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TESTIMONY AND EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 829.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 830.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 831.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

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No. 833.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 834.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

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MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 835.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 836.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1913.

United States Commerce Court

No. 32.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., Petitioners,

vs.

THE UNITED STATES OF AMERICA ET AL., Respondents; INTERSTATE COMMERCE COMMISSION ET AL., Intervenors.

No. 33.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, ET AL., Petitioners,

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THE UNITED STATES OF AMERICA ET AL., Respondents; INTERSTATE COMMERCE COMMISSION ET AL., Intervenors.

No. 34.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., Petitioners,

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No. 35.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., Petitioners,

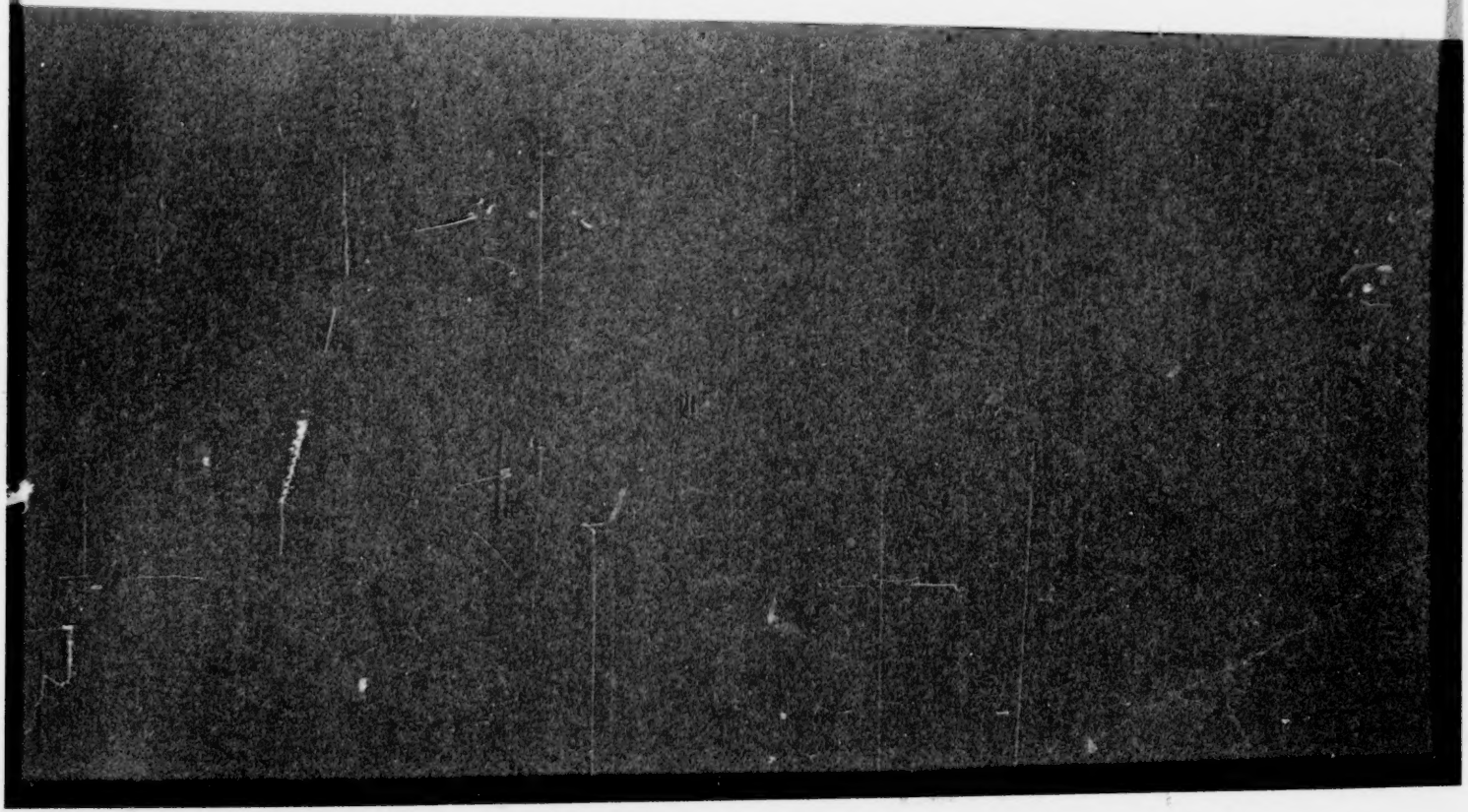
vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION ET AL., Intervenors.

TRANSCRIPT OF STENOGRAPHER'S NOTES OF HEARING HELD AT NEW ORLEANS, LA., DECEMBER [illegible] 1913, BEFORE COMMERCE COURT [illegible] ENTITLED "IN THE MATTER OF [illegible] AND APPLICATIONS OF RAILROADS [illegible] RATES AND CERTAIN TAP LINE [illegible] ORIGINATION AND SUSPENSION DOCKET No. 1."

VOLUME I.

(Filed in U. S. Commerce Court March 28, 1914, and printed under the direction of the Clerk.)



IN THE

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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BEFORE THE INTERSTATE COMMERCE COMMISSION.

Docket No. 11 (I. & S.).

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES, CANCELLING THROUGH RATES, WITH CERTAIN TAP LINE CONNECTIONS.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al., Complainants,

against

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Defendants.

U. S. POST OFFICE BUILDING,
NEW ORLEANS, LA., *December* 8, 1910.

Met pursuant to notice at 10:00 A. M.

Examiner Burchmore: The Interstate Commerce Commission has assigned for hearing at this time and place, a number of cases known as the "tap line cases". In view of the large attendance of counsel, the hearing will be adjourned to the 12th floor of the Grunewald Hotel, at 10:45 A. M.

2 (Whereupon, the hearing was adjourned, to be resumed at 10:45 A. M. at the Hotel Grunewald, a notice to this effect having been duly posted on the bulletin board at the Federal Building.)

HOTEL GRUNEWALD,
NEW ORLEANS, LA., *December* 8, 1910.

Met pursuant to adjournment at 10:45 A. M.

Before James S. Harlan, Commissioner, and John S. Burchmore, Special Examiner.

Appearances:

S. H. Cowan, Esq., (Fort Worth, Texas), and
Frank Andrews, Esq., (Houston, Texas), for the Miller Link Lumber Company, et al.
Messrs. Andrews, Ball & Streetman, (Houston, Texas), for Burrs Ferry, Browndell & Chester Railway Co.
R. G. Pleasant, Esq., (New Orleans, La.), for the Louisiana Railroad Commission.
William A. Glasgow, Esq., (Philadelphia, Pa.), for the Butler County Railway Company.
F. C. Dillard, Esq., (Chicago, Ill.) and

J. P. Blair, Esq., (New Orleans, La.), for Morgan's Louisi-
3 ana & Texas Railroad & Steamship Company, and Louisiana Western Railroad Company.

F. C. Dillard, Esq., (Chicago, Ill.) and

H. M. Garwood, Esq., (Houston, Texas), for the Texas & New Orleans Railroad Company; Houston, East & West Texas Railway Company; Gulf, Harrisburg & San Antonio Railway Company; Washington & Choctaw Railway Company, and also, with

H. W. Seaman, Esq., (719 Rookery, Chicago, Ill.), for the Tremont & Gulf Railway Company, and the Groveton, Lufkin & Northern Railway Company.

Sidney F. Andrews, Esq., (538 Pierce Building, St. Louis, Mo.) for the Arkansas Eastern Railroad Company.

J. S. Hershey, Esq., (Chicago, Ill.).

J. J. Coleman, Esq., (Chicago, Ill.), and

James L. Coleman, Esq., (1011 Railway Exchange, Chicago, Ill.) for the Santa Fe System Lines.

Samuel H. West, Esq., (St. Louis, Mo.), for the St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas, and Paragould Southeastern Railroad Company.

Fred H. Wood, Esq., (St. Louis, Mo.), for the New Orleans, Texas & Mexico Railroad Company; Orange & Northwestern
4 Railroad Company, and also, with

E. K. Voorhees, Esq., (St. Louis, Mo.), General Freight Agent, for the St. Louis & San Francisco Railroad Company.

James C. Jeffery, Esq., (Chicago, Ill.).

J. M. Johnson, Esq., (St. Louis, Mo.), and

Herbert J. Campbell, Esq., (Chicago, Ill.), for the Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

O. E. Perkins, Esq., (St. Louis, Mo.), for the St. Louis, Iron Mountain & Southern Railway Company.

C. J. McPherson, Esq., (St. Louis, Mo.), for the Missouri Pacific Railway Company.

Thomas C. McRae, Esq., (Prescott, Arkansas), for the Prescott & Northwestern Railroad Company; H. M. Stephens; Western Tie & Timber Company; Caddo & Choctaw Railroad Company; Dorcheat Valley Railroad, and Louisiana Railway Company.

C. L. Marsilliot, (Memphis, Tenn.), for the Crittenden Railroad Company; Helena & Parkin Railroad Company, and Tyronza & St. Francis River Railroad Company, and also, with

J. F. Gautney, Esq., (Jonesboro, Ark.), for the Manila & Southwestern Railroad Company.

5 Charles T. Coleman, Esq., (Little Rock, Ark.), for the Wilson Northern Railway Company; Blytheville, Leachville & Arkansas Southern Railroad Company; Roosevelt & Western Railroad Company, and Gould Southwestern Railway Company.

Henry M. Armistead, Esq., (Little Rock, Ark.), for the Perla Northern Railway Company, and Malvern & Fresco Valley Railway Company.

John B. Daish, Esq., (Washington, D. C.), for the Paragould & Memphis Railway Company.

William L. Stocking, Esq., (Kansas City, Mo.), for the Doniphan, Kensett & Searcey Railroad Company and the Saline River Railway Company.

E. J. Mantooth, Esq., (Lufkin, Texas), for the Moscow, Camden & San Augustine Railway Company.

George Wesley Smith, Esq., (Rayville, La.), for the Delhi, Baskin & Southwestern Railway Company.

E. L. Sargent, Esq., (New Orleans, La.), and

W. F. Braggins, (New Orleans, La.), for the Texas & Pacific Railway Company.

Edgar H. Farrar, Esq., (New Orleans, La.), for the Red River & Gulf Railroad Company.

Messrs. Saner & Saner, (Dallas, Texas), by (Jno. S. Saner,
6 Esq.), for the Caro Northern Railway Company.

T. M. Mehaffy, Esq., (Little Rock, Ark.), for the Little Rock, Maumelle & Western Railroad Company, and Saginaw & Ouachita River Railroad Company.

Leon Sugar, Esq., (Lake Charles, La.), for the Sabine & Northern Railroad Company.

Charles F. Ziebold, Esq., (St. Louis, Mo.), for the Zwolle & Eastern Railway Company, and Mississippi Valley Railway Company.

John A. Sargent, Esq., (Kansas City, Mo.), Vice-President and General Manager, Missouri & Louisiana Railroad Company.

George C. Greer, Esq., (Beaumont, Texas), for the Texas Southeastern Railroad Company.

J. D. Riddell, Esq., (Kansas City, Mo.), for the Salem, Winona & Southern Railroad; Victoria, Fisher & Western Railroad Company and the Ouachita Northwestern Railroad Company.

W. Q. Church, (Kansas City, Mo.), for the Louisiana Central Railroad Company.

Messrs. Hill, Brizzolova & Fitzhugh, (Fort Smith, Ark.), for Central Railway Company of Arkansas.

W. L. Dean, (Huntsville, Texas), and
7 B. H. Powell, (Huntsville, Texas), for the Trinity Valley Southern Railroad Company.

E. M. Tweksbury, Esq., (Buffalo, N. Y.), for the South Buffalo Railway.

Edward B. Peirce, Esq., (Chicago, Ill.), and

W. F. Dickinson, Esq., (Chicago, Ill.), for the Chicago, Rock Island & Pacific Railway Company.

Messrs. Green & Green, by (Marcellus Green, Esq.), (Jackson, Miss.), for the Fernwood & Gulf Railroad Company.

T. Brady, Jr., Esq., for the Natchez, Columbia & Mobile Railroad Company; New Orleans, Natalbany & Natchez Railroad Company and Kentwood, Greensburg & Southwestern Railroad Company.

E. A. Frost, Esq., (Shreveport, La.), for the Mansfield Railway & Transportation Company.

N. S. Brown, (St. Louis, Mo.), and

F. R. Pierce, Esq., (St. Louis, Mo.), for the Southern Pine Sys-

tem; Enterprise Railroad Company; Griffen, Magnolia & Western Railway Company; Natchez, Ball & Shreveport and Saline Bayou Railroad Company.

N. S. Brown, Esq., (St. Louis, Mo.), and

H. E. Hardtner, Esq., (Urania, La.), for the Natchez, Urania & Ruston Railway Company.

N. S. Brown, Esq., (St. Louis, Mo.), and

Thos. W. Frye, Esq., (St. Louis, Mo.), for the L'Anguille Railway Company.

S. W. Moore, Esq., (Kansas City, Mo.), for the Kansas City Southern Railway Company.

P. S. McLurg, Esq., (Monroe, La.), for Monroe & Southwestern Railway Company.

Messrs. Moore & Moore, (Texarkana, Ark.), by (Henry Moore, Esq.), for Homan & Eastern Railroad Company, and Louisiana & Arkansas Railway Company.

Martin Walsh, Esq., G. P. & F. A., (Nashville, Ark.), and

J. W. Bishop, Esq., General Attorney, (Nashville, Ark.), for Memphis, Dallas & Gulf Railway Company.

Phin. Kimball, Esq., (St. Louis, Mo.), for Arkansas & Gulf Railroad Company.

W. S. Hobbs, Esq., (Warren, Ark.), for Warren & Ouachita Valley Railway Company.

Luther M. Walter, Esq., (Chicago, Ill.), for Fourche River Valley & Indian Territory Railway Company; Trinity Valley & Northern Railway Company, and Lake Charles Railway & Navigation Company.

John S. Kirkpatrick, Esq., (Kansas City, Mo.) for the De Queen & Eastern Railway Company; and Sabine & Eastern Railway Company.

T. J. Gaughan, Esq., (Camden, Ark.), for the Crossett Railway Company; Louisiana & Pacific Bluff Railway Company; and El Dorado & Wesson Railway Company.

Walter H. Saunders, Esq., for the Gulf & Sabine River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Little Rock, Sheridan & Saline River Railway Company; Tioga & Southeastern Railway Company; Mill Creek & Little River Railway & Navigation Company, and Bernice & Northwestern Railway Company.

Jos. R. Lane, Esq., (Davenport, Iowa), for the Warren & Ouachita Valley Railway Company.

George A. Keyes, Esq., (Kentwood, La.), for the Kentwood & Eastern Railway Company.

W. R. Thurmond, Esq., (Kansas City, Mo.), and

J. Walter Farrar, Esq., (Kansas City, Mo.), for the Louisiana & Pacific Railway Company; Sibley, Lake Bistineau & Southern Railway Company, and the Woodworth & Louisiana Central Railway Company.

Henry L. Fitzhugh, Esq., (Fort Smith, Ark.), for the Central Railway of Arkansas.

Julian C. Wilson, Esq., (Memphis, Tenn.), for the Blytheville, Burdette & Mississippi River Railway Company.

9a W. N. Welch, Esq., (Myrtistown, La.), for the Black Bayou Railroad Company.

William White, Esq., (McComb, Miss.), President and General Manager, and

W. B. Mixon, (McComb, Miss.), Attorney, for the Liberty White Railroad Company.

Robert R. Reid, Esq., (Amite, La.), for the Kentwood & Eastern Railway Company.

J. T. Burlingame, Vice President and General Manager, for the Washington & Choctaw Railway Company.

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C. W. Jones	Central Ry. of Ark.	495

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10 *Proceedings.*

Commissioner Harlan: Gentlemen, I wish first to suggest that all who are here representing any interest that is involved in this proceeding will be good enough to file their appearances with the reporter at some time during the day. It is desirable that the record should show just who are here and who are interested. Another thing that I would like all to observe is this: The stenographer does not know all who are here and all who may address the Commission on this occasion. He suggests, and I hope you will bear it in mind when any one rises to address the Commission they will first give their names to the stenographer, and it might be well to say what interest they represent.

I shall be glad now to have any suggestions as to procedure. I assume counsel perhaps have given that matter some consideration, and I would be glad to know whether the suggestions have been formulated as to how we shall proceed with this matter. Of course it is understood that the Star Grain and Lumber case is here, also all the special cases that have been filed by the tap lines. It is the purpose of the Commission to make one record, which shall be considered as attached to the record in the Star Grain and
11 Lumber case, and also will be a record for the individual cases that are to be presented.

Have counsel any suggestions to make as to how we shall proceed to make up this record?

Mr. Glasgow: Mr. Commissioner, I represent the Butler County Railway Company. Counsel who have been representing the numerous short lines who are here have been somewhat embarrassed in making any suggestion as to procedure, because they did not know exactly what the views of the Commission were in connection with this hearing. They have considered as far as I know, both separately as far as their lines are concerned, and generally, the subject of this inquiry; and upon one question they have appointed a committee to present a motion to your Honor this morning as to a matter which occurs in the record, which I will now, if your Honor will permit me, ask to spread on the record at this time.

There has been a petition filed in this cause styled the supplemental petition of the Miller Link Lumber Company and others. As I understand the situation, the Star Grain case has been reopened for taking further evidence, and that it has been combined and consolidated with the special petitions of short line roads, which have been filed with the Commission, all to be
12 heard at this time before your Honor.

The scope of the Star Grain case was that certain complaints filed with the Commission a petition to reestablish through routes and joint rates which had been withdrawn by the carrier, the Atchison, Topeka & Santa Fe Railway Company. Upon that inquiry the Commission delivered an opinion and subsequently reopened the case or considered it further, taking into consideration the general question of division of rates between short line railroads and the trunk lines, and whether joint rates and through routes should be established, and that, as we understand it, is the inquiry that is now before the Commission for investigation. The petition to which I have alluded undertakes in this inquiry to extend the investigation far beyond any question which was in the Star Grain case or any question made by the special petition. Therefore, this committee, who represent or who are acting for all of the counsel here, because it was inconvenient for them all to make the motion, desire to present this motion, which I will read, if your Honor will permit me:

"Now come all short line railway companies and all owners of short line railways, cited to appear at this hearing and now move the Commission to strike from the record in this cause all
13 of the supplemental petition filed herein by Miller Link Lumber Company, et al, except so much thereof as charges that division of through rates between the trunk line railways and the short line railways is in violation of the second and third sections of the Act to Regulate Commerce.

"And in order that the above motion and the reasons therefor may be made more specific it is further moved—

"1. That section 3 of said supplemental petition filed herein by Miller Link Lumber Company, et al., be stricken from this record, for the reason that by said section 3 there is thrust into this case questions which cannot properly be considered, upon the citation which parties are required to answer upon a re-opening of the case of Star Grain & Lumber Company, et al., versus A. T. & S. F. Railway Company, et al., No. 1319, and the other cases assigned for hearing this day therewith since by said petition it is sought to have the Commission pass upon all 'rates of freight on lumber and saw mill products, now in effect from points on the lines of said railways in Louisiana, Arkansas and Texas to interstate destinations in the States of Oklahoma, Colorado, Kansas, Missouri, Iowa, Nebraska, and other interstate destinations' and this upon the insuf-
14 ficient charge that such rates 'are unjust and unreasonable per se and relatively as compared to the rates of freight which the owners of the saw mills and shippers who receive such divisions of the rates are accorded.'

"2. That section 5 of said petition should be stricken from the record in that it undertakes without any definite or distinct allegations of fact or without giving information as to what specific objection petitioners may have as to rates, to have this Commission 'consider the entire body of rates on lumber from Louisiana, Arkansas and Texas as well as the regulations and practices pertaining to such transportation and to the rates' and to thrust said *omnibus*, indefinite and unlimited inquiry into cause No. 1319 aforesaid.

"3. That said petition undertakes to inject into this cause and inquiry into the legality or propriety of Group Rates, which has no place in the investigation upon which the Commission is engaged in cause No. 1319 aforesaid, and especially in that there are no specific and definite allegations as to what Group Rates petitioner charges to be illegal and the reasons therefor, and paragraph 3 of the prayers of said petition should be stricken from the record
15 for the above reason and because same is indefinite and uncertain.

"4. That paragraph 1 of the prayers of said petition be stricken from the record, because it asks to inject into cause No. 1319 aforesaid matters which cannot properly be considered therein.

"5 That paragraph No. 4 of the prayers of said petition be stricken from the record, in that it asks the Commission to give notice of an *omnibus* "investigation of all the interstate rates from Texas points to interstate markets on lumber and lumber products, together with the tap line divisions and other allowances, regulations, practices and rates applicable to the lumber and logging traffic in the same manner and to the same extent as the same subject shall be involved with respect to the rates, regulations and practices from said points in Louisiana and Arkansas,' and the facts alleged and the section aforesaid are so indefinite that the Commission cannot properly base an investigation or an order thereon.

"6. That paragraph 5 of the prayers of said petition be stricken from the record as the same is too indifinite and uncertain to enable parties interested in this proceeding to understand definitely the relief asked and the Commission can not properly base an
16 investigation or order thereon.

"7. If investigation is to be had on a complaint as indefinite as the petition above referred to, then the effect thereof would be to deny to parties interested a proper hearing in that they would have no definite and specific information as to the grounds of complaint and necessarily could not prepare their defense thereto.

WM. A. GLASGOW, JR., *Philadelphia;*
EDGAR H. FARRAR, *New Orleans;*
H. W. SEAMAN, *Chicago;*
C. L. MARSHALL, *Memphis;*
WALTER H. SAUNDERS, *St. Louis,*
Committee of Counsel Representing Short Line Railroads Cited to Appear."

Now, sir, I think, and the committee think, that the case of the National Petroleum Association against Ann Arbor Railroad Company settles the question as to this petition, 14 I. C. C. Reports. Your Honor is no doubt familiar with the case. In that case a petition very much of the same character as this, undertaking to charge that all the rates in a certain district were unreasonable and unjust, just as this undertakes to charge, that all rates
17 from Texas, Arkansas, and Missouri to all the points in Colorado and the other states of the Union are unjust and unreasonable, was filed; and the Commission says:

"Then it must follow that we are asked by complainant to reduce by one sweeping order thousands and perhaps hundreds of thousands of rates concerning which no specific complaint has been made and not one syllable of evidence offered. To quote the language used in Dallas Freight Bureau versus M. K. & T. Ry. Co., 12 I. C. C. Rep. 427: 'The case seems to have been thrown together as if the Commission only needed to have an opportunity presented to it to take favorable action. * * * We are authorized under the Act to order a reduction in rates only when it is made to appear that they are unjust or unreasonable or unjustly distriminatory or unduly perferential. But inasmuch as this proceeding is undoubtedly maintained in good faith upon the belief that the Commission can, within the powers conferred upon it by law, and from the evidence in this record, grant the relief prayed for, it may be well to state here some of the insuperable difficulties involved in an omnibus complaint of this nature,' and they go on to discuss it.
18 "We can make no such wholesale order as is prayed for in this proceeding. If any of these rates are excessive or operate to effect forbidden discriminations, as may be the case, they are the rates of one or more carriers against which a definite and specific complaint can be directed," and the Commission in that case dismissed the complaint of the National Petroleum Company and required them to come in, as they subsequently did, with specific charges as to specific rates.

Now, the committee make this motion. We do not want to go beyond the inquiry which is legitimately and properly before the Commission, and we make this motion before your Honor on the record. I do not know whether your Honor will feel like passing upon it at this time, but before going into any of the questions involved on that, if your Honor does not pass on it, we should ask that your Honor refer the motion to the Commission to be passed upon before we go to the expense of going into the record on that question.

Commissioner Harlan: Is counsel here representing the petition? I think it was filed by Judge Cowan.

Mr. Cowan: Yes, your Honor.

Commissioner Harlan: Have you any suggestions to make in response to the motion?
19 Mr. Cowan: The motion of Mr. Glasgow is to postpone the case until the allegations can be made sufficiently definite to inform the parties interested of what rates we complain, and

that we shall not be permitted to inject into the case an investigation of any rates which were not embraced in the original case of the Star Grain and Lumber Company, and that we shall not investigate any questions except the questions involved in that case. As I understand Mr. Glasgow, he wants the Commission and your Honor to postpone the hearing of this case in order that they may ascertain whether these questions may be heard in this case, so they will not have to go to the expense of making preparation for trial. It is like the application in a criminal case for the continuance of such a trial on the ground of the absence of the witnesses, who are really in the vicinity of the court house. The Commission under the present law has ample and complete power to investigate any matter that pertains to the matter of the complaint or the rates complained of. The Act of 1910 gives the Commision ample power in that particular, and it may investigate without a complaint and on its own motion. The law does not require that the Commission specify with the certainty of an indictment just what the subject matter is in all particulars, but only generally. I take it that the motion is without any foundation, legally speaking, because of the power conferred upon the Commission by the Act of Congress of 1910. The petition seeks in this case to adjust the rates for the purpose of preventing those discriminations as to which the Commission made its decision in the Star Grain and Lumber case, the object being to embrace the question of reasonableness per se and the relative reasonableness of the rates, as well as matters pertaining to discriminations, to rebates and to practices concerning the handling of traffic, the making of the application of the rates or the division of the rates. Whether the petition is as aptly drawn as my friend, Mr. Glasgow, might draw it, and whether it sets out in detail to inform those who are present of the matter that is intended to be reached by virtue of the petition calling the Commission's attention to the situation, I do not know; I probably could have drawn it a great deal better, but it was sufficient, at least, that when the petition is served upon these gentlemen it has brought together the largest aggregation of good looking and intelligent and wealthy gentlemen who are participating in these advantages that I have ever seen, by a petition containing as little as Mr. Glasgow says it contains. It brought him down here representing a cooperage company and not a lumber company, from Philadelphia, and it seems very strange, in view of what your Honor sees before you, that these gentlemen should contend that the petition was not sufficient to inform these gentlemen what the subject matter intended to be reached, is about. I think the petition has ample evidence now before your Honor that it has reached all the purposes of a petition that could be drawn by a Philadelphia lawyer, however much better it might be than one drawn by a gentleman from Texas.

Mr. Glasgow: The question is not who drew the petition, but when my friend undertakes to look around over this audience and say this petition has brought them here, the truth of the business is, a great many of these distinguished and good looking gentlemen

he has referred to never heard of this petition until they got here. He has misinterpreted this motion——

Commissioner Harlan: I assume, after the compliment Judge Cowan has paid to the assemblage, that no one wants action on your motion at this time.

Mr. Glasgow: No, sir; I do not suppose you will pass upon it now.

22 Commissioner Harlan: We will reserve that question for the Commission. I think it proper, however, to say that in addition to the notice that has been given, that the Commission expects at this time to have a record that will enable it to proceed on the intimations made by the Commission in the Star Grain and Lumber case. The Commission has before it also the numerous petitions of particular lines which bring that same general question in issue; and in addition, the Commission has suspended the action of the carriers cancelling the so-called tap line allowances, and the investigation of the propriety of the carriers in that regard is here before us. So that I may say, for the Commission, and after a conference with the Commission, that it hopes at this time to make a record that will be sufficient basis for such action as may be necessary on this whole question.

Mr. Glasgow: Do you mean of the division of rates to carriers?

Commissioner Harlan: The division of rates and lawful allowances in all cases and in particular cases, and in the propriety of the action taken by the carriers in cancelling allowances. Now, I should regard it, and that is the view of the Commission, as most unfortunate if any attitude is assumed here, either by the tap

23 lines, or by the regular lines, or by the lumber interests, that will impair the sufficiency of this record as the basis for a disposition of the whole question.

Mr. Glasgow: I have not done that, and neither does this motion put it in that attitude. But we cannot be put in the attitude of being in any way attempting to limit the inquiry of the Commission. But your Honor recognizes that the question of reasonableness per se of rates from Texas to Louisiana and Arkansas is a very different question from what has been considered in this case, and we do ask that before you go into the questions of the breadth suggested by this supplemental petition, that if your Honor does not feel like passing upon it alone before you go into it, we have that matter submitted to the Commission for its order in that connection, because it opens up a breadth of examination that no Commission, in my judgment, can possibly pass on in one case, it is utterly impossible. Therefore, I do not think that the committee can expect your Honor to pass upon it, but we do not want to go into that thing without having it submitted to your honor to consider it at your leisure.

Commissioner Harlan: Your motion is of record, and you

24 have heard my statement made in behalf of the Commission, and I think all questions growing out of the motion may be reserved for the action of the Commission.

Mr. Garwood: In behalf of the lines which I represent, I wish to [redacted] that in view of the course of this investigation, and in view

of the shortness and insufficiency of the notice of this supplemental petition, it had not occurred to us that the reasonableness of the lumber rates from the territory mentioned to the consuming territory would be considered, as to the reasonableness per se of those rates, and we are utterly unprepared with testimony to maintain those rates, if they are to be attacked. I think that I state almost a truism when I say it has never occurred to any of the main lines, the trunk lines, that here we would be called upon to meet the charge that the rates were unreasonable, and we are not prepared to do it.

Commissioner Harlan: Let me interrupt you for a moment, Mr. Garwood. The view of the Commission is, as I think I correctly interpret it, that the purpose of the supplemental petition was not to bring before the Commission the general question of the reasonableness of the lumber rates from those territories, but only
25 the particular question as to the reasonableness in view of the allowances made to tap lines. I assume that counsel who filed the petition is not prepared to go beyond that phase of the question of reasonableness. And it occurs to me, as I assume that it would be acceded by you, that there will be a sufficient basis here for the determining of the reasonableness of lumber rates from that point of view.

Mr. Garwood: As a mere collateral or incidental question——

Commissioner Harlan: As a question growing out of the whole matter of allowances made by regular lines to tap lines, the state of those allowances, and the effect that those allowances have upon the net revenues of those carriers. I assume we will have no difficulty in proceeding upon that general basis, and I assume that counsel does not expect at this time to go beyond that.

Mr. Cowan: Your Honor has correctly stated the view that we hold, for the petitioners, and the object of filing it. We did not expect to go into the general question of the rates per se; that is, put in the formal allegation of the petition like in the filing of an indictment.

Mr. Peirce: I would like to state my view of the situation
26 in view of this supplemental petition. I think your Honor has stated about as clearly as could be, my own understanding of this supplemental petition. Now, the Rock Island was not a party to the Star Grain and Lumber case, and has never been made a party to it, to my knowledge, and no copy of this petition has ever been served upon us. Now, the situation, as I understand it, is simply this: that there has been a controversy pending in Texas by many of the Texas lumber producers that the payment of these allowances in Arkansas and Louisiana resulted in discrimination against the Texas people who were not getting these allowances directly or indirectly, and a petition was filed before the Texas Commission asking that the local rates in Texas be reduced to offset these divisions in Arkansas and Louisiana, and that the Texas people have never made any contention as to the rates in and of themselves, but simply that the payment of these divisions in Arkansas and Louisiana resulted in a discrimination, which, if removed or cancelled, satisfied their complaint. Now, when the main lines, like the Rock Island and the Missouri Pacific and the others filed these petitions cancelling

the divisions with the short lines, the Commission suspended
27 these cancellations; and while I have never known just precisely the theory upon which it was done, I have understood in a general way, and I think perhaps now in an authoritative way, that it was done for the purpose of determining whether these cancellations were proper or not——

Commissioner Harlan: That is not quite the basis of the action of the Commission, as I understand it. It was done because the Rock Island in a case in court, had permitted or secured, or at any rate, the results were had in court as to produce a discrimination if the rest of the rates were not suspended.

Mr. Peirce: The noise outside, your Honor, prevented me from hearing.

Commissioner Harlan: Well, it was done as the result of a proceeding against the Rock Island in court, in which such action was taken as would result in a discrimination unless the suspension was made general.

Mr. Peirce: What action do you refer to?

Commissioner Harlan: I do not think it worth while to refer to it. You were there and argued the case, as I understand. However, I do not think it worth while to go into the reasons of the
28 Commission in taking that action. It did take it, and this is the situation.

Mr. Peirce: I was just stating my understanding, and was about to conclude. The petition filed by Mr. Cowan, as stated by your Honor, was simply to restate the petition of the Texas shippers, that these allowances in Arkansas and Louisiana were improper, and resulted in a discrimination, and the only effect of this petition was to raise the question squarely before the Commission and put them on the record in order to be heard here on the question of the propriety of these allowances, and that that is the question that is now before the Commission. After all, these lines are here, and I understand they are all here by their counsel and want to be heard, and make their cases, and the Commission, after hearing the evidence, may decide that the action of the main lines in cancelling these divisions was improper and that these lines are lines entitled to share in these rates, and if they do decide that, it seems to me the only necessary conclusion is that the petition of Mr. Cowan must be dismissed. If, on the contrary, the Commission holds these divisions are improper, then, of course, they will be permanently cancelled, and in that way Mr. Cowan's petition will be satisfied and no further action than the permanent cancellation of divis-
29 ions will be necessary. Now, that is the issue, as I understand it, that is to be heard by the Commission here at this time.

Commissioner Harlan: Mr. Peirce, I do not see how I can make the statement any clearer than I have endeavored to make it. You have overlooked the second hearing in this city on the tap line question. Now, if you will remember, the issue in the Star Grain and Lumber case was so enlarged in the second hearing as to bring before the Commission the entire question of tap line allowances, whether

in Arkansas, Louisiana or Texas, and the Rock Island, if I mistake not, was present on that occasion.

Mr. Peirce: Well, we were present——

Commissioner Harlan: The Commissioner certainly regards the Rock Island as being before it on this occasion.

Mr. Peirce: I do not think there is any question but what the Rock Island is here, and I do not think there is any question but what the Rock Island is a party to the record, and I do not want your Honor to understand I am going to raise any technical objection. But at the first hearing in New Orleans, the Star Grain case was set down for hearing; to which the Rock Island was not
30 a party, and also the other cases known as the Chicago Coal and Lumber cases, to which the Rock Island was a party. They were all assigned for hearing before the Commission at New Orleans, in this room, and we all appeared here in those cases and introduced evidence, and the record was made one, and the evidence was treated in both cases, but separate opinions were rendered in those cases, and I do not know of any order that was ever made consolidating those cases. However, I do not desire and will not. If it becomes necessary to get in the Star Grain and Lumber case, in order to let the Commission go ahead, I think we shall do it. I do not want to take any position that would in any way obstruct this proceeding, and will not do it, and if necessary, I think we would enter our appearance if you wanted it entered, in order to proceed with this record in this case.

Commissioner Harlan: I think probably counsel will do that, at any rate, there can be no misunderstanding. The whole tap line question is here, and as I understand it, counsel understands the Rock Island is a party to that question.

Mr. Peirce: I do not rise to object to the jurisdiction of the Commission, but simply for the purpose of stating my under-
31 standing of the issues before the Commission.

Commissioner Harlan: If your understanding is any narrower than that, I think you are wrong. The Commission understands that the tap line question is before it in all of its aspects in this hearing, and we expect a record to be made, and we want the co-operation of every one in making a record that will enable the Commission to dispose of that question.

Mr. Peirce: Well, you say the tap line question, in all of its aspects, and I take it that is the propriety of making the divisions to the tap lines in each and all of the cases.

Commissioner Harlan: The propriety of making the divisions generally and in individual cases, and also the question intimated very clearly by the Commission in the Star Grain and Lumber case, whether there ought not to be a reduction of the rate; so that the matter may rest on the net revenues of the carriers.

Mr. Peirce: Yes, sir. Now, if the position of the Commissioner is correct, that there ought to be a readjustment of the rates if the tap line divisions are cancelled, it is impossible for us to give any

consideration to that question until after the tap line ques-
32 tion is settled, because we do not know what divisions you are going to allow or what you are not going to allow, and it is impossible for us to give any consideration to that, and impossible for us to introduce any evidence on that, because we do not know what the decision of the Commission is ultimately going to be, after you hear the evidence of all these gentlemen here as to their individual roads. You may decide, after you hear the evidence, that the situation will remain as it is today. If you do, I take it there would not be any readjustment of the rates under the intimation of the Commission in the Star Grain and Lumber case, and I do not see how the Commission could very well expect us to introduce evidence on the question of the readjustment of rates on the assumption that tap line divisions are cancelled, because we do not know what the Commission is going to decide, and we do not know what the result of that phase of the controversy is going to be.

Commissioner Harlan: Well, I assume, Mr. Peirce, that there will be abundant opportunity before the Commission to present your views on this particular question as well as on the general question, and I can see that on any suggestion made by counsel that this question will be considered by the Commission. As to
33 whether it is desirable to have your line introduce further testimony, all those matters can come forward for decision by the Commission after we have made this record.

Mr. Glasgow: Your Honor's statement of what is here today is practically satisfactory to us, so far as I am concerned; that is, all the questions involved in the allowances to tap lines are to be considered. We make our motion and I expect we will have an opportunity for hearing on that. We are not complaining of the breadth of this petition as filed as a supplemental petition at this time. That is reasonably satisfactory. Now, not as a member of the committee, but as counsel for a single client, I want to suggest to your Honor as to the method of procedure. The tariffs have been filed in the case I particularly represent by the St. Louis & San Francisco, and by the Missouri Pacific, cancelling the former rates in effect from points on the Butler County Railroad to destination, and putting in effect new rates, which new rates are an increase over the rates formerly paid, or under the tariffs cancelled out. The petition was filed by the Butler County Railroad Company attacking the cancelling tariffs as unjust and unreasonable, and asking for joint rates and through routes in division of the rates be-
34 tween the two carriers, alleging that the Butler County Railroad Company is a common carrier. Now, upon that petition, and I take it that the others are practically the same, the first inquiry arises as to whether the tariffs which your Honors have suspended and whether the rates thereunder, are reasonable and just, and upon that the burden of proof is upon the railway companies to justify what is an increased rate. That is a matter of procedure now. Second, the question comes up whether there shall be joint rates and through routes and divisions thereof. The question arises on the threshold whether the Butler County Railroad is a common

carrier, and if so, what should be the rates and divisions thereof, and therefore, I suggest to your Honor that the question of procedure now should be, first, that as to the tariffs which have been suspended, and the reasonableness of the increased rates which have been filed, that the carriers should now assume the burden of establishing the justness of the rates which are increased, for the service rendered.

Commissioner Harlan: Where is the Butler County Railroad?

Mr. Glasgow: It runs from a place called Poplar Bluff in either Arkansas or Missouri——

35 Mr. Jeffery: In Missouri.

Mr. Glasgow: To a connection with the Iron Mountain and the Frisco Road, for about thirty-five miles towards the Arkansas line in a general way south.

Commissioner Harlan: Have you had allowances heretofore?

Mr. Glasgow: We do not state it that way.

Commissioner Harlan: I do not want to commit you, but we want to get along. Did you get something from the regular lines?

Mr. Glasgow: We got a division of the through rates.

Commissioner Harlan: Very well, call it what you like, division or allowance; that is what you got?

Mr. Glasgow: Yes.

Commissioner Harlan: Now, the new tariffs cancelled that?

Mr. Glasgow: Yes, sir.

Commissioner Harlan: And at the same time raised the rates?

Mr. Glasgow: Put in the rate from the junction the same as it was from the Butler County Railroad, which is an increased rate on shipments from the Butler County Railroad.

Commissioner Harlan: Then you stand practically as all the other lines here?

Mr. Glasgow: I think so.

36 Commissioner Harlan: And on that question the Commission understands that the regular lines, in pursuance of the intimations by the Commission in the Star Grain and Lumber case, filed these tariffs cancelling the allowances. Now, these tap lines filed their petitions asking for their restoration. We want all the information that we can get on that question from the particular carriers, and we are not going to stop very long this morning to determine the question of where the burden of proof is, or whether it is an increased rate or not.

Mr. Glasgow: I am trying to bring out of this chaos some method of procedure.

Commissioner Harlan: I do not think there is any chaos.

Mr. Glasgow: I am talking about the chaos we had yesterday, when your Honor was not here, because there was a great variety of opinion as to what we were to do. Now, I suggest, in order to try and get along—I am not trying to obstruct anything——

Commissioner Harlan: I assume you are not.

Mr. Glasgow: What I say is that the petition attacks the rates which are now filed as unreasonable, and when that question comes

up, I suggest the burden would be upon the carriers to pro-
37 ceed with the inquiry. When it comes to the question of the allowance or division of rates, or whether the joint rates should be established, the individual short line must proceed to present its case.

Commissioner Harlan: That has been understood.

Mr. Glasgow: And I merely suggest that as the method of procedure.

Commissioner Harlan: We are trying to make a record on the general question, and not on the individual cases.

Mr. Peirce: Right on that point, we are not parties to the Butler County case——

Mr. Glasgow: Yes, you are.

Mr. Peirce: If we are, then that serves as an illustration. I do not understand in these petitions filed by the short lines, any question is raised as to the reasonableness of rates. Those petitions are filed asking the restoration of through rates, and therefore, Mr. Glasgow is wholly wrong and illogical in his position, in stating that any burden of proof rests upon the main carriers here to establish the reasonableness of an increased rate. They did not increase the rate, but merely cancelled a through rate with one of their connections, in view of this understanding of the intim-
38 ation of the Commission in the Star Grain case, and now that short line comes and says to the Commission that the main line has improperly cancelled that through rate, and we ask the restoration of the through rate, but the only question now is whether that cancellation was improperly made, and if the Commission finds it was improperly made, then I take it that the through rate will be immediately re-established, in accordance with whatever the finding of the Commission may be.

Commissioner Harlan: Mr. Peirce, I do not understand there is any substantial difference between your view and that suggested by Mr. Glasgow, and the view I have endeavored to express for the Commission. We shall not at this time discuss whether the 24 cent rate from Texas to Kansas City is or is not a reasonable rate. We shall at this time expect to make a record which will enable the Commission to determine whether any part of that rate is to go to the tap line as a general proposition, and to the particular tap line that contests that rate as a particular proposition.

Mr. Peirce: That is exactly as I understand it.

Commissioner Harlan: Now, there can be no misunderstanding as to what we are here for.

39 Mr. Peirce: I agree fully with that, and will proceed on that line.

Mr. McRae: I represent the Prescott & Northwestern Railroad, and we have filed a complaint against the St. Louis, Iron Mountain & Southern, and against the Kansas City & Southern Railway Company for the cancellation of the rates. We are among the first on the docket, and I would ask of your Honor, if you have determined the order in which these special complaints shall be heard. We

are here with our witnesses, prepared to give the Commission such information as we have touching our transportation questions.

Commissioner Harlan: Mr. McRae, before taking up that question, I want to make an addition, Mr. Peirce, to the statement I last made, which was incorporated in some remarks I had previously made on the question of the reasonableness of the rate, to the extent that the rate may be unreasonable because of the allowances or divisions being made to tap lines, that question of reasonableness is before us, but no other question. I have stated that in several different ways, and in making my last statement I neglected to complete it by calling attention again to that phase of the matter, which the Commission believes is now before it.

40 Mr. Jeffery: Do I understand from that that for instance the 18 cent rate from the lumber territory to St. Louis will be attacked and the burden on us to defend that 18 cent rate as it stands? I am doing this sincerely, because I could not quite get your idea on that point.

Commissioner Harlan: I am going to ask counsel to confer with other counsel on that point.

Mr. Jeffery: I will do that, but I did not understand.

Commissioner Harlan: I set it forth as clearly as I could, and I am going to leave the question now with this assemblage, and let us go ahead.

Mr. Glasgow: Some of the gentlemen here have not filed petitions for their specific lines, and I think it would clarify the subject if your Honor would state, as I suppose is the rule, that they may introduce evidence as to their lines without having formally filed a complaint.

Commissioner Harlan: It was so understood with counsel representing a number of these lines at Washington, that they need not burden the record with separate petitions, but that everyone here that wanted to go into this record would have liberty to do so without a formal petition. We have asigned first for hearing the case of the Red River & Gulf Railroad against the Rock

41 Island. That case went into court, and was referred by the court to the Commission, and we thought it desirable, under those conditions and as a courtesy to the court, that that case be disposed of first. I would like to know who is here representing that road.

Mr. Farrar: We represent the Red River & Gulf, but I think your Honor is mistaken in saying the court referred that case to the Commission. The appeal was dismissed voluntarily because the defendant came in and pleaded——

Commissioner Harlan: Aside from the question, we have assigned that case first, and if you are ready to go ahead, we will go ahead with this.

Mr. Marsilliot: Mr. Commissioner——

Mr. Farrar: It will be necessary for us to send out and get our books and papers.

Commissioner Harlan: I hope counsel will be ready when their case is called. I make no criticism of this particular case, but I

hope hereafter all books and papers and witnesses will be on hand when the case is called.

Mr. Farrar: We would have been ready, but my client's train was delayed.

Mr. Marsilliot: In order that we may facilitate the move-
42 ment of the Commission, and carry out the suggestion your Honor has just made, and which we think was a most excellent one, I would like to repeat Mr. Glasgow's question, as to whether or not your Honor has fixed any order that these cases may be set, in order that we may be ready, and all of us may be ready as fast as they are called.

Malvern & Freeo Valley Ry. Co.

Commisioner Harlan: We will have to develop this thing a little later. We want to get started and then be able to make some announcement that will relieve a good many of those who are here perhaps until tomorrow. Is the Malvern & Freeo Valley in court?

Mr. H. M. Armistead: I represent that company. I understand that we are in court.

Commissioner Harlan: I will put the further question. Are you ready to go ahead with your case?

Mr. Armistead: I undestand we were brought here on citation to the complaint of the Butler County Railroad. That complaint is here, and our response to it is that we did not cause the conditions complained of there; that is, the cancelling of the division sheets of the Butler County Railroad, and it would be a simple denial of the allegations in that complaint. Now, in the case of the
43 Arkansas Eastern Railroad Company, the Malvern & Freeo Valley is cited to that complaint, and that is similar to the Butler County Railroad complaint; and now our answer would be simply that we did not cancel any divisions with that complainant. If there has been any general citation issued, any citation making the Malvern & Freeo Valley a party to any other complaint, I am not advised of it, and I would like to have advice from your record.

Commissioner Harlan: Did you get into court with a bill for the restoration of the rate?

Mr. Armistead: Yes, sir; we have a suit pending in the United States Circuit Court for the——

Commissioner Harlan: Was that the case that was referred to the Commission?

Mr. Armistead: No, sir. I heard your Honor state just now something about that case——

Commissioner Harlan: Was not there an injunction granted in that case?

Mr. Armistead: There was an injunction.

Commissioner Harlan: Have you any complaint against the Rock Island?

Mr. Armistead: We have a complaint in court.

Commissioner Harlan: You have no complaint before the
44 Commission?

Mr. Armistead: None here.

Commissioner Harlan: That is to say, the Commission may order your allowance cut off and we will not hear from you again; is that it?

Mr. Armistead: No, sir. If you will be patient with me, I will be frank with you.

Commissioner Harlan: I expect counsel to be frank.

Mr. Armistead: And I will be frank.

Commissioner Harlan: What is your position? We would like to get your case up, because it was a case in court and there was another case in court, and we have assigned those two cases first for hearing.

Mr. Armistead: Well, this is the first advice that I have had or that any of the Malvern & Freeo Valley people have had that that case was assigned first. Will you kindly answer my inquiry from your record, whether we are cited on any other complaint than the Butler County Railroad and the Arkansas & Eastern?

Commissioner Harlan: Well, we will assume that you are not, and from that point, what is your procedure?

Mr. Armistead: Then I will be perfectly frank with you.

45 Your Honor stated just now that the Rock Island had procured that case to be brought——

Commissioner Harlan: No, I did not state that, or at least did not intend to be so understood.

Mr. Armistead: I understood you to so state. And in order that you may understand that that is not true, I will state that the Malvern & Freeo Valley regards itself as a common carrier. It is, in fact, a typical tap line. It may eventually turn out not to be entitled to a division, and in order to test its right under a contract for a division, it filed that bill and a temporary injunction was granted, and that case was fully argued in court. There were amici curiæ from all over the country pro and con——

Commissioner Harlan: If you will pardon me, the Commission knows all those facts.

Mr. Armistead: Yes, sir. Now, I will make our position here plain. We are ready to be investigated, but we do desire an opportunity to prepare, by bringing records and witnesses, and we were not advised until your Honor spoke that it was proposed to investigate us first.

Commissioner Harlan: Well, then, will you be ready at

46 two o'clock?

Mr. Armistead: No, sir.

Commissioner Harlan: When will you be ready?

Mr. Armistead: I should say that I will be ready in ten days.

Commissioner Harlan: You are not ready to go on now?

Mr. Armistead: No, sir.

Commissioner Harlan: Very well; the Commission will have to close the record at this time as to your road. Have you any of your witnesses here?

Mr. Armistead: I have an officer of the company here.

Commissioner Harlan: What officer is that?

Mr. Armistead: President.

Commissioner Harlan: Have you any others?
Mr. Armistead: No, sir.
Commissioner Harlan: Is he here now in court?
Mr. Armistead: Yes, sir.
Commissioner Harlan: Will you be kind enough to put him on the stand?
Mr. Armistead: I want to make this objection, that we are entitled to notice and to have a complaint filed, if it is a complaint to the Commission, we are entitled to be advised what it is, and
47 that we should not be dealt with summarily.
Commissioner Harlan: It is not the purpose of the Commission to deal summarily with any one, and it is not the practice of the Commission. The Commission never acts until it thinks itself fully advised as to all the facts; but we have come down here to go ahead with the investigation. It has been widely advertised, as is indicated by the presence of this assemblage, and we expect the tap lines that are interested in the continuance of divisions or allowances to be ready here to give us all the facts showing that they are entitled to have these divisions or allowances.
Mr. Armistead: Still, you have an Interstate Commerce Act, and you have rules of practice——
Commissioner Harlan: If counsel is not ready to go on at this time, after all this notice, the record will show that, and the Commission will have to take its action in that particular case.
Mr. Armistead: Very well, I will state we are not ready because we have not been notified that we were a party to any complaint except that of the Butler County and the Arkansas & Eastern.
Commissioner Harlan: You have received a notice from
48 the Commission?
Mr. Armistead: I have just asked two or three times if there is any citation shown to be served upon us. I have never received it.
Commissioner Harlan: Where is the president of your company; will you ask him to arise?
Mr. Armistead: Mr. Foster is here.
Commissioner Harlan: What is your name?
Mr. Foster: Foster.
Commissioner Harlan: Did you receive any citation from the Commission?
Mr. Foster: For December 8th, for this hearing?
Commissioner Harlan: Yes, for this week.
Mr. Foster: No.
Commissioner Harlan: Has your road in any way received any notice of this hearing?
Mr. Foster: Not that I know of. We have an agency appointed in Washington, which is supposed to send us on all our notices.
Commissioner Harlan: Did you receive at your general offices any notice of any kind?
Mr. Foster: No, sir; only in regard to the two cases Mr.
49 Armistead refers to, the Butler County and the Arkansas & Eastern.

Mr. Armistead: We are made defendants in those cases.

Commissioner Harlan: Are you ready to meet the case of the Butler County Railroad?

Mr. Foster: I understand our attorney has just explained the situation with regard to that.

Commissioner Harlan: Mr. Glasgow, you represent the Butler County Railroad?

Mr. Glasgow: Yes.

Commissioner Harlan: I understand you have a complaint in which this railroad is defendant.

Mr. Glasgow: They got into it in this way, our complaint was against the Frisco and the Iron Mountain and the Missouri Pacific, and this was a short road, and the tariffs showed a concurrence in the rates which had been cancelled, and in going down the line of concurring carriers, in order to make proper filings, the name of this road, which I do not now recall, was put in as a defendant and a concurring carrier in the cancelling of the tariffs.

Mr. Armistead: Whether that is true or not, we do not want to limit it to that anyway. We are perfectly willing to be
50 investigated.

Commissioner Harlan: What is the name of your Washington agent?

Mr. Armistead: I do not know.

Mr. Foster: Tannikin, or some such name.

Commissioner Harlan: Mr. Foster, the Commission will now call you as the president of that railroad. Will you be kind enough to take the stand?

H. H. FOSTER was called as a witness, and having been duly sworn, testified as follows:

Mr. Armistead: Will I be permitted to state in the record that we came here not prepared to answer any questions——

Commissioner Harlan: Let the record show that Mr. Foster is called by the Commission, and counsel states that he was not ready so far as his case is concerned.

Mr. Armistead: We are not advised of any complaint against us other than those two I have mentioned.

Commissioner Harlan: Will you state your full name, Mr. Foster?

Mr. Foster: H. H. Foster.

Commissioner Harlan: Where do you reside?
51 Mr. Foster: Little Rock, Arkansas.

Commissioner Harlan: What is your business?

Mr. Foster: My principal business is the manufacturing and selling of lumber.

Commissioner Harlan: Where is your mill?

Mr. Foster: At Waleo, Arkansas.

Commissioner Harlan: How far is that from Little Rock?

Mr. Foster: About 43 or 44 miles.

Commissioner Harlan: How long have you been engaged in the lumber business there?

Mr. Foster: Nine years.

Commissioner *Foster:* Are you connected with a lumbering corporation?

Mr. Foster: Yes, sir.

Commissioner Harlan: What is the name of that?

Mr. Foster: Wisconsin and Arkansas Lumber Company.

Commissioner Harlan: You are president of it?

Mr. Foster: Yes.

Commissioner Harlan: And have been for nine years?

Mr. Foster: Yes.

Commissioner Harlan: What is the extent of the plant that it has at Walco; what does it consist of?

52 Mr. Foster: It is a saw mill, and its accessories, with a capacity of about 45,000,000 feet a year of lumber.

Commissioner Harlan: What is the capital of your company?

Mr. Foster: A million and a quarter.

Commissioner Harlan: Does it own lumber forests?

Mr. Foster: Yes, sir.

Commissioner Harlan: What acreage have you?

Mr. Foster: We have about 65,000 acres uncut.

Commissioner Harlan: Is it in one body?

Mr. Foster: Practically, sir.

Commissioner Harlan: What was your original holding when the company was organized?

Mr. Foster: About 70,000 acres.

Commissioner Harlan: You have not purchased any additional land since that time?

Mr. Foster: Yes, sir; about 30,000 acres.

Commissioner Harlan: And you have lumbered how much?

Mr. Foster: About 35,000 acres.

Commissioner Harlan: And you have about 60,000 or 65,000 left?

Mr. Foster: Yes.

Commissioner Harlan: What is the character of the lumber?

53 Mr. Foster: Short leaf yellow pine.

Commissioner Harlan: The short leaf, as I understand it, is used more for the fine interior work, rather than the exterior?

Mr. Foster: The manufacturers of it claim that the finish is superior to the long leaf.

Commissioner Harlan: Have you a logging road?

Mr. Foster: Yes, sir.

Commissioner Harlan: When was it built?

Mr. Foster: 1902 it was commenced; when we built the plant.

Commissioner Harlan: That was after the mill was built?

Mr. Foster: It was all started about at the same time.

Commissioner Harlan: And completed about at the same time?

Mr. Foster: Yes, sir.

Commissioner Harlan: The mill and the road went into operation at the same time?

Mr. Foster: Yes, sir.

Commissioner Harlan: And both belonged to the lumber corporation at that time?

Mr. Foster: Yes, sir.

Commissioner Harlan: Is there now a railroad corpora-
54 tion?

Mr. Foster: Part of the equipment is owned by a separate corporation; the company has a logging road outfit besides.

Commissioner Harlan: If you will just answer the question yes or no, which was, is there now a railroad corporation?

Mr. Foster: Yes, sir.

Commissioner Harlan: When was it organized?

Mr. Foster: I cannot state that definitely; I think about 1905 or 1906.

Commissioner Harlan: Under the general incorporation law of Arkansas?

Mr. Foster: Yes, sir.

Commissioner Harlan: What capital has it?

Mr. Foster: Authorized, $175,000, and I think it has $169,000 paid in.

Commissioner Harlan: Does it own any railroad?

Mr. Foster: Yes, sir.

Commissioner Harlan: What is the mileage of it?

Mr. Foster: A little over nine miles.

Commissioner Harlan: What are the termini of that road?

Mr. Foster: Walco and the end of the line, nine miles from the mill, called Landers.

Commissioner Harlan: Is Walco the mill point?
55 Mr. Foster: Yes, sir.

Commissioner Harlan: And the other end is what?

Mr. Foster: Landers.

Commissioner Harlan: Is that a junction point with some railroad?

Mr. Foster: It is where we join on to our logging road.

Commissioner Harlan: Do you join any railroad?

Mr. Foster: Not on the Landers end. We do on the Walco end.

Commissioner Harlan: How far is the rail line from your mill?

Mr. Foster: Our railroad moreover from——

Commissioner Harlan: No, what regular line serves your mill?

Mr. Foster: The Chicago, Rock Island & Pacific, and the Iron Mountain.

Commissioner Harlan: Does the tap line, I will use that phrase for convenience only, join both roads?

Mr. Foster: Yes, sir.

Commissioner Harlan: Where does it join the Rock Island?

Mr. Foster: I think it is about a quarter of a mile north of the mill.

56 Commissioner Harlan: Where does it join the Iron Mountain?

Mr. Foster: It is almost directly at the mill; it has a switch out to the Iron Mountain, the main line.

Commissioner Harlan: Almost directly at the mill?

Mr. Foster: Yes, sir.

Commissioner Harlan: Did you build the switch to the Iron Mountain?

Mr. Foster: Yes, sir.

Commissioner Harlan: When I say "you," I am talking of the railroad that you are president of?

Mr. Foster: Well, we originally built it when the plant was installed there.

Commissioner Harlan: It was originally built by the lumber company?

Mr. Foster: Yes, sir.

Commissioner Harlan: And not by the Iron Mountain?

Mr. Foster: No, sir.

Commissioner Harlan: And subsequently was turned over to the railroad company?

Mr. Foster: Yes, sir.

Commissioner Harlan: The tap line?

Mr. Foster: Yes, sir.

57 Commissioner Harlan: Do you remember when that switch was built, with the Iron Mountain?

Mr. Foster: In 1902, in the spring of 1902, when we began operations there.

Commissioner Harlan: Now, on the other side of the mill point, what track have you that belongs to the railroad company?

Mr. Foster: I do not understand.

Commissioner Harlan: Well, you have described the general conditions between the mill point and the tracks of the Rock Island and the Iron Mountain.

Mr. Foster: We have nine miles of road running in a southeasterly direction to the timber. That belongs to the railroad company.

Commissioner Harlan: How long has that been built?

Mr. Foster: That was built in 1902.

Commissioner Harlan: Is it a single track?

Mr. Foster: Yes, sir.

Commissioner Harlan: What rails has it?

Mr. Foster: 45 pound steel.

Commissioner Harlan: Is it a broad gauge road?

Mr. Foster: Yes, sir.

58 Commissioner Harlan: Has the lumber company any railroad that joins the tap line at Walco?

Mr. Foster: Well, the lumber company owns the tracks itself on its mill site, and leases it to the Freeo Valley Railroad Company, and they keep it up and maintain and operate it for the lease, and do the switching in there.

Commissioner Harlan: Let me see——

Mr. Foster: That is at the mill.

Commissioner Harlan: The lumber company at the mill owns what track?

Mr. Foster: They own their loading tracks, and they own the track that goes to the log pond to dump their logs off into the pond.

Commissioner Harlan: How about this switch track connecting with the Iron Mountain; does that belong to the lumber company?

Mr. Foster: Yes, sir, that belongs to the lumber company.

Commissioner Harlan: And the switch track connecting the road with the Rock Island?

Mr. Foster: Yes, sir; to the lumber company.

Commissioner Harlan: The nine miles of track to Walco belongs to the railroad company?

59 Mr. Foster: To the railroad company; that is, to Landers; from Walco to Landers.

Commissioner Harlan: Where is Landers? You have not described that point.

Mr. Foster: That is the end of the road; that is in the woods; out to the woods end of it, where it joins onto the logging road of the Wisconsin & Arkansas Lumber Company.

Commissioner Harlan: Well, from the mill to Walco, what is the——

Mr. Foster: Well, the mill is at Walco.

Commissioner Harlan: I see.

Mr. Foster: Walco is the mill, and these are its track facilities which I have described, that the lumber company owns, that are about its plant.

Commissioner Harlan: From Walco to Landers is a track nine miles long, that belongs to the railroad company?

Mr. Foster: Yes, sir.

Commissioner Harlan: Although originally built by the lumber company?

Mr. Foster: Yes.

Commissioner Harlan: The lumber company has rented the tracks about the plant and the switch tracks to the railroad

60 company?

Mr. Foster: Yes, sir.

Commissioner Harlan: At Landers, you say, the logging road connects with the tap line?

Mr. Foster: Yes.

Commissioner Harlan: What is the extent of the logging road?

Mr. Foster: I think approximately there is about 17 miles of it out now.

Commissioner Harlan: And that belongs to the lumber company?

Mr. Foster: Yes.

Commissioner Harlan: Mr. Foster, who are the other officers of the railroad company?

Mr. Foster: Well, I cannot name them, except that they are all members of the Wisconsin & Arkansas Lumber Company.

Commissioner Harlan: Who owns the railroad company?

Mr. Foster: The Wisconsin & Arkansas Lumber Company owns its stock.

Commissioner Harlan: No stock outside at all?

Mr. Foster: No, sir.

Commissioner Harlan: And all the officers of the railroad
61 company are either stockholders or officers of the lumber company?

Mr. Foster: Or members of the company.

Commissioner Harlan: So it is practically one investment by the same people; different corporations, but the same people own both companies.

Mr. Foster: Yes, sir.

Commissioner Harlan: You have spoken of Walco as a station. Does the tap line have any station building there?

Mr. Foster: They have a small building on the right of way of the Iron Mountain.

Commissioner Harlan: Well, that is not at Walco.

Mr. Foster: Right there at Walco; yes, sir.

Commissioner Harlan: What kind of a station is that?

Mr. Foster: Oh, it is just a temporary, rough building; it answers the purpose for a flag station; that is all the privileges we have for passenger traffic there.

Commissioner Harlan: Is there any station at Landers?

Mr. Foster: No, sir.

Commissioner Harlan: Is there any industry at Walco except your lumber company?

Mr. Foster: No, sir.

62 Commissioner Harlan: How near is the nearest mill to Walco that does not belong to your company?

Mr. Foster: Saw mill?

Commissioner Harlan: Saw mill or any other kind?

Mr. Foster: Oh, the—Malvern is quite a manufacturing point.

Commissioner Harlan: How far is that from Walco?

Mr. Foster: About a mile and a half.

Commissioner Harlan: Is there any other interest at Landers than that of your lumber company; any mill or——

Mr. Foster: No, there is no manufacturing interest down there.

Commissioner Harlan: Any lumbering mill?

Mr. Foster: For the past year there has been a considerable quantity of staves and stave bolts and such stuff as that gotten out down there by the farmers.

Commissioner Harlan: By farmers?

Mr. Foster: Yes, sir; some people have gone down in there with representatives, getting from the farmers—they are getting the stave bolts.

Commissioner Harlan: And your railroad moves that to
63 the junction?

Mr. Foster: Yes.

Commissioner Harlan: Do you know the extent of that traffic last year?

Mr. Foster: It was about 12 per cent of the revenues of the road, ten or 12.

Commissioner Harlan: Do you know the extent of it in carloads?

Mr. Foster: No, sir; I do not.

Commissioner Harlan: You can find that out?

Mr. Foster: Yes.

Commissioner Harlan: You do not remember the number of carloads?

Mr. Foster: I do not; no, sir.

Commissioner Harlan: Or the gross revenue?

Mr. Foster: It is running for the last eight or nine months from $200 to $400 per month, approximately.

Commissioner Harlan: How many farmers are engaged in that work?

Mr. Foster: I could not tell you; that is quite a farming community, all south of that road.

Commissioner Harlan: They are not in any way related to

64 your company?

Mr. Foster: No.

Commissioner Harlan: Have no financial arrangement with it?

Mr. Foster: No.

Commissioner Harlan: Where is their market for these staves?

Mr. Foster: Little Rock is the principal market, the nearest market of any note.

Commissioner Harlan: Mr. Foster, I wish you would procure a statement of the carloads that you have received at Landers or elsewhere on your road, and carried to the junction with the Iron Mountain or the Rock Island; also the gross revenues and the number of different shipments. Now, that is traffic that has developed in the last year?

Mr. Foster: There has always been a little of it; there has been more of it last year.

Commissioner Harlan: Is there any other traffic, other than your own lumber company's traffic?

Mr. Foster: There is fertilizer; we have some considerable fertilizer out there to the farmers, and shipments have been made that way, and there is lumber that is shipped out there to the farmers.

65 Commissioner Harlan: From what point?

Mr. Foster: From our mill.

Commissioner Harlan: Your own lumber?

Mr. Foster: Yes, sir; but it is sold to the farmers, and the revenue collected for taking it out there; and there is some cotton seed accumulated at a little town by the name of Lono; that is about half a mile off our logging road.

Commissioner Harlan: How far is that town from the Iron Mountain tracks?

Mr. Foster: I should judge the Iron Mountain tracks would be about ten miles west.

Commissioner Harlan: And from the Rock Island tracks?

Mr. Foster: About six or seven miles, seven or eight miles; I am only giving those distances approximately.

Commissioner Harlan: Will you also procure and furnish to the

Commission a statement covering, say, the last three years, of all the outside tonnage you have had?

Mr. Foster: Yes, sir.

Commissioner Harlan: Stating the amount of gross revenue from it?

Mr. Foster: Yes, sir.

Commissioner Harlan: Now, Mr. Foster, do you receive a
66 salary as president of the railroad company?

Mr. Foster: No, sir.

Commissioner Harlan: Do any of the officers receive a salary as officers of that company?

Mr. Foster: No, sir; they do not.

Commissioner Harlan: What equipment have you?

Mr. Foster: We have got about 60 logging cars, standard *guage* flat cars, and we have cabooses and——

Commissioner Harlan: Do you mean you have 60 cars, standard *guage* flat cars, used for logging?

Mr. Foster: Yes, sir; we have two or three cabooses, which are used in connection with the trains, and we have six locomotives.

Commissioner Harlan: Of what style?

Mr. Foster: There are two of them which are the Shea, the geared engines, and four of them are rod engines, about 45 to 50 ton engines.

Commissioner Harlan: To whom does that equipment belong?

Mr. Foster: To the railroad company.

Commissioner Harlan: Did it ever belong to the lumber company?

67 Mr. Foster: Part of it was turned over when the corporation was formed, and part of it has been bought since.

Commissioner Harlan: Are you sure that those locomotives belong to the railroad company? Are they not shown on the books of the lumber company to belong to the lumber company?

Mr. Foster: I think not, sir. I think they are owned by the railroad company and leased to the lumber company, the portion of them that they use in the woods.

Commissioner Harlan: Leased to the lumber company?

Mr. Foster: Yes, sir.

Commissioner Harlan: So they are operated by the lumber company?

Mr. Foster: Part of them; the main line engines, of course, are operated and maintained by the railroad.

Commissioner Harlan: Who furnished the capital for the railroad company, or was there any capital furnished?

Mr. Foster: The Wisconsin & Arkansas Lumber Company furnished it.

Commissioner Harlan: Just describe how it was that the railroad company acquired the title of nine miles of track and certain equipment from the lumber company. Did any money pass from the railroad company to the lumber company?

68 Mr. Foster: The investment was made in the railroad by the company.

Commissioner Harlan: By the lumber company?

Mr. Foster: Yes, sir.

Commissioner Harlan: Then, you organized the railroad company?

Mr. Foster: And passed the title to it and took the stock for what we had put into it.

Commissioner Harlan: And no money passed?

Mr. Foster: Practically none, absolute money.

Commissioner Harlan: As the railroad company—well, it was done as that thing is ordinarily done?

Mr. Foster: Yes.

Commissioner Harlan: That is, you issued capital for estimated value?

Mr. Foster: No; just exactly what we put into it.

Commissioner Harlan: For what you paid into it.

Mr. Foster: For exactly what it cost.

Commissioner Harlan: Has the railroad company at any time had any capital of its own; has it issued any stock and obtained cash for it?

Mr. Foster: Not outside of that one transaction.

69 Commissioner Harlan: Who built the original track? I understood you to say it was built by the lumber company, but who furnished the capital for that?

Mr. Foster: The lumber company.

Commissioner Harlan: Was it built by the lumber company or by the Rock Island?

Mr. Foster: Built by the lumber company.

Commissioner Harlan: I do not mean who furnished the capital; you have just answered the question.

Mr. Foster: No, we absolutely built it under railroad contracts, regardless of trunk lines or anything else; it was our property.

Commissioner Harlan: What do you mean to say, by building it under railroad contracts?

Mr. Foster: A man that was in the habit of going out and building under railroad construction, came there and bid on the grading and laying of the rail.

Commissioner Harlan: What was his name?

Mr. Foster: Dalhoff.

Mr. Armistead: The Dalhoff Construction Company?

Mr. Foster: I do not know whether it was the Dalhoff Construction Company. I think Mr. Dalhoff was operating as a

70 contractor himself and graded the road, and we furnished the ties and he laid them. That is eight or nine years ago, and I do not remember just all the details of it.

Commissioner Harlan: You say the railroad company has never had any cash capital of its own?

Mr. Foster: No; outside of that transaction.

Commissioner Harlan: It keeps separate books, of course?

Mr. Foster: Yes.

Commissioner Harlan: And keeps a system of accounts that the Commission has prescribed?

Mr. Foster: Yes, sir; they have accepted them.

Commissioner Harlan: Have you filed tariffs?

Mr. Foster: Yes.

Commissioner Harlan: Are you sure of that?

Mr. Foster: Well, I will say we filed concurring tariffs, all the tariffs we have are the concurrence with the Rock Island and the Iron Mountain roads.

Commissioner Harlan: Does any of your equipment go off your own lines?

Mr. Foster: Not of our equipment; no, sir.

Commissioner Harlan: I wish you would also file a statement showing the tonnage of manufactured lumber that has gone out
71 from your mill over the Rock Island, and a separate statement of the tonnage which has gone out over the Iron Mountain during the last three years.

Mr. Foster: You had better make a memorandum of this.

Mr. Armistead: I presume we will be furnished with some memorandum of your Honor's request in this regard.

Commissioner Harlan: I think you can arrange that. But it will help expedite the thing if counsel will himself keep a memorandum.

Mr. Armistead: I had not commenced to do it. I had thought we could get it from the stenographer, probably.

Commissioner Harlan: Does most of your lumber go out over the Iron Mountain or the Rock Island?

Mr. Foster: The Rock Island.

Commissioner Harlan: What proportion goes out over the Iron Mountain?

Mr. Foster: Oh, 35 per cent, about.

Commissioner Harlan: Was there a time when the Iron Mountain got more of your tonnage that it does now?

Mr. Foster: They got all of it. It was all the connection we had when we started in.

Commissioner Harlan: When did the Rock Island build
72 into that country?

Mr. Foster: Well, they were operating as far as—I am mistaken about their having all of it; the original plan. The Rock Island was as far as Malvern, which was one and a half to two miles away from the mill, and we got Rock Island facilities at that time and the switching charges were absorbed, so we had both roads, but the Iron Mountain had the bulk of the business, their tracks being immediately at the mill.

Commissioner Harlan: Did you ever haul the lumber to Malvern?

Mr. Foster: No, sir; that is not for a charge. We have taken trains up there.

Commissioner Harlan: I mean by horse and wagon; did you ever haul it up?

Mr. Foster: No.

Commissioner Harlan: You have never used teams at all?

Mr. Foster: No; we are too far away.

Commissioner Harlan: Take the first year of your operation; that was in 1902?

Mr. Foster: Yes, sir.

Commissioner Harlan: Then your lumber went out over the Iron Mountain?

73 Mr. Foster: Very largely; except that we could get cars switched in belonging to the Rock Island over the Iron Mountain tracks; but the bulk of the business went by the Iron Mountain at that time.

Commissioner Harlan: When you did that, what arrangement did you have with the Rock Island? Did you pay them for switching the car in, or the Iron Mountain for switching the Rock Island car in?

Mr. Foster: Well, I don't remember, somebody absorbed the switching rate anyway; we did not have to; they wanted the business, and got down there, and it was taken care of.

Commissioner Harlan: The Rock Island wanted the business and they got the cars in; that is your recollection?

Mr. Foster: Yes, sir.

Commissioner Harlan: You did not pay anything for switching the cars in?

Mr. Foster: Not that I remember of, because we had the Iron Mountain directly at our door, and I do not suppose we would have paid a great deal to have had their cars switched down there.

Commissioner Harlan: What proportion of your lumber did the Rock Island get in that way? Do you remember?

74 Mr. Foster: No, sir; I do not. The Iron Mountain had the bulk of the business, a very large proportion of it.

Commissioner Harlan: When did the conditions change so that the Rock Island got the bulk of it?

Mr. Foster: They were changed about 1905 or 1906 by the building of a track from their Malvern line down to our mill.

Commissioner Harlan: Is that the track you have spoken of as about half a mile in length?

Mr. Foster: No; that track is about—they constructed about two miles and a half of track to get to our mill, and it ends about half a mile from the mill, and the Malvern & Freeo Valley there connects with it.

Commissioner Harlan: When they built those two miles and a half, they found the Malvern & Freeo Valley already built to that point?

Mr. Foster: Yes, sir.

Commissioner Harlan: And they then connected up with it?

Mr. Foster: Yes, sir.

Commissioner Harlan: And after that, the Rock Island got the bulk of the traffic?

Mr. Foster: Not immediately; it has grown; it has been a fair division until within the last two or three years.

75 Commissioner Harlan: Well, did you enter into any written contract with the Rock Island at that time?

Mr. Foster: Yes, sir.

Commissioner Harlan: Have you a copy of that here?

Mr. Foster: I do not know whether the attorney has or not.

Mr. Armistead: No, we have not any papers with us. We will furnish it. A copy has been on file with the Commission since it has been entered into, and we will furnish a copy with the record. That contract and the amendments have all been filed, but we will furnish it, if it is desired, also.

Commissioner Harlan: Up to that time, Mr. Foster, had the Iron Mountain made you any allowances?

Mr. Foster: Yes, sir.

Commissioner Harlan: What was the amount of the allowance received from the Iron Mountain?

Mr. Foster: Three cents per hundred pounds.

Commissioner Harlan: Well, was that the allowance they had paid you from the beginning?

Mr. Foster: Yes, sir.

Commissioner Harlan: That is, they paid it to your railroad company?

Mr. Foster: Yes, sir, they—in the beginning, I think it
76 was paid—I do not know how it was handled in the first place; I think about the same as all those tap line arrangements down there. Many of those logging roads did not have charters. We had no charter at the time, that was in the early history of it.

Commissioner Harlan: Well, then, it was paid to the lumber company.

Mr. Foster: I could not tell you just how that was handled. The road was named, it was called the Malvern & Freeo Valley, and was a railroad without a charter, it was a private road, and they paid it to the road, if I remember right; it never has been paid direct to the Wisconsin & Arkansas Lumber Company.

Commissioner Harlan: Did you make that arrangement with the Iron Mountain?

Mr. Foster: Yes, sir.

Commissioner Harlan: Just tell us what the basis was for that allowance of three cents, for what service?

Mr. Foster: The timber was about nine miles away from the Iron Mountain's main line, and about 700,000,000 feet of it, and we brought the logs to the manufacturing point, where we joined—the junction of the Iron Mountain and the Malvern & Freeo
77 Valley, under a milling in transit rate, and produced the lumber and turned it over to the Iron Mountain.

Commissioner Harlan: Was that a published rate?

Mr. Foster: That I could not tell you, sir.

Commissioner Harlan: Well, your road did not join at that time in any rates, it was not a railroad, then, was it?

Mr. Foster: No, it was a private railroad. We owned it without a charter.

Commissioner Harlan: After you were chartered, was there any change in the method of handling the business?

Mr. Foster: It was paid to the railroad company.

Commissioner Harlan: That is the only change?

Mr. Foster: Yes.

Commissioner Harlan: The haul was just about the same, and it was conducted in the same manner?

Mr. Foster: Yes, sir.

Commissioner Harlan: When the Rock Island connected up with the Malvern & Freeo Valley, what allowance did you get from the Rock Island?

Mr. Foster: Three cents per hundred pounds.

Commissioner Harlan: And that has been the allowance
78 ever since?

Mr. Foster: Yes, sir.

Commissioner Harlan: And were you then a chartered railroad?

Mr. Foster: Yes, sir.

Commissioner Harlan: When the Rock Island came in?

Mr. Foster: Yes, sir; we had a charter by that time.

Commissioner Harlan: Have you at any time or on any business had an excess of three cents?

Mr. Foster: No.

Commissioner Harlan: The payments by the Rock Island were always to the chartered tap line?

Mr. Foster: Yes, sir.

Commissioner Harlan: Where are your markets?

Mr. Foster: This simply spreads out in a perfect fan from Little Rock northeast and northwest; we reach Canada and the New England states and the Dakotas——

Commissioner Harlan: You sell lumber ordinarily delivered?

Mr. Foster: We guarantee it—the custom under which lumber is sold practically guarantees the weights; it is not a delivery; it is not so considered, but it is so arranged that the customer is sure to get the dry lumber; he is not having green lumber forced on him.

79 Commissioner Harlan: He gets it at the delivered weight?

Mr. Foster: Yes, sir; we make him a delivered price, but the delivery is not guaranteed by the lumber man.

Commissioner Harlan: The freight is paid by your company?

Mr. Foster: We never pay the freight by the company, except where we happen to ship to a prepaid station. The method is that the receiving party takes up the expense bill and sends it back as a part of his remittance.

Examiner Burchmore: You guarantee the rate, as well as the weight, do you not?

Mr. Foster: I suppose we practically guarantee the rate. We use the published rates. We do almost anything that the customer wants us to do that is legitimate; that is about the size of it.

Commissioner Harlan: You do not carry any passengers?

Mr. Foster: We make no charge for passengers at all.

Commissioner Harlan: Or express matter?

Mr. Foster: No, sir.

Commissioner Harlan: Do not carry any mail?

Mr. Foster: No, sir.

Examiner Burchmore: Any less than carload freight?

Mr. Foster: Some.

80 Examiner Burchmore: Have you a regular train service running on regular schedules?

Mr. Foster: Practically; it makes three trips a day.

Examiner Burchmore: Each way?

Mr. Foster: Yes.

Examiner Burchmore: Do you publish any local rates to and from the junction point?

Mr. Foster: We use the Arkansas distance tariff, the Commission tariff.

Mr. Armistead: That tariff is now called the court tariff; it is prescribed under an injunction and is used by all intra-state roads in Arkansas.

Examiner Burchmore: What employees has the railroad company who are not also employees of the milling company?

Mr. Foster: Its engineers, trainmen, roadmen and trackmen.

Examiner Burchmore: Can you indicate the number of such employees, in a general way?

Mr. Foster: I should judge somewhere about 25 men.

Examiner Burchmore: Separated into classes, how many engineers and how many fireman and how many road employees.

Mr. Foster: The only fireman and engineer we have is on
81 our main line, one engineer and one fireman, and the train crew, and the men who keep up the road and keep it in shape; the other engines that are operated in the woods end of it clear out into the woods, are operated by the lumber company.

Commissioner Harlan: Let me ask right here; the three cents you get now from both lines covers what services performed by your company?

Mr. Foster: It covers the haul from Landers to Walco, over nine miles of track.

Commissioner Harlan: But not the haul into Landers?

Mr. Foster: No, sir. That, the lumber company does—the railroad company sends its main line engine down over the 18 miles of logging road for the trains that are accumulated and we pay the railroad company 80 cents a thousand feet for that haul.

Commissioner Harlan: I did not quite get that. How do you get the logs from your forest to Landers; who does that work for you?

Mr. Foster: Well, the lumber company builds the tracks and keeps them up and owns them, and we accumulate the trains down there, with our woods engines, whatever engines are in the
82 woods operating, and in trains of about 16 to 18 cars; the main line engine goes down over the track of the Wisconsin & Arkansas Lumber Company and gets that train and brings it up.

Commissioner Harlan: What main line engine?

Mr. Foster: The main line engine of the Malvern & Freeo Valley Railroad.

Commissioner Harlan: You do not mean the Rock Island or Iron Mountain?

Mr. Foster: No, sir; neither the Iron Mountain or the Rock Island have any tracks of any description on any of the property of the lumber company or the Malvern & Freeo Valley Railroad company, and their engines never come on there.

Commissioner Harlan: When you used that phrase "main line" you meant your tap line?

Mr. Foster: Our own line; yes, sir.

Commissioner Harlan: It sends its engine down to the forest and hauls up these trains?

Mr. Foster: Yes, sir; and they have an earning capacity of 80 cents a thousand feet for the logs out of that haul, for that and the maintenance of the logging engines.

Commissioner Harlan: Just how is that rate established;
83 is that part of the court tariff?

Mr. Foster: No.

Commissioner Harlan: What sort of a movement is that?

Mr. Foster: It is an intrastate movement entirely, I suppose.

Commissioner Harlan: Is there any rate published for it?

Mr. Foster: No, sir.

Commissioner Harlan: Any bill of lading issued?

Mr. Foster: No, sir.

Commissioner Harlan: Do you issue any bills of lading?

Mr. Foster: Yes, sir.

Commissioner Harlan: From what point to what point?

Mr. Foster: From Landers to destination of the lumber.

Commissioner Harlan: Have you a form of your own for that?

Mr. Foster: We use the regular form; our railroad name is printed on it.

Commissioner Harlan: How long have you been doing that?

Mr. Foster: I think three or four years; I think we have always done it; it has always been handled that way.

Examiner Burchmore: Do the rates published by the Rock Island and the Iron Mountain apply only from the mill at Walco or are they published and do they apply from the other end of the line at Landers?

84 Mr. Foster: They are published to apply from Landers.

Examiner Burchmore: With a milling in transit privilege?

Mr. Foster: Yes, sir.

Examiner Burchmore: Are your cars equipped with air brakes?

Mr. Foster: Yes, sir.

Examiner Burchmore: And safety couplers?

Mr. Foster: Yes, sir, and they were inspected just a very few days ago by the representative of the Commission, and he pronounced them in very fine order.

Commissioner Harlan: What were the net profits of your tap line last year?

Mr. Foster: I will just have to give you that from memory; I think about $12,000 or $13,000; somewhere along there.

Mr. Armistead: I did not hear that question.

Mr. Foster: The profits of the Malvern & Freeo Valley Railroad last year.

Mr. Armistead: Net?

Mr. Foster: I understood that was the question.

Commissioner Harlan: The net profits from operation.

Mr. Foster: Yes, sir; I think about $12,000 or $13,000; it ran along near that neighborhood.

85 Mr. Armistead: About four per cent on the cost.

Mr. Foster: I am giving you that from memory.

Commissioner Harlan: It is so understood, Mr. Foster. Is all the authorized stock of that company issued? If not, what part is issued?

Mr. Foster: Now, my recollection is that the authorized capital is $175,000 and that there is $169,500 issued.

Commissioner Harlan: What was the cost of these nine miles of road?

Mr. Foster: It was $169,500, with its equipment; it was a very difficult country to go through, and the grades——

Commissioner Harlan: What was the character of the country?

Mr. Foster: Very rough and very hilly. We operate one grade four miles long that averages over three per cent.

Examiner Burchmore: Who is the traffic manager of the Malvern & Freeo Valley, if you have one?

Mr. Foster: I think Mr. F. H. McCormack.

Examiner Burchmore: He is also manager of the lumber company?

Mr. Foster: No; he is sales manager.

Examiner Burchmore: Does he receive any salary from the railroad company?

86 Mr. Foster: No.

Examiner Burchmore: What employee of the Malvern & Freeo Valley issues the bills of lading, as you have described them being issued?

Mr. Foster: We have a joint agent with the Rock Island and the Iron Mountain.

Examiner Burchmore: The bills of lading are not issued by an employee of the Malvern & Freeo Valley who is also an employee of the milling company?

Mr. Foster: Well, my name is used as the joint agent there, but I do not do it.

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: I suppose counsel on the other side desires to ask some questions. We do.

Mr. Armistead: Yes, we do.

Mr. Marsilliot: I notice it is six minutes of one o'clock, and it occurs to me that it might be well to take it up after lunch.

Commissioner Harlan: You raise a very important question. We will now adjourn until two o'clock.

Whereupon, at 12:44, a recess was taken until 2:00 P. M.

87 After Recess. 2:00 P. M.

H. H. FOSTER resumed the stand.

Mr. Armistead: Your Honor asked immediately before adjournment if we desired to ask this witness any questions, and in reply I stated that we did, and Judge Cowan indicated that he desired to ask some questions, and I would really prefer that Judge Cowan examine him first, because his questions might suggest matters that I might wish to attempt to clear up.

Mr. Cowan: That is immaterial to me. I supposed, being intervenors, we would come at the tail end, that is all, but it does not make any difference.

Commissioner Harlan: You may proceed now, Judge Cowan, and we will think that question over as to the future examinations.

Mr. Cowan: It does not make any difference at all. When you bring the logs from the end of the timber road on by Landers to your mill, the same engine which takes them to the mill brings them from the end of the line?

88 Mr. Foster: Yes, sir.

Mr. Cowan: And you use, of course, the logging cars throughout the entire length of the line?

Mr. Foster: Yes, sir.

Mr. Cowan: To whom do you say the cars belong?

Mr. Foster: The railroad company.

Mr. Cowan: Is there any contract between the railroad company and the milling company for the use of the tracks from Landers out to the timber?

Mr. Foster: Yes, sir.

Mr. Cowan: Is that a written contract?

Mr. Foster: Yes, sir.

Mr. Cowan: Will you file a copy of it, if quite agreeable?

Mr. Foster: Sir?

Mr. Cowan: Will you please file a copy of it as part of your evidence, and hand it to the stenographer?

Mr. Foster: Will you make a memorandum of it?

Mr. Armistead: I am going to ask to have that incorported in the record; it is already on file with the Commission. If it is not, it is a mere oversight.

Mr. Cowan. Have you any depot at Landers?

Mr. Foster: No.

89 Mr. Cowan: A switch there?

Mr. Foster: Yes, sir.

Mr. Cowan: What sort of a switch is that; just a siding?

Mr. Foster: Like any other switch; I don't know what you mean by what sort of a siding, it is a switch.

Mr. Cowan: Does it run to anything, or is it just a siding for trains to pass?

Mr. Foster: It is a spur; the railroad tracks probably extend 500 feet beyond the point where the logging road branches off.

Mr. Cowan: How would one looking at it know which was the logging road and which was the railroad?

Mr. Foster: I don't think they could tell by looking at it.

Mr. Cowan: Whereabouts at this place called Landers, there being no depot, do these logs enter interstate commerce as a movement on the milling in transit rates? Just where do they enter that traffic?

Mr. Foster: At that junction between the logging railroad and the Malvern & Freeo Valley tracks.

Mr. Cowan: How do you arrive at that idea; how would you tell it?

Mr. Foster: It is the end of the incorporated line.

90 Mr. Cowan: Because it is the end of the incorporated line?

Mr. Foster: Yes, sir.

Mr. Cowan: Is there any other reason for it?

Mr. Foster: I do not know that there could be. It is the end of the incorporated line, and it begins interstate traffic at that point.

Mr. Cowan: Have you any contract with either the Rock Island or the Iron Mountain that so provides in the contract?

Mr. Foster: We have a contract with the Rock Island. We have not with the Iron Mountain.

Mr. Cowan: That contract provides that this becomes interstate commerce when it passes this point at Landers?

Mr. Foster: The rates are made effective at Landers.

Mr. Cowan: And that is rates on what?

Mr Foster: On logs; it is on lumber.

Mr. Cowan: Which is it?

Mr. Foster: With a milling in transit privilege.

Mr. Cowan: Have you the tariff which specifies that?

Mr. Foster: No, I have not.

Mr. Cowan: Have you ever seen the tariffs which specify this milling in transit?

Mr. Foster: I think I have; I think it is so specified in

91 the tariff.

Mr. Cowwan: When you haul these logs down to the mill of course you put them in some pond, I assume?

Mr. Foster: Yes, sir.

Mr. Cowan: Who does that for you, does the lumber company do that?

Mr. Foster: Yes, sir.

Mr. Cowan: Or does the railroad company do it?

Mr. Foster: The lumber company.

Mr. Cowan: Where does the lumber company take charge of the logs for the purpose of putting them in the pond?

Mr. Foster: When they are loaded at the log platform, built for the purpose of putting them into the pond.

Mr. Cowan: The lumber company, then, does the unloading?

Mr. Foster: Yes, sir.

Mr. Cowan: Is the lumber company at all of the expense up to this point at Landers, all expense back of that the lumber company is at, is it?

Mr. Foster: Yes, sir; absolutely.

Mr. Cowan: How much does it cost you to haul these logs from

Landers up to this platform at the unloading place?

Mr. Foster: How much does it cost from Landers——

92 Mr. Cowan: To the unloading place; how much does it cost the railroad company?

Mr. Foster: We have no data here to tell you, sir.

Mr. Cowan: Have you any data anywhere to tell?

Mr. Foster: Yes, sir.

Mr. Cowan: Where is that?

Mr. Foster: At the office at Malvern.

Mr. Cowan: Do you keep a separate account of the expense of hauling the logs from Landers up to that platform?

Mr. Foster: Yes, sir.

Mr. Cowan: What does that expense consist of?

Mr. Foster: Maintaining the track, maintaining the equipment, transportation, office expense.

Mr. Cowan: Maintenance of what equipment?

Mr. Foster: The maintenance of the engines, the maintenance of the logging cars.

Mr. Cowan: You keep that separately for your road engine?

Mr. Foster: Yes, sir.

Mr. Cowan: You do not recall now how much that costs?

Mr. Foster: No.

Mr. Cowan: Do you keep the mileage of your logging cars?

Mr. Foster: No, sir.

93 Mr. Cowan: Do you keep the mileage of this road engine?

Mr. Foster: No, sir.

Mr. Cowan: How many road engines have you in that service?

Mr. Foster: On the main line?

Mr. Cowan: Yes, that take the train from Landers, on to this unloading platform.

Mr. Foster: We have one engine.

Mr. Cowan: How many?

Mr. Foster: One engine does the work.

Mr. Cowan: Do you have any recollection how much it costs you to maintain that engine in a year?

Mr. Foster: I know in a general way it costs about $6,000 to maintain an engine for a year.

Mr. Cowan: $6,000?

Mr. Foster: Yes, sir.

Mr. Cowan: How do you know that?

Mr. Foster: I know it from general information and general experience with engines.

Mr. Cowan: Did you ever examine into any of the annual reports of the Rock Island or the Iron Mountain to find out that it costs generally about half that?

Mr. Foster: No.

94 Mr. Cowan: It is, you say, a 45 ton engine?

Mr. Foster: Yes, sir.

Mr. Cowan: Was it new or second hand when you bought it?

Mr. Foster: The ro-d engines were bought second hand.

Mr. Cowan: And from whom were they obtained?

Mr. Foster: Different parties.

Mr. Cowan: By "parties," you mean different railroads?

Mr. Foster: No, sir; from none of the railroads.

Mr. Cowan: How is that?

Mr. Foster: We did not buy them from the railroads at all; we bought most of them in Chicago from F. M. Hicks.

Mr. Cowan: Then you have the original cost of this engine?

Mr. Foster: Yes, sir.

Mr. Cowan: Do you keep the expense of fuel used in that engine by the mile; do you keep that separately for this track between Landers and that unloading station?

Mr. Foster: We keep our railroad books in accordance with the instructions of the Commission, and make those reports to them, and they accept them.

Mr. Cowan: I wondered how you kept your accounts to know how the expense of operation was on this incorporated road, doing what you claim is the interstate business.

95 Mr. Foster: It is a very easy proposition; it is entirely separate from the other.

Mr. Cowan: How do you keep it separate, if you do not keep the fuel account——

Mr. Foster: We do keep the fuel account; we charge it with all the coal furnished us; it has got a large bin of its own.

Mr. Cowan: Now, that means all the coal that it burns?

Mr. Foster: It means the coal that is used on the main line; yes, sir.

Mr. Cowan: That is what I was asking. Do you keep that separate from Landers on?

Mr. Foster: Yes, sir; from Landers on to Walco.

Mr. Cowan: You keep that coal separate?

Mr. Foster: That coal is in a separate bin by itself, and all the supplies and everything that enter into that part of the road.

Mr. Cowan: I thought you said this engine went down into the woods and got the cars.

Mr. Foster: It does.

Mr. Cowan: How do you manage by keeping it in a separate bin to keep a separate account of the cost of the amount consumed between Landers and Walco? You load up your tender

96 with coal and make the trip and back?

Mr. Foster: Yes, sir.

Mr. Cowan: By what method do you keep it separate from Landers up to Walco?

Mr. Foster: Well, in that particular, I do not think it is kept separate, sir, any more than it is an estimate of what is used on the main line, when she makes that trip.

Mr. Cowan: Do you keep separate the wages of your engineer and fireman?

Mr. Foster: On the main line?

Mr. Cowan: Separate from Landers up to Walco, to what it is on the balance of the trip after you get the cars?

Mr. Foster: No.

Mr. Cowan: These men make that round trip in a day?

Mr. Foster: They make three of them.

Mr. Cowan: And they work for you from Landers out, to where they get the train and come back to Landers; is that right? I mean work for the lumber company?

Mr. Foster: They work for the railroad company all the way, the entire trip.

Mr. Cowan: The service, then, beyond Landers is for the Malvern & Freeo Valley Railroad Company?

97 Mr. Foster: The Malvern & Freeo Valley Railroad Company performs it, and the lumber company pays them for it beyond Landers.

Mr. Cowan: That is so much a thousand for the logs?

Mr. Foster: Yes, sir.

Mr. Cowan: Are there any separate entries in fact in the books of the Malvern & Freeo Valley Railroad, to show the expense of that engine while on the track of the incorporated company, compared to the expense on the track of the other company?

Mr. Foster: I think not.

Mr. Cowan: After you have unloaded your logs into the pond, how long until you saw them?

Mr. Foster: We have a pond capacity of about half a million feet of logs, and a mill capacity of about 175,000 feet a day. Now, we may get logs in the pond that will lay there a year; ordinarily they are sawed within 24 hours.

Mr Cowan: Do you know anything about where the lumber is going to that you make out of those logs when they are put into the pond?

Mr. Foster: No.

Mr. Cowan: Do not have any idea?

98 Mr. Foster: Not the slightest.

Mr. Cowan: Do not have any idea what the rates are going to be on that lumber?

Mr. Foster: Not the slightest.

Mr. Cowan: And-you do not know whether it is going intrastate or not?

Mr. Foster: No.

Mr. Cowan: It may go to Little Rock or some other place in Arkansas?

Mr. Foster: No.

Mr. Cowan: When you make out a bill of lading for the shipment of a carload of lumber, do you make the bill of lading read as the point of origin at Landers?

Mr. Foster: Yes.

Mr. Cowan: But it is not, in point of fact, there?

Mr. Foster: Not as lumber; it is milled into lumber, and it starts as logs there.

Mr. Cowan: Suppose that lumber is going to a Texas point; did the logs start from Landers to Texas?

Mr. Foster: Yes, sir.

Mr. Cowan: How do you know that, when it goes into the pond, and you do not know where it is going to from that?

99 Mr. Foster: Because there are absolutely no other logs go into the pond.

Mr. Cowan: Except what logs go to Texas?

Mr. Foster: Except what logs I might send there. Do you mean the mill's particular logs?

Mr. Cowan: Yes.

Mr. Foster: It is absolutely the only log supply we have which come over that road.

Mr. Cowan: But when you bill out a car of lumber to Texas, you make that billing from Landers?

Mr. Foster: Yes, sir.

Mr. Cowan: Because you brought the logs from there?

Mr. Foster: Yes, sir.

Mr. Cowan: But those logs did not start to Texas. They may have started to anywhere that the lumber happens to go?

Mr. Foster: Well, they started for Texas as much as any milling in transit proposition; as much as a bushel of corn starts for Europe, or it may start for Asia; it gets milled into corn meal somewhere; you do not undertake to preserve the identity of the particular bushel of corn that went one way or the other, nor do we the logs.

Mr. Cowan: Do you think if the identity of the grain is

100 to be preserved, that therefore the identity of the lumber in the logs should be preserved?

Mr. Foster: I do not know anything about that.

Mr. Armistead: If I may interpose an objection, I object to that. It is asking the opinion of the witness.

Commissioner Harlan: Well, this gentleman is president of a railroad company, and he ought to know about these things.

Mr. Armistead: It seems to me it just calls for his opinion.

Commissioner Harlan: Well, we want his opinion. It may help us.

Mr. Armistead: All right; I withdraw my objection.

Mr. Cowan: You do not know but what the bill of lading issued today at Landers on lumber which you load out from Waco may have in the car logs that were sent a year before into the mill pond from Landers?

Mr. Foster: Yes, sir; it may have.

Mr. Cowan: What is the use of billing this lumber from Landers? You do not load it there? What is the use of that?

Mr. Foster: To avail ourselves of the milling in transit privilege.

Mr. Cowan: Where is that privilege defined that you avail

101 yourselves of, that makes it necessary to make a billing from a place where you do not ship the lumber?

Mr. Foster: Sir?

Mr. Cowan: Where is that privilege defined?

Mr. Foster: I think not very many years ago the interstate Commerce Commission said that the operation would come within the limits of the milling in transit privileges.

Mr. Cowan: There was no other purpose in making the bill of

lading read from Landers except to get a division of the rate, was there?

Mr. Foster: That was the purpose.

Mr. Cowan: Is Walco on the line of the Rock Island?

Mr. Foster: It is within about a half a mile; between a quarter and half a mile of it.

Mr. Cowan: It is not on the line of the Rock Island?

Mr. Foster: Not exactly.

Mr. Cowan: Is it on the line of the Iron Mountain?

Mr. Foster: Probably a thousand feet away.

Mr. Cowan: The actual movement of the lumber, then is over that short distance to the connection with each place?

Mr. Foster: We take the cars in there and switch them back and load them.

102 Mr. Cowan: Do they bring their engines onto your track to get these cars, or do you set them on their tracks?

Mr. Foster In the case of the Rock Island, we go in to their tracks after the empties and set the loads, and in the case of the Iron Mountain, their engine just backs in on the head of their tracks with their empties.

Mr. Cowan: Where you have set the loaded cars?

Mr. Foster: Yes, sir.

Mr. Cowan: About the actual service after the lumber is manufactured, and you know where it is going to; after it is loaded in the car, the actual service is over this short space of track?

Mr. Foster: In the lumber shipped in the form of lumber, yes, sir.

Mr. Cowan: And the railroad company hauls no lumber, neither is any loaded at Landers whatever?

Mr. Foster: Not of lumber.

Mr. Cowan: Why not have this three cents allowance, just for the switching from your mill to the Rock Island, and the Iron Mountain tracks? Why not have it applied to the whole movement of the lumber, as you are billing the lumber out?

Mr. Foster: Well, we had the Rock Island to deal with and
103 the Iron Mountain to deal with, and we made the kind of deal we could make, the best deal we could make.

Mr. Cowan: But in most cases why should not the billing be simply from Walco—you say it is on your line and not on theirs—to the destination of the lumber, and not from Landers, a place where the lumber never moved from?

Mr. Foster: Because the railroad considered itself well within its rights to have the milling in transit privilege, and that was the way it had to take its business, and avail itself of it.

Mr. Cowan: Do you estimate what was the cost of the service from Landers to the junction point with the Rock Island and the Iron Mountain?

Mr. Foster: Yes, sir, we know about what it is.

Mr. Cowan: Did that form the basis of the three cents per hundred pounds?

Mr. Foster: Yes, sir.

Mr. Cowan: You estimated the cost of the service on the lumber?

Mr. Foster: Yes, sir.

Mr. Cowan: From Landers?

104 Mr. Foster: Yes, sir.

Mr. Cowan: Did you estimate the cost of the service on the logs?

Mr. Foster: We estimated—the operation is very simple to reduce lumber back to logs or logs back to lumber to get your feetage or tonnage.

Mr. Cowan: When you estimate the service to be three cents per hundred pounds on lumber, how did you get at the figures; did you estimate that that would be what it would cost if you did move the lumber, or what it had cost you to move the logs?

Mr. Foster: It is what it cost us practically in each case; it cost us that much to move the raw material from Landers to Walco, that is what it would amount to at three cents per hundred pounds turned into lumber.

Mr. Cowan: Then up to the time you loaded it on the cars at Walco, you estimated in your trade with the Rock Island and the Iron Mountain that it would cost you three cents per hundred pounds to move the logs; that is, three cents per hundred pounds, estimated in lumber measurement, from Landers to your unloading place at the pond?

Mr. Foster: Yes, sir.

Mr. Cowan: You then did not count anything for the

105 switching of these cars of lumber out to the other roads?

Mr. Foster: We estimated that was practically the service we put into it;; I do not know that I could give you just exactly the detail of that, sir, or just how we arrived at it or just what we did. We got the best milling in transit rate we could get.

Mr. Cowan: The rate was fixed at three cents because it was based on the cost of the service; you are certain of that?

Mr. Foster: That was one of the considerations.

Mr. Cowan: What other one was there, if there was any other?

Mr. Foster: The other consideration was that it was practically what was being paid by the logging road at that time so we were assured when we came down there, for the moving the raw material to the mill.

Mr. Cowan: Who made that trade with the Rock Island? Did you make it?

Mr. Foster: Yes, sir, I made the trade.

Mr. Cowan: With what man did you make the trade?

Mr. Foster: Oh, I dealt with quite a number of them.

Mr. Cowan: But there must have been somebody who came

106 to this common estimate of what it cost.

Mr. Foster: I think the principal part of the trade was made with their division freight agent at that time, Mr. Morrison.

Mr. Cowan: Did you and he sit down and figure what it would cost you to perform this service, or what it would cost them to perform it?

Mr. Foster: No, I did not talk with him about that part of it specially, that I know of. That was my part of it.

Mr. Cowan: Did you talk with him about what it cost to handle this lumber from your loading platform or stack or whatever you call it, out to their tracks?

Mr. Foster: The trade with the Rock Island was made long after we already had a traffic arrangement with the Iron Mountain.

Mr. Cowan: I understand that, but my question was, did you and he estimate what it would cost you to switch this lumber from the place where you loaded the cars over to their tracks?

Mr. Foster: I don't remember.

Mr. Cowan: That did not enter into it.

Mr. Foster: I do not remember the details of the conversation.

107 Mr. Cowan: Did that enter into it at all or not? You ought to know, you made the trade.

Mr. Foster: I have made hundreds of trades eight or nine years old that I cannot remember the details of, my conversation in regard to them.

Mr. Cowan: You can recollect whether or not you figured what it actually cost you to move the car when actually loaded?

Mr. Foster: I do know, sir, as a positive fact, that the three cents per hundred pounds practically is the cost of moving the raw material from the edge of the timber at Landers to the mill, the service we perform on it.

Mr. Cowan: To the mill?

Mr. Foster: Yes, sir.

Mr. Cowan: Independent of the cost of switching the car of lumber to the other tracks?

Mr. Foster: Yes, I think that represents practically the cost of the service that we perform on the logs and lumber, the upkeep of that portion of the road.

Mr. Cowan: Why should the Rock Island pay you for moving the logs from Landers to your saw mill?

Mr. Foster: Well, they would have the choice, if they wanted the tonnage, of building their own road down there and

108 producing it or else paying us for bringing it up there.

Mr. Cowan: Suppose they had built their own road down to Landers, what would they have gotten? You already had your own to bring the logs to the mill?

Mr. Foster: No.

Mr. Cowan: Didn't you have your road to Landers when you made the trade with the Rock Island?

Mr. Foster: That is where the lumber began; we started from there.

Mr. Cowan: Did you not have your own road to Landers when you made the trade with the Rock Island, and was it not incorporated at that time?

Mr. Foster: No, it was not.

Mr. Cowan: Was it incorporated when you made the contract with the Rock Island?

Mr. Foster: Yes, sir, and this contract is in force now.

Mr. Cowan: If they had built their road to Landers, they would not have gotten lumber, you had no saw mill there?

Mr. Foster: The property would probably have been put up in different shape.

Mr. Cowan: What property?

Mr. Foster: The entire property. Originally it was put up
109 as the two properties together, and it was afterwards separated and incorporated and chartered, one as a railroad and the other as a lumber company.

Mr. Cowan: You already had your mill at Walco, when you made the trade with the Rock Island?

Mr. Foster: Yes, sir, and we already had the Iron Mountain and we could have turned the entire traffic to them.

Mr. Cowan: Why should the Iron Mountain pay you for bringing your logs up?

Mr. Foster: Because when we made the trade with the Iron Mountain, we had neither mill nor railroad.

Mr. Cowan: But why should they pay for bringing the logs to the mill?

Mr. Foster: They should pay, if they want the traffic, if they want the tonnage, if it costs to go off into the forest after the tonnage, they should either pay us for the service, or perform the service themselves, if they expect to receive the tonnage.

Mr. Cowan: Is that why they did it?

Mr. Foster: I expect that is the reason they did it, to get the tonnage.

Mr. Cowan: Is that your understanding of it?

110 Mr. Foster: Yes, sir; to get the tonnage.

Mr. Cowan: When you made the trade with the Rock Island, you agreed you would give them not less than a certain amount of your tonnage?

Mr. Foster: Yes, sir.

Commissioner Harlan: Are you making that statement now as president of the lumber company or the railroad company?

Mr. Foster: I am talking entirely as the president of the railroad company. I understand that is the one that is being investigated, and I am talking from that standpoint.

Mr. Cowan: This Malvern & Freeo Valley Railroad Company was under no obligation to haul your logs from Landers to the saw mill except what you paid them for doing?

Mr. Foster: Under no obligations to haul the logs from Landers to the saw mill?

Mr. Cowan: Yes, except what they were paid for doing.

Mr. Foster: Well, I suppose they were not.

Mr. Cowan: And did they at any time agree with the saw mill industry that they would haul your logs for a certain period for a certain amount?

Mr. Foster: To the railroad company?

Mr. Cowan: Yes.

111 Mr. Foster: They have got a contract with the lumber company to haul the logs, yes, sir.

Mr. Cowan: What do they charge for hauling the logs from Landers to Walco?

Mr. Foster: They do not charge the lumber company anything. They controlled the tonnage and sold the tonnage.

Mr. Cowan: They sold the tonnage?

Mr. Foster: They sold the tonnage to the Rock Island and Iron Mountain.

Mr. Cowan: Does the lumber company get any advantage out of that?

Mr. Foster: Only just what you please to call the community of interests, they are both held by the same stockholders.

Mr. Cowan: As representing the lumber company, would you have any objection to the cancellation of that allowance of three cents per hundred pounds to the railroad company?

Mr. Foster: I should think I should. I do not see any reason why I should not object.

Mr. Cowan: Why should you object to it?

Mr. Foster: Because I have got myself to consider in all the interests I have got charge of and am responsible for.

112 Mr. Cowan: The lumber company owns the stock in the railroad company?

Mr. Foster: Yes.

Mr. Cowan: If the railroad company gets a profit out of this three cents a hundred pounds, the lumber company gets it, because the lumber company owns the stock?

Mr. Foster: They get it through their dividends in their stock holdings in the Malvern & Freeo Valley Railroad.

Mr. Cowan: Before you had this contract with the Rock Island, and before you were incorporated, did you get the allowance then?

Mr. Foster: Yes.

Mr. Cowan: Who got that?

Mr. Foster: The railroad company.

Mr. Cowan: It was not a company then; it was not incorporated.

Mr. Foster: It was not an incorporated railroad; it was a railroad.

Mr. Cowan: It was a railroad, but was simply a road that was built by the lumber company?

Mr. Foster: Yes.

Commissioner Harlan: He explained that this morning;

113 that there was no chartered company, and he says the railroad got it, and he also said that the lumber company got it after the railroad got it.

Mr. Cowan: Why was the road incorporated; what business reason led you to incorporate the railroad?

Mr. Farrar: Why, to be—that was done for the express purpose of legalizing as far as we knew how, the custom that had been in existence in Arkansas and Louisiana for years and years, since the establishment of the lumber business.

Mr. Cowan: Legalizing what?

Mr. Foster: Upon the payment of compensation from the trunk lines to the logging railroads for bringing the raw material to the mill; it was the custom throughout the country.

Mr. Cowan: The expense of maintenance of $6,000 per annum

for the engine; did that include the salary of the engineer and the fireman?

Mr. Foster: Yes, sir.

Mr. Cowan: And also the repairs on the engine and the fuel?

Mr. Foster: Yes, sir; that is only a general estimate.

Mr. Cowan: Yes. You have these items separate, though?

Mr. Foster: We have our books and our accounts, kept in
114 accordance with the instructions of the Interstate Commerce Commission.

Mr. Cowan: Do you pay the railroad company anything for the use of cars that are set over on your track?

Mr. Foster: No, sir.

Mr. Cowan: Do they pay you anything if you deliver them back in a certain length of time?

Mr. Foster: No, sir; I think there has never been anything between us.

Mr. Cowan: You have no demurrage rules, then, so-called?

Mr. Foster: None that are operative; none that we take advantage of.

Commissioner Harlan: And no per diem rules?

Mr. Foster: No, sir.

Commissioner Harlan: Any demurrage charged against the lumber company?

Mr. Foster: Yes, sir; in case we held the cars.

Commissioner Harlan: What was the last case you recollect?

Mr. Foster: Of a demurrage?

Commissioner Harlan: Yes.

Mr. Foster: I have no recollection of one.

Commissioner Harlan: To whom does the lumber com-
115 pany pay it?

Mr. Foster: They pay it to the owner of the car.

Commissioner Harlan: The Rock Island or the Iron Mountain?

Mr. Foster: The Rock Island or the Iron Mountain; yes, sir.

Mr. Cowan: How much free time do you have before you have to pay any demurrage?

Mr. Foster: I think it is 48 hours.

Mr. Cowan: How much is it per day?

Mr. Foster: One dollar.

Mr. Cowan: One dollar a day?

Mr. Foster: Yes.

Mr. Cowan: You have not your annual report here, that you make to the Interstate Commerce Commission?

Mr. Foster: No, sir.

Mr. Cowan: Speaking of the selling price of lumber which you mentioned, what do you base that on with respect to the freight rates, say, for example, you are selling a carload of lumber to go to a Texas point or one to Oklahoma City; doubtless you send lumber to most places—what is the basis of the price of that lumber with respect to the rate of freight?

Mr. Foster: It is the weight of the lumber, multiplied by
116 the rate from Landers to Oklahoma City or Texas, or wherever it goes.

Mr. Cowan: When you quote to the man you sell the lumber to a price for the lumber, do you quote it with the freight paid or F. O. B. at your mill?

Mr. Foster: We quote him freight paid, and we accept the expense bill as part of the remittance.

Mr. Cowan: And that is practically universally the case?

Mr. Foster: Yes, sir.

Mr. Cowan: Then your lumber would net you the same, whether you sold it to go to Texarkana, Little Rock, Fort Worth, Oklahoma City or Chicago?

Mr. Foster: Yes, sir; it would be higher or lower according to the freight rate, delivered.

Mr. Cowan: That is, higher or lower to the producer?

Mr. Foster: At the point of destination, but the same at the mill.

Mr. Cowan: What other traffic does the Rock Island get at Walco except from your mill?

Mr. Foster: They get the inbound tonnage on all our commissary supplies, camp supplies——

117 Commissioner Harlan: That is to be shown by exhibits filed by this witness. I think perhaps you need not ask for details.

Mr. Foster: I was asked for the inbound tonnage over the Rock Island.

Commissioner Harlan: You are to furnish that for three years.

Mr. Cowan: Do they get anything except that which comes off of your road, going into and out of your mill, or——

Mr. Foster: That has been growing in small quantities; as I stated before, the revenue to the Malvern & Freco Valley outbound on that class of tonnage has been $200 to $400 a month, and has been for some time.

Mr. Cowan: They have no station there at Walco?

Mr. Foster: They have an agent.

Mr. Cowan: Who occupies part of your offices?

Mr. Foster: Yes, sir.

Mr. Cowan: Who is that agent?

Mr. Foster: I am.

Mr. Cowan: That is all.

Mr. Armistead: The Malvern & Freco Valley extends in a southerly direction from Walco to the terminus at Landers, does

118 it not?

Mr. Foster: Rather southeast; it bears off to the east.

Mr. Armistead: What are the timber holdings or the estimated cut of timber in that contiguous territory belonging to the Wisconsin & Arkansas Lumber Company?

Mr. Foster: The present time?

Mr. Armistead: At the present time.

Mr. Foster: About 500,000,000 feet.

Mr. Armistead: What period of time do you anticipate, if you have made estimates, will be required to cut that timber?

Mr. Foster: Somewhere from twelve to fourteen years.

Mr. Armistead: So that this tonnage will be there for that period, for that length of time, estimated?

Mr. Foster: Yes, sir.

Mr. Armistead: What estimated cut had you there when the railway line which is now incorporated and known as the Malvern & Freeo Valley was first laid?

Mr. Foster: The lumber company held, when we laid the rails, about 600,000,000 feet of timber, and we estimated that there was about 300,000,000 feet which we could acquire title to as we went on. The original deal contemplated about 600,000,000 feet of timber.

119 Mr. Armistead: Is there any reasonably practical or feasible method of logging that country; that is, transporting the logs out of it, other than by railway?

Mr. Foster: No, sir. It must come that way; there are no other facilities.

Mr. Armistead: What is the character of the country with reference to its topography?

Mr. Foster: It is rough, hilly country, cut in two by a ridge that is the back bone between the Ouachita and Saline Rivers; this ridge runs right through the middle of them, and the streams on each side cut it down into valleys and hills.

Mr. Armistead: What sort of a line has your incorporated line, the Malvern & Freeo Valley, with reference to construction and permanence?

Mr. Foster: Well, construction, standard ties, standard gauge, 45 pound steel, well drained, and a road that we can run as fast as they can run on any road, and well kept up.

Mr. Armistead: Do you hold yourselves out to the public as a common carrier, in that you are ready to perform any service that is offered?

Commissioner Harlan: We will not stop on that. It is incorporated as a common carrier, and it must be assumed that in
120 all these cases that affirmative reply will be made to these questions. The question is whether there is any stuff there to carry.

Mr. Armistead: Is this a country adapted to farming, when denuded of timber?

Mr. Foster: Yes, sir.

Mr. Armistead: What crops are raised in that soil?

Mr. Foster: Cotton and corn, principally.

Mr. Armistead: Fruit?

Mr. Foster: Good fruit country. It has not been developed.

Mr. Armistead: Is it not a fact that it is a strawberry and canteloupe coutnry immediately around there?

Mr. Foster: Yes, sir; good fruit country.

Mr. Armistead: Have you any prospects of extending this road?

Mr. Foster: Yes, sir.

Mr. Armistead: What are they?

Mr. Foster: The road was originally chartered to Lono, a small town, and we are within about five miles of it, and we have been

urged and are contemplating now the extension of the line to Lono.

121 Mr. Armistead: What is there at Lono?

Mr. Foster: It is a little, small country village; it is the headquarters for the farmers about there.

Mr. Armistead: Farming country around there?

Mr. Foster: Yes, sir. Very well developed farming country. It is right on that ridge; it is a little farming center, is what it is.

Mr. Armistead: We will ask leave to file as a part of the record in this case the contract between the railroad company and the Wisconsin & Arkansas Lumber Company, which has been referred to in the examination. I believe it is on file with the Commission.

Commissioner Harlan: Then it need not be filed again.

Mr. Armistead: We would ask leave to file a detailed statement in the way of a tabulated statement and explanation for the tabulation, of the cost of the construction of this road, the cost of the operation, the net and gross earnings, the character of freight or traffic from which these earnings are derived, and a copy of the charter granted to the road by the State of Arkansas.

Commissioner Harlan: That need not be filed. It is the

122 ordinary charter, I suppose, under the State law.

Mr. Armistead: We would ask leave to file and make part of this record a map of the Malvern & Freeo Valley Railroad, drawn on scale, showing the physical location of the railroad, the physical location of the lines of the connecting carriers, the St. Louis, Iron Mountain & Southern and the Chicago, Rock Island & Pacific, the location of the town of Malvern, the station of Walco, the mill of the Wisconsin and Arkansas Lumber Company and the logging operations of the lumber company at the terminus of the Malvern & Freeo Valley Railroad and approximately the topography of the country, and also the location of the timbered lands of the Wisconsin & Arkansas Lumber Company. I will state to your Honor that the usual maps drawn with rough approximations would not be proper, and we want to file a map drawn to scale by an engineer, and we will have to prepare such a map.

Commissioner Harlan: Very well.

Mr. J. L. Coleman: Is all of this inbound freight destined to your stores?

Mr. Foster: The inbound is consigned to the Wisconsin & Arkansas Lumber Company.

Mr. J. L. Coleman: No other storekeeper operates in that

123 territory?

Mr. Foster: Not at Walco; no, sir.

Mr. J. L. Coleman: Do you make a local rate from Walco to the Commissary on the inbound stuff?

Mr. Foster: No, this Malvern & Freeo Valley has no local rate there.

Mr. J. L. Coleman: How do you account for the fact that no other storekeeper operates in that territory?

Mr. Foster: At Walco?

Mr. J. L. Coleman: At any other of your commissary points.

Mr. Foster: Well, we have just got one. We have two commissaries, one in the woods and one at the mill.

Mr. J. L. Coleman: And of course your company wants to keep control of that?

Mr. Foster: Yes, sir; we own it lock, stock and barrel.

Mr. J. L. Coleman: Do you interchange transportation with trunk line railroads?

Mr. Foster: Yes, sir.

Mr. J. L. Coleman: Does the Rock Island or the Iron Mountain Railroad give to your officers transportation?

Mr. Foster: We have two annuals on each road.

Mr. J. L. Coleman: One for whom?

124 Mr. Foster: One from each road for myself, and one from each road for F. H. McCormack.

Mr. J. L. Coleman: Is he the traffic manager?

Mr. Foster: Yes, sir.

Mr. J. L. Coleman: Also he is salesman for the lumber company?

Mr. Foster: He is the general superintendent for the lumber company.

Mr. J. L. Coleman: And he is also sales manager for the lumber company?

Mr. Foster: He handles the sales.

Mr. J. L. Coleman: I suppose in the course of his business for the lumber company he would use those annuals in traveling?

Mr. Foster: Well, I don't know whether——

Commissioner Harlan: If he is wide awake the Commission should suppose he does use those annuals, unless this witness says he does not.

Mr. J. L. Coleman: That is what I want to know.

Mr. Foster: Well, he does.

Mr. J. L. Coleman: Do you use yours?

Mr. Foster: Yes, sir; repeatedly. Every day of my life.

Mr. Coleman: So when you get transportation from the

125 trunk line railroads, you use it in soliciting business for the lumber company?

Mr. Foster: I do not undertake to dissolve myself from one relation to the other every time I get onto a train. I have the transportation, and I use it.

Mr. J. L. Coleman: So if you were going on lumber business, competing with some other lumber company, you would assume that you were still president of the railroad and use that transportation?

Mr. Foster: I think I would assume it; yes, sir.

Mr. J. L. Coleman: Now, Mr. Foster, why did you not incorporate the logging railroad from Landers to the woods?

Mr. Foster: Well, we did not want to incorporate it.

Mr. J. L. Coleman: Well, is that the best answer?

Mr. Foster: I think that is answer enough, unless the Commission thinks I ought to go into it a little more in detail.

Commissioner Harlan: We want to know all the facts, if there are any other reasons.

Mr. Foster: We wanted to control that timber company.

Mr J. L. Coleman: You wanted a monopoly?

Mr Foster: Yes, sir—no, we did not want a monopoly, but we wanted to control that section of the country.

126 Mr. J. L. Coleman: You wanted to move the lumber right down there from Landers so no other man could come in and acquire timber country afterwards?

Mr. Foster: Yes, sir.

Mr. J. L. Coleman: That is one of the reasons you acquired other territory there?

Mr. Foster: Yes, sir.

Mr. J. L. Coleman: In the course of 14 years, you think all the lumber will be gone?

Mr. Foster: Practically.

Mr. J. L. Coleman: Well, will you take up your railroad track?

Mr. Foster: I could not tell you?

Mr. J. L. Coleman: You do not know?

Mr. Foster: No.

Mr. J. L. Coleman: So you don't know whether this road will be a lumber road or not?

Mr. Foster: I do not imagine we will ever take the road up. I do not know whether we will continue to operate it ourselves or not. We may sell it.

Mr. J. L. Coleman: Is it not true it is used now solely as an incident to the manufacture of lumber?

127 Mr. Foster: It is used largely in that traffic. Its principal traffic is the raw material from Landers to Walco.

Mr. J. L. Coleman: This land which promises cotton and corn and fruit has not produced any yet?

Mr. Foster: Oh, yes; that is quite a very productive farming country.

Mr. J. L. Coleman: But it is not shipped over your road?

Mr. Foster: No. Not a great deal of it.

Mr. J. L. Coleman: Have you a through rate on merchandise in bound?

Mr. Foster: We have to Walco.

Mr. J. L. Coleman: From St. Louis and Chicago?

Mr. Foster: On inbound?

Mr. J. L. Coleman: Yes.

Mr. Foster: You mean the railroad company?

Mr. J. L. Coleman: The lumber company or anybody?

Mr. Foster: No.

Mr. J. L. Coleman: Is there a through rate from St. Louis to Walco?

Mr. Foster: I think so.

Mr. J. L. Coleman: Do you get a division of that through rate?

128 Mr. Foster: No.

Mr. J. L. Coleman: You do not?

Mr. Foster: No.

Mr. J. L. Coleman: Who are the other carriers making that through rate?

Mr. Foster: The Iron Mountain.

Mr. J. L. Coleman: And who else?

Mr. Foster: The Rock Island.

Mr. J. L. Coleman: How could it be a through rate if there is only one road in it?

Mr. Foster: The Iron Mountain is absolutely at our doors.

Mr. J. L. Coleman: I do not want to have you misunderstand me. I asked if there is a through rate on the merchandise to Walco.

Mr. Foster: Yes.

Mr. J. L. Coleman: If there is, there must be more than one carrier joining in it.

Mr. Foster: I do not know why. Walco is on the Iron Mountain just as much as it is on the Malvern & Freeo Valley. Walco can have two railroads and not necessarily have to ship in anything, it ships in over both of them.

Mr. J. L. Coleman: Didn't you say to Mr. Cowan just now
129 you had a switch from your Walco place to these other roads?

Mr. Foster: Yes.

Mr. J. L. Coleman: Well, what is the answer?

Mr. Foster: The answer is that for inbound merchandise the main line of the Iron Mountain Railroad is within 200 feet of the commissary.

Mr. J. L. Coleman: But for outbound merchandise?

Mr. Foster: It is the same place. The facilities are such for the lumber company that they did not have their planing mill on the same spot they have the commissary.

Mr. J. L. Coleman: It depends which way you look at it; whether from St. Louis or Walco; if it forms a connection.

Mr. Foster: We can get there inbound from the Iron Mountain or send it out locally, without its going over the Malvern & Freeo Valley at all, but we cannot ship carloads that way, and the lumber business is a carload business.

Mr. J. L. Coleman: When you had this transfer from the lumber company to the railroad company of all the equipment, and when you decided upon a capital stock, did you acquire, as being represented by that $175,000 of capital stock, all of the equipment?

Mr. Foster: Yes, sir.

130 Mr. J. L. Coleman: You included that used on the logging road?

Mr. Foster: Yes.

Mr. Coleman: And as a matter of fact, though, that is used solely for the lumber company?

Mr. Foster: No.

Mr. J. L. Coleman: And not the logging road?

Mr. Foster: You mean the rails of the logging road? No, sir; that never entered into the cost of the main line of the Malvern & Freeo Valley or in any way into the $169,000, that is represented by stocks.

Mr. J. L. Coleman: Do not misunderstand me. I mean equipment, cars and engines.

Mr. Foster: Yes, sir; the equipment, cars and the engines, and

the nine miles of road, with its grade and right of way and bridges, and everything that goes with it cost $169,000 and belongs to the railroad company.

Mr. J. L. Coleman: True, but some of those cars and engines are used on the logging railroad.

Mr. Foster: They are rented at an annual rental provided for in the contract.

131 Mr. Coleman: Supposing these divisions were cancelled, would you stop milling?

Mr. Foster: I do not think we would.

Mr. J. L. Coleman: You would still go on?

Mr. Foster: I expect we would.

Mr. J. L. Coleman: Supposing that divisions were cancelled with every man in a similar situation as your company, the milling business would still go on, I suppose?

Mr. Foster: I anticipate that it would be here with us.

Mr. J. L. Coleman: Have you any objection to telling the Commission what you paid for your acquirement of timber land out in that country?

Mr. Foster: What we paid for the timber? I have, unless the Commission insists on it. I think——

Commissioner Harlan: We will not go into that question.

Mr. Armistead: That question is directed to the Wisconsin and Arkansas Lumber Company?

Mr. Coleman: Well, the gentleman has difficulty in dissolving those two relations.

Mr. Armistead: No, he has not, and furthermore, he is not here to be submitted to any insults from you.

Mr. J. L. Coleman: That is all.

132 Examiner Burchmore: You testified that this Malvern & Freeo Valley Railroad was constructed by a regular railroad contractor and paid for by the lumber Company originally?

Mr. Foster: Yes.

Examiner Burchmore: Who furnished the rails and fastenings?

Mr. Foster: We bought them in the open market.

Examiner Burchmore: The rails and fastenings or no part of the line were furnished by the Iron Mountain?

Mr. Foster: No, not a foot of them by any railroad. We bought and paid for the new rails in the open market.

Commissioner Harlan: Do you have an agent at Landers——

Mr. Foster: Yes, sir.

Commissioner Harlan: Wait a moment, I am not finished. To accept the logs that come in on the logging road and bill them out?

Mr. Foster That is all done on the outbound shipments of the lumber. There are no bills made on the Malvern & Freeo Valley, except we keep a record of the cars that go over the road every day and they are loaded just as full as they will carry, and at Walco it is cut into lumber and dried and put through the planing mill, and then the bills of lading are made as the shipments are made into the country.

133 Commissioner Harlan: I know, but the lumber company does not accept delivery at Landers and re-bill it at that point?

Mr. Foster: From Walco?

Commissioner Harlan: No, from Landers.

Mr. Foster: No, there are no bills made between Landers and Walco.

Commissioner Harlan: No record kept?

Mr. Foster: Except the movement of the car.

Mr. Cowan: You answered the Commissioner—he asked you the question which I think you probably misunderstood, if you had an agent at Landers, and you said "yes, sir."

Mr. Foster: The three roads have a joint agency.

Commissioner Harlan: You are talking about Walco?

Mr. Foster: Yes, sir.

Commissioner Harlan: I was asking about Landers.

Mr. Foster: No, there is no agent.

Commissioner Harlan: You do not keep any record or billing there?

Mr. Foster: No, absolutely not.

Commissioner Harlan: The name Walco comes from the initials of the lumber company, does it?

Mr. Foster: Yes, sir.

134 Mr. Cowan: There was one item of your evidence wherein I understood you to say that the engines that the lumber company had were sold or transferred to the railroad company, the Freeo Valley Company, and then the engines were rented back and a rental paid for use in the logging camps; is that correct?

Mr. Foster: Yes, sir.

Mr. Cowan: What was the business reason for selling the engines to the railroad company, which were going to be used by the lumber company, and then leasing the engines back from the railroad company by the lumber company?

Mr. Foster: Well, it was all property that naturally would come under the head of a railroad, and it was all put together and the cost accounted for or made up and the stock for the railroad company issued accordingly when the transfer was made.

Mr. Cowan: And the same reasons should have applied to the track. The track is a thing that approximately would belong to a railroad?

Mr. Foster: Yes, sir.

Mr. Cowan: You knew that these engines of the sort only
135 fit for a logging camp that happened to be used there or not at all, the railroad company could not use them?

Mr. Foster: Well, they were originally railroad engines, they were engines, almost all of them, which came off the Lackawanna System.

Mr. Cowan: But you stated two engines were——

Mr. Foster: Well, two engines were geared engines, yes, sir, but those are frequently used on railroads in rough countries.

Mr. Cowan: Do your books show the value of the unincorporated part of your railroad?

Mr. Foster: That has been taken care of in logging operations and charged off every year as an operating account.

Mr. Cowan: These rails are in part laid down from place to places as you may want to reach the timber?

Mr. Foster: Yes, sir.

Mr. Cowan: And they are here today, and away tomorrow——

Mr. Foster: That is true of a large portion of the track. Of course we start in in the timber nearest the mill, and keep on through and leave the track which will take care of the timber farthest away, and it becomes a logging road.

Mr. Cowan: If the railroad company were to lease two or
136 three miles beyond Landers, you might just as well bill it from out there as from Landers?

Mr. Foster: If they had tracks down there, I suppose they could do it.

Mr. Cowan: That is all.

Commissioner Harlan: That seems to be all. You are excused.

Mr. Armistead: Do you desire us to bring the other employees? The call came rather unexpectedly.

Commissioner Harlan: That is for you to say.

Mr. Armistead: Some other attorneys are going to ask the Commission to hold a session at Little Rock before an Examiner. I do not know what the Commission will do, but could we take in other witnesses at that time; anything that might occur to us?

Commissioner Harlan: That can be determined later. Perhaps it might be well to say that after the Red River & Gulf is disposed of, we will take up the Crittenden Railroad and the Crossett Railroad, and possibly that will consume the afternoon. *Perhaps* here interested in other railroads may perhaps want to be excused until tomorrow morning. We will first go through the Red River & Gulf and then the Crittenden and then the Crossett Railroad, and we will reserve the Prescott & Northwestern this afternoon also.

137 *Red River & Gulf Railroad Company.*

Commissioner Harlan: Is the Red River & Gulf Railroad Company ready?

Mr. Farrar: Yes, sir.

Commissioner Harlan: How many witnesses have you?

Mr. Farrar: I have only one. I have some documents to offer first. We offer the certified copy of the charter and amended charter of the Red River & Gulf Railroad.

Commisioner Harlan: Let me say that all your exhibits that are now in the record are considered as being in the record for all purposes. That is our practice. You need not get on the record what you have just offered, if it is already there.

Mr. Farrar: I will then make a general offer of the documents annexed to the petition. Under the statement made by the Commissioner, the Red River & Gulf offers the documents annexed to and made part of its petition in this case.

138 J. S. CROWELL was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Farrar: What connection have you with the Red River & Gulf Railroad?

Mr. Crowell: General manager of the Red River & Gulf Railroad.

Mr. Farrar: How long have you been general manager of the company?

Mr. Crowell: Since the organization in 1906, in the latter part of 1906.

Mr. Farrar: I show you this blue print, and ask you if that blue print correctly indicates the lines, route and connections of the Red River & Gulf Railroad.

Mr. Crowell: It does.

Mr. Farrar: What are the two termini of that road?

Mr. Crowell: Long Leaf, Louisiana, and Lecompte, Louisiana.

Mr. Farrar: On what line of railroad is Long Leaf?

Mr. Crowell: Long Leaf is on the Red River & Gulf Railroad and the St. Louis, Iron Mountain & Southern Railway.

Mr. Farrar: On what line is Lecompte?

139 Mr. Crowell: Lecompte is on the Rock Island, the Southern Pacific and the Texas & Pacific.

Mr. Farrar: Do the Texas & Pacific and the Southern Pacific at Lecompte use separate tracks, or do they use the same tracks?

Mr. Crowell: They use joint tracks; the same tracks.

Mr. Farrar: What is the length of the line of this road?

Mr. Crowell: 12¾ miles.

Mr. Farrar: How many stations are there on this road?

Mr. Crowell: Six or seven stations.

Mr. Farrar: What are their names?

Mr. Crowell: Long Leaf, Hurricane Creek, Forest Hill, Stamps Junction, Randolph, Holdup, Togo, Spring Hill and Lecompte.

Mr. Farrar: Are those stations flag stations or regular stations?

Mr. Crowell: They are all flag stations except the two termini and the Togo station.

Mr. Farrar: How many mills are there on the line of that road?

Mr. Crowell: There is one mill at Long Leaf, and there is a mill location at Togo; the mill burned recently.

140 Mr. Farrar: Recently burned?

Mr. Crowell: Yes, sir.

Mr. Farrar: Does this map correctly show the location of the mill which you say is at Long Leaf?

Mr. Crowell: Yes, sir, it does.

(The map so offered and identified was received in evidence and thereupon marked Red River & Gulf Railroad Exhibit No. 1, witness Crowell, received in evidence December 8, 1910, and is attached hereto.)

Mr. Farrar: Whom does the mill at Long Leaf belong to?

Mr. Crowell: To the Crowell & Spencer Lumber Company, Limited.

Mr. Farrar: Who does the mill at Togo belong to?
Mr. Crowell: To the Lecompte Lumber Company, Limited.
Mr. Farrar: What is the equipment of your railroad?
Mr. Crowell: We have one locomotive and four cars.
Mr. Farrar: What kind of cars are those?
Mr. Crowell: One is a combination passenger coach and freight car, and the others are flat cars.
Mr. Farrar: How many trains does this road run?
Mr. Crowell: One a day each way.
Mr. Farrar: What business do you do with those trains?
141 Mr. Crowell: We do a general business as a public carrier.
Mr. Farrar: Do you carry passengers?
Mr. Crowell: Yes, sir.
Mr. Farrar: Do you carry generall freight?
Mr. Crowell: We do; yes, sir.
Mr. Farrar: You have set forth in the petition in this case a detailed statement of the receipts and disbursements of this company for the years 1906, 1907, 1908 and the year 1909. Is that statement correct?
Mr. Crowell: It is; yes, sir; it is verified.
Mr. Farrar: You have also set forth in this petition a detailed statement of your receipts on finished lumber from the Crowell & Spencer Lumber Company and on finished lumber from the Lecompte Lumber Company and on miscellaneous freight such as hay, grain, groceries, household goods, cattle, furniture, and so forth, for each of those years; is that correct?
Mr. Crowell: It is correct; yes, sir.
Mr. Farrar: At this point, if your Honor please, we ask leave to file as part of this witness's testimony a similar statement for the year 1910.
Commissioner Harlan: Very well.
142 (The statement so offered and identified was received in evidence and thereupon marked Red River & Gulf Railroad Exhibit No. 2, witness Crowell, received in evidence December 8, 1910, and is attached hereto.)

Mr. Farrar: In explanation of two items in this statement, to wit, revenue for trackage from Rock Island gravel trains, and revenue from trackage for the Crowell & Spencer Lumber Company's log trains, we desire to offer the original trackage contract between the Red River & Gulf Railroad Company and the Rock Island, Arkansas & Louisiana Railroad Company, dated the 24th of August, 1907.
Commissioner Harlan: That is the original?
Mr. Farrar: Yes, sir; together with a map annexed which shows that portion of the line of the Red River & Gulf Road to which this trackage agreement applies. It covers only the hauling of gravel out of this pit.

(The paper so offered and identified was received in evidence and thereupon marked Red River & Gulf Railroad Exhibit No. 3,

witness Crowell, received in evidence December 8, 1910, and is attached hereto.)

Examiner Burchmore: Who was the other party to this contract?

143 Mr. Crowell: It is the Rock Island, Louisiana & Arkansas.

Mr. Farrar: It is one of the branch lines of the Rock Island. We next offer in evidence the original contract between the Crowell & Spencer Company and the Red River & Gulf Railroad covering contract for logging trains over a portion of this road, together with a map annexed showing what portion of the road is covered——

Commissioner Harlan: That is the Red River & Gulf Railroad operates logging trains for the lumber company?

Mr. Crowell: No, the lumber company operates logging trains over a portion of the Red River & Gulf.

Mr. Farrar: Together with a letter of the Railroad Commission of Louisiana, showing that this contract is duly filed with the Railroad Commission of Louisiana.

Commissioner Harlan: That need not be filed. The record will show that you offer to prove that, and that the contract has been filed with the State Commission.

(The paper so offered and identified was received in evidence and thereupon marked Red River & Gulf Railroad Exhibit No. 4, witness Crowell, received in evidence December 8, 1910, and is attached hereto.)

Mr. Farrar: This map or blue print which was offered in
144 evidence here shows this Crowell & Spencer tram road?

Mr. Crowell: Yes, sir; it does.

Mr. Farrar: This is the line marked here running south?

Mr. Crowell: Yes.

Mr. Farrar: Does your road handle any log trains on this tram road?

Mr. Crowell: The railroad company?

Mr. Farrar: Yes.

Mr. Crowell: No, sir, it does not.

Mr. Farrar: Who handles the logging trains on this Crowell & Spencer tram?

Mr. Crowell: The Crowell & Spencer Lumber Company.

Mr. Farrar: Who handles those logging trains when they come under this contract on this portion of the Red River & Gulf?

Mr. Crowell: They are handled under the despatcher of the Red River & Gulf Railroad.

Mr. Farrar: But I mean to say, whose locomotives are they that handle them?

Mr. Crowell: The Crowell & Spencer Lumber Company locomotives and crew.

Mr. Farrar: Has the Red River & Gulf Railroad Com-
145 pany any interest in the operation of that logging road, other than the revenue which it receives under this trackage contract?

Mr. Crowell: None whatever, no.

Mr. Farrar: Does the Red River & Gulf Railroad receive other than the trackage under this agreement, any compensation from the Crowell & Spencer Lumber Company or from any connecting railroad for any of the logs that are hauled over that track?

Mr. Crowell: No, sir; it does not.

Mr. Farrar: In your division of rates with these connecting lines, is any consideration whatever given to the hauling of these logs over this tram track by the Crowell & Spencer Company?

Mr. Crowell: No; none.

Mr. Farrar: You have no milling in transit arrangements whatever?

Mr. Crowell: No.

Mr. Farrar: You have no interests in this logging business whatever?

Mr. Crowell: None whatever.

Mr. Farrar: What are your relations to the Louisiana Railway Commission?

146 Mr. Crowell: The relations of any other common carrier railroad; we comply with their requirements.

Mr. Farrar: Do you obey their rules and regulations?

Mr. Crowell: Yes, sir.

Mr. Farrar: Do you make reports to the local Commission?

Mr. Crowell: Yes, sir.

Mr. Farrar: What reports do you make to the Interstate Commerce Commission?

Mr. Crowell: We make monthly and annual reports.

Mr. Farrar: Of what?

Mr. Crowell: Covering the transactions of business.

Mr. Farrar: To the Interstate Commerce Commission?

Mr. Crowell: To the Interstate Commerce Commission.

Mr. Farrar: How is your road treated in the matter of the assessment in this State?

Mr. Crowell: It is assessed the same as any other common carrier railroad.

Mr. Farrar: It is assessed by the Board of State Railroad Commissioners?

Mr. Crowell: Yes.

Mr. Farrar: Is your road liable to taxation or free from taxation, and if so, why?

147 Mr. Crowell: Free on account of the law that exempts roads from taxation for ten years, except for the rolling stock; we pay taxes on the rolling stock.

Mr. Farrar: You pay taxes on the rolling stock?

Mr. Crowell: And equipment; yes, sir.

Mr. Farrar: But you pay no taxes on your roadbed, because your road was built within the limit provided by the Constitution?

Mr. Crowell: Exactly.

Mr. Farrar: How is your freight that is shipped off from your road handled, in regard to billing?

Mr. Crowell: We bill it on our own way bills.
Mr. Farrar: How do you handle local freight?
Mr. Crowell: The same as we do other freight.
Mr. Farrar: You use way bills and bills of lading for local freight?
Mr. Crowell: Yes, sir.
Mr. Farrar: And how about interestate freight?
Mr. Crowell: We do the same on interstate freight.
Mr. Farrar: You issue bills of lading?
Mr. Crowell: And way bills.
Mr. Farrar: And way bills also?
148 Mr. Crowell: Yes, sir.
Mr. Farrar: Do you keep a set of books complete?
Mr. Crowell: Yes, sir.
Mr. Farrar: I show you these three books, which are called cash book, ledger and journal. Are they the books of your company?
Mr. Crowell: They are; yes, sir.
Mr. Farrar: Do they show a complete condition of your affairs, from the time that this company began to operate down to this date?
Mr. Crowell: They do; yes, sir.
Mr. Farrar: How are the funds of this company kept?
Mr. Crowell: They are kept by the company.
Mr. Farrar: Where?
Mr. Crowell: In banks.
Mr. Farrar: Where?
Mr. Crowell: Shreveport Commercial National Bank at present.
Mr. Farrar: Did you ever keep them any where else?
Mr. Crowell: We did for a while in the Lake Charles National Bank at Lake Charles.
Mr. Farrar: Were the funds of your company at any time ever kept in the custody of any other person or corporation?
149 Mr. Crowell: No, sir; they were not.
Mr. Farrar: Are the funds of your company now, or were the funds of your company ever at any time mingled with the funds of the Crowell & Spencer Lumber Company?
Mr. Crowell: No, sir; not to my knowledge.
Mr. Farrar: In this petition here you give a list of your stockholders?
Mr. Crowell: Yes.
Mr. Farrar: Is that list correct?
Mr. Crowell: It is; yes, sir.
Mr. Farrar: Is an account kept in your ledger with each one of those stockholders?
Mr. Crowell: Yes, sir; it is.
Mr. Farrar: Have you a certificate of stock?
Mr. Crowell: Yes, sir.
Mr. Farrar: That book will not be here until tomorrow——
Commissioner Harlan: You need not stop on the details of that book. It is true that the stockholders of the lumber company control, by stock ownership, the railroad company?

Mr. Crowell: Yes, sir.
Mr. Farrar: They are the same. I am going to prove it.
Commissioner Harlan: That can be admitted now through
the witness, that the ownership of the two companies is controlled by the same parties.
Mr. Farrar: Yes, sir, except one share of stock in this company is not owned by the lumber company. In whose name does stock of this company stand on your books?
Mr. Crowell: In the names of the individuals owning the stock.
Mr. Farrar: Whose names are shown in this ledger?
Mr. Crowell: Yes.
Mr. Farrar: Is there any difference, and if so, what, in the personnel of the stockholders of this company and the personnel the stockholders of the Crowell & Spencer Lumber Company?
Mr. Crowell: Only a slight difference; one share of railroad ock owned by outside parties.
Mr. Farrar: He is not a stockholder in the Crowell & Spencer umber Company?
Mr. Crowell: No.
Mr. Farrar: Who is that outside party?
Mr. Crowell: James Andrews, Alexandria.
Mr. Farrar: Has this company declared dividends?
Mr. Crowell: Yes, sir; it has.
51 Mr. Farrar: To whom have those dividends been paid?
Mr. Crowell: Paid to the stockholders.
Mr. Farrar: Do your ledger and your books show the payment of ese dividends to those individual stockholders?
Mr. Crowell: Yes, sir; they do.
Mr. Farrar: Have you got the receipts of those individual stockolders for those dividends?
Mr. Crowell: Yes, sir.
Mr. Farrar: Can you produce them?
Mr. Crowell: Yes, sir.
Commissioner Harlan: That will not be necessary. We will take he gentleman's word for all those details.
Mr. Farrar: What becomes of the money that you pay to the tockholders as dividends?
Mr. Crowell: I can only account for my own.
Mr. Farrar: What do you do with yours?
Mr. Crowell: I use it for my individual uses.
Mr. Farrar: Have you ever known of any instance——
Commissioner Harlan: I do not think that is necessary.
Mr. Farrar: I want to show that neither of these corporations ever receive any of these dividends.
52 Commissioner Harlan: That sufficiently appears. The witness has fully explained that there are two corporations nd they are owned by identically the same persons, and the divilends of the lumber company go to the stockholders of that comany, and the dividends of the railroad company go to the stockolders of that company, and they respectively dispose of their funds s they choose, and that is all of record.

Mr. Farrar: That is what I wanted to show; yes, sir.

Commissioner Harlan: Is James Andrews an employee of the railroad?

Mr. Crowell: He is the attorney of the railroad company, and also for the lumber company. He is not on a salary basis.

Mr. Farrar: Now, sir, who is president of the Lumber Company?

Mr. Crowell: C. C. Crowell, president.

Mr. Farrar: Who is president of the railroad company?

Mr. Crowell: C. C. Crowell; the same.

Mr. Farrar: What difference is there between the officers of the lumber company and this railroad company?

Mr. Crowell: Well, they are identical, with the exception that we have an auditor for the railroad company.

153 Mr. Farrar: You have an auditor in the railroad company?

Mr. Crowell: Yes, sir.

Mr. Farrar: Is he in any respect an employee of the lumber company?

Mr. Crowell: Yes, sir; he is.

Mr. Farrar: He is an employee, then, of both corporations?

Mr. Crowell: Yes, sir.

Mr. Farrar: Is he paid a salary by the railroad company?

Mr. Crowell: Yes, sir.

Mr. Farrar: Are the officers of the railroad company paid any salary?

Mr. Crowell: They are not; no, sir, outside of the one.

Commissioner Harlan: Except the auditor?

Mr. Crowell: Except the auditor.

Mr. Farrar: Now, the employees of the railroad company, the engineers and firemen and the conductors and tracknen and people of that sort, are they the employees of both corporations or the employees of only one?

Mr. Crowell: Only one.

Mr. Farar: Which one?

Mr. Crowell: The railroad company.

Mr. Farrar: Have you division rates with all of your railroad connections?

154 Mr. Crowell: Yes, sir.

Mr. Farrar: On all traffic of every sort.

Mr. Crowell: Of every sort; yes, sir, except with the Texas & Pacific, we have not lumber divisions with the Texas & Pacific at present.

Mr. Farrar: Do you divide rates with all of the roads that you connect with?

Mr. Crowell: Yes, sir.

Mr. Farrar: On all kinds of traffic?

Mr. Crowell: Yes, sir.

Mr. Farrar: Except with the Texas & Pacific, and with them you have no lumber divisions?

Mr. Crowell: No.

Mr. Farrar: Did you ever have any lumber divisions with the Texas & Pacific?

Mr. Crowell: Yes, sir.

Mr. Farrar: When were they cancelled?

Mr. Crowell: About a year and a half ago.

Mr. Farrar: Why?

Commissioner Harlan: I suppose that division was simply mislaid, was it?

155 Mr. Crowell: How is that?

Commissioner Harlan: What became of that division?

Mr. Crowell: That was cancelled by the Texas & Pacific.

Mr. Farrar: I have just asked you why they cancelled it?

Mr. Crowell: They explained they did not get enough business to justify the continuance of it.

Mr. Farrar: What is your division with the road you connect with at Long Leaf?

Mr. Crowell: Three cents.

Mr. Farrar: What is your division rate with the Rock Island, that you connect with at Lecompte?

Mr. Crowell: $2\frac{1}{2}$ to $4\frac{1}{2}$ cents; I believe that is correct.

Mr. Farrar: What is your division rate with the Southern Pacific, that you connect with at Lecompte?

Mr. Crowell: Three and four cents.

Mr. Farrar: When we say "Southern Pacific," we mean Morgan's Louisiana & Texas Railroad & Steamship Company, which, though operated as a separate corporation, is known as the Southern Pacific Company?

Mr. Crowell: Yes, sir.

156 Mr. Blair: Known as the Southern Pacific Lines.

Mr. Farrar: Known as the Southern Pacific Lines. I do not mean to say you are utterly lost and swallowed up; you have your identity still left.

Mr. Blair: As the Southern Pacific is denying it is a party to this suit, I wanted the record straight.

Mr. Farrar: Knowing the sensitiveness of the gentleman on that subject, I took his individual fractions and made them parties.

Mr. Blair: And the Southern Pacific also, which was unnecessary.

Mr. Farrar: I do not know whether it was necessary, but I thought I would gather them all up.

Commissioner Harlan: Well, the record will show. Let us get ahead.

Mr. Farrar: How long have these various divisions which you speak of with these three sets of connecting lines been in force?

Mr. Crowell: They have been in force since the completion of the line, with the exception of the Rock Island Lines, and those were put in after the completion of this line of theirs, which connects with our road.

157 Commissioner Harlan: When was your road organized?

Mr. Crowell: In 1905.

Commissioner Harlan: When was the track built?

Mr. Crowell: In 1905, and it began business in December of that year.

Commissioner Harlan: Built by the railroad company?

Mr. Crowell: Well, it was built by the Crowell & Spencer Lumber Company.

Mr. Farrar: I was just about to bring that out. Who did the actual, physical construction of this road?

Mr. Crowell: The Crowell & Spencer Lumber Company.

Mr. Farrar: Who did the title to this road come from, to this corporation?

Mr. Crowell: It passed by deed of record; we deeded the property over to the railroad company after its completion.

Mr. Farrar: What was the price for which this property was transferred?

Mr. Crowell: $101,000.

Mr. Farrar: What did that represent?

Mr. Crowell: It represented cash paid out in the construction of the line.

Mr. Farrar: The actual cash paid out?

158 Mr. Crowell: The actual cash paid out in constructing the line and equipping the line.

Mr. Farrar: What did the Crowell & Spencer Lumber Company receive as a consideration for that deed; what did they get back; what did they receive from the railroad company?

Mr. Crowell: That transaction was handled in this way; a dividend was declared and the money used to cover the purchase of the railroad company.

Commissioner Harlan: Who declared the dividend; which company?

Mr. Crowell: The Crowell & Spencer Lumber Company.

Commissioner Harlan: Declared a dividend out of surplus?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Of $101,000?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And that money, instead of being paid over to the stockholders, was used to build this road?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Then the railroad company was organized?

Mr. Crowell: The railroad company was organized ahead of the construction.

159 Commissioner Harlan: And after the road had been built by the lumber company, it was turned over to the railroad company?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And the railroad company paid for it in stock for that amount?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And that included the equipment?

Mr. Crowell: Yes, sir.

Mr. Farrar: And that stock was declared as a dividend to the stockholders of the Crowell & Spencer Lumber Company?

Mr. Crowell: Yes, sir.

Mr. Farrar: Do you keep an agent at Lecompte?

Mr. Crowell: Yes, sir; we have two agents at Lecompte.

Mr. Farrar: Do you mean Lecompte?

Mr. Crowell: We have a joint agency there with the Rock Island and the Texas & Pacific.

Mr. Farrar: And another joint agency with the Texas & Pacific?

Mr. Crowell: Yes.

Mr. Farrar: Have you an agent at the other terminus?

160 Mr. Crowell: Yes, sir; we have.

Mr. Farrar: Do you issue time cards and schedules?

Mr. Crowell: Yes, sir; we do, and run trains on the schedule.

Mr. Farrar: Run trains on that schedule?

Mr. Crowell: Yes, sir.

Mr. Farrar: How are the trains on your road handled; are they handled by the motive power of any of the other railroads with whom you connect, or are they handled with your own motive power?

Mr. Crowell: They are handled with our own motive power.

Mr. Farrar: Do any of the connecting roads run any of their trains over your road, except the gravel trains run by the Rock Island road under the trackage contract?

Mr. Crowell: None except that one contract.

Mr. Farrar: And the logging trains that are run by the Crowell & Spencer Lumber Company?

Mr. Crowell: Yes.

Mr. Farrar: At the time that the railroad company complained of in your complaint here cancelled the lumber rate, did they cancel the other through rates with you on merchandise and other articles?

161 Mr. Crowell: You refer to the Texas & Pacific.

Mr. Farrar: No, sir; I am referring to the suit now before the court.

Mr. Crowell: No, sir; they did not, only the lumber rate.

Mr. Farrar: They did not undertake to cancel their division rates with you on general traffic?

Mr. Crowell: No.

Mr. Farrar: But only on lumber?

Mr. Crowell: Only on lumber.

Mr. Farrar: When was this mill at Togo burned?

Mr. Crowell: Burned some time this year.

Mr. Farrar: Has it been reconstructed?

Mr. Crowell: No, sir; it has not.

Mr. Farrar: Have they got much lumber on hand there unsold, or have they moved it out since the mill was burned?

Mr. Crowell: They had considerable lumber there, but most of it has been moved out since the mill burned.

Mr. Farrar: Your receipts for the year 1910, the statement of which you are to make up for the Commission, will show that?

Mr. Crowell: Yes, sir.

Mr. Farrar: Now, what is the general character of the freight that you handle for people along the line of that road?

162 Mr. Crowell: We handle everything that is offered.

Commissioner Harlan: That will be shown in the exhibits you propose to file?

Mr. Farrar: The exhibits generally show that, because they are affidavits made by merchants in these various towns of Alexandria, and so on, who testify as to the character of the goods that they had shipped over the line of this road, cattle, furniture, hardware——

Commissioner Harlan: That is all of record, and you need not bring it out by this witness.

Mr. Farrar: Now, we tender, if your Honor please, for the inspection by the Commission and counsel, the stock transfer book, the bank deposit books, the cash book, the ledger and the journal of this company, to show the manner in which its business has been conducted, and to show it is controlled by its own officers.

Commissioner Harlan: That tender will be shown in the record.

Mr. Farrar: This Lecompte Company; have the Crowell & Spencer Company any relations whatever with the Lecompte Lumber Company.

163 Mr. Crowell: None whatever; it is entirely independent.

Mr. Farrar: Have any of the stockholders in the Lecompte Lumber Company any stock ownership in the Crowell & Spencer Company?

Mr. Crowell: None.

Mr. Farrar: Any of the stockholders of the Crowell & Spencer Company have any stock in the Lecompte Lumber Company?

Mr. Crowell: No.

Commissioner Harlan: When was the Crowell & Spencer Lumber Company organized?

Mr. Crowell: Organized in 1898—incorporated in 1898.

Commissioner Harlan: When was your mill at Long Leaf built?

Mr. Crowell: 1892.

Commissioner Harlan: How far is that from the tracks of the St. Louis & Iron Mountain?

Mr. Crowell: The saw mill was about a quarter of a mile.

Examiner Burchmore: It was constructed in 1902?

Mr. Crowell: 1892.

Examiner Burchmore: Before the Lumber Company was organized?

Mr. Crowell: It was originally a partnership, and was incorporated in 1898.

164 Commissioner Harlan: What sort of connection did you have with the Iron Mountain tracks before this tap line was incorporated?

Mr. Crowell: The lumber company owned its tracks into the saw mill.

Commissioner Harlan: Did you get an allowance at that time?

Mr. Crowell: No, sir.

Commissioner Harlan: When did you first commence to get an allowance from the Iron Mountain?

Mr. Crowell: After the organization of the railroad.

Commissioner Harlan: In 1905?

Mr. Crowell: In 1905.

Commissioner Harlan: Where do most of your logs come from?

Mr. Crowell: Most of our logs at present come from the territory shown there by the line, as laid down in the blue print.

Commissioner Harlan: The Crowell & Spencer tram line?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Is there much lumber on the Red River & Gulf, any belonging to you?

Mr. Crowell: No sir.

Commissioner Harlan: Any belonging to anyone else?

165 Mr. Crowell: No; the timber is all cut out, except this territory, and there is only about a year and a half on it.

Commissioner Harlan: So that all the timber that you now get is on the line of this private carrier called the Crowell & Spencer tram on this map?

Mr. Crowell: Yes, sir.

Commissioner Harlan: These logs are carried by the lumber company itself to your mill at Long Leaf?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And there manufactured into lumber?

Mr. Crowell: Yes.

Commissioner Harlan: What proportion of the manufactured lumber goes out over the Iron Mountain?

Mr. Crowell: Well, a small per cent.

Commissioner Harlan: Before this Red River & Gulf was built, all of your lumber went out over the Iron Mountain, did it not?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And you built it 12 miles over to the Rock Island?

Mr. Crowell: 12¾ miles over to the Texas & Pacific and

166 the Southern Pacific at that time. The Rock Island was not built through there until later.

Commissioner Harlan: What line takes the major part of your manufactured lumber now?

Mr. Crowell: The Rock Island is getting the most. It changes, though, with different times; it depends on the business offered. At present time the Rock Island is getting most of the business.

Commissioner Harlan: How long has that been true?

Mr. Crowell: It has been true for about two years.

Commissioner Harlan: For the last two years the Rock Island has been getting the bulk of your traffic?

Mr. Crowell: Getting the bulk of it; yes, sir, practically.

Commissioner Harlan: So that you haul logs from your forest on the Crowell & Spencer tram line into your mill on the Iron Mountain line, and then the manufactured lumber is hauled back about 12 miles to the Rock Island?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Instead of going out over the Iron Mountain?

Mr. Crowell: Well, we deliver business to the Southern Pacific and the Iron Mountain and to the Rock Island.

167 Commissioner Harlan: The Iron Mountain and the Rock Island have a junction at Alexandria, have they not, a few miles north?

Mr. Crowell: Yes, sir.

Commissioner Harlan: How many miles north is that?

Mr. Crowell: Twenty-five.

Commissioner Harlan: Before this Red River & Gulf was built, when you wanted to reach Rock Island points you used the Iron Mountain, did you not?

Mr. Crowell: We did not reach it through Alexandria; they did not have a road into Alexandria at that time.

Commissioner Harlan: Where did you reach the Rock Island at that time?

Mr. Crowell: I think that business was handled in connection with the Texas & Pacific, and they turned it over at Fort Worth.

Mr. Farrar: The Rock Island construction into that territory is only of a very recent date.

Commissioner Harlan: It went to the Texas & Pacific at Alexandria?

Mr. Crowell: Yes, sir; at Alexandria at that time, and to the Southern Pacific. Rates were in effect both ways.

168 Commissioner Harlan: But you can reach all Rock Island points by using the Iron Mountain to Alexandria or some other junction point, can you not?

Mr. Crowell: Yes, sir.

Examiner Burchmore: Among the exhibits filed of record, to which counsel refers, are a number of printed blanks filled out by shippers who say that they have used the Red River & Gulf Railroad Company during the past three or four years in receiving or shipping freight. One of these statements is filed by J. B. Simnott.

Mr. Farrar: That is Smith Brothers & Company, of New Orleans.

Examiner Burchmore: President of Smith Brothers & Company, of New Orleans. What amount of traffic does that firm originate or receive?

Mr. Crowell: It is not a large traffic.

Examiner Burchmore: As much as one carload in the whole year, or more?

Mr. Crowell: Four, I should say.

Examiner Burchmore: Kracke & Flanders, a partnership, also filed out such a statement. Is their traffic of considerable volume?

169 Mr. Crowell: Yes, sir.

Examiner Burchmore: About how much in a year?

Mr. Crowell: Well, it is all in local shipments.

Examiner Burchmore: J. P. Dunn, a farmer at Forest Hill certifies that he has made shipments over your road. Are those simply

occasional shipments of agricultural products, or is it a considerable traffic?

Mr. Crowell: Occasional shipments of agricultural products.

Examiner Burchmore: I presume you have seen all these statements which are filed of record?

Mr. Crowell: Yes, sir.

Examiner Burchmore: Could you estimate the total volume of traffic that is handled for these shippers who have written these statements, in a year? Does it amount to ten carloads or one carload?

Mr. Crowell: More than ten carloads, I should say; there are shippers there that would ship more than ten carloads individually.

Examiner Burchmore: What would you estimate the total volume?

Mr. Crowell: I do not know that I could estimate that with any degree of accuracy, without looking up the records.

Mr. Farrar: The statements will show the exact amount of
170 that, outside of lumber.

Commissioner Harlan: What is the extent of your lumber shipments; what was your cut last year?

Mr. Crowell: About 17 and a half million feet.

Commissioner Harlan: Do you know about how many carloads went out from the mill over all lines?

Mr. Crowell: No, I could not give the actual number.

Commissioner Harlan: How long has it been since there was any lumber on the Red River & Gulf, east of its junction with the Crowell & Spencer tram?

Mr. Crowell: Early this year, in March, I think.

Commissioner Harlan: Are there some forests on your road, the Red River & Gulf?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Which belong to you?

Mr. Crowell: There are some belonging to us, and others owned by other people.

Commissioner Harlan: When was the Crowell & Spencer tram line built?

Mr. Crowell: That was built in the last of 1906 or 1907.

Commissioner Harlan: And in 1905, when the Red River & Gulf Railroad was built, what forests did you own, and where
171 were they?

Mr. Crowell: They were west of Long Leaf, and operated over a logging tram that we afterwards dismantled.

Commissioner Harlan: Let me see if I understand that. When the Red River & Gulf was built, you owned no forest east of Long Leaf?

Mr. Crowell: Yes, we owned forest east of Long Leaf, but at the time of the building of the Red River & Gulf we were operating 15 miles of tram road due west of Long Leaf, and that road has been dismantled.

Commissioner Harlan: Then you commenced to lumber east of Long Leaf in 1906?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Describe your holdings east of Long Leaf, when the Red River & Gulf was built, and the location of your forest.

Mr. Crowell: The location was on both sides of the line for a distance——

Commissioner Harlan: What line?

Mr. Crowell: The Red River & Gulf.

Commissioner Harlan: How far east did they extend?

Mr. Crowell: Between six and seven miles east of Long Leaf.

172 Commissioner Harlan: And at that time, your mill was at Long Leaf?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Why did you invest money in the extension of the Red River & Gulf eastward beyond your forest?

Mr. Crowell: In order to handle our lumber.

Commissioner Harlan: Over these other lines?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Which you could have reached at that time through their junction at Alexandria?

Mr. Crowell: Yes, sir.

Commissioner Harlan: You could have reached all Rock Island points in 1905 through Alexandria?

Mr. Crowell: Yes, sir.

Commissioner Harlan: And you could have reached the Texas & Pacific points too?

Mr. Crowell: Yes, sir.

Commissioner Harlan: But notwithstanding that, you extended the Red River & Gulf to a junction with those lines?

Mr. Crowell: Yes, sir.

Commissioner Harlan: You did that to get divisions, did you not.

173 Mr. Crowell: Yes, sir, and for the further reason that we could not get cars from the St. Louis, Watkins & Gulf, which is now the Iron Mountain; they were unable for four or five months of every year to give us cars, and our business was badly crippled, and it was largely for that reason that our road was built, as well as for the other.

Commissioner Harlan: You were not getting a sufficient supply of equipment from the Iron Mountain.

Mr. Crowell: No; they could not furnish it.

Commissioner Harlan: Did you have any talk with the other roads before you extended the Red River & Gulf eastward?

Mr. Crowell: Yes, sir.

Commissioner Harlan: Just tell us what inducement you had to extend that road to the junction with the Rock Island and other roads to the east.

Mr. Crowell: They offered us divisions of the through rates.

Commissioner Harlan: What divisions were offered?

Mr. Crowell: At that time we received three and four cents, I believe it was, from the Texas & Pacific and the Southern Pacific.

Commissioner Harlan: And what offer was made to you by the Rock Island?

174 Mr. Crowell: Well, there was no offer made by the Rock Island at that time. There was no Rock Island.

Commissioner Harlan: The Rock Island came in later?

Mr. Crowell: The Rock Island came in later; yes, sir.

Commissioner Harlan: What is the highest division you have ever received from any line?

Mr. Crowell: I believe five cents was as much as we have ever received.

Commissioner Harlan: When was that?

Mr. Crowell: In 1906 and 1907.

Mr. Jeffery: Talk up, please. I did not hear what you said. Who did you say you got the five cent division from?

Commissioner Harlan: He has not said that. He is giving the details——

Mr. Crowell: To a few common points in Texas we got five cents from the Texas & Pacific and the Southern Pacific, at one time.

Commissioner Harlan: What was the highest division you ever received from the St. Louis, Watkins & Gulf or the Iron Mountain?

Mr. Crowell: Three cents.

Commissioner Harlan: When did you make your arrange-

175 ments with the Rock Island?

Mr. Crowell: Since they built this line south of Alexandria.

Commissioner Harlan: When was that?

Mr. Crowell: That has been something over two years.

Commissioner Harlan: What division do you receive now from the Rock Island?

Mr. Crowell: From two and a half to four and a half cents.

Commissioner Harlan: Is four and a half cents the highest going division at this time?

Mr. Crowell: To the best of my recollection it is; yes, sir. I have the division sheets with me.

Mr. Farrar: You say you have those division sheets?

Mr. Crowell: Yes, sir.

Mr. Cowan: They will be filed; they are already filed.

Mr. Crowell: They are all filed.

Examiner Burchmore: Has the Red River & Gulf a contract with the Rock Island Railroad?

Mr. Crowell: No, sir.

Examiner Burchmore: No contract for divisions of the rates?

Mr. Crowell: No, sir; not for divisions.

Mr. Farrar: You have no contracts with any railroad as to

176 rates, have you?

Mr. Crowell: No, sir.

Commissioner Harlan: Do you own all the forests through which the Crowell & Spencer tram runs?

Mr. Crowell: No.

Commissioner Harlan: Do you own all on the west of that line?

Mr. Crowell: No.

Commissioner Harlan: Are there other interests in there?
Mr. Crowell: Yes, sir; other large interests.
Commissioner Harlan: How do they get to market?
Mr. Crowell: Some are not operators, some are only timber holdings. The bulk——
Commissioner Harlan: Any farmers in there?
Mr. Crowell: Yes, sir.
Commissioner Harlan: Does the Crowell & Spencer tram carry any stuff for the farmers?
Mr. Crowell: Yes, sir.
Commissioner Harlan: To what extent?
Mr. Crowell: Only in a small way; local shipments of molasses and cane and——
Commissioner Harlan: Do you carry logs for any one else?
177 Mr. Crowell: We have; yes, sir.
Mr. Farrar: There is no connection, though, between this Crowell & Spencer tram and the Red River & Gulf Railroad at all, is there?
Mr. Crowell: No, sir, none.
Commissioner Harlan: What was the cost of the Crowell & Spencer tram for building?
Mr. Crowell: Over $30,000.
Commissioner Harlan: Is it standard gauge?
Mr. Crowell: Standard gauge; yes, sir.
Commissioner Harlan: Why was not that turned over to the Red River & Gulf?
Mr. Crowell: No particular reason why; the Red River & Gulf had no object in buying that property.
Commissioner Harlan: Is that all the reason that you did not turn it over to the Red River & Gulf?
Mr. Crowell: That subject was never taken up at all, and it was never considered.
Commissioner Harlan: You just did not do it.
Mr. Crowell: We did not do it.
Commissioner Harlan: Judge Cowan, have you any questions?
Mr. Cowan: The original object of building the Red River
178 & Gulf was for the purpose of logging the timber belonging to the Crowell & Spencer Company?
Mr. Crowell: No.
Mr. Cowan: What was the object of building it, then?
Mr. Crowell: The object was to get the advantage of additional shipping facilities, and the remuneration incident to that.
Mr. Cowan: How much of the old tram line that had been used by the Crowell & Spencer Company did you put into the make up of the Red River & Gulf?
Mr. Crowell: There was not any of it. This is a newly constructed railroad throughout.
Mr. Cowan: From Long Leaf to Lecompte?
Mr. Crowell: Yes, sir.
Mr. Cowan: How long is that road?
Mr. Crowell: Fourteen and three-quarter miles.

Mr. Cowan: And that goes from the Iron Mountain over to a connection with the Texas & Pacific and the Rock Island?

Mr. Crowell: And the Southern Pacific.

Mr. Cowan: And the Southern Pacific?

Mr. Crowell: Yes, sir.

Mr. Cowan: And you completed that road in 1905?

179 Mr. Crowell: Yes, sir.

Mr. Cowan: Previous to building that road, how did you log the mill of the Crowell & Spencer Lumber Company?

Mr. Crowell: We logged the mill over a tram road owned by the Crowell & Spencer Lumber Company.

Mr. Cowan: And no part of that was used in the Red River & Gulf?

Mr. Crowell: No part, except a few miles of steel was used.

Mr. Cowan: How many miles of steel?

Mr. Crowell: About five miles of steel.

Mr. Cowan: But not the track or roadway?

Mr. Crowell: No.

Mr. Cowan: Just that much material used?

Mr. Crowell: That much material.

Mr. Cowan: You say you have two joint agents at Lecompte?

Mr. Crowell: Yes, sir.

Mr. Cowan: What do you pay them?

Mr. Crowell: We pay one $50 and the other $35.

Mr. Cowan: And they are respectively also local agents of the Texas & Pacific and the Rock Island?

Mr. Crowell: Yes, sir.

180 Mr. Cowan: How much do the Texas & Pacific and the Rock Island pay them?

Mr. Crowell: I do not know.

Mr. Cowan: Why do you have two agents at that place?

Mr. Crowell: We get business in connection with both lines, and necessarily that business has to be handled.

Mr. Cowan: Well, if you just had one station, you would not have to have but one agent?

Mr. Crowell: But we have an arrangement whereby we get into both stations.

Mr. Cowan: The Texas & Pacific only has one agent there?

Mr. Crowell: One agent.

Mr. Cowan: But you have two?

Mr. Crowell: We have two.

Mr. Cowan: Now, all this tonnage which you speak of being carried for other people, how much of that goes in fact, if any, to the commissaries or other uses of the Crowell & Spencer Lumber Company?

Mr. Crowell: A good proportion of it. The statement filed with our bill shows the exact amount.

Mr. Cowan: Well, these men who make affidavits that they have been shipping on your road, were they shipping that sort

181 of produce, or manufactured articles?

Mr. Crowell: Yes, sir.

Mr. Cowan: And they did not disclose in their affidavit, though,

that they were shipping it for the purpose of your lumber company's business?

Mr. Crowell: No.

Mr. Cowan: But that was the fact?

Mr. Crowell: No, that was not the fact. Some of this business was not shipped in connection with that business, and had no connection whatever with the Crowell & Spencer Lumber Company.

Mr. Cowan: I thought you said a good portion of it did.

Mr. Crowell: I said a good portion of the local business was business to the Crowell & Spencer Lumber Company, but this business shipped by these local people was entirely independent of that business.

Mr. Cowan: What enterprises are there on this Red River & Gulf Railroad between your saw mill and Lecompte?

Mr. Crowell: This Lecompte Lumber Company plant was the principal one.

Mr. Cowan: Who owns that?

Mr. Crowell: The owners of that are Mr. George Gainnie
182 and his son, K. M. Gainnie, and Walter Clark, of Lecompte.

Mr. Cowan: Have they any relations to the Crowell & Spencer Lumber Company?

Mr. Crowell: No.

Mr. Cowan: Any ownership in the stock of the railroad company?

Mr. Crowell: No, sir; none.

Mr. Cowan: Have they trackage rights over it?

Mr. Crowell: No.

Mr. Cowan: How do they log their mill?

Mr. Crowell: By wagons and teams.

Mr. Cowan: They are located on your line?

Mr. Crowell: On our line.

Mr. Cowan: What amount do you get for hauling their lumber?

Mr. Crowell: The same divisions apply on lumber from their mill as from our own.

Commissioner Harlan: Over what line does the bulk of their lumber go?

Mr. Crowell: I could not say with any degree of accuracy; it can go over all the connecting lines.

Commissioner Harlan: Does a good share of it go over the Iron Mountain?

183 Mr. Crowell: Yes, sir.

Commissioner Harlan: More than over the Texas & Pacific or the Southern Pacific?

Mr. Crowell: Well, I think not; than those three lines combined.

Commissioner Harlan: Well, the Iron Mountain gets more of their lumber than it does of yours?

Mr. Crowell: Well, at the present they are not shipping.

Commissioner Harlan: I know now they are not, since they burned up, but I am talking of the time they did ship.

Mr. Crowell: I could not say.

Commissioner Harlan: Have you not any judgment on that?

Mr. Crowell: I think they do get more than from our company, yes, sir.

Commissioner Harlan: What allowance did you get on their lumber from the Iron Mountain?

Mr. Crowell: Three cents.

Mr. Cowan: Did you get anything in addition to that for hauling their lumber?

Mr. Crowell: No.

Mr. Cowan: Or for hauling logs?

Mr. Crowell: No.

184 Mr. Cowan: Or for any other service?

Mr. Crowell: No.

Mr. Cowan: How far is their mill from the other end of your line at Lecompte; is it right there?

Mr. Crowell: About five miles.

Mr. Cowan: It is down on your line?

Mr. Crowell: It is down on our line about five miles.

Mr. Cowan: What was the output of that mill; have you any idea?

Mr. Crowell: About 40,000 feet a day capacity.

Mr. Cowan: How did that compare with the output of your mill?

Mr. Crowell: About half; about 50 per cent of ours.

Mr. Cowan: Were there any arrangements for divisions of rates to points where the rate division sheet itself did not apply, like there are in many cases where a division sheet does not apply, then the division will be according to the agreement of the traffic officials.

Mr. Crowell: No, none except these division sheet agreements.

Mr. Cowan: Have you any knowledge as to what it costs you to haul a carload of lumber from Long Leaf to Lecompte?

185 Mr. Crowell: No.

Mr. Cowan: Have you ever made any estimate as to what it costs you?

Mr. Crowell: No.

Mr. Cowan: You do not haul any logs?

Mr. Crowell: No, we do not haul any.

Mr. Cowan: Your business is not mixed up with hauling logs at all?

Mr. Crowell: No. We have hauled a few logs; that is, where local people shipped them.

Mr. Cowan: But your business is the commercial business you do, and the business of hauling lumber?

Mr. Crowell: Lumber and other commodities.

Mr. Cowan: Do you know how many carloads of traffic you haul altogether?

Mr. Crowell: Between fifteen hundred and two thousand cars a year.

Mr. Cowan: Can you come a little nearer than that to it?

Mr. Crowell: No, I do not believe I could.

Mr. Cowan: You can file a statement which shows exactly?

Mr. Crowell: I think our statement shows.

186 Mr. Farrar: No, it simply shows the revenue from various sources.

Mr. Cowan: I want to know the number of carloads.

Mr. Crowell: How would you compute the local shipments in carloads?

Mr. Cowan: Take that for a carload, for the purposes of my question; state the total number of loaded cars and of those, the total number that were carloads; the total number of empty cars moved, giving it in opposite directions, as no doubt your accounts show what it is in each direction?

Mr. Crowell: Yes, sir.

Mr. Cowan: During the period of a year.

Mr. Crowell: Any particular year?

Mr. Cowan: Take before that mill burned, the fiscal year ending June 30, 1909.

Mr. Crowell: I could get that information up for you.

Mr. Cowan: Yes. And then make a statement showing the total train expenses separately from the locomotive expenses; then the total locomotive expenses, so that we can get at what it costs per car——

Mr. Farrar: We have our books here, which show the whole cost of transportion and everything is detailed in those books.

187 Mr. Cowan: He can make up the statement, I assume, just a tabulated statement.

Mr. Crowell: I would like to have what you want.

Mr. Cowan: We will have that furnished to you in a request, probably, with a heading for the table, that you can just fill in, and it will enable some one to find out what it costs you to haul lumber.

Mr. Crowell: Yes.

Mr. Cowan: Do you now know in your own mind what you consider it to be worth for each separate movement of lumber on a 12 mile road, such as you have got? About how much do you think it costs you per car for actual expenditure outside of maintenance of track, to handle lumber?

Mr. Crowell: I should say about $7.50 a car.

Mr. Cowan: $7.50 a car?

Mr. Crowell: Yes, sir; per car. Of course, if we get quantities of cars that are handled to full capacity, we could handle them for less, but take the business furnished as we get it now, and basing it on that quantity of business.

Mr. Cowan: How much does a car of lumber weigh, on the average, as you handle it?

188 Mr. Crowell: About 60,000 pounds.

Mr. Cowan: You told the number of engines, but I will ask that again.

Mr. Crowell: One locomotive.

Mr. Cowan: How many more could you handle with a locomotive, if you had the stuff to handle?

Mr. Crowell: We could handle twice the business we are handling.

Mr. Cowan: What size and character of locomotive is that?
Mr. Crowell: About 45 ton locomotive.
Mr. Cowan: Does the lumber company own engines and cars which they log with on the tram?
Mr. Crowell: Yes, sir; they have three locomotives, and about 40 to 50 cars of their own.
Mr. Cowan: What income has the railroad company from the use of this tram from the Crowell Lumber Company for the logs moved over the tram?
Mr. Crowell: Twenty-five cents a thousand, log scale.
Mr. Cowan: For what distance?
Mr. Crowell: Three and a half miles.
Mr. Cowan: That is just for the use of the track?
Mr. Crowell: That is just for the use of the track.
189 Mr. Cowan: But not for any other service?
Mr. Crowell: But not for any other services.
Mr. Cowan: Do you have demurrage rules with the Rock Island, the Iron Mountain and the Texas & Pacific?
Mr. Crowell: Yes, sir.
Mr. Cowan: What are the arrangements between you and them?
Mr. Crowell: The regular arrangements applying with all the roads; we pay $1.00 a day demurrage after a certain time.
Mr. Cowan: Who pays it?
Mr. Crowell: The Red River & Gulf.
Mr. Cowan: The Red River & Gulf pays $1.00 a day?
Mr. Crowell: Yes, sir.
Mr. Cowan: Not the lumber company?
Mr. Crowell: I think the railroad company pays the demurrage.
Mr. Cowan: The regular arrangements between the railroads is not $1.00 a day. The lumber company may pay $1.00 a day, but whatever that is, you can make a statement and file it, if you do not recollect it.
Mr. Crowell: Yes, sir.
Mr. Cowan: If you know what the demurrage arrangements are, state them for the record, and if not, file a statement.
190 Commissioner Harlan: Well, do you know the demurrage arrangements?
Mr. Crowell: We pay demurrage, I know that.
Commissioner Harlan: Who pays it?
Mr. Crowell: The Red River & Gulf, I think.
Commissioner Harlan: That is, if a Rock Island car is set at your mill and detained by the mill longer than it ought to be?
Mr. Crowell: We pay $1.00 a day.
Commissioner Harlan: Who pays it?
Mr. Crowell: The Red River & Gulf; that is my recollection.
Commissioner Harlan: Does the Red River & Gulf collect anything from the mill?
Mr. Crowell: I could not be positive of that.
Commissioner Harlan: You would know, would you not?
Mr. Crowell: I can find out; yes, sir. I think we filed a state-

ment with the Commission covering that point, regarding demurrage.

Mr. Coleman: You mentioned a dividend having been paid to the stockholders of the railroad company?

Mr. Crowell: Yes, sir.

Mr. Coleman: What was that dividend?

191 Mr. Crowell: Well, it varied.

Mr. Coleman: Well, the first one?

Mr. Crowell: The first dividend, I believe, was 15 per cent.

Mr. Coleman: The second?

Mr. Crowell: I will have to get the books.

Mr. Farrar: The books show it.

Mr. Crowell: Give me the ledger.

(Book produced and handed to witness.)

Commissioner Harlan: What was the last dividend?

Mr. Crowell: Ten per cent dividend.

Commissioner Harlan: What year?

Mr. Crowell: The first dividend was paid May 29, 1907.

Commissioner Harlan: Fifteen per cent?

Mr. Crowell: Yes, sir.

Mr. Coleman: The next one?

Mr. Crowell: July 28, 1908.

Mr. Coleman: How much?

Mr. Crowell: Thirty per cent.

Mr. Coleman: The next?

Mr. Crowell: November 19, 1908; ten per cent.

Mr. Coleman: 1908?

Mr. Crowell: Yes, sir.

192 Mr. Coleman: That was about six months later, ten per cent more?

Mr. Crowell: November 11th.

Mr. Coleman: The next?

Mr. Crowell: July 17, 1909; ten per cent.

Mr. Coleman: Six months later. Next?

Mr. Crowell: October 20, 1909, ten per cent.

Mr. Coleman: Have you any of that stock for sale?

(No response.)

Mr. Coleman: Now, take the division of three cents which you got from the Iron Mountain, what haul did you perform to earn that?

Mr. Crowell: We haul the lumber about a quarter of a mile.

Mr. Coleman: What was the through rate that the railroads got?

Mr. Crowell: What was the through rate?

Mr. Coleman: Yes, say to Colorado points.

Mr. Crowell: They vary from 27½ to 34 cents.

Mr. Coleman: What is the distance?

Mr. Crowell: I don't know that.

Mr. Coleman: Take the 2½ cent rate to the Rock Island at Lecompte, what service did you perform for that?

193 Mr. Crowell: We haul that 12¾ miles.

Mr. Coleman: You haul it 12¾ miles for two and a half cents?

Mr. Crowell: Yes, sir.

Mr. Coleman: Take the haul you give for the four and a half cents.

Mr. Crowell: We haul it twelve miles.

Mr. Coleman: What was the difference? Why did you get four and a half cents in one case and two and a half in another case?

Mr. Crowell: I cannot explain that.

Mr. Coleman: Can anybody?

Mr. Crowell: I suppose they can.

Mr. Coleman: Who would that be?

Mr. Crowell: The traffic management.

Mr. Coleman: Of the other railroads?

Mr. Crowell: Yes, sir.

Mr. Coleman: They simply bid with your company to get the traffic; is not that it?

Mr. Crowell: They voluntarily made it.

Mr. Coleman: Take the three cent division and the four

194 cent division with the Southern Pacific, what haul do you perform on that?

Mr. Crowell: We haul that 12¾ miles.

Mr. Coleman: Do you interchange transportation?

Mr. Crowell: Yes, sir.

Mr. Coleman: What do you get?

Mr. Crowell: We get two or three annuals.

Mr. Coleman: And you get them from the Southern Pacific?

Mr. Crowell: Yes, sir.

Mr. Coleman: And the Iron Mountain?

Mr. Crowell: Yes, sir.

Mr. Coleman: And the Rock Island?

Mr. Crowell: The Rock Island and the Texas & Pacific.

Mr. Coleman: Are these used by your people in soliciting lumber business in competition with other lumber companies?

Mr. Crowell: None of our office force solicits business except by mail.

Mr. Coleman: Now, then, is some officer of the railroad company an officer of the lumber company?

Mr. Crowell: Yes, sir.

Mr. Coleman: Are not they all the same?

Mr. Crowell: They are practically all the same.

195 Mr. Coleman: So when you say that it is only an officer of the railroad company, you are making the division between the two parts of you?

Mr. Farrar: He said the officers of the lumber company solicit trade by mail.

Mr. Crowell: None of the officers of the lumber company travel for business.

Mr. Coleman: True, but the officers of the lumber company are the very same men who are officers of the railroad?

Mr. Crowell: Yes, sir.

Mr. Coleman: So it is the difference between tweedle-dee and tweedle-dum, is it not?

Commissioner Harlan: We will reserve that for argument.

Mr. Crowell: We do not solicit business on this transportation; we do not solicit business at all personally, except by mail, for our company; none of our officers travel for business.

Mr. Coleman: How do you come to get this transportation then?

Mr. Crowell: We made requisitions for it, and it was supplied.

Mr. Coleman: That is the only reason?

Mr. Crowell: And by reason of the fact that we are a com-
196 mon carrier railroad and entitled to it.

Mr. Coleman: Have you any other transportation besides that I have named?

Mr. Crowell: Yes, sir.

Mr. Coleman: What is it?

Mr. Crowell: The L. & A. and the L. R. & N.

Mr. Coleman: Any more?

Mr. Crowell: I think I have some more; yes, sir.

Mr. Coleman: What is that?

Mr. Crowell: I could not tell you that. I have got a lot of it. It does not amount to much.

Mr. Coleman: Is it not so, that you never threw open the Red River & Gulf Railroad as a common carrier until all the timber was cut away?

Mr. Crowell: No, sir, it is not true.

Mr. Coleman: Is there timber on it now?

Mr. Crowell: Yes, sir.

Mr. Coleman: Are you using it?

Mr. Crowell: We are using some of it; yes, sir.

Mr. Coleman: In the milling operation?

Mr. Crowell: Yes, sir.

Mr. Coleman: That is all.

197 Commissioner Harlan: Do you get trip transportation over on request?

Mr. Crowell: We have gotten a few trip transportations.

Commissioner Harlan: For what purpose?

Mr. Crowell: Personal trips; I have been out home once on a trip transportation.

Mr. Farrar: I call your attention to a statement made here for the year 1898, by which it appears that you received in revenue for trackage for the Rock Island gravel trains $23,097.

Mr. Crowell: Yes, sir.

Mr. Farrar: And that you received as a total freight receipt that year $46,054.96, so that more than half of your total freight receipts came from the trackage for these Rock Island Gravel trains, did it not?

Mr. Crowell: Yes, sir; that is correct.

Mr. Cowan: How far did they run over your track?

Mr. Crowell: They hauled about six miles over our track.

Mr. Cowan: How much did your total track cost, $101,000 for the 12 miles?

Mr. Crowell: Yes, sir.

Mr. Cowan: They pay you $23,000 a year for the use of six
198 miles?

Mr. Crowell: No.

Mr. Cowan: How did you get the money, then?

Mr. Crowell: They paid us that year, they hauled 75 cars a day over the road for the first year when they were ballasting.

Mr. Cowan: But they would have paid for your entire road in five years. Who made that contract to pay that much to run the gravel train over the road?

Mr. Crowell: Some one on the Rock Island.

Mr. Cowan: Some managing official make that contract?

Mr. Crowell: Yes, sir.

Mr. Cowan: Who was it, just for curiosity?

Mr. Crowell: I believe the vice-president of the road signed the contract.

Mr. Cowan: The vice-president in charge of operation?

Mr. Crowell: Yes, sir. The original contract is on file.

Mr. Farrar: I have offered it in evidence.

Mr. Cowan: I know, but I thought you might remember who it was.

Mr. Crowell: I know it was the vice-president.

Mr. Cowan: Did he make it with you?

199 Mr. Crowell: He made it with the company.

Mr. Cowan: Did you do the negotiating?

Mr. Crowell: The president of the road, my father, did the contracting.

Mr. Cowan: Was anything said about the reasonable use or wheelage on a track of that sort?

Mr. Crowell: They thought the price was too high that we asked, at once, and we had considerable correspondence.

Mr. Cowan: How many years did they use that track for hauling gravel?

Mr. Crowell: They used it about one year solid, and afterwards they used it about six months at one time.

Mr. Cowan: What has been the amount of return from that source thereafter?

Mr. Crowell: It is shown in the statement filed in the record. I do not remember the exact figure.

Commissioner Harlan: That seems to be all.

Examiner Burchmore: One or two questions about the physical characteristics of the road. What weight of rail is used?

Mr. Crowell: We have 35, 45 and 60 pound rail.

Examiner Burchmore: Which predominates?

200 Mr. Crowell: The 45 pound.

Examiner Burchmore: You said you had one or two station buildings?

Mr. Crowell: No.

Examiner Burchmore: You have none?

Mr. Crowell: We have none, except these joint stations at the terminus.

Examiner Burchmore: Are those joint station buildings chiefly used by your road or by the trunk lines?

Mr. Crowell: Chiefly by the trunk lines.

Examiner Burchmore: And were constructed before your road was built?

Mr. Crowell: Yes, sir.

Examiner Burchmore: With the exception of the Rock Island?

Mr. Crowell: Yes, sir.

Examiner Burchmore: Have you any freight platforms for loading and unloading freight on your line, other than at those stations just referred to?

Mr. Crowell: Yes, sir.

Examiner Burchmore: How many, and where?

Mr. Crowell: One at Togo and one at Holdup and one at Long Leaf.

201 Examiner Burchmore: Have you any track scales for weighing carload shipments?

Mr. Crowell: No, sir.

Examiner Burchmore: Any team tracks along your line?

Mr. Crowell: No.

Examiner Burchmore: Have you any facilities along your line for handling less than carload freight, any special facilities, such as small scales or small storage buildings?

Mr. Crowell: No, sir; we have not.

Examiner Burchmore: How many employees are there in your operating department, that is, engineers, firemen and conductors?

Mr. Crowell: We have one train crew, one engineer, one conductor, one fireman and one brakeman.

Examiner Burchmore: What is the number of employees, approximately, in your road department for maintaining the way?

Mr. Crowell: We have two section crews; they average from three to eight men to the section.

Examiner Burchmore: Where is your general office located?

Mr. Crowell: Long Leaf.

Examiner Burchmore: It is identical with the general office of the lumber company?

202 Mr. Crowell: In the same building, yes, sir.

Examiner Burchmore: You testified that you had some passenger traffic. Is the major portion of that passenger traffic revenue traffic or free traffic?

Mr. Crowell: All revenue traffic.

Examiner Burchmore: Is any considerable amount of passenger traffic for the public as contrasted with your own employees?

Mr. Crowell: Oh, yes.

Examiner Burchmore: Do those passengers pay cash fares on the train, or purchase tickets?

Mr. Crowell: Some pay cash fares and some purchase tickets.

Examiner Burchmore: You have tickets on sale?

Mr. Crowell: Yes.

Mr. Farrar. Did the Government of the United States levy the corporation tax upon the Red River & Gulf Railroad Company?

Mr. Crowell. Yes, sir.

Mr. Farrar. Have you paid that corporation tax?

Mr. Crowell. We have; yes, sir.

Examiner Burchmore. Mr. Crowell, was that tax the same against the road as a common carrier as it would have been if the road had not been a common carrier, that is, the mere fact that it
203 was a corporation?

Mr. Crowell. My understanding was that that was a corporation tax.

Examiner Burchmore. Applicable to all corporations, business as well as common carriers?

Mr. Crowell. Yes, sir.

(Witness excused.)

204 *Cotton & Railroad Company.*

Mr. Marsilliot. I will call Mr. Stonebraker.

F. E. STONEBRAKER was called as a witness and having been duly sworn, testified as follows:

Mr. Marsilliot. In order that your Honor and the gentlemen present may a little better understand this case and to go a little faster with it, I want to describe in about two minutes what our road is. I have not the map here, but I think I can explain it better than as if I had a map. About 25 miles west of the city of Memphis, on the St. Louis, Iron Mountain & Southern Railroad, is the prosperous town of Earle, which I think has some 2,000 or 2,500 inhabitants at the present time. The Rock Island Railroad runs a little south of west, or almost paralleling the Iron Mountain, passing through Forest City, which your Honor will probably see on the map there, in St. Francis County, and this Crittenden Railroad runs from the town of Earle, 25 miles west of Memphis on the Iron Mountain, south about 16 miles to the town of Heth, on the Rock Island, and connects these two trunk lines, and an extension is now in process toward the town of Democrat, which
205 your Honor will not see on that map. It is a small town at the present time, but the extension is now in progress, and it is suggested it will be a big town very soon, but it is now a very small town.

I want to state, furthermore, that this road does more service for the public than for the lumber company which owns the controlling stock, and it does a daily business for the public. I simply make that statement so that your Honor and the gentlemen on the other side will understand what we are talking about.

Mr. Cowan. This is not in the yellow pine district?

Mr. Marsilliot. No, this is hardwood; in the bottoms. Crittenden County is the first country on the other side of the river from Tennessee. It is a hardwood road.

Direct examination:

Mr. Marsilliot: Your name is F. E. Stonebraker?

Mr. Stonebraker: Yes.

Mr. Marsilliot: Where do you live?

Mr. Stonebraker: Memphis, Tennessee.

Mr. Marsilliot: How long have you lived there?

Mr. Stonebraker: About fifteen years.

206 Mr. Marsilliot: Are you connected with the Crottenden Railroad?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: That railroad is incorporated under the general incorporation laws of the State of Arkansas?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Incorporated in 1905, I believe?

Mr. Stonebraker: August of 1905.

Mr. Marsilliot: Mr. Stonebraker, do you know when the construction of this road was begun?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: When was it?

Mr. Stonebraker: In 1899.

Mr. Marsilliot: Who began the construction of it?

Mr. Stonebraker: The Crittenden Lumber Company.

Mr. Marsilliot: What was the purpose in the construction of the road at the outset?

Mr. Stonebraker: A plant adjunct.

Mr. Marsilliot: What other purpose or view did the builders of that road have in mind at the time they laid the first rails?

Mr. Stonebraker: The intention from the beginning was

207 to make a railroad eventually connecting the Rock Island.

Mr. Marsilliot: How do you know that?

Mr. Stonebraker: Because I was there and doing the work, and that was my intention, and it was discussed with other associates.

Mr. Marsilliot: What was your business in 1898, when the construction of this road began?

Mr. Stonebraker: General manager of the Crittenden Lumber Company.

Mr. Marsilliot: You say that the purpose of the building of this road at the very outset was to make it a common carrier and a public service corporation?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Now, I will ask you to state what policy was pursued by the builders of that road in order to bring about that result, that is, with reference to inviting settlers and other enterprises into that country?

Mr. Stonebraker: We encouraged settlers to come in there.

Mr. Marsilliot: How did you do that; what methods did you pursue?

Mr. Stonebraker: By telling them we intended to provide a way that they could have their supplies given them.

208 Mr. Marsilliot: Did you do that in person?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: What was the result of your efforts along that line?

Mr. Stonebraker: Well, we got a number of settlers to come in there to open up lands.

Mr. Marsilliot: Along the line of your road?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: We are speaking now about the time before the incorporation of the road. Now, the road was incorporated in 1905?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: What has been done with reference to inviting settlers and enterprises into that country since the incorporation of your road?

Mr. Stonebraker: The same energies have been displayed.

Mr. Marsilliot: Mr. Stonebraker, what is your connection with that road?

Mr. Stonebraker: President.

Mr. Marsilliot: What is your present business?

Mr. Stonebraker: Lumber.

Mr. Marsilliot: I believe you are the American agent of
209 some European lumber concern, are you not?

Mr. Stonebraker: Yes, sir; Belgian.

Mr. Marsilliot: You are no longer in the employ of the Crittenden Lumber Company?

Mr. Stonebraker: No.

Mr. Marsilliot: When did you cease to be their general manager, if you remember, about?

Mr. Stonebraker: About four years ago.

Mr. Marsilliot: On page 5 of the printed petition filed by the Crittenden Railroad Company I see a list of stockholders there. I observe from that list that the Crittenden Lumber Company still owns the controlling interest in the stock of that road; is that correct?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: How much stock do you hold in it?

Mr. Stonebraker: Fifty shares.

Mr. Marsilliot: That is $5,000?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Now, I do not believe I caught just exactly when you say you severed your connection as general manager of the Crittenden Lumber Company.

Commissioner Harlan: He said four years ago.

210 Mr. Marsilliot: But you still remain president of that road?

Mr. Stonebraker: Yes, sir.

Commissioner Harlan: While we are on this, are these other men named on page 5 of your petition interested as stockholders in the Crittenden Lumber Company?

Mr. Stonebraker: No, sir; not all of them.

Commissioner Harlan: Some of them?

Mr. Marsilliot: I can show you that in a moment.

Commissioner Harlan: It is not necessary. Some of them are.
Mr. Stonebraker: Yes, sir.
Commissioner Harlan: About $6,000 is outstanding in $150,000?
Mr. Stonebraker: Yes, sir.
Commissioner Harlan: In the hands of stockholders who have no interest in the Crittenden Lumber Company?
Mr. Stonebraker: Yes, sir.
Mr. Marsilliot: Prior to the time that road was incorporated, and prior to the time it was extended to a connection with the Rock Island Railroad, thereby connecting the two trunk lines, the Rock Island and the Iron Mountain, can you tell us what were
211 the conditions with respect to transportation service at Earl?
Mr. Stonebraker: I do not understand your question.
Commissioner Harlan: Let me put a question first. Had the line been completed before the railroad was incorporated?
Mr. Stonebraker: No, sir.
Commissioner Harlan: How much had been built?
Mr. Stonebraker: I would say about seven to eight miles.
Commissioner Harlan: By the lumber company?
Mr. Stonebraker: Yes.
Commissioner Harlan: Your mill is at Earl?
Mr. Stonebraker: No, sir.
Commissioner Harlan: Where is it?
Mr. Stonebraker: At Crittenden, between two and three miles south of Earl.
Commissioner Harlan: Now, the question counsel asked was, what was the condition there, or what were the transportation conditions before the railroad company was incorporated?
Mr. Marsilliot: At Earl; that is, what sort of service did the people at Earl get, the merchants?
Mr. Stonebraker: Well, unsatisfactory, I think.
Mr. Marsilliot: What sort of a depot did they have there,
212 the Iron Mountain?
Mr. Jeffery: Did they have a depot?
Mr. Stonebraker: They had, if I remember, the frame of a box car for a station.
Mr. Marsilliot: You say the mill of the Crittenden Lumber Company is between two and three miles south of Earl, and on the main line of the Crittenden Railroad?
Mr. Stonebraker: Yes, sir.
Mr. Marsilliot: When was the Crittenden Railroad there completed to its connection with the Rock Island at Heth?
Mr. Stonebraker: In 1908.
Mr. Marsilliot: In 1908?
Mr. Stonebraker: Yes.
Mr. Marsilliot: How far south of Heth does it now extend?
Mr. Stonebraker: Something more than a mile; I don't just remember the exact distance, building.
Mr. Marsilliot: The extension is now in progress?
Mr. Stonebraker: Yes, sir
Mr. Marsilliot: I will ask you whether or not it was the original

intention, so soon as conditions justified it, to extend that road down to some point on the Iron Mountain, something like Marianna, somewhere in that neighborhood?"

213 Mr. Stonebraker: It has been contemplated."

Mr. Marsilliot: That is under consideration now."

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Taking the distance between Earl and Trafton as approximately sixteen miles, what are the holdings of the Crittenden Lumber Company there, in the way of timber lands?"

Mr. Stonebraker: I do not know the holdings of the Crittenden Lumber Company in timber lands.

Mr. Marsilliot: Do you know what proportion their holdings bear to the whole area of timber land contiguous to this line?"

Mr. Stonebraker: No, sir.

Mr. Marsilliot: The general manager of the road can answer that question?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: And he is here. Now, after the construction of this extension to a connection with the Rock Island you then had two trunk line connections. Did you receive divisions of the through rates from those connections?"

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Who arranged those divisions with the trunk line officials?

214 Mr. Stonebraker: I did.

Mr. Marsilliot: Without going into details Mr. Stonebraker, I will ask you to state whether or not those divisions were fair and just for the service performed by your company.

Mr. Stonebraker: I believe they were just.

Mr. Marsilliot: And the details of that can also be given by Mr. Blair, the general manager?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Now I would like for you to tell us since the construction of that connection with the Rock Island, what has been the progress of development from an agricultural and industrial standpoint along the line of that railroad?"

Mr. Stonebraker: Very rapid progress has been made.

Mr. Marsilliot: Do you know about how many manufacturing plants there are along the line of that road between Earl and Trafton at the present time?

Mr. Stonebraker: I believe there are seven plants.

Mr. Marsilliot: You think there are seven."

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: What is the nature of the country through which that road is built, with reference to the character of the soil?"

215 Mr. Stonebraker: The soil is very fine.

Mr. Marsilliot: Is it hilly or swampy country?"

Mr. Stonebraker: Swampy.

Mr. Marsilliot: With reference to the construction of a railroad through that kind of country, was it a difficult or simple proposition?

Mr. Stonebraker: Difficult.

Mr. Marsilliot: At the time that road was built down through there, what sort of a country was that? Developed or undeveloped?

Mr. Stonebraker: Undeveloped.

Mr. Marsilliot: Since the construction of the road, and the removal of a good part of the timber, what has been done with that land?

Mr. Stonebraker: There has been much improvement, rapidly settling up.

Mr. Marsilliot: Are you able to state of your own knowledge what the value of that land is from an agricultural standpoint in that section? I do not mean in dollars and cents, but whether it is good land or poor land.

216 Mr. Stonebraker: Good land.

Mr. Marsilliot: How does it compare in that respect to the best of the agricultural lands in the Mississippi Bottoms; how does it run?

Mr. Stonebraker: I believe it equals any.

Mr. Marsilliot: You believe it equals any in the Mississippi Valley?

Mr. Stonebraker: Yes, sir; in the St. Francis Valley and Mississippi Valley.

Mr. Marsilliot: You said a while ago you made certain representations to the investors in enterprises and in agricultural pursuits along that line with reference to the service you intended to give them. I will ask you what those representations were, and who made them, so far as you know of your own knowledge, what you told those people?

Mr. Stonebraker: I told the people we invited to settle in there that it was our intention to have a connecting line of railroad between Early and Heth and to develop that country, and that plan we worked on from the beginning.

Mr. Marsilliot: In other words, from the very outset of the construction of this road, your intention was to make it a railroad proposition distinctively, and you invited these settlers and in-

217 vestors in various enterprises to come in there and pursued that policy all the way through to the present time?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: And the result of it has been, as I understand, a marked development?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Have you any idea at the present time about how much land there is in cultivation right along the line of your road? I do not mean to an acre, but approximately?

Commissioner Harlan: Well, it is more important to show the traffic.

Mr. Marsilliot: I have another witness who will testify to that. Now, I will ask you to state, coming to the point his Honor has suggested, what the nature of the traffic is that that road does.

Mr. Stonebraker: It is general traffic, merchandise and forest products.

Mr. Marsilliot: Farm and agricultural supplies?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Do you run a local service on that road?

Mr. Stonebraker: Yes, sir.

218 Mr. Marsilliot: What arrangements have you with the Chicago, Rock Island & Pacific with reference to your Memphis service to the people of Earl and along your road?

Mr. Stonebraker: We have a daily local car.

Mr. Marsilliot: A package car?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Less than carload car?

Mr. Stonebraker: Yes, sir, and more than one car if necessary to handle the business. I said daily cars; we have no cars Sundays.

Mr. Marsilliot: Do you run a daily train service on that line?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: What sort of solicitation service do you have in the city of Memphis to secure freight for your line?

Mr. Stonebraker: We have a soliciting arrangement.

Mr. Marsilliot: With whom?

Mr Stonebraker: The Rock Island Railroad.

Mr. Marsilliot: And they do constantly solicit freight for your line?

Mr. Stonebraker: Yes.

219 Mr. Marsilliot: And you have, as I understand it, an arrangement with them whereby you run a daily package car or cars, as the case may be, over to Heth over the Rock Island and then up from Heth to Earl?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: And deliver freight all along the line of the road to Earl?

Mr. Stonebraker: Yes.

Mr. Marsilliot: I will ask you to state whether or not the Crittenden Railroad has a depot at Earl.

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Without any egotism about it, I will ask you what about that depot and its appointments, the characteristics, as compared with most of them in that section of the country.

Mr. Sonebraker: It is a very good station, much better than some others in that vicinity.

Mr. Marsilliot: I do not want to mention the Iron Mountain by comparison of course. Have you an agent at Earl?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: What is his business?

Mr. Stonebraker: To look after billing and all business of the line at that point.

220 Mr. Marsilliot: He does that exclusively?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: I will ask you to state whether or not that agent

at that depot also solicits business in the town of Earl for the Crittenden line?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: In other words, he is their employee exclusively for the purpose of billing and handling the traffic on that line and soliciting business at Earl?

Mr. Stonebraker: Absolutely.

Mr. Marsilliot: Has that railroad ever paid any dividends?

Mr. Stonebraker: No, sir.

Mr. Marsilliot: Has it ever made any money? Ever earned any money, over and above expenses?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: Can you tell us in a rough way about what it has earned, over and above its expenses?

Mr. Stonebraker: I cannot tell you in a rough way. However, Mr. Blair is here to submit that with the figures.

Mr. Marsilliot: I will ask you what has been done with the net earnings of that railroad.

Mr. Stonebraker: Put into betterments and extensions.

221 Mr. Marsilliot: Has any of that money ever gone into the hands of the Crittenden Lumber Company or any stockholder at all?

Mr. Stonebraker: Not to my knowledge.

Mr. Marsilliot: You would have been pretty apt to know something about it, if it had?

Mr. Stonebraker: I hope so.

Mr. Marsilliot: So that the Crittenden Lumber Company never has gotten a dollar, and neither have the stockholders, except the benefits they have derived from the extension of the road?

Mr. Stonebraker: Yes.

Mr. Marsilliot: Have its funds been kept as a railroad proposition, instead of being intermingled with the funds of the lumber company?

Mr. Stonebraker: Yes, sir; there has been a bank account kept at various cities for the railroad.

Mr. Marsilliot: What bank; do you know?

Mr. Stonebraker: No, sir.

Commissioner Harlan: That does not make any difference.

Mr. Marsilliot: All right. I simply wanted to give all the facts.

222 Commissioner Harlan: I know, but some of those details are not necessary.

Mr. Marsilliot: Inasmuch as you were with this proposition from the very inception, and have been its president and have followed it all the way down the line, I want to ask you what, in your opinion, from your knowledge of the facts and conditions, would be the effect of the cancellation of the through routes and joint rates if these cancellation orders are permitted to go into effect, and considering first, the effect on the railroad itself, what would be the effect on the railroad if these cancellation orders go into effect and you are denied all divisions or through rates.

Commissioner Harlan: Cannot he just explain that in one way at least, by telling what the allowances were? That has not appeared yet.

Mr. Marsilliot: I do not know that he knows that as accurately as another witness, but I would like to have his idea of what the effect would be on the railroad, if it is cut off from all divisions of the through rates.

Mr. Stonebraker: I think the Crittenden Railroad would sustain a severe loss.

223 Mr. Marsilliot: Well, in what way?

Mr. Stonebraker: Well, in the manner of people leaving our line; at least, that has been threatened, if we had to charge them additional rate.

Mr. Marsilliot: Well, what people have threatened to leave your line?

Mr. Stonebraker: Well, Mr. Mason in particular.

Mr. Marsilliot: What business is he in?

Mr. Stonebraker: Cooperage business.

Mr. Marsilliot: He runs a cooperage plant on your line?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: He threatened to leave your line if you charged the combination rates?

Mr. Stonebraker: Well, he said he could not pay an additional rate, and would be forced to leave.

Mr. Marsilliot: Do you, as a matter of fact, think he could afford to pay the additional rate?

Mr. Stonebraker: I know very little about the cooperage business, and could not give an opinion about it.

Mr. Marsilliot: That is with reference to the road. What effect would the cancellation of these divisions have on this rapid development you have been speaking about in industrial and

224 agricultural respects?

Mr. Stonebraker: Owing to the fact of there being no roads or turnpikes, means and ways for people to get in their supplies, I think it would retard greatly the growth of that vicinity.

Mr. Marsilliot: Why is it there have not been any roads and turnpikes built through that country?

Mr. Stonebraker: I do not know.

Mr. Marsilliot: From wading through those swamps over there during the last few years, or at the time that road was constructed, would you like, yourself, to undertake to build a turnpike or county road through that land?

Commissioner Harlan: Let us not go into that.

Mr. Marsilliot: I simply wanted to show it was so swampy that they could not build it.

Commissioner Harlan: That appears.

Mr. Cowan: If it is so swampy they could not build a road, I wonder how they would cultivate it.

Mr. Marsilliot: I am going to show that right now. I want to ask you what effect the cutting out of the timber would have on

that swampy country there, with reference to drying out the land?

225 Mr. Stonebraker: Oh, easier access, and it makes it easier to cross.

Mr. Marsilliot: Does that land down there through that section respond rapidly to the ordinary drainage methods?

Mr. Stonebraker: Yes, sir.

Commissioner Harlan: I really do not think this is of absolute value to the record. Everyone knows about Arkansas and the swamps and how it is going to be drained, and everything else.

Mr. Marsilliot: I believe that is all.

Mr. Cowan: I want to ask one question about the local rates. There is no other railroad serving these industries except yours, between Earl and Heth?

Mr. Stonebraker: No, sir; not those on our line.

Mr. Cowan: Who are all these people there, the farmers, the people you are serving on that line; are they farmers?

Mr. Stonebraker: Many of them are farmers.

Mr. Cowan: Do not they ship their stuff out from there to Memphis principally?

Mr. Stonebraker: Memphis and St. Louis.

Mr. Cowan: As a matter of fact, the business is done with Memphis nearly altogether by the farmers who live nearby, and

226 that is all around Memphis?

Mr. Stonebraker: Much business is done in Earl.

Mr. Cowan: If it is shipped from Earl down to these farms, it is shipped on a local rate?

Mr. Stonebraker: From Earl?

Mr. Cowan: The through rate has nothing to do with it. You get more out of the local rate than out of a division of the through rate?

Mr. Stonebraker: Oh, no.

Mr. Cowan: That is all.

Mr. Marsilliot: I want to ask you a question about that. There is a large quantity of traffic which moves from these enterprises on your line into other states, is there not?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: There is a through rate charged on that, is there not?

Mr. Stonebraker: Yes, sir.

Mr. Marsilliot: And the Crittenden Railroad Company has got its divisions of the through rate?

Mr. Stonebraker: Yes, sir.

Examiner Burchmore: Do you at the present time own any stock in the Crittenden Lumber Comptny?

227 Mr. Stonebraker: No.

Examiner Burchmore: Does any member of your family own any stock?

Mr. Stonebraker: No, sir.

Commissioner Harlan: That seems to be all.

(Witness excused.)

J. R. BLAIR was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Marsilliot: Your name is J. R. Blair?
Mr. Blair: Yes, sir.
Mr. Marsilliot: Where do you live?
Mr. Blair: Memphis, Tennessee.
Mr. Marsilliot: How long have you lived there?
Mr. Blair: About five years.
Mr. Marsilliot: In what way are you connected with the Crittenden Railroad?
Mr. Blair: Secretary and general manager.
Mr. Marsilliot: How often do you go over to Earl and along the road?
228 Mr. Blair: Two or more times a week.
Mr. Marsilliot: You are also connected with the Crittenden Lumber Company?
Mr. Blair: Yes, sir.
Mr. Marsilliot: What is your connection with the Crittenden Lumber Company?
Mr. Blair: Western manager.
Mr. Marsilliot: Before we go further, I want to ask you, do you solicit orders for lumber for your saw mill, the Crittenden Lumber Company?
Mr. Blair: By correspondence; yes, sir.
Mr. Marsilliot: Now, Mr. Blair, you have been there about five years. Were you general manager of the road at the time it was incorporated?
Mr. Blair: No, sir.
Mr. Marsilliot: How long did you get there after it was incorporated?
Mr. Blair: I was working for the Crittenden Lumber Company at the time the road was incorporated, and was employed at Earl, at the mill.
Mr. Marsilliot: I wish you would state briefly, so we can hurry along, what were the conditions affecting transportation,
229 or rather, the transportation service received by the citizens of Earl prior to the time this road was extended down to the Rock Island at Heth?
Mr. Blair: Before the Crittenden Railroad connected with the Rock Island at Heth, the only way they could get freight and ship freight was from and by the St. Louis, Iron Mountain & Southern Railroad. When our road connected with the Rock Island at Heth arrangements were made for through rates and routes, which gave Earl a competitive service, thereby greatly facilitating ordinary business transactions.
Mr. Marsilliot: Are you able to state what effect that competitive transportation service had upon the growth and development of the town of Earl?
Mr. Blair: I would say it had a great deal.

Mr. Marsilliot: I want to ask you what effect the construction of that road to a connection with the Rock Island at Heth had upon the rates paid by the merchants at Earl, for instance, on traffic to Memphis of various kinds; take cotton, for instance.

Mr. Blair: The rates remained the same in all cases, with the exception of cotton; the cotton rate was reduced somewhat.

Mr. Marsilliot: Well, about what percentage?

230 Mr. Blair: I do not know; 25 or 30 per cent, probably.

Mr. Marsilliot: In other words, after the construction of your road to the connection with the Rock Island, the merchants at Earl got a reduction of some 25 or 30 per cent in the rate on cotton to Memphis?

Mr. Blair: Yes, sir.

Mr. Marsilliot: I want to ask you right there about how much cotton is shipped, in a general way, from Earl to Memphis, per annum?

Mr. Blair: Probably this year something over 6,000 bales will be shipped.

Mr. Marsilliot: How much of that will be handled by your road, as near as you can tell?

Mr. Blair: About fifty per cent.

Mr. Marsilliot: About 50 per cent goes down over the Crittenden Road south to Heth, and then over the Rock Island to Memphis?

Mr. Blair: Yes, sir.

Commissioner Harlan: What is the mileage by that route?

Mr. Blair: It is 15 miles from Earl to Heth, and I think 24 or 25 miles from Heth to Memphis.

Commissioner Harlan: What is the mileage over the Iron

231 Mountain route into Memphis?

Mr. Blair: 25 or 26 miles, about.

Commissioner Harlan: Twenty-five miles, as against 40 over your road?

Mr. Blair: Yes, sir.

Mr. Marsilliot: But the rates are the same by either route?

Mr. Blair: They are.

Mr. Marsilliot: I will ask you to illustrate some of the divisions of rates between your road and the Iron Mountain and the Rock Island. Just select any illustrations that occur to you.

Mr. Blair: The divisions are the same in all cases; that is, we get the same divisions from the Rock Island as the Iron Mountain. The rate to Memphis is six cents, of which we get two cents; to Cairo and St. Louis it is ten to twelve cents, of which we get two cents, and to Kansas City, sixteen cents, of which we get two cents.

Mr. Marsilliot: So you never get more than two cents division on any of that traffic?

Mr. Blair: Never more than two cents on forest products.

Mr. Marsilliot: Considering the service your road renders

232 and that it is the initial line, do you think that is a fair division?

Mr. Blair: I think it is a very fair division.

Mr. Marsilliot: Well, fair to whom?

Mr. Blair: To everybody.

Mr. Marsilliot: Is there any such thing on your road as the milling in transit scheme we have talked about here this morning?

Mr. Blair: No.

Mr. Marsilliot: You have no such feature of that kind on your road at all?

Mr. Blair: No.

Mr. Marsilliot: There is nothing of that kind in connection with the Crittenden Lumber Company?

Mr. Blair: No.

Mr. Marsilliot: What sort of an outfit have you got at the town of Earl in the way——

Commissioner Harlan: Where are the forests of the Crittenden Lumber Company?

Mr. Blair: The mill of the Crittenden Lumber Company is situated two miles south of Earl, and when we commenced there, their woods were all around us; the timber was drawn from the
233 woods that were nearest the mill, and as we progressed the road was built longer and longer, and the holdings of the Crittenden Lumber Company are of course farther and farther away.

Commissioner Harlan: How do you get you logs now to the mill?

Mr. Blair: The Crittenden Railroad Company hauls them.

Commissioner Harlan: What charge does that railroad make?

Mr. Blair: $5.00 per log car.

Commissioner Harlan: Against the lumber company?

Mr. Blair: Yes.

Commissioner Harlan: Regardless of the distance?

Mr. Blair: That takes it to the Rock Island Road. We are now just continuing our road, or extending our road beyond, and there will be a charge of $7.00 when we get down there, but at present it is $5.00 regardless of distance.

Commissioner Harlan: What kind of rate do you call that?

Mr. Blair: Per car load rate, flat rate.

Commissioner Harlan: Is that published?

Mr. Blair: Yes, sir.

Commissioner Harlan: With the Inter-state Commerce Commission?

234 Mr. Blair: With the State Commission.

Commissioner Harlan: When the lumber is manufactured, and you haul it out to the Iron Mountain at Earl, what division do you get?

Mr. Blair: Two cents.

Commissioner Harlan: On the Memphis rate?

Mr. Blair: All rates.

Commissioner Harlan: When you haul it out to the Rock Island Junction you get two cents?

Mr. Blair: Yes, sir.

Commissioner Harlan: What part of your manufactured lumber goes out over the Rock Island?

Mr. Blair: Probably 50 per cent.

Commissioner Harlan: Did you get any allowance from the Iron Mountain before the railroad was incorporated?

Mr. Blair: Yes, sir.

Commissioner Harlan: What was it?

Mr. Blair: I think it was the same as it is now.

Commissioner Harlan: Do you have any equipment—I have forgotten whether it has been stated——

Mr. Marsilliot: I was just coming to that.

Mr. Blair: We have equipment, but none of our own
235 equipment is interchanged with the other roads.

Commissioner Harlan: You have only the logging equipment?

Mr. Blair: And a few other box and flat cars, which we use for the general business.

Commissioner Harlan: How many locomotives?

Mr. Blair: Two.

Commissioner Harlan: Do you have any special locomotives in the logging business?

Mr. Blair: Only two on the entire road.

Examiner Burchmore: You said there are no milling in transit rates or privileges on your railroad?

Mr. Blair: Yes, sir.

Examiner Burchmore: Were there not formerly such privileges and divisions?

Mr. Blair: No, sir.

Mr. Marsilliot: Coming now to the road itself, beginning with the town of Earl, what sort of facilities have you in that town such as a depot and engines——

Commissioner Harlan: The depot at Earl has been described. Have you public team tracks there?

Mr. Blair: Yes.

Commissioner Harlan: How many?

236 Mr. Blair: One.

Commissioner Harlan: How many cars will it hold?

Mr. Blair: A number. All that any one would want to use.

Commissioner Harlan: Have you an agent there for less than carload freight?

Mr. Blair: Yes, sir.

Mr. Marsilliot: And he does not do anything else but that?

Mr. Blair: That is all.

Mr. Marsilliot: How is that road constructed, standard or narrow gauge?

Mr. Blair: Standard gauge.

Commissioner Harlan: What is the iron?

Mr. Blair: 35 pound steel, and some 65; just a little.

Mr. Marsilliot: Let us come to your train service. What sort of a train service do you have?

Mr. Blair: We run a local freight from Crittenden to Heth, which returns with a package car from Memphis every day, which it delivers at Earl, or returns to Crittenden and goes to other points along the road.

Mr. Marsilliot: And that drops the freight packages along the road, according to the destinations?

Mr. Blair: The big bulk of it is for Earl.

237 Mr. Marsilliot: Now, what do you do in the way of securing business for that road, where do you solicit business and how do you solicit it?

Mr. Blair: That package freight coming from Memphis, the Rock Island are of course interested in getting a good deal of freight——

Commissioner Harlan: Let us not go over that. That is sufficiently in the record.

Mr. Marsilliot: At the present time, taking the total tonnage of your road, about how much of its business is transacted for the Crittenden Lumber Company and about how much for the public?

Mr. Blair: I would say not over 35 per cent for the Crittenden Lumber Company. I have not the exact figures, but about 35 to 40 per cent; not over 40 per cent for the Crittenden Lumber Company and the balance for the general public.

Mr. Marsilliot: You have your through and local tariffs published and regularly on file with the State and Interstate Commerce Commission?

Mr. Blair: Yes, sir.

238 Mr. Marsilliot: Have you made your reports regularly to the Interstate Commerce Commission?

Mr. Blair: Yes, sir.

Mr. Marsilliot: Have you ever received any complaint about your manner of keeping accounts or rendering your reports?

Mr. Blair: We have had some explanations to make, which have always been satisfactory.

Mr. Marsilliot: I want to ask about this train service. What have you to say about the public log loading service on your road?

Mr. Blair: There are mills on our line which buy timber along our line, which we are required to load for them and haul to their plants.

Mr. Marsilliot: But they pay you your regular local tariff?

Mr. Blair: Yes, sir.

Commissioner Harlan: Their mills are on your line?

Mr. Blair: Yes, sir.

Mr. Marsilliot: Before I forget it, the Crittenden Lumber Company pays your road the same as any other enterprise located on your road?

Mr. Blair: Yes, sir.

239 Mr. Marsilliot: Does it receive any service or any different service or different rate from any other enterprise on your line?

Mr. Blair: Absolutely none.

Mr. Marsilliot: Does it pay the regular local and through rates on the service rendered to it by your railroad company?

Mr. Blair: In every case.

Mr. Marsilliot: How often are those settlements made, Mr. Blair?

Mr. Blair: Once a month.

Mr. Marsilliot: We will come to the enterprises on your road. How many are there, and what do they consist of?

Mr. Blair: Butler & Linster are at one end of the road, as a stave mill.

Mr. Marsilliot: Let us take them one at a time. What is their business?

Mr. Blair: They make staves.

Mr. Marsilliot: How much, in a rough way, do they ship per month?

Mr. Blair: I do not know.

Commissioner Harlan: It would be much more satisfactory to have those details in the form of an exhibit. It is impossible
240 to remember these amounts, and we would have to examine the exhibits anyway. If you will prepare an exhibit giving the names of these industries and their location and the business in which they deal, and the amount of freight you have handled in the last three years for each of them in and out——

Mr. Marsilliot: We will do that. There are seven enterprises located on your line?

Mr. Blair: Yes, sir.

Mr. Marsilliot: How did they happen to locate there?

Mr. Blair: We induced them to, by proving to them it was advantageous to do so, inasmuch as the location was good and the rates were the same.

Mr. Marsilliot: What representation did you make to them with reference to public transportation service?

Mr. Blair: That it was the same on our road as on any road, and the through rates were the same from any point on our line as from Earl or Heth.

Mr. Marsilliot: Have those representations been carried out by your road?

Mr. Blair: Yes, sir.

Mr. Marsilliot: I want to ask you about how much land, in
241 a rough way, there is in cultivation along the line of your road. I do not mean to the acre, but as near as you can get at it.

Mr. Blair: Our road is 15 miles between Earl and Heth, and for half of that distance it is cultivated on both sides of the road, and the other half is being put into a state of cultivation.

Mr. Marsilliot: About how many acres, in round figures, as near as you can get at it?

Mr. Blair: Probably 10,000 acres.

Mr. Marsilliot: What proportion do the timber holdings of the Crittenden Lumber Company bear to the total timber area along the line of your road, in other words, taking the total area as 100 per cent, about what percentage of timber contiguous to your road does the Crittenden Lumber Company own?

Mr. Blair: Up to the present time they have owned probably 75 per cent; that is on a mileage on each side of the road I would say 75 per cent.

Mr. Marsilliot: Up to the present time?

Mr. Blair: Yes, sir.

Mr. Marsilliot: As I understand, a great deal of that tim-
242 ber has been removed?

Mr. Blair: Yes, sir.

Mr. Marsilliot: What has been done with the land after the timber has been removed?

Mr. Blair: It has been largely sold to northern farmers, who have come down there to settle.

Mr. Marsilliot: What representations have you made to them about transportation service?

Commissioner Harlan: You need not go further into that. If this witness can show by exhibits the traffic he has moved for the farmers, that is all he need to show.

Mr. Marsilliot: We will do that. Now, from your familiarity with this situation, I should like to have you explain to the Commission what, in your opinion, will be the necessary effect of the cancellation of these divisions of through rates, and why?

Mr. Blair: It will necessarily make an increase in the rate, because everybody along our line will have to pay a local rate in addition to the rate which is now in effect from Memphis to destination along our line, and the mills located on our line I understand cannot stand the additional expense; they will have to be moved, which
243 will take their tonnage away from us.

Mr. Marsilliot: Well, now, right there I want to ask you, what have you done in the way of building spur tracks and switches for enterprises on your line?

Mr. Blair: We have built one spur track of four and a half miles to a mill whose capacity is two carloads of lumber a day. We have built another spur to a plant whose capacity is probably two carloads a week. We have built two of that kind.

Commissioner Harlan: Are those lumber mills?

Mr. Blair: Lumber mills; and another spur probably three-quarters of a mile long, which goes to two mills.

Mr. Marsilliot: Is the Crittenden Railroad, or any of its stockholders, interested in any of those other enterprises on your line?

Mr. Blair: None whatever, to my knowledge.

Mr. Marsilliot: Have you got any interest in any of them?

Mr. Blair: No, sir.

Commissioner Harlan: Did your question include the stockholders? Did the stockholders of the Crittenden Lumber Company?

Mr. Blair: I understood the question that way, and I answered no.

244 Commissioner Harlan: The Crittenden Lumber Company or its stockholders have no interest in the forests that those other lumber companies are operating?

Mr. Blair: They have no interest in them whatever.

Examiner Burchmore: You said there were no milling in transit arrangements; on file with the Commission is Rock Island tariff No. I. C. C. 8630 and Iron Mountain A-974, which may have been cancelled by this time; I do not know whether they are still in effect, but they are said to contain milling in transit rules applicable over

the Crittenden Railroad, and by the Crittenden Railroad. Now, that your memory is refreshed by reference to those tariffs, do you remember whether such milling in transit arrangements have been in effect?

Mr. Blair: I do not remember them and I know if they are in effect, they have never been taken advantage of.

Examiner Burchmore: Will you not look into the matter upon your return to your office, and advise the Commission formally by way of supplement to your testimony on that point?

Mr. Blair: Let me have those tariff numbers.

Examiner Burchmore: Rock Island I. C. C. 8630 and Iron Mountain A-974. The Commission also has a division sheet issued
245 by the Chicago, Rock Island & Pacific on January 1st, 1909, numbered percentage issue No. 11, providing a basis for dividing freight rates with the Crittenden Railroad. I do not know whether that is your present division sheet. Do you know whether it is?

Mr. Blair: I think there has been another one since.

Examiner Burchmore: This division sheet provides that on lumber in carloads from stations on the Crittenden Railroad to all stations in Arkansas on the Rock Island or Frisco the divisions will be as follows, to the Crittenden Railroad, free; to the Rock Island and connections, the remainder. That indicates evidently that on traffic within the State of Arkansas the Crittenden Railroad hauls it free for the lumber company?

Mr. Blair: Yes, sir.

Examiner Burchmore: Have you any explanation to make of that arrangement?

Mr. Blair: None other than when the connection was made with the Rock Island they gave the railroad no division of intra-state freight business.

Examiner Burchmore: Is that explained by any action of
246 the Arkansas State Commission with respect to such divisions?

Mr. Blair: Not that I know of.

Commissioner Harlan: What is the explanation?

Mr. Blair: I do not know. We never did get it, and that is all I know.

Examiner Burchmore: What is the explanation for your willingnes to haul it free for the shipper?

Mr. Blair: The only explanation is that — is very little business for us in Arkansas.

Commissioner Harlan: Are you permitted under the laws of Arkansas to haul free for a shipper?

Mr. Blair: I presume not.

Commissioner Harlan: Still you are doing it?

Mr. Blair: It seems so.

Commissioner Harlan: Is that all the explanation you have to make?

Mr. Blair: That is all the explanation I can make; yes, sir.

Examiner Burchmore: Will you furnish the Commission with a copy of the present division sheet of the Rock Island?

Commissioner Harlan: I would like to put one question now on that matter. You are now hauling it free, and the tariff so provides.

247 Mr. Blair: Yes, sir, the tariff so provides.

Commissioner Harlan: Does the fact that the railroad company is owned by the lumber company have any relation to that?

Mr. Blair: Absolutely none; no sir.

Examiner Burchmore: You have a passenger traffic?

Mr. Blair: Yes, sir.

Examiner Burchmore: Have you any passenger equipment?

Mr. Blair: No.

Examiner Burchmore: Passengers are hauled in cabooses?

Mr. Blair: Yes, sir.

Examiner Burchmore: Do passengers pay any fare?

Mr. Blair: No.

Examiner Burchmore: They are hauled free?

Mr. Blair: Yes, sir.

Examiner Burchmore: That includes the traveling public as well as employees of your community?

Mr. Blair: Yes, sir.

Mr. Marsilliot: Are you not mistaken about that? Take a passenger getting on with a package or something of that kind——

Mr. Blair: If a passenger gets on and he has a grip or big bundle, he pays 25 cents or a dime for the privilege of car-

248 rying it down the line.

Commissioner Harlan: Do you haul lumber for any other than the Crittenden Lumber Company without charge in the State of Arkansas?

Mr. Blair: Well, I cannot state.

Commissioner Harlan: You must have some provision about that.

Mr. Blair: I think there is a charge, but what it is, I do not know.

Commissioner Harlan: My precise question was whether you hauled it free of charge.

Mr. Balir: No, sir.

Mr. Marsilliot: Is there any lumber originating on your line of road sold to points in Arkansas, to amount to anything?

Mr. Blair: No, very, very little.

Mr. Marsilliot: When was the last time you remember of a carload going off of your railroad to any point in Arkansas?

Mr. Blair: I do not remember of one.

Mr. Marsilliot: In other words, that traffic moved to points east of the Mississippi River and to points north and west of the State of Arkansas?

Mr. Blair: Yes, sir.

249 Examiner Burchmore: Have you filed with the Interstate Commerce Commission any local rates between stations as your own line?

Mr. Blair: No.

Examiner Burchmore: Do you handle any traffic which has orig-

nated in Memphis or St. Louis and is billed to points on your line on combinations, by using your local rates, which is not published with the Commission?

Mr. Blair: No.

Examiner Burchmore: You have joint through rates from Memphis and St. Louis?

Mr. Blair: Yes.

Examiner Burchmore: Do you file annual reports of statistics with the Interstate Commerce Commission?

Mr. Blair: Yes, sir.

Examiner Burchmore: When was the last one filed?

Mr. Blair: June 30, 1908 to 1909.

Examiner Burchmore: Do you file monthly reports.

Mr. Blair: No.

Examiner Burchmore: Accident reports?

Mr. Blair: No.

Examiner Burchmore: Are your cars equipped with safety
250 devices, as required by the Interstate Commerce Comission?

Mr. Blair: Couplers, but no air brakes.

Examiner Burchmore: Do you keep your system of accounts in accordance with the rules promulgated by the Interstate Commerce Commission?

Mr. Blair: Not entirely.

Examiner Burchmore: Are those exceptions of an important nature, or is it substantially different?

Mr. Blair: Well, it is substantially different. We keep a set of books as a double entry system, and from that system we send everything to the Interstate Commerce Commission in their annual report

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: No questions, so far as I am concernel.

Mr. Coleman: What are the divisions of the through rates on the traffic from Memphis and St. Louis inbound?

Mr. Blair: I cannot state offhand. I think it is about—I do not know; I cannot state offhand.

Mr. Coleman: Do you know what you get on that haul of cotton?

Mr. Marsilliot: From where do you mean; from Earl to Mem phis?

251 Mr. Coleman: Yes, if you remember.

Mr. Blair: No, sir, I cannot remember.

Mr. Coleman: What percentage does the lumber traffic bear to all the traffic, if you know?

Mr. Blair: No, I have never made up those things.

Mr. Coleman: Your position, then, is that the divisions you receive on the cotton and merchandise from St. Louis is comparatively unimportant, compared with the lumber?

Mr. Blair: Yes, sir:

Mr. Coleman: It is so unimportant that you do not even know?

Mr. Blair: Oh, no; it is considerably more than that.

Mr. Coleman: But the main thing is the division on the lumber?

Mr. Blair: Yes, sir.

Mr. Marsilliot: Is it possible for you, without the tariff before you to keep in your mind the divisions on all of the numberless and varied classes of commodities that you haul from various points?

Commissionr Harlan: Now, we all know that it is not, but we thought he might know something about that. If he does not, he might ascertain that.

252 Mr. Blair: I will have it in the division sheets which I will show.

Commissioner Harlan: We will adjourn at this point until ten o'clock tomorrow morning.

Whereupon, at 5:30 P. M., an adjournment was taken until Friday, December 9, 1910, at 10:00 A. M.

253 NEW ORLEANS, LA., *December* 9, 1910.

Met pursuant to adjournment at 10:00 A. M.

Present: Parties as before.

Commissioner Harlan: The stenographer informs me that not more than half of the parties in attendance have filed appearances, as requested yesterday. I hope it will be understood that the Commission cannot act on any case unless the record shows that that road is here. It becomes very important, therefore, for all the tap lines, so-called, that are seeking a restoration of through rates to indicate that desire by filing their appearances of record. The Commission will not consider any case that does not appear of record.

Mr. Brady: On the question of reparation, some are cited here who have not entered an appearance, where there has been no cancellation of the divisions.

Commissioner Harlan: I should advise those roads to enter their appearance also. The Commission is going to deal with the whole question.

Mr. Cowan: If I may make the suggestion, that if there is a list, complete or otherwise, so that the names could be called, that the list be gone over and the names be called, because persons who have not entered their appearence may do so orally,

254 and it might save a good deal of complication if the names were called, and let those enter their appearance who happen to be here, or, if they are here and do not want to appear, they can do that.

Commissioner Harlan: That seems to be a good suggestion. There are a great many of them on the list before us at this time, but I will call them off, and if any one appears, they will at once arise and state their names.

The first on the list is the Anderson & Saline River Railway.

(No response.)

Commissioner Harlan: Antoine Valley Railroad Company.

(No response.)

Commissioner Harlan: The Arkansas Eastern Railroad.

Mr. Andrews: Sidney F. Andrews.

Commissioner Harlan: Bearden & Ouachita River Railroad.

Mr. Beland: Mr. J. H. Beland.
Commissioner Harlan: Beirne & Clear Lake Railroad.
(No response.)
Commissioner Harlan: Blytheville, Burdette & Mississippi River Railroad.
(No response.)
255 Commissioner Harlan: Brookings & Peach Orchard Railroad.
(No response.)
Commissioner Harlan: Crossett Railway. That road was represented yesterday.
Mr. McRae: I am here, and a written appearance was filed for that road.
Commissioner Harlan: De Queen & Eastern Railroad.
Mr. Kirkpatrick: John S. Kirkpatrick.
Commissioner Harlan: Doniphan, Kensett & Searcy Railway.
Mr. Burdette: I appear for that road.
Commissioner Harlan: El Dorado & Wesson.
Mr. Niehauss: C. W. Niehauss.
Commissioner Harlan: Cornie Valley.
(No response.)
Commissioner Harlan: Elmore & Southwestern.
(No response.)
Commissioner Harlan: England & Clear Lake Railway.
(No response.)
Commissioner Harlan: Fordyce & Princeton.
Mr. Murray: W. T. Murray.
Commissioner Harlan: Fourche River Valley & Indian Territory Railway.
256 Mr. Bigelow: N. B. Bigelow.
Commissioner Harlan: Freeo Valley Railway.
Mr. Bower: Edward Bower.
Commissioner Harlan: Greenfield & Southeastern.
(No response.)
Commissioner Harlan: Griffen, Magnolia & Western.
(No response.)
Commissioner Harlan: Helena, Parkin & Northern.
(No response.)
Commissioner Harlan: Homan & Southeastern.
(No response.)
Commissioner Harlan: Kearney & Sheriden.
(No response.)
Commissioner Harlan: L'Anguille River Railway.
(No response.)
Commissioner Harlan: Lester & Ouachita Valley Railroad.
(No response.)
Commissioner Harlan: Little Rock Maumelle & Western.
Mr. Mehaffy: An appearance has already been entered.
Commissioner Harlan: Little Rock, Sheridan & Saline River Railway.
(No response.)
257 Commissioner Harlan: Louisiana & Pine Bluff.
Mr. Scott: F. W. Scott.

Commissioner Harlan: Luchrmann & Western Railway.
(No response.)
Commissioner Harlan: The Malvern & Freeo Valley Railway. That was before us yesterday.
Mississippi, Arkansas & Western Railway.
(No response.)
Commissioner Harlan: Mississippi Valley Railroad.
Mr. Ziebold: Charles F. Ziebold.
Commissioner Harlan: The Osceola, Little River & Western Railroad.
(No response.)
Commissioner Harlan: Ouachita Valley Railway.
Mr. Buchner: C. A. Buchner.
Commissioner Harlan: Perla Northern Railroad.
Mr. Armistead: H. M. Armistead.
Commissioner Harlan: Prescott & Northwestern Railroad.
Mr. McRae: I have already entered my appearance.
Commissioner Harlan: Red River Valley.
(No response.)
Commissioner Harlan: Rison & Mt. Elba Railroad.
258 (No response.)
Commissioner Harlan: Round Top Terminal Company.
(No response.)
Commissioner Harlan: Saginaw & Ouachita River Railway.
Mr. Mehaffy: My appearance has been noted.
Commissioner Harlan: Saline Bayou Railway.
(No response.)
Commissioner Harlan: Saline River Railway.
Mr. Stocking: An appearance was entered yesterday for that road.
Commissioner Harlan. Thornton & Alexandria Railway.
Mr. Beland: J. H. Beland.
Commissioner Harlan: Warren & Ouachita Valley Railroad.
(No response.)
Commissioner Harlan: Warren, Johnsville & Saline River Railroad.
(No response.)
Commissioner Harlan: Wilmar & Saline Valley Railroad.
(No response.)
Commissioner Harlan: Wilson Northern Railway.
Mr. Coleman: Charles T. Coleman.
Commissioner Harlan: Wyandotte & Southeastern Railway.
259 (No response.)
Commissioner Harlan: Arkansas & Gulf Railroad.
Mr. Kimball: Mr. M. Kimball.
Commissioner Harlan: Arkansas Southeastern Railroad.
(No response.)
Commissioner Harlan: Bernice & Northwestern Railway.
(No response.)
Commissioner Harlan: Bodcaw Valley Railway Company.
(No response.)

Commissioner Harlan: Delhi, Baskin & Southwestern Railway Company.
(No response.)
Commissioner Harlan: Dorcheat Valley Railroad.
Mr. McRae: I have entered an appearance.
Commissioner Harlan: Enterprise Railway Company.
(No response.)
Commissioner Harlan: Gulf & Sabine River Railroad, Fullerton Division.
(No response.)
Commissioner Harlan: Gulf & Sabine River Railroad, Stables Division.
(No response.)
260 Commissioner Harlan: Kentwood & Eastern Railway Company.
(No response.)
Commissioner Harlan: Kentwood, Greensburg & Southwestern Railroad Company.
Mr. Brady: T. Brady, Jr.
Commissioner Harlan: Lake Charles Railway & Navigation Company.
Mr. Webber: W. B. Webber and Luther M. Walter.
Commissioner Harlan: Loring & Western Railway Company.
(No response.)
Commissioner Harlan: Louisiana & Pacific Railway.
Mr. Thurmond: W. R. Thurmond.
Commissioner Harlan: Louisiana Central Railroad.
Mr. Church: W. Q. Church.
Commissioner Harlan: Louisiana Railway Company.
Mr. McRae: I have filed an appearance.
Commissioner Harlan: Mangham & Northeastern Railway.
(No response.)
Commissioner Harlan: Mansfield Railway & Transportation Company.
Mr. Frost: E. A. Frost.
Commissioner Harlan: Martindale & Ouachita River Rail-
261 road Company.
(No response.)
Commissioner Harlan: Mill Creek & Little River Railway & Navigation Company.
(No response.)
Commissioner Harlan: Missouri & Louisiana Railroad.
Mr. Sargent: John A. Sargent.
Commissioner Harlan: There seems to be two roads of that name.
Mr. Sargent: One corporation operates all of them.
Commissioner Harlan: Monroe & Southwestern Railway Company.
Mr. McLurg: P. S. McLurg.
Commissioner Harlan: Natchez, Ball & Shreveport Railway Company.
(No response.)

Commissioner Harlan: Natchez, Urania & Ruston Railway.
(No response.)
Commissioner Harlan: New Orleans, Natalbany & Natchez Railway Company.
Mr. Brady: T. Brady, Jr.
Commissioner Harlan: North Louisiana & Gulf Railroad.
Mr. Hobbs: W. S. Hobbs.
262 Commissioner Harlan: Ouachita & Northwestern Railroad.
Mr. Riddell: J. D. Riddell.
Commissioner Harlan: The Red River & Gulf is already before us. Red River & Rocky Mount Railroad.
Mr. Ziebold: I appear for that road.
Commissioner Harlan: Sabine & Eastern Railway.
Mr. Kirkpatrick: J. S. Kirkpatrick.
Commissioner Harlan: Sabine & Northern Railroad Company.
Mr. Sugar: My appearance has been filed.
Commissioner Harlan: Sibley, Lake Bisteneau & Southern Railway.
Mr. Thurmond: W. R. Thurmond.
Commissioner Harlan: The Tioga & Southeastern Railway.
(No response.)
Commissioner Harlan: The Tremont & Gulf Railway.
Mr. Seaman: I appear for that company.
Commissioner Harlan: Victoria, Fisher & Western Railroad Company.
Mr. Riddell: J. D. Riddell.
Commissioner Harlan: Woodworth & Louisiana Central Railway Company.
Mr. Thurmond: W. R. Thurmond.
263 Commissioner Harlan: Zwolle & Eastern Railway.
Mr. Ziebold: Charles F. Ziebold.
Commissioner Harlan: Angelina & Neches River Railroad.
A Voice: Luther M. Walter will represent that road.
Commissioner Harlan: Beaumont & Saratoga Transportation Company.
(No response.)
Commissioner Harlan: Beaumont & Great Northern Railroad.
(No response.)
Commissioner Harlan: Caro Northern Railway.
Mr. Saner: J. S. Saner.
Commissioner Harlan: Durham Transportation Company.
(No response.)
Commissioner Harlan: Galveston, Beaumont & Northeastern.
(No response.)
Commissioner Harlan: Groveton, Lufkin & Northern Railway.
Mr. Garwood: The appearance was entered yesterday.
Commissioner Harlan: Jefferson & Northwestern Railway.
(No response.)
Commissioner Harlan: Livingston & Southeastern Railway.
(No response.)

Commissioner Harlan: Moscow, Camden & San Augustine.
264 Mr. Mantooth: E. J. Mantooth.
Commissioner Harlan: Nacogdoches & Southeastern Railroad.
Mr. Smith: W. B. Smith.
Commissioner Harlan: Shreveport, Houston & Gulf Railroad.
A Voice: Luther M. Walter will represent that road.
Commissioner Harlan: Texas Southeastern Railroad.
Mr. Greer: George C. Greer. My appearance was entered yesterday.
Commissioner Harlan: Timpson & Henderson Railroad.
(No response.)
Commissioner Harlan: Trinity Valley & Northern.
A Voice: Luther M. Walter will represent that road.
Commissioner Harlan: Trinity Valley Southern Railroad.
Mr. Powell: B. H. Powell.
Commissioner Harlan: Are there any other companies that have not been called?
Mr. McRae: The Caddo & Choctaw.
Commissioner Harlan: The appearance has been entered for that road.
Mr. Brady: The Natchez, Columbia & Mobile Railroad Company. I represent that company.
Commissioner Harlan: We only want such roads as have
265 not been called, who wish to enter their appearance.
Mr. Armistead: I desire to place Mr. H. H. Foster, of the Malvern & Freeo Valley Railroad on the stand in order that he may correct and explain his testimony.

H. H. Foster was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Armistead: You wish to make a correction and an explanation of your testimony with reference to the connections of the incorporated road with the lumber company's tram road. Proceed, and be as concise as possible.
Mr. Foster: I testified yesterday that the logging road south of Landers was owned by the lumber company, that portion of the line that is taken up and transferred from one place to another. That was true as to everything except the rail. The rail belongs to the Malvern & Freeo Valley Railroad Company, and is rented to the lumber company; that is, ten miles belongs to them and ten miles of the rail was secured through the Malvern & Freeo Valley from the Rock Island on a rental valuation and by them rented to the lumber company, so that the 18 miles of rail that lies south of
Landers is the property of the Malvern & Freeo Valley Rail-
266 road, and by them rented to the lumber company. That was not in accordance with my testimony yesterday. I could not think fast enough to state the details.
Commissioner Harlan: And ten miles were furnished by the Rock Island?

Mr. Foster: The Malvern & Freeo Valley rents that ten miles from the Rock Island road, and in turn rents it to the lumber company.

Commissioner Harlan: Is the rent reserved in the contract which is already in evidence?

Mr. Foster: Yes, sir.

Mr. Armistead: That rail is used in your temporary trams, and laid into the woods, and moved from time to time?

Mr. Foster: Yes, sir. That is the end of the track south of Landers.

Mr. Armistead: That is the lumber company's trams?

Mr. Foster: Yes, sir.

Commissioner Harlan: While you are on the stand I would like to know whether it is not true that the Malvern & Freeo Valley Railroad was incorporated by you at the suggestion and advice of the Rock Island?

Mr. Foster: No, sir: I do not think that is true at all. The
267 incorporation of that road was the outgrowth of the sitting of the Commission in St. Louis in about 1904, when it was stated by the Commission that lines at least to be common carriers must be incorporated, and both the Iron Mountain and the Rock Island insisted that if these relations were to exist, that we must become an incorporated line, and we incorporated.

Commissioner Harlan: Well, your attention was called to that proceeding by these two roads?

Mr. Foster: I was present at the hearing.

Commissioner Harlan: That seems to be all.

Mr. Cowan: I would like to ask what the object of renting rails is. What is the reason for renting rails?

Mr. Foster: Well, sometimes it fits your financial situation better to pay six per cent interest than to buy rails at——

Mr. Cowan: But as between the Freeo Valley Railroad and the lumber company, the Wyoming or Wisconsin, or whatever the name of it is: how could it fit the financial situation there to rent the rails?

Mr. Foster: I explained yesterday all the railroad's property or property which came under a general railroad character was incorporated under the charter, already received from the state,
268 and put in to constitute its capital stock....

Mr. Cowan: But I am speaking now of renting rails. I can not see why there would be a rental arrangement for renting rails as between your lumber company and the railroad company.

Mr. Foster: I do not see why; it is just as legitimate as the renting of rails between the lumber company and any other railroad company. They might rent them from the Rock Island, the Santa Fe or the Iron Mountain.

Mr Cowan: Why does not the lumber company continue to own the rails it uses on its own track, instead of renting them from anybody?

Mr. Foster: They did not want to. I think they were clearly moving within their rights when they shaped it up as they did.

Mr. Cowan: Who determines the rental of rails?

Mr. Foster: I don't know; that is a pretty old proposition; it is too far back for me.

Mr. Cowan: I am talking now about the rental as between the Malvern & Freeo Valley Railroad and your lumber company; how did it come about you were making that arrangement to rent rails?

Mr. Foster: I tried to make it clear to you that we took
269 the railroad property that could be headed under such, and naturally would be headed under such property, and put it in one corporation.

Mr. Cowan: And turned it over to the railroad company?

Mr. Foster: Yes, sir, and rails naturally were that part of it.

Mr. Cowan: And that included the rails that were used out in the lumbering district, in the lumber?

Mr. Foster: There were very few of them at that time.

Mr. Cowan: Well, whatever it was, was included?

Mr. Foster: Yes, sir.

Mr. Cowan: And then as the lumber company was using those rails, you rented them back to the lumber company?

Mr. Foster: Yes.

Mr. Cowan: And then you employed the railroad company to move over the rails they had rented to the lumber company, the logs from your timber, and paid them so much for moving the logs?

Mr. Foster: Yes, sir.

Mr. Cowan: Who conceived that?

Mr. Foster: You understand south of Landers we go there into the timber, and those tracks, it would be an utter impossibility to incorporate and maintain any particular line for any length
270 of time. You are changing about all over the woods; every 40 acres gets a track across it, and it was these rails that were rented by the railroad to the lumber company, a proposition that is frequently entered into between roads, and is quite a common practice.

Mr. Cowan: I fail to see the object, though, of the railway company owning the rails, and the lumber company renting the rails from the railroad company.

Mr. Foster: Well, I can give you no more object in it than simply the convenience of the arrangement, because it was property of a railroad character, under one heading.

Mr. Cowan: What rental was paid?

Mr. Foster: Six per cent on a valuation of $28.00 a ton, I think, was the arrangement.

Mr. Cowan: Simply interest on the investment, then?

Mr. Foster: Yes.

Mr. Cowan: And not a rental?

Mr. Foster: That is the rental; that was the rental consideration.

Mr. Cowan: Where is that denominated a rental?

Mr. Foster: I do not know.

Mr. Cowan: Why would it be denominated a rental, if it
271 is six per cent on the cost of the rail?

Mr. Foster: We are willing to rent at it. Other roads are willing to, and rails can be secured from any line, I think.

Mr. Cowan: Anything for deterioration?

Mr. Foster: No.

Mr. Cowan: Any provision for supplying new rails when those are worn out at the end of the rental period?

Mr. Foster: Yes, sir.

Mr. Cowan: And that is in the contract you have filed?

Mr. Foster: Yes, sir, I think so.

Mr. Armistead: That contract is on file with the Commission, is it not?

Mr. Foster: I do not know whether the contract between the lumber company and the Malvern & Freeo Valley is on file with the Commission or not. I think it is.

Mr. Armistead: I am sure it is.

Commissioner Harlan: If it is not, we would like to have you produce a copy.

Mr. Armistead: I am confident it is on file.

Commissioner Harlan: Is Landers a station which has been fixed for some time where it now is?

Mr. Foster: Yes, sir; we built directly there, and never
272 changed.

Mr. Andrews: I think you misunderstood about Landers. You said you built at Landers.

Mr. Foster: We built from Walco to Landers originally, and the point has never been changed.

Mr. Andrews: You did not build anything at Landers, except the track?

Mr. Foster: No, it is the terminus of the road, and always has been. Logging operations started from there, and the lines branch out all through the woods.

Mr. Coleman: Is your rental that the lumber company pays the Malvern & Freeo Valley the same as the Freeo Valley pays the Rock Island?

Mr. Foster: Yes, sir.

Mr. Coleman: Do you carry that in the books of the lumber company?

Mr. Foster: Yes.

Mr. Coleman: Charged against the logging operations?

Mr. Foster: Charged against the logging operations.

Mr. Marsilliot: I would like to recall Mr. Blair. While he is taking the stand, I would like to file in the Butler County Railroad case, the answer of the Tyronza & St. Francis River Valley
273 Railroad Company.

(The paper was marked "Filed, December 9, 1910," and is attached hereto.)

J. R. BLAIR was recalled as a witness, and having been previously sworn, testified as follows:

Commissioner Harlan: Before we go farther with this witness, I want to say that I have been laboring under some embarrassment as to the order in which these roads shall be called. I think perhaps not less than fifty requests have been made for a preferred status, and we have been giving a good deal of consideration to the matter over night as to what is the best and simplest way to proceed. It was agreed last night that the Butler County Road would come on after the road that is now before us, on the understanding that that would take a very short time; but from that point on there has been no agreement, and I have expressly declined to make any agreement. One embarrassment is that the Commission has indicated to a great many roads that they need not file formal petitions, and it has been pointed out very forcefully that the roads that have taken advantage of that suggestion by the Commission
274 ought not to be postponed until the last, and that seems to be a fair and reasonable suggestion. We have concluded, therefore, inasmuch as we have started with the Rock Island road, that the simplest way is to go through with those roads. Many of them reach the Iron Mountain and other roads, and in going through with the Rock Island roads we will gather up a great many roads in which other regular lines are interested, and that probably will consume the day. So that those who are not interested in tap lines that reach the Rock Island may at least be excused until two o'clock, and after we get through the Butler County road we will commence to call the Rock Island roads alphabetically.

Mr. Scott: I understood from your Honor's statement yesterday that it was not necessary, in order to have a hearing here, that any tap lines should file a petition at all.

Commissioner Harlan: It has been so understood that a formal petition is not necessary; but it is necessary that every tap line that is interested in the continuance of its divisions or allowances, whether they have been cancelled or not, shall appear at this hearing.

Mr. Marsilliot: Mr. Blair, you were asked yesterday after-
275 noon with reference to a tariff issued by the St. Louis, Iron Mountain & Southern Railroad Company that provided for a milling in transit rate on your road, that question being asked by the Commissioner. Now, I want to ask you if you ever saw or heard of that tariff until your attention was directed to it on yesterday afternoon.

Mr. Blair: No, sir.

Mr. Marsilliot: Did any official of your company ever directly authorize the issuance of a tariff providing for milling in transit privileges on your road?

Mr. Blair: No, sir.

Mr. Marsilliot: Never to your knowledge?

Mr. Blair: No, sir.

Mr. Marsilliot: Now, Mr. Blair, if that is so, how do you explain, or have you any explanation, of how that tariff came into existence?

Mr. Blair: We gave the Iron Mountain a general—what do you call it—concurrence?

Mr. Marsilliot: A general concurrence agreement?

Mr. Blair: Yes, sir.

Mr. Marsilliot: And as I understand it, under that general concurrence the Iron Mountain issued this tariff.

276 Mr. Blair: I presume so.

Mr. Marsilliot: That is simply a presumption on your part?

Mr. Blair: Yes, sir.

Commissioner Harlan: You need not go further into that. It sufficiently appears.

Mr. Marsilliot: Just one more question on that. There never has been any sort of milling in transit arrangement with anybody at any time on your road, under that or any other tariff?

Mr. Blair: No.

Mr. Marsilliot: Now, Mr. Blair, you were asked yesterday afternoon by the Commission, with reference to a division sheet which seems to provide for something like a free haul on your road on business originating on your road and destined to points on other lines, but within the State of Arkansas. You were asked by the Commission to investigate that matter, and I will ask you if you have done so since the hearing yesterday afternoon.

Mr. Blair: Yes, sir.

Mr. Marsilliot: What have you to say with reference to that division sheet?

277 Mr. Blair: That division sheet calls for no division to the Rock Island on business wholly within the State of Arkansas, which originates on our road; we get no division on such business; but the freight which we secure in payment of the haul is governed by our local tariff, which is filed with the State Commission.

Mr. Marsilliot: In other words, if I understand you, the word "free" as used in that division sheet means that the shipment is delivered free, so far as the trunk line is concerned; that is to say that the trunk line is under no obligations to allow your road a division on such traffic?

Mr. Blair: That is right.

Commissioner Harlan: Do you mean on a two line local movement, that the Rock Island makes no charge?

Mr. Blair: They charge from the point of connection with our road, and we charge the local freight between the point of origin on our road, to the point of connection with the Rock Island, and that goes as advance charges on that shipment; in other words, if we should ship a car from Felco to Pine Bluff, the charge would be $10 per car from Felco to Heth, and that would go as advance charges on the shipment, and the additional charges would be from Heth to Pine Bluff, all of which would be collected by the Rock Island.

278 Examiner Burchmore: I am not fully informed about Arkansas state rates, but does not the Arkansas State Com-

mission enforce some sort of joint rates between carriers in Arkansas, joint through rates?

Mr. Blair: As I understand it, we are allowed that. Now, if it is illegal, I am not informed.

Examiner Burchmore: What I mean, are not there joint through rates from stations on your line on lumber in carloads to points on the Rock Island line in the State of Arkansas?

Mr. Blair: We are allowed by the State, because of being a tap line, 150 per cent of the mileage that is collected.

Examiner Burchmore: There are no joint through rates from stations on your line to points in the State of Arkansas on other lines?

Mr. Blair: No.

Examiner Burchmore: Does that mean that you are getting a special status, other than the ordinary common carriers, in the State of Arkansas?

Mr. Blair: No.

Mr. Marsilliot: If I understand you, then, on what little business of that kind you did do, your road never hauled anything free for anybody?

279 Mr. Blair: No.

Mr. Marsilliot: And you got your local tariff rate on that traffic from the point of origin to your junction point?

Mr. Blair: Yes, sir.

Mr. Marsilliot: And that is fixed by the Railway Commission of Arkansas, as I understand?

Mr. Blair: Yes, sir.

Mr. Marsilliot: In all the years of your connection with the Crittenden Railroad, I will ask you to state to the very best of your recollection how many shipments were ever made over the railroad.

Mr. Blair: I have been with the Company eight years, and I do not suppose ten cars during that time have been shipped from any point on our road to any point in Arkansas.

Mr. Marsilliot: So it is a remote proposition?

Mr. Blair: Yes, sir.

Mr. Marsilliot: I neglected to ask you two questions yesterday, and I will ask them now, and then I am done. What did your depot at Earl cost, approximately?

Mr. Blair: About $2,000.

Mr. Marsilliot: What sort of depot facilities have you at Heth in connection with the Rock Island Railroad?

280 Mr. Blair: The Rock Island own their own depot; we have none; our tracks go right to the Rock Island depot.

Mr. Marsilliot: And there is a joint use of the Rock Island depot?

Mr. Blair: Of the platforms; yes, sir.

Mr. Marsilliot: Now, my last question to you is this: As the matter stands now, what percentage of the whole area of timber along the line of the Crittenden Railroad does the Crittenden Lumber Company own, as it stands today?

Mr. Blair: Probably not more than ten per cent.

Mr. Marsilliot: Probably not more than ten per cent?

Mr. Blair: Yes, sir.

Examiner Burchmore: You testified yesterday that not over 35 per cent is traffic controlled by the Crittenden Lumber Company.

Mr. Blair: Yes, sir.

Examiner Burchmore: Has that been the prevailing ratio in the past history of the railroad?

Mr. Blair: No; that is, as it has increased since our connection with the Rock Island and our ability to handle freight into East.

Commissioner Harlan: You said from 35 to 40 per cent?

281 Mr. Blair: Yes, sir; 35 to 40 per cent.

Commissioner Harlan: The records of the Commission seem to indicate that as much as 80 per cent of your traffic comes from the Crittenden Lumber Company.

Mr. Blair: It has in the past, but not in the past year. We commenced with the Rock Island about two years ago, and since that time the other business has increased.

Commissioner Harlan: The statements made by the officers of your company to the officials of the Commission and now appearing on our records, were to the effect that 80 per cent of your traffic is Crittenden Lumber traffic. Now, as I understood it, you gave a different impression yesterday. I want you to state to the best of your belief at this time, what is the relation of your traffic.

Mr. Blair: 35 to 40 per cent of the tonnage is from the Crittenden Lumber Company, today.

Commissioner Harlan: How long has that been so?

Mr. Blair: For the past year.

Commissioner Harlan: Have you gone over the matter recently and familiarized yourself with the fact?

Mr. Blair: Yes, sir.

Commissioner Harlan: When did you do that?

282 Mr. Blair: Probably a month ago.

Commissioner Harlan: Did you make any figures?

Mr. Blair: Only in estimates.

Commissioner Harlan: Then you think that within the past year the percentage has decreased from 80 per cent to 35 or 40 per cent?

Mr. Blair: Yes, sir; the past two years, on the whole. It commenced to decrease two years ago.

Mr. Marsilliot: Why was that?

Mr. Blair: Because of our connection with the Rock Island and our ability to handle products other than from the Crittenden Lumber Company.

Mr. Marsilliot: That increased your general traffic and made it a real railroad proposition?

Mr. Blair: Yes, sir.

Examiner Burchmore: You say 45 per cent of the tonnage. What percentage of the revenue?

Mr. Blair: I cannot state that without getting figures for it.

Examiner Burchmore: Is it your impression that it is 45 per cent or 90 per cent of the revenue?

Mr. Blair: Not that much; not 45 per cent.

283 Examiner Burchmore: How do you get at this 45 per cent; do you include in that 45 per cent only the lumber that is

actually billed in the name of the Crittenden Lumber Company or do you include also lumber they may have sold to customers f. o. b. the mill?

Mr. Blair: All shipments of the Crittenden Lumber Company.

Examiner Burchmore: Do you include lumber that is moving for customers of the Crittenden Lumber Company, in the 45 per cent?

Mr. Blair: Yes, sir.

Examiner Burchmore: Do you include supplies for the commissary, if they have one?

Mr. Blair: Well, we have no commissary.

Examiner Burchmore: Have you filed statements of your tonnage and revenue for the past fiscal year in this case?

Mr. Blair: Yes, sir—well, I filed my yearly report.

Mr. Marsilliot: We understand the Commission requested us yesterday to furnish a statement for the past three years, and that will be promptly prepared and filed in this case.

Mr. Coleman: Could we look at that sheet for a minute, that shows the free haul in Arkansas?

(Paper handed counsel.)

284 Examiner Burchmore: You stated that the Arkansas Commission permitted you to charge 150 per cent of the Arkansas rate.

Mr. Blair: Yes, sir.

Examiner Burchmore: In what shape do you get that authority?

Mr. Blair: From the Railroad Commission.

Examiner Burchmore: Is it a special order entered in your favor or——

Mr. Blair: No, I think it is general to short lines.

Examiner Burchmore: Can you refer us to that so we can see the order?

Mr. Blair: No, sir; I suppose you would have to get it from the Commission.

Commissioner Harlan: They give you a constructive mileage and 150 per cent?

Mr. Blair: They publish the mileage.

Mr. Marsilliot: The United States Circuit Court, I am informed, has published what they call the Court Tariff, and we will take pleasure in filing that.

Commissioner Harlan: You need not. The Commission has that, and knows a good deal about it.

Mr. Coleman: You said you investigated last night this question of divisions, and desire to change your statement. What did
285 that investigation amount to?

Mr. Blair: Well, I made the statement yesterday, if I remember correctly, that there was practically a free haul on our line. That, of course, is not so; there is nothing hauled on our line for anybody for no charge; and in talking with our superintendent, who is here, he reminded me of the fact of that charge of $10, which is accounted for in our local tariff.

Mr. Coleman: In other words, your arrangement amounts to the

charge of two locals, if your statement is correct, between your line and the Rock Island and the Iron Mountain?

Mr. Blair: Yes, sir.

Mr. Coleman: Why should you have a division sheet of two locals; what is the sense of that?

Mr. Blair: Well, with our arrangement with the Rock Island we get no revenue whatever for our haul.

Mr. Coleman: This purports to be a division of the through rate. As you have stated it, the arrangement covering lumber is nothing but an addition of two local rates, $10 to you and the rest to the Rock Island.

Mr. Blair: Yes, sir.

Mr. Coleman: Then why have a division sheet of two
286 locals, if you are correct?

Mr. Blair: I do not see any necessity for it, myself.

Mr. Coleman: Are you sure that your investigation was thorough in this matter?

Mr. Blair: No, it was not thorough as to looking up the papers, because I had none with me.

Mr. Coleman: You are relying on what your superintendent told you?

Mr. Blair: Yes, sir.

Mr. Coleman: I note also, if your statement is also correct, that to some points you show a division to your road of two cents and two and one-half cents under the same heading, No. 7, on which you show a free haul to stations in Arkansas on lumber. That is also inconsistent with your statement, is it not?

Mr. Blair: Two cents and two and a half cents on what?

Mr. Coleman: On lumber in carloads, grouped under heading 7 at different destinations.

Mr. Blair: In Arkansas?

Mr. Coleman: No, you make an exception of Arkansas.

Mr. Blair: Yes.

Mr. Coleman: You haul that free?

287 Mr. Blair: According to that; yes, sir.

Mr. Coleman: Did you get this up?

Mr. Blair: No.

Mr. Coleman: Who did?

Mr. Blair: The Rock Island, I believe.

Mr. Coleman: But you concurred in it?

Mr. Blair: Yes.

Mr. Marsilliot: Let me have that tariff for a minute.

Mr. Coleman: Just one question. Has there been any decrease in the business of the Crittenden Lumber Company in the last year or two?

Mr. Blair: No.

Mr. Coleman: None at all?

Mr. Blair: Not to any extent.

Mr. Coleman: You are familiar with that, and have investigated that?

Mr. Blair: Yes, sir.

Mr. Coleman: That is all.

Mr. Marsilliot: Taking this division sheet which bears the number 113——

Commissioner Harlan: I suggest that you have the witness here who made that tariff, and do not spend another minute with
288 this witness.

Mr. Marsilliot: He is not here.

Commissioner Harlan: Is anyone here who can explain it?

Mr. Marsilliot: No; but I want to show one thing which will clear up the whole business.

Commissioner Harlan: Very well; go ahead.

Mr. Marsilliot: On this division sheet I see it provides a basis for dividing freight rates between your road and the Rock Island, not only on Arkansas business, but on interstate business?

Mr. Blair: Yes.

Mr. Marsilliot: It provides for both things in the same sheet?

Mr. Blair: Yes.

Mr. Marsilliot: And it simply provides that on the Arkansas business destined to points beyond your line, you get no division.

Mr. Blair: From the Rock Island; yes, sir.

Mr. Marsilliot: And you have got to take care of yourself?

Mr. Blair: Yes.

Mr. Marsilliot: And you did do it?

Mr. Blair: Yes, sir.

289 Mr. Marsilliot: That is all there is to it. That is all.

(Witness excused.)

Mr. Marsilliot: The next witness I intended to call was Mr. Walcott, the treasurer of this road, and I was going to ask him one question, and that is on the existence of the milling in transit business. He would testify that it never existed on this road.

Commissioner Harlan: Now, your view is sufficiently in the record. This witness has said he has never availed himself of that privilege, but it was put in by the Rock Island. The record is as complete as it can be.

Mr. Marsilliot: To save time, I will say that I have two witnesses here who will say they applied for that milling in transit privilege on our road, and were refused; two outside manufacturing concerns. I take it you do not care to hear from them?

Commissioner Harlan: Where are those witnesses?

Mr. Marsilliot: They are here in the room.

Commissioner Harlan: Let them stand up.

(Two gentlemen arose.)

Commissioner Harlan: What is your name?

Mr. Machen: Machen.

290 Commissioner Harlan: What is your business?

Mr. Machen: Manufacturer of wooden products.

Commissioner Harlan: Where?

Mr. Machen: Earl, Arkansas, two miles south of Earl.

Commissioner Harlan: On what railroad?

Mr. Machen: Crittenden Railroad.
Commissioner Harlan: Where is your market?
Mr. Machen: In Poplar Bluff, Missouri, principally.
Commissioner Harlan: What do you know about this milling in transit rate?
Mr. Machen: I know I have applied for it.
Commissioner Harlan: When?
Mr Machen: A year ago.
Commissioner Harlan: Did you know it was published?
Mr. Machen: No, sir; I did not know anything about it.
Commissioner Harlan: Why did you apply for it, if you did not know it was published?
Mr. Machen: Why did I?
Commissioner Harlan: Yes.
Mr. Machen: Because I asked for it, and thought perhaps I could get it.

Commissioner Harlan: Well, you don't expect to get what
291 is not published, do you?

Mr. Machen: Well, I am not familiar with railroad business.
Commissioner Harlan: I recommend you to find out, if you are trying to get the benefit of rates and privileges which are not published. That is all you know about it; you were refused the privilege, were you?
Mr. Machen: Yes.
Commissioner Harlan: I think that is all on that question.
Mr. Marsilliot: Do you know whether that ever has existed on that road or not?
Mr. Machen: Not to my knowledge, it has not.
Commissioner Harlan: Do you mean you wanted it for a special shipment, or did you want the road to publish it?
Mr. Machen: Our rough product originated on the Crittenden Railroad, and was milled on the Crittenden Railroad, and reshipped on the Crittenden Railroad, and I understood——
Commissioner Harlan: I put my question again. Did you want it on a particular shipment, or did you want the Crittenden Railroad to establish that privilege?
Mr. Machen: I wanted them to establish it.
Mr. Marsilliot: You did not know whether it was published or not?

292 Mr. Machen: No.

Mr. Coleman: At that time they actually had published a milling in transit arrangement, had they not——
Commissioner Harlan: When did you make this request?
Mr. Machen: I believe a year ago, to the best of my memory.
Mr. Coleman: At that time the milling in transit privilege was published?
Mr. Machen: I do not know.
Mr. Coleman: Well, is it not so?
Mr. Marsilliot: I think that is so; yes.
Mr. Coleman: In other words, the Crittenden Railroad refused to

you, a private shipper on the road, a privilege which they published in their tariff?

Mr. Machen: I do not know whether they published it or not.

Mr. Cowan: From whom did you get your raw material?

Mr. Machen: From whom?

Mr. Cowan: Yes.

Mr. Machen: From different parties.

Mr. Cowan: Did you get it from the Crittenden Lumber Company?

Mr. Machen: I have bought some from the Crittenden Lumber Company.

293 Mr. Cowan: Well, were you doing it at that time?

Mr. Machen: Well, I was getting some stuff.

Mr. Cowan: Was it not on that product you asked this milling in transit privilege?

Mr. Machen: No, sir; not on that alone.

Mr. Cowan: Well, you were getting raw material from different people. Did you designate that it was desired upon raw material coming from the Crittenden Lumber Company or from some other source?

Mr. Machen: From all sources.

Mr. Marsilliot: The other witness is Mr. Whitman.

C. T. WHITMAN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where is your place of business?

Mr. Whitman: Earl, Arkansas.

Commissioner Harlan: What is your business?

Mr. Whitman: Cooperage and lumber.

Commissioner Harlan: Where do you get your raw materials?

Mr. Whitman: I get it, part of it, off the Crittenden Railroad.

294 Commissioner Harlan: What proportion of it?

Mr. Whitman: Seventy-five per cent of it, for the last year.

Commissioner Harlan: Mr. Machen, what proportion of your raw material have you got from the Crittenden Lumber Company last year?

Mr. Machen: Fifty per cent.

Commissioner Harlan: Is that from the lumber company or from off the Crittenden Railroad?

Mr. Machen: Shipped on the Crittenden Railroad, bought from different parties.

Commissioner Harlan: What do you know about this milling in transit privilege, Mr. Whitman?

Mr. Whitman: Not anything.

Commissioner Harlan: You did not know about it?

Mr. Whitman: No, never asked for it.

Commissioner Harlan: Never asked for it?

Mr. Whitman: No. All I asked for was a rate.

Mr. Marsilliot: Did it ever exist on that road?

Mr. Whitman: Not to my knowledge.

Mr. Marsilliot: How much freight have you shipped on that road?

Mr. Whitman: Something like 3,000 cars.

295 Mr. Marsilliot: Did you ever hear of anybody getting it on that road?

Mr. Whitman: No.

Mr. Marsilliot: I want to introduce Mr. Holly.

H. C. HOLLY was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Marsilliot: How long have you been connected with the Crittenden Road?

Mr. Holly: Since 1901.

Mr. Marsilliot: What is your business in connection with it?

Mr. Holly: Superintendent.

Mr. Marsilliot: I want to ask you, in the management of that road, whether or not there is any difference made in the service rendered to one person, firm or corporation on the road from that rendered to another?

Mr. Holly: Well, there has been, in a way.

Mr. Marsilliot: Well, describe how it has been.

Mr. Holly: Well, for instance, we have showed our patrons along the road in preference to the Crittenden Lumber Company.

296 Mr. Marsilliot: To what extent has that been done?

Mr. Holly: Well, for instance, when at times there was a shortage of cars and our patrons had shipments to make, we have given the privilege of cars to them instead of to the Crittenden Lumber Company.

Mr. Marsilliot: Why was that done?

Mr. Holly: That was to work up the traffic.

Mr. Marsilliot: What is the general characteristic of the construction of the roadbed and bridges of that road? You are superintendent of it.

Mr. Holly: Well, the roadbed from Earl to Heth is the bottom ballast, we have no gravel ballast; it is all made of the bottom land; and the bridges are all substantial, capable of carrying anything that we choose to carry.

Mr. Marsilliot: What is the biggest load you carry over that road in a car?

Mr. Holly: 100,000 pounds capacity.

Mr. Marsilliot: Have any trouble doing that?

Mr. Holly: Well, we never have had.

Mr. Marsilliot: I believe that is about all.

Mr. Coleman: You say in times of shortage of cars you would prefer the private shippers to the Crittenden Lumber com-

297 pany?

Mr. Holly: We have; yes, sir.

Mr. Coleman: You say you do that to work up traffic?

Mr. Holly: Yes, sir.

Mr. Coleman: It is customary to work up traffic when your cars are short?

Mr. Holly: Well, it is customary for us to take care of our people to the very best of our ability.

Mr. Coleman: It is only when you have shortage of cars that you work up this traffic?

Mr. Holly: Well, when we have plenty of cars everybody has them.

Commissioner Harlan: What is your understanding of the proportion of your general tonnage that belongs to the Crittenden Lumber Company?

Mr. Holly: Well, that is a part of the business that I do not keep up with, but——

Commissioner Harlan: Well, what is your best judgment?

Mr. Holly: But I should say from 35 to 40 per cent.

Commissioner Harlan: At this time? It has been more in the past?

Mr. Holly: At this time; yes, sir, for the past year.

298 (Witness excused.)

Mr. Marsilliot: I want to call Mr. Barton, very briefly.

C. G. BARTON was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Marsilliot: What is your name?

Mr. Barton: C. G. Barton.

Mr. Marsilliot: You live at Earl?

Mr. Barton: Yes, sir.

Mr. Marsilliot: What is your business.

Mr. Barton: Mercantile business.

Mr. Marsilliot: What is the nature of your business, what is the extent; just in a general way.

Mr. Barton: Do you mean the amount of business?

Mr. Marsilliot: Yes; and what kind of mercantile business?

Mr. Barton: General furnishing business, and I also run a gin.

Mr. Marsilliot: What is the volume of your business which you do at Earl?

Mr. Barton: Well, this year we ought to do $150,000. We probably will gin 2,700 bales of cotton.

299 Mr. Marsilliot: Tell as concisely as you can to the Commission what sort of service the Crittenden Railroad Company gives you.

Mr. Barton: I think the service is so good that about 75 per cent of my incoming freight is shipped over the Crittenden Railroad, and I haul my cotton, which cost me ten cents a bale drayage to the Crittenden Railroad, while I could load it from the gin right to the Iron Mountain.

Mr. Marsilliot: That you pay to the drayage man for hauling?

Mr. Barton: Yes.

Mr. Marsilliot: You pay ten cents more to get it on the Crittenden Railroad, because they give you more prompt service?

Mr. Barton: Yes.

Mr. Marsilliot: What do you think would be the effect of the cancellation of these through routes and joint rates on the town of Earl?

Mr. Barton: I don't know hardly—I think it would be bad, I cannot say just what the damage would be.

Mr. Marsilliot: You have not studied the situation carefully?

Mr. Barton: No.

300 Mr. Marsilliot: That is all.

Mr. Barton: We would not get as good service.

Mr. Jeffery: Are you a stockholder in the Crittenden Lumber Company?

Mr. Barton: No.

Mr. Jeffery: Are you a stockholder in the railroad company?

Mr. Barton: No.

Mr. Marsilliot: Interested in the Crittenden Lumber Company——

Commissioner Harlan: No; he said he was not.

Mr. Cowan: What is the matter with the Iron Mountain hauling that cotton? I suppose you send it to Memphis largely.

Mr. Barton: Yes, sir.

Mr. Cowan: What is the difficulty about the hauling of cotton from your platform over to Memphis, 25 miles?

Mr. Barton: I do not know as there is any great difference in the time of delivery from Earl to Memphis, but there is a difference in the way stuff is handled by the agents there. They handle it quicker and get prompter service.

Mr. Cowan: By hauling it over to the other fellow?

Mr. Barton: Yes, sir.

Commissioner Harlan: The agents where?

Mr. Barton: At Earl.

301 Examiner Burchmore: Are the rates the same by both routes?

Mr. Barton: Yes, sir.

Examiner Burchmore: And the same delivery in Memphis?

Mr. Barton: Yes, sir.

Commissioner Harlan: Do you move 2,700 bales?

Mr. Barton: I have not to date; I have moved about 2,400, and I expect to get——

Commissioner Harlan: And you pay ten cents a bale more to avoid the Iron Mountain?

Mr. Barton: Well, there is about 250 bales of that that I shipped on the Iron Mountain, at the first of the season.

Mr. Cowan: What is the real reason of that? There must be some reason for it that we have not heard.

Mr. Barton: I have stated the reason.

Mr. Cowan: That is the only reason?

Mr. Barton: That is the only reason; yes, sir.

Mr. Cowan: Have you not any business relation with the Crittenden Lumber Company or business in connection with their store

which makes you have this feeling in your breast for the Crittenden Railroad?

Mr. Barton: No, sir; I have not. I do not think the Crit-
302 tenden people do very much business with me in their store.

Mr. Cowan: You just simply do not like the Iron Mountain, the way it does business?

Mr. Barton: Well, I don't particularly like their service there.

Mr. Cowan: It is up to Mr. Jeffery.

Mr. Coleman: Just what does the agent at Earl do that you do not like?

Mr. Barton: The shipments are not as good.

Mr. Coleman: Tell us what he does. You take the shipment down, and what does the agent do, issue the bill of lading?

Mr. Barton: Not promptly, no.

Mr. Coleman: How long would it take?

Mr. Barton: Sometimes you get a bill there is the morning and get it back the next day. He has the negro porter go out and check the cotton up.

Mr. Coleman: You could not get it any quicker?

Mr. Barton: In some cases I suppose you could.

Mr. Coleman: What is the best you ever did? Did you ever make any kick about it?

Mr. Barton: No.

Commissioner Harlan: I think we have gone as far as we
303 should go on that.

Mr. Coleman: Do you cash some of the pay checks of the Crittenden people?

Mr. Barton: Very few indeed.

Mr. Marsilliot: I want to ask Mr. Morrison a few questions.

Commissioner Harlan: What do you want to bring out?

Mr. Marsilliot: He is a banker, and I wanted him to tell the situation and what the road had done to the town.

Commissioner Harlan: That is sufficiently in the record for the purposes of the Commission.

Mr. Marsilliot: All right; we are done.

304 *Butler County Railroad Company.*

Commissioner Harlan: The Butler County Railroad Company is the next company. Mr. Glasgow, are you ready?

Mr. Glasgow: Yes, sir.

Commissioner Harlan: How many witnesses have you?

Mr. Glasgow: One.

WILLIAM N. BARRON was called as a witness and having been duly sworn, testified as follows:

Mr. Glasgow: I want to make a brief statement of our case. In this case there are three petitions filed by the Butler County Railroad Company. They were originally petitions filed, and then by permission of the Commission, they were filed in this cause as

petitions to be considered under the Star Grain case. One is the Butler County Railroad Company against the Missouri Pacific Railway Company and the Iron Mountain; the second is the Butler County Railroad Company against the St. Louis & San Francisco Railroad Company and others; and the third is the Butler County Railroad Company against F. A. Leland, agent, and the Alabama & Vicksburg Railway Company.

The petition sets forth the tariffs which were in effect at
305 this time on the several routes set up in the petition by the several defendants, and their connections, and that tariffs had been filed by each of the defendants with the concurrences, cancelling those rates and putting in effect other rates from the junction point with the Butler County Railroad at Poplar Bluff.

The petition has two charges, first, that the rates established under the cancelling tariffs, or proposed to be established under those cancelling tariffs, which are increases over and above the rates now in effect, are unjust and unreasonable. Second, that the Butler County Railroad Company is a common carrier and entitled to joint rates and through routes with the long line carriers, and that the joint rates and through routes in effect before the cancellation notices were just and reasonable, and asking the Commission to re-establish them, or require that those rates be re-established or continued with divisions to the several roads parties thereto.

Direct examination:

Mr. Glasgow: Where do you live, Mr. Barron?

Mr. Barron: Poplar Bluff, Missouri.

Mr. Glasgow: What is your relation to the Butler County
306 Railroad Company?

Mr. Barron: I am the vice-president, treasurer and general manager of the Butler County Railroad Company.

Mr. Glasgow: You have charge of its operation?

Mr. Barron: Yes, sir.

Mr. Glasgow: When was the Butler County Railroad Company organized?

Mr. Barron: It was organized under the railroad statute of Missouri in September, 1905.

Mr. Glasgow: Prior to that time what company or person owned the railroad which the Butler County Railroad Company now owns?

Mr. Barron: That which was in existence at that time was owned by the Brooklyn Cooperage Company.

Mr. Glasgow: The Brooklyn Cooperage Company is a lumber company?

Mr. Barron: It is a cooperage company.

Mr. Glasgow: Engaged in making cooperage stock?

Mr. Barron: Yes, sir.

Mr. Glasgow: And it has a mill on the line of the Butler County Railroad?

Mr. Barron: Yes, sir.

307 Mr. Glasgow: At what point?

Mr. Barron: At a point in the neighborhood of Poplar Bluff called Linstead.

Mr. Glasgow: At the time that the Butler County Railroad Company was incorporated, were there any allowances made by the carriers with which it connected physically to the Brooklyn Cooperage Company on cooperage stock or lumber or anything else?

Mr. Barron: No, sir.

Mr. Glasgow: What roads does the Butler County Railroad Company connect with?

Mr. Barron: It connects with the St. Louis, Iron Mountain & Southern Railroad, and also with the St. Louis and San Francisco Railroad.

Mr. Glasgow: At what point?

Mr. Barron: Well, it is variously known as Linstead and Poplar Bluff; it is in the neighborhood of Poplar Bluff.

Mr. Glasgow: You have a map here of the Butler County Railroad?

Mr. Barron: Yes, sir.

(Paper Produced.)

Mr. Glasgow: Beginning at Poplar Bluff, at the connec-
308 tion between the Butler County Railroad and the St. Louis & San Francisco Railroad, there are tracks, a red dotted line. To whom do those tracks belong?

Mr. Barron: The red line indicates tracks which the Butler County Railroad Company owns.

Mr. Glasgow: And the black line with white in between?

Mr. Barron: Indicates tracks owned by other concerns, over which the Butler County Railroad Company operates its trains.

Mr. Glasgow: And the yellow?

Mr. Barron: Indicates tracks which are owned by the Brooklyn Cooperage Company.

Mr. Glasgow: Now, beginning at Poplar Bluff, to what point does the Butler County Railroad Company operate its trains over its own tracks and tracks over which it has the running right?

Mr. Barron: From Poplar Bluff it operates its trains over its own tracks to the junction with the St. Louis, Iron Mountain and Southern at Linstead; then over the track of the St. Louis, Iron Mountain and Southern Railway Company, Cairo Branch, to Lowell Junction.

Mr. Glasgow: What distance?

309 Mr. Barron: About seven and a half miles.

Mr. Glasgow: That is by arrangement or agreement for trackage payments by the Butler County Railroad?

Mr. Barron: Yes, sir.

Mr. Glasgow: And thence to where?

Mr. Barron: It operates over its own track; that is, over the Butler County Railroad Company's own track south, a distance of seven miles.

Mr. Glasgow: To what point?

Mr. Barron: To a point called Bailey's; thence over the track that is owned by the Brooklyn Cooperage Company to a point called Melville.

Mr. Glasgow: Is that under an agreement or lease?

Mr. Barron: That is under an agreement by which the Butler County Railroad Company operates and has trackage rights on that track. Thence it operates northwardly to a point called Menorkenut on a track also owned by the Brooklyn Cooperage Company, over which it has trackage rights.

Mr. Glasgow: At that point is where the tracks of the Brooklyn Cooperage Company operated by it connect with the Butler County Railroad Company?

Mr. Barron: That is one of the points where it connects
310 with the Brooklyn Cooperage Company logging tracks.

Mr. Glasgow: Beginning at Linstead and going over the St. Louis & San Francisco tracks to Lowell Junction——

Mr. Barron: That is the Iron Mountain track.

Mr. Glasgow: I should say the Iron Mountain track to Lowell Junction, what is the arrangement under which you operate trains over that track?

Mr. Barron: The arrangement is that the Butler County Railroad Company operates its trains subject to the orders of the train despatcher of the Iron Mountain Railroad, and for the service and the use of the track it pays the Iron Mountain Railroad Company a certain sum per train mile, depending upon the size of the train.

Mr. Glasgow: Well, now, a train of 25 cars?

Mr. Barron: It pays 65 cents per train mile.

Mr. Glasgow: And 35 cars?

Mr. Barron: 75 cents.

Mr. Glasgow: And 45 cars or more?

Mr. Barron: 85 cents.

Mr. Glasgow: Can you tell us about what per annum that rental amounts to which is paid to the Iron Mountain Road?

Mr. Barron: That amounts to about $3,600 per annum.

311 Mr. Glasgow: Beginning at Poplar Bluff, have you got a station there?

Mr. Barron: We have a station in the neighborhood of Poplar Bluff; it is about a mile distant from the center of the town; it may be said to be in Poplar Bluff.

Mr. Glasgow: Do you have an agent?

Mr. Barron: Yes, sir.

Mr. Glasgow: Have you an agent at Lowell Junction?

Mr. Barron: We have a joint agent with the Iron Mountain Railroad there, and we pay the entire compensation of that agent.

Mr. Glasgow: You pay it?

Mr. Barron: Yes, sir.

Mr. Glasgow: Have you a station or agent at Bailey's?

Mr. Barron: No.

Mr. Glasgow: Have you at Melville?

Mr. Barron: Yes, sir.

Mr. Glasgow: An agent and station man?

Mr. Barron: Yes, sir.

Mr. Glasgow: For the delivery of freight or travel which may pass along?

Mr. Barron: Both.

312 Mr. Glasgow: Do you run regular trains over the Butler County Railroad, on schedule?

Mr. Barron: Yes, sir.

Mr. Glasgow: Have you got a copy of the schedule of your company there?

Mr. Barron: Yes, sir.

Mr. Glasgow: The time table No. 4?

Mr. Barron: Yes, sir.

Mr. Glasgow: I want to file this as an exhibit.

(The paper so offered and identified was received in evidence and thereupon marked Butler County Railroad Exhibit No. 1, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. Glasgow: Those trains shown on that schedule, are operated upon regular time tables for the carriage of passengers and freight?

Mr. Barron: Yes, sir; every day except Sunday.

Mr. Glasgow: Do you sell passenger tickets on that road?

Mr. Barron: Yes, sir.

Mr. Glasgow: At what points?

Mr. Barron: At Poplar Bluff, Lowell Junction, Melville and wherever there is an agent. The remainder of the business
313 is done on a cash fare basis by the men in charge of the train.

Commissioner Harlan: What is the total mileage operated by your road?

Mr. Barron: About 35 miles, 34.

Mr. Glasgow: What is the part of that of which the Butler County Railroad now owns the track?

Mr. Barron: Twelve miles.

Mr. Glasgow: And have you any track arrangement looking to the immediate acquisition of additional tracks?

Mr. Barron: Yes, sir; just as soon as the deed can be drawn, the Butler County Railroad will acquire by purchase from the Brooklyn Cooperage Company, the present owner, that piece of track lying between Bailey's and the southern terminus of the road, including three miles that is now under construction down there, to the south line of section 13.

Mr. Glasgow: And has the price been agreed upon?

Mr. Barron: Yes, sir.

Mr. Glasgow: When the Butler County Railroad was organized I suppose, following the usual way, the cooperage company sold to that company the tracks which it then had, and——

Mr. Barron: Part of them.

314 Mr. Glasgow: Part of them, and issued stock in consideration thereof?

Mr. Barron: Yes, sir.

Mr. Glasgow: And that stock is held by the Brooklyn Cooperage Company?

Mr. Barron: It is held, Mr. Glasgow, by certain individuals in trust for the Brooklyn Cooperage Company.

Commissioner Harlan: What is the amount of the capital stock issued?

Mr. Barron: $163,500.

Commissioner Harlan: And authorized?

Mr. Barron: $200,000.

Commissioner Harlan: All of it is held in trust for the Brooklyn Cooperage Company?

Mr. Barron: I believe so; yes, sir.

Mr. Glasgow: Has it any bonded indebtedness?

Mr. Barron: It has a bonded indebtedness of $50,000.

Mr. Glasgow: Those bonds are probably held in the same way?

Mr. Barron: I believe they are; yes, sir.

Commissioner Harlan: Held by whom?

Mr. Barron: I believe they are held—the paper is made
315 payable to the Brooklyn Cooperage Company.

Mr. Glasgow: The bonds you mean, or the note?

Mr. Barron: The note, and the mortgage securing the note.

Mr. Glasgow: Will you tell us when the operations were commenced, and these roads were being built, were there any towns or villages or farms along the route this road now goes?

Mr Barron: There were no towns or villages; there were a very few farms, but none in comparison with what exist there now.

Mr. Glasgow: The Great Western Land Company is a company owning large tracts of lumber and timber lands?

Mr. Barron: Yes, sir. I have a map here which shows the situation about that. (Producing map.)

Mr. Glasgow: The yellow on this map shows the land of the Great Western Land Company, does it?

Mr. Barron: Yes, sir.

Mr Glasgow: Now, as the progress of cutting timber on the lands of this company proceeded, the white indicates the lands from which it has been cut off, does it?

Mr. Barron: No, sir; not altogether; that is hardly cor-
316 rect.

Mr. Glasgow: Well——

Mr. Barron: The white indicates land that the Great Western Land Company does not own; and you will notice that there is a great deal more white on the map where the railroad has been in operation for some years than there is farther down; it never was an absolutely solid body, but it was about alike; but up on the northern portion, where the railroad has existed from 11 to 12 years, a great deal of the land has been sold. Whenever it is sold, it is sold to a settler who puts it, or part of it, immediately into cultivation.

Mr. Glasgow: That white along there, does that indicate the land that is under cultivation or——

Mr. Barron: It indicates the land that has been sold and what few farms there were in that neighborhood prior to that time, and that section of the country is very largely in cultivation.

Mr. Glasgow: Are there farms all along the line of the road from

Lowell Junction down to Melville, of course with intervening spaces yet to be settled?

Mr. Barron: Yes, sir. The Great Western Land Company in that neighborhood has sold three or four hundred separate tracts of land that are now in cultivation, to farmers.

317 Commissioner Harlan: What is the relation between the Brooklyn Cooperage Company and the Great Western Land Company?

Mr. Glasgow: I was coming right to that at this moment, if your Honor will permit me. As I understand, the stock of the Brooklyn Cooperage Company is owned by the American Sugar Refining Company?

Mr. Barron: Yes, sir.

Mr. Glasgow: The Great Western Land Company's stock is held by whom?

Mr. Barron: By the American Sugar Refining Company.

Mr. Glasgow: And that is the only relation which exists between the Great Western Land Company and the Brooklyn Cooperage Company?

Mr. Barron: Yes, sir.

Mr. Glasgow: What is the Brooklyn Cooperage Company engaged in doing; what is its principal business?

Mr. Barron: Its principal business is the manufacturing of sugar barrels with which to ship the sugar refined by the American Sugar Refining Company.

Mr. Glasgow: What is the character of the timber in that section of country that the Great Western Land Company owns?

Mr. Barron: It is the same as all of that eastern Texas
318 and eastern Arkansas and southeast Missouri bottom; it is hardwood timber; it consists principally of gum; next in volume will be oak, and after that, hickory, ash, elm, and other timbers of that forest in smaller proportions.

Mr. Glasgow: Any pine?

Mr. Barron: Not a pine tree on the outfit.

Mr. Glasgow: Now, beginning at Lowell Junction and coming along, I understand you to say down towards Melville there are farms along the line of the road.

Mr. Barron: Yes.

Mr. Glasgow: Have any villages sprung up since the road was started?

Mr. Barron: Yes, sir; three.

Mr. Glasgow: What are they?

Mr. Barron: Batesville, Bailey's and Melville.

Mr. Glasgow: What is the population, should you say, of Melville?

Mr. Barron: Well, Melville will approximate a thousand people.

Mr. Glasgow: And the others are villages which have grown up?

Mr. Barron: And the others are smaller.

319 Mr. Glasgow: What character of freight is transported by the Butler County Railroad?

Mr. Barron: You might say pretty much everything that is used by a community.

Mr. Glasgow: Well, name the principal articles.

Mr. Barron: Well, the principal is—transported by the Butler County Railroad?

Mr. Glasgow: Yes, sir.

Mr. Barron: Do you mean the less than carload, or the general proposition?

Mr. Glasgow: Well, it is engaged in carload and less than carload transportation?

Mr. Barron: Yes.

Mr. Glasgow: Does it carry the class freights?

Mr. Barron: Yes, sir.

Mr. Glasgow: And has tariffs in effect covering class freights?

Mr. Barron: Yes, sir, and filed with the Federal Commission.

Mr. Glasgow: With the Interstate Commerce Commission?

Mr. Barron: Yes, sir.

Mr. Glasgow: And joint traiffs covering the class freight
320 with what roads?

Mr. Barron: With the St. Louis, Iron Mountain and Southern.

Mr. Glasgow: When the tariffs were filed cancelling the rates on lumber and lumber products by the Iron Mountain Road were the class freights cancelled out also?

Mr. Barron: No.

Mr. Glasgow: And now today the through routes and joint rates are in effect with the Iron Mountain for class freight on your road?

Mr. Barron: Yes, sir.

Mr. Glasgow: Does any freight move under those tariffs?

Mr. Barron: A great deal.

Mr. Glasgow: Have you any arrangement for carrying the mails on this road?

Mr. Barron: Yes, sir, we are under contract with the Post Office Department to carry the mail.

Mr. Glasgow: From what point?

Mr. Barron: From Lowell Junction to Melville. The name of Melville post office is Quelin. The place has two names: the post office is the name of Quelin and the railroad name of Melville.

Mr. Glasgow: Have you filed joint tariffs with other roads, the Iron Mountain and the Frisco roads; with the Interstate
321 Commerce Commission, or concurrences in their through tariffs?

Mr. Barron: We have filed concurrences with the Interstate Commerce Commission concurring in tariffs issued by the Missouri Pacific and by the Frisco Railroad.

Commissioner Harlan: Where are your lumbering operations going on now?

Mr. Barron: They are going on on that land of the Great Western Land Company.

Commissioner Harlan: I assume so, but what part of this land?

Take, for instance, the region south of Melville; what are you doing down there?

Mr. Barron: They are lumbering down there.

Commissioner Harlan: In what section?

Mr. Barron: Well, where that yellow line is, you will see on the other map, Judge——

Commissioner Harlan: Melville, apparently, seems to be in section 31.

Mr. Barron: 31 and 36, and the lumbering operations are being carried on in the vicinity of these yellow lines here and here and down there (indicating.)

Commissioner Harlan: If you will just answer the ques-
322 tion: Melville, you say, is in 31 and 36?

Mr. Barron: Melville is situated in section 31, township 23, north range, 7 east and——

Commissioner Harlan: We will just leave out the township and range, and shorten it up.

Mr. Barron: Well, in sections 31 and 36.

Commissioner Harlan: Is it towards the north of 31 or the south of 31?

Mr. Barron: It is in the south half of 31 and 36.

Commissioner Harlan: Well, south of Melville, then, according to this map, the road is owned by the Brooklyn Cooperage Company?

Mr. Barron: Yes, sir.

Commissioner Harlan: And it is around that road that you are now doing lumbering south of Melville?

Mr. Barron: Yes, sir.

Commissioner Harlan: That is, the Brooklyn Cooperage Company is doing the lumbering?

Mr. Barron: Yes, sir.

Commissioner Harlan: And the Butler County Railroad is doing the hauling?

Mr. Barron: No, sir.

323 Mr. Glasgow: I am coming to it——

Commissioner Harlan: Well, we have come to it now, and I want to know now. Who does the hauling from the forest to Melville?

Mr. Barron: From that forest, the Brooklyn Cooperage Company.

Commissioner Harlan: With what equipment?

Mr. Barron: Its own.

Commissioner Harlan: How many logging cars has it?

Mr. Barron: Now, I beg pardon—I said its own equipment—I had the locomotives in my mind.

Commissioner Harlan: Very well.

Mr. Barron: The cars belong to the Butler County Railroad.

Commissioner Harlan: But the locomotives belong to the Cooperage Company?

Mr. Barron: Yes, sir.

Commissioner Harlan: What is the mileage of the constructed track south of Melville?

Mr. Barron: It is about two and one-half miles.

Commissioner Harlan: Does it run right into the forest belonging to the Great Western Land Association?

Mr. Barron: Yes, sir.

324 Commissioner Harlan: Is there any other ownership there?

Mr. Barron: Yes, there is——

Commissioner Harlan: According to this yellow map, the ownership is very insubstantial, as indicated by the white part of the map.

Mr. Barron: Well, it is small, compared with the amount of land owned by the Great Western Land Company, but there is a good deal of territory shown on that map, and a good deal of land and timber is owned by other parties.

Mr. Glasgow: Each of those blocks represents a square mile, does it?

Mr. Barron: Yes, sir.

Commissioner Harlan: Well, this map with the yellow color on it, indicates substantially the ownership as it exists today?

Mr. Barron: Yes sir.

Commissioner Harlan: The yellow showing the Great Western Company's ownership, and the white the outside ownership?

Mr. Barron: Yes, sir.

Commissioner Harlan: Now, I observe that south of a station called Hicoria there is a logging road running due east?

325 Mr. Barron: Yes.

Commissioner Harlan: Are you doing any lumbering there?

Mr. Barron: Yes, sir.

Commissioner Harlan: And that forest also belongs to the Great Western Land Association?

Mr. Barron: And others.

Commissioner Harlan: It is indicated on this colored map?

Mr. Barron: Yes, sir.

Commissioner Harlan: And the logging road belongs to the Cooperage Company?

Mr. Barron: Yes, sir.

Commissioner Harlan: Does it use any locomotives that it owns?

Mr. Barron: Yes, sir.

Commissioner Harlan: The locomotives it owns there are confined to the logging road?

Mr. Barron: Yes, sir.

Commissioner Harlan: And is that true of the locomotives used south of Melville?

Mr. Barron: Yes, sir.

Commissioner Harlan: They do not go onto the tracks of the Butler County Railroad?

326 Mr. Barron: Yes, sir; they do.

Commissioner Harlan: What do they do on those tracks?

Mr. Barron: They will run over them.

Commissioner Harlan: To what point—do you mean regularly?

Mr. Barron: No—they will run over them and get some timber and deposit it at some switch where the Butler County Railroad will handle it.

Commissioner Harlan: Just at an interchange point?

Mr. Barron: Yes, sir:

Commissioner Harlan: And not beyond that?

Mr. Barron: No.

Commisioner Harlan: Now, north of Menorkenut and also to the east, there is some of this track belonging to the Cooperage Company?

Mr. Barron: Yes, sir.

Commissioner Harlan: And you are doing lumbering in there?

Mr. Barron: The Brooklyn Cooperage Company and others are doing lumbering in there.

Commissioner Harlan: Well, the Brooklyn Cooperage Company is lumbering the Great Western Land Company's lands?

Mr. Barron: It and others.

327 Commissioner Harlan: What other land——

Mr. Barron: No—it and other parties are lumbering the Great Western Company's land.

Commissioner Harlan: But the Brooklyn Cooperage Company is lumbering no lands except those belonging to the Association?

Mr. Barron: Yes, sir, it is.

Commissioner Harlan: Just tell us about that.

Mr. Barron: If it buys a tract of timber on another man's land, it lumbers that, and the Great Western Land Company is doing business with other parties who lumber on the Great Western Land Company's land as well as the Brooklyn Cooperage Company. The Brooklyn Cooperage Company take off only one class of timber and other parties remove the remainder and ship it out over that road.

Commissioner Harlan: At what other part of the Great Western Land Company's holding is the Cooperage Company lumbering at this time?

Mr. Barron: I beg pardon?

Commissioner Harlan: Well, I see that the Land Association owns some lands up along the Iron Mountain right of way.

Mr. Barron: Yes, sir.

328 Commissioner Harlan: Is the Brooklyn Cooperage Company doing any lumbering there?

Mr. Barron: Yes, sir.

Commissioner Harlan: How extensive is the lumbering at that point:

Mr. Barron: Not very extensive, because that section is pretty well cut over, and very little left.

Commissioner Harlan: You may proceed.

Mr. Glasgow: I was asking you a moment ago whether the Butler County Railroad Company filed concurrences in the joint tariffs published by the Frisco and the Iron Mountain roads, with the Interstate Commerce Commission?

Mr. Barron: Yes, sir, it did.

Mr. Glasgow: Will you give us, if you have there, a reference to the index filed with the Interstate Commerce Commission of those tariffs?

Mr. Barron: Well, Mr. Glasgow——

Commissioner Harlan: You can file that later.

Mr. Barron: Mr. Glasgow has it, I believe.

Mr. Glasgow: I do not believe so.

Commissioner Harlan: Well, it is filed in our Bureau of Tariff-?

Mr. Barron: Yes, sir.

329 Mr. Glasgow: The last that is filed is I. C. C. No. 5, Butler County Railroad Company, indexes to tariff No. 5?

Mr. Barron: Yes, sir.

Mr. Glasgow: And that shows the list of tariffs which your company has concurred in, and the company filing the tariff with the Interstate Commerce Commission?

Mr. Barron: Yes, sir.

Mr. Glasgow: Have you also filed with the Interstate Commerce Commission the tariff of the Butler County Railroad?

Mr. Barron: Yes, sir.

Mr. Glasgow: And that is filed as I. C. C. No. 1, Butler County Railroad freight tariff of local rates No. 3?

Mr. Barron: Yes, sir.

Mr. Glasgow: On classes and commodities?

Mr. Barron: Yes, sir.

Mr. Glasgow: Has your company complied with the Federal statute as to safety appliances?

Mr. Barron: Yes, sir; clear down to the ash pan law.

Mr. Glasgow: The Butler County Railroad has?

Mr. Barron: Yes, sir.

Mr. Glasgow: Can you give us approximately what was the cost to your company to comply with that statute of Congress?

330 Mr. Barron: Well, I should say about $6,500.

Mr. Glasgow: Has your company made the reports to the Interstate Commerce Commission monthly and yearly required by the Act to regulate Commerce?

Mr. Barron: Yes, sir; also required by the orders of the Commission.

Mr. Glasgow: Does your company keep its books in accordance with the regulations and orders of the Interstate Commerce Commission.

Mr. Barron: It does.

Mr. Glasgow: Will you tell us how many locomotives the Butler County Railroad has?

Mr. Barron: It has two.

Mr. Glasgow: How many cars?

Mr. Barron: Well, it has 110 or 112 or 113, I forget which. Not less than 110, however.

Mr. Glasgow: It has a passenger coach?

Mr. Barron: Yes, sir, and we just bought another one, making two.

Mr. Glasgow: Cabooses?

Mr. Barron: About three.

Mr. Glasgow: Has it any box cars?

331 Mr. Barron: Yes, sir.

Mr. Glasgow: Coal cars?

Mr. Barron: It has six gondolas.

Mr. Glasgow: Does this photograph show a train on the Butler County Railroad made up of the various characters of equipment owned by that road? (Handing photograph.)

Mr. Barron: Yes, sir.

Mr. Glasgow: I offer that in evidence.

(The photograph so offered and identified was received in evidence and marked Butler County Railroad Exhibit No. 2, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. Glasgow: Does your company, in pursuance of the Act of Congress, observe the hours of service provided by the Congressional Act?

Mr. Barron: Yes, sir.

Mr. Glasgow: Can you tell us about what population is adjacent to and along the line of road operated by the Butler County Railroad, and served by it?

Mr. Barron: There is a population of not less than 3,500 or 4,000 people—there is more than that; I will say 5,000 people.

332 Mr. Glasgow: Farmers?

Mr. Barron: Farmers and merchants——

Mr. Glasgow: A general population, I suppose?

Mr. Barron: General population. Hunters——

Mr. Cowan: Politicians?

Mr. Barron: Oh, yes; I might say they predominate.

Examiner Burchmore: A great number of timber cutters and lumber men?

Mr. Barron: Yes, sir, a great number of men working in the timber, tie makers, piling makers; all of these, however, or with very few exceptions, have farms and they devote their time——

Commissioner Harlan: Never mind going into those details. We understand there is a general population there.

Mr. Glasgow: When the Butler County Railroad receives shipments o lumber to go over its road, or cooperage stuff, whichever it may be, or whatever it may be, where is it received by the Butler County Railroad?

Mr. Barron: Wherever it is tendered to it.

Mr. Glasgow: At what points on its line, I mean?

Mr. Barron: Well——

Mr. Glasgow: At the junction points with these logging roads?

333 Mr. Barron: Yes, sir.

Mr. Glasgow: That is what I mean.

Mr. Barron: And other places, too; it receives lumber tendered to it for shipment by a private mill at Melville and it receives lumber tendered to it for shipment by the public at Bailey's and at Batesville.

Mr. Glasgow: But I mean, does the Butler County Railroad perform any of the service off its own line, of bringing the traffic to its line?

Mr. Barron: No.

Mr. Glasgow: That is performed, in the case of the Cooperage Company, by the engines of the Cooperage Company?

Mr. Barron: Yes.

Mr. Glasgow: Will you tell me along that line, what industries are there at Poplar Bluff or Linstead?

Mr. Barron: What industries are there at Poplar Bluff?

Mr. Glasgow: Or Linstead?

Mr. Barron: At Poplar Bluff is the mill of the Brooklyn Cooperage Company, engaged in the manufacturing of staves and headings. At Poplar Bluff is the mill of the Quercus Lumber Company, engaged in the manufacture of oak lumber. At Poplar Bluff is the mill of the Oil Well Supply Company, engaged in the manu-
334 facture of sucker rods for deep wells, and hickory lumber. At Poplar Bluff is the mill of the Putnam Manufacturing Company, engaged in making handles.

Mr. Glasgow: Has the Brooklyn Cooperage Company any interest whatever in the mill of the Quercus Lumber Company or the Oil Well Supply Company or the Putnam Hickory Mill?

Mr. Barron: None, whatever.

Mr. Glasgow: The Quercus Lumber Company, however, does buy some of the lumber or timber that they use, from the Great Western Land Company?

Mr. Barron: It buys oak logs from the Great Western Land Company?

Commissioner Harlan: Does it buy them delivered?

Mr. Barron: No, sir; the logs are scaled by two men; one employed by the Quercus Lumber Company and the other by the Great Western Land Company. They are loaded on the ground of the Great Western Land Company, and on the track of the Brooklyn Cooperage Company. Now, the Great Western Land Company pays the freight. Now, where that point of delivery is, is perhaps a nice legal question, and I would not undertake to say, but the title passes on the ground on these private tracks of the Brooklyn Cooperage Company.

335 Commissioner Harlan: You mentioned two other companies. Do they get their wood from the Butler County Railway?

Mr. Barron: Yes, sir.

Commissioner Harlan: Altogether?

Mr. Barron: No, sir; not altogether.

Commissioner Harlan: Largely?

Mr. Barron: Very largely.

Commissioner Harlan: And is that wood sold to them by the Great Western Land Company in practically the same way?

Mr. Barron: Most of it.

Commissioner Harlan: And delivered in the same way; the title passes on the logging road of the Brooklyn Cooperage Company?

Mr. Barron: No, some of the other customers of the Great Western Land Cmpany cut the timber themselves and haul it.

Commissioner Harlan: And they pay the freight?

Mr. Barron: And they pay the freight; yes, sir.

Mr. Glasgow: Is there any other connection between the Quercus Lumber Company, the Putnam Hickory Mill and the Oil Well Supply Company, other than you have stated?

Mr. Barron: By connection you mean railroad connection or proprietary interest.

336 Mr. Glasgow: I mean proprietary interest, affiliation, ownership or other than that you have detailed, as to getting lumber from the lands of the Great Western Land Company?

Mr. Barron: None whatever.

Mr. Glasgow: Coming down to Bailey's, can you tell us what, if any, industries are located there?

Commissioner Harlan: Proceed as rapidly as you can.

Mr. Glasgow: Is there a cotton gin there?

Mr. Barron: There is a cotton gin there and a saw mill in that immediate vicinity.

Mr. Glasgow: Drummond's saw mill?

Mr. Barron: Yes, sir.

Mr. Glasgow: And a cattle pen?

Mr. Barron: Yes, sir.

Mr. Glasgow: Do the Great Western Land Company or the Brooklyn Cooperage Company have any interest in the cotton gin or Drummond's mill?

Mr. Barron: No.

Mr. Glasgow: It is separate and independent?

Mr. Barron: Nor in the cattle pen, which is separate and independent.

Mr. Glasgow: Take it down at Melville?

337 Mr. Barron: Well, there is a saw mill at Batesville.

Commissioner Harlan: Is there a logging road joining your line at Bailey's?

Mr. Barron: No.

Commissioner Harlan: How far is this mill away?

Mr. Barron: Something less than a mile.

Commissioner Harlan: How do they get the lumber over there?

Mr. Barron: By team.

Commissioner Harlan: Does that mill own forests?

Mr. Barron: It owns timber.

Commissioner Harlan: It is lumbering its own timber?

Mr. Barron: Yes.

Commissioner Harlan: And not the timber of the Great Western Company?

Mr. Barron: No.

Mr. Glasgow: And it hauls it up to Bailey's, to your road?

Mr. Barron: Yes, sir.

Mr. Glasgow: Just as the Brooklyn Cooperage Company does up to the points of connection with the logging road?

Mr. Barron: Yes sir; and then the farmers in that neighborhood are making ties and handle bolts, and such things?

338 Commissioner Harlan: They haul them to your roads?

Mr. Barron: Yes.

Commissioner Harlan: Do you give them any allowance?

Mr. Barron: No.

Commissioner Harlan: They bear the expense of their haul?

Mr. Barron: Yes, sir.

Mr. Glasgow: Do you give the Brooklyn Cooperage Company any allowance for hauling it up to the line of your road?

Mr. Barron: No.

Commissioner Harlan: There was another mill, you said, at Batesville?

Mr. Barron: At Batesville.

Commissioner Harlan: Just north of Bailey's?

Mr. Barron: Yes.

Commissioner Harlan: What timber is that mill getting?

Mr. Barron: They are getting private timber.

Commissioner Harlan: Not of the Great Western Land Company?

Mr. Barron: No.

Commissioner Harlan: How far from your track is that situated?

Mr. Barron: That is on our track.

Commissioner Harlan: How do they get their logs to the mill?

339 Mr. Barron: By teams.

Commissioner Harlan: What distance?

Mr. Barron: Well, they haul within two miles.

Commissioner Harlan: You do not pay them anything, do not give them any allowance?

Mr. Barron: No, sir.

Mr. Glasgow: You do not give anybody allowances for bringing traffic up to your line?

Mr. Barron: No, sir.

Mr. Glasgow: Now, at Melville there is a cattle pen there for receiving cattle also?

Mr. Barron: Yes.

Mr. Glasgow: There is Baumhoefer's mill?

Mr. Barron: Yes, sir.

Mr. Glasgow: And Talley's mill?

Mr. Barron: Talley's mill. Mr. Talley tendered to the railroad in November 18 cars of lumber, and we shipped it from Melville for him.

Commissioner Harlan: Has he a logging road?

Mr. Barron: No.

Commissioner Harlan: How many miles south of Melville is that mill?

340 Mr. Barron: Three.

Commissioner Harlan: How does he get there with his manufactured lumber?

Mr. Barron: Hauls it by team.

Commissioner Harlan: Three miles?
Mr. Barron: Yes.
Commissioner Harlan: Who bears the expense of that?
Mr. Barron: He does.
Commissioner Harlan: You do not give him any allowance?
Mr. Barron: No, sir.
Examiner Burchmore: It would be more convenient for him if he could haul his lumber over to the Brooklyn Cooperage Company's private line and there ship it, would it not? He is very near to their line.
Mr. Barron: It is a mile and a half away.
Commissioner Harlan: And he hauls it three miles to Melville?
Mr. Barron: Yes, sir; he has a better road.
Mr. Glasgow: Has there been any application made to the Brooklyn Cooperage Company, so far as you know, to allow them to use that line if they wanted to?
Mr. Barron: No.
341 Commissioner Harlan: Has there ever been any talk about it?
Mr. Barron: That is a new line; it has been built this year.
Commissioner Harlan: I know, but there has been a whole year in which he could take up that question with him.
Mr. Barron: Well, he has not done so.
Commissioner Harlan: Does he know it is there?
Mr. Barron: Yes, sir, he knows it is there.
Mr. Glasgow: You say he has a better road to Melville than from his place to the tracks owned by the Brooklyn Cooperage Company?
Mr. Barron: Yes, sir. That railroad is not quite complete down at the lower end, because it is in such a swampy, wet country that we have not been able to finish it, and that is probably the reason he has not applied for the use of that track.
Commissioner Harlan: You say farmers have bought up some of these lands?
Mr. Barron: Yes, sir.
Commissioner Harlan: They cut down trees occasionally, do they not?
Mr. Barron: Yes, sir.
342 Commissioner Harlan: What do they do with them?
Mr. Barron: They sell them.
Commissioner Harlan: Sell them to the mills?
Mr. Barron: They will sell them to whoever will buy them. They will sell, depending what it is——
Commissioner Harlan: Do they sell the standing tree?
Mr. Barron: No, they sell the product of the tree.
Commissioner Harlan: Does it not happen occasionally that they carry those logs to the mill and have them lumbered and then use the lumber?
Mr. Barron: Yes, sir; very frequently.
Commissioner Harlan: And sell it?
Mr. Barron: No; they use the lumber.
Commissioner Harlan: Don't they occasionally sell it?

Mr. Barron: No, I don't think so. When they carry the log to the saw mill and have it sawed, it is usually for their own purposes, to build houses and barns with.

Commissioner Harlan: You do not have shipments over your road of small lots of lumber for anybody?

Mr. Barron: Yes, sir, we do; a great many.

Commissioner Harlan: Tell us about those. For whom?

Mr. Barron: Well, from Poplar Bluff we have a great
343 many small shipments of finished lumber to stations down the railroad——

Commissioner Harlan: I am talking about the lumber the other way.

Mr. Barron: No, sir; there is no movement of lumber the other way in small lots; it is all in carloads.

Commissioner Harlan: Well, do you have shippers that give you one or two carloads in a year?

Mr. Barron: Yes, sir.

Commissioner Harlan: And are there many such shippers?

Mr. Barron: You speak of lumber?

Commissioner Harlan: Yes.

Mr. Barron: Yes, there are two or three.

Commissioner Harlan: Do they have mills?

Mr. Barron: Yes, sir.

Commissioner Harlan: Are there any pony mills down in that country?

Mr. Barron: Yes.

Commissioner Harlan: Where are they?

Mr. Barron: Well, there are two on what we call the Hicoria spur.

Commissioner Harlan: Is that the spur of the Cooperage
344 Company?

Mr. Barron: No, sir—the Cooperage Company owns it, but the Butler Railroad Company runs it——

Commissioner Harlan: You mean the spur up from Hicoria to Menorkenut?

Mr. Barron: Yes, sir.

Mr. Glasgow: What is a pony mill?

Mr. Barron: Well, I presume by pony mill is meant a portable mill.

Mr. Glasgow: I understood you to say that the Baumhoefer mill, Talley's mill, the P. & S. Lumber Mill, were at Melville or in the vicinity of it.

Mr. Barron: No, the P. & S. Lumber Company has a couple of mills on the Hicoria spur.

Mr. Glasgow: Does it not also have one at Melville?

Mr. Barron: No.

Mr. Glasgow: And Melville is the point where the mail is carried for Quelin?

Mr. Barron: Yes.

Mr. Glasgow: What is the character of the Butler County Rail-

road, as to its physical character, equipment, rails, and so forth.

345 Mr. Barron: The road which was first built was 56 pounds; all that has been built in the last five years is 60 pound steel.

Mr. Glasgow: How does it compare with the road of the trunk line carriers that you join?

Mr. Barron: Well, I would not like to say that. I think we have got a pretty good road; we carry 100,000 pound capacity cars over it every day, loaded to capacity.

Mr. Glasgow: Mr. Barron, does the Butler County Railroad on these through rates which have been in effect on lumber and on the class rates—do you issue through bills of lading?

Mr. Barron: Yes, sir. I have got last month's bills of lading right here.

Mr. Glasgow: Are they on the form that has been approved by the Commission?

Mr. Barron: Yes, sir; it is on the universal form.

Mr. Glasgow: There is no use to file them, I suppose?

Commissioner Harlan: No. Have you prepared any exhibit showing the tonnage of your road?

Mr. Barron: Yes, sir.

Mr. Glasgow: I am coming right to that. Have you a statement prepared of the earnings of your passenger business?

346 Mr. Barron: Yes.

Mr. Glasgow: For the year ending June 30, 1910, and for the five months ending November 30, 1910?

Mr. Barron: Yes, sir.

Mr. Glasgow: We offer that in evidence.

(The paper so offered and identified was received in evidence and thereupon marked Butler County Exhibit No. 3, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. Glasgow: Tell us approximately how many passengers per day are handled.

Commissioner Harlan: We will not go into those details. That is all shown on the exhibit, and can be argued later.

Mr. Glasgow: No, that is not shown on the exhibit.

Commissioner Harlan: Well, it ought to be.

Mr. Glasgow: The total is shown.

Commissioner Harlan: Very well; ask the question.

Mr. Barron: We carry 75 passengers per day.

Mr. Glasgow: Have you prepared a statement showing the tonnage and revenue of the Butler County Railroad, from traffic handled for the Brooklyn Cooperage Company and for all other traffic?

347 Mr. Barron: Yes, sir.

Mr. Glasgow: And all other traffic, including the lumber which has been mentioned as being sold by the Great Western Land Company, and which the purchasers take from their lands to mills, and so forth?

Mr. Barron: Yes, sir; to mills, and that is also sold direct in the form of ties and piling to railroads and brokers.

Mr. Glasgow: I want to file the monthly statement, beginning July 1st, 1909, and ending June 30th, 1910, and for the five months beginning July 1st, 1910, and ending November 30th, 1910.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 4 and 5, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Mr. Cowan: I suggest when a statement of that kind is filed that the summary ought to be stated in the record, because these copies will never be furnished to anybody.

Mr. Glasgow: Can you tell us the number of cars handled by the Butler County Railroad from July 1st, 1909, to June 30th, 1910, all cars handled?

348 Mr. Barron: You are speaking of carload freight?

Mr. Glasgow: Yes.

Mr. Barron: Yes, sir, I can tell you.

Mr. Glasgow: You have it on that yellow memorandum you have got?

Mr. Barron: Yes.

Commissioner Harlan: Does this yellow sheet summarize the larger sheet you have just offered in evidence?

Mr. Barron: Yes, sir.

Commissioner Harlan: Just give us the summary.

Mr. Glasgow: The number of cars for the year ending June 30th, 1910.

Mr. Barron: 10,436.

Mr. Glasgow: What number of cars out of that were handled for the Brooklyn Cooperage Company?

Mr. Barron: 6,593.

Mr. Glasgow: How many for all other carload freight?

Mr. Barron: 3,843.

Mr. Glasgow: What was the percentage of freight cars handled by the Butler County Railroad Company for the Brooklyn Cooperage Company?

Mr. Barron: 63 per cent.

349 Mr. Glasgow: And 37 per cent for other carload freight?

Mr. Barron: Yes, sir.

Mr. Glasgow: And the number of tons handled by the company, total, was what?

Mr. Barron: 188,403.

Mr. Glasgow: And the number out of that handled for the Brooklyn Cooperage Company?

Mr. Barron: 108,722 tons.

Mr. Glasgow: And other carload freight?

Mr Barron: 78,441.

Mr. Glasgow: And the less than carload freight?

Mr. Barron: 1, 240 tons.

Commissioner Harlan: Of that other carload freight, 78,000 tons, what part contained lumber of the Great Western Land Company?

Mr. Glasgow: You mean from——

Mr. Barron: None. The Great Western Land Company has no lumbering.

Commissioner Harlan: Well, the Great Western Land Company, you said, sold lumber?

Mr. Barron: No, sir.

350 Mr. Glasgow: Timber?

Commissioner Harlan: I was not using the word "lumber" in the correct sense. How much timber, then, was moved in that 78,000 tons that had been sold by the Land Company to mills other than the Cooperage Company mills?

Mr. Glasgow: None of that was sold to the Cooperage Company. I will answer it, to expedite it. We have not got this analyzed down to the point to show that of that other carload freight how much is timber coming from the lands of the Great Western Land Company. We have not analyzed it to that point.

Commissioner Harlan: Your figures do not show that?

Mr. Barron: No.

Commissioner Harlan: You can get that, can you not?

Mr. Barron: Yes, sir; I can get it.

Commissioner Harlan: I wish you would do so, and file it as an exhibit. You have testified about certain mills that either cut the timber themselves or buy it delivered on the tramways of the Brooklyn Cooperage Company?

Mr. Barron: Yes, sir.

Commissioner Harlan: We want an examination and a statement of the amount of that timber that goes over the Butler County Railroad.

351 Mr. Glasgow: Would you not want that analyzed a little further, to show what proportion of it goes to each of the purchasers?

Commissioner Harlan: Well, he can analyze it as he chooses, if he shows that result.

Mr. Barron: That is on timber that goes to these outside mills?

Commissioner Harlan: Yes.

Mr. Glasgow: He wants to know how much of that 78,000 tons comes from timber which was cut on the land of the Great Western Land Company.

Mr. Barron: And went to these mills?

Mr. Glasgow: Yes.

Mr. Barron: All right.

Commissioner Harlan: Or went elsewhere, all of it that moved over your road.

Mr. Barron: Well, now, Judge, half of that material that comes off of the Great Western Land Company's land goes to mills, and the other half goes direct in some form that does not require manufacturing; for instance, piling; there is a very large volume of that that goes out.

Commissioner Harlan: Very well; show that. Show all
352 the timber that comes off the Great Western Company's lands and is moved by your line, and for whom it is moved.

Mr. Barron: All right.

Commissioner Harlan: And if you can now, tell us about what proportion of that 78,000 tons constitutes timber of that kind. We would like to know it.

Mr. Barron: I cannot.

Commissioner Harlan: Very well.

Mr. Glasgow: What is the percentage of carload freight handled by the Butler County Railroad Company for the Brooklyn Cooperage Company; the percentage of the total?

Mr. Barron: In tons?

Mr. Glasgow: No, the percentage of the whole number of tons handled for the Brooklyn Cooperage Company.

Mr. Barron: 57 per cent.

Mr. Glasgow: And 42 per cent is other carload freight?

Mr Barron: Yes, sir.

Mr. Glasgow: And one per cent is less than carload?

Mr. Barron: Yes.

Mr. Glasgow: Now, the revenue earned: what proportion of that comes from the carload freight handled for the Brooklyn Cooperage Company?

353 Mr. Barron: 39 per cent of the revenue derived——

Mr. Glasgow: Let us get the dollars first.

Mr. Barron: $28,092.

Mr. Glasgow: What comes from other carload freight?

Mr. Barron: $41,133.

Mr. Glasgow: And less than carload freight?

Mr. Barron: $4,427.

Mr. Glasgow: And the percentage of the revenue which is derived from the carload traffic of the Brooklyn Cooperage Company is what per cent?

Mr. Barron: 39 per cent of the whole.

Mr. Glasgow: And the other carload freight?

Mr. Barron: 55 per cent.

Mr. Glasgow: And less than carload freight?

Mr. Barron: Six per cent.

Commissioner Harlan: I would like you to extend those figures so as to cover the timber we have just been talking about.

Mr. Barron: Well, it will only change one line.

Mr. Glasgow: I think practically what you want is a statement of all the shippers and what tonnage is handled for them?

Commissioner Harlan: Well, the witness understands. I
354 want the information and percentages of this outside tonnage we have just been talking about.

Mr. Barron: Yes, I understand.

Mr. Glasgow: Now, then, for the five months of the year 1910, beginning July 1st, I will read this without asking the question. The number of cars handled——

Commissioner Harlan: I think if you will just file it, that will be sufficient.

Mr. Glasgow: Mr. Cowan asked to put it in the record.

Commissioner Harlan: We need all the time we have got. Now, Mr. Glasgow, if you will oblige the Commission by filing it——

Mr. Glasgow: I am going to do it, but I was told that counsel wanted the figures.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 6 and 7, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Mr. Glasgow: You know the tariffs which you have had in effect with the Iron Mountain and the St. Louis and San Francisco Road. Can you give us a statement showing the divisions of the through rates to points, St. Louis, New York, New Orleans, Cairo,
355 Thebes, Memphis and East St. Louis; first in connection with the Iron Mountain, and second, in connection with the St. Louis & San Francisco?

Mr. Barron: Yes, sir.

Mr. Glasgow: Have you that statement?

Mr. Barron: Yes, sir.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 8 and 9, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Commissioner Harlan: Was there a larger percentage of traffic for the controlling mill for the year ending June 30th, 1909, than there was for the year ending June 30th, 1910?

Mr. Barron: I think not. The controlling mill's output has been quite uniform, but the other business has been growing quite rapidly.

Commissioner Harlan: Then the percentage last year would be larger, would it not, if the percentage of the other has grown rapidily this year?

Mr. Barron: Yes, sir; the percentage of the outside business was larger this year than before.

356 Commissioner Harlan: What was the percentage of the inside business last year; the controlling mill's traffic?

Mr. Barron: You have it there.

Commissioner Harlan: I mean for the year ending June 30th, 1909?

Mr. Barron: I have not got the figures, but it would be larger, of course, than——

Commissioner Harlan: Have you any idea what the percentage was for that year?

Mr. Barron: It would not be a great deal greater; the outside business is growing. At the beginning, the outside business——

Commissioner Harlan: If you do not know, we will not stop.

Mr. Barron: I do not know, no, but it is not a great deal different.

Mr. Glasgow: Will you please tell us in connection with the two statements you have just filed, showing the divisions which the Butler County Railroad gets, what is the service rendered by the Butler County Railroad for the division of rates which it gets?

Mr. Barron: The service performed by the Butler County Railroad Company is the transportation of the timber from the
357 point where it is tendered to the Butler County Railroad to destination. Some of it is milled in transit. Now, the compensation—of course I say it is transported to destination for the through rate, of which we get that division. Now, the compensation that is received is on the cheaper grades of lumber one cent per 100 pounds on the logs, and on the more valuable kinds of timber, one and one-half cents per 100 pounds on the logs, for the milling in transit service, for handling it, and then the division on the manufactured product, if it is milled.

Mr. Glasgow: To illustrate it briefly, take a log you receive at Memorkenut on your line, that is going through, a through shipment of the lower grades. As I understand, you carry that log down on your line to the mill at Linstead?

Mr. Barron: Down to the Brooklyn Cooperage Company's mill, say at Linstead; yes, sir.

Mr. Glasgow: There it is milled in transit?

Mr. Barron: Yes, sir.

Mr. Glasgow: Then you handle that from the mill tracks over to the long line road, and deliver it?

Mr. Barron: Yes, sir.

Mr. Glasgow: And for that, you get the proportion shown
358 in the statement filed? As shown in the tariff?

Mr. Barron: Yes, sir.

Mr. Glasgow: And in addition to that, you get one cent per 100 pounds for your own tariff on the log?

Mr. Barron: Yes, sir.

Mr. Glasgow: And if it is the higher grade of log, one and one-half cents per 100 pounds?

Mr. Barron: Yes, sir.

Commissioner Harlan: What is the total earnings of your road, then, on the shipment?

Mr. Barron: On the shipment?

Commissioner Harlan: Yes.

Mr. Barron: Well, it takes about five cars of logs to make one of lumber or manufactured material. Now, we get an average of $4.00 a car on the logs; that is $20.00, and three cents per 100 pounds under the junction rate, say 60,000 pounds, is $18.00. Now, we get $38.00 for handling, say, five and a half cars.

Commissioner Harlan: To the mill, and how many cars from the mill?

Mr. Barron: No, four and one-half cars to the mill and one from the mill.

359 Commissioner Harlan: And what is the distance from the mill to the junction with the Rock Island?

Mr. Barron: Half to three-quarters of a mile.

Examiner Burchmore: That is the distance from the outside of your plant to the line of the Iron Mountain, or does that include the haul inside the plant?

Mr. Barron: Well, it will average a little over half a mile. You take the mill of the Quercus Lumber Company, that stands about half a mile away from the junction point of the Iron Mountain and Frisco. The Brooklyn Cooperage Company's mill is about the same, and the handle mill about the same.

Commissioner Harlan: Who hauls it from the mill to the regular line?

Mr. Barron: The Butler County Railroad.

Mr. Glasgow: Are there any other mills in competition with the Brooklyn Cooperage Company's mill in the sale of the manufactured products?

Mr. Barron: No, sir, the products of the Brooklyn Cooperage Company's mill is consumed by the proprietor of the mill, by the real owner, the beneficial owner of the property. It is not sold.

Mr. Glasgow: Is there anybody in that vicinity making
360 the same character of stuff?

Mr. Barron: Yes, sir, but in a very small way, a very insignificant way.

Mr. Glasgow: And the product of the Brooklyn Cooperage Company's mill does not come into competition with that product?

Mr. Barron: No, sir. Whenever there is any transaction of that character at all, it is the purchase by the Brooklyn Cooperage Company of the product of the outside mill, and not a sale except——

Mr. Glasgow: I think that is all. I will ask to have these maps marked as exhibits.

(The maps so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 10 and 11, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Examiner Burchmore: You testified that the Butler County Railroad was incorporated in 1905?

Mr. Barron: Yes.

Examiner Burchmore: Did you give the date on which it was built, or the first building?

Mr. Barron: I did not.

361 Examiner Burchmore: What was the first construction?

Mr. Barron: 1899.

Examiner Burchmore: Prior to the incorporation in 1905, did or did not the Butler County Railroad, I mean the line that was then in existence, receive allowances from the Missouri Pacific System?

Mr. Barron: It did not.

Examiner Burchmore: It received none?

Mr. Barron: No.

Examiner Burchmore: Has the Butler County Railroad any contract in effect now with the Iron Mountain System covering through rates or allowances?

Mr. Barron: Well, I guess not; nothing more than is shown in the tariffs.

Examiner Burchmore: Any contract, not a tariff, but a contract?

Mr. Barron: Well, then, if a tariff is not a contract, it has no contract, no sir.

Examiner Burchmore: Has it in the past had any such contract for divisions?

Mr. Barron: No, sir.

Examiner Burchmore: Does the Brooklyn Cooperage Com-
362 pany now have, or has it in the past had such a contract with the Iron Mountain System?

Mr. Barron: No.

Examiner Burchmore: Would you know if there had been such a contract in existence in the past?

Mr. Barron: I would.

Mr. Glasgow: Have you any information that there is? Because I will look it up if you have.

Commissioner Harlan: What are you the president of?

Mr. Barron: Nothing.

Commissioner Harlan: What is your relation to the railroad company?

Mr. Barron: I am vice-president.

Commissioner Harlan: As such, are you authorized to sign contracts?

Mr. Barron: For the railroad company; yes, sir.

Commissioner Harlan: For the railroad company?

Mr. Barron: Yes.

Commissioner Harlan: Is any one else authorized to sign contracts?

Mr. Barron: Well, I don't remember what the by-laws provide,
but I have done all of the business; there has nobody else
363 done anything except me; I have done it all.

Commissioner Harlan: I want to put to you the question: Is there any contract between the Iron Mountain or the Missouri Pacific or any other line governing the amount of divisions that are received by the Butler County Railroad, whether that contract is with your railroad, or with the American Sugar Refining Company or the Land Association, or the Brooklyn Cooperage Company.

Mr. Barron: I do not know what you mean by a contract. They have got a division sheet, issued, but that is all I know anything about.

Commissioner Harlan: I am talking about a formal contract.

Mr. Barron: No, sir; there is none and never was.

Examiner Burchmore: One of your companies has a contract with the Iron Mountain under which these trackage rights are exercised.

Mr. Barron: That is a verbal contract which runs from month to month. They perform the service and send us a bill for so much money, and we pay it.

Examiner Burchmore: There was a written contract some time ago?

Mr. Barron: Yes, there was a written contract covering
364 those trackage rights, but that was made by an individual with the Iron Mountain Railroad, and it is so long ago it has been forgotten.

Examiner Burchmore: Who was that individual?

Mr. Barron: That individual was a man named Lowell M. Palmer.

Examiner Burchmore: Who was Lowell M. Palmer?

Mr. Barron: But that did not cover any question of divisions; it just provided for the running of the trains, and fixed the amount of the trackage and the amount per train mile.

Examiner Burchmore: Why was that contract discontinued; why did you abandon that method and resort to a verbal contract, if you know?

Mr. Glasgow: When was the date of this contract?

Mr. Barron: That contract was made in 1899, when the business was started out there. At that time the land was owned by Lowell M. Palmer.

Commissioner Harlan: Have you a copy of that contract?

Mr. Barron: Yes, sir.

Commissioner Harlan: Will you supply a copy to the Commission?

365 Mr. Barron: Certainly; but that was before these companies ever acquired any of this land——

Mr. Glasgow: May I ask, because I never heard of this before—what is the purpose of going back to 1899 on this?

Commissioner Harlan: For the purposes of this inquiry.

Mr. Glasgow: That does not give me any information.

Commissioner Harlan: We want to get all of the information that is available.

Mr. Glasgow: I thought if I knew your Honor's purpose, I might be able to assist in getting it out.

Mr. Jeffery: I will state at this time I know there is no contract for divisions between the Butler County Railroad and either the Missouri Pacific or the Iron Mountain. You will recollect that we withdrew from our written contracts which we had with any tap line, and there was only one. This is the first I ever heard of this one, and it must be with an individual.

Commissioner Harlan: The witness has said that it was.

Mr. Jeffrey: But there is none with the Butler County Railroad. In fact, there is none in effect with any now.

Examiner Burchmore: You testified that the amount of compensation paid to the Iron Mountain for trackage rights was
366 so much per train; I think you mentioned 85 cents per train or 25 cars.

Mr. Barron: No, I said it was 65, 75 and 85.

Examiner Burchmore: Does your road run a train composed of as many as 35 cars?

Mr. Barron: Yes, sir.

Examiner Burchmore: I ask the question because your time table shows three trains each way each day. You testified your total

traffic last year amounted to something in excess of 10,000 cars, which would be, in rough numbers, 35 a day. Those 35 were apparently handled in six trains.

Mr. Glasgow: I suggest that Mr. Barron has not testified that he hauled an average of 35 cars a day over the road. I suppose it is like any other road——

Examiner Burchmore: The only question I desire to ask is what is the average payment per train which you make for these trackage rights, in a general way?

Mr. Barron: Well, it is 75 cents per mile.

Examiner Burchmore: That is your average actual payment?

Mr. Barron: Yes, sir. Now, you say we operate three trains a day. That is correct, but two of those trains do not handle any freight business to speak of. All of the freight business is
367 handled by one train, and the train will carry on an average I would say, 42 cars. It is a level track, and a good engine, and we put all of that business into one train and get over the ground faster with the other two, the other two being devoted, I might say, exclusively to passenger business.

Examiner Burchmore: You testified that lines of railroad marked in red on this first map were owned by the Butler County Railroad Company.

Mr. Barron: Yes, sir.

Examiner Burchmore: Is that an actual ownership in fee of the land, or a long term lease of the land, or some other kind of lease of the land from the Brooklyn Cooperage Company?

Mr. Barron: It is an actual ownership in fee of the land.

Commissioner Harlan: And the rails?

Mr. Barron: Yes, sir, and the rails and the ties and spikes.

Examiner Burchmore: The town known as Linstead; is it within the municipal limits of Poplar Bluff?

Mr. Barron: It is not.

Examiner Burchmore: Within what distance is it of
368 Poplar Bluff?

Mr. Barron: Well, the property there constitutes the eastern boundary of part of Poplar Bluff, and there is about 120 acres of land devoted to manufacturing businesses outside of the municipal limits.

Examiner Burchmore: You referred in your testimony to three other industries at Linstead, or Poplar Bluff, the Oil Well Supply Company, the Quercus Lumber Company and the Putnam Manufacturing Company. Are the mills or factories of those companies on ground owned by the Brooklyn Cooperage Company; that is, are they lessees of the Cooperage Company?

Mr. Barron: They are, all of them, and up until a few months there was another mill there, the Garretson & Greacen Lumber Company.

Examiner Burchmore: Can you indicate in a general way what that lease arrangement is?

Mr. Barron: Yes, sir; the Brooklyn Cooperage Company leased five acres of land to the Oil Well Supply Company for a rental

of $150 per annum, on which they constructed a mill which they operate, and a similar arrangement was made with the Quercus Lumber Company, and on another piece of ground of 20 acres. Later on, another arrangement similar to the other two was made with the Putnam Manufacturing Company for its mill site.

369 Examiner Burchmore: And substantially the same rental consideration, the same general basis?

Mr. Barron: The same general basis; yes, sir.

Examiner Burchmore: Does the line of the Butler County Railroad connect with any other railroad than the Iron Mountain?

Mr. Barron: Yes, sir.

Examiner Burchmore: With the Frisco?

Mr. Barron: Yes, sir.

Examiner Burchmore: At what point?

Mr. Barron: Well, they call that Poplar Bluff.

Examiner Burchmore: There is an actual physical connection at Poplar Bluff?

Mr. Barron: There is an actual physical connection, but it is not in the city of Poplar Bluff; it is outside on this same track of ground.

Examiner Burchmore: Does your company maintain joint through rates in connection with the Frisco generally?

Mr. Barron: Not generally on lumber.

Examiner Burchmore: Practically its entire traffic goes out over the Iron Mountain?

Mr. Barron: No, sir; the Frisco gets some. The Iron
370 Mountain has been pretty short of cars lately, and the Frisco got the bulk of it.

Examiner Burchmore: What rates apply over the Frisco, the combination of locals?

Mr. Barron: No, there are some through rates there. We have never gotten down to the combination of local rates yet, and I hope we never shall.

Examiner Burchmore: There are joint through class rates in effect over your line in connection with the Iron Mountain to interstate destinations, and those are published and filed with the Commission. What is the publication of those rates; that is to say, from stations on your line are the class rates to interstate destinations the same as the class rates from the junction points, Lowell, and the same as the class rates from Poplar Bluff? Perhaps that is a little long——

Mr. Barron: It was a little indirect.

Examiner Burchmore: The question is this: Are these joint through class rates in effect over your line to interstate destinations the same as the junction class rates, or are they made on the combination of locals?

Mr. Barron: They are made, some of them are on a combination of locals, and some are not. Some are joint through rates.

371 Examiner Burchmore: But the amount of those joint through rates; are they as low as the joint through rates——

Mr. Barron: As the combination of locals? They are lower.

Examiner Burchmore: Are they as low as the through rates in effect from Poplar Bluff?

Mr. Barron: No, they are higher.

Examiner Burchmore: They are substantially equal to the sum of the locals?

Mr. Barron: No, they are less than the sum of the locals.

Examiner Burchmore: You testified that you had class and commodity rates filed with the Commission between points on the Butler County Railroad, local rates?

Mr. Barron: Yes, sir.

Commissioner Harlan: Is your division less or greater than your locals?

Mr. Barron: Why, Judge, I will tell you. Up to about a month ago it was less, but I went to Mr. Perkins and Mr. Johnson and I complained about that, and they were good enough to increase it so it is a shade more. It formerly was 27 per cent, and it is now 33 per cent. 27 per cent was a shade too low, and 33 per cent would just carry it.

372 Commissioner Harlan: The percentages of the joint through rates?

Mr. Barron: Yes.

Commissioner Harlan: Now, you get a division that is larger than the local?

Mr. Barron: Well, it is our local plumb; the scale goes down like that; but before that, it did not, it went down on the other side; but it is not substantially different from the sums of our locals; that is, on those rates which are based on the sum of the two locals. Now, there are certain rates which are not arrived at in that way, we agree on the division arbitrarily.

Mr. Jeffery: That is less than carload business, and not lumber?

Mr. Barron: That is less than carload business and not lumber; yes, general classes and commodities. But now, live stock and cattle which goes in carloads, on which there are through rates that is not dealt with on the basis of the sum of the two locals, but it is competitive, and we met it both took less than the sum of our local rate.

Examiner Burchmore: On these through class rates are all points on your line blanketed; do they all take the same rate?

373 Mr. Barron: No, sir—well, no, sir, they do not.

Examiner Burchmore: Do all points on your line south of Lowell Junction take the same rate?

Mr. Barron: No, sir.

Examiner Burchmore: Those rates are scaled, graded?

Mr. Barron: Yes, sir, except cotton and live stock.

Mr. Barron: Your index of tariffs, issued December 1, 1910, I. C. C. No. 5, under section 3, reads as follows: "Numerical list of Butler County Railroad Company tariffs bearing I. C. C. numbers, none." Does that not indicate that you have no local rates on file with the Commission under your own I. C. C. number.

Mr. Barron: It indicated that at the time that tariff was filed,

we had no local rates on file with the Commission, but we have filed one since.

Examiner Burchmore: Since December 1st, 1910?

Mr. Barron: Yes, sir. I have a copy of it here, I think, or Mr Glasgow has it.

Examiner Burchmore: You referred to the transportation of the United States mails. Do you have a contract with the Government, similar to the contracts entered into by the Government
374 with all common carriers?

Mr. Barron: Well, now, I never had anything to do with any other railroad, and I do not know what kind of a contract the other railroads have, but we have a contract with the Government which I presume is similar to the usual contracts.

Examiner Burchmore: The question with me is just this, the Government employs railroads to transport the mail as common carriers between various points; it also employs private individuals, or mail routes, to transport mail in carriages and otherwise——

Mr. Barron: Well, the Government has employed us to transport the mails as a common carrier, and we get the railroad carrier's compensation for the service, which I might mention incidentally is very low.

Commissioner Harlan: Do you mean your division is low?

Mr. Barron: No, the total compensation; the through rate is low.

Mr. Glasgow: The division with the Government is low?

Mr. Barron: Yes, sir.

Examiner Burchmore: Do you carry any express matter?

Mr. Barron: No. We have three trains a day, and it will go by freight just as fast as it will go by express.

375 Mr. Glasgow: You give it all an expedited service?

Mr. Barron: Yes, sir.

Examiner Burchmore: Has your company any track scales for weighing cars?

Mr. Barron: No.

Examiner Burchmore: Has it any small scales for weighing L. C. L. freight?

Mr. Barron: Yes, sir, it has team scales.

Commissioner Harlan: Judge Cowan, have you some questions?

Mr. Cowan: I wanted to ask some questions about some of these divisions. In the exhibits which you have filed, Mr. Barron, showing the divisions with the Missouri Pacific and the St. Louis, Iron Mountain & Southern on lumber and cooperage stock handles and cotton, the rate from Poplar Bluff is stated to be 12 cents to St. Louis from all stations on the Butler County Railroad, of which you get a division of five cents. Does that include the station called Linstead, where your factory is?

Mr. Barron. No, sir. Now, pardon me, but you said the paper shows the rate from Poplar Bluff. Your question would have expressed what you meant if you had left that Poplar Bluff off,
376 and said from all stations on the Butler County Railroad.

Mr. Cowan: Yes, they are both coupled here in the same

category, but I see the rate is ten cents from Poplar Bluff and twelve cents from all stations on your road.

Mr. Barron: Yes, sir.

Mr. Cowan: Out of that twelve cents you get five cents?

Mr. Barron: Yes.

Mr. Cowan: Does that apply on traffic, lumber loaded into the cars at Linstead?

Mr. Barron: Yes, sir; by reason of the milling in transit arrangement.

Mr. Cowan: Do you manufacture lumber, or does that term "lumber" mean lumber products, staves and barrel heads?

Mr. Barron: Well, the lumber products go out on a commodity cooperage rate, and the lumber proper is manufactured by parties with whom we have no proprietary connection.

Mr. Cowan: You mentioned several factories to whom you had leased some land there?

Mr. Barron: Yes, sir.

Mr. Cowan: And I assume that was for the purpose of concentrating the business there, and for your railroad to get the traffic loaded on its line and then transferred to the Iron Mountain,
377 so you would get a division of the rate. Is that correct?

Mr. Barron: Well, that matter was not altogether lost sight of, no. That railroad has got to live; it has enjoyed a division ever since it was created, and the result of the operation so far has been a net loss of $8,000; and we had in mind that division; yes, sir, we had.

Mr. Cowan: There was no other compensation which would amount to anything to let them have the land on which to put the factory except the fact that you would get a division of the rate on the lumber which they manufactured.

Mr. Barron: Yes, sir; they all paid a fair rental value for the land they got.

Mr. Cowan: I think I heard you mention $150 a year for five acres. I thought that was pretty cheap.

Mr. Barron: Well, we paid $60 an acre for the land.

Examiner Burchmore: Does that include the use of your mill pond?

Mr. Barron: No, that is only the land.

Mr. Glasgow: That is 50 per cent.

Mr. Cowan: On cooperage stock from all Butler County Railroad stations the rate to St. Louis is 35 cents, out of which
378 you get——

Mr. Barron: No, sir; that is New York.

Mr. Cowan: I am mistaken; 35 cents to New York, out of which you get three cents?

Mr. Barron: Yes, sir.

Mr. Cowan: How does it come about that you get practically ten per cent on the New York shipments, and you get 40 per cent on the shipments to St. Louis?

Mr. Barron: Because the haul is much longer to New York and the rate higher, and we do not haul it any longer or any farther on a New York shipment than on a St. Louis shipment.

Mr. Cowan: How far do you haul the lumber itself?
Mr. Barron: The manufactured product?
Mr. Cowan: Yes.
Mr. Barron: About three-quarters of a mile.
Mr. Cowan: It is customary for the carload shipper of lumber or lumber products throughout the country to load the cars?
Mr. Barron: Yes, sir.
Mr. Cowan: The railroad company does not undertake that?
Mr. Barron: Yes, sir; they load the cars.

379 Mr. Cowan: At what expense is the Butler County Railroad per car for the handling of it from one of these lumber concerns there out to the Iron Mountain Road?

Mr. Barron: Ordinarily none, and I will explain why, because I applied to the American Railroad Association and the Central Storage and Demurrage Bureau for admission to those organizations, and they have so far deferred approving the application, and we are on a demurrage basis instead of a per diem basis. We do not pay per diem, and therefore we are at no expense for the cars.
Mr. Cowan: But I meant the expense of handling per car.
Mr. Barron: The expense of handling per car?
Mr. Cowan: Yes. You switch it over about three-quarters of a mile, as I understand, and I wondered if you knew how much it cost you per car to do that.
Mr. Barron: Well, it does not cost a great deal to do that, but that is not the entire service. We have got to get that timber in there to Linstead.
Mr. Cowan: I understand all that.
Mr. Barron: And there is a 35 mile haul.
Mr. Cowan: How much do you get for hauling the logs into the mills of some of these other concerns which make lumber products which move to St. Louis on the 12 cent rate?

380 Mr. Barron: One and one-half cents per 100 pounds, which will average about $6.00 per car, and the haul will average 25 miles.

Mr. Cowan: Do you know what the Arkansas Commission tariff is for hauling logs a similar distance?
Mr. Barron: No, sir; we do not do business in Arkansas.
Mr. Cowan: Well, Missouri, then.
Mr. Barron: About four and one-half cents per 100 pounds.
Mr. Cowan: For a distance of 25 miles?
Mr. Barron: Yes, sir; either four or four and a half cents, I am not sure.
Mr. Glasgow: Is that a local tariff?
Mr. Barron: Yes, sir. I can tell you what it is.
Mr. Glasgow: I do not care to go any further with it.
Mr. Cowan: I did not mean to take time with that.
Mr. Glasgow: You need not go into that, unless counsel desires.
Mr. Cowan: I see the rate on cotton to St. Louis from your stations is 14 cents per 100 pounds, out of which you get a ten cent division. Why is the division on cotton so much less in percentage to the total than in the case of lumber?

381 Mr. Barron: Well, I expect the Missouri Pacific gentlemen out-traded me on that.

Mr. Jeffery: They don't often do it, I guess.

Mr. Barron: I am glad you called attention to it.

Mr. Cowan: I see the rate to Thebes from all stations on your line for lumber is ten cents, out of which you get five cents, and the Iron Mountain gets five.

Mr. Barron: Well, that is a division of three cents under the junction rate, just as it is in the other cases, outside of cotton.

Mr. Cowan: I wanted to ask what the cooperage company pays for getting its logs in.

Mr. Barron: It pays one cent per 100 pounds. Those logs are not worth more that 50 per cent of the value of the other logs.

Mr. Cowan: I notice that you do not have the blanket system of rates on lumber from your stations, but a two cent arbitrary above the average. I do not know whether it is an arbitrary, but it is two cents above the St. Louis rate.

Mr. Glasgow: No.

Mr. Barron: We have the blanket system, but it is not the same rate as the Poplar Bluff rate, it is a group rate.

382 Mr. Cowan: It is two cents more from stations on your line than from Poplar Bluff?

Mr. Barron: Yes.

Mr. Glasgow: But the whole line of stations on his line are grouped.

Mr. Cowan: Is there a blanket system of rates from the locality of Poplar Bluff on Iron Mountain stations?

Mr. Barron: Yes, sir, but the blanket is not as big as it is farther south.

Mr. Cowan: How far down does this ten cent rate extend below Poplar Bluff?

Mr. Barron: I do not know; but I do know that a point 15 miles south of Poplar Bluff carries a $10\frac{1}{2}$ cent rate.

Mr. Cowan: How far north of Poplar Bluff does the ten cents rate apply?

Mr. Barron: That I do not know.

Mr. Cowan: Do you know the extent of the blanket to which the ten cent rate applies from stations on the Frisco line to St. Louis?

Mr. Barron: No, sir, but on the same parallel of latitude as the southern terminus of our road, the Frisco's rate to St. Louis

383 is 12 cents, the same as ours; that is a point a few miles east of the southern end of our road.

Mr. Cowan: A man doing business on your line and shipping from stations on your line, either logs or lumber, would have to pay on the basis of two cents more than he would for an equal distance from St. Louis on the Iron Mountain or the Frisco. Your rates are two cents higher.

Mr. Barron: No, sir. From a point on the Frisco as far south from St. Louis as our stations he would pay the same. He would pay a little more if he shipped over our road than he would if he shipped on the Iron Mountain from a point about as far south.

Mr. Cowan: You receive from the Frisco on shipments to Cairo also one-half of the ten cent rate. Now, you spoke about them outtrading you on the cotton. By what sort of means were you able to get the Frisco Railroad and the Iron Mountain Railroad to give you one-half of the rate to Cairo and to Phebes; what inducement was there that would induce them to give you half the rate for the service you performed, and they take it and haul it on to Phebes or Cairo for the same amount they give your company?

Mr. Barron: Well, they give us a division of three cents
384 under the junction rate, and we haul it, say 35 miles to the mill, deliver it to the mill, switch them in and empty car and get the load and carry it out and haul it three-quarters of a mile, and they will haul it 70 miles. We will haul five cars 35 miles and they will haul one car 70 miles, and I think that we are not getting any more than we are entitled to.

Mr. Jeffery: What is the through rate?

Mr. Barron: I think ten cents; I am not quite sure.

Mr. Cowan: What is the distance from Popular Bluff to Thebes?

Mr. Barron: I should say 60—65 or 70 miles. I am not sure.

Mr. Cowan: Do you know what expense is involved in delivering at Thebes?

Mr. Barron: No, sir.

Mr. Cowan: Nor Cairo?

Mr. Barron: No, sir. I understand there is a bridge toll there.

Mr. Cowan: How much do you understand the bridge toll to be?

Mr. Barron: A cent and a half.

385 Mr. Cowan: So, after paying the bridge toll, they would have, out of a shipment either to Cairo or Thebes, $3\frac{1}{2}$ cents left, $1\frac{1}{2}$ cents off five cents.

Mr. Barron: Well, assuming those figures are correct, that is so; but they only haul one car, while we have to handle six.

Mr. Cowan: Well, but at all events, three and one-half cents is what the net would be after they paid the bridge toll at Thebes or Cairo.

Mr. Barron: It is three cents less than their regular rate, whatever that will be.

Commissioner Harlan: Mr. Jeffery, is there a bridge toll at Thebes?

Mr. Jeffery: Yes, I think there is. It is a bookkeeping proposition, for the reason that the Iron Mountain and the Cotton Belt and one other road own the Bridge, and the Iron Mountain, for instance, gets one-third back of everything that goes over it.

Mr. Cowan: Let me ask at this point, Mr. Jeffery, however, it is a very expensive bridge, and you would not be making any money on your investment on one and one-half cents per 100 pounds.

386 Mr. Jeffery: I could not say about that.

Mr. Cowan: What did the bridge cost, do you know?

Mr. Jeffery: I haven't any idea.

Mr. Cowan: Now, you handle some carloads of lumber from stations on your line, where there are some small saw mills where you do not handle the logs at all, but just handle the lumber?

Mr. Barron: Yes, sir.

Mr. Cowan: In those case- you would haul the lumber, just one car?

Mr. Barron: Yes.

Mr. Cowan: Down to the junction point of delivery?

Mr. Barron: Yes.

Mr. Cowan: And get five cents per 100 pounds for it, while the railroad would take that and deliver it to Thebes or Cairo for the other part of the rate?

Mr. Barron: Yes, sir; in those instances that is true.

Mr. Cowan: Your rates generally on that line for everything including lumber are a differential higher than the junction point rate to the outgoing destinations on the Mississippi River. That is, it appears so here?

Mr. Barron: I do not think the classes are stated on here.

387 Mr. Cowan: No, but you stated a while ago that the rates were higher on points on your line than they are from junction points.

Mr. Barron: Yes, sir; they are.

Mr. Cowan: Your New York rate, however, is the same on cooperage to New York—New York is the same rate, and it is also the same to New Orleans from stations on your line as from Poplar Bluff?

Mr. Barron: Yes, sir.

Mr. Cowan: Is the cotton rate from points on your line the same as from the junction point?

Mr. Barron: No, sir, it is higher.

Mr. Cowan: How much higher; do you remember?

Mr. Barron: No, I do not remember.

Mr. Cowan: That will be shown by the tariff anyway?

Mr. Barron: Yes.

Mr. Cowan: That is all. I wanted to inquire of Mr. Glasgow if there has been any map or drawing of the track connections at Poplar Bluff, showing the location of the industries, the switch tracks and their connection with the Iron Mountain and the Frisco.

Mr. Glasgow: Nothing further than I have already offered in evidence.

388 Mr. Cowan: I did not look at it.

Mr. Glasgow: It did not show the terminal connections.

Mr. Cowan: I suggest in all these cases there ought to be a drawing to show the terminal connections.

Mr. Glasgow: What is the purpose of that?

Mr. Cowan: It enables the eye to see, better than a verbal description.

Mr. Glasgow: You will have a drawing showing your tracks from the mill to the railroad?

Mr. Barron: Yes, sir.

Mr. Coleman: Your cooperage rates from points on your line are the same as from junction points to New York and other points, are they not?

Mr. Barron: To New York and New Orleans they are the same.

Mr. Coleman: You do not add the two cent arbitrary?

Mr. Barron: We do on cooperage to everywhere except those two points.

Mr. Coleman: The rate on lumber carries an arbitrary of two cents from points on your line over the rate from junction points?

Mr. Barron: Yes, sir.

Mr. Coleman: The effect of that is to enable you to buy
389 from those little men on your line a good deal cheaper?

Mr. Barron: We do not buy from the little men.

Mr. Glasgow: What little men are you referring to?

Mr. Coleman: Haven't you some individual lumber men on the line who would sell, some men with pony lumber mills?

Commissioner Harlan: This witness said when they made a purchase of that sort it was a direct purchase by the cooperage company.

Mr. Barron: Of the Great Western Land Company. Well, the Brooklyn Cooperage Company has purchased some tracts of timber also.

Mr. Coleman: And the effect of that adjustment would be to let them buy it two cents cheaper?

Commissioner Harlan: This witness is talking about the purchase of land and you are referring to manufactured material.

Mr. Barron: We do not purchase any manufactured material.

Mr. Coleman: If they can add two cents on the lumber man's rate out, and make it the same on the cooperage rate, they can get two cents off his price, that is my point.

Mr. Glasgow: I would like to have the gentleman work that out a little more definitely.

390 Mr. Coleman: We will after lunch. You said you complied with all the safety appliance laws?

Mr. Barron: Yes, sir.

Mr. Coleman: And that you spent $6,500 to put ash pans on two engines?

Mr. Barron: No.

Mr. Glasgow: Let us be fair among ourselves.

Mr. Coleman: I wanted to know.

Mr. Barron: No, I said the expense of complying with the safety appliance acts amounted to anyhow $6,500.

Mr. Coleman: What did you do to comply with it?

Mr. Barron: Well, we put air brakes on; something like 115 or 120 vehicles.

Mr. Coleman: I see by this picture you have no air brakes on those cars at all.

Mr. Barron: No, you do not see anything of the kind.

Mr. Coleman: Well, show me them.

Mr. Barron: I am not going to show them. They are there all right; like the drummer's overcoat.

Mr. Glasgow: You find them.

Mr. Coleman: You cannot find them, either; they are not there.

391 Mr. Glasgow: That is a puzzle picture. You find the air brakes.

Mr. Coleman: How many ash pans did you put on these engines?

Mr. Barron: We did not put any ash pans on. I said that we had complied with the safety appliance acts down to the furnishing of the ash pans.

Mr. Coleman: That was all you did?

Mr. Barron: No, I did not say that was all we did.

Mr. Coleman: Well, we don't seem to connect up, for some reason.

Mr. Barron: I mean to say that our engines have got the ash pans that you can dump without having the fireman go underneath it. The equipment is fixed that way. It is also fixed with air brakes, and we put them on, and it cost something between $5,000 and $6,000 to do that thing alone. They are also equipped with the required steps and grab irons and hand brakes, and the tops of the box cars have got these running boards on.

Mr. Coleman: That is all.

Mr. Cowan: Just one question. The cooperage that is shipped from your manufacturing establishment principally goes
392 to New York and New Orleans?

Mr. Barron: Yes, sir; principally. It goes to other points but most of it goes to those two points.

Mr. Cowan: That is because the owner of the mill, or the practical owner, consumes the cooperage at the sugar manufacturing plants in the vicinity of those two places?

Mr. Barron: Yes, sir. Now, those cooperage rates were made in 1899, before the organization of the Butler County Railroad or the participation by the railroad in the rate, and they are the same now as they were then.

Examiner Burchmore: Where did those rates apply from then?

Mr. Barron: They applied from Linstead.

Examiner Burchmore: Well, but does not Linstead take the Poplar Bluff rate?

Mr. Barron: Yes, sir, and those rates are the same as the Poplar Bluff rates. They are the Poplar Bluff rates; that is what they are.

Commissioner Harlan: Is your railroad paying dividends?

Mr. Barron: No, sir, it has paid in the five years one dividend of four per cent, but it ought not to have paid that.

Commissioner Harlan: It could have paid it? It did pay it?

393 Mr. Barron: It had borrowed some money, and did not spend all that it had borrowed, and it had that surplus and paid a dividend with it, and afterwards it had to borrow more. We have had to borrow some $15,000 to $20,000 to pay our bills in the last two years.

Commissioner Harlan: You file your reports with the Commission, I believe?

Mr. Barron: Yes.

Commissioner Harlan: That shows your surplus account, if you have any?

Mr. Barron: Yes, sir.

Mr. Glasgow: Will you state, please, what is the population of Poplar Bluff?

Mr. Barron: About 8,000.

Mr. Glasgow: I want you also to state to the Commission whether this man Palmer that you spoke of, who made this contract or agreement with one of the roads for trackage—he sold out all his interests there to the Brooklyn Cooperage Company afterwards?

Mr. Barron: Mr. Palmer owned the land in 1899 and made that contract in his own name. In 1902 he sold all his land to the Brooklyn Cooperage Company.

394 Mr. Glasgow: So, at the time the contract was made which has been referred to, Palmer owned the lands?

Mr. Barron: Yes, sir.

Mr. Glasgow: And he afterwards sold those lands to the Brooklyn Cooperage Company?

Mr. Barron: Yes, sir.

Mr. Glasgow: Will you please tell us what is the width of the right of way of the Butler County Railroad?

Mr. Barron: 100 feet.

Mr. Glasgow: Have you had accidents on that road for which you have been — under the Missouri statute applicable to carriers?

Mr. Barron: Yes, sir.

Mr. Glasgow: How many?

Commissioner Harlan: We will not stop on the details of that. If you have been held, that covers the question. It is not necessary to go into detail.

Mr. Barron: Yes, sir, we have been held for that, for litigated contests.

Commissioner Harlan: You have so stated.

Mr. Glasgow: One more question. Your company is engaged in extending its road as the development requires in that

395 community?

Mr. Barron: Yes, sir. We have in contemplation at the present time the extension of the road ten miles south into Arkansas.

Mr. Glasgow: A further extension of the Butler County Railroad?

Mr. Barron: Yes, sir.

Commissioner Harlan: Did Mr. Palmer own that land in his own right or as trustee?

Mr. Barron: In his own right.

(Witness excused.)

Whereupon, at 1:00 P. M., a recess was taken until 2:00 P. M.

396 After Recess.

2:00 P. M.

Mr. Green: My name is Marcellus Green, of Jackson, Mississippi. I represent the Fernwood & Gulf. I do not exactly understand the status here. The controversy, as I understand it, is a controversy growing out of the rates on the west side of the river under similar circumstances, and my clients have been summoned

here by a notice in these proceedings, to which they are not a party, and I am really embarras-ed to know exactly the status that I occupy, and I would be glad if your Honor would advise me.

Commissioner Harlan: Well, you have been made a party to the investigation which the Commission is making, and have been served with a notice.

Mr. Green: We are, then, considered as being parties defendant to this controversy on the west side of the river?

Commissioner Harlan: Of course you are only interested where you are, and with what you are doing there.

Mr. Green: There is no controversy on the east side of the river between the main lines and——

Commissioner Harlan: Are you receiving allowances?

Mr. Green: We are getting a published division on the
397 through rates filed with the Commission.

Commissioner Harlan: That is the controversy here. You had better be here to justify your case.

Mr. Green: There are hundreds of people interested in these several proceedings. I did not know until yesterday on a telegram from my client, who found out that he was summoned here to be present and answer. Now, is it not possible for your Honor to so adjust this matter that all of us need not be held dancing in attendance here from day to day?

Commissioner Harlan: Have you any suggestion to make as to how it is to be done?

Mr. Green: Yes, sir, I would make this suggestion, that your Honor take the list of the several carriers or companies in controversy and then assign a day for the hearing of so many on this day and so many on the next day and so many on the next day.

Commissioner Harlan: We cannot spend our time in this way. We are dealing with the commerce of the country, and we have got to move, and you have got to be here to present your case as it is called. Now, I am doing the best I can to represent all interests——

Mr. Green: I see the difficulties in your way, but would
398 it not be possible for our people—we are really outside of the controversy on this west side, and we have no interest in it——

Commissioner Harlan: I direct your attention again to the suggestion I have just made. The Commission does not understand you are interested in the situation west of the river. The Commission is interested on the east side of the river. You are getting an allowance, and that is what the Commission wants to know about.

Mr. Green: Of course every railroad is getting an allowance in that sense.

Commissioner Harlan: All I can say to you is perhaps to indicate that the east of the river line perhaps will not be called until Monday. Now, if they are called—I do not think they will be called—but your judgment about that is perhaps as good as mine. We are going to push this thing as rapidly as possible. If the

eastern lines are called before Monday, they will have to be here. You know who they are, and you might arrange with them as to who will be here tomorrow in case they are called. I do not think they will be called. Perhaps we can say that the east of the river lines will not be called until Monday.

399 Mr. Brady. That was the question I was about to ask on behalf of the road I represent.

Crossett Railway Company.

Mr. Gaughan: Mr. Trieschmann will take the stand.

A. TRIESCHMANN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: State your name.

Mr. Trieschmann: A. Trieschmann.

Commissioner Harlan: Where do you reside?

Mr. Trieschmann. Crossett, Arkansas.

Commissioner Harlan: In what business are you engaged?

Mr. Trieschmann: Engaged in the sawing of lumber, and as auditor and traffic manager of the Crossett Railway Company.

Commissioner Harlan: For what lumber company do you sell lumber?

Mr. Trieschmann: Crossett Lumber Company.

Commissioner Harlan: Where is its mill?

400 Mr. Trieschmann: At Crossett, Arkansas.

Commissioner Harlan: Where is its general office?

Mr. Trieschmann: At Crossett.

Commissioner Harlan: Does it lumber its own forests?

Mr. Trieschmann: It does.

Commissioner Harlan: How long has the Crossett Lumber Company been engaged in business at Crossett?

Mr. Trieschmann: Eight years.

Commissioner Harlan: Have you been with them all that time?

Mr. Trieschmann: Not at Crossett all that time. I think about seven years.

Commissioner Harlan: Are they interested elsewhere as lumber people?

Mr. Trieschmann: No, sir—now, do you mean the stockholders or the company?

Commissioner Harlan: Well, did the company succeed any partnership?

Mr. Trieschmann: No.

Commissioner Harlan: What is the significance of your inquiry, then?

Mr. Trieschmann: The stockholders have interests in other

401 companies, but the Crossett Lumber Company has not.

Commissioner Harlan: Who are the large stockholders of your company?

Mr. Trieschmann: Mr. E. S. Crossett and Dr. J. W. Watzek and C. W. Gates; they are the large stockholders.

Commissioner Harlan: Are they engaged elsewhere and in other lumber companies?

Mr. Trieschmann: They are.

Commissioner Harlan: Where?

Mr. Trieschmann: They are engaged in the lumbering business at Fordyce, Arkansas; Lockhart, Alabama, and in Oregon; I do not know what place in Oregon.

Commissioner Harlan: What is the extent of their forest near Crossett; how many acres of timber land do they own?

Mr. Trieschmann: The fee simple lands aggregate something like 200,000 acres, and their timber deeds that are part of the holdings but not fee simply lands.

Commissioner Harlan: How many such acres have they; timber deeds? Was that included in the 200,000?

Mr. Trieschmann: No; I should judge there is close to 50,000 acres; I am speaking in round figures and not accurately. I do not know.

402 Commissioner Harlan: Well, for the most part, do they lie north and to the east of Crossett?

Mr. Trieschmann: They lie north and south and west, and some east, but not a great deal east.

Commissioner Harlan: Where is the Crossett Lumber Company's mill?

Mr. Trieschmann: It is at Crossett.

Commissioner Harlan: And where is it now engaged in timbering?

Mr. Trieschmann: At Crossett.

Commissioner Harlan: Do you mean to say there is lumbering going on right around Crossett, where you are getting the logs?

Mr. Trieschmann: Do you mean the logging operations?

Commissioner Harlan: Yes, the logging operations.

Mr. Trieschmann: The logging operations at the present time are about 20 miles north of Crossett.

Commissioner Harlan: How do the logs get to the mill at Crossett?

Mr. Trieschmann: They are hauled over the Crossett Railway.

Commissioner Harlan: Tell us about that railway; when was it organized?

403 Mr. Trieschmann: The first organization I think was in 1905. I will have to go to the records for that, because my connection has only been two years, and I would not know.

Commissioner Harlan: You think it was incorporated in 1905?

Mr. Trieschmann: I think the first incorporation was in 1905.

Commissioner Harlan: Had the road been built prior to the incorporation of the railroad company?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Built by the Crossett Lumber Company?

Mr. Trieschmann: Yes.

Commissioner Harlan: In 1905, before the railroad was chartered, what was the distance from which logs were being hauled to the mill at Crossett?

Mr. Trieschmann: Something like eight or ten miles. I do not remember that, either; it could not have been less, I think, though, than ten miles. That, however, does not mean that the first year's logging was done ten miles away from the mill, because the first year's logging was probably done within two or three miles.

Commissioner Harlan: Then since the incorporation of the railroad company, the logging operation has moved farther to the north?

404 Mr. Trieschmann: Yes, sir.

Commissioner Harlan: And the haul is now about 20 miles?

Mr. Trieschmann: About 20 miles.

Commissioner Harlan: What is the capital stock of the Crossett Lumber Company?

Mr. Trieschmann: It is $25,000.

Commissioner Harlan: Who owns that stock?

Mr. Trieschmann: It is owned practically by the stockholders of the Crossett Lumber Company.

Commissioner Harlan: Substantially the same investment?

Mr. Trieschmann: Substantially the same.

Commissioner Harlan: Do you know what the cost of that road was?

Mr. Trieschmann: The cost of the original road was $30,000.

Commissioner Harlan: For how many miles?

Mr. Trieschmann: Ten miles.

Commissioner Harlan: And subsequently ten additional miles were built?

Mr. Trieschmann: Yes, sir; but not by the railroad company. The ten additional miles is a leased track, the Crossett Railway Company is paying a lease for the use of the ten miles beyond

405 the original ten miles.

Commissioner Harlan: Let us go back to the first. The Crossett Lumber Company built ten miles of road before the railroad was organized?

Mr. Trieschmann: Yes.

Commissioner Harlan: To whom does that belong now?

Mr Trieschmann: The Crossett Railway Company.

Commissioner Harlan: When was it transferred to them?

Mr. Trieschmann: I think it was in 1905.

Commissioner Harlan: Shortly after it was incorporated?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Did the Crossett Railway Company pay anything for that road?

Mr. Trieschmann: Yes.

Commissioner Harlan: What did it pay?

Mr. Trieschmann: Stock.

Commissioner Harlan: To what amount?

Mr. Trieschmann: $30,000.

Commissioner Harlan: What is the capital stock of the road?

Mr. Trieschmann: I mean $25,000. I got my figures wrong.

Commissioner Harlan: For that amount in stock, the railroad

company acquired fee simple title to the right of way of
406 about ten miles of railroad?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: And with the track and steel and equipment?

Mr. Trieschmann: Yes, sir, it included two engines.

Commissioner Harlan: It included two engines?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: No other equipment?

Mr. Trieschmann: No other equipment at that time, excepting working equipment, such as hand cars.

Commissioner Harlan: Are we to understand that those ten miles only cost $25,000 to build in the beginning?

Mr. Trieschmann: I really do not know what it cost. I would have to look at the original records. I have no knowledge of that whatever.

Commissioner Harlan: What was the northern terminus of the road at that time?

Mr. Trieschmann: The northern terminus of the road at that time was what we call Stephens.

Commissioner Harlan: And was that ten miles away?

Mr. Trieschmann: Yes, about ten miles.

Commissioner Harlan: You say after the road was incor-
407 porated, ten additional miles were constructed?

Mr. Trieschmann: Not at one time.

Commissioner Harlan: But altogether?

Mr. Trieschmann: Altogether, up to the present time, ten additional miles have been constructed.

Commissioner Harlan: Who built that additional road?

Mr. Trieschmann: The Crossett Lumber Company built that ten miles of additional road.

Commissioner Harlan: Who owns this now?

Mr. Trieschmann: The Crossett Lumber Company.

Commissioner Harlan: By whom was that mileage built? Did the Crossett Lumber Company do it under a contract?

Mr. Trieschmann: I think most of it was done under contract? I really don't know about that.

Commissioner Harlan: As a matter of fact, was not that built by the Crossett Railroad Company for the Crossett Lumber Company?

Mr. Trieschmann: No, it was not.

Commissioner Harlan: Who owns that track at this time?

Mr. Trieschmann: The Crossett Lumber Company.

Commissioner Harlan: Who operates it?

Mr. Trieschmann: The Crossett Railroad Company operates it.

408 Commissioner Harlan: Under what sort of a contract?

Mr. Trieschmann: Under a lease.

Commissioner Harlan: Have you a copy of that?

Mr. Trieschmann: It is on file with the Commission.

Commissioner Harlan: Very well.

Mr. Gaughan: Will that be a part of this record?

Commissioner Harlan: If it is on file, it will be part of the record.

Mr. Gaughan: I would like to have it understood that all the contracts and papers we have on file with the Commission be included in the record.

Commissioner Harlan: Very well; it will be so understood. You are sure that is filed with the Commission?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: When was it filed?

Mr. Trieschmann: I think it was filed about 30 days ago, at a request from the Commission.

Commissioner Harlan: Has the railroad company any share in that lease?

Mr. Trieschmann: They have not.

Commissioner Harlan: What is the character of the road first constructed to Stephens: what is the character of the roadbed
409 and rails.

Mr. Trieschmann: It is 45 pound rail, and it is in first class order.

Commissioner Harlan: Well ballasted?

Mr. Trieschmann: It is well ballasted.

Commissioner Harlan: What about the additional ten miles.

Mr. Trieschmann: It is of the same character.

Commissioner Harlan: Same kind of rails?

Mr. Trieschmann: Same kind of rails.

Commissioner Harlan: Who are the officers of the Crossett Railway Company?

Mr. Trieschmann: Mr. C. W. Gates is president and E. W. Gates is vice-president and myself, traffic manager and auditor.

Commissioner Harlan: Are those gentlemen also officers of the lumber company?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: What is their office in the lumber company?

Mr. Trieschmann: Mr. C. W. Gates is president, E. W. Gates is manager, and myself, assistant manager.

Commissioner Harlan: Do each of you get a salary from
410 the railway company?

Mr. Trieschmann: We do not.

Commissioner Harlan: You get a salary only from the lumber company?

Mr. Trieschmann: Yes.

Commissioner Harlan: Have you any clerks in the employ of the railroad company?

Mr. Trieschmann: Yes.

Commissioner Harlan: How many?

Mr. Trieschmann: One.

Commissioner Harlan: What is his salary?

Mr. Trieschmann: His salary is $100 per month.

Commissioner Harlan: Paid by the railroad company?

Mr. Trieschmann: Yes.

Commissioner Harlan: Does he do any work for the lumber company?

Mr. Trieschmann: Yes.

Commissioner Harlan: What work does he do for the lumber company?

Mr. Trieschmann: It is just clerical work of various kinds.

Commissioner Harlan: Is he paid by the lumber company also?

411 Mr. Trieschmann: Yes, sir.

Commissioner Harlan: How much?

Mr. Trieschmann: It is a joint salary. This $100 per month is supposed to cover any and all clerical work of the one man, but the clerical work of the railroad company is divided between two or three men.

Commissioner Harlan: I do not quite understand it. There is one man that does the work and one man gets the salary?

Mr. Trieschmann: No, one man does not do all the work.

Commissioner Harlan: My question was how many clerks you had, and you said one, and I asked what salary he got, and you said $100 a month.

Mr. Trieschmann: Well, he does not get that whole $100.

Commissioner Harlan: Well, what part does he get?

Mr. Trieschmann: Well, $100 is paid by the railroad company for the clerical work.

Commissioner Harlan: And the railroad company appropriates that amount every month for its clerical work?

Mr. Trieschmann: Yes; that is——

Commissioner Harlan: Is that sum paid to one or more clerks?

Mr. Trieschmann: That is paid to more than one.

412 Commissioner Harlan: Give the names of the clerks who have got that $100 last month.

Mr. Trieschmann: Byron Kemp.

Commissioner Harlan: How much did he get?

Mr. Trieschmann: I don't know exactly how that is divided unless I would look up the record.

Commissioner Harlan: Was it divided among two or three or four, or how many clerks; do you know that?

Mr. Trieschmann: It is just for the clerical service that is performed.

Commissioner Harlan: It is the appropriation, then, by the railroad company for all its clerical work?

Mr. Trieschmann: Yes.

Commissioner Harlan: And that work is done by clerks otherwise in the employ of the lumber company?

Mr. Trieschmann: Yes.

Commissioner Harlan: And they are also paid by the lumber company?

Mr. Trieschmann: They are; yes, sir.

Commissioner Harlan: So that this $100 as divided among them, is in addition to their monthly salary from the lumber company? I mean, it is paid by the railroad company?

413 Mr. Trieschmann: Yes.

Commissioner Harlan: But it is in addition to what they regularly receive from the lumber company?

Mr. Trieschmann: Yes.

Commissioner Harlan: Do they receive from the lumber company a salary that is identical with the salaries of other clerks in the lumber company that do not do any work for the railroad company?

Mr. Trieschmann: How was that question, again? I do not beiieve I understand it.

Commissioner Harlan: How many clerks has the lumber company?

Mr. Trieschmann: I could not tell you.

Commissioner Harlan: Well, quite a number?

Mr. Trieschmann: About 12 or 15.

Commissioner Harlan: And they have a salary that is more or less an average fixed salary?

Mr. Trieschmann: Yes.

Commissioner Harlan: These three or four clerks that do railroad work, do they get more than the other clerks, counting what they get from the railroad company as part of their monthly earnings?

414 Mr. Trieschmann: Why, yes; they do, that is extra.

Commissioner Harlan: That is the point I wanted to get at.

Mr. Trieschmann: Yes.

Commissioner Harlan: They get the regular average salary from the lumber company, and then get this extra salary from the railroad company?

Mr. Trieschmann: Yes.

Commissioner Harlan: What other employees of the railroad company are there?

Mr. Trieschmann: There are none excepting the operating crews.

Commissioner Harlan: How many——

Mr. Trieschmann: About 40 men.

Commissioner Harlan: The railroad company owns only two locomotives?

Mr. Trieschmann: That is all.

Commissioner Harlan: It has some logging cars?

Mr. Trieschmann: They lease the logging cars.

Commissioner Harlan: From whom?

Mr. Trieschmann: The lumber company.

Commissioner Harlan: How many?

Mr. Trieschmann: About 80 I think is correct.

415 Commissioner Harlan: Under written contracts?

Mr. Trieschmann: There is a contract on file for that, I think. That was done before I knew anything about the railroad business. I do not know whether that contract is on file or whether it is verbal.

Commissioner Harlan: What is the rent paid by the railroad to the lumber company?

Mr. Trieschmann: I think the total aggregate is something like $22,000 a year.

Commissioner Harlan: How much is it a month?

Mr. Trieschmann: Well, it would be one-twelfth of that.

Commissioner Harlan: Don't you pay $2,500 a month to the lumber company for those cars?

Mr. Trieschmann: The records will show.

Commissioner Harlan: But you do not know?

Mr. Trieschmann: No, I would not attempt to say, without looking at the records. The annual report contains that exactly, and it is on file with the Commission.

Mr. Gaughan: If that contract is in writing, and is not on file with the Commission, we would like to have permission to make it part of this record.

Commissioner Harlan: Very well; if you will just have
416 a copy made and forward it to the Commission.

Mr. Gaughan: I do not know whether it is in writing or not.

Mr. Trieschmann: If it is on file, we will have it copied for the record.

Commissioner Harlan: Do the men who compose the train crews do any work other than running those trains?

Mr. Trieschmann: Those 40 men also include the track crews for the maintenance of the railroad.

Commissioner Harlan: Do they do any other work than maintain the track and operate the trains?

Mr. Trieschmann: No, sir.

Commissioner Harlan: Do they load or unload the trains?

Mr. Trieschmann: Yes; they perform all the services in connection with the railroad end of the work.

Commissioner Harlan: Do they load the logs on the cars?

Mr. Trieschmann: No, they do not load the logs on the cars.

Commissioner Harlan: Who does that?

Mr. Trieschmann: The Crossett Lumber Company.

Commissioner Harlan: With their employees?

Mr. Trieschmann: With their employees.

Commissioner Harlan: Who unloads them at the mill?
417 Mr. Trieschmann: The railroad employees.

Commissioner Harlan: Into a pond?

Mr. Trieschmann: Yes.

Commissioner Harlan: Now, you said the lumber company holds about 200,000 acres of land. Is there any timber uncut between Crossett and Stephens at this time?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Belonging to the lumber company?

Mr. Trieschmann: Well, I am not in a position to say who owns that timber. There is quite a lot of timber on the north main line that is still uncut. Some is owned by the Crossett Lumber and some by other individuals.

Commissioner Harlan: Is there any lumbering going on there now south of Stephens?

Mr. Trieschmann: Nothing more than probably tie making and piling.

Commissioner Harlan: That is done by outside interests?

Mr. Trieschmann: Some done by outside interests and some done by ourselves.

Commissioner Harlan: What is the general character of the country; are there any farms there?

Mr. Trieschmann: There are a great many farms at the
418 present time in that part of the country.

Commissioner Harlan: South of Stephens?

Mr. Trieschmann: Yes, south of Stephens. I cannot tell how many, but quite a number of farms in that territory; not directly on the railroad, but adjoining the railroad.

Commissioner Harlan: Well, where is the Crossett Lumber Company now doing the major part of its logging?

Mr. Trieschmann: About 20 miles north of Crossett.

Commissioner Harlan: Where is that with reference to Stephens?

Mr. Trieschmann: That is about 10 miles north.

Commissioner Harlan: In other words, at the end of this additional ten miles that have been built?

Mr. Trieschmann: Yes.

Commissioner Harlan: Is any one else doing any lumbering about the end of this extension of ten miles?

Mr. Trieschmann: Yes.

Commissioner Harlan: Who is doing that?

Mr. Trieschmann: I will have to go to the records to find the names. There are probably half a dozen different parties. I would like——

Commissioner Harlan: Are they companies or individuals?

419 Mr. Trieschmann: Some are companies and some are individuals.

Commissioner Harlan: Are those large operations or small?

Mr. Trieschmann: They are small at the present time.

Commissioner Harlan: Is the Crossett Lumber Company interested directly or indirectly in those operations?

Mr. Trieschmann: They are not.

Commissioner Harlan: Do you do the hauling of the logs?

Mr. Trieschmann: We do.

Commisioner Harlan: To what mill?

Mr. Trieschmann: Well, that product is not hauled to any mill. That product is hauled as it is put on the cars there, either in the form of logs, staves or piling. Let me correct one statement. We do haul logs to another mill at Crossett, the mill which we lease to an outside party.

Commissioner Harlan: The mill that the Crossett Lumber Company owns?

Mr. Trieschmann: Owns and leases to another party.

Commissioner Harlan: Who is now running that mill?

Mr. Trieschmann: The Garretson & Greacon Lumber Company of St. Louis.

Commissioner Harlan: Do they have a large output?

420 Mr. Trieschmann: About 20,000 to 30,000 feet per day.

Commissioner Harlan: Where do their logs come from?

Mr. Trieschmann: From the Crossett Lumber Company.

Commissioner Harlan: Do you mean from the lands of the Crossett Lumber Company?

Mr. Trieschmann: Largely from the lands; yes.

Commissioner Harlan: Who cuts those logs?

Mr. Trieschmann: The Crossett Lumber Company.

Commissioner Harlan: Is that the only outside shipper of logs into Crossett?

Mr. Trieschmann: No, sir.

Commissioner Harlan: Who else ships logs?

Mr. Trieschmann: There are various parties, and I will get up a statement showing the number of cars that these different parties ship.

Commissioner Harlan: From what lands do their logs come?

Mr. Trieschmann: Individual holdings; I would not know the names.

Commissioner Harlan: Is that a large movement?

Mr. Trieschmann: In the aggregate I presume it is probably 50 to 75 cars so far this year.

Commissioner Harlan: Where do those logs go?

421 Mr. Trieschmann: Various places; some are shipped north; some are shipped to Little Rock and various places, for wagon industries largely.

Commissioner Harlan: What do you regard as the point of origin, from a transportation point of view, of those logs?

Mr. Trieschmann: We bill them from Stephens.

Commissioner Harlan: Through to destination?

Mr. Trieschmann: Through to destination; where there are joint through rates.

Commissioner Harlan: What charge do you make up to Stephens?

Mr. Trieschmann: Up to Stephens?

Commissioner Harlan: Yes.

Mr. Trieschmann: That is all in the through rate.

Commissioner Harlan: So the through rate extends to Stephens and back to the log?

Mr. Trieschmann: Back to the place where we have leased.

Mr. Gaughan: Back to the point where the Crossett Railway Company takes charge of them.

Commissioner Harlan: Is there any logging road that joins the Crossett Railroad at any point?

Mr. Trieschmann: I believe not.

422 Commissioner Harlan: Counsel has just said that the point of origin of these logs you have just been speaking of is the point where the Crossett Railroad Company takes charge of them.

Mr. Trieschmann: I thought you meant outside of the Crossett Lumber Company.

Mr. Gaughan: I think the witness misunderstands. Are there not

spur tracks leading out into the timber that the Crossett Lumber Company assembles the logs on the main line from?

Mr. Trieschmann: Yes.

Mr. Gaughan: That is what he has reference to.

Mr. Trieschmann: Yes. I did not know that was the question.

Commissioner Harlan: When did the railway company undertake to operate the ten miles of additional line you have described north of Stephens?

Mr. Trieschmann: I think the lease for the first four miles has possibly been in effect one or two years, the records with the Commission will show that. The second lease for an additional four miles has just taken effect a short time ago.

423 Commissioner Harlan: A matter of a few weeks?

Mr. Trieschmann: Well, more than that; several months.

Commissioner Harlan: If you will send the Commission a copy of that contract or lease. I suppose it is another document, is it not?

Mr. Trieschmann: Yes. Well, I think that is on file with the Commission at the present time.

Commissioner Harlan: Very well. Now, you described 20 miles of railroad operated by the Crossett Company.

Mr. Trieschmann: Well, it should be 18.

Commissioner Harlan: 18?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: And in addition, are there spur tracks or logging roads which run into that track?

Mr. Trieschmann: Yes.

Commissioner Harlan: How many such spur tracks are there, or logging roads?

Mr. Trieschmann: I should judge ten miles; just as a guess.

Commissioner Harlan: And by whom are they owned?

Mr. Trieschmann: They are owned by the Crossett Lumber Company.

424 Commissioner Harlan: Who operates them?

Mr. Trieschmann: The Crossett Lumber Company.

Commissioner Harlan: With what equipment?

Mr. Trieschmann: Their own equipment.

Commissioner Harlan: Including an engine?

Mr. Trieschmann: Including their own engines.

Commissioner Harlan: How many cars have they on those ten miles of logging road?

Mr. Trieschmann: How many have they?

Commissioner Harlan: Yes, the Crossett Lumber Company.

Mr. Trieschmann: I do not know how many, they have some, but the Crossett Railway cars are used largely on those tracks.

Commissioner Harlan: Are those logging roads the roads that reach these other outside people that send logs and staves into Crossett over your railroad?

Mr. Trieschmann: Some are and some are hauled by teams to the main line where we built switches for them to load their cars.

Commissioner Harlan: Now, who does any hauling by wagon?

Mr. Trieschmann: Various parties.

Commissioner Harlan: For what distance?

Mr. Trieschmann: That I don't know. I presume anywhere from one to four or five miles.

425 Commissioner Harlan: Do you haul the logs or staves?

Mr. Trieschmann: Both.

Commissioner Harlan: Do you know how large a tonnage that is?

Mr. Trieschmann: I think it has been about 65 to 75 cars in the last twelve months. It has just recently developed.

Commissioner Harlan: Do the logging roads owned by the railway company carry lumber in any form, either in logs or staves, that did not come from the forest of the Crossett Lumber Company?

Mr. Trieschmann: I am not in a position to say. I am not sure about that.

Commissioner Harlan: Well, what is your best opinion?

Mr. Trieschmann: I think there is some traffic that is hauled over these logging lines before it is delivered to the railway company.

Commissioner Harlan: Have you some special person or company in mind who is doing any lumbering beyond there, and who uses those logging roads?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Well, who?

426 Mr. Trieschmann: There is the Hampton Stave Company, for Fordyce, Arkansas.

Commissioner Harlan: Where do they get their raw material?

Mr. Trieschmann: They buy it from individuals out there.

Commissioner Harlan: Are staves made in mills?

Mr. Trieschmann: No, sir, not in our mill. They have stave mills for that purpose.

Commissioner Harlan: Does this man have a stave mill whom you have just mentioned?

Mr. Trieschmann: They get out the hewed products; what they call stave bolts, and those are transported to the mills.

Commissioner Harlan: Are there any points on your line other than Stephens where there is any population?

Mr. Trieschmann: There are logging camps which constitute a population of about 500 to a camp.

Commissioner Harlan: How many such camps are there?

Mr. Trieschmann: We have two such camps on the line.

Commissioner Harlan: And they are employees of the Crossett Lumber Company?

Mr. Trieschmann: In the main they are.

Commissioner Harlan: Does the lumber company operate company stores?

427 Mr. Trieschmann: They do.

Commissioner Harlan: Are there any outside stores there to supply the lumber camps?

Mr. Trieschmann: Not directly in the camps, but nearby.

Commissioner Harlan: Are there any towns or post offices?

Mr. Trieschmann: I am not in a position to say about any post offices.

Commissioner Harlan: Well, any sort of towns.

Mr. Trieschmann: No, there are no towns out there. I will take that back. There is one town that we supply, that is within one mile of the railroad.

Commissioner Harlan: What do you haul there?

Mr. Trieschmann: We haul merchandise for the people who live there.

Commissioner Harlan: General merchandise?

Mr. Trieschmann: General merchandise.

Commissioner Harlan: How large a town is that?

Mr. Trieschmann: It is just a small country post office, probably two or three stores. I have never been there, so I am not posted.

Commissioner Harlan: Do you run passenger trains?

Mr. Trieschmann: We do not.

428 Commissioner Harlan: Do you carry mail or express?

Mr. Trieschmann: We do not.

Commissioner Harlan: This traffic to the town which you have spoken of, I suppose, is very small?

Mr. Trieschmann: Comparatively small; yes, sir.

Commissioner Harlan: It is all a local movement from Crossett, or do you have any through traffic?

Mr. Trieschmann: We have some through traffic, but that is comparatively small.

Commissioner Harlan: Have you through rates on general merchandise?

Mr. Trieschmann: Yes.

Commissioner Harlan: Class rates?

Mr. Trieschmann: Class and commodity rates.

Commissioner Harlan: How long have they been in?

Mr. Trieschmann: They have been on file for six months, I should say. The tariff is on file with the Commission.

Commissioner Harlan: What was the total tonnage of your railroad for the last fiscal year?

Mr. Trieschmann: That is on file with the Commission. I have not refreshed my memory with those figures.

Examiner Burchmore: Approximating 5,000 carloads?

429 Mr. Trieschmann: Well, I think it is a little less than that; approximately a little over 4,000; between 4,000 and 5,000.

Commissioner Harlan: What percentage was logs from the Crossett Lumber Company?

Mr. Trieschmann: I should judge between 90 and 95 per cent.

Commissioner Harlan: And what percentage was logs or staves manufactured from the forest belonging to the Crossett Lumber Company?

Mr. Trieschmann: About the same per cent.

Commissioner Harlan: You do not quite mean that, do you?

Mr. Trieschmann: Maybe I did not get your question right?

Commissioner Harlan: You say 95 per cent was lumber from the Crossett Lumber Company. That leaves five per cent unaccounted for. Out of the five per cent remaining, how much con-

sisted of logs and staves that had been cut and manufactured by other persons from the land of the Crossett Lumber Company?

Mr. Trieschmann: The entire five per cent; that is, I am just guessing at those percentages.

Commissioner Harlan: Those are approximations?

Mr. Trieschmann: Those figures are all on file with the
430 Commission in detail.

Commissioner Harlan: You do not include this general merchandise at all in your figures?

Mr. Trieschmann: Yes, that is included.

Commissioner Harlan: What percentage of the whole was that?

Mr. Trieschmann: The general merchandise?

Commissioner Harlan: Yes.

Mr. Trieschmann: A very small per cent; probably three or four hundred thousand pounds of that kind of merchandise in twelve months.

Commissioner Harlan: Of that merchandise, how much was to the Crossett Lumber Company's stores and camps?

Mr. Trieschmann: That is in addition to what I gave you.

Examiner Burchmore: With reference to the construction of this road north of Stephens, there is filed with the Commission a copy of a contract entered into in 1906 by the Rock Island Company, the Crossett Railroad Company and the Crossett Lumber Company, which recites that the railway company, meaning the Crossett Railway Company, is, at the request of the lumber company, building a line of railway from Crossett, Arkansas, in a northeasterly direction to Stephens, Arkansas, a distance of 6½ miles, and from
431 Stephens, Arkansas, in a northeasterly direction, a distance of 9½ miles. When completed, said railway's main line will be 16 miles in length. One of the provisions of the contract is that the Crossett Railway Company covenants and agrees with all speed and despatch to complete its railway from Crossett in a northeasterly direction to Stephens, and from Stephens in a northeasterly direction for 9½ miles. With those provisions in this contract read, is your recollection changed so you would now say that the railway beyond Stephens was constructed by the Crossett Railway Company, rather than by the lumber company?

Mr. Trieschmann: I said it was constructed by the lumber company.

Examiner Burchmore: This contract seems to say it was constructed by the Crossett Railway Company.

Mr. Trieschmann: Well, I am not familiar with the details of that contract.

Examiner Burchmore: I have just read that into the record.

Mr. Trieschmann: It is on record for itself.

Examiner Burchmore: After the construction of this line from Crossett to Stephens it was operated—that is, after 1905—by the Crossett Railway Company, and the line beyond Stephens
432 was operated for a time by the lumber company?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: In 1909 or 1910 the Crossett Railway

Company took over the operation of a portion of the line north of Stephens.

Mr. Trieschmann: Four miles.

Examiner Burchmore: What change of conditions or circumstances explains this difference in the operation? Why did the railway subsequently take over the additional mileage, if you know any explanation?

Mr. Trieschmann: Well, I do not know what the explanation was, other than to get the operations under the railroad management.

Examiner Burchmore: I might ask the question a little differently. Why, in the beginning, was the line beyond Stephens operated by the lumber company instead of by the railroad company as one operation?

Mr. Trieschmann: I am not posted to say as to just why that was done.

Commissioner Harlan: Let me ask at this point, is it not true that the operation of this track by the railroad company followed the lumbering as the lumbering went farther back——

433 Mr. Trieschmann: That is true.

Commissioner Harlan: Did not the railroad company take up the operation of the line? You say that is true?

Mr. Trieschmann: That is true.

Commissioner Harlan: Leaving the lumber company to operate the rest of the mileage that went into the forest?

Mr Trieschmann: Yes.

Commissioner Harlan: Why was that so? Why was it so arranged?

Mr. Trieschmann: Well, in getting out the timber, it is hard to determine just what direction you want the line to take. The railroad company did not take over the railroad; it did not lease it until the permanent line had been established, and subsequently would buy it as a part of the main line.

Commissioner Harlan: But this additional ten miles you have described has never been changed, as I understand it, since it was first constructed?

Mr. Trieschmann: It was not all constructed at the same time in the northerly direction.

Commissioner Harlan: But it never was a movable line?

Mr. Trieschmann: No, sir.

434 Commissioner Harlan: Part of the time a portion of that line was operated by the lumber company?

Mr Trieschmann: Yes.

Commissioner Harlan: And the rest by the railroad company?

Mr. Trieschmann: Yes.

Commissioner Harlan: So it was not a question as to being a movable line; the lumber company simply did not turn that part over to the railroad company. Now, why not?

Mr. Trieschmann: I do not know as I can give you an explanation of that. That is out of my jurisdiction. I do not know why that was done.

Examiner Burchmore: Some parties not connected with the Crossett Lumber Company have been carrying on outside logging operations in this region, and you say on land that does not belong to the Crossett Lumber Company.

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Does the Crossett Lumber Company own the stumpage rights on that land or any of it?

Mr. Trieschmann: It might own some, but there is a great deal of product handled that it does not. Where the Crossett Lumber Company owns the stumpage, they would do their own operations.

Examiner Burchmore: Is there any town at Stephens? I
435 did not understand you to say that there was.

Mr. Trieschmann: There is no town there, except a mercantile establishment.

Examiner Burchmore: Is that mercantile establishment operated by the Crossett Lumber Company?

Mr. Trieschmann: It is not.

Examiner Burchmore: It has no relation to it?

Mr. Trieschmann: No relation whatever.

Examiner Burchmore: Are there any considerable number of stores at Crossett?

Mr. Trieschmann: Just one store at Crossett.

Examiner Burchmore: That is the company store?

Mr. Trieschmann: The company store.

Examiner Burchmore: But there is a store at Stephens which is not a company store?

Mr. Trieschmann: Yes.

Examiner Burchmore: And they compete?

Mr. Trieschmann: And they compete.

Examiner Burchmore: What rate does the storekeeper at Stephens pay to get his merchandise from the wholesaling points?

Mr. Trieschmann: There is a through rate published,
436 which tariff is on file, and from points where there are no through rates published, the local rate, as filed with the Arkansas Commission, is charged.

Examiner Burchmore: What is that through rate; that is to say, is that through rate higher than the rate to Crossett?

Mr. Trieschmann: No, sir; I think not.

Examiner Burchmore: The same rate?

Mr. Trieschmann: I think it is the same rate. The tariff will show for itself.

Examiner Burchmore: The lumber company maintains commissaries up in the woods?

Mr. Trieschmann: Yes.

Examiner Burchmore: What freight charges, if any, does the lumber company pay on its supplies for those commissaries?

Mr. Trieschmann: The published Arkansas rate.

Examiner Burchmore: Up to Crossett, or beyond Crossett?

Mr. Trieschmann: Beyond Crossett.

Examiner Burchmore: On the Crossett Railway?

Mr. Trieschmann: Yes, sir.

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Examiner Burchmore: Where there are through rates of freight, it pays the through rate, however?

437 Mr. Trieschmann: If the shipments are handled in that way.

Examiner Burchmore: If the shipments are handled in that way, it is customary to bill them locally to the junction point?

Mr. Trieschmann: No; they are billed through from the shipping point, if it is a commodity that can be handled in that way.

Examiner Burchmore: Has your company published and filed with the Interstate Commerce Commission a tariff of local fares between Crossett and Stephens?

Mr. Trieschmann: Yes, sir, on interstate traffic.

Examiner Burchmore: Class rates?

Mr. Trieschmann: Class rates.

Examiner Burchmore: Do you carry any passengers?

Mr. Trieschmann: We do not.

Examiner Burchmore: Do not people ride on your trains?

Mr. Trieschmann: Employees, and possibly some others; I am not in a position to say about that. I presume there are.

Examiner Burchmore: What other trunk lines does the Crossett Railway connect with, in addition to the Rock Island System?

Mr. Trieschmann: With the Iron Mountain Railway, and

438 the A. L. & G.

Examiner Burchmore: The Arkansas, Louisiana & Gulf?

Mr. Trieschmann: The Arkansas, Louisiana & Gulf.

Examiner Burchmore: What percentage of its outbound tonnage on lumber goes out over each of these companies, in a general way?

Mr. Trieschmann: Well, in a general way I should say 50 per cent goes Rock Island, 40 per cent Iron Mountain and ten per cent the other; that varies according to the car supply; some months it is just the reverse from that.

Examiner Burchmore: Is it true as a general statement that the rates are the same by these three trunk lines?

Mr. Trieschmann: Exactly the same.

Examiner Burchmore: Are the conditions the same?

Mr. Trieschmann: In the main they are. There are some differences; it depends on the territories.

Commissioner Harlan: How far is your mill from the Rock Island tracks?

Mr. Trieschmann: About, I should judge, half or three-quarters of a mile; probably half a mile.

Commissioner Harlan: And from the Iron Mountain tracks?

Mr. Trieschmann: Probably 300 or 400 yards.

439 Examiner Burchmore: Is not your mill right at the junction between the two companies?

Mr. Trieschmann: At the junction between the Rock Island and the Iron Mountain?

Examiner Burchmore: Between the Iron Mountain and the Rock Island; practically at the junction?

Mr. Trieschmann: Practically at the junction; 200 or 300 yards.

Commissioner Harlan: And what allowances do you get from the Iron Mountain?

Mr. Trieschmann: That varies all the way, I think, from two to four and a half cents.

Commissioner Harlan: What is the highest allowance you have ever received from any rate?

Mr. Trieschmann: Four and a half cents.

Commissioner Harlan: Are the Rock Island allowances the same?

Mr. Trieschmann: The same.

Commissioner Harlan: To the same destinations?

Mr. Trieschmann: Well, that varies some; not exactly the same to the same destinations.

Commissioner Harlan: What service do you understand
440 the Crossett Railway Company performs for those allowances?

Mr. Trieschmann: As I understand it, the milling in transit, and the delivering of the lumber to these lines.

Commissioner Harlan: That is, the hauling of the logs from the tree to the mill?

Mr. Trieschmann: Yes.

Commissioner Harlan: And the manufactured lumber from the mill to the main line?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Do you put them on the interchange track of the main line?

Mr. Trieschmann: Yes.

Examiner Burchmore: On shipments of general merchandise, that is, as distinguished from lumber coming into Crossett over the Rock Island and Iron Mountain, and consigned to the company's store at Crossett, does the Crossett Railway Company receive any switching charge?

Mr. Trieschmann: If it is billed through to the Crossett Railway, we do receive part of the through rate.

Examiner Burchmore: As a matter of fact, are not shipments that are intended for the company's store at Crossett, cus-
441 tomarily billed for delivery on the Crossett Railway at Crossett?

Mr. Trieschmann: No, I think most are billed direct.

Examiner Burchmore: What is that switching charge where it is allowed?

Mr. Trieschmann: I do not think there is any switching charge of that kind, except on straight carload lots. There is no switching charge on less than carload lots.

Examiner Burchmore: Is that paid by the consignee or by the Rock Island or Iron Mountain?

Mr. Trieschmann: That switching charge is paid by the railway company, wherever there is a switching charge.

Examiner Burchmore: Does your company issue bills of lading covering outbound shipments of lumber?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Where are they issued?

Mr. Trieschmann: They are issued in the office.

Examiner Burchmore: At Crossett?

Mr. Trieschmann: At Crossett.

Examiner Burchmore: A shipment of logs coming from a point north of Stephens and moving by railroad to Crossett and there milled into lumber and subsequently shipped out as lumber
442 to an interstate destination; would any bill of lading be issued at Stephens or at a point up in the woods covering a carload of logs?

Mr. Trieschmann: It would not.

Examiner Burchmore: The first bill of lading issued on such a transaction would be issued at Crossett?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Would that be issued when the lumber was shipped out of the mill?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: What rate would be applied; the rate in effect at the time the shipment left the woods, or the rate in effect at the time the shipment left the mill?

Mr. Trieschmann: The mill.

Examiner Burchmore: And that rate would be the rate published from Crossett or from Stephens?

Mr. Trieschmann: From Stephens.

Examiner Burchmore: You have a milling in transit privilege published in the tariff?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Are you familiar with the Commission's rulings with regard to transit privileges and practices?

Mr. Trieschmann: I don't know as I am, any late rulings.
443 I kept up——

Examiner Burchmore: The customary transit arrangement at large transit points, such as Chicago, contemplates the surrender by the shipper at transit points, of the inbound billing at the time he ships his product out. Such a practice is not possible on the Crossett Railway under the present methods of billing?

Mr. Trieschmann: I should think not; no, sir.

Examiner Burchmore: You just assume that the logs have come from Stephens?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: As a matter of fact, you know they have?

Mr. Trieschmann: Certainly.

Mr. Gaughan: They could not come from anywhere else.

Examiner Burchmore: Are any waybills issued by the Crossett Railway?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: On lumber moving south, or moving into Crossett?

Mr. Trieschmann: Lumber moving into Crossett?

Examiner Burchmore: Way bills, not bills of lading, but
444 are any way bills issued on movements of logs to Crossett?

Mr. Trieschmann: No, sir.

Examiner Burchmore: They are just handled in the cars?

Mr. Trieschmann: In the cars.

Examiner Burchmore: Is there a card billing on the cars?

Mr. Trieschmann: There is not.

Examiner Burchmore: How can you tell whether a car of logs is intended for your mill at Crossett or for some one else?

Mr. Trieschmann: By reports made by the train crew. I will correct that. There is billing on other logs for other parties. There is a slip billing for them, which is re-billed at Crossett.

Examiner Burchmore: You have no agent at Stephens?

Mr. Trieschmann: No.

Examiner Burchmore: Shipments of merchandise, from state or interstate points, consigned to this storekeeper at Stephens, how do you collect the charges on such a shipment?

Mr. Trieschmann: We keep an account.

Examiner Burchmore: And collect from his monthly or——

Mr. Trieschmann: Well, just whenever it is convenient, probably some days we collect daily and keep an account.

445 Commissioner Harlan: Do you keep separate books of account for the railroad company?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: And report to this Commission?

Mr. Trieschmann: Yes.

Commissioner Harlan: How long have you been doing that?

Mr. Trieschmann: Ever since the Commission required it.

Examiner Burchmore: Are your cars equipped with safety couplers?

Mr. Trieschmann: They are not.

Examiner Burchmore: With air brakes?

Mr. Trieschmann: They are not.

Examiner Burchmore: Are your locomotives equipped with such devices?

Mr. Trieschmann: I am quite sure they are equipped. I am not posted on the mechanical end of it.

Examiner Burchmore: Some of your cars are used for purposes other than the hauling of logs?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Are such cars equipped with safety devices?

Mr. Trieschmann: Yes, sir.

446 Mr. Gaughan: Do you know of any instance where the through rate has been changed between the time the logs started from the woods and the lumber from that log would reasonably be shipped out?

Mr. Trieschmann: I never have.

Mr. Gaughan: As a general rule, how long is it from the time a shipment of logs starts from the woods until it is milled into lumber?

Mr. Trieschmann: Well, anywhere from one week to thirty days. Some might be three months. That would be impossible to state accurately.

Mr. Gaughan: But I mean as a general rule?

Mr. Trieschmann: As a general rule, about two to three weeks.

Mr. Gaughan: Where are they kept, in a pond?

Mr. Trieschmann: What is that?

Mr. Gaughan: Are they kept in a pond?

Mr. Trieschmann: Those logs?

Mr. Gaughan: Yes.

Mr. Trieschmann: The logs are not kept more than 24 hours probably.

447 Mr. Gaughan: That is what I am talking about; from the time the railroad company gets the logs, how long is it before they are turned into lumber?

Mr. Trieschmann: That is liable to happen in five to 24 hours.

Mr. Gaughan: It is rarely ever more than 48 hours, is it?

Mr. Trieschmann: No, sir.

Mr. Gaughan: What is the character of the forest growth in the territory through which your railroad is extended?

Mr. Trieschmann: There are various kinds of hard wood and the pines, pine predominating.

Mr. Gaughan: I wish you would state the different kinds of hard wood that are merchantable.

Mr. Trieschmann: Oak, gun, hickory, some cypress; those are the principal varieties.

Mr. Gaughan: Are those classes of timber now coming into the market?

Mr. Treischmann: They are.

Mr. Gaughan: Is pine timber now coming into the market which was unfit for logs at the time these woods were cut over?

Mr. Trieschmann: Yes, sir.

448 Mr. Gaughan: For what use?

Mr. Trieschmann: For various uses.

Mr. Gaughan: Could you name some of the uses?

Mr. Trieschmann: Some of the lower grades are now being used for box purposes and crate purposes.

Commissioner Harlan: I do not think we will go into that, unless they are made on this line.

Mr. Gaughan: I simply wanted to show the forest products that are still left there, to be hauled by this railway company.

Commissioner Harlan: Well, he says there are such products to be hauled. You need not go into the details.

Mr. Gaughan: I would like to show the extent of it.

Commissioner Harlan: Do you mean in tonnage? Well, proceed and answer the question.

Mr. Gaughan: In a general way, not particularly, of course, but in a general way; is there much of it, or just a little of it?

Mr. Trieschmann: There is a great deal of that character of timber that will have to be cut from now on.

Mr. Gaughan: Is it not a fact that this railroad has extended north near the Saline River bottoms?

Mr. Trieschmann: That is a fact.

449 Mr. Gaughan: Is there not a great deal of hard wood timber in that bottom?

Mr. Trieschmann: Very large quantities.

Mr. Gaughan: Do you know of any one or many people who have

purchased hard wood timber holdings in that territory who expect to have it brought out on this railroad?

Mr. Trieschmann: I know of one party who invested a little over a million dollars. I do not know how many acres that included. I think that is known as the American Timber Company: It is the only large investment that I can recall now.

Mr. Gaughan: State what proportion of the pine timber owned by the Crossett Lumber Company in the territory where the railroad is built has now been cut.

Mr. Trieschmann: About, I should say, 95 per cent of the first cutting.

Mr. Gaughan: In the event the Commission should hold that this railroad is not entitled to participate in the through rates, what would the company do with that road?

Mr. Trieschmann: Well, there are several propositions that might present themselves. We would either have to make an attempt to surrender our charter, and if that was allowed, of course we
450 would take up the track. If it was not allowed, under the laws of Arkansas, we would have to operate trains at a very heavy loss.

Mr. Gaughan: Is there any future for that road? What is the purpose of the owners, or rather, the stockholders of this road, to do with it in the event it is recognized as a railroad entitled to participate in divisions?

Mr. Trieschmann: The purpose is to extend north immediately, connecting with a railroad running south from Wilmar, Arkansas, acquiring that property, which would make an extension of something like 50 miles from Crossett to Wilmar, which would be operated for regular train service.

Mr. Gaughan: Would you inaugurate a passenger business then?

Mr. Trieschmann: We would be compelled to, and we would, because it would be profitable.

Mr. Gaughan: Has that line been surveyed?

Mr. Trieschmann: It has.

Mr. Gaughan: At what cost?

Mr. Trieschmann: I think something like $1,500 to $2,000 was expended for that survey.

Mr. Gaughan: Will you attach a map showing this survey——

451 Commissioner Harlan: I do not think we need that.

Mr. Gaughan: What has been done in the way of developing agricultural industries along the line of this railroad?

Mr. Trieschmann: There have been a great many small farms developed in what was, a few years ago, waste land.

Commissioner Harlan: That whole country is opening up, as all the rest of the state is; is not that about it?

Mr. Trieschmann: In this immediate vicinity it has opened up since the railroad has gone into that country. It was waste land prior to that time, so far as agriculture is concerned.

Mr. Gaughan: Have the stockholders of this company built a cotton gin at Crossett this year?

Mr. Trieschmann: The stockholders of the lumber company have.

Mr. Gaughan: Well, they are the same people?

Mr. Trieschmann: Not this year, but two or three years ago.

Mr. Gaughan: How many bales of cotton did they gin there this year?

Mr. Trieschmann: Ginning is not over, but I think it will reach 1,000 bales.

Commissioner Harlan: Did the Crossett Railroad Com-
452 pany move any of that cotton?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: You have not mentioned it heretofore in your testimony. What did they move?

Mr. Trieschmann: Well, they moved all of it. The gin is on the Crossett Railway Company's tracks.

Commissioner Harlan: Where do they move it; to what point?

Mr. Trieschmann: Some of the cotton has been moved a distance of ten miles.

Commissioner Harlan: Does the flat cotton reach Crossett over your line?

Mr. Trieschmann: Yes, sir; some does.

Commissioner Harlan: How much?

Mr. Trieschmann: I could not tell you. There has been only a few carloads this year.

Commissioner Harlan: Do you carry much of the baled or compressed cotton; do you carry much of that, and from where to where?

Mr. Trieschmann: From the gin, which is a half a mile from the Rock Island tracks.

Commissioner Harlan: You carry the compressed cotton half a mile?

453 Mr. Trieschmann: Yes, sir; whatever that distance is.

Commissioner Harlan: What charge do you make for that service?

Mr. Trieschmann: There is $3.00 per car charged in a published tariff.

Commissioner Harlan: Is that absorbed by the Rock Island?

Mr. Trieschmann: Yes, sir; by either line that takes it.

Commissioner Harlan: Does any other railroad reach the gin?

Mr. Trieschmann: No, sir.

Mr. Gaughan: Is there a physical connection at this point between the Rock Island and the Iron Mountain?

Mr. Trieschmann: There is not.

Mr. Gaughan: How do they get cars from one line to the other?

Mr. Trieschmann: The Crossett Railway Company has to do that switching.

Commissioner Harlan: What charge does it make for that service?

Mr. Trieschmann: $3.00 per car.

Commissioner Harlan: How many cars did you switch last year?

454 Mr. Trieschmann: The records will show; I would not attempt to say, but it was a great number.

Commissioner Harlan: Well, just give us a good, reasonable guess at it.

Mr. Trieschmann: Oh, I should think 50 cars.

Commissioner Harlan: Fifty cars?

Mr. Trieschmann: I should think so.

Commissioner Harlan: During the year?

Mr. Trieschmann: I should think so. A great deal of that switching done—I was not familiar with it at the time.

Mr. Gaughan: You stated the stock of this railway company was held by the same parties who held the stock in the Crossett Lumber Company. Is that stock pooled or held in trust in any way?

Mr. Trieschmann: It is not.

Mr. Gaughan: Are the owners of that stock at liberty to sell it to whomever they please?

Commissioner Harlan: This witness does not know anything about it.

Mr. Gaughan: I think he does.

Commissioner Harlan: I do not think he does. He does
455 not know any better than anyone here in the room knows. He says it is not pooled, and any one knows a man who owns stock may sell it and do what he pleases with his dividends.

Mr. Gaughan: I just wanted to show there was no agreement.

Commissioner Harlan: We will not stop on that. Have you any further questions?

Mr. Cowan: Yes, I have some questions. What is the character of the divisions which you receive; are they evidenced by division sheets with the Rock Island?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: And with the Iron Mountain?

Mr. Trieschmann: Yes.

Mr. Cowan: Where is this town of Crossett in Arkansas, geographically speaking?

Mr. Trieschmann: In the southern part of the state.

Mr. Cowan: What line of the Iron Mountain is that?

Mr. Trieschmann: On the Iron Mountain proper.

Mr. Cowan: Between what points?

Mr. Trieschmann: It is the end of the line.

Mr. Cowan: Running from where?

Mr. Trieschmann: It is a branch from what they call Montrose.

456 Mr. Cowan: And on what part of the Rock Island is it?

Mr. Trieschmann: On the southern extension of the line that runs from Little Rock south, known as the Crossett branch.

Mr. Cowan: Do these division sheets specify what the divisions are to be in all cases or do they leave it to be determined by some other method dependent upon the destination of the lumber in certain cases?

Mr. Trieschmann: No they specify what they are to be in each case.

Mr. Cowan: Are the division sheets filed with the Interstate Commerce Commission or filed in this case?

Mr. Trieschmann: That I do not know. I presume so. The Iron Mountain and Rock Island file those.

Mr. Cowan: With respect to the lumber, the only service you perform is from the mill to the railroad?

Mr. Trieschmann: Yes.

Mr. Cowan: Do you know whether the railroad company has any interest in the tracks from your mills to the railroad?

Mr. Trieschmann: They own them.

Mr. Cowan: Which railroad owns them?

Mr. Trieschmann: The Crossett Railway owns them.

Mr. Cowan: Do the Iron Mountain and the Rock Island
457 have any sidings or switches at Crossett?

Mr. Trieschmann: Yes.

Mr. Cowan: Do they have any connection with your lumber yard?

Mr Trieschmann: No, sir; excepting over the Crossett Railway Company's tracks.

Mr. Cowan: Is there any obstacle to their building spur tracks to your lumber yard?

Mr. Trieschmann: Any obstacles?

Mr. Cowan: Yes.

Mr. Trieschmann: The obstacle is, we would not sell them the land to do it; that is all.

Mr. Cowan: But they could condemn that if they wanted to build?

Mr. Trieschmann: Yes.

Mr. Cowan: Why would you not sell them land if they wanted to build out there for your convenience?

Mr. Trieschmann: Well, it is not convenient.

Mr. Cowan: Why would you not sell them the tracks already built? That would be convenient; you would be willing to do that, would you not?

Mr. Trieschmann: If the consideration was proper; yes, sir.

458 Mr. Cowan: Well, you are not making any money by the operation of the railroad, are you?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: How much were the net earnings on the operation of your railroad?

Mr. Trieschmann: Covering what period?

Mr. Cowan: Well, say, for the year ending June 30th, 1910.

Mr. Trieschmann: The statement is on file with the Commission.

Mr. Cowan: Well, I am just asking you how much it was, if you know.

Mr. Trieschmann: Well, I do not know the exact figures.

Mr. Cowan: Has it paid any dividends?

Mr. Trieschmann: They have not.

Mr. Cowan: Does the lumber company pay any dividends?

Mr. Trieschmann: They have.

Mr. Cowan: You said if the Commission should hold that you are not entitled to a division of rates, you would consider the matter of taking up the tracks. How would the lumber company get the logs, if you did that?

Mr. Trieschmann: We are through cutting in the north territory.

459 Mr. Cowan: You have no use for the railroad for the purpose of getting the logs to the mill?

Mr. Trieschmann: Not after six months from today.

Mr. Cowan: On what ground do you expect to make the rate from Stephens on the lumber, instead of Crossett, if you are not going to cut anything up there?

Mr. Trieschmann: That will have to be changed up.

Mr. Cowan: When you said you were through cutting up there, are you speaking advisedly?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: You have no more timber to bring down that way?

Mr. Trieschmann: No.

Mr. Cowan: So in the event that the Commission should hold you are not entitled to a milling in transit from Stephens, it would not cut any ice, because you are not going to bring anything from there?

Mr. Trieschmann: There would have to be a new charter for a southern extension.

Mr. Cowan: How long has it been since you brought any logs from Stephens; when did you get through cutting?

460 Mr. Trieschmann: I did not say we were through. I say we will be through within six months.

Mr. Cowan: What do you contemplate doing, regardless of what the Commission does, with this road? You have the saw mill there. What are you going to do about getting logs?

Mr. Trieschmann: We are going to log south instead of north.

Mr. Cowan: You say you are going to charter a railroad for that. Is that the idea, or are you just going to build a logging railroad out from Crossett?

Mr. Trieschmann: The purpose is to make an extension and connect with the main line railroad, which will be an eventual distance of over 90 miles.

Mr. Cowan: How far will it be from Crossett, when you build this extension?

Mr. Trieschmann: Thirty miles. Not to the first one, but it will be that when we get through.

Mr. Cowan: How long will it be to the first logs you expect to mill?

Mr. Trieschmann: Probably six or eight miles.

Mr. Cowan: Do you contemplate building a logging railroad to that, or a railroad to get a division of the rate?

461 Mr. Trieschmann: We contemplate making that part of the main line of the railroad.

Mr. Cowan: You say you have a joint agent at Crossett between the railroad company and the lumber company. He keeps his office in the lumber company's office?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: Just what sort of work does he do?

Mr. Trieschmann: The regular railroad work.

Mr. Cowan: Is it loading cars or making out billing, or what?

Mr. Trieschmann: Billing and daily records, demurrage records and claims.

Mr. Cowan: Does he perform that service for the railroad company?

Mr. Trieschmann: He does.

Mr. Cowan: Does he look after the loading of the cars?

Mr. Trieschmann: He does not.

Mr. Cowan: He makes out the billing which accompanies each car that is delivered to the Iron Mountain or to the Rock Island?

Mr. Trieschmann: Yes.

Mr. Cowan: He makes out the way bills and bills of lading?

462 Mr. Trieschmann: Yes, sir.

Mr. Cowan: How many cars do you ship out during a month, say?

Mr. Trieschmann: It varies from 250 to 350, and sometimes 400.

Mr. Cowan: Who is it that determines that he is to have $100 a month; the railroad company or the lumber company?

Mr. Trieschmann: The railroad company.

Mr. Cowan: What man determines that for the railroad company?

Mr. Trieschmann: I do not know.

Mr. Cowan: Does the railroad company have any officer there who confers with this agent in regard to his duties or who supervises what he does?

Mr. Trieschmann: I don't know. He can confer with any of the officers if he so chooses.

Mr. Cowan: They are the same officers of the lumber company?

Mr. Trieschmann: Yes.

Mr. Cowan: They do not get any pay from the railroad company?

Mr. Trieschmann: No.

463 Commissioner Harlan: Is this the same man we were talking of a while ago?

Mr. Trieschmann: Yes.

Commissioner Harlan: Is it not a fact the railroad company pays that money over to the lumber company, and the lumber company disburses it to these several clerks?

Mr. Trieschmann: No. I would like to make myself clear there. That was an arrangement with which I am not familiar, and I would like to get the exact status of it, and file it as evidence in this, so there will be no misunderstanding.

Commissioner Harlan: Very well, let that statement be filed, showing what is done now and what has been done for the last twelve months.

Mr. Cowan: Will you attach a list of the checks you have been giving? The checks will show for themselves whether it is a railroad check or a lumber company check.

Mr. Trieschmann: That will all show.

Commissioner Harlan: You might file copies of the checks.

Mr. Trieschmann: If there are checks.

Mr. Cowan: You pay checks, do you not?
Mr. Trieschmann: No, we pay cash altogether.
Mr. Cowan: Who does?
464 Mr. Trieschmann: The railroad company.
Mr. Cowan: And the lumber company, too?
Mr. Trieschmann: Yes.
Mr. Cowan: Is there not any voucher that is signed up?
Mr. Trieschmann: Yes, sir; just a receipt.
Mr. Cowan: Where does he draw his money? Do they take it around to him and deliver it to him, or does he take a voucher of some sort to the office and get his money? You must keep your money somewhere and not lying around loose.
Mr. Trieschmann: We have regular pay days.
Mr. Cowan: The same paymaster? Do you have a paymaster?
Mr. Trieschmann: Yes, sir.
Mr. Cowan: The same paymaster for the railroad as for the lumber company?
Mr. Trieschmann: No.
Mr. Cowan: Two different paymasters?
Mr. Trieschmann: Yes, sir.
Mr. Cowan: Who are they?
Mr. Trieschmann: Mr. Cannon is paymaster for the Crossett Railway Company.
Mr. Cowan: And who for the lumber company?
Mr. Trieschmann: Mr. Hall.
465 Mr. Cowan: Why do you have a joint agent and separate paymasters?
Mr. Trieschmann: What do you mean by joint agent?
Mr. Cowan: You said you had a joint agent, the lumber company and the railroad company.
Mr. Trieschmann: The lumber company has no agent.
Mr. Cowan: Well, he is an employee of the lumber company, you said.
Mr. Trieschmann: Well, he is not an agent in the sense that the railroad has an agent.
Mr. Cowan: Well, the same man, the same individual, that is joint in the sense of his service. He performs service for the railroad company and the lumber company?
Mr. Trieschmann: Yes.
Mr. Cowan: If he can perform service for them, why should not the paymaster be the same?
Mr. Trieschmann: I do not know any reason why, but he is not.
Mr. Cowan: I thought maybe you could give some explanation of it.
Mr. Trieschmann: There is a separate set of books, is the reason.
466 Mr. Cowan: Well, one man might handle the separate sets of books, just as the other man does in the lumber office. Where do you stay at Crossett?
Mr. Trieschmann: Yes.

Mr. Cowan: In the lumber company's office?
Mr. Trieschmann: Yes.
Mr. Cowan: Do you have charge of it?
Mr. Trieschmann: No, sir; not exactly.
Mr. Cowan: What is your position?
Mr. Trieschmann: Sales manager.
Mr. Cowan: You do not have anything to do with running these offices there?
Mr. Trieschmann: I run my own office.
Mr. Cowan: As sales manager?
Mr. Trieschmann: Yes.
Mr. Cowan: But you do not have anything to do with running the offices of the railroad company or lumber company?
Mr. Trieschmann: No.
Mr. Cowan: You are not posted about a lot of those things and they do not come within your jurisdiction; is not that the case?
Mr. Trieschmann: I can tell you what you want to know, I
466*a* expect.
Mr. Cowan: I do not know; I have asked several things and you were not able to tell what I wanted to know, and of course if it came under your jurisdiction you would be familiar with it.
Mr. Trieschmann: Yes.
Mr. Cowan: You are the sales agent?
Mr. Trieschmann: Yes.
Mr. Cowan: Do you have anything to do with employing or discharging men who operate the saw mill and the operations at the planing mill, and the like?
Mr. Trieschmann: No; each foreman does that himself.
Mr. Cowan: Do you have charge of the foremen?
Mr. Trieschmann: I do not.
Mr. Cowwan: Do you have charge of the engineers of the rail road company?
Mr. Trieschmann: I do not.
Mr. Cowan: Or the sectionmen?
Mr. Trieschmann: I do not.
Mr. Cowan: Or the agent of the railway company?
Mr. Trieschmann: I do not.
Mr. Cowan: Have you examined their books to see what they do?
467 Mr. Trieschmann: Yes.
Mr. Cowan: When?
Mr. Trieschmann: Well, in making up our annual reports. I am not the one that keeps the books.
Mr. Cowan: Are you an official of the railroad company?
Mr. Trieschmann: Yes.
Mr. Cowan: What position do you hold there?
Mr. Trieschmann: Traffic manager and auditor.
Mr. Cowan: If you are auditor of the railroad company you ought to know exactly about how you pay this man who is the joint agent; whether you pay him in cash or by voucher or by check, or in what manner that is done, you being the auditor.

Mr. Trieschmann: That will show in this record.

Mr. Cowan: That business is all kept in the same offices there and all operated together, is it not, the railroad and the lumber company business?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: If I were to go in there, I would not know who was the railroad man and who was the lumber man?

Mr. Trieschmann: Not unless you asked.

Mr. Cowan: Could I find out then?

468 Mr. Trieschmann: Yes.

Mr. Cowan: Take this man who represents both the railroad company and lumber company, how could I find out who he was? I would have to ask him, would I not?

Mr. Trieschmann: You could ask anybody.

Mr. Cowan: They would tell me he was operating for both.

Commissioner Harlan: Judge Cowan, I think we had better leave that man just where he is and pass to some one else.

Mr. Cowan: With regard to that competing store which you said was at Stephens, I believe you said your company was not interested in the store at all.

Mr. Trieschmann: I said that.

Mr. Cowan: Neither the railroad company nor the lumber company?

Mr. Trieschmann: That is right.

Mr. Cowan: And they haul merchandise in there over your line of railroad that moves on through rates to Stephens?

Mr. Trieschmann: How is that?

Mr. Cowan: I think you said they moved some merchandise which comes in on through rates.

Mr. Trieschmann: There are through rates published. I do not know how they order it; whether they order it on locals

469 or on the through rates, but through rates are published.

Mr. Cowan: To Stephens?

Mr. Trieschmann: To Stephens.

Mr. Cowan: You have not a copy of that tariff here?

Mr. Trieschmann: It is on file with the Commission.

Mr. Cowan: Is there a higher rate to Stephens than to Crossett?

Mr. Trieschmann: There is not, not on the through rate?

Mr. Cowan: If it stops at Crossett and is moved out to your store, a similar shipment, I will say, from Memphis is billed to Crossett and goes out to the company's store at Crossett—I believe the company's store is there?

Mr. Trieschmann: Yes, sir; the company's store is at Crossett.

Mr. Cowan: It moves out over the tracks of this railroad company you are auditor of?

Mr. Trieschmann: To Crossett; no, sir.

Mr. Cowan: Where do you get your merchandise shipments which are consigned to the lumber company's store?

Mr. Trieschmann: Get it right at Crossett.

Mr. Cowan: What is Crossett, is it on your track or on the Rock Island?

470 Mr. Trieschmann: It is on the track of the Rock Island and the Iron Mountain.

Mr. Cowan: So a carload shipment would not be switched over onto your track, would it?

Mr. Trieschmann: It would from the Rock Island.

Mr. Cowan: Do you get any division on the merchandise which would be consigned to your company at Crossett?

Mr. Trieschmann: Yes, sir, providing it was billed over the Crossett Railway Company on that through rate.

Mr. Cowan: As a matter of fact, do you get a division of the rate on merchandise and other supplies that come in, consigned to the Crossett Lumber Company?

Commissioner Harlan: I think this witness has been over that ground.

Mr. Cowan: About the inbound.

Commissioner Harlan: Yes. Mr. Burchmore covered all that point.

Mr. Cowan: Well, I did not hear it. I made a note of it, and thought I was noticing it. It will not take but a moment about that, for fear it is not in.

Commissioner Harlan: Just a moment.

Mr. Cowan: All this carload merchandise comes to you on a division of the rates?

471 Mr. Trieschmann: Not all of it, no.

Mr. Cowan: What part does not?

Mr. Trieschmann: Well, the tariffs show as to which railroad we are a party to the through rate.

Mr. Cowan: The tariffs would not show what moved to your railroad.

Commissioner Harlan: The witness said all merchandise of a general nature that came in on joint rates yielded a division to his road, but he did not know the extent of the merchandise that came in on joint rates.

Mr. Trieschmann: It is not necessary to ship it that way.

Mr. Cowan: When a carload goes to Stephens, if such a thing ever happens, would you get the same division of the rate as you would in a carload consigned to your company on your own tracks at Crossett?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: So that the additional service of hauling up there receives no different compensation than what it would on your tracks at Crossett; there is no additional rate up there?

Mr. Trieschmann: No additional rate.

472 Mr. Cowan: Have you any contract with the Rock Island as to the amount of your tonnage that you will deliver to them?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: How much is that?

Mr. Trieschmann: Fifty per cent.

Mr. Cowan: Who made that contract: I mean, acting for your company?

Mr. Trieschmann: I am not sure about that.

Mr. Cowan: Did the lumber company make it?

Mr. Trieschmann: I do not know who made that contract; it was made before I had any connection with the railroad company.

Mr. Cowan: Is that contract, according to your understanding, on file?

Mr. Trieschmann: It is on file with the Commission.

Mr. Gaughan: He was questioned about it a while ago.

Examiner Burchmore: A copy of it filed with the Commission was entered into in 1906 by the Rock Island System while it was called the Rock Island, Louisiana & Arkansas, that is the name of that particular part of the system. The Crossett Railway Company is the party of the second part and the lumber company the party of the third part. It provides that 50 per cent shall be over
473 the Rock Island, and the division shall be so much in cents per 100 pounds.

Mr. Cowan: Is there any contract between the Crossett Lumber Company and the railroad company that the Crossett Lumber Company will deliver its lumber to the Crossett Railroad Company, or whatever the name of this company is?

Mr. Trieschmann: No contract.

Mr. Cowan: You do not know how the Crossett Railroad Company could become assured that it could deliver that amount of tonnage to the Rock Island?

(No response.)

Mr. Cowan: Where is the location of the planer with respect to the tracks of the Rock Island and the Iron Mountain, is it closer than the saw mill?

Mr. Trieschmann: The saw mill is probably closer to the Rock Island, and the planing mill closer to the Iron Mountain.

Mr. Cowan: What amount of territory is used in stacking lumber between these two roads?

Mr. Trieschmann: Anywhere from 20 to 40 acres, I should think.

Mr. Cowan: How far from the Rock Island Railroad is the nearest part of your lumber yard, where your lumber is stacked?

474 Mr. Trieschmann: It must be close to half a mile; between a quarter and a half.

Mr. Cowan: How far is the closest part of your lumber yard to the Iron Mountain?

Mr. Trieschmann: It must be about half a quarter.

Mr. Cowan: Practically almost right on the track? Half a quarter is 200 yards.

Commissioner Harlan: Well, he said 300.

Mr. Trieschmann: Yes, between 200 and 300 yards.

Mr. Cowan: You say the American Timber Company has made an investment of a million dollars in timber. Is that in the direction you contemplate extending this railroad?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: That is to the north?

Mr. Trieschmann: That is right north of our tracks.

Mr. Cowan: You also said you had made a survey in that direction.

Mr. Trieschmann: Yes, sir.

Mr. Cowan: What interest has the American Timber Company in the matter of the extension of this railroad into its timber?

475 Mr. Trieschmann: None whatever.

Mr. Cowan: Are the owners of the Crossett Lumber Company interested in the American Timber Company?

Mr. Trieschmann: None whatever.

Mr. Cowan: In regard to the matter of demurrage, does the Crossett Railroad Company charge the lumber company anything for demurrage?

Mr. Trieschmann: I think not.

Mr. Cowan: How much per diem does the Crossett Railroad Company have on the cars it receives from the Iron Mountain or Rock Island?

Mr. Trieschmann: Forty-eight hours.

Mr. Cowan: Then you have to pay what?

Mr. Trieschmann: One dollar per day.

Mr. Cowan: Do you mean the Crossett Railway Company has to pay one dollar a day?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: You are certain about that, as I understand?

Mr. Trieschmann: I think I am.

Mr. Cowan: Now, you were asked in regard to the rental of those cars. It seems, from the information at hand, that there is some agreement whereby the Crossett Railway Company pays the

476 Crossett Lumber Company $2,500 a month for the lease of some cars. Do you know anything about that?

Mr. Trieschmann: There is a lease, but I do not think that $2,500 per month covers the lease of the cars.

Mr. Cowan: Is there some other contract than the $2,500 contract?

Mr. Trieschmann: There is a contract on file covering that lease, I think. That has been a lease of long standing.

Mr. Cowan: If you are the auditor of the railroad company you ought to be familiar with the books showing what the rental is.

Mr. Trieschmann: That is all on file with the Commission.

Mr. Cowan: But you ought to have it up here in your head, if you are the auditor of the company, it seems like you ought to know something about what the amounts of the lease is, your railroad company is paying to the lumber company, and what it is for.

Examiner Burchmore: Have you a copy of your report here?

Mr. Trieschmann: There is one in my room at the hotel.

Mr. Gaughan: State what the lease is, as near as you remember.

Mr. Trieschmann: The lease for the year, as near as I re-

477 member, is $22,500.

Commissioner Harlan: That covers a rental for the cars, and nothing else?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: Who repairs those cars?

Mr. Trieschmann: The Crossett Lumber Company.

Mr. Gaughan: Does it renew them?

Mr. Trieschmann: They keep them renewed; they have to replace them as they are worn out.

Commissioner Harlan: What is the cost of a logging car?

Mr. Trieschmann: There are different costs; I should judge from $300 to $700 a car.

Commissioner Harlan: Have any been bought since you have been connected with the lumber company?

Mr. Trieschmann: I think not; that is, not complete. We usually buy a portion of a car and make part of it, and just what the total cost of the car is, I would not know until I looked up the figures.

Commissioner Harlan: You would not say it would cost as much as $700?

Mr. Trieschmann: Not for a logging car.

478 Commissioner Harlan: Well, the kind you use; would $300 be a good price for it?

Mr. Trieschmann: I should judge from $300 to $400 a car.

Commissioner Harlan: And this $22,500 is for how many cars?

Mr. Trieschmann: Eighty cars.

Commissioner Harlan: How much a car is that?

Mr. Trieschmann: Well, it would be a little over $250 a car.

Commissioner Harlan: Per year?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: And that goes on year after year?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: The railroad company has not paid any dividends?

Mr. Trieschmann: No, sir.

Mr. Cowan: Does the lumber company carry those cars on its books as an investment, capital account?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: What does it carry those cars at on its books, do you know?

Mr. Trieschmann: They are not kept separate, it is a part of other equipment.

479 Mr. Cowan: You spoke about the logs being milled and put into lumber there, and I understood in 48 hours; I probably misunderstood you. Sometimes it might go as long as a month, I think you said.

Mr. Trieschmann: There were two questions covering that.

Mr. Cowan: I know, and referring your mind to them, I want to ask you if you do not unload your logs into a pond, as is usual with saw mills?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: What is the capacity of this pond? How many do you put in it?

Mr. Trieschmann: It varies all the way from 100,000 feet to one or two million feet.

Mr. Cowan: So as to the identity of the logs, you do not know how long they may be in there before they are milled out?

Mr. Trieschmann: No.

Mr. Cowan: There is no attempt to mill logs out, with respect to the dates they are put in the pond?

Mr. Trieschmann: No.

Mr. Cowan: Do you put them in on the same side or the
480 opposite side from where they are taken out and go up to the saw?

Mr. Trieschmann: The same side.

Mr. Cowan: When your logs are sawed, of course the timber is green and wet and has to be put through the process of drying in some fashion. How long does it take that lumber to get in condition to be put through the planer, in case it is sold?

Mr. Trieschmann: About three days.

Mr. Cowan: That is all.

Mr. Coleman: Do you know that the Act to Regulate Commerce, as amended in 1910, provides or makes it unlawful for a railroad agent to give information to a rival shipper of the business of another shipper?

Mr. Trieschmann: I am not familiar with any such law.

Mr. Coleman: Well, if I tell you that that is the law, can you explain how that joint agent at Crossett can receive information as agent of the railroad company and not give it to himself as agent of the lumber company?

Mr. Trieschmann: How is that?

Commissioner Harlan: Well, the difficulty of that is obvious. We will not go into that.

481 Mr. Coleman: That is all.

Mr. Cowan: You are sales agent. What duties do you perform? Do you stay there at Crossett all the while, or go elsewhere?

Mr. Trieschmann: I stay there most of the time: I go elsewhere also.

Mr. Cowan: Where do you make sales of your lumber; where does it go to?

Mr. Trieschmann: To about 25 different states in the Union.

Mr. Cowan: Do you sell down in Texas?

Mr. Trieschmann: Occasionally.

Mr. Cowan: Oklahoma?

Mr. Trieschmann: Some.

Mr. Cowan: Do you go up there to Oklahoma City, for example?

Mr. Trieschmann: I have never been there.

Mr. Cowan: Do you sell at Kansas City?

Mr. Trieschmann: Sometimes.

Mr. Cowan: Omaha?

Mr. Trieschmann: Yes, sir.

Mr. Cowan: Denver?

482 Mr. Trieschmann: Yes.

Mr. Cowan: Do you go up there?

Mr. Trieschmann: I go to some of those places.

Mr Cowan: Do you sell railroad lumber supplies to railroad companies?

Mr. Trieschmann: Yes.
Mr. Cowan: Do you sell at Chicago?
Mr. Trieschmann: Occasionally.
Mr. Cowan: St. Louis?
Mr. Trieschmann: Yes.
Mr. Cowan: Do you go to those places for the purpose of making contracts for sales?
Mr. Trieschmann: Sometimes.
Mr. Cowan: Where is your chief sale for the lumber you produce down there?
Mr. Trieschmann: The Central States of the United States.
Mr. Cowan: I do not know hardly—you mean up the Mississippi and Ohio Valley and this country north, and the Missiouri Valley?
Mr. Trieschmann: That is what I mean.
Mr. Cowan: As auditor of the railroad company you receive passes, do you not, from the Iron Mountain?
483 Mr. Trieschmann: Yes.
Mr. Cowan: The Rock Island?
Mr. Trieschmann: Yes.
Mr. Cowan: Any other officers of your railroad company receive passes?
Mr. Trieschmann: I think there is one other.
Mr. Cowan: Who is he?
Mr. Trieschmann: The vice-president.
Mr. Cowan: What is his position with the lumber company?
Mr. Trieschmann: Manager.
Mr. Cowan: Does he make sales also?
Mr. Trieschmann: Sometimes. Very seldom.
Mr. Cowan: When you make sales to railroad companies, large institutions, you go there oftentimes to make the contract, do you not?
Mr. Trieschmann: Very seldom. We have traveling men for that purpose.
Mr. Cowan: When you are traveling for the lumber company, making sales, you use your passes that you get from the railroad company on account of being the auditor of the Crossett Railway Company, do you not?
Mr. Trieschmann: Well, that is soliciting business for the
484 Crossett Railway Company.
Mr. Cowan: How is that?
Mr. Trieschmann: That would be soliciting business for the Crossett Railway Company.
Mr. Cowan: To pay it out on lease of logging cars?
(No response.)
Mr. Cowan: The Crossett Railway Company is not making any money, as I understand?
Mr. Trieschmann: Yes, sir, they are.
Mr. Cowan: You said they never paid a dividend.
Mr. Trieschmann: Well, they have a big surplus.
Commissioner Harlan: Tell us about the surplus. What is the amount of it? I was going to inquire.

Mr. Trieschmann: Well, I would prefer to file a statement, in this report, showing the surplus.

Commissioner Harlan: Never mind the exact statement. You can do that later. Tell us now about what the surplus is.

Mr. Trieschmann: I think it must be $10,000 or $12,000—no. it is about $30,000, I think.

Commissioner Harlan: How long has it taken to accumulate that amount?

Mr. Trieschmann: Since 1905.

485 Commissioner Harlan: Pursuing Judge Cowan's question about the free transportation, have you passes on any other than the Rock Island and Iron Mountain?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: On what roads?

Mr. Trieschmann: I do not know that I can recall the exact roads.

Commissioner Harlan: About how many such passes have you?

Mr. Trieschmann: I think about six or seven.

Commissioner Harlan: And the vice-president also has that many?

Mr. Trieschmann: I am not sure about that; I think he has.

Commissioner Harlan: Have your assistant salesmen any passes?

Mr. Trieschmann: No, sir.

Examiner Burchmore: The line north of Stephens now operated by the Crossett Railway Company is still owned by the lumber company?

Mr. Trieschmann: Yes.

Examiner Burchmore: It is leased to the Crossett Railway Company?

486 Mr. Trieschmann: Yes.

Examiner Burchmore: Can you state the terms of that lease with respect to the consideration?

Mr. Trieschmann: I think it is about $400 per month, in round figures.

Commissioner Harlan: That is for the whole ten miles?

Examiner Burchmore: Per mile?

Mr. Trieschmann: That is just the total.

Examiner Burchmore: For how many miles?

Mr. Trieschmann: The full distance.

Examiner Burchmore: Ten miles?

Mr. Trieschmann: No, eight miles. That is also on file.

Examiner Burchmore: What was the cost of construction of that road per mile, in a general way; do you know?

Mr. Trieschmann: Not without referring to the records, no, sir.

Commissioner Harlan: Do you mean you cannot tell in a general way about what it cost?

Mr. Trieschmann: Well, I should judge $5,000 or $6,00 per mile.

Examiner Burchmore: Was not the first contract entered into in the summer of 1909?

487 Mr. Trieschmann: For the four miles?

Examiner Burchmore: For the first four miles.

Mr. Trieschmann: Yes.

Examiner Burchmore: Was not the consideration for that four miles $5,000 a year?

Mr. Trieschmann: I would have to look at the records for that.

Commissioner Harlan: Would you be kind enough to get your annual report?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: Does your lumber company sell any lumber in the State of Arkansas?

Mr. Trieschmann: It does.

Examiner Burchmore: Does it sell any in the State of Louisiana?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: You said it did in Texas. What division is received on joint rates on shipments to points in Arkansas, Louisiana and Texas?

Mr. Trieschmann: $3.00 per car.

Examiner Burchmore: You receive no divisions in cents per hundred pounds?

488 Mr. Trieschmann: No.

Examiner Burchmore: Is there any explanation for that?

Mr. Trieschmann: Other than that we could not make arrangements.

Examiner Burchmore: The trunk lines declined to give you any divisions in cents per 100 pounds?

Mr. Trieschmann: Yes, sir.

Examiner Burchmore: And you have no milling in transit arrangements to those states?

Mr. Trieschmann: No.

Examiner Burchmore: But simply a switching charge which is absorbed?

Mr. Trieschmann: Yes.

Commissioner Harlan: Get your annual report and then come back.

Mr. Cowan: I have one question now. You do not know what it costs you per car to perform that service with the engine of moving the lumber from the place where it is loaded and delivering it to the exchange track, to the Rock Island or Iron Mountain?

Mr. Trieschmann: No, sir, I could not give you that.

Commissioner Harlan: You have no other witness?

489 Mr. Gaughan: I have no other witness, but I want to ask Mr. Trieschmann another question. What is the population of Crossett?

Mr. Trieschmann: Just about 2,500.

Mr. Gaughan: What kind of a town is it?

Mr. Trieschmann: It is a first class little village.

Mr. Gaughan: It has got schools there?

Mr. Trieschmann: Fine schools; yes, sir.

Mr. Gaughan: A public library?

Mr. Trieschmann: A public library and a public hall, and seven or eight churches.

Commissioner Harlan: Does it not come within the class of communities which are ordinarily referred to as company towns?

Mr. Trieschmann: Yes, I think it would come under that class.

Commissioner Harlan: You have no other witness?

Mr. Gaughan: No.

(At 5:20 P. M., at the adjournment of the day's hearing, Mr. Trieschmann reappeared and announced that he desired to make a further statement.)

490 Commissioner Harlan: Mr. Trieschmann, do you wish to make any statement in regard to something you have said heretofore in regard to your testimony?

Mr. Trieschmann: In regard to that $100 a month, I will just refer to our annual report. That is handled as a journal entry in the lumber company's books and also in the railroad company's books, which shows how it is disbursed.

Commissioner Harlan: Then you substitute your annual report in that regard for the explanation you have heretofore given?

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: You said something a moment ago about a plan for disposing of your line to some other carrier.

Mr. Trieschmann: Yes, sir.

Commissioner Harlan: What is that?

Mr. Trieschmann: We have a definite proposition from a trunk line today to buy the Crossett line 20 miles north, running from Crossett north, and if purchased, that trunk line will complete the line to Wilmar that we have had in contemplation, and a proposed line from Wilmar north to Pine Bluff.

491 Examiner Burchmore: What trunk line do you refer to?

Mr. Trieschmann: The Arkansas, Louisiana & Gulf. The president, vice-president and stockholders were at our place only last week and were trying to buy the road. We are awaiting a decision from the Commission. If that road cannot be legally operated by this present ownership then we must sell it, but if it can be, we want to run it north.

Commissioner Harlan: If you run it north, it will be in connection with another spur line called the Wilmar & Saline River?

Mr. Trieschmann: Yes, sir. We will buy that and make a permanent line from Wilmar to Crossett.

Commissioner Harlan: You will have to build how many miles in order to join that road?

Mr. Trieschmann: Two or three miles. That taps all that new timber.

Commissioner Harlan: The next road is the Doniphan, Kensett & Searcy. Is that road present by a representative? Counsel responded this morning for the Doniphan, Kensett & Searcy, and I would like to know if there is anyone here representing that
492 road, the attorney or official or agent of that company.

(No response.)

Commissioner Harlan: The record will show that that road was called.

(At this point Mr. Scott appeared.)

Commissioner Harlan: Have you any witness?

Mr. Scott: No, sir. I wish to make an inquiry. As I understand the situation, the Commission has had its examiners on our property a number of times and in our offices, and has obtained detailed information from us. They have made independent inquiry and have gotten full information as to our property and our method of doing business, and I suppose they have reported the result of those examinations to the Commission, and that the reports are on file. I assume that those reports, together with the reports my companies have made in obedience to the law and to the requirements of the Commission will be taken as a part of the record in this case and would be considered in the final determination of it. Now, if I am correct in that, after conference with my people, that we will be willing to submit the matter to the Commission, provided it is understood, of course, that we suffer no prejudice by reason of the fact that we have not filed here any petition, complaint,
493 pleading or other paper, and that we introduce no other evidence.

Commissioner Harlan: Am I to understand that you renounce the right to present your case?

Mr. Scott: No, sir; we do not renounce the right to present our case.

Commissioner Harlan: Now is the time to present it unless you do. If your people are here, I would like them to rise and be sworn.

Mr. Scott: My client will not be here until tomorrow. I thought I might stop him on the way, if the record could be made up in the way I have suggested. We have entered our appearance here, and are here in open court protesting against the cancellation of the through rates and cutting off of our divisions. I think we may be satisfied with the record as made up from those reports.

Commissioner Harlan: If you represent that road as counsel, it is for you to say what your case will be, and if you are satisfied to let your case stand upon such presentation of it as you have now suggested, it is for you to say.

Mr. Scott: Did I understand your Honor that in passing upon our case you would take up those reports already on file?

494 Commissioner Harlan: I do not know what the Commission will do. The Commission usually fully advises itself from all the information available, but the Commission expected your road, among others, to make its representation at this time.

Mr. Scott: I will ask your Honor to adjourn it until tomorrow, then, as I cannot take it up at this time.

Commissioner Harlan: Well, I see no objection to that. Your case will be called again tomorrow.

Is the Arkansas & Southeastern before the Commission?

Mr. H. L. Fitzhugh: Yes, your Honor.

495 *Central Railway of Arkansas.*

C. W. JONES was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?
Mr. Jones: Fort Smith, Arkansas.
Commissioner Harlan: What is your business?
Mr. Jones: I am secretary, treasurer and general manager of the Central Railway Company of Arkansas.
Commissioner Harlan: What are the termini of that road?
Mr. Jones: Ola, on the Rock Island.
Commissioner Harlan: And what is the other end of it?
Mr. Jones: It is at Brizi, Arkansas.
Commissioner Harlan: Is that a fixed point or a movable point?
Mr. Jones: It is a fixed point.
Commissioner Harlan: What is the mileage between those points?
Mr. Jones: 13.13 miles.
Commissioner Harlan: What is the character of the rail on that road?
Mr. Jones: 60 pound steel.
496 Commissioner Harlan: When was it built?
Mr. Jones: 1906 and 1907.
Commissioner Harlan: You mean the whole road was built at that time, or——
Mr. Jones: It was commenced in 1906 and completed in 1907.
Commissioner Harlan: By whom was the road built?
Mr. Jones: By the Central Railway Company of Arkansas.
Commissioner Harlan: What is the capital of that company?
Mr. Jones: The authorized capital is $2,600,000.
Commissioner Harlan: And the issued capital?
Mr. Jones: $260,000.
Commissioner Harlan: Was that capital issued for cash?
Mr. Jones: The capital stock?
Commissioner Harlan: The capital that is already issued, $260,000, was it issued for cash?
Mr. Jones: I do not understand: I do not get that idea.
Commissioner Harlan: Well, you say that capital was issued. Now, was it——
Mr. Jones: No, not all cash.
Commissioner Harlan: Just explain how much was cash.
Mr. Jones: I think there were about $200 a mile issued.
Commissioner Harlan: $200 a mile for 13 miles?
497 Mr. Jones: Something like that—no, $2,000.
Commissioner Harlan: $2,000?
Mr. Jones: Yes.
Commissioner Harlan: And what property was acquired by the railway company to represent the balance of the issued capital?
Mr. Jones: The right of way, rails, equipment, depots, and so forth.

Commissioner Harlan: How much did that railroad cost?
Mr Jones: It has cost $260,000.
Commissioner Harlan: How much a mile is that?
Mr. Jones: It is a little over $19,000.
Commissioner Harlan: Did that cost include the equipment?
Mr. Jones: The equipment; yes, sir.
Commissioner Harlan: What is the equipment?
Mr. Jones: The equipment consists of five locomotives, 16 flat cars, three box cars, and a passenger coach.
Commissioner Harlan: One passenger coach?
Mr. Jones: One passenger coach.
Commissioner Harlan: And a mail car, mail and express car?
Mr. Jones: That is a combination passenger, mail and baggage car.

Commissioner Harlan: Any bridges on the line?
498 Mr. Jones: There are a number of pile bridges.
Commissioner Harlan: Any grades?
Mr. Jones: The grade is about 1.3, I think.
Commissioner Harlan: Any cuts or fills?
Mr. Jones: Yes, sir.
Commissioner Harlan: What is the general character of the country?
Mr. Jones: It is mountainous, rocky and hilly.
Commissioner Harlan: Who are the officers of this road?
Mr. Jones: Mr. L. L. Siboll, is president; A. F. Coughton, vice-president, and C. W. Jones, secretary and treasurer.
Commissioner Harlan: Where is your general office?
Mr. Jones: They incorporated in Fort Smith, but their business office is at Plainview, Arkansas.
Commissioner Harlan: Incorporated under the general railroad law of Arkansas?
Mr. Jones: Yes.
Commissioner Harlan: How many clerks have you in your general office?
Mr. Jones: There are two at Plainview.
Commissioner Harlan: Is that all at Plainview?
Mr. Jones: Those are all the clerks there. That is, the
499 station agent and his assistant.
Commissioner Harlan: How many crews have you?
Mr. Jones: Three.
Commissioner Harlan: How many men?
Mr. Jones: We average about some 27 to 30 men, including the section men.
Commissioner Harlan: Are you connected with any lumber company?
Mr. Jones: With the Fort Smith Lumber Company.
Commissioner Harlan: What is your relation to that company?
Mr. Jones: Secretary and treasurer and general manager.
Commissioner Harlan: Stockholder?
Mr. Jones: Yes, sir.
Commissioner Harlan: Are the other officers of the railroad company connected with that company?

Mr. Jones: Yes, sir.

Commissioner Harlan: What is their position in your lumber company?

Mr. Jones: They are the same.

Commissioner Harlan: They use the same title?

Mr. Jones: Yes, sir.

Commissioner Harlan: How many stockholders has the
500 railroad company?

Mr. Jones: Ten.

Commissioner Harlan: Are they also the stockholders of the lumber company?

Mr. Jones: Part of them are; there are three, I believe, that are not stockholders of the lumber company.

Commmissioner Harlan: But the road is substantially owned, I assume, by the stockholders of the lumber company?

Mr. Jones: Yes, sir.

Commissioner Harlan: It is practically the same investment; the same interest?

Mr. Jones: Yes, sir. The lumber company furnished the railroad company with the money to build the road; they are practically the same.

Commissioner Harlan: Just how was that done? You say the lumber company furnished the railroad company the money to build the road. The railroad company has stockholders. Did they furnish the money, or did it come directly from the lumber company?

Mr. Jones: Most of it from the lumber company.

Commissioner Harlan: Paid over to the railroad company, and the railroad stock was issued to the lumber company?

501 Mr. Jones: Yes.

Commissioner Harlan: And afterwards transferred to the stockholders of the railroad company?

Mr. Jones: Yes.

Commissioner Harlan: So that practically the entire cost of the railroad company and equipment was furnished by the lumber company?

Mr. Jones: Yes.

Commissioner Harlan: And the railroad company is now practically owned by the lumber company?

Mr. Jones: Yes, sir.

Commissioner Harlan: Where is the mill of the lumber company?

Mr. Jones: Seven miles southwest of the junction with the Rock Island at Ola, at Plainview.

Commissioner Harlan: Where is it with respect to your line?

Mr. Jones: The mill?

Commissioner Harlan: Yes.

Mr. Jones: The mill is located on the Central Railway of Arkansas.

Commissioner Harlan: How far is it from your mill to the
502 Rock Island main line?

Mr. Jones: Seven miles.

Commissioner Harlan: What other line does your railroad company join?

Mr. Jones: None.

Commissioner Harlan: Then your railroad has seven miles of track over which the manufactured lumber is carried?

Mr. Jones: Yes.

Commissioner Harlan: And six miles over which the logs are carried?

Mr. Jones: Yes.

Commissioner Harlan: What acreage does the lumber company own?

Mr. Jones: They have in the neighborhood of 60,000 acres of fine timber, uncut.

Commissioner Harlan: How near is the present logging operation to the mill?

Mr. Jones: It is about seven miles.

Commissioner Harlan: Seven miles?

Mr. Jones: Ten miles to the mill.

Commissioner Harlan: And six miles of that distance is covered by your track?

503 Mr. Jones: The lumber company have a spur track——

Commissioner Harlan: I know that, but six miles of that ten miles is covered by the tracks of the railroad company—or perhaps you had better explain how that is.

Mr. Jones: The spur of the lumber company is four miles from the main line at present. Of course that moves as we cut the timber.

Commissioner Harlan: Where does the spur line leave the railroad company's track, at the mill?

Mr. Jones: No, sir; it is four miles southeast from the the mill.

Commissioner Harlan: Does the track of the Central Railway Company run on the edge of the timber lands owned by the lumber company or through them?

Mr. Jones: The track of the Central Railway of Arkansas runs on the edge of the timber holdings at the present time.

Commissioner Harlan: And the spur track runs down in the forest?

Mr. Jones: Runs into the timber; yes, sir.

Commissioner Harlan: What is the direction according to the compass from the mill to the end of the Central Railway's track?

Mr. Jones: It is southeast.

504 Commissioner Harlan: Then to the north and east of the Central Railway's tracks there is no timber land owned by the lumber company?

Mr. Jones: North of the Central's tracks?

Commissioner Harlan: Yes.

Mr. Jones: Yes, sir.

Commissioner Harlan: In which direction does the spur track run?

Mr. Jones: It runs east from the Central's tracks.

Commissioner Harlan: Are there any other lumber operations around there?

Mr. Jones: There are three mills located on the line, and there are five or six other mills in the vicinity that ship over the railroad.

Commissioner Harlan: Have you a map of your line?

Mr. Jones: I have a map of the line. (Producing blue print.)

Commissioner Harlan: You have been kind enough to show us a map of your road. I understand that it joins the Rock Island at a place called Ola.

Mr. Jones: Yes, sir.

Commissioner Harlan: And then proceeds in a southwesterly direction?

505 Mr. Jones: Yes, sir.

Commissioner Harlan: For about how far?

Mr. Jones: Seven miles, to Plainview.

Commissioner Harlan: And apparently passes around the edge of a mountain?

Mr. Jones: The point of a mountain.

Commissioner Harlan: At that point, as I infer from this map, the lumber lands are owned by the Fort Smith Lumber Company?

Mr. Jones: Yes, sir.

Commissioner Harlan: Then your line swinging around to the south of the mountain, goes for some seven miles to its present terminus?

Mr. Jones: Yes.

Commissioner Harlan: And it makes a loop?

Mr. Jones: Yes.

Commissioner Harlan: And inside of that loop lies this mountain land on which your timber is?

Mr. Jones: Yes.

Commissioner Harlan: And your timber lands extend how far east from the apex of the loop?

Mr. Jones: About 24 miles.

Commissioner Harlan: Then your logging road runs to the

506 north?

Mr. Jones: Well, north and east, or northeast, rather.

Commissioner Harlan: North and east from the south side of this loop?

Mr. Jones: Yes.

Commissioner Harlan: And it runs into timber lands that are owned by the Fort Smith Lumber Company exclusively?

Mr. Jones: Yes, sir; that spur line does.

Commissioner Harlan: Now, is there any lumber south of the south side of the loop of your railroad?

Mr. Jones: Yes, sir.

Commissioner Harlan: Does that belong to the Fort Smith Lumber Company?

Mr. Jones: No.

Commissioner Harlan: To whom does that belong?

Mr. Jones: There is one tract that is south of the Fourche River that is held by the Choctaw Investment Company.

Commissioner Harlan: Where is their mill?

Mr. Jones: They have no mill. That is the land south.
Commissioner Harlan: They are not operating their land?
Mr. Jones: No.
Commissioner Harlan: Are there any mills on your railroad except your own mill?
507 Mr. Jones: Yes, sir.
Commissioner Harlan: What mills are on that line, and where are they?
Mr. Jones: There is one about a mile and a half east of Plainview, and one about three miles east of Plainview. One is owned by J. J. Ford and the other by J. W. Berry.
Commissioner Harlan: Are they on the southern loop of your line or the northern?
Mr. Jones: The southern.
Commissioner Harlan: Are they directly on your line?
Mr. Jones: Yes, sir, they have sidings to both of them.
Commissioner Harlan: What lumber are they using?
Mr. Jones: They are cutting oak and pine.
Commissioner Harlan: From whose land?
Mr. Jones: From their own lands, or from timber which they purchased.
Commissioner Harlan: Is that south of the south line of your land?
Mr. Jones: Yes, sir; south.
Commissioner Harlan: Have they any logging roads?
Mr. Jones: No.
508 Commissioner Harlan: How far from their mill are their logging operations at the present?
Mr. Jones: I presume from a mile to a mile and a half.
Commissioner Harlan: How do they get the logs to the mill?
Mr. Jones: They are hauled by wagons.
Commissioner Harlan: How large is their operation?
Mr. Jones: One of them is about 6,000 per day and the other about 10,000 capacity.
Commissioner Harlan: Do you mean in manufactured lumber, 10,000 feet?
Mr. Jones: Yes, sir; that is, oak lumber principally.
Commissioner Harlan: What is your total tonnage?
Mr. Jones: For what period?
Commissioner Harlan: Well, for the last fiscal year.
Mr. Jones: Including the logs into the mill and——
Commissioner Harlan: The total tonnage hauled by the railroad company.
Mr. Jones: And not by the logging road?
Commissioner Harlan: Not by the logging road.
Mr. Jones: We had about 35,000 tons total.
Commissioner Harlan: During the year?
Mr. Jones: During the year.
509 Commissioner Harlan: You do not operate the logging roads, do you, your railroad company?
Mr. Jones: The railroad company operates the road, and that is——

Commissioner Harlan: You did not quite catch that point. Does the lumber company operate the logging roads?

Mr. Jones: The logging roads?

Commissioner Harlan: Yes.

Mr. Jones: The lumber company builds the logging roads, and the railroad company sends their engines there and uses their equipment.

Commissioner Harlan: The lumber company has no equipment?

Mr. Jones: No.

Commissioner Harlan: Including the traffic on the logging road, what is your total tonnage, or what was it last year?

Mr. Jones: It runs something like 75,000 tons.

Commissioner Harlan: What proportion of that was lumber, logs owned by the Fort Smith Lumber Company?

Mr. Jones: About 19,000 tons—that was lumber.

Commissioner Harlan: Let us get that right. Are you making a distinction between logs and lumber?

Mr. Jones: Yes, sir.

510 Commissioner Harlan: I want your total tonnage of everything, logs, lumber and general merchandise and farming products and everything else. What was it last year?

Mr. Jones: About 75,000 tons.

Commissioner Harlan: Now, what portion of that consisted of logs and lumber for all persons?

Mr. Jones: I think about 50,000 tons.

Commissioner Harlan: And of that 50,000 tons, what part belonged to the Fort Smith Lumber Company?

Mr. Jones: I am wrong on that; I did not understand it. There is about 50,000 tons for the Fort Smith Lumber Company; that includes all logs into the mill and the lumber out of the mill.

Commissioner Harlan: I will put the inquiry again, because we want to get this as accurately as possible. I know want to know what was the volume in tons of your traffic during the last fiscal year, including the logs and lumber and farm products and all other traffic?

Mr. Jones: About 75,000 tons.

Commissioner Harlan: Now, what part of the 75,000 tons was logs and lumber for all persons, all shippers?

Mr. Jones: I do not know whether I have got that so I can

511 give it to you.

Commissioner Harlan: Have you an exhibit which will show?

Mr. Jones: No, sir.

Examiner Burchmore: Is a copy of your annual report here?

Mr. Jones: No.

Commissioner Harlan: Can you give us an approximate statement?

Mr. Jones: I can give you a statement of the lumber from Plainview to Ola.

Commissioner Harlan: Very well; give us that. How much was that?

Mr. Jones: That is for the Fort Smith Lumber Company or all?

Commissioner Harlan: All, from Plainview to Ola.

Mr. Jones: 34,534 tons, everything; that is, from Plainview to Ola; that includes lumber, express, mail, baggage, and so forth.

Commissioner Harlan: What part of that was lumber?

Mr. Jones: There was about 20,753 tons.

Commissioner Harlan: From Plainview to Ola?

Mr. Jones: Yes, sir.

Commissioner Harlan: What part of that lumber belonged
512 to the Fort Smith Lumber Company?

Mr. Jones: 19,165 tons.

Commissioner Harlan: Have you any figures showing the logs that were hauled into the mill at Plainview?

Mr. Fitzhugh: The question of milling in transit does not enter into this. We get no division except from Ola to Plainview, and we make no charge whatever for the question of logging, and there is no addition for that, and we did not think it necessary to prepare that information; but all the other information we have. The milling in transit proposition does not enter into it at all.

Commissioner Harlan: You said there were a couple of mills on the south loop of your road?

Mr. Jones: Yes.

Commissioner Harlan: Do you haul manufactured lumber for that community, Ola?

Mr. Jones: Yes, sir.

Commissioner Harlan: To what extent during the year?

Mr. Jones: There have been, I suppose, from one mill probably 15 to 20 cars.

Commissioner Harlan: During the year?

Mr. Jones: And the other one has been 50 to 60 carloads more.

513 Commissioner Harlan: Do you haul any other products from the south loop into Ola, general merchandise and farm products?

Mr. Jones: Cotton seed.

Commissioner Harlan: How much cotton seed?

Mr. Jones: I think there have been five cars this year.

Commissioner Harlan: In flat cotton?

Mr. Jones: Yes, sir.

Commissioner Harlan: How much——

Mr. Jones: That is on the south loop.

Commissioner Harlan: That is on the south road loop into Ola?

Mr. Jones: No, not from there.

Commissioner Harlan: Any other products?

Mr. Jones: From that point?

Commissioner Harlan: Yes.

Mr. Jones: We have handled piling and logs.

Commissioner Harlan: That was your own piling and logs?

Mr. Jones: No, sir, for other people.

Commissioner Harlan: You have not the figures showing that?

Mr. Jones: No, I have not the figures up, all of them, for
514 the year.

Commissioner Harlan: Are there any towns on your line?

Mr. Jones: Plainview.

Commissioner Harlan: What is the size of Plainview?

Mr. Jones: About 1,500.

Commissioner Harlan: Is that what they call a company town?

Mr. Jones: No.

Commissioner Harlan: How many mills are there?

Mr. Jones: The Fort Smith Lumber Company and W. M. Hippy.

Commissioner Harlan: Any one else?

Mr. Jones: At the end of the line there, there is five or six small mills that ship from Plainview.

Commissioner Harlan: Are they on your line?

Mr. Jones: They are not right on the line of the railroad, but they are a little distance from there.

Commissioner Harlan: Half a mile or so?

Mr. Jones: Some of them, or a little further.

Commissioner Harlan: How do they get to your line?

Mr. Jones: Haul it by wagon.

Commissioner Harlan: What rate do you make to them to haul it to Ola?

515 Mr. Jones: The published tariff, the same as the Arkansas tariff, if they ship to Ola.

Commissioner Harlan: If it goes on the joint through rate, what allowance do you get on all this lumber?

Mr. Jones: The division?

Commissioner Harlan: The division.

Mr. Jones: We get to Oklahoma points three and three-quarter cents, and to other points four cents.

Commissioner Harlan: What is the highest division you have ever received?

Mr. Jones: Four cents.

Commissioner Harlan: From what line?

Mr. Jones: The Rock Island.

Commissioner Harlan: Is this another railroad line north there, or a river (indicating)?

Mr. Jones: That is a river.

Commissioner Harlan: Do you recall approximately your gross revenues last year?

Mr. Jones: About $35,000.

Commissioner Harlan: And how much net?

Mr. Jones: The net revenue was—we lost about $440 in operating our road last year.

516 Commissioner Harlan: You call that your net, then?

Mr. Jones: Yes, sir; that is net.

Commissioner Harlan: That is, you have not paid any dividends at all?

Mr. Jones: No.

Commissioner Harlan: Were you among those that were present at the birth of this railroad; were you among those who conceived the plan of building a railroad?

Mr. Jones: No, sir.

Commissioner Harlan: Can you tell us why it was built?

Mr. Jones: The road was built with a view of going to Hot Springs eventually, and a branch from Plainview to Waldo.

Commissioner Harlan: How far is Hot Springs?

Mr. Jones: From where?

Commissioner Harlan: Well, from anywhere on your line?

Mr Jones: It would be about 85 miles from Plainview.

Mr. Cowan: What direction from this point?

Mr. Jones: South.

Commissioner Harlan: Do you understand that was the primary object of starting this construction?

Mr. Jones: Yes, sir.

Commissioner Harlan: You did not start it to bring in
517 this lumber?

Mr. Jones: Well, they expected to get shipments, or to get tonnage.

Commissioner Harlan: Do you mean the Commission to understand that you started out to reach Hot Springs or bust, is that the kind of a road it was?

Mr. Jones: No, sir.

Commissioner Harlan: Is it not a fact that you started out to get this lumber into your mill?

Mr. Jones: That was eventually what we expected to do with it.

Commissioner Harlan: Well, you are not doing it eventually, you are making Hot Springs the eventual end of this road. Did you not put it in there to get your logs in?

Mr. Jones: The railroad?

Commissioner Harlan: Yes.

Mr. Jones: We built it for to get the timber out and develop the country, and there is quite a farming country in there, quite a valley.

Commissioner Harlan: Where is that Valley?

Mr. Jones: That is this Fourche Valley.

Commissioner Harlan: You are not carrying any of that
518 farming stuff now, are you?

Mr. Jones: Yes, sir.

Commissioner Harlan: Well, I want to know about it.

Mr. Jones: We have hauled this year 5,000 bales of cotton from Plainview.

Commissioner Harlan: But you are not hauling any of that cotton into Plainview?

Mr. Jones: No, sir.

Commissioner Harlan: How does that cotton reach Plainview?

Mr. Jones: By wagon.

Commissioner Harlan: Is there a compress there?

Mr. Jones: No.

Commissioner Harlan: You carry it as flat cotton to what points?

Mr. Jones: We ship it to Little Rock.

Commissioner Harlan: It is compressed at Little Rock?

Mr. Jones: It is compressed at Little Rock.

Commissioner Harlan: How does it get to Little Rock, on a joint rate?

Mr. Jones: It gets there on a local rate, but afterwards we are parties to a joint rate if it be shipped to New York or anywhere else.

519 Commissioner Harlan: It goes to Little Rock on a joint rate between your road and the Rock Island?

Mr. Jones: Yes, sir.

Commissioner Harlan: Do you remember what that is?

Mr. Jones: No.

Commissioner Harlan: What is your division on it?

Mr. Jones: We get ten cents per 100 pounds.

Commissioner Harlan: You do not know what the rate is to Little Rock, the joint rate?

Mr. Jones: As I understand it, that is the Commission rate: those are the rates—that is taken from Plainview to Little Rock and then we are parties to a joint rate, and that is shipped to New Orleans or Boston or——

Commissioner Harlan: It moves out of Little Rock on the balance of a through rate?

Mr. Jones: Yes, sir.

Commissioner Harlan: I want to know what the local rate is, it goes in first on a local rate?

Mr. Jones: Yes, sir. I do not remember what it is.

Commissioner Harlan: Do you know what it is Mr. Fitzhugh?

Mr. Fitzhugh: No, I do not know. There are compress regulations that govern those things, but I do not know what

520 those regulations are.

Commissioner Harlan: The compress regulations do not govern the rate. They may be a part of the privilege of the through shipment.

Mr. Fitzhugh: Yes.

Commissioner Harlan: The road from Ola to Plainview was built in 1906 or started then?

Mr. Jones: In 1906, and completed in 1907.

Commissioner Harlan: Now, you have described the ownership of these two interests, the lumber company and the railroad company. The lumber company was in existence before the railroad company, was it not?

Mr. Jones: The lumber company was in existence, yes, sir, before the railroad.

Commissioner Harlan: When was the mill built?

Mr. Jones: The mill was built in 1909.

Commissioner Harlan: The mill was built after the railroad?

Mr. Jones: Yes, sir.

Commissioner Harlan: Is this a case of a railroad that has a lumber company as an incident to it, or is it a lumber company that has a railroad company as an incident to it?

Mr. Jones: We had been operating a mill at Abbott, which

521 was 60 or 70 miles west, for nine years, shipping our lumber down on the Rock Island rails to the territory tributary to those rails, and afterwards this railroad was built and we wanted to

get this lumber down through here, and this mill was built after the railroad.

Commissioner Harlan: Well, you built your mill in 1909?

Mr. Jones: Yes.

Commissioner Harlan: Were you doing any lumbering there before the mill was built?

Mr. Jones: No, sir, we were not.

Commissioner Harlan: You did not commence to lumber until after the mill was built?

Mr. Jones: No.

Commissioner Harlan: So the railroad started first?

Mr. Jones: Yes.

Commissioner Harlan: And was in operation a year or two before the mill was built?

Mr. Jones: Yes.

Commissioner Harlan: On its way to Hot Springs?

Mr. Jones: Yes, sir.

Examiner Burchmore: Before your mill was built at Plainview there was logging done on this road, and were those logs
522 moved down to your other mill?

Mr. Jones: There was a mill there of W. W. Gardner & Company, a small mill at Plainview.

Commissioner Harlan: You hauled logs there to that mill?

Mr. Jones: That was logs that were hauled there during the construction of that railroad, and I had nothing to do with it, and the railroad had nothing to do with it, as far as I remember.

Mr Fitzhugh: State when the Central Railroad of Arkansas was incorporated.

Mr. Jones: January 31, 1906.

Mr. Fitzhugh: Have you the articles of incorporation with you?

Mr. Jones: I have a copy.

Mr. Fitzhugh: Does the Commissioner care to have them? When did it build the railroad?

Commissioner Harlan: We have been all over that. One of the object in putting the questions from the bench was to shorten the examination. I hope you will not repeat any of those questions.

Mr. Fitzhugh: I will try not to. How long had it been in operation before the lumber company put up this mill on
523 the line?

Commissioner Harlan: That question has just been asked. The mill was built in 1909 and the railroad in 1906 and 1907.

Mr. Fitzhugh: Does the railway receive anything on account of milling in transit?

Mr. Jones: No, sir.

Mr. Fitzhugh: Does it make any charges for that?

Mr. Jones: No.

Examiner Burchmore: Are the logs hauled free of charge up to the mill?

Mr. Jones: No, sir, the logs are hauled from the spur line to the mill, by authority of the Arkansas Railroad Commission, up to Plainview.

Commissioner Harlan: At the state rate?

Mr. Jones: At 50 cents 1,000 feet, and way bills are made for all those cars.

Mr. Fitzhugh: How many trains per day does your road operate?

Mr. Jones: Three round trips per day.

Mr. Fitzhugh: Does it do a passenger service?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: Does it run on schedule time?

524 Mr. Jones: Yes, sir.

Mr. Fitzhugh: State if it carries mail and express.

Mr. Jones: Yes, sir, it carries both mail and express.

Mr. Fitzhugh: To give the Commission an idea of the amount of passenger business, state the number of paid passengers carried for the month of October, 1910.

Mr. Jones: There were about 1,600.

Mr. Fitzhugh: Does your road comply with the Federal Safety Appliance Act by equipping engines and cars with air brakes and automatic couplers?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: Does it make its report to the Interstate Commerce Commission?

Mr. Jones: Yes.

Mr. Fitzhugh: And does it keep its books in the manner required by the Commission?

Mr. Jones: Yes.

Mr. Fitzhugh: Does it operate under the rules and regulations of the Arkansas Railroad Commission?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: You stated that Plainview was a place of 1,500 inhabitants.

525 Mr. Jones: Yes.

Mr. Fitzhugh: What other means have the people of Plainview for the transportation of their merchandise or produce to the general markets of the world?

Mr. Jones: No other means but the railway facilities.

Mr. Fitzhugh: Is the town of Plainview a lumber camp or is it a substantial town?

Mr. Jones: It is a substantial town.

Mr. Fitzhugh: How many banks there?

Mr. Jones: They have two banks.

Mr. Fitzhugh: How many general merchandise stores?

Mr. Jones: Six general stores.

Mr. Fitzhugh: Any brick business houses?

Mr. Jones: The two bank buildings are brick.

Mr. Fitzhugh: Can you state to the Commission the amount of business during the month of October, 1910, for the general public, and the revenue therefrom, and the amount done for the Fort Smith Lumber Company and the revenue therefrom?

Mr. Jones: I think I have a statement of it, sir. The lumber company had delivered to the railroad at Plainview 75 cars of lumber to haul to Ola, and by other people 15 cars of piling, 23 cars of

oak lumber and eight cars of logs, 62 cars of cotton, 10 cars
526 of cotton seed; that was for other people, which the Fort Smith Lumber Company had no interest in.

Mr. Fitzhugh: That was outgoing freight from Plainview to Ola?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: As to the revenue derived from that freight, what percentage of it was from the Fort Smith Lumber Company?

Mr. Jones: From the Fort Smith Lumber Company was 33.39 per cent, and other shippers 56.75 per cent; passengers, eight per cent; mail, .55; express, 1.23; excess baggage, 1.9.

Commissioner Harlan: I suggest he file that statement.

(The statement so offered and identified was received in evidence and thereupon marked Central Railroad of Arkansas Exhibit No. 1, witness Jones, received in evidence December 9, 1910, and is attached hereto.)

Mr. Fitzhugh: Is that a fairly representative month?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: State if the relative proportion of business done by your railroad for the Fort Smith Lumber Company and for the general public, is changing, and if so, whether or not you are doing a larger proportion or will continue to do a larger proportion
527 of business for the general public than for the lumber company.

Mr. Jones: I think the business will increase for the general public.

Mr. Jones: There was no town there when the railroad was built in there?

Mr. Jones: There was no town there when the railroad was built in there. It was started in 1907.

Mr. Fitzhugh: State if there are any other towns on beyond Plainview that depend upon this road to get their merchandise also.

Mr. Jones: There is Rover, Wing, Grovely, Blunton, which have general stores and are west of us, which could get their supplies of merchandise from Plainview and ship all their farming products and send it to Plainview, and it is sent out over our road.

Mr. Fitzhugh: You stated just now you had already carried this season 5,000 bales of cotton from Plainview to Ola. State how much cotton you carried during the whole season of last year.

Mr. Jones: That was 3,436 bales.

Mr. Fitzhugh: Does that indicate that the country is being
528 developed and more cotton being raised?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: How long does the cotton season last—I suppose the Commission knows about that.

Commissioner Harlan: Yes.

Examiner Burchmore: The month of October was a little exceptional in that regard. It had more cotton than other months of the year.

Mr. Fitzhugh: Certainly. How much did you carry during the month of November from Plainview to Ola, how many bales?

Mr. Jones: I think it was about 2,300 for November, and about 1,900—I disremember the exact amount, but about 1,900 or 2,000 in October.

Mr. Fitzhugh: You carry cotton seed, corn and other produce?

Mr. Jones: Outbound?

Mr. Fitzhugh: Yes, from Plainview to the markets of the world.

Mr. Jones: There has been no corn shipped out of there, or any other farm products other than cotton and cotton seed.

Mr. Fitzhugh: With reference to bringing in corn or grain or farming utensils and vehicles for the Fourche Valley and
529 the little towns around and beyond Plainview?

Mr. Jones: That is all brought in and distributed at Plainview, and flour, corn, grain and hay and general merchandise.

Mr. Fitzhugh: State if you keep a railway agent at Plainview or elsewhere.

Mr. Jones: We have an agent at Plainview, and a joint agent at Ola.

Commissioner Harlan: Have you a station at Plainview?

Mr. Jones: Yes, sir.

Commissioner Harlan: For less than carload shipments?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: Describe the station and what it cost——

Commissioner Harlan: No, that is enough.

Mr. Fitzhugh: Does your road issue bills of lading and way bills?

Mr. Jones: Yes, sir.

Mr. Fitzhugh: Schedules and time tables?

Mr. Jones: Yes.

Mr. Fitzhugh: Can you state whether or not these enterprises along your line are growing and increasing?

530 Mr. Jones: I think they are.

Mr. Fitzhugh: Has the Fort Smith Lumber Company or the Central Railway of Arkansas any interest whatever in any of these other saw mills or mercantile establishments which use your road?

Mr. Jones: None whatever.

Mr. Fitzhugh: Or any of its stockholders?

Mr. Jones: No.

Mr. Fitzhugh: With reference to the original object of building your road, some questions were asked you. Were you a member of the original incorporators?

Mr. Jones: I am a member of the original; yes.

Mr. Fitzhugh: Are you one of the original incorporators?

Mr. Jones: Of this road; yes, sir, but the road was originally started by other people; that is, that made the surveys for this line.

Mr. Fitzhugh: Tell the Commission if it is not a fact that the route you have surveyed is the shortest, easiest and most accessible route from that part of the state to Hot Springs, Arkansas.

Mr. Jones: Yes, sir.

Mr. Fitzhugh: And do you know if it was not the inten-

tion of the parties when they started to build this road, to
531 build it into Hot Springs, and of course to take the lumber, when they built the road?

Mr. Jones: The survey of this road was made by the Choctaw, Oklahoma & Gulf to start with, several years ago, and they expected to build this road from Ola to Hot Springs, as I understand. I had nothing to do with that part of it. Then afterwards they sold to the Rock Island and these parties then formed a company and were chartered, and then this company was chartered later, to which I was a party to this road or charter.

Commissioner Harlan: Has the company of which you are a member seriously contemplated the extension of this road to Hot Springs?

Mr. Jones: That was their intention; that was my understanding of the intention to do it; yes, sir. There are other interests that they expected to develop and build up this line and carry it through to Hot Springs, also through to Waldo.

Mr. Fitzhugh: I believe you asked the weight of the rails——

Commissioner Harlan: Yes; that is in.

532 Mr. Jones: 60 pound steel.

Mr. Fitzhugh: New?

Mr. Jones: Yes.

Mr. Fitzhugh: Bought by the railroad company itself?

Mr. Jones: Yes.

Examiner Burchmore: Aside from tariffs or division sheets has your company any contract with the Rock Island Road for allowances or divisions?

Mr. Jones: No.

Examiner Burchmore: Has any other road served by the Rock Island and your line?

Mr. Jones: They have a road from Ola to Dardanelle.

Examiner Burchmore: What is the name of that?

Mr. Jones: The Dardanelle, Ola & Southern.

Examiner Burchmore: Is there any relation between the Dardanelle, Ola & Southern and the Central Railway of Arkansas?

Mr. Jones: None at all.

Mr. Cowan: Is Dardanelle on any other road?

Mr. Jones: It is on the Arkansas River, and there is a railroad across the river.

Mr. Cowan: Is the railroad across the river accessible for
533 traffic moving north of Ola?

Mr. Jones: I presume not. It would have to be taken by one road and hauled across the river.

Mr. Cowan: You could not do that?

Mr. Jones: No.

Mr. Peirce: The road north of the river publishes through rates from Dardanelle, as I understand.

Mr. Jones: I do not know anything about that.

Mr. Peirce: The road leading out from Russellville to Dardanelle publishes through rates south of the river, that is, to Dardanelle

proper, although the rails terminate on the other side of the river. But the railroad takes the stuff to Dardanelle.

Mr. Cowan: Is there a bridge there?

Mr. Jones: An abandoned bridge.

Mr. Cowan: When the lumber company advanced the money to build this road, you were connected with the lumber company?

Mr. Jones: Yes, sir.

Mr. Cowan: You expected it, of course, to be a profitable enterprise because of the fact that you had the timber which could not be developed without the railroad?

Mr. Jones: Yes, sir.

534 Mr. Cowan: How much did that increase the value of the 60,000 acres of timberland?

Mr. Jones: By building the railroad?

Mr. Cowan: Yes.

Mr. Jones: I do not know that I could state how much it increased it.

Mr. Cowan: According to your judgement, what do you figure it would increase it?

Mr. Jones: I pre-ume it would double the value, probably.

Mr. Cowan: And it was that expectation, rather than the expectation of the amount of freight you would get, that induced you to enter into the enterprise?

Mr. Jones: I think they expected to get that traffic on the road other than the timber.

Mr. Cowan: You expected at least to make operating expenses out of the traffic, and then your company, which advanced the money to build it, of course would make a large sum of money by the enhancement of the value of the timber; that is correct, is it not?

Mr. Jones: How is that?

Mr. Cowan: You expected in addition to paying operating expenes to make a large sum of money by the enhanced

535 value of the timber land, naturally?

Mr. Jones: I do not know that the railroad figured on that at all.

Mr. Cowan: I mean the lumber company which advanced the money. The lumber company figured on that.

Mr. Jones: Having a profit on the timber?

Mr. Cowan: Yes.

Mr. Jones: They expected to get that; yes, sir.

Mr. Cowan: But they would expect to have a largely enhanced value to the 60,000 acres, by the building of the railroad?

Mr. Jones: It would make the timber more valuable by building the railroad.

Mr. Cowan: And that was the reason they advanced the $250,000 to build the railroad?

Mr. Jones: I do not know that that was the exact reason.

Mr. Cowan: There would not have been any chance to get the profit out of the timber, unless somebody built the railroad there?

Mr. Jones: No.

Mr. Cowan: The timber is not capable of being logged to any other place without building a railroad into it.

536 Mr. Jones: It could be logged to the Fourche River, part of it.

Mr. Cowan: But you were not doing that?

Mr. Jones: No.

Mr. Cowan: And that would be a very unsatisfactory method of course.

Mr. Jones: I think so.

Mr. Cowan: What kind of timber is it?

Mr. Jones: Yellow pine.

Mr. Cowan: You could float the pine, but you could not have floated the hard wood very well in the river.

Mr. Jones: We have no hard wood.

Mr. Cowan: Where do you market your lumber?

Mr. Jones: In Oklahoma, Missouri, Arkansas, Nebraska, some few shipments east of the Mississippi; not very many.

Mr. Cowan: And you come in competition with other producers of pine lumber from Texas, Louisiana and Arkansas?

Mr Jones: I presume so.

Mr. Cowan: On what basis do you make the price of your lumber at Plainview?

Mr. Jones: On the basis of the cost.

Mr. Cowan: And do you make the same price, no matter

537 where it is going?

Mr. Jones: Yes, sir.

Mr. Cowan: So the freight rate is added to the price of the lumber when it reaches the man who buys the lumber for retail purposes, or otherwise?

Mr. Jones: Yes, sir.

Mr. Cowan: Is there competition between your company in selling lumber at these various points and other companies selling lumber shipped from elsewhere? You meet the competition of other mills?

Mr. Jones: I presume so; yes, sir.

Mr. Cowan: And there is a competition, is there?

Mr. Jones: Yes, sir. There are other people in the business

Mr. Cowan: Well, there is no uniformity in prices of lumber agreed upon between the producers, no combination between them that fixes the wholesale price of lumber?

Mr. Jones: No, sir; none that I know of.

Mr. Cowan: So that it is an open competition where the freight rate from anywhere must figure in the value of the lumber delivered at the point of sale?

Mr. Jones: Yes.

538 Mr. Cowan: Have you the short line to Oklahoma from your place; is that the nearest pine timber for Oklahoma?

Mr. Jones: They have timber in Oklahoma.

Mr. Cowan: They have not much pine timber there?

Mr. Jones: Some pine; yes, sir, in eastern Oklahoma there is quite a good deal of pine.

Mr. Cowan: What was the market value of that land before the railroad was decided upon?

Mr. Jones: The market value of the land?

Mr. Cowan: Yes, I mean the land and timber.

Mr. Jones: Well——

Mr. Cowan: Situated at it was before.

Mr. Fitzhugh: Is that material?

Commissioner Harlan: I think it is. It shows one object in building the road. Do you know what the market value was before the road was built, or its construction announced?

Mr. Jones: No, I do not.

Mr. Cowan: He said it about doubled, and I wondered what the market value of such land was, situated that far from the railroad.

Mr. Jones: I think land has been bought from $3.00 to $5.00 an acre.

539 Mr. Cowan: What is such land worth today?

Mr. Jones: There has been quite a good deal of land that has been offered from $4.00 to $6.00.

Mr. Cowan: How far from the railroad?

Mr. Jones: Some of it is six, eight or ten miles.

Mr. Cowan: It would, of course, depend on the stumpage in any event?

Mr. Jones: Yes, sir.

Mr. Cowan: When you say land offered, do you mean land that has got the virgin timber?

Mr. Jones: Yes.

Mr. Cowan: Pine.

Mr. Jones: Yes, sir; some kind of timber, mountain timber; that is all mountainous.

Examiner Burchmore: Is it a matter of public, common understanding that the Dardenelle, Ola & Southern is a tap line?

Mr. Jones: I don't know whether it is or not.

Examiner Burchmore: Who controls it?

Mr. Jones: It is in the hands of a receiver.

Examiner Burchmore: When was that road constructed?

Mr. Jones: I think 1907 or 1908, I don't remember the exact date.

Examiner Burchmore: Did it operate a general freight and passenger business?

Mr. Jones: Yes, sir.

540 Mr. Cowan: How did you come to build the road down that 13 miles and stop there? I don't understand that there is any mill there.

Mr. Jones: We chartered for 130 miles and we built ten per cent. of it.

Mr. Cowan: Why did you just build ten per cent of it?

Mr. Jones. Well, I think we had to build ten per cent in a certain length of time under the charter.

Mr. Cowan: You did not build it there and stop at that point for any industrial reason?

Mr. Jones: No, sir

Mr. Cowan: You did not intend to put a mill there?

Mr. Jones: We had not at that time; no, sir.

Mr. Cowan: And you only used four miles of it beyond Plainview, where you have connected your spur for your logging purposes?

Mr. Jones: That is used for our logging purposes, and they have a siding at the end of the line, which is used for the general public for anything they offer to be shipped.

Mr. Cowan: That spur belongs to your railroad company, it is not a mill proposition?

Mr. Jones: Which spur is that?

Mr. Cowan: The spur that branches out four miles from Plainview.

541 Mr. Jones: That is the lumber company's spur.

Mr. Cowan: You spoke about having a siding for hauling other people's traffic.

Mr. Jones: That is on the main line of the railroad.

Commissioner Harlan: That belongs to the railroad, but there is a spur which belongs to the lumber company which is operated by this railroad company.

Mr. Cowan: And the real cost $260,000, as you have stated. How much did you get back in the way of town lots, bonuses and other things of value that went to the railroad company for construction?

Mr. Jones: We got nothing in the way of bonuses; we had a few rights of way that were given to us, I suppose.

Mr. Cowan: I spoke of town lots also. Did you make certain money off of Plainview lots?

Mr. Jones: The Fort Smith Lumber Company own one-half interest in the town site.

Mr. Cowan: You exchange the usual transportation with other people?

Mr. Jones: Yes, sir.

Mr. Cowan: And do these passes go to the lumber company's employees?

542 Mr. Jones: Passes from whom?

Mr. Cowan: What you get from other railroads, the Rock Island and others.

Mr. Jones: The only transportation we get is that which I receive, and I am employed by the railroad company.

Mr. Cowan: You are the only one who gets any?

Mr. Jones: Yes.

Mr. Cowan: The reason you had ten incorporators in the railroad company and seven in the lumber company is that the law requires ten for the railroad company?

Mr. Jones: Not that I know of.

Mr. Cowan: If there should be a loss on the operation of the railroad company, that would fall upon the stockholders of the lumber company?

Mr. Jones: It would fall upon the stockholders of the railroad company.

Mr. Cowan: And they are stockholders of the lumber company?

Mr. Jones: Some of them are.

Mr. Cowan: What per cent of the stock of the railroad company——

Commissioner Harlan: That is all in the record. He said
543 it was practically owned by stockholders of the lumber company.

Mr. Cowan: That is what I thought, but I asked him if the loss would fall on the stockholders of the lumber company and he spoke of part of them not owning stock in the railroad company.

Commissioner Harlan: No, it was the other way——

Mr. Cowan: And I asked him if the railroad company's stockholders were the same, and I understood him to say they were not.

Commissioner Harlan: They are not quite the same.

Mr. Cowan: Then I asked the per cent.

Commissioner Harlan: Do you know the per cent?

Mr. Cowan: It is the per cent of the stock of the railroad company that is owned by the stockholders of the lumber company.

Mr. Jones: I do not know that I could give you the per cent exactly.

Mr. Cowan: Well, the shares; is it nearly all owned by the lumber company's shareholders?

Mr. Jones: Yes.

Mr. Coleman: Did we correctly understand that there were about 1,600 passengers carried every month?

544 Mr. Jones: Of October.

Mr. Coleman: During the month of October?

Mr. Jones: During the month of October.

Mr. Coleman: What were your passenger earnings during that month?

Mr. Jones: About $380 and some odd dollars.

Mr. Coleman: Was that unusual?

Mr. Jones: That is about—it runs from $300 to $500 a month.

Mr. Coleman: As a rule?

Mr. Jones: Yes.

Mr. Coleman: What do you charge for fare?

Mr. Jones: The fare is 25 cents from Ola to Plainview.

Mr. Coleman: Is most of this traffic from Ola to Plainview?

Mr. Jones: Yes, sir, between the two towns largely.

Mr. Coleman: Between what two points does the bulk of that passenger traffic move?

Mr. Jones: Between Ola and Plainview.

Mr. Coleman: As to the cotton, did you issue bills of lading on all the 5,000 bales of cotton which moved in October?

Mr. Jones: Yes, sir.

545 Mr. Fitzhugh: I forgot to ask you, Mr. Jones, if your road is taxed by the State of Arkansas just as other railroads are taxed?

Mr. Jones: The Tax Commissioners tax it and assess it the same as other railroads.

Mr. Fitzhugh: The same as other railroads, and not as other property?

Mr. Jones: Yes.

Mr. Fitzhugh: You stated that the stockholders were practically the same in the two companies. I will ask you if Mrs. Gertrude Abbott does not own nearly one-quarter of the stock of the lumber company and no stock whatever in the railroad company?

Mr. Jones: Yes, sir.

Mr. Coleman: Those people moving between Ola and Plainveiw are they employees of the lumber company?

Mr. Jones: Some of them are.

Mr. Coleman: What percentage?

Mr. Jones: I suppose about five per cent.

Mr. Coleman: Now, that means about 50 people a day, does it not, moving between those points?

Mr. Jones: Something like that.

546 Mr. Coleman: And only five per cent are lumber people?

Mr. Jones: Yes, sir; that will be about the percentage.

Mr. Coleman: And the others would be commercial travelers?

Mr. Jones: Yes.

Mr Coleman: 45 commercial travelers would move a day over that line?

Mr. Jones: No, not commercial travelers, passengers, I do not know that they would all be commercial travelers.

Mr. Coleman: Would they be residents of Ola and Plainview, or destined to points beyond?

Mr. Jones: Some might be residents of Ola and Plainview and other places.

Mr. Coleman: But only five per cent would be lumber men?

Mr. Jones: I am judging about five per cent would be employees of the Fort Smith Lumber Company.

Mr. Coleman: How many men have you up in the woods near Plainview?

Mr. Jones: About 50 to 75.

Mr. Coleman: And at Ola, how many people?

Mr. Jones: How many people do we have at Ola?

Mr. Coleman: Well, the population.

Mr. Jones: Ola is about 1,000 inhabitants.

547 Mr. Coleman: And how many of your people are there at Ola?

Mr. Jones: None.

Mr. Cowan: I want to ask one question, why the railroad was not built on to Hot Springs.

Mr. Jones: The promoter of it died; that is, the one that intended to do that.

Mr. Cowan: Is it bonded?

Mr. Jones: No, sir.

Mr. Cowan: The stock represents the full capitalization?

Mr. Jones: Yes, sir.

Commissioner Harlan: Have you any other witness?

Mr. Fitzhugh: No.

(Witness excused.)

Commissioner Harlan: Is the El Dorado & Western before the Commission?

(No response.)

Commissioner Harlan: Is the Fordyce & Princeton?

(No response.)

Commissioner Harlan: The Fourche River Valley & Indian Territory?

Mr. Brady: Mr. Walter will be here in the morning.

548 Commissioner Harlan: The Lester & Ouachita Valley Railway?

(No response.)

Commissioner Harlan: Is the Ouachita Valley Railway before the Commission?

(No response.)

Commissioner Harlan: The Bernice & Northwestern?

(No response.)

Commissioner Harlan: The North Louisiana & Gulf?

Mr. Brady: Mr. Walter has that case.

Commissioner Harlan: Is the Perla River Northern Railway Company here?

Mr. Armistead: Yes.

Commissioner Harlan: Are you ready?

Mr. Armistead: We will be ready in the morning.

Mr. Cowan: I would like to make a suggestion, while we can all hear it, and consider it, that by to-morrow morning we endeavor to ascertain what is going to be the course of the procedure, so far as that might be ascertained; and particularly, how long we are going to continue the investigation here. A number of gentlemen, I am sure, have business arrangements of one kind and another to make dependent somewhat upon that, and I make the suggestion

549 that we endeavor tomorrow morning, if we can, when the Commission convenes, reach some understanding that would enable business people to make appointments and arrangements according to the time we are going to occupy.

Commissioner Harlan: I suggest that we adjourn until tomorrow at 9:30, and we will have a little time in which to talk over the matter which you suggest.

Mr. Garwood: I would like to inquire from Judge Cowan as to whether the intervenors in this case will introduce any testimony at the conclusion of the investigation which is now under way.

Mr. Cowan: Well, I would be very glad to answer if I could, Judge Garwood, as you well know, but I can hardly determine until we find whether we are going to get through with the consideration as it is now proceeding. But when that is through, then I suppose either the railroads, if they should see fit to do so, or the intervenors, if they should see fit to do so, would be called upon certainly to introduce such evidence as they have. Some of that I desire to get here when we find out just how long we are going to be here. I do not care to bring the men here unnecessarily, but want to get them here

so as not to delay the proceeding and that was one of the rea-
550 sons for my suggestion.

Mr. Garwood: It is your purpose at this hearing, if time suffices, to introduce evidence for the intervenors?

Mr. Cowan: I am unable to say that without consulting with Mr. Andrews, who is in the case with me, and other gentlemen here, but it is our purpose to introduce evidence to some extent dependent somewhat on what evidence shall be introduced by the other side.

Mr. Garwood: My purpose in asking that is that there are witnesses, who, as their own cases are determined would go home, but who would perhaps wish to remain in the event that the intervenors would undertake to put in evidence.

Mr. Cowan: I apprehended it was the case that the business situation of a great many men would hardly permit their remaining at New Orleans any great length of time, and it might be that we might, after consultation, decide it necessary to have another hearing for the purpose of winding up, and then we could accommodate everybody and let them remain at home and not remain here for the purpose of hearing evidence which might not be introduced, and it will be our endeavor to accommodate Judge Garwood and the other gentlemen in that effort.

Whereupon, at 5:30 P. M., an adjournment was taken to Saturday, December 10, 1910, at 9:30 A. M.

551 NEW ORLEANS, LA., *December* 10, 1910.

Met pursuant to adjournment at 9:30 A. M.

Present: Parties as before.

Commissioner Harlan: Yesterday we called the Warren & Ouachita Valley Railroad. I was advised that counsel was out of the room for the moment, and it was understood he might appear this morning. Who is the representative of that road?

Mr. Hobbs: My counsel is not here, but I am willing to take the stand and be examined.

W. S. HOBBS was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Will you give your full name to the reporter?

Mr. Hobbs: W. S. Hobbs.

Mr. Greer: It was suggested last evening there would be some discussion as to the question of procedure, and inasmuch as there are so many tap lines to be investigated and so much time to consume, it is a very vital question with a number of us. Will your Honor
not devote some time to that question now?

552 Commissioner Harlan: What suggestion have you to make?

Mr. Greer: I represent a Texas line, and there are a number here.

If the present method is pursued, and we can see no other that would be just and fair, than that of inquiring into each particular case, necessarily it will be some two weeks or at least ten days until some could be reached. If your Honor could set down the Texas cases for some date to be heard at some point in Texas or here, it would be very convenient. A number of us have court proceedings that are just waiting our return. We supposed there would be something definite announced as to when our cases would come up, or approximately.

Commissioner Harlan: We have already announced we would take up the Rock Island cases first, and follow them with the Iron Mountain. Are any of your lines Rock Island or Iron Mountain connections?

Mr. Greer: They are Cotton Belt and Southern Pacific, but if your Honor could announce that those particular cases would be reached on a certain day next week at this place, or some place in Texas, it would facilitate us very much.

Commissioner Harlan: It is difficult to tell just how many lines we will have today. It has been our hope that we would pro-
553 ceed more rapidly, and I think we can, if counsel will indulge in less examination.

Mr. Greer: But I think 75 or 100 cases have entered an appearance here, and even at the best, it will be seven, eight or ten days before you could reach some of them.

Commissioner Harlan: We had not thought so. We thought we could get through early next week.

Mr. Greer: Each one is entitled to a hearing and must stand on its own merits, and if you dispose of them at the rate of ten a day, which is the maximum you could hope for, it would be a long time before you could reach those lowest on the list. I believe it would meet the wishes of those representing the Texas cases if your Honor would just group them together and hear us at some particular day in the future, limiting the scope of the inquiry to just what is now being observed, hearing the facts pertaining to each particular road.

Commissioner Harlan: How many Texas roads are there?

Mr. Greer: We made an estimate last night——

Mr. Scott: About 12 that I know of.

Commissioner Harlan: I am advised we have about 20 on our list.

554 Mr. Greer: Well, there are 12 present. There are, perhaps, quite a number who are not present that your Honor will want to inquire into, and there are some western Louisiana roads who are closely related to our section, and I am satisfied they would like to be investigated about the same time. Just to give an illustration of the situation, I left some three or four cases in the Federal Court undisposed of, and the court is in session and is going to adjourn next week.

Commissioner Harlan: Of course the difficulty is obvious. We have had a great many statements of that kind, involving different considerations; but the Commission must get ahead with this question, and we expected to close the record here.

Mr. Greer: You understand we do not ask for delay——

Commissioner Harlan: Would it meet your views if we simply announced this morning that the Texas lines would not be called until Monday? Your suggestion of a hearing in Texas we cannot agree to.

Mr. Greer: Would your Honor designate a day when they will be heard? You see, that would only leave Sunday.

Commissioner Harlan: I have just suggested Monday.

Mr. Greer: You said not until Monday. If you said Monday, that would meet our approval and convenience.

555 Commissioner Harlan: We will do this; we will say that the Texas cases will not come up before Monday, and at the close of the day I agree to advise some one by telegram as to the probabilities for Monday, and will do it tonight, so that would give you an opportunity to get here Monday or Monday afternoon if necessary, or possibly we might indicate in the telegram that you need not come until Tuesday. We will do the best that we can. If you will undertake to communicate with the others, or I will advise Mr. Garwood.

Mr. Greer: I presume if the case was to be called Monday we would all stay here, because that would only leave Sunday, and we could not transact business at home.

Commissioner Harlan: There are two sides to the question. We would like to oblige counsel as much as possible, but we want to get ahead with this record, and we do not want to spend our time here Monday waiting. It is possible that we would not call your cases until Tuesday. At the same time, we may get into the Texas cases Monday afternoon; it depends upon what develops before. Perhaps farther along in the day we can get some better impression. Where do you reside, Mr. Hobbs?

Mr. Hobbs: Warren, Arkansas.

556 Commissioner Harlan: What is your business?

Mr. Hobbs: General Manager of the Warren & Ouachita Valley Railway.

Commissioner Harlan: How long have you been connected with that railroad?

Mr. Hobbs: Nearly five years.

Commissioner Harlan: When was it incorporated?

Mr. Hobbs: I have not the record with me, but I think it was in 1895.

Commissioner Harlan: Who are the other officers of the railroad?

Mr. Hobbs: Mr. F. E. Weyerhauser, President; Mr. J. W. Embree, of Chicago, is Vice-President; Mr. C. J. Mansfield, of Warren, is Secretary, and Mr. O. O. Axley, of Warren, is Treasurer.

Commissioner Harlan: Are those men officers of any lumber company?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Of what company?

Mr. Hobbs: Mr. Weyerhauser is president of the Southern Lum-

ber Company, I believe; Mr. Embree is president of the Arkansas Lumber Company; Mr. Mansfield is secretary and general
557 manager of the Arkansas Lumber Company, and Mr. Axley is general manager of the Southern Lumber Company.

Commissioner Harlan: In a general way your road is owned by lumber interests?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Stockholders who are interested in lumber companies?

Commissioner Harlan: What particular lumber company has a mill on your line?

Mr. Hobbs: The Southern Lumber Company and the Arkansas Lumber Company.

Commissioner Harlan: And those two companies or their stockholders practically own your road?

Mr. Hobbs: Practically; I think they do entirely.

Commissioner Harlan: What are the termini of your road?

Mr. Hobbs: Warren, Arkansas, and Banks, Arkansas.

Commissioner Harlan: Where is Warren, with respect to Little Rock—I have it here. Warren and Banks, did you say?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What is the capital of your road?

Mr. Hobbs: Authorized, $300,000.

Commissioner Harlan: I understand it is about 16 miles
558 long.

Mr. Hobbs: Exactly.

Commissioner Harlan: What stock has been issued?

Mr. Hobbs: $284,000.

Commissioner Harlan: What cash capital has your road?

Mr. Hobbs: I do not understand that.

Commissioner Harlan: Was the stock issued for cash?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And was the railroad built by the railroad company?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What is the character of the road?

Mr. Hobbs: It is a very fair railroad.

Commissioner Harlan: Well ballasted?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What kind of iron have you?

Mr. Hobbs: Sixty pounds.

Commissioner Harlan: Did your company buy the rail?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And bought the other material that went into the road?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And there were no contributions or
559 loans by railroad companies?

Mr. Hobbs: No, sir.

Commissioner Harlan: Is the track a permanent track?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What equipment have you?

Mr. Hobbs: We have three locomotives, two coaches, one caboose, one box car and five flat cars; I believe is the equipment.

Commissioner Harlan: What is the population of Warren?

Mr. Hobbs: I don't know exactly; the population of Warren and its suburbs is about 6,000 people.

Commissioner Harlan: It was a town, then, before your railroad was built?

Mr. Hobbs: Yes, sir, a good many years.

Commissioner Harlan: Is that true of Banks?

Mr. Hobbs: No, sir; Banks is a new town that has been built since the railroad went in there.

Commissioner Harlan: Do you do any express business between those two towns?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Passenger business?

Mr. Hobbs: Yes, sir.

560 Commissioner Harlan: Mail?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Have you a station at Banks?

Mr. Hobbs: Yes, sir. The Rock Island has one; it is used jointly between us and the Rock Island.

Commissioner Harlan: And at Warren you connect with the Iron Mountain?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Do you use a joint station with that road?

Mr. Hobbs: No.

Commissioner Harlan: Have you a station of your own?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Have you a physical connection with the Iron Mountain at Warren?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Now, these two mills, you say, are at Warren?

Mr. Hobbs: Well, they are not in Warren, no, sir; they are about a mile and a half to two miles from Warren.

Commissioner Harlan: West of Warren?

Mr. Hobbs: Yes, sir.

561 Commissioner Harlan: Who owns the right of way around the right of way of the Warren & Ouachita Valley Railway?

Mr. Hobbs: It is owned by various people; of course the Southern and the Arkansas Lumber Companies own a good deal of it.

Commissioner Harlan: Do they own on both sides?

Mr. Hobbs: I think so; yes, sir.

Commissioner Harlan: What is the extent of the holding of that lumber company?

Mr. Hobbs: I could not tell you.

Commissioner Harlan: Do you know about how much?

Mr. Hobbs: I should say the two of them together, probably own 100,000 acres of land.

Commissioner Harlan: On both sides of the road?

Mr. Hobbs: No, sir; they do not own it there. They own i
beyond the line, a great deal of their holding is beyond the line.
Commissioner Harlan: Confine your answer to their holding o
the line.
Mr. Hobbs: I have no idea.
Commissioner Harlan: Is it 60,000 acres?
Mr. Hobbs: I have no idea.
562 & 563 Commissioner Harlan: Can you furnish that?
Mr. Hobbs: I expect they will furnish me with the in
formation.
Commissioner Harlan: Are you an officer of either of those com
panies?
Mr. Hobbs: No.
Commissioner Harlan: If you will be kind enough to get tha
information——
Mr. Hobbs: Yes, sir.
Commissioner Harlan: The holding of those two companies be
tween Warren and Banks. Now, you say they own other forests
Just where are they?
Mr. Hobbs: I think they are all located in Bradley County, in th
southwestern portion.
Commissioner Harlan: How near to this Warren & Ouachita
Valley Railroad?
Mr. Hobbs: It varies from one mile to 20.
Commissioner Harlan: The point I want to get at is this; where
do logs come from which are manufactured into lumber at these
two mills?
Mr. Hobbs: The logs at the present time are coming, some o
them, from 20 miles south of Banks, and some of them five
564 miles south of Banks.
Commissioner Harlan: And they come from the forests be
longing to these two companies?
Mr. Hobbs: Yes, sir.
Commissioner Harlan: How do they reach Banks?
Mr. Hobbs: They have trackage arrangements with the Rock
Island Railroad and also——
Commissioner Harlan: A written contract?
Mr. Hobbs: Yes, sir.
Commissioner Harlan: Have you filed that contract with the Com
mission?
Mr. Hobbs: Yes, sir.
Commissioner Harlan: Do you operate your own logging trains
over the Rock Island?
Mr. Hobbs: We have no logging trains. The lumber companies
do.
Commissioner Harlan: You said the railroad had some equip
ment.
Mr. Hobbs: We have no logging equipment. We do no logging
at all.
Commissioner Harlan: The railroad does not?
Mr. Hobbs: No.

565 Commissioner Harlan: Then your equipment is used only in other business?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What right have these two lumber companies to move their trains over your road?

Mr. Hobbs: They have a trackage right.

Commissioner Harlan: Has that contract been filed with the Commission?

Mr. Hobbs: I think so.

Commissioner Harlan: State in a general way what the payment made by the lumber company to you is for that privilege.

Mr. Hobbs: They pay us 15 cents a thousand feet.

Commissioner Harlan: A thousand feet in the log?

Mr. Hobbs: Well, no; it is measured, board measure, after it is sawed.

Commissioner Harlan: What is their arrangement with the Rock Island?

Mr. Hobbs: I think they pay the Rock Island 75 cents a train mile.

Commissioner Harlan: Is that the only compensation that the railroad receives from the lumber companies?

Mr. Hobbs: Yes, sir, except from freight that they ship or——

566 Commissioner Harlan: What kind of freight do they ship?

Mr. Hobbs: All kinds in and out.

Commissioner Harlan: For your company's stores?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: How many employees have they?

Mr. Hobbs: The lumber company?

Commissioner Harlan: Yes.

Mr. Hobbs: I could not tell you.

Commissioner Harlan: Do you know about how many?

Mr. Hobbs: I should judge three or four hundred apiece at Warren; I do not know how many in the woods.

Commissioner Harlan: Where are the companies' stores located?

Mr. Hobbs: In Warren they sell goods to all people in town they can.

Commissioner Harlan: They are general stores?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Do you bring in their general merchandise?

Mr. Hobbs: Some of it.

Commissioner Harlan: On through billing from what points generally?

567 Mr. Hobbs: All points in the United States, practically.

Commissioner Harlan: How does it reach your line?

Mr. Hobbs: By the way of the Rock Island at Banks.

Commissioner Harlan: If it comes to Warren from the east, would not the Iron Mountain be a more direct route?

Mr. Hobbs: It might be, but it is not.

Commissioner Harlan: It might be, but it is not?

Mr. Hobbs: It is not the most direct route; no, sir. We have the shortest line in connection with the Rock Island.

Commissioner Harlan: To Memphis, for instance?

Mr. Hobbs: To Memphis and Little Rock and any points reached beyond Little Rock, our line in connection with the Rock Island is about 30 miles shorter than the Iron Mountain is to Little Rock.

Commissioner Harlan: How about Memphis?

Mr. Hobbs: I do not know the distance to Memphis. However, I believe the Rock Island is about the same, or a little shorter, possibly, to Memphis, than the Iron Mountain.

Commissioner Harlan: Does that company's material come on through billing from Little Rock?

Mr. Hobbs: Yes, sir; all of it.

Commissioner Harlan: From Little Rock?

568 Mr. Hobbs: Yes, sir.

Commissioner Harlan: Or through Little Rock?

Mr. Hobbs: Yes, sir; all that comes from Little Rock comes on through billing; in fact, anything that comes from anywhere is on through billing.

Commissioner Harlan: So that is a local movement in the State of Arkansas?

Mr. Hobbs: From Little Rock; yes, sir.

Commissioner Harlan: Perhaps you did not understand. I am talking now of all the general merchandise that you move for the lumber companies going to their general stores. Does that come from Little Rock mostly, or from all points?

Mr. Hobbs: From all points.

Commissioner Harlan: Does it come under through billing?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: You file tariffs?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: An interstate tariff of your own?

Mr. Hobbs: I file concurrences in joint tariffs, and file an interstate tariff of my own.

Commissioner Harlan: An interstate tariff of your own?

Mr. Hobbs: Yes, sir.

569 Commissioner Harlan: Just what sort of a tariff is that interstate tariff of your own?

Mr. Hobbs: Well, we have to have an interstate tariff covering classes and commodities.

Commissioner Harlan: You mean rates applicable to interstate movements?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: On this through merchandise, what allowance do you get, say on shipments from St. Louis?

Mr. Hobbs: On what kind of shipments?

Commissioner Harlan: Well, groceries, and general merchandise and things of that kind.

Mr. Hobbs: I cannot give you all that; you know there is different allowances on all classes and commodities.

Commissioner Harlan: Take class rates.

Mr. Hobbs: On first class I think we receive 15 cents per 100 pounds; something near that.

Commissioner Harlan: What is the first class rate from St. Louis?

Mr. Hobbs: I think it is $1.20.

Commissioner Harlan: From St. Louis?

Mr. Hobbs: Yes, sir. I am not positive as to that; I think
570 that is it.

Commissioner Harlan: Have you filed a division sheet with the Commission?

Mr. Hobbs: No.

Commissioner Harlan: I wish you would be kind enough to do that.

Mr. Hobbs: All right. I think there is one filed by the Rock Island probably, showing what allowances we receive; what division we receive.

Commissioner Harlan: I do not think the Rock Island tariffs would show that as to class rates.

Mr. Hobbs: The tariffs might not, but the division sheets would.

Commissioner Harlan: I do not think they are filed. If you will file all the division sheets you have, either with the Rock Island or the Iron Mountain——

Mr. Hobbs: All right, sir.

Commissioner Harlan: Now, your divisions are not fixed and specific divisions of each joint through rate, are they? Are they not established on a percentage basis?

Mr. Hobbs: No, they are arbitrary.

Commissioner Harlan: There is no basis that you can de-
571 scribe for us underlying your division of joint through rates?

Mr. Hobbs: Well, I do not know; no, that I could explain any basis under which they are given, only that we are allowed, of course, what we can get in the first place, but enough to try to pay us for handling the business.

Commissioner Harlan: If you will file division sheets that will all appear, and also your local rates. Do you publish local Arkansas rates that are not filed with our Commission?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: If you will file your local tariff also.

Mr. Hobbs: All right.

Commissioner Harlan: And as I understand it, you receive absolutely nothing from the lumber companies except this rate per thousand feet?

Mr. Hobbs: That is all.

Commissioner Harlan: And that is under a trackage arrangement?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: You do not carry any logs for them?

Mr. Hobbs: No.

572 Commissioner Harlan: Do you carry any manufactured lumber?

Mr. Hobbs: Yes, sir; all of it.

Commissioner Harlan: Just tell us where you receive the manufactured lumber of these two companies.

Mr. Hobbs: We receive it at their mills.

Commissioner Harlan: Near Warren?

Mr. Hobbs: One is about a mile, and the other about a mile and a half from Warren.

Commissioner Harlan: Which one is a mile away?

Mr. Hobbs: The Arkansas Lumber Company.

Commissioner Harlan: What is the market to which that lumber usually goes in the greatest volume?

Mr. Hobbs: Well, I do not know which it goes to in the greatest volume; it goes to all points in the country.

Commissioner Harlan: Up towards Memphis, St. Louis and Chicago?

Mr. Hobbs: The northern and eastern states, judging from the billing; that is what I go by.

Commissioner Harlan: Where is that billing made out?

Mr. Hobbs: At our offices.

Commissioner Harlan: And that is through billing?

Mr. Hobbs: Yes, sir.

573 Commissioner Harlan: Under joint through rates?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What compensation do you receive for that service?

Mr. Hobbs: We receive a division varying from one and one-half to five cents per 100 pounds.

Commissioner Harlan: On what traffic do you get five cents per 100 pounds?

Commissioner Harlan: On traffic going to the Mississippi River junctions, I think; I cannot tell you; the division sheets will show.

Commissioner Harlan: We would like you to file those division sheets also.

Mr. Hobbs: Well, that is covered——

Commissioner Harlan: You say that is covered by something you have already filed?

Mr. Hobbs: No, sir; by the division sheets you desire me to file.

Mr. Peirce: We have all that on file.

Commissioner Harlan: You have filed it?

Mr. Peirce: Yes.

Commissioner Harlan: Mr. Jeffery, has the Iron Mountain

574 filed those division sheets with this line?

Mr. Jeffery: Yes; we have filed our divisions with all lines I am not quite sure, your Honor, whether it covers anything except lumber.

Mr. Hobbs: There are some division sheets filed or issued by your line, I know I have copies of some of them.

Mr. Jeffery: I do not remember whether that included other commodities other than lumber. Of course, we have a division with the Warren & Ouachita Valley on all commodities.

Commissioner Harlan: We will take that matter up and will let

you know, Mr. Hobbs, what we want, if we have not everything we do want.

Mr. Hobbs: All right.

Commissioner Harlan: What was the total volume of tonnage moved by your line during the last fiscal year excluding, of course, these logs hauled by the lumber companies themselves?

Mr. Hobbs: I have no idea. I have no records with me to show that, to speak of.

Commissioner Harlan: Your records will show that?

Mr. Hobbs: Yes, sir; it is filed with the Commission.

Commissioner Harlan: When did you file your first annual report with the Commission?

575 Mr. Hobbs: The first one I filed was when I first came with the road five years ago.

Commissioner Harlan: Do you keep your accounts as the Commission requires?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Mr. Hobbs, I understand your accounts are well kept.

Mr. Hobbs: Thank you. We try to keep them well.

Commissioner Harlan: I mean by that that the reports in the offices of the Commission are that your line does keep its accounts according to our system, but perhaps more exactly, or at least as exactly, as any other tap line.

Mr. Hobbs: We follow it just as close as any trunk line does.

Commissioner Harlan: And if that is so, you will be able easily to get the figures we want.

Mr. Hobbs: Yes, sir.

Commissioner Harlan: I would like to have a statement showing your tonnage annually for the last five years, and the character of the tonnage.

Mr. Hobbs: Well, your Honor, we had a fire March 29,
576 1909 which destroyed all our records and burned our general office building. I can give it from that date on.

Commissioner Harlan: Very well. Where is your general office building?

Mr. Hobbs: At Warren.

Commissioner Harlan: Is it a separate building?

Mr. Hobbs: Yes, sir; it is part of the depot, it is the second story of our depot.

Commissioner Harlan: That is the Iron Mountain station—no, you have a station of your own there?

Mr. Hobbs: We have a station of our own there.

Commissioner Harlan: Can you tell us in a general way what lumber traffic you have for other companies than the two lumber companies you have named?

Mr. Hobbs: We probably handle for other companies approximately, I should say, from 250 to 350 cars a year, or have been doing that; that is, small concerns that have, you might call them, portable mills; that is, they go in and saw out a tract of timber that they buy and move somewhere else.

Commissioner Harlan: Do they deliver the lumber to you in the form of logs or manufactured lumber?

Mr. Hobbs: Manufactured lumber?

577 Commissioner Harlan: Hauled in wagons to your line?

Mr. Hobbs: Hauled in wagons, if the mill is not located on the line.

Commissioner Harlan: Are there any mills on your line?

Mr. Hobbs: Not right on the line.

Commissioner Harlan: So it is all hauled in wagons?

Mr. Hobbs: At the present time; yes, sir.

Commissioner Harlan: Have you any station for the reception of such traffic?

Mr. Hobbs: We have about six side tracks on the line, I should say.

Commissioner Harlan: Is that all carload freight?

Mr. Hobbs: That is all carload freight, the lumber is.

Commissioner Harlan: Do you take any less than carload traffic in lumber from these outside interests?

Mr. Hobbs: If it is offered; yes, sir.

Commissioner Harlan: You set a car on the loading track for that purpose?

Mr. Hobbs: Not for less than carload, we do not; we load it in the local car.

Commissioner Harlan: Suppose it is a less than carload shipment, what rates does it get?

578 Mr. Hobbs: It takes class rates.

Commissioner Harlan: It takes through class rates?

Mr. Hobbs: It would depend on where it would go.

Commissioner Harlan: We will suppose to Memphis or St. Louis.

Mr. Hobbs. There are no less than carload shipments made, only on local shipments.

Commissioner Harlan: Where does that less than carload stuff go to?

Mr. Hobbs: Only just to short distances.

Commissioner Harlan: Banks or Warren?

Mr. Hobbs: Banks or Warren, or some local station along the line.

Commissioner Harlan: Have you any other station along the line?

Mr. Hobbs: Not of any consequence.

Commissioner Harlan: Have you any station building between Banks and Warren?

Mr. Hobbs: We have three, what we call telephone houses; we keep telephones in; side tracks, I should say, and not stations, that provide shelter if any one wants to get on or off the trains.

579 Commissioner Harlan: Are those telephones open to the public?

Mr. Hobbs: No, not supposed to be. Sometimes they open them.

Commissioner Harlan: They are not stations that can be used by the public until your train gets there?

Mr. Hobbs: No, sir—yes, sir, there are rooms they can get into.

Commissioner Harlan: Well, they cannot deliver less than carload shipments of lumber at those telephone stations?

Mr. Hobbs: They do not usually at the blind sidings; no railroad has depots at their blind sidings:

Commissioner Harlan: Then you have no regular stations between Banks and Warren?

Mr. Hobbs: No, nothing of any consequence.

Commissioner Harlan: So that the less than carload movements do not go off your line?

Mr. Hobbs: I do not say that they do not; they might some go off the line, but not to interstate points; they would go to points in Arkansas.

Commissioner Harlan: Are there any such movements?

Mr. Hobbs: I do not recall ever having any such movements.

580 Commissioner Harlan: How about the carload movement from these outside interests; at what rate would a carload move to Memphis?

Mr. Hobbs: I think the rate is 14 cents per 100 pounds.

Commissioner Harlan: It is a joint through rate?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What is your division of such movement?

Mr. Hobbs: I think it is five cents per hundred pounds.

Commissioner Harlan: Wherever it comes from?

Mr. Hobbs: Yes, sir; on our line.

Commissioner Harlan: If it comes from Banks it is five cents?

Mr. Hobbs: If it comes from Banks, we usually ship it over the Iron Mountain by the way of Warren.

Commissioner Harlan: You would not ship it over the Rock Island?

Mr. Hobbs: No, we could not from Banks.

Commissioner Harlan: Why not?

Mr. Hobbs: Because they are located at Banks also.

Commissioner Harlan: You mean the Rock Island would get it and you would not?

581 Mr. Hobbs: Yes, sir. If we would get it from there, we would have to solicit it, or route it by way of Warren and the Iron Mountain.

Commissioner Harlan: You do not get any of that traffic?

Mr. Hobbs: Yes, sir, we do.

Commissioner Harlan: You solicit it and get it?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And you carry it by way of the Iron Mountain?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And get five cents per 100 pounds?

Mr. Hobbs: I believe that is what we get.

Commissioner Harlan: What is the carload weight usually?

Mr. Hobbs: It runs from 40,000 to 50,000 pounds on yellow pine, usually; sometimes heavier or lighter.

Commissioner Harlan: And you would get five cents out of the rate of 14 cents to Memphis; is that right?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: How much traffic do you get from the farmers on your line?

Mr. Hobbs: Not a great deal.

Commissioner Harlan: Any cotton?

582 Mr. Hobbs: Most of the cotton in the vicinity of our line is hauled to the towns by the farmers on their wagons, where it is sold to the merchants, and then the merchants in turn sell it to the cotton buyers, who ship it. We get all we can of it.

Commissioner Harlan: It does not amount to very much?

Mr. Hobbs: Yes, sir, about 5,000 or 6,000 bales per year; not on our line, however; that is on the two lines.

Commissioner Harlan: What other line do you mean?

Mr. Hobbs: The Iron Mountain and our line at Warren and the Rock Island and our line at Banks.

Commissioner Harlan: You participate in the movement of about 5,000 bales?

Mr. Hobbs: Well, we have not for the last two years. We have done that well in years past, but——

Commissioner Harlan: What division do you get on that? It all goes to Memphis, does it not?

Mr. Hobbs: No, to Little Rock. We get ten cents per 100 pounds.

Commissioner Harlan: Out of the through rate of what?

Mr. Hobbs: I cannot state what it is.

Commissioner Harlan: What is the extent of your pas-

583 senger traffic?

Mr. Hobbs: What way?

Commissioner Harlan: How many passengers a month do you carry?

Mr. Hobbs: Well, I should judge we carried about 3,000 or 4,000 passengers a month.

Commissioner Harlan: What proportion are employees of the lumber companies?

Mr. Hobbs: I do not know; there is no distinction made between them and anybody else.

Commissioner Harlan: They pay their way, just as others do?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Do you issue tickets?

—. ——.

Mr. Hobbs: Do you know about what your passenger revenue is per month?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: What is it?

Mr. Hobbs: It runs right around $1,200 a month.

Commissioner Harlan: What about your express revenue a month?

Mr. Hobbs: Well, it is from $30 to $50 a month.

584 Commissioner Harlan: Can you give us a general idea of your monthly revenue from all sources except your trackage agreement traffic?

Mr. Hobbs: You mean the pay we get for the trackage of the lumber companies?

Commissioner Harlan: Yes, sir; from all sources except the traffic from the two lumber companies, on the logs.

Mr. Hobbs: Do you mean exclusive of the finished product?

Commissioner Harlan: No, exclusive of the logs you haul from the lumber companies, what is your monthly revenue?

Mr. Hobbs: Well, of course it varies. You mean gross revenue?

Commissioner Harlan: Perhaps we will get at it a little differently. What is their average gross revenue from all sources?

Mr. Hobbs: I should judge it is about $5,000 to $6,000 a month.

Commissioner Harlan: What part of that do you get from your trackage agreements with the lumber companies?

Mr. Hobbs: I should say probably from $400 to $1,000 a month.

Commissioner Harlan: And what part of it comes from
585 the general merchandise that you haul for the lumber companies?

Mr. Hobbs: I have no idea. We do not keep any separate account of what they ship or any other merchants ship.

Commissioner Harlan: Do you not settle with the lumber companies on some monthly basis?

Mr. Hobbs: No, we settle with them the same as any other merchants.

Commissioner Harlan: On delivery of the freight?

Mr. Hobbs: Some merchants we settle with weekly.

Commissioner Harlan: Can you ascertain about what the lumber companies pay you monthly?

Mr. Hobbs: Yes, sir, I think so.

Commissioner Harlan: I wish you would do that. Pick out four months since your general offices were destroyed; four fairly typical months.

Mr. Hobbs: That is, revenue on freight received?

Commissioner Harlan: Freight received, or outbound freight for the lumber companies, under class and commodity rates, and not under the trackage agreements.

Mr. Hobbs: All right.

Commissioner Harlan: How many employees have you in your general offices?

586 Mr. Hobbs: One beside myself.

Commissioner Harlan: How many men have you in your train and track crews?

Mr. Hobbs: Well, we have sometimes very few, and sometimes a great many.

Commissioner Harlan: Well, what is a fair average?

Mr. Hobbs: I should judge about 15 or 25 trackmen; six to 12 train and enginemen.

Commissioner Harlan: They are all carried on the books of your company?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Do they do any work of any kind for the lumber companies?

Mr. Hobbs: Nothing only the switching we would do for any other shipper.

Commissioner Harlan: Do they load *on* the logs on the cars, or participate in the loading of the logs on the cars?

Mr. Hobbs: We do not have anything to do with the logs at all. We do not touch them.

Commissioner Harlan: The lumber company operates its own trains with its own crews?

Mr. Hobbs: Yes, sir, under our own jurisdiction.

587 Commissioner Harlan: Under your own jurisdiction?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: As to the running of the trains, and that sort of thing?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: But your company does not participate in the delivering of the logs or unloading at the pond?

Mr. Hobbs: No.

Commissioner Harlan: The lumber of these two companies is sent to the general lumber markets?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: And there competes with lumber of other companies?

Mr. Hobbs: It competes with lumber of other companies, and they compete with one another.

Commissioner Harlan: They compete with one another, and these two companies compete with the small people along your line?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Who haul their lumber to you in wagons?

Mr. Hobbs: Yes, sir. There is one thing I would like to mention; you asked me about the lumber that was shipped over

588 our line by other than the two lumber companies interested in the line. In the past year we have made a connection with the Saline River Railway, or rather, they have made it with us. That is a small line, I think owned by another mill company, and there are through rates from Draughon, Arkansas, on the Cotton Belt in connection with our line, and the Rock Island, to several interstate points, and we handle some lumber that way.

Commissioner Harlan: How much does that amount to per year?

Mr. Hobbs: It has not been running a year yet.

Commissioner Harlan: Well, a month?

Mr. Hobbs: It has been running, I should say, 18 or 20 cars a month lately; but the car situation has not been so we could furnish them the cars they could use.

Commissioner Harlan: Does most of your manufactured lumber go out from Warren over the Iron Mountain?

Mr. Hobbs: No, sir; I would not say most of it. Most of it goes whichever way the cars are furnished.

Commissioner Harlan: Then taking it in that way, does the Rock Island get the bulk of your traffic, or the Iron Mountain?

589 Mr. Hobbs: I should judge it is about equally divided.

Commissioner Harlan: Is there any contract which requires you or the lumber companies to divide it equally?

Mr. Hobbs: There is a contract with the Rock Island that requires us to give them fifty per cent if the service is equal.

Commissioner Harlan: I understand these logs come in over the Rock Island to Banks and then from Banks to the mill near Warren?

Mr. Hobbs: Some of them do and some they are getting off their own lines, the lumber companies are.

Commissioner Harlan: We will take the Rock Island first. At what distance do they come from on the Rock Island?

Mr. Hobbs: The Arkansas Lumber Company is now hauling 21 miles over the Rock Island, and the Southern Lumber Company has been hauling, I believe, five or six miles.

Commissioner Harlan: Do the lumber companies run their own trains over the Rock Island—I believe you said they did?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Have either of those lumber companies logging roads connecting with the Warren & Ouachita Valley?

Mr. Hobbs: One connection.

590 Commissioner Harlan: Does that run to the south of that road or to the north of it?

Mr. Hobbs: It leaves our line to the west, and crosses the Rock Island main line and goes south or southwesterly.

Commissioner Harlan: What is the extent of that logging road?

Mr. Hobbs: I think it is about ten or twelve miles long now; it is a new line.

Commissioner Harlan: That is operated by——

Mr. Hobbs: By the two lumber companies.

Commissioner Harlan: Do logs belonging to other lumber companies move over that logging road?

Mr. Hobbs: Not that I know of.

Commissioner Harlan: Does the Rock Island bring onto your line through Banks logs belonging to any other lumber company?

Mr. Hobbs: No, sir.

Commissioner Harlan: Does the Rock Island bring onto your line through Banks any general merchandise?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: From the south?

Mr. Hobbs: Yes, sir.

591 Commissioner Harlan: Does it bring onto your line any manufactured lumber through Banks?

Mr. Hobbs: There might be a car once or twice a year.

Commissioner Harlan: It is rather an infrequent movement?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Then I understand, Mr. Hobbs, that these logs on the Rock Island are hauled for one company about 20 miles to Banks and then by you for 15 miles, say, to the mill?

Mr. Hobbs: Fourteen or 15 miles; yes, sir.

Commissioner Harlan: Fourteen or 15 miles to the mill, and then at least half of the manufactured product is hauled back 14 or 15 miles to the Rock Island?

Mr. Hobbs: I should judge about half; yes sir.

Commissioner Harlan: But you say it is more than half.

Mr. Hobbs: Sometimes it is more, and sometimes less; it will probably average up half.

Commissioner Harlan: And the logs which are produced on the lumber road belonging to these two companies are hauled in the same manner to their mills and at least about half of it is hauled back to the Rock Island?

Mr. Hobbs: The total amount of tonnage, I should say, is
592 divided about that way.

Commissioner Harlan: And you get from the Rock Island and the Iron Mountain the same allowances or divisions?

Mr. Hobbs: Practically the same, I should think.

Examiner Burchmore: There is filed with the Commission a copy of the contract dated November 5, 1907, between the Rock Island Railroad and the Warren & Ouachita Valley Railway Company. Under that contract which provides for the trackage rights you have referred to for 25 miles south of Banks the consideration is fixed at 75 cents per train mile, as you have stated.

Mr. Hobbs: Yes, sir.

Examiner Burchmore: You stated that the lumber company actually moves these logs over that trackage?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: And that the lumber company moves these logs from Banks to its mill under trackage rights over the Warren & Ouachita Valley?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: The consideration is 15 cents per 1,000 feet of lumber?

Mr. Hobbs: Yes, sir.

593 Examiner Burchmore: Stated in terms per train, what does that equal?

Mr. Hobbs: It depends a great deal on the size of the train; they haul pretty heavy trains; sometimes as many as 45 cars of logs in a train and I should figure it would run between 50 and 60 cents a train mile, if figured down to feet.

Commissioner Harlan: Can you figure that out in cars, what the revenue of a car would be?

Mr. Hobbs: No, I cannot; they vary in size, you know, and I do not know just what they have in their cars.

Examiner Burchmore: That 75 cents per train mile rate is for a train of 30 cars?

Mr. Hobbs: Limited.

Examiner Burchmore: And trains longer than 30 cars are proportionately higher rates?

Mr. Hobbs: Yes, sir, on the Rock Island.

Examiner Burchmore: What would be the charge per train of 30 cars under this 15 cent rate?

Mr. Hobbs: It would depend upon what they had in the cars.

Examiner Burchmore: An average car?

Mr. Hobbs: Well——

594 Examiner Burchmore: Seventy-five cents or $1.00?

Mr. Hobbs: No, it would not be that much, I do not think. I think it would average, as I said, between 50 and 60 cents, or thereabouts. That is, of course, just estimated.

Mr. Andrews: You said 50 or 60 cents a train mile. He is asking you about a car, for the total distance.

Mr. Hobbs: Is that what you want?

Examiner Burchmore: I said a train of 30 cars.

Mr. Hobbs: You mean the rate per train mile?

Examiner Burchmore: This is the rate per train mile.

Mr. Hobbs: That is Rock Island trackage.

Examiner Burchmore: I meant in terms per train mile for 30 cars.

Mr. Hobbs: Based on our rate?

Examiner Burchmore: Based on your 15 cents. I wanted to get the relation between the two rates.

Mr. Hobbs: It would run about $20.25 for the 14 mile haul. You understand there is also an empty haul back, so that would have to be divided by two, to get the average train miles.

Commissioner Harlan: I do not quite understand that. Who pays that and to whom and what is it? You have just given
595 the figure of $20.25. I did not catch the question.

Mr. Hobbs: He asked me what it would amount to per train mile at the rate we charge them, for 30 cars, and I told him a train of 30 cars ordinarily would amount to about $20.25.

Commissioner Harlan: Paid by the lumber company to you?

Mr. Hobbs: To the Warren & Ouachita Valley Railroad. And that would figure quite close to 70 or 75 cents per train mile.

Examiner Burchmore: Does the lumber company pay the Rock Island or pay your company for the trackage over the Rock Island rails?

Mr. Hobbs: It pays our company.

Examiner Burchmore: And your company pays the Rock Island?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: What is the result of that transaction to the Warren & Ouachita Valley Railway, does it make a profit out of the transaction, or a loss?

Mr. Hobbs: We lose our time.

Examiner Burchmore: You come out about even financially?

Mr. Hobbs: We come out exactly even financially.

Examiner Burchmore: Are you familiar with the terms of
596 this contract referred to?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: One of the provisions of that contract permits the Warren & Ouachita Valley Railroad Company to assign its rights and privileges thereunder, or assign the benefits to the Southern Lumber Company or the Arkansas Lumber Company for their trackage on their logging trains.

Mr. Hobbs: Yes, sir.

Examiner Burchmore: It forbids the assignment to any other

companies or corporations other than those two lumber companies?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: Are you familiar with the original construction of this railroad?

Mr. Hobbs: Only from hearsay.

Examiner Burchmore: Do you know in what way the material entering into the original construction was delivered at Banks or at Warren; in what way it was moved in?

Mr. Hobbs: I presume it was moved in over the Iron Mountain: that was the only railroad there was there.

Examiner Burchmore: The Rock Island was not yet constructed?

597 Mr. Hobbs: No, sir.

Examiner Burchmore: Do you know whether customarily a legal interstate rate of freight was paid on those rails and other material entering into the construction of the railroad?

Mr. Hobbs: I have no idea. The road was started by private parties.

Examiner Burchmore: Were the rails and fastenings out of which this road was constructed transported by the Iron Mountain to the junction points under special rates filed to take care of those movements, if you know?

Mr. Hobbs: I could not tell you. Do you mean the last rails?

Examiner Burchmore: Well, the first or the last; any of them.

Mr. Hobbs: They were handled under an interstate rate, all that have been put in since I have been there.

Examiner Burchmore: Was it a special rate published to take care of those movements?

Mr. Hobbs: Not specially that I know of; no, sir. We have a rate on rails and fastenings from different points, and that is the tariff which was used. It is still in effect, and has been, I guess, for several years.

598 Commissioner Harlan: Has your road declared any dividends?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: State what they were for the last three years.

Mr. Hobbs: I don't remember previous to last year.

Commissioner Harlan: What was it last year?

Mr. Hobbs: I think it was ten per cent last year; I am not positive as to that, although that can be shown, but I think it was ten per cent.

Commissioner Harlan: Do you remember what it was the year before?

Mr. Hobbs: I do not remember.

Commissioner Harlan: I wish you would find that out. I suppose our records would show it, but you can find it out very readily.

Mr. Hobbs: All right. For the last three years?

Commissioner Harlan: Well, we will say since the road was built.

Mr. Hobbs: The road never started doing any business until five years ago.

Commissioner Harlan: Then for the last five years.

Examiner Burchmore: One of the articles of the contract
599 heretofore referred to provides that the use of the tracks of the Rock Island Company under the trackage arrangement is expressly limited to the hauling of logs and logging trains for this lumber company and also of material entering into the construction of logging railroads and supplies, tools, equipment and employees connected with the logging railroad, and logging operations. Was the purpose or result of this provision in this contract to enable this railroad or the lumber company to receive its rails and other material at a less rate of freight than it would otherwise pay?

Mr. Hobbs: No, sir.

Examiner Burchmore: What was the purpose of that provision?

Mr. Hobbs: Well, the trackage right, I presume was granted in order to help them log their mill and to provide revenue for the Rock Island Railroad at the same time; that is what it covers, the material used in logging operations. Of course they do not ship anything in like that. They use their rail one place and haul it to another.

Examiner Burchmore: But in hauling or moving that rail from one point to another, instead of paying the Rock Island Railroad a rate of freight per 100 pounds on such movements, you pay
600 simply 75 cents per train mile for the trains on which that material is loaded?

Mr. Hobbs: I have never moved any.

Examiner Burchmore: You referred to the recent connection of the Saline River Railroad with your road.

Mr. Hobbs: Yes, sir.

Examiner Burchmore: Do you know what divisions the Saline River Road receives on traffic moving out from points on that railroad to interstate destinations, lumber traffic?

Mr. Hobbs: I think it is three cents per 100 pounds.

Examiner Burchmore: On traffic moving from a point on the Saline River Railroad over that railroad and thence over your railroad, and thence over a trunk line to an interstate destination, what are the divisions received by your company and by the Saline River Railroad?

Mr. Hobbs: I think they receive three cents and we receive two cents per 100 pounds, where we receive five cents, and where it is less, it is in proportion.

Examiner Burchmore: In other words, where the movement now goes over your rails, in addition to the Saline River, the earnings of the trunk lines are not decreased, but you split the tap line division?

601 Mr. Hobbs: Yes, sir; we split the division.

Commissioner Harlan: Whose equipment brings traffic over the Saline River Railroad to your road and thence to Warren or Banks?

Mr. Hobbs: Do you mean locomotives or cars?

Commissioner Harlan: Locomotives and cars.

Mr. Hobbs: The Saline River Railroad handles their own freight, and whosever cars they can get.

Commissioner Harlan: There is no transfer of cars?

Mr. Hobbs: No.

Commissioner Harlan: Or merchandise?

Mr. Hobbs: They do not handle merchandise.

Commissioner Harlan: Your locomotives do not go on their rails or theirs on yours?

Mr. Hobbs: No, not for that. They have a trackage right over our road, the same as the Arkansas & Southern Lumber Companies.

Commissioner Harlan: To your mills?

Mr. Hobbs: No, to theirs.

Commissioner Harlan: What lumber company owns that company?

Mr. Hobbs: I think the Saline Lumber Company.

Commissioner Harlan: Are your people interested in that?

602 Mr. Hobbs: No.

Commissioner Harlan: So far as you know it is wholly independent?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: Reference has already been made to the provision in this same contract requiring the Warren & Ouachita Valley Railroad to deliver to the Rock Island at least 50 per cent of the traffic moving to Rock Island territory. Who has the routing of this lumber traffic? That is, is the routing controlled by the Warren & Ouachita Valley Railway, or is it controlled by the lumber companies?

Mr. Hobbs: Under the present law, it is controlled by the lumber companies.

Examiner Burchmore: As a matter of fact, and not as a matter of law, who specifies the routing on these shipments; an official of the lumber company or of the railroad company?

Mr. Hobbs: Sometimes their bills of lading show routings, and sometimes they do not; and when they do not, we route them as we see fit, giving them the best rate there is.

Examiner Burchmore: The point is this, the Warren & Ouachita Valley has bound itself to deliver 50 per cent of the traffic to the Rock Island?

603 Mr. Hobbs: Yes, sir.

Examiner Burchmore: In order that it may be enabled to comply with that undertaking, does it not retain control of the routing of this traffic, as a matter of fact?

Mr. Hobbs: We can do that by the cars we furnish; if we furnish cars furnished us by the Rock Island, we must load them via the Rock Island. We require that and every other railroad does.

Examiner Burchmore: Then as a matter of fact, the Warren & Ouachita Valley Railroad does control the routing of traffic originating on its road?

Mr. Hobbs: As far as its junctions; yes, sir.

Examiner Burchmore: I mean it controls it with respect to which trunk line shall haul it out?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: Is any amount of stock in the Warren & Ouachita Valley Railway owned by any trunk line railroad official?

Mr. Hobbs: I do not think so. I do not know of anybody who owns any of it.

Commissioner Harlan: Did you ever hear of any such ownership?

604 Mr. Hobbs: I know there is none.

Commissioner Harlan: Have you ever had any personal injury suits?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: By employees of the railroad company?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Resulting in verdicts or judgments?

Mr. Hobbs: Yes, sir. We paid $10,000 last year.

Examiner Burchmore: Who paid $10,000?

Mr. Hobbs: The Warren & Ouachita Valley.

Examiner Burchmore: Have there been any such suits against the lumber companies for injuries sustained on the railroad?

Mr. Hobbs: I never heard of anybody. If anybody was hurt on the railroad, they would sue the Warren & Ouachita Valley Railroad.

Commissioner Harlan: Well, they might, but has anyone made the mistake of suing the lumber companies?

Mr. Hobbs: I never heard of it. We have an indemnity contract with them, however, that we will hold them responsible, or they are responsible, for any accidents of that kind occurring.

Examiner Burchmore: Suppose a person was injured on
605 one of these logging trains of the lumber company; they would not sue the railroad company?

Mr. Hobbs: Very likely, if they were on the railroad.

Examiner Burchmore: But the lumber company would indemnify the railroad?

Mr. Hobbs: Yes, sir; that is the contract we have with them.

Examiner Burchmore: Has your company any track scales for weighing carload shipments?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: How many?

Mr. Hobbs: One.

Examiner Burchmore: You have small platform scales for weighing wagon loads or less than carload traffic?

Mr. Hobbs: Yes, sir; local merchandise.

Examiner Burchmore: Are your trains run on a regular schedule?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: How many trains have you each way a day?

Mr. Hobbs: One passenger, and one mixed train each way daily.

606 Commissioner Harlan: Judge Cowan, have you any questions?

Mr. Cowan: How far is it from your tracks, where you load the

lumber into the cars, to where you deliver the lumber to the Iron Mountain road?

Mr. Hobbs: I said about a mile and a half from one mill and about a mile from the other.

Mr. Cowan: My question had reference to the place at which the lumber was loaded. I thought it might be a different place from where the mill is.

Mr. Hobbs: That might be, too. I do not know exactly the distance, but we have to haul it out of that track anyway; it is hauled at least a mile and a half.

Mr. Cowan: Does the Iron Mountain have any tracks to the lumber company's mills?

Mr. Hobbs: No.

Mr. Cowan: Does the Rock Island have any tracks to the lumber company's mills?

Mr. Hobbs: No, sir.

Mr. Cowan: What does it cost to perform the service of the switching of the lumber from the place where it is loaded by the lumber company to where it is delivered to the railroad company?

607 Mr. Hobbs: I could not tell you exactly.

Mr. Cowan: Can you approximate about what that service costs?

Mr. Hobbs: That depends on how many cars you have to move.

Mr. Cowan: Do you have any general idea about what such services cost?

Mr. Hobbs: The reports made to the Commission show what it costs to handle freight per ton per mile. I do not remember what it is.

Mr. Cowan: Of course you would not estimate switching on the basis of a ton per mile movement.

Mr. Hobbs: You have to base it on everything you handle.

Mr. Cowan: It would depend on the number of cars the switch engine handles per day, more than anything else. You have to pay for the cost of this engine, whether it is handling cars or not.

Mr. Hobbs: And you have to operate it tomorrow for nothing perhaps. I don't remember exactly.

Mr. Cowan: Your railroad keeps no accounts to show separately what it costs for switching independent of other track operation or transportation service?

Mr. Hobbs: No.

608 Mr. Cowan: What does it cost to build a railroad like the one you have?

Mr. Hobbs: It would cost at the present time about $310,000 to equip it.

Mr. Cowan: What does it cost actually to build per mile in that locality; the character of road you have?

Mr. Hobbs: To build it in the way our road is built?

Mr. Cowan: Yes.

Mr. Hobbs: I should say from $6,000 to $10,000; maybe a little more.

Mr. Cowan: Do you keep separately the cost of the maintenance of the railroad?

Mr. Hobbs: We keep our books according to the Commission's orders.

Mr. Cowan: So your annual reports will show all that?

Mr. Hobbs: Yes, sir.

Mr. Cowan: In all cases the lumber company performs the service of loading and unloading. The railroad company does not do that?

Mr. Hobbs: No, sir, only on local shipments on less than carload shipments.

Mr. Cowan: On L. C. L. business?

609 Mr. Cowan: The $10,000 you had to pay for personal injuries, was that actually paid by the railroad company or the lumber companies?

Mr. Hobbs: Paid by the railroad company.

Mr. Cowan: Was it recouped or paid over, then, by the lumber company to the railroad company?

Mr. Hobbs: We have never got anything I know of from them for it.

Mr. Cowan: It happened, then, independently of the lumber company's operations?

Mr. Hobbs: Yes, sir.

Mr. Cowan: Is there any obligation in such cases for the lumber company to stand any part of the loss?

Mr. Hobbs: I do not know anything about the lumber company. I only run the railroad, and I have to pay whatever it costs to run it.

Mr. Cowan: I was wondering if there was any obligation for them to pay. You said you never had received anything.

Mr. Hobbs: No, there is no obligation for them to pay anything the railroad loses.

Mr. Cowan: You said you get on every car going out on the Iron Mountain a division of the rate. On lumber, I mean.

610 Mr. Hobbs: Yes, sir.

Mr. Cowan: Do you get any division over the Iron Mountain on any other traffic than lumber?

Mr. Hobbs: Yes, sir.

Mr. Cowan: And do you get it on any traffic originating at the same locality as your lumber mills?

Mr. Hobbs: I do not know of anything that originates there but lumber. I never heard of anything.

Mr. Cowan: There is nothing originates at Warren that your line would handle but lumber?

Mr. Hobbs: Near Warren; not in connection with the Iron Mountain; no.

Mr. Cowan: If there was anything that originated in the way of traffic at Warren, it would be delivered to the Iron Mountain team tracks or depots?

Mr. Hobbs: It would, if I could not get it delivered to mine.

Mr. Cowan: Outside of lumber, do you have any place at Warren where you can take traffic and get a division from the Iron Mountain for handling it?

Mr. Hobbs: I would not give it to the Iron Mountain, but to the Rock Island.

611 Mr. Cowan: And haul it across the other way?

Mr. Hobbs: Yes, sir.

Mr. Cowan: Suppose you got it at Banks, would you deliver it to the Rock Island up there?

Mr. Hobbs: No, to the Iron Mountain.

Mr. Cowan: Back to the Iron Mountain?

Mr. Hobbs: Yes.

Mr. Cowan: So this road is an institution which hauls to the Iron Mountain from the Rock Island and from the Iron Mountain to the Rock Island for a division of the rate?

Mr. Hobbs: The road was built for profit, and we hope to make one.

Mr. Cowan: And it makes it by moving the freight the farthest way around for the nearest way haul?

Mr. Hobbs: That is a part of my business.

Mr. Cowan: Well, do you hold that as an inducement to each one of these roads to give you the division that you get?

Mr. Hobbs: Why, they know the business there as well as I do.

Mr. Cowan: Do they solicit the business on these divisions; do they endeavor to get you a haul for example——

Mr. Hobbs: No, sir, I do that myself. Everything I get from Banks has got to be in competition with the Rock Island.

612 and everything I get from Warren has got to be in competition with the Iron Mountain; it costs something to get that, and we get some division, necessarily.

Mr. Cowan: You handle a good deal of other people's business than the lumber company's from Banks to Warren and from Warren to Banks?

Mr. Hobbs: About 50 per cent of our earnings are other than that furnished us by the lumber companies.

Mr. Cowan: Is that 50 per cent handled from Warren to Banks and Banks to Warren?

Mr. Hobbs: It is handled over our line somewhere.

Mr. Cowan: But you get a lot of it in the interior?

Mr. Hobbs: We do not get much in the interior; it is practically all in the termini.

Mr. Cowan: Except passengers?

Mr. Hobbs: Yes, sir.

Mr. Cowan: And 50 per cent of that would be hauled from one terminal to the other?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: You say you have issued $284,000 capital stock?

Mr. Hobbs: Yes, sir.

613 Commissioner Harlan: And your road, you think cost from $6,000 to $10,000 to build?

Mr. Hobbs: That is just to build the dump and lay the track. Of course it has been ballasted and put in shape.

Commissioner Harlan: How much do you think it cost with the ballast?

Mr. Hobbs: I could tell exactly with the reports, but could not tell without them.

Commissioner Harlan: The road, with the equipment, did not cost $284,000, did it?

Mr. Hobbs: Yes, sir; it cost more than that.

Mr. Cowan: In regard to the company traffic that is handled for the lumber companies, independent of the output of the mills, I suppose they get a large amount of supplies and materials of one kind and another. Where do you take that from? Do you get any of that at Warren?

Mr. Hobbs: Yes, sir.

Mr. Cowan: From the Iron Mountain?

Mr. Hobbs: No. Well, we might, destined to some point on our line. Do you mean local freight or carload freight?

Mr. Cowan: Any sort of freight that is consigned to the lumber companies.

614 Mr. Hobbs: Yes, sir; we have through rates to all of our stations in connection with the Iron Mountain.

Mr. Cowan: You do not understand me. The lumber company receives a large amount of supplies and materials of various sorts, delivered by your line to the lumber companies.

Mr. Hobbs: Well, they receive it at our station, usually.

Mr. Cowan: And they get most of it at the station where the mill is?

Mr. Hobbs: I do not say most of it. Some of it they get there and some at Warren station.

Mr. Cowan: Do you get a division on that when it is delivered to the company at Warren, over the Iron Mountain?

Mr. Hobbs: No.

Mr. Cowan: But if it comes over the Rock Island from Banks you do?

Mr. Hobbs: Yes, sir.

Mr. Cowan: How is this material brought in there; does it not all come in, the commissary supplies, and all that, on the Rock Island?

Mr. Hobbs: The majority of it does; yes, sir.

Mr. Coleman: The line started at Warren originally, did it not?

615 Mr. Hobbs: Yes, sir.

Mr. Coleman: And extended how far?

Mr. Hobbs: I think two and a half or three miles.

Mr. Coleman: And then was there a logging road connecting that into the woods at right angles?

Mr. Hobbs: I am not able to say.

Mr. Coleman: What was the next extension?

Mr. Hobbs: I do not know when the next extension was.

Mr. Coleman: At the time when your knowledge begins, what was the end of the Warren & Ouachita Valley Railway?

Mr. Hobbs: It was eleven miles long.

Mr. Coleman: And that made it how far from Banks?

Mr. Hobbs: Five miles.

Mr. Coleman: At the end of that eleven miles, you had a logging road extending at perhaps right angles into the woods?

Mr. Hobbs: The lumber companies, I presume, had—one of them I know did.

Mr. Coleman: That is what I mean. You received from the Iron Mountain a division of the through rate at that time on lumber?

Mr. Hobbs: Yes, sir.

Mr. Coleman: Can you recall what that was?

616 Mr. Hobbs: No.

Mr. Coleman: Was it less than the one you received from the Rock Island?

Mr. Hobbs: We were not in connection with the Rock Island at that time.

Mr. Coleman: Less than the one you now receive?

Mr. Hobbs: Well, possibly a little less, not much.

Commissioner Harlan: Can you ascertain what it was?

Mr. Hobbs: I have no records.

Commissioner Harlan: Mr. Jeffery, will you be kind enough to file an exhibit? What was that date, Mr. Coleman?

Mr. Coleman: When the line was five miles from Banks, and before——

Commissioner Harlan: What was that date?

Mr. Hobbs: I would say it was in January or February, five years ago.

Commissioner Harlan: If you will say, Mr. Jeffery, what divisions or allowances you were paying this line prior to January, 1906, for several years, I wish you would.

Mr. Jeffrey. All right. I suppose I can bring the table right down to date of the allowances.

Mr. Coleman: Is the logging lines in practically the same

617 position physically—I will put that in another way—geographically, is it in about the same position; does it lie on the same line, about, as it did five years ago?

Mr. Hobbs: No, it has been changed a good many times.

Mr. Coleman: How has it been changed: by extension or twisting the tracks?

Mr. Hobbs: It has been moved.

Mr. Coleman: Which way has it been moved?

Mr. Hobbs: South.

Mr. Coleman: Towards the Iron Mountain?

Mr. Hobbs: No, towards the Ouachita River.

Mr. Coleman: About five years ago you extended your line from your junction point with the logging road to Banks, on the Rock Island?

Mr. Hobbs: Yes, sir.

Mr. Coleman: What was it that induced you to build that additional mileage of railway?

Mr. Hobbs: Well, I presume it probably had to be built at some time to get timber, and there was a town of 6,000 or 7,000 people, and the Rock Island was building a trunk line through that terri-

tory, and missed the town, and we saw an opportunity to go
618 to it and possibly make something out of it.

Mr. Coleman: Was any inducement made from the Rock Island Railroad, by way of a better division than the Iron Mountain gave you?

Mr. Hobbs: At that time there was no arrangement made until it was completed.

Mr. Coleman: Was it when it was completed?

Mr. Hobbs: When it was completed we went to them and asked them for a division.

Mr. Coleman: And they gave you a better division than the Iron Mountain?

Mr. Hobbs: Well, a slight increase, possibly.

Mr. Coleman: I have in mind what seems to be an inconsistent statement; I may have misunderstood you, but I thought you said the construction of your logging line into the woods did not extend towards the Rock Island, but towards the river.

Mr. Hobbs: It extends beyond the Rock Island, that is now the lumber companies' lines are now all beyond the Rock Island and beyond ours. The lumber companies' lines are all beyond Banks.

Mr. Coleman: That is what I mean. You referred to a
619 mixed train. What is that?

Mr. Hobbs: A train that handles both passengers and freight.

Mr. Coleman: And the passenger train runs at what time?

Mr. Hobbs: The train leaves Warren at 10:10 in the morning.

Mr. Coleman: And goes where?

Mr. Hobbs: To Banks.

Mr. Coleman: What are the people it carries, in the main; lumbermen going up to the woods to work for you?

Mr. Hobbs: They do not any of them go on our trains to work for the lumber companies unless they pay their fare.

Mr. Coleman: Do you issue through bills of lading?

Mr. Hobbs: Yes, sir.

Mr. Coleman: Where are they issued?

Mr. Hobbs: At our open stations, at Warren and Banks.

Mr. Coleman: If for a point on the Rock Island, you would issue it at Warren, to get the long haul?

Mr. Hobbs: Yes.

Mr. Coleman: And if for the Iron Mountain, you would issue it at Banks?

Mr. Hobbs: If it came from Banks we would. We would not otherwise.

620 Mr. Coleman: That is all.

Mr. Andrews: And it would not be for the Iron Mountain if it did not come from Banks, would it?

Mr. Hobbs: No, it might come from some other point on our line.

Mr. Jeffery: Your line does not commence on the main line of the Iron Mountain?

Mr. Hobbs: No.

Mr. Jeffery: But it is on the east and west line of the Warren branch?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: This contract which has been referred to several times, dated November 5, 1907, section 2 of article 4 provides that the Rock Island Company grants to the Warren & Ouachita Valley Company the right to take up the said connection between the two companies and take up all material included in the same, and to remove the same from time to time to such points on the portion of the railroad the use of which is granted as may be necessary or convenient to the business of the Warren Company, as the timber along the line may be exhausted. A provision of the same wording is contained in the contract between the War-
621 ren & Ouachita Valley Railway and the Saline River Railway Company, dated January 7, 1909, which is also filed with the Commission?

Mr, Hobbs: Yes, sir.

Examiner Burchmore: The purpose of those provisions, if you know; is it to permit these lumber roads to move along as the timber becomes exhausted and change their line from time to time?

Mr. Hobbs: That is what it is for; yes, sir.

Examiner Burchmore: So that they are not intended to be permanent lines of railroad, in one location?

Mr. Hobbs: No, sir.

Mr. Cowan: Is it claimed that such roads as that are common carriers? Do you claim that is a common carrier?

Mr. Hobbs: We have no such line, and I do not know anything about it.

Commissioner Harlan: You are putting a hard question to this witness.

Examiner Burchmore: Do you receive any coal for use along your line?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: What use is made of that coal?

622 Mr. Hobbs: Burned in engines.

Examiner Burchmore: And where is that coal stored?

Mr. Hobbs: We have a coal bin to store it, I guess, as all the rest of the people who get coal.

Examiner Burchmore: At what point, I mean.

Mr. Hobbs: Our coal bin is at Cloquet.

Examiner Burchmore: Intermediate between Warren and Banks?

Mr. Hobbs: Yes, sir.

Examiner Burchmore: Where does that coal come from?

Mr. Hobbs: Various points; some from Illinois, Arkansas, Kentucky and Indiana.

Examiner Burchmore: What freight is charged on the coal moving from Illinois?

Mr. Hobbs: $2.65 a ton, I think, is the rate.

Examiner Burchmore: What division of that rate is received by the Warren & Ouachita Valley?

Mr. Hobbs: I think we receive 27½ cents a ton.

Examiner Burchmore: About the same division applies on Kentucky coal?

Mr. Hobbs: On all coal.

Examiner Burchmore: No coal is used by the lumber companies?

Mr. Hobbs: No, except they burn coal in their locomotives.

623 Commissioner Harlan: Do you supply the countryside with coal?

Mr. Hobbs: There is very little coal burned there. There are dealers who furnish coal for people who want coal.

Commissioner Harlan: You do not sell any of it?

Mr. Hobbs: No.

Examiner Burchmore: Who owns the right of way on which this road is built?

Mr. Hobbs: The Warren & Ouachita Valley Railroad Company.

Examiner Burchmore: The land is not owned by the lumber companies?

Mr. Hobbs: No, not the right of way. There may be some outside of it, but not the right of way.

Mr. Coleman: Is the right of way owned in fee by the railroad?

Mr. Hobbs: Yes, sir.

Mr. Coleman: From whom did it acquire title?

Mr. Hobbs: From different people?

Mr. Coleman: Not from the lumber company?

Mr. Hobbs: Some of it, yes, sir.

Mr. Scott: Do you receive any shipments from the Saline River Railway of commodities other than lumber?

624 Mr. Hobbs: I believe we have received a little cottonseed, chiefly.

Mr. Scott: From what point was that?

Mr. Hobbs: New Edinburg.

Mr. Scott: That is a town on the Saline River Railway?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: Is not that the terminus of the Saline River Railway?

Mr. Hobbs: No, sir; I think not. I know it is not.

Commissioner Harlan: Is there not a logging road which runs south of New Edinburg?

Mr. Hobbs: I think it is run by the railroad; I think they are operating trains over it.

Commissioner Harlan: New Edinburg is south of Saline?

Mr. Hobbs: Yes.

Commissioner Harlan: There is no other railroad connection except the Saline River Railroad?

Mr. Hobbs: No.

Examiner Burchmore: What is the name of the junction point of the Saline River Railroad and the Warren & Ouachita Valley?

Mr. Hobbs: Glenn.

625 Examiner Burchmore: Where is that, with reference to New Edinburg?

Mr. Hobbs: I should judge about 15 miles.

Examiner Burchmore: That is now the terminus of the Saline River Road?

Mr. Hobbs: Yes, sir.

Commissioner Harlan: That seems to be all.

(Witness excused.)

626 Commissioner Harlan: Did we have any appearance yesterday for the Arkansas Southeastern?

(No response.)

Commissioner Harlan: Then we will call the Doniphan, Kensett & Searcy.

Mr. Scott: I will be ready to take that up Monday. I sent a telegram in pursuance of my conversation with you last night.

Commissioner Harlan: The El Dorado & Western.

Mr. Gaughan: That is Mr. Walter's case.

Commissioner Harlan: Little Rock, Maumelle & Western.

Mr. Mehaffy: We have wired for one witness who is coming on the train, and the other witness has gone to meet him.

Commissioner Harlan: Mr. Hobbs, will you be kind enough to furnish a map of your road, showing its connections with the Rock Island at Banks and with the Iron Mountain at Warren, and also showing the relation of the mills with each road and the switch tracks?

Mr. Hobbs: Yes.

Commissioner Harlan: Have it drawn somewhat to scale, so that the distances will all appear clearly and definitely.

Mr. Hobbs: Yes, sir. I would like to ask you also if it
627 is going to be necessary for my counsel to come here now. Is there anything you are going to want of me or our road?

Commissioner Harlan: Not if you will furnish all we have asked you to furnish. If we want any further information we will advise you or your counsel.

The Perla Northern Railway?

Mr. Armistead: I appear for that company. The offices of that company are in St. Louis. I was advised that the Perla Northern is not interested in the question of divisions, because the lumber that is hauled over its road, on which it has been getting a division of the interstate rate, will be cut out and it will cease to get such divisions before the suspension of cancellations in these cases matures and I have nothing to offer, and nothing further to say. As I stated before, I do not want to be taken as absolutely certain in that, but of course if the cancellations are suspended, they will not get a division.

Commissioner Harlan: After your statement the Commission will take it as certain that the divisions will be given up.

The Round Pond Terminal Company. Is there any one here that represents the Round Pond Terminal Company in Arkansas?

(No response.)

628 Tremont & Gulf Railway Company.

Commissioner Harlan: The Tremont and Gulf.
Mr. Garwood: We are ready to proceed, your Honor.
Commissioner Harlan: How many witnesses have you?
Mr. Garwood: We have about three or four or five.

Commissioner Harlan: If they can all arise now and be sworn. (Whereupon the several witnesses were duly sworn.)

H. W. SEAMAN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: You reside in Chicago, Illinois?
Mr. Seaman: Yes, sir.
Commissioner Harlan: And are a railroad man?
Mr. Seaman: Yes, sir.
Commissioner Harlan: How long have you been connected with the operation of railroads?
Mr. Seaman: For 20 years.
Commissioner Harlan: And with what railroad are you now connected?
Mr. Seaman: With the Tremont & Gulf.
Commissioner Harlan: In what capacity?
Mr. Seaman: As president.
629 Commissioner Harlan: Do you happen to remember when that road was chartered?
Mr. Seaman: It was incorporated under the laws of Louisiana December 18, 1907.
Commissioner Harlan: How long have you been connected with it?
Mr. Seaman: Since its organization.
Commissioner Harlan: When was that road built?
Mr. Seaman: Built, part of it, prior to 1907, but during 1906 and 1907 and 1908.
Commissioner Harlan: In other words, there was no track on its present right of way until 1906, and from that time its construction went forward to completion?
Mr. Seaman: There was a small railroad starting from Tremont about 12 miles south, but after it was concluded to make a railroad of it, with grade and alignment, practically the old railroad was abandoned and a new line constructed so as to put it on a standard railroad basis.
Commissioner Harlan: What is its northern terminus?
Mr. Seaman: Tremont.
Commissioner Harlan: And the southern terminus?
Mr. Seaman: Winnfield.
630 Commissioner Harlan: Has it any branch lines?
Mr. Seaman: It has one to Dodson, a connection with the Rock Island, and from Menefee to Pyburn, where it makes a connection with the Rock Island, and from Menefee to Rochelle, where it makes a connection with the St. Louis & Iron Mountain.

Commissioner Harlan: The Pyburn branch is what you first referred to as the Dodson?

Mr. Seaman: Yes, sir. Pyburn and Dodson are practically the same town.

Commissioner Harlan: That is on the west of your main line?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Rochelle is east of your main line?

Mr. Seaman: Yes, sir.

Commissioner Harlan: What is the distance from Menefee to Pyburn?

Mr. Seaman: I think about 12 miles, although I can give that definitely, and the distances are all given in the paper which I have furnished your Honor, exactly.

Commissioner Harlan: You have spoken about a line that extended some 12 miles south of Tremont, a temporary line.

631 Mr. Seaman: Yes, sir.

Commissioner Harlan: That was afterwards re-aligned and re-graded and made a part of the Tremont & Gulf. When was that line built?

Mr. Seaman: I do not know. It was built by the old Tremont Lumber Company, which was composed of Mr. Gardner, of the Northwestern, and a number of northern people who sold out. The line was of very small value, and was simply a logging line.

Commissioner Harlan: The Tremont Lumber Company had a mill at that time at Tremont, or near Tremont?

Mr. Seaman: Yes.

Commissioner Harlan: Has it a mill there now?

Mr. Seaman: It has just been abandoned; there is a small cutting up plant there, but that will be abandoned.

Commissioner Harlan: Did it own forests around Tremont?

Mr. Seaman: It did.

Commissioner Harlan: South or north of Tremont?

Mr. Seaman: East and west, but not north, to amount to anything.

Commissioner Harlan: It owned on either side of this logging road, then?

632 Mr. Seaman: Yes, sir. If you will examine—where is the black book you have there? That shows the location of the forests.

Commissioner Harlan: The witness here refers to a map entitled a map showing land and timber holdings of the Southern Investment Company, Winn Parish Lumber Company and Louisiana Lumber Company, Limited. I observe that map contains no reference apparently to the Tremont Lumber Company——

Mr. Seaman: The Tremont Lumber Company now owns all the lumber featured on that map. At the time the contract to which the map you have in your hand had reference was made, the lumber was all owned by the three companies, the Louisiana Lumber Company, Southern Investment Company and Winn Parish Company. Since that time, however, they have sold all their lumber and lands to the Tremont Lumber Company.

Commissioner Harlan: And all of these colored portions on this map indicate timber lands that formerly belonged to these three companies and later to the Tremont Lumber Company.

Mr. Seaman: The Tremont Lumber Company formerly owned the mill only and bought the stumpage.

Commissioner Harlan: I suppose much of this timber has
633 been lumbered and cut off.

Mr. Seaman: Some of it.

Mr. Cowan: May I inquire if there are copies of that map which could be furnished for the record?

Commissioner Harlan: Have you copies?

Mr. Seaman: I have no copies of that map. We could get it. I will see that you get one.

Mr. Cowan: It ought to be in the record.

Mr. Garwood: I will introduce that book as a part of the record. It has a great many of the ordinances——

Commissioner Harlan: I don't know that we want this book attached to the record.

Mr. Seaman: You already have it filed with the Commission.

Commissioner Harlan: Including the map?

Mr. Seaman: Yes, sir, a duplicate of that book.

Commissioner Harlan: Very well, then this book and the maps in it will be considered as a part of the record for reference by counsel and the Commission. What is the capital of the Tremont & Gulf, authorized and issued?

Mr. Seaman: The authorized capital is $5,000,000

Commissioner Harlan: The outstanding capital?

Mr. Seaman: $2,000,000.

634 Commissioner Harlan: Have you any bond issue?

Mr. Seaman: $1,550,000 issued; $5,000,000 authorized.

Commissioner Harlan: What is the length of the line, including the branches?

Mr. Seaman: 113.87 miles.

Commissioner Harlan: What was the actual cost of constructing the line and purchasing the equipment?

Mr. Seaman: The right of way and tracks, $1,609,771.85; buildings, fixtures, and so forth; I haven't that separate, but sufficient to bring the total up to $1,851,582.22.

Commissioner Harlan: What part of that expenditure was made while you were president of the company?

Mr. Seaman: Nearly all of it.

Commissioner Harlan: And you know that to be the actual cost of the line and its equipment?

Mr. Seaman: Yes, sir; to the best of my belief.

Commissioner Harlan: That amounts to about $22,000 a mile?

Mr. Seaman: Yes, sir.

Commissioner Harlan: What equipment have you?

Mr. Seaman: We have one class C Baldwin engine, 35 tons, one class C engine purchased from the C. B. & Q., 40 tons, two class C Baldwin engines, 74 tons each; passenger equipment, one
635 coach, two combination coach and baggage; freight equipment, 148 box car manufactured by Haskell & Barker 60,000

pounds capacity each; 50 flat cars, Haskell & Barker, 80,000 pounds capacity; four cabooses, one combination caboose, three box cars, 60,000 capacity, four flat cars, 60,000 capacity, a ditcher plow, drivers, various tools and equipment, all of which is shown upon the schedule which has been furnished you.

Mr. Cowan: Are the flat cars logging cars?

Mr. Seaman: No, sir; we have no logging equipment.

Commissioner Harlan: You mentioned the fact that you have some passenger car equipment.

Mr. Seaman: Yes, sir.

Commissioner Harlan: Do you run passenger cars over the line?

Mr. Seaman: Yes, sir, regularly.

Commissioner Harlan: On regular schedules?

Mr. Seaman: Yes, sir.

Commissioner Harlan: How many trains each way a day?

Mr. Seaman: If you will ask that of our traffic manager, please, he will give it to you definitely and accurately.

Mr. Garwood: There is one train each way each day, your Honor.

636 Commissioner Harlan: We will get at those details from the traffic manager. I observe, Mr. Seaman, that Mr. D. G. Joyce is vice-president.

Mr. Seaman: Yes, sir.

Commissioner Harlan: And J. S. Joyce is secretary.

Mr. Seaman: Yes, sir.

Commissioner Harlan: A. P. Tugwell treasurer.

Mr. Seaman: Yes.

Commissioner Harlan: J. B. Fick, auditor.

Mr. Seaman: Yes, sir.

Commissioner Harlan: Then those same men are directors, and Mr. Jenks, Mr. Stubbs, Mr. Patterson and Mr. Hume.

Mr. Seaman: Yes, sir.

Commissioner Harlan: Is the stock of this road owned substantially by those men?

Mr. Seaman: It is owned by the Southern Investment Company, except sufficient to qualify the directors.

Commissioner Harlan: Where was that company organized?

Mr. Seaman: Maine.

Commissioner Harlan: And under your charter what is the general scope of its functions and operations?

637 Mr. Seaman: To own stock and bonds and lands, and do a general business, and it has power to own stocks and bonds.

Commissioner Harlan: Are you an officer of that company?

Mr. Seaman: I am not.

Commissioner Harlan: Have you some familiarity with its details?

Mr. Seaman: Only in a very general way.

Commissioner Harlan: Is it engaged in any way through other companies in lumbering operations?

Mr. Seaman: Yes, sir; it owns the capital stock of the Tremont Lumber Company.

Commissioner Harlan: Any other companies?
Mr. Seaman: No, sir.
Commissioner Harlan: Any mills?
Mr. Seaman: No, sir.
Commissioner Harlan: Does it directly own any lumber lands?
Mr. Seaman: It does not.
Commissioner Harlan: Does it own any other railroads?
Mr. Seaman: It does not.
Commissioner Harlan: Has it any other business so far as you know, except the lumber business, through the ownership of
638 the capital stock of the Tremont & Gulf?
Mr. Seaman: I am not advised as to that. They have been practically a holding company.
Commissioner Harlan: Do you know what the capital stock of the Tremont Lumber Company is?
Mr. Seaman: I do not.
Commissioner Harlan: Are there any other lumber mills on the line of the Tremont & Gulf?
Mr. Seaman: Yes, sir.
Commissioner Harlan: I observe here the Tremont Lumber Company is indicated as having a mill property at Tremont. That, you say, has lately been abandoned?
Mr. Seaman: Practically so; yes, sir.
Commissioner Harlan: Then it is put down on this map as having interstate at Eros, which is a station south of Tremont.
Mr. Seaman: Tremont, Eros, Pyburn and Rochelle.
Commissioner Harlan: What about Jonesboro?
Mr. Seaman: And Jonesboro.
Commissioner Harlan: It has mills at all those points?
Mr. Seaman: Yes, sir; the mill at Pyburn has practically been abandoned; it has three live mills, Jonesboro, Eros, and
639 Rochelle.
Commissioner Harlan: You are not manufacturing lumber at Pyburn or Tremont?
Mr. Seaman: Not at the present time.
Commissioner Harlan: How lately were they given up as going concerns?
Mr. Seaman: Within the last year.
Commissioner Harlan: Are there any other mills at Pyburn or Tremont?
Mr. Seaman: I am not advised as to that, but our traffic manager could furnish you with all the details.
Commissioner Harlan: Then I observe the Haynes Lumber Company, Cornie Stave Company and Lemore & Company are also named on this map as having some interests at Chatham.
Mr. Seaman: Also G. H. Hughes.
Commissioner Harlan: Is he a lumber man also?
Mr. Seaman: I presume so.
Commissioner Harlan: Are there mills at Chatham?
Mr. Seaman: No, sir; only small mills.

Commissioner Harlan: What operation does the Haynes Lumber Company carry on there?

Mr. Seaman: I could not tell you. I know they are there.
640 and our traffic manager will give you all the details.

Commissioner Harlan: You are not advised, then, as to the number of mills and the character of the lumber interests on your line?

Mr. Seaman: Not in sufficient detail to testify.

Commissioner Harlan: And all the statistics relating to the traffic and extent and character of it, I suppose, can be had from some one else?

Mr. Seaman: Yes, sir. This statement presents in detail all the statistics that you would perhaps require.

Commissioner Harlan: Well, this typewritten statement marked Tremont & Gulf, I suppose, may be filed of record as an exhibit to this witness's testimony.

Mr. Garwood: Yes.

(The statement so offered and identified was received in evidence and thereupon marked Tremont & Gulf Railroad Exhibit No. 1, witness Seaman, received in evidence December 10, 1910, and is attached hereto.)

Commissioner Harlan: Has your company been paying dividends?

Mr. Seaman: It has not.

Commissioner Harlan: It has paid the interest on its
641 bonds?

Mr. Seaman: Yes, sir.

Commissioner Harlan: What is the interest, the rate, I mean?

Mr. Seaman: Five per cent on $1,550,000.

Commissioner Harlan: Has it any other liens of that character?

Mr. Seaman: There are none.

Commissioner Harlan: Has it any accumulated surplus?

Mr. Seaman: No, sir; as fast as money has been made, it has been put into the purchase of additional equipment and facilities for the road.

Commissioner Harlan: Well, it has been earning its operating expenses and more.

Mr. Seaman: It has been earning its interest on its bonds. There has been a deficit, as shown by the statement, from operation at different times. The net results have not shown the cost of operation plus the interest on the bonds, and the fixed charges.

Commissioner Harlan: Of course all the trains operated over the Tremont & Gulf are operated by that company.

Mr. Seaman: No, sir.

642 Commissioner Harlan: Are there any outstanding trackage rights?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Tell us about those. Who has any trackage rights over your line?

Mr. Seaman: The Tremont Lumber Company has trackage rights

under a traffic and trackage agreement, whereby they use our line or any portion of it for the purpose of transporting their logs in their own trains and by their own equipment over our line to their various mills.

Commissioner Harlan: And with their own crews?

Mr. Seaman: And with their own crews.

Commissioner Harlan: Of course, under the supervision of your operating officers?

Mr. Seaman: We train despatch them; yes, sir.

Commissioner Harlan: Is that agreement in writing?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Has it been filed with the Commission?

Mr. Seaman: It has.

Mr. Cowan: That is in the book you refer to?

Mr. Seaman: Yes.

643 Commissioner Harlan: Can you state in just general terms what the Tremont & Gulf pays you, either by the month or by the year, for that right?

Mr. Seaman: They pay us nothing.

Commissioner Harlan: Do you mean the contract does not call for any payment?

Mr. Seaman: It calls specifically for free trackage rights.

Commissioner Harlan: What was the consideration passed to the Tremont & Gulf for that free trackage right?

Mr. Seaman: The furnishing to the Tremont & Gulf Railway Company of its entire in and out bound tonnage, particularly the tonnage arising from 250,000 odd acres of timber land.

Commissioner Harlan: What is the general character of its inbound tonnage?

Mr. Seaman: The railroad, you mean?

Commissioner Harlan: No, of the Tremont Lumber Company. I understand you to say that in consideration of the agreement on the part of that shipper to route all of its inbound and outbound tonnage over your line, you give it free trackage rights over your line?

Mr. Seaman: Let me correct one statement, possibly. This 644 does not provide for the routing of the inbound tonnage specifically. It has special reference to the tonnage arising from the timber lands, a schedule of which is attached to the trackage and traffic agreement.

Mr. Garwood: The 13th paragraph of the agreement.

Commissioner Harlan: That arrangement is expressed in paragraph 13 on page 203 of the book entitled "Corporate Records and Proceedings of the Tremont & Gulf Railway Company.

Mr. Seaman: Yes, sir.

Commissioner Harlan: Which has already been filed with the Commission.

Mr. Seaman: Yes.

Commissioner Harlan: I would like to understand that a little more fully. Here is a shipper that operates its own trains over your line, and apparently such a considerable tonnage that the railroad

company was willing to give it a free trackage right. Now, just how does that result to the financial benefit of your company?

Mr. Seaman: By receiving the tonnage arising from the timber on the land mentioned in these schedules.

Commissioner Harlan: For illustration, the Tremont Lum-
645 ber Company has a mill at Eros?

Mr. Seaman: Yes, sir.

Commissioner Harlan: It takes out logs at or near that point or from some distant point, and carries them to its mills.

Mr. Seaman: The Tremont Lumber Company have as much railroad of their own as the Tremont & Gulf Railway Company has.

Commissioner Harlan: Now, the logs are brought into that mill by the Tremont Lumber Company over its logging road or over your line.

Mr. Seaman: Over its logging roads, which of course are changed from time to time, and wherever it is necessary to attach them to our main line they do so, and take up the distance from the end of their line to the mill to which the logs are destined by operation over our tracks.

Commissioner Harlan: We will assume a movement of logs over their logging road to your main line at some point south of Eros, carried thence in its own trains to its mill at Eros?

Mr. Seaman: Yes.

Commissioner Harlan: Now, it has a free trackage over
646 your line to the mill?

Mr. Seaman: Yes.

Commissioner Harlan: At just what point of time and how does that movement accrue to your financial advantage?

Mr. Seaman: After they have manufactured the lumber and loaded it for shipment outbound.

Commissioner Harlan: Then you move it from Eros to what point ordinarily?

Mr. Seaman: Depending upon the connection, whether to the V. S. & P. or Tremont or various lines, Winnfield or to the Iron Mountain at Rochelle, depending upon the territory to which it may be destined.

Commissioner Harlan: We will take a Rock Island local point; you will move it south to Winnfield?

Mr. Seaman: Yes, sir, because we have switch engines there and can handle it to advantage.

Commissioner Harlan: Well, to Winnfield; that is a distance of what?

Mr. Seaman: Of under 40 miles; 38 to 40 miles.

Commissioner Harlan: Now, you bill it out at Eros to some through point over the Rock Island.

Mr. Seaman: Yes, sir.

647 Commissioner Harlan: Under a joint through rate.

Mr. Seaman: Yes.

Commissioner Harlan: On what basis is your division established to Rock Island local points?

Mr. Seaman: If you will kindly ask that of our traffic manager?

Commissioner Harlan: Very well.

Mr. Seaman: I can give it to you generally, but he can give it to you definitely.

Commissioner Harlan: Well, that is illustrative, then, of the use made by the Tremont Lumber Company of your tracks under the free trackage rights that this contract gives it?

Mr. Seaman: Yes, sir.

Commissioner Harlan: And is illustrative of the financial benefit you get on their manufactured lumber?

Mr. Seaman: Yes.

Commissioner Harlan: Is there any other revenue accruing to the railroad company in any form from the Tremont Lumber Company?

Mr. Seaman: No, sir.

Commissioner Harlan: Under the trackage rights which this contract gives to the Tremont Lumber Company have they the
648 right to haul the logs of other shippers over your line without paying anything to you?

Mr. Seaman: No, sir, except the logs may be manufactured, as in one instance, and the manufactured lumber turned over to us for shipment. There has recently, or is now building at Winnfield, a plant——

Commissioner Harlan: Let us pursue this inquiry a little farther, and then I would like to have the explanation. As I understand your statement and this contract, the Tremont Lumber Company, under its trackage arrangement with the Tremont & Gulf Railroad Company, has no right to haul any logs except those belonging to it.

Mr. Seaman: That is all; or to conduct any business of any character along the line except that with reference to the transportation of its own logs.

Commissioner Harlan: And, as a matter of fact, does it haul the traffic of any one else?

Mr. Seaman: It does not.

Commissioner Harlan: You say there is one exception to that general rule?

Mr. Seaman: Well, it is hardly an exception. The Mansfield Lumber Company has expended about $125,000 or $130,000
649 in the erection of a plant, which is not quite complete, at Winnfield, to saw up the hard wood timber which is intermingled with the pine timber on the acreage belonging to the lumber company, and the lumber company deliver that on their own equipment to the Mansfield Hard Wood Lumber Company.

Commissioner Harlan: The Tremont Lumber Company makes those logs on its own land?

Mr. Seaman: I do not know what they do between themselves as to that. The title to the logs does not pass until they reach Winnfield and their mill. Whatever way the logging is handled, I do not know.

Commissioner Harlan: However, the logs come, whether from the lands of the Tremont Lumber Company or not, they are brought into Winnfield free of charge, so far as your railroad is concerned?

Mr. Seaman: They can only come from the lands of the Tremont Lumber Company.

Commissioner Harlan: And they are brought in free of charge by the Tremont Lumber Company to Winnfield under this trackage arrangement?

Mr. Seaman: Yes.

Commissioner Harlan: And there, so far as you are advised, the title passes to the Mansfield Hard Wood Lumber Company?

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Mr. Seaman: Yes, sir.

Commissioner Harlan: Do you know who owns the stock in that company?

Mr. Seaman: I do not definitely, except I would state to you that the Tremont & Gulf Railway or the Tremont Lumber Company has no interest whatsoever in it; it is entirely distinct——

Commissioner Harlan: Is it owned directly or indirectly by the Southern Investment Company?

Mr. Seaman: It is not, they have no interest in it. It is an independent company.

Commissioner Harlan: The Southern Investment Company, you said, is owned substantially by the men who own this railroad company?

Mr. Seaman: Yes, sir—no, not by the men. The Southern Investment Company, as a distinct corporation, owns the stock of the Tremont & Gulf Railway Company substantially.

Commissioner Harlan: It is the general understanding that the Joyces own the Southern Investment Company.

Mr. Seaman: Well, they are only one of a great many.

Commissioner Harlan: Well, they are very largely interested?

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Mr. Seaman: They are very largely interested.

Commissioner Harlan: So far as you know, have the Joyces and any other stockholders in the Southern Investment Company any interest directly or indirectly in the Mansfield Hard Wood Lumber Company?

Mr. Seaman: They have none whatsoever.

Commissioner Harlan: Has the Tremont & Gulf given any other free trackage rights to lumber people over its line?

Mr. Seaman: No. They are willing to do so, however, exactly on the terms stated in this contract, provided they can comply; there are those who can, and if they should apply, they would get the same terms.

Commissioner Harlan: Is it consistent with the laws of the state in which this company operates to allow any one to move traffic over its line without charge?

Mr. Seaman: I do not think it is inconsistent.

Commissioner Harlan: Is it done under any special authority of the State Commission or statute?

Mr. Seaman: Not particularly. I do not know of any prohibition in the statutes.

Commissioner Harlan: Are there other lumber interests
652 that have logging lines connected with the Tremont & Gulf?
Mr. Seaman: No, sir.
Commissioner Harlan: Well, take the Winn Lumber Company, which is noted as having a mill at or near Womack on your line, does it lumber its own forests?
Mr. Seaman: Yes, sir.
Commissioner Harlan: Is that true of the Carnie Stave Company?
Mr. Seaman: Yes, sir.
Commissioner Harlan: The Southern Lumber Company?
Mr. Seaman: Yes, sir.
Commissioner Harlan: G. H. Hughes?
Mr. Seaman: Yes.
Commissioner Harlan: The Haynes Lumber Company?
Mr. Seaman: Yes.
Commissioner Harlan: In other words, none of these lumber companies noted on this map of the Tremont & Gulf are lumbering lands belonging to the Tremont Lumber Company?
Mr. Seaman: No.
Commissioner Harlan: Or the allied interests of that company?
Mr. Seaman: No.
653 Commissioner Harlan: Do you know the extent of their holdings?
Mr. Seaman: I do not.
Commissioner Harlan: Or the location of them?
Mr. Seaman: Well, it is contiguous to the various towns in which they are operated.
Commissioner Harlan: They haul their logs by wagon to these mills?
Mr. Seaman: I do not know; I think so.
Commissioner Harlan: Are the mills on your line?
Mr. Seaman: Yes.
Commissioner Harlan: Or is there a switching movement?
Mr. Seaman: No, the mills are on our line or contiguous.
Commissioner Harlan: Practically on your line?
Mr. Seaman: Yes, sir.
Commissioner Harlan: How far on the east of your line do the woods and forests of the Tremont Lumber Company extend?
Mr. Seaman: That is shown on the maps, your Honor, fully.
Commissioner Harlan: Very well. You do not know anything about the details of the divisions of your line?
Mr. Seaman: No, only in a general way. That the traffic man can answer.
654 & 655 Commissioner Harlan: Has the Tremont & Gulf any other sources of revenue than the movement of lumber for the Tremont Lumber Company, and the other industries on its line, besides passenger and mail?
Mr. Seaman: Well, it does a large general business at Winnfield and various connecting points

Commissioner Harlan: You mean a general transportation business?

Mr. Seaman: Yes.

Commissioner Harlan: Are there any other trackage rights outstanding?

Mr. Seaman: There are none, except that the J. B. White interests, owners of the Ouachita & Northwestern have constructed a track from a connection with the Iron Mountain to a connection with our line between Womack and the line about in that section, and have graded and have their steel there, and they have applied to us for the right to connect there, to get trackage rights into Winnfield so as to connect with the Rock Island and the L. R. & N. and the L. & A.

Commissioner Harlan: Is that an incorporated railroad?

Mr. Seaman: I presume so.

Commissioner Harlan: Owned by a lumber Company?

656 Mr. Seaman: I do not know as to the ownership. The grade is completed and the rails and ties are there now, and the road is constructed within a few miles, and in a very short time will be connected up.

Commissioner Harlan: Is it in operation?

Mr. Seaman: Yes, sir; it is in operation from a point on the St. Louis, Iron Mountain & Southern to within a mile or two.

Commissioner Harlan: Have you agreed upon any trackage rights?

Mr. Seaman: We have substantially, but not in all the details.

Commissioner Harlan: Not formally?

Mr. Seaman: No.

Commissioner Harlan: All the details have not been worked out?

Mr. Seaman: No.

Commissioner Harlan: But in general, does it involve a free movement of the logs from the junction to Winnfield?

Mr. Seaman: No, sir; it would mean that they expect to haul not logs, but the finished product.

Commissioner Harlan: Where is their mill, near your line?

657 Mr. Seaman: No, it is on the Iron Mountain Railroad. I do not know the exact location of their mill, whether it is on the Iron Mountain or back there. They are very large operators.

Commissioner Harlan: Now, their mill is on the Iron Mountain at what point?

Mr. Seaman: I do not know.

Commissioner Harlan: Do they own some forest between the Iron Mountain and the Tremont & Gulf?

Mr. Seaman: I do not know whether the railroad does, but——

Commissioner Harlan: Well, the lumber company that owns it?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Is that where the lumbering operations are going on?

Mr. Seaman: Yes, sir; they have no interests and no mills along our line.

Commissioner Harlan: So they would move the logs to the south-

east to their mill near the Iron Mountain, and the finished product would come back from the mill to the junction with your line?

Mr. Seaman: That portion of it that they wanted to ship over these various lines of road.

658 Commissioner Harlan: And then it would be hauled south to Winnfield and thence to destination?

Mr. Seaman: Yes, sir. The question is whether they should haul that as an intermediate line, or whether we should permit them, having it once entrained, to haul it down with their own engines and equipment, which would be a far preferable proposition. We would be obliged to charge them a rate which would be difficult to ascertain at various times, whereas, if they were allowed to haul their full trains, it would be on a train mile basis, probably. There are times when the individual roads are powerless to furnish equipment; take, for instance, the Rock Island or the Iron Mountain, or any of the roads, have peculiar conditions on their own lines, and do not want to furnish the equipment; if they have connection with but one line, their operations are closed. It is absolutely necessary to get connections with more than one line, so that the operations may be continuous.

Commissioner Harlan: So that if one cannot operate, the other can?

Mr. Seaman: And there are points of destination on the various other lines, which can be reached to far greater advantage.

659 Commissioner Harlan: To sum up your statement in a general way, I understand that since the Tremont & Gulf was opened, the Tremont Lumber Company has enjoyed a free movement of logs over your road to any of its mills?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Wherever the logs may have been produced?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Provided they were produced on lands belonging to it?

Mr. Seaman: Yes.

Commissioner Harlan: And that there is some movement in the trains of the Tremont Lumber Company to Winnfield for the Mansfield Hard Wood Lumber Company.

Mr. Seaman: The logs, however, belong to the Tremont Lumber Company, and all the product from those logs must be delivered back to us.

Commissioner Harlan: Do I understand that you stand ready to give a similar right of free trackage over your line to the logs of any other lumber company, produced at some point, and that require a haul over your line in order to reach the mill of the owner of the logs?

660 Mr. Seaman: Yes, sir, when they comply with the same conditions and under similar circumstances to those under which the Tremont Company's logs move.

Commissioner Harlan: Will you describe in a general way what

are the general circumstances and conditions which you have in mind?

Mr. Seaman: The company furnished us with a large portion of our right of way.

Commissioner Harlan: We will assume that another company has not the opportunity, because your right of way has already been furnished.

Mr. Seaman: I do not think we would stop on that; we would be very glad if we could get the outbound tonnage, and they operate substantially as a railroad, as the Tremont Lumber Company do, which has 20 engines and are highly organized, and we would be very glad to furnish anybody with free trackage, provided we secured all the outbound tonnage from their forests.

Commissioner Harlan: Do I understand that the Tremont Lumber Company operates the chartered railroad?

Mr. Seaman: No, sir, but they operate better than the majority of small railroads. They have nearly 100 miles of track,
661 20 engines or about that number, from 18 to 22 engines, and they are train dispatched by us and are a very highly organized organization.

Commissioner Harlan: You do not mean to say, then, that another company have a substantially equal mileage or be substantially as well organized in order to secure this free trackage?

Mr. Seaman: No, sir, we would not allow every Jim Crow organization that did not know how to operate a train and understand the train rules and perform the proper functions, we would not permit them to operate on our line; if that became necessary we would, if we could secure the consent of the Tremont Lumber Company, avoid this trackage arrangement and put in a train mile arrangement, which we have already considered, and have had printed.

Commissioner Harlan: Under your contract with the Tremont Lumber Company, have you the right to give free trackage to any other lumber company without its consent?

Mr. Seaman: Yes, sir.

Commissioner Harlan: You have?

Mr. Seaman: Yes, sir, specifically in the contract.

Commissioner Harlan: Does it not come to this, then, that
662 you would not give free trackage to any lumber company that was not large enough to operate lumber trains?

Mr. Seaman: That is about right; yes, sir; unless they could operate on a schedule and would not be liable to cause accidents and damage and danger to our track and to our operation.

Commissioner Harlan: In other words, there are conditions that surround the right of anyone else to have a free movement of logs over your road?

Mr. Seaman: Well, only the ordinary business conditions that would move anyone in considering it.

Commissioner Harlan: Well, the small fellow would not get the rate, would he?

Mr. Seaman: He would if he could operate his own cars and trains, and would operate on a schedule. We do not want any one

breaking in on our track at any moment, or at any time, and unless he does so under train schedules, with the proper despatch.

Commissioner Harlan: There are forests on the east and west of your track that are owned by other people?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Outside interests?

663 Mr. Seaman: Yes, sir.

Commissioner Harlan: And of course the wood that stands there on the stump is as valuable as the wood of the Tremont Lumber Company?

Mr. Seaman: Yes, sir.

Commissioner Harlan: And if manufactured, it would compete in practically the same markets?

Mr. Seaman: It would not make any difference as to that. Yes, it would.

Commissioner Harlan: So that the basis on which they might successfully compete, becomes very important, does it not?

Mr. Seaman: I do not quite understand your question.

Commissioner Harlan: Well, if they had to pay for hauling their logs over your track to their mills, and the Tremont Lumber Company does not have to pay you, the latter company would have something of the advantage.

Mr. Seaman: Not a particle. We will haul their logs at a rate that is satisfactory, if they give us the outbound tonnage, or else we will charge them a straight rate. The proposition is based on the question of receiving back to us the products of those forests, otherwise we would put in a straight tariff for moving it, the

664 same as the L. & A. or any other railroad.

Commissioner Harlan: But I want to get the thing more specifically. You say there are outside interests here in these woods. Now, it is entirely conceivable that logs may come to your track possibly in a logging train of three or four cars, that have to be moved to some mill on your line.

Mr. Seaman: Yes, sir.

Commissioner Harlan: If that is a small operation, so that it cannot meet the general conditions, you have outlined, you won't give it free trackage, but you charge it a rate on the logs?

Mr. Seaman: We will give them free trackage if they will give us back all the tonnage arising from the logs so moved.

Commissioner Harlan: Suppose they have a mill at Dodson and cannot give you the manufactured tonnage outbound because it is right on the Rock Island tracks.

Mr. Seaman: We are also at Dodson, and if they move it off from our line and move the tonnage through other transportation companies, they cannot secure free trackage on our line.

Commissioner Harlan: Then does it not come to this, that if the owner of the forest there is so situated that he can not give you any outbound tonnage of the manufactured lumber, he does

665 not get a service over your line, that is, equipment on the same terms and conditions upon which you offer service to the Tremont Lumber Company.

Mr. Seaman: The fact is, your Honor, that the situation that you have in mind does not exist, as a matter of fact.

Commissioner Harlan: Well, if it did exist, he would get the same result.

Mr. Seaman: If it did exist, he would get the same result as the Tremont Lumber Company exactly. There are forests there of sufficient magnitude to warrant it. The question has been up, and whenever the people who own that want to lumber it and are willing to give us the outbound tonnage, they will get exactly the same conditions.

Commissioner Harlan: I understand you to say the details of the tonnage and the extent of it will be testified to by the traffic manager.

Mr. Seaman: Yes, sir. I simply want to add one thing. I know at the inception of this railroad enterprise Mr. W. T. Joyce, who is now dead, and who I think you know or know of, was largely interested in railroads, not only lumber railroads, but other railroads,
and being largely interested in this large tract of timber, and
666 seeing the opportunities for investment here, and for the construction of a railroad and the building up of the 250,000 acres of land, he projected this road from Tremont to Winnfield and from Winnfield to Rochelle and from Rochelle to Neches, a distance of 62 miles east of Rochelle. Have you the large map there, Mr. Garwood?

(Map produced.)

Commissioner Harlan: Well, the road from Rochelle to Neches has not been built.

Mr. Seaman: No, sir; it has been surveyed. It would have been built if we were certain as to what the Interstate Commerce decision would be. If we are to be classed as a tap line, so-called, the road will not be built. If we are a railroad, as I absolutely know we are, the road will be built. We have made our surveys and we own some timber east of there; but it is agricultural as well as timber, and contains large quantities of stone and gravel, a very valuable country.

Commissioner Harlan: Is there any agricultural country upon the Tremont & Gulf?

Mr. Seaman: Yes, sir; very largely.

Commissioner Harlan: Do you move any cotton?

Mr. Seaman: Yes, sir; cotton and peanuts and trains of
667 cattle to New Orleans. We moved 1,200 carloads of stone; there is a little railroad off to a quarry and we are moving 1,200 cars to a connection with the V. S. & P. for railroad construction in Mississippi.

Commissioner Harlan: Is it owned by outside interests?

Mr. Seaman: Absolutely.

Commissioner Harlan: Judge Garwood, have you any questions?

Mr. Garwood: Yes, a few. Your statement shows that the cost of the Tremont & Gulf is approximately $1,800,000 and more.

Mr. Seaman: Yes.

Mr. Garwood: In your opinion as a railroad man, is that a fair estimate of its actual value as a railroad proposition?

Mr. Seaman. It is.

Commissioner Harlan: Actual value at the time it was built?

Mr. Seaman: Yes, sir.

Commissioner Harlan: You have had a large experience in the building of railroads?

Mr. Seaman: Yes, sir.

Mr. Garwood: What is its maximum grade?

Mr. Seaman: One per cent.

668 Mr. Garwood: Do you know its maximum curvature?

Mr. Seaman: I think it is three and a half or four degrees.

Mr. Garwood: Four degrees is my own recollection.

Mr. Seaman: Four, as I remember.

Mr. Garwood: Its cost will approximate $22,000 a mile?

Mr. Seaman: Including equipment; yes, sir.

Mr. Garwood: What is its weight of steel rail?

Mr. Seaman: 60 pounds.

Mr. Garwood: Is it in all things a standard gauge permanent railway, well equipped with permanent and valuable stations, equipment and all of the modern appliances of a modern railway?

Mr. Seaman: It is.

Mr. Garwood: How is it operated, by telephone or telegraph?

Mr. Seaman: Both.

Mr. Garwood: Both by telegraph and telephone?

Mr. Seaman: Yes, sir.

Mr. Garwood: Does it own its own telephone system?

Mr. Seaman: It does.

Mr. Garwood: If you know, what is the value of that plant, the telephone plant?

Mr. Seaman: I cannot give you the value. It is shown

669 here.

Commissioner Harlan: Do you use the wires for public service?

Mr. Seaman: No; we have three wires and four wires, standard telephone lines.

Commissioner Harlan: It cost some $20,000, is my understanding.

Mr. Garwood: That is my recollection. Now, how is the telegraph worked in connection with that; who owns the telegraph line?

Mr. Seaman: We do. We have both the telegraph and telephone; we are largely despatching now by telephone.

Mr. Garwood: Do you do an express service?

Mr. Seaman: We do. We have a contract with the Wells Fargo Express Company.

Mr. Garwood: Is that contract set out in extenso in your volume of corporate records which you have filed here?

Mr. Seaman: It is.

Mr. Garwood: I will ask that the Commission consider that contract as introduced in evidence. Have you a contract for the carriage of the mail?

Mr. Seaman: Yes, sir.

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Mr. Garwood: The Tremont Lumber Company, as such,
670 owns no interest in the railway company?

Mr. Seaman: No.

Mr. Garwood: Nor does the railway company, as such, own any interest in the lumber company?

Mr. Seaman: None whatever.

Mr. Garwood: The community of interests arises solely from the fact that the Southern Investment Company, which has multitudinous stockholders, owns stock in both companies?

Mr. Seaman: Yes, sir.

Commissioner Harlan: May I interrupt there? Is there some document here that shows how much stock the Southern Investment Company owns in each company?

Mr. Seaman: No, sir; I think not.

Commissioner Harlan: Can you tell us?

Mr. Seaman: I do not know. They own all the stock in each one——

Commissioner Harlan: All the stock?

Mr. Seaman: Substantially all the stock of the Tremont Lumber Company and substantially all the stock of the Tremont & Gulf

Commissioner Harlan: I understood so, but——

Mr. Garwood: Except such as is necessary to qualify di-
671 rectors. Does the railway company maintain an absolutely separate and independent organization from the lumber company?

Mr. Seaman: It does.

Mr. Garwood: Has it its own independent offices and officers?

Mr. Seaman: Absolutely; there is no employee of the Tremont & Gulf Railway Company that is in any manner an employee of the lumber company, or vice versa.

Mr. Garwood: Are their offices physically separate?

Mr. Seaman: They are.

Mr. Garwood: Does it perform all the functions of a common carrier, both as to holding itself out as such, actually transporting the business and in the issuance of bills of lading intrastate and interstate upon the usual and ordinary forms?

Mr. Seaman: Yes, sir.

Mr. Garwood: Under the laws of the State of Louisiana, it exercises the right of eminent domain?

Mr. Seaman: Yes, sir.

Mr. Garwood: Is it a member of the American Railway Association?

Mr. Seaman: Yes, sir.

Mr. Garwood: Does it conform to the rules and regulations of the Railroad Commission of Louisiana?

672 Mr. Seaman: Yes, sir.

Mr. Garwood: Is it recognized by that official body as a common carrier under the laws of Louisiana?

Mr. Seaman: Yes, sir.

Mr. Garwood: Are its cars and locomotives equipped in accordance with the safety appliance acts of Congress?

Mr. Seaman: Yes, sir.

Mr. Garwood: Can you state whether the State of Louisiana has safety appliance laws?

Mr. Seaman: Yes, sir.

Mr. Garwood: Does it conform with those laws?

Mr. Seaman: It does.

Mr. Garwood: Does it keep its accounts in accordance with the accounting orders of the Interstate Commerce Commission?

Mr. Seaman: It does.

Mr. Garwood: Does it make its regular reports in accordance with the rules and regulations of the Interstate Commerce Commission?

Mr. Seaman: It does.

Mr. Garwood: Does it make similar reports to the Railroad Commissioner of Louisiana?

Mr. Seaman: Yes, sir.

673 Mr. Garwood: When demanded?

Mr. Seaman: Yes, sir.

Mr. Garwood: I believe you stated there is no officer of the railroad company that is an officer or employee of the lumber company.

Mr. Seaman: That is, active officers. Mr. David Joyce is vice-president, and Mr. Stanley Joyce, Secretary.

Mr. Garwood: I am referring to the actual conduct of the business.

Mr. Seaman: Yes, actual operation.

Mr. Garwood: Has the railroad company an officer, a traffic man and a full corps of employees necessary to operate the road, with due regard to the rights, safety and convenience of the public.

Mr. Seaman: It has.

Mr. Garwood: It operates its trains on schedule time?

Mr. Seaman: Yes, sir.

Mr. Garwood: Have you in the town of Winnfield acquired trackage right under ordinances through the streets of that town?

Mr. Seaman: Yes, sir.

Mr. Garwood: Those are given to you under duly enacted

674 ordinances?

Mr. Seaman: Yes, sir.

Mr. Garwood: Some of them, I believe, are in your book of corporate records.

Mr. Seaman: They are all shown in the record.

Mr. Garwood: We will ask that they be considered as introduced in evidence.

Commissioner Harlan: It will be so understood.

Mr. Garwood: Has the railroad company received any public aid, by way of public donation, taxation or otherwise, from any of the communities through which it runs.

Mr. Seaman: In the town of Winnfield principally, where we established a depot at an expense of $7,000 and have been a material assistance to them, as is shown by the record this morning, in the Picayune, that largely through our efforts the town of Winnfield has been placed upon a parity with the connection of the Rock Island

with the V. S. & P., so that it is now in a fair way to become a large distributing center, which it has gradually been approaching.

Mr. Garwood: What is the population of Winnfield?

Mr. Seaman: I could only guess as to that, but I think abiut 3,500 or 4,000 people. It possibly may be larger.

675 Mr. Garwood: Largely through the connections afforded by your road, its competitive influence and its efforts in that direction, Winnfield aspires to become and is to some extent becoming a jobbing center, is it not?

Mr. Seaman: Rates were put in yesterday by the Commission which will permit them to become a jobbing center. They did do considerable, but they were at a disadvantage with the connecting points on the Rock Island and the V. S. & P. until the order of the Commission was entered yesterday at Shreveport.

Mr. Garwood: One other thing, relative to the trackage contract. I understood you to state to Commissioner Harlan that the two companies have been negotiating relative to a change of that contract.

Mr. Seaman: Yes.

Mr. Garwood: Would you please state how far that negotiation has gone and what are the proposed alterations that are suggested?

Mr. Seaman: Well, as between the lumber company and the railroad company and the Southern Investment Company, as a railroad man, I have proposed that they pay to us a trackage of 35 cents a train mile, which is the usual trackage agreement, where they

676 furnish their own equipment and power. The trackage agreement in force on the Rock Island at points, and I think upon the Missouri Pacific—that question has proceeded far enough to print the necessary contract, which has been printed. It is simply a modification of section 13 of the traffic and trackage agreement, whereby, instead of free trackage, they are to pay us at the rate of 35 cents per train mile, and with the necessary modifications to fit that condition.

Mr. Garwood: That is all.

Commissioner Harlan: I neglected to refer to the mills at Jonesboro and Rochelle, of the Tremont Lumber Company, and to their relation to the lines of the regular carriers. How far is the Tremont Lumber Company's mill at Jonesboro from the tracks of the Rock Island?

Mr. Seaman: A plat is attached to this book, giving the exact distance.

Commissioner Harlan: Well, in a general way.

Mr. Seaman: Oh, it is not very far.

Commissioner Harlan: About a quarter of a mile?

Mr. Seaman: About, but it is shown definitely on the plat.

677 Commissioner Harlan: How far is their mill at Rochelle from the tracks of the Iron Mountain?

Mr. Seaman: About the same distance. The railroad company owns the tracks at all the mills, the lumber company owns no tracks at the mills.

Commissioner Harlan: What allowances or divisions do you get

from the Iron Mountain and Rock Island on manufactured lumber out to interstate points from those mills?

Mr. Seaman: If you will ask that of our traffic manager, he knows the details.

Commissioner Harlan: What is your highest allowance; do you happen to remember that? Never mind, we will get it from the other witness.

Mr. Seaman: I think it is six cents.

Commissioner Harlan: You do get allowances on shipments from those mills, or divisions, as you call them?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Does the Tremont & Gulf make any allowances to the lumber company of any kind?

Mr. Seaman: None whatever.

Commissioner Harlan: Does the lumber company, so far as you know, get any allowances from the Rock Island and Iron
678 Mountain?

Mr. Seaman: The lumber company itself?

Commissioner Harlan: Yes.

Mr. Seaman: No, sir, the lumber company has absolutely no tonnage.

Commissioner Harlan: This is not a milling in transit movement of logs to the mill?

Mr. Seaman: No.

Commissioner Harlan: It is merely a local movement.

Mr. Seaman: Yes.

Examiner Burchmore: There is on file with the Commission a contract dated February 5, 1909, between the Tremont & Gulf and the Rock Island System, relating to trackage and maintenance of the connection at Winnfield, I think.

Mr. Seaman: Yes, sir.

Examiner Burchmore: Have you any other contracts with the Rock Island System relating to divisions or rates?

Mr. Seaman: Well, no written contract; no, sir, only we are a party to their tariffs in the ordinary way.

Examiner Burchmore: Aside from the free trackage rights accorded to the lumber companies, is there any service performed by the Tremont & Gulf Railroad for the Tremont Lumber Com-
679 pany without charge?

Mr. Seaman: No, sir.

Examiner Burchmore: There is no free switching performed?

Mr. Seaman: No, sir.

Examiner Burchmore: Does not the Tremont & Gulf Railroad Company perform interwork switching free of charge?

Mr. Seaman: No; we spot our cars and take care of them, and they perform their own service.

Examiner Burchmore: Has there been in your knowledge in the past any negotiation for the sale of this Tremont & Gulf to the Rock Island or the St. Louis, Iron Mountain & Southern System?

Mr. Seaman: Is that a part of this inquiry?

Mr. Garwood: I presume almost anybody who owns a short line

road would like to sell it, but I think those are matters of more or less private nature, and a business man would scracely like to go into it. I do not know anything about it, and do not care anything about it.

Commissioner Harlan: We will limit the inquiry in this way. We want to know from this witness whether there are any arrangements that are completed, either with the Rock Island or the Iron Mountain, and the actual consummation of which will de-
680 pend upon the result of the Commission's investigation in this proceeding. That, I think, the Commission is entitled to know.

Mr. Garwood: Of course, your Honor, if there is anything in the shape of an agreement by which a motive might be established for the extension of any improper or peculiar favors, or anything of that sort, it is a matter, of course, which the Commission would have a perfect right to probe to the bottom, and we would have no objection to that line of inquiry, and as a practical matter, I would have no objection to this inquiry except this, I do not know; I have no personal knowledge about the matter one way or the other, but it occurs to me that no business man, if he is dealing with one, two or three, he might be trying to play one against the other; I do not know——

Commissioner Harlan: It was for that reason that I limited the inquiry to executed agreement; that is, agreements that are so far negotiated as to have become fixed and depending for their consummation only upon a condition subsequent to or the result of the conclusions of the Commission in this proceeding.

Mr. Garwood: Whether the Commission does or does not
681 recognize this as a common carrier?

Commissioner Harlan: Yes, or whether it continues or orders the cancellation of the division.

Mr. Garwood: Now, your Honor will pardon me when I say that I fail to see how that would throw any light upon the proposition whether we are a common carrier or not. If we are a common carrier, the Commission will doubtless hold we are entitled to a division.

Commissioner Harlan: There is undoubtedly force in your proposition, but the other side of it is this, the Commission does not recognize any common carrier has any secrets of its own, if it is under the jurisdiction of the Commission.

Mr. Garwood: Any traffic secrets, I heartily concur, nor have we any secrets——

Commissioner Harlan: Well, and its relations to other carriers in the form of contracts and agreements, if they are not reduced to writing, is a matter which the Commission has always thought was within its jurisdiction to inquire about.

Mr. Garwood: For instance, I speak with the utmost freedom because I do not know, if we ascertain from this witness on the stand that he is trying to sell to the Frisco or the Rock Island or the Iron Mountain, possibly our lines would like to get into the
682 game some where, and perhaps we could one way or the other, not wishing to see a good road like the Tremont & Gulf

fall into the laps of our competitors, we might interpose to block the game in some way. I can conceive of such things being done.

Commissioner Harlan: You could not do that if the agreement were executed, and I limited the inquiry to that proposition, whether any negotiation has been carried so far by the Tremont & Gulf with the Rock Island or the Iron Mountain that it will become a consummated transaction, depending on the result of this inquiry. Now, I do not see that that is a matter that a carrier has a right to withhold from the Commission.

Mr. Garwood: Now, what bearing does that have upon the question before the Commission, as to whether we are or are not a common carrier?

Commissioner Harlan: I will leave you to infer what bearing it may have. It may have a very extensive bearing. If the price paid amounts to a continuation of a division in another form it may be a very vital question, and it may have other significance.

Mr. Garwood: If it is a sale, how could there be a continuance of a division, when they have lost title?

683 Commissioner Harlan: We are now talking about the possibility of a continuance in another form to an investment interest of the divisions that they are now enjoying in this form. Now, that seems to me to be clear enough. Do you press your objection to this question?

Mr. Garwood: Solely upon the proposition that it is a matter of private business interests, which has no relevancy or materiality to the matter before the Commission.

Commission Harlan: I again ask, do you press your objection?

Mr. Garwood: Yes, sir.

Commissioner Harlan: In view of the importance that counsel attaches to the question, I will take the matter under consideration until two o'clock as to what ruling will be made at this time.

Mr. Garwood: It may possibly be we will have no objection to it. I know nothing about the subject matter, and therefore I make the objection.

Commissioner Harlan: Perhaps you might confer with the witness and ascertain whether he desires to answer or ascertain whether he has any objection.

Mr. Seaman: I will say we have no executed contracts
684 which are not on file with the Commission.

Commissioner Harlan: I did not mean contracts which were executed on paper in a formal way, but whether the negotiation has proceeded to an understanding of any kind, whether verbal or in writing that is fixed and depends for its consummation upon the result of this inquiry.

Mr. Garwood: We interpose the objection at this time.

Commissioner Harlan: The question will be reserved until two o'clock.

Examiner Burchmore: Under this contract referred to on page 203 of the book "Traffic and Trackage Agreements," the right is reserved to the Tremont & Gulf Railroad Company to route all traffic furnished by the lumber company?

Mr. Seaman: Yes, sir.

Examiner Burchmore: Is that same reservation contained in the new contract which is ready for signature?

Mr. Seaman: Yes, sir, except that we always recognize if there is any material difference, as stated in the contract, to the shipper, or if he has a preference, we have always observed it, but if it makes no difference to the Tremont Lumber Company over what route it goes, we select the routes which will give the best expedition and
685 best results to us.

Examiner Burchmore: The provision in the contract is subject to some such provision.

Mr. Seaman: No, only they have the right of terminal delivery, and we have the right, there being no difference whatsoever in the rates to the lumber company, the contract specifically provides they reserve the right of terminal routing.

Examiner Burchmore: Was any part of the rail from which the Tremont & Gulf was actually constructed, furnished by any common carrier with which it connects?

Mr. Seaman: No.

Examiner Burchmore: It was all purchased in the market?

Mr. Seaman: Yes, sir.

Examiner Burchmore: Were those rails moved to the points where used, under a special rate published by the interstate carriers, to apply on such movements?

Mr. Seaman: Yes, sir.

Examiner Burchmore: Were those special rates on the same general basis as the rates usually applied on steel rails?

Mr. Seaman: Yes, sir.

Examiner Burchmore: They were not on an unusually low
686 basis or special basis?

Mr. Seaman: No.

Examiner Burchmore: Did the Tremont & Gulf receive any divisions out of the movement of its own rails?

Mr. Seaman: I believe not. I am not sure, but I think not.

Examiner Burchmore: Rails for new construction or replacements move under joint rates which are participated in by the Tremont & Gulf?

Mr. Seaman: Ordinary material rates.

Examiner Burchmore: Do you know about what those divisions are?

Mr. Seaman: I do not.

Examiner Burchmore: Since the construction of the Tremont & Gulf and during the period since the construction, has the Southern Investment Company itself or through its subsidiary companies increased its land, or timber, or stumpage holdings in this country?

Mr. Seaman: Somewhat from time to time, but I am not familiar as to that. They are always buying.

Examiner Burchmore: Explain the failure to include in the lines of the Tremont & Gulf Railroad the private railroad operated by the lumber company.

687 Mr. Seaman: The lumber company's roads are being taken up and replaced from time to time at different junction points, operated through the woods in all directions, temporary railroad and not permanent.

Examiner Burchmore: It is only because of its temporary character that it was kept out of the organization?

Mr. Seaman: No, sir; absolutely the Tremont & Gulf is a railroad, as much as any railroad ever constructed, and the logging roads are logging roads purely for that purpose.

Examiner Burchmore: I understood those logging roads were of a very high character of construction.

Mr. Seaman: Yes, sir, they are; as far as logging roads go. They have main lines, and branches off of those. The main lines remain for years, and the branches from them are taken up and put down from time to time.

Commissioner Harlan: Judge Cowan, have you some questions? Let me say that I understand from Mr. Garwood that all the details of rate matters and financial details and matters of operation will be explained by other witnesses.

Mr. Cowan: Yes, I understood that. The only thing I thought of asking Mr. Seaman was if there is anybody here representing the Tremont Lumber Company who could tell us about the affairs of the Lumber Company. If so, we might want to call them, if
688 they are here.

Commissioner Harlan: Is there any officer or agent of that company here?

Mr. Seaman: There is, as a matter of fact.

Commissioner Harlan: Who is it?

Mr. Seaman: Mr. Carpenter, is here, not as a witness, but as an onlooker.

Commissioner Harlan: If Mr. Carpenter is here, we would like to have him here at two o'clock as a witness.

Mr. Cowan: I do not know that we want to ask anything at this time.

Mr. Coleman: Have you been with the Tremont & Gulf Railroad ever since it was originally constructed?

Mr. Seaman: Yes, sir—now, one moment. The Tremont & Gulf Railway Company is organized, there was the Tremont & Gulf Railroad, a small 12 mile road, owned by other interests which we succeeded. I organized the Tremont & Gulf Railway Company.

Mr. Coleman: The Tremont & Gulf Railroad Company——

Mr. Seaman: Railroad, not company.

Mr. Coleman: Railroad, began at Tremont?

Mr. Seaman: Yes.

689 Mr. Coleman: Extended in a southerly direction for 12 miles.

Mr. Seaman: About 12 miles.

Mr. Coleman: What year was that?

Mr. Seaman: I do not know what time the original road was constructed. It was an old logging road.

Mr. Coleman: When you came in?

Mr. Seaman: In 1907, 1906 and 1907.

Mr. Coleman: Then the Tremont & Gulf Railway began the construction of a road?

Mr. Seaman: Yes, sir.

Mr. Coleman: Still in a southerly direction?

Mr. Seaman: Yes, sir.

Commissioner Harlan: We have been all over that in a general way, and I wish you would remember what we explained. This witness has explained those details. Now, if you have some other facts you want to bring out, you may do so.

Mr. Coleman: I will not be but a minute, if I keep on.

Commissioner Harlan: Very well.

Mr. Coleman: Your mill is at Tremont, the first one?

Mr. Seaman: Yes, sir.

690 Mr. Coleman: How far was the first construction of the railway?

Mr. Seaman: It was constructed continuously, without interruption, as it now stands.

Mr. Coleman: Did you have a mill at Eros?

Mr. Seaman: Yes, sir; that was an old mill, which was taken over and rebuilt by these people when they reached it.

Mr. Coleman: Then you went down to Sikes?

Mr. Seaman: Yes, sir.

Mr. Coleman: At that time the only connection with a trunk line was the Vicksburg, Shreveport & Pacific?

Mr. Seaman: Yes.

Mr. Coleman: Did you go to Jonesboro next?

Mr. Seaman: No. The entire road was constructed throughout. We do not go direct from Sikes to Jonesboro.

Mr. Coleman: The Rock Island operates that track?

Mr. Seaman: Yes, sir.

Mr. Coleman: When did you complete the spur from Pyburn over to Rochelle?

Mr. Seaman: At the same time; it was all built together, the Rochelle line a little later; that is, it happened to be constructed a little later.

691 Mr. Coleman: When was the Southern Investment Company organized?

Mr. Seaman: I cannot tell you.

Mr. Coleman: No idea?

Mr. Seaman: Oh, years ago.

Mr. Coleman: Before the railroad?

Mr. Seaman: Yes.

Mr. Coleman: When was the stock of the railroad company transferred to the Southern Investment Company?

Mr. Seaman: At the time it was issued.

Mr. Coleman: The Mansfield Hard Wood Lumber Company, you testified, was given a free haul of its logs down to the mill.

Mr. Seaman: No, sir; I did not so testify.

Commissioner Harlan: No, he said the Mansfield Company got no title to the logs except upon delivery at the mill, but they were

hauled there by the Tremont Lumber Company on its trackage rights.

Mr. Coleman: You do not care to mill hardwood lumber up there?

Mr. Seaman: No, sir.

Mr. Coleman: Is not that the reason you let it go down there, so it will clear it up for you?

692 Mr. Seaman: Yes, sir. You speak of me. I have nothing to do with the lumber.

Commissioner Harlan: It is understood your replies refer to the lumber company.

Mr. Seaman: I presume so.

Mr. Coleman: When you testified a while ago you would allow any lumber company to run a train over your road on a trackage arrangement similar to the one which the Tremont Lumber Company has with the Tremont & Gulf Railway, your sole condition was that they give you the outbound tonnage?

Mr. Seaman: Practically so; yes.

Mr. Coleman: That carried with it, I suppose, the division of the through rates?

Mr. Seaman: Yes, sir.

Mr. Coleman: So, if the division of the through rates at Winnfield and Rochelle is six cents per 100 pounds, you meant that that six cents per 100 pounds should accrue to the Tremont & Gulf Railroad Company?

Mr. Seaman: Yes, sir.

Mr. Coleman: Does the Southern Investment Company pay a dividend?

Mr. Seaman: I do not know.

693 Mr. Coleman: Who does?

Mr. Seaman: I do not know that.

Mr. Coleman: Are you president of that company?

Mr. Seaman: I am not. I have no connection with it.

Mr. Coleman: Does the Tremont Lumber Company pay a dividend?

Mr. Seaman: I have no connection with the Tremont Lumber Company.

Mr. Coleman: DoDes the Tremont & Gulf Railway pay a dividend?

Mr. Seaman: It has not.

Mr. Coleman: Never has?

Mr. Seaman: No.

Mr. Coleman: How was your title acquired to the right of way of all these various roads?

Mr. Seaman: By deed.

Mr. Coleman: Was all of it by deed?

Mr. Seaman: Absolutely.

Mr. Coleman: You never condemned any land?

Mr. Seaman: Yes, sir.

Mr. Coleman: Then you did not get it by deed.

Mr. Seaman: We got it from the sheriff by deed in the proper way, if you understand condemnation proceedings.

694 Mr. Coleman: Who built the road from Jonesboro to Sikes?

Mr. Seaman: That was built by the old lumber company partially; I do not know who built it, as a matter of fact.

Mr. Coleman: You have it marked as one of your lines.

Mr. Seaman: Yes, sir; we operate that under lease.

Mr. Coleman: Under lease from whom?

Mr. Seaman: From the Tremont Lumber Company.

Mr. Coleman: What are the terms of that lease?

Mr. Seaman: It is all shown in the book here of records.

Mr. Coleman: You don't know it?

Mr. Seaman: I don't know it out of hand. It is here as part of the record.

Mr. Coleman: You mentioned something about a contract for 35 cents covering the trackage.

Mr. Seaman: Yes.

Mr. Coleman: 35 cents per train mile?

Mr. Seaman: 35 cents a train mile limited to certain tonnage.

Mr. Coleman: There never has been a secret arrangement, has there, between the two companies?

Mr. Seaman: No, sir. Every contract of any kind or character that our railroad has with the Tremont Lumber Company

695 or any other patron on our line is contained in this book, except one or two minor contracts as to connections which have been made since this was published.

Mr. Coleman: If there has been a running arrangement of 25 cents between your company and the Tremont Lumber Company would you know of it?

Mr. Seaman: Yes, sir.

Mr. Coleman: Is Mr. Batchelder here?

Mr. Seaman: No. He has no connection with the Tremont & Gulf Lumber Company.

Mr. Coleman: If I told you Mr. Batchelder testified in the case of the Chicago Lumber & Coal Company against the Tioga & Southeastern Railway two years ago that the Tremont Lumber Company paid 25 cents per train mile to the railroad company—or just the other way—would that change your opinion?

Mr. Seaman: Not the least, because he did not know anything about it if he said so.

Mr. Coleman: Is your road operated at a profit or a loss?

Mr. Seaman: At a loss.

Mr. Coleman: Always?

696 Mr. Seaman: Some months it is operated at a profit. We hope soon to have it on a profitable basis.

Mr. Coleman: Have you ever filed with the Louisiana State Commission your total earnings and expenditures?

Mr. Seaman: I think so. That you can ascertain from our auditor who attends to that part of the business.

Mr. Coleman: Have they ever shown a net profit for a year?

Mr. Seaman: No, never.

Mr. Coleman: Sure?

Mr. Seaman: I am quite sure. I do not know as to the filing of it, but I do not know of any year when we have made a net profit.

Mr. Coleman: You were connected with it two years ago?

Mr. Seaman: Yes, sir.

Mr. Coleman: Would it refresh your recollection if I told you—I do not say you personally, but your company—filed a statement with the Louisiana State Commission showing total earnings of $83,600, operating expenses $54,564.68, and a net profit of $29,080.

Mr. Seaman: I would not know anything about it.

Mr. Coleman: So when you said they had not made one,
697 you meant you did not know anything about it?

Mr. Seaman: Only in a general way. We have no profits for distribution to the stockholders, because I am continually asking them for more money than they will furnish me to put into track and equipment, and for other purposes.

Mr. Cowan: I assume you have reference to profit over and above fixed charges.

Mr. Seaman: Yes.

Commissioner Harlan: What was your operating ratio last year; do you know?

Mr. Seaman: 75.7 per cent.

Mr. Coleman: In the construction of your railroad, has your aim been to put your mill at a junction point with a trunk line?

Mr. Seaman: We have nothing to do with mills; we have them all along the line.

Mr. Coleman: Were not the mills built at junction points after your railroad connected, or before?

Mr. Seaman: Some were before, and some after.

Mr. Coleman: Which before?

Mr. Seaman: Jonesboro, Pyburn and Tremont.

Mr. Coleman: And the ones at Rochelle and Winnfield
698 were built afterwards?

Mr. Seaman: We have no mill at Winnfield. Rochelle was just completed a short time ago. We built at Rochelle because the Iron Mountain is here, and there are good water facilities, the Little River.

Mr. Coleman: I understand you do not know about the divisions and the details.

Mr. Seaman: No; I know generally, but not the details.

Commissioner Harlan: Do you rent any equipment from the lumber company?

Mr. Coleman: No.

Mr. Cowan: Or do they rent any from your company?

Mr. Seaman: No. They may at times get an engine for a day for a special service.

Mr. Coleman: You testified that the line from Womack over to Lyons—was it?

Mr. Seaman: From a point between Womack and Lyons easterly to a connection with the Iron Mountain.

Mr. Coleman: You testified that the reason that would be desirable would be on account of equipment, giving you better equipment.

Mr. Seaman: Not giving us any equipment.

699 Mr. Coleman: Won't you clear us up on that?

Mr. Seaman: The lease would be desirable so after they had their product all in train at the point where their mill is, they could better haul it through over our line than for us to pick it up at the junction point, we making them a train mile rate. The contract has not been concluded as yet.

Mr. Coleman: You did not mean it would have any effect on the furnishing of cars?

Mr. Seaman: Not on our equipment.

Mr. Coleman: You do not send your cars out?

Mr. Seaman: Yes, sir.

Mr. Coleman: Over other lines?

Mr. Seaman: Yes, sir.

Mr. Coleman: How extensively?

Mr. Seaman: All of them; we never see them.

Mr. Coleman: How many have you?

Mr. Seaman: We have one or two hundred. We try to get them and you fellows take them and hold on to them; steal them, in other words.

Mr. Coleman: Where the railroad does the hauling for the lumber company free of charge, you take care of the per diem, do you not?

700 Mr. Seaman: Yes.

Mr. Coleman: I mean the railroad takes care of the per diem.

Mr. Seaman: Well, you may get that from our traffic man, who understands the details.

Mr. Coleman: If your contract so provides, no doubt it is true.

Mr. Seaman: Whatever our contract provides, it is true.

Mr. Coleman: There is such a clause in the contract.

Commissioner Harlan: I do not think your question was quite accurately stated. The railroad does not do any hauling for the lumber company, of logs; the lumber company does the hauling itself.

Mr. Coleman: I mean it is subject to that. I mean the logs come down under the jurisdiction of the lumber company, but the per diem charge is all charged——

Mr. Seaman: There is no per diem. They have their own cars and equipment.

Commissioner Harlan: They use their own logging cars and locomotives.

Mr. Coleman: When the lumber leaves the mill, it is on a different car?

701 Mr. Seaman: Yes.

Mr. Coleman: Now, then, does your railroad company pay any charges accruing to that car?

Mr. Seaman: Originally as between ourselves and other carriers: yes, sir.

Mr. Coleman: You stated you reserved the right absolutely to control routing.

Mr. Seaman: As shown in the contract.

Mr. Coleman: Supposing I buy a car of lumber from the lumber company and wanted to route it my own way, as consignee, what then?

Mr. Seaman: You could have it.

Mr. Coleman: Then you do not control the routing?

Mr. Seaman: We do if we wish to insist upon it; we control the routing except the destination line, guaranteeing them the same rate, no higher rate, and as prompt delivery. They can take the destination routing.

Mr. Coleman: So, as a matter of fact, all you care for is to have the connecting line, the line that connects with you; you want the right to select that line. You do not care about the last line?

Mr. Seaman: No.

702 Mr. Coleman: You just want the line that pays you the highest division?

Mr. Seaman: Naturally; yes.

Mr. Coleman: That is all.

Commissioner Harlan: Do you charge demurrage on a car set at Chatham for the Haynes Lumber Company?

Mr. Seaman: Yes, sir.

Commissioner Harlan: Do you charge demurrage on a car set at Rochelle for the Tremont Lumber Company?

Mr. Seaman: Yes, sir, if it is subject to demurrage.

Examiner Burchmore: With respect to the lease of the Jonesboro road, a copy of that lease is found in this corporate record of proceedings. It is dated apparently May 1st, 1906 and runs for three years.

Mr. Seaman: There has been a mere formal renewal of that lease, by endorsement on the contract.

Examiner Burchmore: And the further question, the sole consideration for the lease of that line moving from the railroad company to the Tremont Lumber Company is the maintenance and upkeep of the track?

Mr. Seaman: Yes, sir.

Commissioner Harlan: The map to which the witness has
703 referred, entitled map of the Tremont & Gulf Railway Company, may be filed as an exhibit.

(The map so offered and identified was received in evidence and thereupon marked Tremont & Gulf Railway Exhibit No. 2, witness Seaman, received in evidence December 10, 1910, and is attached hereto.)

(Witness excused.)

J. B. FICK was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?

Mr. Fick: Winnfield.

Commissioner Harlan: You are auditor of the Tremont & Gulf?

Mr. Fick: Yes.

Commissioner Harlan: As such, was this financial exhibit to which Mr. Seaman has referred prepared by you or under your supervision?

Mr. Fick: It was.

Commissioner Harlan: Does it contain an accurate statement of the financial and other affairs of your company, according to the various pages that it contains?

704 Mr. Fick: It does.

Commissioner Harlan: What period of time does it cover?

Mr. Fick: Sixteen months; the fiscal year 1909-1910, and then a period of four months ending October 31, 1910.

Commissioner Harlan: In a general way state what it shows with respect to the net revenues of the company during the last fiscal year.

Mr. Fick: The total operating revenue for the fiscal year ending June 30, 1910 was $249,104.48.

Commissioner Harlan: And operating expenses?

Mr. Fick: The total operating expenses for the same period were $188,479.51.

Commissioner Harlan: Now, if you add taxes and interest to that, what net do you get?

Mr. Fick: We get a net loss of $29,670.55; that is, for the fiscal year.

Commissioner Harlan: What is the largest item in the expense for maintenance of way and structures?

Mr. Fick: Track men.

Commissioner Harlan: The expense for that was some $88,000 for maintenance of way and structures?

Mr. Fick: Yes, sir.

705 Commissioner Harlan: Are the details shown on this report?

Mr. Fick: No, sir; only so far that that is the total of the operation or operating expenses. You see these items here were filed with the Commission.

Commissioner Harlan: I know, but one item of $88,794.27 is assigned to the maintenance of way and structures.

Mr. Fick: Under the classification issued by the Interstate Commerce Commission; yes, sir.

Commissioner Harlan: But what was the largest item in that?

Mr. Fick: Preparing the ballast of the road; that is, fixing up the roadbed.

Commissioner Harlan: Was that done last year?

Mr. Fick: Yes, sir.

Commissioner Harlan: Do you mean ballast as a primary proposition, or maintenance of ballast?

Mr. Fick: No, maintenance of ballasting; it was not an addition and betterment account or construction account. You see, we had considerable flood there, and to repair the track and put it back into a good first class condition it was necessary to perform that work.

Commissioner Harlan: Is not that a very large item on a road only 16 miles long?

706 Mr. Fick: How much?

Commissioner Harlan: Is not that a large item for a road that is only—I was thinking of something else. What does that amount to per mile of road?

Mr. Fick: That includes the side tracks and industrial spurs, making a total of about 80 odd miles, which would be possibly about $1,000 or $1,200.

Mr. Seaman: They had floods there, and all of the roads were washed out, and bridges and miles of track, and they were reballasted, and it put the track in better shape than it was before.

Commissioner Harlan: I observe an item of $102,000 for the previous year, which is some $14,000 more than the year 1910, assigned to maintenance of way and structures.

Mr. Seaman: It must have been practically the same proposition.

Mr. Fick: There are some entries down below there to show.

Mr. Seaman: There were weeks and weeks the roads did not operate down there; we had our road in shape and we detoured the Rock Island and other trains over our line.

Commissioner Harlan: Then the maintenance of equipment last year was $30,000 and the preceding year $53,000?

707 Mr. Fick: Yes, sir.

Commissioner Harlan: What is the explanation?

Mr. Fick: There were heavy repairs to some of those locomotives.

Commissioner Harlan: Does this statement show the original cost of equipment?

Mr. Fick: No, sir; that shows the present valuation, less the depreciation.

Commissioner Harlan: What is the present value of the equipment?

Mr. Fick: About $170,000.

Commissioner Harlan: What percentage do you write off per month on your car equipment?

Mr. Fick: On the freight cars, five per cent.

Commissioner Harlan: Five per cent a month?

Mr. Fick: No, sir; per annum.

Commissioner Harlan: I asked per month.

Mr. Fick: Well, that would be——

Commissioner Harlan: That is all right. What per cent do you write off per annum on your locomotives?

Mr. Fick: Six per cent.

Commissioner Harlan: What amount did you carry to

708 surplus last year? I suppose none, if you had a deficit.

Mr. Fick: None.

Commissioner Harlan: What the year before?

Mr. Fick: None.

Commissioner Harlan: Have you any accumulated surplus?

Mr. Fick: No.

Commissioner Harlan: Mr. Garwood, the Commission will adjourn at this time until two o'clock, and proceed with Mr. Fick afterward.

Whereupon, at 12:55 P. M., a recess was taken until 2:00 P. M.

709 After recess.

2.00 p. m.

Mr. Coleman: The statement made by the witness, which has been submitted to the Commission, showing allowances made to tap lines, shows payments made for the years 1906, 1907, 1908, 1909 and 1910, but it should be explained that all divisions were cancelled in 1908, and the payments made during that year and during the year 1909 and 1910 were settlements for divisions which had accrued prior to the cancellations. No division was in existence after the cancellation in 1908.

Mr. Andrews: May it please the Commission, so far as having my case heard, I am unfortunate because I am a connection of the Frisco Lines, and I understood you were to take up the Iron Mountain after the Rock Island. I wanted to know if you would excuse the lines connecting with the Frisco until Monday morning?

Commissioner Harlan: I think that would be safe; yes.

Mr. Andrews: Thank you.

710 J. B. Fick resumed the stand.

Commissioner Harlan: The question that arose on objection of counsel when Mr. Seaman was on the stand will be reserved for consideration by the Commission. In case the Commission desires to press that inquiry, Mr. Seaman will be expected to take the stand again at Washington, or at some other convenient place.

Mr. Fick, I direct your attention again to the items on this account for maintenance of way and structures amounting to $102,000 in the year 1909 and $88,000 in the year 1910, or a total of $191,000 plus for the two years. For those two years the two items together make a very large proportion of your outstanding capital stock. I would like to ask whether those items are not somewhat excessive, when compared with similar items on regular lines.

Mr. Fick: I believe not. The road being new, requires a greater amount of labor.

Commissioner Harlan: What is an ordinary expenditure per mile?

Mr. Fick: I could not say as to that. I would have to refer to other roads.

711 Commissioner Harlan: What was the total estimated value of the equipment? You gave it before.

Mr. Fick: $170,000.

Commissioner Harlan: And your expenditures during those two years on maintenance of equipment aggregated $83,000?

Mr. Fick: Yes, sir.

Commissioner Harlan: Or 50 per cent. Is that a usual percentage, 25 per cent a year for the maintenance of equipment?

Mr. Fick: Well, I could not say as to that. There were heavy repairs on some of the locomotives, and then that includes, you know, all the repairs to the box cars and flat cars and passenger equipment, and so forth.

Commissioner Harlan: Who does the repairs for your cars.

Mr. Fick: Wherever they are. You see the foreign roads bill on us for the amount. Under the Master Car Builders Association, they bill on us for owner's defects, and we have to pay those.

Commissioner Harlan: You made practically no repairs yourself or under contract?

Mr. Fick: Not under contract; no, sir.

Commissioner Harlan: Yourself; have you shops?

712 Mr. Fick: We had the shops at Eros.

Commissioner Harlan: Are the details of your shop accounts here?

Mr. Fick. No, sir.

Commissioner Harlan: Judge Cowan, have you any questions of this witness?

Mr. Cowan: Just a question or two on the lines your Honor was just asking about. Under the Master Car Builders' rules, what repairs do the other lines charge you with?

Mr. Fick: Owner's defects.

Mr. Cowan: Do you have your engines rebuilt in any machine shops anywhere?

Mr. Fick: Not rebuilt.

Mr. Cowan: Didn't you have contract work done on the engines, or have it done otherwise in anybody else's shops than your own?

Mr. Fick: Not any contract work to my knowledge.

Mr. Cowan: Were these second hand engines when you got them?

Mr. Fick: I could not say.

Mr. Cowan: Well, do you know of any extraordinary repairs made on them?

713 Mr. Fick: They were running repairs, and heavy repairs made on account of the road being new, and naturally it is harder on a locomotive on a new track than on an old, solid roadbed.

Mr. Cowan: Do your annual reports show your locomotive mileage?

Mr. Fick: Yes, sir.

Mr. Cowan: In regard to the question of repairs on your cars, what did that consist of, equipment with air brakes and the like?

Mr. Fick: Yes, sir; whatever the owner's defects may be, there are certain things that the connecting line or the carrier pays.

Mr. Cowan: You know whether or not, probably, if you had your cars equipped with air brakes in the last two years.

Mr. Fick: No, sir, they were equipped with air brakes when purchased.

Mr. Cowan: Have you any explanation you can offer why it cost such a large percentage of the value of your equipment to repair it annually?

Mr. Fick: No.

Mr. Cowan: Where does the lumber company repair its
714 engines and cars?

Mr. Fick: I could not say.

Mr. Cowan: Do they do it on your line?

Mr. Fick: I don't know.

Mr. Cowan: Do you know whether the cost of repairs of the locomotives and the cars which are embraced in your accounts that have been spoken of—do you know whether it is the aggregate of the operation of your shops; is that the way it is figured? Do you take the aggregate of the operation of your shops and divide that aggregate cost by the cars where the work was on cars, and by locomotives where it was on locomotives?

Mr. Fick: There is a percentage of labor and so forth added to the cost.

Mr. Cowan: Does your road make any repairs for the lumber company's engines and cars?

Mr. Fick: Not that I know of.

Mr. Cowan: Do you know whether they do or not?

Mr. Fick: I do not believe they do. I do not know.

Mr. Cowan: Do you make any repairs for owners' defects and charge that back to the lumber company on the trains which are run on your tracks?

715 Mr. Fick: No, sir.

Mr. Cowan: In regard to the maintenance of way and structures, you seem to have $1,000 per mile of line charged up. Did that include ballast where you had none before?

Mr. Fick: No.

Mr. Cowan: Did it include the widenings of the embankment?

Mr. Fick: Only so much as under the classification of the Interstate Commerce Commission was supposed to be charged to operation.

Mr. Cowan: Did it include the reconstruction or building of new depots?

Mr. Fick: No, sir; only so far as repairs.

Mr. Cowan: Did it include the purchase of new rails and ties?

Mr. Fick: No, sir.

Mr. Cowan: The building of new bridges?

Mr. Fick: Not of new bridges; no, sir.

Mr. Cowan: The rebuilding of old ones?

Mr. Fick: Only so far as they are under the classification.

Mr. Cowan: Do you keep the account of the divisions of rates between your company and your connecting line?

Mr. Fick: I keep an account of the amounts collected.

716 Mr. Cowan: Can you make a statement showing the amounts you have collected on lumber received from the Tremont Lumber Company?

Mr. Fick: I could.

Mr. Cowan: And that received from lumber which you get from other than the Tremont Lumber Company?

Mr. Fick: I could.

Mr. Cowan: Do you know what the rate or division is?

Mr. Fick: No, sir.

Mr. Cowan: Who does?

Mr. Fick: The traffic manager.

Mr. Cowan: But you make the settlements, do you not?

Mr. Fick: I make the interline settlements and traffic balances; yes, sir.

Mr. Cowan: Well, you have to have the amount of the division in order to know whether the amount is correct when you make the settlements, of course.

Mr. Fick: Yes, sir.

Mr. Cowan: Is it not a fact that the division sheets do not furnish the basis of settlement in many instances, but it is subject to the settlements to points to which the division sheets do not apply?

717 Mr. Fick: I did not get that.

(Question read.)

Mr. Fick: No, sir.

Mr. Cowan: All your divisions are from your division sheets?

Mr. Fick: Yes, sir.

Mr. Cowan: In some division sheets there are provisions for traffic other than that named in the division sheets, where the respective traffic officials agree on the amount of division, and you bill it out with some sort of a billing slip which shows that the division is different to what the division sheets would make it; and I wondered if that was the case with respect to your line and any of your connecting lines.

Mr. Fick: Our divisions are furnished by our traffic manager to us; the settlements with connecting lines are made on that basis.

Mr. Cowan: Is that a percentage or an arbitrary amount, do you happen to recall?

Mr. Fick: Well, that differs. I could not give you a definite answer.

Mr. Cowan: But that would be shown on your division sheets?

718 Mr. Fick: The percentage would be shown on the division sheets.

Mr. Cowan: Have you filed the division sheets or have you them?

Mr. Fick: That is with the traffic man.

Mr. Cowan: Have these divisions varied for the past two years since you have been with the company?

Mr. Fick: I could not say as to that. I have not watched them.

Mr. Cowan: Now, as to the financial relations of the railroad company and the Southern Development Company, that involves remittances by your company to the Southern Development Company?

Mr. Fick: No.

Mr. Cowan: To whom do you pay the interest on the bonds?

Mr. Fick: To the Southern Investment Company.

Mr. Cowan: Well, I got the word wrong. Are the earnings of your road from time to time kept in an account or bank for your own company, or is it turned over to the Southern Development Company?

Mr. Fick: Kept in our own name in various banks.

Mr. Cowan: Do you have any financial relations to the
719 Tremont Lumber Company?

Mr. Fick: None, except as a common carrier.

Mr. Cowan: Do you make the settlements in regard to the rates of freight and so on with the Tremont Lumber Company? Do you have any settlements to make with them on that subject?

Mr. Fick: No, sir. Where local merchandise is carried, our agents collect the amount, the same as from any other shipper.

Mr. Cowan: That is all.

Mr. Coleman: What interest do those bonds bear?

Mr. Fick: Five per cent.

Mr. Coleman: How long a term?

Mr. Fick: Forty years.

Mr. Cowan: And the bonds are owned by the Investment Company?

Mr. Fick: I could not say. They are held in trust by the Illinois Trust Company. That is in evidence.

Mr. Cowan: I understood you to say you remitted the interest to the Investment Company.

Mr. Fick: Yes, sir.

Mr. Cowan: That would indicate——

Mr. Garwood: What that indicates is a matter that the
720 record will show.

Commissioner Harlan: This witness says he does not know who owns them.

Mr. Cowan: After showing earnings of $249,000 and operating expenses of $188,000, in arriving at the deficit, of course you deducted the bond interest?

Mr. Fick: For the net corporate account, yes, sir.

Mr. Garwood: It was stated this morning that the company belonged to the American Railway Association. Are there requirements as to the general character that a railway must attain before it can be admitted to such an association?

Mr. Fick: I believe there are; yes, sir.

Mr. Garwood: As to its grade as a railroad?

Mr. Fick: Yes, sir.

Mr. Garwood: I assume that the Commission understands those requirements.

Commissioner Harlan: Yes, sir.

Mr. Garwood: What other railway associations do you belong to?

Mr. Fick: We are members of the Southern Demurrage & Storage Bureau, and then of course, as officers, we are members of
721 the American Railway Accounting Officers Association, and the Car Transportation Association.

Mr. Garwood: As anditor, you keep your accounts in accordance with the rules of the Interstate Commerce Commission?

Mr. Fick: Yes, sir.

Mr. Garwood: You make your reports to the Commission in the legal form?

Mr. Fick: Yes, sir.

Mr. Garwood: And also report to the Louisiana Commission?

Mr. Fick: Yes, sir.

Mr. Garwood: What is your monthly pay roll, in round numbers?

Mr. Fick: Between $700- and $8,000.

Mr. Garwood: Have you an officer in charge of the general operation of your road, a general superintendent or general manager?

Mr. Fick: Yes, sir.

Mr. Garwood: What other officers of a general character have you?

Mr. Fick: We have a treasurer and traffic manager and general superintendent and vice-president and secretary.

Mr. Garwood: Are you fully equipped with all of the of-
722 ficers requisite and necessary to properly conduct an active railway?

Mr. Fick: Yes, sir.

Mr. Garwood: How many agency stations have you on your line?

Mr. Fick: Nine.

Mr. Garwood: How many non-agency stations?

Mr. Fick: Fifteen.

Mr. Garwood: Turn to the page of your statement, the second page, I believe, and give me the cost of the buildings of those several agencies, stating as you call each one, whether it is an agency or non-agency station.

Mr. Fick: At Cartwright we have a pagoda, the book value is $200. At Eros we have a depot, $2,500. I wish to state that Cartwright is a non-agency point and Eros is an agency point. At Chatham we have a depot, $800, an agency point. At Womack and Lyons——

Commissioner Harlan: If you will just indicate the agencies——

Mr. Fick: On the third page it will show the agency and non-agency points, and the distance from Tremont, Pyburn and Jonesboro, and also whether or not it is a telephone station.

723 Commissioner Harlan: It seems to be a very complete statement of all the details.

Mr. Garwood: Now, at each of those agency stations you maintain an agent who performs all of the ordinary duties of a railway station agent?

Mr. Fick: Yes, sir.

Mr. Garwood: He issues bills of lading, both intrastate and interstate on the usual forms?

Mr. Fick: Yes, sir.

Mr. Garwood: How many section houses have you on your line?

Mr. Fick: Thirty.

Mr. Garwood: What is their character as to permanency and their general nature?

Mr. Fick: Well, they are an ordinary house; they are not what they term a box house, but are good permanent buildings, one for the section foreman, and the other is for the others.

Mr. Garwood: Can you recall how many section men your company employs?

Mr. Fick: On an average, I believe about 112.

Mr. Garwood: Do you know how many train operatives
724 you have?

Mr. Fick: Around 18 or 20; that is, train crews, you are speaking of?

Mr. Garwood: Train crews; yes.

Mr. Fick: Yes, sir.

Mr. Garwood: Does that include engineers and conductors, freight and passenger?

Mr. Fick: Yes, sir.

Mr. Garwood: You do an active passenger business, do you?

Mr. Fick: Yes, sir.

Mr. Garwood: What was your passenger business for the year ending June 30, 1909?

Mr. Fick: For passenger service proper——

Mr. Garwood: I mean exclusive, now, if you can so give it, for your earnings from mail and express.

Mr. Fick: $15,383.34.

Mr. Garwood: And for the year ending June 30, 1910?

Mr. Fick: $17,259.86.

Mr. Garwood: You have made a statement showing the passenger receipts by month for the last 16 months, by stations——

Commissioner Harlan: Mr. Garwood, I think it will not be
725 necessary to go over this. It will all be available to you in the argument.

Mr. Garwood: I merely did it in accordance with the suggestion of counsel the other day that he wished to get a running idea of the extent of the operations. Of course it is all there for the Commission to read.

Commissioner Harlan: This is so full that I think it is not necessary to go over the details, unless you have some special thing you desire to bring out.

Mr. Garwood: Just one or two other questions. Do you do a general passenger business, not confined to the passage of mill employees and business of that character; in other words, do you do a large general public business as a carrier of passengers.

Mr. Fick: We do.

Commissioner Harlan: Do the employees of any one go over this road without tickets?

Mr. Fick: No, sir.

Commissioner Harlan: Mr. Seaman said not.

Mr. Garwood: No, indeed.

Commissioner Harlan: What was your point?

Mr. Garwood: They have undertaken to show that most of
726 the business of some of the lines—that is, their interrogatories would indicate that the passenger business resulted largely from the patronage of mill employees, and things of that sort.

Commissioner Harlan: If so, it is on tickets.

Mr. Garwood: Oh, yes, absolutely it is on tickets, but I want to show this is a general commercial passenger business pertaining to the public at large, and is not confined to any particular class of people.

Commissioner Harlan: The witness has so indicated that.

Mr. Seaman: No one connected with the lumber company in any capacity has transportation over this road.

Mr. Garwood: The Tremont Lumber Company pays demurrage on cars, just as any other concern that does business with you?

Mr. Fick: Yes.

Mr. Garwood: You pay per diem to your connections?

Commissioner Harlan: That was all stated by Mr. Seaman.

Mr. Garwood: I do not want any mistakes about these propositions.

Commissioner Harlan: That is clearly understood.

Mr. Garwood: Have you made in this statement an analysis of your business, interstate and intrastate, at each station? I
727 am not going into that, but just want to indicate it.

Mr. Fick: I have; yes, sir.

Mr. Garwood: Have you also made a showing as to the character of the business, whether lumber or general merchandise?

Mr. Fick: I have.

Mr. Garwood: Have you made a statement showing the extent of business which your road receives from the Tremont Lumber Company.

Mr. Fick: I have.

Mr. Garwood: That all appears in the statement?

Mr. Fick: It does.

Mr. Garwood: You have figured this out, showing the relative proportions of the various classes of business?

Mr. Fick: I have shown the percentage on each sheet for each station.

Mr. Garwood: As inquired about?

Mr. Fick: Yes, sir.

Mr. Garwood: Are there stations upon your line where there are no mills of the Tremont Lumber Company, where you do a large business?

Mr. Fick: Yes, sir.

Mr. Garwood: Just by way of illustration, select one or
728 two of those and call them to the attention of the Commission.

Mr. Fick: For instance, at Winnfield, the largest station on our line, the Tremont Lumber Company's per cent is 9.1; outside business of other parties is 90.9 per cent.

Mr. Garwood: What is your total business at Winnfield?

Mr. Fick: The total is $41,804.38.

Mr. Garwood: Now, select some station——

Mr. Fick: Here is Sikes, a smaller station, with a business amounting to $10,037, which is 100 per cent for others.

Mr. Garwood: Where the Tremont Lumber Company had no business whatever?

Mr. Fick: No. At Womack the business amounting to $8,538.39 is 100 per cent for others, and the Tremont Lumber Company no business. At Gaars Mill, business amounting to $5,278.01, 100 per cent for others, and the lumber company no business. Those are practically some of the larger points. And then the smaller points——

Mr. Garwood: How about Chatham?

Mr. Fick: That is $18,237. Others, 96.9 per cent, and the Tremont Lumber Company 3.1 per cent.

Mr. Garwood: In other words, there are numerous stations upon your line where the lumber company has no interest of
729 any kind, where you do a very large business of a general commercial character?

Mr. Fick: Yes, sir.

Mr. Garwood: Have you caused to be made up a list of industries on your line which are entirely independent of and have no connection with the Tremont Lumber Company?

Mr. Fick: Yes, sir.

Mr. Garwood: If so, I will ask you if that is the statement (handing paper).

Mr. Fick: Yes, sir; it is made up in conjunction with our traffic manager.

Mr. Garwood: We offer that in evidence.

(The statement so offered and identified was received in evidence and thereupon marked Tremont & Gulf Exhibit No. 3, witness Fick, received in evidence December 10, 1910, and is attached hereto.)

Mr. Fick: That goes in connection with the map.

Mr. Garwood: I might ask you the general question if this statement which you have prepared, was prepared under your immediate direction, and if it is correct.

Commissioner Harlan: He has already stated that in response to my inquiry.

730 Mr. Garwood: Is Winnfield the county seat of the Parish?

Mr. Fick: It is.

Mr. Garwood: Where is the county seat of Jackson Parish?

Mr. Fick: It is unlocated at the present, but an effort was made to have it removed to Chatham. It was at Vernon.

Mr. Garwood: What do you mean by it being unlocated? It is not in suspense, they have a county seat somewhere.

Mr. Fick: It was voted to remove it from Vernon.

Mr. Garwood: Well, it is at Vernon now?

Mr. Fick: Yes, sir.

Mr. Garwood: Where is Vernon, relative to any line?

Mr. Fick: Vernon lies possibly in the northwest square, between Chatham and Jonesboro; that is up here, possibly in the center of it.

Mr. Garwood: Not on a railroad?

Mr. Fick: No; that is not on a railroad.

Mr. Garwood: The citizens utilize your road to reach that point?

Mr. Fick: Yes, sir.

Mr. Garwood: And it is now contemplated that it will be removed to Chatham, situated on your line?

Mr. Fick: Yes, sir.

731 Mr. Garwood: So you will have two county seats on your line if it is moved to Chatham?

Mr. Fick: Yes, sir.

(Witness excused.)

J. H. GEAGAN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: What is your business?

Mr. Geagan: General freight agent of the Tremont & Gulf Railway Company.

Commissioner Harlan: How long have you occupied that relation to that company?

Mr. Geagan: Since the 1st of January, 1910.

Commissioner Harlan: Had you any relation with it prior to that time?

Mr. Geagan: Yes, sir.

Commissioner Harlan: What?

Mr. Geagan: Chief clerk to the general freight agent.

Commissioner Harlan: How long have you been with the road?

Mr. Geagan: Since March 5, 1909.

Commissioner Harlan: You may proceed, Mr. Garwood.

Mr. Garwood: I wish you would state what divisions you
732 get with your various trunk line connections. I will first take on lumber, the Vicksburg, Shreveport & Pacific, with which you connect at Tremont.

Mr. Geagan: The divisions range from 2.4 cents to six cents per 100 pounds.

Commissioner Harlan: On what shipments do you get six cents per 100 pounds?

Mr. Geagan: That would be very hard to say; it is according to the territory to which it moves.

Commissioner Harlan: Just what is a typical point?

Mr. Geagan: Well, Chicago, Illinois, for instance.

Mr. Garwood: What divisions do you get with the Rock Island?

Mr. Geagan: From three to six cents.

Mr. Garwood: Indicate in the same manner as you did in response to Commissioner Harlan's question, in a general way to what territory your six cent division would apply.

Mr. Geagan: To various points on the Rock Island. Well, take Western Trunk Line territory.

Mr. Garwood: What divisions do you get with the Iron Mountain?

Mr. Geagan: From three to six cents.

733 Mr. Garwood: Where does the six cent division apply?

Mr. Geagan: Well, Western Trunk Line territory; Central Freight Association territory chiefly.

Mr. Garwood: You connect at Winnfield, Louisiana, also with the Louisiana & Arkansas?

Mr. Geagan: We do; yes, sir.

Mr. Garwood: What road is that; is that what is known as the Buchanan road?

Mr. Geagan: It is known locally, or generally, you might say.

Mr. Garwood: It is known locally as the Buchanan road?

Mr. Geagan: Yes.

Mr. Garwood: Buchanan is a lumber man?

Mr. Geagan: Yes, sir.

Mr. Garwood: He is the practical owner of that road, and is so considered generally, is he not?

Mr. Geagan: That is the understanding.

Mr. Garwood: What is the length of that road, about?

Mr. Geagan: Approximately 200 miles.

Mr. Garwood: Is it not longer than 200 miles? Is it not very nearly 300 miles?

Mr. Geagan: Well, I could not say offhand, but it is
734 between 200 and 300, I suppose; possibly over 200, or at least 300.

Commissioner Harlan: Well, you state the fact to be that it is nearly 300 miles?

Mr. Garwood: It is my understanding it is about 275 miles.

Mr. Seaman: 276 miles.

Mr. Garwood: Have you divisions with that road, and if so, what are they?

Mr. Geagan: They are practically the same as with the Iron Mountain.

Mr. Garwood: Do you know the average haul on your line of your lumber?

Mr. Geagan: For the past six months it is 21.65 miles.

Commissioner Harlan: That is, the manufactured lumber?

Mr. Geagan: That is the manufactured lumber; yes, sir.

Mr. Garwood: Have you any milling in transit rates of which the Tremont Lumber Company takes advantage?

Mr. Geagan: We have milling in transit rates, but the Tremont Lumber Company does not take advantage of them.

Commissioner Harlan: That average haul of 21.65 miles seems to be of lumber manufactured by other than the Tremont Lumber Company.

735 Mr. Geagan: That is the lumber manufactured by everyone.

Commissioner Harlan: It is not so stated here.

Mr. Garwood: Mr. Fick says that that was the oversight of the stenographer.

Mr. Fick: It was the general haul.

Mr. Garwood: You had better correct that.

Commissioner Harlan: It is an oversight right at the top of the page. Now, what do you understand this table to be, Mr. Fick?

Mr. Fick: The figures shown there are as to the number of cars hauled for 16 months for others than the Tremont Lumber Company.

Commissioner Harlan: That is what it says.

Mr. Fick: Yes, and then the stenographer should have shown average haul for all lumber cars, including the Tremont Lumber Company.

Commissioner Harlan: 21.65 miles?

Mr. Fick: 21.65; yes, sir. I did not notice it until this afternoon.

Mr. Seaman: That you make a general statement, then, and not attached to this specific tabulation?

Mr. Fick: Yes, sir.

736 Mr. Cowan: Before you leave that point, as you were asking the other witness about it, I think some inquiry ought to be made in regard to whether that just applies to lumber that has a real movement, or whether it applies to all cars that are loaded at the mills which are situated on some other line where the company only performs a switching service.

Mr. Fick: That is the rail movement over the line.

Mr. Cowan: But it does not apply to or include that lumber for which you performed a switching service?

Mr. Fick: No, sir.

Mr. Cowan: And for which you get the same division as if it was a rail movement.

Mr. Fick: No.

Mr. Cowan: You do get the same division for that switching service as for the division, for instance, the mill at Rochelle?

Mr. Garwood: That is a question.

Mr. Cowan: You are getting the average length of haul of all lumber products. I do not see how it can include the cars as to which there is only a switching movement, because the length of the road would not indicate there could be any such average number, if those were included.

737 Commissioner Harlan: There is another table, which shows that the lumber tonnage—I think there is a table that shows that of the total tonnage, 75 per cent is moved for the Tremont Lumber Company.

Mr. Fick: Yes, sir.

Commissioner Harlan: Now, what is the average haul of manufactured lumber of that company?

Mr. Fick: Of the Tremont Lumber Company?

Commissioner Harlan: Yes.

Mr. Fick: I could not say right off hand. I believe Mr. Geagan can tell.

Commissioner Harlan: Have you that, Mr. Geagan?

Mr. Geagan: I could not state for this, off hand. This 21.65

includes the Tremont Company's lumber, the lumber shipped by them.

Mr. Garwood: What other lumber companies independent of the Tremont Company are situated on your lines, and in a general way state their capacity?

Commissioner Harlan: We have that list.

Mr. Garwood: There are a number of them, are there not?

Mr. Geagan: There are.

Mr. Garwood: You were about to say that you had *in*
738 some milling in transit rates, and that the Tremont Lumber Company does not use those rates. I would be glad for you to state what they are.

Mr. Geagan: It is covered by a tariff which provides shipments of lumber to a given point on the road, that they can be billed into a certain point and milled or stored in transit, and then on proof of shipment of a certain percentage of lumber outbound from that same party, and he surrenders the inbound expense bill, there is a reduction made in the rate to what we call the milling in transit rate.

Mr. Garwood: That applies to staves, for instance, and things of that character?

Mr. Geagan: It does.

Mr. Garwood: In such case, you haul out the finished product?

Mr. Geagan: We do.

Mr. Garwood: Where, at what point on your lines are those rates availed of?

Mr. Geagan: Chiefly at Winnfield, by the Winn Lumber Company, and at Jonesboro, Louisiana.

Mr. Garwood: What is the Winn Lumber Company?

Mr. Geagan: It is a planing mill located at Winnfield.
739 Commissioner Harlan: Well, that movement is very inconsiderable, is it not?

Mr. Geagan: No, sir; there is considerable movement for the Winn Lumber Company at Winnfield.

Commissioner Harlan: I do not mean that particular company, but taking all the movement at the milling in transit, it is small, compared to the entire movement?

Mr. Geagan: Compared to the entire movement, it is small.

Mr. Garwood: How, in a general way, do the divisions which you receive from your connecting carriers, compare with the local rates under the Louisiana Commission rates, or whatever you operate under here.

Mr. Geagan: Well, generally speaking, our division of the through rate is lower.

Mr. Garwood: Lower than the local rate?

Mr. Geagan: Yes, sir.

Mr. Garwood: I notice you have an independent company, that Mr. J. H. Frazier at Cartwright. They have a lumber mill there, have they?

Mr. Geagan: They have.

Mr. Garwood: What would be the effect on that business if

through billing were not permitted, and through rates did
740 not apply?

Mr. Geagan: Well, Mr. Frazier, the shipper, would have to pay from six to eight cents additional from the mill located on our line than he would from a mill located on the trunk line.

Mr. Garwood: Would that operate injuriously upon the shipper who was thus compelled to ship on the local rate to the point of junction?

Mr. Geagan: I suppose it would; yes, sir.

Mr. Garwood: I will ask you if there is any agricultural development in the section of the country served by your road.

Mr. Geagan: Yes, sir, there is considerable development right now especially—well, take the entire line, but especially around Eros, Chatham and Sikes.

Mr. Garwood: I have been reading in the paper since I have been in New Orleans a good deal about peanuts in Louisiana. Is there any development along that line in that section?

Mr. Geagan: Yes, sir; considerable.

Mr. Garwood: Are there any cattle raised and shipped from that section up there?

741 Mr. Geagan: Quite a number of cattle raised, and some shipped.

Mr. Garwood: Now, as to the general commercial business that you do; is that extensive?

Mr. Geagan: Yes, we consider it extensive, especially at Winnfield.

Mr. Garwood: Winnfield is a town of about 4,000 people, is it not?

Mr. Geagan: Yes, sir, about that.

Mr. Garwood: How many banks have they there?

Mr. Geagan: Two.

Mr. Garwood: What other large commercial enterprises have they there?

Mr. Geagan: They have the Louisiana Creosoting Company, handling creosoted timber and lumber; the Winn Lumber Company, Dalton Clark Stave Company, manufacturing, and the usual number of stores for a town of that size, and business houses, hardwood, furniture, and so forth.

Mr. Garwood: The Hard Wood Lumber Company.

Mr. Geagan: The Mansfield Hard Wood Lumber Company.

Mr. Garwood: Do you do a fair share of the commercial business at Winnfield?

742 Mr. Geagan: Yes, sir; we do.

Mr. Garwood: Are you an active competitor at Winnfield with the other roads entering there for all commercial business?

Mr. Geagan: We are; yes, sir.

Mr. Garwood: Do you bring in and take out interstate commercial business; I mean as contradistinguished from lumber business?

Mr. Geagan: Yes, sir.

Mr. Garwood: To and from Winnfield?

Mr. Geagan: We do; yes, sir.

Mr. Garwood: Is your general commercial business increasing or decreasing?

Mr. Geagan: It is increasing.

Mr. Garwood: How with regard to your passenger business?

Mr. Geagan: Well, we do a general passenger business, and that is increasing.

Mr. Garwood: You run your passenger trains on a regular schedule?

Mr. Geagan: Yes, sir.

Commissioner Harlan: That already appears. It was testified to by Mr. Seaman.

Mr. Garwood: I want to get now the character of the
743 trains he runs. That was merely preliminary.

Commissioner Harlan: All right, go ahead.

Mr. Garwood: What service do you render?

Mr. Geagan: From Tremont to Winnfield we run two straight passenger trains and have a mixed train from Tremont to Winnfield daily.

Mr. Garwood: By a passenger train, you mean by that a train devoted exclusively to the passenger service?

Mr. Geagan: Passenger service, baggage, mail and express.

Mr. Garwood: How many cars in that train?

Mr. Geagan: Two.

Mr. Garwood: The baggage, mail and express car, and then your passenger car?

Mr. Geagan: Yes, sir.

Mr. Garwood: Are those cars neat, clean and comfortable cars?

Mr. Geagan: They are comfortable cars; yes, sir.

Mr. Garwood: Did you get your division sheets with the various lines?

Mr. Geagan: No, I have not the division sheets here.

Mr. Garwood: Can you, and will you furnish them to the Commission if they desire them?

744 Mr. Geagan: Yes, sir.

Commissioner Harlan: We would like those.

Mr. Cowan: I suppose they are to be furnished by all the trunk lines and tap lines.

Commissioner Harlan: Most of them are in, but if they are not, the Commission will call for them.

Mr. Garwood: I did not know whether he had them. I would as soon the Commission had them.

Mr. Coleman: In furnishing those statements, we think it should appear when the division of six cents was first allowed, with reference to the efforts of the Rock Island on its connection with the company, our position being that the original allowance of the Iron Mountain and other roads was four cents, until they made a connection with the Rock Island, when the Rock Island made an allowance of six cents, and forced all others to do so.

Mr. Garwood: I would like to ask for my own enlightenment. You say "our position." Whom do you represent?

Mr. Coleman: The Atchison, Topeka & Santa Fe Railway Company.

Commissioner Harlan: Will you show that information?

745 Mr. Geagan: Yes, sir.

Commissioner Harlan: On a separate statement connected with your division sheet. The Commission would like to have that also.

Mr. Geaghan: Yes, sir.

Examiner Burchmore: Are you an officer or employee of any other railroad company?

Mr. Geagan: I am not.

Examiner Burchmore: Referring to your I. C. C. No. 52, terminal charges tariff, item No. 11, I just want to ask the meaning or application of that rule.

Mr. Geagan: Well, on a shipment where we have no through rates between certain points, there is a drayage charge. Well, for instance, a shipment originating at a point on the Tremont & Gulf, going to a point on the Rock Island, where there are no through rates in effect, there is a drayage charge between the two stations of the Tremont & Gulf and the Rock Island.

Examiner Burchmore: For example, a through shipment from Eros to St. Louis; if you had no joint through rate you would charge your local to Winnfield, plus the drayage, plus the local charge out of Winnfield?

746 Mr. Geagan: Yes, sir.

Examiner Burchmore: I think that rule No. 11 is irregular under the tariff regulations of the Commission, in that it provides that the drayage charge to be added will be based on the lowest figure that the company is able to arrange with dray lines. I think that is irregular.

Commissioner Harlan: You apply that on through billing?

Mr. Geagan: Well, yes, on shipments covered by the through bills of lading.

Examiner Burchmore: What is the greatest division you have ever received on lumber?

Mr. Geagan: Six cents.

Examiner Burchmore: Are you sure about that?

Mr. Geagan: To the best of my knowledge.

Examiner Burchmore: The Commission's information is, from an examination of your company, that you formerly received, and whether you do now or not I do not know, an allowance of 6 and 7 cents on some lumber, destination unknown.

Mr. Geagan: They did not to my knowledge.

Examiner Burchmore: Can you inquire and inform the Commission?

747 Mr. Geagan: I will, but I think if we had received it since my connection with the company I would have known it.

Mr. Seaman: May I ask what time that information relates to?

Examiner Burchmore: The report was furnished December 11,

1909, and the information was furnished by Mr. Fick. Was there such a division at one time, Mr. Fick?

Mr. Fick: I received that division from Mr. Mead, who was at that time traffic manager.

Commissioner Harlan: You say you got the division from Mr. Mead?

Mr. Fick: He was traffic manager at that time, and I got the figures from him.

Examiner Burchmore: Reference has been made to a quarry located a short distance from Winnfield, from which a track connects with your line at Winnfield.

Mr. Geagan: It connects with the track of the Louisiana Railway & Navigation Company.

Examiner Burchmore: Who owns that quarry?

Mr. Geagan: I understand it is owned by some New Orleans capitalists. I. L. Lyon is one.

Examiner Burchmore: Do you participate on through rates on stone that comes from that quarry?

748 Mr. Geagan: We do to Winnfield.

Commissioner Harlan: Well, to what common, ordinary destination?

Mr. Geagan: Vicksburg.

Commissioner Harlan: You carry it through Rochelle?

Mr. Geagan: Through Tremont.

Examiner Burchmore: What is your division under that rate?

Mr. Geagan: Do you want that in round figures, per car or per 100 pounds?

Examiner Burchmore: Per 100 pounds.

Mr. Geagan: Two cents per 100 pounds.

Examiner Burchmore: Is there any relation between that quarry and the lumber company or railroad company?

Mr. Geagan: There is none between the railroad company and the quarry.

Commissioner Harlan: What about the lumber company?

Mr. Geagan: Not that I know of.

Commissioner Harlan: Did you ever hear that there was any?

Mr. Geagan: No.

Mr. Seaman: There is not.

Examiner Burchmore: Does that private line connecting

749 the quarry with your rails at Winnfield, receive any part of that rate?

Mr. Geagan: Not of our rate.

Examiner Burchmore: Or of any rate, so far as you know?

Mr. Geagan: No.

Examiner Burchmore: Where is the bill of lading, issued on lumber transported for the Tremont Lumber Company?

Mr. Geagan: At the station where it is loaded; for instance, at Eros.

Examiner Burchmore: At the mill point?

Mr. Geagan: At the mill point.

Examiner Burchmore: No logs ever moved under billing on your road for the Tremont Lumber Company?

Mr. Geagan: No.

Examiner Burchmore: You referred to the milling in transit privilege, which is availed of by other shippers over your road on lumber. How long does the tariff permit storage in transit of that lumber?

Mr. Cowan: Give the tariff reference.

Mr. Geagan: The tariff does not specify; there is no limit placed on the time of reshipment.

Examiner Burchmore: What tariff controls the practice?

750 Mr. Geagan: Tariff 3-B, I. C. C. No. 58.

Examiner Burchmore: Does the Tremont & Gulf Railway Company perform any interwork switching for the Tremont Lumber Company?

Mr. Geagan: No, sir.

Commissioner Harlan: I would like to know where the great volume of manufactured lumber originating on your line goes to under your billing.

Mr. Geagan: Well, it is about evenly divided, to Central Freight Association, Western Trunk Line territory, and a certain portion of it to Eastern Trunk Line territory.

Commissioner Harlan: Can you say whether it is equally divided, so far as the six cent division is concerned, and the lower division?

Mr. Geagan: I think it is.

Commissioner Harlan: Does not the great volume of it take six cents?

Mr. Geagan: Yes, sir; it does.

Examiner Burchmore: The mill of the Tremont Lumber Company at Rochelle is located about 1,000 feet from the tracks of the Iron Mountain, I believe?

Mr. Geagan: About that.

751 Examiner Burchmore: A shipment of lumber moving out of Rochelle, under a bill of lading issued by your company to an interstate destination, does your company issue any way bill for that movement?

Mr. Geagan: Our agent makes the way bills.

Mr. Cowan: Where does the way bill show that the shipment originates in such a case?

Mr. Geagan: It originates—which mill?

Mr. Cowan: In such a case as Rochelle, I said.

Mr. Geagan: Denkman.

Mr. Cowan: How far is that from Rochelle?

Mr. Geagan: That station is about a mile.

Mr. Cowan: And on that lumber you get a six cent division?

Mr. Geagan: On some of it.

Mr. Cowan: Let us see if we cannot get at what it is you get the smaller division on, a little more definitely. You ship lumber destined for Texas points?

Mr. Geagan: Yes, sir; some goes to Texas.

Mr. Cowan: And you get six cents on that?

Mr. Geagan: Some of it.

Mr. Cowan: What of it do you not get six cents on?

Mr. Geagan: I do not know that I could say off hand.

752 Mr. Cowan: Is it not a fact that there is very little you do not get six cents on?

Mr. Geagan: No, there is considerable lumber that we do not get six cents on.

Mr. Cowan: What obstacle is there to your shipping all your lumber via the road that pays you six cents, as you have the right to route it?

Mr. Geagan: Sometimes the question of car supply, and different things, and sometimes the routing requested by the shipper or consignee.

Mr. Cowan: Can you make a statement of how much of your lumber tonnage you get the six cent division on, and how much you get the lower division on?

Mr. Geagan: Can I prepare a statement of that kind?

Mr. Cowan: Yes.

Mr. Geagan: It could be done, with a great deal of work.

Mr. Cowan: Well, you have said so far that on some of it you get six cents, and on some of it you get a smaller division, two and a half cents, or something, without giving us any idea, as I understand it——

Commissioner Harlan: He said by far the larger part of his lumber goes to points under the six cent division to his road.

753 Mr. Cowan: He gets the six cent division?

Commissioner Harlan: Yes.

Mr. Cowan: On the larger part of it?

Commissioner Harlan: On the larger part of it.

Mr. Cowan: The witness talked very low, and I had not understood it. I believe you said to Western Trunk Line territory you got six cents?

Mr. Geagan: Yes.

Mr. Cowan: And it does not matter whether it moves via the Rock Island or the Iron Mountain, as to your division?

Mr. Geagan: It makes no difference.

Mr. Cowan: To Texas points you say you get six cents on some, and less on some. Under what divisions would you get less on any movement to Texas points?

Mr. Geagan: Well, it depends on the routing it moves, and the destination. Some points of destination we get less than six cents.

Mr. Cowan: Where; to what points?

Mr. Geagan: Well, take the western part of Texas.

Mr. Cowan: Points on what railroad?

Mr. Geagan: I do not know that I can say offhand. It would be shown in the division sheets that go to the Commission.

754 Mr. Cowan: To points on the Gould lines and on the lines of the Rock Island, Colorado & Southern, you get six cents, do you not?

Mr. Geagan: To Texas points?

Mr. Cowan: Yes.

Mr. Geagan: We do not. What do you mean by the Gould lines, the Texas & Pacific?

Mr. Cowan: Those which we all know to be the Gould lines, the Texas & Pacific, and the St. Louis Southwestern.

Mr. Geagan: No, we do not get six cents.

Mr. Cowan: The International & Great Northern?

Mr. Geagan: I think not.

Mr. Cowan: Do you ship any lumber to those points in Texas where you do not get the six cent division which you might send via a route that would give you the six cents?

Mr. Geagan: It is done sometimes; yes, sir.

Mr. Cowan: All the Rock Island business that goes off your line pays six cents to all Rock Island stations?

Mr. Geagan: Not to all Rock Island stations.

Mr. Cowan: How is that?

Mr. Geagan: I said a while ago that the division with the Rock Island ranges from three to six cents.

755 Mr. Cowan: Is the larger part of the business which you send to Texas on the six cent division?

Mr. Geagan: Well, I could not say that offhand.

Mr. Cowan: I will just ask you to prepare a statement showing the amount of business you move on the six cent division and the amount of business you move on the lower divisions.

Commissioner Harlan: To Texas?

Mr. Cowan: To Texas and Oklahoma and Colorado points.

Commissioner Harlan: Can that be done without much trouble?

Mr. Geagan: It will require a great deal of work.

Mr. Cowan: It would seem to me the witness ought to have some general idea of what general proportion moves on the six cent and the lower divisions, but he does not seem to have it.

Commissioner Harlan: Will you indicate two months, one in each year, that would be satisfactory?

Mr. Cowan: Yes, sir; take October this year and October last year.

Mr. Geagan: To Texas?

Mr. Cowan: Texas, Oklahoma and Colorado points.

Commissioner Harlan: Very well, do that.

756 Mr. Cowan: Have you now in mind the volume of your business that you move to Texas points?

Mr. Geagan: No, sir; not to Texas points.

Mr. Cowan: Have you now in mind the volume of your business that you move to Oklahoma points?

Mr. Geagan: No.

Mr. Cowan: Is your Oklahoma rate in Group 5 or Group 6?

Mr. Geagan: Group 5, to practically all Oklahoma points.

Mr. Cowan: What is the division on such shipments, it is uniform?

Mr. Geagan: Is it uniform?

Mr. Cowan: Is the division uniform when the lumber is being shipped to points in Group 5?

Mr. Geagan: Yes.

Mr. Cowan: What would it be; six cents?

Mr. Geagan: Yes.

Mr. Cowan: What length of haul is it from the Rochelle mill to deliver to the Iron Mountain & Southern.

Mr. Geagan: I should judge it is about a mile.

Mr. Cowan: Is that the only mill of the Tremont Lumber Company that is located at a junction point with the other railroad, except the one at Tremont?

757 Mr. Geagan: Jonesboro.

Mr. Cowan: What is the length of the haul at Jonesboro?

Mr. Geagan: About a mile.

Mr. Cowan: Relatively, what proportion of the lumber of the Tremont Lumber Company is cut at Rochelle, Jonesboro and Tremont?

Mr. Garwood: Eros. We have no mill at Tremont now. It is at Eros, right below.

Mr. Cowan: Well, take Rochelle and Jonesboro. What is the relative amount of lumber furnished by that company to the railroad which is cut at Jonesboro and Rochelle?

Mr. Geagan: I suppose 40 per cent of it will come from Rochelle, divided almost equally between the other two lines.

Mr. Cowan: And 60 per cent would be about equally divided between Jonesboro and Eros?

Mr. Geagan: Yes.

Commissioner Harlan: Our records show that the mill at Jonesboro is about 3,000 feet from the Rock Island tracks. Is that about right?

Mr. Geagan: I could not say exactly as to that.

Commissioner Harlan: A little over half a mile.

758 Mr. Seaman: It is shown in this book.

Commissioner Harlan: Yes; that will appear later.

Mr. Cowan: Do you haul traffic on a through rate and route from Tremont down to Winnfield, that comes off the Vicksburg, Shreveport & Pacific?

Mr. Geagan: Yes, sir; we do.

Mr. Cowan: You have division sheets that show what you receive out of that?

Mr. Geagan: Yes, sir.

Mr. Cowan: What divisions do you get on ordinary traffic other than lumber? Do you have a percentage basis?

Mr. Geagan: Yes, and there is a wide difference in the divisions on general traffic, merchandise.

Mr. Cowan: Are your rates from stations on your line to and from points on the Vicksburg, Shreveport & Pacific to points on the Rock Island and points on the Iron Mountain, or to points beyond any of these lines—are your rates to and from your stations higher than the rates from the junction point on those lines? Take traffic generally; I am not speaking of lumber.

Mr. Geagan: Generally speaking, we carry the same rates to our local stations as are carried to junctions.

759 Commissioner Harlan: Under the general class rates or commodity rates?

Mr. Geagan: Generally speaking, we do; yes, sir.

Mr. Cowan: Are the rates to Eros, which is not reached by any other road, the same as the rates to Tremont, generally speaking?

Mr. Geagan: Yes, sir; they are.

Mr. Cowan: That would be the same at Womack, Chatham, and those other stations, as I understand your answer.

Mr. Geagan: I will qualify that. In some instances there are differences in the rates to those stations.

Mr. Cowan: Where there are differences, the rate, of course is higher to stations on your line than to the junction point?

Mr. Geagan: Yes.

Mr. Cowan: How far is Eros from Tremont?

Mr. Geagan: Eleven miles.

Mr. Cowan: Do you get any division on the rates to and from the Tremont Lumber Company on traffic other than lumber?

Mr. Geagan: Yes.

Mr. Cowan: Well, would you get it if it is delivered to the Tremont Lumber Company at Rochelle? Suppose they shipped a carload of commissary or other supplies to Rochelle over the
760 Iron Mountain, would you get a division out of that?

Mr. Geagan: If we handled the car, we would.

Mr. Cowan: I wanted to find out if you do handle it. Do you handle that business?

Mr. Geagan: Sometimes.

Mr. Cowan: Generally, do you, or not?

Mr. Geagan: Generally we do.

Mr. Cowan: And at Jonesboro?

Mr. Geagan: And at Jonesboro.

Mr. Cowan: Is it not a fact that practically all of the business that the Tremont Lumber Company ships into Rochelle and Jonesboro is delivered to your station rather than the others?

Mr. Geagan: All of it is?

Mr. Cowan: I think I used the words "practically all."

Mr. Geagan: Well, yes; I think practically all.

Mr. Cowan: The intention is to do that, of course, because of the relation of the companies. And what is the basis of your division in that case, the same as if it were shipped to Eros?

Mr. Geagan: In some cases, yes, and some different.

Mr. Cowan: Your division sheets generally are filed, are
761 they, as well as on lumber?

Commissioner Harlan: They are going to be filed. Is the inbound division the same ordinarily as the outbound division on similar rates?

Mr. Geagan: Yes, sir.

Mr. Cowan: It seems from information which we have that there are certain switching allowances received from connecting carriers of $3.00 per car at Winnfield. What does that apply to?

Mr. Geagan: It applies to shipments received by us, destined to a point on our rails within the yard limits at Winnfield, where we do nothing more than switch the car on a switching way bill.

Mr. Cowan: But that does not apply to lumber in any way.

Mr. Geagan: Yes, it applies to lumber.

Mr. Cowan: For what purpose would you be receiving lumber at Winnfield from another road?

Mr. Geagan: Well, the rate applies on lumber. I do not know whether we have handled any lumber on that arrangement lately.

Mr. Cowan: There would not be any place to move it, unless you handled it on a through bill of lading to Tremont.

762 Mr. Geagan: We might want to unload it on our team track.

Mr. Cowan: Do you know what the tonnage or number of carloads of logs amounts to which the Tremont Lumber Company haul to Jonesboro and Rochelle over your line?

Mr. Geagan: I do not.

Mr. Cowan: Do you keep any record that shows that, that you know of?

Mr. Geagan: I do not.

Mr. Cowan: You keep the traffic statistics, do you not?

Mr. Geagan: I do.

Mr. Cowan: Do you know about what the amount of traffic in logs is which is handled by the Tremont Lumber Company to Winnfield, that are delivered to the Mansfield Hard Wood Company?

Mr. Geagan: No.

Mr. Cowan: You could furnish the total number of carloads of logs that are hauled?

Mr. Geagan: It could be furnished.

Mr. Cowan: I wish you would make a statement showing the total number of carloads hauled by that company by their own equipment, without any compensation to the railroad company during the period of the year ending June 30, 1910, assum-

763 ing that you have not the statistics at hand. When the logs are taken to the Mansfield Hard Wood Lumber Company, do you know where they are delivered?

Mr. Geagan: They are delivered on the track at the Mansfield Lumber Company's mill.

Mr. Cowan: Are they delivered on your track?

Mr. Geagan: We own the track; yes.

Mr. Cowan: You own the track to that industry?

Mr. Geagan: We do.

Mr. Cowan: Are there any other tracks than yours which reach the Mansfield Hard Wood Lumber Company's industry?

Mr. Geagan: No.

Mr. Cowan: All lumber, then, that is shipped out by that concern must first go over your line?

Mr. Geagan: Yes, sir.

Mr. Cowan: You get the same division out of that that you would on lumber shipped out from any other station on your line?

Mr. Geagan: We do.

Mr. Cowan: Either the three or six cents, according to the destination?

Mr. Geagan: Yes, sir.

764 Mr. Cowan: How much service do you perform for the handling of that lumber of the Mansfield Hard Wood Lumber Company; what is the length of line you could haul it?

Mr. Geagan: We could haul it to Tremont, 50 miles, or to any of the junctions, to Rochelle, a haul of 23 miles.

Mr. Cowan: If it were destined to points on the Rock Island, you would just switch it over to the Rock Island, would you not?

Mr. Geagan: We carry no through rates from Winnfield in connection with the Rock Island on lumber.

Mr. Cowan: So you do not ship any lumber at all by way of Winnfield and the Rock Island connection?

Mr. Geagan: Not originating at Winnfield.

Mr. Cowan: But do you ever ship any lumber of the Mansfield Hard Wood Lumber Company to the Rock Island tracks to be sent out on that line?

Mr. Geagan: We have not.

Mr. Cowan: You have carried all that lumber either by way of Rochelle or Tremont?

Mr. Geagan: The fact is the Mansfield Hard Wood Lumber — are just beginning operations, and they have only shipped one car of lumber from there so far.

765 Mr. Cowan: It is a new industry, then?

Mr. Geagan: Yes.

Commissioner Harlan: I think perhaps most of these matters can be worked out from the tariffs, can they not?

Mr. Cowan: Probably so. I did not understand. I suppose it is my inability to understand, some way or other, but I did not understand about the $3.00 switching charge at Winnfield and to what sort of traffic that applies.

Commissioner Harlan: I do not understand some phases of that, but I suppose the tariffs will enable us to study that out. Is that all?

Mr. Cowan: I want to make just this inquiry about that $3.00 switching charge. You say that does not apply to lumber, as a matter of fact.

Mr. Geagan: It applies on lumber.

Mr. Cowan: Under what circumstances would it apply to a carload of lumber?

Mr. Geagan: If a man received a carload of lumber destined to Winnfield, coming in over the line of any other road, and demanded Tremont & Gulf delivery.

Mr. Cowan: To whom would the $3.00 be charged?

Mr. Geagan: The line delivering us the car.

766 Commissioner Harlan: That line would absorb it, do you mean?

Mr. Geagan: They would pay us. I do not know whether they would absorb it on all shipments or not.

Mr. Garwood: I did not understand the question.

Commissioner Harlan: The point is this: Mr. Cowan directed the attention of the witness to a switching charge of $3.00, which he understood was assessed at Winnfield, and by way of illustration

he asked what charge the Tremont & Gulf would make on a carload inbound to Winnfield over the Rock Island or one of the other lines that required delivery on the Tremont & Gulf tracks, and the witness says the Tremont & Gulf would make a charge of $3.00 against its connection. The question is whether the connection would absorb that charge, and the witness does not know.

Mr. Garwood: I suppose the tariffs will show that.

Commissioner Harlan: Yes.

Mr. Cowan: Do you know of its having, in fact, been applied on any shipment of lumber?

Mr. Geagan: At Winnfield?

Mr. Cowan: Yes.

Mr. Geagan: Yes.

767 Mr. Cowan: What road did the car come in over?

Mr. Geagan: I cannot say offhand. I don't remember which particular road it came in over.

Mr. Cowan: And what would you do with the car; what would you have to do with it? Would it be set over on an exchange track?

Mr. Geagan: From our interchange track we would place it on the consignee's track.

Mr. Cowan: On this car you say you know of, did you do that?

Mr. Geagan: Yes, sir.

Mr. Cowan: To whom did you charge the $3.00?

Mr. Geagan: The road delivering us the car.

Mr. Cowan: Did they absorb it out of the rate to Winnfield?

Mr. Geagan: I could not say as to that.

Commissioner Harlan: That is the point he does not know about. The tariffs will show.

Mr. Coleman: Does not that switching rate apply out?

Mr. Geagan: Yes, sir.

Mr. Coleman: Is it not so, that you are charging that $3.00 a car for the hard wood lumber that leaves the Mans-

768 field mill and goes to the Rock Island track?

Mr. Geagan: If it moves under our tariffs; yes, sir.

Mr. Coleman: And is not that $3.00 charge for precisely the same service that you get six cents per 100 pounds when it is up at Jonesboro or Rochelle?

Mr. Geagan: No.

Mr. Coleman: It is a switch from the Mansfield mill to the Rock Island connection——

Commissioner Harlan: How do the two movements differ?

Mr. Geagan: On the movement at Winnfield our connection will furnish the car and we will simply put it on the man's track to unload it and turn it back to them, and we do not weigh the car, and in the other case we perform all the service.

Commissioner Harlan: Furnish the car?

Mr. Geagan: Yes.

Commissioner Harlan: It is very often a foreign car?

Mr. Geagan: Yes, sir.

Commissioner Harlan: You just set it there; is that all?

Mr. Geagan: Yes.

Commissioner Harlan: Don't you do precisely the same thing at Winnfield, charge in one case six cents per 100
769 pounds and in the other $3.00 a car.

Mr. Geagan: In the case in question at Winnfield we do not weigh the car, but set it on the track.

Commissioner Harlan: That is the only difference, is it not, you do not weigh it?

Mr. Geagan: Yes, sir.

Commissioner Harlan: And you do not bill it at Winnfield?

Mr. Geagan: We do not bill it at Winnfield.

Commissioner Harlan: And you do bill it at Jonesboro and Rochelle?

Mr. Geagan: Yes.

Commissioner Harlan: But with the exception of billing it and weighing it, the service is the same on the outward movement?

Mr. Geagan: Yes, possibly so.

Mr. Cowan: I wanted to see why, in case the shipment was brought in over the Rock Island, which they paid $3.00 for, why the car could not be unloaded on the Rock Island tracks, without their giving up anything in coming to Winnfield.

Mr. Geagan: Possibly the consignee wanted delivery on our track for some reason.

Mr. Cowan: Why don't you charge him the same rate, if
770 he is situated where he wants delivery on your tracks, as you would on an outbound shipment that originated on your tracks for the same consignee? You would get six cents in one case and in the other case only $3.00.

Mr. Geagan: We simply handle that as a switch movement at Winnfield.

Commissioner Harlan: That has already been explained. How large are the shipping limits of Winnfield, how extensive?

Mr. Geagan: Our yard limits are something like a mile.

Commissioner Harlan: I mean the entire switching limits.

Mr. Geagan: Of our line or all lines?

Commissioner Harlan: All lines.

Mr. Geagan: It embraces the four lines of railroad; possibly a square mile, or something like that.

Commissioner Harlan: Are there any industries that are on your line and also on the Rock Island?

Mr. Geagan: No, sir.

Mr. Coleman: I wanted to inquire what other outbound joint through rates you have other than on lumber.

Mr. Geagan: We have them on classes and commodities generally to jobbing points.

Mr. Coleman: On all classes and commodities?

771 Mr. Geagan: Not all.

Mr. Coleman: I suppose that will appear.

Commissioner Harlan: He has stated that.

Mr. Coleman: Have you on cattle?

Mr. Geagan: No, not on cattle—yes, to St. Louis we have on cattle.

Mr. Coleman: Have you on peanuts?

Mr. Geagan: We have on peanuts.

Mr. Coleman: I believe Judge Garwood asked you if your divisions compared with the local Louisiana distance tariff rates, and you answered yes. Is that correct?

Mr. Geagan: I referred to lumber when I answered him.

Mr. Coleman: Is that correct?

Mr. Geagan: The divisions are slightly lower than our local rates.

Mr. Coleman: What is the minimum under the Louisiana distance tariff?

Mr. Geagan: The minimum hauled on our line, do you mean?

Mr. Coleman: Prescribed in Louisiana. I understand they fix a minimum haul up to five miles, with a maximum rate for that haul.

Mr. Geagan: Five miles is the minimum on our line.

772 Mr. Coleman: What do you get for five miles?

Mr. Geagan: Six cents per 100 pounds.

Mr. Coleman: Under the Louisiana tariff?

Mr. Geagan: Under our Louisiana tariff.

Mr. Coleman: I mean, does the local distance tariff of Louisiana allow you to charge six cents per 100 pounds for five miles?

Mr. Geagan: It does.

Mr. Coleman: Have you reference to that tariff?

Examiner Burchmore: Here is a complete list of this company's tariffs.

Mr. Coleman: Does it show lower than five miles?

Examiner Burchmore: I have not the tariffs themselves; only a list of the tariffs.

Mr. Geagan: 3-B, I. C. C. No. 58.

Mr. Coleman: I do not think it is important enough to stop.

Commissioner Harlan: No.

Mr. Jeffery: Are you not mistaken when you say you get six cents per 100 pounds division to points on the Cotton Belt? I am informed by the Cotton Belt that is not the case.

Mr. Geagan: I did not understand the question was that

773 way.

Mr. Seaman: Do you have divisions to points on the Santa Fe?

Mr. Geagan: No.

Mr. Jeffery: You do not get a division to points on the Cotton Belt?

Mr. Geagan: No.

Commissioner Harlan: I do not recall the witness having said that he did.

Mr. Coleman: You ship some lumber to Kansas, do you not?

Mr. Geagan: Yes, sir; some.

Mr. Coleman: Your division is six cents on that traffic, is it not?

Mr. Geagan: Some of it; yes, sir.

Mr. Coleman: Most of it; nearly all of it; in fact, all of it.

Mr. Geagan: I would not say all of it.

Mr. Coleman: But a considerable portion of your lumber does move to Kansas, a very considerable portion?

Mr. Geagan: I do not know just what proportion.

Mr. Cowan: One question which I should have asked: In the operation of your company's business, as traffic manager,
774 has the Tremont Lumber Company at any time routed its own freight other than giving the destination of the freight?

Mr. Geagan: Yes, they have.

Mr. Cowan: To what extent have they done that?

Mr. Geagan: It is very seldom they do it.

Mr. Cowan: Do they make out the bills of lading in their office when they load a car to be shipped out from Rochelle, say?

Mr. Geagan: They make bills of lading.

Mr. Cowan: And on that they name the destination?

Mr. Geagan: They do.

Mr. Cowan: And when you make out the way bill you name the route, do you?

Mr. Geagan: Yes, sir.

Mr. Cowan: Just how do you handle that bill of lading; do they send it to your office made out to be stamped and signed?

Mr. Geagan: Our local agent signs the bill of lading.

Mr. Cowan: They make it out and he signs it?

Mr. Geagan: Yes.

Mr. Cowan: Then your local agent makes out the way bills?

Mr. Geagan: He makes the way bills.

Mr. Cowan: Do you have a standard set of rules for your
775 agent to go by in routing traffic to a given destination; say, Kansas, Colorado, Central Freight Association territory, and the like?

Mr. Geagan: No, we have no set rule to go by.

Mr. Cowan: How does he know how to route it?

Mr. Geagan: According to the tariffs.

Mr. Cowan: But the tariffs may apply via the Iron Mountain or the Rock Island, either.

Mr. Geagan: It is governed largely by the class or kind of car it is in.

Mr. Cowan: Suppose it is one of your cars.

Mr. Geagan: He would call upon me as general freight agent for routing.

Mr. Cowan: When he does that, by what route do you preferably send that car?

Mr. Geagan: I would not say we sent it preferably by any route.

Mr. Cowan: Do you have any arrangement by which you give the Rock Island a certain percentage of your traffic?

Mr. Geagan: We have not.

Mr. Cowan: Have you any such arrangement with any other line.

776 Mr. Geagan: We have not.

Mr. Cowan: In fact, what proportion do you give to the Rock Island?

Mr. Geagan: We give them 35 per cent, approximately, of our entire movement.

Mr. Cowan: Of lumber?

Mr. Geagan: Of lumber.

Mr. Cowan: And the other is divided how; between the Iron Mountain and the Arkansas & Louisiana, the Vicksburg, Shreveport & Pacific; what ratio is the other division of the traffic?

Mr. Geagan: The Vicksburg, Shreveport & Pacific will get about one-third of our entire output, and the Iron Mountain; the balance is divided between the Iron Mountain and the L. R. & N. at Winnfield. The Iron Mountain, I suppose, 20 per cent.

Mr. Cowan: The Vicksburg, Shreveport & Pacific's traffic all moves east of the Mississippi River, I suppose.

Mr. Geagan: Not all of it.

Commissioner Harlan: Judge Cowan, you have exceeded your one question.

Mr. Cowan: I beg your pardon. I am through.

777 Examiner Burchmore: A question that ought to have been asked of the former witness I think you will be able to answer. This traffic agreement between the lumber interests and the Tremont & Gulf Railroad Company provides that the lumber companies will make arrangements for coal and water supply for the lumber company engines operating under this traffic agreement, but that the railroad company agrees to furnish coal and water for those engines at cost, where it is desired by the lumber company. Now, as a matter of fact, does the lumber company obtain the coal for its engines from the railway company?

Mr. Geagan: I could not say; I do not know.

Examiner Burchmore: Do you know as regards water?

Mr. Geagan: I do not know.

Commissioner Harlan: Mr. Fick, what do you know about that?

Mr. Fick: The lumber company buys its own coal except at Chatham. We furnish them coal, and bill on them at the same price we bill to other parties.

Commissioner Harlan: That is, cost: is it?

Mr. Fick: Practically, adding just ten or fifteen per cent more to pay for the handling. And for water, they pay

778 fifty cents a tank, and we pay the same wherever we take it.

Examiner Burchmore: The contract seems to provide that the Tremont & Gulf shall use all adequate and reasonable means to provide cars for shipments for the Tremont Lumber Company. It further provides when it shall fail to move or furnish cars as requested by the lumber company, then the lumber company shall have the right, if they desire, to go to one of the trunk lines and get cars, haul them empty with their own engines to the mill, there load them and haul them back to the division with the trunk line, for their shipments to interstate points. Are you advised whether that has ever been taken advantage of?

Mr. Geagan: It has never been taken advantage of to my knowledge.

Examiner Burchmore: It further provides, as I understand it,

that the railway company shall have the right to control the routing of all traffic in lumber furnished by the Tremont Lumber Company. That is your understanding?

Mr. Geagan: They allow us to route the lumber except in some particular case, where——

Examiner Burchmore: That is all.

(Witness excused.)

779 Mr. Garwood: I neglected to introduce the income account statistics for the year ending June 30, 1910 by months.

(The paper so offered and identified was received in evidence and thereupon marked Tremont & Gulf Exhibit No. 4, witness Geagan, received in evidence December 10, 1910, and is attached hereto.)

Mr. Garwood: Now, we have two or more witnesses who are citizens on the line, business men. I do not know that they will add very much to what your Honor wants to know, and unless you wish to examine them——

Commissioner Harlan: They would testify to the specific service and promptness of the service and the building up of the territory?

Mr. Garwood: Yes.

Commissioner Harlan: The record may show that if they were called, they would so testify.

Mr. Garwood: J. H. Frazier, and an independent lumber man on the line.

Commissioner Harlan: Very well, the record will show that would be the tendency of their testimony. We will next call the Warren, Johnsville & Saline River Railroad.

Mr. Cowan: Before your Honor calls the next case I wish to inquire if the gentleman representing the Tremont Lumber
780 Company is here, Mr. Carpenter.

Mr. Seaman: He is here.

Mr. Cowan: I wanted to ask some questions of Mr. Carpenter in regard to the lumber company's operations on the Tremont & Gulf Railroad, as a part of this investigation.

Commissioner Harlan: Will you make that rather short?

Mr. Cowan: If Mr. Carpenter is going to remain over until Monday we will postpone it until Monday.

Mr. Seaman: Get through with him now.

Commissioner Harlan: Close it as soon as you can.

S. J. CARPENTER was called as a witness, and having been duly sworn, testified as follows:

Mr. Cowan: Have you a record of the amount of logs which you haul over the tracks of the Tremont & Gulf Railway?

Mr. Carpenter: Yes.

Mr. Cowan: Will you please furnish it, covering a year?

Mr. Carpenter: Yes, sir. Of course I haven't it with me.

Mr. Cowan: I know, but you will furnish it.

Mr. Garwood: State what year; the exact time.

Mr. Cowan: I was about to say the year ending June 30, 1910.

Mr. Seaman: Mr. Geagan has stated that already.

781 Mr. Cowan: Stating separately the logs hauled to the different mills.

Mr. Carpenter: Yes.

Mr. Cowan: Do you do any milling operation except on the line of the Tremont & Gulf Railway?

Mr. Carpenter: The Tremont Lumber Company does not; no, sir.

Mr. Cowan: Is there any lumber company connected with the Tremont & Gulf Railway for whom you do any logging, or haul any logs?

Mr. Carpenter: The lumber company connected with the Tremont & Gulf Railway?

Mr. Cowan: Located on the Tremont & Gulf, I should say.

Mr. Carpenter: For whom we do logging?

Mr. Cowan: For whom you haul logs.

Mr. Carpenter: No. We sell some logs for the Mansfield Hard Wood Company, or are arranging to. We have not sold them any to amount to anything.

Mr. Cowan: Delivered at Winnfield?

Mr. Carpenter: Delivered at Winnfield.

Mr. Cowan: Does the price which you get for those logs depend upon some contract, or is it the price which anybody

782 else would supply logs at, at Winnfield?

Mr. Carpenter: Yes; it is the market price. We are not hard wood manufacturers, and have intermingled with our timber more or less hard wood that we wished to log when we were getting off the pine, and we sought a purchaser for the hard wood, and the Mansfield Company wished to operate our hard wood, and we explained to them before making the contract that we had entered into an agreement with the Tremont & Gulf Railroad Company covered by this trackage agreement which has been referred to here, that we could not part with the control of the tonnage arising from that timber, and if they bought of us that hard wood timber, they must respect the contract we had made with the Tremont & Gulf Railway Company.

Mr. Cowan: If you sell it to them delivered at Winnfield, I do not see why they would have anything to do with the matter.

Commissioner Harlan: The Tremont & Gulf gets the outbound tonnage, is what he means.

Mr. Carpenter: Yes.

Mr. Cowan: You could only sell them timber if they would give the tonnage to the Tremont & Gulf?

783 Mr. Carpenter: Yes. Of course under this contract we would not be allowed to sell any of this timber, for we induced the Tremont & Gulf to extend these lines with that understanding, that we would give them the tonnage.

Mr. Cowan: You could not sell them the timber, even if they were willing to pay you for hauling it out there, unless they would deliver the tonnage?

Mr. Carpenter: Unless they were willing to enter into a contract for the tonnage.

Mr. Cowan: All your other timber is subject to that contract, and you have no right to dispose of it unless the product goes back as freight to the Tremont & Gulf?

Mr. Carpenter: Yes.

Mr. Cowan: You get the market price at Winnfield?

Mr. Carpenter: Well, we made the best sale we could They, of course, took that into consideration.

Mr. Cowan: But it would be based on that, of course.

Mr. Carpenter: They had to take into consideration the circumstances under which they would have to operate.

Commissioner Harlan: What is that hard wood?

Mr. Carpenter: It is largely oak. There is some gum.

Commissioner Harlan: Where is the market?

784 Mr. Carpenter: I think they are exporting it largely, although the agricultural implement people are large buyers in that neighborhood.

Mr. Cowan: Do you sell to anybody else except the company you have just mentioned?

Mr. Carpenter: Yes, sir.

Mr. Cowan: Do they buy from anybody else except you?

Mr. Carpenter: Yes.

Mr. Cowan: How do they get it?

Mr. Carpenter: I say they do, but they are not operating yet, but it is their plan to buy from other people, and they will have to make their own arrangements for transportation.

Mr. Cowan: But they could buy lumber on the Rock Island and the L. & A.?

Mr. Carpenter: I understand it is their plan to ship in on the Louisiana Railroad & Navigation Company, and they are building plants on their track now.

Mr. Cowan: How many miles of logging road does your company operate?

Mr. Carpenter: We have in operation now some 55 or 60 miles of track. The lumber company owns rails that do not happen

785 to be needed at this time, to lay more track, at this time.

Mr. Cowan: At how many points do you connect with the Tremont & Gulf with your logging road?

Mr. Carpenter: There are three principal points, although I believe now we have temporary spurs off it at one or two other points for a little bit of timber.

Mr. Cowan: Name the points.

Mr. Carpenter: They are not necessarily regular stations, you know.

Mr. Cowan: Well, they are connecting points?

Mr. Carpenter: The first one leaving, coming down on the Rochelle branch, is seven miles from the mill at Rochelle. The logging camp that is supplying the Eros mill leaves the main line of the Tremont & Gulf about five miles above Eros and goes off 15 or

20 miles. Jonesboro is the same way, about half way between Jonesboro and Sikes it branches off from the main line.

Mr. Cowan: In the operation of your logging road, do you use your regular logging cars?

Mr. Carpenter: Well, our regular logging cars; yes, sir; they are not a light skeleton car, but all of our new equipment we are buying is 40 foot 80,000 pound capacity cars, very fine
786 cars.

Mr. Cowan: In returning these cars to the lumbering district, do you carry anything out on them?

Mr. Carpenter: No, everything is shipped in a regular way, except we are allowed under our contract to move camp equipment and that sort of thing, but nothing in the way of supplies that are billed out by the railroad company.

Mr. Cowan: Have you an estimate of what it costs you per thousand feet to deliver your logs at the mill?

Mr. Carpenter: Yes, sir; we keep records of that sort.

Mr. Cowan: Which show that?

Mr. Carpenter: Yes.

Mr. Cowan: I wish you would just file a statement.

Mr. Carpenter: I do not want to do that unless there is some very good reason why it should be done. The Tremont Company's cost of logging—of course there are a great many factors.

Mr. Cowan: I will pass that for the moment and ask you a general question as an expert, then. What is the reasonable cost of operating a logging train per train mile, of the ordinary sort?

Mr. Carpenter: Well, it depends so much upon the char-
787 acter of the road, whether it is a main line or tram road, for the maintenance, that I could not give it to you.

Mr. Cowan: Well, generally speaking, what do you consider the cost for logging mills per train mile for the cost of hauling the logs? We are all ignorant of that, and have no information as to what those things ought to cost, or give it per thousand feet.

Mr. Carpenter: You are speaking about the cost of taking the logs from the end of the tram roads and moving them to the main line of the railroad?

Mr. Cowan: I am speaking of the train operation after the logs have been loaded.

Mr. Carpenter: I will just explain to you briefly——

Commissioner Harlan: Suppose you say first whether you know or not.

Mr. Carpenter: I have records which show exactly, but I have not them with me.

Mr. Cowan: Go ahead.

Mr. Carpenter: What I wished to tell him was the cost of hauling on the main line is much less than it is in the woods.

Commissioner Harlan: Do you mean the main line in the
788 woods?

Mr. Carpenter: Of the Tremont & Gulf in our case, or a main line that is well kept up.

Mr. Cowan: My purpose is to get just that. State the cost per

train mile or per thousand feet on the main line of a logging road, well kept up, or any other unit basis you have in mind.

Mr. Carpenter: I cannot give it.

Commissioner Harlan: Well, I do not suppose this case is going to be decided on that, anyway. Have you anything further of this witness?

Mr. Cowan: Where do you sell the principal part of your lumber output?

Mr. Carpenter: We sell it over a large territory, Central Freight Association, and Western Trunk Line Territory takes perhaps two-thirds of our output; and it is scattered from New England to Texas.

Mr. Cowan: And in the territory west of the Missouri River, and Texas?

Mr. Carpenter: Yes, sir.

Mr. Cowan: Oklahoma and Kansas?

Mr. Carpenter: Yes, sir.

789 Mr. Cowan: In all these places you meet the ordinary competition in the lumber business in the sale of your product?

Mr. Carpenter: Yes.

Mr. Cowan: Do you sell it on a delivered price at the point of delivery, or do you sell it at the mill basis price?

Mr. Carpenter: We guarantee the weights, and make practically a delivered price, but do not guarantee delivery.

Commissioner Harlan: That is practically universal, is it not?

Mr. Carpenter: Yes, sir.

Mr. Cowan: You do have for your own purposes an estimated price at the mill?

Mr. Carpenter: Yes.

Mr. Cowan: And that is usual with lumber companies?

Mr. Carpenter: Yes.

Mr. Cowan: What is your annual output?

Mr. Carpenter: We are manufacturing about on the basis of 100,000,000 feet a year now.

Commissioner Harlan: How many carloads does that make?

Mr. Carpenter: I should say 7,000.

Mr. Cowan: This lumber you manufacture is pine lumber?

790 Mr. Carpenter: Yes.

Mr. Cowan: Known by any particular name, Long Leaf or——

Mr. Carpenter: Long Leaf yellow pine.

Mr. Cowan: And the same character of pine is supplied by mills in Louisiana, Arkansas and eastern Texas?

Mr. Carpenter: Yes, sir.

Mr. Cowan: I would like to ask one question, if you can state what it costs you from the stump to the mill to log your mill.

Mr. Carpenter: I have no figures on that. It varies under different conditions.

Commissioner Harlan: Have you any mill that is connected by a spur track with the Rock Island?

Mr. Carpenter: No, we have no track except the Tremont & Gulf to our mills.

Commissioner Harlan: Have you ever had any spurs to any of your mills from the Iron Mountain or Rock Island?

Mr. Carpenter: No.

Mr. Cowan: Have you ever endeavored to get a spur track from any of the other roads?

Mr. Carpenter: No.

Mr. Cowan: Naturally, your situation with the Tremont &
791 Gulf is such that as a business matter, you would not do that.

(No response.)

(Witness excused.)

792 *Warren, Johnsville & Saline River Railroad.*

Mr. Gaughan: I will call Mr. Forsyth.

J. F. Forsyth was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?

Mr. Forsyth: Warren, Arkansas.

Commissioner Harlan: What is your business?

Mr. Forsyth: I am general manager of the Warren, Johnsville & Saline River Railroad.

Commissioner Harlan: How long have you been connected with that line?

Mr. Forsyth: Since it was built.

Commissioner Harlan: When was it built?

Mr. Forsyth: 1902.

Commissioner Harlan: By whom?

Mr. Forsyth: By the Bradley Lumber Company.

Commissioner Harlan: Was it completely built at that time?

Mr. Forsyth: No, sir.

Commissioner Harlan: How much was built when you went there in 1902?

793 Mr. Forsyth: Six miles completed at once.

Commissioner Harlan: It now extends from Warren to Hermitage?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Warren is on what line, on the Iron Mountain?

Mr. Forsyth: On the Iron Mountain.

Commissioner Harlan: And Hermitage is on the Rock Island?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Were you enjoying divisions on manufactured lumber or on logs when those six miles were the only part of the completed line?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: You got those divisions from the Iron Mountain?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: What did they amount to? What was the minimum and the maximum?

Mr. Forsyth: I think it was a blanket of two cents, if I remember correctly now.

Commissioner Harlan: What had it been for some time before you went there?

794 Mr. Forsyth: I think it was that way all the time; that is as far as my knowledge goes.

Commissioner Harlan: Is that the highest division you have ever received from the Iron Mountain?

Mr. Forsyth: Up to date?

Commissioner Harlan: Up to date.

Mr. Forsyth: No, sir.

Commissioner Harlan: When was the line extended south to Hermitage?

Mr. Forsyth: 1905.

Commissioner Harlan: Was that done by one contract of construction?

Mr. Forsyth: It was done under contract of construction; yes, sir.

Commissioner Harlan: That is, you first had six miles and the next time you built, you built right through to Hermitage?

Mr. Forsyth: No.

Commissioner Harlan: How many miles did you next build?

Mr. Forsyth: Four miles, to make the connection to Hermitage.

Commissioner Harlan: Then there was a line running out

795 from Hermitage?

Mr. Forsyth: We had four miles additional to build, making ten miles, by 1905, and then we made an addition of four miles and a fraction to reach Hermitage. We are not quite at Hermitage; the junction is a mile north of Hermitage.

Commissioner Harlan: The Bradley mill is at Warren?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: After you made the next extension to the six mile track, did you get any high division from the Iron Mountain?

Mr. Forsyth: No, sir.

Commissioner Harlan: You had not connected with the Rock Island, so you were not getting any divisions from the Rock Island at that time?

Mr. Forsyth: No, sir.

Commissioner Harlan: When did you reach the Rock Island rails?

Mr. Forsyth. I am not quite sure of the year, Judge; it was either 1905 or 1906, along in May or June of that year.

Commissioner Harlan: Did you reach the main track or a spur track of the Rock Island?

Mr. Forsyth: Well, it is what we call the main track there,

796 but it is considered a spur connection, I think, of the Rock Island main line which runs from Tinsman to Crossett. I do not know whether the Rock Island considers it main line or not.

Commissioner Harlan: At the time you reached the Rock Island

rails, the Warren, Johnsville & Saline River Railroad, as it is now called, was still the property of the Bradley Lumber Company?

Mr. Forsyth: It was still the property of the Bradley Lumber Company until 1905; yes, sir. It was not incorporated until that time.

Commissioner Harlan: After reaching the Rock Island rails, the title to the property was turned over to the railroad corporation?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Organized under the laws of the State of Arkansas?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: With what capital stock, authorized?

Mr. Forsyth: $200,000.

Commissioner Harlan: And issued?

Mr. Forsyth: $50,000.

797 Commissioner Harlan: What is the mileage of the completed road?

Mr. Forsyth: It is 14.8 miles outside of the yard limits; the yard limits take up 1⅛ or 1 1/6 miles.

Commissioner Harlan: What was the cost of that construction?

Mr. Forsyth: Something over $200,000, including equipment.

Commissioner Harlan: That is what it cost the Bradley Lumber Company?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And it was turned over to the railroad company, and simply a nominal issue of stock of $50,000 was made?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And that was issued to the Bradley Lumber Company, or its officers, or stockholders?

Mr. Forsyth: It was issued to stockholders.

Commissioner Harlan: So that the railroad is owned by the same people who own the lumber company?

Mr. Forsyth: I think practically so.

Commissioner Harlan: What is the character of the road-

798 bed; is it a ballasted road?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: What iron do you use?

Mr. Forsyth: It was originally started at 35 pound steel, but we have changed some of that now, and we have a little over—there is about six and a half miles of 60 pound, and we are gradually replacing the 35 pound with 60 pound as fast as we can.

Commissioner Harlan: What equipment have you?

Mr. Forsyth: We have three locomotives and about 50 logging cars.

Commissioner Harlan: And passenger cars?

Mr. Forsyth: No passenger cars; we do not run a passenger car.

Commissioner Harlan: Do you do any passenger business?

Mr. Forsyth: No.

Commissioner Harlan: Mail or express business?

Mr. Forsyth: No.

Commissioner Harlan: Do you own the right of way?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Do you own the equipment?

Mr. Forsyth: Yes, sir; all of it.

799 Commissioner Harlan: Have you any bonded indebtedness?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: What does it amount to?

Mr. Forsyth: I think that there was $200,000 worth of bonds issued. I am not in a position to give you that exact information. I did not know the extent of this inquiry, and I will have to depend on our reports to the Commission, to be exact on it.

Commissioner Harlan: Very well; that will be understood.

Mr. Gaughan: We will furnish a statement showing the bonds outstanding.

Mr. Forsyth: I will have it furnished.

Commissioner Harlan: And the rate of interest?

Mr. Forsyth: And the rate of interest.

Examiner Burchmore: You stated you had no passenger cars?

Mr. Forsyth: No.

Examiner Burchmore: In one of the reports to the Commission it says your company has two passenger cars owned.

Mr. Forsyth: It is a mistake; they are cabooses.

Commissioner Harlan: Do you carry passengers in the cabooses?

800 Mr. Forsyth: We used to carry them, but that matter was up before the Arkansas Railroad Commission, whereby they wanted us to put on regular service, and I took it up with the State Commission, and owing to the fact there were so very few passengers, I asked to be relieved from that duty.

Commissioner Harlan: The passengers you do carry in cabooses you make no charge for?

Mr. Forsyth: No.

Examiner Burchmore: There was a time, according to your time table, that you had a mixed train.

Mr. Forsyth: We filed that. We practically do that; yes; it is simply to comply with your regulations; that is all.

Commissioner Harlan: There is no regulation which requires you to file a passenger time-table you have a passenger car, is there?

Mr. Forsyth: I do not know; under the laws of the State of Arkansas——

Commissioner Harlan: Well, it is a fact you do not sell tickets, and you make no charge?

Mr. Forsyth: No.

Commissioner Harlan: And you do carry passengers simply
801 as an accommodation on a caboose car?

Mr. Forsyth: Yes.

Commissioner Harlan: What inducements were held out to you aand by whom, to build this connection over to Hermitage?

Mr. Forsyth: Well, we thought that the road would be a paying proposition, and we needed other outlets.

Commissioner Harlan: Well, it was the outlet that was the inducement, was it not?

Mr. Forsyth: Principally.

Commissioner Harlan: And the things that accompany the outlet?

Mr. Forsyth: Yes.

Commissioner Harlan: Did you have a promise of divisions which were higher than you had been receiving?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: You had that promise before you built over there?

Mr. Forsyth: Yes.

Commissioner Harlan: Was it agreed what the division should be?

Mr. Forsyth: I do not know. That agreement was completed after——

802 Commissioner Harlan: I do not mean the written agreement, but you understood you were going to get higher agreements or divisions than two cents per hundred pounds?

Mr. Forsyth: Yes.

Commissioner Harlan: And you do get five cents per 100 pounds?

Mr. Forsyth: Yes.

Commissioner Harlan: And it was understood you were to get five cents before you went over there, and that was a part of the inducement?

Mr. Forsyth: I would say yes, sir, but I did not negotiate this arrangement.

Commissioner Harlan: Well, that is your understanding?

Mr. Forsyth: That is my understanding; yes, sir.

Commissioner Harlan: What forest does the Bradley Lumber Company own?

Mr. Forsyth: Well, we have 35,000 acres uncut yet.

Commissioner Harlan: What did they have when you went there?

Mr. Forsyth: I think they had in the neighborhood of 10,000 acres altogether, and that has been bought since.

Commissioner Harlan: I thought you said they had 35,000

803 acres now.

Mr. Forsyth: Yes.

Commissioner Harlan: And they had 10,000 then?

Mr. Forsyth: Yes.

Commissioner Harlan: And have bought the other since?

Mr. Forsyth: Yes, sir. I went there in 1901.

Commissioner Harlan: You went there in connection with the lumber company?

Mr. Forsyth: Yes.

Commissioner Harlan: Let me ask you at this point whether the officers of the railroad company are practically the same as the officers of the lumber company.

Mr. Forsyth: Practically; yes, sir.

Commissioner Harlan: And as officers of the railroad company, do they receive any salary from the railroad company?

Mr. Forsyth: Only myself.

Commissioner Harlan: Do you also receive a salary from the lumber company?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Compared to your salary as an official of the lumber company is your salary as an officer of the railroad company a substantial salary or nominal?

804 Mr. Forsyth: I should say a substantial salary.

Commissioner Harlan: Now, to return to the forests, do they lie off between Warren and Hermitage?

Mr. Forsyth: Not now. That part is all cut out. Our main holdings are now south of Hermitage and east.

Commissioner Harlan: But east of the Rock Island branch line?

Mr. Forsyth: All east of the Rock Island branch line; yes, sir.

Commissioner Harlan: Have you some logging roads connected with your main line?

Mr. Forsyth: The arrangement that we have—the lumber company has five miles of spur lines connecting with the main line.

Commissioner Harlan: That is operated by the lumber company?

Mr. Forsyth: It is operated by the railroad company at actual cost, which the lumber company refunds to the railroad company.

Commissioner Harlan: The lumber company has no locomotives or equipment?

Mr. Forsyth: No equipment of any kind.

805 Commissioner Harlan: So you run your cars off on this spur track?

Mr. Forsyth: Yes.

Commissioner Harlan: And you have no trackage agreement, but simply operate at cost?

Mr. Forsyth: Simply operate at cost to the main line.

Commissioner Harlan: Have you determined what the cost is?

Mr. Forsyth: Just the actual payroll and expenses. Of course the engines are on a rental basis.

Commissioner Harlan: I do not quite understand that. Your train crews and your engineers take your trains off onto the logging track.

Mr. Forsyth: Yes, sir.

Commissioner Harlan: The lumber company has no engineers or train crews?

Mr. Forsyth: No.

Commissioner Harlan: And every time you run a train off on the logging road and bring it back, can you take the time?

Mr. Forsyth: Well, there are two engines that are devoted altogether and stay on the spur track and we have only one engine that stays on the main line.

Commissioner Harlan: I see. So you charge all that ex-

806 pense to the lumber company?

Mr. Forsyth: We charge all that expense to the lumber company; yes, sir.

Commissioner Harlan: Have you a trackage arrangement with the Rock Island; do you bring in some over the Rock Island?

Mr. Forsyth: Yes, sir, but that is all finished now.

Commissioner Harlan: You do not do that any longer?

Mr. Forsyth: No; they are all cut out.

Commissioner Harlan: When did you cease running your trains over the Rock Island?

Mr. Forsyth: Last June, I think it was.

Commissioner Harlan: What was the trackage arrangement made at that time?

Mr. Forsyth: 75 cents per train mile on a basis of 30 cars to the train.

Commissioner Harlan: What is the daily output of the Bradley mill?

Mr. Forsyth: About practically 100,000 feet.

Commissioner Harlan: A day?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And it is using just this one spur track, or one logging road?

807 Mr. Forsyth: Yes, sir.

Commissioner Harlan: And that lies somewhat east of Hermitage?

Mr. Forsyth: Yes.

Commissioner Harlan: Perhaps a little to the south.

Mr. Forsyth: South and east.

Commissioner Harlan: And the logging road is seven miles, or five, did you say?

Mr. Forsyth: The logging road is five miles of spurs that we have; these are spurs that are changed from one time to the other.

Commissioner Harlan: Yes, but at present you only have five miles of logging road running off the line of your road?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Do you haul over the logging road logs of any other than the Bradley Lumber Company?

Mr. Forsyth: No, sir. We never have done it.

Commissioner Harlan: Do you haul any general merchandise over that road except for the Bradley Lumber Company?

Mr. Forsyth: No, sir; not over the logging railroad.

Commissioner Harlan: It has a commissary, I suppose, 808 out in the woods?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And it does receive supplies?

Mr. Forsyth: Yes, sir; those supplies are billed just the same as if it was an outside party; that is, to the lumber company.

Commissioner Harlan: You charge local rates?

Mr. Forsyth: The local rates are billed and way bills issued just the same.

Commissioner Harlan: Are there any rates running out into the woods?

Mr. Forsyth: We comply with the Arkansas State tariff in that respect.

Commissioner Harlan: Do you do any traffic of a general nature on your line?

Mr. Forsyth: Well, very little, excepting we do a small per-

centage—we have three spurs out there for the accommodation of people, one about four miles, one about six and one about eight; they bring in staves, stave bolts, piling and ties, and we take out fertilizer and occasionally we bring in cotton seed.

Commissioner Harlan: Those are short loading tracks?

809 Mr. Forsyth: Short loading tracks; yes, sir.

Commissioner Harlan: What is the amount of that tonnage by the year?

Mr. Forsyth: It would not exceed ten per cent of the total.

Commissioner Harlan: Are the ties cut——

Mr. Forsyth: That is, I say that, figuring on the tonnage of the lumber and not on the tonnage of the logs.

Commissioner Harlan: Yes. Are those ties cut from the lands of the Bradley Lumber Company?

Mr. Forsyth: No.

Commissioner Harlan: That is all outside traffic?

Mr. Forsyth: Yes.

Commissioner Harlan: Has your railroad ever paid any dividends?

Mr. Forsyth: No, sir.

Commissioner Harlan: You file your annual and monthly reports with the Commission?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: Do you recall what your total revenue from operation was last year?

Mr. Forsyth: No, sir; I cannot. I know it is approxi-

810 mately gross about $35,000 to $36,000, I think.

Commissioner Harlan: And your expenses of operation?

Mr. Forsyth: About $30,000; I think that is right.

Commissioner Harlan: You had a slight net earning, then?

Mr. Forsyth: Yes.

Commissioner Harlan: But you have not paid it out in dividends?

Mr. Forsyth: It was used on extensions and betterments.

Commissioner Harlan: As I understand it, you rent no property from the Bradley Lumber Company?

Mr. Forsyth: No.

Commissioner Harlan: And have no revenues except—what do you charge the Bradley Lumber Company for the haul from the lumber camps to the mill at Warren?

Mr. Forsyth: We charge the Bradley Lumber Company—we have a back haul coming in and we charge them $6.00 a car, which is our regular published tariff.

Commissioner Harlan: Is that from the camp to the mill?

Mr. Forsyth: That is from the camp to the mill on all shipments made back to the Rock Island. That is shipments—there is no milling in transit arrangement on the Rock Island shipments. There is on the Iron Mountain shipments.

811 Commissioner Harlan: Let me see if I get the point. You haul the logs up to the junction with your line?

Mr. Forsyth: Yes.

Commissioner Harlan: At cost?

Mr. Forsyth: At cost; yes, sir.

Commissioner Harlan: That expense does not come into the $6.00 at all?

Mr. Forsyth: No.

Commissioner Harlan: Then from the junction of the logging line with your line, you haul the logs to the mill near to Warren?

Mr. Forsyth: Yes.

Commissioner Harlan: And then you haul the manufactured lumber back to Hermitage?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And there deliver it to the Rock Island for $6.00 a car; is that it?

Mr. Forsyth: That is, we, of course, participate in the through rate on the finished product.

Commissioner Harlan: I am not sure that I understand it. You charge $6.00 a car from the junction of the logging line with your line up to the mill at Warren?

812 Mr. Forsyth: Yes.

Commissioner Harlan: That is a completed service by itself, is it?

Mr. Forsyth: Yes.

Commissioner Harlan: Then the manufactured lumber is billed out from that point as a new contract of transportation?

Mr. Forsyth: Yes.

Commissioner Harlan: And on that you get a division ranging from nothing at all to five cents?

Mr. Forsyth: No, one and one-half cents to five cents.

Commissioner Harlan: It is mostly five cents, is it not?

Mr. Forsyth: Yes.

Commissioner Harlan: If the manufactured lumber goes out over the Iron Mountain you bill the logs from the junction with the logging road?

Mr. Forsyth: Yes.

Commissioner Harlan: And it goes to the mill on the milling in transit rates?

Mr. Forsyth: Yes.

Commissioner Harlan: And then out to destination?

Mr. Forsyth: Yes.

Commissioner Harlan: And you get one and a half to

813 five cents on that?

Mr. Forsyth: Yes.

Commissioner Harlan: And that is mostly five cents?

Mr. Forsyth: Yes.

Commissioner Harlan: Which road takes the great bulk of your manufactured product?

Mr. Forsyth: Practically equally divided; it adjusts itself on the equipment furnished.

Commissioner Harlan: Is it not also adjusted under contract with the Rock Island, do you not guarantee them at least half?

Mr. Forsyth: That is the agreement, but it adjusts itself naturally anyway.

Commissioner Harlan: How many track men and train crews have you?

Mr. Forsyth: One section crew and then we have one crew in the woods that lay these spurs for the company at cost, and three train crews.

Commissioner Harlan: The section crew stays on the main line?

Mr. Forsyth: Altogether.

Commissioner Harlan: Then you have a crew in the woods
814 that lay the spurs for the lumber company?

Mr. Forsyth: Yes.

Commissioner Harlan: And they do that at cost?

Mr. Forsyth: Yes.

Commissioner Harlan: Then you have the regular train crews?

Mr. Forsyth: Yes.

Commissioner Harlan: How many men, 20 or 30?

Mr. Forsyth: Ten men in the train crews, I think, and then——

Commissioner Harlan: Do they load the logs on the cars?

Mr. Forsyth: No.

Commissioner Harlan: Do they participate in that at all?

Mr. Forsyth: No, they participate in the unloading.

Commissioner Harlan: In the unloading at the mill?

Mr. Forsyth: Into the pond; that is all.

Commissioner Harlan: The unloading is done by your people?

Mr. Forsyth: Yes; there is a pond man that is furnished by the lumber company and the brakemen help unload the logs.

Commissioner Harlan: Have you joint class and commodity rates generally?

Mr. Forsyth: Yes.

815 Commissioner Harlan: With both lines?

Mr. Forsyth: I think not with both lines.

Commissioner Harlan: Just with the Rock Island?

Mr. Forsyth: I think so.

Commissioner Harlan: Well, you said only about ten per cent of your traffic was outside of lumber.

Mr. Forsyth: Yes.

Commissioner Harlan: What sort of a town is Warren? I believe the record shows, still you might state how many people.

Mr. Forsyth: I should say, including the mills which are outside the limits, about in the neighborhood of 5,000 people.

Commissioner Harlan: And Hermitage had how many people?

Mr. Forsyth: Not to exceed 1,000.

Commissioner Harlan: That is a town that you built up, is it not?

Mr. Forsyth: Well, it was built up principally by the Rock Island and ourselves.

Examiner Burchmore: I have before me what purports to be a percentage issue No. 10, being a division sheet issued by the Rock Island Railway, containing divisions in effect with
816 the Warren, Johnsville & Saline River. Before I refer to that, may I ask, do you have any lumber shipments moving from points on your line to stations in Arkansas?

Mr. Forsyth: Yes, sir, we have.

Examiner Burchmore: This percentage sheet provides that on yellow pine lumber from points on the Warren, Johnsville & Saline River Railway to points in Arkansas and Louisiana, except junction points where through rates are published, the divisions to the Warren, Johnsville & Saline River are free, and the Chicago, Rock Island & Pacific and connections take the remainder. Does that mean that you receive no compensation for the haul of lumber from a point on your line that is consigned to a station in Arkansas or Louisiana?

Mr. Forsyth: That is a mistake. My understanding was that we participate in the state tariff, but that at no time should our percentage be over the sum of our local rates.

Examiner Burchmore: Then, similar to another company, as has appeared at this hearing, you receive your local rate on shipments consigned to Arkansas and Louisiana, and the Rock Island collects its junction rate.

Mr. Forsyth: Yes, sir.

Examiner Burchmore: This does not mean that you have a
817 free haul?

Mr. Forsyth: No.

Examiner Burchmore: There is filed with the Commission a copy of an agreement entered into on the 20th day of May, 1907, between the Rock Island, party of the first part, and the Warren, Johnsville & Saline River Railroad, party of the second part, and the Bradley Lumber Company, party of the third part. Are you familiar with the terms of that contract? It is a contract for divisions and traffic arrangements.

Mr. Forsyth: I could not say. Any questions I can answer I will, but I cannot say that I am very familiar with it.

Examiner Burchmore: I will call your attention to the following language in the second paragraph of that agreement as follows: "For the proper, economical and profitable conduct of its business, it requested the Warren Company to construct and operate said lines of railway." Does that language mean that this railroad was constructed for the proper, economical and profitable conduct of the business of the saw mill company; in other words, that it was constructed not as a common carrier primarily, but as a plant facility? Perhaps that is not a question for you to answer——

Mr. Forsyth: I would answer it in this way, that the rail-
818 road company could do the work cheaper than the lumber company, and that is the reason we made the contract for the spur work. I do not know anything about the main line work in that contract. That is not a question I could answer.

Mr. Gaughan: Would not that be asking the witness for the expression of an opinion?

Commissioner Harlan: Perhaps counsel can argue the case on the contract as it stands, without any questions.

Mr. Forsyth: I am not familiar enough with it anyway, because it was not drawn up by me, and I had no part in the contract.

Examiner Burchmore: Without asking any questions, I call your

attention to the terms of the contract dated September 9, 1908, between the Rock Island and the Warren, Johnsville & Saline River Railway Company and the Bradley Lumber *Lumber* Company seems not to be a party to that contract.

Mr. Forsyth: That is the trackage rights?

Examiner Burchmore: That is the trackage rights under which you operate the four or five miles over the Rock Island.

Mr. Forsyth: Yes.

819 Examiner Burchmore: The second paragraph of that contract reads in this way: "Whereas, the Rock Island Company owns and operates, as lessee, a certain line of railroad extending through Bradley County, Arkansas, and the Johnsville Company desires to obtain the right to operate trains over that portion of said road, hereinafter described, in order to facilitate the movement and handling of its logs from the forest to its mill at Warren, Arkansas, and the Rock Island Company is willing to grant such use"—referring to the logs in the mill as though the property of the Warren, Johnsville & Saline River Railway——

Commissioner Harlan: Did that railroad own any mill?

Mr. Forsyth: No, sir.

Examiner Burchmore: This contract provides as consideration the sum of 75 cents per train of 30 cars per mile. It further provides that if at any time it is so desired, the Rock Island will haul those cars at a rate of 35 cents per thousand feet instead of per train mile. Has that provision of the contract ever been taken advantage of?

Mr. Forsyth: No.

Examiner Burchmore: As a matter of fact, what has been the practice under the trackage rights? By that, I mean, has the War-

820 ren, Johnsville & Saline River Railroad hauled these logs from the forest on the Rock Island Railroad under the trackage rights?

Mr. Forsyth: Yes.

Examiner Burchmore: The lumber company has never gone down there?

Mr. Forsyth: No.

Mr. Gaughan: You mean there is but five miles of spur track in all, or do you mean there is that much of a main line, with spur track branching off from it?

Mr. Forsyth: There is that much of spurs and all.

Mr. Gaughan: Do you know how much track it will take to log the territory in which the timber of the Bradley Lumber Company is located?

Mr. Forsyth: Eventually?

Mr. Gaughan: Yes.

Mr. Forsyth: About 30 miles.

Mr. Gaughan: Please state whether or not your outside traffic for the railway company has increased or diminished since the construction of the road to Hermitage?

Mr. Forsyth: Increased.

Mr. Gaughan: State whether or not the country through which it is built is improving in an industrial way?

821 Mr. Forsyth: I cannot say it is an improvement in an industrial way; it has in an agricultural way.

Mr. Gaughan: Well, that is what that word covers. In an agricultural way, you say there are farms being opened up?

Mr. Forsyth: Yes.

Mr. Gaughan: This country was largely a wilderness, where your timber is located, before the timber was cut, was it not?

Mr. Forsyth: Practically altogether.

Mr. Gaughan: Are the lands fit for agricultural purposes?

Mr. Forsyth: A percentage of them, yes, sir.

Mr. Gaughan: Does the lumber company own much pine timber where it does not also own the land?

Mr. Forsyth: In the neighborhood of 15,000 acres.

Mr. Gaughan: On that land do you also own the hard wood?

Mr. Forsyth: No, sir; just the pine. In some cases we do, but in the large majority of cases we only own the pine timber on what we call timber deeds, where the deed is only for the timber, and not in fee simple.

Mr. Gaughan: In operating these logging tracks, do you permit the owners of the hard wood timber to get their timber out by means of your railroad?

822 Mr. Forsyth: Naturally.

Mr. Gaughan: Do you treat them all alike?

Mr. Forsyth: Everybody.

Mr. Gaughan: What, in the aggregate, will that tonnage amount to?

Mr. Forsyth: Per annum?

Mr. Gaughan: No, gross tonnage of the hard wood timber in that territory not owned by the Bradley Lumber Company?

Mr. Forsyth: That is a question that is too big for me to answer. I could not tell. Some hundreds of thousands of tons.

Mr. Gaughan: All I want to get in the record is a general idea of the amount of it.

Mr. Forsyth: Well, I should say there would be at least 10,000 cars, at least.

Mr. Gaughan: I may not have understood you in answer to the Commissioner's questions but this milling in transit——

Commissioner Harlan: Suppose you let me tell you that. There is no milling in transit on lumber that goes out over the Rock Island, but there is a milling in transit on that which goes out over the Iron Mountain. That is to say, the logs start on the

823 through rate at the junction of the logging road with this road, and they move to the mill and are there milled, and the manufactured lumber goes out on the transit rate.

Mr. Gaughan: The only point I did not catch was this, if the lumber company pays the railway company something for bringing those logs from Hermitage to the Bradley mill, and they are then milled on the through rate with the milling in transit privilege, should not that charge be refunded by the railway company to the lumber

company, and state whether or not that is done, as to lumber going out on the Iron Mountain.

Mr. Forsyth: No, we have an arrangement with the lumber company; we keep a record of all logging cars, and at the end of each month we proportion the shipments of lumber as they have actually been made with the proportion of the logs actually hauled, and so divide and make the charge on that basis.

Mr. Gaughan: As I understood it the way your testimony went in, you would be making a double charge.

Mr. Forsyth: No; that is the only way we could get at it.

Commissioner Harlan: How many car loads of logs make one car-load of lumber?

824 Mr. Forsyth: It varies from four to six; it depends on the class of timber we are handling. If small cars, they will take more, and if large, they will take less. I thought the feetage basis would be more accurate.

Mr. Gaughan: Did you make the contract yourself with the Rock Island?

Mr. Forsyth: No.

Mr. Gaughan: You do not know whether the matter referred to by the Examiner was simply clerical errors, or whether it was put in there intentionally?

Mr. Forsyth: I do not really know anything about that contract. It was made in the St. Louis office and not at Warren. It is evidently a clerical error.

Mr. Gaughan: That is all.

Commissioner Harlan: There is one question I omitted to ask you. Do you know anything about the lumber company called the Bernice Lumber Company?

Mr. Forsyth: I know of it, but I do not know anything about it; that is, I know of it. That is away out of that territory.

Commissioner Harlan: Do you know anything about the Lee Lumber Company?

Mr. Forsyth: I know of it; yes, sir.

825 Commissioner Harlan: What about the Brown Lumber Company?

Mr. Forsyth: I do not.

Commissioner Harlan: Have you ever heard of the Little River Lumber Company?

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And the William Farrell Lumber Company?

Mr. Forsyth: William Farrell Lumber Company; yes, sir.

Commissioner Harlan: And the Gulf Lumber Company?

Mr. Forsyth: Yes.

Commissioner Harlan: And do you know something about the tap lines that are owned by those companies?

Mr. Forsyth: No, sir; I do not. The only place that I have been at on any one of these companies—I simply know of them. The only one is the Little Valley, and the Gulf Lumber Company. I have not been there for two or three years.

Commissioner Harlan: Have you ever heard of what is called the Colonial Railway, consisting of a number of tap lines?

Mr. Forsyth: No, sir; I have not heard of that.

Commissioner Harlan: Do you know who owns the Bradley Lumber Company?

Mr. Forsyth: Yes.

826 Commissioner Harlan: Who owns it?

Mr. Forsyth: The Chicago Lumber & Coal Company.

Commissioner Harlan: Does not that company own the Bernice Lumber Company?

Mr. Forsyth: I am not sure whether they do.

Commissioner Harlan: And the Lee Lumber Company and these others?

Mr. Forsyth: They are interested in the Lee Lumber Company, but the others, I do not know.

Commissioner Harlan: Are they interested to the extent of controlling it?

Mr. Forsyth: I do not know that they are.

Commissioner Harlan: Are you familiar with the affairs of the Chicago Lumber & Coal Company?

Mr. Forsyth: Not well enough to say that I am.

Commissioner Harlan: Are you an officer of that company?

Mr. Forsyth: No, sir; only of the Bradley Lumber Company.

Commissioner Harlan: The Bradley Lumber Company reports its transactions to that company?

Mr. Forsyth: Yes, sir.

Mr. Cowan: Does the Bradley Lumber Company own retail lumber yards?

827 Mr. Forsyth: No, sir.

Mr. Cowan: Is it not a fact that the interests which do own the Bradley Lumber Company do own a large number of yards in Kansas, about 80 lumber yards in Kansas?

Mr. Forsyth: How many?

Mr. Cowan: Eighty is the information I have; and two in Iowa and three in Nebraska.

Mr. Forsyth: I do not know the number of their yards at all. I know they own some; yes, sir.

Mr. Cowan: Where does your output go to, mainly?

Mr. Forsyth: All territories; we sell practically—I do not think five per cent of our output goes to the Chicago Lumber & Coal Company's yards.

Mr. Cowan: How does this division of the rate figure in the price of the lumber? Does it cut any figure in the price of lumber?

Mr. Forsyth: We figure on the tariff rates.

Mr. Cowan: The price of the lumber would not depend in any sense on whether this division was three cents per 100 pounds or five cents per 100 pounds; or would it?

Mr. Forsyth: No, sir; it would depend altogether on the published tariff rates.

828 Mr. Cowan: Do you know of any lumber manufacturers in your country which do not have a tap line of some sort,

which get a division of rates? Do you know of any which do not enjoy that privilege?

Mr. Forsyth: No.

Mr. Cowan: Are you pretty well acquainted with the situation in Arkansas and the lumber business in the yellow pine territory?

Mr. Forsyth: Fairly, I should say.

Mr. Cowan: In looking around over the country you keep your eyes open as to whether other people are getting an advantage over you?

Mr. Forsyth: Naturally I would.

Mr. Cowan: And it is your information that practically all these lumber manufacturers in that part of the country are getting somewhat similar divisions to what you do?

Mr. Forsyth: I presume so, although I have no knowledge of the actual divisions any one of them is getting.

Mr. Cowan: Do you know of any lumber mill which has a track connection from the main line and belonging to the main line, where the main line takes the lumber from the mill and
829 itself performs the service of the switching, we may call it, from the mill to the main line.

Mr. Forsyth: Oh, yes; quite a few, I think.

Mr. Cowan: In such cases, do the saw mills get a division of the rate?

Mr. Forsyth: I only know of three instances that I am well enough acquainted to say yes. I cannot say about any more.

Mr. Cowan: There is some sort of a scheme, though, whereby there is a division of the rate going to the tap line, we may call it, for the sake of not having a definite name.

Mr. Forsyth: Yes, sir, there is.

Mr. Cowan: When your lumber is billed out at Warren over the Iron Mountain, does your billing show that it originated at the junction point of the logging road with your line?

Mr. Forsyth: Yes.

Mr. Cowan: But there is no station at that junction point?

Mr. Forsyth: A small station, telephone connection.

Mr. Cowan: But nobody there to actually issue billing?

Mr. Forsyth: No.

Mr. Cowan: No lumber shipped from there?

Mr. Forsyth: Well, there are cars loaded there, but no billing actually done by an agent there; no, sir.

830 Mr. Cowan: What is the object of making the billing read from this junction point with the mill company's logging road?

Mr. Forsyth: Because it is a milling in transit transaction.

Mr. Cowan: Do you ever bill any lumber over the Iron Mountain, which shows the lumber to have originated at Warren or at your mill at Warren, as the point of origin?

Mr. Forsyth: No.

Mr. Cowan: It always shows as the point of origin the place where the logs come to your railroad?

Mr. Forsyth: Yes.

Mr. Cowan: Is there any more reason for having your billing for

Iron Mountain shipments show the point of origin at that place than there is to have your Rock Island shipments of lumber show the point of origin at that junction?

Mr. Forsyth: I think so or I would not have done it.

Mr. Cowan: What is that?

Mr. Forsyth: Because we do double the service.

Mr. Cowan: What is that?

Mr. Forsyth: It is not a continuous shipment on the Rock Island.

831 Mr. Cowan: It is just as continuous as it is in the case of the Iron Mountain.

Mr. Forsyth: No.

Mr. Cowan: In both cases do you not dump the logs into the pond and they saw them out of that?

Mr. Forsyth: Yes.

Mr. Cowan: In both cases when you load a car of lumber you send it to the line of the Iron Mountain or Rock Island?

Mr. Forsyth: Yes.

Mr. Cowan: So the continuity of the shipment is the same in actual service in one case as in the other, except the difference in the distance you move it?

Mr. Forsyth: That is a matter of opinion.

Mr. Cowan: How far do you move it in the case of the Iron Mountain shipments from the place where you load the car?

Mr. Forsyth: About in the neighborhood of a mile.

Mr. Cowan: That would not be worth five cents per 100 pounds itself, would it?

Mr. Forsyth: No, sir. We do not figure that we are charging five cents for that service.

Mr. Cowan: You figure you are charging five cents from where you got the logs?

832 Mr. Forsyth: Yes.

Mr. Cowan: In the case of the Rock Island, you figure the service from your mill over to the Rock Island is worth five cents?

Mr. Forsyth: For the 16 mile haul; yes, sir.

Mr. Cowan: And for that reason it is not worth while to bill the lumber from the junction of the logging road with your road?

Mr. Forsyth: Well, the railroad has to earn something.

Mr. Cowan: Is the office of the railroad company and the lumber company all one and the same thing?

Mr. Forsyth: They are in separate rooms in the same building; yes, sir.

Mr. Cowan: Are the officers of each the same persons, both in the employ of the lumber company and the railroad?

Mr. Forsyth: No, they have two men that are strictly altogether in the railroad company.

Mr. Cowan: And what do they do?

Mr. Forsyth: One is superintendent and one is an office man.

Mr. Cowan: That is the lumber company——

Mr. Forsyth: Who does the billing.

833 Mr. Cowan: Is that the lumber company or the railroad company?

Mr. Forsyth: The railroad company.

Mr. Cowan: They do not receive any salary and perform no work for the lumber company?

Mr. Forsyth: No.

Mr. Cowan: You come in competition with other manufacturers of lumber, of course, wherever you sell it, in all the markets?

Mr. Forsyth: Yes.

Mr. Cowan: You sell it on the basis of a mill price, plus the feright?

Mr. Forsyth: Yes.

Mr. Cowan: That is usual?

Mr. Forsyth: Yes.

Mr. J. J. Coleman: You speak about an arrangement for hauling logs for the lumber company. Is the arrangement you make mention of $6.00 a car, a somewhat recent one?

Mr. Forsyth: No, sir; it has been four to five years.

Mr. Coleman: Are you familiar with the testimony of Mr. Millard in the case of the Chicago Lumber & Coal Company against the Tioga & Southeastern, docket 1438?

834 Mr. Forsyth: No, sir; I am not.

Mr. J. J. Coleman: Do you consider that Mr. Millard was sufficiently familiar with the affairs of the railroad company and the lumber company to know what the arrangement was for hauling logs?

Mr. Forsyth: Well, I would not want to say. Mr. Millard has not been there ten times in his life.

Mr. J. J. Coleman: Well, there has been no new arrangement made?

Mr. Forsyth: I do not think there has, not in the last four or five years, not after we had incorporated. We did not incorporate until 1905, and prior to that we had other arrangements. As I have said, I want to leave all this data on record with the Commission to verify these things.

Commissioner Harlan: You have filed some exhibits already.

Mr. Forsyth: Yes, sir.

Commissioner Harlan: And you want those to be referred to as part of your testimony?

Mr. Forsyth: I want those to be referred to and to be authentic.

Commissioner Harlan: It will be so understood. Who is the president of your company?

835 Mr. Forsyth: S. H. Fullerton.

Commissioner Harlan: He is here?

Mr. Forsyth: Yes.

Commissioner Harlan: Mr. Fullerton, will you be good enough to be present on Monday as a witness?

Mr. Fullerton: Yes.

Commissioner Harlan: You will be understood as having been called by the Commission to testify on Monday. Are there any further questions to put to this witness?

Mr. Gaughan: Only this, to make a correction in the record. In answer to counsel's question, you said that you knew of no lumber

manufacturing plant in Arkansas to whom a division was not given. As a matter of fact, you do not know of any lumber companies to whom a division is given, do you?

Mr. Forsyth: I have not any knowledge of other people's business.

Mr. Gaughan: Well, whatever divisions you know of, are given to some railroad company, are they not?

Mr. Forsyth: I did not understand that question.

Mr. Gaughan: I say such divisions as you may know of, are given to some railroad company, are they not? They are not
836 given to a lumber company.

Mr. Forsyth: Yes.

Mr. Gaughan: Your division is not given to a lumber company, is it?

Mr. Forsyth: To some railroad company; yes, sir. I so understood the question.

Mr. Gaughan: That is what you had reference to?

Mr. Forsyth: Yes.

Commissioner Harlan: Gentlemen, I would like to know, as it may help out the whole situation, what tap lines connecting with the Cotton Belt are here, and also if the Kansas City Southern and the Frisco, for the convenience of those who are here, and with the prospect of not reaching certain cases until Tuesday, we thought possibly we might now announce that certain cases would not be called on Monday. We will reserve for calling the Rock Island and the Iron Mountain cases.

Mr. Thurmond: One of our lines which connects with the Rock Island also connects with the Southern Pacific.

Commissioner Harlan: Then that must be regarded as a Rock Island case.

Mr. Thurmond: In the Woodworth & Louisiana Central
837 and the Sibley, Lake Bisteneau & Southern, that is a proposition in connection with the Southern Pacific, and it would save a great deal of time if they were considered together.

Commissioner Harlan: The Louisiana Central is the only one which reaches the Rock Island?

Mr. Thurmond: Yes, which reaches the Rock Island, but a lot of general testimony will apply to all of them.

Commissioner Harlan: Then those cases may be reserved to be heard, not on Monday, but for call on Monday in connection with the other two, composing, what do you call it?

Mr. Thurmond: They call it the Shreveport, Alexandria & Southern System.

Mr. Sargent: The Kansas City Southern cases will not be taken up Monday?

Commissioner Harlan: Such cases as do not reach the Rock Island or Iron Mountain will not be taken up on Monday.

Mr. Mantooth: The Cotton Belt cases will not be taken up on Monday?

Commissioner Harlan: If they do not connect with the Rock Island. If counsel will wire on Monday in sufficient time, we may

be able to give some indication as to the cases to be heard
838 Tuesday. Understand, with the exception of the case just referred to that is reserved in connection with the system, we want all the Rock Island and Iron Mountain cases on Monday. We will now adjourn until Monday morning at 9:30 A. M.

(At the request of counsel Commissioner Harlan then proceeded with the hearing of the Dorcheat Valley Railroad Company.)

839 *Dorcheat Valley Railroad Company.*

E. E. PORTER was called as a witness and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?
Mr. Porter: Texarkana, Arkansas.
Commissioner Harlan: What is your business?
Mr. Porter: Lumber and railroad.
Commissioner Harlan: What railroad are you connected with?
Mr. Porter: The Dorcheat Valley Railroad.
Commissioner Harlan: How long have you been connected or associated with that road?
Mr. Porter: Since its organization.
Commissioner Harlan: When was that?
Mr. Porter: I believe part of the road was built in 1905; it was incorporated in 1906, January, 1906.
Commissioner Harlan: Let us go back to the termini of the road. What was its first terminus; from what point was it built?
Mr. Porter: Cotton Valley, Arkansas, on the L. & A.
Commissioner Harlan: By whom was it built?
840 Mr. Porter: The Porter-Wadley Lumber Company.
Commissioner Harlan: What was the extent of the mileage first constructed?
Mr. Porter: Three or four miles.
Commissioner Harlan: Into forests owned by that lumber company?
Mr. Porter: Yes, sir.
Commissioner Harlan: And do you remember when those four miles were completed?
Mr. Porter: In the latter part of 1905; something along there; early in 1906, the road was incorporated in 1906.
Commissioner Harlan: What was the extent of the forests owned by the lumber company at that time?
Mr. Porter: The extent of the forest near the mill was small.
Commissioner Harlan: What was the acreage?
Mr. Porter: The acreage was probably two or three thousand acres near the mill and across the large bayou that is in that territory we owned at that time probably ten or fifteen thousand acres of land and timber rights, across this large bayou.
Commissioner Harlan: What was your connection?
841 Mr. Porter: With the Louisiana & Arkansas Railroad.
Commissioner Harlan: At Cotton Valley?

Mr. Porter: Yes, sir; near Cotton Valley.

Commissioner Harlan: How close was your mill to the line of that road?

Mr. Porter: It is about a quarter of a mile from the L. & A.

Commissioner Harlan: What allowance did you get at that time?

Mr. Porter: Nothing.

Commissioner Harlan: Did you have any equipment?

Mr. Porter: Only logging equipment.

Commissioner Harlan: It was just a logging road at that time?

Mr. Porter: Yes, sir.

Commissioner Harlan: You got no allowance whatever?

Mr. Porter: No. We went in there with the understanding that we would get no division on the timber between this Big Creek and the Louisiana & Arkansas Railroad. It is near to the railroad, and the railroad considered that that was its own tonnage. And, when we built across this creek, which is a long creek on which we
842 have over a 4,000 foot bridge, we were to have a division on the tonnage beyond that creek.

Commissioner Harlan: What is the name of that creek?

Mr. Porter: Dorcheat.

Commissioner Harlan: When did you build the latter part?

Mr. Porter: We built across it about Christmas, 1905.

Commissioner Harlan: How many miles did you build in order to cross the creek?

Mr. Porter: To the first station beyond the creek it is six miles from Cotton Valley.

Commissioner Harlan: 4,000 feet of that is a bridge?

Mr. Porter: Yes, sir; about 4,200 feet.

Commissioner Harlan: What kind of a bridge?

Mr. Porter: About 125 feet is a piling bridge; piling 40 feet long; and the balance is a bench built up with timber.

Commissioner Harlan: Did you make any extension after you got across the creek?

Mr. Porter: Yes, sir; we built eight or ten miles to the east, and cut out that territory. Now we are logging to the south; we went on east eight or ten miles and to the south ten or twelve miles, and are cutting out that territory, and later we go north ten or
843 twelve miles from this Gleason. We extend out in every direction.

Commissioner Harlan: These extensions were built by the logging company?

Mr. Porter: We built out four or five miles before that road was incorporated, and logged this timber which was near the mill, on which we were to have no division.

Commissioner Harlan: You built that out before you built the two extensions across the creek?

Mr. Porter: Yes, we have built everything since.

Commissioner Harlan: The Railroad Company has built everything since?

Mr. Porter: Yes.

Commissioner Harlan: Did the railroad company build across the creek?

Mr. Porter: Yes, sir, we incorporated about the time we were going across the creek.

Commissioner Harlan: What is the capital of the railroad company?

Mr. Porter: $75,000.

Commissioner Harlan: Was there any cash paid in?

Mr. Porter: Yes, sir; it was all paid in.

Commissioner Harlan: By the owners of the lumber company?

844 Mr. Porter: By the stockholders.

Commissioner Harlan: The railroad company is owned by the stockholders of the lumber company?

Mr. Porter: Not altogther; there are a few stockholders in the railroad, minor interests.

Commissioner Harlan: But it is practically identical interests?

Mr. Porter: Yes, sir; only the stock was issued to the individual stockholders and was paid for by them by check.

Commissioner Harlan: After the railroad was incorporated and these two extensions were built, did you have any improvement in your roadbed?

Mr. Porter: Yes, sir; we improved our roadbed.

Commissioner Harlan: What sort of rail have you?

Mr. Porter: 35 pound rail; 3,000 oak ties, forming a good logging railroad.

Commissioner Harlan: You would call it more of a logging railroad than a railroad?

Mr. Porter: It is a typical so-called tap line, logging railroad.

Commissioner Harlan: Is it ballasted?

Mr. Porter: With sand ballast.

845 Commissioner Harlan: What equipment have you now?

Mr. Porter: Five locomotives and about 60 logging cars.

Commissioner Harlan: And the entire expense was what?

Mr. Porter: Of building the railroad?

Commissioner Harlan: Yes.

Mr. Porter: About $120,000; in that neighborhood.

Commissioner Harlan: That included the equipment?

Mr. Porter: Yes, sir.

Commissioner Harlan: And your entire mileage at this time is what?

Mr. Porter: We have in operation, I should say, about 14 or 15 miles, 15 or 16 miles. Beyond Gleason those tracks are moved a good deal.

Commissioner Harlan: Do they belong to the railroad company?

Mr. Porter: Everything belongs to the railroad company.

Commissioner Harlan: The lumber company has no track at all?

Mr. Porter: The lumber company has no equipment or anything.

Commissioner Harlan: You are organized under the general law of Arkansas as a common carrier?

846 Mr. Porter: Well, it takes six incorporators, and there are a few other stockholders who own small interests.

Commissioner Harlan: Do you reach any other regular lines?

Mr. Porter: No.

Commissioner Harlan: When you built out in this country, was it a swampy forest country?

Mr. Porter: No; it is broken country; there are big creeks through it, and it is broken with farms.

Commissioner Harlan: It was an unsettled forest country?

Mr. Porter: There are a good many farms through it.

Commissioner Harlan: I mean when you built out.

Mr. Porter: There were a good many farms then.

Commissioner Harlan: It has rapidly increased in population?

Mr. Porter: No, it is increasing some. We are selling some of our cut over land, but it was a good farming country.

Commissioner Harlan: Do you own the lands in fee?

Mr. Porter: About half or one-third.

Commissioner Harlan: And the rest you have stumpage rights?

Mr. Porter: Yes, sir; about one-third we own.

Commissioner Harlan: Does the railroad own its right of way?

847 Mr. Porter: Yes, sir; we made a deed to the railroad, and it is put on record.

Commissioner Harlan: When it moves these branches, does it acquire the right of way?

Mr. Porter: No, sir. Beyond this station the Porter-Wadley Lumber Company furnishes the right of way.

Commissioner Harlan: What station do you refer to?

Mr. Porter: Gleason; that is the end of what we call the main line. The Porter-Wadley Company furnish the right of way for the tracks beyond that.

Commissioner Harlan: You mean furnish it temporarily?

Mr. Porter: Yes, sir.

Commissioner Harlan: When you move these extensions, the railroad company has no longer any rights?

Mr. Porter: No.

Commissioner Harlan: Is there any written contract under which those rights of way are furnished by the lumber company to the railroad company?

Mr. Porter: Yes.

Commissioner Harlan: Have you filed that?

Mr. Porter: I do not know whether it is filed with the Com-

848 mission or not.

Commissioner Harlan: Is it one general contract?

Mr. Porter: Yes.

Commissioner Harlan: Will you send us a copy of that?

Mr. Porter: Yes, sir. You have a copy of our contract with the L. & A.

Commissioner Harlan: Yes. Now, when did you first commence to get divisions with the L. & A.?

Mr. Porter: After we commenced to operate beyond this creek and to haul the timber in from beyond this bayou.

Commissioner Harlan: What division were you then allowed?

Mr. Porter: Our division varies. We are allowed from three to

four cents and perhaps four and a half cents in some cases: it averages about three and a half cents. That was the contract of the L. & A.

Commissioner Harlan: That contract we have?

Mr. Porter: Yes, sir, you had it two or three times, and we furnished it to your inspector who was around examining our books a year or two ago.

Commissioner Harlan: It seems to be here. Do these divisions appear on regular division sheets?

Mr. Porter: Oh, yes.

849 Commissioner Harlan: You have copies of the originals?

Mr. Porter: Yes, sir. I haven't them here; they are issued by the Louisiana & Arkansas. You have copies, I presume.

Commissioner Harlan: We seem to have them. Do they indicate divisions on manufactured lumber only?

Mr. Porter: Yes, sir, I think so.

Commissioner Harlan: Do you have divisions on class rates?

Mr. Porter: No, sir; there are no through shipments.

Commissioner Harlan. You do not move any general merchandise?

Mr. Porter: We move some, but it is all local from Cotton Valley practically.

Commissioner Harlan: Is Cotton Valley quite a point?

Mr. Porter: It is quite a little point; there are six or eight stores there. But there are some fertilizer and other things which move in from points on the Vicksburg, Shreveport & Pacific, those are Louisiana rates.

Commissioner Harlan: You have not filed any of those?

Mr. Porter: No.

Commissioner Harlan: Have you filed any tariffs with the Commission?

850 Mr. Porter: Yes.

Commissioner Harlan: You have filed concurrences?

Mr. Porter: No, we have filed tariffs.

Commissioner Harlan: Just these local tariffs?

Mr. Porter: Yes.

Commissioner Harlan: Then practically all your tonnage except a little general merchandise and some fertilizer from Louisiana points is outbound lumber?

Mr. Porter: No, sir; we have a stave mill and handle factory on our road.

Commissioner Harlan: Where are they?

Mr. Porter: The stave mills near Cotton Valley and the handle factory is eight or nine miles in the woods.

Commissioner Harlan: How near is the stave factory to your line?

Mr. Porter: It is on it.

Commissioner Harlan: How near to Cotton Valley?

Mr. Porter: Between a quarter and half a mile from the L. & A.

Commissioner Harlan: When was it built?

Mr. Porter: A year and a half after our road was incorporated.

851 Commissioner Harlan: It uses hard wood?

Mr. Porter: Yes.

Commissioner Harlan: Gets it from your company?

Mr. Porter: Yes, but it gets it practically all from the Porter-Wadley Lumber Company. It did buy some other, but our tonnage on staves last year was 4,100 tons.

Commissioner Harlan: Then you mentioned another mill farther out.

Mr. Porter: It is a handle factory.

Commissioner Harlan: And it gets its lumber from your forest?

Mr. Porter: Not all of it. I think they get some of it from us.

Commissioner Harlan: The greater part of it?

Mr. Porter: The greater part of it.

Commissioner Harlan: Do they cut it or do you cut it and deliver it to them?

Mr. Porter: They cut it.

Commissioner Harlan: How does it get to their mill?

Mr. Porter: They haul it in wagons and ship their product on our line.

Commissioner Harlan: And what division do you get on

852 the through rate on staves and handles?

Mr. Porter: That is handled on a combination of locals to Cotton Valley, and then they local it out. They pay us our local to Cotton Valley.

Commissioner Harlan: Do you recall what that is?

Mr. Porter: No. There is a tariff here.

Commissioner Harlan: Is a carload of handles worth more than a carload of lumber?

Mr. Porter: Yes, sir.

Commissioner Harlan: How much more?

Mr. Porter: I don't know, a carload of handles is worth $400 or $500, I think.

Commissioner Harlan: Well, a carload of lumber might be worth $400 or $500?

Mr. Porter: Yes, but not the average. The average is $150 to $175.

Mr. Wadley: $240 for manufactured lumber.

Commissioner Harlan: A carload of handles is worth how much?

Mr. Wadley: $500 or $600.

Mr. Porter: We handled 5,100 tons of staves.

Commissioner Harlan: How much of handles?

853 Mr. Porter: I do not know.

Commissioner Harlan: Do you know what the local rates are from the handle mill, from the local point to Cotton Valley?

Mr. Porter: I presume it takes the class rate.

Mr. Wadley: It is $12.00 a car.

Commissioner Harlan: Well, we have it in the tariff, and will find it. Now, have you any source of income—I am speaking of the railroad company—except your divisions of your lumber rates,

and the divisions on your staves and handles and your local rates on general merchandise and fertilizer?

Mr. Porter: We have some revenue on logs up to this junction point, this station where we spread out in different directions.

Commissioner Harlan: Just tell us about that.

Mr. Porter: We have a tariff filed under the authority of the Louisiana Commission. Have you a copy of that tariff? Locally to this station it is $1.25 a thousand.

Commissioner Harlan: That is a charge under the local tariff that you make against the lumber company?

Mr. Porter: Yes, sir, up to this point.

854 Commissioner Harlan: For hauling its logs from the forest up to what point?

Mr. Porter: Gleason; that is the end of the permanent line.

Commissioner Harlan: That is the end of the permanent line?

Mr. Porter: Yes.

Commissioner Harlan: Now, then, how does the lumber company get its logs from Gleason to its mill near Cotton Valley?

Mr. Porter: The railroad company hauls them in, and we have milling in transit tariffs published or concurred in, with the Commission.

Commissioner Harlan: And that milling in transit rate to St. Louis, for instance, is what?

Mr. Porter: Eighteen cents, the same as on the L. & A.

Commissioner Harlan: Out of that you get what?

Mr. Porter: I think about three or three and a half cents. We do not pay much attention to that. We leave that to the L. & A. to give the division agreed on.

Commissioner Harlan: How many carloads of logs do you take in to make a carload of lumber out?

Mr. Porter: In our case, I heard a gentleman say five or six. Ours, it would take seven or eight; sometimes nine, because

855 we handle short logs; we handle about 2,500 feet on a car of logs, and a car of lumber will average 18,000 or 19,000 feet; seven or eight cars, sometimes a little more.

Commissioner Harlan: What was your total tonnage last year?

Mr. Porter: The way we have made the report to the Louisiana Commission, it shows up our total tonnage as 147,000 tons, but that includes the lumber, 29,000 tons, which we really do not handle, but we get revenue on the milling in transit.

Commissioner Harlan: Just explain that a little more clearly.

Mr. Porter: Our total tonnage handled is 157,000 tons, as shown in the report, but 29,000 of that was lumber that we really did not handle, it was loaded on the tracks of the L. & A., but on which we get our milling in transit revenue.

Commissioner Harlan: That milling in transit revenue, do you mean you get a division of the joint through rate?

Mr. Porter: Yes.

Commissioner Harlan: Where is the mill with reference to the L. & A.?

Mr. Porter: About a quarter of a mile from it; the saw
856 mill; the planing mill is nearer the L. & A. tracks.

Commissioner Harlan: The logs go into the sawmill?

Mr. Porter: Yes.

Commissioner Harlan: Do they go over to the planing mill?

Mr. Porter: Yes, sir; the lumber is manufactured in the saw mill and then goes into the yard and then to the planing mill and then to the L. & A. tracks.

Commissioner Harlan: Then it is dressed lumber?

Mr. Porter: Yes, sir. We occasionally ship some rough, but it is generally planed and loaded on the L. & A.

Commissioner Harlan: How do you get it from the saw mill to the planing mill?

Mr. Porter: It is trucked into the yard to dry, and then into the planing mill.

Commissioner Harlan: What is the distance between the two mills?

Mr. Porter: About 1,000 to 1,100 feet.

Commissioner Harlan: And that is carried over there by horses?

Mr. Porter: Yes, sir.

Commissioner Harlan: And then it is planed or dressed and loaded directly into the L. & A. car from the planing mill?

857 Mr. Porter: Yes.

Commissioner Harlan: Then in your milling rate there is a partial movement of the lumber by truck?

Mr. Porter: Yes, sir.

Commissioner Harlan: You do not take it to the sawmill and load it from the saw mill, but truck it between the two mills?

Mr. Porter: Yes, sir.

Commissioner Harlan: In case the rough lumber goes out, where is it loaded?

Mr. Porter: It is trucked the same way; we have no loading track at the saw mill. We ship very little rough lumber.

Commissioner Harlan: You have been here during the day?

Mr. Porter: Yes, sir.

Commissioner Harlan: You have heard the testimony of others?

Mr. Porter: Yes, sir.

Commissioner Harlan: Is it usual to have a saw mill and a planing mill?

Mr. Porter: Yes, sir.

Commissioner Harlan: Most of this lumber that goes out is dressed lumber?

858 Mr. Porter: Yes, sir. I do not know of a saw mill anywhere, except these little portable mills, that do not have a planing mill.

Commissioner Harlan: And there is usually some distance between the saw mill and the planing mill?

Mr. Porter: Yes, sir; it is bound to be, because the drying yard is usually located between the two for convenience; the lumber would go right out the back end of the saw mill to the yard to dry and then into the planing mill, and is loaded right onto the track.

Commissioner Harlan: You file reports with the Commission?

Mr. Porter: They have never asked us; that is, for annual reports, but for a few accident reports, and inspectors have been around to look at our equipment.

Commissioner Harlan: You file reports with the State Commission?

Mr. Porter: Yes, sir. This is our report (indicating).

Commissioner Harlan: What was your total revenue last year?

Mr. Porter: $53,375.42.

Commissioner Harlan: What was your expense account?

Mr. Porter: $48,680.89.

859 Commissioner Harlan: Did you have an item in your expense account for maintenance of way?

Mr. Porter: Yes.

Commissioner Harlan: And what was that amount?

Mr. Porter: Maintenance of way is $21,069.18.

Commissioner Harlan: Is not that pretty large?

Mr. Porter: Yes, sir; we operate in a very bad country; it takes care of these spurs.

Commissioner Harlan: Does it build the spurs?

Mr. Porter: It lays the steel; yes, sir.

Commissioner Harlan: It does all the work, does it not?

Mr. Porter: It does practically all the work; yes, sir.

Commissioner Harlan: Moving the spurs?

Mr. Porter: Yes, sir; and we operate in very rough country.

Commissioner Harlan: Does it do the grading?

Mr. Porter: Whatever is necessary; we do not do much grading on spurs.

Commissioner Harlan: That is to say, if a spur track is taken up and moved to another place, and you have to do a little grading to take the ties and rails, and all that, that goes into maintenance of way?

860 Mr. Porter: Yes.

Commissioner Harlan: What was your maintenance of equipment last year?

Mr. Porter: $8,140.13.

Commissioner Harlan: What is the total value of your equipment?

Mr. Porter: $38,051.88. The maintenance of logging equipment is very heavy, especially in rough country, and we have a very heavy, rough, hilly country.

Commissioner Harlan: Does the railroad have about the same officers that the lumber company has?

Mr. Porter: Well, the lumber company is a partnership.

Commissioner Harlan: Well, do the officers of the railroad receive salaries?

Mr. Porter: No, sir; not the president and secretary and treasurer.

Commissioner Harlan: The clerk is paid by the railroad; you have one clerk?

Mr. Porter: We have two or three who are paid by the railroad, but they are all joint employees with the lumber company.

Commissioner Harlan: They are paid by the railroad, but
861 do some work for the lumber company?

Mr. Porter: They are paid part by the railroad and part by the lumber company.

Commissioner Harlan: You have train crews?

Mr. Porter: Yes.

Commissioner Harlan: How many men?

Mr. Porter: Sometimes we operate four, and sometimes five engines.

Commissioner Harlan: Generally speaking.

Mr. Porter: Generally speaking, it will take from eight to 15.

Commissioner Harlan: Your train crews and the track crews will constitute 40 to 50 men?

Mr. Porter: Forty to 50 or 60 men.

Commissioner Harlan: Do they load the logs on the cars?

Mr. Porter: No.

Commissioner Harlan: Who does that?

Mr. Porter: The lumber company.

Commissioner Harlan: With different men?

Mr. Porter: Yes, sir.

Commissioner Harlan: But you unload them at the pond?

Mr. Porter: Some of the lumber men that work on the
862 pond assist in unloading.

Commissioner Harlan: Who does the trucking of the rough lumber over to the planing mill?

Mr. Porter: The lumber company.

Commissioner Harlan: Of course the lumber company loads the dressed lumber into the cars?

Mr. Porter: Yes.

Mr. Gutheim: The division that you get as a general rule is exactly one-half the division that accrues to the L. & A.?

Mr. Porter: That was the trade we made with the L. & A. that we were to get one-half of the division they received on the lumber. They do not always make it just that, but they try to average it up. They have for some reason sometimes given us less, and sometimes more.

Mr. Gutheim: Is it your understanding that the rate authorized by the Louisiana Commission of $1.25 per 1,000 feet log scale from the logs on the stations on the branch or spur track is to cover also the spur work, construction spur work?

Mr. Porter: Yes, sir, it is to cover the railroad work up to Gleason.

Mr. Gutheim: The railroad company gets no compensa-
863 tion from the lumber company for constructing those spur tracks and so forth except the $1.25?

Mr. Porter: No.

Commissioner Harlan: Let me ask in a general way if the lumber rate itself were reduced, how would it hurt you to cut out these divisions?

Mr. Porter: I do not know as it would hurt us at all, if it was reduced as much as our division.

Commissioner Harlan: Well, for the purpose of illustration, suppose you get an average division on all your shipments, say, of three cents.

Mr. Porter: We are supposed to get an average of three and a half cents.

Commissioner Harlan: Well, we will say three cents. Suppose the general lumber rate were reduced three cents and extended to Cotton Valley, where your mill is.

Mr. Porter: Well, I probably did not explain myself a minute ago. If the lumber rate to all territory was reduced, it would hurt us just that much.

Commissioner Harlan: Suppose there is a blanket rate. You have now a blanket rate.

Mr. Porter: It would hurt us the amount of that division.

864 I first understood you to mean if it was reduced to certain territory, down to and including us.

Commissioner Harlan: No. I say without disturbing the present relation of rates, which is more or less blanket.

Mr. Porter: Yes, sir, it would hurt us three and a half cents.

Commissioner Harlan: And that blanket rates were reduced and then extended to all these junctions, how would that hurt you three and a half cents?

Mr. Porter: We would still have to compete with the other man who had the same advantage.

Commissioner Harlan: No, but I am supposing a case now where all divisions would be cut out and the blanket rate is extended to all junctions of tap lines with regular lines.

Mr. Porter: Including the whole territory down to Houston and everywhere?

Commissioner Harlan: All the territory that now has the blanket rate.

Mr. Porter: Well, I could not say just how that would affect us.

Commissioner Harlan: It would be rather difficult to find out how it is going to hurt you.

865 Mr. Porter: Sir?

Commissioner Harlan: You would find it difficult to explain how it would hurt you. Let me illustrate. We will not take your mill, but take a mill down in southern Louisiana. There is a 24 cent rate to Kansas City, and that rate really goes right back to the tree, if there is a milling in transit privilege. Now, suppose the rate is cut down to Kansas City and extended to the junction of the tap lines with the regular lines, instead of back to the forest, and all the milling in transit division is left out. Now you are competing with me, and we both have mills down there. Would not that leave us in precisely the same equality?

Mr. Porter: If we were all in the same position it would, but we have to compete against other mills and other territory.

Commissioner Harlan: I am assuming their divisions would be cut out also.

Mr. Porter: Do you mean the Pacific Coast, the territory we meet them in, or the white pine?

Commissioner Harlan: I do not think there are any such divisions over there as you have here.

Mr. Porter: I know, but we would have to meet them, and
866 the white pine and the Pacific Coast and the stuff in the North.

Commissioner Harlan: Any reduction in the rate would help to do that, would it not if the rate was reduced?

Mr. Porter: If the general rate was reduced, if their rate is reduced too?

Commissioner Harlan: If their rate is left where it is it would be to your advantage, if your rate was lower?

Mr. Porter: Yes, sir. Now, then, take some other roads in south Texas that have advantages which we have not.

Commissioner Harlan: What advantages?

Mr. Porter: Well, in some cases some of the Texas mills have sold their tap lines and some have loaned money at a lower rate, and they have advantages we have not.

Commissioner Harlan: And have their capital invested otherwise, the money they receive for the tap line?

Mr. Porter: Yes.

Commissioner Harlan: They have otherwise invested?

Mr. Porter: Yes, sir. May I explain a minute? When we went into this territory to look at this timber, it had been looked at by five or six different lumber men, and they had all turned it down
867 and said the country was too broken, too many big creeks, too many farms and the timber was too scattered to justify the putting of a railroad into it to mill it, and Mr. Buchanan had sent two or three of his own people into it, and they had turned it down——

Mr. Wadley: Mr. Buchanan went himself.

Mr. Porter: Well, I did not know he went, but two or three went in and they turned it down. The man whom I had been associated with in the mill business before owned about 10,000 or 12,000 acres in this territory, and he wanted to organize a corporation in which he would be interested to operate the territory, and Mr. Wadley and I looked at the timber and decided we could not afford to do it unless we could get help from the railroad. We went to Mr. Buchanan and told him if he would build us a spur ten miles long from Cotton Valley into this timber and turn it over to us to operate we would go for the timber. That has been done, and he had done it in other cases, and it has been done by other railroads. He said that he would prefer to give us a division and if we would go after this tonnage in this territory he would divide the L. & A. revenue with us. He preferred to do that rather than build the spur, because he was of the opinion there was not enough
868 timber in the territory, and it was so expensive it would not pay, and he made the agreement and the contract was made later, before we invested a dollar in the timber.

Mr. McRae: The contract was written before you built across the creek?

Mr. Porter: About the time; yes, sir. I do not remember what the date of that contract was. About 1906.

Mr. Wadley: Is it not a fact that the agreement was made before we invested.

Mr. Porter: Yes, sir. Here is a letter by Mr. Buchanan saying the contract would be made.

Mr. Wadley: Let me state in regard to the question you asked a moment ago, about what effect it would have on our proposition if the divisions were cut off and the rates were lowered, say to the extent of three and a half cents, the blanket rates. It would have this effect, that our proposition is so much more difficult than the average mill that we would be at a big handicap, because we cannot log this plant——

Commissioner Harlan: You can only do so much with what you have.

Mr. Wadley: Yes.

869 Commissioner Harlan: Now, if that rate is reduced by the amount of your allowance——

Mr. Wadley: And every other one is reduced, we are handicapped in that we would not have made this investment on an equal footing with the others. We do not have the benefit of the division, our position is so much more expensive.

Mr. Porter: We would not be at any disadvantage with anybody that has three and a half cents.

Commissioner Harlan: I am assuming all conditions equal, and that your division will be cut out, and I am saying supposing the rate would be reduced to the extent of your division, how would it affect you adversely?

Mr. Porter: It would not affect us adversely as compared with a man who had as much division as we have, unless other lumber rates were reduced to the Pacific Coast and the white pine forest, and other rates.

Mr. McRea: And it is not true that on the Pacific Coast and in the Norway district the rates have been adjusted on some other basis than that of divisions.

Mr. Porter: I do not know about that. I think so.

Commissioner Harlan: I will just read in the evidence, per-

870 haps it might be here, this letter of Mr. Buchanan. It is on the letterhead of the Louisiana & Arkansas Railway Company, dated Texarkana, Arkansas, August 13, 1904, addressed to Mr. E. E. Porter, Texarkana, Arkansas. It reads as follows:

"DEAR SIR: I hereby agree to cause the L. & A. Railway to enter into an agreement and contract to divide equally all revenue received from the lumber manufactured from logs originating on the railroad to be incorporated by you and others, and to be built from or near Cotton Valley across Dorcheat. Contract will be made when your company is incorporated.

Yours truly,

WILLIAM BUCHANAN,"
President and General Manager."

—. Dorcheat is the creek?

Mr. Porter: Yes, sir.

Commissioner Harlan: And that was attached to your original copy of the agreement subsequently executed by your railroad?

Mr. Porter: Yes, sir.

Commissioner Harlan: The Dorcheat Valley Railroad and
871 the Louisiana & Arkansas Railway Company.

Mr. Porter: In line with that letter.

Mr. McRae: And the copy of the contract which you attached to your complaint is a true copy of that?

Mr. Porter: Yes, sir.

Mr. McRae: The road is assessed for taxes by the Board in the same manner as the main line roads in Louisiana?

Mr. Porter: Yes, sir; we pay taxes on the equipment.

Mr. McRae: And you comply with all the regulations of the Louisiana Commission?

Mr. Porter: Yes.

Mr. McRae: And such of the regulations of the Interstate Commerce Commission as you have been requested to?

Mr. Porter: Yes.

Mr. McRae: When transporting the lumber you speak of or that his Honor asked you about, the carriage of the green lumber from the saw mill to the planer, do you not first carry it to the kiln in trucks?

Mr. Porter: Some of it, and it passes through the kilns into the yard, some of it to the planer.

Mr. McRae: And is, in fact, handled twice after it is unloaded from the logging cars?

872 Mr. Porter: Yes.

Mr. McRae: You keep the books of your railroad company separate from those of your lumber company?

Mr. Porter: Separate books and separate bank account.

Mr. McRae: Do you pay per diem and charge demurrage?

Mr. Porter: Yes, sir; it is provided for in our regular tariff.

Mr. McRea: Would you have built this road but for this agreement, across the Dorcheat?

Mr. Porter: No, sir.

Mr. McRae: You could not have afforded it?

Mr. Porter: We would not have gone in the face of more experienced men, men with more money.

Mr. McRae: Did you cut all your timber, or have you left some of it?

Mr. Porter: We left some timber this summer. Our timber man told us there was a tract of about 10,000,000 to 15,000,000 feet a mile or so beyond the end of one of our spurs, but the country was so rough we could not afford to go after it, even with the division.

Mr. McRae: Have you stated what your net earnings were from the operation of this road?

873 Mr. Porter: Yes, sir, I have stated them. I think our logging operations—this operation cost us $5.00 per thousand. We have been in a very rough country, and we probably lost money on some of that territory, and that is the reason we came out

and left some of this territory which was a mile or so from the end of the spur. We were in such a rough place it took two Shay engines to haul three logging cars out over the hill.

Mr. McRae. I do not know that I quite understand you about the right of way. Mr. Wadley made a suggestion. I understood you to say that the railroad company owned the right of way that you had acquired.

Mr. Porter: It does to Gleason, and there is a deed on record in Minden, at the Parish seat.

Mr. McRae: A logging spur is simply a permit to go over and it is taken up and there is no deed, and you give them the right to go over this land, and if it is necessary to go over private property you acquire that?

Mr. Porter: Yes, sir.

Mr. Wadley: You mentioned there that the lumber company furnished all the right of way.

Mr. Porter: No.

874 Commissioner Harlan: Only for the movable tracks.

Mr. Porter: The lumber company of course furnished all the right of way beyond Gleason.

Commissioner Harlan: But the railroad company owns all the right of way to Gleason?

Mr. Porter: The lumber company buys that and pays for it under contract.

Commissioner Harlan: You said the lumber company had turned into a partnership.

Mr. Porter: Yes.

Commissioner Harlan: What is that partnership?

Mr. Porter: Porter, Wadley & Company.

Commissioner Harlan: Was the lumber company incorporated originally?

Mr. Porter: Yes, sir; it is still in existence, but owns timber only.

Commissioner Harlan: What is the relation of Porter, Wadley & Company to the lumber company? Are they lessees?

Mr. Porter: No, sir; Porter, Wadley & Company purchase timber from the Porter-Wadley Lumber Company.

Commissioner Harlan: The timber, but not the fee title?

Mr. Porter: No, sir, just the stumpage.

875 Commissioner Harlan: The incorporated company owns the fee title to about 35,000 acres?

Mr. Porter: No, sir; we now have about 22,000 acres; that is in fee and timber rights together.

Commissioner Harlan: Now, Porter, Wadley & Company have acquired the timber rights on the acres that you own in fee?

Mr. Porter: They buy timber from month to month and pay for it as they get it out.

Commissioner Harlan: The lumber company is simply a company that owns it?

Mr. Porter: Yes.

Commissioner Harlan: And it is not operated?

Mr. Porter: No.

Commissioner Harlan: The partnership is operated?

Mr. Porter: Yes.

Commissioner Harlan: The partnership owns the saw mill and planer?

Mr. Porter: Yes, sir; everything.

Commissioner Harlan: Does the partnership own the railroad?

Mr. Porter: No, the stockholders own the railroad, and there are several individuals who are not stockholders in
876 the lumber company. It requires six incorporators in Louisiana, and there are not that many members of the Porter-Wadley Company.

Mr. McRea: But E. E. Porter and Mr. Wadley are the principal stockholders in the railroad company?

Mr. Porter: Yes, sir, we are the principal owners of all three companies.

Commissioner Harlan: I understand the outside traffic amounts to very little.

Mr. Porter: The tonnage last year was 746 tons; that is, general freight; that includes feed stuff, fertilizer and general merchandise.

Commissioner Harlan: Inbound and outbound?

Mr. Porter: Yes, sir, 726 tons, I should say.

Mr. McRae: I believe you stated it was standard gauge?

Mr. Porter: Yes, sir.

(Witness excused.)

877 *Bernice & Northwestern Railway Company.*

(At 6:00 P. M. the hearing on the above named company was held before Examiner Burchmore in room 1077 of the Grunewald Hotel, New Orleans, pursuant to agreement between all parties.)

G. W. JAMES was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is your residence and occupation?

Mr. James: I live at Bernice, Louisiana, and am president of the Bernice & Northwestern Railway.

Examiner Burchmore: How long have you been president of that company?

Mr. James: Ever since its organization.

Examiner Burchmore: In what year?

Mr. James: 1908.

Examiner Burchmore: It was incorporated in 1908?

Mr. James: It was incorporated in 1908.

Examiner Burchmore: In what year was the railroad or the first portion of the railroad constructed?

Mr. James: It was started in 1902 or 1903; it belonged to
878 the lumber company at that time.

Examiner Burchmore: Was the first construction co-incident with the establishment of the mill at that point?

Mr. James: Yes, sir.

Examiner Burchmore: Describe the line as it then existed, in a rough way.

Mr. James: Well, we built a logging road from Bernice to Summerfield to log the Bernice Lumber Company's plant.

Examiner Burchmore: How long was that road?

Mr. James: Well, it was 15 miles to Summerfield.

Examiner Burchmore: At that time?

Mr. James: Yes, when it was started it was 15 miles.

Examiner Burchmore: Was there any town at Summerfield at that time?

Mr. James: Yes, sir.

Examiner Burchmore: It was not just a point in the woods?

Mr. James: No, it is an old town, the oldest town in Louisiana, I guess.

Examiner Burchmore: At Bernice you had a connection with the Chicago, Rock Island & Pacific Railway?

Mr. James: Not at that time we did not; it was known as the Arkansas Southern at that time.

879 Examiner Burchmore: Was it a part of the Rock Island System?

Mr. James: It was the Rock Island when we started and the lumber company sold it to the railroad company.

Examiner Burchmore: Was the Arkansas Southern a part of the Rock Island System at that time?

Mr. James: No.

Examiner Burchmore: Was it an independent road?

Mr. James: Yes, sir.

Examiner Burchmore: Was it at that time controlled by lumber interests, if you know?

Mr. James: No, sir; I do not think so, but I could not say.

Examiner Sanford: What are the termini of the road; where does it run from and to?

Mr. James: From Bernice, Louisiana to Summerfield, Louisiana.

Examiner Sanford: Any branches?

Mr. James: Yes, sir; that is a distance of 15 miles; then it has another branch which runs from Dubach to Cunningham, eleven miles.

Examiner Sanford: Is Cunningham a station?

Mr. James: Yes, sir.

880 Examiner Sanford: It has no other connections?

Mr. James: No, except the Rock Island connection.

Examiner Burchmore: At the time of the incorporation in 1908 was there any other railroad in existence other than the line from Bernice to Summerfield?

Mr. James: There was a road at Bernice; the Arkansas Southern was there.

Examiner Burchmore: I mean was there any other part of this tap line?

Mr. James: No.

Examiner Burchmore: What road has subsequently been constructed since the incorporation?

Mr. James: Oh, yes, sir, at the time of the incorporation. I thought you said when it was first built, there was not any other, but at the time of the incorporation there was this other branch from Dubach, eleven miles, it was there the same as it is today.

Examiner Burchmore: Dubach is eleven miles westward?

Mr. James: Yes, sir.

Examiner Burchmore: Is there any connection between the Dubach line and the Bernice line?

Mr. James: Rock Island connection.

881 Examiner Burchmore: Have you trackage rights over the Rock Island?

Mr. James: Nothing over our rails—we run our engines back and forth, but we pay the regular tariff; we have not any special rate.

Examiner Burchmore: No contract?

Mr. James: No.

Examiner Burchmore: No special arrangement?

Mr. James: No, sir; no special arrangement.

Examiner Burchmore: Do you run your own cars back and forth?

Mr. James: No.

Examiner Burchmore: Just your engines?

Mr. James: Just our engines.

Examiner Burchmore: What consideration do you pay for that privilege?

Mr. James: Seventy-five cents per engine mile.

Examiner Burchmore: That is run with your own crew and under its own power?

Mr. James: Yes, sir.

Examiner Burchmore: Without any load behind?

Mr. James: No.

882 Examiner Burchmore: No empty cars?

Mr. James: No.

Examiner Burchmore: By whom is the stock in the Bernice & Northwestern Railway Company now held?

Mr. James: Well, it is held by myself and Mr. Fleishel and a few others, minor stockholders, that have not got but a little.

Examiner Burchmore: By whom is the majority of the stock of the railroad company held?

Mr. James: It is held by the same people as the lumber company; practically the same.

Examiner Burchmore: Then in substance the railroad company is owned and controlled by what lumber company, if any?

Mr. James: The same people that control the Bernice & Northwestern Railroad Company control the Bernice and Dubach Lumber Companies.

Examiner Burchmore: Those are two lumber companies, the Bernice Lumber Company and the Dubach Lumber Company?

Mr. James: Yes, sir.

Examiner Burchmore: That ownership of railroad stock is by the

stockholders of the lumber companies and not by the lumber companies themselves?

883 Mr. James: Yes, sir, by the stockholders.

Examiner Burchmore: There is no holding company that owns the stock in both companies?

Mr. James: No.

Examiner Burchmore: What was the earliest time when an allowance or division was paid to this tap line?

Mr. James: When it was started, in 1908.

Examiner Burchmore: Prior to the chartering of the tap line, no allowances or divisions whatsoever were paid to the owners of that tap line?

Mr. James: No, sir; nothing before that.

Examiner Burchmore: What rates on freight were paid prior to the incorporation? The regular legal tariff rate from the junction point?

Mr. James: You mean by the lumber company?

Examiner Burchmore: Yes.

Mr. Gaughan: To the Rock Island, he means.

Examiner Burchmore: To the Rock Island or its predecessor.

Mr. James: The lumber company owned the railroad company——

Mr. Gaughan: No, he is talking about what rate did you pay to the Arkansas Southern before you incorporated.

Mr. James: We paid them the regular tariff rate from

884 Bernice, the junction point.

Examiner Burchmore: Without any drawback or reduction of any character?

Mr. James: No, we did not get anything back before it was incorporated.

Examiner Burchmore: Was the establishment of divisions and allowances coincident with the incorporation of the tap line?

Mr. James: You mean they started at the same time?

Examiner Burchmore: Yes.

Mr. James: Yes, sir, we got the divisions when we chartered.

Examiner Burchmore: What was the purpose of this incorporation of the tap line, if you can state?

Mr. James: Well, we really chartered to get the divisions. We had to charter before we could get them, and we chartered in order to get the divisions, while we were doing a good deal of other business out in that country; in fact, we do a good deal of other business for other people.

Examiner Burchmore: At the time of the incorporation was there any actual traffic ready to be solicited for the public along the lines of your tap line?

885 Mr. James: Yes, sir; we were doing at least 15 per cent for the public before we chartered—ten per cent, I will say, at least.

Examiner Burchmore: What was the character of that traffic and for whom was it performed?

Mr. James: It was hauling staves in and car lots of flour and feed stuff for this town of Summerfield.

Examiner Burchmore: Say for the 12 months ending June 30, 1908, what would you estimate the total tonnage moving over this tap line; that is, prior to the incorporation?

Mr. James: That is, before the incorporation?

Examiner Burchmore: Yes.

Mr. James: Well, I just said not less than—about 10 or 12 per cent, I suppose, of the stuff.

Examiner Burchmore: No, but in cars or tons, what was the total traffic of all kinds that moved over that tap road?

Mr. James: Logs for the mills?

Examiner Burchmore: Everything, of every character.

Mr. James: How many carloads?

Examiner Burchmore: Yes.

Mr. James: It is pretty hard to get that.

Examiner Burchmore: A general statement.

886 Mr. James: For a year?

Examiner Burchmore: Yes; I simply want an idea of the extent of its business.

Mr. Gaughan: Would he have a right to see this paper and then compare it?

Examiner Burchmore: He can look at anything he wants to.

Mr. James: I know what it was for the next year, and it is practically the same.

Examiner Burchmore: Just tell it in round figures, then.

Mr. Gaughan: You can refresh your memory from any paper you have got.

Mr. James: Before the organization is what you want?

Examiner Burchmore: Yes.

Mr. James: For the next year it was 83,000 tons.

Examiner Burchmore: Of all traffic?

Mr. James: That is for the next year; that is after we incorporated.

Examiner Burchmore: What was the traffic——

Mr. James: I suppose the year before that would be about 80,000 tons, the year before we chartered.

Examiner Burchmore: For the nine months ending June 30, 1909, we have understood that your total traffic was 36,695

887 tons.

Mr. James: For nine months?

Examiner Burchmore: Yes, commencing October 1st, 1908.

Mr. James: Well, this that I gave you for the year was 83,000 tons.

Examiner Burchmore: More than twice what you handled in nine months. Your first annual report for the fiscal year ending June 30, 1909, indicates, I think, a traffic of 36,695 tons for nine months.

Mr. James: Yes, and now the next year was 83,000 tons.

Examiner Burchmore: That is the fiscal year 1910?

Mr. James: Ending this year, this is the last report. I could

not say whether before we chartered—we did not keep any track of that before we chartered. I do not know whether it would be a little more or a little less.

Examiner Burchmore: The line from Bernice westward practically parallels the road from Dubach westward with no physical connection?

Mr. James: Yes, sir.

Examiner Burchmore: What is the location of the mill of the Bernice Lumber Company?

Mr. James: It is on the track of the Bernice & Northwestern.

888 Examiner Burchmore: Right on the track of the Rock Island?

Mr. James: Yes, sir.

Examiner Burchmore: Where is the mill of the Dubach Lumber Company located?

Mr. James: Also on the track of the Rock Island.

Examiner Burchmore: Also on the track of the Bernice & Northwestern?

Mr. James: Yes, sir.

Examiner Burchmore: At Dubach?

Mr. James: Yes, sir.

Examiner Burchmore: How much of a town is Dubach?

Mr. James: It is about 1,500 people, I guess.

Examiner Burchmore: Was there any town there before the mill was constructed?

Mr. James: The mill was constructed and the town about the same time; it is all really built together.

Examiner Burchmore: Are Bernice and Dubach, or either of them, what are commonly known as company towns?

Mr. James: No, sir. Saw mill towns? No, they are good sized towns. We do not compose ten per cent of the people.

889 Examiner Burchmore: These lumber companies do not control the merchandise trade there?

Mr. James: No. We have got a big town; Bernice is about 3,000 people, and a good big bank in both towns.

Examiner Burchmore: Does the Bernice & Northwestern publish and file with the Commission any tariff of local rates applying to interstate traffic between points on its line?

Mr. James: Interstate?

Examiner Burchmore: Yes, for interstate application.

Mr. James: Published with the Commission; no, sir, I do not think so. I would rather leave that question for Mr. Wacker to answer, as to the tariff.

Examiner Burchmore: You are not advised with respect to the rates as well as he is?

Mr. James: No. We have a milling in transit proposition strictly, and Mr. Wacker can explain that all better than I can.

Examiner Burchmore: Will you please explain the method or practice at the present time of handling the logs into the mill and the lumber out of the mill for these controlling lumber companies?

Mr. James: That is a milling in transit proposition which I would rather Mr. Wacker would answer.

890 Examiner Burchmore: I am speaking from an operating standpoint; not what rates or privileges, but what is the physical handling of the property?

Mr. James: Well, we have got log cars and three locomotives, and 62 or 64 log cars.

Examiner Burchmore: Those cars are equipped with safety appliances?

Mr. James: No, they are regular skeleton log cars.

Examiner Burchmore: No air brakes or couplers?

Mr. James: No.

Examiner Burchmore: Used for the transportation of anything but logs?

Mr. James: No.

Examiner Burchmore: Any cars used for other tonnage?

Mr. James: Yes, sir; we have four of what we call open cars, flat cars, really, that we have for what little freight we handle.

Examiner Burchmore: Any box cars?

Mr. James: No, sir.

Examiner Burchmore: A caboose?

Mr. James: No.

Examiner Burchmore: Are these flat cars equipped with

891 couplers?

Mr. James: Yes, sir.

Examiner Burchmore: And air brakes?

Mr. James: We have brakes on the engines and these flat cars.

Examiner Burchmore: The Bernice & Northwestern engine takes the logging cars which it owns and hauls them empty into the forest?

Mr. James: Hauls them to Summerfield, and then the lumber company has spurs and it pulls these logs up to the main line, as we call it, to the railroad.

Examiner Burchmore: Does the lumber company have any locomotives?

Mr. James: Yes, sir.

Examiner Burchmore: It handles the cars over its own private spur tracks, then?

Mr. James: Yes, sir.

Examiner Burchmore: What is the extent of those private spur tracks in length?

Mr. James: That is all of them at both places, Dubach and Bernice?

Examiner Burchmore: State it separately.

892 Mr. James: At Bernice we have, I should say, about eight or nine miles. Dubach has about nine miles, I think.

Examiner Burchmore: A logging car is loaded with logs up in the forest by the employés of the lumber company?

Mr. James: Yes, sir.

Examiner Burchmore: And it is then hauled by the engine of the lumber company to Summerfield?

Mr. James: Yes, sir.

Examiner Burchmore: In the case of the Bernice company's shipments?

Mr. James: Yes.

Examiner Burchmore: What is the subsequent method with respect to those logs?

Mr. James: The engine that runs from Bernice to Summerfield picks these loads up and carries them to the mill, which is located at Bernice.

Examiner Burchmore: Who unloads the logs at that point?

Mr. James: The mill employés.

Examiner Burchmore: They are then manufactured into lumber?

Mr. James: Yes, sir.

Examiner Burchmore: And loaded into cars by whom?

893 Mr. James: The Rock Island.

Examiner Burchmore: Where are those cars set, and by whom?

Mr. James: They are set by the Rock Island upon their spur track.

Examiner Burchmore: And are loaded by your employés, or the lumber company employés?

Mr. James: Yes, sir.

Examiner Burchmore: They are then switched out or moved out by the Rock Island?

Mr. James: By the Rock Island. We do not handle them at all.

Examiner Burchmore: And move to interstate destinations?

Mr. James: Yes, sir.

Examiner Burchmore: Is any bill of lading issued at the time the log leaves the woods, or leaves Summerfield?

Mr. James: Yes, sir.

Examiner Burchmore: By whom is that issued and where?

Mr. James: That is stated, it is from Summerfield or Cunningham, whichever the case may be, as we have no agent at Summerfield.

Examiner Burchmore: Have you any agent at Cunning-

894 ham?

Mr. James: No, sir.

Examiner Burchmore: Where are your agents located?

Mr. James: At Bernice.

Examiner Burchmore: They issue bills of lading in the name of the Bernice & Northwestern Railway?

Mr. James: Yes, sir.

Examiner Burchmore: At Bernice, but stated Summerfield?

Mr. James: Yes.

Examiner Burchmore: And Cunningham?

Mr. James: Yes.

Mr. Wacker: I would like to correct that. There is also an agent at Dubach who signs bills of lading for the Dubach Division, and also one at Bernice, who signs for the Bernice Division.

Examiner Burchmore: The method is the same.

Mr. Wacker: The method is exactly the same.

Examiner Burchmore: Are any waybills issued for the movement into the mills?

Mr. James: Yes, sir, into the mill and out.

Examiner Burchmore: Waybills are issued in?

Mr. James: Yes, sir.

895 Examiner Burchmore: Are those card waybills?

Mr. James: We make a waybill covering the cars in.

Examiner Burchmore: Those freight bills actually accompany the cars?

Mr. James: No.

Examiner Burchmore: The conductor never sees them?

Mr. James: No, we make a waybill covering the train of logs.

Examiner Burchmore: Then when the shipments subsequently move out from the mill for interstate destinations, under what bill of lading do they move?

Mr. James: They move under the bill of lading—they move under a waybill. We furnish the Rock Island a waybill for each car.

Examiner Burchmore: You issue the waybills then?

Mr. James: Yes, sir.

Examiner Burchmore: What point is shown as the point of origin on that waybill?

Mr. James: Summerfield and Cunningham.

Examiner Burchmore: Bernice does not appear as the point of origin?

Mr. James: No.

896 Examiner Burchmore: Is any new bill of lading issued?

Mr. James: New bill of lading?

Examiner Burchmore: Yes.

Mr. James: What do you mean, after the car is loaded?

Examiner Burchmore: When it is loaded out with lumber. You stated you issued——

Mr. James: Yes, we issue a bill of lading for each car of lumber.

Examiner Burchmore: You issue two bills of lading, one at the time the log leaves Summerfield, and at the time the lumber leaves the mill?

Mr. James: I don't know about bills of lading——

Mr. Wacker: We do not issue the bill of lading for the logs, but issue a waybill or wheel report; the conductor has a wheel report in which he reports the number of logs in each train. For instance, he brings in ten cars of logs and he turns the report into the office, and from his report we turn the waybill into the mill.

Examiner Burchmore: So far as the logs are concerned, no bill of lading is issued until they reach Bernice?

Mr. Wacker: That is right.

Examiner Burchmore: Immediately upon their arrival at

897 Bernice, is the waybill issued?

Mr. Wacker: There is a bill issued on the conductor's report of his trip brought in at that time.

Examiner Burchmore: Subsequently when the lumber is billed

out from the mill you then issue a bill of lading reading back to Summerfield or Cunningham, as the case may be?

Mr. Wacker: Yes, sir.

Examiner Burchmore: An examination of the operations of your company was made by examiners of the Commission on or about December 4th, 1909, and the Commission has in its records a report from such examiners. Has there been any change in the methods or practices of your company since the date of that examination with respect to the movement of logs or the movement of lumber?

Mr. James: No, sir, I think not.

Examiner Burchmore: Has there been any new construction by the railroad company since that date?

Mr. James: No, sir, not by the railroad company.

Examiner Burchmore: There has however, been new construction or change of line in the case of the private rails of the lumber companies?

Mr. James: Yes, sir.

898 Examiner Burchmore: Those lines are not fixed in character, but are moved from time to time as the timber is cut?

Mr. James: Yes, sir, they are small spur tracks, and it is moved into the timber we cut, we move it farther out.

Examiner Burchmore: Are the officers of the Bernice & Northwestern Railway Company identical with the officers of the lumber companies, or either of them?

Mr. James: Well, they are practically the same.

Examiner Burchmore: Are you advised as to what parties or interests own the Bernice Lumber Company?

Mr. James: Yes, sir, I know who owns the Bernice Lumber Company.

Examiner Burchmore: State, if you will.

Mr. James: I am President of it, I own it.

Examiner Burchmore: You own the Bernice Lumber Company?

Mr. James: Yes, sir.

Mr. Gaughan: He wants to know how much of the stock is yours?

Examiner Burchmore: What proportion of the stock do you own?

899 Mr. James: About half, a little over half.

Examiner Burchmore: Do you own that in your own right or in trust?

Mr. James: Of what company do you mean, now, the Bernice or the railroad?

Examiner Burchmore: The Bernice Lumber Company.

Mr. James: I own the Bernice Lumber Company.

Examiner Burchmore: In your own right?

Mr. James: Yes, sir. I own all this company.

Examiner Burchmore: The Bernice Lumber Company is not owned or controlled by any interests that own and control other lumber companies aside from the Dubach Company?

Mr. James: No.

Examiner Burchmore: Does the same statement apply to the Dubach Lumber Company?

Mr. James: Yes, sir. I own over fifty per cent of both those companies.

Examiner Burchmore: Who owns the minority interests in those two companies?

Mr. James: In the Dubach Lumber Company and Bernice Lumber Company, Mr. M. L. Fleishel, the same man who is interested in the railroad.

900 Examiner Burchmore: How long have you owned the controlling interest in these two companies?

Mr. James: About nine years with the Bernice and I bought the Dubach Lumber Company four years ago, three and a half or four.

Examiner Burchmore: Since the incorporation of the Bernice & Northwestern Railway Company, and the establishment of allowances or divisions have you increased to a considerable extent your land or stumpage holdings in that vicinity?

Mr. James: No, sir, there is none to increase. We probably would if we could.

Examiner Burchmore: Is there any timber along the line——

Mr. Gaughan: I do not think you understood the question. He means have you bought any timber, after you got this division promised to you?

Mr. James: Yes, sir, we are buying timber. We buy timber right along.

Examiner Burchmore: Acquiring additional timber lands or stumpage rights?

Mr. James: Yes, sir.

Examiner Burchmore: Is there any timber land along the line of the Bernice & Northwestern which is not owned by your

901 lumber companies?

Mr. James: There is quite a good deal of hardwood——

Mr. Wacker: He is talking about lands.

Examiner Burchmore: Well, or stumpage?

Mr. James: I said quite a good deal of hardwood.

Examiner Burchmore: Is there any cutting going on?

Mr. James: Of hardwood? Yes, sir.

Examiner Burchmore: Are there any other sawmills on your line?

Mr. James: No, sir.

Examiner Burchmore: By whom is this cutting done?

Mr. James: By two or three concerns in New Orleans here. The Lamore Company, Cornie Stave Company, Adams Stave Company and A. Lamore Company. They are cutting staves, all those parties, and ties.

Mr. Wacker: The ties are being cut by Jacobs, are they not?

Examiner Burchmore: And others?

Mr. James: Well, the ties are cut, there are quite a good deal of ties which have been shipped by—I haven't got that big tie man's name.

Mr. Wacker: Is not Jacobs the man?

902 Mr. James: No, but on the Dubach Division.

Examiner Burchmore: Should I ask you about the rates applying on ties, or Mr. Wacker?

Mr. James: You might ask him.

Examiner Burchmore: Have you ever heard of the so-called Colonial system of tap lines?

Mr. James: Yes, sir.

Examiner Burchmore: Is there such a system?

Mr. James: No, sir.

Examiner Burchmore: How have you heard of it then?

Mr. James: It has not been in existence for, I don't know, it has been six or seven years, and it really never was incorporated; it never was a railroad. It was in the Guide, I think, was about as far as that question ever got.

Examiner Burchmore: Can you give me a little information?

Mr. James: The Bernice & Northwestern was in with the Colonial Railway System.

Examiner Burchmore: What sort of a system was that?

Mr. James: It was not much of a system. That was away back, four or five years before the incorporation.

Examiner Burchmore: Has the Colonial System gone out
903 of existence entirely?

Mr. James: I suppose so. I haven't heard of it in five, six or seven years.

Examiner Burchmore: Your railroad has no relation with any other tap lines?

Mr. James: No, sir, none whatever.

Examiner Burchmore: Have you any contract with the Rock Island System?

Mr. James: Nothing more than division sheets; I don't know whether you count those as contracts or not.

Examiner Burchmore: Is there any other statement that you desire to make in order that the Commission may be fully informed with respect to the status of your company?

Mr. James: I do not know of any. The Commission has all our reports, and we make our yearly and monthly reports and accident reports.

Examiner Burchmore: Do you keep your accounts in conformity with the regulations of the Interstate Commerce Commission?

Mr. James: Yes, sir, we keep that according to their rules.

Examiner Burchmore: What is the capitalization of the railroad?

Mr. James: $200,000.

904 Examiner Burchmore: Authorized?

Mr. James: Yes, sir.

Examiner Burchmore: And outstanding?

Mr. James: $108,600.

Examiner Burchmore: Was that stock paid for in cash or issued in exchange for railroad acquired?

Mr. James: The lumber company declared a dividend——

Mr. Gaughan: The lumber company declared a dividend and you people got some money, and you took the money and bought stock in the railroad?

Mr. James: Yes, sir, we bought stock in the railroad or really bought the railroad.

Mr. Gaughan: You bought stock in the railroad, and then the railroad company bought the railroad.

Examiner Burchmore: What was done was this, the lumber company declared a dividend, and instead of paying the dividend in cash had the railroad stock issued to its stockholders?

Mr. Gaughan: No.

Examiner Burchmore: I do not wish to ask a technical question, but the substance of that transaction was about that?

905 Mr. James: That is about the substance of it. The lumber company declared a dividend, and we organized a railroad and practically to the same stockholders, and bought stock in it.

Examiner Burchmore: As a stockholder in the lumber company you received money in the shape of a dividend and used that money to buy stock in the railroad?

Mr. James: Yes, sir.

Examiner Burchmore: And the railroad, with the money thus obtained from stock subscription, bought the line from the lumber company?

Mr. James: Yes, sir.

Examiner Burchmore: What dividends, if any, has the railroad company paid?

Mr. James: They have not paid any.

Examiner Burchmore: Are there any bonds outstanding on the railroad?

Mr. James: No.

Examiner Burchmore: You have paid no interest on bonds, then?

Mr. James: No.

Examiner Burchmore: Have you accumulated a surplus?

906 Mr. James: No, I think we have lost a little money.

Examiner Burchmore: The operations have been conducted at a loss?

Mr. James: Yes.

Examiner Burchmore: What advantage, if any, has accrued to the owners of this railroad through its operations then?

Mr. James: We expected to do better than we did. We expected to make some money out of it, but up to date we have failed.

Examiner Burchmore: To make some money from the public traffic?

Mr. James: From the public traffic and the lumber company.

Examiner Burchmore: Was not the railroad built and organized primarily for the purpose of serving these lumber plants and with the hope that as an adjunct to the lumber plant it would pay?

Mr. James: Well, the railroad does a good deal of outside business and always has, ever since it has been in existence, even before it was incorporated they did quite a good deal of business for the public.

Examiner Burchmore: There is no further statement you desire to make.

907 Mr. Gaughan: I wanted to direct his attention to one feature, and he should have answered it in answer to the

Examiner's question when he asked if you had anything else. How far is it practicable to log a sawmill with wagons, how far away?

Mr. James: With wagons?

Mr. Gaughan: Yes.

Mr. James: Not over two miles.

Mr. Gaughan: Were it not for the railroad to which you have referred, lumber, both hardwood and pine, out at the end of those lines, would not be available at all, would it?

Mr. James: No, sir. There is no other railroad in that section.

Mr. Gaughan: Were it not for the divisions which this railroad company receives, in view of the character of the country and the physical conditions, could that timber be manufactured profitably? That is to say, if the lumber company had to bear by itself the entire expense of bringing it to its mill by a railroad owned by it, and got no division of the freight rates.

Mr. James: We have bought timber since this division was put in that we never had figured on cutting, but after getting the
908 division we have gone much farther than we expected to go.

Examiner Burchmore: You can apply that division on one side of the ledger as against the extra cost of going farther into the woods, on the other side of the ledger?

Mr. James: Yes, sir.

Examiner Burchmore: These other interests who are cutting hardwood along your line team their logs to the railroad?

Mr. James: Yes, sir, to the line.

Examiner Burchmore: Do they receive any allowance for that teaming?

Mr. James: No, sir.

Mr. Gaughan: You also team your logs to the railroad, do you not?

Mr. James: Yes, sir.

Examiner Burchmore: Has the Bernice & Northwestern any station building?

Mr. James: Nothing only warehouses.

Examiner Burchmore: What are those warehouses, and where are they located?

Mr. James: Cottonseed. We have three cottonseed houses at Summerfield, that is practically all the warehouses we have.
909 We haul a good deal of cottonseed.

Examiner Burchmore: Any team tracks?

Mr. James: You mean for freight?

Examiner Burchmore: Yes.

Mr. James: We do not have any freight, only in car lots.

Examiner Burchmore: Do you have any side tracks where freight for the public can be set?

Mr. James: Yes, sir.

Examiner Burchmore: Along the lines?

Mr. James: Yes, sir; that is at Summerfield and Cunningham and one along the line between Summerfield and Bernice.

Examiner Burchmore: I presume the extent and nature of your tonnage is fully set forth in your annual report for 1910 to the Commission?

Mr. James: Yes, sir.

Examiner Burchmore: What employés has the railroad company?

Mr. James: In office work or——

Examiner Burchmore: All together?

Mr. James: How many men?

Examiner Burchmore: Yes, and classify them.

Mr. James: They use about 35 men, I guess.

910 Examiner Burchmore: How many engineers?

Mr. James: Three.

Examiner Burchmore: Fireman?

Mr. James: Three.

Examiner Burchmore: Other train men?

Mr. James: Seven.

Examiner Burchmore: Do those men devote their entire time to the work of the railroad?

Mr. James: Yes, sir.

Examiner Burchmore: Do not work for the lumber company ordinarily?

Mr. James: No.

Examiner Burchmore: How many track men have you?

Mr. James: It will average about 25 men.

Examiner Burchmore: Who work solely for the railroad company?

Mr. James: Yes, sir, who work solely for the railroad company.

Examiner Burchmore: What other employés are there, if any?

Mr. James: Well, myself and the agent at Bernice and Dubach, and the superintendent at Dubach.

Examiner Burchmore: That superintendent is also an

911 employé of the mill company?

Mr. James: Yes, sir.

Examiner Burchmore: Does he receive a salary from the railroad company?

Mr. James: Yes, sir.

Examiner Burchmore: What is his salary from the railroad company?

Mr. James: About one-third of his salary.

Examiner Burchmore: Well, I mean in dollars?

Mr. James: $25.00 a month.

Examiner Burchmore: Do you receive a salary from the railroad company?

Mr. James: Yes, sir.

Examiner Burchmore: What is your salary from the railroad company?

Mr. James: $100 a month.

Examiner Burchmore: These agents at Dubach and Bernice, are they joint agents with the railroad company?

Mr. James: With the Rock Island, do you mean?

Examiner Burchmore: Yes.

Mr. James: No.

Examiner Burchmore: Are they also employed by the
912 mill companies?

Mr. James: Yes, sir.

Examiner Burchmore: In what capacity?

Mr. James: The agent is bookkeeper at the lumber company.

Examiner Burchmore: At each point?

Mr. James: Yes.

Examiner Burchmore: What proportion of their salaries is paid by the railroad company?

Mr. James: About one-fourth of it.

Examiner Burchmore: Do they devote substantially one-fourth of their time to railroad work?

Mr. James: They devote three-fourths of it, there is more work for the railroad than for the lumber company, much more.

Examiner Burchmore: May I call your attention to the provision in the amendment to the Act to Regulate Commerce, enacted at the last session, which forbids any agent or employé of a common carrier subject to the act, from giving to any shipper information respecting the shipments of his competitors. Now without asking you any question about that, it being perhaps a matter of argument, how could your agents refrain from giving to them-
913 selves as employés of the lumber company, information with respect to shipments of its competitors, if any move over the railroad company? That is not a question, however. Where is the general office of the Bernice & Northwestern Railway Company?

Mr. James: Bernice.

Examiner Burchmore: Has that always been its general office?

Mr. James: Yes, sir.

Examiner Burchmore: Did it not formerly have a general office in the Fullerton Building, St. Louis, Mo.?

Mr. James: No, sir; I don't know how you got us mixed up with the Fullerton Building.

Examiner Burchmore: Did you ever hear of a Mr. J. C. Cremer?

Mr. James: I saw him, and that is just about all.

Examiner Burchmore: We have him on one of our reports as the Comptroller of the Bernice & Northwestern Railway Company, with an office in the Fullerton Building, St. Louis?

Mr. James: I don't know anything about it.

Examiner Burchmore: Is that correct?

Mr. James: No.

Examiner Burchmore: He has never been an officer of your company or an employee?

914 Mr. James: No, sir, not in any way, shape or form.

Examiner Burchmore: I presume you are fully authorized to represent your company on this occasion?

Mr. James: Yes, sir.

(Witness excused.)

A. H. WACKER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Please state your residence and occupation?

Mr. Wacker: Bernice, La. I am Auditor of the Bernice & Northwestern, and bookkeeper of the lumber company.

Examiner Burchmore: State in a general way the basis of the divisions or allowances received by the Bernice & Northwestern on the movement of lumber?

Mr. Wacker: We have a division sheet furnished us by the Rock Island, showing divisions to various points on lumber that we ship from the mills of the Bernice and Dubach Lumber Companies.

Examiner Burchmore: But what is the basis of the amounts of those allowances?

915 Mr. Wacker: Do you mean the maximum and minimum divisions allowed?

Mr. Burchmore: What is the basis of the amounts of those allowances?

Mr. Wacker: If I understand you correctly, you want the minimum and maximum allowances.

Examiner Burchmore: Yes, and the general territory to which they apply.

Mr. Wacker: Well, the division sheet provides for a minimum of one cent and a maximum of four cents per 100 pounds. The four cent division applies to points located on the Rock Island rails, that is where they get the entire haul the divisions are higher than they are where the rates have to be divided with other lines.

Examiner Burchmore: Four cents per 100 pounds applies to traffic to all points on the Rock Island?

Mr. Wacker: No, to points in Nebraska and Colorado, located on their own line. For instance, to Omaha we get a four cent division.

Examiner Burchmore: To Rock Island points in Texas four cents?

Mr. Wacker: We only get one cent division. I do not

916 know whether you have a copy of that.

Examiner Burchmore: Refer to that division sheet and state whether it is your present division sheet (handing paper)?

Mr. Wacker: Yes, except there ought to be stated here a recent division sheet which came out allowing us one cent to points in Texas.

Examiner Burchmore: What is the number of that?

Mr. Wacker: Rock Island No. 25,232.

Examiner Burchmore: That is the present division sheet, with the exception just stated?

Mr. Wacker: There are some additions which are not here. We have a new division—another addition was two cents per 100 pounds to points located in Arkansas.

Examiner Burchmore: Is there any lumber traffic on which your company receives no division from the Rock Island?

Mr. Wacker: Yes, on lumber moving to local points in the State of Louisiana we do not get any division.

Examiner Burchmore: What is the explanation?

Mr. Wacker: I really cannot tell you what the explanation is, because this division sheet was put in by an arrangement with our traffic department. Our traffic man, Mr. Musick, made the
917 arrangement with the Rock Island.

Examiner Burchmore: Do you receive a division of two or three dollars a car on business to Louisiana?

Mr. Wacker: We have a local tariff in effect which provides for a rate of $5.00 per car on logs moving from our Bernice or Cunningham station to the mill. Now when the product of those logs goes to the local points we retain that $5.00 on the logs.

Examiner Burchmore: That is paid to you by the lumber company?

Mr. Wacker: That is paid to us by the lumber company or the shippers.

Examiner Burchmore: That in case of shipment performed for the public would be paid by the shipper?

Mr. Wacker: Yes, sir.

Examiner Burchmore: When the shipment goes to a point to which you have joint rates with the Rock Island, and a division in effect, you credit that $5.00 on the through rate?

Mr. Wacker: The way we handle that is this. We tested a trainload of logs there to find out about what the number of
918 feet would be on each car of logs and we found that each car would contain about 2000 feet of logs in the rough, and we also find that the average number of feet of lumber shipped out in the car of the finished product is about 16,000 feet; consequently we arrived at the ratio of eight cars of logs to make one car of lumber, the finished product. Now if we collect our local freight of $5.00 per car on those logs, and they give us a bill of lading showing a reshipment of the finished product to a point on which we receive divisions we give them a milling in transit allowance of the entire amount paid on the logs.

Examiner Burchmore: In the case of a shipment to an interstate destination, is the rate applied that in effect from Bernice to destination or that in effect from Summerfield to destination?

Mr. Wacker: The rate is the same, because the rates are quoted by groups. Bernice, for instance, is in Group 19, according to the Rock Island tariffs, and Summerfield is in Group 42. Now both these groups take the same rate.

Examiner Burchmore: Dubach is the same rate?

Mr. Wacker: Yes.

Examiner Burchmore: And Cunningham?

919 Mr. Wacker: Yes, sir. It does not make any difference whether the stuff is billed from Bernice or Cunningham, because the rate is the same.

Examiner Burchmore: As a matter of fact all the shipments for the Bernice Lumber Company are billed as originating at Summerfield?

Mr. Wacker: Yes, sir.

Examiner Burchmore: The tariff contains a milling in transit privilege?

Mr. Wacker: We concur in the Rock Island tariff and Leland's tariff, and the Rock Island tariff shows the transit privilege.

Examiner Burchmore: Does that contain any rule with respect to the proportion of logs in to lumber out?

Mr. Wacker: No. If it does I do not recall it. I do not think it does.

Examiner Burchmore: Can you refer to the present tariff by the I. C. C. number?

Mr. Wacker: Do you mean the Rock Island?

Examiner Burchmore: Yes.

Mr. Wacker: No.

920 Examiner Burchmore: Have you filed an index with the Commission of your tariffs?

Mr. Wacker: Our tariff department handles that. I believe they have. I would not be positive of it. I do not handle that part of the business.

Examiner Burchmore: You are the agent at Summerfield?

Mr. Wacker: I am the Auditor, and act as agent at Bernice.

Examiner Burchmore: Then you attend to the billing and so forth?

Mr. Wacker: Yes, sir.

Examiner Burchmore: Is there any territory which you can refer to as being your principal selling market?

Mr. Wacker: Well, I find that the majority of the shipments are destined to points east of the Mississippi River and north of the Ohio River on which the divisions will average three cents per 100 pounds. That is about what I figure our average divisions are.

Examiner Burchmore: What are the average rates, of course in a general way?

Mr. Wacker: Well, the rates range all the way from 18 cents to 37 cents, you know. You mean the rates from the mill to

921 final destination? They will run, we will say, 14 cents, that is the Memphis rate. The two cent division is based on the Memphis rate. Take that from 14 cents to 37 cents or even 40 cents. Of course, we ship to points all over the country. We issue bills of lading to any point all over the country.

Examiner Burchmore: You have just described the territory to which most of your lumber moves, and you have said that on most of that lumber you get the three cent division.

Mr. Wacker: That would be the average, I think.

Examiner Burchmore: Out of what general rate would that be the division?

Mr. Wacker: On the rates shown in the tariff.

Examiner Burchmore: I mean 20 cents or 40 cents or what?

Mr. Wacker: I should think that rate would average about 30 cents.

Mr. Gaughan: We get a division on the average rate of 30 cents.

Examiner Burchmore: Under the joint rate under which the

Rock Island and its connecting lines haul the lumber for a distance ranging from 100 or 200 miles to 1000 miles, you receive three cents per 100 pounds——

Mr. Wacker: I would figure that as an average.

922 Examiner Burchmore: What service do you perform for that three cents?

Mr. Wacker: Well, we perform the service, we figure the hauling of the rough product into the mill.

Examiner Burchmore: And that seems to be all?

Mr. Wacker: Yes, sir.

Examiner Burchmore: You furnish no cars except for the movement of the logs?

Mr. Wacker: Except the logging cars for the movement of the logs.

Examiner Burchmore: I believe it was stated that the lumber company owns no cars?

Mr. Wacker: No, I do not think they own any. The railroad owns all the cars. I believe he did state that the lumber company owned an engine, which they do.

Examiner Burchmore: What is the rate to Chicago and the division of that rate?

Mr. Wacker: The rate to Chicago is 26 cents per 100 pounds. I believe it is.

Examiner Burchmore: And the division?

Mr. Wacker: The division would be three cents.

Examiner Burchmore: What is the rate to Kansas City and the division?

923 Mr. Wacker: Kansas City is 24 cents and if that shipment moves over the Rock Island, that is over our rails of the Rock Island exclusively, we get three cents, but if it is routed some other way by the shipper so the Rock Island does not get the entire haul after it leaves us, we get a two cent division.

Examiner Burchmore: By whom was the railroad originally constructed, that is to say, was it originally constructed by the lumber company or by a railroad for the lumber company?

Mr. Wacker: This was really a railroad operated by the lumber company before it was chartered as a railroad; it was already in existence when the present railroad company bought it.

Examiner Burchmore: I understand, but the railroad was not constructed by the Arkansas Southern on behalf of the lumber company?

Mr. Wacker: That was before my time. I do not think the Arkansas & Southern had anything to do with the construction of this. Do you know, Mr. Gaughan?

Mr. Gaughan: No, I was a stockholder.

Mr. Wacker: The Arkansas & Southern was a logging road itself at one time.

924 Examiner Burchmore: Does the Bernice & Northwestern switch any carloads for the public?

Mr. Wacker: We do this, we do not do any switching. We set

cars that are furnished us by the Rock Island on our spurs out along the line for loading with bolts, staves and cottonseed.

Examiner Burchmore: By the public?

Mr. Wacker: Yes, sir.

Examiner Burchmore: Tell me a little about your general traffic, how much cottonseed, and so forth?

Mr. Wacker: I think I have a little statement here which will give an idea. Our annual report for the year ending June 30th, 1910, shows a total tonnage of 83,611 tons. Now out of that tonnage we handled a total of 11,223 tons of miscellaneous commodities, grain, flour, mill products, cotton, cottonseed, fertilizer, salt, coal, staves, bolts, and so forth.

Examiner Burchmore: This statement shows that the percentage of miscellaneous commodities handled for the public to the total tonnage hauled for the public and for the lumber companies is 13.4 per cent.

925 Mr. Wacker: Yes, sir.

Examiner Burchmore: For the year ending June 30th, 1910.

Mr. Wacker: Yes.

Examiner Burchmore: This statement substantially agrees with the figures given in the annual report for that year.

Mr. Wacker: Yes, sir.

Examiner Burchmore: You have filed your annual report for that year?

Mr. Wacker: That is a copy.

Examiner Burchmore: Was any part of this material mentioned on this statement camp supplies or company materials for the logging operators?

Mr. Wacker: That is not included in this statement. We have not had any of that. All that we handled outside of course, is right here, and all that we handled for the mill company is shown right here. We haven't anything else.

Examiner Burchmore: Can you give these same figures stated in dollars and cents instead of in tons?

Mr. Wacker: I do not think they show that way in the report. If they do they are right here. I would have to take them from the report.

Examiner Burchmore: Reference may be made to the an-

926 nual report for that information.

Mr. Wacker: If you haven't it there I can get it for you.

Examiner Burchmore: If not contained in the annual report it will be furnished by you?

Mr. Wacker: Yes, sir. I think this annual report will show the total revenue collected on all commodities, and if you will want it that way I will have to separate it for you.

Examiner Burchmore: In this statement, I understand, Mr. Wacker, you say that the 44,887 tons of logs represent not the total weight of logs in, but the excess of the logs over the lumber?

Mr. Wacker: Yes, and those logs of which no division was received. For instance, lumber sold for local shipment.

Examiner Burchmore: The total quantity of logs handled, I presume, was 83,000?

Mr. Wacker: That 83,000 is the total of all commodities. The total of logs handled would be 23,000 plus 43,000. 83,000 was the total of all tonnage.

Examiner Burchmore: That is a very large increase apparently over the figures reported for the nine months of the fiscal year ending June 30th, 1909.

927 Mr. Wacker: I will tell you why I think that is. I think there would be stave business and other miscellaneous products heavier; and also the logging was a good deal heavier.

Examiner Burchmore: The logging was a great deal heavier?

Mr. Wacker: Yes, sir.

Examiner Burchmore: It is probably covered by what I have said already, but I cannot understand these figures of tons and feet as readily as carload statements. Can you indicate how many carloads of lumber per month or per year are shipped out by your two lumber companies?

Mr. Wacker: I can give you an estimated average of about 1,500 cars of lumber a year. We will average about 35 cars of finished product shipped out from Bernice.

Examiner Burchmore: What is the capacity of each of the mills, stated separately?

Mr. Wacker: The Bernice mill has a capacity of 50,000 daily, and the Dubach mill of about 75,000 daily.

Examiner Burchmore: Do you make any charge for depreciation of equipment in your accounts?

Mr. Wacker: Yes, sir, we make a charge of one-twelfth of ten per cent per annum, and charge it off every month.

928 Examiner Burchmore: And on locomotives?

Mr. Wacker: All equipment the same.

Examiner Burchmore: What is the approximate cost of upkeep of logging cars per annum, in your experience?

Mr. Wacker: The maintenance of equipment, I presume, would come near to that. I can refer to this and give it to you.

Examiner Burchmore: Take the total sum and divide by the number of cars and we could get that figure I presume?

Mr. Wacker: Yes, sir.

Examiner Burchmore: You do not know what that is?

Mr. Wacker: No. The books show what the total maintenance of equipment was and we could arrive at it per car.

Examiner Burchmore: What do you pay for logging cars?

Mr. Wacker: They will average about $210, I guess. They generally come in knocked down, and we have to have them set up and it costs something to get them fixed up and in running order; I suppose $225 to $230.

Examiner Burchmore: What is the capacity of your logging cars?

Mr. Wacker: 40,000 pounds.

Examiner Burchmore: Do you carry any mail?

Mr. Wacker: No.

929 Examiner Burchmore: Express?

Mr. Wacker: No.

Examiner Burchmore: Passengers?

Mr. Wacker: No; we are chartered for freight only.

Examiner Burchmore: You are chartered for freight only?

Mr. Wacker: That is all.

Examiner Burchmore: You carry people free sometimes?

Mr. Wacker: Well, they ride on our engines at their own risk, but we do not encourage anybody to do it, and we consider them as trespassers.

Examiner Burchmore: Do the officers or employés of the railroad company hold any passes from interstate railroads?

Mr. Wacker: Yes.

Examiner Burchmore: What passes and what officers?

Mr. Wacker: I think Mr. James has a pass over the Rock Island, I believe he has. I wish you had asked him that question instead of me, because I really don't know positively. I think he has over the Rock Island.

Examiner Burchmore: Interstate annual?

Mr. Wacker: Yes, sir.

Examiner Burchmore: You have a pass?

930 Mr. Wacker: I have not an annual but I have had trip passes over the Rock Island.

Examiner Burchmore: You heard the testimony given by Mr. James. Is there any correction that you would suggest in the testimony he gave?

Mr. Wacker: Now, I didn't exactly understand his testimony in regard to the old Arkansas Southern, why he came to get that mixed up with the Bernice & Northwestern I did not understand.

Examiner Burchmore: Tell us about that road.

Mr. Wacker: As I understand it, it formerly was a logging road, and some years back was taken over by the Rock Island and now forms part of their main line.

Examiner Burchmore: Do you know who operated it when it was a logging road?

Mr. Wacker: I do not know. It was long before I came down in this part of the country.

Mr. Gaughan: The Arkansas Southern started at Eldorado, and was built to Junction City, a distance of about 16 miles, and stayed there about two or three years, and then it was extended to Wesson and became quite a railroad. Then, it was extended to Winnfield and then a short distance below Winnfield and towns grew

931 up on it and Bernice was one of them.

Examiner Burchmore: When did it reach Bernice?

Mr. Gaughan: It reach the spot where Bernice is about 1900, I guess.

Examiner Burchmore: Was that its terminus for awhile?

Mr. Gaughan: No, Bernice was never its terminus, but there was not any Bernice until it got there. Then it was sold to the Rock Island System.

Examiner Burchmore: Did you ever hear anything about that sale, the terms?

Mr. Gaughan: Yes, sir; I was a stockholder and attorney for it, and helped make the sale.

Examiner Burchmore: Is there any statement you care to make?

Mr. Gaughan: No, that has nothing to do with all this.

Examiner Burchmore: Who controlled it when it was operated as a tap line?

Mr. Gaughan: Well, it really never was operated as a tap line.

Examiner Burchmore: Well, it was operated in connection with some lumbering operations?

Mr. Gaughan: Well, it was operated in connection with a
932 great many lumbering operations, a great many sawmills on it which had nothing to do with the railroad. There was only one sawmill on it that the stockholders of the Arkansas Southern had owned, and that was the one at Stonesboro, which is now owned by the Tremont & Gulf people. We sold it to them.

Examiner Burchmore: Is there any further statement you think should be made in order that this record may completely inform the Commission with respect to the operations of your road?

Mr. Wacker: None that I know of.

Examiner Burchmore: Have you anything further, Mr. Gaughan?

Mr. Gaughan: Have you got a telephone or telegraph line?

Mr. Wacker: We have a telephone line.

Mr. Gaughan: Along the line of the road?

Mr. Wacker: Reaching from Bernice to Summerfield.

Examiner Burchmore: Have you a train dispatcher?

Mr. Wacker: No.

Mr. Gaughan: When anyone along the line of the road desires to have some freight moved, how is the communication made so that the railroad engines can go there and get it?

933 Mr. Wacker: They either notify us by phone or else give the requisition or request for service to our trainmen, and they bring it into headquarters, to the office, and the service that they request is performed in that way.

Mr. Gaughan: Has traffic moved over your line of railroad every day?

Mr. Wacker: Yes, sir.

Examiner Burchmore: Will you request Mr. James to furnish the Commission with a map of the line drawn to scale and showing the location of the mills and also the private tracks of the lumber company, and where lumbering is going on and these station points, and so forth.

Mr. Gaughan: Yes.

Examiner Burchmore: Have you any time table or regular train schedules?

Mr. Wacker: We have no timetable. We try to run four trains daily, that is, make two round trips daily, one in the morning and one in the afternoon.

Examiner Burchmore: Do you connect with Rock Island trains?

Mr. Wacker: No.

Whereupon, at 7:30 P. M. the hearing in the above men-
934 tioned railroad was closed, and an adjournment was taken according to the previous announcement of the Commissioner, until Monday, December 12th, 1910, at 9:30 A. M.

935 NEW ORLEANS, LA., *December* 12, 1910.

Met pursuant to adjournment at 9:30 A. M.
Present: Parties as before.

Commissioner Harlan: The first case is the Little Rock, Maumelle & Western. How many witnesses have you?
Mr. Mehaffy: We have two witnesses.

(The witnesses were then sworn.)

Little Rock, Maumelle & Western.

F. NEIMEYER, was called as a witness, and having been duly sworn testified as follows:

Commissioner Harlan: State your name?
Mr. Neimeyer: F. Neimeyer.
Commissioner Harlan: Where do you live?
Mr. Neimeyer: Little Rock, Ark.
Commissioner Harlan: What is your business?
Mr. Neimeyer: I am Secretary of the A. J. Neimeyer Lumber Company, and Treasurer of the Little Rock, Maumelle &
936 Western Railroad.
Commissioner Harlan: What are the [illegible]ini of the Little Rock, Maumelle & Western?
Mr. Neimeyer: Maumelle.
Commissioner Harlan: Where is that in relation to the City of Little Rock?
Mr. Neimeyer: 16 miles, in a westerly direction.
Commissioner Harlan: Have you a map of your road?
Mr. Neimeyer: Well, it is a pretty large one here.
Commissioner Harlan: Never mind here. I think I have something here which will do.
Mr. Neimeyer: It is pretty large and is in two sections.
Commissioner Harlan: Where is Becker, with relation to your road?
Mr. Neimeyer: It is about a mile from our connection with the St. Louis, Iron Mountain & Southern, possibly not quite a mile.
Commissioner Harlan: Your connection with the Iron Mountain is at Maumelle?
Mr. Neimeyer: No.
Commissioner Harlan: Where is your connection with the
937 Iron Mountain?
Mr. Neimeyer: Well, Becker, I guess.
Commissioner Harlan: Where is Maumelle with reference to Becker?
Mr. Neimeyer: 16 miles west.

Commissioner Harlan: Of Becker?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: What do you call your eastern terminus, Becker or Maumelle?
Mr. Neimeyer: Becker, Ark.
Commissioner Harlan: Becker is your eastern terminus?
Mr. Neimeyer: Becker is our eastern terminus.
Commissioner Harlan: And what is your western terminus?
Mr. Neimeyer: Maumelle.
Commissioner Harlan: I understand now. How far is Becker from Little Rock?
Mr. Neimeyer: Our connection with the Iron Mountain, do I understand you?
Commissioner Harlan: No, how far is the town of Becker from Little Rock?
Mr. Neimeyer: About three and a half miles.
938 Commissioner Harlan: A little towards the south and west?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Your connection with the Iron Mountain is about a mile from Becker?
Mr. Neimeyer: In the neighborhood of a mile.
Commissioner Harlan: To the west of Becker?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Where is the mill of the lumber company of which you are secretary?
Mr. Neimeyer: It is at Becker, Ark.
Commissioner Harlan: What is the name of that mill?
Mr. Neimeyer: The A. J. Neimeyer Lumber Company.
Commissioner Harlan: Is it on the tracks of the Iron Mountain?
Mr. Neimeyer: No, sir.
Commissioner Harlan: Have you a sawmill and planing mill?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Are they within the same enclosure?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: How far apart?
Mr. Neimeyer: About 200 feet.
939 Commissioner Harlan: Which is nearer to the Iron Mountain tracks?
Mr. Neimeyer: The sawmill.
Commissioner Harlan: Is the sawmill on the Little Rock, Maumelle & Western tracks?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Is the planing mill also on that line?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: How far do you think the sawmill is from the Iron Mountain, is it half a mile?
Mr. Neimeyer: Yes; it is between three-quarters of a mile and a mile.
Commissioner Harlan: That is from the Iron Mountain tracks at Becker?
Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Is there a spur track running from the Iron Mountain track into the sawmill or planing mill?

Mr. Neimeyer: No, sir.

Commissioner Harlan: Where is the junction between the Little Rock, Maumelle & Western and the Iron Mountain, is it
940 near the sawmill?

Mr. Neimeyer: No, it is possibly—our connection tracks where we deliver the cars to the Iron Mountain is about half a mile from the sawmill, I should think.

Commissioner Harlan: Who owns the track from the sawmill to that interchange track?

Mr. Neimeyer: The Little Rock, Maumelle & Western.

Commissioner Harlan: Mr. Neimeyer, our reports show that the sawmill of the Neimeyer Lumber Company is only an eighth of a mile from the point of connection with the Iron Mountain.

Mr. Neimeyer: Well, I understand where I have gone wrong now is on account of where the spur of the Iron Mountain comes off of the main line and joins our spur; it possibly is only an eighth of a mile.

Commissioner Harlan: Is that the point of interchange?

Mr. Neimeyer: Yes.

Commissioner Harlan: Right at the junction of those two spurs?

Mr. Neimeyer: No, we have a switch and a set out track where we interchange cars.

Commissioner Harlan: Let me ask you in your own way,
941 just to explain the physical conditions there, and the relation of the tracks that lead from your mill to the main line of the Iron Mountain. Just explain it in your own way.

Mr. Mehaffy: Would not your Honor rather he would take the map and point it out to you there?

Commissioner Harlan: Yes, perhaps that would do. Now this map is entitled Map of located line of Little Rock, Maumelle & Western, and towards the bottom here I see the town of Becker. Is that right?

Mr. Neimeyer: Yes, sir. Here is the main line of the Iron Mountain (indicating).

Commissioner Harlan: To the right hand of the map.

Mr. Neimeyer: Yes. They maintain a track and there is another industry on this track.

Commissioner Harlan: They maintain a switch track from the main line passing several industries.

Mr. Neimeyer: To a large brick plant, and the penitentiary, which they serve.

Commissioner Harlan: What is the distance from the main line to the penitentiary?

Mr. Neimeyer: I would think it is half a mile.

942 Commissioner Harlan: From the penitentiary on towards Becker who owns the track?

Mr. Neimeyer: The Little Rock, Maumelle & Western.

Commissioner Harlan: Indicate your mill.

Mr. Neimeyer: Well, the mill is set right there about (indicating).

Commissioner Harlan: That is in the northeast corner of the square marked "Becker".

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: How far is that from the penitentiary?

Mr. Neimeyer: Well, the penitentiary is probably there (indicating).

Commissioner Harlan: Is that a distance of an eighth of a mile?

Mr. Neimeyer: I think so; possibly a little more.

Commissioner Harlan: Who owns the track from the sawmill to the junction of the Iron Mountain spur near the penitentiary?

Mr. Neimeyer: The Little Rock, Maumelle & Western.

Commissioner Harlan: Has that company always owned that spur?

943 Mr. Neimeyer: Yes, sir.

Commissioner Harlan: It was built by the Lumber Company, was it not?

Mr. Neimeyer: It was not.

Commissioner Harlan: It was built by the railroad company?

Mr. Neimeyer: Yes.

Commissioner Harlan: Was there at any time a spur track there that belonged to the Iron Mountain, leading into your sawmill?

Mr. Neimeyer: No.

Commissioner Harlan: And what is the point of interchange when you have a loaded car which you want delivered to the Iron Mountain, where do you deliver it to them?

Mr. Neimeyer: At an interchange track which is located about one-eighth of a mile from our sawmill.

Commissioner Harlan: And you will haul it there with your own locomotive?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Extending west from the sawmill is the line of the Little Rock, Maumelle & Western?

Mr. Neimeyer: Yes, sir.

944 Commissioner Harlan: You say it is 16 miles long?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What is the character of the roadbed, is it ballasted?

Mr. Neimeyer: It is rock ballasted.

Commissioner Harlan: What rail have you?

Mr. Neimeyer: 60 pound.

Commissioner Harlan: What equipment have you, I am now referring to the railroad company?

Mr. Neimeyer: We have one engine, one combination caboose which carries passengers and also carries freight, and we have nine work cars, five flat cars, I think that is the correct number, and one motor car.

Commissioner Harlan: Have you any logging trucks?

Mr. Neimeyer: No, sir.

Commissioner Harlan: What are those trucks?

Mr. Neimeyer: Logging cars.

Commissioner Harlan: Our records refer to them as logging trucks. Do you understand what that means?

Mr. Neimeyer: I do not.

Commissioner Harlan: What use do you make of the
945 motor car?

Mr. Neimeyer: We use that for private inspection.

Commissioner Harlan: Is it a car that runs on rails?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Private inspection of what?

Mr. Neimeyer: Of the line. It is also used by the Neimeyer Lumber Company to some extent.

Commissioner Harlan: Is it owned by the railroad company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What use does the Lumber Company make of it?

Mr. Neimeyer: Well, if the officers care to go to the woods to look over the work at the end of the line, and the woods operation, they take it to the front.

Commissioner Harlan: Sort of a joy ride car?

Mr. Neimeyer: Probably you could call it that.

Commissioner Harlan: Well, is it a passenger car or a freight car, or what sort of a car is it?

Mr. Neimeyer: It is a motor car that could carry about nine passengers.

Commissioner Harlan: How long has the railroad had that car?

946 Mr. Neimeyer: Ever since the road has been completed out about seven miles.

Commissioner Harlan: How large is the town of Becker?

Mr. Neimeyer: Well, I cannot say it has any population at all, from the fact it is a part of Little Rock.

Commissioner Harlan: It is within the corporate limits of Little Rock?

Mr. Neimeyer: No.

Commissioner Harlan: Well, what is there? Your mill is near there. What else is at the place called Becker? There is a post office?

Mr. Neimeyer: No.

Commissioner Harlan: No post office?

Mr. Neimeyer: No; just the mill plant.

Commissioner Harlan: It is a mill point?

Mr. Neimeyer: Yes.

Commissioner Harlan: Is that true of Maumelle?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Is that a mill point too?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Has it a post office?

947 Mr. Neimeyer: No, there is a post office, but it is not on the main line.

Commissioner Harlan: I see on this map that the western terminus of your line is given as Douglass. What is that, is that right?

Mr. Neimeyer: Well, we call it Maumelle.

Commissioner Harlan: Douglass and Maumelle are one and the same point?

Mr. Neimeyer: One and the same point.

Commissioner Harlan: And that has no post office. What is at Maumelle?

Mr. Neimeyer: Nothing there but where we interchange logging cars with the Little Rock, Maumelle & Western.

Commissioner Harlan: Is there any post office called Douglass post office?

Mr. Neimeyer: Not to my knowledge.

Commissioner Harlan: And no post office called Maumelle post office?

Mr. Neimeyer: There is one but it is not located on our line or real near it.

Commissioner Harlan: Are Douglass and Maumelle then the same thing?

948 Mr. Neimeyer: Practically the same thing.

Commissioner Harlan: Is that the local understanding, that there is but one place there, and it is called Douglass or Maumelle, according to the pleasure of the person who speaks of it?

Mr. Neimeyer: Yes.

Commissioner Harlan: Is there any company store there?

Mr. Neimeyer: No, sir.

Commissioner Harlan: Is there any point or post office between Becker and Maumelle on your line?

Mr. Neimeyer: Carnes, Ark., there is an industry on the Little Rock, Maumelle & Western.

Commissioner Harlan: What is that industry?

Mr. Neimeyer: A little hardwood sawmill. The owner of that sawmill was appointed Postmaster, but I do not think he ever received his commission or did any work.

Commissioner Harlan: That mill is right on your rails?

Mr. Neimeyer: Yes.

Commissioner Harlan: Where does it get its hard wood?

Mr. Neimeyer: From the Neimeyer Lumber Company.

Commissioner Harlan: How does it get the logs into the

949 mill?

Mr. Neimeyer: It is hauled over the Little Rock, Maumelle & Western rails at the connecting point.

Commissioner Harlan: As I infer then, you do not carry any mail or express matter?

Mr. Neimeyer: No, sir.

Commissioner Harlan: And you carry no merchandise for any one except this hardwood mill and for the lumber company?

Mr. Neimeyer: We haul merchandise for several parties besides those.

Commissioner Harlan: Just tell us who they are and the character of the traffic?

Mr. Neimeyer: We haul from the Greenville Stave Company, who are shipping staves over our line.

Commissioner Harlan: Where is their mill?

Mr. Neimeyer: They have a couple of stave mills three or four miles from the end of our line.

Commissioner Harlan: And right on your line?

Mr. Neimeyer: No, sir, no mills right on the line.

Commissioner Harlan: Where do they get their logs?

Mr. Neimeyer: They own the timber.

950 Commissioner Harlan: How far are their mills from your line?

Mr. Neimeyer: Three or four miles, something like that.

Commissioner Harlan: They haul the manufactured products by wagon to your line?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Do you get a division on that traffic?

Mr. Neimeyer: We have a local rate; it is shipped into the City of Little Rock.

Commissioner Harlan: That is a joint rate with the Iron Mountain?

Mr. Neimeyer: No, sir; it is not shipped over the Iron Mountain rails. They have a switching charge and switch it to their plant, which is in Little Rock.

Commissioner Harlan: And the Iron Mountain has a switching charge from Becker to Little Rock?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Do you make any allowance to them out of your local rate?

Mr. Neimeyer: No.

951 Commissioner Harlan: You say at Maumelle your line joins the logging road of the Neimeyer Lumber Company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What is the extent of that road, how long is it?

Mr. Neimeyer: The logging road?

Commissioner Harlan: Yes.

Mr. Neimeyer: In the neighborhood of ten miles.

Commissioner Harlan: Does it run into forest belonging to the lumber company?

Mr. Neimeyer: It does.

Commissioner Harlan: Who operates that line?

Mr. Neimeyer: The A. J. Neimeyer Company.

Commissioner Harlan: Have they an engine?

Mr. Neimeyer: Three of them.

Commissioner Harlan: How many logging cars?

Mr. Neimeyer: Seventy, I think.

Commissioner Harlan: Do those logging cars run over your rails?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And are hauled by those locomotives?

952 Mr. Neimeyer: The Little Rock, Maumelle & Western.

Commissioner Harlan: Do you get any traffic over that logging road except such as belongs to the Neimeyer Lumber Company?

Mr. Neimeyer: We do not.

Commissioner Harlan: What is your yearly tonnage, what was your tonnage for the last fiscal year from all sources?

Mr. Neimeyer: Our traffic manager will give you that information.

Commissioner Harlan: What is the capital stock of your road?

Mr. Neimeyer: $250,000. authorized.

Commissioner Harlan: And when was it organized?

Mr. Neimeyer: 1907.

Commissioner Harlan: What was the issue of capital stock?

Mr. Neimeyer: $160,000.

Commissioner Harlan: Was that issued for cash or property or partly both?

Mr. Neimeyer: I did not understand your question.

Commissioner Harlan: Was that capital stock issued for cash paid in to the railroad company, or for property turned
953 over to the railroad company?

Mr. Neimeyer: It was for construction work.

Commissioner Harlan: Well, I will put the question in a little different way. Who built the line of the Little Rock, Maumelle & Western, was it built by the railroad company or the lumber company?

Mr. Neimeyer: The railroad company.

Commissioner Harlan: Who furnished the money to do the work?

Mr. Neimeyer: There are bonds out to the amount of $160,000, and there is about $28,000 of that amount in the treasury, and borrowed money.

Commissioner Harlan: In addition to $160,000 of bonds, have you issued some stock?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: To the extent of——

Mr. Neimeyer: $160,000.

Commissioner Harlan: What was the cost of the line?

Mr. Neimeyer: In the neighborhood of $20,000 a mile.

Commissioner Harlan: That is, it cost about $320,000 all told?

954 Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And it was paid for by an issue of $160,000 of bonds and a like amount of stock?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And that included the cost of the equipment?

Mr. Neimeyer: No, sir.

Commissioner Harlan: How much did the equipment cost?

Mr. Neimeyer: I do not know the figures; I guess I can get that for you.

Commissioner Harlan: You are sure that did not include the cost of equipment?

Mr. Neimeyer: I think not.

Commissioner Harlan: Have you your annual report there?

Mr. Neimeyer: No, our traffic manager has it.

Commissioner Harlan: Mr. Neimeyer, who are the officers of the railroad company?

Mr. Neimeyer: A. J. Neimeyer is the President, E. B. Kinsworthy is Vice President, H. B. Becker, Secretary, Frank Neimeyer, Treasurer, G. W. Smith, Traffic Manager, C. J. Trowbridge, Auditor.

Commissioner Harlan: Are they all connected officially
955 with the lumber company?

Mr. Neimeyer: No.

Commissioner Harlan: Who are the officers of the lumber company?

Mr. Neimeyer: A. J. Neimeyer, President, C. A. Antrim, Vice President, Frank Neimeyer, Secretary, and H. C. Becker, Treasurer.

Commissioner Harlan: In a general way, without going into the details of the ownership of the stock of these two companies, is the railroad company owned practically by the stockholders of the lumber company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: It is practically an identical investment by the same people?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: The lumber company and the railroad company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What is the tonnage that you get from this hardwood mill at Carnes annually?

Mr. Neimeyer: I could not give you that figure. Possibly our traffic manager can.

956 Commissioner Harlan: You cannot give it exactly, but can you give it in round numbers?

Mr. Neimeyer: No, I cannot.

Commissioner Harlan: Do you know the tonnage of the stave mill further along on the line?

Mr. Neimeyer: No, I am not familiar with it.

Commissioner Harlan: It is small, is it not?

Mr. Neimeyer: Well, it is considerable.

Mr. Mehaffy: I think the traffic man can give that.

Commissioner Harlan: Will you be kind enough to give those figures now, by your traffic manager.

Mr. Smith: I am figuring it up.

Commissioner Harlan: Does the railroad pay any dividends on its stock?

Mr. Neimeyer: It does not.

Commissioner Harlan: Who owns the bonds?

Mr. Neimeyer: They are held by individuals.

Commissioner Harlan: In the lumber company?
Mr. Neimeyer: Some of them.
Commissioner Harlan: Well, a great majority of them?
Mr. Neimeyer: Well, I think so.
957 Commissioner Harlan: What is the rate of interest on the bonds?
Mr. Neimeyer: Six per cent.
Commissioner Harlan: Do you know when this road was built from Becker to Maumelle?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: When was its construction first actually started and by whom?
Mr. Neimeyer: The fall of 1907.
Commissioner Harlan: You are now referring to the present rail line?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Was there a logging line there before the railroad was built?
Mr. Neimeyer: No.
Commissioner Harlan: It was a virgin forest country?
Mr. Neimeyer: Yes, sir. Let me correct that statement. The fall of 1906.
Commissioner Harlan: And was it constructed right through to Maumelle or partially built and operated and then later ex-
958 tended?
Mr. Neimeyer: Partially built and operated, and then extended.
Commissioner Harlan: What was the mileage of the first portion that was constructed?
Mr. Neimeyer: Seven miles.
Mr. Harlan: Was there any logging done on that seven miles of railroad?
Mr. Neimeyer: On the main line?
Commissioner Harlan: Yes.
Mr. Neimeyer: A small amount.
Commissioner Harlan: Who did that logging?
Mr. Neimeyer: The A. J. Neimeyer Lumber Company.
Commissioner Harlan: Did they own the lands immediately around the seven mile track?
Mr. Neimeyer: A little of it, that is through the land that the track does run?
Commissioner Harlan: Yes.
Mr. Neimeyer: Very little of it.
Commissioner Harlan: Their ownership was at the west end of the track?
Mr. Neimeyer: Yes.
959 Commissioner Harlan: How long did it take them to clean up that lumber?
Mr. Neimeyer: About a year.
Commissioner Harlan: Did they have a logging road then connecting it?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Was that logging road about on the right of way of the present extension to Maumelle?

Mr. Neimeyer: No, sir, it was not on the right of way.

Commissioner Harlan: It ran at right angles?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Then after you got that cleaned up, you extended the line to Maumelle?

Mr. Neimeyer: Extended it to Carnes.

Commissioner Harlan: When was that extension?

Mr. Neimeyer: In 1907 sometime.

Commissioner Harlan: In making that extension did you run through any timber that belonged to the Neimeyer Lumber Company?

Mr. Neimeyer: A small amount.

Commissioner Harlan: And that was taken off, was it?

960 Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Did you lay a new logging road?

Mr. Neimeyer: We did.

Commissioner Harlan: Is that to the north or south of the regular road?

Mr. Neimeyer: Both sides.

Commissioner Harlan: How long were those logging roads?

Mr. Neimeyer: The longest spur up to this point I think was about four to five miles.

Commissioner Harlan: And those spurs were all operated by the lumber company and not by the railroad?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Did they at that time have equipment and operate it?

Mr. Neimeyer: The lumber company?

Commissioner Harlan: Yes.

Mr. Neimeyer: Yes, sir.

Commissioned Harlan: When those spurs were taken up, who did it?

Mr. Neimeyer: The lumber company.

Commissioner Harlan: The railroad company had no expense of moving those spurs?

961 Mr. Neimeyer: Not in the least.

Commissioner Harlan: When did you extend your line from Carnes to Maumelle?

Mr. Neimeyer: We began in the fall of 1907 and finished in 1908 some time.

Commissioner Harlan: And the lumber company connected the logging roads with your tracks, did it?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: How many logging roads did it have between Carnes and Maumelle?

Mr. Neimeyer: Between Carnes and Maumelle?

Commissioner Harlan: Yes, at any time since that extension was made?

Mr. Neimeyer: None at all between Carnes and Maumelle.
Commissioner Harlan: The only logging road connected with it is at Maumelle?
Mr. Neimeyer: At the present time.
Commissioner Harlan: And that comes in from the southwest?
Mr. Neimeyer: Northwest.
Commissioner Harlan: And that is the only logging road that has joined that extension from Carnes at any time?
962 Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Has the railroad company at any time received traffic from any of these logging roads belonging to any one other than the Neimeyer Lumber Company?
Mr. Neimeyer: I think not.
Commissioner Harlan: Is the woods of your lumber company largely pine?
Mr. Neimeyer: Pine and oak.
Commissioner Harlan: Does it market the oak itself?
Mr. Neimeyer: It does.
Commissioner Harlan: The hardwood mill at Carnes does not exhaust your oak timber at all?
Mr. Neimeyer: No, we have another industry that we sell a certain class of our oak to.
Commissioner Harlan: You have another mill?
Mr. Neimeyer: It is owned by outside parties.
Commissioner Harlan: Haven't you two mills at Becker?
Mr. Neimeyer: No, sir. The Clark & Gay Manufacturing Company is located at Becker.
Commissioner Harlan: Have you any mill at Maumelle?
Mr. Neimeyer: No, sir.
963 Commissioner Harlan: Is there any mill there?
Mr. Neimeyer: No.
Commissioner Harlan: Is there any mill at the point called Douglass?
Mr. Neimeyer: No, sir.
Commissioner Harlan: Has the lumber company ever had a mill at Douglass or Maumelle?
Mr. Neimeyer: No, sir.
Commissioner Harlan: Has there been a mill there?
Mr. Neimeyer: Not to my knowledge.
Commissioner Harlan: The lumber of this lumber company goes into the general market, does it not, and competes with all this pine lumber from this region?
Mr. Neimeyer: Yes, sir.
Commissioner Harlan: Where is most of it shipped to?
Mr. Neimeyer: Do you want me to give you the states?
Commissioner Harlan: Well, in a general way.
Mr. Neimeyer: Missouri and Mississippi River points.
Commissioner Harlan: Do you go as far east as Chicago?
Mr. Neimeyer: Oh, yes, sir.

Commissioner Harlan: How much farther east?

964 Mr. Neimeyer: We ship into Massachusetts some.

Commissioner Harlan: The bulk of your shipments go east of the Mississippi River?

Mr. Neimeyer: No, sir.

Commissioner Harlan: Do you ship to the west at all, or to the south?

Mr. Neimeyer: We ship to the west. Not to the south.

Commissioner Harlan: Where does the main volume of your traffic go, east or west?

Mr. Neimeyer: I would say north, Oklahoma, Kansas, Nebraska, Iowa, Missouri and Illinois.

Commissioner Harlan: And as far east as Massachusetts?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: In competition with all the rest of this lumber?

Mr. Neimeyer: Yes.

Commissioner Harlan: Have you through rates to all those points?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And what division do you get?

Mr. Neimeyer: I will be glad to have the traffic manager

965 answer those questions for you.

Commissioner Harlan: Can you now give us the volume of traffic from that hardwood mill at Carnes during the last fiscal year?

Mr. Smith: A little over 7,000 tons.

Commissioner Harlan: From the hardwood mills?

Mr. Smith: Yes, sir.

Commissioner Harlan: And from the two stave mills farther west?

Mr. Smith: About 300 tons.

Commissioner Harlan: And what was your total tonnage during that same fiscal year?

Mr. Smith: 105,194 tons.

Commissioner Harlan: You file your annual reports with the Interstate Commerce Commission, and your concurrences?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And keep your accounts as prescribed by the Commission?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Where is the general office of your railroad?

966 Mr. Neimeyer: Becker, Ark.

Commissioner Harlan: Is it in the office of the lumber company?

Mr. Neimeyer: No.

Commissioner Harlan: Have you a freight station there?

Mr. Neimeyer: No.

Commissioner Harlan: Have you a freight station anywhere on your line?

Mr. Neimeyer: No, sir.

Commissioner Harlan: You have a separate office building?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What sort of a building is it?

Mr. Neimeyer: Well, it is an ordinary wooden structure.

Commissioner Harlan: And all the records of the company are kept there?

Mr. Neimeyer: Yes, sir, all but the general ledger.

Commissioner Harlan: How many employés have you there stationed regularly?

Mr. Neimeyer: We have our traffic manager.

Commissioner Harlan: Does he do any business for the lumber company?

967 Mr. Neimeyer: He does not.

Commissioner Harlan: How many men have you in your track and train crews?

Mr. Neimeyer: He will answer all those questions. I think I can give them to you approximately.

Commissioner Harlan: That will do.

Mr. Neimeyer: Ten in the track crew, and four men in the train service.

Commissioner Harlan: You receive the logging train at the junction at Maumelle?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Your locomotives do not go out on the logging lines?

Mr. Neimeyer: No, only occasionally for repairs.

Commissioner Harlan: Is there a repair shop out on the logging line?

Mr. Neimeyer: We have a repair shop, yes, sir.

Commissioner Harlan: Who does the repairs, the lumber company?

Mr. Neimeyer: To what?

Commissioner Harlan: To the locomotives.

Mr. Neimeyer: Who- locomotives?

968 Commissioner Harlan: My inquiry was whether your railroad locomotives go out on the logging line?

Mr. Neimeyer: No.

Commissioner Harlan: And you said they do occasionally. Was that a mistake?

Mr. Neimeyer: No, sir, that was a mistake.

Commissioner Harlan: Do the lumber company's locomotives come in to your lines?

Mr. Neimeyer: Occasionally, for repairs.

Commissioner Harlan: Where is your repair shop?

Mr. Neimeyer: At Becker, the principal shop.

Commissioner Harlan: You do the repairs for the lumber company?

Mr. Neimeyer: No, the lumber company does the repairs for the railroad company.

Commissioner Harlan: Then the repair shop belongs to the lumber company and is at the mill?

Mr. Neimeyer: Yes: sir.

Commissioner Harlan: Does the lumber company make any charge against the railroad company?

Mr. Neimeyer: It does.

969 Commissioner Harlan: Does the railroad company unload the logs at the pond?

Mr. Neimeyer: They help; both companies participate in that unloading.

Commissioner Harlan: The saw mill employés come out and help the railroad employes do the unloading?

Mr. Neimeyer: Yes, sir,—not the sawmill employés, what we call the car men who keep the cars in repair.

Commissioner Harlan: By whom are those men paid?

Mr. Neimeyer. The Neimeyer Lumber Company, for what work they perform for them.

Commissioner Harlan: What division do you get from the Iron Mountain, or is it the Rock Island?

Mr. Neimeyer: Mr. Smith will answer that.

Mr. Smith: Here is our sheet (handing paper).

Commissioner Harlan: Your connection at Becker is the Iron Mountain, is it?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Do you also reach the rails of the Rock Island?

Mr. Neimeyer: We do not, only by switch.

970 Commissioner Harlan: To whom does that switch belong?

Mr. Neimeyer: We reach it only by a switching charge to the Iron Mountain; there is no connection.

Examiner Burchmore: The cost of construction of the Little Rock, Maumelle & Western Railroad approximated $20,000 per mile, you stated?

Mr. Neimeyer: Yes.

Examiner Burchmore: That seems to be rather high cost for construction. What is the character of this country?

Mr. Neimeyer: It is very hilly and rocky.

Examiner Burchmore: Is this line laid over those hills, or did you make cuts?

971 Mr. Neimeyer: No, sir; we made cuts and fills. We have a profile here of it, if you would like to see it.

Mr. Mehaffy: He has a profile from which you can get a pretty good idea about the line.

Mr. Neimeyer: There are one or two cuts which cost us $5,000 to make them, for a very short distance.

Examiner Burchmore: Do you cross any streams?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: How many bridges have you?

Mr. Neimeyer: I could not give you the number offhand. There are quite a number of them, a large number of them.

Commissioner Harlan: Is this an original document?

Mr. Neimeyer: Yes, sir, it is our located lines.

Examiner Harlan: I mean to say, have you other copies of this?

Mr. Neimeyer: I think we have, but that is—

Commissioner Harlan: If there is no objection I would like to have this attached to the record.

Mr. Mehaffy: If there is no other copy, we will have one made.

Mr. Neimeyer: We will have one made, but I am sure there——

972 (The paper so offered and identified was received in evidence and thereupon marked Little Rock, Maumelle & Western Railroad Exhibit No. 1, witness Neimeyer, received in evidence December 12, 1910, and is attached hereto.)

Examiner Burchmore: The mileage is 16 miles?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: Stock to the amount of $160,000 has been issued and outstanding. Was that sold for cash?

Mr. Neimeyer: No, sir.

Examiner Burchmore: Was it issued as a bonus with the bonds?

Mr. Neimeyer: Well, it was issued for construction work done by a construction company, in payment.

Commissioner Harlan: Mr. Neimeyer, I wish you would explain that very fully. I put you the inquiry as to the cost of this road, and understood you to say that it cost $20,000 in actual cash laid out, per mile. Now, I wish you would state whether or not that is the fact.

Mr. Neimeyer: Well, there was other money in this work besides——

Commissioner Harlan: Explain in your own way the full details of that financial transaction.

973 Mr. Neimeyer: There were bonds sold to the amount of $131,500 for which we received cash, and there was in the neighborhood of $200,000 of borrowed money, which we still owe.

Commissioner Harlan: Now, you mean by that that about $330,000 of actual cash was expended in the construction of that road?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And why was the stock issued? I understand why the bonds were issued, because you borrowed $130,000 of money on those bonds. Now, you say you owe on notes or otherwise, some $200,000 more. Nevertheless you have got an issue of stock outstanding. You do not borrow money on stock ordinarily, although you may have done it in this case, but we want to know just how that stock was issued.

Mr. Neimeyer: It was issued to the construction company for work in building this line.

Commissioner Harlan: Let us see; you got some money on your bonds, $130,000. Then you borrowed $200,000, and you still owe that?

Mr. Neimeyer: Yes, sir.

974 Commissioner Harlan: Then you must have issued the stock to the construction company as a bonus; is not that it?

Mr. Neimeyer: That is correct.

Commissioner Harlan: Now, who composed the construction company? In the first place, tell us what the name of the construction company was.

Mr. Neimeyer: Becker Construction Company.

Commissioner Harlan: Named after the town of Becker?

Mr. Neimeyer: Named after an individual, one of our stockholders.

Commissioner Harlan: And the town was named after him?

Mr. Neimeyer: Yes.

Commissioner Harlan: Was he interested in the lumber company?

Mr. Neimeyer: He was.

Commissioner Harlan: Then is it not a fact the construction company was practically the lumber company?

Mr. Neimeyer: Well, I guess so.

Commissioner Harlan: Well, that is my understanding of the meaning of it all.

Mr. Neimeyer: I think so.

975 Commissioner Harlan: So that the lumber company and the construction company and the railroad company are practically one and the same interests?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Then when you said that the railroad cost $20,000 a mile, as I understand it, you meant to be understood not as indicating that it cost in actual dollars and cents so much, but only that that was the face of the transaction between these three companies?

Mr. Neimeyer: I didn't quite get that question.

Commissioner Harlan: Well, I put it in a little different way. I understood you to say that $160,000 of bonds were owned by the people that are interested in the lumber company.

Mr. Neimeyer: Not all of them.

Commissioner Harlan: Not all of them, but practically the entire issue is owned by those people?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: From whom did you borrow the $200,000?

Mr. Neimeyer: We borrowed $66,000 from Mr. Charles Becker.

Commissioner Harlan: That leaves $134,000.

Mr. Neimeyer: The other two amounts were borrowed from the Saginaw Lumber Company and the Monarch Lumber Company.

976 Commissioner Harlan: Now, we want to get at all these facts, and I wish you would facilitate the examination as much as you can, and I know you will. Who owns the A. J. Neimeyer Lumber Company? I do not mean the stockholders, but what investment interest owns that company? Is it not controlled by what is generally referred to as the A. J. Neimeyer interests of St. Louis?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And they own and control the Neimeyer

Lumber Company and the Little Rock, Maumelle & Western Railroad Company and the Saginaw Lumber Company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: And the Saginaw & Ouachita River Railroad?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: So that this entire capital was furnished by practically the one financial interest?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: I put you the question again: what did the railroad cost a mile in actual cash? Now, I do not mean cash paid to the construction company, but I mean in actual outlay.

977 Mr. Neimeyer: Well, I think I gave you that figure of $20,000: I think that is actual cash, if I am not mistaken.

Commissioner Harlan: Well, you are in a position to know about those things, are you not?

Mr. Neimeyer: I should be.

Commissioner Harlan: You mean to be understood as saying that that actual sum of money went into the construction of this road as those words ought to be understood?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: Who owns the right of way on which this road was laid?

Mr. Neimeyer: The Little Rock, Maumelle & Western.

Examiner Burchmore: The railroad owns the right of way?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: How did it acquire that right of way?

Mr. Neimeyer: Part of it was donated, part of it was paid for and part of it was condemned.

Examiner Burchmore: How much of it was donated?

Mr. Neimeyer: I could not tell you the exact amount.

Examiner Burchmore: Five miles, ten miles?

Mr. Neimeyer: No, I think not so much as that. I could not give you the figures.

Examiner Burchmore: By whom was it donated?

978 Mr. Neimeyer: By individuals who owned the land the road passed over.

Examiner Burchmore: By individuals interested in the lumber company?

Mr. Neimeyer: No.

Examiner Burchmore: How much of the road was purchased, how much of the right of way?

Mr. Neimeyer: I could not give you those figures.

Examiner Burchmore: About how much?

Mr. Neimeyer: I suppose ten or twelve miles of it; probably more.

Examiner Burchmore: From whom was it purchased?

Mr. Neimeyer: From the owners of the land that it passed over.

Examiner Burchmore: Were those owners interested in the lumber companies?

Mr. Neimeyer: In no way unless as to what part crossed the Neimeyer Lumber Company's lands.

Examiner Burchmore: How much of that purchased right of way crossed the Neimeyer Lumber Company's land, a substantial portion?

Mr. Neimeyer: No, sir.

979 Examiner Burchmore: Did the railroad company pay to the Neimeyer Lumber Company or to the interests that composed that Neimeyer Lumber Company any sum of money for right of way and land?

Mr. Neimeyer: They did not.

Examiner Burchmore: Did they issue stock in exchange for right of way land?

Mr. Neimeyer: They did not.

Examiner Burchmore: What rate of interest is paid on this $200,000 debt represented by notes?

Mr. Neimeyer: Six per cent.

Examiner Burchmore: Has that interest actually been paid?

Mr. Neimeyer: Yes, sir. Possibly not all of it, but the larger portion of it.

Examiner Burchmore: Has the railroad company paid any dividends on stock?

Mr. Neimeyer: No, sir.

Examiner Burchmore: The reports to the Commission seem to indicate that the revenue for the last fiscal year was $12,657.90, and the operating expenses $5,993.34, leaving a net earning of $6,664.56 from operation. What disposition was made of this net in-

980 come from operation of $6,664.56, if you know?

Mr. Neimeyer: I do not know.

Examiner Burchmore: It was used to pay interest on this indebtedness?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: And on the bonds?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: And when that interest on notes and bonds was paid, there was a deficit?

Mr. Neimeyer: I am not familiar with those figures.

Examiner Burchmore: What salaries are paid to the general officers of the railroad company?

Mr. Neimeyer: A. J. Neimeyer receives $200 a month.

Examiner Burchmore: Does he perform any actual labor in exchange for that salary?

Mr. Neimeyer: He is the general manager.

Examiner Burchmore: What portion of his time is devoted to railroad affairs?

Mr. Neimeyer: A small part of it.

Examiner Burchmore: Is that salary in substantial proportion to his salary from the lumber company?

Mr. Neimeyer: Yes, sir.

981 Examiner Burchmore: Does any other officer of the railroad company receive a salary?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: What officers?

Mr. Neimeyer: The treasurer and secretary and traffic manager.

Examiner Burchmore: What do those salaries aggregate?

Mr. Neimeyer: I could not give you the figures.

Examiner Burchmore: Can you state the salaries from the railroad company in amount?

Mr. Neimeyer: The secretary, $50 a month, I think; the treasurer is $25 I know. The traffic manager—do you mean the officers of the lumber company who receive salaries from the railroad company?

Examiner Burchmore: Yes.

Mr. Neimeyer: That is all.

Examiner Burchmore: $275 a month is paid to the general officers of the railroad company as salaries.

Mr. Neimeyer: Yes, sir; that are officers of the Neimeyer Lumber Company.

Examiner Burchmore: Any other officers of the railroad
982 company that are not officers of the lumber company that receive salaries?

Mr. Neimeyer: Yes.

Examiner Burchmore: What officer is that?

Mr. Neimeyer: The traffic manager.

Examiner Burchmore: Does the traffic manager perform any service for the lumber company?

Mr. Neimeyer: No.

Examiner Burchmore: Receives no salary from the lumber company?

Mr. Neimeyer: No.

Examiner Burchmore: What service does the traffic manager render to the railroad company?

Mr. Neimeyer: He operates the road.

Examiner Burchmore: He is general superintendent?

Mr. Neimeyer: Yes.

Examiner Burchmore: Devotes his entire time to the railroad business?

Mr. Neimeyer: Yes.

Examiner Burchmore: Is he a stockholder in this lumber company?

Mr. Neimeyer: He is not.

983 Examiner Burchmore: What was the total cost of the equipment of this road?

Mr. Neimeyer: I could not give you those figures.

Examiner Burchmore: Where was the money obtained for the purchase of the equipment?

Mr. Neimeyer: It was purchased from these moneys they borrowed, and on the bonds.

Examiner Burchmore: There was $160,000 obtained from the sale of bonds, and $200,000——

Mr. Neimeyer: No, sir; $131,500 from the sale of bonds, I think was the figure.

Examiner Burchmore: $200,000 obtained on notes, making $331,500 in money that was raised for the financing of this railroad?

Mr. Neimeyer: Yes.

Examiner Burchmore: You stated the cost of the road was $20,000 a mile, which for 16 miles, would be $320,000, leaving a remainder of $11,000, as I figure it.

Mr. Neimeyer: Yes, sir; something like that.

Examiner Burchmore: Did that $11,000 cover the cost of this locomotive, combination passenger coach, motor car, 14 freight cars, and the rest of the equipment?

984 Mr. Neimeyer: It would not miss it very far. Of course $20,000 might not be the exact figure, but it is near it. The locomotive is a second hand locomotive, which we bought we think, very cheap, and the cars were all second hand.

Examiner Burchmore: You stated there are ten men engaged in track work for the railroad company.

Mr. Neimeyer: Ten most of the time, and sometimes as high as 20.

Examiner Burchmore: Do those men put any part of their time in repairing, maintaining or changing the tracks of the lumber company?

Mr. Neimeyer: Only the switches at the mill that belong to the lumber company, which their engines use.

Examiner Burchmore: The trackmen of the railroad company perform no service for the lumber company.

Mr. Neimeyer: No, sir.

Examiner Burchmore: The Little Rock, Maumelle & Western carry passengers?

Mr. Neimeyer: It does.

Examiner Burchmore: Does it receive revenue from those passengers?

Mr. Niemeyer: Yes.

985 Examiner Burchmore: Are tickets sold for transportation?

Mr. Neimeyer: No.

Examiner Burchmore: Cash fares are collected on the train?

Mr. Niemeyer: Cash fares are collected on the train.

Examiner Burchmore: How many trains per day are run over this railroad?

Mr. Neimeyer: Two round trips.

Examiner Burchmore: Under regular schedule?

Mr. Neimeyer: Yes.

Examiner Burchmore: Do those trains make connections with the trains of other railroads?

Mr. Neimeyer: The logging road.

Examiner Burchmore: They make no connection with the Iron Mountain trains?

Mr. Neimeyer: No.

Examiner Burchmore: Does your railroad company have any trackage rights over the Iron Mountain?

Mr. Neimeyer: No, not to my knowledge.

Examiner Burchmore: It does not operate its engines or trains over the Iron Mountain tracks?

Mr. Neimeyer: No.

Examiner Burchmore: On examining these maps of your
986 line from Carnes to Douglas and from Becker to Carnes, I note one or two tracts of land belonging to the St. Louis, Iron Mountain & Southern, apparently.

Mr. Neimeyer: I think those belong to the Neimeyer Lumber Company, as the entire tract was purchased from the St. Louis, Iron Mountain & Southern Railway.

Commissioner Harlan: When was that purchase made?

Mr. Neimeyer: In 1904.

Examiner Burchmore: Are any of the officers of the Iron Mountain Railroad interested in the Neimeyer Lumber Company?

Mr. Neimeyer: They are not.

Examiner Burchmore: Are any of them interested in this railroad company?

Mr. Neimeyer: No.

Examiner Burchmore: Is the St. Louis, Iron Mountain & Southern interested in either the railroad company or lumber company?

Mr. Neimeyer: No.

Examiner Burchmore: Who furnished the steel for the tracks of this railroad company?

Mr. Neimeyer: Four miles of it was bought from the St. Louis, Iron Mountain & Southern. First it was leased and after-
987 ward purchased.

Examiner Burchmore: The rail was leased off the ground?

Mr. Neimeyer: Yes.

Examiner Burchmore: Not laid?

Mr. Neimeyer: No, and the balance was purchased in the market.

Examiner Burchmore: On what basis was that rail leased originally, on a percentage of its value or how?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: What was that percentage?

Mr. Neimeyer: Six per cent, I think.

Examiner Burchmore: Of what valuation; that is the regular market price?

Mr. Neimeyer: Yes, sir. I do not know the figures, I have not got those with me.

Examiner Burchmore: Well, describe that valuation of the rail.

Mr. Neimeyer: Per ton?

Examiner Burchmore: Was it supposed to be the market value of rail in Little Rock or the market value of rail in the rolling mills?

Mr. Neimeyer: The market value of relaying rail at Little
988 Rock.

Examiner Burchmore: Was that second hand rail?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: When was that rail purchased, that four miles of rail?

Mr. Neimeyer: I do not know the exact date.

Examiner Burchmore: About when?

Mr. Neimeyer: Our traffic manager can answer that question.

Examiner Burchmore: Was it purchased at the same price as the rent that had previously been estimated on?

Mr. Neimeyer: He probably can answer that question.

Examiner Burchmore: Are you familiar with the rates and divisions of those rates?

Mr. Neimeyer: No, sir, only in a general way.

Examiner Burchmore: Is not the hard wood mill which you referred to as being located at Carnes owned by the Neimeyer Lumber Company?

Mr. Neimeyer: It is not.

Examiner Burchmore: Who does own it?

Mr. Neimeyer: A. C. McCarley.

Examiner Burchmore: Was it formerly owned by the Neimeyer Lumber Company?

989 Mr. Neimeyer: No.

Examiner Burchmore: Was it formerly owned by any stockholders of the Neimeyer Lumber Company?

Mr. Neimeyer: No.

Examiner Burchmore: Is there any direct or indirect relation between A. C. McCarley and the Neimeyer interests?

Mr. Neimeyer: No.

Examiner Burchmore: The stave mills located farther west on the line, are they owned by the Neimeyer interests?

Mr. Neimeyer: No.

Examiner Burchmore: By A. C. McCarley?

Mr. Neimeyer: No.

Examiner Burchmore: Who does own them?

Mr. Neimeyer: The Greenville Stave Company.

Examiner Burchmore: Any relation between the Greenville Stave Company or its stockholders and the Neimeyer interests?

Mr. Neimeyer: None at all.

Examiner Burchmore: Do those stave mill owners hold any stock in this railroad?

Mr. Neimeyer: No, sir.

Examiner Burchmore: Our reports of examinations made of your company indicate that the hard wood mill was located

990 eleven miles from the junction point at a place known as Douglas, and not referred to on the reports as Carnes.

Mr. Mehaffy: That is not Carnes, that is Maumelle. Douglas and Maumelle are the same, and Carnes is a different place.

Examiner Burchmore: Douglas and Maumelle are 16 miles from Becker.

Mr. Neimeyer: Yes:

Examiner Burchmore: Carnes is eleven miles from Becker. This seems to indicate that the hard wood mill, eleven miles from Becker, was owned by the Neimeyer Lumber Company, such information having apparently been furnished by officers of the railroad company. Is that incorrect?

Mr. Neimeyer: It is incorrect. Mr. McCarley owns the mill.

Examiner Burchmore: Does he own any stock in the railroad company?

Mr. Neimeyer: No.

Examiner Burchmore: In the Neimeyer Lumber Company?
Mr. Neimeyer: No, sir.
Commissioner Harlan: That mill is not operated directly or indirectly for the Neimeyer interests?
Mr. Neimeyer: The logs are furnished by the Neimeyer
991 Lumber Company.
Commissioner Harlan: That is all?
Mr. Neimeyer: Yes, sir; and he charges them so much per thousand. They are not sold to him; the lumber belongs to the Neimeyer Lumber Company. He charges $3.00 per thousand for sawing that oak timber into lumber.
Commissioner Harlan: And the lumber thus manufactured is marketed by the Neimeyer Lumber Company?
Mr. Neimeyer: Yes, sir; it is the property of the Neimeyer Lumber Company.
Commissioner Harlan: But the stave mills use their own product?
Mr. Neimeyer: Yes.
Examiner Burchmore: The reports to the Commission seem to indicate, as I stated a moment ago, operating expenses for the fiscal year of 5993.34. Is that the correct figure as you remember it?
Mr. Neimeyer: No, sir; I do not remember it.
Examiner Burchmore: What is the total operating expenses per annum?
Mr. Neimeyer: I could not give you those figures. Our traffic manager will give them to you.
Examiner Burchmore: Have you a copy of the annual report here?
992 Mr. Neimeyer: Our traffic manager has it.
Commissioner Harlan: Have you some questions to put to this witness?
Mr. Mehaffy: Yes, but would you like to take up the Saginaw & Ouachita River? He is the same witness we will use there.
Commissioner Harlan: We will go through the examination first on this line.
993 Mr. Mehaffy: Do you know, Mr. Neimeyer, which corporation was organized first, the lumber company or the Little Rock, Maumelle & Western?
Mr. Neimeyer: The lumber company.
Mr. Mehaffy: It was some time near the same time, the building of the two?
Mr. Neimeyer: No, sir; the Neimeyer Lumber Company was incorporated in 1904 and the railroad company in 1907.
Mr. Mehaffy: I believe that you have already stated that your right of way not only belonged to the railway company but that it was acquired by donation, purchase and condemnation?
Mr. Neimeyer: Yes, sir.
Mr. Mehaffy: Has the railroad company actually condemned right of way there in the courts of Arkansas?
Mr. Neimeyer: It has.
Mr. Mehaffy: Does the railroad company charge the Neimeyer

Lumber Company the same rates for services performed for it that it does these other industries on its line?

Mr. Neimeyer: It does.

Mr. Mehaffy: Were these industries on the line of the railroad put there after the road was built?

994 Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: Have they any other means of transportation except to haul it to the Iron Mountain or the Rock Island?

Mr. Neimeyer: They have not.

Commissioner Harlan: Let me interrupt just a moment at that point. From this map I see that your railroad runs substantially parallel to a branch of the Rock Island out of Little Rock. Do you know how far apart the two lines are?

Mr. Neimeyer: The railroad line and the Rock Island?

Commissioner Harland: Yes.

Mr. Neimeyer: Well, I think that they run parallel there a distance of seven miles at least.

Mr. Mehaffy: Becker is really and practically part of Little Rock, is it not?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: And you were asked about a post office there. The mail addressed there is addressed to Little Rock?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: There are quite a number of stock holders in the railroad company that are not interested in any way at all in the lumber company, are there not?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: The lumber company itself does not own

995 any stock in the railroad company, does it?

Mr. Neimeyer: How is that?

(Question repeated.)

Mr. Neimeyer: No, sir.

Mr. Mehaffy: But some of the stockholders own stock?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: I believe you stated you ran these trains, two a day, on schedule time?

Mr. Neimeyer: Yes.

Mr. Mehaffy: You charge everybody who rides the regular passenger fare?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: How is that rate fixed; by the Arkansas law or the Arkansas Railroad Commission?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: These other factories, Clark & Gay—that is entirely independent of the lumber company and the railroad company, is it?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: Has that been established there since the organization of the railroad?

Mr. Neimeyer: Shortly afterward.

996 Mr. Mehaffy: In bringing the logs into the mill for the lumber company, does the railroad company bring them in at a certain price and charge the lumber company for the service?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: What is that charge, do you know?

Mr. Neimeyer: Two cents per 100 pounds.

Mr. Mehaffy: Is it or not true that you are preparing for a connection also with the Rock Island Railroad?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: That has not yet been completed?

Mr. Neimeyer: No, sir.

Mr. Mehaffy: What sort of country is that in the direction in which the Little Rock, Maumelle & Western is going? It is built out 16 miles. The charter, I believe, provides for 25 miles. What is out there to be hauled or transported?

Mr. Neimeyer: It is considerable of an agricultural country; there is a large amount of rock and wood, stave timber, also a large tract of timber which the Neimeyer Lumber Company is not interested in.

Mr. Mehaffy: The timber of the Neimeyer Lumber Company, and then other large tracts of timber, in which they have no interest at all?

997 Mr. Neimeyer: Yes, sir. Not within the 25 miles, though, the other timber.

Mr. Mehaffy: It is beyond that?

Mr. Neimeyer: Yes.

Mr. Mehaffy: Is there any means of getting that to market at all except by this railroad?

Mr. Neimeyer: I think not.

Mr. Mehaffy: Do you comply with all the regulations of the Arkansas Railroad Commission, and the rules and regulations of the Interstate Commerce Commission?

Mr. Neimeyer: We do.

Mr. Mehaffy: I believe that is all.

Examiner Burchmore: The figures that I referred to a few moments ago as being the operating revenue and operating expenses were apparently for the year 1908. This purports to be a copy of your annual report for the year ending June 30, 1910, and it shows on page 91 six general officers receiving an annual compensation aggregating $6,150. I understood you to refer to four general officers, who received an aggregate annual salary, as I footed it up, of $3,300. That leaves a discrepancy in the figures. Will you state again who the officers are who receive salaries, and what
998 those salaries are?

Mr. Neimeyer: The president receives $200; the secretary I think is $50; the treasurer $25; traffic manager, $150, and the auditor $50.

Examiner Burchmore: And one other.

Mr. Neimeyer: The general attorney, I think, $100. I think that is the six. I cannot give you those exact figures. Our traffic manager can furnish that.

Commissioner Harlan: Is the general attorney also attorney for the lumber company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: Does he receive any salary from the lumber company?

Mr. Neimeyer: He does not.

Commissioner Harlan: What about the auditor, does he receive a salary from the lumber company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: What amount?

Mr. Neimeyer: $50.

Commissioner Harlan: So from the two companies he gets $100 a month?

Mr. Neimeyer: Yes.

999 Commissioner Harlan: Then who is it that gets $150, the traffic manager?

Mr. Neimeyer: Yes.

Commissioner Harlan: He does not get any salary from the lumber company?

Mr. Neimeyer: No.

Commissioner Harlan: The secretary of the railroad company gets $50.

Mr. Neimeyer: I think that is $50.

Commissioner Harlan: Does he get a salary from the lumber company?

Mr. Neimeyer: Yes, sir.

Commissioner Harlan: How much?

Mr. Neimeyer: $75.

Commissioner Harlan: And the president's salary from the lumber company is what?

Mr. Neimeyer: $200.

Examiner Burchmore: The operating revenues for the same year as given in this report on page 45 are $47,341.83, and the operating expenses were $22,607.68, apparently, divided as follows: $3,977.10 for maintenance of way, $3,590.90 for maintenance of equipment, $350.10 for traffic expenses, $10,427.00 for trans-

1000 portation expenses, and $4,262.43 for general expenses. I presume it is unnecessary to ask any question about that, except to call attention to the fact that the salaries of the general officers and general office clerks are $4,000, which compares to $4,000 for maintenance of way, $3,500 for maintenance of equipment, and is the largest single item of expense, with the exception of transportation expenses. The difference between the total operating expenses and total operating revenue is apparently in excess of $25,000. That, I understand, is the sum used for the payment of the interest on the bonds and mortgage indebtedness.

Mr. Neimeyer: Do you want me to give a full list of the salaries paid by the railroad company?

Examiner Burchmore: No. This report indicates that for your engineers, firemen and brakemen.

Mr. Neimeyer: And trackmen.

Examiner Burchmore: There are some general office clerks in addition?

Mr. Neimeyer: Yes, sir; that is what I wanted to get at.

Examiner Burchmore: Do those general office clerks work exclusively for the railroad company?

1001 Mr. Neimeyer: They do not.

Examiner Burchmore: What proportion of their time is devoted to the service of the railroad company?

Mr. Neimeyer: I could not say exactly, but the amount paid them is supposed to pay them for the time that they put in for the railroad company.

Examiner Burchmore: The proportion between the time devoted to the work of the railroad company and the total time that they work is supposed to be the same as the proportion in their salaries?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: Are any passes issued to the officers of your company?

Mr. Neimeyer: They are.

Examiner Burchmore: To what officers?

Mr. Neimeyer: Speaking of the railroad company?

Examiner Burchmore: Yes, the railroad company.

Mr. Neimeyer: The president, vice president, secretary, treasurer, traffic manager.

Examiner Burchmore: Are those annual passes?

Mr. Neimeyer: Yes, sir, on our road.

Examiner Burchmore: Exchange transportation, is that is-

1002 sued by the Iron Mountain to your officers?

Mr. Neimeyer: Yes, sir, but not to all of them.

Examiner Burchmore: The passes you referred to were Little Rock, Maumelle & Western passes?

Mr. Neimeyer: Yes, sir.

Examiner Burchmore: What transportation do the officers of the railroad company hold over foreign lines?

Mr. Neimeyer: The president has an annual over the St. Louis, Iron Mountain & Southern, and the Burlington, and possibly one or two other lines that I do not know of.

Examiner Burchmore: The Rock Island?

Mr. Neimeyer: No, sir. The vice-president receives no transportation from being connected with our line. The treasurer holds an annual from the Rock Island and the Iron Mountain, L. & A. and a few other lines.

Examiner Burchmore: The vice-president holds transportation by virtue of his office in other railroad companies?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: There is one question I forgot to ask. You were asked about this Little Rock, Maumelle & Western running parallel with the Rock Island. Is it not true that where it does parallel the Rock Island and in the direction in which it goes, that

1003 it would be practically impossible, because of the mountains, to get from one railroad to the other?

Mr. Neimeyer: Yes, sir.

Mr. Mehaffy: Or for shippers or persons who wanted to transport goods in the territory of the Little Rock, Maumelle & Western to get to the Rock Island at all?

Mr. Neimeyer: Yes, sir.

Mr. Cowan: You are pretty well acquainted with the saw mill situation, and their location with respect to the different railroad lines in Arkansas?

Mr. Neimeyer: A few of them.

Mr. Cowan: Do you know any case where the main railroad, trunk line, I will call it, builds any industry spurs to saw mills, loading tracks of saw mills?

Mr. Neimeyer: No, sir; I do not know of any.

Mr. Cowan: Is it not a fact that to all other industries, however, like cottonseed oil mills, and the like, the railroad does build an industrial spur to the industry?

Mr. Neimeyer: I am not familiar with that.

Mr. Cowan: Is it not a fact that the scheme is worked and everybody knows about it, and it is a matter of common understanding, that a railroad company in the case of a saw mill industry

1004 builds no spurs to the loading tracks, but leaves the saw mill interests to do it in order to get a division of the rate, is not that commonly understood to be the case?

Mr. Neimeyer: I don't know what other people do or how that is arranged.

Mr. Cowan: Well, that is the way it is in your own case?

Mr. Neimeyer: Yes, I guess so.

Mr. Cowan: There is not any obstacle to a railroad company building a spur to a saw mill loading track, just as well as it can build a spur to a cotton oil mill or to a warehouse for a wholesale grocer, is there?

Mr. Neimeyer: I would think so.

Mr. Cowan: You think there is an obstacle to doing it?

Mr. Neimeyer: I do not know as there is one.

Mr. Cowan: You spoke of the owners of the stock of this railroad company. Inasmuch as the railroad is in debt on account of its bonds, and money borrowed for as much as it is worth, or as much as it costs, the stock is a matter of no particular value, is it, except just to control the corporation?

Mr. Neimeyer: Well, we hope it will be.

Mr. Cowan: But at present it is not?

1005 Mr. Neimeyer: No, sir.

Mr. Cowan: So it does not matter much whether a man who owns the stock is an owner in the saw mill or not, he has not got anything at present, whether he is the owner of the stock in the saw mill or not, and he has got nothing by owning the stock in the railroad company?

Mr. Neimeyer: I don't think he has got much in either one at the present time.

Mr. Cowan: Now, the funds that arise from the operation of this railroad go to the bondholders and to the creditors?

Mr. Neimeyer: Yes, sir.

Mr. Cowan: For interest?
Mr. Neimeyer: Yes.
Mr. Cowan: Who are the bondholders?
Mr. Neimeyer: They are individuals.
Commissioner Harlan: He said the same people own the bonds that own the lumber company.
Mr. Neimeyer: Part of the same people.
Mr. Cowan: The people to whom the indebtedness is owing are also the same interests?
Mr. Neimeyer: Yes, sir.
Mr. Cowan: So that the man having the stock in the rail-
1006 road company, the proceeds of the operation do not go to him anyhow, really?
(No response.)
Mr. Cowan: You have a man here who does know about the billing and the like. You do not claim to know anything about the billing and handling of the traffic?
Mr. Neimeyer: No, the traffic manager will tell you that.
Mr. Cowan: That is all.
(Witness excused.)

G. W. SMITH was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: State your name.
Mr. Smith: G. W. Smith.
Commissioner Harlan: What relation do you bear to the railroad company we have just been talking about?
Mr. Smith: Traffic manager.
Commissioner Harlan: How long have you been connected with it as traffic manager?
Mr. Smith: About three years.
Commissioner Harlan: You have no relation to the lumber company, as I understand?
1007 Mr. Smith: No.
Commissioner Harlan: Perform no duties for them at all?
Mr. Smith: No.
Commissioner Harlan: What sort of billing does the Little Rock, Maumelle & Western Railroad Company issue on lumber hauled by it, or logs hauled by it? Just describe the whole rate situation.
Mr. Smith: On the logs brought in at the mill they issue local billing.
Commissioner Harlan: Where is the billing issued?
Mr. Smith: At Becker.
Commissioner Harlan: At the mill?
Mr. Smith: At the office at Becker.
Commissioner Harlan: What charge does the company make for that service, and against whom?
Mr. Smith: They make a charge of two cents per 100 pounds against the mill company.
Commissioner Harlan: And that is regularly paid, is it?

Mr. Smith: Yes, sir.

Commissioner Harlan: How often are settlements made?

Mr. Smith: They settle once a month.

Commissioner Harlan: And what service is performed by
1008 the railroad company for that charge? Just describe the exact service.

Mr. Smith: They haul those logs from Maumelle to Becker, a distance of 16 miles.

Commissioner Harlan: And then the railroad employees join with others in unloading the logs into the pond?

Mr. Smith: Yes, sir.

Commissioner Harlan: Is that all the service that the railroad company does for the two cents?

Mr. Smith: Yes.

Commissioner Harlan: Is that two cents a thousand feet log measure?

Mr. Smith: Yes, sir—no, it is two cents per 100 pounds, estimated weights.

Mr. Andrews: He has used the two cents interchangeably. I do not know whether he means two cents per 100 pounds or per 1,000 feet of logs.

Commissioner Harlan: Explain that.

Mr. Smith: It is two cents per 100 pounds. Pine logs are estimated 7½ pounds to the foot, and hard wood at ten pounds to the foot.

Commissioner Harlan: Are the logs actually weighed?

1009 Mr. Smith: No.

Mr. Cowan: What does that amount to per car?

Commissioner Harlan: Yes, what does that amount to per car?

Mr. Smith: It goes about $4.50 to $5.00 a car.

Commissioner Harlan: How many cars are in an ordinary train?

Mr. Smith: About 20 cars.

Commissioner Harlan: About how many trains do you move in a given period?

Mr. Smith: We move two trains a day.

Commissioner Harlan: Does the two cents cover the haul of the empties back to the junction of the logging road?

Mr. Smith: Yes.

Commissioner Harlan: You make no charge for that service?

Mr. Smith: No.

Commissioner Harlan: What other source of revenue has the railroad company?

Mr. Smith: Well, on the outbound business; that is, on through cars, they get a division, as shown by that sheet.

Commissioner Harlan: That is to say, on manufactured lumber
you get to all points on the Missouri Pacific and the Iron
1010 Mountain except points in Oklahoma, Arkansas, Louisiana and Texas six cents per 100 pounds.

Mr. Smith: Yes.

Commissioner Harlan: What service do you perform for that compensation?

Mr. Smith: You will notice at the bottom of that sheet that we add two cents; we get really two cents off of that on the division.

Commissioner Harlan: Explain that.

Mr. Smith: We add for the service of the Little Rock, Maumelle & Western two cents on the finished product, and on that we get six cents per 100 pounds, we get from the connecting line, the trunk line, four cents, and the lumber company pays the two cents.

Commissioner Harlan: Now, you charge the lumber company two cents for bringing the logs into the mill and you also charge the lumber company two cents out of the through rate.

Mr. Smith: On the finished product; yes, sir. In other words, we add two cents to the through rate.

Commissioner Harlan: And then you add two cents to the through rate?

Mr. Smith: Yes, sir, to the trunk line rate.

Commissioner Harlan: Take a shipment to a typical point
1011 on the Missouri Pacific, and state the through rate.

Mr. Smith: We will say to Jefferson City, it will be six cents, and——

Commissioner Harlan: Just a moment. I want to know what is the joint through rate from Becker to Jefferson City.

Mr. Smith: I think it is 26 cents.

Commissioner Harlan: And you add two cents to that rate?

Mr. Smith: No, it would be 22 cents. I guess the Jefferson City rate is probably 18 cents.

Commissioner Harlan: Have you in mind any definite rate on manufactured lumber from Becker to any given point?

Mr. Smith: I can give you St. Louis. The Iron Mountain rate to St. Louis is 18 cents. We would add two cents——

Commissioner Harlan: From what point?

Mr. Smith: From Little Rock; from our connection.

Commissioner Harlan: Well, your connection with the Iron Mountain is at Becker, eight miles out?

Mr. Smith: Well, it is about—I think that is meant for 8/10 of a mile.

Commissioner Harlan: You think it ought to be .8 of a mile.

Mr. Smith: Yes.

Commissioner Harlan: Is that at Becker?

Mr. Smith: No, that is at the connection of the Iron
1012 Mountain.

Commissioner Harlan: What is the joint through rate from the mill to St. Louis, if there is a joint through rate?

Mr. Smith: Twenty cents.

Commissioner Harlan: Is that published as a joint through rate from your mill, or from Becker?

Mr. Smith: Yes, sir; that is published as a joint through rate.

Commissioner Harlan: That is the total charge that the lumber company pays?

Mr. Smith: Yes.

Commissioner Harlan: What part of that charge do you get?

Mr. Smith: We get five cents.

Commissioner Harlan: You get that from whom?

Mr. Smith: From the Iron Mountain.

Commissioner Harlan: That is a division?

Mr. Smith: Yes, sir.

Commissioner Harlan: What relation has this two cents which you have referred to, to that divsion; what is the two cents?

Mr. Smith: Well, the two cents is supposed to cover the mill service; the railroad service from the mill to the junction.

1013 because the division that they give the railroad company would not earn as much money as it should on the division that they allow.

Commissioner Harlan: You are a traffic man and you ought to know about rates, and I wish you would just explain in your own way what the rate is on the through cars, whatever it is or however it is published, on manufactured lumber from the mill to St. Louis, and what part your railroad company gets out of it.

Mr. Smith: The through rate as published from Becker to St. Louis is 20 cents, and our line gets in settlement with the Iron Mountain five cents and the Iron Mountain gets 15 cents.

Commissioner Harlan: What service do you perform for that five cents?

Mr. Smith: That five cents in addition to the two cents which is charged on the logs into the mill covers the entire service from the end of the line to the junction.

Commissioner Harlan: We are talking now about the rates on manufactured lumber. You have already disposed of your charge of two cents on the logs.

Mr. Smith: That would cover the service from the mill to

1014 the junction.

Commissioner Harlan: That would cover the service from the mill to the junction with the Iron Mountain?

Mr. Smith: Yes, sir; to the connection.

Commissioner Harlan: For that compensation you set the empty car at the mill?

Mr. Smith: Yes.

Commissioner Harlan: And you take it from the junction?

Mr. Smith: Yes.

Commissioner Harlan: And set it at the mill?

Mr. Smith: Yes.

Commissioner Harlan: And then the loaded car you set back on the interchange track?

Mr. Smith: Yes, sir. Now, there is one feature in there we have not touched. The mill company, as shown by this tariff, gets a milling in transit rate. When the finished product is billed out, we allow them credit for that tonnage on what we have charged them on the logs hauled in.

Commissioner Harlan: Just explain that transaction. There is a shipment of the manufactured lumber out on a 20 cent rate, of which you get five cents?

Mr. Smith: Yes.

1015 Commissioner Harlan: You have already received two cents on the logs coming in?

Mr. Smith: Yes, sir. Now, if that car weighs 60,000 pounds, we would allow the mill company a credit on their logging bill of two cents a hundred on that finished product.

Commissioner Harlan: That is, of the inbound log bills?

Mr. Smith: Yes.

Commissioner Harlan: You make a refund, in other words?

Mr. Smith: Yes, sir. A milling in transit arrangement, the same as made on all railroads where their products are manufactured or finished en route.

Commissioner Harlan: So, as a matter of fact, then, on the logs that enter into a carload of manufactured lumber, the lumber company pays a through charge of 20 cents?

Mr. Smith: Yes, the lumber company pays a through charge of 20 cents, less the credit they are allowed on the logs coming in.

Commissioner Harlan: Well, it pays a through charge of 20 cents, as I understand you to say, and then you get out of that five cents?

Mr. Smith: And we pay to the mill company, we allow them credit on their previous log bill. When the logs come into
1016 the mills, we assess a freight and collect it. When the finished product is shipped out, then we allow them credit for the tonnage of the finished product, on their log bill, which virtually represents their log bill.

Commissioner Harlan: Well, I though- so. How many carloads of logs make one carload of lumber?

Mr. Smith: I believe they figure about 40 per cent.

Commissioner Harlan: Can you answer the question a little more directly? I asked how many carloads of logs make one carload of manufactured lumber?

Mr. Smith: I think about eight.

Commissioner Harlan: I may be a little bit dull about this, but I would like to know what the lumber company pays, starting from the junction of your line with the logging road on eight carloads of logs manufactured into one carload of lumber and sent on to St. Louis.

Mr. Smith: Well, we will say the eight carloads of logs would cost them $40; the finished product would be $20; that is $60, and——

Commissioner Harlan: I do not mean the total, but the rate.

Mr. Smith: Well, it would be seven cents through—no, it would not. I will have to figure that out, I guess. The logs
1017 coming into the mill and the finished product out, on the average, is about 40 per cent, and the balance is wasted; it is slabs, and so on.

Mr. Mehaffy: I think he is just a little mixed on it.

Commissioner Harlan: I do not know who is mixed; I suspect I am, but I would like to know about it.

Mr. Mehaffy: That is exactly what I am undertaking to do. I think I can state it to him.

Commissioner Harlan: Very well, if you will go at it.

Mr. Mehaffy: I will try. Forty per cent, you mean when the

logs come in from the woods, the amount that goes out in finished product is about 40 per cent of what comes in?

Mr. Smith: Yes, sir.

Mr. Mehaffy: But when you load the cars out in the woods it takes eight of those cars practically to make one carload of lumber?

Mr. Smith: Yes.

Mr. Mehaffy: Now, you stated you got two cents for bringing them in and then got a division of the rate to St. Louis, and the Commissioner wants to know about that two cents. Explain that.

Mr. Smith: You mean the two cents on the logs in, or two
1018 cents on the finished product out?

Commissioner Harlan: The question is, what you mean.

Mr. Mehaffy: Well, the railroad company gets the division on the finished product, does it not?

Mr. Smith: Yes.

Mr. Mehaffy: The mill company pays the railroad company two cents for bringing the logs in?

Mr. Smith: Yes.

Mr. Mehaffy: You state because of the milling in transit privilege that you give the mill company then credit for the two cents back. Now, that is what the Commissioner wanted you to explain, I think.

Mr. Smith: Yes.

1019 Commissioner Harlan: Then your five cents covers the two cents in, is that it? Do you refund that to the lumber company?

Mr. Smith: It will not cover quite that, because the finished product does not equal the amount that is brought in of the raw material, as I tried to explain; there is a certain wastage in there that does not go out in the finished product, therefore the railroad does not refund quite two cents, it refunds the difference between the amount of manufactured product and the wastage in the logs that are manufactured.

Commissioner Harlan: And the result of the transaction is that the lumber company does pay something on the inbound movement?

Mr. Smith: Yes, sir. I would change that—well, forty per cent, they would pay 1.2 cents per hundred.

Commissioner Harlan: They would pay on the 60 per cent of the inbound movement of logs?

Mr. Smith: Yes, sir.

Commissioner Harlan: So that the lumber company actually does pay you 60 per cent of two cents per 100 pounds?

Mr. Smith: Yes.

1020 Commissioner Harlan: Estimated weight?

Mr. Smith: That gets at it.

Commissioner Harlan: What authority in the published tariffs is there for a refund by you to the lumber company of 40 per cent of the two cents inbound?

Mr. Smith: That tariff is open to anyone who does a milling in transit business on the line; it is filed with the Interstate Commerce

Commission and approved by them, and approved by the Railroad Commission of Arkansas.

Commissioner Harlan: It is a regular milling in transit tariff?

Mr. Smith: Yes, sir the same as all other milling in transit rates, on grain and so on.

Commissioner Harlan: You have stated the total tonnage?

Mr. Smith: Yes.

Commissioner Harlan: I observe on these two sheets which you have handed to me, and which I understand to be your division sheets, you get as high as 6 cents per 100 pounds from the outbound movements of manufactured lumber, and at other points on other lines you get 5 cents, and it runs down to nothing to points in Arkansas, Louisiana and Texas. Now what does that mean, that you receive no compensation for your participation——

1021 Mr. Smith: We receive no divisions from the trunk lines.

Commissioner Harlan: To Arkansas, Louisiana and Texas points?

Mr. Smith: Yes.

Commissioner Harlan: What charge do you make?

Mr. Smith: We make the regular service charge.

Commissioner Harlan: Is that a charge per 100 pounds or per car?

Mr. Smith: No, per car.

Commissioner Harlan: On the manufactured lumber?

Mr. Smith: As fixed by the Railroad Commission of Arkansas. We never shipped anything except into the State of Arkansas, we never shipped anything to Louisiana.

Commissioner Harlan: And that charge which you call a charge per car includes the haul from the mill to the junction point?

Mr. Smith: Yes, sir.

Commissioner Harlan: And that is in addition to the haul of the logs inbound?

Mr. Smith: Yes, sir.

Examiner Burchmore: That charge is $3.00 per car for

1022 switching?

Mr. Smith: Yes, sir.

Examiner Burchmore: Does that compensate you for the service of switching out?

Mr. Smith: Well, I could not say. That is what they were willing to make the charge.

Examiner Burchmore: In your opinion is that sufficient?

Mr. Smith: Well, we could not go higher than that. The Railroad Commission of Arkansas would not allow it. They fixed the rate of switching for anything under three miles at $3.00.

Examiner Burchmore: You regard that $3.00 a car as inadequate?

Mr. Smith: I really could not say as to that.

Examiner Burchmore: It never occurred to you that it is inadequate?

Mr. Smith: No.

Examiner Burchmore: Have you any contracts with the Rock

Island Railroad, aside from their division sheets, with regard to rates or divisions?

Mr. Smith: No, sir.

Examiner Burchmore: What percentage of your finished
1023 lumber moved out over the Rock Island?

Mr. Smith: I should judge about 40 per cent.

Examiner Burchmore: And the remaining 60 per cent over the Iron Mountain?

Mr. Smith: Yes, sir.

Examiner Burchmore: When did you first establish joint traffic arrangements with the Rock Island?

Mr. Smith: I believe it was in June, 1908, the first of June.

Examiner Burchmore: That was after the road had been in operation over a year?

Mr. Smith: It was opened January 1st, 1908.

Examiner Burchmore: Under the present rates in effect in connection with the Rock Island, the Iron Mountain received a switching charge for the movement from your junction to the Rock Island tracks?

Mr. Smith: Yes, sir.

Mr. Burchmore: What is that charge?

Mr. Smith: $3.50 per car.

Examiner Burchmore: Does the Iron Mountain concur in those joint tariffs in effect over the Rock Island?

Mr. Smith: No.

1024 Examiner Burchmore: Does the Iron Mountain handle traffic under a through rate?

Mr. Smith: Just the switching charge.

Examiner Burchmore: You issue your waybill from Becker?

Mr. Smith: Yes, sir.

Examiner Burchmore: So that the waybill does not read from the Iron Mountain?

Mr. Smith: No.

Examiner Burchmore: When you established these traffic arrangements with the Rock Island in June, 1908, was there any increase at that time in the amount of your division?

Mr. Smith: No.

Examiner Burchmore: The result of establishing traffic arrangements with the second trunk line was not to increase the amount of your divisions on traffic?

Mr. Smith: No.

Examiner Burchmore: Had the Iron Mountain allowed you previously as high as 6 cents on divisions on certain rates?

Mr. Smith: I think that was the first division, yes, sir.

Examiner Burchmore: Has there been any objection on the part of the Iron Mountain in participating in the movements that move out over the Rock Island?

1025 Mr. Smith: No, sir.

Examiner Burchmore: Have you any written contract with the Rock Island covering divisions, rates or tonnage?

Mr. Smith: No.

Examiner Burchmore: Then you have no contracts whatsoever with trunk lines?

Mr. Smith: Nothing further than the published tariffs.

Examiner Burchmore: And division sheets?

Mr. Smith: Yes.

Examiner Burchmore: Is this I. C. C. No. 5 of the Little Rock, Maumelle & Western, being its milling in transit rules, referred to in the tariffs naming the joint through rates.

Mr. Smith: In what?

Examiner Burchmore: Is there a cross reference in the tariffs?

Mr. Smith: You mean in the tariffs issued by the trunk lines covering through rates?

Examiner Burchmore: Yes.

Mr. Smith: No, that is not mentioned. They mention the two cents we add on the finished product, but they do not——

Examiner Burchmore: Those joint tariffs then contain practically the same provisions as this I. C. C. No. 5?

1026 Mr. Smith: Yes.

Commissioner Harlan: Mr. Mehaffy, have you any questions?

Mr. Mehaffy: No.

Mr. Cowan: The mill, of course, could not be operated without the railroad?

Mr. Smith: No, sir.

Mr. Cowan: Do you have through rates to ship out staves and lumber which come from the hardwood mill?

Mr. Smith: Yes, sir.

Mr. Cowan: What do you get out of that?

Mr. Smith: The same division applies on hardwood and pine.

Mr. Cowan: Do you charge them for bringing the logs to their mills?

Mr. Smith: Yes, sir, the same as the other.

Mr. Cowan: You give them the same refund?

Mr. Smith: Yes.

Mr. Cowan: The rates then from points on your lines are two cents higher than they are on the Iron Mountain?

Mr. Smith: Yes.

Mr. Cowan: That two cents goes to make up part of the aggregate of the rate, as I understand you, and when you give it to the

1027 Iron Mountain they take 15 cents out of the rate to St. Louis and you take five?

Mr. Smith: Yes.

Mr. Cowan: And that is the only money you get on the transaction except what the mill pays you for hauling the logs in?

Mr. Smith: Yes, sir.

Mr. Cowan: And you refund that to the extent of two cents per 100 pounds on the lumber?

Mr. Smith: Yes, sir—no, we figured out, I believe, an amount of 8 mills per hundred.

Mr. Cowan: How is that?

Mr. Smith: We have just been figuring that out, and it amounts to nearly one-half, the refund amounts to about one cent.

Mr. Cowan: At all events the refund is simply a refund of 2 cents per 100 pounds on the lumber shipped on out.

Mr. Smith: Yes, sir.

Mr. Cowan: Whatever that weight amounts to?

Mr. Smith: Yes.

Mr. Cowan: So that the mill company, if it is to be treated
1028 as paying for the freight on the logs, really gets a refund of two cents per 100 pounds on the lumber?

Mr. Smith: Yes, sir.

Mr. Cowan: And if you deduct that from what it costs to haul the logs in, it just about breaks even, about one cent?

Mr. Smith: It amounts to nearly one-half of what it costs to get the logs in.

Mr. Cowan: Well, one-half of two cents?

Mr. Smith: Yes, sir.

Mr. Cowan: When you make your bill of landing, it shows a shipment from Becker to St. Louis, for example?

Mr. Smith: Yes, sir.

Mr. Cowan: And when you make the shipment of the hardwood the billing shows from the station there, whatever the name of the station is?

Mr. Smith: Yes, sir.

Mr. Cowan: And this money is used for the purpose of paying interest on the indebtedness of the railroad company to the lumber company?

Mr. Smith: Well, I could not say what they do with the money.

Mr. Cowan: But it never gets out of the hands of the
1029 interests which own the mill and the railroad?

Mr. Mehaffy: If he could not say what they do with it, I do not see how he could answer that question. He has just told you he did not know.

Examiner Burchmore: Have you any joint class and commodity rates other than lumber rates?

Mr. Smith: Yes, sir.

Examiner Burchmore: They are carried in I. C. C. No. 8, issued by your company, that is the local freight tariff?

Mr. Smith: The commodity rates are in there, local rates. We have no through commodity rates.

Examiner Burchmore: Then class or commodity freight moving to or from points on your line is handled under the combination of local rates to and from the junction points?

Mr. Smith: Yes, sir.

Mr. Cowan: Who pays that $3.00 switching charge when it goes to the Rock Island?

Mr. Smith: Over the Rock Island?

Mr. Cowan: Yes.

Mr. Smith: The Rock Island absorbs the Iron Mountain switching.

Mr. Cowan: And then gives you 6 cents division in addi-
1030 tion to that?

Mr. Smith: Yes.

Mr. Cowan: You have not stated in the record, but I suppose the division sheets show—you get 6 cents to points in Texas?

Mr. Smith: No, sir, we get nothing to Texas.

Mr. Cowan: You do not ship anything there?

Mr. Smith: No.

Mr. Cowan: Who controls the routing of the traffic, who controls the traffic?

Mr. Smith: I do the routing.

Mr. Cowan: Of course the mill company does not sell lumber anywhere except where it gets a division of the rates, naturally?

Mr. Smith: No, they never have.

Mr. Cowan: Do you have cases where divisions are made— —

Mr. Smith: Excuse me; except they sell a great deal of lumber in Arkansas where we get no division. I expect probably 25 per cent of their output goes to Arkansas.

Mr. Cowan: And you get no division?

Mr. Smith: No.

1031 Mr. Cowan: But you charge the local rate?

Mr. Smith: No, we charge them $3.00 a car switching.

Mr. Cowan: And in that case you do not refund anything to the mill company on the logs?

Mr. Smith: No.

Commissioner Harlan: What is the length of that switch movement by the Iron Mountain over to the Rock Island tracks?

Mr. Smith: I think it is between three and four miles; the commission allows them, I believe, $3.00 for three miles and under, and $3.50 for three to four miles, and it is between three and four miles.

Commissioner Harlan: And the Rock Island absorbs that switching charge?

Mr. Smith: The Rock Island absorbs that switching charge.

Commissioner Harlan: And then reaches over the Iron Mountain and pays you a division?

Mr. Smith: Yes, sir.

Mr. Cowan: Did you have an arrangement before you built this railroad that you would get these divisions, or do you know?

Mr. Smith: I do not know as to that. I was not with the
1032 company when the railroad was built.

Mr. Cowan: Are you acquainted with the sawmill industry and the way the business is handled in Arkansas?

Mr. Smith: No, this is the first time I have ever been connected with a sawmill railroad.

Mr. Jeffery: As I understand it, your railroad is building towards the Rock Island now, to connect with the Rock Island?

Mr. Smith: The survey has been made and the estimates furnished.

Mr. Jeffery: What was your reason for that?

Mr. Smith: Shortage of money, I guess.

Mr. Jeffery: I mean why are you building to the Rock Island?

Commissioner Harlan: He says there is a shortage of money and they are not building. They have only made a survey.

Mr. Jeffery: Then you do not contemplate building over there?

Mr. Smith: I suppose they will build when they get in better shape.

Mr. Jeffery: Have you got a promise of a higher division from the Rock Island?

1033 Mr. Smith: No; it will give us a more valuable location in Little Rock, and give us trackage in there where we could locate industries.

Mr. Jeffery: As I understand the 6 cent division applies really where you make a local charge of 2 cents, in other words, the net division either from the Iron Mountain or the Rock Island is 4 cents.

Mr. Smith: 3 and 4 cents. The net allowance is 2 cents less than the statement we have here.

Mr. Jeffery: That 2 cents is your own money coming back, you might say?

Mr. Smith: Yes.

Mr. Jeffery: Has your allowance always been that 6 cents ever since?

Mr. Smith: Yes, sir, ever since the arrangement has been made with both lines.

Mr. Jeffery: It was made about the same time with both lines?

Mr. Smith: The Rock Island about six months after the Iron Mountain.

Mr. Jeffery: But you negotiated for that at about the
1034 same time with both lines?

Mr. Smith: Yes, sir, the only reason for the delay was that they could not get their tariffs out.

Mr. Cowan: No agreement as to giving any particular percentage of the traffic to either line?

Mr. Smith: No.

(Witness excused.)

Mr. Mehaffy: I ask to introduce a certified copy of the charter.

Commissioner Harlan: That will not be necessary.

Mr. Mehaffy: And also a certified copy of the order of the Board of Railroad Commissioners authorizing the incorporation of the railroad.

Commissioner Harlan: That may be filed. We will ask counsel to file as soon as possible a map showing the exact conditions of the mills and their relation to the tracks, the distances, and a statement of the actual distance to the Iron Mountain. A reduced copy of what you have will doubtless suffice.

(The original map marked Exhibit No. 1 was returned
1035 to Mr. Neimeyer for the purpose of securing a copy to be filed with the Commission.)

1036 Commissioner Harlan: There are a number of other Rock Island roads who are represented by Mr. Walter who is engaged at this time in some litigation for the Commission, and it is understood they will be deferred for the present. We will come now to the Iron Mountain. The first one noted is the Antoine Valley. Is that road represented this morning?

(No response.)

Commissioner Harlan: The next is the Arkansas & Gulf.

Mr. Kimball: I am here for that road.

Arkansas & Gulf Railroad.

PHIN KIMBALL, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: What is your name?

Mr. Kimball: Phin Kimball.

Commissioner Harlan: Your business?

Mr. Kimball: Sawmill business and real estate.

Commissioner Harlan: Where do you reside?

Mr. Kimball: St. Louis.

1037 Commissioner Harlan: Where do you conduct any sawmill business?

Mr. Kimball: At Laark, La., in the northeast part of the state, west of the river.

Commissioner Harlan: Your mill is at Laark?

Mr. Kimball: Yes, sir.

Commissioner Harlan: How long have you been engaged there in the lumber business?

Mr. Kimball: Since 1904.

Commissioner Harlan: And the name of your lumber company is what?

Mr. Kimball: The Kimball Lumber & Manufacturing Company, hardwood business, also cypress.

Commissioner Harlan: What lumber lands does your company own?

Mr. Kimball: Well, we own between 35,000 and 40,000 acres.

Commissioner Harlan: Do you own that in fee?

Mr. Kimball: Well, we have a bond and mortgage on it.

Commissioner Harlan: Well, I mean you own fee title, you own the timber and the land?

Mr. Kimball: Yes, sir. Now I would like to explain, I
1038 have no partners. When I say we, really the company is not incorporated yet, and never has been.

Commissioner Harlan: Just your self?

Mr. Kimball: Yes, sir.

Commissioner Harlan: You refer to the lumber company?

Mr. Kimball: Yes.

Commissioner Harlan: You own about 35,000 to 40,000 acres, in that neighborhood?

Mr. Kimball: About in that neighborhood, yes, sir.

Commissioner Harlan: Have you any timber rights?

Mr. Kimball: Nothing except what is in fee.
Commissioner Harlan: And the timber is cypress——
Mr. Kimball: Mostly oak and gum, and some little cypress and elm.
Commissioner Harlan: No pine?
Mr. Kimball: No pine.
Commissioner Harlan: So your mill is a hardwood mill?
Mr. Kimball: Yes, sir.
Commissioner Harlan: How do you reach the market?
Mr. Kimball: Well, Laark is seven miles from a station now called Kimball. It used to be Cypress.
Commissioner Harlan: On what line?
1039 Mr. Kimball: The Iron Mountain.
Commissioner Harlan: How do you reach Kimball?
Mr. Kimball: By the Arkansas & Gulf.
Commissioner Harlan: Is that a railroad company incorporated under the Laws of the State of Louisiana?
Mr. Kimball: It is incorporated under the Laws of Louisiana, but we never issued any stock. I own it. I have a few local partners but they only own $300 or $400.
Commissioner Harlan: It is seven miles long. When was this company incorporated?
Mr. Kimball: I think 1904 or 1905.
Commissioner Harlan: Was the road built by the railroad company?
Mr. Kimball: The road was built by me. I never issued any stock.
Commissioner Harlan: So that you really own the whole investment?
Mr. Kimball: That is right. I intended to build further, you understand, and thought I would have more money, but we could not build any further, so I never issued any stock.
Commissioner Harlan: And the town of Kimball I pre-
1040 sume is a town that you own?
Mr. Kimball: Yes, sir, mostly. It used to be Cypress, and we changed that name to Kimball this year.
Commissioner Harlan: What is there at Kimball; do you have a post office?
Mr. Kimball: Nothing but the farm; there is no post office there now. There is no agent. The station burned down last June.
Commissioner Harlan: Was it built by you or the Iron Mountain?
Mr. Kimball: It was built by the Iron Mountain before I went there.
Commissioner Harlan: Kimball is simply an interchange point?
Mr. Kimball: Yes, sir.
Commissioner Harlan: It is not a community there?
Mr. Kimball: I have about 850 acres of open farm lands there.
Commissioner Harlan: Which you farm yourself?
Mr. Kimball: Which I rent out, unfortunately.
Commissioner Harlan: What sort of track have you?

Mr. Kimball: Between Kimball and Laark is 35 and 40
1041 pound. Outside of that it is mostly 45 and 60 pound.

Commissioner Harlan: Any stone ballast?

Mr. Kimball: No. We are putting sand on it. I have a steam shovel on it, and have been putting sand on it for two years.

Commissioner Harlan: What equipment have you?

Mr. Kimball: Two locomotives and about 26 log cars, three flat cars, three boxes and a caboose, and one motor car seating 12 passengers, and another little motor car I have there for emergencies. That is a gasolene motor car, in case the other breaks down.

Commissioner Harlan: Is there any passenger traffic between Laark and Kimball?

Mr. Kimball: Yes, sir, we carry a little; it amounts to just about what it costs to run the motor car, about $75.00 to $100.00 a month income.

Commissioner Harlan: Do you sell tickets?

Mr. Kimball: No, there is no agent at Kimball, so we collect cash fares and give receipts the same as they do on the Iron Mountain.

Commissioner Harlan: Have you a passenger layout at Kimball or Laark?

1042 Mr. Kimball: It is just in the store.

Commissioner Harlan: It is your company's store?

Mr. Kimball: It is not incorporated, but I run it in my name.

Commissioner Harlan: It is your store?

Mr. Kimball: Yes.

Commissioner Harlan: From Laark there is apparently a log road?

Mr. Kimball: I have about ten miles of branches.

Commissioner Harlan: You have one——

Mr. Kimball: Two—one of them goes back into Arkansas.

Commissioner Harlan: Kimball is in Louisiana.

Mr. Kimball: No, in Arkansas.

Commissioner Harlan: Just over the line?

Mr. Kimball: Just over the line, a mile and a half up on the Iron Mountain.

Commissioner Harlan: To the south in Louisiana you seem to have a logging road?

Mr. Kimball: Southeast into Louisiana beyond Laark.

Commissioner Harlan: What is the length of that logging road?

Mr. Kimball: That is not a logging road, that is what I call the Arkansas & Gulf, that is seven miles long.

1043 Commissioner Harlan: From Laark to the southeast is not there a logging road?

Mr. Kimball: Well, no—probably a mile and then I have one which runs northeast, and then one due east two or three or four miles.

Commissioner Harlan: What is the total mileage of logging roads that join the main line at Laark?

Mr. Kimball: Between nine and ten miles of track.

Commissioner Harlan: Have you any special equipment that you use solely on those roads?

Mr. Kimball: No, I will tell you how I do that. The logging cars and all of the equipment belonging to the railroad proper is owned by the railroad, as I call it. The engines haul these cars for $1.50 a car.

Commissioner Harlan: $1.50 a car from the——

Mr. Kimball: From the log camps to Laark.

Commissioner Harlan: Where the mill is?

Mr. Kimball: Yes, sir.

Commissioner Harlan: Then the logs are milled and the lumber is moved to Kimball?

Mr. Kimball: That is right. Now we haul millions of feet of lumber from Kimball, formerly Cypress, to Laark away from the
1044 Iron Mountain seven miles, and take it back again.

Commissioner Harlan: Is that your own timber?

Mr. Kimball: Yes, sir.

Commissioner Harlan: Does that come from Arkansas or Louisiana?

Mr. Kimball: That comes from Arkansas. This last year I hauled about three million feet to what we call the State line, it came from Louisiana but was hauled up into Arkansas by switch and then brought back from State Line to Laark and I manufactured it there and took it back to the Iron Mountain.

Commissioner Harlan: What was your total tonnage last year?

Mr. Kimball: I could not tell you. We saw about 20,000 feet a day and run about 275 days as a rule. 20,000 feet of hardwood would weigh about 80,000 pounds. I could figure it up and give you that, though, if you desire.

Commissioner Harlan: Do you file any tariffs with the Commission?

Mr. Kimball: Yes, sir, we have concurred through the Missouri Pacific. While I am President and Traffic Manager and
1045 some of the other officers, I really don't know much about the traffic.

Commissioner Harlan: Do you file annual reports with the Commission?

Mr. Kimball: Yes, sir, I think we did file reports for awhile.

Examiner Burchmore: When did you file your first annual report?

Mr. Kimball: I could not tell you that.

Examiner Burchmore: It is only recently you have been filing them?

Mr. Kimball: Yes, sir.

Commissioner Harlan: That is, you do not know that date either as President, Secretary or Treasurer of the company?

Mr. Kimball: I am not the Treasurer, unfortunately.

Commissioner Harlan: Do you move any traffic for anyone else?

Mr. Kimball: Very little. There is nothing out there much; when I first went there we went through some farms for two miles, that is about five years ago. I know we left some stock and they

ate up the cotton and we had to pay for it. But since then
1046 the farms have been abandoned and there is no development in there.

Commissioner Harlan: So practically you only move your own lumber?

Mr. Kimball: Practically. We move some little passenger business, but the lumber business is nineteen*ths*-twentieths of it.

Commissioner Harlan: Did you have any local rates filed with the Commission?

Mr. Kimball: I think so, yes, sir—well, we use the commodity and class rates for the store. The Laark Mercantile Company is not the Kimball Manufacturing Company in any sense. Our store burned down on September 21st, and we lost our store and office and I am building a brick store 30 x 100 feet, and a brick office alongside of it.

Commissioner Harlan: Of course you understand you are an interstate road?

Mr. Kimball: Yes, sir.

Commissioner Harlan: You run across the State line?

Mr. Kimball: Yes.

Commissioner Harlan: So that in a special sense you are under the jurisdiction of the Commission if you do any traffic at
1047 all as a common carrier?

Mr. Kimball: Yes.

Commissioner Harlan: What rates do you carry in connection with the Iron Mountain on lumber to interstate destinations?

Mr. Kimball: Well, usually the way they figure that, they give us—we have to pay four cents above Little Rock on some shipments, and five cents above Little Rock and Pine Bluff, but it figures out about one cent higher than Kimball or Cypress, it used to be, and then they give us back two or three cents. We really make two cents and one cent division that the Iron Mountain pays. We charge that against the lumber company, but the Iron Mountain really gives the railroad two cents and one cent. We do not get any five and six cent divisions.

Commissioner Harlan: Have you any milling in transit rates?

Mr. Kimball: No, we charge the lumber company $1.50 a car.

Commissioner Harlan: Into Laark?

Mr. Kimball: Into Laark, yes, sir.

Commissioner Harlan: In either direction?

Mr. Kimball: Well, yes, on the logs in either direction,
1048 on the log cars.

Commissioner Harlan: And then for carrying the manufactured lumber from Laark to your junction with the Iron Mountain you get from two to three and a half cents?

Mr. Kimball: No, from two to three cents, but the published rate is one cent higher than the Kimball rate.

Examiner Burchmore: You get from two to three cents plus this one cent?

Mr. Kimball: Say from Laark to St. Louis it is 16 cents and Kimball to St. Louis is 15 cents. The railroad company is credited

with three cents so that sawmill pays one cent and the Iron Mountain two cents to St. Louis, and the same going through Thebes gateway or Cairo.

Commissioner Harlan: I suppose you know these facts from conferring with your traffic manager?

Mr. Kimball: Yes, sir.

Examiner Burchmore: We have here a copy of your I. C. C. No. 1, issued by the Arkansas & Gulf, Phin Kimball, General Freight Agent, St. Louis, which contains your merchandise and carload rates between all stations on your line.

Mr. Kimball: Yes, sir.

Examiner Burchmore: So they are filed with the Commission.

1049 Mr. Kimball: Yes.

Examiner Burchmore: Do you maintain a regular train service.

Mr. Kimball: No, not on freight. On passengers we go twice a day with the motor car; it leaves at 11:00 and 2:20, and meets the Iron Mountain trains going north, and carries the mail out to meet the trains going south. We have carried the mail out for five years.

Examiner Burchmore: You carry passengers also?

Mr. Kimball: Yes, sir.

Examiner Burchmore: Was that regular train service recently established?

Mr. Kimball: Yes, sir, I have had the car about two years, but the track was so rough we were afraid to run it, we were afraid it would break it up, until we got the steam shovel on it and put some sand on it.

Examiner Burchmore: Do you receive passenger fares from these passengers?

Mr. Kimball: Yes, sir.

Examiner Burchmore: Do you sell any tickets?

Mr. Kimball: No, there is no agent except at one end I have an agent at Laark, and we have a cash fare slip they turn out that is sent into St. Louis. I do not know as it makes any dif-

1050 ference, I told you I resided in St. Louis. I am a legal resident of Louisiana and am Postmaster at Laark.

Examiner Burchmore: Has the railroad company paid any dividends?

Mr. Kimball: No, it does very little business.

Examiner Burchmore: Has it any surplus?

Mr. Kimball: No.

Examiner Burchmore: Do you receive a salary as officer of the railroad company?

Mr. Kimball: I am credited with one but have never received it.

Examiner Burchmore: Never have been paid?

Mr. Kimball: Never have been paid.

Examiner Burchmore: Do you keep the books of account of the railroad company in accordance with the rules of the Interstate Commerce Commission?

Mr. Kimball: Well, I suppose we do. We keep everything

separate. The lumber company and the railroad company are entirely separate and so is the store company.

Examiner Burchmore: The railroad company has an auditor or bookkeeper?

Mr. Kimball: Well, he gets a pro rate; we have a lady in
1051 St. Louis, and a timekeeper and agent at Laark, and we prorate their salaries.

Examiner Burchmore: That proportion of their salaries is in proportion to their service?

Mr. Kimball: Yes, sir, practically, as near as we can come at it.

Examiner Burchmore: Are those bookkeepers advised of the requirements of the Interstate Commerce Commission with reference to accounting?

Mr. Kimball: Well, I do not know. I would judge so.

Examiner Burchmore: You do not know whether they have been made acquainted with the Commission's rules?

Mr. Kimball: I think when your representatives were there, they made us acquainted with them to a certain extent.

Examiner Burchmore: Are your cars equipped with automatic couplers?

Mr. Kimball: Yes, sir, the flat cars are. The log cars are not. But we do not use the automatic couplers there because the road is so rough they would not couple. I want to say to you we use our flat cars mostly for sand. We overhauled about 18 of them this year, and we have a steam plow and plow the sand off the cuts.

1052 Commissioner Harlan: You are ballasting your road?

Mr. Kimball: Yes, sir.

Examiner Burchmore: Do your employés work more than eight hours?

Mr. Kimball: We work eleven hours a day.

Examiner Burchmore: Do you observe the Hours of Service Law?

Mr. Kimball: Oh, yes, sir, as I understand it, we cannot work longer than 17 hours unless in the case of a wreck. I wish to say to you in explanation that I made considerable effort in making surveys, I think you have the correspondence on your record; I spent over $5,000 in surveying and prospecting to build this road further.

Commissioner Harlan: To what track?

Mr. Kimball: Well, we expected some tracks, there was a whole lot of surveying done several years ago east of me, in East Carroll and West Carroll Parishes, the Frisco, and a road called the Alexandria, Greenville & Eastern, and that also made it pretty lively down there, but it all died out after awhile by the Iron Mountain's building a stub down there and killing it.

Commissioner Harlan: Do the railroad company employés
1053 load or unload the cars?

Mr. Kimball: No, we have a steam loader, and we do not unload them at the mills. The cars are hauled right up in the mill and it is a trap car and we do not handle them like they unload them into a pond, and all of that is done by the milling com-

pany. The railroad simply hauls them and gets $1.50 for hauling the loaded car, and it hauls the empty back free.

Examiner Burchmore: What did this railroad cost you to build?

Mr. Kimball: I would judge about $5,000 a mile.

Commissioner Harlan: There are no cuts and fills?

Mr. Kimball: No.

Commissioner Harlan: Are there any bridges?

Mr. Kimball: No except log bridges.

Commissioner Harlan: Do you receive any passes from the Iron Mountain?

Mr. Kimball: One annual over the Iron Mountain.

Commissioner Harlan: As President of the railroad company?

Mr. Kimball: As President of the railroad company.

Commissioner Harlan: And from its connections?

Mr. Kimball: What connections do you mean?

1054 Commissioner Harlan: The connections to the market, like the Burlington and other roads?

Mr. Kimball: Yes, sir, I have received transportation, but they have cut them off of late years. I have the small annuals and one over the Burlington east of the river.

Commissioner Harlan: Have you issued any transportation over your line to officers of connections?

Mr. Kimball: No, sir; they won't come. I wrote one time to the Commission, I used to issue passes to the lumber company customers, and I wrote to the Commission and Senator Cockrell answered it and said I had better quit it.

Commissioner Harlan: Will you be kind enough to get your engineering department to send us just a rough map of this road and its logging connections, showing the distances and the character of its connections with the Iron Mountain?

Mr. Kimball: Yes, sir.

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: Are you pretty well acquainted in Louisiana as to the sawmill operations generally?

Mr. Kimball: Not very greatly, no.

Mr. Cowan: I suppose this railroad of yours is complying with these regulations of one kind and another, in order to keep

1055 the divisions you are getting out of the rates; that is the reason for it?

Mr. Kimball: I didn't quite catch that.

Mr. Cowan: Whatever compliance you make with the regulations of the Interstate Commerce Commission is so that you can hold on to the divisions that you get from the Iron Mountain Railroad?

Mr. Kimball: I don't know as I just quite catch your meaning.

Mr. Cowan: You get your lumber out cheaper than you would if you did not profess to have a railroad?

Mr. Kimball: Well, yes, in one way; yes, sir.

Mr. Cowan: You get two cents per 100 pounds——

Mr. Kimball: To me as owner of the company, I naturally would get that back.

Mr. Cowan: You would have to operate your sawmill with a railroad anyhow, if you operated it?

Mr. Kimball: No, I would not have put it out there if I had not expected and expect still to build a railroad which would be permanent. It is permanent now.

Mr. Cowan: I do not see how you could operate a sawmill without a railroad.

1056 Mr. Kimball: I probably would not have built there. When I first built the road I was talking to a man, a Mr. Louis Houck, who had made some success in it. In fact I was trying to interest him down there, but I could not. But I figured on building the road somewheres, and I spent enough money, if I had to build a road somewhere, to come out even or make anything on it, and I expect to.

Mr. Cowan: If you do not do that you have still to go ahead with this meagre division of one or two cents, but if you could reach the Rock Island I guess you have observed from the evidence you would get a good deal more money.

Mr. Kimball: Yes, sir, I expect to go to the Mississippi River.

Mr. Cowan: Is it not a fact that the sawmill interests generally in that part of the country are getting divisions out of the rates, the interests are getting divisions either by tap lines or some other method?

Mr. Kimball: I don't know a thing about them except what I have heard here.

Mr. Cowan: If you only get two cents on yours and another man competing with you gets six or seven cents on his, he has undoubtedly got an advantage over you?

1057 Mr. Kimball: Well, I think hardwood mills pay a lower rate of freight than yellow pine. It would be 16 cents from Laark on hardwood and 18 cents on pine, but we have no pine in that country.

Mr. Jeffery: That is to St. Louis?

Mr. Kimball: That is to St. Louis, yes, sir, and proportionate to Thebes.

Mr. Cowan: I thought it was just the other way, that hardwood paid a higher rate.

Mr. Kimball: Not in there. I do not know as to other points.

Mr. Cowan: You do not know the situation as to other people?

Mr. Kimball: No. We do not buy lumber, we are simply a sawmill firm and practically do not buy any.

Mr. Jeffery: The 16 cents is the rate from Laark to St. Louis?

Mr. Kimball: Yes, sir.

Mr. Jeffery: What is the rate from the junction?

Mr. Kimball: 15 cents from Kimball. We add one cent.

Mr. Jeffery: What division do you get out of that rate?

Mr. Kimball: Three cents.

1058 Mr. Jeffery: So your net division is two cents; you get your own one cent back and two cents division?

Mr. Kimball: Yes. Some places we only get one cent.

Commissioner Harlan: Your interest in the rate is simply the

cost to you of laying down your lumber in St. Louis and other markets, is that it?

Mr. Kimball: I do not understand you.

Commissioner Harlan: Suppose the divisions were cut off and the rate reduced from Kimball, you would be as well off as you are now, would you not?

Mr. Kimball: No, I do not look at it that way. I do not look at the mill connected with the railroad. Naturally I own the two——

Commissioner Harlan: I am speaking of the entire investment which you now have. Individually you own everything there?

Mr. Kimball: Yes.

Commissioner Harlan: The town and the lumber company and the railroad?

Mr. Kimball: Practically, yes, sir.

Commissioner Harlan: Speaking of your individual interests and eliminating these different companies, you would be as well
1059 off without a division of the through rate, if the rate itself to St. Louis were reduced to the extent of your present division?

Mr. Kimball: In the present instance it might, but the railroad is not going to stop. I am expecting—now this summer there was a party came to St. Louis a third time to see me and to ask me to come over in West Carroll, and I am now building to the Beth River and it is going to be a stationary line, I think, I am going to call that a stationary place, and I want to get over there, and if we do not have something to work with it will naturally flatten that part out.

Commissioner Harlan: Take the present investment, excluding this proposed extension, you would be as well off without the division if the rates were reduced to that extent, would you not?

Mr. Kimball: I might in dollars and cents, but I would not feel that way. I expect the railroad to make itself. While I might get as many dollars myself if I got any, still I would not feel as much interested in trying to do something for the road unless I found I could get some help. I think a trunk line should be in
1060 a position to assist a developing line, that is the way I feel about it. While in the present instance, as you say, if they reduce the rate three cents, naturally the lumber company would get as much for the lumber, but that would not encourage me to develop that road, which I am going to do.

Commissioner Harlan: Your investment would be as well off?

Mr. Kimball: No, sir, the sawmill might, but the railroad would not.

Commissioner Harlan: Well, your whole investment.

Mr. Kimball: I do not think so, because the Iron Mountain would not help me. I expect to get some help.

Commissioner Harlan: You do not think the reduced rate would be a help to you?

Mr. Kimball: It would be there, but it would not if I shipped something else, which I expect to. I could not charge a local which

would justify the shipment of the other products. That is, nobody would want to come down there.

Commissioner Harlan: We will confine the inquiry to your interest as a lumber man.

Mr. Kimball: I do not own half the timber in the country, and I own all I want to, and I would be very glad to do what I could to induce something to come there. I would build a spur,
1061 side track or anything in reason to get someone to come out there and put up some sort of a plant and get the business.

Commissioner Harlan: You are now speaking as a railroad man?

Mr. Kimball: I am now speaking as a railroad man, yes, sir.

Commissioner Harlan: I am directing your attention to your interests as a lumber man. You would be as well off as a lumber man——

Mr. Kimball: The sawmill would individually; I would not as a whole.

Commissioner Harlan: Of course, we are a little confused by your mingled interests here.

Mr. Kimball: I am trying to make myself plain. The sawmill part of it would, but individually I would not be as well off. It would take away the feeling that I would get something by building a little road and I could not get anybody to come down there. I cannot get them anyway so far. I think I might when times go along, but if I have to charge the full local I do not think I can get them down there for some time yet.

Mr. Cowan: They are afraid to ride on the railroad.

1062 Mr. Kimball: They could walk.

Commissioner Harlan: That seems to be all.

Mr. Kimball: If you are through with me I will leave the town.

(Witness excused.)

Commissioner Harlan: The Berne & Clear Lake Railroad?

(No response.)

Commissioner Harlan: The Brookings & Peach Orchard Railroad?

(No response.)

Commissioner Harlan: The Caddo & Choctaw Railway.

Mr. McRea: We are ready.

1063 Caddo & Choctaw Railway Company.

T. W. ROSBOROUGH, was called as a witness and having been duly sworn, testified as follows:

Commissioner Harlan: What is your name?

Mr. Rosborough: T. W. Rosborough.

Commissioner Harlan: What is your business?

Mr. Rosborough: Railroading, and lumber business.

Commissioner Harlan: At what point?

Mr. Rosborough: Rosboro, Ark.

Commissioner Harlan: What are the termini of your road and what is the road called?

Mr. Rosborough: It is Rosboro and Cooper, and it is called the Caddo & Choctaw.

Commissioner Harlan: When was it incorporated?

Mr. Rosborough: In April 1907.

Commissioner Harlan: Where is Rosboro with reference to Little Rock?

Mr. Rosborough: It is about 35 miles west of Hot Springs.

Commissioner Harlan: Is it east or west of Little Rock?

Mr. Rosborough: Southwest; it is west of Hot Springs too.

Commissioner Harlan: I have Rosboro. Now what is the
1064 other terminus?

Mr. Rosboro: Cooper; it is a new station. The road has just been built to it.

Commissioner Harlan: With what road does it connect?

Mr. Rosborough: The Iron Mountain.

Commissioner Harlan: At Rosboro?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: What is the length of the line to Cooper?

Mr. Rosborough: 14 miles at present.

Commissioner Harlan: When was it built?

Mr. Rosborough: It was built at different times, from the date of organization until the present.

Commissioner Harlan: You say the date of organization of the railroad company?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: Was it all built by the railroad company?

Mr. Rosborough: Yes.

Commissioner Harlan: When was the first mileage constructed and how much?

Mr. Rosborough: The first was in 1907, it was built—
1065 the grading was about seven miles, and the track was laid about four miles.

Commissioner Harlan: To what point, what did you call that end there?

Mr. Rosboro: We first called our end Spears.

Commissioner Harlan: Was there any lumbering at Spears or near Spears?

Mr. Rosborough: Yes, sir, there was logging off the main line, a spur leading off the main line.

Commissioner Harlan: What was the length of that spur?

Mr. Rosborough: The first spur was about two miles long.

Commissioner Harlan: By whom was that built?

Mr. Rosborough: The spur was built by the Caddo River Lumber Company.

Commissioner Harlan: Is that the company that owns the Caddo & Choctaw Railroad?

Mr. Rosborough: The individual stockholders of the Caddo River Lumber Company own the Caddo & Choctaw Railroad Company.

Commissioner Harlan: Is the ownership about the same?

Mr. Rosborough: There are some exceptions.

Commissioner Harlan: Did the Lumber Company furnish the capital for the construction of the railroad?

1066 Mr. Rosborough: The stockholders of the lumber company are the stockholders of the railroad company and the stockholders of the railroad company have about one-half—the stock is divided about two to one in favor of the lumber company; each stockholder of the lumber company that owns two shares of stock in the lumber company owns one share in the railroad company.

Commissioner Harlan: The point I wanted to get at was this, did the railroad company actually receive cash capital and with that build the road, or was the road built under some contract by the lumber company and its stockholders, and then turned over to the railroad in payment of the stock that was issued?

Mr. Rosborough: No, it was understood that—the railroad was chartered before the road was constructed at all, and $50,000 of that stock was subscribed proportionately to begin with, with the stockholders of the company.

Commissioner Harlan: So the railroad was built by the railroad company?

Mr. Rosborough: The railroad was actually built by the railroad company.

1067 Commissioner Harlan: And what was the cost of the entire road?

Mr. Rosborough: Well, according to the annual reports that you have, there was only 12 miles of road finished when that report went in, and it cost $166,183.84.

Commissioner Harlan: Well, what is the capital stock of the railroad?

Mr. Rosborough: $250,000.

Commissioner Harlan: Is that issued?

Mr. Rosborough: There has been $50,000 of it issued.

Commissioner Harlan: Has it any bonds outstanding?

Mr. Rosborough: No, sir.

Commissioner Harlan: Any indebtedness?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: To what amount?

Mr. Rosborough: Well, the annual report shows; I haven't it exactly.

Commissioner Harlan: It is simply a current account or indebtedness for the construction of the road?

Mr. Rosborough: The Caddo & Choctaw Railroad Company owes the Caddo River Lumber Company for all over and above the difference of the money that was paid in and what they

1068 have earned—they owe the difference to the Caddo Lumber Company.

Commissioner Harlan: Can you just say in round numbers what that amount is?

Mr. Rosborough: I can get at it reasonably close—no, I can not give that to you now, but I can furnish it to you if you like a little later.

Mr. McRea: It is the difference between the cost of the road and $50,000.

Mr. Rosborough: Well, plus the earnings that the road earned; it is $50,000 plus the earnings, and deduct that from the cost of the road.

Examiner Burchmore: The profit from operation each year is credited on the indebtedness to the lumber company.

Mr. Rosborough: Yes, that is the idea.

Commissioner Harlan: What equipment has the Caddo & Choctaw?

Mr. Rosborough: It has at present one locomotive and 18 cars.

Commissioner Harlan: What rails have you used there?

Mr. Rosborough: 55 pound steel rail.

Commissioner Harlan: Is there any ballast on the road?

1069 Mr. Rosborough: Why, only the ballast that was taken out of the dumps. Our country is a rocky country and slaty, and the slate makes a good ballast, and it has been all surfaced up with this style of ballast.

Commissioner Harlan: Standard gauge?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: Does it operate the logging roads also that are attached to it?

Mr. Rosborough: The Caddo & Choctaw?

Commissioner Harlan: Yes.

Mr. Rosborough: The lumber company build these spurs and pay for the ties that are under them, and pay for all the construction of the spurs, and the Caddo & Choctaw operate over them.

Commissioner Harlan: The lumber company has no equipment then?

Mr. Rosborough: Not a bit, no, sir.

Commissioner Harlan: Who owns the forest into which the logging roads run?

Mr. Rosborough: Well, there is a greater part of it owned by the Caddo River Lumber Company, but the Caddo River Lumber Company's holdings is a very narrow strip ranging from one

1070 to two miles wide the first 12 miles, and then it branches out and gets to be four or five miles wide, and the territory adjoining their holding is held by other parties.

Commissioner Harlan: What is the total length of the Caddo & Choctaw Road?

Mr. Rosborough: 14 miles; it was on the report we made to you 12 miles, though.

Commissioner Harlan: Do you haul any logs over the logging roads and into Rosboro for any shippers other than the Caddo River Lumber Company?

Mr. Rosborough: No logs. We haul other forest products.

Commissioner Harlan: Over the logging roads?

Mr. Rosborough: No, over the main line.

Commissioner Harlan: That is the point I want to get at. Have you any mills on the main line?

Mr. Rosborough: Not exactly on the main line. We have several

small mills off the main line, but the price of lumber has been so low of late years they have not been doing very much business. They could not, they had to haul it to our road to ship it.

Commissioner Harlan: Are they stave mills?

1071 Mr. Rosborough: No, lumber mills, these small jerkwater sawmills.

Commissioner Harlan: And they haul the lumber to your line?

Mr. Rosborough: They haul their rough lumber to our line, and it is shipped from there.

Commissioner Harlan: Do you plane it?

Mr. Rosborough: No—well, we have bought some from them, but do not make a practice of it.

Commissioner Harlan: How far are their mills from the line?

Mr. Rosborough: They vary all the way from one to five miles.

Commissioner Harlan: And they haul their rough lumber to the track by wagons?

Mr. Rosborough: Yes.

Commissioner Harlan: Do they lumber in the forests of the Caddo River Lumber Company?

Mr. Rosborough: No.

Commissioner Harlan: They have their own holdings?

Mr. Rosborough: Yes.

Commissioner Harlan: But they are not now in operation?

Mr. Rosborough: Well, we hauled a little stuff this month

1072 out there; they are not operating very freely, no, sir.

Commissioner Harlan: Is there any other traffic that you move; any cotton or farm produce?

Mr. Rosborough: We have not handled any cotton up to the present. We have handled some stave bolts and staves.

Commissioner Harlan: It is rather small traffic, I infer.

Mr. Rosborough: Yes, sir; we handle all traffic that is offered us, and encourage traffic in carload lots.

Commissioner Harlan: Not less than carload lots?

Mr. Rosborough: We have not handled anything to speak of in less than carload lots, and that which we have handled we have handled for cost.

Commissioner Harlan: Any stations on your line?

Mr. Rosborough: We are now building a first class station at Cooper. We have not any station completed at present.

Commissioner Harlan: For what use are you building that?

Mr. Rosborough: We have a town that is located at Cooper.

Commissioner Harlan: Is that sort of a company town?

Mr. Rosborough: No, it is not really on the company's land; it is on an individual's land, and we——

Commissioner Harlan: Is there a post office there?

Mr. Rosborough: There is a post office applied for there.

Commissioner Harlan: How many people live there?

1073 Mr. Rosborough: This town of Cooper is two and one-half miles from a town by the name of Daisy, that is inland, and we could not reach Daisy with our railroad on account of the topography of the country, and we therefore stopped at Cooper and ex-

pect for the Daisy merchants to move to Cooper. In Daisy there are about 500 people.

Commissioner Harlan: Well, are they moving?

Mr. Rosborough: They are. I do not know that they will all move, but the principal merchants are moving.

Commissioner Harlan: And in contemplation of that movement you are erecting the station?

Mr. Rosborough: We are erecting a station there that is right on the same lines of those of the Iron Mountain, it is built on the same architecture, on a concrete foundation, and is to be a permanent building.

Commissioner Harlan: Have you any passenger trains?

Mr. Rosborough: We have not at present, no. We expect to put on——

Commissioner Harlan: Have you any mail or express?

Mr. Rosborough: No; we have made application for a mail contract to Cooper.

Commissioner Harlan: How much of general merchan-
1074 dise, just in general terms, do you move?

Mr. Rosborough: Well, only a very small percentage; in fact we have made no charge for handling local shipments of any kind, or passengers; our charges have been for carload lots only. We were not equipped to handle local shipments or passengers, and for that reason have made no charge for them.

Commissioner Harlan: So that at this time you are practically moving no traffic except for the lumber company?

Mr. Rosborough: Yes, sir; we are moving any traffic in carload lots for outsiders, but no small shipments.

Commissioner Harlan: What traffic is offering in carload lots? I understood you to say these mills were not running.

Mr. Rosborough: Well, staves and stave bolts from the forests in, and fertilizers and foods and such stuff going out. Cotton seed meal and cake in carload lots.

Commissioner Harlan: What is the extent of that traffic?

Mr. Rosborough: It is a very small percentage.

Commissioner Harlan: The staves come from what forest?

Mr. Rosborough: They do not come off from ours.

Commissioner Harlan: Is the railroad company paying any dividends?

1075 Mr. Rosborough: No, sir.

Commissioner Harlan: Paying interest on its indebtedness?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: At what rate?

Mr. Rosborough: Six per cent.

Commissioner Harlan: What was its total tonnage last year?

Mr. Rosborough: I have an estimate of that. This is not absolutely authentic, but I figured that our tonnage for last year was about 150,000 tons.

Commissioner Harlan: And of that, what amount came from and went to the Caddo River Lumber Company?

Mr. Rosborough: Well, a very large percentage of it.

Commissioner Harlan: Well, 95 per cent?

Mr. Rosborough: I would say perhaps about 95 per cent; I could not get at it any closer than that. Now, of course the stuff, the lumber going out from the Caddo River Lumber Company's mill, you included that in the Caddo River lumber?

Commissioner Harlan: Yes.

Mr. Rosborough: Yes. That was logs coming into the mill and lumber going out, principally.

Commissioner Harlan: Total tonnage?

Mr. Rosborough: Yes, sir.

1076 Commissioner Harlan: The mill as it is at Rosborough—how is it located with reference to the tracks of the regular carrier there, the Iron Mountain, is it not?

Mr. Rosborough: It is about a quarter of a mile, I should say, from the Iron Mountain station.

Commissioner Harlan: Well, to the Iron Mountain tracks, how close is it?

Mr. Rosborough: The Iron Mountain tracks are at the Iron Mountain station.

Commissioner Harlan: There is no Iron Mountain spur track running over to the mill?

Mr. Rosborough: Well, the planer track was graded and tied by the Caddo & Choctaw Railroad; the Iron Mountain people then furnished the steel and fastenings and laid the track and charged us up with it, and after we delivered to them a certain number of cars they refunded to us what was charged.

Commissioner Harlan: For the labor?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: How far is your planing mill from the saw mill?

Mr. Rosborough: About 200 feet or a little over.

Commissioner Harlan: And then your planing mill is on

1077 this spur track your have just referred to?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: Is not that for all intents and purposes an Iron Mountain spur track?

Mr. Rosborough: Well, I have given you the exact record of it.

Commissioner Harlan: Well, is not that the general basis on which the Iron Mountain builds all spur tracks to industries?

Mr. Rosborough: Well, I could not answer that intelligently.

Commissioner Harlan: Your manufactured lumber is loaded into cars on that track?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Was that siding constructed under the standard form of side track agreement, written contract?

Mr. Rosborough: I do not know what that is.

Examiner Burchmore: Did you have a contract?

Mr. Rosborough: We signed a contract regarding that side track.

Commissioner Harlan: Have you that here?

Mr. Rosborough: No. I presume likely you have it in
1078 your records.

Commissioner Harlan: I think possibly we have.

Mr. Rosborough: Yes, sir; I haven't it.

Commissioner Harlan: If we haven't it, you can furnish us a copy?

Mr. Rosborough: I suppose we could get a copy; yes, sir.

Commissioner Harlan: Well, we will ask the Iron Mountain to furnish it. Now, what rates do you have in effect for the movement of lumber, and what is their application with reference to the logs?

Mr. Rosborough: I do not quite get your question.

Commissioner Harlan: Just tell us about your rates on lumber, what the lumber company has to pay.

Mr. Rosborough: What the lumber company has to pay?

Commissioner Harlan: Yes. On what rate does it get its manufactured lumber to market; is it a milling in transit rate?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: Just describe the application of that rate to a shipment of logs from back in the forest.

Mr. Rosborough: Well, the Caddo & Choctaw Railroad gets fifty cents a thousand for hauling the logs in, plus a four cent division.

1079 Commissioner Harlan: That is, hauling the logs in over the logging road to the mill at Rosboro?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: Fifty cents a thousand feet in the logs?

Mr. Rosborough: Fifty cents a thousand feet in the logs, plus a four cent division that they receive from the Iron Mountain Road.

Commissioner Harlan: On the manufactured product out?

Mr. Rosborough: On the manufactured product out.

Commissioner Harlan: What is the earnings at fifty cents a thousand feet on an ordinary logging car from the forest to the mill?

Mr. Rosborough: That is about $2.50. We put about 5,000 feet of logs on one of our logging cars, on an average; our logging cars are standard flat cars, 40 feet long, 60,000 pounds capacity.

Commissioner Harlan: And for that compensation you haul the logs from out in the forest over the logging road and then over your main line to the mill?

Mr. Rosborough: Plus the four cent division we get: the fifty cents would not compensate us, but with that four cent division it makes it possible for the logging road to live.

1080 Commissioner Harlan: At the mill, then, the logs are sawed and then they pass from the saw mill to the planing mill by trucks, I suppose?

Mr. Rosborough: The logs are dumped off into the pond, and are taken up in a slip to the mill, manufactured into lumber and taken back to the yard, and part to the dry kiln and part to the yard, and after it is in condition it is taken through the planing mill and loaded on the cars.

Commissioner Harlan: And then it goes through on the through rate, and you get four cents out of that?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: The Caddo & Choctaw began operation in July, 1907?

Mr. Rosborough: The Caddo & Choctaw Railroad was incorporated April 19, 1907, and began construction at once.

Examiner Burchmore: Does it own the right of way on which it operates?

Mr. Rosborough: It owns all the right of way which has been purchased outside. The transfer of the title has never been made from the Caddo River Lumber Company to the Caddo & Choctaw Railroad Company for the right of way that it actually owns.

1081 The idea was to finish the road to Cooper and then make one transfer of the whole title on a basis of $5.00 per acre.

Examiner Burchmore: There is no lease of that road?

Mr. Rosborough: Just an agreement to that effect. The agreement is on that basis.

Examiner Burchmore: The railroad company pays nothing to the lumber company for the use of the land in the interim?

Mr. Rosborough: No; it is understood they are to buy that land at $5.00 per acre, all the land, 100 foot right of way from the mill out to Cooper.

Examiner Burchmore: What proportion of the right of way was furnished by the Caddo River Lumber Company?

Mr. Rosborough: Practically all of it; probably a mile, a mile and a half or two miles of that, that the Caddo & Choctaw Railroad Company has bought.

Commissioner Harlan: Who owns the right of way from this spur track to the planing mill to the Iron Mountain main line?

Mr. Rosborough: That is owned by the Caddo River Lumber Company.

Examiner Burchmore: If you had signed a standard form of switch track agreement covering that I think it is probable

1082 that the title under that agreement would rest in the Iron Mountain. Is not that the usual provision?

Commissioner Harlan: It differs on different roads, and will have to be ascertained.

Examiner Burchmore: I understood you to say the Iron Mountain furnished the steel rails out of which a part of this road was built.

Mr. Rosborough: No; part of it was bought new. We bought our rail right from the rolling mills new, 55 pound steel. I told you that the Iron Mountain furnished the rail for the spur track.

Examiner Burchmore: You stated, though, that the Caddo & Choctaw furnished the steel rail for this private logging road.

Mr. Rosborough: The Caddo & Choctaw owns the rail on the logging road. The Caddo River Lumber Company owns no rails or railroad equipment or fastenings whatever, and have never spent a dollar for equipment.

Examiner Burchmore: Does the lumber company pay any rental for the use of that steel rail?

Mr. Rosborough: No, the rails all belong to the railroad com-

pany. The lumber company pays them fifty cents a thousand.

1083 Commissioner Harlan: The logging roads are moved from time to time?

Mr. Rosborough: When the timber is taken off, the track is moved ahead.

Commissioner Harlan: Is that done by the railroad company?

Mr. Rosborough: No, that is done by the Caddo River Lumber Company. They estimate the amount of timber that is on a spur; they have all that estimated, and they charge off so much per thousand to cover the cost of constructing that spur and taking it up.

Commissioner Harlan: And they do that?

Mr. Rosborough: They do that; yes, sir.

Commissioner Harlan: The railroad does not do it at all?

Mr. Rosborough: The railroad has absolutely nothing to do with it.

Commissioner Harlan: The railroad owns the ties and rails and operates it.

Mr. Rosborough: The railroad does not own the spur ties, only the main line ties.

Comm. Harlan: It only owns the rails?

Mr. Rosborough: Yes.

Examiner Burchmore: If the Caddo & Choctaw owns the
1084 steel rails composing the private lumber road, and also operates the trains over that lumber road, why is not that private lumber road considered a part of the railroad system?

Mr. Rosborough: Because the mill company builds these tracks. They build these tracks and the railroad company gets the logs off of them and brings them into the mill.

Examiner Burchmore: Is there any particular reason why these private roads reaching into the forest are considered private roads and are not considered as part of the system of the Caddo & Choctaw Railroad as a common carrier?

Mr. Rosborough: You see, our charter provides for the main line and does not provide for the spurs off of it. Our spurs are short. The longest we have up to the present time is only about three miles long.

Examiner Burchmore: Do you operate a regular train service?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Any time tables?

Mr. Rosborough: No; there is no time table.

Examiner Burchmore: How many trains daily?

Mr. Rosborough: One train each way.

Examiner Burchmore: Does that train make connections with the Iron Mountain passenger trains?

Mr. Rosborough: No; it leaves the mill at 6:30 and goes
1085 back about 5:30.

Examiner Burchmore: Does it carry any passengers at the present time?

Mr. Rosborough: We permit passengers to ride on it free of charge at their own risk.

Examiner Burchmore: It is contemplated to establish a passenger service?

Mr. Rosborough: We expect to have a passenger and mail service in the next 60 days.

Examiner Burchmore: You handle less than carload freight without charge to the public?

Mr. Rosborough: We do to all that is offered us.

Examiner Burchmore: Does that less than carload freight come to you under through billing from the Iron Mountain?

Mr. Rosborough: No, the only freight that we have taken in that way has been brought by the people living out on our line from various concerns and shipped out.

Examiner Burchmore: Does the Iron Mountain agent at Rosborough ever tender to your trainmen package shipments to be taken out and delivered to shippers along your line?

Mr. Rosborough: He never has to my knowledge.

Examiner Burchmore: You estimated the tonnage taken
1086 last year as 150,000 tons. For the previous fiscal year our records would indicate that the tonnage was about 107,000 tons.

Mr. Rosborough: Well, we ran the mill day and night part of the past year.

Examiner Burchmore: That is a substantial increase in your tonnage?

Mr. Rosborough: Yes.

Examiner Burchmore: For the preceding fiscal year, out of that 107,000 estimated total tonnage of your road, our records indicate that 106,875 tons, that is, all but 50 tons, was furnished by the Caddo River Lumber Company; that is a little in excess of 99 per cent. In your opinion, are those figures accurate for the preceding fiscal year?

Mr. Rosborough: We keep our records very accurately, and I think you can reasonably count on anything we sent you in the way of records as being correct.

Examiner Burchmore: There has been, then, a fifty per cent increase, substantially, in your total tonnage for the present fiscal year over the preceding fiscal year. Has there been a similar increase in the tonnage offered by the public, or a greater increase?

1087 Mr. Rosborough: I could not answer that intelligently.

Examiner Burchmore: In other words, for the year ending June 30, 1910, was 99 per cent of your traffic handled for the controlling interests?

Mr. Rosborough: I could not answer that.

Examiner Burchmore: Does the Iron Mountain Railroad set the empty cars at your mill for loading the lumber?

Mr. Rosborough: No, the Caddo & Choctaw set all the cars and do all the switching.

Examiner Burchmore: Set them back and switch them, and all?

Mr. Rosborough: Yes.

Examiner Burchmore: Where is the bill of lading issued and by whom?

Mr. Rosborough: It is issued by the Caddo & Choctaw Railroad Company.

Examiner Burchmore: At its office in Rosboro?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: When is it issued?

Mr. Rosborough: It is issued when the cars are loaded.

Examiner Burchmore: With finished lumber?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Where is the bill of lading dated
1088 as to point of origin?

Mr. Rosborough: Spears, Arkansas.

Examiner Burchmore: Then the bill of lading is issued for a carload of lumber as originating at Spears?

Mr. Rosborough: Yes.

Examiner Burchmore: But is actually issued when that carload has just been loaded at the mill in Rosboro?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Do you issue any way bills?

Mr. Rosborough: Yes.

Examiner Burchmore: Where do those way bills read from?

Mr. Rosborough: From Spears.

Examiner Burchmore: And they show your company as the carrier up to Rosboro?

Mr. Rosborough: They show the Caddo & Choctaw Railroad Company as delivering this stuff to the Iron Mountain at Rosboro.

Commissioner Harlan: Do the railway employees load or unload the cars or participate in the loading or unloading?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: At both ends?

Mr. Rosborough: Yes, sir.

1089 Examiner Burchmore: Do you receive a salary as an officer of the railroad company?

Mr. Rosborough: No.

Examiner Burchmore: Do any of the officers of the railroad company receive salaries?

Mr. Rosborough: Yes.

Examiner Burchmore: What ones?

Mr. Rosborough: The auditor and traffic manager.

Examiner Burchmore: Those are two different persons?

Mr. Rosborough: That is one person.

Examiner Burchmore: Who is the traffic manager today?

Mr. Rosborough: O. H. Helwig.

Examiner Burchmore: Is he an officer of any other tap line?

Mr. Rosborough: I think perhaps he is.

Examiner Burchmore: He seems to be the traffic manager also of the Prescott & Northwestern, of Prescott, Arkansas.

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Any relation between that company and your company?

Mr. Rosborough: None other than that part of the stockholders

of the Ozan Land & Lumber Company are stockholders in the Caddo River Lumber Company.

1090 Examiner Burchmore: Do you receive any interstate passes over the Iron Mountain?

Mr. Rosborough: Yes, sir.

Examiner Burchmore: Over any other railroad?

Mr. Rosborough: One other.

Examiner Burchmore: What railroad?

Mr. Rosborough: The Chicago & Alton.

Examiner Burchmore: Do the other officers, or any of them——

Mr. Rosborough: I can only answer for myself.

Examiner Burchmore: You do not know whether the other officers receive passes?

Mr. Rosborough: No, I have never seen any.

Examiner Burchmore: Do you actually use those passes?

Mr. Rosborough: I have never used the Chicago & Alton; I have the Iron Mountain.

Examiner Burchmore: Does the Caddo & Choctaw Railroad Company issue any passes?

Mr. Rosborough: It has not up to the present.

Examiner Burchmore: What is the basis of the rates applied on lumber from points on your line; that is, does the junction line rate apply back to points on your line?

Mr. Rosborough: I do not understand your question. Give it to me a little differently.

1091 Examiner Burchmore: What is the rate published by the Iron Mountain on lumber from its station at Rosboro to St. Louis?

Mr. Rosborough: Eighteen cents.

Examiner Burchmore: What is the joint rate applying from Spears?

Mr. Rosborough: Eighteen cents.

Examiner Burchmore: It is the same rate?

Mr. Rosborough: Yes.

Examiner Burchmore: And that is true of all destinations, practically?

Mr. Rosborough: It is, so far as I know.

Examiner Burchmore: You receive a uniform division of four cents per 100 pounds?

Mr. Rosborough: Yes, sir—well, I think that there are some few points in Oklahoma on the Rock Island Road perhaps where there is a two cent division.

Examiner Burchmore: Is there any lumber traffic on which you do not receive a division?

Mr. Rosborough: We do not receive any for Arkansas.

Examiner Burchmore: What earnings do you receive on a car shipped in Arkansas?

1092 Mr. Rosborough: We have a local tariff of four cents per 100 pounds, the Arkansas tariff. I have it in my pocket, if you would like it.

Examiner Burchmore: You actually charge that on that lumber?

Mr. Rosborough: Anything we ship to Arkansas, yes, sir.

Commissioner Harlan: What is the relation between the Caddo River Lumber Company and the other company to which you have just referred?

Mr. Rosborough: Well, the interests are not identical, by any means. More than half of the stock owned by the Caddo River Lumber Company has no connection with the Ozan Lumber Company.

Commissioner Harlan: What is the relation between the Prescott & Northwestern and the Caddo River Lumber Company?

Mr. Rosborough: The same as there is between the two mills, I suppose. They have nothing in common at all.

Commissioner Harlan: There simply happens to be stockholders in both companies that are the same?

Mr. Rosborough: Yes, sir, but it is not the same capital at all.

Commissioner Harlan: It is not directed by any holding
1093 company?

Mr. Rosborough: No.

Commissioner Harlan: The policies of the two companies have no relation to each other?

Mr. Rosborough: No, they are absolutely different. I have not a penny of stock in the Ozan Lumber Company or the Prescott & Northwestern.

Commissioner Harlan: Not interested in its policy?

Mr. Rosborough: Not a particle, and have nothing to do with it.

Examiner Burchmore: We have not the figures here for the last fiscal year ending June 30, 1910.

Mr. Rosborough: Well, they have been furnished. It was a little late on account of my being absent.

Examiner Burchmore: Well, for the fiscal year ending June 30, 1909, the operating revenues of your company were apparently $19,660.60, on traffic supplied by the Caddo River Lumber Company, $25 on other traffic, and $2.96 of miscellaneous revenue, making $19,688.62 as the total revenue. The total operating expenses were but $6,924.40. This leaves a net revenue of $12,764.22, which was carried to surplus, according to your report.

Mr. Rosborough: Yes, sir, that is true.

1094 Examiner Burchmore: That represents approximately the profit from the operation of the road?

Mr. Rosborough: Yes.

Examiner Burchmore: Is the profit for the year ending June 30, 1910, substantially the same?

Mr. Rosborough: I will give it to you.

Examiner Burchmore: Give the figures.

Mr. Rosborough: Yes, sir. The net, after taxes and everything has been paid, is $12,167.29.

Examiner Burchmore: That is, excluding any interest payments?

Mr. Rosborough: That is excluding any interest payments, yes, sir.

Examiner Burchmore: And that is on a total operating revenue of what amount?

Mr. Rosborough: $24,550.53.

Commissioner Harlan: Mr. McRae, have you any questions?

Mr. McRae: Will you state the grade upon which your road is built?

Mr. Rosborough: Practically on a one per cent grade. There were two short places in the road that we have had to build on
1095 a two per cent grade. We try to maintain a one per cent grade.

Mr. McRae: In building this road, did you build it with a view of making it a permanent road?

Mr. Rosborough: Yes, sir, we did.

Mr. McRae: How far is it from the present western terminus of that road, or southwestern terminus, to the northwestern terminus of the Prescott & Northwestern?

Mr. Rosborough: Well, here is only a distance—I don't know exactly, but I should not suppose there was over six or seven miles distance.

Mr. McRae: How far to the eastern terminus of the De Queen & Eastern?

Mr. Rosborough: I think about 20 miles.

Mr. McRae: How far is the western terminus at Rosborough from the eastern terminus of the Glenwood & Hot Springs?

Mr. Rosborough: Four miles.

Mr. McRae: How far is it from Glenwood to Hot Springs?

Mr. Rosborough: About 35 miles.

Mr. McRae: Is it practicable to build a railroad through there to Hot Springs?

Mr. Rosborough: Yes, sir.

Mr. McRae: Is it practicable to extend your road west or
1096 southwest to connect with these other roads I have mentioned?

Mr. Rosborough: Yes.

Mr. McRae: In constructing this road, you have built it on this grade, standard gauge, and equipped it with 56 pound steel with a view of utilizing it as a railroad?

Mr. Rosborough: Our steel is 55 pound.

Mr. McRae: Your steel is 55 pound?

Mr. Rosborough: Yes, sir, but that was the intention.

Mr. McRae: Is the country through which you have built this 14 miles of road such as can be developed, and is there agriculture and other interests there to be served by a railroad?

Mr. Rosborough: Yes, sir, on both sides of it.

Mr. McRae: Have you built your road only up to your timber, or have you built it into your timber, and if so, how far into the timber?

Mr. Rosborough: Well, we are getting our logs now from about eight miles from the mill and the road is completed 14 miles.

Mr. McRae: What is the object of building your road beyond the point where you get your logs?

Mr. Rosborough: To increase the revenue of the road, and
1097 to build up the country, and satisfy the people.

Mr. McRae: Serve the people that you speak of at Daisy, and are there other communities?

Mr. Rosborough: Yes.

Mr. McRae: How about Kirby?

Mr. Rosborough: There is a town of Kirby.

Mr. McRae: And is there a prosperous agricultural community within two or three miles of the railroad?

Mr. Rosborough: Yes, sir.

Mr. McRae: Who have assured you of business if you would equip your road for commercial purposes?

Mr. Rosborough: Yes.

Mr. McRae: And you have built it as rapidly as has been practicable under the conditions since you incorporated?

Mr. Rosborough: Yes, as fast as we could get the money.

Mr. McRae: You incorporated about the time the panic began?

Mr. Rosborough: Yes.

Mr. McRae: And had a pretty hard time to get money?

Mr. Rosborough: Yes.

Mr. McRae: And you have put all the money you could into it, and have built it as rapidly as you could, with an idea
1098 of making a permanent road?

Mr. Rosborough: Yes.

Mr. McRae: No idea of abandoning it?

Mr. Rosborough: No, no idea whatever. It is chartered under the State of Arkansas, and we could not abandon it if we wanted to.

Mr. McRae: You feel that if you get the usual divisions allowed a railroad you will make a financial success?

Mr. Rosborough: Yes, sir. Our earnings last year showed a little over six per cent earnings.

Mr. McRae: Is your road assessed for taxes as the Fort Smith & Gurdon branch of the Iron Mountain is?

Mr. Rosborough: Yes, sir.

Mr. McRae: Does the company report to the State Commission?

Mr. Rosborough: Yes.

Mr. McRae: Do you make your reports annually and monthly to the Interstate Commerce Commission?

Mr. Rosborough: Yes.

Mr. McRae: Have you the certified copy from the record of the Railroad Board of Commissioners with you?

Mr. Rosborough: It is in the hotel. I haven't it with me here.

Mr. McRae: Will you file that with the stenographer as
1099 an exhibit to your deposition?

Mr. Rosborough: Yes, sir.

Commissioner Harlan: What does that show?

Mr. McRae: It is a certificate of the incorporation by the Railroad Board of the State.

Commissioner Harlan: It is proffered to show that it is regarded by the State Commission as a common carrier.

Mr. McRae: Yes.

Commissioner Harlan: It need not be filed, but it will be understood that that does show that it was authorized by the State Commission to act as a common carrier in the State of Arkansas.

Mr. McRae: Do you keep the books of your railroad separate from those of the lumber company?

Mr. Rosborough: Yes.

Mr. McRae: And your bank account the same way?

Mr. Rosborough: Yes, sir, we have separate bank accounts.

Mr. McRae: Do you publish your tariff?

Mr. Rosborough: Yes.

Mr. McRae: And concur in the tariffs of the road with which you connect?

Mr. Rosborough: Yes, sir.

Mr. McRae: And in which you are named as a party?

1100 Mr. Rosborough: Yes.

Mr. McRae: Have you stated the number of employees you have in the railroad company?

Mr. Rosborough: We now have about 25, but when our last year's report was put in, we had about 15.

Mr. McRae: You say you have made application for carrying the mail. Have there been applications from the people there for the appointment of post offices, and if so, how many between Rosboro and Cooper?

Mr. Rosborough: Two post offices.

Mr. McRae: You say you have arranged for the laying out and platting of a town at Cooper?

Mr. Rosborough: Yes, sir.

Mr. McRae: How far have you progressed with that?

Mr. Rosborough: We have had an abstract—lands have been abstracted and a depot has been under construction.

Mr. McRae: You spoke of 50 cents on the log road. When you refer to the log road, you mean the tram road; that is, the spur. That is not the Caddo & Choctaw Railroad?

Mr. Rosborough: Well, I really mean that the mill company pays in addition to the divisions 50 cents per thousand for the train service.

1101 Mr. McRae: Is that train service over the Caddo & Choctaw incorporated line, or for hauling it over the spurs?

Mr. Rosborough: Well, they can construe that just as they choose. That is what they get out of it.

Mr. McRae: You go out over the spurs and bring it in, and charge 50 cents?

Mr. Rosborough: Yes.

Mr. McRae: Is it worth 50 cents to haul it over the spurs?

Mr. Rosborough: Yes, sir.

Mr. McRae: You said you have one engine. Have you any orders for another engine?

Mr. Rosborough: Yes, sir, we have another order in that has been in since last July for a fully equipped engine that is to cost us between $12,000 and $13,000, equipped with headlight and all modern appliances.

Mr. McRae: I believe that is all.

Commissioner Harlan: How many acres of timber does the Caddo River Lumber Company own?

Mr. Rosborough: In the neighborhood of 30,000 acres.

Commissioner Harlan: Has it any timber rights in addition to that?

Mr. Rosborough: You mean timber on land that does not
1102 belong to the company?

Commissioner Harlan: Yes.

Mr. Rosborough: Yes, there is some of that.

Commissioner Harlan: What is the extent of that?

Mr. Rosborough: I don't know. It is all mixed up together, it is all told in this 30,000 acres.

Mr. McRae: Is it not true that the majority of the Stock of the Caddo River Lumber Company and also a majority of the stock of the Caddo & Choctaw Railroad Company is owned by people who are not in any way connected with the Prescott & Northwestern Railroad Company?

Mr. Rosborough: Yes, sir, that is absolutely true.

Mr. McRae: From whom did you buy the first timber holdings for the Caddo River Lumber Company?

Mr. Rosborough: From the Ozan Lumber Company.

Mr. McRae: And in that negotiation the stockholders of that company took a certain per cent of the stock for the purchase money; is not that true?

Mr. Rosborough: That is true?

Mr. McRae: And in that way they are interested?

Mr. Rosborough: Yes.

1103 Mr. McRae: They have no control over it?

Mr. Rosborough: No, sir; they have no control over it, or management.

Mr. McRae: And your company has no control over the management connected with its line or the mill operated by that management?

Mr. Rosborough: No.

Commissioner Harlan: Judge Cowan, have you any questions?

Mr. Cowan: Are all these logging roads projected to Hot Springs practicable as railroad propositions?

Mr. Rosborough: Well——

Mr. Cowan: There have been a good many gentlemen testifying and it seems everybody intends to build a road to Hot Springs, and I am curious to know whether there is traffic there to build all these roads into Hot Springs.

Mr. Rosborough: Well, the Hot Springs people offered $100,000 for a road running in there from our country.

Mr. Cowan: Well, I was speaking of the traffic; that is all.

Mr. Rosborough: Well, I guess that is sufficient, is it not, to know that they have wanted one coming in from the West?

1104 Mr. Cowan: That is a sufficient answer, no doubt. You are handling pine timber altogether, are you?

Mr. Rosborough: Well, no; the railroad company hauls staves and stave bolts, and that is oak.

Mr. Cowan: Well, your lumber company is engaged in the manufacture of pine?

Mr. Rosborough: They are manufacturing pine except with the exception they do saw a little oak for bridge timbers for the Caddo & Choctaw Railroad Company.

Mr. Cowan: The tariff rates on the logs at 50 cents a hundred, applies over all timber spurs?

Mr. Rosborough: Well, I think——

Mr. Cowan: You charge 50 cents a thousand. I do not know as I understand it exactly, but I suppose it means for the entire haul from the spurs where they get the logs on the car up to the mill.

Mr. Rosborough: We get a 4 cent division, you know.

Mr. Cowan: I understand that, but I am speaking of the 50 cents on the logs. What service does that pay for, the entire service from the stump?

Mr. Rosborough: No, we would not be satisfied with 50 cents a thousand.

1105 Mr. Cowan: Well, in so far as it pays for anything, it pays partly for that service from the stump to the mill?

Mr. Rosborough: Well, the railroad equipment hauls the logs off the spurs to the main line, and from the main line they take it on into the mill and——

Mr. Cowan: What does the 50 cents pay for, or does it pay for both?

Mr. Rosborough: It certainly does not pay for both.

Mr. Cowan: It is applied in the direction of which movement?

Mr. Rosborough: I will tell you how we figure that. We figure that the railroad company gets for their service $1.50 per thousand. We figure that the four cents brings them in $1.00 and the 50 cents brings them in 50 cents, and we figure they get $1.50 a thousand through that channel.

Mr. Cowan: But you do not try to segregate the service, one part performed by you where the logging road connects with the railroad tracks, and the other up to the mill, you do not try to segregate the two services on the logs?

Mr. Rosborough: Well, the 50 cents practically covers the spur work, hauling it over the spurs, it is certainly worth 50 cents to haul logs over the spur.

1106 Mr. Cowan: You keep no accounts which show the separation of the service?

Mr. Rosborough: No, we do not.

Mr. Cowan: Is any of that refunded?

Mr. Rosborough: No, sir, not a penny of it.

Mr. Cowan: So that the railroad company is logging your mill, and you are paying them 50 cents a thousand feet for that, and the lumber rate you consider pays from the junction point when the lumber is shipped out, four cents, is that the way of it?

Mr. Rosborough: I think so, yes, sir.

Mr. Cowan: You do not connect with any other railroad except the Iron Mountain?

Mr. Rosborough: No, sir.

Mr. Cowan: Are you acquainted with the situation of saw mills

in Arkansas generally, with respect to the way the business is handled with trunk line railroads?

Mr. Rosborough: I can only speak from our own standpoint, sir.

Mr. Cowan: Well, personally, do you know the location and situation of the saw mill industry tracks, and the trunk line tracks?

1107 Mr. Rosborough: No, I do not personally know anything about anything *about anything*, except our own business.

Mr. Cowan: Well, you find out whether other people get divisions of the rates, of course, and you want to get as good as they do?

Mr. Rosborough: Well, I find we are not getting as good as some of them, but I didn't really know it until I came to this meeting.

Mr. Cowan: Does that put you to a disadvantage?

Mr. Rosborough: Well, perhaps they are giving more service than we are. We would take more, of course, if that is what you are getting at.

Mr. Cowan: Well, does the fact that one man gets four cents and another gets six cents affect the profit of your lumber transactions?

Mr. Rosborough: Not if it costs two cents more for the other man to perform his railroad service.

Mr. Cowan: Suppose it costs the same.

Mr. Rosborough: Well, if it costs the same there might be some discrimination, but I am not able to say whether they are the same. As we extend our road, we will expect greater divisions.

1108 Mr. Cowan: Although your saw mill still remains at the junction point of the main line road?

Mr. Rosborough: Yes, sir.

Mr. Cowan: How much service do you perform in handling the lumber from your mill over to the Iron Mountain?

Mr. Rosborough: Well, that has been answered.

Mr. Cowan: Has it?

Mr. Rosborough: Yes, sir.

Mr. Cowan: All right. In regard to the ownership of stock in the railroad company, is that a beneficial thing in the way of getting money? There are no dividends paid.

Mr. Rosborough: Not a cent.

Mr. Cowan: All the earnings go to pay the interest or into surplus account, and it does not accumulate to the stockholders in the form of dividends?

Mr. Rosborough: The stockholders never have been paid a cent of the Caddo & Choctaw earnings.

Mr. McRae: All of the earnings have gone into the construction and equipment of the road?

Mr. Rosborough: Yes, sir.

Mr. McRae: This 50 cent charge, what would it cost to haul the logs from the stump where the logs are cut, after they are

1109 loaded on the car, over the spur to the line of your road? Your incorporated road? What is that service worth?

Mr. Rosborough: Well, it is certainly worth 50 cents.

Mr. McRae: When you say you get 50 cents for hauling the logs, you do not mean to say that you get any more for that service than it is worth to haul it to the line?

Mr. Rosborough: No.

Mr. McRae: But in a general way you just understand you have gotten the 50 cents?

Mr. Rosborough: Yes.

Mr. McRae: Speaking of the road through to Hot Springs, if those connections were made, what would you estimate would be the difference in time in reaching Hot Springs from north Texas and south Oklahoma over those lines instead of around by the Iron Mountain by way of Benton?

Mr. Rosborough: I have really never figured on that, from a time table standpoint, but it would certainly save a good many miles and perhaps a day's time.

Mr. McRae: What would it cost to get the log from the stump onto the car, loaded?

Mr. Rosborough: You mean from the woods, the log haul?

Mr. McRae: Yes.

1110 Mr. Rosborough: About $2.50 a thousand.

Mr. McRae: The loading in addition to the haul?

Mr. Rosborough: I do not really understand that question.

Mr. McRae: In addition to the hauling of the load, what would it cost to load the logs from the stump onto the car?

Mr. Rosborough: You mean to cut the trees in the woods, bring them to the spur lines and load them on the cars?

Mr. McRae: Yes.

Mr. Rosborough: That would cost an average of at least $2.50.

Mr. McRae: So it would cost about $5.00 a thousand, including transportation from the tree to the mill?

Mr. Rosborough: Yes.

Commissioner Harlan: Mr. Jeffery, will you furnish a copy of the spur track agreement with the Caddo & Choctaw Railroad?

Mr. Jeffery: Yes, sir.

Mr. Cowan: I would like for you to file that tariff.

Mr. Rosborough: Which tariff?

Mr. Cowan: That shows that 50 cent charge, to show where the tariff says that the tariff applies to and from.

Mr. Rosborough: There is no tariff issued on that basis.

Mr. Cowan: Well, then there is no basis for making the 1111 charge over the spur, if there is no tariff issued.

Mr. Rosborough: Well, yes, there is an agreement between the mill company and the railroad company, and the railroad company is getting credited that way each month, and their books will show it.

Mr. Cowan: But there is no tariff for that movement?

Mr. Rosborough: No, there is no tariff for that movement. We have an Arkansas tariff, which I have in my pocket, which I can leave with the Commissioner, if he wants it, but we have no tariff on that basis.

Mr. Cowan: I would like you to do that.

Mr. Rosborough: Yes.

Mr. Cowan: That part of the road called a spur built out into the timber is not incorporated as a railroad?

Mr. Rosborough: No.

Mr. Cowan: So the Arkansas tariff could not apply to that?

Mr. Rosborough: No, but the railroad equipment engines haul that; they go down on the spurs and take their cars down there, and they get these logs and bring them down to the main line.

Mr. Cowan: But there could be no legal tariff over that line as a railroad, because it is not incorporated?

1112 Mr. Rosborough: I don't know anything about that.

Commissioner Harlan: You will not undertake to answer that question.

Mr. Rosborough: I will not undertake to answer that question.

(Witness excused.)

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

1113 After Recess.

2:00 P. M.

Commissioner Harlan: Is the Elmore & Southwestern before the Commission?

(No response.)

Commissioner Harlan: The Enterprise Railway?

(No response.)

Commissioner Harlan: I thought the Enterprise Railway was represented.

Mr. Brown: The Enterprise Railway is one of the four railroads of the Southern Pine System, and I am sure it would facilitate the inquiry if that could be postponed until the other roads making up that system are present.

Commissioner Harlan: How many are there?

Mr. Brown: Four.

Commissioner Harlan: There are three of them listed here now, and we will take the other one with those three, if you are ready to go on now.

Mr. Brown: We are not quite ready to go on now, because there is some data we are expecting this afternoon with regard to the other three. That data pertains to the Enterprise Railway very largely.

1114 Commissioner Harlan: What kind of data?

Mr. Brown: Showing the contract relations and the manner of operation with respect to the mill.

Commissioner Harlan: We will set the whole group, then, for the first thing in the morning. The Greenfield & Southwestern, or Greenfield & Southeastern, possibly; it is a little obscure at this point.

(No response.)

Commissioner Harlan: The Helena, Parkin & Northern.

(No response.)

Commissioner Harlan: The Homan & Southeastern.

(No response.)

Commissioner Harlan: The Homan & Eastern Line.

(No response.)

Commissioner Harlan: The Cornie & Sheridan.

(No response.)

Commissioner Harlan: The L'Anguille River Railway.

Mr. Brown: Mr. Fry is here for that railroad, your Honor.

Mr. J. J. Coleman: Before going on with that, may I state that in the Chicago Lumber & Coal Company versus the Tioga & Southeastern, a great deal of testimony was taken in connection with tap line rates and divisions, and if your Honor pleases; we
1115 would like to ask that that be made part of the record in this case.

Commissioner Harlan: You refer to the testimony taken in New Orleans?

Mr. Coleman: I refer to the testimony taken in New Orleans and in St. Louis.

Commissioner Harlan: Well, it is my understanding that on that hearing the testimony then taken was attached, by order of the Commission, to the Star Grain & Lumber Case, and therefore that testimony will be before us in this investigation in connection with the Star Grain & Lumber case. It will be understood that that testimony will form a part of this general record.

Mr. Cowan: Before your Honor begins, I make a suggestion probably the Commission can get it easier than the attorneys can, that we apply to the Louisiana Commission for a railroad map which shows the tap lines and logging roads in Louisiana. They have an excellent map of that sort. I have seen one copy, and it will be of great advantage if we can get it in the record. I mention it now lest we forget it.

Commissioner Harlan: Commissioner Taylor of that Commission was here a day or two ago.

1116 Mr. Cowan: Mr. Barrow, the Secretary, is here

Commissioner Harlan: Is Mr. Barrow here now?

Mr. Cowan: He is not in the room.

Commissioner Harlan: We will make that application.

Mr. Cowan: On application, I have no doubt they will furnish a sufficient number of copies for the parties interested.

1117 *L'Anguille River Railway Company.*

THOMAS W. FRY was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Your name is——

Mr. Frey: Thomas W. Fry.

Commissioner Harlan: Where do you live?

Mr. Fry: St. Louis.

Commissioner Harlan: What is your business?

Mr. Fry: I am secretary of the Charles F. Luehrmann Lumber Company.

Commissioner Harlan: Is that an incorporated company?

Mr. Fry: Yes, sir, at St. Louis, Missouri.

Commissioner Harlan: Has it any relations with any railroad company?

Mr. Fry: Not directly, no, sir.

Commissioner Harlan: Have its stockholders any relation to any railroad company?

Mr. Fry: Some of the stockholders of the Luehrmann Lumber Company have stock in the L'Anguille River Railway Company.

Commissioner Harlan: Are you personally connected with the railroad company?

1118 Mr. Fry: I have some stock in it.

Commissioner Harlan: You are not an officer in it?

Mr. Fry: No.

Commissioner Harlan: Do you know anything about it?

Mr. Fry: Well, somewhat about the organization of it.

Commissioner Harlan: Is there any officer of that company here?

Mr. Fry: No.

Commissioner Harlan: Are you prepared to give us all we want about the history of that road and its organization?

Mr. Fry: Yes, sir.

Commissioner Harlan: And the details of its operations?

Mr. Fry: I think so.

Commissioner Harlan: And all about its annual reports, and things of that kind?

Mr. Fry: I will try to give you all I can.

Commissioner Harlan: Can you tell us why there is not some officer of the road here?

Mr. Fry: I do not know a thing about that, except on Saturday afternoon Mr. Luehrmann, who had intended to come down here, who is president of the road, wired me about four o'clock in the afternoon that he could not come down, and asked me

1119 to come down.

Commissioner Harlan: You think you are qualified with the necessary information to tell us about this road?

Mr. Fry: I think so; yes, sir.

Commissioner Harlan: Very well; now, tell us when that road was organized.

Mr. Fry: In 1902.

Commissioner Harlan: Under the laws of what state?

Mr. Fry: Arkansas.

Commissioner Harlan: And for what general purposes?

Mr. Fry: For hauling merchandise from the L'Anguille River to the Iron Mountain Railroad.

Commissioner Harlan: Was the road constructed at the time of the incorporation of the railroad company?

Mr. Fry: No, sir.

Commissioner Harlan: How soon afterwards was it constructed?

Mr. Fry: Immediately afterward.

Commissioner Harlan: Starting out from what point?

Mr. Fry: From a connection with the Iron Mountain, and running in a general circular direction to the L'Anguille River.

1120 Commissioner Harlan: What do you call that junction point?

Mr. Fry: That is at Marianna proper.

Commissioner Harlan: Where is Marianna on the map of Arkansas?

Mr. Fry: Right on the Helena & Winn branch of the Iron Mountain.

Mr. Cowan: That is in the hard wood district?

Mr. Fry: Yes, sir.

Commissioner Harlan: What is the length of that road?

Mr. Fry: 1.7 miles.

Commissioner Harlan: How long did it take the railroad company to construct it?

Mr. Fry: I think it was about four or five months.

Commissioner Harlan: And at what cost?

Mr. Fry: The total cost of the railroad right of way and rails, without the equipment, was a little over $13,000.

Commissioner Harlan: From whom was the right of way purchased?

Mr. Fry: From a variety of persons, and one small piece by condemnation.

Commissioner Harlan: Has it station facilities at Marianna?

Mr. Fry: That is the junction with the Iron Mountain
1121 Railroad.

Commissioner Harlan: That is not a town?

Mr. Fry: Marianna is a town, and the junction is right in part of the town; the Iron Mountain runs through Marianna.

Commissioner Harlan: Has the L'Anguille River Railroad any station of its own there?

Mr. Fry: No.

Commissioner Harlan: It joins with the Iron Mountain?

Mr. Fry: It joins with the Iron Mountain on an interchange track.

Commissioner Harlan: It does not have any station expense there at all?

Mr. Fry: No.

Commissioner Harlan: Is there any mill near its junction with the Iron Mountain?

Mr. Fry: There is one mill near there, but it does not ship on the L'Anguille River Railway. It ships on the Iron Mountain.

Commissioner Harlan: Is there any mill on the L'Anguille River Railway?

Mr. Fry: Two on the other end. One is named Deutsch, owned by the Indiana-Arkansas Lumber & Manufacturing Com-
1122 pany, and the other is River, on which the Miller Lumber Company is located, and there is a lumber yard belonging to McDonald Brothers at a point called Hilly.

Commissioner Harlan: Has the L'Anguille River Railway any equipment?

Mr. Fry: Just two locomotives.

Commissioner Harlan: No cars?

Mr. Fry: No, no cars.

Commissioner Harlan: Is there any logging railroad that joins it?

Mr. Fry: No, sir; all of the logs for the mills we ship over it are brought in by the river, and have nothing whatever to do with it.

Commissioner Harlan: Brought in on the L'Anguille River?

Mr. Fry: Yes, sir.

Commissioner Harlan: And is the mill of the Miller Lumber Company on the river?

Mr. Fry: Yes, sir.

Commissioner Harlan: How close to the rails of the L'Anguille River Railway?

Mr. Fry: They have a little spur track running right down to the river; likewise with the Indiana & Arkansas Company;
1123 they are also located on the river, and bring in all their logs by river.

Commissioner Harlan: Their logs are floated?

Mr. Fry: They are pulled up; they are floated down the St. Francis to the L'Anguille River, and pulled up by boats.

Commissioner Harlan: Those boats are operated by whom?

Mr. Fry: The lumber company.

Commissioner Harlan: And belong to them?

Mr. Fry: Yes, sir.

Commissioner Harlan: What distance are the logs floated and pulled by water?

Mr. Fry: From ten miles to about 75 miles.

Commissioner Harlan: And from forests belonging to these lumber companies?

Mr. Fry: Largely belonging to them, and from logs purchased in the open market.

Commissioner Harlan: The logs so purchased are also floated and pulled here by water?

Mr. Fry: Yes, sir.

Commissioner Harlan: Is it all hard wood?

Mr. Fry: Yes, sir, except some cypress.

Commissioner Harlan: Who furnished the capital for the
1124 construction of this railroad?

Mr. Fry: The stockholders.

Commissioner Harlan: Who are the officers?

Mr. Fry: Mr. George Luehrmann and Mr. Ed Luehrmann.

Commissioner Harlan: Is he president?

Mr. Fry: Mr. George Luehrmann is president.

Commissioner Harlan: And Mr. Ed Luehrmann?

Mr. Fry: Treasurer.

Commissioner Harlan: Who are the other officers?

Mr. Fry: Mr. Miller is vice-president and Mr. Max Miller is general manager.

Commissioner Harlan: Are they officers of the lumber company?

Mr. Fry: Mr. George Luehrmann is president of the Indiana & Arkansas Lumber Company and Mr. Ed Luehrmann is vice-president of the Luehrmann Lumber Company and Mr. Miller is president of the Miller Lumber Company and Mr. Houck the secretary of the L'Anguille River Railway is an officer, but I am not sure what officer he is, of the Miller Lumber Company.

Commissioner Harlan: What is the authorized capital stock of the company?

1125 Mr. Fry: $10,000

Commissioner Harlan: And it has expended $13,000?

Mr. Fry: On railway roadbed, and about $5,000 on equipment.

Commissioner Harlan: What about the rails?

Mr. Fry: I say, on the railroad roadbed and rails, about $13,000, and on equipment a little over $5,000.

Commissioner Harlan: Who owns that stock, the $10,000 that has been issued?

Mr. Fry: I can give you all the names of the stockholders, if you would like.

Commissioner Harlan: If you will, please, and the amounts.

Mr. Fry: I would have to refer to—I telegraphed this morning for an exact list, to see if there had been any changes in the stock book. I will have that answer this afternoon, and if you will permit me, I would like to file it afterwards.

Commissioner Harlan: Very well, that may be done. But in general, are the stockholders of the railroad company also stockholders in the Luehrmann Lumber Company?

Mr. Fry: No, sir, about half of them are.

Commissioner Harlan: And the other half are stockholders in some other lumber company?

1126 Mr. Fry: The Miller Lumber Company and the Indiana & Arkansas.

Commissioner Harlan: The mill here belongs to the Luehrmann Lumber Company?

Mr. Fry: To the Indiana & Arkansas Lumber & Manufacturing Company, and the Miller Lumber Company.

Commissioner Harlan: There are two mills?

Mr. Fry: Yes, sir.

Commissioner Harlan: Where is the mill of the Luehrmann Lumber Company?

Mr. Fry: We have no mill there. They have a mill up further in Arkansas, but not at Marianna.

Commissioner Harlan: And neither of these lumber companies have a mill on this line, owning a forest on the line?

Mr. Fry: I did not catch that.

Commissioner Harlan: Neither of these mills own any timber land along this road?

Mr. Fry: Not on the line, but on the L'Anguille River.

Commissioner Harlan: Well, you said that was 75 miles away.

Mr. Fry: From ten to 75 miles away; that is, by river; of course those distances vary on account of the river line.

1127 Commissioner Harlan: Does the Miller Company own any mill elsewhere?

Mr. Fry: I think in Louisiana, but I am not sure.

Commissioner Harlan: Have they on the lien of the Luehrmann & Western Railway?

Mr. Fry: No.

Commissioner Harlan: Has the Indiana & Arkansas Company any mill on that line?

Mr. Fry: No, sir.

Commissioner Harlan: Has the Luehrmann Lumber Company?

Mr. Fry: Yes, sir.

Commissioner Harlan: Where is that line? The Luehrmann & Western?

Mr. Fry: Running down from a point at the intersection of the Iron Mountain and the Black River, immediately north of Knobel and south of Corning.

Commissioner Harlan: The Miller Lumber Company and the Indiana & Arkansas Lumber Company own all the stock in this railroad?

Mr. Fry: No, the stockholders of those two companies own all the stock.

Commissioner Harlan: Well, I meant it in that sense.

1128 Mr. Fry: Yes, sir.

Commissioner Harlan: Have you any station at Deutsch?

Mr. Fry: We have no regular separate building; no, sir.

Commissioner Harlan: You mentioned another point near Deutsch, did you not?

Mr. Fry: Hilly and River.

Commissioner Harlan: You have not any station there, either?

Mr. Fry: No separate station.

Commissioner Harlan: Is there any community on the line of this railroad?

Mr. Fry: Other industries?

Commissioner Harlan: Any community, any population?

Mr. Fry: Well, Marianna. If you will look at the map, Marianna occupies this ground in and around here (indicating). The farther you get away from here, the farther you are away from the town.

Commissioner Harlan: That is the point of connection with the Iron Mountain, or substantially so?

Mr. Fry: Yes, sir.

Commissioner Harlan: At the other end of the track, is there any population, farming population?

1129 Mr. Fry: Right across the river, the farther you get away from the town the more farms there are.

Commissioner Harlan: Do you move any traffic for them?

Mr. Fry: A slight amount, but not a great deal, but it is growing as the ground is being opened up.

Commissioner Harlan: What was the total tonnage last year?

Mr. Fry: About 35,000 tons.

Commissioner Harlan: And of that amount, what came from these outside shippers?

Mr. Fry: I have not got that exactly in tons, but it is practically about 15 per cent outside. I will file a statement with the Commission, with your permission, giving the exact amount.

Commissioner Harlan: If you will, very well. Do you move any mail or express matter?

Mr. Fry: No.

Commissioner Harlan: Carry any passengers?

Mr. Fry: No.

Commissioner Harlan: Pay any dividends on the railroad stock?

Mr. Fry: Not yet.

Commissioner Harlan: Have you made any net profits?

1130 Mr. Fry: We have accumulated a surplus of about $8,000.

Commissioner Harlan: From the beginning in 1902 to date?

Mr. Fry: Yes, sir.

Commissioner Harlan: Have you made any expenditures out of income on the roadbed?

Mr. Fry: We have expended our surplus.

Commissioner Harlan: The surplus you have just mentioned has been expended on the improvement of the roadbed?

Mr. Fry: Yes, sir.

Commissioner Harlan: What is the character of the track there?

Mr. Fry: Circular and very hilly and a grade of about 43½ feet in the mile.

Commissioner Harlan: Is it ballasted?

Mr. Fry: As well as we can; yes, sir.

Commissioner Harlan: What kind of rail have you?

Mr. Fry: 56 and 60 pound.

Commissioner Harlan: Do the officers of the railroad company receive any salaries?

Mr. Fry: Yes, sir.

Commissioner Harlan: Will you be kind enough to state what the salaries are?

1131 Mr. Fry: The salaries of the general officers last year were $6,480.

Commissioner Harlan: Do they also receive salaries from the lumber company?

Mr. Fry: Well, neither of the two first officers receive any salaries from the Indiana & Arkansas Company, and I presume that Mr. Miller does receive some salary from his own company, but I am not sure of it.

Commissioner Harlan: This road, then, hauls only the manufactured lumber?

Mr. Fry: Yes, sir.

Commissioner Harlan: And it goes into Memphis, I suppose, largely, does it not?

Mr. Fry: No, it goes to the north central states, a majority of it.

Commissioner Harlan: Over the Iron Mountain?

Mr. Fry: Over the Iron Mountain.

Commissioner Harlan: And what kind of rates are in effect for that traffic?

Mr. Fry: The rate is 12 cents into St. Louis, and 20 cents into Chicago.

Commissioner Harlan: Of the 20 cent rate, what division
1132 does the L'Anguille River Railway receive?

Mr. Fry: Two cents.

Commissioner Harlan: And to St. Louis?

Mr. Fry: Two cents; a flat division on interstate business.

Commissioner Harlan: On all interstate business?

Mr. Fry: Yes, sir.

Commissioner Harlan: On state business, what does it receive?

Mr. Fry: Nothing.

Commissioner Harlan: Is there any state business?

Mr. Fry: Some.

Commissioner Harlan: And that is free of charge?

Mr. Fry: Free of any division from the railroad. The railroad makes an extra charge of two cents per 100 pounds.

Commissioner Harlan: But the L'Anguille River Railroad does not receive anything?

Mr. Fry: From the connecting roads, no, sir.

Commissioner Harlan: Does it receive anything from the shippers?

Mr. Fry: Two cents.

Commissioner Harlan: How many employes has the railroad?

Mr. Fry: I think about ten or eleven.

1133 Commissioner Harlan: Well, you said it only had two locomotives and has no equipment. Whose equipment is used?

Mr. Fry: The Iron Mountain.

Commissioner Harlan: And you haul it in to the mill?

Mr. Fry: Haul it in and haul it out.

Commissioner Harlan: What do these ten or eleven employees do? I do not refer to the engineer and firemen, but the others?

Mr. Fry: The trackman and——

Commissioner Harlan: Do they do any loading or unloading?

Mr. Fry: No, sir.

Commissioner Harlan: Where is the car loaded, at the planing mill?

Mr. Fry: There are two planing mills and two saw mills. Of course the planing mill products are loaded at the respective planing mills and the saw mill products at the respective saw mills, and the rough lumber is also loaded from the McDonald Lumber Company's accumulation yard.

Commissioner Harlan: The saw mill product is rough lumber?

Mr. Fry: Yes, sir. We also handled some considerable lumber from the Walstein Lumber Company which has a little mill

1134 up on the St. Francis which brought it in by boat and it was unloaded there and loaded on to cars on our road.

Commissioner Harlan: What charge did you make for that?

Mr. Fry: Two cents, except where it went through interstate, and then we did not charge anything but billed it from there.

Commissioner Harlan: There is no relation between the stockholders of that company and the railroad?

Mr. Fry: Of neither one of those companies, no, sir.

Examiner Burchmore: What companies did you state the stockholders were in who owned the stock of your line?

Mr. Fry: The stockholders of the Indiana & Arkansas and the Miller Lumber Company.

Examiner Burchmore: The mills on the line are owned by what companies?

Mr. Fry: The Miller Company and the Indiana & Arkansas.

Examiner Burchmore: The L'Anguille Lumber Company has a mill on your line?

Mr. Fry: The Miller Lumber Company now used to be the
1135 L'Anguille Lumber Company, and they changed the name a year ago.

Commissioner Harlan: They are both incorporated companies?

Mr. Fry: I think so, yes, sir.

Examiner Burchmore: All the stockholders in the Indiana & Arkansas Lumber & Manufacturing Company are also stockholders in the Miller Lumber Company; the two lumber companies have common stockholders?

Mr. Fry: No, sir; they are entirely separate and distinct.

Commissioner Harlan: Are the stockholders of the Luehrmann Lumber Company common with the stockholders of any other company?

Mr. Fry: Some of the stockholders of the Luehrmann Company own stock in the Indiana & Arkansas Company.

Examiner Burchmore: As a matter of fact, do not all the stockholders in the Indiana & Arkansas Lumber Company own stock in the Luehrmann Lumber Company?

Mr. Fry: I do not think so. One stockholder, I believe.

Examiner Burchmore: What is his holding?

Mr. Fry: About 30 or 40 per cent of the Luehrmann Lumber Company.

Commissioner Harlan: Has that been so for the last three
1136 or four years?

Mr. Fry: I think it was about four years ago.

Commissioner Harlan: Do all your answers relating to the ownership by stockholders cover the period of the last three or four years substantially?

Mr. Fry: I think so.

Commissioner Harlan: There has been no recent change of any importance?

Mr. Fry: No; there was one stockholder in the Indiana & Arkansas, I have forgotten the exact date, but I think it was about three years ago, that sold out and did not remain a holder.

Examiner Burchmore: The junction point with the Iron Mountain is known as Marianna?

Mr. Fry: Yes, sir.

Examiner Burchmore: And Deutsch is at the other end of the line?

Mr. Fry: Yes, sir.

Examiner Burchmore: You referred to Hilly and River as two stations. Are they the stations at the two mills referred to?

Mr. Fry: Deutsch is one mill, right up here, and then River and Hilly are right down here at these respective points, one is
1137 the loading point of the Miller Lumber Company and the other is the loading point of the McDonald Lumber Com-

pany, and at River there is also a small elevator being built to take care of river shipments. They do not amount to very much, but they are growing.

Examiner Burchmore: Has the Iron Mountain a public or private track extending from its general right of way up to the river?

Mr. Fry: No, sir.

Examiner Burchmore: It has none?

Mr. Fry: No.

Examiner Burchmore: There is no way in which shipments coming down the river could be loaded directly into the cars standing on the tracks of the Iron Mountain Railroad?

Mr. Fry: The only way they could do would be to load them on our railroad, or haul it by wagon.

Examiner Burchmore: Are there any joint through rates on lumber applying from Deutsch to interstate destinations?

Mr. Fry: Yes, sir.

Examiner Burchmore: Are those the same as the junction point Marianna rates?

Mr. Fry: Yes, sir.

1138 Examiner Burchmore: They are no higher?

Mr. Fry: No.

Examiner Burchmore: You receive a uniform division of two cents per hundred pounds on all outbound lumber?

Mr. Fry: Except to some southwestern points. The tariff of the Iron Mountain on file with the Commission shows that. I have forgotten.

Commissioner Harlan: Without those things, is it less or more?

Mr. Fry: Less.

Examiner Burchmore: Do any logs move into the mill of the Miller Lumber Company over your rails?

Mr. Fry: No.

Examiner Burchmore. Do any logs move into the mill of the lumber company by rail?

Mr. Fry: No.

Examiner Burchmore: They are all floated down by the river?

Mr. Fry: Yes, sir, floated down the St. Francis and brought up the L'Anguille River.

Examiner Burchmore: There is no transportation service rendered by your company with reference to these lumber movements, except on the finished product out of the mill?

1139 Mr. Fry: Yes, sir.

Examiner Burchmore: And that transportation service consists in one case of one-quarter of a mile?

Mr. Fry: I did not state that.

Examiner Burchmore: What is the distance from the mills to the junction point?

Mr. Fry. About one mile and a fifth.

Examiner Burchmore: And in the case of the other mill?

Mr. Fry: It is practically the same. The other extension is a little extension to the road.

Examiner Burchmore: The report of the examination of this

company seems to indicate that the mills are respectively three-quarter and seven-eighths of a mile from the junction point.

Mr. Fry: I can't be sure. Here is the scale, 100 feet, and you can count them (indicating). It shows 5,700 feet; that is over a mile.

Examiner Burchmore: To what mill?

Mr. Fry: The Indiana & Arkansas.

Commissioner Harlan: Did the Iron Mountain ever have a spur track down to the river?

Mr. Fry: When we started down there, we had an arrange-
1140 ment with the Iron Mountain for furnishing us rails with the consideration that we give them all the freight made by the lumber company, and the rail was put down and kept there a short while and then we returned the rail to the Iron Mountain and put down our own rail, and purchased it in the open market.

Commissioner Harlan: When was that done?

Mr. Fry. I think that was done in 1906 or 1904.

Commissioner Harlan: And what was the length of the rail so furnished to you by the Iron Mountain?

Mr. Fry: I could not give you the exact feet, but it was about as long as the rail is now. I could secure that information and file it also.

Commissioner Harlan: Was the bed of that road graded?

Mr. Fry: Graded, and there was a good big cut up there at the first curve; that was all done by the L'Anguille River Railway Company.

Commissioner Harlan: The Iron Mountain had no expense in connection with the track which was laid, except in furnishing the rail?

Mr. Fry: No.

Commissioner Harlan: And they furnished the labor?

1141 Mr. Fry: No.

Commissioner Harlan: What charge did they make for the use of the rails?

Mr. Fry: They simply gave us the rail; loaned it to us without charge.

Commissioner Harlan: Did you have any equipment at that time, any locomotives?

Mr. Fry: We bought a locomotive.

Commissioner Harlan: You did the hauling at that time?

Mr. Fry: Always did the hauling.

Examiner Burchmore: You referred to a mill of the Luehrmann Lumber Company located further up in Arkansas.

Mr. Fry: I answered a question in regard to that from the Commissioner.

Examiner Burchmore: Does this railroad handle any logs or lumber moving to or from that mill further up in Arkansas?

Mr. Fry: No.

Examiner Burchmore: I am not advised as to the geographical location——

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Mr. Fry: They are not at all similar, and cannot be considered, because one is 100 miles north of this point.

Examiner Burchmore: You stated the total salaries of the
1142 general officers were $6,480 per annum, as I understood it. What portion is that of the total operating expenses of the company?

Mr. Fry: About six to eleven, I think.

Examiner Burchmore: The report before me apparently for the fiscal year ending June 30, 1909, indicates that the total operating expenses of that railroad for the year 1909 was $9,911.60, of which $6,480 was general office salaries. That would leave about $3,500 to take care of the track and transportation and traffic expenses. Those figures are approximately the same for the fiscal year ending June 30, 1910.

Mr. Fry: No, the total cost was greater, and the salaries remained the same. You have a report on file for 1910.

Examiner Burchmore: It is not here.

Commissioner Harlan: What seems to be a branch of your road runs up to a brick factory, and also to the cemetery. Do you get any traffic from the brick factory?

Mr. Fry: We get some little traffic from the brick yard, and they are just growing and we expect to get considerable business as soon as they are able to ship out stuff.

Examiner Burchmore: Your I. C. C. No. 1 of the L'Anguille River Road, which is the tariff of local rates applying to
1143 points on your road, names a rate of $3.00 per car for the movement of coal from Marianna, Arkansas, the connection with the Iron Mountain, to the Light & Power Company's switch at Marianna, and names a minimum rate of $5.00 per car on cotton from River to Marianna, and similar rates on other commodities, a few of them. Do you consider those rates compensatory for the service rendered under them?

Mr. Fry: The rate for coal, I think, has been changed. Haven't you a later tariff than that?

Examiner Burchmore: This is the latest tariff I have before me. What is the present rate on coal?

Mr. Brown: You have a copy of the last issue of the tariff have you not, Mr. Fry?

Mr. Fry (handing paper): It is down to $3.00.

Examiner Burchmore: $3.00 per car?

Mr. Fry: Yes, sir.

Examiner Burchmore: The same rate apparently applies on brick, lumber, cement, sand and gravel.

Mr. Fry: Yes, sir.

Examiner Burchmore: Do you consider that rate a compensatory rate for the service rendered thereunder?

Mr. Fry: No, I hardly do.

1144 Commissioner Harlan: How far is it by the county road from the brick factory over to the Iron Mountain's freight station or loading track?

Mr. Fry: By the way the road runs?

Commissioner Harlan: Yes.

Mr. Fry: I suppose it is a mile and a half, up hill.

Examiner Burchmore: There are joint through rates on lumber from Deutsch to interstate destinations. Is there a milling in transit privilege in connection with those rates?

Mr. Fry: Not that I know of.

Commissioner Harlan: Have you any questions, Mr. Brown?

Mr. Brown: I notice on your map here that a part of the railroad is constructed on Louisiana Street of the town of Marianna. Will you please state whether the permission to lay the track on that street was secured by an ordinance from the town?

Mr. Fry: That is my impression. I know we received permission?

Mr. Brown: We would like permission to file a copy of the ordinance.

Commissioner Harlan: No, the record may show it is done by ordinance, or a permit of the municipal authorities, and this
1145 map may be attached to the record.

(The map so offered and identified was received in evidence and thereupon marked L'Anguille River Railway Exhibit No. 1, witness Fry, received in evidence December 12, 1910, and is attached hereto.)

Mr. Brown: You stated in your direct examination that part of your right of way was acquired under condemnation proceedings?

Mr. Fry: Yes, sir.

Mr. Brown: Did you secure the deed for that part under the decree of the board?

Mr. Fry: I think so; that is my impression. I was not there at that time, but I remember having a letter notifying us that on a stretch right on the curve it was necessary to institute condemnation proceedings to go through. The man was asking an exorbitant price.

Mr. Brown: You stated in response to a question from Commissioner Harlan that you had no station buildings out on your road.

Mr. Fry: Yes.

Mr. Brown: I notice on your plat exhibit 1 a building marked "River Warehouse." Please explain that to the Com-
1146 missioner and also explain the use that that structure is put to.

Mr. Fry: A small building on the river at the landing of the packets; in the summer time, when the water is good there are a couple of lines that run a regular packet service between Marianna and the St. Francis River, and the lands along the St. Francis are opening up as fast as the Indiana & Arkansas Lumber Company cuts the timber, they are opening up farms, and as they cultivate it, we expect to have considerable business over L'Anguille River Railroad. This little station is a landing place, with a little elevator for elevating material from the boats so it can be loaded onto the cars.

Mr. Brown: And you interchange traffic with the packet lines?

Mr. Fry: To a small extent.

Mr. Brown: Is that business increasing or on the decline?

Mr. Fry: It is increasing.

Mr. Brown: What, in your opinion, is the prospect for the future growth of that interchange business on the river?

Mr. Fry: We expect it will occupy a very respectable per-
1147 centage of the entire revenues, because of the fact that the land has been a wilderness up to the present time, and is being rapidly opened to cultivation.

Mr. Brown: What is its character after being cleared of the timber, with respect to being suitable for agricultural purposes?

Mr. Fry: All my railroad friends tell me it is the richest natural ground in the United States, the St. Francis Valley.

Mr. Brown: Is it the bottom land of the St. Francis River?

Mr. Fry: Yes, sir, very thick, deep, alluvial soil.

Mr. Brown: What do they grow that would be articles of commerce?

Mr. Fry: Cotton largely, and some alfalfa and farm products.

Mr. Brown: Do you have any inbound business for this railroad?

Mr. Fry: There is quite a respectable amount.

Mr. Brown: Have you any figures that would indicate what that was?

Mr. Fry: Yes, sir, inbound last year was 168 cars, and 3,540 tons.

1148 Mr. Brown: Do you have a division with the Iron Mountain on the inbound as well as outbound business?

Mr Fry: No.

Mr. Brown: What charge do you make on the inbound business?

Mr. Fry: Two cents per 100 pounds.

Mr. Brown: Is that your local rate?

Mr. Fry: Yes, sir.

Commissioner Harlan: What was that tonnage inbound?

Mr. Fry: Lumber coming in to the box factory at Miller.

Mr. Brown: Where did that come from largely?

Mr. Fry: All points on the Iron Mountain, some on the Frisco, and some from the Rock Island.

Mr. Brown: Within the State of Arkansas or beyond?

Mr. Fry: Yes, sir; all within the state.

Commissioner Harlan: Do you move the box material out again?

Mr. Fry: We reship it.

Mr. Brown: It goes on, on what sort of a rate, a milling in transit rate?

Mr. Fry: I think the Miller Lumber Company, they own that box factory; I am not conversant with it, but I am under the impression they have a milling in transit arrangement with the
1149 Iron Mountain for lumber that is converted into shooks.

Mr. Brown: From whom do you collect the freight?

Mr. Fry: From the Miller Lumber Company direct.

Mr. Brown: There is no absorption of that by the Iron Mountain on the outbound movement?

Mr. Fry: No.

Mr. Brown: Who bears the expense of maintaining this river warehouse station?

Mr. Fry: The L'Anguille River Railway.

Mr. Brown: So that you do have some station expenses along your line?

Mr. Fry: Nominal.

Commissioner Harlan: What traffic do you interchange there with the river lines?

Mr. Fry: Some cotton and cotton seed. We had a couple of carloads of household goods a couple of months ago.

Mr. Brown: Was that an interstate shipment of household goods which you refer to?

Mr. Fry: I think it was; yes, sir.

Commissioner Harlan: On what sort of tariff?

Mr. Fry: I am not sure whether it was an interstate shipment or within the state.

1150 Commissioner Harlan: Did you take it from the water lines and load it onto the cars?

Mr. Fry: We took it down and shipped it by boat.

Mr Brown: It came in over the Iron Mountain?

Mr. Fry: Yes, sir.

Commissioner Harlan: Did you load it on the boat?

Mr. Fry: No, we did not perform that duty.

Commissioner Harlan: Who did it?

Mr. Fry: The boat company.

Commissioner Harlan: The other way, do you get some traffic from the packets?

Mr. Fry: Some little; it is growing.

Commissioner Harlan: Who loads it on the cars?

Mr. Fry: Anything that comes in the shippers load.

Commissioner Harlan: The shippers?

Mr. Fry: The shippers will load any lumber or things of that kind.

Commissioner Harlan: But traffic which comes off the boats into your track and then on to the Iron Mountain?

Mr. Fry: If the boats bring any, they have to load it themselves.

Commissioner Harlan: Does that traffic proceed under a
1151 tariff filed with the Commission?

Mr. Fry: What little we have handled, yes, sir.

Commissioner Harlan: There is a tariff?

Mr. Fry: It has been largely local. I think I gave it to you.

Mr. Brown: You have a class and commodity tariff there, have you?

Mr. Fry: Yes, sir.

Mr. Brown: What is the I. C. C. number of that tariff, Mr. Fry?

Mr. Fry: No. 3.

Mr. Brown: That is the independent tariff of your railroad company, is it?

Mr. Fry: Yes, sir.

Examiner Burchmore: This is a copy of your annual report for 1910?

Mr. Fry: Yes, sir.

Examiner Burchmore: How much cotton did you handle during the year ending June 30, 1910?

Mr. Fry: I am not able to state.

(Book handed witness.)

1152 Mr. Fry: There was not any. We handled some hay.

Examiner Burchmore: You did not handle any cotton during the year ending June 30, 1910?

Mr. Fry: No.

Examiner Burchmore: How much have you handled since June 30, 1910?

Mr. Fry: I cannot tell you, but I can find out.

Examiner Burchmore: An increased tonnage?

Mr. Fry: I am not able to state.

Commissioner Harlan: Will you be good enough to prepare and send to the Commission a statement showing your total tonnage during the year ending June 30, 1910, and also showing what part of that approximately, if not accurately, belonged to the Indiana & Arkansas Lumber & Manufacturing Company and what part to the Miller Lumber Company and what part to other companies?

Mr. Fry: I will be very glad to.

Mr. Brown: May we bring that down to date?

Commissioner Harlan: Yes, if you will make that year complete in itself and then show additionally down to date?

Mr. Brown: Yes.

Commissioner Harlan: Then also show your total operat-

1153 ing revenue, divided in the same manner; that is, showing what was paid to you by the Indiana & Arkansas Company.

Mr. Fry: I will show the tonnage and revenue.

Commissioner Harlan: The total revenue, divided by these various shippers, the details.

Mr. Fry: I will show you each shipper and the tonnage and the revenue.

Commissioner Harlan: You need not show any of the independent shippers, but show the two companies.

Mr. Fry: Yes, sir.

Commissioner Harlan: And then group the other shippers.

Mr. Fry: Yes, sir.

Mr. Brown: How far up and down the river do these packet lines run, if you know?

Mr. Fry: I think one boat to Rajah, and the other to the cut off.

Mr. Brown: Where do they start?

Mr. Fry: At Marianna.

Mr. Brown: How far is that?

Mr. Fry: I think about 75 miles.

Mr. Brown: Do you file your tariffs with the State Commission of Arkansas?

1154 Mr. Fry: I do not attend to that, but I think we comply with the regulations.

Mr. Brown: Do you make your reports and pay your taxes to the Railroad Commission of Arkansas as a railroad corporation?

Mr. Fry: Yes, sir.

Mr. Brown: What is the possibility of hauling from the river to the Iron Mountain by wagon, considering the topography of the country?

Mr. Fry: Well, it is hilly, and in dry weather of course it can be hauled, but in wet weather it is a practical impossibility to do anything regularly.

Mr. Brown: What proportion of the year ordinarily would it be impossible to handle the business by wagon?

Mr. Fry: In the early summer, commencing with June, July, August and September, on up possibly to November, and it commences to get wet about now.

Mr. Brown: Are you a member of the per diem agreement?

Mr. Fry: We operate under demurrage.

Mr. Brown: You are on a demurrage basis with respect to the Iron Mountain, are you?

Mr. Fry: Yes, sir.

1155 Mr. Brown: When you receive cars from the Iron Mountain, where does the Iron Mountain place them for delivery to your company?

Mr. Fry: On an interchange track at Marianna.

Mr. Brown: Does the locomotive power of the Iron Mountain come onto your rails for any purpose?

Mr. Fry: No.

Mr. Brown: Your locomotives receive the empty cars on the interchange track, do they?

Mr. Fry: Yes, sir.

Mr. Brown: And they pull them to the proper place on your line for loading, and then haul the loaded car back and make delivery to the Iron Mountain on the interchange track?

Mr. Fry: Yes, sir.

Mr. Brown: Is that interchange track indicated on this blue print map of your railroad?

Mr. Fry: I think just that continuation of our road up there.

Mr. Brown: It is the continuation up there beyond the point of the connection?

Mr. Fry: Yes, sir.

Mr. Brown: If the Commissioner would like to have it, I will file a statement of the stockholders of the two lumber companies

1156 referred to, showing just what relation they bear.

Commissioner Harlan: Very well.

Mr. Brown: Have you any plans or purposes looking to the extension of this railroad beyond its present terminus?

Mr. Frey: We have had under contemplation——

Commissioner Harlan: Now, Mr. Fry, don't tell us you are going to Hot Springs.

Mr. Fry: We have not, but we have 35,000 acres a little northeast of Marianna which we have never cut any timber from. The Crittenden Railway Company running south from Earl down to

Heth has a terminus immediately north of our land and we have had it up with the possible view of ultimately building up and connecting with that road and rushing a larger system. We have not gone any further than talking about it.

Commissioner Harlan: Had you contemplated that plan of reaching the tracks of the Rock Island?

1157 Mr. Fry: We had only a connection with that, the reaching of the Midland Lumber Company. Of course we appreciate to the full the advantages of connecting up with the other railroads.

Mr. Cowan: I suppose you have heard the evidence of the Crittenden Railroad Company here the other day?

Mr. Fry: I was not here.

Mr. Cowan: You will find in the record that there is no use of your extending your line, as they are building very rapidly in that direction.

Mr. Fry: That will save us some money, then.

Mr. Cowan: Undoubtedly. Is it not a fact that these lumber companies through that country handling hard wood and other lumber have their mills and track so arranged that they all get a part of the rate from the through lines, greater or less, according to their ability to do trading, of course?

Mr. Fry: I am not very familiar *expect* what I have heard since I have been here. I have had considerable illumination since I got here this morning.

Mr. Cowan: You have no chance to connect up with the Rock Island anywhere, have you?

Mr. Fry: Not unless I connect the way I spoke of.

1158 Mr. Cowan: And even then you would increase your division?

Mr. Fry: Sir?

Mr. Cowan: Do you know of any lumber concern in the countrwhere the railroad company builds its side tracks and spurs out as a proposition of its own to handle the saw mill output? In all cases you know of, the lumber company has its own tracks and has some sort of an arrangement whereby they get part of the rate?

Mr. Fry: I am not particularly familiar with what the other people do.

Mr. Cowan: I said so far as you know, that is the question.

Mr. Fry: No, I do not.

Mr. Cowan: You look out and see whether the other fellows get more than you do?

Mr. Fry: I have since I got here this morning.

Mr. Cowan: It will make you a little more industrious.

Mr. Fry: I am going to.

Mr. Brown: Does your company issue the regular and usual railroad forms of bills of lading and way bills?

Mr. Fry: Yes, sir.

Mr. Brown: Under your own name?

1159 Mr. Fry: Yes, sir.

Examiner Burchmore: Where is Miller Junction?

Mr. Fry: It is right here (indicating).

Examiner Burchmore: It is the junction between the line to the planing mill of the Miller Lumber Company and the line to the McDonald plant?

Mr. Fry: Yes.

Commissioner Harlan: That seems to be all. The Little Rock, Sheridan & Saline River Railway.

Mr. Booth: I represent that company.

1160 *Little Rock, Sheridan & Saline River Railway Company.*

EDWIN BOOTH was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: What is your business?

Mr. Booth: I am auditor of the Little Rock, Sheridan & Saline River Railway.

Commissioner Harlan: How long have you been connected with that company?

Mr. Booth: Since 1907.

Commissioner Harlan: Do you know all about its *his* history and its organization?

Mr. Booth: No, sir.

Commissioner Harlan: What do you know about that company, what part of its business are you familiar with?

Mr. Booth: Most of the accounting since 1907.

Commissioner Harlan: Is there any other officer of the road here?

Mr. Booth: The president is here, but he is not familiar with that part of it.

Commissioner Harlan: Do you know who built it, and those details?

1161 Mr. Booth: Yes, sir.

Commissioner Harlan: Do you know when it was organized?

Mr. Booth: February, 1892.

Commissioner Harlan: Under the laws of what state?

Mr. Booth: Arkansas.

Commissioner Harlan: When was it built?

Mr. Booth: It was started about that time.

Commissioner Harlan: By whom?

Mr. Booth: By the William Farrell Lumber Company.

Commissioner Harlan: From Farrell, Arkansas?

Mr. Booth: I don't know if it was started from there at that time or not.

Commissioner Harlan: How much of the line did the William Farrell Lumber Company build?

Mr. Booth: I don't know that.

Commissioner Harlan: Has any other officer of your road been here during this session?

Mr. Booth: No, sir.

Comm. Harlan: Do you expect any other officer here?
Mr. Booth: No, sir.
Commissioner Harlan: Do you know anything about the cost of this road?
Mr. Booth: Yes, sir.
1162 Commissioner Harlan: Its relations to the lumber company and who holds its capital and all that?
Mr. Booth: Yes, sir.
Commissioner Harlan: Where is Farrell, Arkansas?
Mr. Booth: Abut 19 miles south of Little Rock on the Iron Mountain.
Commissioner Harlan: Is it Farrell or Farrells?
Mr. Booth: Farrell.
Commissioner Harlan: What sort of a town is it?
Mr. Booth: Principally made up of saw mill people.
Commissioner Harlan: Just a saw mill town?
Mr. Booth: Yes, sir.
Commissioner Harlan: And is there more than one mill there?
Mr. Booth: Only one.
Commissioner Harlan: And that is owned by the William Farrell Lumber Company?
Mr. Booth: Yes, sir.
Commissioner Harlan: And the railroad is owned by your lumber company?
Mr. Booth: Yes, sir.
Commissioner Harlan: What is the length of it?
Mr. Booth: About 17 miles of main line.
1163 Commissioner Harlan: Does the railroad company own its own right of way?
Mr. Booth: Yes, sir.
Commissioner Harlan: And its equipment?
Mr. Booth: Yes, sir.
Commissioner Harlan: What equipment has it?
Mr. Booth: Three locomotives and 36 cars.
Commissioner Harlan: Has it a station at Farrell?
Mr. Booth: The lumber company office.
Commissioner Harlan: In the office of the lumber company?
Mr. Booth: Yes.
Commissioner Harlan: Is that also the general office of the railroad company?
Mr. Booth: Yes,
Commissioner Harlan: Does it own its equipment?
Mr. Booth: Yes.
Commissioner Harlan: Is the track ballasted?
Mr. Booth: Some parts of it.
Commissioner Harlan: What sort of rail have they?
Mr. Booth: 35 pound.
Commissioner Harlan: Who is the president of the railroad company?
1164 Mr. Booth: Mr. S. H. Fullerton, of St. Louis.
Commissioner Harlan: Was not Mr. Fullerton here the other day?

Mr. Booth: Yes, sir.
Commissioner Harlan: Is he here now?
Mr. Booth: Yes, sir.
Commissioner Harlan: Mr. Fullerton, you know about the organization of the road, and all its details?
Mr. Fullerton: I do not, your Honor.
Commissioner Harlan: When did you become associated with it?
Mr. Fullerton: Four or five years ago, but I never had any—they made me president of the lumber company and railroad company, but I never took any active part in the management of the business.
Commissioner Harlan: Neither of the railroad company nor the lumber company?
Mr. Fullerton: Neither one or the other. It was organized by the Farrell Lumber Company and they are still running it, and operating it.
Commissioner Harlan: Are there any communities or villages on the line of this railway?
1165 Mr. Booth: Yes, sir; there are some villages out there.
Commissioner Harlan: Will you give me the names?
Mr. Booth: There is Ico.
Commissioner Harlan: What is the population?
Mr. Booth: Mostly farm houses. There is a post office there.
Commissioner Harlan: What other business?
Mr. Booth: And a town called Tightwad, about six miles from Farrell.
Commissioner Harlan: Is that a post office?
Mr. Booth: No.
Commissioner Harlan: I suppose there are no divisions at Tightwad?
(No response.)
Commissioner Harlan: What other points?
Mr. Booth: Craigs Mill.
Commissioner Harlan: What is that, a lumber point?
Mr. Booth: That is the terminus of the road, and also a post office?
Commissioner Harlan: That is the terminus of your road?
Mr. Booth: Yes, sir.
Commissioner Harlan: What is the population of that town?
1166 Mr. Booth: I could not say.
Commissioner Harlan: Is it sort of a lumbering town?
Mr. Booth: No, it is principally farmers; it is about three miles from Boxeye.
Commissioner Harlan: It is the point where the Farrell Lumber Company has its mill?
Mr. Booth: It is where it has most of its logging operations.
Commissioner Harlan: The mill is up near Farrell?
Mr. Booth: Yes.
Commissioner Harlan: I started to ask you who were the officers of the company. You stated Mr. Farrell. Who are the others?

Mr. Booth: R. A. Farrell, treasurer, and William E. Farrell, vice-president.

Commissioner Harlan: Are they also officers of the Farrell Lumber Company?

Mr. Booth: Mr. Fullerton and Mr. R. A. Farrell are.

Commissioner Harlan: Do they get salaries as officers of the railroad company?

Mr. Booth: No.

Commissioner Harlan: Does anyone get a salary as an
1167 officer of the railroad company?

Mr. Booth: No.

Commissioner Harlan: Do you get a salary as officer of the railroad company?

Mr. Booth: No.

Commissioner Harlan: There are no salary items, then, except for the employees that run the locomotives and your train crews?

Mr. Booth: A general office clerk.

Commissioner Harlan: And your track men?

Mr. Booth: Yes.

Commissioner Harlan: They are all paid by the railroad company?

Mr. Booth: Yes, sir.

Commissioner Harlan: Do they do any work for the lumber company?

Mr. Booth: No, sir.

Commissioner Harlan: Any of them?

Mr. Booth: No.

Commissioner Harlan: Out at the mill point, which is the terminus of your line, Craigs Mill, I believe you called it, there are some logging roads, are there not?

1168 Mr. Booth: Do you mean spurs?

Commissioner Harlan: Yes.

Mr. Booth: Yes, sir.

Commissioner Harlan: Are they owned by the railroad company?

Mr. Booth: No, by the lumber company.

Commissioner Harlan: By whom are they operated?

Mr. Booth: The lumber company.

Commissioner Harlan. With what equipment?

Mr. Booth: The leased equipment.

Commissioner Harlan: They lease it from whom?

Mr. Booth: The Little Rock, Sheridan & Saline River Railway.

Commissioner Harlan: When you stated your equipment a little while ago, did you give us the number of cars that you retained possession of and operate?

Mr. Booth: Yes, sir.

Commissioner Harlan: In addition to those, you own the cars that the lumber company is using on the logging road?

Mr. Booth: We both use them.

Commissioner Harlan: Do you run your locomotives on the logging road?

1169 Mr. Booth: No.

Commissioner Harlan: What do they pay you for those cars?

Mr. Booth: They do not pay us anything for those cars.

Commissioner Harlan: Do they pay you for anything else?

Mr. Booth: The locomotives.

Commissioner Harlan: They use your locomotives?

Mr. Booth: Yes, sir.

Commissioner Harlan: What do they pay for that?

Mr. Booth: $20 a day.

Commissioner Harlan: What locomotives are there?

Mr. Booth: What type, do you mean?

Commissioner Harlan: Yes.

Mr. Booth: I think there are two class B and one class C, two 30 tons and one 35 tons.

Commissioner Harlan: Do your employees unload the logs at the pond, the railroad employees?

Mr. Booth: They do not have to, but sometimes they help.

Commissioner Harlan: Ordinarily do they do it?

Mr. Booth: Yes, sir.

Commissioner Harlan: Do they do it alone?

Mr. Booth: No, the lumber employees do——

Commissioner Harlan: But ordinarily they do participate
1170 in the unloading?

Mr. Booth: Yes, sir.

Commissioner Harlan. Do they do any loading at the junction with the logging road?

Mr. Booth: No.

Commissioner Harlan: Do they go out on the logging roads?

Mr. Booth: Yes, sir.

Commissioner Harlan: And help to do some loading there?

Mr. Booth: No.

Commissioner Harlan: Ordinarily who pulls the train in from the logging roads to your line?

Mr. Booth: The lumber company.

Commissioner Harlan: What forest has the Farrell Lumber Company out at the end of your line, or around it?

Mr. Booth: I cannot say; it is right around the end of the line, but we have 54,000 acres altogether.

Commissioner Harlan. Do you receive from the logging line any logs belonging to any other company than the William Farrell Lumber Company?

Mr. Booth: No.

Commissioner Harlan: Do you haul any outside traffic for anybody?

1171 Mr. Booth: Very little.

Commissioner Harlan: Are there any mills on the line?

Mr. Booth: No, sir.

Commissioner Harlan: What kind of traffic do you haul for outsiders?

Mr. Booth: Very little of any kind.

Commissioner Harlan: Any cotton or farm produce?
Mr. Booth: No.
Commissioner Harlan. Do you haul any supplies or general merchandise out on your line?
Mr. Booth: Yes, sir.
Commissioner Harlan: What is the extent of that traffic?
Mr. Booth: Oh, $150 worth of freight a month, merchandise and feed.
Commissioner Harlan: Does that come from Little Rock mostly on local billing?
Mr. Booth: We rebill it from Farrell.
Commissioner Harlan: On the local rate?
Mr. Booth: Yes, sir.
Commissioner Harlan: What is the extent of your logging traffic from the junction of the logging roads to the mill: how many cars a year?
1172 Mr. Booth: Oh, about 10,000 cars.
Commissioner Harlan. And where is your mill with relation to the Iron Mountain tracks?
Mr. Booth: The saw mill is about 200 yards.
Commissioner Harlan: And your planing mill?
Mr. Booth: It is about 100 feet.
Commissioner Harlan: Is there a spur track of the Iron Mountain alongside the planing mill?
Mr. Booth: Yes, sir.
Commissioner Harlan: So that the dressed lumber—and that is all you ship, is it not?
Mr. Booth: No.
Commissioner Harlan: Do you ship a lot of rough lumber?
Mr. Booth: Yes, sir.
Commissioner Harlan. How much in proportion to the dressed lumber?
Mr. Booth: The greater portion is rough timbers.
Commissioner Harlan: The greater portion is timber?
Mr. Booth: Yes, sir.
Commissioner Harlan: The dressed lumber you load right onto the Iron Mountain cars on their own spur tracks?
Mr. Booth: Yes, sir.
1173 Commissioner Harlan: Or do you own the spur tracks?
Mr. Booth: I cannot say that positively, whether we own it or not.
Commissioner Harlan: Is there any milling in transit rate in effect?
Mr. Booth: Yes, sir.
Commissioner Harlan. What is the rate to St. Louis?
Mr. Booth: Eighteen cents from Farrell.
Commissioner Harlan: From Farrell?
Mr. Booth: Yes, sir.
Commissioner Harlan: Well, that is the rate on the dressed lumber or the rough lumber from the mill point?
Mr. Booth: Yes, sir.

Commissioner Harlan: Is there any milling in transit arrangement on logs?

Mr. Booth: It is purely a milling in transit arrangement with us altogether.

Commissioner Harlan: Tell us how that applies.

Mr. Booth: It is the same from our road as from the junction with the Iron Mountain.

Commissioner Harlan. So the 18 cent rate extends back to your logging operations?

1174 Mr. Booth: Yes, sir.

Commissioner Harlan: What division do you receive?

Mr. Booth: We receive four cents to territory known as Central Freight Association territory and five cents west.

Commissioner Harlan: Is that the highest allowance you get?

Mr. Booth: Yes, sir.

Commissioner Harlan: I suppose you interchange free transportation?

Mr. Booth: Yes, sir.

Commissioner Harlan: Who gets the free transportation on your road?

Mr. Booth: The treasurer and myself.

Commissioner Harlan. The treasurer and yourself?

Mr. Booth: Yes, sir.

Commissioner Harlan: Do you represent the lumber company in any way?

Mr. Booth: Yes, sir.

Commissioner Harlan: What is your relation with the lumber company?

Mr. Booth: Auditor.

Commissioner Harlan: As such, do you have to do any traveling?

1175 Mr. Booth: Yes, sir.

Commissioner Harlan: Do you participate in the selling of lumber for the lumber company?

Mr. Booth: Yes, sir; to some extent.

Commissioner Harlan. Do you go to St. Louis and Chicago?

Mr. Booth: Yes, sir; principally to St. Louis.

Commissioner Harlan: Have you passes on other roads than the Iron Mountain?

Mr. Booth: Yes, sir.

Examiner Burchmore: It is about 200 yards from the saw mill to the line of the Iron Mountain Railroad?

Mr. Booth: Yes, sir.

Examiner Burchmore: Is that a standard gauge or narrow gauge track?

Mr. Booth: To the line of the Iron Mountain?

Examiner Burchmore: Yes.

Mr. Booth: Standard gauge.

Examiner Burchmore. The main line of the Little Rock, Sheridan & Saline River is broad gauge or narrow gauge?

Mr. Booth: Narrow gauge.

Examiner Burchmore: Is there not a third rail between the saw mill and the Iron Mountain tracks?

1176 Mr. Booth: Not all the way.

Examiner Burchmore: How are the empty cars placed at the mill?

Mr. Booth: By the Iron Mountain.

Examiner Burchmore: And taken away by the Iron Mountain?

Mr. Booth: Yes, sir.

Examiner Burchmore: I am referring to the saw mill.

Mr. Booth: Yes, sir.

Examiner Burchmore: Then the Little Rock, Sheridan & Saline River Railway Company does not touch the cars containing the lumber coming out of the mills?

Mr. Booth: No.

Examiner Burchmore: They are handled by the Iron Mountain Railroad?

Mr. Booth: Yes, sir.

Examiner Burchmore: Are there any joint through rates in effect from Craigs Mill to interstate destinations?

Mr. Booth: Yes, sir.

Examiner Burchmore: With milling in transit privileges?

Mr. Booth: Yes, sir.

Examiner Burchmore: Have you any means of weighing the logs which move to your mill?

1177 Mr. Booth: No.

Examiner Burchmore: How do you ascertain what the weight of those logs is?

Mr. Booth: We have taken years of manufacturing, and find that it takes six logging cars to make one railroad car of the manufactured product, and our local tariff provides we get $4.00 a car for the logs.

Examiner Burchmore: Into the mill?

Mr. Booth: Into the mill, and an average railroad car is figured about 60,000 pounds on the material we ship, and we charge them $4.00 a car for the six log cars, which would bring about $24.00, and our division is most of it four cents and an average of 60,000 pounds would make $24.00.

Examiner Burchmore: In other words, when six cars of logs move into the saw mill, the railroad company charges the lumber company $24.00 for those six cars of logs?

Mr. Booth: Yes, sir.

Examiner Burchmore: Subsequently when one 60,000 pound car of lumber manufactured from those logs is moved out, you credit that $24.00 you have received on the in-movement against the out-movement.

Mr. Booth: Yes, sir.

1178 Examiner Burchmore: And the railroad retains it as its division?

Mr. Booth: Yes, sir.

Examiner Burchmore: But as a matter of fact, you have no

accurate knowledge of what the actual weight of those logs moving in was?

Mr. Booth: No.

Examiner Burchmore: Is there any bill of lading issued for the movement of logs into the mill?

Mr. Booth: Yes, sir.

Examiner Burchmore: Where is that bill of lading issued?

Mr. Booth: It is issued by the billing clerk at Farrell.

Examiner Burchmore: Does he issue that bill of lading before the logs leave the other end of the line?

Mr. Booth: The bill of lading comes in with them.

Examiner Burchmore: I don't just understand that. The billing clerk at Farrell makes out a bill of lading and sends it to the other end of the line to come back with the logs?

Mr. Booth: No, the man at the mill when the cars come in, keeps a memorandum of the train, and the billing clerk hunts out the way bill.

Examiner Burchmore: Then, as I understand it, the prac-
1179 tice is similar to that of another company into which we have already examined, and is this: a train load of logs from the woods comes into the mill, and the conductor or official of that train advises the billing clerk in the mill how many logs he has brought with him, and bills of lading are issued for that quantity of logs?

Mr. Booth: Yes, sir.

Examiner Burchmore: Are any way bills issued for the movement into the mill?

Mr. Booth: I could not state positively.

Examiner Burchmore: Not so far as you are advised?

Mr. Booth: No.

Examiner Burchmore: What bills of lading are issued on the movements of lumber out of the mill?

Mr. Booth: The Little Rock, Sheridan & Saline River bill them.

Examiner Burchmore: New bills of lading?

Mr. Booth: Yes, sir.

Examiner Burchmore: Independent of those previously issued on the logs.

Mr. Booth: Yes, sir.

Examiner Burchmore: Where are those bills of lading dated?

1180 Mr. Booth: At Farrell.

Examiner Burchmore: They are dated at Farrell?

Mr. Booth: And the way bills at Craigs Mill.

Examiner Burchmore: Then you issue bills of lading at Farrell and way bill it from Craigs Mill?

Mr. Booth: Yes.

Examiner Burchmore: The way bill and the bill of lading on the same shipment do not agree?

Mr. Booth: I thought you meant at the time the shipment moved. They are all way billed from Craigs Mill.

Examiner Burchmore: From Craigs Mill to St. Louis, for example, you have a through way bill?

Mr. Booth: Yes, sir.

Examiner Burchmore: And that through way bill shows the Little Rock, Sheridan & Saline River Railroad as the first participating carrier?

Mr. Booth: Yes, sir.

Examiner Burchmore: And as participating up to Farrell?

Mr. Booth: Yes, sir.

Examiner Burchmore: Does the conductor of the Little Rock, Sheridan & Saline River Railway ever receive that through way bill?

1181 Mr. Booth: No.

Examiner Burchmore: Then it is handed right over to the Iron Mountain?

Mr. Booth: Yes, sir.

Examiner Burchmore: And the Iron Mountain switches the car from the mill to its mail line?

Mr. Booth: Yes, sir.

Examiner Burchmore: And then it moves to interstate destination?

Mr. Booth: Yes, sir.

Examiner Burchmore: I understood you to state the division received was four cents to C. F. A. territory.

Mr. Booth: Yes, sir.

Examiner Burchmore: And five cents to Western territory?

Mr. Booth: Yes, sir, west of Pueblo.

Examiner Burchmore: What is it east of Pueblo?

Mr. Booth: To some points we get four cents.

Examiner Burchmore: Three cents to any points?

Mr. Booth: Oklahoma points.

Examiner Burchmore: How long have you been receiving a four and five cents division on western traffic?

Mr. Booth: I cannot say. About a year, the five cents.

1182 Examiner Burchmore: Within a year or two?

Mr. Booth: Yes, sir.

Examiner Burchmore: Previous to that the highest division you received on traffic to points west of the Mississippi River was three cents per 100 pounds, was it not?

Mr. Booth: Yes, sir.

Examiner Burchmore: What is the explanation for this increase in divisions, if you know it?

Mr. Booth: I cannot say. I found out that others were getting that much, and we solicited it.

Commissioner Harlan: You thought you ought to have it?

Mr. Booth: Yes.

Commissioner Harlan: If the others got it?

Mr. Booth: Yes, sir.

Examiner Burchmore: And the railroad officials agreed with you?

Mr. Booth: Yes, sir.

Examiner Burchmore: I understood you to say that the inbound movements of merchandise amounted to $150 a month.

Mr. Booth: About that; yes, sir.

Examiner Burchmore: For the fiscal year ending June 30, 1909, if these figures are correct, the total tonnage of this road
1183 seems to have been 41,471 tons, of which 41,361 tons all but 110 tons, was supplied by the lumber company; is that about the present proportion of the traffic?

Mr. Booth: No, I think it is heavier last year.

Examiner Burchmore: What purpose is served by the third rail that runs up a portion of the distance from your saw mill to the main line of the Iron Mountain?

Mr. Booth: For the purpose of switching the cars of coal to the coal docks.

Examiner Burchmore: Where are those coal docks located?

Mr. Booth: About 400 feet back of the saw mill, beyond the end of the standard gauge tracks, back of the saw mill.

Commissioner Harlan: What track is not standard gauge?

Examiner Burchmore: The whole railroad is narrow gauge.

Commissioner Harlan: Your whole line is narrow gauge except the spur track next the planing mill?

Mr. Booth: Next the saw mill.

Examiner Burchmore: Does this company pay any dividends?

Mr. Booth: No.

Examiner Burchmore: Has it accumulated a surplus?

Mr. Booth: We have a small surplus.

Examiner Burchmore: What amount?

1184 Mr. Booth: It is simply a cash surplus; about $10,000 at the present date.

Examiner Burchmore: $10,000 cash surplus?

Mr. Booth: Yes, sir.

Examiner Burchmore: How many years have you been accumulating that surplus?

Mr. Booth: Since 1907.

Examiner Burchmore: What was the cost of construction of the whole railroad?

Mr. Booth: About 120 some odd thousand dollars.

Examiner Burchmore: $120,000 in round figures?

Mr. Booth: Yes, sir.

Examiner Burchmore: What is the capital stock of the road?

Mr. Booth: $125,000.

Examiner Burchmore: Any bonds outstanding?

Mr. Booth: Yes, sir.

Examiner Burchmore: To what amount?

Mr. Booth: $75,000.

Examiner Burchmore: What is the rate of interest on those bonds?

Mr. Booth: Five per cent.

Examiner Burchmore: Has the interest been paid?

1185 Mr. Booth: Yes, sir.

Examiner Burchmore: Who holds those bonds?

Mr. Booth: The William Farrell Lumber Company.

Examiner Burchmore: Who holds the stock, the stockholders of the William Farrell Lumber Company?

Mr. Booth: Yes, sir, practically the same.

Examiner Burchmore: This rental of $20 a day for the use of locomotives; does that include the crew?

Mr. Booth: Yes, sir.

Examiner Burchmore: And the coal?

Mr. Booth: Yes, sir.

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: No questions.

Mr. Jeffery: Your division at this time of five cents applies only to trans-Missouri Territory, does it not?

Mr. Booth: Well, I am not positive about all that western business. We do not ship very much stuff out there.

Mr. Jeffery: And it is four cents to Western Trunk Line territory?

Mr. Booth: Yes, sir.

Commissioner Harlan: Will you be kind enough to see whether there is any spur track agreement with this road, Mr. Jeffery, and send us a copy?

1186 Mr. Jeffery: Yes.

(At a later hour in the day Mr. Booth reappeared and stated that he desired to correct a portion of his testimony as follows:)

Commissioner Harlan: Have you any correction to make to the testimony you gave in connection with the Little Rock, Sheridan & Saline River Railway Company?

Mr. Booth: I understood one question from your attorney, if we made two bills of lading, one for the logs coming into the mill and one on the outbound manufactured lumber. I understand that I said yes. W do not make two bills of lading. We only make two way bills. I am not positive that that is correct as to the question, but I was told that after I left by some one acquainted with the fact, that we only make one bill, which is made by the lumber company for the manufactured product on shipments going to territory where there is a division received.

Commissioner Harlan: Is there any other correction you wish to make?

Mr. Booth: We do not get any division to points in Arkansas or to Eastern Trunk lines. Then the lumber company does not receive that credit back for the $24, as stated in my testimony. They

1187 receive only credit for the lumber going to points where the railroad receives divisions, and the charge of $4.00 a car still stands against the lumber company and my replies as to tonnage and revenue were based on 1910 business.

Commissioner Harlan: And you think the Examiner had in mind your report for 1909?

Mr. Booth: Yes.

Commissioner Harlan: Well, your testimony will be read with these suggestions before us.

Commissioner Harlan: We have secured another stenographer, and Mr. Burchmore will hear the east of the river cases, and the Jackson Railway at this time in the adjoining room, and all persons who are

connected with those cases will please retire with Examiner Burchmore to that room.

In connection with the testimony of this witness, Mr. Fullerton, I wish you would be good enough to enlighten the Commission as to what on our record is referred to as the Colonial System. Do you know anything about that?

Mr. Fullerton: Of railroads?

Commissioner Harlan: Yes.

1188 Mr. Fullerton: I know nothing whatever about it.

Commissioner Harlan: The Little Rock, Sheridan & Saline River is indicated as a railroad belonging to the Colonial System. Have you ever heard of that?

Mr. Fullerton: I never heard of that before and never knew that it belonged to any such system.

Commissioner Harlan: And the Mill Creek & Little River Railway & Navigation Company.

Mr. Fullerton: I never knew anything about it. It must have been several years ago.

Commissioner Harlan: You are not connected with the last named road?

Mr. Fullerton: I think that our company owns some stock in that company, but has only acquired it in the last three years, and it has not been a member of any Colonial System of railroad that I know anything of.

Commissioner Harlan: What about the Tioga & Southeastern; are you associated with that in any way?

Mr. Fullerton: Yes, sir.

Commissioner Harlan: Are you associated with any other road, the Gulf & Sabine River?

Mr. Fullerton: Yes, sir.

1189 Commissioner Harlan: But you do not recognize that as a system?

Mr. Fullerton: No, sir.

Commissioner Harlan: Are they owned about by the same people?

Mr. Fullerton: I am connected with the Warren, Johnsville & Saline River, the Gulf & Sabine and the Little Rock, Sheridan & Saline River, and the Tioga & Southeastern.

Commissioner Harlan: We may ask you later to give us some further light on that question. The next road is the Louisiana Railway.

1190 *Louisiana Railway Company.*

J. M. BERNARDIN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: What is your business?

Mr. Berdardin: I am president of the Louisiana Railway Company, and secretary and treasurer of the Grant Timber & Manufacting Company.

Commissioner Harlan: When was the Louisiana Railway Company organized?

Mr. Bernardin: In 1900.

Commissioner Harlan: Under the laws of the State of Louisiana?

Mr. Bernardin: Yes.

Commissioner Harlan: With what capital stock?

Mr. Bernardin: $25,000.

Commissioner Harlan: Who were its officers?

Mr. Bernardin: I think the first incorporators were W. L. Whittaker. I have a copy here of the charter. I was not connected with it at the time, and I can only give you what this charter says.

Commissioner Harlan: We will not stop on it. Who are
1191 its present officers?

Mr. Bernardin: I am president, Mr. T. H. Garrett, of St. Louis, is vice-president. E. E. Fitzgerald is secretary and treasurer.

Commissioner Harlan: Are all of these officers also officers of any lumber company or interested in any way?

Mr. Bernardin: Mr. Garrett is vice-president of the Grant Timber & Manufacturing Company and Mr. Fitzgerald is general manager.

Commissioner Harlan: Are you connected with that company?

Mr. Bernardin: I am secretary and treasurer of the Grant Timber & Manufacturing Company.

Commissioner Harlan: Is there a company known as the Grant Lumber & Land Company?

Mr. Bernardin: It is in liquidation. There was at one time. It owned a mill, and this company of which I gave you the name owned the timber, and the Louisiana Railway Company owned the railroad.

Commissioner Harlan: And who owned all three?

Mr. Bernardin: The same stockholders.

Commissioner Harlan: So it is practically one investment by the same people?

1192 Mr. Bernardin: Yes, sir.

Commissioner Harlan: And as I understand it, your road is about 30 miles long?

Mr. Bernardin: No, it is about 16 miles of main line, and then we own the steel of about 13 or 14 miles more, that we lease to the mill company for spur purposes.

Commissioner Harlan: Your main line starts out at what point?

Mr. Bernardin: At Grant, on the Louisiana & Arkansas, and it crosses the Iron Mountain at Selma, Louisiana, and then it runs, or it did run, in a westerly or northwesterly direction, and I expect since you have got your map that we have moved, because I will show you——

(Witness indicates on map to the Commissioner.)

Commissioner Harlan: Grant is a point on what road?

Mr. Bernardin: The Louisiana & Arkansas Railroad.

Commissioner Harlan: And from Grant you run how many miles southwesterly to Selma?

Mr. Bernardin: It is two and one-quarter miles, I think.

Commissioner Harlan: In what direction does your track run?

Mr. Bernardin: It runs west, and then there was a line went up northwest.

1193 Commissioner Harlan: How far west?

Mr. Bernardin: Well, it went out there about eight miles, and then we stopped and we went north, say, about six miles.

Commissioner Harlan: By whom was the track from Grant to Selma built, and when?

Mr. Bernardin: It was built by the Louisiana Railway Company.

Commissioner Harlan: By the Louisiana Railway Company?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: When?

Mr. Bernardin: Well, I was not connected with it until 1905, and it was built then, but I think about a year before I became connected with it.

Commissioner Harlan: Who built the track from Selma west?

Mr. Bernardin: The Louisiana Railway Company.

Commissioner Harlan: And then to the north and west?

Mr. Bernardin: Well, the Louisiana Railway Company.

Commissioner Harlan: What part of this track is ballasted track?

Mr. Bernardin: Very little.

Commissioner Harlan: What rail have you on the track?

Mr. Bernardin: 35 and 45 pound.

1194 Commissioner Harlan: What is the length of the track that you have just described from Grant to Selma, and then west and then north?

Mr. Bernardin: Two and a quarter miles, and then it is about eight miles from Selma out, and then six; that is, the 16 miles of the main line.

Commissioner Harlan: Do you also own some logging lines?

Mr. Bernardin: No, but we buy all the steel and lease it to the Grant Timber & Manufacturing Company and they use it for spurs off, getting the logs.

Commissioner Harlan: What logging lines have they in extent?

Mr. Bernardin: They used that whole 13 or 14 miles of steel in their operation.

Commissioner Harlan: Do you lay the tracks for them and move them?

Mr. Bernardin: No, we just furnish the track and splices.

Commissioner Harlan: What do they pay you?

Mr. Bernardin: $1.00 a thousand. I have here a copy of the contract which is on file, which shows how we have handled that.

Mr. McRae: Is that on file with the Commission?

1195 Mr. Bernardin: Yes, sir; that is on file with the Commission, and that——

Commissioner Harlan: That $1.00 a thousand is for the use of the steel?

Mr. Bernardin: For the use of the steel, and the Louisiana Railway Company taking the empty cars out on their spurs for them and bringing the loads back to the Louisiana Railway Company's main line, and then as the contract reads, the compensation for that

has been derived out of the division of the through rate for the haul after it reaches the main line of the Louisiana Railway Company.

Commissioner Harlan: That becomes another transaction?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: So then you operate the logging roads for the lumber company; that is, with your equipment?

Mr. Bernardin: Well, practically so; yes, sir.

Commissioner Harlan: And with your crews?

Mr. Bernardin: And with our crews.

Commissioner Harlan: And do you load the logs on the cars?

Mr. Bernardin: No, we do not load the logs, they load them but we gather them up. They may have them scattered around on several little spurs after they branch off there, before we
1196 gather them on the main line, and sometimes we stop and go on a little further and get enough more to make a train.

Commissioner Harlan: But they load them on the cars?

Mr. Bernardin: Yes.

Commissioner Harlan: Your men do not help in that work?

Mr. Bernardin: No.

Commissioner Harlan: Do your men help unload at the mill?

Mr. Bernardin: No, we deliver them at the mill and they have what they call a pond crew, which unload and put them in the mill.

Commissioner Harlan: What mill have you?

Mr. Bernardin: Two at Selma.

Commissioner Harlan: What mill at Grant?

Mr. Bernardin: Nothing; just a connection with the Louisiana & Arkansas Railroad.

Commissioner Harlan: Why did you build to Grant?

Mr. Bernardin: As I told you, it was built before I went there, but they were there, I think, to get another connection and get a better car service.

Commissioner Harlan: Have you any station at Grant?

Mr. Bernardin: No.

Commissioner Harlan: Just a track connection——

1197 Mr. Bernardin: Well, there is a little shed there, to which the Louisiana & Arkansas trainmen have a key and our men have a key.

Commissioner Harlan: You do not keep any agent there?

Mr. Bernardin: No.

Commissioner Harlan: Have you a station at Selma?

Mr. Bernardin: No.

Commissioner Harlan: Have you a station anywhere along the line?

Mr. Bernardin: No.

Commissioner Harlan: Do you carry any traffic for outsiders?

Mr. Bernardin: Well, that is practically nil; what we can get.

Commissioner Harlan: What was your tonnage in lumber from the junction of the logging road to the mill at Selma last year?

Mr. Bernardin: In logs it was 260,000 some odd tons.

Commissioner Harlan: You have explained how the lumber com-

pany pays you for the service of gathering up logging cars and bringing them to your main line.

Mr. Bernardin: Yes.

Commissioner Harlan: What compensation do you receive from that point, and from whom?

1198 Mr. Bernardin: Well, we figure our compensation was from our connection. When we delivered them the product of those logs in the shape of lumber; that is, the tonnage those logs would make, we got compensation from the connecting lines.

Commissioner Harlan: Well, what is that?

Mr. Bernardin: It varies; it is from two to four cents, with possibly a few exceptions. I am not sure whether or not there were not a few points where there was five cents.

Mr. Jeffery: I do not think there is.

Mr. Bernardin: Well, rather than to be caught up on that for the record, I will say possibly there might be a few places, but in a general way, it is two cents and four cents.

Commissioner Harlan: Has it ever been higher?

Mr. Bernardin: No.

Commissioner Harlan: What allowances do you get from the Louisiana & Arkansas?

Mr. Bernardin: They are practically the same from both lines, as near as I remember.

Commissioner Harlan: Do you have any connection with the Rock Island in this immediate vicinity?

Mr. Bernardin: No, sir.

Commissioner Harlan: Did you ever get less divisions than
1199 those you have just named?

Mr. Bernardin: Not during my time, because they have never been changed except perhaps in a few cases, maybe eight or ten cases since I have been there, but they were less at some times in the history of the road.

Commissioner Harlan: Have you any trackage rights with any line?

Mr. Bernardin: We have now. The timber company owns some timber quite a ways off, and it was thought best for them to spur off from the Louisiana & Arkansas. There are, I think, two trackage contracts with the Louisiana & Arkansas; they are all on file with the Commission.

Commissioner Harlan: Just explain now to what point. Is that east from Grant or west from Grant?

Mr. Bernardin: We go west from Grant, and they spurred off first at a station above Packton, Arkansas, and after they got some timber there, I think they went still farther west.

Commissioner Harlan: What acreage is owned by the lumber company?

Mr. Bernardin: About 105,000 acres.

Commissioner Harlan: Do you give that as the ownership at this time?

1200 Mr. Bernardin: Yes.

Commissioner Harlan: Some of it has been lumbered off, I suppose?

Mr. Bernardin: Yes, sir. There are about 30,000 acres which have been denuded.

Commissioner Harlan: Are there any other interests upon your logging rails?

Mr. Bernardin: No, there is not a mill out there?

Commissioner Harlan: No stave mill?

Mr. Bernardin: Not a stave mill; no, sir.

Commissioner Harlan: No cotton or farm produce?

Mr. Bernardin: No.

Commissioner Harlan: Practically nothing but logs?

1201 Mr. Bernardin: That is all there is we have hauled out; I think we had divisions on staves and stave bolts, but it is practically nothing.

Commissioner Harlan: You do not make use of them to speak of?

Mr. Bernardin: If anybody wants them, we have several set-out tracks, and if they want to put anything there we will get a car for them and set it so they can load it.

Commissioner Harlan: What is the geographical situation at Selma? I have in mind the saw mill and planing mill and the tracks of the Iron Mountain. How far is the saw mill from the Iron Mountain tracks?

Mr. Bernardin: What we call the old mill, the mill site, comes right up to the Iron Mountain right of way. I think the loading track there just clears their right of way. On the other side of the Iron Mountain track I think that must be two or three hundred feet from the Iron Mountain right of way.

Commissioner Harlan: Are both mills in operation?

Mr. Bernardin: Yes, sir.

Commissioner: What did you call it, the old mill?

Mr. Bernardin: The old mill and new mill. We built a new mill there after the present people acquired the property.

1202 Commissioner Harlan: And the planing mill is on the right of way of the Iron Mountain?

Mr. Bernardin: Well, it is located so, of course, they can load on the loading track; that is, at the old mill. If I am not mistaken it just clears the Iron Mountain right of way; it is parallel to it. On the other side it is between two and three hundred feet.

Commissioner Harlan: The Iron Mountain has a spur track running to both mills?

Mr. Bernardin: No, sir; they only own their track up to their right of way and from there on the mill company owns the track.

Commissioner Harlan: And the mill companies built them in the beginning, or did the Iron Mountain lay them for them?

Mr. Bernardin: I cannot say as to the old one but I know when the new one was built the mill company built that themselves.

Commissioner Harlan: And owns the rail?

Mr. Bernardin: And owns the rail.

Commissioner Harlan: Where is your lumber marketed generally?

Mr. Bernardin: Oh, from Pennsylvania to Colorado and north of the Ohio River, and probably half east and west of the Mississippi River.

1203 Commissioner Harlan: Generally speaking do you get five cents on the bulk of your product?

Mr. Bernardin: No.

Commissioner Harlan: What was your highest percentage?

Mr. Bernardin: I thought there was maybe some five cents; here is a statement, your Honor, that may give you some light on the divisions. I would be glad for you to have it.

Mr. McRae: You said from two to four cents.

Mr. Bernardin: Yes, sir; from two to four cents, they vary according to the revenue the trunk lines get out of it.

(The paper so offered and identified was received in evidence and thereupon marked "Louisiana Railway, Exhibit No. 1, Witness Bernardin," received in evidence December 12, 1910, and is attached hereto.)

Commissioner Harlan: There seems to be some average figures here, 3.24; would you say that is correct?

Mr. Bernardin: Yes, sir; that is what I got it up for, to determine the average divisions we got, and that was taken from the remittances as we received them.

1204 Commissioner Harlan: Do you move out any manufactured lumber over the Louisiana and Arkansas?

Mr. Bernardin: Yes, sir; that two and one-quarter mile haul from Selma to Grant.

Commissioner Harlan: What proportion of your manufactured product goes out in that way?

Mr. Bernardin: I think that tells right there. It gives the two lines; it is about half and half I think. I saw here where—it is about half and half, it runs here.

Commissioner Harlan: Are there any understandings or agreements that produce that result?

Mr. Bernardin: Not a thing, except that you cannot play ball with one fellow part of the time and not all the time. If you do not kind of divide it up, when cars are scarce they remember you did not give them any business when they had plenty of cars and they don't wait on you.

Commissioner Harlan: And that is the reason you do divide it up?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: That is a stub of the Louisiana and Arkansas?

Mr. Bernardin: No.

Commissioner Harlan: Where does it run to the east from Grant?

1205 Mr. Bernardin: It runs over to Jena.

Commissioner Harlan: What does it connect with there?

Mr. Bernardin: That is its terminus. It does not connect with any line.

Commissioner Harlan: That is the reason I called it a stub.

Mr. Bernardin: Oh, yes, sir; I see. There was a time when that was its main line over there into Hope, Arkansas, and later they built from Packton down to Alexandria.

Commissioner Harlan: Did I ask you what your capital stock is?

Mr. Bernardin: Of the railroad company?

Commissioner Harlan: Yes, sir.

Mr. Bernardin. Yes, sir, it is $25,000, but we subsequently increased it to $100,000.

Commissioner Harlan: What did it cost?

Mr. Bernardin: Well, we have about $200,000 in there now. $204,000.

Commissioner Harlan: Actual investment?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: And you have $100,000 in stock and $100,000 bonds?

Mr. Bernardin: No, no bonds. The surplus or earnings
1206 which were left were put into the property.

Commissioner Harlan: Have you paid any dividends?

Mr. Bernardin: No.

Commissioner Harlan: You have put the net earnings back into the property?

Mr. Bernardin: Yes.

Commissioner Harlan: To the extent of about $100,000?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: In what period of time?

Mr. Bernardin: Well, when these people bought the property the stock was $25,000 and we gave $85,000 for the railroad; in other words 340 for the stock, and with what surplus there was in then and what we have left in after, so that the surplus and capital was more than $100,000. We declared a $75,000 stock dividend.

Commissioner Harlan: I am not sure that I get the details. You say you bought the road at $25,000?

Mr. Bernardin: Well we bought it from the stockholders; I mean these present stockholders gave what was equal to $340 a share for this stock of the Louisiana Railway Company, and as I say, with the surplus that they then had and what was left in, when we equalled more than $100,000 so we could declare out
$75,000 in a stock dividend we did so, to make the capital
1207 $100,000.

Commissioner Harlan: Have you stated what the road originally cost or do you know?

Mr. Bernardin: Well, we thought it was worth $85,000 when we bought it. But I do know——

Commissioner Harlan: I do not mean what you bought it for, but what did the original builders of the road pay for it?

Mr. Bernardin: I think it cost $85,000, because so far as I know the actual money——

Mr. McRae: He was not connected with the first organization.

Commissioner Harlan: You do not know what it originally cost?

Mr. Bernardin: No, but we sort of appraised the thing when we bought it and considered it worth that much money.

Commissioner Harlan: $85,000?

Mr. Bernardin: Yes, sir. And I know that since then whatever has gone on the books has been actually spent.

Commissioner Harlan: What accumulated surplus did you find when you bought the road?

Mr. Bernardin: There was about $65,000 we thought in there at the time.

1208 Commissioner Harlan: You mean the surplus was in the form of an invested asset, it was not cash?

Mr. Bernardin: No.

Commissioner Harlan: It was simply the investment value of the road?

Mr. Bernardin: Yes.

Commissioner Harlan: That equalled $25,000 and a surplus of $60,000?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: And then you put in some more capital and that brought up the capital——

Mr. Bernardin: We did not put in any more money but we left the earnings in, we did not take anything out.

Commissioner Harlan: And you finally issued $100,000 of stock?

Mr. Bernardin: $75,000 more, to make it $100,000 issue.

Commissioner Harlan: What was the mileage at that time when you bought the road?

Mr. Bernardin: I think it was about eight or nine miles; I do not recall just what it was, and they have the usual amount of stuff for spur tracks.

Commissioner Harlan: At the time you bought the road there were eight or nine miles?

Mr. Bernardin: Yes.

1209 Commissioner Harlan: And you appraised it at $85,000?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: And you issued $100,000 of capital?

Mr. Bernardin: We did not do that immediately.

Commissioner Harlan: No, but after a while.

Mr. Bernardin: Yes.

Commissioner Harlan: How did you build the other eight miles, was that built with earnings?

Mr. Bernardin: As far as they would go and the balance of it the lumber company would let them use their credit; that is in this way, they would buy steel for them and charge it to them; the railroad company did not have any credit except with its stockholders, and as they were all interested one way with the other, you might say that the lumber company financed the railroad.

Commissioner Harlan: For the other eight miles?

Mr. Bernardin: Yes.

Commissioner Harlan: How did it do that?

Mr. Bernardin: In that way, that I tell you.

Commissioner Harlan: How did the railroad pay the timber company back, in service?

Mr. Bernardin: In service; yes, sir and in money.

1210 Commissioner Harlan: The other eight miles were finally built out of the earnings of the railroad company, is not that the case?

Mr. Bernardin: Yes.

Commissioner Harlan: What do you regard or understand to be the present value of this railroad? I will put that in a little different way. What do you understand to be the investment up to this time?

Mr. Bernardin: $204,485.

Commissioner Harlan: Then in effect out of surplus income you have added $100,000 to the investment?

Mr. Bernardin: Yes.

Commissioner Harlan: In what period of time did you do that?

Mr. Bernardin: In five years; but you understand they still owe about $18,000 or $20,000 that they have not paid, but of course that is spent on the property.

Commissioner Harlan: With the exception of that, say, $20,000, the railroad is paid for?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: In what form is that debt represented?

Mr. Bernardin: In just an open account.

1211 Commissioner Harlan: An open account between the railroad company and the lumber company?

Mr. Bernardin: Yes.

Commissioner Harlan: That is to say the lumber company is still your creditor to the extent of $18,000 or $20,000?

Mr. Bernardin: Yes.

Commissioner Harlan: What were the net revenues for last year?

Mr. Bernardin: Do you mean the fiscal year?

Commissioner Harlan: Ending June 30, 1910.

Mr. Bernardin: About $40,000. Let me get it from the books and have it right—well it was $39,824.71, after paying the taxes.

Commissioner Harlan: And interest on this deferred payment to the lumber company?

Mr. Bernardin: They have never charged us any interest; it was just an open running account, sometimes more and sometimes less.

Commissioner Harlan: That approximates forty per cent on your original cash investment of $100,000?

Mr. Bernardin: Yes, sir; and twenty per cent on what is in there.

1212 Commissioner Harlan: It comes to this, does it not, that taking the operations of the railroad for the last year, that on June 30, 1910, you find yourselves in the position of a railroad that originally cost $110,000 cash, in one way and another, to which you had added earnings to the extent of $100,000 less $18,000 re-

maining unpaid in open account, and you cleared net last year approximately $40,000?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: Have you stated what the total outbound tonnage was last year of all kinds?

Mr. Bernardin: If you mean what we delivered to the other lines, I do not believe I can give it to you—yes, I can. It was 75,848 tons of lumber. We have the lumber tonnage separated from the logs.

Commissioner Harlan: Do you remember the number of cars?

Mr. Bernardin: No, but that would be about 3,000 cars.

Commissioner Harlan: Have you any other source of revenue?

Mr. Bernardin: No, sir.

Commissioner Harlan: And the lumber company competes with other lumber companies in the general markets I presume?

Mr. Bernardin: Yes, sir.

Commissioner Harlan: Rather an active competitor, is it not?

1213

Mr. Bernardin: We do the best we can.

Commissioner Harlan: And your lumber is pine, generally?

Mr. Bernardin: All pine.

Commissioner Harlan: Have you some questions Mr. McRae?

Mr. McRae: I believe I would like to file this charter or at least call attention to it.

You have stated this railroad was incorporated before you had any connection with it?

Mr. Bernardin: Yes, sir.

Mr. McRae: From where to where? Can you state that without my finding it?

Mr. Bernardin: No, I cannot. I will have to find it in there myself. It says from a point in Concordia Parish, Louisiana, at or near Vidalia extending westward through the parishes of Concordia and Catahoula to a point on Little River at or near Simon's Ferry; thence through the Parish of Grant to the line of the St. Louis, Iron Mounain and Southern Railway, crossing the same in the northwest quarter of the northeast quarter of Section 29, Township 9, North Range 1 E., 342 feet from the point on the north line of said section, where said St. Louis, Iron Mountain and

1214

Southern enters it, the angle of crossing being such a degree, and thence in a westerly direction through the parish of Grant and Winn to a point on the Red River between Montgomery and Colfax at or near Lake Nautachas.

Commissioner Harlan: That seems to be news to you.

Mr. Bernardin: Yes, because it was all chartered and taken out before I had any connection with it.

Commissioner Harlan: You do not mean to say there is any plan before your company for carrying out this route?

Mr. Bernardin: I rather think there was because----

Commissioner Harlan: I do not mean that there was, but is there now?

Mr. Bernardin: No.

Mr. McRae: I was going to have you explain. Now, since you bought the stock on this road, which was projected into this territory, has another one of the defendant carriers built into the territory this charter sought to cover?

Mr. Bernardin: The Louisiana and Arkansas running from Grant to Jena covers a part of the territory named in the charter.

Mr. McRae: Did you understand that this was a real railroad projected at the time by the original promoters of it?

1215 Mr. Bernardin: My understanding is that at the time the charter was taken out for this road that they had no saw mill interests whatever.

Mr. McRae: Was it receiving divisions at the time you bought the stock in it?

Mr. Bernardin: It was.

Mr. McRae: The same divisions it is receiving now or substantially so?

Mr. Bernardin: Yes.

Mr. McRae: Would you have made the investment in the timber land there if you had not supposed you could continue the same divisions?

Mr. Bernardin: We would not have paid that price for it.

Mr. McRae: Is the Louisiana Railway recognized by the authorities in Louisiana as a railroad and assessed by the same Board as the defendant carriers?

Mr. Bernardin: They are.

Mr. McRae: Does it report to the Louisiana Commission in the form required of it?

Mr. Bernardin: Yes, sir.

Mr. McRae: Does it make a monthly and annual report to the Interstate Commerce Commission?

1216 Mr. Bernardin: Yes.

Mr. McRae: And complies with all regulations of that Commission?

Mr. Bernardin: Yes.

Mr. McRae: Does it keep its accounts separate?

Mr. Bernardin: Yes.

Mr. McRae: Do you pay per diem and charge demurrage?

Mr. Bernardin: We do.

Commissioner Harlan: Tell us about that. Do you charge demurrage against the lumber company?

Mr. Bernardin: Yes.

Mr. McRae: Do you publish tariffs and concur in tariffs of the other roads to which you are made a party?

Mr. Bernardin: Yes.

Mr. McRae: The company issues bills of lading?

Mr. Bernardin: Yes.

Mr. McRae: I believe you have explained the amount of holdings you have. I think his Honor asked you that.

Mr. Bernardin: Yes.

Mr. McRae: How far is the timber from the mill, have you stated that?

Mr. Bernardin: No, but it covers an area of about—it is
1217 three townships one way and about four another; it is pretty well scattered in those townships; it would be about eighteen miles by twenty-four.

Mr. McRae: What would this road be worth if it was denied the through routes and joint rates and a division thereof?

Mr. Bernardin: I do not know, but they can have my stock for half price. I don't know what it would be worth.

Mr. McRae: I believe that is all.

Commissioner Harlan: Do the state laws provide a different basis for taxing the logging roads and common carrier roads?

Mr. Bernardin: I think not. You know all roads in Louisiana have a period of about ten years, that is roads built during the period of ten years were exempt from taxes and that has expired, and I notice where our taxes have gone up.

Commissioner Harlan: It expired with your company?

Mr. Bernardin: Yes, sir. Well, it expired with all companies, and I mean those companies built during that time are now subject to taxation.

Mr. McRae: I will ask you to examine that and see if it represents correctly the position of the two railroads and your
1218 mill. (Handing paper.)

Mr. Bernardin: Yes.

(The paper so offered and identified was received in evidence and thereupon marked Louisiana Railway Exhibit No. 2, Witness Bernardin, received in evidence December 12, 1910, and is attached hereto.)

Mr. Cowan: Speaking of demurrage, do you operate under demurrage or per diem?

Mr. Bernardin: The railway company pays per diem. If the mill company keeps the cars too long they charge them demurrage

Mr. Cowan: You have ninety-six hours free time, have you not?

Mr. Bernardin: What is that?

Mr. Cowan: Don't you have ninety-six hours before you begin to pay per diem?

Mr. Bernardin: Not as I understand it. Per diem commences when you take them off the connecting line tracks, unless they have changed them recently.

Mr. Cowan: The information we have recently from the examination made by the Commission is that you have ninety-six
1219 hours.

Mr. Bernardin: Whatever it is, it is done according to the rules of the Commission.

Mr. Cowan: Then that means that you do not know how that is done?

Mr. Bernardin: No, I do not know about the details except I do know if there is any mill which keeps the car longer than they are allowed to, we charge them demurrage, and I know the connecting lines surely make us pay per diem.

Mr. Cowan: You were talking about the mill and I was talking about your railroad.

Mr. Bernardin: I was talking about both of them.

Mr. Cowan: Your railroad gets a car from its connecting line and it goes out on this track and you turn it over to the mill company. Now the settlement between your railroad company and the Iron Mountain, for example, is based on a certain number of days of free time before you pay anything, is it not?

Mr. Bernardin: I do not think there is any free time between railroads.

Mr. Jeffery: Not on per diem.

Mr. Bernardin: On per diem there is no free time between railroads.

1220 Mr. Cowan: Is there any per diem charge or demurrage charge by you against the lumber company?

Mr. Bernardin: I stated there was.

Mr. Cowan: How much free time do you give them?

Mr. Bernardin: Whatever the other lines give them; I think it is forty-eight hours.

Mr. Cowan: It it not a fact that all the saw mills operating in Louisiana that you are acquainted with operate under some sort of plan or scheme whereby they get a division of the rate on the shipment of the lumber out from the mill?

Mr. Bernardin: I think most of them do. I cannot testify certainly, but I think they do in a general way.

Mr. Cowan: You said if the allowances or whatever we may call them were cancelled that then they could have your stock??

Mr. Bernardin: Yes, sir.

Mr. Cowan: At half price I believe you said. Would it not be necessary to operate this railroad in order to operate the saw mills?

Mr. Bernardin: I do not know that it would be necessary for the railroad to operate it. It would be necessary for some one, I reckon, or else the mill would have to go out of business. They would have to get their logs in there.

1221 Mr. Cowan: A logging railroad in some form or other is necessary in the transaction of the saw mill business; they cannot carry it on without it?

Mr. Bernardin: They cannot run it without logs, that is sure, and you have to get them in some way.

Mr. Cowan: The most economical way is to get them in by rail?

Mr. Bernardin: I think it is, yes, sir.

Mr. Cowan: Do you ship lumber to Texas?

Mr. Bernardin: Yes, sir.

Mr. Cowan: You have divisions on all the roads to destinations on all different roads or parts of them?

Mr. Bernardin: Except the Santa Fe, I think.

Mr. Cowan: Do you have divisions with the Cotton Belt?

Mr. Bernardin: Yes, sir.

Mr. Cowan: And you get the same divisions to points other than the Santa Fe, no matter on what railroad the station is located to which you ship lumber?

Mr. Bernardin: You mean competitive points?

Mr. Cowan: Uniform divisions.

Mr. Bernardin: No, they are not uniform I stated they vary from two to four cents.

1222 Mr. Cowan: Suppose you ship over the Iron Mountain to a point on the Cotton Belt in Texas, say Waco, would you get the same division?

Mr. Bernardin: No, we have no joint rates with the Iron Mountain and Cotton Belt.

Mr. Cowan: That is why I was asking you. How would you reach the Cotton Belt?

Mr. Bernardin: By the Louisiana and Arkansas.

Mr. Cowan: What divisions would you get in such a case?

Mr. Bernardin: I cannot give you the details, they run from two to four cents.

Mr. Jeffery: You would get one cent in that case, would you not?

Mr. Bernardin: I do not think there is any on which we get as little as one cent.

Mr. Jeffery: In Texas business on the Iron Mountain you would.

Mr. Bernardin: I do not think we have any joint rates with the Iron Mountain to Texas points.

Mr. Cowan: Do you get any division on shipments made within the State of Arkansas?

Mr. Bernardin: No, I think not.

1223 Mr. Cowan: Why is that? It has been stated here several times.

Mr. Bernardin: I don't know myself, but I do not think we ever did have a division on business going to the State of Arkansas.

Mr. Cowan: Do you haul that lumber and logs for nothing?

Mr. Bernardin: They do not sell any up there; the mill does not sell any lumber in Arkansas, Mr. Cowan.

Mr. McRae: We manufacture more lumber in Arkansas than we can consume.

Mr. Cowan: I know that, but somebody testified they sold twenty-five per cent of their output in Arkansas.

Mr. Bernardin: Well, we do not sell.

Mr. Cowan: Do you sell any in Louisiana?

Mr. Bernardin: No, I don't think we ever made a shipment in that state.

Mr. Cowan: But if you did, do you have divisions?

Mr. Bernardin: No, I think that would be the sums of the locals.

Mr. Cowan: You said you would not have paid as much for the timber if you had not had the division of the rates?

Mr. Bernardin: No, what I want to get in is this, we would

1224 not have paid as much for that property if it had not had divisions at the time we bought it, because we bought that property subsequent to the time that the Commission had passed on this tap line division and we took it into consideration and we thought that that was a reasonably safe judgment to go on, and my opinion is we would have bought that property for considerably less if the tap line divisions were not in, because it was a consideration.

Mr. Cowan: You say "we" would have bought it. Did not "we" buy it from "we"?

Mr. Bernardin: No, we did not.

Mr. Cowan: I misunderstood you then.

Mr. Bernardin: No, we bought it from other people.

Mr. Cowan: That is the railroad.

Mr. Bernardin: I am speaking now, when I speak about buying the property, of the thing as a whole, that is the railroad, saw mill and timber land; it was all one transaction, all made, all at one time.

Mr. Cowan: Does the amount of the division of the rate enter into the price of the lumber or——

Mr. Bernardin: To whom?

Mr. Cowan: Anybody.

1225 Mr. Bernardin: I don't think so.

Mr. Cowan: Then somebody gets that division, of course, if it does not enter into the price of the lumber?

Mr. Bernardin: Yes, sir.

Mr. Cowan: Who else can get that except the parties who have the beneficial ownership in the railroad?

Mr. Bernardin: Who else could get the division? Do you mean if there was no division?

Mr. Cowan: No; where there is a division, who gets the benefit of it if it does not enter into the price of the lumber? If it enters into the price of the lumber you said that the man that buys the lumber may get the benefit of it, but if it does not, somebody gets the benefit of the four cents.

Mr. Bernardin: Well, we as stockholders of the railroad company are getting the benefit of it.

Mr. Cowan: And they are the same people who own the saw mill and own the lumber?

Mr. Bernardin: Yes, sir.

Mr. Cowan: Take some man who is operating a saw mill with a railroad to log his mill who does not get that division, he is at that much disadvantage.

1226 Mr. Bernardin: Yes, sir; he certainly is, unless he has got something in lieu of the division.

Mr. Cowan: Well, that is another question.

Mr. Bernardin: Well——

Mr. Cowan: There has been some reference to having something in lieu, and somebody getting the benefit in some other way. Do you know of any case in which any person has?

Mr. Bernardin: I cannot testify to what I have not seen, but it is pretty well known that there are other considerations besides tap line divisions that some saw mill men have received from railroad companies, and I think that one of them so testified in this room about two days ago.

Mr. Cowan: The disposition then is to find some sort of a scheme where somebody gets some benefit out of the through rate?

Mr. Bernardin: You will find that somewhere or some how they are all getting in the game and getting about the same thing;

they may not get it on tap line divisions, but some way or somehow they are pretty nearly on the same basis.

Mr. Cowan: Do you sell to Santa Fe stations, for instance, to Wichita?

1227 Mr. Bernardin: No, we have no divisions—yes, sir, into competitive points.

Mr. Cowan: You do not sell a shipment over the Santa Fe to that point?

Mr. Bernardin: No.

Mr. Cowan: Because you have no rates on the Santa Fe?

Mr. Bernardin: No.

Mr. Cowan: If you meet a man in competition at Wichita, whose mill is on the Santa Fe, and who cannot get in there on the same net rate you do and you ship in on the Rock Island and you get four cents division, are you not in a position to outbid him?

Mr. Bernardin: I presume we would, if it came around to the point, we would take it away from the railroad company and give it to the mill company; but I want to answer you in another way. I do not believe that the saw mill man that gets a division takes that into consideration when he sells his lumber, because he always tries to sell it for all he can get for it, and he naturally would take pride in selling his lumber and getting just as much for it as the man did who had no division.

Mr. Cowan: Wherever he could do that, of course, he

1228 pockets the swag.

Mr. Bernardin: Sure he does. If I get four cents and another man does not get it and does not get anything in lieu of it, I have that much advantage over him, no doubt about that.

Mr. Cowan: If these divisions were canceled would that raise the price of lumber in your opinion?

Mr. Bernardin: I think it would not. I think it would reduce it to the buyer.

Mr. Cowan: Why do you think it would reduce it?

Mr. Bernardin: Because the cost of lumber to the buyer is predicated on the cost at the mill and the freight added, and if you reduce the freight he will get it.

Mr. Cowan: I say if the divisions were canceled.

Mr. Bernardin: If the divisions were canceled?

Mr. Cowan: Yes.

Mr. Bernardin: I thought you said the rate.

Mr. Cowan: I made a slip of the tongue, then.

Mr. Bernardin: Yes.

Mr. Cowan. I mean if the divisions were canceled would that increase the price of lumber if the rates remained the same and the divisions were canceled to the tap lines?

1229 Mr. Bernardin: I do not think it would. I think the mill man through this ownership would make just that much less money.

Mr. Cowan: If the flat rate were reduced and the divisions canceled, then what would be the effect on the price of lumber?

Mr. Bernardin: It means cheaper lumber in St. Louis and Chicago, wherever those rates go.

Mr. Cowan: You seem to be a very intelligent man. Thank you for the answer.

Mr. Bernardin: Well, it is probably what you wanted.

Mr. Cowan: Just how would you figure that out? You are an experienced man in the business. Tell the Commissioner how you reckon it would tend to reduce the price of lumber if you reduced the flat rate and cancel out the divisions to tap lines.

Mr. Bernardin: I already answered that.

Mr. Cowan: You said it would do it. How would it?

Mr. Bernardin: The mill man would add just that much less freight to the price you try to get at the mill for it. For example, we will say ten dollars at the mill for the lumber. The rate
1230 to St. Louis now is eighteen cents, that is four dollars and fifty cents freight as an average. That would be fourteen dollars and fifty cents. If you would reduce that rate to fifteen cents per hundred pounds then he would only add three dollars and seventy-five cents to his ten dollars.

Commissioner Harlan: He would add nothing to his price?

Mr. Bernardin: No, he would just give it to the man in St. Louis. You will find that the lumber men have price lists figured out on rates from I think sixteen cents to forty-five cents and when they go to quote a man on lumber they first look up his rate and then refer to that price list and quote him. You can see now that there are frequently times, as when they reduced the Omaha rates, the very day in fact some man anticipated it because they could not ship it until it went into effect, but they began to sell lumber in Omaha cheaper immediately after the rate was reduced from twenty-six cents to twenty-five cents.

Commissioner Harlan: Cheaper by the difference in the rate?

Mr. Bernardin: Yes, sir.

Mr. Cowan: Now, then, the man who is not getting any tap line division and who is not getting some advantage in some other fashion necessarily is at that much disadvantage so far as the profits
1231 of his business is concerned compared to the tap line saw mill that is getting the division?

Mr. Bernardin: I have so stated.

Mr. Cowan: And that in your opinion lies in the profit of the manufacturing enterprise?

Mr. Bernardin: Yes.

Mr. Cowan: Does it not result, if the man without the tap line division and without securing some sort of beneficial arrangement otherwise cuts his lumber and sells it in competitive markets, it means he is marketing his timber cheaper than the man *has to* who gets the tap line division?

Mr. Bernardin: He can put it in his timber or lumber. In the general operations he is handicapped that much.

Mr. Cowan: How do you estimate the net cost to a lumber company of the lumber?

Mr. Bernardin: We do not estimate it. We take our books for it.

Mr. Cowan: I assume you carry your lumber at a certain estimated cost of production, the lumber you have on hand?

Mr. Bernardin: Oh, I think for purposes of taking stock every month we take ten dollars, but when we go to find out what the cost is we do not take ten dollars; we take our books for it.

1232 Mr. Cowan: Then you estimate the value of stumpage, the value of your timber in the tree?

Mr. Bernardin: Well we have an arbitrary price that we charge the saw mill for stumpage and credit it to the timber account.

Mr. Cowan: Is that affected by the fact of having your tap line divisions or by the amount of the rate?

Mr. Bernardin: It is not now, no; but it would have been affected if there had been none, because we are charging this out at a price now to work that account down. If the account had been less we could have charged less to the account.

Mr. Cowan: That is all.

Mr. Garwood: I would like to ask a question. If the Santa Fe has canceled out the through rates with its connections, tap lines and various trunk lines, and industries not situated upon the Santa Fe must ship upon the sums of the locals, does not that operate to give industries situated on the Santa Fe a monopoly of the Santa Fe local market?

Mr. Bernardin. Yes, sir.

Mr. Garwood: Are not industries not situated on the Santa Fe therefore shut out of competition with industries situated on the Santa Fe for all local markets upon the Santa Fe?

1233 Mr. Bernardin: They are.

Mr. Garwood: Does not the fact as to whether the tap line divisions are an ultimate advantage to the stock owning interests, whoever they may be, depend upon whether or not the operations of the investment in the railroad are profitable and remunerative?

Mr. Bernardin: That is such a long question I could not keep it.

(Question read.)

Mr. Bernardin: I do not understand it yet. I don't know what you are driving at.

Mr. Garwood: In other words, if the railroad that is denominated here a tap line, that is built and owned by the same stock owning interests as own an industry, if that is not a profitable investment. then there can be no ultimate advantage to its owners, can there?

Mr. Bernardin: Certainly not.

Mr. Garwood: Then that question inquired into by counsel depends wholly upon the question whether there is a profit made in that enterprise?

Mr. Bernardin: Yes, sir.

1234 Mr. Garwood: You have stated that the cancelation of the through rate by the Santa Fe operates to give industries situated upon the Santa Fe a monopoly of its local market. Does it not also follow that those local markets are in the control, at least to that extent, of the industries situated upon the Santa Fe and are not those industries therefore in position to charge the

ultimate consumer at those local markets a higher price for th lumber if they choose to do so?

Mr. Bernardin: They would probably have to, because they woul not buy lumber as cheap as the fellow who was across the countr on a line which had rates from this whole market down here.

Mr. Jeffery: When did you connect with the L. & A.?

Mr. Bernardin: As I say, it was connected there prior to 1905 when I got there.

Mr. Jeffery: So you don't know——

Mr. Bernardin: No, I think I stated it was about a year o eighteen months prior to that.

Mr. Jeffery: I notice you have a higher division to Oklahoma tha to anywhere else?

Mr. Bernardin: Yes.

1235 Mr. Jeffery: How do you account for that?

Mr. Bernardin: I don't know unless it is a short hau maybe out there and there was more to divide up on it.

Mr. Jeffery: A short haul via the L. & A.?

Mr. Bernardin: Yes.

Mr. Jeffery: As a matter of fact, don't you know that the divisio to Oklahoma was increased when you connected with the L. & A.?

Mr. Bernardin: No, as I say, they never have been changed, s far as I know, since we have been connected with them, and we wer connected with them about a year before I came here.

Commissioner Harlan: What do you understand, Mr. Jeffery?

Mr. Jeffery: I understand there was an increase. I noticed ther was a greater division to Oklahoma, which caught my eye, becaus ordinarily they are less.

Mr. Garwood: You gave some figures as to the result of your opera tion for the last fiscal year.

Mr. Bernardin: Yes, sir.

Mr. Garwood: Those figures did not include any interest on th sum total of the investment in the railroad?

Mr. Bernardin: No.

Mr. Garwood: It was a mere operating account in othe

1236 words?

Mr. Bernardin: Yes, sir.

Mr. Coleman: Is your testimony with respect to the cancelation o any lumber rates from points on other lines to be understood as you belief that the Santa Fe has canceled some rates of lumber from othe lines?

Mr. Bernardin: Do you mean recently?

Mr. Coleman: Well, you were a witness for the complainant i the Star Grain & Lumber case?

Mr. Bernardin: Yes.

Mr. Coleman: Your testimony which you gave there was wha you heard from others as to who canceled the lumber rates?

Mr. Bernardin: I expect the record can tell better than I. M recollection is that the Santa Fe and the Cotton Belt were unable t divide the rate——

Mr. Coleman: I am speaking about the cancelation now.

Mr. Bernardin: I was going to say I don't know whether Mr. Hershey canceled them or Mr. Farrell, but I do remember they were canceled out and I believe a complaint filed before the Commission. I could not say on whom the responsibility rested for the cancelation of those rates.

Mr. Coleman: You complained pretty seriously of the al-
1237 leged disability you labored under in selling lumber for the Buchanan Mills so-called.

Mr. Bernardin: Yes, sir.

Mr. Coleman: You do not know what course this cancelation took?

Mr. Bernardin: That was several years ago. I don't remember the details, only that I will say this, that the Santa Fe among lumber men had the credit for canceling out those rates. Whether they did or not I don't know.

Mr. Coleman: The record will show for itself, your Honor.

Commissioner Harlan: Yes.

Mr. Coleman: I would like to ask another question. You have been actively engaged in selling lumber for a great many years in the territory traversed by the Santa Fe rails, what is known as Trans-Missouri and Western Trunk Lines territory?

Mr. Bernardin: Yes, sir.

Mr. Coleman: Do you find any other lumber that you must compete against, except the lumber that originates at mills exclusively located on the Santa Fe rails to the Santa Fe markets?

1238 Mr. Bernardin: No, we have to compete with all this lumber produced in the Southwest.

Mr. Coleman: What is your information or experience as to the mills that are available on other lines to Santa Fe markets, mills other than Santa Fe mills? Judge Garwood's question might give the inference that the Santa Fe mills have the exclusive access to local Santa Fe points. Do you not meet the competition of other saw mills that have through rates to Santa Fe points?

Mr. Bernardin: Yes, I think the Southern Pacific Mills get on to the Santa Fe and some few Texas and Pacific mills.

Mr. Coleman: Any others?

Mr. Bernardin: Now, Mr. Coleman, after we got out of the Santa Fe's territory, at that time I just sort of dropped it, and I am not as familiar perhaps with the mills that get to local Santa Fe stations as I ought to be, or as others are, and it is only in a general way that I know now who really is on the local Santa Fe points.

Mr. Coleman: Do you know of any lines connected——

Mr. Bernardin: I do know one too; the Frisco, running across from De Quincy to Baton Rouge. They have joint rates with you because I have lately shipped some lumber from stations
1239 over there to stations on your line.

Mr. Coleman: Have you ever shipped any on the I. & G. N.?

Mr. Bernardin: No.

Mr. Coleman: Do you know whether they have joint rates?

Mr. Bernardin: No. If you say so I will take your word for it.

Mr. Coleman: Do you know whether the Texas & Pacific have?

Mr. Bernardin: I said the Texas & Pacific.

Mr. Coleman: Do you know the lines connecting at Fort Worth have through rates to Santa Fe points?

Commissioner Harlan: The tariffs will disclose that. I do not think we need go further with that.

Mr. Cowan: You spoke of getting out of Santa Fe territory.

Mr. Bernardin: What I mean is, we did not pay the attention to the customers along that line we did to other places. We could not get rates in there and could not pay attention to them if we sold them.

Mr. Cowan: So you naturally went to the best place you could get divisions, as the Santa Fe did not give divisions?

Mr. Bernardin: Yes.

1240 Mr. McRae: Do you mean that the people who were affiliated with that road in some way were able to undersell you and you had to get other markets?

Mr. Bernardin: It was that, and also because we went to other markets, we did not want to go up against the game.

Mr. McRae: Is that the contract you read between the Grant Lumber Company and the railroad company?

Mr. Bernardin: Yes, sir.

(The paper so offered and identified was received in evidence and thereupon marked Louisiana Railway Exhibit No. 3, Witness Bernardin, received in evidence December 12, 1910, and is attached thereto.)

1241 *Mill Creek and Little River Railway and Navigation Company.*

W. A. MURRAY was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: State your full name.

Mr. Murray: W. A. Murray.

Commissioner Harlan: Where do you live?

Mr. Murray: Manistee, Louisiana.

Commissioner Harlan: What is your business?

Mr. Murray: Lumber man and railroading.

Commissioner Harlan: With what railroad are you connected?

Mr. Murray: The Mill Creek and Little River Railway and Navigation Company.

Commissioner Harlan: What are the terminii of that road?

Mr. Murray: Bryants Spur on the west to right close to the Little River or at the Little River on the east.

Commissioner Harlan: With what regular line do you connect?

Mr. Murray: The Iron Mountain.

Commissioner Harlan: At Bryants Spur?

Mr. Murray: Yes, sir.

1242 Commissioner Harlan: When was the Mill Creek and Little River Railway and Navigation Company organized?

Mr. Murray: In November, 1905.
Commissioner Harlan: At what time was the railroad built?
Mr. Murray: It was started I think in August, 1905.
Commissioner Harlan: By whom?
Mr. Murray: It was started by the Little River Lumber Company; it was started before the charter was gotten out.
Commissioner Harlan: How much of a track was built during that year?
Mr. Murray: I expect about six miles was built in the first year.
Commissioner Harlan: What was the total length of the constructed track at this time?
Mr. Murray: Close to ten miles.
Commissioner Harlan: When did the railroad company acquire title to the railroad property?
Mr. Murray: Not until 1908, I think it was.
Commissioner Harlan: Was that after the entire ten miles had been built?
Mr. Murray: No, some was built since then.
1243 Commissioner Harlan: How did it acquire the title, by purchase?
Mr. Murray: Yes, sir; it acquired title by purchase and by building part of it.
Commissioner Harlan: Who furnished the capital for the construction of the railroad?
Mr. Murray: The Little River Lumber Company.
Commissioner Harlan: And what was the total cost of the railroad?
Mr. Murray: $31,935.
Commissioner Harlan: Does that include the equipment?
Mr. Murray: No.
Commissioner Harlan: Is that the cost of the total completed track at this time?
Mr. Murray: Yes, sir.
Commissioner Harlan: What did the equipment cost and what equipment have you?
Mr. Murray: We have two locomotives and twelve logging cars.
Commissioner Harlan: What did it cost?
Mr. Murray: The equipment, $8,606.66.
Commissioner Harlan: So that the total investment ap-
1244 proximates $38,000?
Mr. Murray: Yes, sir.
Commissioner Harlan: Have you any stations on that road?
Mr. Murray: Yes, sir.
Commissioner Harlan: Passenger stations?
Mr. Murray: No, sir; we carry no passengers.
Commissioner Harlan: Do you carry any mail?
Mr. Murray: No.
Commissioner Harlan: Express?
Mr. Murray: No.
Commissioner Harlan: Do you own the right of way?

Mr. Murray: Part of it runs over the land of the Little River Lumber Company.

Commissioner Harlan: How much of it?

Mr. Murray: About eight miles I think.

Commissioner Harlan: How did you get the other two miles?

Mr. Murray: We have a lead of two miles.

Commissioner Harlan: So you do not own the fee title to any of the right of way?

Mr. Murray: Not as railroad people.

Commissioner Harlan: Not as a railroad. Where is the
1245 mill of the lumber company?

Mr. Murray: At Manistee.

Commissioner Harlan: Where is Manistee with reference to Bryants Spur?

Mr. Murray: Three miles northeast.

Commissioner Harlan: Is the mill reached by the Mill Creek and Little River Railway and Navigation Company's rails?

Mr. Murray: Yes.

Commissioner Harlan: Have you a map of that road here?

Mr. Murray: No, sir; I have not.

Commissioner Harlan: I do not quite understand how it is that the mill is three miles north of Bryant's Spur. In what direction does the track run?

Mr. Murray: North and east.

Commissioner Harlan: Then the mill is how far from the Iron Mountain's rails?

Mr. Murray: About three miles.

Commissioner Harlan: How far is the planing mill from the Iron Mountain's rails?

Mr. Murray: It is a part of the saw mill and joins it.

Commissioner Harlan: Was the mill built after the rail-
1246 road or before?

Mr. Murray: Before.

Commissioner Harlan: How long before?

Mr. Murray: I don't know. We did not build the mill.

Commissioner Harlan: You did not build the mill?

Mr. Murray: No.

Commissioner Harlan: You mean the Little River Lumber Company did not build it?

1247 Mr. Murray: No, we did not build it.

Commissioner Harlan: Had it been built several years before?

Mr. Murray: Yes, sir.

Commissioner Harlan: Was there any rail connection?

Mr. Murray: No.

Commissioner Harlan: How did it get its lumber over to the Iron Mountain rails?

Mr. Murray: On a wooden tram, and they got their logs into the mill with oxen and wagons as long as they could do so profitably, and then they had to quit.

Commissioner Harlan: At that time they were lumbering rather near the mill, were they not?

Mr. Murray: Yes, sir.

Commissioner Harlan: And after that was cut out, they had to find some more economical way of getting the logs?

Mr. Murray: They had no money to go ahead, and had to quit.

Commissioner Harlan: They had to quit?

Mr. Murray: Yes, sir.

Commissioner Harlan: And then your people came along and bought the mill?

Mr. Murray: Yes, sir.

Commissioner Harlan: And the lands?

1248 Mr. Murray: Well, they didn't have much land.

Commissioner Harlan: And your people came along and bought the mill.

Mr. Murray: Yes.

Commissioner Harlan: And acquired additional lands?

Mr. Murray: Yes.

Commissioner Harlan: And constructed the road?

Mr. Murray: Yes.

Commissioner Harlan: How much of this road is logging road?

Mr. Murray: We haul logs over the road east of the mill; we are hauling logs over that part of the road between Manistee and Bryant Spur.

Commissioner Harlan: I had in mind rather the character of the road. From Bryant Spur to Manistee is it ballasted?

Mr. Murray: Yes, sir.

Commissioner Harlan: With what?

Mr. Murray: Well, with the soil which is there, which is kind of a gravelly soil, and makes a good ballast.

Commissioner Harlan: What rail have you between Bryants Spur and the mill?

Mr. Murray: 35 pound steel.

Commissioner Harlan: What is the character of the road-

1249 bed beyond the mill toward the forest?

Mr. Murray: It is about just the same; it is a very hilly country; extremely hilly.

Commissioner Harlan: Cuts and fills?

Mr. Murray: Yes, sir; a great many.

Commissioner Harlan: And the same weight of rail?

Mr. Murray: Yes, sir.

Commissioner Harlan: Then that part of the road, the ten miles, is operated by the railroad company?

Mr. Murray: Yes, sir.

Commissioner Harlan: Are there any logging roads that run into the main line?

Mr. Murray: After you get out about three miles beyond the mill there are logging spurs there.

Commissioner Harlan: Who own those spurs?

Mr. Murray: The railroad company.

Commissioner Harlan: Does it own the rails also?

Mr. Murray: Yes, sir.

Commissioner Harlan: And lays them down?
Mr. Murray: No, sir.
Commissioner Harlan: Who does the moving of those roads?
Mr. Murray: The lumber company.
1250 Commissioner Harlan: But you supply the material?
Mr. Murray: We supply the rails only.
Commissioner Harlan: They supply the right of way and the sleepers.
Mr. Murray: And the ties and construction.
Commissioner Harlan: And the construction?
Mr. Murray: Yes, sir.
Commissioner Harlan: And you operate them for the lumber company?
Mr. Murray: Yes, sir.
Commissioner Harlan: I observe this railroad is also called a navigation company.
Mr. Murray: Yes, sir.
Commissioner Harlan: What is the meaning of that?
Mr. Murray: We figured at one time that we might operate floating property in connection with it.
Commissioner Harlan: Up what river?
Mr. Murray: The Little River.
Commissioner Harlan: How far is that from the eastern terminus of your road?
Mr. Murray: It is right at it.
Comimssioner Harlan: Your road runs right to the river bank?
1251 Mr. Murray: Yes.
Commissioner Harlan: Is there a landing there?
Mr. Murray: Not now there is not, because we never have carried out our original intention up to date.
Commissioner Harlan: You have not any boats on the river now?
Mr. Murray: No.
Commissioner Harlan: Do not receive any traffic that way?
Mr. Murray: No, we have no connection now.
Commissioner Harlan: Are there any communities on your line?
Mr. Murray: There are several settlers.
Commissioner Harlan: Is Bryants Spur a town or just a railroad connection?
Mr. Murray: No, sir, just a railroad connection.
Commissioner Harlan: What about Manistee?
Mr. Murray: Manistee is a town of about two or three hundred people, I guess.
Commissioner Harlan: A company town?
Mr. Murray: That is all.
Commissioner Harlan: Is there any other community on your line?
Mr. Murray: You mean town?
1252 Commissioner Harlan: Towns?
Mr. Murray: No.
Commissioner Harlan: No post offices?
Mr. Murray: Manistee is a post office.

Commissioner Harlan: But I mean east of Manistee.
Mr. Murray: No.
Commissioner Harlan: Just a few farmers?
Mr. Murray: Yes, sir.
Commissioner Harlan: Do you move any hay or produce for the farmers in or out?
Mr. Murray: No, sir.
Commissioner Harlan: Do you get any lumber from the tram lines except the lumber belonging to the Little River Lumber Company?
Mr. Murray: No.
Commissioner Harlan: You have not any other outside traffic?
Mr. Murray: Not much; not to speak of, I don't think any.
Commissioner Harlan: Who are the officers of the railroad company?
Mr. Murray: John Pennington is president; M. L. Fleishel, is vice-president, H. R. Swartz is secretary, and I am treasurer
1253 and auditor.
Commissioner Harlan: Are those men also officers of the lumber company or stockholders?
Mr. Murray: Yes, sir.
Commissioner Harlan: And the railroad is owned by the lumber company or its stockholders?
Mr. Murray: Owned by its stockholders, the same stockholders.
Commissioner Harlan: It is the same investment?
Mr. Murray: Practically.
Commissioner Harlan: Do the officers of the railroad company receive salaries from the railroad company?
Mr. Murray: Yes, sir; some of them.
Commissioner Harlan: What is the aggregate salary list; what does it amount to per year?
Mr. Murray: A little over $2,000.
Commissioner Harlan: And they also receive salaries from the lumber company?
Mr. Murray: Yes, sir.
Commissioner Harlan: Where is the office of the railroad company?
Mr. Murray: Manistee.
1254 Commissioner Harlan: In the office of the lumber company?
Mr. Murray: Yes.
Commissioner Harlan: Have you train crews and track employees?
Mr. Murray: Yes, sir.
Commissioner Harlan: Do they load and unload the cars and participate in the loading and unloading?
Mr. Murray: In the unloading. The train crew unloads the cars.
Commissioner Harlan: But they do not load them?
Mr. Murray: They do not load them.
Commissioner Harlan: I would like to know in detail about that.

You take a train load of cars and distribute them on the logging roads, do you not?

Mr. Murray: Yes, sir.

Commissioner Harlan: Do those railroad employees simply stay there idle until the other lumber employees load the cars?

Mr. Murray: No.

Commissioner Harlan: Or do they participate in it?

Mr. Murray: No, they bring the empty cars back and set them in on one spur, and they come up on another spur and get the
1255 loads that have been loaded while they have been making the trip.

Commissioner Harlan: So they do not spend any time at that point?

Mr. Murray: No.

Commissioner Harlan: Except in making up the train?

Mr. Murray: They simply spot the cars and go and back up to other cars and go on.

Commissioner Harlan: But at the mill point they do the unloading into the pond?

Mr. Murray: They dump the logs off the cars.

Commissioner Harlan: What divisions do you have under through rates on manufactured lumber?

Mr. Murray: Two cents per 100 pounds both east and west of the river.

Commissioner Harlan: What service do you perform for that compensation?

Mr. Murray: We haul the empty Iron Mountain cars from our connection at Bryants Spur to Manistee and spot them at the mill of the lumber company for loading, and then switch them out to our connection at Bryants Spur with the Iron Mountain, three miles; three miles empty and three miles loaded.

1256 Commissioner Harlan: Do you know what allowance or division the mill had from the Iron Mountain before you bought it out?

Mr. Murray: They had none.

Commissioner Harlan: You know that to be the fact?

Mr. Murray: I do not know that to be the fact; but I should not suppose they had, because they had no railroad.

Commissioner Harlan: Well, they had a wooden rail?

Mr. Murray: Yes, sir.

Commissioner Harlan: What was the power?

Mr. Murray: Four mules.

Commissioner Harlan: Do you get any compensation for the hauling of logs into the mill?

Mr. Murray: Yes.

Commissioner Harlan: What compensation do you get?

Mr. Murray: Four dollars per car.

Commissioner Harlan: You take the empty cars out and distribute them on the spurs and you provide the motive power and haul the loaded cars back to the mill and unload them?

Mr. Murray: Yes, sir.

Commissioner Harlan: What was your total tonnage during the last fiscal year?

1257 Mr. Cowan: State it separately as to lumber and logs.

Mr. Murray: 52,622 tons.

Commissioner Harlan: That was all tonnage belonging to the Little River Lumber Company?

Mr. Murray: Not all logs or lumber; there was 197 tons of miscellaneous freight.

Commissioner Harlan: How much was miscellaneous?

Mr. Murray: 197 tons.

Commissioner Harlan: But it belonged to the lumber company, most of it?

Mr. Murray: Most of it; yes, sir.

Commissioner Harlan: Does the company have a company store?

Mr. Murray: It has a store in which not all the lumber company stockholders are interested; it has an interest.

Commissioner Harlan: Now, what was your total revenue last year, and how much was on lumber, and how much on other traffic?

Mr. Murray: $18,379.23.

Commissioner Harlan: And what was the operating expense?

Mr. Murray: Total, $17,129.91.

Commissioner Harlan: You had net revenue about $1,000; is that it?

1258 Mr. Murray: Yes, sir.

Commissioner Harlan: You show transportation expenses of $6,000 and maintenance of way $5,600, maintenance of equipment $2,800, general expenses $2,200. Do you know about what your net operating expenses of the year before were?

Mr. Murray: I think they were some less, because there were two months of the fiscal year ending June 30, 1909 in which the road did not operate.

Commissioner Harlan: Have you ever declared any dividend?

Mr. Murray: No.

Commissioner Harlan: Have you stated what capital stock was outstanding?

Mr. Murray: $25,000.

Commissioner Harlan: In bonds?

Mr. Murray: No, sir.

Commissioner Harlan: The total cost of the road was about $40,000, you said?

Mr. Murray: How much?

Commissioner Harlan: $40,000, you said, for road and equipment.

Mr. Murray: Pretty close to that; yes, sir.

Commissioner Harlan: Judge Cowan, have you any ques-

1259 tions to ask?

Mr. Cowan: Just one or two questions. You haul the car out from the Iron Mountain without expense to it for loading, and deliver it back without expense to the Iron Mountain?

Mr. Murray: I do not catch the question.

Mr. Cowan: You perform the service for receiving the car, taking

it to the mill and delivering it back to the Iron Mountain without any expense to the Iron Mountain?

Mr. Murray: Except our two cents per 100 pounds.

Mr. Cowan: I understand, but there is no expense for the service?

Mr. Murray: Yes, sir.

Mr. Cowan: And they give you two cents per 100 pounds?

Mr. Murray: Yes.

Mr. Cowan: You sell your lumber, of course, in competition with some of these gentlemen who have been on the stand here, where the Iron Mountain goes into the siding by the planing mill and sets the car there and comes in and gets it and takes it out, and where they pay four cents division in such cases.

Mr. Murray: I don't understand——

Commissioner Harlan: This is the point. Judge Cowan says that you go and take an empty car of the Iron Mountain and
1260 set it at the mill where it is loaded and take it out again and get two cents. Now, he directs your attention to other cases testified to here by witnesses where the Iron Mountain does that same thing and pays somebody four cents.

Mr. Murray: Yes, sir.

Mr. Cowan: Now, I will lay that as a predicate to ask the question. If you do not operate your business at a disadvantage compared to the man who gets the four cents, when it comes to selling in the end.

Mr. Murray: Not from selling our lumber, but from operating a railroad, we do.

Mr. Cowan: But when you come to sell lumber, you are at that much disadvantage.

Mr. Murray: Not as a lumber company we are not.

Mr. Cowan: Well, it is all one investment you have said.

Mr. Murray: Well?

Mr. Cowan: And so it was in the other cases testified about.

Commissioner Harlan: As the representative of this investment, would you object to that or not?

Mr. Murray: To the question?

Commissioner Harlan: No, not to the question, but to the
1261 practice.

Mr. Murray: Of the other people getting this four cents?

Commissioner Harlan: Yes.

Mr. Murray: I think they get a pretty good plum.

Commissioner Harlan: Well, doesn't it put you, as the representative of this investment, at a disadvantage, compared to the other investments?

Mr. Murray: Yes, he gets more out of his investment than we do, of course.

Commissioner Harlan: He also gets more out of the Iron Mountain than you do?

Mr. Murray: Yes, sir. That part of it is wrong.

Mr. Garwood: May I ask a question? Mr. Murray, a short line that connects with two or three or four trunk lines has a strategic

position which naturally enables it to get better divisions than a short line that is tied onto one trunk line, does it not?

Mr. Murray: I never enjoyed that distinction.

Mr. Garwood: Well, that is a fact, is it not?

Mr. Murray: I am only speaking from experience.

Mr. Garwood: Well, that is the natural result, is it not?

Mr. Murray: Maybe you know.

1262 Mr. Garwood: Is not that what short lines are built for, to connect main trunk lines, to play one against the other and get the best trade they can out of the connecting trunk lines?

Mr. Murray: If there were two or three more adjacent to our mill, I would certainly connect up with them.

Mr. Cowan: I had one other question I wanted to follow up with. Now, you have had your attention directed to the fact of the man getting four cents, whereas you get two cents. Now, let us take a case, and I will assume there are such cases, where a man who is situated somewhat as you are, and gets a car from the railroad and takes it out to his mill, performing the same sort of service you do, loads it and takes it back to the trunk line and gets no division for performing the same service. That puts you in a position compared to him of having two cents the best of it, as an investment proposition, does it not?

Mr. Murray: There might be other matters——

Mr. Cowan: Assuming there are not.

Mr. Murray: Assuming that there are not?

Mr. Cowan: Yes.

Mr. Murray: I assume he could not do it very long.

1263 Mr. Cowan: Why?

Mr. Murray: Because he would go out of business.

Mr. Cowan: Is competition in the sale of lumber such that it would put him out of business by the tap line saw mills having that advantage in the market?

Mr. Murray: Well, he might have some exceptionally good timber, or something like that, that might enable him to go on——

Mr. Cowan: But the tendency would be to hurt his business?

Mr. Murray: Yes.

Mr. Cowan: Now, you do know of manufacturers of lumber who do not get any divisions at all, do you not?

Mr. Murray: I am not very well acquainted with only a few of the lumber interests about.

Mr. Cowan: Well, do you know of any which do not get divisions?

Mr. Murray: Yes, I expect I do, who have not any railroads, though.

Mr. Cowan: What is that?

Mr. Murray: They have no railroads.

Mr. Cowan: Well, they may be situated about like you are in that particular.

1264 Commissioner Harlan: Mr. Jeffery, have you any questions?

Mr. Jeffery: No.

Commissioner Harlan: Is that all, Judge Cowan?

Mr. Cowan: That is all.

Commissioner Harlan: Mr. Murray, I have marked opposite the name of your road the phrase "Colonial System." Do you know anything about that?

Mr. Murray: No, sir, I do not know anything about that.

Commissioner Harlan: You are not connected with any other railroad of this kind.

Mr. Murray: No.

Commissioner Harlan: Or any other lumber company than the Little River Lumber Company?

Mr. Murray: No.

(Witness excused.)

Commissioner Harlan: Is the Mississippi, Arkansas & Western before the Commission?

(No response.)

Commissioner Harlan: The Mississippi Valley Railroad.

Mr. Ziebold: My client was here a number of days and he said it was urgent for him to be home, and he left Saturday and said he would be back tomorrow on the eleven o'clock train.

1265 Commissioner Harlan: We will endeavor to call that case tomorrow; I am not certain that we can arrange it. The Monroe & Southwestern Railway.

Mr. Mason: I am here for that company.

Mr. R. G. Pleasant: The Attorney General of the State has requested me to file an intervention in these proceedings in the name of the Railroad Commission of the State of Louisiana.

Commissioner Harlan: Have you prepared the petition?

Mr. Pleasant: Yes, sir; the petition is prepared.

Commissioner Harlan: Very well, it may be received. I assume that the petition presents no new issue requiring answer by any of the defendants.

Mr. Pleasant: I think not.

Commissioner Harlan: It will be received with that understanding.

Paper marked Filed, December 12, 1910, and is attached hereto.

1266 *Monroe & Southwestern Railway Company.*

J. E. MASON was called as a witness and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?

Mr. Mason: Monroe, Louisiana.

Commissioner Harlan: What is your business?

Mr. Mason: Auditor of the Monroe & Southwestern Railway.

Commissioner Harlan: Will you tell me where Monroe is with respect to Alexandria?

Mr. Mason: Just north.

Commissioner Harlan: On the line of what railroad?

Mr. Mason: The Vicksburg, Shreveport & Pacific and the Iron Mountain, at the intersection.

Commissioner Harlan: Is Monroe the junction point with the Iron Mountain?

Mr. Mason: Yes, sir.

Commissioner Harlan: How long is your railroad?

Mr. Mason: The main line is 10⅜ miles, and the side track and spurs 6¾ miles.

Commissioner Harlan: When was your company organized?

Mr. Mason: I think it was in April, 1904.

1267 Commissioner Harlan: And what capital stock is authorized?

Mr. Mason: $1,000,000.

Commissioner Harlan: And what issued?

Mr. Mason: $172,000.

Commissioner Harlan: Have you any bond issue?

Mr. Mason: No bonds. There was an issue authorized, but it was never issued.

Commissioner Harlan: Who are the officers of this company?

Mr. Mason: R. Henderson, president; A. E. Nicholson, vice-president; Nelson Sharpe, secretary; P. S. McLurg, treasurer; J. C. Pierce attorney, and myself, auditor. P. S. McLurg, general manager, and C. C. Goodlett, superintendent.

Commissioner Harlan: Are those gentlemen also officers of the Grayling Lumber Company?

Mr. Mason: About two-thirds of them.

Commissioner Harlan: Are the stockholders of the railroad substantially the stockholders of that lumber company?

Mr. Mason: Practically.

Commissioner Harlan: It is practically one and the same investment, by the same people?

Mr Mason: Yes, sir.

Commissioner Harlan: Do the officers of the railroad com-

1268 pany receive salaries?

Mr. Mason: Well, the general officers do not. I receive a salary, and one clerk and the superintendent.

Commissioner Harlan: Where are you offices?

Mr. Mason: At Monroe.

Commissioner Harlan: In the office of the lumber company?

Mr. Mason: In the same office.

Commissioner Harlan: How many locomotives have you?

Mr. Mason: We have four locomotives.

Commissioner Harlan: How many cars?

Mr. Mason: I think 91.

Commissioner Harlan: By whom was the road built?

Mr. Mason: It was built originally by the Monroe Lumber Company.

Commissioner Harlan: Was that the predecessor of the Grayling Lumber Company?

Mr. Mason: Yes, sir.

Commissioner Harlan: The entire road was built by that com
pany, including the spur tracks?
Mr. Mason: Yes, sir.
Commissioner Harlan: Did that company purchase and own th
equipment?
1269 Mr. Mason: It owned the whole thing.
Commissioner Harlan: When did the Grayling Lumb
Company succeed that lumber company as the owner of the railroad
Mr. Mason: That was three years ago last January, 1906, I think
Commissioner Harlan: Did you catch my question. Did th
Grayling Lumber Company succeed the other lumber company
the owner of the railroad?
Mr. Mason: Yes, sir; they did.
Commissioner Harlan: When did the railroad company itse
acquire title to the railroad?
Mr. Mason: By purchase from the Monroe Lumber Compan
in 1904, when it was chartered.
Commissioner Harlan: Then the railroad company owned th
railroad before the Grayling Lumber Company acquired the oth
property of the original lumber company?
Mr. Mason: Yes, sir.
Commissioner Harlan: What lumber lands has the Grayling Lum
ber Company?
Mr. Mason: You mean their timber rights or what does it own
Commissioner Harlan: What does it own in fee and wh
1270 timber rights?
Mr. Mason: I cannot say exactly; somewhere about 40,00
acres in fee, I think; I am not sure.
Commissioner Harlan: And how many acres in timber right
about?
Mr. Mason: Probably 5,000.
Commissioner Harlan: Does the railroad own its right of way?
Mr. Mason: Yes, sir.
Commissioner Harlan: And owns all of its rails?
Mr. Mason: Yes, sir.
Commissioner Harlan: Do you know what it originally cost?
Mr. Mason: No, I do not.
Commissioner Harlan: Has it any station at Monroe?
Mr. Mason: Yes, sir.
Commissioner Harlan: A joint station with any other company
Mr. Mason: No, a station of its own.
Commissioner Harlan: What kind of station has it?
Mr. Mason: A small building; one room with the place par
tioned out for the station agent.
Commissioner Harlan: Does it receive less than carlo
1271 freight?
Mr. Mason: Yes, sir.
Commissioner Harlan: Has it any other station on its line?
Mr. Mason: Only at Chatham, we have a man looking after o
interests there.
Commissioner Harlan: How far is that from Monroe?

Mr. Mason: Ten miles.
Commissioner Harlan: That is the other terminus?
Mr. Mason: Practically, yes, sir.
Commissioner Harlan: Do you receive less than carload freight at that point?
Mr. Mason: Yes, sir.
Commissioner Harlan: Do you carry mail?
Mr. Mason: No.
Commissioner Harlan: Passengers?
Mr. Mason: Yes, sir.
Commissioner Harlan: Do you charge fare for passengers?
Mr. Mason: Yes, sir.
Commissioner Harlan: Sell tickets?
Mr. Mason: Yes, sir.
Commissioner Harlan: Run regular passenger trains?
Mr. Mason: Run regular passenger trains.
1272 Commissioner Harlan: How many?
Mr. Mason: Two a day each way.
Commissioner Harlan: Do you carry any express matter?
Mr. Mason: No.
Commissioner Harlan: Who are these passengers?
Mr. Mason: Anyone who wants to travel; country people, employees, it makes no difference.
Commissioner Harlan: Very largely employees of the lumber company and their families?
Mr. Mason: Not necessarily; there are a good many settlers out in the country who come to Monroe that way.
Commissioner Harlan: Is Monroe quite a town?
Mr. Mason: About 16,000.
Commissioner Harlan: Any industries besides your mill?
Mr. Mason: Yes, sir; there are other industries there.
Commissioner Harlan: Other mills?
Mr. Mason: We have one located on our road outside of the Grayling Lumber Company.
Commissioner Harlan: Where is that?
Mr. Mason: About half a mile from West Monroe.
Commissioner Harlan: To whom does that belong?
Mr. Mason: To the Riverside Lumber Company.
1273 Commissioner Harlan: Is the Grayling Lumber Company interested in that lumber company?
Mr. Mason: No.
Commissioner Harlan: Are its stockholders interested?
Mr. Mason: No.
Commissioner Harlan: Is it wholly independent?
Mr. Mason: It is wholly independent.
Commissioner Harlan: It uses your rails for what?
Mr. Mason: To get its product on to the market; that is the only outlet for it.
Commissioner Harlan: You mean its manufactured lumber?
Mr. Mason: Its manufactured lumber; yes, sir.
Commissioner Harlan: Do you haul any logs to that mill?

Mr. Mason: We have not so far.

Commissioner Harlan: How does it get its logs?

Mr. Mason: By the river.

Commissioner Harlan: What river is that?

Mr. Mason: The Ouachita River.

Commissioner Harlan: How much of a haul do you have on its manufactured lumber to the Iron Mountain?

Mr. Mason: We deliver to the Vicksburg, Shreveport & Pacific.

1274 Commissioner Harlan: How much of a haul do you have?

Mr. Mason: About a mile.

Commissioner Harlan: Over your own rails?

Mr. Mason: Yes.

Commissioner Harlan: Your own right of way?

Mr. Mason: Our own right of way.

Commissioner Harlan: What allowance do you get on that lumber?

Mr. Mason: $5.00 a car switching charge.

Commissioner Harlan: That is a switching charge?

Mr. Mason: Yes, sir.

Commissioner Harlan: That is absorbed by the Vicksburg, Shreveport & Pacific?

Mr. Mason: No, that is our charge according to the tariff under authority from the Commission.

Commissioner Harlan: Who pays it?

Mr. Mason: The Riverside Lumber Company.

Commissioner Harlan: That is in addition to the rate?

Mr. Mason: That is in addition to the rate?

Commissioner Harlan: That does not come out of the rate charged to the Riverside Lumber Company on the through movement?

1275 Mr. Mason: We do not bill out anything; they bill it themselves from West Monroe.

Commissioner Harlan: They pay you the $5.00 switching charge?

Mr. Mason: Yes, sir.

Commissioner Harlan: Do you know whether the Vicksburg, Shreveport & Pacific returns that or absorbs that in any way?

Mr. Mason: No, I have no information.

Commissioner Harlan: You have no information as to that?

Mr. Mason: No.

Commissioner Harlan: To come back to your own lumber, or the lumber of the Grayling Lumber Company, how do the logs of that company reach your line?

Mr. Mason: By rail over the Monroe & Southwestern Road.

Commissioner Harlan: That is your line. How are they brought to your line?

Mr. Mason: They are loaded on cars, and the cars are bunched by locomotives, and then the regular train draws them to the mill.

Commissioner Harlan: The point is this, are there logging roads connected with your line that your company does not own?

Mr. Mason: No.

1276 Commissioner Harlan: There are no logging roads?

Mr. Mason: No.

Commissioner Harlan: You have not any spur tracks out into the woods?

Mr. Mason: Yes, sir; we have spur tracks out into the woods, but these are handled by the Monroe Lumber Company, outside of the railroad company.

Commissioner Harlan: That is the point I was trying to get at.

Mr. Mason: They are moved from time to time without any cost to the railroad company, to assist the logging operations.

Commissioner Harlan: You spoke of the Monroe Lumber Company. You mean the Grayling Lumber Company?

Mr. Mason: I should say the Grayling Lumber Company.

Commissioner Harlan: That company owns some spur tracks?

Mr. Mason: It does not own the steel. The railroad furnishes the steel.

Commissioner Harlan: Your company furnishes the steel?

Mr. Mason: Yes, sir.

Commissioner Harlan: And the lumber company lays the track?

Mr. Mason: Lays the steel.

1277 Commissioner Harlan: And moves the track whenever necessary?

Mr. Mason: And moves the track whenever necessary.

Commissioner Harlan: It does that all at its own expense?

Mr. Mason: Yes, sir.

Commissioner Harlan: Has the lumber company any locomotives?

Mr. Mason: No. We lend the lumber company a locomotive for that purpose.

Commissioner Harlan: So your locomotive goes out there and gets these logs on the logging cars and assembles them into a train and draws them onto your main line?

Mr. Mason: Exactly.

Commissioner Harlan: What charge do you make to the lumber company up to the junction point with your line?

Mr. Mason: One and one-half cents a hundred.

Commissioner Harlan: That is 100 feet log measure?

Mr. Mason: 100 pounds.

Commissioner Harlan: 100 pounds?

Mr. Mason: One and one-half cents per 100 pounds.

Commissioner Harlan: And the service performed is simply to bring the log cars to your own rails?

Mr. Mason: Yes, sir.

1278 Commissioner Harlan: Then over your own rails up to the mill what do you charge?

Mr. Mason: One and one-half cents.

Commissioner Harlan: Another cent and a half?

Mr Mason: No, that is the same one and one-half cents; that is from where the logs are assembled in carloads.

Commissioner Harlan: Then you haul the logs from the forest to the mill for one and one-half cents?

Mr. Mason: Yes, that is it.

Commissioner Harlan: Do you haul the logs of any other lumber company over your rails?

Mr. Mason: No.

Commissioner Harlan: Do you haul any other merchandise over your rails?

Mr. Mason: Yes, sir; we haul ties, staves and stave bolts.

Commissioner Harlan: Where do those things come from?

Mr. Mason: From out of the woods that the people cut.

Commissioner Harlan: Are they the woods of the Grayling Lumber Company?

Mr. Mason: Some of them are.

Commissioner Harlan: Most of them?

Mr. Mason: Yes.

1279 Commissioner Harlan: And the staves?

Mr. Mason: Most of them are made by outside parties.

Commissioner Harlan: From what forest?

Mr. Mason: From forests adjacent to the railroad.

Commissioner Harlan: Are they Grayling Lumber Company's forests?

Mr. Mason: Some of them are from the Grayling forests.

Commissioner Harlan. Most of them?

Mr. Mason: I could not say, I am sure.

Commissioner Harlan: Is that a large movement?

Mr. Mason: Not very large.

Commissioner Harlan: How many cars?

Mr. Mason: Probably two or three cars a month.

Commissioner Harlan: And of ties, how many?

Mr. Mason: Of ties it will average about the same.

Commissioner Harlan: What charge do you make on the ties?

Mr. Mason: According to the regular tariff; I don't know what it is without referring to it.

Commissioner Harlan: It is the same rate which is in effect from Monroe, is it not?

Mr. Mason: I do not understand the question.

Commissioner Harlan: Is it a joint through rate or a

1280 local rate?

Mr. Mason: Local rate on our line.

Commissioner Harlan: You haul them up to Monroe?

Mr. Mason: Yes, sir.

Commissioner Harlan: And make a local charge?

Mr. Mason: Yes, sir.

Commissioner Harlan: You don't know what that is?

Mr. Mason: Not without referring to the tariff.

Commissioner Harlan: Do you move these staves in the same way on a local rate?

Mr. Mason. Yes, sir.

Commissioner Harlan: Aside from that small movement, you have no traffic except the traffic of the lumber company which owns the railway?

Mr. Mason: And such traffic as we will get from people out in the country hauling in their produce, and such things as that.

Commissioner Harlan: How much does that amount to?

Mr. Mason: It will amount to not more than five per cent.

Commissioner Harlan: Is that all carload?

Mr. Mason: No.

Commissioner Harlan: You have less than carload freight?

1281 Mr. Mason: We have less than carload freight; yes, sir.

Commissioner Harlan: Where is that delivered?

Mr. Mason: To Strozier, at Chatham.

Commissioner Harlan: You have a station there for less than carload freight?

Mr. Mason: We have no stations, but have people meet the trains to receive it.

Commissioner Harlan: All that traffic amounts to about five per cent of the total?

Mr. Mason: Yes, sir.

Commissioner Harlan: That includes the inbound traffic, too?

Mr. Mason: Yes, sir.

Commissioner Harlan. The general merchandise?

Mr. Mason: The general merchandise.

Commissioner Harlan: 95 per cent is the traffic of the lumber company?

Mr. Mason: Of the lumber company, I should judge it would be that.

Commissioner Harlan: Do the railroad employees load these cars out in the forest?

Mr. Mason: No, the lumber company's employees.

1282 Commissioner Harlan: Do you unload them at the mill?

Mr. Mason: The lumber company unloads them.

Commissioner Harlan: The railroad company employees do not participate in that at all?

Mr. Mason: No.

Commissioner Harlan: How far is your planing mill from the tracks of the regular line?

Mr. Mason: You mean the Monroe & Southwestern Railroad line?

Commissioner Harlan: No, the Iron Mountain.

Mr. Mason: The Iron Mountain railroad tracks, the spur runs up to the planing mill.

Commissioner Harlan: That spur belongs to the Iron Mountain?

Mr. Mason: The steel does. We furnish the ties.

Commissioner Harlan: Do you have a contract with them for a spur track?

Mr. Mason: I don't know; I think there is a contract of some sort, but I am not positive.

Commissioner Harlan: Mr. Jeffery, will you furnish that contract also?

Mr. Jeffery: What is the name of that lumber company?

1283 Commissioner Harlan: The Grayling Lumber Company, of Monroe. Does the Iron Mountain ever put any cars on that spur track that you do not use?

Mr. Mason: I do not think they do.

Commissioner Harlan: The lumber is loaded right out of the planing mill onto the Iron Mountain cars, or such cars as they send there?

Mr. Mason: Yes, sir.

Commissioner Harlan: And the Iron Mountain carries them to their own main line?

Mr. Mason: Yes, sir.

Commissioner Harlan: Your railroad does not move that lumber at all?

Mr. Mason: Not after it is loaded in the cars.

Commissioner Harlan: Does it set the empty cars there?

Mr. Mason: No.

Commissioner Harlan: Is most of your lumber dressed lumber?

Mr. Mason: Yes, sir.

Commissioner Harlan: You ship out very little of the rough lumber?

Mr. Mason: Very little.

1284 Commissioner Harlan: What compensation does your railroad company get from the Iron Mountain on the outbound lumber?

Mr. Mason: Four cents.

Commissioner Harlan: Now, as I understand it, you have not done any service at all in connection with the outbound shipments, and yet you get four cents per 100 pounds. Just why do you get that?

Mr. Mason: We get it for developing that country; developing that business.

Commissioner Harlan: For developing the traffic?

Mr. Mason: Yes, certainly.

Commissioner Harlan: Is that the basis of the payment that is made to you?

Mr. Mason: I could not say. I have not seen the paper myself.

Commissioner Harlan: No; I mean is it your understanding that you get four cents per 100 pounds on this outbound lumber as an inducement or to aid you in developing this traffic?

Mr. Mason: That is my understanding.

Commissioner Harlan: Not because you do any transportation service?

1285 Mr. Mason: No.

Commissioner Harlan: Is the four cents a fixed allowance on all outbound shipments?

Mr. Mason: No, we only get three cents on some. It just depends. On some we do not get any.

Commissioner Harlan: On what traffic do you get nothing?

Mr. Mason: On the local points in Arkansas and Louisiana.

Commisisoner Harlan. What do you get to Oklahoma?

Mr Mason: Four cents; that is, providing the junction point is not Little Rock.

Commissioner Harlan: What do you get to Little Rock?

Mr. Mason: Nothing.

Commissioner Harlan: You get nothing to Little Rock?

Mr. Mason: We get nothing to Little Rock.

Commissioner Harlan: Suppose you move out rough lumber, do you get anything to Little Rock then?

Mr. Mason: No, nothing to Little Rock.

Commissioner Harlan: What was your total tonnage last year?

Mr. Mason: 99,338 tons.

Commissioner Harlan: And your total revenue, and your net revenue also.

1286 Mr. Mason: Total revenue $41,864.11, and net revenue with taxes deducted was $9,321.58.

Commissioner Harlan: And your company does not pay any dividends, does it?

Mr. Mason: No.

Commissioner Harlan: And you have no bond issue?

Mr. Mason: No bond issue.

Commissioner Harlan: No interest to pay?

Mr. Mason: No, sir.

Commissioner Harlan: Have you an accumulated surplus?

Mr. Mason: Yes, sir; $23,988.50.

Commissioner Harlan: That is not cash, of course?

Mr. Mason: No.

Commissioner Harlan: It is money you put back from earnings into the property?

Mr. Mason: Yes, sir; that would be reduced if that four cents was taken off; it would be a losing proposition then.

Commissioner Harlan: In other words, your net earnings are helping you to build up a railroad there; is not that it?

Mr. Mason: Yes, sir.

Commissioner Harlan: That is the way it is being used?

Mr. Mason: That is the way practically it is used.

1287 Commissioner Harlan: Do you file your reports with the Interstate Commerce Commission?

Mr. Mason: Yes.

Commissioner Harlan: You filed your annual report for 1909 and in that you say that you moved during that year some 16,000 tons of lumber. What did you move in 1910 of lumber?

Mr. Mason: 16,635 tons.

Commissioner Harlan: Now, as a matter of fact, did you move any lumber in either year?

Mr. Mason: Well, that was a question that I have been trying to find out; whether it was correct or not to put it in. I tried to find out from the young man who was here asking questions today, when he came around getting data from us, I think it was last Spring, and he could not give me an answer on that. I brought up that very point with him as to whether that should be included in that tonnage or not.

Commissioner Harlan: Well, I suppose what you mean to say is that he did not give you an answer.

Mr. Mason: He did not give me an answer.

Commissioner Harlan: Well, that is a little different from "could not give it."

Mr. Mason: Well, that is what I mean.

1288 Commissioner Harlan: He declined to answer the question?

Mr. Mason: Yes. I wanted that information.

Commissioner Harlan: Where is the mill of your company with reference to the river?

Mr. Mason: Alongside the river, on the river banks.

Commissioner Harlan: On which side of the river?

Mr. Mason: On the east side.

Commissioner Harlan: And where is your rail terminus?

Mr. Mason: On the west side.

Commissioner Harlan: How does the lumber get across the river?

Mr. Mason: By cable transfer.

Commissioner Harlan: I mean how do the logs get across the river?

Mr. Mason: By cable transfer.

Commissioner Harlan: So that as a rail proposition, you do not get a chance to handle lumber at all?

Mr. Mason: Only from that Riverside mill; that is the lumber proper. The logs are way billed as in transit, for manufacture in transit.

Commissioner Harlan: Your rails do not cross the river?

Mr. Mason: No.

1289 Commissioner Harlan: And your mill is across the river?

Mr. Mason: Yes, sir.

Commissioner Harlan: And you have a sort of pipe line in between?

Mr. Mason: Well, it is a transfer, just like the T. & P. has a transfer across this river, only a little different style; that is all.

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: In case of the local movement to points in Louisiana and Arkansas, where you do not get a division of the rates with the Iron Mountain, what does your railroad company charge the lumber company for moving that sort of traffic?

Mr. Mason: It does not charge anything, only what it gets out of the logs, for hauling the logs to be manufactured.

Mr. Cowan: One and one-half cents per 100 pounds?

Mr. Mason: One and a half cents per 100 pounds.

Mr. Cowan: Does that one and one-half cents enter into your receipts for hauling logs that go out in lumber to interstate points, where you get a division on the lumber, or do you refund that?

Mr. Mason: Do we refund that?

1290 Mr. Cowan: Yes.

Mr. Mason: No, we do not.

Mr. Cowan: Do you refund any part of it under any circumstances, of the one and a half cents?

Mr. Mason: No, I cannot say that we do. We sell very little locally.

Mr. Cowan: What sort of lumber do you manufacture; pine?
Mr. Mason: Pine lumber.
Mr. Cowan: Now, this man who has a saw mill situated on your line, other than your own, he pays $5.00 a car?
Mr. Mason: Yes.
Mr. Cowan: And then he pays the rate from Monroe to wherever it goes?
Mr. Mason: Yes.
Mr. Cowan: And you do not know of that being refunded?
Mr. Mason: No, I do not.
Mr. Cowan: Have you heard anything about it?
Mr. Mason: What is that?
Mr. Cowan: Have you any understanding about it?
Mr. Mason: No.
Mr. Cowan: If it is not refunded, he would be to the disadvantage of paying $5.00 more per car and doing without his
1291 division, compared with the Grayling Lumber Company?
Mr. Mason: I didn't exactly hear that.
(Question read.)
Mr. Mason: I do not see that he gets any division out of it.
Mr. Cowan: What is that?
Mr. Mason: I cannot see where that other lumber company would get any division.
Mr. Cowan: That is what I was saying.
Mr. Mason: Yes, he would really pay $5.00 a car, besides the regular freight rates.
Mr. Cowan: The Grayling Lumber Company, or rather, the beneficial owners of the property, save that $5.00 a car, and get an allowance of four cents per 100 pounds in marketing their lumber?
Mr. Mason: How is that?
(Question read.)
Commissioner Harlan: Judge Cowan, there is a different railroad, and I have not put to this witness any questions as to his allowances from the Vicksburg, Shreveport & Pacific. What do you get from them?
Mr. Mason: We do not get anything from them, conse-
1292 quently we do not ship by the Vicksburg, Shreveport & Pacific.
Commissioner Harlan: The Vicksburg, Shreveport and Pacific is on the other side of the river?
Mr. Mason: Yes.
Commissioner Harlan: And that switch movement is west of the river for this other mill over the Vicksburg, Shreveport & Pacific, and the Grayling Lumber Company sends its logs across by wire, across the river, and they do not ship by the Vicksburg, Shreveport & Pacific, and do not get any allowances by that road.
Mr. Cowan: I understand that now. That just makes the case that much worse, from my viewpoint. Take a car of lumber from the Grayling Lumber Company to St. Louis, over the Iron Mountain; they have not paid the $5.00 switching charge per car, and the stockholders of that Grayling Lumber Company have received

back through the railroad which they own a division of four cents per 100 pounds on that car of lumber when it is delivered in St. Louis.

Mr. Mason: The railroad company receives the four cents, yes, but the lumber company pays the cost of transportation of those logs across the river; they pay for that.

Mr. Cowan: The other man ships a carload of lumber to
1293 be sold in competition with this, and he has paid $5.00 a car, and there is no division allowed on it. Now, is there not a preference by virtue of that transaction of——

Mr. Mason: I cannot see why it would be, because he has not to put his lumber across the river, and we have to put the logs across the river.

Commissioner Harlan: But does it not work out this way, that he gets his lumber across the river and pays for it and you get it across the river and you are paid for it?

Mr. Mason: I don't catch that exactly.

Commissioner Harlan: Well, he puts his lumber across the river, and he pays the cost of doing it.

Mr. Mason: No, he does not have to put his lumber across the river at all. It is already on the west side of the river, and he pays us the switching charge from his mill, that our railroad company handles, to West Monroe.

Commissioner Harlan: Well, put it in another way; his rate to St. Louis is the same as your rate to St. Louis?

Mr. Mason: Yes.

Commissioner Harlan: And he pays the full rate?

Mr. Mason: Yes.

Commissioner Harlan: And you get something allowed
1294 out the rate?

Mr. Mason: No, we don't get anything.

Commissioner Harlan: Well, your railroad company does.

Mr. Mason: No, sir.

Commissioner Harlan: You get a division of four cents per 100 pounds.

Mr. Mason: Not from his lumber.

Commissioner Harlan: No, not from his lumber, but from your own.

Mr. Mason: From our own, yes, sir, but not from his lumber.

Commissioner Harlan: He pays $5.00 and the full rate, and you pay——

Mr. Mason: He pays us for the service we render him.

Commissioner Harlan: Yes, he pays you the switching charge of $5.00 and then he pays the full rate.

Mr. Mason: Just the same as if we have any stuff coming in over the Vicksburg, Shreveport & Pacific to our mill, we have to pay the Iron Mountain a switching charge of $5.00, or if it is anything to be manufactured and reconsigned, we get it for $3.00.

Commissioner Harlan: Now you have not told us of any——

1295 Mr. Mason: And then if we have to ship anything, if the lumber company ships anything via the Vicksburg, Shreveport & Pacific, we have to pay the Iron Mountain two cents per 100 pounds to get it switched to the Vicksburg, Shreveport & Pacific tracks.

Commissioner Harlan: Just to get your idea, you think that he is in no worse position than you are under existing conditions?

Mr. Mason: Shipping by the same railroad, he is in better shape.

Commissioner Harlan: Well, shipping by one railroad, and you shipping by another, do you get into St. Louis on a substantial equality; is that your view?

Mr. Mason: Exactly, with the exception that he pays our railroad company $5.00 extra switching charges, whereas the lumber company has to foot the bill of getting the logs across the river.

Mr. Cowan: Where do you bill the lumber from that you ship on the main line?

Mr. Mason: Chatham.

Mr. Cowan: The bill shows from Chatham?

Mr. Mason: Yes, sir.

1296 Mr. Cowan: That is down on your line on the other side of the river from the saw mill?

Mr. Mason: Yes, sir.

Mr. Cowan: Why do you bill it from down there?

Mr. Mason: It is way billed to Monroe to be worked in transit; the logs are, and then we rebill it from the same point as lumber. That was *out* instructions from the railroad company when that road was chartered.

Mr. Cowan: Where is the lumber billed from that goes out from the other mill that you do the switching on?

Mr. Mason: From the Vicksburg, Shreveport & Pacific station as West Monroe.

Mr. Jeffery: What kind of a mill have you got there, a hard wood or yellow pine mill?

Mr. Mason: Yellow pine.

Mr. Jeffery: Are all the mills there yellow pine?

Mr. Mason: No, the Riverside Company's mill is a hard wood mill, but they do saw pine as well as hard wood, mixed.

(Witness excused.)

1297 *North Louisiana and Gulf Railroad.*

JAMES L. DORMON was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?

Mr. Dormon: At present I am living in Bienville Parish, where we are installing a salt works.

Commissioner Harlan: What company are you connected with?

Mr. Dormon: I am president of the Central Salt and Mineral Company.

Commissioner Harlan: Is your works or present place of business near the tracks of the North Louisiana & Gulf?

Mr. Dormon: It is.

Commissioner Harlan: How near?

Mr. Dormon: They have a temporary spur to our plant now and have surveyed for a permanent line to their main line between three and four miles away, so I am informed by their civil engineer a few days ago.

Commissioner Harlan: How long is that temporary spur?

Mr. Dormon: Well, it would be hard to say because there are so many spurs there. I suppose two or three miles long.

Commissioner Harlan: It was put in especially for your
1298 plant?

Mr. Dormon: I don't think it was put in entirely for my plant, but largely, because there is more track there than I think they would have any use for without our plant; but understand, I don't know exactly what holdings they have around there in the way of timber holdings, so I could not say whether that would serve some more of their timber holdings, but I rather think not.

Commissioner Harlan: You are using that spur at present?

Mr. Dormon: Yes.

Commissioner Harlan: You are shipping?

Mr. Dormon: Yes, sir; we are shipping in; our plant is not entirely completed yet, but we are shipping in machinery.

Commissioner Harlan: At the completion of your plant you expect to be an outbound shipper?

Mr. Dormon: Yes.

Commissioner Harlan: To what territory?

Mr. Dormon: Arkansas, Louisiana, Alabama, Mississippi principally, and of those four probably more inside the State of Louisiana than outside.

Commissioner Harlan: Will you be a carload shipper?

Mr. Dormon: Exclusively.

1299 Commissioner Harlan: What tonnage do you expect to ship out?

Mr. Dormon: We are installing our salt plant there for the capacity of three to four cars a day to begin with. In addition to that we shall also develop our crushed rock business.

Commissioner Harlan: Is that a by-product of your salt operations?

Mr. Dormon: No. The property is all on the same tract of land in a sense, but the operation of one has nothing to do with the other.

Commissioner Harlan: Do you mine salt there?

Mr. Dormon: Not at present. The first plant we are putting up is to take the brine from a deep well which we have dug, and evaporate it with steam.

Commissioner Harlan: Then you are to have a different mill for the rock?

Mr. Dormon: Yes, sir.

Commissioner Harlan: What will you do with your rock?

Mr. Dormon: The hard rock we will sell for concrete and road making and such things as that.

Commissioner Harlan: What tonnage are you anticipat-
1300 ing of that character?

Mr. Dormon: I will give an instance which will illustrate it. I know four weeks ago there was a contractor who almost begged me to make a contract to supply him with about three hundred carloads of crushed rock, and we were not quite ready and I had to refuse to make the contract, because we could not say we could do it right then.

Commissioner Harlan: Do you want to be understood as being engaged in two different manufacturing enterprises, one manufacturing of salt and the other of crushed rock?

Mr. Dormon: They are different, but they are related. It is all the same. Our company is the Central Salt and Mineral Company. It was organized to manufacture salt or other minerals or natural rock or lime or any of those things.

Commissioner Harlan: What have you to say as to your interest in this general question?

Mr. Dormon: Our interest in this question of the survival of these short railroads is almost acute, because we are making quite an investment there in the plant. I was over east in October and bought a six hundred horse power boiler plant and we have already ordered eight or ten carloads of lumber and have invested
1301 quite an amount there for labor and if these short railroads get put out of business and leave us without transportation we would be in very bad position and liable to lose our investment.

Commissioner Harlan: Have you understood from any source that there is any danger of the destruction of this railroad investment by any order of the Commission in this proceeding?

Mr. Dormon: No, sir; I have not, but——

Commissioner Harlan: Your interest as a shipper is only in the rates you have to pay?

Mr. Dormon: In getting the service and the rate.

Commissioner Harlan: Getting the service and the rate.

Mr. Dormon: Yes.

Commissioner Harlan: Good service and rates.

Mr. Dormon: Good service and reasonable rates.

Commissioner Harlan: And if your rates are not disturbed your interest is not acute?

Mr. Dormon: If we get good service and reasonable rates we are perfectly satisfied. If we can get that. The reason I made that remark in the form I did is that there is some newspaper talk I noticed some little article a long while back when this subject first came up, whoever wrote the paper spoke as if it might be a
1302 very serious thing, and might put a good many of the short roads out of business, and I had that in mind in framing the answer as I did just now. I could not say whether it would or would not, I am not a lumber man or a railroad man and do not know anything about that kind of business.

Commissioner Harlan: Is there any other statement you wish to make?

Mr. Dormon: Well, I might state this, that the North Louisiana

& Gulf Railroad nor the Huie-Hodge Lumber Company, neither one has any interest whatever in my company, and none of our stockholders hold any interest in those companies.

Commissioner Harlan: I assumed that was so or else you would have so stated in the beginning.

Mr. Dormon: Yes, that is correct. I might add that I am now negotiating quite a large contract with a gentleman here for Swift & Company for a large order *on* this soft rock which we also have a deposit of there, to use for agricultural purposes, to be pulverized and spread upon the soil. That would be quite a large order itself. We will undoubtedly handle quite a large tonnage out of that.

Mr. Hodge: You have been over the line and from your
1303 observation of our equipment and road do you think we are in a position to handle your outbound tonnage or not?

Mr. Dormon: I am perfectly satisfied of it, from the fact you have already handled some inbound shipment carloads and less than carload shipments satisfactorily.

Commissioner Harlan: As a merchant and shipper at this point, you will not be disturbed, as I understand it, if your rates are not affected and your service is not affected?

Mr. Dormon: No, sir; if we can get a fair rate and good service, of course that will be perfectly *satisfieid*. That is all we ask for and all we have any right to ask for.

Commissioner Harlan: I so understand it.

Mr. Dormon: Certainly.

Commissioner Harlan: Is that all you care to speak of?

Mr. Dormon: Yes.

(Whereupon, at 6:10 o'clock p. m., an adjournment was taken to Tuesday, December 13, 1910 at 9:30 o'clock a. m.)

1304 NEW ORLEANS, LA., *December* 13, 1910.

Met pursuant to adjournment at 9:30 A. M.

Present: Parties as before.

Commissioner Harlan: In calling over the Iron Mountain cases we passed the Enterprise Railway, the Griffen, Magnolia & Western, the Lester & Ouachita Valley Railroad, composing what is commonly spoken of as the Southern Pine system.

Mr. Gaughan: The Lester & Ouachita Valley Railroad has not entered any appearance and will not appear.

Mr. Brown: That road is not a part of the Southern Pine System.

Commissioner Harlan: Do you represent the Enterprise Railway?

Mr. Brown: Yes, sir.

Commissioner Harlan: And those others, if you will call all the witnesses who expect to be sworn in any of those cases——

Mr. Brown: Mr. Pierce, the General Auditor, represents all of those roads. I may say with reference to the Natchez, Ball & Shreveport, the report is not in the room. It is on the express wagon. Mr. Pierce may be able to satisfy your Honor as
1305 to all the facts without the detailed statement, which is not in the room at this time.

Enterprise Railroad Company; Griffen, Magnolia & Western Railway Company; Saline Bayou Railway Company; Natchez, Ball & Shreveport Railroad Company (Southern Pine System).

F. R. PIERCE, was called as a witness and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?

Mr. Pierce: St. Louis.

Commissioner Harlan: What is your position?

Mr. Pierce: I am the Auditor of the roads composing the Southern Pine System.

Commissioner Harlan: What roads are in that System?

Mr. Pierce: The Griffen, Magnolia & Western, the Enterprise Railroad; the Saline Bayou Railroad, and the Natchez, Ball & Shreveport.

Mr. Pierce: There is one other line in the system, the
1306 owners of which have not authorized me to make any presentation here for their account, the Lester and Ouachita Valley.

Commissioner Harlan: You are not able then to give us the facts about that road?

Mr. Pierce: I am not.

Commissioner Harlan: We will start with the Enterprise Railway. What is your relation to that road?

Mr. Pierce: I am the Auditor.

Commissioner Harlan: That is a Louisiana corporation?

Mr. Pierce: That is a Louisiana corporation.

Commissioner Harlan: The Griffen, Magnolia & Western Railway is an Arkansas corporation?

Mr. Pierce: Yes, sir. The Saline Bayou road is an Arkansas corporation, and the Natchez, Ball & Shreveport is a Louisiana corporation.

Commissioner Harlan: When was the Enterprise Railroad incorporated?

Mr. Pierce: 1903.

Commissioner Harlan: What is its authorized capital?

Mr. Pierce: $30,000.

Commissioner Harlan: What capital has been issued?
1307 Mr. Pierce: $20,500, is my recollection.

Commissioner Harlan: Has it any issue of bonds?

Mr. Pierce: It has not.

Commissioner Harlan: Just state the names of the officers of that road?

Mr. Pierce: The president is J. A. Bentley; the treasurer is Paul Lisso; the auditor is F. R. Pierce; assistant auditor is H. H. Furby. I do not now recall the other officers. There have been some recent changes.

Commissioner Harlan: Well, are they also officers of the Enterprise Lumber Company?

Mr. Pierce: Mr. Bentley is the president of the Enterprise Lumber Company. The other officers I do not know that they have any official connection with the Enterprise Lumber Company.

Commissioner Harlan: Who owns the Enterprise Railway?

Mr. Pierce: The Enterprise Railroad Company is owned by its own stockholders, but the controlling interest in the road is owned by the stockholders who own the Enterprise Lumber Company.

Commissioner Harlan: How much is the ownership in the railway by stockholders in the lumber company.

1308 Mr. Pierce: It is practically entire.

Commissioner Harlan: Where is the mill of the Enterprise Lumber Company?

Mr. Pierce: The Enterprise Lumber Company owns a mill located at Alexandria, Louisiana.

Commissioner Harlan: And is that one of the terminii of the Enterprise Railroad?

Mr. Pierce: It is a terminus in this sense, that the Enterprise Railroad Company has a trackage right over the Iron Mountain road from Simms to Alexandria and it reaches Alexandria over the rails of the Iron Mountain road.

Commissioner Harlan: Where is Simms with relation to Alexandria?

Mr. Pierce: Twelve miles north.

Commissioner Harlan: Then the lumber company's mill is at Simms, on the Iron Mountain?

Mr. Pierce: No, sir.

Commissioner Harlan: Where is the mill?

Mr. Pierce: At Alexandria.

Commissioner Harlan: Well, running east from Simms on the Iron Mountain is the track of the Enterprise Railroad Com-

1309 pany.

Mr. Pierce: Yes, sir.

Commissioner Harlan: And it is some eighteen miles long?

Mr. Pierce: I believe the mileage is less than that; I think it is twelve miles of main line.

Commissioner Harlan: Standard gauge?

Mr. Pierce: Standard gauge, 52 and 60 pound rail.

Commissioner Harlan: How is it ballasted?

Mr. Pierce: It is a dirt road.

Commissioner Harlan: What equipment has the railroad company?

Mr. Pierce: It has a caboose, standard flat cars, locomotives of the ordinary type.

Commissioner Harlan: We have here seventy-one cars and three locomotives. Is that about right?

Mr. Pierce: I think that is absolutely correct; four locomotives, however, is my recollection.

Commissioner Harlan: That is owned by the railroad company?

Mr. Pierce: That is owned by the railroad company.

Commissioner Harlan: Does the railroad company own its right of way?

Mr. Pierce: It does.

1310 Commissioner Harlan: Tell us when that railroad was built.

Mr. Pierce: The road was built in 1903.

Commissioner Harlan: By the railroad company?

Mr. Pierce: It was inaugurated by the lumber company, but the railroad company was formed immediately after and as soon as its charter came out it took over the property.

Commissioner Harlan: Had the property been constructed at that time?

Mr. Pierce: Only initiated.

Commissioner Harlan: Did it acquire the right of way over lands of the Enterprise Lumber Company and from the lumber company?

Mr. Pierce: It did partially and partially over the land of citizens.

Commissioner Harlan: What logging roads connect with the Enterprise Railway?

Mr. Pierce: There are no logging roads connecting with the Enterprise Railroad. The Enterprise Railroad Company builds spurs into the timber in that territory belonging to the Enterprise Railroad Company and handles their timber for them from the woods to the main line.

Commissioner Harlan: Do they supply all the materials

1311 and do the labor at the expense of the railroad company?

Mr. Pierce: They supply all the materials and do the labor for a compensation.

Commissioner Harlan: What is that compensation?

Mr. Pierce: I don't know.

Commissioner Harlan: Is that compensation received in the way of a rate for the hauling of the logs or is it a special compensation for the service?

Mr. Pierce: It is a special compensation based on the per thousand feet of logs basis.

Commissioner Harlan: Tell us what stations you have on that line.

Mr. Pierce: Clear Creek is our only station.

Commissioner Harlan: Where is that with relation to Simms?

Mr. Pierce: It is twelve miles east of Simms.

Commissioner Harlan: At the eastern terminus of the Enterprise Railroad?

Mr. Pierce: Practically at the terminus.

Commissioner Harlan: Have you a station building there?

Mr. Pierce: We have only a warehouse there.

Commissioner Harlan: A warehouse?

1312 Mr. Pierce: Well, a shed for receiving freight.

Commissioner Harlan: Do you move less than carload freight?

Mr. Pierce: We do.

Commissioner Harlan: Do you move mail and express matter?

Mr. Pierce: We do not.

Commissioner Harlan: Run any passenger trains?

Mr. Pierce: We do not. We handle passengers only free on our trains; we haul the citizens whenever they care to ride with us, but

there is not sufficient traffic there to warrant the maintenance of service which would meet the requirements of the Commission, if we hauled them for hire.

Commissioner Harlan: What is the timber land which is being lumbered by the Enterprise Lumber Company, what is the extent of it?

Mr. Pierce: I am not able to answer that within a reasonably accurate statement.

Commissioner Harlan: Can you approximate it, is it fifty thousand or one hundred thousand acres?

Mr. Pierce: The original purchase there, if I recall it, as a matter of gossip, was twenty-one thousand acres.

1313 Commissioner Harlan: Original purchase by the Enterprise Lumber Company?

Mr. Pierce: Original purchase by the Enterprise Lumber Company.

Commissioner Harlan: Have they added to that since?

Mr. Pierce: They have.

Commissioner Harlan: Do they own as much as one hundred thousand acres, do you think, at this time?

Mr. Pierce: That would be mere conjecture. I should say they did not.

Commissioner Harlan: As much as fifty thousand acres?

Mr. Pierce: It is possible.

Commissioner Harlan: Mr. Pierce, does your railroad haul any logs for any one other than the Enterprise Lumber Company?

Mr. Pierce: We do not, that I recall now.

Commissioner Harlan: Have you any outside traffic except in less than carload freight you have just referred to?

Mr. Pierce: We have some outside traffic in the way of forest products.

Commissioner Harlan: And manufactured by mills on the line or near the line?

1314 Mr. Pierce: It is mostly of a character that does not pass through mills; stave bolts, cordwood and various products of that character, which is not milled.

Commissioner Harlan: Are those products made from lumber cut on the lands of the Enterprise Lumber Company?

Mr. Pierce: It is not.

Commissioner Harlan: What is the extent of that tonnage?

Mr. Pierce: It constitutes about three or four per cent of our road revenue.

Commissioner Harlan: Does that go into Alexandria?

Mr. Pierce: It does.

Commissioner Harlan: On the local rate?

Mr. Pierce: Most of it does—no, not a local rate but a through rate.

Commissioner Harlan: Through rate to Alexandria?

Mr. Pierce: Through rate to Alexandria.

Commissioner Harlan: Joint through rate?

Mr. Pierce: Joint through rate covered by tariffs.

Commissioner Harlan: That is not hauled then by you into Alexandria under a trackage right?

Mr. Pierce: No, the Iron Mountain performs the service on that beyond Simms. We give that to them at Simms and they
1315 haul it in; our trackage right there only contemplates the handling of logs designed for this one mills.

Commissioner Harlan: Well, it is less than carload stuff usually, is it not, or does it move in carloads?

Mr. Pierce: This forest product?

Commissioner Harlan: Yes.

Mr. Pierce: Carload always.

Commissioner Harlan: What was your total tonnage last year?

Mr. Pierce: I will have to refer to the report. The total outside tonnage is given as 113,735 tons of lumber. Now, manifestly, in making up this statement Mr. Furby has construed as lumber everything in the nature of forest products.

Commissioner Harlan: Including logs?

Mr. Pierce: Including logs?

Mr. Pierce: Does your road move any lumber?

Mr. Pierce: We do not.

Commissioner Harlan: State in general terms what is the nature of this trackage arrangement that you have with the Iron Mountain?

Mr. Pierce: If you will permit me to amend that by saying
1316 we do not move any manufactured lumber.

Commissioner Harlan: What is the character of the agreement for trackage rights which you have with the Iron Mountain, what are the general terms?

Mr. Pierce: The general terms are on a basis of fifty cents a train mile either way regardless of the size of the train.

Commissioner Harlan: Empty and loaded?

Mr. Pierce: Yes, sir; the same charge for moving an empty train as loaded.

Commissioner Harlan: Do you haul the trains with your own power into Alexandria?

Mr. Pierce: We do.

Commissioner Harlan: And is your mill at Alexandria directly on the tracks of the Iron Mountain?

Mr. Pierce: You mean the mill of the Enterprise Lumber Company?

Commissioner Harlan: When I say "your" I address you in two relations——

Mr. Pierce: I have no relations with the Enterprise Lumber Company.

Commissioner Harlan: Very well, I mean the Enterprise
1317 Lumber Company.

Mr. Pierce: Their mill is located on the tracks of the Iron Mountain and the Texas & Pacific, both have switches in there.

Commissioner Harlan: Who owns the switch into the plant of the Enterprise Lumber Company?

Mr. Pierce: There are switches into this plant owned by the T. & P. and by the Iron Mountain and by the Enterprise.

Commissioner Harlan: Just how is that joint ownership arranged?

Mr. Pierce: These are separate switches.

Commissioner Harlan: Oh, they are separate switches?

Mr. Pierce: Separate switching facilities for the three roads there.

Commissioner Harlan: Have you a little sketch showing these switches?

Mr. Brown (producing paper): I think this shows them.

Mr. Cowan: When you use the term "Enterprise" on the tracks, you mean the railroad company or lumber company?

Mr. Pierce: I mean the railroad company always.

Commissioner Harlan: Mr. Pierce is not an officer of the lumber company. Now, here is a map called plat showing Enterprise
1318 Lumber Company's proposed spurs at Alexandria. Just point out the location of the mill.

Mr. Brown: This may show it a little more clearly.

Mr. Pierce: This is the saw mill of the Enterprise Lumber Company down here (indicating).

Commissioner Harlan: Near the Bayou File?

Mr. Pierce: Yes, sir. Now, this is our spur here.

Commissioner Harlan: Marked A line?

Mr. Pierce: Yes, sir.

Commissioner Harlan: I observe here another line marked C line, which at a point separates into two spurs, one marked D line, which approaches your saw mill on the south, and one still further to the south, marked "To Red River T. & P. spur." What is this D line spur?

Mr. Pierce: The ownership is T. & P.

Commissioner Harlan: That reaches your mill, does it?

Mr. Pierce: It does.

Commissioner Harlan: It is very close to your mill, is it not?

Mr. Pierce: At the mill.

Commissioner Harlan: Now, your own spur marked A line is not so close to the mill as this D line spur, is it?

1319 Mr. Pierce: It is practically as close, but it is on the opposite side of the mill.

Commissioner Harlan: Well, this map would seem to indicate it is some distance from the mill.

Mr. Pierce: If the trend of the question is to determine on what line we load, we do not load any outbound business on the spurs of the Enterprise road; that is for inbound business, and the outbound business is over the Iron Mountain and the T. & P. spur.

Commissioner Harlan: From the A line is another line running down through your mill. What is that; is it simply a survey line or a rail line?

Mr. Pierce: That does not indiate a track at all.

Commissioner Harlan: It is perhaps a survey line.

Mr. Pierce: These were survey lines for the purpose of determin-in the location of the log pond.

Commissioner Harlan: Does the log pond lie between your spur and the mill?

Mr. Pierce: No, our spur track runs around the edge of the log pond, but the log pond comes up to the rear of the mill.

Commissioner Harlan: These logging trains are operated over the Iron Mountain with your own engines and your own
1320 crews, using your own cars?

Mr. Pierce: They are.

Commissioner Harlan: And who dumps the logs into the pond?

Mr. Pierce: Our train crew.

Commissioner Harlan: Then the logs are taken from the pond into the mill and they are sawed and loaded out over this D line spur, which belongs to the T. & P., is that it?

Mr. Pierce: Partially so and partially over the Iron Mountain spur.

Commissioner Harlan: Does the Iron Mountain spur reach the mill?

Mr. Pierce: It does.

Commissioner Harlan: Which is the Iron Mountain spur?

(Witness indicates on diagram.)

Commissioner Harlan: Then this map seems to indicate that the Iron Mountain spur comes in below the spur I refer to as being marked "To Red River T. & P. spur?"

Mr. Pierce: Yes, sir; they are both located there.

Commissioner Harlan: Where is your planing mill?

Mr. Pierce: The Enterprise Lumber Company has no planing mill.

Commissioner Harlan: All their shipments are of the rough
1321 lumber?

Mr. Pierce: The shipments are not all what is known in the trade as rough lumber; there is in the saw mill of the Enterprise Lumber Company a single planing machine.

Commissioner Harlan: What is your general market; your largest market?

Mr. Pierce: The question is difficult to answer. We take lumber from that mill consigned to all parts of the country. I am not sufficiently acquainted with their business to know what they consider the largest part.

Commissioner Harlan: Is it pine or hard wood?

Mr. Pierce: It is pine.

(The map so offered and identified was received in evidence and thereupon marked Enterprise Railway Company Exhibit No. 1, witness Pierce, received in evidence December 13, 1910, and is attached hereto.)

Commissioner Harlan: What proportion of your shipments go out over the Iron Mountain?

Mr. Pierce: The general division is around 75 per cent to the Iron Mountain.

Commissioner Harlan: Has that been so for the last three or four years?

1322 Mr. Pierce: I think that is about the percentage.

Commissioner Harlan: Were both spur tracks at the mill when your road was constructed?

Mr. Pierce: I am not prepared to say.

Commissioner Harlan: I wish you would find that out. Is there anyone here that knows? Do you know the facts, Mr. Brown?

Mr. Brown: I think the Iron Mountain spur, if your Honor will notice this map, it is dated August 27, 1903; I think at the time the Enterprise Road was constructed out there from Simms that the Enterprise Lumber Company at the same time took up with the Iron Mountain the question of constructing the spur into the mill at Alexandria.

Commissioner Harlan: Then the Iron Mountain was not there at that time?

Mr. Brown: No, I do not think so.

Commissioner Harlan: Mr. Pierce, will you find out just when it was put in there? When you were first able to make shipments over the Iron Mountain on a spur near your mill. Do you receive any compensation from these two roads on outbound shipments, any payments, allowances or divisions?

1323 Mr. Pierce: The Enterprise Railroad Company has in through rates and divisions with the Iron Mountain Road, but not with the T. & P. Road on general traffic.

Commissioner Harlan: Has it ever had any divisions with the Texas & Pacific on lumber?

Mr. Pierce: We never have.

Commissioner Harlan: What are your divisions at this time with the Iron Mountain on through shipments of lumber?

Mr. Pierce: The quantity of the division?

Commissioner Harlan: Yes, the lowest and highest you receive under all available rates.

Mr. Pierce: Our divisions run from two cents to five cents; the average is three and something.

Commissioner Harlan: What service do you understand that the Enterprise Railroad Company does for that money?

Mr. Pierce: We perform the service of initiating this traffic on our own lines. The movement commences with us and we haul it to Alexandria.

Commissioner Harlan: Well, is the through rate a rate on lumber?

Mr. Pierce: It is a rate on lumber in the log from the point of origin to destination, with the privilege of milling at any point on the Enterprise Road, or at junctions with the Iron Mountain.

1324 Commissioner Harlan: Is the Iron Mountain's rate from Alexandria on lumber the same as the joint rate of the Iron Mountain and the Enterprise Railroad Company from the eastern terminus of the Enterprise Railway?

Mr. Pierce: I am not prepared to say what the rate from Alexandria is, because I am not interested in it, but my understanding is that Alexandria comes in the blanket there, and the blanket is maintained over that territory.

Commissioner Harlan: The blanket goes back to the point where you——

Mr. Pierce: The blanket goes back to Clear Creek.

Commissioner Harlan: You say you are not interested in the rate. What do you mean by that?

Mr. Pierce: I mean there is nothing in my affairs that call upon me to know what the rate from Alexandria is. There is a general blanket rate on forest products from that territory.

Commissioner Harlan: Are you familiar with general conditions around this territory, so far as the lumber traffic is concerned?

Mr. Pierce: Yes, sir.

Commissioner Harlan: Mr. Pierce, I would like to know
1325 whether in your judgment it is possible for small mills to successfully compete with your mill, when you get divisions of this kind, and they do not get any?

Mr. Pierce: You are assuming that I am interested in the Enterprise Lumber Company. You mean whether or not the Enterprise Lumber Company would have an advantage over these small mills?

Commissioner Harlan: Yes, you can put it that way if you like.

Mr. Pierce: Not the slightest.

Commissioner Harlan: The mill that has to haul its product to the Iron Mountain station by wagon, now, can such a mill successfully compete with a mill that has this relation to a special railroad and gets an allowance on delivering the manufactured lumber by rail at the junction?

Mr. Pierce: My experience would lead me to believe that the small mill that has its timber close enough to the trunk line to be able to handle it on wagons or lumber close enough to handle the lumber on wagons, would have an advantage over people of this character who are compelled to invest large sums of money in railroads in order to develop the timber territory.

1326 Commissioner Harlan: Are there a good many small mills around here?

Mr. Pierce: There is very little timber left on the main lines of these trunk line roads in that territory today that is available. That is a condition that existed at the time the trunk lines were built through the territory, but time has taken the timber away. It has been used up and there are not many of those mills left.

Commissioner Harlan: You think it is simply because the lumber has gone and not because they are not able to compete?

Mr. Pierce: Not by any means. Because the timber is gone and there is no opportunity for them.

Commissioner Harlan: But it is true, is it not, that there are no small concerns around your country; I mean within 25, 30, 40 or 50 miles?

Mr. Pierce: It is true they would have an advantage over a mill located as this is.

Commissioner Harlan: That is not quite the question. I want to know if there are any small concerns now in existence.

Mr. Pierce: There are a few.

Commissioner Harlan: They are very few?

Mr. Pierce: They are very few.

1327 Commissioner Harlan: And their output is inconsiderable, compared with the output of mills equipped such as yours is, with a railroad?

Mr. Pierce: Their output is inconsiderable. There have been statistics made up on that, which might be submitted to you if you care to see them.

Commissioner Harlan: By whom?

Mr. Pierce: George K. Smith, the secretary of the Yellow Pine Manufacturers' Association, I believe.

Commissioner Harlan: The output of mills which have to haul the lumber to the mill and the product to the station.

Mr. Pierce: The output of mills that do not have to develop their territory by the investment in railroads.

Commissioner Harlan: Do you know just what that investment showed in a general way? I do not mean accurate figures.

Mr. Pierce: It showed that the number of those mills and the quantity of their output was very inconsiderable, as compared with the larger concerns that had to develop the country.

Commissioner Harlan: Then that investigation shows that for one reason or another there are very few small mills; is not that it?

1328 Mr. Pierce: Not that there are so few small mills, but their product as compared with the general output of pine lumber is inconsiderable.

Commissioner Harlan: Didn't the investigation show that there are a great many small mills regardless of their output that are in operation?

Mr. Pierce: It showed that the number of mills of the individuals was very much greater than what is known as the large concerns who are investing large sums of money and developing their holdings by means of railroads.

Commissioner Harlan: Such mills, then, are more numerous than the larger mills, but their output is a very small proportion of the total.

Mr. Pierce: Their output is quite small compared with the number.

Commissioner Harlan: Am I to understand that under existing conditions those small mills are nevertheless able to keep going.

Mr. Pierce: They are always successful where they can find timber.

Commissioner Harlan: What charge does your company make for hauling the logs of the Enterprise Lumber Company to

1329 the mill?

Mr. Pierce: We make no charge for hauling the logs to the mill. Our rate is from Clear Creek to destination.

Commissioner Harlan: That is a lumber rate, with a milling in transit privilege.

Mr. Pierce: That is a lumber rate.

Commissioner Harlan: Does not that mean, then, that the through rate to St. Louis—what is it, 18 cents?

Mr. Jeffery: Eighteen cents; yes, sir.

Commissioner Harlan: That the 18 cents rate on the lumber to St. Louis picks up the log and carries it to and through the mill and on to the market without additional expense to the lumber company?

Mr. Pierce: It does.

Commissioner Harlan: And the fellow that has no railroad, and does not have his logs picked up for him, he has to do that himself, and he does not have his lumber picked up for him, but he has to haul it to the station; are not those the relative conditions under which the business is done by these two classes of mills?

Mr. Pierce: Is it your desire that I should set up his opposing advantages?

1330 Commissioner Harlan: You can do that if you like, but I want an answer to the question first, and then you can say what you like. I want to know the facts first.

Mr. Pierce: You have stated the matter correctly as to the facts.

Commissioner Harlan: Now if you have any comment to make upon those facts, I would like to know what it is.

Mr. Pierce: If it is proper for me to say, I would say that the man with the small mill, who is located on the trunk line is not required to go out and organize a railroad company and invest his money in that, often with very little return. He has his timber more cheaply——

Commissioner Harlan: Pardon me a moment. You are now proceeding on the case stated. A number have been spoken of here by various witnesses, where the mill is not on the trunk line, but there is a substantial haul of the lumber to the receiving station of the trunk line, and there is a substantial haul of the logs to the mill. Now those conditions exist and witnesses have so stated here. Now, I want to know in your judgment, based on your practical experience with the lumber interests, if the small fellow can successfully compete with the large fellow who has a railroad, and if

1331 he does it successfully and keeps his mill going?

Mr. Pierce: He does.

Commissioner Harlan: Do you know of such cases?

Mr. Pierce: I do.

Commissioner Harlan: Do they exist around you?

Mr. Pierce: I have been in this territory but very little in the last four years. I have now in mind only one mill in that territory of that character, though doubtless others exist. As to that immediate locality, you could find much more competent witnesses than I am.

Commissioner Harlan: The point in my mind is this. Up in my country everybody is a small miller, and everybody hauls his logs and everybody hauls his lumber; there are no big concerns. I want to know whether the small man and the big man can exist success-

fully side by side down in this country, and you say there is only one man you know of in your part of the country.

Mr. Pierce: That has a body of timber close enough to the trunk line to warrant him having his mill on the line.

Commissioner Harlan: I do not know where the timber is, but there is only one you can state in your country that is a going concern?

1332 Mr. Pierce: Unless I can think about it. There is no question about the ability of the small mill to compete with the large mill in this country.

Commissioner Harlan: Well, that one man is doing it.

Mr. Pierce: Oh, he is doing it successfully.

Commissioner Harlan: Does the Enterprise Railway Company own any other track than the track you have just described?

Mr. Pierce: No other track.

Commissioner Harlan: We have some record of another bit of track somewhere else in the neighborhood that is supposed to belong to your company a little closer to Alexandria. Do you know of any such tract?

Mr. Pierce: I do not.

Commissioner Harlan: You say you pay 50 cents per train mile?

Mr. Pierce: That is my recollection.

Commissioner Harlan: Our records seem to indicate that you pay $1.00 a train mile.

Mr. Pierce: Well, that is incorrect.

Commissioner Harlan: Very well. Our records seem to indicate that you charge the lumber company $1.50 for handling the logs to Alexandria?

1333 Mr. Pierce: That is also incorrect.

Commissioner Harlan: This is a report made up by an examiner who conferred with your officials in December, 1909.

Mr. Pierce: Well, the information—either the officers have not understood the query of the examiner, or in some way or another he has gotten it down wrong. The service for which we charge the lumber company is for the construction of spurs in their holdings, for the loading of their logs and switching of their logs out to our main line. We keep two locomotives out there for the purpose of handling their stuff to the main line.

Commissioner Harlan: What do you charge for that service?

Mr. Pierce: My recollection is it is $1.50 per thousand. I am not positive on that.

Commissioner Harlan: Who knows better than you about this? We ought to get the information without delay, and we ought to have it accurately. I understood you to say in the beginning that you could tell——

Mr. Pierce: That is correct. It is $1.50 per thousand.

Commissioner Harlan: Just what service does that cover?

Mr. Pierce: That covers the construction of spurs, the operation of those spurs, the loading of the logs and the switching of
1334 the logs to the main line.

Commissioner Harlan: That is in addition to the divisions which you get?

Mr. Pierce: That is a separate earning.

Commissioner Harlan: What were your total revenues last year, and your net?

Mr. Pierce: Freight revenue, $53,045.15; operating expenses, $56,049.47, leaving a deficit of $3,257.28.

Commissioner Harlan: Do the officers of the railroad get salaries?

Mr. Pierce: They do not, except myself; I receive a salary.

Commissioner Harlan: What is the Southern Pine System?

Mr. Pierce: It is a trade name used for convenience in handling the affairs of these five roads.

Commissioner Harlan: Is it a corporation?

Mr. Pierce: It is not.

Commissioner Harlan: It is simply a selling agency, or is it——

Mr. Pierce: No, it is a trade name, under which we conduct the correspondence of these five roads for convenience. For instance, with the Commission, they allow us in filing accident re-
1335 ports, to file our reports under this trade name for economy of time.

Commissioner Harlan: Is there an inter-corporate relation between these several lumber companies?

Mr. Pierce: There is not.

Commissioner Harlan: Is there one company that owns the stock in the several lumber companies?

Mr. Pierce: There is not.

Commissioner Harlan: What about the railroad stock?

Mr. Pierce: It is all separate; they are separate corporations.

Commissioner Harlan: Are the stockholders the same, or substantially so, in all these different companies?

Mr. Pierce: They are not.

Commissioner Harlan: Is there complete identity as to all companies, or are one or two closely related in stock ownership?

Mr. Pierce: There is complete identity, except the Saline Bayou and the Griffen, Magnolia & Western, which are practically owned by the same people.

Commissioner Harlan: You perhaps used the wrong expression. You mean separation?

1336 Mr. Pierce: I mean each one of these companies is in itself a complete identity, and that there is no inter-relation between the companies, except the Saline Bayou and the Griffen, Magnolia & Western.

Commissioner Harlan: What is that relation?

Mr. Pierce: The stockholders of one are practically the same as the stockholders of the other.

Commissioner Harlan: You refer there to the lumber companies or the railroad company?

Mr. Pierce: The railroad company.

Commissioner Harlan: Are the two railroad companies owned by stockholders who also own the stock of one lumber company or two lumber companies?

Mr. Pierce: Two lumber companies, but the stockholders of both those lumber companies are practically the same.

Commissioner Harlan: So that those two lumber companies and those two railroads represent practically one investment by the same people, but through different corporations?

Mr. Pierce: Well, they are two forks to the same stem, the sap comes from the same trunk.

Commissioner Harlan: What was the total cost of the Enterprise Railroad?

1337 Mr. Pierce: $73,352.36,—oh, no; road and equipment?

Commissioner Harlan: Yes.

Mr. Pierce: $132,852.26.

Commissioner Harlan: Do you know what the cost of the equipment was?

Mr. Pierce: Segregated?

Commissioner Harlan: Yes.

Mr. Pierce: $54,500.

Commissioner Harlan: I observe that last year you had an expense for maintenance of equipment, according to your annual report, of $14,000, which was about 25 or 30 per cent of the value of the equipment, and an item of $19,000 practically $20,000, for maintenance of way and structures. Do you recall what those items were respectively, for the year before?

Mr. Pierce: I am sorry, but I cannot, Mr. Commissioner.

Commissioner Harlan: Were they about as large?

Mr. Pierce: I have not the slightest recollection of them.

Commissioner Harlan: Your company has not paid any dividends?

Mr. Pierce: No, sir.

Commissioner Harlan: Has it any cash capital, working

1338 capital?

Mr. Pierce: Cash on hand?

Commissioner Harlan: Cash on hand.

Mr. Pierce: Very little. It is in debt.

Commissioner Harlan: How do you take care of this deficit?

Mr. Pierce: We borrow the money from the Enterprise Lumber Company.

Commissioner Harlan: Have you had to borrow money year after year?

Mr. Pierce: We have.

Commissioner Harlan: What does the total debt now amount to?

Mr. Pierce: About $112,000.

Commissioner Harlan: That covers what period of time?

Mr. Pierce: Eight years.

Commissioner Harlan: In other words, there has been a deficit each year?

Mr. Pierce: There has been a deficit each year.

Commissioner Harlan: Do you pay interest on that debt?

Mr. Pierce: We do. It is charged up to us.

Commissoner Harlan: Well, do you pay it?

Mr. Pierce: When we have the money we pay it.

1339 Commissioner Harlan: Is that the way your deficit was created last year, by paying the interest, or did the interest enter into the expense side of the account?

Mr. Pierce: The interest was charged up to us, and the general result of our operation was that we were at this much of a deficit.

Commissioner Harlan: So that the deficit is predicated on the proposition that the interest in one form or another has been paid?

Mr. Pierce: That it has been paid.

Commissioner Harlan: If you have had a deficit for every year, it is not likely that the lumber company can look forward to the early payment of that debt, is it?

Mr. Pierce: There is no reassuring prospect on that subject.

Commissioner Harlan: If you put in 25 per cent each year on your equipment and a very large percentage on your maintenance of way and structures, you are all the time building up a substantial asset in this road and roadbed and the equipment?

Mr. Pierce: We hope it is.

1340 Commissioner Harlan: So that even if you declare no dividend to the stockholders, the value of the investment is yearly increasing?

Mr. Pierce: We hope so.

Mr. Brown: You are a stockholder of the Enterprise Railway?

Mr. Pierce: I am.

Mr. Brown: You are not interested in the Enterprise Lumber Company?

Mr. Pierce: No, I am not.

Commissioner Harlan: The witness has stated that, and I hope counsel will avoid repetition as far as possible.

Mr. Brown: I will try to. Referring to the trackage agreement, and the Commissioner's remark about the payment of $1.00, as you stated, and as the contract reads, as I understand it, it is 50 cents a train mile. Now, that is in or out, loaded or empty; is that your understanding of it?

Mr. Pierce: Any mile that we move a train over the Iron Mountain we pay 50 cents, regardless of the character of the train.

Mr. Brown: So when a train comes in and out, it would cost $1.00 a mile to move the train in and out; that is probably the explanation of the dollar charge.

Mr. Pierce: For the double track movement.

1341 Mr. Brown: You have a station or a village or a town called Stone's Camp upon the line of the Enterprise Railroad, have you not?

Mr. Pierce: We have.

Mr. Brown: Is there a general store located at that place?

Mr. Pierce: There is.

Commissioner Harlan: Does the Enterprise Lumber Company have any interest in that store?

Mr. Pierce: They have not.

Mr. Brown: Does your railroad handle any business either in or out for that store?

Mr. Pierce: We do.

Mr. Brown: What is the general nature of that business?

Mr. Pierce: It is usually class business, merchandise, feed stuffs, and flour and produce.

Mr. Brown: How is that handled, on joint through rates, or do you handle it on the local rate from Simms?

Mr. Pierce: On the local from Simms.

Mr. Brown: Are your locomotives and your cars equipped with safety appliances, as required by the Federal Act?

Mr. Pierce: They are.

Mr. Brown: Do you make your accident reports to the
1342 Interstate Commerce Commission?

Mr. Pierce: We do.

Mr. Brown: Keep your accounts in accordance with the rules of the Commission, as you understand them?

Mr. Pierce: We endeavor to do so.

Mr. Brown: File with the Commission your annual reports?

Mr. Pierce: We do.

Mr. Brown: Have you filed your annual report for the year ending June 30, 1910?

Mr. Pierce: We have.

Mr. Brown: It is true, is it not, Mr. Pierce, that the tracts of timber along the main line of these railroads have been largely consumed?

Mr. Pierce: It is.

Mr. Brown: And it is also true that the timber that furnishes the supply of lumber is now located to a considerable extent away from the main line of the railroads?

Mr. Pierce: It is practically all remote from trunk lines.

Mr. Brown: Is it not also true throughout this part of the country that these timber tracts have been bought up in large bodies, large acreage, by these large lumber companies?

Mr. Pierce: It is necessary that they should buy these
1343 tracts in large quantities in order to supply a raw material to warrant such an investment as is requisite now to be made in railroads and mills to handle a proposition of that character.

Mr. Brown: Well, notwithstanding that, there are in many places all over this country small tracts of timber land are there not?

Mr. Pierce: There are.

Mr. Brown: That is not all in one interest, and is it not also true that the small mills that the Commissioner referred to, are, to a large extent, located upon what are here denominated as tap lines?

Mr. Pierce: There are more of them located on lines of that character than there are on the trunk lines.

Mr. Brown: And they are using these so-called tap lines as their means of transportation, are they not?

Mr. Pierce: That is their only outlet to the market.

Mr. Brown: And these joint through rates that the Enterprise Lumber Company pays over the rails of the Enterprise Railroad are available to and permit the small mill located upon these tap lines to do business upon exactly the same basis as a large mill like the Enterprise Lumber Company?

1344 Mr. Pierce: They do.

Mr. Brown: What would be the effect upon the small mill located upon the so-called tap line, if the joint through rate was discontinued?

Mr. Pierce: He would be compelled to pay the sums of the locals through the junction of the trunk line.

Mr. Brown: What, in your opinion, would be the effect of that sort of a combination of freight rates upon the business of the small mill located upon the so-called tap line?

Mr. Pierce: He would be put at a serious disadvantage over mills that might be located on the trunk line; the probabilities are he would be driven out of business.

Mr. Brown: I think that is all I have with respect to the Enterprise Railroad.

Commissioner Harlan: Is this a copy of your annual report for last year? (Handing paper.)

Mr. Pierce: It is.

Commissioner Harlan: An exact copy?

Mr. Pierce: It is.

Commissioner Harlan: And you are the auditor of this road?

Mr. Pierce: Yes.

Commissioner Harlan: Will you point out where it shows
1345 the payment of interest, either by credit or cash, to the lumber company?

Mr. Pierce: Mr. Commissioner, it was not made up by me, but by the assistant auditor, and I am not prepared to say that I personally understand how the entries were made in connection with it.

Commissioner Harlan: I understood you to say that it was made up by the assistant auditor?

Mr. Pierce: Yes, sir.

Commissioner Harlan: And you have not given it personal examination?

Mr. Pierce: I have not.

Commissioner Harlan: If it does not show here that the interest has been charged against your company and credited to the lumber company, that means that the lumber company has not received the interest in any form, does it not?

Mr. Pierce: I think that would be the proper inference.

Commissioner Harlan: I put the question, Mr. Pierce, because I have been impressed by the fact that you are the auditor of this road, and yet apparently so large an item as interest on $120,000, I believe you said, has not lodged itself in your mind sufficiently to know whether you paid it or not, and it leads
1346 possibly to the inference or suggests the inference that this whole system of accounting for the railroad company is more or less a nominal or formal matter, and that your real interest lies largely in the lumber company. Here you are the auditor, and you tell me the interest has been paid, and yet this account furnished to the Commission and supposed to be correct, does not seem to indicate that it has been paid.

Mr. Pierce: There is an earnest endeavor to keep these accounts properly.

Commissioner Harlan: I am sure of that, but I direct your attention to that one fact that as auditor of this road, that fact has not lodged itself definitely in your mind, whether you paid interest on this large indebtedness or not, and you are not quite sure as to what your trackage arrangement was with the Iron Mountain, and you stated it 50 cents and counsel suggests it is $1.00 a mile, and I am left in doubt as to what it really is.

Mr. Brown: I have the contract and will be glad to file it.

Commissioner Harlan: That is the point. The contract is all available, but it apparently is not lodged definitely in the mind of the auditor of the railroad who has daily to deal with
1347 the accounts of this railroad.

Mr. Pierce: I beg pardon, but I stated positively it was fifty cents a train mile.

Commissioner Harlan: Very well; if that is your positive conviction, it will depend upon what the record discloses.

Mr. Pierce: That is my positive knowledge.

Commissioner Harlan: The statement was made to the examiner of the Commission, and it is now in the records of the Commission, indicating you get $1.00 a train mile.

Mr. Pierce: This is a payment; we pay it to the Iron Mountain.

Commissioner Harlan: Yes, you pay the Iron Mountain——

Mr. Pierce: Fifty cents a train mile either way.

Commissioner Harlan: Yes. Judge Cowan, have you any questions of this witness?

Mr. Cowan: Yes. I did not understad your position. You say you are a stockholder in this company that you are auditor of, and you are not interested in the lumber company?

Mr. Pierce: I am not interested in the lumber company. I am a stockholder in this railroad company.

Mr. Cowan: How did you happen to have that stock in this company that continually has a deficit, and auditor of a com-
1348 pany where you own the stock and do not know whether you paid the interest or not?

Mr. Pierce: I believe that my acquisition of the stock was perfectly honorable, Judge.

Mr. Cowan: I have no doubt of that, but it might have been a very foolish business undertaking if they do not pay anything, and I wondered how you came to be a stockholder in a company of this sort.

Mr. Pierce: I have not claimed that it was paying investment.

Mr. Cowan: What is the object of having it, then?

Mr. Pierce: I got it in the way that a good many people get mining stocks, when they are not looking.

Mr. Cowan: Who sold it to you—is that the way the Enterprise Company deals, or did they sell you the stock?

Mr. Pierce: The stock was acquired from a friend of mine and in a perfectly legitimate way, I assure you, Judge.

Mr. Cowan: Well, how much salary do you draw as auditor?

Mr. Pierce: Well, that is a personal matter.

Mr. Cowan: I don't know about that.

Commissioner Harlan: I think we ought to know that, and
1349 other witnesses have been required to state that.

Mr. Pierce: The salary is made up of the contributions for the different lines, Mr. Commissioner. My salary is $300 a month.

Commissioner Harlan: You are auditor for all these lines?

Mr. Pierce: Yes.

Mr. Cowan: What is the quantity of stock you own, just enough to qualify you as an official?

Mr. Pierce: Fifteen shares is my recollection.

Mr. Cowan: Where do you keep your office?

Mr. Pierce: St. Louis.

Mr. Cowan: Where does the lumber company, or companies connected with these lines keep their offices?

Mr. Pierce: The office of the Enterprise Lumber Company is at Alexandria.

Mr. Cowan: Do these lumber companies served by the railroads of which you are auditor have an office and place of business jointly or singly in St. Louis?

Mr. Pierce: They have separate offices; some of them in St. Louis and some of them not there.

Mr. Cowan: Is it the same place where your office is?

Mr. Pierce: It is the same place where my office is.

1350 Mr. Cowan: All the offices in the same rooms?

Mr. Pierce: All offices in the same rooms. We have a suite of rooms.

Mr. Cowan: This Southern Pine—what do you call it?

Mr. Pierce: Southern Pine System.

Mr. Cowan: The Southern Pine System has these offices where you keep your office, does it?

Mr. Pierce: Yes, sir.

Mr. Cowan: And they have a sales agent there for the lumber?

Mr. Pierce: Yes, sir.

Mr. Cowan: Is it a joint sales agency?

Mr. Pierce: I beg your pardon. You asked me if the Southern Pine System had a sales agent for lumber?

Mr. Cowan: Yes, that was my question.

Mr. Pierce: The Southern Pine System is not in the lumber business. If the information you want is as to whether or not the stockholders interested in the Southern Pine System are also stockholders of lumber companies, I will say that they are and that they run an office in St. Louis and that they there employ all such people as would naturally be employed in a lumber business.

1351 Mr. Cowan: Well, there is a sales agent for these lumber companies occupying the same office with you?

Mr. Pierce: They do; the same suite.

Mr. Cowan: I cannot understand this. How many lumber companies are there that do business on the Southern Pine or Yellow Pine System?

Mr. Pierce: Well, do you mean—those interested in the community, that have the community of interest taint on them; is that what you mean?

Mr. Cowan: I don't know as it is a taint; it is just a business proposition. They have a sales agent there, I understand.

Mr. Pierce: There are five of those companies.

Mr. Cowan: And one of them is the Enterprise Company which we have been talking about?

Mr. Pierce: They do not have an office in St. Louis.

Mr. Cowan: Well, have they any interest in this joint sales agent we have been talking about?

1352 Mr. Pierce: I did not say anything about a joint sales agent.

Mr. Cowan: Well, I did. I made a mistake, I guess. I asked you if they had a joint sales agent in the office you occupy, and I thought you said they did.

Mr. Pierce: The five lumber companies interested in these railroad companies have no joint sales agent.

Mr. Cowan: Do each of them have a sales agent there?

Mr. Pierce: Each one of them has a sales agent, but not there.

Mr. Cowan: And the people who are in the office with you represent whom?

Mr. Pierce: The people who are in the office with me represent the Southern Pine System, and also represent two of the lumber companies that are interested in the stock—whose stockholders are interested in the stock of these roads.

Mr. Cowan: What companies are those?

Mr. Pierce: Louis Werner Company and the Oak Leaf Mill.

Mr. Cowan: Do you keep the books of each one of these railroad companies at St. Louis; is that where the books are kept?

Mr. Pierce: We do not.

1353 Mr. Cowan: Where are they kept?

Mr. Pierce: At the local offices of the roads.

Mr. Cowan: And are you familiar with where the local office is in the case of the Enterprise Lumber Company?

Mr. Pierce: St. Louis—at Alexandria.

Mr. Cowan: Is that in the lumber company's office?

Mr. Pierce: I do not know. It is in the same building.

Mr. Cowan: And you have been down there, of course?

Mr. Pierce: I have.

Mr. Cowan: Have you an assistant auditor there?

Mr. Pierce: I have.

Mr. Cowan: You supervise what he does?

Mr. Pierce: Possibly not as closely as I should. In a general way.

Mr. Cowan: Well, there is a little indication here that you do not.

Mr. Pierce: Yes; the Commissioner has just called my attention to that.

Mr. Cowan: Now, you say you don't know whether the office is in the lumber company's office or not?

Mr. Pierce: I said that I did know that it was.

Mr. Cowan: And that is in the office of the bookkeepers
1354 of the lumber company?

Mr. Pierce: All of the lumber company's people are in this office.

Mr. Cowan: Does this assistant auditor you have spoken of do anything else except audit the business of the Enterprise Railroad Company?

Mr. Pierce: I do not know of his other employment. I take it he is employed also by the Enterprise Lumber Company. So fas as my relations with him are concerned, he is simply my associate in the service of the Enterprise Railroad.

Mr. Cowan: What do you pay him?

Mr. Pierce: I don't know. He reports direct to——

Mr. Cowan: You do not know what the Enterprise Railroad pays him?

Mr. Pierce: I do not, no.

Mr. Cowan: Do they pay him anything?

Mr. Pierce: I don't know.

Mr. Cowan: Is it not a fact that the Enterprise Lumber Company has already written off this indebtedness that the railroad is supposed to owe it, off its books?

Mr. Pierce: I am not familiar with the books of the Enterprise Lumber Company. I could not say whether that was a fact
1355 or not. I do not think it likely they would do anything of the kind.

Mr. Cowan: Do you have any understanding of it?

Mr. Pierce: They have never given us a receipt for it, by any means, or declared to us that they think it is a lost account.

Mr. Cowan: How long have you been owing it?

Mr. Pierce: We have been accumulating it for the last eight years.

Mr. Cowan: It is barred by the Statute of Limitations.

Mr. Pierce: No, it is accumulating. There is ten years' limitation in Louisiana.

Mr. Cowan: Any notes outstanding for it?

Mr. Pierce: No.

Mr. Cowan: Any sort of security given for it?

Mr. Pierce: No.

Commissioner Harlan: Right at that point let me interrupt and ask you whether such an indebtedness would appear as a funded debt or not on our formal report.

Mr. Pierce: Our idea of a funded debt is one for which a bond is given, and it would not appear on a road of that character. We have no bonds.

1356 Commissioner Harlan: How would it appear?

Mr. Pierce: As an open account.

Commissioner Harlan: Does it appear here, do you know?

Mr. Pierce: I think it does.

Commissioner Harlan: If you will go on, Judge Cowan, Mr. Sanford will look it up.

Mr. Cowan: I do not want to consume much time on this, but I want to ask about the man who does the small business on a tap line,

which your counsel asked about, and the advantages that he has b
paying the rate of freight, as compared to the saw mill which own
the tap line and gets a division out of the rate. I understood yo
to put it that the man operating the small mill on the tap line is
an advantage as compared to the man who is the owner of the ta
line and operating his mill. Did I understand you correctly?

Mr. Pierce: I feel that he is.

Mr. Cowan: Do you know of such a case?

Mr. Pierce: I think so.

Mr. Cowan: Just give us an instance of that case, and let us s
what his situation is. Where is the man operating a saw mill whi
is independent of tap line ownership on a tap line?

1357 Mr. Pierce: Do you want a concrete example?

Mr. Cowan: Yes; I want to find the case.

Mr. Pierce: By names and locations, and so on?

Mr. Cowan: Yes; that is the only way to do it.

Mr. Pierce: Just as an illustration, the usual saw mill of th
character is small, the timber is bought in small blocks——

Mr. Cowan: No, just tell me the place where the mill is. On wh
tap line is that mill you have in mind? You said you knew of o

Mr. Pierce: There is a mill located at Mount Holly, Arkansas.

Mr. Cowan: What line is that on?

Mr. Pierce: On one of our lines, the Griffen, Magnolia & Weste

Mr. Cowan: How far from the junction point of the main lin

Mr. Pierce: About 18 miles.

Mr. Cowan: You haul his lumber on your tap line?

Mr. Pierce: We do.

Mr. Cowan: Do you get anything for it?

Mr. Pierce: We do.

Mr. Cowan: How?

1358 Mr. Pierce: Through the division of the through rate.

Mr. Cowan: How much division do you get on his lumbe

Mr. Pierue: About 3.4 cents average on it.

Mr. Cowan: He pays the full rate?

Mr. Pierce: He pays the full rate.

Mr. Cowan: Where is your mill located?

Mr. Pierce: I haven't any mill.

Mr. Cowan: I mean the mill that belongs to the interests of t
tap line.

Mr. Pierce: Located at Griffen.

Mr. Cowan: They pay the same through rate that he does?

Mr. Pierce: The same through rate.

Mr. Cowan: Do they own the stock in the railroad?

Mr. Pierce: They do.

Mr. Cowan: And there comes back to the railroad company
of the rate they pay this 3.4 cents, and there comes back to
railroad company out of the lumber that he ships the same
cents.

Mr. Pierce: Yes, sir.

Mr. Cowan: You say that gives this man an advantage who p
the full rate and who does not get anything back, as compa

with the saw mill interests which do get it back on their
1359 lumber and on his?

Mr. Pierce: No, I did not say that. You misunderstood me.

Mr. Cowan: I am giving a concrete example, because I thought that was what you meant when you said he was working at an advantage.

Mr. Pierce: I said there were certain advantages to the small mill man that the large one did not enjoy. I did not say there was any advantage in the rate.

Mr. Cowan: What are the advantages this man enjoys, just taking this concrete example?

Mr. Pierce: He is relieved from the investment in a large quantity of raw material, in the first place. Many of these people investing in large saw mill propositions in the South are carrying raw material for 25 years. In the second place, he is relieved of the investment in railroads, for the purpose of developing his property, and he is accumulating his timber in small quantities at a very low price. Usually he buys it from his brother-in-law, his mother-in-law or his old friends, and they get their timber together for 25 to 50 cents a thousand, and he handles his business in a small, concrete way at small expense, and makes his lumber for less money
than the big people do, and enjoys the same rate out that
1360 they do.

Mr. Cowan: The enjoyment of the rate is that he enjoys the opportunity to pay the rate, but does not get any division?

Mr. Pierce: The rate from this country is the same.

Mr. Cowan: I understand that, but the divisions seem to be different.

Mr. Pierce: Very trifling, if any, so far as I know.

Mr. Cowan: Then you say that he is relieved of the investment in a railroad for developing his property?

Mr. Pierce: That is what I said.

Mr. Cowan: So I assume that that means that you treat the investment of the lumber company in these instances where you are auditor of the railroad, as being the real investment that is in the railroad, the lumber company made the investment.

Mr. Pierce: There is no question but what these railroads would not have been built had it not been for the fact that they were needed to transport the tonnage of the country.

Mr. Cowan: Well, you consider, then, that the investment of one of these big lumber concerns in a railroad is a necessity to the operation of the business?

Mr. Pierce: It is a necessity to the movement of freight
1361 of a railroad.

Mr. Cowan: Well, but is it not necessary to the operation of the saw mill business on a large scale to build and operate a railroad for that purpose?

Mr. Pierce: It is a necessity for that mill to get logs to its mill in some way.

Mr. Cowan: I did not ask that. I asked the other question, and that you might answer, if it is a necessity for them to operate the railroad or not, in the operation of a large saw mill business.

Mr. Pierce: No, the only necessity to them is to devise some means to get the logs to their mill.

Commissioner Harlan: Well, the means they devise is a railroad, and the other fellow devises a horse and wagon or a couple of mules; is not that about the only difference?

Mr. Pierce: Well, it is technically so.

Mr. Cowan: Take the man who operates the railroad in the development of his logging business, and who does not get a division of the rate at all; is he not at a great disadvantage as compared to the saw mill interest, which develops its railroad, but gets a division of the rate for it,

Mr. Pierce: I am not prepared to say. I have not had
1362 any experience with that kind of railroading.

Mr. Cowan: That is all.

Commissioner Harlan: Mr. Jeffery, have you any questions?

Mr. Jeffery: No.

Mr. Brown: Just one question about the billing arrangement. Will you please explain how the lumber is billed out, whether it is on the through billing from the eastern terminus of your Enterprise Railroad.

Mr. Pierce: It moves on through billing.

Mr. Brown: What is the initial point?

Mr. Pierce: Clear Creek.

Mr. Brown: Does this traffic move under the usual and customary bill of lading and railroad form of way bill?

Mr. Pierce: Uniform bills of lading, and standard form of way bill.

Mr. Brown: Of your railroad company?

Mr. Pierce: Yes, sir.

Mr. Brown: That is all.

Mr. Cowan: One question about that billing. Have you examined the bills made out by the Iron Mountain Railroad when they ship this lumber out?

Mr. Pierce: The Iron Mountain does not issue any bills
1363 for this lumber.

Mr. Cowan: Who issues the bills.

Mr. Pierce: The Enterprise Railroad.

Mr. Cowan: At Alexandria?

Mr. Pierce: At Alexandria.

Commissioner Harlan: No, you said at Clear Creek.

Mr. Pierce: He is talking about the bill of lading.

Commissioner Harlan: Were you talking about the way bill?

Mr. Brown: I asked about both. I asked him from what point it was way billed.

Commissioner Harlan: You said Clear Creek?

Mr. Pierce: Yes, sir.

Commissioner Harlan: And the lading papers are issued at Alexandria?

Mr. Pierce: Yes, sir.

Mr. Cowan: Then the bill of lading would read a shipment of a carload of lumber to St Louis from Clear Creek?

Mr. Pierce: Yes.

Mr. Cowan: You are certain of that, are you?

Mr. Pierce: I am.

Mr. Cowan: And there would be a way bill issued on that to whom?

1364 Mr. Pierce: To the conductor.

Mr. Cowan: Of what train?

Mr. Pierce: Whatever train took it out, whichever train switched it out

Mr. Cowan: And in the operation of the Iron Mountain you say the way bill will read from Clear Creek, to this conductor?

Mr. Pierce: Yes, sir.

Mr. Cowan: Is there anything else you ship from Clear Creek?

Mr. Pierce: Than lumber?

Mr. Cowan: Yes, is there other stuff shipped from Clear Creek besides logs?

Mr. Pierce: Practically no outbound movement, except forest products, as I testified.

Mr. Cowan: You have seen these way bills and bills of lading, and know?

Mr. Pierce: I have.

Mr. Cowan: What is the purpose of making a false billing. It is true it is not shipped from there. What is the purpose of billing it?

Mr. Pierce: Why do you call it false? It is not.

1365 Mr. Cowan: Because you say it is shipped from Clear Creek, but it is not. It is shipped from Alexandria.

Mr. Pierce: It is shipped from Clear Creek, and the tariff so provides for it.

Commissioner Harlan: That is a question, I think, that can be reserved for the argument.

Mr. Pierce: The object of putting the bill the way it is is to throw the responsibility for the routing on the Enterprise Railroad.

Mr. Jeffery: The arrangement is the ordinary so-called milling in transit?

Mr. Pierce: Yes, sir.

Mr. Jeffery: And it is a milling in transit tariff which you ship under?

Mr. Pierce: Yes, sir.

1366 *Griffen, Magnolia & Western Railroad Company.*

Commissioner Harlan: Now, Mr. Pierce, do you sustain the same relation to the Griffen, Magnolia & Western?

Mr. Pierce: I do.

Commissioner Harlan: That is in Arkansas?

Mr. Pierce: It is.

Commissioner Harlan: In order that I may find the point, will you tell me where Griffen is in relation to Little Rock?

Mr. Pierce: It is 125 miles south.

Commissioner Harlan: That company is controlled by the Louis Werner Saw Mill Company?

Mr. Pierce: The stockholders.

Commissioner Harlan: I mean in the same way; the stockholders are identical?

Mr. Pierce: Yes, sir.

Commissioner Harlan: What is its capital?

Mr. Pierce: $50,000.

Commissioner Harlan: Is that authorized and issued?

Mr. Pierce: Authorized and issued.

Commissioner Harlan: Have you any bonded indebtedness?

Mr. Pierce: None whatever.

1367 Commissioner Harlan: Any other debt except current accounts?

Mr. Pierce: No other debt except current accounts.

Commissioner Harlan: What is the length of that road?

Mr. Pierce: Eighteen miles of main line.

Commissioner Harlan: And it owns some logging line which is connected with it?

Mr. Pierce: Yes.

Commissioner Harlan: The total mileage is what?

Mr. Pierce: 28 or 30 miles.

Commissioner Harlan: It is a standard gauge?

Mr. Pierce: It is a standard gauge, 35 to 40 pound rail, third track.

Commissioner Harlan: What equipment has it?

Mr. Pierce: Three locomotives and equipped with 50 standard flat cars and a caboose.

Commissioner Harlan: Any passenger cars?

Mr. Pierce: There has been no passenger service for hire.

Commissioner Harlan: Do you carry any mail or express?

Mr. Pierce: We do not.

Commissioner Harlan: And what is the southwestern or most southerly terminus of your line?

1368 Mr. Pierce: Graham.

Commissioner Harlan: I observe here a point called Maryville.

Mr. Pierce: We are not into Maryville.

Commissioner Harlan: You say you have some logging lines connected with the main line. Do you own the logging lines?

Mr. Pierce: We own the logging lines.

Commissioner Harlan: Do you operate them?

Mr. Pierce: And operate them.

Commissioner Harlan: Do you make any charge for that service, distinct from any other charge which you make?

Mr. Pierce: We do. We make a charge against the parties for whom the logging is done on these spurs.

Commissioner Harlan: Do any logs come off the spur tracks except the logs of the Louis Werner Saw Mill Company?

Mr. Pierce: They do.

Commissioner Harlan: For whom else do you haul logs?

Mr. Pierce: Several parties.

Commissioner Harlan: Who have mills?

Mr. Pierce: Mills not on our lines, but mostly on the Iron Mountain.

Commissioner Harlan: The mill of the Louis Werner Saw
1369 Mill Company is at Griffen?

Mr. Pierce: At Griffen.

Commissioner Harlan: And these other mills are where?

Mr. Pierce: They are located at various points.

Commissioner Harlan: On the Iron Mountain?

Mr. Pierce: On the Iron Mountain.

Commissioner Harlan: North and south of Griffen?

Mr. Pierce: I believe these is only one I recall south; the others are all north.

Commissioner Harlan: How far south?

Mr. Pierce: Eighteen miles, located at El Dorado.

Commissioner Harlan: The others are north of Griffen, and what is the most distant one of those mills?

Mr. Pierce: I take it part of this tonnage goes to Newport, Arkansas, which I would judge was the most northerly of these points.

Commissioner Harlan: How far is that from Griffen?

Mr. Pierce: About 300 miles. It is only fair to state that most of this logging movement is hard woods, heavy logs.

Commissioner Harlan: Do the logging roads connected with the Griffen, Magnolia & Western run into any forests that belong to other people than the Louis Werner Saw Mill Company?

1370 Mr. Pierce: The Louis Werner Saw Mill Company owns but a very small percentage of the total acreage in that territory, and they run mostly into the holdings of other people.

Commissioner Harlan: What is the extent of the holdings of the Louis Werner Saw Mill Company?

Mr. Pierce: The percentage?

Commissioner Harlan: No, the extent of it, how many acres?

Mr. Pierce: 5,000 or 6,000 acres of timber, and land, fee simple.

Commissioner Harlan: What is the total tonnage which you move annually over that line? Take last year, for instance.

Mr. Pierce: 59,740 tons.

Commissioner Harlan: What part of that belonged to the Louis Werner Saw Mill Company and what part to others?

Mr. Pierce: I am unable to say. The tonnage runs about 55 to 65 per cent for the Louis Werner Saw Mill Company, and the balance for others.

Commissioner Harlan: And that is hauled to its mill at or near Griffen?

Mr. Pierce: The tonnage they have is taken to Griffen.

Commissioner Harlan: Is their mill on the Iron Mountain
1371 rails?

Mr. Pierce: The saw mill is not. The planing mill is.

Commissioner Harlan: So the manufactured lumber is loaded right out of the planing mill onto the Iron Mountain tracks?

Mr. Pierce: Both lines have loading tracks there.

(The witness here explained diagram to the Commissioner.)

Commissioner Harlan: This sketch which you have just examined seems to indicate that your saw mill is approached by two spur tracks. To whom do they belong?

Mr. Pierce: The Griffen, Magnolia & Western.

Commissioner Harlan: Both of them?

Mr. Pierce: Both of them.

Commissioner Harlan: This and that (indicating)?

Mr. Pierce: Yes, sir.

Commissioner Harlan: Do you know about what proportion of their lumber is shipped in the rough?

Mr. Pierce: This is an interior mill, and not to exceed five per cent moves in the rough.

Commissioner Harlan: Then the rough lumber is carried in some form over to the planing mill, which seems to be served by two tracks. Now, to whom do those tracks belong?

Mr. Pierce. The principal track belongs to the Iron Moun-
1372 tain; it is its passing track.

Commissioner Harlan: That is their main line?

Mr. Pierce: No, that is a passing track.

Commissioner Harlan: Then inside of that, and closer to the mill, is another track. That belongs to whom?

Mr. Pierce: That belongs to us.

Commissioner Harlan: To the railroad company?

Mr. Pierce: To the Griffen, Magnolia & Western.

Commissioner Harlan: And not to the mill?

Mr. Pierce: Not to the mill. It connects with that passing track.

Commissioner Harlan: And are both tracks used in shipping dressed lumber from the planing mill?

Mr. Pierce: No, only the Iron Mountain track.

Commissioner Harlan: I will put the general inquiry: On whose tracks do the cars stand that are loaded at the planing mill ordinarily?

Mr. Pierce: The Iron Mountain's tracks.

Commissioner Harlan: Is your own track ever used in carrying such shipments to destination?

Mr. Pierce: It is.

Commissioner Harlan: Just explain when your track is
1373 used, and when the Iron Mountain track is used, and why this different use is made of the two tracks.

Mr. Pierce: It is a matter of convenience in handling the mill people's business; if we can spot a car for them and the Iron Mountain's service is not there at the time, and we can spot it to advance their interests, we do it.

Commissioner Harlan: Is there any distinction made under published tariffs or division sheets in the compensation that your company receives?

Mr. Pierce: None at all.

Commissioner Harlan: What is the lowest and what is the highest division you get?

Mr. Pierce: We get from two to five cents on the business off this road.

Commissioner Harlan: Is it not two and a half to five cents?

Mr. Pierce: No it is from two to five cents.

Commissioner Harlan: And it is substantially the same sort of a rate which you described a few minutes ago in connection with another line?

Mr. Pierce: It is.

Commissioner Harlan: It is a milling in transit rate?

Mr. Pierce: Yes, sir, it is on this business or on any other
1374 business of this character.

Commissioner Harlan: On the business of the Werner Saw Mill Company it is that kind of a rate?

Mr. Pierce: It is.

Commissioner Harlan: That is to say, you haul the logs from your junction with the tram line to the mill and then the dressed lumber goes out on a milling in transit rate which extends back as a lumber rate to the junction with your tram line?

Mr. Pierce: Yes, sir.

Commissioner Harlan: And you get divisions for the whole service you perform in that connection?

Mr. Pierce: We do.

Commissioner Harlan: But in this case, as in the other, your road does not haul ordinarily any dressed lumber; it sometimes does from the switch track——

Mr. Pierce: We do not haul any dressed lumber of the Griffen Mill Company.

Commissioner Harlan: Yes, I am limiting my inquiry now to the Werner Saw Mill Company.

Mr. Pierce: Yes, that is correct. The Griffen Mill Company is a trade name used locally there.

1375 Commissioner Harlan: There is no Griffen Mill Company as a corporation?

Mr. Pierce: No.

Commissioner Harlan: But that trade name is used to indicate the product of the Werner Saw Mill Company?

Mr. Pierce: That trade name is used to indicate the property of the Louis Werner Saw Mill Company at this point.

Commissioner Harlan: But the lumber is not sold as the Griffen Company's lumber?

Mr. Pierce: No.

Commissioner Harlan: It is sold as the Werner Company's lumber?

Mr. Pierce: Yes.

Commissioner Harlan: And as I said a moment ago, you perform no service on the dressed lumber, except occasionally when

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as a matter of convenience you set an empty car at the mill over this little spur track you have described?

Mr. Pierce: Yes, sir. We perform no service on the lumber after it is dressed. We have performed our service prior to that.

Commissioner Harlan: On the logs?

Mr. Pierce: Yes.

1376 Commissioner Harlan: Do you haul any dressed lumber for anyone else?

Mr. Pierce: We do.

Commissioner Harlan: State who these people are out in the woods that hand you logs on these tram roads.

Mr. Pierce: S. Stone, John Ray—do you class bolts as logs?

Commissioner Harlan: Yes.

Mr. Pierce: W. T. Flournoy.

Commissioner Harlan: They hand you what?

Mr. Pierce: Logs, bolts and staves; F. L. Graham, G. J. Childs and J. A. Flournoy.

Commissioner Harlan: Well, in all, how many are there?

Mr. Pierce: I presume there are 25 of those shippers there.

Commissioner Harlan: And do they get the logs from their own forests?

Mr. Pierce: They get the logs from the purchasers: they buy it from the settlers.

Commissioner Harlan: They do not buy from the Werner Saw Mill Company?

Mr. Pierce: They do not.

Commissioner Harlan: Do you make a charge to them——

1377 Mr. Pierce: Pardon me; when we have a class of logs they want on a piece of ground of ours, we sell it to them, but of course that is only a very small amount of traffic.

Commissioner Harlan: Do you make a separate charge to those men for hauling their logs and bolts to the junction point of your line with the tram line, or do you make the charge clear through to their mill?

Mr. Pierce: We charge through to where this traffic moves, to points to which we have through rates we apply the through rate; otherwise we apply the local Arkansas distance tariff.

Commissioner Harlan: Do you quite get my point? I assume in this case, as in the case of the other railroad, that you built the tram roads; they do not belong to the lumber company, do they?

Mr. Pierce: No.

Commissioner Harlan: You supply the rails and you pay the labor for putting down the tram roads. Now, in the other case you made a separate charge for hauling the logs from the woods to the junction of the train lines with your main line. Do you make such a charge in this case against the Werner Saw Mill Company?

1378 Mr. Pierce: We do.

Commissioner Harlan: What is that charge?

Mr. Pierce: $1.50 per thousand feet.

Commissioner Harlan: As in the other case?

Mr. Pierce: As in the other case.

Commissioner Harlan: What charge, if any separate charge, is made against these other people whose logs you haul over the same tram lines to their junctions with your main line?

Mr. Pierce: Where it is a case of milling on our own road, we would make the same charge we did with the Louis Werner Saw Mill Company; where it moves out intact onto another line, we treat it as though it were a local shipment.

Commissioner Harlan: Of logs or bolts, as the case may be?

Mr. Pierce: Yes, sir, applying the local distance tariff to it.

Commissioner Harlan: So that those shippers pay a rate over all the mileage that they use belonging to your company, whether tram line or main line?

Mr. Pierce: Yes, sir.

Commisisoner Harlan: Do you deliver it to the Iron Mountain at Griffen?

Mr. Pierce: We do.

1379 Commissioner Harlan: And they carry it on to the mills?

Mr. Pierce: Yes, sir.

Commissioner Harlan: You charge the local rate to Griffen?

Mr. Pierce: We do where we have not through rates and divisions. Where it moves on a through rate——

Commissioner Harlan: Are there any through rates on logs to these mills?

Mr. Pierce: I think not on logs. I do not recall any.

Commissioner Harlan: Are there any through lumber rates?

Mr. Pierce: There are.

Commisisoner Harlan: Can you give a typical point?

Mr. Pierce: Any basing point, Mississippi River crossings.

Commissioner Harlan: In that case what division do you get out of the through rate?

Mr. Pierce: On this particular traffic to the Mississippi River crossings?

Commissioner Harlan: Yes.

Mr. Pierce: Four cents.

Commissioner Harlan: Then those through rates on lumber extend back to the southern terminus of your tram lines?

Mr. Pierce: They do.

Commissioner Harlan: And these logs move over your
1380 tram lines and their main line to Griffen, and there are handed to the Iron Mountain and transported to the mill point and there are milled, and then on to the Mississippi River on the through rate?

Mr. Pierce: I do not know whether the logs stop at the milling in transit at those milling points, or how the Iron Mountain handles that. We collect the revenue due us in a junction settlement at Griffen, and then turn the business over to the Iron Mountain, and how they handle it I am not prepared to say.

Commissioner Harlan: Is that four cents in all cases, or is it less?

Mr. Pierce: I am speaking then of a division of the through rate.

Commissioner Harlan: Yes, to the Mississippi River.

Mr. Pierce: Now, the local distance tariff is the local Arkansas court tariff, and varies.

Commissioner Harlan: What does that give you?

Mr. Pierce: Practicaly four to five cents.

Commissioner Harlan: So that your division in that case is less than your local?

Mr. Pierce: Yes, sir.

1381 Commissioner Harlan: What is the lowest division you receive on through shipments for these other people?

Mr. Pierce: Two cents per 100 pounds.

Commissioner Harlan: The divisions are the same on their logs as on the logs of the Werner Saw Mill Company?

Mr. Pierce: The divisions are the same.

Commissioner Harlan: Do you carry any other stuff, farming produce or cotton?

Mr. Pierce: We carry general freight of all kinds.

Commissioner Harlan: What was the extent of that last year?

Mr. Pierce: 42 tons of merchandise and 200 tones of products of agriculture, and various forms of lumber tonnage and forest products other than lumber, 37,720 tons.

Commissioner Harlan: Let this map be marked as an exhibit.

(The map so offered and identified was received in evidence and thereupon marked Griffen, Magnolia & Western Railroad Exhibit No. 1, witness Pierce, received in evidence December 13, 1910, and is attached hereto.)

Commissioner Harlan: Mr. Pierce, the mill of the Werner Saw Mill Company is on the other side of the Iron Mountain tracks, is it not?

1382 Mr. Pierce: From the side on which we approach them with our main line, it is.

Commissioner Harlan: Do you know whether any other mills whose logs go over your line actualy have the benefit of milling in transit rates?

Mr. Pierce: I am not advised at all, Mr. Commissioner, as to how the Iron Mountain handles the business beyond our rails.

Commissioner Harlan: Is it not your understanding that they do not have that advantage and have to move on the local rate?

Mr. Pierce: I know absolutely nothing of it.

Commisioner Harlan: Is there anyone here that does know about that; any other officer of your road here?

Mr. Pierce: No other officer of our road here who would know anything about it.

Commissioner Harlan: Mr. Jeffery, are you an officer of this Griffen, Magnolia & Western Company?

Mr. Jeffery: No, sir; I have not the honor. I am not an officer of any railroad. But our traffic man has just left the room, and I will get him up here, and if there is anything we can enlighten you on, we would be very glad to do it.

1383 Commissioner Harlan: We would like to know, then, if it is not a fact that these other mills have to move their logs on the local rate.

Mr. Jeffery: From this particular tap line?

Commissioner Harlan: Yes.

Mr. Jeffery: I will get Mr. Perkins up here.

Mr. Cowan: If I understand right, the witness states where that moves on the through rate they get a division of the rate from the Iron Mountain, and where it moves on a local rate, of course he collects the local rate. The question as to what traffic of logs he moves on other than the local rate for these other people going beyond Griffen would illustrate whether it may move on a milling in transit rate.

Commissioner Harlan: What do you say to that suggestion?

Mr. Pierce: Really, I did not just get the drift of Judge Cowan's query.

Commissioner Harlan: Just let me put it in another way. Do you not collect from two to four cents from those shippers right at Griffen?

Mr. Pierce: Station settlements?

Commissioner Harlan: Station settlements.

Mr. Pierce: No, we do not collect it from the shipper.

1384 We collect it from the Iron Mountain as advance charges.

Commissioner Harlan: That is, when it goes through as a through shipment. I am now talking about the cases where you get the Arkansas tariff.

Mr. Pierce: That is only where it is local. Where it moves as a through shipment, it is settled as an inter-line account through my office. We take a car of logs—to make a concrete illustration of it, from a station on our line, moving to a mill on the Iron Mountain, we haul these logs up to Griffen, turn them over to the Iron Mountain and bill on the Iron Mountain for our charges, and at stated intervals we settle with them in station accounts for our charges on that load of logs, and we have nothing further to do with that load of logs. They take it to the milling point. When it is milled, and how they handle it beyond there, I do not know.

Commissioner Harlan: Where is it billed, what is the ordinary way bill on those logs?

Mr. Pierce: Way billed to our station at Griffen to the conductor.

Commissioner Harlan: Do you not issue bills of lading?

Mr. Pierce: We do issue a bill of lading for that, by the conductor.

1385 Commissioner Harlan: Only up to Griffen?

Mr. Pierce: Only up to Griffen.

Commissioner Harlan: It is not a through bill?

Mr. Pierce: It is not a through bill.

Commissioner Harlan: Then you must charge the Arkansas local tariff.

Mr. Pierce: Arkansas distance tariff is charged on it.

Commissioner Harlan: Is it not a fact that most of the logs for

those other companies move in that way on the local tariff to Griffen?

Mr. Pierce: The most of them do.

Commissioner Harlan: So they pay the local rates, while the Werner Saw Mill Company pays on the bulk of its shipments, the through rate?

Mr. Pierce: Yes, that is true.

Commissioner Harlan: Now, is it not also true that you are frequently requested, and when I say "you" I mean the Werner Saw Mill Company, to fill orders received by these other companies for lumber?

Mr. Pierce: Received by these other companies for lumber?

Commissioner Harlan: Yes.

Mr. Pierce: No.

1386 Commissioner Harlan: Has not that ever happened?

Mr. Pierce: I am not thoroughly familiar with the details, but I do not recollect of ever hearing of an instance of that character.

Commissioner Harlan: You do not remember, then, within the last year any such instances where these other lumber people received orders and you filled them? I mean by you, the Werner Saw Mill Company.

Mr. Pierce: I do not get the drift of that, Mr. Commissioner. Do you mean the other shippers on our line received orders for lumber?

Commissioner Harlan: Yes, and asked you to fill them.

Mr. Pierce: And asked us to fill them?

Commissioner Harlan: Yes.

Mr. Pierce: I do not. This logging movement is of a character of logs that the Werner Company, the shipper at Griffen, does not handle as a rule at all.

Commisisoner Harlan: Do you know something about the past history of the Werner Saw Mill Company?

Mr. Pierce: I do.

Commissioner Harlan: Did it not at one time own a road, or its stockholders own a road called the Little Rock & Monroe?

1387 Mr. Pierce: It did not.

Commissioner Harlan: Who did own that road?

Mr. Pierce: The Little Rock & Monroe Railroad Company.

Commissioner Harlan: I mean what stockholders.

Mr. Pierce: I only know two or three of the stockholders.

Commissioner Harlan: Was it not owned by people who were interested, then or now, in the Louis Werner Saw Mill Company?

Mr. Pierce: No, sir.

Commissioner Harlan: Was it owned by people interested in any other saw mill company?

Mr. Pierce: Yes, sir.

Commissioner Harlan: What saw mill company?

Mr. Pierce: The Union Saw Mill Company was one.

Commissioner Harlan: Where were its operations?

Mr. Pierce: The plant is located at Huttig, Arkansas.

Commissioner Harlan: What were the total gross earnings last year of this company?

Mr. Pierce: $29,618.36.

Commissioner Harlan: What was its net?

Mr. Pierce: $1,746.10.

Commissioner Harlan: I want to put my inquiry in another form; the one I put to you a few minutes ago. Is it not true
1388 that the Werner Saw Mill Company often fills requisitions from neighoring mills for lumber?

Mr. Pierce: No, that is not the case. The Werner Saw Mill Company is a constant solicitor of business in the lumber markets throughout the country, and is a manufacturing concern, and has very little interchange business with any of its neighbors.

Commissioner Harlan: Do not the other companies turn over orders to that company that they cannot fill at the price offered; has not that frequently happened?

Mr. Pierce: It has not, to the best of my knowledge. If the Commissioner will kindly tell me what it is that is wanted, I will endeavor to answer.

Commissioner Harlan: I think the questions themselves indicate.

Mr. Pierce: If there is something improper——

Commissioner Harlan: Well, I have not indicated any impropriety except the taking advantage of the opportunities. You say no such opportunities come to you, no such requisitions are made on this Werner Saw Mill Company?

Mr. Pierce: So far as I know, there is practically no interchange business between that company and its neighbors.

1389 Commissioner Harlan: Have you some questions, Mr. Brown?

Mr. Brown: Does the Griffen, Magnolia & Western Railroad serve the town of Mount Holly?

Mr. Pierce: It does.

Mr. Brown: Does any other railroad serve that community?

Mr. Pierce: No.

Mr. Brown: Do you have any division with the Iron Mountain or are you a party to any joint tariffs on the classes? Class freight?

Mr. Pierce: We have not.

Mr. Brown: Your divisions are confined to the lumber and lumber products?

Mr. Pierce: They are.

Mr. Brown: In connection with the Griffen, Magnolia & Western?

Mr. Pierce: Yes, sir; class and commodity rates are all made on the Arkansas distance tariff.

1390 Mr. Brown: Your equipment is equipped as required by the Federal Safety Appliance Act?

Mr. Pierce: To the best of our ability it is.

Mr. Brown: Do you move your traffic under the usual uniform bill of lading?

Mr. Pierce: Yes, sir.

Mr. Brown: Issued by the Griffen, Magnolia & Western Railroad?
Mr. Pierce: We do.
Mr. Brown: You make your monthly and annual reports and accident reports to the Commission?
Mr. Pierce: We do.
Mr. Brown: I believe you gave the percentage of outside business moved over this road?
Mr. Pierce: I did.
Mr. Brown: What stations have you on the road west of the crossing of the Iron Mountain tracks?
Mr. Pierce: Lisbon and Graham.
Mr. Brown: Are those your billing stations?
Mr. Pierce: We bill from both stations.
Mr. Brown: And on the traffic on which you enjoy a division of the rates, the traffic is billed from either Graham or Lisbon?
1391 Mr. Pierce: We usually use Lisbon as a billing point.
Mr. Brown: That is all.
Mr. Cowan: Where is the billing made out, at these stations you speak of or at some central point?
Mr. Pierce: Billing is made out at Griffen.
Mr. Cowan: Have you depots and station agents at these points?
Mr. Pierce: No, we have warehouses.
Mr. Cowan: Are they stations or just places to receive freight on a side track?
Mr. Pierce: We have nothing there but a small warehouse for taking care of packages. It meets all the requirements, however, of the traffic.
Mr. Cowan: There are some other roads with which you are connected that you are going to testify about?
Mr. Pierce: There are.
Mr. Cowan: After you get through with all of them I want to examine the witness.
Commissioner Harlan: Is it not true that the combination of local rates that these people pay and have to pay under the published tariffs exceeds the through rate paid by the Werner Saw Mill Company to the same destination? It must necessarily be so,
1392 must it not?
Mr. Pierce: No, sir, the combination rate applies only to such points as we have not any through rates to. If the Werner Saw Mill Company is making shipments of that character, exactly the same rates would apply to them. There is no disposition to prefer anybody on this road.
Commissioner Harlan: But the Werner Saw Mill Company gets the milling and transit privilege quite generally, does it not?
Mr. Pierce: It gets the milling and transit privilege quite generally, and any one else can have the milling and transit privilege who desires to avail himself of it.
Commissioner Harlan: Well, as a matter of fact, you have said yourself, the other people in the great majority of cases pay the combination of locals?

Mr. Pierce: They do because their shipments are moving to points where there are no through rates and division in.

Commissioner Harlan: Very well. They move to those points in competition with your lumber or lumber of this saw mill company?

Mr. Pierce: Those movements do not compete with the Louis Werner Saw Mill Company.

1393 Commissioner Harlan: That was my inquiry. Are they in a position to compete?

Mr. Pierce: No, they do not compete; it is not the same commodity, it is not the same character of material.

Commissioner Harlan: Tell us about that. That may be important.

Mr. Pierce: The Louis Werner Saw Mill Company is engaged in the manufacture of pine lumber. The logs and material of that character moving off our road onto the Iron Mountain for milling on the Iron Mountain are exclusively, I might say, hard woods, that go into assembling plants on the Iron Mountain, and there is no more relation between them than there is between railroad steel and structural steel.

Commissioner Harlan: Then you do not move pine for anyone else but the Louis Werner Company?

Mr. Pierce: We move manufactured pine for several other parties, but that is manufactured pine moving on the through rates.

Commissioner Harlan: Where do you get that, at what point on your line?

Mr. Pierce: At Graham and at Lisbon.

Commissioner Harlan: In what quantity?

1394 Mr. Pierce: Oh, the movement sometimes will run forty cars a month and sometimes down to nothing.

Commissioner Harlan: From what mills, are they on your line?

Mr. Pierce: They are close to it, practically on the line; they haul the stuff in.

Commissioner Harlan: Is that pine which comes from the forests of the Werner Saw Mill Company?

Mr. Pierce: No.

Commissioner Harlan: Those people get the benefit of through rates, do they?

Mr. Pierce: They get the benefit of the through rate.

Commissioner Harlan: And they mill at their own mills?

Mr. Pierce: And they mill at their own mills.

Commissioner Harlan: You are not authorized to speak for the Lester & Ouachita Valley?

Mr. Pierce: I am not.

Commissioner Harlan: But you can speak for the Natchez, Ball & Shreveport?

Mr. Pierce: Yes.

Mr. Jeffery: I have Mr. Perkins here now, if you would like to question him about that tariff.

1395 Commissioner Harlan: Well, the witness has thrown some light on that question. I may ask Mr. Perkins later, Mr. Jeffery.

When was that company organized?

Mr. Brown: I will say that the information we have not received relates to that road so I do not know how much information Mr. Pierce will be able to give you of the details respecting that road.

Mr. Pierce: Mr. Commissioner, my knowledge of this road is confined almost entirely to its accounts; its connections and the information which we expected to get seems to have gotten lost by the express company. I am perfectly willing to go ahead and do the very best I can to inform the Commissioner.

Commissioner Harlan: There is no one else who can speak more definitely?

Mr. Brown: No.

Commissioner Harlan: Under those circumstances I do not think we will undertake to examine into that road with this witness, because it would not get us anywhere.

Mr. Cowan: I should think not.

Mr. Brown: We think Mr. Pierce can give you the general
1396 layout of the tracks there.

Commissioner Harlan: I think we will in some other way get the information about that. Have you any further inquiries to put to the witness?

Mr. Cowan: Does that constitute all the roads?

Mr. Brown: There is one other road.

Commissioner Harlan: The Saline Bayou Railroad. When was that road organized?

Mr. Pierce: June 2, 1905, is the date of their charter.

Commissioner Harlan: What is its authorized and issued capital?

Mr. Pierce: $30,000.

Commissioner Harlan: Has it any bonded indebtedness?

Mr. Pierce: It has none.

Commissioner Harlan: Are the officers of that road the officers also of the Oak Leaf Mill Company?

Mr. Pierce: The stockholders of that road are the stockholders of the Oak Leaf Mill Company.

Commissioner Harlan: But the two companies have different officers?

Mr. Pierce: Different officers.

Commissioner Harlan: And you are the auditor?

1397 Mr. Pierce: I am the auditor.

Commisioner Harlan: Do the officers of that road receive salaries?

Mr. Pierce: They do—I do.

Commissioner Harlan: Any others?

Mr. Pierce: I think not, that I know of.

Commissioner Harlan: What is the length of the road?

Mr. Pierce: About fourteen miles.

Commissioner Harlan: Standard gauge?

Mr. Pierce: Standard gauge.

Commissioner Harlan: What rails?

Mr. Pierce: 35 and 40 pound rails, third track.

Commissioner Harlan: How many locomotives?
Mr. Pierce: Two.
Commissioner Harlan: How many freight cars?
Mr. Pierce: The freight cars are logging cars. The business of freight is handled with equipment from foreign lines entirely.
Commissioner Harlan: The mill of the Oak Leaf Mill Company is at a point called Oak Leaf on the Iron Mountain, is it not?
Mr. Pierce: It is.
1398 Commissioner Harlan: How near to the tracks of the Iron Mountain is that built?
Mr. Pierce: The loading platform is right up against the tracks of the Iron Mountain and abuts on them.
Commissioner Harlan: So that the Iron Mountain sends the cars there and takes them away?
Mr. Pierce: Yes, sir.
Commissioner Harlan: Does that track belong to the Iron Mountain or to the mill company?
Mr. Pierce: It belongs to the mill company beyond their right of way.
Commissioner Harlan: It was constructed under some contract or agreement with the Iron Mountain?
Mr. Pierce: I am not prepared to say because I was not familiar with the making of this contract.

Commissioner Harlan: Let the map of this road be marked as an exhibit.
(The paper so offered and identified was received in evidence and thereupon marked Saline Bayou Railroad Exhibit No. 1, Witness Pierce, received in evidence December 13, 1910, and is attached hereto.)
Commissioner Harlan: Mr. Jeffery, we would like a copy
1399 also of the spur track agreement that you have with the Saline Bayou Railroad at Oak Leaf, probably with the Oak Leaf Mill Company.
Mr. Jeffery: All right.
Commissioner Harlan: I understand you to say, Mr. Pierce, that ordinarily the cars are spotted at the planing mill and taken away by the Iron Mountain?
Mr. Pierce: They are.
Commissioner Harlan: But occasionally your line does not work.
Mr. Pierce: Yes, in emergencies.
Commissioner Harlan: In emergency cases only?
Mr. Pierce: Yes.
Commissioner Harlan: Does that mill company ship out much undressed or rough lumber?
Mr. Pierce: Practically none.
Commissioner Harlan: What is the character of the lumber, is it pine or hard wood?
Mr. Pierce: Pine.
Commissioner Harlan: Has the Saline Bayou Railroad spur track connections?

Mr. Pierce: It has.

1400 Commissioner Harlan: Owned by it?

Mr. Pierce: Owned by it

Commissioner Harlan: Or by the lumber company?

Mr. Pierce: All owned by the railroad company?

Commissioner Harlan: And operated by it?

Mr. Pierce: And operated by it.

Commissioner Harlan: Do they make a separate charge for hauling over the tram tracks?

Mr. Pierce: They make a separate charge for the construction of these spurs and assembling of the logs.

Commissioner Harlan: And that is how much?

Mr. Pierce: $1.50 per thousand.

Commissioner Harlan: And that was the case with the last road that we considered, was it not?

Mr. Pierce: It was.

Commissioner Harlan: The lumber company has no locomotives of its own?

Mr. Pierce: None.

Commissioner Harlan: And no cars?

Mr. Pierce: No cars.

Commissioner Harlan: And who does the loading out at the end of the tram tracks?

1401 Mr. Pierce: We do it.

Commissioner Harlan: And you also do the unloading at the mill?

Mr. Pierce: We do the unloading at the mill.

Commissioner Harlan: And for the service of loading out in the woods and building these tram tracks for the haul on the tram tracks to their junctions with the main line you charge $1.50 a thousand?

Mr. Pierce: $1.50 per thousand feet of log.

Commissioner Harlan: What other source of revenue have you?

Mr. Pierce: The movement of the freight over our line, freight operations.

Commissioner Harlan: On logs what other revenue do you make?

Mr. Pierce: We have no other revenue on the logs.

Commissioner Harlan: Well you get divisions—

Mr. Pierce: Construing the movement of the logs from our stations on our main lines to destination as a lumber movement there is no other revenue from the logging department.

Commissioner Harlan: The so-called lumber movement under the milling and transit rates starts at the junction of the tram

1402 lines with the main line?

Mr. Pierce: It does.

Commissioner Harlan: And $1.50 takes care of all service up to that point?

Mr. Pierce: Up to that point.

Commissioner Harlan: Well your milling and transit arrangement on this road is substantially the arrangement you have just related in connection with the two other roads?

Mr. Pierce: It is.

Commissioner Harlan: And what are the lowest and highest divisions?

Mr. Pierce: One and one-half cents to four cents.

Commissioner Harlan: Do you know where the bulk of the shipments of that company go to?

Mr. Pierce: I could not state offhand.

Commissioner Harlan: Well, what is your average division on all shipments?

Mr. Pierce: About three cents.

Commissioner Harlan: Do you haul the logs of any other milling company over that line or its tram connections?

Mr. Pierce: We do not. We handle the hard wood logs over the line for companies other than our own.

1403 Commissioner Harlan: What is the extent of that movement.

Mr. Pierce: Small, probably six per cent. of our road movement is from outside business.

Commissioner Harlan: Do those logs come from land owned by the Oak Leaf Company?

Mr. Pierce: No.

Commissioner Harlan: Do you haul any general merchandise and farm products?

Mr. Pierce: We do.

Commissioner Harlan: To what extent?

Mr. Pierce: The extent is extremely small for the reason the country is very small and has not been developed.

Commissioner Harlan: Would you say as much as ninety-five per cent. of your tonnage was of the lumber company?

Mr. Pierce: Ninety-five per cent. of the tonnage is farm products arising from the business of the Oak Leaf Mill Company, and the other five per cent. is general business.

Commissioner Harlan: What was the total tonnage last year and the total revenues and net revenues?

Mr. Pierce: The total tonnage was 48,480 tons.

Commissioner Harlan: What was the outside tonnage, if

1404 that shows?

Mr. Pierce: I am unable to say. There was an operating deficit of $2,307.20.

Commissioner Harlan: Who supplies that deficit?

Mr. Pierce: The Oak Leaf Mill Company.

Commissioner Harlan: Has that railroad company accumulated a debt to the mill company?

Mr. Pierce: $2,312.22.

Commissioner Harlan: Is the accumulated debt today.

Mr. Pierce: Is the total amount of indebtedness.

Commissioner Harlan: I neglected to ask you whether the Griffen Magnolia & Western has any debt due to the Werner Lumber Company. Let me ask first whether it has paid any dividend?

Mr. Pierce: It has not. There is a debit balance of $6,097.45, accumulated indebtedness.

Commissioner Harlan: All owing to the lumber company?

Mr. Pierce: All owing to the lumber company.

Commissioner Harlan: You do not run any passenger trains on this line?

Mr. Pierce: We do not.

Commissioner Harlan: Or carry mail or express?

Mr. Pierce: We do not.

1405 Commissioner Harlan: Have your divisions been recently increased?

Mr. Pierce: They have not.

Commissioner Harlan: How long have you received as much as four cents on some shipments?

Mr. Pierce: For five years.

Commissioner Harlan: From our records the Examiner was informed that two cents per hundred miles was the highest division. That does not agree with your information.

Mr. Pierce: If he got his information from me he certainly must have misunderstood me.

Commissioner Harlan: Have you some questions?

Mr. Brown: This road is incorporated under the laws of Arkansas?

Mr. Pierce: It is.

Commissioner Harlan: Do you report to the railroad Commission and pay taxes to the Commission as a railroad corporation?

Mr. Pierce: We do.

Mr. Brown: How about the Griffen, Magnolia & Western? I forgot *ab* ask you about the taxes. Under the laws of what state is that railroad incorporated?

1406 Mr. Pierce: Arkansas.

Mr. Brown: Does that railroad report to the State Commission and pay taxes as a railroad corporation?

Mr. Pierce: It does.

Mr. Brown: With respect to the Saline Bayou road, do you keep your accounts and make your reports to the Interstate Commerce Commission the same as with the other roads?

Mr. Pierce: We do.

Mr. Brown: I think that is all.

Commissioner Harlan: Is this a railroad or railway, under its terms?

Mr. Pierce: I think it is a railroad—railway is the name apparently.

Mr. Cowan: Did you say that you had no interest in any of the lumber companies?

Mr. Pierce: I said I had no interest in the Enterprise Lumber Company.

Mr. Cowan: Well, I judged from your familiarity with this subject that you have some sort of relation to some of the lumber companies, and I thought you said you had no interest in any of them. I may have misunderstood you.

Mr. Pierce: I am not an employee in any lumber company.

1407 Mr. Cowan: In what lumber companies are you interested?

Mr. Pierce: I am interested in the Lester Mill Company, the Oak Leaf Mill Company, and Louis Werner Saw Mill Company.

Mr. Cowan: Is that all?
Mr. Pierce: I do not recall any others now.
Mr. Cowan: All those companies have an agency or at least some of them have an agency in the same office you are in in St. Louis?
Mr. Pierce: Yes, sir.
Mr. Cowan: You are the auditor of each one of those railroad companies?
Mr. Pierce: I am.
Mr. Cowan: And also of the one about which you did not testify?
Mr. Pierce: I am.
Mr. Cowan: Each of these companies keeps its books, however, at the local point where they have their office, at the lumber company's plant.
Mr. Pierce: They do.
Mr. Cowan: Do you actually keep a set of books at St. Louis or do you simply get them from the local office, for the railroad company, I am talking about.
1408 Mr. Pierce: We keep all the records that are necessary for the handling of my end of the accounts at St. Louis.
Mr. Cowan: What end of the accounts do you handle?
Mr. Pierce: Interline accounts with connecting lines.
Mr. Cowan: You do not handle any of the accounts of the railroad company as between itself and its employees and as between itself and the lumber company, in the operation of the road?
Mr. Pierce: I do not.
Mr. Cowan: That is done at the local office of each one of the railroad companies?
Mr. Pierce: Yes, sir.
Mr. Cowan: And that is at the lumber company's office in each case?
Mr. Pierce: Yes, sir.
Mr. Cowan: I will group them together to save time.
Mr. Pierce: Yes.
Mr. Cowan: The arrangement is substantially the same as to each one of them, so far as your part of it is concerned and your relation to the local office of each railroad company?
Mr. Pierce: I think so.
1409 Mr. Cowan: The amount that each one charges the lumber company which it serves is on the same basis for service.
Mr. Pierce: I think so.
Mr. Cowan: And the amount of the division that is received from the Iron Mountain railroad is upon the same basis exactly, wherever the destination is the same, or at least I assume that is so.
Mr. Pierce: No, that is a mistake. It varies somewhat.
Mr. Cowan: The manner however of handling the interline accounts, which you handle, is the same respecting each company?
Mr. Pierce: It is.
Mr. Cowan: The accounts which come into your hands as auditor are the funds arising from settlements with the Iron Mountain railroad?
Mr. Pierce: They are.

Mr. Cowan: If I recall correctly your mills are all situated on the Iron Mountain.

Mr. Pierce: The Iron Mountain does not make all the settlements however; that is not material, however.

Mr. Cowan: You might explain that. Where it moves off the Iron Mountain onto some other line?

1410 Mr. Pierce: It may move onto other lines and we have settlements with other roads.

Mr. Cowan: You do not connect with any other railroad companies than the Iron Mountain except in the case of the T. & P. at Alexandria?

Mr. Pierce: We have connections with other roads but not joint rates and divisions with any of them.

Mr. Cowan: As I understood all these saw mills were located on the Iron Mountain road and there was no other road at the point of junction except the T. & P. at Alexandria?

Mr. Pierce: There are other lines with which we connect, but we do not interchange business with them.

Mr. Cowan: Which one of these other roads connect with other lines?

Mr. Pierce: Well the Enterprise road connects with other lines at Alexandria. The Natchez, Ball & Shreveport connects with the L. & A., and the Saline Bayou connects with the Memphis, Dallas & Gulf.

Mr. Cowan: But you confine your business to the Iron Mountain?

Mr. Pierce: We confine our business to the Iron Mountain.

Mr. Cowan: Your connection with the lumber company,

1411 are you interested in the Werner Company?

Mr. Pierce: I am.

Mr. Cowan: And its office is at St. Louis in the same office you are in?

Mr. Pierce: It is.

Mr. Cowan: Are you an officer of the company?

Mr. Pierce: I am.

Mr. Cowan: What position?

Mr. Pierce: The very humble one of vice-president, which does not amount to much as a rule.

Commissioner Harlan: Do you get a salary as vice-president?

Mr. Pierce: I do not.

Mr. Cowan: You represent the company in business transactions?

Mr. Pierce: Only in an advisory capacity.

Mr. Cowan: Without desiring to go into your private business, are you pretty largely interested in the Werner Company?

Mr. Pierce: I own some of the stock.

Mr. Cowan: A substantial interest in the business I assume?

Mr. Pierce: I would say yes.

1412 Mr. Cowan: In what other lumber company are you an officer?

Mr. Pierce: I am an officer of the Lester Mill Company.

Mr. Cowan: What office is that?

Mr. Pierce: Vice-president again.

Mr. Cowan: And you own a substantial interest in that concern?
Mr. Pierce: I do.
Commissioner Harlan: Are you vice-president without emoluments?
Mr. Pierce: Without emoluments.
Mr. Cowan: You may just tell us about the others without my questioning.
Mr. Pierce: I am also connected with the Oak Leaf Mill Company.
Mr. Cowan: And you own a substantial interest in that?
Mr. Pierce: Yes, sir.
Mr. Cowan: Vice-president of that on the same salary?
Mr. Pierce: I am president of the Oak Leaf Company.
Mr. Cowan: And you received a salary as president, of course?
Mr. Pierce: I do not.
Mr. Cowan: Those are all the mill companies you are in-
1413 terested in?
Mr. Pierce: Those are all the mill companies of which I am an officer.
Mr. Cowan: What others are you interested in?
Mr. Pierce: I have some mill interests in Mississippi.
Mr. Cowan: But not in the mills that are connected with these roads you have been testifying about?
Mr. Pierce: Not any connection with these roads.
Mr. Cowan: Do all of these mills have a sales agent or some other agent in this office building where you have your office?
Mr. Pierce: They do, except the Lester Mill Company; they have no sales agent there.
Commissioner Harlan: All of these companies interchange transportation with other lines?
Mr. Pierce: Yes, sir.
Commissioner Harlan: The Iron Mountain?
Mr. Pierce: Yes, sir.
Commissioner Harlan: And that transportation is used, is it not?
Mr. Pierce: Well, the transportation, Mr. Commissioner, is only
requested for myself and one officer, the superintendent of the
1414 road. We use it, of course.
Commissioner Harlan: Have you transportation over other lines than the Iron Mountain?
Mr. Pierce: I have.
Commissioner Harlan: In general, how many roads send you transportation?
Mr. Pierce: Four or five. I make no practice of requesting it of any great number.
Mr. Cowan: What service do you perform for each of these lumber companies for which you are vice-president, and what service do you perform for the one you are president of?
Mr. Pierce: Practically none; merely in an advisory capacity.
Mr. Cowan: Are you connected with the management of the business?
Mr. Pierce: No, I am not.
Mr. Cowan: Just in an advisory capacity. Of course I do not

know, you can explain what that means. I don't know exactly what you had in mind. Is that advice with respect to the management of the business in each of the companies?

Mr. Pierce: It would be advice as to the policy of the company in any direction.

1415 Mr. Cowan: Financial operations?

Mr. Pierce: Financial operations, purchase of timber, extensions of investments in any direction.

Mr. Cowan: And in the extension of your trade in various directions?

Mr. Pierce: Yes, sir; anything to advance the general interest.

Mr. Cowan: And that would include of course the selling——

Mr. Pierce: Well, that is a detail with which I am not familiar.

Mr. Cowan. Your companies, I will call them for the sake of shortening up the language, sell extensively in Texas, Oklahoma, and Kansas?

Mr. Pierce: They do not.

Mr. Cowan: Why?

Mr. Pierce: I presume because it is they have not solicited the trade in that territory.

Mr. Cowan: Where does the principal output go?

Mr. Pierce: From the Alleghany Mountains to Denver, from St. Louis to Duluth; it is mostly sent to Central Freight Association and trans-Mississippi territory.

Mr. Cowan: You do sell, I presume, some lumber in Okla-

1416 homa and some in Kansas?

Mr. Pierce: I do not recall any special movement to those territories. Some in Kansas, yes. We have quite a fair movement to Kansas, and a little movement to Texas and Oklahoma.

Mr. Cowan: On your Denver Business, can you state what division you get?

Mr. Pierce: We get five cents on Denver business.

Mr. Jeffery: What is the rate to Denver?

Mr. Pierce: Thirty-seven cents, the same to Pueblo.

Mr. Cowan: Do you sell railroad ties and timber to any of the railroads reaching Colorado common points like the Denver & Rio Grande for example?

Mr. Pierce: I do not know enough about the sales department to be able to answer that question. I do not recall any instance of that kind.

Commissioner Harlan: I understood you to say your highest division was four cents, from two to four cents; you now speak of a five cent division.

Mr. Pierce: I said five cents.

1417 Mr. Cowan: He said two to five cents. You do not receive any divisions in the local Arkansas business, I assume, from what has been testified to here; if you supply any trade, you do not have any divisions?

Mr. Pierce: We have no movement there.

Mr. Cowan. Of course you attempt to sell your lumber where you get the best divisions if you can get the right price for your lumber?

Mr. Pierce: I have nothing to do with that, as to where they attempt to sell it. I presume they attempt to sell it where they can get the best price.

Mr. Cowan: Being in an advisory capacity that is undoubtedly what you would advise?

Mr. Pierce: Well, I would not work against the interests of my own road, no.

Commissioner Harlan: When you travel do you look into the markets and see what the demands are and in that way direct the policy of any of these lumber companies and indicate where efforts should be made to dispose of the lumber, where they can find a market?

Mr. Pierce: I do no traveling on this subject.

Commissioner Harlan: No, but when you do travel I say, do you endeavor to look at the market conditions?

Mr. Pierce: I endeavor to have my mind closely on all
1418 the business with which I am connected, and I would gladly advise any one whom I found seeking lumber to place an order with the mills on our road.

Mr. Cowan: Do you have any divisions to points in Texas?

Mr. Pierce: We do.

Mr. Cowan: And what are those divisions?

Mr. Pierce: One cent.

Mr. Cowan: And it is the same as the State of Arkansas, there is no movement on that, I assume?

Mr. Pierce: Well, we have had no movement that I recall of any magnitude.

Mr. Cowan: You said in the case of Alexandria, in the Enterprise Lumber Company, 75 per cent you thought went over the Iron Mountain and then that you had no divisions with the T. & P., and I wondered what road took the other 25 per cent.

Mr. Pierce: The other moves out over the other lines, the T. & P. Southern Pacific and Rock Island.

Mr. Cowan: You ship some lumber then where you get no divisions at all, going to the T. & P., I believe you said you got no division with the T. & P.

Mr. Pierce: We get no division with the T. & P.

1419 Mr. Cowan: And I suppose therefore it takes very little of your business?

Mr. Pierce. I don't know what percentage is with them.

Mr. Cowan: Well, it does get divisions with some connections.

Mr. Pierce: I have nothing to do with it because I get no money from them.

Mr. Cowan: What divisions do you get from the Rock Island at Alexandria?

Mr. Pierce: Two to five cents.

Mr. Cowan: The same basis as the Iron Mountain?

Mr. Pierce: Yes, sir.

Mr. Cowan: But they do not carry the business into Texas on that division from that point?

Mr. Pierce: No.

Mr. Cowan: Taking all these saw mills together the same interests own the road in each case which own the mill in that particular case substantially?

Mr. Pierce: In each case, Judge, the people who own the largest shipper on each one of these lines are the people who own the road.

Mr. Cowan: And the roads were constructed for that
1420 industrial purpose you spoke of in case of the Enterprise Company?

Mr. Pierce: The roads were constructed under agreements with the trunk line with which they connected, to develop certain territory.

Mr. Cowan: And are there agreements with the Iron Mountain in each case?

Mr. Pierce: There are. Not in writing.

Commissioner Harlan: These agreements or understandings preceded the construction of the road or followed the construction?

Mr. Pierce: They preceded the construction of the road.

Commissioner Harlan: And were all verbal?

Mr. Pierce: And were all verbal.

Mr. Cowan: There is an inter-ownership relation in the interest in the saw mills by the stockholders in all these mills, that is the principal owners in every one of these mills are the principal owners in each one of the others, if I gather it right?

Mr. Pierce: No, that is incorrect. There is a separate set of stockholders for each one of these mills. Now the same set of
1421 stockholders are not directly interested in any two of these mills except in the case of the Oak Leaf and Louis Werner Saw Mill.

Mr. Cowan: I understood you were substantially in each one except the Enterprise?

Mr. Pierce: I am not interested in either the Enterprise or the Ball mill or the Pollock mill, but I am interested in the other three.

Mr. Cowan: What community of interests put this business together and you as the auditor of all these different roads? Of course somebody did that. What community of interests put these companies together and you as auditor to make settlements with the Iron Mountain?

Mr. Pierce: There is no community of interest, but simply for convenience of handling the business among ourselves.

Mr. Cowan: Then you as auditor of the railroad in each case know of course all of the transactions of each of the roads with the Iron Mountain?

Mr. Pierce: Yes, sir.

Mr. Cowan: And the owners of each lumber company know that you know these transactions?

Mr. Pierce: Yes, sir.

Mr. Cowan: And you control all of the matters of settlement?

1422 Mr. Pierce: Yes, sir.

Mr. Cowan: And who controls the direction of the traffic?

Mr. Pierce: The people who sell the lumber.

Mr. Cowan: What have you to do with the matter of directing and controlling the routing?

Mr. Pierce: Nothing at all.

Mr. Cowan: Who does that?

Mr. Pierce: Salesmen at the different mills.

Mr. Cowan: How many officers have these mills in the offices you keep, does each mill just have one man?

Mr. Pierce: In the office where I have my suite there are only two of these mills that are represented and they have there a general sales agent.

Mr. Cowan: All you are represented in are represented in an advisory capacity at least, which you occupy?

Mr. Pierce: Well, yes.

Mr. Cowan: Who is there then for you to advise with if the other mills haven't somebody there?

Mr. Pierce: The president of the company, bookkeepers, cashiers, treasurer, second vice-president.

Mr. Cowan: Are they located there?

Mr. Pierce: They are all located there.

1423 Commissioner Harlan: Let me put a question which will go to the point you are trying to arrive at in a little different form. Is there one dominating or predominating interest in all these companies?

Mr. Pierce: There is not.

Commissioner Harlan: Are there one or two men that are large stockholders in all the companies?

Mr. Pierce: There is not.

Mr. Cowan: I was leading up only to the point of finding out what is this Southern Pine—what is the name of that?

Mr. Jeffery: The Southern Pine System.

Mr. Cowan: Southern Pine System. I was just leading up to a final question to know how it came about there was such a thing known in this transaction as the Southern Pine System, and it seems for trade convenience and so forth.

Mr. Pierce: I have stated it was a trade name for convenience in handling all the business of these roads without handling all the names at once.

Mr. Cowan: So in your correspondence with the Iron Moun-

1424 tain no matter which one it is for, it is under the name of——

Mr. Pierce: The Southern Pine System.

Commissioner Harlan: It seems to be a system without any vertebræ.

Mr. Cowan: I think it has got pretty good vertebræ in Mr. Pierce.

Commissioner Harlan: I think Mr. Pierce has given us all the information he has on the question.

Mr. Jeffery: I notice in all these short line railroads you are auditor of they all have the same division. I suppose in the capacity of the auditor of the various roads you knew what the other roads were getting so you could get the same?

Mr. Pierce: Did you notice they were all the same?

Mr. Jeffery: The divisions are the same.

Mr. Pierce: You noticed they were all the same?

Mr. Jeffery: I understood so.

Mr. Pierce: You are sure you noticed that?

Mr. Jeffery: I thought I had, but I see I am mistaken, so I withdraw that.

Commissioner Harlan: There is just one question to which
1425 I wish to direct your attention before you leave the stand, and that is that although you know the affairs of these several railroad companies, and something of the affairs of these several lumber companies, you have only indicated one small going concern in all this region that hauls its logs to the mill and its lumber to the station. Now, before you get off the stand, do you know any others who are successfully operating under those conditions in competition with you and others who are getting divisions?

Mr. Pierce: Would the Commissioner permit me to take that under thought and hand in a memorandum later?

Commissioner Harlan: Yes, I think that is only fair.

Mr. Pierce: I would like to.

Commissioner Harlan: I think the record ought to show, it has a direct relation, Mr. Pierce, to my inquiry, that at this time you are not able, notwithstanding your familiarity with all these matters, to show more than one. But I think it is entirely fair for you to look into the matter.

Mr. Cowan: There is one question I want to ask about all the roads
1426 that I had asked about one or two, and that is, is it not a fact that the auditor who makes up these annual reports which you have before you for each of the railroad companies you are general auditor of, keeps his office in the lumber company's office and is an employee of the lumber company?

Mr. Pierce: He is an employee of the railroad company, Judge, but he has his office in the lumber company's office as a rule. I do not recollect now the exact circumstances with regard to each one of these cases.

1427 Mr. Cowan: Is he not also in each case the bookkeeper or auditor for the lumber company?

Mr. Pierce: He generally has joint duties.

Mr. Cowan: Is there an arrangement between the railroad company and the lumber company as to how much salary each one pays?

Mr. Pierce: I am not familiar with it, but I presume there is.

Mr. Cowan: That you do not handle?

Mr. Pierce: No.

Mr. Cowan: They agree or somebody agrees on the $300 a month they pay you as Auditor, and that is distributed equally between each railroad company?

Mr. Pierce: Yes, sir.

Mr. Jeffery: When was the last one of these roads built?

Mr. Pierce: The last one of these roads was—I do not know, Mr. Jeffery.

Mr. Jeffery: Was it not about 1904? Your attorney suggests that it was about that year. Was not that correct?

Mr. Pierce: Yes, sir, I would say that the Saline Bayou was the last road built.

1428 Mr. Jeffery: The Saline Bayou?

Mr. Pierce: Yes, sir.

Mr. Jeffery: You say they were built pursuant to a verbal understanding or verbal agreement, I suppose prior to the time of the building and completion. With whom were those agreements?

Mr. Pierce: Do you want me to go into the detail of the history of this matter, Mr. Jeffery?

Mr. Jeffery: No, I am just asking you to give the names of the parties with whom you had the understanding.

Mr. Pierce: The suggestion was originally brought to my attention by Col. Dean's office, of the Land Department, and the traffic arrangements were made with Mr. Lincoln, is my present recollection.

Mr. Jeffery: Mr. J. C. Lincoln?

Mr. Pierce: Yes, sir.

Mr. Jeffery: And there was no further negotiation—I mean when the contract was actually made, was it made with the Vice President or any higher official or with just the traffic official?

Mr. Pierce: With the traffic official. There was no contract in the sense of a written document.

1429 Mr. Jeffery: I understand, but you can have a verbal contract.

Mr. Pierce: It was an interchange of views between traffic officials.

Mr. Jeffery: And I suppose at that time they made an agreement with you to give you so much of a division if you gave them the business and built the roads, that was the substance of it.

Mr. Pierce: That was the substance of it.

Mr. Jeffery: And this was all prior to 1904?

Mr. Pierce: Yes, sir.

Mr. Brown: You stated in response to Mr. Jeffery's question that all these arrangements were made prior to the construction of any of these roads. Is that true of what is now the Griffen, Magnolia & Western?

Mr. Pierce: The road was commenced by another concern that met with misfortune.

Mr. Brown: You mean they failed financially?

Mr. Pierce: With which these people had nothing to do, that is what I mean. They met with financial misfortune.

Mr. Brown: What did your company do when you went
1430 into business there at Griffen, how much road had been constructed there at that time?

Mr. Pierce: About five miles of road been constructed there.

Mr. Brown: Was the road incorporated at that time?

Mr. Pierce: It was not.

Mr. Brown: Just what did your company do there?

Mr. Pierce: We extended this road, and we found that the mill

was pushing the road into a territory where there was a great deal of business which came to it outside of the logging business, and we found that we were performing the functions of a common carrier without being properly incorporated. Our attention was brought to this fact by a member of the Arkansas State Commission and it was suggested that if we wanted to act with propriety we would incorporate our property, and would commence to maintain the right relations toward the State and Federal Commissions. In this way the corporation was brought about.

Mr. Brown: Taking that road, have you ever had under consideration or have you now any plan for its extension?

Mr. Pierce: We have had and have now under consideration plans for its extension both east and west.

1431 Mr. Brown: To what point?

Mr. Pierce: Magnolia.

Mr. Brown: Not Hot Springs?

Mr. Pierce: No, not Hot Springs. I tried to say that soon enough so as to avoid all criticism. We were intending to reach Magnolia on the west, and either El Dorado or Champion on the east.

Mr. Brown: Has there ever been any serious negotiation looking to that extension?

Mr. Pierce: There has been serious negotiation looking to the extension in that——

Mr. Brown: When was that?

Mr. Pierce: In 1907, just before the panic. The town of Magnolia made us a very handsome offer to put our connection there, and the town of El Dorado also approached us on the subject and we were practically guaranteed a bonus and an assisting fund of $2,000 a mile in the construction of this road, but the panic of 1907 came on and we were unable to finance it. The conditions since that time with regard to lines of this character have been so chaotic there has been nothing further done with the matter.

Mr. Brown: Is it the purpose of this company in the nat-

1432 ural course of events to make these connections you speak of?

Mr. Pierce: We expect to be able to do so.

Mr. Brown: And extend to the towns you mentioned?

Mr. Pierce: Yes, sir, we expect to do so.

Mr. Brown: With respect to each of these roads there has been a good deal said about the lumber companies and mills at each of these points. In your opinion do each of these roads serve a public purpose and perform a public service independently of and without reference to these various mills?

Commissioner Harlan: I think that will not do. This witness has shown the facts. You can ask him what the facts are, and we have gone over that.

Mr. Brown: My only purpose is to develop whether there was any need for a railroad in the vicinity, if the mill was taken away. I think the witness ought to be permitted to state what the facts are about that.

Commissioner Harlan: He has already stated the facts. There is no objection to his answering that question.

Mr. Brown: Assuming the mills were taken away, is there any public need for the railroad concerning which you have testified this morning?

1433 Mr. Pierce: There is a public need for them.

Mr. Brown: Is that true of each one of them?

Mr. Pierce: It is true of each one of them in a varying degree.

Commissioner Harlan: Well, in the natural course of events and the development of the country through which these various roads run, would it increase and naturally increase the traffic——

Commissioner Harlan: That does not add to the value of the record. I think in all but one case there is a deficit shown with the lumber traffic at this time.

Mr. Brown: That is true of some trunk lines and yet they may serve a public purpose.

Commissioner Harlan: I do not know of any trunk line that does not pay the cost of operations. There may be one or two, but generally speaking there are not. I think the facts on that question are sufficiently in the record. You are leading the witness beyond Hot Springs to the Sunset, in what you are doing.

Mr. Brown: My purpose was to show whether there would be any traffic developed there out-side of the lumber business.

1434 Commissioner Harlan: Is there any traffic now or in the immediate future to pay the running expenses of these roads, if the lumber business is suspended?

Mr. Pierce: There is in connection with the Griffen, Magnolia & Western; if it was economically managed it would pay its own expenses independent of the business of the controlling interest.

Commissioner Harlan: Is that true of any other roads you have mentioned?

Mr. Pierce: I do not think it is true of any of the others yet.

Mr. Brown: Is there any prospects of development on these other roads?

Mr. Pierce: There is a prospect of it. We cannot develop unless we have facilities for transportation.

Mr. Brown: Are the character and amount of the products of the soil served by these various roads such as will bring traffic to the road when it is developed?

Mr. Pierce: Traffic is bound to be developed when the timber is taken off.

Mr. Brown: Do your various companies at all times accept all the freight traffic that is tendered to them and hold

1435 themselves as carriers for hire on all the traffic tendered to them for transportation?

Mr. Pierce: We do.

Mr. Brown: That is all.

Mr. Cowan: There is one question opened up or that seems to be opened up by Mr. Jeffery's inquiry, and that is when the arrangement was made with the Iron Mountain Railroad which he states was suggested by the land man, or Land Commissioner, I believe he said, that these lumber companies then proceeded to capitalize and provide the means for its development.

Mr. Pierce: You understand me, do you, correctly, that I said the investment in this particular mill property was suggested by the Land Department of the Iron Mountain?

Mr. Cowan: I thought you said——

Mr. Pierce: They did do so.

Mr. Cowan: And then you made the traffic arrangement with Mr. Lincoln.

Mr. Pierce: Yes, sir, afterwards.

Mr. Cowan: And that was before any of these railroads were built except a little part of the Griffen, Magnolia &
1436 Western?

Mr. Pierce: Well, this other property was also in a similar situation at that time.

Mr. Cowan: The present interests which own these railroads and sawmills made their arrangements for the financing of the transaction after the arrangement had been made with the railroad company which you have just spoken of?

Mr. Pierce: That is practically true.

Mr. Cowan: And the financing involved, of course, the railroad as well as the sawmill structures and timber lands and whatever else was necessary to the undertaking?

Mr. Pierce: The revenue came from the same source.

Mr. Cowan: That seems to be all.

(Witness excused.)

Mr. Jeffery: We have not gone into the question of the basis of divisions. Of course they are based on the distances and amounts charged. I assume that is in the record because in each case you have your own tariffs with the tap lines.

Commissioner Harlan: Yes.

1437 *Natchez, Urania & Ruston Railway.*

Q. T. HARDTNER, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?

Mr. Hardtner: Urania.

Commissioner Harlan: What is your position?

Mr. Hardtner: Auditor and General Freight Agent of the Natchez, Urania & Ruston.

Commissioner Harlan: When was that organized?

Mr. Hardtner: In 1899.

Commissioner Harlan: Under the laws of the State of Indiana?

Mr. Hardtner: And chartered in 1902, March 29th, 1902.

Commissioner Harlan: You draw a distinction between the organization of that company and its chartering?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: Just what do you mean by that?

Mr. Hardtner: The charter was not made until 1902.

Commissioner Harlan: Was it a going concern as a railroad in 1899?

1438 Mr. Hardtner: It was.

Commissioner Harlan: Built by whom?

Mr. Hardtner: The Urania Lumber Company.

Commissioner Harlan: When you organized the railroad company in 1902 what was the authorized capital?

Mr. Hardtner: $100,000.

Commissioner Harlan: What has been paid in?

Mr. Hardtner: $50,000.

Commissioner Harlan: Have you any bonded indebtedness?

Mr. Hardtner: We have not.

Commissioner Harlan: How did the railroad company acquire title to the railroad and equipment?

Mr. Hardtner: By purchase from the Urania Lumber Company.

Commissioner Harlan: The payment was made by turning over this capital stock?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: That included the title to the roadbed?

Mr. Hardtner: No, the right of way belonged to the Urania Lumber Company.

Commissioner Harlan: Then the railroad company ac-
1439 quired only the rails and the equipment?

Mr. Hardtner: Rails and the equipment.

Commissioner Harlan: And the ties?

Mr. Hardtner: Yes.

Commissioner Harlan: Was there any lease by the lumber company to the railroad company of the right of way?

Mr. Hardtner: Nominally so, yes, sir; a service is rendered.

Commissioner Harlan: Nothing in writing?

Mr. Hardtner: No.

Commissioner Harlan: Do you regard the Natchez, Urania & Ruston as a railroad company under the laws of the State of Louisiana?

Mr. Hardtner: We do.

Commissioner Harlan: Can a railroad under the laws of Louisiana be a railroad company without owning its right of way or having a definite lease for it?

Mr. Hardtner: I do not know.

Commissioner Harlan: Well, we will not go into that question. Who are the officers of the railroad company?

Mr. Hardtner: Henry E. Hardtner, President, A. J. Hardt-
1440 ner, Secretary and Treasurer, Q. T. Hardtner, Auditor and General Freight Agent.

Commissioner Harlan: Are they also officers of the Urania Lumber Company?

Mr. Hardtner: Yes.

Commissioner Harlan: And are the stockholders in the two companies substantially identical?

Mr. Hardtner: Substantially so.

Commissioner Hardtner: What is the length of the railroad?

Mr. Hardtner: About 14 miles; I do not know just exactly.

Commissioner Harlan: Standard gauge?

Mr. Hardtner: Standard gauge.
Commissioner Harlan: What rail?
Mr. Hardtner: 35 and 56 pound.
Commissioner Harlan: Where is your junction with the Iron Mountain?
Mr. Hardtner: Urania.
Commissioner Harlan: In the State of Louisiana?
Mr. Hardtner: Yes, sir.
Commissioner Harlan: Have you any station of your own at Urania?
Mr. Hardtner: We have not.
1441 Commissioner Harlan: Is the mill of the lumber company on the tracks of the Iron Mountain?
Mr. Hardtner: On the tracks of the Natchez, Urania & Ruston.
Commissioner Harlan: Does not the lumber yard go right up to the right of way of the Iron Mountain?
Mr. Hardtner: Part of it, yes, sir.
Commissioner Harlan: Where is the planing mill?
Mr. Hardtner: The planing mill is right at the mill. We have no regular planing mill. We saw timbers, and——
Commissioner Harlan: How far is the sawmill from the tracks of the Iron Mountain?
Mr. Hardtner: About 300 yards.
Commissioner Harlan: Does not the Iron Mountain spur reach right up to the mill?
Mr. Hardtner: Up to their right of way. I think it shows right on that map just where it is (indicating).
Commissioner Harlan: Before the railroad was organized did the Iron Mountain build a spur track into your mill?
Mr. Hardtner: The old mill, there was an old mill right on the Iron Mountain track, and the old mill has been torn down and a new mill built.
Commissioner Harlan: When was the new mill built?
1442 Mr. Hardtner: Latter part of 1900 or early in 1901.
Commissioner Harlan: Was it the transfer of the old mill to a new site?
Mr. Hardtner: No, we built a new mill.
Commissioner Harlan: And new machinery?
Mr. Hardtner: Yes, sir.
Mr. Cowan: What is the output of the mill?
Mr. Hardtner: About 80,000 a day, about 15,000,000 to 18,000,000 feet a year.
Mr. Cowan: Of pine lumber?
Mr. Hardtner: Pine.
Commissioner Harlan: What is the extent of the pine lands owned by the Urania Lumber Company?
Mr. Hardtner: They own about 30,000 acres at present.
Commissioner Harlan: Does that company own any tram lines that join with your line?
Mr. Hardtner: No.
Commissioner Harlan: Do you own any tram line?

Mr. Hardtner: The Natchez, Urania & Ruston own the spur tracks.

Commissioner Harlan: What is the mileage of those spur
1443 tracks?

Mr. Hardtner: Those spur tracks are very short; they are not over a quarter of a mile in length.

Commissioner Harlan: You own them, build them and operate them?

Mr. Hardtner: Yes.

Commissioner Harlan: And the lumber company has no locomotive?

Mr. Hardtner: No.

Commissioner Harlan: How many have you?

Mr. Hardtner: Two.

Commissioner Harlan: How many cars have you?

Mr. Hardtner: 25, I think.

Commissioner Harlan: The lumber company has none?

Mr. Hardtner: No.

Commissioner Harlan: Do you load the logs of the lumber company on to the cars?

Mr. Hardtner: We do.

Commissioner Harlan: And you unload them at the mill?

Mr. Hardtner: We do.

Commissioner Harlan: You haul them over these spur tracks to your main line?

1444 Mr. Hardtner: Yes, sir.

Commissioner Harlan: Do you make any special charge for that?

Mr. Hardtner: We charge $1.50 a thousand for loading and hauling the logs to the mainline, and also for keeping up the track.

Commissioner Harlan: Well, but that track is yours.

Mr. Hardtner: What is that?

Commissioner Harlan: That track is yours, it belongs to the railroad company.

Mr. Hardtner: Yes.

Commissioner Harlan: You do not charge them anything for keeping up the track which you own?

Mr. Hardtner: I say this $1.50 charge covers loading the logs and hauling out to the main line.

Commissioner Harlan: And unloading at the pond?

Mr. Hardtner: Yes—no, the main line crew unload at the pond.

Commissioner Harlan: From the junction of the main line with the logging lines, what charge do you make tc the lumber company?

1445 Mr. Hardtner: We do not make any.

Commissioner Harlan: You do not know that is a free service?

Mr. Hardtner: We get a division.

Commissioner Harlan: That is the through rate to destination on lumber extends back to what point?

Mr. Hardtner: Yes, sir; Hinton is the point.

Commissioner Harlan: Hinton is the junction on your line?

Mr. Hardtner: No, that is the shipping point.

Commissioner Harlan: That is the shipping point?

Mr. Hardtner: Yes, sir, in the woods; in fact it is the centre of the logging operations. Urania is the junction point with the Iron Mountain.

Commissioner Harlan: Yes, but is Hinton on the logging lines or on your main line?

Mr. Hardtner: It is on the main line.

Commissioner Harlan: Then it is the point where the logging lines join your main line?

Mr. Hardtner: Yes.

Commissioner Harlan: What is the lowest division you get to any destination on lumber from Hinton?

1446 Mr. Hardtner: Two cents.

Commissioner Harlan: And what is the highest?

Mr. Hardtner: Well, on one road we get four cents, there was one road in Oklahoma, but the principal division is three cents.

Commissioner Harlan: I do not quite understand that. What main lines do you join? Only the Iron Mountain.

Mr. Hardtner: Only the Iron Mountain, that is all.

Commissioner Harlan: And they give you two cents to some points, and you then said that one line gives you four cents to Oklahoma.

Mr. Hardtner: Our settlements come from the delivering line, our division settlements; for instance, if we ship to the Missouri, Oklahoma & Gulf, that is, if they deliver the lumber, the divisions come from that road.

Commissioner Harlan: Is that the road that gives you three cents?

Mr. Hardtner: Four cents.

Commissioner Harlan: And that is your highest division?

Mr. Hardtner: That is our highest division.

Commissioner Harlan: And your average division on all traffic is what?

1447 Mr. Hardtner: About two and a half cents.

Commissioner Harlan: Did you say how many acres of land the lumber company owns out there?

Mr. Hardtner: Yes, sir; about 30,000 acres.

Commissioner Harlan: Does anyone else own any out there?

Mr. Hardtner: Yes.

Commissioner Harlan: Do you haul out logs over the tram lines and on to your main line for any other lumber company?

Mr. Hardtner: No.

Commissioner Harlan: Well, how do these other people reach the Iron Mountain?

Mr. Hardtner: Well, they have not shipped any logs. They still own the land. It is farmers and settlers.

Commissioner Harlan: But they are not doing any logging operations?

Mr. Hardtner: Only stave bolts and ties.

Commissioner Harlan: That is all hardwood?

Mr. Hardtner: Hardwood, yes, sir.

Commissioner Harlan: Do they own pine woods also?
Mr. Hardtner: Yes.
Commissioner Harlan: But none of them are making any logs?
1448 Mr. Hardtner: No.
Commissioner Harlan: Why is that?
Mr. Hardtner: Well, I don't suppose they have enough to justify them putting up a mill. There was a small mill on the line, but it is now discontinued.
Commissioner Harlan: Whereabouts on your line was that mill?
Mr. Hardtner: It was about half way out to Hinton.
Commissioner Harlan: Was it right on your line?
Mr. Hardtner: Yes.
Commissioner Harlan: How long did it continue in operation?
Mr. Hardtner: Well, it was in operation when we built out there, I think. It was just the local business throughout the country, a small mill.
Commissioner Harlan: What was its output, do you remember?
Mr. Hardtner: I suppose about 1,000 to 2,000 feet a day.
Commissioner Harlan: Did it operate at any time after the railroad was organized in 1902, or had it ceased the operations before that time?
Mr. Hardtner: I don't really remember. It may have operated a short time after that.
Commissioner Harlan: Did the Urania Lumber Company get any divisions before the railroad company was organized?
1449 The railroad was there.
Mr. Hardtner: Yes.
Commissioner Harlan: And the lumber company operated the locomotives and cars for itself?
Mr. Hardtner: The Natchez, Urania & Ruston did.
Commissioner Harlan: And it took the logs to its mill, and then they were made into lumber and they got no allowance of any kind from the Iron Mountain?
Mr. Hardtner: No.
Commissioner Harlan: You did not commence to get any divisions or allowances until after the railroad company was organized?
Mr. Hardtner: No.
Commissioner Harlan: And I assume it was organized for that purpose, was it not?
Mr. Hardtner: No, it was organized primarily, of course, to haul logs.
Commissioner Harlan: But the railroad was built primarily to haul logs?
Mr. Hardtner: Yes.
Commissioner Harlan: And was there?
1450 Mr. Hardtner: Yes.
Commissioner Harlan: Now then there came a point in 1902 when you organized a railroad company. Why did you organize a railroad company?

Mr. Andrews: I think the witness misconstrues that. He does not understand that you mean chartered. He stated in the beginning that he organized back some time before the chartering.

Commissioner Harlan: I see. This is the question. You make a distinction between the word organized and the word charter?

Mr. Hardtner: Yes.

Commissioner Harlan: We do not want any misunderstanding. Now then you organized the railroad in the sense of building it in 1899?

Mr. Hardtner: Yes.

Commissioner Harlan: It was built by the lumber company?

Mr. Hardtner: Yes.

Commissioner Harlan: I understood you to say the lumber company got no allowance or divisions at that time?

1451 Mr. Hardtner: Yes, sir, it got divisions from the beginning when it was first built.

Commissioner Harlan: Now we understand one another. How much of a division did you get at that time, I refer to the lumber company.

Mr. Hardtner: I think our divisions are the same now as they were in the beginning.

Commissioner Harlan: So after the railroad was chartered there was no change in the divisions?

Mr. Hardtner: No.

Commissioner Harlan: Now what was the extent of your tonnage last year?

Mr. Hardtner: Your Honor, I haven't it exact; I could give it approximately.

Commissioner Harlan: Yes, that will do.

Mr. Hardtner: Our tonnage was about 17,500 tons of lumber in all.

Commissioner Harlan: And that all belonged to the Urania Lumber Company except some staves and things of that kind?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: You do not have any mail service?

Mr. Hardtner: No.

Commissioner Harlan: Or passenger service?

1452 Mr. Hardtner: We have made application for mail service now. There is a post office at Hinton and it is now supplied by what they call the Star Route, driven around through the country, and the government has sent out papers asking for measurements, and so forth, with a view of establishing a mail route on the line.

Commissioner Harlan: Do you carry express?

Mr. Hardtner: No.

Commissioner Harlan: Any passengers?

Mr. Hardtner: Only those connected with the tap line, free.

Commissioner Harlan: Free of charge?

Mr. Hardtner: Yes.

Commissioner Harlan: You do not carry any less than carload freight outbound?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: What kind?
Mr. Hardtner: Local shipments for which we make no charge.
Commissioner Harlan: You carry it simply to the junction points?
Mr. Hardtner: Yes, sir, or along the line.
1453 Commissioner Harlan: What is it, cotton or farm produce?
Mr. Hardtner: We have handled some cotton, but not the last two or three years because there is no cotton raised down there now.
Commissioner Harlan: Is there any general inbound merchandise carried over your line?
Mr. Hardtner: Yes, sir.
Commissioner Harlan: On local rates.
Mr. Hardtner: Well, we make no charge.
Commissioner Harlan: You have no revenue from any source except on the movement of logs and lumber in staves?
Mr. Hardtner: Yes, sir, that is all.
Commissioner Harlan: Your logging road dumps the logs into the pond and then they are taken into the mill and made into lumber?
Mr. Hardtner: Yes.
Commissioner Harlan: Who sets the cars at the mill for loading?
Mr. Hardtner: The Iron Mountain pushes the cars in and we do part of the switching. We spot some of the cars, but as a rule the Iron Mountain local will spot the cars on the side
1454 track. They come in on our main line.
Commissioner Harlan: Do you do any switching for outsiders?
Mr. Hardtner: Yes, sir.
Commissioner Harlan: There is a little town, is there, at the junction point?
Mr. Hardtner: There is.
Commissioner Harlan: And you have some spur tracks there leading to industries?
Mr. Hardtner: Yes, sir.
Commissioner Harlan: What are those industries?
Mr. Hardtner: Well, staves and ties that are shipped out to New Orleans or other points.
Commissioner Harlan: They are not made at Urania, are they?
Mr. Hardtner: Oh, no.
Commissioner Harlan: You bring them in——
Mr. Hardtner: They are made by the farmers as a rule.
Commissioner Harlan: On your line?
Mr. Hardtner: Yes.
Commissioner Harlan: And you bring them in and they are stored here?
Mr. Hardtner: No, they are shipped on out, that is in carloads.
1455 Commissioner Harlan: What charge do you make for that service?
Mr. Hardtner: We have a minimum charge of $15.00 a car.
Commimssioner Harlan: Do you move any logs over your line to Urania on a local rate of $15.00?

Mr. Hardtner: No. We have shipped some hardwood logs out to New Orleans and also north, but it is a very small percentage.

Commissioner Harlan: What service do you perform for these divisions? As I understand it, you take the logs of the lumber company at the junction of the tram lines with your main line?

Mr. Hardtner: Yes.

Commissioner Harlan: You make no charge against the lumber company for hauling them to the mill?

Mr. Hardtner: No.

Commissioner Harlan: But under a milling in transit rate the logs are there made into lumber and the Iron Mountain usually spots the cars?

Mr. Hardtner: Yes.

Commissioner Harlan: And then the manufactured lum-
1456 ber moves out to destination on the through rate?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: And then you get the divisions of the through rates?

Mr. Hardtner: Yes.

Commissioner Harlan: Have you any other source of revenue?

Mr. Hardtner: No.

Commissioner Harlan: No trackage rights?

Mr. Hardtner: No.

Commissioner Harlan: You say you have issued $50,000 of capital stock?

Mr. Hardtner: Yes.

Commissioner Harlan: Does that represent the original cost of the road and equipment?

Mr. Hardtner: Practically; that is up to that time. Now the cost of the road to date is more than that.

Commissioner Harlan: What is it to date?

Mr. Hardtner: $70,805.

Commissioner Harlan: Up to date?

Mr. Hardtner: Yes.

Commissioner Harlan: What were your net earnings last
1457 year approximately?

Mr. Hardtner: Approximately——

Commissioner Harlan: Give your gross first, if you have it?

Mr. Hardtner: The gross was about $28,250.

Commissioner Harlan: And your net?

Mr. Hardtner: Net earnings—I do not know, I think it was about $2,000.

Commissioner Harlan: Do you file reports with the Commission annually?

Mr. Hardtner: We have not yet. We wanted to ask permission to file the report before the end of the year for this last year's business. We file reports with the State Railroad Commission and have been filing monthly reports.

Commissioner Harlan: What do your reports to the State Commission show as net earnings for the year 1909?

Mr. Hardtner: I don't know. The President made out the report.

Commissioner Harlan: You have stated to our Examiner, or some officer of the railroad did, that your net recenue for that year was in excess of $10,000. Is that your recollection?

1458 Mr. Hardtner: I suppose it was. It was some less than this year.

Commissioner Harlan: You mean it is more this year than it was last?

Mr. Hardtner: Yes.

Commissioner Harlan: Well, that was a net revenue on a total investment of $70,000?

Mr. Hardtner: Yes.

Commissioner Harlan: About 15 per cent, something like that.

Mr. Hardtner: Well, the net investment was not as much last year as this, because we have expended some more this year.

Commissioner Harlan: So that the percentage of earnings last year was in excess perhaps of 15 per cent, and about 15 per cent this year?

Mr. Hardtner: It is about 15 this year. I have no recollection of last year.

Commissioner Harlan: Do you find any small lumber people about you that are successfully competing with you that have to haul their logs by wagon to mill, and haul the lumber to the station?

1459 Mr. Hardtner: I do not know of any small mills in our territory.

Commissioner Harlan: Small people cannot compete with you?

Mr. Hardtner: There is no timber along the Iron Mountain that can be bought; in fact there is none at all. It has all been cut out. The only timber there is is out from the road.

Commissioner Harlan: Didn't you say there were some people who owned timber on your line?

Mr. Hardtner: Yes. I was speaking of the Iron Mountain now. Probably 50 per cent of the lands out through the interior on our road, that is not owned by the Urania Lumber Company.

Commissioner Harlan: 50 per cent?

Mr. Hardtner: Yes, sir.

Commissioner Harlan: And they are not logging them at all?

Mr. Hardtner: No.

Mr. Brown: This 50 per cent of the outside holdings on the lands along your railroad, is that held in large or small tracts?

Mr. Hardtner: Small tracts.

Mr. Brown: You stated, I believe, that about 10 per cent

1460 of your earnings were from business other than the lumber company?

Mr. Hardtner: Practically just about that; maybe a little less.

Mr. Brown: Are there any agricultural lands——

Commissioner Harlan: I do not remember that the witness stated that. What is that percentage?

Mr. Hardtner: Of the outside business, it is about 10 per cent or probably a little less, that is ties, staves and business of that kind.

Mr. Brown: Are there any agricultural lands contiguous to your railroad?

Mr. Hardtner: There are.

Mr. Brown: What is the character of that land, fertile or——

Mr. Hardtner: Agricultural lands, creek bottoms.

Mr. Brown: Fertile or otherwise?

Mr. Hardtner: Fertile. Not all of them, but the creek bottoms are.

Mr. Brown: About what is the acreage of this agricultural land along the line?

Mr. Hardtner: I do not know, I could not state how much.

1461 Mr. Brown: Is there a considerable acreage or just small tracts?

Mr. Hardtner: Well, I do not know, I could not say just what amount. I suppose probably 20 per cent are agricultural lands.

Mr. Brown: The timber holdings of the Urania Lumber Company extend almost to Winnfield on the west, and Jena on the east, do they not?

Mr. Hardtner: Yes, sir.

Mr. Brown: Have you cut out any part of the timber on the east of the Iron Mountain tracks?

Mr. Hardtner: We have not.

Mr. Brown: This town of Hinton, is that a town or just a village station?

Mr. Hardtner: It is the loading operations—it is a town.

Mr. Brown: It has a post office?

Mr. Hardtner: It has a post office but it is not an incorporated town.

Mr. Brown: The town of Urania, how is that built, is it up along the Iron Mountain track or along the line of your railroad?

1462 Mr. Hardtner: It is built up along the line of our railroad.

Mr. Brown: Are the loading tracks and side tracks on your track there or on the tracks of the Iron Mountain?

Mr. Hardtner: On our tracks.

Mr. Brown: And those are the tracks which serve the town of Urania?

Mr. Hardtner: Yes, sir.

Mr. Brown: Are you familiar with the country traversed by your railroad?

Mr. Hardtner: Rather.

Mr. Brown: Considering its general character, do you think there are sufficient resources there to support your railroad independently of the mill business of the Urania Lumber Company?

Mr. Hardtner: Well, I don't know whether there is or not.

Mr. Brown: You are not able to say?

Mr. Hardtner: No.

Mr. Brown: I think that is all.

Commissioner Harlan: I want to direct your attention to the fact that our examination of your books showed that less than two

1463 per cent of your gross revenues for the year 1909 came from traffic not supplied by the lumber company; $600 all told.

Mr. Brown: I would like to ask him, do you use the regular and uniform bills of lading?

Mr. Hardtner: Yes.

Mr. Brown: And the waybilling?

Mr. Hardtner: Yes.

Mr. Brown: Are these copies of the bills used (handing papers)?

Mr. Hardtner: Yes, sir.

Mr. Brown: We would like to file them.

(The papers so offered and identified, were received in evidence and thereupon marked Natchez, Urania & Ruston Railway Exhibits Nos. 1 and 2, Witness Hardtner, received in evidence December 13th, 1910, and are attached hereto.)

Mr. Brown: If you would like, we will file a blue print showing the connection with the Iron Mountain and the spur tracks and mills, showing the distances, and so forth.

Mr. Cowan: The statement for 1909 shows $40,540 of traffic supplied by the lumber company, and the other traffic $600, a total of $41,140 and the operating expenses $30,957, leaving a net
1464 revenue of $10,183. Do those figures conform to your recollection?

Mr. Hardtner: I don't remember. I did not make the report.

Mr. Cowan: If so, it appears that your operating expenses of that road were $30,957. If you had not had any divisions of the rates, your expenses of operation of course, would have been the same, because you had to operate for the purposes of supplying the mill with logs. Would not that be true?

Mr. Hardtner: Yes.

Mr. Cowan: So you received out of the divisions of these rates almost $10,000 more than the total cost of operating the logging roads for supplying the mill with logs.

Mr. Hardtner: And divisions?

Mr. Cowan: Yes.

Mr. Hardtner: Yes. I suppose so. I don't know just what the figures are.

Mr. Cowan: Do you know of any lumber concerns in the country who are operating their sawmills by rail logging propositions similar to your mill which are not getting a division of the rates?
1465 Mr. Hardtner: I don't know. I presume they all get divisions.

Mr. Cowan: The $15.00 per car which you charge on the stave bolts and the like, is simply a local charge from delivery points to the Iron Mountain?

Mr. Hardtner: Yes.

Mr. Cowan: Is that covered by a tariff of any sort?

Mr. Hardtner: I think it is. We have a tariff to New Orleans.

Mr. Cowan: But would the haul on your line be covered by a tariff?

Mr. Hardtner: Yes. We have a tariff, I think it is filed with the State Commission.

Mr. Cowan: With the State Commission?

Mr. Hardtner: Yes, sir.

(Witness excused.)

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

1466 After Recess.

Mr. Brown: Mr. F. R. Pierce, who was on the stand for the lines representing the Southern Pine System, gave testimony before your Honors two years ago in the case of the Chicago Coal & Lumber Company against the Tioga & Southeastern along the general lines involved in this hearing, and I would like permission to have the testimony he gave in that case made part of his testimony given this morning.

Commissioner Harlan: It was understood yesterday that the entire testimony in that case would be attached to this case, and could be referred to as a part of the record here.

Among the cases reserved for Tuesday were two Rock Island cases, the Doniphan, Kensett & Searcy, and that will be heard by Examiner Burchmore in a few minutes, as I understand; and the other was the Woodworth & Louisiana Central Railroad. Is that road represented?

Mr. Thurmond: I represent that road.

Commissioner Harlan: Are your witnesses here?

Mr. Thurmond: Yes, they are around the building. They are not all here now.

Commissioner Harlan: Have you any witnesses here now?

1467 Mr. Thurmond: No. Will you take that up in connection with the two other roads, the Sibley, Lake Bistineau & Southern and——

Commissioner Harlan: Are the witnesses here?

Mr. Thurmond: They are all within call.

Mr. Riddell: Just before adjournment your Honor called the Ouachita & Northwestern, and I presumed you were going to take it up immediately after adjournment. It follows the Natchez, Urania & Ruston and is an Iron Mountain connection.

Commissioner Harlan: Well, we will reach that this afternoon, I hope; in fact I know we shall.

Mr. Riddell: I thought as the other lines were not ready immediately on the call we might take that up now.

Commissioner Harlan: How many witnesses have you?

Mr. Riddell: Just one. It will not take very long.

Commissioner Harlan: While counsel is getting his witnesses we will hear your witness.

1468 *Ouachita & Northwestern Railroad.*

C. E. SLAGLE, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?
Mr. Slagle: Clarks, Louisiana.
Commissioner Harlan: Where is that with relation to Alexandria?
Mr. Slagle: 62 miles north of Alexandria and 36 miles south of Monroe.
Mr. Riddell: You might indicate it to the Commissioner.
Mr. Slagle: Here is a map of the road which might be of some service.

(Witness indicates position of Clarks on map before the Commissioner.)

(The map so offered and identified, was received in evidence and thereupon marked Ouachita & Northwestern Railroad Exhibit No. 1, Witness Slagle, received in evidence December 13th, 1910, and is attached hereto.)

Commissioner Harlan: When was that line organized?
Mr. Slagle: It was incorporated May 27th, 1905, and amended on November 11th, 1908.
1469 Commissioner Harlan: When was the road built?
Mr. Slagle: The Standard division part of it was purchased from another company in 1906, and the northwest line from Clarks, the construction was commenced also in 1906.
Commissioner Harlan: Have you a line on one side of the Iron Mountain and one on the other side?
Mr. Slagle: The line on the east side has been taken up.
Commissioner Harlan: And now you have a line only on the west side?
Mr. Slagle: In a northwesterly direction.
Commissioner Harlan: From Clarks?
Mr. Slagle: From Clarks.
Commissioner Harlan: What was the name of the line running from Clarks towards the east and south?
Mr. Slagle: Ouachita & Northwestern.
Commissioner Harlan: And that is also the name of the line running west from Clarks?
Mr. Slagle: Yes.
Mr. Riddell: I want to correct a mistake. You say you only have a line west of the Iron Mountain. That is from Clarks?
1470 Mr. Slagle: Yes, and east from Standard.
Commissioner Harlan: Is that all the investment of one company?
Mr. Slagle: Yes, sir.
Commissioner Harlan: Those three lines?
Mr. Slagle: Yes, sir.
Commissioner Harlan: We will start from the one running west from Clarks. What division do you call that?

Mr. Slagle: The Jackson Division.

Commissioner Harlan: What is the length of that line?

Mr. Slagle: It is under construction; as the new construction, the grading was finished in September of this year, 24⅝ miles, and the steel has been laid to date approximately 20 miles, and it is now being laid about two miles a month.

Commissioner Harlan: Is it in operation?

Mr. Slagle: It is up to the end of the steel and increases as they finish it.

Commissioner Harlan: Have you at this time constructed any logging connections?

Mr. Slagle: The railroad company owns all the railroad property of every description serving its company.

Commissioner Harlan: You have tram lines running into
1471 the main line?

Mr. Slagle: Yes, sir, about 15 miles.

Commissioner Harlan: Now the line that ran west and somewhat southerly from Clarks you say has been removed?

Mr. Slagle: Yes, sir, southeast.

Commissioner Harlan: Easterly and somewhat southerly?

Mr. Slagle: Yes.

Commissioner Harlan: What was the length of that line?

Mr. Slagle: That line was originally about 14 miles.

Commissioner Harlan: And when was it built?

Mr. Slagle: The construction was commenced in November, 1903.

Commissioner Harlan: That was before the organization of the railroad company?

Mr. Slagle: It was before the incorporation of it.

Commissioner Harlan: Then it was originally built by whom?

Mr. Slagle: We built it in the name of the Ouachita & Northwestern but as a matter of fact the Louisiana Central Lumber Company built it.

Commissioner Harlan: How long was it operated?

Mr. Slagle: It was operated until 1909.

Commissioner Harlan: And its title passed to the railroad
1472 company?

Mr. Slagle: Yes, sir, by deed. The property was all deeded to the Ouachita & Northwestern with a right of way northwest, not southeast, in 1908.

Commissioner Harlan: Was there any lease to it of the southeast property?

Mr. Slagle: Yes, sir, there was a letter from the lumber company to the railroad company authorizing the use of the right of way through that country.

Commissioner: Harlan: That lumber was all taken off and then the road itself removed between the termini?

Mr. Slagle: We purchased at Standard a mill property in 1906 which changed the operations at Clarks, leaving the balance of the property of that company for the sawing at Standard, and hence the operations were somewhat changed by that increased purchase of timber in that territory.

Commissioner Harlan: Well, in the meantime had you taken off all of the timber that was on that southeast or Standard branch?

Mr. Slagle: As far as it extended?

Commissioner Harlan: As far as it extended, yes.

1473 Mr. Slagle: Yes, sir.

Commissioner Harlan: And you took up the tram lines and connected with it?

Mr. Slagle: Yes.

Commissioner Harlan: Or did you leave those tram lines and run them over to your Standard branch?

Mr. Slagle: No, they did not connect.

Commissioner Harlan: You took up all the tracks there?

Mr. Slagle: Yes, sir.

Commissioner Harlan: Did the Louisiana Central Lumber Company then have a mill at Clarks?

Mr. Slagle: Yes.

Commissioner Harlan: Has it still a mill at Clarks?

Mr. Slagle: We have two mills at Clarks.

Commissioner Harlan: Then they acquired this other property at Standard?

Mr. Slagle: Yes.

Commissioner Harlan: That is a mill property?

Mr. Slagle: It is a small mill property, but they rebuilt it entirely and enlarged it.

Commissioner Harlan: Are there any farms around what we call the southeast branch?

1474 Mr. Slagle: A good many farms, yes, sir.

Commissioner Harlan: Were there any other mills or interests?

Mr. Slagle: We ship from one of the spurs of that tram, from what is called Cruse Lumber Company, and served them while the tram was there, but that part was never incorporated, you understand.

Commissioner Harlan: Where was their mill?

Mr. Slagle: About six miles from Clarks.

Commissioner Harlan: And east?

Mr. Slagle: Southeast, but it was on a spur and not on the main line of that track.

Commissioner Harlan: Was there any other mill on that line?

Mr. Slagle: No.

Commissioner Harlan: Was that mill using lumber from the lands of the Louisiana Central Lumber Company?

Mr. Slagle: No.

Commissioner Harlan: It owned its own lands?

Mr. Slagle: It owned its own land and is still in operation.

Commissioner Harlan: Did you move any general mer-

1475 chandise or farm produce?

Mr. Slagle: We moved some, but an inconsiderable amount.

Commissioner Harlan: While that line was there?

Mr. Slagle: Yes, sir. And there was some hay moved.

Commissioner Harlan: Did you have some stations on that line?
Mr. Slagle: Three buildings.
Commissioner Harlan: And you used some locomotives and equipment on that line that were later transferred to the other line when that line was taken up?
Mr. Slagle: Yes, sir, when we incorporated, by deed, the property was all sold.
Commissioner Harlan: Well, but this line we have referred to as the southeastern line was owned by the Ouachita & Northwestern Road, that is the title——
Mr. Slagle: The deed passed in 1908.
Commissioner Harlan: And at that time it was in operation?
Mr. Slagle: Yes.
Commissioner Harlan: But it is not in operation at this time?
Mr. Slagle: No, sir.
Commissioner Harlan: But the two mills at Clarks are still
1476 running?
Mr. Slagle: Yes.
Commissioner Harlan: And they belong to the Louisiana Central Lumber Company?
Mr. Slagle: They belong to the Louisiana Central Lumber Company.
Commissioner Harlan: When was the branch built that extends easterly from Standard?
Mr. Slagle: By purchase, there was five miles of that line passed to the Louisiana Central Lumber Company, and in turn was transferred by this deed to the Ouachita & Northwestern Railroad Company, and it has been extended since approximately nine miles southeast.
Commissioner Harlan: Making a total mileage of about 13 miles of main track.
Mr. Slagle: Well, nine miles from that, exclusive of the sidings at Standard.
Commissioner Harlan: What is the total length of the main line from Standard?
Mr. Slagle: Nine miles approximately.
Commissioner Harlan: Now you have in connection with that a lot of tram roads?
1477 Mr. Slagle: About five miles and a half in that division.
Commissioner Harlan: What is the capital stock authorized?
Mr. Slagle: $600,000.
Commissioner Harlan: And what have you issued?
Mr. Slagle: $303,000.
Commissioner Harlan: Have you any bonded indebtedness?
Mr. Slagle: No, sir.
Commissioner Harlan: What was the cost of the construction of those three branches, the original actual cost?
Mr. Slagle: You mean the one southeast, that has been taken——
Commissioner Harlan: No, the one to the west, the one to the southeast and the one that runs from Standard.

Mr. Slagle: About $334,000 or $335,000.

Commissioner Harlan: That was the actual cost of those three roads with the equipment?

Mr. Slagle: Yes.

Commissioner Harlan: And the capital was furnished by the Louisiana Central Lumber Company?

Mr. Slagle: In this way. At the time of the incorporation a dividend was declared of $303,000 payable in stock of the
1478 Ouachita & Northwestern, issued to each stockholder, their pro rata as a stockholder of the Ouachita & Northwestern, with one exception, there is Mr. J. P. Stubbs, our general attorney, holds one share.

Commissioner Harlan: With that exception the stock ownership in the two enterprises is substantially the same?

Mr. Slagle: The individual stockholders are the same with that one exception.

Commissioner Harlan: What is the total mileage now in operation?

Mr. Slagle: Including the spurs, or exclusive of the spurs?

Commissioner Harlan: Main line?

Mr. Slagle: About 29 miles.

Commissioner Harlan: And including the spurs?

Mr. Slagle: About 50½ miles of track, 56 pound steel, with the exception of four miles, which is 40 pound, and that is part of the trams into the woods.

Commissioner Harlan: Is it ballasted?

Mr. Slagle: Well ballasted with dirt only.

Commissioner Harlan: Standard gauge?

1479 Mr. Slagle: Exceptionally well ballasted, especially toward the northwest.

Commissioner Harlan: The gauge is standard gauge?

Mr. Slagle: Yes, sir.

Commissioner Harlan: How many locomotives?

Mr. Slagle: Seven locomotives.

Commissioner Harlan: And 149 freight cars?

Mr. Slagle: 146 freight cars—there are 150 altogether, of all kinds of cars.

Commissioner Harlan: What is that other car?

Mr. Slagle: I think a stock car.

Commissioner Harlan: What traffic do you move other than lumber manufactured, and log lumber?

Mr. Slagle: You understand the road is new now. They are just taking out the first crop of the forest, but up to June 30th of this year we handled 412,205 tons, of which 1,661 tons was other than the Louisiana Central Lumber Company.

Commissioner Harlan: Can you give us some idea of the tonnage on that southeastern branch we have spoken of?

Mr. Slagle: That was taken up?

Commissioner Harlan: Yes, before it was taken up.

Mr. Slagle: It was mostly forest products excepting this
1480 mill that we served from one of the spurs, and we had an understanding that we would move their traffic until we took up that particular spur.

Commissioner Harlan: Well, you said you had some farms there?
Mr. Slagle: Yes, sir.
Commissioner Harlan: Any cotton?
Mr. Slagle: A few bales.
Commissioner Harlan: General merchandise and hay?
Mr. Slagle: Some merchandise out to what they call Copenhagen, about seven miles, and there was a hay farm from which we moved some hay into Clarks.
Commissioner Harlan: But it was small?
Mr. Slagle: Yes, sir.
Commissioner Harlan: But you have not had a full year's operation on the new line northwest——
Mr. Slagle: No.
Commissioner Harlan: Or the new line east from Standard?
Mr. Slagle: Yes, sir, they have been there since 1907.
Commissioner Harlan: That was what my question was. I am taking the railroad company as one investment. and I want to
1481 know what the total tonnage was last year on the two branches now in operation.
Mr. Slagle: 412,205 tons up to June 30th of this year.
Commissioner Harlan: Both branches?
Mr. Slagle: Yes, sir.
Commissioner Harlan: And of that some 1600 tons was outside traffic?
Mr. Slagle: Yes, sir.
Commissioner Harlan: What were your gross receipts?
Mr. Slagle: $155,936.47.
Commissioner Harlan: And your operating expenses?
Mr. Slagle: $131,793.79.
Commissioner Harlan: And your net?
Mr. Slagle: $24,142.68.
Commissioner Harlan: And you had operated the western branch how many months?
Mr. Slagle: We had operated up until January 1st, 1910, eight miles of it. The balance was constructed in 1910 up to a junction with the Tremont & Gulf Railroad, excepting the laying of steel. The ties had been assembled, and excepting the laying of steel on about four miles, which is now being laid at the rate of two miles a month.
1482 Commissioner Harlan: You are then connecting up with the Tremont & Gulf at the west end of the line?
Mr. Slagle: Yes, sir, and we have a surveying crew beyond that now. They are in the field now.
Commissioner Harlan: That is the line Mr. Seaman spoke of the other day?
Mr. Slagle: Yes, sir.
Commissioner Harlan: What is the total acreage owned by the Louisiana Central Lumber Company?
Mr. Slagle: Uncut, or since its purchase, or both?
Commissioner Harlan: Both?
Mr. Slagle: We have acquired in fee simple and by timber deed

approximately 235,000 acres, and there is uncut today, including the timber deed, approximately 180,000 acres.

Commissioner Harlan: Of that amount of timber land what part lies west of the Iron Mountain?

Mr. Slagle: West of the Iron Mountain uncut, you mean?

Commissioner Harlan: Well, no, both.

Mr. Slagle: It want to explain that we have sold about practically 15,000 acres to a colonization company.

Commissioner Harlan: Is that east of the Iron Mountain?

1483 Mr. Slagle: That is east of the Iron Mountain where the track is taken up. Do you wish to include that now?

Commissioner Harlan: Well, you had better let us know what you have. Explain your holdings?

Mr. Slagle: I should judge about 60,000 acres.

Commissioner Harlan: East of the Iron Mountain?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And of that about 15,000 acres have been sold recently?

Mr. Slagle: Yes, sir.

Commissioner Harlan: To some colonizing company?

Mr. Slagle: Yes, sir, and that leaves uncut there about 35,000 or 38,000 acres probably.

Commissioner Harlan: Is that colony an agricultural community?

Mr. Slagle: That is the idea, yes, sir.

Commissioner Harlan: That is along the line of the original branch to the southeast?

Mr. Slagle: Yes, sir.

Commissioner Harlan: They are all farmers?

Mr. Slagle: Yes, sir, that is their idea, of adding to the settlers already there; it is an experiment, in fact.

1484 Commissioner Harlan: Have they entered upon farms?

Mr. Slagle: The deed has just passed about five or six months ago and they have not perfected their plans.

Commissioner Harlan: How far east of Clarks is that?

Mr. Slagle: Commencing four miles from Clarks, and it runs through townships 12, 11, 3 and 4 east.

Commissioner Harlan: How distant is the farthest part of the track you have sold?

Mr. Slagle: About 14 miles from Clarks.

Commissioner Harlan: At that point does the land approach your branch from Standard?

Mr. Slagle: The uncut portion of the timber holdings.

Commissioner Harlan: But not the colony?

Mr. Slagle: Well, the uncut lands go up to where the timber has not been removed, but I should say it is about ten miles from the end of the track southeast from Standard.

Commissioner Harlan: Is this pine or hardwood, or both?

Mr. Slagle: Both.

Commissioner Harlan: Does pine predominate?

Mr. Slagle: Largely.

Commissioner Harlan: Are your mills pine mills?

1485 Mr. Slagle: We built one of the mills at Clarks with the idea of cutting hardwood, but for a time that idea has been abandoned, and it is now cutting pine, so all the mills at this time are cutting pine.

Commissioner Harlan: You have one mill at Standard or two?

Mr. Slagle: One mill.

Commissioner Harlan: So you are operating three mills. What is your total daily output on the average?

Mr. Slagle: In carloads, or feet?

Commissioner Harlan: Well, feet?

Mr. Slagle: I should say about 325,000 feet; five bands and a gang is the equipment.

Commissioner Harlan: How many carloads approximately does that make a day?

Mr. Slagle: I should say something like 20 cars.

Commissioner Harlan: Do you have any trackage rights over the Iron Mountain between the mills?

Mr. Slagle: We had a contract with the Iron Mountain that expired November 27th, 1910, but an application has been made for its renewal and it will probably be renewed within the next 30 days.

1486 Commissioner Harlan: What use did you make of that?

Mr. Slagle: For the running of the trains of the Ouachita & Northwestern Railroad between Clarks and Standard at a per train mile basis of 50 cents per train mile.

Commissioner Harlan: Trains of logs?

Mr. Slagle: And empties, either way.

Commissioner Harlan: What was the purpose of that, to use another mill when the other two were busy or pressed, or what?

1487 Mr. Slagle: One idea was to connect up the two roads, and you will notice from the map there is a road under construction now connecting up the two tracks.

Commissioner Harlan: Did you make substantial use of this trackage privilege?

Mr. Slagle: No great use of it; no, sir.

Commissioner Harlan: Did you haul over either of the branches now in operation or over the train connecting with the branches the logs of any other than the Louisiana Central Lumber Company?

Mr. Slagle: Some hickory logs have moved.

Commissioner Harlan: Do they come in over the tram line to the main line?

Mr. Slagle: They are there assembled, yes, sir, and cars are switched off to any of the spurs and loaded.

Commissioner Harlan: Have you such movements on both branches?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And what do they amount to?

Mr. Slagle: Very small amount up to the present time.

Commissioner Harlan: With that exception do you move lum-

ber for any one other than the Louisiana Central Lumber Company?

1488 Mr. Slagle: As I explained a while ago, the Cruse Lumber Company southeast had a mill and we served them until that was taken up, probably two or three cars a week, and there are two mills now planned to locate on the line northwest between Clarks and the Tremont & Gulf Road. You understand that is a new road and they are just starting. The Pioneer Pole & Shaft Company.

Commissioner Harlan: Have they some lumber lands up there?

Mr. Slagle: They have some and they propose to buy from the Louisiana & Central Lumber Company some hickory logs. Hickory is their lumber.

Commissioner Harlan: Will that be the main source of their supply?

Mr. Slagle: I should judge it would be about divided half and half.

Commissioner Harlan: Those mills are not in operation?

Mr. Slagle: No, we are just making the arrangements now for the location of them on our line.

Commissioner Harlan: With those exceptions do you now haul lumber or logs for anybody other than the Louisiana & Central Lumber Company?

1489 Mr. Slagle: We are getting out a good many staves and stave bolts.

Commissioner Harlan: For outside interests?

Mr. Slagle: For outside interests.

Commissioner Harlan: And other lands not belonging to the Louisiana & Central Company?

Mr. Slagle: Not belonging to the Louisiana & Central Lumber Company.

Commissioner Harlan: What is the extent of that movement?

Mr. Slagle: It is quite a lot since July of this year. Prior to that it was not a great amount. There seems to have been renewed activity starting in with beginning about mid-summer this year; five or six of them have gone in there with the idea of buying the unsold portions of the hard wood and working it into staves and stave bolts.

Commissioner Harlan: Are there any towns on either of these two branches?

Mr. Slagle: The town of Chester, thirteen miles from Clarks northwest has been established and there is also a post office and some stores, two stores I believe have located there within the last six months.

1490 Commissioner Harlan: They are not company stores?

Mr. Slagle: They are not company stores. And the town of Newport, which is a post office, a mile and a half away as I believe, a mile and a half farther out; and we have a petition from the Jackson Parish officials in the Southern part of Jackson Parish asking us to extend our line to a point at Weston wi-h the idea of locating the County Seat of Jackson Parish there. We told them we would put in our engineering force there and see the advisability of the con-

struction of that line and with the idea of either extending it beyond or to the Rock Island and we would let them know before they voted on the proposition in January. Outside of that I know of no industries likely to locate in the near future.

Commissioner Harlan: Taking the tonnage of all these outside industries and shippers, does it amount to as much as five per cent of your whole tonnage?

Mr. Slagle: I don't think so. It is sixteen hundred and sixty-one tons up to July of this year.

Commissioner Harlan: That is less than one per cent?

Mr. Slagle: Yes. But the country is new and the timber will have to be first removed before it will be materially increased,
1491 so that the country can settle up. That is our belief as to the improvements which will come to the earth, that the timber will first have to be removed.

Commissioner Harlan: Where is the general office of the road?

Mr. Slagle: Clarks, Louisiana.

Commissioner Harlan: Is it in one of the mills?

Mr. Slagle: It is in the general office of the lumber company.

Commissioner Harlan: Are the officers of the railroad company substantially the officers of the lumber company?

Mr. Slagle: Practically so. There are some few variations.

Commissioner Harlan: Do they get salaries as officers of the railroad company?

Mr. Slagle: None, except myself.

Commissioner Harlan: How many clerks do you have in the office of the railroad company or connected with its work?

Mr. Slagle: There are three of them looking after it, but they also work for the lumber company and are paid proportionately to the service rendered to either company, for economy.

1492 Commissioner Harlan: How many train and track crews?

Mr. Slagle: There are 60 or 70 all together.

Commissioner Harlan: They do not appear on the lumber company's accounts at all?

Mr. Slagle: No.

Commissioner Harlan: You operate the tram lines?

Mr. Slagle: Yes.

Commissioner Harlan: And you move them as may be required?

Mr. Slagle: Yes.

Commissioner Harlan: To what account do you charge the cost of moving out of your tram line connections?

Mr. Slagle: For the purpose of not mixing up the accounts, the railroad company took all this property over, and by agreement with the lumber company they proposed to build these spurs and take them up and re-lay them and connect with *with* the main line of the Ouachita & Northwestern, for which they would charge a service of $1.50 a thousand, log scale, on the logs, and we charge the spurs—a spur is taken up, as it will appear in the Commission's report.

Commissioner Harlan: Does it go to the expense of maintenance of way and structures?

1493 Mr. Slagle: No, it is a separate account, $53,683.68 last year.

Commissioner Harlan: Was any part of that for taking up your southeast branch from Clarks?

Mr. Slagle: Yes, sir, part of that is in there.

Commissioner Harlan: What was the cost of that?

Mr. Slagle: Of course, it was not well constructed like our present line; it was about $70,000 altogether, and last year about $14,000 went into this $53,000.

Commissioner Harlan: I am not sure that I understand that. My question is how much did it cost you to take up the southeast branch?

Mr. Slagle: Regardless of the period?

Commissioner Harlan: Yes, the operation of taking it up. It was all done at one time?

Mr. Slagle: No.

Commissioner Harlan: As one operation?

Mr. Slagle: No. You see we left some timber with which to operate on while we were taking it up, and we were probably two years taking up the entire 14 miles.

Commissioner Harlan: For this $1.50 do you load the logs

1494 on the cars?

Mr. Slagle: No, the lumber company loads them. The railroad company delivers the cars to the steam log loaders of the lumber company.

Commissioner Harlan: You do not participate in it at all?

Mr. Slagle: No.

Commissioner Harlan: You do no work of any kind for the lumber company?

Mr. Slagle: No.

Commissioner Harlan: Do they unload them in the pond?

Mr. Slagle: They do. They deliver them in the pond.

Commissioner Harlan: Then you have this transit privilege?

Mr. Slagle: Milling in transit.

Commissioner Harlan: And the lumber rate under the milling in transit rate commences with the junction of the tram line, between the tram line and your main line?

Mr. Slagle: Yes, sir, Oakland and Somerville are the two billing points.

Commissioner Harlan: Somerville is on the Standard Division?

Mr. Slagle: Yes.

Commissioner Harlan: And Oakland on the northwest

1495 branch?

Mr. Slagle: Yes.

Commissioner Harlan: Have you any particular market to which you send a greater volume than to another market, I refer now to the lumber company?

Mr. Slagle: Generally yard stock trade is where most of it goes. Do you want to know the districts?

Commissioner Harlan: Yes.

Mr. Slagle: That will vary of course as the orders are delivered to

the lumber company; I should judge that Missouri, Kansas, Nebraska, Illinois, Indiana and Ohio get the bulk of it.

Commissioner Harlan: What division do you get to Illinois, for instance?

Mr. Slagle: From two to four cents. The State of Illinois?

Commissioner Harlan:

Mr. Slagle: I think it is four cents to Illinois. I am not sure about that.

Commissioner Harlan: Do you get any five cent divisions?

Mr. Slagle: No, sir.

Commissioner Harlan: We will come back to the Standard branch. Where is the mill of the Louisiana Central Lumber
1496 Company with relation to the Iron Mountain tracks?

Mr. Slagle: About half a mile.

Commissioner Harlan: Where is the planing mill?

Mr. Slagle: You mean the sawmill?

Commissioner Harlan: I meant the sawmill in my first question.

Mr. Slagle: It is about ⅜ of a mile, and the planing mill is a fraction over half a mile.

Commissioner Harlan: Is it reached by a spur track of the Iron Mountain?

Mr. Slagle: No, no spur tracks or sidings of any description belonging to the Iron Mountain reach beyond their right of way.

Commissioner Harlan: Did they ever have a spur track?

Mr. Slagle: Never.

Commissioner Harlan: Is that true of the mill at Clarks?

Mr. Slagle: Both places.

Commissioner Harlan: They never had any spur track?

Mr. Slagle: No, sir.

Commissioner Harlan: What service do you understand you perform for these divisions? I know about the logs up to the mill——

1497 Mr. Slagle: The service performed is the milling in transit from points on their line to Clarks, where they are converted into lumber from the logs, and then the lumber is re-assembled and loaded and the railroad company receives from the Iron Mountain Road empties from the receiving track, and after they are loaded the Ouachita & Northwestern switches from the planing mill, weighs the lumber and delivers it to the rails of the Iron Mountain on their delivering tracks.

Commissioner Harlan: Where are your scales?

Mr. Slagle: One at Clarks and one at Standard, about half a mile from each station—a mile from Clarks and half a mile from Standard.

Commissioner Harlan: They are car scales, are they?

Mr. Slagle: Yes, sir, Fairbanks scales.

Commissioner Harlan: They weigh the lumber in the cars?

Mr. Slagle: Yes, sir.

Commissioner Harlan: Now how far is this interchange track from your sawmill?

Mr. Slagle: It is a little over a mile from Clarks and a little over half a mile from Standard.

Commissioner Harlan: Does the Louisiana Lumber Company ship timber out?

1498 Mr. Slagle: Do you mean construction timbers?

Commissioner Harlan: Yes, construction timbers.

Mr. Slagle: There is a very small per cent of that class.

Commissioner Harlan: How about rough lumber, a small percentage of that?

Mr. Slagle: Yes, sir.

Commissioner Harlan: Most of it is dressed lumber?

Mr. Slagle: Yes, sir.

Commissioner Harlan: I would like to know how long you have been engaged either as a railroad man or as a lumber man down in this part of the country?

Mr. Slagle: About a little over nine years.

Commissioner Harlan: You know it pretty well, don't you?

Mr. Slagle: Well——

Commissioner Harlan: You know the country pretty well?

Mr. Slagle: I have tried to observe.

Commissioner Harlan: Do you know any small mills carrying on a successful lumber business?

Mr. Slagle: This Cruse Lumber Company I am speaking of is still pulling to the Iron Mountain since we ceased to serve them.

Commissioner Harlan: Why did you cease to serve them?

1499 Mr. Slagle: Because they were located on one of our spurs which reached their mill, and it was agreed we would serve them so long as that spur was located there. I explained to them that it was not incorporated in the company.

Commissioner Harlan: Do you speak of a spur as what we call tram or logging roads?

Mr. Slagle: No, it was a spur from the main line, and it was explained to them it would be mutually satisfactory after the timber was cut, as it was not an incorporated part of the line, to take it up.

Commissioner Harlan: What do you mean by saying it was not an incorporated part of the line?

Mr. Slagle: That is, the original charter reads from a point northwest from Clarks in the vicinity of Weston, that is the principal part.

Commissioner Harlan: You built a main line and then you built a spur connecting with it and you own the right of way and you own the rails and ties and you regard that as not being a part——

Mr. Slagle: It is a part, I did not mean to say it was not a part of the system, because the deeds passed in 1908 to the

1500 property, except the right of way southeast.

Commissioner Harlan: Apparently you do not regard it as part of the incorporated road?

Mr. Slagle: Not part of the permanent location.

Commissioner Harlan: But that was a spur track connecting with your main line?

Mr. Slagle. Yes, sir.

Commissioner Harlan: It was not a logging track connecting with your main line?

Mr. Slagle: Spur track connecting with the main line.

Commissioner Harlan: And you thought you could take it up any time you wished, whether this mill wanted you to or not?

Mr. Slagle: The reason I had the conference with them was to see whether they would let us.

Commissioner Harlan: You were willing to respect their wishes, but you could have stood on your right to take it up?

Mr. Slagle: I believe we could.

Commissioner Harlan: And you did take it up, that southeastern branch?

Mr. Slagle: Yes.

Commissioner Harlan: And left there some farmers that
1501 you had been serving?

Mr. Slagle: Yes.

Commissioner Harlan: Now there is a colony of people going in there?

Mr. Slagle: We sold them some 15,000 acres and they had acquired by purchase 5,000 more, making 20,000 all together, which they proposed to settle up, a colonization scheme of some kind.

Commissioner Harlan: And that sale was made after you had taken up the tracks?

Mr. Slagle: Yes, sir. They asked for the price on the lands, and we told them they would not be for sale until after we did take the road up.

Commissioner Harlan: Now the railroad company owned the right of way?

Mr. Slagle: We did not, no, sir.

Commissioner Harlan: You did not own that right of way?

Mr. Slagle: No, sir.

Commissioner Harlan: It does own the right of way on the other two branches.

Mr. Slagle: Yes, sir.

1502 Commissioner Harlan: And it is your impression, is it, under the laws of the State of Louisiana, that if the right of way belongs to someone else the railroad can be removed?

Mr. Slagle: That is my impression. The owner of the land can——

Commissioner Harlan: Can oust you, can eject you.

Mr. Slagle: Yes, sir. In this case there was an agreement or an understanding that they had permission to use those rights of way, but that was in the form of an agreement and not a deed.

Commissioner Harlan: It was understood in the form of a letter?

Mr. Slagle: Yes, sir.

Commissioner Harlan: It was not even in the form of a lease?

Mr. Slagle: No.

Commissioner Harlan: It was simply that the railroad company was a tenant at will for a definite period?

Mr. Slagle: That southeast——

Commissioner Harlan: It was just a tenancy at will?

Mr. Slagle: They were given permission to enter upon the
1503 lands of the Louisiana Central Lumber Company for the purpose of serving them in removing this pine timber southeast. When I speak of southeast from Clarks, I do not speak of the other line.

Commissioner Harlan: Well, you were given that permission but there was some track there before the railroad company was chartered?

Mr. Slagle: Yes, sir.

Commissioner Harlan: But the railroad company extended that track?

Mr. Slagle: No, sir; they began to take up coming back before that. Fourteen miles was originally constructed, and part of it had been taken up before the deed passed. This was treated the same as spur tracks leading from the main line now in all directions, under the $1.50 contract with the Louisiana Central Lumber Company, that they lay the spurs and take them up for the purpose of assembling logs to the main line and finally reaching the mills of this company, and that construction southeast was regarded in the same way.

Commissioner Harlan: Well, you say it was regarded in the same light, but it was nevertheless operated by the railroad company?

1504 Mr. Slagle: Yes, sir.

Commissioner Harlan: And you got joint through rates on lumber from the eastern terminus on the main line where the tram roads joined them?

Mr. Slagle: Yes, sir. In 1906——

Commissioner Harlan: Wait a minute. Did you not get such divisions of joint through rates?

Mr. Slagle: Yes, sir.

Commissioner Harlan: So that the published rates in which your line was named as a party extended to the joining of that line to the junction with the tram lines?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And you purported to carry lumber over it as a common carrier?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And you did carry some outside stuff, very little for other people, as a common carrier?

Mr. Slagle: Yes, sir.

Commissioner Harlan: Under the published rates?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And then you took the track up?

Mr. Slagle: Yes.

1505 Commissioner Harlan: Now I asked you whether you were familiar with this country, and I understood you to say that you were.

Mr. Slagle: As far as my observation has gone. I do not know just how familiar I may appear after putting the question.

Commissioner Harlan: I will put the question to you that I put

to other witnesses this morning, whether you know any one within good driving distance from your mills who is successfully conducting at this time a lumber business involving a wagon haul of the logs to the mill and a wagon haul of the lumber to a railroad track?

Mr. Slagle: Excepting the one that I spoke of, the Cruse Lumber Company.

Commissioner Harlan: But that lumber company——

Mr. Slagle: Is still doing business.

Commissioner Harlan: Well, it got a good start on your line.

Mr. Slagle: It was operated before we reached them.

Commissioner Harlan: *Was*—its wagon haul now?

Mr. Slagle: About five miles to the town of Kelly?

Commissioner Harlan: What is its output?

1506 Mr. Slagle: Yellow pine principally, some of both. It is a small mill.

Commissioner Harlan: How long has it been operating there?

Mr. Slagle: I should judge since 1901 they have been operating around in that country, and their present location, they have been operating there, I should judge, about five or six years.

Commissioner Harlan: Was that on your Standard Branch or on your southeast branch?

Mr. Slagle: On the southeast branch from Clarks. They originally located on what they call the Monroe Lumber Company's spur leading out from Spaulding, which was taken up years ago. After that spur was taken up, they moved to a point about five miles from Kelly where they had purchased some timber land, and were operating there when one of the spurs of the Ouachita & Northwestern reached their mill, and while that spur was located there we served them, shipping out two or three cars a week.

Commissioner Harlan: You say it is still in operation?

Mr. Slagle: Yes.

Commissioner Harlan: What is its output, do you know?

Mr. Slagle: I should judge about two cars a week.

1507 Commissioner Harlan: Do you understand it is a successful enterprise and prosperous?

Mr. Slagle: I do not know as I could answer just how prosperous. They seem to be doing a little business there, have a little store and getting out this product and shipping it to the town of Kelly. Now they operate a farm in connection with this mill, and there are times when the mill crew put in a crop, so it is not *an* operation of the full 312 days of the year; I should judge about two-thirds of the time the mill runs.

Commissioner Harlan: It appears from your testimony that the railroad Company owned by the Louisiana Central Lumber Company is operating at a substantial profit yearly.

Mr. Slagle: About four and a half per cent.

Commissioner Harlan: Well, you had in 1909 net revenues from operation of $69,000.

Mr. Slagle: No, sir.

Commissioner Harlan: What were they?

Mr. Slagle: About $7,000 up to June 30th, 1900, was the accumulated surplus.

Commissioner Harlan: What was the accumulated surplus?

Mr. Slagle: About $7,000.

1508 Commissioner Harlan: No, but in that year your earnings as shown by your reports were something in excess of $130,000.

Mr. Slagle: I think you have failed to take off the taking up of the spurs.

Commissioner Harlan: Well, that is not a revenue from operation?

Mr. Slagle: No, I thought you said net operation.

Commissioner Harlan: No, I was talking about revenue from operation, $131,000.

Mr. Slagle: Yes, sir.

Commissioner Harlan: And your expenses were $68,000 and your net revenue as shown on your own report was $62,000.

Mr. Slagle: From which you were to deduct the taking up of the spurs.

Commissioner Harlan: Well, you do not do that every year?

Mr. Slagle: As they are taken up they are charged off each year.

Commissioner Harlan: I thought you referred to the southeastern branch, the expense of taking that up?

Mr. Slagle: No.

Commissioner Harlan: Well, taking out that expense you

1509 had a substantial net?

Mr. Slagle: For the year ending June 30th, 1909, it was about $4,000.

Commissioner Harlan: Well, you said four and one-half per cent.

Mr. Slagle: Well, I was speaking of the year ending June 30th, 1910.

Commissioner Harlan: What is your operating ratio, do you remember, the ratio of operating expenses to revenue?

Mr. Slagle: The straight operating expenses, do you mean?

Commissioner Harlan: Have you not figured out an operating ratio?

Mr. Slagle: About 49 per cent, I think, of the regular operating expense.

Commissioner Harlan: This last year?

Mr. Slagle: Yes, sir. I will tell you exactly.

Commissioner Harlan: Well, the ordinary percentage of a railroad is what, on the regular line?

Mr. Slagle: About 70, I understand.

Commissioner Harlan: Considering the fact that you are making four and a half per cent on your money, do you or do you

1510 not—I now refer to the lumber company, enjoy an advantage, having a division, over the man who has to haul his lumber and logs?

Mr. Slagle: It depends entirely on the timber back of the mill. In this particular case, let me illustrate what I mean by that. In this particular case nine years ago we saw this advantage as a lumber

company, a great tract of timber and undeveloped country between Clarks in a northwesterly direction to the Vicksburg, Shreveport & Pacific north, and a so-called tap line running from Ruston known as the Arkansas Southern, which is now part of the Rock Island. And I was sent into that country to look it over and I reported to my principal that there was an area of some 30 or 40 miles of undeveloped country, but it would require a large expenditure to develop it. The land would have first to be purchased and then developed by building up a main line railroad.

Commissioner Harlan: I follow all that and understand it all, but you have done all that.

Mr: Slagle: We bought the timber before we put the railroad in.

Commissioner Harlan: Very well, you did that, and you have got everything now in running order. Now I put to you the inquiry as to whether at this moment this investment, and it
1511 is all one investment, does not give you an advantage over the small fellow, because you get this division of the through rate and he does not, and he has adopted wagons and you have adopted a railroad to get your stuff to the main line of the Iron Mountain.

Mr. Slagle: I will answer that this way. To the party with the tract of timber on the main line of a railroad I would say we were not, nor would the Louisiana Central have an advantage over the individual located at a point on the Ouachita & Northwestern or any other tap line; but to the party located farther in the interior in an undeveloped country off the main line of a trunk line or so-called tap line, we would.

Commissioner Harlan: Well, you talk of a party located in the interior. Now his lumber is just where yours is, or we will assume that it is.

Mr. Slagle: No, these particular lands have been developed by building this main line through.

Commissioner Harlan: No, but he has a haul of his logs sometimes three or four miles. We have heard of cases here where there was a haul three or four miles, and I believe one case of five
1512 miles to the mill, and then there was in one case a longer haul than that, I believe, of the lumber to the railroad. So that that fellow is substantially circumstanced as you are.

Mr. Slagle: Except he has no investment.

Commissioner Harlan: Yes, he has invested in horses and wagons, and you have invested in rails. You have adopted one method to get to the Iron Mountain and he has another. Now you get a division and he does not. I ask you as a practical man whether that does not give you an advantage over him in getting the lumber to the market?

Mr. Slagle: To the man located off the main line or tap line, it would.

Commissioner Harlan: Well, we are talking about that particular man who is located off of both.

Mr. Slagle: Yes, we would to that particular man.

Commissioner Harlan: You get divisions from what line?

Mr. Slagle: St. Louis, Iron Mountain & Southern.
Commissioner Harlan: You do not reach any other line?
Mr. Slagle: It will be very few months until we have arrangements in with other lines.
Commissioner Harlan: The Tremont & Gulf?
Mr. Slagle: The Tremont & Gulf, and probably——
1513 Commissioner Harlan: Have you some understanding with them about divisions?
Mr. Slagle: We have had a conference, but no definite understanding has been reached, excepting when we are ready to operate that the traffic departments of both companies will get together and work out a tariff satisfactory to both for that arrangement.
Mr. Riddell: Does the Ouachita and Northwestern concur in joint tariffs issued by the Iron Mountain?
Mr. Slagle: They do.
Mr. Riddell: And does it issue its own interstate tariffs to cover shipments for which there are no joint rates?
Mr. Slagle: They do.
Mr. Riddell: Does it make all the reports to the Federal and State Commissions that are required of it?
Mr. Slagle: They do.
Mr. Riddell: Who makes the waybills for the lumber that moves from points on the Ouachita & Northwestern covered by the joint rates?
Mr. Slagle: The agent of the Ouachita & Northwestern.
Mr. Riddell: And who issues the bills of lading for that lumber that is moving on joint through rates, that moves on through
1514 waybills?
Mr. Slagle: The Ouachita & Northwestern signs the bill of lading issued by the lumber company.
Mr. Riddell: It might be made out by the lumber company, but it is issued by the railroad?
Mr. Slagle: They are signed by the Ouachita & Northwestern.
Mr. Riddell: That is what I wanted to know. Is the Ouachita & Northwestern recognized by the Louisiana Railroad Commission as a common carrier?
Mr. Slagle: It is.
Mr. Riddell: Does the Ouachita & Northwestern receive in the shape of divisions from the Iron Mountain anything in excess of the original divisions?
Mr. Slagle: It does not.
Mr. Riddell: As a matter of fact in the case of tonnage for Colorado common points it gets less, does it not? Did it not some years ago and for perhaps a short period have an arrangement which contemplated an allowance to it of five cents?
Mr. Slagle: Yes, sir.
Mr. Riddell: hat is no longer effective, is it?
1515 Mr. Slagle: No, sir.
Mr. Riddell: You spoke about an extension of the line to its intersection with the Tremont & Gulf, to Jonesboro, I believe, or perhaps to Winnfield, through a trackage arrangement with

the Tremont & Gulf. What consideration would prompt that extension?

Mr. Slagle: Do you mean to the Rock Island?

Mr. Riddell: No, the extension that you spoke about being in contemplation to Jonesboro or to a connection with the Rock Island at Winnfield through the Tremont & Gulf.

Mr. Slagle: There were two reasons. One to secure additional terminal facilities with other roads, and the survey now under way is due to a petition from the Parish of Jackson, with the idea of extending our line to the Rock Island and locating the Parish seat thereupon and we have not decided as yet whether we will negotiate for trackage right over the Tremont & Gulf into Winnfield or extend our line to the Rock Island, but either one will probably be carried out.

Mr. Riddell: Were you influenced by a desire to make more tonnage tributary to the Ouachita & Northwestern?

Mr. Slagle: Yes, sir.

Mr. Riddell: And to enable you to secure a better car
1516 supply with which to accommodate the traffic which you originated?

Mr. Slagle: Yes, sir. And another idea, that after the timber is removed we consider that there is a vast country through which the road would pass that when settled up would make it a good permanent line.

Mr. Riddell: Is the country along this line of yours which runs from Clarks northwest, of a character which would make it suitable for agricultural purposes?

Mr. Slagle: Yes, sir; it is largely short leaf, which carries a good soil.

Mr. Riddell: Do you feel justified in the belief that it is sufficiently good for agricultural purposes so that that country would be calculated to support a railroad after the timber was cut out?

Mr. Slagle: We feel positive that that will be the case.

Mr. Riddell: Who owns the rails of the Ouachita & Northwestern Railroad?

Mr. Slagle: The Ouachita & Northwestern Railroad Company.

Mr. Riddell: They were acquired by ordinary purchase, were they, I suppose?

Mr. Slagle: Purchased by deed from the lumber company
1517 in 1908.

Mr. Riddell: You were asked as to whether a lumber company operating under the conditions that environ the Louisiana Central would enjoy an advantage over some smaller lumber man who was compelled to haul his logs into his mill by team. Do you know whether or not it is a fact that these larger lumber operators whose operations are supplemented by these incorporated so-called tap lines have also to haul their logs into the points where they are loaded on to the cars?

Mr. Slagle: We are compelled to, yes, sir.

Mr. Riddell: You do not know how much of an average distance that is, and how it compares with the distance over which the man operating without a tap line has to haul his logs, do you?

Mr. Slagle: To any spur extended by the Ouachita & Northwestern at or near any land not owned or already acquired, they would have a right to also cut that timber to be transported to some point on our line for the purpose of manufacture the same as we would serve the Louisiana Central Lumber Company.

Mr. Riddell: I think you misunderstood my question. The small operator, if we may term him such, who is not served by
1518 a tap line, and who has to log his mill through the medium of teams, has to haul those logs a certain average distance, and a large operator whose efforts are supplemented by the tap line has also to haul his logs up to the points where they are loaded on the logging cars?

Mr. Slagle: Yes, sir.

Mr. Riddell: I wanted to know if you could say as to how the wagon haul in the one instance compared with the wagon haul in the other. Do you know which one hauls it the greater distance?

Mr. Slagle: The average distance for the lumber company I think is about a mile and a half. Two miles would be the maximum haul, while the small operator runs as a rule from the tree out from his mill four, five or six miles.

Mr. Riddell: He hauls it further on an average?

Mr. Slagle: Yes, sir.

Mr. Riddell: But still both of them have a haul by wagon?

Mr. Slagle: Yes, sir.

Mr. Riddell: That is all.

Mr. Cowan: You spoke about the agricultural possibilities of all this country over here, and we have heard a great many other witnesses tell about it, and I find when you build a line out
1519 there when the lumber is taken out the line is taken out. Why did you not leave it there, if this is such an agricultural country?

Mr. Slagle: I spoke of the northwest branch.

Mr. Cowan: What about the other?

Mr. Slagle: We think that is all right, and I would not be surprised if it was not put down again to cut out the hardwood. The hardwood is still there, a large part of it.

Mr. Cowan: You are general manager of the lumber company?

Mr. Slagle: Yes, sir.

Mr. Cowan: And of the railroad company?

Mr. Slagle: Yes, sir.

Mr. Cowan: You were acting as general manager of which when you determined to take out this line which was in this good agricultural country where you sold 20,000 acres? Were you acting as general manager of the lumber company or as general manager of the railroad company when you decided to take it up?

Mr. Slagle: The arrangements were that the spurs would be built upon the lands of the lumber company to enable them to remove the pine, after which they would have a right to take up the spurs and move them to other locations, and this tram
1520 southeast did not have the same permanent construction as the lines southeast from Standard or northwest from Clarks

now have. In fact probably twice as much money per mile has been spent.

Commissioner Harlan: He asked a little different question. He wants to know whether Mr. Slagle of the lumber company told Mr. Slagle of the railroad company to clear out.

Mr. Cowan: Who decided to take that up?

Mr. Slagle: The railroad company decided to take it up after it had performed the service of removing the pine and there was no other traffic offered.

Mr. Cowan: That is just my point. According to your present statement, if you did not have the pine on the other line you would have the traffic, enough to operate a railroad?

Mr. Slagle: It has not been developed yet as to its agricultural possibilities.

Mr. Cowan: As a matter of fact is not all this talk about these roads having traffic to support them when the lumber is gone just simply talk, there is nothing else to it.

Mr. Slagle: No, I do not believe it is.

Mr. Cowan: I certainly do, if you ask me the question.

Mr. Slagle: I do not.

1521 Mr. Cowan: Here is the Tremont & Gulf going to extend its line to develop agricultural traffic, and you are going to extend your line. How are these railroads to be supported by an agricultural country which does not produce anything hardly?

Mr. Slagle: I think if you will examine the map, you will find we have the advantage of not being so close to some other tracks which you speak of.

Mr. Cowan: If you go across the territory occupied by the Tremont & Gulf you would be pretty close to it.

Mr. Garwood: I suggest to counsel if he wants an answer to that question he ought to go into West Texas somewhere, where they are not building roads.

Mr. Cowan: Now when you did have the opportunity to leave a railroad down for the purpose of agricultural development either Mr. Slagle as general manager of the lumber company or of the railroad company decided to tke it up.

Mr. Slagle: There was not the opportunity for a terminal southeast from Clarks as we would have northwest from Clarks, and the purchase of the property at Standard would enable the Ouachita & Northwestern Railroad Company to extend their line southeast from Standard and reach a part of the same line and in that way

1522 we could serve a large part of the people on this line that is taken up.

Mr. Cowan: Now when you were operating this line that you did take up the Louisiana Railroad Commission recognized you as a railroad just the same as they do with the others, did they not?

Mr. Slagle: You misunderstand it. A part of our line northwest has been graded since 1906, and that was the part that we have developed, and then the line southeast from Standard is being extended to develop this same country that has been abandoned on the southeast line from Clarks.

Mr. Cowan: Well, but then you escape my question. When you did operate it, the Louisiana Railroad Commission recognized it as a railroad, and you got divisions of the rates, and so on, is that right?

Mr. Slagle: We got a division of the rates, but we also had this line constructed northwest.

Mr. Cowan: I know, but you might answer the question as to whether the Louisiana Railroad Commission recognized it as a railroad?

Mr. Slagle: They recognized the whole system. We had five miles constructed north from Clarks.

1523 Mr. Cowan: Did they recognize that which you took up, as a railroad, that is subject to a perfectly plain answer yes or no.

Mr. Slagle: I think they did.

Mr. Cowan: Now then, of what importance is it that the Louisiana Commission recognizes a railroad as a railroad, when you can go and take it up the next day, as you did in that case?

Mr. Slagle: We considered that that was not the permanent line.

Mr. Cowan: Did you talk with the Louisiana Commission about it before you took it up?

Mr. Slagle: No.

Mr. Cowan: In other words, you had a railroad out there where you were operating as common carrier, getting divisions of rates, and when you concluded to take it up you simply took it up.

Mr. Slagle: The charter does not provide for that being a permanent line.

Mr. Cowan: Does your charter in the other case provide for its being a permanent line?

Mr. Slagle: Yes.

1524 Mr. Cowan: Is there any difference in the wording of the charter?

Mr. Slagle: Which line do you refer to?

Mr. Cowan: Well, the ones you were talking about. I am referring to the ones you are referring to.

Mr. Slagle: Yes.

Mr. Cowan: Now what is the difference in the charter in the one you built that you took up, and the charter of the one that you have reference to that you have not taken up?

Mr. Slagle: It specifies the country through which it is to be built.

Commissioner Harlan: I suggest that you pass to some other point.

Mr. Cowan: I believe you said awhile ago that the country cannot develop as a farming country until the timber is cut off?

Mr. Slagle: No, sir, not to its full capacity.

Mr. Cowan: We all know you have to clear land in order to cultivate it and you cannot do that until the timber is taken off Until that is done there are no agricultural products to be hauled are there?

Mr. Slagle: There are some.

1525 Mr. Cowan: Well, very small.

Mr. Slagle: On the contrary, about 15 per cent, I should judge, throughout the territory we are going now, and as the timber is removed that will increase.

Mr. Cowan: The railroad is building in there for the purpose of handling timber, of course.

Mr. Slagle: Primarily so.

Mr. Cowan: And the capital was advanced by the people who bought the timber lands both for the purpose of building the railroad and establishing the sawmill industry?

Mr. Slagle: Yes.

Mr. Cowan: And the one could not have been established without the other, it could not have been supported without the other?

Mr. Slagle: Not on the first, no, sir.

Mr. Cowan: Up to this time.

Mr. Slagle: Up to this time. We have faith in the future of that country and believe that after that is done it will develop into a good country.

Mr. Cowan: Yes, but it was not the faith in the future of the farming part of it that led the people who invested in the
1526 timber lands, and in the sawmill industry and in the railroad to make the investment. They did it on account of the timber.

Mr. Slagle: It encouraged us to make a better line than would otherwise be constructed if it was for the purpose of removing the timber only.

Mr. Cowan: In regard to the bills of lading, I wish to ask you as a man of undoubtedly wide experience, if it is not a fact that all these sawmills of any importance make out their own bills of lading and take them over to the railroad agent to sign them?

Mr. Slagle: That is the custom with both trunk lines and tap lines.

Mr. Cowan: It does not matter if a man is getting a division of rates or not, he does it?

Mr. Slagle: Every shipper is required to do that.

Mr. Cowan: Whether he is getting a division or not?

Mr. Slagle: Yes, sir, that is the law, I believe.

Mr. Cowan: When did the five cent division cease? You spoke about having a five cent division at one time. When did that cease?

Mr. Slagle: I think in 1903. The records will show.

Mr. Cowan: And why was that?

1527 Mr. Slagle: I believe they advanced the argument that the divisions to Colorado points would not justify a larger division than the Mississippi and Missouri River crossings.

Mr. Cowan: What was the division which you received prior to 1908?

Mr. Slagle: Two to four cents.

Mr. Cowan: Do you know of any lumber companies in the country which are operating where they log the mill by a railroad who do not receive divisions of rates?

Mr. Slagle: That is a pretty big question. I would have to examine into the matter——

Mr. Cowan: I just asked you if you knew of any?

Mr. Slagle: No, I do not know of any.

Mr. Cowan: Do you ship your lumber and sell lumber to Texas?

Mr. Slagle: No.
Mr. Cowan: Why?
Mr. Slagle: We have no joint through rates to Texas.
Mr. Cowan: Do you ship to Oklahoma?
Mr. Slagle: Yes.
Mr. Cowan: And your division there is what? Four cents?
1528 Mr. Slagle: Four cents.
Mr. Cowan: And to Kansas?
Mr. Slagle: Four cents.
Mr. Cowan: And then to the Missouri River territory you get four cents in all that territory which the Iron Mountain reaches?
Mr. Slagle: With a few exceptions.
Mr. Cowan: Mainly your divisions, I assume, are four cents?
Mr. Slagle: I do not know how it would figure out, but largely four cents.
Mr. Cowan: Do you sell railway supplies, materials?
Mr. Slagle: We sell some. A large part of it is yard stock trade, of the lumber company.
Mr. Cowan: When you come to sell your products on the market at various places, you meet competition of lumber that is produced in the yellow pine district everywhere?
Mr. Slagle: The lumber of the Louisiana Central Lumber Company is sold by the sales department in Kansas City and——
Mr. Cowan: That is one thing I wanted to ask you about. What relation has the Louisiana Central Lumber Company to the Missouri Land & Exchange——
1529 Mr. Riddell: The Missouri Lumber & Land Exchange?
Mr. Cowan: Yes.
Mr. Slagle: They are our sales agents.
Mr. Cowan: Are they exclusive sales agents?
Mr. Slagle: Yes, sir, excepting that we have the privilege of selling any one that should come to the mill.
Mr. Cowan: What other companies are operating through this Missouri Land & Lumber Exchange Company?
Mr. Slagle: What other lumber companies?
Mr. Cowan: Yes.
Mr. Slagle: The Louisiana Central Lumber Company, the Louisiana Long Leaf Lumber Company, and the Missouri Lumber & Mining Company, and the Ozark Land & Lumber Company.
Mr. Cowan: What are the relation- of these companies to the owners of your company that you have been testifying about.
Mr. Slagle: What are their relations?
Mr. Cowan: Yes.
Mr. Slagle: The corporate existence of each is separate, but some of the principal stockholders are the same in the majority of them, although the majority of the largest stockholders in one company are not interested in the other.
Mr. Cowan: There is a community of interests so far as
1530 the interest of one company being the interest of the other in the matter of the sale and disposition of the product?
Mr. Slagle: I think not, excepting that the president of some of

these companies stands well with the others, and that their confidence there forms this community of interests. But you take the Missouri Company, for instance, the people that own half the interest in the Missouri Company own not a dollar of stock in the Louisiana Long Leaf Lumber Company, and it is more by a mutual arrangement rather than by ownership arrangement.

Mr. Cowan: I assumed it probably incorrectly because they had the common agent for the sale of their output, and I assumed, of course, there was some common ownership.

Mr. Slagle: It is an economical arrangement as a matter of fact, and that is what prompted it more than anything else.

Mr. Cowan: At all events the relations are such that they do not want to compete with one another or they would not employ a common agent.

Mr. Slagle: It does not take so many salesmen. You take several companies which join together instead of each having a salesman for the same territory they have but one.

1531 Mr. Cowan: Does not the fact that you get a division out of this rate give you an advantage in the market selling lumber over a man that is put to the same expense you are to log his mill, who does not get a division?

Mr. Slagle: I do not think they pay any attention to it. That is, they meet competition, and the market is such that they get what they can for the lumber. Whether the salesmen know anything about the railroad I don't know.

Mr. Cowan: Now these companies that you mentioned are operating in Louisiana, the ones which have the common agent at Kansas City.

Mr. Slagle: No, sir, two of them in Louisiana.

Mr. Cowan: Which ones are those?

Mr. Slagle: The Louisiana Long Leaf Lumber Company and Louisiana Central Lumber Company.

Mr. Cowan: Where do the others operate?

Mr. Slagle: The Missouri Lumber & Mining Company, and the Ozark Land & Lumber Company operate in Missouri.

Mr. Cowan: They do not handle pine, of course?

Mr. Slagle: Yes.

Mr. Cowan: Is their pine in Missouri?

Mr. Slagle: Yes, sir.

1532 Mr. Cowan: I am just so ignorant about it I don't know about it.

Mr. Slagle: There is the best kind of pine up in Missouri.

Mr. Riddell: There is not very much of it left though.

Mr. Cowan: Each of them operate their mill by a railroad in somewhat similar fashion to what you do.

Mr. Slagle: I think not. I think the Ozark Land & Lumber Company, I do not know whether Mr. Riddell could answer that question. I do not know whether they have a railroad or not.

Mr. Riddell: They have an incorporated railroad, yes, sir.

Mr. Cowan: Don't they get any divisions?

Mr. Riddell: No.

Mr. Cowan: That is the only one we have been able to hear of. Do the ones you operate in Louisiana have a railroad somewhat similar to yours?

Mr. Slagle: Yes, sir, I believe the one in Louisiana connects from the Kansas City Southern to the T. & P.

Mr. Riddell: The others will go on here. The railroad
1533 that serves the Louisiana Long Leaf Company is before the Commission.

Mr. Cowan: I did not know that, and I was just inquiring at this point.

Commissioner Harlan: Does your line exchange free transportation as other tap lines do?

Mr. Slagle: Yes, sir.

Commissioner Harlan: It is used by the officers of the railroad company?

Mr. Slagle: Yes, sir.

Commissioner Harlan: And some of these officers are officers of the lumber company?

Mr. Slagle: Yes, sir.

Commissioner Harlan: Where is Grandin, on the southeast?

Mr. Slagle: Grandid, Missouri, is located on the branch of the Frisco running out from Willow Springs, Missouri, about 80 miles.

Mr. Riddell: I think that is a matter which may come up in connection with the Salem, Winona & Southern. It was formerly a mill point, but it is not to-day.

Mr. Cowan: Is it not a fact that the general sales agent of this Missouri Lumber & Land Exchange controls the salesmen
1534 who make the prices for lumber that is sold by all the companies belonging to that Exchange?

Mr. Slagle: Each company has the right to return any and all orders that do not suit them.

Mr. Cowan: But it all comes through this general sales agent?

Mr. Slagle: Most of it does.

Mr. Cowan: Now it appears from a statement made to the Commission that the traffic that was supplied by the controlling interest of the Ouachita & Northwestern Railroad was $125,000 in the year 1909, and other traffic $6,125, making a total revenue of $131,000, operating expenses $68,000 in round figures, and net revenue $63,000. Do those figures conform to your recollection?

Mr. Slagle: Excepting that you want to deduct for the spurs taken up.

Commissioner Harlan: We have been over those figures?

Mr. Cowan: I thought so.

Mr. Riddell: You expressed the belief that the country through which this line leading northwest from Clarks is operating, is of a character that will probably support a railroad after the tim-
1535 ber is cut out.

Mr. Slagle: Yes.

Mr. Riddle: How long will it be before the timber is cut out?

Mr. Slagle: From one year to 25 years.

Mr. Riddell: You did not think when you offered that opinion

that that country would support a railroad if the lumber were all cut out in six months or a year, did you?

Mr. Slagle: I did not. It would be a gradual development.

Mr. Riddell: Before the timber is all cut down you believe it will support a railroad?

Mr. Slagle: Before the first crop of timber has been removed there will have sprung up sufficient agricultural districts to keep the railroad going after it loses that revenue.

Mr. Riddell: I want to go back to the divisions for a moment. Was any consideration given to the matter of divisions that would be allowed to a railroad of the character of the Ouachita & Northwestern before the timber holdings of the Louisiana Central were purchased?

Mr. Slagle: Yes, sir.

Mr. Riddell: Were you given to understand by the Iron
1536 Mountain people that such division allowances would be made? I do not care for the detail.

Mr. Slagle: I was sent south by our people——

Mr. Riddell: No, you had better answer the question whether you were given to understand that?

Mr. Slagle: Yes.

Mr. Riddell: You were given to understand that?

Mr. Slagle: Yes.

Mr. Riddell: Did the knowledge of that fact influence the purchase of the property?

Mr. Slagle: The purchase of the timber?

Mr. Riddell: Yes.

Mr. Slagle: Yes. They are from one mile to about 35 miles away from the Iron Mountain.

Mr. Riddell: You know that the building of this road would be necessary in order to develop that timber?

Mr. Slagle: Yes, it was so far away from the Iron Mountain.

Mr. Riddell: And you would not have purchased it if you had not been assured that that railroad would be accorded adequate divisions or in line with what others were getting?

Mr. Slagle: No, sir, we had better opportunities to buy
1537 timber on the tracks rather than to buy so far away at that time.

Mr. Riddell: You would have bought elsewhere but for the knowledge of that fact?

Mr. Slagle: Yes, sir.

Mr. Garwood: From what branch of your line is the extension which is to connect with the Tremont & Gulf constructed, the Northwestern, or——

Mr. Slagle: Northwest branch from Clarks.

Mr. Garwood: Are you building on directly from Clarks or from the——

Mr. Slagle: Direct from Clarks. The line has all been graded to the Tremont & Gulf and finished in September, and ties laid.

Mr. Garwood: How far is it out there?

Mr. Slagle: 24½ miles.

Mr. Garwood: You spoke of a short line from the Vicksburg, Shreveport & Pacific, from Houston southward——

Mr. Slagle: Ruston.

Mr. Garwood: Or Ruston. That subsequently became a part of the Rock Island?

Mr. Slagle: Yes, sir.

1538 Mr. Garwood: What was the name of that line?

Mr. Slagle: The Arkansas Southern.

Mr. Garwood: Was Ruston one of the termini of that line?

Mr. Slagle: No, north of that.

Mr. Garwood: About how long was that line?

Mr. Slagle: It ran from a point north of Ruston to Winnfield. Some lumber company built it down there.

Mr. Garwood: It was built by a lumber company?

Mr. Slagle: Yes, sir.

Mr. Garwood: It is not a part of the Rock Island System?

Mr. Slagle: It is not a part of the Rock Island System, yes, sir.

Mr. Garwood: Are you familiar with the several steps by which the Louisiana & Arkansas Railroad expanded into one of the large and prosperous lines of Louisiana?

Mr. Slagle: Yes, sir.

Mr. Garwood: Was not that built originally as short line lumber roads and gradually became connected up into a long and prosperous railway?

Mr. Slagle: Yes, sir, and that encouraged us to believe that we could do something of the same kind.

Mr. Garwood: Is not that process of development now going on all over the State of Louisiana?

1539 Mr. Slagle: Yes.

Mr. Garwood: Counsel seemed to have the theory that the railroad should not build into the country until it was fully developed. I will ask you if it is not the boast of the railways that they have developed the country, rather than that the country developed the railroads?

Mr. Slagle: Yes, sir.

Mr. Garwood: Are you familiar with the fact that the system of the Gulf, Colorado & Santa Fe in East Texas, which has expanded into a large and prosperous line, and thence has crossed over into Louisiana was made up of lumber roads, small railroads built by one of our lumber kings in Texas?

Mr. Slagle: That is my understanding. I was over part of that line two years ago.

Mr. Cowan: Did he build that while he was a lumber king or before? Did he not before he ever went into the lumber business? You know that the general impression is that he built it as a lumberman and sold it to the Santa Fe, but the fact is he built it before he ever went into the lumber business.

Mr. Garwood: I did not say when he built it, but the fact is he did build it and they were short lines and they were welded

1540 into a railroad which now penetrates a rich lumber country.

Mr. Slagle: That is my understanding.

Mr. Garwood: And is doing much, both for the development of Texas and Louisiana.

Mr. Slagle: Yes, sir.

Mr. Garwood: That is all.

Mr. Cowan: Just one question about the returning of these orders from the general sales agent. You say each company has the right to refuse the orders that the general sales agent may turn in?

Mr. Slagle: Yes, sir.

Mr. Cowan: Is that other than the right which all lumber companies have to refuse them if they do not have the stuff to fill them?

Mr. Slagle: Well, the Missouri Lumber & Land Exchange Company in that case would have to go on the market and buy the lumber if they could not get any of the mills to fill it.

Mr. Cowan: But he is the agent, and when he makes the sale you recognize that, if you have the stuff to fill it?

1541 Mr. Slagle: If we could fill the order conveniently without loss to the Louisiana Central Lumber Company, we would accept it, otnerwise we would return it.

Mr. Cowan: You would not have an agent up there to go out and make sales and turn them down if you had the lumber to fill them?

Mr. Slagle: If he made a mistake we would return it.

Mr. Cowan: Who fixes the price, he or your company?

Mr. Slagle: As a matter of fact I think the retail dealer has been fixing it.

Mr. Cowan: And that is the price, including the freight rate?

Mr. Slagle: I do not think that enters into it. He just gets his orders, and you will have to do the best you can and if you make a loss you will have to stand it.

(Witness excused.)

Commissioner Harlan: The Woodworth & Louisiana Central and the other two roads. How many witnesses have you?

Mr. Thurmond: Five or six.

Commissioner Harlan: Have them all stand and be sworn.

1542 (Thereupon the several witnesses were duly sworn.)

Mr. Thurmond: I would like to have the Louisiana & Pacific called first.

1543 *Louisiana & Pacific Railway.*

DAVID MCLEAN, was called as a witness, having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?

Mr. McLean: De Ridder, Louisiana.

Commissioner Harlan: What is your position?

Mr. McLean: I am Auditor for the Louisiana & Pacific Railway.

Commissioner Harlan: How long have you been connected with that road in that or any other capacity?

Mr. McLean: Three years.

Commissioner Harlan: When was it organized and chartered as a railroad company?

Mr. McLean: In 1906.

Commissioner Harlan: When was the road built?

Mr. McLean: Your Honor, I am not familiar with all of that detail. It was——

Mr. Thurmond: It was constructed during the year 1906.

Commissioner Harlan: Was it completed before the railroad company was organized and chartered?

1544 Mr. Thurmond: No, sir, it was completed——

Commissioner Harlan: By the railroad company?

Mr. Thurmond: Yes, sir. There is a history of that we can give by another witness if your Honor desires.

Commissioner Harlan: Well, was any part of the railroad built by the lumber company?

Mr. Thurmond: This railroad was made up by connecting together three lumber railroads.

Commissioner Harlan: Then belonging to lumber companies?

Mr. Thurmond: Then belonging to lumber companies.

Commissioner Harlan: And unorganized and not chartered as railroad companies?

Mr. Thurmond: Yes, they had charters from the state, I believe, at that time. One of them perhaps did not, but this particular road, the Louisiana & Pacific originally was a lumber road.

Commissioner Harlan: What is the principal terminus of the Louisiana & Pacific?

Mr. McLean: De Ridder, Louisiana, and Lake Charles, Louisiana.

Commissioner Harlan: What is that distance?

Mr. McLean: 43 miles.

1545 Mr. Thurmond: Would your Honor care for this map (producing map)?

Commissioner Harlan: Let it be marked as an exhibit.

(The map so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Company Exhibit No. 1, Witness McLean, received in evidence December 13th, 1910, and is attached hereto.)

Commissioner Harlan: Let us know the character of the roadbed and what rail is used?

Mr. McLean: That is 60 pound rail used over the most of the line.

Commissioner Harlan: What sort of roadbed, is it ballasted?

Mr. McLean: It is a dirt roadbed.

Commissioner Harlan: What is the authorized capital?

Mr. McLean: The capital stock is $50,000.

Commissioner Harlan: How much has been issued?

Mr. McLean: All of it.

Commissioner Harlan: Any bonded indebtedness?

Mr. McLean: Yes, sir, $600,000, of which $582,200 has been issued?

Commissioner Harlan: Covered by mortgage on the property?

McLean: Yes, sir, first mortgage bonds.

1546 Commissioner Harlan: What per cent of interest?

Mr. McLean: Six per cent.

Commissioner Harlan: What property does it cover besides the railroad?

Mr. McLean: Just the roadbed and equipment.

Commissioner Harlan: What do you understand to have been the cost to the present company of the road and equipment?

Mr. McLean: To June 30th, 1910, $607,000.

Commissioner Harlan: What is that rate per mile of road?

Mr. McLean: I could not say right now.

Commissioner Harlan: We can work that out.

Mr. Thurmond: It would be 65 into that amount he gave.

Commissioner Harlan: Will some one do that sum? I would like to know what it is. You are an auditor. Will you work that out?

Mr. McLean: That would be approximately $8,900 per mile.

Commissioner Harlan: Now does your company own all the right of way from De Ridder to Lake Charles?

Mr. McLean: No, sir. They have trackage rights.

Commissioner Harlan: What mileage then have you used in this last calculation, the mileage that you own, or the mileage that you own and lease?

1547 Mr. McLean: I have used the mileage that we own and lease. That would be 69.8 miles.

Commissioner Harlan: Now what mileage do you own and what do you lease?

Mr. McLean: We lease 42.3 miles.

Commissioner Harlan: Suppose you take the balance and then tell us what your capital is per mile of road owned. Well, we will do that sum ourselves. Why did you take the mileage leased?

Mr. McLean: I just happened to take the mileage the gentleman gave me. I overlooked the fact.

Mr. Thurmond: It was suggested from here. Your Honor, we have that mileage divided up here.

Commissioner Harlan: Just tell us what the company owns and between what points. Start at De Ridder. Do you own a station at De Ridder?

Mr. McLean: No.

Commissioner Harlan: Do you lease a station there?

Mr. McLean: Yes, sir. That is covered by our lease, the use of it.

Commissioner Harlan: At what point south of De Ridder

1548 do you commence to own any tracks?

Mr. McLean: At a point a little less than a mile south of De Ridder.

Commissioner Harlan: Is that called De Ridder Junction?

Mr. McLean: That is called De Ridder Junction. From there to Bundick, La.

Commissioner Harlan: What is that mileage?

Mr. McLean: Eight miles.

Commissioner Harlan: What is the character of the rail on that track?

Mr. McLean: That is all 60 pound rail.
Commissioner Harlan: And is it rock ballasted?
Mr. McLean: No, sir, dirt.
Commissioner Harlan: From De Ridder Junction to the south to Bonami do you own any track?
Mr. McLean: No, sir.
Commissioner Harlan: What is the point at which you commence to own track?
Mr. McLean: At Lilly Junction.
Commissioner Harlan: What track do you own at that point?
Mr. McLean: We own from there to Walla, a distance of seven and a half miles.
1549 Commissioner Harlan: What rail have you on that?
Mr. McLean: 60 pound rail.
Commissioner Harlan: At what point towards the south do you own further tracks?
Mr. McLean: Fayette, La.
Commissioner Harlan: There you run to the west, do you?
Mr. McLean: To Camp Curtis.
Commissioner Harlan: Through Barn Creek?
Mr. McLean: Yes, sir.
Commissioner Harlan: What is the length of that?
Mr. McLean: Nine miles.
Commissioner Harlan: And the rail is what?
Mr. McLean: 60 pound rail.
Commissioner Harlan: On to the south again where do you own further tracks?
Mr. McLean: We start in at Bridge Junction and we own about a mile of track, or better than a mile into the Lake Charles station, Goosport Yard.
Commissioner Harlan: Who owns the terminals at Lake Charles?
Mr. McLean: We do, the Louisiana & Pacific Railway.
Mr. Thurmond: Will your Honor look at this plat as to the
1550 terminals at Lake Charles (handing paper)?
Commissioner Harlan: Then you own from Bridge Junction into Lake Charles?
Mr. McLean: Yes, sir.
Commissioner Harlan: And all the tracks and station?
Mr. McLean: Yes.
Commissioner Harlan: What is this, a map of the Lake Charles terminal?
Mr. Thurmond: It is a map of the tracks owned by the Louisiana & Pacific, in Lake Charles, and shows the tracks into the mills from Bridge Junction over to what is called Goosport, a part of Lake Charles.
Commissioner Harlan: Who owns the intervening tracks from De Ridder to Bridge Junction.
Mr. McLean: The Lake Charles & Northern Railroad Company.
Commissioner Harlan: And your company has acquired the right to the use of that track by lease?
Mr. McLean: Yes.

Commissioner Harlan: Has that lease been filed with the Commission?

Mr. McLean: It has, I believe.

Mr. Thurmond: It has.

1551 Commissioner Harlan: What is the general basis of the lease, what is the rental?

Mr. McLean: Trackage rental; we pay a trackage rental of 2[illegible] cents per train mile.

Commissioner Harlan: What did that amount to last year?

Mr. McLean: Approximately $7,000. I can give the exact figures.

Commissioner Harlan: Do you operate the road yourselves with your own power and equipment?

McLean: Yes.

Commissioner Harlan: And run the stations?

Mr. McLean: We have joint agents at all the stations except Lake Charles.

Commissioner Harlan: Is the lessor road an operating road?

Mr. McLean: Yes, sir.

Mr. Cowan: It is the Southern Pacific interests that own the Lake Charles & Northern, so I understand. I am not speaking by the card.

Mr. Thurmond: Correct.

Commissioner Harlan: Well, that is not the main line of the Southern Pacific, is it? It ends at De Ridder.

Mr. Blair: The Lake Charles & Northern is a separate in-

1552 corporation and begins at Lake Charles and goes to De Ridder, and by trackage rights 25 or 30 miles beyond.

Mr. Thurmond: Here is a map of the Lake Charles & Northern.

Commissioner Harlan: Are you accurate in saying it begins at Lake Charles?

Mr. Blair: Yes.

Commissioner Harlan: This witness seems to have said that the terminals belong to the Louisiana & Pacific.

Mr. Blair: They have their own terminals, and the Lake Charles & Northern has its own terminals.

Commissioner Harlan: Now, who are the officers of the Louisiana & Pacific Railway Company?

Mr. McLean: President, R. A. Long; Vice President, C. B. Sweet; Treasurer, F. J. Bannister; General Superintendent, C. M. Boswell; General Auditor, P. C. Rickey; Auditor, D. McLean.

Commissioner Harlan: Which one of those officers are also officers of the lumber companies?

Mr. McLean: I understand that Messrs. Long, Sweet, Bannister and Rickey are officers of lumber companies.

Commissioner Harlan: And of what lumber companies?

Mr. McLean: The Long-Bell Lumber Company.

1553 Commissioner Harlan: Are they not interested in, or officers of a number of other companies?

Mr. McLean: Now I don't know anything about the organization of the lumber companies.

Commissioner Harlan: Well, do you know anything in response to my inquiry?
Mr. McLean: If they are interested in other companies?
Commissioner Harlan: Yes.
Mr. McLean: No, I do not, not of my own knowledge.
Commissioner Harlan: Do you know whether they are interested in the Hudson River Lumber Company?
Mr. McLean: It is my understanding they are.
Commissioner Harlan: The Kansas Fuel Company?
Mr. McLean: I do not know.
Commissioner Harlan: The King Ryder Lumber Company?
Mr. McLean: I understand they are.
Commissioner Harlan: The Long-Bell Experimental Farm & Mercantile Company?
Mr. McLean: I understand they are, yes, sir.
Commissioner Harlan: The Long-Bell Mercantile Company?
Mr. McLean: Yes, sir.
Mr. Thurmond: We will hand you a list of the stock-
1554 holders of the Louisiana & Pacific, and the stockholders of the lumber mills that are on the Louisiana & Pacific, and put it into the record.

(The paper so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Exhibit No. 2, Witness McLean, received in evidence December 13th, 1910, and is attached hereto.)

Commissioner Harlan: Are all these companies on that railroad, the Louisiana & Pacific?
Mr. McLean: What companies?
Commissioner Harlan: I have read them. And the Calcasieu Long-Leaf Lumber Company?
Mr. McLean: Yes, sir.
Commissioner Harlan: That is at Lake Charles?
Mr. McLean: Yes, sir.
Commissioner Harlan: The Hudson River Lumber Company at De Ridder?
Mr. McLean: Yes, sir.
Commissioner Harlan: The Kansas Fuel Company at Bonami?
Mr. McLean: Yes, sir.
Commissioner Harlan: The King Ryder Company at Bonami?
Mr. McLean: Yes, sir.
Commissioner Harlan: The Experimental Farm Company at the same place, and also at De Ridder, is that right?
Mr. McLean: Yes.
Commissioner Harlan: And Long-Bell Lumber Company
1555 at Bundick?
Mr. McLean: Yes, sir.
Commissioner Harlan: The Long-Bell Naval Stores Company at the same place?
Mr. McLean: Yes, sir.

Commissioner Harlan: And the Long Leaf Lumber Company at Longville?

Mr. McLean: Yes, sir.

Commissioner Harlan: Is it not true that the stockholders of this company are substantially the stockholders of one or more of the companies that I have just mentioned?

Mr. McLean: Your Honor, I don't know. I only know the stockholders of the Louisiana & Pacific Railway. I don't know who are the stockholders in the lumber companies you mentioned.

Commissioner Harlan: Your list here does not show the actual ownership of the stock, the amount of it?

Mr. Thurmond: No. We will show that Mr. R. A. Long owns, I believe, a majority of the stock in all those companies and owns a majority of the stock in the Louisiana & Pacific Railway Company.

1556 Commissioner Harlan: Does not his general ownership in these companies and in the railroad company, he and his family, largely exceed the majority?

Mr. Thurmond: Doubtless so, probably 70 per cent.

Commissioner Harlan: Has your line any contracts relating to the traffic of these lumber companies and other companies on your line?

Mr. McLean: Yes, sir.

Commissioner Harlan: In a general way what is the object and purpose of those contracts?

Mr. Thurmond: If your Honor please, the contracts are all on file with the Commission and for those details outside of those figures we have witnesses who are much more familiar than this witness. I thought perhaps your Honor wanted the auditor first.

Commissioner Harlan: Very well, if this witness does not know those details we can go ahead.

Mr. Thurmond: You left out the name of the traffic manager?

Mr. McLean: Yes, sir.

Mr. Thurmond: Give it, please.

1557 Mr. McLean: Mr. R. S. Davis.

Commissioner Harlan: Have you the traffic statistics of your road?

Mr. McLean: For the year ending June 30th, 1910, I have a copy of the report to the Commission.

Commissioner Harlan: Will you state what the gross tonnage was?

Mr. McLean: Gross tonnage 251,409 tons.

Commissioner Harlan: What part of that was lumber?

Mr. McLean: 242,590 tons.

Commissioner Harlan: What part of the whole gross tonnage was furnished by these mills and industries I have just mentioned?

Mr. McLean: I would say approximately 98 per cent in connection with those companies.

Commissioner Harlan: What was the character of the outside tonnage?

Mr. McLean: Merchandise and various commodities.

Commissioner Harlan: Commodities that move under class rates, too?

Mr. McLean: Yes, sir.

Commissioner Harlan: And general merchandise?

1558 Mr. McLean: And general merchandise.

Commissioner Harlan: Does this line carry express and mail matter?

Mr. McLean: No, sir.

Commissioner Harlan: Any passengers?

Mr. McLean: Yes, sir.

Commissioner Harlan: What is the extent of its passenger traffic?

Mr. McLean: If I remember correctly, its passenger revenue for the fiscal year ending June 30th, 1910, was $300.

Commissioner Harlan: Do you run any passenger cars?

Mr. McLean: No, we do not.

Commissioner Harlan: You have not any regular time?

Mr. McLean: Yes, we run on schedule.

Commissioner Harlan: How many trains a day?

Mr. McLean: Two, one each way.

Commissioner Harlan: What was the gross revenue from operation last year?

Mr. McLean: The gross operating revenues were $220,985.94.

Commissioner Harlan: And what was the operating expenses?

Mr. McLean: $145,433.69.

1559 Commissioner Harlan: And the net operating revenues?

Mr. McLean: $75,552.25.

Commissioner Harlan: Is that net after the payment of interest?

Mr. McLean: No, sir, that is the net after the deduction of operating expenses.

Commissioner Harlan: And did not include taxes and interest?

Mr. McLean: No.

Commissioner Harlan: After the payment of taxes and interest what was the net revenue?

Mr. McLean: $16,781.95.

Commissioner Harlan: In addition to the $600,000 of bonds, only part of which were issued, have you any other outstanding obligations?

Mr. McLean: No, sir, excepting open accounts, that is all.

Commissioner Harlan: Are there not some notes payable to these various lumber companies?

Mr. McLean: No, sir.

Commissioner Harlan: Were those obligations taken up recently?

Mr. McLean: Yes, sir.

1560 Commissioner Harlan: By this issue of bonds?

Mr. McLean: By bond issue, yes, sir.

Commissioner Harlan: As I understand it, on April 30th, 1909, you had notes payable aggregating half a million dollars?

Mr. McLean: Something like that, yes, sir.

Commissioner Harlan: Approximating that sum due to several of these companies I have just named?

Mr. McLean: Yes, sir.

Commissioner Harlan: What is the significance of that indebtedness, does it mean that the money for the construction of this road and the purchase of equipment was furnished by these companies?

Mr. McLean: That transaction was completed before I came with the company. It is my understanding, and I believe I am correct, that that represented the purchase price of the road from those various companies.

Commissioner Harlan: You are now talking about the road that your company owns?

Mr. McLean: Yes, sir.

Commissioner Harlan: Does your answer imply that these several lumber companies had built those portions of the road and
1561 later sold it to the railroad company?

Mr. McLean: Yes, sir.

Commissioner Harlan: It means that, does it?

Mr. McLean: Yes.

Commissioner Harlan: At that time were these railway companies independent of one another in the sense that they had no affiliations?

Mr. McLean: So far as I know, I am not familiar with that, but so far as I know they are independent of one another.

Commissioner Harlan: Does anyone know the history of these lumber companies and their relation to one another and the railroad?

Mr. Thurmond: Yes, sir, they were organized at different times. Mr. R. A. Long owns a majority of the stock in the four main mill companies named there.

Commissioner Harlan: I want to know about the history of them.

Mr. Thurmond: We can give you all that complete by another witness, who will be able to do so.

Commissioner Harlan: Have you stated what is the equipment of your road?

1562 Mr. McLean: No, sir, I have not.

Commissioner Harlan: Will you be good enough to do that now.

Mr. McLean: We own 22 locomotives, one pile driver, six cabooses, three stock cars, one refrigerator, 14 box cars, 10 outfit cars, one tank, 15 flat cars, 8 gondolas, and 270 log cars.

Commissioner Harlan: Do you lease any cars?

Mr. McLean: Do we lease any? No, sir.

Commissioner Harlan: I mean are you using any cars under lease from some lessor?

Mr. McLean: No.

Commissioner Harlan: You own all these cars?

Mr. McLean: We own all these cars.

Commissioner Harlan: And those are all the cars in operation?

Mr. McLean: Well, of course, you understand the cars we receive, we interchange service with connecting lines.

Commissioner Harlan: Do these several lumber companies own any cars and locomotives?

Mr. McLean: Not to my knowledge.

1563 Commissioner Harlan: Are there any logging roads that join the Louisiana & Pacific?

Mr. McLean: No, sir.

Commissioner Harlan. Now, are you sure of that?

Mr. McLean: Well, now, I believe there is a logging road that connects with the main line, a line running over from Carson, I don't know the name of it.

Mr. Thurmond: I expect the Commissioner refers to the logging roads that brings the logs up to the ends of these branch lines.

Mr. McLean: Is that what you refer to?

1564 Commissioner Harlan: I simply referred to logging roads, whether they joined the line of the Louisiana & Pacific Railway.

Mr. McLean: Yes, each one of the lumber company's logging road.

Commissioner Harlan: We will take the branch that goes out to Bundick. Are there not some lines that join the main line there?

Mr. McLean: Yes, sir.

Commissioner Harlan: How many of them are there?

Mr. McLean: One.

Commissioner Harlan: To whom does that belong?

Mr. McLean: The rails belong to the Louisiana & Pacific, the rails and fastenings.

Commissioner Harlan: And the ties and labor to the lumber company?

Mr. McLean: The ties and labor to the lumber company.

Commissioner Harlan: Do you operate that logging road?

Mr. McLean: No, sir.

Commissioner Harlan: What is the length of that logging road at Walla, is not there a logging road there?

1565 Mr. McLean: Yes, sir. The same condition.

Commissioner Harlan: Is there anyone else that can give these facts more accurately?

Mr. Thurmond: Yes, we put this witness on more particularly as to the tonnage and that sort of thing.

Commissioner Harlan: If you have some questions to put to this witness we will proceed to get these facts from some one else.

Mr. Thurmond: Will you give the number of employees of the Louisiana and Pacific now?

Mr. McLean: Well, it employs a general superintendent and local auditor and car accountant, chief despatcher, five agents, four telegraph operators, about fifteen clerks, five stenographers, three porters, eight train crews and the necessary trackmen. The number of trackmen vary from time to time.

Mr. Thurmond: Have you made out a tabulated statement of the lumber originating on the Louisiana and Pacific and delivered to connecting lines for six months ending October 31, 1910.

Mr. McLean: Yes, sir.

Mr. Thurmond: And forest products handled locally on

1566 the Louisiana & Pacific for the six months ending October 31, 1910?

Mr. McLean: Yes, sir.

Mr. Thurmond: A statement of carloads and less than carloads originating on the Louisiana & Pacific delivered to various connecting carriers for the same period?

Mr. McLean: Yes, sir.

Mr. Thurmond: A statement of carloads and less than carloads received by the Louisiana & Pacific Railway Company from connecting carriers?

Mr. McLean: Yes, sir.

Mr. Thurmond: And the freight handled for other than these four lumber companies mentioned?

Mr. McLean: Yes, sir.

Mr. Thurmond: Is this correct?

Mr. McLean: It is, to the best of my knowledge and belief.

Mr. Cowan: Does that cover logs as well as lumber?

Mr. McLean: No.

(The paper so offered and identified was received in evidence and thereupon marked Louisiana & Pacific Railway Company Ex-
1567 hibit 3, Witness McLean, received in evidence December 13, 1910, and is attached hereto.)

Mr. Thurmond: Are you familiar with the stations on the line of this road?

Mr. McLean: Yes.

Mr. Thurmond: The towns, I mean.

Mr. McLean: Yes.

Mr. Thurmond: Will you give the principal towns and industries on this road?

Mr. McLean: Starting out at De Ridder, Louisiana, it has a population of approximately five thousand people. The principal industries there are the Gulf Refining Company, Waters-Pierce Oil Company, Hudson River Lumber Company, Crystal Ice Company, Ridder Bottle Works and some thirty or more mercantile houses and two banks.

The next station is what is known as the experimental farm; the principal industry located there is the Long Mill Experimental Farm Company.

Mr. Thurmond: What does it do?

Mr. McLean: General farming and fruit raising and stock raising.

Mr. Thurmond: Fruit specialties and farm products?

Mr. McLean: The next is Bonami, Louisiana.

Mr. Thurmond: Can you say about what investment that
1568 farm represents?

Mr. McLean: I could not. It it quite extensive. Bonami, the population is approximately two thousand people and the principal industry is the King-Ryder Lumber Company and the King-Ryder Mercantile Company.

The next is Bannester, Louisiana, a small population. The W. A. Brown Lumber Company is located at that point, and they also have a mercantile company.

Longville, Louisiana, has a population approximating two thousand and the principal industry is the Longville Long Leaf Lumber Company and Mercantile Company. Besides those two industries at that town there are a number of independent stores.

Mr. Thurmond: Does any mercandise go over the Louisiana & Pacific to those stores?

Mr. McLean: Yes, sir.

The next is Fulton, our junction with the N. O., T. & N.

Mr. Thurmond: That is the junction with the Frisco system?

Mr. McLean: That is the junction with the Frisco System. The population of that town is about one hundred, and the Merchandise Store is about the only industry there.

1569 Gaytine, Louisiana, has a small population. The Calcasieu Naval Stores are located at that point.

Gillis, Louisiana, is a small town with a population perhaps about two hundred. General merchandise store and a branch of the Calcasieu Naval Stores is located at that place.

Lake Charles has a population of about 23,000; quite a jobbing center and supports a large population. On our branch line, on the branch running from De Ridder, the principal town is Bundick with a population of perhaps two hundred to two hundred and fifty. The industries there are the Hudson River Lumber Company's store and the Longville Naval Stores and the Hudson River Mercantile Company.

On the Bonami branch, Walla is about seven and a half miles west of Lilly Junction, with a population of about two hundred and fifty. The principal industry is the King-Ryder Lumber Company. There is also a small Lumber Company there named the Bundick Creek Lumber Company, which ships several carloads of lumber every month.

On the branch from Fayette is Camp Curtis, about nine miles west. The population is about two hundred. The principal industry is the Calcasieu Long Leaf Lumber Company and their

1570 Mercantile Company. That I believe is all the towns of any distinction on the line.

Mr. Thurmond: What is the average haul of the logs hauled over the Louisiana & Pacific rails from the origin of the logs to their delivery to the connecting lines?

Mr. McLean: About thirty miles.

Mr. Thurmond: What is the average haul of the finished products from the mills hauled over these connecting lines?

Mr. McLean: Approximately twenty miles.

Commissioner Harlan: Do you lease any equipment to the lumber companies?

Mr. McLean: Yes, sir.

Commissioner Harlan: Take the mill at De Ridder Junction, or is there a mill there?

Mr. McLean: At De Ridder Junction, no. The mill is located at De Ridder.

Commissioner Harlan: It operates with your equipment the tram line into Bundick?

Mr. McLean: Yes.

Commissioner Harlan: What is the consideration for the lease by your company of that equipment?

Mr. McLean: There is no consideration except in the
1571 terms of the contract.

Commissioner Harlan: Well, what is the general consideration as expressed in that contract?

Mr. McLean: That we get one hundred per cent of the output of the mill, the entire output of the mill.

Commissioner Harlan: You are now talking about one hundred per cent of the lumber milled?

Mr. McLean: What haul do you perform on that lumber?

Mr. McLean: We take the logs at Bundick and handle them into De Ridder and we take the finished product at the mill and deliver it to the various connecting lines.

Commissioner Harlan: What connecting line gets most of the output at De Ridder?

Mr. McLean: That I could not answer. It varies. I perhaps could give you the entire output of all the mills better than I could any one mill.

Commissioner Harlan: Where do you take the logs, at Bundick or out on the tram line?

Mr. McLean: At Bundick.

Commissioner Harlan: They are delivered to you there by the lumber company?

Mr. McLean: Yes.

1572 Commissioner Harlan: With its own locomotives?

Mr. McLean: Yes.

Commissioner Harlan: Do you unload them at the mill?

Mr. McLean: Yes, sir; our crew unloads the logs at the mill into the pond.

Commissioner Harlan: Do you make any charge against the lumber company for that service?

Mr. McLean: No.

Commissioner Harlan: Are you paid anything for the service and if so by whom and how?

Mr. McLean: We get our proportion of the through rate.

Commissioner Harlan: The through rate goes back to Bundick?

Mr. McLean: The through rate goes back to Bundick.

Commissioner Harlan: It is just a milling in transit.

Mr. McLean: It is just a milling in transit arrangement.

Commissioner Harlan: What are your divisions?

Mr. McLean: They vary from one and a half cents to five and a half cents.

Commissioner Harlan: On what traffic do you get five and a half cents?

Mr. Thurmond: The traffic manager will give all those
1573 details.

Commissioner Harlan: Very well. Do you have a similar arrangement with mills who get their logs from logging lines that join your road at Walla?

Mr. McLean: Yes.

Commissioner Harlan: That is to say you lease them equipment on the condition that you get one hundred per cent of their traffic?

Mr. McLean: Yes.

Commissioner Harlan: You have that arrangement with all the mills?

Mr. McLean: Yes.

Commissioner Harlan: Have you any written contracts with any of the regular lines for division? Can the traffic man give us that?

Mr. Thurmond: That is on file with the Commission.

Commissioner Harlan: How long does this lease run with the Lake Charles & Northern?

Mr. McLean: Twenty years, from 1906.

Commissioner Harlan: Now is not the Lake Charles & Northern physically in good condition?

Mr. McLean: Yes.

1574 Commissioner Harlan: Well ballasted?

Mr. McLean: Not ballasted.

Commissioner Harlan: What rails has it?

Mr. McLean: I think it is sixty pound rail all the way through.

Commissioner Harlan: It is as good a road as your branches to Bundick, Walla and Camp Curtis?

Mr. McLean: The same kind.

Commissioner Harlan: The same kind of a road?

Mr. McLean: Yes.

Commissioner Harlan: Is it not equipped with power and cars?

Mr. McLean: I do not know what the equipment is.

Commissioner Harlan: Is it not in a physical condition to haul all this traffic just as well as your road?

Mr. McLean: That I could not say. I do not know what its equipment is.

Commissioner Harlan: Do you handle business for the general public along the line of that road?

Mr. McLean: We do.

Commissioner Harlan: Is that controlled by the contract in any way?

Mr. McLean: No.

1575 Commissioner Harlan: The contract is silent on that question?

Mr. McLean: Yes.

Commissioner Harlan: You do not haul many passengers though, do you?

Mr. McLean: No.

Commissioner Harlan: Do you engage in the through haul of outside products on your road?

Mr. McLean: Yes, sir.

Commissioner Harlan: But the Lake Charles & Northern gets practically all that outside tonnage, does it not?

Mr. McLean: No I don't believe it gets as much as we do. Now, of course, that is just my observation, but I believe we are handling more outside tonnage than the Lake Charles & Northern is.

Mr. Cowan: Because of the fact that they have operating men and traffic men who know more about the details, I would rather postpone any cross examination now of Mr. McLean for the present.

Mr. Thurmond: Did you state to the Commission that your road pays sixty per cent of the salaries of the joint agents?

Mr. McLean: I did not.

1576 Mr. Thurmond: That is a fact?

Mr. McLean: Yes.

Mr. Thurmond: Except as to Lake Charles, where they have their own agent and pay it all?

Mr. McLean: Yes.

Commissioner Harlan: Have you the custody of the contracts with the company?

Mr. McLean: No, I have not.

Commissioner Harlan: Who has?

Mr. McLean: I have copies of them.

Commissioner Harlan: You have copies of all the contracts?

Mr. McLean: Yes, sir.

Commissioner Harlan: Is there any contract between your company and the Lake Charles & Northern which limits or purports to limit the operations of your company to the Long-Bell traffic?

Mr. McLean: Not to my knowledge, absolutely not.

Commissioner Harlan: Did you ever hear of any such?

Mr. McLean: I never did.

(Witness excused.)

1577 R. S. DAVIS, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: How long have you been connected with the Louisiana & Pacific Railway as traffic manager?

Mr. Davis: About 6 years.

Commissioner Harlan: Prior to that time had you any relation with that road in any other capacity?

Mr. Davis: No, sir.

Commissioner Harlan: Have you been a railroad man for some time?

Mr. Davis: Yes, sir.

Commissioner Harlan: Are you familiar with the contracts between this road and other companies with relation to traffic?

Mr. Davis: To some extent, so far as relating to traffic, yes, sir.

Commissioner Harlan: Is there any contract between the Lake Charles & Northern and the Louisiana & Pacific that limits the operations of the latter to the Long-Bell traffic?

Mr. Davis: No, sir, no contract

Commissioner Harlan: Any understanding of that kind?

1578 Mr. Davis: I don't know. I have heard that there was such an understanding. I am not familiar with it. There has been some question about our soliciting traffic in that way.

Commissioner Harlan: As to your right to solicit traffic?

Mr. Davis: Yes, sir.

Commissioner Harlan: Well, what arrangement is there between the two roads for the division of revenue from traffic which originates on the Lake Charles & Northern and is handled by the Louisiana & Pacific?

Mr. Davis: There is no arrangement—did you state originating on the Lake Charles & Northern?

Commissioner Harlan: Yes.

Mr. Davis: We are absolutely separate and distinct from the Lake Charles & Northern. The Louisana & Pacific operates a railroad that originates and delivers tonnage and has absolutely no connection with the Lake Charles & Northern.

Commissioner Harlan: There is no contract relating to the revenues from traffic originating on the Lake Charles & Northern but handled exclusively by your road?

Mr. Davis: Originating on the Lake Charles & Northern?

Commissioner Harlan: In the sense that it is the lessor
1579 company and owns this line. It originates not on your branch lines, but on the leased part of your line.

Mr. Davis: The Lake Charles & Northern traverses the same territory between De Ridder and Lake Charles that we do. If they originate any tonnage, we do not get a haul on it. I do not believe I understand your question.

Commissioner Harlan: Well, perhaps not. I am not talking about traffic originating on the Lake Charles & Northern that the Lake Charles & Northern hauls, but traffic originating on the Lake Charles & Northern as distinguished from your branch lines that you own yourself and handle exclusively by your line. Is there any obscurity in that question? If there is, I will try to put it another way.

Mr. Davis: I don't understand the question.

Commissioner Harlan: Well, here is a point called Bannister which is on your leased line.

Mr. Davis: Yes.

Commissioner Harlan: And it is on a line that is owned by the Lake Charles & Northern and operated by the Lake Charles & Northern.

Mr. Davis: Yes.

1580 Commissioner Harlan: Now suppose there is a shipment of general merchandise offered to you at that point, I refer to traffic originating on the Lake Charles & Northern, but suppose it is handled——

Mr. Davis: I catch your point, handled by the Louisiana & Pacific line?

Commissioner Harlan: Yes. Is there an understanding or agreement with respect to the division of revenue?

Mr. Davis: No, sir, none that I know of.

Commissioner Harlan: Does your line get all of the revenue?

Mr. Davis: Yes, sir.

Commissioner Harlan: They get it all?

Mr. Davis: All, so far as the haul is concerned. If we handled shipments from Bannister to Lake Charles going to New Orleans we get our proportion of the through rate.

Commissioner Harlan: And the Lake Charles & Northern does not get any of it?

Mr. Davis: No, sir. That is our own line and we pay for the privilege of operating over it.

Commissioner Harlan: Is there any understanding by which the output of these mills is divided up between the Southern
1581 Pacific and the Frisco?

Mr. Davis: There is a contract with each line, a contract with the Frisco and one with the Southern Pacific.

Commissioner Harlan: What is the general result of those contracts?

Mr. Davis: The general result of those contracts is that 40 per cent of the tonnage goes to the Southern Pacific and 60 per cent to the Frisco, providing they furnish the equipment.

Commissioner Harlan: If they do not furnish the equipment you have the privilege of giving it to the other line?

Mr. Davis: Yes.

Commissioner Harlan: Is it not true that the Lake Charles & Northern is physically able to haul all of this traffic for the Long-Bell lines as well as your line?

Mr. Davis: I believe so. I do not know, I suppose if they are not now, they could furnish enough motive power to handle it. I do not know whether they are able now or not. The condition of the road, it is one line, and I suppose they can do what we are doing in the matter of operating.

Commissioner Harlan: Then as I understand it, you have the right to pick up traffic at any point along the line?

1582 Mr. Davis: Yes.

Commissioner Harlan: And move it and get all the revenue from it?

Mr. Davis: Yes.

Commissioner Harlan: And that your understanding has been that there is some understanding or agreement which gives you all the Long-Bell traffic?

Mr. Davis: There is an understanding that we get all the tonnage originating from the timber handled by our company under a milling in transit arrangement, all the product of that timber.

Mr. Thurmond: That understanding is with these various lumber companies.

Mr. Davis: Yes.

Commissioner Harlan: You heard the testimony of Mr. McLean about the rates?

Mr. Davis: Yes, sir, I think so.

Commissioner Harlan: Is there any correction you wish to make?

Mr. Davis: I don't now remember just what he said. We carry a full line of class and commodity rates with all connections except the Santa Fe.

1583 Commissioner Harlan: About 98 per cent of all your tonnage is tonnage coming from these companies?

Mr. Davis: I presume that is a fair statement. I have not a statement here that shows that actually.

Commissioner Harlan: Can you tell us what the average division you receive on all your lumber shipments is?

Mr. Davis: I should think the average would run about 3.9 cents per 100 pounds. I am not sure but that is—I have in mind a statement made up some time ago which furnished that information, and that was the figure. It may be more or less.

Commissioner Harlan: Are there not wholly independent mills in this country that you serve?

Mr. Davis: Adjacent or tributary to the Louisiana & Pacific?

Commissioner Harlan: Yes.

Mr. Davis: There is one small mill at Walla, I believe.

Commissioner Harlan: Is it situated on your line?

Mr. Davis: I have never seen the mill. I understand it is right on the line, yes, sir.

Commissioner Harlan: That is the only one you know that is wholly independent?

1584 Mr. Davis: Yes, sir. The W. A. Brown Lumber Company at Bannister.

Commissioner Harlan: Do those people get their logs from lands owned by any of these Long-Bell interests?

Mr. Davis: I cannot answer that question. I don't know.

Commissioner Harlan: You do not know what is the case with the Brown people at Bannister?

Mr. Davis: No. I know we handle some of their business, and that is all.

Commissioner Harlan: What do you understand to be the service that your line performs for these divisions?

Mr. Davis: An average service on lumber of 19.9 miles, and on the logs about 30 miles.

Commissioner Harlan: Do you haul any logs on the main line that have not reached the main line over these branch lines?

Mr. Davis: I do not think so, no. I do not know of any logging movement at all on the main line from one point to another. They all go into the mill.

Commissioner Harlan: Which branch line gives you the largest logging movement?

Mr. Davis: Well, that would be a guess on my part. It is reasonable to say that the mill that ships the largest amount of

1585 manufactured lumber would do that. I do not know. I am not a lumber man.

Commissioner Harlan: Which mill ships the largest amount?

Mr. Davis: The mill at Lake Charles. The annual capacity of the mill at De Ridder is 1800 cars, at Bonami 3000 cars, and at Longville 3500 cars, and Lake Charles 3000 cars.

Commissioner Harlan: Where do the logs come from that reach the mill at Lake Charles?

Mr. Davis: From a point called Camp Curtis.

Commissioner Harlan: Then when the logs are milled there which way does the lumber go out ordinarily?

Mr. Davis: The lumber ordinarily, as a transportation proposition should go out over the Southern Pacific; but on account of the

car supply we have to haul it to Fulton very often. We aim to give a large percentage of that tonnage to the Southern Pacific, but it is not always possible to do it.

Commissioner Harlan: There is considerable back haul on that?

Mr. Davis: Yes, sir, about 18 miles.

Commissioner Harlan: 18 miles?

Mr. Davis: Yes, sir.

1586 Commissioner Harlan: Is there any back haul from the lumber mill at De Ridder, in actual practice?

Mr. Davis: No, that is a direct haul from the mill to the various connections.

Commissioner Harlan: Have you some questions, Mr. Thurmond?

Mr. Thurmond: Mr. Davis, you say you have been with the Louisiana & Pacific for six years?

Mr. Davis: About that time, yes, sir; six or seven.

Mr. Thurmond: You are familiar with how that road grew up and how these smaller roads were brought together and the big line constructed?

Mr. Davis: I know something of the conditions existing then, yes, sir.

Mr. Thurmond: I think if you would go into that and explain it, I think it would answer the question the Commissioner asked of the other witness, and also carry it right on up and explain what this Louisiana & Pacific Road does with reference to connecting up with these other roads.

Mr. Davis: In 1905, I think it was, 1904 or 1905, the largest owner in the Louisiana & Pacific, Mr. Long, made an effort to find other outlets for his tonnage. The facilities we had at

1587 that time were limited. We only had one connection, the Kansas City Southern. And negotiations were conducted between the Missouri Pacific, in connection with the line for the terminus of the Louisiana & Pacific to Alexandria, and also with the Santa Fe. The proposition with the Santa Fe was to connect up with them over about the Sabine River. The Santa Fe proposition fell through, the Santa Fe deciding to build their own line over into Louisiana. Nothing came of the Missouri Pacific's proposition at that time on account of the—I really don't know the reason why, the Gould people could not meet the terms or conditions or were not willing to enter into negotiations at that time, and the road was started south. Mr. Harriman, as I understand it, had been looking for an outlet north, and entered into negotiations with Mr. Long. As the result of those negotiations Mr. Long, who had completed his road I believe to a point south of Fulton about a mile, sold his line to the Southern Pacific people at the book cost, whatever that was. It was handled by their engineers and other expert men.

Mr. Thurmond: Begin just a little back of that point and tell about what there was already there prior to the time that you have told about in the way of roads which served the mills,

1588 for instance, the Bradley-Ramsey Road.

Mr. Davis: Before Mr. Long started south with this prop-

erty he organized the Louisiana & Pacific Railway, taking over the De Ridder & Eastern Road, which was running at that time between Bundick and De Ridder; also the line of the Louisiana & Pacific, running from Bonami out to Walla. Those two lines were in existence at that time. He had this Lake Charles & Leesville Road, which was a narrow gauge line, which had just been purchased, running from a point on the Calcasieu River north over towards Camp Curtis. Those three roads were taken over by this company, and as I stated, this extension south was started when these negotiations with the Southern Pacific people were entered into. Mr. Harriman wanted a line north, and Mr. Long wanted a line south. The result was that the road was sold, as I understand—I was not present when the terms were made—at its actual value, and the compensation being the cost of the road plus the right to operate at a certain rental, which I believe is 25 cents per mile, the Louisiana & Pacific Railway paying 60 per cent of the station expenses and salaries, and so forth, of the agents.

1589 Commissioner Harlan: Who maintains the track?

Mr. Davis: The Lake Charles & Northern, I believe.

Mr. Thurmond: What connection does that give the Louisiana & Pacific Road as completed, as it is now?

Mr. Davis: The Louisiana & Pacific at the time it started to build had but one connection, the Kansas City Southern. That line was not able to furnish equipment, and there were days and weeks at a time when the mills could not get cars. The extension of this line and the arrangement made for a track into Lake Charles has given us connection with the Frisco, Iron Mountain, Kansas City Southern at Lake Charles and the Southern Pacific at Lake Charles, and the Frisco at Fulton.

Mr. Andrews: To better understand what he is now saying would you mind my asking what line was physically on the ground that was sold in this sale he is speaking about? I did not get from him just what was there to sell. Will you explain?

Mr. Davis: What railroad was there to sell?

Mr. Andrews: Yes, sir, what was physically on the ground which you explain was sold to the Harriman System?

Mr. Davis: Well, I do not know what was physically on the

1590 ground except the rail.

Mr. Andrews: Well, what part of it there on the map, from where to where?

Mr. Davis: From De Ridder down to a point just south of Fulton, I understand it is about a mile.

Mr. Andrews: That is what was sold?

Mr. Davis: That was sold by the Louisiana & Pacific to the Lake Charles & Northern.

Mr. Andrews: And it had not reached Lake Charles then, as shown on this map?

Mr. Davis: It had not reached Lake Charles when the Lake Charles & Leesville Road was purchased; it was a narrow gauge road, and that was part of the trade.

Mr. Andrews: I did not know what was included in that sale.

Mr. Thurmond: Mr. Garwood says he does not understand about the Lake Charles & Leesville. That was the road which was bought from the Bradley-Ramsey Milling Company.

Mr. Davis: Yes, sir.

Mr. Thurmond: Extended from where to where?

Mr. Davis: The road was originally owned by the Bradley-Ramsey people and extended from a place called Banks, on the
1591 Calcasieu River north, as I remember, 25 or 30 miles in this section.

Mr. Thurmond: Up to where Camp Curtis is now?

Mr. Davis: Yes.

Mr. Thurmond: About 30 miles of road?

1592 Mr. Davis: That is my recollection.

Mr. Thurmond: And that part of the Bradley & Ramsey Road was incorporated into the Louisiana & Pacific, and sold to the Lake Charles & Northern?

Mr. Davis: Yes.

Mr. Thurmond: Part of the De Ridder Road south was sold to that road?

Mr. Davis: Yes, sir.

Mr. Garwood: Was the narrow gauge brought up to standard gauge before the sale to the Lake Charles & Northern?

Mr. Davis: Well, when the Louisiana & Pacific sold the right of way, or that narrow gauge property, it was with the understanding that it would be a standard gauge into Lake Charles, they having the right to operate over it.

Mr. Garwood: Then the Lake Charles & Northern built its own road down then from a point a little below Fulton to Calcasieu River?

Mr. Davis: They built their own line down to the Calcasieu River, and crossing the river near Goosport and——

Mr. Garwood: So that the Louisiana & Pacific when it sold out to the Lake Charles & Northern, returned the right to use the tracks?

1593 Mr. Davis: Absolutely; otherwise the road would not have been sold.

Mr. Garwood: It retained that much of an estate in the line which it itself owned and constructed?

Mr. Davis: Yes.

Mr. Garwood: And acquired the additional estate of the right to use the track of the Lake Charles & Northern, constructed from a point below Fulton into Lake Charles?

Mr. Davis: Yes.

Mr. Garwood: I understand now.

Mr. Thurmond: Further, I will get you to state if it is not a fact that these contracts were made simultaneously?

Mr. Davis: I think so.

Mr. Thurmond: The contract of sale to the Lake Charles & Northern containing the right to a trackage contract which was afterwards executed and is on file with the Commission, and also a contract with the Louisiana & Western part of the Southern Pacific System providing for joint routes and through rates with that company?

Mr. Davis: Yes, sir.

1594 Mr. Thurmond: I will ask you if that was not all one transaction at the time.

Mr. Davis: I understand so; yes, sir.

Commissioner Harlan: Did that contract provide for divisions also?

Mr. Thurmond: I believe the contract with the Louisiana & Western provides for joint rates and through routes and divisions.

Mr. Davis: It provides for a four cent division, except on export business, and that was to be——

Commissioner Harlan: Were the lumber companies made parties to that contract?

Mr. Davis: I think so.

Commissioner Harlan: The four lumber companies?

Mr. Davis: I think so.

Commissioner Harlan: Are not those lumber companies also actual parties to other contracts for divisions?

Mr. Davis: I think they are also parties to the contract with the Frisco. The question of tonnage was involved there.

Commissioner Harlan: This lease, as I understand it, has about 18 years to run?

1595 Mr. Davis: I do not know. I heard Mr. McLean say about twenty years. I am not sure.

Mr. Thurmond: It has sixteen years now.

Commissioner Harlan: Is it not pretty well understood around there that that lumber will all be cut out in about fifteen years?

Mr. Davis: I really don't know. I imagine——

Commissioner Harlan: Is not that the general gossip and understanding?

Mr. Davis: Some of that timber will be cut out in five years.

Commissioner Harlan: I mean that there will be none left in fifteen years.

Mr. Davis: In that section?

Commissioner Harlan: I mean that can be conveniently reached by these lines.

Mr. Davis: I do not know about that, Mr. Commissioner.

Commissioner Harlan: Well, I suppose you are not familiar with those details, but is not that the general current gossip?

Mr. Davis: Well, I have heard it said that the yellow pine business will cease to be a business in about 25 years or 30

1596 years. I do not know how true that is.

Commissioner Harlan: I had in mind this territory served by this particular line.

Mr. Davis: I suppose that gossip that you refer to will apply to that line.

Commissioner Harlan: Now, as I understood it, you said that you understood that there was some contract or agreement or understanding that limits the Louisiana & Pacific activity to the Long-Bell traffic?

Mr. Davis: Yes, sir, I said something to that effect.

Commissioner Harlan: That, at any rate, is the actual practice,

is it not? The Louisiana & Pacific does not move any traffic except what comes from those interests?

Mr. Davis: The Louisiana & Pacific have through rates and divisions with the Kansas City Southern, the Frisco, the St. Louis, Iron Mountain & Southern, and Lake Charles, also the Kansas City Southern at Lake Charles. We have gone to a good deal of expense in supplying our agents and ourselves with tariffs, and the public, and we have made an earnest effort to secure a good share of the business going to all of those stations, and I think the records of the Lake Charles & Northern will show that we have been more than successful.

1597 Commissioner Harlan: General merchandise, class and commodity rates?

Mr. Davis: Yes, sir. I have some friends among the railroads, and there is a little hot air connected with this railroad business, but they promise great things, and I try to check them up and interchange reports show that they are giving us a good share of the merchandise for De Ridder, Bonami, Longville, Bannister and Walla; Walla, of course, we are bound to get, as that is a local point.

Mr. Blair: You spoke of the lumber companies being parties to the contract for a division of rates. Did not that same contract provide for a routing of traffic by the lumber companies?

Mr. Davis: Yes. I think I explained that to the Commissioner that there was a tonnage obligation there, and on that account they had to.

Mr. Blair: And their participation in the contract was as to the routing of traffic and not as to a share in the division?

Mr. Davis: Oh, absolutely no; they simply held that the Louisiana & Pacific was obligated to give the Southern Pacific 40

1598 per cent of the traffic if they furnished the cars.

Commissioner Harlan: I did not intend to be understood as thinking that they were to get any part of the division.

Mr. Blair: I just wanted to call attention that it was not simply a contract for divisions of rates, but for routing.

Commissioner Harlan: They were parties to a contract in which the division was settled?

Mr. Blair: Yes, sir, and a division as to traffic, to which they were necessarily parties.

Mr. Thurmond: But in the general operating contracts, the lumber companies are not parties, as to how the track shall be used.

Commissioner Harlan: I have not asked you, Mr. Davis, whether the Louisiana & Pacific makes any charge against the lumber compaines for hauling the logs.

Mr. Davis: They do not. The rate we publish now, Mr. Commissioner, includes transportation of the logs to the mill and the products to the connecting line.

Commissioner Harlan: And no charge for that service is made to the lumber company?

Mr. Davis: No, sir. That basis has been in effect in the Southwest for years, milling in transit, is in effect today

1599 on the trunk lines, as well as the short lines, and I am personally responsible for putting it in there, I think. In put-

ting in that adjustment I figured that it was an productive business, and I put in the milling in transit rate.

Commissioner Harlan: Does not that give the lumber company a very great advantage in the general markets over other companies, if it has its logs hauled to the mill for it without cost?

Mr. Davis: Well, I am not familiar, Mr. Harlan, with the lumber business, but I am sure, from the inquiries I have made on that point, that the investigation will show, if you care to go into it, that if there is any advantage in the cost to manufacture. I cannot say as to that, but it does not appear that this advantage is shown up in the cost of selling lumber, and that is what you want to get at. Whether this milling in transit enables the mills to produce lumber and sell it cheaper than somebody else.

Commissioner Harlan: Well, in all of its aspects, whether it is not a great advantage.

Mr. Davis: Well, I cannot say as to that.

Commissioner Harlan: You do know, do you not, that a number of lumber roads have been bought by the regular
1600 lines?

Mr. Davis: Yes.

Commissioner Harlan: Some of them at very high mileage prices.

Mr. Davis: Yes, sir.

Commissioner Harlan: And I assume that if not your road, some of the other roads, are looking forward to the consummation of some such agreement. Now, considering it as one investment by the same people, looking forward to such an ultimate result, does not the situation daily build up a very substantial asset for those people and thus give them a very great and decided advantage over other people that do not have tap lines and divisions?

Mr. Davis: Do you refer to the cost of manufacture?

Commissioner Harlan: The general result of the investment. They own the railroad; they own the mill, and they make earnings on the railroad, and these earnings go back into the property and prepare it for purchase at a high price by the regular line. Taking the result of the whole investment, does it not give them a very decided advantage?

Mr. Davis: I cannot see that it does. I do not think that—
1601 the blanket system of making rates in the South is pretty well observed, and I do not believe that this question, if there is any advantage which can be shown by the lumber companies' books in this milling in transit business, I do not believe that enters into the selling of lumber, and that is what you are trying to get at, is it not?

Commissioner Harlan: The sale of the lumber?

Mr. Davis: Yes, sir. The proposition, as I understand it is, that you are trying to ascertain if this allowance or milling in transit proposition discriminates in any way for or against.

Commissioner Harlan: Yes.

Mr. Davis: If that is what you are trying to get at, I am not in position to say as a lumber man whether it does or does not, but it is my own belief that it does not, from my own observation and inquiry.

Commissioner Harlan: What does 4 cents per 100 pounds on an ordinary carload of lumber amount to?

Mr. Davis: Four cents per 100 pounds would amount to about $20.00 a car, and I think we run about an average of 50,000 pounds to the car.

Commissioner Harlan: And some of those mills will turn out how many cars a year? One of them 2500, I think you
1602 said.

Mr. Davis: Yes, sir.

Commissioner Harlan: Well, that amounts to $70,000 a year.

Mr. Davis: Yes, sir.

Commissioner Harlan: Now do you mean to say that that is not reflected in the cost of the producing of the lumber, if the same interest owns a mill and a railroad, and the railroad is finally sold at a high price.

Mr. Davis: If it is, I do not know it, and I have tried to find it out and I have not been able to. This tap line question has been before us for a number of years, and my friends, Judge Cowan and others, have been claiming that and I have been trying to satisfy myself personally. The blanket system of rate making is in this section, and I do not believe that the cost to manufacture enters into the sale of lumber at all. I remember four years ago we had a meeting in Austin, Mr. Farley claiming to represent 200,000 farmers, appeared there and asked for a reduction in the rates on lumber in the State of Texas. The chief witness for the railroads at that time was Mr. Bonner, who is now connected with the Kirby Lumber Company. He told the Commission that a reduction
1603 in those rates would not benefit the farmer, that the lumber was sold on a blanket rate, and if there was any reduction made it would go to the manufacturer, and I think that any—the point I am trying to make is this, that any advantage the manufacturer may have through this common ownership of owning his railroad and owning his lumber mill is something that he is working for, and he keeps it, he does not give it away.

Commissioner Harlan: You mean he does not give it away in the price of the lumber?

Mr. Davis: Yes.

Commissioner Harlan: But does not he accumulate it in the less cost of manufacturing lumber?

Mr. Davis: One mill without a tram road may manufacture lumber $1.00 a thousand less than one which does have a road. Some men may have poor sawmill managers. Those are conditions you cannot equalize by freight rates. The mills on the Louisiana & Pacific may sell lumber at a higher average rate than a mill on some other line. Those are matters which all have a bearing on the question.

Commissioner Harlan: Have you looked into the tap line question from a broad point of view to see what the practice
1604 is elsewhere?

Mr. Davis: Do you mean all over this section of the country?

Commissioner Harlan: Yes.

Mr. Davis: I have in a general way kept close touch with it for the last few years.

Commissioner Harlan: Is it not true that the tap lines which do not receive divisions represent about as much capital and about as much mileage as the tap lines that do receive divisions?

Mr. Davis: I could not answer that. I do not believe that is true, but I would not attempt to discuss that with you.

Commissioner Harlan: Assuming that is true, is there no advantage in the divisions that are given to some of these lines?

Mr. Davis: I would have to know all the conditions surrounding the man who has a road and receives no divisions before I can answer that question. There may be some other compensations. That was brought out here last year when Mr. Park testified that he did not believe in taking divisions, but he would take $4,000,000
1605 or three and a half million dollars. Those are all matters which enter into the general question, and you would have to know all the facts before you could reach a decision. At least I would before I would answer the question.

Commissioner Harlan: But as a mere fact on the surface, as you see the surface of things, it would make a difference?

Mr. Davis: It would make a difference just as two trunk lines, one running parallel to the other and one getting divisions and the other not getting divisions; one would operate at a loss and the other may be paying operating expenses.

Commissioner Harlan: Well, but Mr. Davis, it seems to me you are looking at this thing from a little different aspect. Here are the surface conditions. Now assume that as many tap lines do not get allowances and have as much mileage as those that do, and assume also there is a certain average cost per mile, a certain average degree of efficiency, to use the term which has been used once recently. Assume all those conditions, and we have got to assume them for the general purposes in philosophizing about these things. Does the division make any difference?

1606 Mr. Davis: It is bound to make a difference, as I say, if you take two lines, one getting a division and the other operating under similar conditions and not getting a division, if it has not any other means of support, it is bound to make a difference, as a railroad proposition: that is the way I view it. But whether or not it makes a difference to a man who has a railroad and will not take a division or not, I cannot say.

Mr. Garwood: Would not the considerations suggested which would tend to show that the man who owns the tap line has a supposed or possible advantage over one that does not, apply equally as strongly to the man who had the large, improved and modern sawmill as against the man who has the small unimproved and ancient machinery and poor operation?

Mr. Davis: I should think so, yes, sir, without question.

Mr. Garwood: And do not all of those general considerations to which your attention has been called, go rather to the size of the investment and the manner of conduct of the industry?

Mr. Davis: Yes, sir.

Mr. Garwood: A railroad assumes heavier liabilities first as a common carrier of freight, does it not?

1607 Mr. Davis: That is my understanding, yes, sir.

Mr. Garwood: It is a guarantor, except as against the act of God and the common enemy; it is also subject to heavy libilities for damages of all character, is it not?

Mr. Davis: It is.

Mr. Garwood: It complies with excessively burdensome regulations, both State and Federal?

Mr. Davis: Yes, sir.

Mr. Garwood: It is compelled under severe penalties, to receive all freight tendered to it, to properly equip and operate its cars, and so forth, with all of those liabilities, and not only direct liabilities but possibly heavy losses, counting also the interest upon the heavy investments, it is not more than likely that the man with the tap line, in so far as possible loss is concerned and the general risks of a large and heavy business, is in a worse condition than the man who has no tap line investment?

Mr. Davis: I should think so. That is a pretty long question and covers a good deal of ground.

Mr. Garwood: I intended it to, because it does cover a good deal of ground.

Mr. Davis: But I think your proposition that the man that

1608 is burdened with the railroad, as you mean?

Mr. Garwood: Yes.

Mr. Davis: Yes, sir; he is up against it.

Commissioner Harlan: Well, Mr. Davis, if he is burdened with a railroad that carries 98 per cent of his traffic, is that liability to loss a very serious one, and if 100 per cent of the traffic is his traffic where is the liability that the other fellow does not have?

Mr. Garwood: I have seen single damage suits in Texas which resulted in verdicts for damages which would wipe off many of the tap lines which have appeared before your Honor.

Mr. Cowan: I wonder why they incorporated, if there is any such danger?

Commissioner Harlan: I come back just at this point, because it relates to the question—I asked Mr. Davis a moment ago whether he made any charge against the lumber company for hauling logs to the mill, and he said no. Now I would like to know whether that cost is not a very substantial element in the cost of producing lumber?

Mr. Davis: Well, that is a matter of record. I do not know a thing about the lumber business.

Commissioner Harlan: Well, but would you not, just from

1609 your practical experience in railroading——

Mr. Davis: As compared with whom?

Mr. Andrews: As a transportation item.

Commissioner Harlan: Would you not regard that as a practical element in the cost of the lumber f. o. b. the mill, the cost of getting the logs to the mill?

Mr. Davis: Yes, sir, the effect of that is shown in the cost of manufacture. To what extent I do not know.

Commissioner Harlan: Limiting the inquiry to just that item, you have said that in this particular case you make no charge against the mills that own this road.

Mr. Davis: No.

Commissioner Harlan: For hauling the logs to the mill?

Mr. Davis: That is right.

Commissioner Harlan: There are many other mills that have logging roads that receive no divisions and have to bear the burden of hauling the logs to the mill. Does not that make a difference in the cost of lumber f. o. b. the mill?

Mr. Davis: On the face of it I would imagine there would appear to be some difference.

Commissioner Harlan: And that would be manifested, would it not, where the man has to haul his logs by wagon?

1610 Mr. Davis: Pardon me. I answer that question by stating that before I would attempt to form an opinion or conclusion I would like to know something about the conditions under which this other man was operating. I think it is only fair if you make a comparison of that kind that we get all the facts.

Commissioner Harlan: Well, you want to go back into the woods and see whether his men are working efficiently and go into his mill and see if he has up-to-date machinery——

Mr. Davis: No.

Commissioner Harlan: And in that way you might find possibly conditions would equalize themselves.

Mr. Davis: No. You see to illustrate, here is a man running a logging road of 20 miles, and he does not get a division, and another one alongside of him the same distance does. The practice of recognizing these roads if they perform a service to the public is almost universal, as well as this man that does not get a division is at a disadvantage or not is the question you asked me, and I answered that I would want to know why he did not incorporate his road and take a division before I answered the question. All incorporated roads receive divisions, so I do not think it is a fair comparison.

1611 Commissioner Harlan: Well, if he does not take advantage of his opportunity, then he is at fault.

Mr. Davis: He is at fault, and I do not think the Commission can help him on that, because there is something wrong with his make-up if he has a railroad and a transportation company, and does not want to do business with any one.

Mr. Garwood: Relative to these milling in transit rates, suppose you shipped out from De Ridder a car of lumber, manufactured product, to a point to which your through rate did not apply, would there not then be a payment in such a case as that by the lumber company to the railroad company representing the cost of the transportation of the logs to De Ridder?

Mr. Davis: We charge them our regular local rates, yes, sir.

Mr. Garwood: In such a case there would be a charge of the regular local rate?

Mr. Davis: Yes, sir.

Mr. Garwood: And the other case is the ordinary application of milling in transit principle?

Mr. Davis: Yes, sir.

Mr. Garwood: Now I do not remember what divisions you
1612 stated you had with the Kansas City Southern.

Mr. Davis: Well, it runs, my recollection is, from one and a half to five cents.

Mr. Garwood: Do you do any considerable amount of your business with the Kansas City Southern?

Mr. Davis: We have been doing considerable, yes, sir.

Mr. Garwood: When you deliver cars to the Louisiana Western at Lake Charles, what service do you perform there? I see from the map here that you have very extensive terminals there. What service would you perform in making those deliveries?

Mr. Davis: This map as I understand it, represents—this is the unloading part. The timber docks are here. In delivering to the Louisiana Western, we take timber right over this line, switch it back and deliver it to the Louisiana & Western at this point here.

Commissioner Harlan: What distance is it?

Mr. Davis: I should say about three-quarters of a mile.

Mr. Thurmond: It is a mile from here to here (indicating).

Mr. Davis: And the dressed lumber is loaded from this track
here. We have several tracks in there and that is switched
1613 to the Louisiana & Western, and if it goes to the Kansas City Southern it is brought down here.

Commissioner Harlan: Did the Louisiana & Western never have a track of its own along those sheds?

Mr. Davis: No, I do not think so; in fact, I am sure of it. That represents the Louisiana & Pacific.

Commissioner Harlan: I say did it ever have?

Mr. Davis: I do not think they were ever in there.

Mr. Garwood: Can you state or have you any knowledge of the value of those terminals?

Mr Davis: I have not.

Mr. Garwood: I will not say the value. I will say the cost.

Mr. Davis: It is merely a matter of hearsay. I think they cost a matter of $40,000 or $50,000.

Mr. Thurmond: $64,000.

Mr. Davis: $64,000 was it?

Mr. Blair: Before that shipment reaches Lake Charles say from the mill at Bonami, what haul has your road performed?

Mr. Davis: 40 miles.

Mr. Blair: That is a haul of the finished product?

1614 Mr. Davis: Yes.

Mr. Blair: That is the service you perform in connection with the other service for the four cent division, so far as the Southern Pacific is concerned?

Mr. Davis: Yes.

Mr. Blair: You have a mill at Longville?

Mr. Davis: Yes, sir.

Mr. Blair: What length haul of the finished product do you perform in connection with the shipments delivered to the Louisiana & Western at Lake Charles?

Mr. Davis: 25 miles.

Commissioner Harlan: Mr. Davis, do you know what assessment is made by the state authorities on main line track?

Mr. Davis: I do not, no, sir.

Commissioner Harlan: Mr. McLean, do you know what assessment is made by the state authorities on main line track?

Mr. McLean: No, sir, I do not.

Commissioner Harlan: Is it not $2,500?

Mr. Rickey: $1,500.

Mr. Garwood: I do not think he understands the question.

Commissioner Harlan: What valuation is assessed upon a mile of road by the state authorities for the purpose of taxation?

1615 Mr. Blair: That differs with each road. They assess each road and sometimes different parts of the road at different valuations according to what they consider its value.

Commissioner Harlan: But is there not some general basis for main line track?

Mr. Blair: No, sir. Our main line is valued, I believe, at $12,000 for some miles.

Commissioner Harlan: Is there some fixed valuation for logging lines?

Mr. Rickey: I do not know.

Commissioner Harlan: Do you know that, Mr. McLean?

Mr. McLean: No, sir, I do not.

Mr. Thurmond: Mr. Davis, your road files its tariffs with the Interstate Commerce Commission?

Mr. Davis: It does.

Mr. Thurmond: You comply with the rules and regulations of the state authorities?

Mr. Davis: Yes, sir.

Mr. Thurmond: I am going to take this up one road at a time, but I will ask if the same is true with the Woodworth & 1616 Louisiana Central and the Sibley, Lake Bistineau & Southern?

Mr. Davis: Yes, sir.

Mr. Thurmond: Your Honor spoke about hauling by wagon. Is it not a fact that the lumber companies mentioned gather their logs up themselves and in their own way to the end of these termini of these branch roads?

Mr. Davis: What lumber companies? Are you talking about the small man?

Mr. Thurmond: I am talking about these on the line of this road which has been referred to.

Mr. Davis: I understand that they build spurs out from the terminus of our track, and——

Mr. Thurmond: So that the lumber company does bring those logs to the terminus of your line and assemble them by team, the same as the other man would have to do.

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Mr. Davis: That is generally understood, I think, everywhere.
Mr. Thurmond: They do that at their own expense?
Mr. Davis: Yes, sir.
Mr. Thurmond: His Honor said something about 98 per cent, where the mill owners were doing 98 per cent of the business. I would like to offer in that connection a certificate made by the
1617 Secretary of the State Board of Railroad Commissioners of Louisiana, showing the percentage of lumber, logs and staves hauled by the various railroads in Louisiana. Answering directly your Honor's question, or in reply to that, I think the average lumber haul is about 66 miles, but noting some of these main line roads, the Rock Island is 68 per cent; the Santa Fe 92, and this particular road of ours is given in this list as 96 instead of 98. The Sibley, Lake Bi-tineau & Southern is 84, and the Woodworth & Louisiana Central 93. Those are comparative figures which may interest your Honor, and I would offer it.

(The paper so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Exhibit No. 4, Witness Davis, received in evidence December 13th, 1910, and is attached hereto.)

Mr. Coleman: I think if you will look further you will find that is tonnage on the Santa Fe which terminates in Louisiana.
Mr. Thurmond: It shows for itself. You may take the witness, Mr. Cowan.
Mr. Cowan: It is now half-past five, and I have a big job with him.
1618 Commissioner Harlan: We will adjourn the further hearing of this case until 9.30 tomorrow morning.

1619 After the hour of adjournment was stated the Commissioner proceeded with the hearing of the Arkansas Eastern Railroad.

Arkansas Eastern Railroad.

F. E. GARY, was called as a witness, and having been duly sworn, testified as follows:

Mr. S. P. Andrews: What position do you hold with the Arkansas Eastern?
Mr. Gary: President.
Mr. Andrews: How long is that road?
Mr. Gary: It is between six and seven miles in operation.
Mr. Andrews: It extends from where?
Mr. Gary: From Turrell to Hafer.
Mr. Andrews: About six miles?
Mr. Gary: Between six and seven.
Mr. Andrews: Turrell is on what road?
Mr. Gary: The Frisco.
Mr. Andrews: What lumber company is at Turrell?
Mr. Gary: The Baker Lumber Company.

Mr. Andrews: Was this road built to Hafer prior to its incorporation, by the Baker Lumber Company?

1620 Mr. Gary: It was.

Mr. Andrews: When was the road incorporated?

Mr. Gary: In 1907.

Mr. Andrews: After it was incorporated, is it a fact that the stock of the railroad company was taken by the stockholders of the Lumber Company?

Mr. Gary: Most of it was; a little of it was sold outside.

Mr. Andrews: The stockholders of the lumber company own a controlling interest in the railroad company?

Mr. Gary: Yes, sir.

Mr. Andrews: I would like to file—I do not know whether you have been taking them, a certified copy of the articles of association

Commissioner Harlan: No, we have not been taking them.

Mr. Andrews: There was something on it that I wanted to call attention to.

Commissioner Harlan: It can be referred to.

Mr. Andrews: Very well. I offer a certified copy of the certificate.

(Paper not marked as an exhibit.)

Mr. Andrews: What is the capital stock of the railroad

1621 company?

Mr. Gary: $112,000.

Mr. Andrews: Divided into 1,120 shares.

Mr. Andrews: How much stock has been issued?

Mr. Gary: 425 Shares.

Mr. Andrews: And between what points has it been authorized to build its road?

Mr. Gary: From Big Creek to Earl, Arkansas.

Mr. Andrews: What is that total distance?

Mr. Gary: Sixteen miles.

Mr. Andrews: And Earl is at a point on the Crittenden Railroad?

Mr. Gary: Well, on the Iron Mountain; it connects with the Crittenden there; yes, sir.

Mr. Andrews: Have you had any negotiations with the owners of that Crittenden Railroad towards extending that road to Earl and form a connection with it or a consolidation?

Mr. Gary: Yes, sir.

Mr. Andrews: Why have you not completed the road from Hafer to Earl?

Mr. Gary: Well, we started to build before this agitation came up about the tap line and money was pretty tight for the last year or two, so we have not done it.

1622 Commissioner Harlan: What is that distance?

Mr. Andrews: It is sixteen miles total length, and they have built six miles from the town of Hafer.

Mr. Andrews: What is the population of Big Creek or Turrell? It seems to have two names.

Mr. Gary: About four hundred, I guess.

Mr. Andrews: And Earl, what is the population?

Mr. Gary: I think about one thousand, possibly more, maybe about fifteen hundred.

Mr. Andrews: What is the population of this town Hafer, where the road now ends?

Mr. Gary: I should say in the neighborhood of two hundred people.

Mr. Andrews: Is there a post office there?

Mr. Gary: Yes.

Mr. Andrews: Please state whether or not you are constructing an extension beyond the town of Hafter towards Earl.

Mr. Gary: We have got three miles now of the dump thrown up ready to put on the ties and iron.

Mr. Andrews: You say it is about ready to put on the iron and ties?

1623 Mr. Gary: Yes, sir; practically ready.

Mr. Andrews: Has the entire route of your railroad been surveyed?

Mr. Gary: Yes, sir.

Mr. Andrews: And a plat showing the location and alignment of the road has been made?

Mr. Gary: Yes, sir.

Mr. Andrews: And a profile?

Mr. Gary: Yes, sir.

Mr. Andrews: When was that made, was it shortly after you incorporated?

Mr. Gary: I think it was the same fall; it was incorporated in June and that work was done that fall.

Mr. Andrews: Has this plat and profile been filed in the proper state offices in Arkansas?

Mr. Gary: Yes, sir.

Mr. Andrews: Have you a map showing the line already built as well as this projected line?

Mr. Gary: Yes, sir. This is not my regular railroad line.

(The map so offered and identified was received in evidence and thereupon marked Arkansas Eastern Exhibit 1, Witness
1624 Gary, received in evidence December 13th, and is attached hereto.)

(Witness explains map to the Commissioner.)

Mr. Andrews: From point A on that map at Turrell the road line extends from there to the point marked B, and B is at Hafer, is it?

Mr. Gary: Yes, sir.

Mr. Andrews: And that is the completed road?

Mr. Gary: That is the completed road.

Mr. Andrews: The extension is represented by another red line extending from B to a point marked C; is that right?

Mr. Gary: Yes, sir.

Mr. Andrews: That you say is about ready for the iron?

Mr. Gary: That is ready for the iron; yes, sir.

Mr. Andrews: The rest of your line from C to Earl on the Iron Mountain, no work has been done on that?

Mr. Gary: No work has been done on that.

Mr. Andrews: But it has been surveyed and the plat and profile made and filed?

Mr. Gary: Yes, sir.

Commissioner Harlan: There the proposed right of way meets the Crittenden Road?

1625 Mr. Gary: Yes, sir.

Mr. Andrews: What is the Baker Lumber Company, a corporation?

Mr. Gary: Yes, sir.

Mr. Andrews: An Illinois corporation?

Mr. Gary: Yes, sir.

Mr. Andrews: Where is its mill?

Mr. Gary: At Turrell.

Mr. Andrews: What kind of lumber does it handle?

Mr. Gary: Hardwood.

Mr. Andrews: No yellow pine?

Mr. Gary: No.

Mr. Andrews: Who are its officers?

Mr. Gary: L. K. Baker, is president; I am vice-president and John W. Gary secretary and treasurer.

Mr. Andrews: Are any of the officers of the lumber company officers of the railroad company?

Mr. Gary: I am the only one. I am president of the railroad company.

Mr. Andrews: The organizations of the two companies are kept separate and distinct?

Mr. Gary: Yes.

1626 Commissioner Harlan: Do you get a salary from both companies?

Mr. Gary: No, not from the railroad company.

Commissioner Harlan: Does any other railroad officer get any salary?

Mr. Gary: Only the traffic manager.

Mr. Andrews: Have you a map showing the land originally owned by the lumber company?

Mr. Gary: Yes, sir.

Commissioner Harlan: What is the acreage?

Mr. Gary: 25,000 Acres.

Commissioner Harlan: That is originally owned?

Mr. Gary: Yes, sir.

Mr. Andrews: I wish to file this map showing the land originally owned by the Baker Lumber Company.

(The map so offered and identified was received in evidence and thereupon marked Arkansas & Eastern Exhibit No. 2, Witness Gary, received in evidence December 13, 1910, and is attached hereto.)

Mr. Andrews: How many acres did it originally own?

Mr. Gary: 25,000.

Mr. Andrews: Has it sold any of the lands?

1627 Mr. Gary: We have practically sold them all.

Mr. Andrews: Have you delivered deeds for a great part of it?

Mr. Gary: All those marked "S" have been deeded, and the balance are under contract.

Mr. Andrews: And on this map, this portion that is marked pink or red, was that your land originally?

Mr. Gary: Yes, sir.

Mr. Andrews: And deeds to that have not been given yet?

Mr. Gary: Deeds have not been issued. Well, possibly there are a few pieces of it have, but not all of it.

Mr. Andrews: But it has been sold?

A. It is under contract, yes, sir.

Mr. Andrews: And that marked "S", the deeds have been given?

Mr. Gary: Yes.

Mr. Andrews: The conveyances made to purchasers?

Mr. Gary: Yes, sir.

Commissioner Harlan: Different purchasers?

Mr. Gary: Yes.

Mr. Andrews: Was that sold in large or small tracts?

Mr. Gary: Well, from 160 acres up to 1000 acres.

Commissioner Harlan: Had the land been cut over?

1628 Mr. Gary: Yes, we sold it after we cut it over.

Commissioner Harlan: It was sold for agricultural purposes?

Mr. Gary: Yes.

Mr. Andrews: What was the market value of that land when you sold it, on the average?

Mr. Gary: The first sale I made was $5.00 an acre.

Mr. Andrews: What is it now selling for?

Mr. Gary: From $20.00 to $30.00 an acre.

Mr. Andrews: That is what you call St. Francis bottom land, is it?

Mr. Gary: Yes.

Mr. Andrews: What equipment has this railroad company?

Mr. Gary: We have three locomotives and about 50 cars.

Mr. Andrews: How do you get your logs from the woods to the main line or to the tap line?

Mr. Gary: To the tap line with teams. You mean from the tree?

Mr. Andrews: From the tree into Hafer?

Mr. Gary: We build spur tracks from Hafer into the woods.

Mr. Andrews: Who builds spur tracks into the woods?

Mr. Gary: The lumber company builds those.

Commissioner Harlan: Does the railroad company furnish

1629 the rail?

Mr. Gary: The railroad company furnishes the rail. They own all that rail. We build the tracks and the lumber company uses that as part of their logging plant, and they load the logs on to the car.

Commissioner Harlan: Who loads the logs?

Mr. Gary: The lumber company does all that work.

Mr. Andrews: Does the railroad company make any charge for the hauling of the logs from the woods to the junction with the tap line?

Mr. Gary: We make a $20.00 a day charge, I think it is either $20.00 or $25.00.

Mr. Andrews: $25.00, is it not?
Mr. Gary: I think it is $25.00 a day.
Mr. Andrews: They charge that and collect it from the Baker Lumber Company?
Mr. Gary: Yes, sir, for the train service.
Commissioner Harlan: For the train service on these tram lines?
Mr. Gary: Yes.
Mr. Andrews: Does that cover your expense in building the tram line?
1630 Mr. Gary: No, those spur tracks are all done by the lumber company.
Mr. Andrews: You said the railroad company before.
Mr. Gary: I did not mean that.
Mr. Andrews: The rails are owned by the railroad company?
Mr. Gary: Yes.
Mr. Andrews: And loaned to the lumber company?
Mr. Gary: Yes.
Mr. Andrews: And the lumber company pays all the labor for moving the tracks?
Mr. Gary: Yes.
Mr. Andrews: Have you had an estimate made of the cost to the Baker Lumber Company for logging its timber or logs from the tree to the mill?
Mr. Gary: Well, my report last year shows what the yearly cost was.
Mr. Andrews: What was that?
Mr. Gary: It was between 7.50 and 7.75 for the year, all kinds of timber.
Mr. Andrews: Do you mean that was the average cost per thousand?
Mr. Gary: Average cost from the stump to the sawmill.
Mr. Andrews: To the mill at Turrell?
1631 Mr. Gary: Yes.
Mr. Andrews: $7.50 to $8.00?
Mr. Gary: A little over $7.50, between $7.50 and $7.75.
Commissioner Harlan: That was the cost to the lumber company?
Mr. Gary: That was the cost to the lumber company.
Commissioner Harlan: Of moving what quantity of logs?
Mr. Gary: It is hardly logs; that would be a thousand feet, $7.50 a thousand.
Commissioner Harlan: $7.50 a thousand feet for felling the tree, loading the logs on the car, and taking them into the mill?
Mr. Gary: That was the lumber company's cost from the stump to the mill.
Mr. Andrews: You do not mean cutting the tree down?
Mr. Gary: Oh, yes.
Mr. Andrews: I thought you meant getting the logs from the tree to the mill?
Mr. Gary: No, that is logging expense and all.
Mr. Andrews: You did not separate the cost of felling the tree from the cost of transporting the logs from the tree to the mill.

1632 Mr. Gary: We have each one of those items separate, but I do not know as I could tell you.

Mr. Andrews: I would like to have the privilege of filing that in this case, that is the cost of the Baker Lumber Company, of getting the log that is cut down from the woods to the mill at Turrell.

Commissioner Harlan: That would be the figure he has just given less the cost of felling the tree and cross-sawing the tree.

Mr. Gary: Yes.

Mr. Andrews: That is all.

Commissioner Harlan: Let me ask, Mr. Gary, that figure you have just given includes some payment made by the lumber company to the railroad company, does it not?

Mr. Gary: I did not just catch that.

Commissioner Harlan: You have just stated it cost $7.50 a thousand feet. Is that log measure?

Mr. Gary: Yes, sir, log measure.

Commissioner Harlan: For felling the tree and cutting the log, and getting the log to the mill?

Mr. Gary: Yes, sir.

Commissioner Harlan: That is the cost to the lumber
1633 company?

Mr. Gary: That is the cost to the lumber company, yes, sir.

Commissioner Harlan: What part of that, if any, is paid by the lumber company to the railroad company which hauls the logs to the mill?

Mr. Gary: It would be that train service.

Commissioner Harlan: You have not stated the basis of train service on logs to the mill?

Mr. Andrews: He said $25.00 a day, they charged for the use of the engines and equipment.

Commissioner Harlan: I thought that was on the logging road?

Mr. Andrews: Yes, sir.

Commissioner Harlan: I am talking now of an item of $7.50 which fells the tree and gets the logs to the mill.

Mr. Gary: Well, of course, those are figures made up for my lumber business, and that means a total cost from the time it starts from the tree until it is landed at the mill.

Commissioner Harlan: Now does that mean in the pond?

Mr. Gary: We have no pond; we unload our logs from the car right on to the log deck.

1634 Commissioner Harlan: You must pay some service to the railroad company, something to the railroad company for its service?

Mr. Andrews: Only the through rate.

Commissioner Harlan: That was the point I wanted to get at.

Mr. Gary: There is the milling in transit in that.

Commissioner Harlan: In other words, the lumber company does not pay your road anything?

Mr. Gary: Only what they get through this division.

Commissioner Harlan: Except this $25.00 a day for operating the tram connections to the tap line?

Mr. Gary: Yes, sir.

Commissioner Harlan: So that the lumber company gets its logs hauled to the mill free of charge?

Mr. Gary: Well, we figure that they get their portion through the through rate when the lumber is shipped out.

Commissioner Harlan: There is no transaction between the railroad and the lumber company that results in the payment by the lumber company to your road for that service of hauling the logs to the mill?

Mr. Gary: We pay nothing more than that train service,
1635 no, sir.

Commissioner Harlan: So then there really is a free haul of the logs, so far as the railing company is concerned?

Mr. Gary: Yes, the Baker Lumber Company pays for hauling it, though.

Commissioner Harlan: Do you as a railroad haul logs over your line for any other lumber company?

Mr. Gary: Yes, sir.

Commissioner Harlan: For whom?

Mr. Gary: Well, we are taking out some logs at the present time for the Wisarkana Lumber Company.

Commissioner Harlan: To what mill are those logs hauled?

Mr. Gary: That is the Wisarkana mill up at Nettleton, Arkansas; it is state business.

Commissioner Harlan: It goes beyond your line?

Mr. Gary: Yes, sir; it is turned over to the Frisco.

Mr. Andrews: I had not overlooked that. I was going to ask the traffic man about hauling that stuff.

Commissioner Harlan: Well, do you charge that company for hauling the logs on your line?

Mr. Gary: As I understand, it would be charged the tariff rate.

1636 Commissioner Harlan: The local Arkansas rate?

Mr. Gary: I think so; I am not very familiar with that.

Mr. Andrews: I will put the traffic man on to show what he charges for that and what industries are there.

Commissioner Harlan: Who loads the logs on your cars?

Mr. Gary: The Baker Lumber Company loads their own.

Commissioner Harlan: Your railroad men do not participate?

Mr. Gary: No.

Mr. Andrews: Who unloads them from the cars?

Mr. Gary: The Baker Lumber Company.

Commissioner Harlan: Your railroad men do not participate in that?

Mr. Gary: No.

Commissioner Harlan: Then your railroad employees, your train and track crews, do no labor at all for the lumber company?

Mr. Gary: No.

Commissioner Harlan: But the clerks in the lumber company office do?

Mr. Gary: No.

Commissioner Harlan: You have a clerk who does that work for the railroad company?

1637 Mr. Gary: Yes, sir.

Commissioner Harlan: He is paid by the railroad?

Mr. Gary: Yes, sir.

Commissioner Harlan: And receives nothing from the lumber company?

Mr. Gary: Well, I did not know that he was, but he was just telling me that he did get a small part of his salary from the lumber company.

Commissioner Harlan: That seems usually to be the case that the clerk who serves the railroad has not enough to do, so he also serves the lumber company and is a joint employé and is paid by both. I assume that is so with yours.

Mr. Gary: I understand from him today that he does get some of his pay from the lumber company. I did not know it. I should have asked that question, but did not.

Commissioner Harlan: But you do not?

Mr. Gary: No.

Commissioner Harlan: Do you remember the total tonnage you moved last year?

Mr. Gary: I have not those figures.

Mr. Andrews: I am going to give the revenue and as much as we can of that data from the traffic man.

1638 Commissioner Harlan: I think of nothing else from Mr. Gary.

(Witness excused.)

H. F. Willis, was called as a witness, and having been duly sworn, testified as follows:

Mr. Andrews: Where do you live?

Mr. Willis: Turrell, Arkansas.

Mr. Andrews: How long have you been connected with the Arkansas Eastern Railway?

Mr. Willis: A little over three years.

Mr. Andrews: If you are in the employ of the lumber company, please state as briefly as you can what your duties for the lumber company are?

Mr. Willis: Originally I was not in the employ of the Baker Lumber Company; my employment originally was to attend to the railroad work. Later on there was a small amount of clerical work given to me belonging to the Baker Lumber Company's work for which a small portion of my salary is paid; that is an additional allowance was made me for that work.

1639 Mr. Andrews: You do not do anything else for the lumber company except what you have spoken of?

Mr. Willis: That is all.

Mr. Andrews: Please state to the Commissioner what industries are on the line of this railroad?

Mr. Willis: We have two cotton gins, a stave mill and general merchandise store.

Mr. Andrews: Where is this store?
Mr. Willis: At Hafer.
Mr. Andrews: Is there a postoffice at Hafer?
Mr. Willis: Yes, sir, there is a postoffice at Hafer.
Mr. Andrews: Do you know whether or not there is another stave factory about to be erected on the line of the road?
Mr. Willis: We have just about completed the arrangements for another stave factory to locate on our line, the plant of which will cost about $35,000.
Mr. Andrews: There is a saw mill, I understand, also on the line?
Mr. Willis: There is a saw mill south——
Mr. Andrews: On this extension, excuse me.
Mr. Willis: Yes, sir, south of Hafer, which we are now endeavoring to reach with the extension of the road, or which we will
1640 reach with the extension of the road which has been testified to.
Mr. Andrews: That saw mill, does it belong to the Baker Lumber Company?
Mr. Willis: No, sir, the Baker Lumber Company has no connection with it absolutely.
Mr. Andrews: You expect to get the movement of that lumber on your road to Turrell?
Mr. Willis: We will get that movement.
Mr. Andrews: Is there any other way for that lumber to go out?
Mr. Willis: Only by wagon, hauling it 8 to 10 miles.
Mr. Andrews: These industries you have spoken of, have they all been located on this line since your connection with it?
Mr. Willis: Yes, sir, with the exception of the stave mill; it was just about ready for operation when I left there, as I remember it.
Mr. Andrews: How much cotton will you carry this year?
Mr. Willis: About 300 bales, possibly a little more than that.
Mr. Andrews: What amount of cotton do you estimate you
1641 will carry next year?
Mr. Willis: We should handle from 1500 to 2500 bales next year, if crop conditions are the average.
Mr. Andrews: I understand they are now opening a county road from Hafer west; is that true?
Mr. Willis: Yes, sir.
Mr. Andrews: Will this increase your traffic, and if so, why?
Mr. Willis: It will give us a connection with the well developed farming community over there in that territory, from which our information is that we should get next year 1000 to 1500 bales of cotton alone.
Mr. Andrews: How far is this community from Hafer?
Mr. Willis: It would be about four to five miles from Hafer, but nearer to that extension that we are making.
Mr. Andrews: Has that community any other railroad reaching it?
Mr. Willis: No, sir.
Mr. Andrews: Or is your road the nearest one?
Mr. Willis: Our road is the nearest, and will be the proper road to serve it.

Mr. Andrews: How near is any other railroad to it?

1642 Mr. Willis: 8 to 10 miles away.

Mr. Andrews: Had you through rates on cotton before the railroads cancelled your through rates?

Mr. Willis: Yes, sir.

Mr. Andrews: Through rates to where?

Mr. Willis: To Memphis points; that is our cotton market.

Mr. Andrews: Did you have any through rates on your classes and commodities, both in and out?

Mr. Willis: No, sir, we did not. The necessity for class and commodity rates had developed about a year and a half ago, and I had had the matter up with the Frisco traffic department, and they had agreed with me on putting in class and commodity rates both in and out, and it only lacked the detail of making up the tariffs about the time that this last agitation of the tap line question came out, and then they declined to put them in. They said that they thought we had better just stop where we were until the whole question was settled.

Mr. Andrews: At the present time, then, cotton that is being shipped from Hafer through to Memphis does not move under the joint rate?

Mr. Willis: It moves on the combination of the two locals.

1643 Mr. Andrews: What per cent of land adjacent to this road had been made ready for cultivation, approximately?

Mr. Willis: Well, about 60 per cent of it, I should judge, has been made ready for cultivation in its different stages; not all of it absolutely ready to plow, but deadened and cut down.

Commissioner Harlan: You refer to the land of the Baker Lumber Company?

Mr. Willis: Yes, sir, the land adjacent to the road through that territory.

Mr. Andrews: Immediately adjacent on either side of the road?

Mr. Willis: Well, my answer would apply to that general territory through which that line runs.

Mr. Andrews: How does this acreage compare with what it was two years ago?

Mr. Willis: Well, 200 to 300 per cent increase, I would say.

Mr. Andrews: There is a man named Hafer who lives at the town of Hafer. What acreage has he in cultivation now?

Mr. Willis: I think he got in about 600 acres this year. Last year he probably had in 400, and the year before that I am quite

1644 sure he did not have in over 200, and then it was in rather a raw state.

Mr. Andrews: Now what has been the growth of Hafer during the past three years, the number of buildings or houses?

Mr. Willis: Three years ago there was practically nothing there, one or two or possibly three houses. Now I should think they have got 25 to 30 houses there.

Mr. Andrews: Has the railroad company a team track at Hafer?

Mr. Willis: Yes, sir.

Mr. Andrews: Accommodating how many cars?

Mr. Willis: Six or seven cars.

Mr. Andrews: Name your stations from Turrell, on your road, the first station from Turrell?

Mr. Willis: Sousa, Wise and Hafer.

Mr. Andrews: In billing the logs that go through, I mean to Turrell for beyond, from what point do you bill them?

Mr. Willis: Those logs are all billed from Wise.

Mr. Andrews: Why not from Hafer?

Mr. Willis: Well, at the time the through rates were put in that was the farthest station out, and the tariffs have never been corrected to read Hafer yet.

1645 Mr. Andrews: Well, where do you bill your cotton from that you get from the gins at Hafer?

Mr. Willis: That is billed from Hafer.

Mr. Andrews: About what population does your road serve approximately?

Mr. Willis: I think between 2000 and 3000 people at the present time.

Mr. Andrews: And what population has this particular district that you say will be reached by the county road, how much will that add to the population served by your road?

Mr. Willis: I understand about 1500 people, 1000 to 1500, I suppose.

Mr. Andrews: What extent of territory would you say on each side of your road does your road serve. I mean that has a population?

Mr. Willis: Well, we expect to draw an average territory of between five to ten miles.

Mr. Andrews: Is it settled back from your road for quite a distance?

Mr. Willis: It is settling and will be settled.

Mr. Andrews: How far is it settled back now?

Mr. Willis: Oh, back that distance even.

1646 Mr. Andrews: By the way, what cars do you use in shipping cotton from Hafer?

Mr. Willis: We use cars from the Frisco connection.

Mr. Andrews: Foreign cars?

Mr. Willis: Yes, sir, foreign cars.

Mr. Andrews: Have you a per diem rule in force on foreign cars on your road?

Mr. Willis: Yes, sir.

Mr. Andrews: I wish you would describe very briefly the method of handling logs from points on your road to Turrell for beyond?

Mr. Willis: They are moved under the usual milling in transit arrangement; that is, the logs originate out on the line and move into Turrell or other points for milling, and then one or two cents is deducted on the through rate.

Mr. Andrews: The billing is from the point where you accept the logs on the tap line?

Mr. Willis: Yes, sir.

Commissioner Harlan: Is that so? Did you not say the lumber is billed from Wise?

Mr. Willis: Yes, sir

Mr. Andrews: I will change that. He explained why it
1647 was billed from Wise, because the present tariffs had never been changed and they stopped at Wise, and the published through rate in the Frisco tariffs, as I understand, gives a rate from Wise.

Mr. Willis: That is the farthest point out that a rate has been published from.

Commissioner Harlan: But as a matter of fact you haul it over your main line from some point beyond?

Mr. Willis: Yes, sir.

Mr. Andrews: State the divisions you receive on lumber or on interstate shipments?

Mr. Willis: On interstate shipments, one and one-half cents to Memphis on a six cent rate; two cents to Thebes on a 10 cent rate; three cents to St. Louis on a 12 cent rate, and three cents to Kansas City on a 12 cent rate.

Commissioner Harlan: Is three cents the highest division?

Mr. Willis: Three cents is the highest division we receive.

Mr. Andrews: How do these divisions on lumber compare with your divisions on cotton?

Mr. Willis: They are less than the division we did have on cotton.

Mr. Andrews: What was your division on cotton?

1648 Mr. Willis: Out of a rate of $1.00 per bale to Memphis, we received 35 cents per bale.

Mr. Andrews: Has your company paid any dividends?

Mr. Willis: No.

Mr. Andrews: What have you done with your surplus, if you have had any?

Mr. Willis: It has been used in additions and betterments to the road, that part of it that has been used.

Mr. Andrews: What is the amount of freight revenue for the year ending June 30th, 1910?

Mr. Willis: $17,161.95.

Mr. Andrews: What was the amount of that freight revenue during the said year from freight other than lumber on which you got divisions?

Mr. Willis: Well, it is not other than lumber.

Mr. Andrews: Well, what is it?

Mr. Willis: It is business other than that of which the holding company, or whatever it is termed, was interested.

Mr. Andrews: You mean the Baker Lumber Company?

Mr. Willis: Yes, sir.

Mr. Andrews: I will get that straight now. What is it, the amount of freight revenue during that year from freight
1649 other than the logs——

Mr. Willis: Other than business with which the Baker Lumber Company was interested.

Mr. Andrews: All right. Put it that way.

Mr. Willis: $5,111.04.

Mr. Andrews: What were the operating expenses for that fiscal year?

Mr Willis: $23,130.80.
Mr. Andrews: Did you pay any taxes, and how much?
Mr. Willis: $1,224.70.
Mr. Andrews: Making a total of what?
Mr. Willis: $24,355.50.
Mr. Andrews: Now your freight revenue was $17,161.95. Did you have any non-transportation revenue?
Mr. Willis: Yes, sir, $7,775.
Mr. Andrews: What was that for?
Mr. Willis: That was for special service out on the logging road, the $25.00 a day service.
Mr. Andrews: Those two together made a total of how much?
Mr. Willis: $24,936.95.
Commissioner Harlan: That is gross revenue from all
1650 sources?
Mr. Willis: Yes, sir.
Mr. Andrews: Leaving a surplus for the year of——
Mr. Willis: $581.45.
Mr. Andrews: You have not any bonded debt?
Mr. Willis: No, sir.
Mr. Andrews: You have filed concurrences in interstate tariffs and make annual and monthly reports to the Interstate Commerce Commission?
Mr. Willis: Yes, sir.
Mr. Andrews: Is your present equipment sufficient for your present track?
Mr. Willis: Yes, sir.
Mr. Andrews: You operate your trains regularly?
Mr. Willis: Yes.
Mr. Andrews: How many?
Mr. Willis: We operate a daily service and sometimes one and sometimes two trains a day.
Mr. Andrews: Do you carry passengers?
Mr. Willis: No.
Mr. Andrews: Have you furnished the Arkansas Tax Commission a list of your taxable property?
Mr. Willis: We are required to furnish that return annu-
1651 ally.
Mr. Andrews: Has the road been assessed as a railroad in Arkansas?
Mr. Willis: Yes, sir; we are assessed the same as other railroads.
Mr. Andrews: Have you a local tariff?
Mr. Willis: Yes, sir.
Mr. Andrews: We would like to file a copy of it.
Commissioner Harlan: Very well. It is not filed with the Interstate Commerce Commission?
Mr. Willis: No, sir, it is a local tariff.

(The paper so offered and identified, was received in evidence and thereupon marked Arkansas Eastern Railroad Exhibit 3, Witness Willis, received in evidence December 13th, 1910, and is attached hereto.)

Mr. Andrews: Has the railroad company a depot at Turrell?

Mr. Willis: We have a freight house there.

Mr. Andrews: Do you handle any carload shipments?

Mr. Willis: Yes, sir, considerable amount of them.

Mr. Andrews: Well, you handle all traffic, I suppose, that that general store at Hafer gets?

Mr. Willis: Absolutely all of it.

1652 Commissioner Harlan: Is that a company store?

Mr. Willis: It has no connection whatever with the company.

Mr. Andrews: About that Wisarkana Lumber Company, where is their timber tract, how far from the tap line?

Mr. Willis: They acquired a timber tract about two miles from our main line, and arranged to get it handled out over one of the logging trams, and we have been handling that traffic out for them. It moved about 150 cars in the last two months of that business.

Mr. Andrews: Let me understand that. Does the railroad company own the tracks over which those logs move to the Arkansas Eastern Railroad?

Mr. Willis: No, sir, those logs come up to the Arkansas Eastern over one of the Baker Lumber Company's tram roads.

Mr. Andrews: And where you connect with your Arkansas Eastern track is how far from Turrell?

Commissioner Harlan: What is that?

Mr. Andrews: I want to know where the tramway connects with the Arkansas Eastern, how far is it from Turrell.

Mr. Willis: That tram is about three miles out.

Mr. Andrews: About three miles from Turrell?

Mr. Willis: Yes, sir.

1653 Mr. Andrews: What rate do you charge that lumber company for hauling those logs?

Mr. Willis: We have charged our local rate to Turrell.

Mr. Andrews: What is it?

Mr. Willis: Two cents.

Mr. Andrews: Two cents per 100 pounds?

Mr. Willis: Yes, sir.

Mr. Andrews: Does that include the movement from where they chop the trees down?

Mr. Willis: No, sir.

Mr. Andrews: Over the tram?

Mr. Willis: No, that is the movement over the Arkansas Eastern Railroad.

Mr. Andrews: Who hauls the logs from the woods up to the Arkansas Eastern Railroad?

Mr. Willis: Well, we do under that other arrangement of $25.00 a day, which they arrange through the Baker Lumber Company.

Mr. Andrews: And that $25.00 a day includes, as I understand, the expense of your engine and your train crew?

Mr. Willis: Yes, sir.

Mr. Andrews: That is practically all, is it not?

1654 Mr. Willis: Yes, sir.

Mr. Andrews: What cars do you use in hauling those logs for this Wisarkana Lumber Company?

Mr. Willis: Foreign equipment furnished by the Frisco Railroad.

Mr. Andrews: So you bring those cars out to your road and your engine carries them over the tram?

Mr. Willis: Yes, sir.

Mr. Andrews: Does your railroad company load them?

Mr. Willis: No.

Mr. Andrews: Your engine brings them back to the Arkansas Eastern?

Mr. Willis: Yes, sir.

Mr. Andrews: About three miles from Turrell?

Mr. Willis: Yes, sir.

Mr. Andrews: Then your engine takes the cars down to Turrell?

Mr. Willis: Yes, sir.

Mr. Andrews: And delivers it where?

Mr. Willis: To the Frisco.

Mr. Andrews: These logs are not removed from the car?

Mr. Willis: No.

1655 Mr. Andrews: They go through to the destination?

Mr. Willis: Yes, sir.

Mr. Andrews: The destination is an Arkansas point?

Mr. Willis: Yes, sir.

Mr. Andrews: That is where the mill is located?

Mr. Willis: About 50 miles from Turrell on the Frisco Railroad.

Mr. Andrews: I have not any other questions.

Commissioner Harlan: Your rate is a local rate to Turrell on that stuff?

Mr. Willis: Yes, sir.

Commissioner Harlan: That amounts to about how much a car?

Mr. Willis: About $5.00 a car.

Commissioner Harlan: What is the weight of the logs, a carload?

Mr. Willis: We have no track scales and they are not weighed, and we are using the minimum weight on the car.

Commissioner Harlan: You haul logs a much further distance for the Baker Lumber Company without making any charge, do you not?

Mr. Willis: Yes, sir, we make a charge for that in the division of the trough rate.

1656 Commissioner Harlan: Do you make a charge against the lumber company?

Mr. Willis: We get a revenue for it in the division of the through rate for that haul.

Commissioner Harlan: Well, even so it is a much longer haul, is it not?

Mr. Willis: Yes, sir.

Commissioner Harlan: About twice——

Mr. Willis: About three miles. We would haul those same logs from the end of our line on the same rate.

Commissioner Harlan: But as a matter of fact you haul for the Baker Lumber Company some logs at a very much less rate than you haul for this lumber company for about half the distance?

Mr. Willis: Well, to figure it out it would perhaps be some less, but through rates generally are lower than local rates.

Commissioner Harlan: Yes. Now, Mr. Gary, let me ask at this point, did I understand that you had arranged—I infer the Baker Lumber Company, for the sale of all the lands not already sold?

Mr. Gary: Yes.

1657 Commissioner Harlan: And that would leave the Baker Lumber Company without any timber?

Mr. Gary: Without any land there. We own more or less timber; well, we own all the timber on the land that we have not cut over, but we have made a contract with a man whose name is on the top of that——

Commissioner Harlan: You keep your timber rights and sell the land?

Mr. Gary: Yes, sir.

Commissioner Harlan: Do your railroad employés do any loading of the logs on to the cars?

Mr. Willis: No.

Commissioner Harlan: Do not throw them off at the mill?

Mr. Willis: No.

Mr. Andrews: How many employés has the railroad company got in its exclusive service?

Mr. Willis: About 15.

Commissioner Harlan: How many locomotives?

Mr. Willis: Three.

Commissioner Harlan: How many cars?

Mr. Willis: About 50.

Commissioner Harlan: Now the mill is where in relation

1658 to the Frisco tracks?

Mr. Willis: It is at the junction of the Frisco and the Arkansas Eastern tracks.

Commissioner Harlan: Does the Baker Lumber Company ship out dressed lumber for the most part?

Mr. Willis: No, sir, their lumber is all rough shaped hardwood lumber.

Commissioner Harlan: It is loaded from the mill into the car at the Frisco track?

Mr. Willis: It is loaded from the yard, they have to have a large storage track, at the end of the cars which are on the connecting track which joins the Frisco and Arkansas Eastern.

Commissioner Harlan: Does not the Frisco's spur track run down to the mill?

Mr. Willis: The Frisco's spur track runs down to the mill, yes, sir.

Commissioner Harlan: A car is placed by the Frisco on that track?

Mr. Willis: Yes, sir.

Commissioner Harlan: A car is hauled out by the Frisco?

Mr. Willis: Yes, sir.

1659 Commissioner Harlan: So that you do not have any haul of the manufactured lumber?

Mr. Willis: We make no haul on the finished product of the lumber company, no, sir.

Commissioner Harlan: I believe that is all.

Mr. Andrews: If there are any statements, of course, we will be glad to furnish them.

Commissioner Harlan: Mr. Willis has already stated your gross revenue and given the amount derived from other sources.

Mr. Andrews: Yes, but he has not given the tonnage.

Commissioner Harlan: Do you haul lumber for any other than the Wisarkana Mill? Do you haul any staves?

Mr. Willis: Yes, sir, we haul staves for the stave company.

Commissioner Harlan: Where do they get their logs?

Mr. Willis: Their timber?

Commissioner Harlan: Their timber?

Mr. Willis: Out on the line—well, out on this Baker Lumber Company's tram lines.

Commissioner Harlan: Is that Baker Company's land?

Mr. Willis: Some of it, and some of it is not.

Commissioner Harlan: Well, for the most part?

1660 Mr. Wills: For the most part, yes, sir.

Commissioner Harlan: I would assume that that was the case.

Mr. Willis: Yes, sir; but on those lands that have not been sold there now a large lot of stuff has come off of those lines.

Commissioner Harlan: Does the Baker Lumber Company retain the lumber rights on a lot of that?

Mr. Willis: They retain it, but they do not get it always; sometimes when the fellow comes in and buys it he finds he has got something pretty nice and he sells it.

Commissioner Harlan: You do not carry mail and express matter?

Mr. Willis: No.

Commissioner Harlan: Or passengers?

Mr. Willis: No. Our freight service is equal to the express. That is daily, and we do not carry any mail. Our railroad is used for getting the mail out to Hafer, but it is through no arrangement with the railroad.

Mr. Andrews: You carry the man that carries the mail, I suppose?

Mr. Willis: Yes, sir.

1661 Commissioner Harlan: Are there any mills around there that haul the logs to the mill?

Mr. Willis: You mean immediately there?

Commissioner Harlan: Well, in that general neighborhood?

Mr. Willis: Yes, sir, there was one small mill about 10 or 15 miles away down on the Frisco Line that hauled their logs to the mill or hauled them in over the Frisco, one or the other.

Commissioner Harlan: I think that is all.

Mr. Andrews: The hauling of the logs from the tree up to the tramway, how is that done, by teams?

Mr. Willis: That is done by teams.

Mr. Andrews: That is the first movement?

Mr. Willis: That is the first movement.

Mr. Andrews: Then it is loaded on the tramway and it is pulled to the tap line?

Mr. Willis: Yes, sir; it requires teams in all cases to put logs to the tram.

(Witness excused.)

Mr. Andrews: I have a little technical matter here. I offer a certain article of the constitution of Arkansas, and some of
1662 the sections from the statutes of Arkansas regarding the incorporation of these roads, showing there is a Board in Arkansas composed of the Governor, Secretary of State and a number of officials who first pass on the public necessity of granting a charter, whether there is public necessity for the granting of the charter. So I offer this instead of bringing the book itself. I have had it compared, and it is correct.

(The paper so offered and identified, was received in evidence and thereupon marked Arkansas Eastern Exhibit No. 4, received in evidence December 13th, 1910, and is attached hereto.)

Whereupon, an adjournment was taken as per the announcement of the Commissioner, to Wednesday, December 14th, 1910, at 9:30 A. M.

1663 NEW ORLEANS, LA., *December* 14, 1910.

Met pursuant to adjournment at 9:30 A. M.

Present: Parties as before.

Mr. Jeffery: Before resuming this morning, I have been requested by Mr. Albert S. Brandeis, of the Louisville & Nashville Railroad Company to request leave to file a brief if he sees fit in this case. I simply make the motion in his behalf.

Commissioner Harlan: Very well. The motion will be of record, and some conclusion will be reached.

Mr. Jeffery: When I say in this case, I mean on the general subject.

Commissioner Harlan: The Paragould & Memphis Railway, is that before the Commission this morning?

(No response.)

Commissioner Harlan. The Prescott & Northwestern.

Mr. McRae: Yes.

Commissioner Harlan: Will you report in the other room before Examiner Burchmore?

The Saginaw & Ouachita River.

Mr. Mehaffy: Yes.

1664 Commissioner Harlan: Will you also report with your witnesses in the adjoining room? I believe Mr. Davis was on the stand for the Louisiana & Pacific Railway when the adjournment was taken.

Mr. Thurmond: Yes, sir. Before proceeding, counsel for the intervenors have asked us for a copy of that trackage contract. Now,

it occurs to me it would clear up this whole situation and it will not take us very long, and possibly the Commission has not got the contracts fully in mind, and I believe it would save time to read these contracts. It is all right in here, all this question of operation, and all, in these three contracts, and if the parties have not them in mind, they can get them here.

Commissioner Harlan: Judge Cowan, will it facilitate your cross examination?

Mr. Cowan: Of course the trouble about that is the consumption of time. The holiday season is approaching.

Mr. Thurmond: I believe it will save the time of the Commission.

Commissioner Harlan: I do not think I can undertake to carry the details of that contract. The Commission would have to examine them.

1665 Mr. Thurmond: I thought when we began that the Commissioner had the substance of them before him.

Commissioner Harlan: Well, we probably have. We will proceed. If you will, let me have them.

Mr. Thurmond: Those are my originals (handing papers).

Commissioner Harlan: Is Mr. Davis here? Will you resume the stand?

R. S. DAVIS, resumed the stand, and further examination continued.

Mr. Thurmond: I omitted to ask you about your membership in railway associations, car service associations. State what the fact is as to the Louisiana & Pacific Road in that respect.

Mr. Davis: We are members of the Western Weighing Association and Southern Car Service Association and the Louisiana Freight Bureau.

Mr. Thurmond: You operate under the rules of those associations?

Mr. Davis: Yes, sir.

Mr. Thurmond: Have you track scales along the line?

Mr. Davis: Yes, sir, a track scale at De Ridder, Bonami
1666 and Fulton.

Commissioner Harlan: You may proceed, Judge Cowan.

Mr. Cowan: For whom are you Traffic Manager?

Mr. Davis: The Louisiana & Pacific Railway, the Sibley, Lake Bistineau & Southern, and the Woodworth & Louisiana Central Railways.

Mr. Cowan: What individual employed you in that capacity?

Mr. Davis: Mr. Long.

Mr. Cowan: R. A. Long?

Mr. Davis: Yes, sir.

Mr. Cowan: And as Traffic Manager to whom do you make any report?

Mr. Davis: In regard to what?

Mr. Cowan: What you do?

Mr. Davis: Well, I do not make very many reports. Mr. Long does not attempt to keep up with the details of the business. I

confer with Mr. Sweet quite often. He is in active charge of the property.

Mr. Cowan: Do you make any formal official report to anybody?

Mr. Davis: If I am asked to I do, yes, sir.

Mr. Cowan: Well, do you?

1667 Mr. Davis: Well, I do not spend my time making reports. I don't understand your question.

Mr. Cowan: I am asking you if you make any formal written report to either of the railroad companies that you are traffic manager for?

Mr. Davis: About what, about my conduct?

Mr. Cowan: About anything.

Mr. Davis: If I am asked to I do, yes, sir.

Mr. Cowan: You might just say whether you make it or not. I do not know. You are asked this plain question, do you make any formal report?

Mr. Davis: If you will tell me what kind of an answer you want, I will make it.

Mr. Cowan: Say yes or no.

Mr. Davis: Well, if I am asked to make a report I make it, or if I have anything to report I make it.

Mr. Cowan: Well, you decline to answer the question?

Mr. Davis: No, sir, I do not.

Commissioner Harlan: Well, does it fall within the line of your duty to make formal and stated reports?

Mr. Davis: I should think so. I am simply an employé.

Commissioner Harlan: Have you made such reports?

1668 Mr. Davis: I think so.

Commissioner Harlan: And does it fall within your duties to make special reports when requested?

Mr. Davis: I should think it would, yes, sir.

Commissioner Harlan: And have you made special reports of particular questions responsively to special requests?

Mr. Davis: I do not recall any particular reports, but I think I have, yes.

Mr. Cowan: To whom did you make them?

Mr. Davis: Well, I would report to Mr. Long or Mr. Sweet.

Mr. Cowan: As a matter of fact to whom did you make such reports, if you made any?

Mr. Davis: I do not recall having made any particular reports now on any subject. If you will refer to any particular subject which you have in mind I will tell you.

Mr. Cowan: It would be impossible for me to, because I don't know.

Mr. Davis: It is impossible for me to pick out some particular subject and say I made a report on that subject.

Mr. Cowan: Have you as traffic manager of either one of these railroad companies made annual, quarterly or at any other stated period, reports of the operation of the traffic department of

1669 such railroad?

Mr. Davis: No, sir.

Mr. Cowan: Now have you reported the business you have been carrying on to anybody, verbally, or otherwise?

Mr. Davis: Yes, sir.

Mr. Cowan: And to whom did you make such report?

Mr. Davis: To Mr. Sweet.

Mr. Cowan: Who is Mr. Sweet?

Mr. Davis: He is Vice-President of the company.

Mr. Cowan: Which company?

Mr. Davis: The Louisiana & Pacific and the other two companies named.

Mr. Cowan: And is he also an official of each one of the lumber companies served by those roads?

Mr. Davis: I understand he is, yes, sir.

Mr. Cowan: Are you traffic manager also for any lumber company?

Mr. Davis: No.

Mr. Cowan: Who is the traffic manager of the lumber companies which your line serves?

Mr. Davis: Mr. Cowan, my relation to those companies is exactly the same as Mr. Hershey's of the Santa Fe. He looks after
1670 the traffic on the line and the shippers on the line look to me to furnish them with rates and cars and handle their claims and handle all matters pertaining to traffic.

Mr. Cowan: Is there a traffic manager of either one of the lumber companies, or of all of the lumber companies in the aggregate?

Mr. Davis: No, sir, I do not know of any.

Mr. Cowan: In dealing with each of these lumber companies respecting their traffic, with whom do you deal?

Mr. Davis: I would deal with the party who brought up the particular subject that was before me; maybe the manager of the mill, maybe the shipping clerk, the man who wrote the letter——

Mr. Cowan: There is no particular individual representing a control of the traffic of either lumber company, with whom you customarily deal?

Mr. Davis: No, I think the control of the traffic is governed by the contract under which we are operating.

Mr. Cowan: Who do you understand controls the traffic?

Mr. Davis: The Louisiana & Pacific, or the Woodworth & Louisiana Central, or the Sibley, Lake Bisteneau & Southern.

1671 Mr. Cowan: And they control the traffic of the respective lumber mills which were situated on their line and are served by them?

Mr. Davis: No, sir; of the particular mills you have in mind, the mills in which Mr. Long is interested.

Mr. Cowan: Well, that is what I mean.

Mr. Davis: There are other mills on the line that use their own judgment in the matter of routing.

Mr. Cowan: Well, that is what I mean. And you are the officer of the Louisiana & Pacific, the Sibley, Lake Bisteneau & Southern, and this other railroad, whatever the name is, who performs the service with respect to the control of the traffic?

Mr. Davis: Yes, sir. I have general supervision over it.

Mr. Cowan: Now, what control have you over the traffic? Do you direct what connecting lines it shall move over by any general rules which you issue to anyone, or by special directions in each shipment?

Mr. Davis: We are talking of lumber are we?

Mr. Cowan: Lumber of the Long-Bell Lumber Companies.

Mr. Davis: That is what you want to know about?

Mr. Cowan: Yes.

1672 Mr. Davis: We attempt to carry out the contracts the best we can, but the car supply controls the routing.

Mr. Cowan: A shipment from a station on the line of the Louisiana & Pacific must move either over the Frisco or the Southern Pacific lines first?

Mr. Davis: Not necessarily, no.

Mr. Cowan: Well, the Kansas City Southern then, I believe you stated?

Mr. Davis: Or the Iron Mountain.

Mr. Cowan: And many of the shipments go to points beyond each one of these lines?

Mr. Davis: Yes, sir.

Mr. Cowan: Who directs the routing from the point of origin to the destination?

Mr. Davis: We undertake to do that, unless there is some specific routing given by the shipper. In a number of cases we leave it to the connecting line.

Mr. Cowan: Well, who is the shipper?

Mr. Davis: Well, the shipper would be the man who loaded the car and delivered the car to us for transportation.

Mr. Cowan: And that would be one of these lumber companies?

Mr. Davis: Yes, sir, or somebody else on the line.

1673 Mr. Cowan: And they have turned over to the Louisiana & Pacific and the other lines for which you are traffic manager, the full right to control that routing?

Mr. Davis: Why, yes, they do not know anything about routing, I imagine.

Mr. Cowan: Have you submitted the names of the lumber companies which belong to the Long-Bell interests and are served by these railroads? Has that list been submitted—I suppose it will be.

Mr. Thurmond: I handed to the Commissioner a list of the stockholders in each of the four companies on the line in which Mr. Long has an interest. Was it put into the record and marked?

Commissioner Harlan: Yes, it was put in last night, I believe.

Mr. Cowan: We should like to have the amount of the holdings, as well as the list of the stockholders.

Commissioner Harlan: I think the list in its present form is not complete, and I so stated yesterday, that it ought to show the respective holdings in order to be of service.

Mr. Thurmond: There is such a bunch of them that I will

1674 have to ask to hand it in later, if you want it in that detail.

Commissioner Harlan: I would like it to show what the list was in 1910, indicating any change since that date.

Mr. Cowan: When were you employed, Mr. Davis, as traffic manager?

Mr. Davis: I was employed, I believe, in 1903.

Mr. Cowan: And you made your contract with Mr. Long?

Mr. Davis: No.

Mr. Cowan: Mr. Sweet? With whom did you make it?

Mr. Davis: Mr. Long simply employed me; I did not know whether I was going to be there a month or ten years.

Mr. Cowan: You agreed upon some salary, I presume?

Mr. Davis: Yes, the salary was agreed upon, I guess; I did not have much to say about the salary.

Mr. Cowan: Well, who designated how much you would get?

Mr. Davis: Mr. Long.

Mr. Cowan: Previous to that time what was your position with that business or industry?

Mr. Davis: Well, previous to that time I was with the Cotton Belt for about 20 years.

Mr. Cowan: Were you at any time employed by any of
1675 these lumber companies before the organization of the railroad?

Mr. Davis: When I went over to Kansas City I was employed as Traffic Manager of the Long-Bell Lumber Company, and was also traffic manager of two lines in which Mr. Long was interested; one was the De Ridder & Eastern and the other the Louisiana & Pacific Railway.

Mr. Cowan: And you were employed by Mr. Long in both these capacities?

Mr. Davis: Yes.

Mr. Thurmond: That was not the present Louisiana & Pacific?

Mr. Davis: No.

Mr. Thurmond: It was a road which ran out east.

Mr. Davis: No, when we reorganized and made a railroad out of those properties, I was appointed traffic manager, and I do not think it is worth while quibbling over that. I am traffic manager of everything and my duties are to look after the traffic, and I try to do it.

Mr. Thurmond: No. Counsel understands that the Louisiana & Pacific there was not the Louisiana & Pacific at this time?

Mr. Cowan: I just wanted to get your relation to the business industries previous to the time of the organization of the present
1676 company.

Mr. Davis: Previous to that I was Traffic Manager of the Long-Bell Lumber Company, and also Traffic Manager of these two short lines.

Mr. Cowan: And no one took your place as Traffic Manager of the lumber company?

Mr. Davis: Well, the Long-Bell Lumber Company—the business of that company, the Pacific Coast business, is handled by Mr. Breckenridge and the retail yard business is handled by Mr. Lewis. I have nothing to do with it.

Mr. Cowan: By that you mean the traffic or the sales?

Mr. Davis: The routing of the freight.

Mr. Cowan: The routing of the freight?
Mr. Davis: Yes.
Mr. Cowan: You have nothing to do with that?
Mr. Davis: No.
Mr. Cowan: So that the Louisiana & Pacific then does not control that?
Mr. Davis: They have absolutely nothing to do with it.
Mr. Cowan: Where do you keep your office?
Mr. Davis: We are in the R. A. Long Building, sixth floor, Kansas City.

1677 Mr. Cowan: Have you any assistants, any persons who assist you as traffic manager?

Mr. Davis: I have a chief clerk, chief rate clerk, two claim clerks and three stenographers.
Mr. Cowan: Who employed them?
Mr. Davis: I did.
Mr. Cowan: Who pays them?
Mr. Davis: The expense is divided between the three companies named a short time ago.
Mr. Thurmond: The three railroad companies?
Mr. Davis: The three railroad companies, yes, sir.
Mr. Cowan: Are there vouchers and accounts made out and sent in to the Auditor for the payment of these people?
Mr. Davis: We receive the money direct, separate accounts; it comes from the railroad company.
Mr. Cowan: Are either one of these persons whose names you have given as assistants—or rather you did not give the names, but that you mentioned as being assistants—are they employed by the lumber company?
Mr. Davis: No, sir.
Mr. Cowan: Do they perform any service for the lumber company?

1678 Mr. Davis: Nothing except in an indirect way. Our principal business is lumber, and we are naturally performing all the service we can to further the interests of those lumber men. I don't know just what——

Mr. Cowan: You are doing the same thing, of course, to further their interests?
Mr. Davis: Yes, sir; anybody on the line who wants me to do something for him, I am willing to do it.
Mr. Cowan: Where is the office of these lumber companies, the R. A. Long interests?
Mr. Davis: The King-Ryder Lumber Company is located at Bonami; the Hudson River Lumber Company at De Ridder; the Long-Bell Lumber Company at Longville, and the Calcasieu Long Leaf Lumber Company at Lake Charles.
Mr. Cowan: Do they have any general sales agent or other general agent at Kansas City?
Mr. Davis: I understand that the sales of those companies—the sales department, rather, is represented in Kansas City by Mr. Nelson.

Mr. Cowan: Where does Mr. Nelson have his office?
Mr. Davis: Kansas City.
Mr. Cowan: The same building you are in?
Mr. Davis: Yes, sir.
1679 Mr. Cowan: The same suite of offices?
Mr. Davis: No.
Mr. Cowan: Adjoining?
Mr. Davis: No, sir.
Mr. Cowan: Do you and Mr. Nelson consult with respect to the routing of the freight which he sells?
Mr. Davis: Occasionally, yes, sir.
Mr. Cowan: When were there any directors' meetings held by either of these railroad companies for whom you are traffic manager?
Mr. Davis: I cannot answer that.
Mr. Cowan: Did you attend any such meetings?
Mr. Davis: No, sir, I am not a director.
Mr. Cowan: When the sales agent makes a sale does he notify you of the fact and the amount of the sale and the place where it is to be delivered?
Mr. Davis: No, sir.
Mr. Cowan: He gives you no information about it?
Mr. Davis: We have information as to the shipments and furnish routing on them.
Mr. Cowan: Who gives that?
Mr. Davis: I do, my office.
1680 Mr. Cowan: I know you give the routing, but who gives you the information that a shipment is to be made?
Mr. Davis: Mr. Nelson's office.
Mr. Cowan: The general sales agent?
Mr. Davis: Yes, sir.
Mr. Cowan: And that is done in all cases, I assume?
Mr. Davis: I should think so. In a number of cases the shipper has some specific routing, I believe, mentioned in the order, and we simply follow that out.
Mr. Cowan: In routing a shipment you use the rate which of course pays your company the best results, if you can?
Mr. Davis: We aim to get all we can, yes, sir; but in routing shipments we give the mill the benefit of every available route, for the reason that the car supply controls the routing.
Mr. Cowan: What are your divisions with the Frisco?
Mr. Davis: They range from two to five and a half cents. I can give you that——
Mr. Cowan: Perhaps you could state in a short way the general proposition, the territory to which this division and that division applies by the different lines.
Mr. Davis: I think I can.
1681 Mr. Cowan: And then you may file the division sheets and save a little time that way.
Mr. Davis: Well, Oklahoma points, with the exception of certain lines, the M. K. & T., for example, gets 5 cents, and the M. K. & T. gets 4¾ cents. In Texas we get all the way from 1¾ cents up to

5½ cents, 1¾, 2¼, 4.1, 2¼, 4½—I can give a complete statement of that if you wish it.

Mr. Cowan: On what lines or what systems or to what groups do you get these different divisions, or does it go that way?

Mr. Davis: To what railroad?

Mr. Cowan: Yes. When you call the divisions, you might state.

Mr. Davis: It varies. We have divisions in nearly every Texas line, I believe; it depends largely on the volume of the through rate.

Mr. Cowan: You reach all important Texas points?

Mr. Davis: Yes, sir.

Mr. Cowan: Where do you get the Santa Fe at?

Mr. Davis: Where do we get them?

Mr. Cowan: Yes, where do you get on the Santa Fe?

Mr. Davis: We get them at De Ridder; they connect with
1682 us there. We have no through rates with them.

Mr. Cowan: So you make no shipments over the Santa Fe?

Mr. Davis: No.

Mr. Cowan: Do you make any shipments which go to the Santa Fe through Fort Worth?

Mr. Davis: No, we have no through rates with the Santa Fe.

Mr. Cowan: With the exception of the Santa Fe, do you have through rates with all lines in Texas?

Mr. Davis: Yes, I think it is pretty well covered.

Commissioner Harlan: Did not the Santa Fe at one time get a considerable part of the traffic of the Hudson River Lumber Company?

Mr. Davis: At one time they had divisions with us.

Commissioner Harlan: A good deal of traffic with other mills?

Mr. Davis: Yes, sir. Mr. Long, this gentleman we are talking about, has very heavy investments on the Santa Fe, but they shut him off and they have not been able to do anything from these mills at all.

Commissioner Harlan: Well, do you mean the Santa Fe closed its markets to you?

1683 Mr. Davis: Absolutely.

Commissioner Harlan: Well, that did not happen until you had gotten some other connections, did it?

Mr. Davis: Well, this whole thing happened so quick and such a change in the attitude of everybody in Texas and on the Santa Fe that I cannot account for it.

Commissioner Harlan: At one time the Kansas City Southern got some traffic?

Mr. Davis: Yes, sir, they get some today.

Commissioner Harlan: Well, they do not get very much. There is only about 10 per cent in which all the other lines can participate, as I remember the figures.

Mr. Davis: I noticed two weeks ago, a few days before I left home, bills of lading covering 21 cars over the Kansas City Southern in one day from two mills. We are not obligated to give our business to any particular line except in connection with the Frisco and Southern Pacific. We have a contract that provided they give us

the cars from month to month we will give them a certain division of our tonnage.

Commissioner Harlan: Is that 50 or 60 per cent?

Mr. Davis: 50 per cent to the Frisco and 40 per cent to
1684 the Southern Pacific.

Commissioner Harlan: And that means 10 per cent available for all other lines?

Mr. Davis: Yes, but there is generally 20 to 30 and sometimes 40 per cent available.

Mr. Cowan: Are there cases in which you receive divisions on shipments to points to which the division sheets do not apply?

Mr. Davis: Now will you state that again?

(Question read.)

Mr. Davis: We do in connection with the Santa Fe. We got a division, I suppose what you mean—we charge our local rate of 5 cents; there are no through rates or divisoons. We simply get our local rate.

Commissioner Harlan: Well, you refer to it as a division. Do you want that to stand?

Mr. Davis: No. He referred to it as a division. A division is simply what it says, a division of a through rate.

Commissioner Harlan: You do not get a division on Santa Fe business?

Mr. Davis: No, we simply take our local, and the effect of that is that I think the last fiscal year they had about five cars for
1685 the Santa Fe, and I think that was company material. I simply mention that to show you that this division to this so-called tap line, if it was a community of interest, might be used and Mr. Long would sell his yards on the Santa Fe if it was all in one pot.

Mr. Cowan: I understand, Mr. Davis, that the division sheets in some instances leave the divisions of the rate or the amount that is to go to each party, to the traffic officials to determine, in cases where the amount or percentage is not named in the division sheet.

Mr. Davis: Well, the division is determined before the division sheet is issued.

Mr. Cowan: Well, take it on export business, how are the divisions made there?

Mr. Davis: Well, the divisions on export business—do you want to know how they are made?

Mr. Cowan: Yes, does the division sheet name just what the division is to be?

Mr. Davis: Yes, sir.

Mr. Cowan: It is agreed upon between the traffic officials?

Mr. Davis: It is agreed upon first, and then the division
1686 sheet issued. If we had no divisions today with the Southern Pacific on export business through New Orleans we would not have any through rates. I would first undertake to fix the through rate, and then we would undertake to agree upon divisions and——

Mr. Cowan: I thought there were shipments made where they

sent some sort of a slip along with the shipment, and settlement to be made afterwards.

Mr. Davis: That is not railroading. I never heard a case of that kind.

Mr. Cowan: Then it is not done, as I understand.

Mr. Davis: Not on our line. I never heard of it.

Mr. Cowan: Do they have any such a thing as what you call a billing order?

Mr. Davis: A billing order?

Mr. Cowan: Yes.

Mr. Davis: Yes, sir; that is common throughout the country; that is an instruction to the agent as to how to bill, showing the through rate and division.

Mr. Cowan: Where there is a station to which a shipment is made, and the division sheet does not name what the divisions are to be, then does the billing order accompany the shipment?

1687 Mr. Davis: I do not know of such a case. There may be, I do not know what you have in mind——

Mr. Cowan: I don't know either. I just know what I have been told, you know.

Mr. Davis: Let me tell you about divisions. When railroads get together to fix divisions they take the general interchange of business, such as merchandise, and they group the lines, and they agree upon per cents and grade the per cents. Where they have an asset in the form of coal or cotton or lumber, that is a fixed arbitrary and it is shown up in the division sheet in that way. Now if you will tell me what you are trying to disclose I will try to help you.

Mr. Cowan: I am trying to find out if you get any division of rates other than the divisions named in the division sheets that have been filed?

Mr. Davis: I do not know of any.

Mr. Cowan: Do you know you do not get divisions other than those named in the division sheets?

Mr. Davis: Well, I do not. I think a road would be very foolish to give us a division if they did not agree to do it. I do not

1688 know of any such case.

Mr. Cowan: You said you had been closed to the Santa Fe?

Mr. Davis: Yes, sir.

Mr. Cowan: In what manner, simply by a refusal to give divisions to the Louisiana and Pacific and your other railroads?

Mr. Davis: Refusal to give us joint rates on classes and commodities, and on lumber particularly. We do not interchange any business. Any business we handle is on a combination of locals.

Mr. Cowan: They do not refuse to make through routes with you?

Mr. Davis: Positively, and they have tried to persuade other lines to refuse us through rates. I can submit that as evidence, if you wish.

Mr. Cowan: The difference comes at the point of making divisions?

Mr. Davis: There has been no difference on that score.

Mr. Cowan: Have you any local lumber yards on the Santa Fe Line?

Mr. Davis: I have not, no, sir.

Mr. Cowan: Have any of these lumber companies?

1689 Mr. Davis: No, sir. Mr. Long has.

Mr. Cowan: From what source are they supplied with lumber?

Mr. Davis: I understand the lumber is purchased in all directions. I can get that information for you.

Mr. Cowan: I do not think it is important.

Mr. Davis: It is just a guess with me.

Mr. Cowan: But your railroad gets nothing out of that at all.

Mr. Davis: Nothing.

Mr. Cowan: Do you ship off of your railroad and supply these mills that are on the Santa Fe line?

Mr. Davis: Well——

Mr. Cowan: When I say mills, I mean lumber yards.

Mr. Davis: For six months, I think I stated to Commissioner Harlan, we shipped about five cars or six cars last year for the Santa Fe. Here is a statement. I will give it to you.

Mr. Cowan: For whom were they shipped, the Long interests or somebody else?

Mr. Davis: No, I think it was railway material; I am not sure. I will be glad to give you the bills.

Mr. Cowan: No, it is not necessary. So you did not sup-

1690 ply Mr. Long's lumber yards on the Santa Fe from this road?

Mr. Davis: We were offered no business except these four or five cars.

Mr. Cowan: In making a statement to procure your divisions from the Frisco, for example, on a shipment that goes beyond the Frisco, who participates in that settlement and in the payment to you?

Mr. Davis: Who participates in the settlement on business going beyond the Frisco?

Mr. Cowan: Yes. Do you just look to the Frisco, or do the three of you, supposing there are three lines.

Mr. Davis: We look to the Frisco. We have no through billing arrangements.

Mr. Cowan: It would be immaterial to you then what the division was as between the part that is left to the Frisco and its connecting lines beyond?

Mr. Davis: So far as our company is concerned we have no interest in the divisions beyond or how it is subdivided, no, sir.

Mr. Cowan: When railroad material is shipped, your office I suppose, has a record and knows that it is railroad material?

1691 Mr. Davis: I should think so. I do not know as we get a record, but we have access to the records. We have bills of lading and way bills, and we would know whether it was railroad material or not.

Mr. Cowan: For example, a shipment to a point on a railroad like the Denver & Rio Grande, say for delivery at Grand Junction, ordinarily they get a division—I suppose always get a division out of the rate.

Mr. Davis: I think we have divisions with them on lumber. I am not sure, but I am willing to assume that we do.

Mr. Cowan: Do you have anything to do with conferring with the different lines in case of a change in the amount of the division which the line beyond your immediate connection receives?

Mr. Davis: No, sir.

Mr. Cowan: Have you in any case had conferences with the officials or employees or representatives of any of these lines beyond with respect to a change in the division of the rate which such lines are to receive.

1692 Mr. Davis: I cannot recall any. I have discussed that matter with the Rock Island people. They have very large purchases of lumber and at one time they bought from mills on our line. They stopped buying from Mr. Nelson, and Mr. Nelson in his efforts to find out why, discovered that they had found a division over in Texas from Santa Fe mills and others which reduced the proportion south of the Rock Island Road to such an extent that it forced them to buy over there and we have never been able to meet that competition. You understand how lumber is purchased by some of these lines, do you not?

Mr. Cowan: No, you might explain that in connection with what you are just telling, how it is purchased, and explain how it is that the Rock Island, for example, quit buying from you, and how the matter of divisions to lines beyond can be so handled as to change the place where the lumber may be purchased.

Mr. Davis: Well, as a general proposition, the purchasing agent of a railroad, as I understand it, tries to buy his lumber just as cheap as he possibly can. If he cannot buy that lumber on his own line he must necessarily buy it on some foreign line. In making purchases on foreign lines he ascertains what the division will be up to the junction point with, say, the Rock Island Road. He finds out what those divisions are, and it practically means the rates to

1693 him. The Commission have ruled that that is legitimate, provided the business goes to the point to which it is consigned. Now, we are at a disadvantage on that account because of the high divisions exacted in connection with the Louisiana & Pacific and its connections up to Rock Island junctions as compared with the small divisions that the Texas lines get in connection up to a point—well, I think it is 40 per cent of the rate.

Mr. Cowan: Suppose you are shipping to—take a concrete instance in the record that the laiety here may understand it—suppose you sell 50,000 cross ties to the Rock Island Railroad to be shipped over the Frisco, as they are separate now; where would those ties be delivered to the Rock Island?

Mr. Davis: Shipped from a point on the Louisiana & Pacific?

Mr. Cowan: Yes, say shipped from Fulton.

Mr. Davis: Well, they would not be shipped from Fulton; they probably would be shipped from a mill on the Louisiana & Pacific. There is no mill at Fulton that would deliver the business to the Frisco at Fulton.

Mr. Cowan: That is what I mean.

1694 Mr. Davis: And it may be the Frisco would take the shipment to Houston or over to Eunice; it depends in what section

of the country the Rock Island wanted the stuff. They have a very wide territory.

Mr. Cowan: If the Frisco exacts too much for their division up to the Rock Island points, that cuts you out of the trade?

Mr. Davis: That division plus our division is the factor used by the purchasing agent in trying to determine what the material will cost him.

Mr. Cowan: In this instance I have named what is the division the Frisco would take. You would take five cents, I think, or whatever it is. How much would you give the Frisco?

Mr. Davis: I have not figured on that. I have not heard of any ties moving. I suppose the divisions up to Eunice would be 8 or 9 cents.

Mr. Cowan: The reason you do not move it, I understand, would be because the Frisco exacts more than the Rock Island can get through some other channel.

Mr. Davis: The through divisions from the mill on the Louisiana & Pacific to the junction with the Rock Island are too great as compared with some other divisions in some other sections.

1695 Mr. Cowan: Do you know from what mill points in Texas the Rock Island buys?

Mr. Davis: No, I have no definite information on that subject.

Mr. Cowan: I suppose there are cases just reversed, where you by reason of the relation of the divisions, can sell the lumber and deliver it to the railroad company for railroad material on a better basis than the Rock Island might be able to from mills on its line?

Mr. Davis: Well, I don't know; there do not seem to be hardly any cases. It seems that we ought to be able to sell roads in Louisiana like the Southern Pacific. But they have mills on their own line. Mr. Nelson has told me he has tried to sell the Southern Pacific but has always complained that our five cent rate just puts him out of the business.

Mr. Cowan: Well, the sum and substance of the whole matter with respect to these divisions beyond your line and your divisions too, is, that in the purchase of the lumber by a railroad company that does not run into the lumber district, that company buys at the mill where it gets the least division up to its connection point.

1696 Mr. Davis: I should think so, unless some particular mill has the kind of stuff they wanted and could get it out quick, and the other could not; they might buy it then. I don't know a thing about the lumber business.

Mr. Cowan: Well, the regulation of this business between the different railroads to the one that is buying the material is the determining factor as to the place where they will buy the lumber?

Mr. Davis: I should think so, as a general proposition.

Mr. Cowan: What proportion of the outfit that goes off your railroad goes as railroad material?

Mr. Davis: It is very small. I could give you a statement of that if you wish it.

Mr. Cowan: I do not care particularly about it. I thought you might approximate it.

Mr. Davis: Well, it is very small.

Mr. Cowan: Ten per cent?

Mr. Davis: Well, I don't think so. It is just a guess with me. I might as well say ten or five.

Mr. Cowan: Does your road handle cross ties that are hewn?

Mr. Davis: The L. & P.?

Mr. Cowan: Yes.

1697 Mr. Davis: I do not know of any hewn ties on the line. I do not think we do.

Mr. Cowan: You ship lumber for other persons, as you have already said, but you do not control the routing on that lumber.

Mr. Davis: If we receive a car with routing instructions on the bill of lading, we respect that routing.

Mr. Cowan: For whom do you ship lumber other than the Long interests?

Mr. Davis: On the Louisiana & Pacific?

Mr. Cowan: Yes.

Mr. Davis: The Bundick Creek Lumber Company at Walla; the Brown Lumber Company, I think, at Bannister have a small mill. and we handle several cars every day.

Mr. Cowan: Do you move that over the line of the Lake Charles & Northern?

Mr. Davis: No, sir, we move that over the line of the Louisiana & Pacific.

Mr. Cowan: Suppose they wanted to route it over the Lake Charles & Northern, what would you do about it?

Mr. Davis: We have no through rates. We would charge our local rate from Walla up to Lilly Junction and the Lake

1698 Charles & Northern would charge their local rate from Lilly Junction.

Mr. Cowan: But there would be no such shipment made, of course.

Mr. Davis: There would be no interchange. We do not know the Lake Charles & Northern at all.

Mr. Cowan: So you do not participate in any through route or rates with the Lake Charles & Northern?

Mr. Davis: No, sir.

Mr. Cowan: Have you ever had any conference with the traffic officials of that road to see if you could make such arrangements?

Mr. Davis: Well, I would not want to. I would probably lose my position if I did.

Mr. Cowan: Have they ever conferred with you and attempted to get that?

Mr. Davis: No.

Mr. Cowan: Then they have no chance to get business on your lines?

Mr. Davis: They have some rights with us in that territory.

Mr. Cowan: But how could they get any shipment to or

1699 from points on the Louisiana & Pacific if there are no through rates or routes?

Mr. Davis: Well, the line is joint. You are talking about a mill

that is situated on the Louisiana & Pacific proper, out at Walla, eight miles from this joint track. Now that is local tonnage to us and we absolutely control it.

Commissioner Harlan: Haven't you well expressed this arrangement? You have not trackage rights over that line at all, have you?

Mr. Davis: Absolutely, yes.

Mr. Cowan: Well, you have referred to it as a joint track. Is it not a joint use of the track?

Mr. Davis: Yes.

Mr. Cowan: And it is not a trackage right at all.

Mr. Davis: Well, I would have to look at that contract to see how it is worded.

Commissioner Harlan: Well, as the thing works out in everyday practice, it is not a trackage right at all, is it?

Mr. Davis: It is a joint use of the line, yes, sir.

Commissiiner Harlan: It is a joint use of the line?

Mr. Davis: Yes, sir, the line was absolutely necessary. In the first place, Mr. Commissioner, a line had to be built. As I
1700 stated yesterday, Mr Long undertook to build the line, and Mr. Harriman purchased the line, and the line would not have been sold except for the fact that we retained our rights to operate our trains over the line.

Commissioner Harlan: Equally with them.

Mr. Davis: Yes, sir.

Commissioner Harlan: Not any trackage right, but you retained your right to operate that railway?

Mr. Davis: Yes, sir, and that is the way the contract reads, and I have never had any instructions to the contrary, and I am going to get all the business I can for that road.

Commissioner Harlan: Now, in actual practice, although you operate it as a railroad and not as a trackage right, although you asserted to the contrary yesterday, but as I understand it you get very little of the local business, and they on the other hand are not allowed to participate in joint through rates with your branch lines, and they get practically none of the lumber business from any mill?

Mr. Davis: I do not know who stated we received very little of the local business. De Ridder, Bonami, Bannister, and Fulton
1701 are joint stations, and we have rates in with the Iron Mountain and with the Frisco and with the Kansas City Southern and also with the Southern Pacific, which connect with us at Lake Charles.

Commissioner Harlan: And you stated yesterday you got your proportion of the business, and recently a little more than they did?

Mr. Davis: Mr. McLean made that statement.

Commissioner Harlan: That is your understanding?

Mr. Davis: That is my understanding. We work with our connections, and of course we cannot expect very much from the Southern Pacific because they have their own line in there, and originate a large tonnage, but with the Frisco and Iron Mountain and Kansas City Southern we have got a very reasonable proportion.

Commissioner Harlan: On the other hand they get practically none of the lumber business?

Mr. Davis: No.

Commissioner Harlan: And you do not intend they shall get any where you can help it?

Mr. Davis: Well, if I had my way they would not.

Mr. Cowan: To bring the whole matter into one concrete statement, is it not true that all traffic going on to or from the
1702 lines of the Louisiana & Pacific off of the Lake Charles & Northern must, if it is moved by the Lake Charles & Northern Railroad Company, go on local rates, the sums of the locals?

Mr. Davis: Yes, sir. We have not any through rates with the Lake Charles & Northern.

Mr. Cowan: Therefore is it not true that there is no such movement on the Lake Charles & Northern of traffic going to or from points on the Louisiana & Pacific?

Mr. Davis: I do not know of any such movement at all.

Mr. Cowan: With respect to the traffic originating at stations on the Lake Charles & Northern, over which you operate your trains, to stations between which you operate, is the depot agent the joint agent of the two companies?

Mr. Davis: Yes, sir; we pay 60 per cent of the expense.

Mr. Cowan: If he receives any traffic that is to go to points on the Louisiana & Pacific, naturally he bills it via the Louisiana & Pacific?

Mr. Davis: I suppose so.

Mr. Cowan: He acts as agent of the Louisiana & Pacific in that case?

Mr. Davis: I think so, yes, sir.

1703 Mr. Cowan: If he receives traffic to go to another station on the Lake Charles & Northern, how *he is* instructed then to ship that? I suppose it is immaterial to the shipper for whom he will bill it.

Mr. Davis: I do not know; it depends how the shipment is routed.

Mr. Cowan: Well, suppose that I bring a wagon load of pine knots—I see you are quite extensive shippers of pine knots.

Mr. Davis: No, we handle very few.

Mr. Cowan: 65 cars, that is more than I ever heard of in my life before.

Mr. Davis: That is as compared with——

Mr. Cowan: Make it potatoes then. I suppose that is a farming country.

Mr. Davis: No, you have the wrong idea; it is just a timber country, and when the timber is cut off it is a farming country.

Mr. Cowan: Well, I am going to ship something.

Commissioner Harlan: Well, Judge, suppose you ship a little hay and see where it comes.

Mr. Cowan: Yes. Is there hay there?

1704 Mr. Davis: I don't know, we will assume there is lots of hay there. I do not know.

Mr. Cowan: Well, assume there is lots of hay?

Mr. Davis: Yes.

Mr. Cowan: And I bring in ten bales of hay to ship from Longville, say, to Bannister, and the agent at Longville receives my hay and I say I want to ship it to Bannister; it makes no differenec to me whether you carry it or the Lake Charles & Northern carries it. For which railroad will the agent bill that hay?

Mr. Davis: Well, I don't know; it depends how it is routed.

Mr. Cowan: Suppose I do not route it, and I bring it in and say I want to ship it from Longville over to Bannister. It has got to go over one road.

Mr. Davis: I could not tell how he would route it.

Mr. Cowan: It has got to go over one road?

Mr. Davis: Yes.

Commissioner Harlan: Your line pays 60 per cent of his salary. I want to know whether that agent is under any instructions from you, written or verbal, as to what to do with Judge Cowan's hay.

Mr. Davis: No, he is not.

1705 Commissioner Harlan: Well, is he simply turned loose with the proportion there, and can he do as he chooses? Judge Cowan in this case did not give any routing instructions. I want to know just how that hay is going to be handled.

Mr. Davis: I cannot tell you, because I do not know. Mr. McLean may know.

Commissioner Harlan: Well, Mr. McLean, can you tell us?

1706 Mr. McLean: What is the question?

Commissioner Harlan: Judge Cowan is offering a carload of hay at Longville to be moved to Bannister without any instructions as to whether it shall go over the Louisiana & Pacific or the Lake Charles & Northern. Now, how would it go?

Mr. McLean: So far as I know, our agent or the joint agent has no written instructions as to how to handle such a shipment. I have advised them verbally that they must not solicit business for either company. If they must——

Commissioner Harlan: Well, Judge Cowan has turned up there; nobody asked him to, but he has turned up with a load of hay.

Mr. McLean: But that the shipper must be requested to state which company he wants it shipped over.

Commissioner Harlan: Is it your duty as auditor to give such instructions?

Mr. McLean: No, in the cases I have in mind the agent asks them.

Commissioner Harlan: Whose duty is it to instruct the agent?

Mr. McLean: I suppose it was the duty of the traffic

1707 manager.

Commissioner Harlan: Then the question is up to you, Mr. Davis. Mr. McLean understands such instructions would proceed from you. What instructions have you given to the agent?

Mr. Davis: I have not given any.

Commissioner Harlan: Do you mean to have it appear on the record that the agent there at Longville is at liberty to use his discretion and he has no instructions and nothing to guide him as to how he is going to move that carload of hay?

Mr. Davis: Well, I have stated the facts to you. I am willing to show in the record that we will issue instructions if that is—I have never heard of a shipment of that kind.

Commissioner Harlan: There must be some local shipments between these points.

Mr. Davis: Undoubtedly there is, and our billing will show. I can get our billing, and the Lake Charles & Northern can show theirs.

Commissioner Harlan: The specific point we want to get at is whether that agent is simply turned loose to deal with
1708 such matters at discretion or whether he has instructions.

Mr. Davis: He has no instructions from me.

Commissioner Harlan: Has he any instructions from the Lake Charles & Northern?

Mr. Davis: I really don't know as to that.

Commissioner Harlan: What salary does he get?

Mr. Thurmond: Ninety dollars.

Mr. Davis: What agent?

Mr. Thurmond: At Longville.

Mr. Davis: Ninety dollars a month.

Commissioner Harlan: Mr. Davis, I do not want anything to appear on the record that intimates a doubt on my part as to your candor in this matter, but I do direct your attention to the fact that as traffic manager of this railroad you get six thousand dollars a year, and that is the case, is it not?

Mr. Davis: No, sir.

Commissioner Harlan: What is the salary?

Mr. Davis: Do you want me to state to you personally or to these gentlemen out here?

Commissioner Harlan: Well, we will pass that matter. It
1709 is a substantial salary?

Mr. Davis: I have no objection to telling you what it is.

Commissioner Harlan: Well, if there is no objection——

Mr. Davis: If you will give me a paper I will tell you what it is.

(The witness here writes on a slip of paper which he hands to Commissioner Harlan.)

Commissioner Harlan: And you have control of the movement of the traffic. Now, are we to understand that none of the agents along the line have any instructions from you as to how to route shipments when they have the opportunity to use one of two lines operating over the same roadbed?

Mr. Davis: That is the situation, Mr. Commissioner.

Mr. Cowan: Now, Mr. Davis, do you ever go to see those agents?

Mr. Davis: I call on them. I do not make very many trips over the Louisiana & Pacific.

Mr. Cowan: Do you have them make any reports to you?

Mr. Davis: No, sir; I have nothing to do with the agents; they report direct to the accounting department.

Mr. Cowan: You said a while ago that you would not
1710 permit the Lake Charles & Northern Railroad Company to have any of the traffic hauled by the Louisiana & Pacific.

and that you would make no application to them for a division of rates?

Mr. Davis: Yes, sir.

Mr. Cowan: And if you did you ought to lose your position.

Mr. Davis: No, I did not say I ought to.

Mr. Cowan: What is that?

Mr. Davis: I don't know whether I said I ought to.

Mr. Cowan: Well, whatever you did say, I am referring to what you did say, without being able to quote it.

Mr. Davis: Well, it would be a foolish thing, if we could handle the business ourselves, to turn around and give it to somebody else.

Mr. Cowan: That is it. Now, you are looking for all the traffic you can get for your company?

Mr. Davis: Yes, sir.

Mr. Cowan: And your company is operating for twenty-five cents a train mile on the Lake Charles & Northern?

Mr. Davis: Yes, sir.

Mr. Cowan: And you pay the station agent at the
1711 station of Longville, who is getting ninely dollars a month sixty per cent of it?

Mr. Davis: Yes, sir.

Mr. Cowan: Now, why haven't you gone to that agent to get him to route everything over the Louisiana & Pacific where they will get the freight rate, instead of the Lake Charles & Northern?

Mr. Davis: Well, I guess it is simply neglect on my part.

Mr. Cowan: Now, take the traffic that moves from Lake Charles to De Ridder; I understand there are a considerable number of people to be supplied there with those things that people have to ship in.

Mr. Davis: Yes, sir.

Mr. Cowan: And you carry that traffic?

Mr. Davis: We carry a share of it; yes, sir.

Mr. Cowan: What share?

Mr. Davis: Well, I have no means of knowing the total tonnage handled into De Ritter. I have asked that question of some of our people at De Ritter, and have understood they thought we got about thirty per cent, as near as they could estimate.
1712 It is just a guess. You would have to find out first the total tonnage handled by the four lines in there and then——

Mr. Cowan: You mean you get about or you think you get about 30 per cent of the total that goes into De Ridder?

Mr. Davis: I do not think that; I do not know. I say I have been informed that we did handle about 30 per cent.

Mr. Cowan: You were informed by whom?

Mr. Davis: I think it was the Superintendent over there, Mr. Boswell or Mr. McLean.

Mr. Cowan: And you move that from Lake Charles?

Mr. Davis: Yes, sir.

Mr. Cowan: Over the Lake Charles & Northern for the entire distance?

Mr. Davis: Over the joint track between those points.

Mr. Cowan: As I understand it, the road from Lake Charles to De Ridder belongs to the Lake Charles & Northern Railroad?

Mr. Davis: Well, I suppose the road does. We are operating under a contract that is here.

Mr. Cowan: Well, is the Lake Charles & Northern operating that road between Lake Charles and De Ridder?

Mr. Davis: They are running trains over it, yes, sir.

Mr. Cowan: What proportion of the traffic that goes to
1713 supply these people that has nothing to do with lumber, between Lake Charles and De Ridder, does the Lake Charles & Northern move?

Mr. Davis: Well, I would not be able to say that. We have separate agents at Lake Charles. We have our own depot, and at the present time we are not as near the center of the city as we would like to be.

Mr. Cowan: Does your road not solicit the business from Lake Charles?

Mr. Davis: We solicit business, yes, sir.

Mr. Cowan: I assume most of your trains moving northbound in the direction of De Ridder run light?

Mr. Davis: Well, I could not answer that.

Mr. Cowan: You don't know?

Mr. Davis: I suppose the——

Mr. Cowan: You bring more logs down than you take lumber back?

Mr. Davis: We pull empties northbound together with merchandise and loads southbound.

Mr. Cowan: And your agent has a free hand to solicit
1714 business at Lake Charles for De Ridder?

Mr. Davis: He has, if he has the time; yes, sir.

Mr. Cowan: Well, you are in the business for profit, and have the opportunity of loading your trains that already run light?

Mr. Davis: Yes, sir.

Mr. Cowan: Would he not be given sufficient assistance to solicit the business?

Mr. Davis: Yes, sir, I should think so.

Mr. Cowan: Do you ever have any conference with him in regard to the amount of traffic and how he gets it and what he does to secure the traffic?

Mr. Davis: No. I have had conferences with him and some correspondence, but not a great deal; I have solicited business in Lake Charles myself, and have had men there soliciting business.

Mr. Cowan: Well, being the traffic manager of this line I should think you would have some knowledge of what proportion of that traffic you get going over that line.

Mr. Davis: Well, I have not. I do not know the total traffic moved, but I should say we get a very good proportion.

Mr. Cowan: You get nearly all of it, do you not?

1715 Mr. Davis: No, I should say not. I do not think we do.

Commissioner Harlan: If I should tell you, Mr. Davis, that the records of the St. Charles & Northern show that during the

year 1909 they received less than $2500 on all the inbound and outbound freight originating or destined to points on their line, would that or would not that indicate that the bulk of that traffic is taken by your line?

Mr. Davis: If those are the figures I would think so. Does that include the joint track over the Santa Fe? They have joint trackage rights over the Santa Fe, and operate between De Ridder and Nitram, just as they operate over our line.

Commissioner Harlan: As I understand the figures, it covers points of origin and destination between De Ridder and Lake Charles, and it was less than $2500.

Mr. Thurmond: What date was that?

Commissioner Harlan: For the year 1909.

Mr. Davis: We have not a memorandum of the earnings on the Lake Charles business here. We received from the Southern Pacific for six months ending October 31st, 106 tons, and from the Iron Mountain 147 tons, and from the Kansas City Southern 110 tons.

1716 Now I do not know—that Kansas City Southern may have been at De Ridder, part of it; but the Southern Pacific delivered us at Lake Charles 106 tons, and the New Orleans, Texas & Mexico, or the Iron Mountain, 147 tons for points on the Louisiana & Pacific north of Lake Charles. Now I cannot tell you what business we handled out of Lake Charles proper for the reason I have not got that data here.

Commissioner Harlan: Well, that is all inbound business?

Mr. Davis: This is business from connecting lines from defined territory, St. Louis, New Orleans and Seaboard.

Commissioner Harlan: The figure I gave you is inbound and outbound on the Lake Charles & Northern.

Mr. Davis: Well, our earnings on this amounted to five hundred and ninety some dollars.

Commissioner Harlan: That is inbound?

Mr. Davis: Inbound, yes, sir.

Commissioner Harlan: And through Lake Charles?

Mr. Davis: And through Lake Charles, yes, sir.

Mr. Collins: Now you have through rates with all these different lines which you mentioned that you connect with at Lake Charles, to points on the Lake Charles & Northern; the Southern Pacific, Iron Mountain and Kansas City Southern.

1717 Mr. Davis: You get that confused yourself or confuse me. We have no rates with the Lake Charles & Northern. They operate over this joint track.

Mr. Cowan: I understand, but you have joint rates with the outfit that owns the Lake Charles & Northern, the Southern Pacific.

Mr. Davis: I have just stated we have through rates on lumber and merchandise outbound with the Louisiana & Western and their connection, the Southern Pacific, and they give us that business at Lake Charles.

Mr. Cowan: The position of the matter is then that Mr. Harriman, I think you said he sought Mr. Long—at all events they got together.

Mr. Davis: That is a supposition.

Mr. Cowan: Somebody made a trade whereby the Southern Pacific interests purchased the Lake Charles & Northern, and gave you the absolute full right to operate over it in all particulars, gave you a division of the rates, and you would not make any division of the rates with the Lake Charles & Northern. That is the situation, is it not?

Mr. Davis: That is the way I understand it.

Mr. Cowan: Well, that is the way it is today?

Mr. Davis: That is the way that contract is.

1718 Mr. Cowan: Did you ever hear of any trackage rights or any rights between two railroad companies of any such character as that in your whole experience?

Mr. Davis: Mr. Ripley of the Santa Fe has given Mr. Harriman joint rights over his tracks. I do not know why he did so. You have to get to the bottom of that. Mr. Harriman was a good trader. He must have had something in mind when he did it. The Southern Pacific operates jointly with the Texas & Pacific from Cheneyville to Alexandria. And the Frisco has the L. & R. N. from Baton Rogue to New Orleans, and have joint rates. Why that is I do not know.

Mr. Cowan: And each one of those has joint routes and through rates with each other to all the stations on the other lines?

Mr. Davis: I cannot say as to that.

Mr. Cowan: Take the line from De Ridder to Nitram, who owns that?

Mr. Davis: I understand that was built by Mr. Ripley.

Mr. Cowan: It is called the Gulf, Colorado & Santa Fe, is it not?

Mr. Davis: Yes.

Mr. Cowan: Who has trackage right over that road?

1719 Mr. Davis: The Lake Charles & Northern, I understand.

Mr. Cowan: And there they connect with the Gulf & Sabine River?

Mr. Davis: I believe they do, yes, sir.

Mr. Cowan: Do you handle any of the traffic which comes to De Ridder over that line?

Mr. Davis: Do we?

Mr. Cowan: Yes, sir.

Mr. Davis: No, sir. The Santa Fe——

Mr. Cowan: Do you handle any traffic going out over that line?

Mr. Davis: No, the Santa Fe would not have anything to do with us, Judge. I would like very much to have rates with them, but we have not been able to persuade them.

Mr. Cowan: Does the Lake Charles & Northern handle the lumber that comes from the Fullerton Line, by way of De Ridder?

Mr. Davis: I understand they do, yes, sir.

Commissioner Harlan: It is a very large output, is it not?

Mr. Davis: I understand it is a very large output, and that the Lake Charles & Northern handle a very large percentage of the tonnage. It is simply a case like ours. Mr. Harriman was going up in that territory and was going to build over there, but instead

1720 of building, Mr. Ripley concluded to let him use his line.

Mr. Cowan: Does the Lake Charles & Northern handle any

other lumber except the lumber that comes over the road I have just mentioned?

Mr. Davis: I do not know.

Mr. Cowan: Do you know of any other that they handle?

Mr. Davis: No, sir, I do not. I have not any access to their records at all, Mr. Cowan.

Mr. Cowan: Do you keep a record of the output of the lumber that is actually shipped out from each one of your sawmills, and do you keep a record of the amount of logs and tonnage of the logs that actually is brought in?

Mr. Davis: We have a record of the lumber, I have. I have not a record of the logs, no, sir.

Mr. Cowan: In the estimate of tonnage then, are the logs considered in the tonnage or simply the lumber tonnage?

Mr. Davis: The division is assessed on the weight of the manufactured product.

Mr. Cowan: I mean in the reports that go to the Interstate Commerce Commission of the tonnage, is the log tonnage stated
1721 or just the lumber tonnage?

Mr. Davis: Could I ask Mr. McLean to answer that? I have nothing to do with the reports.

Mr. McLean: Will you repeat the question?

(Question read.)

Mr. McLean: Just the lumber tonnage, the tonnage of the finished product.

Mr. Cowan: And have you a record of the log tonnage?

Mr. McLean: The logs are not weighed.

Mr. Cowan: Have you a record of the estimated tonnage of logs?

Mr. McLean: A record of the number of logs.

Mr. Cowan: I will ask you to please file a statement showing the total amount of lumber output shipped out over your lines from each of the mills.

Mr. Thurmond: What is that?

Mr. Cowan: The output of the lumber shipped out from each of the mills over his line, and the amount drawn from each mill that is delivered to each main line road for transportation beyond.

Mr. Davis: Yes, sir. Do you want me to file that with the Commision?

1722 Mr. Cowan: Yes.

Mr. Garwood: For what period?

Mr. Cowan: Make it cover the period—he might just as well make it cover a year. You have that given by the year?

Mr. Davis: Yes, sir.

Mr. Cowan: Make it for the year ending June 30th, 1910.

Commissioner Harlan: Make it cover the years 1908, 1909 and 1910. You have got those years?

Mr. Garwood: The fiscal year?

Commissioner Harlan: The fiscal year.

Mr. Cowan: Do you keep any record of the traffic operation of the Louisiana & Pacific Railroad Company which would enable you to show the operating statistics separately for lumber and other traffic,

the amount for example, per train mile, and the average loading per car?

Mr. Davis: No.

Mr. Cowan: Of course, your annual report undoubtedly ought to show it for all traffic, but I wondered if you kept it separately for lumber traffic?

Mr. Davis: I think that would expedite matters. I do not know a thing about it——

1723 Mr. Cowan: Well, you do not know about it.

Mr. Davis: I do not know a thing about the accounts and how they are kept.

Mr. Cowan: Mr. McLean, have you the operating statistics to show the amount of lumber which you carry per train mile and the average loading per car mile of lumber? I suppose you have the latter, but have you it separately for lumber, as to the amount per train mile?

Mr. McLean: No.

Mr. Cowan: Mr. Davis, are you acquainted with the actual physical operation of the road, do you pay any attention to that?

Mr. Davis: No.

Mr. Cowan: You have somebody here who is well acquainted with it, I suppose?

Mr. Davis: The superintendent, yes, sir.

Mr. Cowan: You do not keep a record of the output of the lumber from these various mills, do you?

Mr. Davis: I do. I have to do that in our efforts to comply with the terms of our contracts. We have got to know what we are doing.

Mr. Cowan: With regard to the percentage that you give to each railroad?

1724 Mr. Davis: Yes.

Mr. Cowan: Let your statement which I have asked for, cover that. I suppose it will in a way, because you do not ship out any except over your own line of railroad, I suppose.

Mr. Davis: It will show all the lumber we handle and the lumber delivered to each connecting line. That will give you the per cent.

Mr. Cowan: When you receive lumber from this other company whose product you handle—you gave the name of it, and I did not recall it——

Mr. Davis: The Bundick Creek Lumber Company.

Mr. Cowan: They pay the full tariff rate?

Mr. Davis: Yes, sir.

Mr. Cowan: And do they get anything back?

Mr. Davis: No, sir.

Mr. Cowan: Do they get any service from you on their logs?

Mr. Davis: No, sir.

Mr. Cowan: Do they purchase any timber from you?

Mr. Davis: Not that I know of. They would not purchase that from the company. That would be——

Mr. Cowan: They own their own lumber?

Mr. Davis: I do not know as to that.

1725 Mr. Cowan: Will you give a statement of their tonnage separately?

Mr. Davis: Yes, sir.

Mr. Cowan: For the same period of time. They have no other railroad connection except through yours?

Mr. Davis: No.

Mr. Cowan: Has that interest any interest in your railroad company?

Mr. Davis: No, sir, not that I know of.

Mr. Cowan: No one of the interested parties are officials?

Mr. Davis: No.

Mr. Cowan: Nor in any way connected with it?

Mr. Davis: No.

Mr. Cowan: And the delivering line, I suppose, collects the entire freight on their lumber?

Mr. Davis: Uuless it is billed prepaid.

Mr. Cowan: And they pay you back how much?

Mr. Davis: It depends on the destination of the shipment.

Mr. Cowan: Well, say it was moving to Kansas City.

Mr. Davis: Well, if a car of lumber moved from Walla to Kansas City by way of our line and the Southern Pacific, we would receive four cents.

1726 Mr. Cowan: You receive the same divisions on that sort of shipment as you do if it were your own lumber?

Mr. Davis: Yes, sir.

Commissioner Harlan: Right at that point I ask again whether such lumber ever goes out by the Lake Charles & Northern.

Mr. Davis: No, sir. This is the Louisiana & Pacific and the Lake Charles & Northern joint tracks. This mill is over here, and we originate the tonnage, and therefore control it. Naturally we would want to take our own haul on it and not divide up with some other line.

Commissioner Harlan: Yes, but there are other mills on the main line, some mills.

Mr. Davis: Some mills: There is one little mill at Bannister which has just started up. We have one or two cars.

Commissioner Harlan: And as a rule you take all that lumber out and the Lake Charles & Northern does not.

Mr. Davis: Where, from this point, Bundick Creek?

Commissioner Harlan: Bannister.

Mr. Davis: I do not know that we take it all. I think that is controlled by parties at Lake Charles, is my recollection; I
1727 am pretty sure we do not handle it all. I can give you a statement of that if you wish it.

Commissioner Harlan: I do not know that that is necessary. I just wanted to know what the course of the business was.

Mr. Davis: The lumber business in that section is very small. There are no other small mills in there that I know of.

Mr. Cowan: How does the Bundick Mill get its logs?

Mr. Davis: I do not know of any lumber mill at Bundick. Have you not in mind the mill at De Ridder?

Mr. Cowan: I am talking about the little mill that is on your line.

Mr. Davis: The Bundick Creek Lumber Company?

Mr. Cowan: Yes, that is the one. I forget the name.

Mr. Davis: I have never been down there. I suppose they pull them in by teams.

Mr. Cowan: That is the same character of lumber that these other lumber companies manufacture?

Mr. Davis: I think it is all yellow pine. I am not positive.

Mr. Cowan: Going down to Lake Charles, your company owns apparently a very small amount of actual railroad mileage,
1728 but it is your terminal there for your sawmills?

Mr. Davis: Yes, sir.

Mr. Cowan: Are those terminals there for the purpose of handling other people's traffic, or for the purpose of handling the sawmill traffic?

Mr. Davis: We have a freight station there and do handle business for all parties who offer freight there.

Mr. Cowan: The big map spread out yesterday showing the extent of those terminals in and about the sawmills and lumber yards and so on.

Mr. Davis: Yes, sir.

Mr. Cowan: Such terminals are necessary for a large lumber yard, whether you handle other traffic or not, are they not?

Mr. Davis: The station is not in the lumber yard.

Mr. Cowan: Well, aside from the station that handles the other traffic at the depot these tracks are essential to the lumber plant.

Mr. Davis: I should think a large concern like that, they would have to have their own tracks, or somebody else would have to have the tracks there for them.

Mr. Cowan: Did they have that sawmill there before this Lake Charles & Northern contract was made?

1729 Mr. Davis: They had no mill. This is practically a new mill and new terminals entirely.

Commissioner Harlan: Were there any spur tracks running into that lumber yard and the old mills before your terminals were put into Lake Charles?

Mr. Davis: I think so. I think the Southern Pacific got in there, and perhaps the Kansas City Southern. I am not sure but they had a mill there and connected with those companies, because that was the only outlet for the product of their lumber mills.

Mr. Cowan: As I understood that map, the Louisiana & Pacific owns all of the tracks serving the sawmill and the planer and the lumber industry of that mill.

Mr. Davis: Judge, I do not know about the financial affairs of the company. It has been stated here that they do. I think Mr. Thurmond yesterday submitted that map with that statement, and I think it can be confirmed.

Mr. Cowan: The service you preform on the lumber there for which you receive your divisions is the delivery to the line which connects with your road and carries it out, either at Lake Charles or at Fulton?

Mr. Davis: Yes, sir.

1730 Mr. Cowan: Do you carry any lumber up as far as De Ridder to be sent out over the Kansas City Southern?

Mr. Davis: No, I do not think we do. We make delivery right there.

Mr. Cowan: Your through rates from the Kansas City Southern apply by what routes, what connections?

Mr. Davis: Via De Ridder and Lake Charles.

Mr. Cowan: You can carry it up to De Ridder if you want to, but you do not do it, of course.

Mr. Davis: No; it is an operating proposition. We would take the short haul.

Mr. Cowan: To what proportion of your lumber do the higher divisions apply, the five cents, for example?

Mr. Davis: Five cents?

Mr. Cowan: Yes, you have five cents in some cases, I believe.

Mr. Davis: The contract with the Frisco calls for 50 per cent of the tonnage, and with the Southern Pacific 40 per cent, if they furnish the cars we aim to give them 50 per cent and 40 per cent.

Mr. Cowan: But do you in fact give them more?

1731 Mr. Davis: In the last several months they have been very short of equipment and we have had to do the best we could. As I explained to the Commissioner, we have been shipping over the Kansas City Southern.

Mr. Cowan: At all events this statement I have called for will show all that?

Mr. Davis: Yes, sir.

Commissioner Harlan: Who in your company attends to the interchange of transportation?

Mr. Davis: Of annual passes?

Commissioner Harlan: Annual passes and trip passes and other transportation?

Mr. Davis: I handle that under the supervision of Mr. Long; he signs the requests.

Commissioner Harlan: And you of course, and all your officers have free transportation over your immediate connections?

Mr. Davis: Yes, sir; I think all of them but—well, I don't know, but I would be willing to say that they all have them. I am not sure but I think they do.

Commissioner Harlan: And over the main lines of those connections in the east, at Chicago——

1732 Mr. Davis: Well, no, they do not. I have a pretty full line of transportation and it varies; but all of the officers have not use for that transportation.

Commissioner Harlan: Well, you are not an officer of any of these lumber companies?

Mr. Davis: No, sir.

Commissioner Harlan: But a number of other officers of your road are officers of one or more lumber companies?

Mr. Davis: Some. Mr. Long is an officer and Mr. Sweet.

Commissioner Harlan: And they have free transportation more or less generally as far as Chicago, have they not?

Mr. Davis: They have transportation to Chicago. yes, sir.

Commissioner Harlan: And perhaps farther to the east?

Mr. Davis: No, I do not thinks so. Mr. Long may have some transportation as far east as Buffalo; I think he has a Wabash pass, but I am not sure; but the eastern lines do not interchange with us now.

Commissioner Harlan: I suppose all your ties are purchased from the lumber companies that are affiliated or in the same investment?

Mr. Davis: I should think so.

Commissioner Harlan: And all your lumber?

Mr. Davis: I do not know a thing about that, but it is
1733 natural to state that it is the case; it is a natural condition.

Commissioner Harlan: And do you know who gets salaries among the officers of your road? I am not sure that that was gone into by Mr. McLean yesterday. Did we go over that with you yesterday?

Mr. McLean: What is it?

Commissioner Harlan: The salaries paid by the Louisiana & Pacific to its officers?

Mr. McLean: No, sir, I do not think we did.

Commissioner Harlan: Are you familiar with that matter, Mr. Davis?

Mr. Davis: With the exception of my own, there is a statement, I believe, that can be furnished you on that. I do not know what the other officers get, no, sir.

Commissioner Harlan: Mr. Davis, I understand of course, that you — essentially an officer of this railroad company.

Mr. Davis: Yes, sir.

Commissioner Harlan: But do you not often participate in conferences and have more or less to do with the shipments of this lumber and the sale of the lumber and its routing and finding markets for it?

1734 Mr. Davis: No, the only conference that I could have in regard to the sale would be with Mr. Nelson, with regard to railroad material. As long as the railroads continue to buy delivered at junction points, the lumber companies throughout the southwest must know to some extent what the divisions are to those division points, and at various times I have conferred with him on that. I have nothing to do with the sale and do not know a thing about lumber.

Commissioner Harlan: Where is the repair shop of your line?

Mr. Davis: I think there is a small shop at De Ridder and a good shop at Longville.

Commissioner Harlan: Who owns the Longville shop?

Mr. Davis: I think it is owned by the Longville Lumber Company.

Commissioner Harlan: Who owns the De Ridder shop?

Mr. Davis: I do not know whether that is owned by the Hudson River Lumber Company or not. Can you say, Mr. McLean, whether repairs are made at De Ridder?

Mr. McLean: Yes.

Mr. Davis: Who makes the repairs?

Mr. McLean: The Louisiana & Pacific.

1735 Mr. Davis: They make their own repairs?

Mr. McLean: Yes.

Mr. Davis: And at Longville, the Longville Lumber Company?

Mr. McLean: Yes.

Mr. Cowan: We have been dealing with inland rates and I overlooked asking you about the export rates. I did try to do it once, but it escaped my mind in some way. Explain the application of the export rates, the divisions, the export rates, the traffic and the division of those rates.

Mr. Davis: I cannot give you much information about the volume of traffic. There is more or less traffic moving all the time. I have not a statement of that.

Mr. Cowan: In the first place, what is the export rate?

Mr. Davis: The rate to Port Arthur is 6 cents per 100 pounds, and the rate to Galveston is 6 cents per 100 pounds.

Mr. Cowan: From all points on your line?

Mr. Davis: Yes, sir; and the rate to New Orleans, I believe, at the present time, is 7 cents.

Mr. Cowan: What divisions are paid in each case?

Mr. Davis: On the Port Arthur and Galveston business we receive 2 cents, and on the New Orleans business 1½ cents, to the best of my recollection.

1736 Mr. Cowan: When were these export rates extended to cover your lines and the Lake Charles & Northern from the water points?

Mr. Davis: They were extended when the line was completed or shortly after that time.

Mr. Cowan: And by that you mean when this corporate organization was made?

Mr. Davis: Yes, sir, when the line was completed into Lake Charles. Prior to that time we got out by the Kansas City Southern.

Mr. Cowan: Did you get the application of the division by that route?

Mr. Davis: 6 cents; yes, we received 2 cents.

Commissioner Harlan: Are there any private cars owned by your company?

Mr. Davis: Yes, sir; the Louisiana & Pacific have a private car.

Commissioner Harlan: For what purpose is it used?

Mr. Davis: Well, I do not use it. Mr. Sweet uses it.

Commissioner Harlan: Can you tell us how often and for what purpose it is used?

Mr. Davis: No, I think he has used it two or three times this

1737 year.

Commissioner Harlan: Have you issued any car and party passes over your line?

Mr. Davis: I think so. Mr. Sweet—I do not think it is necessary for him as an officer of the company to have a pass, but I think he has one.

Commissioner Harlan: Well, it would be necessary for a car and party, would it not, over your line?

Mr. Davis: I think if he has one it would be issued car and so many employees; I think the Commission have a rule on that.

Commissioner Harlan: You own the telephone line, as I understand.

Mr. Davis: That matter has not been up with me.

Commissioner Harlan: Well, what is the fact? Someone said, I believe, that you used the telephone to some extent in operating trains.

Mr. Davis: Yes, sir, they use the telephone, as I understand it, on the branch lines, and telegraph on the main line.

Commissioner Harlan: Do those telephone lines belong to
1738 the railroad company?

Mr. Davis: I think they do; I am not positive as to that.

Commissioner Harlan: Well, that is the fact, is it not, Mr. McLean?

Mr. McLean: The Louisiana & Pacific does not own the telephone lines.

Commissioner Harlan: Who does own them?

Mr. McLean: Those lines were transferred to the Lake Charles & Northern at the time the road was sold.

Mr. Davis: We are talking about the line from De Ridder to Bundick. The Lake Charles & Northern have nothing to do with that.

Mr. McLean: I am not in a position to say whether the Louisiana & Pacific own that or not.

Commissioner Harlan: Are you in a position to say who pays the employés who operate that telephone?

Mr. McLean: We have no employees operating that telephone.

Commissioner Harlan: Well, they are used in running your trains are they not, those telephone lines?

Mr. McLean: Not that I know of.

Commissioner Harlan: Have you a telephone line along the main line?

1739 Mr. McLean: No, sir; not for the Louisiana & Pacific.

Commissioner Harlan: Who would know about the ownership of these telephone lines?

Mr. Rickey: What specific line are you inquiring about?

Commissioner Harlan: I will put the question to you. What specific line do you know about?

Mr. Rickey: The Louisiana & Pacific built a line which was included in the sale to the Lake Charles & Northern main line. I understand there is a station at each of the junction points along the line, Lilly Junction, De Ridder Junction and Fayette for dispatching trains, but this line was sold to the Lake Charles & Northern.

Commissioner Harlan: Mr. Davis, I understood you to say you did not use the telephone lines on the main line in the train dispatching?

Mr. Davis: That is my observation. Perhaps I should have stated that I did not know, but I got it into my head we had a telephone line through from De Ridder to Lake Charles and that on the branch lines there was some sort of communication. I have nothing to do

with the operation of the trains, and am sorry I cannot give you the information.

Commissioner Harlan: We would like to get the information from some one, some one ought to be here who knows about
1740 all these things.

Mr. Garwood: I will ask you if it is not the common practice among railways to have joint use of tracks and joint agents?

Mr. Davis: I think it is. I just cited three cases right in this vicinity. There may be more. Those are all that occurred to me.

Mr. Garwood: Where there are such contracts as a rule the agents are joint and do business for both companies?

Mr. Davis: I understand that to be the case.

Mr. Garwood: And maintain a neutral attitude in the solicitation of business for the respective roads?

Mr. Davis: Yes, sir.

Mr. Blair: You spoke of a joint line between Cheneyville and Alexandria used by the Texas & Pacific and the Morgan Road.

Mr. Davis: Yes, sir.

Mr. Blair: Would it be usual for the Texas & Pacific to make joint rates with the Morgan Railroad from points on its line to any point on that joint line?

Mr. Davis: Would it be what?

1741 (Question read.)

Mr. Davis: I cannot understand it.

(The two previous questions were again read.)

Mr. Davis: I do not believe I could say. That would be a matter of agreement. I do not see anything unusual in it.

Mr. Blair: Is it not a matter of custom that two railroads under those circumstances never make joint rates? That is the fact in regard to the Texas & Pacific and the Morgan Company. If you do not know, of course I cannot bring that fact out by you.

Mr. Davis: I tried to explain in our case that where two lines are competing it is not usual to interchange business.

Commissioner Harlan: Mr. Blair, what is your point of view in putting these inquiries? I would like to get some idea.

Mr. Blair: Some comment was made on the fact that there were no joint rates between points on the Louisiana & Pacific and some points on the joint line operated by it and the Lake Charles & Northern, and the object of my question was simply to show that there was nothing unusual in the absence of joint rates between the Lake Charles & Northern and the Louisiana & Pacific under those circumstances. I had in mind the fact that we operate a joint line
1742 with the Texas & Pacific between Cheneyville and Alexandria, but the Texas & Pacific will not make joint rates with our line for any point on its line to some point on that joint line.

Commissioner Harlan: Is it not rather usual when trackage rights are given to provide that the lessee line shall not have any local traffic, or shall not originate traffic on the leased tracks?

Mr. Blair: That does not exist in regard to the contract between the Texas & Pacific and the Morgan company.

Commissioner Harlan: Well, that is the same interest, is it not?

Mr. Blair: Oh, no. The Texas & Pacific and the Morgan, one is a Gould line and the other is a Huntington line.

Commissioner Harlan: That seems to be all for the present company.

Mr. Cowan: I understand we are to finish the Louisiana & Pacific before we take up the others?

Commissioner Harlan: Yes. You have some other witnesses?

Mr. Thurmond: Yes.

(Witness excused.)

1743 Commissioner Harlan: I would like to ask Mr. McLean to take the stand.

Mr. Thurmond: Mr. McLean is the local Auditor for the line. We have the General Auditor here. I put Mr. McLean on just to prove the correctness of the figures as to tonnage. I simply stated that, so if you ask questions beyond Mr. McLean's domain, we can probably find some one else here to answer them.

DAVID MCLEAN, was called as a witness, and having been previously sworn, testified as follows:

Commissioner Harlan: Mr. McLean, will you define again your position and the scope of your work for the Louisiana & Pacific?

Mr. McLean: My position is local auditor at De Ridder. I take care of and audit all of the revenues and expenses of the company so far as it pertains to the handling of freight and passenger service, and so on.

Commissioner Harlan: Do you mean over the whole line?

Mr. McLean: Yes.

Commissioner Harlan: Do you have to do with the expense account at all?

1744 Mr. McLean: The expense accounts of the officials?

Commissioner Harlan: The operating expense account?

Mr. McLean: Yes.

Commissioner Harlan: Do you have clerks under you who make the actual entries on the books under your supervision?

Mr. McLean: Yes, sir.

Commissioner Harlan: Then I will put to you again the question whether in the expense account or operation of this track between De Ridder and Lake Charles there is anything there which shows whether that company runs a telephone line.

Mr. McLean: I think not. I think that there were one or two items of expense connected with telephone operation last year. It pertained to the purchase of cable for passing the line under certain tracks, and that is all I know of.

Commissioner Harlan: Is there a telephone on your desk?

Mr. McLean: Yes, sir, there is a telephone in my office.

Commissioner Harlan: Where is the central to and from which it is operated?

Mr. McLean: We have a central in our own building that connects us with the De Ridder central and the various agencies, various stations.

Commissioner Harlan: If you want to call up the auditor
1745 at Lake Charles, or any accounting officer at Lake Charles, or elsewhere, over what wires do you call it up?

Mr. McLean: That would be as I understand it over the wires of the Lake Charles & Northern.

Commissioner Harlan: If you want to call up a railroad official at Bundick, what wires do you use?

Mr. McLean: As I understand that Bundick telephone, it is the property of the lumber company.

Commissioner Harlan: Do you mean that runs over your rail line?

Mr. McLean: Now, your Honor, I do not know where it runs.

Commissioner Harlan: Is any one carried on your payrolls that has to do with the operation of that telephone line at Bundick?

Mr. McLean: No, sir.

Commissioner Harlan: Is it not used in operating your trains?

Mr. McLean: I could not say.

Commissioner Harlan: Well, Mr. Davis has just said that it was. Have you no information on that point?

Mr. McLean: I have not. I simply know that there is a telephone station at some of the junction points of the branches with
1746 the main line; that is all I know about it.

Commissioner Harlan: You do not know whose telephone line that is?

Mr. McLean: I do not.

Commissioner McLean: Does anyone here know?

Mr. McLean: Why——

Commissioner Harlan: Cannot we get some information on this from some one who knows.

Mr. Sweet: The telephone line between De Ridder and Bundick belongs to the Hudson River Lumber Company.

Commissioner Harlan: And it reaches their camp?

Mr. McLean: Yes.

Commissioner Harlan: And is in use in the operation of your railroad?

Mr. Sweet: I do not think so.

Commissioner Harlan: Mr. Davis said it was.

Mr. Sweet: I do not think so.

Mr. Davis: I said I have been out over that line and I observed a telephone line. I do not think I said it was used for that, because I really do not know.

Commissioner Harlan: Perhaps I was mistaken, but I understood you to say that the main line as you call it, was operated
1747 under a telegraph system, and the branch lines by telephone system.

Mr. Davis: I may have said something to that effect, but that was simply from observation.

Commissioner Harlan: Now, Mr. Sweet, are there any offices and stations along the right of way of that branch line?

Mr. Sweet: Trains operating on the Bundick Branch, as I understand, leave De Ridder under the direction of the Dispatcher of the

main line; they have to pass out over the tracks of the main line, as you will notice on the map, and then they have 7½ miles of run to Bundick, one train operating over that track. They do not come in contact with any other trains, and they are not dispatched, as I understand.

Commissioner Harlan: Is there any telephone office out on that line?

Mr. Sweet: There is a telephone office out there, yes, sir.

Commissioner Harlan: When the train starts back, is not the telephone used?

Mr. Sweet: They have the right to the tracks; there is no necessity for them getting orders until they get to De Ridder.

1748 Commissioner Harlan: Am I to understand that the telephone is never used to give any orders by the railroad officials?

Mr. Sweet: I could not say as to that.

Commissioner Harlan: Is there anyone here who can say?

Mr. Sweet: It is used, I presume occasionally. Mr. Boswell might give you that.

Commissioner Harlan: Well, I will not pursue that inquiry any farther. No one here seems to know how the business is done on the branch lines. I will ask this further question of you, Mr. McLean: Do the operating expenses include any item for the maintenance of this telephone line?

Mr. McLean: No, sir.

Commissioner Harlan: Do you know how the taxes are assessed on the track that belongs to the Louisiana & Pacific?

Mr. McLean: I do not.

Commissioner Harlan: Have you ever looked into that matter?

Mr. McLean I have not.

Commissioner Harlan: Do you know anyone who does know?

Mr. McLean: I think our general auditor has.

Commissioner Harlan: Is the general auditor here?

Mr. McLean: Yes, sir; Mr. Rickey.

Commissioner Harlan: Mr. Rickey, will you tell us about
1749 this matter of taxes, on what basis they are assessed?

Mr. Rickey: I am not prepared to answer that, Mr. Commissioner.

Commissioner Harlan: Had you anything to do with making the return to the assessing officials?

Mr. Rickey: Yes, sir, we make annual reports required on their blanks, but I have not copies here.

Commissioner Harlan: Have you no recollection on that point?

Mr. Rickey: No.

Commissioner Harlan: Mr. Sweet, did you not make a report to the taxing official?

Mr. Sweet: We have a party who attends to that specially. It is his duty.

Commissioner Harlan: Is that party in court?

Mr. Sweet: No, sir.

Commissioner Harlan: Do you know on what basis you work that out?

Mr. Sweet: I could not say. The reports are furnished to the authorities over here in Louisiana, and we have his report here.

Commissioner Harlan: If you can, take from that report
1750 what it was.

Mr. Sweet: I think the report as to the assessment to the right of way and so forth was made on the basis of their being exempted from taxation for that part under a certain law, that is that which was constructed for a certain period. Now I do not handle that and am not familiar with it.

Commissioner Harlan: I want to know on what basis the taxes were assessed? Do you know?

Mr. Sweet: No, I do not know.

Mr. Thurmond: This book shows it for 1908 and 1909, before the Railroad Commission.

Commissioner Harlan: Mr. Sweet, do you not know that the taxes were assessed on the same basis that is applied to tap lines and logging roads, and so forth?

Mr. Sweet: I do not know about that, your Honor.

Commissioner Harlan: Did you not yourself make a return to the assessing officials to that effect?

Mr. Sweet: I do not think so. I think that was made by our Commissioner who looks after that.

Mr. Thurmond: His name is Sweet.

1751 Mr. J. W. Martin: I might be able to clear this up. I am familiar with the situation as it exists on the Southern Pacific Railway. The return is made to the State Board of Appraisers on blanks provided by the State Board. The rate of taxation or assessment, rather, is settled by that State Board of Appraisers, according to its published report. The laws of Louisiana exempt railroads constructed in the state for ten years after their construction from taxation for state and parochial taxes, but they are liable for special taxes levied in the district through which they run. For instance, for school taxes, or some special tax like a special school tax that is not a parochial school tax.

Commissioner Harlan: Well, do you know what the basis of that assessment was?

Mr. Martin: It is set forth in the report of the State Board of Appraisers. I thought that that was the report of the State Board of Appraisers that you had before you. I can find one in the city. That is the Railroad Commissioners' report I find, but the State Board of Appraisers make a report.

Mr. Rickey: I might say for the year ending June 30, 1910 our taxes amounted to approximately $2,213, as assessed by the State Board.

Commissioner Harlan: That still does not give the basis
1752 of the assessment, and that is what the Commission desires.

Mr. Martin: I will say further, for the information of the Commissioner, that I have a copy of that report at home, and I have looked it over, but I have not memorized sufficiently to state positively, but that the different roads are assessed according to the value of the material entering into them, according to the weight of

the steel, and so forth, and the equipment is assessed according to its value.

Mr. Garwood: I do not know how it is in Louisiana, but in Texas, when we go before the county boards of equalization, each railroad scrambles for the lowest valuation it can get.

Commissioner Harlan: That seems to be a usual course of conduct. Well, the Commission will advise itself on this question. Mr. McLean, it appeared yesterday that until quite recently this railroad company was indebted to a substantial amount, I have forgotten the exact figures, in the form of notes held by four different lumber companies. Do you know what the origin of that indebtedness in each case was?

Mr. McLean: I have understood, sir, that it was the purchase price of that part of the line purchased from those various lumber companies.

Commissioner Harlan: That is to say, the individual debt
1753 due to each company covers the book value of the railroad property acquired from that company?

Mr. McLean: From that company; yes, sir.

Commissioner Harlan: It amounted in all to about $306,000?

Mr. McLean: I think it amounted, when refunded by the bonds issued, to approximately $500,000.

Commissioner Harlan: Well, do you mean bonds were issued in excess of the amount of the indebtedness?

Mr. McLean: Yes, sir.

Commissioner Harlan: It was for that reason that I had lost sight of that fact. Were the bonds divided among these lumber companies in about the proportion of the indebtedness that was due to them, or did they go into other hands?

Mr. McLean: I understand that the notes held by those lumber companies were taken up and bonds in like amount given them instead.

Mr. Thurmond: The general auditor can give you more information along those lines than this man, if you want to have him do so.

Commissioner Harlan: That may be, and if so, I would like to have him give it. But Mr. McLean testified on these points yesterday. Judge Cowan, have you any questions?

1754 Mr. Cowan: There are a few question I wanted to ask Mr. McLean, but unfortunately I have forgotten most of them. How far back in this transaction were you personally acquainted with the organization of these companies and the issuance of securities, and the like?

Mr. McLean: I commenced work for the Louisiana & Pacific three years ago.

Mr. Cowan: You were not there at the inception of the organization of the railroad company and its relations with the Lake Charles & Northern by these contracts and so forth?

Mr. McLean: No. I am familiar with the contracts we operate under.

Mr. Cowan: But that is just by having seen the contracts?

Mr. McLean: Yes, sir, by having seen them.

Mr. Cowan: Do you keep up the books, the general office books,

of the Louisiana & Pacific Railway, as an auditor in charge of all of its accounts?

Mr. McLean: Yes, sir.

Mr. Cowan: And I suppose you have reported or do report the physical properties, the equipment, and everything of that kind, that is in your department, in the accounts reported to the Interstate Commerce Commission?

1755 Mr. McLean: Yes, sir, I have filed those figures.

Mr. Cowan: Is this private car part of your equipment?

Mr. McLean: It belongs to the Louisiana & Pacific Railway, yes, sir.

Mr. Cowan: What use has the Louisiana & Pacific Railway for a private car?

Mr. McLean: Why, that car is used by our vice-president.

Mr. Cowan: Who is that?

Mr. McLean: Mr. Sweet.

Mr. Cowan: Well, we have been hearing round that it was a very fine car, and all that, and I wondered how a little railroad like this could afford any such equipment. Can you tell us what it is carried at in your equipment cost?

Mr. McLean: In our equipment account it is carried at—I cannot give you an exact amount, but I can give it to you within a few hundred dollars—$20,000.

Mr. Cowan: $20,000.

Mr. McLean: Yes.

Mr. Cowan: Where do you keep it?

Mr. McLean: Wherever Mr. Sweet happens to be. I think——

Mr. Cowan: Is it kept on your line?

Mr. McLean: If he is on our line; yes, sir.

1756 Mr. Cowan: You know what I mean now?

Mr. McLean: I don't know where the car is, because I am not with the car.

Mr. Cowan: Well, you hardly ever see it?

(No response.)

Mr. Cowan: Do your accounts show the car mileage paid to other companies for the carrying of that car over their lines?

Mr. McLean: My accounts do not show any car mileage paid to other companies for the handling of that car.

Mr. Cowan: And you do not pay any?

Mr. McLean: My accounts do not show it.

Mr. Cowan: I am asking you if you pay it. You say they do not show it. Now, does the Louisiana & Pacific pay car mileage on that car over foreign lines?

Mr. McLean: If it did, it would appear in my books.

Mr. Cowan: That is what I was getting at. The fact it does not appear on the books means you do not pay it?

Mr. McLean: We do not pay it.

Mr. Cowan: Do you know whether it moves under a pass arrangement over the foreign lines?

Mr. McLean: I do not know under what arrangement it

1757 moves over foreign lines.

Mr. Cowan: Do your accounts show any repairs of that car?

Mr. McLean: Yes, sir.

Mr. Cowan: And where are those repairs made?

Mr. McLean: I believe the last time that car was repaired it was repaired at the shops at Longville, Louisiana.

Mr. Cowan: Well, that is probably some very unimportant repairs?

Mr. McLean: No, I think it was rather extensive

Mr. Cowan: From whom did your railroad company purchase that car?

Mr. McLean: I do not know.

Mr. Cowan: It was there when you came?

Mr. McLean: It was there when I went there.

Mr. Cowan: What is the average cost of maintenance of that car?

Mr. McLean: I could not state positively the average cost.

Mr. Cowan: Do you pay for the porters and, to use Mr. Kirby's expression, the "vittles" and so on?

Mr. McLean: Yes, sir.

Mr. Cowan: I suppose of course it is a prohibition car?

Mr. McLean: Undoubtedly; when in Texas it is, I think

1758 Mr. Cowan: And does Mr. Sweet eat all these supplies or does he have others of the lumber companies with him to aid him in the consumption of the commissary?

Mr. McLean: Well, now I could not say.

Mr. Cowan: Well, there must be some considerable expense in the maintenance of a car worth $20,000, and I thought maybe you would know what it was.

Mr. McLean: I do not know. I could not state exactly what the average cost of the maintenance of the car is.

Mr. Cowan: Can you state approximately what it is?

Mr. McLean: I would not care to say.

Mr. Cowan: What is that?

Mr. McLean: I would not care to say.

Mr. Cowan: Well, I know you would not——

Mr. McLean: I don't mean that. I am quite willing to say if I knew, if I knew positively I would tell you and would be glad to.

Mr. Cowan: It is not put in separately into your accounts in the reports to the Interstate Commerce Commission?

Mr. McLean: No.

Mr. Cowan: It goes in under the head of repairs and renewals of cars?

1759 Mr. McLean: The repairs to the car of course go under the passenger car repairs.

Mr. Cowan: Where do the expenses that enter into the maintenance of equipment—where do the expenses of this porter or these porters, and the commissaries—where does that go into the accounts which go to the Commission, under what head?

Mr. McLean: Under the head of salaries and expenses of clerks and attendants and general officers, of course.

Mr. Cowan: That car is not used for the purposes of your railroad is it? It is used for the purposes of the people who own the lumber companies?

Mr. McLean: Well, now, so far as I know, it is used for the purposes of the railroad.

Mr. Cowan: And what purposes of the railroad?

Mr. McLean: I never have discussed any lumber business with Mr. Sweet in that car.

Mr. Cowan: You transact railroad business with him?

Mr. McLean: I have transacted railroad business with him in that car.

Mr. Cowan: Aside from the meetings of officials in the car, for what railroad purposes is it used?

Mr. McLean: Well, positively I could not state. I pre-
1760 sume general railroad purposes.

Mr. Cowan: It is kept at Kansas City principally, is it not?

Mr. McLean: I could not say that. I do not know where the car is except when it is down on our own line.

Mr. Cowan: You answer that you do not know where it is generally kept. You are not familiar with the bond issues that are placed on the market for sale of the lumber companies, are you?

Mr. McLean: No.

Mr. Cowan: Nor the interest that they bear?

Mr. McLean: No.

Mr. Cowan: What do you do with the money? Do you get the money? You keep the accounts. Do you get the money that comes into this railroad company?

Mr. McLean: Yes, sir.

Mr. Cowan: What do you do with it?

Mr. McLean: It is deposited with the Calcasieu National Bank at Lake Charles and the First National Bank at Kansas City, Missouri.

Mr. Cowan: Principally which?

Mr. McLean: The largest balance right now is with the
1761 First National Bank of Kansas City, Missouri.

Mr. Cowan: Do you issue the vouchers for payments out of this money?

Mr. McLean: Yes, sir.

Mr. Cowan: And it principally goes for the payment of interest on the indebtedness, does it not, after the payment of operating expenses?

Mr. McLean: Well, no, the interest on the indebtedness is six per cent, on the bonded indebtedness of the road, and the operating expenses are a great deal more, and the principal part of it would be operating expenses.

Mr. Cowan: Do you have a net income over and above the fixed charges?

Mr. McLean: Yes.

Mr. Cowan: And to what account is that carried? Is that carried in a surplus?

Mr. McLean: That is carried into surplus account, yes, in accordance with the requirements of the Interstate Commerce Commission.

Mr. Cowan: How much does that amount to per year?

Mr. McLean: For the last fiscal year it was $16,000 and some hundred dollars.

1762 Mr. Cowan: You did not declare any dividends to the stockholders?

Mr. McLean: Last year?
Mr. Cowan: Yes.
Mr. McLean: Yes, sir, we did.
Mr. Cowan: How much?
Mr. McLean: Seventy per cent stock dividend.
Mr. Cowan: Seventy per cent?
Mr. McLean: Yes.
Mr. Cowan: Do you happen to know now yourself who happened to get that money?
Mr. Rickey: May I answer that question as to dividends?
Mr. Cowan: If he knows, let him answer. He said he handles the money.
Mr. Rickey: He did not answer it fully. There was a stock dividend and not a cash dividend.
Mr. Cowan: Well, I asked him if they paid a dividend and he said yes. Was it a cash or a stock dividend?
Mr. McLean: Stock dividend, I said.
Mr. Cowan: Did you pay any cash dividend?
Mr. McLean: No.
Mr. Cowan: Who got the stock dividend?
1763 Mr. McLean: The stockholders.
Mr. Cowan: You issued that, did you?
Mr. McLean: No, I did not issue the stock certificates.
Mr. Cowan: No money accrues to the stockholders of the lumber company from the operation of this railroad unless it comes from the interest on bonds?
Mr. McLean: No.
Mr. Cowan: Or in the form of advantage in the operation of the lumber company?

(No response.)

Mr. Cowan: Do you know anything about why there was a 70 per cent stock dividend issued?
Mr. McLean: No, I did not know why it was decided to issue that stock dividend.
Mr. McLean: Are you accumulating any surplus so you can pay any cash dividend on that stock?
Mr. McLean: We have a surplus. Now, what the management of the road will decide to do with it I am not advised.
Commissioner Harlan: When you issued the stock dividend, it went on the liability side of the account?
Mr. McLean: Yes.
Commissioner Harlan: What went on the other side?
1764 Mr. McLean: The surplus represented by that dividend had been used for improvements and additions.
Commissioner Harlan: How did you enter up the item on the other side of the account, in what form?
Mr. McLean: It is charged to surplus.
Commissioner Harlan: What was the amount of the stock dividend?
Mr. McLean: $21,000.

Commissioner Harlan: In the surplus account what entry did you make?

Mr. McLean: Your Honor, I do not believe I quite understand your question.

Commissioner Harlan. If you charge it to surplus, you put some entry in the surplus account, did you not?

Mr. McLean: Well, we charge surplus and credit capital stock, of course, if I can understand your question; that is the only book transaction there would be.

Commissioner Harlan: Well, Judge Cowan, will you proceed with this witness, if you have any further questions?

Mr. Cowan: I have none.

Commissioner Harlan: Have you any further questions, Mr. Thurmond?

1765 Mr. Thurmond: No, sir. We did not recall him.

(Witness excused.)

P. C. RICKEY was recalled as a witness, and having been previously sworn testified as follows:

Mr. Thurmond: You are the general auditor of the Louisiana & Pacific Railway Company?

Mr. Rickey: I am.

Mr. Thurmond: You are auditor for some number of other companies?

Mr. Rickey. Yes, sir.

Mr. Thurmond: Probably 20 or 25?

Mr. Rickey: About 27, I judge; the supervising auditor.

Mr. Thurmond: His Honor asked something about the issuance of the bonds of the Louisiana & Pacific Railway. Will you explain that bond issue?

Mr. Rickey: Well, the Louisiana & Pacific Railway is an incorporation with an authorized capital stock of about $200,000, of which only $30,000 has been issued for cash, and they were able to acquire more or less railroad material and equipment along their
1766 line on a time basis, by purchase on a time basis, for which they gave notes bearing interest at six per cent, and they issued a bond issue, authorized issue of $600,000, using these bonds, which were secured by mortgage on the entire properties to refund the notes, together with the sale of such bonds as were necessary to acquire additional working capital. For instance, the bonds were taken by various individuals for investment, by banks and trust companies.

Mr. Thurmond: You have no means of knowing where those bonds are now, unless they happen to be registered?

Mr. Rickey: I only know from hearsay and conversation with the bondholders.

Mr. Thurmond: Do you know in that way that they are scattered among a number of owners?

Mr. Rickey: Yes, sir, scattered quite largely. I know of promi-

nent banks and trust companies that have them, as well as the lumber companies from whom the property was acquired.

Mr. Thurmond: The bond issue was in excess of the debt of the company?

Mr. Rickey. The authorized issue was, not the actual issue.

Mr. Thurmond: Do you know of some blocks of those bonds being disposed of to persons who had no interest in any of
1767 these mills and lumber companies?

Mr. Rickey: Yes, sir; quite a number of bonds.

Mr. Thurmond: You might give one or two. The Commissioner seems interested in that point.

Mr. Rickey: The First National Bank of Kansas City; the Calcasieu National Bank of Lake Charles; the Merchants National of Houston, I believe has $15,000.

Commissioner Harlan: Those first two banks are banks where your accounts as a railroad are kept?

Mr. Rickey: We have an account kept with the First National—yes, the first two banks.

Mr. Thurmond: Do you know of some individuals not interested in the lumber companies that own some of those bonds, or did own them?

Mr. Rickey: I cannot recall any at this time.

Mr. Thurmond: Well, you know of some people who have bought the bonds simply as an investment?

Mr. Rickey. Yes, sir, who had a general knowledge of our property; people who were not stockholders in the company and not associated with it.

Mr. Thurmond: Have you a surplus on hand now, the Louisiana & Pacific?

1768 Mr. Rickey: Yes.

Mr. Thurmond: Have you paid interest on your indebtedness as it fell due?

Mr. Rickey: Yes, sir.

Commissioner Harlan: What is the amount of the surplus?

Mr. Rickey: It is about, around $40,000.

Commissioner Harlan: Well, you need not stop on the exact amount.

Mr. Rickey: It is $51,000.

Mr. Thurmond: Are you accumulating it at this time for any particular purpose?

Mr. Rickey. Well, we have our semi-annual interest to meet January 1st on our indebtedness, amounting to about $30,000 to $35,000.

Commissioner Harlan: Have you stated that as a surplus without making a cross entry of this accrued interest?

Mr. Rickey: No, this surplus is in addition to that accrual.

Commissioner Harlan: $51,000?

Mr. Rickey: Yes, sir. I thought he meant a surplus of cash.

Mr. Thurmond: I used the word surplus not in the accounting sense, but if you had a balance on hand.

1769 Mr. Rickey: We are conserving all the cash we can get to meet our obligations.

Mr. Thurmond: Have you bought or contracted recently for any new equipment?

Mr. Rickey: Yes, sir.

Mr. Thurmond: Cars?

Mr. Rickey. Yes, we have quite a number of cars ordered now and delivered, and several engines.

Mr. Thurmond: The Commissioner asked yesterday some one about the operating ratio. Can you give him that on the Louisiana & Pacific?

Mr. Rickey: About 65.8 per cent.

Mr. Thurmond: 65.81 we have it here.

Mr. Rickey: 65.81; that is the cost of operating, not including interest charges and depreciation.

Commissioner Harlan: Not including depreciation.

Mr. Rickey: I beg pardon; it does include depreciation; yes, sir.

Mr. Thurmond: That will give your Honor an idea of the information of the witness.

Commissioner Harlan: I merely wanted to correct that statement about depreciation.

1770 Mr. Thurmond: My questions doubtless have given your Honor an idea of what the witness is, and if you have any questions I have nothing further.

Commissioner Harlan. No, I think not.

Mr. Cowan: You spoke about being auditor of a great many companies. I suppose that includes all these lumber companies of the Long-Bell interests?

Mr. Rickey: Yes, sir.

Mr. Cowan: And includes the different railroads which have been mentioned here serving those lumber concerns?

Mr. Rickey: Yes, sir.

Mr. Cowan: And your office is kept where; at Lake Charles?

Mr. Rickey: At Kansas City.

Mr. Cowan: And do you divide the expense of this auditing office among the different lines and lumber companies?

Mr. Rickey: No, my office at Kansas City is a supervising office; the expense is borne by such companies as receive the benefits of the clerical work.

Mr. Cowan: I do not understand it, and am just trying to understand it. Are you simply an employee for these concerns only, or do you run a general auditing office in Kansas City?

1771 Mr. Rickey. No, I am employed by the Long-Bell Lumber Company's interests, and Mr. Long's interests in general.

Mr. Cowan: You have one office at which this general service is performed for all these companies?

Mr. Rickey: Yes, sir.

Mr. Cowan: And each company has its own auditor at its place of business?

Mr. Rickey: Yes.

Mr. Cowan: And you might call him a bookkeeper, I suppose?

Mr. Rickey: Chief clerk, ranking accountant, I mean.

Mr. Cowan: And that is the case with the lumber companies and each one of those railroads?

Mr. Rickey: Yes.

Mr. Cowan: They all make reports to you?

Mr. Rickey: Yes.

Mr. Cowan: Do the railroads spoken of make their annual reports to the Railroad Commission of Louisiana and to the Interstate Commerce Commission direct from their offices, or do you make those reports?

Mr. Rickey: They are prepared in the local offices. All
1772 the general records or detailed records of each railroad are kept in its own local office.

Mr. Cowan: Is there a general auditing of books of the lumber companies in the office, so that you know what the expenses and the earnings and capitalization and interest and all of that is?

Mr. Rickey: Yes.

Mr. Cowan: Your own books, then, constitute a compendium of the business of each lumber company in your office?

Mr. Rickey: No, sir; the books do not, no, sir.

Mr. Cowan: What would they contain, what general character of information?

Mr. Rickey: Business relating to the individual companies; each company has its own set of books.

Mr. Cowan: Well, that is what I meant. If Mr. Long wants to know what the situation is in regard to any one of the lumber companies, he goes to your office for it?

Mr. Rickey: Yes.

Mr. Cowan: And there you can tell him everything that there is about it, so far as all of the property owned, the indebtedness, the interest, taxes and operating expenses, the stock of lumber on hand, the sales, and the bills receivable, and so on?

1773 Mr. Rickey: Yes, sir.

Mr. Cowan: Now, that general account you get as a transcript from the local bookkeeper at a particular mill, or——

Mr. Rickey: I get the reports from him, the financial reports.

Mr. Cowan: But the local man at the mill has nothing to do with the indebtedness, interest and the general administration expenses. You would handle that at your own office?

Mr. Rickey: It is all disbursed through his office, the receipts and disbursements are handled by the local people.

Mr. Cowan: Is that directed from your office?

Mr. Rickey: Not in detail, no, sir.

Mr. Cowan: But the whole thing is concentrated there at Kansas City under your supervision, and the work performed by these fellows out where the mill is or the railroad is operated?

Mr. Rickey: I supervise their detail and outline their method of accounting, and so forth.

Mr. Cowan: Mr. Long has his office there with you or you with him?

Mr. Rickey: Yes, sir, the same building.

Mr. Cowan: The general sales agent has his office there?

1774 Mr. Rickey: Yes, sir.

Mr. Cowan: Is he general sales agent of all these lumber companies of which you are auditor?

Mr. Rickey: I might say so. He sells their output.

Mr. Cowan: Well, all of these lumber companies have one general sales department, have they not; that is, they have a general agency for the sale of the entire output of all these common interests?

Mr. Rickey: They have arranged with one sales office to handle their entire output.

Mr. Cowan: Who is in charge of that?

Mr. Rickey: Mr. N. B. Nelson.

Mr. Cowan: You have nothing to do with that?

Mr. Rickey: Not with the sales.

Mr. Cowan: Do you have to do with the collection of the money, or does it go back to each mill from which the lumber is shipped?

Mr. Rickey: No, it is collected by the Long-Bell Lumber Company.

Mr. Cowan: There at Kansas City?

Mr. Rickey: Yes, sir.

Mr. Cowan: And you keep your account with the First
1775 National Bank, somebody else said?

Mr. Rickey: No. I did not say so.

Mr. Cowan: I will ask where it is kept.

Mr. Rickey: The Long-Bell Lumber Company?

Mr. Cowan: Yes. These lumber companies; where do they keep their bank accounts?

Mr. Rickey: In various banks of Kansas City; four or five banks.

Mr. Cowan: The money is collected for lumber that is sold through this sales agency; does that money come to you at Kansas City for entry on the books?

Mr. Rickey: Yes, sir.

Mr. Cowan: And you make the deposits in the bank?

Mr. Rickey: Yes, sir.

Mr. Cowan: And in whose name?

Mr. Rickey: The Long-Bell Lumber Company?

Mr. Cowan: You are acquainted with the capitalization and all of that, of the Long-Bell Lumber Company?

Mr. Rickey: Yes, sir.

Mr. Cowan: The Long-Bell Lumber Company is composed of what, of these different companies?

Mr. Rickey: No, they are all individual companies that you speak of.

1776 Mr. Cowan: I have a circular which you must know about, offering for sale bonds, I think it is bonds, some sort of securities, which I would like to hand you for the purpose of examination to see if you are familiar with the circular.

Mr. Rickey: I recognize it, yes, sir.

Mr. Cowan: Does that circular contain a correct statement of the capitalization and various forms of bonds and securities and assets and so on of the company?

Mr. Rickey: You are asking that for the purpose of investing in these bonds?

Mr. Cowan: How is that?

Mr. Rickey: Yes, it is correct; approximately correct.

Mr. Cowan: Without going to the trouble or taking time to read it, I should like to file it.

Commissioner Harlan: It may be marked.

(The statement so offered and identified was received in evidence and thereupon marked Intervenors' Exhibit No. 1, witness Rickey, received in evidence December 14, 1910, and is attached hereto.)

Mr. Garwood: We have not seen it, and I reserve the right to make any objection. I do not know whether it has any relevancy to this matter or not.

1777 Commissioner Harlan: Of course you may make objections after you have inspected it, Mr. Garwood.

Mr. Cowan: I may not understand you correctly, and if I do not, you can attribute it to my ignorance and not to your failure to have stated it right. When the general sales agent makes a sale for some other of these lumber companies than the Long-Bell Lumber Company, the Lufkin Land & Lumber Company, for example, and you collect the money, is that money deposited first to the Long-Bell Lumber Company?

Mr. Rickey: Yes.

Mr. Cowan: And then do you distribute it to the account of the Lufkin Land & Lumber Company?

Mr. Rickey: No.

Mr. Cowan: Does the Long-Bell Lumber Company?

Mr. Rickey: We have paid the Lufkin Company for anything they have shipped for our account.

Mr. Cowan: The whole business is handled through the Long-Bell Lumber Company, but each lumber company is paid for the lumber it supplies; is that it?

Mr. Rickey: Yes, the Long-Bell Lumber Company will sell lumber, buying it from the mills which you have named, as well as other mills, buy it where they can, buy the stock to the

1778 best advantages of their sales department.

Mr. Cowan: How many mills does the Long-Bell Company operate in its own interest?

Mr. Rickey: The Long-Bell Company does not operate any mills.

Mr. Cowan: Just what is the Long-Bell Company?

Mr. Rickey: The Long-Bell Lumber Company is a selling company, you might say; a sales company.

Mr. Cowan: What are its assets?

Mr. Rickey: The Long-Bell Lumber Company's assets?

Mr. Cowan: Yes.

Mr. Rickey: The usual character of a sales company or lumber company; it is a timber holding company.

Mr. Cowan: Is it incorporated?

Mr. Rickey: Yes.

Commissioner Harlan: You mean it owns timber lands?

Mr. Rickey: Yes, sir, but no mills.

Mr. Cowan: It owns timber lands, but does not operate any saw mills, I believe you stated?

Mr. Rickey: Yes.

Mr. Cowan: Does it own the timber lands which are owned by these lumber companies of which you are auditor, which do

1779 operate the saw mills?

Mr. Rickey: No, sir.

Mr. Cowan: Does it handle the entire output of these saw mills, of which you are auditor?

Mr. Rickey: Approximately, except what they might sell within the corporate limits of their little towns.

Mr. Cowan: And fixes the prices, or rather agrees with the purchaser on the price at which the lumber is sold?

Mr. Rickey: Yes, sir; they agree with the purchaser.

Mr. Cowan: And that is through a common sales agency?

Mr. Rickey: You mean the retail yard purchaser, or whoever buys it?

Mr. Cowan: Yes.

Mr. Rickey: Yes, sir.

Mr. Cowan: Does the Long-Bell Company operate retail yards?

Mr. Rickey: Yes, sir.

Mr. Cowan: How many?

Mr. Rickey: From 70 to 80.

Mr. Cowan: Where are they principally located?

Mr. Rickey: Kansas and Oklahoma, 16 or 17 on Santa Fe points.

1780 Mr. Cowan: How do you get your lumber to the Santa Fe points?

Mr. Rickey: I do not know.

Mr. Cowan: You know nothing about the operation of the railroad, and its relation to the other carrying lines which get the lumber to the place of sale?

Mr. Rickey: No, not in that detail of routing.

Mr. Cowan: What does the Long-Bell Lumber Company get for the service of handling the output of these mills?

Mr. Rickey: A commission.

Mr. Cowan: The ordinary commission that is charged in such a case?

Mr. Rickey: I think so, yes, sir; a small commission per thousand

Mr. Cowan: Mr. R. A. Long himself owns a controlling interest in each one of these lumber concerns?

Mr. Rickey: Yes, sir.

Mr. Cowan: And are the other owners of the Long-Bell Lumber Company also interested in the different lumbering concerns, the 30 odd that you are auditor of?

Mr. Rickey: They are not all lumber concerns.

Mr. Cowan: Well, those that are lumber concerns.

1781 Mr. Rickey: To some extent, yes; so far as we, as employees—we have been permitted to invest our savings usually.

Mr. Cowan: It is perfectly legitimate and proper, and undoubt-

edly you have got a pretty good thing. You have been able to beat Mr. Harriman in a trade pretty badly, and doubtless it is a money making proposition.

Mr. Rickey: No, it is a saving proposition.

Mr. Garwood: Is that submitted by way of argument or suggestion?

Mr. Cowan: Well, I thought it was wit.

Mr. Garwood: I did not recognize it as such.

Commissioner Harlan: You took it seriously, did you, Judge Garwood?

Mr. Garwood: Yes.

Mr. Cowan: Who are the individuals who own practically all the stock in the Long-Bell Lumber Company?

Mr. Rickey: What percentage would you consider practically all the stock?

Mr. Cowan: Well, you can just use the word any way you please.

Mr. Rickey: Mr. Long, the president of the company, is the largest stockholder; Mr. Sweet, Mr. Bannister, Mr. Nelson,
1782 Mr. Forsman, myself, Mr. Davis—no, not Mr. Davis; Mr. Nelson over here, the sales manager.

Mr. Cowan: So you have left Mr. Davis out high and dry on some account. He is nothing but a traffic man?

Mr. Rickey: I don't know about that.

Mr. Cowan: Do these same individuals also hold a holding in the saw mills which operate down here?

Mr. Rickey: Mr. Long is the principal stockholder in each sawmill company.

Mr. Cowan: How long have you been with the Long-Bell Lumber Company?

Mr. Rickey: Since the middle of 1905.

Mr. Cowan: Was that about the time of the genisis of the organization of this Louisiana & Pacific and these other railroads into operating railroad companies? I just forget the date.

Mr. Rickey: I think so.

Mr. Cowan: You were there when that was planned and put through, then?

Mr. Rickey: I think so; yes.

Mr. Cowan: Were you connected with the transaction as an auditor at that time?

Mr. Rickey: I outlined the accounting methods; yes, sir.

Mr. Cowan: You also had previously been in the employ-
1783 ment of the different lumber companies comprising this interest? I assume you have at least.

Mr. Rickey: I was in my present association or connection; yes.

Mr. Cowan: Mr. Andrews calls my attention to the statement in this circular, which you doubtless can explain, as you state the Long-Bell did not own any saw mills; in stating the assets covered by the mortgage, it says "In addition, this mortgage covers seven large modern saw mill plants, together with their full equipment, including planing mills" and so on. That is correct, I suppose, being in this statement?

Mr. Rickey: For the purpose of the bond issue the property was deeded to the Long-Bell Lumber Company and in the legal manner, and an exchange of instruments between the various companies was effected, whereby the Long-Bell Lumber Company had title sufficient to execute the trust deed, and the property was then deeded back subject to the trust deed, in order that the holding companies would receive their pro rate.

Mr. Cowan: You might explain briefly how that was done.

Commissioner Harlan: I think the witness has explained.

Mr. Rickey: I think I did.

Mr. Cowan: Then I will ask this question: What com-
1784 panies were they that deeded their properties to the Long-Bell Company, and then after the trust deed was given, received it back?

Mr. Garwood: We have interposed no objection up to this time. Of course in so far as there is any community of interests, stocks and so forth of the lumber companies in the railroad, we think that would throw light on the transaction and is relevant, but it seems to me this inquiry now has passed quite beyond all that, and assumes the attitude of one lumber company pursuing an inquiry into the various details of another lumber company per se, as absolutely disconnected from any transportation problem. Now, if we are going into that, and take up the details of this matter, and then go in and take up the details of the rival company, as in common fairness, if it is going to be a fishing expedition on the part of all of us who represent lumber interests, this hearing will never end. There are a vast number of interests here who wish to put the salient points of their cases before your Honor just as rapidly and as fast as we can, and I would like to suggest that there ought to be some limit to the minuteness of this inquiry. As to the main proposition, the community of interest, as a matter of course, so far as it throws any light
1785 on this investigation, it is proper to go into it, but I submit to go into the terms and conditions of timber mortgages and all that sort of thing is pursuing the inquiry beyond any reasonable limits, and we never will get through.

Commissioner Harlan: Judge Cowan, aside from the consumption of time, I think the objection as stated by Judge Garwood is well founded. I think the community of interests has been shown, so far as this evidence tends to show it, and the other details are perhaps not of value to this record.

Mr. Cowan: I am not attempting to go into the private matters, but I am attempting to show on the record the things which are shown on the public deed records of the company. I simply wanted to know who the companies were whose mills were included in the mortgage.

Commissioner Harlan: The witness may state that.

Mr. Rickey: The Calcasieu Long-Leaf Lumber Company; Hudson River Lumber Company; King-Ryder Lumber Company; Longville Lumber Company; Lufkin Land & Lumber Company; Rapides Lumber Company.

Commissioner Harlan: Which of these lumber companies are not on the line of the Louisiana & Pacific?

Mr. Rickey: The Rapides is on the line of the Woodworth
1786 & Louisiana Central; the Lufkin Lumber Company is in Texas on the line of the Cotton Belt, and the Houston, East & West Texas.

Mr. Andrews: You named only six, as I counted them. The circular names seven.

Mr. Thurmond: Is the Globe included?

Mr. Rickey: At that time one mill company had two mills. No, the Globe is not included. That made seven mills.

Mr. Cowan: How many mills does the entire organization operate?

Mr. Rickey: Seven.

Mr. Cowan: I mean all the Long-Bell interests.

Mr. Rickey: I do not know. We have mills in California.

Mr. Cowan: I mean in this yellow pine district, how many mills?

Mr. Rickey: Seven.

Mr. Cowan: I supposed one company would have several mills sometimes. That is all.

Commissioner Harlan: Have you any questions, Mr. Coleman?

Mr. Coleman: No.

Commissioner Harlan: I observe on June 30, 1908 the total out-
standing obligation of the Louisiana & Pacific in the form
1787 of notes payable and held by these lumber companies amounted to $362,549.57. These notes were increased by adding to the obligation to each lumber company, so that on April 30, 1909 the aggregate amount was $499,094.84, an increase during the year of $136,525.27. What was the explanation of that increase?

Mr. Rickey: The building of the terminals—I cannot give it to you specifically; it was doubtless largely equipment that the Louisiana & Pacific purchased from the mills along the line, and additional equipment or railroad steel.

Commissioner Harlan: It had nothing to do with the terminals at Lake Charles?

Mr. Rickey: No, it has nothing to do with the terminals.

Commissioner Harlan: The increase in the indebtedness was confined wholly, was it not, to the branch lines?

Mr. Rickey: Yes, sir—no, we build extensive yards at Fayette.

Commissioner Harlan: Are you sure about that?

Mr. Rickey: Well, that was built in 1909 some time. You said the entire indebtedness. The increase was due to branch lines.

Commissioner Harlan: No, I did not say that. I asked
1788 you that.

Mr. Rickey: No, I think not, because we were perfecting our tracks and terminals there, and we borrowed money from the bank to assist in doing that.

Commissioner Harlan: If you borrowed money from the bank you did not give a note to these lumber companies. I have confined your attention to the indebtedness represented by notes payable, and in the notes of these four lumber companies on April 30, 1909.

Mr. Rickey: That was for equipment and steel purchased; that was all, we purchased from them.

Commissioner Harlan: It did not relate to any main line improvements or terminals at any main line points?

Mr. Rickey: No, that particular increase did not.

Commissioner Harlan: Of that aggregate amount last stated our records seem to indicate that $133,842.61 was due on a note payable to the Hudson River Lumber Company.

Mr. Rickey: That is approximately correct. There was a series of notes, or several notes, aggregating about that amount.

Commissioner Harlan: That company operates on what you call the De Ridder Branch, does it not?

1789 Mr. Rickey: Well, they have logging camps beyond the De Ridder Branch, beyond Bundick.

Commissioner Harlan: Yes, but it receives its logs from what you call the De Ridder Branch?

Mr. Rickey: Yes.

Commissioner Harlan: And that branch was originally known as the De Ridder & Eastern Railway?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And it belonged to the Hudson River Lumber Company?

Mr. Rickey: Yes.

Commissioner Harlan: And was sold by the Hudson River Lumber Company to the Louisiana & Pacific?

Mr. Rickey: Yes.

Commissioner Harlan: And the total amount of the purchase price, with the equipment up to April 30, 1909 was the sum I have last stated?

Mr. Rickey: Yes, sir. I am assuming your statement is correct.

Commissioner Harlan: The figures may all be subject to correction by you later. Now, the notes held by the Hudson River Company on June 30, 1908 aggregated $115,620, and dur-

1790 ing the following year the amount of the notes so held by that company was increased to $133,842.61. What is the explanation of that increase during the year?

Mr. Rickey: I cannot answer that, except in that same general way, that from time to time in the last three years the Louisiana & Pacific has purchased railway steel and equipment from the Hudson River Lumber Company I do not recall——

Commissioner Harlan: Well, the increase represents expenditures on the De Ridder Branch, does it not?

Mr. Rickey: It represents equipment and steel purchased from the Hudson River Lumber Company which the Louisiana & Pacific are using on that branch, as well as on other branches that equipment goes off that branch and is used on various branches.

Commissioner Harlan: That branch is operated almost exclusively for the Hudson River Lumber Company's logs, is it not?

Mr. Rickey: Yes, sir, but the equipment goes to all parts of the Louisiana & Pacific property.

Commissioner Harlan: What you call the Bonami Branch was formerly the Louisiana & Pacific Railroad?

Mr. Rickey: Yes, sir; a portion of it was. We have built
1791 and rebuilt, you know, and put on 60 pound steel and standardized the rail.

Commissioner Harlan: That belongs to the King-Ryder Company?

Mr. Rickey: At one time; in the beginning.

Commissioner Harlan: And was finally acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: It is almost exclusively operated for that company or for that company's traffic?

Mr. Rickey: Yes, sir.

Commissioner Harlan: That company held notes of the Louisiana & Pacific on June 30, 1908 to the amount of $137,113. Our records seem to show that the amount of these notes was increased during the following year to $149,820.93. My understanding is that that increase was for funds advanced by that company and used for steel and equipment that had been assigned for use on that branch. Is not that the case?

Mr. Rickey: Well, I would qualify that——

Commissioner Harlan: I understand the equipment goes off that branch, but that money was furnished by that lumber company and for the purpose of improving that branch and available
1792 equipment on that branch in one form or another.

Mr. Rickey: Well, the Louisana & Pacific purchased from that interest such property as they wanted to use in permanent operation.

1793 Commissioner Harlan: On that branch?

Mr. Rickey: Yes, sir; the lumber company did not advance funds, as you mentioned, to develop that branch, except indirectly, as you so state.

Commissioner Harlan: That company holds the notes. It must have advanced the funds.

Mr. Rickey: Yes, sir, I say except in that indirect manner.

Commissioner Harlan: Do you call that indirect, to advance the money and take a note for it?

Mr. Rickey: Well, I was merely qualifying your remark about advancing funds to the Louisiana & Pacific.

Commissioner Harlan: Well, I do not quite catch your meaning, but I think there is no misunderstanding between us. The Lake Charles branch so-called on your records, was formerly the Lake Charles & Leesville Railway?

Mr. Rickey: Well, it covers the same territory, rebuilt.

Commissioner Harlan: Rebuilt and very extensively rebuilt?

Mr. Rickey: Very extensively rebuilt.

Commissioner Harlan: And it was changed from narrow gauge to standard gauge?

1794 Mr. Rickey: Yes, sir; the Lake Charles & Leesville was not an incorporated road.

Commissioner Harlan: The original road?

Mr. Rickey: No.

Commissioner Harlan: Who changed it to standard gauge?

Mr. Rickey: The Louisiana & Pacific largely—entirely.

Commissioner Harlan: When was that change made?

Mr. Rickey: The change was made after 1906, along in 1907 and 1908.

Commissioner Harlan: On June 30, 1908, the Calcasieu Long Leaf Lumber Company held notes of the Louisiana & Pacific to the extent of $89,916.57 according to our records. Now, was the Lake Charles branch a narrow gauge road when acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: When acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: It was afterwards made a standard gauge road?

Mr. Rickey: Yes, sir.

1795 Commissioner Harlan: Now I find that during the following year the indebtedness of the Louisiana & Pacific to this lumber company was extended, so that the total amount of notes held by it on April 30, 1909, aggregated $151,611.34, indicating that that additional amount of funds had been placed at the disposal of the Louisiana & Pacific by that lumber company. For what purpose was it used?

Mr. Rickey: That is for equipment.

Commissioner Harlan: Had it any relation to the change in gauge?

Mr. Rickey: I do not recall that the Calcasieu Long Leaf Lumber Company did that work. My recollection is that the Louisiana & Pacific standardized the narrow gauge portion, and the Louisiana & Pacific employed the Calcasieu Company to do some work on standardizing some logging cars and old equipment, and then the Louisiana & Pacific bought additional equipment direct from the car manufacturers.

Commissioner Harlan: Where did the Louisiana & Pacific get the funds for making that change in the gauge?

Mr. Rickey: No specific reserve was set aside; it came out of their general funds, operating profits and working capital, so far as they expended any money, I mean.

1796 Commissioner Harlan: Was it charged against the income account?

Mr. Rickey: Somewhat; I cannot recall in detail. It was in 1906 or 1907, and I cannot recall.

Commissioner Harlan: Will you be good enough to ascertain that fact and file a statement of it?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Giving references to your books, showing all the details, if you can.

Mr. Rickey: Yes, sir. That is the reconstruction of the narrow gauge portion of the Lake Charles track?

Commissioner Harlan: Yes, the date and cost of it, and the source of the funds and whether any funds were advanced directly or indirectly by the Calcasieu Long Leaf Lumber Company for that purpose. That branch as I understand the testimony is operated almost exclusively for that lumber company, that is, for its traffic.

Mr. Rickey: The larger percent of traffic is for that lumber company.

Commissioner Harlan: When was the Longville Branch constructed?

Mr. Rickey: In 1907.

1797 Commissioner Harlan: Who furnished the funds for that?

Mr. Rickey: Some work was done by the Longville Lumber Company and other work by the Louisiana & Pacific direct.

Commissioner Harlan: Do you know what amount the Louisiana & Pacific advanced on that account?

Mr. Rickey: No, I could not answer that. In cash, you mean?

Commissioner Harlan: Yes.

Mr. Rickey: No, I could not answer that; ten thousand to fifteen thousand dollars I recall.

Commissioner Harlan: I wish you would ascertain that fact and also the source of funds advanced to the Louisiana & Pacific. The Longville Lumber Company on April 30th, 1909, held notes of the Louisiana & Pacific to the amount of $63,819.96. Do you know what use was made of the funds of the lumber company so advanced?

Mr. Rickey: That covered railroad equipment and steel.

Commissioner Harlan: I understand Examiner Burchmore has finished the Prescott & Northwestern, and I would like to call again for the Paragould and Memphis Railway.

(No response.)

Commissioner Harlan: The Saginaw and Ouachita River Railway Company.

1798 (No response.)

Commissioner Harlan: The Tioga & Southeastern.

Mr. Garwood: I think Mr. Saunders represents the Tioga & Southeastern and he has been very seriously unwell and I have promised to render some little assistance. I have not seen him this morning and I do not know whether he is up or not. He was quite unwell yesterday, but they have been here continuously.

Commissioner Harlan: Judge Garwood, as you are in this case, we will wait.

The Victoria, Fisher & Western.

Mr. Lee: I am president of the Tioga & Southeastern and we are ready. Mr. Saunders is our attorney here.

(The last question and answer were then read as follows:

"Commissioner Harlan: What use was made of the funds of the lumber company so advanced?

"Mr. Rickey: That covered railroad equipment and steel.")

Mr. Rickey: That covered railroad equipment and steel. Under the contracts between the Louisiana & Pacific and these several lum-

ber companies, the Louisiana & Pacific is to acquire all of that railroad property and pay for it in cash.

1799 Commissioner Harlan: Is to acquire?

Mr. Rickey: Is to acquire or was to.

Commissioner Harlan: Well, has it acquired it?

Mr. Rickey: It has acquired practically all of it now.

Commissioner Harlan: That Longville branch is operated exclusively for the Longville Lumber Company, is it not; it brings their logs into Lake Charles?

Mr. Rickey: Well, the larger proportion of the tonnage is for the Longville Lumber Company. It is not operated exclusively for it.

Commissioner Harlan: Our records show, and I believe that you stated that on June 30, 1908, the outstanding capital stock amounted to $30,000?

Mr. Rickey: Yes, sir.

Commissioner Harlan: The shares are hundred dollar shares?

Mr. Rickey: Three-hundred dollar shares as I remember it.

Commissioner Harlan: So that would make how many shares?

Mr. Rickey: One hundred shares.

Commissioner Harlan: The same amount was outstanding on April 30, 1909?

1800 Mr. Rickey: Yes.

Commissioner Harlan: Is that the present amount of outstanding capital stock?

Mr. Rickey: $51,000 is the present amount.

Commissioner Harlan: Well, you have stated on your direct examination that it was $30,000, and I thought perhaps there had been a mistake.

Mr. Rickey: I thought you referred to some specific date when you mentioned $30,000 heretofore.

Commissioner Harlan: I did a moment ago, but previously in responding to some one else you said the outstanding capital stock was $30,000.

Mr. Rickey: I must have misunderstood.

Commissioner Harlan: You meant to exclude the stock dividend, did you not?

Mr. Rickey: I do not recall under what circumstances I answered that.

Commissioner Harlan: The present amount outstanding is $51,000?

Mr. Rickey: Yes, sir.

Commissioner Harlan: How was that increase made?

Mr. Rickey: By a stock dividend of 70 per cent?

1801 Commissioner Harlan: 70 per cent?

Mr. Rickey: $21,000; as much as the surplus would stand.

Commissioner Harlan: Well, you exhausted the surplus practically?

Mr. Rickey: Yes, sir; we desired to increase our capitalization to be more consistent with the investment.

Commissioner Harlan: When the thirty thousand dollars of stock was outstanding it was held by six stockholders, Mr. Long own-

ing $23,700, and the other stockholders owning the balance, $6,300. The stock dividend of course was made in proportion to the holdings of the several stockholders?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And do those stockholders own the stock now, namely: $51,000, in the same proportion?

Mr. Rickey: Yes, sir; there has been no change in the stockholders since that date.

Commissioner Harlan: Do they hold that stock on their personal account?

Mr. Rickey: They own it individually; yes, sir.

Commissioner Harlan: Not as trustees in any form for
1802 one another?

Mr. Rickey: Not to my knowledge.

Commissioner Harlan: Have you ever heard that there was any trust attached to any one of these holdings?

Mr. Rickey: No, I have not. I never heard any intimation of that.

Commissioner Harlan: For instance one or two holders own but one share here. Is that to qualify them as directors?

Mr. Rickey: The wives of some of these gentlemen?

Commissioner Harlan: I did not observe that they were the names of women. Are they directors in any of the companies?

Mr. Rickey: Yes, sir. Two of them I think are. I have not the directors' list

Commissioner Harlan: I assume in those two cases that they hold the shares to qualify them as directors.

Mr. Rickey: I think in two instances. yes; in order to make five directors.

Commissioner Harlan: So their stock is held in a trust relation?

Mr. Rickey: Well, no. I know that Mrs. Long paid for her stock. She bought it from Mr. Long. I remember that
1803 particularly. I have not a definite knowledge of the other individual cases.

Commissioner Harlan: Well, there are two persons that hold nine shares each. One is Mr. Sweet. Is that held in any trust relation?

Mr. Rickey: No, he bought that and paid for it.

Commissioner Harlan: And there is another holder of nine shares.

Mr. Rickey: Mr. Bannister?

Commissioner Harlan: Yes.

Mr. Rickey: He bought that and paid for it.

Commissioner Harlan: So far as you know the holding of Mr. Long is not in any trust relation for the Longville Lumber Company or any other company?

Mr. Rickey: It is not, so far as I know.

Commissioner Harlan: Did you ever hear that it was?

Mr. Rickey: No.

Commissioner Harlan: Mr. Rickey, you said some bonds were held by two or more banks. One was a Kansas City bank. What bank is that again?

Mr. Rickey: The First National Bank.

Commissioner Harlan: Is Mr. Long a stockholder in that
1804 bank?

Mr. Rickey: No, sir; I never heard that he was. He may be, but I doubt it very much. I never heard he was.

Commissioner Harlan: But your account is kept there?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Well, is it not understood——

Mr. Rickey: A small checking account is kept there unless we accumulate a large amount of cash prior to our interest period date, in which event we keep most of it there.

Commissioner Harlan: Is it not understood that Mr. Long in some way dominates or controls the policy of that bank?

Mr. Rickey: No, indeed he does not; I do not believe he is a director of the bank.

Commissionar Harlan: What is his relation to the Calcasieu Bank, if any?

Mr. Rickey: A patron only.

Commissioner Harlan: The company deposits there?

Mr. Rickey: Yes.

Commissioner Harlan: Does Mr. Long also deposit in either of those banks personally?

Mr. Rickey: No, sir—you mean the First National in
1805 Kansas City and the Calcasieu Bank?

Commissioner Harlan: Yes.

Mr. Rickey: No, he is not a personal depositor.

Commissioner Harlan: Do I understand you to wish to give us the impression that the bonds of the Louisiana & Pacific are held by those banks by way of investment?

Mr. Rickey: Yes, sir; in the case of the Calcasieu National Bank I heard the other day that their trust company wanted to buy some for investment in addition to what the Calcasieu Bank held. They have a trust company that is willing to take some as an investment, I understand.

Commissioner Harlan: Do you yourself regard them as investment securities?

Mr. Rickey: I do.

Commissioner Harlan: That is, with a lease on the main line of road that has I think fifteen years to run and branch lines which are now deriving their revenue from lumber that is gradually being exhausted; it was said by one of your witnesses yesterday they only have a limited period of years left for lumbering; you would regard those bonds as investment securities for trust banks?

Mr. Rickey: I would.

1806 Commissioner Harlan: Were they offered to the public as these other bonds were offered?

Mr. Rickey: No, sir; a larger portion of the issue was used in the refunding of the note indebtedness.

Commissioner Harlan: Did the Louisiana & Pacific ever pay any cash dividend?

Mr. Rickey: No, sir.

Commissioner Harlan: Did the branch line which it subsequently acquired ever pay any cash dividend?

Mr. Rickey: I cannot speak prior to 1905. They have not to my knowledge.

Commissioner Harlan: Never have looked into that question?

Mr. Rickey: No, I have never sought any information on it, but my impression is they have paid no dividends. They used their earnings in the further development of their property, buying equipment and steel. I know that is the case since 1905, but prior to that I think it was the case also.

Commissioner Harlan: The expense account of your line for the year 1909 assigned to traffic amounted to some $11,000. Have you looked into the items that go to make up that traffic expense
1807 account?

Mr. Rickey: You mean—that does not include transportation?

Commissioner Harlan: No.

Mr. Rickey: That referred to the traffic department? I have not looked into that in detail.

Commissioner Harlan: What do you understand to be the general items that are covered by the traffic expense account?

Mr. Rickey: The salary of traffic manager and his office force, together with other office expenses and cost of tariffs published and other legitimate charges outlined by the Commission chargeable against those accounts.

Commissioner Harlan: Does it not occur to you that is rather a large item for a road of this character to expend?

Mr. Rickey: Not considering the tonnage, no; although I am not in a position to compare it with other traffic organizations.

Commissioner Harlan: Is there not an existing agreement in writing between your line and the Southern Pacific or any other regular line or between any officer or stockholder of your line for the sale of the line of the Louisiana & Pacific after you are through
1808 with it?

Mr. Rickey: I have never heard of such an agreement. They have already sold of course all they wanted to sell.

Commissioner Harlan: I referred to the track now owned by the Louisiana & Pacific.

Mr. Rickey: No, there is no agreement to my knowledge.

Commissioner Harlan: With the Southern Pacific, or any other company, or any other representative of any other company?

Mr. Rickey: No, sir.

Commissioner Harlan: You have never heard of any such understanding?

Mr. Rickey: No, sir; I have never heard it mentioned or a possibility of such a contract.

Mr. Cowan: I would just ask if there was any provision for the redemption of the bonds?

Mr. Rickey: They are redeemable at 101½ and interest.

Commissioner Harlan: That is not the question, whether you have provided for any sinking fund or redemption fund for payment of the bonds?

Mr. Rickey: Not as yet. They were issued January 1,
1809 1910, for a period of ten years.

Mr. Thurmond: How many of those bonds are sold, and what amount?

Mr. Rickey: About $593,000.

Mr. Thurmond: Out of an authorized issue of $600,000?

Mr. Rickey: Yes, sir.

Mr. Cowan: Are they guaranteed by anybody?

Mr. Rickey: Personally? No, sir. They are secured by a deed of trust covering the property in favor of the Commerce Trust Company of Kansas City.

Mr. Cowan: But that property is only the railroad company property?

Mr. Rickey: Yes, sir, rail and equipment; roundhouses, shops and all other physical property.

Mr. Cowan: I guess you have stated who bought the bonds?

Mr. Rickey: It was largely a refunding issue to get rid of these notes and get them into a secure form. I told Mr. Gutheim when he visited us two years ago that we had started that issue before the panic came on but we postponed it.

Mr. Cowan: There is no other security outstanding against
1810 the railroad and equipment?

Mr. Rickey: No.

Mr. Garwood: It is now twelve minutes of one.

Commissioner Harlan: We will take a recess until two o'clock.

(Whereupon at 12:50 P. M. a recess was taken until 2 P. M.)

1811 After Recess.

Mr. Jeffery: Your Honor asked that the Iron Mountain file a copy of the spur track agreement with the Caddo & Choctaw. I have it here. This is the only one we have with them. It expired on the 20th of July, 1909, and by mutual agreement we are still operating under the terms of this agreement. This agreement is with the Gurdon and Fort Smith Railroad, which is one of our subsidiary companies.

Commissioner Harlan: That can be filed in connection with the testimony in that case.

(The paper so offered and identified was received in evidence and thereupon marked Caddo & Choctaw Exhibit No. 1, received in evidence December 14, 1910, and is attached hereto.)

Mr. McRae: Before you proceed I want to ask leave of the Commission, for the Arkansas Railroad Commission to intervene by petition and become a party to the proceeding and a reasonable time to present a petition.

Commissioner Harlan: There is no objection to your filing an intervening petition at this time provided it does not raise
1812 an issue that requires new parties and answers?

Mr. McRae: It will not be. It will be to the same degree

allowed by the State of Louisiana. What time will your Honor allow?

Commissioner Harlan: Well, will ten days suffice?

Mr. McRae: Very well, within ten days, then.

Commissioner Harlan: That is for the Arkansas Commission?

Mr. McRae: Yes.

Commissioner Harlan: Is the Mississippi Valley Railroad before the Commission?

(No response.)

Commission Harlan: The Victoria, Fisher & Western?

(No response.)

Commissioner Harlan: The Roosevelt & Western?

Mr. Charles T. Coleman: I have entered an appearance.

Commissioner Harlan: That will be heard in the next room by Examiner Burchmore. The Wilmar & Saline Valley will be heard before Examiner Burchmore. Mr. Thurmond, will you recall the last witness, Mr. Rickey?

1813 P. C. RICKEY, was called as a witness, and having been previously duly sworn, further testified as follows:

Commissioner Harlan: Mr. Rickey, I am not sure that the record is quit full with respect to the purchase by the Southern Pacific of the various properties now comprising its through line from De Ridder to Lake Charles. I understand that a part of that was purchased and was a railroad already in operation and that the line was completed to Lake Charles by some original construction; is that right?

Mr. Rickey: On the part of the Lake Charles & Northern?

Commissioner Harlan: Yes.

Mr. Rickey: Yes, sir. The Louisiana & Pacific——

Commissioner Harlan: Suppose we start at De Ridder——

Mr. Rickey: The Louisiana & Pacific projected a line from De Ridder to Lake Charles, that is about 43 miles, and had built a mile and a half below Fulton, standard gauge 60-pound track, when the negotiations were completed for the transfer to the Lake Charles & Northern, with the understanding that the Lake Charles and Northern would complete the line on to Lake Charles, and accord
1814 the traffic or trackage rights, or whatever you term it, at twenty-five cents a train mile.

Commissioner Harlan: Now, if you will just start at Fulton and say what happened.

Mr. Rickey: The Lake Charles and Northern in their purchase of the property from the Louisiana & Pacific bought the right of way from this point south of Fulton on to Lake Charles or to the river.

Commissioner Harlan: To the Calcasieu River?

Mr. Rickey: For fifteen thousand dollars.

Commissioner Harlan: What did the company pay for the track up to Fulton or a mile below?

Mr. Rickey: They paid the book cost.

Commissioner Harlan: What was that amount?

Mr. Rickey: About four hundred and seventy-five thousand

dollars, in round numbers; that included this fifteen thousand dollars for right of way.

Commissioner Harlan: And the constructed mileage was what?

Mr. Rickey: I do not know; from De Ridder to Fulton is about how many miles, Mr. McLean? About twenty-six miles?

Commissioner Harlan: From De Ridder to Fulton is about twenty-six miles?

1815 Mr. Rickey: Yes, sir. This purchase included station buildings as well as the track.

Commissioner Harlan: And any equipment?

Mr. Rickey: No.

Commissioner Harlan: The constructed mileage was to a point about a mile south of Fulton?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And from that point there had been a survey and some grading?

Mr. Rickey: Yes, sir; on the part of engineers. The Louisiana & Pacific had surveyed that and completed it.

Commissioner Harlan: Up to the north bank of the Calcasieu River?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And for that survey of roadbed you paid fifteen thousand dollars?

Mr. Rickey: The Lake Charles & Northern paid fifteen thousand dollars.

Commissioner Harlan: The Lake Charles & Northern?

Mr. Rickey: Yes, sir, for the right of way and such grading as had been performed.

1816 Commissioner Harlan: And that was included in the figure last mentioned?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Then who actually built the track from this point south to the north bank of the river?

Mr. Rickey: The Lake Charles & Northern.

Commissioner Harlan: What did that cost?

Mr. Rickey: I have no idea.

Commissioner Harlan: That appears on the books of that company, does it not?

Mr. Rickey: Yes, I assume so.

Commissioner Harlan: If you will furnish the Commission with a statement——

Mr. Rickey: Of the Lake Charles & Northern, with which we have no connection.

Commissioner Harlan: How did the Lake Charles & Northern cross the river?

Mr. Rickey: They built a bridge, a steel bridge——

Commissioner Harlan: What is the length of that bridge, and its approaches?

Mr. Rickey: Of course, I have no records on that. I would estimate five or six hundred feet.

1817 Commissioner Harlan: What is the character of the bridge?

Mr. Rickey: The usual steel bridge or iron bridge.

Commissioner Harlan: Do you know what it cost?

Mr. Rickey: No, sir.

Commissioner Harlan: Have you ever heard what it cost approximately?

Mr. Rickey: No, I have never heard any estimate made.

Commissioner Harlan: Well, from the south bank of the river what new construction was there by the Lake Charles & Northern and to what point?

Mr. Rickey: They continued after crossing the river and built a line on into their main tracks or to the main tracks of the Louisiana & Western, I should judge a mile and a half or some such distance, in order that they might run on in to the Louisiana Western tracks, and in turn the Louisiana & Pacific built from the bridge a distance of about a mile to the Calcasieu Long Leaf Lumber Company's property that they might furnish transportation facilities.

Commissioner Harlan: And also built its own terminals in Lake Charles?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Those were shown on the large map
1818 heretofore introduced in evidence?

Mr. Rickey: Yes, sir.

Commissioner Harlan: From the Calcasieu River there was some road built up to the northwest and along towards Camp Curtis. Just what was the line of that road, what is the starting point, on the Calcasieu River?

Mr. Thurmond: It is all set out in this contract, in this plat, your Honor.

(Question read.)

Mr. Rickey: That was a point probably four miles from the present crossing of the bridge.

Commissioner Harlan: Four miles east?

Mr. Rickey: East or northeast, yes.

Commissioner Harlan: What is that point called, or what was it called?

Mr. Rickey: Banks, I believe I have heard that term applied to it.

Commissioner Harlan: From Banks in what general direction did the main line run?

Mr. Rickey: Northerly.

Commissioner Harlan: To what point?

Mr. Rickey: Probably fifteen miles, and then west.

1819 Commissioner Harlan: Then west to Camp Curtis?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Did it run as far north as Bannister?

Mr. Rickey: No.

Commissioner Harlan: As Fayette?

Mr. Rickey: Turning west at Fayette.

Commissioner Harlan: What was the name of that road?

Mr. Rickey: The Lake Charles & Leesville.

Commissioner Harlan: By whom and when was it built?

Mr. Rickey: It was an unincorporated road built by the Bradley-Ramsey Lumber Company.

Commissioner Harlan: And was a narrow gauge road?

Mr. Rickey: And was a narrow gauge road serving the saw mills in Lake Charles.

Commissioner Harlan: Did it run over this right of way you have just referred to as a surveyed and a partially constructed roadbed?

Mr. Rickey: Yes, sir. The Louisiana & Pacific acquired that property and later on sold it——

Mr. Thurmond: There is what we are talking about, the right of way and partially constructed roadbed. It runs over here
1820 (indicating).

Commissioner Harlan: This witness has testified that the Lake Charles & Northern purchased a constructed road from De Ridder to a point about one mile south of Fulton and from that point to the north bank of the Calcasieu River purchased for fifteen thousand dollars a right of way that had been surveyed and partially thrown up into the roadbed.

Mr. Thurmond: It is this piece of road right in there, if I am correct about it (indicating).

Mr. Rickey: Yes, sir, the Louisiana & Pacific engineers did not survey to this point at Banks. They covered a portion of that narrow gauge roadway and then straight on down to the river.

Mr. Thurmond: That is what your Honor is talking about, that little piece right in there (indicating).

Commissioner Harlan: Then this narrow gauge road ran somewhat to the northwest, to a point south of Fulton to which a railroad had been constructed, and which was purchased to that point by the Lake Charles & Northern.

Mr. Rickey: Yes, sir. I might qualify that. During the construction of the Louisiana & Pacific this narrow gauge was in operation.

1821 Commissioner Harlan: From Banks?

Mr. Rickey: From Banks to this point.

Commissioner Harlan: To Camp Curtis?

Mr. Rickey: Yes, sir, and a third rail was laid to assist in the construction and conversion to a standard gauge.

Commissioner Harlan: The point I want to get at is the trackage of this narrow gauge road. It ran somewhat to the northwest to a point one mile south of Fulton?

Mr. Rickey: And continued on to Fayette.

Commissioner Harlan: And continued on to Fayette on the right of way of what road, its own road?

Mr. Rickey: The Louisiana & Pacific had acquired this Lake Charles & Leesville narrow gauge road by purchase, probably in 1906. I am not sure that your Honor understands that.

Mr. Thurmond: I am going to put Mr. Sweet on the stand next, and he is familiar with those details.

Commissioner Harlan: Very well, we will get them from Mr. Sweet.

Mr. Cowan: I want to know if the evidence as to the date at which

the bonds of the Louisiana & Pacific were issued and sold and
1822 the parties to whom they were sold and who owned them has been put in the record, or is to be put in the record. Has that been called for?

Commissioner Harlan: The record shows to whom the bonds were sold, as I understand it.

Mr. Cowan: If it has not been called for I want it put in the record with the date of the sale of the bonds.

Mr. Thurmond: I do not know when they were sold. They were sold at different times. They were issued January 1, 1910.

Commissioner Harlan: If you will show that.

Mr. Cowan: The date of the bonds, the price at which they were sold, and the name of the present owner.

Commissioner Harlan: The amount, the date, when issued, when sold, and the amount of the consideration.

Mr. Rickey: We will file a statement to that effect.

Commissioner Harlan: Mr. Sweet, take the stand.

C. B. SWEET, was called as a witness, and having been duly sworn, testified as follows:

Mr. Thurmond: State your name.

Mr. Sweet: C. B. Sweet.

1823 Mr. Thurmond: Where do you reside?

Mr. Sweet: Kansas City, Missouri.

Mr. Thurmond: You are the vice-president of the Louisiana & Pacific Railway Company?

Mr. Sweet: Yes.

Mr. Thurmond: And of the Sibley, Lake Bisteneau & Southern?

Mr. Sweet: Yes.

Mr. Thurmond: And the Woodworth & Louisiana Central?

Mr. Sweet: Yes.

Mr. Thurmond. You are vice-president of these four milling companies on the line of this road, heretofore mentioned?

Mr. Sweet: Yes.

Mr. Thurmond: Vice-president of various other companies?

Mr. Sweet: Yes.

Mr. Thurmond: You need not give them all, but give the Commissioner in a general way what other companies you are connected with.

Mr. Sweet: About twenty different corporations and companies; in the lumber business in this section, in addition to those named is the Lufkin Land & — Company at Lufkin; the Globe Lum-
1824 ber Company, at Yellow Pine, Louisiana; the Rapides Lumber Company, of Woodworth, Louisiana; and then there are some lumber manufacturing companies on the Pacific Coast, the Longville Lumber Company and some coal companies and so forth.

Mr. Thurmond: How long have you been associated with Mr. R. A. Long in business?

Mr. Sweet: About twenty-five years.

Mr. Thurmond: I believe it is a fact, is it not, that your special duties are in connection with the railroad interests?

Mr. Sweet: Yes, sir; I have more to do with it.

Mr. Thurmond: At least you are the active managing officer of these roads?

Mr. Sweet: I direct some of those things; yes, sir.

Mr. Thurmond: The Commissioner has asked about the ownership of stock in this Louisiana & Pacific Road. Will you kindly state whether or not it is a fact that the stockholders, the list of whom I have given the Commissioner as owing stock in this road, are the absolute, unqualified owners of that stock?

Mr. Sweet: They are.

1825 Mr. Thurmond: Not as trustees, but in their own individual rights?

Mr. Sweet: Yes, sir.

Mr. Thurmond: Did they buy that stock and pay for it in cash?

Mr. Sweet: Yes.

Mr. Thurmond: Do they own it, or do any of them own it in trust for anybody else or any company?

Commissioner Harlan: You just asked him that and he said no.

Mr. Thurmond: The Commissioner was desirous of knowing something about how this Louisiana & Pacific was constructed. Will you please give the history of that road and say who owned each of these branches when you first knew of them and when they started and how you acquired this Lake Charles & Leesville Road, what the Louisiana & Pacific constructed, what the condition of it was when you sold out the right of way to the Lake Charles & Northern, and the object you and your associates had in building that road or starting it from De Ridder to Lake Charles and why you sold out?

Mr. Sweet: Would you like to have a history of that,

1826 your Honor?

Commissioner Harlan: Just as briefly as you can state it.

Mr. Cowan: One thing I would like the witness to tell about is where that Leesville road was. I have never been able to get that from what anybody has said. While he is going along with it he might state, and not assume that we know all about it.

Mr. Sweet: The first history that I know of the lines that make up what is called the Louisiana & Pacific was that during 1902, we will say, the De Ridder & Eastern was built, owned by the Hudson River Lumber Company, and built by them.

Commissioner Harlan: State the termini.

Mr. Sweet: From De Ridder east to Bundick. A little prior to that date, in the year 1901, I think the Louisiana & Pacific was built by the King-Ryder Lumber Company and owned by them, from Bonami, in a southeasterly direction.

Commissioner Harlan: What was the other terminus?

Mr. Sweet: Walla. At an earlier date the Lake Charles & Leesville was built by the Bradley-Ramsey Lumber Company to what is shown on this map which you have there, from Lake Charles

1827 to Fayette in a northerly direction, and then from Fayette to Camp Curtis in a northwesterly direction, a distance of about thirty miles.

Commissioner Harlan: How did it cross the river?

Mr. Sweet: I said from Lake Charles. I would say from the river opposite Lake Charles.

Commissioner Harlan: From a place called Banks?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Just let me ask at that point, did that narrow gauge road pass through Fulton?

Mr. Sweet: Yes.

Commissioner Harlan: And as far north as Fayette?

Mr. Sweet: Yes, sir. I think in 1905, if I remember the correct date, the Longville interests, what we term as the Long interests, purchased the Bradley-Ramsey interests at Lake Charles, and in the name of the Calcasieu Long Leaf Lumber Company, the principal stockholders of which are Mr. Long, and the other stockholders are included, and with it they acquired the property of the Lake Charles & Leesville Railroad. If I have the date right, during 1905 or the first part of 1906 the organization of the present Louisiana & Pacific was made.

1828 Commissioner Harlan: Before you pass from that, let me ask what properties there were at Lake Charles that belonged to that lumber company you have just mentioned?

Mr. Sweet: What properties were there?

Commissioner Harlan: Yes, sir. Was a mill property?

Mr. Sweet: There was a mill property, and a chemical plant that went with the purchase from the Bradley-Ramsey Lumber Company.

Commissioner Harlan: And this narrow gauge railway was also purchased?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Did that narrow gauge railway serve that mill at Lake Charles?

Mr. Sweet: Yes, sir. I do not know how many more, but——

Commissioner Harlan: How did it get across the river and into Lake Charles?

Mr. Sweet: With the property were tugboats that pulled these logs across the river from where they were dumped into the river to the mile. I think it was at that time a distance along the river of about five miles.

Commissioner Harlan: And that was owned by the lumber company?

1829 Mr. Sweet: Yes, sir.

Commissioner Harlan: Tug boats and landings?

Mr. Sweet: Yes, sir. In 1905 or the first part of 1906, the present Louisiana & Pacific road was reorganized and purchased from the lumber companies, the De Ridder & Eastern, the property of the old Louisiana & Pacific, owned by the lumber company, and also from the Calcasieu company at Lake Charles, and the Lake Charles & Leesville, and they started then to connect up the different lines between De Ridder and Lake Charles and the branch lines referred to.

Commissioner Harlan: When did it purchase the line from Bonami to Walla?

Mr. Sweet: At the time of the reorganization of the Louisiana & Pacific. They were all bought in at about the same time.

Commissioner Harlan: You did not mention that before.

Mr. Sweet: Yes, sir. Would you like for me to go into the sale to the Southern Pacific?

Commissioner Harlan: Well, what was the aggregate price paid by the Louisiana & Pacific for the properties which you have just described?

Mr. Sweet: The price paid for those lines, and it included
1830 their equipment, was the price determined to be their value from the cost of the construction and purchase price of the equipment. We paid them cost for that property.

Commissioner Harlan: And the vendors were lumber companies?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And the lumber companies that have been before us in this hearing?

Mr. Sweet: I said lumber companies. They were organized as railroad companies, but the stock was held and owned by those lumber companies.

Commissioner Harlan: I want to get at that exactly. These three railroad companies were then incorporated railroad companies?

Mr. Sweet: Two, the De Ridder and Eastern, and the Louisiana & Pacific, were incorporated. I do not think that there was a charter possibly for the Lake Charles & Leesville. If there was, I do not think I ever saw it.

Commissioner Harlan: Then the road from Bonami to Walla, was not incorporated, so far as you know it?

Mr. Sweet: Yes, sir, it was incorporated. I am referring to the Lake Charles & Leesville. That was not incorporated.

1831 Commissioner Harlan: The narrow gauge road?

Mr. Sweet: Yes, sir.

Mr. Thurmond: At that point, can you state what was the object in connecting up these roads and starting to construct a road between Lake Charles and De Ridder——

Commissioner Harlan: There was a question unanswered, as to the purchase price.

Mr. Sweet: I answered it and said it was the price determined upon——

Commissioner Harlan: You stated that, but I asked for the figures.

Mr. Sweet: I could not give you that, but the price has been included in all our statements, and could be submitted at any time.

Commissioner Harlan: Well, I think we have it.

Mr. Thurmond: I was calling your attention and asking you to state what the prime object was of the organizing of this road in connecting up these branch roads and constructing a road from De Ridder to Lake Charles.

Mr. Sweet: I would have to consume a little time in the history of that. The history would be that during 1901 or 1902 or about
1832 that time the Long interests, if you care to put it that way, built mills and bought timber and built railroads at De Ridder and Bonami and that was located on the Kansas City & Southern

line. Later on, as I have stated they bought the mill at Lake Charles; and a little later than that built and completed the mill at Longville. But I am getting a little ahead of the story.

The Kansas City Southern were not able to serve the lumber interests of the Long interest, if you please. We looked for an outlet for that lumber. We solicited the Atchison, Topeka & Santa Fe to build to the Sabine River west; we proposed to them that we would build a line of road from De Ridder to the river and at that time, after going over the ground pretty thoroughly, they decided they would build the road themselves, and before the construction, however, of that line, our interests had figured on the purchase of the Bradley interests at Lake Charles, so we coupled them together and built these lines to serve the Long interests, that is the mills at De Ridder, Bonami, Bannister and Lake Charles and any other mills that might spring up in that country. We have also made our calculations on further extensions, and the further purchase of properties in that locality, not altogether in that direct locality,
1833 but some are and some are at a distance, not too far, for the construction of branch lines or the extension of this line.

Mr. Thurmond: Would one of those be the Woodworth and Louisiana Central?

Mr. Sweet: I would not like to go into detail on that, unless counsel wants to, for the reason that it might interfere with some negotiations, if you please.

Mr. Thurmond: Proceed in your own way.

(The previous question and answer thereupon were read.)

Commissioner Harlan: In the early part of that statement, you said, as I gather it, that your interests at Bonami were then being served by the Kansas City Southern, but not efficiently?

Mr. Sweet: Yes, sir; Bonami and De Ridder were the interests that we had in that locality at that time.

Commissioner Harlan: How close were the Bonami interests to the Kansas City Southern and where did you reach the line of that company?

Mr. Sweet: The mills of the King-Ryder Lumber Company were located at Bonami, and the mills of the Hudson River Lumber Company were located at De Ridder.

1834 Commissioner Harlan: And both mills were located on the Kansas City Southern?

Mr. Sweet: Yes, sir, they were located on the tracks. The tracks were built into the Kansas City Southern. I would like to explain that a little, that at the time during 1901 and 1902, when we were building the Bonami and De Ridder mills, we made our contracts with the Kansas City Southern for a siding a little different from the contracts that are usually made; that is, in that we had included that if we cared at any time to purchase from them the sidings that they had built into those places we had the privilege of doing so at cost price. The reason it was put in there was that we had in mind just what we have done here now, and we did buy those tracks.

Commissioner Harlan: Are those sidings now a part of your main line?

Mr. Sweet: They are, sir.

Commissioner Harlan: What was the mileage of the sidings thus purchased from the Kansas City Southern?

Mr. Sweet: I do not know that I could tell you correctly. It is shown in the exhibits of the sale to the Lake Charles & Northern, and I would be glad to furnish you with that detail if you
1835 like.

Commissioner Harlan: Does it leave your line still connected with the Kansas City Southern at Bonami?

1836 Mr Sweet: It does not. That is, the lines were connected with the Kansas City Southern at De Ridder and Bonami, and they were bought then from the Kansas City Southern by the reorganization of the Louisiana & Pacific, and it permits of a connection at those two places.

Commissioner Harlan: Well, it permits of a connection——

Mr. Sweet: There is a connection, yes, sir.

Commissioner Harlan: At De Ridder and Bonami?

Mr. Sweet: Yes, sir. They do not come on our own tracks and we do not go on their tracks.

Commissioner Harlan: You may proceed.

Mr. Thurmond: So as I understand it, the object of building this road was to get a connection with and competition by five or six trunk line railroads.

Mr. Sweet: As many as we could get. We had in mind those that we did connect with, and in other words we were out for trade.

Mr. Thurmond: And to get through routes and joint rates with as many railroads as possible.

Mr. Sweet: We were out to get as much money as we could out of it with these railroads and built for these connections.

1837 Mr. Thurmond: I do not know whether it is in the record, but you might state very briefly what roads this Louisiana & Pacific does connect with.

Mr. Sweet: We have a connection at De Ridder with the Atchison, Topeka & Santa Fe; we have joint agents at De Ridder with the Atchison, Topeka & Santa Fe and the Lake Charles & Northern, and have a connection there with the Kansas City Southern. We also connect at Bonami with the Kansas City Southern and the Frisco interests at Fulton. The Southern Pacific interests and the Missouri Pacific interests as well as the Kansas City Southern and Lake Charles.

Mr. Thurmond: Now, Mr. Sweet, when you sold this portion of your road between De Ridder and Lake Charles, you retained a joint trackage right with the Lake Charles & Northern?

Mr. Sweet: Yes, sir.

Mr. Thurmond: State whether or not you would have sold that road or that part of the road without still having the right to operate your road over it?

Mr Sweet: We made at the time of the sale a traffic arrangement, not with the Lake Charles & Northern, but with the Southern

Pacific interests, and one contract hinges on the other. The
1838 sale was made because of the track arrangement, and the track arrangement because of the sale. We would not have thought of selling other than to have had the track arrangement, that was one of the first things to think of.

Mr. Thurmond: The joint trackage contract is the contract which was contemplated and provided for in the sale of the road?

Mr. Sweet: Yes, sir. And we thought that the trade was a very good one for us, that we had the same rights on the road that we had before and we believed at less money than we could afford to own it and keep it up.

Commissioner Harlan: What price was paid to you?

Mr. Sweet: At the time the negotiations were made we had constructed and were operating between De Ridder and Bonami; it was a heavy timbered country through to Fulton, and we were working along that right of way and had the right of way cut and that was under construction. We had purchased for that construction into Lake Charles 40 miles of 60 pound rail, and we had that on hand, quite a little of it.

Commissioner Harlan: And that went with the sale?

Mr. Sweet: Well, we did not get our money out of that
1839 until it was in the track. We put it in the track. But we had the rail purchased, and it was part of it on the track, and as I say, the first payment they made us was $90,000.

Commissioner Harlan: Mr. Rickey has stated the amount correctly a little while ago, including this $15,000 for this right of way.

Mr. Sweet: I was not paying attention to what he said.

Commissioner Harlan: Well, what is your understanding then?

Mr. Sweet: They paid us the cost of the reconstruction line except that part of the Lake Charles & Leesville, and that went in in a lump sum. That did not include the rail, but just the right of way of the track and what work had been done in throwing up the dump, and so forth. It did not include the rail. The purchase of that did obligate them to take up the light rail that was on that line at the time they put down the heavy rail and delivered that light rail to us.

Commissioner Harlan: Was that a cash transaction?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Between the Southern Pacific and what company?

1840 Mr. Sweet: And the Louisiana & Pacific.

Commissioner Harlan: And it amounted to—what was the amount?

Mr. Sweet: About $475,000.

Commissioner Harlan: About $475,000?

Mr. Sweet: Something like that. That would not be quite the figure.

Commissioner Harlan: And that went into the treasury of the Louisiana & Pacific?

Mr. Sweet: Yes, sir, it went into the treasury of the Louisiana & Pacific.

Commissioner Harlan: What was done with it?

Mr. Sweet: We have used it in buying additional equipment and rail, and so forth for the branches; it has never been paid out. We put down——

Commissioner Harlan: Well, did you use—that is about half a million dollars. Did you use that sum in addition to the other half million dollars you borrowed from the lumber companies?

Mr. Sweet: This money did not all come to us at one time. I think I put in the testimony that the first payment was $90,000.

1841 Commissioner Harlan: Yes.

Mr. Sweet: And we were borrowing money from time to time that went into this construction. The rail we bought on time and we did not pay for that, and we have not paid for it all yet, as far as that is concerned.

Commissioner Harlan: But ultimately you got approximately half a million dollars?

Mr. Sweet: Yes, sir.

Commissioner Harlan: In cash?

Mr. Sweet: Yes.

Commissioner Harlan: And later you borrowed another half million dollars from these four lumber companies?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Do you mean to have the record show that you have an investment of about a million dollars in these branch lines and equipment?

Mr. Sweet: No, sir, about $725,000 now.

Commissioner Harlan: In the cash investment?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Covering what mileage?

Mr. Sweet: That covers about 22 miles. Then we have on hand about 40 miles of steel. We have locomotives and cars.

1842 About half of that is in equipment, and about half of it in the tracks, and so forth.

Commissioner Harlan: Then there is a quarter of a million dollars still unaccounted for in your statement. What became of that?

Mr. Sweet: I did not do the accounting, but I do not think there was any error made in it——

Commissioner Harlan: No, I am not suggesting that there are any errors in the account, but you got $475,000——

Mr. Sweet: I think I understand the question now. The De Ridder & Eastern, at the time the new organization of the Louisiana & Pacific purchased it, was built of 35 pound rails. The same is true of the extension out from Lilly Junction to Walla. Since the organization and with some of this money, I could very easily say, and I think it is true, we put down 60 pound rail instead of 35 pound, and we have bought new locomotives and we have other locomotives coming now. I think we have 21 or 22 at this time.

Commissioner Harlan: In other words, has that absorbed the whole million dollars?

Mr. Sweet: Except what possibly we might have in cash at this

time and with the interest on the bonds and such things
1843 as those.

Commissioner Harlan: The total cash investment then approximates a million dollars, and how many miles of track?

Mr. Sweet: I think 22 or something like that.

Commissioner Harlan: And 40 miles of additional steel?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And your equipment?

Mr. Sweet: Yes, sir. Well, in addition to that, there is quite an extensive yard at Lake Charles. We have in there I think, $64,000 in yards at Lake Charles, and in improvements.

Commissioner Harlan: You purchased and constructed all the Lake Charles terminal?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And also this mile and a half of track from Bridge Junction into Lake Charles?

Mr. Sweet: Yes, sir. We have $64,000, I think it is, invested in that, and then we have quite a little investment at Longville in the tracks in there, the line we are building, which does not show here at Longville. I might give you the investment at that point if you care for it.

Commissioner Harlan: The amount of it?

1844 Mr. Sweet: Mr. Rickey, will you give me those figures? You can find them quicker than I can.

Mr. Thurmond: At that point may I ask, what do you say is the amount you have in that road? His Honor says about a million dollars.

Mr. Sweet. No, I said $725,000.

Mr. Thurmond: Is it not a fact now—I may be wrong about it, but if I am, set me right—that the Louisiana & Pacific constructed that road with funds which were furnished by the Lake Charles & Northern?

Mr. Sweet: Well, they used that fund. They did not use any of it for——

Mr. Thurmond: The contract provides that the purchase price shall be $15,000, which is the agreed value of the narrow gauge portion and then there is a provision that the second party shall pay the first party $90,000 at the time of the execution of the agreement and the balance shall be paid monthly as the work progresses on estimates furnished by the engineer.

Commissioner Harlan: That has already been gone over by the witness, and he stated it very clearly, but he stated the aggre-
1845 gate consideration was $475,000, and we have otherwise shown an investment of $199,000 for the branch roads, and cash put in by the lumber companies, so that the railroad is charged with approximately a million dollars for property that it now owns, and equipment.

Mr. Thurmond: That is what I wanted to get at.

Mr. Cowan: Property that it owns and the balance of money that came from the Southern Pacific was paid to it for the Lake Charles & Northern.

Commissioner Harlan: Yes.

Mr. Blair: Under the terms of the contract there was no money paid by the Southern Pacific or the Lake Charles & Northern except what was expended on the part of the road they were to build and certified to by the two engineers.

Commissioner Harlan: Let me ask the witness and see if he understands it. You sold what has been called here the main line for $475,000 in round figures.

Mr. Sweet: Something like that, yes, sir.

Commissioner Harlan: And that was ultimately paid to you all in cash, was it?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Now then, you have left only the branch lines.

1846 Mr. Sweet: We have the branch lines and the Lake Charles investment.

Commissioner Harlan: The Longville investment?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And the equipment?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Now then the branch lines as shown by other testimony, were fully paid for by the lumber companies?

Mr. Sweet: Yes, sir. That is——

Commissioner Harlan: That is, they were constructed, and other sums were invested and you paid them by giving them your notes for half a million dollars.

Mr. Sweet: Yes, sir.

Commissioner Harlan: So that left you with cash on hand the amount of $475,000 received from the sale of the main line?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Now I am just stating the result of the testimony as I gather it. I may be wrong about it, and if I am, I want to be set right.

Mr. Sweet: I think you have it right.

1847 Commissioner Harlan: Out of that money you built your Lake Charles terminals. You have possibly 40 miles of steel rail. I do not know whether you had that out of that fund or not; and you have built your Longville investment. Now that ought to leave you a substantial amount of cash on hand.

Mr. Sweet: We have about $45,000 of cash, I think our last statement——

Mr. Rickey: May I explain that? The Lake Charles & Northern advanced us money from month to month on the original estimates in the progress of the work so that in the ultimate completion of the work we have collected from them $475,000, but we had previous to the collection of that spent the money and had borrowed money from different sources in order to construct the property, therefore when we got the $475,000 back we did not have any surplus in cash left because we had spent that money in building the property and sold it to the Lake Charles & Northern at actual cost.

Mr. Sweet: I would like to add, if I may be permitted, to my testi-

mony, that this has been a going proposition for about four years, and this money you speak of has been coming in and going
1848 out for four years in different transactions. It has all been kept within the property of the Louisiana & Pacific, and has never been in any other books.

Mr. Thurmond: Is it not a fact that out of the $475,000 you speak of, the Louisiana & Pacific built the road from one mile south of Fulton to Banks?

Mr. Sweet: Give me that question again.

Mr. Thurmond: Out of this $475,000 you speak of as getting, is it not a fact that the Louisiana & Pacific built the road from one mile south of Fulton to the river, or to the place called Banks?

Mr. Sweet: No, they had nothing to do with that.

Commissioner Harlan: If there is anyone that understands this, I would like to have the facts stated.

Mr. Rickey: Did I not make myself clear?

Commissioner Harlan: Not at all.

Mr. Rickey: The Louisiana & Pacific had about $50,000 of working capital, and they made contracts to build this 26 miles of road to Fulton from De Ridder. Now they spent the $50,000 working capital in rails and construction work, and they went over to Houston and Mr. Kellogg, the engineer, verified the progress of the work and paid us that $50,000, and we took that and built some more,
1849 so we had no surplus of cash left.

Commissioner Harlan: We are not talking about surplus, and it seems to me you are adding to the confusion. We had a railroad from De Ridder to a mile south of Fulton, which was constructed, and we had a road too, from the latter point into Lake Charles which had been thrown up——

Mr. Blair: I do not like to get into the class of people who rush in where a better class of people fail, but I think I can explain it in this way. There are two contracts with the Lake Charles & Northern, one dated October 31st, 1906, which is an executory contract of sale, and the other dated February 21st, 1908, follows it, and is the completed contract. At the time of the executory contract of sale there was no road completed through De Ridder or one mile south to Ramsey Junction or to the other point, but the Louisiana & Pacific——

Commissioner Harlan: There was a road completed from De Ridder to one mile south of Fulton.

Mr. Blair: No, there is where your Honor is in error. At the time of the executory contract of sale there was no completed road. There was two or three miles from De Ridder in the direction of Bonami.
1850 Then some preliminary work had been done. The road between De Ridder and Bonami, the preliminary work being completed at $90,000, the contract between the Lake Charles & Northern and the Louisiana & Pacific was this, they said to the Louisiana & Pacific: "You go on and build a broad gauge road from De Ridder to one mile south of Fulton, and we, the Lake Charles & Northern, will pay you whatever you spend in building that road as part of the purchase price. Now then the Lake Charles & Northern will

commence at the other end and construct the road down to the river at its expense. When those two constructions are completed those deeds will be passed." It was under this obligation to complete the road to De Ridder from one mile from Fulton that the Louisiana & Pacific expended $475,000 and received from the Lake Charles & Northern $475,000, so if they kept their accounts fairly, and I have no doubt they did, they did not make a dollar by that transaction and had not any surplus.

Mr. Cowan: Then the Southern Pacific built the line, and the Louisiana & Pacific had nothing to do with it except do the work?

Mr. Blair: The Louisiana & Pacific had a narrow gauge road.

1851 Commissioner Harlan: From Banks to Camp Curtis.

Mr. Blair: Yes, and a right of way. They had a right of way from De Ridder to Fulton, and had done about $90,000 worth of work, and had a completed road from between De Ridder to Bonami, and those are what we bought, and those are the facts.

Commissioner Harlan: It may be when we come to look over the record some one can understand it, but this witness has testified that there was a railroad from De Ridder to Bundick belonging to the Hudson River Lumber Company, and in operation. He then testified there was a railroad from Bonami to Walla——

Mr. Blair: Those are all off the line we bought.

Commissioner Harlan: Not all the track is off the line. Part of that track is on the line, as I understand it.

Mr. Blair: Between De Ridder and Bonami is the only track I know of.

Commissioner Harlan: Now, from Bonami to Lilly Junction, was not that a part of the original lumber road, and is it not part of the main line?

Mr. Sweet: Bonami to Lilly Junction?

1852 Commissioner Harlan: Was it not a part of the lumber road?

Mr. Sweet: At the time this main line road was built, the line from Bonami to Lilly Junction was reconstructed and the new line did take in part of the old line.

Commissioner Harlan: It took in all the old line from Bonami to Lilly Junction?

Mr. Sweet: Yes, sir.

Commissioner Harlan: I understand so.

Mr. Blair: That is for what the $90,000 was paid.

Mr. Sweet: No, not from Bonami to Lilly Junction, but from Bonami Junction to Lilly Junction.

Commissioner Harlan: Well, have you any further questions to ask the witness?

Mr. Thurmond: The Commissioner yesterday was asking for some illustrations of benefit of a road like this to a small mill owner. Have you in mind an illustration of that kind on this line of yours, the Bundick line, which you could give me?

Mr. Sweet: What is that question?

Mr. Thurmond: The benefits of a tap line, as they call it, to a small mill owner, a small individual mill owner.

Mr. Sweet: Well, if they are located on a tap line they
1853 will get the benefits that any large or small mill owner will get.

Mr. Thurmond: Was there a case of that kind out at Bundick?

Mr. Sweet: There was at one time a small mill at Bundick, yes, sir.

Mr. Thurmond: Did that owner ship over this Bundick or De Ridder branch?

Mr. Sweet: Yes, sir.

Mr. Garwood: How far is it from Longville to De Ridder northward?

Mr. Sweet: 19 miles, I think, about.

Mr. Garwood: And thence from Longville to Lake Charles.

Mr. Sweet: About 24 miles or 25 miles.

Mr. Garwood: I do not think anyone has testified as to the general character of the construction and roadbed of the Lake Charles & Northern over which you operate. Is that a permanent, well constructed road?

Mr. Sweet: Yes, sir; built out of nearly all 60 pound rail with good ties, and was originally built with the ballast found along the right of way, dirt ballast, and is now being improved by hauling in sand and so forth at places where it is needed; it is a good dirt ballast road.

1854 Mr. Garwood: Will you state the weight of the rail?

Mr. Sweet: 60 pounds.

Mr. Garwood: How does that road compare with other roads in that locality, for instance, the Santa Fe or the Frisco?

Mr. Sweet: I think the Santa Fe has 60 pound rail on their line in that locality. The Frisco have a little heavier rail. The Frisco have in the last year or so ballasted their tracks, and I do not think the Santa Fe have put any ballast on their track. They had not the last time I was over it.

Mr. Garwood: Would you say in general terms that this Lake Charles & Northern is as good a road from a physical and operating standpoint as the Santa Fe?

Mr. Sweet: Just the same class.

Mr. Garwood: Just the same class of road?

Mr. Sweet: Yes, sir.

Mr. Garwood: You mentioned, or some other witness mentioned that the Long-Bell interests own a mill in Texas. Where is that mill?

Mr. Sweet: The Long-Bell people have an interest in a mill at Lufkin, Texas.

Mr. Garwood: Where is it situated with reference to the town of Lufkin, in it or near it?

1855 Mr. Sweet: I am not sure but part of it is inside the corporate limits; it is right in the town, you might say.

Mr. Garwood: Is there any railway there, any substantial interest

in which is owned by the same stockholding interests that own the mill?

Mr. Sweet: If there are any interests there which own——

Mr. Garwood: Do you own any railway over there?

Mr. Sweet: No, we have no interest there except the lumber company and the commissary, and so forth.

Mr. Garwood: Except the lumber mill?

Mr. Sweet: Yes, sir.

Mr. Garwood: From a lumber standpoint, how does that mill operate and succeed as compared with other mills belonging to the Long-Bell interests which come under your observations?

Mr. Sweet: The mill at Lufton, Texas, this year, and I would say at this time, is one as well operated and as cheaply operated as any proposition we have. They produce their lumber at less than the average cost and they obtain a price as high or higher than the average cost, or higher than the average price paid.

Commissioner Harlan: What line is it on?

1856 Mr. Sweet: On the St. Louis Southwestern.

Mr. Garwood: It is on the Cotton Belt. Did that interest there, the same interests that own the mill ever construct any railway over there?

Mr. Sweet: Yes, sir.

Mr. Garwood: About how many miles?

Mr. Sweet: They first constructed 30 miles and sold that to the Cotton Belt Line and later on constructed 20 miles, a total of 50 miles, and sold it to the Cotton Belt Line.

Mr. Garwood: Sold it to the Cotton Belt?

Mr. Sweet: Yes, sir.

Mr. Garwood: Was it through the acquisition of those lines by the Cotton Belt that the St. Louis Southern found an entrance into Lufkin and that portion of the state?

Mr. Sweet: No, sir. This was built from Lufkin. They came in from the west.

Mr. Garwood: But it now belongs to the Cotton Belt?

Mr. Sweet: Yes, sir.

Mr. Cowan: How do you get your logs to the Lufkin Mill?

Mr. Sweet: We haul them 50 miles over the Cotton Belt.

Mr. Cowan: What do you have to pay for it?

Mr. Sweet: 30 cents a train mile.

1857 Mr. Cowan: Do you get that back in any way?

Mr. Sweet: No.

Mr. Cowan: If you manufacture your lumber cheaper than you do elsewhere it is not on account of the cost of getting the logs to the mill.

Mr. Sweet: I do not know—I take the cost of getting the logs to the mill in with other costs of manufacture at that place.

Mr. Cowan: Why is it cheaper to manufacture at that place than elsewhere? It is not on account of the fact that the cost of logging is cheaper?

Mr. Sweet: I did not say it was any cheaper. I said it was as good as the average, or possibly a little better than our average mill costs.

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Mr. Cowan: How much did it cost you to operate those trains in addition to paying 30 cents per train mile?

Mr. Sweet: I do not know that I have figured it in dollars and cents. I can go into details of the cost of making lumber, if you care to.

Mr. Cowan: Well, not at this time. Do you get any division of the rate when you ship out?

Mr. Sweet: No.

1858 Mr. Cowan: And do you get any compensation back from the Cotton Belt for hauling the logs in?

Mr. Sweet: No.

Mr. Cowan: None refunded in any way?

Mr. Sweet: No.

Mr. Cowan: So that in delivering the logs at the mill you are at the expense of logging your timber land and of operating the trains and paying 30 cents a train mile for the use of the track?

Mr. Sweet: Yes, sir.

Mr. Cowan: You operate your own trains now?

Mr. Sweet: Yes, sir.

Mr. Cowan: And furnish your own equipment?

Mr. Sweet: Yes.

Mr. Cowan: And when you move out the lumber you pay the flat rate of 18 cents to St. Louis, or whatever it is?

Mr. Sweet: Yes, sir.

Mr. Cowan: Is that the same rate as it is from Lake Charles?

Mr. Sweet: I am not posted on the rates.

Mr. Cowan: Well, there is a blanket rate all across this country, to common points?

1859 Mr. Sweet: We pay whatever rate is proper out of Lufkin We do not get any return on it.

Mr. Cowan: Is there another lumber mill at Lufkin?

Mr. Sweet: I think there is one mill there that I know of, right at the town.

Mr. Cowan: Outside of what profits you may have made in building the line and selling the line to the Cotton Belt, if any, if one mill at that place gets a division of the rate, say four or five cents per 100 pounds, and the other does not, does not the one that gets the division of the rate operate at an advantage as compared with the other?

Mr. Sweet: Well, I think that the condition surrounding that would make a little difference, and should be taken into consideration. The Cotton Belt built their main line right into our woods and all we have to do is to build spurs off from their main line. I think we are getting just as good an opportunity to make lumber cheap as would the other fellow who had to build the main line spur and then build his spurs off, and——

Mr. Cowan: In a somewhat similar case where you haul your logs from Camp Curtis down to Lake Charles, there you get a four cent division out of the rate, and you pay 25 cents a train mile

1860 for operation over the line of the Lake Charles & Northern.

Mr. Sweet: I can only answer as to the mileage. I do not

know what the divisions are. The testimony of other witnesses will show that. But so far as the railroad proposition is concerned, we as the Long interests do not care for the holding of railroad property, if people will do for us as the Cotton Belt has done at Lufkin, and other lines have done, build their main lines into the timber.

Commissioner Harlan: Well, you built that line?

Mr. Sweet: Yes.

Commissioner Harlan: And sold it to the Cotton Belt?

Mr. Sweet: Yes.

Commissioner Harlan: What did you get for it?

Mr. Sweet: The sale of the 30 miles was made before our interests came in possession of the Lufkin Land & Lumber Company property. I do not know what they received for that. We built 20 miles beyond and sold it to the Cotton Belt at actual cost of construction.

Commissioner Harlan: What was that?

Mr. Sweet: From memory I could not give it to you. The sale was made four or five years ago, and——

1861 Commissioner Harlan: Was it for cash or bonds?

Mr. Sweet: We took the bonds of the Cotton Belt Railroad.

Commissioner Harlan: At what rate?

Mr. Sweet: I could not say as to that. We carried the bonds a little while and sold them. I can ask for that information and get it right here for you if you want it.

Commissioner Harlan: You might do that.

Mr. Sweet: Mr. Rickey, can you not answer that question right off? It was the second mortgage Cotton Belt bonds.

Mr. Rickey: We got $185,000 par value, and I think the market value at that time was $169,000.

Commissioner Harlan: What rate of interest?

Mr. Rickey: Four and a half per cent.

Commissioner Harlan: Was that the only consideration?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Was it all in bonds?

Mr. Rickey: Yes, sir.

Mr. Sweet: I would like to correct that a little. We had bought eight or nine miles of 60 pound rails from the Cotton Belt before we had any idea of selling it to them, and we were owing them for

1862 that rail at a certain price per ton, the market price at that time. We paid them this debt we owed them and took bonds for the balance of the track. That was the trade.

Mr. Andrews: Mr. Sweet, in the original contract, which I understand, your Honor, has been filed with the Commission, has it not?

Commissioner Harlan: No, it has not, but I will ask that it be filed.

Mr. Thurmond: I understood it had been.

Mr. Andrews: It bears no marks.

Mr. Thurmond: Copies have been filed. That is the original you have in your hand.

Mr. Andrews: Have copies been filed?

Mr. Thurmond: Yes.

Mr. Andrews: This is dated October 31st, 1906. The sole consideration that I find in it for the right of operating your trains over the road constructed and to be constructed is 25 cents a train mile. Was there any other consideration than that?

Mr. Sweet: Any other consideration?

Mr. Andrews: From you, to be paid to the Lake Charles & Northern.

Mr. Sweet: We pay a percentage of the station expense——

1863 Mr. Andrews: No, at that time, at the date of the agreement, October 31st, 1906.

Mr. Sweet: I do not know that I gather the question, but the right of operating—we reimbursed the Lake Charles & Northern or the Southern Pacific 25 cents a train mile.

Mr. Andrews: Perhaps I can make it plainer to read to you what the contract says, and then ask what I want to know: "And for the use of said railroad as aforesaid, said first party, that is you, shall pay to said second party, that is the Lake Charles & Northern, a rental equal to 25 cents per train mile for every train that shall be run over said road by said first party during the existence of this contract." Now I see nothing else in this contract anywhere that provides for you to pay anything else, and the question I ask is, did such an agreement exist at the date of the making of this contract?

Mr. Sweet: I think I can answer your question, and that is that at the time that contract was executed it was during the construction of this line from De Ridder to Lake Charles, and we were using the north end of it all the time while the other part was being constructed. I think the operating contract was made later than

1864 that. I think there is a contract and probably you have it there, made a year or so later, that covers the operating after the road was completed. This was a temporary arrangement, as I recall it.

Mr. Andrews: Under date of February 21st 1908——

Mr. Sweet: That is the one.

Mr. Andrews: You made another contract?

Mr. Sweet: Yes, sir.

Mr. Andrews: By which you agreed to pay 60 per cent of all the station expenses except at Lake Charles, at which place you agreed to pay $100 a month; and the query that I wanted to make was why this additional contract for another consideration not mentioned in the first contract, was made.

Mr. Sweet: Does not the second contract which you refer to also mention the trackage over the line and embrace all that?

Mr. Andrews: It refers to both of the former contracts, but it does not state why you are giving a compensation not provided in the first contract.

Mr. Sweet: Well, that is what I explained awhile ago, that the first contract was a temporary contract, if I remember correctly, providing for the Louisiana & Pacific to use these tracks during the construction.

Mr. Andrews: But it does not say anything about its being

1865 temporary or anything of the kind. There is a reference to a contract as to the details of operation to be made later.

Mr. Sweet: Well, that is the one. That was a temporary contract.

Mr. Andrews: But this is a contract with compensation in it, and what I was trying to find out was whether this compensation arose from an after consideration or existed as part of the first contract.

Mr. Sweet: The contracts followed one another, and the later contract was the one which was to be effective after the road was to be completed, and the other was to be effective until we turned the road over to the Lake Charles & Northern and received our money. It took a year or two to complete the road and get it in operation, I think two years, from 1906 to 1908. I take it 1908 was about the date we commenced joint operations and prior to that they were not on the line, the Lake Charles & Northern.

Mr. Andrews: You mean you were operating it, and the Lake Charles & Northern were not?

Mr. Sweet: Yes, sir, we were on it.

Mr. Andrews: Who kept it up during the two years you were operating it, and the Lake Charles & Northern were not
1866 operating it.

Mr. Sweet: Well, the line was new, and I suppose we were keeping it up and putting it in the cost of the road.

Mr. Andrews: Charging it to construction account?

Mr. Sweet: Yes, sir, the construction trains were running over it, and there was not very much to do, and the line was new.

Mr. Andrews: Do you know enough about the maintenance of railroads to say approximately what the maintenance charge ought to be, omitting equipment, per mile on this character of road?

Mr. Sweet: I could not say.

Mr. Andrews: Do you know from experience what it is on this road or otherwise?

Mr. Sweet: No, sir.

Mr. Andrews: No information as to the annual maintenance charge, omitting equipment?

Mr. Sweet: No. I have my own idea about that, and that is I think it is more than 25 cents a train mile, for what we run over it.

Mr. Andrews: Is it not true within your knowledge that 25 cents a train mile will not keep up the maintenance cost——
1867 Mr. Sweet: No, sir, that is not true——

Mr. Andrews: I am speaking of this particular road. Let me finish the question. Will not keep up the maintenance of this particular road on the operations which you do upon it.

Mr. Sweet: That is not within my knowledge. I do not know that.

Mr. Andrews: You said you did not think it would?

Mr. Sweet: I do not think it would. We did not think so when we made the contract.

Mr. Andrews: That is what I thought. I think you had arranged to eat your cake and have it too.

Mr. Sweet: That is the thought we had in mind during the construction of this track and milling interests, that we were making

good trades all the time, and we make them all the time, whenever we can.

Mr. Cowan: I have the curiosity to ask, if I may, if you know the genesis of the original trade, and with whom it was made?

Mr. Sweet: What trade is it?

Mr. Cowan: Well, the Long-Bell interests made a trade
1868 with somebody connected with the Southern Pacific interests in this transaction?

Mr. Sweet: I think Mr. Long and Mr. Harriman talked that matter over and made the trade.

Mr. Cowan: Did that cover any other railroad than the Louisiana & Pacific?

Mr. Sweet: No.

Mr. Cowan: Was the Sibley, Lake Bisteneau & Southern involved?

Mr. Sweet: No, what that had to do with the traffic arrangement included the Woodworth & Louisiana Central, but did not include the Sibley, Lake Bisteneau & Southern.

Mr. Cowan: The effect of the matter was that the trade was started by Mr. Long and Mr. Harriman before Mr. Long had spent any money to amount to anything on the road between De Ridder and Lake Charles.

Mr. Sweet: I don't know what you mean by any money to amount to anything, but the sale was contemplated and there was 20 miles under construction and $90,000 had been put into it, besides equipment.

Mr. Cowan: And that $90,000 was paid back?

Mr. Sweet: Yes, sir.

1869 Mr. Cowan: At the time the contract was made?

Mr. Sweet: No.

Mr. Andrews: That is what the contract says, that $90,000 and $15,000 were to be paid.

Mr. Sweet: The first $90,000 was paid after the contract was made, and after their auditors had satisfied themselves that they were safe in paying us an advance of $90,000 on what had been done.

Mr. Cowan: And thereafter the Southern Pacific interests advanced the money from time to time as the road was constructed?

Mr. Sweet: No, we constructed the road and then they advanced the money.

Mr. Cowan: I thought some gentleman who seemed to speak with authority said that the matter was submitted to Mr. Kellogg, who is an engineer of the Southern Pacific at Houston, on estimates, and the money was paid.

Mr. Sweet: You put the question the other way. You said the money was furnished and the road constructed, and I put it the other way. The road was constructed and the money furnished.

1870 Mr. Cowan: I said as it was constructed from time to time. I meant as the construction was completed from time to time.

Mr. Sweet: That is correct.

Mr. Cowan: That is what I meant.

Mr. Sweet: Yes, sir, that is correct.

Mr. Cowan: The Southern Pacific in effect built this line, the Louisiana & Pacific acting as the construction company in building it.

Mr. Sweet: Well, you can look at it that way if you want to. We had a line operating from Lake Charles to Camp Curtis and were operating over it. We were also operating from the north south.

Mr. Cowan: You were just logging over that?

Mr. Sweet: That is what we were doing there; yes, sir; hauling logs.

Mr. Cowan: This narrow gauge was how long, from Lake Charles north?

Mr. Sweet: 30 miles.

Mr. Cowan: Up to Fayette?

Mr. Sweet: Fayette, and then out to Camp Curtis.

Mr. Cowan: Were you operating that as a logging road too?

Mr. Sweet: Yes, sir.

1871 Mr. Cowan: Was any part of that track used, or was it thrown away and new line built?

Mr. Sweet: No, the grade was used and made standard, and of course that necessitated widening out the dump, and so forth, and the reconstruction of the roadbed.

Mr. Cowan: And that road was included in the sale under the contract?

Mr. Sweet: What road is that?

Mr. Cowan: That is the Leesville Road.

Mr. Sweet: A part of it was, to a point from the river to Fayette.

Mr. Cowan: And the steel which was taken up your company kept, and I suppose used for logging spurs?

Mr. Sweet: Well, some of it is in use, and some of it we have in storage or supply yards.

Mr. Cowan: Does the 40 miles of steel you have include that, or new steel?

Mr. Sweet: It includes that steel and other steel. We have been taking up, as I have told in my testimony, these branch lines of lighter steel and putting down 60 pound, and this supply we have is the lighter steel.

Mr. Cowan: The money that was borrowed from the lum-

1872 ber companies, or rather that was owing to them, was simply for these lines that the Louisiana & Pacific now own which they had constructed as lumber companies, and sold to the Louisiana & Pacific.

Mr. Sweet: No. Nearly the same thing, but they were not the same construction as they are now. It was the right of way and the rails that were in there, and there has been a different sort of construction put on it.

Mr. Cowan: Does your company have any interest whatever in the traffic or get any benefit out of the traffic which comes from Fullerton over the Gulf & Sabine River Road and over the Gulf, Colorado & Santa Fe and over the Lake Charles & Northern to Lake Charles?

Mr. Sweet: Mr. Davis can answer that question better than I can.

Mr. Cowan: You retain no interest by contract arrangement that you know of?

Mr. Sweet: We have a contract with the Frisco and Rock Island interests, which connect with us at Fulton.

Mr. Cowan: I said Fullerton.

Mr. Sweet: Oh, Fullerton, no.

(Witness excused.)

1873 Mr. Thurmond: In order that I may know what is in the record, may we have it understood for the purpose of argument that all the reports, monthly reports and statements and other documents filed with the Commission, are to be considered in evidence.

Commissioner Harlan: Yes.

Mr. Thurmond: I offer one of these time tables in evidence as a whole.

Commissioner Harlan: Have you filed copies of the contracts with the map attached?

Mr. Thurmond: We have not done so here. If not, we will do so.

Commissioner Harlan: What was it you referred to awhile ago when you said you had filed the original contracts?

Mr. Thurmond: I probably used the wrong word. I meant copies of our contracts are on file with the Commission.

Commissioner Harlan: Then they need not be filed here.

Mr. Thurmond: That is what I thought. May we consider also the official railroad map gotten out by the Commission.

Commissioner Harlan: Yes.

1874 Mr. Andrews: While you are right on the point of the contract, I would like to inquire of the Commission if in making up this record for the use of those who have ordered copies, if it is customary for the Commission to have inserted in making that record, copies of contracts introduced in evidence, so that reference will not have to be made by those desiring the information to the Commission's records to obtain them.

Commissioner Harlan: That is not the custom. It is the custom of counsel to furnish other counsel copies of their exhibits, and I assume Mr. Thurmond will furnish Judge Cowan and his colleagues copies of these contracts.

1875 Mr. Thurmond: Yes, we will furnish him a copy of these printed contracts which have been talked about here. I do not care about furnishing copies which we file with the Commission, but I will furnish him copies of those three. That is what you want?

Mr. Andrews: That is all I know anything about. There may be some others that I want very much, but do not know about at all.

Mr. Thurmond: I would like to offer in evidence one of these time tables of the Lake Charles & Northern Railroad Company. We rest on the Louisiana & Pacific, and I would like to file it, and put on the stand for the Commissioner to examine, the manager of the Sibley, Lake Bisteneau & Southern and the Woodworth & Louisiana

Central, unless for this reason that the Commissioner does not care to take up the Sibley, Lake Bisteneau & Southern Road. The divisions have not been cancelled; the Vicksburg, Shreveport & Pacific has recognized it as a regular road.

Commissioner Harlan: I think we will hear from those roads.

Mr. Cowan: I may state that my understanding is that all the annual reports filed with the Interstate Commerce Commission are by virtue of the statute itself evidence before the Commission
1876 and do not have to be offered, and it will be so understood.

Commissioner Harlan: Yes.

(The time table so offered and identified was received in evidence and thereupon marked Louisiana & Pacific Exhibit No. 5, received in evidence December 14, 1910, and is attached hereto.)

1877 *Sibley, Lake Bisteneau & Southern Railway.*

J. W. MARTIN was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you reside?

Mr. Martin: Yellow Pine, Louisiana.

Commissioner Harlan: Your business?

Mr. Martin: Railroad man; general superintendent of the Sibley, Lake Bisteneau & Southern, and lumber man and general manager of the Globe Lumber Company, Limited.

Commissioner Harlan: Just to shorten up the record, is that lumber company the company that controls this railroad?

Mr. Martin: The controlling stockholders in the lumber company are the controlling stockholders in the railway company.

Commissioner Harlan: What is the extent of that control?

Mr. Martin: I could not give you just the number of shares without going to the record, but I could go to the record.

Commissioner Harlan: It is very largely the whole of the stock?

Mr. Martin: Yes.

Commissioner Harlan: So, to all practical purposes there
1878 is an identity of interests in the two investments?

Mr. Martin: Yes, sir; all stockholders in the lumber company are not stockholders in the railroad company; all stockholders in the railroad company are not stockholders in the lumber company.

Commissioner Harlan: What is the terminus of the Sibley, Lake Bisteneau & Southern?

Mr. Martin: It connects with the Vicksburg, Shreveport & Pacific Railroad, and the Louisiana & Arkansas Railroad at Sibley, Louisiana, and extends south about 31 miles through Webster and Bienville into Red River Parish.

Commissioner Harlan: Is there a point called Camp Long?

Mr. Martin: Yes, sir, the last station we have established on that road.

Commissioner Harlan: That is the most southerly station?

Mr. Martin: The most southerly station. The road extends

beyond that some little distance, but that is the last station to which tariffs are issued?

Commissioner Harlan: How far beyond that does it extend?

Mr. Martin: About three miles.

Commissioner Harlan: And what is the character of the roadbed?

1879 Mr. Martin: It is graded.

Commissioner Harlan: Ballasted?

Mr. Martin: No, sir, not ballasted.

Commissioner Harlan: What rail do you use?

Mr. Martin: 40 pound and 60 pound rail.

Commissioner Harlan: When was it organized?

Mr. Martin: In July, 1900.

Commissioner Harlan: With what authorized capital?

Mr. Martin: $100,000.

Commissioner Harlan: What is the issued capital?

Mr. Martin: The same.

Commissioner Harlan: Any bonded indebtedness?

Mr. Martin: None.

Commissioner Harlan: Any current indebtedness?

Mr. Martin: Yes, sir.

Commissioner Harlan: Other than for current accounts?

Mr. Martin: Yes, sir.

Commissioner Harlan: What indebtedness have you?

Mr. Martin: There is about $99,000 at this time.

Commissioner Harlan: Represented in what form?

Mr. Martin: In outstanding notes.

Commissioner Harlan: Has that indebtedness in that form been larger than it now is?

1880 Mr. Martin: Yes.

Commissioner Harlan: What was its original highest amount?

Mr. Martin: That I could not say without going back to the records.

Commissioner Harlan: Well, about?

Mr. Martin: I would not like to make a guess.

Commissioner Harlan: Your road is approximately 33 miles long?

Mr. Martin: 31.

Commissioner Harlan: Standard gauge?

Mr. Martin: Yes.

Commissioner Harlan: You have six locomotives?

Mr. Martin: Yes, sir.

Commissioner Harlan: 113 freight cars?

Mr. Martin: Yes.

Commissioner Harlan: And one passenger car?

Mr. Martin: Two.

Commissioner Harlan: You have recently purchased another car?

Mr. Martin: No, we have had two cars for the past year or 18 months.

Commissioner Harlan: Well, that car must have been in the
1881 woods when we were down there looking for it.
Mr. Martin: Maybe so.
Commissioner Harlan: You have had it for a year or so?
Mr. Martin: But it was not on the train, it was at Yellow Pine.
Commissioner Harlan: You move passengers, do you?
Mr. Martin: Yes.
Commissioner Harlan: To what extent?
Mr. Martin: Well, the passenger fares run from $300 to $700 a month.
Commissioner Harlan: What sort of a place is Sibley?
Mr. Martin: It is a junction point; a small place, not very large.
Commissioner Harlan: Any stores?
Mr. Martin: Oh, yes.
Commissioner Harlan: How many people there?
Mr. Martin: Perhaps seven or eight hundred.
Commissioner Harlan: Is that a company town?
Mr. Martin: No, sir.
Commissioner Harlan: It is a community that is growing up on the Vicksburg, Shreveport & Pacific?
Mr. Martin: In the ordinary acceptance of a company
1882 town, there are no large industrial companies there. There are mercantile companies there.
Commissioner Harlan: What other towns have you on your road?
Mr. Martin: Yellow Pine.
Commissioner Harlan: What sort of a place is that?
Mr. Martin: That is what you would call a company town?
Commissioner Harlan: How many employees?
Mr. Martin: I presume there are 1,200, all told. The employees run four or five hundred.
Commissioner Harlan: What other towns?
Mr. Martin: Ringgold.
Commissioner Harlan: How large is that town?
Mr. Martin: Ringgold is a country trading town with a bank and post office and cotton gin and oil mill, which recently burned down, just a short time ago, and probably ten or twelve mercantile establishments.
Commissioner Harlan: How many people, about?
Mr. Martin: Oh, I would say 1,200.
Commissioner Harlan: And then Camp Long?
Mr. Martin: Well, there is Halls Summit, a town just north of Camp Long, a quarter of a mile. It is another country
1883 trading point, but it is not as large as Ringgold, and has no post office.
Commissioner Harlan: It has a post office?
Mr. Martin: No, it is on a rural route. That country from Ringgold south is served by a rural route. There is no post office except from Ringgold south.
Commissioner Harlan: You carry mail?
Mr. Martin: No.
Commissioner Harlan: Express matter?

Mr. Martin: We carry express as freight; in other words for people along the road who want express carried, merchants at Ringgold and Halls Summit and Yellow Pine, they leave a standing order to deliver their express to the road as freight, and we carry it from there as freight.

Commissioner Harlan: You carry it to Sibley and then they send it by express from that point?

Mr. Martin: Carry it out; yes, sir, as local freight?

Commissioner Harlan: And you receive it in the same way?

Mr. Martin: We receive it in the same way.

Commissioner Harlan: What was the extent of your traffic last year; I refer to the fiscal year.

Mr. Martin: I would prefer that you get those records
1884 from the auditor.

Mr. Thurmond: I will offer that statement——

Mr. Martin: Because the detail matter of figures is something I do not charge my memory with. The local auditor is C. P. Perkinson. The general auditor is P. C. Rickey, and Mr. Rickey has the figures.

Commissioner Harlan: You have heard what the figures are?

Mr. Martin: I have heard, but I never charge my memory with something I can make a matter of record.

Commissioner Harlan: How far can we go with you on this question?

Mr. Martin: Anything about the physical condition of the road, the manner in which it is conducted and safety appliances and so forth.

Commissioner Harlan: Well, tell us where the mill of the Globe Lumber Company is.

Mr. Martin: The mill of the Globe Lumber Company is situated at Yellow Pine.

Commissioner Harlan: How far is that from your junction with the Vicksburg, Shreveport & Pacific and the L. & A.?

Mr. Martin: About five miles.

Commissioner Harlan: When was it built?

1885 Mr. Martin: It was built before I came here; I suppose in 1898 or 1899.

Commissioner Harlan: When was the railroad built?

Mr. Martin: The railroad was built originally, I do not know when that part of it from Sibley to Yellow Pine, but it originally expected to serve the mill at Yellow Pine with logs obtained from Lake Bistineau, running southwest from Yellow Pine to the Lake.

Commissioner Harlan: By whom was that track built?

Mr. Martin: I could not say. I think it was by R. L. Trigg.

Commissioner Harlan: You went there when?

Mr. Martin: In July, 1901.

Commissioner Harlan: And the mill was since built?

Mr. Martin: Yes.

Commissioner Harlan: There was no railroad incorporated at that time, was there?

Mr. Martin Yes.

Commissioner Harlan: What was it?
Mr. Martin: This road was incorporated.
Commissioner Harlan: It was incorporated?
Mr. Martin: It was in 1900 that this road was
1886 & 1887 incorporated.
Commissioner Harlan: You do not know by whom or when that track was built?
Mr. Martin: No, but I have the impression that it was built by R. L. Trigg.
Commissioner Harlan: When did the Sibley, Lake Bistineau & Southern acquire that property?
Mr. Martin: When the railroad was organized we leased that property from the Globe Lumber Company, Limited, and afterwards bought the property.
Commissioner Harlan: Bought the right of way?
Mr. Martin: Yes.
Commissioner Harlan: And the equipment?
Mr. Martin: Yes.
Commissioner Harlan: Then did the railroad company afterward extend the line?
Mr. Martin: Yes.
Commissioner Harlan: To what extreme point as a railroad?
Mr. Martin: It is extended as main line——
Commissioner Harlan: To Camp Long, is it not?
Mr. Martin: To a point beyond and south of Camp Long in the northwest quarter of section 31, township 13, north range 9 west.
1888 Commissioner Harlan: Is it ballasted up to the point you have just named?
Mr. Martin: It is graded, and only at two places is ballasted.
Commissioner Harlan: What is the rail south of Camp Long?
Mr. Martin: 40 pound.
Commissioner Harlan: Any logging lines connected with your line?
Mr. Martin: Yes, sir; south of Camp Long the logging lines of the Globe Lumber Company, Limited, their spurs.
Commissioner Harlan: They belong to the lumber company?
Mr. Martin: They belong to the lumber company.
Commissioner Harlan: And the rails and equipment?
Mr. Martin: The rails and equipment belong to the lumber company.
Commissioner Harlan: Do they operate the logging lines?
Mr. Martin: Yes.
Commissioner Harlan: Your equipment does not go onto them?
Mr. Martin: Yes, sir; ours does.
Commissioner Harlan: They have no logging cars?
Mr. Martin: They have no logging cars, but we give them the use of ours.
1889–1899 Commissioner Harlan: They have locomotives?
Mr. Martin: No.

Commissioner Harlan: Then they have no equipment. I thought you said they had equipment.

Mr. Martin: No.

Commissioner Harlan: They lease it from you?

Mr. Martin: Yes.

Commissioner Harlan: What?

Mr. Martin: Logging cars and three locomotives.

Commissioner Harlan: All the logging cars?

Mr. Martin: All the logging cars and three locomotives and a couple of tank cars.

Commissioner Harlan: Do those locomotives get onto the main line?

Mr. Martin: Yes, sir, for switching purposes.

Commissioner Harlan: For no other purpose?

Mr. Martin: No.

Commissioner Harlan: They do not go through to the mill?

Mr. Martin: Only for repairs.

Commissioner Harlan: But the cars do?

Mr. Martin: The cars do.

Commissioner Harlan: What do they pay you for locomo-
1900 tives and cars?

Mr. Martin: At present they pay for the haul on the main line $2.75 per car for points south of Ringgold, and $2.50 per car——

Commissioner Harlan: Have you a map of your line here?

Mr. Martin: No, I have not. I presume some of the others here——

Mr. Thurmond: We have no map here, except the regular map——

Mr. Martin: The map of the Louisiana Railroad Commission locates our line properly, so far as such a map can.

Commissioner Harlan: Does it show the points?

Mr. Martin: Yes, sir: I think it does. I say properly; as properly as you can determine from a map that does not show section lines. (Witness examines map). It is practically correct, all the way; it shows the points and shows the stations.

Commissioner Harlan: My last question was whether you received any compensation from the lumber company for the use of your locomotives, and your equipment, and you proceeded to give an explanation. As I understand it, you do not receive any specific sum of money as rental?

Mr. Martin: That is not for the use of the locomotives
1901 and equipment; it is for hauling the logs.

Commissioner Harlan: But you do receive some compensation for hauling the logs. Now, from what point on the logging line?

Mr. Martin: As I stated in my answer, $2.75 from points south of Ringgold, and $2.50 from points north of Ringgold.

Commissioner Harlan: Are those main line points?

Mr. Martin: Any point where their spurs would reach our main line.

Commissioner Harlan: The $2.50 is from your main line junction?

Mr. Martin: From the point where they deliver those logs.

Commissioner Harlan: From the point where they deliver those logs on your main line?

Mr. Martin: Yes.

Commissioner Harlan: And from that point you haul the logs for $2.50 per car, from points south of Ringgold?

Mr. Martin: Points north of Ringgold, and $2.75 from points south of Ringgold.

Commissioner Harlan: Then there are logging roads that join your main line north of Ringgold?

Mr. Martin: No, there are not yet. There may be.

1902 Commissioner Harlan: Then you are not receiving $2.50 on any traffic?

Mr. Martin: We will this winter, because logs will be put on the road.

Commissioner Harlan: But at this time you have not?

Mr. Martin: We have not so far, since that tariff went into effect.

Commissioner Harlan: Then the logging roads are being constructed north of Ringgold?

Mr. Martin: No, the logs will be put on the side track at Davis, by wagon.

Commissioner Harlan: Is the Globe Lumber Company hauling any logs to your line?

Mr. Martin: They do not haul any logs. They hire it done.

Commissioner Harlan: They are hauling them to your main line by wagon?

Mr. Martin: Those logs they purchase from people living along the road, that they will haul to Davis.

Commissioner Harlan: They purchase delivered at Davis?

Mr. Martin: Yes.

Commissioner Harlan: And then you propose to charge $2.50 from that point?

1903 Mr. Martin: Yes, sir.

Commissioner Harlan: Do you receive logs at any other point north of Ringgold?

Mr. Martin: No. They are getting logs south of Ringgold at this time. I mean logs delivered by the people along the road, who haul them by wagon.

Commissioner Harlan: Are you getting logs delivered by any one at any point north of Ringgold except Davis?

Mr. Martin: Yes.

Commissioner Harlan: What points?

Mr. Martin: Just at a small spur about four or five miles from Yellow Pine.

Commissioner Harlan: South of Yellow Pine?

Mr. Martin: South of Yellow Pine.

Commissioner Harlan: Who delivers you logs there?

Mr. Martin: Different parties.

Commissioner Harlan: Well, from what forest?

Mr. Martin: From their own land.

Commissioner Harlan: And are they bought delivered by the Globe Lumber Company or shipped in by the people who do the logging?

Mr. Martin: They are bought by the Globe Lumber Com-
1904 pany delivered by the owners.

Commissioner Harlan: Delivered in wagons on your main line?

Mr. Martin: No, delivered by wagon.

Commissioner Harlan: Well, all right, we will say that; delivered by wagon on your main line?

Mr. Martin: Yes.

Commissioner Harlan: And from that point you charge $250, a car?

Mr. Martin: Yes.

Commissioner Harlan: That is paid by the Globe Lumber Company?

Mr Martin: Yes.

Commissioner Harlan: At what point south of Ringgold do you get logs?

Mr. Martin: Maddens Spur, Hulls Summit, and some at a point close to Giddens.

Commissioner Harlan: Those are delivered by wagon?

Mr. Martin: Yes.

Commissioner Harlan: And purchased in the same way by the Globe Lumber Company?

Mr. Martin: Yes.

Commissioner Harlan: Do you haul logs over your line for
1905 any one other than the Globe Lumber Company?

Mr. Martin: We hauled some export logs.

Commissioner Harlan: Where do they come from?

Mr. Martin: They were shipped from Davis.

Commissioner Harlan: That was just one shipment?

Mr. Martin: It was several.

Commissioner Harlan: Is it a regular traffic over your line?

Mr. Martin: No, because the material for regular traffic is not in there. This was just some walnut logs they found and some persimmon.

Commissioner Harlan: From what land did they come?

Mr. Martin: I could not tell, there are so many owners in there.

Commissioner Harlan: What rate did you charge?

Mr. Martin: The regular published tariff rate. I do not remember what it was.

Commissioner Harlan: Was it shipped locally?

Mr. Martin: No, it was to New Orleans, I do not remember what the rate was.

Commissioner Harlan: It was a through rate on walnut and persimmon logs from Davis?

1906 Mr. Martin: Yes, sir.

Commissioner Harlan: To New Orleans for export?

Mr. Martin: Yes, sir; I say for export. I know they were going for export, but I do not know that the rate was specially named for export.

Commissioner Harlan: How long had you had that rate in before the shipments were made?

Mr. Martin: Well, it was not put in specially for that. The tariff is the best evidence.

Commissioner Harlan: Was that a lumber rate or walnut rate?

Mr. Martin: Forest products.

Commissioner Harlan: With that exception you have hauled no logs over this line for outside interests?

Mr. Martin: No logs; no, sir.

Commissioner Harlan: What forest products have you hauled with that exception?

Mr. Martin: Lumber, ties and staves.

Commissioner Harlan: From what mills have you hauled lumber?

Mr. Martin: From H. B. Batcheloer's mill at Ringgold.

Commissioner Harlan: Is that on your line?

1907 Mr. Martin: Yes, sir.

Commissioner Harlan: The mill is right on your line?

Mr. Martin: No, the mill is off the line about 15 rods.

Commissioner Harlan: You have a spur track there?

Mr. Martin: No, we load it at the adjoining side track at Ringgold about a quarter of a mile long.

Commissioner Harlan: Does he move it by hand or fetch it there on a wagon?

Mr. Martin: He fetches it in there on a wagon.

Commissioner Harlan: How does he get his logs, by wagon?

Mr. Martin: On his own land, by wagon.

Commissioner Harlan: Is that a regular traffic, does his mill have a daily output?

Mr. Martin: Yes, sir, when he operates it. He does not always run it, though. It is still there.

Commissioner Harlan: What rate did you give him?

Mr. Martin: The regular published tariff rate, joint rate.

Commissioner Harlan: Where does his lumber go?

Mr. Martin: My impression is most of his lumber went up into Kansas.

Commissioner Harlan: It was a joint rate from Ringgold?

Mr. Martin: It was a joint rate from all points on our

1908 line.

Commissioner Harlan: A blanket rate?

Mr. Martin: The regular rate from that country, the same as Yellow Pine.

Commissioner Harlan: Well, the same rate as from Sibley?

Mr. Martin: The same rate as from Sibley.

Commissioner Harlan: And from Yellow Pine?

Mr. Martin: Yes, sir.

Commissioner Harlan: What is your division of that blanket rate?

Mr. Martin: We have not the same divisions to all points.

Commissioner Harlan: What is your lowest and what is the highest?

Mr. Martin: The lowest is one and a half cents that I know of, and the highest that I know of is four and a half cents.

Commissioner Harlan: Have you never received a higher division than four and a half cents?

Mr. Martin: I think we have, but I do not think we do now. That is my impression, but Mr. Davis can tell you.

Commissioner Harlan: Well, what is your impression?

Mr. Martin: I think we had at one time on a very small amount of traffic, as high as five and a half cents, that was
1909 to some point out in Colorado, I believe.

Commissioner Harlan: Did you not get as high as seven cents division at one time?

Mr. Martin: If we did, I do not recollect it. We may have.

Commissioner Harlan: Do you recollect a six cent division?

Mr. Martin: No, I do not recollect a particular six cent division, any division that means just six cents.

Commissioner Harlan: Well, do you recall anything about six cents?

Mr. Martin: No. I think we had one five and a half cents; five or five and a half.

Mr. Cowan: Maybe Mr. Davis can answer that.

Commissioner Harlan: What is your recollection of the highest division you ever received?

Mr. Davis: The highest division is seven cents; that is my recollection.

Commissioner Harlan: To what points?

Mr. Davis: Denver and Trinidad.

Commissioner Harlan: When was that?

Mr. Davis: Five or six years ago.

Commissioner Harlan: When was the six cent division?
1910 Mr. Davis: I do not recall the six cent division. I thought I had my division sheet here. I have a memorandum showing that the present divisions are three to four cents via Shreveport, two and a half to four and a half cents via Vicksburg, and two and a half cents via Monroe.

Commissioner Harlan: Where was the five and a half cent division applicable?

Mr. Davis: I do not recall the five and a half cent division.

Mr. Martin: That was my impression; five and a half cents.

Commissioner Harlan: You receive $2.75 from the Globe Lumber Company for carrying its logs from points south of Ringgold to its mill at Yellow Pine?

Mr. Martin: Yes.

Commissioner Harlan: Do you unload them at the mill?

Mr. Martin: We do.

Commissioner Harlan: You do not do any loading out on the tram line?

Mr. Martin: No, sir; none whatever.

Commissioner Harlan: Your employees do not go out there on the tram line?

Mr. Martin: No.

1911 Commissioner Harlan: Your train crews do?
Mr. Martin: No.
Commissioner Harlan: Do your track crews?
Mr. Martin: The train crews of the Globe Lumber Company that handle the engines they get from us go out on those tracks, and not our crews.
Commissioner Harlan: I am talking about your crews.
Mr. Martin: No, except that the contract provides that either company can use the tracks of the other company for switching purposes at the junction.
Commissioner Harlan: Who does the loading at these intermediate points?
Mr. Martin: The Globe Lumber Company.
Commissioner Harlan: And your train crews do not participate in that at all?
Mr. Martin: None whatever.
Commissioner Harlan: Do you have any rates on lumber in connection with other lines?
Mr. Martin: Yes, sir.
Commissioner Harlan: And they apply from all points on your line?
Mr. Martin: Yes, sir, alike.
1912 Commissioner Harlan: But the Globe Lumber Company does not ship any lumber except from Yellow Pine, does it?
Mr. Martin: That is all.
Commissioner Harlan: What haul do you perform on lumber?
Mr. Martin: From what point?
Commissioner Harlan: From yellow pine.
Mr. Martin: For interstate shipments?
Commissioner Harlan: Interstate or local.
Mr. Martin: About five miles. Local shipments, they ship some lumber back as far as Halls Summit and to Ringgold for local consumption.
Commissioner Harlan: And you charge the Louisiana tariff for that?
Mr. Martin: No, we have our own tariff.
Commissioner Harlan: You have your own local tariff for that?
Mr. Martin: Yes.
Commissioner Harlan: That, of course, is not an interstate movement.
Mr. Martin: No.
Commissioner Harlan: Is it a blanket rate to all points?
Mr. Martin: No, it is a mileage rate.
1913 Commissioner Harlan: Is it the Louisiana tariff?
Mr. Martin: It is based on that tariff.
Commissioner Harlan: What is the volume of that?
Mr. Martin: Very little.
Commissioner Harlan: Is it less than carload?
Mr. Martin: Very little.
Commissioner Harlan: Mostly all carload?
Mr. Martin: Yes, sir.

Commissioner Harlan: Who is the consignee, is it not the Globe Lumber Company?

Mr. Martin: No.

Commissioner Harlan: Who pays the freight?

Mr. Martin: The consignee, unless he buys it delivered.

Commissioner Harlan: Well, he usually does buy it delivered?

Mr. Martin: Yes, sir, particularly if it goes to a station where there is no agent. At Ringgold there is an agent.

Commissioner Harlan: You bring the empties from the Vicksburg, Shreveport & Pacific to Ringgold?

Mr. Martin: Yes.

Commissioner Harlan: And the cars are loaded and you get the divisions you have explained?

1914 Mr. Martin: Yes.

Commissioner Harlan: Who loads the cars?

Mr. Martin: The Globe Lumber Company.

Commissioner Harlan: Have you your gross tonnage for last year?

Mr. Martin: Yes, sir.

Commissioner Harlan: I thought you said a little while ago you did not have them.

Mr. Martin: Well, you were talking about finer figures than gross.

Commissioner Harlan: What was your gross tonnage last year?

Mr. Martin: I can give this just as I have it here, and perhaps it will serve your purpose better than any other way, as I got it for private purposes. For the year ending June 30, 1910, lumber shipments by the Globe Lumber Company, 41,637 tons; revenue, $31,141.12. Lumber shipped by other parties, 3,655 tons; revenue, $2,525.05. Other tonnage——

Commissioner Harlan: You are reading the same figures which I have here, and we will not stop on that.

Mr. Thurmond: May I put that list of figures in?

Commissioner Harlan: Yes, when your other witness comes.

Mr. Thurmond: Did you give a list of the other shippers on the line, such as Madden Brothers?

1915 Mr. Martin: I did not.

Mr. Thurmond: Give that please, general shippers of some considerable quantity of stuff.

Mr. Martin: Other shippers of lumber on the line of the Sibley, Lake Bisteneau & Southern are H. P. Batchelor, at Ringgold; R. R. Madden, at Madden's Spur; Tomme & Sons, at Giddens; Pierce Brothers at Davis or from Davis. This last named concern is just completing their mill.

Commissioner Harlan: A lumber mill?

Mr. Martin: Yes, sir. Another mill that is cut out is Tucker Brothers at Ringgold.

Commissioner Harlan: Well, what is the capacity of this mill that is approaching completion?

Mr. Martin: I expect they will ship 20,000 a day.

Commissioner Harlan: Do they own lands?

Mr. Martin: They own stumpage.
Commissioner Harlan: Have they a logging line?
Mr. Martin: Rail line?
Commissioner Harlan: Yes.
Mr. Martin: No, sir.
Commissioner Harlan: They will haul their logs?
Mr. Martin: Yes, and will haul the lumber after it is cut.
1916 Commissioner Harlan I thought you said the mill is on your line.
Mr. Martin: They ship at the point I named.
Commissioner Harlan: You mean they haul the logs to the mill?
Mr. Martin: They haul the logs to the mill and then they haul their lumber to the railroad.
Commissioner Harlan: How far?
Mr. Martin: Well, their haul will be three miles.
Commissioner Harlan: Well, the mill is not on your line.
Mr. Martin: No, it is not on our line, but this is the only available outlet, inasmuch as Lake Bisteneau is to the west of it and they cannot get across the lake.
Commissioner Harlan: I thought you said the mill was on your track.
Mr. Martin: No, that is the shipping point for the other shippers.
Mr. Thurmond: The Chatham Lumber Company?
Mr. Martin: S. H. Chatham. They make ties. And J. J. Capello Lumber Company.
Commissioner Harlan: Do these ties come from the lands of the Globe Lumber Company or outside?
1917 Mr. Martin: Outside.
Commissioner Harlan: Are they hewn or sawed ties?
Mr. Martin: Both.
Commissioner Harlan: Where is the mill?
Mr. Martin: Those mills I named cut quite a bit, and Tucker Brothers cut more or less, before they cut out.
Mr. Thurmond: How old a town is Ringgold?
Mr. Martin: It is one of the oldest -owns in that part of the state.
Mr. Thurmond: Have you got your passenger revenue, the number of passengers hauled?
Mr. Martin: No.
Mr. Thurmond: Have you got the passenger revenue?
Mr. Martin: For what date?
Mr. Thurmond: For the year ending June 30, 1910.
Mr. Martin: I think I have.
Mr. Thurmond: I will ask you if this is it (handing paper).
Mr. Martin: Passenger revenue for the year ending June 30, 1910, $3,112.16.
Mr. Thurmond: Have you the number of passengers there?
Mr. Martin: I have not.
Mr. Cowan: If he has the aggregate of his freight and
1918 passenger and lumber earnings there, let it be read.
Commissioner Harlan: It is shown on another statement.

He is simply taking the figures of the auditor.

Mr. Martin: That is all.

Mr. Thurmond: Do not bother looking it up any more.

Mr. Garwood: Do you raise any cotton up there?

Mr. Martin: Yes, sir. Ordinarily Ringgold ships about 4,000 bales. This year they haven't, nor for two years back, on account of the boll weevil. The cotton crop has been reduced.

Commissioner Harlan: To what figure?

Mr. Martin: Something like 2,000 bales.

Mr. Garwood: How much will you probably ship this year?

Mr. Martin: About 2,000 bales.

Mr. Garwood: Is it a good country, agriculturally speaking?

Mr. Martin: That country is as good a hill country as there is in Louisiana. We have considerable revenue in potatoes this year; I do not know how much. They turned their attention to potatoes and peanuts instead of cotton on account of the boll weevil.

Mr. Garwood: How much cotton have you in sight?

Mr. Martin: Well, that term might be a misleader. We
1919 cleaned our cotton up a week ago yesterday that was on our platform at Ringgold, while I was present.

Mr. Garwood: I have a statement here to the effect that you have moved this season to date 2,737 bales of cotton, and that there are about 500 more in sight. Is that correct?

Mr. Martin: Well, that was obtained from the ginners around there, that information, and I do not know what that is. If that statement came from our office at Yellow Pine, it is correct.

Mr. Garwood: Yes, sir, it comes from your local office.

Mr. Thurmond: We offer it in evidence.

Commissioner Harlan: The record may show that this witness has a statement from the office of his company showing that 2,700 bales have been moved this year, and 500 are in sight in the compress and elsewhere. You need not put it in.

Mr. Garwood: What in general terms is your movement of other agricultural products?

Mr. Martin: I would not like to give any figures, except that we move everything that is offered us to move, but just how much there is of each item I do not know.

Mr. Garwood: Give me a general idea.

Mr. Martin: But we always have more or less to move.

1920 Mr. Garwood: It is a substantial quantity, in other words?

Mr. Martin: Yes, sir.

Mr. Garwood: You subserve the convenience of the farming community, shipping products in substantial and appreciable quantities?

Mr. Martin: We do, and we move practically all of the products that are produced for eight miles on each side of the road.

Mr. Garwood: Is the country settling and progressing in an agricultural way?

Mr. Martin: Yes, sir.

Mr. Garwood: There has been more or less discussion in an interrogatory way as to the agricultural development of this Louisi-

ana country, where forests were originally on the ground. For our information will you please tell me what was the character of this country served by your road there. Is it to any extent what you might call a cut over territory; in other words has lumber been removed from it and a subsequent agricultural development followed?

Mr. Martin: I do not know that I am going to be very complimentary to some of the gentlemen present when I state the actual condition up there. That country was always a semi-settled
1921 country. If I had been picking it out for a logging country I would not have picked it out. There were too many farms in it, and fully one-half of the surface of the country has been cleared up and the logging proposition consisted of tracts owned by people outside of there in small amounts and parts of farms and I presume that one-half of that country has been cleared as a whole.

Commissioner Harlan: How many acres does the Globe Lumber Company own?

Mr. Martin: 42,000 and something in fee.

Commissioner Harlan: And what timber rights?

Mr. Martin: I could not say exactly how much there is of that left.

Commissioner Harlan: How much was there?

Mr. Martin: We have had timber rights on over 75,000 acres.

Mr. Garwood: The town of Ringgold is about what population?

Mr. Martin: Ten or twelve hundred people there.

Mr. Garwood: I will ask you if your road has received any donation of land or otherwise from that community.

Mr. Martin: It did.

Mr. Garwood: What was it?

Mr. Martin: The citizens of Ringgold furnished the right
1922 of way through townships 15 and 16 north range 9 west; that is, in Bienville Parish, for this road, in consideration of their building through the town of Ringgold and operating a train service.

Mr. Garwood: About how far was that?

Mr. Martin: Twelve miles.

Mr. Garwood: I will ask you if in order to reach your line there was a substantial change in location of the people; in other words, was there a moving from one place to another in order to be upon the line?

Mr. Martin: At Ringgold, yes, they have what they call laid out a new town. The old town was off from our road, because it was inaccessible on account of the topography of the country, and the business interests have largely moved down close to our track.

Mr. Garwood: About how far was that?

Mr. Martin: About 60 to 80 rods, in the general neighborhood of that.

Commissioner Harlan: This road runs somewhat parallel to the Louisiana & Arkansas Railroad, does it not, for some distance?

Mr. Martin: They diverge at Sibley and they go about five
1923 miles apart at Yellow Pine, and continue about that way as far south as Ringgold, after which they get farther apart.

Commissioner Harlan: How far apart are they at Heflin on the L. & A.?

Mr. Martin: About five miles.

Commissioner Harlan: Yellow Pine is not opposite Heflin, is it?

Mr. Martin: No, not near.

Commissioner Harlan: They get closer than five miles at Heflin?

Mr. Martin: No, that is what they call it. I drove it one time and thought it was ten miles.

Commissioner Harlan: Do you know anything about the financial details of this company?

Mr. Martin: In a general way; yes, sir.

Commissioner Harlan: You owe $10,000 to the Shreveport bank?

Mr. Martin: The Commercial Bank, yes, sir.

Commissioner Harlan: What interest are you paying on that?

Mr. Martin: Six per cent.

Commissioner Harlan: Is that the note of the company?

Mr. Martin: Of the railroad company?

1924 Commissioner Harlan: Yes.

Mr. Martin: Yes, sir.

Commissioner Harlan: Is anyone else on the paper?

Mr. Martin: I am and R. A. Long, individually, both of us.

Commissioner Harlan: And you owe $80,000 to the Globe Lumber Company on one note?

Mr. Martin: Yes, sir.

Commissioner Harlan: And $36,000 on another?

Mr. Martin: Well that $36,000 has been reduced since you got those figures, just recently.

Commissioner Harlan: Is anyone on those notes?

Mr. Martin: No, sir.

Commissioner Harlan: The national bank require two names on negotiable paper, do they not?

Mr. Martin: No, they do not make any particular mention of that. I asked for the loan——

Commissioner Harlan: I am asking you the question.

Mr. Martin: I was going to explain better than I can answer in any other way. I asked for the loan and told Mr. Urey that Mr. Long would endorse it personally and Mr. Urey said "Oh, pshaw, put your name on it," and I put my name on it, as Mr. Long

1925 was already on it. Mr. Urey is president of the bank.

Commissioner Harlan: I do not mean to suggest that your name would not have been sufficient, but as a matter of fact Mr. Long is on the paper, and national banks generally require two names on paper, do they not?

Mr. Martin: Well, my experience has not been very extensive——

Mr Cowan: That is the law, but it is not the practice.

Mr. Greer: No, sir, it is not the law.

Commissioner Harlan: Well, in addition to the capital stock you at one time, on June 30, 1909, owed $127,000 of which this $10,000 formed a part?

Mr. Martin: Yes.

Commissioner Harlan: What was the origin of that indebtedness?

Mr. Martin: It was for material bought from the Globe Lumber Company that was not taken care of by the stock that was received for the purchase price. That has been reduced.

Commissioner Harlan: What was the $100,000 of capital for?

Mr. Martin: The $100,000 of capital was what the company was organized with. You understand this organization took place years before my connection with it.

1926 Commissioner Harlan: You are not familiar with the details?

Mr. Martin: No, only the dates and so forth.

Commissioner Harlan: On June 30, 1908, you owed only $86,000, and on June 30, 1909 you owed $127,000.

Mr. Martin: Yes.

Commissioner Harlan: You had borrowed that money or created that indebtedness in the mean time. What was that for? That was after you came there.

Mr. Martin: I think that was because of the purchase of equipment.

Commissioner Harlan: Well, was not the equipment purchased with the $100,000 of capital?

Mr. Martin: No, the road was organized and the company was organized and the existing company was leased and extended by the railroad company and afterwards the road which was leased was bought.

Commissioner Harlan: That was done within your time, was it not?

Mr. Martin: I do not know the exact date. I wish you would get those figures from the auditor, because he has them in shape. I handle all the bills at Yellow Pine, and purchase everything at Yellow Pine but——

1927 Commissioner Harlan: What is the amount of the issued capital stock?

Mr. Martin: $100,000.

Commissioner Harlan: You do not know what that represents?

Mr. Martin: You mean——

Commissioner Harlan: What it was issued for, what you got in return.

Mr. Martin: I would rather you would go to the auditor for that.

Mr. Garwood: How far is it from the end of your road to the Red River?

Mr. Martin: About seven miles.

Mr. Garwood: What is the nearest town on the Red River?

Mr. Martin: Shadow.

Mr. Garwood: What sized town?

Mr. Martin: A little river trading town, about 1,200. It is also the Parish seat.

Mr. Garwood: What road?

Mr. Martin: The Louisiana Railroad & Navigation Company.

Mr. Garwood: What is the character of the intervening territory?

Mr. Martin: Shadow is right on the bank of the river, and
1928 the bluffs come down pretty close to the river.

Mr. Garwood: I mean intervening between Shady and the end of your road.

Mr. Martin: It gradually rises from the Red River Valley into the hills. It is good farming country.

Mr. Cowan: Your road has been an operating railroad hauling traffic for other people ever since you have been connected with it?

Mr. Martin: Yes, sir.

Mr. Cowan: You do not belong to this new dispensation which came in about 1905 or 1906?

Mr. Martin: Please be more specific.

Mr. Cowan: Well, organizing railroads for the purpose of getting a division of rates. You have been hauling people all along anyway.

Mr. Martin: I can make the best answer by saying what Mr. Long stated to me when I came with these people. I was with the Central Coal & Coke people and made arrangements to come to these people, and he made mention of the railroad and said "We are in a little railroad deal over there and we have not made much money out of it yet, but we hope to." So I take it that it was organized for the purpose of making money.

1929 Mr. Cowan: In the hauling of logs to this mill you do not refund back any of the money that is paid for that?

Mr. Martin: No, the railroad does not.

Mr. Cowan: There is no milling in transit proposition in that?

Mr. Martin: Not on that line, not at present.

Mr. Cowan: There has not been since you have been with it?

Mr. Martin: Yes, sir, there has.

Mr. Cowan: When was that?

Mr. Martin: Well, for a number of years, and in explanation of that, there have been various interpretations of the Interstate Commerce Law, and for awhile we were told in order to legally take divisions we had to haul the logs free the whole length of the road, and we did so.

Mr. Cowan: Your present counsel did not tell you that.

Mr. Thurmond: I was just going to suggest I hoped he did not attribute that law to us.

Mr. Martin: And the divisions which the railroad company received did not take care of the extension of the road, and the running expenses of it, and we cast about for a means of increasing the revenue and as a consequence we issued this tariff on
1930 on logs and since then it has been satisfactory.

Commissioner Harlan: Then you milled in transit before, and now you do not?

Mr. Martin: There are almost as many interpretations of that term "milling in transit" as there is of the Interstate Commerce Law, and I would like to have it defined before I say we milled in transit.

Mr. Cowan: I suppose the paper that has been filed covers or shows what percentage of earnings are from lumber and what percentage from the Globe Lumber Company?

Mr. Thurmond: Yes, that is all on this paper. I have not filed it yet because I have not identified it. Unless the Commissioner desires to inquire of Mr. Rickey, I will ask him if these figures are correct.

Mr. Rickey: They are.

(The paper so offered and identified, was received in evidence and thereupon marked Sibley, Lake Bistineau & Southern Exhibit No. 1, received in evidence December 14, 1910, and is attached hereto.)

Commissioner Harlan: Do you know about this capital stock?

Mr. Rickey: Yes, sir.

Commissioner Harlan: What did you receive for this
1931 $100,000 capital?

Mr. Rickey: I only know it in a general way, but I know the company has invested in the main line, 30 miles, $211,000, and this $100,000 was contributed towards the building of the line.

Commissioner Harlan: In what form has it invested it, in cash?

Mr. Rickey: I was not present in the early days.

Commissioner Harlan: Then why do you use that expression, that it has invested in the main line, $211,000?

Mr. Rickey: Because it is offset in the trial balance, and under the resources is the roadbed and structures, $211,000.

Commissioner Harlan: It is in that sense you have used the word invested?

Mr. Rickey: Yes.

Commissioner Harlan: Then it does not mean quite what it says. How do you know they invested that amount of cash in the road?

Mr. Rickey: From the nature of the physical property, I am sure that is the cost of it.

1932 Mr. Thurmond: Well, will it be necessary to file the charter of the company?

Commissioner Harlan: No, that is not necessary.

Mr. Thurmond: We may consider it for the purposes of argument?

Commissioner Harlan: Yes.

1933 *Woodworth & Louisiana Central Railway Company.*

ROBERT STACK, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?

Mr. Stack: Woodworth, La.

Mr. Garwood: We would like to file as a part of Mr. Rickey's statement on the Sibley Road, a statement showing the indebtedness and for what it accrued. It should have been put in awhile ago.

Commissioner Harlan: This amount on notes payable?

Mr. Garwood: Yes, and another sum of $84,000.

Mr. Rickey: The laying of the steel and the indebtedness in

notes is $84,000 for improving cars purchased from the Globe Lumber Company.

Mr. Garwod: What was the $10,000 note?

Mr. Rickey: For new steel recently purchased and put on to the main line, not for the use of the lumber companies.

Commissioner Harlan: Where did you say you lived, Mr. Stack?

Mr. Stack: Woodworth.

Commissioner Harlan: What is your business?

1934 Mr. Stack: Superintendent of the Woodworth & Louisiana Central Railroad.

Commissioner Harlan: Where is Woodworth with relation to Shreveport and Sibley?

Mr. Stack: It is south. Woodworth is 14 miles south of Alexandria.

Commissioner Harlan: On what line?

Mr. Stack: On the Iron Mountain, the Watkins Branch of the Iron Mountain.

Commissioner Harlan: What is your relation to the Woodworth & Louisiana Central?

Mr. Stack: Superintendent.

Commissioner Harlan: How long have you been with the company?

Mr. Stack: With the railroad company six years.

Commissioner Harlan: Were you prior to that time connected with any other company?

Mr. Stack: Not any railroad company.

Commissioner Harlan: With any other company?

Mr. Stack: The Long-Bell Lumber Company.

Commissioner Harlan: At Woodworth?

Mr. Stack: No, at Kansas City.

1935 Commissioner Harlan: Have you any relation with the Rapides Lumber Company?

Mr. Stack: Yes, sir, General Manager of the Rapides Lumber Company.

Commissioner Harlan: How long have you been with that company?

Mr. Stack: I have been with that company as manager since 1904.

Commissioner Harlan: Who were the officers of the railroad company?

Mr. Stack: R. A. Long, President; C. B. Sweet, Vice President and General Manager; F. J. Bannister, Secretary; P. C. Rickey, Auditor; R. S. Davis, Traffic Manager, and Thurmond & Farrar, General Attorneys.

Commissioner Harlan: Are those gentlemen also connected with the Rapides Lumber Company?

Mr. Stack: All but Mr. Davis.

Commissioner Harlan: They are all officers except Mr. Davis?

Mr. Stack: Yes, sir.

Commissioner Harlan: And the stock of the railway company is owned by the stockholders of that company?

1936 Mr. Stack: Substantially, yes, sir.

Commissioner Harlan: It is practically the same investment?

Mr. Stack: Yes, sir; there are one or two different stockholders in the railroad company that are not in the lumber company.

Commissioner Harlan: Small stockholders?

Mr. Stack: Yes, sir, very small.

Commissioner Harlan: Do you receive a salary from both companies?

Mr. Stack: Yes, sir.

Commissioner Harlan: Is it a substantial salary from each company?

Mr. Stack: I think so.

Commissioner Harlan: Do the other officers of the railroad company receive salaries from the lumber company?

Mr. Stack: No.

Commissioner Harlan: You are the only one?

Mr. Stack: Mr. Long receives a salary.

Commissioner Harlan: From both companies?

Mr. Stack: Yes, sir.

Commissioner Harlan: What is his salary as President of
1937 the railroad company?

Mr. Stack: He gets $600 a year, I think.

Commissioner Harlan: What is the capital of the railroad company?

Mr. Stack: $25,000.

Commissioner Harlan: Bonded indebtedness.

Mr. Stack: It is not bonded.

Commissioner Harlan: Has it any other debts?

Mr. Stack: Yes.

Commissioner Harlan: To what amount?

Mr. Stack: It owes the Rapides Lumber Company, I think, $88,000, and a bank in Alexandria $10,000.

Commissioner Harlan: What was the maximum amount of its indebtedness to the Rapides Lumber Company?

Mr. Stack: I am not prepared to say.

Commissioner Harlan: Has that indebtedness been reduced from time to time?

Mr. Stack: Yes, sir.

Commissioner Harlan: Do you remember what the largest amount was?

Mr. Stack: I think it has been reduced probably $25,000 or $30,000.

1938 Commissioner Harlan: In the last four or five years?

Mr. Stack: Yes, sir.

Commissioner Harlan: Since the company was organized?

Mr. Stack: Yes, sir.

Commissioner Harlan: Did you give the date of the organization of the railroad company?

Mr. Stack: No. 1900.

Commissioner Harlan: The $10,000 borrowed at the bank there is represented by a note of the company?

Mr. Stack: Yes.

Commissioner Harlan: And you were on the back of it?

Mr. Stack: I am not.

Commissioner Harlan: Who is?

Mr. Stack: Mr. Long.

Commissioner Harlan: Anyone else?

Mr. Stack: No.

Commissioner Harlan: This is a narrow gauge road, is it?

Mr. Stack: 18 miles of it is narrow gauge and 6 miles is standard gauge.

Commissioner Harlan: And the 6 miles of standard gauge runs from La Moria to Woodworth?

Mr. Stack: Yes, sir.

1939 Commissioner Harlan: The standard gauge, which is 6.25 miles long, extends from what regular line?

Mr. Stack: From the Southern Pacific, Texas Pacific and Rock Island at La Moria.

Commissioner Harlan: What other connection have you?

Mr. Stack: The Iron Mountain at Woodworth.

Commissioner Harlan: That is the St. Louis, Watkins & Gulf?

Mr. Stack: Yes, sir.

Commissioner Harlan: And west from Woodworth the narrow gauge line runs for about 18 miles?

Mr. Stack: For about 18 miles.

Commissioner Harlan: To what point?

Mr. Stack: To a point we call Hineston.

Commissioner Harlan: You call that your main line?

Mr. Stack: Yes, sir.

Commissioner Harlan: You have one standard locomotive?

Mr. Stack: Yes, sir.

Commissioner Harlan: Two narrow gauge locomotives?

Mr. Stack: Yes, sir.

Commissioner Harlan: Two standard cars?

Mr. Stack: Yes, sir.

1940 Commissioner Harlan: And nine narrow gauge cars?

Mr. Stack: We have five narrow gauge locomotives.

Commissioner Harlan: And one standard locomotive?

Mr. Stack: Yes, sir.

Commissioner Harlan: What are the two standard gauge cars which you have?

Mr. Stack: One is a flat car and the other is a pile driver.

Commissioner Harlan: What sort of a town is La Moria?

Mr. Stack: A little country trading point.

Commissioner Harlan: How many people?

Mr. Stack: About 250 people, probably; two small stores.

Commissioner Harlan: And Woodworth?

Mr. Stack: It is a town of about 1000 to 1250 people.

Commissioner Harlan: And Hineston?

Mr. Stack: Hineston is a little country town, post office.

Commissioner Harlan: Do you carry passengers?
Mr. Stack: No.
Commissioner Harlan: Any mail?
Mr. Stack: No.
Commissioner Harlan: Express matter?
Mr. Stack: No.
1941 Commissioner Harlan: Do you carry any general merchandise?
Mr. Stack: Yes, sir.
Commissioner Harlan: To what amount?
Mr. Stack: We carry considerable.
Commissioner Harlan: You have not the figures with you?
Mr. Stack: No.
Mr. Thurmond: Here is a list of the figures (handing paper).
Commissioner Harlan: Is your total tonnage last year shown on this report?
Mr. Stack: I do not know. Mr. Rickey will show you that.
Commissioner Harlan: Do you move any farm products?
Mr. Stack: Yes, sir.
Commissioner Harlan: Move any manufactured lumber for shippers other than the Rapides Lumber Company?
Mr. Stack: No.
Commissioner Harlan: Move any logs over your line?
Mr. Stack: No.
Commissioner Harlan: You are manager of that lumber company and can tell us what is the extent of their forests. How many acres do you own?
Mr. Stack: We own 42,000 all told; about 20,000 or 21,000 virgin pine and about 20,000 cut.
1942 Commissioner Harlan: Do you own timber rights in addition?
Mr. Stack: Very small.
Commissioner Harlan: Does the railroad company own its own right of way?
Mr. Stack: Yes, sir.
Commissioner Harlan: Acquired when?
Mr. Stack: The six miles from La Moria to Woodworth was acquired in 1900 from the settlers; and since then we have been getting leases from the Rapides Lumber Company and settlers out on the west.
Commissioner Harlan: That is west of the Iron Mountain?
Mr. Stack: Yes, sir.
Commissioner Harlan: You do not own the fee of any lands there?
Mr. Stack: No.
Commissioner Harlan: Do you pay any rent to these lessors, do you pay the Rapides Lumber Company any rent?
Mr. Stack: No, we simply have the right as long as we use the railroad.
Commissioner Harlan: Have you any written leases?
Mr. Stack: Yes, sir.

Commissioner Harlan: Have you a copy of those leases
1943 here?

Mr. Stack: No, sir.

Commissioner Harlan: Will you be kind enough to furnish a copy of the lease between the lumber company and the railroad company, and copies of one or two leases with settlers.

Mr. Stack: Yes, sir.

Commissioner Harlan: Where is the mill of the lumber company?

Mr. Stack: At Woodworth.

Commissioner Harlan: Is it on the tracks of the Iron Mountain?

Mr. Stack: Right close to it.

Commissioner Harlan: Reached by a spur?

Mr. Stack: Yes, sir.

Commissioner Harlan: And the planing mill is on the spur track?

Mr. Stack: Yes, sir.

Commissioner Harlan: Does the lumber company own any logging lines connected with the Woodworth & Louisiana Central?

Mr. Stack: The spurs in the woods.

Commissioner Harlan: Are they owned by the lumber company?

Mr. Stack: Yes, sir.

1944 Commissioner Harlan: Who built them?

Mr. Stack: The lumber company.

Commissioner Harlan: And paid for them?

Mr. Stack. Yes, sir. They do not own the steel.

Commissioner Harlan: You own the steel?

Mr. Stack: The railroad company owns the steel.

Commissioner Harlan: Who paid for the labor?

Mr. Stack: The lumber company.

Commissioner Harlan: When you have to move those tram or logging roads who does it?

Mr. Stack: The lumber company.

Commissioner Harlan: At its expense?

Mr. Stack: Yes, sir.

Commissioner Harlan: Has the lumber company any cars?

Mr. Stack. No.

Commissioner Harlan: The railroad company operates the tram line?

Mr. Stack: Yes, sir.

Commissioner Harlan: Sends out the locomotives and cars?

Mr. Stack: Yes, sir.

Commissioner Harlan: Who does the loading on the cars?

Mr. Stack: The lumber company.

1945 Commissioner Harlan: Does the railroad company participate?

Mr. Stack: No.

Commissioner Harlan: The railroad company unloads at the pond?

Mr. Stack. Yes, sir.

Commissioner Harlan: Do you make any special charge for hauling the logs on the logging roads up to the main line junction.

Mr. Stack: The lumber company does that.

Commissioner Harlan: No, you do that, you have just said you did.

Mr. Stack: The lumber company delivers the logs to the spur on the main line and gives them to the main line engine.

Commissioner Harlan: But you have just said that the lumber company did not have any locomotives and any cars, and therefore it cannot make the delivery to you.

Mr. Stack: No, you misunderstood me.

Commissioner Harlan: Perhaps you misunderstood me, or I misunderstood you. We will start again. You have these logging roads connected with the main line at Hineston?

Mr. Stack: Yes, sir.

Commissioner Harlan: Does the lumber company have
1946 any locomotives?

Mr. Stack: They have leased locomotives, yes, sir.

Commissioner Harlan: From the railroad company?

Mr. Stack: From the railroad company.

Commissioner Harlan: Has it leased any cars?

Mr. Stack: Yes, sir.

Commissioner Harlan: How many?

Mr. Stack: It leases them all.

Commissioner Harlan: Has it leased all the locomotives, your narrow gauge locomotives?

Mr. Stack: Yes, sir, all but one.

Commissioner Harlan: And all your cars?

Mr. Stack: Yes, sir.

Commissioner Harlan: And you do not operate the narrow gauge road at all, do you, I mean the railroad?

Mr. Stack: Yes, sir, we operate the main line.

Commissioner Harlan: What do you regard as the main line?

Mr. Stack: From Woodworth to Hineston.

Commissioner Harlan: How can you as a railroad man operate that line when you have leased all your locomotives but one, and all your cars? You said you had leased all your cars.

Mr. Stack: The lumber company——

1947 Commissioner Harlan: Perhaps we do not understand one another. If you will explain how the logs get to the mill in your own way—who fetches them there?

Mr. Stack: The lumber company loads the logs on cars in the woods and delivers them with their own engines to the main line, and then the railroad company takes them with their engine and delivers them into the pond.

Commissioner Harlan: With the one locomotive?

Mr. Stack: With the one locomotive, yes, sir.

Commissioner Harlan: So the railroad company has no control over the cars, they have all been leased to the lumber company; but you do haul the cars with your own locomotive to the mill, is that it?

Mr. Stack: The railroad company owns the cars.

Commissioner Harlan: But you said they leased all the cars to the lumber company?

Mr. Stack: No, they have not.

Commissioner Harlan: Then I did misunderstand you. Then you have not leased any cars to the lumber company?

Mr. Stack: No.

Commissioner Harlan: But you have leased one locomotive
1948 to the lumber company?

Mr. Stack: No, we leased four locomotives to the lumber company.

Commissioner Harlan: Four?

Mr. Stack: Yes, sir.

Commissioner Harlan: Narrow gauge locomotives?

Mr. Stack: Yes, sir.

Commissioner Harlan: I do not know that I am hearing as others do——

Mr. Garwood: I think he said he leased all but one of the narrow gauge cars.

Mr. Stack: We leased all the locomotives on the spur except one, and that one is used on the main line. Those locomotives we use on the spur are leased to the lumber company.

Commissioner Harlan: You have five narrow gauge locomotives?

Mr. Stack: Yes, sir.

Commissioner Harlan: As I understand you now, the railroad company owns five narrow gauge locomotives?

Mr. Stack: Yes, sir.

Commissioner Harlan: And it has leased four of those locomotives to the lumber company?

1949 Mr. Stack: Yes, sir.

Commissioner Harlan: And the lumber company uses them on the spur?

Mr. Stack: Yes, sir.

Commissioner Harlan: And they do not get on the main line except on the switch movement?

Mr. Stack: Practically.

Commissioner Harlan: You have not leased any of the logging cars to the lumber company, have you?

Mr. Stack: No.

Commissioner Harlan: So that you deliver the cars to the lumber company at the interchange point, and they haul the cars out to the woods and there they are loaded by the lumber company?

Mr. Stack: Yes.

Commissioner Harlan: And there the loaded cars are delivered back to you at the interchange points?

Mr. Stack: Yes, sir.

Commissioner Harlan: And your one remaining narrow gauge locomotive hauls them from that point to the mill?

Mr. Stack: Yes, sir.

Commissioner Harlan: Do you collect any rent for those
1950 four locomotives?

Mr. Stack: No.

Commissioner Harlan: Do you make any charge for hauling the

logs from the interchange tracks to the mill and dumping them in the pond?

Mr. Stack: No.

Commissioner Harlan: That is a free service?

Mr. Stack: That is covered by the contract.

Commissioner Harlan: Covered in another way?

Mr. Stack: Yes, sir.

Commissioner Harlan: But there is no specific charge for that transportation?

Mr. Stack: No.

Commissioner Harlan: And there is no specific charge for the locomotives you have leased to the lumber company?

Mr. Stack: No.

Commissioner Harlan: What compensation do you get from the lumber company for the use of four locomotives and for the haul of the logs to the mill?

Mr. Stack: We get their outbound tonnage.

Commissioner Harlan: You get their outbound tonnage of manufactured lumber?

1951 Mr. Stack: Yes, sir.

Commissioner Harlan: And where do you receive that lumber?

Mr. Stack: At Woodworth.

Commissioner Harlan: At what point?

Mr. Stack: Woodworth.

Commissioner Harlan: I know, but at what point in Woodworth, at the planing mill?

Mr. Stack: Yes, sir, some at the planing mill and some at the sawmill.

Commissioner Harlan: Is it mostly dressed lumber or rough lumber?

Mr. Stack: Mostly dressed.

Commissioner Harlan: You receive it at the planing mill?

Mr. Stack: Yes.

Commissioner Harlan: At whose track?

Mr. Stack: Joint track.

Commissioner Harlan: Of the Iron Mountain and yourselves?

Mr. Stack: Of the Iron Mountain and ourselves.

Commissioner Harlan: Who places the empty cars there?

Mr. Stack: We do.

Commissioner Harlan: How far is the planing mill from the interchange track with the Iron Mountain track?

1952 Mr. Stack: Oh, probably 25 feet.

Commissioner Harlan: So your railroad hauls the empty cars 25 feet and spots it at the planing mill?

Mr. Stack: Yes, sir, we take it. Of course, the interchange is longer than that. They are just as far apart.

Commissioner Harlan: That is the end of the interchange track?

Mr. Stack: Yes, sir.

Commissioner Harlan: Is 25 feet away from the planing mill?

Mr. Stack: Yes.

Commissioner Harlan: And you possibly have a longer haul than that sometimes when the car is farther along on the interchange track?

Mr. Stack: Yes.

Commissioner Harlan: But from the interchange track to the planing mill is about 25 feet?

Mr. Stack: Yes, sir.

Commissioner Harlan: And that is a joint track?

Mr. Stack: Yes, sir.

Commissioner Harlan: And the interchange track itself belongs to the Iron Mountain?

1953 Mr. Stack: That is joint too.

Commissioner Harlan: When you say it is joint, do you mean it is jointly owned by the two companies?

Mr. Stack: The Iron Mountain or the old Watkins Road furnished the steel and we furnished the ties and labor.

Commissioner Harlan: That is the Woodworth & Louisiana Central furnished the ties and labor?

Mr. Stack: Yes, sir.

Commissioner Harlan: Who furnished the right of way?

Mr. Stack: We did; we furnished the right of way.

Commissioner Harlan: I thought you did not have any title west of the Iron Mountain tracks?

Mr. Stack: Well, I consider that ours.

Commissioner Harlan: I know, but I thought all the right of way west of the Iron Mountain track was leased.

Mr. Stack: Oh, no, not all of it.

Commissioner Harlan: You so stated. If you want to correct your testimony now is the time to do it.

Mr. Stack: It is not all leased. I said part of it was leased.

Commissioner Harlan: You certainly stated, and of course you may correct it, but you certainly stated all the right of way

1954 west of the Iron Mountain track was leased either from settlers or from the Rapides Lumber Company. Was that a mistake?

Mr. Stack: Well, that is what I mean, it is all from one or the other.

Commissioner Harlan: So the railroad company does not own it at all west of the Iron Mountain track?

Mr. Stack: No.

Commissioner Harlan: It is simply a lessee. I will ask again, with those facts before you, who furnished the right of way for this interchange track and the spur track which runs in front of the planing mill.

Mr. Stack: It was furnished by lease.

Commissioner Harlan: The railroad company had acquired the use of it by lease from the Rapides Lumber Company?

Mr. Stack: Yes, sir.

Commissioner Harlan: Well, for that service on the lumber what charge do you make?

Mr. Stack: We get a division of the rate.

Commissioner Harlan: What is the lowest division and what is the highest?

Mr. Stack: I think, without knowing positively, I will
1955 state about from one and one-half cents to, I think, about five and a half cents.

Commissioner Harlan: Did you not at one time get a higher division than that?

Mr. Stack: I think some time some years ago we did get a higher division than that.

Commissioner Harlan: Did you not get up as high as seven cents?

Mr. Stack: That was on some Denver business, I think.

Commissioner Harlan: When was that division cancelled?

Mr. Stack: I think about three or four years ago. Mr. Davis can tell you about it.

Commissioner Harlan: When was that cancelled, Mr. Davis?

Mr. Davis: I cannot tell you exactly.

Commissioner Harlan: Now as I understand it, the only interstate service that you participate in as a carrier and the only transportation service for which you are paid is the haul of the lumber from the planing mill to the interchange track?

Mr. Stack: That is on the business routed by the Iron Mountain. Of course, we perform a much greater——

Commissioner Harlan: I am talking about the Iron Moun-
1956 tain at this point.

Mr. Stack: That is right.

Commissioner Harlan: And I am also talking of the lumber of the Rapides Lumber Company. Now, do you haul any lumber or logs for any other company?

Mr. Stack: No.

Commissioner Harlan: Any forest products?

Mr. Stack: No.

Commissioner Harlan: I am now talking again about the narrow gauge road.

Mr. Stack: Yes, sir.

Commissioner Harlan: Do you haul any staves or ties?

Mr. Stack: No.

Commissioner Harlan: Do you haul any general merchandise over that road?

Mr. Stack: Some, yes, sir.

Commissioner Harlan: What rates do you charge, is that a local movement?

Mr. Stack: That is a local movement.

Commissioner Harlan: Purely?

Mr. Stack: Purely.

Commissioner Harlan: You have no through rates?
1957 Mr. Stack: No.

Commissioner Harlan: We will take the standard gauge line from Woodworth to La Moria; that is 6¾ miles long?

Mr. Stack: Yes.

Commissioner Harlan: Do you haul any manufactured lumber over that line and deliver it to other carriers?

Mr. Stack: Yes, sir.

Commissioner Harlan: Whose lumber do you haul over there?
Mr. Stack: The lumber of the Rapides Lumber Company.
Commissioner Harlan: And from no one else?
Mr. Stack: And from no one else.
Commissioner Harlan: You do that work with your standard locomotive?
Mr. Stack: Yes, sir.
Commissioner Harlan: And you do the work with your standard locomotive when you make delivery to the Iron Mountain?
Mr. Stack: Yes, sir.
Commissioner Harlan: What proportion of your traffic goes beyond the Iron Mountain over this standard track to the other carriers?
Mr. Stack: I should say at least 95 per cent.
1958 Commissioner Harlan: What divisions do you get from those carriers?
Mr. Stack: About I think two to five cents or five and a half cents.
Commissioner Harlan: When was that track built?
Mr. Stack: The standard gauge?
Commissioner Harlan: Yes.
Mr. Stack: In 1900.
Commissioner Harlan: Did you say five or five and a half cents?
Mr. Stack: From five to five and a half cents. I said from two to five and five and a half cents.
Commissioner Harlan: Have you never received any higher division than five and a half cents?
Mr. Stack: I said we did get seven cents to some points out in Denver and around in that country at one time.
Commissioner Harlan: When was that standard gauge track built?
Mr. Stack: In 1900.
Commissioner Harlan: Was the Rock Island in that country at that time?
Mr. Stack: No, sir.
1959 Commissioner Harlan: What lines did you connect with at the other end of your standard gauge track?
Mr. Stack: The Texas & Pacific and the Southern Pacific.
Commissioner Harlan: What divisions did you get from them at that time?
Mr. Stack: I don't remember.
Commissioner Harlan: Did you get any divisions?
Mr. Stack: We got some, yes, sir.
Commissioner Harlan: When did the Rock Island get into that territory?
Mr. Stack: I think it was two or three years ago.
Commissioner Harlan: 1907, was it not?
Mr. Stack: I think so.
Commissioner Harlan: Were your divisions over the T. & P. then increased or did they remain as ever?
Mr. Stack: No, sir, we are not getting any division on the T. & P. now.

Commissioner Harlan: What is that other line over there?

Mr. Stack: The Southern Pacific.

Commissioner Harlan: Were you divisions increased after you joined with the Rock Island?

Mr. Stack: As to that I could not say, but I do not
1960 think they were. They were left practically the same, although I would not be sure of that.

Commissioner Harlan: The connection with the Rock Island did not result in any increase in your divisions, as you now recall them?

Mr. Stack: I do not know, not that I recall. It may.

Mr. Davis: The division by the Southern Pacific is four cents with the exception of export.

Commissioner Harlan: What is the export?

Mr. Davis: Two cents.

Commissioner Harlan: Will you answer the question at this point, whether the connection between the Rock Island and the Woodworth & Louisiana Central resulted in an increase of divisions by any line?

Mr. Davis: An increase of one and one-half cents.

Commissioner Harlan: That increase became effective on the Iron Mountain as well as others?

Mr. Davis: No, sir. We are getting now on all business except Alexandria, four cents.

Commissioner Harlan: Four cents on all business?

Mr. Davis: Except Alexandria, Louisiana, and on that we get one and one-half cents.

1961 Mr. Cowan: Mr. Davis will file the division sheets as to all these railroads, of which he is traffic manager, covering the period of time the same as we asked for today in regard to the other line, and also the tonnage in the same way as was asked for from the Louisiana & Pacific and the output of each road, which goes to each road.

Mr. Davis: We will give it to you.

Commissioner Harlan: It is the understanding of the witness that the Rock Island went into that country in 1907. That is my recollection——

Mr. Davis: It is my recollection that we opened up with them in 1908.

Commissioner Harlan: You mean you made a connection with them in 1908?

Mr. Davis: Yes, sir.

Commissioner Harlan: Am I to understand that that did not affect your divisions?

Mr. Davis: It did by that route.

Commissioner Harlan: Of course, you then got divisions?

Mr. Davis: Yes.

Commissioner Harlan: But did it affect the amount of your divisions by any other route?

1962 Mr. Davis: No.

Commissioner Harlan: What division did you then get

from the Rock Island? You have stated that from two to five and a half cents——

Mr. Stack: Yes.

Commissioner Harlan: And you got seven cents on this Denver business?

Mr. Stack: Yes.

Commissioner Harlan: How did that affect the movement of your traffic?

Mr. Stack: Do you mean——

Commissioner Harlan: The connection with the Rock Island.

Mr. Stack: Volume?

Commissioner Harlan: No, but the routing of your traffic.

Mr. Davis: I can explain that. We give 50 per cent of our business to the Rock Island if they furnish cars, and of the balance, 40 per cent to the Southern Pacific.

Commissioner Harlan: Before the Rock Island went in there, what part of your traffic did the Iron Mountain get?

Mr. Davis: Well, I cannot say. I think the Texas & Pacific got a very large part of it at that time, and after the Rock Island
1963 connected with us they cancelled all rates with us and have had none since that time, but up to the time we formed this connection with the Rock Island they got at least 75 to 80 per cent of the tonnage.

Commissioner Harlan: And the Iron Mountain was getting some?

Mr. Davis: Yes, they were getting something, not a great deal though. The Iron Mountain and the T. & P. at that time were one, I guess.

Commissioner Harlan: Have you filed a copy of that contract with the Rock Island for the division of the tonnage?

Mr. Davis: Yes, sir, I think so.

Commissioner Harlan: I do not mean the division of the rate, but of the tonnage?

Mr. Davis: Yes, sir; it is in, I think.

Commissioner Harlan: Do you receive free transportation from the Rock Island, Southern Pacific, Iron Mountain and other connections?

Mr. Stack: I have transportation over the Southern Pacific but not over the other two.

Commissioner Harlan: Not over the Rock Island?

Mr. Stack: No.

Commissioner Harlan: Have you never had?

1964 Mr. Stack: No.

Commissioner Harlan: Why not?

Mr. Stack: I do not know.

Commissioner Harlan: Have you been refused transportation?

Mr. Stack: No, I have never requested it.

Commissioner Harlan: Do you use transportation over the Southern Pacific?

Mr. Stack: Very seldom.

Commissioner Harlan: Does any officer of your line get interchange transportation over the Rock Island?

Mr. Stack: I am sure I don't know.
Commissioner Harlan: Who applies for interchange transportation?
Mr. Stack: Mr. Davis, I imagine.
Mr. Davis: Mr. Long and Mr. Sweet and Mr. Rickey and myself, I believe, own Rock Island transportation.
Commissioner Harlan: Southern Pacific.
Mr. Davis: I think all the officers hold annual transportation.
Commissioner Harlan: And the Iron Mountain?
Mr. Davis: My recollection is Mr. Long and myself.
Commissioner Harlan: What connection takes you into
1965 Chicago on free transportation?
Mr. Davis: From Kansas City?
Commissioner Harlan: Yes, Kansas City or St. Louis.
Mr. Davis: The Rock Island and Burlington.
Commissioner Harlan: You have Burlington transportation?
Mr. Davis: Yes, sir.
Mr. Thurmond: You have had these figures compiled, have you not, your bookkeeper or auditor made them?
Mr. Stack: Yes, sir.

(The paper so offered and identified, was received in evidence and thereupon marked Woodworth & Louisiana Central Exhibit No. 1, received in evidence December 14th, 1910, and is attached hereto.)

Mr. Thurmond: You have seen there figures and know them, Mr. Rickey?
Mr. Rickey: Yes, sir.
Mr. Thurmond: They are taken from records in your office?
Mr. Rickey: Yes, sir.
Mr. Thurmond: You think they are accurate?
Mr. Rickey: Yes, sir.
Mr. Thurmond: That is all.
Commissioner Harlan: It is understood without further
1966 examination of these witnesses that both of these lumber companies and both of these railroads belong to what we call the R. A. Long interests.
Mr. Thurmond: Yes, in the sense it has been stated here, that Mr. R. A. Long has the majority of the stock.
Commissioner Harlan: Yes, he has the majority of the stock.
Mr. Thurmond: Yes.
Mr. Cowan: I understand the extent of that control will be presented to the Commission and also the request I made as to the relative amount of tonnage moving from each mill to each connection, and that this line, the same as we requested of the Louisiana & Pacific, will furnish it. The Commissioner asked for it for 1908, 1909 and 1910, and probably we had better make it the same.
Mr. Thurmond: I suppose any evidence is in here for all purposes, otherwise I ask that that certificate of percentages given by the Louisiana State Railroad Commission be considered in this case.
Commissioner Harlan: The whole record is available in each particular case.

Mr. Cowan: Do you make out the billing of the lumber that is shipped out from your mill, Mr. Stack?

1967 Mr. Stack: The agent of the railroad does. The waybill do you mean?

Mr. Cowan: Well, the bill of lading.

Mr. Stack: Yes, sir.

Mr. Cowan: The lumber company makes out the bill of lading, does it not?

Mr. Stack: Yes.

Commissioner Harlan: And passes it over to the agent of the railroad company to sign?

Mr. Stack: No, sir, the railroad company, the shipping clerk of the planing mill hands out a list of cars that is to go out that day, and the railroad agent makes out the bill of lading and sends it or delivers it to the lumber company.

Mr. Cowan: What agent does that?

Mr. Stack: The station agent of the Woodworth & Louisiana Central.

Mr. Cowan: Where does that bill of lading show that the lumber moves from?

Mr. Stack: That it moves from points—going to the Rock Island or Southern Pacific, it would move from Woodworth.

Mr. Cowan: And in the other case, of the Watkins & Gulf?

Mr. Stack: Pardon me——

1968 Mr. Cowan: In case it is moving over the Watkins & Gulf?

Mr. Stack: Nelsonville.

Mr. Cowan: Where is Nelsonville?

Mr. Stack: On our line west of Woodworth.

Mr. Cowan: In all cases after the lumber is actually loaded at the planing mill and moves out from there?

Mr. Stack: Yes, sir.

Mr. Cowan: And the logs are brought into the mill without any charge in each case?

Mr. Stack: Yes, sir.

Mr. Cowan: And the logs are not shipped separate which furnish the lumber that goes to the Rock Island from that that goes to the Watkins & Gulf?

Mr. Stack: No.

Mr. Cowan: So it is just a mere means of putting in so-called milling in transit on the Watkins & Gulf lumber, but not as to the other two?

Mr. Stack: I think so.

Mr. Cowan: But in all cases the service is the same except you do haul the lumber on from your mill over to the Rock Island and Southern Pacific?

Mr. Stack: That is true.

1969 Mr. Cowan: Where your line joins with the Southern Pacific do you maintain an agency there?

Mr. Stack: Yes, sir, joint agent.

Mr. Cowan: He is the local agent of the Southern Pacific?

Mr. Stack: The Southern Pacific, the T. & P. and our road.

Mr. Cowan: And is there an agent at the junction point with the Rock Island?

Mr. Stack: Yes, sir.

Mr. Cowan: Is he a joint agent?

Mr. Stack: No. We only have one agent at La Moria.

Mr. Cowan: Does he actually have the position of an agent of your road, or do you simply pay a part of his salary?

Mr. Stack: He is an agent of ours. We consider him so.

Mr. Cowan: How is that?

Mr. Stack: We consider him as an agent, yes, sir.

Mr. Cowan: Does somebody appoint him an agent?

Mr. Stack: Yes.

Mr. Cowan: Or do you just pay part of his compensation?

Mr. Stack: He is our agent and signs himself as our agent.

Mr. Cowan: Do you pay compensation to him?

Mr. Stack: Yes, sir.

Mr. Cowan: What proportion?

1970 Mr. Stack: We pay him $35.00 a month.

Mr. Cowan: All of the figures to show the traffic on your line are in the hands of Mr. Davis?

Mr. Stack: Yes, sir.

Mr. Cowan: I understand you to answer the Commissioner that you handle some merchandise, but that was just local. But you do not handle that as a carrier of merchandise, do you?

Mr. Stack: We handle anything that is offered us.

Mr. Cowan: Well, what do you handle?

Mr. Stack: We handle groceries and general merchandise.

Mr. Cowan: And that goes out to whom?

Mr. Stack: Out to our camps, out to the mill company's camps.

Mr. Cowan: Well, that is the extent of it?

Mr. Stack: Well, then, and from La Moria to Woodworth we handle merchandise.

Mr. Cowan: In what quantity?

Mr. Stack: Not very large quantities.

Mr. Cowan: What do you get for that, your local rates?

Mr. Stack: We have through rates, I think. For that you will have to refer to Mr. Davis.

1971 Mr. Cowan: He knows all about what you handle on the different lines, does he?

Mr. Stack: Yes, sir.

Mr. Cowan: I suppose there will be a classified commodity request. I think it has already been made, but if not, it will be, so that everybody will file a statement of the classified commodities, to show what quantity of stuff has moved and what they get for it.

Mr. Stack: We also handle a large amount of cane on our line.

Commissioner Harlan: I will ask you whether you handle any farm products on your line?

Mr. Stack: Yes, sir, a large amount of cane.

Commissioner Harlan: Between where?

Mr. Stack: Shady Spur and La Moria.

Commissioner Harlan: Is that a local movement to La Moria?
Mr. Stack: Yes, sir.
Commissioner Harlan: On the local rate?
Mr. Stack: Yes.
Commissioner Harlan: Any cotton?
1972 Mr. Stack: No.
Mr. Cowan: That is for the purpose of the camp or of the mill company?
Mr. Stack: Going west, yes, sir; at Woodworth and La Moria it is for the Rapides Lumber Company's store and two or three other little stores that are located there.
Mr. Cowan: Well, Mr. Davis can furnish a statement with regard to all of that?
Mr. Stack: Yes, sir.
Commissioner Harlan: This branch of the Commission will now adjourn until 9:30 tomorrow morning.

Whereupon, at 5:30 P. M., an adjournment was taken to Thursday, December 15th, 1910, at 9:30 A. M.

[End of Volume I.]

Vol. II.

TESTIMONY AND EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 329.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 330.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 331.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 332.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 333.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 334.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 335.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 336.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1913.

IN THE

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

VOLUME II.

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VOLUME II.

STAR GRAIN AND LUMBER COMPANY et al., Complainants,
against
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Defendants.

1973 NEW ORLEANS, LA., *December* 15, 1910.

Met pursuant to adjournment at 10:00 A. M.
Before Examiner Burchmore.

Examiner Burchmore: Gentlemen, Examiner Boyle of the Commission will hold hearings during the day in the adjoining room. The cases to come up before him will be announced in this room. He will take up first the Gould Southwestern Railroad, and is now ready to poceed. The next road to come up before him will be the Liberty White, which I understand is an east of the river line. Are there any other east of the river tap lines present this morning?

(No response.)

Examiner Burchmore: There seems to be a general anxiety to conclude this hearing as soon as it can be completed without neglecting any important facts of the investigation, and in order to attain that result and expedite the time, I have been instructed by Commissioner Harlan to continue the proceeding in the same manner in which it has been conducted so far, and if counsel will cooperate by limiting their examination as much as it can be limited and
1974 by refraining from asking questions which have already been asked by other examining counsel, I think we may be able to adjourn this hearing by Saturday night, a result which I think all desire to see attained. A line of questions was gone into the other day concerning the so-called Colonial Railroad System, and I believe that Mr. Fullerton agreed to be present at a later time to explain that system or his understanding of that system to the Commission. Is Mr. Fullerton present?

Mr. Fullerton: Yes.

Examiner Burchmore: Will you please be sworn.

S. H. FULLERTON, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Will you make such explanations as you are able to with respect to this so-called Colonial System of tap lines?

Mr. Fullerton: I know absolutely nothing about them.

Examiner Burchmore: Then you are not able to enlighten the Commission in this connection?

Mr. Fullerton: The talk about the Colonial System I heard her for the first time.

1975 Examiner Burchmore: Were you not the president of system by that name?

Mr. Fullerton: No, sir.

Examiner Burchmore: I had inferred yesterday, Mr. Fullerton that for some years there was an association of several tap lines, th association not taking the form of an incorporation or formal organ zation, and the tap lines that were in this association were controlle by certain lumber companies whose entire output was sold throug the Colonial Lumber Company. Now whether that explanation correct or not, I do not know, but have you ever heard of the Col nial Lumber Company?

Mr. Fullerton: Yes, sir, the Colonial Lumber & Timber Com pany.

Examiner Burchmore: Are you or have you been an officer stockholder in that company?

Mr. Fullerton: I never have been an officer.

Examiner Burchmore: You have been a stockholder?

Mr. Fullerton: We bought out the Colonial Lumber & Timbe Company I think about the first of 1907.

Examiner Burchmore: In connection with that purchase of th Colonial Lumber & Timber Company you were not advised of th prior existence of any so-called Colonial System of tap lines

1976 Mr. Fullerton: No.

Examiner Burchmore: What was the nature of the bus ness of the Colonial Lumber & Timber Company?

Mr. Fullerton: They had interests in certain manufacturing in dustries and bought and sold lumber.

Examiner Burchmore: They did not manufacture lumber?

Mr. Fullerton: Yes, they manufactured it, that is through sub sidiary companies, not directly.

Examiner Burchmore: That was a holding and selling company

Mr. Fullerton: Yes, sir.

Examiner Burchmore: Then you are not able to enlighten th Commission with respect to the so-called Colonial System?

Mr. Fullerton: No, I do not know anything about it.

Examiner Burchmore: Do you know anyone who might be able t enlighten the Commission?

Mr. Fullerton: M. L. Fleishel, who was President of the Colonia Lumber & Timber Company might be able to do so. He was th man, we bought out his holdings in the Colonial Lumber & Timbe Company.

Examiner Burchmore: Does counsel desire to address any que tions to the witness in this connection?

1977 Mr. Cowan: Just with respect to the Colonial Lumber Com pany?

Examiner Burchmore: Just in that connection.

Mr. Cowan: Just in that connection only, none that I know of.

(Witness excused.)

M. L. FLEISHEL, called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Can you inform the Commission with respect to this system of tap lines?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: Please make such explanation as you can.

Mr. Fleishel: The Colonial Railway System was composed of a number of short line railroads that were the property of several lumber companies of which I was an officer. The name of Colonial System was simply used as a trade name for convenience; it was not an incorporated system, and had no significance other than the combining of those different railroads under one heading for convenience. That is about all there is to it. I was an officer of those several short line railroads myself.

1978 Examiner Burchmore: You were an officer of each of those railroads?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: Was the Bernice & Northwestern one of those roads?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: The Warren, Johnsville & Saline River?

Mr. Fleishel: No.

Examiner Burchmore: Was the Tioga & Southeastern?

Mr. Fleishel: No.

Examiner Burchmore: Was the Shamrock & Western?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: Was the Mill Creek & Little River Railroad & Navigation Company a member?

Mr. Fleishel: I think it was; I am not positive; either that or the Boston & Little River.

Examiner Burchmore: Was the Little Rock, Sheridan & Saline River Railway?

Mr. Fleishel: No.

Examiner Burchmore: The Sabine & Little River?

1979 Mr. Fleishel: No, sir.

Examiner Burchmore: Were there any other companies in that system?

Mr. Fleishel: I think we were interested in a road over in Alabama about that time, and I am not sure but that was under that heading, but that was never an incorporated road.

Examiner Burchmore: And these lumber companies or tap lines were owned or controlled by substantially the same financial interests?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: Any further questions by counsel?

Mr. Cowan: Which three or four or whatever it was formed the Colonial System?

Mr. Fleishel: I think the Bernice & Northwestern, the Shamrock & Western, and I think the Mill Creek & Little River Railroad & Navigation Company, and at that time the Dorcheat, the Blackman & Dorcheat, I think it was.

Mr. Cowan: What were the lumber companies served by each of those roads?

Mr. Fleishel: The Bernice Lumber Company and the Brown Lumber Company.

Mr. Cowan: Which one served the Brown Lumber Com-
1980 pany?

Mr. Fleishel: The Shamrock & Western.

Examiner Burchmore: The Little River Lumber Company owns the Mill Creek & Little River Railroad?

Mr. Fleishel: Yes, sir, substantially.

Mr. Cowan: What others?

Mr. Fleishel: The Vredenburg Sawmill Company own the road in Alabama. The Bernice Lumber Company, the Brown Lumber Company, and the Valley Lumber Company, and the Blackman & Dorcheat.

Examiner Burchmore: The Dorcheat Company and the Brown Lumber Company were controlled by the Chicago Lumber & Coal Company?

Mr. Fleishel: No.

Examiner Burchmore: Who did control those companies?

Mr. Fleishel: I did personally. The Chicago Lumber & Coal Company had nothing to do with them at that time. You understand this Colonial Railway System has had no existence of any kind for something over four years, I think.

Mr. Cowan: When it did have existence, the purpose of it was to handle the business passing over it somewhat as a unit?

1981 Mr. Fleishel: Well, yes.

Mr. Cowan: And that I assume was for the purpose of being able to get as good divisions from the trunk lines as you could?

Mr. Fleishel: No, the majority of them got no divisions whatever. During the years of the Colonial System I do not think any of those roads got any division.

Mr. Cowan: What could have been the purpose of it?

Mr. Fleishel: We expected to, and we hoped to, but we never did get them. The Bernice & Northwestern in later years and the Mill Creek & Little River Company in later years got divisions but the others never did get any.

Mr. Cowan: There was no other purpose of having the railroads operate under a particular name?

Mr. Fleishel: We incorporated most of those roads with the expectation of complying with the law and getting divisions, but we never did do it. I sold them out about that time, and never did follow them up.

Mr. Cowan: At the present time are those lumber companies which you mentioned still operating the railroads you mentioned?

Mr. Fleishel: Well, I do not know. The lumber compa-
1982 nies are not any more—they sold their properties out to railroad corporations.

Mr. Cowan: They have gone out of existence, have they?

Mr. Fleishel: No, the railroads have not. Some of them have, all but two have.

Mr. Cowan: What two?

Mr. Fleishel: The Bernice & Northwestern and the Mill Creek & Little River Railway & Navigation Company.

Mr. Cowan: And that was because the timber was cut out, I assume, in the other cases?

Mr. Fleishel: No.

Mr. Cowan: Did they sell out to some other company?

Mr. Fleishel: Yes.

Mr. Cowan: What companies own them now?

Mr. Fleishel: The timber was sold at Cotton Valley, and the Dorcheat Company's timber was sold, surrounding that country, to the Porter-Wadley Lumber Company. The Brown Lumber Company is still operating and will be for a good many years.

Mr. Cowan: Does it operate the same railroad?

Mr. Fleishel: Yes.

Mr. Cowan: Does that railroad now get divisions?

1983 Mr. Fleishel: No.

Mr. Cowan: Do any of the railroads which are in this list of the Colonial Line now operate or get divisions?

Mr. Fleishel: Yes, the Bernice & Northwestern and the Mill Creek & Little River Railway & Navigation Company.

Mr. Cowan: The Mill Creek & Little River Railway & Navigation Company has been heard?

Mr. Fleishel: Both of them have been heard.

Mr. Cowan: Both of them have been heard?

Mr. Fleishel: Yes.

Mr. Cowan: At present there is no relation between them whatever?

Mr. Fleishel: No.

Mr. Cowan: That Colonial Company had no reference to the handling of the lumber, that is the selling of the lumber?

Mr. Fleishel: The Colonial Lumber & Timber Company sold the bulk of the lumber in those days. It was a wholesale company.

Mr. Cowan: And they practically handled the output as a common sales agent company?

Mr. Fleishel: Yes.

Mr. Cowan: Does that company still operate?

1984 Mr. Fleishel: I think it does. I am not at the head of it any longer.

(Witness excused.)

1985 Examiner Burchmore: Is the Antoine Valley Railroad before the Commission?

(No response.)

Examiner Burchmore: Is counsel present for the Memphis, Dallas & Gulf?

(No response.)

Examiner Burchmore: I may state into the record that we were informed yesterday that the Antoine Valley Railroad had been absorbed by the Memphis, Dallas & Gulf. I understand also that

the Memphis, Dallas & Gulf has absorbed the Ultima Thule, Arkadelphia & Mississippi Railway. Is the Mississippi Valley Railroad present?

(No response.)

Mr. Ziebold: Is that road in Arkansas, connecting the Iron Mountain?

Examiner Burchmore: No, that is the other company. I understand you represent the Mississippi Valley Railway.

Mr. Ziebold: Yes.

Examiner Burchmore: That will be called later in the morning. Is the Paragould & Memphis present? An appearance has been filed for that company, by Mr. John B. Daish.

1986 Is the Portland & Southeastern Railway present? A letter has been received from that company and will be filed of record. The letter indicates that they will not appear.

(The letter is as follows:)

DEC., 13, 1910.

Commissioner Harlan, Grunewald Hotel, New Orleans, La.

DEAR SIR: Owing to circumstances over which we have no control it will be impossible for us to be present at the meeting now being held by your Commission.

We own and operate, according to the enclosed schedule, a line of railroad from Portland, Arkansas, to Albritton, Arkansas. This road is standard gauge and has been constructed at great expense, as a permanent road. It now is serving the people and persons engaged in timber and lumber business along its right of way with freight facilities. Several manufacturing establishments being already in operation and quite a number have contracted for the construction of mills and factories. Others are seeking locations in the vicinity of our road for the purpose of engaging in the

1987 manufacturing business.

We have applied for a United States mail contract and the Government Inspector has examined the road and its equipment and facilities and has approved the application.

This road is not a logging road, but was constructed and equipped and is now being operated as a regular railroad engaged in the business of transporting freight and passengers to and from various points along its lines and thereby accommodating the general public with freight and passenger service.

We have a schedule of freight tariffs on file with your Commission and concur in and conform to the tariff of rates of the St. Louis, Iron Mountain & Southern Railroad with which we connect at the City of Portland, Arkansas, and we further concur in the rates as promulgated and published by the Railroad Commission of the State of Arkansas.

We are arranging to continue the extension of our road southwardly to connect with the Queen & Crescent at Delhi or at some other point, and also to extend the road to Lake Providence, on the

Mississippi River Financial arrangements are now under way looking towards the raising of funds for this purpose.

1988 In view of the foregoing, we beg to advise that the charter of our company was issued by the State of Arkansas and we are a railroad within the full intent and meaning of the statute authorizing the building and operation of railroads in the State of Arkansas.

For some time past we have been making, and are now making our regular monthly reports to your Commission at Washington, as required by the United States statutes.

In the event your Commission should decide that our company is not a common carrier we shall have gone to an unnecessary expense in constructing the road in such substantial manner as would conform to the essential elements of a common carrier. We, therefore, trust that you will make no decision unfavorably affecting our company or its property and which does not recognize it as a public carrier.

Should you desire further information in regard to it, we will hold ourselves in readiness to at any time furnish same.

The officers of the company desire to express their regrets in being unable to be present either in person or by their representative.

Very truly yours,

1989 PORTLAND SOUTHEASTERN RAILWAY COMPANY,
By SAM B. JEFFRIES,
Vice Pres. & General Counsel."

Examiner Burchmore: Is the Wilmar & Saline Valley present?

Mr. Riddell: Mr. Judson is coming here to represent that road. I understand his train has been delayed. He will make his appearance later.

Examiner Burchmore: It was agreed that that case would be deferred until noon, as I recall it.

The Lake Charles Railway & Navigation Company.

Mr. Porter: Counsel are not present for that road this morning.

Examiner Burchmore: Are there any other Iron Mountain connections present who have not been heard or called?

(No response.)

Examiner Burchmore: The Anderson & Saline River Railway.

(No response.)

Examiner Burchmore: The Blytheville, Leachville & Arkansas Southern. The attorney for that road is now trying a case before Examiner Boyle, and this case will be deferred until he concludes that examination.

Examiner Burchmore: The Bearden & Ouachita River
1990 Railroad.

Mr. Beland: I represent that road. Mr. Walter is counsel.

(At this point Mr. Luther M. Walter appeared.)

Mr. Walter: We are ready for that case and our principal witness will also be a witness in the Thornton & Alexandria.

Examiner Burchmore: We will proceed with the Bearden & Ouachita River.

The Delhi, Baskin & Southwestern Railway Company.

Mr. G. W. Smith: I appear for that road, and I will state that at this time the Delhi, Baskin & Southwestern withdraws objections to cancellations of these tariffs, reserving the right, of course, to make application to the Commision to have the same reinstated in the future.

Examiner Burchmore: The Delhi, Baskin & Southwestern connects with the Iron Mountain?

Mr. Smith: Yes, sir.

Examiner Burchmore: And I understand it is willing to relinquish divisions on lumber, but wishes to reserve the rigght later if they be established.

Mr. Smith: Yes, sir.

Examiner Burchmore: That statement will be noted of record without any understanding, however, that that right will be reserved to it.

1991 Mr. Smith: I understand that perfectly.

Bearden & Ouachita River Railroad Company.

J. H. BELAND was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Mr. Beland, you are an officer of the Bearden & Ouachita River Railroad?

Mr. Beland: Yes, sir.

Examiner Burchmore: What is your office?

Mr. Beland: Vice-president and manager.

Examiner Burchmore: Our understanding is that the Bearden & Ouachita River Railroad is controlled by the Cotton Belt Lumber Company, through the ownership of capital stock. Is that correct?

Mr. Beland: The same stockholders are practically the same for the lumber company as for the railroad, but two separate corporations.

Examiner Burchmore: They are separate corporations, but the stock is held by the same people?

Mr. Beland: Practically so.

Examiner Burchmore: Do those stockholders hold their
1992 stock in the two companies in the same proportion?

Mr. Beland: Yes, sir.

Examiner Burchmore: Where are the mills of the Cotton Belt Lumber Company located with reference to this line?

Mr. Beland: At Best, Arkansas.

Examiner Burchmore: There is but one mill?

Mr. Beland: One mill.

Examiner Burchmore: Is there a saw mill and planing mill?

Mr. Beland: Saw mill and planing mill.

Examiner Burchmore: The plant is located directly on the rails of the St. Louis Southwestern Railway, as well as on the rails of the Bearden & Ouachita River Railroad?

Mr. Beland: It is not on the right of way of the railroad.

Examiner Burchmore: But it immediately adjoins the right of way?

Mr. Beland: It does.

Examiner Burchmore: The junction with the Cotton Belt is at Best, Arkansas?

Mr. Beland: Yes.

Examiner Burchmore: Does this railroad intersect any other common carrier railroad?

Mr. Beland: No.

1993 Examiner Burchmore: I understand that the Bearden & Ouachita River Railroad runs in a southerly direction from Best for a distance of about 15 miles to Caney.

Mr. Beland: 14 miles absolutely due south.

Examiner Burchmore: And at Caney a private tram road owned by the Cotton Belt Lumber Company extends on in a southerly direction for a number of miles?

Mr. Beland: Practically in all directions, east, west and south of Caney.

Examiner Burchmore: What is the mileage of that private tram road?

Mr. Beland: Well, from half a mile to eight miles; it varies, where the logging is done.

Mr. Beland: I believe we have about eight or nine miles of steel.

Examiner Burchmore: What is the character of the territory traversed by the Bearden & Ouachita River Railroad?

Mr. Beland: Pine flat land.

Examiner Burchmore: Are there any farms along the way?

Mr. Beland: Yes, sir.

1994 Examiner Burchmore: Would you describe it as being in part of a farming country?

Mr. Beland: It is.

Examiner Burchmore: How many farms are on or near the line?

Mr. Beland: For a distance out from Best to 12 miles there are numerous farms all through there.

Examiner Burchmore: Beyond that point it is exclusively a timber country?

Mr. Beland: A few scattered homesteads.

Examiner Burchmore: Are there any other saw mills or milling operations on or near the line of this railroad?

Mr. Beland: None.

Examiner Burchmore: Then the Cotton Belt Lumber Company owns the only saw mill that this road serves?

Mr. Beland: Yes, sir.

Examiner Burchmore: Do these farmers manufacture staves or other forest products?

Mr. Beland: Occasionally they do.

Examiner Burchmore: How much of the timber land or what

proportion of the land and stumpage rights in the territory served by this company is owned or controlled by the Cotton Belt Lumber Company?

1995 Mr. Beland: Well, from eight miles out from Best I suppose 75 per cent of the land within a mile or two of the railroad track is owned by the lumber company.

Examiner Burchmore: Practically all of the timber is owned?

Mr. Beland: Yes.

Examiner Burchmore: So that the 25 per cent of the land which is not owned by this lumber company is not timber land?

Mr. Beland: No, sir.

Examiner Burchmore: Was that land formerly held by the lumber company and then disposed of by other people?

Mr. Beland: Some of it has and some has been cleared for farming.

Examiner Burchmore: When was this railroad constructed, or when was the first construction?

Mr. Beland: I suppose 15 or 18 years ago.

Examiner Burchmore: At that time it was merely a logging road?

Mr. Beland: Yes, sir.

Examiner Burchmore: By whom was the railroad constructed?

Mr. Beland: The lumber company.

Examiner Burchmore: When was this mill at Best opened?

Mr. Beland: About 1885.

1996 Examiner Burchmore: Previous to the building of any part of the railroad?

Mr. Beland: Yes, sir.

Examiner Burchmore: Then I assume that this railroad was constructed originally, or the first construction of this railroad was for the purpose of serving the mill at Best with logs?

Mr. Beland: Yes, sir.

Examiner Burchmore: When was it incorporated as a railroad?

Mr. Beland: June, 1904.

Examiner Burchmore: Previous to that time had it received any divisions out of joint rates on lumber?

Mr. Beland: My recollection is that it had, although I am not sure.

Examiner Burchmore: It was at that time incorporated as a common carrier railroad under the laws of that state?

Mr. Beland: Yes, sir.

Examiner Burchmore: And it has since held itself out to the public as a common carrier?

Mr. Beland: We take care of any business that is offered us.

Examiner Burchmore: What was the purpose of the in-

1997 corporation of this railroad company?

Mr. Beland: It is my recollection that we could not receive a freight proportion unless we were an incorporated road.

Examiner Burchmore: What was the capital stock of this railroad company at the time of its organization?

Mr. Beland: $28,000.

Examiner Burchmore: Was that entire amount issued at the time?

Mr. Beland: Yes, sir.

Examiner Burchmore: What was the authorized capital stock at that time?

Mr. Beland: $28,000.

Examiner Burchmore: Has there been any capital stock issued since that time?

Mr. Beland: No.

Examiner Burchmore: So the present capital stock is $28,000?

Mr. Beland: Yes, sir.

Examiner Burchmore: Was that stock issued in the beginning for cash?

Mr. Beland: There was a dividend declared by the lumber
1998 company when the railroad was sold.

Examiner Burchmore: When the railroad was sold to the railroad comporation?

Mr. Beland: Yes, sir.

Examiner Burchmore: And that dividend, instead of being in cash, took the form of stock in the railroad company?

Mr. Beland: Practically so.

Examiner Burchmore: The present officers of the two companies, I understand, are identical.

Mr. Beland: About.

Examiner Burchmore: They have the same president?

Mr. Beland: Yes, sir.

Examiner Burchmore: The same vice-president?

Mr. Beland: Yes, sir.

Examiner Burchmore: The same secretary?

Mr. Beland: Yes, sir.

Examiner Burchmore: The same treasurer?

Mr. Beland: Yes, sir.

Examiner Burchmore: And do they have the same traffic manager?

Mr. Beland: Well, the secretary acts as traffic manager.

Examiner Burchmore: Of both companies?

1999 Mr. Beland: Of both companies.

Examiner Burchmore: Are there any officers of the railroad company who receive salaries from the railroad company?

Mr. Beland: Yes, sir.

Examiner Burchmore: What officers are those and what are their salaries?

Mr. Beland: I think the president receives about $50 a month. I receive $50. The secretary $50.

Examiner Burchmore: And the treasurer?

Mr. Beland: Nothing. Also the lumber company's woods foreman, about $60 of his salary is charged to the railroad. He acts as agent at Caney.

Examiner Burchmore: This woods foreman acts as station agent.

Mr. Beland: Yes, sir.

Examiner Burchmore: Does he perform a substantial service for which he should be paid $60 a month?

Mr. Beland: He performs a service of checking all the stock in and out that is shipped to the people about the country.

Examiner Burchmore: What proportion of his time is devoted to railroad service?

Mr. Beland: It would be hard to say.

2000 Examiner Burchmore: Half of his time?

Mr. Beland: No, not a third.

Examiner Burchmore: What salary does he receive from the lumber company?

Mr. Beland: $150 a month.

Examiner Burchmore: Then the salary is supposed to be divided between the two companies in the same proportion that his service is divided?

Mr. Beland: About.

Examiner Burchmore: Do these other officers of the railroad company render any actual service to the company for which they should receive these salaries?

Mr. Beland: Practically not.

Examiner Burchmore: They serve it only nominally?

Mr. Beland: Yes, sir.

Examiner Burchmore: And their salaries, I presume, are inconsiderable in comparison to their salaries from the lumber company?

Mr. Beland: Yes.

Examiner Burchmore: These paid officers are all stockholders in the lumber company with the exception perhaps of this woods foreman?

2001 Mr. Beland: Yes, they are all excepting the woods foreman.

Examiner Burchmore: The main line mileage of this railroad is 14 miles?

Mr. Beland: Yes sir.

Examiner Burchmore: How many miles of siding has it?

Mr. Beland: It has only a few hundred feet.

Examiner Burchmore: Is it standard or narrow gauge, and what is the weight of the rail?

Mr. Beland: Standard gauge 35 pound steel.

Examiner Burchmore: From whom was that steel obtained?

Mr. Beland: Some from the Illinois Steel Company and some from the Carnegie Steel Company.

Examiner Burchmore: None of that rail was furnished by the Cotton Belt System of railroad?

Mr. Beland: None.

Examiner Burchmore: What rate of freight did you pay to get that steel to Best, a special rate published by the carrier to take care of that particular movement or movements?

Mr. Beland: I think the last rails we purchased were all bought delivered from the steel company.

Examiner Burchmore: Does this company hold any trackage rights over the rails of other companies?

Mr. Beland: No, sir.

Examiner Burchmore: Do the engines of the Cotton Belt at any time pass over the rails of this company?

Mr. Beland: The engines of the Cotton Belt?

Examiner Burchmore: Yes.

Mr. Beland: No, sir; the Cotton Belt Lumber Company owns no engines.

Examiner Burchmore: I mean the Cotton Belt Railroad.

Mr. Beland: No.

Examiner Burchmore: You connect with the Cotton Belt Railroad?

Mr. Beland: Yes.

Examiner Burchmore: What is the nature of the construction of this railroad; is it well built with substantial bridges?

Mr. Beland: Yes, sir.

Examiner Burchmore: And easy grades?

Mr. Beland: Yes.

Examiner Burchmore: How is it ballasted?

Mr. Beland: It is simply surfaced with the earth thrown up from the dumps.

Examiner Burchmore: Is the character of the country such that cuts and fills are necessary?

Mr. Beland: Only slight.

Examiner Burchmore: Where necessary you have made such cuts and fills?

Mr. Beland: Yes, sir.

Examiner Burchmore: How many locomotives are there?

Mr. Beland: Three.

Examiner Burchmore: How many freight cars and what is their class?

Mr. Beland: We only have but one box car, a small box car with about 50 logging cars.

Examiner Burchmore: You call that box car a passenger car, do you not?

Mr. Beland: No.

Examiner Burchmore: Haven't you got a passenger car?

Mr. Beland: No.

Examiner Burchmore: You had one?

Mr. Beland: No, sir. You are mixing it up with the T. & A., I expect.

Examiner Burchmore: We have on our list one combination passenger and freight car.

Mr. Beland: No.

Examiner Burchmore: That is the box car to which you refer?

Mr. Beland: That is the box car. Well, it is used as a caboose, and also hauling the local stuff to and from Caney.

Examiner Burchmore: Is this locomotive equipped with safety devices?

Mr. Beland: No.

Examiner Burchmore: It has not air brakes or automatic couplers?

Mr. Beland: No.

Examiner Burchmore: How about the box car?

Mr. Beland: It is not.

Examiner Burchmore: Do not the safety appliance laws of Congress require your company to equip its cars and engines with air brakes and other safety devices?

Mr. Beland: I think so.

Examiner Burchmore: Why have you not complied with that requirement, if there is any special reason?

Mr. Beland: We have not done any interstate business.

Examiner Burchmore: You have not done an interstate business?

Mr. Beland: No, that is, outside of our logs.

Examiner Burchmore: Have you any station buildings?

2005 Mr. Beland: No, sir.

Examiner Burchmore: You have stations, however?

Mr. Beland: We have a sort of a warehouse that is owned by the Cotton Belt Lumber Company.

Examiner Burchmore: Where is that located?

Mr. Beland: Best.

Examiner Burchmore: Is the road equipped with telegraph or telephone service?

Mr. Beland: No.

Examiner Burchmore: How many track crews have you at work on the line?

Mr. Beland: We have one at present.

Examiner Burchmore: Sometimes have two or three?

Mr. Beland: Yes.

Examiner Burchmore: Do those track men at any time work on the private tram road of the Cotton Belt Lumber Company?

Mr. Beland: No, sir.

Examiner Burchmore: Is it not a fact that they keep that road in good repair and maintain it?

Mr. Beland: No, we have a separate section crew for the Bearden & Ouachita River.

Examiner Burchmore: Do not the same men comprise

2006 both crews?

Mr. Beland: No.

Examiner Burchmore: Have you any station employees other than this woods foreman to whom you refer?

Mr. Beland: No, sir.

Examiner Burchmore: How many train crews have you?

Mr. Beland: One.

Examiner Burchmore: How do you operate three locomotives with one train crew?

Mr. Beland: The train crew of the main line is charged to the railroad. The other crews are furnished by the lumber company on the spur.

Examiner Burchmore: Are there any employees in the general

offices of the railroad company other than the officers to whom reference has been made?

Mr. Beland: No.

Examiner Burchmore: Do the clerks of the lumber company perform any clerical work for the railroad company?

Mr. Beland: Only the secretary of the lumber company, as I mentioned a while ago.

Examiner Burchmore: Then there are no clerks of the lumber company who work for the railroad company?

2007 Mr. Beland: No.

Examiner Burchmore: And the railroad company has no clerks other than the gentlemen already mentioned?

Mr. Beland: That is right.

Examiner Burchmore: Do you run any passenger or mixed train?

Mr. Beland: We carry passengers, but no charge is made for the service.

Examiner Burchmore: Then you do not carry passengers for hire?

Mr. Beland: No.

Examiner Burchmore: Is the road incorporated merely as a freight carrier?

Mr. Beland: I could not say as to that.

Examiner Burchmore: Are the trains run on a regular schedule?

Mr. Beland: There is a trip made some time in the forenoon and sometime in the afternoon.

Examiner Burchmore: But there is no published time table?

Mr. Beland: No.

Examiner Burchmore: You do not carry any mail or express matter?

Mr. Beland: No, sir.

2008 Examiner Burchmore: Are you able to give the figures for your total freight tonnage for the last fiscal year, or for any other defined period of time?

Mr. Beland: I think the past fiscal year was something like 58,000 tons. I am not sure as to that.

Examiner Burchmore: That is a slight increase over the tonnage for the preceding year?

Mr. Beland: I do not know.

Examiner Burchmore: It seems to be, if the figures we have for the previous year are correct and your figures also are correct. About 95 per cent of that tonnage was lumber, was it not?

Mr. Beland: Logs.

Examiner Burchmore: What other commodities did you handle?

Mr. Beland: An occasional car of cotton, fertilizer, feed and some groceries, local.

Examiner Burchmore: Does the Cotton Belt Lumber Company have any commissaries along the line of this road?

Mr. Beland: Only at Best.

Examiner Burchmore: Is that commissary located adjacent to the right of way of the St. Louis Southwestern Railroad?

Mr. Beland: Yes, sir.

2009 Examiner Burchmore: Does any of the freight intended for that commissary ever pass over the rails of the Bearden & Ouachita River Railroad for any distance?

Mr. Beland: No.

Examiner Burchmore: So this railroad is never interested in any way in traffic for the commissary?

Mr. Beland: No.

Examiner Burchmore: Does it handle any other traffic of any kind at any time for the lumber company?

Mr. Beland: Groceries, and such as that; that go to our log camps.

Examiner Burchmore: Do you charge any freight for that?

Mr. Beland: There is a charge made.

Examiner Burchmore: What is that charge, your regular local freight charge?

Mr. Beland: Yes, sir, I think it is.

Examiner Burchmore: It is the Arkansas Commission tariff, as applied to your road?

Mr. Beland: I think so.

Examiner Burchmore: You handle no lumber or forest products for shippers other than the Cotton Belt Lumber Company?

Mr. Beland: An occasional car of staves and cotton seeds.

2010 Examiner Burchmore: I asked with respect to forest products. What is the volume of staves which moves during the year, two or three carloads?

Mr. Beland: Yes, sir.

Examiner Burchmore: You did not have as many as that last year, did you?

Mr. Beland: I don't remember.

Examiner Burchmore: Will you furnish for the information of the Commission a statement for the year ending June 30, 1910, showing the total tonnage of logs handled for the account of the Cotton Belt Lumber Company, showing separately the total amount of merchandise or other traffic handled for the same company, showing also separately the total traffic handled for persons or firms in whom the Cotton Belt Lumber Company has no interest? You may subdivide the latter figure in any manner you choose, to show the total of staves and cotton, if that is desired, and give also the revenue on each class of this traffic. Can you prepare and furnish such a statement to the Commission?

Mr. Beland: Can we furnish that?

Examiner Burchmore: Yes.

Mr. Beland: I could not right here.

2011 Examiner Burchmore: I mean within the next fortnight, or so.

Mr. Beland: I think so.

Examiner Burchmore: We request that such a statement be forwarded to the Commission for filing in this record, and if possible, I would request that copies of all these statements be furnished to counsel for the trunk line with which the company connects and also to Judge Cowan, representing the intervenors.

Mr. Cowan: I make the suggestion, Mr. Examiner, that a formal request embodying what you have just said, be handed to all of the various tap lines who have been examined and who will be examined, and that when such a statement is furnished, that inasmuch as they are very short, as a general proposition, only covering a page or such a matter, that the Commission make an exception of the rule of not copying the exhibits, but let them be copied in the record. The difficulty is to ever find it when you go to look up the record, unless it appears in connection with the testimony.

Examiner Burchmore: It will be impossible to have these statements copied into the record at the point where the transcript of the witnesses' testimony appears, but your request will be
2012 noted on the record, and I think the Commission will make a written request on all the tap lines for such statement.

Mr. Thurmond: Where shall we send those?

Examiner Burchmore: They should be addressed to the secretary of the Interstate Commerce Commission at Washington, and reference should be made to this case. You have no published passenger farse?

Mr. Beland: No.

Examiner Burchmore: Do you file with the Commission any tariffs naming local rates on your line on logs or commodities or classes?

Mr. Beland: Yes, sir.

Examiner Burchmore: Those rates are applicable to interstate movements in the absence of joint through rates?

Mr. Beland: I think it only applies on lumber.

Examiner Burchmore: You have not any local class tariff?

Mr. Beland: No, sir.

Examiner Burchmore: Is your company a party to joint through class rates published by the St. Louis Southwestern Railroad, and applying from interstate points to points on your line?

2013 Mr. Beland: Yes, sir.

Examiner Burchmore: What is your division of those joint rates on class freight?

Mr. Beland: One to two and a half cents.

Examiner Burchmore: Is that division adequate?

Mr. Beland: We do not think so.

Examiner Burchmore: What stations are there on your line other than Best?

Mr. Beland: Caney; that is the end of the road.

Examiner Burchmore: What are the joint rates on class freight from Caney to interstate destinations; that is to say, are they the same as the local rates published by the St. Louis Southwestern from its station at Best, or are they higher than those rates?

Mr. Beland: The same.

Examiner Burchmore: I refer now to rates on class freight, merchandise.

Mr. Beland: We have no through rates at all.

Examiner Burchmore: You have no joint rates on merchandise or class freight?

Mr. Beland: No.

Examiner Burchmore: You just said you did have, as I
2014 understood you?

Mr. Beland: Only on lumber, carloads.

Examiner Burchmore: You have no joint rates on anything except lumber or logs?

Mr. Beland: No.

Examiner Burchmore: How do you move these shipments of staves that you have; are they shipped locally to Best?

Mr. Beland: Locally to Best. We charge the Arkansas distance tariff.

Examiner Burchmore: They are never billed to St. Louis or from St. Louis?

Mr. Beland: No.

Examiner Burchmore: You sometimes have movements of merchandise, do you not, over your line from Best to Caney which have originated at St. Louis or some other interstate point, and which are tendered to you at Best by the St. Louis Southwestern agent?

Mr. Beland: All stuff that has been shipped over our road has been billed to Best and rebilled from Best over our road, charging the local rate, the Court tariff.

Examiner Burchmore: It may be rebilled at Best, but as a matter of fact, who gives you the goods, the agent of the St.
2015 Louis Southwestern Railroad?

Mr. Beland: The party to whom it is consigned.

Examiner Burchmore: Nothing is handled, then, from interstate points to points on your line under a through arrangement without the intervention of the shipper's hand at Best?

Mr. Beland: That is right.

Examiner Burchmore: With respect to lumber, have you any joint through rates on forest products from Caney to interstate destinations in connection with the St. Louis Southwestern Railroad?

Mr. Beland: Not from Caney.

Examiner Burchmore: Then you have no joint through rates from Caney of any kind?

Mr. Beland: Unless it would be from the lumber. As I understand, that is a milling in transit proposition.

Examiner Burchmore: That is what I am trying to get at. Have you any joint through rates on lumber or forest products from Caney to destination?

Mr. Beland: This division or proportion we are getting, I do not know whether that applies from Caney or Best.

Examiner Burchmore: Have you a milling in transit arrangement on your line?

2016 Mr. Beland: Yes, sir, we suppose that proportion is a milling in transit.

Examiner Burchmore: Can you have milling in transit without having a joint rate into that place?

Mr. Walter: Is not that tariff on file, and would not that be the best answer?

Examiner Burchmore: Judge Cowan and the other gentlemen have not access to it, and we want to get it in the record. Are you informed as to it, Mr. Walter?

Mr. Walter: Not as to that particular tariff.

Examiner Burchmore: I think it is of some importance as to whether they apply from Caney or only apply from Best. Have you the tariff with you?

Mr. Beland: No, I have not.

Mr. Walter: The Cotton Belt tariff, as I understand, provides for milling in transit from this point of origin, and the shipping point at Best.

Examiner Burchmore: Do the rates on the Cotton Belt apply in any case from Caney?

Mr. Walter: It applies on any logs originating on that line, converted into lumber at Best, from any point.

Examiner Burchmore: I presume that is correct, but that
2017 statement may be verified by a reference to the tariffs on file with the Commission.

Mr. Walter: Yes.

Examiner Burchmore: What is the amount of the divisions which this company receives on lumber handled on joint rates with the St. Louis Southwestern Railway?

Mr. Beland: One to two and one-half cents.

Examiner Burchmore: Is two and a half cents the highest division you have ever received on lumber?

Mr. Beland: Yes, sir.

Examiner Burchmore: How long have you been receiving as much as two and a half cents per hundred pounds?

Mr. Beland: I wish to state that at one time we did receive three cents on shipments to Texas local points: that is, on the Cotton Belt Railroad.

Examiner Burchmore: I thought so. When was that three cent division withdrawn or reduced?

Mr. Beland: I think something like a year ago; I am not sure.

Examiner Burchmore: Was there not a time when you received four cents on certain traffic?

Mr. Beland: No, sir, not that I know of.

2018 Examiner Burchmore: You would know if you had received such division?

Mr. Beland: I think so.

Examiner Burchmore: You receive a division of from one to two and a half cents at the present time, and formerly you received as much as three cents on certain traffic. What service do you render for that division?

Mr. Beland: The hauling of the logs from the woods to Caney; you might say delivering the logs to the mill.

Examiner Burchmore: And that is all?

(No response.)

Examiner Burchmore: As to your method of handling logs, and lumber, reference has been made to some private spur tracks or tram lines belonging to the Cotton Belt Lumber Company up in the woods. Who owns the steel rail in those tracks?

Mr. Beland: The lumber company.

Examiner Burchmore: Did they purchase that rail from this lumber company?

Mr. Beland: No, sir. They reserved the rail. What rail was bought for the lumber company was charged to the lumber company and paid for by them.

2019 Examiner Burchmore: But all the rail was bought at one time?

Mr. Beland: Not all of it. It was bought from time to time.

Examiner Burchmore: And was the price paid by the lumber company for its rail the same as the price paid by the railroad company for its rail?

Mr. Beland: Different markets——

Examiner Burchmore: When purchased at the same time?

Mr. Beland: There was never any bought at the same time for both companies.

Examiner Burchmore: How did they reserve certain of the rail for the lumber company? Did the purchasing agent of the lumber company do the purchasing for the railroad company?

Mr. Beland: Yes, sir.

Examiner Burchmore: Does the lumber company get a commission on all those purchases?

Mr. Beland: No, sir.

Examiner Burchmore: They charge them over to the railroad company at cost?

Mr. Beland: Yes, sir.

Examiner Burchmore: The history of those transactions is

2020 all shown in the books of the lumber company as well as the railroad company?

Mr. Beland: Yes, sir, all in the lumber company, they are. We have purchased no rail for three or four years.

Examiner Burchmore: Does the lumber company own any locomotives?

Mr. Beland: No.

Examiner Burchmore: It leases two locomotives from the railroad company?

Mr. Beland: Yes, sir.

Examiner Burchmore: What is the compensation paid for those locomotives?

Mr. Beland: The railroad company owns all of the locomotives. They are not leased by the lumber company. If I said that I was mistaken.

Examiner Burchmore: You said they owned three locomotives.

Mr. Beland: The railroad company.

Examiner Burchmore: You said they only had one train crew.

Mr. Beland: Yes, sir.

Examiner Burchmore: How do they operate three with one train crew?

Mr. Beland: The locomotive is owned by the railroad, and
2021 the train crews on two of the locomotives are the lumber company's employees.

Examiner Burchmore: If the lumber company hires the train crew and the locomotives that those crews operate are the property of the railroad company, there must be some arrangement between the two as to those locomotives. Now what is it?

Mr. Beland: Well, there is an agreement of some kind. I think a copy of that is filed with the Commission.

Examiner Burchmore: I do not seem to find a copy of it in our files here this morning. What is the compensation that the railroad company receives for the use of its property? Is it a charge on the logs or a payment from it?

Mr. Beland: It is a small charge on the logs.

Examiner Burchmore: Then that compensation takes the form of a charge on the logs, and not a charge per day for the use of the locomotives?

Mr. Beland: Yes, sir.

Examiner Burchmore: Who furnishes the fuel that those locomotives burn?

Mr. Beland: The lumber company furnishes the fuel for the switch engine, and the railroad company furnishes the fuel on the main line.

2022 Examiner Burchmore: For two locomotives?

Mr. Beland: One on the main line and two in the woods; those two in the woods are not always in operation.

Examiner Burchmore: When in operation they burn wood furnished by the lumber company?

Mr. Beland: Yes, sir.

Examiner Burchmore: And the one on the main line burns fuel furnished by the railroad company?

Mr. Beland: Yes, sir.

Examiner Burchmore: I assume the logs are loaded on the cars by lumber company employees in the woods?

Mr. Beland: Yes, sir.

Examiner Burchmore: The crew employed by the lumber company takes those cars from the place where they are loaded down to the connection of the main line of the railroad?

Mr. Beland: Yes, sir.

Examiner Burchmore: What charge passes from the lumber company to the railroad company in connection with that much of the service, any charge?

Mr. Beland: Ten and one-half cents a ton.

Examiner Burchmore: Does that cover the logs up to the main line or all the way to the mill?

2023 Mr. Beland: That is the entire charge.

Examiner Burchmore: All the way to the mill?

Mr. Beland: Yes, sir.

Examiner Burchmore: Then the locomotive operated by the rail-

road company takes the logs on the logging cars from the point where they are loaded, from a point adjacent to the main line, and takes them to the mill?

Mr. Beland: Yes, sir.

Examiner Burchmore: And the entire charge received by the railroad company from the lumber company on the logs moving into the mill is ten and one-half cents a ton?

Mr. Beland: Yes, sir.

Examiner Burchmore: Is that on actual weight or estimated weight basis?

Mr. Beland: Estimated.

Examiner Burchmore: What is that estimate?

Mr. Beland: I think it is 8,000 pounds per thousand feet of logs.

Examiner Burchmore: What is the compensation paid for a logging car?

Mr. Beland: I could not tell.

Examiner Burchmore: Who unloads the logs at the mill?

2024 Mr. Beland: The train crew.

Examiner Burchmore: Does the railroad company receive any additional compensation for the labor of the train crew in unloading the logs at the mill?

Mr. Beland: None.

Examiner Burchmore: Now, we have disposed of the question of logs into the mill. Now take up lumber moving out of the mill. Who furnishes the empty cars for lumber movements?

Mr. Beland: The Cotton Belt Railroad.

Examiner Burchmore: Who places those empty cars at the mill?

Mr. Beland: The logging road does, and sometimes the railroad, the trunk line; principally by the trunk line.

Examiner Burchmore: Now the mill is served by a private side track or other side track directly connected with the St. Louis Southwestern, is it not?

Mr. Beland: Yes, sir.

Examiner Burchmore: That side track from the mill to the St. Louis Southwestern was laid by the latter corporation, was it not?

Mr. Beland: Yes, sir.

Examiner Burchmore: Is there any contract or form of

2025 side track agreement in existence between the lumber company and the St. Louis Southwestern covering that side track?

Mr. Beland: No.

Examiner Burchmore: When was the side track put in?

Mr. Beland: Twenty-six years ago, I guess. It has been changed from time to time.

Examiner Burchmore: Well, it was originally put in under a side track agreement, was it not?

Mr. Beland: It was.

Examiner Burchmore: And partly paid for by the railroad company?

Mr. Beland: I think they furnished the rails only.

Examiner Burchmore: That was under this usual refund arrangement of $2.00 a car, or something of that kind?

Mr. Beland: No, we never received any such refund.

Examiner Burchmore: Is it not a fact that under that original private side track agreement with the St. Louis Southwestern Railroad Company, the title to the land on which that side track was laid is now invested in the St. Louis Southwestern Railroad Company?

Mr. Beland: The lumber company's loading platform is on its own line, but the rails in the side track are on the Cotton Belt
2026 Railroad.

Examiner Burchmore: How often does it happen as a matter of fact that the locomotive of the Bearden & Ouachita River Railroad actually hauls the empty car up to this loading track? Is it not very unusual?

Mr. Beland: Not very.

Examiner Burchmore: Well once a week.

Mr. Beland: I presume so.

Examiner Burchmore: And they only place one or two cars at a time for loading?

Mr. Beland: Whatever might be there to load that they can handle.

Examiner Burchmore: When the car has been loaded with lumber it is moved over to the St. Louis Southwestern Railroad's main line by the locomotive of the St. Louis Southwestern or the locomotive of this railroad in the same way that the empty car is moved?

Mr. Beland: No, sir.

Examiner Burchmore: How is it handled?

Mr. Beland: It is handled direct by the St. Louis Southwestern. They go in on the side track and pull that car out.

Examiner Burchmore: Is there any bill of lading or way
2027 bill issued to cover the movement of the logs from the woods into the mill?

Mr. Beland: No, sir.

Examiner Burchmore: I presume that the conductor of your logging train makes a report to the mill superintendent upon his arrival as to the quantity of logs he has brought in?

Mr. Beland: Yes, sir.

Examiner Burchmore: Is that report made on a piece of paper or printed form?

Mr. Beland: He copies it on his time book. He keeps the train crew's time; he keeps a record of the cars he pulls in each day on that book, and as he turns in his time, he turns that in.

Examiner Burchmore: When the lumber is shipped out to interstate destinations who issues the bill of lading covering that car?

Mr. Beland: Our man.

Examiner Burchmore: Your agent?

Mr. Beland: Yes, sir.

Examiner Burchmore: He executes that bill of lading?

Mr. Beland: Yes, sir.

Examiner Burchmore: What is the point of origin as
2028 shown on that bill of lading?

Mr. Beland: Best.

Examiner Burchmore: Best, meaning the station of that name on the Bearden & Ouachita River Railroad?

Mr. Beland: Yes.

Examiner Burchmore: And not the station by that name on the St. Louis Southwestern. Does your agent also issue a through way bill?

Mr. Beland: I think he does.

Examiner Burchmore: Are you sure about that?

Mr. Beland: No, I am not.

Examiner Burchmore: Is it not a fact that it is only in rare instances that he does issue such a through way bill?

Mr. Beland: I feel quite sure that he issues the way bill.

Examiner Burchmore: And that way bill, when issued, corresponds to the bill of lading?

Mr. Beland: Yes, sir.

Examiner Burchmore: Are the divisions shown on the face of that way bill?

Mr. Beland: No, sir.

Examiner Burchmore: Your settlement with the St. Louis Southwestern Railroad is a monthly interline settlement?

2029 Mr. Beland: Yes, sir.

Examiner Burchmore: How does this railroad company make its collections from the Cotton Belt Lumber Company for the services rendered? Monthly?

Mr. Beland: I think it is charged monthly.

Examiner Burchmore: Is that a bookkeeping settlement or an actual check or cash settlement?

Mr. Beland: Bookkeeping.

Examiner Burchmore: Is the cash of the two companies mingled?

Mr. Beland: No.

Examiner Burchmore: The railroad has a separate bank account?

Mr. Beland: It has.

Examiner Burchmore: Well, is there any cash in that bank account other than the small amounts received from foreign shippers? You do not carry in that bank account any cash from checks received from the lumber company, do you.

Mr. Beland: Whatever source we receive any cash from, it is credited to this railroad account and is carried in the bank.

Examiner Burchmore: As a matter of fact, do you receive any cash or any considerable amount of cash from the Cotton

2030 Belt Lumber Company which you could deposit in the bank? Are not these payments all bookkeeping payments?

Mr. Beland: If the railroad company has anything due from the Cotton Belt Lumber Company it is paid by the Cotton Belt Lumber Company with a check, but no actual cash is handled.

Examiner Burchmore. But as a matter of fact the lumber company issues very few checks to the railroad company?

Mr. Beland: Very few.

Examiner Burchmore: Those checks are not of large amount?

Mr. Beland: No.

Examiner Burchmore: Does this railroad company have any bonds?

Mr. Beland: No, sir.

Examiner Burchmore: Has it any indebtedness aside from current liabilities?

Mr. Beland: No, sir.

Examiner Burchmore: Its total capital stock is $20,000?

Mr. Beland: Yes, sir.

Examiner Burchmore: It constructed 14 miles of railroad and bought all the equipment with a capitalization of $28,000?

Mr. Beland: There has never been any dividends de-
2031 clared and what profits have been made have been spent in the betterment of the road or equipment.

Examiner Burchmore: There have never been any dividends?

Mr. Beland: No.

Examiner Burchmore: The net revenues are all put into additions and betterments?

Mr. Beland: And improvements.

Examiner Burchmore: Have you any surplus at the present time?

Mr. Beland: I think about $3,000.

Examiner Burchmore: And it is proposed to devote that to additions and betterments?

Mr. Beland: I do not know yet.

Examiner Burchmore: You have not contemplated a cash dividend, have you?

Mr. Beland: It is possible.

Examiner Burchmore: Are the accounts of the railroad company kept in the manner prescribed by the Interstate Commerce Commission?

Mr. Beland: Yes.

Examiner Burchmore: Who keeps those accounts?

Mr. Beland: The secretary.

2032 Examiner Burchmore: You are the secretary?

Mr. Beland: No, sir.

Examiner Burchmore: Do you file annual reports with the Interstate Commerce Commission?

Mr. Beland: Yes, sir.

Examiner Burchmore: When did you file your first annual report?

Mr. Beland: The first annual report?

Examiner Burchmore: Yes.

Mr. Beland: Two or three years ago.

Examiner Burchmore: What is the valuation of this road, including equipment?

Mr. Beland: I suppose it is worth $35,000.

Examiner Burchmore: Including equipment?

Mr. Beland: Yes, sir.

Examiner Burchmore: Then if your capital stock is $28,000 and the total value of the road with equipment is $35,000, do we under-

stand you have only paid the difference, or $7,000 into additions and betterments out of your net profits?

Mr. Beland: Yes, sir.

Examiner Burchmore: Do the officers of this railroad company hold any free interstate passes from other railroad compa-
2033 nies, as officers?

Mr. Beland: I do.

Examiner Burchmore: Does any other officer hold such transportation?

Mr. Beland: No, sir.

Examiner Burchmore: How many annual passes have you; one on the Cotton Belt?

Mr. Beland: One on the Cotton Belt and one on the Burlington.

Examiner Burchmore: Is that all?

Mr. Beland: That is all that I remember. There may be two or three logging roads or tap lines.

Examiner Burchmore: Do you actually use those passes?

Mr. Beland: Occasionally.

Examiner Burchmore: Well, you never pay fares, do you, when traveling on those railroads?

Mr. Beland: No, sir, not when I have the free transportation.

Examiner Burchmore: And you do not forget to take your pass with you?

Mr. Beland: I try not to.

Examiner Burchmore: Mr. Walter, have you any ques-
2034 tions?

Mr. Walter: The operation of the railroad is entirely separate and distinct from the lumber company, is it?

Mr. Beland: Yes, sir.

Mr. Walter: Those cars, with the exception of the caboose and with the exception of the locomotive, are all standard logging cars, eight wheels?

Mr. Beland: Yes, sir.

Mr. Walter: And are not required by the Safety Appliance Law to be equipped?

Mr. Beland: We understand not.

Mr. Walter: About how many people live within the territory that is reached by your line who would use your railroad if they used any?

Mr. Beland: I suppose there are four or five hundred people.

Mr. Walter: All the supplies they receive that are carried over a railroad, go over your line?

Mr. Beland: No, sir.

Mr. Walter: How do they get them out there?

Mr. Beland: Well, some of them trade at Hampton and wagon the stuff to their homes.

Mr. Walter: Anything that goes out over the railroad goes
2035 out over your line?

Mr. Beland: What?

Mr. Walter: Anything that goes out to the immediate territory served by your line is handled by your railroad?

Mr. Beland: It is.

Mr. Walter: And all the products of the farm that they ship out over a railroad go over your line?

Mr. Beland: We move very little stuff of that nature.

Mr. Walter: The cotton and cotton seed that is shipped by them delivered to you at Caney on your line, is carried by you in?

Mr. Beland: We handle a few cars.

Mr. Walter: You do not turn down any?

Mr. Beland: No.

Mr. Walter: You handle it for anybody that brings it to you?

Mr. Beland: Yes, sir.

Mr. Walter. You have a joint rate only on forest products?

Mr. Beland: That is all.

Mr. Walter: You have your local class rates on classes that are carried?

Mr. Beland: Yes, sir.

Mr. Walter: That one and one-half cents you speak of is
2036 the division on lumber; it is not the class rate?

Mr. Beland: Lumber only.

Mr. Walter: You charge the local rate on everything else?

Mr. Beland: Yes, sir.

Mr. Walter: As a matter of fact, there are some staves or stave bolts hauled by you?

Mr. Beland: Yes, sir.

Mr. Walter: On all freight handled by you there is a tariff charge?

Mr. Beland: Yes, sir.

Examiner Burchmore: That tariff of local charges is not filed with the Interstate Commerce Commission, I understood you to say.

Mr. Walter: Do you know whether or not the so-called Court tariff of the Arkansas Commission is on file with the Interstate Commerce Commission?

Mr. Beland: I could not say as to that.

Mr. Walter: As a matter of fact, I understand it is on file with the Commission.

Examiner Burchmore: Has it been adopted by this company?

Mr. Beland: We use the Arkansas Court tariff.

2037 Mr. Walter: Has that been adopted by your company?

Mr. Beland: Yes, sir.

Mr. Walter: As I understand it, the railroad company, the Bearden & Ouachita River, hauls all the logs from Caney to the mill?

Mr. Beland: Yes, sir.

Mr. Walter: The lumber company only collects those logs in the woods and assembles them at Caney?

Mr. Beland: Out on the spurs from Caney.

Mr. Walter: And the railroad takes those intrain loads down to the mill?

Mr. Beland: Yes, sir.

Mr. Walter: And takes the empties back to these various spurs?

Mr. Beland: Yes, sir.

Mr. Walter: Do you make reports to the Arkansas Commission; have you had occasion to be requested to make reports without having made them?

Mr. Beland: We answer everything they ask for.

Mr. Walter: You comply with the regulations of the Commission so far as you understand them to apply to your road?

Mr. Beland: Yes, sir.

2038 Mr. Walter: As to the transactions between you and the lumber company, the same methods of taking care of that is had as if it was any other concern?

Mr. Beland: Yes, sir.

Mr. Walter: The fact that there happens to be joint interests or people interested both in the lumber company and railroad company does not affect the manner in which you take care of your railroad business?

Mr. Beland: No.

Mr. Walter: That is all.

Examiner Burchmore: Judge Cowan, have you any questions?

Mr. Cowan: Nothing.

Mr. Walter: This same witness is also in the Thornton & Alexandria.

Examiner Burchmore: Just one more question. The Commission has a report rendered in the summer of 1909 by one of its accounting examiners who went over your property and the accounts of your company. Now, assuming that that report correctly describes the methods and practices of your railroad as they were at that date, has there been any subsequent change of a substantial nature in your methods and practices of conducting transportation that would render such a report inaccurate at the present time, as

2039 describing your present situation?

Mr. Beland: Not that I know of.

Examiner Burchmore: You do business in about the same manner you did at that time?

Mr. Beland: Yes, sir.

Examiner Burchmore: Of course any little details of unimportant matters may have changed?

Mr. Beland: Yes, sir.

Examiner Burchmore: I merely asked the question to know whether our report is obsolete or in the main accurate. This witness it is understood also wishes to testify in the Thornton & Alexandria Railway. That railway is the last one listed as a Cotton Belt System connection. Is there any objection on the part of the other Cotton Belt System connections to taking up that railroad at this time?

Mr. Riddell: I agreed with Mr. Stocking, who left here, to represent one of those roads, and we would not like to waive any rights we have.

Examiner Burchmore: What road is that?

Mr. Riddell: The Saline River Railroad.

Examiner Burchmore: Do you object to this company be-
2040 ing heard at this time instead of immeditely after your company?

Mr. Riddell: We would like to get ourselves before the Commission as soon as possible.

Examiner Burchmore: It would simply mean a postponement of half an hour, or so.

Mr. Riddell: All right.

Mr. Greer: In what manner are you going to take those up, in alphabetical order?

Examiner Burchmore: As announced by the Commissioner two or three days ago, we are taking up in alphabetical order, or substantially in alphabetical order, the connections of these system. and we are now dealing with roads that are connected with the Cotton Belt.

Mr. Greer: Regardless of states?

Examiner Burchmore: Yes.

Mr. Greer: There are a good many in Texas on the Cotton Belt that are earlier than that.

Examiner Burchmore: The Angeline & Neches River Railroad.

2041 *Angelina & Neches River Railroad.*

ELI WIENER, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Are you an officer of the Angelina & Neches River Railroad?

Mr. Weiner: I am secretary and treasurer and auditor.

Examiner Burchmore: Are you also an officer of the Angelina County Lumber Company?

Mr. Wiener: Secretary and treasurer.

Examiner Burchmore: I understand that the Angelina & Neches River Railroad is controlled by the Angelina County Lumber Company through the ownership of the entire capital stock?

Mr. Weiner: The stockholders of the Angelina County Lumber Company own the stock of the Angelina & Neches River Railroad in substantially the same proportion, about ninety-five per cent of the stockholders of the lumber company own about ninety-eight per cent of the stock of the railroad company.

Examiner Burchmore: And five per cent in the case of one com
pany and two per cent in the other is in the hands of the
2042 directors?

Mr. Wiener: In the lumber company it is not; in the railroad company it is.

Examiner Burchmore: Who are these stockkholders, the five per cent, in the lumber company?

Mr. Wiener: One of them is a son of the president of the company and the other one is a sister of mine.

Examiner Burchmore: Then they are in the family, the principal ones?

Mr. Wiener: Yes, sir; as I say, the ownership is substantially the same.

Examiner Burchmore: The Angelina County Lumber Company has but one saw mill?

Mr. Wiener: But one.

Examiner Burchmore: A planing mill in connection therewith.

Mr. Wiener: A planing mill in connection therewith.

Examiner Burchmore: I understand that this railroad connects with the Houston East and West Texas at Prosser, Texas?

Mr. Wiener: That is correct.

Examiner Burchmore: And with the St. Louis, Southwestern Railway of Texas at Keltys, Texas?

2043 Mr. Wiener: That is correct.

Examiner Burchmore: Are those the two terminii of the line?

Mr. Wiener: No, the present terminus of the railroad is Naclina, which is in Nacogdoches County, 19.98 miles from Keltys.

Examiner Burchmore: And 19.89 miles is the total main line mileage of the road?

Mr. Wiener: Is the total main mileage of the road.

Examiner Burchmore: It also has about one mile of side tracks.

Mr. Wiener: It has, on June 30, 1910, 2.43 miles I think is the exact figure. Just one second, I will give them to you exact. (Witness refers to papers.) 2.43 miles.

Examiner Burchmore: Now, the mill of the Angelina County Lumber Company is located at the junction with the Cotton Belt system?

Mr. Wiener: Located at Keltys, yes, sir.

Examiner Burchmore: And it joins the right of way of that company as well as being on the line of the rails of the Angelina?

Mr. Wiener: The saw mill is situated some little distance
2044 from the Cotton Belt right of way. The planing mill is off the right of way, but very close to it.

Examiner Burchmore: Most of the lumber from that mill is shipped out of the planing mill?

Mr. Wiener: The majority of it is, yes, sir.

Examiner Burchmore: The loading platform near this planing mill is reached by the private side track directly connecting with the Cotton Belt, is it not?

Mr. Wiener: The Cotton Belt has connection with that side track.

Examiner Burchmore: It can reach that side track without actually moving over the rails of the Angelina & Neches River Railroad?

Mr. Wiener: It can; yes, sir.

Examiner Burchmore: And does?

Mr. Wiener: It does in some instances.

Examiner Burchmore: The distance from this mill plant to the junction with the Houston East & West Texas is about three miles?

Mr. Wiener: Approximately; three miles.

Examiner Burchmore: Does any considerable volume of lumber move out over the Houston East & West Texas?

2045 Mr. Wiener: During this year there has been a considerable volume, according to car supply. There have been some months when the volume has been fairly heavy, and for the last month or two the Southern Pacific system seem to have been short of empty cars and the tonnage has not been so heavy that way.

Examiner Burchmore: Are there any other saw mill operations on this line of railroad?

Mr. Wiener: None.

Examiner Burchmore: What is the character of the country through which it runs, is it a timber country?

Mr. Wiener: The twenty miles of road is through a section from which the larger portion of the pine timber has been cut in the past.

Examiner Burchmore: Was that land formerly owned by this lumber company?

Mr. Wiener: Some portions of it, a very small percentage of the entire twenty miles.

Examiner Burchmore: But this lumber company had the timber rights on most of that land, did it not?

Mr. Wiener: On the greater portion of it; yes; on a good deal of it, there have been some portions of it that have been
2046 cut by other mills, but nearly all has been cut by this lumber company, and there is a good deal of it in cultivation now.

Examiner Burchmore: When was the mill at Keltys opened for operation?

Mr. Wiener: I have been there since 1890; I think the mill was built early in the 80's, I do not know exactly, it was before my time.

Examiner Burchmore: When was this railroad first begun?

Mr. Wiener: That I cannot say. The Angelina & Neches River Railroad dates to 1900.

Examiner Burchmore: What was the date of the incorporation of this company?

Mr. Wiener: In August, 1900.

Examiner Burchmore: There had been a railroad there previous to that time?

Mr. Wiener: Yes, there was a railroad there previous to that time.

Examiner Burchmore: That railroad was originally built, was it not, in order to haul logs to this saw mill in the beginning?

Mr. Wiener: Yes, sir; it was originally built as a logging
2047 railroad.

Examiner Burchmore: And what was the length of the line in 1900?

Mr. Wiener: Approximately ten miles.

Examiner Burchmore: Then it ran from Keltys, crossing the Houston East & West Texas and on into some woods?

Mr. Wiener: Well, it ran to—I do not know whether the Texas & New Orleans was there at the time it ran to the point where the

Texas & New Orleans now is; I do not know whether the Texas & New Orleans was built there or not.

Examiner Burchmore: This railroad crosses or joins the Texas & New Orleans?

Mr. Wiener: Crosses the T. & N. O. approximately nine miles from Keltys.

Examiner Burchmore: What is the name of that junction?

Mr. Wiener: McCoy.

Examiner Burchmore: Do you interchange any lumber traffic with the T. & N. O.?

Mr. Wiener: We do not.

Examiner Burchmore: Then that is merely a crossing and not an interchange point?

Mr. Wiener: The T. & N. O., and the H. E. & W. T. inter-
2048 ests are practically identical, and for that reason we have *en*ver interchanged with them.

Examiner Burchmore: No particular object in interchanging with them?

Mr. Wiener: They reach the same territory that we can reach by the T. & N. O.

Examiner Burchmore: It simply involves a longer haul without opening up any new territory or givng you any better rate?

Mr. Wiener: That is correct.

Examiner Burchmore: When was the present main line approximately twenty miles completed?

Mr. Wiener: Completed some time this year, in 1910.

Examiner Burchmore: This railroad company was incorporated in 1900. Were the articles of incorporation entered into in accordance with the state laws governing the incorporation of railroad companies?

Mr. Wiener: General railroad law of Texas.

Examiner Burchmore: Then this is incorporated as a common carrier railroad?

Mr. Wiener: It is incorporated as a common carrier railroad.

2049 Examiner Burchmore: Has it held itself out in that capacity to the public from the beginning?

Mr. Wiener: It did.

Examiner Burchmore: When did it first begin to receive divisions out of joint through rates on lumber?

Mr. Wiener: I think at the time of its incorporation or very shortly thereafter. I don't remember exactly, it is a long time ago.

Examiner Burchmore: Were those divisions substantially the same as the present divisions it receives?

Mr. Wiener: I think they are identically the same via the Cotton Belt as they are today. I do not think there have been any changes.

Examiner Burchmore: Did you receive any divisions at that time from the Houston East & West Texas.

Mr. Wiener: We did not.

Examiner Burchmore: When were the Houston East & West Texas Divisions established?

Mr. Wiener: Some years ago, I don't remember.

Examiner Burchmore: Was it in 1905?

Mr. Wiener: Oh, long about 1895 or 1896, I don't remember the exact date.

2050 Examiner Burchmore: What was the total capital stock of this road when incorporated?

Mr. Wiener: Authorized $75,000; issued $55,000.

Examiner Burchmore: Has there been any issuance of capital stock since the organization?

Mr. Wiener: There has not.

Examiner Burchmore: So that the present outstanding stock holdings aggregate $55,000?

Mr. Wiener: That is correct.

Examiner Burchmore: Now was that $55,000 of stock issued for cash?

Mr. Wiener: There was no actual exchange of cash. We considered it a cash transaction. It was a bookkeeping transaction in fact.

Examiner Burchmore: Did not that amount as a matter of fact to a dividend on the stock of the lumber company stockholders, in substance?

Mr. Wiener: In substance it did. It was handled as a payment and repaid to the lumber company for the railroad.

Examiner Burchmore: The stockholders of the lumber company received shares of stock in the lumber company for which they did not actually pay in any cash?

2051 Mr. Wiener: Well it came—they had a surplus there to their credit with the lumber company and it was handled through the books of the lumber company.

Examiner Burchmore: Then the financing of this road was somewhat similar to that of a number of others which we have already examined?

Mr. Wiener: I presume so.

Examiner Burchmore: The president of the lumber company and the president of the railroad company are the same person?

Mr. Wiener: They are.

Examiner Burchmore: The same is true of the vice-president?

Mr. Wiener: That is true.

Examiner Burchmore: And the general manager?

Mr. Wiener: The vice-president and general manager are the same; one person in each instance.

Examiner Burchmore: The secretary and treasurer of each company is the same?

Mr. Wiener: That is correct.

Examiner Burchmore: And the auditor of the railroad company is the auditor of the lumber company?

Mr. Wiener: No, we have no auditor for the lumber com-

2052 pany, but the secretary and treasurer and auditor of the railroad company is secretary and treasurer of the lumber company.

Examiner Burchmore: Has either company any additional officers?

Mr. Wiener: The general attorney is all.

Examiner Burchmore: Well, the general attorney is not paid an annual salary, is he, by either company?

Mr. Wiener: He is paid an annual salary, yes.

Exminer Burchmore: Which of these officers of the railroad company receives salaries from that company?

Mr. Wiener: All of them.

Examiner Burchmore: What are those salaries?

Mr. Wiener: Fifty dollars a month each, the president, vice-president, general manager, and secretary-treasurer.

Examiner Burchmore: Do they all render the same service to the railroad company?

Mr. Wiener: That is supposed to be approximately for the proportion of their time that is taken. The time for the last six months or so in some instances, the railroad company has got more than its share of their time, but it is supposed to average the time they employ for the railroad company.

2053 Examiner Burchmore: Those salaries are not excessive for the services rendered, however?

Mr. Wiener: I do not think so.

Examiner Burchmore: As a matter of fact the services rendered by the president are almost nominal, are they not?

Mr. Wiener: Why, nominal; he is present at conferences and discussions of railway policy and things of that kind, but the actual work that he does is very nominal.

Examiner Burchmore: Do the stockholders of the lumber company actually convene in annual meetings?

Mr. Wiener: Yes, sir; we are all right there, in daily meeting you might say; we all live right there, or the majority of us.

Examiner Burchmore: This is a standard gauge line?

Mr. Wiener: It is.

Examiner Burchmore: What is the weight of the rail?

Mr. Wiener: Principally 35 pounds; there is a very little 30 pound and some 40 pound, but it is principally 35 pound rail.

Examiner Burchmore: Is it ballasted?

Mr. Wiener: Just in natural dirt ballast, well surfaced.

2054 Examiner Burchmore: Any cuts and fills on the line?

Mr. Wiener: Yes, a good many.

Examiner Burchmore: Does this road run uphill and down dale or is the country level?

Mr. Wiener: To a certain extent it is level. The first few miles built before its incorporation there was not so much of that work done, but in the last eight or ten months we have changed some of the old cuts and fills and spent $5,600.

Examiner Burchmore: Do you cross any streams?

Mr. Wiener: Yes, quite a number of them.

Examiner Burchmore: The bridges are substantial?

Mr. Wiener: We have one bridge approximately 2,000 feet which is the best bridge crossing the river. There are four, the H. E. & W. T., and the T. & N. O., and ours, and we have as good a bridge as any one.

Examiner Burchmore: The road is constructed in substantially the same way that the main or branch lines of the longer carriers in Texas are constructed?

Mr. Wiener: Yes, sir, it is. There may be some differences, some of them may have a bigger percentage of grading and some less, but the general character, there are no rock ballasted roads
2055 through there, and they are all about the same manner of construction.

Examiner Burchmore: But on the whole the construction of this road is good?

Mr. Wiener: Yes, sir; we so consider it.

Examiner Burchmore: Have you any station buildings?

Mr. Wiener: Not completed except a freight warehouse at Keltys.

Examiner Burchmore: That is a small warehouse?

Mr. Wiener: That is a small warehouse for handling freight.

Examiner Burchmore: That warehouse as a matter of fact is in a building owned by the lumber company, is it not?

Mr. Wiener: Well, it is a building built on the right of way of the railroad company and belongs to it.

Examiner Burchmore: What do you store in that warehouse?

Mr. Wiener: We store any outbound freight that may be tendered the railroad company, and if the railroad company has anything they store in it; they store different materials in it at different times.

Examiner Burchmore: As a matter of fact there is not very much freight stored in that, is there?

2056 Mr. Wiener: If there is a shipment of freight to go out it is usually taken down in the evening to that warehouse and loaded on the train next morning.

Examiner Burchmore: Do you use the station buildings of the Houston East & West Texas or the Cotton Belt system for any purpose?

Mr. Wiener: The Cotton Belt has no station at Keltys. We have up with them now the question of a joint passenger and freight depot at Keltys. They have none there and we have asked them if it would suit them to avoid doubling expense to build a joint station.

Examiner Burchmore: Have you any track scales on the road?

Mr. Wiener: No track scales on the road.

Examiner Burchmore: You have no means of weighing carload freight?

Mr. Wiener: We have no means of weighing carload freight; we take connection weight.

Examiner Burchmore: How many locomotives have you on this road?

Mr. Wiener: One.

Examiner Burchmore: Is that all?

2057 Mr. Wiener: That is all now. There have been some changes since the report of your Special Examiner.

Examiner Burchmore: You formerly had four locomotives?

Mr. Wiener: We formerly had four locomotives.

Examiner Burchmore: What became of the other three?

Mr. Wiener: We sold them to the lumber company.

Examiner Burchmore: How many cars do you own and operate?

Mr. Wiener: We own now one passenger car and three box cars and have bought one standard caboose, and have under lease one flat car.

Examiner Burchmore: When did you purchase that passenger car?

Mr. Wiener: We made a deal for its purchase some time in the spring or early summer; it was actually delivered to us about, I think, the 1st of October.

Examiner Burchmore: Is that passenger car a regular passenger car, or is it a freight car with windows cut in it?

Mr. Wiener: It is a regular passenger car. The reason we were delayed, the railroad we bought it from said they could not take it out of their passenger service and they delayed us for two
2058 months. It was in the T. & N. O. or the H. & T. C. passenger service.

Examiner Burchmore: What use is made of that?

Mr. Wiener: It is used in daily operation of a mixed passenger and freight train.

Examiner Burchmore: Have you any other rolling stock beside that referred to?

Mr. Wiener: I think of nothing else.

Examiner Burchmore: No motor cars?

Mr. Wiener: No.

Examiner Burchmore: No hand cars?

Mr. Wiener: Yes.

Examiner Burchmore: Are they used by the lumber company at any time?

Mr. Wiener: I think not; not to my knowledge: they are not supposed to be.

Examiner Burchmore: Is your equipment supplied with the proper and necessary couplers and air brakes?

Mr. Wiener: The railroad company's equipment is supplied with the equipment prescribed by the Safety Appliance Acts, so far as we know them.

Examiner Burchmore: Mr. Walter, in connection with this last company it was stated, and I neglected to amplify it after-
2059 wards, then it was not necessary to equip those logging cars with safely couplers because the Act makes an exception in favor of logging cars. That is not true, however of the locomotives. As I understand it, locomotives must be equipped with airbrakes and couplers, unless they are used solely for the hauling of log cars containing only logs.

Mr. Walter: That is right.

Examiner Burchmore: And the statements made by the witness for that company indicate that they sometimes haul other kinds of freight in their trains besides logs, so it would appear their locomotive ought to have some safety device.

Mr. Walter: I think as to the locomotive it has driving wheel brakes and proper couplers itself, but so far as the train line is concerned, it has not any.

Examiner Burchmore: The locomotive then is properly equipped?

Mr. Walter: I think it is. I will find out later and let you know.

Examiner Burchmore: I suggest you look into it. It is not necessary to inform us in this record.

Mr. Wiener: I would state that the safety appliance
2060* inspector of the Commission has been over our line at one time inspecting our equipment.

Examiner Burchmore: And the result of that inspection was not any prosecution for violation of law?

Mr. Wiener: No, so far as his statement to me, I think he found us satisfactory at that time.

Examiner Burchmore: Are there any private train lines or logging roads connecting with this road not owned or operated by it?

Mr. Wiener: There are logging lines connecting at Naclina.

Examiner Burchmore: Are those lines owned by the railroad company or by the lumber company?

Mr. Wiener: By the Angelina County Lumber Company.

Examiner Burchmore: What is the extent of those lines?

Mr. Wiener: They only have at the present time I think fifteen miles of rail, or possibly more; sometimes it is all down and sometimes only a portion is in operation.

Examiner Burchmore: Who owns the steel?

Mr. Wiener: The Angelina County Lumber Company.

Examiner Burchmore: Did they buy that steel from this railroad company?

Mr. Wiener: No.

2061 Examiner Burchmore: How many section gangs has the Angelina & Neches River Railroad at work?

Mr. Wiener: They have really three. They have been operating under one foreman and a sub-foreman, two gangs, and we call it one, and they have another gang.

Examiner Burchmore: Do they work at any time on the tracks of the lumber company?

Mr. Wiener: Not to my knowledge. If they do a bill would be rendered against the lumber company for the time they spent on those tracks.

Examiner Burchmore: What would be the basis of the bill?

Mr. Wiener: The cost of the service. However, I have no recollection of any such transaction.

Examiner Burchmore: Has the railroad any station employees?

Mr. Wiener: It has one agent.

Examiner Burchmore: At Kelty's?

Mr. Wiener: At Keltys.

Examiner Burchmore: He is also employed by the lumber company?

Mr. Wiener: He is an employee of the lumber company. In the past his railroad service has been nominal.

2062 Examiner Burchmore: And when he works for the railroad company he does not leave his lumber company desk?

Mr. Wiener: No, the office has been, I will state for your benefit possibly, or for your records, there have been some changes in those

matters lately on account of the increased mileage and so forth, and we are changing those matters considerably.

Examiner Burchmore: You say three of those locomotives formerly owned by the railroad company were sold to the lumber company. What was the payment?

Mr. Wiener: We sold them the three locomotives and all of the logging equipment, at a price based upon cost less depreciation.

Examiner Burchmore: How did you figure depreciation?

Mr. Wiener: Upon the basis of our report to the Interstate Commerce Commission.

Examiner Burchmore: Well, does this railroad now own no logging cars?

Mr. Wiener: It owns no logging cars.

Examiner Burchmore: The lumber company operates its own private spur tracks?

Mr. Wiener: It does.

2063 Examiner Burchmore: They are not operated by the railroad company?

Mr. Wiener: They are not operated by the railroad company.

Examiner Burchmore: Where do they keep the locomotives at night?

Mr. Wiener: They keep them in the woods, the spur locomotives in the woods.

Examiner Burchmore: Do these locomotives run back and forth over the line of the railroad company?

Mr. Wiener: Sometimes. One of those now hauls logging trains.

Examiner Burchmore: Do you refer to the locomotive still owned by the railroad company?

Mr. Wiener: No.

Examiner Burchmore: One of the other three?

Mr. Wiener: One of the other three.

Examiner Burchmore: How long has this lumber company been operating its own rails?

Mr. Wiener: It has been operating its own logging spurs always, except a portion of the main line spur, as they call it, and there was one time during the last fiscal year it was discontinued,

2064 when the railroad company operated for the lumber company a portion of its logging spur.

Examiner Burchmore: About seven miles?

Mr. Wiener: About seven miles.

Examiner Burchmore: When did they discontinue that operation?

Mr. Wiener: With the purchase of that seven miles of the additional track.

Examiner Burchmore: The railroad company purchased the seven miles?

Mr. Wiener: The railroad purchased the seven miles; yes, sir.

Examiner Burchmore: What did they pay for the seven miles?

Mr. Wiener: They purchased seven and a fraction miles and paid fifty thousand dollars for it.

Examiner Burchmore: Did the road cost but fifty thousand dollars to build, seven miles?

Mr. Wiener: I think it cost considerably more. There is one mile that represents over eighteen thousand dollars.

Examiner Burchmore: Then the lumber company sold this mileage for less than cost?

2065 Mr. Wiener: I think so. We attempted to make an estimate as close as we could and we arrived as near as we could at fifty thousand dollars, but there were several years' upkeep of that track, that improved the track and was not included in that estimate.

Examiner Burchmore: Did the railroad company pay for that seven miles of the track at the time, or did it assume an indebtedness to cover the purchase price?

Mr. Wiener: They executed an indebtedness; they did not assume an indebtedness; they executed an indebtedness.

Examiner Burchmore: In the form of bonds or notes?

Mr. Wiener: In the form of a vendor's lien note.

Examiner Burchmore: What is the amount of that note?

Mr. Wiener: Fifty thousand dollars.

Examiner Burchmore: Any other indebtedness between the lumber company and the railroad company except current liabilities?

Mr. Wiener: There is a current account; I do not know the exact figures; I think around twenty thousand dollars today that the railroad company owes the lumber company.

Examiner Burchmore: In addition to the fifty thousand dollars?

2066 Mr. Wiener: In addition to the fifty thousand dollars.

Examiner Burchmore: They have not paid any part of that fifty thousand dollars?

Mr. Wiener: No, it is not due yet.

Examiner Burchmore: It is the intention however to pay that out of net earnings?

Mr. Wiener: Either out of net earnings or bonded indebtedness or increased capital stock.

Examiner Burchmore: Has the railroad any bonds?

Mr. Wiener: It has not, except that fifty thousand dollars reported as bonded indebtedness.

Examiner Burchmore: Has this railroad any passenger or mail train service?

Mr. Wiener: It has.

Examiner Burchmore: Give the particulars of that service and state whether it is under a published schedule.

Mr. Wiener: Yes, sir; we are operating a mixed passenger and freight schedule under a published schedule.

Examiner Burchmore: That only operates between Keltys and——

Mr. Wiener: There is our published schedule.

(Handing paper.)

2067 (The paper so offered and identified was received in evidence and thereupon marked Angelina & Neches River Rail-

road Exhibit No. 1, Witness Wiener, received in evidence December 15, 1910, and is attached hereto.)

Mr. Wiener: It operates through to the end of the line over the entire mileage, 19.89 miles. We operate one train each way a day.

Examiner Burchmore: Does that train make any connection with the passenger trains of other companies?

Mr. Wiener: It leaves Keltys in the morning about fifteen minutes after the arrival of the Cotton Belt train and returns about ten minutes before the arrival of the Cotton Belt train going in the opposite direction.

Examiner Burchmore: It does not connect with the Houston East & West Texas trains?

Mr. Wiener: No, it does not.

Examiner Burchmore: Or the Texas & New Orleans train?

Mr. Wiener: It does not.

Examiner Burchmore: In addition to this mixed train do you run any freight train service?

Mr. Wiener: None.

Examiner Burchmore: How many cars are there in this
2068 mixed train?

Mr. Wiener: There is a passenger car and we expect to have a caboose in that service as soon as it arrives, and we use whatever freight cars are necessary for the handling of the business.

Examiner Burchmore: And logging cars?

Mr. Wiener: No logging cars.

Examiner Burchmore: How do the logging cars get down to the mill?

Mr. Wiener: At the present time they are operated by the lumber company.

Examiner Burchmore: That is under some form of trackage agreement?

Mr. Wiener: That is under a trackage agreement.

Examiner Burchmore: Then as I understand the logs which are cut up in the woods are loaded on logging cars belonging to the lumber company?

Mr. Wiener: That is correct.

Examiner Burchmore: And hauled by the lumber company engines, operated by its employees, down to the mill?

Mr. Wiener: They are hauled by the lumber company's engines
2069 first to the connection with the railroad, and there another lumber company engine operated by the lumber company's employees brings those log cars into Keltys.

Examiner Burchmore: Is there any written agreement covering this trackage?

Mr. Wiener: There is a written agreement covering this trackage?

Examiner Burchmore: Is it filed with the Commission?

Mr. Wiener: I think not.

Examiner Burchmore: Will you file it in connection with your testimony in this case?

Mr. Wiener: Yes, I will file a copy. You want a copy of our trackage agreement?

Examiner Burchmore: What is the basis of the computation for that trackage right?

Mr. Wiener: It is based upon 50 cents per thousand feet log scale for the logs handled over the road.

Examiner Burchmore: That I assume amounts to about one cent per hundred pounds on the lumber out?

Mr. Wiener: Fifty cents per thousand feet log scale I expect will amount to a fraction over it.

Examiner Burchmore: About one and one-half cents per
2070 hundred pounds.

Mr. Wiener: It would average one and a half to two cents.

Examiner Burchmore: That has not been paid, though, only for the last few months.

Mr. Wiener: Prior to that time the railroad company brought the logs to the mill.

Examiner Burchmore: From the junction of the small spur track?

Mr. Wiener: Well, they operated, I should say, between five and six miles of the track owned at that time by the lumber company. They ran their engine over it and their logging trains and brought the logs over that track and the twelve and a half miles then belonging to the railroad company into Keltys.

Examiner Burchmore: How did the logs get from the tree up to the point where the railroad company took them?

Mr. Wiener: Over tracks belonging to the lumber company.

Examiner Burchmore: But they were hauled by engines
2071 belonging to the railroad company?

Mr. Wiener: Owned by the railroad company but operated by employees of the lumber company.

Examiner Burchmore: And what payment was made for the use of those locomotives?

Mr. Wiener: We made one payment to cover the use of the locomotives in the operation of that track for one dollar per thousand feet.

Examiner Burchmore: That was one dollar from the tree to the mill?

Mr. Wiener: To the connection with the main line at Alco.

Examiner Burchmore: What did you charge from Alco to the mill?

Mr. Wiener: Our tariff provided that the outbound division should cover that charge.

Examiner Burchmore: Then you formerly received one dollar per thousand feet plus a certain part of your division that was received from the Cotton Belt Railroad Company?

Mr. Wiener: That is correct.

Examiner Burchmore: At the present time you do not touch the logs to the mill at all?

2072 Mr. Wiener: At present we are not.

Examiner Burchmore: But you receive fifty cents per thousand for the use of your tracks?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Is any other use made of those tracks?

Mr. Wiener: Only for the operation of the railroad company's train.

Examiner Burchmore: What are your earnings from the operation of that train?

Mr. Wiener: Of the railroad company's train?

Mr. Examiner Burchmore: Yes. Are they considerable in amount?

Mr. Wiener: It seems to me they are going to be very much more than we first thought. I have the figures here for the first twenty-one day's operation of that train and the passenger earnings were $114.60.

Examiner Burchmore: Well, everybody was curious to ride on the passenger trains?

Mr. Wiener: No, there was no particular curiosity, but the country we are opening up is pretty well settled; we are into a thickly settled farming section. The freight earnings were $214.97.

2073 Mr. Cowan: What was the date of that twenty-one days?

Mr. Wiener: From November 7th to November 30th, that is twenty-one days' operation. We operate every day except Sunday.

Examiner Burchmore: That train has only been running about a month.

Mr. Wiener: After the 7th of November.

Examiner Burchmore: Before that you had no passenger service?

Mr. Wiener: We had no passenger service previous to that day.

Examiner Burchmore: Do you handle the United States mail?

Mr. Wiener: Not at present.

Examiner Burchmore: You are negotiating for that with the government?

Mr. Wiener: We are figuring and have been requested to make application. I have been requested personally to write up a form for some of the citizens whose post office is about a mile from the end of our track for the location of the post office on our road at Naclina, and they expect us to handle the mail when they get the post office established.

2074 Examiner Burchmore: Any express companies operating over your line?

Mr. Wiener: No.

Examiner Burchmore: Is it contemplated?

Mr. Wiener: If any one of them will make us a proposition that they want the business we will be glad to make an arrangement with them. I do not know whether the express company will consider it worth while or not. We handle it as a freight proposition now.

Examiner Burchmore: Do these passengers pay cash fare on the train or do they have tickets?

Mr. Wiener: The conductor carries a regular cash slip.

Examiner Burchmore: But you will sell tickets?

Mr. Wiener: We have tickets in stock and are awaiting the erection of station facilities.

Examiner Burchmore: You are going to erect some stations?

Mr. Wiener: As I have stated, we have proposed to operate a joint

station with the Cotton Belt at Keltys and we have requested the Houston East & West Texas to give us trackage privileges into the town of Lufkin with our trains.

2075 Examiner Burchmore: How far is Lufkin from the junction?

Mr. Wiener: I think one and three-quarter to two miles.

Examiner Burchmore: There are some other tap lines which run into Lufkin, are there not?

Mr. Wiener: There are three or two of them.

Examiner Burchmore: Do you propose to make joint traffic arrangements for passenger traffic with these other lines?

Mr. Wiener: We do not figure to have joint arrangements. We only expect to sell local tickets.

Examiner Burchmore: You do not expect to run your trains down beyond Lufkin?

Mr. Wiener: No, not at the present time.

Examiner Burchmore: Lufkin is the county seat?

Mr. Wiener: Lufkin is the county seat.

Examiner Burchmore: And quite a city?

Mr. Wiener: Yes, we figure five or six thousand.

Examiner Burchmore: Are there any towns on your present line?

Mr. Wiener: Outside of Keltys we have a station known as Alco which was the terminus of the road for some time. That has a small population and some farming settlement around the town,

2076 and the store there at present is owned by the lumber company but that is not expected to be continued. There is quite a settlement there, and at Naclina we have a town which is primarily a lumber company town but it is close into the river bottom where there are quite a number of farms.

Examiner Burchmore: What was your total freight tonnage for the last fiscal year?

Mr. Wiener: I have got that, Mr. Examiner, only approximately.

Examiner Burchmore: Well, the approximation will do.

Mr. Wiener: The approximate tonnage of lumber and logs—do you want them separately or together?

Examiner Burchmore: Separately and together.

Mr. Wiener: The approximate lumber tonnage was about 26,000 tons and the approximate log tonnage I believe 50,000 tons, and there was some other tonnage, very nominal, of other commodities.

Examiner Burchmore: Less than one per cent of your tonnage was other than lumber and logs?

Mr. Wiener: Less than one per cent of the interstate tonnage was, yes, sir.

2077 Examiner Burchmore: How much of that one per cent was handled on account of your company stores?

Mr. Wiener: I suppose at that time practically all of it was on account of the lumber company's business, the greater portion of it anyhow.

Examiner Burchmore: Is it not a fact that so far, or at least until recently your entire traffic was supplied by these controlling interests?

Mr. Wiener: Approximately all of it.

Examiner Burchmore: Well, there was not enough other traffic to be counted?

Mr. Wiener: Not enough freight traffic to cut any figure in the operation of the road.

Examiner Burchmore: An officer of your company stated to the Examiner when in the field that you did not handle anything except for the lumber company. Is that so?

Mr. Wiener: Possibly. I think I talked to the Examiner myself.

Examiner Burchmore: Well, you made some such admission?

Mr. Weiner: Well, we handled some other stuff, yes, but very nominal, not worth taking into account at that time. We handled anything that was tendered us, but until the extension of the
2078 line there was nothing else tendered to us.

Examiner Burchmore: And that was very recently?

Mr. Wiener: We acquired the additional mileage, I think on June 30th.

Examiner Burchmore: What is the explanation for this change in the practices and methods with respect to handling the logs into the mill?

Mr. Wiener: There are two or three explanations. One is with the increased mileage of our road and the increased business, we expected, we considered that an easier way to handle it.

Examiner Burchmore: Is the Mississippi Valley Railroad present?

Mr. Ziebold: Yes.

Examiner Burchmore: What are your connections?

Mr. Ziebold: The Frisco.

Examiner Burchmore: Through a misunderstanding yesterday, the Commissioner being under the impression that the Mississippi Valley Railway was identical with the Mississippi Valley Railroad, the latter being an Iron Mountain connection, he agreed that the case should be heard this morning. In view of that agreement it will now be called for hearing before Examiner Boyle in
2079 the adjoining room in a few minutes.

Mr. Jeffery: Did you say that is an Iron Mountain connection?

Examiner Burchmore: No, that is a Frisco connection.

What are the other reasons, Mr. Wiener?

Mr. Wiener: One thing that had some little effect on the matter was that the state passed a safety appliance law which copied the Federal law except it did not exempt logging equipment, and while we were advised that possibly as we were in both state and interstate business we would not have to comply with that law, we did not care to disobey it, and that required us to handle logs in standard flat cars equipped with safety appliances. We leased some of those cars and tried the operation and found it very unsatisfactory and the lumber company stated it was unsatisfactory to handle those cars over spurs, therefore it would be more satisfactory for them to purchase our equipment and handle it themselves.

Examiner Burchmore: Why did you buy the seven miles of railroad?

Mr. Wiener: Because they were opening up new settlements of farming country, and we thought it was a piece of track
2080 that would add to the ability of the railroad company to make money.

Examiner Burchmore: Why don't you buy the rest of it?

Mr. Wiener: We have some more road surveyed ahead of us that will be permanent road. The other road is being taken up and laid down. It is not permanent.

Examiner Burchmore: Do you contemplate any extension in the immediate future?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Where are you going?

Mr. Wiener: We have a preliminary survey covering about twenty-eight miles. We have ten milees that we expect to build in the next ten or twelve months, if the arrangements which we have with the people ahead are put through.

Examiner Burchmore: What will it open up?

Mr. Wiener: That will afford a market for the town of Chireno and give a market outlet for five thousand bales of cotton.

Examiner Burchmore: Where will the twenty-eight miles run?

Mr. Weiner: To the Santa Fe, at San Augustine.

Examiner Burchmore: Is this lumber company negotiat-
2081 ing for the acquisition of any timber rights along that section?

Mr. Wiener: No, the lumber company own a very small proportion of the timber in that direction. They expect to develop some timber, but on the particular ten miles a very small portion of it is on land owned or controlled by the lumber company.

Examiner Burchmore: That may be true, but how about the stumpage right?

Mr. Wiener: On that particular line, the stumpage rights, only a very small proportion belong to the lumber company.

Examiner Burchmore: Have you stated the extent of timber holdings or stumpage rights of this lumber company in this territory?

Mr. Wiener: At Nacogdoches County, the lumber company owns approximately 12,000 acres of land and about 28,000 acres additional timber rights.

Examiner Burchmore: Have you any questions you desire to ask in this particular connection, Judge Cowan, as to timber lands and timber rights?

Mr. Cowan: No.

Mr. Wiener: I will state in connection with that, however,
2082 that that is only a portion, considerably less than half of the timber in that immediate section.

Examiner Burchmore: The rest of the timber is not being cut?

Mr. Wiener: Some of it is owned by another lumber company and considerable of it is owned by small farmers and settlers in there.

Examiner Burchmore: What is this other lumber company?

Mr. Wiener: The Frost-Johnson Lumber Company of Nacogdoches.

Examiner Burchmore: Do they have any mills in that vicinity?

Mr. Wiener. Their mill in Nacogdochees is twenty miles from the end of our track.

Examiner Burchmore: How do they get logs from that timber?

Mr. Wiener: Within a few miles of us there they are operating a road from Nacogdoches south into that territory.

Examiner Burchmore: What is the name of that road?

Mr. Wiener: The Nacogdoches & Southeastern.

Examiner Burchmore: Is there any further statement you wish to make with respect to the nature and extent of your freight traffic?

2083 Mr. Wiener: Only as to the future possibilities of it, as we see them.

Examiner Burchmore: I presume Mr. Walter can bring that out more fully than I could. Now, with respect to the rate, have you any joint rates with these connecting lines covering class traffic?

Mr. Wiener: We are concurring or participating carriers in practically every southwestern line tariff I believe issued by Mr. Leland, and we are also a concurring carrier in some tariffs issued by some other agent or lines of roads.

Examiner Burchmore: Do the Texas common point rates apply to stations on your line?

Mr. Wiener: We think they do.

Examiner Burchmore: You are in Texas?

Mr. Wiener: We are in Texas, and we think the Texas Commission rates should apply.

Examiner Burchmore: From St. Louis——

Mr. Wiener: The Texas common point rates apply. I do not think there is an exception. I think every rate is the same to points on our line that it is to our connection with the main line.

2084 Examiner Burchmore: You have on file with the Commission an index of all your tariffs?

Mr. Wiener: We have.

Examiner Burchmore: I have a copy of that before me dated February 1, 1910, bearing your I. C. C. No. 3.

Mr. Wiener: Here is one——

Examiner Burchmore: There may be a subsequent issue of a new one, but if so it would be substantially the same?

Mr. Wiener: There may be some changes. Here is one issued November 1st, and we have a still later one issued December 1st.

Examiner Burchmore: Those are on file with the Commission?

Mr. Wiener: Those are on file with the Commission.

Examiner Burchmore: It will not be necessary to refer to them further. How about joint rates on lumber?

Mr. Wiener: We have joint rates on lumber with both the Cotton Belt and Southern Pacific system, the Houston East & West Texas.

Examiner Burchmore: To points all over the country?

Mr. Wiener: To points all over the country.

Examiner Burchmore: I mean to any territory to which you might wish to carry shipments.

2085 Mr. Wiener: I think they cover practically the entire country with the exception of some individual exceptions, points in New Mexico on the Santa Fe and some individual exceptions in other portions of the country.

Examiner Burchmore: You do not have any rates to Santa Fe local points, do you?

Mr. Wiener: We have rates from points on our lines to nothing on the Santa Fe.

Examiner Burchmore: What are your divisions in connection with the Cotton Belt system on lumber?

Mr. Wiener: Two and four cents.

Examiner Burchmore: The highest division you receive is four cents from the Cotton Belt?

Mr. Wiener: The highest division we receive is four cents.

Examiner Burchmore: Two cents is the lowest division?

Mr. Wiener: Via the Cotton Belt, yes, sir.

Examiner Burchmore: Have you ever received a higher division than four cents from the Cotton Belt?

Mr. Wiener: I do not think so, in my recollection.

Examiner Burchmore: Is there any traffic that you interchange with the Cotton Belt on which you receive no division

2086 of a joint rate? For example, where the Cotton Belt takes the whole rate or where there are no joint rates on your line, so you charge the local?

Mr. Wiener: I think about the only application of that would be the Santa Fe.

Examiner Burchmore: You have some traffic to Santa Fe local points?

Mr. Wiener: No, I do not think we ever have any to Santa Fe local points.

Examiner Burchmore: I am not talking about points to which you have no divisions, but about traffic which actually moves on which you earn no division.

Mr. Wiener: Speaking of an interstate basis?

Examiner Burchmore: Yes.

Mr. Wiener: I do not recollect. There might have been an exceptional car, but I do not remember.

Examiner Burchmore: You get divisions out of joint rates on shipments of lumber to points in Texas?

Mr. Wiener: We are not getting them, no.

Examiner Burchmore: Why not.

Mr. Wiener: Well, on account of a little misunderstanding with the Texas Railroad Commission of some long standing.

2087 Examiner Burchmore: Have you ever had any application on file with the Texas Railroad Commission to give you the necessary status which would entitle you to such a division?

Mr. Wiener: Yes, sir; and they at that time stated there were certain requirements, they seemed to require certain physical facts

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which would cause the expenditure of more money than we had or could borrow.

Examiner Burchmore: When did you make that application?

Mr. Wiener: One application was made several years ago; I do not remember the date.

Examiner Burchmore: When was the other made?

Mr. Wiener: I was just going to explain. The Commission changed its status or rather made a public declaration that it believed it had the authority to regulate railroads and did not intend to recognize any more.

Mr. Mantooth: That is, formally recognize them.

Mr. Wiener: That is, formally recognize them. The majority of the Commission made the statement they did not expect to recognize a railroad, but when one was chartered they expected to see it obey the law. Following that opinion we equipped ourselves as we thought in compliance with the law and so stated to the
2088 Commission and some of our connections we made applications for some joint rates which were not covered by railroad commission tariffs, and in reply to that the Commission notified us to be there on the 10th of next month, apparently to overrule their former opinion, and stated that on January 10th they would take up the matter.

Mr. Walter: That is a joint application by you with other lines?

Mr. Wiener: That is a joint application for some special rate.

Examiner Burchmore: Did you have any difficulty in getting the Cotton Belt to join in that application?

Mr. Wiener: The application was made with the St. Louis Southwestern system. The Cotton Belt rates did not require any application. There was some special joint rates with the St. Louis Southwestern which required a special order of the Commission to make it effective.

Examiner Burchmore: You make one statement as to the Cotton Belt and another as to the St. Louis Southwestern——

Mr. Wiener: I mean the Southern Pacific. The application was made with the Southern Pacific system.

2089 Mr. Walter: Let me suggest that a copy of that application be put in the record now.

Examiner Burchmore: Has it a material bearing on the case?

Mr. Walter: Yes, it shows the joint action of the Southern Pacific system and the Angelina & Neches River Railroad.

Examiner Burchmore: Have you a copy of it?

Mr. Wiener: I have an unsigned copy.

(The paper so offered and identified was received in evidence and thereupon marked Angelina & Neches River Exhibit No. 2, Witness Wiener, December 15, 1910, and is attached hereto.)

Examiner Burchmore: But as a matter of fact, speaking of the present date and without regard to the possibility of any different action or position in the future, the Texas Railroad Commission does not recognize and has not recognized so far the Angelina & Neches River Railroad as being a common carrier railroad?

Mr. Wiener: It has not issued any public order to that effect.

Examiner Burchmore: Well, whether its action is correct or not is another matter, but as a matter of fact it has not recognized
2090 it as a common carrier.

Mr. Wiener: It has not recognized it.

Examiner Burchmore: Are there any other short timber roads in that vicinity which have been recognized by the Texas Railroad Commission?

Mr. Wiener: I think there are a number which have been recognized; there are some short railroads in Texas which are doing business without any such formal recognition.

Examiner Burchmore: Is this action of the Texas Railroad Commissioner apparently an arbitrary one or do they assign reasons for their position?

Mr. Wiener: I cannot answer that question.

2091 Examiner Burchmore: You never heard any reasons assigned?

Mr. Wiener: As I stated, at one time several years ago they requested that we get our road in as good shape as the big systems like the Katy which have been in operation with heavy traffic, and we could not spend the money.

Mr. Garwood: Your Honor, would you permit me to make a statement with relation to that matter at this time?

Examiner Burchmore: Certainly.

Mr. Garwood: For a long time, quite a number of years, the Railroad Commission pursued the formal policy of issuing a formal order recognizing some and not recognizing others. There was, so far ase I am advised, no special statutory authority conferring upon them the right or power to recognize or not to recognize, but they pursued that policy for a number of years. Within the last few years they have concluded it was not their province to pass upon the question whether a railway was or was not a common carrier in so far as issuing a formal order to that effect, and they have discontinued that policy and have done so for the past year or two, and they are not now issuing any formal orders to that effect. But I understand that they will pass upon and undertake to determine whether joint rates shall be made as in the case indicated
2092 by the witness, his own application having been set down for a formal hearing on an order.

Examiner Burchmore: What divisions do you receive from the Houston, East & West Texas?

Mr. Wiener: I think the minimum is about one cent; it is a percentage basis; and the maximum is four cents.

Examiner Burchmore: How long have you been receiving as much as four cents from the Houston, East & West Texas?

Mr. Wiener: Since some time last February.

Examiner Burchmore: What prompted the Houston, East & West Texas to increase their maximum divisions from three to four cents?

Mr. Wiener: That particular division applies on traffic routed only through one gateway, one way, and was, I understand, caused

by their making favorable traffic arrangements with one of their connections which would permit them to pay that division.

Examiner Burchmore: That increase in division was not the result of any negotiation that you initiated with them?

Mr. Wiener: I had talked to them, and had talked to their connections. I think though that the same division was put in with
2093 some of their other connections which had not mentioned the matter to them. It was the result of some very favorable arrangements with some of their connections.

Examiner Burchmore: You interchanged the major portion of your lumber with the Cotton Belt?

Mr. Wiener: There have been some months when the car supply from the Southern Pacific was short, I believe they have received the major portion; it is simply now depending solely upon the question of car supply.

Examiner Burchmore: Does it not depend largely upon markets in which you happen to sell your lumber?

Mr. Wiener: Yes, sir, it depends upon the routings applicable and their tariffs; when we turn over a car, the intermediate routing is usually left to the railroad company and they naturally route it via the route paying the best rates, paying them the best revenue.

Examiner Burchmore: When lumber does move out over the Houston, East & West Texas for interstate destinations which could be reached by the St. Louis Southwestern and its connections, you are really receiving a less division and rendering a greater service?

Mr. Wiener: In a good many instances we receive the same division from either line.

2094 Examiner Burchmore: But you render a very much greater service?

Mr. Wiener: Yes, we render a greater service on the finished product.

Examiner Burchmore: You do not render any service at all on the finished product when it moves over the Cotton Belt?

Mr. Wiener: Yes, sir, some we do and some we do not.

Examiner Burchmore: What instances?

Mr. Wiener: In the movement of rough lumber from the sawmills, we do some switching service on handling a portion of the Cotton Belt shipments.

Examiner Burchmore: I questioned you with respect to the manner the lumber moved out, did I not?

Mr. Wiener: Somewhat.

Examiner Burchmore: The empty car is set at the mill by the St. Louis Southwestern?

Mr. Wiener: It is partially set in on the loading track by the Cotton Belt. The Cotton Belt refused to build a foot of their track off the right of way. They own the track so far as their right of way extends.

Examiner Burchmore: Their engine sets the car and takes the loaded car away?

2095 Mr. Wiener: If the loading tracks happen to be so full with cars they may set them and sometimes our engine goes up and switches the track.

Examiner Burchmore: Are the rates published from your line on lumber on a milling in transit basis?

Mr. Wiener: With the Cotton Belt the rate provides that the rate covers movement of the log to the mill and the lumber from the mill.

Examiner Burchmore: But the movement of the log is not performed by your company at all?

Mr. Wiener: Not now, but this has been the Cotton Belt milling in transit tariff, and we have taken it up and notified them we want to change it for that reason.

Examiner Burchmore: Has this company paid any dividends?

Mr. Wiener: It has not.

Examiner Burchmore: Accumulated any surplus?

Mr. Wiener: It has not. It has accumulated a deficit.

Examiner Burchmore: Losing money every year?

Mr. Wiener: No, it made some last year. For the year ending June 30th, 1910, it made about $700.

Examiner Burchmore: On the whole, however, it has been a losing venture?

2096 Mr. Wiener. For the ten years' operation it shows something like $7,000 or something over $7,000 loss.

Examiner Burchmore: Then the sum of the annual deficits has exceeded the sum of the annual balances?

Mr. Wiener: By something over $7,000, yes, sir.

Examiner Burchmore: Who has paid that $7,000?

Mr. Wiener: It is an indebtedness of the railroad company.

Examiner Burchmore: To the lumber company?

Mr. Wiener: Part of it, yes. It stands as an indebtedness. All of the indebtedness of the railroad company, today however, is not to the lumber company.

Examiner Burchmore: Examiner Boyle will take up at this point the Zwelle & Eastern Railway in the adjoining room. Do the officers of this railroad receive any interstate passes?

Mr. Wiener: Yes, sir.

Examiner Burchmore: Do they use those passes?

Mr. Wiener: I do mine, yes, sir.

Examiner Burchmore: Do the other officers of the railroad company receive passes?

Mr. Wiener: I think we receive three annuals.

Examiner Burchmore: And they are used?

2097 Mr. Wiener: I presume so.

Examiner Burchmore: Well, you do not think those gentlemen pay fare when they have passes?

Mr. Wiener: No, when they travel they use their passes unless there is something seriously the matter with their minds.

Examiner Burchmore: I think that is all.

Mr. Walter: This line of railroad of yours is a permanent railroad?

Mr. Wiener: Yes, sir.

Mr. Walter: Intended to remain there indefinitely?

Mr. Wiener: Intended to remain there indefinitely.

Mr. Walter: You serve anybody and everybody that offers you business?

Mr. Wiener: Yes, sir.

Mr. Walter: This proposed extension to Chereno, what sort of a country is that?

Mr. Wiener: That is going into a country, we expect for several miles to traverse a country on which there is no timber. It is going into one of the oldest settled farming communities of East Texas.

Mr. Walter: How does it rank in quality as to a farming
2098 community?

Mr. Wiener: Very high. The quality of the soil is very good.

Mr. Walter: Their agricultural and farming products rank with any part of Texas?

Mr. Wiener: With any part of the State, I think.

Mr. Walter: That railroad is under process of contract to the people along the line?

Mr. Wiener: You mean the building of it?

Mr. Walter: Yes.

Mr. Wiener: It has not been contracted yet.

Mr. Walter: But you have an arrangement with the people in process of arrangement so you expect to build the railroad?

Mr. Wiener: We expect to build the railroad, yes, sir.

Mr. Walter: That railroad is to be built whether it goes to Chereno or not?

Mr. Wiener: It will be built either near or to Chereno, yes, whether it goes to Chereno or not it will be built.

Mr. Walter: That is, in the immediate future?

Mr. Wiener: That is in the immediate future. We expect to complete about ten miles of it.

Mr. Walter: Has action been taken toward an amendment
2099 of your charter?

Mr. Wiener: The charter has been amended to include that extension.

Mr. Walter: Very recently?

Mr. Wiener: This year.

Mr. Walter: About how many people now live in the immediate territory along your line, what is the population?

Mr. Wiener: That is a hard question to answer. The immediate territory along our line has considerable farming territory. Some of the oldest farms in the county are along the line, and there is one track of about 90,000 acres which is being colonized, owned by colonization people, and we go something like two or three miles through that particular tract.

Mr. Walter: Would you say there are as many as 3000 or 4000 people who could use your railroad?

Mr. Wiener: I would consider it at least that many.

Mr. Walter: All this land after the timber is removed is agricultural land, is it not?

Mr. Wiener: Yes, sir, very good agricultural land, some of it.

Mr. Walter: If you reach Chereno or near enough for
2100 them to use your line that will aid several thousand more people.

Mr. Wiener: That will aid several thousand more people. There

are, I presume, 20,000 acres or more in cultivation in that immediate neighborhood, and quite a heavy population, several thousand people.

Mr. Walter: The railroad company furnishes the railroad for all logs that come out, under a contract arrangement with the lumber company?

Mr. Wiener: It furnishes the railroad, yes.

Mr. Walter: You spoke a moment ago of the requirement by the Texas State Commission made some years ago. I would ask you if your railroad now in the condition in which it is meets all that requirement?

Mr. Wiener: I think it does. We so consider it. We are complying with all the laws and orders of the Texas Commission today.

Mr. Walter: That is all.

Mr. Cowan: Just one question. As I understand the result of your situation, you were handling simply the logs and lumber of the Angelina County Lumber Company until you began to make these improvements and changed your relations as to the manner of hauling the logs, operating the cars and getting a passenger car
2101 and the like, and that since the rejuvenation of this road, you are now in a position to speak to the public that you are going to operate a railroad for public purposes, and are doing it now?

Mr. Wiener: We are operating a railroad every day.

Mr. Cowan: And doing it now?

Mr. Wiener: And doing it now.

Mr. Cowan: And the object of operating that railroad is for the compensation you get out of doing it?

Mr. Wiener: Yes, sir.

Mr. Cowan: And that compensation will come for the present, at least, mostly and almost altogether from the lumber business?

Mr. Wiener: I think that our total compensation for the entire month of November on lumber was only about 80 per cent of the total revenues received, and the other revenues were only received for part of the month.

Mr. Cowan: The revenues for the other traffic than lumber, however, are on traffic that is handled for the lumber company?

Mr. Wiener: Only a portion of it.

Mr. Cowan: Well, a portion of it is.

2102 Mr. Wiener: A portion of it is.

Mr. Cowan: You cannot operate and could not operate that railroad as a railroad for the public unless you operated it by getting the divisions on the rates on the lumber?

Mr. Wiener: We could not operate it except at a loss without getting a part of the revenue on all the traffic we handle.

Mr. Cowan: My friend, Mr. Henderson, the President of Angelina County, is the president of this railroad company?

Mr. Wiener: He is Vice-President of the railroad company.

Mr. Cowan: Well, he is the financial end of the company?

Mr. Wiener: Yes, sir.

Mr. Cowan: And he is not in the habit of doing business at a loss if he can help it?

Mr. Wiener: Well, he has done it, to my personal knowledge, in a good many instances.

Mr. Cowan: Well, that may have been on account of his employés or something like that. What is the object in going to San Augustine?

Mr. Wiener: The opening up of a section of country that will give our railroad tonnage in the days when the lumber business is a thing of the past in Texas.

2103 Mr. Cowan: San Augustine is the place which Governor Roberts mentioned in his book as being the centre of the surrounding country.

Mr. Wiener: I do not know, but it is.

Mr. Andrews: That is Nacogdoches.

Mr. Garwood: And it is, is it not?

Mr. Wiener: It is. I have been there.

Examiner Burchmore: What is the total movement of logs into your mill at the present time?

Mr. Wiener: Expressed in what terms?

Examiner Burchmore: Any terms you can express it.

Mr. Wiener: The total movement at the present time, I suppose, would be about 100,000 feet per day.

Examiner Burchmore: What does it cost the lumber company to move that 100,000 feet into the mill?

Mr. Wiener: I could not answer that question, because I have not the statement detailed that close, but it cost-, the service of the train crew and the operation of that train, and the maintenance of their equipment besides the trackage they pay us.

Mr. Garwood: If you get to San Augustine, what railway system will you reach then?

2104 Mr. Wiener: The Santa Fe.

Mr. Garwood: Then the Santa Fe penetrates through and reached the lumber district in East Texas?

Mr. Wiener: It does.

Mr. Garwood: How far northward from Beaumont does it go?

Mr. Wiener: I do not know the mileage. It goes through San Augustine to Center and across up to Longview which I believe is the northern terminus at present.

Mr. Garwood: The general tendency of railroad construction in East Texas is eastward toward the pine forests now served by the Santa Fe, is it not?

Mr. Wiener: I do think the general tendency is in that direction.

Mr. Garwood: Yes. The Texas railroads are pointing in that direction. Now if through routes and joint rates are not afforded to the railroads that are thus penetrating that section of Texas, is it not a fact that that tonnage will be tied up to the Santa Fe and it will move it throughout its entire length.

Mr. Wiener: I think so. That is my understanding.

Mr. Garwood: Is it not also the fact that the forest products
2105 of that section of Texas will be denied the right and privilege of moving to the markets of the world out through the northern Texas gateways via these roads that are now penetrating

that section and will be compelled to move over the entire route of the Santa Fe in that section?

Mr. Wiener: That is correct.

Mr. Garwood: Then I will ask you the question if *if* it is not directly to the interests of East Texas and the citizens and inhabitants thereof that through routes and joint rates be provided by the carriers that are now penetrating that section?

Mr. Wiener: It is.

Examiner Burchmore: That is your judgment. Do you think other people might have a different opinion?

Mr. Wiener: I do not think there are very many of the citizens of East Texas but would consider the building of railroads through that section is opening up the country that is at present undeveloped and which will stay undeveloped until that country is penetrated by some system of railroads.

Examiner Burchmore: Are not the trunk lines rather thick in that country?

Mr. Wiener: *There* are not—there is not a main trunk line within 19 miles of the town of Chereno which we are
2106 going to.

Mr. Walter: Have not the trunk lines been pretty generally made up of the small lines which were originally constructed to carry lumber?

Mr. Wiener: The trunk lines to a great extent have been made up by the acquisition and extension of short lines of railroads in recent years. The Cotton Belt extension from Lufkin south has been by the acquisition of roads built and operated and connected with lumber companies; and other systems have been extended on the same basis.

Mr. Garwood: Was not the Santa Fe a road made up from the Kirby Road which the Santa Fe bought from Mr. Kirby, the intervenor in this case?

Mr. Wiener: That is my understanding, that the present Santa Fe Road in East Texas was built out of Beaumont by Mr. Kirby, and afterwards acquired by the Santa Fe.

Mr. Garwood: Is it not a fact that the Houston, East & West Texas which runs from Houston to Logansport and then in connection with the Houston & Shreveport to Shreveport, was originally a narrow gauge road built into the pine forests for the main purpose of accommodating that lumber tonnage, and was it not afterwards changed to a standard gauge road?

2107 Mr. Wiener: When I first came to Texas it was a narrow gauge road, and the principal tonnage of which was lumber, and a sawmill every few miles on the road, and very little else moving. Since that time it has been broadened to standard gauge.

Mr. Garwood: And it is not part of the Sunset Central System?

Mr. Wiener: It is now part of the Sunset Central System.

Examiner Burchmore: Was it formerly owned by lumber people?

Mr. Wiener: I do not know. I have been there 20 years and it was there before I was.

Mr. Garwood: It was projected by private citizens in Houston.

Whether they owned any timber or not I do not know. It was before my day. You will have to ask Mr. Bonner as to that question.

Mr. Cowan: It is your understanding that that road was projected by parties who were not the owners of timber?

Mr. Garwood: I do not know. Paul Dumont was one of the original movers in that enterprise. As to whether he was interested in lumber I do not know.

Mr. Cowan: Old man Bonner says he never heard of his being interested in lumber.

2108 Mr. Garwood: Mr. Bonner is one of our oldest inhabitants, and if he says so, it is no doubt correct.

Mr. Greer: Is it not your information that the present Santa Fe out of Beaumont reaching northward to San Augustine was built primarily and largely subscribed to by four mills at Beaumont, Mr. Kirby projecting it, and these mills assisting him in it to serve those mills?

Mr. Wiener: My understanding was it served the mills at Beaumont, that its original traffic was the service of those mills and logs.

Mr. Greer: When it extended up to Jasper, a distance of about seven miles, was not its tonnage entirely of lumber and logs?

Mr. Wiener: That would be a presumption. I presume so, from my general knowledge.

Mr. Greer: That does actually penetrate the best pine forest in East Texas, or did at that day?

Mr. Wiener: It did at that day.

Examiner Burchmore: Did it receive any divisions out of joint rates at that time?

Mr. Wiener: My understanding is it did.

Mr. Greer: I do not know about the question of divisions,
2109 but as a matter of fact do you know whether the owners of that mill contributed largely by way of contributing stock or other assistance to build that road for the purpose of getting logs to their mills and serving the mills of Beaumont?

Mr. Wiener: I do not know that. That was out of my immediate vicinity at that time, and I know nothing of the details of the building of that road.

Mr. Greer: Do you know whether the Commissioner authorized a logging rate of about $4.00 into Beaumont for a number of years for the benefit of those mills over that road?

Mr. Wiener: My understanding is there was a logging rate authorized by the Commission.

Examiner Burchmore: This may be applicable to this case, but I do not see its application unless the road received tap line divisions. If it was an expense to build the road and an expense to the builders and they received no compensation from the railroads to partially take care of that expense, what is the application to this particular case, unless to show that the Santa Fe was originally constructed in that manner.

Mr. Greer: My understanding is that a mill man's money can build a railroad the same as anybody's else money, and if it is a fair compensation it is immaterial who owns it, and
2110 if these mill men did build this railroad at a considerable expense——

Examiner Burchmore: At their own expense?

Mr. Greer: Well, Mr. Kirby was not the original owner, but he contributed largely to it.

Examiner Burchmore: Do you mean the Santa Fe paid for this road?

Mr. Greer: The Santa Fe had nothing in the world to do with it, the object being to show that these roads grow into real trunk line railroads.

Examiner Burchmore: The Commission understands that that is a fact, that short lines of lumber roads have in very many instances become integral parts of these great systems.

Mr. Walter: Let us have the information furnished us by the Santa Fe whether there was divisions paid when the line was originally constructed?

Mr. Cowan: The Santa Fe had nothing to do with it. The Southern Pacific would know if there were any divisions.

Examiner Burchmore: Does anyone know?

Mr. Coleman: There has not been any proof to indicate that the sawmill men at Beaumont owned the road. The Santa Fe bought the road from John H. Kirby.

2111 Mr. Greer: Is Mr. Kirby here?

Mr. Coleman: My remembrance is that when the Santa Fe acquired the road, John H. Kirby had no sawmills on the line. Now it seems to me——

Examiner Burchmore: We are dealing with the distant past, and this investigation concerns primarily the present, and if this past history of the Santa Fe's present line has a direct bearing on the issues in this case, I should be glad to hear any questions that would bring it out.

Mr. Greer: As to the Santa Fe's practices, I am sure since they got the road this division has not existed. I am a citizen of Beaumont, and it is my understanding the road was originally built in the interests of those men and the Texas Commission authorized rates on which the logs came in, of the character of a milling in transit proposition, a certain amount of refund on the number of cars. I may be mistaken about it, but if Mr. Kirby is here he can inform us.

Mr. Andrews: He is not here today.

Examiner Burchmore: Is it your thought that a part of the present Santa Fe main line used to be made up of tap lines which received divisions in about the same manner that these tap lines today receive divisions?

2112 Mr. Greer: I just stated the extent of my information. It is the extent of my information that the logs were hauled into Beaumont on a milling in transit rate, and that a certain amount was refunded on the milling in transit basis. I do not know the exact terms, but to that extent it was similar in character.

Mr. Cowan: That information can be obtained.

Mr. Bonner: I was associated with Mr. Kirby in a way. I was not actively connected with the road. I happen to know that Boston capital put up most of the building of that road and developed what was then a very much undeveloped country. I believe one or two

lumber companies in Beaumont or some of their officers held some bonds, very few and only for a short period, but I cannot state positively; but it is my recollection they did not own a dollar of stock in the road, unless perhaps a qualifying share as a director. Boston capital put up the money for the construction of that road.

Mr. Greer: Didn't they have a milling in transit rate?

Mr. Bonner: They put in a milling in transit rate later on, but Mr. Kirby did not own any sawmill or any interest in a sawmill when he built the road, and the Kirby Lumber Company was organized after he sold the road.

Mr. Greer: Did he own any timber?

2113 Mr. Bonner: He owned some interest in timber at that time, but he bought most of it after that.

Examiner Burchmore: Does not this discussion relate more particularly to the whole question, if it has any bearing? It has no bearing on the Angelina & Neches River Railroad.

Mr. Greer: No.

Mr. Bonner: I merely wanted to tell what I knew.

Mr. Garwood: In that connection I intended to make the inquiry at a later point. I would like to be advised as to when the intervenor's case and that branch of the case will be taken up. Our witnesses are leaving, and we would like to be advised definitely as to whether they will be put on their case at this time, and whether in case they do not intend to put on their case, we will be expected to take up that branch of the inquiry ourselves at this hearing, and in that event we wish to be advised as to whether the intervenors, Mr. Kirby and Mr. Bonner and Mr. Hancock—and I would also like to ask if Mr. Coleman, of the Santa Fe, will remain here until the end of this hearing. I would request that information through counsel.

Mr. Cowan: Well, I have very little information on the subject to communicate, but I will say that whatever information I have I will be glad to communicate.

2114 The understanding was that it was going to take all the time that the Commission could devote to the matter to hear the tap line side of the case here. I asked Judge Harlan about that, and spoke to counsel in regard to it. It seems that the progress that is being made would require all the time that could be devoted to this hearing to hearing the tap line side of the case, and on that account it was understood that we would not be expected, and in fact the opportunity would not exist for us to undertake to put in our side of the case nor for the trunk lines to undertake to put in their side of it. I do not know whether Judge Harlan communicated that to the Examiner or not, but I suppose he did. And therefore I notified you, Judge Garwood, at the request of Judge Harlan, that such would be the case, according to the way the matter appeared to me then.

Mr. Garwood: That is correct, that was probably the case at that time.

Mr. Cowan: And it was by his authority, and I presume the Examiner understands it as I understood it. That is all the information I have about it, and on that account I supposed we would not at-

tempt to put in any testimony at this hearing, hoping we can
2115 even get through with the tap lines at this hearing.

Mr. Walter: Do you expect to put in testimony?

Mr. Cowan: Hereafter?

Mr. Walter: Yes.

Mr. Cowan: Certainly.

Mr. Garwood: That is the point we want to be definitely advised about. We have testimony we wish to put in this record. Some of this testimony we will expect our friends upon the other side to furnish us, which I have no doubt they will gladly do. We also have independent testimony that ought to go into the record, and from our standpoint we wish to have it placed in the record. We do not wish to be placed in the attitude of having this hearing closed with that expectation, confining ourselves merely to the salient points involved in each individual tap line case and not have these general features go into the record. We wish to be absolutely certain that there will be at an early date and in time for it to be thoroughly considered by the Commission this general line of testimony which we assume will be taken up by the intervenors in the case. If they do not take it up, we want our own testimony in the record. And that is now, that we wish to be definitely advised about
2116 whether there will be at an early date another hearing and in full time to give the Commission time to investigate the testimony adduced prior to the final hearing upon all these matters.

Examiner Burchmore: It is my understanding that at the present session each and every tap line that is a party to this whole record will be given the fullest opportunity to present any facts that it has to present, and the effort will be made to develop all the facts that will shed any light on the methods and practices of these so-called tap lines or on the question of their status as common carriers. I have not received any instructions to go farther than to call all the tap lines and hear each case presented. I do not think the Commission would enter any final order in a matter of this importance without affording every party in interest the fullest opportunity to present their case and bring out all the testimony; and so it is my general understanding that the Commission will hold a further hearing in this matter at which the intervenors, perhaps, will put in their case, if they have one to put in, and if the Southern Pacific or any other interests in this case have further facts they want to bring out, I understand they have an opportunity to bring out those facts. All I can say authoritatively is that I understand that at the
2117 present sessions this week we will take up only the case of each individual tap line and go no further. If when we go that far, any one wishes to present further facts immediately, I will wire the Commission and find out whether I can hear it. But I have an idea we will not complete this phase of the investigation before Saturday night, and we will be doing very well if we do that.

Mr. Garwood: It appears now to be likely——

Examiner Burchmore: It can be noted in the record, however, that the interests you represent desire to have a further hearing in connection with this case, in some relation.

Mr. Garwood: We wish to be advised definitely whether there will be another hearing. I have understood from the intervenors that they expected to——

Mr. Cowan: I have stated that Judge Harlan told me that and told me to tell you so.

Examiner Burchmore: It is my impression there will be a further hearing.

Mr. Cowan: But he did not care at that time to make any public announcement about it, because he did not know how far some of the individual parties might want to call some of the wit-
2118 nesses who might leave upon making such an announcement. But so far as the subsequent hearing is concerned, there was no question at all that he told me there would be a subsequent hearing at which the intervenors and trunk lines would be accorded the opportunity to put in whatever evidence they pleased; but he wanted to try to close the tap line end of it here if he could. That hearing to be at as nearly a convenient date as would suit the business of the Commission and yet expedite the proceeding. That was the definite understanding, and I not only told you gentlemen but some other lawyers when they asked me about it, that that was my understanding.

Mr. Garwood: I had not understood that testimony at such further hearing would be limited to the intervenors and trunk lines.

Mr. Cowan: He did not so state. I said they would be given an opportunity.

Examiner Burchmore: But I do understand at that further hearing no opportunity will be given to any tap line that appears at this hearing and states its case here, to present any further facts in relation to its particular case. We are supposed to clean up this part of the investigation at this session.

2119 Mr. Garwood: No. One reason why I am raising this inquiry now, in addition to being certain that will be the case, is to confine this inquiry as closely as possible to that.

Examiner Burchmore: I think this inquiry should be confined to the investigation as closely as possible, of the particular lines before us.

Mr. Jeffrey: I wish to call attention to this. I have a list of 20 Iron Mountain tap lines which have not been called yet.

Examiner Burchmore: Do they all receive divisions?

Mr. Jeffrey: Unfortunately they do. Suppose I hand this list up to you.

Examiner Burchmore: I wish you would. I have seven or eight, but the rest have been called and have not answered.

Mr. Cowen: There have been a good many called while you have been out.

Examiner Burchmore: Is this all with the Angelina & Neches River?

Mr. Walter: We want to make one reservation, as to the necessity for rebuttal in some particular lines.

Examiner Burchmore: Your request will be noted.

2120 Mr. Cowan: The law gives you that, I think.

Mr. Walter: Yes, and I know we will get it.

Mr. Coleman: In regard to Judge Garwood's inquiry, and whether the Santa Fe would be represented here, I may say it will be represented by either myself or some one else. Now if he has any special purpose in asking whether I personally would be here, I can arrange to be here or have any one for the Santa Fe that the defendants or Mr. Garwood may wish to have testify.

Examiner Burchmore: We will take a recess until two o'clock.

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

2121 After Recess.

Examiner Burchmore: The Mississippi Valley Railway has been referred to Examiner Boyle.

The Blythville, Leachville & Arkansas Southern will be heard by Examiner Boyle.

The Black Bayou Railroad will be heard in the adjoining room. Is anyone present for that road?

(No response.)

Examiner Burchmore: Is anyone present for the Jefferson & Northwestern?

(No response.)

Examiner Burchmore: Is the Bodcaw Valley Railroad present?

(No response.)

Examiner Burchmore: The Bodcaw Valley Railroad apparently is not present. It is my understanding that the officers of that company have been present at this hearing. Whether they are here now or not I do not know, but apparently there is no following up of the matter

The Durham Transportation Company?

(No response.)

2122 Examiner Burchmore: The England & Clear Lake Railroad. Is there any appearance for the England & Clear Lake Railroad?

(No response.)

Examiner Burchmore: The Freeo Valley Railroad?

Mr. Walter: I appear for that railroad.

2123 *Freeo Valley Railroad.*

EDWARD BOWER, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Are you an officer of the Freeo Valley Railroad?

Mr. Bower: I am Vice President and Manager.

Examiner Burchmore: Are you an officer of the Eagle Lumber Company?

Mr. Bower: Yes, sir.

Examiner Burchmore: The line of the Freeo Valley Railroad connects with the St. Louis Southwestern Railway, as I understand, at Eagle Mills, Arkansas?

Mr. Bower: It does.

Examiner Burchmore: Is that the terminus of the line?

Mr. Bower: Yes, sir.

Examiner Burchmore: In what direction and for what distance does it extend?

Mr. Bower: It extends in a northeasterly direction about 22 miles, not 22 miles exact, but a fraction under 22 miles, to what is known as Princeton Junction.

Examiner Burchmore: Where is this road located with
2124 reference to Little Rock or Texarkana?

Mr. Bower: It is south of Pine Bluff, about 60 miles, and north of Texarkana about 90 miles.

Examiner Burchmore: Does it connect with the line of any other common carrier?

Mr. Bower: No, sir.

Examiner Burchmore: The other terminus of the line is known as Princeton Junction?

Mr. Bower: Princeton Junction.

Examiner Burchmore: The word junction suggests the connection with some other line of railroad.

Mr. Bower: With the logging road.

Examiner Burchmore: A private logging road of the Eagle Lumber Company extends, as I understand it, from that point. What is the length of that road, and in what direction does it run?

Mr. Bower: It runs almost due west, and is approximately 17 miles, a little in excess of 17 miles.

Examiner Burchmore: How closely does the line of the Freeo Valley Railroad run to the line of any other common carrier besides the St. Louis Southwestern?

2125 Mr. Bower: The nearest point is 5¼ miles from the Rock Island's Fordyce-El Dorado Branch.

Examiner Burchmore: Have you contemplated building across to the Rock Island or is there some barrier intervening between the lines?

Mr. Bower: There has been talk of venturing in that direction. There has been nothing done. It has been dropped.

Examiner Burchmore: Is it proposed to connect the line of this railroad with the line of the Fordyce & Princeton, which seems to be somewhat adjacent?

Mr. Bower: No. There was at one time a proposition to connect it with the Malvern & Freeo Valley Railroad, making the Iron Mountain connection.

Examiner Burchmore: That has been abandoned?

Mr. Bower: That has been abandoned.

Examiner Burchmore: Who is President of this railroad company?

Mr. Bower: E. L. Hayward.

Examiner Burchmore: He is also President of the Eagle Lumber Company?

Mr. Bower: No. Edward B. Hayward is President of the Eagle Lumber Company.

2126 Examiner Burchmore: Is that father and son?

Mr. Bower: Father and son.

Examiner Burchmore: Mr. E. L. Hayward is Vice President of the Eagle Lumber Company?

Mr. Bower: No.

Examiner Burchmore: Does he occupy any position with the lumber company?

Mr. Bower: Secretary of the lumber company.

Examiner Burchmore: Who are the other officers of the railroad company?

Mr. Bower: I am its Vice President, and M. J. Moore, Secretary and Treasurer.

Examiner Burchmore: Is Mr. Moore an officer of the lumber company?

Mr. Bower: No.

Examiner Burchmore: Are you an officer of the lumber company?

Mr. Bower: I am its Treasurer and Manager.

Examiner Burchmore: Then with the exception of Mr. M. J. Moore, the officers of the Freeo Valley Railroad Company seem to be officers also of the lumber company?

Mr. Bower: Yes, sir.

2127 Examiner Burchmore: I understand that the Eagle Lumber Company substantially controls the Freeo Valley Railroad through the ownership of a majority of the capital stock; is that correct?

Mr. Bower: I think so, yes, sir.

Examiner Burchmore: The stockholders of the two companies are in the main common?

Mr. Bower: With the exception of a few shares of stock, they are identical.

Examiner Burchmore: Are those few shares in the hands of directors?

Mr. Bower: Directors of the railroad company?

Examiner Burchmore: Yes.

Mr. Bower: Yes, sir.

Examiner Burchmore: And there are no stockholders in the lumber company who are not directly interested in the railroad company?

Mr. Bower: None.

Examiner Burchmore: What is the character of the country through which this railroad runs?

2128 Mr. Bower: Well, it is a mixture of almost everything that can be found in Southern Arkansas. The first three miles out from the junction with the Cotton Belt is fine flats; the next seven miles we will say is a farming country, and it runs almost that entire distance through farming lands. Then we get out into the gumbo hills and it is a very rough country and not very thickly settled on the line of railroad.

Examiner Burchmore: Does the Eagle Lumber Company own any timber land in this vicinity?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is the extent of its timber holdings?

Mr. Bower: There are no timber holdings of the Eagle Lumber Company immediately on the line of the Freeo Valley, but they own a large per cent of the cout-over land for the last ten miles of the length of the line. But beyond and where a private line of the Eagle Lumber Company runs they have approximately 30,000 acres of timber lands.

Examiner Burchmore: In the general area in which this 30,000 acres is situated, how much timber land is there outstanding in the hands of other owners?

Mr. Bower: Well, that would be an estimate on my part. I would think as a rough guess at it there was as much as
2129 one hundred million feet of pine. I have no way of knowing the amount of hardwood, but there is considerable.

Examiner Burchmore: What acreage?

Mr. Bower: Well, 20,000 acres.

Examiner Burchmore: So that this company controls more than half of the timber acreage out there?

Mr. Bower: Yes, I think so.

Examiner Burchmore: In speaking of timber lands, I mean to include stumpage rights, and I suppose you so understood.

Mr. Bower: Yes, sir. There is a great deal of timber land within our territory that has already — logged for the pine, and I have no estimate at all on the hardwood that remains there, but it is coming into the market rapidly; and taking that in connection with the outside pine, the lumber company does not own or control by any means 50 per cent of the stumpage in that territory.

Examiner Burchmore: Do you do any hardwood lumbering?

Mr. Bower: No, sir.

Examiner Burchmore: You sell the hardwood on the trees to other mills?

Mr. Bower: Yes, sir.

2130 Examiner Burchmore: What other sawmills are there on the line?

Mr. Bower: There is only one other sawmill known as the Williams mill. There is another small mill owned by a Mr. Wright that is six miles off the line. He has been wagoning his lumber to the line of the Freeo Valley, and it has been moved out over our line. There is also a small mill that is cutting hardwood, cross ties, railroad crossties exclusively.

Examiner Burchmore: I understand that the mill of the Eagle Lumber Company is located at the junction point at Eagle Mills with the St. Louis Southwestern and is in fact directly adjacent to the tracks of that company?

Mr. Bower: That is correct.

Examiner Burchmore: Is there a sawmill and planing mill both in that plant?

Mr. Bower: Yes, sir.

Examiner Burchmore: One of each?

Mr. Bower: Yes, sir.

Examiner Burchmore: Is there a side track extending from the rails of the Cotton Belt to a convenient point near your loading platform?

Mr. Bower: Well, I do not know that it could be termed
2131 a private siding. There is a siding which goes to our loading platform but——

Examiner Burchmore: Who owns that siding?

Mr. Bower: Well, it was built under the Cotton Belt siding contract. I think that contract provided at the time it was made that the Eagle Lumber Company should do the grading and furnish the crossties and the Cotton Belt furnished the rail and maintains the siding.

Examiner Burchmore: When was that side track constructed or when was the contract made?

Mr. Bower: As I recall it, that contract was made about 1902; that was before my time with the company, however, and I am not positive as to the date of it.

Examiner Burchmore: It is however possible for cars to be moved from the mill to the Cotton Belt main line without moving over the rails of this Freeo Valley Railroad?

Mr. Bower: Yes, sir.

Examiner Burchmore: When was this railroad first constructed?

Mr. Bower: It was begun about 20 years ago.

Examiner Burchmore: When was it incorporated?

Mr. Bower: I think the charter is dated May 11th, 1904.
2132 Examiner Burchmore: And that charter was taken out under the laws of the state?

Mr. Bower: Yes, sir.

Examiner Burchmore: And the line is incorporated as a common carrier railroad?

Mr. Bower: Yes, sir.

Examiner Burchmore: At the time of that incorporation was the entire present line constructed and in operation?

Mr. Bower: No, there was 18 miles constructed at that time.

Examiner Burchmore: Four or five miles have been built since?

Mr. Bower: Four miles.

Examiner Burchmore: Will you state what the total mileage of those private tram road tracks is?

Mr. Bower: I said approximately 17 miles. There is a little more still than that owned by the lumber company, but it is a go and come proposition, it is taken up and laid down.

Examiner Burchmore: When was this mill at Eagle Mills first put in operation?

Mr. Bower: About 26 years ago.

Examiner Burchmore: Then this railroad was constructed subsequent to the opening of the mill?

2133 Mr. Bower: Yes, sir.

Examiner Burchmore: In the beginning was the railroad operated as a mill facility to bring logs to that mill?

Mr. Bower: I take it that it was.

Examiner Burchmore: That is your understanding?

Mr. Bower: That is my understanding.

Examiner Burchmore: That was the situation in 1904, was it not?

Mr. Bower: Well, yes. I do not know what outside business was being done in 1904.

Examiner Burchmore: How long has Mr. Hayward been interested in this plant?

Mr. Bower: Since its inception, since the building of the plant.

Examiner Burchmore: What was the capital stock of this railroad when it was first incorporated?

Mr. Bower: $50,000.

Examiner Burchmore: Was that all issued?

Mr. Bower: Yes, sir.

Examiner Burchmore: Was it issued for cash, or as a sort of dividend on the lumber companys stock, or in what manner
2134 was it issued?

Mr. Bower: It was issued by declaring a dividend of the lumber company; checks were written, I understand, for the amount of the dividend, and were placed in the hands of the stockholders of the lumber company, and they were advised of the organization of the railroad and given permission to accept cash or stock in the railroad for a like amount.

Examiner Burchmore: But did all of them accept the stock?

Mr. Bower: Yes, sir.

Examiner Burchmore: Simply endorsed their checks over?

Mr. Bower: Yes, sir.

Examiner Burchmore: I understand in a substantial sense the officers and directors and stockholders of this railroad company at the present time are practically identical with the officers, stockholders and directors of the Eagle Lumber Company, or perhaps that statement is too broad?

Mr. Bower: They are in a sense; the president of the railroad company is the son of the president of the lumber company; our secretary and treasurer has no interest whatever in the lumber company except that he is an employé of the company.

Examiner Burchmore: But the two corporations, while
2135 they are distinct and separate corporations legally, are in substance one in interest?

Mr. Bower: They are.

Examiner Burchmore: Did the Cotton Belt System furnish any of the steel rails out of which this railroad was built?

Mr. Bower: None that I have any knowledge of.

Examiner Burchmore: Does this railroad company have any station buildings?

Mr. Bower: They have a small freight depot at Eagle Mills.

Examiner Burchmore: And that is the only station?

Mr. Bower: That is the only station.

Examiner Burchmore: Do they have any team tracks at which carload freight can be received or delivered to the shippers along the line?

Mr. Bower: Yes, sir.

Examiner Burchmore: What stations are there along the line, using the word stations in the sense of meaning points to or from which rates apply?

Mr. Bower: There are a number of sidings that are known by the number of miles distant they are from the junction with the
2136 Cotton Belt. The first siding is 7 miles out and is known as the Section House; the next is known as the Williams' Switch, and was built there for the little sawmill that I mentioned, and is 2 miles from the mill. The third is known as the Fourteen Mile Siding. The next is Eaglet, a small town, and the other is Princeton Junction, where there is a siding.

Examiner Burchmore: Those names are all shown in the tariffs?

Mr. Bower: I think so, with the exception of Section House, which I believe is called Scales. There was a depot built there at one time, which was destroyed by fire. The point was named Scales.

Examiner Burchmore: This is a standard gauge railroad?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is the weight of the rail?

Mr. Bower: 35 pounds, with the exception of a mile and a half, which is 45 pounds.

Examiner Burchmore: Is the road substantially constructed?

Mr. Bower: It is.

Examiner Burchmore: Any bridges?

Mr. Bower: Yes, sir.

2137 Examiner Burchmore: Well kept up?

Mr. Bower: It is.

Examiner Burchmore: How is it ballasted?

Mr. Bower: Principally with gravel.

Examiner Burchmore: When was that gravel ballast put on?

Mr. Bower: That work was begun about—well, before my time, but I will say eight years ago.

Examiner Burchmore: How many locomotives do you own and operate?

Mr. Bower: We operate two.

Examiner Burchmore: How many do you own?

Mr. Bower: None.

Examiner Burchmore: Those locomotives are leased from the lumber company?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is the basis of compensation?

Mr. Bower: There is really none, with the exception that a part of the consideration of the sale from the lumber company to the railway company was that 61 logging cars and a caboose and one locomotive at that time was the property of the lumber company and was turned over to the railroad company to be operated, and they were to keep up all repairs and at any time that there was a
2138 demand made on the railroad company for that equipment it was to be returned in substantially as good condition as it was received.

Examiner Burchmore: Any provision for depreciation?

Mr. Bower: Well, no.

Examiner Burchmore: Was that a written contract?

Mr. Bower: No, sir.

Examiner Burchmore: Then the railroad company pays nothing for the use of this locomotive and cars?

Mr. Bower: Except the up-keep. Understand now, the log cars are all run over the private line of the lumber company on the spurs, as well as over the main line. The spur work is being done in a mountainous country, very hilly, and the damage to those cars is very very heavy.

Examiner Burchmore: Who keeps them up?

Mr. Bower: The railroad company; that is the consideration of the lease, that no matter whether the damage is done on the spur tracks or the railroad, it is taken care of by the railroad company.

Examiner Burchmore: You have one box car, you said?

Mr. Bower: No, one caboose.

Examiner Burchmore: Is not that car described in your
2139 books as a combination passenger and freight car?

Mr. Bower: Well, it is, one end is a freight car and the other is a regulation caboose of the American Car & Foundry Company.

Examiner Burchmore: Do you have any other rolling stock besides that described?

Mr. Bower: Substantially none.

Examiner Burchmore: How many track crews are there on the road?

Mr. Bower: Two.

Examiner Burchmore: Do they perform any work on the private tram line of the lumber company?

Mr. Bower: None whatever.

Examiner Burchmore: Have you any station employés?

Mr. Bower: One.

Examiner Burchmore: And he is at Eagle Mills?

Mr. Bower: Joint agent of the Cotton Belt and Freeo Valley.

Examiner Burchmore: What compensation do you pay that agent?

Mr. Bower: I think it is $27.50 per month.

Examiner Burchmore: Do you pay any proportion of the cost of maintaining the station at that point?

2140 Mr. Bower: No, we do not.

Examiner Burchmore: You use the Cotton Belt stations?

Mr. BOWER: Well, in a sense we do, and we do not. The loading spur that runs to our platform is between our connection with the Cotton Belt and the depot and it is not possible for us to get our trains or our engine to the Cotton Belt without going on the main line, to the Cotton Belt depot.

Examiner Burchmore: How many train crews have you?

Mr. Bower: One.

Examiner Burchmore: Do you operate a locomotive with one train crew?

Mr. Bower: No, one locomotive is an emergency locomotive.

Examiner Burchmore: Are there any employés in the general office of the railroad company other than its officers?

Mr. Bower: No.

Examiner Burchmore: Do any of the clerks of the lumber company perform service at times for the railroad company?

Mr. Bower: They do; Mr. Moore, the secretary.

Examiner Burchmore: Is he compensated for that labor by the railroad company?

Mr. Bower: No.

2141 Examiner Burchmore: Does the railroad company pay any money to the lumber company to take care of the services performed by the latter's employés?

Mr. Bower: It does not.

Examiner Burchmore: What are the salaries of these officers from the railroad? I mean railroad officers who may also be officers of the lumber company?

Mr. Bower: There is no compenastion.

Examiner Burchmore: The railroad company then pays no salaries to its officers?

Mr. Bower: No.

Examiner Burchmore: is there any salaried officer of the railroad?

Mr. Bower: Not one, except this agent I spoke of.

Examiner Burchmore: The officers render gratuitous service to this carrier?

Mr. Bower: They do.

Examiner Burchmore: Is not that a little unusual on railroad companies lines?

Mr. Bower: I presume it is.

Examiner Burchmore: You have a very efficient management then. Do you run any passenger or mixed trains?

Mr. Bower: We do not do a passenger business for hire.

2142 Examiner Burchmore: You are incorporated only as a freight carrier?

Mr. Bower: Well——

Examiner Burchmore: At least you do not carry passengers?

Mr. Bower: We do not carry passengers. The caboose is run at times, and passengers all ride when they care to.

Examiner Burchmore: Do your freight trains all operate on a regular service?

Mr. Bower: No, sir.

Examiner Burchmore: How many trains are there running each way daily on the average?

Mr. Bower: Two.

Examiner Burchmore: Two each way?

Mr. Bower: Two each way.

Examiner Burchmire: Those are purely freight trains?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is your total freight tonnage for the past fiscal year?

Mr. Bower: Well, it depends on how you figure it. If as our

secretary made up the annual returns, if that is the correct way of arriving at the tonnage, it is something in excess of 130,000 tons; but in making that report he estimated the log tonnage, and
2143 to that added the lumber tonnage.

Examiner Burchmore: That was a duplication of figures to a certain extent?

Mr. Bower: That was a duplication of figures.

Examiner Burchmore: What would be your tonnage if you did not make that duplication?

Mr. Bower: The total tonnage is about 37,000 tons, that is if we eliminate that duplication.

Examiner Burchmore: 37,000?

Mr. Bower: 37,000, I think is what it is.

Examiner Burchmore: Your total tonnage if you duplicate the tonnage, is 130,000, and if you do not duplicate the figures it is 37,000, or about a quarter as much.

Mr. Bower: Yes, sir. You know the rough material, the logs are very much in excess of the weight of the finished product.

Examiner Burchmore: I do not think the latter figure is accurate, but what is the total weight of the logs into the mill?

Mr. Bower: We have been estimating them at 6,000 pounds to the thousand feet.

Examiner Burchmore: But how many tons to the year?
2144 Mr. Bower: 108,000 tons, as I recall it.

Examiner Burchmore: And your lumber was about 30,000?

Mr. Bower: No. Our lumber was about 29,000 tons. The outside tonnage made the difference.

Examiner Burchmore: What was the extent of the outside tonnage?

Mr. Bower: I think 5,524 tons.

Examiner Burchmore: Well, then, if you do not duplicate the figures, I would suggest that your total tonnage was about 110,000 or 112,000 tons, counting all the logs in and all the other merchandise moved, and not counting the lumber out.

Mr. Bower: It depends how you make the figures as to what the total tonnage is.

Examiner Burchmore: About what percentage of that total tonnage is furnished by the Eagle Lumber Company or subsidiary or relating concerns?

Mr. Bower: On the basis of the report made for the year ending June 30th, the per cent furnished by the Eagle Lumber Company is about 90 per cent of the total tonnage.

Mr. Andrews: The year ending June 30th last?

Mr. Bower: The year ending June 30th last.

Examiner Burchmore: Has that been the prevailing ratio
2145 in past years?

Mr. Bower: No, I think it has decreased, going down a little bit.

Examiner Burchmore: You mean the public traffic has increased in the past few years?

Mr. Bower: Yes, sir.

Examiner Burchmore: By the time the lumber is cut out most of the traffic will be done for the public?

Mr. Bower: Yes, sir.

Examiner Burchmore: You of course have no passenger fares?

Mr. Bower: —.

Examiner Burchmore: Do you publish or file with the Commission any tariffs naming local freight rates over your line?

Mr. Bower: No, we do not do a local freight business for hire.

Examiner Burchmore: You do not publish any local rates that could be applied on through transportation exchanged with the Cotton Belt, in the absence of joint through rates.

Mr. Bower: Not on class commodities.

Examiner Burchmore: You do on forest products or some of them?

2146 Mr. Bower: Yes, sir.

Examiner Burchmore: What is your local rate on lumber?

Mr. Bower: The local rate on lumber over the line?

Examiner Burchmore: Yes.

Mr. Bower: From the end of the line is $15.00 a car flat rate.

Examiner Burchmore: You are a party to joint through interstate rates on lumber or other forest products in connection with the Cotton Belt System?

Mr. Bower: Yes, sir. That applies to yellow pine only, I think.

Examiner Burchmore: Yellow pine lumber only?

Mr. Bower: Yes, sir.

Examiner Burchmore: Does it apply to staves?

Mr. Bower: No.

Examiner Burchmore: Do you handle any staves?

Mr. Bower: Yes, sir.

Examiner Burchmore: What rates do you apply to staves?

Mr. Bower: The same as the lumber rate, a flat rate of $15.00 a car.

Examiner Burchmore: The yellow pine lumber rate?

Mr. Bower: Yes, sir.

2147 Examiner Burchmore: Do you handle any hardwood?

Mr. Bower: Well, no logs; we have handled hardwood lumber.

Examiner Burchmore: What rate do you charge on hardwood lumber?

Mr. Bower: The same.

Examiner Burchmore: I thought you said the rates applied on yellow pine?

Mr. Bower: I was speaking of the joint rates concurred in by the Cotton Belt, and now I am speaking of the local rate of $15.00 a car.

Examiner Burchmore: Are your joint through rates on yellow pine lumber from stations on your line the same as the Cotton Belt rates from its local stations in this same group?

Mr. Bower: Yes, sir.

Examiner Burchmore: What division do you receive out of these joint through rates?

Mr. Bower: From one to two and one-half cents per 100 pounds.

Examiner Burchmore: Is 2½ cents the greatest division you have ever received?

Mr. Bower: No, there was a time, well, I might say it is the largest we have ever received; there was a division of three cents provided for Texas business on the Cotton Belt rails, but we have
2148 never had any business in that territory and to my knowledge there has never been a division given the Freeo Valley in excess of 2½ cents.

Examiner Burchmore: What is the usual weight of a carload of lumber?

Mr. Bower: Our cars average about 40,000.

Examiner Burchmore: What do your earnings on a carload of lumber average?

Mr. Bower: I would say $8.00.

Examiner Burchmore: You have filed with the Commission an index — your tariffs?

Mr. Bower: Yes, sir.

Examiner Burchmore: Do the rates on lumber to which you are a party carry with them a milling in transit privilege?

Mr. Bower: They do.

Examiner Burchmore: Who handles the logs into the mill?

Mr. Bower: The railroad company handles them.

Examiner Burchmore: How many locomotives does the lumber company own or operate?

Mr. Bower: They own five. They operate three independent of the railroad.

Examiner Burchmore: And lease the other two to the rail-
2149 road?

Mr. Bower: And lease the other two.

Examiner Burchmore: How many logging cars does the lumber company own?

Mr. Bower: 61.

Examiner Burchmore: How many does it operate?

Mr. Bower: Well, in connection with the Freeo Valley, 61, those same cars that are maintained by the railroad company run out on the lumber company's spur tracks, and are loaded there.

Exminer Burchmore: Are there not certain logging cars which are operated by the logging company itself?

Mr. Bower: Well, there are two steel cars which are not log cars, and I believe the lumber company has three water cars, tank cars for water purposes.

Examiner Burchmore: And that is all?

Mr. Bower: That is all.

Examiner Burchmore: Do those cars move over the rails of the Freeo Valley Railroad Company at times?

Mr. Bower: I do not—yes, they do; they have been brought into the shop.

2150 Examiner Burchmore: Just for repairs?

Mr. Bower: Just for repairs.

Examiner Burchmore: Is any charge made when they are taken into the shop?

Mr. Bower: No.

Examiner Burchmore: Who owns those shops?

Mr. Bower: The Eagle Lumber Company.

Examiner Burchmore: Does the Eagle Lumber Company repair cars and locomotives for the railroad company?

Mr. Bower: Yes, sir.

Examiner Burchmore: WLat charge does it make for repairs?

Mr. Bower: The regular shop job prices.

Examiner Burchmore: Do they make a profit on those repairs?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is the extent of that profit in a general way?

Mr. Bower: There is added to the actual time that is kept by the shop foreman ten per cent for use of tools in the shop.

Examiner Burchmore: That is a reasonable addition?

Mr. Bower: I would think very reasonable.

2151 Examiner Burchmore: The lumber company does not own nine logging cars which it operates itself?

Mr. Bower: They did at one time. They have been wrecked and have been taken out of the service. They were small cars, 24 inch wheels that set on the side track until the frames were rotten, and they were finally wrecked.

Examiner Burchmore: When were they taken out of service?

Mr. Bower: They have not been in the logging service for five years. They were used for hauling ballast for awhile three years ago.

Examiner Burchmore: Are these private tracks ballasted?

Mr. Bower: Some of them.

Examiner Burchmore: Is any of that ballast hauled over the railroad?

Mr. Bower: No.

Examiner Burchmore: It comes from a pit on the private lines?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is the explanation for the policy to include this private line of tram roads in the railroad system?

2152 Mr. Bower: Well, at the time the railroad was incorporated there was no thought for an extension in the direction of the logging operations for a number of years. The railroad was headed in a general way to a point where the Rock Island passes the northeast corner of the lumber company's holdings. The line started that way and built past the junction point with the lumber company's tram road; there were a number of circumstances that induced the lumber company to change its mind about going into that solid block of timber at that time, and they constructed their private line in a westerly direction, picking up their scattered timber. The private line was started out without any definite idea as to where it was going when it was started. It was begun as a logging spur, and after a complete survey of the territory, it was determined to make it a permanent thing for a few years anyway, and it was then ballasted up.

Examiner Burchmore: As to the manner in which these logs are transported from the woods to the mill, are we to understand that the locomotives operated by the lumber company haul the logging cars when loaded as far as Princeton Junction?

Mr. Bower: No, they haul to Princeton, which is 2½ miles from Princeton Junction. The railroad crew goes to Princeton
2153 Junction, delivers the empties on a siidng and picks up the loads and hauls them over the lumber company's private line 2½ miles.

Examiner Burchmore: Princeton is beyond Princeton Junction?

Mr. Bower: Yes, sir.

Examiner Burchmore: And farther away——

Mr. Bower: To the west of it 2½ miles.

Examiner Burchmore: Why do they have interchange at Princeton instead of Princeton Junction?

Mr. Bower: The principal reason was the water question. There was no water in the gumbo country and there was a running creek at Princeton and the junction point or division point was made down there on account of the water.

Examiner Burchmore: The railroad company hauls the logs from Princeton to the mill?

Mr. Bower: Yes, sir.

Examiner Burchmore: Does it there unload them?

Mr. Bower: Yes, sir.

Examiner Burchmore: Do employés of the lumber company assist in unloading the logs?

Mr. Bower: They assist, but the train crew also assists.

Examiner Burchmore: What is the total charge paid by
2154 the lumber company for the hauling of the logs into the mill?

Mr. Bower: There is none for the haul over the railroad company's line, but for the service of hauling them 2½ miles out of Princeton, and for unloading at the skid way, the lumber company is paying the railroad company a rate of $2.00 the logging car.

Examiner Burchmore: That amounts to how much on a carload of lumber, about $8.00?

Mr. Bower: Well, yes, probably $8.00.

Examiner Burchmore: Now we have the logs into the mill. After they are milled and are ready for shipment to an interstate destination, what is the practice; that is to say, who furnishes the empty car?

Mr. Bower: The Cotton Belt.

Examiner Burchmore: Who places that empty car at the mill?

Mr. Bower: They do.

Examiner Burchmore: It is then loaded by mill employés?

Mr. Bower: Yes, sir.

Examiner Burchmore: Who takes the loaded car back to the Cotton Belt's main line?

Mr. Bower: The Cotton Belt.

Examiner Burchmore: Then the Freeo Valley Railroad
2155 does not have anything to do with the handling of the finished product?

Mr. Bower: Substantially nothing. There are times when it is onvenient to go in on the siding with the Freeo Valley Railroad ompany's locomotive and place a few cars at the loading track, but is not done as a general proposition.

Examiner Burchmore: Then the statement which seems to have een made at one time by an official of the Cotton Belt to the effect hat the lumber "is loaded on our tracks and cars handled by us to nd from the plant", you would say is substantially correct?

Mr. Bower: Say that again, please.

(Question read.)

Mr. Bower: Yes.

Examiner Burchmore: Is there any billing covering the inbound ovement of the logs?

Mr. Bower: No.

Examiner Burchmore: The conductor, I presume, makes a report t the arrival of the train at the mill of the number of logs he has rought in?

Mr. Bower: No.

Examiner Burchmore: The mill just knows how many
156 logs gets there by finding them there?

Mr. Bower: No.

Examiner Burchmore: Well, what is done?

Mr. Bower: There is a report made of the lumber company's perations in the woods to the railroad company, of the number of ars which have been switched to the railroad company that day?

Examiner Burchmore: And all the logs that leave the woods go o the mill?

Mr. Bower: Yes, sir.

Examiner Burchmore: If they lost a few overboard there would ot be any claim for damages?

Mr. Bower: I presume not.

Examiner Burchmore: Who issues the bill of lading on the out- ound lumber from the mill?

Mr. Bower: The Freeo Valley Railroad.

Examiner Burchmore: Its agent at Eagle Mills issues that bill of ading?

Mr. Bower: Yes, sir.

Examiner Burchmore: Does he also issue a waybill?

Mr. Bower: No. That is, as I understand it, transfer
2157 billing.

Examiner Burchmore: Handled on transfer billing to the Cotton Belt?

Mr. Bower: Yes, sir.

Examiner Burchmore: What point is shown as the originating point on this bill of lading?

Mr. Bower: Eagle Mills.

Examiner Burchmore: Does the face of the bill of lading indicate that the shipment has come from beyond?

Mr. Bower: No, it does not. All the face of the billing is that it was received by the Cotton Belt from the Freeo Valley Railroad;

that is, it is Freeo Valley standard bills of lading that are tendered to the Cotton Belt.

Examiner Burchmore: That bill of lading is signed by the Cotton Belt?

Mr. Bower: There is a joint agent there.

Examiner Burchmore: And he files it away as the agent of the company?

Mr. Bower: Yes, sir. Well, that is the transfer part of it.

Examiner Burchmore: The original bill of lading is signed by you as the agent of your company?

2158 Mr. Bower: Yes.

Examiner Burchmore: And kept in your files?

Mr. Bower: Well, the original we——

Examiner Burchmore: Settlements with the Cotton Belt are made monthly by interline settlement?

Mr. Bower: Yes.

Examiner Burchmore: You have a full supply of railroad forms such as are necessary for operation?

Mr. Bower: Yes, sir.

Examiner Burchmore: You endeavor to comply with all the state and Federal statutes governing the conduct of railroad companies which are common carriers?

Mr. Bower: We attempt to.

Examiner Burchmore: And you feel that you do substantially comply with all those requirements?

Mr. Bower: Yes, I think we do.

Examiner Burchmore: Have you a resident agent in Washington?

Mr. Bower: Yes, sir.

Examiner Burchmore: Have you posted in your station at Eagle Mills all of the tariffs to which you are a party, or are they accessible for examination by shippers?

Mr. Bower: The only tariffs we have are concurrences in

2159 the Cotton Belt, and as our joint agent is with the Cotton Belt, they are posted, I suppose, on their accounts.

Examiner Burchmore: Does this railroad have any bonds?

Mr. Bower: No.

Examiner Burchmore: Any other indebtedness?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is that indebtedness?

Mr. Bower: An indebtedness to the Eagle Lumber Company, I think of about $9,000 at this time.

Examiner Burchmore: What does that $9,000 represent?

Mr. Bower: It represents an advance of money to the railway company for the four mile extension of their line after the purchase was made from the lumber company.

Examiner Burchmore: Has the road paid any dividends?

Mr. Bower: No.

Examiner Burchmore: Has it accumulated any surplus?

Mr. Bower: Yes, sir.

Examiner Burchmore: What is that surplus in amount?

Mr. Bower: The actual surplus is something like $30,000; I have forgotten the exact amount.

Examiner Burchmore: Is that a bookkeeping surplus?

Mr. Bower: Yes, sir.

2160 Examiner Burchmore: Any cash on hand?

Mr. Bower: No, sir.

Examiner Burchmore: Has that surplus been expended in additions and betterments?

Mr. Bower: Yes, sir. The surplus has been accumulated by this extension of the main line. The transfer was made to the railroad company at a time when it was necessary to accommodate the lumber company's business that the four mile extension be made and a part of the consideration was that the money should be furnished by the lumber company for making that extension, and it is a matter of bookkeeping between the lumber company and the railroad company, and as fast as any money accumulates it is paid to the lumber company on this open running account.

Examiner Burchmore: These divisions you receive out of joint rates are intended to apply, I assume, partly or wholly on the movement of the logs into the mill?

Mr. Bower: Yes, sir.

Examiner Burchmore: On what basis is this company taxed?

Mr. Bower: The basis for taxation was $3,000 a mile——

Examiner Burchmore: I mean is it taxed as other common carriers are taxed?

2161 Mr. Bower: Well, it is taxed by the Executive Board of the Railway Tax Commission or Tax Commission, I guess, of Arkansas, the body that handles it.

Mr. Walter: It is handled the same way as other railroads?

Mr. Bower: The same as other railroads?

Examiner Burchmore: As a matter of fact, I understand no charge is made by your company for handling local freight?

Mr. Bower: That is true.

Mr. Walter: Don't you mean in less than carload lots?

Mr. Bower: I mean in less than carload lots.

Examiner Burchmore: I do not believe there is any local carload freight?

Mr. Bower: Yes, sir.

Examiner Burchmore: Oh, in staves?

Mr. Bower: Yes, sir, and fertilizer and foodstuffs and flour.

Examiner Burchmore: That stuff has all come from or is destined to interstate points, is it not?

Mr. Bower: No some of it is and some is not.

Examiner Burchmore: You understand that in order to bring the traffic within the jurisdiction of the Interstate Commerce Commission it is not necessarily required that that traffic

2162 shall move under through billing, but it is sufficient if it moves under a common arrangement from which it is handled from a point in one state to another point in another state without the intervention of a shipper at an intermediate point.

Mr. Bower: Yes, sir.

Examiner Burchmore: And you govern yourself in the filing of your rates and the application of those rates according to that understanding?

Mr. Bower: I understand in a general way that that is true, but the movement of carload business, as a general proposition, moves under our local rates, flat rates.

Examiner Burchmore: Those rates are published with the Interstate Commerce Commission?

Mr. Bower: I was under the impression that they were, but I am not sure.

Examiner Burchmore: You refer to the Williams Mill, which is located near Williams Switch?

Mr. Bower: Yes, sir.

Examiner Burchmore: Is that mill owned by or controlled by or related to the Eagle Lumber Company?

Mr. Bower: No.

Examiner Burchmore: What is the extent of their ship-
2163 ments annually?

Mr. Bower: They have moved from the Williams Switch to the Section House Switch, I called your attention to, and a statement made by the proprietor of that mill says he will ship 200 cars of lumber this year.

Examiner Burchmore: What character of lumber?

Mr. Bower: Yellow pine and hardwood.

Examiner Burchmore: Where does he get his logs?

Mr. Bower: He has bought them around in that neighborhood.

Examiner Burchmore: He is not logging your land?

Mr. Bower: No, sir.

Examiner Burchmore: What about this Wright Mill?

Mr. Bower: The Wright Mill was moved out in that territory a year or a year and a half ago primarily to work up some blown down timber, and they afterwards bought adjacent timber and they have been operating about six miles off our line.

Examiner Burchmore: I suppose they team their lumber over to your line?

Mr. Bower: They do.

Examiner Burchmore: That is a mill that has a wagon haul on its logs into the mill, I suppose?

Mr. Bower: Yes, sir.

2164 Examiner Burchmore: And a wagon haul of its lumber over to your line?

Mr. Bower: Yes.

Examiner Burchmore: Can that mill successfully compete with your mill that owns the tap line and gets its logs into the mill substantially free of cost?

Mr. Bower: Well, no, it was not a matter of successful operation at all. The mill was really a contract——

Examiner Burchmore: It was a salvage proposition?

Mr. Bower: Yes, it was a salvage proposition; it was a contract made with the farmers who had the blown down timber, to go out and save what could be saved out of it.

Examiner Burchmore: Do the officers of your company receive free interstate transportation over other lines?

Mr. Bower: Just one.

Examiner Burchmore: What one is that?

Mr. Bower: I do.
Examiner Burchmore: Do you use that pass?
Mr. Bower: Yes, sir.
Mr. Walter: Do you operate into Princeton?
Mr. Bower: Yes, sir.
Mr. Walter: How many people live at Princeton?
2165 Mr. Bower: I would say—oh, I do not know, 350 or 400 people. It used to be the county seat of the county, but they have moved the court house, and it has depleted it somewhat. I do not know the exact population.
Mr. Walter: About how many people live along the line of your road and adjacent territory?
Mr. Bower: Oh, I have not given that matter much thought.
Mr. Walter: Well, just a rough estimate?
Mr. Bower: Two miles from this Section House spur or siding that I mentioned is the town of Holly Springs, probably 300 or 400 people there. The little town of Eaglet and around it is some little place, and I presume a conservative estimate, within a distance back a little on each side, 1000 people.
Mr. Walter: That territory through which you run is in part agricultural?
Mr. Bower: Yes.
Mr. Walter: And as the timber land is cleared away farms are being built up?
Mr. Bower: There are a number of farms being opened up, yes, sir.
Mr. Walter: Those people will be there when the timber is
2166 gone?
Mr. Bower: Yes.
Mr. Walter: You have built a permanent road?
Mr. Bower: Yes.
Mr. Walter: The intention is to devote it to the public use?
Mr. Bower: That was the intention.
Mr. Walter: And do you serve everybody that comes impartially?
Mr. Bower: We do.
Mr. Walter: Why have you not put on passenger service for hire?
Mr. Bower: Well, at the beginning of the railroad organization there was a feeling that the business would not justify us, and it has been the intention whenever we reached the point where it was justified and where there was a demand made for it, it would be put on. And just about one year ago I had the matter up with our people, and at that time the destruction of the tap line status as a common carrier was in question, and they advised me not to invest in any equipment until we found out what was going to be done.
2167 Mr. Walter: If as a common carrier your status is established, is it your intention to operate passenger service?
Mr. Bower: It is.
Mr. Walter: All the hardwood and other timber along your line must use your line as its outlet, must it not?
Mr. Bower: Yes, sir.

Mr. Walter: There is quite a lot of hardwood there?

Mr. Bower: A great deal of hardwood.

Mr. Walter: How many mills, three in addition to your own on your line?

Mr. Bower: Yes, sir.

Mr. Walter: And those are all served by you?

Mr. Bower: Yes.

Mr. Walter: Will your tonnage next year exceed the past year?

Mr. Bower: It will.

Mr. Walter: And during the past year more than 5500 tons were shipped in which you had no interest at all except as a carrier?

Mr. Bower: Yes, sir. That is all with one exception now, the stave bolt business, there was some of that that was sold as standing timber to the stave company from the Eagle Lumber Com-
2168 pany's holdings; their land; but it was sold at so much a cord and was worked up by them and transported on our line.

Mr. Walter: You had no interest in the shipment?

Mr. Bower: No interest whatever.

Mr. Walter: Have you had occasion to discuss with those people along your line that you serve as to their desire to have the common carrier status made permanent?

Mr. Bower: I have.

Mr. Walter: What do you find the view of those people to be?

Mr. Bower: The view of the people to a man is that they do not know what they are going to do unless we put on that promised passenger service.

Mr. Walter: There is a strong public demand for it, is there?

Mr. Bower: If a petition was circulated, every man, woman and child along the road would sign it, if it did any good.

Mr. Walter. Those farmers along your line use it for shipping forest products as well as products of the farm?

Mr. Bower: Yes, sir.

2169 Mr. Walter: So there is quite a number of carload shipments?

Mr. Bower: Yes, sir. I think last year to farmers there were 13 carloads of fertilizer hauled over our line, to give you an idea of the farming interests there are there. Those farmers up to the present time have not been very strong on buying fertilizer, but they are coming to the front now.

Mr. Walter: If your line was not in operation there, state what would be the effect upon getting supplies of that character in, and the material out that they produce?

Mr. Bower: Well, the end of the main line is 22 miles out, and the very nearest haul is 18 miles to a trunk line station—I will take that back, I am thinking only of the Cotton Belt. They might reach the Rock Island a little nearer than that.

Mr. Walter: It would be rather an expensive wagon haul, would it not?

Mr. Bower: Yes, sir.

Mr. Walter: With small loads?

Mr. Bower: Yes.

Mr. Walter: Is there anything further that you would like to add to what you have already said?

2170 Mr. Bower: Well, I do not know as it is necessary to add much more. I will just mention a colonization scheme that is being talked of, but there will be nothing done with it until it is decided what will be done with the railroad.

Mr. Walter: What does that contemplate, speaking in a general way?

Mr. Bower: The Eagle Lumber Company has given a real estate concern an option on 17,000 acres of their cut-over lands, which are out from 10 to 18 miles from the Coton Belt terminus, from the road, and their proposition is to build a town and from that town radiate out and bring in colonists to open up that 17,000 acres of land.

Mr. Walter: That is dependent upon the determination of the status of the road?

Mr. Bower: Further negotiations with respect to that depend upon the status of the road.

Mr. Walter: That is all.

Mr. Cowan: You spoke of a lot of contracts and arrangements which have bee nmade between the railroad company and the lumber company. How did the railroad company deal with the lumber company?

Mr. Bower: Well, you mean how did they deal at——

2171 Mr. Cowan: Yes, the lumber company decided to incorporate its railroad holdings into a railroad company.

Mr. Bower: I presume if you want to call a spade a spade that is the way it was done.

Mr. Cowan: And it is simply play-like talk to talk about the railroad company dealing with the lumber company; they were all a single investment to begin on.

Mr. Bower: Yes, sir.

Mr. Cowan: And then the lumber company decided to do that and incorporated the railroad and issued the securities usual in such cases, and the property was turned over so that the railroad company as a corporation became the owner of certain parts of the property.

Mr. Bower: Yes, I think so.

Mr. Cowan: And the same people continued to operate both as they had been before?

Mr. Bower: Yes.

Mr. Cowan: And they operated it for the same purposes it had been before, of supplying the lumber company with logs for its mill and getting the product out?

Mr. Bower: That is true with the exception of one feature of the case, and that is that prior to the organization of the railroad

2172 company there was no effort made to take care of anybody except the private logging roads to the sawmill, and since that time there has been an effort made to do a railroad business rather than serving the mill company exclusively.

Mr. Cowan: You would be compelled to haul any stuff after having incorporated, that anybody tendered you, as a common carrier.

Mr. Bower: Yes, sir, but there has been an effort made to encourage that class of business. We do not take it because we are compelled to, but we encourage it.

Mr. Cowan: Yes, you would be compelled to, because you are a common carrier.

Mr. Bower: I understand.

Mr. Cowan: $15.00 a car is the rate people pay to send their stuff off your line if they are independent?

Mr. Bower: Yes.

Mr. Cowan: If as a matter of fact your railroad company was an independent concern is there any reason you can see why the Eagle Lumber Company ought not to pay as much as the other fellow for hauling stuff out?

Mr. Bower: Probably not.

2173 Mr. Cowan: Are there other sawmills logging by railroads in your territory which do not secure divisions from the trunk lines?

Mr. Bower: I do not know of any.

Mr. Cowan: Are there any other small mills in your part of the country except the one you mentioned as being on your line or near it?

Mr. Bower: No, I know of none that are logging by railroad.

Mr. Cowan: Are there any sawmills on the main line of the trunk lines that log by team?

Mr. Bower: Yes. You mean on the Cotton Belt?

Mr. Cowan: Yes. To what extent is lumber produced that way?

Mr. Bower: I know of none but small mills of say 10,000 daily capacity.

Mr. Cowan: The great bulk of the lumber in the State of Arkansas is produced by mills logged by railroad?

Mr. Bower: Yes, sir, I think so.

Mr. Cowan: And in all the instances you know of they get a division somewhat similar to the way you get it, for the movement out of the lumber?

Mr. Bower: Yes, sir, most of them get higher divisions, I
2174 think.

Mr. Cowan: Well, as a business proposition, don't you think you are entitled, in justice to your commercial business, to just as good a division as somebody who happens to be on the Rock Island Road?

Mr. Bower: As a railroad proposition I believe we are entitled to every cent we can get in the way of divisions.

Mr. Cowan: As it ultimately results to the benefit of the entire investment in both the lumber company and the railroad, don't you think as a business proposition, taking both as one investment, that you, being on the Cotton Belt, are at a disadvantage compared to a man on the Rock Island who gets 2 or 3 or 4 cents a hundred more than you do?

Mr. Bower: If I thought that strong enough, with the three or

four mile opening between us and the Rock Island, I think we would have connected it up to the Rock Island and delivered it to them a distance of 27 miles and be on a level with the other fellow.

Mr. Cowan: It would be a considerable undertaking to haul that lumber 27 miles?

Mr. Bower: Yes, sir.

Mr. Cowan: And would probably cost you the difference
2175 between your division and what the Rock Island fellow gets, don't you think so?

Mr. Bower: Well, I do not know.

Mr. Cowan: Well, if you had your mill on the Rock Island, that would be a different thing.

Mr. Bower: Yes.

Mr. Cowan: And it would cost you considerable money to build that extra track and maintain it?

Mr. Bower: Yes, it would in a sense. It is hilly country, but if as has been suggested, the entire operation of the lumber plant and the railroad is one and the same thing, I will say that the lumber company owns timber extending right up within a quarter of a mile of the Rock Island Railroad.

Mr. Cowan: Then ultimately you will use that timber by extending your road or putting a mill over at the Rock Island?

Mr. Bower: No, it will all be logged with a spur track, I think.

Mr. Cowan: I believe you have stated what divisions you get?

Mr. Bower: Yes, sir.

Mr. Cowan: This 5,000 tons of other freight than that handled for the lumber company or controlling interest is principally
2176 of the lumber of those two mills you have spoken of?

Mr. Bower: Principally lumber?

Mr. Cowan: Yes.

Mr. Bower: No, it is not. There is a large percentage of that that is stave bolts and split staves.

Mr. Cowan: You will be requested, no doubt—you are going to request them all to file these commodity statements which have been spoken of?

Examiner Burchmore: Yes.

Mr. Cowan: So I will not go into it.

Examiner Burchmore: You have heard this request, Mr. Walter?

Mr. Walter: Yes.

Examiner Burchmore: I wish you would furnish one for each of your companies, and also the map.

Mr. Walter: Yes, a blue print.

Examiner Burchmore: Or an ink map, either one.

Mr. Walter: I do not know that I understand you. You have joint rates on yellow pine lumber through to interstate destinations?

Mr. Bower: Yes.

2177 Mr. Walter: If yellow pine lumber is hauled for some other concern than your own, is it not handled at that joint rate?

Mr. Bower: It is, if it goes to interstate points.

Mr. Walter: And no local charge?

Mr. Bower: No local charge, and this man Williams whom I have mentioned, when the rates were first cancelled, when the order of cancellation of the interstate rates was made, in some way was informed of it, and wrote a letter which he sent to me with the request to send it to the Interstate Commerce Commission, but the suspension of the cancellation was made before I received his letter and I did not forward it on. In this letter he stated that he had purchased his timber in that vicinity with the distinct understanding that his interstate movements would move on the joint route and rate, and that he would consider the cancellation of that a great injustice to him because he estimated that he had at least 200 cars a year that would move interstate.

Mr. Walter: For how long a time?

Mr. Bower: I do not think he said. I do not know the extent of his timber holdings.

2178 Mr. Walter: I will ask you whether all the relations of the railroad company and the lumber company are kept separate, and their corporate individuality recognized both by the railroad company and by the lumber company?

Mr. Bower: Yes, sir.

Mr. Coleman: If I understood you correctly, you estimate the weight of your logs at 6,000 pounds per 1,000 feet.

Mr. Bower: I think that was the estimate which was put on them.

Mr. Coleman: How did you arrive at that estimate?

Mr. Bower: Well, I could not say. It has been handed down to us. I may be mistaken about 6,000; it is either 6,000 or 8,000; but when I was asked the question I said 6,000.

Mr. Coleman: Is it your candid opinion that the logs will not weigh more than 8,000?

Mr. Bower: I do not believe they would, although I never saw a pine log weighed in my life.

Mr. Coleman: Never made the test?

Mr. Bower: Never made the test, and we have no track scales, and it is estimated weights throughout.

Mr. Coleman: Then you will raise your estimate to 8,000?

Mr. Bower: Well, I am hardly competent to say.

2179 Examiner Burchmore: When you return to your office, if you should discover your testimony is incorrect and you find it should be 8,000, you will write a letter to the Commission?

Mr. Bower: Yes.

Mr. Walter: I think he said 8,000.

Mr. Bower: My impression is I said 6,000, when I was asked the question.

Mr. Coleman: I think if you will cause a test weight to be made of logs, you will find even in the shortleaf territory they will weigh in excess of 10,000 pounds.

Examiner Burchmore: You might advise the Commission further in that respect by any statement you care to make as to the weight of logs, Mr. Bower.

Mr. Bower: All right. I am liable to be mistaken about that. I say offhand I do not know what logs do weigh.

(Witness excused.)

2180 *Groveton, Lufkin & Northern Railway.*

J. C. ANDERSON, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer of the Groveton, Lufkin & Northern Railway?

Mr. Anderson: Yes, sir; vice-president.

Examiner Burchmore: Are you an officer of any lumber company, and if so, what company and what office?

Mr. Anderson: Trinity County Lumber Company, manager.

Examiner Burchmore: Where are the mills of the Trinity County Lumber Company located?

Mr. Anderson: They are located near Groveton, just across the railroad tracks from the town of Groveton.

Examiner Burchmore: I understand the line of the Groveton, Lufkin & Northern Railway extends from Lufkin in the State of Texas, where a connection is made with the St. Louis, Southwestern and Houston East & West Texas into Eastern Texas, through the town known as Vair——

Mr. Anderson: It is the junction; there is no town there.

Examiner Burchmore: Yes, a junction point with the Texas Southeastern.

2181 Mr. Anderson: Yes, sir.

Examiner Burchmore: To Groveton, the other terminus, where a junction is made with the Missouri, Kansas & Texas system.

Mr. Anderson: Yes, sir; that is correct.

Examiner Burchmore: The mill you stated is located at Groveton?

Mr. Anderson: Near Groveton. The Missouri, Kansas & Texas divides the place. Our mill is located on one side of the railroad and the town proper and court house, stores and business of Groveton is on the other side.

Examiner Burchmore: Your mill is located very close to the right of way of the M. K. & T.?

Mr. Anderson: I should judge nearly a quarter of a mile, if not quite. Our lumber yards run up almost to the right of way of the M. K. & T. The mill is on the far side.

Examiner Burchmore: Where is your planing mill?

Mr. Anderson: It is also on the far side, about the same distance from the M. K. & T. as the saw mill.

Examiner Burchmore: And where is your loading platform?

Mr. Anderson: At the planing mill and west of the planing mill, all about the same distance from the main line of the M. K. & T.

2182 Examiner Burchmore: The place where the cars are actually loaded is about one thousand feet from the main line of the M. K. & T.?

Mr. Anderson: I should judge it was two thousand feet. I never measured it, but it is not less than a quarter of a mile.

Examiner Burchmore: When was this mill at Groveton opened?

Mr. Anderson: About twenty-nine years ago, in 1882, to be exact, in the spring.

Examiner Burchmore: Was it then operated by the Trinity County Lumber Company?

Mr. Anderson: Yes, sir.

Examiner Burchmore: When was this railroad begun?

Mr. Anderson: The Groveton, Lufkin & Northern?

Examiner Burchmore: Yes.

Mr. Anderson: In the spring of 1907.

Examiner Burchmore: The first part of the railroad was constructed?

Mr. Anderson: Yes, sir.

Examiner Burchmore: Then there was no railroad there at all until 1907?

2183 Mr. Anderson: Yes, sir, there was a railroad there twenty-five years ago.

Examiner Burchmore: A part of the present line of the railroad?

Mr. Anderson: No, sir; no part of it.

Examiner Burchmore: Just tell me about that without my asking the questions.

Mr. Anderson: The Trinity County Company was logging its mill from the south of the M. K. & T. railroad with a narrow gauge railroad. In the spring of 1907 it was decided to build an outlet for the product of the mill because they were having a good deal of trouble with car shortage and they were shut out from a good many markets on account of not being able to get freight rates, and they began the construction of what is now the Groveton, Lufkin & Northern Railway. It was built during the years of 1907 and 1908; it was opened up as a railroad—if you will allow me to explain it in my own words I can possibly save you some time. It was opened for traffic on the last day of November two years ago, 1908. The Trinity County Lumber Company at that time owned twenty miles of logging road and still owns them and is still operating them logging the mill, but it has no connection whatever with the

2184 Groveton, Lufkin & Northern Railway, and no part of the material or equipment that the Trinity Lumber Company owned ever went into the Groveton, Lufkin & Northern.

Examiner Burchmore: That is on the other side of the M. K. & T.

Mr. Anderson: No. About the time we began building the Groveton, Lufkin & Northern we exhausted the timber to the south of the mill and began operating with a standard gauge road north of the M. K. & T. track.

Examiner Burchmore: Towards Lufkin?

Mr. Anderson: Well, we first went off in a northerly direction and cut out a belt of timber that we had been operating in for a couple of years and we are now operating directly east of the town of Groveton and the mill and the lumber company still owns the old logging road, the rails and cars and engines and everything that was connected with it. No part of it ever went into the building of the Groveton, Lufkin & Northern Railway. That was a proposition that was built new from the start.

Examiner Burchmore: But the old logging road was taken up and a new one constructed?

2185 Mr. Anderson: We are changing those roads constantly; yes, sir.

Examiner Burchmore: Was the main line of the Groveton, Lufkin & Northern Railway availed of by the Trinity County Lumber Company for the movement of logs?

Mr. Anderson: We run our logs over a mile and a half of the Groveton, Lufkin & Northern railroad just before we get to the edge of town.

Examiner Burchmore: And what compensation is paid for that?

Mr. Anderson: We have never paid any. There has been a contract contemplated and talked of, but it never has been reduced to writing or enforced; it is only recently, beginning about the first of the month, that we began operating that branch. We did after the first eleven months of this year log about four miles, or to be exact about three and one-half miles over the tracks of the road cutting out a little timber that we had a short time lease on. We ran over the Groveton, Lufkin & Northern three and a half miles for the first eleven months of this year. That track has been taken up and we are now running over about a mile and a half over the Groveton, Lufkin & Northern tracks. We do that more to avoid

2186 a grade crossing. We have our old logging road parallel with the main line of the Groveton, Lufkin & Northern this distance, and could still take our logs to the mill without going on to the tracks of the Groveton, Lufkin & Northern, but in order to avoid putting in a crossing we run over a mile and a half of the tracks of the Groveton, Lufkin & Northern.

Examiner Burchmore: As a matter of fact the use of those tracks entails no considerable added burden on this railroad anyway?

Mr. Anderson: No, we thought very little.

Examiner Burchmore: No- what is the total mileage owned by the Groveton, Lufkin & Northern?

Mr. Anderson: Twenty-one and one quarter miles.

Examiner Burchmore: What is the northern terminus of that line?

Mr. Anderson: Lufkin. We reach Lufkin over thirteen and three quarter miles of the Texas Southeastern, by lease.

Examiner Burchmore: Where do you join the Texas Southeastern?

Mr. Anderson: At Vair. We were building to Lufkin and

2187 the Texas Southeastern people, having a line practically over the route that we would have gone, made a proposition to us to use their tracks from this junction point, and we did. The basis of that contract is that we pay three per cent on the fixed value of their thirteen and three-quarter miles of track, and we pay our proportion of the maintenance on a wheelage basis.

Examiner Burchmore: Is that contract filed with the Commission?

Mr. Anderson: Yes, sir, I think so. I know it is filed with the State Commission and I am sure it is with the Interstate Commerce Commission: Is that right?

Mr. Helmick: I think not with the Interstate Commerce Commission.

Mr. Anderson: I do not know, it is a state proposition. I do not known whether the Interstate Commerce Commission asked for it or wanted it.

Mr. Garwood: We will file it if it is not filed.

Examiner Burchmore: Is the Texas Southeastern understood to be owned by any lumber company?

Mr. Anderson: I think the ownership is something like ours; it is owned by the people who own and control the Southern
2188 Pine interests, that is my impression. I have not any information on that. They have a mill on the Houston East & West Texas at Dibell.

Examiner Burchmore: Are there any branch lines of this railroad?

Mr. Anderson: The Groveton, Lufkin & Northern?

Examiner Burchmore: Yes, sir.

Mr. Anderson: None, except the branch to our planing mill at Groveton.

Examiner Burchmore: Well, does the Texas Southeastern have trackage rights over your road for any distance?

Mr. Anderson: No, sir; none at all.

Examiner Burchmore: The line of the Texas Southeastern at this point runs in a general east and west direction?

Mr. Anderson: Yes, sir, and they have a number of branches though; they run from Vair up north; they are operating north.

Examiner Burchmore: Up to Lufkin?

Mr. Anderson: Well, that is on the east side of the Neches River—I mean on the west side; they also have a branch which runs off in that direction.

Mr. Garwood: Here is a map of the Texas Commission.

2189 Examiner Burchmore: I correctly understand that that division of the M. K. & T. with which you connect is not a part of its main line, but it is a detached line?

Mr. Anderson: No, it is locally known as the "Katy Orphan." It is a little offshoot. They cut off—Trinity is their nearest point to the main line. They use the I. & G. N. from Trinity to Houston or from Trinity to Mineola.

Examiner Burchmore: I presume your principal connection is the Houston East & West Texas?

Mr. Anderson: Not necessarily. We connect with the Cotton Belt and the Houston East & West Texas at Lufkin and we also do business with the M. K. & T.

Examiner Burchmore: When was this railroad incorporated?

Mr. Anderson: The Groveton, Lufkin & Northern?

Examiner Burchmore: Yes. In 1907?

Mr. Anderson: It was chartered May 15, 1908.

Examiner Burchmore: After the constuction was completed?

Mr. Anderson: Well, it was in course of construction at that time. We began its construction more than a year before, 1907.

Examiner Burchmore: How was the railroad financed?

2190 Mr. Anderson: The Trinity County Lumber Company was the uncle we went to for money.

Examiner Burchmore: What is the total capital stock of the railroad company?

Mr. Anderson: Fifty thousand dollars.

Examiner Burchmore: All issued?

Mr. Anderson: All issued and all paid for.

Examiner Burchmore: Was that issued indirectly in the form of a dividend to the stockholders of the lumber company?

Mr. Anderson: No, it was issued for real money, cash paid in.

Examiner Burchmore: Who paid in that cash?

Mr. Anderson: The stockholders.

Examiner Burchmore: How did they secure the cash?

Mr. Anderson: I cannot tell you. I secured part of it by working for it.

Examiner Burchmore: The stockholders——

Mr. Anderson: It was all paid up in cash and it all went into the treasury of the railroad company.

Examiner Burchmore: The two companies are substantially one in interest, are they not?

2191 Mr. Anderson: To a very large extent.

Examiner Burchmore: Are there any minority holdings in either company which are separate and distinct from the holdings of the other?

Mr. Anderson: Yes, sir; there are five residents of Texas who hold a small interest in the railroad who are not interested in the lumber company.

Examiner Burchmore: They only hold five shares?

Mr. Anderson: One share each for the purpose of qualifying them as directors.

Examiner Burchmore: But all the stockholders of the lumber company own stock in the railroad company?

Examiner Burchmore: And substantially in proportion?

Mr. Anderson: Yes, sir. I might say exactly in proportion except for the five shares I spoke of.

Examiner Burchmore: The officers of the two companies are substantially the same?

Mr. Anderson: They are not. I am the only exception to that. The officers of the lumber company are entirely different from the officers of the railroad company with the exception that I happen to be the manager of the lumber company and vice-president of the railroad company.

2192 Examiner Burchmore: All the officers of the railroad company are either employees or otherwise interested in the lumber company?

Mr. Anderson: No, sir; not at all.

Examiner Burchmore: The contrary is the fact?

Mr. Anderson: Yes, sir; I can give you the history of that if you wish. The officers of the railroad company, Mr. Seaman is president and has no interest in the lumber company. I am vice-president. Mr.

W. J. Helmick is general manager, and up to two months ago W. P. Smith was the auditor and traffic manager of the railroad company. The officers of the lumber company, David Joyce is president, D. J. Batchelder is vice-president, James Stanley Joyce is secretary, and W. A. Remick is treasurer.

Examiner Burchmore: Mr. Seaman is president of the Tremont & Gulf?

Mr. Anderson: Yes, sir.

Examiner Burchmore: What is the weight of the rails in this railroad?

Mr. Anderson: Sixty pounds.

Examiner Burchmore: Steel?

Mr. Anderson: Yes, sir.

2193 Examiner Burchmore: Standard gauge.

Mr. Anderson: Yes, sir.

Examiner Burchmore: Is the road substantially constructed?

Mr. Anderson: It is said to be as good a road as there is in East Texas. I think so and I have been told that by railroad men who have been over it and examined it.

Examiner Burchmore: Is this road as well built as the connecting line of the M. K. & T.?

Mr. Anderson: A great deal better, or than either of our other connections; I do not think I exaggerate when I say it is a better road than the Houston East & West Texas and the Cotton Belt.

Examiner Burchmore: You naturally take pride in that fact?

Mr. Anderson: Well, we endeavored to make a first class road out of it when we built it, and we tried to—the general superintendent of the Houston East & West Texas has stated a number of times that it was a better road than his and better than the I. & G. N.

Examiner Burchmore: It is graded?

Mr. Anderson: Yes, sir.

2194 Examiner Burchmore: Is it ballasted?

Mr. Anderson: No, we have no ballast. We have no rock or gravel in our country. The only ballast or what could be claimed to be ballast is that we put about forty or fifty thousand yards of clay on; it is something I never saw before and I do not know how to describe it. We got it out with a steam shovel and we blasted it out and put it under the road after the contractors got through with it and made a good roadbed.

Examiner Burchmore: What station buildings have you?

Mr. Anderson: We have small stations at Lacey and a station called Helmic and one called Apple Springs. We use the terminal at Groveton of the M. K. & T., and the terminal at Lufkin of the Cotton Belt under lease, for which we pay a substantial consideration.

Examiner Burchmore: Have you any track scales?

Mr. Anderson: Yes, sir; we have a pair of track scales.

Examiner Burchmore: Water tank?

Mr. Anderson: Yes, sir.

Examiner Burchmore: I suppose you have team tracks for less than carload freight?

Mr. Anderson: We have the team tracks of the M. K. & T.
95 at Groveton and the Cotton Belt at Lufkin. We have cotton platforms at the three stations I have mentioned and also iting rooms for passengers.

Examiner Burchmore: How many locomotives does this road n?

Mr. Anderson: One.

Examiner Burchmore: How many does it lease?

Mr. Anderson: None, except in case of accident or emergency. We ve at times rented an engine from the lumber company while our gine was undergoing repairs.

Examiner Burchmore: What other rolling stock have you, and is owned or leased?

Mr. Anderson: We do not lease anything in the way of rolling ock. We have one passenger coach, one combination coach, eight x cars, twenty-one flat cars, a pile driver mounted on a car, one otor car, "Joy Rider" as the Judge said the other day, four hand rs that are used by section men going to work, four push cars and ne steel car that has been used since the road started.

Examiner Burchmore: These box cars, are they used in the local ork?

Mr. Anderson: No. We originally had sixteen of thouse
196 but several of them have been destroyed and we have sold four and the others are used principally in local freight, carrying ackage freight between Groveton & Lufkin.

Examiner Burchmore: You formerly had more than one locomo- ve?

Mr. Anderson: Yes, we had two, but we found as our business in- reased that they were both rather light for the traffic and we sold hem both and bought a new locomotive, I think in August of this ear.

Examiner Burchmore: As a matter of fact did you not have three?

Mr. Anderson: No, we never had but two. We had one locomo- ive about forty thousand pounds weight I should judge of the pas- enger type and one about fifty thousand pounds, ten wheeler that we sed in the main line work.

Examiner Burchmore: While our examiner was on the ground in 1910 he thought he saw three locomotives.

Mr. Anderson: He might have seen—the lumber company have four and he might have mistaken one of theirs for ours, but the road never had but two.

Examiner Burchmore: He writes that you had three locomotives, and all the information he obtained was cheerfully furnished
2197 by Mr. Helmick.

Mr. Anderson: Well, that was an error on somebody's part. We never owned but two and we sold them last spring and bought a sixty-five ton locomotive which is now hauling our train. There is a photgraph of it. (Handing photograph.)

Examiner Burchmore: Do you offer this in evidence?

Mr. Anderson: You can have it if you like. I have several of them.

Examiner Burchmore: As you choose.

Mr. Anderson: I merely offer it to show you we have a pretty good locomotive.

(The paper so offered and identified was received in evidence and thereupon marked Groveton, Lufkin & Northern Exhibit 1, Witness Anderson, received in evidence December 15, 1910, and is attached hereto.)

Examiner Burchmore: The lumber company equipment does not move over this railroad?

Mr. Anderson: Except over the mile and a half we spoke of.

Examiner Burchmore: I think their equipment may be disregarded for the present.

Mr. Anderson: The lumber company's locomotives never
2198 go on the tracks of the railroad company except that mile and a half I mentioned.

Examiner Burchmore: How many section gangs have you?

Mr. Anderson: Three.

Examiner Burchmore: You have three section gangs and four hand cars?

Mr. Anderson: Well, we have an extra one. We were a little liberal when we bought them and we have an extra one.

Examiner Burchmore: Do they also work on the logging road?

Mr. Anderson: No.

Examiner Burchmore: How many station agents or employees have you?

Mr. Anderson: We use a joint agent at Lufkin and Groveton of the Cotton Belt and Katy, respectively. We have a station agent whose office is where the headquarters of the road at Groveton is and he acts as station agent and does all the billing from the planing mill and shipping sheds of the lumber company; and we have an arrangement with the Post Master at two intermediate stations who sells tickets for us on commission. We do not pay them a salary and they
do not handle any money for freight. They are prepay sta
2199 tions so far as freight goes.

Examiner Burchmore: You have one train crew?

Mr. Anderson: We have one train crew.

Examiner Burchmore: Are there any employees of the general offices of the railroad company?

Mr. Anderson: Yes, sir, the general manager and Mr. Helmick, the auditor and car accountant and the station agent I spoke about.

Examiner Burchmore: Those men are paid their entire compensation by the railroad company?

Mr. Anderson: Yes, sir.

Examiner Burchmore: And as a matter of fact perform no service for the lumber company except in their capacity as railroad agents?

Mr. Anderson: That is all.

Examiner Burchmore: By whom is this Trinity County Lumber Company controlled?

Mr. Anderson: It is owned by Chicago people, a few of the stockholders and small holdings are scattered. One lives in California and one in Clinton, Iowa, but the majority of stock is held in Chicago.

Examiner Burchmore: Is it not controlled by the South-
2200 ern Investment Company?

Mr. Anderson: No, sir. They have nothing to do with it. I can give you the stockholders if you wish.

Examiner Burchmore: Well, no; further than to ask if Mr. William T. Joyce or William T. Joyce & Company do not own a majority?

Mr. Anderson: The William T. Joyce Company, an Illinois corporation, owns a majority of the stock of the Trinity County Lumber Company.

Examiner Burchmore: And the rest is owned by interests allied to that company?

Mr. Anderson: No, not at all. There are a number of people who own stock who are in no wise connected with the company. Mr. Batchelder is a large stockholder and has no connection with it. Mr. Earl of Stockton, California, is a large stockholder. Mrs. Fall, I think, lives at Clinton, Iowa; at any rate she formerly came from there. I think she holds one hundred and fifty shares of stock, I am sure she does.

Examiner Burchmore: Is this railroad a part of any system of railroads?

Mr. Anderson: No.

2201 Examiner Burchmore: It is not allied to any other tap line?

Mr. Anderson: Not at all.

Examiner Burchmore: Do you maintain a regular train service, and, if so, give the particulars.

Mr. Anderson: We run one train a day each way leaving Groveton in the morning and arriving at Lufkin about eleven o'clock, connecting with the Houston East & West Texas both north and south, leaving there after the arrival of their train and reaching Groveton at three thirty in the afternon, connecting with the M. K. & T. train going west in the afternoon. We take passengers from the M. K. & T. in the morning and connect with them at Groveton in the morning and afternoon and we connect with the Houston East & West Texas at Lufkin both north and southbound trains, they arrive there about noon about the same time.

Examiner Burchmore: Do you issue a time schedule?

Mr. Anderson: Yes, sir.

Examiner Burchmore: You may file a copy of that if you desire.

Mr. Anderson: I would be pleased to.

Examiner Burchmore: This is a mixed train?

2202 Mr. Anderson: Yes, sir, we haul one pasenger coach and one combination passenger and baggage, and one coach that carries passengers and baggage and express.

Examiner Burchmore: Do you carry the mail?

Mr. Anderson: Yes, sir.

Examiner Burchmore: Is there any freight carried on this train?

Mr. Anderson: Yes, sir; all the freight is carried on that train.

Examiner Burchmore: You do not run any other train?

Mr. Anderson: No, sir; that is the reason we bought the larger locomotive, so we could handle all the business with one train.

Examiner Burchmore: Does it make good speed?

Mr. Anderson: Yes, sir, they run fast enough.

Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Anderson: For the fiscal year ending last June, the 30th, we carried about nineteen thousand passengers, and the business——

Examiner Burchmore: All revenue passengers?

Mr. Anderson: Yes, sir. And the business for the five
2203 months of the present fiscal year would indicate a passenger traffic of about twenty-four thousand for this year.

Examiner Burchmore: What revenue from that traffic?

Mr. Anderson: Last year it was twelve thousand dollars.

Examiner Burchmore: Any passengers carried free?

Mr. Anderson: No, sir; except railroad employees that are entitled to a pass.

Examiner Burchmore: Do the mill employees pay fare?

Mr. Anderson: They do if they travel on our train?

Examiner Burchmore: Do you issue any annual passes to the officers of other railroad companies?

Mr. Anderson: Yes, sir. We are extremely liberal with them.

Examiner Burchmore: I suppose you receive passes liberally?

Mr. Anderson: Well, not liberally. We have I think three in our office. I have a pass, Mr. Helmick has one, and Mr. Smith, who was formerly our traffic man, had a pass.

Examiner Burchmore: And you gentlemen use those passes?

Mr. Anderson: I do, and I presume they do.

Examiner Burchmore: Are the passes you issue ever presented by the holders?

Mr. Anderson: Oh, yes.

2204 Examiner Burchmore: We have one or two companies that issue passes who could not induce the holders to ride on them.

Mr. Anderson: They come to see us. One man said they do not come to them, but they do come to see us.

Examiner Burchmore: What is the total value of your freight movement?

Mr. Anderson: In tons or money?

Examiner Burchmore: Well, I think, if I remember the figures last year our tonnage was sixty thousand seven hundred and twenty-eight tons.

Examiner Burchmore: That is a substantial increase over the preceding year, as I understand?

Mr. Anderson: Yes, sir, we only had it part of the year; we only had been in operation seven months before that.

Examiner Burchmore: What percentage of that tonnage is furnished by the Trinity County Lumber Company?

Mr. Anderson: I cannot give you that in tons, but I can give the money. The revenue from that sixty thousand tons was fifty-eight thousand dollars in round numbers. Of that the lumber company
was forty-three thousand dollars and the merchandise, mail,
2205 express, baggage, demurrage, passengers and other revenue was $25,400. That would indicate about thirty-five per cent of business outside of lumber.

Examiner Burchmore: That makes $68,000?

Mr. Anderson: Well, I took this hurriedly from our books. I will have to correct that and will give it to you and file it later.

Examiner Burchmore: I suggest you advise the Commission of any corrections which should be made in the figures you have testified to. I would make that same suggestion to any witness who appears, if you find in the transcript you are quoted as saying something that is incorrect or inaccurate, you should advise the Commission of it.

Mr. Garwood: There is the exhibit we had printed, which is attached to the petition in the case.

Examiner Burchmore: There are figures already given then in this record?

Mr. Garwood: Yes.

Mr. Anderson: I think you have all the figures in our annual report.

Examiner Burchmore: Well, we have, but for the benefit of counsel I think some of these final figures should be stated into the
2206 record. Counsel have not access to all our annual reports. What is the nature of your carload traffic other than lumber?

Mr. Anderson: Well, we haul cotton and wagons and staves and any merchandise that is offered for shipment, feed, hay, grain and so forth.

Examiner Burchmore: What switching services do you perform, if any?

Mr. Anderson: Our switching service is very small. I think we switched a few cars of wood out from the saw mill for the Trinity County Lumber Company, I think about two hundred dollars last year was the revenue from that.

Examiner Burchmore: Do any of your passengers travel under coupon tickets or other forms of tickets that are signed by other railroads?

Mr. Anderson: I think not. I think we only have local tickets.

Examiner Burchmore: You do have local tickets?

Mr. Anderson: Yes, sir.

Examiner Burchmore: And some passengers pay cash fare on the train?

Mr. Anderson: Oh, yes; our conductor collects it.

2207 Examiner Burchmore: Have you filed with the Interstate Commerce Commission any local rates applying over your line applicable to interstate movement?

Mr. Anderson: Yes, sir.

Examiner Burchmore: You are also parties to joint through rates?

Mr. Anderson: Yes.

Examiner Burchmore: Joint through rates on class traffic?

Mr. Anderson: Yes, sir.

Examiner Burchmore: And also on lumber and forest products?

Mr. Anderson: Yes, sir.

Examiner Burchmore: With respect to these class rates, do the Texas common point rates apply from stations on your line or are you in other territory?

Mr. Anderson: Yes, they do.

Examiner Burchmore: With respect to lumber, are the joint rates on lumber from the stations on your line the same as the rates published from group stations in that vicinity on other roads?

Mr. Anderson: Yes, sir.

Examiner Burchmore: You receive divisions on joint lum-
2208 ber rates?

Mr. Anderson: Yes, sir.

Examiner Burchmore: What are the divisions you receive on traffic in lumber interchanged with the Houston East & West Texas?

Mr. Anderson: Do you mean what amount we receive?

Examiner Burchmore: Yes, as a division.

Mr. Anderson: I am not right sure about that, but I think about three cents, three to five. I do not think there is anything less than three; there may be some few points where we get less than three cents.

Examiner Burchmore: I think you get two to some points.

Mr. Anderson: Possibly we do. How is that, Mr. Helmick?

Mr. Helmick: One and one-half cents to five points.

Examiner Burchmore: How about the M. K. & T.?

Mr. Anderson: They vary from as low as one cent to as high as five.

Examiner Burchmore: I thought you got a uniform division with the M. K. & T. of four cents?

Mr. Anderson: No, I wish we did.

Examiner Burchmore: That has never been the situation?

Mr. Anderson: No.

2209 Examiner Burchmore: How about the St. Louis Southwestern?

Mr. Anderson: Our division varies there. That probably runs the same as the H. E. & W. T. I am not right clear on the details of these divisions. I may make an error, but it will not be a very grave one if I do.

Examiner Burchmore: I have a division sheet marked St. Louis Southwestern No. 1561, dated January 2, 1909, basis for dividing through rates between Mississippi and Missouri River points and points in defined territories, and stations on the Groveton, Lufkin & Northern, and this division sheet shows a uniform division to your line of four cents by the St. Louis Southwestern.

Mr. Anderson: If you want the details of that you will have to wait until Mr. Helmick or Mr. Smith are on the stand. They are familiar with them and I am not, only in a general way.

Examiner Burchmore: Are there any other saw mills on your line?

Mr. Anderson: Yes, sir; two.

Examiner Burchmore: Where are they and what is the extent of their traffic?

Mr. Anderson: They ship from the station called Helmic,
2210 about twelve miles from Groveton; one is located about one hundred or two hundred yards from the main line with a switch into their yard and the other man hauls his lumber into

our side track and loads it. One mill is owned by Wood & McGee. We have a side track into their mill. The other mill is not now in operation. It has been, however, since we have been operating up to three or four months ago.

Examiner Burchmore: In the case of shipments of lumber which move out from your road through Groveton and over the M. K. & T., the only service that you perform under these divisions is a haul of one or two thousand feet over to that road?

Mr. Anderson: You mean from our planing mill to the M. K. & T. tracks?

Examiner Burchmore: Yes.

Mr. Anderson: We haul it something over a mile and weigh it and mill it.

Examiner Burchmore: You haul it somewhere else in order to weigh it?

Mr. Anderson: No, as I remember it, it is seven thousand feet from the Junction of the M. K. & T. to the end of our planing mill tracks.

2211

Examiner Burchmore: I thought you said it was about two thousand feet?

Mr. Anderson: I said directly across from the station of the M. K. & T. to our planing mill.

Examiner Burchmore: Well, I do not understand the lay of the land.

Mr. Anderson: I can show that to you.

Examiner Burchmore: Never mind that now, because we have called for a map.

Mr. Garwood: We have a map of the terminals here.

(The witness then explained the map to the Examiner.)

Mr. Garwood: We offer the maps showing the terminals of the Groveton, Lufkin & Northern at the town of Groveton and desire leave to withdraw the originals and file duplicates.

(The maps so offered and identified were received in evidence, and thereupon marked Groveton, Lufkin & Northern Exhibits Nos. 2 and 3, Witness Anderson, received in evidence December 15, 1910, and are attached hereto.)

Examiner Burchmore: The mill at Groveton is on the opposite side of the M. K. & T. from your line entrance into Groveton?

2212

Mr. Anderson: Yes, sir.

Examiner Burchmore: You cross the M. K. & T. at that point and have trackage rights for some distance over its line?

Mr. Anderson: We have trackage rights from here (indicating).

Mr. Garwood: When you say here use some expression that will indicate to the stenographer what it is.

Mr. Anderson: We have trackage rights for one mile from the station at Groveton.

Examiner Burchmore: And also have the joint use of the station?

Mr. Anderson: And all their terminals.

Examiner Burchmore: What is the length of your haul on lumber from the mill moving out over the M. K. & T.?

Mr. Anderson: I should say a mile and a quarter.

Examiner Burchmore: In that mile and a quarter haul you stop and weigh the lumber?

Mr. Anderson: Stop and weigh the lumber and deliver it to them on this interchange track.

Examiner Burchmore: As indicated on the map?

2213 Mr. Anderson: Yes, sir. Our engine hauls the cars out here, goes down to the scales and weighs them and shoves them back, and the M. K. & T. trains take them on the interchange track.

Examiner Burchmore: Who issues the bills of lading on outbound shipments of lumber moving out over the M. K. & T.?

Mr. Anderson: The Groveton, Lufkin & Northern——

Examiner Burchmore: And that bill of lading shows the town of Groveton as the point of origin?

Mr. Anderson: No, it shows Atmar. The end of the line there is called Atmar to distinguish it from Groveton. The agent at Groveton has nothing to do with billing our lumber. That is done by our station agent.

Examiner Burchmore: In the case of lumber moving in the other direction over your line you haul the lumber from the mill and weigh it on the M. K. & T. track?

Mr. Anderson: What other direction?

Examiner Burchmore: Through Lufkin?

Mr. Anderson: We weigh it on our own tracks. We do not weigh anything on the M. K. & T. tracks. They have no

2214 scale.

Examiner Burchmore: I thought the Katy had the track.

Mr. Anderson: No, it is the right of way; if you will notice, the scales are about the middle of our half of that interchange track, and we put the scales in.

Examiner Burchmore: You weigh it on that same scale?

Mr. Anderson: Yes, sir and carry it down to Groveton where it is put on this spur and that is where our train starts from in the morning.

Examiner Burchmore: Marked "Front of Katy depot"?

Mr. Anderson: Yes.

Examiner Burchmore: In the case of a shipment which moves out through Lufkin instead of through Groveton, you weigh it in the same manner on the same scales?

Mr. Anderson: Yes.

Examiner Burchmore: And then haul it in the opposite direction to the point of interchange?

Mr. Anderson: Yes.

Examiner Burchmore: Does this company make an effort to comply with all the Federal and state laws regulating common carrier railroads?

Mr. Anderson: We do.

Examiner Burchmore: What is the valuation of this road,
2215 including or excluding equipment?

Mr. Anderson: Including equipment I do not know what the value is, but we paid $487,000 for it.

Examiner Burchmore: That is what it cost you?

Mr. Anderson: That is what it cost us, yes.

Examiner Burchmore: And you constructed it?

Mr. Anderson: We bought it, yes.

Examiner Burchmore: The lumber company built it?

Mr. Anderson: The lumber company built it and turned it over to the railroad company as a going concern. We bought the railroad one afternoon and went to operating it the next morning carrying passengers and freight.

Examiner Burchmore: Did the lumber company operate it previous to the purchase?

Mr. Anderson: No.

Examiner Burchmore: Then you instituted the service when you bought the road?

Mr. Anderson: Yes.

Examiner Burchmore: Did the lumber company make a profit on this railroad?

Mr. Anderson: A very little; yes, sir.

Examiner Burchmore: It sold it substantially at cost?

2216 Mr. Anderson: Yes, sir. It cost the lumber company in round figures $400,000 to build.

Examiner Burchmore: Did you give the capitalization of this company?

Mr. Anderson: $50,000.

Examiner Burchmore: What bonds has it?

Mr. Anderson: $437,000 and the two make $487,000.

Examiner Burchmore: The cost of the road?

Mr. Anderson: The cost of the road.

Examiner Burchmore: Who holds those bonds, the stockholders?

Mr. Anderson: I think they are owned by the Trinity County Lumber Company insofar as I know.

Examiner Burchmore: What do they pay on those bonds?

Mr. Anderson: Five per cent.

Examiner Burchmore: Has the road a surplus?

Mr. Anderson: No. We have managed to accumulate, as the gentleman said a while ago, a small deficit.

Examiner Burchmore: Have you paid any dividends?

Mr. Anderson: Never.

Examiner Burchmore: Will you furnish, Mr. Garwood, a map such as has been called for from other roads?

2217 Mr. Garwood: Yes, sir.

Examiner Burchmore: And make it a small map, inasmuch as the terminals at Groveton are fully shown on these maps, that map may be drawn to a small scale.

Mr. Anderson: Would this railroad map of Texas answer your purpose?

Examiner Burchmore: It would perhaps, but I have here a draft of a letter which was proposed to be sent to the tap lines, or handed

to them, describing the map that was desired, and I will let you read it, although we may not send such a letter, but this will make clear to you what we want, and if you will return this after you have examined it. Are there any small saw mills located a short distance from this line which team their lumber over to your road?

Mr. Anderson: One, but it is not in operation at the present time.

Examiner Burchmore: As a matter of fact that lumber mill cannot operate to a financial advantage in competition with a mill that is located on a railroad, can it?

Mr. Anderson: We do not come in competition with them at all.

Examiner Burchmore: Well, they might come in compe-
2218 tition with you. I suppose you are so much larger?

Mr. Anderson: No, I do not think so. We do business with those people and frequently buy their lumber and give them every facility as a railroad for getting to the market that we have ourselves.

Examiner Burchmore: I think that is all.

Mr. Garwood: Mr. Anderson, was your road ever personally inspected by the Railroad Commission of Texas?

Mr. Anderson: Yes, sir.

Mr. Garwood: What Commissioners inspected it?

Mr. Anderson: Judge Storey and Mr. Colquitt, the present Governor-elect.

Mr. Garwood: Did they go over the full length of the road for the express purpose of ascertaining whether it was a railroad entitled to do business as a common carrier and to be recognized as such under the laws of the State of Texas?

Mr. Anderson: I so understood it. We made a date with them to examine the road for that purpose and they did so.

Mr. Garwood: After that inspection did you file a formal application with the Commission to be recognized as a railway?

Mr. Anderson: We did, either immediately before that in-
2219 spection or directly after, I do not recall the date.

Mr. Garwood: In pursuance of that application upon the part of the railway and the inspection by the railway Commissioner it was recognized by formal order by the Commission?

Mr. Anderson: Yes, sir.

Mr. Garwood: In that connection, your Honor, we offer a copy of our formal application to the Commission to be recognized as a common carrier.

(The paper so offered and identified was received in evidence and thereupon marked Groveton, Lufkin & Northern Exhibit No. 4. Witness Anderson, received in evidence December 15, 1910, and is attached hereto.)

Examiner Burchmore: That application was granted?

Mr. Anderson: Yes, sir.

Mr. Garwood: And in that further connection we offer the formal order of the Commission as set out on page 214 of the Eighteenth Annual Report of the Railroad Commission of Texas. Shall I read it? It is very short:

"Groveton, Lufkin & Northern Railway. In the matter of the

application of Groveton, Lufkin & Northern Railway Company for recognition by this Commission as a common carrier of freight
2220 and passengers with the duties and privileges incident thereto as prescribed by law, in view of the allegations contained in said application, and of the fact that the line of railway of said company has been duly inspected by this Commission and found to be in the condition alleged, properly constructed, equipped to perform the duties of such carrier, it is ordered by the Railroad Commission of Texas that said application of the Groveton, Lufkin & Northern be, and the same is hereby granted, and said company is recognized by this Commission as subject to its orders, rules and regulations and entitled to participate in through rates of freight applying on class and commodities to or from points on its lines of railway. Circular No. 2951, effective November 18, 1908."

Mr. Anderson: And I will say we began operating on the 30th of that same month.

Mr. Garwood: Did you thereafter make an application to the Railway Commission for the issuance of bonds?

Mr. Anderson: We did.

Mr. Garwood: Under the laws of the state bonds can only be issued, that is, bonds which carry a lien upon the corpus of the property, after application to the Commission made in ac-
2221–2 cordance with its rules and regulations?

Mr. Anderson: I so understood it.

2223 Mr. Garwood: That application under the rules of the Commission sets out the corporate proceedings, showing the requisite authority for the issuance of the bonds, and also sets out in detail your acquisition of your right of way, how it is held, all contracts of construction, your alignment map, your profile and all material facts tending to show the actual cost of the construction.

Mr. Anderson: Yes.

Mr. Garwood: You made that application?

Mr. Anderson: We furnished all that information to the engineer of the Commission.

Mr. Garwood: After that application was filed, did the official engineer of the Railroad Commission of Texas personally inspect your railway?

Mr. Anderson: He did.

Mr. Garwood: Did he carefully go over your entire properties, making a minute examination into all of its corporate matters, contracts, records and so forth?

Mr. Anderson: He did; and in addition to that we threw open the books of the Trinity County Lumber Company to him, that he might ascertain the amounts that we paid for everything that
2224 went into the construction of the road. It was not incumbent upon us to do that, but we did it to enable him to get at the facts.

Mr. Garwood: Having made this inspection, did he file with the Railway Commission his reports and valuation of the road?

Mr. Anderson: Yes, sir.

Mr. Garwood: Have you got a copy of that report?

Mr. Anderson: I have.

Mr. Garwood: Have you it with you? I wish you would find it so I may introduce it in evidence.

(Paper produced.)

Mr. Garwood: At this point we introduce in evidence the official report of R. D. Parker, official engineer of the Railroad Commission of Texas, valuing the Groveton, Lufkin & Northern Railway.

(The paper so offered and identified was received in evidence and thereupon marked Groveton, Lufkin & Northern Exhibit No. 5, witness Anderson, received in evidence December 15, 1910, and is attached hereto.)

Mr. Garwood: I will ask you, Mr. Anderson, if that valuation made by the official engineer was not raised to some extent, and if the Railroad Commission of Texas did not find that you were
2225 entitled to a slightly greater valuation than the engineer made?

Mr. Anderson: Yes, sir.

Mr. Garwood: Did they make their order allowing the issuance of bonds by the railway after that?

Mr. Anderson: Yes, sir.

Mr. Garwood: We here introduce the order of the Railroad Commission of Texas, of date December 31, 1909.

(The paper so offered and identified was not marked.)

Examiner Burchmore: What amount of bonds does that cover?

Mr. Garwood: $437,000. I will state in that connection that under the rules of the Commission the carrier is permitted to issue in stocks and bonds together the amount of the value of the road. Having found the road to be of the value of $487,000, and having $50,000 of stock, they authorized the issuance of $437,000 in bonds.

Examiner Burchmore: Then the finding of the Commission was that this road was worth exactly what it cost?

Mr. Anderson: No, I did not say that. I said the road cost us about $400,000, but the Commission allowed us a valuation of $487,000.

Examiner Burchmore: I thought you said you paid the lumber company $487,000 for it.

2226 Mr. Anderson: We did, the railroad company did.

Examiner Burchmore: Then the lumber company made $87,000.

Mr. Anderson: No, we did not.

Examiner Burchmore: I do not follow the figures.

Mr. Anderson: I think the Commission had in mind at the time the depreciation on the bonds of at least ten per cent, which would have been $43,000.

Examiner Burchmore: The bonds did depreciate?

Mr. Anderson: If we were to undertake to sell them, they probably would. The face value was $437,000, but the lumber company took them as worth 90 cents.

Mr. Cowan: On our side it is admitted that the Railroad Commission allows for a lot of real estate and engineering expenses, and

other expenses, so it generally runs ten to 15 per cent, and sometimes more than the actual cost of the property, when you come to figure it out.

Examiner Burchmore: That seems to be a sufficient explanation.

Mr. Anderson: I can make it plainer——

Examiner Burchmore: I think it is plain. I think we all understand it.

Mr. Anderson: The lumber company figured we got about
2227 $443,000 for the road, taking the depreciation of bonds into account, and it cost us about $400,000, so we made about eight per cent, which is not considered unreasonable, from the standpoint of construction. We took the place of a construction company.

Examiner Burchmore: That is a pretty good profit to make on work you were doing for yourselves.

Mr. Anderson: We were two years in doing it, and figured no interest on the cost and labor which was put into that two years, and there are a number of items.

Examiner Burchmore: I think that is enough on that point.

Mr. Garwood: I will state in that connection that the Commission sometimes allows in its valuation a small per cent for what it calls a franchise value.

Mr. Cowan: That is only in towns and streets.

Mr. Garwood: No, not at all; on the proposition as a whole, and it did so in this particular case, I will add, at my especial request. The order of the Commission dated Austin, Texas, December 31, 1909, authorizing the issuance of those bonds, is a short one, and I have it attached to the copy of the petition here.

Mr. Cowan: Just state it is the order as shown in the copy
2228 of the petition.

Examiner Burchmore: I would not offer it. I think we can find it in our records.

Mr. Garwood: I will say as attached to the copy of the petition of the Groveton, Lufkin & Northern, marked Exhibit C.

Examiner Burchmore: Then it is already in the record?

Mr. Garwood: Yes, sir. I wanted to call the attention of the Commission to the very satisfactory recitals in this order as to the nature and character of our road, the fact that it is being operated in good faith as a carrier.

Examiner Burchmore: Well, we have it already.

Mr. Garwood: In that connection we offer a copy of the deed of trust, securing these bonds.

Examiner Burchmore: Is that important to offer? We do not want to cumber up the record.

Mr. Garwood: It will not be copied. I wanted the record complete.

(The paper so offered and identified was received in evidence and thereupon marked Groveton, Lufkin & Northern Exhibit No. 6. witness Anderson, received in evidence December 15, 1910, and is attached hereto.)

Mr. Garwood: You said the Trinity County Lumber Com-
2229 pany had been in operation for 25 years, or more, before this railroad was built?

Mr. Anderson: Yes.

Mr. Garwood: Does your road go through a farming section to any extent?

Mr. Anderson: Yes, sir.

Mr. Garwood: To what extent?

Mr. Anderson: The Trinity County is one of the oldest sections, I believe, of east Texas. We are not very far from the Nacogdoches, which was at one time an outpost of civilization. I suppose Trinity County has been settled up as long as any county. There are men living in the county that is served by our road, middle aged men, who were born there.

Mr. Garwood: Have you any portion of your right of way enclosed by a legal hog-proof fence?

Mr. Anderson: Yes, sir.

Mr. Garwood: How much of it?

Mr. Anderson: I think about seven miles. Allow me to correct an error I made a while ago in giving the division of the revenue. I stated it was a total of $58,000, $43,000 for lumber. That should have been $33,000.

Mr. Garwood: How many farms did you go through when
2230 you were acquiring your right of way for this road?

Mr. Anderson: We bought right of way, I think, through 12 or 13 farms in the 21 miles.

Mr. Garwood: What is the width of your right of way?

Mr. Anderson: 100 feet.

Mr. Garwood: You have complete fee simple deeds to all of that right of way?

Mr. Anderson: Yes, sir.

Mr. Garwood: Do you own that in fee simple title or is it the ordinary right of way deed?

Mr. Anderson: We are owners in fee simple.

Mr. Garwood: Fee simple title?

Mr. Anderson: Yes, sir.

Mr. Garwood: Do you do an express business?

Mr. Anderson: Yes.

Mr. Garwood: With Wells Fargo & Company?

Mr. Anderson: Wells, Fargo, yes, sir.

Mr. Garwood: Do you carry the mail?

Mr. Anderson: Yes, sir.

Mr. Garwood: I will ask you what facilities you give in the way of the carriage of mail to people along that line that did not theretofore exist.

2231 Mr. Anderson: We carry mail to two post offices immediately on the line of road, and we supply from Apple Springs, a station about half way between Groveton and Lufkin, six or seven Star Route offices. The mail is distributed from Apple Springs to those offices in the country.

Mr. Garwood: From Groveton the Houston market is reached

either via the M. K. & T. and the I. & G. N. or the M. K. & T. and the Houston, East & West Texas, or by the Groveton, Lufkin & Northern and the Houston, East & West Texas?

Mr. Anderson: Yes.

Mr. Garwood: State what commercial business you do for the citizens of Groveton from Houston.

Mr. Anderson: From Houston into Groveton?

Mr. Garwood: From Houston into Groveton?

Mr. Anderson: I do not know——

Mr. Garwood: I do not mean the figures, but——

Mr. Anderson: I have not any means of knowing what the other road does, but we have the impression we do about half of the business of the town.

Mr. Garwood: What is the size of that town?

Mr. Anderson: About 5,000.

Mr. Garwood: It is not merely a mill town?

2232 Mr. Anderson: No, sir, it is the county seat and there are more people who live there who are not directly connected with the lumber company than people who are.

Mr. Garwood: In other words, it is a thriving town, with banks, commercial establishments and the ordinary incidents of a thriving town?

Mr. Anderson: I think so.

Mr. Garwood: Is it not a fact, Mr. Anderson, that you do a very large express and package freight business from Houston via the H. E. & W. T. to Lufkin and thence down your road to Groveton?

Mr. Anderson: I think we do the bulk of it.

Mr. Garwood: You think you do the bulk of it?

Mr. Anderson: Yes.

Mr. Garwood: Why do you think you do?

Mr. Anderson: We make better time than any other line into Groveton. We get express and freight because we make better time to Groveton than they do by either of the other routes.

Mr. Garwood: Freight of that character delivered to the Houston, East & West Texas late in the afternoon at Houston gets to Groveton via the H. E. & W. T. and your road at what time?

2233 Mr. Anderson: 3:30 the next afternoon.

Mr. Garwood: How does that compare with the service rendered by the other lines into Groveton?

Mr. Anderson: They generally get it in about two or three days.

Mr. Garwood: And you get there the next day?

Mr. Anderson: Yes, sir.

Mr. Garwood: Is that business increasing?

Mr. Anderson: Constantly. Our records show that.

Mr. Garwood: And is it relatively increasing more than the lumber business is increasing?

Mr. Anderson: The general business from the public, independent of the lumber business, is increasing all the time.

Mr. Garwood: Increasing all the time, and in a greater ratio than the lumber business?

Mr. Anderson: Yes, sir.

Mr. Garwood: You transport cotton from your line?

Mr. Anderson: Yes, sir.

Mr. Garwood: How many bales last year?

Mr. Anderson: I do not recall the figures for the last season. This year we have handled about 2,200 or 2,300 bales.

2234 Mr. Garwood: Of this season's cotton?

Mr. Anderson: Of this season's crop.

Mr. Garwood: 2,200 or 2,300 bales?

Mr. Anderson: Yes, sir.

Mr. Garwood: I will ask you if it is not a fact on a great deal of that cotton you get a double haul, first into Groveton and then out from Groveton for Lufkin?

Mr. Anderson: Yes, there are a great many farmers around Apple Springs who ship their cotton into Groveton and sell it because they have no market where they are, and they would have to haul it otherwise, and they prefer to pay our local into Groveton rather than haul it that distance into Groveton. We haul two or three or four hundred bales into Groveton, which is sold there and immediately shipped back over our line to Houston and other points.

Mr. Garwood: Is all your general commercial business constantly increasing and expanding?

Mr. Anderson: Yes, sir.

Mr. Garwood: Have you, in addition to the financial statements which you have filed as exhibits to your petition in this case, prepared a statement for the time intervening since the close of the last fiscal year from June 30, 1910?

2235 Mr. Anderson: I have no statement, but I have a memorandum here which will give an idea of the increase in the mercantile shipments; that is, the shipments other than lumber shipments, for the four months, July, August, September and October of this year, as compared with last year. That shows a constantly increasing ratio of merchandise shipments as compared with the total.

Mr. Garwood: Give some of those figures for the convenience of counsel.

Mr. Anderson: I can give you the old statement, and make it part of the record.

Mr. Garwood: Read them off so they will appear in the record.

Mr. Anderson: The total revenue for lumber for the four months that I mentioned of this year is $10,258.44. For last year it was $11,768.00——

Examiner Burchmore: Do you want that copied in the record?

Mr. Garwood: Yes.

Examiner Burchmore: It may be.

(The statement is as follows:)

Summary of Statistics for the Months of July, August, September and October, 1909 & 1910.

Revenue on Lumber from Trinity County Lumber Company—Interstate	6301.60	5930.16
Revenue on Lumber from Trinity County Lumber Company—State and Local	5485.15	4328.28
Total Revenue on Lumber from Trinity County Lumber Company	11768.75	10258.44
Revenue on Lumber from Independent Mills—Interstate	283.73	1068.86
Revenue on Lumber from Independent Mills—State	54.83	607.98
Total Revenue on Lumber from Independent Mills	340.56	1676.84
Revenue on Other Commodities—Interstate	579.57	910.24
Revenue on Other Commodities—Local and State	3416.59	3930.69
Total Revenue on Other Commodities	3996.16	4540.93
Percent of Freight Revenue from Lumber	75.21	71.14
Percent of Freight Revenue from Lumber from Trinity County Lumber Company	73.10	61.15
Percent of Trinity County Lumber Company —Lumber Revenue to Total Revenue	56.17	45.76
Percent of Freight Revenue on Lumber from Independent Mills	2.11	9.99
2237 Percent of Freight Revenue on Interstate Lumber	40.83	41.72
Percent of Freight Revenue from Other Freight—Interstate	3.59	5.42
Total Interstate Percent of Freight Revenue	44.42	47.14
Percent of Lumber Revenue of Total Revenue	57.84	53.24
Total Number of Tons of Freight Handled	20712	21639
Total Number of Passengers Handled	6405	7622
Number of Bales of Cotton Handled	1005	1276
Total Revenue	20964.08	22417.03
Total Revenue from Trinity County Lumber Company—Lumber	11786.75	10258.44
Total Revenue Other Than Trinity County Lumber Company—Lumber	9197.33	12158.59

Mr. Garwood: Can you state from that statement the relative proportion of your general business to the lumber business?

Mr. Anderson: Well, in a general way last year the lumber business was about 55 per cent of our revenue, and the other business 45 per cent. This year so far the figures have been reversed. The lumber business would be about 45 per cent of the total revenue and mer-

chandise and business from *out* outside public would be 55 per cent, in round figures.

2238 Examiner Burchmore: Three years ago it was about 75 and 25, was it not?

Mr. Anderson: Yes, sir; for the first seven months we operated of course the lumber business was the largest part of our revenue, because we had to build up the outside business. That has been——

Mr. Garwood: What was your passenger business for the last four months, as covered by this statement?

Mr. Anderson: The passenger business for the four months of this year would indicate an annual total of about $24,000, as against something less than $19,000 last year.

Examiner Burchmore: Please do not examine on that. That will be on the record.

Mr. Garwood: What is the general character of your station appliances, passenger facilities and freight facilities for the public between Lufkin and Groveton?

Mr. Anderson: I stated a while ago that we had cotton platforms for the loading and unloading of the freight and cotton, and we have also a waiting room for passengers. They are not heated, nor do we furnish ice water, or anything of that kind, but they are rooms which keep them out of the weather, and keep them comfortable in bad weather.

2239 Mr. Garwood: Are they substantially and permanently built?

Mr. Anderson: Yes, sir; they are all painted, and if they have overlooked any frills in putting them up I do not know it.

Mr. Garwood: How many passenger pagodas have you on that line?

Mr. Anderson: Three.

Mr. Garwood: Where are they located?

Mr. Anderson: At Lacey, Helmic and Apple Springs.

Mr. Cowan: Is there any other railroad that has a pagoda?

Mr. Garwood: We have them everywhere in Texas except out in western Texas in the cactus, where you live.

Mr. Cowan: I did not know there were any Chinamen down there that would make them desirable or necessary.

Mr. Garwood: You have stated, as I understand it, that the railway company and the Trinity County Lumber Company have no connection in their operations or employees in any manner whatsoever.

Mr. Anderson: None, with the single exception of myself; I am the only goat in the lot.

Mr. Garwood: Their operations are absolutely separate and distinct?

2240 Mr. Anderson: They are.

Mr. Garwood: None of the equipment——

Examiner Burchmore: I would not go into that. I think it is fully in the record.

Mr. Garwood: I want it absolutely in the record.

Examiner Burchmore: I think he has made it clear, that it is entirely separate.

Mr. Garwood: If it is entirely clear to your Honor I will drop it at that point. State, if you know, Mr. Anderson, whether you have through rates on interstate business with the Gulf, Colorado & Sante Fe, business within the state, not business outside the state.

Mr. Anderson: Yes, sir; we have.

Mr. Garwood: Have you through rates with them to points outside the state?

Mr. Anderson: No, sir, we have not.

Mr. Garwood: You are recognized, then, as a common carrier entitled to participate in these rates in so far as state business is concerned, but not for interstate business.

Mr. Anderson: That is correct.

Examiner Burchmore: As a matter of fact, the Santa Fe would not be permitted by the State Commission to cancel those
2241 rates, would it?

Mr. Anderson: No; that is the only reason we have them.

Mr. Garwood: Have you any reasonable through routes that ought to be available to you in connection with the Santa Fe and its connections?

Mr. Anderson: Do you mean outside the state of Texas?

Mr. Garwood: Yes.

Mr. Anderson: Yes.

Mr. Garwood: Where would it be reasonable for you to deliver to the Santa Fe? By what routes would you move?

Mr. Anderson: Well, Judge, that is a point that I am not very clear on. I presume that Houston would be——

Mr. Garwood: Going from Lufkin, could you move directly south over the Houston, East & West Texas and deliver to the Santa Fe at Cleburne?

Mr. Anderson: Yes, sir, or we could also deliver to them by the I. & G. N. at Conroe via Trinity.

Mr. Garwood: By each of those routes the Santa Fe would have the long haul on lumber to points on the Atchison System outside the state?

Mr. Anderson: Yes, sir.

Examiner Burchmore: I do not want to be unreasonable.
2242 but we are not trying here the establishment of joint through rates between companies, but the status of this road.

Mr. Garwood: The reason I asked that question is because it is in the petition of this road.

Examiner Burchmore: Suppose that fact be granted as proven without any testimony, what effect will that have on the decision of this case?

Mr. Garwood: We expected in this same application—this road did not know where it was going to be classified when it filed its petition and therefore asked for the establishment of through routes. If that part of the case is not going to be considered in connection with it——

Examiner Burchmore: Do you expect to try this case with the object of securing an order requiring the establishment of through routes and joint rates with the Santa Fe?

Mr. Garwood: It was so prayed for in the petition, and for that reason I did not want to be held as having waived it.

Examiner Burchmore: You have not waived it, but I think you had better plan to take that up in a supplemental proceeding after this general question has been disposed of.

Mr. Garwood: I do not want to be in the attitude of having made a prayer in the petition and offering no evidence to sustain
2243 it. Of course I should be glad if that would be by way of supplemental proceedings, to eliminate that at this point.

Examiner Burchmore: If we try that issue here, we will not get through for weeks, I am afraid, and you have preserved your rights.

Mr. Garwood: That is all I have done it for. Is there anything further, Mr. Anderson, that you wish to add to what you have said?

Mr. Anderson: Nothing that occurs to me, Judge.

Mr. Garwood: I believe that is all.

Mr. Cowan: You reside at Groveton?

Mr. Anderson: Yes.

Mr. Cowan: How long have you lived there?

Mr. Anderson: Four years.

Mr. Cowan: Had you been residing in that part of Texas before that?

Mr. Anderson: No, sir.

Mr. Cowan: How long have you been connected with the Trinity County Lumber Company?

Mr. Anderson: Four years.

Mr. Cowan: Where did you live before that?

2244 Mr. Anderson: Chicago.

Mr. Cowan: Are you connected with any other lumber company beside this?

Mr. Anderson: No.

Mr. Cowan: Are you connected with any other railroad company beside this?

Mr. Anderson: No.

Mr. Cowan: I was not noticing, but what position is it you hold with both the railroad and the lumber company?

Mr. Anderson: I am vice-president of the railroad, and manager of the lumber company.

Mr. Cowan: As vice-president of the railroad, are you manager of it; do you manage the railroad end of it?

Mr. Anderson: How is that?

Mr. Cowan: As vice-president of the railroad, do you manage it also?

Mr. Anderson: I am supposed to be the official head of the road in Texas.

Mr. Cowan: When you came to Groveton the lumber company was logging its mill by roads built out in the forest, from which you drew your logs?

Mr. Anderson: Yes.

2245 Mr. Cowan: And at that time your only outlet was the M. K. & T. Railroad?

Mr. Anderson: Yes, sir.

Mr. Cowan: The saw mill had been built along the right of way of the railroad, or nearby?

Mr. Anderson: Yes, sir.

Mr. Cowan: And the railroad had extended its spurs into the saw mill industry for the purpose of delivering freight and receiving freight?

Mr. Anderson: Yes, sir.

Mr. Cowan: And during all that period of time the railroad company performed the service of switching in the empty cars and taking out the loads?

Mr. Anderson: What railroad do you refer to?

Mr. Cowan: Well, the only one then was——

Mr. Anderson: The M. K. & T., yes, sir.

Mr. Cowan: You were not receiving divisions from it on account of being located on its line and bringing in logs?

Mr. Anderson: No.

Mr. Cowan: You then performed the same service with respect to bringing in logs that you do to-day, substantially?

Mr. Anderson: Yes.

2246 Mr. Cowan: Now, you come in a mile and a half over the Lufkin road, or whatever you call it?

Mr. Anderson: Yes.

Mr. Cowan: Preferably because it is a better track than your logging road, and you do not have a grade crossing?

Mr. Anderson: Yes.

Mr. Cowan: For which service there is nothing charged and no benefits derived by either your railroad company or your lumber company, except you get the privilege of paying it?

Mr. Anderson: I do not say that no charge is made. There has been, as I stated, a contract contemplated between the railroad and lumber company, by which trackage rights would be acquired, but it never has been reduced to writing yet. We have let it go by default largely because the same interests control both concerns.

Mr. Cowan: Well, my statement is correct; that there has been no charge made, has there?

Mr. Anderson: No.

Mr. Cowan: You were in the same attitude with respect to your lumber company as was William Cameron and others, who connect with the M. K. & T. road, and mill on that line and ship

2247 their lumber out?

Mr. Anderson: I know nothing of their conditions, surrounding their operations.

Mr. Cowan: At all events you received no benefits from the M. K. & T. except the ordinary railroad facilities. You got no division or allowance of any sort?

Mr. Anderson: Do you mean prior to the building of the Groveton, Lufkin & Northern?

Mr. Cowan: Yes.

Mr. Anderson: No, sir, we did not.

Mr. Cowan: When you found out you were in that condition, you found also instances—for example, you must have known how it was in Arkansas and Louisiana in particular.

Mr. Anderson: No, I will not admit that, because it would not be correct. I know nothing about the conditions in Louisiana and Arkansas, only what I have heard here in the last ten days.

Mr. Cowan: I suppose you knew before you built the road that most of the lumber mills in the country which were in competition with you in the markets were receiving divisions out of these rates.

Mr. Anderson: No, I did not know it. I knew some of
2248 them were. That was only hearsay. I did not know of my own knowledge that any of them were.

Mr. Cowan: At the time you came down there to manage the lumber business, there were rebates paid by railroad companies that had ceased?

Mr. Anderson: None that I know of. We did not get any of them if there were.

Mr. Cowan: You had to pay the full flat rate?

Mr. Anderson: Yes.

Mr. Cowan: Is it not a fact that the lumber company concluded, and you, as the managing officer of the lumber company, concluded that if you would build a railroad out whereby you could deliver the lumber out to other connecting lines, thereby getting a division of the rates, that it would be a good financial proposition to do it?

Mr. Anderson: We thought so. We thought we were entitled to compensation if we spent the money to build a railroad.

Mr. Cowan: And that induced you to build this railroad?

Mr. Anderson: To some extent; yes, sir.

Mr. Cowan: Did it not induce you wholly? You were not in the railroad business.

Mr. Anderson: No, not necessarily. We——
2249 Mr. Cowan: Well——

Mr. Garwood: Let the witness answer the question.

Mr. Anderson: The timber holdings of the lumber company at that time were practically all north of the M. K. & T. road, and we knew that we would have to build railroads in there to draw that timber and those logs to the mill, and it is rather a rough country, and the ordinary logging road built through those hills would be a pretty hard proposition. We concluded, inasmuch as we had to spend some money to get there, we might as well build a good one while we were at it.

Mr. Cowan: Well, you were lumber people; you were not in the railroad business.

Mr. Anderson: No, we were forced into it, I might say.

Mr. Cowan: You built the railroad——

Mr. Anderson: And we are not now in the railroad business, and do not want to be.

Mr. Cowan: What?

Mr. Anderson: I say our lumber people are not in the railroad business and do not want to be. We have trouble enough in the lumber business.

Mr. Cowan: You are not having any more trouble in the lumber busines than you did then?
2250 Mr. Anderson: A good deal.

Mr. Cowan: That is on account of the lower price. Pri-

marily you built this railroad for the purpose of delivering your own lumber to other connections than the M. K. & T.

Mr. Anderson: That was one object, but one of the main reasons was at that time the car service to the mills was quite a problem, and we thought we would be in a better position with three outlets than we would with one; I mean in the shipment of lumber after it was manufactured.

Mr. Cowan: But that was——

Mr. Anderson: Just wait until I get through. The facilities offered by the M. K & T. were not the best. You are familiar with their location; the branch that we are on is only called a railroad by courtesy; it is a lot of junk, that if they haven't any other use for it on the main line they send it down there and make the poor fellows use it down there. That applies to engines for moving business. And their arangements with the International & Great Northern for moving their tonnage from Trinity to Houston or to Mineola are rather burdensome, and they were not able to give us rates, and we were shut out from a great many points we would like to reach, because they could not give us rates, and it was partly to cover

2251 that that we built.

Mr. Cowan: Now, Mr. Anderson, are you right certain that the M. K. & T. could not give you rates to everywhere?

Mr. Anderson: There were a great many points we could not reach by the M. K. & T.

Mr. Cowan: Well, you could not reach them by the M. K. & T. tracks?

Mr. Anderson: Nor by their connections. I mean to say they could not make us satisfactory rates.

Mr. Cowan: Well, you were enjoying then the general blanket rate system that applied practically to all territory where you go now?

Mr. Anderson: Yes, sir.

Mr. Cowan: But the object at last, if it was to get cars or better rates, or any other purpose, in constructing the railroad, was to benefit the lumber business?

Mr. Anderson: Yes, to some extent, of course. I could not——

Mr. Cowan: You were not out building railroads for the purpose of developing the country independent of your lumber business?

Mr. Anderson: We would not have done that if it had been

2252 the only reason.

Mr. Cowan: Did you have any agreement with the Houston, East & West Texas Railroad before you built this line?

Mr. Anderson: No, sir.

Mr. Cowan: That you would get a division of the rate when you got in there?

Mr. Anderson: No.

Mr. Cowan: Did you have any with the M. K. & T. that you would get a division of the rate when you got in there?

Mr. Anderson: No.

Mr. Cowan: Did you have any understanding that you would receive them?

Mr. Anderson: No.

Mr. Cowan: If you had not received a division of the rate you certainly would have been in the soup, wouldn't you, with that railroad?

Mr. Anderson: Yes, sir.

Mr. Cowan: You say now that you acted without any understanding that you were to get a division of the rate?

Mr. Anderson: Yes.

Mr. Cowan: But you believed you would get it?

Mr. Anderson: We thought we would because we would
2253 have three outlets where we only had one.

Mr. Cowan: How much did you believe you would get?

Mr. Anderson: We did not know. That is a matter that has been thrashed out up to this good day, we are all the time scrapping with them.

Mr. Cowan: Having got the railroad built, you immediately got the division?

Mr. Anderson: We went out and got all we could.

Mr. Cowan: At that time is it not a fact you carried most of the lumber sent to Houston, East & West Texas, or delivered it most to the M. K. & T.?

Mr. Anderson: There is no rule about it; it varies. It depends upon the car supply and where our lumber is sold——

Mr. Cowan: I am just asking what did take place.

Mr. Anderson: When?

Mr. Cowan: Did you deliver most of it to the Houston, East & West Texas?

Mr. Anderson: No, for the first year we delivered more to other lines; more to the M. K. & T. and more to the Cotton Belt.

Mr. Cowan: The service you performed with respect to deliv-
eries to the M. K. & T. were precisely the same as they were
2254 before?

Mr. Anderson: How is that?

Mr. Cowan: The service in delivering to the Katy at Groveton remained the same as it was before?

Mr. Anderson: No.

Mr. Cowan: Wherein did you change it?

Mr. Anderson: The M. K. & T. went into our tracks, got the cars out and weighed them and billed them.

Mr. Cowan: And thereafter you did that for them?

Mr. Anderson: Certainly we do. There is no road has any access to our tracks now but the Groveton, Lufkin & Northern.

Mr. Cowan: What became of the Katy tracks?

Mr. Anderson: They took their tracks up. They had *an* excuse for a track in there.

Mr. Cowan: And they took it up?

Mr. Anderson: And they took it up.

Mr. Cowan: Between whom was that arrangement made?

Mr. Anderson: I could not say that there was any arrangement made. It was understood when our road was built that we were going in there, and their track was in such a condition it had to be rebuilt if it remained, and they took it up, and we built the track in over the same road or practically so.

2255 Mr. Cowan: And you switch about a mile and a quarter to the Katy?

Mr. Anderson: Yes, sir.

Mr. Cowan: In delivering to the H. E. & W. T. do you do any switching on your line or not?

Mr. Anderson: Which end of the line?

Mr. Cowan: To the Houston, East & West Texas at Lufkin.

Mr. Anderson: At Lufkin we deliver in the yards of the Cotton Belt. We have no physical connection with the H. E. & W. T. At Lufkin we deliver in the yards of the Cotton Belt and there is a switching charge made there which the H. E. & W. T. absorbs, and we in turn pay the transfer from their line on all freight going over our line.

Mr. Cowan: Taking a man who is situated out on the M. K. & T. who logs his mill with a railroad and who pays the flat rate and gets no division, don't you think you have an advantage over him, so far as the railroad charges are concerned?

Mr. Anderson: Well, I am not prepared to express an opinion on that. It is a hypothetical proposition, and it is a condition that is not likely to exist, because there is no place where a man can locate on the line of the M. K. & T. and get any timber; it is all

2256 cut, all that is tributary to the M. K. & T. has been cut and hauled in long ago.

Mr. Cowan: To what extent is the saw mill business carried on in that part of the state by logging a mill by railroad where the mill gets, or the railroad gets—I mean the railroad belonging to the mill—no division of the rates?

Mr. Garwood: The railroad does not belong to the road?

Examiner Burchmore: Judge Cowan, I am very anxious to take up one more case before we adjourn tonight, and if you can hasten the examination I will very much appreciate it.

Mr. Cowan: Was there a traffic manager of your company, your railroad company and your lumber company, a Mr. Wilson, who was a common traffic manager for both?

Mr. Anderson: The lumber company has no traffic manager?

Mr. Cowan: At any time was there a man named Wilson who was traffic manager for the lumber company and the railroad company?

Mr. Anderson: Named who?

Mr. Cowan: Wilson.

Mr. Anderson: Not to my knowledge.

Mr. Cowan: You will be asked, I suppose, to file a statement which has been asked for heretofore, showing the total

2257 amount of tonnage from your mill which goes to each one of your connecting lines.

Mr Anderson: I can give that to you now, if you want to know.

Mr. Cowan: Well, that general question has been asked, and is to be complied with, as I understand it, by all lines, and we will not take time now.

Mr. Garwood: In the ordinary course of operations, how long will it take the Trinity Lumber Company to cut out its timber there?

Mr Anderson: About ten or twelve years.

Mr. Garwood: You of course knew that at the time you constructed this road?

Mr. Anderson: Yes, sir.

Mr. Garwood: The road was then built as a permanent investment, irrespective of any investment that your stock-holding interests might have in lumber?

Mr. Anderson: Well, I might say that two-thirds of the original holdings of the Trinity County Lumber Company had been cut before the railroad had been thought of or dreamed of.

Mr. Garwood: In routing your stuff, do you obey the routings of the shipper?

2258

Mr. Anderson: Yes, sir.

Mr. Garwood: The Trinity County Lumber Company?

Mr. Anderson: Yes.

Mr. Garwood: Do you charge the Trinity County Lumber Company demurrage?

Mr. Anderson: Yes.

Mr. Garwood: Do you receive per diem on your cars?

Mr. Anderson: On our cars on other lines?

Mr. Garwood: That go off your line and are on other lines?

Mr. Anderson: Yes.

Mr. Garwood: I believe it is admitted that we endeavor to comply, and do substantially comply with all the state and Federal laws with reference to reports to both state and Interstate Commissions, and safety appliance acts. Do you observe the Federal Hours of Service Law?

Mr. Anderson: Yes.

Mr. Garwood: Just below you there runs from Trinity the Beaumont & Great Northern Railway?

Mr. Anderson: Yes.

Mr. Garwood: Running from a connection with the M. K. & T. branch to the I. & G. N. and thence over to the H. E. & W. T.

2259

Mr. Anderson: At Livingston.

Mr. Garwood: That road receives divisions, does it not?

Examiner Burchmore: We know all about that railroad.

Mr. Garwood: I did not know whether your Honor knew they received divisions, and that no notice of cancellation has been given to it.

Examiner Burchmore: We know all about it. There is a case submitted to the Commission for decision involving the rights of that company?

Mr. Garwood: That was prior to the severance of its stock-holding relations.

Examiner Burchmore: We are advised about that at the present time.

Mr. Garwood: The question I want to ask is if mills situated on that line get the advantage of a through rate and those upon other lines in the same general locality do not get the advantage of a through rate, whether there would not be a discrimination in their favor.

Mr. Anderson: That is very apparent.

Examiner Burchmore: That is argumentative. Do you understand that the Beaumont & Great Northern Railway Com-
2260 pany is now completely divorced from any lumber interests?

Mr. Garwood: That is my understanding. I am not connected with it in any way, but that is my understanding.

Mr. Coleman: Did you ever weigh any of the logs coming from your logging railroad on your standard railroad?

Mr. Anderson: We do not handle any logs.

Mr. Coleman: Don't you haul the logs to the saw mill?

Mr. Anderson: The lumber company does.

Mr. Coleman: Well, then the lumber company. Did the lumber company ever weigh them?

Mr. Anderson: No, sir; they never did.

Mr. Coleman: Have you any idea what the weight of 1,000 feet of logs is, or the average weight?

Mr. Anderson: Do you mean the weight of the logs which would make 1,000 feet of lumber? We have always estimated in a rough way about 10,000 pounds. That may not be correct; it will vary very much with different timber.

Mr. Coleman: Would that be your average?

Mr. Anderson: I should figure about that.

Mr. Coleman: I simply want to get in the record some way if we cannot get a conservative estimate, some idea of the weight.

2261 Mr. Anderson: We could easily weigh them, but we never have. I got that impression from the fact that we get 60,000 capacity cars and we load about 3,000 feet; that is, a carload of logs makes about 3,000 feet of lumber.

Mr. Coleman: Would it be convenient for you to test out and find what the average is?

Mr. Anderson: We could do it; yes, sir.

Mr. Coleman: I think for the benefit of the general needs of this case, in order to determine the tonnage, it should be determined.

Mr. Anderson: We would be pleased to run a train load of logs across the scales and give you the weights on it.

Mr. Coleman: You say you collect demurrage. Who do you find it necessary to collect demurrage from?

Mr. Anderson: From the Trinity County Lumber Company principally, or from any other mill that we serve.

Mr. Coleman: Now, you say you pay per diem.

Mr. Anderson: The road pays per diem for the cars, yes, sir.

Mr. Coleman: Well, I refer to the road. Of course you are in a dual position——

Mr. Anderson: When I say we pay demurrage, I mean the
2262 lumber company pays it and the railroad company collects it.

Mr. Coleman: I am speaking about—of course the carriers have an arrangement with the lumber company for paying per diem, but when I ask that I ask it as an officer of the railroad, whether the railroad pays per diem.

Mr. Anderson: The railroad pays per diem; yes, sir.

Mr. Coleman: Do you recall what that per diem is?

Mr. Anderson: It was, I think, 30 cents up to a short time ago, and it is now 35 cents.

Mr. Coleman: And your demurrage charge?

Mr. Anderson: $1.00.

Mr. Coleman: So that really the owners of your joint interests make that profit——

Mr. Anderson: We make a loss, as far as the lumber company is concerned, but the railroad company makes——

Mr. Coleman: I say the individuals, the participators in the holdings, make a profit on this demurrage, collecting as they do over and above the per diem.

Mr. Garwood: I think that is——

Examiner Burchmore: It seems to me, Mr. Coleman, if they hold the car ten days the M. K. & T. would receive $3.50 per diem and the lumber company would pay $10.00 demurrage, and the
2263 railroad company would take the difference.

Mr. Anderson: That is exactly it.

Mr. Coleman: Well, they pay it to themselves.

Examiner Burchmore: Part of it.

Mr. Coleman: But I say the stockholders pay the profit over and above the per diem to themselves.

Examiner Burchmore: That is a fact.

Mr. Anderson: We pay the railroad that owns the car.

Mr. Coleman: When you collect from another lumber company you make the absolute profit, and they pay more than you people do?

Mr. Anderson: Yes, sir; but I do not think we ever collect any demurrage from other lumber companies, because we put in a car and they load it and we take it out. They have 48 hours.

Mr. Coleman: As a matter of bookkeeping, you hold those cars as long as you want to and your company pays the per diem, whereas the other shipper pays the demurrage?

Mr. Anderson: We would be the losers the longer we held it, the more we are out of pocket.

Mr. Coleman: You are not as much a loser as the other shipper

2264 Mr. Anderson: We only serve one man and he loads his cars rather promptly, but if he holds it over 48 hours, we collect the demurrage from him.

Mr. Garwood: You have in no milling in transit rates, or anything of that sort?

Mr. Anderson: No.

Mr. Garwood: We introduce in connection with the testimony of this witness the financial statements attached to the petition in this case, marked respectively Exhibits A and B.

Examiner Burchmore: Those are already of record, and reference to them will suffice.

Mr. Garwood: Now, we have our traffic man, who is perpared to go into the question of divisions. Those are matters that are embraced in the division sheets, but we are ready to put him on.

xaminer Burchmore: I would like to ask him about three ques-
s, and I think that is all that will be necessary.

Witness excused.)

5 W. P. SMITH was called as a witness, and having been duly sworn, testified as follows:

Ir. Garwood: I will state in this connection that Mr. Smith was auditor and traffic man until about the last three months, when took other employment, and we have another man, but I think will be familiar with what you wish to ask him.

Examiner Burchmore: Your company receives no divisions in nection with the Texas Southeastern?

Ir. Smith: Well, on state divisions we do now.

Examiner Burchmore: Not interstate?

Ir. Smith: No.

Examiner Burchmore: The same is true of the Eastern Texas?

Ir. Smith: The same is true of the Eastern Texas.

Examiner Burchmore: Your divisions from the M. K. & T. on ıber amount to what sum?

Ir. Smith: About three cents; interstate is three cents flat.

Examiner Burchmore: I understood Mr. Anderson to say it ran m one and a half to four cents.

Ir. Smith: On interstate with the M. K. & T., three cents flat.

66 Examiner Burchmore: How about the Houston, East & West Texas on lumber?

Mr. Smith: The Houston, East & West Texas, our basis runs from e-half a cent to five cents.

Examiner Burchmore: One-half a cent to state traffic?

Mr. Smith: Yes, sir, to five cents interstate traffic.

Examiner Burchmore: You never receive more than five cents?

Mr. Smith: Nothing, no, sir.

Examiner Burchmore: The Cotton Belt allows you how much?

Mr. Smith: The Cotton Belt divisions run from two to four nts.

Examiner Burchmore: Two cents on state traffic?

Mr. Smith: Two cents on state traffic is the minimum and four nts on interstate traffic.

Examiner Burchmore: And four cents on interstate traffic is a t division?

Mr. Smith: Yes, sir.

Examiner Burchmore: Everywhere?

Mr. Smith: Well, except to one line.

Examiner Burchmore: What is that line?

Mr. Smith: The Kansas City, Mexico & Orient.

Examiner Burchmore: Is there not a certain line of rates 267 on which you receive a percentage of the rate and not a division?

Mr. Smith: That is in connection with the Sunset Central Lines; e get 20 per cent of the proportion accruing to the Sunset Central.

Examiner Burchmore: That sometimes exceeds four cents, does it not?

Mr. Smith: No, that is the highest we can get. They reserve the minimum to their junctions.

Examiner Burchmore: What is the rate to St. Louis?

Mr. Smith: Eighteen cents.

Examiner Burchmore: And you get 25 per cent of that rate at times?

Mr. Smith: On lumber, no.

Examiner Burchmore: I have St. Louis Southwestern Railway Company percentage tariff 1561——

2268 Mr. Smith: I think you will notice, though, that that does not apply on lumber.

Examiner Burchmore: Well, that is true. Well, the class rates divide 75 and 25 per cent.

Mr. Smith: Yes, sir.

Examiner Burchmore: In connection with the Cotton Belt?

Mr. Smith: Yes, sir.

Examiner Burchmore: Is it true of the other roads?

Mr. Smith: No, they vary with the other lines.

Examiner Burchmore: Your class rate divisions are higher than your lumber divisions?

Mr. Smith: Well, in one sense, yes, sir.

Examiner Burchmore: Division sheet M. K. & T. 3810 issued by that company January 22nd, 1909, provides that on business interchanged with the Groveton, Lufkin & Northern Railway, the following basis will govern traffic to or from Kansas City and points on the M. K. & T. Railway taking the same rate or lower. Allow Groveton, Lufkin & Northern 25 per cent of the through rate. I understand you to say the through rate to St. Louis is 18 cents.

Mr. Smith: That was on lumber.

Examiner Burchmore: You get 25 per cent of that?

2269 Mr. Smith: No, I think you will notice that does not apply on lumber.

Examiner Burchmore: It applies on coal, coke, cotton, cotton-seed, linters, live stock, grain and grain products——

Mr. Smith: I think there is a supplement which never applied on any lumber.

Examiner Burchmore: I thought you said you got a division of four cents, and no higher.

Mr. Smith: We do not get four cents on lumber.

Examiner Burchmore: There is a supplement to this published a short time later—no, there is not. I will show you this division sheet. Is there an error in that sheet?

Mr. Smith: There is a supplement to this division sheet which excepts lumber from the application of the same. There is a special lumber division sheet which takes care of lumber and foreign products.

Examiner Burchmore: Then do you say this division sheet is not accurate?

Mr. Smith: Not so far as lumber is concerned.

Examiner Burchmore: I do not think it is necessary to bring out the details of these divisions. Are there any questions you desire to ask?

2270 Mr. Garwood: You have issued bills of lading in the ordinary form, state and interstate?

Mr. Smith: Yes, sir.

Mr. Garwood: And followed the usual course of approved railroading in that particular?

Mr. Smith: Yes.

Mr. Garwood: In the publication of your tariffs, and concurrences, and so forth?

Mr. Smith: Yes, sir.

Mr. Cowan: I want to ask Mr. Anderson a question, but do not want to ask this witness.

(Witness excused.)

Mr. Cowan: Just where you are, Mr. Anderson, is it or not a fact that the Groveton, Lufkin & Northern, has some sort of an arrangement for a sale or transfer of the property to the Sunset Central Lines, or some of the Southern Pacific interests?

Mr. Anderson: None whatever.

Mr. Cowan: Was there at any time any arrangement by agreement for division of the rates other than the ordinary division sheets?

2271 Mr. Anderson: None whatever.

Mr. Cowan: That is all.

Mr. Garwood: I will ask the Commission to consider as offered in evidence the rules and regulations of the Railroad Commission of Texas relative to the issuance of stocks and bonds. I ask the Commissioner also to consider as offered in evidence the profiles of our road, and our map of each consecutive mile. It is a very large diagram.

Examiner Burchmore: I do not believe that ought to be put in the record. The record is so big that we will have to send it in a car now.

Mr. Garwood: Very well. I want to state that our general manager is here, and in the interest of time I did not put him on, but I tender him to the Commission for examination either by your Honor or any interested party as to any detail of the conduct or management of that road.

W. J. HELMICK, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Are you an officer in any other railroad?

Mr. Helmick: No.

2272 Examiner Burchmore: You have heard the testimony offered in this case by the other witnesses?

Mr. Helmick: Yes, sir.

Examiner Burchmore: Were there any inaccuracies or corrections that you would suggest?

Mr. Helmick: No.

Examiner Burchmore: It accords with your general understanding of the situation?

Mr. Helmick: Yes, sir.

(Witness excused.)

Examiner Burchmore: The Red River & Rocky Mount?

(No responses.)

Examiner Burchmore: The Rison & Mt. Elba? Is that company represented? I am informed there is no appearance.

The Saline River Railway?

Mr. Smyth: I am here for that road.

Examiner Burchmore: We will hear the Lake Charles & Northern, the Fourche River Valley & Indian Territory Railway, and the Wilmar & Saline Valley Railroad cases at 8:00 o'clock this evening.

2273 *The Saline River Railway.*

L. N. SMYTH, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is your position with this railroad?

Mr. Smyth: Auditor.

Examiner Burchmore: How long have you been Auditor of this company?

Mr. Smyth: Since April 15th, this year.

Examiner Burchmore: The Saline River Railway, as I understand it, is controlled by the Saline River Lumber Company through the ownership of the capital stock?

Mr. Smyth: Since April 15th this year.

Examiner Burchmore: The Saline River Railway, as I understand it, is controlled by the Saline River Lumber Company through the ownership of the capital stock?

Mr. Smyth: Well, the stock does not belong to the lumber company, but it belongs to the stockholders of the lumber company.

Examiner Burchmore: Are those stockholders the same in the two companies?

2274 Mr Smyth: Practically so.

Examiner Burchmore: Do they hold their stock in proportion?

Mr. Smyth: Yes, sir.

Examiner Burchmore: In a general way the officers of the two companies are the same?

Mr. Smyth: About the same, yes, sir.

Examiner Burchmore: Well, what differences are there?

Mr. Smyth: Well, there are none except the General Superintendent of the railroad does not fill the same position with the lumber company exactly; that is, he does not meet with the Board of Directors, but otherwise they are the same.

Examiner Burchmore: The Saline River Railway connects with the Cotton Belt at Draughon, Arkansas?

Mr. Smyth: Yes.
Examiner Burchmore: Does it connect with any other railroad?
Mr. Smyth: With the Warren and Ouachita Valley at a place alled Glynn.
Examiner Burchmore: When did you form that connection?
Mr. Smyth: Some time in last May, I believe.
Examiner Burchmore: Which road extended its line to that point?
2275 Mr. Smyth: The lumber company built the extension from New Edinburg, as has been shown previously in reports to he Commission, and in May last they sold it to the railroad company, so that now the entire line belongs to the railroad company.
Examiner Burchmore: Is it not a fact that the Saline River Lumber Company is controlled by Mr. C. J. Carter and his associates.
Mr. Smyth: He is President of both companies and the chief executive officer.
Examiner Burchmore: This lumber company is controlled by the same interests that control the Doniphan Lumber Company?
Mr. Smyth: Yes, sir, just about the same.
Examiner Burchmore: And that company is understood to be in control of the Doniphan, Kensett & Searcy Railroad?
Mr. Smyth: Yes, sir.
Examiner Burchmore: Is there any private tram road connecting with this company?
Mr. Smyth: There are spurs belonging to the lumber company but no tramway.
Examiner Burchmore: What is the character of the country through which it extends?
2276 Mr. Smyth: It is a cut-over timber country with some agricultural products, but not much, except at the station of New Edinburg; around there there is considerable farming and some staves produced, and there has been some little lumber hauled in there and shipped out over the road from local mills through the country, that is small portable mills which move about from place to place.
Examiner Burchmore: The mill or mills of this lumber company are, I understand, located at Draughon?
Mr. Smyth: Yes, sir.
Examiner Burchmore: And they immediately adjoin the rails of the Cotton Belt System?
Mr. Smyth: That is right.
Examiner Burchmore: Is there a private side track connecting the mill with the main line of the Cotton Belt?
Mr. Smyth: Planing mill.
Examiner Burchmore: Well, the loading platform of your industry?
Mr. Smyth: No, the planing mill is located on the Cotton Belt side track. However, the railroad company furnishes the ties
2277 and all necessary material for repairing that track.
Mr. Riddell: By the railroad company, you mean the Saline River?
Mr. Smyth: Yes.

Examiner Burchmore: But the Saline River Railroad does not operate that track?

Mr. Smyth: No; they occasionally go in there to switch cars for the convenience of the lumber company.

Examiner Burchmore: When was this mill at Draughon opened for operations?

Mr. Smyth: Well, it has been, from the record, I should say, about from 13 to 15 years ago; it was not erected by the present owner.

Examiner Burchmore: When did the present owners acquire it?

Mr. Smyth: They bought it in 1907.

Examiner Burchmore: When was the construction commenced on this railroad?

Mr. Smyth: The railroad was built and chartered at the time they bought the mill. They bought the two properties together.

Examiner Burchmore: The railroad was then in existence?

Mr. Smyth: Yes.

Examiner Burchmore: Had it been incorporated previ-
2278 ously?

Mr. Smyth: Yes.

Examiner Burchmore: As a common carrier?

Mr. Smyth: Yes.

Examiner Burchmore: Was it in fact performing services as a common carrier?

Mr. Smyth: I could not say as to that.

Examiner Burchmore: Did it have any traffic besides lumber previous to that time?

Mr. Smyth: I could not say, but it was chartered under the laws of Arkansas, and I now have the original charter in my office.

Examiner Burchmore: As a matter of fact you suspect it did not do any other business?

Mr. Smyth: I do not suppose it did. They contemplated going to this little town of New Edinburg that afterwards the new owners built to. At that time I understand it took a somewhat different route from what it does now, and was a narrow gauge road, and they converted it into a broad gauge road and extended it and changed the general route of the tracks so that they reached this town of New Edinburg, which is quite a little place of importance.

2279 Examiner Burchmore: What was the date of this conversion?

Mr. Smyth: I could not say as to that.

Examiner Burchmore: Previous to 1907?

Mr. Smyth: No, sir, it was after that.

Examiner Burchmore: It was narrow gauge when you bought it?

Mr. Smyth: Yes.

Examiner Burchmore: The lumber company bought this railroad and everything first as one enterprise.

Mr. Smyth: No, they bought it as two separate propositions.

Examiner Burchmore: It was purchased at one time?

Mr. Smyth: Yes, sir, all made in one deal, but there were two corporations, and they bought the stock of both.

Mr. Riddell: I understand the lumber company never owned that road at any time.

Mr. Smyth: No.

Mr. Riddell: But the same stockholders bought it?

Mr. Smyth: Yes, sir.

Examiner Burchmore: I meant the Carters went down there and bought the railroad and lumber company as one deal.

Mr. Riddell: I call attention to that, because in most cases the lumber company originally got the railroad and transferred
2280 it to the railroad company.

Mr. Smyth: But there was a difference in the name too. At the present time the lumber company is called the Saline River Lumber Company, and the railroad the Saline River Railroad, but at the time of the purchase the lumber company had some other name. I think it was the Goodlander & Moore Lumber Company, or something of that sort.

Examiner Burchmore: Was that a fictitious name or the name of the officers?

Mr. Smyth: No, it was the name—the Goodlander Lumber Company, I believe was the correct name.

Examiner Burchmore: What was the capital stock of this railroad company at the time it was purchased?

Mr. Smyth: $50,000.

Examiner Burchmore: That is all outstanding?

Mr. Smyth: Yes.

Examiner Burchmore: Has there been any increase in the capitalization?

Mr. Smyth: No.

Examiner Burchmore: Any bonds at the present time?

Mr. Smyth: No.

2281 Examiner Burchmore: There have not been any bonds issued so far as you know?

Mr. Smyth: There have not been any bonds issued so far as I know.

Examiner Burchmore: Any other indebtedness at the present time?

Mr. Smyth: Yes, sir.

Examiner Burchmore: What is that indebtedness?

Mr. Smyth: Do you want the amount of it?

Examiner Burchmore: Yes, and the nature of it, and to whom it is due.

Mr. Smyth: Our books show a total of loans and bills payable of $127,553.62.

Examiner Burchmore: What do those loans cover?

Mr. Smyth: Principally advances from the lumber company.

Examiner Burchmore: What use was made of those advances, additions and betterments in the main?

Mr. Smyth: I suppose in improving the road: You know they changed it from what it originally was, a narrow gauge, and changed the entire route of it, and during the course of these 13 years they have operated the road that line has been increasing gradually. I

suppose they have paid some back, but in the main it has kept
2282 piling up to what it is now.

Mr. Riddell: The road is accumulating a deficit instead of a surplus, is it?

Mr. Smyth: Yes.

Examiner Burchmore: Speaking of the financing of this road in 1907, or subsequent to that, who furnished the money with which the railroad was bought?

Mr. Smyth: I think the present stockholders have just about the same interest now that they did originally when the road was purchased, but I could not say what the proportions are. I have no data of that kind here.

Examiner Burchmore: Are there any stockholders of this railroad who are not also stockholders of the lumber company?

Mr. Smyth: I think not, except for the purpose of having the required number of directors.

Examiner Burchmore: What is the mileage of main line and sidings?

Mr. Smyth: Main line 19.21 miles; spurs and sidings, 1.72 miles.

Examiner Burchmore: 19 miles of main line?

Mr. Smyth: Yes, sir. That was increased, you know.

Examiner Burchmore: It was increased by nine miles?

2283 Mr. Smyth: No, it is increased by 10.21 miles. Originally the road was nine miles long.

Examiner Burchmore: When was that road increased?

Mr. Smyth: Last May.

Examiner Burchmore: And you say the railroad company built that extension? The lumber company built that extension, did it not?

Mr. Smyth: Yes.

Examiner Burchmore: And the railroad took it over?

Mr. Smyth: Yes.

Examiner Burchmore: At cost?

Mr. Smyth: At cost, yes, sir.

Examiner Burchmore: And a portion of this indebtedness represents that cost?

Mr. Smyth: That is included in this $127,000 I mentioned.

Examiner Burchmore: Do you contemplate in the near future funding your debts?

Mr. Smyth: That has been talked about, but nothing definitely arrived at so far.

Examiner Burchmore: No particular advantage in doing that, is there?

2284 Mr. Smyth: No, sir.

Examiner Burchmore: Is there any obstacle in the way of doing it?

Mr. Smyth: None that I know of. If it was done it would be just simply giving the stockholders in the lumber company some evidence of the debt that they have not now, except this last purchase, there was a note given for that, and I believe the intention is to pay it when the note is due. It is a short time note.

Examiner Burchmore: What is the weight of the rail in this road?

Mr. Smyth: 35 pounds

Examiner Burchmore: Ballasted?

Mr. Smyth: Just ordinary surfaced track, like most of the roads of that nature are, except that it is in good condition and perfectly safe to run over.

Examiner Burchmore: Are there any severe grades?

Mr. Smyth: No, sir, none except what the trains can very easily negotiate.

Examiner Burchmore: What is the sharpest curve on the line?

Mr. Smyth: I could not say without referring to the records.

2285 Examiner Burchmore: Any bridges?

Mr. Smyth: Yes, quite a number.

Examiner Burchmore: Steel bridges?

Mr. Smyth: No, wooden.

Examiner Burchmore: Over large streams?

Mr. Smyth: No, just small streams.

Examiner Burchmore: Have you any station buildings?

Mr. Smyth: Yes, sir, we have one station building of our own, and then we occupy the Cotton Belt station jointly at Draughon.

Examiner Burchmore: Do you have a joint agency there?

Mr. Smyth: Yes, sir.

Examiner Burchmore: What proportion of the total expenses of the station and what proportion of the agent's salary does your road pay?

Mr. Smyth: At Draughon we pay about 77 per cent of the agent's salary, and one-half of all the expenses of running the station including printing and everything of that sort.

Examiner Burchmore: Then I judge that station is chiefly used for your work?

Mr. Smyth: No, it is used as much for the Cotton Belt as

2286 it is for us.

Examiner Burchmore: Then it is owned by the Cotton Belt?

Mr. Smyth: The building is owned by the Cotton Belt, yes, sir.

Examiner Burchmore: I wanted to see why you paid most of the expenses.

Mr. Smyth: Well, they imposed that on us and we just had to stand it I suppose, or else hire an agent of our own, and it was cheaper for us.

Examiner Burchmore: What does 77 per cent of the agent's salary come to?

Mr. Smyth: His salary amounts to $55.00 a month, and I believe the Cotton Belt stands $12.50 and we stand the rest. Now at New Edinburg, our other station, we have an exclusive agent that we pay a salary to, and who devotes all his time to our business.

Mr. Riddell: That is the railroad business?

Mr. Smyth: Yes, sir. He has no connection with the lumber company at all. We have had him located there several years in the exclusive employ of the railroad company.

Examiner Burchmore: Are there any other stations on your line where there are no buildings?

2287 Mr. Smyth: There are no stations. We have some blind sidings——

Examiner Burchmore: From a tariff standpoint, do you have any other stations?

Mr. Smyth: Yes, sir, we have stops by the name of Carter, Hebron, Tucks, New Edinburg; that is the regular station mentioned before, where there is an agent located.

Mr. Riddell: Those are points at which you receive and deliver freight?

Mr. Smyth: Yes, sir, for freight, except that those first three mentioned are small blind sidings.

Mr. Riddell: You would deliver prepaid shipments of merchandise if you had any?

Mr. Smyth: Yes, sir, and we also stop there for passengers, on flag. And at Glynn.

Examiner Burchmore: What is the connection with the Warren & Ouachita Valley Railroad?

Mr. Smyth: Glynn.

Examiner Burchmore: Do you interchange any traffic with that road?

Mr. Smyth: Yes, sir. That road connects with the Iron

2288 Mountain at Warren, and the Rock Island at Banks.

Examiner Burchmore: Leaving the question of traffic for a moment, how many locomotives does the railroad company have?

Mr. Smyth: Three.

Examiner Burchmore: Does it operate all those locomotives?

Mr. Smyth: Yes, they use three of them most of the time, but use two every day. Some times the other one is not in commission.

Examiner Burchmore: Do you own those locomotives?

Mr. Smyth: Yes, sir.

Examiner Burchmore: How many cars do you own?

Mr. Smyth: 35 skeleton logging cars, one box car, one tank car, one caboose, and one combination passenger coach.

Examiner Burchmore: How many road employés are there, or how many section gangs?

Mr. Smyth: Ordinarily we have one; sometimes two, depending on conditions.

Examiner Burchmore: Do either of those gangs perform any work off of your line?

Mr. Smyth: No, sir. The spurs do not belong to the railroad company, and the lumber company employs all its own men.

2289 Examiner Burchmore: Do you have any station employés other than the two agents referred to?

Mr. Smyth: No other station employés except when required occasionally, they may hire extra men to help handle freight or something of that sort.

Examiner Burchmore: What employés are there in the general office of the railroad company?

Mr. Smyth: Myself and the assistant auditor. He is located at Draughon, and I am located in Kansas City.

Examiner Burchmore: The clerks of the lumber company do not work for the railroad company?

Mr. Smyth: No, sir, except this man in Draughon that I mention, a part of his salary is paid by the lumber company and part of it by the railroad company. He is employed by the railroad company, but we pay—I should say he is employed by the lumber company, but we pay them for whatever time he uses for the railroad company.

Examiner Burchmore: What does he do?

Mr. Smyth: He looks after the general accounting of the business done down there at that end of the line.

2290 Mr. Riddell: He is the one you said was assistant auditor?

Mr. Smyth: Yes, sir.

Examiner Burchmore: Give us briefly the particulars of your train service and its character.

Mr. Smyth: We have a mixed train which leaves Draughon daily except Sunday in connection with the local Cotton Belt passenger, making the round trip to New Edinburg. This train makes two trips daily connecting with local passengers both north and south. It carries the mail and express which is handled by freight on our road, but——

Examiner Burchmore: The express company does not operate over your line?

Mr. Smyth: No, but we have an arrangement with them whereby we take their express and deliver it at New Edinburg. We have the privilege of handling it any way we want to, just so we are responsible for it.

Mr. Riddell: That is substantial an express service, is it not?

Mr. Smyth: It is equivalent to it, except we bill the packages the same as we would local freight shipments.

Examiner Burchmore: Do you publish a time table?

2291 Mr. Smyth: Yes, sir.

Examiner Burchmore: Do you wish to file a copy of it?

Mr. Smyth: I have none here, but we can file one.

Examiner Burchmore: It is not necessary unless you deem it desirable.

Mr. Riddell: Is the time table in the Official Guide?

Mr. Smyth: I think it is, yes, sir.

Mr. Riddell: If it is not it might be well to file one.

Mr. Smyth: All right, I will file one.

Examiner Burchmore: How many freight trains do you run aside from the trains described, any?

Mr. Smyth: We run a regular train each way daily, and then an extra train when the occasion requires. These trains run on orders issued by the General Superintendent, made up in standard railway form.

Examiner Burchmore: The first of these trains is the same train you referred to a few minutes ago as——

Mr. Smyth: No.

Examiner Burchmore: As your mixed train?

Mr. Smyth: Well, the one I mentioned first is a mixed train, but in addition to that we operate two regular freight trains that handle logs and lumber.

2292 Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Smyth: It is not as heavy as we would like for it to be. It amounts to about 5 per cent of the gross revenue of the road.

Examiner Burchmore: How many passengers did you carry during some period for which you may have the figures?

Mr. Smyth: Last year I think we carried about 3,000 passengers.

Examiner Burchmore: They all paid fares?

Mr. Smyth: Yes.

Examiner Burchmore: Do you have published tariffs covering passenger service?

Mr. Smyth: Yes, sir.

Examiner Burchmore: Are they filed with the Interstate Commerce Commission?

Mr. Smyth: I think so. If they are not they ought to be.

Examiner Burchmore: Well, they are state fares; I do not know whether they would be filed or not.

Mr. Smyth: We make it a practice, though, to file everything of that nature.

Mr. Riddell: I do not know whether the Commission re-

2293 quires that or not, where they are just local fares.

Examiner Burchmore: Not if you do not cross the state line and do not sell any through tickets.

Mr. Smyth: I do not know as to that.

Examiner Burchmore: Do you carry any people free?

Mr. Smyth: None except those with passes.

Examiner Burchmore: Are any lumber company employés the recipients of passes?

Mr. Smyth: Yes, sir, some of them are.

Examiner Burchmore: Those who travel on the lumber company's business?

Mr. Smyth: Yes.

Examiner Burchmore: With respect to your freight traffic, what is your total tonnage?

Mr. Smyth: The total tonnage for the fiscal year ending June 30th, 1910, was 75,753 tons.

Examiner Burchmore: That is of all speciees of traffic?

Mr. Smyth: Yes, sir.

Examiner Burchmore: How much of that was lumber?

Mr. Smyth: About 17 per cent.

Examiner Burchmore: Was lumber, 17 per cent.

Mr. Smyth: 17 per cent lumber, and 81 per cent of it was

2294 logs.

Examiner Burchmore: Then 98 per cent was logs and lumber?

Mr. Smyth: Yes.

Examiner Burchmore: That is what I meant.

Mr. Smyth: And two per cent of it was merchandise of various kinds.

Examiner Burchmore: How much of that logs and lumber was transported for the Saline River Lumber Company or on its account?

Mr. Smyth: Well, practically all of it. We handled some lumber for other parties, but I do not think there was more than two or three carloads in the year that were shipped possibly from New Edinburg.

Examiner Burchmore: I am going to ask you to file a tonnage statement of the nature called for from other parties.

Mr. Riddell: Yes, I understand what that is, I believe.

Examiner Burchmore: This statement you are making now is sufficiently general for the purposes of this record, and the tonnage statement will be accurate. Has this company any commissary along the line?

Mr. Smyth: No.

2295 Examiner Burchmore: So the other two per cent you refer to is farm products or general merchandise handled for interests who are wholly separate from the lumber company?

Mr. Smyth: Handled to and from this town of New Edinburg I mentioned before.

Examiner Burchmore: Is this town a company town?

Mr. Smyth: No, I do not think any of our employés live there, and we have no interest in it.

Examiner Burchmore: You will give those figures in tons as well as in dollars of revenue?

Mr. Riddell: I understand exactly what is wanted in that respect and I will see that it is furnished.

Examiner Burchmore: Are rates published from your line in connection with the milling in transit privilege?

Mr. Smyth: In one direction we have with the Cotton Belt, we have rates too with the Warren & Ouachita Valley and the Rock Island also.

Examiner Burchmore: Are the through rates from the point of origin on your line to interstate destinations, where there are such through rates, the same as the Cotton Belt rates from Draughon and in that vicinity?

2296 Mr. Smyth: Yes, sir.

Examiner Burchmore: Then the junction point rate applies over your line?

Mr. Smyth: Yes.

Examiner Burchmore: You have rates also in connection with the Warren & Ouachita Valley and the Rock Island?

Mr. Smyth: Yes.

Examiner Burchmore: Are those the same rates in a general way as over the Cotton Belt?

Mr. Smyth: Yes, the rates are practically the same.

Examiner Burchmore: The rates are the same both ways?

Mr. Smyth: Yes.

Examiner Burchmore: How about the divisions? In the first place, what are your divisions with the Cotton Belt?

Mr. Smyth: They range from one to two and a half cents.

Examiner Burchmore: Is two and a half cents the greatest division you receive from the Cotton Belt?

Mr. Smyth: I think so. I never noticed any division larger than that, possibly on account of not having made any shipment to other points where there are higher rates.

Mr. Riddell: That seems to be the basis which is very com-
2297 mon with the Cotton Belt, and I imagine it is correct.

Examiner Burchmore: I was under the impression you got a division of three and a half cents out of the Cotton Belt.

Mr. Smyth: No, it is via the W. & O. V and the Rock Island.

Examiner Burchmore: Now wait a minute——

Mr. Smyth: I think you will find that is not wrong, because I would be glad if you did.

Examiner Burchmore: I guess you are right. What are the divisions over the Rock Island?

Mr. Smyth: Three and a half cents.

Examiner Burchmore: Standard three and a half cents?

Mr. Smyth: Yes.

Examiner Burchmore: Then I suppose all your traffic goes over the Rock Island?

Mr. Smyth: No, not all of it. It depends a good deal upon the car supply.

Examiner Burchmore: They get all the competitive traffic?

Mr. Smyth: Yes, of course.

Examiner Burchmore: Naturally.

Mr. Smyth: Yes.

2298 Examiner Burchmore: How much does the Warren & Ouachita Valley Railway get out of this traffic that goes over the Rock Island?

Mr. Symth: One and one-half cents.

Examiner Burchmore: So the Rock Island sacrifices five cents?

Mr. Smyth: Yes, they give up five cents, but they get something out of it themselves.

Examiner Burchmore: They get the balance?

Mr. Smyth: Yes.

Examiner Burchmore: Has the Cotton Belt System manifested any intention or evidence of raising its divisions?

Mr. Smyth: No, sir.

Examiner Burchmore: They would rather lose the traffic?

Mr. Smyth: I never heard anything about raising it at all. They are more inclined to cut it down, if anything.

Mr. Riddell: Will you permit me to ask a question right here. You said in reply to a query that all your competitive business went over the Rock Island. Do you mean that? Is not all this lumber business practically competitive?

Mr. Smyth: Well, I mean where everything was equal and
2299 we had the choice of routes, we would naturally give it to the Rock Island.

Mr. Riddell: You give it a preference?

Mr. Smyth: Yes, sir, on account of the divisions.

Mr. Riddell: But I understand all this lumber traffic is competitive by reason of its destination; it can be reached by the Cotton Belt or the Rock Island.

Mr. Smyth: Not in every case.

Mr. Riddell: But substantially?

Mr. Smyth: Yes.

Examiner Burchmore: What proportion of your traffic goes out over the Rock Island now?

Mr. Smyth: I suppose at the present time about half of it.

Examiner Burchmore: Have you a contract with the Rock Island?

Mr. Smyth: No, not to my knowledge.

Examiner Burchmore: It seems to me that ordinary business policy would prompt you to send everything by the Rock Island that you could send that way.

Mr. Smyth: This arrangement has not been in effect very long and——

Examiner Burchmore: Well, since it has been in effect?

2300 Mr. Smyth: And the car supply has cut quite a figure in the case. Recently we have been up against a car shortage down there, and it has been more a question of getting cars to load the lumber in than the matter of divisions.

Examiner Burchmore: When did the Rock Island establish divisions with your company?

Mr. Smyth: I could not say exactly, but it was along some time early this year.

Examiner Burchmore: Since this tap line question was actively under consideration?

Mr. Smyth: Yes, sir.

Examiner Burchmore: Is it your understanding that the Rock Island has been expanding the list of roads to which it gives allowances recently?

Mr. Smyth: I could not say.

Mr. Gaughan: This is merely a split of Mr. Hobbs' division on the Warren & Ouachita Valley?

Mr. Riddell: Was your arrangement made with the Rock Island or the Warren & Ouachita Valley?

Mr. Smyth: I could not say positively, as I had nothing to do with it. I imagine, though, since considering it further, that the

2301 arrangement was made with the Warren & Ouachita Valley.

Mr. Riddell: I ask that question, because in discussing this question last night with Mr. Carter and Mr. Stocking I understood very specifically that the arrangement was made with the Warren & Ouachita Valley because I recall having made the suggestion that the Warren & Ouachita Valley had that basis presumably over its own line, and it could very readily extend it to include connecting lines, providing they did not ask any further assistance from the Rock Island.

Examiner Burchmore: The only trouble about that is that the Warren & Ouachita Valley does not get five cents on all its traffic.

Mr. Riddell: That is the suggestion I offered them, and they concurred in it and gave me to understand that the arrangement had been made with the Warren & Ouachita Valley.

Mr. Smyth: I am forming my own opinion from the Rock Island division sheets.

Mr. Riddell: The witness will give you a definite written statement with whom that arrangement was made, if you care to have it.

Examiner Burchmore: I suggest that you might do so, that we can understand it. The Warren & Ouachita Valley only get
2302 a division of three cents on some traffic, or that was formerly true at least. There is no traffic you send via the Rock Island on which you get less than three and a half cents.

Mr. Smyth: That is my understanding.

Examiner Burchmore: Is there any territory you cannot reach over the Rock Island?

Mr. Smyth: Yes, sir, some points.

Examiner Burchmore: Any extensive points?

Mr. Smyth: I think not; no territory to which the lumber company ships.

Examiner Burchmore: Is there any territory that you cannot reach that the Warren & Ouachita Valley people do reach?

Mr. Smyth: Not that I know of.

Examiner Burchmore: Then it means that with respect to a part of the traffic reaching the Rock Island rails over the Warren & Ouachita Valley, the Rock Island raised its three cents division to a five cent division when accorded to the two companies?

Mr. Smyth: That is a matter that I could not state definitely.

Examiner Burchmore: Well, is that your impression?

Mr. Smyth: No, I have no ideas at all on that point. I am
2303 simply giving you what the Rock Island divisions sheets show is our proportion of that rate in certain tariffs that it covers. Aside from that I know nothing about it, because I have not investigated it.

Examiner Burchmore: I suggest you include in your communication any general statement you can make in this particular such as you think the Commission ought to be informed about so it will make the record complete.

Mr. Riddell: We will furnish a comprehensive statement in regard to this division arrangement, as to how it was made, and give full information about it.

Examiner Burchmore: Now do you have any joint class rates with either of your connections?

Mr. Smyth: We have some class and commodity rates, but I could not say positively just what they are at the present time. The only through billing that I have in mind now to our line is shipments of grain and flour. We have through rates on stuff of that kind from the Missouri Pacific points in Missouri, and we have received shipments recently on——

Mr. Riddell: If you have through rates on food products it is quite reasonable to assume you have it on merchandise generally?

2304 Mr. Smyth: I think so, but there is very little traffic of that kind.

Examiner Burchmore: You have local tariffs on file with the Commission which would cover any such business, if they are not covered by the through rate?

Mr. Smyth: I think so.

Examiner Burchmore: For particulars as to your rates, we can refer to your tariffs, but what is your general basis of divisions on class freight, if you are able to testify as to that?

Mr. Smyth: The only one I can mention positively from memory is the rate on flour from points on the Missouri Pacific in Missouri, on which our division is 15 per cent of the Kansas City rate, which is 29 cents per 100 pounds.

Mr. Riddell: Might it not be well to have the witness file a statement as to just what through rate he has on other than forest products, and the divisions he gets out of that?

Examiner Burchmore: Yes, you may file such a statement.

Mr. Smyth: That division just mentioned would amount to 4.35 cents per 100 pounds.

Examiner Burchmore: I do not think it is necessary to go into the particulars of this phase of the matter further than to ask
2305 whether you are endeavoring to comply with all the state and Federal laws, such as the safety appliance act and rate legislation, that govern the methods and practice of railway common carriers.

Mr. Smyth: We are, and also are observing the Sixteen Hour law.

Examiner Burchmore: And you are incorporated as a common carrier under the laws of Arkansas?

Mr. Smyth: Yes, sir.

Examiner Burchmore: And you hold yourselves out to the public as desiring to transport any traffic offered to you?

Mr. Smyth: Yes, sir.

Examiner Burchmore: What is the valuation of the road and equipment?

Mr. Smyth: The book value is $160,707.16.

Examiner Burchmore: Do you think that is the real value?

Mr. Smyth: I do not know, that is what the road has cost.

Examiner Burchmore: Has it actually cost that?

Mr. Smyth: Yes, sir.

Examiner Burchmore: A good deal of that cost represents cost of changes in line and replacing originally poor construction incident to the taking over of what were formerly purely logging
2306 tracks.

Mr. Smyth: Yes, sir, and improving the road and putting it in shape.

Examiner Burchmore: It would not cost that much to build the present railroad as an initial proposition?

Mr. Smyth: No, sir.

Examiner Burchmore: Has this road ever paid dividends?

Mr. Smyth: Not to my knowledge.

Examiner Burchmore: Would you know if it had?

Mr. Smyth: No, unless it had paid dividends within the last two or three years, which it has not. The road now shows a deficit of some $12,000.

Examiner Burchmore: A year?

Mr. Smyth: No, that is the total deficit.

Examiner Burchmore: What was the deficit when you came on the road?

Mr. Smyth: About the same.

Examiner Burchmore: Then you have been coming out even for the past few years?

Mr. Smyth: No, the past year we lost $8,233.13.

Examiner Burchmore: But for the fiscal year 1909 you had a net profit of something in excess of $2,000?

2307 Mr. Smyth: Is that correct?

Examiner Burchmore: Is it not correct?

Mr. Smyth: I do not know about those figures.

Examiner Burchmore: Does that sound right to you?

Mr. Smyth: No, sir. 1909? According to my record, at the end of 1909 the books showed a deficit of $4,086.36.

Examiner Burchmore: Yes, for two or three years preceding, but from the operation for that particular year——

Mr. Smyth: For the current year?

Examiner Burchmore: You made about $2,000?

Mr. Smyth: Well, possibly so. I have no figures on that.

Examiner Burchmore: Well, we have that figure in; whether it is correct or not I am not sure, but the total operating revenues for that year are given as $27,438.76, total operating expenses, $25,421.22. Now of those operating revenues I might state that $22,845 was on freight supplied by the controlling interests supposedly, and other traffic paid $2,988.04. Then we have passenger traffic about $1,000 and mail, switching and rents about $500 for that year.

Mr. Smyth: Those are the figures furnished to the Commission in the annual report?

2308 Examiner Burchmore: I think so. They are contained here in a special report by one of our examiners.

Mr. Smyth: The amount I mentioned of $4,086.36——

Examiner Burchmore: Is an accumulated deficit, including the previous years.

Mr. Smyth: Yes, sir.

Examiner Burchmore: Have I asked you about the salaries of the general officers?

Mr. Smyth: No.

Examiner Burchmore: What are they?

Mr. Smyth. None of the general officers draw salaries except myself and the general superintendent.

Examiner Burchmore: Is your entire salary paid by the railroad?

Mr. Smyth: One fourth by the railroad and one fourth by the Saline River Lumber Company, and one fourth by the Doniphan, Kensett & Searcy.

Examiner Burchmore: You testified for the Doniphan, Kensett & Searcy?

Mr. Smyth: Yes, sir; and one quarter by the Doniphan Lumber Company.

2309 Examiner Burchmore: You work about one quarter of the time for each of these companies?

Mr. Smyth: And sometimes overtime.

Examiner Burchmore: Well, about half of your time for each of these four companies?

Mr. Smyth: Yes, sir. I think the time is pretty well distributed between the four proportionately.

Examiner Burchmore: Will you please describe briefly the service this company rendered for which it is paid these divisions? What are these divisions supposed to cover in the case of shipments moving over the Cotton Belt, and what do they in fact cover?

Mr. Smyth: The divisions are supposed to cover the service performed in hauling the logs to the mill from the spur connection. The lumber company pays the railroad company $3.00 per car for hauling the logs to the main line on their spurs. The logs are loaded by the lumber company.

Examiner Burchmore: Then these private spurs are operated by the lumber company for the railroad company?

Mr. Smyth: Yes, sir, that is as far as hauling logs is concerned.

Examiner Burchmore: Who unloads them at the mill?

Mr. Riddell: You have not answered the question fully yet.

Mr. Smyth: In what respect?

Mr. Riddell: You asked him what service he gives for this compensation.

Examiner Burchmore: Just continue the description of the movement of the logs and lumber with such details as you regard important.

Mr. Riddell: That is all you perform, I think. You haul them from the junction of the spur to the main mill.

Mr. Smyth: They are there unloaded.

Mr. Riddell: And the loaded lumber is handled by the Cotton Belt?

Mr. Smyth: Yes, sir.

Examiner Burchmore: If cars are furnished by the Cotton Belt?

Mr. Smyth: Yes, sir

Examiner Burchmore: But it is accurate to state as a matter of fact the lumber is loaded directly on to the cars by the Cotton Belt as if no other railroad was there?

Mr. Smyth: Yes, sir.

Examiner Burchmore: How about the billing?

Mr. Smyth: The bills of lading read from Carter, Arkansas.

Examiner Burchmore: Which is back on your line?

Mr. Smyth: Which is a point back on our line.

Examiner Burchmore: And do you issue those bills of lading?

Mr. Smyth: They are signed by the agent of the Cotton Belt and the Saline River agent.

Examiner Burchmore: But he signs them in his capacity as your agent?

Mr. Smyth: Yes, sir.

Examiner Burchmore: And he issues through way bills?

Mr. Smyth: He issues through way bills, yes, sir, for the Cotton Belt Company on shipments outbound and transfer made with the slip.

Examiner Burchmore: Slip transfer?

Mr. Smyth: Yes, sir, and southbound billing on shipments by the

Rock Island it is done by the same agent on the forms of the Saline River Railway. We haul those cars to Glynn, a distance of a little over 19 miles; that is the service performed on that part of the business.

2312 Mr. Riddell: That haul down from Draughon to this intersection of the Warren & Ouachita Valley, is in addition to the service you perform on shipments going out via the Cotton Belt?

Mr. Smyth: Yes, sir.

Examiner Burchmore: But there is no milling in transit on the Rock Island?

Mr. Smyth: No.

Examiner Burchmore: So the billing is from Draughon?

Mr. Smyth: Yes.

Mr. Riddell: But that billing must cover the service he renders?

Examiner Burchmore: But the logs are hauled for this other charge into the mill?

Mr. Smyth: Yes.

Examiner Burchmore: You pay the same charge on logs which subsequently move out on the Rock Island as on those which move out on the other roads?

Mr. Smyth: Well, there is a difference, there are some logs delivered in the pond there at the mill, and it is assumed that they will about equal the timber shipped out over the Rock Island, if there would be any distinction made on that point.

2313 Examiner Burchmore: Then the lumber company pays charges on some logs that go to the mill?

Mr. Smyth: The lumber company?

Examiner Burchmore: Yes.

Mr. Smyth: They pay only the $3.00 per car for bringing the logs into the main line.

Examiner Burchmore: Then that is not credited against the outbound charges?

Mr. Smyth: No.

Examiner Burchmore: Then on logs which are moved into the mill and subsequently moved out in the shape of lumber to Rock Island destinations, as a matter of fact the Saline River Railroad receives no charge for its haul into the mill?

Mr. Smyth: No.

Examiner Burchmore: It gets an indirect benefit from the lumber moving out?

Mr. Smyth: Yes.

Examiner Burchmore: But no direct charge?

Mr. Smyth: No.

Examiner Burchmore: There is a contract, is there not, between your company and the Cotton Belt?

2314 Mr. Smyth: I do not know of any.

Examiner Burchmore: Well, if I should tell you there is a contract you will look for it, will you not?

Mr. Smyth: Yes.

Examiner Burchmore: Would you have heard of it if there was?

Mr. Smyth: I might not have heard of it. These rates have beeen in effect for a long time.

Examiner Burchmore: I will ask you to file with the Commission a contract between your railroad or the lumber company and the Cotton Belt.

Mr. Smyth: Relating to divisions?

Examiner Burchmore: Relating to anything. I have not seen the contract and only a reference to it.

Mr. Smyth: If there is one.

Examiner Burchmore: I have a report to which the copy is referred to as being attached, but it is in fact detached.

Mr. Smyth: We will furnish it if we have it.

Examiner Burchmore: What is the nature of the contract between your railroad and the Warren & Ouachita Valley?

Mr. Smyth: We will also furnish you a copy of that
2315 contract.

Examiner Burchmore: If that contract relates particularly to rates or divisions, the regulations of the Commission require its filing.

Mr. Smyth: Yes.

Examiner Burchmore: I will say that I have what purports to be a copy of a contract dated January 7th, 1909, between the Warren & Ouachita Valley Railroad Company and your railway company, so you need not file that contract.

Mr. Riddell: You only want the ones with the Cotton Belt then?

Examiner Burchmore: Yes.

Mr. Smyth: Does that refer to shipments of lumber or logs?

Examiner Burchmore: I do not know, it is a long document. Do you know what it provides? We will read it and find out what it provides, and you can read it and find out what it provides. It is long enough to provide anything. What is the extent of the private spur tracks or tram road owned by the lumber company which connects with this railroad?

Mr. Smyth: At the present time I should say about seven miles.

2316 Examiner Burchmore: Who owns those spur tracks?

Mr. Smyth: The Saline River Lumber Company.

Examiner Burchmore: Who built them?

Mr. Smyth: The Saline River Lumber Company.

Examiner Burchmore: Who owns the rails?

Mr. Smyth: The Saline River Lumber Company.

Examiner Burchmore: How did they get them?

Mr. Smyth: I could not say.

Examiner Burchmore: They did not buy them from the railroad?

Mr. Smyth: They have had them a number of years?

Examiner Burchmore: Do you make any interline settlements with the Cotton Belt?

Mr. Smyth: Yes.

Examiner Burchmore: How do you settle your charges on traffic going to the Rock Island?

Mr. Smyth: Direct with the Rock Island or the delivering line.

Examiner Burchmore: Then you get your divisions from them and the Warren & Ouachita Valley gets its division from the Rock Island?

Mr. Smyth: Not in every case. In some cases we settle
2317 with the delivering carrier.

Examiner Burchmore: Well, some other road, such as the New York Central?

Mr. Smyth: Yes.

Mr. Riddell: I think the accounting department arrangement is that the delivering line divides up the revenue and settles with all the roads.

Mr. Smyth: Yes; for instance, if we had a few cars going to the Northern Pacific we would settle direct with the Northern Pacific.

Mr. Riddell: This railroad company owns all this property including its right of way, does it not?

Mr. Smyth: Yes, sir.

Mr. Riddell: And I believe you said, I am not certain, that your locomotives and your cars, except the skeleton cars, were equipped with air brakes in accordance with the rules of the Commission?

Mr. Smyth: Yes, and automatic couplers.

Mr. Riddell: Do you have any platform scales for the weighing of less than carload freight?

Mr. Smyth: Yes, sir, all less than carload shipments are
2318 weighed.

Mr. Riddell: Are you prepared to operate over spurs for other people on the same basis as you do for the Saline River Lumber Company?

Mr. Smyth: Yes.

Mr. Riddell: At New Edinburg are there any stores?

Mr. Smyth: There are eight or ten, or possibly twelve stores.

Mr. Riddell: Is there a bank there?

Mr. Smyth: Yes.

Mr. Riddell: And your line handles merchandise into that point?

Mr. Smyth: Into and out also.

(Witness excused.)

Whereupon, at 6:35 P. M., a recess was taken until 8:00 P. M.

2319 Evening Session.

8 P. M.

Fourche River Valley & Indian Territory Railway Company.

F. H. Hartshorn, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: I understand you are president of this railway company.

Mr. Hartshorn: Yes.

Examiner Burchmore: Are you an officer of any lumber company?

Mr. Hartshorn: Vice-President and general manager of the Fourche River Lumber Company.

Examiner Burchmore: By whom is the Fourche River Lumber Company owned or controlled?

Mr. Hartshorn: By Bigelow Brothers & Walker Company, headquarters in Chicago.

Examiner Burchmore: Are Bigelow Brothers & Walker interested in lumber operations elsewhere?

Mr. Harthorn: I think not, but I would not make that as an absolute positive statement.

Examiner Burchmore: But insofar as you are advised?

2320 Mr. Hartshorn: No.

Examiner Burchmore: By whom is the Fourche River Valley & Indian Territory Railway owned and controlled?

Mr. Hartshorn: The Fourche River Lumber Company.

Examiner Burchmore: Are the stockholders of the two companies common, or what is the relation?

Mr. Hartshorn: Virtually so; there are only five qualifying shares outside.

Examiner Burchmore: I understand that this railway company was incorporated in August, 1905, in Arkansas as a successor to the Arkansas River & Southern Railway Company?

Mr. Hartshorn: Yes.

Examiner Burchmore: The present company is a common carrier railroad under its charter?

Mr. Hartshorn: Yes.

Examiner Burchmore: Irrespective of what its practices may be.

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Was the Arkansas River & Southern Railway Company ostensibly a common carrier railroad?

Mr. Hartshorn: Yes, sir.

2321 Examiner Burchmore: Now, as a matter of fact the Fourche River Lumber Company and this railroad company are in substance controlled by Bigelow Brothers & Walker?

Mr. Hartshorn: They are.

Examiner Burchmore: The Fourche River Lumber Company has a mill located at Graytown?

Mr. Hartshorn: It has.

Examiner Burchmore: Has it any other mill?

Mr. Hartshorn: It has not in operation.

Examiner Burchmore: The line of the Fourche River Valley and Indian Territory Railroad as I understand it connects with the Rock Island system at Bigelow, Arkansas?

Mr. Hartshorn: It does.

Examiner Burchmore: Is that one of the termini of the road?

Mr. Hartshorn: It is.

Examiner Burchmore: Please describe in your own way the line of the road and mileage.

Mr. Hartshorn: The Fourche River Valley & Indian Territory Railway starts at Bigelow, Arkansas, a junction point with the Rock Island and runs in a southerly direction for about six miles, then in

a westerly direction, the total length of the road, main line,
2322 being 14.8 miles. In making this six miles it goes by Rankin Creek, which makes the length of the line more than six miles. I think it is nearer nine than six.

Examiner Burchmore: Then you have about 14.8 miles of main line?

Mr. Hartshorn: Yes.

Examiner Burchmore: And about two miles of side track?

Mr. Hartshorn: Yes.

Examiner Burchmore: This is a standard gauge line?

Mr. Hartshorn: Yes.

Examiner Burchmore: Does it connect with the line of any other railroad company?

Mr. Hartshorn: Incorporated railroad company, no, sir.

Examiner Burchmore: What private tram lines connect with it?

Mr. Hartshorn: The Fourche River Lumber Company's.

Examiner Burchmore: What is the extent of those private tram lines?

Mr. Hartshorn: The present line is about ten miles.

Examiner Burchmore: Where is that located with reference to the Fourche Railroad Company?

2323 Mr. Hartshorn: It joins the railway company at a place we call Wye, Arkansas, which is a post office.

Examiner Burchmore: Where is Wye with reference to the mill?

Mr. Hartshorn: It is about nine miles by railroad. That distance will be verified by Mr. Collins.

Examiner Burchmore: Wye is not the other end of the line?

Mr. Hartshorn: No, sir. Bellevue is the other end of the line.

Examiner Burchmore: Are there any other mills on your line besides the one at Graytown?

Mr. Hartshorn: Not directly.

Examiner Burchmore: You said that this company had no other mill in operation?

Mr. Hartshorn: Yes.

Examiner Burchmore: Has it another mill which is not being operated?

Mr. Hartshorn: Yes, sir; a small shingle mill at Perry, Arkansas.

Examiner Burchmore: How long has that been closed down?

Mr. Hartshorn: Five years anyway.

2324 Examiner Burchmore: This entire railroad is in Perry County, Arkansas?

Mr. Hartshorn: A very short distance in Pulaski County. I do not know whether that has been filed with the Commission or not, but we found that the corners there jogged and we run across. I do not know whether 181 feet, I think it is, into Pulaski County; a very short distance on account of the section corners there.

Examiner Burchmore: When was the mill at Graytown opened?

Mr. Hartshorn: In the fall of 1903.

Examiner Burchmore: Was it then operated by the present corporation?

Mr. Hartshorn: It was.

Examiner Burchmore: When was the Fourche River Lumber Company incorporated?

Mr. Hartshorn: In the spring of 1903.

Examiner Burchmore: About that time?

Mr. Hartshorn: Just prior to that, before that.

Examiner Burchmore: This is the first mill operation in which this company has been interested?

Mr. Hartshorn: Yes, sir.

2325 Examiner Burchmore: And the mill was built by this company?

Mr. Hartshorn: It was.

Examiner Burchmore: When was construction begun on this railroad?

Mr. Hartshorn: In 1903, the spring I think of 1903.

Examiner Burchmore: How much of it was constructed at that time?

Mr. Hartshorn: Well, prior to the incorporation of the Fourche River Valley and Indian Territory Railroad there was about 8.9 miles.

Examiner Burchmore: Now, as a matter of fact this railroad in its inception was a mere plant facility, was it not? I mean it was originally built to draw the logs to the mill and the lumber from the mill to the railroad?

Mr. Hartshorn: The original building of the road was from a place that was called at that time Esau into the mill to facilitate getting the machinery to the mill.

Examiner Burchmore: Where is Esau?

Mr. Hartshorn: Esau is now Bigelow.

Examiner Burchmore: It was built from the junction with the Rock Island?

2326 Mr. Hartshorn: It was built from the junction with the Rock Island to the mill site.

Examiner Burchmore: That is only half a mile?

Mr. Hartshorn: Oh, well, no; I guess it is nearly three-quarters of a mile.

Examiner Burchmore: Well, it is less than a mile?

Mr. Hartshorn: Yes.

Examiner Burchmore: I thought you said the road was originally nine miles.

Mr. Hartshorn: No, I said we started there originally in that way and then in accordance with our attorney's advice, he advised us not to incorporate until we got through with all our other work. We intended to incorporate right along from the start.

Examiner Burchmore: What would have been your purpose in incorporating?

Mr. Hartshorn: Because it would be the main line road, by that I mean the tap line road, we will call it.

Examiner Burchmore: You did not want to serve the public until you got through serving yourselves?

Mr. Hartshorn: No, the trouble was with so much work on hand at one time, that is all.

2327 Examiner Burchmore: I thought the advice you would secure from your lawyer would be legal rather than practical.

Mr. Hartshorn: Yes.

Examiner Burchmore: He advised you not to incorporate. What was the objection in his mind to the incorporation in 1903?

Mr. Hartshorn: Only in that way, just as the statement I have made to you. We told him in regard to different things and in regard to the railroad incorporation, and they are very sensible people——

Examiner Burchmore: I would not go any further into that. When was the balance of the road constructed, immediately after the incorporation?

Mr. Hartshorn: Yes, sir; I think by November of that year the balance of it was constructed.

Examiner Burchmore: Who constructed the portion of the road built after the incorporation?

Mr. Hartshorn: The railway company.

Examiner Burchmore: Did it do that construction itself or through contractors?

Mr. Hartshorn: Part of it was done by force account and part of it under contract.

2328 Examiner Burchmore: Part of it then was constructed by the lumber company?

Mr. Hartshorn: Yes.

Examiner Burchmore: What charge did the lumber company make for the construction?

Mr. Hartshorn: We sold the 8.9 miles, about that, for $219,500 worth of the stock of the railway company.

Examiner Burchmore: Was there any other stock issued?

Mr. Hartshorn: $500.

Examiner Burchmore: And that went to directors?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Was that $219,000——

Mr. Hartshorn: $219,500.

Examiner Burchmore: Was that supposed to be the actual cost of the construction of that eight miles of road?

Mr. Hartshorn: No, the road actually cost without any interest, just a trifle under $200,000.

Examiner Burchmore: What was the $19,000?

Mr. Hartshorn: That was in the nature of making up their interest and——

Examiner Burchmore: That was supposed to be actual cost plus interest on the investment?

2329 Mr. Hartshorn: Yes, virtually that.

Examiner Burchmore: The financing then of the road originally was arranged by the lumber company?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: What is the present capitalization of the railroad?

Mr. Hartshorn: $220,000.

Examiner Burchmore: There has been no increase in the capitalization?

Mr. Hartshorn: No.
Examiner Burchmore: Are there any bonds outstanding?
Mr. Hartshorn: $100,000.
Examiner Burchmore: In whose hands are they?
Mr. Hartshorn: They are in the Fourche River Lumber Company.
Examiner Burchmore: On what account were they issued?
Mr. Hartshorn: On account of indebtedness, to take up notes.
Examiner Burchmore: What did those notes represent?
Mr. Hartshorn: Money advanced to the railway company.
Examiner Burchmore: What use was made of that money?
Mr. Hartshorn: Construction.
2330 Examiner Burchmore: Construction of what?
Mr. Hartshorn: Of the balance of the road.
Examiner Burchmore: The $219,500 only covered the——
Mr. Hartshorn: The 8.9 miles, about.
Examiner Burchmore: Then you constructed an additional 8 or 9 miles?
Mr. Hartshorn: 14.8, the difference between that.
Examiner Burchmore: Then you construction 6 miles more?
Mr. Hartshorn: Just about.
Examiner Burchmore: That cost only $100,000?
Mr. Hartshorn: The actual cost was not that much.
Examiner Burchmore: It seems to me if you can build 6 miles for less than $100,000 you ought to be able to build 8 or 9 miles for a good deal less than $200,000.
Mr. Hartshorn: We spent in the neighborhood of $25,000 for about one-eighth of a mile which covered the bridge, iron or steel bridge across the Fourche River with the approaches thereto.
Examiner Burchmore: That is in the original 9 miles?
Mr. Hartshorn: Yes, sir.
Examiner Burchmore: What else was there that made
2331 that original construction so expensive?
Mr. Hartshorn: It is heavy work.
Mr. Walter: Did not that also include the equipment?
Mr. Hartshorn: Oh, yes.
Examiner Burchmore: What was the value of the equipment that was included in the $200,000?
Mr. Hartshorn: I think that was $29,204.85.
Examiner Burchmore: Well, now you have $25,000 for that eighth of a mile including the bridge and nearly $30,000 for equipment; that makes $55,000. Now, the difference between that and $200,000 is $145,000, that it cost you to construct about 8 miles of road. How do you reconcile that figure with the other figure of less than $100,000 for the construction of the balance of the line?
Mr. Hartshorn: When we got on top of the plateau the construction was not as heavy as it was in getting on to the plateau.
Examiner Burchmore: Where is the top?
Mr. Hartshorn: At Wye, the 8.9 miles.
Examiner Burchmore: Then both of those figures, I refer to the

$100,000 and the $219,500 are supposed to represent actual cost of construction plus an interest charge?

2332 Mr. Hartshorn: Of the bonds, it was $80,000, the actual amount.

Examiner Burchmore: And $20,000 of that was discount?

Mr. Hartshorn: Discount.

Examiner Burchmore: Well, could you not have sold those bonds for better than 80?

Mr. Hartshorn: 5 per cent bonds at these times? I doubt it.

Examiner Burchmore: Those are not a very safe investment then, those bonds?

Mr. Hartshorn: Well, not if the Commission rules against us.

Examiner Burchmore: How are those bonds secured?

Mr. Hartshorn: By mortgage of all the physical property and rolling stock.

Examiner Burchmore: Are those bonds in any way secured by the lumber company?

Mr. Hartshorn: No, sir.

Examiner Burchmore: I understand that the officers of the Fourche River Lumber Company and the Fourche River Valley and Indian Territory Railroad Company are substantially identical?

2333 Mr. Hartshorn: Yes, sir; a difference in positions that is all.

Examiner Burchmore: What is the weight of the rail in this railroad?

Mr. Hartshorn: 56-pound.

Examiner Burchmore: What is the character of the construction?

Mr. Hartshorn: First class.

Examiner Burchmore: It is a well built railroad?

Mr. Hartshorn: It is.

Examiner Burchmore: The bridges are substantial?

Mr. Hartshorn: Yes.

Examiner Burchmore: Has it any severe grades?

Mr. Hartshorn: It has, three per cent. I would rather have Mr. Collins testify on those matters, if you want to go in them in detail.

Examiner Burchmore: I do not think it is necessary. If you say that the road is fairly well built——

Mr. Hartshorn: Yes, sir. We have a great deal of rock, the majority of it.

Examiner Burchmore: May I ask you about the station buildings or Mr. Collins?

2334 Mr. Hartshorn: I can answer, in a general way.

Examiner Burchmore: Just advise us in general.

Mr. Hartshorn: We entered into a contract with the Rock Island for joint tracks and station buildings at Bigelow.

Examiner Burchmore: What was the date of that contract?

Mr. Hartshorn: Well, now I——

Examiner Burchmore: Some years ago?

Mr. Hartshorn: Well, I would say that it was in the early part of 1906; and that contract provided for the maintaining of joint

tracks and stations, and in addition to that we have a two story station building, the upper portion of which is occupied by the officers of the railway company.

Examiner Burchmore: Where is that located?

Mr. Hartshorn: At Graytown. At Wye we have a store room and also at Bellevue a store room or warehouse.

Examiner Burchmore: Any additional freight platforms or other freight facilities?

Mr. Hartshorn: We have at Orchard a freight platform and at Rankin and Bellevue—at all of the stations they have platforms there.

Examiner Burchmore: Those facilities are adequate for
2335 the handling of any freight that has thus far been offered to you?

Mr. Hartshorn: They are.

Examiner Burchmore: You have a station agent at Graytown and the agent at Bigelow I understand acts as a joint agent?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Are there any other agents?

Mr. Hartshorn: None in the broad sense of the word.

Examiner Burchmore: In the sense of station agents?

Mr. Hartshorn: Yes.

Examiner Burchmore: Have you any track scales?

Mr. Hartshorn: No, sir; the lumber company has.

Examiner Burchmore: Where are those track scales, in the mill yard?

Mr. Hartshorn: Yes, sir, or to the south.

Examiner Burchmore: Those track scales are used by the railway company?

Mr. Hartshorn: They are.

Examiner Burchmore: How many locomotives does this railroad own?

Mr. Hartshorn: One.

Examiner Burchmore: Does it lease any locomotives?

2336 Mr. Hartshorn: It does not, except it has leased from the Rock Island, when repairs were necessary on its own locomotive.

Examiner Burchmore: What does it pay for that locomotive when it leases it?

Mr. Hartshorn: To my best recollection it was ten dollars a day; it might have been twelve.

Examiner Burchmore: That was exclusive of fuel?

Mr. Hartshorn: Oh, yes.

Examiner Burchmore: You furnished the fuel?

Mr. Hartshorn: Yes.

Examiner Burchmore: And you furnished the crew?

Mr. Hartshorn: And the train crew.

Examiner Burchmore: What kind of a locomotive do you get for ten dollars a day?

Mr. Hartshorn: I would say it was a 65-ton, but now I am not prepared to say.

Examiner Burchmore: Pretty good locomotive?

Mr. Hartshorn: Well, not as good as our own.

Examiner Burchmore: Your own locomotive is described in your reports to the Commission?

Mr. Hartshorn: Yes.

2337 Examiner Burchmore: How many passenger cars have you, if any?

Mr. Hartshorn: One combination.

Examiner Burchmore: One combination passenger and freight or passenger and caboose?

Mr. Hartshorn: Passenger and baggage. We carry freight in it, too.

Examiner Burchmore: How many freight cars and what is their character?

Mr. Hartshorn: I would rather—I think I can go into the reports, or Mr. Collins can give you that.

Examiner Burchmore: Mr. Colins, can you state how many you have?

Mr. Collins: Yes, sir; two box cars, eleven flat cars, and forty-eight other cars.

Examiner Burchmore: Are there any cars owned by the lumber company and used by the railroad company?

Mr. Hartshorn: No, sir.

Examiner Burchmore: Does this company handle passengers for hire?

Mr. Hartshorn: It does.

Examiner Burchmore: What is the extent of its passenger

2338 traffic?

Mr. Hartshorn: To the best of my recollection it was about $1100 for the last fiscal year.

Examiner Burchmore: What is your fare?

Mr. Hartshorn: Three cents a mile.

Examiner Burchmore: What is the usual collection from a passenger, ten cents, a quarter or fifty cents?

Mr. Hartshorn: I should say about thirty cents.

Examiner Burchmore: Do you handle the United States mail?

Mr. Hartshorn: Not under contract. The post office at Wye, Arkansas, was established early this year, and I understand the mail contract will not be let until the next quarter.

Examiner Burchmore: You have reason to suppose you will get the contract?

Mr. Hartshorn: We have.

Examiner Burchmore: Does any express company operate over your line?

Mr. Hartshorn: We do not—we carry the express which comes in as freight to the end of the line.

Examiner Burchmore: Under any arrangement with any express company?

2339 Mr. Hartshorn: No.

Examiner Burchmore: Do the passengers buy tickets?

Mr. Hartshorn: They do as much as we can make them, at the

Bigelow and Graytown depots, but none at the other end of the line as we have no agents.

Examiner Burchmore: Are agents of this lumber company transported over the railroad free?

Mr. Hartshorn: Two employees only.

Examiner Burchmore: What is your total freight tonnage inbound for a given period?

Mr. Hartshorn: In dollars and cents?

Examiner Burchmore: In tons?

Mr. Hartshorn: 145,351 tons.

Examiner Burchmore: For what period?

Mr. Hartshorn: For the fiscal year ending June 30, 1910.

Examiner Burchmore: Is that a substantial increase over the preceding year?

Mr. Hartshorn: I would say not. I should think it was about the usual.

Examiner Burchmore: Is there any duplication of figures in that statement?

2340 Mr. Hartshorn: It includes the tonnage of the logs in and tonnage of the lumber out manufactured from those logs?

Examiner Burchmore: Have you made any separation of the logs and lumber figures?

Mr. Hartshorn: The lumber out was, from the Fourche River Lumber Company alone, this is—no, this is from the whole, from every one, 31,176 tons.

Examiner Burchmore: Now for the fiscal year ending June 30, 1908, your total figure seems to be 96,156 tons.

Mr. Hartshorn: 1908?

Examiner Burchmore: 1908.

Mr. Hartshorn: This is for the year 1910.

Examiner Burchmore: Then your traffic has increased?

Mr. Hartshorn: Over 1908, yes, sir. I was referring to 1909.

Examiner Burchmore: You have given the figures of logs and lumber handled for the Fourche River Lumber Company. Have you any other figures on your traffic?

Mr. Hartshorn: Yes, that figure that I gave you, though, was for the lumber from all parties. Now forest products for

2341 other than the lumber company but not including lumber. 4,543 tons.

Examiner Burchmore: What about lumber for other parties?

Mr. Hartshorn: That is included in that 31,176. I can give you that later or furnish it to you later on if you desire it, but I cannot now.

pany, 86 per cent, and on forest products it was 96.8 per cent of that Fourche River Lumber Company traffic?

Mr Hartshorn: Yes, sir; I should say 95 per cent.

Examiner Burchmore: Have you any merchandise and general freight figures?

Mr. Hartshorn: Yes, sir. Freight for the Fourche River Lumber Company, 2,683 tons; freight for other parties, 448 tons.

Examiner Burchmore: Have you got any percentages worked out?

Mr. Hartshorn: I have the freight of other than forest products for other parties, 14 per cent, and the Fourche River Lumber Company, 86 per cent, and on forest products it was 96.8 per cent for the Fourche River Lumber Company and 3.2 for other parties.

2342 Examiner Burchmore: Revenue freight and not tonnage?

Mr. Hartshorn: No, those are our tonnage figures.

Examiner Burchmore: Then of the entire tonnage of the road for that fiscal year I gather it is some 90 or 95 per cent which was furnished by the Fourche River Lumber Company?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Will you prepare and file at your early convenience a tonnage statement such as we have requested from the other companies?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: At this point I might also ask for a map.

Mr. Walter: We will do that, but Mr. Hartshorn has a map there that I think he can furnish you.

Mr. Hartshorn: It is not a regular blue print but it is a map which shows the line of the road. Now this shows Little Rock. That is not literally true; Little Rock is farther down, and it shows also over here Walden; that is not literally true, it is farther west. But Bigelow and Graytown and the road are virtually correct.

Examiner Burchmore: What are the shaded portions of

2343 this map?

Mr. Hartshorn: The Fourche River Lumber Company's land.

Examiner Burchmore: Could you mark it in on this map in ink, the precise location of your saw mill, or is it marked?

Mr. Hartshorn: No, it is not marked, but it is right in here. (Indicating.)

Mr. Walter: Indicate it with an "X."

Mr. Hartshorn: Yes.

Examiner Burchmore: The mill is at the point marked "X" in ink on this map?

Mr. Hartshorn: Yes.

Examiner Burchmore: Is the connection with the Rock Island shown with approximate accuracy?

Mr. Hartshorn: It does not show any of the interchange tracks here or the stations. Of course that is on a very small scale.

Examiner Burchmore: This map will suffice if you will also file a small sketch of the terminals at Bigelow and the interchange tracks there. I also suggest if you can file one or two copies of this map with the Commission it will be a convenience. The whole pamphlet may be filed. Is it issued by your company?

2344 Mr. Hartshorn: By our agents.

(The paper so offered and identified was received in evidence, and thereupon marked Fourche River & Indian Territory Exhibit No. 1, Witness Hartshorn, received in evidence December 15, 1910, and is attached hereto.)

Examiner Burchmore: Do you publish any passenger fares?
Mr. Hartshorn: Schedules?
Examiner Burchmore: Yes.
Mr. Hartshorn: No, not generally speaking. We have it posted in the station.
Examiner Burchmore: It is not necessary to file it with the Interstate Commerce Commission I assume?
Mr. Hartshorn: No.
Examiner Burchmore: Do you have any local class and commodity rates applying between points on your line?
Mr. Hartshorn: We do.
Examiner Burchmore: Are those rates filed with the Interstate Commerce Commission so as to be available in connection with Interstate movements?
Mr. Hartshorn: They are not. We have a letter which arrived just shortly before I came down here asking for that and
2345 it will be attended to soon after my return home.
Examiner Burchmore: Do you understand the Interstate Commerce Commission asks carriers to file rates?
Mr. Hartshorn: To file tariffs?
Examiner Burchmore: Yes.
Mr. Hartshorn: That is what they requested of us. This is a local distance tariff.
Examiner Burchmore: I did not know we had a department request for tariffs.
Mr. Walter: Yes, that is for a separate rate to be applied on through shipments.
Mr. Hartshorn: Yes.
Examiner Burchmore: I assume you are a party to joint tariffs issued by the Rock Island and other carriers?
Mr. Hartshorn: We are.
Examiner Burchmore: Are there such tariffs naming joint rates on classes and commodities other than on lumber?
Mr. Hartshorn: There are not.
Examiner Burchmore: Then the only tariff to which you are joint parties is on lumber and forest products?
Mr. Hartshorn: Yes, but we have a contract with the Rock Island providing for other commodities whenever the tonnage gets
2346 sufficient.
Examiner Burchmore: Do you have a joint rate on coal?
Mr. Hartshorn: We do not.
Examiner Burchmore: Do you burn coal in your locomotives?
Mr. Hartshorn: We do.
Examiner Burchmore: Where do you get that coal?
Mr. Hartshorn: At the present time from Hartsford, Arkansas, a point on the Rock Island.
Examiner Burchmore: You take delivery of it at Bigelow?
Mr. Hartshorn: Bigelow, Arkansas.
Examiner Burchmore: These joint rates on lumber which you have with the Rock Island, do they apply from all points on your line as points of origin?

Mr. Hartshorn: They do.

Examiner Burchmore: What is the rate basis?

Mr. Hartshorn: The rate basis is the same as from Bigelow, Arkansas; that is from Greytown it is the same as from Bigelow, Arkansas, and from other points west thereof it is one cent per hundred pounds higher than Bigelow.

Examiner Burchmore: What divisions do you receive out of these point rates?

2347 Mr. Hartshorn: Two and three quarter cents when to Oklahoma points from Graytown; three and three-quarter cents when to Oklahoma points west of Graytown; points that carry the one cents higher rate.

Examiner Burchmore: That is to all points in Oklahoma where there are joint rates?

Mr. Hartshorn: Yes, sir, I so understood your question.

Examiner Burchmore: Certainly.

Mr. Hartshorn: And other interstate points, from Graytown three cents and from points west thereof which carry the one cent higher rate four cents. No division to intra-state destinations except where the movement moves in interstate movement.

Examiner Burchmore: Well, are there any joint through rate stations on your line to points in Arkansas?

Mr. Hartshorn: I think there is one point only, on the Midland Valley, but there are several on the Kansas City Southern, and quite a few on the Frisco.

Examiner Burchmore: But all those shipments would move on the interstate movement?

Mr. Hartshorn: Interstate movement.

Examiner Burchmore: Then as a matter of fact there are
2348 no joint through rates out of which you do not receive a division?

Mr. Hartshorn: No, that is true.

Examiner Burchmore: Where does most of your traffic go to? Any particular territory?

Mr. Hartshorn: Well, west and north.

Examiner Burchmore: You receive three cents as a division on most of your traffic?

Mr. Hartshorn: Yes.

Examiner Burchmore: The rates you said were one cent higher from points west of Graytown and from Graytown?

Mr. Hartshorn: Yes.

Examiner Burchmore: That additional cent in each case is retained by your company and the Rock Island makes no greater earnings on a shipment west of Graytown and from Graytown?

Mr. Hartshorn: Well, in reality we only get, you might say, so far as the Rock Island is concerned, 2¾ cents and 3 cent divisions. The other cent comes from the extra freight.

Examiner Burchmore: Is that the greatest division you have ever received?

Mr. Hartshorn: Until a reduction of rates into Oklahoma
2349 was made we received the same to Oklahoma points as we received to other points.

Examiner Burchmore: This division sheet which I have before me is numbered Chicago Rock Island division sheet No. 3 and seems to have become effective in April, 1909. That division sheet carries a note reading as follows: with a minimum to the Rock Island lines of five mills per ton per mile, but in no case must the Fourche River Valley & Indian Territory receive less than one cent per hundred pounds.

Mr. Hartshorn: That is true, and I wish to state that we also have a division on forest products of two cents per hundred pounds from all stations on the line other than lumber, lath and shingles. The divisions I have mentioned apply on lumber, lath and shingles only.

Examiner Burchmore: These divisions are the same on stuff milled in transit as on lumber moving through without transit?

Mr. Hartshorn: Yes.

Examiner Burchmore: This railroad has a complete supply of stationery such as bills of lading and way bills, letterheads and so forth?

Mr. Hartshorn: Yes.

2350 Examiner Burchmore: I do not know that the absence of such stationery would in any way affect its status. But do you endeavor to comply with all the state and Federal laws that are enacted to govern the conduct of railroad common carriers?

Mr. Hartshorn: We do.

Examiner Burchmore: Is your equipment furnished with safety devices?

Mr. Hartshorn: All that portion that leaves our line, and the others do not come under the Safety Appliance Act, the center of drawhead being only twenty-four inches from the top of the rail.

Examiner Burchmore: I assume from your previous testimony that the value of this road with equipment is $219,500 plus $100,000?

Mr. Hartshorn: I said that the $80,000 is the actual net returns on that bond issue.

Examiner Burchmore: Then the value of the road with equipment is apparently an even $300,000.

Mr. Hartshorn: I think that our books show $347,000 in round figures.

Examiner Burchmore: Is there any indebtedness on the

2351 road at the present time?

Mr. Hartshorn: Only current indebtedness.

Examiner Burchmore: Some of the additions and betterments have been paid for out of earnings. The point is your road today is apparently worth more than the sum of your capital stock and bond issue.

Mr. Hartshorn: No, the assets I said include the earnings up to June 30, 1910.

Examiner Burchmore: I do not quite understand.

Mr. Hartshorn: We have in round figures I would say $347,000 worth of assets. We have a surplus on hand of $17,000 and we have in the neighborhood of eighty-five hundred or nine thousand dollars of current accounts.

Examiner Burchmore: Receivable?

Mr. Hartshorn: No, payable.

Examiner Burchmore: What do those represent, those accounts payable?

Mr. Hartshorn: I can give you a list of them but not today.

Examiner Burchmore: These are not accounts with the lumber company?

Mr. Hartshorn: Yes, sir; some of them.

2352 Examiner Burchmore: Do they represent salaries?

Mr. Hartshorn: Oh, no.

Examiner Burchmore: Has this railroad paid any dividends?

Mr. Hartshorn: It has.

Examiner Burchmore: Indicate the extent of those dividends.

Mr. Hartshorn: Last year it was sixteen per cent, $35,200.

Examiner Burchmore: What was it the preceding year? Give a history of the dividends from the beginning with substantial accuracy.

Mr. Hartshorn: They have paid in the neighborhood of $100,000, very close to it.

Examiner Burchmore: In how many years?

Mr. Hartshorn: Since the incorporation.

Examiner Burchmore: That is in about five years?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: What about the salaries of the officers of this railroad?

Mr. Hartshorn: Of the lumber company?

Examiner Burchmore: What are their salaries from the railroad?

Mr. Hartshorn: I receive $100 and Mr. Bigelow $50, Mr.

2353 Walker $60 per month. None of the other employees or persons connected with the lumber company receive any salary.

Examiner Burchmore: Those salaries amount almost to a small dividend on the stock, do they not?

Mr. Hartshorn: $2,400 a year.

Examiner Burchmore: That is one per cent on your capitalization?

Mr. Hartshorn: Yes.

Examiner Burchmore: Are those salaries moderate for the services rendered?

Mr. Hartshorn: I should judge so.

Examiner Burchmore: What general office force has the railroad company, any?

Mr. Hartshorn: Yes, it has an auditor who also occupies the position of station agent and we have an office boy. At times we also have extra help. There is quite a little work attendant upon getting out reports and so forth and Mr. Collins of course has general supervision of the office and outside.

Examiner Burchmore: That extra help is furnished by the lumber company employees as a rule, is it not?

Mr. Hartshorn: It never has been so.

2354 Examiner Burchmore: Do these regular employees also work for the lumber company?

Mr. Hartshorn: Oh, no, they perform no work for the lumber company.

Examiner Burchmore: This company has some private tram roads connected with the railroad?

Mr. Hartshorn: It has.

Examiner Burchmore: Does it own any locomotives?

Mr. Hartshorn: Two.

Examiner Burchmore: Are there any other saw mills on your line?

Mr. Hartshorn: Not directly.

Examiner Burchmore: What are there in that vicinity?

Mr. Hartshorn: There is one just south of Orchard and some beyond the end of the line at Bellevue.

Examiner Burchmore: Are those mills operated?

Mr. Hartshorn: The one south of Orchard is now, and I am not positive about those west of Bellevue.

Examiner Burchmore: Do they ship anything over your line?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: What is the extent of those shipments?

Mr. Hartshorn: Small.

2355 Examiner Burchmore: They team their lumber over to your line?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Can a mill that has to team its logs up to the mill, as I suppose these mills do, and then has to team its lumber over to the line of some railroad and then has to pay the regular interstate rate of freight, compete at all successfully with another mill that gets its lumber to market for the interstate rate without paying any teaming bill?

Mr. Hartshorn: I think I can answer that question by making a statement regarding the purchase just recently by Mr. Collins for the railway company of this little mill south of Orchard. He purchased some bridge stringers at a less price than the lumber company would furnish them to him.

Examiner Burchmore: That may mean either of two things: it may mean that that little mill could afford to sell lumber very much cheaper than you could because of its economical operation or because it got its timber at a less cost or some such reason, or it might mean it was unable to reach any other market where it had to pay freight and therefore was willing to sell its product at a very

2356 much cheaper price on that account.

Mr. Hartshorn: No they can get to the markets really cheaper than the lumber company can.

Examiner Burchmore: How do you explain that?

Mr. Hartshorn: The cost on their lumber out is one cent per hundred pounds over ours.

Examiner Burchmore: But they have to team it to get it to your railroad?

Mr. Hartshorn: Yes, sir, but they were able to compete on this bill which I just spoke of.

Examiner Burchmore: But are they able to compete at St. Louis on lumber for example?

Mr. Hartshorn: The small mill in my estimation makes the market for lumber and not the big mill.

Examiner Burchmore: Do you mean they are like tramp steamships, they will do the best they can?

Mr. Burchmore: That does not mean they are making a profit on their lumber?

Mr. Hartshorn: Well, I am not able to answer that.

Examiner Burchmore: What about the timber holdings of this lumber company in the territory which is served by the railroad company in question?

2357 Mr. Hartshorn: How many acres?

Examiner Burchmore: Yes, and how many board feet standing in the woods?

Mr. Hartshorn: About 45,000 acres, 225,000,000 feet.

Examiner Burchmore: That includes stumpage rights?

Mr. Hartshorn: Yes, sir; there is included in that possibly 1500 acres, 7,000,000 of timber rights owned.

Examiner Burchmore: That is yellow pine lumber?

Mr. Hartshorn: Yes, sir and a small amount of hard woods mixed with it.

Examiner Burchmore: Is there any hard wood cutting going on in those camps?

Mr. Hartshorn: We are cutting what hard wood amongst the pine.

Examiner Burchmore: You sell hard wood?

Mr. Hartshorn: Yes, sir, a small per cent.

Examiner Burchmore: You have rates on that the same as on pine?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: And the divisions are on the same general basis?

Mr. Hartshorn: Yes, sir.

2358 Examiner Burchmore: Is there any timber in the territory adjacent to your line owned by other interests?

Mr. Hartshorn: Lumber corporations?

Examiner Burchmore: Other lumber corporations or private owners, any large tracts of timber?

Mr. Hartshorn: Well, the A. J. Neimeyer Lumber Company just south of us, and no other corporation, but there is quite an amount of timber owned by other people, individuals.

Examiner Burchmore: In what part of Arkansas is this railroad.

Mr. Hartshorn: It is thirty-nine miles west of Little Rock.

Examiner Burchmore: You said the Niemeyer interests have timber in that vicinity?

Mr. Hartshorn: South of us.

Examiner Burchmore: That is along the Little Rock Maumee & Western?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: How near does that road come to you?

Mr. Hartshorn: Well their timber comes right together,
2359 you might say; their line of railroad is only about six miles from us.

Examiner Burchmore: Who is this "B. L. Company" marked on this map?

Mr. Hartshorn: I could not tell you.

Mr. Walter: On what map is this?

Examiner Burchmore: This is a private map drawn in the Commission's office. We could not find a railroad map that had all these railroads on it so we had to make one. Is not that the Bryant Lumber company?

Mr. Hartshorn: Yes, sir, but they have no railroad.

Examiner Burchmore: This is supposed to be a representation of your railroad running out here towards Brizz, is it not?

Mr. Hartshorn: Well, yes. I do not know what the Bryant Lumber Company would be doing in there.

Examiner Burchmore: That will develop later, if there is any relation.

Mr. Walter: It ought to be B. W., probably, Bigelow-Walker.

Mr. Hartshorn: Yes, perhaps it is the Bigelow-Walker Company.

Examiner Burchmore: You never heard of the Bryant
2360 Lumber Company?

Mr. Hartshorn: Yes, but they have no railroad, I said.

Examiner Burchmore: Are not they connected with the Fourche River Lumber Company in some way?

Mr. Hartshorn: Not in any way.

Examiner Burchmore: No relation or ownership relation between the two companies?

Mr. Hartshorn: Not at all.

Examiner Burchmore: Is one of them lessee and the other the lessor of any lands?

Mr. Hartshorn: No.

Examiner Burchmore: I have before me what purports to be a copy of a complaint at law filed in the Perry County Circuit Court by the Bryant Lumber Company, complainant, against the Fourche River Lumber Company, defendant. Are you acquainted with the particulars of that lawsuit?

Mr. Hartshorn: Well, there have been several of them. If you will let me see the complaint I can tell you.

(Paper handed witness.)

Mr. Hartshorn (after examining paper): Yes, sir; I am familiar with it.

Examiner Burchmore: What was the outcome of that liti-
2361 gation?

Mr. Hartshorn: It was a verdict against us for, I won't undertake to tell you the amount, but the amount was not for each specific time but a blank amount, and the case is now in the Supreme Court of Arkansas.

Examiner Burchmore: Then the Bryant Lumber Company won that suit?

Mr. Hartshorn: Yes, sir, in the Circuit Court.

Examiner Burchmore: What was the nature of that proceeding, can you state it in the record very briefly?

Mr. Hartshorn: You want the gist of the matter, how it arose?

Examiner Burchmore: Just the gist of it, how it arose, and how it was involved. Do not go into all the details but just state in a few words.

Mr. Hartshorn: The Bryant Lumber Company had some lands running down to Rankin Creek, over which we desired to pass with the railway, and we finally came to an understanding with them regarding the hauling of their logs, and left a large amount to arbitration.

Examiner Burchmore: Before you proceed, what was the nature of that understanding with the Bryant Lumber Company
2362 respecting the movement of their logs?

Mr. Hartshorn: We agreed to haul the logs that they then owned—this is the lumber company I am speaking about now, at 37½ cents a thousand, and all logs that they purchased thereafter at a price to be agreed upon by the board of arbitration.

Examiner Burchmore: Let me ask, because I have not much knowledge of those things, is that charge of 37½ cents supposed to be a compensatory charge?

Mr. Hartshorn: It was certainly not.

Examiner Burchmore: You undertook to render a service then for less than cost?

Mr. Hartshorn: Yes.

Examiner Burchmore: Partly in payment for land rights or timber?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Now proceed.

Mr. Hartshorn: One of the contentions in this suit was that the Fourche River Lumber Company should obtain for them the same concessions in freight rates that they enjoyed through ownership in the Fourche River Valley and Indian Territory railroad.

2363 Examiner Burchmore: Did you say that, or are you quoting the statement that the Fourche River Valley Lumber Company received concessions in the freight rate?

Mr. Hartshorn: I am quoting what they say in this suit. We never received any concessions. It was not a statement of mine, but it was just quoting from this case.

Examiner Burchmore: Well, some dispute had arisen under this agreement and you arbitrated it?

Mr. Hartshorn: Yes.

Examiner Burchmore: And then did not abide exactly by the terms of the arbitration?

Mr. Hartshorn: Yes, I should have stated, when this matter of divisions came up we notified the board that they had no jurisdiction over the matter whatever and told them it would not make any difference what their decision would be, that we would not abide by it. It amounted to the same thing, as it was not within their province.

Examiner Burchmore: Then as I understand your statement the suit involved this point, the Bryant Lumber Company having contracted with you and under that contract being guaranteed, as it understood it, the same rate of freight on outbound shipments of

lumber that your company paid, discovered that the Fourche
2364 River Valley & Indian Territory Railroad was receiving divisions out of the published joint through rate and felt that it ought to receive the same net rate, or what might be described as a net rate, that is the difference between the joint through rate, and the division, and you felt it would not be proper to give them that through rate and therefore declined to put that interpretation on the contract, and you were sued and a recovery was had?

2365 Mr. Hartshorn: We did not, however, in our contract guarantee anything about out freights at all; it was only on hauling their logs.

Examiner Burchmore: They thought the contract gave them the same out rate on lumber?

Mr. Hartshorn: Yes, they actually did have the same out rate that we did.

Examiner Burchmore: But they thought that your division gave you some advantage that they did not enjoy?

Mr. Hartshorn: Yes, sir, that is the gist of this suit.

Examiner Burchmore: You have appealed the case?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: What are the grounds of your appeal, do you know?

Mr. Hartshorn: Well, in the first place we claim that they did not prove their case, and in the second place it would be illegal for any such thing to happen, especially in regard to this division.

Examiner Burchmore: Have you learned of the recent decision of one of the courts in Arkansas of a case brought by the Sawyer & Austin Lumber Company against the Iron Mountain?

2366 Mr. Hartshorn: Yes, sir.

Examiner Burchmore: That case is somewhat similar to yours, I assume.

Mr. Hartshorn: In a general aspect, yes.

Examiner Burchmore: So I presume you anticipate a favorable outcome to the present suit?

Mr. Hartshorn: We certainly do.

Examiner Burchmore: Does not the Bryant Lumber Company own some timber along your right of way?

Mr. Hartshorn: A small amount now.

Examiner Burchmore: Most of it has been cut?

Mr. Hartshorn: Yes.

Examiner Burchmore: Where was their timber milled when they were cutting it?

Mr. Hartshorn: Over at Fourche, which is about a mile; their mill is about a mile and three quarters, I should say, from Bigelow, and I should say three quarters of a mile from Fourche, which is a mile east of Bigelow.

Examiner Burchmore: Beyond the junction?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: How did they get their logs to the mill, did your locomotives haul them?

2367 Mr. Hartshorn: No, we gave them to the Rock Island at Bigelow, and the Rock Island hauled them.

Examiner Burchmore: You hauled them down from the woods to Bigelow?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: And only received 37 cents?

Mr. Hartshorn: The lumber company received two cents, the lumber company paying the railroad company the difference.

Examiner Burchmore: This two cents means a division of the joint through rate?

Mr. Hartshorn: No, our local distance tariff called for two cents a hundred pounds on logs. The railway company must collect that two cents. They do it by getting 37½ cents a thousand from the Bryant Lumber Company, and the balance from the Fourche Lumber Company.

Examiner Burchmore: Then it gives the Fourche Railway Company a substantial sum to carry out this agreement?

Mr. Hartshorn: It does.

Examiner Burchmore: It strikes me as perhaps worthy of notice that in the original agreement, which seems to have been the occasion of this law suit, and which is set out at length in the bill of complaint, such original agreement being dated apparently Au-
2368 gust 3rd, 1905, this railroad seems to be referred to as the Fourche River Lumber Company proposition.

Mr. Hartshorn: No, that was before the Fourche River Valley Railway——

Examiner Burchmore: Well, it keeps referring to the railroad which was built on this land by the Fourche Company, and to the Fourche River Lumber Company, and so forth.

Mr. Hartshorn: I stated that this road for the 8.9 miles was built by the Fourche River Lumber Company, and that is the road that goes over this land.

Examiner Burchmore: That is the proportion of the road west of Wye.

Mr. Hartshorn: No, this is the portion——

Examiner Burchmore: The portion east of Wye?

Mr. Hartshorn: Yes, sir. (Witness indicates on map.)

Mr. Walter: That is only the allegation in the bill you are referring to now?

Examiner Burchmore: It is, and also the allegation in this bill that the failure of the defendant, meaning the Fourche River Lumber Company, to perform the award of the arbitrators by pay-
2369 ing the Bryant Lumber Company the same differentials that the defendant receives from the Fourche River Valley & Indian Territory Railroad Company on through rates over the Rock Island, that amounts to some $2800, and so forth; that seems to reflect the view that this Bryant Lumber Company had of the relation of the Fourche River Lumber Company, and this railroad company. Now as a matter of fact did the Fourche River Lumber Company receive any differentials out of the freight rates from this railroad?

Mr. Hartshorn: It did not.

Examiner Burchmore: So this reflects a misunderstanding of the situation?

Mr. Hartshorn: It certainly does.

Examiner Burchmore: It has some conclusion with regard to the nature of the transaction which does not agree with your conclusion. At last they felt they were somewhat injured by the existence of this differential.

Mr. Hartshorn: Apparently.

Examiner Burchmore: Is that the feeling of other shippers along your line, or don't you know?

Mr. Hartshorn: I think not. This lumber was not produced on our line.

2370 Examiner Burchmore: I thought the logs were produced on your line.

Mr. Hartshorn: The logs were, but the lumber is not produced on our line that they claim differentials on.

Mr. Walter: As a matter of fact that lumber was manufactured on the Rock Island, and took the Rock Island rate.

Mr. Hartshorn: Which rate is the same as the Graytown or Bigelow rate.

Mr. Walter: You had nothing whatever to do with that?

Mr. Hartshorn: No.

Examiner Burchmore: But was not that lumber when it moved out on the Rock Island billed as having originated on your line and a division paid to your company on it?

Mr. Hartshorn: Oh, no.

Examiner Burchmore: Has your company any contracts with the Rock Island Railroad regarding divisions of rates?

Mr. Hartshorn: It has.

Examiner Burchmore: I find in the Commission's files what purports to be a copy of a contract dated August 9th, 1904, between the Chicago, Rock Island & Pacific Railroad Company, party of the first part, and the Arkansas River & Southern Railroad Company of the second part. That corporation is the predecessor of your cor-

2371 poration?

Mr. Hartshorn: Of the Fourche River Valley & Indian Territory Railroad, yes.

Examiner Burchmore: I believe you so stated a little while ago.

Mr. Hartshorn: Yes.

Examiner Burchmore: Now this contract, I may say, seems to be similar in a general way to a number of other contracts that have been filed with the Commission, entered into by the Rock Island Railroad with other short line railroads whose principal traffic is lumber or other foreign products, respecting rates and divisions. Are you familiar with the terms of this contract?

Mr. Hartshorn: Yes. It is quite awhile since I have read it.

Examiner Burchmore: In brief, this contract provides for the maintenance of physical connections and traffic arrangements between the two companies, for the maintenance of joint through rates on forest products and for the payment to your company on movements of manufactured lumber, lath and shingles, the divisions ranging from two cents upward.

Mr. Hartshorn: In addition it also provides at some future
2372 time that joint rates shall be made on other products.

Examiner Burchmore: When such rates shall be found necessary?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: And that reasonable divisions will be established?

Mr. Hartshorn: Yes.

Examiner Burchmore: It also provides that you ship 50 per cent of your traffic over the Rock Island, does it not?

Mr. Hartshorn: I think it does; I am not sure.

Examiner Burchmore: Now, was this contract entered into before the completion of this railroad?

Mr. Hartshorn: Oh, yes, sir.

Examiner Burchmore: Do you contend or would you state that this railroad was constructed on the faith of this contract?

Mr. Hartshorn: The Fourche River Valley & Indian Territory Railroad Company was extended, is a continuation—after we chartered the Fourche River Vally & Indian Territory Railroad Company, we extended it the 5.9 miles.

Examiner Burchmore: Was this contract assigned——

Mr. Hartshorn: To the Fourche River Valley Company.

2373 Examiner Burchmore: It was?

Mr. Hartshorn: Yes.

Examiner Burchmore: And was its period of effectiveness which was originally ten years, extended?

Mr. Hartshorn: No, sir.

Examiner Burchmore: So that the contract expires in 1914?

Mr. Hartshorn: In 1914.

Examiner Burchmore: There are two paragraphs in that contract and these paragraphs I may say appear in other contracts that have been filed, namely paragraphs 9 and 10, which provide that if at any time any part of this contract that is not essential to the performance of the interchange of traffic is declared void by a court or any Commission assuming jurisdiction over the subject matter, or if at any time the divisions provided for under this contract are found illegal or excessive, the necessary adjustment of such divisions or modifications of the performance of the contracts will be made. Do you recall such a clause?

Mr. Hartshorn: Yes, sir.

Examiner Burchmore: Are you able to state the purpose of including those clauses in this contract, or by whose suggestions
2374 they were included?

Mr. Hartshorn: No. I think it was on the part of the Rock Island that they were included.

Examiner Burchmore: Do you think it indicates a doubt or question in the mind of the lawyer by whom it was drawn as to the legality of some of the provisions of the contract?

Mr. Hartshorn: No, I do not. My best recollection is that they stated at the time, I think it was Mr. Holden, the traffic manager then, that they—well, the gist of it was that they did not wish to do

anything illegal in any sense or form and they put that in for a matter of protection, that was all.

Examiner Burchmore: So that they would not incur any penalties or invite a lawsuit by the other party to the contract in the event that at some future date the contract was annulled by some authority.

Mr. Hartshorn: They undoubtedly had that in their minds, although nothing was said at that time.

Examiner Burchmore: In view of those provisions in that contract, do you think your company could successfully maintain a suit for specific performance, or for breach of that contract in the event that it was declared improper by any tribunal?

2375 Mr. Hartshorn: We have not crosed that bridge yet.

Examiner Burchmore: You are not a lawyer and would not express an opinion?

Mr. Hartshorn: No.

Examiner Burchmore: Does the railroad company perform any inter-work switching for the lumber company?

Mr. Hartshorn: I do not believe I understand that expression.

Examiner Burchmore: I will ask Mr. Collins. It is a question of operation.

Mr. Hartshorn: Yes.

Examiner Burchmore: Have you any other contracts with railroads or other companies regarding any phase of this railroad's operations?

Mr. Hartshorn: This contract for joint station and exchange tracks.

Examiner Burchmore: Has that contract been filed with the Commission?

Mr. Hartshorn: I do not know. That is not a very complete copy. We just copied part of it. I can give you a copy if

2376 you like.

Examiner Burchmore: I wish you would file a copy of that contract in this record.

Mr. Hartshorn: All right.

Examiner Burchmore: I presume counsel will keep track of these requests. That contract contains no clauses with respect to divisions or rates.

Mr. Hartshorn: No.

Examiner Burchmore: It simply provides for the joint operation of that depot or terminals?

Mr. Hartshorn: Yes, sir; building them and their operation.

Examiner Burchmore: I think that is all.

Mr. Walter: Does the Arkansas Commission recognize you as a common carrier?

Mr. Hartshorn: They do.

Mr. Walter: Do you publish a time card?

Mr. Hartshorn: We have a time card posted in our depot.

Mr. Walter: At the end of your line have you any graded right of way?

Mr. Hartshorn: Beyond the present operation?

Mr. Walter: Yes.

2377 Mr. Hartshorn: Yes, sir.

Mr. Walter: About how much?

Mr. Hartshorn: Four miles about, I believe it is.

Mr. Walter: That map which you filed shows three projected lines, I believe.

Mr. Hartshorn: Yes, sir, three projected lines or surveys were made.

Mr. Walter: What are your intentions as to extensions?

Mr. Hartshorn: We will have to wait a little while before deciding on that.

Mr. Walter: Does it in a measure depend on the result of this investigation?

Mr. Hartshorn: A good deal.

Mr. Walter: In the purchase of ties or timbers, are such purchases restricted to the Fourche River Lumber Company?

Mr. Hartshorn: No. Mr. Collins just purchased some bridge timbers from a little mill near Orchard, and he has purchased ties at various times from other parties, and other bridge timbers.

Mr. Walter: What sort of a bridge is that you have near the mill?

Mr. Hartshorn: Well, 200 feet swing bridge.

2378 Mr. Walter: That is a bridge which opens for navigation?

Mr. Hartshorn: Yes.

Mr. Walter: What position do you occupy with the lumber company?

Mr. Hartshorn: Secretary and Treasurer.

Mr. Walter: So the first statement was a mistake?

Mr. Hartshorn: It was simply a mistake.

Mr. Walter: This is a permanent railroad you have there?

Mr. Hartshorn: It certainly is.

Mr. Walter: One intended to remain after the timber is gone?

Mr. Hartshorn: It certainly is.

Mr. Walter: I believe the Fourche River Lumber Company have sold or put in the hands of agents for sale a colonization scheme?

Mr. Hartshorn: Yes, sir, covering about 15,000 acres.

Mr. Walter: How much has been sold?

Mr. Hartshorn: Nearly that much, 15,000 acres.

Mr. Walter: The purchasers have gone in and located?

Mr. Hartshorn: Some of them, and they are going in there.

Mr. Walter: Fruit orchards?

Mr. Hartshorn: Yes, sir.

2379 Mr. Walter: Live stock?

Mr. Hartshorn: Yes, sir.

Mr. Walter: And various agricultural pursuits?

Mr. Hartshorn: Yes, sir.

Mr. Walter: Mr. Collins will go more into the question of the service to the public generally. I believe that is all I want to ask Mr. Hartshorn now.

(Witness excused.)

W. M. COLLINS, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Mr. Collins, were you aware that the Rock Island was paying five cents to many tap lines on its line?

Mr. Collins: What is that?

Examiner Burchmore: Were you aware that the Rock Island has been paying a division of five cents to many tap lines that connect with it?

Mr. Collins: I have heard those things, yes, sir.

Examiner Burchmore: Did you know it before you came here?

Mr. Collins: No, I did not, only in one case.

2380 Examiner Burchmore: You have made no effort to secure an increase in your divisions?

Mr. Collins: Yes, sir, I have.

Examiner Burchmore: Any great effort?

Mr. Collins: No.

Examiner Burchmore: It did not seem probable you would be successful?

Mr. Collins: Well, I did not know; I made an effort to get a little more than what we were getting, because I thought we were entitled to more.

Examiner Burchmore: About the equipment of the railroad company and lumber company, how many cars has the railroad?

Mr. Collins: We have 11 flat cars, 2 box cars, 1 tank car, 1 combination coach and 48 logging cars.

Examiner Burchmore: Has the lumber company any cars?

Mr. Collins: Not that I know of except one track laying car.

Examiner Burchmore: Has the lumber company any locomotives?

Mr. Collins: Two.

Examiner Burchmore: Do those locomotives operate over its logging line?

2381 Mr. Collins: Yes, sir.

Examiner Burchmore: Can you describe very briefly the way in which the logs are taken to the mill, as an operating matter?

Mr. Collins: The logs are delivered to us on an interchange track at Wye station.

Examiner Burchmore: Delivered to you by the lumber company?

Mr. Collins: Yes, sir; and we have an interchange track where we deliver the empties and they deliver the loads, and we deliver the logs to the mill.

Examiner Burchmore: Wye station?

Mr. Collins: Yes, sir.

Examiner Burchmore: Then the logging trains of the Fourche River Lumber Company operate over your main line for some distance?

Mr. Collins: No, they do not come on it at all.

Examiner Burchmore: Wye is the connection with the private tram line?

Mr. Collins: Yes, sir.

Examiner Burchmore: What charge do you make for hauling the logs to the mill?

Mr. Collins: Two cents.

2382 Examiner Burchmore: The lumber company pays two cents for getting the logs into the mill?

Mr. Collins: Yes, sir.

Examiner Burchmore: Who unloads the logs at the mill?

Mr. Collins: The lumber company.

Examiner Burchmore: Not the railroad company?

Mr. Collins: No.

Examiner Burchmore: But the unloading operation is very simple, it simply consists in unloosening the fastenings which holds the logs and rolling them off?

Mr. Collins: No, they have a machine for unloading them.

Examiner Burchmore: Is there any billing which accompanies the shipment into the mill, or does the conductor simply report it?

Mr. Collins: No, the cars are all waybilled, I mean bills of lading from Wye, and we waybill them in the office.

Examiner Burchmore: Is that bill of lading issued before they leave Wye?

Mr. Collins: Yes, the conductor makes a bill for all shipments west of Graytown on everybody's stuff.

Examiner Burchmore: That bill of lading is dated at Wye and reads only up to——

2383 Mr. Collins: From the Fourche River Lumber Company at Wye and the Fourche River Lumber Company at Graytown.

Examiner Burchmore: It is a local bill of lading?

Mr. Collins: Yes, sir.

Examiner Burchmore: And you charge two cents per 100 pounds?

Mr. Collins: Yes, sir.

Examiner Burchmore: The rates on your line are on a milling in transit basis?

Mr. Collins: I don't know anything about that.

Mr. Hartshorn: We have a milling in transit clause in our tariffs.

Examiner Burchmore: You handle the empty cars from the Rock Island Junction to the mill?

Mr. Collins: Yes, sir.

Examiner Burchmore: And the loaded cars in the opposite direction?

Mr. Collins: Yes, sir.

Examiner Burchmore: On the movement of lumber generally, your agent at Graytown issues the bill of lading?

Mr. Collins: No, the lumber company issues them.

Examiner Burchmore: Your agent signs them?

2384 Mr. Collins: Yes, sir.

Examiner Burchmore: So as a matter of fact they are executed by the Fourche River Valley & Indian Territory Railway?

Mr. Collins: Yes, sir.

Examiner Burchmore: And what is shown as the point of origin of the shipment?

Mr. Collins: Graytown.

Examiner Burchmore: And not Wye?

Mr. Collins: No, sir.

Examiner Burchmore: And it is shown as a carload of lumber originating at Graytown and destined to St. Louis, for example?

Mr. Collins: Yes, sir.

Examiner Burchmore: Does your railroad company issue a through waybill?

Mr. Collins: Yes, sir.

Examiner Burchmore: Then the cars do not move to the Rock Island under transfer billing?

Mr. Collins: No, sir.

Examiner Burchmore: Does that waybill show the divis-
2385 ions?

Mr. Collins: No.

Examiner Burchmore: Your divisions are paid in an interline settlement?

Mr. Collins: Yes, sir. I have my last month's samples with me.

Examiner Burchmore: I do not care to examine them, and it will not be necessary to offer them.

Mr. Collins: I mean they are last month's forms, not samples.

Examiner Burchmore: The rates from Graytown are the same as the Rock Island rates from Bigelow?

Mr. Collins: Yes, sir.

Examiner Burchmore: Is this two cents charge which is paid for the shipments into the mill credited in any way on the outbound freight charges?

Mr. Collins: Well——

Mr. Hartshorn: I think I can answer that question better than he can.

Examiner Burchmore: If you will?

Mr. Hartshorn: No.

Examiner Burchmore: What is the rate, for example, to
2386 St. Louis?

Mr. Hartshorn: 18 cents on pine, and 15 on hardwood.

Examiner Burchmore: Then on a movement of lumber to St. Louis the total freight charges are 18 cents from Graytown on, but the lumber company has already paid two cents on logs to get them into the mill?

Mr. Hartshorn: Into Graytown, yes, sir.

Mr. Walter: That is in addition to the through rate?

Examiner Burchmore: That is in addition to the through rate?

Mr. Hartshorn: Yes, sir.

Mr. Collins: That is correct.

Examiner Burchmore: You have heard the testimony in the other cases for the last few days?

Mr. Hartshorn: Yes.

Examiner Burchmore: Does not your arrangement seem to be less liberal?

Mr. Hartshorn: Under our milling in transit rate we show a loss,

and consequently if we made any charge we felt that we ought to charge our local distance tariff, which is two cents, and that accounts for our local charge dividends.

Examiner Burchmore: Well, your policy has been to
2387 charge the lumber company what it ought to pay for the service it gets from the railroad company?

Mr. Hartshorn: More than it ought to pay in order not to come out in the hole.

Examiner Burchmore: Then these divisions you receive from the Rock Island are not intended to cover the cost of the movement of logs into the mill?

Mr. Collins: No, sir.

Examiner Burchmore: Although you have milling in transit rates?

Mr. Hartshorn: Although we have milling in transit rates.

Examiner Burchmore: You do not use those milling in transit rates on the Fourche River Lumber Company's traffic?

Mr. Hartshorn: No, we do not.

Examiner Burchmore: Do you run any passenger trains?

Mr. Collins: We run a mixed train.

Examiner Burchmore: One mixed train daily in each direction?

Mr. Collins: We run two.

Examiner Burchmore: Run two in each direction?

Mr. Collins: Yes, sir.

2388 Examiner Burchmore: Do those connect with Rock Island passenger trains?

Mr. Collins: Yes, sir.

Examiner Burchmore: Are there any freight trains in addition to those two mixed trains?

Mr. Collins: No, sir.

Examiner Burchmore: I think Mr. Hartshorn covered the matter of divisions rather fully.

Mr. Collins: Yes.

Examiner Burchmore: That is all that I care to ask, Mr. Walter.

Mr. Walter: Mr. Collins, are there a number of mill men along the line, shippers of lumber?

Mr. Collins: Six.

Mr. Walter: They have their own separate mills?

Mr. Collins: Yes, sir.

Mr. Walter: Neither the Fourche River Lumber Company nor the Fourche River Valley & Indian Territory Railroad Company have any connection with them at all of a proprietary sense?

Mr. Hartshorn: No.

Mr. Walter: What else besides forest products are carried
2389 by the road?

Mr. Collins: Agricultural products.

Mr. Walter: Is it varied, different kinds?

Mr. Collins: Yes, sir.

Mr. Walter: Live stock?

Mr. Collins: No, we do not have any outbound live stock. We have some inbound live stock.

Mr. Walter: Emigrants' outfits?

Mr. Collins: Yes, sir.
Mr. Walter: In short, you serve everybody that comes, impartially?
Mr. Collins: Yes, sir, we certainly do.
Mr. Walter: We can give the names of these various shippers, some dozen or fifteen men who are in the business of shipping piling and logs and their addresses, if you want them.
Examiner Burchmore: Are any of those men related to this lumber company?
Mr. Collins: No.
Examiner Burchmore: You may file the statement if you wish.
Mr. Collins: Some of them haul their lumber 15 miles on wagons.
2390 Examiner Burchmore: You can file if you desire, but need not state them in the record.
Mr. Walter: About how many of these shippers that patronize the railroad to a material degree?
Mr. Collins: You mean saw mill men?
Mr. Walter: Yes.
Mr. Collins: There are six mills on the line, or off the line, that haul lumber into the line.
Mr. Walter: In addition to that, are there shippers of piling, staves and ties?
Mr. Collins: No ties, but piling and staves. We buy all the ties ourselves that are put out on the road.
Mr. Walter: If you know you may state whether or not continually emigrants are coming on to the line of the railroad and settling?
Mr. Collins: Yes, sir.
Mr. Walter: How are these trains operated along the line, by telephone?
Mr. Collins: Yes, sir.
Mr. Walter: Who owns that?
Mr. Collins: The railroad company.

Mr. Walter: That is all.

(Witness excused.)

2391 *Lake Charles Railway & Navigation Company.*

W. P. WEBER was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: What is your residence?
Mr. Weber: Lake Charles, La.
Examiner Gutheim: Your occupation is what?
Mr. Weber: President of the Lake Charles Railway & Navigation Company.
Examiner Gutheim: Have you a map of the Lake Charles Railway & Navigation Company that you can submit in evidence that will show its general geographical location?

Mr. Weber: We have a map here. We probably had better furnish you another one.

Examiner Gutheim: Yes.

Mr. Walter: We will give you another one, but here is the State Commission map of Louisiana which will give you an idea of it.

(Witness proceeds to explain map.)

Examiner Gutheim: According to this map the line operates in and about Lake Charles by rail and thence by water up the Calcasieu River to a place known as Hecker, thence by rail in an
2392 easterly and northerly direction to Edna.

Mr. Weber: Yes, sir.

Examiner Gutheim: What carrier line connections have you at Lake Charles?

Mr. Weber: We have the Kansas City Southern, the Southern Pacific, the L. & W. Division, and the Iron Mountain.

Examiner Gutheim: And your next rail connections are at Edna?

Mr. Weber: At Edna, where we have the Iron Mountain.

Examiner Gutheim: That is the Watkins Route, is it not?

Mr. Weber: Yes, sir.

Examiner Gutheim: From Edna the line runs north how far?

Mr. Weber: At the present time it is only running north—the completed line is half a mile north. The line is proposed to run to Kinder, a distance of 5½ miles north. The steel is purchased for this line, and part of it is on the ground and the work is being done at this time.

Examiner Gutheim: What is the industry on your line at Lake Charles?

Mr. Weber: Well, we serve a number of industries there by boat, you understand.

Examiner Gutheim: But what industries do you serve
2393 there by rail?

Mr. Weber: The Powell Lumber Company.

Examiner Gutheim: Going from Hecker on your rail line, what industries are located between Edna and Hecker?

Mr. Weber: Well, at the town of Hecker there are two stores, general merchandise, and the Calcasieu Naval Stores Company has a turpentine plant and distillery there. The company is better known as the Union Naval Stores Company.

Examiner Gutheim: Is there any other industry until you get to Edna?

Mr. Weber: At Moore.

Examiner Gutheim: What is there?

Mr. Weber: There is also another Naval Stores plant belonging to the Calcasieu Naval Stores Company.

Examiner Gutheim: And at Edna is there a mill?

Mr. Weber: A saw mill at Edna.

Examiner Gutheim: Owned by whom?

Mr. Weber: The Powell Lumber Company.

Examiner Gutheim: Was the settlement at Hecker an existing settlement prior to the time that this rail line was built.

Mr. Weber: It was for a number of years.

2394 Examiner Gutheim: About what is its present population?

Mr. Weber: From 300 to 500.

Examiner Gutheim: What is it in the case of Moore and Kelly Junction? Were they settled communities prior to the entrance of the railroad?

Mr. Weber: There were some settlers in there. There were no communities, just small land owners.

Examiner Gutheim: Is there anything at Baggetts?

Mr. Weber: Just a station, and there are some rice farmers in there.

Examiner Gutheim: As a matter of fact are Moore and Kelly Junction and Baggetts the remains of former logging camps?

Mr. Weber: Well, Kelly Junction is the place where the proposed line is to be built into Lake Charles.

Examiner Gutheim: That is going south from Kelly Junction and then paralleling the Southern Pacific into Lake Charles?

Mr. Weber: Yes, sir. Moore station, as already explained, is a logging camp, but it is now being used by a number of settlers and also being used by the Calcasieu Naval Stores Company.

Examiner Gutheim: Outside of the stores mentioned, the

2395 Calcasieu Naval Stores Company, the principal industries that furnish traffic are the two mills of the Powell Lumber Company at Edna and Lake Charles.

Mr. Weber: Those are the principal interests.

Examiner Gutheim: These stores at Hecker, are they stores owned by the Kelly-Weber Company?

Mr. Weber: No.

Examiner Gutheim: Were they at one time owned by the Kelly-Weber Company?

Mr. Weber: No, sir.

Examiner Gutheim: Who are the present owners of those stores?

Mr. Weber: Mr. F. Hebert owns one, and the Calcasieu Naval Stores Company owns the other one.

Examiner Gutheim: What is the relation between the Powell Lumber Company or the stockholders of the Powell Lumber Company, and the Lake Charles Railway & Navigation Company?

Mr. Weber: The principal stock in both companies is held by the same people; there is some difference though. There are some stockholders in the railroad company who are not stockholders in the lumber company.

Examiner Gutheim: To what extent are the stockholders

2396 different, that is in the number of shares?

Mr. Weber: Well, we have in the Lake Charles Railway & Navigation Company two stockholders who have no interest in the Powell Lumber Company.

Examiner Gutheim: What do their holdings amount to?

Mr. Weber: One of them amounts to 10 or 13 shares.

Mr. George M. King: One has 10 shares and the other two.

Mr. Weber: G. M. King owns 10 shares, and D. Giavinnie two shares.

Examiner Gutheim: When was the rail line from Hecker into Edna constructed?

Mr. Weber: It was finished in the latter part of 1907.

Examiner Gutheim: When was it begun: I take it it was begun out of Hecker.

Mr. Weber: I cannot give you the exact date it was begun. The road was started before our company was organized.

Examiner Gutheim: That is it was started by the predecessors of the Powell Lumber Company?

Mr. Weber: Yes, sir.

Examiner Gutheim: Was the road built about as was required for the timber operation of the Powell Lumber Company or its predecessor?

2397 Mr. Weber: The part that our predecessor built, I presume, he built for the benefit of his lumbering interests.

Examiner Gutheim: How about the part that was built since the Powell Lumber Company interests acquired title?

Mr. Weber: We extended the line for the purpose of reaching out and getting more business.

Examiner Gutheim: More timber business?

Mr. Weber: Any kind of business.

Examiner Gutheim: How much of an extension did you make after you acquired the original railway?

Mr. Weber: About 12 miles.

Examiner Gutheim: How far had the road been built at the time of that acquisition?

Mr. Weber: About eight miles.

Examiner Gutheim: To what point?

Mr. Weber: Near Moore.

Examiner Gutheim: Was the original road what was known in that locality as the Kelly tram?

Mr. Weber: Yes, sir, the Kelly tram never owned that road, though.

Examiner Gutheim: Never owned the Lake Charles Rail-

2398 way & Navigation Company?

Mr. Weber: No, nor it never owned the road that forms any part of it.

Examiner Gutheim: I understood you to say that the original road was what was known as the Kelly tram?

Mr. Weber: Well, it was what was known as the Kelly tram, but the Kelly tram did not own it. It was commonly known as the Kelly tram in that country, but it was owned by J. G. Powell.

Examiner Gutheim: Now the road was organized as a carrier corporation about when?

Mr. Weber: July 22nd, 1908.

Examiner Gutheim: And at that time what capital stock was issued?

Mr. Weber: Well, we issued $50,000 worth on or about that time, the full amount of the capital stock.

Examiner Gutheim: And that stock was issued to the original
wners in consideration of the proper transfers to the railroad cor-
oration?
Mr. Weber: The stock was issued to six different people who sub-
scribed for it.
399 Examiner Gutheim: Were those people all interested at
the time in the Powell Lumber Company?
Mr. Weber: Only four of them.
Examiner Gutheim: And their holdings of the $50,000 amounted
o what?
Mr. Weber: The four, do you mean?
Examiner Gutheim: Yes.
Mr. Weber: It amounted to $1200, the two amounted to $1200.
Examiner Gutheim: The two not interested?
Mr. Weber: The two not interested amounted to $1200.
Examiner Gutheim: So that about $48,000 was held by the Powell
Lumber Company interests.
Mr. Weber: Yes, sir.
Examiner Gutheim: How much railroad property was acquired
for that $50,000 worth of stock?
Mr. Weber: We transferred to the Lake Charles Railway &
Navigation Company all of the railroad track and equipment that
was owned at that time by the Powell Lumber Company.
Examiner Gutheim: That included the tracks in and about Lake
Charles and the floating equipment necessary for use on the river
and about eight miles from Hecker east?
2400 Mr. Weber: It included more track than that. The other
things which you mentioned were included. At the time
that the Powell Lumber Company acquired from its predecessor
those tracks, I stated it was about eight miles. The Powell Lumber
Company built on in the direction of Edna to some extent previous
to the time the transfer was made.
Examiner Gutheim: And all that was built was transferred——
Mr. Weber: All that was built was transferred.
Examiner Gutheim: Was there any steel on hand for the remain-
der of the construction to Edna that passed with the conveyance of
the railroad?
Mr. Weber: I do not remember whether there was any unlaid steel
at that time, any steel that we had on hand was included in the
transfer.
Examiner Gutheim: What obligations are now outstanding in
addition to the $50,000 of capital stock?
Mr. Weber: $29,193.51.
Examiner Gutheim: And that indebtedness is owing to whom?
Mr. Weber: The principal part of that indebtedness is owing to
the Powell Lumber Company. There is some outstanding, of
course.
Examiner Gutheim: Is that indebtedness that arose in the
2401 construction of the property or that had accumulated in the
course of the current operation of the railroad property?

Mr. Weber: It is practically all indebtedness that has accumulated in construction.

Examiner Gutheim: So that substantially $80,000 has been expended for the railroad property that is now owned by the Lake Charles Railway & Navigation Company and the floating equipment used on the river?

Mr. Weber: Yes, sir; to get it exact it is $81,475.65.

Examiner Gutheim: The total rail mileage is how much?

Mr. Weber: 20 miles.

Examiner Gutheim: And the spurs and sidings are about how much?

Mr. Weber: About a half a mile.

Examiner Gutheim: Are the present officials of the Lake Charles Railway & Navigation Company also officials of the Powell Lumber Company?

Mr. Weber: In part.

Examiner Gutheim: To what extent?

Mr. Weber: The President of the railroad and the lumber company are the same.

Examiner Gutheim: That will be sufficient, then. Now
2402 is your track all standard gauge?

Mr. Weber: Yes, sir.

Examiner Gutheim: And the weight of the rail is what?

Mr. Weber: We have some 30 pound. All the steel that has been bought since the incorporation has been heavier, 45 pounds and 52 pounds.

Examiner Gutheim: About what proportion is now laid with 30 pound?

Mr. Weber: About 12 miles.

Examiner Gutheim: Are there any station buildings at Hecker?

Mr. Weber: None.

Examiner Gutheim: At Moore, Kelly Junction or Baggetts?

Mr. Weber: One at Edna.

Examiner Gutheim: Is the station building at Edna the property of this company or the Watkins Road?

Mr. Weber: The property of the railroad company, the Lake Charles Railway & Navigation Company.

Examiner Gutheim: Is it used jointly with the Watkins Company?

Mr. Weber: No.

Examiner Gutheim: I take it there is no depot at Lake
2403 Charles?

Mr. Weber: No.

Examiner Gutheim: What equipment have you?

Mr. Weber: We have a steamboat, two barges, three locomotives, 50 logging cars and 15 flat cars.

Examiner Gutheim: Are any of the locomotives operated on the Lake Charles rails?

Mr. Weber: No, sir.

Examiner Gutheim: They are all operated between Hecker and Edna?

Mr. Weber: They are all operated between Hecker and Edna, yes, sir.

Examiner Gutheim: And so far as required by the Federal Acts they are all equipped with safety appliances?

Mr. Weber: The one that handles the local business is equipped with safety appliances. The other two are not.

Examiner Gutheim: At Lake Charles, do you mean?

Mr. Weber: No, up on the main line; one handles all local business and the other two nothing but logs.

Examiner Gutheim: Has the company a telephone or telegraph line?

Mr. Weber: No.

2404 Examiner Gutheim: The trains are not dispatched?

Mr. Weber: No, sir.

Examiner Gutheim: About how many men have you in the railway service solely?

Mr. Weber: We have an average of about 16 track men, three locomotive crews and six men on the steamboat.

Examiner Gutheim: Where is the general office located?

Mr. Weber: Lake Charles.

Examiner Gutheim: In an office joint with the Powell Lumber Company?

Mr. Weber: In the same building, but they do not occupy the same rooms.

Examiner Gutheim: Are the general office employés joint employés of both companies?

Mr. Weber: Not all of them.

Examiner Gutheim: How many general office employés that are employés solely of the railroad company?

Mr. Weber: Our traffic manager is not an employé of the lumber company in any way, shape or form. The officers and employés in the office are joint.

Examiner Gutheim: Are those joint employés paid by the lumber company and a proportion of their wages charged to the

2405 railway company?

Mr. Weber: To the railroad company.

Examiner Gutheim: What proportion does the railroad company pay?

Mr. Weber: In all cases except me, I think there is one who does not receive any salary, the railroad company is paying two-fifths of the joint salaries. There is one salary that I did not mention, connected with the railroad company, and that is our general manager. He does not draw any salary in any way, shape or form from the lumber company.

Examiner Gutheim: He operates over the whole line, or between Hecker and Edna?

Mr. Weber: Just the line between Hecker and Edna. The steamboat captain has charge of the river.

Examiner Gutheim: What train service do you operate?
Mr. Weber: One train a day each way.
Examiner Gutheim: Sunday trains?
Mr. Weber: None on Sunday.
Examiner Gutheim: Do they operate on regular schedules?
Mr. Weber: They try to.
Examiner Gutheim: On published time tables?
Mr. Weber: Yes.
2406 Examiner Gutheim: Are these arrangements for handling passengers on these trains?
Mr. Weber: No, sir.
Examiner Gutheim: Do you handle any United States mail?
Mr. Weber: We do not.
Examiner Gutheim: Express?
Mr. Weber: We do not.
Examiner Gutheim: Can you furnish us with a statement showing the total tonnage and revenue of the road for the last fiscal year and the division of that tonnage and revenue between the tonnage and revenue accruing on the business of the Powell Lumber Company and the tonnage and revenue accruing on the business of the outside general public?
Mr. Weber: We can.
Mr. Walter: You have that with you, have you not?
Mr. Weber: Well, he asked me to furnish it, and I thought we could make it more complete maybe.
Examiner Gutheim: Mr. Burchmore suggests you are going to furnish that same statement for all of them.
Mr. Walter: Yes, and a map for all of them.
Examiner Gutheim: The logs that are used at the Lake
2407 Charles mill are taken to Hecker, I should say, and then by the river line to Lake Charles.
Mr. Weber: Yes, sir.
Examiner Gutheim: Where is the woods operation or logging operation going on at the present time?
Mr. Weber: There is one camp and contractor at Moore, and the logs that go to the Lake Charles mill are furnished principally from this place at this time. We are buying some logs, or the company is buying some logs along the line.
Examiner Gutheim: Is the entire railroad operation in the timber conducted by the Lake Charles Railway & Navigation Company?
Mr. Weber: No, sir, it is not.
Examiner Gutheim: Who handles the spur operation?
Mr. Weber: The logging contractors who are employed by contract with the lumber company.
Examiner Gutheim: And do they handle that work with their own railroad equipment?
Mr. Weber: The Lake Charles Railway & Navigation Company furnishes the steel for the spurs and the locomotive power. The contractors for the lumber company lay their own tracks and load their own logs.

2408 Examiner Gutheim: What consideration is paid by the contractors to the railroad for the use of the equipment?

Mr. Weber: They do not use any equipment.

Examiner Gutheim: I understood you to say they furnished the ocomotive and the steel.

Mr. Weber: No, sir; that is a mistake. The steel is furnished nd the railroad company hauls the cars for which they charge the umber company $4.00 a car.

Examiner Gutheim: Yes; but am I to understand that the $4.00 er car compensation covers also the privilege extended to the Powell umber Company to use this rail and this locomotive?

Mr. Weber: They do not use a locomotive; the railroad company ses the locomotive.

Examiner Gutheim: Is there not a locomotive necessary in the operation of the logging spurs?

Mr. Weber: The locomotive goes right in on the spur; the spurs are short at this time, because they are moved from time to time; and it pulls the logs out on the main line and hauls them to the mill or to the river, as the case may be.

Examiner Gutheim: Let me get this straight now. Does

2409 the steel that is laid in the temporary logging spurs and taken up from time to time and relaid belong to the Lake Charles Railway & Navigation Company?

Mr. Weber: Yes, sir.

Examiner Gutheim: And the laying and taking up and relaying of that steel is done by the lumber company?

Mr. Weber: Yes, sir; or their sub-contractors.

Examiner Gutheim: And the only locomotive operation that is performed there is performed by the Lake Charles Railway & Navigation Company's locomotive?

Mr. Weber: Yes, sir.

Examiner Gutheim: That is, there is no one locomotive assigned to the spur work?

Mr. Weber: No.

Examiner Gutheim: What other traffic is handled over the line in addition to the logs?

Mr. Weber: Do you mean in which the lumber company has no interest?

Examiner Gutheim: Well, to get a general idea of the traffic there?

Mr. Weber: Well, they haul turpentine and resin and tar.

Examiner Gutheim: That is for the Calcasieu Naval Stores

2410 Company?

Mr. Weber: Yes, sir; better known as the Union Naval Stores Company. Merchandise for; hauled here some steel some time back for a tram company that was located above there; they haul some rice in carloads.

Examiner Gutheim: About all of the business that you handle going north from Lake Charles comes pretty nearly being camp supplies, does it not?

Mr. Weber: We do not handle any camp supplies going north by the boat to any great extent, a very small amount.

Examiner Gutheim: Is it handled south from Edna?

Mr. Weber: No, sir; we do not handle very much of that stuff. The people living in there buy their stuff from the stores at Hecker.

Mr. Walter: Where is your commissary?

Mr. Weber: The lumber company has a commissary at Edna, the only commissary connected with the business.

Examiner Gutheim: Do you issue any local tariffs?

Mr. Weber: We do.

Examiner Gutheim: Are they filed with the Interstate Commerce Commission?

Mr. Weber: They are.

2411 Examiner Gutheim: Do you concur in the point tariffs of your connections?

Mr. Weber: Yes, sir.

Examiner Gutheim: With the Southern Pacific lines and the Iron Mountain and Kansas City Southern?

Mr. Weber: Yes, sir.

Examiner Gutheim: And what divisions does the Lake Charles Railway & Navigation Company receive out of the through rates?

Mr. Weber: Do you want any special line or just the maximum and minimum?

Examiner Gutheim: If you will file the division sheets you can just give us the range.

Mr. Weber: Three-quarters of a cent to four cents. I will say that that should read three-quarters of a cent to three cents, because the points to which we are entitled to a four cent division are points which we are not able to avail ourselves of.

Mr. Walter: Shall I put them in the record? They are already on file?

Examiner Gutheim: All right, if we have them. It runs

2412 from three-quarters of a cent to three cents.

Mr. Weber: Three-quarters of a cent to four cents, but we do not get any four cent divisions, unfortunately.

Examiner Gutheim: Do they all pay you the same divisions?

Mr. Weber: No, sir; they do not.

Examiner Gutheim: What divisions do you get on your class and commodity rates?

Mr. Walter: 15 and 20 per cent.

Examiner Gutheim: Are those class and commodity rates in effect generally, or are they simply in effect to and from New Orleans?

Mr. Weber: Generally.

Examiner Gutheim: Are the divisions that accrue to your line allowed on a milling in transit basis?

Mr. Weber: They are.

Examiner Gutheim: You are filing annual and monthly reports with the Commission?

Mr. Weber: We are filing annual reports with the Railroad Commission and monthly reports—in fact, all the reports that we know of, to the Interstate Commerce Commission. I want to say, how-

ever, that we did not file an annual report in a book like I see
2413 some of the other lines have. We never received any such book for that purpose. We received it from the State Commission and filed that. We will, however, work that up or will ask for the book as soon as we get home. We have been filing those trial balance sheets every month which shows the report of our business for the year tabluated.

Examiner Gutheim: Is the road operating on a paying basis?

Mr. Weber: Well, this year we have made a little money. We are at the present time a loser.

Examiner Gutheim: Who is financing the deficit?

Mr. Weber: The Powell Lumber Company.

Examiner Gutheim: What rate of interest is paid on the indebtedness due the Powell Lumber Company?

Mr. Weber: No interest so far.

Examiner Gutheim: Does your line exchange free transportation with your connections?

Mr. Weber: To some.

Examiner Gutheim: What free transportation do the officials of your road receive?

Mr. Weber: We get two transportations from the Kansas City Southern, three from the Southern Pacific and four from the Iron Mountain.

2414 Examiner Gutheim: Have you any beyond those lines?

Mr. Weber: Yes, sir.

Examiner Gutheim: Which takes you how far, to Chicago?

2415 Mr. Weber: No, sir; we have not anything to Chicago.

Mr. Walter: Have you any beyond those lines?

Mr. Weber: No, sir, not in that direction. We have other transportation, but not in the direction of Chicago. Kansas City and St. Louis.

Examiner Gutheim: I take it you and Mr. Gibson hold passes on all the lines mentioned.

Mr. Weber: On all the lines mentioned, yes, sir.

Mr. Walter: This proposed extension from Edna to Kinder is how far?

Mr. Weber: About five miles.

Mr. Walter: At that point what connection will you make that you have not now?

Mr. Weber: The Colorado Southern.

Examiner Gutheim: That is the Frisco Line?

Mr. Weber: Yes, sir.

Mr. Walter: Why are you making that extension?

Mr. Weber: Well, there are two or three reasons. We want to have more facilities for handling our business, getting more equipment, better rates, and also getting the business between Edna and Kinder, which is partly a rice country and partly timber,
2416 and also there are two other turpentine companies up there that we can serve if we make that extension; and get connected up to the Colorado Southern and they give us the rate that they have promised us on turpentine and resin; we will be able to

handle that business which is now being hauled by wagon in part to Kinder and part of it elsewhere.

Mr. Walter: Is that desirable traffic?

Mr. Weber: Very desirable.

Mr. Walter: And with this extension, will it move in some volume?

Mr. Weber: Yes, sir.

Mr. Walter: Is this road a permanent road?

Mr. Weber: It is.

Mr. Walter: Your charter, I believe, is only for a common carrier of freight and property?

Mr. Weber: Yes, sir.

Mr. Walter: And not of passengers?

Mr. Weber: Not of passengers.

Mr. Walter: I will ask you what effect, if any, the extension of this line to Kinder will have on the rate to the shipper of turpentine and resin.

Mr. Weber: It will reduce the rate to the shipper three
2417 cents per 100 pounds.

Mr. Walter: In other words, it will apply the blanket rate to points on our line?

Mr. Weber: It will apply the blanket rate to points on our line.

Mr. Walter: And you will receive the same division that you would receive locally now?

Mr. Weber: Exactly the same division.

Mr. Walter: What effect will it have as to classes and commodities with reference to the two-line and three-line haul, will it reduce those rates to the shippers?

Mr. Weber: It will.

Mr. Walter: That is to say, the two-line haul is cheaper than the three-line haul to the shipper, it makes a less rate?

Mr. Weber: It makes a less rate; yes, sir.

Mr Walter: We will file these statements showing classification of tonnage and also furnish you a map. Is there anything else which occurs to you which you desire to state?

Mr. Weber: You remember you wanted to know about the brief.

Mr. Walter: As to the complaint, a complaint has not been filed as to this line. Shall we file a complaint, and allow the
2418 evidence that has already been taken to apply to that complaint?

Examiner Burchmore: I do not understand that it is essential to file a complaint, in fact, I do not understand that any right you may have will be prejudiced or jeopardized by your failure to file a complaint.

Mr. Walter: We can file it in a couple of weeks' time, and perhaps if there is no objection, we will do that.

Examiner Burchmore: I would not file a complaint, but if you feel at all doubtful, you may write to the Commission and I think that will elicit the reply that no complaint is necessary.

Mr. Walter: All right.

Examiner Gutheim: You spoke of the extension from Edna to Kinder.

Mr. Weber: Yes, sir.

Examiner Gutheim: As a matter of fact, the territory from Edna to Kinder is now served by the Watkins Road, which has been located in that community for a good many years?

Mr. Weber: Yes, sir.

Examiner Gutheim: At the mill at Edna, does the Lake Charles Railway & Navigation Company handle the finished product,
2419 or is it taken out directly by the Watkins locomotives?

Mr. Weber: In most cases it is taken out by the Iron Mountain.

Examiner Gutheim: It is only very occasionally that you handle it out?

Mr. Weber: Very occasionally.

Examiner Gutheim: And at Lake Charles you have no power, and the mill service is entirely performed by the connections?

Mr. Weber: Yes, sir.

Mr. Walter: That is all.

Mr. Weber: You asked me if there is any statement I might make. It is this: The country that our line runs through belongs to small holders with two exceptions, besides the Powell Lumber Company's interests. Our line does not run through property belonging to the Powell Lumber Company, but the country belongs to small holders with the exception I have spoken of, and those exceptions are timber holdings that belong to interests that have no connection in any way, shape or form with either the railroad or the lumber company, which we hope to serve when they get ready to manufacture their timber into lumber.

2420 Mr. Walter: Is there any proposed colonization scheme on foot?

Mr. Weber: Not that I know of.

Mr. Walter: Do you know of any option being given?

Mr. Weber: Yes, sir; I know of an option on 6,000 acres adjoining our line for colonization, but I do not know that the sale has been made.

Mr. Walter: That is all.

Whereupon, at 10.30 P. M., an adjournment was taken to Friday, December 16, 1910, at 9.30 A. M.

2421 NEW ORLEANS, LA., *December* 16, 1910.

Met pursuant to adjournment at 9:30 a. m.

Present: Examiner Burchmore and parties as before.

Mr. Riddell: I understand that the case of the Salem, Winona and Southern was called last night when we were away, and if there is no objection, I would like to have that case brought up for hearing now.

Examiner Burchmore: First, let me say I have been asked by a number of counsel and representatives whether we will be able to

conclude by Saturday evening, or whether there will be a postponement or further hearings next week. I can answer the first question in the negative. There seem to be over 30 cases awaiting trial at this time, and I do not believe we can hear 15 cases a day. As to whether there will be an adjournment or continuance of the hearing next week, I think I will be able to make an announcement this noon. But I will say that any road that is present and insists upon a hearing at this time will not be forced to go over until a later date. If it is decided to postpone the hearing. I will make some announcement at two o'clock on that.

I desire to call a number of tap line connections of the
2422 Iron Mountain System whose names have not been called, and I call them simply for the purpose of ascertaining whether they are represented. Is the Englewood, Alexandria & Southwestern present?

Mr. Cone: That is out of business.

Examiner Burchmore: I am informed through unofficial sources that this road has ceased operations. The Homan & Southeastern? An appearance has been entered for that company, but it has been called twice and seems not to be present. The Poplar Bluff & Dan River Railway.

(No response.)

Examiner Burchmore: The Prescott & Reader Railway.

(No response.)

Examiner Burchmore: The Scott County Railroad. That railroad is reported to have ceased operations, the entire timber holdings of the controlling company having been cut out, and there being no other business which it could carry, I assume. The Swarts & Ouachita. That is also reported as having ceased operations. The Tyronza & St. Francis River.

(No response.)

Examiner Burchmore: The West Point Railroad.

(No response.)

2423 Examiner Burchmore: The Williamsville, Greenville & St. Louis Railway. That railroad is reported to be carrying very little traffic at the present time; perhaps some ore or something of that kind, but the timber is all cut out.

The Wills Point Railway.

Mr. Jeffery: I may say about the Scott County Railroad, they have ceased the lumber business, but we have a water melon division in with them.

Examiner Burchmore: The Red River & Rocky Mount Railroad was called yesterday afternoon. I had agreed to notify counsel a few moments before the case was called, and then promptly forgot that agreement. He was out in the ante room and I did not give him an opportunity to come in. I think the case should be heard at the present time, it being a Cotton Belt connection.

Mr. Cowan: Before proceeding with the witness in that case I wish now to call attention in the record to what I should have called attention to the first day, that in the supplemental petition of the intervenors filed in this case the printed copies do not have the name of the Ludington, Wells & Van Schaick Lumber Company, of

Ludington, Louisiana as one of the intervenors. The original petition filed with the Interstate Commerce Commission was a
2424 typewritten copy, which by error of the stenographer, left out the one name. Learning that I telegraphed the name to the Interstate Commerce Commission, to the secretary, to be inserted. Later the secretary wired me that it was necessary to have copies furnished for all parties, and so I telegraphed an associate counsel in Washington to have the copies printed. When he went to get the petition and have it printed, he did not get hold of the copy which had the name inserted. There were several typewritten copies sent to the secretary, and he got the copy which did not have that name in, so I wish to have the record show that correction. Now, if your Honor please, a few moments ago when you were speaking about the continuance of the hearing here, you said that if there was any company present which insisted upon a hearing at this time, that a continuance would not be forced. It is not my desire, of course, to force any continuance, but we expected to quit tomorrow night, according to the suggestion made by the Examiner, if those who desire to have a hearing, and if those who desire to have a hearing would indicate that they are not willing to leave without a hearing, and if the number of those cases is such that you would have to go over into next week, then it would require a change in
2425 your Honor's ruling as to whether there would be a continuance forced or we should remain over until next week. So it seems to me, using a colloquial or colonial expression of the judges in Texas, the docket ought to be sounded, to see if we have to stay. Some of us have to leave. I do not have to, but Judge Garwood has to, and some of the other attorneys, and we ought to know as soon as we can after you have gotten your other information what we are going to do.

Examiner Burchmore: That was my purpose, to call the cases.

Mr. Cowan: To call the cases and see whether we have to stay over until next week.

Examiner Burchmore: I do not think, as a matter of fact, that there will be a large proportion of the cases that will insist upon a hearing at the present time, Judge, from the requests for postponement which have come to me. I simply wanted to let counsel know.

Mr. Cowan: I simply make that suggestion in the interest of posting counsel as well as myself.

Mr. Garwood: If it is at all practicable, I should very much desire that the hearing be closed for all purposes; that is, for this sitting, Saturday night. I should very much dislike to leave
2426 if the hearing is still in progress. Still, I have an engagement with Mr. Andrews, of counsel for the intervenors, at Austin Wednesday, that is of considerable importance to us, and if we could close up Saturday night as a whole, I would like very much to do so.

Examiner Burchmore: The Red River & Rocky Mount Railroad will now be heard.

Mr. Ziebold: I represent that company, and Mr. Beardsley will testify.

Examiner Burchmore: I might announce at this time, to save you all sitting here, that I think we will call the Wilmar & Saline River next, it being in turn. Is that company present?

Mr. Judd: We will be ready.

Examiner Burchmore: I have been requested to give preference to the Salem, Winona & Southern, which is not yet in turn. I understand that Captain White has been here throughout the hearing, and counsel for one or two other interests have expressed a willingness to give way to that case this morning. Is there any objection to calling that case this morning? I will call that case third, then. These three cases will doubtless take until noon.

2427 *Red River & Rocky Mount Railroad.*

A. H. BEARDSLEY was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are an employee of this railroad company?

Mr. Beardsley: Yes, sir; I am an officer.

Examiner Burchmore: What is your office?

Mr. Beardsley: Secretary.

Examiner Burchmore: Are you an officer of any lumber company?

Mr. Beardsley: No, sir.

Examiner Burchmore: Are you employed by any lumber company?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: What company, and what is your capacity?

Mr. Beardsley: Sales manager of the Antrim Lumber Company.

Examiner Burchmore: What proportion of your total compensation is paid by this railroad?

Mr. Beardsley: None.

Examiner Burchmore: The railroad pays you no salary?

Mr. Beardsley: No, sir.

Examiner Burchmore: Do you devote any substantial por-
2428 tion of your time to its service?

Mr. Beardsley: Well, not a great deal; no sir.

Examiner Burchmore: Is it not true that the stockholders of the Red River & Rocky Mount Railroad are identical with the stockholders of the Antrim Lumber Company, Limited?

Mr. Beardsley: No.

Examiner Burchmore: What difference is there?

Mr. Beardsley: There are three stockholders in the railroad company who have absolutely no stock in the lumber company.

Examiner Burchmore: Those are directors?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: Did they purchase their stock, or was it presented to them?

Mr. Beardsley: Well, practically presented to them.

Examiner Burchmore: What was the purpose of the construction of this railroad?

Mr. Beardsley: Mainly to supply the mill with logs.

Examiner Burchmore: I understand the Red River & Rocky Mount Railroad connects with the Cotton Belt System at Antrim, Louisiana.

Mr. Beardsley: Yes, sir.

2429 Examiner Burchmore: Is that the terminus of the line?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: It extends from that point in what direction and for what distance?

Mr. Beardsley: East and west at present.

Examiner Burchmore: Easterly or westerly?

Mr. Beardsley: Both, right now.

Examiner Burchmore: Then Antrim is not one of the termini, is it?

Mr. Beardsley: Well, we are not operating east at present.

Examiner Burchmore: How far east of that point does the line extend?

Mr. Beardsley: At present about three-quarters of a mile.

Examiner Burchmore: To what point?

Mr. Beardsley: Well, it just goes to the woods.

Examiner Burchmore: That line is owned by the railroad?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: How far west does it extend?

Mr. Beardsley: About twelve miles; a little less than twelve miles.

Examiner Burchmore: To what point?

Mr. Beardsley: To the woods also.

2430 Examiner Burchmore: That line is operated?

Mr. Beardsley: Yes.

Examiner Burchmore: Has the Antrim Lumber Company any private spur tracks connecting with this road?

Mr. Beardsley: Yes.

Examiner Burchmore: Where are those tracks, and what is their extent?

Mr. Beardsley: All told, it is about a mile long and runs out into the woods to no definite point.

Examiner Burchmore: Are those tracks operated by the railroad company or the lumber company?

Mr. Beardsley: Those tracks are put down by the lumber company.

Examiner Burchmore: And the railroad company operates them?

Mr. Beardsley: To this extent; they do all the switching over the track, but the track and ties and right of way and everything belong to the lumber company on this spur.

Examiner Burchmore: Is it not a fact that this railroad was built to develop and get together the timber holdings of the Antrim Lumber Company?

Mr. Beardsley: Yes, I think it was.

2431 Examiner Burchmore: I understand or assume that when the timber has been exhausted along this line the tracks will

be taken up and the equipment sold or removed to some other point; is not that a fact?

Mr. Beardsley: I do not know that that will be a fact with this western division.

Examiner Burchmore: Well, that seems to be the impression in some quarters, does it not?

Mr. Beardsley: I cannot answer positively on that.

Examiner Burchmore: That is a possibility?

Mr. Beardsley: That is a possibility; yes, sir.

Examiner Burchmore: Is it a probability?

Mr. Beardsley: Well, I do not know; there are some conditions developing in there now that may make the company see fit to leave the track.

Examiner Burchmore: That is, you think it may become a paying common carrier railroad?

Mr. Beardsley: Yes, sir, there are chances for it.

Examiner Burchmore: Independent of the traffic furnished by the lumber company?

Mr. Beardsley: Absolutely; yes, sir.

Examiner Burchmore: You say there are chances; is it
2432 probable that it will become a paying venture as a railroad?

Mr. Beardsley: That is too indefinite. I will tell you what it is. It is on account of the Caddo Oil Fields there, right across the river, and if they open up and develop, we will certainly keep the road down there, I believe.

Examiner Burchmore: What prospective traffic have you after the timber is exhausted, aside from this oil?

Mr. Beardsley: Well, I cannot say any in view right now; practically none.

Examiner Burchmore: As a matter of fact, the Caddo oil fields are adequately served by the Kansas City Southern now?

Mr. Beardsley: That may be true, but they are after us for the cut over lands we have there, and evidently they are interested.

Examiner Burchmore: This prospective traffic in petroleum will be furnished by shippers who have adequate means of reaching the market independent of your line; that is, they can use the Kansas City Southern, and that railroad will be satisfactory, presumably?

Mr. Beardsley: Well, the Kansas City Southern could not go over into our territory, if we did not want them to.

Examiner Burchmore: No, but there will not be any oil
2433 shipped from Caddo to Antrim, will there?

Mr. Beardsley: Not necessarily from Caddo, but you understand there is supposed to be oil all over that country.

Examiner Burchmore: Oh, I see; on your holdings?

Mr. Beardsley: Yes, sir, on the Antrim Lumber Company's holdings.

Examiner Burchmore: The territory through which this road runs is very poor land, and not fertile enough to encourage agriculture, as I understand it?

Mr. Beardsley: No, sir; you are mistaken there.

Examiner Burchmore: Are there any farms down there?

r. Beardsley: Yes, sir, there is one of the best peach orchards I ever seen in the back part of the land.

xaminer Burchmore: How long have you been raising peaches nat region?

r. Beardsley: We have not been raising them at all, but it is ad- at to our land.

xaminer Burchmore: How long have there been peach orchards nat neighborhood?

Ir. Beardsley: I cannot state definitely, but I imagine six or n years; somewhere around there; I am not positive on that point.

4 Examiner Burchmore: How does your road differ in the nature and extent of its operations, from the Bodcaw Valley lroad, which seems to be in the same vicinity? They are of the ie general character?

Ir. Beardsley: I do not know much about the one you mention.

Examiner Burchmore: Is not that the one which connects at len Bridge with the trunk line?

Ir. Beardsley: I believe it is, but I am not positive about that.

Examiner Burchmore: Where are the mills of the Antrim Lum Company located?

Ir. Beardsley: At Antrim, Louisiana.

Examiner Burchmore: They are immediately adjacent to the ht of way of the Cotton Belt Railroad?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: And the lumber manufactured in those lls is located directly into the equipment furnished by the Cotton lt, as it stands on Cotton Belt rails?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: So that the finished lumber moving out from these mills does not pass over at any time the rails of 435 the Red River & Rocky Mount Railroad?

Mr. Beardsley: No, sir.

Examiner Burchmore: And the engines of the Red River & Rocky lount Railroad do not haul this finished lumber?

Mr. Beardsley: No, sir, they do not touch it.

Examiner Burchmore: Then the entire service in connection ith the lumber is performed by the Cotton Belt System?

Mr. Beardsley: On the lumber; yes, sir.

Examiner Burchmore: But on the logs this Red River & Rocky lount Railroad gets the haul?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: When was this mill opened?

Mr. Beardsley: About 16 years ago.

Examiner Burchmore: That was the first operation of the mill?

Mr. Beardsley: Somewhere around there; I am not positive; I ave not been with the company long enough to know.

Examiner Burchmore: Was it then operated by this same corpora- ion?

Mr. Beardsley: I think it was. I would not speak positively on hat point.

Examiner Burchmore: When was construction begun on
2436 this railroad?

Mr. Beardsley: About the same time.

Examiner Burchmore: The railroad was originally intended solely to haul the logs to the mill, was it not?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: When was this railroad incorporated?

Mr. Beardsley: In May, 1904.

Examiner Burchmore: Previous to that time had it received any divisions out of freight rates?

Mr. Beardsley: It had.

Examiner Burchmore: It had?

Mr. Beardsley: Yes.

Examiner Burchmore: Previous to that it had transported traffic for the public?

Mr. Beardsley: To my knowledge, no.

Examiner Burchmore: Well, your opinion is, aside from actual knowledge, that it had not?

Mr. Beardsley: That is my opinion.

Examiner Burchmore: Who pays the taxes of this railroad company?

Mr. Beardsley: The railroad company.

Examiner Burchmore: Is it not a fact that the lumber com-
2437 pany, as an actual matter of fact, pays these taxes and charges them to the railroad tax account?

Mr. Beardsley: Well, now, I am not sure whether the railroad company issues their own check or not for it; it eventually is charged to the railroad company, which makes the railroad company, in my estimation, pay it.

Examiner Burchmore: What is the total capitalization of this railroad?

Mr. Beardsley: $64,000.

Examiner Burchmore: Is that all issued and outstanding?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: Was it paid for in cash?

Mr. Beardsley: I think it was a transfer arrangement, similar to some of these other cases you have had before you.

Examiner Burchmore: It was in the nature of a stock dividend to the stockholders of the lumber company, was it not?

Mr. Beardsley: Well, you might construe it that way; yes, sir.

Examiner Burchmore: That is, the stockholders in the lumber company received a dividend in the shape of railroad stock; that is about what it amounted to?

2438 Mr. Beardsley: Well you might put that construction on it.

Examiner Burchmore: What construction would you put on it?

Mr. Beardsley: Well, I hardly know how to explain it best.

Examiner Burchmore: Just explain the original financing of this road in such a way as you can.

Mr. Beardsley: The lumber company charged the amount of the stock to the stockholders and the stockholders received stock from

railroad company to the extent of their holdings, which is prac-
lly nothing but a transfer.
Examiner Burchmore: Has the railroad company any bonded in-
tedness?
Mr. Beardsley: No, sir.
Examiner Burchmore: Has it any notes outstanding?
Mr. Beardsley: No, sir.
Examiner Burchmore: What did it cost to construct this rail-
d including equipment, if you know?
Mr. Beardsley: I do not know, but I presume—well, I do not
ow positively. I will make that answer.
Examiner Burchmore: You have about 14 miles of standard
uge track?
Mr. Beardsley: Somewhere in that neighborhood.
Examiner Burchmore: What is the character of the rail?
39 Mr. Beardsley: 35 pound steel.
Examiner Burchmore: This railroad is all light construc-
on, is it not?
Mr. Beardsley: Well, compared with the main line of the Cotton
elt, yes, sir.
Examiner Burchmore: Do you hold any trackage rights over the
otton Belt?
Mr. Beardsley: No, not now.
Examiner Burchmore: How many locomotives have you?
Mr. Beardsley: Three.
Examiner Burchmore: Do you operate all those locomotives?
Mr. Beardsley: Yes, sir.
Examiner Burchmore: Do you own those locomotives?
Mr. Beardsley: Yes, sir, own them outright.
Examiner Burchmore: What cars has the railroad company?
Mr. Beardsley: Thirty cars.
Examiner Burchmore: How long has it owned those logging cars?
Mr. Beardsley: Quite a while; I don't know when they were
purchased; it was before my time.
Examiner Burchmore: Are not those log cars leased from the lum-
ber company?
2440 Mr. Beardsley: No, sir, not to my knowledge they are
not.
Examiner Burchmore: You have no other equipment besides
these logging cars?
Mr. Beardsley: Well, we have got, I think, two hand cars, but I
did not include that in the equipment in making up my list.
Examiner Burchmore: How many gangs of workmen are there
engaged on track work?
Mr. Beardsley: One.
Examiner Burchmore: Those men or other trackmen employed
by the railroad company maintain and keep in condition and relay
the private tram roads of the Antrim Lumber Company, do they
not?
Mr. Beardsley: No, sir, I do not think they touch the private
tracks of the Antrim Lumber Company at all.
Examiner Burchmore: Who attends to that repairing?

Mr. Beardsley: They have their own crew, a spur crew.
Examiner Burchmore: Have you any station buildings?
Mr. Beardsley: No.
Examiner Burchmore: Any platforms or warehouses?
Mr. Beardsley: No, you could not call them warehouses. We have a round house.
2441 Examiner Burchmore: For the locomotives?
Mr. Beardsley: Yes.
Examiner Burchmore: Is that round house standing on land owned by the lumber company?
Mr. Beardsley: I do not know whether the ground has ever been transferred to the railroad company or not; I am of the opinion it has not.
Examiner Burchmore: What about the building, who owns that?
Mr. Beardsley: That is owned by the railroad company.
Examiner Burchmore: Who owns the right of way on which the railroad runs?
Mr. Beardsley: The railroad company.
Examiner Burchmore: It owns that outright?
Mr. Beardsley: Yes, sir.
Examiner Burchmore: Was any part of that right of way secured by condemnation proceedings?
Mr. Beardsley: I am not familiar.
Examiner Burchmore: Do you know, Mr. Ziebold?
Mr. Ziebold: I think not.
Examiner Burchmore: How many train crews have you?
Mr. Beardsley: Three.
Examiner Burchmore: What employees are there of the railroad company aside from the track crews and train crews
2442 that receive salary?
Mr. Beardsley: There is one party at the mill that takes care of the records; he gets a nominal compensation for the time he spends on it.
Examiner Burchmore: Do you have any passenger trains?
Mr. Beardsley: No.
Examiner Burchmore: Do not carry passengers for hire?
Mr. Beardsley: No.
Examiner Burchmore: How many freight trains do you run, and are they run on a regular schedule?
Mr. Beardsley: We run one regular train out, that is, the empty cars out in the morning and the loaded cars back in the evening on a regular schedule posted in the office.
Examiner Burchmore: How many cars in that train, as a general thing?
Mr. Beardsley: They average from 15 to 20.
Examiner Burchmore: Do you carry any other freight except logs?
Mr. Beardsley: No.
Examiner Burchmore: Are you able to give me the total tonnage figures for your road for the past fiscal year?
2443 Mr. Beardsley: 27,721.
Examiner Burchmore: All of that tonnage was logs, was it not?

Mr. Beardsley: Yes, sir.
Examiner Burchmore: You did not have any other freight?
Mr. Beardsley: Only such little supplies as go out to the commissary, which do not amount to very much and are not worth considering.
Examiner Burchmore: You are a party to joint tariffs on file with the Interstate Commerce Commission?
Mr. Beardsley: Yes, sir, we concur in the Cotton Belt tariffs.
Examiner Burchmore: What stations are there on your line, from a tariff standpoint; that is, what stations are named in the tariffs? You have Plain Dealing.
Mr. Beardsley: That is not on the Red River & Rocky Mount; that is on the Cotton Belt, about three miles from Antrim.
Examiner Burchmore: What did you have to do with Plain Dealing, as a station?
Mr. Beardsley: It has more to do with the billing. We have no agent at Antrim.
Examiner Burchmore: The Cotton Belt has no station at
2444 Antrim?
Mr. Beardsley: No.
Examiner Burchmore: The billing is done at Plain Dealing?
Mr. Beardsley: Yes, sir; the agent does it there; he makes his billing read from Antrim to destination.
Examiner Burchmore: Simply because there is no employee at Antrim?
Mr. Beardsley: Yes.
Examiner Burchmore: I understand all the billing is made out by the Cotton Belt agent?
Mr. Beardsley: The bill is; yes, sir.
Examiner Burchmore: Your company does no billing?
Mr. Beardsley: We make our own bills of lading, and present them to the agent at Antrim.
Examiner Burchmore: I mean the Red River & Rocky Mount Railroad has nothing to do with the bills of lading?
Mr. Beardsley: That is what I mean; they make out the bills of lading at Antrim.
Examiner Burchmore: I should think if they make them out, they ought to sign them as a railroad.
Mr. Beardsley: They do sign them.
Examiner Burchmore: The bills of lading or way bills?
2445 Mr. Beardsley: The bills of lading.
Examiner Burchmore: I thought the bills of lading when signed were delivered to the shipper.
Mr. Beardsley: We use the triplicate standard form and they deliver the memorandum, and straight bill of lading goes——
Examiner Burchmore: The original goes to the shipper?
Mr. Beardsley: Yes, sir.
Examiner Burchmore: One copy goes to your railroad files and the other copy——
Mr. Beardsley: To the agent at Plain Dealing.
Examiner Burchmore: That copy goes to the agent so he can make out the way bill?

Mr. Beardsley: That is the understanding; yes, sir.

Examiner Burchmore: What stations are there on your line?

Mr. Beardsley: Well, none.

Examiner Burchmore: I mean stations from a tariff standpoint, named in the tariff.

Mr. Beardsley: The tariff shows, I believe, two or three stations, but they are no longer in existence.

Examiner Burchmore: There are no joint rates published from points back along your line?

Mr. Beardsley: I think the tariff provides that, but we
2446 are not operating them.

Examiner Burchmore: But there are no stations there?

Mr. Beardsley: No.

Examiner Burchmore: Your mill is at Antrim?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: And these bills of lading read from Antrim on the Red River & Rocky Mount, and not from Antrim on the Cotton Belt?

Mr. Beardsley: Our bills of lading do; yes, sir.

Examiner Burchmore: Is the joint rate that applies from points on your line the same as the joint rate that applies from Plain Dealing on lumber?

Mr. Beardsley: Yes, sir; I think Plain Dealing takes the same rates as all our points.

Examiner Burchmore: Your station at Antrim takes the same rate on lumber that the Cotton Belt's own station at Antrim takes?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: What are your divisions?

Mr. Beardsley: From one to two and a half cents, according to the road the car takes.

Examiner Burchmore: That is your largest division, two and a half cents?

2447 Mr. Beardsley: Yes, sir.

Examiner Burchmore: The only service you perform for that division is the movement of the logs into the mill?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: Do you receive any other compensation for moving those logs into the mill?

Mr. Beardsley: From the lumber company we do, 40 cents a ton from the company.

Examiner Burchmore: Is that 40 cents a ton on the actual weight of the logs?

Mr. Beardsley: It is estimated at 8,000 pounds per 1,000 feet.

Examiner Burchmore: Is that a reasonable estimate, in your opinion?

Mr. Beardsley: I think it is.

Examiner Burchmore: Have you ever weighed any logs?

Mr. Beardsley: I have not personally, but I presume the company did when they first started in.

Examiner Burchmore: Have you any track scales there?

Mr. Beardsley: No, sir.

Examiner Burchmore: Mr. Walter, one of your companies
2448 said it had track scales on its line. Do you know what one that was?

Mr. Cowan: The Groveton, Lufkin & Northern has.

Mr. Garwood: That is our road.

Examiner Burchmore: Would it be too much trouble for the Groveton, Lufkin & Northern to weigh two or three carloads? It has been suggested that it may be important to know how much logs weigh, and if they will instruct the Commission as to the log weights——

Mr. Garwood: We will be very glad to do that.

Mr. Cone: The Forest Service has accurate weights on all kinds of green logs.

Examiner Burchmore: I presume the Commission will take that matter up with the Forest Service.

Mr. Walter: The Fourche River Railroad has scales, and they have made very careful weights.

Mr. Cowan: Do you recall what it is on pine?

Mr. Walter: He told me it ranged from 7,500 to 11,000.

Mr. Beardsley: If he gets long leaf logs he will get into trouble.

Mr. Riddell: Mr. White can give you definite information.

Mr. White: It depends on the size of the logs. If the
2449 scaling is of a small log, that carload of logs weighs 20 per cent or 25 per cent — than if it is a large log. You see in scaling a log that is only 12 inches in diameter and 16 feet long. there are 64 feet in it, and it will saw out a good deal more than that, the overrun is so much greater on a small log, so that small log will weigh 20 to 25 per cent more than large logs per thousand.

Mr. Coleman: What is the average on short leaf and long leaf?

Mr. White: Short leaf timber growing on low lands will weigh 20 per cent more than the same class of timber growing on high land. It gets more moisture, and grows more rapidly, and at the same time it dries out and shrinks after it is dry, it is lighter than the timber on the high land.

Mr. Cowan: What is the general average, as you understand?

Mr. White: In Missouri our average was about 7,000 pounds per thousand feet of lumber.

respecting the operation of railroads?

Mr. White: That is board measure; that is on the high lands in Missouri. Down in Louisiana that timber will weigh 8,000 pounds to the thousand feet of lumber, the average size, trees that will average 14 to 15 inches in diameter.

2450 Mr. Cowan: Will you permit a few questions of Mr. White in the record as a matter of general information?

Mr. Greer: He is going to take the stand directly.

Mr. Cowan: Some one remarked here that the Forest Service of the Government has an accurate estimate.

Examiner Burchmore: Yes, sir. We will take that up with the Forest Service. Does this company comply with the acts of Congress respecting the operation of railroads?

Mr. Beardsley: They endeavor to do so; yes, sir.

Examiner Burchmore: Do you keep your accounts in accordan with the system prescribed by the Interstate Commerce Commissio

Mr. Beardsley: Yes, sir; but I understand we did not file the la annual report. For what reason, I do not know. I have been tr ing to find out ever since I have been here.

Examiner Burchmore: You have not filed any annual repo have you?

Mr. Beardsley: I do not know since the last one, since I got he and found it was required, I have been trying to get it.

Examiner Burchmore: I understand you do not file any annu reports.

2451 Mr. Beardsley: I cannot vouch for that. I have not be in charge of this department long enough to know.

Examiner Burchmore: How long have you been keeping a sep rate set of books for the railroad company?

Mr. Beardsley: Well, for years back; I think that can be a swered positively. I can give you any information that you desi because everything is kept separate on the books.

Examiner Burchmore: Is it not a fact that until very recently least this railroad company kept no separate books but simply ke separate accounts on the lumber company's books?

Mr. Beardsley: They still do that, keep separate accounts on t books of the lumber company, but the accounts are separate. understood that was your question before.

Examiner Burchmore: You are incorporated under the Louisia law as a railroad common carrier?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: Has this railroad paid any dividends?

Mr. Beardsley: No.

Examiner Burchmore: Is it losing or making money?

Mr. Beardsley: Losing money.

Examiner Burchmore: Has it consistently lost money from t beginning?

2452 Mr. Beardsley: I think it has.

Examiner Burchmore: Lost money, as far as being a ra road company is concerned?

Mr. Beardsley: Yes.

Examiner Burchmore: Have you any contract with the Cott Belt respecting rates and divisions?

Mr. Beardsley: Not to my knowledge.

Examiner Burchmore: But you have a contract with the Cott Belt respecting the track that connects your mill with the right way?

Mr. Beardsley: I am not positive.

Examiner Burchmore: Will you look into that on your retu and advise the Commission if you have one?

Mr. Beardsley: Yes, sir.

Examiner Burchmore: You need not send a copy, but simp indicate it.

Mr. Beardsley: That is, the spur track from the mill?

Examiner Burchmore: The spur track from the mill to the C ton Belt line.

Mr. Beardsley: And address the secretary at Washington?
Examiner Burchmore: Yes. Mr. Ziebold, will you furnish a map of this railroad?
2453 Mr. Ziebold: The witness has a map with him.
Mr. Beardsley: This map only covers the road running into Antrim.
Examiner Burchmore: Will you complete that map and send us that map?
Mr. Beardsley: I would prefer to send you a complete map.
Examiner Burchmore: That is all I desire to ask at this time.
Mr. Zeibold: When you referred to the fact that you did not know whether the line would be taken up and the line discontinued after the timber was cut out, because of the probable prospects of other traffic, owing to the supposed oil in that territory, you meant that you believe you have oil on your holdings, and in that vicinity, and if it should be discovered and developed, there would spring up communities and settlements and produce traffic other than timber; is that what you meant?
Mr. Beardsley: Yes, sir.
Mr. Ziebold: Consequently you could not say at this time what disposition is to be made of the line after the timber is cut out?
Mr. Beardsley: No, sir.
2454 Mr. Ziebold: When you say you keep your accounts separately you mean you keep them on the books of the lumber company but in such a manner throughout that the business of the lumber company and the railroad company are entirely separate and all details of each can be ascertained at any time?
Mr. Beardsley: Yes, sir. We have a special book prepared for it. It is a special combination journal, which provides for the accounts of the railroad company.
Mr. Ziebold: Are you desirous of complying with whatever regulations you have not complied with, so far as it is practicable and possible for you to do so?
Mr. Beardsley: Yes, sir, very anxious.
Mr. Ziebold: That is all.
Mr. Cowan: Have you any oil wells on your land?
Mr. Beardsley: No, sir, not now.
Mr. Cowan: One of the tap lines has a prospective diamond proposition on their land. Have you got anything of that sort on yours?
Mr. Beardsley: We do not think ours is a wild cat scheme, because there is oil right across the river.
Mr. Cowan: Well, there are diamonds right up in Arkansas.
Mr. Ziebold: Black?
2455 Mr. Cowan: Does the Louisiana Commission recognize this as a railroad?
Mr. Beardsley: I believe they do.
Mr. Cowan: Can you name any track that has iron or steel rails on it that the Louisiana Commission does not recognize?
Mr. Beardsley: Any track?
Mr. Cowan: es, do you know of any place where there are some rails and ties that the Louisiana Commission does not recognize it as a railroad?

Mr. Beardsley: No, sir, I do not.

Mr. Cowan: Where is this railroad projected to; is it Rocky Mount or Mountain?

Mr. Beardsley: Mount, is the name.

Mr. Cowan: Is there a prospect of an extension of this road?

Mr. Beardsley: No.

Mr. Cowan: Thank you. You are the only one I have heard of. What divisions did the road get previous to the time that it incorporated?

Mr. Beardsley: I cannot answer that question. I am not posted on it.

2456 Mr. Cowan: Well, you answered the Examiner that it got some division.

Mr. Beardsley: I know it did, but I do not know how much.

Mr. Cowan: But it did not get divisions as a railroad, did it?

Mr. Beardsley: I presume it did.

Mr. Cowan: It was not a railroad corporation before it was incorporated.

Mr. Beardsley: Well, I understand lots of them got it that were not incorporated at that time.

Mr. Cowan: The fact is they got it the same way that the rebating business went on all over the country; the division was paid to the lumber company as there was no railroad to pay it to?

Mr. Beardsley: I do not know.

Examiner Burchmore: I would not ask the witness as to that.

Mr. Cowan: I want to protect him. The statute of limitations has run, I guess. Well, your railroad company itself could not have got any divisions, as you had no incorporation.

Mr. Beardsley: We had a railroad company, but it was not incorporated.

Mr. Cowan: Who composed the company?

2457 Mr. Beardsley: Well, it was then owned by the lumber Company.

Examiner Burchmore: May I say this, I suppose you know, Judge Cowan, but I understand from another hearing that we had here that previous to the incorporation of some of these railroads the main connecting line used to pay allowances to them and paid these allowances however, not in the name of the lumber company but to the railroad company by name, although it was not incorporated, and the railroad simply endorsed the checks to the lumber company which owned it, and the railroad itself, having no corporate existence, the lumber company got the money. Now, at the present time if the money does pass from the railroad corporation to the lumber company owners, it passes indirectly through stock ownershop. But the reason they incorporated many of these companies, as you perhaps know, was the supposed intimation from the Commission that incorporation was necessary.

Mr. Cowan: I understand that to be the case, but my understanding does not become evidence in the record.

Examiner Burchmore: I think this statement will make it evidence in the record in connection with your question.

Mr. Cowan: Your lumber company kept no separate books for the railroad company before it was incorporated?

2458 Examiner Burchmore: It does not today, Judge Cowan; I do not believe I would bring it up further.

Mr. Cowan: Separate accounts, he said.

Mr. Beardsley: I presume it did, but I cannot answer positively. It was before my time.

Mr. Cowan: Do you keep an account in your books to show the operating statistics, for example, the train miles, car miles and tonnage, the statistics as to operating, as to amount of tonnage handled over different divisions of your road?

Mr. Beardsley: We do not keep all these items you have mentioned in the books, but we can ascertain them from the facts we have on the books.

Mr. Cowan: Is it not a fact the only books you keep are for the purpose of showing the amount of divisions the railroad company pays?

Mr. Beardsley: No, you are mistaken about that. I can show you every item of expense or receipts that the railroad has got, regardless of divisions.

Examiner Burchmore: I think this road is rather fully covered, and I would not ask any further questions.

Mr. Cowan: I have no further questions. I only asked

2459 that in view of the fact he stated the Louisiana Commission recognized it as a railroad.

(Witness excused.)

Mr. Ziebold: Are we expected to send a statement of tonnage and revenue? There seems to be a general understanding as to that?

Examiner Burchmore: You may have that right.

Mr. Ziebold: Showing the revenue and expenditures?

Examiner Burchmore: Yes.

Mr. Ziebold: At this point I desire to state for the purposes of the record, that this company is an incorporated company under the railroad corporation laws of Louisiana, and believes itself to be a common carrier, and as such entitled to divisions allowed common carriers. But we desire the Commission also to have in view for its consideration in passing on the status, rights and obligations of this company the provisions of the Interstate Commerce Law, as contained in section 15, which provides that where the owner directly or indirectly renders any service in connection with transportation that he or they are entitled to reasonable allowance for that service, which may be fixed, so that if we should be denied recogni-

2460 tion at this time because of some deficiency as a common carrier, we expect to have our rights considered under section 15, because then the owner is participating in the service, and transporting the product under the milling in transit principle that has been in existence. I wish that to be a part of the record.

2461 *Wilmar & Saline Valley Railway.*

A. W. JUDD, was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: I understand, Mr. Judd, that the Wilmar

& Saline Valley is controlled by the Gates Lumber Company through ownership of a majority of the capital stock and that the officers of the two companies are practically identical. Are those statements correct?

Mr. Judd: They are.

Examiner Burchmore: Are the stockholders of the two companies the same, or what differences are there in stockholders?

Mr. Judd: They are the same titles but they are different stockholders.

Examiner Burchmore: The line of this railroad connects with the St. Louis, Iron Mountain & Southern at Wilmar, Arkansas?

Mr. Judd: Yes, sir.

Examiner Burchmore: From what point in what direction does it extend and for what distance?

Mr. Judd: Due south for twelve miles.

Examiner Burchmore: Any branch lines?

2462 Mr. Judd: The company has a branch line from the main line where we incorporated about fifteen miles.

Examiner Burchmore: Those branch lines are owned by the lumber company, however?

Mr. Judd: Yes, sir, by the Gates Lumber Company.

Examiner Burchmore: But the main line of the railroad would not be worth very much if it did not have those feeders?

Mr. Judd: Well, it was worth considerable at that time when it was incorporated; all our lumber was on that line then.

Examiner Burchmore: But at the present time those feeders are absolutely essential to the existence of this railroad?

Mr. Judd: Probably so.

Examiner Burchmore: I have here a letter addressed by you apparently to the statistician of the Commission in 1910 answering his inquiry as to the location of Godwin, Arkansas, which he says was not on any map he was able to obtain. Now Godwin, I understand is the southern terminus of your line.

Mr. Judd: Yes, sir.

Examiner Burchmore: Is there any settlement there?

2463 Mr. Judd: Yes, sir.

Examiner Burchmore: How much of a town?

Mr. Judd: There are probably 30 or 40 people.

Examiner Burchmore: Those are all lumber company employees. are they not?

Mr. Judd: No.

Examiner Burchmore: Is not that a company town?

Mr. Judd: Well, it is a company town but they are not all company employees who live there.

Examiner Burchmore: Your company has a commissary there?

Mr. Judd: No.

Examiner Burchmore: I mean the lumber company has?

Mr. Judd: No.

Examiner Burchmore: Are there any stores there?

Mr. Judd: No.

Examiner Burchmore: Where do they get their provisions and supplies?

Mr. Judd: At Wilmar.
Examiner Burchmore: Do you have a company store at Wilmar?
Mr. Judd: No.
Examiner Burchmore: Then this lumber company does
2464 not furnish supplies and so forth to its employees?
Mr. Judd: No, sir.
Examiner Burchmore: The mill of the Gates Lumber Company is located at what point?
Mr. Judd: Wilmar, Arkansas.
Examiner Burchmore: It is at the junction with the Iron Mountain?
Mr. Judd: Yes, sir.
Examiner Burchmore: And the lumber manufactured at that mill is loaded into cars standing on the Iron Mountain rails?
Mr. Judd: Yes, sir.
Examiner Burchmore: In other words the Wilmar & Saline Valley Railroad performs no service of transportation in connection with the movement of lumber out of the mill but only on logs into the mill?
Mr. Judd: No, they do some work for the lumber itself.
Examiner Burchmore: What is that work?
Mr. Judd: Just at present the railroad company does a lot of that work.
Examiner Burchmore: What work?
2465 Mr. Judd: The Iron Mountain only gives you a freight train about twice a week, and we take our engine around there and place empty cars and take the loaded out.
Examiner Burchmore: Where do you get the empty cars?
Mr. Judd: Off the Iron Mountain track.
Examiner Burchmore: Where do you put the loaded cars?
Mr. Judd: What we call a passing track up to the station, to the house track.
Examiner Burchmore: What switching distance is that?
Mr. Judd: Probably two thousand feet or more.
Examiner Burchmore: You move the empty cars about two thousand feet and the loaded cars about two thousand feet?
Mr. Judd: Yes, sir; not all the time.
Examiner Burchmore: You only do that in extraordinary times when the Iron Mountain is too busy to do it?
Mr. Judd: When they cannot do it, they are not too busy but they have not motive power to do it.
Examiner Burchmore: The engines are not powerful enough?
Mr. Judd: Yes, sir; that is what I mean.
Examiner Burchmore: Is there a heavy grade?
Mr. Judd: No, sir; but they are on a strike and they are in pretty bad shape.
2466 Examiner Burchmore: Then it is the temporary disability of the Iron Mountain that forces you to perform this service?
Mr. Judd: Not altogether. We do it the whole year round. There is a grade about a quarter of a mile east from us and if they bring a heavy load from Warren they will leave some on our track and we go around there and clean up the track so we can do some work.

Examiner Burchmore: When was this mill opened for operation?
Mr. Judd: I think twenty-one years ago. It was before my time.
Examiner Burchmore: When was the railroad construction begun?
Mr. Judd: I am not positive; I think it was ten or eleven years ago.
Examiner Burchmore: Originally it was not incorporated?
Mr. Judd: Yes, sir; this was.
Examiner Burchmore: When was the railroad incorporated?
Mr. Judd: I think it was in 1902.
Examiner Burchmore: The same time it was built?
Mr. Judd: Yes, sir. I can explain by saying we were log-
2467 ging north and now we are logging south.
Examiner Burchmore: Then you moved the railroad?
Mr. Judd: Yes, sir; not this railroad but the Gates Lumber Company at that time was milling north.
Examiner Burchmore: The Gates Lumber Company owned that railroad running north?
Mr. Judd: Yes, sir.
Examiner Burchmore: When was the road running south constructed?
Mr. Judd: I think ten years ago; I am not positive.
Examiner Burchmore: When was the railroad corporation organized?
Mr. Judd: I think in 1902; I am not positive, it was before my time.
Examiner Burchmore: At the same time the railroad was constructed?
Mr. Judd: Practically so, I suppose; I am not positive.
Examiner Burchmore: Was any other traffic in sight at that time excepting logs moving to the Gates Lumber Company?
Mr. Judd: No, I do not think there was.
Examiner Burchmore: This road was constructed prima-
2468 rily for the purpose of enabling the Gates Lumber Company to get its logs into its mill?
Mr. Judd: Yes, sir.
Examiner Burchmore: In other words to serve the same purpose that the former line running northward had served?
Mr. Judd: I think that is correct.
Examiner Burchmore: What is the capital stock of this road?
Mr. Judd: $50,000.
Examiner Burchmore: Does that represent the cost of constructing the road and the equipment?
Mr. Judd: I think it was supposed to be the cost of the road. That was before my time.
Examiner Burchmore: Any bonds?
Mr. Judd: No.
Examiner Burchmore: Any other indebtedness?
Mr. Judd: No.
Examiner Burchmore: What has the road cost to build, have you any figures?

Mr. Judd: I have not. The superintendent handles that.
Examiner Burchmore: Is he here this morning?
2469 Mr. Judd: No.
Examiner Burchmore: Has there been any other witness resent for your company?
Mr. Judd: No, sir.
Examiner Burchmore: You file an annual report with the Interstate Commerce Commission?
Mr. Judd: Yes, sir.
Examiner Burchmore: That report shows the cost of road and equipment?
Mr. Judd: Yes, sir.
Examiner Burchmore: Is it your opinion it is about $50,000, shown in that report?
Mr. Judd: I know the capital stock is $50,000.
Examiner Burchmore: I mean the cost of the road. Was it in excess of $50,000?
Mr. Judd: I could not say. I do not know.
Examiner Burchmore: Have they paid for any additions and betterments in recent years out of their net earnings?
Mr. Judd: Yes, sir.
Examiner Burchmore: That is the disposition of the surplus that has been made from time to time?
Mr. Judd: To some extent, yes, sir.
2470 Examiner Burchmore: This is a standard gauge line?
Mr. Judd: Yes, sir.
Examiner Burchmore: How many locomotives have you?
Mr. Judd: Four.
Examiner Burchmore: Do you own all those locomotives?
Mr. Judd: They are leased from the lumber company.
Examiner Burchmore: You lease all four of them?
Mr. Judd: Yes, sir.
Examiner Burchmore: What do you pay for those locomotives?
Mr. Judd: I could not say, I don't know.
Examiner Burchmore: You have not any idea?
Mr. Judd: I have not. No, I don't think there is any charge for it though. I do not think there is any charge for the lease.
Examiner Burchmore: You have some freight cars?
Mr. Judd: No, no freight cars.
Examiner Burchmore: You lease some freight cars?
Mr. Judd: Regular box cars?
Examiner Burchmore: I mean any kind of cars.
Mr. Judd: We have logging cars.
Examiner Burchmore: How many logging cars do you own?
Mr. Judd: None. They are leased.
2471 Examiner Burchmore: You lease about sixty?
Mr. Judd: Sixty. We have sixty-six cars altogether.
Examiner Burchmore: What other cars have you besides the logging cars?
Mr. Judd: Two tank cars and four flat cars.
Examiner Burchmore: All the equipment is owned by the lumber company?

Mr. Judd: Yes.

Examiner Burchmore: How long has that been true?

Mr. Judd: It has been true since we were incorporated.

Examiner Burchmore: Did you not inform the Examiner of the Commission or did not some officer of your company inform the Examiner of the Commission in the summer of 1909 when he was going over this property that the locomotives and cars were owned by the railroad?

Mr. Judd: I had thought of that—I was not there when the representative was there, but I think they were put in as locomotives of the railroad company. If that is true it was a mistake.

Examiner Burchmore: I would suggest that in the future you rectify mistakes of that kind, because our records ought to be correct. I suppose the annual reports are correct?

2472 Mr. Judd: Yes, sir.

Examiner Burchmore: What is the character of the construction of this road, does it run uphill and down dale like the one we were talking of the other day?

Mr. Judd: In some places it is quite hilly. In some places it is very fine track.

Examiner Burchmore: You have fills and cuts?

Mr. Judd: Yes, sir and some bridges.

Examiner Burchmore: Pretty well built?

Mr. Judd: The Iron Mountain people say it is a better track than they have.

Examiner Burchmore: How many track crews have you?

Mr. Judd: We have two on the incorporated part.

Examiner Burchmore: How many on the unincorporated part?

Mr. Judd: Two.

Examiner Burchmore: Those gangs do not interchange work, part on one part and part on the other?

Mr. Judd: No.

Examiner Burchmore: Any station agents?

Mr. Judd: We have a joint agent at Wilmar.

Examiner Burchmore: No other agent?

2473 Mr. Judd: No.

Examiner Burchmore: Any station buildings?

Mr. Judd: No.

Examiner Burchmore: Do you pay a part of the station expense at Wilmar?

Mr. Judd: We pay half of the agent's salary.

Examiner Burchmore: How many train crews has the railroad company?

Mr. Judd: One.

Examiner Burchmore: One train crew for four locomotives?

Mr. Judd: One of them is idle practically all the time and two working in the woods.

Examiner Burchmore: Those two that work in the woods you said were leased from the lumber company by the railroad company?

Mr. Judd: That is true.

Examiner Burchmore: If they are leased from the lumber com-

pany by the railroad company one would think that the railroad was operating that.

Mr. Judd: Well, that is not correct.

Examiner Burchmore: Then you did not mean to say that four were leased?

2474 Mr. Judd: No.

Examiner Burchmore: But two are leased?

Mr. Judd: By the railroad company direct, yes, sir.

Examiner Burchmore: Does the lumber company lease its locomotives?

Mr. Judd: No, they own them.

Examiner Burchmore: And they operate them?

Mr. Judd: Yes, sir, and they operate them.

Examiner Burchmore: Have you any other salaried employees than the ones I have mentioned?

Mr. Judd: No, sir.

Examiner Burchmore: Who performs the clerical work in the general offices of the railroad?

Mr. Judd: I do to some extent and the bookkeeper for the Gates Lumber Company.

Examiner Burchmore: Does the lumber company reimburse that bookkeeper?

Mr. Judd: No, sir.

Examiner Burchmore: Does it pay the lumber company anything for his services?

Mr. Judd: No.

Examiner Burchmore: That is a gratuitous service?

2475 Mr. Judd: Yes, sir.

Examiner Burchmore: Any passenger service?

Mr. Judd: No.

Examiner Burchmore: You are incorporated as a freight carrier exclusively?

Mr. Judd: Freight carrier exclusively.

Examiner Burchmore: How many freight trains do you run each way?

Mr. Judd: Two each way a day.

Examiner Burchmore: Any logging trains beside those?

Mr. Judd: No.

Examiner Burchmore: How many cars in each train?

Mr. Judd: Twenty, supposed to be twenty.

Examiner Burchmore: What is your tonnage for the past fiscal year?

Mr. Judd: About, if I remember right, 71,000 tons.

Examiner Burchmore: That was less than the previous year?

Mr. Judd: I could not say, I don't remember.

Examiner Burchmore: How much of that was logs?

Mr. Judd: About ninety per cent.

Examiner Burchmore: What was the rest of it?

Mr. Judd: Well, there were some stave bolts, some finished

2476 lumber and supplies to the shore out there.

Examiner Burchmore: As a matter of fact more than 95 per cent of it was logs, is not that the fact?

Mr. Judd: I could not say; I am just guessing at 90 per cent.

Examiner Burchmore: In the fiscal year 1908, for example, it seems you had a total tonnage of 78,998 tons, that is about correct?

Mr. Judd: I think so.

Examiner Burchmore: That entire tonnage is reported to have been supplied by the Gates Lumber Company. Has this foreign tonnage or public tonnage as I might describe it, grown up since 1908?

Mr. Judd: Oh, yes; yes, sir.

Examiner Burchmore: In the last year or so?

Mr. Judd: Yes, sir; I can explain that probably in this way, that after the end of our incorporated track we have changed and are going due east instead of due south now, and are going through a very fine farming country.

Examiner Burchmore: You took up a part of your trade?

Mr. Judd: Yes, sir, and we are going east now 15 miles from Godwin, instead of due south 8 miles.

Examiner Burchmore: What was the extent of your ton-
2477 nage in agricultural products last year?

Mr. Judd: Last year it was very light because we had just finished the road and were not running over it.

Examiner Burchmore: How much do you say it will be this year?

Mr. Judd: That is a hard thing to estimate.

Examiner Burchmore: As much as three carloads?

Mr. Judd: Yes, sir; more than that. We have application now for three cars of cotton seed. It will be a great deal more than that.

Examiner Burchmore: You have no lumber tonnage.

Mr. Judd: I don't understand what you mean by that.

Examiner Burchmore: You handle logs but no lumber?

Mr. Judd: We handle lumber from the mills direct to the farming district?

Examiner Burchmore: Small quantities?

Mr. Judd: Small quantities, yes, sir.

Examiner Burchmore: Do you have any local freight rates, or do you use the Arkansas scale?

Mr. Judd: We use the Arkansas Court House tariff or classification.

Examiner Burchmore: Do you file any tariffs with the
2478 Interstate Commerce Commission?

Mr. Judd: On lumber, yes, sir.

Examiner Burchmore: Not on other traffic?

Mr. Judd: No.

Examiner Burchmore: Do you have joint through class rates with the Iron Mountain?

Mr. Judd: You mean on classes?

Examiner Burchmore: Yes.

Mr. Judd: Nothing but just on lumber.

Examiner Burchmore: Are there any stations along your line at which lumber originates?

Mr. Judd: No, sir.

Examiner Burchmore: You have joint rates published from Wilmar on your line to interstate destinations reached by the Iron Mountain?

Mr. Judd: On lumber, yes, sir.

Examiner Burchmore: Do you have joint through rates from any other originating point?

Mr. Judd: No.

Examiner Burchmore: Those rates are the same as the local rates of the Iron Mountain; there is no arbitrary added in the case of shipments from your line?

2479 Mr. Judd: From Wilmar?

Examiner Burchmore: Yes.

Mr. Judd: No, not from Wilmar.

Examiner Burchmore: What division do you receive on that traffic?

Mr. Judd: Two cents.

Examiner Burchmore: On all traffic?

Mr. Judd: No, not on all traffic.

Examiner Burchmore: On all lumber traffic?

Mr. Judd: On lumber billed from Godwin.

Examiner Burchmore: Then your rates do reach back to Godwin?

Mr. Judd: Oh, yes; all our lumber shipments originating from Godwin or from the Wilmar & Saline Valley.

Examiner Burchmore: Then you have a milling in transit rate?

Mr. Judd: Yes, sir.

Examiner Burchmore: None of your lumber is billed as originating from Wilmar?

Mr. Judd: Yes, sir; lots of it.

Examiner Burchmore: What is that?

Mr. Judd: To all Arkansas points.

2480 Examiner Burchmore: That is lumber on which you do not get a division of the rate?

Mr. Judd: Yes, sir.

Examiner Burchmore: So there is no object in billing it back to Godwin. Now is two cents the highest division?

Mr. Judd: Yes, sir.

Examiner Burchmore: You are sure about that?

Mr. Judd: Yes, sir.

Examiner Burchmore: You formerly received a higher division?

Mr. Judd: No, sir, not that I know of. You probably have reference to four cents, but we do not get four cents. On eastern shipments the division shows four cents, but the freight bills come back overcharged two cents.

Examiner Burchmore: What is the meaning of that?

Mr. Judd: I don't know: It was done before I ever came in there; so we really get two cents.

Examiner Burchmore: That is all you actually get in cash, two cents?

Mr. Judd: Yes, sir.

Examiner Burchmore: Don't you think probably the Iron

Mountain has probably overcharged you two cents on that
2481 lumber?

Mr. Judd: Well, we watch that pretty close.

Examiner Burchmore: I think the division sheets of the Commission today show four cents and on some traffic is it not a fact there is a two cent arbitrary added to the Iron Mountain's rate?

Mr. Judd: I don't understand what you mean by that.

Examiner Burchmore: Well, whatever the explanation is, you say as a matter of fact you never got more than two cents?

Mr. Judd: Two cents is all we get.

Examiner Burchmore: If that is so, how did the Examiner learn when we examined your property and questioned your officials that you received four cents on Eastern traffic?

Mr. Judd: That is what I just remarked, the division sheet shows four cents, but those freight bills on eastern shipments come back overcharged two cents, and while we get four cents back from the Iron Mountain, nevertheless we are overcharged two cents, so it only makes two cents net.

Examiner Burchmore: Do those shippers put in a claim for the overcharge?

2482 Mr. Judd: No, we do.

Examiner Burchmore: You say you keep rather close watch of those things. Why didn't you see the matter through and learn the satisfactory explanation for the overcharge of two cents?

Mr. Judd: There wasn't any reason for that. That was established before I went there, and the way they wanted it, and it was satisfactory to me.

Examiner Burchmore: How much does the Gates Lumber Company pay for getting its logs to the mill?

Mr. Judd: I don't believe—it doesn't pay anything.

Examiner Burchmore: It does not pay anything?

Mr. Judd: They pay for the service of the Wilmar & Saline Valley employees and train crews.

Examiner Burchmore: Is there any billing accompanying the logs into the mills?

Mr. Judd: No.

Examiner Burchmore: Who issues the bill of lading on the outbound lumber?

Mr. Judd: The Wilmar & Saline Valley.

Examiner Burchmore: That bill shows the point of origin
2483 as Godwin?

Mr. Judd: Yes, sir.

Examiner Burchmore: Do you issue any waybills?

Mr. Judd: The joint agent does that.

Examiner Burchmore: Does that through waybill read over the Wilmar & Saline Valley or do you hand it over to the Iron Mountain or transfer billing?

Mr. Judd: It reads from the Wilmar & Saline Valley.

Examiner Burchmore: So it shows two connecting carriers? With the junction at Wilmar?

Mr. Judd: Yes, sir.

Examiner Burchmore: Are the proportions shown on that way-bill?

Mr. Judd: No.

Examiner Burchmore: That is all arranged through interline settlement?

Mr. Judd: Through interline settlement.

Examiner Burchmore: Then I suppose that the divisions on the outbound lumber pay for the transportation of the logs into the mill?

Mr. Judd: Supposed to.

Examiner Burchmore: Well, as a matter of fact they do, because your road is operated at a profit?

2484 Mr. Judd: Yes, sir.

Examiner Burchmore: Do you file tariffs with the Interstate Commerce Commission?

Mr. Judd: Yes, sir.

Examiner Burchmore: You endeavor to comply with all the regulations of the Interstate Commerce law I presume?

Mr. Judd: In every respect.

Examiner Burchmore: The same is true of state regulations?

Mr. Judd: Yes.

Examiner Burchmore: Your road is recognized in Arkansas as a common carrier railroad?

Mr. Judd: Yes, sir.

Examiner Burchmore: Have the courts ever recognized you?

Mr. Judd: Do you mean in a suit?

Examiner Burchmore: In any law suit.

Mr. Judd: No, sir, never had any.

Examiner Burchmore: Never have been sued for damages by an employee who was injured on the train?

Mr. Judd: No, sir.

Examiner Burchmore: The Gates Lumber Company oper-

2485 ates its own private side track?

Mr. Judd: At the mill, do you mean?

Examiner Burchmore: Now, I was speaking of up in the woods?

Mr. Judd: Yes, sir.

Examiner Burchmore: Then the locomotive that that company operates hauls the logs to the junction with the main line of the railroad?

Mr. Judd: Yes, sir.

Examiner Burchmore: Then the engine of the Wilmar & Saline Valley hauls the logs the rest of the way to the mill?

Mr. Judd: Yes, sir.

Examiner Burchmore: Then the Wilmer & Saline Valley does not go off its rails to the wood?

Mr. Judd: No, except on pay days.

Examiner Burchmore: Then it goes as a pay train?

Mr. Judd: No, we use it to take us to where the men are with the money.

Examiner Burchmore: Just as a convenience?

Mr. Judd: Just as a convenience; yes, sir.

Examiner Burchmore: The two companies have the same pay master?

2486 Mr. Judd: Yes, sir.

Examiner Burchmore: Do you keep your books separate from the books of the lumber company?

Mr. Judd: Yes, sir.

Examiner Burchmore: Have a separate set of books?

Mr. Judd: Yes, sir.

Examiner Burchmore: Is the cash of the two companies mingled in the same bank?

Mr. Judd: Yes, sir.

Examiner Burchmore: Does the railroad company issue any checks?

Mr. Judd: No.

Examiner Burchmore: The lumber company issues checks for them?

Mr. Judd: Yes, sir.

Examiner Burchmore: Do you keep your accounts in accordance with the system prescribed by the Interstate Commerce Commission?

Mr. Judd: Yes, sir; in every respect.

Examiner Burchmore: What dividends have you paid as a railroad company?

Mr. Judd: Do you mean the amount?

2487 Examiner Burchmore: Yes, in the whole history of the road.

Mr. Judd: I am not prepared to answer that. I don't remember.

Examiner Burchmore: Well, you pay dividends?

Mr. Judd: Yes, sir; we pay them to the stockholders of the railroad.

Examiner Burchmore: Is that a substantial dividend?

Mr. Judd: Pretty fair, I think; yes, sir; I do not remember the amount.

Examiner Burchmore: I have not the figures here for 1910, and I am not sure whether these are the 1909 or 1908 figures that I have, but I am inclined to think they are for 1909. At any rate I will read them:

Total operating revenue on traffic supplied by the controlling interest was $38,719.11; there was no other source of revenue. $38,719.11 as against $13,846.68 operating expenses, leaving a net revenue of $24,872.43. Have you made as much money as that this year?

Mr. Judd: I could not say: I have not got the figures. I don't know.

Examiner Burchmore: Well, your operating ratio seems

2488 to be rather low, $38,000 of revenue as against $13,000 of expenses. Are not your earnings very great for this road?

Mr. Judd: That would appear they were. The superintendent handles those figures and I am not qualified to answer.

Examiner Burchmore: Is he here?

Mr. Judd: No, sir.

Examiner Burchmore: I suppose you will see a copy of this testimony. If you find those figures are radically wrong I want you to correct them.

Mr. Judd: I will be glad to.

Examiner Burchmore: Of course we can verify them from our records, but I read them so that counsel will have an idea what they are. You paid a ten or fifteen per cent dividend this year?

Mr. Judd: I could not say about that. The superintendent handles that and I don't know.

Examiner Burchmore: But you understand the dividends are substantial?

Mr. Judd: Yes, sir; they are, I admit that.

Examiner Burchmore: Stock in this railroad company is desirable from an investment standpoint?

Mr. Judd: Well, it ought to be.

2489 Examiner Burchmore: Are there any other mills on the line?

Mr. Judd: No.

Mr. Jeffery: About that four cents, was it not a matter of fact that you published a two cent local rate from the mill point so that the net division was really two cents; in other words at one time you got your two cents that you charged yourself back, plus the two cent division allowed on the milling in transit tariff?

Mr. Judd: I am not qualified to state, because all that was done before I came there.

Mr. Jeffery: When did you come?

Mr. Judd: I have been working there quite a while but only three years since I had charge of these things or any connection with it.

Mr. Jeffery: My inclination is he has got a four cent division.

Mr. Judd: No, we do not. We get a two cent division net.

Examiner Burchmore: We will look into it and if the division sheets are not filed with the Commission the carriers will be requested to file them.

2490 Mr. Judd: The division sheet shows four cents I think. I have asked our Mr. Gates about that several times.

Examiner Burchmore: Suppose you ask your Mr. Gates to look into that and write the Commission and inform us, how you seem to have been cheated out of two cents.

Mr. Judd: I know that.

Mr. Jeffery: Find out whether it is an over charge or an under divide.

Mr. Judd: It must have been an under divide.

Mr. Cowan: The information gathered by an examination of the books of the so-called railway company show you had a total tonnage of 79,898 tons; that is the report your company made to the Examiners of the Interstate Commerce Commission.

Mr. Judd: For the fiscal year ending June 30th?

Mr. Cowan: 1909 I suppose.

Mr. Judd: It was 71,000 tons and some odd.

Mr. Cowan: This revenue you received, $38,719, which you could

not get except by a division of the rate, you had no other source of revenue, and that does not figure out two cents. That figures more money. Now there is something wrong about it. The tonnage is not right or the amount of the division you have named. I
2491 call your attention to it in order that you may correct it and show where the error is. Now, I want to ask you this question: what I mean is, if you multiply the tonnage by the two cents it does not account for the money you got.

Mr. Judd: I understand that. Your idea is to have me look into it and verify it?

Mr. Andrews: Have your Mr. Gates look into it.

Mr. Judd: I will be glad to do that.

Mr. Cowan: Is there any reason why you should not get four cents if other lumber companies get four cents divisions?

Mr. Judd: No good reason why we should not. I think we should if the rest of them are getting it.

Mr. Cowan: Your notion is it would be undue discrimination to give you two cents and another man under similar circumstances four cents?

Mr. Judd: Yes, sir; although I do not know that they are getting four cents.

Mr. Cowan: And it would be a still further discrimination to give another man none and give you two?

Mr. Judd: Well, I could not say, it would depend on what
2492 he has got.

Mr. Cowan: If they gave another man five or six cents and only gave you two cents that would be a discrimination?

Mr. Judd: Not necessarily?

Mr. Cowan: And would you not feel the effect of it in the ultimate operation of your business enterprise? It would necessarily be reflected in the business enterprise as a whole if one man got five cents out of the rate and another man got none.

Mr. Judd: No, I don't think so. I think conditions vary in different places.

Mr. Cowan: But I said under similar circumstances and conditions.

Mr. Judd: I am not qualified to say about that.

Mr. Cowan: That is, a man logging his mill on the Rock Island gets five cents per hundred pounds division and you are logging your mill on the Iron Mountain and by the same means, by one of these so-called railroad companies, and you get two cents. Do you think that is fair between you and him as a business proposition?

Mr. Judd: Well, I have always been kind of learned to be content with what I had, regardless of what the other fellow
2493 got.

Mr. Cowan: I did not ask you what you were content with, but would it be fair as a business proposition?

Mr. Judd: It would be fair to me.

Mr. Cowan: It would be?

Mr. Judd: Yes, sir.

Mr. Cowan: To give you two cents and the other man five?

Mr. Judd: If he had occasion to get it; yes, sir.
Mr. Cowan: To the victor then belongs the spoils?
Mr. Judd: Evidently, yes, sir.
Mr. Garwood: I think that is a line of examination that is going to keep us.
Mr. Cowan: I am through. You need not take any time arguing.
Mr. Garwood: Then you should have finished before you started.
Mr. Andrews: The Gates Lumber Company is the company that is identical in interest with the railroad company as stated. Is there any other interest in the lumber business or railroad business controlled or owned by the people or the corporation who own
2494 and control the Gates Lumber Company?
Mr. Judd: No.
Mr. Andrews: It is not connected with any other interests by a community of stock ownership or otherwise?
Mr. Judd: No.
Examiner Burchmore: Have you any other statement you desire to make?
Mr. Judd: No, I believe not.
Examiner Burchmore: Has there been any material change in the methods and practices of your company and its manner of doing business in the last year or two?
Mr. Judd: No, sir.
Examiner Burchmore: Then a report rendered to the Commissioner by an Examiner who went over the property a year or two ago would be as accurate today, omitting unessential details as it would then?
Mr. Judd: I think it would except as the spur track was changed. The map of the railroad would be entirely different, that is the spur part of it.
Examiner Burchmore: Will you furnish the Commission a map of your line such as has been requested of other companies?
2495 Mr. Judd: Yes, sir.
Examiner Burchmore: And a statement of the tonnage. You have heard those requests?
Mr. Judd: Yes, sir, I will be glad to.

(Witness excused.)

Examiner Burchmore: The Salem Winona & Southern Railroad.
Mr. Garwood: The Washington & Choctaw is represented by Mr J. G. Burlingame, vice-president and general manager. It is situated in the state of Alabama, connecting with the Mobile & Ohio, just above Mobile. It wishes to be made a party to the record and to enter its appearance.
Examiner Burchmore: With whom do they connect?
Mr. Garwood: The Mobile & Ohio.
Examiner Burchmore: East of the river?
Mr. Garwood: East of the river.
Examiner Burchmore: All right, but I am afraid we cannot hear them this week.

Mr. Garwood: He hardly expects that, but he wishes to enter his appearance and be made a party to the proceeding.

Examiner Burchmore: But he is not present ready for hearing?

2496 Mr. Garwood: Yes, he is here and if you reach him in due order he will be prepared to put on his case.

Mr. Riddell: Mr. White will be prepared to testify to all matters concerning the Salem, Winona & Southern with the exception of the division arrangement and tonnage movement and way billing of freight, and handling of the freight. It will be necessary for me to give that testimony.

Mr. Jeffery: Before going into an examination of this particular tap line I wish to state that a day or so ago I asked permission of the Commission on behalf of Mr. Brandeis of the Louisville & Nashville Railroad Company to file a brief in this investigation. At his request at that time I asked permission to file a brief on his behalf if the other carriers in the case filed briefs. I have a telegram now in which he asks me to ask the Commission for leave to file a brief irrespective of the action of the other carriers. He is not present and his road is not a party to the action, and I would like to file this telegram.

Examiner Burchmore: It will be filed and the request laid before the Commission: I might say, however, that I am not aware that the Commission have made any order or announcement in respect

2497 to briefs in the case, but when such an order is made Mr. Brandeis will be remembered.

(The telegram was received and thereupon marked filed December 16, 1910, and is attached hereto.)

2498 *Salem, Winona & Southern Railroad.*

J. B. WHITE, was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: Your name?

Mr. White: J. B. White.

Examiner Gutheim: You live where?

Mr. White: Kansas City, Missouri.

Examiner Gutheim: Your occupation is what?

Mr. White: My chief occupation is that of a lumber man.

Examiner Gutheim: You have some connection with the Salem, Winona & Southern Railway Company?

Mr. White: Yes, sir.

Examiner Gutheim: What is your official relation to that company?

Mr. White: President of the company.

Examiner Gutheim: Have you a map of that railroad which we can have in evidence?

Mr. White: I have a Rand-McNally map showing the road.

Examiner Gutheim: Well, as a matter of fact the Salem, Winona & Southern Railroad begins at a point in the State of Missouri known as Horse Hollow, and runs south to a point known as Winona Junction?

2499 Mr. White: It begins at Winona Junction and runs north to Angelina or Horse Hollow, that was the native name, but the Post Office there is Angelina, and it is on the map as Angelina.

Examiner Gutheim: What connections have you with the road, the Salem, Winona & Southern?

Mr. White: The Frisco at Winona.

Examiner Gutheim: At Winona or Winona Junction?

Mr. White: At Winona.

Examiner Gutheim: Do you operate with the motive power of the Salem, Winona & Southern Railway over any portion of the Frisco line east or west of Winona?

Mr. White: A little over two miles between Winona and Winona Junction.

Examiner Gutheim: Have you in the past operated farther east than Winona over the Frisco?

Mr. White: Yes, sir, we had a mill at Grandin and an unchartered road.

Examiner Gutheim: The operations at Grandin have now entirely ceased?

—. As a saw mill town it his entirely ceased and we are not lumbering there any more.

Examiner Gutheim: What communities are there on the
2500 line of the Salem, Winona & Southern between Winona and Horse Hollow?

Mr. White: Do you mean what towns?

Examiner Gutheim: Yes.

Mr. White: The town of West Eminence, which is a mile and a half from the county seat, is the principal town; and we have stations at two points between West Eminence and Winona Junction, which are Buckhart and Delaware.

Examiner Gutheim: Are there any communities of any considerable size at those two points?

Mr. White: It is a farming settlement. At Delaware we ship cattle and we have a yard there and a cattle and stock chute.

Examiner Gutheim: What is there at West Eminence?

Mr. White: At West Eminence there is theh saw mill of the Missouri Lumber & Mining Company and the commissary of the Missouri Lumber & Mining Company and two other mercantile establishments belonging to other people.

Examiner Gutheim: What is the name of the county seat that you say is one and one-half miles from West Eminence?

Mr. White: It is Eminence.

Examiner Gutheim: Has it any railroad serving it with
2501 the Salem, Winona & Southern through West Eminence?

Mr. White: That is all.

Examiner Gutheim: Is this road from Winona to Horse Hollow owned by the Salem, Winona & Southern Railway corporation?

Mr. White: No, it is rented from the Missouri Lumber & Mining Company.

Examiner Gutheim: Is the equipment that operates over that

road in the name of the Salem, Winona & Southern also owned by the Missouri Lumber & Mining Company?

Mr. White: It is owned by the Missouri Lumber & Mining Company and rented by the railroad company.

Examiner Gutheim: How long is the line of railroad that is leased?

Mr. White: Twenty miles, a little over twenty miles.

Examiner Gutheim: And that is from Winona to Horse Hollow?

Mr. White: That is from Winona Junction to Horse Hollow.

Examiner Gutheim: How much equipment is operated by the Salem, Winona & Southern and leased from the Missouri Lumber & Mining Company?

2502 Mr. White: Two locomotives, two box cars, fifty flat cars, two coaches and one caboose.

Examiner Gutheim: Are the fifty flat cars, flat cars of the ordinary type or logging cars?

Mr. White: They are flat cars of the ordinary type equipped with air brakes.

Examiner Gutheim: But used practically solely in the logging operations for the Missouri Lumber & Mining Company?

Mr. White: No, they are not used at all for the Missouri Lumber & Mining Company.

Examiner Gutheim: What consideration is paid by the Salem, Winona & Southern Railroad to the Missouri Lumber & Mining Company for the lease of the approximately twenty miles of railroad and the equipment you have mentioned?

Mr. White: $1,000 a month.

Examiner Gutheim: Upon what basis is that rental arrived at?

Mr. White: About eight per cent upon the value of the property, the cost of the road.

Examiner Gutheim: Are there any other lumber or mining operations that are served by the Salem, Winona & Southern

2503 Railroad with the exception of the Missouri Lumber & Mining Company and which produce a considerable proportion of its traffic?

Mr. White: There is one mill that cuts about 20,000 feet a day and that is between Horse Hollow and West Eminence. Then there is a smaller mill that is located from two or three miles from Horse Hollow and the lumber is hauled into Horse Hollow.

Mr. Riddell: I have here a letter addressed to me by the general superintendent of the Salem, Winona & Southern giving a list of the names and addresses of all the shippers of various products served by the railroad company. It might be well to file that.

Examiner Burchmore: Is that list correct?

Mr. Riddell: It certainly must be.

Mr. White: Yes, sir.

(The paper so offered and identified was received in evidence and thereupon marked Salem, Winona & Southern Exhibit 1, Witness White, received in evidence December 16, 1910 and is attached hereto.)

Examiner Gutheim: The two mills you have mentioned are

absolutely independent of the control of the Missouri Lum-
2504 ber & Mining Company?

Mr. White: Yes, sir.

Examiner Gutheim: What is the relation between the Missouri Lumber & Mining Company and the Salem, Winona & Southern Railroad Company?

Mr. White: No relation except practically the same stockholders in the Lumber Company own stock in the Salem, Winona & Southern Railroad Company.

Examiner Gutheim: Just what stockholders, if any, are there in the railroad company who are not stockholders in the lumber company?

Mr. White: There are perhaps only two, and they only own a small amount of stock, simply as directors; but the same amount of stock is not owned, that is, the same relative amount; for instance, one of our stockholders has twice as much stock in the railroad company as he has in the lumber company. He is quite a large stockholder.

Examiner Gutheim: From your description of the property I take it the Salem, Winona & Southern Railroad corporation does not own any railroad property whatever?

Mr. White: No, it does not.

Examiner Gutheim: And the valuation of the property
2505 upon which you pay a rental of one thousand dollars per month must be $150,000?

Mr. White: Yes, sir.

Examiner Gutheim: The road was constructed for the Missouri Lumber & Mining Company?

Mr. White: Yes.

Examiner Gutheim: Was it constructed contemporaneously with the erection of the West Eminence mill or prior thereto in connection with the operation of the old mill at Grandin?

Mr. White: It was constructed prior to the construction of the building of the mill at West Eminence.

Examiner Gutheim: Had it been used prior to that time in connection with the lumber operations serving the mill at Grandin?

Mr. White: Yes, sir.

Examiner Gutheim: North of Horse Hollow——

Mr. White: Perhaps I should qualify that statement by saying not as a railroad, not as a common carrier.

Examiner Gutheim: But merely as an incident to the lumbering operations?

Mr. White: Yes, sir.

2506 Examiner Gutheim: North of Horse Hollow are there any railroad operations at the present time that connect with the Salem, Winona & Southern?

Mr. White: Nothing excepting the tram road of the Missouri Lumber & Mining Company.

Examiner Gutheim: And that tram road is not operated in any way that might be termed a common carrier operation?

Mr. White: No, it is not.

Examiner Gutheim: Going back into the ancient history of the

company, at the time the mill operated at Grandin your logging was done north and west of Grandin on the Frisco and up on this track that is now the Salem, Winona & Southern into the woods that are still being cut over by the Missouri Lumber & Mining Company north of Horse Hollow?

Mr. White: No. Prior to the building of that road into Shannon County we operated at Grandin and north and west of Grandin on the main line of the Current River Railroad by a contract made in 1886.

Examiner Gutheim: Did that contract provide for the operation of that piece of track by the Missouri Lumber & Mining Company alone or did it give you merely a trackage right for certain
2507 purposes?

Mr. White: It gave us a trackage right in common with all other mills on that road. The Ozark Land & Lumber Company and the Cords-Fisher Lumber Company, all had trackage rights on that road.

Examiner Gutheim: Was the trackage right restricted to certain class of service. Were you permitted to haul anything other than logs and cars to be used in hauling logs?

Mr. White: We were permitted to haul logs and to haul food and equipment and anything that went into use for the hauling of logs.

Examiner Gutheim: And what consideration was paid by the Missouri Lumber & Mining Company for the trackage privilege?

Mr. White: The same consideration as they granted all other mills, and was the consideration whereby the railroad company agreed to build a railroad to Grandin, Missouri and have it finished by a certain time, providing we would build a mill and have it finished by a certain time, a mill of a certain capacity that would be capable of giving them fifteen million feet of lumber each year.

2508 Examiner Gutheim: That mill's production, were you required under the contract, under the trackage privilege to give any portion of the output to the Frisco?

Mr. White: Only such proportion to the Frisco as came from the logs we hauled over their road.

Examiner Gutheim: In other words, you guaranteed the Frisco a certain percent of the tonnage that came out of the logs hauled from over their road under the trackage privilege?

Mr. White: Yes, sir; that is right.

Examiner Gutheim: Was there any agreement as to the rates the Missouri Lumber & Mining Company was to pay out of Grandin?

Mr. White: The contract stated that the Missouri Lumber & Mining Company should have the same rates as any other mill along the line; that the rate should not exceed a certain sum, and that it should have in all respects the same rates as the most favored competitor.

Examiner Gutheim: What was the reason for the separate incorporation of the particular piece of track from Winona to Horse Hollow about 1908 as a common carrier corporation?

2509 Mr. White: Do you mean why did we build from the junction two miles from——

Examiner Gutheim: No, why did you incorporate the road, or that piece of track separately as the Salem, Winona & Southern?

Mr. White: Well, it was because we considered the matter and we were informed—the Missouri Lumber & Mining Company was informed by the railroad that they could not under the law give the divisions to the railroad which was unincorporated or to the Missouri Lumber & Mining Company through its unincorporated railroad, and then they cancelled our divisions, and then we were entirely cut out at Grandin, and the question was whether we should build a mill at West Eminence in Shannon County——

Mr. Riddell: Did not they also notify you that they could not continue this trackage privilege over their line with a lumber company?

Mr. White: Yes, sir, they also informed us they could not continue the trackage agreement.

Examiner Burchmore: That seems to be a sufficient explanation for the purposes of this record.

2510 Examiner Gutheim: After the discontinuance of the operation at Grandin was the mill dismantled and moved to the place now known as West Eminence?

Mr. White: Yes, sir, a great portion of it.

Examiner Gutheim: Was that property moved by the power of the Salem, Winona & Southern or the Missouri Lumber & Mining Company over the line of the Frisco from Grandin to Winona Junction under the trackage agreement that you had?

Mr. White: Yes, under that trackage agreement.

Examiner Gutheim: As a matter of fact the trackage agreement you said provided only for the hauling of logs and logging camp supplies?

Mr. White: Yes, sir, and the machinery, of course, and I did not add that, but anything pertaining to the successful operation of our mills was permitted.

Examiner Gutheim: That is to say it was the understanding of your company that that old contract that was made back in 1887 contemplated that when that Grandin mill should be moved, if ever, you had the privilege of carrying that mill machinery over the line of the Frisco under those trackage rights as far as you desired?

Mr. White: I do not think it was contemplated, I do not think we intended to move the mill at the time it was made.

2511 Examiner Gutheim: But it was contemplated that the definition of the commodities that you were permitted to carry under that trackage agreement should take in mill machinery?

Mr. White: Yes, sir, it was contemplated that everything that was necessary to the successful prosecution of our lumber business at Grandin, between that and the forest, between the town of Grandin and the forest, we would be permitted to run our own logging trains over and carry our own material, and we carried lumber for our camps and——

Examiner Burchmore: Is it not a fact when any large mills are opened up in this southern pine territory that it is the custom or has been the custom of the railroads running south from Chicago,

for example, to put in special commodity rates to cover the movement of sawmill machinery and other supplies of that nature.

Mr. White: I think that is true.

Examiner Burchmore: I have observed a great many tariffs of that nature and ask whether that is not the fact.

Mr. White: Yes, sir. Mr. Riddell would be familiar with the tariff arrangements.

Mr. Riddell: Well, that was the custom more or less general, I think, when some of the mills in which Mr. White is in-
2512 terested in Louisiana were built seven or eight years ago, special rates were made on all the equipment of those mills. I wanted to ask whether this was of any importance, the movement of this tonnage from Grandin to West Eminence? It was strictly within the State, and I do not think any question ought to be raised as to its being regular.

Examiner Burchmore: Well, it has a general relation to the whole nature of that trackage agreement and arrangement. Have you any further questions along that line?

Examiner Gutheim: No, I had about finished on it.

Examiner Burchmore: It seems to me it is pertinent to this inquiry, although it may not be directly involved.

Mr. Riddell: Of course, it is understood that trackage agreement is no longer in existence east of Winona.

Examiner Gutheim: Yes, that is understood. The entire track of the Salem, Winona & Southern and the Missouri Lumber & Mining Company is of standard gauge?

Mr. White: It is.

Examiner Gutheim: That portion which is operated entirely by the Salem, Winona & Southern between Horse Hollow and Winona is about what weight of rails?

2513 Mr. White: It is chiefly—I think it all 56 pound.

Examiner Gutheim: Have you any station buildings along the line from Winona to Horse Hollow?

Mr. White: Yes.

Examiner Gutheim: At any place with the exception of West Eminence.

Mr. White: No station building for the accommodation of passengers except at West Eminence. At Horse Hollow the passengers occupy or use the store where tickets are sold at one end of the store.

Examiner Gutheim: About how many men have you in the railroad operation—that is, how many road crews have you?

Mr. White: We have three.

Examiner Gutheim: How many men in them?

Mr. White: I think 15.

Examiner Gutheim: State generally about how many employés in the transportation service?

Mr. White: I do not know whether I have that statement here. Have you got it, Mr. Riddell? It would be enough, anyhow, to equip two trains, and then an agent at West Eminence and
2514 a joint agent with the Frisco at Winona, and then our auditor and ticket agent.

Examiner Gutheim: Is your general office work all done at West Eminence?

Mr. White: The general office work, the transportation, we have an office in Kansas City for the general traffic manager.

Examiner Gutheim: But is the general office work at West Eminence done by employés who are solely railroad employés or joint employés?

Mr. White: Some of it is solely railroad employés.

Examiner Gutheim: Are the joint employés paid by the railroad company and a portion of the wages charged to the lumber company, or the other way round?

Mr. White: The Salem, Winona & Southern hired its own bookkeeper, and I am not sure whether any portion of the auditor's salary is charged to the Missouri Lumber & Mining Company, but I am under the impression that the auditor does some work for the Missouri Lumber & Mining Company, but most of his work is for the railroad company.

Examiner Gutheim: What train service is operated by the Salem, Winona & Southern, how many trains a day?

Mr. White: Two trains each way.

2515 Examiner Gutheim: Is passenger service taken care of in those trains?

Mr. White: Passenger service is well taken care of.

Examiner Gutheim: Do you handle any United States mail or express?

Mr. White: We handle United States mail.

Examiner Gutheim: You have no express contracts?

Mr. White: We have no express contracts.

Examiner Gutheim: Can you say what your total tonnage was in your last fiscal year, or if you have not been operating there a year, since you began operations, and how much was handled before the Missouri Lumber & Mining Company.

Mr. White: Yes, sir; Mr. Riddell, our traffic manager, will state it. I don't know whether he has been sworn yet.

(J. B. RIDDELL was then duly sworn.)

Mr. Riddell: The general tonnage for the last fiscal year was 64,572 tons. That was comprised of 56,107 tons of forest products and 8,465 tons of other freight. The Missouri Lumber & Mining Company contributed 53,301 tons of the forest products and the other interests 2,806 tons, and the Missouri Lumber & Mining Company contributed 5,310 tons of other freight than forest prod-

2516 ucts, and other interests contributed 3,155 tons. Would you like the revenue also?

Examiner Gutheim: Yes.

Mr. Riddell: The total revenue was $54,074.20, made up as follows: Forest products of the Missouri Lumber & Mining Company, $30,290.17; forest products outside interests, $1,408.93. Other freight of Missouri Lumber & Mining Company $14,036.37. Other freight of outside interests $8,338.73. I would like to say at this point in explanation that this other freight of the Missouri Lumber

& Mining Company, $14,036.37 is materially in excess of what the figures will be next year, or perhaps for several years to come by reason of the fact that the Salem, Winona & Southern charged for the transportation of all of the machinery and lumber and construction material of all kinds that entered into the building of the sawmill and planing mill at West Eminence, as well as all of the other buildings that go to make up that town. Excepting that tonnage, the freight other than forest products handled for outside interests exceeded that handled for account of the Missouri Lumber & Mining Company.

Examiner Burchmore: But for that year about $44,000 of the revenue came from the controlling interests, and about $9,000 outside?

2517 Mr. Riddell: Approximately.

Mr. Andrews: Could you state that in per cent; have you worked it out?

Examiner Burchmore: It is about 20 per cent.

Mr. Riddell: I have not worked out the percentage, but it is in the record.

Examiner Burchmore: Does that answer the request that has been made of the other companies?

Mr. Riddell: Yes.

(The statement so offered and identified, was received in evidence and thereupon marked Salem, Winona & Southern Exhibit No. 2, Witness Riddell, received in evidence December 16th, 1910, and is attached hereto.)

Examiner Gutheim: While you were operating the mill at Grandin, did the Frisco take the product of the mill right at that point?

Mr. White: Yes, sir. They took it at the station at their own sidings at Grandin.

Examiner Gutheim: Did the Missouri Lumber & Mining Company have to perform any actual service in getting that mill product to their siding?

Mr. White: Yes, sir, we owned——

2518 Examiner Gutheim: How much of a haul?

Mr. White: Well, it was not over—for our rough lumber, the way our tracks run, we would have to haul the rough lumber a mile, nearly a mile and a half. Our dressed lumber, the tracks connecting with our shed from the planing mill, it was not perhaps over a few hundred feet, 500 or 1000 feet.

Examiner Gutheim: In the operation of the new mill at West Eminence do you have to haul milled products down to Winona Junction for delivery to the Frisco?

Mr. White: The Salem, Winona & Southern?

Examiner Gutheim: Yes.

Mr. White: No, the Salem, Winona & Southern Railroad takes our product at the mill at West Eminence and hauls it to Winona Junction or down to Winona.

Examiner Gutheim: And there the Frisco gets it?

Mr. White: The Frisco gets it at Winona.

Examiner Gutheim: How much of a haul is it from West Emi-

nence to the point of interchange with the Frisco at Winona, approximately?

Mr. White: Something over 15 miles.

Mr. Riddell: I think it is 15.77.

2519 Mr. White: Yes, sir.

Examiner Gutheim: At the time of the operation at Grandin say for the last year you were at Grandin, about what was the average haul on the logs that were worked up in the mill?

Mr. White: The last year at Grandin we hauled our logs from West Eminence, and I think hauled them about 50 miles.

Examiner Gutheim: The log haul I suppose has been constantly increasing from the time that the Grandin mill had been erected?

Mr. White: Yes, sir.

Examiner Gutheim: That in part was the reason for the continuance of the mill at Grandin and the removal to West Eminence.

Mr. White: Yes, sir. It was not the reason we moved to West Eminence, but it was the reason we quit Grandin.

Examiner Gutheim: About what is the average haul on your logs to the West Eminence mill at the present time?

Mr. White: I think that is an average of about 12 or 15 miles. an average of 12 miles, I will say.

Examiner Gutheim: Is the operation of the railroad north of Horse Hollow entirely at the expense of the Missouri Lumber & Mining Company?

2520 Mr. White: The operation of the logging roads to Horse Hollow from West Eminence is entirely at the expense of the Missiouri Lumber & Mining Company. The Salem, Winona & Southern Railroad Company rents that portion between West Eminence and Horse Hollow, nearly 6 miles, for the use of their business, the railroad business, taking supplies up into that country for the Missouri Lumber & Mining Company's stores and for other stores, and lumber.

Examiner Gutheim: You mean that the Salem, Winona & Southern permits the Missouri Lumber & Mining Company to use the tracks between West Eminence and Horse Hollow?

Mr. White: It is different——

Mr. Riddell: The Salem, Winona & Southern is incorporated as a common carrier between West Eminence and Winona Junction, and this portion of the track between West Eminence and Horse Hollow is simply rented from the Missouri Lumber & Mining Company.

Mr. White: That is right.

Examiner Gutheim: Then I am to understand that the track operated by the lumber company begins at West Eminence and not at Horse Hollow?

2521 Mr. White: Yes, sir.

Mr. Andrews: I understood you to say that all the line you operated as a railroad was leased from the Missouri Lumber & Mining Company.

Mr. White: It is.

Mr. Andrews: I did not so understand the question asked of you, and I wanted to clear up the confusion.

Mr. White: The Salem, Winona & Southern as incorporated has the exclusive right to the road from West Eminence to the Frisco, some 15.7 miles. Then they rent five or six miles more of the lumber company to Horse Hollow.

Examiner Gutheim: Is the railroad operation a profitable operation?

Examiner Burchmore: May I interrupt. I think we shall call the Shreveport, Houston & Gulf. Are you ready?

Mr. Walter: We are ready.

Examiner Burchmore: There will be no other cases called until two o'clock.

Mr. White: It is a very profitable operation as a railroad, but largely due to the fact that we have had an unusual amount of freight in hauling machinery in and supplies for the new plant at West Eminence during the past year closed June 30th. It
2522 will not be as much next year or this year.

Examiner Gutheim: That is all.

Mr. Riddell: I do not know whether you stated, but I would like to get you to state whether or not the agent at West Eminence devotes his entire time to the affairs of the railroad, and gets all his compensation from the railroad?

Mr. White: He does.

Mr. Riddell: You stated that you maintained a stock pen and chute at Delaware, and I would like to ask whether or not you do not maintain one at West Eminence?

Mr. White: Yes, sir.

Mr. Riddell: And you actually use them in the shipment of live stock?

Mr. White: Yes, sir.

Mr. Riddell: Do you have any track scales for the weighing of carload freight?

Mr. White: We do. I should add that we also have shipped two carloads of sheep from Horse Hollow in the last year.

Mr. Riddle: The Salem, Winona & Southern Railroad does not handle logs for the Missouri Lumber & Mining Company?

Mr. White: No, not any logs.

Mr. Riddell: Your trains are operated on a regular pub-
2523 lished schedule, are they not?

Mr. White: Yes, sir.

Mr. Riddell: You have a time card and it is posted?

Mr. White: Yes.

Mr. Riddell: You have tickets on sale?

Mr. White: Yes.

Mr. Riddell: Both at Winona and West Eminence?

Mr. White: Yes, sir.

Mr. Riddell: In the interchange of the cars with the Frisco you are governed by the per diem rules, are you not?

Mr. White: Yes, sir.

Mr. Riddell: And in your relations with the shippers along your line, the Car Service Rules apply, do they not?

Mr. White: They do.

Mr. Riddell: This town of Eminence which is adjacent to West

Eminence, that is the county seat of Shannon County, is a town of several hundred population?

Mr. White: Yes, sir.

Mr. Riddell: It has stores and banks, one or more?

Mr. White: It has four or five good stores, and a bank, and it has a large hotel and the usual accommodations for a good town

2524 Mr. Riddell: Not quite as large as the Grunewald?

Mr. White: No, but it is built on the same plan; it is very extensive; it is built out of concrete and——

Mr. Riddell: All that community are dependent solely on the Salem, Winona & Southern as a means of transportation of persons and property?

Mr. White: Yes, sir.

Mr. Riddell: Did you seek a mail contract with the government, or did the government make a demand on you to handle the mail?

Mr. White: Our road did not seek the contract.

Mr. Riddell: That is what I am asking you.

Mr. White: No, the railroad did not.

Mr. Riddell: The first overtures were made by the government.

Mr. White: Made by the people in a petition, I think——

Mr. Riddell: I was only speaking of your relation to the government.

Mr. White: No, we did not seek it.

Mr. Riddell: Is the line betwen West Eminence and the junction of the Frisco through the lands owned by the Missouri Lumber & Mining Company.

Mr. White: The line between West Eminence and the

2525 Frisco for 13.7 miles is owned by other people. The Missouri Lumber & Mining Company never owned but one quarter section of 160 acres.

Mr. Riddell: These are not exclusive passenger trains, but are mixed trains?

Mr. White: Yes, sir.

Mr. Riddell: They are identical with the Frisco, I believe.

Mr. White: Yes, sir.

Mr. Riddell: The only difference being that in that section the Frisco only runs one train and you run two?

Mr. White: Yes, sir.

Mr. Riddell: Is the country along this line to its northern terminus susceptible of agricultural pursuits?

Mr. White: Yes, sir, it is.

Mr. Riddell: Is it being developed at all or any emigration into the territory along your line?

Mr. White: I see that the Emigration Commissioner published that there were 300 emigrants the past year into Shannon County.

Mr. Riddell: How long a cut has the mill of the Missouri Lumber & Mining Company?

2526 Mr. White: Only five years.

Mr. Riddell: Can you say how the volume of timber owned by the Missouri Mining & Lumber Company in this territory north of West Eminence compares with other interests?

Mr. White: We own about not more than one-fifth of the timber in that territory.

Mr. Riddell: Not more than twenty per cent?

Mr. White: Not more than 20 per cent. There are other companies which own a great deal more than we have. One company has 85,000 acres, while we only have 50,000 acres.

Mr. Riddell: When this timber of the Missouri Lumber & Mining Company is exhausted and the mill ceases to operate, this railroad will have to extend or in some other way find additional tonnage?

Mr. White: That is the intention, yes.

Mr. Riddell: The original intention, I believe, was not to take the road to Hot Springs, but up to somewhere near Salem?

Mr. White: That is the intention.

Mr. Riddell: I think there was a plan on foot at one time to couple up with the road of the Ozark Land & Lumber Company which runs south about 25 miles south of Winona?

Mr. White: Yes, sir, we tried to accomplish that.

2527 Examiner Burchmore: I understand you contemplated building across to reach the Frisco?

M. White: The Frisco and Salem. The Frisco Road runs through Salem to St. Louis, and then it also has a branch south of us, and we contemplate building and connecting up the Salem Road.

Examiner Burchmore: What advantage would accrue to you connecting with the Frisco at Salem?

Mr. White: The development of the coal and iron mines. There are a great many iron mines in Shannon County and a great deal of timber in Shannon County, and then the country is being developed by farmers and they need a railroad.

Examiner Burchmore: Has the Frisco held out any inducements to you in the shape of divisions to connect with their line?

Mr. White: We expect to get divisions. The road is getting divisions, but they held out no further inducements.

Examiner Burchmore: It is not anticipated that the result of a connection with the Frisco would be an increase in divisions?

Mr. White: No.

Mr. Riddell: I do not think that has been discussed at all.

2528 Mr. White: No, it has not been discussed at all.

Mr. Riddell: Is it your belief there is a necessity for a railroad in that country?

Mr. White: Yes, sir, and we were encouraged to build the railroad.

Mr. Riddell: I believe you have some figures showing the earnings of the road. Will you please state how much they earned the last fiscal year on passengers?

Mr. White: The passenger revenue for the year ending June 30th, $5,282.29.

Mr. Riddell: How much from mail?

Mr. White: $822.86.

Mr. Riddell: Would it be a reasonably safe assumption that the bulk of those people traveled between Winona and West Eminence?

Mr. White: The bulk of the people traveled between there and

West Eminence, but they are getting off at Delaware, and Buckhart and all stations.

Mr. Riddell: I only asked that to get at some idea of the number of passengers. We have that information filed, but I believe the rate between Winona and West Eminence is about 60 cents. It is based on four cents.

2529 Examiner Burchmore: Your report to the Commission shows the number of passenger miles.

Mr. Riddell: We did not have it before us here. You know, I believe, of the fact that it is contended by the intervenors in this case that the allowance of divisions gives an advantage to the mill served by roads who get those divisions and enables those mills to sell lumber at cheaper delivered prices than other people, and that they are actually used for that purpose. You know of that contention.

Mr. White: Yes, sir, I know that has been stated.

Mr. Riddell: In addition to being the President of this railroad you are general manager, are you not, of the Missouri Lumber & Land Exchange Company?

Mr. White: Yes, sir.

Mr. Riddell: And that I understand to be a selling agency handling the output of the Missouri Lumber & Mining Company, the Ozark Land & Lumber Company, the Louisiana Central Lumber Company, and the Louisiana Long Leaf Lumber Company?

Mr. White: That is right.

Mr. Riddell: No one interest owns or controls all those
2530 various lumber companies?

Mr. White: No.

Mr. Riddell: For instance, there is no stockholder in the Ozark Land & Lumber Company who owns any stock in the Missouri Lumber & Mining Company?

Mr. White: None.

Mr. Riddell: And no stockholders in the Missouri Lumber & Mining Company that owns any in the Ozark Company?

Mr. White: No.

Examiner Burchmore: Does one company own the other?

Mr. White: No.

Mr. Riddell: The principal interest in the Ozark Land & Lumber Company does not own any stock in any of the other companies?

Mr. White: No.

Mr. Riddell: And the principal interest in the Louisiana Central Lumber Company does not own stock in either the Louisiana Long Leaf Company or the Ozark Land & Lumber Company?

Mr. White: No, none.

Mr. Riddell: As a matter of fact, while some people are interested in most of the companies, there is no one or two
2531 or three or four people who control them all?

Mr. White: No.

Mr. Riddell: When a salesman for this Missouri Lumber & Land Exchange Company goes to sell lumber at a point like St. Louis or

Chicago or any point east of the Missouri River, as an illustration, he prices that lumber at a figure that includes the carriage to destination or a delivered price, so to speak?

Mr. White: Yes, sir.

Mr. Riddell: When he sells that lumber he does not know from what mill it is likely to be moved?

Mr. White: He does not.

Mr. Riddell: We will take St. Louis as an illustration or Chicago, as the situation is just the same. If he should sell to a dealer in St. Louis or Chicago some 10 or 12 carloads of lumber at one time, he knows nothing about who will ship that lumber except it will be some mill represented by the Exchange?

Mr. White: That is all.

Mr. Riddell: When that order reaches the office in Kansas City it will very probably be distributed as among all these mills in the event that the conditions at the various mills will permit?

2532 Mr. White: That is the plan we follow.

Mr. Riddell: The price has been fixed in advance and each one of these different mills, assuming that that division be made, will get the same delivered price?

Mr. White: Yes, sir.

Mr. Riddell: Out of which it will have to pay the freight rate?

Mr. White: Yes, sir.

Mr. Riddell: Do you know it to be a fact that any part of this lumber that may be shipped from Clarks or Standard on the Iron Mountain would move on a rate out of which the so-called tap line would receive a division of four cents, whereas if it were placed at West Eminence the tap lines would get three cents, and if it went to the T. & P. mill at Victoria the tap line would get two cents, and if it went to Foster on the Kansas City Southern the tap line would get one cent, whereas if it went to Winona the tap line would get nothing.

Mr. White: That is correct.

Examiner Burchmore: Are you trying to show that the divisions are grossly disproportionate to different points?

2533 Mr. Riddell: No. I am trying to show that the divisions to the tap line has absolutely nothing to do with the fixing of the price of the lumber so far as the mills represented by the Missouri Lumber & Land Exchange is concerned.

Examiner Burchmore: Suppose that is true, it might be true that the divisions materially affect the prosperity of the mills that receive them.

Mr. Riddell: I was not dealing with that at all, but only with the delivered price of the lumber.

Examiner Burchmore: Well, that may be so.

Mr. Riddell: It is in our case.

Mr. Andrews: Will you please state the delivered rate at St. Louis from each of the points you have named. You have stated the divisions.

Mr. Riddell: Well, from West Eminence it is 11 cents. From Winona 11 cents; from Fisher 18 cents; from Victoria 18 cents, and from Clarks and Standard 18 cents.

r. Andrews: And from the Ozark Mill?
r. Riddell: I stated that, 11 cents. The rates from Missouri made a differential of 7 cents per 100 pounds under the south, ather the rates from the south are made a differential of 11 cents per 100 pounds over Missouri, from what is known as the Grandin district.
Examiner Gutheim: You spoke of a couple of carloads of p which you took out of Horse Hollow?
r. White: Yes, sir.
xaminer Gutheim: You are getting more or less of that business n Horse Hollow all the time?
r. White: No, the stock business is just beginning to be loped. There has been a great deal of work done to develop country. The Governor and his staff were down there, and are trying to get that country settled up in the Ozark region, so they have got some people in there to raising sheep and cattle it is going to be a stock country largely.
xaminer Gutheim: The common carrier operation of the Salem, ona & Southern does not serve Horse Hollow, but only goes s far as West Eminence?
r. White: It serves as far as Horse Hollow.
Examiner Gutheim: I understood you to say that the Salem, ona & Southern did not go as far as Horse Hollow, but from West inence to Horse Hollow was all the Missouri Lumber & Mining Company's track.
Mr. White: It is, and so is all the track. They lease it to the Salem, Winona & Southern.
Examiner Gutheim: But as I understand it they do not run the ion between West Eminence and Horse Hollow.
r. White: But they do, and I so stated.
r. Riddell: I think the distinction is between leased and incor ated. The line is only incorporated up to West Eminence, but it exclusive use of the tracks to West Eminence, but beyond that ents it.
Examiner Gutheim: Have the people in Horse Hollow the right emand the common carrier services beyond West Eminence?
r. White: Yes, sir, it is being performed every day.
Examiner Gutheim: West Eminence is the point at which the ling operation of the Missouri Lumber & Mining Company is at sent conducted?
r. White: Yes, sir.
Examiner Gutheim: You say you have about five years of cut?
r. White: That is all.
Examiner Gutheim: Is there a written contract that provides for lease of this track from Winona Junction up to West Emin ence?
Mr. White: Yes, sir, there is.
Examiner Burchmore: Is it filed with the Commission?
r. White: I do not remember. I think it is, but it is filed with State Commission.
r. Riddell: We will file it.

Mr. White: We will file it, yes, sir.

Examiner Burchmore: You will file it if it is not already filed?

Mr. White: Yes, sir.

Examiner Gutheim: But the Salem, Winona & Southern as a corporation owns absolutely no railroad property?

Mr. White: No.

Examiner Gutheim: So if it should get out of that country it is not likely it is going to suffer any of the inconvenience that usually attends the cessation of a common carrier operation?

Mr. White: They will not unless they should be forced out by some unfortunate decision.

Examiner Gutheim: But if they should happen to get out they would not have any property as a railroad?

Mr. White: No, but we expect to make that railroad pay.

2537 Mr. Garwood: Do you ship any lumber to Texas?

Mr. White: No. That is out of our territory.

Mr. Garwood: Do you ship any to New Mexico?

Mr. White: No.

Mr. Garwood: To what extent do you ship to Kansas?

Mr. White: Mr. Riddell will know more about that.

Mr. Riddell: We ship quite largely to Kansas. West Eminence is not very far from the Missouri-Kansas State Line.

Mr. Garwood: Where do you ship the greater part of your product to?

Mr. Riddell: Into the State of Missouri.

Mr. Garwood: It is consumed locally in the state?

Mr. Riddell: Yes, sir, Kansas City and St. Louis are large consuming points, and St. Joseph.

Mr. Garwood: You ship nothing to Texas?

Mr. Riddell: No. Did you want to ask me about the divisions?

Mr. Walter: Could we not now have the captain state the weight of logs?

Mr. Cowan: Weight of logs, lumber, and the method of estimating the weight and scaling the logs.

Examiner Burchmore: I think we will ascertain that from

2538 the forest service, but if he wishes to make a very brief statement he may.

Mr. White: I will make a very brief statement, and it is this, that in Missouri logs running say 15 logs to the thousand will weigh from 7,000 to 10,000 pounds to the thousand. Now I think that is true in the south. It depends on the size of the logs. Logs that will run ten logs to the thousand I judge will weigh from 8500 to 9500, while logs that would run six logs to the thousand feet would only weigh from 7500 to 9000. I should correct my figure. 15 to the thousand run from 9000 to 10,000 pounds. Logs running ten to the thousand will weigh 8500 to 9500 pounds. Logs running six to the thousand will run from 7500 to 9000, and we all know that there are a great many logs that will sink, they are so heavy, that they are heavier than water, and I should judge in some localities five per cent sink as soon as they get into the water.

Examiner Burchmore: The Commission has in connection with

ne of these companies a statement handed to one of our examiners
y an operating official of the actual results of weighing logs, and
that will be looked up and considered in this connection.

539 Mr. Cowan: I want to ask a question or two in regard to this common sales agency. What is the name of the company
at is the common sales agent?

Mr. White: It is the Missouri Lumber & Land Exchange Company.

Mr. Cowan: Is that the same one which sells also for the Long-Bell interests?

Mr. White: No.

Mr. Cowan: There was somebody else here——

Mr. Riddell: That was Mr. Slagle, the owner of one of the Louisiana Companies.

Mr. Cowan: That is the same common sales agent which was spoken of by Mr. Slagle?

Mr. Riddell: Yes.

Mr. Cowan: You sell the lumber at the same price for each one of the mills?

Mr. White. Yes.

Mr. Cowan: And it results——

Mr. White: Well, I should correct that a little. There are some people who prefer Missouri Lumber because of its being lighter and so sometimes we have a sale and get a little better price for

540 the short leaf finish from Missouri than we can from the south.

Mr. Cowan: What I mean, the same quality of lumber is sold at the same price.

Mr. White: Yes, sir.

Mr. Cowan: And the mills sell the lumber at a delivered price to Kansas City, for example?

Mr. White: Yes, sir.

Mr. Cowan: And at Denver?

Mr. White: Yes, sir. Perhaps I should disabuse your mind as to how the price is fixed. A salesman is told that he must sell his lumber at the best he can in the market and we place a limit that we cannot let him go below. He gets as much above that as he can but it is the same to all mills. The order is divided up among the different mills and some days there are better prices than other days.

Mr. Cowan: And it is a delivered price?

Mr. White: It is a delivered price.

Mr. Cowan: And that price is not based upon the mill price at all?

Mr. White: No.

2541 Mr. Cowan: And this company's sales agency has by contract the right to sell the entire output of these mills except their local sales?

Mr. White: They have the right to sell from all of these mills but the mills themselves reserve the right to sell also. But they find it more economical not to put a salesman on the road because we can do it more economically by letting the central office sell the lumber.

Mr. Cowan: And as a matter of fact your sales agency does sell the output, whether the mills are bound to permit you to do it or not, as a business proposition it is better for them.

Mr. White: They sell most of it, but not all of it. Anybody can go to any of our mills and buy a carload of lumber, any dealer can.

Mr. Cowan: That is, any dealer can?

Mr. White: Yes, sir.

Mr. Cowan: But that is not the practice?

Mr. White: No.

Mr. Cowan: In case they do that does your agency get its commission?

Mr. White: We do.

2542 Mr. Andrews: Just for the purpose of clarifying the history you have given involving some little repetition, that I may not misunderstand the point, the lumber business was organized in 1885, I understood you to say?

Mr. White: Do you mean the incorporation of the Missouri Lumber & Mining Company, our lumber business?

Mr. Andrews: Yes.

Mr. White: It was organized in December, 1880.

Mr. Andrews: And the development of that produced all these railroad tracks you have been testifying about?

Mr. White: Yes, sir.

Mr. Andrews: And in 1908 a railroad company was incorporated?

Mr. White: Yes, sir.

Mr. Andrews: At that time your average lumber haul to the mill at its then location on the Frisco tracks, Winona Junction was that point?

Mr. White: No, at Grandin, hauling from the forest in Shannon County to Grandin.

Mr. Andrews: Was what distance?

Mr. White: About 50 miles.

Mr. Andrews: Then I understood you to say since you

2543 moved the mill it is about 12 miles?

Mr. White: Yes.

Mr Andrews: What makes that difference?

Mr. White: Because we built a mill closer to the forests and went into another county and built another mill close to the forests.

Mr. Andrews: And now you haul the finished product how far?

Mr. White: After it is made into lumber 15.7 miles.

Mr. Andrews: Now, as a matter of fact it takes about four carloads of logs to make one carload of finished product, does it not, average?

Mr. White: I expect it does, yes, sir

Mr. Andrews: So that the distance from where the mill is now located to the delivery at the Frisco is one car instead of four transported over your railroad?

Mr. White: Yes.

Mr. Andrews: The lumber company has been operating the rail-

ad company during all of these years as it has grown and devel-
ed substantially like you are operating it now.

Mr. White: We operated another railroad, not this one. This road was never operated years ago. This road has only
544 been built in the last three years.

Mr. Andrews: I do not understand that part. This is cent construction?

Mr. White: This is recent construction. The lumber company ilt the railroad. They built a railroad 50 miles southeast in an-her county, at a place called Grandin 23 years ago, and that rail-ad has been taken up.

Mr. Riddell: Have you a map there of Missouri? I think I can plain it.

Examiner Burchmore: It seems to me this is wholly in the rec-d.

Mr. Andrews: It may be fully in the record to those who under-and the physical situation there, but I have been trying very ard to follow these physical conditions and I do not understand em. I am not desiring any unnecessary repetition, but simply to t the facts so the record will reflect to a stranger what they are.

Mr. White: Perhaps I can state it briefly. We incorporated in ecember, 1880.

Mr. Andrews: The lumber company?

Mr. White: The lumber company, and a year from that
545 time we had a sawmill built and were hauling 10 miles to Mill Springs on the Iron Mountain, that is where we began auling our lumber 10 miles, with mules. Then we had to shut own and then we got this operation into Grandin and——

Mr. Andrews: I understood all that, but I did not understand the hysical conditions.

Mr. Andrews: You have spoken of the development of that coun-y by emigration. Under the census returns, as a matter of fact, 6 counties of Missouri, being the rural counties with few exceptions, ll showed a decrease in population in the last 10 years, did they ot?

Mr. White: I understood they did. I refer to the Globe Democrat f December 6th, in which W. H. Curran, the Commissioner of migration of the State of Missouri, made his report and he shows bout 300 emigrants into Shannon County last year.

Mr. Andrews: I was not questioning the correctness of your tatement, but about the facts as they had existed for the past ten ears. Tha is the result in the past 10 years in Missouri.

Mr. White: I have not examined it carefully, but I understand
in the main that is true. Some counties have lost in popu-
546 lation.

Mr. Andrews: How long has the mail been carried over his line?

Mr. White: I think it has been about a year.

Mr. Andrews: How long have passengers been carried?

Mr. White: Something over a year. I think we made a previous eport to the Commission a year ago.

Examiner Burchmore: Will you furnish a map of this line of the character requested of other lines?

Mr. Riddell: Yes.

Examiner Burchmore: And also a tonnage statement?

Mr. Riddell: We have furnished that.

Mr. Cowan: One question I wish to ask is whether there are any other lumber companies than the ones mentioned for whom your agency sells the output?

Mr. White: We do not sell for any other company.

Examiner Burchmore: Is this tap line a part of any other system of short line railroads?

Mr. White: No, it is not.

Examiner Burchmore: Mr. Riddell just happens to be traffic manager of several railroads?

Mr. White: He is a traffic manager of several roads, three
2547 different roads, yes.

Mr. Garwood: Do you see any logical connection between the decrease in population in Missouri and the increase in tap line mileage?

Mr. White: No.

Mr. Andrews: I asked that question because from the testimony it seems the only way to develop a country is to build a tap line, and I think in Missouri they had not been holding it down as they ought to.

Mr. White: The trouble is there are very few tap lines in this country.

Mr. Coleman: Under the method of selling, as you have explained what would be the comparative net price results at the mills, what you call Louisiana Company mill, as against your Ozark mill, having in mind the rates and the divisions to the tap lines?

Mr. White: It would conflict.

Mr. Coleman: The same kind of lumber shipped at the same time at the same delivered price.

Mr. White: Then they would not get as much if they paid more freight, they would not get as much net for their lumber.

2548 Mr. Coleman: What would be the comparative results. Ozark getting nothing, and the Louisiana Company's mill, or its railroad company, getting a division, what would be the comparative results to the respective common owners of the mills and the railroads?

Mr. White: The result as explained to me by the general manager and one of the largest stockholders of that road that belongs to the lumber company, the Ozark Land & Lumber Company, he said he considered he was doing just as well as he would to incorporate his road and abide by the requirements and the expense and liability that he would by incorporating, and therefore he would not incorporate and——

Mr. Coleman: It is your opinion then that the Louisiana Mill would suffer no particular hardship if the divisions were done away with entirely?

Mr. White: I spoke of their rights as railroads. The railroads would suffer if their divisions were taken away.

Mr. Coleman: I would like to put it in another way. Take the same kind of lumber, what is your average weight on lumber, take the mill out from one of these mills.

Mr. White: Say 2600 dry and green maybe it will average
2549 2600.

Mr. Coleman: The railroad serving the Ozark mill gets nothing?

Mr. White: They get nothing because that railroad is owned by the mill.

Mr. Coleman: What do I understand to be the allowance to the railroad serving the Louisiana Company's mill?

Mr. White: Four cents at Salem, and say to a common point north of the Ohio and east of the Mississippi four cents.

Mr. Coleman: Then on that business going to those particular markets four cents for 2600 pounds, that would be $1.04 better mill price that the Louisiana Company would get than the Ozark Company would get.

Mr. White: It would be $1.04 that the railroad company would get.

Mr. Coleman: I am assuming it is common ownership, that the holders and owners of the railroad and the lumber companies, that the Louisiana Company would get $1.04 more out of the net results of the railroad and the lumber company——

Mr. White: Yet you say that if the Louisiana Lumber Company had a railroad that was getting a division of four cents, and a
2550 man in Missouri or anywhere else had a railroad to the same market that did not get any division, that all conditions being equal that he would be the loser. But if the Louisiana Railroad is a railroad and is entitled to divisions and is going to remain as a railroad, that is a different proposition. It is not the number company.

Mr. Coleman: Well, I take t that there was a common ownership respectively in the two different concerns, that is taking the Louisiana Railway and the mill it serves as one, and the Ozark Company the other, and the question of the difference in mill price is what I was trying to get at.

Mr. White: Well, my stockholders hold stock in a great many different railroads, trunk lines, some of them.

(Witness excused.)

J. B. RIDDELL was called as a witness, and having been previously sworn, testified as follows:

Examiner Burchmore: Are these rates on a milling in transit basis?

Mr. Riddell: No, not at all. They do not handle the logs.

Examiner Burchmore: Do you have any contracts with other lines of railroads as to divisions?

2551 Mr. Riddell: No, only verbal agreements, no contracts—some are written.

Examiner Burchmore: What is the nature of those written agreements?

Mr. Riddell: They would be division sheets.

Examiner Burchmore: They amount to a division sheet?

Mr. Riddell: That is all.

Examiner Burchmore: What is the range of your divisions?

Mr. Riddell: From one to four cents per 100 pounds.

Examiner Burchmore: Is there any traffic on which you do not get a division?

Mr. Riddell: Yes.

Examiner Burchmore: What?

Mr. Riddell: The traffic handled on the combination of locals.

Examiner Burchmore: There are no joint rates out of which you receive nothnig?

Mr. Riddell: No, we would not be a party to a rate which we did not receive divisions on.

Examiner Burchmore: What is your local rate?

Mr. Riddell: I think four cents.

2552 Examiner Burchmore: Is there any traffic on which you receive more than four cents as a division, have you ever received more than four cents?

Mr. Riddell: This company never has.

Examiner Burchmore: Its predecessor?

Mr. Riddell: I believe perhaps 12 years ago there was a time when to a limited territory they got five cents. That division would average perhaps two and a half to two and three quarter cents.

Examiner Burchmore: Were the Grandin Mill's rates on a milling in transit basis?

Mr. Riddell: Yes.

Examiner Burchmore: Then the divisions formerly received also covered the logs into the mill?

Mr. Riddell: Well, the allowance was based on the handling of the logs in and switching of the manufactured traffic over, as has been explained.

(Witness excused.)

2553 *Shreveport, Houston & Gulf.*

L. D. GARRISON, was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: You are auditor and traffic manager of the Shreveport, Houston & Gulf?

Mr. Garrison: I am.

Examiner Burchmore: Are you an officer employed for any lumber company?

Mr. Garrison: I am an employé of a lumber company, the Carter-Kelly Lumber Company.

Examiner Burchmore: In what capacity do you serve that lumber company?

Mr. Garrison: Bookkeeper.

Examiner Burchmore: The Shreveport, Houston & Gulf connects with the Texas & New Orleans and the St. Louis, Southern Railway at or near Prestridge, Texas?

Mr. Garrison: It does.

Examiner Burchmore: Does it connect with the line of any other common carrier railroad?

Mr. Garrison: No.

Examiner Burchmore: Has it any private tram road connection?

2554 Mr. Garrison: We have a physical connection with the Carter-Kelly Lumber Company at Manning.

Examiner Burchmore: I understand that the stockholders of the Carter-Kelly Lumber Company and this railroad company are identical.

Mr. Garrison: They are.

Examiner Burchmore: They hold their shares in the two companies in proportion?

Mr. Garrison: Yes, sir.

Examiner Burchmore: I also understand that the officers of the two companies are substantially the same?

Mr. Garrison: There is one difference, in the vice-presidents.

Examiner Burchmore: The mill of the Carter-Kelly Lumber Company is located at Manning?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Is that one of the terminii of the line?

Mr. Garrison: Yes, sir.

Examiner Burchmore: That is approximately nine miles from the junction with these other roads?

Mr. Garrison: Yes, sir.

2555 Examiner Burchmore: And that junction point is the other end of the line?

Mr. Garrison: Yes, sir.

Examiner Burchmore: In other words this road runs from the junction to the mill?

Mr. Garrison: Yes.

Examiner Burchmore: When was this mill put into operation?

Mr. Garrison: The first shipments were made in February, 1907.

Examiner Burchmore: The first shipments were made at that time?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Was that the first cutting that had been done in the mill?

Mr. Garrison: Yes, sir, that was after the completion of the mill at Manning.

Examiner Burchmore: Then the railroad and mill were constructed at about the same time?

Mr. Garrison: Well, the railroad built its track into Manning before the saw mill was completed.

Examiner Burchmore: The saw mill outfit moved over the

2556 railroad to get to the mill?

Mr. Garrison: The machinery did and supplies and material.

Examiner Burchmore: When was the railroad incorporated?

Mr. Garrison: June 20, 1906.

Examiner Burchmore: Before its construction?

Mr. Garrison: Yes, sir.

Examiner Burchmore: What was the capital stock of the railroa corporation?

Mr. Garrison: $100,000.

Examiner Burchmore: What is the capital stock of the lumb company?

Mr. Garrison: $200,000.

Examiner Burchmore: How was the railroad company financed

Mr. Garrison: The capital stock authorized was $100,000, $50,0 of which was paid in in actual cash.

Examiner Burchmore: By the present stockholders, substa tially?

Mr. Garrison: Substantially, yes, sir.

Examiner Burchmore: Did that cash that was paid in for railroa stock pass through the treasury or the cashier or treasurer of th lumber company?

2557 Mr. Garrison: It did not.

Examiner Burchmore: Are there any bonds outstanding

Mr. Garrison: There are none.

Examiner Burchmore: Is there any other indebtedness?

Mr. Garrison: We have a bills payable account of $30,000 rig now.

Examiner Burchmore: What does that represent?

Mr. Garrison: That represents an amount borrowed in part t construct the road.

Examiner Burchmore: Then the road cost to construct abou $80,000.

Mr. Garrison: No.

Examiner Burchmore: Or more than that?

Mr. Garrison: The equipment and construction $106,000.

Examiner Burchmore: And of that $50,000 was raised from th sale of capital stock?

Mr. Garrison: Yes, sir.

Examiner Burchmore: And $30,000 is your present indebtedne to the lumber company——

Mr. Garrison: We do not own the lumber company.

Examiner Burchmore: From whom did you borrow it?

Mr. Garrison: We borrowed $30,000 from W. T. Carte

2558 & Brother?

Examiner Burchmore: Well, W. T. Carter & Brother ar the principal owners of this lumber company?

Mr. Garrison: They own stock, yes, sir; but we borrowed th money from W. T. Carter & Brother and not from the lumbe company.

Examiner Burchmore: They are substantially identical with th Carter-Kelly Lumber Company?

Mr. Garrison: They are interested.

Examiner Bruchmore: Do they not own the majority of th stock?

Mr. Garrison: No, I do not think they *are*.

Examiner Burchmore: You are not sure. They are not the ma jority stockholders?

Mr. Garrison: I do not think they are.

Examiner Burchmore: In addition to this $50,000 and this $30,000 you have previously owned some further sum that was put in for construction?

Mr. Garrison: Well, we have paid back quite a little amount on account.

Examiner Burchmore: What was the total indebtedness?

2559 Mr. Garrison: At one time I think we owed about forty or forty-five thousand dollars.

Examiner Burchmore: And you have paid back fifteen thousand dollars out of your net revenue?

Mr. Garrison: Substantially that amount.

Examiner Burchmore: Then the operations of the road have been conducted at a profit?

Mr. Garrison: Yes.

Examiner Burchmore: Is that a substantial profit?

Mr. Garrison: It is.

Examiner Burchmore: Has the road paid any dividends?

Mr. Garrison: No.

Examiner Burchmore: It is deferring the payment of any dividends until it has paid its debts?

Mr. Garrison: It did.

Examiner Burchmore: What is the mileage of this line, and is it standard or narrow gauge?

Mr. Garrison: Standard, nine miles.

Examiner Burchmore: And what weight of steel?

Mr. Garrison: 40 Pound steel except one mile which is 56.

Examiner Burchmore: Is that nine miles all owned?

Mr. Garrison: Yes.

2560 Examiner Burchmore: In addition to that nine miles you have some trackage rights?

Mr. Garrison: We have trackage rights over the Cotton Belt, from our junction at Prestridge to Huntington, a distance of about one and three-quarter miles.

Examiner Burchmore: Your contract covering those trackage rights also provides for the joint use of station facilities?

Mr. Garrison: Yes, sir.

Examiner Burchmore: That is on file with the Commission?

Mr. Garrison: It is on file with the Texas Commission. I do not know whether the Cotton Belt has filed it with the Interstate Commerce Commission or not?

Examiner Burchmore: I understand it is on file. Does it cross any streams?

Mr. Garrison: Nothing except——

Examiner Burchmore: You have not any large bridges?

Mr. Garrison: We have one about 1000 feet long, a trestle, wooden bridge.

Examiner Burchmore: Is the road well built or of light non-substantial construction?

Mr. Garrison: Well built, solid roadbed.

2561 Examiner Burchmore: Any station buildings of your own?

Mr. Garrison: We have.

Examiner Burchmore: Mention them.

Mr. Garrison: At our junction with the Cotton Belt and the T
N. O. at Prestridge we have a joint pagoda with the Cotton B
and we have another pagoda of our own at a station called Ke
which is six miles from Prestridge. At Manning we have a stand
depot building in every respects.

Examiner Burchmore: Have you any warehouses or platfo
aside from these structures you have just mentioned?

Mr. Garrison: We have our joint facilities you understand
Huntington in connection with the Cotton Belt.

Examiner Burchmore: But nothing else?

Mr. Garrison: No.

Examiner Burchmore: Have you any track scales for weigh
car load shipments?

Mr. Garrison: We have not at present but they are contempla
right now and I believe will be put in.

Examiner Burchmore: How many locomotives does the road ow

Mr. Garrison: Four.

2562 Examiner Burchmore: Passenger cars?

Mr. Garrison: We own one passenger coach and one co
bination mail baggage and express car.

Examiner Burchmore: How many freight cars?

Mr. Garrison: We own thirty-two.

Examiner Burchmore: How many of those are logging cars?

Mr. Garrison: None.

Examiner Burchmore: All freight cars?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Do you lease any equipment?

Mr. Garrison: You mean for our own use?

Examiner Burchmore: Either as lessor or lessee?

Mr. Garrison: We lease some of that equipment to the Cart
Kelly Lumber Company.

Examiner Burchmore: To them?

Mr. Garrison: Yes, sir.

Examiner Burchmore: What does the lumber company le
from this road?

Mr. Garrison: Three locomotives and thirty-one flat cars.

Examiner Burchmore: What do they pay for the locomotives?

Mr. Garrison: They pay a monthly rental of $5,292.53.

Examiner Burchmore: What is the basis—per locomotiv

2563 Mr. Garrison: No, that is for all the equipment, th
locomotives and thirty-one flat cars.

Examiner Burchmore: Is not that rather a modest charge?

Mr. Garrison: We do not think so.

Examiner Burchmore: You heard the other day perhaps the tes
mony to the effect that the Rock Island or the Iron Mountain,
have forgotten which, charged a certain tap line ten dollars a d
for the use of a locomotive without fuel or crew.

Mr. Garrison: We understand that $8 is a legitimate charge b
we figured, when we leased this equipment to Carter-Kelly Co
pany a depreciation charge of six per cent and on top of that a s

per cent interest charge which would practically amount to about twelve per cent on the investment.

Examiner Burchmore: And I suppose these were second hand locomotives.

Mr. Garrison: No, sir; one of them was. There were two new locomotives and one second hand.

Examiner Burchmore: Then you think that that is a fair and reasonable rental for that equipment?

Mr. Garrison: We felt that it was.

2564 Examiner Burchmore: Do you charge the same interest and take account of the same depreciation on the logging cars?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Who keeps these cars and equipment in repair?

Mr. Garrison: The lumber company.

Examiner Burchmore: There is a provision that they will take care of depreciation?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Is that inside or outside of the $200?

Mr. Garrison: I say they take care of depreciation. There is a fixed rental of this amount, but it does not say anything about depreciation. We took care of that, we used that basis when we fixed the rental charge against the lumber company.

Examiner Burchmore: If you were renting similar equipment from the Cotton Belt system would you consider you were getting it very cheap if you got it for the same sum?

Mr. Garrison: I should think so.

Examiner Burchmore: You would not think you were paying a very high rental?

2565 Mr. Garrison: No.

Examiner Burchmore: On the other hand would you think you were paying a rather low rental?

Mr. Garrison: I think it is entirely reasonable.

Examiner Burchmore: From both points of view?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Does the lumber company own any equipment of its own?

Mr. Garrison: No rolling stock.

Examiner Burchmore: What is the aggregate length of the private lines of this lumber company?

Mr. Garrison: I believe the Carter-Kelly line is about 7 miles long now.

Examiner Burchmore: That is moved from time to time?

Mr. Garrison: Well, that will be the main line; they have just finished constructing the main line and they will build trams out to it from time to time.

Examiner Burchmore: They have not been operating this very long?

Mr. Garrison: This is a new line. They were operating in another direction.

Examiner Burchmore: It has been changed recently?
2566 Mr. Garrison: In the last year.
Examiner Burchmore: How many track crews are employed on these rails?
Mr. Garrison: One.
Examiner Burchmore: Do they assist in maintaining and changing the tracks of the private logging road?
Mr. Garrison: No.
Examiner Burchmore: Do you have any men do that?
Mr. Garrison: No.
Examiner Burchmore: The lumber company attends to the maintenance of its own tracks?
Mr. Garrison: They do.
Examiner Burchmore: How many train crews has the railroad company?
Mr. Garrison: One.
Examiner Burchmore: And they operate the single locomotive that is retained in your service?
Mr. Garrison: Yes, sir.
Examiner Burchmore: The lumber company has three crews?
Mr. Garrison: It all depends on their logging operations; some times they do and some times they do not.
2567 Examiner Burchmore: How many employees are there engaged in general office work or supervising the work of this railroad?
Mr. Garrison: Two.
Examiner Burchmore: Do those men work for the lumber company also?
Mr. Garrison: Yes, sir.
Examiner Burchmore: How are they paid?
Mr. Garrison: They are paid a salary by the railroad company and also by the lumber company.
Examiner Burchmore: Now, does the railroad company actually hand those men any money?
Mr. Garrison: We voucher them direct.
Examiner Burchmore: The voucher goes through the lumber company?
Mr. Garrison: No.
Examiner Burchmore: Does the railroad company pay the lumber company any sum whatsoever on account of the services rendered by the lumber company's employees?
Mr. Garrison: Not unless it is in the case of an emergency. For instance, if we had a muck on the line and it is necessary to
2568 get other section men on some occasions you understand we would expect to voucher the lumber company for it and would do it.
Examiner Burchmore: Who are those two men who work for both companies?
Mr. Garrison: The president and general manager and myself.
Examiner Burchmore: That is three.
Mr. Garrison: Well the president and general manager is the same.

Examiner Burchmore: Then there are no clerks employed by both companies?

Mr. Garrison: No.

Examiner Burchmore: Are you paid by the lumber company and the railroad company both?

Mr. Garrison: Yes, sir.

Examiner Burchmore: What proportion of your salary is paid by the railroad company?

Mr. Garrison: You mean what proportion is paid by the lumber company?

Examiner Burchmore: Well, what proportion is paid by the railroad company?

Mr. Garrison: About two-fifths.

2569 Examiner Burchmore: Do you divide your time rather evenly between the two companies?

Mr. Garrison: I think so. Well——

Examiner Burchmore: What about the president, what is his salary from the railroad company?

Mr. Garrison: His is a monthly salary.

Examiner Burchmore: What is the amount of the president's salary from the railroad?

Mr. Garrison: $50 a month.

Examiner Burchmore: He also receives compensation from the lumber company?

Mr. Garrison: He does.

Examiner Burchmore: Does he render any real services for that $50?

Mr. Garrison: He does.

Examiner Burchmore: You run passenger trains?

Mr. Garrison: We run mixed trains.

Examiner Burchmore: How many mixed trains?

Mr. Garrison: We run double daily service, that is two trains each way.

Examiner Burchmore: Two trains each way?

Mr. Garrison: Yes, sir.

2570 Examiner Burchmore: On a regular time schedule?

Mr. Garrison: Yes, sir. I should qualify that, except Sunday.

Examiner Burchmore: No trains on Sunday?

Mr. Garrison: No.

Examiner Burchmore: You carry the mails on these trains?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Carry passengers for hire?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Do those passengers ever have tickets?

Mr. Garrison: Yes.

Examiner Burchmore: Some on tickets and some pay train fare?

Mr. Garrison: Yes.

Examiner Burchmore: How many freight trains do you run in addition to these two mixed trains?

Mr. Garrison: We do not run any.

Examiner Burchmore: Do you have any special logging trains?

Mr. Garrison: No.

Examiner Burchmore: How many cars are there in those
2571 trains on the average?

Mr. Garrison: I should think they would average up to five or perhaps six cars.

Examiner Burchmore: Of logs and everything?

Mr. Garrison: No logs, at all. Lumber and the passenger coach.

Examiner Burchmore: You do not handle any logs to the mill?

Mr. Garrison: No, we do not.

Examiner Burchmore: The private tram lines are all behind the mill?

Mr. Garrison: Yes.

Examiner Burchmore: Do you endeavor to comply with all the state and Federal laws?

Mr. Garrison: We do.

Examiner Burchmore: Are the cars and locomotives equipped with safety appliances?

Mr. Garrison: They are.

Examiner Burchmore: How about the cars and locomotives operated by the lumber company?

Mr. Garrison: They are never on our track but they are equipped with air appliances and one of your Examiners was down
2572 to the place not long ago and he recommended that we make some improvements on them, that is from a general point of view, but he said it would not be necessary so far as the operation was concerned by the railroad company.

Examiner Burchmore: What is the valuation of this road, what is it worth?

Mr. Garrison: The whole road, equipment and everything?

Examiner Burchmore: Yes.

Mr. Garrison: Well, it actually cost us over $106,000.

Examiner Burchmore: Has the road ever paid a dividend?

Mr. Garrison: No.

Examiner Burchmore: You have supplies of tickets and bills of lading and letterheads and so forth?

Mr. Garrison: Yes, sir.

Examiner Burchmore: Is there any further examination counsel wishes to make of this phase of the company's operation? We will reserve until after recess the question of rates and divisions and the manner of handling tonnage, and traffic.

Mr. Walter: How wide is the right of way?

2573 Mr. Garrison: 100 feet.

Mr. Walter: How are the trains operated?

Mr. Garrison: You mean so far as the schedule is concerned?

Mr. Walter: Yes.

Mr. Garrison: They are on a published schedule each way, both trains.

Mr. Walter: Regularly published schedule?

Mr. Garrison: Yes, sir.

Mr. Walter: How much did that station at Manning cost you?

Mr. Garrison: $1,237.22.

Mr. Walter: That was built as the result of an order by the Texas State Commission?

Mr. Garrison: It was.

Mr. Walter: Are you recognized by the Texas State Commission as a common carrier?

Mr. Garrison: We are.

Mr. Walter: Do you observe the hours of service law, both state and national?

Mr. Garrison: We do.

2574 Mr. Walter: As a matter of fact the majority of the capital stock of the railroad is not owned by Carter & Brother, is not that true, as a company?

Mr. Garrison: How is that, now?

Mr. Walter: The majority of the capital stock of the railroad is not owned by W. T. Carter & Brother?

Mr. Garrison: It is not.

Mr. Walter: Is that railroad permanent in every sense of the word, roadbed and rails and ties?

Mr. Garrison: It is.

Mr. Walter: What character of ties do you have?

Mr. Garrison: Standard solid oak ties, white oak I think it is, post oak.

Mr. Walter: Was this railroad constructed under the supervision and survey of an engineer?

Mr. Garrison: It was.

Mr. Walter: This road was constructed prior to the time the machinery and mill went in?

Mr. Garrison: Yes, sir.

Mr. Walter: In pursuance of a charter regularly secured from the state authorities?

Mr. Garrison: Yes.

2575 Examiner Burchmore: It has held itself out to the public that you could serve as a common carrier?

Mr. Garrison: It has in every respect.

Mr. Walter: Can you state whether or not the Texas State Commission made a physical inspection before formally recognizing it?

Mr. Garrison: They did. Judge Storey, at that time chairman of the State Commission, made a personal inspection.

Examiner Burchmore: When was this inspection and the road recognized?

Mr. Garrison: He inspected it in the last part of February, 1908.

Mr. Walter: You have a copy of that formal order?

Mr. Garrison: Yes, sir.

Mr. Walter: We will ask to have it made part of the record, unless you think it is not material.

Examiner Burchmore: What light will it throw on the question?

Mr. Walter: It shows recognition by the Commission.

Mr. Garwood: It is a declaration by that body that it is physically fit to act as a common carrier.

Examiner Burchmore: Does that go into the details of the character of the road?

2576 Mr. Garwood: No, it makes no finding as to that, but it makes it for that purpose.

Examiner Burchmore: Then you state that such a document was entered?

Mr. Walter: It was.

Examiner Burchmore: That is sufficient.

Mr. Walter: You carry mail?

Mr. Garrison: We do.

Mr. Walter: Express?

Mr. Garrison: We do.

Mr. Walter: Passengers?

Mr. Garrison: Yes, sir.

Mr. Walter: And freight for anybody and everybody that they offer it to?

Mr. Garrison: Yes, sir.

Mr. Walter: Do you not have loading points along this line?

Mr. Garrison: We do.

Mr. Walter: At what places?

Mr. Garrison: McConnico and Kelly, two intermediate stations.

Mr. Walter: Speaking generally what class of freight do
2577 you handle aside from forest products?

Mr. Garrison: Merchandise and grain products.

Examiner Burchmore: We will go into the question of the character of traffic after recess.

Mr. Walter: You operate a passenger train into Huntington?

Mr. Garrison: We do.

Mr. Walter: What size town is Huntington?

Mr. Garrison: I should judge seven or eight hundred.

Mr. Walter: About how many people live along the line of the Shreveport, Houston & Gulf?

Mr. Garrison: I should judge about 500.

Mr. Walter: This is entirely a farming country?

Mr. Garrison: No, not entirely.

Mr. Mantooth: He means from Manning to Huntington.

Mr. Garrison: That is principally farm land, that is cut over.

Mr. Walter: None of the right of way from Prest Ridge to Manning is owned by the lumber company?

Mr. Garrison: No.

(Whereupon at 1 P. M. recess was taken until 2 P. M.)

2578 After Recess.

Mr. Ziebold: I desire to present this request for the purpose of the record as follows:

On behalf of the lines represented by myself I wish to ask that the Commission require the various trunk lines interested to file with the Commission as soon as possible a narrative statement of their respective origins, original length, amount of rolling stock and equipment and other details which will show in a practical way how considerable they were in the beginning and their gradual growth and increase from that time up to the present time. It being our con-

tention that the trunk lines of today were possibly in no better situation in their early days than the short lines of today are now.

Secondly, that the Santa Fe and the intervenors here be requested to file a detailed statement with the Commission as soon as possible showing the number and location of so-called tap lines purchased by the Santa Fe from the various intervenors or any of their community or associated interests and the purchase price, and all contracts and other conditions as to right of trackage and otherwise connected therewith, as forming a part of the transaction of pur-
2579 chase and sale.

Third, that the intervenors be requested to file as soon as practicable with the Commission copies of their f. o. b. mill and delivered price lists and their various concession sheets, such as they have had during the last four or five years and have at the present time. The object of this request being that inasmuch as the present hearing has given the trunk lines and the intervenors abundant information as to the origin, conditions, contractual and other relations of the short lines which they can procure by securing copies of the record and prepare themselves for any further hearings or proceedings, that this detailed information will enable the representatives of the short lines to acquire some advance information and be better prepared to conduct examination and elicit information on those subjects at any further hearings or proceedings to be held hereafter.

Examiner Burchmore: Do you feel that you need all that information, Mr. *D*iebold?

Mr. *D*iebold: I may not need it, but others may. I feel that it is necessary and just for the purposes of a complete record and the full enlightenment of the Commission.

2580 Examiner Burchmore: How do you apply that request, for example, to a specific case? Take the Rock Island, you say, what was the Rock Island in the beginning. Do you want them to analyze each mile of their track? You know it is made up of a number of small lines.

Mr. Ziebold: That is the very proposition I want to elicit, how they were made up and at what different times and through the connection of what tap lines.

Mr. Jeffery: We have a hundred and twenty or more difficult companies, and it would be a big undertaking.

Examiner Burchmore: Yes, it seems to me that is a large request It is a request that will be noted on the record. I cannot indicate whether the Commission will make that request of the carriers or not. I suggest, however, that you renew your request for such detailed information in a formal communication addressed to the Commission, in other words, this record may not be written out and reach the Commission for a fortnight and if you will address a separate letter as to each request, that is, to say, one request as to trunk lines, and another request covering the desired information from the intervenors, those letters will receive the particular attention of the Commission.

2581 Mr. *D*iebold: I will do that in addition to the request that has gone into the record.

Mr. Garwood: Before Mr. Ziebold goes, I wish to make just this suggestion. Now a request for specific information as to any specific matter at any specific date, of course is entirely reasonable, and we would be glad to comply with it. I perhaps will prefer some request of that sort later on in this hearing; but it would be extremely burdensome, especially so with our line, some of which started back as far as 1854; and if we had to comply with his request we would have to dig up ancient history that would cover a large volume and a great deal of effort. And while of course I want to comply with the reasonable request, still that would entail an immense amount of historic delving that personally I have not got time to go into, and I doubt if the shifting officers know this ancient history. We have changed ownership and even organization two or three times within this half century or more.

Examiner Burchmore: I understand you regard that request as a little broad.

Mr. Garwood: That was the point I was suggesting. It covers not only too much territory but too much time.

2582 Examiner Burchmore: I think it must be apparent to any one that if the Commission feels that this request is entirely too broad it will have to do either of two things, deny the whole request or have to demand that in part. I suggest you make your request just as narrow as you can in consideration of the rights of your client.

Mr. Ziebold: I will state as far as I am concerned and the interests I represent if there is a practical, substantial compliance with the request, such as the Commission in its judgment thinks adequate and sufficient, that will be sufficient for us. We do not mean to require any detailed information as to any specific point, but such a compliance as would give in substance the information covering the subject as in the judgment of the Commission we may properly expect.

Examiner Burchmore: Would it suffice for your purposes if the Iron Mountain, through Mr. Jeffery, should state that there are now embodied in its line of railway some thirty or forty small lengths of tracks, which while originally separately organized *and* separately operated tap lines?

Mr. Ziebold: Yes, if he will state their original termini and from whom they were acquired and what was the considera-

2583 tion and whether it was a cash transaction or whether there were any contractual relations which existed thereafter or even now may still be in existence. There has been a careful inquiry into the contractual relations of the tap lines and lumber mills and I think that it is only just that the present trunk lines show their hands also.

Mr. Jeffery: I think all that information has been asked for by the Commission; it is in that series of questions they sent out in the trunk lines rate advance case. I know all that as to whom we brought property from and acquired our subsidiary lines from, the Commission's questions were very complete and comprehensive and they are being prepared now by the various lines. I think all this

will be filed by the Commission and I think you will get a very complete report there of all those matters.

Mr. Andrews: So far as the requests made of the intervenors are concerned, it seems to me that it is utterly irrelevant to the course of inquiry that has been conducted here. In the early stages of the proceeding the Commissioner declined to permit any inquiry into any sort of lumber company operations except as they related absolutely to the tap lines operated in connection with the lumber
2584 companies, and certainly schedules of prices and price lists and concessions off and things of that kind have never been in the case, and I cannot see how they can have any place in the case. I do not know why the position in a lawsuit entitles another party to that suit to information that is not involved in the lawsuit.

Examiner Burchmore: I feel sure that the Commission will not grant any request for information to be furnished by the intervenors before ascertaining from the intervenors whether they have any objection to furnishing such information and giving you an opportunity to object to the specific inquiry.

Mr. Andrews: I did not think myself that the Commission would enter an order of that character in view of this investigation, but I wanted to note an objection of record, as the request had been made of record.

Examiner Burchmore: That is perfectly proper.

Mr. Garwood: As to that branch of the inquiry where the gist of the controversy is that the intervenors are being discriminated against unjustly and unduly, it occurs to me that the request of counsel is eminently just and proper, and I think that is of the very essential gist and soul of the complaint lodged by the inter-
2585 venors in this case, and that is information which would be peculiarly within their knowledge and which I assume they should have no objection to furnishing.

Examiner Burchmore: I did not grasp the precise nature of the information which Mr. *Diebold* wished the intervenors to furnish, but it is understood that he will renew his request in writing addressed to the Commission at Washington and the Commission will take such action as it deems proper. The objection of the various parties to furnishing this information will be noted in the record and I think there is nothing further to be said at this time.

Mr. Ziebold: Except when we do that we will do it in addition to this request and not in substitution of this request.

Examiner Burchmore: I want to call the names of all the cases which have not been disposed of or heretofore called for hearing, with the object of ascertaining whether the parties are ready at this time to proceed with the hearing. I therefore request that counsel or representatives of these lines will indicate as the names are called first, whether they would prefer that the hearing with respect
2586 to their particular lines should be deferred until a date hereafter to be fixed, or whether they would prefer to have the hearing go on with respect to their company at this time, tomorrow, or Monday, or just what their position is with respect to an immediate hearing or a postponement.

Is the De Queen & Eastern Railroad present?

Mr. Kirkpatrick: Yes; we have been here ever since the day before the Commission began work and have been ready all the time, and yet unless we could be heard today or certainly tomorrow it would suit us better if we could be heard at St. Louis or Kansas City or some place nearer home. We are willing to suit our convenience to the convenience of the Commission but do not believe if there is any possibility that we could be heard in St. Louis or Kansas City that we would care to take our chances to wait over until next week here for a hearing.

Examiner Burchmore: The Galveston, Beaumont & Northeastern?

Mr. Walter: We are ready to be heard on Saturday, but I will say as to this line, as in regard to almost all I represent that we are ready to go on until the hearings conclude but are perfectly
2587 willing to conform to the convenience of the Examiner or the Commission, having in mind of course that if there is a postponement of the hearing that the existing status may be maintained and the suspension may be held in effect until there can be a determination of the question.

Examiner Burchmore: In general then, the clients you represent will be perfectly agreeable to having their cases tried in turn as late as Monday or Tuesday?

Mr. Walter: Some of them would prefer to be heard today or tomorrow, but others of them the first part of next week. As to the individual lines I would want to make a special answer as to those.

Examiner Burchmore: The Gulf & Sabine River Railroad.

Mr. Sugar: I represent that road and Mr. Walden, the witness, is not in the room. I would prefer to see him before definitely answering.

Mr. Garwood: Is that the Gulf & Sabine River?

Mr. Sugar: I made a mistake. The Sabine & Northern is what I represent.

Mr. Garwood: I am authorized to state that the Gulf & Sabine River, having waited some time, would prefer to let the matter
2588 go over until the next hearing rather than wait over until Monday.

Examiner Burchmore: But you will be ready tomorrow?

Mr. Garwood: I hardly think so, your Honor.

Examiner Burchmore: The Loring & Western Railway?

(No response.)

Examiner Burchmore: The Louisiana & Eastern Railway?

(No response.)

Examiner Burchmore: The Louisiana Central Railroad?

Mr. Church: We would prefer a postponement until some other time at St. Louis.

Examiner Burchmore: The Mansfield Railway & Transportation Company.

Mr. Walter: We are ready today, if we can get a hearing to-

day. If not, the matter can go over under the conditions I have referred to.

Examiner Burchmore: You would not want that heard Monday?

Mr. Walter: I think not. We would rather have it go over than to do that.

Examiner Burchmore: The Missouri & Louisiana Railroad?

Mr. Sargent: Rather than wait until Monday we would prefer to go over until some future time, but I am ready this after-
2589 noon or tonight, and if it can be reached tomorrow we would rather stay until tomorrow night and get through with it.

Examiner Burchmore: The Sabine & Eastern Railway.

Mr. Kirkpatrick: I suggested we were willing to submit that on the Examiner's report if satisfactory to the Commission.

Examiner Burchmore: I do not know what you mean by satisfactory to the Commission.

Mr. Kirkpatrick: Well, unless the Commission on its own behalf desires further testimony or desires to make an additional examination, we have not any witnesses here today and it would have to be at a later date.

Examiner Burchmore: Do I understand you do not care to put in any testimony in support of your contention that you are a common carrier and entitled to participate in divisions?

Mr. Kirkpatrick: I think the examination the Commission has already made and the reports show the physical condition of the road. It is an independent corporation and regularly incorporated under the laws of Louisiana.

Examiner Burchmore: If you are not prepared for hearing
2590 and do not desire to put in any testimony it may be that the Commission will regard the case as abandoned.

Mr. Kirkpatrick: I would not care to have that done, but as I say we have not our evidence here today. We had it some days ago, but we were unable to get the witnesses today or possibly tomorrow.

Examiner Burchmore: Will you be ready tomorrow?

Mr. Kirkpatrick: I do not think we could get them here.

Examiner Burchmore: Would you be ready Monday?

Mr. Kirkpatrick: I would prefer not to try to be here Monday, but if our other case should go to a subsequent date we could be ready then.

Examiner Burchmore: What is your other case?

Mr. Kirkpatrick: The De Queen & Eastern.

Examiner Burchmore: That is going to be called today.

Mr. Kirkpatrick: Very well.

Examiner Burchmore: The Sabine & Northern Railroad.

Mr. Sugar: That is the one I referred to just now. We are ready now, but as to what would be our pleasure if it could not be reached today or tomorrow, I am not able to say.

2591 Examiner Burchmore: The Blythesville, Burdette & Mississippi River Railway. Is that company not represented?

Mr. Coleman: I understand that counsel from St. Louis representing that road, but they are not in the room.

Examiner Burchmore: The Wilson Northern Railroad.

Mr. Coleman: The Wilson Northern is ready but I cannot get them here today. We will have to go over.

Examiner Burchmore: You will be ready Monday?

Mr. Coleman: No, we could not possibly.

Examiner Burchmore: Would you be ready tomorrow?

Mr. Coleman: Yes, but my purpose is unless it can be tried today to let it go over.

Examiner Burchmore: The Manila & Southwestern.

Mr. Gautney: I want to suggest this. It is very essential that we get that, in order to know something of the conditions of affairs. If there is to be any continuance of the hearing I would like to inquire at this time as to when that order which restored the lumber rates becomes ineffective. Do I understand it is January 1st?

Examiner Burchmore: January 5th, if there is no extension.

Mr. Gautney: In this line which I represent there is a
2592 great deal of business we handle other than lumber. At present our lumber rate is restored, but our great difficulty is handling other commodities and for that reason we would like to be heard at this time if possible.

Examiner Burchmore: Do you desire a hearing at this time?

Mr. Gautney: Yes.

Examiner Burchmore: Will you wait until you get it?

Mr. Gautney: I do not know whether I can or not. I have about reached my limit. Now, if there is any possibility of its being heard I would like it to be heard.

Examiner Burchmore: Or tomorrow?

Mr. Gautney: That would be all right?

Examiner Burchmore: How about Monday?

Mr. Gautney: I cannot be here Monday. If the next hearing is to be in St. Louis of course we could go there much easier than to come here.

Examiner Burchmore: The Beaumont & Saratoga Transportation *Transportation* Company.

(No response.)

Examiner Burchmore: The Peach River & Gulf Railway.

Mr. Walter: Saturday or Monday or a continuance.

2593 Examiner Burchmore: The Riverside & Gulf Railway.

Mr. Walter: The same order.

Examiner Burchmore: The Beaumont & Great Northern?

(No response.)

Examiner Burchmore: The Livingston & Southeastern.

(No response.)

Examiner Burchmore: The Moscow, Camden & San Augustine.

Mr. Mantooth: We are ready today and will be tomorrow or Monday or Tuesday, whenever you reach us.

Examiner Burchmore: The Timpson & Henderson, formerly the Timpson & Northwestern.

(No response.)

The Caro Northern Railway.

Mr. Saner: I have been in attendance and very much desire a hearing this week if possible. If it is not possible we will continue until Monday.

Examiner Burchmore: The Trinity Valley & Northern.

Mr. Baldrach: We are ready to go on.

Examiner Burchmore: The Nacogdoches & Southeastern.

Mr. Walter: We are ready in that or to go over for a future hearing. We would like to have it disposed of. There are three held by joint interests, the Nacogdoches & Southeastern, the Mans-
2594 field Railway & Transportation Company, and the Louisiana & Pine Bluff, and we would like to have them heard at the same time if they can be.

Examiner Burchmore: The Mangham & Northeastern.

Mr. Gilly: If it does not jeopardize our interests we would like to have it postponed until a future time. I understand there will be a future meeting in Kansas City or St. Louis.

Examiner Burchmore: I am not sure about it.

Mr. Gilly: We are ready for a hearing today or tomorrow.

Examiner Burchmore: Will you be here Monday?

Mr. Gilly: I can, but I would rather not.

Examiner Burchmore: The Jefferson & Northwestern.

(No response.)

The Gideon & North Island Railroad.

Mr. Walter: We would like to get a hearing on that today or tomorrow and if not I think it would suit Mr. Anderson better to have a hearing in St. Louis of on another date.

Examiner Burchmore: The Memphis, Dallas & Gulf.

(No response.)

—. The Arkansas Southeastern.

2595 Mr. Walter: Either today or tomorrow or at a later date.

Examiner Burchmore: Will you be ready Monday?

Mr. Walter: Yes, sir.

Mr. Jefferson: About that Memphis, Dallas & Gulf, I suggest if you have a future hearing they be notified in some way. I am afraid they are under some misapprehension as to their exact status in this case.

Examiner Burchmore: Is not that owned by some Chicago people?

Mr. Jeffery: I do not know by whom it is owned but I know we have divisions on all classes and commodities with them and our traffic people told me it is quite an embryonic trunk line.

Examiner Burchmore: Is it a good deal better road than the Tremont & Gulf?

Mr. Jeffery: I would not like to make any invidious comparisons——

Mr. Garwood: There are so few better roads than that that I question it.

Mr. Jeffery: I would not like to say as to that. I really do not know, I am not in a position to say.

2596 Examiner Burchmore: The Eldorado & Wesson.

Mr. Walter: We will be ready whenever the Commission reaches us.

Examiner Burchmore: The Fordyce & Princeton Railway.

Mr. Walter: The same thing.

Examiner Burchmore: The North Louisiana & Gulf Railroad.

Mr. Walter: We would like to get a hearing on that today or tomorrow and if not it had better go over.

Examiner Burchmore: The Wyandotte & Southern Railway.

(No response.)

The Lester & Ouachita Valley Railway.

(No response.)

Examiner Burchmore: The Little Rock, Sheridan & Saline River.

Mr. Cone: That has been heard.

Examiner Burchmore: The Louisiana & Pine Bluff.

Mr. Walter: If we can get a hearing today or tomorrow we would like to have it. If not the matter can go over.

2597 Mr. Jeffery: Your Honor there is one that I suggest go over. I am very anxious to get away and that is the only one of the Iron Mountain roads that I think I would like to stay and hear, and if there is to be a further hearing I would like to ask that that be put over, and I will be able to attend to it. I have to leave myself today, and cannot hear it unless it can be heard this afternoon.

Examiner Burchmore: The Mississippi Valley Railroad.

(No response.)

Examiner Burchmore: The Mississippi Valley Railway has been heard.

The Natchez, Ball & Shreveport.

Mr. Wilson: I understood you called the Blythesville, Burdette & Mississippi River Railway.

Examiner Burchmore: Are you ready for a hearing?

Mr. Wilson: Yes, sir.

Examiner Burchmore: Will you be ready for a hearing Monday?

Mr. Wilson: No, sir; I am very much ready today.

Examiner Burchmore: Can you be heard tomorrow?

Mr. Wilson: If we cannot be heard today we could be heard tomorrow.

2598 Examiner Burchmore: The Paragould & Memphis Railway? An appearance has been entered by Mr. John B. Daish, but he has not appeared yet.

The Red River Valley Railroad.

(No response.)

Examiner Burchmore: The Texas Southeastern Railroad.

Mr. Greer: We are ready. I presume we will be the next one called and we want a hearing.

Examiner Burchmore: How long will that case take?

Mr. Greer: It ought not to take much more than an hour.

Examiner Burchmore: That is quite a railroad.

Mr. Greer: Yes, sir.

Examiner Burchmore: The Thornton & Alexandria Railway.

Mr. Walter: We would like to get a hearing on that. I think it will be reached this afternoon on the regular call of the Cotton Belt connections.

Examiner Burchmore: There seem to be twenty-six roads ready for hearing. I think the best thing to do and the course that will be pursued unless there is too much objection, is to continue the regular call today and tomorrow and continue the hearing Monday and proceed through until we have disposed of all the cases
2599 that can be heard. Now several have responded that they would be positively unable to be heard Monday. I am willing to try to make up a little calendar of the cases that will be reached today or may be reached today and those that will or may be reached tomorrow and also those who have to go over to next week. I cannot do that until adjournment this afternoon.

Mr. Garwood: Some of our witnesses in the Gulf & Sabine River Railroad are compelled to leave to fulfill important engagements and they cannot possibly be back Monday.

Examiner Burchmore: Now, Mr. Garwood: Where can that case be heard if it is heard later?

Mr. Garwood: It can be heard at whatever place it suits the convenience of the Commission, St. Louis, Kansas City or Chicago or here or any other convenient locality.

Examiner Burchmore: That is the Gulf & Sabine River?

Mr. Garwood: Yes.

Examiner Burchmore: By whom is that road controlled or how is it owned?

Mr. Garwood: I understand in a general way by the Fullerton interests.

Examiner Burchmore: Are there any other companies
2600 that are in a similar position with respect to a hearing Monday?

Mr. Coleman: The Wilson Northern, I have court engagements on Monday that will make it imperative for me to leave and I would like to leave tonight.

Examiner Burchmore: I think you will be reached tomorrow.

Mr. Coleman: If there is to be a hearing at St. Louis or Kansas City I would rather let it go over and get away tonight. We have been here nearly two weeks.

Examiner Burchmore: I think you can be heard tomorrow and I would very much prefer not to put off any case that does not have to be.

Mr. Coleman: If it is an absolute certainty we could be heard I would strain a point and stay, but if there is any uncertainty we would rather leave tonight.

Examiner Burchmore: When do you have to leave?

Mr. Coleman: 7:30.

Examiner Burchmore: We will try to find out later in the afternoon.

2601 Mr. Garwood: Your Honor made the remark that you would continue this hearing over until next week without there was very strenuous objection. I take it from that that you wanted to know whether there would be strenuous objection. There are some of us here who have a general interest in this matter, and in its broader and general phases, independent of any direct or immediate interest of any particular carrier, and who feel obligated to keep in touch with the drift of this investigation as a whole. Now if any very considerable number of these cases are to be heard on Monday, it would leave some of us, myself particularly, in a very embarrassing position. I have cases in court in our Appellate Court that are to be submitted on Wednesday, the 21st, and I do not think it is possible we can get a postponement of them. Now then not only is it impoissible to get a postponement, but we will be obliged to be in Austin on Tuesday morning, and we cannot possibly get there if we are here Monday. We will have to leave here at least on Sunday. And in that same connection I desire to state that I personally know from Judge Cowan that he has made a very important engagement on Monday in Texas, and is assembling parties at Galveston to meet him there, and it would greatly inconvenience

2602 him and a very large number of people interested in that proposition. So it would be extremely unfortunate for him to remain.

Mr. Walter: If you cannot hear today or tomorrow either the Eldorado & Wesson, the Ouachita Valley, the Fordyce & Princeton, the Mansfield Railway & Transportation Company, the Louisiana & Pine Bluff, the Nacogdoches & Southeastern, the Gideon & North Island, the North Louisiana & Gulf, we would like to have those go over until a subsequent hearing, unless as to the North Louisiana & Gulf, you could fix a day certain next week, say Wednesday or something like that.

Mr. Mantooth: It seems to me there are quite a number of cases which would not object to postponement, if they have to remain over until Monday. They would be willing to have their cases taken up today or tomorrow. Some of these gentlemen, Judge Garwood and Mr. Andrews, say they cannot be here. I suggest that you try the cases that would have to remain over here in any event rather than miss a hearing, and try them today or tomorrow, and postpone those that could not stay until Monday and let them go, so we could dispose of those that have to stay here. I do not want to come back if I can avoid it. I have been traveling over the country a good many times to get a hearing, and I am here and would like to

2603 get a hearing before I leave. I represent the Moscow, Camden & San Augustine Railroad. I am willing to stay here until I get a hearing. I do not mean by that that I am willing to concede my right to be heard at the proper time, when I am called on the list.

Examiner Burchmore: You will be called in your proper order on the list, regardless of whether the others are ready or not.

Mr. Mantooth: I want to stay until I get a hearing, but I suggest there are quite a number who might not want to remain over until Monday if they are called in their proper order, and in that way we might save time by picking out those who would not be heard now in any event, and let those remain over until a later date.

Examiner Burchmore: What were those cases you said could not go over?

Mr. Walter: The Mansfield Railroad & Transportation Company, the Nacogdoches & Southeastern, the Louisiana & Pine Bluff, the Gideon & North Island, the Eldorado & Wesson, the Ouachita Valley and the Fordyce & Princeton.

Mr. Jeffrey: Would it not be just as convenient if all those cases were heard later in St. Louis?

2604 Mr. Walter: If that can be done without any prejudice to our rights under the existing situation, we would like to conform to the pleasure and convenience of the Commission and counsel on the other side, but we want to maintain the existing situation as long as we can.

Mr. S. R. Greer: There seems to be a good many who will not have their cases called today or tomorrow, and I would like very much to have our case postponed, the Mangham & Northeastern.

Examiner Burchmore: Where is it located?

Mr. Greer: In the northeastern part of Louisiana, a connection with the Iron Mountain.

Examiner Burchmore: You are connected with the Mangham & Northeastern?

Mr. S. R. Greer: Yes.

Examiner Burchmore: I think you will be reached tomorrow, but are you anxious to go over?

Mr. Greer: I would like very much to get away tonight, I live in St. Louis, and it would be much more convenient to attend a hearing there or in Kansas City, and it seems there will be another hearing; unless it is the purpose of the Commission to continue this hearing indefinitely into next week.

2605 Examiner Burchmore: I will make some announcement at four o'clock regarding the precedure. We are now on the Shreveport, Houston & Gulf, and we will complete that in a few moments and take up the Texas Southeastern next. I desire to dispose of all the cases possible at this hearing, and I am instructed to postpone only such cases as must be postponed. But I will make some announcement about four o'clock about the postponement, and counsel will then have an opportunity to make any further suggestions they desire.

L. D. GARRISON, was recalled as a witness, and having been previously sworn, testified as follows:

Examiner Burchmore: Now, Mr. Garrison, we have covered the general characteristics of this company and its relation to the other companies, leaving for this afternoon only the question of rates and divisions and practices of transportation. Do you have joint through rates on class freight?

Mr. Garrison: Yes, sir.
Examiner Burchmore: To interstate points?
Mr. Garrison: We do.

Examiner Burchmore: Do those rates apply over the
2606 Houston, East & West Texas Railroad?

Mr. Garrison: In connection with the Texas & New Orleans, that is part of the Southern Pacific System.
Examiner Burchmore: And also in connection with the Cotton Belt?
Mr. Garrison: Yes, sir.
Examiner Burchmore: Are the joint class rates the same over both companies?
Mr. Garrison: Yes, sir.
Examiner Burchmore: And they are quite general in their application?
Mr. Garrison: Yes, sir, they are.
Examiner Burchmore: Your company files no local freight tariffs of its own issuance?
Mr. Garrison: No, sir.
Examiner Burchmore: You have, however, on file with the Commission an index of your tariffs which shows all the schedules in which you participate?
Mr. Garrison: Yes, sir.
Examiner Burchmore: What are your divisions under class rates?
2607 Mr. Garrison: With the Cotton Belt we get 25 per cent of their proportion of the through rate.
Examiner Burchmore: And how much on the Texas & New Orleans?
Mr. Garrison: 12½ per cent.
Examiner Burchmore: Then most of your class freight, I imagine, goes to the Cotton Belt?
Mr. Garrison: Yes, sir. There is only one exception to that, and that is the case of grain and grain products.
Examiner Burchmore: We will not go into the details. You have also joint through rates on lumber?
Mr. Garrison: Yes, sir.
Examiner Burchmore: And forest products?
Mr Garrison: Yes, sir.
Examiner Burchmore: Are your rates the same from your mill at Manning as the rates published by the Texas & New Orleans and the Cotton Belt respectively from Prestridge?
Mr. Garrison: They are except in one or two instances that I know of.
Examiner Burchmore: Just one or two exceptions to that rule?
Mr. Garrison: Yes, sir.
2608 Examiner Burchmore: What are your divisions on lumber received from the Cotton Belt?
Mr. Garrison: Four cents.
Examiner Burchmore: Is it a uniform division of four cents?
Mr. Garrison: To interstate points where through rates are published.

Examiner Burchmore: Four cents to all interstate points where through rates are published?

Mr. Garrison: Yes, sir.

Examiner Burchmore: To such points you also get four cents where the rate yields a minimum of eight cents to the Cotton Belt?

Mr. Garrison: Yes.

Examiner Burchmore: Are the divisions the same with the Texas & New Orleans?

Mr. Garrison: No.

Examiner Burchmore: What divisions do you receive there on lumber?

Mr. Garrison: It varies. On lumber destined to Katy points we get three cents, and to Kansas City Southern points we get three cents, and to points on the Colorado & Southern we get
2609 four cents; but to all other points we get 20 per cent of the Sunset Central proportion up to their junction with the foreign line.

Examiner Burchmore: How does that 20 per cent figure out?

Mr. Garrison: It will average about two cents.

Examiner Burchmore: Sometimes less and sometimes more?

Mr. Garrison: Well, we do not ship very much stuff that way. It will be about two cents average.

Examiner Burchmore: You have no milling in transit rates?

Mr. Garrison: No.

Examiner Burchmore: As matter of fact there is no other sawmill on your line except the one at Manning?

Mr. Garrison: No.

Examiner Burchmore: Has your company any contract with the Texas & New Orleans respecting rates and divisions?

Mr. Garrison: No.

Examiner Burchmore: Have you any with the Cotton Belt System?

Mr. Garrison: No, we have not.

Examiner Burchmore: I have before me copies of three or four contracts which I would like to call to your attention very briefly. Here is one agreement entered into February 1st, 1909,
2610 between this railroad and the Carter-Kelly Lumber Company, a corporation, giving the lumber company the right, as I understand it, to operate its logging trains over a part of the lines of this railroad.

Mr. Garrison: Yes, sir.

Examiner Burchmore: What was that system?

Mr. Garrison: They operate over the entire length of our main line from Manning to Prestridge.

Examiner Burchmore: What is the purpose of that operation?

Mr. Garrison: They had some timber up above Prestridge that they logged from there down to Manning.

Examiner Burchmore: Then they haul the logs down over the line to the mill?

Mr. Garrison: The lumber company haul their own logs. The railroad company did not do it.

Examiner Burchmore: The engine was operated by the lumber company?

Mr. Garrison: Yes, sir.

Examiner Burchmore: And the train by the lumber company?

Mr. Garrison: Entirely.

Examiner Burchmore: They paid you how much?

Mr. Garrison: 20 cents a train mile.

2611 Examiner Burchmore: Is not that a very low rate?

Mr. Garrison: We did not think so. I think that is a common compensation over in that country on the main lines.

Examiner Burchmore: How many cars in the train?

Mr. Garrison: It simply pertained to the train. If they had one car or a light locomotive it was the same price.

Examiner Burchmore: They usually run a very heavy train?

Mr. Garrison: Yes, sir.

Examiner Burchmore: As few trains as possible.

Mr. Garrison: Sure, but I might say though, they have not hauled any logs for six months.

Mr. Walter: Has that contract terminated?

Mr. Garrison: It has so far as—There is no official termination, but there will be no more logs hauled over it.

Examiner Burchmore: It just expired by lapse of the practice?

Mr. Garrison: Yes, sir.

Mr. Walter: No more logs to haul?

Mr. Garrison: No.

Examiner Burchmore: I also have what purports to be a copy of a contract between the St. Louis Southwestern of Texas and the Shreveport, Houston & Gulf, under which in consideration

2612 of the sum of $5.00 per train, round trip, for each round trip, the Cotton Belt System granted to the Shreveport, Houston & Gulf Railroad the right to run its logging trains over the tracks of that system from Prestridge to Donovan and return.

Mr. Garrison: Yes.

Examiner Burchmore: Did the Shreveport, Houston & Gulf operate any logging trains over that track?

Mr. Garrison: Let me explain that——

Examiner Burchmore: The explanation is this, is it not, as stated in a letter from you addressed to the Commission: The Cotton Belt was under the impression that those were your logging trains, and in executing the contract your officer neglected to call their attention to the necessity of changing it?

Mr. Garrison: Yes, sir, that is it exactly.

Examiner Burchmore: A mere inadvertence?

Mr. Garrison: Yes, sir.

Examiner Burchmore: I also have a copy of a contract dated November 1st, 1907 with a memorandum of agreement attached to it and describing it, between the Texas & New Orleans Rail-

2613 road, and the Shreveport, Houston & Gulf, covering the construction, use and ownership of an interchange track 2½ miles south of Huntington. That contract as you recall it, contains no provision relating to rates or divisions.

Mr. Garrison: Not at all.

Examiner Burchmore: Also a contract dated October 1st, 1907, between the Cotton Belt System and the Shreveport, Houston & Gulf. Do you remember what the nature of that contract was?

Mr. Garrison: What was the date of it?

Examiner Burchmore: 1907?

Mr. Garrison: Dated October 1st, 1907?

Examiner Burchmore: October 1st.

Mr. Garrison: That covered the use and trackage rights over 1¾ miles of track belonging to the Cotton Belt between our junction at Prestridge and Huntington, and also station facilities at Huntington.

Examiner Burchmore: What was the payment?

Mr. Garrison: A monthly fixed charge of $45.00 a month.

Examiner Burchmore: For the whole business?

Mr. Garrison: Yes.

Examiner Burchmore: What was the distance from Prest-
2614 ridge to Donovan?

Mr. Garrison: I do not really know. I think it is about a mile.

Examiner Burchmore: Prestridge to Donovan one mile?

Mr. Garrison: I think it is. It may not be quite so far.

Examiner Burchmore: Then the Cotton Belt System charged you $5.00 per round trip for a train movement between Prestridge and Donovan as a trackage right?

Mr. Garrison: I do not know what they call it. That was a fixed charge.

Examiner Burchmore: It amounted only to a trackage right; they permitted your trains to run over that track and charged you $5.00 a trip?

Mr. Garrison: That is the lumber company, you understand.

Examiner Burchmore: Well, I do not care which.

Mr. Garrison: $5.00 a round trip was what they charged.

Examiner Burchmore: And it was one mile each way?

Mr. Garrison: Yes, sir, so far as I know.

Examiner Burchmore: That is about $2.00 or $2.50 a train mile, and yet your railroad company only charges this lumber company 20 cents a mile?

Mr. Garrison: Well, in rebuttal to that I may say, I am not
2615 prepared to say this is positive, but it is my recollection that the Cotton Belt charged the Lufkin Land & Lumber Company the same rate, 20 cents a mile, covering about 20 miles of their track between Lufkin and Donovan.

Examiner Burchmore: Then this $5.00 is a specially high rate?

Mr. Garrison: Well, it only took care of five or six round trips. That perhaps accounted for that.

Examiner Burchmore: You said in rebuttal. You do not understand I was charging that against your company, but simply trying to bring out all the facts both ways. The division on lumber is not intended to and in fact does not take care of any of the expense of moving the logs into the mill.

Mr. Garrison: No, sir, not at all.

Examiner Burchmore: What timber holdings has this lumber company along the line of this railroad, has it any timber holdings?

Mr. Garrison: I believe they own the timber on maybe 100 acres just before we get to Manning, about half or three-quarters of a mile.

2616 Examiner Burchmore: Beyond Manning and away from Prestridge.

Mr. Garrison: No. They just recently acquired it.

Examiner Burchmore: Is there anything else they have acquired since they built this railroad?

Mr. Garrison: They have bought timber from time to time.

Examiner Burchmore: Has anybody else been able to cut their timber land and mill it in competition with this lumber company?

Mr. Garrison: The lumber company bought all the available timber down there.

Mr. Walter: What is your passenger revenue, the number of passengers carried last year?

Mr. Garrison: I think that we hauled something over 9,000.

Mr. Walter: About how much total revenue?

Mr. Garrison: The total passenger revenue was $2,978.20.

Mr. Walter: What were your total earnings last year?

Mr. Garrison: You mean the gross operating revenue?

Mr. Walter: Yes.

Mr. Garrison: $25,464.84.

Mr. Walter: Now then, what other earnings did the railroad have?

Mr. Garrison: We derived a revenue from the rental of
2617 that equipment from the Carter Mills that amounted to $3,510.36.

Mr. Walter: How much for trackage?

Mr. Garrison: That covers the rent received, that is that 20 cents per train mile, $976.20.

Mr. Walter: Demurrage?

Mr. Garrison: We collected $953.

Mr. Walter: Do you know when that timber was bought for the hauling of which 20 cents a train mile was paid?

Mr. Garrison: It was bought after the railroad was completed, and after Carter-Kelly Company had begun cutting the timber down below Manning.

Mr. Walter: How long after?

Mr. Garrison: Two years, I think.

Mr. Mantooth: Two years after the building of the mill and the railroad?

Mr. Garrison: Yes, sir.

Mr. Walter: How much was there of this timber?

Mr. Garrison: Do you mean the stumpage?

Mr. Walter: Yes.

Mr. Garrison: I think about 10,000,000 feet.

Mr. Walter: Do you know whether there is any other individual or individuals that own a material amount of timber land
2618 among the Carter-Kelly holdings?

Mr. Garrison: I do.

Mr. Walter: What concern owns the alternate sections?
Mr. Garrison: It is called the Santa Fe properties.
Mr. Walter: By that you mean the Santa Fe Railroad?
Mr. Garrison: Yes, sir.
Mr. Walter: In addition to the forest products you carried for the Carter-Kelly people, there are various shipments for various people today?
Mr. Garrison: Yes, sir.
Examiner Burchmore: Did you have any special purpose in bringing out that Santa Fe holding?
Mr. Walter: Nothing except to show it is not all owned by us.
Examiner Burchmore: It is not all being cut.
Mr. Mantooth: No, sir, it is not.
Mr. Walter: The country is pretty well settled all down through that country south of the railroad, is it not?
Mr. Garrison: Yes, sir, it is.
Mr. Walter: We will file the itemized statement that is required as to all these rates, and also a map.

2619 Examiner Burchmore: What is the proportion of your tonnage that is lumber for this company?
Mr. Garrison: It is about 94 per cent for the fiscal year ending last June.
Examiner Burchmore: What per cent of the earnings?
Mr. Garrison: I have not figured that.
Examiner Burchmore: About the same per cent, or much less?
Mr. Garrison: It would be about 90 per cent.
Examiner Burchmore: The statement you will furnish will show that accurately?
Mr. Garrison: Yes.
Examiner Burchmore: Have you any questions, Mr. Andrews?
Mr. Andrews: I do not think you gave the percentage of holdings of the railroad company and the Carter-Kelly Lumber Company.
Mr. Garrison: You mean the stock of one in the other?
Mr. Andrews: Yes. You stated they were substantially the same, but some differences, but did not give percentages.
Mr. Garrison: He asked me if the joint ownership was on a regular fixed percentage or ratio, as I understood it. I do not exactly catch your question.
Examiner Burchmore: I think that was fully brought out this morning.

2620 Mr. Andrews: I understood him to say it was a controlling interest, but did not understand him to give the percentage, and did understand him to say there are some differences. If I am incorrect about it I will ask no questions.
Examiner Burchmore: You may be right, but I was of another opinion.
Mr. Andrews: Well, what is the difference in the stock holdings of the two corporations, in percentages?
Mr. Garrison: About four for one.
Mr. Andrews: You misunderstand me. Say for instance, Mr. Carter is a stockholder in each company, just assume that; is his per-

centage of stock in the lumber company the same as his percentage of stock in the railroad company?

Mr. Garrison: It is.

Mr. Andrews: And that applies to the other stockholders?

Mr. Garrison: Except in only one or two minority stockholders, who have sold what little stock they had.

Mr. Andrews: What would that amount to in percentage?

Mr. Garrison: Very little, because——

Mr. Andrews: Director's shares?

Mr. Garrison: No.

Examiner Burchmore: How many shares in number, aside
2621 from percentages?

Mr. Garrison: I do not know. Do you mean the total number?

Examiner Burchmore: How many shares in the railroad company's stock are not owned by people who have any interest in the lumber company?

Mr. Garrison: None at all. They are joint ownership, if you mean——

Mr. Andrews: I understood you to give a different answer this morning, is the reason I asked.

Mr. Garrison: You mean if one man owns stock in the lumber company, if he also owns it in the railroad company?

Mr. Andrews: Yes.

Mr. Garrison: That is right.

Examiner Burchmore: I think he was asked this morning whether Mr. Carter of Houston, owned a majority of stock in the railroad company, and he said he did not.

Mr. Walter: W. T. Carter & Brother.

Mr. Mantooth: That is not a corporation.

Mr. Andrews: I was not asking about that, but about the other part. How far do you haul when you deliver to the St. Louis Southwestern?

Mr. Garrison: Nine miles.

2622 Mr. Andrews: How far do you haul when you deliver to the Texas & New Orleans?

Mr. Garrison: Nine miles.

Mr. Andrews: Do you deliver at a junction point?

Mr. Garrison: Yes.

Mr. Andrews: I did not understand*ing* that Huntington was a junction point. I thought the junction point was at Jacksonville.

Mr. Garrison: I mean our junction point with these two lines is at Prestridge.

Mr. Andrews: The query was how they came to be both nine miles unless they joined at the same point where you crossed them.

Mr. Garrison: They do.

Mr. Andrews: I thought it was at Jacksonville.

Mr. Garrison: They cross there and down below at Huntington again.

(Witness excused.)

E. C. DURHAM was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: Your full name?
Mr. Durham: E. C. Durham.
Mr. Gutheim: You live where?
Mr. Durham: Diboll, Texas.
Examiner Gutheim: Your occupation is what?
Mr. Durham: General Manager of the Texas Southeastern Railroad Company.
Examiner Gutheim: You offer this map of the Texas Southeastern in evidence?
Mr. Durham: Yes.

(The map so offered and identified, was received in evidence and thereupon marked Texas Southeastern Railroad Exhibit No. 1, Witness Durham, received in evidence December 16th, 1910, and is attached hereto.)

Examiner Gutheim: According to this map the Texas Southeastern extends from Diboll to the station where you have a connection with the Houston, East & West Texas in a northerly direction through Blix and Vair to a terminus called Neff.

2624 Mr. Durham: That is correct.

Examiner Gutheim: From Blix you have a branch running is an easterly direction to Lufkin?
Mr. Durham: Yes.
Examiner Gutheim: What is the nature of the country that this road traverses?
Mr. Durham: It is timber country; a good deal of the timber has been cut out right along the lines just now, but there has been.
Examiner Gutheim: Are the stations, the names of which I called from the map, the only stations located on your line?
Mr. Durham: No, there is small station at Peavy.
Examiner Gutheim: Where is Peavy?
Mr. Durham: Six miles southwest of Lufkin.
Mr. Greer: And a station at Lufkin too.
Examiner Gutheim: And Peavy is between Lufkin and Blix?
Mr. Durham: Yes.
Examiner Gutheim: How much of a community is there at Blix?
Mr. Durham: Nothing much. There are a few farmers that live around there.

Examiner Gutheim: At Peavy is there any community to

2625 speak of?

Mr. Durham: There is a store there; a small farming settlement.
Examiner Gutheim: What is the situation at Vair?
Mr. Durham: There is nothing at Vair at all right at the station.
Examiner Gutheim: And at Neff?
Mr. Durham: That is a farm settlement.

Examiner Gutheim: Were any of those settlements there prior to the date the road was built through that country?

Mr. Durham: Yes, sir, I think there were.

Examiner Gutheim: How many?

Mr. Durham: Well, they are just about like they were before the road was built; there has been no particular change.

Examiner Gutheim: I say were they all there before the road was built?

Mr. Durham: I am not sure about that; I think they were, though.

Examiner Gutheim: Is any one of them or all of them the remains of former logging camps?

Mr. Durham: I do not think so.

Examiner Gutheim: Are there any industries that furnish
2626 any large amount of tonnage to the road at these points?

Mr. Durham: No, sir.

Examiner Gutheim: What is there at Diboll?

Mr. Durham: The Southern Pine Lumber Company has two sawmills there.

Examiner Gutheim: Have they sawmills at any other point on the line?

Mr. Durham: No, sir.

Examiner Gutheim: And is the Southern Pine Lumber Company interested in the railroad?

Mr. Durham: Well, the stockholders are, some of them.

Examiner Gutheim: To what extent?

Mr. Durham: I think all the stockholders of the railroad company own stock in the lumber company except two, that own one share for the purpose of qualifying as directors, and the parties that own the controlling interest in the lumber company own the controlling interest in the railroad company.

Examiner Gutheim: Are the officers of the railroad and of the lumber company substantially identical?

Mr. Durham: The President of the railroad is also President of the lumber company, and the Vice-President of the railroad is not an officer nor a stockholder in the lumber company, but he
2627 does some work for them.

Examiner Gutheim: Was the railroad built as an incorporated carrier, or was it originally built as a part of the investment of the Southern Pine Lumber Company?

Mr. Durham: Now I am not sure about that; I think it was built as a logging road in the beginning.

Examiner Gutheim: About the same time that the first mill was established at Diboll?

Mr. Durham: I do not know about that, but I presume it was.

Examiner Gutheim: What is the outstanding indebtedness of the road at the present time?

Mr. Durham: About $365,000.

Examiner Gutheim: All in stock?

Mr. Durham: No, sir.

Examiner Gutheim: How is it divided?

Mr. Durham: Oh, you mean including the stock? The capital stock is——

Examiner Gutheim: How much stock and how much bonds?

Mr. Durham: The capital stock is $250,000 and there is $238,900 issued.

Examiner Gutheim: $238,900 issued in stock?

Mr. Durham: Yes.

2628 Examiner Gutheim: How is the rest divided?

Mr. Durham: The biggest portion of it is carried in the form of a note held by the Southern Pine Lumber Company.

Examiner Gutheim: And about what is the cost of the road and equipment?

Mr. Durham: I think the balance on June 30th was $635,000.

Examiner Gutheim: How is the difference between that figure and the $365,000 financed?

Mr. Durham: I misunderstood you. The capital stock of the company is $250,000 and that $365,000 that I spoke of is in addition to the capital stock; it is a liability.

Examiner Gutheim: What rate of interest, if any, is paid on the balance due the lumber company?

Mr. Durham: Six per cent.

Examiner Gutheim: As a matter of fact does the railroad company carry any separate financial account, or is all of the taking in and paying out of the cash performed by the lumber company and simply charged and credited on the lumber company's books, and reversely on the railroad company's books?

Mr. Durham: No, sir, it is all carried by the railroad com-

2629 pany.

Examiner Gutheim: Has that always been so, or has the system just recently been made to conform to that?

Mr. Durham: I think that that has been the custom for several years. I know it has been since I have been with the company, about two years and a half.

Examiner Gutheim: If I say that the Examiner who went over your books about a year ago this time gathered from them that the method was for the Southern Pine Lumber Company to support the railroad and pay its bills and that the railroad was credited with the freight charges, would that make you change the statement any?

Mr. Durham: Well, the freight that we handle for the Southern Pine Lumber Company is charged to them and we settle with them once a month.

Examiner Gutheim: Is there an actual cash transaction?

Mr. Durham: No.

Examiner Gutheim: Or simply a credit to the account?

Mr. Durham: That is it.

Examiner Gutheim: So as a matter of fact if the railroad needs money and does not get it, the lumber company pays it off, and if there is a surplus it may be temporarily loaned to the lum-

2630 ber company or applied on the debt?

Mr. Durham: If we need the money we get it from the

lumber company, and there has never been any surplus to give back to them.

Examiner Gutheim: The line is all standard gauge?

Mr. Durham: Yes, sir.

Examiner Gutheim: About what rail has it?

Mr. Durham: 56 and 60 pound.

Examiner Gutheim: Any station buildings at the various locations marked on the map as stations?

Mr. Durham: Yes, sir, we have a station building at Diboll, a small shed at Blix, a little station at Vair, one at Neff, and a shed at Peavy.

Examiner Gutheim: Is the Diboll station the property of the Houston, East & West Texas?

Mr. Durham: No, sir, it is not.

Examiner Gutheim: Is it in fact the general office of the Southern Pine Lumber Company?

Mr. Durham: No, sir.

Examiner Gutheim: About how much equipment have you at the present time?

Mr. Durham: We have 84 flat cars, 10 box cars, and 3
2631 locomotives; we have another locomotive which will be delivered next month; a pile driver, a motor car and caboose, and one combination passenger and baggage car.

Examiner Gutheim: And that equipment is all furnished with safety devices as required by the Federal Acts?

Mr. Durham: Yes, sir.

Examiner Gutheim: You have a telegraph or telephone service in connection with the road?

Mr. Durham: Telephone.

Examiner Gutheim: Used for dispatching trains?

Mr. Durham: Yes, sir.

Examiner Gutheim: About how many men are there in the railroad service solely?

Mr. Durham: I think there are 55 now.

Examined Gutheim: Are the general office employés men who devote their entire time to the railroad work, or men who are jointly in the employ of the railroad and the Southern Pine Lumber Company?

Mr. Durham: They devote all their time to railroad work.

Examiner Gutheim: How much train service do you operate?

Mr. Durham: We run a train from Diboll to Neff and return each day, and one from Diboll to Lufkin and return each
2632 day, except Sunday.

Examiner Gutheim: Are they passenger trains?

Mr. Durham: Mixed trains.

Examiner Gutheim: About how many passengers do you handle?

Mr. Durham: Last year we handled something over 6000.

Examiner Gutheim: Do you handle any mail or express?

Mr. Durham: We handle express but no mail.

Examiner Gutheim: Can you furnish us with a statement of the total tonnage and revenue for the last fiscal year, and divide that

between the total tonnage and revenue handled for the Southern Pine Lumber Company and that for the outside general public?

Mr. Durham: Yes, sir.

Examiner Gutheim: Will you file that statement in evidence?

Mr. Durham: I haven't it prepared here now; I can furnish it to you.

Examiner Gutheim: It will be understood that will be furnished?

Mr. Durham: Yes, sir.

Examiner Gutheim: Is your passenger business done with tickets, or all with cash fares?

Mr. Durham: Most of it is with tickets, sold at Lufkin and
2633 Diboll, and some is cash fare.

Examiner Gutheim: And you publish regular tariffs and file them with the Interstate Commerce Commission?

Mr. Durham: We do through our joint agents, yes, sir.

Examiner Gutheim: Are there any local tariffs published?

Mr. Durham: We have one local tariff that is filed with the Interstate Commerce Commission.

Examiner Gutheim: Does that tariff make any provision for a charge on the hauling of logs for the Southern Pine Lumber Company?

Mr. Durham: No, it does not.

Examiner Gutheim: Those are hauled on a milling in transit basis?

Mr. Durham: No.

Examiner Gutheim: Are the logs hauled by the railroad?

Mr. Durham: Yes.

Examiner Gutheim: You mean they are hauled free?

Mr. Durham: No.

Examiner Gutheim: How is the compensation arranged?

Mr. Durham: We charge them $2.50 a car for 10 miles and less, and $3.00 a car for 10 miles and under 20 miles.

2634 Mr. Greer: You said there was no tariffs. Is there not a local tariff which authorizes that charge?

Mr. Durham: Yes, sir, but it does not authorize any milling in transit arrangement.

Examiner Gutheim: Does the rate on logs include any railroad operation in the woods service in connection with the logging?

Mr. Durham: No.

Examiner Gutheim: The woods service is all done with the power of the Southern Pine Lumber Company?

Mr. Durham: Yes, sir.

Examiner Gutheim: In the case of the mills at Diboll, does the Houston, East & West Texas take out the product with its own power?

Mr. Durham: No.

Examiner Gutheim: How much of a haul does the Texas Southeastern Railroad perform on that product?

Mr. Durham: It is simply a switching proposition for about 3000 feet or about 8000 feet.

Examiner Gutheim: What other connections do you have to which you deliver the product of those mills?

2635 Mr. Durham: We connect with the Houston, East & West Texas and Lufkin and the Cotton Belt.

Examiner Gutheim: You make no deliveries at Lufkin, do you?

Mr. Durham: We deliver 95 per cent of our stuff at Lufkin.

Examiner Gutheim: That is you take it from Diboll around through Blix over to Lufkin?

Mr. Durham: Yes, sir.

Examiner Gutheim: And deliver it to the Houston, East & West Texas there?

Mr. Durham: Yes, sir, we do.

Examiner Gutheim: 95 per cent?

Mr. Durham: Yes, sir.

Mr. Greer: Not to the Houston, East & West Texas?

Mr. Durham: No, we do not do that with 95 per cent of our business. I mean 95 per cent of our business is handled through Lufkin either to the Cotton Belt or the Houston, East & West Texas, and of that I suppose the Cotton Belt gets 80 per cent or maybe more.

Examiner Gutheim: Do you mean the Houston, East & West Texas deliveries are made at Lufkin?

Mr. Durham: Some of them are, yes, sir.

Examiner Gutheim: A small proportion of them?

2636 Mr. Durham: Yes, sir.

Examiner Gutheim: And they get very little at Diboll?

Mr. Durham: Yes, sir, very little.

Examiner Gutheim: As a matter of fact could the Houston, East & West Texas take out the product of the Diboll mills with its own power?

Mr. Durham: They could not, no, sir, without going in on our yards and tracks.

Examiner Gutheim: On the tracks of the railroad or the tracks of the Southern Pine Lumber Company?

Mr. Durham: No, the Southern Pine Lumber Company has no tracks.

Examiner Gutheim: Have you any connections other than the Houston, East & West Texas and the Cotton Belt?

Mr. Durham: We connect with the Eastern Texas out at Neff and the Groveton, Lufkin & Northern at Vair.

Examiner Gutheim: Is the Eastern Texas a Cotton Belt proposition?

Mr. Durham: I understand it is.

Examiner Gutheim: You make no deliveries to them at Neff?

Mr. Durham: No.

Examiner Gutheim: Does the Groveton, Lufkin & North-

2637 ern get anything at Vair?

Mr. Durham: We handle a little business that way; not very much.

Examiner Gutheim: The haul from Diboll over to the Cotton

Belt and the Houston, East & West Texas and its connections at Lufkin is how long?

Mr. Durham: 17.5 miles.

Examiner Gutheim: From Diboll up to Neff is how long?

Mr. Durham: It is 17.8 miles.

Examiner Gutheim: Will you indicate generally the range of divisions which you get from the connections that take out the product of the Southern Pine Lumber Company?

Mr. Durham: On interstate business we get from the Cotton Belt four cents per 100 pounds on the lumber to all points where through rates are published, and on Texas business to points on their line where the rate is 12 cents or more we get 4 cents per 100 pounds, and to points beyond their line in Texas we get two cents per 100 pounds. On the Houston, East & West Texas most of our divisions are figured on a percentage basis, and I suppose the average is about two cents.

2638 Examiner Gutheim: You have through rates and divisions on classes and commodities with both the Cotton Belt and the Houston, East & West Texas?

Mr. Durham: Yes, sir.

Examiner Gutheim: Your divisions on lumber are not made on a milling in transit basis?

Mr. Durham: No, sir.

Examiner Gutheim: Are you making monthly and annual reports to the Interstate Commerce Commission?

Mr. Durham: Yes, sir.

Examiner Gutheim: And is the road a paying proposition?

Mr. Durham: It did not pay anything last year. We lost some $2900.

Examiner Gutheim: Has it been paying in previous years?

Mr. Durham: I think they have considered it a paying proposition heretofore.

Examiner Gutheim: You have something in your surplus accounts?

Mr. Durham: Yes, sir.

Examiner Gutheim: About how much?

Mr. Durham: I think it is $59,000.

Examiner Gutheim: And that has been how long accruing?

2639 Mr. Durham: Year before last we made $15,000, and the balance of it was accumulated possibly in four or five years.

Examiner Gutheim: Are the general officers of the railroad paid any salaries?

Mr. Durham: Yes, sir.

Examiner Gutheim: How much is paid to each?

Mr. Durham: All of the salaries—my own salary is paid by the railroad company, and they pay the Vice-President $100 a month and the Southern Pine Lumber Company also pays him something; I do not know just what. The President does not draw any salary from either company; he does not draw any from the railroad company anyhow. All the other employés are paid by the railroad.

Mr. Greer: But you are not paid anything by the lumber company, are you?

Mr. Durham: No, sir.

Examiner Gutheim: This Texas Southeastern is the line over which the Groveton, Lufkin & Northern has trackage rights between Vair and Lufkin?

Mr. Durham: Yes, sir.

Examiner Gutheim: And you get a considerable revenue out of those trackage rights?

2640 Mr. Durham: Yes, sir, we get $450 per mile per annum, and they also pay their proportion of the maintenance expense, that is arrived at on a car mileage basis.

Examiner Gutheim: That is simply the maintenance of way expense?

Mr. Durham: Yes, sir.

Examiner Gutheim: Is the Groveton, Lufkin & Northern connected in any way with the Texas Southeastern or the Southern Pine Lumber Company?

Mr. Durham: No.

Examiner Gutheim: Or is it a branch of any carrier line in that locality?

Mr. Durham: Not that I know of. I do not think it is.

Examiner Gutheim: That is all.

Mr. Greer: Mr. Durham, what kind of a depot building have you at Diboll?

Mr. Durham: We have got a two story station there that has got a waiting room for white people and colored people, a ticket office and a wareroom and platform. And the upstairs is used for the general office of the Texas Southeastern.

Mr. Greer: Has the Southern Pine Lumber Company any interest in that building?

2641 Mr. Durham: No.

Mr. Greer: What was the cost of it?

Mr. Durham: I do not know, I think it cost probably about $800 or $900.

Mr. Greer: State what other employés are at work in that building outside of yourself?

Mr. Durham: Well, we have a local agent and a timekeeper there and a bookkeeper and auditor of the company.

Mr. Greer: Are those people in any way employed by the Southern Pine Lumber Company?

Mr. Durham: No, sir, they are not.

Mr. Greer. You spoke of your Vice President. Who is he?

Mr. Durham: J. E. Mitchell.

Mr. Greer: In what capacity does he serve this railroad?

Mr. Durham: As chief engineer.

Mr. Greer: He is not an officer in the Southern Pine Lumber Company?

Mr. Durham: No, sir.

Mr. Greer: And if the Southern Pine Lumber Company employs him it is in what capacity, as a surveyor or engineer?

Mr. Durham: As a surveyor, and he looks after their lands and timbers.

2642 Mr. Greer: Referring to those tracks, has the H. E. &

W. T. any tracks into your lumber yards or mill?

Mr. Durham: No.

Mr. Greer: I mean the mill of the Southern Pine Lumber Company?

Mr. Durham: No.

Mr. Greer: It could not get into your yards except over the track of the Texas Southeastern?

Mr. Durham: No, sir, it could not.

Mr. Greer: What company owns the various switch tracks that penetrate your lumber yards there?

Mr. Durham: The Texas Southeastern Railway Company.

Mr. Greer: The lumber company does not own them?

Mr. Durham: No, sir.

Mr. Greer: What character of track have you?

Mr. Durham: We think we have a very good track.

Mr. Greer: How does it compare with the tracks of the trunk line railroads in that portion of the state?

Mr. Durham: Well, it is better than some of them, and I think it is as good as the average.

Examiner Burdmore: Take a concrete comparison; how does it compare with the line of the Groveton, Lufkin & Northern?

2643 Mr. Durham: They have 60 pound rail on all their lines, and part of ours is 76, but outside of that I think it is pretty much the same class of road.

Examiner Burchmore: We are pretty well informed with respect to that company. You would say your company ought to be regarded as having about the same quality of road?

Mr. Durham: Yes, sir.

Mr. Greer: On that subject, has your track ever been inspected by the Railroad Commission through its engineer?

Mr. Durham: Yes, sir.

Mr. Greer: And valued?

Mr. Durham: Yes, sir.

Mr. Greer: It is the duty of the Railroad Commission of Texas to put a valuation on all the railroads that are recognized by the Commission, is it not?

Mr. Durham: I think so.

Mr. Greer: And in addition to that can you state whether or not the company filed an application for authority to issue bonds in which it fully and minutely described its tracks, under a sworn statement?

Mr. Durham: Yes, sir.

Mr. Greer: Did the Commission's engineer, pursuant to

2644 his duties, under that application make an investigation and value it in that connection also?

Mr. Durham: Yes, sir.

Mr. Greer: In this connection we will read the valuation of the road as placed on it by the Railroad Commission of Texas. I read from page 389 of the 18th Annual Report of the Railroad Commission of the State of Texas. The heading is: Summary of valuations of railroads as ascertained by the Railroad Commission of Texas in accordance with the requirements of Article 4584-C Statutes of Texas,

up to October 31st, 1909. The Texas Southeastern, date of report of value October 4th, 1909. Mileage 27.07 miles.

Roadbed and so forth (mileage sheet A)	$400,739.38
General property	56,123.96
Rolling stock and equipment	79,530.00
Total value	$536,393.34
Average per mile	19,815.05

From your knowledge of the road what would you say as to whether or not that represents a fair and conservative value of the road and its equipment?

Mr. Durham: I think that is a very conservative estimate; I do not think the Railroad Commission ever makes any other
2645 kind.

Mr. Greer: This is from an actual inspection of the road by the engineer?

Mr. Durham: Yes, sir.

Examiner Burchmore: What is that valuation per mile?

Mr. Greer: $19,815.05.

Examiner Burchmore: What is the valuation placed on the Groveton, Lufkin & Northern?

Mr. Garwood: It is over $20,000. I will ask to read it right in that same connection. $23,016.40 per mile as shown on page 387 of the 18th Annual Report. That includes the equipment, however.

Examiner Burchmore: Is the difference in valuation partly explained by equipment, or are there some expensive bridges or is it the difference in the weight of rail, perhaps?

Mr. Garwood: Difference in weight of rail would be one.

Examiner Burchmore: It is not important to reconcile that difference, however.

Mr. Greer: What percentage of your railroad is laid with 60 pound and what part with 56 pound rail?

Mr. Durham: At the present time there are 11½ miles that are laid with 60 pound rail, but when that valuation was made
2646 there were only about 2½ miles of 60 pound and the other was 56.

Mr. Greer: Then have you laid that rail since?

Mr. Durham: Yes, sir, we have laid nine miles.

Mr. Greer: In the last year you have laid something like nine miles of 60 pound rail?

Mr. Durham: Yes, sir.

Mr. Greer: Are those rails new?

Mr. Durham: Yes, sir.

Mr. Greer: Purchased by whom?

Mr. Durham: By the Texas Southeastern Railroad Company.

Mr. Greer: Referring to this track, is it ballasted in any way?

Mr. Durham: No, sir, except in a few places it is ballasted with cinders; it is just an ordinary dirt roadbed.

Mr. Greer: As compared with the Houston, East & West Texas and the M. K. & T., is it as good a roadbed as either of those?
Mr. Durham: I think it is as good or better.
Mr. Greer: Or the Cotton Belt?
Mr. Durham: Well, than their lines in that section.
Mr. Greer: What kind of logging cars are those you use?
Mr. Durham: They are standard flat cars.
2647 Mr. Greer: Are they equipped with safety appliances?
Mr. Durham: Yes, sir.
Mr. Greer: Why is that?
Mr. Durham: Well, that is on account of the Texas law requiring common carriers to equip their cars with certain safety appliances such as air brakes and automatic couplers. They do not except cars that are in logging service.
Mr. Greer: They do not except those?
Mr. Durham: No.
Mr. Greer: Have your locomotives got the electric headlights?
Mr. Durham: Yes, sir.
Mr. Greer: That is required by the Texas Commission?
Mr. Durham: Yes, sir.
Mr. Garwood: We answered the question generally yesterday that we complied with all the Texas laws with reference to the L. & N. I supposed the Commission understood it included electric headlights and all.
Examiner Burchmore: I would not go into the details of that compliance. I do not think it is important.
Mr. Greer: Let me put a general question. Do you comply with all the state and Federal laws on the subject of safety
2648 appliances?
Mr. Durham: Yes, sir.
Mr. Greer: Generally, and do you attempt to comply with all the laws as applied to common carrier railroads?
Mr. Durham: Yes, sir.
Mr. Greer: Both Federal and state?
Mr. Durham: Yes, sir.
Mr. Greer: Do you publish and file with the Interstate Commerce Commission your tariffs?
Mr. Durham: Yes, sir.
Mr. Greer: Do you publish any local intrastate tariffs?
Mr. Durham: Yes, sir, I have already answered that.
Mr. Greer: These joint rates and through routes are published with your concurrence?
Mr. Durham: Yes, sir.
Mr. Greer: You concur in them?
Mr. Durham: Yes, sir.
Mr. Greer: Do you participate in any joint rates with the Texas Railroads on intrastate shipments?
Mr. Durham: Yes, sir.
Mr. Greer: Those authorized by the State Commission?
Mr. Durham: Yes, sir.
2649 Mr. Greer: State whether or not your road has ever been recognized by the State Commission of Texas?

Mr. Durham: It has.

Mr. Greer: Was that done after an investigation or not?

Mr. Durham: Yes, sir.

Mr. Greer: State whether or not it has been easy or difficult to get recognition in Texas?

Mr. Durham: We found it a very difficult proposition over there.

Mr. Greer: In this connection I wish to read the Commission's order on the subject on page 214 of the annual report for 1909, in the matter of the application of the Texas Southeastern Railroad for recognition by this Commission as a common carrier of freight and passengers, with the duties and privileges incident thereto, as prescribed by law——

Examiner Burchmore: Is that order similar to the one Mr. Garwood read yesterday?

Mr. Greer: Yes, sir.

Examiner Burchmore: I do not believe I would read it. I think the title is enough.

Mr. Greer: It may be stated that it was granted on formal
2650 application.

Examiner Burchmore: Yes.

Mr. Greer: And after an investigation by the Commission. We will refer to page 214 of the 18th Annual Report of the Railroad Commission for the State of Texas for 1909 for the order of the Commission recognizing this road. What facilities have you at Lufkin?

Mr. Durham: We use the terminals of the Cotton Belt System.

Mr. Greer: Under what arrangement?

Mr. Durham: We pay them a monthly rental for the privilege of using their depot and tracks.

Mr. Greer: Is the contract on file with the Commission?

Mr. Durham: I do not know whether it is or not. I think it is.

Mr. Greer: You use their depot facilities too?

Mr. Durham: Yes, sir.

Mr. Greer: What about the agent?

Mr. Durham: He is agent for our company, a joint agent.

Mr. Greer: What other facilities do you have for taking care of freight and passengers at the other station on your line?

2651 Mr. Durham: We have an unloading track at Peavy, a spur; we have unloading tracks at Diboll and Neff, I believe that is all.

Mr. Greer: Have you any buildings at any of these places?

Mr. Durham: We have the station buildings and platforms I mentioned before.

Mr. Greer: You have mentioned those?

Mr. Durham: Yes.

Mr. Greer: Do you haul logs for the Southern Pine Lumber Company?

Mr. Durham: Yes, sir.

Mr. Greer: Free, or do they pay you?

Mr. Durham: They pay us $2.50 a car for 10 miles and less, and $3.00 for 10 miles and under 20 miles.

Mr. Greer: I believe you stated that?

Mr. Durham: Yes.
Mr. Greer: And that is under a published tariff?
Mr. Durham: Yes, sir.
Mr. Greer: You have no milling in transit?
Mr. Durham: No, sir.
Mr. Greer: I understood you to say that the finished prod-
2652 uct, the lumber which you transport, is 95 per cent of it handled through Lufkin?
Mr. Durham: Yes, sir.
Mr. Greer: And only about five per cent at Diboll?
2653 Mr. Durham: Yes, sir.
Mr. Greer: Then that gives you over 17 miles' haul on the finished product?
Mr. Durham: Yes, sir.
Mr. Greer: What road furnishes you the best facilities for reaching the Mississippi gateways?
Mr. Durham: The St. Louis Southwestern, Cotton Belt Road.
Mr. Greer: Where is the major part of your market?
Mr. Durham: I do not know whether the major part goes through the Mississippi gateways or not; a large portion of it does go that way; I know that.
Mr. Greer: Does the St. Louis Southwestern reach the Mississippi gateways by one line or a number of lines?
Mr. Durham: Well, that system reaches the gateways direct from Lufkin.
Mr. Greer: From what sources do you derive your freight at present, and what prospective sources have you that you can reasonably rely on in the future?
Mr. Durham: Well, we handle the business of the Southern Pine Lumber Company, logs and lumber, and we handle merchandise and various freights for stores at Diboll, a little store at Peavy,
2654 and we are putting in a track now to handle 1,200 or 1,500 cars of logs for a saw mill at Lufkin, and also we are going to handle the output of a brick plant that is being established on our line about three miles from Lufkin.
Mr. Greer: Is it a branch line from Blix to Lufkin?
Mr. Durham: It is located on that line; yes, sir.
Mr. Greer: Did the Southern Pine Lumber Company own any timber on that branch line running up to Lufkin at all?
Mr. Durham: They may have owned a few small tracks, but——
Mr. Greer: Wat it a considerable or inconsiderable quantity, if any?
Mr. Durham: Very small.
Mr. Greer: Was the object of building that line to use it to transport logs into that mill, could it have had any such object?
Mr. Durham: No, I think not.
Mr. Greer: No logs there belonging to the Southern Pine Company to transport?
Mr. Durham: No.
Mr. Greer: The logs on that line are going to be transported to what place?

Mr. Durham: Lufkin.
2655 Mr. Greer: By the railroad for another mill?
Mr. Durham: They are.
Examiner Burchmore: As a matter of fact, did you not build to Lufkin in order to get another outlet to the market?
Mr. Durham: Yes, sir.
Mr. Greer: How large a town is Lufkin?
Mr. Durham: It has five or six thousand people, I think.
Mr. Greer: It has banks?
Mr. Durham: Yes, sir.
Mr. Greer: And various mercantile establishments and so on?
Mr. Durham: Yes, sir.
Mr. Greer: How large a town is Diboll?
Mr. Durham: About 1,500.
Mr. Greer: Are there any other interests there besides the Southern Pine Lumber Company's mill?
Mr. Durham: No manufacturing concerns.
Mr. Greer: Any mercantile establishments?
Mr. Durham: There are several other stores.
Mr. Greer: How many people?
Mr. Durham: About 1,500.
Mr. Greer: These other stores you speak of, has the South-
2656 ern Pine Company any interest in them?
Mr. Durham: No.
Mr. Greer: I believe you spoke of a brick yard to be located; is it in process of construction now?
Mr. Durham: Yes, sir.
Mr. Greer: How far from Lufkin?
Mr. Durham: That is about three miles.
Mr. Greer: Dependent on your road?
Mr. Durham: Yes, sir.
Mr. Greer: How is that country adapted to agricultural purposes, after the timber is cut off?
Mr. Durham: Well, it is the ordinary east Texas country.
Mr. Greer: Well, don't speak of east Texas country as being ordinary. Is it not extraordinary?
Examiner Burchmore: Mr. Garwood got a full description of this country into the record. Is your country any different than his?
Mr. Durham: No, it is practically the kind of country that Mr. Anderson described, testifying for the Groveton, Lufkin & Northern.
Examiner Burchmore: Is that correct substantially?
Mr. Durham: I think so substantially.
2657 Mr. Greer: Do you carry express?
Mr. Durham: Yes.
Mr. Greer: Do you interchange cars with trunk line railroads?
Mr. Durham: Yes.
Mr. Greer: It is interchanged on a mileage basis?
Mr. Durham: Per diem basis.
Mr. Greer: Is demurrage paid your railroad by the Southern Pine Lumber Company?
Mr. Durham: Yes, sir.

Mr. Greer: You own your own right of way?
Mr. Durham: Yes, sir.
Mr. Greer: What is its width?
Mr. Durham: 100 feet.
Mr. Greer: Have you any expensive construction on your road in the way of bridges or fills or cuts, or anything of that sort?
Mr. Durham: We have a bridge across the Noches River, I think it is about 1,841 feet long.
Mr. Greer: Any other considerable expensive construction?
Mr. Durham: That is the main bridge we have, the biggest one we have. We have two miles of line on the Lufkin Branch
2658 that was very expensive; I do not know just what it cost per mile.
Mr. Greer: Well, approximate it.
Mr. Durham: I should say about $30,000 a mile.
Mr. Greer: That is on the branch on which the Southern Pine owns no timber?
Mr. Durham: Yes, sir.
Mr. Greer: Do you issue bills of lading?
Mr. Durham: Yes, sir.
Mr. Greer: And way bills?
Mr. Durham: Yes, sir.
Mr. Greer: Do you issue bills of lading both state and interstate?
Mr. Durham: Yes.
Mr. Greer: Do you have any considerable intrastate business?
Mr. Durham: I think it is about 20 per cent, I suppose, of our total business.
Mr. Greer: I believe you stated you have a division of rates on that.
Mr. Durham: Yes, sir.
Mr. Greer: How do your divisions compare with the local Commission rate authorized by the railroad Commission of Texas
2659 for similar service?
Mr. Durham: Our local rate on lumber intrastate from Diboll to Lufkin would be five cents per 100 pounds.
Mr. Greer: And you get just four cents division interstate?
Mr. Durham: We get four cents interstate, yes, sir.
Examiner Burchmore: You sometimes get a higher division than four cents?
Mr. Durham: Yes, sir; that is only on Texas business. To competitive points on the Sunset Central lines, where the rate is 18¾ cents or more, we get five cents.
Mr. Greer: On what class of business?
Mr. Durham: On business to points on the Sunset Central lines, where the rate is 18¾ cents or more, to competitive points, we get five cents.
Mr. Greer: Is that local state business?
Mr. Durham: Yes, sir, that is state business.
Mr. Greer: That is intrastate?
Mr. Durham: That is intrastate.

Examiner Burchmore: You formerly got as much as five cents and I think a little more on certain interstate traffic in lumber?

Mr. Durham: Not since I have been with the company.

2660 Examiner Burchmore: Did not the Cotton Belt formerly give you 25 per cent of their joint through rate on lumber?

Mr. Durham: No.

Examiner Burchmore: Perhaps I cannot read the division sheet right, or perhaps this is in error. Here is St. Louis Southwestern in connection with the St. Louis Southwestern of Texas, a division sheet issued June 3, 1908, and bearing No. 1416——

Mr. Durham: That applies, I think, on classes and commodities from the Cotton Belt to our line.

Examiner Burchmore: It says basis for dividing through rates on freight traffic except coal, coke, carloads, and cotton; it does not say except lumber, between St. Louis, Kansas City, East St. Louis, Cairo, and so forth, describing a large territory, to all stations on the Texas Southeastern Railroad, per cents between all stations on the Texas Southeastern and New Orleans, Vicksburg and other stations, 75 per cent to the St. Louis Southwestern and connections and 25 per cent to your company. Perhaps I read this wrong, but I do not understand it.

Mr. Durham: We are sure we do not get it.

Examiner Burchmore: You never got any percentages on

2661 lumber?

Mr. Durham: No, sir.

Mr. Cowan: I guess there is a special division sheet on lumber that applies to it, although it is not noted as being an exception on that.

Mr. Durham: Yes, sir.

Mr. Greer: That is on southbound business?

Mr. Durham: That division sheet applies between, but I know we have gotten four cents interstate from the Cotton Belt for a long time; no more and no less.

Examiner Burchmore: If that is your statement, it can be verified from the division sheets themselves.

Mr. Durham: Yes, sir.

Mr. Greer: You run your trains on regular schedule?

Mr. Durham: Yes, sir.

Mr. Greer: Have you stated about the number of passengers last year?

Mr. Durham: Yes.

Mr. Greer: You have scales for weighing freight?

Mr. Durham: Track scales; yes, sir.

Mr. Greer: And have you stated your daily passenger service?

2662 Mr. Durham: Yes.

Mr. Greer: Did you give the total number of employees?

Mr. Durham: Yes.

Examiner Burchmore: They are itemized in the annual reports.

Mr. Greer: Well, do you transport all freight and passengers that are offered?

Mr. Durham: Yes.
Mr. Greer: You treat everybody alike, or endeavor to do so?
Mr. Durham: Yes.
Mr. Greer: Is the road put there as a permanent road?
Mr. Durham: Yes.
Mr. Greer: Is there any prospective extension of that road?
Mr. Durham: I do not think there is any that will be made in the very near future; possibly later on the road will be extended to Palestine, but I do not think that will be for several years.
Mr. Greer: Then you are not relying altogether on your intention; it is what you are?
Mr. Durham: No, sir.
Mr. Greer: Do you keep separate accounts and make reports?
Mr. Durham: Yes, sir.
2663 Mr. Greer: With regard to some question asked you about the accounts between you and the Southern Pine Lumber Company, I want to know if your business is kept entirely separate from the Southern Pine Lumber Company.
Mr. Durham: Oh, yes.
Mr. Greer: And when you transport freight for another, do you collect it or does the Southern Pine Lumber Company?
Mr. Durham: We collect it.
Mr. Greer: Have you a bank account?
Mr. Durham: Yes, sir.
Mr. Greer: You pay your own debts, and the Southern Pine Company does not pay your debts?
Mr. Durham: We pay all of our own accounts at our own bank; they have a separate bank account at another bank.
Mr. Greer: Have you received the usual recognition in Texas that is accorded railroads in Texas in the way of damage claims?
Mr. Durham: Yes, sir.
Mr. Greer: You have had to respond in that particular, have you?
Mr. Durham: Yes, sir.
Mr. Greer: With reference to the officers, is there any officer in your company outside of the president who is an officer
2664 in the Southern Pine Lumber Company?
Mr. Durham: There is not.
Mr. Greer: He is the sole officer common to the two?
Mr. Durham: Yes, sir.
Mr. Greer: Is the president active in the management of the road?
Mr. Durham: Yes, sir; that is, I do not know that you would say he is active, either. He is——
Mr. Greer: Who is general manager?
Mr. Durham: I am.
Mr. Greer: You are general manager?
Mr. Durham: Yes.
Mr. Greer: State the other officers.
Examiner Burchmore: Let us leave out those details. He has given the statement. We know who they are. We have them all on file with the Commission, and he has stated they are not officers of the lumber company.

Mr. Greer: I believe that is all.

Mr. Garwood: I would like to ask one question. Is it not a fact that in order to conform the grade of the Texas Southeastern to the maximum one per cent of the Groveton, Lufkin & Northern
2665 before this trackage agreement was entered into that your railroad spent perhaps $50,000 on that part of it between what you call the Lufkin Branch from Vair to Lufkin?

Mr. Durham: They made some improvements there, Judge; I don't know just what they cost.

Mr. Greer: State whether it was considerable.

Mr. Anderson: I don't know the cost, but when we made our survey, I know we practically paralleled 13 miles of this road, and the owners of the road came to us and made a proposition for us to use their road under a trackage agreement, and one of the conditions in making that lease was that they reduced two or three grades that then existed to one per cent, so they would conform to ours, and I think that the manager who preceded Mr. Durham told me that it would cost about $50,000. I am not clear about that. I know they worked all winter there with a steam shovel doing that work, and our engineer checked it before we entered into the contract, so that their grades between Vair and Lufkin conform to ours.

Mr. Greer: Have you appointed an agent at Washington to represent you under the recent act of Congress?

Mr. Durham: Yes, sir.

Mr. Greer: Who is it?

Mr. Durham: C. N. Osgood.

2666 Mr. Greer: I offer this map showing the switch terminals.

(The map so offered and identified was received in evidence and thereupon marked Texas Southeastern Exhibit No. 2, witness Durham, received in evidence December 16, 1910, and is attached hereto.)

Examiner Burchmore: Before we proceed in respect to this company, it seems advisable, because of the representations made by the parties who seem to desire postponements in some of the cases, and because of the heavy calendar there is ahead of us here, to postpone the following cases for hearing at a later date to be fixed by the Commission:

Gulf & Sabine River Railroad.
Louisiana Central Railroad.
Mansfield Railway & Transportation Company.
Sabine & Eastern Railway.
Nacogdoches & Southeastern Railroad.
Louisiana & Pine Bluff.
Red River Valley Railroad.

Are there any other companies in which it will be impossible for the witnesses or counsel to be heard Monday?

Mr. Garwood: There are two cases that I direct your Honor's attention to that cannot stay over, the Alabama road, the
2667 Washington & Choctaw.

Examiner Burchmore: The Washington & Choctaw will go over.

Mr. Garwood: Mr. Greer of the Mangham & Northeastern cannot remain over until Monday, and he would like for his case to be added to the postponed list.

Examiner Burchmore: I think that that case can probably be reached tomorrow.

Mr. Garwood: Can you remain over until tomorrow?

Mr. S. R. Greer: I do not believe I can, if it is possible to be postponed.

Examiner Burchmore: Where is that road?

Mr. S. R. Greer: It is in the northeastern part of this state, and connects with the old New Orleans & Northwestern part of the Iron Mountain.

Examiner Burchmore: Who controls it?

Mr. S. R. Greer: The Stuart Greer Lumber Company.

Examiner Burchmore: Does it receive divisions of the joint rate at the present time?

Mr. S. R. Greer: Yes, sir.

Examiner Burchmore: Were those divisions cancelled recently?

Mr. S. R. Greer: Yes, sir.

Examiner Burchmore: And the order was suspended by
2668 the Commission?

Mr. S. R. Greer: Yes, sir.

Examiner Burchmore: I would prefer not to postpone it at this moment, but I will see about it a little later.

Mr. S. R. Greer: I would like to get away on the 7:15 tonight.

Examiner Burchmore: I do not suppose you could secure unanimous consent to take it up out of order.

Mr. Andrews: He could secure unanimous consent to postpone it.

Mr. S. R. Greer: Yes.

Examiner Burchmore: On what ground?

Mr. S. R. Greer: I cannot stay over.

Examiner Burchmore: It is impossible?

Mr. S. R. Greer: Practically so; yes, sir.

Examiner Burchmore: You are the only witness for that company?

Mr. S. R. Greer: Yes, sir.

Examiner Burchmore: It would not be possible to have some one else here Monday?

Mr. S. R. Greer: No, it would not.

Examiner Burchmore: Where can your case be heard later?
2669 Mr. S. R. Greer: In St. Louis, Kansas City or Chicago.

Examiner Burchmore: Then it will be understood that the Mangham & Northeastern will also go over.

Mr. Walter: Will there be a hearing here as late as Wednesday?

Examiner Burchmore: There will not, unless there is some company who absolutely demands a hearing.

Mr. Walter: Could you give us an idea which cases will be reached today and tomorrow?

Examiner Burchmore: The remaining cases I have on my calendar, which may, however, be incomplete, are in this order, being in the same order they have stood from the beginning:

The Thornton & Alexandria,
The De Queen & Eastern,
Galveston, Beaumont & Northeastern——
I am omitting the roads that are postponed——
The Loring & Western, which seems not to be present,
The Louisiana & Eastern Railway, which has not answered,
The Missouri & Louisiana Railroad, which is ready for hearing,
The Sabine & Northern Railroad, also ready for hearing,
The Blytheville, Burdette & Mississippi River, which is
2670 ready for hearing tomorrow,
The Wilson Northern Railroad, of which the same is true,
The Manila & Southwestern,
Peach River & Gulf,
Beaumont & Saratoga Transportation Company, which has not answered,
Riverside & Gulf Railway,
Beaumont & Great Northern, which has not answered,
Livingston & Southeastern, which is not present.
Mr. Garwood: The Beaumont & Great Northern has a case pending——
Examiner Burchmore: I think they may be regarded as being off this docket, but not as out of the case.
The Moscow, Camden & San Augustine. Now, counsel in that case have been here for ten days, and they want very badly to be heard, and I think they are inclined to ask unanimous consent.
Mr. Garwood: If your Honor would entertain a motion to that effect, I would make it.
Mr. Sargent: I have been here for ten days, and then some, and I have been on the head of the list, and I have got to go home by Monday. My road is the Missouri & Louisiana.
2671 Examiner Burchmore: You will be heard tomorrow surely.
The Caro, Northern,
Trinity Valley & Northern,
Jefferson & Northwestern, which seems not to be present,
Gideon & North Island Railroad,
Memphis, Dallas & Gulf.
At this point allow me to say that my attention has been called to a clipping of the Chicago Record-Herald of recent date and reading as follows, and it is perhaps well to get it in the record, although it may be a mere newspaper report:
"The Little Rock Board of Trade announces that the Rock Island proposes to take over the Memphis, Dallas and Gulf Railroad, which is now in operation from Ashton (Ashdown), on the Kansas City Southern, via Nashville to Murfreesboro, Pike County."
Eldorado & Wesson,
Fordyce & Princeton,
North Louisiana & Gulf,
Ouachita Valley,
Natchez, Ball & Shreveport——
Mr. Walter: Let me make one more request. I notice at the last

is the El Dorado & Wesson, the Fordyce & Princeton, the
2672 North Louisiana & Gulf, and Ouachita Valley. If all those other cases are heard, they cannot be heard before Monday night. Cannot those possibly go over?

Examiner Burchmore: I have felt that possibly it would not be wise to announce definitely whether we would conclude tomorrow but we will start tomorrow morning and plug ahead as hard as we can, and by the middle of the afternoon we will know where we stand and can come to a final conclusion whether we will adjourn until Monday or adjourn indefinitely.

Mr. Coleman: Some railroads are insisting upon being heard immediately. The Wilson Northern will change places with them if that is agreeable.

Mr. Gautney: I observe from the list you called there that my case is perhaps the tenth or twelfth case.

Examiner Burchmore: What road?

Mr. Gautney: The Manila & Southwestern, and it seems from the rate of procedure, it will be impossible to reach that case during this hearing, and either at Kansas City, St. Louis or Chicago we would prefer it to go over.

Examiner Burchmore: Your case is coming up tomorrow.

Mr. Gautney: I am afraid not.

Examiner Burchmore: It is going to be called tomorrow.
2673 I cannot promise more than that.

Mr. Gautney: If it is called, we will be here and try it.

Examiner Burchmore: I have it marked for Saturday, with the expectation it will be called on Saturday.

Mr. Gautney: Well, we will be here.

Examiner Burchmore: Is there any further examination of this witness?

Mr. Andrews: I have not quite understood, Mr. Durham, the method of your logging operations. Your mill is located at Diboll?

Mr. Durham: Yes, sir.

Mr. Andrews: Originally your tram roads were thrown out to the timber, that was the original movement?

Mr. Durham: Yes, sir.

Mr. Andrews: Subsequently you became incorporated?

Mr. Durham: Yes, sir.

Mr. Andrews: Was that before or after you built what you call the Lufkin Branch?

Mr. Durham: That was before we built the Lufkin Branch.

Mr. Andrews: You became incorporated, then, when you had the road down to that junction point with these two branches; what do you call it, Blix?

2674 Mr. Durham: Yes, sir, I think they were incorporated before they built that road.

Mr. Andrews: Before they built which road?

Mr. Durham: From Diboll to Blix.

Mr. Andrews: I thought that was the first one you built.

Mr. Durham: No, sir, the line from Diboll to Blix was built by the Texas Southeastern.

Mr. Andrews: What was the road which was built before the incorporation of the line, do you think?

Mr. Durham: I think the Southern Pine Lumber Company had a tram road, that ran east from Diboll.

Mr. Andrews: Where are your logging operations with reference to Blix, that is, the junction point of the two branches, is it not?

Mr. Durham: Yes, sir; they are directly west of there.

Mr. Andrews: And beyond from Diboll?

Mr. Durham: Yes.

Mr. Andrews: There the lumber company's trams spread out to the lumber?

Mr. Durham: They leave the main line at Vair; that is three miles west of Blix.

2675 Mr. Andrews: Does the railroad company have anything to do at all with the logging operations, the leasing of equipment or otherwise, or the movement of cars on the tram lines, prior to the delivery of the loaded car on the railroad track?

Mr. Durham: The way they are handling the log business now, the lumber company loads the logs and delivers them to the railroad company.

Mr. Andrews: At what point?

Mr. Durham: At a place called Gibson.

Mr. Andrews: Where is that with reference to the railroad track?

Mr. Durham: That is about five miles west of Vair on the Southern Pine Company's tram line.

Mr. Andrews: Then your engines go out there and take them?

Mr. Durham: Yes.

Mr. Andrews: Does the lumber company lease any equipment from the railroad company, or the railroad company any from the lumber company?

Mr. Durham: No.

Mr. Andrews: No interchange of equipment?

Mr. Durham: No, except occasionally for a day or two in case of accident they might borrow an engine.

2676 Mr. Andrews: And for these train hauls you speak about you get a compensation which includes the service of going in on the tram road?

Mr. Durham: Yes.

Mr. Greer: I did not catch that.

Mr. Andrews: He has stated what the compensation was to the railroad for the log haul and I asked him if it included going in on the tram line for the cars, which he has just stated it did.

Mr. Andrews: Did you compute the tram line mileage as part of the mileage in fixing the amount to be charged for a car?

Mr. Durham: Yes, sir.

Mr. Andrews: Does the railroad company charge the lumber company demurrage on cars under any conditions?

Mr. Durham: Yes, sir.

Mr. Andrews: Under what conditions?

Mr. Durham: Well, they charge them demurrage under the rules

that the Railroad Commission of Texas prescribe; that is, 48 hours free time, excluding Sundays and holidays.

Mr. Andrews: Whose cars are used to load the logs on?

Mr. Durham: The Texas Southeastern.

Mr. Andrews: Do you charge demurrage on those cars in the woods?

2677 Mr. Durham: Well, if they detain them we do; yes, sir.

Mr. Andrews: And do you collect the demurrage?

Mr. Durham: Yes, sir.

Mr. Andrews: And you handle on the per diem basis as between the railroad company and other railroads?

Mr. Durham: Yes, sir.

Mr. Andrews: Now, what free time is allowed, the Texas Commission's rules on free time?

Mr. Durham: Do you mean on the demurrage?

Mr. Andrews: Yes.

Mr. Durham: Yes, sir.

Mr. Andrews: You adhere to that?

Mr. Durham: Yes, sir.

Mr. Andrews: You spoke a while ago of a debt of $365,000 that the railroad company owed. Does it own it to the lumber company?

Mr. Durham: Yes, sir.

Mr. Andrews: How long has it owed it?

Mr. Durham: I think they have been owing the lumber company for quite a number of years, probably ever since the road was organized.

Mr. Andrews: Do you pay interest on it?

2678 Mr. Durham: Yes, sir.

Mr. Andrews: How often?

Mr. Durham: It is about every six months, I think.

Mr. Andrews: Do you do that by bookkeeping or by actual money over the counter?

Mr. Durham: It is a bookkeeping transaction.

Mr. Andrews: And you do it by bookkeeping.

Mr. Durham: Yes, sir.

Mr. Andrews: And that is a matter of charging the respective companies according to their accrued liabilities on the books of each company?

Mr. Durham: Yes, sir.

Mr. Andrews: You stated that you had a surplus of $59,000.

Mr. Durham: Yes, sir.

Mr. Andrews: That is money, I presume?

Mr. Durham: No, sir.

Mr. Andrews: And not in accounts?

Mr. Durham: No, sir, it is not in money.

Mr. Andrews: Explain that please, sir.

Mr. Durham: I do not know that I can.

Mr. Andrews: Give any definite explanation of it. I will put it in this way, if it is only in credits and not in money, against

2679 whom are those credits, or against whom are the debits, I should say, made?

Mr. Durham: The debits are made against the road and equipment and property that they own.

Mr. Andrews: You mean, then, that this theoretical accumulation of a $59,000 surplus is a paper accumulation of profits, all of which have actually gone into the railroad; is that the way you mean to put it?

Mr. Durham: Yes, sir, I think that is correct.

Mr. Andrews: There is no money on hand, but it is represented by investment?

Mr. Durham: Yes, sir, very little money.

Mr. Andrews: And not by credits?

Mr. Durham: No, sir.

Mr. Andrews: When you deliver to the H. E. & W. T. from the Diboll mill, what is the purpose in carrying it to Lufkin instead of making the delivery at Diboll?

Mr. Durham: We handle some of our business, about five per cent, at Diboll.

Mr. Andrews: I understand that, but——

Mr. Durham: But it is on account of the location of the tracks there; they have a track which will only hold about four
2680 cars, and they use that for unloading merchandise and loading ties, and just at the end of their track on our track the store and ice house of the Southern Pine & Lumber Company is located, and it is pretty hard to get that business through there without a whole lot of switching, and we run a regular train to Lufkin, and we figure that as a rule we can handle it by Lufkin better than we can by Diboll.

Mr. Andrews: Would it not be a good deal cheaper to build a better interchange track than to carry that equipment and loaded cars around from day to day?

Mr. Durham: Yes, sir; that is a better proposition, and it would be pretty hard to make a better connection in the way the plant and everything is located, but it would be better for us if we could deliver that business to them there.

Mr. Andrews: Did it not really grow up under the condition of the desire on the part of the railroad company and on the part of its connections to start in with some haul on the finished product, instead of merely delivering it as a switch proposition; is not that really the way it grew up?

Mr. Durham: You mean handling it by Lufkin?

Mr. Andrews: Yes.

Mr. Durham: No. I don't think so.

2681 Mr. Andrews: Don't you think that had anything to do with it?

Mr. Durham: If that had been the case, we would have handled it all that way.

Mr. Andrews: Well, you handle pretty nearly all that way.

Mr. Durham: Yes.

Mr. Andrews: Five per cent is only a nickel out of a dollar.

Mr. Durham: We would handle more business that way if we could do it to advantage.

Mr. Andrews: How long was the mill in operation before you commenced the Lufkin operation?

Mr. Durham: I don't know, it has been over a number of years.

Mr. Andrews: It is a pretty old proposition as a mill?

Mr. Durham: Yes, sir.

Mr. Andrews: Where is the principal product disposed of, just generally, where does it go to?

Mr. Durham: I should say that the main part of their business is sold—well, Nebraska, Kansas, Missouri, Iowa, Illinois, Texas, and Oklahoma.

Mr. Andrews: What percentage in Texas?

Mr. Durham: About 20 per cent, I would say.

Mr. Andrews: I believe you stated you are the manager
2682 for the railroad company?

Mr. Durham: Yes, sir.

Mr. Andrews: Are you the traffic manager also?

Mr. Durham: Yes, sir.

Mr. Andrews: Do you perform any service of any kind at all for the lumber company?

Mr. Durham: No.

Mr. Andrews: Who routes the lumber company's traffic?

Mr. Durham: I do; that is, such business that is not already routed by the shipper.

Mr. Andrews: Well, you observe shippers' instructions, I presume.

Mr. Durham: Yes, sir.

Mr. Andrews: And when there are no shippers' instructions, then you exercise the option, instead of the lumber company?

Mr. Durham: Yes, sir.

Mr. Andrews: What percentage would you say is shippers' instructions?

Mr. Durham: Possibly not over ten per cent.

Mr. Andrews: And by shippers' instructions, you mean the person who has purchased the lumber?

Mr. Durham: Well, either that or the Southern Pine
2683 Lumber Company, who ships it. I think they specify such routing as their customer desires.

Mr. Andrews: Is it not true that the Southern Pine Lumber Company never specifies a route to you unless it has first been required by the purchaser?

Mr. Durham: Yes, sir; that is correct.

Mr. Andrews: That is all.

Mr. Greer: Just one question before I forget it, as to this surplus. Is not that just an excess of the resources over the liabilities, practically?

Mr. Durham: It is the excess of the earnings over expenses yes, sir.

Mr. Greer: Have you not put betterments and improvements into this road from time to time?

Mr. Durham: Yes, sir.

Mr. Andrews: He said all that.

Mr. Coleman: In your early testimony you said a great deal of the lumber went to the Mississippi River at——

Mr. Durham: Yes, sir.

Mr. Coleman: Is that routed by the Cotton Belt?

Mr. Durham: Yes, sir.

Mr. Coleman: And would naturally work through the
2684 Cairo gateway, I should take it.

Mr. Durham: I think the greater part of it goes through East St. Louis, by Thebes and East St. Louis.

Mr. Coleman: Well, Thebes.

Mr. Durham: Yes, sir.

Mr. Coleman: Your division of the rate on that business is how much?

Mr. Durham: Four cents.

Mr. Coleman: And your haul?

Mr. Durham: 17½ miles.

Mr. Coleman: Do you know what the basing rate is to Cairo?

Mr. Durham: Sixteen cents.

Mr. Coleman: Do you know what the Cotton Belt's distance is from Lufkin to Cairo?

Mr. Durham: I think it is about 630 or 640 miles.

Mr. Coleman: So that they get twelve cents for a 630 mile haul, and you get four cents for seventeen miles?

Mr. Durham: Yes.

Examiner Burchmore: Who furnishes the car?

Mr. Durham: The Cotton Belt furnishes the empty car.

Mr. Garwood: Is it not the universal practice that the originating line is always given consideration from the fact that it origi-
2685 nates the traffic?

Mr. Durham: I believe that is the custom, Judge.

Mr. Andrews: And it always trades it to the best possible advantage?

Mr. Durham: Yes, sir.

(Witness excused.)

Mr. Andrews: I did not ask this witness any questions about it, nor have I any since I have been making cross examinations. I understand the Commission will request of every tap line that has been represented here a statement showing the ownership of its stock respectively in the controlling interests and in the tap lines.

Examiner Burchmore: We have not made that request so far. Do you suggest it?

Mr. Andrews: Yes, sir. I understood it was made when Commissioner Harlan was here.

Mr. Cowan: That was my understanding all the way through. In the first place, he stated the Commission had a lot of that.

Examiner Burchmore: If your understanding is correct, the matter is all right. If it is not, I will see that the request is presented.

2686 Mr. Andrews: We request that it be furnished to save time in examination.

Mr. Garwood: I thought that the matter was gone into in every case.

Mr. Greer: It is practically the same.

Mr. Andrews: He merely stated that Mr. Temple owned the controlling interest in both cases.

Examiner Burchmore: We will see that the request goes before the Commission.

Mr. Garwood: Of course we will furnish it, but we do not want any more work than we have to do.

Examiner Burchmore: I presume if the request is submitted to the short lines, they will submit whatever objection they have, but I do not see what objection they could have to furnishing it.

Mr. Greer: I omitted to put a witness on in regard to an isolated fact, and that is, the influence of divisions on prices. Commissioner Harlan questioned about that, and the possibility of mills operating successfully without divisions. He asked questions on that, and I have a witness who is acquainted with that subject.

Examiner Burchmore: Do you think it is essential to your
2687 particular case?

Mr. Greer: He seemed to think so.

Examiner Burchmore: To your particular case.

Mr. Greer: No.

Examiner Burchmore: Or just in the whole record?

Mr. Greer: Just on the whole record.

Examiner Burchmore: That matter I understood was gone into rather fully by other witnesses.

Mr. Greer: The other witness did not testify to the facts known to this witness.

Examiner Burchmore: How long will it take?

Mr. Greer: It is just an isolated question. It will only take five minutes.

Examiner Burchmore: Very well.

L. D. GILBERT was called as a witness, and having been duly sworn, testified as follows:

Mr. Greer: You are connected with the Southern Pine Lumber Company?

Mr. Gilbert: Yes, sir.

Mr. Greer: Connected with any other lumber company?

Mr. Gilbert: Yes, sir.

2688 Mr. Greer: Are you acquainted with the prices at which those two lumber companies have sold their product?

Mr. Gilbert: Yes, sir.

Mr. Greer: And have compiled a statement on that subject?

Mr. Gilbert: Yes.

Mr. Greer: Covering what period?

Mr. Gilbert: I compiled a statement covering the last three months in 1909, October, November and December, 1909.

Mr. Greer: Based on actual sales?

Mr. Gilbert: Based on actual sales.

Mr. Greer: And it has been shown here that the Texas Southeastern is connected with the Southern Pine Lumber Company?

Mr. Gilbert: Yes.

Mr. Greer: And that the stockholders of the Southern Pine Lum-

ber Company in the main own the stock of the railroad company. Where is this other lumber company?

Mr. Gilbert: It is at Pineland, Texas, on the Santa Fe. The style is the Temple Lumber Company.

Mr. Greer: What is the comparative size of the two concerns and plants?

Mr. Gilbert: Well, the Temple Lumber Company has one two-band mill and the Southern Pine Company has a two-band
2689 mill and one single band mill.

Mr. Greer: Both of them good large mills?

Mr. Gilbert: Yes, sir.

Mr. Greer: Well equipped?

Mr. Gilbert: Yes.

Mr. Greer: You say this other lumber company is on the Santa Fe?

Mr. Gilbert: Yes, sir.

Mr. Greer: There is no railroad connection with it that receives divisions?

Mr. Gilbert: No, sir.

Mr. Greer: You take the lumber direct from those two mills, lumber of the same kind as actually sold during that period and in the same markets; how do the prices compare; in other words, does the division received by the Texas Southeastern Railroad Company at Diboll influence the price of the lumber sold by the Southern Pine Lumber Company as compared with prices of this other mill?

Mr. Gilbert: It does not. The price basis is the same, the quality and kind being the same.

Mr. Greer: What is that based on?

Mr. Gilbert: It is based on the net f. o. b. mill price.

2690 Mr. Greer: Do you know of any other mills on the Santa Fe over there that are in operation that are being logged without the use of a tram line?

Mr. Gilbert: I think there are two at least, one at Lamorle, which is about three miles north of Pineland, and one at Steep Creek. I do not think either of those have tram roads.

Mr. Greer: Do you know in times past when timber was contiguous to the railroad, that there were a number of that sort of mills up and down the Santa Fe, small mills?

Mr. Gilbert: I am quite sure there were.

Mr. Greer: What, in your judgment, is the controlling factor of the ability of a small mill to operate and log its mill with teams? What is the controlling factor?

Mr. Gilbert: Do you mean the principal item of expense? I do not just catch the question.

Mr. Greer: Under what circumstances can a mill operate successfully, that type of mill?

Mr. Gilbert: It would have to have its timber very close to the mill.

Mr. Greer: And when it has the timber near the mill it can operate successfully with teams?

Mr. Gilbert: That is all.

691 Examiner Burchmore: What is the ultimate fact that you have proved by this witness?

Mr. Greer: Commissioner Harlan seemed to think it impossible or a mill to be logged with teams and operate in the same section f country in competition with a mill which had a railroad serving that received tap line divisions, and it is in answer partially to that nquiry.

Examiner Burchmore: What do you mean by the word "impossile?"

Mr. Greer: It could not operate successfully.

Examiner Burchmore: You mean a financial success?

Mr. Greer: Yes.

Examiner Burchmore: The witness says if the mill was far nough away from the railroad, it could not afford to team it.

Mr. Greer: Certainly not. It is a question of the accessibility of he logs. When they are accessible, it can operate. And it is as to he effect on the prices.

Examiner Burchmore: It does not seem to me that a great deal f light is shed on the inquiry by this witness, but his testimony is n the record.

Mr. Cowan: I want to ask one question about your price basis. You said the base price was the price of the lumber f. o. b.

2692 the mill.

Mr. Gilbert: Well, I might correct that and say we make he price delivered to the customer.

Mr. Cowan: That is a very different proposition.

Mr. Gilbert: It is the same one, merely from the other side——

Mr. Cowan: That is a very different proposition.

Mr. Gilbert: There is no difference in the price we make between the two mills. We make the same price on the lumber that comes from the lumber mill on the Santa Fe that we do that comes from the mill at Diboll, quantity and kind being the same.

Mr. Cowan: The one at Diboll, then, really pays a net rate to the railroad of four cents per 100 pounds less than the one on the Santa Fe?

Mr. Gilbert: I did not understand your question, Judge.

Mr. Cowan: Oh, well, the railroad which serves the mill at Diboll belongs to the people that own the mill.

Mr. Gilbert: In the main it does; there are some stockholders in the lumber company that are not stockholders in the railroad company.

Mr. Cowan: Well, I guess they are pretty scarce, but I assume the controlling interest does, at all events.

2693 Mr. Gilbert: Yes, the vice-president of the lumber company owns no stock in the railroad company.

Mr. Cowan: Let us get to the question, though. Is it not a fact that the same interests substantially which ship the lumber from Diboll to Kansas City, for example, for delivery are out of pocket four cents per 100 pounds less than the one that ships on the Santa Fe?

Mr. Gilbert: The same people are. The lumber company is not.

Mr. Cowan: Well, the same people; I said the same interests. Now, that being so, do you say that it does not affect the price? And that is for the reason that you sell at the same figure?

Mr. Gilbert: Yes, sir; we do not consider the railroad in fixing the prices on the lumber.

Mr. Cowan: Now, is it not a fact that what Mr. White said was true, that the sales agent sells for what he can get in the market?

Mr. Gilbert: Yes.

Mr. Cowan: And the retail purchaser has as much to do in fixing the price as the manufacturer?

Mr. Gilbert: He has had for the last three years.

2394 Mr. Cowan: Now, that being so, is it not a fact that the man who gets $1.00 a thousand off in divisions has got just that much advantage if he has a mind to use it in making the trade?

Mr. Gilbert: If he gets that $1.00 division.

Examiner Burchmore: This seems to me largely a matter of argument. We know what the facts are in a general way, and I guess the Commission knows about as much now about the manner of selling lumber, and tap line divisions, and all other phases of this investigation as anybody else does, and I think this is a matter of argument. It seems so to me.

Mr. Garwood: I would like to suggest that in his hypothetical question counsel always leaves out the cost of operating the railroad, the interest on the bonds, and so forth.

Examiner Burchmore: I suppose it costs less to operate a railroad than a mule team or ox team. If it did not, there would not be any tram roads.

Mr. Gilbert: That would depend on the distance.

Mr. Garwood: I do not know what the cost of operating a mule team is.

Mr. Coleman: I would like to get something in the record there. Did I understand you to state that you knew of but two saw mills on the Santa Fe that log by team?

2395 Mr. Gilbert: I said there were only two that I know, yes, sir, and I am not positive if they do. I know they did for a time, but they may have tram roads now.

Mr. Coleman: Do you pretend to be very familiar with the situation on the Santa Fe?

Mr. Gilbert: No.

Mr. Coleman: Would it surprise you to know there are over fifty?

Mr. Gilbert: Well, yes, sir; it would surprise me to know there are over fifty.

Mr. Coleman: We will put in an exhibit before this hearing is over with, if you intend to hear the trunk lines later on, to show just how many mills we have now. In the Chicago Lumber & Coal case we filed one showing we had 79, I think, of the small mills that did not log by tram.

Examiner Burchmore: Would it surprise you to know that there are apparently more mills in these southwestern states that do not receive any divisions through their tram roads than there are mills that do?

Mr. Gilbert: I do not know anything about it. I have not given it any study.

Mr. Greer: That is largely accounted for from the fact
2696 that little mills spring up and cut off two or three hundred acres of land and then quit.

Mr. Gilbert: Yes, sir; some of the small mills will set for as much as 100,000 feet of lumber.

Examiner Burchmore: The records of the Commission, just reading them down alphabetically, down the line show that there are private tram roads which do not receive any allowances whatever, which have mileages as follows: 4, 8, 6, 2, 12, 27, 6, 4, 10, 13, and so on, and we have got more companies of that length that do not receive any divisions—of course they are not incorporated, but they handle 100 per cent of their traffic from the controlling industry, just about the same as these other companies have testified.

Mr. Gilbert: Well, the Southern Pine own and operate about 20 miles of logging road that is not owned by the Texas Southeastern Company.

Examiner Burchmore: I am simply reading those figures to indicate there are a vast number of mills that have private tram roads which do not receive any divisions. Perhaps I should not have read that into the record. I do not know that the fact requires any discussion at this time.

Mr. Garwood: Will you- Honor let us have a copy of that,
2697 or we will be glad to have it all go in the record.

Examiner Burchmore: I will see if a copy can be obtained.

Mr. Greer: Now about the four cents that this railroad receives; in order to get that it had to make an investment of something over $19,000 a mile and undertake all the burdens of both state and national laws with reference to railroads?

Mr. Gilbert: So I understand.

(Witness excused.)

Examiner Burchmore: We will now take the Thornton & Alexandria Railroad. Before we begin on this railroad, I might say that counsel for the Missouri & Louisiana Railroad, as I understand it, suggests it will be absolutely impossible for him to attend the hearing tomorrow.

Mr. Coleman: I think not. I think Mr. Sargent said he wanted to get through tomorrow, and felt he ought to come on tomorrow.

Examiner Burchmore: He is not present?

Mr. Walter: He could not stay over Sunday, is the way I understood it.

Examiner Burchmore: Is there any road that absolutely can not stay here until tomorrow? This will be the last case called
2698 this afternoon, and after this is heard, we will adjourn until 9:30 tomorrow morning.

2699 *The Thornton & Alexandria Railway.*

J. H. BELAND, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer of the Thornton & Alexandria Railway Company?

Mr. Beland: Yes, sir.

Examiner Burchmore: Are you also an officer of any lumber company?

Mr. Beland: The Stout Lumber Company.

Examiner Burchmore: The officers in those two companies I understand are substantially identical?

Mr. Beland: Practically so.

Examiner Burchmore: With only a slight difference?

Mr. Beland: Slight.

Examiner Burchmore: Now the majority of the capital stock in the two companies is held by the same persons, is it not?

Mr. Beland: Yes, sir.

Examiner Burchmore: What differences are there in the stock ownership?

Mr. Beland: None substantially.

Examiner Burchmore: Any differences aside from direct-
2700 ors' qualifying shares?

Mr. Beland: No, sir.

Examiner Burchmore: This railroad connects, as I understand it, with the Cotton Belt at Thornton, Arkansas?

Mr. Beland: Yes, sir.

Examiner Burchmore: Is that one of the termini?

Mr. Beland: Yes, sir.

Examiner Burchmore: Please describe the road commencing at that point?

Mr. Beland: It runs in a southerly direction to the county seat town of Hampton, Calhoun County.

Examiner Burchmore: And that is the terminus?

Mr. Beland: Yes, sir.

Examiner Burchmore: What is the total main line mileage?

Mr. Beland: 22.93 miles, I think.

Examiner Burchmore: There are several miles of side track?

Mr. Beland: I suppose there are three or four miles.

Examiner Burchmore: Where is the mill of the Stout Lumber Company located?

Mr. Beland: Near Thornton.

Examiner Burchmore: How near Thornton?

Mr. Beland: Half a mile from the station of the Cotton Belt Railroad; it is in the corporate limits of the town.

2701 Examiner Burchmore: And half a mile from the station?

Mr. Beland: About.

Examiner Burchmore: The station is farther down the track?

Mr. Beland: North of the mill.

Examiner Burchmore: The mill itself is right on the right of way of the Cotton Belt System?

Mr. Beland: Not on the right of way.

Examiner Burchmore: Well, I mean it is——

Mr. Beland: It is nearly within a few feet.

Examiner Burchmore: And the loading platforms of that mill are so placed that cars furnished by the Cotton Belt for the loading of lumber can be loaded right out of your platform right on to the car as it stands on the Cotton Belt right of way?

Mr. Beland: We have two loading tracks; one is such as you have described, and the other is entirely off any railroad company's right of way.

Examiner Burchmore: You use the two tracks impartially?

Mr. Beland: Yes, sir.

Examiner Burchmore: What about the location of this second side track?

Mr. Beland: Only for convenience in loading.

2702 Examiner Burchmore: But the Cotton Belt engines move the cars to and from that side track?

Mr. Beland: Not from this one.

Examiner Burchmore: They do not?

Mr. Beland: No, sir.

Examiner Burchmore: That connects with the rails of your company?

Mr. Beland: With the Thornton & Alexandria Railway.

Examiner Burchmore: How far does the locomotive move the car of lumber that comes from this loading track?

Mr. Beland: I should say 700 or 800 feet.

Examiner Burchmore: That movement is by your locomotive?

Mr. Beland: Yes, sir.

Examiner Burchmore: I address you as an officer of the Thornton & Alexandria Railway. When was this sawmill constructed or opened for operations?

Mr. Beland: I think it has been in existence about 25 years.

Examiner Burchmore: When was construction commenced on the railroad?

Mr. Beland: Perhaps 15 years ago.

Examiner Burchmore: When was the railroad incorporated?

2703 Mr. Beland: In the year 1904.

Examiner Burchmore: That incorporation was under the laws of Arkansas? and empowers this railroad to carry on the business of a common carrier railroad?

Mr. Beland: Yes, sir.

Examiner Burchmore: It holds itself out to the public as a common carrier railroad?

Mr. Beland: Yes, sir.

Examiner Burchmore: Is there any public in that vicinity?

(No reply.)

Examiner Burchmore: That is rather a blind question. There are other shippers on the line?

Mr. Beland: Yes, sir.

Examiner Burchmore: So this railroad then was constructed before it was incorporated?

Mr. Beland: Yes, sir.

Examiner Burchmore: The entire road?

Mr. Beland: It was partly completed, my understanding is, after it was incorporated.

Examiner Burchmore: How much of the road was in existence at the time of the incorporation?

Mr. Beland: I think about 18 miles, or something near that.

2704 Examiner Burchmore: It did not run up to the county seat?

Mr. Beland: It did not.

Examiner Burchmore: Are there any private tram lines connected with this road?

Mr. Beland: No.

Examiner Burchmore: The Stout Lumber Company owns no private tracks?

Mr. Beland: Private tram tracks?

Examiner Burchmore: I mean logging tram tracks?

Mr. Beland: The Stout Lumber Company has spurs from the town of Hampton connecting their logging road.

Examiner Burchmore: What is the extent of that logging road?

Mr. Beland: It varies; I think it is now about 5 miles long.

Examiner Burchmore: It is moved from time to time?

Mr. Beland: Yes, sir.

Examiner Burchmore: How long has this lumber company been known as the Stout Lumber Company?

Mr. Beland: About the first of this year.

Examiner Burchmore: It was formerly the Stout-Greer Lumber Company?

2705 Mr. Beland: Yes, sir.

Examiner Burchmore: Is it a corporation?

Mr. Beland: Yes, sir.

Examiner Burchmore: There was no change in that corporation except the change in the name?

Mr. Beland: That is all.

Examiner Burchmore: And the relations between the lumber company and the railroad company are substantially the same today that they were before the change in the name of the lumber corporation?

Mr. Beland: Yes, sir.

Examiner Burchmore: What was the purpose of the original construction of this road?

Mr. Beland: The original construction of the road was absolutely for the hauling of logs only, I think. I say that because I have not been connected with this company until about a year and a half ago.

Examiner Burchmore: Well, the history of the road at least until recent years would justify that thought?

Mr. Beland: Yes, sir.

Examiner Burchmore: What was the purpose of incorporating it?

2706 Mr. Beland: We wanted to do a general railroad business.

Examiner Burchmore: It was your desire to serve the public that prompted you to incorporate?

Mr. Beland: Yes, sir.

Examiner Burchmore: Your incorporation had no relation to the question of the legality of divisions?

Mr. Beland: It might at first have prompted us to have incorporated.

Examiner Burchmore: As a matter of fact was not that the primary consideration that led you to incorporate?

Mr. Beland: I do not know.

Examiner Burchmore: You have never heard?

Mr. Beland: No, sir.

Examiner Burchmore: Is it not a fact that the line of this railroad practically parallels the Rock Island?

Mr. Beland: Yes, sir.

Examiner Burchmore: And at no point is more than four or five miles away from the line of that railroad?

Mr. Beland: Nearly so.

Examiner Burchmore: Now do you think that the demands of that country required the building of a second line within five miles of one already there?

2707 Mr. Beland: I think our road was built first.

Examiner Burchmore: Then you think the Rock Island——

Mr. Beland: Was after the business.

Examiner Burchmore: Have you contemplated building over to meet the Rock Island?

Mr. Beland: We own a right of way at a distance of about 14 miles out from Thornton to a town called Tinsman. We purchased the right of way.

Examiner Burchmore: When did you purchase the right of way?

Mr. Beland: I do not know, but it has been two or three years ago, I think.

Examiner Burchmore: The purchase of that right of way is evidence, is it not, of the active intention of this company to build across and make a connection with the Rock Island?

Mr. Beland: We had thought of it and think of it yet.

Examiner Burchmore: You have had some negotiations of some character or another with the Rock Island line looking to that result?

Mr. Beland: A long time ago they were.

Examiner Burchmore: About three or four years ago?

Mr. Beland: I think so.

2708 Examiner Burchmore: Did the question of divisions of freight rates enter into those negotiations at all?

Mr. Beland: Yes, sir.

Examiner Burchmore: Did you enter into any tentative contract with the Rock Island covering divisions?

Mr. Beland: I think not.

Examiner Burchmore: But the proposition was discussed?

Mr. Beland: It was.

Examiner Burchmore: You now receive divisions on lumber that moves out over your line in connection with the Cotton Belt System?

Mr. Beland: Yes, sir.

Examiner Burchmore: What are those divisions?

Mr. Beland: From one to two and a half cents.

Examiner Burchmore: Is that as liberal a basis of divisions as that which obtains elsewhere?

Mr. Beland: That seems to be their scale along in our territory.

Examiner Burchmore: Well, the Rock Island gives larger divisions than that, according to the evidence in this case, does it not?

Mr. Beland: In this case?

2709 Examiner Burchmore: Yes, in this proceeding?

Mr. Beland: Yes, sir.

Examiner Burchmore: And I presume you would naturally anticipate that the result of making a connection with the Rock Island would be a more generous division?

Mr. Beland: Yes, sir.

Examiner Burchmore: You had that thought in mind?

Mr. Beland: Yes, sir, and also to help us out in the way of securing cars during the car shortage.

Examiner Burchmore: Certainly, there are other advantages which come from having two outlets to the market rather than one. I am simply endeavoring to find out what the facts are. How long has this second side track into your plant, the one which is farther away from the Cotton Belt, been in existence?

Mr. Beland: Long ago, at least two years, I should judge.

Examiner Burchmore: Not more than two or three years?

Mr. Beland: Well, I will say that. It perhaps has been in there five or six years.

Examiner Burchmore: What is the total capital stock of this railroad corporation?

Mr. Beland: $50,000.

Examiner Burchmore: Is that all issued?

2710 Mr. Beland: Yes, sir.

Examiner Burchmore: Was it paid for in cash?

Mr. Beland: It was paid for by a dividend which was declared by the lumber company.

Examiner Burchmore: It was a dividend on the lumber company's stock paid in the form of stock in another company?

Mr. Beland: Yes, sir, that is my understanding of that. This transaction was before I became manager.

Examiner Burchmore: But that was the substance of the transaction?

Mr. Beland: Yes, sir.

Examiner Burchmore: What is the weight of the rail with which this road is built?

Mr. Beland: We have six miles of 60 pound steel, new steel, practically four miles of 40 pound steel, and the balance is either 35 or 30 or 40 pound.

Examiner Burchmore: The road is well built?
Mr. Beland: Yes, sir.
Examiner Burchmore: Have you heard of any road down in that vicinity that is not well built, a short line road?
Mr. Beland: No.
2711 Examiner Burchmore: Have you any station buildings?
Mr. Beland: We have one.
Examiner Burchmore: At what point?
Mr. Beland: At Hampton.
Examiner Burchmore: That is the county seat that you referred to?
Mr. Beland: Yes, sir.
Examiner Burchmore: How long have you had that building?
Mr. Beland: Ever since the road was built into there.
Examiner Burchmore: That is two or three years?
Mr. Beland: Yes, sir.
Examiner Burchmore: And do you know what that building cost?
Mr. Beland: I should judge it cost $600 or $700.
Examiner Burchmore: Frame?
Mr. Beland: Yes.
Examiner Burchmore: Has a ticket office?
Mr. Beland: Yes, sir.
Examiner Burchmore: And waiting room?
Mr. Beland: White and colored.
Examiner Burchmore: A storage room for freight and so forth?
2712 Mr. Beland: Yes, sir.
Examiner Burchmore: How many engines have you?
Mr. Beland: Four.
Examiner Burchmore: Do you own all those locomotives?
Mr. Beland: Yes, sir.
Examiner Burchmore: Operate them all?
Mr. Beland: Yes, sir.
Examiner Burchmore: Does the lumber company own any locomotives?
Mr. Beland: One.
Examiner Burchmore: And with that locomotive it switches the logs on their tram spur?
Mr. Beland: It is used as a construction engine for the building of these spurs.
Examiner Burchmore: Then I understand that the logs are taken from the private tram spurs by the locomotives of the railroad company?
Mr. Beland: Yes.
Examiner Burchmore: What compensation is paid for that service?
Mr. Beland: $1.25 per thousand feet, log scale.
Examiner Burchmore: What does that cover?
2713 Mr. Beland: That is a switching charge from Hampton to the woods.

Examiner Burchmore: The woods are all beyond Hampton?
Mr. Beland: Yes.
Examiner Burchmore: Then from Hampton up to the mill what do you receive?
Mr. Beland: We get a division from the railroad company.
Examiner Burchmore: The lumber that moves out from points on your line is all billed from Hampton?
Mr. Beland: No, sir.
Examiner Burchmore: From the mill?
Mr. Beland: Thornton.
Examiner Burchmore: From Thornton on your line?
Mr. Beland: Yes.
Examiner Burchmore: Who issues that bill of lading, who signs that bill of lading?
Mr. Beland: An employé of the company.
Examiner Burchmore: Of the Thornton & Alexandria?
Mr. Beland: Yes, sir.
Examiner Burchmore: Where is that employé?
Mr. Walter: Mr. Halpin is here and is more familiar with that branch of the work and with the financial and other statisti-
2714 cal information. Mr. Beland was introduced only for the physical operations.
Examiner Burchmore: What is the character of your rolling stock other than locomotives?
Mr. Beland: We have 3 box cars, 6 flats, one caboose, one combination passenger and baggage car, and 50 some logging cars.
Examiner Burchmore: Any other equipment?
Mr. Beland: No, I think not.
Examiner Burchmore: Any track scales?
Mr. Beland: No, sir.
Examiner Burchmore: Have you any team tracks on which carload freight could be delivered?
Mr. Beland: Team tracks? Sidings?
Examiner Burchmore: Yes, side tracks.
Mr. Beland: Yes.
Examiner Burchmore: They call them team tracks in a big city. Your cars are all equipped with the necessary safety devices?
Mr. Beland: The log cars are not, but the other cars that we pull in our passenger train are all equipped with air, automatic couplers, self-dumping ash pans for the engine. We try to make it a
2715 standard train.
Examiner Burchmore: Telegraph or telephone service?
Mr. Beland: Yes, sir.
Examiner Burchmore: Don't you own that yourself?
Mr. Beland: Yes.
Examiner Burchmore: The lumber company uses it?
Mr. Beland: Yes.
Examiner Burchmore: Do they pay rent?
Mr. Beland: I don't know.
Examiner Burchmore: How many track crews are there on the road?

Mr. Beland: Three.

Examiner Burchmore: Do they keep in order the private tracks of the lumber company?

Mr. Beland: Not the private tracks.

Examiner Burchmore: Who does maintain those logging spurs?

Mr. Beland: It is in their logging department.

Examiner Burchmore: Of the mill company?

Mr. Beland: Of the mill company?

Examiner Burchmore: The railroad has nothing to do with that in any way, shape or form?

Mr. Beland: No.

2716 Examiner Burchmore: Have you any station employés.

Mr. Beland: We have one.

Examiner Burchmore: He is at——

Mr. Beland: Hampton.

Examiner Burchmore: Does he devote his entire time to this service?

Mr. Beland: Yes, sir.

Examiner Burchmore: He does not work for the lumber company?

Mr. Beland: No.

Examiner Burchmore: It is not the storekeeper?

Mr. Beland: No.

Examiner Burchmore: How many train crews in the railroad service?

Mr. Beland: There are three train crews.

Examiner Burchmore: One of those locomotives is an emergency engine?

Mr. Beland: Yes, sir.

Examiner Burchmore: Does the lumber company have any train crews?

Mr. Beland: No.

Examiner Burchmore: How do they operate their log-

2717 ging cars?

Mr. Beland: Except this one construction engine I have spoken of, which is owned by the lumber company.

Examiner Burchmore: Does that construction engine lie idle a large part of the time, or are they building tracks all the time?

Mr. Beland: They use it practically every day more or less.

Examiner Burchmore: Now what clerks or other employés has this railroad company besides those mentioned?

Mr. Beland: There is a charge made against the railroad company of $100 per month which the lumber company receives for services that different employés in the office might perform for the railroad company.

Examiner Burchmore: How much time do the lumber company employés put in for the railroad company under that $100 charge?

Mr. Beland: It requires a good deal of time, with all the reports which have been made.

Examiner Burchmore: Do you think the railroad company gets its money's worth?

Mr. Beland: I think so.

Examiner Burchmore: What salaries are paid to the gen-
2718 eral officers of the railroad company, I refer to such officers as are not also employed by the lumber company.

Mr. Beland: Mr. Walter referred to Mr. Halpin, who is here, who can testify to all that, as to rates and such as that. I am not really posted on those things.

Examiner Burchmore: Not even as to rates of salaries?

Mr. Beland: Some of them I am.

Examiner Burchmore: Can you advise me with respect to your train service and if so, make a full statement.

Mr. Beland: Train service?

Examiner Burchmore: Yes.

Mr. Beland: Well, we have a train that leaves Thornton in the morning about seven o'clock and arrives at Hampton about nine something, I forget just what, and returns in time to make connections with the northbound Cotton Belt train known as Train No. 2.

Examiner Burchmore: It makes one round trip a day?

Mr. Beland: Yes, sir, in the morning.

Examiner Burchmore: That carries passengers?

Mr. Beland: Yes, sir.

Examiner Burchmore: Does it make any trip in the afternoon?

2719 Mr. Beland: Not that train.

Examiner Burchmore: Another train?

Mr. Beland: Logging train.

Examiner Burchmore: Then you have two trains?

Mr. Beland: Yes.

Examiner Burchmore: Have you any other trains?

Mr. Beland: Only the log train and this one mail and passenger train.

Examiner Burchmore: Do both of those trains run on regular schedule?

Mr. Beland: Not the log train.

Examiner Burchmore: Do you have a timetable?

Mr. Beland: We have, for the mail train.

Examiner Burchmore: If desirable you can file it. Do you carry mail?

Mr. Beland: Yes, sir.

Examiner Burchmore: Express matter?

Mr. Beland: Yes.

Examiner Burchmore: Does any express company operate on your line, or do you carry express as freight?

Mr. Beland: No, we carry express packages.

Examiner Burchmore: For what company?

2720 Mr. Beland: For ourselves.

Examiner Burchmore: The Adams Express Company does not operate on your line or any other company of that kind?

Mr. Beland: No.

Examiner Burchmore: You charge freight rates?

Mr. Beland: No, we handle small packages and charge the express rate. As I said, I would like to have you ask those questions of Mr. Halpin.

Examiner Burchmore: As to the details I will, but I thought you might know as to the general business. I will ask him as to the freight traffic and passenger traffic and for the figures. You have supplies of bills of lading and waybills and other stationery of that kind?

Mr. Beland: Yes, sir.

Examiner Burchmore: Do you wish to testify in regard to the manner of billing freight?

Mr. Beland: No.

Examiner Burchmore: I believe you said it was your effort to comply with all the state and federal laws that govern the conduct of common carrier railroad companies?

Mr. Beland: It is.

Examiner Burchmore: Can you advise me with respect to
2721 the profits which have been made from the operation of this railway?

Mr. Beland: I think our net profit for the year ending last June was about $1,500.

Examiner Burchmore: What were the revenues on which you made that profit?

Mr. Beland: Passenger and express and——

Examiner Burchmore: I mean the amount, or shall I ask the question of another witness?

Mr. Beland: The other witness, I prefer.

Examiner Burchmore: Has this railroad any bonds?

Mr. Beland: No, sir.

Examiner Burchmore: Do you owe any money to the lumber company?

Mr. Beland: They hold a note against the railroad company for $80,000.

Examiner Burchmore: And the capital stock you said was $50,000?

Mr. Beland: Yes.

Examiner Burchmore: What did the road cost to build?

Mr. Beland: Let me explain. This road when it was turned over or sold to the Thornton & Alexandria Company was a narrow gauge road, and was not extended into Hampton.

2722 Examiner Burchmore: And you paid $50,000 for a narrow gauge road?

Mr. Beland: Yes, sir.

Examiner Burchmore: That is what you paid for the road.

Mr. Beland: Yes.

Examiner Burchmore: And some equipment?

Mr. Beland: And the narrow gauge equipment.

Examiner Burchmore: Then you changed your narrow gauge equipment and standardized the road?

Mr. Beland: Yes, sir, and got this fund from the Stout Lumber Company.

Examiner Burchmore: And you also extended it to this other point?

Mr. Beland: Yes, sir.

Examiner Burchmore: What did all those changes cost?

Mr. Beland: I could not give you the figures.

Examiner Burchmore: Is another witness present who can?

Mr. Beland: I believe he can.

Mr. Walter: Mr. Halpin will give you that.

Examiner Burchmore: I believe that is all with this witness.

Mr. Walter: When you bought that line, it consisted only
2723 of a narrow gauge extending about 18 miles?

Mr. Beland: That is my recollection.

Mr. Walter: That was standardized and extended into Hampton?

Mr. Beland: Yes, sir.

Mr. Walter: Hampton is the county seat?

Mr. Beland: Yes, sir.

Mr. Walter: About how many people live at Hampton?

Mr. Beland: I should judge 800 to 1,000.

Mr. Walter: How many people live along or tributary to the Thornton & Alexandria Road?

Mr. Beland: 4,000 or 5,000 people.

Mr. Walter: All the service from Hampton to Thornton either passenger or freight is over your line?

Mr. Beland: Yes.

Mr. Walter: Your engine goes down to the woods where the logs have been loaded by the lumber company and hauls those logs up to Hampton, for which you receive a switching charge?

Mr. Beland: Yes.

Mr. Walter: The railroad company then take those logs down to Thornton and unload them?

Mr. Beland: Yes, sir.

2724 Examiner Burchmore: The railroad unloads them?

Mr. Beland: Yes, sir.

Mr. Walter: That $1.25 switching charge covers that service for the unloading as well as bringing them up to Hampton?

Mr. Beland: Yes, sir.

Examiner Burchmore: But not for the movement between——

Mr. Walter: The movement from Hampton down to Thornton is covered by the joint rate.

Mr. Beland: Yes.

Mr. Walter: Out of which you receive a division of one and a half to two cents?

Mr. Beland: Yes.

Mr. Walter: You have now a connection with the Cotton Belt?

Mr. Beland: Yes.

Mr. Walter: What is the great advantage of an additional connection with the Rock Island?

Mr. Beland: To secure empties during car shortage and——

Mr. Walter: I will ask you whether or not that is one of the most important considerations?

Mr. Beland: Yes.

2725 Mr. Walter: In having more than one connection.

Mr. Beland: Yes, sir, and to reach other territories.

Examiner Burchmore: What are the other important considerations?

Mr. Walter: Is there any additional consideration in having a second connection other than the additional territory you can reach on joint rates and the additional car supply? Besides the other territory you would reach on the joint rates and the car supply, is there any consideration?

Mr. Beland: We should get better divisions.

Mr. Walter: In the building of that road have you recently made any improvements in grades or anything of that sort?

Mr. Beland: We are making an improvement right now.

Mr. Walter: Is that an extensive improvement? About how much are you putting into the improved right of way?

Mr. Beland: We are reducing a couple of curves in a distance of about a mile at a cost of five or six thousand dollars.

Mr. Walter: How far is it from Hampton to Thornton?

Mr. Beland: Nearly 23 miles.

Mr. Walter: Has the Stout Lumber Company cut over a good portion of its holdings?

2726 Mr. Beland: It has quite a bit.

Mr. Walter: Is that territory occupied to any extent by farmers or producers of fruit?

Mr. Beland: Yes, sir.

Mr. Walter: What is the general nature of the freight traffic which you handle other than forest products?

Mr. Beland: General merchandise of all kinds, flour and feed stuffs.

Mr. Walter: Any cotton or cottonseed?

Mr. Beland: Cotton and cottonseed.

Mr. Walter: And other agricultural products?

Mr. Beland: Yes, sir.

Mr. Walter: Your line serves everybody that comes to you for service either in passenger or freight?

Mr. Beland: Yes, sir, we cater to it.

Mr. Walter: You are building up business as much as you can?

Mr. Beland: Yes, sir.

Mr. Walter: Has the lumber company, if you know, made any sale of its lands or does it contemplate any sales looking to colonization?

Mr. Beland: We are experimenting with our land with a
2727 view of selling it.

Mr. Walter: Just explain to what extent such experimentation by the lumber company has been had.

Mr. Beland: We have expended in the last two or three years about $30,000 on that line.

Mr. Walter: What were you doing?

Mr. Beland: Raising fruit, vegetables, corn, hay, peanuts and alfalfa.

Mr. Walter: In other words, demonstrating the possibility of the soil along the line of road?

Mr. Beland: We can raise most anything.

Mr. Walter: And that was the purpose of this experimental farming?

Mr. Beland: Yes, sir.

Mr. Walter: Can you give me some idea of the extent of the orchard which you put out?

Mr. Beland: We have an orchard of about 8,000 Alberta trees which are beginning to bear, and we shipped two cars from there this year.

Mr. Walter: That will increase?

Mr. Beland: Besides that we have a couple of thousand plum and a thousand or so pear trees.

2728 Mr. Walter: I will ask whether or not you can express an opinion as to whether the general business along your line of railroad will increase in greater proportion than the forest products shipped out?

Mr. Beland: I think it will.

Mr. Walter: Have you not a depot at Thornton?

Mr. Beland: We use—no, we have not.

Mr. Walter: How much longer will the cut of timber last which is now owned by the lumber company, in the ordinary process of cutting?

Mr. Beland: It ought to last 30 years.

Mr. Walter: Will that compel additional building of spur lines?

Mr. Beland: Yes.

Mr. Walter: Will there be any extension of main line?

Mr. Beland: No extension of main line.

Mr. Walter: Only the lumber spurs will be taken up and moved?

Mr. Beland: The lumber spurs perhaps will be built out a distance of 18 to 20 miles.

Mr. Walter: How many lumber shippers have you or other shippers in carload lots of forest products other than the Stout Lumber Company?

2729 Mr. Beland: We have a couple of dozen, I expect, of different concerns.

Mr. Walter: Has the Stout Lumber Company any connection with those concerns?

Mr. Beland: None whatever.

Mr. Cowan: Ask him to file a list or give it now.

Mr. Walter: Can you furnish a list or state now the names right into the record, of the various shippers? If you have a list there, hand it to the stenographer.

Mr. Beland: Mr. Halpin I think has that statement.

Mr. Walter: Here is a list that we offer as an exhibit to his testimony, to be copied into the record. Read the list.

Examiner Burchmore: I do not think we had better copy it.

Mr. Cowan: To save time I was asking him to read the names of the concerns on his line.

Mr. Walter: Also a list of the merchants of Hampton. It is very short.

Examiner Burchmore: It may be copied in then.

(The lists are as follows:)

List of Shippers on T. & A. Ry.

The Stout Lumber Company, Mfrs. & Wholesale Lumber.
Hampton Lumber Co., " Hardwood Lumber.
2730 Hampton Stave Co., Staves, Heading, Stave Bolts, etc.
Fordyce Manufacturing Co., Spoke Timber.
W. A. Matthews & Co., Staves & Heading.
National Cooperage & Wooden W. Co., Staves and Stave Bolts.
J. C. Hollingsworth, Cotton Seed.
Furlow & Son, Cotton.
W. C. Dunn, Cotton.
J. M. Dunn, Cotton Seed.
H. B. Dunn, Cotton.
Moro Fruit Farm, Shippers of Fruit.
Virginia Carolina Chemical Co., Fertilizers.
E. L. Koonce, Contractor.

The above are all Carload shippers.
None of the above have any pecuniary interest in this line, except some of the stockholders of this Company are stockholders in The Stout Lumber Company and the Moro Fruit Farm, and all are wholly dependent upon this line to move their products to market.

2731 *List of Hampton Merchants.*

Biggers, Furlow & Son, Hardware.
Furlow & Son, General Merchandise.
H. B. Dunn, do.
Hampton Grocery Co., do.
W. C. Dunn, do.
Hampton Pharmacy Co., Drugs.
North Side Grocery Co., Groceries & Gen. Mdse.
A. A. Ables, General Merchandise.
J. B. Lucas, Restaurant.
J. B. Wood Feed Store, Feed, Hay, etc.
J. C. Hollingsworth, Cotton Gin.
J. E. Sturgis, General Merchandise.
Hampton Lumber Yard, Retail Lumber.
W. J. Autrey, General Merchandise.
J. B. Ritchie, do.
J. M. Dunn, do.
J. E. Upton, do.
Cobb & Son, do.
J. B. Ritchie, Benson, Ark., Fertilizers.

None of the above have any pecuniary interest in this line
2732 except some of the stockholders of this Company are stockholders in the Hampton Lumber Yard, and all are wholly dependent upon this line to procure their stocks of merchandise.

Mr. Walter: In this extension to Hampton, let me ask whether the public made any donations to secure that extension?

Mr. Beland: They did.

Mr. Walter: To what extent?

Mr. Beland: They gave us right of way and terminal facilities, and a bonus of $2500 cash.

Mr. Walter: What is the value of the consideration you received, counting in the cash and terminal?

Mr. Beland: I should judge $10,000.

Mr. Walter: That was all done in order to get the facilities afforded by you as a common carrier?

Mr. Beland: Yes, sir, they solicited us very strongly, I understand.

Mr. Walter: Do the Arkansas authorities recognize you as a common carrier or not?

Mr. Beland: Yes, sir.

Examiner Burchmore: Have they given you any special
2733 recognition different in character from what you might term the recognition that you have received at the hands of the Interstate Commerce Commission? I mean this Commission has received your tariffs and annual reports and written you letters.

Mr. Beland: Along the same lines.

Examiner Burchmore: And no further?

Mr. Beland: And no further.

Mr. Gaughan: In Arkansas they do not have the formal recognition like they do in Texas.

Examiner Burchmore: That is what I meant. Does this railroad own its entire right of way?

Mr. Beland: With the exception of a very little bit that is tied up in litigation, I guess.

Examiner Burchmore: Are you familiar with the terms of a contract which seems to have been entered into on the 11th day of January, 1909, between this railroad company and the Stout-Greer Lumber Company covering the matter of log movement?

Mr. Beland: No, I do not recall it.

Examiner Burchmore: Is it not a fact that——

Mr. Walter: Perhaps you had better ask Mr. Halpin about it. He knows about it.

2734 Examiner Burchmore: Just one question about it. Is it not a fact that the railroad company transports the mill employees free of charge?

Mr. Beland: I think that that was the contract, made in the form of a contract.

Examiner Burchmore: Do the employees pay fares as a matter of fact?

Mr. Beland: The employees pay fare on the road? No.

Examiner Burchmore: You mean lumber company's employees?

Mr. Beland: No.

Examiner Burchmore: Who repairs these locomotives belonging to the railroad company?

Mr. Beland: The lumber company.

Examiner Burchmore: And they also repair the cars?

Mr. Beland: Yes.

Examiner Burchmore: What do they charge for those repairs?

Mr. Beland: I think there is 10 per cent added to the actual cost.

Examiner Burchmore: There seems to be a provision in this contract to that effect. This contract I may say also purports to provide for the $1.25 charge per thousand feet to reimburse the railroad company for moving the logs over the tram road
2735 up to Hampton. Is there any further examination of this witness?

Mr. Cowan: I want to ask a few questions. What is the extent of the holdings of timber by the lumber company?

Mr. Beland: About 70,000 acres of timber land.

Mr. Cowan: The extent of the land that has been cut off is how much?

Mr. Beland: I suppose there is 20,000, maybe 30,000 acres.

Mr. Cowan: The amount of the service performed in the delivery of lumber by your company to the St. Louis Southwestern, what service do you perform, any?

Mr. Beland: I do not understand.

Mr. Cowan: Well, the lumber is delivered from your mill to the Cotton Belt.

Mr. Beland: Yes, sir.

Mr. Cowan: How much service does your railroad company perform?

Mr. Beland: Sometimes the railroad pushes them on to the Cotton Belt side tracks.

Mr. Cowan: Generally speaking, how is it done?

Mr. Beland: The Cotton Belt Railroad takes the load from the mill siding.

2736 Mr. Cowan: And puts the cars there to be loaded?

Mr. Beland: Yes.

Mr. Cowan: Now you haul lumber for other concerns along the line of your road?

Mr. Beland: Yes, sir.

Mr. Cowan: Are they just little sawmills?

Mr. Beland: Yes, sir.

Mr. Cowan: What rate of freight do you charge them?

Mr. Beland: I think the Arkansas Court tariff.

Examiner Burchmore: We have another specialist here on freight rates for this company.

Mr. Cowan: I have no further questions that I know of.

Mr. Coleman: No questions.

Examiner Burchmore: What was the other company for which you testified?

Mr. Beland: The Bearden & Ouachita River.

Examiner Burchmore: Any relation between those two railroads?

Mr. Beland: None whatever.

Examiner Burchmore: Or between the lumber companies?

Mr. Beland: No, they are separate and distinct companies.

Examiner Burchmore: Are they in the same general vicinity?

2737 Mr. Beland: Yes, sir, about eight miles apart.

Examiner Burchmore: And you are on the ground as the chief operating officer for both companies?

Mr. Beland: Yes, sir. I might correct the statement. I have one share of stock in the Cotton Belt Lumber Company, and also own stock in the Stout Lumber Company.

Examiner Burchmore: You are a director, I suppose?

Mr. Beland: Yes, sir.

(Witness excused.)

B. E. HALPIN was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Mr. Halpin, you are an officer of this lumber company, and also of the railroad company?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Is your entire compensation paid by either company?

Mr. Halpin: There is $50.00 a month of my salary charged against the railroad company.

Examiner Burchmore: Charged against the railroad?

Mr. Halpin: Yes.

2738 Examiner Burchmore: What, does the railroad give it to you?

Mr. Halpin: The railroad does not. In fact, the railroad does not handle any cash, only in the hands of the agent at the station.

Examiner Burchmore: Most of its cash is handled for it by the lumber company?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Any other officers of this railroad that receive salaries?

Mr. Halpin: No.

Examiner Burchmore: Aside from Mr. Beland?

Mr. Halpin: No, he does not draw any salary from the railroad.

Examiner Burchmore: Is it charged to the lumber company?

Mr. Halpin: Yes.

Examiner Burchmore: I thought he was not an officer of the lumber company?

Mr. Halpin: Yes, he testified he was.

Examiner Burchmore: No other officers of the railroad company receive salaries?

Mr. Halpin: No, sir.

2739 Examiner Burchmore: Is there any billing accompanying the movement of logs to the mill?

Mr. Halpin: No, sir.

Examiner Burchmore: Does the conductor make a report on his arrival at the mill of the number of logs he has brought in?

Mr. Halpin: Yes, sir.

Examiner Burchmore: That report is entered on the books of the railroad company?

Mr. Halpin: The number of loads, yes.

Examiner Burchmore: The figures he brings in *on* entered on the books of the company?

Mr. Halpin: The number of cars.

Examiner Burchmore: And that is the accounting basis for the charge of $1.25?

Mr. Halpin: No, not the report the conductor turns in. That is the report of the man who scales the logs in the woods.

Examiner Burchmore: He is a lumber employee?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Then the lumber company renders to the railroad company the statement which is the basis of this
2740 $1.25 settlement?

Mr. Halpin: Yes, sir.

Examiner Burchmore: And I suppose the railroad company exercises some check on that statement?

Mr. Halpin: Well, the check of the number of cars brought in.

Examiner Burchmore: Does the Thornton & Alexandria Railroad issue bills of lading on the outbound movement of lumber?

Mr. Halpin: Yes, sir.

Examiner Burchmore: In all cases?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Do you issue any way bills?

Mr. Halpin: No. It is handled on transfer billing. We give the Cotton Belt agent an extra copy of the bill of lading.

Examiner Burchmore: And that acts as transfer billing?

Mr. Halpin: Yes, sir.

Examiner Burchmore: And he makes out a waybill over his line?

Mr. Halpin: I presume he does.

Examiner Burchmore: Are the rates on lumber over this
2741 line on a milling in transit basis?

Mr. Halpin: Yes, sir.

Examiner Burchmore: But the lumber is billed as originating at the junction point, is it not?

Mr. Halpin: It is billed as originating at Thornton, on the Thornton & Alexandria Railroad.

Examiner Burchmore: But what is the necessity for a milling in transit privilege if it originates at the mill?

Mr. Halpin: Well, we need the money.

Examiner Burchmore: Well, I know it, but you could get the money without having a milling in transit arrangement, if the fact is your lumber is billed as originating at the mill.

Mr. Halpin: Well, that is the way the bills of lading read.

Examiner Burchmore: The bills of lading read as though the lumber originated at the mill?

Mr. Halpin: Yes.

Examiner Burchmore: And not originating back at Hampton?

Mr. Halpin: No, because our mill is not located at Hampton, and we could not very well do that.

2742 Mr. Walter: The bill of lading does not show where the freight originated, but where it is billed from.

Mr. Halpin: Yes, sir, that is all.

Examiner Burchmore: Is the rate applied a straight rate from Hampton, or is it a re-shipping rate from Hampton?

Mr. Halpin: Well, of course we understand it as being a——

Examiner Burchmore: Let me go at this a little differently. Do you have joint through rates on lumber published from Hampton?

Mr. Halpin: Yes, sir.

Examiner Burchmore: To intrastate points?

Mr. Halpin: Yes, sir.

Examiner Burchmore: And those rates are the same as the rates from Thornton on your line to interstate points?

Mr. Halpin: Now I said—we have a tariff covering rates on lumber from Hampton. It is a proportional tariff applicable to interstate shipments. It is not a through rate. We have not issued a joint tariff naming rates.

Examiner Burchmore: You mean you do not have any joint tariffs?

Mr. Halpin: We have joint tariffs, but not on lumber from Hampton out.

2743 Examiner Burchmore: Do you have joint tariffs on lumber from Thornton out?

Mr. Halpin: The Thornton & Alexandria has not.

Examiner Burchmore: As a matter of fact it is explained to me that the Cotton Belt publishes its rate in this fashion; they name a rate from Thornton on their line to St. Louis, for example, and make that rate applicable on logs that have come in to Thornton.

Mr. Halpin: Yes, sir.

Mr. Walter: And the bill of lading is applicable from the junction.

Examiner Burchmore: I believe the Cotton Belt's statements bear that out?

Mr. Halpin: Yes, sir.

Examiner Burchmore: But the division received on those joint rates is intended in a way to cover the logs into the mill?

Mr. Halpin: Yes.

Examiner Burchmore: For as a matter of fact on a great deal of this traffic you do not perform any service on the lumber.

Mr. Halpin: Not after it is loaded into the car.

2744 Examiner Burchmore: But after it has become lumber?

Mr. Halpin: No.

Examiner Burchmore: For half of your traffic or perhaps more is loaded on that track which is a part of the Cotton Belt System.

Mr. Halpin: Yes.

Examiner Burchmore: And loaded directly on the Cotton Belt tracks?

Mr. Halpin: Yes.

Examiner Burchmore: What percentage of the lumber is so loaded?

Mr. Halpin: I have no means of knowing. We do not keep any record of it. I imagine 75 per cent of it.

Examiner Burchmore: That is all I wanted, just a general idea. The rate of freight you paid to St. Louis and other interstate points is the same that you would pay if you were located directly on the Cotton Belt and had no railroad connection other than the Cotton Belt?

(No reply.)

Examiner Burchmore: You pay the regular Cotton Belt local rate?

Mr. Halpin: Yes, sir.

2745 Examiner Burchmore: What are your divisions of the Cotton Belt rates?

Mr. Halpin: On lumber?

Examiner Burchmore: On lumber?

Mr. Halpin: One cent to two and a half cents, you might say from nothing to two and a half cents; there are some shipments we do not get a division on.

Examiner Burchmore: Shipments to what territory?

Mr. Halpin: Texas, except on the Cotton Belt.

Examiner Burchmore: You receive no divisions or shipments to points in Texas off the Cotton Belt?

Mr. Halpin: No.

Examiner Burchmore: But to other points you receive from one to two and a half cents?

Mr. Halpin: Yes, sir.

Examiner Burchmore: There is not any traffic on which you receive more than two and a half cents?

Mr. Halpin: No.

Examiner Burchmore: Have you ever received more than two and a half cents?

Mr. Halpin: Yes, sir, we did some years ago.

Examiner Burchmore: How long ago?

2746 Mr. Halpin: I should say two or three years ago.

Examiner Burchmore: What was that higher division?

Mr. Halpin: We received three cents to points in Texas on the Cotton Belt.

Examiner Burchmore: That accords with my understanding of your divisions. What is the extent of your freight traffic, give us a general idea?

Mr. Halpin: Our total freight for our last fiscal year amounts to $38,800.

Examiner Burchmore: Do you know the tonnage?

Mr. Halpin: Well, I have it here some place.

Examiner Burchmore: I will withdraw that question for the moment. How much of that represented earnings on logs at this $1.25 rate?

Mr. Halpin: Well, I have that here somewhere; $24,169.

Examiner Burchmore: $24,000 on the logs?

Mr. Halpin: Yes.

Examiner Burchmore: Well, you mean that was the division you received from the Cotton Belt?

Mr. Halpin: No. I understood you to say at the $1.25 rate.

Examiner Burchmore: Yes.

2747 Mr. Halpin: Yes, sir, that is what it amounted to.

Examiner Burchmore: How much did you get from the Cotton Belt?

Mr. Halpin: It amounted to about $9,000.

Examiner Burchmore: Does this $1.25 charge on the logs amount to more than the charge you would get out of the Cotton Belt on the lumber?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Is not that $1.25 credited in any way against the freight charges on the outbound movement?

Mr. Halpin: No—well, it is credited to the same account that the percentage from the Cotton Belt is credited to, freight revenue account.

Examiner Burchmore: If the lumber company has paid $1.25 on the logs, the lumber company is not permitted to pay any less on the lumber out; it pays the full rate on the lumber out, nevertheless.

Mr. Halpin: Yes, sir.

Examiner Burchmore: How much did you receive from passenger traffic, mail and express and such sources?

Mr. Halpin: $4,135.

Examiner Burchmore: Making your total revenue how much?

2748 Mr. Halpin: $42,995 for last year.

Examiner Burchmore: What were your expenses last year?

Mr. Halpin: About $41,500.

Examiner Burchmore: Then you had a profit of how much?

Mr. Halpin: About $1500.

Examiner Burchmore: The preceding year you had a larger profit than that on a smaller revenue?

Mr. Halpin: I do not remember what our figures were.

Examiner Burchmore: I think for the fiscal year 1909 the figures apparently are $35,540.84 revenue, and $32,172.78 of expense, making a net revenue of $3,368.06. The major portion of that I assume, was applied as interest on your loan?

Mr. Halpin: Yes, sir.

Examiner Burchmore: You have not any surplus?

Mr. Halpin: Well, we have——

Examiner Burchmore: Actual cash surplus, I mean.

Mr. Halpin: Not in cash, but we have a surplus of about $8,000.

Examiner Burchmore: That is in the road?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Do you keep a separate bank ac-

2749 count from the lumber company?

Mr. Halpin: No.

Examiner Burchmore: Do you keep separate books, not separate accounts, but separate books.

Mr. Halpin: Yes, sir.

Examiner Burchmore: Are those books kept in accordance with the Commission's system of accounting?

Mr. Halpin: Yes, sir, strictly.

Examiner Burchmore: How long have they been so kept?

Mr. Halpin: Ever since the Commission inaugurated the new system of accounts, the last two or three years or three or four years.

Examiner Burchmore: What is the extent of your passenger traffic, is there any figure you can give other than the revenue?

Mr. Halpin: Yes, sir, we carried 4,562 revenue passengers last year.

Examiner Burchmore: That is 15 or 20 a day, apparently?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Do the officers of your company receive free passes over other railroads?

Mr. Halpin: Two of us do.

Examiner Burchmore: Those two are also officers of the
2750 lumber company?

Mr. Halpin: Yes, sir.

Examiner Burchmore: Do they use those passes?

Mr. Halpin: Yes, sir.

Examiner Burchmore: In interstate travel?

Mr. Halpin: Yes, sir.

Examiner Burchmore: What percentage in your opinion, if you have not the actual figures, of the total tonnage of your road is furnished by the interests that control the road, I refer to the lumber company?

Mr. Halpin: About 70 or 75 per cent—now, of the revenue?

Examiner Burchmore: Of the revenue?

Mr. Halpin: Yes, sir.

Examiner Burchmore: But somewhere near 95 per cent of the tonnage?

Mr. Halpin: The percentage of the tonnage would perhaps be more on account of the heavy tonnage of the logs.

Examiner Burchmore: I neglected to ask you, you have joint rates on class freight applying from Hampton?

Mr. Halpin: Yes, sir, and to Hampton.

Examiner Burchmore: And you get 15 per cent of those rates as your division?

2751 Mr. Halpin: Of the joint tariffs, yes, sir.

Examiner Burchmore: What does that 15 per cent amount to?

Mr. Halpin: Well, of course, business billed in that way is not kept separate in our records, so I have no means of knowing.

Examiner Burchmore: But I mean on a package of class freight, do you get four or five cents per 100 pounds, or 15 or 20, or how does it run?

Mr. Halpin: It runs anywhere from 10 to 20 cents, I should say.

Examiner Burchmore: That is on small freight.

Mr. Halpin: Yes, sir; there is very little business billed that way into Hampton: They buy most of the local freight within the state.

Examiner Burchmore: You use the so-called court tariff, local tariff?

Mr. Halpin: Yes, sir.

Mr. Walter: As to the telephone used by the lumber company, does the lumber company pay for that?

Mr. Halpin: Yes, sir, a rental.

Mr. Walter: As to the express which you carry, have you
2752 had in consideration between you and the express company as to an express contract?

Mr. Halpin: Well, no, there is not any express company operating on our line. The Pacific Express Company had their man down there a few months ago and wanted to put in their service on our line, but what they offered was not enough to interest us.

Mr. Walter: You carry the express at your local merchandise rate?

Mr. Halpin: Yes.

Mr. Walter: As to the number of employés carried by the railroad free for the lumber company, where do most of the lumber company's employés spend the night?

Mr. Halpin: Well, the men at the plant, the sawmill, do not do any free traveling. It is some of the woods employés who are passed, we send them either way.

Mr. Walter: Any employé going in there is passed free of charge?

Mr. Halpin: Yes, sir.

Mr. Walter: The lumber company's employés mostly live at Hampton or in the woods?

Mr. Halpin: Well, the woods employés?

2753 Mr. Walter: Yes.

Mr. Halpin: They live in the woods at the camps.

Mr. Walter: And the Thornton employés live mostly at Thornton?

Mr. Halpin: Yes.

Mr. Walter: Can you say what the average would be per month of this free carriage?

Mr. Halpin: Not more than ten passengers a month.

Mr. Walter: What about the rates on classes and commodities from Hampton out, is that high enough to pay you for the service rendered?

Mr. Halpin: Yes, sir.

Mr. Walter: Do you carry all the traffic that goes into or out of Hampton?

Mr. Halpin: Practically, all, yes, sir.

Mr. Walter: We have a photograph of the station at Hampton, together with some of the equipment for the Examiner's view. If that will cumber the record we will not put it in the record, but it simply demonstrates the building at Hampton with the equipment. We also have some further photographs showing the kind of
2754 buildings, the substantial quality of the architecture at Hampton which we also want simply to have the Examiner see.

Examiner Burchmore: I think it would cumber the record a good deal. I do not think the case would be decided on that point.

Mr. Walter: Yes. The Court House there is some evidence of the prosperity of the county.

(Photographs presented to the Examiner for inspection.)

Mr. Walter: You furnish the only railroad facilities that Hampton has?

Mr. Halpin: Yes, sir.

Mr. Walter: I think that is all.

Mr. Cowan: About what do you charge people who haul lumber on your line other than the lumber company that owns the road? Do you haul any other lumber for other people?

Mr. Halpin: Hardwood lumber.

Mr. Cowan: What arrangements do you have?

Mr. Halpin: We have a tariff.

Mr. Cowan: Local rates?

Mr. Halpin: Yes, sir.

Mr. Cowan: To Thornton?

2755 Mr. Halpin: Well, we have a tariff for interstate business also, a proportional tariff.

Mr. Cowan: How much is the local rate?

Mr. Halpin: Five cents per 100 pounds.

Mr. Cowan: Do you move any of it on the local rate?

Mr. Halpin: Yes, sir.

Mr. Cowan: Do you move any on the interstate through rate?

Mr. Halpin: Well, the rate is the same, it is a proportional tariff naming the same rate as the local rate.

Mr. Cowan: So the man shipping lumber from points on your line pays the same rate as anybody else would pay from Thornton plus five cents per hundred pounds?

Mr. Halpin: Yes, sir.

Mr. Cowan: And that is the case with staves, stave bolts, and things of that kind?

Mr. Halpin: I do not know what the rate is on the Cotton Belt for staves. There is a great deal of that business on our line but it is all charged at the local rate.

Mr. Cowan: In other words, your railroad company does not move any lumber or foreign products on the same rate as the Thornton rate is?

Mr. Halpin: No, that Thornton rate is only on yellow 2756 pine, and there is no call for——

Mr. Cowan: You do not move yellow pine from points on your line for anybody else?

Mr. Halpin: We would if they offered it.

Mr. Cowan: Well, you do not haul it, they do not offer it?

Mr. Halpin: No.

Mr. Cowan: If they offered it they would have to pay five cents per hundred pounds more than your mill?

Mr. Halpin: No——

Mr. Gaughan: He said the blanket rate was on yellow pine.

Examiner Burchmore: I thought he said there was no blanket rate.

Mr. Cowan: That was on hardwood.

Examiner Burchmore: He said in answer to my question that the rates were published in an entirely different manner, that is, the Cotton Belt published——

Examiner Stracker: They apply from anywhere on tap lines, but only apply on yellow pine, and they put the junction rate all the way back on the tap lines.

Mr. Walter: There is no joint rate on hardwood lumber.

Mr. Halpin: No.

Mr. Cowan: That is all.

2757 Mr. Walter: Can you tell about the amount of forest products in carloads that is now waiting cars for shipment along your line?

Mr. Halpin: 35 or 40 cars. However, that is a little more than usual.

Mr. Coleman: Have you lumber shipments going into what is known as Central Freight Association territory?

Mr. Halpin: Yes, sir, lumber shipments.

Mr. Coleman: That is routed via Thebes mostly?

Mr. Halpin: Via Du Po, East St. Louis, the same as the junction point of the Cotton Belt at East St. Louis.

Mr. Coleman: What is the rate to East St. Louis?

Mr. Halpin: 18 cents at the present time.

Mr. Coleman: That is the same rate as applies from down at Lufkin, is it not?

Mr. Halpin: I think so.

Mr. Coleman: What is your proportion of that rate?

Mr. Halpin: Well, if it is destined for points east of the Mississippi River it is two and a half cents.

2758 Mr. Coleman: What is the distance on the Cotton Belt from your station?

Mr. Halpin: I think it is a little over 400 miles.

Mr. Coleman: Do you recall what the distance is from Lufkin?

Mr. Halpin: No, sir, I do not.

Mr. Coleman: Did you say about how many miles it is greater than from Lufkin?

Mr. Halpin: I don't know.

Mr. Cowan: Since you do not get divisions to Texas points, you do not ship lumber down there, do you?

Mr. Halpin: Not very much. We ship some.

Mr. Cowan: You did ship there when you did get divisions?

Mr. Halpin: Some; yes, sir.

Mr. Cowan: The principal part of your lumber goes on the two and a half cent division?

Mr. Halpin: Well, I would say that perhaps 50 per cent of it does.

Mr. Cowan: And you ship lumber to points in Arkansas locally for sale?

Mr. Halpin: Yes, sir.

Mr. Cowan: Do you get any division on that?

2759 Mr. Halpin: No.

Mr. Cowan: You charge the local rate on it or not? What does your railroad company get out of lumber of this lumber company that is shipped for sale in Arkansas locally?

Mr. Halpin: Nothing.

Examiner Burchmore: Have you not a switching charge?

Mr. Halpin: No.

Examiner Burchmore: It does not handle the lumber, as a matter of fact; it simply handles the logs in?

Mr. Halpin: It does not handle part of it.

Mr. Cowan: And you handle the lumber locally to Arkansas points, the same as you do interstate lumber, so far as the service at the saw mill is concerned?

Mr. Halpin: Yes, sir.

Mr. Walter: Those Arkansas shipments would not amount to more than one or two per cent, would they?

Mr. Halpin: No.

(Witness excused.)

Mr. Sargent: While I was out I believe some question about our line was raised, and I would ask as a special courtesy that you allow me to be heard tonight. It loses me 24 hours unless I can
2760 get out tomorrow morning, and I am quite sure it will not take very long, and if you can hear me I will greatly appreciate it.

Examiner Burchmore: Your road is the Missouri & Louisiana?

Mr. Sargent: Yes, sir.

Examiner Burchmore: And connects with what company?

Mr. Sargent: The Kansas City Southern and Santa Fe.

Mr. Cowan: Have you just one witness?

Mr. Sargent: That is all.

Mr. Andrews: Judge Cowan is not at all well. I do not like to go on with any of these matters in his absence. The proposition consists of four industrial enterprises, and I apprehend will take considerable time in the examination.

Examiner Burchmore: I advised Mr. Sargent that I was willing to hold a night session, although I do not feel like it myself, if there was unanimous consent, but I do not feel I can take a road out of order unless there is such consent, especially at a night session.

Mr. Sargent: While there are four of them, two are coal properties, and I do not imagine they will be considered at length, and as to them, they could come following the lumber company, and I could answer your questions in very short order, because there is very little to be said.

2761 Examiner Burchmore: Do other counsel desire an opportunity to cross examine the witnesses in this case?

Mr. Cowan: I am not posted on the case until I hear his testimony.

Examiner Burchmore: I can see that counsel would have some hesitancy in objecting, but if there is really any unwillingness, I do not feel I could take it up.

(After further consideration of this matter the case was set down for tomorrow morning.)

Mr. W. P. Anderson: I represent the Gideon & North Island Railroad Company, and it is imperative that I leave here. I am willing to meet the Commission for hearing at any time and place I am called upon, at St. Louis, preferably.

Examiner Burchmore: Very well, it will be understood that the Gideon & North Island will not be called at this session, but will be put over for such further hearing as the Commission may arrange.

(Whereupon, at 5:40 P. M., an adjournment was taken to Saturday, December 17, 1910, at 9:30 A. M.)

2762 NEW ORLEANS, LA., *December* 17, 1910.

Met pursuant to adjournment at 9:30 A. M.
Present: Parties as before.

Examiner Burchmore: Gentlemen, we will come to order.

Mr. Cowan: Before taking up any of the cases this morning I want to read into the record the following requests of the trunk lines, made by the intervenors. These requests have been partly made from time to time, but in order that there may be no misunderstanding, and in order that the matter may be in the record on the consideration of the Commission, as well as the consideration of those who receive the typewritten report of the stenographer, I will read the following requests, that the trunk lines furnish a statement to be presented at the beginning of the next hearing of this case, showing for the years ending June 30, 1908, 1909 and 1910 the following matter: I may interpolate that by trunk lines I mean the railroad lines as separate from those that have been denominated the tap lines.

First. The number of saw mills on or adjacent to their lines, the station or place at which the same are located, the name of the
2763 lumber company and the name of the lumber company tap line or railroad, if any, serving such saw mills and which connect with the trunk line.

Second. The output of each of such saw mills, delivered to the trunk line by the saw mill or the serving railroad of the saw mill interest.

Third. A sketch showing the track connections of the trunk line with each of the saw mills or with the saw mill's connecting railroad.

Fourth. The number of saw mills located on lumber or logging roads serving them, and which logging or lumber roads connect with the trunk line, and the name of the company operating such saw mill and such lumber or logging road.

Fifth. The aggregate tonnage of lumber delivered to such trunk line by each lumber or logging road; that is, the short line serving the saw mill or mills.

Sixth. The aggregate amount of divisions paid to each.

Seventh. The tonnage of lumber on which division was paid.

Eighth. The tonnage received from each lumber or logging road, on which no division was paid.

Ninth. The tonnage of mills not having a railroad serving them, or having railroads, but not having divisions or allowances
2764 out of the rate.

Tenth. The total lumber tonnage of all sorts in all directions, and the average distance hauled and the earnings per ton mile, where those statistics are kept, and if they are kept by the system of railroad to which the trunk line belongs, then let the statement show the same facts as to the system.

Eleventh. The average car loading of lumber.

Examiner Burchmore: Judge Cowan, your request of course is on the record and will receive the attention of the Commission I may suggest it will probably be a fortnight before the transcript gets to

the Commission, and it may take a week later before they can act on the request, and do you not think it would be perhaps well to renew that request, or make the same request of the Commission?

Mr. Cowan: I can hand you this memorandum, or have Mr. Philips write this out now and hand it to you during the day.

Mr. Walter: On account of the press of time, on behalf of the Galveston, Beaumont & Northeastern, the Peach River & Gulf and the Riverside & Gulf, while the witnesses are here and ready to be heard, we are willing and request that these three cases go over until the subsequent hearing.

2765 Examiner Burchmore: That will involve no special inconvenience?

Mr. Walter: Nothing but what we are willing to undergo. Then as to the El Dorado & Wesson, the Ouachita Valley Railroad Company and the Fordyce & Princeton Railway, the witnesses and officers of those lines, together with associate counsel, were compelled to leave the city and could not remain for the hearing today. I therefore ask that these cases be passed to a subsequent hearing.

Examiner Burchmore: Mr. Gaughan, of counsel, stated to me it was absolutely impossible for those companies to remain, and requested that they go over, if it could possibly be done, and I agreed that that might be done if the request were renewed this morning by counsel.

Mr. Walter: As to the Arkansas Southeastern and the North Louisiana & Gulf, the witnesses and officers of those two lines are here ready to be heard, but they are the last two practically on the call, and cannot be here for a hearing earlier than Wednesday of next week. I therefore suggest that these two cases, if they cannot be reached today, be passed for the subsequent hearing.

Examiner Burchmore: It may be possible that we can hear
2766 the Arkansas Southeastern later in the day.

Mr. Walter: Very well, we will hold ourselves in readiness, and if you think it possible as to the North Louisiana & Gulf, we will do the same.

Examiner Burchmore: I think that may be possible, but not as probable as in regard to the other.

Mr. Walter: We will hold ourselves in abeyance, and ready to proceed, and will not give you any more trouble.

Examiner Burchmore: The De Queen & Eastern is on the list first.

2767 *De Queen & Eastern Railroad.*

H. L. DIERKS was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer of this railroad company?

Mr. Dierks: I am.

Examiner Burchmore: What is your position?

Mr. Dierks: Secretary and treasurer.

Examiner Burchmore: You are also secretary and treasurer of the Dierks Lumber & Coal Company?

Mr. Dierks: I am.

Examiner Burchmore: I will ask you, Mr. Dierks, if the officers of these two companies are substantially the same?

Mr. Dierks: They are.

Examiner Burchmore: And the persons who hold those offices have practically the same position in each of the two companies?

Mr. Dierks: Yes, sir.

Examiner Burchmore: As a matter of fact, all of the officers of the lumber company are officers in the railroad company?

2768 Mr. Dierks: Well, the elected officers are, yes.

Examiner Burchmore: This railroad connects with the Kansas City Southern at De Queen, Arkansas?

Mr. Dierks: Yes, sir.

Examiner Burchmore: That is one of the termini of the line?

Mr. Dierks: Yes, sir.

Examiner Burchmore: And from that point it runs in what direction and for what distance?

Mr. Dierks: Well, it runs in an easterly direction for 27.02 miles.

Examiner Burchmore: Is that its terminus?

Mr. Dierks: At present; yes, sir.

Examiner Burchmore: What is the name by which the terminus is known?

Mr. Dierks: Dierks, Arkansas.

Examiner Burchmore: Are there any other main lines of this railroad?

Mr. Dierks: Any other main lines? No.

Examiner Burchmore: What is the extent of the branches?

Mr. Dierks: Well, it varies at times. We have approximately 30 miles of steel for spurs, but it is not often that it is all laid; it

2769 probably would average 15 to 20 miles at a time.

Examiner Burchmore: I understand that the Dierks Lumber Company controls this railroad through stock ownership.

Mr. Dierks: The stockholders control the railroad.

Examiner Burchmore: Are the stockholders of the two companies the same, or practically the same?

Mr. Dierks: Well, they are not exactly the same; there is some difference.

Examiner Burchmore: Are those differences extensive?

Mr. Dierks: There is about $50,000 of the railroad stock that is owned by people that have no stock in the lumber company.

Examiner Burchmore: Do those people have any interest in the lumber company?

Mr. Dierks: No, sir.

Examiner Burchmore: Who are those people that hold the $50,000 in lumber stock?

Mr. Dierks: Well, I do not know as I can say off hand.

Examiner Burchmore: Have they any relation to the lumber business?

Mr. Dierks: No, sir.

Examiner Burchmore: Any lumber business, I mean?
Mr. Dierks: One of them I think has.
Examiner Burchmore: How extensive are his holdings?
Dierks: His holdings are not in the South; they are in Ne-

niner Burchmore: Will you file with the Commission a list stockholders of this railroad company, indicating whether they ny relation to the Dierks Lumber & Coal Company, and if not, s their business; that is, whether they are interested in the trade, and have timber holdings in that vicinity?
Dierks: Yes, sir.
Andrews: And the amount of stock held by each.
niner Burchmore: Yes, and the amount of stock held by

Dierks: Yes, sir.
niner Burchmore: What is the total capitalization of the l?
Dierks: Authorized, $700,000. Issued and paid?
niner Burchmore: How much issued?
Dierks: Issued, $593,700.
Examiner Burchmore: Is not that rather a heavy capitalization for a 30 mile railroad?
Mr. Dierks: Not the way it is built. It is built like a rail-

niner Burchmore: I understand the saw mill of the Dierks r & Coal Company, which was formerly located at the junction of the Kansas City Southern, and near its rails, was de- by fire a year or so ago.
Dierks: Yes, sir, a year ago last May.
niner Burchmore: Is that mill being reconstructed?
Dierks: No, sir, not yet.
niner Burchmore: Well, it is proposed to rebuild it?
Dierks: Well, it will be rebuilt if lumber prices ever get high to warrant the rebuilding of it.
Cowan: The company has a saw mill now?
niner Burchmore: The company has no saw mill there at ne.
Dierks: Not in operation. They have a mill, but it is not in on.
niner Burchmore: A small mill?
Dierks: It is small compared with the one that was burned; hard wood mill. The other was pine.
Examiner Burchmore: Do you think that will be opened for operation in the near future?
Mr. Dierks: Not until the pine mill is built.
niner Burchmore: So you might say as a practical matter, npany has no mills there which it will operate until further g is done?
Dierks: No, they have not.
niner Burchmore: Has this lumber company any other saw nywhere?

Mr. Dierks: No, sir.

Examiner Burchmore: Who controls this lumber and coal company?

Mr. Dierks: Well——

Examiner Burchmore: Any special interests?

Mr. Dierks: The Dierks interests, the Dierks family.

Examiner Burchmore: Does the Dierks family have interests elsewhere in the lumber trade?

Mr. Dierks: Individually; yes, sir.

Examiner Burchmore: As a matter of fact, they also control the Sabine & Eastern Railway, do they not, down in Louisiana?

Mr. Dierks: I guess—yes, they would have control of that.

Examiner Burchmore: Are you here as a witness in con-
2773 nection with that company?

Mr. Dierks: No, sir.

Examiner Burchmore: You said $50,000 in the stock of this railroad is outstanding in the hands of other than the Dierks Lumber & Coal Company stockholders. Are those people related to the Dierks family?

Mr. Dierks: I think some of them are.

Examiner Burchmore: Your list might show that relation, if it has any bearing on it.

Mr. Dierks: Yes, sir.

Examiner Burchmore: Are there any other saw mills along the line?

Mr. Dierks: Yes, sir.

Examiner Burchmore: How many of them? Describe them in a general way.

Mr. Cowan: And where located.

Mr. Dierks: I am not as familiar with the industries on our line as our other witness would be, and I would prefer that he answer that question.

Examiner Burchmore: I will put it to the other witness. What is your principal tonnage at the present time?

Mr. Dierks: That is a question he ought to answer too, I
2774 believe.

Examiner Burchmore: He will testify with respect to the rates and divisions?

Mr. Dierks: Yes, sir.

Examiner Burchmore: Also as to the characteristics of the road; that is, the rails and the stations and so forth?

Mr. Dierks: Well, either one of us can do that.

Examiner Burchmore: What is the weight of the rail in this railroad?

Mr. Dierks: The majority of it, or practically all of it is 60 pound now.

Examiner Burchmore: How long has it been 60 pound?

Mr. Dierks: Well——

Examiner Burchmore: Two or three years?

Mr. Dierks: No, more than that.

Examiner Burchmore: That is a sufficient answer. The ties are of good grade?

Mr. Dierks: Standard No. 1 ties.

Examiner Burchmore: Is the road ballasted?

Mr. Kirkpatrick: They are oak ties.

Mr. Dierks: Yes. The road, I don't know whether you would call it ballasted or not; it is tamped and well surfaced, and
2775 part of it ballasted with cinders.

Examiner Burchmore: Any towns on your line?

Mr. Dierks: Yes, sir.

Examiner Burchmore: What are they?

Mr. Dierks: The first town is called Geneva; the next is Lockesburg; the next is Provo, and the next is Dierks.

Examiner Burchmore: Those are the only towns?

Mr. Dierks: Yes, sir.

Examiner Burchmore: What is the size of these towns in a general way?

Mr. Kirkpatrick: Describe De Queen first.

Examiner Burchmore: Yes, I did not mention De Queen; that is the beginning of the road.

Examiner Burchmore: Describe those towns in a very brief way.

Mr. Dierks: De Queen is a very lively Arkansas town of possibly 3,000 people or such a matter, and seems to be very prosperous. There are a great many stores there; I don't know how many, hotels and every other industry that goes to make up a southern city or town.

The town of Geneva does not amount to a great deal. I do not know; there are one or two or three stores, I believe. There
2776 is one, I know. I don't know about the rest of them. And a church and school house. And there is a saw mill at that point, I believe.

Lockesburg, up until recently, was the county seat of Sevier County.

Mr. Kirkpatrick: It was a town before the War, was it not?

Mr. Dierks: It was a very old town. Yes, it was there before the War. Our road was the first road that reached the town, and it is the only one there now.

Examiner Burchmore: Why did they move the county seat?

Mr. Dierks: They voted it out. De Queen got too strong for them.

The town of Provo is a small town; I believe it has three stores. I do not know what other industries are there. Our other witness can describe these towns more than I can.

Examiner Burchmore: Any population there?

Mr. Dierks: There are some people there; I don't know how many.

Examiner Burchmore: Does this lumber and coal company have any stores of its own at these towns?

Mr. Dierks: It has a store at Dierks. The town of Dierks
2777 I should judge, is about three or four hundred people, and it has a number of mercantile establishments, drug stores and bank and in fact everything that goes to make up a small sized town.

Examiner Burchmore: Are any of these towns on the wane since the lumber company ceased operation?

Mr. Dierks: Well, we expected them to be, but they are not.

Examiner Burchmore: They are keeping right up?

Mr. Dierks: Yes, sir. At the town of Dierks we have no employees there, except one, outside of the general store.

Examiner Burchmore: Are there any private tram roads that connect with this railroad, any logging spurs?

Mr. Dierks: No private, no.

Examiner Burchmore: Well, this road owns and operates the logging spurs?

Mr. Dierks: When they are in operation; yes, sir.

Examiner Burchmore: Are there any in operation at the present time?

Mr. Dierks: No, sir.

Examiner Burchmore: Those logging spurs ceased to be operated when the mill burned down?

2778 Mr. Dierks: Yes, sir. I say they are not in operation; there is one spur that is occasionally used, but that is very seldom, by another party who has a little timber out there.

Examiner Burchmore: There are not any logging spurs owned by these other mills to which you made general reference?

Mr. Dierks: No.

Examiner Burchmore: Have those mills expressed or manifested a desire to have this railroad put in spurs for their special benefit?

Mr. Dierks: Those have spurs for their loading.

Examiner Burchmore: But I mean up into their woods.

Mr. Dierks: Not that I know of, no.

Examiner Burchmore: Would you honor such a request, if made?

Mr. Dierks: We would, if the tonnage would justify the expense.

Examiner Burchmore: Did the tonnage of logs originated by the Dierks Lumber people justify the expense of putting the spurs into their woods?

Mr. Dierks: Yes, sir.

Examiner Burchmore: They cannot cut any more logs in a given territory than any one else can, can they?

2779 Mr. Dierks: Well, they can cut more than some people can. It depends on how much money the other fellow *has* got.

Examiner Burchmore: What do you mean by justifying the expense, in the case of a spur built into another man's woods?

Mr. Dierks: It would take a certain amount of tonnage or a certain length of time to repay the railroad for the expense they would go to in building the spur.

Examiner Burchmore: What I mean is this: If you build a spur track three miles into the woods for the purpose of hauling logs out, there is a certain maximum amount that must be hauled out of that spur; you cannot haul any more than are in the woods.

Mr. Dierks: No.

Examiner Burchmore: There are just as many in the woods of John Smith or John Brown as in the Dierks woods?

Mr. Dierks: Probably.

Examiner Burchmore: Would not these people pay as much for getting the logs from those spurs as the Dierks Lumber Company would pay?

Mr. Dierks: They would if they had the timber there.

Examiner Burchmore: You mean there is not any one else
2780 who has the timber?

Mr. Dierks: Well, yes, there are a number that have timber there, but I do not believe there is anybody that has any quantity of timber.

Examiner Burchmore: What did the Dierks Lumber Company pay to this railroad for getting their logs hauled over these woods tracks up to the main line?

Mr. Dierks: They paid $6.00 for a single car and $12.00 for a double car.

Examiner Burchmore: How much was the load of one of those cars?

Mr. Dierks: Do you mean in feet?

Examiner Burchmore: In any quantity in which it might be measured.

Mr. Dierks: A single car would hold probably 3,000 to 3,500, depending on the size of the logs.

Mr. Kirkpatrick: Describe the character of these cars and then the Examiner will understand.

Mr. Dierks: We have some cars that are short; that is, 48 foot cars; they will only hold one length. The most of our cars, however, are 40 feet, 60,000 pound capacity, standard flat cars, and they will hold two lengths.

2781 Examiner Burchmore: Do you have any double deck logging cars?

Mr. Dierks: No.

Examiner Burchmore: Is there such a thing?

Mr. Dierks: I never heard of a double deck lumber car.

Examiner Burchmore: I saw somewhere in reference to these reports, a reference to a rate on double deck cars.

Mr. Dierks: They probably called it double deck because they can haul two lengths.

Examiner Burchmore: You say they charged $6.00 for hauling the logs. What did that $6.00 cover?

Mr. Dierks: It covered hauling the logs from the point of origin on the spur track to the main line.

Examiner Burchmore: And then from the main line up to the mill there was an additional charge of some sort?

Mr. Dierks: That was covered, I believe, by the divisions that the railroad received out of the through billing.

Examiner Burchmore: How many locomotives has this railroad at the present time, or should I ask the other witness?

Mr. Dierks: You should ask the other witness.

Examiner Burchmore: You stated, I believe, that the capitalization of this railroad; that is, the out- capital stock, amounts to
2782 $593,000.

Mr. Dierks: $593,700, yes, sir.

Examiner Burchmore: $593,700?
Mr. Dierks: Yes, sir.
Examiner Burchmore: Are there any bonds outstanding?
Mr. Dierks: No.
Examiner Burchmore: Any other indebtedness?
Mr. Dierks: Nothing only current bills.
Examiner Burchmore: What did the road cost to build?
Mr. Dierks: Up to date?
Examiner Burchmore: Up to date.
Mr. Dierks: Well, I don't know. It cost more than the books show. The books show it cost, I believe, $599,000, in that neighborhood, but it cost more.
Examiner Burchmore: Now, a part of that total cost is to be accounted for by the fact that you have from time to time taken up and relaid these spur tracks into the woods?
Mr. Dierks: No, sir, that is not in a fixed account, the spur track.
Examiner Burchmore: Those are owned and operated by the railroad, when they are operated?
Mr. Dierks: Yes, sir.
2783 Examiner Burchmore: But the railroad does not own the right of way on which they are laid, of course?
Mr. Dierks: Part of it.
Examiner Burchmore: Do I understand that the lumber company formerly paid for the movement of these tracks from place to place in its woods?
Mr. Dierks: No, sir; the railroad pays all that expense, and charges it to an expense account.
Examiner Burchmore: It goes right into operating expenses?
Mr. Dierks: Yes, sir.
Examiner Burchmore: Of course the effect of that is to increase the total operating expenses for the year. Do you understand that that is a correct manner of charging this cost, under the rules of the Commission, as prescribed for accounting?
Mr. Dierks: That is my understanding of it.
Examiner Burchmore: What dividends has this company paid on its stock?
Mr. Dierks: Well, the company has only paid one dividend that I know of, and I don't really know just when that was. It was five or six years ago, I believe, or four or five at least, of six per cent.
2784 Examiner Burchmore: What surplus has it at the present time?
Mr. Dierks: I believe the surplus account up to the end of the last year was only about $2,000. However, the road has made more money than that.
Examiner Burchmore: If you have only paid one dividend of six per cent, and only have $2,000, about, in the treasury as surplus, where has the rest of the profit gone to?
Mr. Dierks: The rest of the profits have gone to the building up of the road, taking up 45 pound steel and relaying with 60 pound

reducing grades, shortening the line, all of which has gone into operating expense instead of fixed account.

Examiner Burchmore: It has gone into operating expenses. Do you not mean——

Mr. Dierks: Well, maintenance of way, or whatever it is called.

Examiner Burchmore: And all the improvements you make on the road you charge right up to operation?

Mr. Dierks: Well, not all of them. On the roadbed I believe all of them go to those accounts.

2785 Examiner Burchmore: Now, you said the road cost, as far as the books show, $599,000. Do you mean $599,000 plus the amounts which you have spent from year to year on additions and have taken out of your operating expense account?

Mr. Dierks: Yes, it cost in addition to that figure.

Examiner Burchmore: And that $599,000 plus these additions you now refer to, does that total amount represent the cost of the permanent tracks and permanent line of the railroad, or does it represent the cost of that line and the cost of this temporary moving of tracks?

Mr. Dierks: It does not include the cost of these temporary moving tracks, these spur tracks.

Examiner Burchmore: Did you understand the question correctly? Is it not a fact that the main line, the permanent line, has cost to date about $599,000 and no more?

Mr. Dierks: It has cost more than that, because, as I say, these expenses of putting in 60 pound steel instead of 45 pound steel, and other general improvements——

Examiner Burchmore: That is not in the $599,000.

Mr Dierks: No.

Examiner Burchmore: How much have these spur tracks cost from time to time?

Mr. Dierks: I have no figures here to tell that.

2786 Examiner Burchmore: That cost is all included in your operating expenses from year to year?

Mr. Dierks: So I understand.

Examiner Burchmore: But your operating expenses from year to year have not included any great amount of expenditure on the main line, aside from the matter of relaying rails?

Mr. Dierks: Yes, quite a bit.

Examiner Burchmore: I wonder if you can——

Mr. Dierks: The main line has been bettered right along.

Examiner Burchmore: Your annual report shows that the cost of this road to date, with equipment, is $599,000, and you say that is not accurate. Are you able to supply the Commission later with any figures as to the real cost of this road?

Mr. Dierks: No.

Examiner Burchmore: Then we will just assume it cost $600,000 or $700,000, or some greater sum?

Mr. Dierks: Yes, sir.

Examiner Burchmore: As a matter of fact, it would not cost any $600,000 to rebuild that line as it stands today, would it?

Mr Dierks: I don't see why it wouldn't.

Examiner Burchmore: You think the road is worth $30,000
2787 a mile?

Mr. Dierks: $30,000? It would not be $30,000, would it?

Mr. Cowan: Nearly $20,000.

Examiner Burchmore: Yes, that is true.

Mr. Dierks: That road, including equipment and its facilities in the way of stations, shops, and so forth, is worth that price, yes, sir.

Examiner Burchmore: Were the stockholders of this company satisfied to have the operating expenses increased from year to year by the amount of money that was expended in changing these tracks, which were used only by the logging company? I should think they would prefer to have their net revenue divided up in the shape of dividends.

Mr. Dierks: Well, they are figuring on making the road a permanent road, and would as soon see it go back into the road as to take it out.

Examiner Burchmore: But I cannot see why these minority stockholders, who have no relation to the lumber company can stand by and be satisfied to have a great amount of money expended each year on what amounts to private logging tracks for the interest of the Dierks Lumber Company.

Mr. Dierks: Well, I do not know as I understand that.

2788 Mr. Kirkpatrick: Can I ask a question?

Examiner Burchmore: You certainly may. I want to get at the situation.

Mr Kirkpatrick: Is it not true that this $6.00 on single cars and $12.00 on double cars did bring in a revenue?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: And that was the purpose of laying them?

Mr. Dierks: Yes, sir.

Examiner Burchmore: Well, did that pay for laying those rails in the woods, taking them up and the cost of the rails and the cost of operating those tracks and yield a profit in addition?

Mr. Dierks: I believe it has. I do not think it has yielded any loss.

Examiner Burchmore: You think they have made a profit?

Mr. Dierks: I think so.

Examiner Burchmore: When was this saw mill opened for operation at De Queen?

Mr. Dierks: I believe it was in 1902.

Examiner Burchmore: About that time?

Mr. Dierks: About that time; yes, sir.

2789 Examiner Burchmore: Was it then owned by the present company?

Mr. Dierks: Yes, sir.

Examiner Burchmore: When was construction begun on this railroad?

Mr. Dierks: In 1900.

Examiner Burchmore: Before the railroad was built?

Mr. Dierks: Yes, sir.

Examiner Burchmore: How much of it was constructed at that time?

Mr. Dierks: I don't know exactly. I think there was about seven or eight miles completed by the time the mill was completed.

Examiner Burchmore: When was the railroad incorporated as a railroad?

Mr. Dierks: In 1900.

Examiner Burchmore: It was at that time incorporated as a common carrier?

Mr. Dierks: It was.

Examiner Burchmore: Of freight and passengers?

Mr. Dierks: Yes, sir.

Examiner Burchmore: And it has held itself out to the
2790 public as such common carrier?

Mr. Dierks: Yes, sir.

Examiner Burchmore: What were the primary purposes of the building of this railroad?

Mr. Dierks: The purposes were to serve the people.

Examiner Burchmore: Well, there were not any woods immediately adjacent to that saw mill at that time, were there?

Mr. Dierks: Immediately adjacent?

Examiner Burchmore: Yes, close at hand; they needed a road to get up to their woods, among other things.

Mr. Dierks: Yes, they needed a road, or some way to get the logs in or else build the mill out in the country.

Examiner Burchmore: That is what I mean. There was not any forest immediately around this mill to be cut; they had to go some distance to get the logs?

Mr. Dierks: There was some forest within a short distance.

Examiner Burchmore: From the beginning of this railroad has it actually carried all the logs milled in the Dierks plant?

Mr. Dierks: Yes, sir, practically all, if not all. I do not know of any that it has not hauled.

Examiner Burchmore: Is there any river there on which
2791 they could float the logs down?

Mr. Dierks: Not at De Queen. There is a river out on the line; I do not know whether it is big enough to float logs or not.

Examiner Burchmore: There is a contract between the lumber company and this railroad company entered into in 1908 which covers this movement of the logging cars to and from the mill, is there not?

Mr. Dierks: I believe so.

Examiner Burchmore: That contract provides this $6.00 charge for the hauling which you have referred to, and also provides a charge of $1.25 for loading logs.

Mr. Dierks: Yes, sir.

Examiner Burchmore: Are you familiar with the terms of that contract?

Mr. Dierks: No. I am not familiar with the terms now. I was at the time, but I have forgotten it now.

Examiner Burchmore: That contract, as I said, was entered into in 1908 and it recites among other things that whereas said lines of

spur track, referring to some of these spurs up into the woods, are of no commercial value for any purpose other than to collect the logs of the Dierks Company and transport them to the main
2792 line of the railroad, to be hauled to the mills of the Dierks Company—but the part of the contract that I wanted to refer to was this. A paragraph provides that the lumber company shall pay the railroad company "the sum of $1.25 for loading each single deck car with logs, and the sum of $2.50 for loading each double deck car with logs." Just what is a single deck and a double deck car?

Mr. Dierks: Under that contract it means that the single decks are the short cars which will only haul one length of logs, and the double decks are the long, 40 feet cars, which will hold two lengths.

Examiner Burchmore: I was thinking of these hog cars, with decks that are one above the other, and I wondered if that was the kind of car here, and wanted an explanation. This contract also provides that it shall be expressly understood and agreed that all the logs hauled up to the mill shall be manufactured into lumber by the Dierks Lumber Company, and be shipped out to market over the lines of the Kansas City Southern from the town of De Queen. Is that contract still in force; has it been abrogated?

Mr. Dierks: I do not know that it has ever been withdrawn,
2793 although it is not used now.

Examiner Burchmore: Certainly it is not in use now, but it has not been abrogated?

Mr. Dierks: No.

Examiner Burchmore: Does the railroad file annual and other reports with the Interstate Commerce Commission?

Mr. Dierks: It does.

Examiner Burchmore: I understand that as a matter of fact there has been some delay in filing its report for the present year, but that it is in preparation.

Mr. Dierks: It will be ready in about three or four days, I understand. There was some delay in getting the books out by the Commission, I believe.

Examiner Burchmore: Are the accounts of this company kept in accordance with the system prescribed by the Interstate Commerce Commission?

Mr. Dierks: As well as we know how.

Examiner Burchmore: Do you keep separate accounts from the lumber company?

Mr. Dierks: Absolutely.

Examiner Burchmore: Are the cars equipped with safety devices?

2794 Mr. Dierks: Yes, sir.

Examiner Burchmore: I think that is all of this witness.

Mr. Kirkpatrick: Now, Mr. Dierks, as I understand it, the lumber company pays $6.00 a single deck and $12.00 a double deck car load of logs for transporting the logs over the spurs to the end of the main line.

Mr. Dierks: Yes, sir, to where it connects with the main line.

Mr. Kirpatrick: And in addition to that they pay $1.25 for a single car, and $2.50 for a double car of loading?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: As I understand, the logs are deposited by the lumber company with teams on the spur tracks.

Mr. Dierks: Along the spur tracks; yes, sir.

Examiner Burchmore: You are speaking now of what they used to do?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: Yes, it is the general custom, and if the mill is ever operated again, I suppose it will be the same. Then the railroad company loads them with steam loaders?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: Is it not true that this charge of $6.00
2795 and $12.00 a car for spur hauling, and the $1.25 and $2.50 for loading was intended to and does produce a revenue to the railroad company?

Mr. Dierks: It was intended to and I believe it does.

Mr. Kirkpatrick: That is over and above all the expense of moving the spurs and putting them down, and the interest on the investment and all those things?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: Is it not true that at the time this railroad was chartered in 1909 that it was intended to make a permanent railroad of it?

Mr. Dierks: It was.

Mr. Kirkpatrick: Now, is it not true also that a number of miles of extra road were built on account of reaching Lockesburg, the county seat?

Mr. Dierks: Yes, sir, I believe it was about six miles that we went out of our way, that is, went out of the way of the Dierks Lumber & Coal Company's timber, to reach Lockesburg, and a very expensive railroad building.

Mr. Kirkpatrick: Now, what was the extra cost of making that connection, would you say?

Mr. Dierks: Well, it cost us extra by going around that
2796 way rather than going in a straight line between $75,000 and $100,000 additional.

Mr. Kirkpatrick: And I believed you received a donation from the town of Lockesburg. What did that amount to?

Mr. Dierks: About $15,000.

Mr. Kirkpatrick: About how many people has the town of Lockesburg?

Mr. Dierks: It is supposed to have about 1,200, as I understand it.

Examiner Burchmore: And at the time the road was incorporated, it was the county seat, and has been for 30 or 40 years?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: And it was only recently that the county seat was moved to De Queen?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: Which is also on the De Queen & Eastern Railroad?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: Now, about how many miles apart are those spurs laid, and about how much of a team haul would you say the lumber company had to make to each spur?

2797 Mr. Dierks: Well, the spurs are laid according to the lay of the land. I do not believe there are any of them closer than three miles, and none of them are five miles apart.

Mr. Kirkpatrick: And the lumber company necessarily moves its logs by team that distance?

Mr. Dierks: Yes, from the dividing line between the two spurs each way.

Mr. Kirkpatrick: How does that compare with the average haul of the small mills located along the line?

Mr. Dierks: I don't believe the majority of the small mills haul their logs any further than that.

Mr. Kirkpatrick: You do not think they do?

Mr. Dierks: No, and they do not have $5.00 a car to pay, either.

Mr. Kirkpatrick: Nor the expense of loading?

Mr. Dierks: No.

Mr. Kirkpatrick: Do they get absolutely the same rate that the Dierks Lumber & Coal Company does for hauling on the main line?

Mr. Dierks: Absolutely.

Mr. Kirkpatrick: No discrimination of any kind in that regard?

2798 Mr. Dierks: Not if we know it.

Mr. Kirkpatrick: Where are the general offices of the company located?

Mr. Dierks: Of the De Queen & Eastern?

Mr. Kirkpatrick: Yes.

Mr. Dierks: At De Queen, Arkansas.

Mr. Kirkpatrick: Has that any connection at all with the lumber company or its offices?

Mr. Dierks: None whatever.

Mr. Kirkpatrick: A separate building?

Mr. Dierks: Absolutely; about a quarter of a mile apart.

Mr. Kirkpatrick: About how extensive is the general office building there?

Mr. Dierks: Well, it is a very large building, I might say, consisting of an agent's quarters, a general office for the accounting, waiting rooms, divided into white and colored divisions, freight and baggage room, and an express room, and all facilities needed by a railroad.

Mr. Kirkpatrick: What does the company do in regard to preserving its records, in accordance with the orders of the Commission?

Mr. Dierks: Why, it preserves them.

2799 Mr. Kirkpatrick: Has it taken any precautions to observe those rules and preserve the records, and if so, what?

Mr. Dierks: It has built a large fire proof vault in the general offices for that purpose.

Mr. Kirkpatrick: And all the past records of the company are kept in accordance with the rules of the Commission as to preserving them?

Mr. Dierks: Yes, sir, they are.

Mr. Kirkpatrick: You say this detour, as it might be called, to reach the town of Lockesburg, cost something like $75,000?

Mr. Dierks: I should think that much anyway, and possibly more

Mr. Kirkpatrick: Describe some of the cuts on the road.

Mr. Dierks: There are two very deep cuts right near Lockesburg. I should judge they are about 25 feet deep, and the two of them combined are two or three hundred yards long, very expensive building.

Mr. Kirkpatrick: Very expensive work?

Mr. Dierks: Yes, and just after going through that cut there is a long fill of about the same height, maybe not quite so high.

2800 Mr. Cowan: I would like to suggest, in the interest of time, that the witness has described what it cost, and says it is a permanent line, built for the general purposes of a common carrier, and going into the details of construction simply consumes unnecessary time, from our viewpoint.

Examiner Burchmore: I think so.

Mr. Cowan: And there would be no contention that they did not prove it, and in the absence of proving that, the amount of traffic would show.

Examiner Burchmore: It seems to me the details of construction might be omitted.

Mr. Kirkpatrick: There are some few items of construction I want to put in the record.

Mr. Cowan: Well, it has to be a good railroad.

Examiner Burchmore: Did it cost $20,000 a mile?

Mr. Kirkpatrick: That includes equipment.

Examiner Burchmore: Was the money wisely expended?

Mr. Dierks: I think so. I do not know but what we made a mistake in going to Lockesburg, but we did not know it at the time.

Examiner Burchmore: I mean you did not waste any money in construction?

2801 Mr. Dierks: No.

Examiner Burchmore: And the road is well built?

Mr. Dierks: Yes, sir.

Examiner Burchmore: I do not think you need to spend any more time.

Mr. Kirkpatrick: I want to show there are a number of steel bridges crossing streams.

Examiner Burchmore: Is that true?

Mr. Dierks: Yes, sir.

Mr. Kirkpatrick: And some very expensive culverts crossing streams, all of which I think are very important details to show it is an actual railroad.

Examiner Burchmore: Please be as brief as possible.

Mr. Kirkpatrick: State something of the character of the bridges.

Examiner Burchmore: I would not go into the character of the bridges. He has stated that.

Mr. Dierks: Would it make any difference to know that one of the bridges is a 200 foot span bridge, with concrete filled cylinders for piers?

Mr. Kirkpatrick: Yes, we want to know that, and the length of the other bridge.

2802 Mr. Dierks: The other is 150 foot span, and at present it is resting on piles.

Examiner Burchmore: There will be no further questions, please, about bridges.

Mr. Kirkpatrick: I understood you to say I might ask that. I can ascertain from the other witness the nature of the depot and stations, and so forth.

Mr. Dierks: Yes.

Mr. Kirkpatrick: I think that is all.

Mr. Cowan: I suppose at the beginning of this enterprise there was some one promoting it who decided on building the railroad and the saw mill. That was all one transaction, to begin with?

Mr. Dierks: Why, I expect you might call it all one transaction.

Mr. Cowan: Who financed the whole proposition?

Mr. Dierks: Different people; the stockholders of both companies.

Mr. Cowan: There must have been some moving spirit in it. You might just tell us briefly how the thing was promoted and financed.

2803 Mr. Dierks: Well, the Dierks interests; there are about twenty of them, I don't suppose you want the names of all of them?

Mr. Cowan: No, that will be filed later with the list of stockholders and the amount of the stock.

Mr. Dierks: Do you want the principal owners; is that the idea?

Mr. Cowan: Yes, who were the principal movers?

Mr. Dierks: Mr. Hans Dierks, Mr. Herman Dierks, the Estate of Peter Dierks and the Estate of Henry Dierks.

Mr. Cowan: The proposition was to get hold of this timber for quite a distance, and build a railroad which would be used for all purposes, as well as for moving the logs to the saw mill and moving that lumber out?

Mr. Dierks: The purpose was to serve the general public, including the Dierks Lumber & Coal Company.

Examiner Burchmore: Did the lumber company furnish the money to build the railroad?

Mr. Dierks: No.

Mr. Cowan: But the interests who furnished the money for one, furnished it for the other, practically?

Mr. Dierks: The interests are practically the same.

2804 Mr. Cowan: And neither enterprise would have been undertaken without the other?

Mr. Dierks: Well, I cannot say that. If somebody else had

come along and built a railroad for our benefit, or for anybody else's benefit——

Mr. Cowan: Well, the object was the combined interests, is what I mean.

Mr. Dierks: That had a great deal to do with it, yes sir.

Mr. Cowan: Judging from the amount of returns that the railroad company obtains from its operation, it would seem to indicate that the object of constructing the railroad was to give service to the controlling interest.

Mr. Dierks: That was not the sole object, no. As I say, the money made in the railroad has been expended on the railroad to make it permanent.

Mr. Cowan: The figures returned to the Interstate Commerce Commission by the examiners show for the year 1908 that the gross returns by the controlling interests of the road were $112,341, and by other traffic it is estimated at $5,900, making $118,242. Operating expenses, $113,541. Net earnings $4,700. I assume that was obtained in your office by the examiners of the Commission.

Mr. Dierks: I do not know whether it was or not. It does
2805 not sound reasonable, though.

Examiner Burchmore: May I interrupt you? Is Mr. C. C. Ray present?

Mr. Dierks: Yes.

Examiner Burchmore: He is the other witness?

Mr. Dierks: Yes, sir.

Examiner Burchmore: When the examiner of the Commission called upon your company at the time referred to by Mr. Cowan about a year or a year and a half ago, he reported to the Commission that the information that he turned in was cheerfully supplied by Mr. C. C. Ray, the general freight agent. In a letter dated January 19, 1910, Mr. Herman Dierks, vice-president and general manager of this railroad, advised the Commission that Mr. Ray had been with the railroad only a short time and was not fully acquainted with the divisions, and therefore that he had inaccurately answered a number of questions asked by the examiner. I might just state what those inaccuracies were in his reply.

2806 Mr. Cowan: Yes.

Examiner Burchmore: For example he was asked "Are the railroad's operations independent of the industrial operations of the controlling interest?" and he answered "No," meaning that they are not independent. And the Commission was asked to correct that record to read "Yes," meaning that they are independent.

In question No. 14 he was asked, "Was the railroad constructed for the purpose of serving the controlling interest," and being a new employee he said, "Yes." His superior officer indicated that it should have been "No."

Another question which is numbered here 22 is, "Is switching performed for the public? A. None offered." And his superior officer said "Yes," instead of "None offered."

And aside from some corrections as to the divisions, which is not

necessary to state, the vice-president subsequently advised the Commission that Mr. Ray's figures as to traffic earnings were entirely inaccurate. Instead of being $112,341.92 revenue on traffic supplied by the controlling interest it ought to be $88,242.48, estimated; $88,000 instead of $112,000. And then on other traffic the
2807 figures should be $30,000 in round figures estimated, instead of $5,900.56. This makes the total operating revenue $118,242.48, exactly the same figure as Mr. Ray had given. The item of $5,900.56 on traffic supplied by other than the controlling interest is stated by the vice-president in his correction to have been entirely wrong, as during the period referred to the revenues from passenger traffic alone were $8,372.96, and from mail $750.91, and from express $1,059.41, making the total passenger mail and express revenue of $10,183.28, and freight outside of the Dierks Lumber & Coal Company's business was estimated at about $20,000. I do not know how it is that the general freight and passenger agent of this railroad was so completely wrong in his figures and how it was that he gave the exact figures, whereas the corrected figures are estimated. I suggest you had better file some sort of statement to clear up this discrepancy.

Mr. Cowan: Yes, a statement from the books. He says he keeps the books in accordance with the Interstate Commerce Commission requirements, and if they do, let the books show them and have no estimate about it. Of course I was just going by the informa-
2808 tion here. I read this because it was the information I had.

You are doing the business that is required by the people living along your line and in the towns in the ordinary way a railroad would do it?

Mr. Dierks: Yes.

Mr. Cowan: And your accounts ought to show how much that is?

Mr. Dierks: Yes, sir.

Mr. Cowan: But my point really is that by far the larger proportion of the earnings on this railroad come from serving the saw mills' interests?

Mr. Dierks: Well, I presume the larger proportion of them do; yes, sir.

Mr. Cowan: Well, you know the larger portion of them do?

Mr. Dierks: Yes, sir. In the past year, though, I do not know how they will be in the future.

Mr. Cowan: Had it not been for that traffic in prospect and which could have been obtained it would have been a perfectly foolish venture to have built the railroad?

Mr. Dierks: I presume it would at that time.

Mr. Cowan: And would today?

2809 Mr. Dierks: Well, I don't know about it today.

Mr. Cowan: When did the mill burn?

Mr. Dierks: It may have been 1909.

Mr. Cowan: And since that time have you got a record of what your traffic earnings have been?

Mr. Dierks: I have a record up to June 30th, yes.

Mr. Cowan: Let your statement that corrects these previous figures

also show the figures on the same items for the fiscal year ending June 30th, 1910.

Mr. Dierks: These figures can be given now in dollars and cents if you would like them.

Mr. Cowan: Well, we would like the tonnage figures as well as the dollars and cents figures. Have you got the dollars and cents now in your hand?

Mr. Dierks: Yes.

Mr. Cowan: You might just give that now.

Mr. Dierks: For the year ending June 30, 1910, the passenger revenue was $5,303.58; for freight $46,603.76; for mail $670.53; express $977.12; excess baggage $139.21; miscellaneous $685.31; total earnings $54,379.51.

Mr. Cowan: Operating expenses, how much?

Mr. Dierks: Operating expenses including depreciation was
2810 $59,049.12.

Mr. Cowan: A deficit of how much?

Mr. Dierks: $4,669.61.

Mr. Cowan: How much timber land did the Dierks interests own to which they were building this road?

Mr. Dierks: At the time they started to build the road?

Mr. Cowan: Well, put it that way then and how much they acquired afterwards.

Mr. Dierks: I do not know how much they owned at that time, but it was only a small amount, something like 15,000 or 20,000 acres. The majority of their land, practically every tree they have now has been bought since the railroad was built.

Mr. Cowan: How much does it amount to?

Mr. Dierks: In fee simple and timber rights they have about 120,000 acres.

Mr. Cowan: How much of the aggregate tonnage or earnings for 1910 were supplied by the Dierks Lumber & Coal Company?

Mr. Dierks: Under the coal item, the Dierks Lumber & Coal Company supplied on forest products $25,121.21 or 53.9 per cent of the total earnings. Other forest products shipped by other
2811 than the Dierks Lumber & Coal Company, a revenue of $10,112.89, 21.6 per cent of the total freight earnings. Other freight outside of forest products was $11,369.66 or 24.5 per cent of the total freight earnings.

Mr. Andrews: Who supplied that?

Mr. Dierks: Our accountant.

Mr. Andrews: Did the Dierks interest supply any of that tonnage of this last item, generally?

Mr. Dierks: The last item?

Mr. Andrews: Yes.

Mr. Dierks: Very little.

Mr. Andrews: What percentage?

Mr. Dierks: I should judge about 10 per cent.

Examiner Burchmore: 10 per cent out of the 20?

Mr. Dierks: No, one-tenth of the $11,000 which would be one thousand and some dollars.

Examiner Burchmore: Has that company any coal mines?

Mr. Dierks: No.

Examiner Burchmore: What does "coal" mean in the name?

Mr. Dierks: It was incorporated with that name, as they handle coal in a retail way in Nebraska.

2812 Mr. Cowan: When the mill burned down of course you ceased to haul logs to the mill?

Mr. Dierks: Not right away. We hauled logs to the hardwood mill for a couple of months after that.

Mr. Cowan: How much of the 1910 year for which the figures were given did you run the hardwood mill?

Mr. Dierks: I should judge about two months.

Mr. Cowan: Now this large amount of tonnage supplied, that is of the earnings, consisted in shipping out lumber that had been already manufactured?

Mr. Dierks: Yes, a large amount of it.

Mr. Cowan: But a very small part of the logs that were hauled into the hardwood mill?

Mr. Dierks: Yes, sir.

Mr. Cowan: At the present time you have no lumber to ship and no logs to haul in for the Dierks interests?

Mr. Dierks: They might have a little lumber left; they have no logs to haul in. They are closed down at the present time completely.

Mr. Cowan: Where — these other mills which are shipping over your line?

Mr. Dierks: From where?

2813 Mr. Cowan: Where are they located on your line?

Mr. Dierks: Our other witness can answer that question better than I can.

Mr. Cowan: You do not know. All right. You said there were no bonds?

Mr. Dierks: No bonds.

Mr. Cowan: I am curious to know how this $600,000 was obtained; was it by sale of the stock or did the lumber company finance it?

Mr. Dierks: I said a while ago the lumber company did not finance it.

Mr. Cowan: Was it by sale of stock that the money was obtained?

Mr. Dierks: Yes.

Mr. Andrews: When you haul these logs in and ship the lumber out do you make any refund of any character to the lumber company on the divisions you get on the outward movement?

Mr. Dierks: No.

Mr. Cowan: Do you make any charge of any sort except the through rate of freight to the other mills located on your line?

2814 Mr. Dierks: No, sir, the through rate of freight, except those we might haul logs for.

Mr. Cowan: They are pine mills?

Mr. Dierks: Some of them are pine and some of them cut hardwood.

Mr. Cowan: It has been understood here that the hardwood lumber rates are not on a blanket system on some of these lines. Does hardwood take the same rate from points on your line as it does from De Queen?

Mr. Dierks: Our other witness will tell you about rates.

Examiner Burchmore: A statement of the stockholders attached to our report as of date August, 1909, shows that persons of the Dierks family hold considerably in excess of 5,000 shares of the stock in this corporation, and something like 500 shares, I should judge, from looking over the statement, or less than 500 are held by people whose names were not Dierks.

Mr. Dierks: Yes.

Examiner Burchmore: That is about 10 per cent outstanding?

Mr. Dierks: I presume something like that.

Examiner Burchmore: Has there been any material change
2815 in the stockholdings since that time?

Mr. Dierks: When was that, 1909?

Examiner Burchmore: August, 1909.

Mr. Dierks: I believe not.

Mr. Cowan: And these other persons whose names are not Dierks, are they connected in interest with the lumber concern?

Mr. Dierks: Yes, sir; some are and some are not.

Examiner Burchmore: And the others acquired their stock through people who originally were in the lumber company, the original stockholders were all lumber company people, were they not?

Mr. Dierks: I do not think so. There were some admitted to buy stock.

Examiner Burchmore: At any rate all this discussion only concerns about 10 per cent of the capital stock of the railroad, for 90 per cent of the capital stock of the railroad is held by the lumber company stockholders?

Mr. Dierks: Yes, sir; I believe so.

Mr. Kirkpatrick: I would like to show if it was not a question of time, by this witness, that we go through a very rich agricultural country that is being settled up very rapidly.

2816 Examiner Burchmore: You may ask a few questions along that line, but make them general and do not go into details.

Mr. Kirkpatrick: State in a general way what the nature of this country we pass through is, and what the prospects of the future freight and passenger development are?

Mr. Dierks: It is a country that is more or less hilly and therefore has practically all kinds of land, good, bad and indifferent. There is a good deal of what is called bottom land, along Cossatot River, and also the Saline River bottom, very rich land. It grows almost anything that can be grown in the state of Arkansas, fruit, corn, hay, cotton and other farm products.

Examiner Burchmore: Are farm products being shipped over the line, as a matter of fact?

Mr. Dierks: I think they are; so I understand.

(Witness excused.)

2817 C. C. RAY, was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: What rolling stock has this railroad company?

Mr. Ray: Five locomotives. Do you care for the class?

Examiner Burchmore: Just the number.

Mr. Ray: Passenger cars, 2; box cars, 3; flat cars, 74; tank cars, 2; Dozier, 1; gondola, 1; loaders 2, and a ditcher and pile driver combined, and then they have about 15 boarding cars.

Examiner Burchmore: Who uses those boarding cars?

Mr. Ray: Company employees.

Examiner Burchmore: Are those logging cars now in use?

Mr. Ray: Some of them, very few.

Examiner Burchmore: As a matter of fact, a considerable part of that equipment is not used very extensively at the present time?

Mr. Ray: No, sir.

Examiner Burchmore: You formerly owned six locomotives?

Mr. Ray: Yes, sir.

Examiner Burchmore: You sold one of them?

Mr. Ray: One of them burned.

2818 Examiner Burchmore: All these locomotives are owned?

Mr. Ray: Yes, sir.

Examiner Burchmore: And the other equipment is owned?

Mr. Ray: Yes, sir.

Examiner Burchmore: You do not lease any equipment from the lumber company?

Mr. Ray: No.

Examiner Burchmore: Does the lumber company own any rolling stock?

Mr. Ray: No.

Examiner Burchmore: The lumber company never operated any rail track?

Mr. Ray: No.

Examiner Burchmore: You have several section gangs?

Mr. Ray: Yes.

Examiner Burchmore: How many train crews are there on the line?

Mr. Ray: Just one at present.

Examiner Burchmore: The other engines are in storage?

Mr. Ray: Yes, sir.

Examiner Burchmore: The traffic is not sufficient to warrant running more than one?

2819 Mr. Ray: It does not justify it.

Examiner Burchmore: Have you any station agents?

Mr. Ray: Five.

Examiner Burchmore: At the towns heretofore named?

Mr. Ray: Yes, sir.

Examiner Burchmore: Do those station agents have any outside work?

Mr. Ray: No; none whatever.

Examiner Burchmore: They work only for the railroad?

Mr. Ray: Yes, sir.
Examiner Burchmore: They do not work for the lumber company?
Mr. Ray: No.
Examiner Burchmore: And never did?
Mr. Ray: No.
Examiner Burchmore: What other employees has this railroad?
Mr. Ray: It has three others, two others.
Examiner Burchmore: Who are they, and what are they?
Mr. Ray: Myself and two clerks in the general office.
Examiner Burchmore: Do you work for the lumber company?
Mr. Ray: No, sir.
2820 Examiner Burchmore: Do these clerks work for the lumber company?
Mr. Ray: No, sir.
Examiner Burchmore: Did they formerly work for the lumber company?
Mr. Ray: No.
Examiner Burchmore: What salaries are paid general officers of this railroad? I do not want the amount of salaries which are paid to people who work for the railroad company only but of the lumber company officials who are also officials of the railroad.
Mr. Ray: Do you want general officers?
Examiner Burchmore: Yes.
Mr. Ray: Well, the salaries are about one thousand dollars a month.
Examiner Burchmore: For all the officers?
Mr. Ray: Yes, sir.
Examiner Burchmore: Does that include those who do not work for the railroad company?
Mr. Ray: Yes, sir.
Examiner Burchmore: Now, excepting in your statement those employees or officers who are exclusively connected with the
2821 railroad, what are the total salaries of general officers who are also connected with the lumber company?
Mr. Ray: About $650 per month.
Examiner Burchmore: Well, do those officers render any substantial service for that $650 a month?
Mr. Ray: In an executive way.
Examiner Burchmore: Are not those salaries rather handsome for the services rendered by those officers?
Mr. Ray: I should believe not.
Examiner Burchmore: Do they actually put in a substantial amount of time each month for that money?
Mr. Ray: I think so.
Examiner Burchmore: What division did you receive on lumber?
Mr. Ray: 2 to 6 cents.
Examiner Burchmore: Where did most of this lumber go?
Mr. Ray: The central states, Missouri, Kansas, Nebraska, Iowa.
Examiner Burchmore: Are rates based on the Mississippi very largely?

Mr. Ray: Well it is a blanket rate to the south; it is the general basis to the Mississippi river.

2822 Examiner Burchmore: What is the rate on Central Freight Association shipments?

Mr. Ray: I don't know. Take Kansas City, I can give you that on pine, it is a 22 cent rate.

Examiner Burchmore: The rate was 22 cents to Kansas City?

Mr. Ray: Yes, sir.

Examiner Burchmore: What was your division of that rate?

Mr. Ray: 6 cents.

Examiner Burchmore: How far did you haul the logs?

Mr. Ray: From the mill to the transfer track.

Examiner Burchmore: About 100 feet?

Mr. Ray: No, it is some quarter of a mile.

Examiner Burchmore: You actually hauled the lumber from the mill to the transfer track?

Mr. Ray: Yes, sir.

Examiner Burchmore: How far did you haul the logs up to the mill?

Mr. Ray: It would be the spur and then 27 miles of main line.

Examiner Burchmore: You hauled the logs 27 miles and

2823 the lumber a quarter of a mile and got 6 cents?

Mr. Ray: Yes, sir.

Examiner Burchmore: How far is it over the Kansas City Southern to Kansas City?

Mr. Ray: 433 miles.

Examiner Burchmore: How much did the Kansas City Southern get?

Mr. Ray: 16 Cents.

Examiner Burchmore: Who furnished the cars?

Mr. Ray: The Kansas City Southern.

Examiner Burchmore: Did the car cost your railroad anything?

Mr. Ray: Per diem.

Examiner Burchmore: How much per diem did you pay on the car?

Mr. Ray: 35 Cents per day.

Examiner Burchmore: What was the rate to St. Louis or East St. Louis?

Mr. Ray: I don't know. We do not have much in there. I don't know.

Mr. Coleman: Do you say you have not a rate to East St.

2824 Louis?

Mr. Ray: We do have one but I do not know what it is.

Examiner Burchmore: You do not have much traffic in there?

Mr. Ray: No.

Examiner Burchmore: Your division then ran from 1 to 6 cents and on the most of the traffic you got 5 or 6 cents?

Mr. Ray: Well they averaged 3 or 4 cents.

Examiner Burchmore: You have joint rates on lumber in connection with the Kansas City Southern?

Mr. Ray: Yes, sir.

Examiner Burchmore: Are those milling in transit rates?
Mr. Ray: Yes, sir.
Examiner Burchmore: Milling in transit rates on yellow pine?
Mr. Ray: Yes, sir.
Examiner Burchmore: As a matter of fact you do not apply the transit principle on yellow pine, do you?
Mr. Ray: Only in the milling of logs.
Examiner Burchmore: Is not your lumber billed as originating at Dierks?
Mr. Ray: Yes, sir.
2825 Examiner Burchmore: So that you did not actually take advantage of the milling in transit rule on your lumber; you billed it as originating at Dierks?
Mr. Ray: The milling in transit offsets the handling of the logs to the mill.
Examiner Burchmore: Perhaps that is a detail it would not be necessary to question closely about, but the fact remains that the rate from the originating point on your line to the interstate destination was the same as the Kansas City Southern's rate from stations in that group.
Mr. Ray: Do you mean on yellow pine?
Examiner Burchmore: Yes.
Mr. Ray: No, sir.
Examiner Burchmore: What was it.
Mr. Ray: Two cents over.
Examiner Burchmore: Then the rate from stations on your line was two cents over the Kansas City Southern rate?
Mr. Ray: Yes, sir.
Examiner Burchmore: Your divisions in some cases was only 1 cent. Does that mean that the Kansas City Southern got 1 cent more on a shipment which came from your line than on shipments from its own line?
2826 Mr. Ray: I don't understand.
Examiner Burchmore: You said the rates from points on your line were two cents higher than the Kansas City Southern stations in that group?
Mr. Ray: Yes, sir.
Examiner Burchmore: Is that true in every case?
Mr. Ray: On yellow pine; yes, sir.
Examiner Burchmore: Did you not say in some cases you only got a division of 1 cent?
Mr. Ray: 2 Cents.
Examiner Burchmore: On some traffic the Kansas City Southern got its full regular rate?
—. ——.
Examiner Burchmore: And you simply got the arbitrary?
Mr. Ray: In some instances, yes, sir; that is true.
Examiner Burchmore: Well, your maximum division was 6 or 8 cents?
Mr. Ray: 6 Cents. We got 4 cents plus the arbitrary of 2 cents.

Examiner Burchmore: That is what I wanted to know, whether it was 4 cents plus the arbitrary or 6 cents minus.

Mr. Ray: 4 cents plus the arbitrary.

Examiner Burchmore: You have heard of the Little River
2827 Railroad?

Mr. Ray: No, sir.

Examiner Burchmore: Do you know about the Neal Springs Lumber Company? They have a tram road.

Mr. Ray: Yes, sir.

Examiner Burchmore: How near is that to you?

Mr. Ray: 12 or 15 Miles.

Examiner Burchmore: 12 or 15 Miles, to the north?

Mr. Ray: To the south.

Examiner Burchmore: It also connects with the Kansas City Southern?

Mr. Ray: Yes, sir.

Examiner Burchmore: And parallels your line in a general way?

Mr. Ray: I could not say. I don't know a thing about it.

Examiner Burchmore: It is quite an extensive road as a tram road?

Mr. Ray: I don't know. I have never been over it.

Examiner Burchmore: Is it not a fact they have 12 or 15 miles of tram tracks?

Mr. Ray: I don't know. I could not say.

2828 Mr. Kirkpatrick: I think it runs in the other direction, west of the Kansas City Southern.

Examiner Burchmore: I only know it is close by.

Mr. Kirkpatrick: It does not parallel our road.

Examiner Burchmore: Do they get any divisions.

Mr. Ray: I do not know.

Examiner Burchmore: So if I say that the Neal Springs Lumber Company has a private tap line and apparently does not pretend to be a common carrier, and which bears the name of the Little River Railroad, and if I further say it extends from a connection with the Kansas City Southern at Neal Springs for about 10 miles which is about 10 miles from De Queen and it has 18 miles of track and receives no allowance for divisions on lumber, you would not be able to confirm or controvert my statement.

Mr. Ray: No, sir.

Examiner Burchmore: I believe that is the fact. I may be incorrectly informed. Is the Neal Springs Lumber Company mill in operation?

Mr. Ray: I thing not.

Examiner Burchmore: When did they close down?

Mr. Ray: I cannot answer that question. I do not know.

2829 Examiner Burchmore: I only wondered whether that company could successfully compete with your company, which perhaps has some advantage from its proximity to this short line railroad, and the relations between the two corporations. I think that is all I care to ask.

Mr. Kirkpatrick: I wish you would describe briefly the character

City Southern, and some with private agent's quarters and divisions of waiting rooms, freight and express quarters.

Mr. Kirkpatrick: And Dierks.

Mr. Ray: Dierks is the same way. We really have a better station than any of the others except at De Queen; good platforms and the same quarters.

2832 Mr. Kirkpatrick: How about section houses?

Mr. Ray: We have section houses at Lockesburg, Provo and Dierks, 5 rooms each, all painted and in good condition.

Examiner Burchmore: You have got the equipment and facilities that most railroads have?

Mr. Ray: We have.

Mr. Kirkpatrick: Do you keep water in the stations?

Mr. Cowan: What is the use? We are trying to save time. I do not like to object, but we are wasting time.

Mr. Kirkpatrick: I think you have consumed your share of the time and we have waited here ten days to get a hearing and I want to save time, but I propose to offer what evidence I think is material. State how you issue your time tables and your rates and all that.

Examiner Burchmore: We will not ask him that. But have you a time table?

Mr. Ray: We have.

Examiner Burchmore: Will you file it?

Mr. Ray: We will file a copy.

Mr. Kirkpatrick: You get out your regular indexes?

2833 Mr. Ray: Yes, sir.

Mr. Kirkpatrick: How frequently?

Mr. Ray: Every thirty days, and we issue a general index every six months and supplement it every thirty days.

Mr. Kirkpatrick: You make joint settlements with how many trunk line railroads?

Mr. Ray: I should say 6 or 8 or 10.

Mr. Kirkpatrick: Have you through joint rates on practically everything that is shipped in any territory?

Mr. Ray: We have.

Mr. Kirkpatrick: I would like to have you state what the comparative division is on carloads of lumber and carloads of some half dozen other classes of freight.

Mr. Ray: Do you mean the earnings?

Mr. Kirkpatrick: Yes.

Mr. Ray: They are about equal on a minimum car.

Mr. Kirkpatrick: Give the amount on several of them.

Mr. Andrews: Do not the division sheets show that?

Mr. Ray: It will show the per cent. The minimum carload of lumber is 34,000 pounds and for the division of 4 cents it will average about $14 or $15. Cotton, the average car is 25 bales, and we get 15 cents per 100 pounds and it will average about $18.50 per

2834 car. Cotton seed is 30,000 pounds, the rate is 4 and 4½ cents, and it will average about $13.50. Live stock, 17,000 pounds minimum, average is about $17.00 to $18.00 per car. Salt, 29 cent rate, and our division is 5½ cents which will equal about

$22.00 per car. Hay 20,000 minimum, the rate is 25 cents and it averages 14 to $15.00. Emigrant's outfit, 22 cent rate, minimum 20,000 pounds, average is $12.50 to $13.00 per car. Flour, 25,000 pound minimum, 26 cent rate, average is 20 to $21.00 per car. Those are some of the principal commodities we handle.

Examiner Burchmore: Would your local rates amount to about the same as your proportions?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: Do you comply with all the Arkansas state laws regarding railroads?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: You are assessed as a railroad?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: Do you remember the last year?

Mr. Ray: About $4600.

2835 Mr. Kirkpatrick: Of railroad tax?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: Does any transaction of the railroad ever get onto the lumber company's books?

Mr. Ray: No.

Mr. Kirkpatrick: No connection in any way, shape or form?

Mr. Ray: No.

Mr. Kirkpatrick: You have the same troubles that trunk lines do in the way of damage suits?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: And lawsuits for killing stock and all those things?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: And are required to post notices for killing stock or pay double damages, under the Arkansas law?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: Have you a franchise tax under the Arkansas law?

Mr. Ray: I understand we have.

Examiner Burchmore: Have you ever paid any judg-

2836 ments for personal injuries and for killing cows?

Mr. Ray: Yes, sir; a good many of them.

Mr. Kirkpatrick: I am sorry to say we have a great many. The general attorney certainly earns his salary on that road, if not any place else.

You post notices in all your stations of your tariffs?

Mr. Ray: We do.

Mr. Kirkpatrick: State briefly how they are posted.

Examiner Burchmore: Please do not go into that. He stated he endeavored to comply with all the laws relating to interstate railroads, and that is one of them, if he does not comply with it he will be indicted some day and sustain the penalties. What is the use of pursuing this in such detail?

Mr. Kirkpatrick: I only wanted to show we make as good arrangements for posting as trunk lines do and post in the same way.

Did you issue this notice of cancellation on through rates on lumber, was that canceled in the regular way?

Mr. Ray: It was.

Mr. Kirkpatrick: I wish you would state briefly how many saw mills and cotton gins and so forth there are on the road?

2837 Mr. Ray: I think about 6 saw mills and about 5 cotton gins.

Mr. Kirkpatrick: The company serves all of those?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: Does it build spurs and side tracks for them?

Mr. Ray: It does whenever requested.

Mr. Kirkpatrick: Does the Kansas City Southern sell joint tickets over your line of railroad?

Mr. Ray: It does.

Mr. Kirkpatrick: And you sell tickets and conduct the business in all respects as a trunk line?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: At the time you were operating on logs those train loads of logs were billed in in the regular way?

Mr. Ray: They were.

Mr. Kirkpatrick: You have track scales?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: And you move the finished product over your own tracks and deliver it to the Kansas City Southern?

2838 Mr. Ray: We do.

Mr. Kirkpatrick: Do you charge the lumber company demurrage at the regular rates?

Mr. Ray: We do.

Mr. Kirkpatrick: And weigh the cars you load and send out?

Mr. Ray: We do.

Mr. Cowan: Has there ever been any demurrage charged to the lumber company?

Mr. Ray: There has.

Mr. Cowan: How much of it?

Mr. Ray: Whenever a car is on hand over 48 hours we charge them one dollar a day.

Mr. Cowan: As a matter of fact has there ever been any charge or occasion for it?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: In regard to your divisions of rates and your rates, are the rates to and from points on your line on class goods the same as the rate to and from De Queen?

Mr. Ray: Yes, sir.

Mr. Cowan: From Missouri and Mississippi River points?

2839 Mr. Ray: Yes, sir.

Mr. Cowan: How is that within the state of Arkansas?

Mr. Ray: We are governed by the state tariff.

Mr. Cowan: And that would be higher on your line?

Mr. Ray: Yes, sir.

Mr. Cowan: That is on class goods, I spoke of. Now, how is it on commodity rates?

Mr. Ray: It is about the same.
Mr. Cowan: So that the only thing you get out of it is the divi-
on of the through rate?
Mr. Ray: Yes, sir.
Mr. Cowan: Now on cotton and live stock are the rates higher to
nd from points on your line?
Mr. Ray: I think not.
Mr. Cowan: On lumber it is 2 cents higher?
Mr. Ray: Yes, sir.
Mr. Cowan: Does that just apply to yellow pine lumber or to
ardwood?
Mr. Ray: Yellow pine and its products?
Mr. Cowan: How is it as to hardwood?
Mr. Ray: The De Queen rates.
Mr. Cowan: The De Queen rates on hardwood are 2 cents
2840 higher on yellow pine?
Mr. Ray: Yes, sir.
Mr. Cowan: You get 6 cents division when your lumber is loaded
onto the cars and delivered to the Kansas City Southern at De
Queen?
Mr. Ray: Yes, sir.
Mr. Cowan: That is the Kansas and Nebraska points?
Mr. Ray: Yes, sir; it varies.
Mr. Cowan: All Missouri River territory?
Mr. Ray: I say 6 cents. We only get that to K. C. S. points.
Mr. Cowan: Don't you get it to points off the K. C. S.?
Mr. Ray: No, sir, not 6 cents.
Mr. Cowan: What do you get when it goes beyond K. C. S.
points?
Mr. Ray: 4 cents generally.
Mr. Cowan: In all cases do you get the 2 cents?
Mr. Ray: Yes, sir.
Mr. Cowan: Where you have a two cent division to nearby points
in Oklahoma you get your 2 cents extra also?
Mr. Ray: Yes, sir.
Mr. Cowan: So you really get nothing less than 4 cents
2841 as income to your road for handling lumber, pine lumber?
Mr. Ray: There might be one or two instances where we
only get an arbitrary. I cannot recall any now.
Mr. Cowan: Your object of course would be not to ship to those
points?
Mr. Ray: No, we want the business where we can get the most for
it, that is true.
Mr. Cowan: Do you do the routing of the lumber?
Mr. Ray: That is left to the shipper.
Mr. Cowan: Who do you count as the shipper, the lumber com-
pany?
Mr. Ray: Everybody along our line.
Mr. Cowan: Well, say there is a carload of lumber shipped out to
Kansas City from De Queen from your mill, is the mill company re-
garded as the shipper, the consignor?

Mr. Ray: They do the routing.

Mr. Cowan: The mill company do the routing?

Mr. Ray: Yes, sir; if it is left open we route it.

Examiner Burchmore: You know there is only one possibility of routing out of De Queen, it all would have to go to the Kansas City Southern.

Examiner Burchmore: And the right of routing beyond
2842 would not be worth anything to this railroad, would it?

Mr. Cowan: It might be worth 2 cents.

Examiner Burchmore: There is something about that 2 cent arbitrary that does not look quite right to me. It may be from lack of information, but the point is this. How could the lumber company sell lumber in strongly competitive territory where it had to pay a 2 cent higher freight rate than a mill up here 10 miles away that belongs to somebody else?

Mr. Ray: I do not know how they do that, but they pay our rates.

Examiner Burchmore: They did it, did they?

Mr. Ray: Yes, sir.

Examiner Burchmore: Well, does not that mean that it is not absolutely essential that the rates from the points of origin on these short lines should be the same in cents per hundred pounds as from points which are directly on the main line of railroad?

Mr. Ray: I could not say.

Examiner Burchmore: Your lumber company bore that 2 cents without flinching apparently?

Mr. Cowan: They do not pay it, they get the De Queen
2843 rate. It is the fellow out on the short line that pays the 2 cents.

Examiner Burchmore: I think he said from their mill they paid 2 cents.

Mr. Ray: Yes, sir.

Examiner Burchmore: And 4 cents out of the treasury of the Kansas City Southern. And 2 cents comes out of the extra rate?

Mr. Ray: That is correct.

Mr. Cowan: I misunderstood it. The De Queen rate from your mill would be 2 cents more than the De Queen rate from anybody else at De Queen, that is on yellow pine?

Mr. Ray: The rate from De Queen takes in the milling of the logs which applies from Dierks. We have no through rates from De Queen. The rate from the Dierks Lumber Company, which is the same as to any other shipper, regardless of where it is located.

Mr. Cowan: On the Kansas City Southern?

Mr. Ray: No, on the De Queen & Eastern.

Mr. Cowan: I understand you now and I stated it correctly?

Mr. Ray: Yes, sir.

Mr. Andrews: You gave divisions awhile ago. Does that
2844 apply on inbound business as well as business that you originate?

Mr. Ray: In and out; yes, sir.

Mr. Andrews: You get the same divisions on business delivered to you that you do on business delivered to the other line?

Mr. Ray: Yes, sir; we do.

Mr. Coleman: What was the purpose of reciting those comparisons of units of carload revenues on various commodities from that paper you had?

Mr. Ray: It was only as a comparison of the revenue, as I understand.

Mr. Coleman: As you understand?

Mr. Ray: Yes, sir.

Mr. Coleman: Well,—it is a comparison of the revenue.

Mr. Kirkpatrick: He made those at my request. I do not know if he knows what I wanted of them.

Mr. Coleman: Will you state what the purpose was?

Mr. Kirkpatrick: Yes, I want to show that on all other classes of freight as compared with lumber the rate is practically the same?

Mr. Coleman: The unit per car load?

2845 Mr. Kirkpatrick: Yes.

Mr. Coleman: Was that your understanding of the purpose?

Mr. Ray: As I understand it it is just a comparison of the earnings with reference to the different commodities.

Mr. Coleman: Now, for lumber you took 34,000 pounds as the weight.

Mr. Ray: That is an average of the 36-foot car, the minimum.

Mr. Coleman: That is an average?

Mr. Ray: That is the minimum on a 36-foot car.

Mr. Coleman: If you wanted this for substantial comparison, you would not take what the minimum would be, would you?

Mr. Ray: Well, I took the minimum on all other commodities.

Mr. Coleman: Do you handle many of those other commodities?

Mr. Ray: We do.

Mr. Coleman: What do you understand to be about the average weight of a car of yellow pine moving from your mill?

Mr. Ray: Well, I should say along from 38,000 to 40,000

2846 pounds?

Mr. Coleman: You never figured it up?

Mr. Ray: No, sir; I never have made any general average.

Mr. Coleman: Could you figure it up very easily? Could you make a statement for the Commission, taking in 1, 2 or 6 months?

Mr. Ray: It would be a good job. I could make it.

Mr. Coleman: I wish you would, please. Now, in making your computation was it your purpose to include hardwood in that approximation there?

Mr. Ray: That was figuring on pine.

Mr. Coleman: Why did you not figure on hardwood as well?

Mr. Ray: Well, I could as well as not.

Mr. Kirkpatrick: He can do it for you in a minute if you want it?

Mr. Coleman: You can conveniently also give us the average weight on the movement for a period of a month or three months?

Mr. Ray: I could.

Mr. Coleman: On Hardwood also?

2847 Mr. Ray: Yes, sir.

Examiner Burchmore: It seems it would be well for you to do that. You have put in a comparison on various commodities and they are based on the minimum weight. Now, those are criticized as being merely paper comparisons. Would it not be well to put in the actual figures, the actual loading on what you actually get?

Mr. Ray: We can do that for a month.

Mr. Kirkpatrick: You took the minimum on each car. That was at my suggestion.

Examiner Burchmore: Yes, I should think you ought to take the actual loading.

Mr. Kirkpatrick: The relation would not vary at all.

Examiner Burchmore: Well, you say it would not, and if that is true your comparison is all right.

Mr. Kirkpatrick: We can furnish it gladly.

Mr. Coleman: I very much doubt about it, and I would like if the attorney would like to express himself definitely and in detail on those various commodities, I would like to discuss it with him.

Mr. Kirkpatrick: The time seems to be very short.

Examiner Burchmore: I think you had better furnish the

2848 statement.

Mr. Kirkpatrick: We will be glad to furnish it. We will be glad to furnish the actual weight.

Mr. Coleman: You testified that your rate on yellow pine to Kansas City was 22 cents.

Mr. Ray: Yes, sir.

Mr. Coleman: That is 22 cents now.

Mr. Ray: Yes, sir.

Mr. Coleman: And that 22 cent rate does not apply from De Queen to Kansas City?

Mr. Ray: No.

Mr. Coleman: It is 20 cents from De Queen?

Mr. Ray: Yes, sir.

Mr. Coleman: What is the rate on hardwood lumber from De Queen to Kansas City?

Mr. Ray: I think it is 21 cents at the present time.

Mr. Coleman: You know that?

Mr. Ray: It has been increased here just recently.

Mr. Coleman: It is in effect now?

Mr. Ray: I think so.

Mr. Coleman: And what is the rate on hardwood from points out on your line?

2849 Mr. Ray: The same thing, 21 cents.

Mr. Coleman: What is the purpose of maintaining a difference on hardwood and yellow pine, that is a differential higher on yellow pine from points on your line by comparison with De Queen to Kansas City?

Mr. Ray: Well, I do not know as there is a general reason.

Mr. Coleman: You do not know of any.

Mr. Ray: No.

Mr. Coleman: Do you have anything to do with determining the rates on lumber applying from points on your line?

Mr. Ray: Yes, sir; I do on some.

Mr. Coleman: Not all?

Mr. Ray: No.

Mr. Coleman: What instance would you feel an interest in in taking a hand in the matter?

Mr. Ray: I don't understand your question.

Mr. Coleman: You say on some lumber rates from points on your line you have something to do with determining them. I take it that where you do not your connection, the Kansas City Southern, would fix the rates?

2850 Mr. Ray: I presume so, yes, sir.

Mr. Coleman: I asked you the question, in what instances would you feel sufficiently interested to take a hand in determining the rates?

Mr. Ray: Where we have any business offered for a certain point, or anything that way.

Mr. Coleman: You do not fix up the rates in anticipation of business being offered?

Mr. Ray: We do in some instances.

Mr. Coleman: Then you are at a loss to explain why this differential is carried, is what we are to understand?

Mr. Ray: I think it is more in there to——

Examiner Burchmore: To what?

Mr. Ray: I cannot explain that.

Examiner Burchmore: It is to increase the earnings of this small road, is it not?

Mr. Ray: Yes, sir.

Examiner Burchmore: What did the lumber company use to pay to get its lumber from the mill to Kansas City?

Mr. Ray: It paid that rate, 22 cents.

Examiner Burchmore: 22 cents?

2851 Mr. Ray: Yes, sir.

Examiner Burchmore: And not 24 cents?

Mr. Ray: Not since I have been with them, I don't think so.

Examiner Burchmore: What was the rate from Neal Springs at that time?

Mr. Ray: I could not say.

Examiner Burchmore: What was the rate from De Queen, as a station on the Kansas City Southern?

Mr. Ray: 20 Cents I think.

Examiner Burchmore: Your lumber company paid 2 cents more to get the Kansas City than the man at De Queen?

Mr. Ray: Yes, sir.

Examiner Burchmore: And the Kansas City Southern rendered you no additional services on that lumber more than it rendered anybody else at De Queen?

Mr. Ray: No.

Examiner Burchmore: Why did you pay them 2 cents?

Mr. Ray: It was more than the earning capacity of the road.

Examiner Burchmore: It was more than the earning capacity of the road?

2852 Mr. Ray: As to divisions.

Examiner Burchmore: I don't understand that.

Mr. Cowan: Let me ask a question and I think I can clear this up in a minute and the witness will be bound to answer.

Is it not a fact you put the 2 cents on because that would add 2 cents higher rate to the man that was shipping from points out on your line, is not that the perfectly plain meaning of it?

Mr. Ray: It had the higher rate and gets the same as the Dierks Lumber Company or any other interest on the line.

Mr. Cowan: Yes, if the Dierks do not get it back. There they do not get it back.

Examiner Burchmore: But in a substantial way it would hurt the mills out on the line while in no substantial way would it hurt the Dierks Lumber Company, because it went to a related corporation and they got it back presumably in dividends. The Dierks Lumber Company was interested in the success of this railroad.

Mr. Ray: I presume so.

Examiner Burchmore: I think that it is perhaps unfair to

2853 press the matter further with this witness.

Mr. Coleman: I just wanted to give him an opportunity to answer.

Mr. Kirkpatrick: I think he has answered as far as he knows and fairly.

Examiner Burchmore: I think so too, and any conclusions or deductions which may be drawn from this situation lie in the realm perhaps of argument. We want the facts and we have got his opinion.

Mr. Cowan: To seal this matter up a little further, is there any hardwood mill out on your line?

Mr. Ray: There is.

Mr. Cowan: What is your division on hardwood?

Mr. Ray: It will vary from 2 to 5 cents.

Mr. Coleman: Have you any gum lumber on this line?

Mr. Ray: Yes, sir.

Mr. Coleman: What is the rate on gum lumber to Kansas City?

Mr. Ray: The same rate as oak.

Mr. Coleman: What is the rate on oak?

Mr. Ray: 19 cents—or it is 21 cents now.

Mr. Coleman: What division do you get to Kansas City on

2854 that?

Mr. Ray: Five cents.

Mr. Coleman: Five cents out of the 21 cent rate?

Mr. Ray: Yes, sir.

Mr. Coleman: And that rate is the same from points on your line?

Mr. Ray: Yes, sir.

Mr. Coleman: So in reality you get a higher division on that hardwood than you do on the yellow pine?

Mr. Ray: Yes, sir.

Mr. Coleman: And the rate is lower to Kansas City and you get a higher division?

Mr. Ray: Yes, sir.

Mr. Coleman: How do you explain that?

Mr. Ray: It is the allowance allowed by the Kansas City Southern.

Examiner Burchmore: The originating carrier I believe it is contended usually gets a larger proportion of the revenue than the connecting line gets because it is an originating carrier?

Mr. Ray: It does.

Examiner Burchmore: You are an originating carrier?

2855 Mr. Ray: Yes, sir.

Examiner Burchmore: Then you get a larger proportion of the revenue, that is taking into consideration the service you render, than the Kansas City Southern gets?

Mr. Ray: Yes, sir.

Examiner Burchmore: Do you fix the divisions?

Mr. Ray: Well, it is an amount reached between the Kansas City Southern and ourselves.

Examiner Burchmore: Do you tell the Kansas City Southern what you want or do they tell you what you can have?

Mr. Ray: We ask for it and do the best we can.

Examiner Burchmore: As a matter of fact you have to be satisfied with the best you can get?

Mr. Ray: Yes, sir.

Mr. Andrews: In this particular case the witness has testified he gets exactly the same division in that he gets out.

Mr. Ray: That is on classes and commodities.

Mr. Andrews: And when somebody else originates the business he gets the same as when he originates it.

Examiner Burchmore: Yes. Any further questions?

Mr. Kirkpatrick: You have constructed two or three

2856 regular loading stock yards on your line?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: This demurrage and per diem, does that run? This gentleman asked whether there had ever been any actual demurrage. What does it run per month?

Mr. Ray: The per diem runs about $100 a month on an average.

Mr. Kirkpatrick: That you have to pay?

Mr. Ray: Yes, sir.

Mr. Kirkpatrick: And the demurrage?

Mr. Ray: I should say it runs twenty-five to fifty dollars a month.

Mr. Kirkpatrick: Now there has been no attempt on the part of the Kansas City Southern or any other roads to cancel this rate on anything except yellow pine lumber and oak?

Mr. Cowan: The hardwood mill out on your line is owned by some entirely independent interest?

Mr. Ray: Yes, sir.

Mr. Cowan: I assumed that to be the case. Where is it located?

Mr. Ray: At Lockesburg.

2857 Mr. Coleman: In connection with that demurrage you really suffer no loss of investment or anything in connection with the demurrage on a car, do you?

Mr. Ray: Just about even.

Mr. Coleman: Well, it is not a car of your company as a rule that handles the lumber going from a point on your line beyond?

Mr. Ray: It is not the car of our company, you say?

Mr. Cowan: It is not a car of your company?

Mr. Coleman: It is a car from a connection?

Mr. Ray: Yes, sir.

Mr. Coleman: On that car you pay 25 cents per diem?

Mr. Ray: 35 cents.

Mr. Coleman: And your demurrage is $1.00?

Mr. Coleman: So really you make 65 cents a day whenever there is a demurrage on somebody else's property do you not?

Mr. Ray: If it is on hand over three days we would.

Mr. Coleman: We are talking about demurrage, when demurrage obtains. So really it is a matter of bookkeeping, inasmuch as the interests that own the railroad own the mill when it is a ques-

2858 tion of the Dierks Lumber Company, and you are really making the difference that you may charge to the company; they are getting that as an offset in their earnings?

Mr. Ray: Not any more than anybody else.

Mr. Coleman: You do not give back any of it to the other shipper?

Mr. Ray: No, sir.

Mr. Coleman: He is not interested in the railroad?

Mr. Ray: No.

Examiner Burchmore: Has this railroad company ever paid any rebates to the lumber company?

Mr. Ray: No, sir; not as I know of.

Mr. Kirkpatrick: There is a certain amount of free time allowed any shipper on the road, the Dierks Lumber Company as well as anybody else.

Mr. Ray: Two days.

Mr. Kirkpatrick: During that time you have to pay the per diem?

Mr. Ray: We do.

Mr. Kirkpatrick: So there is not any very big amount of money in the proposition as this gentleman seems to think?

2859 Mr. Ray: No.

Mr. Coleman: He has not any investment in the car either.

Mr. Kirkpatrick: Well he is paying for it every day.

Examiner Burchmore: I believe that is enough on that question. Have you any contracts with the Kansas City Southern?

Mr. Ray: I believe we have one which covers the scales.

Examiner Burchmore: You have not any rate or division contract?

Mr. Ray: No.

Examiner Burchmore: I will request counsel to file a map of this road. You understand what kind of a map we want?

Mr. Kirkpatrick: Yes.

Examiner Burchmore: Will you give us a statement of your revenue and tonnage?

Mr. Kirkpatrick: Yes, sir; I will do that, and want to do it. I also understood this forthcoming annual statement to be considered in this case.

Examiner Burchmore: It is understood all the annual re-
2860 ports of these companies will be considered.

Mr. Kirkpatrick: I am especially anxious for this one, on account of the fact that it runs during a time when the mill was not in operation, and the delay in getting it out was on account of the delay in furnishing the blanks. There were about two months that we did not get them.

I also want to furnish a statement as requested by these gentlemen, showing the tonnage separated. We have shown the dollars and cents, but I would also like to show the tonnage in that statement.

2861 Examiner Burchmore: The Missouri & Louisiana Railroad.

Mr. Walter: Before that is taken up I want to make one suggestion for the record. Apparently the Commission has some information from cases like the Neal Springs Lumber Company, where certain information may have been given to the Commission as to why a certain concern is not able to do business as it thinks it ought to. Now on behalf of all these so-called tap lines we make the formal statement to the Commission that we desire the Commission to call as witnesses parties who give information so that they may be cross examined. I do not think it is proper that our clients should be denied the right to inquire into the facts that may go to bear upon the righteousness of a decision in these cases, and therefore I suggest as to Neal Springs, if any such information has come to the Commission, that some party who knows the facts should be called as a witness under oath——

Examiner Burchmore: May I suggest, take that Neal Springs case, all I know is that from reports that have reached us there is a private tram road at Neal Springs that is called the Little River Valley Railroad, and we know that is owned by the Neal
2862 Springs Lumber Company, and that it has no allowance, and that is all we did know. And I asked this gentleman if they were interested in the business and he said they were not.

Mr. Walter: There might be some inferences from that unsupported statement and from the evidence that comes to you that because it did not get allowances it was driven out of business. Our information is entirely different as to why that lumber company is not now in business.

Examiner Burchmore: Do you think that fact one way or the other will fix the status of this railroad?

Mr. Walter: No, but it might have a bearing upon the general proposition as to whether the Commission will or will not allow joint rates with the lumber producing lines.

Examiner Burchmore: I feel some hesitancy in laying before the Commission the request to subpœna as witnesses an unknown

and inaccurately described class of persons, all the persons who may have given us information. If you have any particular person whom you have in mind——

Mr. Walter: No, all the request we have is that the Commission give no attention to unauthentic and unsupported evidence without opportunity for cross examination by parties interested in
2863 this proceeding.

Examiner Burchmore: I am quite sure that the Commission will not.

Mr. Walter: That is what I thought, but I wanted the record to show so.

Examiner Burchmore: But the Commission in reaching its decision in any case has to exercise its judgment and discretion and its judgment upon all the knowledge it has of the geography, the conditions, and everything else.

Mr. Walter: That is true, but I did not want the Commission to be imposed upon. I have great confidence in its judgment.

Mr. Kirkpatrick: I would like to have noted the request that I may file a brief after I receive a copy of the evidence.

Examiner Burchmore: Your request is noted. I may say I do not know what the Commission will do in the matter of briefs, but it will take it up in its own way.

Mr. Kirkpatrick: I understood Commissioner Harlan to say before he went away, that opportunity would be given to file briefs.

Examiner Burchmore: My impression is you will be given an opportunity to file briefs, but the suggestion I might make
2864 is that it would be wise to make your briefs as brief as possible.

Mr. Kirkpatrick: It would be brief if I filed it.

2865 *Missouri & Louisiana Railroad Company.*

JOHN A. SARGENT, was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: Give your name in full?

Mr. Sargent: John A. Sargent.

Examiner Gutheim: Your place of residence?

Mr. Sargent: Kansas City.

Examiner Gutheim: Your occupation is what?

Mr. Sargent: Vice-President and General Manager of the Missouri & Louisiana Railroad Company.

Examiner Gutheim: That is the company usually known as the Central Coal & Coke Railroad?

Mr. Sargent: Yes, sir.

Examiner Gutheim: And will you explain briefly just where that railroad operates and what properties it serves?

Mr. Sargent: It has two lines in Louisiana, the business practically being confined to handling logs and the product of the Central Coal & Coke Company, one mill property being located at Carson and the other at Neame, La. It has another property in

the red line in Arkansas reaching the mines in what is known as the Sonora, Arkansas, district. It has another in Northern Missouri, Macon County, reaching the mines in the district.

Examiner Guilbert. Will you execute and file with the Commission maps which will show the general geographical position of the lines operated with the various line connections?

Mr. Sargent. Large maps we understand——

Examiner Guilbert. Maps about the size (indicating).

Mr. Sargent. Just the usual condition?

Examiner Guilbert. Showing the usual conditions.

Mr. Sargent. Yes, sir.

Examiner Guilbert. Now what is the capital stock of the Missouri & Louisiana Railroad Company?

Mr. Sargent. $750,000.

Examiner Guilbert. Is all that outstanding?

Mr. Sargent. Yes.

Examiner Guilbert. And who holds it?

Mr. Sargent. Owned by the Central Coal & Coke Company.

Examiner Guilbert. Entirely?

Mr. Sargent. It stands in the name of individuals that hold it in trust.

Examiner Guilbert. Are the officials of the railroad company all connected with the Central Coal & Coke Company as officials?

Mr. Sargent. The general officials are, yes, sir.

Examiner Guilbert. Are you personally connected with the Central Coal & Coke Company in an official capacity?

Mr. Sargent. I do not know whether I would be called an official; I am employed by the Central Coal & Coke Company.

Examiner Guilbert. Taking up the lumber properties in Louisiana, the mill at Carson is served by a branch that connects with the Kansas City Southern?

Mr. Sargent. Yes, but it has a connection with the Santa Fe and the Southern Pacific also.

Examiner Guilbert. By the Southern Pacific you mean the Lake Charles & Northern Line?

Mr. Sargent. The Lake Charles & Northern property of the Southern Pacific.

Examiner Guilbert. About how much of a haul is it from the Carson mill to the Kansas City Southern?

Mr. Sargent. I suppose in the neighborhood of three or four thousand feet, something like that.

Examiner Guilbert. Is that haul performed by the Missouri & Louisiana?

Mr. Sargent. We do all the switching.

Examiner Guilbert. How much of a haul is there to the Lake Charles & Northern connection?

Mr. Sargent. I think from the mill it is about 3.8 miles, something like that.

Examiner Guilbert. How far do you have to go to get to the Santa Fe?

Mr. Sargent: Approximately nine miles.

Examiner Gutheim: As a matter of fact do you make many deliveries to the Santa Fe?

Mr. Sargent: Yes, sir, we do a little business with the Santa Fe right along.

Examiner Gutheim: Does the great majority of the business go to the Kansas City Southern and the Lake Charles & Northern, though?

Mr. Sargent: Well, we do more business with the Southern Pacific Lines than with the Santa Fe, but the Kansas City Southern has more than the other two combined.

Examiner Burchmore: You do not give the Santa Fe any
2869 traffic destined to points other than local points on its line?

Mr. Sargent: Yes, we do at certain times, the business has to move certain routes.

Examiner Gutheim: About how much of a log haul do you have to reach the Carson mill.

Mr. Sargent: The railroad itself takes up logs where the spurs connect anywhere from 5 to 10 miles away from the main line.

Examiner Gutheim: Going to Neame, about how much track have you going into the woods there?

Mr. Sargent: At the present time about six miles of main line.

Examiner Gutheim: And that track all lies to the west of the Kansas City Southern?

Mr. Sargent: That track all lies west of the Kansas City Southern, practically so.

Examiner Gutheim: How long since you quit operating to the east of the Kansas City Southern?

Mr. Sargent: I think about a year.

Examiner Gutheim: And about how far did you operate in that direction?

Mr. Sargent: East?

2870 Examiner Gutheim: Yes.

Mr. Sargent: Approximately 20 miles.

Examiner Gutheim: Since you ceased logging east of the Kansas City Southern what has become of the track formerly known as the Missouri & Louisiana Railroad track?

Mr. Sargent: Some time before the lumber company ceased operations east of the Kansas City Southern track we made a contract with the Louisiana Central Railroad Company, and sold them a half interest in the property, the contract further providing that an extension approximating five miles was to be built by the Louisiana Central and we were to pay 50 per cent of the cost, all of which was accomplished. The contract further providing that the Louisiana Central had the option on that property, and they actually purchased it, I think a year ago last March.

Examiner Gutheim: The Louisiana Central you spoke of is the so-called tap line of the Pickering interests?

Mr. Sargent: Yes, sir.

Examiner Gutheim: Did they take over all of the old Missouri & Louisiana tracks east of the Kansas City Southern or only a portion?

Mr. Sargent: Our contract with them for sale covered only
2871 part of the line, about 14 or 15 miles maybe. The remaining, somewhere between four and five miles we retained to ourselves.

Examiner Gutheim: Has that been taken up?

Mr. Sargent: Most of it has.

Examiner Gutheim: You said that as to the Missouri & Louisiana running from both Carson and Neame, that the business was practically confined to the hauling of logs and supplies for the Central Coal & Coke Company.

Mr. Sargent: Unfortunately for the railroad that is about all there is.

Examiner Burchmore: In the case of the Carson line, if I may interrupt, is it not a fact that it operates exclusively for the Central Coal & Coke Company? You have not any tonnage at all for others?

Mr. Sargent: That is my reply, there is nothing else.

Examiner Gutheim: What you mean is you only pick up an occasional shipment for somebody who wants it taken out into the woods for somebody else?

Mr. Sargent: That is the idea.

Examiner Gutheim: At Neame you have the Kansas City Southern only for a carrier connection?

Mr. Sargent: Yes, sir.

2872 Examiner Gutheim: Does the Kansas City Southern or the Missouri & Louisiana handle out the product of the mill?

Mr. Sargent: The Kansas City Southern do the switching at Neame.

Examiner Gutheim: You perform no service whatever on the milled product?

Mr. Sargent: Not on the manufactured product.

Examiner Gutheim: Will you give generally the range of divisions you receive on the product of both of those mills at Carson and Neame, from the Kansas City Southern?

Mr. Sargent: Well, I suppose the average is in the neighborhood of two cents. It runs from a fraction of a cent up. It varies as to the territory, that is where the business is destined.

Examiner Gutheim: The maximum is what?

Mr. Sargent: I guess about three cents.

Examiner Gutheim: And it will average about two cents?

Mr. Sargent: I should guess that.

Examiner Gutheim: You get no divisions from the Santa Fe, of course?

Mr. Sargent: No.

Examiner Burchmore: Is that reply as to the minimum
2873 of three cents correct?

Mr. Sargent: I have not the divisions in my hand, but I think you will find them attached to your reports there which will show absolutely.

Examiner Burchmore: Is it not a fact you get four cents on some traffic from each of those places?

Mr. Sargent: Your Honor, at the present time I could not answer.

There is some business that pays maybe four cents. The sheets will have to speak for themselves. They can be furnished.

Examiner Gutheim: It is my recollection that on the blanket division sheet that was filed for a lot of these companies there were a few points, not more than half a dozen, that paid four cents, and that is where the maximum of four cents came from at that time. What divisions do you get from the Lake Charles & Northern, the Southern Pacific Line?

Mr. Sargent: They run about the same as the Kansas City Southern, one cent to—I am not really certain that they even allow more than two cents, even where the Kansas City Southern may.

Examiner Gutheim: You mean that the Lake Charles &
2874 Northern maximum is two cents?

Mr. Sargent: That is my recollection, but that division sheet is also on file.

Examiner Gutheim: It is my impression that that division sheet is not on file, for at the time the examination was made the Lake Charles & Northern connection had not been completed.

Mr. Sargent: Well, I did not bring it with me, but it is pretty nearly identical with the Kansas City Southern.

Examiner Gutheim: Will you obtain and file with the Commission a copy of the division sheet with the Lake Charles & Northern?

Mr. Sargent: Yes, I will file one.

Examiner Gutheim: Now are these divisions by the Kansas City Southern and the Lake Charles & Northern covered by a written contract other than the division sheets themselves?

Mr. Sargent: No contracts.

Examiner Gutheim: Where does the Bonanza Line connect with the carrier?

Examiner Burchmore: May I suggest, suppose we dispose of these two lumber company connections and permit counsel to have
2875 cross examination on them before we turn to the coal.

Examiner Gutheim: Will counsel proceed with the cross examination as to the lumber company now then?

Examiner Burchmore: There are one or two questions I want to ask, because I am not familiar with this property. This is all one corporation, this railroad company?

Mr. Sargent: Yes, sir.

Examiner Burchmore: The Missouri & Louisiana Railroad operates, as I understand, four detached properties?

Mr. Sargent: Yes, sir.

Examiner Burchmore: That have not any connections?

Mr. Sargent: No.

Examiner Burchmore: They are like that N. K. & T. floating rib down there that we heard about yesterday, with respect to each other?

Mr. Sargent: Yes, sir.

Examiner Burchmore: You have one line in the vicinity of Carson, La.?

Mr. Sargent: Yes, sir.

Examiner Burchmore: And that line has certain rolling stock, cars and locomotives?

Mr. Sargent: Yes, sir.

2876 Examiner Burchmore: And that rolling stock is confined in its movements to that line?

Mr. Sargent: Yes, sir, unless for some reason we need to move an engine to another point for temporary service.

Examiner Burchmore: When you do that you pay the carriers the same rate for the privilege of moving your engine up to another place?

Mr. Sargent: That is a published rate per mile that is paid.

Examiner Burchmore: And do you pay it?

Mr. Sargent: Yes, sir.

Examiner Burchmore: The sawmill at Carson is how far from the connection with the Kansas City Southern?

Mr. Sargent: I suppose three or four thousand feet; it is adjacent to the Kansas City Southern right of way.

Examiner Burchmore: Your other mill at Neame, did I understand that a portion of the former line of that railroad had been sold to the Louisiana Central?

Mr. Sargent: Yes, sir.

Examiner Burchmore: And another portion is now being jointly operated?

Mr. Sargent: No, the joint operation has ceased.

2877 Examiner Burchmore: The joint operation ceased and you sold it?

Mr. Sargent: Yes, sir.

Examiner Burchmore: It was formerly jointly operated?

Mr. Sargent: Yes, sir.

Examiner Burchmore: When you jointly operated it, how did you divide the operating expenses between the two companies?

Mr. Sargent: Based up on wheelage.

Examiner Burchmore: Was there a contract under which that joint operation was carried on?

Mr. Sargent: Yes, sir.

Examiner Burchmore: It is filed with the Commission?

Mr. Sargent: Yes, sir.

Examiner Burchmore: What was the date of the sale of that portion of the road?

Mr. Sargent: I am mixed on that, but my impression is it was a year last March.

Examiner Burchmore: Along about March, April or May, 1909?

Mr. Sargent: That is my recollection.

Examiner Burchmore: Do you remember what the sale price was, or is there objection to furnishing that?

Mr. Sargent: Well, it is easy enough to tell what the sale

2878 price was. They were to pay us a fixed price for the railroad that was to be eventually sold under the terms of this contract, and then when they purchased our half interest that is just what they paid us for the other half, so the figures in the contract tell that. However that contract does not show the cost of the line that was constructed following the completion of that contract, about five miles being extended towards the east toward

Cravens, La., and I don't remember how much it was, but our 50 per cent was just what the bills called for.

Examiner Burchmore: Now do you handle any logs or lumber down there at the Neame Branch of your road for any other lumber companies?

Mr. Sargent: No, sir.

Examiner Burchmore: Do you handle anything for the Pickering Lumber Company?

Mr. Sargent: Not now.

Examiner Burchmore: How long since you ceased to haul logs or lumber for the Pickering people?

Mr. Sargent: I think a year last March.

Examiner Burchmore: At the same time it was sold?

Mr. Sargent: Yes, sir.

2879 Examiner Burchmore: When you did haul the lumber you charged them $2.50 a car, did you not?

Mr. Sargent: We switched lumber for them at $2.50 per car in some instances.

Examiner Burchmore: How far did you switch it for them?

Mr. Sargent: About four and a half miles.

Examiner Burchmore: That was four and one half miles on a loaded car and four and one half miles on the empty?

Mr. Sargent: Yes, sir.

Examiner Burchmore: Was not that grossly inadequate compensation?

Mr. Sargent: It was, but it was a temporary arrangement made until only the whole line could be completed, for this reason, that the Louisiana Central at the time the contract was made, had no physical connection with our railroad. They were building south from Pickering to a little junction that was known and will be shown on the map as Norlan and their mill at Cravens was operating and for a period of a few months and until they completed their construction we did as lots of carriers do, help out another carrier to overcome their temporary disability.

2880 Examiner Burchmore: Did I understand that the capital stock of this railroad company is held by certain persons in trust?

Mr. Sargent: No deed of trust was ever executed, but it is in fact the situation.

Examiner Burchmore: That is in trust for the Central Coal & Coke Company?

Mr. Sargent: Yes, sir.

Examiner Burchmore: Have any dividends ever been paid on that stock?

Mr. Sargent: Yes, sir.

Examiner Burchmore: Just tell us about the dividends?

Mr. Sargent: I cannot, but it is in your report.

Examiner Burchmore: Quite substantial?

Mr. Sargent: They have been at times.

Examiner Burchmore: Have they run as much as six per cent per year on the average?

Mr. Sargent: Six per cent?
Examiner Burchmore: Yes.
Mr. Sargent: I think more.
Examiner Burchmore: Ten per cent per annum?
Mr. Sargent: Maybe more than that, I don't remember.
2881 Examiner Burchmore: I just wanted counsel to be able to find from this testimony, as they have not access to our reports. Are there any bonds?
Mr. Sargent: No bonds.
Examiner Burchmore: Is there any other statement you wish to make? I understand your counsel is not here to examine you.
Mr. Sargent: I have no counsel.
Examiner Burchmore: Any further statement you wish to make concerning the general character of the company or its operations of these two lines before you are cross examined?
Mr. Sargent: No, but I may want to after being cross examined.
Examiner Burchmore: You may have that opportunity. Mr. Andrews, have you any questions?
Mr. Andrews: Under what governmental authority is the Missouri & Louisiana Railroad Company incorporated?
Mr. Sargent: Missouri.
Mr. Andrews: The State of Missouri?
Mr. Sargent: Yes.
Mr. Andrews: Do you own any railroad in the State of Missouri?
2882 Mr. Sargent: Yes, sir.
Mr. Andrews: How much?
Mr. Sargent: Ten miles of main line and about that much more of surveys tracks, to the coal field.
Mr. Andrews: You also own in Arkansas and Louisiana?
Mr. Sargent: In Arkansas we lease, we do not own any.
Mr. Andrews: You do not own any tracks in Arkansas?
Mr. Sargent: No.
Mr. Andrews: The Missouri & Arkansas propositions serve coal industries, as I understand?
Mr. Sargent: Yes, sir.
Mr. Andrews: And what you own in Louisiana serves lumber interests?
Mr. Sargent: Yes, sir.
Mr. Andrews: I have not quite understood the physical situation of the roads in Louisiana. How many miles of line is there at Carson at the present time?
Mr. Sargent: It is about 13 miles, the main line.
Mr. Andrews: Running from where to where?
Mr. Sargent: Running from Pu Jo, La., the Santa Fe connection, generally in an easterly direction crossing the Kansas City
2883 Southern on east to a connection with the Lake Charles & Northern at what is known as C. C. Junction.
Mr. Andrews: And the mill is located at the intermediate crossing of the Kansas City Southern.

Mr. Sargent: Yes, sir.

Mr. Andrews: So that the real purpose of building the road was to give you the connection with three trunk lines as an outlet for your lumber products?

Mr. Sargent: Well, so far as the connection with the Santa Fe is concerned, we were there first.

Mr. Andrews: You got there before they built in?

Mr. Sargent: Yes, sir.

Mr. Andrews: Is that on the De Ridder Branch?

Mr. Sargent: That is on the De Ridder Branch.

Mr. Andrews: You built there before they built in?

Mr. Sargent: Yes, sir.

Mr. Andrews: How were you there before they built in? Were you tramming out to the timber?

Mr. Sargent: The main line ran to a point perhaps a mile or two north of the Santa Fe right of way.

Mr. Andrews: That was the means of tramming out to the timber?

2884 Mr. Sargent: There were the trams out beyond that, but before the Santa Fe had their lines completed or about that time, those trams north of the Santa Fe track were abandoned because the timber had been cut out by the mill company.

Mr. Andrews: Are you logging any north of the Santa Fe at this time?

Mr. Sargent: Not now.

Mr. Andrews: Any timber left north of the Santa Fe?

Mr. Sargent: Yes, sir.

Mr. Andrews: What quantity?

Mr. Sargent: Not very much.

Mr. Andrews: Approximately how much?

Mr. Sargent: Well, I don't believe I could even make a close guess at that. It is scattering and it is to the west of Pu Jo several miles. I presume that there is enough timber up there to keep a mill busy eight or ten months, if they go into that, which I understand is possible.

Mr. Andrews: Does the Central Coal & Coke Company own all that timber in its own name, or in the name of others?

Mr. Sargent: In its own name.

Mr. Andrews: In its own name?

Mr. Sargent: So far as I have ever heard.

2885 Mr. Andrews: The Central Coal & Coke Company furnished the money to build the railroad?

Mr. Sargent: Indirectly, yes.

Mr. Andrews: Well, it came out of the pocket of the Central Coal & Coke Company, is the direct inquiry.

Mr. Sargent: I would have to go back into history to tell you exactly how it happened.

Mr. Andrews: Unless you want to tell it, all I am interested in is in knowing whose pocket it came from. If you want to tell the details I have no objection.

Mr. Sargent: To be as brief as possibly, the Central Coal & Coke Company organized many years ago the Arkansas & Choctaw Railroad, and that company as a corporation did build the railroads in Louisiana. The Arkansas & Choctaw was sold to the Frisco. The Arkansas & Choctaw started at Ashdown and went west with a charter from the government to build through the Indian Territory. The Frisco acquired that property mostly because they wanted that charter. But when it was sold the equipment and all detached lines were retained by the coal company. They did not go with the sale of the main line of the Arkansas & Choctaw Road, so that the corporation that they originally organized, the Arkansas & Choc-
2886 taw, built these properties, but in the part of the sale it was to retain these detached parts, and the balance was cash.

Mr. Andrews: Well, the Central Coal & Coke Company furnished the money for the original construction?

Mr. Sargent: That was so long ago and before my connection with the company, that I could not say whether the coal company as a company furnished the money for the Arkansas & Choctaw.

Mr. Andrews: But it lent it to the railroad company, and the railroad company used it to build the railroad.

Mr. Sargent: They financed the proposition, yes, sir.

Examiner Burchmore: What do you think of this suggestion: Could you furnish to the Commission in a letter, after conferring with the officers of the railroad who are advised of the fact, a narrative statement of the construction, history of each of these four detached properties, and then a narrative statement, omitting the non-essential details, of the financial history of its operation.

Mr. Sargent: As to the Louisiana Lines I have told it already.

2887 Examiner Burchmore: Yes, but it is a little scattered in the record, and if you could give us a narrative story of the construction of all the roads and also the financing of the properties, that would be of great value as supplementing your testimony here.

Mr. Sargent: I will make a try at it, but I do not know what more I can say.

Examiner Burchmore: There are some things you said you do not know.

Mr. Sargent: Well, only as to this fact, whether the Coal Company put in the money in the Arkansas & Choctaw Road, or whether they as individuals raised the money to start the construction of the Arkansas & Choctaw. I do not remember because that was before my connection with the company, but the Central Coal & Coke Company undoubtedly financed the property, or it could not have been launched.

Examiner Burchmore: We understand, or my impression from your testimony so far is that the Central Coal & Coke Company is now the beneficiary under a trust or the beneficial owner of this railroad.

Mr. Sargent: Yes, sir.

2888 Examiner Burchmore: And my impression is originally financed the railroad in a substantial sense, it furnished the money.

Mr. Sargent: That is correct.

Examiner Burchmore: If your impression is any different, I think you ought to give us a statement later on of the variation.

Mr. Sargent: My impression is not any different.

Mr. Andrews: How much timber holdings has the C. C. & C. C. at the present Carson Mill?

Mr. Sargent: Do you mean that will be manufactured at the Carson Mill?

Mr. Andrews: Yes, that is left.

Mr. Sargent: A whole lot of it.

Mr. Andrews: Well, in feet?

Mr. Sargent: They have about 12 years' supply of timber back of that mill at the present time.

Mr. Andrews: What does that mean in feet?

Mr. Sargent: Well, they turn out about 60,000,000 feet per annum.

Mr. Andrews: 60,000,000 feet per annum?

Mr. Sargent: Yes.

2889 Mr. Andrews: Then you have about 360,000,000 feet of standing timber contiguous to that mill?

Mr. Sargent: Well, it is contiguous to that so far as I know.

Mr. Andrews: And I believe you said that that railroad company handled no business except for the lumber company?

Mr. Sargent: There is no other business.

Mr. Andrews: Your mill at Neame, how much mileage have you there?

Mr. Sargent: The line west is being constructed slowly——

Mr. Andrews: First, what track is your mill on, trunk line track?

Mr. Sargent: The Kansas City Southern.

Mr. Andrews: How far from the track?

Mr. Sargent: It is adjacent to the right of way.

Mr. Andrews: That is a north and south trunk line at that point or east and west?

Mr. Sargent: North and south approximately.

Mr. Andrews: Where does the track of the Missouri & Louisiana Railroad Company run from the mill?

Mr. Sargent: Well, it starts out in a southerly direction crossing the Kansas City Southern main line south of the town of

2890 Neame and then starts west. There is about seven or eight miles built so far.

Mr. Andrews: To where?

Mr. Sargent: It is nothing but the end of the line.

Mr. Andrews: Just to the woods?

Mr. Sargent: Into the woods.

Mr. Andrews: And there you tram out to your timber?

Mr. Sargent: Yes.

Mr. Andrews: Any other mileage there besides that?

Mr. Sargent: Not that the railroad operates. The mill company has its laterals of course, all over the woods.

Mr. Andrews: There are no stations or other facilities for being a railroad?

Mr. Sargent: None needed out there for the business we handle.
Mr. Andrews: That belongs to the Central Coal & Coke Company?
Mr. Sargent: Yes, sir.
Mr. Andrews: In the same way?
Mr. Sargent: In the same way.
Mr. Andrews: Was it constructed in the same way or was
2891 it constructed after the line we have just asked you about?
Mr. Sargent: That was constructed after.
Mr. Andrews: When did that construction begin?
Mr. Sargent: I think it was started about a year ago last March.
Mr. Andrews: The Central Coal & Coke Company furnished the money to build that?
Mr. Sargent: Yes.
Mr. Andrews: It was built with the company's money?
Mr. Sargent: Yes.
Mr. Andrews: The Central Coal & Coke Company also owns the mill at that point?
Mr. Sargent: Yes.
Mr. Andrews: Does that line do any business of any kind at all except for the mill or for the Central Coal & Coke Company?
Mr. Sargent: It has no other business at present.
Mr. Andrews: It produces all the traffic that the railroad handles?
Mr. Sargent: At present.
Mr. Andrews: And you have explained the divisions that you get on the Carson mill. Do you get the same divisions on
2892 the Neame Mill?
Mr. Sargent: Except there is no arrangement for divisions except with the Kansas City Southern.
Mr. Andrews: You do not reach anything but the Kansas City Southern?
Mr. Sargent: No, not now.
Mr. Andrews: Consequently you have no other company to arrange divisions with? Do you get the same divisions with the Kansas City Southern there that you do with the Kansas City Southern at Carson?
Mr. Sargent: Yes.
Mr. Andrews: When you were asked by the Examiner if the Missouri & Louisiana Railroad Company had declared any dividends you meant the railroad company, as to all of its properties?
Mr. Sargent: Yes, sir.
Mr. Andrews: Have either of these lumber lines that I have asked you about declared any dividends?
Mr. Sargent: The income and expenses are all kept together, and if they combined have a net earning, that is distributed as a dividend.
Mr. Andrews: How is it distributed as a dividend?
2893 Mr. Sargent: In dividends declared in the usual way.
Mr. Andrews: Maybe I misunderstood you. You mean

all these four isolated pieces of property are kept as one property in bookkeeping and reported to the Commission?

Mr. Sargent: Yes, sir, the reports to the Commission show the reports of all as one line.

Mr. Andrews: Then you keep no separate books as to these mills in Louisiana?

Mr. Sargent: Yes, sir, that is merely a matter of bookkeeping, to make the reports necessary.

Mr. Andrews: Then I will change the question and ask you if you keep these separate accounts, whether there have been annual earnings and net profits on either of these Louisiana lines?

Mr. Sargent: Some years, yes.

Mr. Andrews: To what extent?

Mr. Sargent: I think I can give you approximately what you want. The earnings received from divisions have never met the operating expenses that I can recall. They may have come close to it some time, but the surplus——

Mr. Andrews: Can you give it to us in this form, the
2894 earnings from divisions, say take the Carson line first, can you give us the earnings from divisions there?

Mr. Sargent: I think I have that here. I have three years, the fiscal years ending June 30th, 1908, 1909 and 1910.

Mr. Andrews: The earnings from divisions now?

Mr. Sargent: Yes, sir.

Mr. Andrews: What are they?

Mr. Sargent: 1908, $16,788.21; 1909, $15,411.91; 1910, $14,-390.10.

Mr. Andrews: What were your total operating expenses for those three years?

Mr. Sargent: 1908, $25,587.73; 1909, $23,827.36; 1910, $20,-249.76.

Mr. Andrews: Your total operating expenses include all services performed by the railroad for the lumber company, do they not?

Mr. Sargent: Yes, all that the railroad does perform itself.

Mr. Andrews: Can you give us the same figures on the Neame plant?

Mr. Sargent: Yes, sir. The income from divisions in 1908 was $10,912.80; 1909, $11,700.70; 1910, $16,174.82.

2895 Mr. Andrews: And the gross operating expenses?

Mr. Sargent: 1908, $30,709.21; 1909, $11,668.02.

Mr. Andrews: Why is that enormous discrepancy?

Mr. Sargent: That is about the time we quit operating that 20 miles of road and started in a westerly direction where there are only seven or eight miles in operation, and as we got on the operating expenses come up a little; in 1910 the operating expenses were $15,590.14.

Mr. Andrews: In regard to logging the mill, what service does the railroad company perform?

Mr. Sargent: The railroad company performs the service of hauling the logs from the woods into the mill site.

Mr. Andrews: Well, that is indefinite, as the railroad itself ends

in the woods, according to your testimony. Do you go out on the sprangled branches of the tram where the cars are loaded and bring the cars in?

Mr. Sargent: In emergency cases only.

Mr. Andrews: Well, what is the custom?

Mr. Sargent: The lumber company has at each plant two engines of its own that it operates and maintains. They do all the woods work, and look after the construction trains which are all
2896 there is. We have nothing whatever to do with that.

Mr. Andrews: They bring them up to this imaginary point where the railroad ends and the tram begins and deliver them to the railroad?

Mr. Sargent: They bring them to the main line. There may be several trams attached to the main line.

Mr. Andrews: From your so-called main line there are several trams sprangled through the woods?

Mr. Sargent: Yes, sir.

Mr. Andrews: They bring them to this point on the main line and you take them there?

Mr. Sargent: Yes, sir, that is the usual way.

Mr. Andrews: Do you lease the lumber company any equipment for that work?

Mr. Sargent: In the case of each plant there are three engines.

Mr. Andrews: Three engines at each plant?

Mr. Sargent: And two of the engines belong to the railroad company, purchased by them, and one in each case belongs to the Central Coal & Coke Company and we lease to them under a verbal arrangement the use of one of our own engines at each point.

2897 Mr. Andrews: What do they pay you for it?

Mr. Sargent: Their sum total payment to us is based upon a log measure. For all the service we render them of moving camp outfits over the main line and extraordinary switching in case they have troubles, for the use of engines. We aim to charge them uniformly 75 cents a thousand. We arrive at that however, in this way. It saves a good deal of bookkeeping. To take it upon the wheel report and charge so much per car, $3.00, which reduced to a thousand feet, the cars averaging about 4,000 pounds, we get about 75 cents.

Mr. Andrews: A thousand feet?

Mr. Sargent: Yes, sir.

Mr. Andrews: Who furnishes the logging cars?

Mr. Sargent: The logging cars belong to the coal company.

Mr. Andrews: And the other equipment of course, belongs to the coal company except the engines which you have mentioned?

Mr. Sargent: Yes. I do not believe there is any equipment at either plant.

Mr. Andrews: That is true at both plants, the same method of operation at both plants?

2898 Mr. Sargent: Yes.

Mr. Andrews: Who routes the shipments when they move out?

Mr. Sargent: The lumber company.

Mr. Andrews: Does not the railroad company have anything to do with the routing?

Mr. Sargent: No, they have a rate man in their office at Kansas City, and he gets an order and he puts the correct rate on them and puts on all routes available and that is the way the order goes to the mill.

Mr. Andrews: Are you Traffic Manager for the railroad company?

Mr. Sargent: No, I am Vice President and General Manager of the railroad company.

Mr. Andrews: Have you a Traffic Manager for the railroad company?

Mr. Sargent: No.

Mr. Andrews: Have you a traffic manager for the lumber interests, the C. C. & C. C. interests?

Mr. Sargent: I am traffic manager for the lumber interests.

Mr. Andrews: Manager for the railroad and traffic manager for the other interests?

2899 Mr. Sargent: Yes.

Mr. Andrews: And when the routing is made up in your office do you make it up as the traffic manager of the lumber company, or as general manager of the railroad company?

Mr. Sargent: As the coal company's employee, I personally do not handle such matters. I do not see an order once in six months.

Mr. Andrews: Well, it is subject to your direction if you see fit to change it?

Mr. Sargent: Certainly.

Mr. Andrews: As a matter of fact it is left to the interest of the railroad company to get the best rate that can be obtained on a shipment to a particular destination, is it not?

Mr. Sargent: Not rate.

Mr. Andrews: Division.

Mr. Sargent: We have got to consider actually the rate that is in effect.

Mr. Andrews: I understand.

Mr. Sargent: And the rate man furnishes the information and furnishes all the available routes.

2900 Mr. Andrews: I corrected the word rate by saying division.

Mr. Sargent: The divisions are the same.

Examiner Burchmore: Is it not correct to say and is it not the final fact that we want to ascertain, that in routing each carload the agent of the coal company that gives the routing instructions, takes into consideration the rights of the railroad and the results to the Missouri & Louisiana Railroad in the way of divisions?

Mr. Sargent: Well, he would in a case like this, if the division on a shipment that could move via the Southern Pacific was one cent, and the division on a shipment destined to that same particular point was two cents if moving via the Kansas City Southern, the railroad would use the Kansas City Southern route.

Mr. Andrews: That is exactly what I asked you, if you did not route it with reference to the best divisions.

Mr. Sargent. But I want to explain there was little occasion for doing that because the divisions are practically identical.

Mr. Andrews. For instance, if you had a shipment going from the Carson Mill to Kansas City you would not route it over the Santa Fe unless you could not possibly get a car from anybody else and had to put on the shipment.

Mr. Sargent. Naturally we would not, because as a railroad we would have to haul it nine miles and only switch it a short distance in the other.

Mr. Andrews. Then as traffic manager of the lumber company you get the best rate you can, and as manager for the railroad company you get the best division you can, you get the best results you can in either case?

Mr. Sargent. I suppose that is the final outcome of it, but it is a matter I never give any consideration to.

Mr. Gaffney. Do you ship lumber to Texas?

Mr. Sargent. Yes, sir.

Mr. Gaffney. Could you state in a general way to what territory largely you ship it?

Mr. Sargent. I suppose that is the final outcome of it, but it is a matter I never give any consideration to.

Mr. Gaffney. Do you ship lumber to Texas?

Mr. Sargent. Yes, sir.

Mr. Gaffney. Could you state in a general way to what territory largely you ship it?

Mr. Sargent. Well, business is scattered all over.

Mr. Gaffney. No special territory?

Mr. Sargent. No particular territory, south and north.

Mr. Gaffney. Can you give without referring to your books any estimate of the amount of lumber that you ship there?

Mr. Sargent. No, I could not. I would have to look it up. The lumber company's books will show the destination of their lumber by states almost any period since they have been in operation, but I never had occasion to use those figures, so I do not know.

Mr. Andrews. Does the Central Coal & Coke Company own a mill in Texas?

Mr. Sargent. No.

Mr. Andrews. Did they formerly?

Mr. Sargent. No.

Mr. Andrews. They have considerable timber holdings, have they not?

Mr. Sargent. They have.

Mr. Andrews. But have no mills operating?

Mr. Sargent. No, the timber land is in Montgomery and Walker Counties, and never had a mill in it.

Mr. Andrews. I was under the impression you had had a mill and a railroad, which railroad had been sold to the Cotton Belt.

Mr. Sargent. No, that does not apply and never did to the Central Coal & Coke Company.

Mr. Andrews. To an allied interest?

Mr. Sargent. Only in the respect that some three or four of the

largest stockholders in the Central Coal & Coke Company were interested in that Louisiana & Texas Company's plant at Ratcliff, Texas.

Mr. Andrews: You still own that?

Mr. Sargent: The Louisiana & Texas Lumber Company has not changed ownership so far as I know. The Central Coal & Coke Company does not own a dollar of it.

Examiner Burchmore: What is the name of the railroad serving that other plant?

Mr. Sargent: The Eastern Texas Railway.

Examiner Burchmore: That has become a part of the Sante Fe System?

Mr. Sargent: No, the Cotton Belt System.

Examiner Burchmore: Have you any questions, Mr. Coleman?

Mr. Coleman: No.

Examiner Burchmore: Have you any further statement you desire to make about these two properties?

Mr. Sargent: It appears to me there is nothing further to
2904 say.

Examiner Burchmore: Now as to the other two properties, I suppose you will be rather brief about them, because they are coal.

Examiner Gutheim: Just a moment on the lumber proposition. Does the Central Coal & Coke Company own the right of way of the two railroad properties in Louisiana?

Mr. Sargent: They do.

Examiner Gutheim: And are the rates upon which you ship from the Carson and the Neame mills made on a milling in transit basis by one or all routes?

Mr. Sargent: That is the theory; the rate on the log or lumber from all points over the Parish is identical and with our small road and its connections we make up one through route and the logs may be milled in transit on the short line or on the long line, and the result is always the same.

Examiner Gutheim: The Bonanza Mill property is served by a railroad operated by the Missouri & Louisiana Railroad Company, but not owned by it, is that the fact?

Mr. Sargent: That is correct. May I interrupt a minute. I do want to make one little statement in connection with the logging roads. You were asking about the dividends. Our annual
2905 statement shows what has been paid. I personally do not remember. But I want to explain why dividends were paid. All of the lines, the two in the coal district and the two in the lumber district, especially the latter, were operated for years at a loss and there was always occasion for calling upon the parent company for money to make both ends meet, and shortly after I came to the company I suggested that was a ridiculous way of doing things, and that the charges for service should be made such as to make the property self-sustaining, inasmuch as there is legitimate income to meet their operating expenses. While I called off a few moments ago the income from divisions, it should be stated that is only a part of the

income that appears in their statement as actual earnings. They are charging $3.00 a car, which is the way it is carried——

Mr. Andrews: We understood that. But I asked you specifically for the income from divisions for another purpose.

Mr. Sargent: Yes. They do a big logging business and applying $3.00 a car to it makes the income from the logging invariably exceed the income from the divisions by a very considerable amount, and that is what sometimes, when we have no bad luck,
2906 creates a surplus. But we have got to have some net earning all the time to provide for contingencies such as wrecks and personal injury claims. We have some of those on hand that look like we will not have a chance to declare a dividend for several years.

Examiner Gutheim: Who owns the tracks operated by the Missouri & Louisiana in the vicinity of Bonanza?

Mr. Sargent: They belong to the Kansas City Southern.

Examiner Gutheim: Are they connected physically with the railroad of the Kansas City Southern?

Mr. Sargent: They are not.

Examiner Gutheim: What is your physical connection, with what carrier line?

Mr. Sargent: The St. Louis & San Francisco.

Examiner Gutheim: And the tracks run from the St. Louis & San Francisco at Bonanza in a generally easterly direction to the mines?

Mr. Sargent: They do.

Examiner Gutheim: What consideration do you pay the Kansas City Southern for the use of the tracks?

Mr. Sargent: Based upon their original cost exclusive of the perishable cost, such as grading and drainage, four per cent.

2907 Examiner Gutheim: Do you lease any equipment with it?

Mr. Sargent: No, sir.

Examiner Gutheim: Do you operate over any track with your own equipment in and about Bonanza, with the exception of the trackage of the Kansas City Southern?

Mr. Sargent: You do not care to talk about the old condition, where they used to run to——

Examiner Gutheim: The present condition.

Mr. Sargent: We started something over a year and a half ago to execute a contract with the Frisco which would provide that we would receive a division per ton on the coal delivered to them for direct consignment to its ultimate destination, and we in turn were to substitute our engines as a switch engine for the use of the Frisco for the purpose of hauling slack coal over about seven miles of the Frisco rails to a coal washing plant. The consideration to the Frisco would be that they would save the expense of putting on a switch engine and our engine having so little tonnage to handle, it was idle part of the time and the arrangement thereby made was mutually beneficial.

Mr. Andrews: Is not this hearing limited to the lumber
2908 business and are we not losing time in going into the coal business?

Examiner Burchmore: We will only take a few moments with

these two properties, and it is all one railroad corporation, and I think the Commission wanted it all brought out. It will be very brief. I might say if you have no interest in it we will adjourn at the conclusion of this phase of the case until two o'clock, and will not take up any other.

Examiner Gutheim: Is that contract with the Frisco agreed upon entirely?

Mr. Sargent: The terms of it were practically agreed upon by exchange of views and conference with the Frisco people, but when the question of what would be done as to these tap lines was brought up, it was concluded that we could not get to a termination of the negotiations until the matter was settled.

Examiner Gutheim: Was the Frisco guaranteed 100 per cent of the output of the Bonanza mines?

Mr. Sargent: They were guaranteed 100 per cent of the output of the mines upon which they were to pay us 10 cents a ton for switching the coal, a service of about 6½ miles over to their
2909 junction, except that on the coal that we were to transport by our engine, in lieu of their doing it with their own power they were to pay no division. When that coal comes out of the washery it goes over the Frisco and we have nothing to do with it. We are simply substituting switching service they would be compelled to do themselves otherwise as a common carrier.

2910 Examiner Gutheim: You mean the only coal upon which you get a division is that which comes from the Bonanza Mines, and is given direct to the Frisco at Bonanza?

Mr. Sargent: Yes, sir.

Examiner Gutheim: No division is paid on the coal which goes to the Hackett Washery, and there delivered to the Frisco?

Mr. Sargent: That is correct.

Examiner Gutheim: Your operating expenses in and about the Bonanza operation consist only of the maintenance of way of the track leased from the Kansas City Southern and the expense incidental to the operation of the one locomotive and the train crew that goes with it.

Mr. Sargent: And the maintenance of the engine.

Examiner Gutheim: And the maintenance of the engine?

Mr. Sargent: Yes.

Examiner Burchmore: One question about that Bonanza plant. How did the Kansas City Southern come to build this five miles of railroad?

Examiner Gutheim: I was going to ask Mr. Sargent to give us a little of the ancient history of that. It is a long story, which I know personally, but I think it should go into the record.

2911 Mr. Sargent: In 1896 or possibly 1897 the Kansas City Southern were building south, and their intent was to build a line to Fort Smith. As originally projected, it ran quite close to this coal property that was then being opened, and in order to make the coal immediately available to their own line, more particularly for engine fuel, they built the tracks adjoining the Frisco where they are right now, to the mines, and they executed a contract with

the Frisco which gave them the trackage right about 19 miles from Poteau, Oklahoma, to Bonanza Junction, a "Y," and later they determined to build a line into Fort Smith. The route they picked out was entirely too expensive and was abandoned for a while, and later they did build to Fort Smith farther north, but far up the valley, so they are entirely removed from the Bonanza mines. They had their investment there, and it was of no value to anyone except to those who could use it in operating the property, and they leased it to us.

Examiner Gutheim: Your road connects at Poteau with the Kansas City Southern through trackage agreement with the Frisco?

Mr. Sargent: No, we took over that contract which the Kansas City Southern executed with the Frisco, and assumed the
2912 obligations and performed the service ourselves for a number of years, but we quit that, well, within the last couple of years; I don't remember just when.

Examiner Gutheim: Then none of your coal moves to the Kansas City Southern now?

Mr. Sargent: Except it may; there are lots of through rates in effect between the Frisco and the Kansas City Southern, but the Frisco is the immediate connection instead of our line.

Examiner Gutheim: What is the extent of the line you lease at Bonanza?

Mr. Sargent: About 6.43 miles, is my recollection.

Examiner Gutheim: You do not do any other business to speak of at Bonanza, or in fact no other business, except the Central Coal & Coke Company business?

Mr. Sargent: No, there is one mine out there, that is ordinarily known as a strip pit, which belongs to other parties, which they work, but the coal company usually buys that coal right at the pit and so in substance, all that is moved out is owned by the Central Coal & Coke Company.

Examiner Gutheim: Taking up the property at Bevier, the main line runs from Bevier, Missouri, to Ardmore?

2913 Mr. Sargent: Yes, sir.

Examiner Gutheim: The mines are in about Ardmore?

Mr. Sargent: They are strung pretty well along the line. The main line distance is ten miles, and the first mine is south of Bevier about two and one-half miles.

Examiner Gutheim: What carrier connection have you with this property?

Mr. Sargent: The Chicago, Burlington & Quincy.

Examiner Gutheim: That is at Bevier?

Mr. Sargent: That is at Bevier.

Examiner Gutheim: Are there any communities of any consequence along the line from Bevier up to Ardmore?

Mr. Sargent: Two towns on the line, Keota and Ardmore. They are old towns; I guess they were there before the railroad was ever built.

Examiner Gutheim: And they are served solely by the Missouri & Louisiana?

Mr. Sargent: Yes.

Examiner Gutheim: Is there any surrounding population that depends on that line for railroad service?

Mr. Sargent: Yes, there is one little interior town which was some years ago quite important; I have not seen it in recent
2914 years; College Mound, it was then, and it was an interior community. There are farms all around in that country; some of the surface is good for that purpose and some not.

Examiner Gutheim: Does that particular line of the Missouri & Louisiana serve any mines which are not controlled directly or indirectly by the Central Coal & Coke Company?

Mr. Sargent: Yes, sir; mines belonging to the Northwestern Coal & Mining Company. That Northwestern company furnishes in the neighborhood of 35 per cent of the tonnage, as a rule. I think they have that.

Examiner Burchmore: You lease a line from them?

Mr. Sargent: No, we own it ourselves.

Examiner Burchmore: Do you not lease any track from them?

Mr. Sargent: Not of the main line. They have tracks which lead to their own mines over which we operate by agreement, and the agreements are on file with the Commission, but it is not main line.

Examiner Gutheim: Are those the ordinary tipple service tracks?

Mr. Sargent: Yes, sir. Well, they have quite a lead leading to their first mine, the first one, but they are all strictly speak-
2915 ing, mine tracks, and are used for no other purpose. For the year ending June 30, 1908, the Northwestern Company furnished 35.24 per cent of the total coal tonnage. In 1909, 29.03 per cent, and in 1910, 32.94 per cent. Of course that runs into thousands of tons, both properties being large producers, and besides this business, there is business for the general public.

Examiner Gutheim: Have you any figures of the tonnage handled for the general public and the revenue received by the company on it?

Mr. Sargent: I have not any tonnage figures on this statement, but I think they are provided in the annual report. I have a division of the income from divisions, passengers, mail and other revenue here.

Examiner Burchmore: Read it briefly.

Mr. Sargent: For 1908 the income from divisions was $29,377.31. To be brief, I will call these in round figures. Would not that be better?

Examiner Burchmore: All right.

Mr. Sargent: Passenger earnings was $5,000. We had no mail contract then, so no income from that. Other revenue, $12,000. In 1909 from divisions, $23,000, passenger earnings $5,000,
2916 mail, $394; other revenue, $8,800. In 1910 from divisions, $26,000; passengers, $4,800, mail, $452; other revenue, $7,700.

Examiner Burchmore: Is not this Northwestern Coal & Mining Company a subsidiary corporation of the Central Coal & Coke Company?

Mr. Sargent: No, it is the only competitor the Central Coal & Coke Company has got in the state of Missouri.

Examiner Burchmore: Active competitor?

Mr. Sargent: Active? Well, I should hope so.

Examiner Burchmore: Then you and your competitor are getting along rather friendly right at that place.

Mr. Sargent: Well, we have got a line that is chartered in the state as a common carrier, and there is no choice; we have to serve them, and they are served absolutely upon the same terms as we serve the Central Coal & Coke Company or any one else.

Examiner Burchmore: But you are their lessee on certain tracks; you lease tracks from them?

Mr. Sargent: That is only to get to their mines. They built those tracks, and we are simply accorded the right to run over them, and the contract more particularly executed to make it com-
2917 pulsory that they maintain the tracks in a safe condition to be used, so in the case of injury their responsibility would be established. There is no consideration in it at all.

Examiner Gutheim: I would say that supplementing the figures of revenue on the business for the general public that Mr. Sargent has submitted, the Commission has of record the tonnage for the years 1908 to 1909, divided on that basis, so if you want the tonnage for 1910, it would have to be obtained from the witness.

Examiner Burchmore: I was going to suggest that you furnish the Commission with a statement of the tonnage and revenues for each of your four properties, the four detached lines, stated separately, stating the character and extent of the tonnage furnished by the controlling corporations, and divide up the tonnage furnished by what might be called the public. And would it be too much trouble to make that up?

Mr. Sargent: No, but allow me to suggest so far as the two lines in Louisiana are concerned, and the line in Arkansas is concerned, there is no other tonnage than the Central Coal & Coke Company.

Examiner Burchmore: But I want the figures, because I
2918 understand that your reports to the Commission combine the four in a lump.

Mr. Sargent: Yes.

Examiner Burchmore: And we would be able to analyze that report, and know how much comes from one line and how much from another. Of course there may not be any separation there as to public and industrial traffic, but we would be able to separate the others.

Mr. Sargent: I have the separate reports.

Examiner Burchmore: All right.

Mr. Sargent: I have it for those three years, but the statement was made that the Commission already had the report.

Examiner Burchmore: Do you want to put that in evidence as it stands?

Mr. Sargent: This memorandum?

Examiner Burchmore: Yes.

Mr. Sargent: Yes, if you care to have it.

Examiner Burchmore: If you care to, it will be received in evidence and perhaps it will show the whole thing.

Mr. Sargent: I am sure it will, but I will have another
2919 try at it.

(The paper so offered and identified was received in evidence and thereupon marked Missouri & Louisiana Exhibit No. 1, Witness Sargent, received in evidence December 17, 1910, and is attached hereto.)

Examiner Gutheim: What divisions do you obtain on the output of the mines at Bevier or at Ardmore?

Mr. Sargent: It is on the basis of so much a ton. The division sheet has been filed, and the terms of the contract with the Burlington under which these divisions were to be allowed, contemplate that the Burlington shall pay nothing on the coal that comes from the Central Coal & Coke Company's mines or the Northwestern Mining Company's mines upon their engine fuel. They, of course, recognized that the pay for the services rendered must in some way or other to be made, but they did not want any tax upon their engine fuel, so they took the tonnage and figured out what it would amount to, and about what it would cost to transport it, and they paid a fixed amount per ton, based upon commercial coal, only it is freight revenue coal to them, and freight revenue coal to us, and that average income, I suppose, figures out about five cents per ton.

2920 Examiner Gutheim: That is on all the coal?

Mr. Sargent: On all coal, when you take the income from divisions and apply it to all the tons of coal handled, that is the Burlington engine coal plus the commercial coal, it averages about five cents a ton.

Examiner Gutheim: But the actual revenue on commercial coal is how much?

Mr. Sargent: It is eight cents a ton; I think ten cents now, changed within the last year.

Examiner Gutheim: About how much of a haul do you perform coming from both the Central Coal & Coke Company and the Northwestern Company's mines?

Mr. Sargent: I think the average service would be about like cutting the line in two, five miles.

Examiner Gutheim: Some of it is hauled about ten miles, others two miles, and others four, and some six?

Mr. Sargent: Yes.

Examiner Gutheim: I will say that the contract with the Burlington is on file with the Commission in connection with the industrial railroad examination.

Examiner Burchmore: This railroad is incorporated in Missouri?

2921 Mr. Sargent: Yes, sir.

Examiner Burchmore: Is there any incorporation in Louisiana?

Mr. Sargent: No, it is a holding company that holds these four companies.

Examiner Burchmore: Does the Louisiana law permit foreign corporations to operate railroads in that state?

Mr. Sargent: I suppose so.

Examiner Burchmore: I thought some of the main line systems had separate corporations in Louisiana, and my impression was that that was due to some state law.

Mr. Sargeant: In Texas that is required, but not in Louisiana.

Examiner Burchmore: Well, the Kansas City Southern has a Louisiana corporation?

Mr. Sargent: They only did that for a purpose. It was not necessary. I was with them when they built the railroad.

Examiner Burchmore: How about Arkansas?

Mr. Sargent: Arkansas is like Louisiana; there is no such law. Texas is the only state I know of that is like that out in this country.

Examiner Burchmore: Your statements to the Commission
2922 report the operating expenses and revenue?

Mr. Sargent: Yes, sir.

Examiner Burchmore: Can you not take your figures for the last three years and advise us as to the separation of revenue and expenses between the four companies?

Mr. Sargent: Yes, sir.

Examiner Burchmore: Take the totals of the operating expenses and revenue for the last three years and separate them between the four companies.

Mr. Sargent: As I understand, make four reports for the years 1908, 1909 and 1910?

Examiner Burchmore: Yes, sir.

Mr. Sargent: Four reports for the separate pieces, all of which were used to make up the total?

Examiner Burchmore: Yes.

Mr. Sargent: Because it all has to be compiled in advance.

Examiner Burchmore: Have you any further statement?

Mr. Walter: As long as Mr. Sargent's attorneys are away, why not permit him to reserve the right to introduce a statement later, if he wants to?

Examiner Burchmore: As to the facts?

Mr. Sargent: I have given you all the facts.

2923 Examiner Burchmore: If your counsel desires to file a brief on the question, or if there is any further statement he wishes to make to the Commission in the form of a written communication, I will allow your suggestion to that effect to go into the record at this point.

Mr. Sargent: Well, we are operating a railroad proposition as such. We assume the responsibility of a carrier, and we have to provide a revenue that will meet the operating expenses and provide for contingencies. We are constantly confronted with extraordinary expenses incident to wrecks, personal injury suits, and we have no means of deriving a revenue sufficient to operate these properties except through the means of being permitted to share in through

rates and be given a division of such through rates, and on that account that income, because of the fact that the divisions will not pay operating expenses, we provide an income through charges for service, in order to make the income meet the expenses. And I only say that again because I want to bring out the fact, if we have no unfortunate accidents, our surplus is great some times and a dividend that is excessive is paid, wheras the next year it may take 200 per cent as the net to meet the deficit incident to the wrecks
2924 and personal injury losses which we have to provide for by some means. In ordinary operations the income looks too big for the service rendered, whereas if you are confronted with these extraordinary items, they fall far short. And I would like to have it go in the record that I ask for our attorney to file any brief in the case if he may elect to do so, and the Commission permits anyone to do so.

Examiner Burchmore: If he so desires, I suggest that you request him to forward his request to the Commission in the shape of a letter, so we may have something to reply to.

Mr. Coleman: May I ask a question? Did you testify as to the amount of the division you got on the coal which originates on your line in Missouri?

Mr. Sargent: Yes, ten cents on the commercial coal only. That, as applied to all coal hauled, brings an income of approximately five cents; in other words, if we were making the Burlington pay on its engine coal, we would charge them five cents as part of the through rate, and the commercial public would be getting the same rate; five cents, but the Burlington did not want it handled that way, so we figured all the tonnage and made the division on commercial coal ten cents, so as to make it all five cents.

2925 Mr. Coleman: I do not know as it is competent for me to ask any questions bearing on the coal proposition there, but we are indirectly interested in coal mines, and so forth, and if permissible, I would like to ask one more question.

Examiner Burchmore: You may.

Mr. Coleman: Is this coal mainly marketed within the state or does any considerable tonnage move interstate?

Mr. Sargent: A very large portion of it goes to the Burlington road. I think there is——

Examiner Burchmore: I just wanted an approximation.

Mr. Sargeant: This is not in total, so I cannot get it absolute, but it looks as if about 60 per cent of the output of the mines goes to the Burlington.

Mr. Coleman: For locomotive consumption?

Mr. Sargent: Locomotive consumption, and the other 40 per cent, quite a tonnage that is, finds its market in Missouri and Nebraska.

Mr. Coleman: And the division applies interstate as well as intrastate.

Mr. Sargent: As well as state; yes, sir.

(Witness excused.)

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

2926 After Recess.

2:00 P. M.

Examiner Burchmore: We will continue with the call, beginning with the Sabine & Northern, and we will go through as far as we can until six o'clock or thereabouts, and if we have made such progress so that there are only two or three cases to be taken up this evening, we will do so; otherwise we will go on to Monday and finish the cases.

Mr. Cowan: Take my own situation, and probably other people are in the same fix, I have got a business engagement which I have been depending on for several days and doing a lot of worrying about. Question: Can I be in Galveston Sunday? Monday? If not, when can I be there? Now, you have some cases, Mr. Garwood, you told me, which you had to try Monday. It seems to me that although it may discommode some one, that if we could know for certain—if I know for certain I will be here until Monday, it is all right, and I have no complaint, except it seems to me we ought to find out whether we are to be here until Monday. That is partly personal, I admit, but I think we all should know whether we are to be here Monday or not.

2927 Mr. Garwood: I wish to file two notices to produce documents. I will not take up the time of the Commission to read them, and will furnish counsel for the intervenors with copies of them, and ask that they be made part of the record.

Examiner Burchmore: Very well; they will be received.

Mr. Garwood: I wish them made part of the record, and copied into the record.

Interstate Commerce Commission.

No. 1319.

STAR GRAIN AND LUMBER COMPANY et als.
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et als.

In the Matter of Tap Line Allowances and Divisions, Consolidated Under Investigation and Suspension Docket No. 11.

Hearing at New Orleans, December 8, 1910.

Notice to Produce.

To the Kirby Lumber Company, Intervener, John H. Kirby, the Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado and Santa Fe Railway Company, and to E. P. Ripley,
2928 President of the Gulf, Colorado and Santa Fe Railway Company and the Atchison Topeka and Santa Fe Railway Company, and to David Gallup, and James R. Chapman, severally:

You, and each of you, are hereby notified to appear and produce upon hearing at the time and place thereof, as shall be hereafter

designated by the Interstate Commerce Commission, the following documents, to-wit:

1. The contract made and entered into by and between said John H. Kirby, of which the Kirby Lumber Company is a beneficiary and the Atchison, Topeka and Santa Fe Railway Company and the Gulf Colorado and Santa Fe Railway Company, both or either of them, or which was entered into by said Atchison Topeka and Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company, both or either of them, by which said Atchison, Topeka and Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company, both or either of them, and of which the Kirby Lumber Company was a beneficiary, whereby and whereunder said Atchison, Topeka and Santa Fe Railway Company and said Gulf, Colorado and Santa Fe Railway Company agreed to cancel, and did cancel, all through and joint rates on lumber with the connecting lines of the said Atchison, Topeka and Santa Fe Rail-
2929 way Company and said Gulf, Colorado and Santa Fe Railway Company, said contract being that specific contract referred to in Paragraph XVIII, Section 13 and Section 14, pages 103 and 104 of the joint and several answers of the defendants Kirby Lumber Company and John H. Kirby to the amended bill of complaint of the Maryland Trust Company, Trustee, Complainant, filed in the case of the Maryland Trust Company, Trustee, vs. Kirby Lumber Company and Houston Oil Company of Texas, then pending in the Circuit Court of the United States for the Southern District of Texas at Houston, being numbered 54 on the Equity Docket thereof, on March 25 A. D. 1905, which said Sections 13 and 14 are as follows, to-wit:

"13. Say that the lumber to be cut from the timber on the Kountze lands is tributary to the Gulf, Colorado and Santa Fe Railroad system which in turn is owned by and is a part of the Atchison, Topeka and Santa Fe Railroad system operating nearly ten thousand miles of railway extending from Chicago, Illinois, to San Francisco, California, with numerous branches in the state of Texas, Oklahoma, Kansas, Missouri, Illinois, Colorado, New Mexico and Arizona, through which it runs, and that it has connections at El Paso for points in Mexico, enabling Kirby Lumber Company to reach all points on the line of the said Atchison system under the con-
2930 tract herein mentioned of said Kirby with said Atchison Railroad, at rates, or rather under conditions, that would give said Kirby Lumber Company an advantage of about $1 per thousand feet of lumber over and above what *is* competitors, located on other lines of railway, could realize from shipments to points reached by said Atchison railroad, and this for the reason that said Atchison & Santa Fe railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers, located along the lines of said Atchison railroad, an advantage in freight rates in reaching all points located on the line of the said Atchison railroad system.

14. Say that said Houston Oil Company of Texas already owned

numerous bodies of land interspersed with said Kountze lands in such a way that it would, if such Kountze lands were not acquired, greatly increase the original cost as well as the expense of operating the tramroads required to log said Houston Oil Company's
2931 lands so interspersed, wherefore it was highly important, as an economic movement, that said Kountze lands be acquired, so much so that thereby an estimated difference in the profit to be realized by defendant, Kirby Lumber Company, amounting to at least $2 to $3 per thousand, would result; that the said Kountze lands were for sale by the owners at a rate of about $2 per thousand feet for the yellow pine timber thereon, and some of said Kirby Lumber Company's competitors in the lumber business, as these defendants knew, were making efforts to acquire parts of said Kountze lands; that the arrangement herein stated between said Kirby and said Atchison, Topeka and Santa Fe Railroad, of which defendant, Kirby Lumber Company, is the beneficiary, is not and under the law could not be exclusively for its benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado and Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison Railroad, not owned by either the said Houston Oil Company of Texas or said Kirby Lumber Company, to tempt competitors, wherefore such regulation by said Atchison railroad would practically result in said Kirby Lum-
2932 ber Company being the sole beneficiary thereof.

2. Contract between said John H. Kirby and said David Gallup, which said contract was by said Kirby assigned to said Kirby Lumber Company, whereby said Gallup, who held title to said Kountze lands, the body of yellow pine lands situated in the State of Texas containing approximately one hundred and sixty-nine thousand acres of virgin pine timber, for the said Atchison Railroad system, gave to said Kirby on option for a period of five years to purchase said lands, and whereby and wherein defendant, Kirby Lumber Company, agreed to sell to said Atchison Railroad system ten million feet of lumber per year at a cost of twenty per cent. (20%) less than the market price thereof, and agreed to route over said Atchison Railroad system, which includes the Gulf, Colorado and Santa Fe Railway system, all lumber manufactured by said Kirby Lumber Company at such of its mills as were located on the railroad of such system, which said contract is the contract referred to by said Kirby Lumber Company and said John H. Kirby in the answer above referred to in said cause of the Maryland Trust Company, Trustee, vs. Kirby Lumber Company and Houston Oil Company of Texas, in said Paragraph XVIII, sub-section 23, page 110, which is as
2933 follows:

"23. Say further, that these defendants realizing that failure of said Houston Oil Company to purchase such lands "(Kountze)" and subject them to said stumpage contract would be disastrous to its manufacturing interests as aforesaid, sought in every way they could to aid the Houston Oil Company of Texas in this crisis, and, relying implicitly on the representations of said Calhoun

and said Houston Oil Company that the latter would later take over said land and relieve defendant, Kirby Lumber Company, of the burden thereof and repay to these defendants their respective outlays in that behalf, with interest thereon, *one* about to see what plan could be adopted for saving the situation and preventing said Kountze lands from falling into the hands of aforesaid competitors; that said Kirby sought his friend F. P. Ripley, President of said Atchison, Topeka and Santa Fe system, with the result that after some weeks of negotiation, the board of directors of said system agreed to advance $2,000,000 towards said purchase if, but only if, the title to such lands was conveyed to them for said $2,000,000, the balance
2934 of the purchase money to be paid by these defendants, or one of them; that this negotiation culminated in the contract, known as the Gallup contract, under which said Gallup, who held the title to said Kountze lands for said Atchison Railroad System, gave to said Kirby an option on such lands for a period of five years, requiring him, said Kirby, to pay the sum of about $165,000, besides interest semi-annually at the rate of 5 per cent per annum on said sum of $2,000,000, which said option said Kirby at once assigned to defendant, Kirby Lumber Company, whereupon it paid said sum of $165,000 in cash and likewise has paid since three of said semi-annual installments of interest; that, as further consideration for said Gallup Contract, defendant Kirby Lumber Company was required to enter into a contract to sell to said Atchison Railroad System 10,000,000 feet of lumber per year at low prices, to wit, 20 per cent, less than the market price thereof, and was also required to route over said railroad system all lumber manufactured by said Kirby Lumber Company at such of its mills as were located on the railroads of such system."

Which said contract is likewise referred to in Subsection
2935 27 of said Paragraph XVIII, page 112 of said answer.

3. Contract of David Gallup and John H. Kirby referred to in letter of John H. Kirby as President of the Kirby Lumber Company to B. F. Yokum, of date November 8, 1903, as set out in the report of Special Master in Chancery J. R. Burnett in Intervention No. 161 in said Equity cause No. 54 above referred to, filed October 14, 1904 in said cause, said contract being therein referred to as dated July — 1902.

4. The said Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company and David Gallup, and each of them, are hereby notified to produce all deeds, contracts and resolutions of Boards of Directors of either of said Companies whereby and whereunder said David Gallup or any other person acting for or in the interest of said Atchison, Topeka and Santa Fe Railway or the Gulf, Colorado and Santa Fe Railway Company or either of said Companies directly acquired title to said Kountze lands referred to in the pleadings hereinabove mentioned.

5. All parties to this notice are notified to produce at the time and place aforesaid copies of conveyances of the Kirby Lumber Company to J. R. Chapman whereby, in consideration of the
2936 sum of $1,980,348.26 of date on or about July 2, 1909, the Kirby Lumber Company conveyed to said J. R. Chapman

certain lands situated in Angelina, Hardin, Jasper, Jefferson, Liberty, Newton, Polk, Sabine, S. Augustin, Shelby, Tyler, Montgomery and other counties in the State of Texas, and of conveyance of date on or about the 29th day of June, 1909, whereby John H. Kirby conveyed to J. R. Chapman for the recited consideration of $1,021,425.00 certain lands situated in Angelina, Liberty, Hardin, Jasper, Newton, Sabine, S. Augustin and Tyler Counties in the State of Texas.

6. Generally, said parties are required to produce at the time and place aforesaid all contracts, agreements and resolutions of Boards of Directors or Stockholders entered into between them either in their corporate or individual capacities or as acting for or in behalf of the corporations aforesaid and in their interest relating to all contracts for the cancellation of through rates, the institution of rates, the delivery of lumber tonnage, the purchase of lands or the use of moneys thereof, or connected with either of the contracts or agreements hereinabove set out.

7. All deeds and contracts entered into and connected with the sale, lease or transfer of the Gulf, Beaumont and Kansas 367 City Railway Company and its lines of Railway by John H. Kirby or his associates to the Gulf, Colorado and Santa Fe Railway Company or the Atchison, Topeka and Santa Fe Railway Company, or whereby either of said Companies or the stockholding interests thereof acquired the essential ownership of said Gulf, Beaumont and Kansas City Railway Company, or whereby the said John H. Kirby or his associates sold, transferred, leased or surrendered the Gulf, Beaumont and Kansas Northern Railway Company or any essential interest therein either to the said Gulf, Colorado and Santa Fe Railroad or the Atchison, Topeka and Santa Fe Railway Company, or the interests controlling or owning said Railway Companies or either of them.

8. Said John H. Kirby and said Kirby Lumber Company are notified to produce at said hearing a copy of said joint and several answer of the Kirby Lumber Company and John H. Kirby to the amended bill of complaint of the Maryland Trust Company filed in said cause of Maryland Trust Company, Trustee, vs. Kirby Lumber Company and Houston Oil Company of Texas in the Circuit Court of the United States for the Southern District of Texas; being Equity cause No. 74 hereinabove referred to; and also the report of Judge James R. Burnett in intervention No. 161 in said Equity cause No. 74 in the matter of the Yoakum Contract, filed October 14, 1904.

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H. W. GATEWOOD,
LUTHER M. WALTER,
E. J. MANTOOTH,
CHAS. T. COLEMAN, *Att'ys.*

Interstate Commerce Commission.

No. 1319.

STAR GRAIN AND LUMBER COMPANY et als.
vs.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et als.

In the Matter of Tap Line Allowances and Divisions, Consolidated under Investigation and Suspension Docket No. 11.

Hearing at New Orleans December 8, 1910.

Notice to Produce.

To the Intervenors, Kirby Lumber Company, William Cameron and Company, Miller-Link Company, Orange Lumber Company, and to each and all of the intervenors making themselves
2939 parties to the intervention of said above named parties, whether herein specifically designated or not:

You and each of you are hereby severally notified to produce at the hearing herein, at the time and place to be hereafter designated by the Interstate Commerce Commission, as applicable to each of said intervenors severally, the following:

1. Cost sheets showing costs per thousand feet, Board Measure, for producing the lumber manufactured at each of your several mills during each month of the year 1910, including every expense chargeable to original cost, from the lumber into the car in which the product moved to market and the general average per thousand feet, Board Measure, for the total amount produced at all the mills of each Company intervening herein during the same period; and showing charge for stumpage per thousand feet, log scale separately and giving name of rule for scaling used in determining the log scale.

2. Exhibit showing the amount received, in dollars and cents, per thousand feet, Board Measure, F. O. B. mill for stock for each month during the year 1910 by grades and per cents in the manner following:

2940

	% of total.	Amount rec'd.
—— feet B. and better (Include all sizes and descriptions)	....	....
—— feet C. and No. 1 Common (Include all sizes and descriptions)	....	....
—— feet No. 2 Common (do)	....	....
—— feet No. 3 Common (do)	....	....
—— feet No. 4 Common (do)	....	....

Show grand total of shipments and general average received per thousand feet board measure for all grades combined.

3. Exhibit showing amount of lumber, including sawed railroad ties as lumber, by cars and feet board measure shipped into each State and Territory of the United States during each month of the year 1910, the amount shipped into Mexico and Canada, and the amount shipped for exporting to foreign countries, giving names of railroads over which shipments moved and number of cars and the amount of feet going over each line of railroad from point of origin to final destination.

2941 4. The Kirby Lumber Company is notified to produce statement of the amount — lumber, railroad ties, and all lumber material sold to the Gulf, Colorado and Santa Fe Railroad or the Atchison, Topeka and Santa Fe Railway Company under the contract made between said parties whereby it was agreed that the Kirby Lumber Company should sell to the said Railway Companies ten million feet of lumber annually at 20% below the market price, which contract said parties have been served notice to produce herein; and, separately statement showing the amount and selling price of all lumber and lumber products, including railroad ties, sold by the Kirby Lumber Company to the Atchison, Topeka and Santa Fe Railway Company from the time of the execution of the contract referred to up to and including the year 1910.

H. M. GARWOOD,
LUTHER M. WALTER,
E. J. MANTOOTH,
CHAS. T. COLEMAN, *Att'ys.*

2942 Examiner Burchmore: Judge Cowan, all I can say is that I am not going to leave New Orleans with any case unheard that wishes to be heard. If, at six o'clock, there appears that there will be only one or two cases left, I do not think anybody will object to our going on tonight and hearing them. I think it probable we will not stay until Monday. I will announce we will hold a session over until Monday, with the possibility that there may be a short night session this evening. Of course if the calendar becomes exhausted today, we will have to adjourn.

2943 *Sabine & Northern Railroad.*

C. E. WALDEN was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: Where do you live?

Mr. Walden: Beaumont, Texas.

Examiner Gutheim: Your occupation is what?

Mr. Walden: I am secretary and treasurer of the Sabine & Northern Railroad.

Examiner Gutheim: I hand you a map of the Sabine & Northern Railroad, which was furnished to one of the examiners of the

Commission about a year ago. Does that show the general geographical location of the country substantially?

Mr. Walden: Yes, but I have a better map showing it.

Examiner Gutheim: If you will file the other map, we will use that.

Mr. Walden: That shows it on scale.

(The map so offered and identified was received in evidence and thereupon marked Sabine & Northern Exhibit No. 1, witness Walden, received in evidence December 17, 1910, and is attached hereto.)

2944 Examiner Gutheim: The track operated by the Sabine & Northern begins at Deweyville, Texas, and runs south a few miles to Ruliffe, and thence in a northeasterly direction to a point called De Quincey and then north through Smyth Junction, and then in a westerly direction to Blewett.

Mr. Walden: Yes, sir, with a spur branch off from Juanita Junction to Juanita.

Examiner Gutheim: And Juanita Junction is between Smyth Junction and Blewett?

Mr. Walden: Yes, sir.

Examiner Gutheim: Who owns the track between Deweyville and Ruliffe?

Mr. Walden: That is the joint track of the Texarkana & Fort Smith Railroad and the Sabine Tram Company, which has been leased by the Sabine Tram Company to the Sabine & Northern Railroad.

Examiner Gutheim: Who owns the track from Ruliffe to De Quincey?

Mr. Walden: The Kansas City Southern.

Examiner Gutheim: And from De Quincey to Smyth Junction?

Mr. Walden: The Kansas City Southern.

Examiner Gutheim: And from Smyth Junction into Blewett.

Mr. Walden: The Sabine & Northern.

2945 Examiner Gutheim: So that the only track owned by this corporation is that from Smyth Junction into Blewett, and from Juanita Junction to Juanita?

Mr. Walden: Yes, sir, in fee simple.

Examiner Gutheim: What is the relation between the Sabine & Northern Railroad and the Sabine Tram Company?

Mr. Walden: In what respect?

Examiner Gutheim: Well, are the stockholders in both companies identical?

Mr. Walden: Practically so. There is one stockholder in the Sabine & Northern Railroad that is not in the Sabine Tram Company.

Examiner Gutheim: And his holdings are sufficient to qualify him as a director?

Mr. Walden: It is nominal; yes, sir.

Examiner Gutheim: The entire track is standard gauge, is it?

Mr. Walden: Yes, sir.

Examiner Gutheim: And the logging along this line is all done out of Blewett?

Mr. Walden: Yes, sir.

Examiner Gutheim: The track from Blewett into the tim-
2946 ber is the private track of the Sabine Tram Company?

Mr. Walden: Private track of the Sabine Tram Company; in other words, what we call the tram road.

Examiner Gutheim: Is the operation of the Kansas City Southern tracks from Smyth Junction through De Quincey down to Ruliffe performed at the present time under contract that was entered into some years ago between the Kansas City Southern and the Texarkana & Fort Smith and the Sabine Tram Company?

Mr. Walden: Yes, sir; under that contract, as signed by the Sabine Tram Company to the Sabine & Northern Railroad.

Examiner Gutheim: That contract provided, did it not, that the operation should be by the Sabine Tram Company or by some corporation organized in its interests?

Mr. Walden: It did.

Mr. Sugar: We have a copy of that here.

Examiner Gutheim: We have a copy also. What consideration is paid the Kansas City Southern for the use of the track between Smyth Junction and Ruliffe?

Mr. Walden: $1.75 per car.

Examiner Gutheim: Per log car?

Mr. Walden: That is the original contract which was en-
2947 tered into between the Sabine Tram Company and the Kansas City Southern Railway.

Examiner Gutheim: And assigned by the Sabine Tram Company to the Sabine & Northern?

Mr. Walden: Assigned by the Sabine Tram Company to the Sabine & Northern, but the consideration is different in that case.

Examiner Gutheim: What is the arrangement for the use of the track between Deweyville & Ruliffe? That track, as I understand, is operated by the Sabine & Northern and the Texarkana & Fort Smith.

Mr. Walden: Yes, sir.

Examiner Gutheim: What arrangement is there as to the use of that track by the owners of it?

Mr. Walden: The Sabine Tram Company leased the right to the Sabine & Northern Railroad to operate over that piece of track in consideration that the Sabine & Northern Railroad would make a flat rate of so much per car from Blewett, Louisiana, to Deweyville, Texas.

Examiner Gutheim: What rate per car does the Sabine Tram Company pay to the Sabine & Northern Railroad for that service from Blewett right through to Deweyville?

2948 Mr. Walden: $5.25 per car where the Sabine & Northern receives no divisions on the outgoing product.

Examiner Gutheim: Where divisions are received, what is paid?

Mr. Walden: That is refunded to the Sabine Tram Company in the proportion of four cars of logs to one car of lumber.

Examiner Gutheim: So that the Sabine & Northern Railroad's revenue is derived ultimately from the log haul solely?

Mr. Walden: I did not catch that.

Examiner Gutheim: The Sabine & Northern's revenue is derived ultimately from the log haul solely, and the divisions go back to the Sabine Tram Company?

Mr. Walden: No.

Examiner Gutheim: Making the amount paid by the Sabine Tram Company the log haul of $5.25 less the division?

Mr. Walden: No, the Sabine & Northern gets $5.25 per car from the Sabine Tram Company for transporting those logs in, provided it receives no division on the finished product delivered by its connection, the Kansas City Southern; but in the event it receives a division, then it refunds to the Sabine Tram Company the cost of bringing in those cars, four cars of logs to one car of lumber, and retains for its compensation the division it gets on the fin-
2949 ished product?

Examiner Gutheim: Where are the mills of the Sabine Tram Company located?

Mr. Walden: One of them is located at Deweyville, Texas, and the other is located at Juanita, Louisiana.

Examiner Gutheim: Has the mill any outlet except by the Sabine & Northern to the Texarkana & Fort Smith at Ruliffe?

Mr. Walden: No.

Examiner Gutheim: And Juanita has no other outlet except the Kansas City Southern at Juanita on its own track?

Mr. Walden: That is true.

Examiner Gutheim: The haul from Deweyville to Ruliffe is how much?

Mr. Walden: Somewhere in the neighborhood of two miles.

Examiner Gutheim: Does the Sabine & Northern perform that two miles of service on the finished product?

Mr. Walden: No.

Examiner Gutheim: The Texarkana & Fort Smith takes it out direct?

Mr. Walden: Yes, sir.

Examiner Gutheim: And at Juanita the Kansas City
2950 Southern takes out the product direct also?

Mr. Walden: Yes, sir.

Examiner Gutheim: So that no service whatever is performed on the product of the mills by the Sabine & Northern?

Mr. Walden: No. We figure we are entitled to the compensation on the basis of a milling in transit. We could, however, perform the services in both cases if it was desired or required.

Examiner Gutheim: What equipment does the Sabine & Northern operate?

Mr. Walden: It owns one locomotive, has one under lease, and has 70 logging cars leased and has one flat car and a caboose.

Examiner Gutheim: And from whom is the equipment leased?

Mr. Walden: From the Sabine Tram Company.

Examiner Gutheim: What consideration is paid as rental?

Mr. Walden: For the locomotive, $100 per month; for the cars, $2,100 per annum, with a contract that the Sabine & Northern Railroad must keep up the cars.

Examiner Gutheim: On the owned track going from Smyth Junction to Blewett and from Juanita Junction to Juanita, is there any service performed for any party except the Sabine
2951–2 Tram Company?

Mr. Walden: Yes, sir; there is some little traffic handled over that line.

Examiner Gutheim: Is it anything more than what is incidental to the needs of the logging camps of the Sabine Tram Company at Blewett and beyond?

Mr. Walden: There are a few people out there that give small quantities of freight to be handled backwards and forwards from Blewett to Smyth Junction or Juanita, as the case may be.

Examiner Gutheim: Does the Sabine & Northern perform any service between Ruliffe and Deweyville for anybody except the Sabine Tram Company?

Mr. Walden: No, sir.

Examiner Gutheim: And under its contract with the Kansas City Southern for the trackage rights, it is prohibited from handling anything except the logs of the Sabine Tram Company?

Mr. Walden: Or some company to be organized—yes, sir, to handle the logs of the Sabine Tram Company.

Examiner Gutheim: Does the contract that provides for the use of the Kansas City Southern's tracks, provide for the distribution of the tonnage of the two mills?

2953 Mr. Walden: Will you read that question?

(Question read.)

Mr. Walden: Do you mean by that, how the tonnage shall be sent out?

Examiner Gutheim: Yes; does the Kansas City Southern provide that it and the Texarkana and Fort Smith shall get all the tonnage and have the permission to route it through?

Mr. Walden: Yes, sir, and with a provision in there that where they cannot hand-e it promptly and furnish equipment promptly, the Sabine Tram Company has the right to designate the routing.

Examiner Gutheim: What division is the Sabine & Northern Railroad allowed out of the rates from Deweyville and Juanita?

Mr. Walden: Three-quarters of a cent to three cents is the greatest division it actually receives. There has been a good deal of discussion about the maximum division on the Kansas City Southern. There is one point, if my recollection serves me right, of four cents; that is Fort Smith, but Fort Smith being located in the manufacturing district, I do not assume that any concern any distance from there has ever had occasion to ship a car of lumber to Fort Smith, so that as a practical proposition the divisions
2954 run from three-quarters of a cent to three cents.

Examiner Gutheim: Now, as a matter of fact, are there any communities located along the line of the road that is owned by the Sabine & Northern.

Mr. Walden: Well, there is Blewett, Louisiana, a small place of five or six hundred people.

Examiner Gutheim: Is it not a fact that Blewett was first established as a logging camp?

Mr. Walden: That is true. And there is Juanita, up there on the tracks of the Kansas City Southern, and the Sabine & Northern, of about seven or eight hundred people.

Examiner Gutheim: Juanita was there before the Sabine & Northern, was it not?

Mr. Walden: Yes, sir, Juanita was there before the Sabine & Northern was ever built. And there is the town of Deweyville down on the Sabine & Northern and the Texarkana & Fort Smith, of probably 1,500 people.

Examiner Gutheim: But Deweyville is served entirely so far as the service except the logging of the mill goes, by the Texarkana & Fort Smith?

Mr. Walden: By the Texarkana & Fort Smith.

Examiner Gutheim: On the joint tracks?

2955 Mr. Walden: On the joint track of the Texarkana & Fort Smith and the Sabine Tram Company.

Examiner Gutheim: Are you keeping separate accounts for the railroad company, as required by the Commission?

Mr. Walden: Yes, sir; and I have all of our forms here, that I am perfectly willing to put in the record if desired.

Examiner Gutheim: You do not have any passenger service?

Mr. Walden: No, sir; we do not handle passengers.

Examiner Gutheim: Is there any contract that provides for the division between the Kansas City Southern and your company, outside of the division sheets?

Mr. Walden: No, sir.

Examiner Gutheim: The divisions are not provided for in the trackage right contract?

Mr. Walden: No, sir.

Examiner Gutheim: Can you say about how much business in tonnage and revenue is done by the Sabine & Northern for parties not connected in any way with the Sabine Tram Company?

Mr. Walden: I could not give it accurately, but I will say it is a very small part.

Examiner Gutheim: Will you furnish a statement that will show the total tonnage and revenue for the last fiscal year, and

2956 the amount of that which was furnished by the Sabine Tram Company, and the different interests?

Mr. Walden: Yes, sir.

Examiner Burchmore: Have you any examination, Judge Cowan?

Mr. Cowan: No.

Mr. Sugar: What is the character of the roadbed of the Sabine & Northern?

Mr. Walden: We have a good roadbed.

Mr. Sugar: What kind of rails have you?

Mr. Walden: 50 pound and 35 pound; the majority of the steel is 50 pound.

Mr. Sugar: Has the road any buildings at Blewett?

Mr. Walden: Yes, sir; that is where we get what tonnage we do outside of that furnished by the Sabine Tram Company. At Blewett, Juanita, and possibly some little delivered to us at Smyth Junction.

Mr. Sugar: Does the Sabine & Northern have any interest in the depot at Smyth Junction?

Mr. Walden: It owns a half interest; that is to say, the Sabine & Northern furnished the lumber, the Kansas City Southern people built the depot—I will put it this way: The Sabine Tram Company originally furnished that, and of course in taking over the
2957 rights, the Sabine & Northern acquired whatever rights they had in that depot.

Mr. Sugar: Does the Sabine & Northern have an agent at Blewett?

Mr. Walden: Yes, sir.

Mr. Sugar: Has it an agent at Smyth Junction?

Mr. Walden: Yes, sir; the agent of the Kansas City Southern at Smyth Junction is a joint agent of the Kansas City Southern and the Sabine & Northern Railroad.

Mr. Sugar: Does the Sabine & Northern pay part of his salary?

Mr. Walden: Yes, sir.

Mr. Sugar: How much?

Mr. Walden: The Sabine & Northern pays him $20 a month for handling its business at that point.

Mr. Sugar: You have filed regular tariffs, both with the State and Interstate Commissions?

Mr. Walden: Yes, sir; we have filed all the classes and commodity tariffs with the State of Louisiana, and we have filed tariffs and concurrences with the Interstate Commerce Commission.

Mr. Sugar: Do you fully comply with all the requirements
2958 of the State of Louisiana and the State of Texas and the United States?

Mr. Walden: So far as we know, we do.

Mr. Sugar: With regard to safety appliances and other requirements?

Mr. Walden: Quite a number of our cars are fitted up with air, so there is a sufficient number of cars in each train with which to handle it. The locomotive has been equipped with an electric headlight, and the ash pan required by the Commission. Of course it is equipped with air to handle the cars with.

Mr. Sugar: Does the bulk of the shipments from the two mills go to points where the Sabine & Northern has allowances, or to points where the road has no allowances?

Mr. Walden: I would say the bulk of the business goes to the places where the Sabine & Northern has no allowances.

Examiner Burchmore: What is the significance of that?

Mr. Sugar: That is in line with a number of questions asked by Commissioner Harlan, I think, and the attorneys for the intervening roads, and it is to meet that, whatever force there may be in the original proposition.

Examiner Burchmore: What earnings do you get on such
2959 traffic where there is no division?

Mr. Walden: In the case of shipments from Deweyville

we get $5.25 per car that we filed the tariff to cover the handling of logs from Blewett to Deweyville, and from the shipments that move from Juanita we get $1.75 per car.

Examiner Burchmore: But you do not get anything on the lumber?

Mr. Walden: We do not get any division on the lumber, unless it goes to a point where we get a division, as I explained in the beginning, in the event the finished product goes to a point where we have a division the cost of bringing in those cars is refunded on the basis of four cars of logs to one of lumber.

Mr. Sugar: In quoting prices of lumber to a possible customer, are the allowances made any feature of your quotation?

Mr. Walden: No, sir, I do not see that it could, or else most of our shipments would go to where we get divisions, as a matter of fact.

Mr. Sugar: Is it not a fact that established saw mills like those of the Sabine Tram Company have regular customers just like the butcher or grocer or any other trade?

2960 Mr. Walden: It is a fact that all saw mills, I presume—at least we do—we have customers who have been buying lumber from the Sabine Tram Company and in some instances most of their lumber for years.

Mr. Sugar: Is it not a fact also that in later years a great deal of lumber is sold in answer to offers made by interior brokers?

Mr. Walden: Repeat that question.

(Question read.)

Mr. Walden: Yes, sir.

Mr. Sugar: He offering you so much for such and such a class of lumber if you care to accept it?

Mr. Walden: Yes, sir. That is the system under which a great deal of lumber is sold that commission men at various large centers go around and solicit business, and they actually take orders and undertake to get that lumber from any source from which it can be had. They will probably write half a dozen institutions that they hold an order calling for such and such quality of lumber, for which they can pay such and such a price, and the mills accept it or not, as they choose. A great deal of lumber is sold that way.

Mr. Sugar: How much timber; that is, in acres, is owned

2961 by the Sabine Tram Company that is tributary to the Sabine & Northern Road?

Mr. Walden: Well, in Louisiana & Sabine Tram Company has something like 22,000 or 23,000 acres cut and uncut timber; in Texas it has something like 60,000 acres cut and uncut. In Louisiana adjoining the Sabine Tram Company's holdings are very large tracts of land, some in the hands of people who will manufacture it themselves, some on the market for anyone who will pay the price to get it. I do not know just how many acres there are. I know of one institution which has 35,000 to 40,000 acres abutting up against us, and there are others who have small quantities, more or less.

Mr. Sugar: But you say the Sabine Tram Company has 22,000 acres cut and uncut. How much is uncut?

Mr. Walden: There are only eight or ten thousand acres uncut, I do not recall just how much there is of it.

Mr. Sugar: Approximately how much other land is there uncut and tributary to the Sabine & Northern which is owned by other people?

Mr. Walden: That runs into a great many thousand acres. There is one body of land that everybody knows about, belonging to the William M. Rice Institution, of 36,000 acres, joining up
2962 to us.

Mr. Sugar: That is all within easy reach of the Sabine & Northern?

Mr. Walden: I say their property adjoins the Sabine Tram Company's property there, and would be adjacent to the Sabine & Northern, and they have a good many thousands of acres over on the Watkins & Gulf, which would not. The Houston Oil Company owns some land there; I do not know whether they will manufacture it or not. The Lutcher & Moore Company own a very large body, and I suppose they will manufacture it.

Mr. Sugar: Going back to the Juanita mill; its lumber shipments are delivered to the Kansas City Southern at Juanita?

Mr. Walden: Yes, sir; the finished product.

Mr. Sugar: Could you deliver that lumber by the Sabine & Northern to another point?

Mr. Walden: The Sabine & Northern could take that lumber and deliver it to the Kansas City Southern at Smyth Junction, between four and five miles below Juanita.

Mr. Sugar: That is to say, the Sabine & Northern tracks practically parallel the Kansas City Southern between Smyth Junction and Juanita?

2963 Mr. Walden: Not exactly parallel them, but the Sabine & Northern goes in a southwesterly direction to Smyth Junction and then turns east, but it kind of forms a triangle. The Sabine & Northern could take the lumber at Juanita and deliver it at Smyth Junction.

Mr. Sugar: You are also in a position to deliver the product of the Deweyville mill at Ruliffe instead of at Deweyville?

Mr. Walden: Certainly; the Sabine & Northern engines and trains go into Deweyville and out from it.

Mr. Sugar: Why is it that some of the product of the Deweyville mill is not given to the Frisco road?

Mr. Walden: The Frisco Railroad has, as you know, a trackage right only, the same as the Sabine & Northern, over the Kansas City Southern, between De Quincy and Beaumont, and that trackage right bars the Frisco from taking either freight or passengers between De Quincy and Beaumont, except at a little place called Maurice, on the New Orleans & Northwestern, which is part of the Frisco system.

Mr. Sugar: In that respect it is tied somewhat like the Sabine & Northern?

Mr. Walden: Yes, sir; we tried to deliver some lumber to
2964 the Frisco, and they would not receive it because they said it would be in violation of their contract.

Mr. Sugar: I believe you said that you had an agent at Blewett?

Mr. Walden: Yes, sir.

Mr. Sugar: What duties does he perform for the Sabine & Northern?

Mr. Walden: He makes out the bills of lading and way bills and looks after the business.

Mr. Sugar: Are the logs way billed from there?

Mr. Walden: Everything that goes from there is way billed.

Mr. Sugar: Now, Mr. Walden, when was the Sabine & Northern incorporated?

Mr. Walden: The date of the charter was January, 1905; I believe they put it of record February, 1906.

Mr. Sugar: Why did the Sabine & Northern incorporate?

Mr. Walden: We incorporated because the traffic department of the Kansas City Southern advised us that it was the opinion of their legal department that they could not pay divisions under the ruling of the Interstate Commerce Commission in that Central Yellow Pine Association case unless the roads were legally incorporated as common carriers, and in order to get these divisions we
2965 incorporated.

Mr. Sugar: Did that cause any change in the original plans of the people in control of the road?

Mr. Walden: Repeat the question.

(Question read.)

Mr. Sugar: Did you decide to build a railroad or run the same old logging road?

Mr. Walden: We decided to incorporate and in fact in our articles of incorporation we stated that we were incorporating for the purpose of extending the line to Marysville, Louisiana, which is a point some twelve miles beyond Blewett.

Mr. Sugar: Was that merely an assertion, or is there something back of it?

Mr. Walden: We meant to make an extension; there was a good deal of tonnage over there, and at the time the charter was taken, we intended to make that extension.

Mr. Sugar: Marysville is a good sized country town, is it not?

Mr. Walden: About 3,000 people.

Mr. Sugar: Some big mills there?

Mr. Walden: There is one big mill and two or three small mills, several stores, and quite a little tonnage produced there.

2966 Mr. Sugar: Why did not the road go on with the construction?

Mr. Walden: We have not felt like spending any more money on a railroad enterprise until we knew just where we stood.

Mr. Sugar: You refer to the present troubles?

Mr. Walden: Well, I refer to the present troubles, and the anticipation of the present trouble. This has been a question for some

time, as to whether a tap line was a railroad and entitled to divisions, and naturally until that proposition was settled, I assume most people do not care to put in any more money in the road than they did have in; at least we would not.

Mr. Sugar: Was the trackage contract between the Sabine Tram Company and the Texarkana & Fort Smith and the Kansas City Southern made before or after the Deweyville mill was built?

2967 Mr. Walden: It was made after the Deweyville mill was built.

Mr. Sugar: Was the line from Juanita Junction to Juanita built before or after this trackage contract?

Mr. Walden: It was built afterwards, because we did not own that Juanita plant at the time that trackage contract was made. We purchased that afterwards.

Mr. Sugar: What length of spur tracks or mill tracks has the mill company that act as feeders to the railroad at Blewett?

Mr. Walden: About 16 miles.

Mr. Sugar: Do the road engines of the Sabine & Northern go on those tracks?

Mr. Walden: No, the Sabine Tram Company has its own locomotives.

Mr. Sugar: Who assembles the cars at Blewett?

Mr. Walden: The Sabine Tram Company.

Mr. Sugar: Then the railroad company takes them up there?

Mr. Walden: The railroad company distributes them, from the time it reaches the Sabine & Northern.

Mr. Sugar: Who estimates the value of the track, the State Board, or who?

2968 Mr. Walden: We render the amount of property we have and the State Board as I understand puts a valuation on it.

Mr. Sugar: That is the Board of Appraisers of Railroad, Telegraph & Telephone Lines?

Mr. Walden: Yes, sir.

Mr. Sugar: Now, the Sabine Tram Company is a Texas corporation?

Mr. Walden: A Texas corporation; yes, sir.

Mr. Sugar: And the Sabine & Northern Railway Company is a Louisiana corporation?

Mr. Walden: Yes, sir.

Mr. Sugar: The Sabine Tram Company has scales at Deweyville, has it not?

Mr. Walden: The Sabine Tram Company and the Kansas City Southern put in a joint scales at Deweyville, a modern 100-ton scale which under the leased rights transferred to the Sabine & Northern, is now a part of the Sabine & Northern, instead of the Sabine Tram Company's equipment.

Mr. Sugar: The thought had occurred to me and it seems to be very material here to ascertain something about the weight of logs,

and I believe we might have that test made. Would that
2969 be very expensive or inconvenient?

Mr. Walden: No, sir, we can put carloads on and weigh the loaded car and the empty car and scale it up; it would be some little expense but not enough to amount to anything. I will say this, however, that that weight would be approximately correct, but the weight of timber varies according to the kind of timber it is and whether it is pithy timber or not.

Mr. Sugar: It should be made with a carload of small logs and a carload of average sized logs——

Examiner Burchmore: Let us not go into the question of the weight of logs. If you wish to make it you may and advise us about the result of it, but we have already in the record enough as to the weight of logs and the principle which controls the weights.

Mr. Sugar: I was not going to ask any questions about it. Is there anything else you wish to state at this point?

Mr. Walden: No, sir; not that I know of.

Mr. Cowan: What is timber land worth in the locality of your mill?

Mr. Walden: That is hard to say, Judge Cowan, it is held
2970 at a better price than the manufacturer can get out of it today. The price of timber land will vary.

Mr. Cowan: You are there and you know something about it. You can say it is worth so much to so much, without attempt to quibble.

Mr. Walden: I am not attempting to quibble. There is no necessity. The value of the timber is good or not according to the ability of the man to hold it. I should say it is $70 an acre, and another man might say more than that.

Mr. Cowan: From $60 to $70.

Mr. Walden: Yes, sir, according to the size of the timber and its nearness to market.

Mr. Cowan: Measured by stumpage estimate what is it worth?

Mr. Walden: Some manufacturers put it in at $3.50, some $4, and some $5. That illustrates the stumpage value just about like the timber value.

Mr. Cowan: What do you mean by putting it in, carrying it in their capital account?

Mr. Walden: In their account, but $3.50 to $5 a thousand, being worth that much.

Mr. Cowan: You do not mean that there is a difference in
2971 the stumpage value of the timber but there is a difference in what the man estimates it to be worth?

Mr. Walden: That is a matter of bookkeeping yes, sir.

Mr. Cowan: And it depends upon what he can manufacture it at and get out of it?

Mr. Walden: It should.

Mr. Cowan: And it depends upon what it costs him to carry it in the stump for a period of years?

Mr. Walden: A great many of them do not even take that into consideration. Some of them figure that they bought timber cheap

years ago and instead of figuring the present market value of it or what they could buy it for, they base it more on what they purchased it at a number of years ago. There are no set rules with reference to the value of stumpage or the value of timber.

Mr. Cowan: Considering the present situation what in your opinion is the fair and reasonable market value in the stumpage per thousand feet of timber in that locality?

Mr. Walden: If you expect to give the manufacturer any profit out of it he could not pay much over $3 to $3.50 for the stumpage and get anything out of it when he put the cost of manu-
2972 facturing and market to it, that is my opinion.

Mr. Cowan: That is what I am asking for, is your opinion. Now the amount he could get out of it depends upon the ultimate cost of manufacturing it.

Mr. Walden: The cost to manufacture and selling it, of course he has got to sell it.

Mr. Cowan: I know, but one of the main elements is the cost of logging his mill and manufacturing it.

Mr. Walden: Yes, he has got to log his mill.

Mr. Cowan: Is the price of lumber based upon the rate of freight at a delivered price at the point of mill or at an f. o. b. price at the mill?

Mr. Walden: It should be based on the f. o. b. mill price at the mill.

Mr. Cowan: Is it?

Mr. Walden: As a matter of fact it seems to me the price of lumber today is based on altogether how bad a man needs the money and whether he has got to run and pay the interest on his debts and so forth. There are a great many concerns selling lumber today that I am satisfied are selling at a loss. We cannot make any money out of it today and I do not think we are the cheapest peo-
2973 ple in the markets.

Examiner Burchmore: Do you mean the market is demoralized?

Mr. Walden: Yes, sir.

Mr. Cowan: I am leading up to that point. The price of lumber today depends on the price at which the man is willing to market his forest?

Mr. Walden: Very largely.

Mr. Cowan: Now, then the man who can log it the cheapest and get it to the point of sale the cheapest has the advantage in the profit to that extent?

Mr. Walden: Why, naturally, a man who manufactures the cheapest lumber will make the most money out of it when he sells it.

Mr. Cowan: You heard the gentleman testify today for some lumber company, I forget the name, but who was on the stand this morning. He gets 6 cents or 4 cents a hundred pounds out of the 18 cent rate on his lumber as a division which goes to the mill company that owns the railroad company. Now you get how much?

Mr. Walden: We get ½ to 3 cents per hundred pounds where it

goes to a place where we get divisions. When it goes to a
2974 place where we do not get any divisions the railroad then has to fall back for its revenue to the $5.25 per car delivered at Deweyville and $1.75 delivered at Juanita.

Mr. Cowan: Which the lumber company has to pay?

Mr. Walden: Which the lumber company has to pay the railroad company.

Mr. Cowan: Don't you know you are working at a disadvantage as against the man who gets the higher division?

Mr. Walden: If our railroad got as good divisions as the other man certainly the railroad company would be benefited that much. If they get a greater division than we do, the road ought to make more money than ours.

Mr. Cowan: In your opinion ought not everybody who is manufacturing and logging their forests by railroad, whether they are common carriers or not, to have equal opportunities in the market?

Mr. Walden: I guess I am dense; I don't seem to understand what your meaning is.

Mr. Cowan: You have in Texas a logging road that is not recognized as a common carrier by the state laws.

2975 Mr. Walden: No, we have no logging road in Texas.

Mr. Cowan: You have some railroad there?

Mr. Walden: Except the Sabine Tram Company has no road except that 2 miles between Blewett and Deweyville, in Texas.

Mr. Cowan: And you get nothing out of that?

Mr. Walden: That is leased to the Sabine & Northern, and of course it gets part of the benefit of whatever the Sabine & Northern Railroad gets.

Mr. Cowan: Do you not get any division on state business?

Mr. Walden: We get some divisions in Texas.

Mr. Cowan: On state business?

Mr. Walden: Yes, sir.

Examiner Burchmore: That is all interstate business, is it not?

Mr. Walden: Yes, it is based on interstate business. I have in mind——

Mr. Cowan: Well, at all events pass that for the moment. My question need not depend on that. Take a railroad in Texas which does not get any division, operating similarly to what yours does in Louisiana, where do you get a division, do you think it is an equal opportunity for one of you to get the freight rate back and
2976 the other not?

Mr. Walden: They are not operating under the same conditions as I understand it. Your question as I gather your meaning is should a tap line that holds itself out as a common carrier get divisions as compared with a tram line that does not hold itself out as a common carrier. Is that the idea?

Mr. Cowan: I am asking you whether as a question of business economy in the manufacture of lumber they are on an equality where one gets a division and the other does not?

Mr. Walden: The manufacturers of lumber are on an equality. The rate is the same.

Mr. Cowan: Well, I will not discuss it with you.

Examiner Burchmore: What is the largest division you get on lumber?

Mr. Walden: 3 cents per hundred pounds.

Examiner Burchmore: Suppose they should raise that rate tomorrow to 5 cents per hundred pounds on lumber, is it not an actual fact that the lumber company would be able to sell its lumber at a little bit better advantage in competition with *of* its competi-
2977 tors than it is today?

Mr. Walden: It could not do it, no.

Examiner Burchmore: Is it not a fact it would feel free to sell the lumber at a little less?

Mr. Walden: I do not know why they should. As a matter of fact the lumber company ought to get the market value of stuff. It can get no more. As an illustration, take Mr. Frary, of the Lutcher Moore Lumber Company, he knows what his material is worth and the Sabine Tram Company ought to get as much as the Lutcher Moore Company, and the Lutcher Moore Company ought to get as much as the Sabine Tram Company.

Examiner Burchmore: Suppose this railroad wanted some material of some kind for use along its line, the lumber company would not hesitate to sell the railroad at actual cost, would it, if it was desired and could not pay any more?

Mr. Walden: Well, we charge the Sabine & Northern Railroad for the material we sell them, the same as we do anybody else; we do not sell it to them any cheaper because they happen to be closely allied with our company.

Examiner Burchmore: You wholly disregard the fact of the close alliance of the two companies when it comes to selling them
2978 the lumber?

Mr. Walden: In fact I can say that because as I said to Mr. Sugar, if we regarded that as a factor very strongly the majority of our lumber would go to points where we get divisions instead of the majority going where we do not get divisions, as it is. We try to market our lumber where we can get the most money.

Examiner Burchmore: I believe we have got a good deal into the record, about all the witness will state on the matter of divisions.

Examiner Gutheim: Take a car which you get a three cent division on, suppose it is a 50,000 pound car, the railroad gets $15 division?

Mr. Walden: Yes, sir.

Examiner Gutheim: On the strength of that the railroad rebates to the lumber company $5.25 charge on 4 carloads of logs?

Mr. Walden: Yes, sir.

Examiner Gutheim: Now the expense that the Sabine Tram Company is put to in the logging, that is $5.25 a car, is one of the elements that goes into the cost of the lumber?

Mr. Walden: Yes, sir.

2979 Examiner Gutheim: So when you rebate $5.25 on the cost of the lumber so far as that particular car goes you have got — $15 to the railroad?

Mr. Walden: Yes, sir.

Examiner Gutheim: The lumber company has got back $21?

Mr. Walden: Yes, sir.

Examiner Gutheim: Out of 4 cars of logs you brought out, how many feet of lumber will you make?

Mr. Walden: I do not know.

Examiner Gutheim: Well, about how much?

Mr. Walden: There ought to be, I would say, in the neighborhood of 25,000 feet.

Examiner Gutheim: 25,000 Feet, and you have got about $21 that you did not have to pay for logging, that you might have to pay on some other car, so you get practically $1 advantage on that lumber on account of the fact you did not have to pay for the logging.

Mr. Walden: You mean the lumber company gets the advantage?

Examiner Gutheim: Yes.

Mr. Walden: It gets some advantage.

Examiner Gutheim: It gets about $1. It gets 25,000 feet
2980 at $21 rebate.

Mr. Walden: Take the other end of it——

Examiner Gutheim: Take this end first. You get about $1.

Mr. Walden: I think it would be about that.

Examiner Gutheim: So that you get a division at a lower price by $1 a thousand than you are getting on a car that you do not get a division on, and if you get no division at all you would be losing a dollar a car as against the fellow who did not get divisions?

Mr. Walden: I would like to make this explanation also. You have taken the proposition where we get $5.25, where the railroad company refunds $5.25 to the lumber company.

Examiner Gutheim: That is also true of the case of the Deweyville mill.

Mr. Walden: How about the other end, at Juanita, where the railroad company gets a divison there but only refunds $1.75 a car.

Examiner Gutheim: The same principle applies, not to such an extent.

Mr. Walden: We figure it would equalize the two.

Examiner Gutheim: Your explanation goes not to the
2981 principle, but to the amount of the advantage. You say at another mill you are advantaged to the extent of $1.75 while in the first you are to the extent of $5.25.

Mr. Walden: Please state that again.

(Question read.)

Examiner Burchmore: Your last explanation amounted to this, that while it is true, that as was apparently brought out by this line of questions which has just been pursued, at one mill you are receiving the advantage of these divisions in that you get a refund of your logging expense of $5.75—— .

Mr. Walden: Where we get divisions.

Examiner Burchmore: Yes, sir; while at the other mill you only get a refund of $1.75.

Mr. Walden: Yes, sir.

Examiner Burchmore: This explanation is in all cases you do not get $5.25 but in some only $1.75, you simply get to the extent of the advantage, the principle is the same.

Mr. Walden: We get back a greater amount on the Deweyville shipment than at the Juanita shipment because the haul is considerably greater and the expense of delivery is greater.

2982 Examiner Burchmore: Is there any further explanation you care to make?

Mr. Walden: No explanation, except that we undertook to handle this proposition on the basis of a milling in transit, and the railroads in Texas at one time under the ruling of the Commission allowed a refund of 4 cars of logs to 1 car of lumber on the finished product, and we undertook in filing this tariff to state it somewhat similar to the way the other lines had handled it. Now, as regards to the difference between the amount refunded on the shipment that went to Deweyville and Juanita we could not equalize that so that the expense would be the same and the lumber company would get the benefit of the same return. We simply based that proposition where we got a division on granting back to Juanita what the Sabine Tram Company had to pay on the cars from Blewett up to Juanita, which was $1.75 per car, and the logs that went to Deweyville, Texas, some 37 miles as compared with a 5 mile haul or approximately that, the cost down there was $5.25, and on the same basis that the Sabine & Northern refunded $1.75 on the Juanita shipment they refunded what was paid, $5.25 on the Deweyville shipment. Now, as to whether the lumber company benefits

2983 or does not by that transaction, of course is a matter of figures.

Examiner Burchmore: I guess perhaps we are getting into the realm of argument an-way.

Mr. Walden: I did not mean to.

Examiner Burchmore: Well, we all have.

Mr. Cowan: I started in upon the price of timber land. The ownership of the saw mill and the railroad in this case is the same in the timber land?

Mr. Walden: Yes, sir.

Mr. Cowan: Lutcher-Moore are in the same fix, are they not?

Mr. Walden: No, sir; Lutcher-Moore have no railroad or make no pretence, they are not incorporated as a common carrier.

Mr. Cowan: They have a great deal better railroad than you have.

Mr. Walden: I don't know about that.

Mr. Cowan: Don't you know they have a great deal better railroad than you have and more expensive?

Mr. Walden: No, I do not know that.

Mr. Cowan: Have you seen it?

2984 Mr. Walden: No.

Mr. Cowan: Don't you know the saw mill cannot operate an extensive plant without a railroad to operate it with?

Mr. Walden: Yes, sir; they can.

Mr. Cowan: Who is doing that?

Mr. Walden: Lutcher-Moore.

Mr. Cowan: Not got a railroad?

Mr. Walden: They say not; it is not incorporated. They call it a tram line.

Mr. Cowan: I am not quibbling about that part of it, but you know they operate a railroad and haul logs to the mill.

Mr. Walden: They either have to operate a railroad or a tram line or have some method of getting the lumber to the mill.

Mr. Cowan: It is laid on rails of as good quality as yours, on ties and graded road to haul the stuff up to the mill the same as you do?

Mr. Walden: I expect so.

Mr. Cowan: You know so.

Mr. Walden: Well, I don't think they haul it to the mill but dump it off in the river.

2985 Mr. Cowan: When they log their forest they have to be at the expense of logging?

Mr. Walden: Yes, sir.

Mr. Cowan: And the railroad company that takes the lumber out does not pay them anything back for it, and in your case they do. Will you say that you do not enjoy an advantage as compared to them in such a case?

Mr. Walden: Yes, sir; because I assume obligations that they do not assume at all.

Mr. Cowan: I understood counsel to say that the reason you incorporated was because the legal department of the Kansas City Southern, though you would incorporate, said you could not get divisions unless you did?

Mr. Walden: Yes, sir.

Mr. Cowan: Did you perform any different service after you incorporated from what you did before, so far as your lumber company is concerned?

Mr. Walden: The arrangement was a little bit different yes, sir.

Mr. Cowan: That is a paper arrangement, but I am talking about the service. Did you perform any different physical service

2986 to the saw mill than you did the day before?

Mr. Walden: The lumber was handled and delivered over the tracks in approximately the same way except we continue the Sabine & Northern end of it to the Sabine & Northern road and let the tram line confine itself to bringing them up to the Sabine & Northern road.

Mr. Cowan: The service is practically the same, the same engines, same crews, over the same railroad, to the same saw mill, and the same kind of lumber.

Mr. Walden: I think we have acquired some engines since.

Mr. Cowan: But that is in the progress of your business.

Examiner Burchmore: I understood the witness substantially admitted that but made a further statement in his own behalf that this railroad had undertaken these duties and liabilities and now held itself to the public as a common carrier and he thought that changed the situation.

Mr. Walden: That is it exactly.

Examiner Burchmore: That is a question of law, is it not?

Mr. Cowan: It may be a question of fact as to what he
2987 actually did. I am not inquiring what he proposed to do but what he actually did. My question was if the service was not the service, and he answered it was. Now, for whom did you perform service the day after you incorporated that you did not the day before?

Mr. Walden: I could not answer that. We may not have performed any service the day after we incorporated.

Mr. Cowan: Well the months afterward. The following month after you incorporated what was the different service?

Mr. Walden: We performed service for anybody who wanted our service after we incorporated. We did not do that before.

Mr. Cowan: But for whom did you do it afterwards that you did not do it for before?

Mr. Walden: Different people who went there that wanted to ship anything.

Mr. Cowan: No, now for whom did you do it?

Mr. Walden: I don't know, I could not say here.

Mr. Cowan: And you put in your charter that you were going to build to some place that you did not build?

Mr. Walden: The charter was to that effect, yes, sir.

2988 Mr. Cowan: And you have not built there?

Mr. Walden: No.

Mr. Cowan: And are not going to?

Mr. Walden: I don't know about that, I am not willing to say that we will not. I will say, under present conditions we won't.

Mr. Cowan: The foundation of it all was to get divisions of the rates?

Mr. Walden: Yes, sir; I made that statement.

Examiner Burchmore: It seems to me I remember hearing a part in drafting a letter to your company not so very long ago in response to an inquiry you addressed to the Commission on a question of law.

Mr. Walden: A question of what?

Examiner Burchmore: The Interstate Commerce law.

Mr. Walden: No, I would not remember it, unless I saw the correspondence.

Examiner Burchmore: I was trying to remember whether it was your company or some one else.

Mr. Walden: I don't remember about it.

Mr. Garwood: When a tram road is laid down the company laying it can take it up whenever it gets ready?

2989 Mr. Walden: That is my understanding. In fact I know it, because we have had tram roads.

Mr. Garwood: When an incorporated railroad lays a track it is compelled to keep it there and operate it until the expiration of the time mentioned in its charter, is it not?

Mr. Walden: That is my understanding.

Mr. Garwood: It cannot quit that business. It assumes the liabilities imposed by law and by statute during the full length of its cor-

porate existence and it has no means of voluntarily relinquishing that liability?

Mr. Walden: That is my understanding.

Mr. Garwood: Is it not true that every question propounded both by counsel for the intervenors and the examiners in this case absolutely leaves out in their comparison of the advantageous situation of the incorporated and the unincorporated road all of the liabilities assumed by the common carrier and the coincident interest on the amount of money put into it.

Mr. Cowan: If you go into that that will lead to a long examination.

Examiner Burchmore: I think you are asking the witness
2990 to testify to matters of law.

Mr. Garwood: No. That last question is not.

Examiner Burchmore: And if you will recall, I think I said or made some explanation a few moments ago——

Mr. Garwood: Your last question did, but this entire examination has been gone over and over and over and I would not have asked the question because I think it is largely a matter of law, but counsel has put that proposition in the record in nineteen different forms and I think——

Examiner Burchmore: I understand you object to that line of questions? If so I will sustain the objection.

Mr. Garwood: I did not object because I did not want to delay the proceeding.

Mr. Sugar: You were asked if the Lutcher & Moore people did not have a tram road equally as good as the Sabine & Northern, and if it was not an inequality for the Sabine & Northern to be allowed a division when the Lutcher Moore people were not allowed one.

Mr. Walden: Yes, sir.

Mr. Sugar: Now take another view of the matter. Say for instance that the Lutcher Moore people buy their timber land at 35
2991 cents to $1.25 an acre and the Sabine Tram Company bought its lands at from $20 to $40 an acre, would it not be an inequality to allow the Lutcher-Moore people to sell lumber at the same price and the Sabine Tram Company?

Mr. Walden: I would say they would have that much advantage and they do have; they bought their lumber lands much cheaper than we did.

Examiner Burchmore: Let us not pursue that any farther.

Mr. Andrews: The Sabine Tram Company has a mill in Texas?

Mr. Walden: Yes, sir.

Mr. Andrews: How many miles of tram road in Texas?

Mr. Walden: None.

Mr. Andrews: How many miles of any sort of road has it in Texas?

Mr. Walden: It has that joint ownership contract with the Kansas City Southern and the Texarkana & Fort Smith between Deweyville and Ruliff, the track itself and the switches and so forth I imagine run out somewhere two and a half to three miles.

Mr. Andrews: That is a joint ownership constructed by whom?

2992 Mr. Walden: By the Sabine Tram Company many years ago. The Sabine Tram Company——

Mr. Andrews: When did the connecting line acquire an interest in it?

Mr. Walden: The Texarkana & Fort Smith?

Mr. Andrews: Yes.

Mr. Walden: I was just going to explain that.

Mr. Andrews: The date is all I care for, unless you want to talk about it.

Mr. Walden: I think my explanation is necessary to make you understand. When they put that mill there in 1898 or 1899 the Sabine Tram Company furnished the right of way, made the grades, furnished the ties, and the Texarkana & Fort Smith furnished the steel and laid it, therefore it became a joint track.

Mr. Andrews: That track was built to serve the mill erected at what you call Deweyville?

Mr. Walden: Deweyville; yes, sir.

Mr. Andrews: Has the Sabine Tram Company any other railroad in Texas, either tram or otherwise?

Mr. Walden: No.

Mr. Andrews: That is all.

2993 Mr. Walden: Yes, sir.

Mr. Andrews: And your interest in that track I understand you to say was leased to the Sabine & Northern?

Mr. Walden: Yes, sir.

Mr. Andrews: Does the Sabine & Northern or the Sabine Tram or anybody else get any division on any purely Taxes movement from that mill?

Mr. Walden: Not where it moves purely within the state.

Mr. Andrews: Do you make any reports to the Texas Railroad Commission?

Mr. Walden: No, sir.

Mr. Andrews: And you are not recognized by the Texas Railroad Commission so far as the Texas end of it is concerned in any sense at all?

Mr. Walden: No, sir.

Mr. Andrews: Is the track in Louisiana better or worse?

Mr. Walden: Than the track in Texas?

Mr. Andrews: Yes.

Mr. Walden: About the same.

Mr. Andrews: About the same track?

Mr. Walden: Yes.

Mr. Andrews: How many miles are there in Louisiana?

2994 Mr. Walden: The Texas end of it I believe has a little heavier steel.

Mr. Andrews: How many miles have you in Louisiana?

Mr. Walden: 9½ miles.

Mr. Andrews: And 3½ miles in Texas?

Mr. Walden: About—well I would say 3. I think 3 would probably cover it.

(Witness excused.)

Examiner Burchmore: The Blytheville, Burdette & Mississippi River Railway.

Mr. Walter: I would like a continuance of the following cases until the next hearing: The Arkansas Southeastern; North Louisiana & Gulf; the Trinity Valley & Northern and the Roman Southeastern.

Examiner Burchmore: We have left on the call 5 cases in addition to these just announced and it seems very possible to dispose of those cases this afternoon and with a short evening session, and counsel has suggested that that be done and those other four cases go over. Is there any objection to that course? How do you feel about that Judge Cowan?

Mr. Cowan: The court hears no objection. We have no ob-
2995 jection.

Examiner Burchmore: It will be understood that the hearing will be adjourned tonight, but it may be possible that one of those companies can be taken up.

Mr. Walter: We will be here and if you can reach any one of them we will be ready.

Examiner Burchmore: If it seems possible we will do it. It was stated to me this noon that the president of the Timpson & Henderson Railroad in Texas, did not attend this hearing and was not present under some misapprehension as to the scope of the hearing, and his part in it. I do not understand how he can be under any misapprehension and I want to say further that an attorney who came to my office in Washington within a fortnight stated that he represented that company, and I think he was their regularly retained counsel, and asked with respect to this hearing down here, and the result of our talk was that I advised him that he or some other representative of that company must be here to look after its rights at this time, and I understood him to say that the general freight agent of that company would be here. I merely make this statement in order that the record may show that the Timpson & Hen-
2996 derson was referred to and they are not here. But, if, as a matter of fact they are under any misapprehension, it will be proper for them to make any such representation to the Commission as they wish to, and such request as they desire to proffer for a hearing at the next hearing. I cannot indicate however what view the Commission will take of this matter.

The Tyrona & St. Francis Valley does not seem to be present and I understand their counsel has sent word indirectly that they did not desire a hearing. We will take up now the Blythesville, Burdette & Mississippi River.

2997 *Blythesville, Burdette & Mississippi River.*

M. B. COOPER, was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer of the Blythesville, Burdette & Mississippi River Railway?

Mr. Cooper: Yes, sir, secretary and treasurer.

Examiner Burchmore: You occupy the same position with the Three States Lumber Company?

Mr. Cooper: No, I am assistant secretary and treasurer of the lumber company.

Examiner Burchmore: I understand this railway company is at least in a substantial sense controlled by the stockholders of the Three States Lumber Company?

Mr. Cooper: It, as a stockholder of the Three States Lumber Company owns as agent for the stockholders of that company a majority of the stock of the railroad company.

Examiner Burchmore: It is a sort of a trust holding?

Mr. Cooper: In a sense; yes, sir.

Examiner Burchmore: That is, the stock in the railroad is held in trust for the stockholders of the lumber company?

2998 Mr. Cooper: Yes, sir.

Examiner Burchmore: The officers of the two companies are substantially identical?

Mr. Cooper: The president is the same, and the secretary and treasurer of the lumber company is vice-president and general manager of the railroad company; and my office in the lumber company is appointive, whereas in the railroad company it is secretary and treasurer which is elective.

Examiner Burchmore: This railroad as I understand it extends from a connection with the St. Louis & San Francisco Railroad, commonly known as the Frisco at Burdette Junction in what direction and for what distance?

Mr. Cooper: It extends about a mile and a half from Burdette Junction on the Frisco to Burdette and then about 5 miles in a southerly direction to the Misissippi River, about 5 miles in a westerly direction, and is now built about 2 miles in a northerly direction with a proposed extension of 7 miles north of Burdette to Blythesville, Arkansas.

Examiner Burchmore: Is there any grading done on that extension?

Mr. Cooper: That extension is practically all graded except a small gap of possibly at this time less than a mile. We are

2999 now hauling on it.

Examiner Burchmore: And the actual construction of the road has been interrupted for some reason?

Mr. Cooper: Well, last winter it was interrupted by the winter rains and it was not completed, and will be completed this fall, if

the weather permits. We are in a bottom country and depend a great deal upon the season we have.

Examiner Burchmore: Then as I understand it, from Burdette the railroad branches out in several directions, running south to the Mississippi, east to a connection with the Frisco and west to Halls Will and Wagoner.

Mr. Cooper: Yes, sir.

Examiner Burchmore: Where is the lumber mill of the Three States Lumber Company located with reference to the line of this railroad?

Mr. Cooper: In Burdette.

Examiner Burchmore: It is at Burdette?

Mr. Cooper: Yes, sir.

Examiner Burchmore: But it is between Burdette City and the Frisco system?

Mr. Cooper: No, it is within the incorporated limits of
3000 Burdette.

Examiner Burchmore: How far is it from the right of way of the Frisco railroad?

Mr. Cooper: By rail it is about a mile and a half.

Examiner Burchmore: As the crow flies about a quarter of a mile?

Mr. Cooper: No, three-quarters, or nearly a mile.

Examiner Burchmore: The Frisco has a long connecting spur running part way to the mill?

Mr. Cooper: It in a sense is a joint track for three-quarters of a mile. The railroad company owns the right of way, ties and so forth, and the Frisco owns the rail only for three-quarters of a mile, of that distance.

Mr. Wilson: Now the balance of the distance.

Mr. Cooper: The balance of the distance to the lumber company's plant is owned by the Blythesville, Burdette & Mississippi River Railway Company?

Examiner Burchmore: That is about a quarter of a mile?

Mr. Cooper: Well, three-quarters by rail. I said the distance was about a mile and a half.

Examiner Burchmore: Are there any other mills on the line?

3001 Mr. Cooper: There is the Burdette Cooperage Company and Stave Manufacturing Plant and J. W. Smith, who manufactures scythe handles.

Examiner Burchmore: Is J. W. Smith a corporation?

Mr. Cooper: A person.

Examiner Burchmore: Is he any officer or stockholder of this lumber company?

Mr. Cooper: He has no interest whatever in the lumber company.

Examiner Burchmore: Does he buy any of his wood from the forests of this lumber company?

Mr. Cooper: He purchased a little from it last fall but is buying

most of his material from other parties who own timber along our road.

Examiner Burchmore: How about the Burdette Cooperage Company, the same question with respect to them?

Mr. Cooper: The Burdette Cooperage Company I will state, one stockholder of the Three States Lumber Company owns a portion of the stock of the Burdette Cooperage Company.

Examiner Burchmore: Is he a minority stockholder in both companies?

Mr. Cooper: He is a minority stockholder in the Three States Lumber Company but a majority stockholder in the Cooper-
3002 age Company.

Examiner Burchmore: Is the relationship between the two companies a very friendly one?

Mr. Cooper: It is.

Examiner Burchmore: Does this cooperage company buy its stock from the forests of the Three States Lumber Company?

Mr. Cooper: Practically all of its raw material comes from the lands of the Three States Lumber Company although they do buy timber from other parties along the road.

Examiner Burchmore: Now, that material, how does it get to their mill, is it handled by this railroad company?

Mr. Cooper: It is handled by the Blythesville, Burdette & Mississippi Railway Company.

Examiner Burchmore: What do they charge for that, the regular tariff rates?

Mr. Cooper: We have a local published tariff covering all commodities handled.

Examiner Burchmore: Is that the court tariff? You do not use the Arkansas tariff?

Mr. Cooper: The Arkansas distance tariff.

Examiner Burchmore: Yes.

3003 Mr. Cooper: Formerly we did, but within the last year we have got out a published local tariff of our own.

Examiner Burchmore: Do you file that with the Interstate Commerce Commission?

Mr. Cooper: One copy has been sent to the Interstate Commerce Commission, but I might file this with the record.

Examiner Burchmore: Does it bear an I. C. C. number?

Mr. Cooper: Yes, do you want this filed?

Examiner Burchmore: Never mind. When was the mill at Burdette opened for operation?

Mr. Cooper: In about 1900.

Examiner Burchmore: That is the first milling that was done there?

Mr. Cooper: Yes.

Examiner Burchmore: Was it at that time operated by this lumber company?

Mr. Cooper: At that time it was operated under contract by A. B. Wolverton. The contract was of this nature. The lumber company put up the money for the timber lands and the plant and the

contractor was to produce that lumber for a certain amount per thousand and in the event—in the returns from his contract he paid for the plant and the lands, they were to go to him at
3004 the completion of the contract.

Mr. Andrews: To whom?

Mr. Cooper: To Wolverton.

Mr. Andrews: The man who put up the money?

Mr. Cooper: The man who took the product.

Examiner Burchmore: Who was the other party to the contract?

Mr. Cooper: The Three States Lumber Company.

Examiner Burchmore: Was this Three States Lumber Company an old corporation?

Mr. Cooper: It was.

Examiner Burchmore: They had owned down there a long time?

Mr. Cooper: This particular property they had not owned a long time, but other property they had owned.

Examiner Burchmore: How far away from this?

Mr. Cooper: Well, it was in another state at that time.

Examiner Burchmore: Then they bought these holdings down here and entered into a contract with Mr. Wolverton to do the work?

3005 Mr. Cooper: Yes, sir.

Mr. Wilson: I did not understand that the Three States Company bought the land at once, but Mr. Wolverton bought it.

Mr. Cooper: He bought it, but it was taken in the name of the Three States Lumber Company for security and they put up the money; it was simply a means of getting that lumber in a manufactured state without going into the detail of the operation themselves.

Examiner Burchmore: They farmed out the privilege of operating?

Mr. Cooper: Yes.

Mr. Andrews: I think I must misunderstand you. I understood you to say that Mr. Wolverton bought this entire proposition and deeded it to the Three States Lumber Company and the Three States Lumber Company advanced the money with *with* the understanding that if he were to have anything left after the debt was paid, it was to go to Mr. Wolverton.

Mr. Cooper: You have it reversed just a little.

Mr. Andrews: I thought I could not understand and that is the reason I ask.

Mr. Cooper: The property was all taken in the name of
3006 the Three States Lumber Company and simultaneously a contract was made with Mr. Wolverton, the contractor——

Mr. Andrews: Who was the purchaser, Mr. Wolverton, or the Three States Lumber Company?

Mr. Cooper: The Three States Lumber Company.

Mr. Andrews: Was the purchaser?

Mr. Cooper: Was the purchaser. Then they contracted the entire proposition to Wolverton.

Mr. Wilson: The Examiner was right and you and I had it wrong.

Mr. Andrews: I thought I did not understand it, but that is the way I understood.

Mr. Cooper: And in the event his contract was successful he was to be deeded the saw mill plant and the cut over lands at the completion of the contract.

Examiner Burchmore: Would there be any objection on your part to filing a copy of that contract?

Mr. Cooper: I think not.

Examiner Burchmore: If not, I believe that will make it clear. But after all it is a detail of the case which may be of no importance.

Mr. Cooper: I think myself it is unimportant. It occurred before the incorporation of the railroad.

3007 Examiner Burchmore: You owned the land before the railroad was built?

Mr. Cooper: It occurred before the incorporation of the railroad.

Examiner Burchmore: Before the building of the railroad?

Mr. Cooper: No.

Examiner Burchmore: You said the mill was opened in 1902?

Mr. Cooper: In 1902.

Examiner Burchmore: When was the railroad first built, at the same time?

Mr. Cooper: A portion of it from the Mississippi River to Burdette was built before the mill was built, as at that time the Frisco railroad had not extended their line through that country.

Examiner Burchmore: You built down to the river?

Mr. Cooper: We built from the river in, in order to bring the plant in at that time.

Examiner Burchmore: As an original proposition the railroad was built to serve the mill?

Mr. Cooper: It was built to serve the mill; yes, sir.

3008 Examiner Burchmore: When was it incorporated?

Mr. Cooper: In 1906.

Examiner Burchmore: It was incorporated at that time under the laws of Arkansas a common carrier railroad?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Previous to 1906 had it had any joint arrangement with the Frisco?

Mr. Cooper: It did not.

Examiner Burchmore: It did not receive any divisions?

Mr. Cooper: No.

Examiner Burchmore: At the time it was incorporated had Mr. Wolverton dropped out of this arrangement?

Mr. Cooper: Yes, sir.

Examiner Burchmore: And the Three States Lumber Company owned the whole proposition?

Mr. Cooper: The Three States Lumber Company owned the whole proposition.

Examiner Burchmore: I guess that is immaterial, then.

Mr. Andrews: And Mr. Wolverton has now ceased to be the residuary legatee?

Mr. Cooper: Yes, sir; but it occurred before the incorpora-
3009 tion of the railroad.

Mr. Andrews: It seems to me it is unimportant.

Examiner Burchmore: In our zeal to get at the facts we went off on a tangent. Now the railroad corporation was formed in 1906?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Were joint rates and divisions thereunder established immediately upon the incorporation?

Mr. Cooper: Within a few months afterwards.

Examiner Burchmore: What was the original capitalization of this corporation?

Mr. Cooper: Of the railroad?

Examiner Burchmore: Yes.

Mr. Cooper: The original capitalization was $240,000.

Examiner Burchmore: Was that all issued?

Mr. Cooper: No.

Examiner Burchmore: How much was issued?

Mr. Cooper: $140,000 issued.

Examiner Burchmore: Now, has any been issued since?

Mr. Wilson: May I save a little time by interjecting?

Examiner Burchmore: Yes.

Mr. Wilson: You mean stock and bonds?

3010 Mr. Cooper: He did not ask me about bonds. There was issued practically at the same time $140,000 of stock and $100,000 of bonds.

Examiner Burchmore: Was one given as a bonus for the other?

Mr. Cooper: No, it would not be considered so. The lumber company received for the road $100,000 in stock and $100,000 in bonds.

Examiner Burchmore: And took it right over in exchange for the road?

Mr. Cooper: Took it right over in Exchange for the road and $40,000 was disposed of outside.

Examiner Burchmore: $40,000 in stock?

Mr. Cooper: In stock.

Examiner Burchmore: Who took that?

Mr. Cooper: Mostly some of the stockholders of the lumber company individually and a few minor holdings by other parties.

Examiner Burchmore: That stock was subsequently bought up?

Mr. Cooper: It is, you might say, held as qualifying stock mostly.

3011 Examiner Burchmore: $40,000?

Mr. Cooper: Yes, sir.

Examiner Burchmore: It takes $40,000 to qualify these directors?

Mr. Cooper: Well, the $40,000 was issued to different parties, but the Three States Lumber Company paid for practically all of it and held the stock in trust.

Examiner Burchmore: There is some state law that requires resident stockholders or something of that kind?

Mr. Cooper: Yes, sir.

Examiner Burchmore: At that time how much of this railroad was in operation?

Mr. Cooper: The line from Wolverton to Burdette, which is 5 miles; the line from Burdette to Burdette Junction, a mile and a half, and two branch lines running west each of which is practically 10 miles, I believe.

Examiner Burchmore: Then pretty nearly all the present line was in operation with exception of the northern extension?

Mr. Cooper: Yes, sir.

Examiner Burchmore: How much railroad has been constructed since that time?

3012 Mr. Cooper: We have the steel laid on practically 2 miles of the Blythesville extension and nearly all of the dump built for the entire extension of 7 miles.

Examiner Burchmore: How have you paid for those extensions, wherever you obtained the money?

Mr. Cooper: A portion of it, of course came from the $14,000 additional stock issued and I think we show a deficit which represents an open account with the Three States Lumber Company.

Examiner Burchmore: What is the amount of that deficit?

Mr. Cooper: I think it is about $16,000.

Examiner Burchmore: Now you pay interest on that I presume?

Mr. Cooper: Yes, sir.

Examiner Burchmore: 6 Per cent?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Did you state what the main line mileage of this road is at the present time?

Mr. Cooper: There was practically twenty miles turned over by the lumber company to the railroad company.

Examiner Burchmore: Twenty miles?

Mr. Cooper: Yes, sir. That we do not consider as all main line however.

3013 Examiner Burchmore: Now on November 20th, 1909, here are some figures that purport to show the mileage as 7.20 miles of main line, 2.99 miles of siding, making 10.19 as a total. Was that inaccurate at that time?

Mr. Cooper: It must be. Possibly that is derived from the fact that we consider our main line will be from Wolverton straight north to Blythesville, and we had at that time about seven miles of that constructed.

Examiner Burchmore: Then your 2.99 miles of siding I suppose was the line over to Burdette Junction?

Mr. Cooper: No, I suppose that was considered sidings, at the river and at Burdette.

Examiner Burchmore: Then I guess this report here is inaccurate.

Mr. Cooper: It must be, if it really states that mileage.

Examiner Burchmore: Probably the Examiner asked you how long the main line was, and you told him seven miles and the sidings you told him 2 miles, and you did not mention the extension?

Mr. Cooper: Yes, sir.

Examiner Burchmore: I suppose your report is accurately stated?

3014 Mr. Cooper: Yes.

Examiner Burchmore: By the way, do you report to the Commission?

Mr. Cooper. Yes, sir. It was filed just after the first of December. We received the blanks late, and did not get them up.

Examiner Burchmore: You did not file an annual report for the preceding year?

Mr. Cooper: No, we did not. No annual report blanks were sent to us at that time. We had to ask to be put on the list so we could get the Interstate Commerce Commission literature.

Examiner Burchmore: Do you have any trackage rights?

Mr. Cooper: In what way?

Examiner Burchmore: Do you operate your trains over the rails of any other companies?

Mr. Cooper: We do not.

Examiner Burchmore: Are there any private logging tracks or tram tracks belonging to the Three States Lumber Company connecting with your line?

3015 Mr. Cooper: There are not. The railroad company owns all the tracks.

Examiner Burchmore: You run right into the woods?

Mr. Cooper: Yes, sir, although I might say that it is contemplated that hereafter there are some of the temporary spurs that will be constructed by the lumber company.

Examiner Burchmore: In the future?

Mr. Cooper: Yes, sir.

Examiner Burchmore: But not in the past?

Mr. Cooper: But not in the past.

Examiner Burchmore: What is the weight of the rail?

Mr. Cooper: We have some 35 pound steel and some 56 pound steel.

Examiner Burchmore: Is your line well built?

Mr. Cooper: There is practically 14 or 15 miles of our line that is put up with a good dump and that dump sand ballasted.

Examiner Burchmore: Well built?

Mr. Cooper: Well built, yes, sir.

Examiner Burchmore: And the rest of your line?

Mr. Cooper: Some of the western line is not, as it is more or less temporary.

Examiner Burchmore: Have you any station buildings?

3016 Mr. Cooper: We have a station building at the river landing where we receive freight from the boat connection.

Examiner Burchmore: You interchange freight with steamboat?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Do you handle in that way traffic which has come up and down the river?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Do you get any traffic from Memphis or New Orleans, for example?

Mr. Cooper: We do from Memphis and St. Louis principally.

Examiner Burchmore: Have you any platforms for freight or warehouses any place other than at the river?

Mr. Cooper: We have, as I say, at the river terminal, a warehouse and platform at Burdette, and sidings at other points for receiving freight.

Examiner Burchmore: But you have not any storehouses elsewhere than at the river and at Burdette for package freight?

Mr. Cooper: We have not.

Examiner Burchmore: How many locomotives have you?

Mr. Cooper: Four.

3017 Examiner Burchmore: You own all those locomotives?

Mr. Cooper: We do.

Examiner Burchmore: You formerly owned five, did you not?

Mr. Cooper: One has been sold during the past year.

Examiner Burchmore: To whom did you sell that?

Mr. Cooper: To some one up in Missouri, someone outside of our line.

Examiner Burchmore: Any passenger cars?

Mr. Cooper: We have not.

Examiner Burchmore: You have nine flat cars?

Mr. Cooper: 19 flat cars.

Examiner Burchmore: How many logging cars?

Mr. Cooper: We own no logging cars at the present time. We did own the logging cars but sold them to the lumber company.

Examiner Burchmore: So that the lumber company now owns all the logging cars?

Mr. Cooper: The lumber company now owns all the logging cars.

Examiner Burchmore: Does the lumber company own any locomotives?

Mr. Cooper: No.

3018 Examiner Burchmore: Has it any other cars?

Mr. Cooper: The lumber company?

Examiner Burchmore: Yes.

Mr. Cooper: No, unless——

Examiner Burchmore: It has a loading crane?

Mr. Cooper: It has loading cars, camp cars, and skidders.

Examiner Burchmore: How long have you had those 19 flat cars?

Mr. Cooper: Most of them were purchased with the road.

Examiner Burchmore: Are those equipped with safety couplers, air brakes, and so forth?

Mr. Cooper: They are equipped with automatic couplers but not with air equipment, as we do not use them in interstate business.

Examiner Burchmore: You have some cars that are used in interstate business?

Mr. Cooper: No; we own no cars that go off our own line.

Examiner Burchmore: I know, but they handle freight which comes from or goes to interstate points?

Mr. Cooper: Well, in the way of — of course, all carload shipments come in on foreign cars.

3019 Examiner Burchmore: Yes, but you have some package stuff which you get from steamboats?

Mr. Cooper: There is package stuff which may be considered interstate business, but it is always handled on one or two cars.

Examiner Burchmore: And those cars are equipped?

Mr. Cooper: Those cars are not, but the locomotive which handles them is equipped.

Examiner Burchmore: I recommend that you ask your attorney to look at the safety appliance laws, and see if you are complying with them, in the event that you are subject to those laws?

Mr. Cooper: All right.

Examiner Burchmore: How many crews are engaged in maintaining the right of way of this road?

Mr. Cooper: It depends on the season. Sometimes one and sometimes two.

Examiner Burchmore: Any station agents?

Mr. Cooper: We have a joint agent at Burdette Junction.

Examiner Burchmore: You haven't any down at the river landing?

Mr. Cooper: No.

3020 Examiner Burchmore: Does your train conductor act as the receiver of freight in connection with the steamboat?

Mr. Cooper: You might consider it in that sense.

Examiner Burchmore: Or do they just leave the freight on the platform?

Mr. Cooper: They leave their freight in the warehouse at that point.

Examiner Burchmore: How many clerks and other employees in the general office of this railroad company?

Mr. Cooper: We practically have no clerks. The joint agent at Burdette attends to most of the business necessary at that point, and I do most of the work on the general office books.

Examiner Burchmore: Do you receive part of your pay from the lumber company?

Mr. Cooper: From the lumber company?

Examiner Burchmore: Yes.

Mr. Cooper: I receive all my pay from the lumber company at present.

Examiner Burchmore: Is anybody paid by the railroad company in the general offices?

3021 Mr. Cooper: None.

Examiner Burchmore: Do any of its officers receive any salaries?

Mr. Cooper: No.

Examiner Burchmore: Do you run any passenger trains?

Mr. Cooper: No.

Examiner Burchmore: Solely freight service?

Mr. Cooper: Solely freight service?

Examiner Burchmore: You carry an occasional passenger on your freight train or engine?

Mr. Cooper: Well, if they want to get on and ride they are not put off, I guess.

Examiner Burchmore: How many trains a day do you run?

Mr. Cooper: When the plants located on our line are operating, we usually have two trains each way a day.

Examiner Burchmore: That is between Burdette Junction and Burdette?

Mr. Cooper: Well, on account of Burdette being in a sense the hub of the system, we operate out one train twice a day to the woods on our western line, and then we have an engine that performs the service between Burdette and Burdette Junction as occasion
3022 requires.

Examiner Burchmore: Then you run down to the river once in awhile?

Mr. Cooper: Yes, sir, when it is necessary.

Examiner Burchmore: Regularly every day?

Mr. Cooper: No, sir.

Examiner Burchmore: Just to meet the steamboats?

Mr. Cooper: To meet the steamboats.

Examiner Burchmore: Do they notify you or do you meet certain steamboats?

Mr. Cooper: Certain steamboats regularly. We know the days they are due.

Examiner Burchmore: You do not carry any express matter, do you?

Mr. Cooper: We do not.

Examiner Burchmore: What is the total volume of your freight tonnage of all descriptions?

Mr. Cooper: This past year it was practically 15,000 tons.

Examiner Burchmore: 15,000 tons of all kinds of freight?

Mr. Cooper: Of all kinds of freight.

Examiner Burchmore: That is a falling off from the preceding year?

3023 Mr. Cooper: It is.

Examiner Burchmore: As I have the figures for the year 1909, ending June 30th, you had 7,834 cars. Is that right?

Mr. Cooper: I think we made a report of that kind to your examiner.

Examiner Burchmore: And your revenue from that traffic was $25,075.13?

Mr. Cooper: Yes.

Examiner Burchmore: What was your revenue this year, do you remember?

Mr. Cooper: About $6,000.

Examiner Burchmore: What is the trouble?

Mr. Cooper: The Three States Lumber Company plant was not in operation for practically the entire period.

Examiner Burchmore: Then for the year 1909 it is substantially accurate to say that 75 per cent of the total tonnage of your railroad was supplied by the Three States Lumber Company?

Mr. Cooper: For the year 1909?

Examiner Burchmore: Yes.

Mr. Cooper: I think so.

3024 Examiner Burchmore: In 1910 the percentage would doubtless be less?

Mr. Cooper: It was about 35 per cent.

Examiner Burchmore: Because of the closing down of your plant?

Mr. Cooper: Yes.

Examiner Burchmore: Do you think the plant will be in operation most of this year?

Mr. Cooper: It is in operation now and I think it will be the entire year.

Examiner Burchmore: Do you originate any particular volume of farm products, for example?

Mr. Cooper: Mostly the greater portion of farm products has been hay this year, although we have considerable farming territory now along our line and with a cotton gin at Burdette we would get quite a lot of cotton tonnage.

Examiner Burchmore: Would you please furnish the Commission a statement of your tonnage for the fiscal year 1909 and from staves for the fiscal year ending June 30th, 1910, in view of the changed conditions?

Mr. Cooper: Yes, sir.

3025 Examiner Burchmore: Showing the total tonnage of the whole road and showing how much was lumber furnished by the Three States Lumber Company, and how much was lumber furnished by other companies, and the volume of logs, if any, moved, and then the volume of other freight, dividing that if you choose, between farm and other products?

Mr. Cooper: I understand the statement you want, and will get it.

Examiner Burchmore: Showing also the revenue figures?

Mr. Cooper: Yes.

Examiner Burchmore: I understand you are also going to give us a map, something similar to the tracing you have here.

Mr. Cooper: Yes, sir.

Examiner Burchmore: Do you have joint through rates in connection with the Frisco?

Mr. Cooper: On lumber.

Examiner Burchmore: To interstate points?

Mr. Cooper: To interstate points.

Examiner Burchmore: Are they the same from stations on your line as from Burdette Junction and other points on the Frisco?

Mr. Cooper: Yes.

3026 Examiner Burchmore: What are your divisions on those rates?

Mr. Cooper: We get two cents on all hardwoods except on cotton wood, on which we get three cents, that is, three cents to points beyond Frisco terminals. If cotton wood is handled within the Frisco System we only get two cents on that.

Examiner Burchmore: But your usual division is two cents?

Mr. Cooper: Yes, sir.

Examiner Burchmore: And three cents on some hardwoods?

Mr. Cooper: Yes, sir.

Examiner Burchmore: To what territory does your lumber go in the main? Give a representative point.

Mr. Cooper: The northern and eastern markets, and some western.

Examiner Burchmore: Does it very largely take, for example, the St. Louis rate?

Mr. Cooper: Most of our tonnage would go by way of Thebes.

Examiner Burchmore: What is the rate to Thebes?

Mr. Cooper: Nine cents.

Examiner Burchmore: And you get two cents?

Mr. Cooper: And we get two cents.

3027 Examiner Burchmore: And what haul do you have for the two cents?

Mr. Cooper: We make a mile and a half.

Examiner Burchmore: A mile and a half haul on the lumber for two cents, and then the Frisco receives how much, seven cents, for what distance?

Mr. Cooper: I should judge it is about 125 miles, I would not be positive about that.

Examiner Burchmore: Mr. Coleman, I observe you have taken some interest in this line of questions with two or three witnesses. This witness testified he hauls the lumber for a distance of one and one half miles for two cents, and the Frisco hauls it from there to Thebes, 125 miles, for the balance of seven cents.

Mr. Cooper: The total rate is nine cents.

Examiner Burchmore: Do you handle any coal?

Mr. Cooper: Inbound we handle some coal.

Examiner Burchmore: To whom is that coal shipped?

Mr. Cooper: To the Three States Lumber Company and the railroad company.

Examiner Burchmore: And they get a division on that rate?

3028 Mr. Cooper: The Frisco puts in a division in May of 15 cents a ton on inbound coal, but during that time I think we handled two carloads of inbound coal, and we were notified just a short time ago that the Frisco had made a rate that cuts us out on that division, although they have not notified us.

Examiner Burchmore: What is your division?

Mr. Cooper: It was 15 cents a ton on inbound coal.

Examiner Burchmore: Do you ship any lumber down the river by steamboat?

Mr. Cooper: We have done so in the past.

Examiner Burchmore: What would you get on this lumber as your earnings?

Mr. Cooper: We would get two cents per 100 pounds from Burdette to Wolverton.

Examiner Burchmore: Who paid that two cents?

Mr. Cooper: The lumber company.

Examiner Burchmore: The steamboat did not allow you any division?

Mr. Cooper: No.

Examiner Burchmore: You are willing to haul the lumber
3029 all the way from Burdette to the landing, a distance of seven miles, for the same rate you get——

Mr. Cooper: Five miles.

Examiner Burchmore: For the same rate you get for hauling lumber over to the Frisco?

Mr. Cooper: We do for the same amount, but I will state here that the service in hauling to the river can be done much cheaper than the service between Burdette and Burdette Junction, because the lumber is loaded on a barge and we can perform that service continuously until that barge is loaded, whereas the service between Burdette and Burdette Junction is intermittent and requires going out possibly after empties without any load to haul on that outward trip and vice versa. We go out with loads and possibly bring empties in.

Examiner Burchmore: But you haul loads down to the river and bring empties back.

Mr. Cooper: But it is done on the one trip. That service may be performed steadily for two weeks or one week in loading a barge, and then possibly there will not be any more service for a month.

Examiner Burchmore: The operation is an economical one.

Mr. Cooper: Yes, sir.

3030 Mr. Coleman: Who performs the transfer on the boats?

Mr. Cooper: The lumber company loads the barges from our cars.

Examiner Burchmore: You perform the service of hauling the logs to the mill?

Mr. Cooper: Yes.

Examiner Burchmore: As a matter of fact your line west of the mill is of very little use except for hauling logs?

Mr. Cooper: No, the old line has developed quite a farm territory.

Examiner Burchmore: You do not haul any logs from that territory?

Mr. Cooper: We were hauling some stave timber from that line for Frisco points.

Examiner Burchmore: You haul the logs to the mill for the lumber company?

Mr. Cooper: Yes, sir.

Examiner Burchmore: What are you paid for that?

Mr. Cooper: Two cents per 100 pounds according to our tariffs.

Examiner Burchmore: Is that two cents in addition to your tariff on lumber out?

3031 Mr. Cooper: It is.

Examiner Burchmore: And that two cents is credited afterwards on the outbound freight?

Mr. Cooper: It is not.

Examiner Burchmore: Then these Frisco rates are not on a milling in transit basis?

Mr. Cooper: No, sir.

Examiner Burchmore: It costs the lumber company two cents

more than the regular Frisco rate to get to market, they have to pay two cents in on the logs and then the full rate out?

Mr. Cooper: Yes, sir.

Examiner Burchmore: You have noticed that some other companies do not pay anything on the logs in and get a milling in transit arrangement.

Mr. Cooper: Yes.

Examiner Burchmore: You have also observed that a great many companies get more than two cents division?

Mr. Cooper: I have.

Examiner Burchmore: But most of those companies pay a higher rate than nine cents, so I suppose you are not hurt to the same extent you would be otherwise?

3032 Mr. Cooper: I do not remember to what point they considered the delivery.

Examiner Burchmore: Well, we had a man yesterday, for example, who got two cents division out of an 11 cent rate to Thebes, and you are paying 9 cents to Thebes.

Mr. Cooper: 9 cents to Thebes.

Examiner Burchmore: Do these logs move into the mill under any billing?

Mr. Cooper: Yes, sir.

Examiner Burchmore: What kind of billing?

Mr. Cooper: The waybills of the Blythville, Burdette & Mississippi River Railroad.

Examiner Burchmore: Are those waybills made up before the car starts to move?

Mr. Cooper: No, they are made out after the car gets to Burdette, as we do not get the information until then.

Examiner Burchmore: When a shipment of lumber is ready to be made to interstate destinations, and the lumber company desires a car to load that on, I suppose this railroad calls on the Frisco for an empty car?

Mr. Cooper: It does.

3033 Examiner Burchmore: And you move that empty car to the mill and it is loaded?

Mr. Cooper: Yes, sir.

Examiner Burchmore: And you move it back to the Frisco?

Mr. Cooper: Yes.

Examiner Burchmore: And the Frisco takes it on?

Mr. Cooper: Yes.

Examiner Burchmore: Where do you get that car to the Frisco on an interchange track?

Mr. Cooper: Yes, sir, there is an interchange track at Burdette Junction.

Examiner Burchmore: What distance do you haul it from the mill before you leave it?

Mr. Cooper: Practically a mile and a half.

Examiner Burchmore: Down to the right of way of the Frisco?

Mr. Cooper: Yes, sir.

Examiner Burchmore: And operate over this joint track?

Mr. Cooper: Yes.

Examiner Burchmore: Does the Frisco set these cars up on the joint track some place?

Mr. Cooper: On the interchange track, which is a siding,
3034 at Burdette Junction.

Examiner Burchmore: Who issues the bills of lading on the outbound movement of lumber?

Mr. Cooper: The Blytheville, Burdette & Mississippi River.

Examiner Burchmore: What man on that road issues the bill of lading?

Mr. Cooper: We have an agent at Burdette who is as well an employee of the lumber company?

Examiner Burchmore: He is not paid by the railroad company as a matter of fact.

Mr. Cooper: Up to the present time the railroad company has not paid him anything because——

Examiner Burchmore: His duties are not very onerous?

Mr. Cooper: No, and the railroad company has had a losing proposition so far, and we have not taken those things up.

Examiner Burchmore: Does he issue a through waybill or transfer billing?

Mr. Cooper: A through waybill is issued by the joint agent at Burdette Junction from Burdette to destination.

Examiner Burchmore: But your conductor does actually have that way bill when he moves a car out to the junction?

Mr. Cooper: No. Our joint agent at Burdette Junction
3035 does that.

Mr. Wilson: Does your Honor mean the waybill or the bill?

Examiner Burchmore: The waybill. At the present time the bill is made at the mill.

Mr. Cooper: The waybill is made at Burdette Junction by the joint agent.

Examiner Burchmore: You file tariffs with the Interstate Commerce Commission?

Mr. Cooper: We do.

Examiner Burchmore: I suppose you endeavor to comply with all laws relating to railroads?

Mr. Cooper: That has been our endeavor, yes.

Examiner Burchmore: Are you able to give the valuation of the road with equipment, or shall we refer to the reports?

Mr. Cooper: I could not state it accurately. The annual reports cover it.

Examiner Burchmore: It covers approximately the same as you have given, that is the $140,000 capital stock and bonds you have stated?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Have you kept up the interest on the bonds?

3036 Mr. Cooper: No, we have set aside and charged it out of our annual earnings.

Examiner Burchmore: Have you got the money to pay it?

Mr. Cooper: No.

Examiner Burchmore: Is the road conducted at a loss?

Mr. Cooper: The road is conducted at a loss.

Examiner Burchmore: Never has paid any dividends?

Mr. Cooper: Never has made any dividends.

Examiner Burchmore: Have you accumulated any deficit?

Mr. Cooper: We have.

Examiner Burchmore: How much is that deficit?

Mr. Cooper: $29,255.67.

Examiner Burchmore: That deficit includes the interest on your bonds?

Mr. Cooper: It does.

Examiner Burchmore: That is, it assumes they are paid, you have charged them off?

Mr. Cooper: Yes, sir, we have charged it off as paid.

Examiner Burchmore: Is it not a fact that for the fiscal year 1909 you made a net revenue of $3,104.44?

Mr. Cooper: Yes, sir, that was not considering taxes and interest on bonds. I think you will find your report states that.

3037 Examiner Burchmore: Yes.

Mr. Wilson: You spoke of your total capitalization. Your total capitalization is $140,000 stock.

Mr. Cooper: Outstanding.

Mr. Wilson: There is $100,000 in bonds?

Mr. Cooper: Yes.

Mr. Wilson: You spoke of some staves that you transported in conjunction with the Frisco. From whom did you obtain those staves?

Mr. Cooper: We have done considerable business the last three years on stave lumber purchased by the Luxora Cooperage Company at Luxora, Arkansas, on the Frisco Railroad. Also by the National Handle Company and Ollipeter & Jontz at Blythville, Arkansas. This timber has all been purchased from other parties along our railroad, and transported by us to Burdette Junction and then handled by the Frisco to those two towns named.

Mr. Wilson: Do you charge the Three States Lumber Company demurrage on the cars?

Mr. Cooper: We do.

Mr. Wilson: How do you pay for your cars?

Mr. Cooper: We pay per diem charge.

3038 Mr. Wilson: And that means, as I understand it, that you pay for the cars so much a day and if the Three States Company keeps them over 48 hours they pay the usual demurrage.

Mr. Cooper: They pay the usual demurrage. They pay $1.00 a day, and we pay at the present time 35 cents per day as soon as the car is delivered to the interchange track.

Mr. Wilson: Is the territory through which your line goes developing, or is it stationary?

Mr. Cooper: It is developing very rapidly.

Mr. Wilson: In what way?

Mr. Cooper: I will say in this connection that this proposition is located in the St. Francis Valley, which includes some of the richest

agricultural territory in the United States, and we have no trouble and none of the lumber companies have any trouble in selling their cut-over lands as rapidly as they put them on the market. The Illinois farmers and the Missouri farmers are buying up this land continually and moving down there and putting it into cultivation.

Mr. Cowan: At what price?

Mr. Cooper: Of the cut-over land?

Mr. Cowan: Yes.

3039 Mr. Cooper: The last we sold we got $15.00 per acre for it.

Mr. Wilson: Does the Three States Lumber Company own all the adjoining land to the railroad?

Mr. Cooper: No.

Mr. Wilson: What percentage should you say they own?

Mr. Cooper: I should say of actual timber lands about 60 per cent, but lands in general, we do not own over 30 or 40 per cent of the lands along our line.

Mr. Wilson: You have a copy of the charter from the State of Arkansas with you?

Mr. Cooper: I have.

Mr. Wilson: And the report of organization?

Mr. Cooper: Yes.

Examiner Burchmore: It will not be necessary to file that. He says it was incorporated under the laws of the state of Arkansas.

Mr. Wilson: Are you recognized as a common carrier in Arkansas?

Mr. Cooper: Yes, sir.

Mr. Wilson: And taxed as a common carrier?

Mr. Cooper: Yes, they taxed us as such.

3040 Mr. Wilson: You hold yourself out as a common carrier?

Mr. Cooper: Yes.

Mr. Wilson: And you are ready to receive business as such?

Mr. Cooper: We do. In fact we are plugging for business, as they say.

Mr. Andrews: Did you state the percentage of your tonnage in giving your business of last year produced by the Three States Lumber Company? If so, I did not hear it.

Mr. Cooper: I said the business of the Three States Lumber Company for the year ending June 30th, 1910, was about 35 per cent of the business handled.

Mr. Andrews: Of your total business?

Mr. Cooper: Of our total business.

Mr. Andrews: And the other is composed most largely of what?

Mr. Cooper: You might say staves and handle stock, raw material.

Mr. Andrews: And that comes from the land you have stated of the Three States Lumber Company?

Mr. Cooper: No, a great deal of it comes from the lands of other parties along our road.

Mr. Andrews: What per cent?

3041 Mr. Cooper: All our handle lumber goes to the Barrette Cooperage Company which is located on our line.

Mr. Andrews: You misunderstood me. The raw material, I understood you to say earlier in your examination, for the staves and handles and things comes from the land of the Three States Lumber Company which are sold by the Three States Lumber Company to the purchaser. You did not say that?

Mr. Cooper: No, only so far as the Bemis Cooperage Company is concerned. They get all our handle timber.

Mr. Andrews: What percentage of it comes from the Three States Lumber Company's land?

Mr. Cooper: Of this raw material for handles and staves?

Mr. Andrews: Yes.

Mr. Cooper: Possibly 50 per cent; it will vary in different years, I should judge.

Mr. Andrews: Now you stated that when the railroad was organized that it issued $140,000 of stock and $100,000 of bonds which were taken over by the lumber company for the purchase price of the railroad?

Mr. Cooper: Yes, sir.

Mr. Andrews: And that subsequently $40,000 of this stock had been disposed of, but you did not state to whom it had been disposed, or more properly, who at present owns it.

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Mr. Cooper: I stated at that time that it had been disposed of to individuals, but the money was advanced by the Three States Lumber Company, and the stock was held in trust by them.

Mr. Andrews: So the Three States Lumber Company still holds all the stock?

Mr. Cooper: Practically all the stock.

Examiner Burchmore: It is the beneficiary of a trust.

Mr. Andrews: Well, I did not get that at all. And this subsequent issue of $40,000 has not been put out, or has it been taken?

Examiner Burchmore: That is included in the present trust.

Mr. Andrews: That is under the same arrangement?

Mr. Cooper: You would not call it under the same arrangement. The other stock was held——

Examiner Burchmore: In order to comply with the Arkansas law he said there had to be a certain percentage of individual stockholders.

Mr. Cooper: Residents of Arkansas.

Examiner Burchmore: It is really held in trust.

Mr. Cooper: It really is, yes, sir.

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Mr. Andrews: You stated it was easier to carry the lumber five miles and load it on the barge than it was to deliver it to the railroad company. As a matter of fact your deliveries to the railroad company consist of switching from the mill point a distance of a mile and a quarter or a mile and a half to the interchange track of the railroad company the cars that have already been loaded by the lumber company, does it not?

Mr. Cooper: I would not call it a switch. I would call it a haul.

Mr. Andrews: Well, name it as you prefer, but that is what the service is, is it not?

Mr. Cooper: The——

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Mr. Andrews: The lumber company loads the cars?
Mr. Cooper: Naturally, yes.
Mr. Andrews: And your railroad company then hauls that to the connecting railroad.
Mr. Cooper: It first goes and gets the empty car and sets it for the lumber company and then takes the load back when the car is loaded.
Mr. Andrews: As a matter of fact generally is it not—it brings the empty back, and vice versa, does it not?
3044 Mr. Cooper: No, I stated awhile ago that was not so much the case in operation——
Examiner Burchmore: I rather think he covered it rather fully, but it is hard to carry these things. When you come to read the record I think you will find it is described fully.
Mr. Andrews: Well, where do you get the cars you haul to the barges?
Mr. Cooper: The railroad company owns them.
Mr. Andrews: What kind of cars, flat cars?
Mr. Cooper: Flat cars.
Mr. Andrews: The lumber company loads the flat cars?
Mr. Cooper: They do.
Mr. Andrews: And the railroad company takes them to the barge and unloads them?
Mr. Cooper: The lumber company.
Mr. Wilson: Do you mean there is $140,000 of stock outstanding——
Mr. Cooper: $140,000.
Mr. Wilson: All together?
Mr. Cooper: Altogether.
Mr. Wilson: The original issue was $100,000 and it was
3045 subsequently increased by $40,000?
Mr. Cooper: Yes.
Examiner Burchmore: That is all stated in the annual report and I think it has been checked up.
Mr. Wilson: Did you mean to convey the impression that there was $40,000 of stock which was issued to qualify directors?
Mr. Cooper: No, not altogether.
Mr. Coleman: You say you work pretty energetically for business in Arkansas?
Mr. Cooper: We do.
Mr. Coleman: With a good deal of success?
Mr. Cooper: It is developing all the time, yes, sir.
Mr. Coleman: Do you have through rates from points on your line or between points on your line and points on the Frisco and other lines in Arkansas?
Mr. Cooper: In Arkansas?
Mr. Coleman: Yes.
Mr. Cooper: We have no case where the Frisco has made a through rate from points on our line to Luxora, Ark.
Mr. Coleman: Does the same apply as from the junction?

Mr. Cooper: No, I should think not. They have made a
3046 combined rate of two and one-half cents per 100 pounds, of which we get one and one quarter cents and they get one and one quarter cents and the haul is about the same for each road.

Mr. Coleman: What is that on?

Mr. Cooper: That is on stave bolts.

Mr. Coleman: Then there are some instances where you get less than two cents for hauling?

Mr. Cooper: Yes, sir, in that instance there is.

Mr. Coleman: Do you handle any lumber business from your line to distant points in Arkansas or any other forest products?

Mr. Cooper: We handle staves and headings from our line to interstate points and also scythe handles.

Mr. Coleman: No, to Arkansas points, points within the state, intrastate.

Mr. Cooper: Of the manufactured product?

Mr. Coleman: Yes.

Mr. Cooper: I do not believe we have any such movement. It is possible though.

Mr. Coleman: You have no divisions on merchandise be-
3047 tween points on your line and other points in Arkansas?

Mr. Cooper: We have not. Our divisions are covered by the term lumber and forest products.

Mr. Coleman: Then on Arkansas State traffic you receive no divisions except as you may add to the rate applying from the junction with the Frisco, with the exception of this through rate from the belts where you get one and one quarter cents.

Mr. Cooper: In carloads of lumber I think we would get a division of that shipped to some point on the Frisco system; I think our division would cover that.

Mr. Coleman: Where is this business which you say you are successful in securing, this intrastate business?

Mr. Cooper: Principally the raw material for the handle companies and stave mills at Osceola and Luxora and Blytheville, Arkansas.

Mr. Coleman: Then the rate is made up on the sums of the locals?

Mr. Cooper: Except in the one case mentioned it is made up of the sums of the locals.

Mr. Coleman: How do you account for it that the shippers on your line are willing to pay relatively a higher rate or
3049 be subjected to the local rate to the junction with the Frisco on intrastate business and yet on interstate business you have the same rates.

Mr. Cooper: It is because they have no other alternative. We cannot get a division on that, and have not been able to get a division on that raw product, and they buy up this timber on our line and pay the combination of rates to get it out.

Mr. Coleman: You spoke about the land on your line, the cut-over land, selling for $15.00 an acre.

Mr. Cooper: Yes, sir.

Mr. Coleman: Is that hardwood lands?

Mr. Cooper: That is hardwood lands.

Mr. Coleman: Is all the land on your line hardwood land?

Mr. Cooper: It is.

Mr. Coleman: I did not understand what you said as to the extent of the holdings of the lumber company.

Mr. Cooper: I said possibly 60 per cent of the timber lands adjacent to our line, that is virgin timber lands, were owned by the lumber company, but when you took into consideration all the land, farming, cut-over and timber lands, we did not own over 30 or 40 per cent of the adjacent land.

3049 Mr. Coleman: Well, what do the holdings aggregate in acreage that are owned by your company?

Mr. Cooper: About 16,000 acres.

Mr. Coleman: What is that hardwood stumpage estimated as worth now?

Mr. Cooper: The hardwood stumpage? I do not know.

Mr. Coleman: Take your hickory.

Mr. Cooper: Is that competent in this matter?

Examiner Burchmore: I did not understand the question.

Mr. Coleman: I asked him what his hardwood stumpage was worth.

Mr. Wilson: That is going into the value of the hardwood stumpage on the Three States Lumber Company's lands.

Examiner Burchmore: Do you object to that?

Mr. Cooper: Yes, sir, I am here as a witness for the Blythesville, Burdette & Mississippi River Railway Company.

Mr. Coleman: What is it generally worth, not on that land, but as a general proposition.

Mr. Cowan: I think we are entitled to that.

Mr. Coleman: As I understand the situation of this road it was operated for quite a time as an unincorporated road and received no divisions, and as seems apparent, for the purpose of the

3050 general property. It seems to me in order to determine the merits of the investment, in view of that fact, that the question of the value of the land at the time they took it, the stumpage, and what they can sell the cut-over lands for now, would figure into the merits of the operation.

Examiner Burchmore: Have you any objection to giving the figures? Would it not suffice if he gives the figures of the general value at that time?

Mr. Coleman: Yes.

Examiner Burchmore: What was the general value in that territory, not what you paid.

Mr. Cowan: Not that particular land, the general proposition.

Examiner Burchmore: What was the general market price of land in that vicinity?

Mr. Cooper: The lands or did you say timber?

Mr. Coleman: Well, I asked for the stumpage. You told us what the cut-over lands were selling for, $15.00, and I asked you what stumpage is figured on now as being worth.

Mr. Wilson: I understand the question as to the value of the

holdings of the Three States Lumber Company, but they are
3051 asking what the value of the stumpage in that vicinity is worth, and I do not object to that.

Mr. Cooper: The value of the timber on the stumpage, $3.00 to $5.00 per thousand.

Mr. Coleman: What was it worth at the time it was purchased?

Mr. Andrews: I do not know that I have any right to interrupt, but certainly we have no right to inquire into the fortunate or unfortunate operation——

Examiner Burchmore: Do you object, Mr. Cooper?

Mr. Cooper: I object, unless it is necessary in this case.

Examiner Burchmore: What is it worth now?

Mr. Cooper: Well, will the answer to this question have any bearing on this railroad case?

Examiner Burchmore: I do not know. I do not think so, but perhaps Mr. Coleman sees a value that we do not see.

Mr. Cowan: I agree with Mr. Andrews about it. I just tried to qualify Mr. Coleman's statement when he asked about what this man's lumber was worth. I do not think he has a right to inquire.

Mr. Cooper: When he does that he gets at the value of our stumpage.

3052 Examiner Burchmore: Will you frame your question the way you want it?

Mr. Coleman: I am willing to withdraw the question if Mr. Andrews does not think it has any bearing. The only purpose I had was to determine whether this investment was originally made with the expectation of a profit and without any ultimate intention of incorporating a railroad in order to operate the property.

Mr. Cowan: That question would be all right.

Examiner Burchmore: Yes.

Mr. Cooper: I can answer that question.

Mr. Cowan: That is different.

Mr. Cooper: I would say at the time the lumber company went in there they constructed simply a tram line and did not, I suppose, have in view at that time the incorporation of the railroad, because there was absolutely no development in there. The Frisco Railroad had not been built through there when we went in there. It was one vast forest. But since that period the St. Francis Valley has gone forward faster than any other section of the country almost in an agricultural line and the possibilities of that country and of a railroad through that country were so evident to our peo-
3053 ple that they took the tram road as a nucleus and from that are building a railroad. We have no occasion at the present time to go to Blytheville with this railroad, but we are doing it as a railroad possibility. At Blytheville we get a connection with the Cotton Belt Railroad, and in that way it gives the patrons of the Blytheville, Burdette & Mississippi River Railway two connections and it also gives to the factories at Blytheville a chance to come down on to our line and buy and handle timber and stave timber and transport it over one road to Blytheville instead of paying our rate

and the Frisco rate. And we have here which we wish to file a petition from the citizens of Blytheville.

Examiner Burchmore: Expressing their hope that this road will be continued?

Mr. Cooper: Expressing their hope that this road will be recognized by the Commission as being continued to Blytheville. In the event the divisions are taken off, there will not be the incentive to build to Blytheville that there is now.

Examiner Burchmore: I do not quite get that. You do not want any division on lumber for Blytheville, do you?

Mr. Cooper: We will possibly get divisions on the Cotton Belt if we ship that way.

3054 Examiner Burchmore: Better divisions than you have now?

Mr. Cooper: No, we have not hoped for better divisions, but we will get as good I suppose.

Examiner Burchmore: Do you anticipate better divisions when you connect up with the Cotton Belt?

Mr. Cooper: No, that was considered, but the incentive was to get two roads.

(The paper so offered and identified, was received in evidence and thereupon marked Blytheville, Burdette & Mississippi River Exhibit No. 1, Witness Cooper, December 17th, 1910, and is attached hereto.)

Mr. Coleman: You testified your road was being operated at a loss, if I understood you correctly.

Mr. Cooper: It is so far.

Mr. Coleman: Well, at as great a loss as before you incorporated it in 1906?

Mr. Cooper: I don't understand how we can make a comparison before it was incorporated.

Mr. Coleman: I understood you to say you had not made any extensions until recently. Now take it up to the time you had made extensions, since 1906, with before 1906, when you got no divisions.

3055 Mr. Cooper: We were not operating a railroad before 1906; we were operating a tram line and the expenses of that went into the general operation, and I could not give you a comparison.

Mr. Coleman: You do not claim, though, that for the money invested that you have not realized more from transportation on that railroad since 1906 net, than you did prior to 1906?

Mr. Cooper: I don't understand the question.

(Question read.)

Mr. Cooper: Prior to 1906 we were not a railroad and were not incorporated, and were simply handling the lumber company's business at what it cost us and operating as economically as we could a tram line, but since that time we have conformed with the Arkansas State Law and the Federal Laws, and it has been expensive to

a great extent, and we have improved the road, and as I said before, almost completed our extension to Blytheville.

Mr. Coleman: That is all.

Examiner Burchmore: Have you any contract with the Frisco System relating to the division of rates, the freight rates themselves?

Mr. Cooper: You would not call it a contract. The offi-
3056 cials of our road and the officials of the Frisco met and agreed on these divisions and the Frisco simply wrote us a letter confirming that.

Examiner Burchmore: It does not bind either party for a term of years?

Mr. Cooper: No, it can be terminated on 30 days' notice, the letter states.

Examiner Burchmore: That is all.

(Witness excused.)

3057 *Wilson Northern Railway Company.*

M. J. BLACKWELL was called as a witness and having been duly sworn testified as follows:

Mr. Charles T. Coleman: I wish to state that there is a complaint in this case in which all the facts are set out in great particularity, and for the purpose of shortening this hearing we admit that there is a community of interest growing out of the fact that all of the stock of Lee, Wilson & Company, a corporation, and all of the stock of the Wilson Northern Railway is owned by the same parties and that is all set out in this complaint and it will save questioning on that at all. We admit that of record, that the stockholders are the same in each except the qualifying shares, as to which we make no contention.

Examiner Burchmore: Are there any special facts you desire to bring out at this hearing?

Charles T. Coleman: None except the first seven paragraphs of this complaint. I want the witness to say they are correct.

Mr. Blackwell: Yes, sir.

Examiner Burchmore: The organization and history are said to be fully set forth in paragraphs 1 to 7 in the amended
3058 complaint filed with the Commissioner as part of this record. You have read that complaint?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Do you believe that the facts as set out in those seven paragraphs are correctly stated?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: As I understand it is admitted there is a community of interest, as explained by your attorney?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: The officers in the two companies are in the main the same?

Mr. Blackwell: Well, yes, sir, they are the same with the exception of the Superintendent and Auditor of the Railway company.

Examiner Burchmore: He is not an officer of the lumber company?

Mr. Blackwell: No, the superintendent and auditor are two different people.

Examiner Burchmore: They are not officers of the lumber company?

Mr. Blackwell: They are not officers of the lumber com-
3059 pany.

Examiner Burchmore: Their entire salaries are paid by the railway company?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Are there any other officers of the railway company who receive salaries from the lumber company?

Mr. Blackwell: The President.

Examiner Burchmore: What is his salary from the railroad?

Mr. Blackwell: $2400 a year.

Examiner Burchmore: What is the salary of the Vice-President?

Mr. Blackwell: No, he does not receive any.

Examiner Burchmore: Are there any other officers who receive a salary from the Railroad?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: The Secretary and Treasurer?

Mr. Blackwell: He receives $400.

Examiner Burchmore: Is not $2400 quite a salary for the president of this road?

Mr. Blackwell: I think not.

Examiner Burchmore: He is also president of the Lumber Company?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: He is an active officer of this rail-
3060 road?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Now, this railroad company as I understand it has a contract with the St. Louis and San Francisco with which it connects?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: The contract entered into in 1908 provides, does it not, for the maintenance of trackage relations between the two companies, particularly with relation to lumber, or what is the purpose of that contract?

Mr. Blackwell: What is the date of that?

Examiner Burchmore: Have you more than one contract?

Mr. Blackwell: We have two, one for the operation of trains and——

Examiner Burchmore: This contract is dated the 8th day of August, 1908.

Mr. Blackwell: That contract is a trackage contract.

Examiner Burchmore: Is that contract still in effect?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: What does it cover?

Mr. Blackwell: Operations of the Wilson Northern trains over the Deckerville branch of the Frisco.

Examiner Burchmore: The line of this railway connects
3061 with the Frisco line which runs from Memphis to St. Louis and it is what is known as Wilson?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Extending from there is a generally northern direction for how many miles?

Mr. Blackwell: The Deckerville branch?

Examiner Burchmore: No.

Mr. Blackwell: The Wilson Northern ten miles.

Examiner Burchmore: Ten miles in a northerly direction?

Mr Blackwell: Yes, sir.

Examiner Burchmore: Is there any other line that you own at the present time?

Mr. Blackwell: No.

Examiner Burchmore: I thought it was building an extension up towards the Jonesboro, Lake City & Eastern.

Mr. Blackwell: We have contemplated one.

Examiner Burchmore: It has been built?

Mr. Blackwell: It has been built and is now in operation.

Examiner Burchmore: What is the length of that extension?

Mr. Blackwell: Seven and a half miles.

Examiner Burchmore: Where do you connect with the Jonesboro, Lake City & Eastern?

Mr. Blackwell: At Ross, Arkansas.

3062 Examiner Burchmore: That line is at present owned by the lumber company?

Mr. Blackwell: Owned by Moore & McFerren.

Examiner Burchmore: Who are they?

Mr. Blackwell: Lumber people at Ross.

Examiner Burchmore: They do not receive any allowances?

Mr. Blackwell: No.

Examiner Burchmore: And they move only logs over that line?

Mr. Blackwell: Only logs, yes sir.

Examiner Burchmore: Do you move any freight over that line?

Mr. Blackwell: Yes.

Examiner Burchmore: What are you moving over that line?

Mr. Blackwell: Lumber.

Examiner Burchmore: Where from?

Mr. Blackwell: From Ross to Wilson.

Examiner Burchmore: You move some of their lumber?

Mr. Blackwell: We move some of their lumber now.

Examiner Burchmore: You get divisions on that?

Mr. Blackwell: Yes sir.

Examiner Burchmore: Do those divisions inure to the benefit of Moore & McFerren?

Mr. Blackwell: No.

3063 Examiner Burchmore: They inure to the benefit of the Wilson Northern?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: You have a contract with whom?
Mr. Blackwell: Moore & McFerren.
Examiner Burchmore: What is the purport of that contract.
Mr. Blackwell: I am not familiar with the exact divisions of the contract. All I know is that we were to build the road from Ross to Keiser.
Examiner Burchmore: And there connect with that company?
Mr. Blackwell: And there connect with that company.
Examiner Burchmore: And you are logging by that road?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: Will you file a copy of that contract as part of this record?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: It will be understood such a contract will be filed?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: Does that contract cover the present operation of the road as well as its future purchase, or don't you know?
Mr. Blackwell: No, I do not.
3064 Examiner Burchmore: Where is the mill of this Lee Wilson Company?
Mr. Blackwell: Located on the spur track of the Frisco Railroad.
Examiner Burchmore: As a matter of fact your lumber can move out over this spur track to the Frisco system without touching the rails of the Wilson Northern?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: And as a matter of fact it does move in that way?
Mr. Blackwell: The Wilson Northern handles the lumber.
Examiner Burchmore: Over that spur track?
Mr. Blackwell: Over that spur track.
Examiner Burchmore: You participate in joint through rates on inter-state shipments of lumber?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: Do you haul the lumber from the mill to the Frisco?
Mr Blackwell: Yes, sir.
Examiner Burchmore: What do you receive for that service?
Mr. Blackwell: Two and three cents.
Examiner Burchmore: What are the rates out of which
3065 you receive two and three cents are they the same as the Frisco rates?
Mr Blackwell: The same as at the junction point, yes, sir.
Examiner Burchmore: What is your rate to Memphis?
Mr. Blackwell: Six cents.
Examiner Burchmore: What is your division?
Mr Blackwell: Two cents.
Examiner Burchmore: You get two cents out of a six cent rate to Memphis?

Mr. Blackwell: Yes, sir.
Examiner Burchmore: You have a great deal of traffic going to Memphis, I presume?
Mr. Blackwell: Some traffic.
Examiner Burchmore: You also receive that same division and the same rate applies from the lumber that goes down from the Jonesboro, Lake City & Eastern?
Mr. Blackwell: We receive two and a half cents division on all lumber from Ross.
Examiner Burchmore: I thought you did not operate the line up to Ross?
Mr. Blackwell: Yes sir, I stated that first, that we did.
3066 Examiner Burchmore: It is operated as part of your railroad?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: You have stations on that line?
Mr. Blackwell: At Ross.
Examiner Burchmore: But the line is actually owned by this other company?
Mr. Blackwell: Yes, sir, they are under contract to build it for the Wilson Northern.
Examiner Burchmore: It is simply a matter of ownership, you are actually operating it?
Mr. Blackwell: We are actually operating it, yes, sir.
Examiner Burchmore: Does any of your lumber move northward to the Jonesboro, Lake City & Eastern?
Mr. Blackwell: No.
Examiner Burchmore: The whole movement is southward, of this lumber?
Mr. Blackwell: Yes, sir.
Examiner Burchmore: Do you get any allowance on the extension for your mill?
Mr. Blackwell: No.
Examiner Burchmore: But you do get logs on that extension which you handle up to Ross for this other company?
3067 Mr. Blackwell: We do not handle them?
Examiner Burchmore: Who does handle them?
Mr. Blackwell: They are not in operation yet.
Examiner Burchmore: When it was in operation you handled their logs?
Mr. Blackwell: The road was not in operation at that time.
Examiner Burchmore: Is that Ross mill going to be in operation?
Mr. Blackwell: I think so.
Examiner Burchmore: Then you will handle logs for it?
Mr. Blackwell: After they deliver them on the main line to us.
Examiner Burchmore: They have some spurs?
Mr. Blackwell: The understanding is they are going to construct their own spurs.
Examiner Burchmore: They are not constructing those spurs?
Mr. Blackwell: Not now, no sir.

Examiner Burchmore: Are there any private spur tracks connecting with your line?

Mr. Blackwell: No.

3068 Examiner Burchmore: The Lee Wilson Lumber Company does not have any spur tracks?

Mr. Blackwell: Not at the present time.

Examiner Burchmore: Your rails go right into the forests?

Mr. Blackwell: We have one spur about a mile and a half long.

Examiner Burchmore: On that spur all the logs originate?

Mr. Blackwell: No.

Examiner Burchmore: Where do the logs originate for your mill?

Mr. Blackwell: Some are hauled to the main line and some up to the spur track.

Examiner Burchmore: I mean all the logs there originate on your spur track or on the main line?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: What do you get for hauling the logs to the mill?

Mr. Blackwell: Two cents for a hundred pounds.

Examiner Burchmore: That is in addition to the outbound division?

Mr. Blackwell: Yes, sir.

3069 Examiner Burchmore: The Lumber company pays the railroad two cents per 100 pounds for taking the logs to its mill?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Then the Frisco pays you two cents as a proportion of the joint through rate out?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Who issues bills of lading on the lumber *lumber* that is pulled out?

Mr. Blackwell: The Wilson Northern Company.

Examiner Burchmore: You have an agent who issues them?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Does he issue waybills?

Mr. Blackwell: Through waybill, yes sir.

Examiner Burchmore: That is used by your conductor and handed over to the other railroad?

Mr. Blackwell: Handed over to the other railroad and inter-line settlements are made.

Mr. Cowan: What sort of lumber is it, pine?

Mr. Blackwell: No, we have no pine; it is all hard wood.

Examiner Burchmore: What is your rate?

Mr. Blackwell: Nine cents.

Examiner Burchmore: And you get three cents out of that?

Mr. Blackwell: We get two cents I think out of that.

3070 Examiner Burchmore: You are in the same position as this last gentleman who appeared, a nine cent rate received, and a three cent division?

Mr. Blackwell: Yes.

Examiner Burchmore: Would you feel injured if he was getting a three cent division and you only two cents?

Mr. Blackwell: tI would not make any difference to me; that is his business.

Examiner Burchmore: You would not care at all?

Mr. Blackwell: No.

Examiner Burchmore: Would you feel you were getting a little advantage over him if you were getting three cents and he only two?

Mr. Blackwell: It would depend upon the services rendered.

Examiner Burchmore: But it would not enter your mind that it would affect the lumber business at all?

Mr. Blackwell: No.

Examiner Burchmore: On the lumber you move out from the mill of the Lee Wilson Company over to the Frisco your movement is only a fraction of a mile, a few hundred feet?

Mr. Blackwell: About three thousand four hundred and eighty feet.

3071 Examiner Burchmore: And for that service of three thousand four hundred and eighty feet movement of the empty cars and the same movement of the loaded cars you get two and three cents per 100 pounds?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: And the Frisco gets seven cents to Thebes, which is a distance of how many miles?

Mr. Blackwell: I do not know the distance to Thebes.

Examiner Burchmore: One hundred miles?

Mr. Blackwell: I suppose that far, yes sir; and they get four cents to Memphis out of the division.

Examiner Burchmore: The Lee Wilson Company, as a matter of fact, have also another private logging road connecting the Jonesboro, Lake City & Eastern at Armorel, Arkansas?

Mr. Blackwell: The Lee Wilson Company have one, yes sir.

Examiner Burchmore: Have they a sawmill there?

Mr. Blackwell: Yes sir.

Examiner Burchmore: They do not get any allowances up there?

Mr. Blackwell: No.

Examiner Burchmore: Do they contemplate incorporating that road, do you know?

3072 Mr. Blackwell: No, it is simply a plant facility.

Examiner Burchmore: How does it differ from this railroad?

Mr. Blackwell: A great deal. It has no dump; it is simply a log road.

Examiner Burchmore: This railroad is a well built road?

Mr. Blackwell: Well-constructed road.

Examiner Burchmore: Standard gauge?

Mr. Blackwell: Standard gauge.

Examiner Burchmore: It has several locomotives?

Mr. Blackwell: Three.

Examiner Burchmore: A number of freight cars?

Mr. Blackwell: Yes sir.

Examiner Burchmore: Any besides logging cars?

Mr. Blackwell: I will give you a list of the equipment. Three engines, 36 log cars, 15 flat cars, two box cars and one caboose and 40 ballast cars which we just bought.

Examiner Burchmore: Those are used for what purpose?

Mr. Blackwell: To ballast the road. We have just bought them and they are not delivered yet.

Examiner Burchmore: It does not take 40 ballast cars——

Mr. Blackwell: It will take 40 to ballast this road to put
3073 it in proper shape.

Examiner Burchmore: What is the rail on this road?

Mr. Burchmore: 56 and 60 pounds.

Examiner Burchmore: Put in recently?

Mr. Blackwell: Yes sir.

Examine Burchmore: Did you buy it from the Frisco?

Mr. Blackwell: No.

Examiner Burchmore: The lumber company bought it for you?

Mr. Blackwell: They paid for them for us; we borrowed the money to pay for them, yes sir.

Examiner Burchmore: What is the total capital stock?

Mr. Blackwell: $100,000.

Examiner Burchmore: Is that fully set forth in this petition?

Mr. Blackwell: Yes.

Examiner Burchmore: And the bonded indebtedness is set forth?

Mr. Blackwell: None.

Examiner Burchmore: You have not any?

Mr. Blackwell: No.

Examiner Burchmore: Have you any unfunded debt?

Mr. Blackwell: What do you mean by that, liability?

3074 Examiner Burchmore: Have you any current obligations?

Mr. Blackwell: Obligations, yes sir.

Examiner Burchmore: What is the extent of that?

Mr. Blackwell: Well, we have one note of $7,187.80.

Examiner Burchmore: That is recently executed?

Mr. Blackwell: No, sir; it is several years old.

Examiner Burchmore: It was much larger, you have paid part of it off, is that the fact?

Mr. Blackwell: I do not remember as to that exactly.

Examiner Burchmore: What was that note executed for, for advances?

Mr. Blackwell: For rail.

Examiner Burchmore: You are familiar with the character of the traffic of your company?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: What is the total traffic for the last fiscal year, do you remember?

Mr. Blackwell: Yes, sir, I have it here; 85,633 tons.

Examiner Burchmore: That was a substantial increase over the previous year?

Mr. Blackwell: I believe it is; I don't remember.

Examiner Burchmore: How much of that was logs?

3075 Mr. Blackwell: 62,290 tons.

Examiner Burchmore: That was also an increase over the previous year?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: How much of that was lumber?

Mr. Blackwell: 19,490 tons.

Examiner Burchmore: That seems to be a proportionate increase, if these figures I have are correct, for the previous year. How much miscellaneous freight?

Mr. Blackwell: 4,253 tons.

Examiner Burchmore: How much of that traffic was supplied by the Lee Wilson Lumber Company?

Mr. Blackwell: 7,218 tons.

Examiner Burchmore: Out of how much?

Mr. Blackwell: 85,633 tons.

Examiner Burchmore: Just about between 85 and 90 per cent?

Mr. Blackwell: tI is about 84 per cent, 84 plus.

Examiner Burchmore: For the previous year it is stated 86.6 of your tonnage was furnished by the Lee Wilson Company. I do not know whether that is accurate, but it is on a report to the Commission.

Mr. Cowan: What is the other tonnage?

3076 Examiner Burchmore: What was the character of the other tonnage you referred to, miscellaneous tonnage?

Mr. Blackwell: It is merchandise.

Examiner Burchmore: And farm products?

Mr. Blackwell: Yes, sir, farm products, cotton.

Mr. Cowan: Lumber and stave bolts?

Examiner Burchmore: Stave bolts?

Mr. Blackwell: No, that is in logs. Stave bolts is in logs.

Examiner Burchmore: Does the lumber company own any commissaries along the line?

Mr. Blackwell: One at Marie and two public stores.

Examiner Burchmore: How much of this miscellaneous tonnage was intended for those stores?

Mr. Blackwell: I do not know.

Examiner Burchmore: Very much of it, about half to them, was it not?

Mr. Blackwell: I expect so, yes sir.

Examiner Burchmore: You will prepare and file with the Commission one of the tonnage statements I have asked for?

Mr. Blackwell: Yes sir.

Examiner Burchmore: If you will, a general statement

3077 will suffice for the record.

Mr. Cowan: Yes, classifying the tonnage, separating it between the lumber company and the other people's tonnage.

Examiner Burchmore: And also give the revenue if you will. I believe you will file a map, you stated?

Mr. Charles T. Coleman: Yes, we have it here now.

Mr. Blackwell: I want to show the tonnage.

Mr. Charles T. Coleman: Here is the tonnage from the end of the last fiscal year down to the present day.

Examiner Burchmore: Make your statement and state it in the record if you wish.

Mr. Blackwell: The total tonnage from June 30th to October 31st, 21047 tons; total lumber tonnage 11,849, total log tonnage 8,329, total merchandise tonnage 869.

Mr. C. T. Coleman: Give the proportion of that furnished by the allied interests.

Mr. Blackwell: The Lee Wilson Company total tonnage 10,566 tons.

Mr. C. T. Coleman: Outside tonnage?

Mr. Blackwell: 10,481 tons.

Examiner Burchmore: This map is a little bit larger than we want and does not show exactly what we want. All we want is just the section of the country through which your road
3078 runs with the terminals and the mills shown.

Mr. Blackwell: I have one at home I have had made since.

Examiner Burchmore: All we want is just this portion in here (indicating).

Mr. Blackwell: I have one drawn on a larger scale and which is a better map.

Examiner Burchmore: Yes, so if you will take this back and show the terminals and mills and all that, that will be sufficient.

Mr. Cowan: I understood you to say that the majority of the tonnage you just read off was for outside tonnage rather than for Lee Wilson & Company?

Mr. Blackwell: No, about 50 per cent for Lee Wilson & Company and 49 per cent outside.

Mr. Cowan: And that outside tonnage, what makes the change from the previous year, what is the occasion for the change?

Mr. Blackwell: It is on account of this new extension that we are operating.

Mr. Cowan: You are hauling what sort of stuff from that extension?

Mr. Blackwell: The Moore & McFerren lumber.

Mr. Cowan: For other people?

3079 Mr. Blackwell: For other people, yes sir.

Mr. Cowan: Lumber and logs for other people?

Mr. Blackwell: Yes sir.

Mr. Cowan: That accounts for it; I just wanted to know why it was.

Examiner Burchmore: Most of it is for this company up at Ross?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Is not that man directly related to your company?

Mr. Blackwell: Not as yet.

Examiner Burchmore: But he will come in?

Mr. Blackwell: I guess he will.

Examiner Burchmore: It looks to me as if this man at Ross was all in with the one family, and if we are wrong about it——

Mr. C. T. Coleman: This extension was built by Moore & McFerren under contract, by which they were to be paid a certain amount?

Mr. Blackwell: Yes.

Mr. C. T. Coleman: It has not yet been incorporated, but it is being operated by the Wilson Northern under a contract to cover the extension. There are no allied interests between him
3080 and the Lee Wilson Company whatever. They are competitors in that lumber business.

Examiner Burchmore: That mill is a competitor?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: You are not trying to buy them out?

Mr. Blackwell: No.

Examiner Burchmore: I mean that is not part of your contract?

Mr. Blackwell: No.

Examiner Burchmore: You are going to buy the railroad, that is all?

Mr. Blackwell: We are going to buy the railroad, but we have no interest in the lumber company whatever and they have not in ours.

Mr. C. T. Coleman: I will have you introduce a sketch of the terminals.

Examiner Burchmore: Perhaps if you will defer that and put that on your map it would be better.

Mr. Blackwell: I have a large map, two inches to each section, which I will send to them.

Mr. C. T. Coleman: The rails of the Wilson Northern do not reach the mills owned by the Lee Wilson Company at all.

Mr. Blackwell: No.

3081 Mr. C. T. Coleman: How far beyond the crossing do the rails of the Wilson Northern extend?

Mr. Blackwell: About 270 feet.

Mr. C. T. Coleman: What is the distance from there to the mill?

Mr. Blackwell: 3,480 feet.

Mr. C. T. Coleman: Who owns the track for that last distance?

Mr. Blackwell: The Frisco railroad.

Mr. C. T. Coleman: And the outbound movement from the mill is entirely over the Frisco track?

Mr. Blackwell: Entirely over the Frisco rails, yes, sir.

Mr. C. T. Coleman: Is there a contract between the Wilson Northern and the Frisco giving them trackage rights in and out from the mills?

Mr. Blackwell: Yes, sir.

Mr. T. C. Coleman: And that you have agreed to file before the Commission?

Mr. Blackwell: Yes, sir.

Mr. Cowan: This road being extended up to this other mill, how do you get your pay for operating that road for their lumber?

Mr. Blackwell: How is that?

3082 Mr. Cowan: The road has been extended and you are operating it?

Mr. Blackwell: Yes, sir.

Mr. Cowan: How do you get your pay for hauling that lumber?

Mr. Blackwell: A division from the Frisco.

Mr. Cowan: And they get the same rate that is charged from that Frisco station?

Mr. Blackwell: No, they do not get the same rate.

Mr. Cowan: Do they have to pay more?

Mr. Blackwell: They have to pay more, one half cent higher.

Mr. Cowan: And you get that too?

Mr. Blackwell: We get that, the Wilson Northern Railway.

Mr. Cowan: If they build a railroad up to their mill they can get within a half cent of what they could get if they were located on the Frisco railroad?

Mr. Blackwell: Yes, sir.

Mr. Cowan: And if you operate it you get whatever division you can from the Frisco?.

Mr. Blackwell: We get two and a half cents.

Mr. Cowan: Is that the only compensation that passes in the matter?

3083 Mr. Blackwell: Yes, sir.

Examiner Burchmore: You are a freight carrier only?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Your charter does not provide for carriage of passengers?

Mr. Blackwell: Yes, sir, it authorizes us to.

Mr. C. T. Coleman: The passenger service is being inaugurated now.

Mr. Blackwell: We will have to carry passengers a week from now and from then *now*.

Examiner Burchmore: It is understood the annual reports filed with the Commission may be referred to freely in case there is any brief or argument. I want to ask one question, that is about a year ago the Commission through its Examiners had an examination made of your road on the ground. Have conditions changed materially since that time?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Has there been any change in conditions other than the new extension?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Then that report would not be applicable to the present situation?

Mr. Blackwell: No, we have widened the dump and re-tied

3084 it from one end to the other and re-surfaced it and have now purchased 40 ballast cars to ballast it from one end to the other.

Mr. C. T. Coleman: You are familiar with the allegations in this printed complaint (handing paper)?

Mr. Blackwell: Yes, sir.

Mr. C. T. Coleman: This contains a very carefully prepared statement of the population and the conditions along the line and may be referred to. Are those allegations true?

Mr. Blackwell: Yes, sir.

Examiner Burchmore: Have you any further statement you wish to make?

Mr. Blackwell: No, only that we expect to—it has been all drawn out as to the land.

Examiner Burchmore: Yes, you expect to develop a traffic from the cultivated land?

Mr. Blackwell: Yes, sir.

(Witness excused.)

3085 *Manila & Southwestern.*

T. S. TAYLOR, sworn and examined.

Mr. Cowan: Would you mind calling the names of the others who you are going to call hereafter?

Examiner Burchmore: I was going to call the Moscow, Camden & San Augustine and the Caro Northern.

Mr. Cowan: I thought Mr. Walter said those have definitely been agreed to be postponed.

Examiner Burchmore: Everything else except those two. I will be ready to hear any others that are ready.

Examiner Gutheim: Where do you live?

Mr. Taylor: Lansford.

Examiner Gutheim: Your occupation is what?

Mr. Taylor: I am manager of the Manila Southwestern Railroad.

Examiner Gutheim: That runs from where?

Mr. Taylor: From Herman on the Frisco to Lansford.

Examiner Gutheim: It runs in a northerly direction or northeasterly direction generally from Herman?

Mr. Taylor: Yes, sir.

Examiner Gutheim: About how near do you get to the Jonesboro, Lake City & Eastern tracks?

3086 Mr. Taylor: About three and a half miles.

Examiner Gutheim: How long is your road?

Mr. Taylor: Five and a half miles.

Examiner Gutheim: That includes main line only?

Mr. Taylor: Main line and spurs.

Examiner Gutheim: The main line is about five miles long?

Mr. Taylor: Yes, sir.

Examiner Gutheim: It is all standard gauge?

Mr. Taylor: Yes, sir.

Examiner Gutheim: About how heavy a rail?

Mr. Taylor: The principal part of the track is 56 pounds and there is something like a quarter of a mile of 45 pound rail.

Examiner Gutheim: What industries have you on the line?

Mr. Taylor: Well, beginning at Herman we have now a cooperage mill.

Examiner Gutheim: And that is operated by whom?
Mr. Taylor: The Mill Shoals Cooperage Company of Mills Shoals.
Examiner Gutheim: Is the cooperage company interested in the railroad?
Mr. Taylor: No.
3087 Examiner Gutheim: How far are they from the Frisco?
Mr. Taylor: Something like 1,000 feet from the Frisco track.
Examiner Gutheim: Does the Frisco serve that mill with its own power?
Mr. Taylor: No.
Examiner Gutheim: Everything has to come over your track?
Mr. Taylor: Yes, sir.
Examiner Gutheim: What else is there on the line going north from Herman?
Mr. Taylor: Half a mile from Herman is a sawmill.
Examiner Gutheim: That is owned by whom?
Mr. Taylor: F. J. Bergman & Company.
Examiner Gutheim: Is that mill operated by Taylor Brothers.
Mr. Taylor: No.
Examiner Gutheim: Do Taylor Brothers operate a mill on that line?
Mr. Taylor: Yes.
Examiner Gutheim: Where?
Mr. Taylor: At Lansford.
Examiner Gutheim: That is the other terminus of the
3088 line?
Mr. Taylor: Yes.
Examiner Gutheim: That mill is operated at the present time?
Mr. Taylor: Yes.
Examiner Gutheim: To what extent are Taylor Brothers interested in the railroad?
Mr. Taylor: They own 49 and a fraction per cent of the stock.
Examiner Gutheim: As a matter of fact did not the so-called Taylor interests purchase the railroad and that mill property as a single proposition?
Mr. Taylor: No, sir.
Examiner Gutheim: Did the Taylor interests build this road?
Mr. Taylor: No, sir.
Examiner Gutheim: By whom was it built?
Mr. Taylor: By a firm or corporation formed by D. A. Smith & Sons and others.
Examiner Gutheim: Did that concern operate this mill you speak of at Lansford?
Mr. Taylor: The Smith concern?
Examiner Gutheim: The concern just mentioned?
3089 Mr. Taylor: No, sir.
Examiner Gutheim: How did the Taylor interests acquire the railroad?
Mr. Taylor: They advanced money to build the railroad and took

a mortgage on the property and at the time of the panic it went to the wall and the property was sold and we bought it in.

Examiner Gutheim: Was any money advanced on any property other than the railroad, as one transaction?

Mr. Taylor: Yes, I believe there was a mortgage on Mr. Smith's property at Manila, Arkansas?

Examiner Gutheim: Where is Manila?

Mr. Taylor: That is over in Mississippi County on the Jonesboro, Lake City & Eastern Railroad.

Examiner Gutheim: Not on this line?

Mr. Taylor: No.

Examiner Gutheim: The mill was acquired by the Taylor people as the result of a foreclosure of the mortgage?

Mr. Taylor: Yes, sir.

Examiner Gutheim: We are to understand that the Taylor interests by that foreclosure obtained absolutely no property except the railroad?

Mr. Taylor: That is all.

3090 Examiner Gutheim: Were the Taylor family interested in any traffic producing operations at or about Lansford prior to the time that mortgage was foreclosed and they took over the railroad?

Mr. Taylor: Yes, sir.

Examiner Gutheim: Were they shipping over the railroad?

Mr. Taylor: Yes sir.

Examiner Gutheim: Did they have any other outlet at all from their property in and about Lansford?

Mr. Taylor: No.

Examiner Gutheim: What is the situation at the present time, are the Taylors just holding the property until they can dispose of it a little more favorably or do they intend to hold on to it indefinitely?

Mr. Taylor: Well we have considered we would hold on to it.

Examiner Gutheim: But you are not operating the mill property at all?

Mr. Taylor: Now?

Examiner Gutheim: Now.

Mr. Taylor: Yes, sir.

Examiner Gutheim: The Taylor family?

Mr. Taylor: Yes, sir.

Examiner Gutheim: And the traffic of the mill is going

3091 out over this line?

Mr. Taylor: Yes, sir.

Examiner Gutheim: That is the stave mill you spoke of?

Mr. Taylor: No, that is a lumber mill at Lansford.

Examiner Gutheim: Do they also conduct something in the line of farming operations at Lansford besides the mill?

Mr. Taylor: Yes, sir.

Examiner Gutheim: And they were also interested in that respect prior to the acquisition of the railroad?

Mr. Taylor: Yes, sir.

Examiner Gutheim: As a matter of fact how much money was advanced by the Taylor family to the former owners of the railroad?

Mr. Taylor: The total amount of money advanced was about $18,000; but after the foreclosure there were other debts that had to be paid which amounted to something like $28,000.

Examiner Gutheim: And the property was taken over for the net amount of the indebtedness to the Taylor people?

Mr. Taylor: Yes, sir.

Examiner Gutheim: Who owns the balance of the stock of the railroad company at the present time?

Mr. Taylor: The four Taylor brothers own it all but a
3092 small per cent.

Examiner Gutheim: So it is all in the Taylor family?

Mr. Taylor: Yes sir, but only two of the Taylor brothers own any interest in the sawmill.

Examiner Gutheim: But the others of the Taylor family are all interested in this farming operation in and about Lansford?

Mr. Taylor: Yes, sir.

Examiner Gutheim: And taking it in that light, the owners of the road are supplying the traffic that is produced by this sawmill and by the farming operations we have mentioned of the Taylor family?

Mr. Taylor: I did not quite catch that question.

(Question read.)

Mr. Taylor: They are producing part of the traffic over the road.

Examiner Gutheim: I mean what they produce, and they do not produce anything else except the farming produce and the sawmill output?

Mr. Taylor: No, sure.

Examiner Gutheim: And what proportion of the total traffic is furnished by them from the standpoint of tonnage and revenue?

3093 Mr. Taylor: In 1909 it stood just 10 per cent.

Examiner Gutheim: How many communities are there on that road?

Mr. Taylor: Well, it is practically a woods.

Examiner Gutheim: And there is nothing to speak of between Herman and Lansford?

Mr. Taylor: No.

Examiner Gutheim: Where does the balance of 90 per cent of the traffic come from?

Mr. Taylor: From the Bergman mill and the result of the shipment of logs from the Wisarkana Lumber Company to their plant at Helkin, Arkansas, and to various other parties shipping to Jonesboro and Bay and Marked Tree.

Examiner Gutheim: All those logging operations are being conducted by parties who are not in any way connected with the Taylors?

Mr. Taylor: Not in the least.

Examiner Gutheim: Is the logging being done on lands owned by the Taylors?

Mr. Taylor: No.

Examiner Gutheim: But the milling, with the exception of the stave mill is all done outside of the line of this railroad?

——. ——.

3094 Examiner Gutheim: The manufacture of the lumber out of these logs, taken out as you have just described, is all outside the line of this railroad?

Mr. Taylor: Yes.

Examiner Gutheim: Are the officers of the railroad at the present time all members of the Taylor family?

Mr. Taylor: No, sir.

Examiner Gutheim: What is the difference?

Mr. Taylor: The superintendent and secretary is not in the family.

Examiner Gutheim: How much equipment have you?

Mr. Taylor: We have an engine and one flat car and a caboose.

Examiner Burchmore: Are the superintendent and the treasurer, are these two different men?

Mr. Taylor: Two different men.

Examiner Burchmore: Paid at all by the lumber company?

Mr. Taylor: No.

Examiner Gutheim: Do you do any passenger business?

Mr Taylor: Yes, sir.

Examiner Gutheim: Do you run trains on regular schedule?

Mr. Taylor: Yes, sir.

3095 Examiner Gutheim: Handle any mail or express?

Mr. Taylor: No.

Examiner Burchmore: Publish a timetable?

Mr. Taylor: Nothing more than typewritten matter stuck up in the office.

Examiner Burchmore: Do you have any through rates from points on your line with divisions accruing to this railroad?

Mr. Taylor: Yes, sir.

Examiner Burchmore: On what do these rates apply?

Mr. Taylor: Lumber; and it did apply on logs.

Examiner Burchmore: Anything on farming products?

Mr. Taylor: Yes, sir; merchandise.

Examiner Burchmore: On any farm products other than cotton and cottonseed?

Mr. Taylor: Nothing more than a joint local rate.

Examiner Burchmore: How much of a division do you get out of the lumber rates?

Mr. Taylor: Two cents.

Examiner Burchmore: And the same on stave rates?

Mr. Taylor: One cent on logs, staves or stave bolts.

Examiner Burchmore: What division do you get on cotton and merchandise?

3096 Mr. Taylor: Fifteen cents on cotton.

Examiner Burchmore: That is fifteen cents a bale?

Mr. Taylor: Fifteen cents per hundred.
Examiner Burchmore: How much on the cotton seed?
Mr. Taylor: Three cents.
Examiner Burchmore: What do you get on classes and commodities generally?
Mr. Taylor: Eight, ten, twelve and fifteen.
Examiner Burchmore: Do you publish any local tariffs?
Mr. Taylor: Yes, sir.
Examiner Burchmore: File them with the Interstate Commerce Commission?
Mr. Taylor: Yes, sir.
Examiner Burchmore: Are you keeping separate books for your railroad accounts?
Mr. Taylor: Yes, sir.
Examiner Burchmore: How long had that been done?
Mr. Taylor: Two years—1908, 1909 and 1910, three years.
Examiner Burchmore: Is the railroad's operation profitable at the present time?
Mr. Taylor: Yes, sir.
Examiner Burchmore: Have you paid any dividends?
Mr. Taylor: No.
3097 Examiner Burchmore: Are you paying any general office salaries?
Mr. Taylor: No, sir.
Examiner Burchmore: You pay the superintendent and secretary?
Mr. Taylor: No, sir; I did not say so.
Examiner Burchmore: Do they serve without compensation?
Mr. Taylor: Yes, sir.
Examiner Burchmore: Who does pay them?
Mr. Taylor: They have but very little service to perform. He is just a figurehead.
Examiner Burchmore: How does he earn his livelihood?
Examiner Gutheim: Are they related to the Taylor family?
Mr. Taylor: Yes, sir.
Examiner Burchmore: I thought you said they were not members of the Taylor family?
Mr. Taylor: The superintendent is not. The superintendent is paid part of his salary by the railroad company.
Examiner Burchmore: And part by the lumber company?
Mr. Taylor: Yes, sir.
Examiner Burchmore: How much does he get from the railroad company?
Mr. Taylor: $20 a month.
3098 Examiner Burchmore: How about the other gentleman, the secretary?
Mr. Taylor: He does not get anything.
Examiner Gutheim: Have you made any annual or monthly reports to the Commission?
Mr. Taylor: Yes, sir.
Examiner Gutheim: When was the first annual report?

Mr. Taylor: I cannot remember. I believe it was the first in 1909.

Examiner Gutheim: Can you tell us or furnish a statement showing the division of tonnage and revenue accurately and also furnish a map to show the general geographical location of the line and arrange to send it to the Commission?

Mr. Taylor: I can.

Examiner Gutheim: Will you do so?

Mr. Taylor: Yes, sir.

Examiner Burchmore: You have heard these requests for statements as to tonnage?

Mr. Taylor: Yes, sir.

Examiner Burchmore: You understand the nature of those statements?

Mr. Taylor: Yes, sir; I have one for 1909.

Examiner Burchmore: What does it show?

3099 Mr. Taylor: It shows the total amount to be one hundred million pounds.

Examiner Burchmore: How much was furnished by the lumber company?

Mr. Taylor: Ten per cent.

Examiner Burchmore: Only ten per cent?

Mr. Taylor: Only 10 per cent from the fact that this was made up from the shipment of logs from a company that received 100 cars a month, which would amount to forty eight million pounds out of a minimum weight of 40,000 pounds per car.

Examiner Burchmore: I do not understand; you say this lumber company only furnishes 10 per cent of the total tonnage of the road.

Mr. Taylor: For 1909, because we were idle.

Examiner Burchmore: How about 1910?

Mr. Taylor: Well, it is more.

Examiner Burchmore: Will you give us the figures for 1910?

Mr. Taylor: Sure.

Examiner Burchmore: Was the mill in operation for the whole of 1910?

Mr. Taylor: Yes, sir.

Examiner Burchmore: I mean the year beginning July 1,

3100 1909 and ending June 30th, 1910.

Mr. Taylor: Was it——

Examiner Burchmore: Was the mill in operation for that entire period?

Mr. Taylor: The mill closed down in 1907 and began operations again in March, 1909.

Examiner Burchmore: Full blast?

Mr. Taylor: Full blast.

Examiner Burchmore: And at work since up to this time?

Mr. Taylor: Yes, sir.

Examiner Burchmore: Will you please give us a tonnage statement for 1910 up to June 30th, 1910?

Mr. Taylor: Yes sir.

Examiner Gutheim: In that statement you will also include the farm products shipped by the Taylor interests?

Mr. Taylor: Yes sir.

Examiner Gutheim: Is your counsel present?

Mr. C. T. Coleman: Gautney was his counsel and had to leave.

Examiner Gutheim: Where are these logs pulled for other people on this road manufactured?

Mr. Taylor: Jonesboro, Nettleton, Bay and Marked Tree.

Mr. C. T. Coleman: Do you move cars supplied by other railroads?

3101 Mr. Taylor: Yes sir.

Mr. C. T. Coleman: Did the Frisco cancel out your rates?

Mr. Taylor: Yes sir.

Mr. C. T. Coleman: Have they been restored under the suspension order?

Mr. Taylor: The lumber rate has been.

Mr. C. T. Coleman: No other divisions have been restored?

Mr. Taylor: No, sir.

Mr. C. T. Coleman: Are you getting any divisions on anything else now?

Mr. Taylor: No, we just put in a local.

Examiner Burchmore: Any other statement you desire to make?

Mr. Taylor: No.

Mr. C. T. Coleman: I will state to the examiner that Mr. Gautney was compelled to go away and he asked me to call your attention to the fact that in his complaint he simply prays for a restoration of through rates and joint rates on these other commodities than lumber. He wants that brought to the attention of the Commission for immediate action.

Examiner Burchmore: How about lumber, he wants them on lumber?

Mr. C. T. Coleman: The division still obtains on lumber,

3102 but he wants the whole matter restored.

Examiner Burchmore: The class rates went out?

Mr. C. T. Coleman: Yes.

Examiner Burchmore: I thought the Commission suspended all those rates.

Mr. C. T. Coleman: It did, but as a matter of fact that suspension order was not obeyed by the Frisco.

Examiner Burchmore: Are you sure on that?

Mr. Taylor: I am quite sure.

Examiner Burchmore: You ought to write to the Commission and tell them that they do not obey the order.

Mr. Taylor: I did not understand we were entitled to it or that they had suspended it.

Examiner Burchmore: I will look into it, but you might write a letter.

Mr. Taylor: I find that we are entitled to commodity rates and classes.

Mr. C. T. Coleman: In that same connection I wish to say the

same is true as to the Wilson Northern. They did not obey the suspension orders.

Examiner Burchmore: I suggest you look into that and see what the situation is.

(Witness excused.)

3103 *Moscow, Camden & San Augustine Railroad.*

W. T. CARTER, called and sworn.

Examiner Burchmore: You are an officer and stockholder in the Moscow, Camden & San Augustine Railway?

Mr. Carter: Yes, sir.

Examiner Burchmore: You are also one of the copartnership of W. T. Carter & Brother?

Mr. Carter: Yes, sir.

Examiner Burchmore: Who are the other members in that copartnership?

Mr. Carter: E. A. Carter and Jack Thomas.

Examiner Burchmore: I understand this copartnership owns substantially the entire capital stock of the Moscow, Camden & San Augustine Railway Company?

Mr. Carter: It owns all but about 50 or 60 shares, 55 or 60 shares.

Examiner Burchmore: What is the total number of shares?

Mr Carter: Let me get that exact. The capital stock authorized is $250,000; the capital stock issued is $50,000. Now of that W. T. Carter, E. A. Carter and Jack Thomas—there are ten stock-
3104 holders, you can count this as well as I can—there are ten stockholders; three of them, W. T. Carter, E. A. Carter and Jack Thomas, then there is one stockholder holds nine shares, another holds one, just qualifying shares, so practically W.T. Carter and Brother hold the stock.

Examiner Burchmore: Are the remaining shares owned by relatives?

Mr. Carter: No sir, except C. L. Carter. C. L. Carter is a brother.

Examiner Burchmore: Then those other shares are held by directors?

Mr. Carter: Yes.

Examiner Burchmore: This copartnership practically controls the corporation.

Mr. Carter: Practically owns and controls the corporation?

Examiner Burchmore: And the officers are substantially the same?

Mr. Carter: The officers are substantially the same.

Examiner Burchmore: Perhaps there are no officers of the copartnership?

Mr. Carter: No.

Examiner Burchmore: But I mean the officers of the railroad are in the copartnership?

3105 Mr. Carter: Yes, sir.

Examiner Burchmore: You connect with the Houston, East & West Texas, at Moscow, Texas, as I understand it?

Mr. Carter: Yes, sir.

Examiner Burchmore: From that point you run in a generally easterly direction?

Mr. Carter: Yes, sir.

Examiner Burchmore: For a distance of about eight or nine miles?

Mr. Carter: About seven miles we call it.

Examiner Burchmore: Then you have side tracks connecting?

Mr. Carter: Yes, sir.

Examiner Burchmore: Then the other end of your line is Camden?

Mr. Carter: Yes, sir.

Examiner Burchmore: Where is San Augustine?

Mr. Carter: San Augustine is about fifty miles east from there.

Examiner Burchmore: You are contemplating an extension to that point?

Mr. Carter: Not now. We started in good faith expecting to extend to that point, but before we got ready to do it the whole
3106 country over there was cut up with railroads and we don't think we can go over there now.

Examiner Burchmore: From Camden there are some private tram lines extending into the woods owned by the co-partnership?

Mr. Carter: Yes, sir.

Examiner Burchmore: What is the extent of those private tram lines?

Mr. Carter: Right now about 12 miles running south.

Examiner Burchmore: That is altogether?

Mr. Carter: Twelve miles in main line not including sidings; that is logging road.

Examiner Burchmore: What is the extent of your timber holding or stumpage rights down in that vicinity?

Mr. Carter: We own about 140,000 acres of land in there. A good deal of it has been cut over. That is beginning at a point 15 miles north of Camden and extending 25 miles south of Camden and 20 miles east of Camden, that is the area our timber is located in. We do not own all of it, but that's the area; our timber is located. We do not own all of it, but that is the area.

3107 Examiner Burchmore: What proportion of that area do you own?

Mr. Carter: I think about one-third.

Examiner Burchmore: Then some of your timber is north of the M. K. & T.?

Mr. Carter: Yes, sir.

Examiner Burchmore: Some of it comes pretty close to the private tram lines of the B., K. & S. What is that?

Mr. Mantooth: The Livingston & Southeastern, that is.

Examiner Burchmore: Do you run as far down as that?

Mr Carter: Yes, sir; our lands do.

Examiner Burchmore: Are the Knox people cutting any of your lands?

Mr. Carter: No.

Examiner Burchmore: Is any of your land being cut over by other people?

Mr. Carter: No.

Examiner Burchmore: You are milling in along the ten or fifteen miles east or southeast of Camden?

Mr. Carter: We are milling now nearly southeast of Camden.

Examiner Burchmore: What proportion of your total holdings has been cut over?

3108 Mr. Carter: I should suppose about 50,000 acres.

Examiner Burchmore: Leaving how much?

Mr. Carter: Leaving perhaps 90,000 that has not been cut.

Examiner Burchmore: At the present rate how long will it take you to cut it out?

Mr. Carter: We are just building a new mill; our mill was destroyed by fire last summer. With the old plant we expected to take 25 years. The new plant we do not know just now, perhaps 20 years.

Examiner Burchmore: You are not cutting at present?

Mr. Carter: No.

Examiner Burchmore: What is your total amount of lumber there in feet?

Mr. Carter: We figured we had about 600,000,000 feet of lumber.

Examiner Burchmore: Then I suppose you are cutting about 25,000,000 feet a year?

Mr. Carter: With the old mill we were cutting about 20,000,000 feet, and we expect to cut 25,000,000 feet or 30,000,000 feet with the new.

Examiner Burchmore: Where was the mill located?

Mr. Carter: At Camden.

3109 Examiner Burchmore: Then the logs did not move over the railroad?

Mr. Carter: No.

Examiner Burchmore: Just the lumber?

Mr. Carter: Just the lumber.

Examiner Burchmore: Where is the new mill?

Mr. Carter: At the same place.

Examiner Burchmore: When was the old mill first put in operation?

Mr. Carter: The old mill began to operate early in 1898.

Examiner Burchmore: When was this railroad first begun?

Mr. Carter: The railroad was chartered in June, 1898, and built during that year.

Examiner Burchmore: So the mill and the road were built about the same time?

Mr. Carter: The mill was in operation before the road was finished. The construction perhaps was going on at the same time.

Examiner Burchmore: You say the road was chartered at that time?

Mr. Carter: Yes, sir.

Examiner Burchmore: As a common carrier?

3110 Mr. Carter: Yes, sir; chartered as a common carrier under the laws and built as a common carrier, and always has been operated as one.

Examiner Burchmore: What is the Texas State Commission's attitude towards your railroad?

Mr. Carter: They have always recognized it from the first time we ever applied for recognition.

Examiner Burchmore: Is not that a little unusual with a new road——

Mr. Carter: That was not very new; that was 12 years ago.

Examiner Burchmore: Did they recognize you 12 years ago?

Mr. Carter: Yes, sir.

Examiner Burchmore: Was their policy the same as it is in more recent years?

Mr. Carter: I do not think so. It has been changed. When our road was ready, we applied to the Railroad Commission for rates, and they made an order establishing the rates from Camden to all points in Texas the same as the rate from Moscow. It was one of the first orders ever made, covering our road, by the Commission of Texas.

Examiner Burchmore: And later on they reversed that?

3111 Mr. Carter: They have never attacked the Moscow, Camden & San Augustine Road.

Examiner Burchmore: I was under the impression from our records that for a time your railroad was not recognized by the State Commission.

Mr. Carter: No, and it was not attacked when they brought the roads up in the State of Texas and cancelled their divisions. The Moscow, Camden & San Augustine was never summoned before them even. The Railroad Commission has always recognized that as a legitimate enterprise and as a common carrier.

Examiner Burchmore: In the event that our record with respect to your road shows otherwise——

Mr. Carter: Well, if it does it will not be right.

Mr. Mantooth: Your records will not show that. At that time they did not make a physical inspection of the roads, and just took if for granted that the road was a common carrier.

Examiner Burchmore: I only speak of that—I have a memorandum that seems to indicate it. I have no doubt you are right.

Mr. Carter: I know I am right, because divisions have never been cancelled, and we have never been before the Commis-

3112 sion except a year or two ago.

Examiner Burchmore: This road was constructed from Camden to Moscow in the beginning?

Mr. Carter: Yes, sir.

Examiner Burchmore: No extension since?

Mr. Carter: No.

Examiner Burchmore: You said the total stock authorized was $250,000?

Mr. Carter: Yes, sir.

Examiner Burchmore: Only $50,000 issued?

Mr. Carter: Yes, sir.

Examiner Burchmore: That, I presume, is explained by the fact that you only built a small fraction of the distance originally contemplated?

Mr. Carter: Yes, sir.

Examiner Burchmore: Did you issue any bonds?

Mr. Carter: No.

Examiner Burchmore: Any indebtedness except current indebtedness?

Mr. Carter: Just a little current indebtedness. Here is a statement as to that.

Examiner Burchmore: I mean nothing that is a standing
3113 obligation.

Mr. Carter: No, nothing that is a standing obligation.

Examiner Burchmore: Do you have any trackage rights over the Houston, East & West Texas?

Mr. Carter: We have no contract; we go over there and switch over their sidings there, putting cars in and taking them out.

Examiner Burchmore: Just the small amount of switching necessary to place cars?

Mr. Carter: Yes, sir.

Examiner Burchmore: Any station buildings?

Mr. Carter: No.

Examiner Burchmore: Do you carry passengers?

Mr. Carter: Yes.

Examiner Burchmore: But there is no waiting room for those passengers on your line?

Mr. Carter: The store houses are right on the line, and they just stay in the store houses.

Examiner Burchmore: Those are warehouses you use for freight?

Mr. Carter: The company store is right on the tracks.

Examiner Burchmore: The lumber company has a
3114 commissary?

Mr. Carter: Yes, sir.

Examiner Burchmore: Have they any commissary except at Camden?

Mr. Carter: No.

Examiner Burchmore: Has the railroad any station agents?

Mr. Carter: Yes, sir.

Examiner Burchmore: At Camden?

Mr. Carter: Yes, sir.

Examiner Burchmore: Elsewhere?

Mr. Carter: The station agent at Moscow is practically a joint agent; we pay him a little salary with the understanding with the Houston, East & West Texas that he performs services for both roads.

Examiner Burchmore: I notice that the Moscow, Camden & San Augustine connects with the Houston, East & West Texas not so very far—maybe 20 miles or so—from the connection with the Beaumont & Great Northern.

Mr. Carter: Yes, sir.

Examiner Burchmore: You are familiar with that railroad?

Mr. Carter: I have been over it a time or two; I am not very familiar with it.

Examiner Burchmore: I am somewhat informed with
3115 respect to that road. How does the construction of your railroad compare with the Beaumont & Great Northern?

Mr. Carter: I think the grades are not so good, and I think the rail is not so heavy.

Examiner Burchmore: On your road?

Mr. Carter: On our road.

Examiner Burchmore: Your road is not quite as heavy construction?

Mr. Carter: No.

Examiner Burchmore: What is your rail?

Mr. Carter: 35 pound.

Examiner Burchmore: Have you substantial bridges?

Mr. Carter: Yes, sir.

Examiner Burchmore: Well built road?

Mr. Carter: Well, yes; we carry cars of 100,000 capacity right along.

Examiner Burchmore: How fast do you run when you have that sized cars?

Mr. Carter: We do not bother about the speed; I suppose they run 20 miles an hour.

Examiner Burchmore: You are not especially cautious, but just go ahead?

3116 Mr. Carter: No, we go ahead with them.

Examiner Burchmore: Any bridges over streams?

Mr. Carter: Yes, sir.

Examiner Burchmore: Steel bridges?

Mr. Carter: No.

Examiner Burchmore: I suppose you file annual reports with the Interstate Commerce Commission?

Mr. Carter: Yes, sir.

Examiner Burchmore: As a matter of fact the characteristics of the road as to bridges, and so forth, I think, are set forth in the annual reports?

Mr. Cowan: All that is in the reports.

Examiner Burchmore: And unless you indicate your desire to go into that phase, I will just touch a little on the details.

Mr. Cowan: Oh, no.

Examiner Burchmore: You have more than one locomotive?

Mr. Carter: We have but one locomotive on that road. We have an order out for another one.

Examiner Burchmore: You have one passenger coach?

Mr. Carter: We have one passenger coach.

Examiner Burchmore: How many freight cars?

Mr. Carter: We have 16 freight cars.

3117 Examiner Burchmore: Are those all regular freight cars?

Mr. Carter: All standard freight cars. We paid $600 apiece.

Examiner Burchmore: Are they all on your own line?

Mr. Carter: Scattered all over the United States.

Examiner Burchmore: Out on general railway service?
Mr. Carter: Yes, sir.
Examiner Burchmore: Have you any confined to your own line?
Mr. Carter: No, sir.
Examiner Burchmore: I presume the W. T. Carter Lumber Company has locomotives of its own for use on its private track?
Mr. Carter: Yes, sir.
Examiner Burchmore: Also has logging cars?
Mr. Carter: Yes, sir.
Examiner Burchmore: It is not necessary to discuss it, because that road is not before us.
Mr. Carter: No connection.
Examiner Burchmore: Do you move logs into the mill as a private matter?
Mr. Carter: Yes, sir.
Examiner Burchmore: You do not consider that as of pub-
3118 lic interest?
Mr. Carter: No.
Examiner Burchmore: Have you ever contemplated taking that private road over as part of the system?
Mr. Carter: We hope that by the time we get through manufacturing lumber we may be able to develop that road south as a common carrier.
Examiner Burchmore: Is that main line of the tram road of a temporary character?
Mr. Carter: It is a pretty good road.
Examiner Burchmore: About as good as the Moscow, Camden & San Augustine?
Mr. Carter: No, it is not as good as the Moscow, Camden & San Augustine.
Examiner Burchmore: It has been moved a little from time to time?
Mr. Carter: We moved it; yes, sir.
Examiner Burchmore: Do you expect to move it in the future?
Mr. Carter: It is possible we will change the main line in the future. We do not know.
Examiner Burchmore: Have you any platforms and scales and things of that kind along your line for handling freight?
3119 Mr. Carter: We have no car scales.
Examiner Burchmore: Any platforms for loading cars?
Mr. Carter: We have a platform for loading cotton at Camden.
Examiner Burchmore: I suppose there are gins there?
Mr. Carter: Gins out in the country, and brought in there; there is no gin at Camden.
Examiner Burchmore: You have road crews that work on the road?
Mr. Carter: Yes, sir.
Examiner Burchmore: And those men do not work for the lumber company?
Mr. Carter: Those men do not work for the lumber company at all.
Examiner Burchmore: You have a station agent at Camden?

Mr. Carter: Yes, sir.

Examiner Burchmore: You have a station agent at Moscow?

Mr. Carter: The agent at Moscow is a joint agent who does the work for both companies, and we pay him a small remuneration.

Examiner Burchmore: You have one train crew?

Mr. Carter: We have one train crew.

3120 Examiner Burchmore: How many employees have you in the general office of the railroad?

Mr. Carter: We have this agent and auditor and secretary, I reckon you might call him.

Examiner Burchmore: Those men also work for the co-partnership?

Mr. Carter: Yes, sir.

Examiner Burchmore: Do you pay them anything for the railroad?

Mr. Carter: They are paid by both companies; they are paid by the railroad company and by the partnership, and we pay them in proportion to what service we think they render.

Examiner Burchmore: Their salaries are described in a general way in the reports to the Commission?

Mr. Carter: Yes, sir.

Examiner Burchmore: How many trains a day do you run?

Mr. Carter: One each way.

Examiner Burchmore: Do you have a time table for the public?

Mr. Carter: Yes, sir.

Examiner Burchmore: Do you distribute a printed form?

Mr. Carter: I don't really know whether we distribute a

3121 published time table or not.

Examiner Burchmore: You get one out anyhow?

Mr. Carter: We have a schedule which has been in force for many years.

Examiner Burchmore: I suppose you connect with the Houston, East & West Texas trains?

Mr. Carter: We connect with the northbound train; we do not connect with the southbound.

Examiner Burchmore: Do they have to wait over night to make the connection?

Mr. Carter: If a man comes south in the evening at three o'clock he would have to wait until next morning.

Examiner Burchmore: Is that a passenger or a mixed train?

Mr. Carter: Mixed train.

Examiner Burchmore: That is the only train you run?

Mr. Carter: That is the only train we run.

Examiner Burchmore: I believe once in a while you have an extra.

Mr. Carter: Yes, sir.

Examiner Burchmore: How many freight cars are there on that train in the usual run?

Mr. Carter: Usually about five when we have a load; that

3122 is about what we carry.

Examiner Burchmore: You have joint rates on lumber in connection with the Houston, East & West Texas?

Mr. Carter: Yes, sir.

Examiner Burchmore: Are those rates the same from Camden as from Moscow?

Mr. Carter: Yes, sir.

Examiner Burchmore: That is true generally?

Mr. Carter: Yes, sir.

Examiner Burchmore: With respect to all rates?

Mr. Carter: With regard to lumber.

Examiner Burchmore: I was referring to lumber.

Mr. Carter: Yes.

Examiner Burchmore: What is your division out on these rates?

Mr. Carter: We have division sheets here; that is all I know about it.

Examiner Burchmore: It is four cents, is it not?

Mr. Carter: No, sir—you mean to interstate points?

Examiner Burchmore: To interstate points.

Mr. Mantooth: That is the maximum rate, I suppose?

Mr. Carter: Our division sheet is practically this; we get
3123 20 per cent of the amount accruing to all lines south of Fort Worth and Dallas and the Houston, East & West Texas and its connections have a minimum of eight cents. Now, I do not know what that figures; in some cases I think we get four cents, and it runs down to one.

Examiner Burchmore: I have got this division sheet. This may be obsolete, but it provides that on lumber destined to interstate points via Lufkin, Cleburne and Houston, the Houston, East & West Texas will be allowed four cents per 100 pounds; the excess over four cents received by the Houston, East & West Texas on shipments from Moscow proper to accrue to the Moscow, Camden & San Augustine Railroad, unless otherwise provided for in current division sheet.

Mr. Carter: Well, at one time that was the arrangement, but that is not so now.

Examiner Burchmore: When was your present sheet issued?

Mr. Carter: This is the last one (indicating).

Examiner Burchmore: This is Sunset Central Route, division sheet 480-A, issued December 1, 1909. On lumber to stations on the Sunset Central you are allowed under that division sheet apparently from two and one-half cents to five cents, and the details are set forth here.

3124 Mr. Carter: Yes, sir.

Examiner Burchmore: To points on other lines in Texas you get 20 per cent of the Sunset Central's proportion?

Mr. Carter: Yes.

Examiner Burchmore: And to interstate points you get 20 per cent of their proportion, receiving for them eight cents to Fort Worth and Dallas?

Mr. Carter: Yes, sir.

Examiner Burchmore: You also have joint class rates to various points?

Mr. Carter: Yes, sir.

Examiner Burchmore: Do the Texas common point rates apply to stations on your line?

Mr. Carter: Yes, sir.

Examiner Burchmore: It seems out of all rates on grain you get two and a half cents, and on class freight from two cents on class E to as high as 12½ cents on 1st class freight. Do you happen to remember what your local class rates are?

Mr. Carter: Our local class rates would be made, I suppose, by the Texas Commission.

Examiner Burchmore: The regular class applies?

Mr. Cowan: That is in the annual report of the Texas
3125 Commission.

Examiner Burchmore: It is a fact that these class divisions are a little less than the locals?

Mr. Mantooth: Yes.

Examiner Burchmore: That is sufficient. How about your lumber rate? That is published by the Texas Commission?

Mr. Mantooth: Yes.

Mr. Carter: Do you want one of these statements?

Examiner Burchmore: Is there any objection to filing this statement of record?

Mr. Mantooth: You have copies.

Examiner Burchmore: If there is no objection, we will take them both.

Mr. Mantooth: I have no copy here, but that is all right.

(The paper so offered and identified was received in evidence and thereupon marked Moscow, Camden & San Augustine Railway Exhibit No. 1, witness Carter, received in evidence December 17, 1910, and is attached hereto.)

Examiner Burchmore: Your agent at Camden issues bills of lading to interstate points on lumber?

Mr. Carter: Yes, sir.

Examiner Burchmore: Does he also issue a way bill?

3126 Mr. Carter: I do not know much about the details. I suppose so.

Mr. Lehman: Yes, sir.

Examiner Burchmore: Then you move the lumber from the mill at Camden down to the junction point, just as any other railroad would move it, if there was another railroad there?

Mr. Carter: Yes, sir.

Examiner Burchmore: Have you ever contemplated building across and connecting with the M., K. & T.?

Mr. Carter: Yes, sir.

Examiner Burchmore: Is that an active plan?

Mr. Carter: Yes, sir.

Examiner Burchmore: Have you made surveys?

Mr. Carter: No. Well, we made a survey about half the way.

Examiner Burchmore: Is there any special object in view in getting across there?

Mr. Carter: Well, yes, sir. In the year 1907 we got caught with

an immense stock of lumber because of the want of service, and that lumber depreciated $5.00 or $6.00 or $7.00 a thousand, and our idea is if we ever have trouble for service again we will build across there to get service and perhaps get a better division to some point than we get now.

3127 Examiner Burchmore: Then it was primarily a matter of car supply and facilities, and also a matter perhaps of better divisions, and therefore more profitable operation?

Mr. Carter: Yes, sir.

Mr. Cowan: If the Examiner will permit at this point, I would like to call attention to the fact that the gentlemen of the Groveton, Lufkin & Northern built from the M., K. & T., because it was a bad service, over to the Houston, East & West Texas.

Examiner Burchmore: I think that counsel would assert, no matter what you connect with, if you can also join with another road, you get better service?

Mr. Garwood: By connecting with the M., K. & T. he gets right in connection with the International & Great Northern just beyond that.

Mr. Carter: We expect to connect with the M., K. & T. unless we get good service, and whenever you decide what kind of a railroad we are.

Examiner Burchmore: I presume naturally this question affects the future plans. What sort of a town is Camden?

Mr. Carter: It is a saw mill town.

Examiner Burchmore: It is nothing more than a sort of
3128 lumber and mill camp, is it?

Mr. Carter: The town of Camden itself is nothing more than a lumber and mill camp? Well, it is pretty prominent, all right. But some time ago I had our old county surveyor, for the purpose of information for this Commission, go around that community and figure up the number of people that were within reach within six or seven miles of Camden, principally south, that were served by that railroad, who had no connection whatever with the saw mill; and he figured there were 1,500 people. Now, I had that map and brought it here to this hearing, and I left here last Saturday to go home and left it in my room and it disappeared, and I have not been able to find it. I can have that map reproduced.

Examiner Burchmore: Was it a large map?

Mr. Carter: A good large map; yes, sir.

Examiner Burchmore: We desire a map of this line, and if you can give us a map of that line, it does not need to be a beautifully engraved map, but we want it to show the saw mill and the connections of the road with the private tram line, and if you can sketch in the woods, you may.

Mr. Carter: If you will give us time, I will be glad to furnish you a map of the whole country, showing the inaccessibility of
3129 the land south of us to railroad facilities. If you take the Commission map of Texas——

Examiner Burchmore: Well, we have maps of that region which

show those facts, but we want to know the location of your mill and the location of the tracks of the tram road with relation to your road.

Mr. Carter: We will try to do that.

Examiner Burchmore: If you will try to make that map small, say no larger than this one here, we will appreciate it.

Mr. Carter: Yes, sir.

Mr. Cowan: That is not a map of the land, but of the railroad and its connections.

Mr. Carter: But what I would like to show would be the future possibilities of that land to the south.

Examiner Burchmore: Yes, but do not take in all of east Texas.

Mr. Carter: Well, I would like to take in two counties there. The distance from the Houston, East & West Texas, running from Houston to Shreveport, and of the Texas & New Orleans from Beaumont to Dallas is about 35 or 40 miles, and those streams in that country run south. It is nearly impossible for those people ten or fif-
3130 teen miles from either of those railroads to get to those railroads with their goods.

Examiner Burchmore: I had an idea the Livingston & Southeastern came from that direction.

Mr. Carter: I expect that is a defunct corporation or very nearly so.

Examiner Burchmore: It is?

Mr. Carter: Yes, sir.

Examiner Burchmore: Well, they have not appeared here, at least, although cited.

Mr. Carter: Well, they have exhausted that timber.

Examiner Burchmore: There was formerly a small mill or a comparatively small mill at least, located about ten miles from Camden, which shipped over your line. Is that still here?

Mr. Carter: That mill has exhausted its timber and been abandoned.

Examiner Burchmore: Have they any other mills on your line?

Mr. Carter: No. There is a shingle mill out on the line which ships some shingles occasionally.

Examiner Burchmore: How much do they ship?

Mr. Carter: Not very much. I suppose three or four car-
3131 loads a year, perhaps.

Examiner Burchmore: What is the total extent of your tonnage per year?

Mr. Carter: I will refer to the statement.

Examiner Burchmore: It is in the statement?

Mr. Carter: Yes, sir.

Examiner Burchmore: Well, we would like the record to show it. This statement shows the total lumber tonnage of 24,405 tons, with a revenue of $10,708.95; logs, 2,380 tons, revenue, $358. What about those logs?

Mr. Carter: Well, we hauled a little piece of timber out on the road over the railroad into the mill.

Examiner Burchmore: You are not making any such haul this year?

Mr. Carter: No.

Examiner Burchmore: The total tonnage of other freight, 1,305 tons; revenue, $2,322.94, making a total tonnage of 28,090 tons. What percentage of that total tonnage was moved for the W. T. Carter & Brother interest?

Mr. Carter: The tonnage, I think, for W. T. Carter & Brother, in tons, is about 95 per cent.

Examiner Burchmore: Did you include in that 95 per cent
3132 the merchandise which goes to the commissary?

Mr. Carter: Yes, sir; that is my understanding.

Examiner Burchmore: I think that is all.

Mr. Carter: The revenue, however, is about 16 per cent.

Examiner Burchmore: Sixteen per cent from the public?

Mr. Carter: Yes, sir.

Mr. Mantooth: You mean 84 per cent?

Mr. Carter: 84 per cent of the total revenue.

Mr. Mantooth: The 16 per cent is created by the public?

Mr. Carter: I want to explain that a little bit. There is lots of the tonnage which comes off for W. T. Carter & Brother, which is for other people and used by other people. We serve through the commissary a great many people that do not buy their stuff direct, but buy from our commissary. It is not shipped in for other people, but for W. T. Carter & Brother, but it is used by people who are not serving the W. T. Carter & Brother interests.

Mr. Mantooth: Not employees of either company?

Mr. Carter: Not employees of either company.

Mr. Mantooth: What is the life of your charter?

Mr. Carter: I think 50 years.

Mr. Mantooth: What is the life of your timber cuttings
3133 now?

Mr. Carter: I do not think exceeding 20 years; that is for the new plant.

Mr. Mantooth: And state whether or not you have acquired practically all the timber holdings within the territory which you have mentioned that you can acquire.

Mr. Carter: Well, I think very nearly all. There is very little timber left in that territory that is not owned by other corporations or people.

Mr. Mantooth: In an area of 15 miles north, 20 miles east and 30 miles south, you own, you say, about one-third of the land holdings?

Mr. Carter: One-third of the land, I think.

Mr. Mantooth: How is the other two-thirds owned or held, if you know?

Mr. Carter: I think one-third is owned by resident people, settlers, farmers, people who live in there, and the other third owned by non-residents or corporations.

Mr. Mantooth: What per cent of that entire area is considered fairly good agricultural land?

Mr. Carter: The land south of Camden is largely short leaf country, and a very large per cent of it, half of it, is good agricul-
3134 tural land when the timber has been removed.

Mr. Mantooth: From the incipiency of these organizations

and institutions there, I will ask you whether or not you have kept books of account showing the transactions with relation to each other, and to other individuals in connection with either concern?

Mr. Carter: I think those accounts have been kept as absolutely accurate as if W. T. Carter & Brother had no interest in them.

Mr. Mantooth: Have you the original books of account with which you commenced that company?

Mr. Carter: I think so. They are at home.

Mr. Mantooth: They are at home, subject to the inspection of any authority that would be authorized to examine them?

Mr. Carter: Yes.

Mr. Mantooth: Would they show the distinct business relations between W. T. Carter & Brother and the railroad company?

Mr. Carter: Yes, sir, from the very first.

Mr. Mantooth: There is nothing in those books or any dealings outside of what the books show, is there?

Mr. Carter: None whatever.

3135 Mr. Mantooth: Do you own any land along the right of way of the railroad, W. T. Carter & Brother, I mean.

Mr. Carter: We own very little. We own the land for about a mile east, and I think perhaps one other little piece that we lately acquired—a mile west, I mean. I said east. I should have said west. The company owns about one mile west from Camden.

Mr. Mantooth: The balance of it is owned by individuals or corporations?

Mr. Carter: Yes, sir.

Mr. Mantooth: How did you acquire your right of way for the railroad?

Mr. Carter: The right of way was given by the people of Moscow as a sort of little bonus that they gave to have the road come into Moscow.

Examiner Burchmore: All the way from Camden?

Mr. Carter: Except that owned by the mill company. We owned land for about one mile west of Camden, and the balance of the way the people of Moscow gave the right of way as a part bonus.

Examiner Burchmore: Well, did you meet their generosity by deeding that mile?

3136 Mr. Carter: It never has been deeded. The railroad has got it.

Examiner Burchmore: It never has paid anything.

Mr. Carter: No.

Mr. Mantooth: That was an inducement to get the road built down there?

Mr. Carter: From Camden to Moscow; yes, sir. There was some thought at the time of building to Corrigan, on account of joining two roads instead of one.

Mr. Mantooth: You understand that the laws of Texas give the Railway Commission authority and require railroads to put their roads in condition and equip them with rolling stock and things of that kind; is that your understanding?

Mr. Carter: Yes, sir.

Mr. Mantooth: That is true of the lines of Texas?

Mr. Carter: Yes, sir.

Examiner Burchmore: I understand the Railroad Commission of Texas assumes that jurisdiction over this road?

Mr. Mantooth: Yes, and can require you to reduce your grade or put heavier steel in, or anything that is required to make a road better for the general public.

Examiner Burchmore: Please omit the details. We know
3137 the fact generally.

Mr. Mantooth: In pursuance of that authority have they required you to perform any duties in that respect?

Mr. Carter: Well, I do not know whether—perhaps it was the Interstate Commerce Commission's orders about equipment. I think the State Commission has also made some orders about equipment.

Examiner Burchmore: I will request you not to go into those details. He said they have assumed jurisdiction.

Mr. Mantooth: They have, and here is an order requiring us to make certain equipment, and we ask to file it in the record.

Examiner Burchmore: Do you insist upon it?

Mr. Mantooth: I think it is proper to go into the record. It is an order requiring Mr. Carter to improve certain equipment or change it.

(The paper so offered and identified was received in evidence and thereupon marked Moscow, Camden & San Augustine Exhibit No. 2, witness Carter, received in evidence December 17, 1910, and is attached hereto.)

Mr. Carter: That has been complied with. I think it is for 20, and we bought 15.

3138 Mr. Mantooth: That was a regular order by the Commission. I wanted to ask you a few questions briefly about the question as to the sale of your lumber, and the different conditions that you would occupy with reference to your mill company if you had no railroad, and I will ask you if the common point rate was reduced upon the lumber in an amount equal to the divisions allowed, and the railroad divisions cancelled, would you as an individual owning an equal amount of stock in the railroad and the saw mill, be on a parity with your competitor in the saw mill business who did not operate a railroad, and received no divisions?

Mr. Carter: Well, I think I would be at a disadvantage to the extent that I have the building and equipping and constructing of a railroad to come up to the requirements of the State Commission and the Interstate Commerce Commission, which is very much in excess of that of building a common tram road.

Examiner Burchmore: Your disadvantage would be that incident to the additional cost of complying with all the state and interstate laws that apply to common carriers and do not apply to private roads?

Mr. Carter: Yes, sir.

3139 Examiner Burchmore: And that would be your sole disadvantage?

Mr. Carter: Well, practically, yes.

Mr. Mantooth: If the rate from the mill to destination of the lumber was reduced to an amount equal to the divisions your railroad receives, and they were withdrawn, would you, as an individual owning an equal portion of the stock in each company, and if so, why?

Mr. Andrews: That is the same question.

Mr. Mantooth: No, it is not.

Mr. Carter: It is a different question. I will illustrate it. If the through rate, the common point rate, to any particular territory was 20 cents, and if we, the Moscow, Camden & San Augustine, received two cents, if that was a common point rate and the rate then was reduced to 18 cents, and the division to the Moscow, Camden & San Augustine withdrawn, I would lose those two cents as an individual. I would lose it from the simple fact that I would have to sell that at the destination or consuming point for two cents per 100 pounds less, to meet the price of my competitor, if the rate was reduced from all the territory. If the rate was reduced from Camden alone, I would not be injured, because I could maintain the
3140 same price for the product.

Mr. Mantooth: If the rate was reduced just from Camden you would not be injured?

Mr. Carter: If the rate was reduced just from Camden I would not be injured.

Mr. Mantooth: But if it was a common point reduction you would be injured?

Mr. Carter: Yes, sir.

Mr Mantooth: What would be the reasonable difference between building and equipping your railroad necessary to operate it and maintain it as a common carrier and building and equipping a tram road sufficient to supply the demands of your mill?

Mr. Carter: The cost of construction and maintenance is about double.

Mr. Mantooth: Do you sell your lumber, taking the 18¾ cent basis as an illustration, any cheaper where your railroad receives a division of four cents than where it only receives a division of two cents?

Mr. Carter: We do not.

Examiner Burchmore: And the explanation is what?

Mr. Carter: Just simply that we sell on the rate, and we
3141 want whatever we can get out of it. We do not want to rob the saw mill for the railroad, but want each institution to stand on its own bottom. We do this, however, we undertake, so far as the selling office is concerned, not to sell where we do not get divisions. We do that. We operate the wholesale office there, and if we sell lumber where we do not get divisions we buy it ourselves.

Mr. Mantooth: What would be the difference in the cost of operating your railroad as now operated as a common carrier, and the operating of an ordinary tram road that would supply your demands?

Mr. Carter: The cost of operating is more, for the simple reason

t the railroad has not got sufficient tonnage to keep it busy. Of
rse we could operate it for less money per ton, if we had plenty
work, but the work they have to do is limited, and the logging
pany is all it can do, and it costs more to operate it per ton.
Examiner Burchmore: Is not that a conceded fact, it costs you
re to keep up a regular train service and all that than if you sim-
run your own logging trains?
Mr. Carter: Yes.
Mr. Mantooth: How many trips a week would you have to
12 make in operating an ordinary tram road, to supply your
demands?
Mr. Carter: I do not get the question.
Mr. Mantooth: I say about how many trips would you have to
ke during a week over that road, if you were running an ordi-
y tram road, to supply the mill company's demands?
Mr. Carter: If we were supplying the logs over that, it would take
eral trips, because the tonnage is so much greater.
Mr. Mantooth: I mean if it was a tram road instead of a railroad,
uld you have to make a trip a day from the mill to your tram
d?
Mr. Carter: I do not get the question.
Mr. Mantooth: I say if you had no railroad and were operating a
m road from your mill to the Houston, East & West Texas——
Mr. Carter: And hauling the lumber?
Mr. Mantooth: And hauling the lumber only.
Mr. Carter: Well, if we did not have to carry it except when we
ready, of course we would not have to make so many trips.
Mr. Mantooth: About how many trips would you have to make
during the week?
13 Mr. Carter: I suppose we could do the business by making
a trip every other day.
Mr. Mantooth: That is all.
Mr. Cowan: But it would cost you just as much to own a railroad
make a trip on every other day as it would to make a trip every
.
Examiner Burchmore: I think he has explained that he did not
nk it would, and there are some reasons that are apparent. If
only had to run the engine over it every other day it would not
as expensive as it would to operate it every day.
Mr. Cowan: I said to own the railroad. Well, Mr. Carter, I just
nted to know if I understood you. You answered Mr. Mantooth
t you sell your lumber at the same price where you get the
isions and where you do not.
Mr. Carter: No, we try not to sell our lumber where we do not get
y division, but we do not make a difference on the 18¾ cent rate.
ere are some places we get four cents, but other places we would
t get over one or two cents, and we do not make any difference in
king quotations at those places, and do not make any difference
in making sales at those places. We simply do not want to
44 cut the market and want the two institutions to stand on
their own bottoms.

Mr. Cowan: I suppose if you sell at a point in Texas where the rate is 14 cents, you sell at the same delivered price that you do where it is 21 or 22 cents.

Mr. Carter: We do not do that.

3145 Mr. Cowan: Well you sell at a delivered price?

Mr. Carter: We sell at a delivered price, but if the rate is 14 cents we make the same price to the 14 cent point regardless of whether we get 2 cents or 4 cents. We do not sell lumber on the 14 cent rate, at the same price we sell it on the 15 cent.

Mr. Cowan: In other words the freight rate enters into the price of the lumber as delivered?

Mr. Carter: The through freight rate enters into the price, but the division does not, that is the point, and that is the fact.

Mr. Cowan: Suppose they gave you a division of half of it, would that affect it?

Mr. Carter: I do not know.

Mr. Cowan: Well, they do do that in some of these cases here, take some of the Arkansas mills.

Mr. Carter: Perhaps if I had a very large division and had an opportunity of getting a very large order I might make a difference, but just selling a carload or two, the idea is to maintain the market.

Mr. Cowan: Do you give it as an expression of your opin-

3146 ion as a business man that the fact of receiving divisions and the amount of the divisions does not affect the price of the lumber.

Mr. Carter: I do not believe that the average man who owns a tap line or gets a division, of course where they get great large ones it may enter into making the price but ordinarily I do not believe it does.

Mr. Cowan: Now somebody is fixing the price of this lumber——

Mr. Carter: If you will allow me to make a suggestion?

Mr. Cowan: Well?

Mr. Carter: I do not know whether the Interstate Commerce Commission has the authority or not, but I would suggest to settle that question of price that the Interstate Commerce Commission require those mills who have not any tap lines and those mills who have tap lines to file a sworn report for 12 months back showing the average price of the products.

Mr. Cowan: That would result in what, showing it was the same, would it not?

Mr. Carter: It would result in showing who is selling cheap lumber and who is not.

Mr. Cowan: The lumber sold in Waco has got to be sold

3147 at the same price for the same quality by everybody who sells it there, you know that?

Mr. Carter: Well, practically.

Mr. Cowan: The man who has the cheaper price fixes the price and sets the price.

Mr. Carter: That is a question.

Mr. Cowan: That is hardly open to debate.

Mr. Carter: That is a question you want to get, and you can get the facts.

Examiner Burchmore: I wonder if the Forestry Service can determine it.

Mr. Carter: I do not know whether they have authority to get that information or not. If you have authority to do it, you ought to do it.

Examiner Burchmore: Your suggestion is in the record.

Mr. Lehman: We make a report to the Forestry Service.

Mr. Cowan: Do you think the mill finally gets the delivered price? The f. o. b. price is the price.

Mr. Carter: The mill price is the price.

Examiner Burchmore: Don't you think we can get the best information about that——

Mr. Cowan: I was trying to get an admission I thought
3148 Mr. Carter would have to make. He has answered that the divisions do not affect the price and he answers they affect the price because they all sell it at the same price. Of course they do.

Mr. Carter: We do not all sell at the same price. One man will come along and sell for 50 cents or $1 less. The price varies.

Mr. Cowan: You are extensively engaged in the business and undoubtedly are a very intelligent and a very honest man. Do you not know it to be a fact that for the last four years, three years anyway, since lumber took such a tumble, that the people manufacturing lumber are endeavoring to make sales wherever they can in order to keep the mills in operation?

Mr. Carter: Yes, sir.

Mr. Cowan: Don't you know it is a fact that the dealer is having more to do with fixing the price than the mill man?

Mr. Carter: Yes, sir.

Mr. Cowan: Don't you know the mill man is trying to meet the prices therefore which the dealer is willing to offer?

Mr. Carter: I do not get the question.

3149 Mr. Cowan: The mill man is trying to meet the price which the retailer is trying to pay.

Mr. Carter: He is trying to meet the price of his competitor, yes, sir.

Mr. Cowan: And in a multitude of competitors you have to look out and see what your competitor is offering to sell at, is not that true?

Mr. Carter: Yes, sir.

Mr. Cowan: And your mill man goes out and he meets the bid that has been made by others if he can find out what it is?

Mr. Carter: Yes, sir.

Mr. Cowan: And he then finds whether you are willing to meet that price?

Mr. Carter: Yes.

Mr. Cowan: And if you are you get the business?

Mr. Carter: If they give it to us.

Mr. Cowan: You are willing to meet it or not, dependent upon whether you have a profit in the transaction; is not that it?

Mr. Carter: Well, I really think some of them claim they are selling without any profit.

3150 Mr. Cowan: That may be so, but the man who has the most profit in his manufacturing enterprise has got the advantage in making the sale.

Mr. Carter: Oh, I will admit freely that perhaps as a whole investment, if a man has got a saw mill and has got a logging road that is not chartered, and another man has got a saw mill and a logging road similar or practically the same, that man has got an advantage on the whole investment, but whether or not he gives it to the dealer, reduces the price of lumber is another question.

Mr. Cowan: And it will depend upon the circumstances of the financial and commercial transaction, on the commercial business of selling lumber necessarily?

(No reply.)

Mr. Cowan: Don't you find it to be a fact in your own case that certain institutions in Louisiana who are largely interested and extensive dealers put you right down to the bottom and you have to meet the very bottom price in order to sell?

Mr. Carter: I do not find it worse from Louisiana than from any other source. They are all making the price.

Mr. Cowan: You do know there are certain institutions

3151 who are pressing the Texas people pretty hard?

Mr. Carter: I do not know. In the first place I am not manager of the sales and do not keep much track of it.

Mr. Cowan: I imagine you have pretty good knowledge, however.

Mr. Carter: You are mistaken.

Examiner Burchmore: Are we getting much useful information?

Mr. Cowan: We have not until the last question.

Examiner Burchmore: If you desire to continue it I have no objection.

Mr. Cowan: I do not expect Mr. Carter is such a person and I knew he would be bound to admit that the commercial side was bound to find its way into the tap line situation.

Mr. Carter: Why does not the fellow who has the saw mill and the railroad all practically the same avail himself and get a charter like the balance of us and get the division? It is open to him.

Mr. Cowan: I am not on the witness stand.

Mr. Carter: Well, that is the question.

Examiner Burchmore: How about the man who has the oxen and wagon?

3152 Mr. Carter: I don't know.

Examiner Burchmore: He has not the capital, is the reason he does not build it, but after all that is in the realm of argument.

Mr. Cowan: He is a retired bankrupt, the man that has not got a tap line. A man who logs with teams is a retired bankrupt.

Mr. Mantooth: I wanted to ask just one more question.

Mr. Carter: Have you had occasion within the last twelve months to investigate to any extent the question as to whether the lumber

has been sold cheaper by Louisiana manufacturers than by Texas manufacturers?

Mr. Carter: No, sir; I have not.

Examiner Burchmore: Do you know anything about that?

Mr. Mantooth: I know something about it as a lawyer, having gone into this question at Austin and other places.

Mr. Carter: I only know that from common rumor; I do not know anything of my own knowledge.

Mr. Mantooth: I supposed you were in the investigation and looked at the figures we had at Austin?

Mr. Carter: No.

3153 Examiner Burchmore: You will file a map?

Mr. Mantooth: Yes, sir.

Examiner Burchmore: And a statement of tonnage?

Mr. Mantooth: Yes, sir, if it is not in the statement already filed we will comply with the order already entered.

(Witness excused.)

Examiner Burchmore: There is only one more case on the active call and that is the Caro Northern.

3154 *Caro Northern Railroad.*

T. TILFORD, was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer of the Caro Northern Railway?

Mr. Tilford: Yes, sir.

Examiner Burchmore: What is your office?

Mr. Tilford: Traffic Manager.

Examiner Burchmore: Are you an officer of any lumber company, and if so what one and what office?

Mr. Tilford: No, sir.

Examiner Burchmore: The Saner-Whitman Lumber Company has mills located on your line?

Mr. Tilford: Yes, sir.

Examiner Burchmore: It is understood I believe that there is some relationship between the two companies?

Mr. Tilford: Yes, sir.

Examiner Burchmore: Is it not a fact that the stockholders of that lumber company own the stock of the Caro Northern?

Mr. Tilford: They practically own stock in the two corporations in about the same proportion, yes, sir.

3155 Examiner Burchmore: There are a few shares outstanding I presume in directors' hands.

Mr. Tilford: In the directors of the lumber company.

Examiner Burchmore: And of the railroad company?

Mr. Tilford: Yes, sir.

Examiner Burchmore: You say the holdings are substantially identical?

Mr. Tilford: The directors are stockholders, yes, sir.
Examiner Burchmore: Are there any differences in the stockholders of the two companies?
Mr. Tilford: Well, it is very slight.
Examiner Burchmore: The Caro Northern connects, as I understand it, with the Texas & New Orleans Railroad in the town of Caro, Texas.
Mr. Tilford: Yes, sir.
Examiner Burchmore: And the Saner-Whitman Lumber Company has a saw mill and planer near the junction point?
Mr. Tilford: Yes.
Examiner Burchmore: But neither the saw mill nor the planer are located immediately adjacent to tracks owned by the Texas & New Orleans Railroad?
Mr. Tilford: No.
3156 Examiner Burchmore: They are served only by the rails of this company?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Is there any other mill owned by this lumber company?
Mr. Tilford: No, sir.
Examiner Burchmore: The line as I understand it extends from Caro in a generally northerly direction for about 18 miles.
Mr. Tilford: About 19 miles, including the switches and spurs.
Examiner Burchmore: To the town of Mount Enterprise?
Mr. Tilford: Yes, sir.
Examiner Burchmore: I notice Mount Enterprise, as charted on your map here, there is a depot.
Mr. Tilford: Yes, sir.
Examiner Burchmore: That is your depot?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Then there is a stock yard?
Mr. Tilford: Yes.
Examiner Burchmore: Those are your stock yards?
Mr. Tilford: Yes, sir.
3157 Examiner Burchmore: And a cotton gin?
Mr. Tilford: Yes, sir.
Examiner Burchmore: No saw mill operations there?
Mr. Tilford: Yes, sir.
Examiner Burchmore: You refer to Langford's Mill?
Mr. Tilford: Yes, sir.
Examiner Burchmore: That is a couple of miles from Mount Enterprise?
Mr. Tilford: No, that blue print is not drawn to scale.
Examiner Burchmore: It is within the town of Mount Enterprise?
Mr. Tilford: It is within the outskirts.
Examiner Burchmore: Who owns that mill?
Mr. Tilford: Langford.
Examiner Burchmore: Do they make shipments over your line?
Mr. Tilford: Yes, sir.

Examiner Burchmore: What amount?
Mr. Tilford: I should judge a car and a half a day on the average.
Examiner Burchmore: How much lumber does the Saner-
3158 Whitman Lumber Company manufacture a day?
Mr. Tilford: I do not know about what they manufacture; they ship four or five cars a day depending on the car supply.
Examiner Burchmore: As against one and a half from the Langford mill?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Do you have much stock originating at that stock yard at Mount Enterprise?
Mr. Tilford: Not a great deal.
Examiner Burchmore: How many carloads will it amount to in a year?
Mr. Tilford: I suppose 30 to 40 a year.
Examiner Burchmore: How much cotton?
Mr. Tilford: Approximately 2000 bales each year.
Examiner Burchmore: I notice on this map the Garrison mill.
Mr. Tilford: Yes.
Examiner Burchmore: The Prince and Parrot mill?
Mr. Tilford: Yes.
Examiner Burchmore: And the Van Sickle mill?
Mr. Tilford: Yes.
3159 Examiner Burchmore: Those are located a distance of a mile or two from your line?
Mr. Tilford: Yes, sir, they are not directly on the railroad but we serve them.
Examiner Burchmore: They have to team their mill product across to the railroad?
Mr. Tilford: Yes, sir.
Examiner Burchmore: At Strongfield Station?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Can those mills team across to your station and compete successfully with the mill at Caro?
Mr. Tilford: They do not, do any more teaming than the Saner-Whitman Company.
Examiner Burchmore: Now what teaming does the Saner-Whitman Lumber Company do?
Mr. Tilford: They haul them to the logging roads and put them on the cars and haul them up to the main line.
Examiner Burchmore: You have private logging trams which connect with your main line at Hutch?
Mr. Tilford: Near there.
Examiner Burchmore: Also one connecting between
3160 Hutch and Kearsey?
Mr. Tilford: That is the old logging road. It has been taken up. They run on about ten miles into the woods.
Examiner Burchmore: No other tram roads besides these connect with the railroad?
Mr. Tilford: No.
Examiner Burchmore: I notice that the Houston East & West

Texas lines immediately north of this line? a distance of a few miles parallel your line?

Mr. Tilford: Yes, sir, 12 or 14 miles.

Examiner Burchmore: Any other railroad in the immediate vicinity?

Mr. Tilford: The I. & G. N., and the Timpson & Henderson railroads.

Examiner Burchmore: Mount Enterprise is not so very far east of the Timpson & Henderson?

Mr. Tilford: It might be called east or southeast.

Examiner Burchmore: And it is only four or five miles from the International & Great Northern?

Mr. Tilford: It is farther than that. That scale is not right there. I just drew that up to show the situation; it is not drawn
3161 to scale, it is about 14 miles to Henderson on the I. & G. N.

Examiner Burchmore: Do you purpose putting this in evidence?

Mr. Tilford: If you will accept it without it being drawn to scale.

Examiner Burchmore: If you will give us a map like this drawn to scale, a smaller scale, this is exactly what we want.

Mr. Tilford: I will be glad to do it.

Examiner Burchmore: What sort of a railroad is the Timpson & Henderson?

Mr. Tilford: I don't know much about that road.

Mr. Saner: I will tell you about that.

Examiner Burchmore: It is quite a railroad?

Mr. Saner: A good railroad, good steel, substantial roadbed, new equipment, new engines and new passenger cars.

Examiner Burchmore: Owned by the Ragley Lumber Company?

Mr. Saner: I could not accurately state. There are a good many stockholders who are not in that company.

Examiner Burchmore: Have you contemplated making a connection to either one of these other railroads?

3162 Mr. Tilford: Yes, sir; we have discussed it from time to time. The owner of the Timpson & Henderson has recently bought stock in our road.

Examiner Burchmore: What is the extent of his holdings?

Mr. Tilford: I think it is about $7500.

Examiner Burchmore: Your total capitalization is what?

Mr. Tilford: $100,000.

Examiner Burchmore: So he has $7500 out of $100,000?

Mr. Tilford: Yes, sir.

Examiner Burchmore: Does he own any interest in this lumber company?

Mr. Tilford: No, sir; not any.

Examiner Burchmore: By the owner you refer to Mr. Ragley?

Mr. Tilford: Of the Timpson & Henderson, yes, sir; he and his associates.

Examiner Burchmore: When was this mill at Caro opened for operation?

Mr. Tilford: It was operating when I went there in 1906. I understand about 18 months.

Examiner Burchmore: It was probably opened about 1904?

Mr. Tilford: Yes, sir.

3163 Examiner Burchmore: When was the railroad begun?

Mr. Tilford: September, 1906.

Examiner Burchmore: After the mill was built?

Mr. Tilford: Yes, sir.

Examiner Burchmore: How did they get their logs to the mill before the road was built?

Mr. Tilford: They had an old tram road extending in an opposite direction.

Examiner Burchmore: It is plotted on this plot?

Mr. Tilford: Yes, sir.

Examiner Burchmore: They used to bring their logs in from the other side of the Texas & New Orleans railroad?

Mr. Tilford: Yes.

Examiner Burchmore: Was it incorporated?

Mr. Tilford: No.

Examiner Burchmore: Did they get any divisions on that tram?

Mr. Tilford: No.

Examiner Burchmore: Then they built this railroad in 1906?

Mr. Tilford: Yes, sir.

Examiner Burchmore: When was it completed to Mount Enterprise, immediately thereafter?

3164 Mr. Tilford: Yes, sir; when I got there it was about finished to Mount Enterprise.

Examiner Burchmore: They built it right through as one thing?

Mr. Tilford: Yes, sir; it was built at one time.

Examiner Burchmore: The old tram of the Saner-Whitman Lumber Company that runs over from a connection between Hutch and Kearsey, when was that laid out, immediately after this road was completed?

Mr. Tilford: That tram there was in another location formerly and was taken up about six or eight months ago and was placed down where it now stands.

3165 Examiner Burchmore: As a matter of fact immediately after the completion of this road private trams were opened up into the woods and they have been moved from time to time.

Mr. Tilford: Yes, sir.

Examiner Burchmore: That is the substance of the transaction?

Mr. Tilford: Yes, sir.

Examiner Burchmore: What is the weight of the rail in this railroad?

Mr. Tilford: 52 pounds.

Examiner Burchmore: Is the road ballasted?

Mr. Tilford: Well, with sand and slag on it.

Examiner Burchmore: Is it graded?

Mr. Tilford: Yes, sir.

Examiner Burchmore: Are there any hills down there?

Mr. Tilford: It is a good grade.

Examiner Burchmore: Substantially level?
Mr. Tilford: The maximum grade is 1.36, I think.
Examiner Burchmore: Any extreme curves?
Mr. Tilford: I do not know the degree of the curves; I do not regard any of them as extreme.
Examiner Burchmore: Do you cross any streams?
3166 Mr. Tilford: Yes, sir.
Examiner Burchmore: What bridges have you?
Mr. Tilford: Wooden bridges.
Examiner Burchmore: Will they hold 100,000 pound cars?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Take anything you could move over the line?
Mr. Tilford: Yes, sir, without any trouble.
Examiner Burchmore: You say the total capitalization of this road is $100,000?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Was that stock sold? How was the road financed?
Mr. Tilford: Stock was issued to the stockholders.
Examiner Burchmore: To whom was it issued?
Mr. Tilford: To individuals.
Examiner Burchmore: Who were those individuals, connected with the lumber company?
Mr. Tilford: They were stockholders of the lumber company.
Examiner Burchmore: They got this stock as kind of a dividend?
Mr. Tilford: I do not think so, no. They borrowed the
3167 money as individuals and built the railroad and issued the stock.
Examiner Burchmore: They borrowed the money as individuals, but did they not borrow it as a collection of individuals, an association of people.
Mr. Tilford: No.
Examiner Burchmore: Did they give individual notes——
Mr. Tilford: That is my understanding.
Examiner Burchmore: Was it not a joint note?
Mr. Tilford: They never issued any note as a lumber company not that I know of.
Examiner Burchmore: Then you say these individual stockholders practically put up the money for the stock?
Mr. Tilford: Yes.
Examiner Burchmore: And with the money thus raised—it amounted to $100,000?
Mr. Tilford: It was more than that. The railroad cost about $109,000 but only $100,000 was issued against it.
Examiner Burchmore: And with that money they built the road?
Mr. Tilford: Yes.
Examiner Burchmore: Where did they get the $9,000?
Mr. Tilford: It was part of the indebtedness they owe the
3168 bank.
Examiner Burchmore: Did they have any bonds?
Mr. Tilford: No.

Mr. Saner: A small part of that went as a bonus for building the road.

Examiner Burchmore: They got a bonus of how much?

Mr. Staner: Approximately $9,000.

Examiner Burchmore: From the town of Mt. Enterprise?

Mr. Tilford: Yes.

Examiner Burchmore: How much of a town was that?

Mr. Tilford: Only about 1200 people, I guess.

Examiner Burchmore: They issued some city bonds?

Mr. Tilford: No, they gave us the right of way and a half interest in the town site company.

Examiner Burchmore: Then Mt. Enterprise is perhaps a company town?

Mr. Tilford: No, it is more of a farming town.

Examiner Burchmore: Have you any stores there?

Mr. Tilford: No.

Examiner Burchmore: Have you any stores along the line?

Mr. Tilford: No.

Examiner Burchmore: I refer to the lumber company.

3169 Mr. Tilford: No, they have not.

Examiner Burchmore: You have a contract between this railroad and the Saner-Whitman Lumber Company, dated October 1st, 1909, and a copy of that contract or what purports to be a copy is on file with the Commission. Are you familiar with that contract?

Mr. Tilford: I might be if I knew the substance of it.

Examiner Burchmore: The substance is that the Saner-Whitman Lumber Company received from the Caro Northern the right to run its logging trains over this road up to the mill upon the payment of 25 cents per train mile?

Mr. Tilford: Yes, sir.

Examiner Burchmore: I suppose for empty trains as well as loaded.

Mr. Tilford: Yes.

Examiner Burchmore: Is that contract still in effect?

Mr. Tilford: Yes.

Examiner Burchmore: They are still operating logging trains?

Mr. Tilford: Yes, sir.

Examiner Burchmore: Then I presume from that fact that this Saner-Whitman Lumber Company has private logging

3170 equipment?

Mr. Tilford: Yes, sir.

Examiner Burchmore: And it has locomotives of its own?

Mr. Tilford: Yes.

Examiner Burchmore: And the logs are hauled into the mill by the lumber company?

Mr. Tilford: Yes.

Examiner Burchmore: Now, of course there is no billing on there?

Mr. Tilford: No.

Examiner Burchmore: That 25 cents a car mile amounts to how much on a train?

Mr. Tilford: 25 cents a train mile, it is.
Examiner Burchmore: Do you haul it ten miles?
Mr. Tilford: About eight miles out and back, which is sixteen.
Mr. Cowan: $2.00 for eight miles.
Examiner Burchmore: It would be $4.00 per round trip.
Mr. Tilford: Yes.
Examiner Burchmore: How many cars have you in the train?
Mr. Tilford: Anywhere from 10 to 15.
Examiner Burchmore: Say an average of 12?
3171 Mr. Tilford: Yes.
Examiner Burchmore: 12 cars and $4.00 a train would be about 33-1/3 cents a car. That is what it costs this lumber company to get logs into the mill plus the cost of operation of the trains, of course.
Mr. Tilford: Yes.
Examiner Burchmore: Have you any statistics as to the cost of getting the logs to the mill?
Mr. Tilford: No, it pertains to the lumber company entirely.
Examiner Burchmore: The railroad company, as I understand it, does handle the lumber from the mill over to the connection with the Texas & New Orleans?
Mr. Tilford: Yes, we perform four distinct movements there on the empties and on the loads.
Examiner Burchmore: How is that, four movements, two in and two out?
Mr. Tilford: We sent the locomotive up to the interchange track at the T. & N. O. depot which is also a joint track, we pay a portion of the expense; we pull the empty car down on to our holding track and then replace the empty car to the various industries as
3172 it may be demanded, or to the cotton gin or the platform. I should say, and then when the lumber is loaded out at the mill we switch it to our weighing track and weigh the shipment and then move it back up to the T. & N. O. interchange track.
Examiner Burchmore: Then you have a track scales?
Mr. Tilford: Yes, sir.
Examiner Burchmore: Are any bills of lading issued on the lumber out of the Saner-Whitman mill?
Mr. Tilford: No.
Examiner Burchmore: I say on the lumber when it moves out to interstate destinations, do you issue bills of lading?
Mr. Tilford: Not from the mill but from the railroad station. We have a depot there.
Examiner Burchmore: From what station?
Mr. Tilford: The Caro Northern Railroad station, our station; Wydeck, we call our station.
Examiner Burchmore: You have two depots in the vicinity of Caro?
Mr. Tilford: Yes.
Examiner Burchmore: Your depot is Wydeck and how far is it from Wydeck to the joint station at Caro by rail?
Mr. Tilford: About .6 of a mile.

Examiner Burchmore: Then from Wydeck a bill of lading
3173 is issued by the Caro Northern?
Mr. Tilford: Yes, sir.
Examiner Burchmore: And that bill of lading will carry the shipment up to St. Louis or wherever it is going?
Mr. Tilford: Yes.
Examiner Burchmore: You have an agent at Wydeck.
Mr. Tilford: I act as agent.
Examiner Burchmore: Well, you also work for the lumber company?
Mr. Tilford: No.
Examiner Burchmore: Do you issue a waybill?
Mr. Tilford: Yes, sir.
Examiner Burchmore: And that agrees with the bill of lading?
Mr. Tilford: Yes.
Examiner Burchmore: And the point of origin shown in those papers is Wydeck?
Mr. Tilford: Yes.
Examiner Burchmore: Is the rate from Wydeck to interstate points the same as from Caro on the Texas & New Orleans rails?
Mr. Tilford: Yes.
3174 Examiner Burchmore: What is your division?
Mr. Tilford: Three-quarters of a cent to four cents.
Examiner Burchmore: What is it on state traffic?
Mr. Tilford: You mean on interstate?
Examiner Burchmore: What do you get on state traffic?
Mr. Tilford: We do not get four cents on interstate business. Three is the maximum on interstate business and four cents applies on state business.
Examiner Burchmore: Your state business varies from three-quarters of a cent to four cents?
Mr. Tilford: Yes.
Examiner Burchmore: And interstate three quarters of a cent to three cents?
Mr. Tilford: Yes.
Examiner Burchmore: And for that service you perform the service of hauling the lumber from the mill over to the track of the T. & N. O. as indicated?
Mr. Tilford: Yes.
Examiner Burchmore: Are the general officers of this railroad paid for their services to the railroad?
Mr. Tilford: Yes.
3175 Examiner Burchmore: All of them?
Mr. Tilford: Yes.
Examiner Burchmore: Please give me the salaries of the general officers who are officers of the railroad who are not officers of the lumber company. I do not care to know the salaries of any one who does not work for the lumber company. The President is president of both companies?
Mr. Tilford: Yes.
Examiner Burchmore: What is his salary from the railroad?
Mr. Tilford: $100 a month.

Examiner Burchmore: He does not do any actual work for the railroad, does he?

Mr. Tilford: Yes, sir, I think he does.

Examiner Burchmore: Very much.

Mr. Tilford: Well, he exercises general executive duties. He goes out and inspects the line and attends to the general legal matters and claims.

Examiner Burchmore: He is an attorney?

Mr. Tilford: Yes.

Examiner Burchmore: Is the Vice-President a salaried officer?

Mr. Tilford: No.

3176 Examiner Burchmore: Any other officer of the railroad receive a salary?

Mr. Tilford: The general manager.

Examiner Burchmore: Are you the general manager?

Mr. Tilford: No.

Examiner Burchmore: Is he an officer of the lumber company also?

Mr. Tilford: Also, yes, sir.

Examiner Burchmore: How much does he get from the railroad?

Mr. Tilford: $100 a month.

Examiner Burchmore: Is his salary proportionate to his services?

Mr. Tilford: Yes.

Examiner Burchmore: Are the railroad company's salaries to those officers really proportionate to their service?

Mr. Tilford: I think so, yes, sir.

Examiner Burchmore: Have you any employés?

Mr. Tilford: Only one of the assistants to one of our agents.

Examiner Burchmore: He does not work for the lumber company?

3177 Mr. Tilford: No.

Examiner Burchmore: That is your assistant there?

Mr. Tilford: No, the assistant to the joint agent, part of which is paid by the railroad.

Examiner Burchmore: You share in the expense of that depot?

Mr. Tilford: Yes.

Examiner Burchmore: I suppose you have some contract with the T. & N. O.?

Mr. Tilford: Yes.

Examiner Burchmore: Do you run any passenger trains?

Mr. Tilford: Yes.

Examiner Burchmore: I did not ask you what equipment you had, did I?

Mr. Tilford: No, we have two locomotives, one passenger coach and 2 box cars.

Examiner Burchmore: Now, you run a regular train on schedule, I suppose?

Mr. Tilford: Yes, sir.

Examiner Burchmore: More than one train?

Mr. Tilford: No, just one trip a day out and back.

Examiner Burchmore: That train meets the Texas & New Orleans trains?

3178 Mr. Tilford: Both ways, yes, sir.

Examiner Burchmore: Is it a mixed train?

Mr. Tilford: Yes.

Examiner Burchmore: Do you publish a time table?

Mr. Tilford: Yes.

Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Tilford: Between 5,000 and 6,000 passengers, I should think, in the last fiscal year.

Examiner Burchmore: And you do not remember what the revenue from those passengers was?

Mr. Tilford: About $1700 approximately; I do not remember exactly.

Examiner Burchmore: For the year?

Mr. Tilford: Yes.

Examiner Burchmore: Has your traffic in passengers increased this year very materially?

Mr. Tilford: Well, it has increased slightly; I do not think it has much.

Examiner Burchmore: Can you inform us with respect to your freight tonnage, did you handle any logs last year as a railroad?

3179 Mr. Tilford: No.

Examiner Burchmore: Did you ever handle any logs as a railroad?

Mr. Tilford: Why, 18 months or two years ago we handled them, yes, sir.

Examiner Burchmore: You formerly handled the logs for the lumber company?

Mr. Tilford: Yes.

Examiner Burchmore: In fact until 18 months or two years ago the lumber company did not haul its own logs?

Mr. Tilford: No.

Examiner Burchmore: You did it for them?

Mr. Tilford: Yes.

Examiner Burchmore: Do you remember what the charge was?

Mr. Tilford: $1.50 a car.

Examiner Burchmore: That was entirely independent of any kind of division?

Mr. Tilford: Well——

Examiner Burchmore: You got that and the divisions out of the lumber rates besides?

Mr. Tilford: No.

Examiner Burchmore: It reverted back to the lumber

3180 company; it was a milling in transit proposition at that time.

Mr. Saner: Just in that connection the full authority is under the rules given on pages 95 and 96, Volume 18, of the Texas Railway Commission reports.

Examiner Burchmore: I do not believe we need go into that. It

will appear in this connection that for the past fiscal year you handled no logs?

Mr. Tilford: No.

Examiner Burchmore: Do you remember how much lumber you handled last year?

Mr. Tilford: About 35,000 tons.

Examiner Burchmore: How much of that was furnished by the Saner-Whitman Lumber Company?

Mr. Saner: Have you a statement on that?

Examiner Burchmore: Please give me the general figures.

Mr. Tilford: I have it in carloads. Will that answer?

Examiner Burchmore: That will answer.

Mr. Tilford: For the period from July 1st, 1909, to July 1st, 1910, the tonnage account of the Saner-Whitman Lumber Company, lumber 897 cars; account of the shippers 451 cars; cotton and cottonseed 62 cars; for other shippers, the Saner-Whitman
3181 Company of course not being interested in cotton and cottonseed. On other commodities such as grain and grain products, feed, flour, fertilizer, and so forth, the account of the lumber company was 98 cars and that on account of other shippers 134 cars. The total account of the lumber company was 995 cars and for account of other shippers 647 cars.

Examiner Burchmore: Have you the revenue on that, Mr. Tilford?

Mr. Tilford: No.

Mr. Saner: You know what the revenue was?

Mr. Tilford: About 50 per cent.

Examiner Burchmore: What per cent of the tonnage was furnished by lumber?

Mr. Tilford: Between 55 and 60 per cent of the total tonnage.

Examiner Burchmore: Was the mill run full blast during that period?

Mr. Tilford: Yes.

Examiner Burchmore: That is, it was not idle?

Mr. Tilford: No.

Examiner Burchmore: How much lumber did other mills on the line furnish?

3182 Mr. Tilford: 451 cars.

Examiner Burchmore: As against your how many?

Mr. Tilford: Against the Saner-Whitman Lumber Company 897 cars.

Examiner Burchmore: That is about two thirds of the lumber traffic is for the Saner-Whitman Lumber Company?

Mr. Tilford: Yes.

Mr. Saner: Can you not bring it on down to date for the Commission so far this year?

Mr. Tilford: July 1st, 1910, to December 1st, account of the Saner-Whitman Lumber Company, lumber 352 cars; other shippers 141 cars. Cotton and cottonseed, other shippers 84 cars; other commodities account of the lumber company, 37 cars, and other ship-

pers 45 cars; total account of lumber company 389 cars; account of other shippers 270 cars.

Examiner Burchmore: About the same proportion, is it not?

Mr. Tilford: Yes, sir, just about the same; it leaves a less than 60 per cent furnished by the lumber company of the total tonnage. Shall I file it as part of the record?

Examiner Burchmore: Yes.

(The paper so offered and identified, was received in evi-
3183 dence and thereupon marked Caro Northern Exhibit No. 1, Witness Tilford, received in evidence December 17th, 1910, and is attached hereto.)

Examiner Burchmore: You comply with the Acts of Congress respecting accidents and safety appliances, and so forth, as far as you are advised?

Mr. Tilford: Yes.

Examiner Burchmore: Does the State Commission of Texas recognize this as a common carrier railroad?

Mr. Tilford: Yes, sir, the present Chairman of the Commission and Governor-elect were over personally to inspect the road and went over it.

Examiner Burchmore: When did they accord you that recognition?

Mr. Tilford: That was in March, 1907.

Mr. Saner: What was the length of the life of the company by the charter?

Mr. Tilford: 50 years.

Mr. Saner: What is the length of the timber holdings by the company there, how much longer before they will be cut out?

Mr. Tilford: About four years, I judge.

3184 Mr. Saner: Was it intended when the company was organized to continue that road as a permanent railroad?

Mr. Tilford: Yes.

Mr. Saner: State the amount of holdings of land by this lumber company in that vicinity now and the condition of the country?

Mr. Tilford: Land and timber rights?

Mr. Saner: Land.

Mr. Tilford: They do not own any land at present. They have recently sold 62,000 acres approximately to eastern capitalists, to a syndicate with a view of settling up the country and bringing in more farms.

Mr. Saner: That is under progress now?

Mr. Tilford: Yes.

Mr. Saner: Buying lots as the timber is cut off?

Mr. Tilford: Yes.

Mr. Saner: It is contemplated they will buy it entirely within the four years?

Mr. Tilford: Yes.

Mr. Saner: Has there been any development of that country prior to that time in the truck line, demonstration farms, at Winder?

3185 Mr. Tilford: Yes.

Mr. Saner: How many cars did you haul from there just one season?

Mr. Tilford: 15.

Mr. Saner: How many bales of cotton have you hauled this season from off the line?

Mr. Tilford: I do not know exactly; I think about 1,780 bales.

Mr. Saner: And more to come?

Mr. Tilford: Yes.

Mr. Saner: You will haul approximately how much?

Mr. Tilford: There will be over 2,000 bales, I am satisfied.

Mr. Saner: How many stations and station agents have you on that line?

Mr. Tilford: Do you mean counting flag stops?

Mr. Saner: Well, no, you need not count the flag stops but permanent stations and buildings more especially.

Mr. Tilford: Besides the joint station at Caro we have one at Wydeck and one at Mount Enterprise.

Mr. Saner: All those are separated and do they have passenger rooms for white and colored people, and are they heated?

3186 Mr. Tilford: Yes.

Mr. Saner: Warehouses and platforms for loading?

Mr. Tilford: Yes, sir.

Mr. Saner: You have temporary loading platforms or platforms without a station at Longfield?

Mr. Tilford: Yes.

Mr. Saner: And also at Winder?

Mr. Tilford: Yes, sir.

Mr. Saner: And at Hutch?

Mr. Tilford: Yes.

Mr. Saner: Do you sell tickets and check baggage?

Mr. Tilford: Yes.

Mr. Saner: The Texas Railroad Commission entered a formal order after that inspection, authorizing you to act as a common carrier road?

Mr. Tilford: Yes, sir.

Mr. Saner: This 18th Annual Report, page 213, I do not want to read it. The Examiner asked you about the services being performed. You have indulged in the pleasures of being sued as a railroad over there?

Mr. Tilford: Yes, sir, we have indulged in that luxury.

3187 Examiner Burchmore: Prior to the time that the Texas Railroad Commission recognized you as a railroad, did the Saner-Whitman Company have to pay any personal injury claims for people who were injured on the railroad?

Mr. Tilford: I could not state as to that.

Mr. Saner: No, they did not.

Mr. Cowan: Whether they did or not, I would like to say for the benefit of the record that the Supreme Court of Texas does not exempt a railroad from being responsible on the ground that it is or is not a common carrier. The two have no relation under our law.

Mr. Saner: That is a question we will not take up right here now.

Mr. Cowan: That is my understanding.

Examiner Burchmore: That puts the question into the record.

Mr. Saner: Will you give us the names of various industries on this road and served exclusively by this road?

Mr. Tilford: I could not give them exactly.

Mr. Saner: Give those you can recall from memory.

Mr. Tilford: Well, what kind?

Mr. Saner: All kinds.

3188 Mr. Cowan: They must be farms, because they could not have had so much cotton.

Mr. Saner: How many gins do you have?

Mr. Tilford: Six or seven; I do not remember the number.

Mr. Saner: How many small saw mills do you serve and have you been serving?

Mr. Tilford: 12 to 15.

Mr. Cowan: They are on the map?

Mr. Saner: Some of them are.

Mr. Tilford: Not all of them.

Mr. Saner: You keep separate books in accordance with the rules of the Interstate Commerce Commission?

Mr. Tilford: Yes.

Mr. Saner: And in no wise mingled with the books of the lumber company or have no connection with them?

Mr. Tilford: Not at all. They are kept in my office building.

Mr. Saner: Each company operates separately and distinct and independent of the other?

Mr. Tilford: Yes.

Mr. Saner: You do your own banking?

3189 Mr. Tilford: Yes.

Mr. Saner: File tariffs and concurrences and indexes and so forth in accordance with the rules of the Commission?

Mr. Tilford: Yes, sir.

Mr. Saner: You file your regular reports to the Commissions both State and Interstate?

Mr. Tilford: Yes.

Mr. Saner: And perform all the other requirements so far as you know them, both the State and Interstate Commerce Commissions?

Mr. Tilford: Yes. There may be some I have overlooked, but I make out many a one of them.

Mr. Saner: You issue regular bills of lading and waybills on all shipments originating and moving from your lines?

Mr. Tilford: Yes.

Mr. Saner: I will just let these generalities stand. There are a good many details I could take up, but just one question. The rates to all points on the Caro Northern are the same as they are to Wydeck?

Mr. Tilford: To or from Wydeck?

Mr. Saner: I say the rates to and from all points on the Caro Northern are the same as they are to Wydeck?

3190 Mr. Tilford: Yes.

Examiner Burchmore: I did not ask you if you have issued through class rates.

Mr. Tilford: Yes.

Examiner Burchmore: I suppose the common point rates apply, or are you not in that territory?

Mr. Tilford: Yes, sir, they apply.

Examiner Burchmore: What division do you get?

Mr. Tilford: 12½ per cent of the St. Louis or Missouri River rate.

Examiner Burchmore: That runs from two cents to two and a half cents?

Mr. Tilford: Yes.

Mr. Cowan: You mean the Southwestern Tariff Committee issues rates to and from your road applying the Texas common point rate on interstate traffic?

Mr. Tilford: Yes.

Mr. Cowan: The Texas rates apply to and from points on your line?

Mr. Tilford: Yes.

Mr. Cowan: And the greater distance the greater the rate?

3191 Mr. Tilford: Applied as to distance.

Mr. Cowan: But as to lumber the interstate rates are the blanket rates applicable in that territory?

Mr. Tilford: Yes.

Mr. Cowan: They are therefore the same to all points on your line?

Mr. Tilford: Yes.

Mr. Cowan: They would also apply to state rates on lumber. They are the same to and from all points on your line to any group in Texas?

Mr. Tilford: Yes, sir.

Mr. Cowan: And they are the same therefore to all these other mills as they are from Wydeck?

Mr. Tilford: Yes.

Mr. Cowan: And a man at the other mill has to pay the same as you do from Wydeck?

Mr. Tilford: Yes.

Mr. Cowan: And he haul- his lumber to your railroad?

Mr. Tilford: Yes:

Mr. Cowan: And haul- his logs to his mill?

Mr. Tilford: Just as the Saner-Whitman Company does, yes, sir.

3192 Mr. Saner: You handle United States mail?

Mr. Tilford: Yes.

Mr. Saner: And an express company operates over your line?

Mr. Tilford: The Wells Fargo Express Company; yes, sir.

Mr. Cowan: Of course, you get a division out of the lumber you haul for them the same as you do anything else you haul for anybody?

Mr. Tilford: Yes, sir.

Examiner Burchmore: Do you furnish your passengers ice water at the stations?

Mr. Tilford: We send them over to the lumber company when they want ice water.

Mr. Saner: We do at Mount Enterprise. I do not think we do at Wydeck or Caro. They have a public fountain there.

Mr. Andrews: I am not sure you made clear this matter of stock ownership. You first said the stock of the railroad company was owned by the owners of the Saner-Whitman Lumber Company?

Mr. Tilford: Yes, sir.

Mr. Andrews: In substantially the same proportion?

Mr. Tilford: Yes.

Mr. Andrews: Subsequently you made some remarks about
3193 Mr. Ragley owning some of it.

Mr. Tilford: Well, he is a minority stockholder.

Mr. Andrews: How much has he got?

Mr. Tilford: $7,500 worth.

Mr. Saner: That arises by reason of the fact that Mr. Ragley is my father-in-law and that that stock that he bought in down there offsets the lumber interest. I personally own the controlling interest in both companies and the stockholders are not identically the same in the railroad company as in the lumber company, but substantially so. In other words, I own the controlling interest.

Mr. Cowan: It is an identity of interests largely?

Mr. Saner: Well, yes, sir, but not absolutely. In other words, I own the controlling interest in both companies, although I do not own all the stock.

Mr. Cowan: I hope you make money out of both.

Mr. Saner: Thank you.

Mr. Andrews: Who carries your deficit?

Mr. Saner: We have none.

Mr. Andrews: You reported a deficit for the year ending June 30th, 1909, to the Commission.

Mr. Saner: Not by carrying it forward up to date. We had
3194 a profit in previous years, and that has been carried forward.

Mr. Andrews: The total result of continuous operation is to the good?

Mr. Saner: Yes, sir.

Mr. Andrews: Have you had any dividends?

Mr. Saner: No.

(Witness excused.)

Examiner Burchmore: That seems to be all the cases we have to hear at this time.

Mr. Cowan: Before we adjourn I want to say, and I think it expresses the sentiment of all the lawyers present for all sides, and I say it for the purposes of the record, because these gentlemen are not all here, that I believe we all feel that Commissioner Harlan and your Honor, the Examiner, have indulged in a great deal of patience, and much more hard work than the attorneys on either side would like to have seen exhibited, and I know you are entitled to the thanks of us all. I say that for the purposes of the record in which as I believe the gentlemen on the other side all join.

3195 Mr. Saner: I especially join in expressing my appreciation for your kindness in sitting over until this late hour to get us in the record at this time.

Examiner Burchmore: The hearing will now stand adjourned without date.

Whereupon, at 6:30 P. M., the hearing in the above matter was adjourned without date.

3196 At three P. M., pursuant to announcement, special examiner Burchmore, opened the hearing in the case of Jackson Railroad Company in an adjoining room where the following proceedings were had:

The Jackson Railroad Case.

Examiner Burchmore: We will now take up the case of the Jackson Railroad Company.

FRANKLIN W. HERR,, was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Where is your place of residence, and what is your occupation?

Mr. Herr: My place of residence is Jackson, La., and my occupation is a good deal like that of a—who is that gentleman this morning who was examined? I hold about six offices in the Jackson Railroad: President, Manager, Secretary, and Treasurer, etc.

Examiner Burchmore: Where is the Jackson Railroad?

Mr. Herr: It is a small tap line connected with the Yazoo & Mississippi Valley Railroad at McManus, La.

Examiner Burchmore: It has how many miles?

Mr. Herr: Four and six-tenths (4.6).

Examiner Burchmore: Single or double track?

Mr. Herr: Single track.

Examiner Burchmore: Standard or narrow gauge.

Mr. Herr: Standard gauge.

Examiner Burchmore: Rock ballasted?

Mr. Herr: No sir; just plain dirt ballast.

3197 Examiner Burchmore: It connects with no other road than the Y. & M. V.?

Mr. Herr: No sir, just the Yazoo & Mississippi Valley.

Examiner Burchmore: When was this road constructed?

Mr. Herr: In the winter of 1894-1895.

Examiner Burchmore: Were you at that time interested in the Company?

Mr. Herr: Yes I organized the Company and built it?

Examiner Burchmore: By whom was the Railroad actually constructed?

Mr. Herr: That means, of course, who produced the funds—put up the money.

Examiner Burchmore: Not the financing but the constructing.

Mr. Herr: Who actually did the construction work?

Examiner Burchmore: Yes.

Mr. Herr: I did sir.

Examiner Burchmore: In your own name?

Mr. Herr: No sir I did it as Manager of the Jackson Railroad. The Company was organized and chartered and I built the road myself—superintended the work in person.

Examiner Burchmore: Under a contract?

Mr. Herr: No sir no contracts were let at all.

Examiner Burchmore: When was the Railroad incorporated?

Mr. Herr: On April 15, 1893.

3198 Examiner Burchmore: What was its total authorized capital stock?

Mr. Herr: Thirty thousand Dollars.

Examiner Burchmore: How much of that was issued?

Mr. Herr: The total amount; three hundred shares were issued.

Examiner Burchmore: Were they paid for in Cash?

Mr. Herr: They were practically paid for in cash. They were issued for construction work. It was sold at a discount of 33⅓% to the stockholders and used in the construction of the work.

Examiner Burchmore: The cash was paid in?

Mr. Herr: Yes and used in construction work.

Examiner Burchmore: Is there any bonded indebtedness?

Mr. Herr: No. sir none at all.

Examiner Burchmore: What industries are there on the line?

Mr. Herr: None at all; not a one of them.

Examiner Burchmore: No mines?

Mr. Herr: Nothing.

Examiner Burchmore: No mills, Mr. Herr?

Mr. Herr: No, sir, no mills or manufactories or industries or enterprises of any character; it runs strictly through an

3199 agricultural country.

Examiner Burchmore: What towns are on the line?

Mr. Herr: Only one town, Jackson. McManus is not a town, but merely a point in the woods. It has a Post Office but that is the extent.

Examiner Burchmore: Has your Company a station at Jackson?

Mr. Herr: Yes sir.

Examiner Burchmore: A station building?

Mr. Herr: Yes., also at McManus.

Examiner Burchmore: Are those one room structures?

Mr. Herr: No sir; ware-room and passenger; white and colored passenger waiting room; also two story building with room overhead for private purposes.

Examiner Burchmore: Do you have platforms for the use of passengers at those points?

Mr. Herr: Yes sir, platforms in connection with the depot.

Examiner Burchmore: Any freight warehouses?

Mr. Herr: There are freight warerooms in both depots.

Examiner Burchmore: Scales?

Mr. Herr: Well, there are no platform scales; only the scales used in the depot. I have no wagon scales or things of that

3200 description, or car scales.

Examiner Burchmore: Lunch counter?

Mr. Herr: No sir.

Examiner Burchmore: Is there an agent, a regular station agent at Jackson?

Mr. Herr: Yes sir.

Examiner Burchmore: There all the time?

Mr. Herr: Yes sir.

Examiner Burchmore: Receives a regular salary?

Mr. Herr: Yes sir. The agency is in my name and so is the McManus agency, but I employ my assistant agents you understand. I really do a very little part of the agency work at Jackson, but the agency is in my name, and I am the responsible agent. You understand, the work is more than I could possibly perform.

Examiner Burchmore: What is the character of your traffic?

Mr. Herr: Standard Gauge laid with 60 pound rails leased from the Y. & M. V. Originally we bought the rails with which we built the road, but it was built with 35 pound relay iron but that was worn out and also impractical under the present loads—too light and we found it necessary to relay the track and leased the rails from the Y. & M. V. Railroad. I have a copy of the lease if you

3201 wish to refer to it.

Examiner Burchmore: On what terms did you lease that rail?

Mr. Herr: We lease that rail on 6% interest plan; that was all.

Examiner Burchmore: Is that a copy of the contract?

Mr. Herr: That is a carbon copy of it.

Examiner Burchmore: Are you willing to offer that in evidence?

Mr. Herr: I would not mind furnishing a duplicate, but that is the only copy I have. That was furnished by the Illinois Central. I said the Y. & M. V., but it is the I. C.

Examiner Burchmore: It owns the Y. & M. V.?

Mr. Herr: Yes sir that is correct.

Examiner Burchmore: The question I asked is, what is the character of your traffic?

Mr. Herr: Oh, I thought you said track. We haul passengers, mail, express and general freight traffic.

Examiner Burchmore: Taking these up one at time, what is the extent of your passenger traffic?

Mr. Herr: Well, the revenue——

3202 Examiner Burchmore: How many passengers travel on it a day?

Mr. Herr: I don't know, I can just answer that question. I have it all here in my state railroad Commission report if you will allow me to make use of it.

Examiner Burchmore: While you are looking, are you a former employee of the Y. & M. V. Railroad Company?

Mr. Herr: Yes sir.

Examiner Burchmore: Formerly an engineer?

Mr. Herr: Yes sir. What is the question you wanted to know—the revenue from passenger traffic?

Examiner Burchmore: That will do.

Mr. Herr: Three Hundred and Eighty-one Dollars and Twenty-five Cents ($381.25) for the year ending June 30, 1910.

Examiner Burchmore: What character of freight do you carry?

Mr. Herr: Just general freight traffic; merchandise, groceries, provisions and so on; usual freight business.

Examiner Burchmore: Are you personally interested in any of the freight that you carry; do you own any of it?

Mr. Herr: Not a cent's worth; not any interest whatever.

3203 Examiner Burchmore: What proportion of the Capital stock of the Company do you own?

Mr. Herr: About Eighty-one and two-thirds per cent, I believe it is.

Examiner Burchmore: Who owns the remainder?

Mr. Herr: It is owned by several individuals of Jackson La.

Examiner Burchmore: Who are they?

Mr. Herr: W. R. McCowan, W. S. Payne, Dr. Geo. H. Jones, Dr. T. H. Jones and P. C. Keller, I believe.

Examiner Burchmore: Are these gentlemen engaged in any manufacturing enterprise, lumbering enterprise?

Mr. Herr: None whatever.

Examiner Burchmore: Well, what was your purpose in constructing this road?

Mr. Herr: Well, I was acquainted at Jackson, La. a town five miles from the Y. & M. V. Railroad and knew that it had no rail facilities whatsoever. The State Insane Asylum was located there and I conceived the idea of building this track. Citizens had made one or two efforts to get the state to build the road on account of the State Asylum being located there and I went to work and

3204 raised the money.

Examiner Burchmore: You did it as a money-making venture?

Mr. Herr: I went into it for what I could make out of it, yes sir.

Examiner Burchmore: You transported apparently nearly four thousand tons of bituminous coal during this fiscal year, ending June 30, 1910. For whom was that carried?

Mr. Herr: The State Insane Asylum as well as that for my own furnaces, too. There is over three thousand tons of that belonging to the Insane Asylum.

Mr. Gutheim: The proposition is that you are running as a regular carrier railroad?

Mr. Herr: Yes sir.

Mr. Gutheim: And none of the stockholders you mention are connected with the road in any way or figure as officers on the road?

Mr. Herr: None at all, W. R. McCowan is a retail merchant. W. S. Payne——

Examiner Burchmore: Don't enumerate them all.

Mr. Herr: No sir.

3205 Examiner Burchmore: Has your Railroad been examined by any employee of the Commission?

Mr. Herr: There was, I think, about last Spring some gentleman——

Examiner Burchmore: Mr. Semple?

Mr. Herr: I don't know his name; at least, I don't remember. He came in and examined my tariff and I think took copies of some way bills from the impression book of the Y. & M. V. Railroad.

Examiner Burchmore: Do you have any joint rates?

Mr. Herr: Yes.

Examiner Burchmore: In connection with the Y. & M. V.?

Mr. Herr: Yes; I have a copy of my tariff there if you would like to refer to it.

Examiner Burchmore: Yes, the Y. & M. V.——

Mr. Herr: I haven't any statement there—I will state that the Jackson Railroad does not publish the tariff; it participates in the joint tariff, but I get the Y. & M. V. to print my tariff, to be sure that I am keeping within the legal requirements in getting them up in due form.

Examiner Burchmore: Does any officer of the Y. & M. V. Railroad own stock in your Company?

Mr. Herr: Not a dollar's worth.

3206 Examiner Burchmore: Then your Company has no connection, direct or indirect, with any manufacturing or lumbering or mining or other industries on or near its line?

Mr. Herr: Absolutely none sir.

Examiner Burchmore: It is, in your opinion, exactly the same as any other Railroad except that it is small.

Mr. Herr: That is correct, yes sir.

Examiner Burchmore: You run passenger trains.

Mr. Herr: I carry one coach—an accom-odation coach, and run a train each way each day except Sunday.

Examiner Burchmore: What is the basis of rate to and from Jackson? Are they made by adding an arbitrary to the Y. & M. V. rate?

Mr. Herr: Well, in one sense of the word, that is correct, but not exactly. You see, before this road was built, Jackson depended for its freight traffic principally upon wagons hauling from the river at Bayou Sara and the rates on my road are formed to meet the traffic, which make it necessary for the Y. & M. V. to allow me the principal portion of my rates, if that makes it plainer.

Examiner Burchmore: Well, suppose that these joint rates were finally cancelled and you had to charge your local rate for

3207 movements on your line, and add that rate to the rate charged by the Y. & M. V. to your line, you would still go on in business.

Mr. Herr: No sir, I would wind up business in thirty days absolutely.

Examiner Burchmore: Still, the people at Jackson have no other way to get their stuff?

Mr. Herr: They would go back to wagons; they would not be long doing it.

Examiner Burchmore: Then your competition is with wagons?

Mr. Herr: With wagons strictly.

Examiner Burchmore: Is anybody here representing the Illinois Central?

Mr. Brady: No sir. I am a legal representative but I am not here representing it.

Examiner Burchmore: Do you know anything about the Jackson Railroad.

Mr. Brady: Yes, I have heard——

Examiner Burchmore: It is an industrial railroad.

Mr. Brady: My information is that the witness has stated just like it is.

Mr. Herr: I have correspondence with the Interstate Com-
3208 merce Commission on that point if you want to have it.

Mr. Brady: I can elaborate that statement if you wish. I will say this, that I have never been over the road, but members of my family lived in Jackson, La., and I know in a general way that it is a small railroad connection between Jackson, Louisiana and the Y. & M. V. Railroad, furnishing facilities for Jackson, Louisiana.

Mr. Herr: The capital was raised in Jackson, Louisiana.

Examiner Burchmore: Is the road a financial success?

Mr. Herr: No sir, it has never been a paying proposition; the probabilities are it will not exist more than a few years longer.

Examiner Burchmore: Will you sell it out or go out of business?

Mr. Herr: There is nobody to sell it out to.

Examiner Burchmore: I think that is all, Mr. Herr.

3209 *Natchez, Columbia & Mobile Railroad.*

Examiner Burchmore: Who shall we take next?

Mr. Butterfield: R. B. Butterfield is here representing the Mobile Railroad extending from Norfield Mississippi westward.

Examiner Burchmore: What other roads are represented here?

Mr. T. Brady, Jr.: I represent the New Orleans and Natalbany and Natchez Railroad Company; I also represent the Greensburg and Southwestern Railroad Company.

Examiner Burchmore: What other railroads are present?

Mr. Keyes: I represent the Kentwood and Eastern.

Examiner Burchmore: The Attorney for the Fernwood and Gulf asked me to state that he was in his room preparing his statement and had not completed it but would come up as soon as he had completed it. Any other Company? Mr. Brady, I think we can take up your Company first.

Mr. Brady: I would like to call your attention that it will be fair to you, I think—to the regular appearance I have entered and I would like to read to you a paragraph or two from it so that you may understand clearly our position. It reads, after stating what it is, that its representative was telephoned of the hearing and the order of
Commissioner Harlan requiring it to appear, and in com-
3210 pliance with this order, it entered its appearance wholly unprepared to present its case. It is advised that, with the exception of two or three short lines in this territory, no short line Railroad Companies in the territory have been cited or ordered to appear at this hearing. The truth is, it believes, upon information, that it was inadvertently ordered to appear at this hearing, since the division of rates which it is receiving has not been cancelled, and it would be manifestly unjust and unfair to it to require it to appear and answer with the short line railroads west of the Mississippi River

which have had the matter under consideration for a great length of time.

That its belief that it has been ordered by inadvertence is further borne out by the fact that, with but two or three exceptions, no short line railroad east of the Mississippi river has been ordered to appear, although there are such railroads in said territory forming connections with the Illinois Central Railroad Company with the Louisville and Nashville Railroad Company, *with the Louisville and Nashville Railroad Company,* with the New Orleans and Northeastern Railroad Company, with the Mobile and Ohio Railroad Company, and
3211 many others too numerous to mention.

That it supposes that the division of rates with these short lines not cited will continue, or at least, they will continue until these short lines have been ordered to appear, and are given a hearing, since, without a hearing, to cancel that division of rates, would be a manifest injustice.

That it is but fair to it that it should have its hearing with short line railroads east of the Mississippi river after it has had time to prepare its case and that it should not be forced into a hearing with these railroads involved in the controversy in the above styled cause.

That it would be unfair to include it in an order issued against other short line railroads in the above styled cause, cancelling a division of rates, since to do so would place it upon a basis with roads west of the Mississippi river not cited, while those east of the Mississippi river would not be upon such a basis and would continue to enjoy a division of freight rates when it would be denied such rights.

That it has no objections to making such a showing as it
3212 can at the present hearing, but it protests against being precluded from making a further showing, should other short lines east of the Mississippi river, not ordered to appear at this writing, be in the future allow a hearing.

That it protests against being included in any order against the railroad in the above styled cause and insists that it is entitled to whatever hearing may be hereafter granted to short line railroads east of the Mississippi river, for the reason that the case which it presents has been hastily prepared, some of its important officers being in the North, so that it really is unable to make the showing to which it is entitled, but will make such showing and answer as it can, with the privilege of appearing and completing it, if a further hearing is extended to short line railroads east of the Mississippi river not ordered to appear at this meeting.

That its participation in the freight rates with the trunk lines has never been cancelled, and in equity, should not be; especially should no change be made as to it as long as short line roads east of the Mississippi river continue to share in a division of rates.

3213 Therefore, it prays that this hearing be not declared final as to it, and upon a future final hearing, that no change be made.

Respectfully submitted,

NATCHEZ, COLUMBIA AND MOBILE RAILROAD COMPANY,

By Attorney T. BRADY, JR.

The answer so offered and identified as Exhibit #1, was received in evidence and thereupon marked "Defendant's Exhibit #1, received in evidence December 12th, 1910," page 3213, and is attached hereto.

Examiner Burchmore: You say you filed that objection?

Mr. Brady: I am asking to file it.

Examiner Burchmore: On behalf of what?

Mr. Brady: The Natchez Columbia and Mobile Railroad Company. I do not want to appear to disobey the Commissioner's request. He asked us to appear and telephoned me to come. That petition is sworn to. We are perfectly willing to appear, as far as we can. If you will allow me to speak to Commissioner Harlan, I would like to speak to him upon the subject because I think it is entirely fair.

Examiner Burchmore: Then you protest on behalf of your company against going on with the hearing?

Mr. Brady: No sir, I say I am willing to have such hearing
3214 as we are able to hear. All I ask is this. Mr. Examiner is this; in the future, if you call the Railroads east of the river—this has been going on west of the river for two years and I had no knowledge of what it was and my Company had no knowledge of what it was——

Examiner Burchmore: You have knowledge of what you are and what you are doing?

Mr. Brady: Sure.

Examiner Burchmore: You don't need to know what the railroads west of the river are doing.

Mr. Brady: That is the point; we need time in which to prepare and that is rather short and we want to be allowed this privilege only in case you cite other roads east of the river, and in case our case is not made out to our satisfaction, that we may continue to press our case then.

Examiner Burchmore: This objection will be received and laid before the Commission for its action, but that does not mean however that it is filed or granted. I have no authority to take any action on it except to retain it. Are you ready now to go on?

Mr. Brady: With what we have got, we will be delighted to accom-odate you.

3215 Examiner Burchmore: It is not an ac-om-odation to me. It is your opportunity to be here in an investigation by the commission into the practices and methods of so-called tap lines.

Mr. Brady: We want to do this: we want to submit our case as far as we can, with your permission, and in case other points east of the river are allowed——

Examiner Burchmore: You may present your case without such permission, but with your request for such permission noted in the record.

Mr. Brady: That is all right.

Examiner Burchmore: What witness have you here?

Mr. Brady: Mr. Butterfield.

R. B. BUTTERFIELD was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is your occupation, Mr. Butterfield?

Mr. Butterfield: General Manager of the Natchez, Columbia and Mobile Railroad, and Secretary-Treasurer of the Butterfield Lbr. Co. of Norfield, Miss., I am Secretary-Treasurer of both companies in the executive department.

Examiner Burchmore: Where is the line of the Natchez Columbia and Mobile Railroad—Where does it run?

3216 Mr. Butterfield: It runs from Norfield Mississippi to a point one hundred and seventeen miles north of New Orleans on the main line of the Illinois Central Railroad in an easterly direction.

Examiner Burchmore: In an easterly direction how far and to what point?

Mr. Butterfield: The main line is about fourteen miles long. It has two lateral branches. One of them is about—The main line runs from Norfield Mississippi to what is called Main Line Junction, fourteen miles east of Norfield and it has a branch from that point in a north-easterly direction to a point called Old Camp, which is eight miles—practically nine miles long, and to a point in a southerly direction, seven and a half miles long.

Examiner Burchmore: What is the termination of that line?

Mr. Butterfield: Its termination is a name given—the switch where the train is made up—called Furlough switch.

Examiner Burchmore: Furlough Switch?

Mr. Butterfield: Yes sir.

Examiner Burchmore: This Railroad is controlled by the Butterfield Lumber Co.

Mr. Butterfield: The stockholders of its company are the
3217 same and own in the Railroad Company a pro rate of stock in the same pro rata of stock as in the lumber Company.

Examiner Burchmore: Where are the mills?

Mr. Butterfield. At Norfield.

Examiner Burchmore: The Mills are at Junction Point?

Mr. Butterfield: Yes sir. Norfield.

Examiner Burchmore: When was this Railroad incorporated?

Mr. Butterfield: In 1891, I forget the exact date; I think June 21st. I can give it to you if you want.

Examiner Burchmore: The year will suffice. When was the line constructed?

Mr. Butterfield: It was incorporated just before the construction started or they started to construct immediately after incorporation.

Examiner Burchmore: At that time, how far was it constructed?

Mr. Butterfield: As soon as they started to construct it at all, we built five miles as fast as they could build it.

Examiner Burchmore: And that was to a temporary terminus?

Mr. Butterfield: Yes sir.

Examiner Burchmore: When was the mill at Norfield opened up?

Mr. Butterfield: In January 1891, I think; the last of
3218 January or first of February, I will not be sure.

Examiner Burchmore: The construction and operation of the Mill and Railroad were practically s-multaneous?

Mr. Butterfield: Yes sir.

Examiner Burchmore: The railroad was a part of the Mill facilities at that time?

Mr. Butterfield: The Railroad, of course, was a part of the mill facilities, but a distinct corporation. At the time of the incorporation of the Railroad, a great many outside people were interested in the incorporation, but have since been bought out until the holdings are identical with the Railroad Company—the lumber company I mean to say.

Examiner Burchmore: Describe a little more fully who the original organizers of this railroad were?

Mr. Butterfield: The original organizers of the Railroad were the heads of the Lumber Company, with a number of local people.

Examiner Burchmore: These local people were minority holders?

Mr. Butterfield: Yes, and have since been bought out.

Examiner Burchmore: Do these local people own timber lands?

3219 Mr. Butterfield: No longer in that neighborhood. They came from neighboring towns.

Examiner Burchmore: Then the minority holdings were in the hands of persons who had no interest in the lumber business in that region.

Mr. Butterfield: None whatever.

Examiner Burchmore: The original line was five miles long. Were there any tap lines or spurs beyond that?

Mr. Butterfield: There was a tap line, I think that ran at that time—I think it was on my connection—for seven miles long, at the end of that five miles.

Examiner Burchmore: And that seven miles was subsequently taken over by the Railroad Company?

Mr. Butterfield: I cannot really say after that seven miles, but I know that the Railroad Company owns everything in the shape of railroad that is there, so it must have been.

Examiner Burchmore: Are not the logging camps beyond Furlough? Are there not?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Owned by the Railroad Company?

Mr. Butterfield: Yes sir.

Examine- Burchmore: Operated by the Railroad.

3220 Mr. Butterfield: Yes sir.

Examiner Burchmore: Then, as I understand you, when you state that they came to Furlough as a terminus——

Mr. Butterfield: Of the main line. These logging spurs are temporary tracks that are put down and taken up, as soon as the timber which is contiguous to them is logged out.

Examiner Burchmore: But they are owned and operated by the Railroad Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: The ground on which they were laid is not owned——

Mr. Butterfield: No sir, belongs to the Lumber Company, under the Railroad Company's operation. The Lumber Company have a compensation for it.

Examiner Burchmore: By whom is the right of way of the line owned—that land?

Mr. Butterfield: By the Railroad Company.

Examiner Burchmore: In fee?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What is the weight of rails?

Mr. Butterfield: 56 or 60 pound.

Examiner Burchmore: In the entire Main Line?

3221 Mr. Butterfield: Yes sir.

Examiner Burchmore: Was that rail purchased entirely by the Railroad Company in the open market or how?

Mr. Butterfield: To eliminate such expenses as possible—the Railroad Company is operated as an entirely distinct business corporation, but to eliminate expense, the general officers of each are the same officers; some of the, the Railroad employees—the railroad employs some of the office force of the Butterfield Lumber Co. and the purchasing agent of the Butterfield Lbr. Co. is the purchasing agent for the Railroad company and acts along this line as the fiscal agent of the Railroad company in purchasing.

Examiner Burchmore: He purchased the rail?

Mr. Butterfield: Yes sir.

Examiner Burchmore: And turned it over to the Railroad?

Mr. Butterfield: The railroad Company does not purchase anything. The Butterfield Lbr. Co. purchased it and turned it over to the Railroad company at the invoice price.

3222 Examiner Burchmore: The Lumber Company receives no commission?

Mr. Butterfield: Nothing whatever.

Examiner Burchmore: Has the Natchez, Columbia and Mobile Railroad any station building?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Where are they?

Mr. Butterfield: We have a station with an agent at Ruth, Mississippi.

Examiner Burchmore: Where is Ruth?

Mr. Butterfield: Ruth is a point ten miles east of Norfield. We have a station building an- agent at Verna, Mississippi, sixteen miles east of Norfield.

Examiner Burchmore: That is on one of these lateral lines?

Mr. Butterfield: On the Northeast Lateral Branch and another at Topeka, Mississippi, which is 20 miles east of Norfield. We have a ticket agent at Norfield Miss. at the Illinois Central depot. In fact, we have a joint ticket agent there and the freight agent is — the Railroad Company's office at Norfield.

Examiner Burchmore: In the Illinois Central Railroad

3223 Company Office?

Mr. Butterfield: No sir, the N. C. & M.

Examiner Burchmore: That office is a common office with the Lumber Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: You use the Illinois Central Station at Norfield?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What is the distance from the mill in Norfield to the line of the Illinois Central?

Mr. Butterfield: Practically we are right on it, but the way the tracks are laid out, I suppose it is a quarter of a mile.

Examiner Burchmore: What distance do cars move over this Railroad to go from the Mill to the Illinois Central?

Mr. Butterfield: The Illinois Central has built a long passing and interchange track and the N. C. & M. Railroad has a switching crew which receives all of the cars for it and for the Lumber Company and delivers all the cars for it and the Lumber Company to the Illinois Central R. R. Co.

Examiner Burchmore: On this Interchange track?

Mr. Butterfield: Yes. The movement of the cars would average probably half a mile.

3224 Examiner Burchmore: The movement of the cars by the——

Mr. Butterfield: By the N. C. & M.

Examiner Burchmore: The officers of the Lumber and Railroad Company, you state, were identical?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What salaries are paid to the officers of the Railroad Company?

Mr. Butterfield: I think it amounts to $3,000.00.

Examiner Burchmore: For all of them?

Mr. Butterfield: For all four.

Examiner Burchmore: Do they perform any substantial service for the railroad Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Does their salary from the Railroad Company compare with their salary from the lumber company in the same proportion that their services do?

Mr. Butterfield: That was the aim in granting the salaries; I think I can state that it does.

Examiner Burchmore: What is the principal traffic of this Company?

Mr. Butterfield: The principal traffic is the haul for the Butterfield Lbr. Co. of logs.

Examiner Burchmore: Are these Hardwood Logs, Hardwood lumber?

3225 Mr. Butterfield: No sir, Yellow Pine.

Examiner Burchmore: No Hardwood?

Mr. Butterfield: Very little; there is some.

Examiner Burchmore: Does the Natchez Columbia and Mobile Railroad have joint rates on lumber in effect in conjunction with the Illinois Central to interstate destination?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What are those rates? Are they the same

in amount as the Junction point rate of the Illinois Central from Norfield?

Mr. Butterfield: No sir, the rate on lumber on the N. C. & M. is two cents higher than the Junction point rate into central traffic or eastern traffic line territory only.

Examiner Burchmore: To other points the rates are the same?

Mr. Butterfield: To other points, the rate would be a combination of the two locals.

Examiner Burchmore: Then you only have through rates to this territory?

Mr. Butterfield: That is all.

Examiner Burchmore: What is the division according to
3226 your tariff?

Mr. Butterfield: Two cents a hundred.

Examiner Burchmore: Then practically, you get the same result in the operation of your road as a common carrier, that you would if operated as a private carrier?

Mr. Butterfield: Well, not hardly. In the first place, the division of rate is a help to the Railroad inasmuch as it gets its full pro rata any way. In the second place, the lowering of the rate—we happen to have on our line of road several small mills which have contributed a great deal to the revenues of the road and it is a fiscal necessity in that portion of the business to obtain our regular rate for lumber and to tack the two cents which would be necessary on top of the regular rate; if it was to be a combination of the two, it would be nearly prohibitive to any industry that might be put up on the road.

Examiner Burchmore: I don't believe I understand that. On a shipment originating at a point on your line and moving to Central Freight Association destination?

Mr. Butterfield: Yes sir.

Examiner Burchmore: The rate charged at two cents per
3227 hundred pounds higher than on like shipments originating on Illinois Central rails from Norfield?

Mr. Butterfield: Yes sir.

Examiner Burchmore: You receive that two cents?

Mr. Butterfield: No sir.

Examiner Burchmore: The rate is two cents higher?

Mr. Butterfield: Yes sir, we receive four cents out of that. We receive that two cents and two cents more at our division from the Illinois Central.

Examiner Burchmore: Then your standard division is four cents per hundred pounds?

Mr. Butterfield: Yes sir.

Examiner Burchmore: These joint through rates carry with them a milling-in-transit privilege.

Mr. Butterfield: No sir, not that I know of.

Examiner Burchmore: What rate is charged on the movement of logs into the mill from the woods?

Mr. Butterfield: $2.00 per thousand feet.

Examiner Burchmore: And the joint rate applied on the lumber applies only from the mill at Norfield—not back from the woods?

Mr. Butterfield: Joint rate on lumber?

Examiner Burchmore: Yes.

3228 Mr. Butterfield: I think that the tariff of the Illinois Central reads that "it shall retain through the claim department of the Ilinois Central two cents per hundred pounds on lumber manufactured from logs brought in over the Natchez, Columbia and Mobile Railroad" and two cents per hundred on lumber that originates on the Illinois Central, so that applied to lumber and logs both.

Examiner Burchmore: Then, the joint rate from point of origin to destination really covers logs into the mill and the lumber out of the mill.

Mr. Butterfield: Yes, sir.

Examiner Burchmore: Will you please describe in your own way the method of billing and collecting the charges on the movements of logs that originate in the woods on your line and is milled at your mill at Norfield and moves to interstate destinations? Just how it is billed and handled?

Mr. Butterfield: There is a scaler employed jointly by the Lumber Company and the Railroad Company who scales the logs on the car after they are put on the cars by the Lumber Company and he makes up a report daily which is sent in daily and charged

3229 daily by the Railroad Company to the Lumber Company. There is a settlement between the Railroad Company and the Lumber Company at the end of each month on that scale. In addition to that, as a check, the train conductor of the train that handles the logs checks over the car and the number of logs he has on the car. He takes no scale.

Examiner Burchmore: Let me ask you several questions about that. The Logging car is placed for loading in the woods?

Mr. Butterfield: Yes sir.

Examiner Burchmore: By the Railroad Company's employees?

Mr. Butterfield: Yes sir.

Examiner Burchmore: And by its engine. It is then loaded with logs by employees of the lumber Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: When loaded, the Railroad company takes the train load of logs and hauls them to the Mill?

Mr. Butterfield: Yes sir, there is a switching movement in the woods first. The log loaders run out on these spurs and the locomotives that handle the log loaders take the cars out to the side track or delivering track, to the Main line, where the train is made up and from there, the regular movement starts.

Examiner Burchmore: Then, upon the arrival of a train

3230 of logs at the Mill, who unloads it.

Mr. Butterfield: The employees of the Railroad Company unload it.

Examiner Burchmore: Into what?

Mr. Butterfield: Into a Pond. We have skids furnished by the Lumber Company.

Examiner Burchmore: When the logs have been cut at the mill, they are loaded into cars by the Mill employees?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What cars are they loaded into?

Mr. Butterfield: The cars that the Illinois Central furnishes.

Examiner Burchmore: These cars that the Illinois Central Company furnishes, are taken, however, that the Natches, Columbia and Mobile Railroad employees from the interchange track and brought up empty for loading?

Mr. Butterfield: Yes sir.

Examiner Burchmore: After being loaded, the car is switched out to the Illinois Central?

Mr. Butterfield: Yes, sir, and weighed.

Examiner Burchmore: Have you a track scale?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Weighed by your employee, and then goes out——

3231 Mr. Butterfield: Weighed by the representative of the Southern Weighing and Inspection Bureau.

Examiner Burchmore: That is, as to the physical handling of the freight?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Now, as to the billing. Is any Bill of Lading issued at the time the logs leave the wood-?

Mr. Butterfield: No sir.

Examiner Burchmore: When is the first Bill of Lading?

Mr. Butterfield: For lumber manufactured; the first Bill of Lading for lumber manufactured from these logs by the lumber Company.

Examiner Burchmore: It is signed by the agent of the Railroad Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: And issued when the lumber leaves the Mill?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Is there any way bill, or car way bill, accompanying the logs into the Mill?

Mr. Butterfield: No, just the train sheets.

Examiner Burchmore: What are these train sheets?

3232 Mr. Butterfield: I think I have a sample here. If you will give me permission to open this grip, I will give you one now (witness hands a train sheet to the commissioner), I can leave that on file.

Examiner Burchmore: Who fills out that train report?

Mr. Butterfield: A joint employee; that is, the scaler employed by both Companies.

Examiner Burchmore: He fills it out in the woods?

Mr. Butterfield: Yes sir; just right as he scales it; immediately after he scales it.

Examiner Burchmore: He hands it to the conductor?

Mr. Butterfield: He mails them to the company entirely foreign to the conductor.

Examiner Burchmore: The conductor does not take it from him?

Mr. Butterfield: No sir.

Examiner Burchmore: In one sense, it accompanies the car?

Mr. Butterfield: Yes sir.

Examiner Burchmore: It is mailed at the same time that the car moves?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Now, when lumber is shipped from
3233 the Mill, the Bill of Lading is issued signed by the N. C. & M. Railroad Agent?

Mr. Butterfield: No sir. The Illinois Central Agent. It is billed directly to the Illinois Central. The N. C. &. M. does not do anything but make switching movement of that and put it out on the Illinois Central receiving track for which they receive a switching charge.

Examiner Burchmore: What is shown as the point of origin on that Bill of Lading?

Mr. Butterfield: Norfield, Mississippi.

Examiner Burchmore: Does that Northfield mean Northfield on the Illinois Central?

Mr. Butterfield: It means Norfield on the Illinois Central. You have it "Northfield," it is Norfield.

Examiner Burchmore: That is immaterial. When the car leaves the mill, there is nothing on the car to indicate to your train employees where the car is going?

Mr. Butterfield: Nothing whatever. There is a switching list handed from the office to the switching employees in the morning. This is simply a switching line—to put such and such a car out on
the track, and the weighmaster—the only record that is kept
3234 of that outside of the switching master's report is that the weigh master furnishes the Illinois Central Agent with the weights on the car.

Examiner Burchmore: Does that Bill of Lading issued by the Illinois Central Agent at Norfield indicate on its face that the lumber has come from there?

Mr. Butterfield: That the logs have come from there?

Examiner Burchmore: No, the Lumber?

Mr. Butterfield: No sir, not lumber; there is no lumber that the Butterfield Lumber Company handles that comes from there

Examiner Burchmore: It comes from there so far as the Illinois Central is concerned?

Mr. Butterfield: That lumber is handled in an entirely different manner from the Logs.

Examiner Burchmore: We are not talking about lumber.

Mr. Butterfield: I understood you to say Lumber. There is nothing on the Bill of Lading to show that the logs come from beyond Norfield.

Examiner Burchmore: That the logs come from beyond Norfield on the Illinois Central, as an Illinois Central point?

Mr. Butterfield: Or as an N. C. & M. point—any point.

3235 Examiner Burchmore: The two points are identical on the two Railroads?

Mr. Butterfield: No sir, they are considerably different. I don't think I caught quite what you want to get at.

Examiner Burchmore: I am trying to understand the practice. The practice seems to be quite different from that followed by points west of the river, and I am trying to find out what the practice is in billing a movement east from there?

Mr. Butterfield: Why, the tariff issued by the Illinois Central Railroad on this traffic—on the two cent pro rata on the logs—is just simply—says that short lines shall receive a pro rata on lumber manufactured from logs. I am giving you this to the best of my recollection, brought in and handled by the N. C. & M. Railroad Company, and shall be paid thru the claim department at the end of the month. At the end of the month, we make up a sworn statement which we send to the Illinois Central Railroad of the shipments—daily shipments of logs—receipt of logs from the N. C. & M. Railroad for the previous month, which we file in the shape of a claim with the Illinois Central Railroad Agent.

Examiner Burchmore: The N. C. & M. Railroad Company
3236 files this claim?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Not the Lumber Company?

Mr. Butterfield: No sir.

Examiner Burchmore: That tariff published refers to the connecting lines?

Mr. Butterfield: Yes sir.

Examiner Burchmore: That seems to be an unusual method?

Mr. Butterfield: It is the only method we use.

Examiner Burchmore: Your Company receives a division of four cents per hundred pounds?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Out of the joint rate published from Norfield?

Mr. Butterfield: Oh, no. The joint rates are to be from points on the line. We get two cents division and two cents pro rata from the Illinois Central.

Examiner Burchmore: This rate of two cents applies from Topeka and Old Camp, etc.

Mr. Butterfield: Yes sir.

Examiner Burchmore: What service does your Company render under this four cent division? What does it do that it should be paid four cents?

3237 Mr. Butterfield: It hauls the logs or hauls the lumber from the point of origin to the Illinois Central Railroad.

Examiner Burchmore: But it hauls no lumber from Topeka or Old Camp?

Mr. Butterfield: It hauls lumber from other mills, not the Butterfield Lumber Company.

Examiner Burchmore: I am speaking of the Butterfield Lumber Company shipments.

Mr. Butterfield: It hauls their logs for which it receives two cents per thousand and two cents per hundred from the Illinois Central as its proportion of the through rate.

Examiner Burchmore: It does not seem to me that that last statement is quite accurate. It receives two cents from the Lumber Company for moving logs into the mill?

Mr. Butterfield: Yes sir.

Examiner Burchmore: It credits that two cents on the subsequent freight charged does it not?

Mr. Butterfield: The two cents that we receive as refund is given back. We get two cents a thousand flat for hauling the lum-
3238 ber, and the claim is turned over to the Lumber Company.

Examiner Burchmore: What does your Railroad Company receive in the end after the transaction is entirely closed and completed and the claim paid by the Illinois Central Railroad? What does the N. C. & M. Railroad Company receive for hauling logs into the mills, and lumber out for the Butterfield Lumber Company?

Mr. Butterfield: It receives two cents a thousand for hauling logs, and receives a switching or rental charge in the wood, and receives a switching charge at the mill for handling loaded cars and weighing them.

Examiner Burchmore: How about the two cents division?

Mr. Butterfield: We get the two cent division as a matter of course, but that is a rebate—I misused the word pro rata—and it is given back.

Examiner Burchmore: That goes back to the Lumber Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What two cents is that?

Mr. Butterfield: The two cents we get from the Illinois Central Railroad Company.

Examiner Burchmore: Is that what the Illinois Central tariff provides?

3239 Mr. Butterfield: No sir, I don't think it is.

Examiner Burchmore: We will put it different. The two cents you get from the Illinois Central Railroad goes to the Butterfield Lumber Company in case of their shipments? In case of shipments handled for some other mill, "John Smith" where does the two cents go that you get from the Illinois Central Railroad Company?

Mr. Butterfield: It goes straight to the N. C. & M.

Examiner Burchmore: It seems to me that the owners of the Railroad receive a little better advantage from this rate?

Mr. Butterfield: No we have never hauled logs for anybody else that went into any traffic territory where we get this pro rata. We haul lumber for them, but our rate on lumber is two cents higher than the rate from Norfield, and the two cents which we receive from the Illinois Central Railroad Company just makes up our proportion of four cents.

Examiner Burchmore: What is the rate from Old Camp to the Ohio River?

Mr. Butterfield: I don't know sir.

Examiner Burchmore: Or to some other representative point?

3240 Mr. Butterfield: The rate from Norfield to Chicago is twenty-four cents. From Old Camp to Chicago would be twenty-six cents.

Examiner Burchmore: Now what is your method or rule as to the offsetting of logs in and lumber out? How many thousand pounds of logs make ten thousand pounds of lumber? What is the proportion?

Mr. Butterfield: I don't know that I could tell you. That is pretty hard. I figure that logs weigh in the neighborhood—Long Leaf Yellow Pine Logs—in the neighborhood of ten pounds to the foot, fresh cut.

Examiner Burchmore: Well, suppose a certain quantity of logs leaves the spurs in Old Camp, and moves to the mill, and they are there made into lumber by the Butterfield Lumber Company, and exactly a car load comes from that quantity of logs, and that car load of lumber is shipped to Chicago, and assuming that all the freight charges of that lumber are paid by the Lumber Company, and nobody else pays any charge on it, how much will the Butterfield Lumber Company have paid in the end to get that shipment to Chicago?

Mr. Butterfield: That is a pretty hard proposition to figure
3241 out.

Examiner Burchmore: I mean, in cents per ton and per car?

Mr. Butterfield: Well, you figure $2.00 a thousand feet and one thousand feet will weigh in the neighborhood of ten thousand pounds. That will be about two cents a hundred pounds, the equivalent of two cents a hundred, or just about that.

Examiner Burchmore: They pay that to get the logs into the Mill?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What more do they pay?

Mr. Butterfield: The switching charge at Norfield.

Examiner Burchmore: The Lumber Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Does not that Illinois Central Railroad absorb that?

Mr. Butterfield: No sir.

Examiner Burchmore: What is that switching charge?

Mr. Butterfield: One Dollar.

Examiner Burchmore: What else do they pay?

Mr. Butterfield: The other might really be considered—I
3242 don't think you could consider it a logging operation for the operation that we do for them in the woods is to get the trains made up, and delivered to our main line.

Examiner Burchmore: How much is that?

Mr. Butterfield: It all depends, it is not a fixed rate. We do this work for them and charge them 10% over and above the cost of the supervision and different charges. That charge is adjusted at the end of each year, besides that, they pay the Illinois Central Railroad, twenty-four cents a hundred pounds.

Examiner Burchmore: That is the rate from Norfield?

Mr. Butterfield: Yes sir.

Examiner Burchmore: They pay twenty-four cents?

Mr. Butterfield: Yes sir, and the equivalent of two cents for hauling the logs, and the switching charge of $1.00.

Examiner Burchmore: Then they pay 26¢ per hundred?
Mr. Butterfield: Yes sir.
Examiner Burchmore: Plus $1.00 for switching?
Mr. Butterfield: Yes, sir.
Examiner Burchmore: Plus something up there in the woods?
3243 Mr. Butterfield: That is charged, I happen to know, directly to their logging expenses.
Examiner Burchmore: What rebate or refund do they get out of that 26 cents?
Mr. Butterfield: Two cents.
Examiner Burchmore: Out of twenty six cents, they get two?
Mr. Butterfield: No, the Lumber Company gets nothing from that twenty six cents.
Examiner Burchmore: Then instead of saying that they pay the Illinois Central Railroad twenty-four cents to go to Chicago, you mean 26 cents, and subsequently you get two cents back.
Mr. Butterfield: Yes sir, That is just exactly what I mean.
Examiner Burchmore: Now, I think I understand you. Now, suppose someone else in the woods—rather portable saw mills in the woods——
Mr. Butterfield: There are quite a few small saw mills I suppose you might call them portable. They take them up and move them once in a while.
Examiner Burchmore: You mention one?
3244 Mr. Butterfield: The Busby Lumber Company.
Examiner Burchmore: They cut their logs into lumber in the woods?
Mr. Butterfield: Yes, sir.
Examiner Burchmore: What do they pay to get a carload of lumber to Chicago?
Mr. Butterfield: Twenty-six cents.
Examiner Burchmore: Then they pay $1.00 less than you pay—you pay 26 cents plus $1.00 for switching?
Mr. Butterfield: Yes sir. We absorb the switching charge on inter-charge by their freight.
Examiner Burchmore: Now, I have gotten, I think, at what I was trying to get. What does the N. C. & M. receive on these movements?
Mr. Butterfield: For Lumber, four cents a hundred.
Examiner Burchmore: Plus $1.00 a car in the woods?
Mr. Butterfield: From the Butterfield Lumber Company.
Examiner Burchmore: I think that is plain. Perhaps we are a little dense about this, but this refund of two cents in the case of the Butterfield Lbr. Co. shipments, can you——
3245 Mr. Butterfield: I think some of the Illinois Central people here have got a copy of that tariff here. If they will get that——
By Mr. Brady: Mr. Benway, can you give us a copy of that tariff?

Mr. Benway: No I have a local tariff. I will get a copy of that tariff.

Examiner Burchmore: The point is this. In the case of the Butterfield Lbr. Co. shipments, you state that they paid something in the woods for getting the cars together, and then two cents, about?

Mr. Butterfield: The equivalent of two cents.

Examiner Burchmore: To get the logs up to the Mill.

Mr. Butterfield: Yes sir.

Examiner Burchmore: And $1.00 for switching at the Mill?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Then, as an original proposition, they pay twenty-four cents to the Illinois Central Railroad?

Mr. Butterfield: Yes sir.

Examiner Burchmore: That makes a total of twenty-six cents?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Plus $1.00?

3246 Mr. Butterfield: Yes sir.

Examiner Burchmore: Now, subsequently, the Illinois Central entertains a claim and refunds two cents?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Where does that two cents go?

Mr. Butterfield: To the Railroad Company to make the equivalent of four cents on handling.

Examiner Burchmore: The Railroad Company receives that two cents refund, and retains it?

Mr. Butterfield: Yes sir.

Examiner Butterfield: It does not pass to the Butterfield Lumber Company.

Mr. Butterfield: No sir. That two cents is to make up the equivalent of four cents, which we are to get and do get.

Examiner Burchmore: I don't think that is just what you said before.

By Mr. Brady: He did not say that because he did not understand you. I didn't want to interrupt. He knew he was in error at the time.

Examiner Burchmore: The result of it all is that aside from any participation by the Railroad Company the Butterfield Lum-

3247 ber Company pays exactly the same amount as any other shipper on the line, plus $1.00, and that $1.00, it pays for extra services.

By Mr. Brady: That is the exact situation, precisely so; the Lumber Company, Mr. Examiner, does not participate in any division of rate whatever in this matter, but the Railroad Company does. The Butterfield Lumber Company is not preferred in any way. It gets extra service for the extra $1.00 that it pays.

Examiner Burchmore: Where does the Busby Lumber Co. get their logs?

Mr. Butterfield: They haul them with the teams from different distances from their mills, contiguous to their mill. There mill is located on a side track.

Examiner Burchmore: Does the N. C. & M. Railroad Company charge them anything for taking the cars off that track?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Then the Railroad Company switches for them?

Mr. Butterfield: Yes, it is a very short switching service.

Examiner Burchmore: Are there any other mills on your line in the woods?

Mr. Butterfield: Yes sir.

Examiner Burchmore: They all get their logs by team?

Mr. Butterfield: Yes sir.

3248 Examiner Burchmore: Does the Butterfield Lbr. Co. get any of its logs by team?

Mr. Butterfield: No sir, none whatever. We have been operating since 1891, and all logs that are near the mill have gone.

Examiner Burchmore: Then, when you want to move a log from a particular tract, you build a spur line?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Why don't the other mills build spur lines?

Mr. Butterfield: They have not got the capital, I suppose.

Examiner Burchmore: The Natchez, Columbia and Mobile Railroad Company goes to the expense of going and getting their logs for the Butterfield Lumber Company? Why should it not meet a part of the expenses in getting logs for these other mills?

Mr. Butterfield: It meets none of the expenses, it is compensated for everything.

Examiner Burchmore: At the 26 cent rate?

Mr. Butterfield: No sir, in addition to that.

Examiner Burchmore: Then I don't understand.

3249 Mr. Butterfield: It is entirely separate. That is an entirely separate operation. The Railroad Company owns all the steel and motive power we have and in fact all of the railroad stuff and at the end of the year all of the operations in the woods up to the switching with the main line trains—where the logs are billed from in billing—is figured at and a charge made as I understand—a 10% charge added to the cost of the railroad company for the Lumber Company. It is entirely an outside operation.

Examiner Burchmore: As I understand the Railroad Company takes the logs almost from the tree without expense other than the 26¢ rate to Chicago.

Mr. Butterfield: That twenty-six cent rate covers only from the switch where the train is made up and the main line train takes it. Anything beyond that is covered by what is reported in the annual report to the commission as outside operations.

Examiner Burchmore: What does that outside operation cost or amount to on a car load of lumber or logs?

Mr. Butterfield: I really cannot say. Last year it amounted to something over $19,000.00.

3250 Examiner Burchmore: On how many thousand feet of logs?

Mr. Butterfield: Well, something like 33,000,000.

Examiner Burchmore: It costs these other Companies a great deal more to team their logs in than that, does it not?

Mr. Butterfield: I don't know, I suppose it does.

Examiner Burchmore: Did you state the total capitalization of the Railroad Company?

Mr. Butterfield: No sir.

Examiner Burchmore: What is it?

Mr. Butterfield: $1,000,000.00.

Examiner Burchmore: What is outstanding?

Mr. Butterfield: $900,000.00 is outstanding, and $100,000.00 is held as Treasury stock.

Examiner Burchmore: What is the total mileage of the Railroad?

Mr. Butterfield: We have 34 miles on main line and main branches.

Examiner Burchmore: That is $30,000.00 a mile?

Mr. Butterfield: That is the capitalization, yes sir.

Examiner Burchmore: Are there any bonds?

3251 Mr. Butterfield: None.

Examiner Burchmore: Any indebtedness?

Mr. Butterfield: None whatever.

Examiner Burchmore: Except current liabilities?

Mr. Butterfield: None whatever.

Examiner Burchmore: What equipment does the Road own?

Mr. Butterfield: We own three 60-ton Baldwin 10 wheel fast freight type locomotives; one 40-ton 6 wheel, Grant switcher; one 72-ton and one 74-ton Shay Gear Type Locomotive. There are two passenger cars, a baggage car, three box cars. I think there are 10 flat cars for handling lumber along the line, and about 75 log cars.

Examiner Burchmore: Does it lease any additional equipment?

Mr. Butterfield: No sir.

Examiner Burchmore: It owns all of that equipment outright?

Mr. Butterfield: Yes sir, and then some work equipment, pile driver and work cars.

By Mr. Brady: Railroad sheds?

Mr. Butterfield: The Butterfield Lbr. Co. owns that.

Examiner Burchmore: Are you informed as to the cost of

3252 constructing this road independent of equipment.

Mr. Butterfield: Well, fairly so.

Examiner Burchmore: State your knowledge.

Mr. Butterfield: Well, the road costs with equipment—has cost to date with equipment—I think in the neighborhood of $8,000.00 a mile, and the equipment cost $2,000.00 a mile. I can give you the exact figures if you will allow me to look at the annual report which I have here.

Examiner Burchmore: You may do that, but before we pursue that line of questioning, I will ask you one or two questions about the capital stock; was the stock issued for cash?

Mr. Butterfield: Partially. That is all in here too; with an explanation to the commission. I said thirty-four miles cost $11,460.42 a mile. I have not divided—the 1910 report does not require me to divide out the equipment and I have not done so, but I can figure it if desired. That $11,000.00 includes equipment. That is the total.

Examiner Burchmore: Have you not some figures? This $374,000.00 is approximately the cost of the——

3253 Mr. Butterfield: Yes, sir, I have that right here. I can explain that to you very simply, $389,592.00.

Examiner Burchmore: That is the road and equipment.

Mr. Butterfield: Yes sir.

Examiner Burchmore: Of that, how much is equipment?

Mr. Butterfield: $55,785.32. No there is an addition; the way that I had that last year, I am not telling the truth. The idea is, it was $55,785.32 and there was added since 1907, $23,515.33.

Examiner Burchmore: $389,000.00 figures correctly.

Mr. Butterfield: Yes, that is the total to June 30, last.

Examiner Burchmore: Now, this $389,000.00 is the total cost of the railroad and equipment. You had $900,000.00 outstanding capitalization. What became of the balance?

Mr. Butterfield: That is a special agreement between the stockholders and the railroad company itself probably. They issued $1,000,000.00 of stock and $100,000.00 of stock was held in the Treasury and the stockholders, as they needed addition and betterment were to pay for those needed additions and betterments—additions to the road—out of this $1,000,000.00.

3254 Examiner Burchmore: Then the $900,000.00 were issued to stockholders, but only partial payment made on the stock?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What was the first assessment?

Mr. Butterfield: The first assessment was for the building of the road, $225,000.00. Then the stock was increased at a later date to this $1,000,000.00, and of that $1,000,000.00—of the additional amount—$164,000.00 for betterments and additions had been paid in. It is being paid by the stockholders as the road is bettered or extended.

Examiner Burchmore: And from that time to time, there will be additional assessments, I assure, if necessary?

Mr. Butterfield: Yes, sir.

Examiner Burchmore: Have you ever paid any dividends on that stock?

Mr. Butterfield: Never have.

Examiner Burchmore: Have you accumulated any surplus?

Mr. Butterfield: Each year, the surplus has been put in for betterment.

Examiner Burchmore: It is simply raising the standard of your road each year?

3255 Mr. Butterfield: That is all.

Examiner Burchmore: I think you said, although I am not quite clear, because we have here so many companies and they are so similar—I think you said that the stockholders were substantially identical in the two companies?

Mr. Butterfield: They are identical; not substantially, the executive offices are the same.

Examiner Burchmore: And reference may be made to the annual reports for a statement as to the operating expenses and operating revenues etc.?

Mr. Butterfield: It is right there if you want to go over it—our copy.

Examiner Burchmore: The repair shops are owned by the Lumber Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: The engines and locomotives and cars of the Railroad Company are repaired in those shops?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What is the basis of charging for those repairs?

Mr. Butterfield: Actual cost and superintendent.

3256 Examiner Burchmore: What is the basis of superintendence?

Mr. Butterfield: Five per cent.

Examiner Burchmore: Does your Company make annual and monthly reports to the Commission?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Extended reports?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Are those cars and locomotives equipped with proper safety devices when operated in trains?

Mr. Butterfield: When not entirely intra-state. When it is entirely interstate, or interstate traffic is handled, it is handled according to the Interstate Commerce Commission's requirements.

Examiner Burchmore: Do you call Long's Interstate traffic?

Mr. Butterfield: We call the equipment that handles these logs intra-state, because the cars never leave that line. They are equipped for a particular service and require a particular kind of equipment in a way as they never leave the line of road and we call

3257 them intrastate.

Examiner Burchmore: You understand that if a box car train takes one box outside of the state that car has to be coupled with air-brakes?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Your compliance with the statute conforms to that part?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Logging cars of the Company do not need to be equipped with devices under certain——

Mr. Butterfield: We do not interpret the law that way and do not equip the cars that way.

Examiner Burchmore: The law makes an exception of logging cars under certain circumstances. Do you keep your accounts in accordance with the custom prescribed by the commission?

Mr. Butterfield: As far as we can. We have some little difficulties now and then.

Examiner Burchmore: Did you make an effort to comply?

Mr. Butterfield: Yes sir we do.

Examiner Burchmore: Will you furnish or have furnished a map of this line showing——

3258 By Mr. Brady: We have it now. We have a map with the Mississippi Railroad Commission ordered and prepared by the Railroad Commission of that state which shows this Railroad.

Examiner Burchmore: Does it show the location of the Mill and industries and forests?

Mr. Brady: No sir; we have asked in this petition to be allowed to file that kind of a map.

Examiner Burchmore: Please do so. A letter will be sent out, I think, describing the nature of that map. If not, some further announcement will be made in this hearing. We will desire a tonnage statement, but before asking for that I would like to ask one or two questions with respect to traffic.

Mr. Butterfield: There is a tonnage statement in the tonnage report.

Examiner Burchmore: That statement does not indicate what traffic or what operation of that traffic is furnished by the controlling interest. We would like a statement of the traffic of your road for the last fiscal year, and if you choose, you may bring it down to date if you desire to show the last fiscal year separately and indi-
3259 cate thereon the amount of logs handled for the Butterfield Lumber Company and the amount of Butterfield Lumber Company lumber and other products handled out of there, and indicate separately the amount of other traffic handled for the Butterfield interests, and in another place the traffic handled for the public—the general public. I refer now to freight traffic. I presume your passenger traffic is set forth in your report. The statement should not only show tonnage, but revenue, in the same way. Now, can you state in a general way what proportion of the freight tonnage of the road in the last year was handled for the Butterfield Lbr Company.

Mr. Butterfield: Well, the total freight earnings was only $96,000.00 and something of which $67,000.00 was charged against the Butterfield Lbr. Co. for freight haul and $30,000 and some odd dollars was for other people on the road.

Examiner Burchmore: To that $67,000, should there be any addition?

Mr. Butterfield: The switching charge is in addition to that.

Examiner Burchmore: Should there be any addition on
3260 account of this refund allowed by the Illinois Central?

Mr. Butterfield: No sir.

Examiner Burchmore: This takes account of it? This $67,000.00 is the gross amount you received on Butterfield tonnage?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Butterfield: Very little it amounts to. Last year I think—I can give you the exact figures from here. $2800.00 I think.

Examiner Burchmore: Do the passengers travel on tickets?

Mr. Butterfield: Yes sir. Sometimes train fares. On that little road, the majority of times they pay train fare, and sometimes travel on ticket. $2897.00 was the passenger revenue. That does not include the mail.

Examiner Burchmore: Do you sell commutation tickets?

Mr. Butterfield: No sir, simply one way tickets.

Examiner Burchmore: Any other tickets in connection with the Illinois Central?

Mr. Butterfield: No sir; we concur in the through rates but no tickets have ever been issued in that way.

3261 Examiner Burchmore: Well, what is your train service?

Mr. Butterfield: We have one mixed train each way daily except Sunday and there are two logging trains daily except Sunday. One of these log trains carries a passenger car and accommodates passengers as a matter of accommodation so as to give a double service.

Examiner Burchmore: Do these discharge passengers at the I. C. trains?

Mr. Butterfield: Yes sir, they make connection at Norfield with the Illinois Central trains north and south.

Examiner Burchmore: Do the employees of the Lumber Company pay fare when riding over the road?

Mr. Butterfield: No sir, they do not pay any fare. The lumber company prefers to let them ride free but each one is given a certain kind of ticket and that ticket is turned in and the lumber company pays three cents a mile to the Railroad Company for it. That is the flat rate.

Examiner Burchmore: Do you issue any passes over your road?

Mr. Butterfield: Yes, sir.

Examiner Burchmore: Very extensively?

Mr. Butterfield: Not so very.

3262 Examiner Burchmore: Have you inter-change passes; do you interchange with other railroads?

Mr. Butterfield: Yes sir interchange passes.

Examiner Burchmore: What passes are held by your office from the Illinois Central?

Mr. Butterfield: Three; the President, Vice-President and myself.

Examiner Burchmore: Are those passes used?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Do the officers make any distinction between railroad company passes and lumber company passes, or use the passes indiscriminately?

Mr. Butterfield: I cannot say that they make any great distinction; when we need to use the pass, we use it.

Examiner Burchmore: Whenever you travel over the Illinois Central, you use it?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Is it an annual pass?

Mr. Butterfield: Yes, sir.

Examiner Burchmore: Have you passes on any other road?

Mr. Butterfield: Yes sir.

Examiner Burchmore: How many passes?

3263 Mr. Butterfield: Oh, I don't know.

Examiner Burchmore: A great number?

Mr. Butterfield: Well not so many.

Examiner Burchmore: On large roads?

Mr. Butterfield: May be seven or eight large systems.

Examiner Burchmore: The same is true of your President?

Mr. Butterfield: They are all issued alike, to the three of us.

Examiner Burchmore: Are there any other mills or industries on your line that are controlled by the Butterfield Lbr. Co., although not operated in its name?

Mr. Butterfield: No sir, none.

Examiner Burchmore: Will you answer the question in the negative if I widen the scope so as to include people who are interested in the Butterfield Lumber Company?

Mr. Butterfield: Yes sir, it would be the same answer.

Examiner Burchmore: No relation between the Butterfield Lbr. Company and its owners and any other industry along this line?

Mr. Butterfield: No sir.

Examiner Burchmore: The same is true of the Railroad Company and other industries along this line?

3264 Mr. Butterfield: Yes sir, exactly so.

Examiner Burchmore: Where does the Railroad Company keep its cash?

Mr. Butterfield: The Railroad Company does not handle any cash at all.

Examiner Burchmore: Well, does it have a bank account?

Mr. Butterfield: No sir. It is handled by the Butterfield Lbr. Co. so as to minimize Book-keeping expenses for a small road.

Examiner Burchmore: Well does the Lumber Company allow interest on the money while it holds it?

Mr. Butterfield: Yes sir.

Examiner Burchmore: I don't know whether I asked the question about joint office employees. Do the same persons act as book-keepers and accountants and clearks for the Lumber Company and the Railroad Company?

Mr. Butterfield: Not exactly. The auditor is the auditor of the Lumber Company and the Railroad Company; the assistant Auditor is for the Railroad only. Our Traffic Manager who is also the General Freight Agent, is in the office and he is a Railroad employee only—the General Manager and myself—I have a stenographer who is a Railroad employee only.

3265 Examiner Burchmore: Does she work with the Lumber Company?

Mr. Butterfield: No sir, she sometimes helps out as we expect the Lumber Company to help out in a pinch, but she is entirely paid for her services by the Railroad Company.

Examiner Burchmore: How many joint office clerks are there for the Railroad?

Mr. Butterfield: I don't know that you would call any of them joint office clerks—I think there is only one, and that is my stenographer.

Examiner Burchmore: The other persons who work for the Lumber Company are also paid by the Railroad Company?

Mr. Butterfield: The only other one—I did not quite catch on.

Examiner Burchmore: There are other Lumber Company em-

ployees who receive partial compensation from the Railroad Company?

Mr. Butterfield: Yes, the Lumber Company's time-keeper is also the Railroad Company's time-keeper.

Examiner Burchmore: And the pay is in proportion to services rendered?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Are there any other employees of
3266 whom that is true?

Mr. Butterfield: Yes sir; that is the employees in the woods. The general scaler. And at one of the water tanks—the engineer at one of the water tanks we use jointly. The Butterfield Lumber Company has a weigher who is paid jointly, as the Railroad Company uses him.

Examiner Burchmore: The Lumber Company uses no scale?

Mr. Butterfield: No sir.

Examiner Burchmore: How many employees are there in the road department of the Railroad Company?

Mr. Butterfield: Regular employees?—I will have to look that up.

Examiner Burchmore: That is shown up, I presume, in your annual report?

Mr. Butterfield: Yes sir.

Examiner Burchmore: How many train crews?

Mr. Butterfield: Two regular train crews; when operating two regular train crews, and it has a full quota of three men and a conductor.

Examiner Burchmore: Three men and a conductor?

Mr. Butterfield: Yes sir; and then the switching and extra crew each have the engine crew and one man.

3267 Examiner Burchmore: The Railroad Company has water tanks?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Any public team tracks?

Mr. Butterfield: Yes sir.

Examiner Burchmore: You charge depreciation on your equipment?

Mr. Butterfield: Yes sir.

Examiner Burchmore: At what rate?

Mr. Butterfield: Five per cent per annum. I have just gone through that with the commission. Heretofore, up until last year, we absorbed our depreciation in the annual inventory, and I understood that was satisfactory until a little while ago, but since that time we have been charging depreciation as required.

Examiner Burchmore: Is the difference between $900,000.00 the capital stock issued, and $390,000.00 paid in, under assessment carried on the books in any form?

Mr. Butterfield: No sir, except that we carry that as a debit balance.

Examiner Burchmore: As a deficit?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Is that correct under the accounting
3268 rules of the Commission?

Mr. Butterfield: Well, I am not sure. I explained that

matter to the Commission in making the annual report, the year that was done, and they have had nothing to say about it.

Examiner Burchmore: Mr. Gutheim thinks it is not in keeping with the requirements.

Mr. Butterfield: That was not done. Several years ago I fully explained to the Commission at that time. I wrote a long sheet and put it in there, and there were no remarks made.

By Mr. Gutheim: The fact is that $900,000.00 were outstanding in the hands of the stockholders?

Mr. Butterfield: Yes sir.

Cross-examination:

By Mr. Brady: Mr. Butterfield, I will ask you whether or not there was a desire on the part of the people, the stockholders of the Butterfield Lumber Company to have the Illinois Central Railroad build a railroad so as to supply that mill with Logs?

3269 Mr. Butterfield: Well, when the Company was first organized and moved to this location—rather when it first moved in this location, they tried to get the Illinois Central Railroad to do that—we were given to understand that the trunk lines in the North did this on percentage of the freight taken away from the mill or handled from the mill as an initial carrier. Trunk lines in Wisconsin will build thirty or forty miles of Logging Road, but the Illinois Central did not see it that way at all.

Mr. Brady: When you chartered your Railroad Company, did you purpose to build a permanent railroad?

Mr. Butterfield: Yes sir, we did. We thought at that time that the country thru which we were going would be able in time to support a railroad.

Mr. Brady: Is it your purpose to extend this road and use it as a permanent road?

Mr. Butterfield: Yes sir.

Mr. Brady: What was the nature of the territory through which the road ran before it was put down?

Mr. Butterfield: Mainly open woods.

Mr. Brady: What is the character of the territory now?

Mr. Butterfield: Well, where the timber has been cut off is

3270 very good farming country, and has been opened up and quite thickly populated with farmers.

Mr. Brady: What of the population? Was it scarcely or thickly settled?

Mr. Butterfield: Very scattering, out from the Railroad.

Mr. Brady: What is the population now?

Mr. Butterfield: Well, I think it has increased about one hundred per cent along the line of the Railroad Company tracks.

Mr. Brady: State whether a good deal of the country along the right of way belonged to other people than the Butterfield Lumber Company?

Mr. Butterfield: All along the right of way of the permanent road? The majority of the land belonged to people other than the Butterfield Lumber Company. The Butterfield Lumber Company has

leased a large share of its cut-over lands and they have now become farming lands.

Mr. Brady: What is the purpose of the Railroad in reference to the lands that are cut over alongside of its tracks and the development of this land?

Mr. Butterfield: Well, the Railroad Company really had nothing to do with the land as they are owned by the Butterfield Lum-
3271 ber Company. It is the Lumber Company's purpose to sell that off as fast as possible.

Mr. Brady: What is the Railroad Company's purpose relative to serving——

Mr. Butterfield: It is to the Railroad Company's interest to get as many inhabitants along its line as possible.

Mr. Brady: Is there a road east of you?

Mr. Butterfield: Yes sir, the N. O. & G. N.

Mr. Brady: The New Orleans and Great Northern?

Mr. Butterfield: Yes, sir. Parallels it and the Gulf and Ship Island Railroad on the other side, up Pearl River.

Mr. Brady: The New Orleans and Great Northern, at what point does it connect?

Mr. Butterfield: It runs from New Orleans to Jackson.

Mr. Brady: How far are you from that road?

Mr. Butterfield: We have an extension of our Northeastern branch. It is graded within two miles of it.

Mr. Brady: Was it your purpose to connect with the N. O. & G. N.?

Mr. Butterfield: At some date, yes.

Mr. Brady: What distance North is it to the Railroad run-
3272 ning parallel to yours?

Mr. Butterfield: I think fourteen miles.

Mr. Brady: What distance is that to the Railroad parallel?

Mr. Butterfield: I don't know just how far it is. 12 and 4—about 16 miles.

Mr. Brady: What Railroad facilities have the people other than that of this road between these two roads?

Mr. Butterfield: None whatever.

Mr. Brady: What is this Railroad doing towards the development of that territory?

Mr. Butterfield: It is doing all that it can.

Mr. Brady: What does that mean to say? Is it developing that territory?

Mr. Butterfield: The territory is developing and developing rapidly. Becoming more thickly inhabited and we have joined an immigration movement in the state trying to get settlements along the line of the road.

Mr. Brady: What is doing that?

Mr. Butterfield: The Railroad Company.

Mr. Brady: The Railroad Company is making that effort?

Mr. Butterfield: Yes sir.

Mr. Brady: When it connects with the N. O. & G. N., your road

will then be connected with New Orleans and with Jackson
3273 from that road?

Mr. Butterfield: Yes sir.

Mr. Brady: We offer, for this record, Mr. Examiner, Passenger Tariff I. C. C. #1 as Exhibit "C."

We further offer Passenger Department, I. C. C. #2, as Exhibit "D."

Further Tariff I. C. C. 1111 as Exhibit "E."

Tariff Index I. C. C. *L* as Exhibit "F."

We offer the time table #21 as Exhibit "G."

The said time table #21 was offered and identified and was received in evidence and thereupon marked "Defendant's Exhibit "G," received in evidence December 12, 1910," page —, and is attached hereto.

We offer the division sheets of freight rates with the Illinois Central Railroad Company as Exhibit "H."

We offer a copy of the map of the Railroad Company which we ask leave to file. We tender for examination the books showing the method in which the book-keeping of the Company is done. We want the notes to show we make the tender.

Examiner Burchmore: You don't need to make that tender. The time tables and division of sheets and the map may be received in evidence as Exhibits now or later if you have not them with you. They may be sent to the Commission, but the tariff we will not receive as Exhibits, as you have called attention to them, and
3274 they are on file with the Commission. If you have any tariffs not on file with the Commission, you can file them, but we will not take as Exhibits anything you have on file with the Commission. We do not wish to cumber the record.

Mr. Brady: We offer—I suppose that will fall under the same ruling—our reports from 1905 to date.

Examiner Burchmore: They will be referred to. Mr. Butterfield, I will ask you whether or not this Railroad Company has been doing a successful business and has earned anything above expenses?

Mr. Butterfield: It has earned in passenger traffic until last year—last year, it earned about 10% on the investment.

Examiner Burchmore: What has been done with these earnings?

Mr. Butterfield: Invested in bettering the road and extending it.

Examiner Burchmore: Has any other sum of money been put into the maintenance of the road bed?

Mr. Butterfield: Each year out of its surplus of capital stock which was issued to the stockholders, there is a sum of money put into the road as it needed it. Last year, it had in the neighborhood of $40,000,00.

3275 Examiner Burchmore: State whether or not the road is constructed—the bed of the road itself—is constructed about as the average trunk line of a railroad bed is constructed?

Mr. Butterfield: The Railroad bed is constructed up to the standard of single track trunk line Railroads.

Examiner Burchmore: What about your Railroad branches?

Mr. Butterfield: They are built to the standard of single track trunk line Railroads.

Examiner Burchmore: When did you first learn of this hearing?

Mr. Butterfield: I first learned of it when you telephoned to me.

Examiner Burchmore: When was that?

Mr. Butterfield: The latter part of last week sometime.

Examiner Burchmore: You want to bring out the fact that you were not notified?

Mr. Brady: No, the point is this, we may overlook something that we ought to introduce if we had the time in which to prepare it, and that ought to measure something as an excuse for us.

Examiner Burchmore: That simply amplifies your petition.

3276 Mr. Brady: Yes. Is there anything, Mr. Butterfield, you would like to state relative to the Railroad Company, that you think of? I have some questions. Do you carry United States mail?

Mr. Butterfield: Yes sir.

Mr. Brady: Do you carry Express?

Mr. Butterfield: We have express rates. We do not carry any connection with any regular express Companies.

Mr. Brady: State whether or not your rates for lumber and other commodities on this road have been fixed by the Railroad Commission of the State of Mississippi?

Mr. Butterfield: They all have to be submitted to the Railroad Commission of Mississippi, and approved before we can use them.

Mr. Brady: State whether or not that particular rate asked by the Railroad Company relative to the Busby mill was fixed by the Railroad Commission?

Mr. Butterfield: No, that was not, that was an interstate rate of two—four cents per hundred pounds on lumber is the rate fixed by the State.

Mr. Brady: State whether or not you are complying with the regulations of the State Railroad Commission and the Interstate

3277 Commerce Commission?

Mr. Butterfield: Just so far as we know them, and I think we know them pretty well, we are.

Mr. Brady: State whether or not you have been adjudged by the courts of Mississippi as a common carrier?

Mr. Butterfield: We have.

Examiner Burchmore: I have a few more questions that occur to me that I think ought to be in the record. Have you had any other applications from any other lumber people to put in logging tracks connected with your line out in the woods?

Mr. Butterfield: No sir, never have.

Examiner Burchmore: Suppose you received such application, would you consider granting it?

Mr. Butterfield: Very seriously. If they had any amount of timber that would make it a paying proposition to handle, but you have to figure on a logging spur and the amount of timber it is going to haul out as against the amount of expenses we are going to.

Examiner Burchmore: Would you operate such a spur to any other point on substantially the same basis as with the Butterfield Lumber Company?

3278 Mr. Butterfield: Yes sir.

Examiner Burchmore: You have never received any such application?

Mr. Butterfield: No sir, have no likelihood to receive such an application, as the Butterfield Lumber Company owns all the timber in that neighborhood.

Examiner Burchmore: Then these other people buy from the Butterfield Lumber Company?

Mr. Butterfield: No sir. They had scattering holdings that we were unable to buy because of various reasons. We were not able to absorb it for various reasons, and there is a body of it there which lasts a small mill a considerable time.

Examiner Burchmore: You say you have under actual consideration, a serious consideration, the question of connecting with the N. O. & G. N. Railroad?

Mr. Butterfield: We have had it under such serious consideration that we approached their Traffic Manager—I did personally—with a view of getting a line on the division which he would be able to give us on our business. He got a proposition from us.

3279 Examiner Burchmore: Is that proposition more favorable than that with the Illinois Central? That division?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Would your connection on the N. O. & G. N. Railroad result in an increase in your business?

Mr. Butterfield: I don't know.

Examiner Burchmore: Would you anticipate that result?

Mr. Butterfield: I don't know. There are several factors entering into that that I am entirely unable to say.

Examiner Burchmore: We don't wish to call for speculative opinion. Were the towns to which you refer, Verna, Topeka, etc.—were those towns there before you built?

Mr. Butterfield: No sir.

Examiner Burchmore: What character of towns are they now?

Mr. Butterfield: Little small towns. One or two of them have only five or six houses, but it is a nucleus.

Examiner Burchmore: What is the population of Verna?

Mr Butterfield: Say 150.

Examiner Burchmore: How many houses in Topeka?

Mr. Butterfield: Probably 12 houses, and there is a Mer-

3280 cantile Company there. We have located a side track and it happens to be a cross-roads near there, and it is a nucleus for a rather thickly populated country. We have a side track and do quite a bit of cotton hauling and fertilizer and handle quite a good haul from there.

Examiner Burchmore: Was there any settlement at Old Camp?

Mr. Butterfield: Yes quite a little settlement there, it was settled. Originally there was nothing there—it was started because we located a logging camp there. The Lumber Company moved a logging Camp there, and the Railroad Company built some houses there and a little saw mill was put up there, and I suppose its population now is in the neighborhood of 150 or 160 people.

Examiner Burchmore: Is there anything at Furlough?

Mr. Butterfield: No sir, that is only a point established not more than six or eight months ago.

Examiner Burchmore: Main Line Junction?

Mr. Butterfield: That is a small switch.

Examiner Burchmore: At what point does the Butterfield Lumber Company maintain its Company stores or Commissary?

3281 Mr. Butterfield: It does not maintain any at all.

Examiner Burchmore: Does the Railroad Company have any?

Mr. Butterfield: No sir, we have a general supply store, but that is kept under the item of material and supplies in the annual report.

Examiner Burchmore: Does the Butterfield Lumber Company have any subsidiary concerns that have mercantile enterprises or commissaries?

Mr. Butterfield: No sir. We do business with an entirely foreign corporation on a percentage basis for the business we furnish.

Examiner Burchmore: The Butterfield Lumber Company gets a percentage?

Mr. Butterfield: Yes on the business we furnish.

Examiner Burchmore: They give your employees—the lumber company employees—credit—you give them a cash check?

Mr Butterfield: Yes sir.

Examiner Burchmore: It is operated as a company store?

Mr. Butterfield: Operated exactly as a Company store.

3282 Examiner Burchmore: Then, it in substance, farms out that privilege?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Where are those stores located?

Mr. Butterfield: They have a store at Northfield and a store house or store room at Camp Twelve, where the stuff is delivered to the employees at the other end of the road.

Examiner Burchmore: What rate of freight is charged on this merchandise handled?

Mr. Butterfield: The regular rate.

Examiner Burchmore: The regular rate of freight?

Mr. Butterfield: Yes sir.

Examiner Burchmore: There are no other small stores at Verna or Topeka?

Mr. Butterfield: Yes sir, one at each one of these places—several of them.

Examiner Burchmore: All these towns are made up mostly of Mill employees—I mean, Lumber Company employees?

Mr. Butterfield: No sir, not at all. There may be one or

3283 two from each place, but the towns are made up of country people and farmers around there.

Examiner Burchmore: I notice the executive officers of this Railroad as entered on the back of the time table seem to be largely the Butterfields?

Mr. Butterfield: Yes sir, it happens to be so.

Examiner Burchmore: The Butterfields control this corporation?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Have they any interest in lumber operations elsewhere?

Mr. Butterfield: No sir.

Examiner Burchmore: They have no other Lumber Company?

Mr. Butterfield: No sir.

Examiner Burchmore: That is their entire interest?

Mr. Butterfield: Yes sir.

Examiner Burchmore: They have no Michigan lumber? Is there any relation between this Railroad Company and other Railroad Companies, save that of traffic relation?

Mr. Butterfield: No sir, none whatever. Yes there is in a way. I don't know whether that will apply right here or not but the
3284 Illinois Central—we have a contract with them—they built the first five miles of our line, and they have an interest in the first five miles in so far as the iron on it goes.

Examiner Burchmore: My next question was whether you have any contract with the Illinois Central?

Mr. Butterfield: We have a track that switches at Norfield.

Examiner Burchmore: Are those contracts filed in the Commission?

Mr. Butterfield: I don't think they are.

Examiner Burchmore: If they cover rates or divisions in any shape or form, they ought to be filed?

Mr. Butterfield: They don't cover anything like that.

Mr. Brady: As a matter of fact, notice has been given the Illinois Central that this contract for miles of steel was terminated and that the N. C. & M. Railroad Company desired to purchase under the terms of the contract.

Examiner Burchmore: Please file a copy of these contracts in this record. I presume there is nothing in that you wish to keep away?

Mr Brady: No sir. We want to give everything we have got.

3285 Examiner Burchmore: There may be some contracts which for business reasons you may not wish to file? Do you participate in joint thru classes of rates and thru commodity rates?

Mr. Butterfield: Yes sir.

Examiner Burchmore: To interstate points?

Mr. Butterfield: Yes sir.

Examiner Burchmore: I presume these tariffs are referred to in your index of tariffs?

Mr. Butterfield: Yes sir.

Examiner Burchmore: What is the basis of rates—as from Topeka? In the first place, are all stations on your line grouped—take the same rates?

Mr. Butterfield: Practically, except on some classes. It graduates as to distance.

Examiner Burchmore: To Chicago, for instance, or Memphis, or New Orleans. Are there grouped rates from all stations on most commodities?

Mr. Butterfield: Yes sir. The major portion of through rates are

put in the tariff for which Mr. A. D. Hall is agent. I can give you the exact ones.

3286 Examiner Burchmore: Are these rates from points on your line, the same as the Illinois Central rate from Norfield?

Mr. Butterfield: No sir.

Examiner Burchmore: How much higher are they?

Mr. Butterfield: It takes in our local, I believe.

Examiner Burchmore: Are they equivalent to the sum of the locals?

Mr. Butterfield: Well, I don't know about the Illinois Central, but except on intra-state traffic—it is all local rate and the through rate.

Examiner Burchmore: Then your division of the class and commodity rate is the same? As under your state tariff?

Mr. Butterfield: Yes, no it is not. I made a mistake because the Intra-state rate provides—rather the State Commission provides that the rate in the state handled on two railroads shall be the sum of the two locals less 10%.

Examiner Burchmore: That is not just what I meant. You get the same on shipments from Topeka to New Orleans as your

3287 division—you receive the same amount under the joint rate?

Mr. Butterfield: Yes sir, I think so.

Examiner Burchmore: You get your regular one line rate as a division?

Mr. Butterfield: In Intra-state traffic?

Examiner Burchmore: And on State Traffic, it is 10% less?

Mr. Butterfield: Yes sir.

Examiner Burchmore: I want to ask one question about that. The $1.00 charged for switching to the Butterfield Lumber Company, is that published in any form.

Mr. Butterfield: I don't know whether it is or not. I am inclined to think it is not.

Examiner Burchmore: If it is published, I wish you would look the matter up and refer us to the tariff rate which you will find. You can refer by letter. If it is not published, the inquiry arises whether you have the right to collect that $1.00 which is not provided for by published tariff?

Mr. Butterfield: I can tell you very easily how that $1.00 arises. It was a matter of trouble we were having with our claim de-

3288 partment on the average in weights, and the Illinois Central used to come into our yard, and do all the switching for the Lumber Company.

Examiner Burchmore: When did this discontinue?

Mr. Butterfield: Years ago. When they discontinued was when we put in our two cents and the Lumber Company and the Railroad Company agreed that the Railroad Company would do the switching of the cars, and place them out there for the Illinois Central at $1.00 per car.

Examiner Burchmore: You don't charge that $1.00 against other mills.

Mr. Butterfield: No sir, because we don't have the work to do for

them that we have to do for the Butterfield Lumber Company. The Railroad Company simply absorbs any switching which there might be at Norfield. There is no switching for anybody else.

Examiner Burchmore: The Butterfield Lumber Company does not complain about that charge?

Mr. Butterfield: No sir. They were opposed to it when it was made.

Examiner Burchmore: It was simply a transfer of funds into a subsidiary corporation?

3289 Mr. Brady: The stockholders are about the same.

Examiner Burchmore: They are dealing with each other at arms' length?

Mr. Butterfield: I am inclined to think they do. Ralph Butterfield is the Manager of the Railroad Company and -is brother is the Manager of the Lumber Company, and they deal with each other in pretty strict accordance with the rules of business.

Examiner Burchmore: There is rivalry between them?

Mr. Brady: They handle the business like you and I manage business. The only thing of course, there is a feeling that it is your money and my money, you know, but in business matter, they are right there.

Examiner Burchmore: It is all two railroads in the same system. Have there been any damage suits for personal injuries brought against the Railroad Company?

Mr. Butterfield: Yes sir.

Examiner Burchmore: Have you paid any money on judgments?

Mr. Butterfield: I think we have been very lucky. I don't think we have paid very much.

3290 Mr. Brady: We have two cases now in the Supreme Court.

Examiner Burchmore: Any under the common carrier statute?

Mr. Butterfield: There have been several.

Mr. Brady: Yes. One is brought under the Common Carrier statute.

Examiner Burchmore: And judgment has been rendered?

Mr. Butterfield: Judgment has been rendered in the lower court in one case for $400.00 and in another case for $175.00, both of which are now pending in the Supreme Court.

Examiner Burchmore: Then your status as a Common Carrier has not been questioned?

Mr. Butterfield: They have decided a long time ago in a case that we were one.

Examiner Burchmore: They decided you were a common carrier?

Mr. Butterfield: Yes sir. When the question first arose, 10 years ago—there was a car load of fertilizer burned, and the question arose there as to whether or not we were a common carrier, and we had just commenced—the road had just commenced to do business—and the Court held in that case that we were a Common Carrier.

3291 That car was burned on the switch track of the Butterfield Lumber Company.

Mr. Brady: We decided the case on the ground—for the reason of the fact that as it was delivered to a track, our liabilities ceased and the question was passed on in that case. That is my recollection.

Examiner Burchmore: Anything further?

Mr. Brady: Just one or two. We want to ask leave to submit a copy of our charter.

Examiner Burchmore: That is unnecessary.

Mr. Brady: I will ask some questions. The Western terminus—the intended Western terminus of your road is what point?

Mr. Butterfield: Natchez.

Mr. Brady: And the Eastern or Southern?

Mr. Butterfield: Mobile.

Mr. Brady: Where do you intend to go after intersecting N. O. & G. N. Railroad, directly to what point?

Mr. Butterfield: It goes almost directly to Columbia, Mississippi.

3292 Mr. Brady: That is the prospectus of the road?

Mr. Butterfield: Yes sir.

Mr. Brady: What size town is Columbia?

Mr. Butterfield: I don't know. It has grown so the last few years that I have no idea. It must have two thousand people.

Examiner Burchmore: The purpose is to show——

Mr. Brady: We intend to build this road into Columbia and ultimately we will want a Mobile connection. It is a small road, but does bona-fide intend to build a railroad. That is my purpose in asking the question.

Examiner Burchmore: The witness has stated that that is the intent.

Mr. Brady: Mr. Butterfield, you were asked the question in reference to putting in side tracks and spurs for other corporations if such were to spring up along your road. Is it not a fact that undethe rulings of the Railroad commission of your own state and the Laws of Mississippi you are required to do that?

Mr. Butterfield: Yes sir.

Mr. Brady: Whether the Company wanted to or not, it is

3293 required, and if it is a common carrier, it is required to put in switches?

Examiner Burchmore: Is that the requirement practically of all State Commissions?

Mr. Butterfield: Yes sir.

Examiner Burchmore: It would require him to build a switch or tap line out in the wood?

Mr. Brady: Yes sir.

Examiner Burchmore: But if you were requested to build a ten mile tap line into the woods, would you consider such a line, for say, Smith & Company.

Mr. Brady: I am not certain. We would not be compelled to build it under the laws of Mississippi; we might be compelled to do it under our commission.

Examiner Burchmore: You have no further statement to make, Mr. Butterfield?

Mr. Butterfield: None that I know of.

Mr. Brady: We ask leave, if we think of anything—we have come here on three or four days' preferation—we ask leave to be allowed to mail it in—anything we may consider necessary.

Examiner Burchmore: Any communication you mail to
3294 the Commission in addition to what has been requested—any such communication will be filed in the record and inspected by the Commission for what it seems to be worth. Of course, not being put under oath, we cannot give absolute verity to it.

Mr. Brady: We would like to ask that you make each request for information, such as division of funds from the Butterfield Company and other Companies we are reaching, so as to enable us to get in something that may be of value to us whereas we perhaps do not see it now.

Examiner Burchmore: It does not seem to me that there is very much more light to be thrown by this Company.

Mr. Brady: I don't know. The people in the west have been discussing this matter two or three years and instead of representing my company I am largely relying upon you to develop what facts should be developed. It is a question of simply throwing ourselves on the mercy of the court, with the information and notice that we have.

Examiner Burchmore: Your rate from east of the river is
3295 two cents higher than from west of the river? Are not the east of the river rates generally two cents higher than west? Or the other way, two cents lower?

Mr. Butterfield: To what point?

Examiner Burchmore: To the Ohio River and north.

Mr. Butterfield: I think they are to the east of the Ohio river. They are lower to the Ohio river than we get on the west side. Oh, I was thinking of the Mississippi River. To the Ohio river, I think they are.

Mr. Brady: Lower, you mean.

Mr. Butterfield: Yes sir.

Mr. Brady: Your rates are lower?

Mr. Butterfield: Yes sir.

Examiner Burchmore: They may be lower in contemplation of payment of allowances?

Mr. Butterfield: That I do not know.

Mr. Brady: Mr. Butterfield will be over here to-morrow for a while and if we think of anything, will you permit us——

Examiner Burchmore: I will listen to any excuses you have to make. We will adjourn until 9.30 at this place when I think the other east of the river cases will be taken up at that time.

Whereupon, at —.

3296 *Trinity Valley Southern Railroad Company.*

(Appearances: B. H. Powell, Esq., Att'y.)

C. O. McCARTER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Mr. Powell, I have been asking the questions to start things out.

Mr. Powell: Yes sir, go ahead.

Examiner Burchmore: Mr. McCarter, what is your residence and what is your occupation:

Mr. McCarter: Oakhurst, Texas, Auditor of the Trinity Valley Southern Railroad Company.

Examiner Burchmore: Are you employed by any Lumber Company?

Mr. McCarter: No sir.

Examiner Burchmore: The Trinity Valley Southern connects with the International and Great Northern at Dodge Texas.

Mr. McCarter: Yes sir.

Examiner Burchmore: And connects with no other Railroad Company?

Mr. McCarter: No sir.

Examiner Burchmore: What is the length of its line?

Mr. McCarter: Six Miles.

3297 Examiner Burchmore: That is, six miles Main line?

Mr. McCarter: Yes sir.

Examiner Burchmore: This report shows 7½ miles.

Mr. McCarter: This is figured five and eight tenths miles on the Railroad Commission of Texas, Mileage circular, but it is generally called six miles.

Examiner Burchmore: Any switches?

Mr. McCarter: No sir except a few spurs to industries along the line.

Examiner Burchmore: Is the Trinity Valley Southern operated in the interest of any lumber company?

Mr. McCarter: In the interest of a lumber company, in what way, do you mean?

Examiner Burchmore: Is it related to any lumber Company?

Mr. McCarter: Some of the stockholders of the Railroad Company are stockholders of a lumber company.

Examiner Burchmore: Is it not a fact that the stockholders of the Lumber Company—the Palmetto Lbr. Co.—control it?

Mr. McCarter: No sir.

Examiner Burchmore: What Lumber Company has mills along its lines at the present time?

3298 Mr. McCarter: None except the Palmetto Lumber Company. Formerly the Columbia Lumber Company was where the Palmetto Lumber Company is now located, but the Palmetto Lbr. Co. before they took from the Columbia Lumber Company, were located out there and the San Jacinto Lumber Company.

Examiner Burchmore: Those Companies have gone out of business?

Mr. McCarter: The San Jacinto Lbr. Co. has gone out of business and moved away and the Palmetto Lbr. Co.—the Mill burned down. They had two mills and one of them burned about a year ago. They still have one mill left.

Examiner Burchmore: Does the Palmetto Lbr. Co. have any stock in the Railroad Company?

Mr. McCarter: No sir.

Examiner Burchmore: Do the officers of the Palmetto Lbr. Co. or the stockholders of the Palmetto Lbr. Co. own any stock in this Railroad?

Mr. McCarter: Some.

Examiner Burchmore: Indicate in a general way, the holdings.

Mr. McCarter: A. C. Ford, President of the Trinity Valley Southern Railraod Company, is also President of the Palmetto Lumber Company, and has one share of stock in the Trinity
3299 Valley Southern Railroad Company.

Examiner Burchmore: And what proportion of the Palmetto Lumber Company?

Mr. McCarter: I cannot say about that.

Examiner Burchmore: He is a majorit*ive* stockholder of the Palmetto Lumber Company?

Mr. McCarter: I presume so, he is President of it.

Examiner Burchmore: Who owns the balance of the stock in the Trinity Valley Southern Railroad Company?

Mr. McCarter: R. W. Miller, who is Vice-President of the Trinity Valley Southern Railroad Company, has one share. He is also General Manager of the Palmetto Lbr. Co. I don't know how much stock he has in the Company. A. L. Black is Superintendent of the Trinity Valley Southern Railroad Company and has one share of stock and has something or other with the Palmetto Lumber Company employ—I don't know what his position is. They are the only ones connected with the Palmetto Lumber Company who have stock in the Trinity Valley Southern Railroad Company. A. L. Black, was Superintendent and he had one share. Miller President, had one share—three shares of stock altogether.

Examiner Burchmore: Who owns the rest of the stock of
3300 the Railroad Company?

Mr. McCarter: W. S. Gibbs, of Huntsville, Texas.

Examiner Burchmore: Who is he?

Mr. McCarter: A Banker at Huntsville.

Examiner Burchmore: He owns that in his own name and right?

Mr. McCarter: Yes sir.

Examiner Burchmore: What else is he besides a banker?

Mr. McCarter: I think he is a capitalist—a banker or something or other; I don't know what he is.

Examiner Burchmore: How much stock does Mr. Gibbs own in the Palmetto Lbr. Co.?

Mr. McCarter: I don't know sir.

Examiner Burchmore: I ask you this—we are dealing not with technicalities but with the substance—is it not a fact that the stockholders—that the Palmetto Lbr. Co. or its stockholders substantial-y own this railraod thru the stock?

Mr. McCarter: I don't think so. It is my understanding in a general way—I don't know positively, but I don't think Mr. Gibbs owns any stock in the Lumber Company.

3301 Examiner Burchmore: How long has he owned his stock in the Railroad Company?

Mr. McCarter: About a year.

Examiner Burchmore: How did he acquire it?

Mr. McCarter: Endorsed over to him—the stock was.

Examiner Burchmore: Endorsed, but why was it endorsed over to him? Did he purchase it?

Mr. McCarter: I don't know whether he purchased it or not, it was transferred over to him from Mr. Ford to Mr. Gibbs.

Mr. Powell: We can develop that better from another witness.

Mr. Ford: I am the President of the Company and I am here and I think if you question me along this line, I can give you information.

Mr. Powell: Mr. Gibbs has owned half for two years and the balance one year.

Examiner Burchmore: You are fully informed in respect to rates and division in this railroad Company?

Mr. McCarter: Yes sir.

Examiner Burchmore: You state that the San Jacinto Company left this part of the country and went elsewhere with its mill?

3302 Mr. McCarter: Yes sir.

Examiner Burchmore: What is the explanation of this departure?

Mr. McCarter: They cut out all the timber, I think, or went broke, or somethng like that.

Examiner Burchmore: Cut out all the timber and could not buy more?

Mr. McCarter: I think so.

Examiner Burchmore: When was the Trinity Valley Southern Railroad incorporated?

Mr. McCarter: The Trinity Valley Southern Railroad Company —the records show that it was incorporated and organized in 1901 in December.

Examiner Burchmore: When was the road built?

Mr. McCarter: The record- show it was built in 1898 or 1899, one of the two.

Examiner Burchmore: And in your opinion, are the records correct?

Mr. McCarter: I have no reason to doubt it.

Examiner Burchmore: Previous to 1898 or 1899, there was no tap line at this place?

3303 Mr. McCarter: I think not. That is my understanding. I don't know that to be a fact. There is nothing to indicate that there was.

Examiner Burchmore: When did the Palmetto Lbr. Co. commence milling in this country—in this lumber country?

Mr. McCarter: The present plant, you mean?

Examiner Burchmore: Yes.

Mr. McCarter: I had better explain. I was not there at the time, but I know from general information that the Palmetto Lumber Company was originally located at Palmetto, Texas, about one mile or two miles from the Trinity Valley Southern Railroad Company and delivered their lumber by means of a spur up to the Trinity Valley Southern Railroad Company, and at that time, the Columbia

Lumber Company and the Trinity Valley Southern Railroad Company were owned by the same stockholders, but the Palmetto Lbr. Co. had no connection whatever with the Trinity Valley Southern Railroad Company.

Examiner Burchmore: The Railroad Company was owned by the stockholders of what company?

Mr. McCarter: Of the Columbia Lumber Company.

Examiner Burchmore: Then the Palmetto Lumber Com-
3304 pany bought out the Columbia Lumber Company's saw mill and timber and railroad?

Mr. McCarter: Yes sir.

Examiner Burchmore: Then, treating or considering the Palmetto Lumber Company as being substantially a successor to the Columbia Lumber Company, with respect, at least, to its particular mill and with respect to its relations to this Railroad, on that understanding, I put this question: Was the railroad originally constructed to facilitate the business of the Lumber Company?

Mr. McCarter: Well, my understanding is that they had to have an outlet there some way to get to the Railroad, and they organized this Railroad Company as such outlet.

Examiner Burchmore: The construction antedates the organization?

Mr. McCarter: I presume that before 1898 no allowances or divisions were paid.

Mr. Powell: I think they operated then as the Trinity Valley Railroad Company, and then they re-organized in 1901 as the Trinity Valley Southern, under the laws of the Texas State Commission.

It was a railroad Company then in 1898 or 1899—I don't
3305 remember the exact date—but at any rate, when first built it was the Trinity Valley Railway Company and it was chartered in 190- as the Trinity Valley Southern Railroad Company.

Examiner Burchmore: Was this Railroad originally constructed if you know or are informed, primarily as a Common Carrier to serve the general public, or primarily to give those mills to which it was related an outlet to reach their market?

Mr. McCarter: As a common carrier for the general public, is my general belief.

Examiner Burchmore: And only in a secondary way, as an outlet for those mills?

Mr. McCarter: Yes sir.

Examiner Burchmore: If that is so, it might be assumed that its traffic has been very largely that of the general public from its inception—is that a fact?

Mr. McCarter: I don't quite catch that question?

Examiner Burchmore: The question is perhaps not well put, but it amounts to this: Is it not a fact that in the beginning, the traffic of this road was almost entirely the traffic furnished by the Lumber Companies that control it?

3306 Mr. McCarter: At the beginning?

Examiner Burchmore: Yes.

Mr. Carter: Well, I could not testify to that because I was not there at that time.

Examiner Burchmore: To leave the history of the road for the present, where is the present mill of the Palmetto Lumber Company located?

Mr. McCarter: At Oakhurst, Texas.

Examiner Burchmore: Where is Oakhurst, Texas?

Mr. McCarter: Six miles from Dodge, the I. & G. N. terminus of the Trinity Valley Southern.

Examiner Burchmore: On the Trinity Valley Southern?

Mr. McCarter: Yes sir.

Examiner Burchmore: How far from this Mill at Oakhurst are the nearest forests from which the mill receives its logs?

Mr. McCarter: You might ask Mr. Ford about that; I don't know.

Examiner Burchmore: Are there any private logging roads connected with the Trinity Valley Southern Railroad Company.

Mr. McCarter: Why, the Palmetto Lumber Company has logging roads running all along there crossing our line at some
3307 places.

Examiner Burchmore: These logging roads are temporary in character and removed from time to time as the forests are cut?

Mr. McCarter: I think some portions of them are. Of course a portion of them run up to the Lumber Company, and they have mills around there, and are never moved.

Examiner Burchmore: The mill is at the terminus of the Railroad?

Mr. McCarter: Yes sir.

Examiner Burchmore: What equipment has the Trinity Valley Southern Railroad Company?

Mr. McCarter: Two locomotives and one combination passenger and baggage coach.

Examiner Burchmore: No freight or log cars?

Mr. McCarter: No sir.

Examiner Burchmore: Does it own that equipment?

Mr. McCarter: Yes sir.

Examiner Burchmore: Doe- it lease any additional equipment?

Mr. McCarter: No sir.

Examiner Burchmore: Does it lease any of its equipment
3308 to other companies?

Mr. McCarter: No sir.

Examiner Burchmore: The Trinity Valley Southern Railroad Company participates in joint through rates on lumber to Interstate points?

Mr. McCarter: Yes sir.

Examiner Burchmore: What is the general basis of those rates? That is to say, are they the same from Oakhurst in cents per hundred pounds as the rates published by the I. & G. N. from the group of stations in which Dodge is included?

Mr. McCarter: Yes sir.

Examiner Burchmore: In other words, the Junction point rate is applied on the tap line?

Mr. McCarter: Yes sir.

Examiner Burchmore: What is your division or the basis of your division out of the joint rate?

Mr. McCarter: Well, they vary from anywhere—from two to five cents.

Examiner Burchmore: What is the general basis of this division—describe that.

3309 Mr. McCarter: Well, as a general basis, they are generally based on a percentage of the I. & G. N. earnings. We usually get about 30% of the I. & G. N. rate.

Examiner Burchmore: You get 30% of the I. & G. N. rate and the I. & G. N. retains 70%?

Mr. McCarter: Yes sir.

Examiner Burchmore: You get that 30% for a haul of six miles?

Mr. McCarter: Yes sir.

Examiner Burchmore: What is the average haul that the I. & G. N. performs?

Mr. McCarter: Well, usually, on that basis, about a hundred miles; eighty miles anyway.

Examiner Burchmore: Through what junction does the greater part of the traffic move?

Mr. McCarter: It is pretty well divided equally through Longview, Fort Worth and Houston. That is, the I. & G. N. Junction.

Examiner Burchmore: Those are the principal junctions?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Do you know the I. & G. N. mileage to Longview?

3310 Mr. McCarter: I don't know exactly; somewhere in the neighborhood of 80 or 90 miles.

Examiner Burchmore: What is the approximate distance to Fort Worth?

Mr. McCarter: By the I. & G. N.?

Examiner Burchmore: Yes sir.

Mr. McCarter: I expect something over one hundred miles—nearly two hundred miles, I expect by the I. & G. N. Railroad.

Examiner Burchmore: Of course, we can figure the distance.

Mr. McCarter: It is nearly two hundred miles, yes, sir.

Examiner Burchmore: What is the distance to Houston?

Mr. McCarter: Seventy-five miles.

Examiner Burchmore: And I understand that in a general way, your company receives a division of from two to five cents for a haul of six miles while the I. & G. N. retains a balance, which would be I suppose from five to ten—five to fifteen cents——

Mr. McCarter: Yes sir.

Examiner Burchmore: For a haul of from seventy-five to two hundred miles?

3311 Mr. McCarter: Yes sir. The five cents that I mention only applies to points on the I. & G. N. where the shipment moves from our line to points on their line. They allow us fifty per cent of the rate, not to exceed our local, and in that way, we get five cents, which is our local.

Mr. Dean: I think that only applies to intra-state shipments.

Mr. McCarter: Yes sir.

Examiner Burchmore: Is not your highest interstate division three cents? What is your chief market?

Mr. McCarter: Well it is pretty well divided, Texas and interstate points, about fifty per cent each way.

Examiner Burchmore: What is your chief interstate market?

Mr. McCarter: East of the Mississippi river is the principal market where the principal part of the lumber moves.

Examiner Burchmore: Are joint rates applied on that traffic or do they break on the Mississippi River?

Mr. McCarter: They break on the Mississippi River.

Examiner Burchmore: What is the rate on the Mississippi River?

Mr. McCarter: Fifteen cents to St. Louis; 16 cents to Thebes and Cairo.

Examiner Burchmore: What do you get out of the 18 cent
3312 rate?

Mr. McCarter: Two cents. That is, one which moves via a certain line, and via some lines, three cents.

Examiner Burchmore: You route most of your traffic at three cents?

Mr. McCarter: I did for a while until I got in a box and quit.

Examiner Burchmore: What embar-assment did that involve?

Mr. McCarter: We got three cents on the M. K. & T. At first we had through rates via that road and later on the through rates were cancelled by the Katy and only applied by the Texas and Pacific and since then the Iron Mountain.

Examiner Burchmore: Are your division sheets filed with the Commission? I don't see any division sheets around?

Mr. McCarter: The I. & G. N. issue them and would naturally file them with the commission.

Examiner Burchmore: I think we have a complete set of yo-r divisio- sheet. Does your company publish and file with the
3313 commission any tariff of rates between Dodge and Oakhurst?

Mr. McCarter: The Railroad commission of Texas publishes those tariffs, and we——

Examiner Burchmore: You don't have any such tariffs with the Interstate Commission?

Mr. McCarter: No sir.

Examiner Burchmore: In order to apply the rates on interstate traffic?

Mr. McCarter: Yes sir we concur in the tariff; we don't issue any tariff ourselves.

Examiner Burchmore: My question refers to local rates on your line which would apply to other traffic in the absence of a give- joint rate?

Mr. McCarter: No, sir, we have not any tariff.

Examiner Burchmore: You know, most railroads file such local state rates with the Interstate Commerce Commission in order to be sure they have the same rate applicable to them for a joint through rate, as a matter of policy.

Mr. Ford: We did not know that.

3314 Examiner Burchmore: It is perfectly proper not to, but it

is frequently done. Are you a party to joint through rates to and from interstate destinations on classes and commodities?

Mr. McCarter: Yes sir.

Examiner Burchmore: Indicate what the division of those rates is?

Mr. McCarter: As a division, we get 10% of the St. Louis and Kansas City proportional rate.

Examiner Burchmore: Well, are all stations on your line grouped?

Mr. McCarter: They take the same grouping as the I. & G. N.

Examiner Burchmore: Does the same rate apply—class rate—from Oakhurst, as from Dodge, on the I. & G. N.?

Mr. McCarter: Yes sir.

Examiner Burchmore: And you get a division of what—what division do you get?

Mr. McCarter: 10% of the proportion south of the river.

Examiner Burchmore: 10% of the proportion south of the Missouri river.

Mr. McCarter: Yes, or the Mississippi river as the case may be.

3315 Examiner Burchmore: How many stations are there on your line?

Mr. McCarter: We have one station at each end and two flag stations.

Examiner Burchmore: Any station buildings?

Mr. McCarter: We have a building at each place—four stations—except that there is a joint station at Dodge with the I. & G. N.

Examiner Burchmore: Is there a general agent at Dodge?

Mr. McCarter: Yes sir.

Examiner Burchmore: Paid by your company?

Mr. McCarter: Yes, sir.

Examiner Burchmore: What is your proportion?

Mr. McCarter: 50% of the expenses of the station?

Examiner Burchmore: Well he is carried on the I. & G. N. pay roll?

Mr. McCarter: Yes, they bill on us.

Examiner Burchmore: Do you have a regular station agent at Oakhurst?

Mr. McCarter: Yes sir.

Examiner Burchmore: Is he carried exclusively on the Railroad Company's pay roll?

3316 Mr. McCarter: Yes sir.

Examiner Burchmore: He receives no compensation and performs no service for the lumber company?

Mr. McCarter: No sir.

Mr. Powell: You had an office building and depot at Oakhurst?

Mr. McCarter: And two waiting rooms, colored and white.

Examiner Burchmore: That office is not used by the lumber company also?

Mr. McCarter: No sir.

Examiner Burchmore: What employees are at work in that building?

Mr. McCarter: My office is in there and the agent. That is all the permanent offices in there.

Examiner Burchmore: You are the operating superintendent of the Railroad?

Mr. McCarter: I am the auditor.

Examiner Burchmore: Is there any superintendent of operation?

Mr. McCarter: Yes sir, A. L. Black is Superintendent.

Examiner Burchmore: He is Vice-President of the Lumber Company also?

3317 Mr. McCarter: Yes sir.

Examiner Burchmore: Does the Palmetto Lumber Company own any locomotives and cars?

Mr. McCarter: Yes sir.

Examiner Burchmore: State what they are.

Mr. McCarter: I could not state; I only know that they own them. I am not connected with that Company.

Examiner Burchmore: If I say that they are supposed to own three locomotives and twenty four cars on their line running from or to Snowtown, would you say that is correct?

Mr. McCarter: I could not say how many they own, sir; I don't know how many. Mr. Ford can probably give you that information.

Examiner Burchmore: What officers of the railroad Company receive salaries fro- the railroad Company?

Mr. McCarter: The Superintendent.

Examiner Burchmore: And the Auditor?

Mr. McCarter: What is the question?

Examiner Burchmore: What officers of the Railroad Company receive salaries from the Railroad Company?

Mr. McCarter: Superintendent and Auditor.

Examiner Burchmore: And no other officers receive a

3318 salary?

Mr. McCarter: No sir.

Examiner Burchmore: What is the Superintendent's salary from the Railroad Company?

Mr. McCarter: Three Hundred dollars a year.

Examiner Burchmore: Does he perform active services for that salary?

Mr. McCarter: He is in charge there. He is also manage- of the same class of work for the lumber company. Of course the company could not afford to have a man of that experience exclusively for the railroad, and therefore they employ him jointly.

Examiner Burchmore: Is his salary excessive for the amount of services he renders the railroad company?

Mr. McCarter: I don't know; I should not think it is.

Examiner Burchmore: What track employees has the railroad Company?

Mr. McCarter: A section foreman and a section crew.

Examiner Burchmore: Does that section gang spend any part of its time at work on the private tracks of the log road?

3319 Mr. McCarter: No sir.

Examiner Burchmore: That entire time is devoted to maintaining the railroad company's track?

Mr. McCarter: Yes sir.

Examiner Burchmore: What train employees are there?

Mr. McCarter: We have an engineer, a fireman, a conductor and a brakeman.

Examiner Burchmore: They devote their entire time to the railroad's service?

Mr. McCarter: They do yes sir.

Examiner Burchmore: What is your train service?

Mr. McCarter: One round trip each day; one train each way.

Examiner Burchmore: One regular schedule?

Mr. McCarter. Yes sir.

Examiner Burchmore: Do you have a time table?

Mr. McCarter: We have not a published time table, but it is published in the guides.

Examiner Burchmore: You mean the I. & G. N. train?

Mr. McCarter: Yes sir, make connections with it.

Examiner Burchmore: Have you any other employees than those I have referred to—general officers, track and train?

3320 Mr. McCarter: No sir, I don't believe we have except the agent.

Examiner Burchmore: The station agent?

Mr. McCarter: Yes sir.

Examiner Burchmore: What if any facilities have you for the handling of less than car load trains?

Mr. McCarter: We have a depot and warehouse.

Examiner Burchmore: In a small scale.

Mr. McCarter: Only a small scale for ways.

Examiner Burchmore: Any wagon scales?

Mr. McCarter: No sir.

Examiner Burchmore: Any track scales?

Mr. McCarter: No sir.

Examiner Burchmore: The weighing is all performed by the I. & G. N.?

Mr. McCarter: We bill the lumber out at an estimated weight and it is weighed en route.

Examiner Burchmore: Is it a standard gauge road?

Mr. McCarter: Yes sir.

Examiner Burchmore: Will you state the weight of the rails?

Mr. McCarter: Thirty-five pounds, I think.

Examiner Burchmore: It is substantially built?

3321 Mr. McCarter: Yes sir. For one hundred thousand pound capacity cars.

Examiner Burchmore: Will it handle one hundred thousand pound capacity cars running at a reasonable rate, or running slowly.

Mr. McCarter: At the average speed that they go all the time—a regular train——

Examiner Burchmore: On an average train run?

Mr. McCarter: Yes sir.

Examiner Burchmore: Has it substantial bridges?

Mr. McCarter: Yes sir.

Examiner Burchmore: It is well built for that character of road?

Mr. McCarter: Yes sir.

Examiner Burchmore: What is the chief tonnage of your road?

Mr. McCarter: Why, lumber is the greatest portion of it, naturally it would be as it is in a lumber district.

Examiner Burchmore: Can you estimate or state accurately the total tonnage for the last fiscal year?

Mr. McCarter: Yes sir, in just a minute; the total tonnage is 127,283 tons.

3322 Examiner Burchmore: Are you going to file that statement?

Mr. McCarter: We can do so.

Mr. Powell: Yes sir, we have prepared it to file.

Examiner Burchmore: Of that, what amount was lumber?

Mr. McCarter: 73%. That is, 73% of the revenue. I never figured out the tonnage.

Examiner Burchmore: That was tons you gave?

Mr. McCarter: Yes sir, but the revenue figures 73%.

Examiner Burchmore: For the preceding year, your total tonnage seems to have been 36,481.

Mr. McCarter: I called it wrong. You had better strike that out. The tonnage for the fiscal year ending June 30, 1910, was 30,148 tons of which 71% was lumber—71% of the revenue.

Examiner Burchmore: Was that about the same proportion as obtained the previous year?

Mr. McCarter: The tonnage for the previous year covers 12 months but the revenues only cover 7 months for the previous year as the books were not kept correctly at the time I took charge, in December, 1908, and I had no way of getting at the figures previous to 1908.

Examiner Burchmore: In referring to lumber, do you
3323 mean the forest products of all kinds, or simply lumber?

Mr. McCarter: Forest products of all kinds.

Examiner Burchmore: Any staves and headings and such stuff made on your line?

Mr. McCarter: No sir.

Examiner Burchmore: Any other forest products other than lumber?

Mr. McCarter: I don't think so. We had some few thousand of shingles in there. I don't know that we have anything else out.

Examiner Burchmore: Aside from the lumber movements, was there any other traffic handled by the railroad company for the lumber company?

Mr. McCarter: Well, shipments come in there—shipments for the company—I never know who they are consigned to as I make my report from the agent's report and in that way I would not know who they are consigned to; but I presume the Palmetto Lbr. Co. is buying stuff there all the time and it goes there the same as anybody else's.

Examiner Burchmore: Does the Palmetto Lbr. Co. have any commissaries or company stores on the line?

Mr. McCarter: One commissary.

3324 Examiner Burchmore: Where is that located?

Mr. McCarter: Right at the mill—at the Palmetto Lumber Company.

Examiner Burchmore: Are there any other stores along the line?

Mr. McCarter: Yes sir.

Examiner Burchmore: Does the merchandise and do the other supplies sold by this company commissary move over the railroad's rails?

Mr. McCarter: Yes sir.

Examiner Burchmore: Under joint rates?

Mr. McCarter: Yes sir.

Examiner Burchmore: On which the railroad receives a division?

Mr. McCarter: Yes sir.

Examiner Burchmore: These commissary supplies are included in the statement of merchandise handled?

Mr. McCarter: Yes sir.

Examiner Burchmore: What proportion of the total merchandise movement consists of this Company's supplies?

Mr. McCarter: I could not say, as I have never made a statement separating the consignees.

3325 Examiner Burchmore: Is it your impression that there is a considerable movement of merchandise handled by the general public?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Over your line?

Mr. McCarter: Yes sir.

Examiner Burchmore: As much as 10% of your traffic?

Mr. McCarter: It has averaged for the last four years about 27%—other than lumber?

Examiner Burchmore: Is a substantial proportion of that 27% composed of merchandise for the Company's stores?

Mr. McCarter: Well, I could not say, as to the exact amount the company gets, but there are about a dozen or more other merchants there that we bring merchandise in to besides the lumber company.

Examiner Burchmore: Small concerns?

Mr. McCarter: Well, one point located about 8 miles from Oakhurst is called Point Blank; that is served from Oakhurst and we bring in the supplies into that community there, and at Snowtown, there is about a dozen merchants who carry anywhere from $5 to $8,000.00 worth of stock I suppose.

3326 Examiner Burchmore: Well, I can cut it short—this part of the examination—by the question, that you will furnish a statement of that tonnage; not a statement simply similar to that contained in the annual report but a statement showing the total movement of lumber for the Palmetto Lumber Company?

Mr. McCarter: Of lumber for the Palmetto Lumber Company—shipped by them?

Examiner Burchmore: When I say that, I mean that you shall include any lumber manufactured in their plant and which may be shipped on account of someone who has bought it F. O. B. point of

origin. Stripped of technical questions, we want the lumber that came from that mill. Show separately in that the total amount of lumber handled on account of other parties, and the total amount of merchandise handled for the Company's commissaries if that can be indicated, and the total amount of merchandise handled for the rest of the public and then show how much farm products—cotton or anything else.

Mr. Neal: The statement shows the cotton.

3327 Mr. McCarter: For what period?

Examiner Burchmore: The fiscal year ending June 30, 1910. Now if you desire, you may also show it down to date, but that is optional and, if so, must be shown separately. Give these figures, not only in tonnage but in revenue both. If you will prepare and file such an exhibit, it may be considered a part of your testimony. Of course, it will have to be checked against the figures in the annual report to show that the figures are correct. I think, with that, we can close this phase of the examination. Do you carry mails?

Mr. McCarter: Yes sir.

Examiner Burchmore: Under standard government contracts?

Mr. McCarter: Yes sir.

Examiner Burchmore: For Oakhurst?

Mr. McCarter: And Point Blank.

Examiner Burchmore: Do you carry any express?

Mr. McCarter: Yes sir.

Examiner Burchmore: With what company have you a contract?

Mr. McCarter: With the Pacific Express.

3328 Examiner Burchmore: I suppose that provides for 50% of the earnings?

Mr. McCarter: 40% I believe we have.

Examiner Burchmore: Do you carry passengers?

Mr. McCarter: Yes sir.

Examiner Burchmore: Those passengers ride on tickets?

Mr. McCarter: Yes sir.

Examiner Burchmore: Sometimes they pay train fare.

Mr. McCarter: If they do not purchase tickets, the conductor collects cash fares and gives them a receipt.

Examiner Burchmore: You carry the Mill employees free?

Mr. McCarter: No sir.

Examiner Burchmore: Does the Palmetto Lumber Company furnish tickets to their employees?

Mr. McCarter: I never heard of it.

Examiner Burchmore: Do you issue any annual passes?

Mr. McCarter: Yes sir.

Examiner Burchmore: Interchange passes with trunk lines?

Mr. McCarter: Yes sir.

Examiner Burchmore: Do you issue any passes for the officers of the Lumber Company as such?

Mr. McCarter: As officers of the Palmetto Lbr. Co.?

3329 Examiner Burchmore: Yes.

Mr. McCarter: No sir.

Examiner Burchmore: What interstate transportation is held by the officers of the railroad company?

Mr. McCarter: Why, I will look over and see. I will have to read them to give them to you. The officers of the lumber company?

Examiner Burchmore: The Railroad company officers?

Mr. McCarter: What interstate transportation is held?

Examiner Burchmore: By officers of the railroad Company. I presume that the officers of the lumber company do not hold any transportation as such?

Mr. McCarter: The I. & G. N.—but that is not interstate.

Examiner Burchmore: Don't give all the roads you hold passes on. You hold a dozen or more?

Mr. McCarter: A dozen or more; a dozen and a half.

Examiner Burchmore: Of interstate passes.

Mr. McCarter: No sir, not of interstate. You just want the interstate?

Examiner Burchmore: Yes, interstate.

Mr. McCarter: I will give you the Interstate.

Examiner Burchmore: Any Chicago and St. Louis?

3330 Mr. McCarter: Yes sir, six.

Examiner Burchmore: That is a sufficient statement. You use those passes?

Mr. McCarter: Yes sir.

Examiner Burchmore: You do not travel on lumber business?

Mr. McCarter: No sir.

Examiner Burchmore: You do all your service for the railroad Company?

Mr. McCarter: Yes sir.

Examiner Burchmore: If you go to Chicago, you don't do any lumber errands there?

Mr. McCarter: No sir.

Examiner Burchmore: Do the other officers? Is the President of the railroad company supplied with any transportation?

Mr. McCarter: Yes sir.

Examiner Burchmore: To about the same extent as you are?

Mr. McCarter: Yes sir.

Examiner Burchmore: Are any of the officers supplied with passes?

Mr. McCarter: The Vice President and Superintendent have I. & G. N. passes.

3331 Examiner Burchmore: Has the Sales Manager of the Lumber company any passes?

Mr. McCarter: I don't think they have any sales manager.

Examiner Burchmore: How do they sell their lumber?

Mr. McCarter: They are manufacturers; they don't sell it except to wholesale dealers.

Examiner Burchmore: They have sales agents?

Mr. McCarter: Yes sir.

Examiner Burchmore: Those sales agents sell on commission?

Mr. McCarter: I don't know how they sell.

Examiner Burchmore: I presume that this Company transacts *his* business the same as any other company does?

Mr. Ford: Yes sir.

Examiner Burchmore: And what we hear from the others, we may assume applies here.

Mr. McCarter: We have no traveling salesmen at all; it has sales agencies.

Examiner Burchmore: But there is nothing peculiar about its way of doing business?

Mr. McCarter: The custom- of the trade apply here I guess.

Examiner Burchmore: Does the Palmetto Lumber Company transport the logs to the Mill?

3332 Mr. McCarter: Yes sir.

Examiner Burchmore: The Railroad company does not go and get the logs?

Mr. McCarter: No sir.

Examiner Burchmore: The private tracks of the lumber company extend to the Mill?

Mr. McCarter: Yes sir.

Examiner Burchmore: They reach the mill directly?

Mr. McCarter: Yes sir.

Examiner Burchmore: Then I assume that the first moment that the Railroad Company has anything to do with the lumber or logs of the Palmetto Lbr. Co. is at the moment when the manufactured lumber is ready for shipment?

Mr. McCarter: Yes sir.

Examiner Burchmore: I assume also that the Trinity Valley Southern Railroad Company obtains its empty car supply from the I. & G. N.?

Mr. McCarter: Yes sir.

Examiner Burchmore: I assume that it moves those cars empty from the junction points up to the mill?

Mr. McCarter: Yes sir.

Examiner Burchmore: And there place them for loading?

3333 Mr. McCarter: Yes sir.

Examiner Burchmore: Are they loaded by the employees of the lumber company?

Mr. McCarty: Yes sir.

Examiner Burchmore: Do the employees of the railraod company assist in the loading?

Mr. McCarter: No sir.

Examiner Burchmore: Who issues the Bills of Lading for interstate shipments?

Mr. McCarter: The agent of the Trinity Valley Southern Railroad company.

Examiner Burchmore: At what point?

Mr. McCarter: Oakhurst.

Examiner Burchmore: The mill is actually located at Oakhurst?

Mr. McCarter: Yes sir.

Examiner Burchmore: These Bills of Lading are dated at Oakhurst on the date when the lumber is ready to go?

Mr. McCarter: Yes sir.

Examiner Burchmore: To its interstate destination?

Mr. McCarter: Yes sir.

Examiner Burchmore: The employees of the railroad
3334 Company with their locomotives, then move the loaded car under billing down to the junction with the I. & G. N. Is this their placed on the exchange track?

Mr. McCarter: Yes sir.

Examiner Burchmore: The I. & G. N. then takes it to destination?

Mr. McCarter Yes sir.

Examiner Burchmore: What way bills are used?

Mr. McCarter: We have the Trinity Valley Southern waybills. We bill it at Oakhurst and the lumber is usually billed through.

Examiner Burchmore: You usually bill it through to interstate destination?

Mr. McCarter: Yes sir.

Examiner Burchmore: Or at least to Fort Worth?

Mr. McCarter: At least to the junction, yes sir.

Examiner Burchmore: That shows the Trinity Valley Southern——

Mr. McCarter: As the originating carrier.

Examiner Burchmore: And participating up to Dodge?

Mr. McCarter: Yes, sir.

Examiner Burchmore: It shows its division as from two to five cents?

3335 Mr. McCarter: It does not show on the way bill, that is made through a monthly inter-line settlement with the I. & G. N.

Examiner Burchmore: Where are the funds of the Railroad Company kept?

Mr. McCarter: At Galveston, Texas.

Examiner Burchmore: In a bank?

Mr. McCarter: The State National Bank.

Examiner Burchmore: Kept separate and distinct from the lumber company's funds?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Did I ask you whether or not it keeps its accounts in conformity with the Interstate Commerce Commission's rules?

Mr. McCarter: No, sir.

Examiner Burchmore: Does it?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Makes monthly reports?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Extended reports? Reports of its expenses?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Are the cars equipped with proper
3336 safety devices?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Do you ever have any accidents on your road?

Mr. McCarter: Sometimes.

Examiner Burchmore: Do you report these to the Interstate Commerce Commission?

Mr. McCarter: Yes, sir.

Examiner Burchmore: Has the Company been named as defendant in any personal injury suit so far as you know?

Mr. McCarter: Not since I have been connected with them, no sir.

Cross-examination:

Mr. Powell: This Company is incorporated under the general statutes of Texas?

Mr. McCarter: Yes, sir.

Mr. Powell: It is subject to the jurisdiction of the State Railroad commission of Texas?

Mr. McCarter: Yes, sir.

Mr. Powell: Does it make its report to the State Railroad Commission as that commission requires?

Mr. McCarter: Yes, sir.

3337 Mr. Powell: Does it own its own right of way?

Mr. McCarter: Yes, sir.

Mr. Powell: What is the width of that right of way?

Mr. McCarter: One hundred feet I believe.

Mr. Powell: The road bears 35 pound steel rails I believe you said?

Mr. McCarter: Yes, sir.

Mr. Powell: The rails are steel?

Mr. McCarter: Yes, sir.

Mr. Powell: Has it got ballast?

Mr. McCarter: Yes, sir, some portion of it is ballasted.

Mr. Powell: It owns its own spur tracks does it?

Mr. McCarter: Yes, sir.

Mr. Powell: Now then with reference to the length of this line, for six miles does not the line own its own spur lines, in the station at Oakhurst? Also the company's loading sheds?

Mr. McCarter: Yes, sir.

Mr. Powell: It loads the cars on our tracks—the tracks of the Trinity Valley Southern?

Mr. McCarter: Yes, sir.

Mr. Powell: And possibly there are seven miles of track

3338 entirely?

Mr. McCarter: We have a spur at Youngstown, a spur at Snowtown, and two spurs at Oakhurst, and a coal bin, and also a spur down to the Palmetto Lumber Company's plant-mill?

Mr. Powell: It has approximately six *lines* of main lines to Oakhurst?

Mr. McCarter: Yes, sir.

Mr. Powell: I was just trying to explain where the seven and nine tenths (7.9) miles comes in. Now then, with reference to the traffic of this road, it is general traffic, isn't it?

Mr. McCarter: Yes sir.

Mr. Powell: Without getting the exact amount, can you state how much cotton you have hauled this season?

Mr. McCarter: So far?

Mr. Powell: Yes, how much cotton have you hauled this season?

Mr. McCarter: I presume about close to about one thousand bales.

Mr. Powell: Is that about the average crop that you haul?
3339 Mr. McCarter: A little better than the average, I believe.
Mr. Powell: And with reference to general merchandise, what size town is Oakhurst?
Mr. McCarter: About fifteen hundred, I think; that is what they claim.
Mr. Powell: There was an old settlement there before the lumber company's plant was put there?
Mr. McCarter: The old town of Snowtown—well, it is still there.
Mr. Powell: Are not 10 or 12 stores there at Snowtown?
Mr. McCarter: Yes sir, about that.
Mr. Powell: Those people had no connection with the Trinity Valley Southern Railroad Company or the Palmetto Lbr. Co.
Mr. McCarter: Not that I know of.
Mr. Powell: Some of those stores carry a good sized stock.
Mr. McCarter: Yes sir.
Mr. Powell: About how much would you state that stock of half a dozen of those stores amounts to?
Mr. McCarter: As I said a while ago, anywhere from five to eight thousand dollars.
3340 Mr. Powell: That much stock in about six of those stores?
Mr. McCarter: Yes sir.
Mr. Powell: I believe you said you carried mail and express?
Mr. McCarter: Yes sir.
Mr. Powell: You do a general common carrier business?
Mr. McCarter: Yes sir.
Mr. Powell: You treat the Palmetto Lbr. Co. like you do anybody else?
Mr. McCarter: Yes sir.
Mr. Powell: You haul material and lumber for anybody that has got it, won't you?
Mr. McCarter: Yes sir.
Mr. Powell: You have done it, have you not?
Mr. McCarter: Yes sir.
Mr. Powell: Prior to the time that the Palmetto Lbr. Co. bought out the Columbia Lbr. Co.'s plant, they shipped as much lumber over this road as the Palmetto Lbr. Co., did not they, approximately?
Mr. McCarter: I presume they did. I was not there prior to the time that the Palmetto Lbr. Co. took over the Columbia plant.
3341 Mr. Powell: You know they haul many cars?
Mr. McCarter: I know they had a mill located at Palmetto. After my connection with the Trinity Valley Southern Railroad, the Palmetto Lumber Company shipped about as much as the Oakhurst mill.
Examiner Burchmore: Why don't they rebuild up that mill?
Mr. Powell: They had bought this Columbia plant at that time. Didn't this mill burn recently—the San Jacinto Co.?
Mr. McCarter: Recently, I think, there was something burned over there, but I believe they moved the saw mill as well as I remember.
Mr. Powell: You are incorrect. The Mill burned and they sold

the timber. But this railroad company did serve that company for a while?

Mr. McCarter: Yes, as a common carrier.

Mr. Powell: Now what is the nature of the country along there? Is it agricultural?

Mr. McCarter: It is developing very fast and being developed into farms. They are moving and considerable farming going on around there.

Mr. Powell: Don't you serve a large portion of the northwest part of San Jacinto county—Point Blank, you say? These peo-
3342 ple all go to Oakhurst for railroad privileges?

Mr. McCarter: Yes sir.

Mr. Powell: There is no other railroad in San Jacinto county except in the southeast corner?

Mr. McCarter: No, sir.

Mr. Powell: How far is the H. E. & W. T. road from your line?

Mr. McCarter: I think about 18 or 20 miles, something like that; probably more.

Mr. Powell: Do you remember how far from your town to Cold Springs?

Mr. McCarter: About 18 miles.

Mr. Powell: How far from Cold Springs to Shepard?

Mr. McCarter: 42 miles.

Mr. Powell: And how far between those two roads?

Mr. McCarter: About 30 miles.

Mr. Powell: San Jacinto county then, in its northwest portion, has no facility for railroad traffic except this line?

Mr. McCarter: No sir.

Mr. Powell: That is true, is it?

Mr. McCarter: Yes sir.

3343 Examiner Burchmore: Are there any inhabitants to require a railroad?

Mr. McCarter: Yes sir.

Mr. Powell: Do you know the population of San Jacinto county?

Mr. McCarter: No sir, I do not.

Mr. Powell: I think it is some twelve thousand under the recent census.

Examiner Burchmore: How far is the terminus of the private logging road that runs up into the northeasterly direction out of Snowtown, I judge? How far is the end of that road from the B. & G. N.?

Mr. McCarter: I don't know.

Mr. Powell: Do you know Mr. Ford? How close are you to the Beaumont and Great Northern?

Mr. Ford: Across Trinity River, I guess it must be about fifteen miles to Oakhurst, to the nearest point of the Beaumont and Great Northern.

Mr. Powell: But you have a private line?

Mr. Ford: You mean our tram road?

Mr. Powell: Yes.

3344 Mr. Ford: I think we go within six or eight miles of them across Trinity river.

Mr. Powell: What kind of road has the Beaumont & Great Northern?

Mr. Ford: A very good road.

Mr. Powell: Is that a tap line?

Mr. Ford: It was included in the original tap line once, but I think it has been since that time——

Mr. Powell: It is about a forty mile road now I think.

Examiner Burchmore: Are you planning to build across?

Mr. Ford: No, the Trinity river is practically a barrier; it would cost $100,000.00 to bridge it.

Mr. Powell: Mr. McCarter, there is a considerable amount of timber adjacent not owned by the Palmetto Lbr. Co., isn't there?

Mr. McCarter: I understand there is.

Examiner Burchmore: Has the Palmetto Lbr. Co. been acquiring timber in recent years?

Mr. McCarter: I don't know about that, I could not say.

Examiner Burchmore: There are no other mills on that line?

Mr. McCarter: Not at present, no, sir.

3345 A. C. FORD was called as a witness, and being first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: You have heard Mr. McCarter's testimony; is it in your opinion accurate?

Mr. Ford: Yes. I think in a few instances, I noticed some discrepancies in it.

Examiner Burchmore: Possibly as to details?

Mr. Ford: Yes, in the main, after details.

Examiner Burchmore: It conveys a correct impression to you?

Mr. Ford: Yes, I think it does.

Examiner Burchmore: Do I understand that the majority of the stock of this Company is now owned by Mr. N. F. Gibs, a banker?

Mr. Ford: Yes sir.

Examiner Burchmore: Does he own that in his own name and right?

Mr. Ford: Yes sir.

Examiner Burchmore: How did he acquire that stock?

Mr. Ford: I had better exp-ain to you that this property was bought from the Cary lumber interests of Chicago just two
3346 years ago this December. Those interests originally built this mill and this railroad. At the time that they built it, the intention was to make quite a railroad proposition out of the property, but they stopped at the town of Oakhurst and never extended it. The Palmetto Lbr. Co. interests of which I own about 40%, and control practically 90% of it wished to acquire the Cary lumber timbering and mill interests at Oakhurst. In order to do so however, it was necessary to buy their entire interests out, including the stock in the Trinity Valley Railroad. I went to Mr. Gibbs, who was a particular friend of mine with whom I had a good many and varied dealings, and who never was and never had been a stockholder in the Palmetto

Lbr. Co. and tried to interest him in the purchase of a part of their investment, the Trinity Valley Southern Railroad. I finally succeeded in doing so and he and I jointly, without any stockholders of the Palmetto Lbr. Co. having any interest in the matter, made a trade with Cary and bought out the Trinity Valley Southern stock. That was two years ago. Last February I sold outright my half interest to Mr. Gibbs, retaining only one share so that I might be a
3347 nominal officer of the road, and in a general way represent the investment that my friend has in there. That will acquaint you pretty well.

Examiner Burchmore: Is Mr. Gibbs your banker?

Mr. Ford: Yes, to a certain extent he was my banker. We bought our original timber from Gibbs eight or ten years ago.

Examiner Burchmore: Now he practically owns the entire capital stock?

Mr. Ford: Yes, out of 200 shares, he owns 194.

Examiner Burchmore: Are there any bonds of the railroad?

Mr. Ford: No sir.

Examiner Burchmore: Any indebtedness outside of current liabilites?

Mr. Ford: No sir, no liabilities of any kind that I know of.

Examiner Burchmore: Mr. Gibbs holds no stock in the Palmetto Lbr. Co.

Mr. Ford: None whatever.

Examiner Burchmore: Does Mr. Gibbs or his bank hold any mortgage on the property of the Palmetto Lbr. Co. or its
3348 bonds?

Mr. Ford: Yes, he did at one time own what you might call the bond of our company to the extent of $200,000.00. Those bonds have, however, been recently liquidated by us and we do not owe Mr. Gibbs anything any more.

Examiner Burchmore: How were they liquidated?

Mr. Ford: By selling to him timber we own in another part of the state of Texas?

Examiner Burchmore: Mr. Gibbs has no interest in this part of Texas within a short radius of ——?

Mr. Ford: He owns quite a lot of land all thru that section—he is quite an extensive land owner.

Examiner Burchmore: We are going into that quite minutely.

Mr. Ford: I am anxious to give you as clear an idea as I can.

Examiner Burchmore: To give you an example, I had one tap line some months ago who came to us and frankly said,—the lumber people said that they had sold the railroad outright to a banker in the east, and divested themselves entirely of all interest, but within six months, we found that the road had been sold
3349 outright back to the original holders and the lumber tracts sold to somebody else. Within six months there was another complete flop in some other direction. So that it appears that rather than having actually sold all the railroad property to foreign interest, it was sort of a financial re-arrangement of the property,

and it is perhaps essential in this case to know just who owned the railroad.

Mr. Ford: I am glad to give you any light I can on that question and furnish you with any information that may help you.

Examiner Burchmore: Aside from any legal questions or technical questions of any sort, do you say that the railroad is not now owned or controlled through stock interest or otherwise, by the interest- that control the Palmetto Lbr. Co.?

Mr. Ford: Yes, sir.

Examiner Burchmore: Completely divorced of any interest or control in the matter?

Mr. Ford: Yes, sir.

Examiner Burchmore: Does Mr. Gibbs or his bank own
3350 any timber holdings along this railroad or near it?

Mr. Ford: No, sir, we have bought from Mr. Gibbs everything outside of some hardwood timber left in that country.

Examiner Burchmore: I mean, Mr. Gibbs, in buying this railroad is not going to open up a saw mill or anything like that and has no such intention?

Mr. Ford: He has no such intention. His interest in the matter came from the fact that he lives at Huntsville about twelve miles west of Dodge on the I. & G. N.

Examiner Burchmore: Are there any extensions being planned in this line?

Mr. Ford: Yes, sir.

Examiner Burchmore: For the immediate future?

Mr. Ford: Yes sir, we are planning for the immediate future.

Examiner Burchmore: For what purpose?

Mr. Ford: The purpose is to connect, to go thru the country, south of San Jacinto country and to connect up a line on the south—giving an outlet on the south with the H. E. & W. T. and Santa Fe, originating tonnage for mills located on those roads.

3351 Examiner Burchmore: This extension will be an ostensible common carrier?

Mr. Ford: Yes, sir; most of the road is already that, but held in private hands. The intention is to connect the property up and make it a common carrier.

Examiner Burchmore: The Palmetto Lbr. Co. retains ownership and control of its private tap road?

Mr. Ford: Yes, sir.

Examiner Burchmore: Is it not contemplated to connect the tap road and receive a division through that?

Mr. Ford: No sir: In pursuance of this plan, it was contemplated to sell to the Trinity Valley Southern a portion of their tram road if that plan was carried out—to make a bona fide sale for a certain amount to the Trinity Valley Southern Railroad of about ten miles of their logging road. That was contemplated?

Examiner Burchmore: For the maintenance and continuation of the tap line division, you have no plan in connection with constructing another tap line to enable this same mill to retain its division?

Mr. Ford: No sir, none whatever.

3352 Examiner Burchmore: Do you receive any benefit from the division now?

Mr. Ford: None whatever. Either directly or indirectly.

Examiner Burchmore: What is the capital stock of the Trinity Valley Southern?

Mr. Ford: Two hundred thousand dollars, issued.

Examiner Burchmore: Issued?

Mr. Ford: Yes, sir.

Examiner Burchmore: Mr. Gibbs owns the majority of that?

Mr. Ford: Yes, sir.

Examiner Burchmore: Has it been a dividen*t* paying company?

Mr. Ford: Yes, it has, I think, made money every year.

Examiner Burchmore: State in a general way what the returns have been for the past years?

Mr. Ford: I am not familiar of course, up to the time we took hold two years ago, except in a general way, but I have always understood it made money for its former owners. During the last two years, Mr. McCarter has the figures of the net earnings.

Examiner Burchmore: What was the rate of dividend?

Mr. Ford: We declared one dividend since we have had it.

3353 out of the surplus, of 10% at the annual meeting last February, this year.

Examiner Burchmore: How long had it taken to accumulate that surplus?

Mr. Ford: About a year we had owned the company.

Examiner Burchmore: There was no*n* surplus when you took it?

Mr. Ford: No sir, the stock carried no especial surplus.

Examiner Burchmore: That 10% was an extraordinary showing in view of the past history of the road?

Mr. Ford: No sir, it was not the entire earnings.

Examiner Burchmore: What surplus had been accumulated since?

Mr. Ford: I will explain here, Mr. Burchmore, that after that or about that time, in December, the Palmetto Lbr. Co. mill at Palmetto burned and the Trinity Valley Southern Railroad had about eight cars belonging to foreign roads on their rails which burned and which carried no insurance. They lost $14 or $15,000.00 which they had to stand out of their earnings. All that was charged off the earnings of the last fiscal year, as nearly nominal. I

3354 have not the figures but I know that for the last 12 months, we only had nominal earnings.

Examiner Burchmore: You are still president of the Railroad Company?

Mr. Ford: Yes, sir.

Examiner Burchmore: Elected at a meeting of the stockholders?

Mr. Ford: Yes sir.

Examiner Burchmore: An actual meeting of the stockholders?

Mr. Ford: Yes sir an actual meeting.

Examiner Burchmore: You still control the policies of the company?

Mr. Ford: Well, when you speak of controlling—I do so on the advice and counsel of the owner of it, Mr. Gibbs. I control however, all of its local affairs in the broadest sense.

Examiner Burchmore: Are you and Mr. Gibbs partners in any enterprise?

Mr. Ford: No sir.

Examiner Burchmore: You are not connected in any other business undertaking?

Mr. Ford: No sir; we are stockholders—no he and I are not either—his family have an interest in a small lumber
3355 Company. We have a small interest in it.

Examiner Burchmore: Have you any interest in any other company than the Thompson & Ford Co.?

Mr. Ford: Yes, two or three different companies outside of the Palmetto Lumber Company.

Examiner Burchmore: Large interest?

Mr. Ford: No sir, not very large. In other lumber companies about $30,000.00 outside of what I own in the Palmetto.

Examiner Burchmore: An ordinary stockholder?

Mr. Ford: Yes. One is a retail concern and the other is a manufacturing concern that has no tap line or enjoys no division as far as I know.

Examiner Burchmore: What bonds?

Mr. Ford: A Railroad Company, no bonds.

Examiner Burchmore: Any deed?

Mr. Ford: No sir.

Examiner Burchmore: Original ventures?

Mr. Ford: Original?

Examiner Burchmore: Yes. Only $20,000 of capital stock, does that represent everything?

3356 Mr. Ford: The $20,000.00 capital stock is nominal that was originally issued. I understand that the original cost of the road was between $55,000.00 and $60,000.00.

Examiner Burchmore: That includes equipment?

Mr. Ford: Yes sir.

Examiner Burchmore: How did they raise the balance of the fund—of the cost of construction?

Mr. Ford: Mr. Burchmore, I am not at all familiar with the original transaction because it has been about ten years ago, and I have only owned it two years.

Examiner Burchmore: When you took the road over, you purchased the $20,000.00 in capital stock?

Mr. Ford: Yes sir.

Examiner Burchmore: And paid therefor in cash?

Mr. Ford: Why I will tell you how that was made, as I told you that these holdings of Timber and Saw Mill property and Railroad were all owned by the same people—the same people in Chicago. They put a value on the whole property together—so much money. I persuaded Mr. Gibbs to assist me in financing it. It involved about $500,000.00. I persuaded him to advance it for the Palmetto

Lumber Company—the original price that Mr. Cary asked
3357 for the Mill was $150,000.00. That is exclusive of timber or lumber. In view however of Mr. Gibbs and myself raising the money for the Palmetto Lumber Company personally, and securing payment of his deferred payments, we made a trade with Mr. Cary by which he reduced the price of the mill plant alone to $110,000.00 and he and I personally acquired the stock of the Trinity Valley Southern Railroad Company. It was figured at $40,000.00. That was the basis it was figured on when we made the deal with Mr. Cary.

Examiner Burchmore: As a matter of fact, the lumber and timber and road were all paid at one time?

Mr. Ford: Yes sir.

Examiner Burchmore: As one interest?

Mr. Ford: Yes sir.

Examiner Burchmore: Is it contemplated that the Palmetto Lumber Company or stockholders thereof shall at a future date buy back the Railroad?

Mr. Ford: It has not been contemplated. The stockholders of the Palmetto Lumber Company outside of myself have never had any knowledge of the business or have not considered that they had any interest whatever in this road at any time.

3358 Examiner Burchmore: Do you own the right of way on which the road is built?

Mr. Ford: No sir.

Examiner Burchmore: Who owns it?

Mr. Ford: The Trinity Valley Southern Railroad Company owns it by deed.

Mr. Powell: We brought that out by Mr. McCarter that the Railroad Company owns the right of way about 100 feet wide.

Examiner Burchmore: Is the Railroad Company recognized as a Common Carrier by the Railroad Commission of Texas?

Mr. Ford: Yes sir.

Examiner Burchmore: Accorded the full rights and privileges that any other road in the state of Texas has?

Mr. Ford: As far as I know. Of course, we investigated that very thoroughly before we located the plant of the Palmetto Lumber Company on this road.

Examiner Burchmore: It has all the rights and disadvantages if any?

Mr. Ford: Yes sir.

Examiner Burchmore: Do you know whether or not there has been any complaint of your rates made by other storekeep-
3359 ers along this line?

Mr. Ford: If there has ever been, I know nothing about it. You see, I operated myself as a manufacturer along this line for eight years before I had interest personally, and I had no complaint to make during this time of the conduct of the road.

Mr. Dean: Mr. Ford, could you, with the present condition of the lumber business since the panic, operate your plant at all without a yearly or monthly loss if you had to pay the local freight rate

from Oakhurst to Dodge, and then the common point rate from Dodge on to interstate destinations?

Mr. Ford: Well, I would say it would be at a severe financial disadvantage for me to do so—to operate my lumber business.

Mr. Dean: If the divisions were cancelled—I believe you stated you got no benefit out of the present division?

Mr. Ford: No sir.

Mr. Dean: If they were cancelled, would you have to pay the local rate to Dodge and from there the same rate you do to Oakhurst?

Mr. Ford: Yes, to interstate points.

Examiner Burchmore: You are speaking to me as a lum-
3360 berman or as a Railroad man?

Mr. Dean: His profession is Lumberman. He owns only one share of railroad stock. I want the record to show that the Palmetto Lumber Company makes itself a party to this record, and I now address him as President of the Palmetto Lumber Company in reference to the effect on the operations of that Company, of the cancellation of these divisions. Mr. Ford, you say that you had been operating in that territory for eight years before you personally acquired any interest in this stock?

Mr. Ford: Yes sir.

Mr. Dean: Now, when you went there, you did it on theory, because of knowledge of the fact that this was a common carrier, and thru it you could get to the markets of the United States?

Mr. Ford: Yes, I investigated that very thoroughly before I made the investment.

Mr. Dean: Would you have invested in that, or located your plant there except for the fact that this Trinity Valley Southern Railroad Company had common carrier privileges and through rates and divisions?

Mr. Ford: I would not.

3361 Mr. Dean: Would you have made the purchase from Mr. Cary of the lumber interest or Saw Mill plant and stock of timber and lumber that you did two years ago except for the fact that you could get the same rate from Oakhurst where the mill was located as you could get on the line of any main or trunk line?

Mr. Ford: No, sir, Iwould not have considered the investment.

Mr. Dean: Now, has the Palmetto Lumber Company its own logging equipment complete?

Mr. Ford: Yes sir.

Mr. Dean: About how much logging road does the Palmetto Lumber Company own?

Mr. Ford: Altogether about twenty miles.

Mr. Dean: About 20 miles of Logging Road?

Mr. Ford: Yes, sir.

Mr. Dean: What is the capacity of the Palmetto Lumber Company?

Mr. Ford: About twenty million feet a year.

Mr. Dean: Before you purchased the Columbia Lumber Company plant, what was the capacity of the Palmetto Lumber Company plant at Palmetto, Texas?

3362 Mr. Ford: About fifteen million feet.

Mr. Dean: There was at that time located a Saw Mill at Youngstown, I believe.

Mr. Ford: Yes sir.

Mr. Dean: Do you know what became of that mill and why?

Mr. Ford: It burned, and they did not rebuild it.

Mr. Dean: Now, has the Trinity Valley Southern Railroad Company ever hauled any logs for you or logged any timber—that is, for the Columbia or Palmetto Lumber Company or any other mill since you have been operating in that territory during the last eight years?

Mr. Ford: Not to my knowledge. Not for the Palmetto Lumber Company. I will state that as a fact.

Mr. Dean: You are familiar in a way with its operation? Your mills are right by its tracks?

Mr. Ford: Yes sir.

Mr. Dean: If it had logged for the Columbia Lumber Company at any time, you would have known it?

Mr. Ford: I am quite sure it did not or I would have known it.

Mr. Dean: Was it ever built as a logging proposition?

Mr. Ford: My information is that it was not.

3363 Mr. Dean: Has it ever, to your knowledge, had any milling in transit rates?

Mr. Ford: To my knowledge, it has not.

Mr. Dean: I believe you said your last investment represented $500.000.00?

Mr. Ford: Yes sir.

Mr. Dean: Is there other timber in that territory to be served by this Railroad Company other than the Palmetto Lumber Company timber?

Mr. Ford: Yes sir.

Examiner Burchmore: Will you furnish the commission with a map drawn to scale, of the line of the Railroad Company showing the junction points with the I. & G. N. and showing the mill location and all the tracks, and showing also the tracks of the private road of the Lumber Company. In other words, a small copy, the smaller the better, so long as it is logical—that will acquaint us with the whole lay of the land.

Mr. Ford: Yes I have some maps of that kind gotten up by some engineer at home, and can send you one of these. Do you wish the tram roads of the Palmetto Lumber Company to be shown on that map?

3364 Examiner Burchmore: Yes so that we can distinguish them and the mill point, and the station buildings, and show the settlements.

Mr. Ford: I will try to get you up as comprehensive a map as I can on a small scale.

Examiner Burchmore: One other question. Suppose that the divisions were withdrawn either as a result of an order from the commission or voluntary action of the I. & G. N. and the Trinity Valley Southern Railroad Company should participate in no joint rates, but

suppose simultaneously the rates—the proportional rates or through rates—were established from the junction point, the same thing as the present net rate accruing beyond junction points, so that shipments of lumber, instead of applying the usual rate on which you receive a division, you would charge your local rate to Texas Points and the I. & G. N. would apply a lower rate beyond, would the effect be seriously detrimental to the interest of the Railroad Company?

Mr. Ford: No, sir, I would not think it would be serious to the interest of the railroad Company.

Examiner Burchmore: Well it would prejudice the lumber Company.

3365 Mr. Ford: I should think very seriously.

Examiner Burchmore: That would be the same rates in cents per hundred pounds to get to that market?

Mr. Ford: That would be true provided the same rate applied from Oakhurst as from Dodge or any point on the Main line of the I. & G. N.

Examiner Burchmore: What I mean to say is, if the same rate applied to market that now applies, and the proportional adjustment obtained elsewhere, would not you be in as good a position as you are right now, as a Railroad man?

Mr. Ford: In other words, the Railroad would be entitled to charge a local rate from terminus to the connection with the I. & G. N.

Examiner Burchmore: Yes?

Mr. Ford: I don't see how it would affect their earnings.

Examiner Burchmore: Your local would be three or four or five cents?

Mr. Ford: Well, I don't see how it would, but if the lumber company had to pay the local rate arbitrarily of three or four or five cents or go into Dodge to the connection of the I. & G. N. and then all of the mills located along the I. & G. N. Railroad should

3366 take advantage of the lower rate, the effect you can readily see, how it would hurt us to the extent of the local rate.

Examiner Burchmore: As a matter of fact, are any mills located immediately on the line of the trunk lines, who get their logs immediately on that line?

Mr. Ford: Yes, very large mills.

Examiner Burchmore: They get their logs by team?

Mr. Ford: By rail.

Examiner Burchmore: From along the line of the I. & G. N.?

Mr. Ford: No sir, by their tram roads.

Examiner Burchmore: But if your divisions were taken away, I presume theirs would be.

Mr. Ford: They have no divisions.

Examiner Burchmore: Then are they not now at a great disadvantage in comparison with you?

Mr. Ford: No sir, not as far as my lumber company is concerned, for our company gets no interest in the divisions.

Examiner Burchmore: They have the same rate that you

3367 do?

—. From your Lumber Mill?

Mr. Ford: Yes sir, exactly.

Examiner Burchmore: They have to bear the expense of operating their tram roads, don't they, as your tram road is paid for?

Mr. Ford: Yes sir, we do not get a cent division from our tram lines.

Examiner Burchmore: What I mean is this. At or out of your private tram line?

Mr. Ford: Yes, sir.

Examiner Burchmore: But you go to the I. & G. N. without cost from your mill. You pay the same rate from your mill which a man on the I. & G. N. pays from his mill?

Mr. Ford: Yes sir.

Examiner Burchmore: Then to all intents and purposes as a lumber man, you are on the I. & G. N. as far as the rates are concerned?

Mr. Ford: But it costs to haul lumber from Oakhurst to Dodge. The Railroad should have something for it.

Examiner Burchmore: There are lumber concerns on the Santa Fe and other points within common carrier territory, and a number of points on the main trunk line, which would be your com-

3368 petitors?

Mr. Ford: Yes, sir.

Examiner Burchmore: Which would have a rate equal to the local in case this division was cancelled?

Mr. Ford: Yes sir.

Examiner Burchmore: Could you compete with that?

Mr. Ford: I would be handicapped at least $1.00 per thousand if I had to pay a local rate for this haul. It would be a very serious matter for us.

Examiner Burchmore: Lumber dealers or mills located on the Santa Fe do not receive divisions from their tap line?

Mr. Ford: No sir.

Examiner Burchmore: How do they compete with those who receive them? Do you know of any advantage that the mills located on the Santa Fe have, that is denied to the mills on the other road?

Mr. Ford: I certainly do.

Examiner Burchmore: Can you state them?

Mr. Ford: They get in the territory on the Santa Fe Railroad which other mills located off the Santa Fe are debarred from reaching for the reason of the fact that the Santa Fe Railroad re-

3369 fused to handle the business of the lumber producing roads in Texas in the division of the through rate, thereby debarring all such plants from entering into the Santa Fe territory.

Examiner Burchmore: But the mill that has a tap line connected with the Santa Fe gets no division?

Mr. Ford: Gets no division. No, sir.

Examiner Burchmore: Has to pay the cost of keeping up its tap line?

Mr. Ford: Yes, sir. I know of no instance in our state, to my knowledge, of any division being granted to any roads along the basis of the testimony I have heard at this hearing. In other words,

there are no mills or tap lines that I know of that enjoy and division that operate purely a logging road as the Livingston and SouthEastern Tap Line. It is a similar proposition to the Oakhurst road.

Examiner Burchmore: It handles nothing but lumber for the Knox Lumber Company?

Mr. Ford: I don't know about that, but it handles lumber alone, not logs.

Examiner Burchmore: The mill is located at the terminus?

3370 Mr. Ford: That is the only class of mills I can figure that are not getting any divisions in the State of Texas. All others have been abolished.

Examiner Burchmore: Have you any further statement to make?

Mr. Ford: No, sir, I don't know anything further. The situation is this: on these tap lines so called, in Texas, that the owners of mill interests located at the terminus of such roads as the Trinity Valley Southern Railroad, and participating in the earnings of that road—you can readily see what a serious matter it would be for those concerns if those divisions were cancelled, and they had to absorb an arbitrary local rate from the milling point to the trunk line.

Examiner Burchmore: Would it be a serious proposition for them if they were withdrawn?

Mr. Ford: I think it would because there are very few in that position. Most of them are located on the main line and get no division—have nothing to do with the tap line rates. There are comparatively few mills in our state not located on the main lines, and which do not pretend to get any division.

3371 Examiner Burchmore: The mills located on the main line have to bear the expenses of getting logs up to the mill?

Mr. Ford: Yes, and so do all of them.

Examiner Burchmore: A mill at the far end of the tap line?

Mr. Ford: Has to bear the same expenses exactly.

Examiner Burchmore: Does it in our case?

Mr. Ford: It certainly does in our case.

Examiner Burchmore: You bear the expenses of your private tram line, but you do not bear the expenses of getting that lumber up to the I. & G. N.?

Mr. Ford: No, sir, neither does the other mill.

Mr. Dean: You don't know of any timber contiguous to the I. & G. N.?

Mr. Ford: No, sir.

Mr. Dean: Now, is the logging equipment of the other mills of the same capacity as yours; they are logged on the main line?

Mr. Ford: Several of them.

Mr. Dean: Your length of tram road and logging equipment is as extensive and expensive as a main line saw mill?

Mr. Ford: Yes, sir.

3372 Mr. Dean: Then you are not paid at all for getting your logs from the woods to the mill?

Mr. Ford: In no way whatever, either directly or indirectly.

Mr. Dean: What is the taxable value of this road, and upon what basis do you pay taxes?

Mr. Ford: About $60,000.00 a year. They tax us pretty high down there.

By Mr. POWELL:

Defendants offer in evidence a report for the year 1910 to 1910 of the income and expenses of the Trinity Valley Southern Railroad Company, marked Exhibit "A."

The said report so offered and identified, was received in evidence and thereupon marked "Defendant's Exhibit A," received in evidence December 13th, 1910, page 3372, and is attached hereto.

3373 *Natchez, Columbia & Mobile R. R.*

NEW ORLEANS, LA., *December* 13, 1910.

Mr. Brady: Mr. Butterfield wishes to make a further statement with reference to the Natchez, Columbia & Mobile Railroad. If Mr. Butterfield has not made it clear to the Examiner that the Butterfield Lumber Company does not profit in any way by a division of rate with the Natchez, Columbia & Mobile Railroad Company, I desire to have Mr. Butterfield restate that it does not.

Examiner Burchmore: It is not perfectly clear, but I think it will become clear upon examination of the tariffs. I understood Mr. Butterfield to state definitely that the Butterfield Lumber Company does not profit, directly or indirectly, through the payment of this refund of 2 cents by the Illinois Central Railroad, except in so far as that 2 cents goes to the railroad with which it is connected.

Mr. Brady: That is true, is it not?

Mr. Butterfield: Yes, sir; the 2 cents goes to the railroad company, the stock of which is owned by the owners of the lumber company.

Examiner Burchmore: Aside from that indirect advantage, there is no other?

Mr. Butterfield: None whatever.

3374 Mr. Brady: The reason for asking the question, Mr. Examiner, is that there was some little cloudiness about that on your part and on his yesterday in the examination. We want to ask Mr. Butterfield whether or not there is any telegraph or telephone line along his railroad.

Mr. Butterfield: There is a telephone line consisting of four wires, two of which,—it is owned by the Cumberland Telephone & Telegraph Company.

Mr. Brady: I want to ask you, Mr. Butterfield, whether anybody connected with the Natchez, Mobile & Columbia Railroad Company, and using passes that you described as having been issued by the Illinois Central Railroad Company, are salesmen of lumber for the Butterfield Lumber Company?

Mr. Butterfield: No, sir.

Mr. Brady: I will ask you whether or not there is any person

connected with the Butterfield Lumber Company that uses passes issued by the Illinois Central Railroad, or any other line, in connection with the sale of lumber for the Butterfield Lumber Company?

Mr. Butterfield: No, Sir. I want to add that this telephone line is put up under contract with the railroad company and the telephone company, and the telephone company furnishes and
3375 maintains two wires on this for the railroad company in its operation of its trains.

Mr. Brady: Who pays for those wires?

Mr. Butterfield: The railroad company pays for its rental.

Examiner Burchmore: What is this telephone company?

Mr. Butterfield: It is the Cumberland Telephone & Telegraph Company.

Examiner Burchmore: Part of the Bell system?

Mr. Butterfield: Part of the Bell system, I understand.

Examiner Burchmore: I will call the case of the Kentwood, Greensburg & Southwestern Railway Company.

Mr. Brady: We are ready in the New Orleans, Natalbany & Natchez Railway Company.

3376 *New Orleans, Natalbany & Natchez Railway Company.*

Examiner Burchmore: I will call the case of the New Orleans, Natalbany & Natchez Railway Company.

Mr. Brady: This railroad is not managed like Mr. Butterfield's. There are different departments in it, and I want to tender different witnesses for different purposes, and I will tender the witness and state for what purpose. I want to submit an answer, or statement with reference to it, which is exactly like the one tendered for the Natchez Columbia & Mobile Railroad yesterday.

Examiner Burchmore: This motion by the New Orleans, Natalbany & Natchez Railway Company will be received and submitted to the Commission for such action as it may deem proper.

(The paper so offered and identified was received in evidence and thereupon marked "New Orleans, Natalbany & Natchez Railway Company Exhibit No. 1, received in evidence December 13, 1910, and is attached hereto.)

Mr. Brady: I will make another statement that will considerably tend to facilitate the hearing. I will state to the Examiner that the stockholders in the New Orleans, Natalbany & Natchez Railway Company are identical with those of the Natalbany Lumber Company, with the exception of four stockholders that are stockholders in the railroad company who are not stock-
3377 holders in the lumber company, the total shares of stock owned by the four in the railroad company being four. Now, I am going to ask Mr. Smythe to take the stand, and I tender Mr. Smythe as a witness purely for the purpose of showing the physical conditions and the manner and method of operating the railroad company, and not with reference to the auditing or account-

ing of the railroad company, since he has no connection with that feature of it.

Examiner Burchmore: Will you have all the witnesses rise and be sworn?

Mr. Brady: Yes, Sir. I will ask all my witnesses, all of the men here with me, to rise and be sworn. I may not tender them all, but I will have them sworn now.

(The witnesses were instructed to rise, and were sworn by the Examiner.)

T. L. SMITHE was called as a witness, and having been duly sworn, testified as follows:

Direct examination.

Examiner Burchmore: Where do you reside, and what is your occupation?

Mr. Smythe: I reside in Hammond, Louisiana, and I am General Manager of the N. O. N. & N. Railroad.

3378 Examiner Burchmore: Are you also an officer of the Natalbany Lumber Company?

Mr. Smythe: No, Sir.

Examiner Burchmore: Not employed by that company?

Mr. Smythe: No, sir.

Examiner Burchmore: Where is this railway located?

Mr. Smythe: It leaves the Illinois Central about three miles north of Hammond.

Examiner Burchmore: And runs?

Mr. Smythe: And runs in a westerly direction about five miles, then bears north around a curve two miles and a half, then north forty-five degrees west about six or seven miles, and then in a northwesterly direction.

Examiner Burchmore: What is the northwesterly terminus of the line?

Mr. Smythe: A little town called Pine Grove. Now, that is the last town, the railroad is built beyond that about two miles, that is, it is in process of construction.

Examiner Burchmore: Your junction with the Illinois Central is at Natalbany?

Mr. Smythe: Natalbany.

Examiner Burchmore: How large a place is Natalbany?

3379 Mr. Smythe: A little town of about a thousand people, very nearly that.

Examiner Burchmore: Does this road connect with any other railroad than the Illinois Central?

Mr. Smythe: No, Sir.

Examiner Burchmore: Are there any private tram-lines connetced with this railroad?

Mr. Smythe: Well, there is one private spur.

Examiner Burchmore: Where is that located?

Examiner Burchmore: First, with respect to this one private spur, and then the Natalbany Lumber Company's logging spurs.

Examiner Burchmore: First, wit hrespect to this one private spur, where is that located, and to whom does it belong?

Mr. Smythe: About twenty miles from Natalbany.

Examiner Burchmore: By whom is it owned?

Mr. Smythe: By Thornton, Claney & Company, Chicago.

Examiner Burchmore: The Natalbany Lumber Company has one or two private tram-lines?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Please state where they connect with your line, and their extent.

3380 Mr. Smythe: They have two, and the easterly one connects with the N. O. N. & N. about twenty-one miles from Natalbany, and the other one at twenty-four and a half miles from Natalbany.

Examiner Burchmore: Are those connecting points, or connections, designated with any station name?

Mr. Smythe: The last one I mentioned there is designated as Pine Grove.

Examiner Burchmore: What stations are there on the line? I mean stations from a tariff standpoint.

Mr. Smythe: There are three.

Examiner Burchmore: Name them.

Mr. Smythe: Natalbany, Montpelier and Pine Grove.

Examiner Burchmore: What is Georgeville?

Mr. Smythe: Georgeville is a little flag station.

Examiner Burchmore: Is that not the point of connection with the first tram-line?

Mr. Smythe: It used to be, but the lumber company have practically logged out their timber there and the tracks are practically taken away.

Examiner Burchmore: Is that true with respect to Storey?

Mr. Smythe: The company camps are there, but their logging operations are about completed.

3381 Examiner Burchmore: What is the length of each of those private tram-roads of the Natalbany Lumber Company?

Mr. Smythe: Those people have one main spur at each place that they take up. The first one I mentioned there is about two and a half miles long and the next is about five. This does not include the lateral spurs; there are several of these.

Examiner Burchmore: What industries are there situated along the line, aside from the Natalbany Lumber Company? Please name them.

Mr. Smythe: Yes, sir; I was just going to say: I have to go numerically first, seven saw mills.

Examiner Burchmore: Seven saw-mills?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Are any of these mills of large capacity?

Mr. Smythe: All small mills; one of the them is about twenty thousand to twenty-five.

Examiner Burchmore: And who owns that mill?

Mr. Smythe: The Penna.-Mich. Lumber Company. It is a connection of the two States, Pennsylvania and Michigan.

Examiner Burchmore: Like Texarkana.

3382 Mr. Smythe: Yes, Sir.

Examiner Burchmore: Are there any box factories along the line?

Mr. Smythe: No, sir.

Examiner Burchmore: Stave makers?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: A number of stave makers?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Those are stave mills?

Mr. Smythe: No, Sir; now the Janovich people in New York make staves all over that part of the country, and also the Austro-American Stave Company, and then numbers of other firms make staves.

Examiner Burchmore: How do you spell that Janovich?

Mr. Smythe: J-a-n-o-v-i-c-h.

Examiner Burchmore: Does the Natalbany Lumber Company own or control the Thornton-Claney Company?

Mr. Smythe: No, Sir.

Examiner Burchmore: No connection whatever?

Mr. Smythe: Not a thing in the world.

Examiner Burchmore: Does the Natalbany Lumber Company own any of the other companies that you referred to?

3383 Mr. Smythe: None whatever.

Examiner Burchmore: The Penna.-Mich. Lumber Company is entirely independent?

Mr. Smythe: Entirely independent.

Examiner Burchmore: Who owns the timber lands along the line?

Mr. Smythe: You mean, who owns the major portion of it? Why, the Natalbany Lumber Company and others.

Examiner Burchmore: The Natalbany Lumber Company owns the major portion?

Mr. Smythe: Yes, Sir; I think so.

Examiner Burchmore: What are their total holdings in the territory served by the line?

Mr. Brady: I will put on other witnesses to show that.

Examiner Burchmore: I will withdraw the question as to you, then. I should ask another witness as to the financial operations?

Mr. Brady: Yes, Sir; Mr. Smythe is the manager of it, practical manager on the line.

Examiner Burchmore: What is the total mileage of this railroad?

Mr. Smythe: Twenty-five miles.

Examiner Burchmore: Our records indicate a mileage of

3384 thirty-one miles. Have you taken up some track?

Mr. Smythe: No.

Examiner Burchmore: Have you any side track?

Mr. Smythe: We have. That is the length of the main line that I have given you. We have numbers of side-tracks. But, by-the-way, allow me to modify that. That twenty-five miles that I mentioned does not include a number of miles that belong to the

N. O. N. & N. Railway Company. We have about five miles at Natalbany, and then we have possibly two or three miles of side-track. So, taking it all together, we have probably thirty-two miles. I was just giving you the length of the main line.

Examiner Burchmore: Is it standard-gauge?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: What is the weight of the rail?

Mr. Smythe: Fifty-six and sixty pounds.

Examiner Burchmore: How is it ballasted?

Mr. Smythe: With the ordinary soil of the country mostly; in other places we have got cinders and sand.

Examiner Burchmore: Are there any sharp grades and curves? How are the bridges, are there any bridges?

Mr. Smythe: Yes, Sir.

3385 Examiner Burchmore: Are they substantial?

Mr. Smythe: They are in good shape.

Examiner Burchmore: How would you describe the general construction of the road; is it well constructed?

Mr Smythe: It is in first-class condition; it is in good condition.

Examiner Burchmore: I mean, is it constructed about as a branch line of a standard railroad is constructed, or like a logging road?

Mr. Smythe: It is in better shape than the ordinary branch line of a standard railroad.

Examiner Burchmore: What station, or stations, have you, if any?

Mr. Smythe: We have two good stations, one at Montpelier with an agency now, and one at Pine Grove. We have a good flag-station a little ahead. We have good stations at Brookhaven, Johnsons, Georgeville and Storey.

Examiner Burchmore: Warehouses at those points, or some of them, where you can store L. C. L. freight?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Have you any track scales?

Mr. Smythe: Yes, Sir.

3386 Examiner Burchmore: Any wagon scales?

Mr. Smythe: No, Sir.

Examiner Burchmore: Any small scales in the depots?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Have any lunch counters?

Mr. Smythe: No, Sir.

Examiner Burchmore: Are there any public team tracks along the line where carload shipments can be unloaded by shippers?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Where are those located?

Mr. Smythe: Well, at all of them, for that matter.

Examiner Burchmore: That is a sufficient statement. Does the New Orleans, Natalbany & Natchez Railway have any trackage rights over the Illinois Central?

Mr. Smythe: No, Sir.

Examiner Burchmore: Has it accorded any trackage rights to the Natalbany Lumber Company?

Mr. Smythe: No, Sir.

Examiner Burchmore: Does the railroad company operate over the private tran-line of the lumber company?

Mr. Smythe: No, Sir.

3387 Examiner Burchmore: How many locomotives has the railroad company?

Mr. Smythe: Ten.

Examiner Burchmore: What character of locomotives,—I withdraw that question, the annual report shows it. How many box cars?

Mr. Smythe: Six.

Examiner Burchmore: Flat-cars?

Mr. Smythe: We have about one hundred and thirty, I think, in good condition.

Examiner Burchmore: Are those regular flat-cars, or logging cars?

Mr. Smythe: Regular flat-cars; and these flat-cars we use for logging purposes and any other purpose.

Examiner Burchmore: Any cabooses?

Mr. Smythe: One.

Examiner Burchmore: Any passenger coaches?

Mr. Smythe: Two.

Examiner Burchmore: Two regular passenger coaches?

Mr. Smythe: One regular passenger coach, and one good fair coach for the laborers.

Examiner Burchmore: Have you any steam shovels and

3388 derricks?

Mr. Smythe: Yes, Sir; and do you consider pile-drivers in that classification?

Examiner Burchmore: Yes, Sir.

Mr. Smythe: Well, we have a pile-driver.

Examiner Burchmore: Have you any motor cars?

Mr. Smythe: Two.

Examiner Burchmore: How many persons do these seat?

Mr. Smythe: One seats four and the other twelve.

Examiner Burchmore: Any hand cars?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: How many?

Mr. Smythe: Eight, I believe.

Examiner Burchmore: Eight hand-cars?

Mr. Smythe: Something like that, I don't just remember,

Examiner Burchmore: Is your equipment supplied with the necessary safety appliances as required by the Acts of Congress?

Mr. Smythe: We have one train which is supplied as required, and of our flat-cars about seventy per cent of them have safety appliances and the others are in the process of having these put on.

3389 Examiner Burchmore: It is your intention to comply with the law as far as possible?

Mr. Smythe: We are doing that in all our repairing.

Examiner Burchmore: Does the Natalbany Lumber Company own any locomotives?

Mr. Smythe: No, Sir.
Examiner Burchmore: Does it own any cars?
Mr. Smythe: No, sir.
Examiner Burchmore: Does it lease any locomotives or cars?
Mr. Smythe: Yes, sir.
Examiner Burchmore: From whom?
Mr. Smythe: From the N. O. N. & N. Railway.
Examiner Burchmore: How many?
Mr. Smythe: Six locomotives.
Examiner Burchmore: How many cars?
Mr. Smythe: It does not lease any cars, we use the cars in the service.
Examiner Burchmore: What payment is made for the use of those leased locomotives?
Mr. Smythe: Twelve Dollars a day.
Examiner Burchmore: Does that twelve dollars a day
3390 include the crew?
Mr. Smythe: No, sir.
Examiner Burchmore: Include the fuel?
Mr. Smythe: The fuel, yes, sir.
Examiner Burchmore: Just the locomotive and fuel.
Mr. Smythe: Yes, Sir; and the necessary repairs.
Examiner Burchmore: Is that twelve dollars a day supposed to include the actual cost of the locomotive a day, or is it supposed to include a profit.
Mr. Smythe: I consider that a fair remuneration.
Examiner Burchmore: On a cost basis?
Mr. Smythe: Yes, Sir.
Examiner Burchmore: But not to give them a profit?
Mr. Smythe: Yes, Sir.
Examiner Burchmore: How did you arrive at twelve dollars?
Mr. Smythe: We just calculated what the locomotive would cost us, and figured a little percentage of profit.
Examiner Burchmore: What was that percentage of profit?
Mr. Smythe: Ten per cent.
Examiner Burchmore: You think that is the result?
Mr. Smythe: Yes, Sir, being fair.
Examiner Burchmore: How many employés has the rail-
3391 road company engaged on maintenance of track?
Mr. Smythe: I think the records better show that, Sir; I don't remember.
Examiner Burchmore: Well, three or four section gangs, or one?
Mr. Smythe: I think it has four section gangs.
Examiner Burchmore: Do these section men——
Mr. Smythe: Let's see, five, including the Bridge Repair crew.
Examiner Burchmore: Do these five section crews devote any part of their time to the repairing or relaying of the private tracks of the lumber company?
Mr. Smythe: No, Sir.
Examiner Burchmore: Their work is exclusively performed on the railroad?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: How many station agents have you?

Mr. Smythe: Three.

Examiner Burchmore: How many train employés has the railroad company?

Mr. Smythe: Fifteen or sixteen men.

Examiner Burchmore: How many crews?

3392 Mr. Smythe: We have four crews.

Examiner Burchmore: What employés are there in the general office of the railroad?

Mr. Smythe: I think the clerical end will better show that.

Examiner Burchmore: Do you run passenger trains?

Mr. Smythe: Yes, Sir; a local mixed train.

Examiner Burchmore: What is your passenger service, the number of trains daily, and whether they run on regular schedule?

Mr. Smythe: Well, we run one train up the road daily, twice each way.

Examiner Burchmore: Does that meet the Ilinois Central trains?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: It runs on regular schedule?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Have you published time tables?

Mr. Smythe: Yes, sir.

Examiner Burchmore: Do you purpose filing that in the record?

Mr. Smythe: I suppose so.

3393 Mr. Brady: Yes, Sir; I have all of them.

Examiner Burchmore: How many freight trains, or logging trains, are run daily?

Mr. Smythe: Generally four.

Examiner Burchmore: Four in each direction?

Mr. Smythe: No, Sir; four in one direction.

Examiner Burchmore: Four loaded and four back?

Mr. Smythe: Four loaded and return empty.

Examiner Burchmore: Are these run on regular schedule?

Mr. Smythe: No, Sir.

Examiner Burchmore: What is the number of cars in your local mixed train?

Mr. Smythe: They vary from four to a dozen.

Examiner Burchmore: Your logging trains are fifteen to twenty cars?

Mr. Smythe: No, Sir; we very seldom handle less than eight thousand feet.

Examiner Burchmore: Do you have any merchandise cars for L. C. L. traffic?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: That is handled on your mixed train?

Mr. Smythe: Yes, Sir.

3394 Examiner Burchmore: Does the railroad transport the United States mails?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Under a standard government contract?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: What is your compensation for that a year?

Mr. Smythe: The clerical end will show that.

Examiner Burchmore: Do you transport express matter?

Mr. Smythe: Except as freight.

Examiner Burchmore: Do you carry passengers?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Do those passengers purchase tickets?

Mr. Smythe: Sometimes.

Examiner Burchmore: Usually pay cash fares?

Mr. Smythe: Well, usually, yes, Sir; that is a fact.

Manager Burchmore: How many passengers do you handle per day, on an average?

Mr. Smythe: That is a pretty hard question to answer, because it varies.

Examiner Burchmore: Is it usual to find four or five
3395 passengers on a train, or twenty or thirty?

Mr. Smythe: Well, we never have less than four or five, and very frequently more than that, fifteen or twenty, or eight or ten, along there.

Examiner Burchmore: Are the employés of the lumber company carried free?

Mr. Smythe: No, Sir.

Examiner Burchmore: You issue annual passes to some of them?

Mr. Smythe: We make annual arrangements. My instructions were that there should be remuneration, so I issue the employés transportation so as not to interfere with the remuneration of the conductor.

Examiner Burchmore: They ride on monthly tickets?

Mr. Smythe: I just write them out, that is, just in emergency cases, otherwise they pay.

Examiner Burchmore: When riding on lumber company's business then, the mill employé's fare is paid to the railroad company.

Mr. Smythe: The mill employé pays his fare just the same as any other man. I am talking about a man sent out there to
3396 the end of the road on emergency, or something of that kind.

Examiner Burchmore: But even from such man you receive a cash fare the same as any other?

Mr. Smythe: Just the same.

Examiner Burchmore: Lumber and logs is the predominating commodity handled by the railroad?

Mr. Smythe: Yes, Sir, we handle a great many logs. I might state incidentally that I have only been with these people two years.

Examiner Burchmore: I have omitted to ask where the mill is located. I refer to the mill of the Natalbany Lumber Company.

Mr. Smythe: Not exactly at Natalbany, there are three of them, the first little station on the road, Mason, which is not very much used, about a mile from the main line of the I. C.

Examiner Burchmore: That is one mill.

Mr. Smythe: Two of them there, the two large mills.

Examiner Burchmore: Is it a sawmill and planing mill?

Mr. Smythe: There are two large sawmills and a planer.

Examiner Burchmore: Where is the third mill?

Mr. Smythe: A short distance from the junction of the road.

3397 Examiner Burchmore: How far from the rails of the Illinois Central?

Mr. Smythe: The junction of the two roads.

Examiner Burchmore: From the right-of-way of the Illinois Central?

Mr. Smythe: Within one hundred feet of it.

Examiner Burchmore: Is there any side-track from the Illinois Central to the mill?

Mr. Smythe: There are two side-tracks.

Examiner Burchmore: I mean, is the mill reached from a private side-track from the Illinois Central? Could cars be taken from the Illinois Central on a private side-track to the mill?

Mr. Smythe: The whole connection is right there, you understand, and they are all switched one from the other. I don't understand your question, Sir.

Examiner Burchmore: Is there any means by which a car can be set at the Natalbany Mill by the Illinois Central, without moving on rails of the New Orleans, Natalbany & Natchez Railway?

Mr. Smythe: No, sir.

Examiner Burchmore: That question, I presume, will be

3398 answered by the map that you will file later?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: What percentage of the total lumber movement comes from these Natalbany mills?

Mr. Smythe: The report will show that, Sir. The clerical report will show that better than I could answer. We have all those figures in proper condition so they will be better shown than I can answer.

Examiner Burchmore: Can you advise me with reference to the method of handling freight and billing?

Mr. Smythe: No, sir.

Examiner Burchmore: How are the logs transported from the forest to the mills?

Mr. Smythe: In regard to the Natalbany Lumber Company, the logs are delivered at the junction of the Natalbany Lumber Company's spurs and the N. O. & N. line, and the N. O. & N. N. engines make up the trains at these points and deliver them to the Natalbany Lumber Company.

Examiner Burchmore: What compensation does the railroad company receive for hauling the logs to the mill?

Mr. Smythe: Three cents per hundred pounds.

Examiner Burchmore: Three cents per hundred pounds on

3399 what?

Mr. Smythe: On the weight of the logs.

Examiner Burchmore: On the actual weight of the logs, or the estimated weight?

Mr. Smythe: Estimated weight. Estimated from the actual weight and scale.

Examiner Burchmore: Does the conductor of the train that

handles these logs into the mill, have any waybill covering the trainload?

Mr. Smythe: He makes his report, as I understand it, of each car, and once a month the month's work is billed regularly, the same as any other freight.

Examiner Burchmore: No Bills of Lading are issued covering the hauling of the logs into the mill?

Mr. Smythe: For individual trains?

Examiner Burchmore: For individual trains.

Mr. Smythe: No, Sir.

Examiner Burchmore: Are the empty cars provided by the Illinois Central?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: And this railroad company takes these empty cars and places them at the mill?

Mr. Smythe: Yes, Sir, the N. O. N. & N. switch engine.

3400 Examiner Burchmore: When so placed, they are loaded by the employees of the lumber company?

Mr. Smythe: Yes, Sir; and then delivered to the I. C. by the N. O. N. & N. switch engine.

Examiner Burchmore: Who issues the bill of lading for the outmove of lumber?

Mr. Smythe: That is another question that must be answered by the clerical end.

Examiner Burchmore: You stated that the Thornton, Claney Company has a private spur?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: How long is that private spur?

Mr. Smythe: In a direct line, a mile and a half, and then there is a little branch about two miles.

Examiner Burchmore: Where is their mill located?

Mr. Smythe: They have no mill.

Examiner Burchmore: What is their business?

Mr. Smythe: They bought a yard of lumber that was manufactured by a little mill about a year and a half ago, and they built their spur in there to remove that, and they put in a little planer, and they are shipping the lumber to Chicago.

Examiner Burchmore: How much lumber is there out there?

3401 Mr. Smythe: Approximately five million feet in that bunch.

Examiner Burchmore: Already cut?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: How did such a quantity of lumber accumulate out there?

Mr. Smythe: In 1908, a cyclone passed through that country, and Mr. T. H. Bowles owned a piece of land that was badly damaged, and he put a little mill in there and cut the lumber and put it right there in the woods.

Examiner Burchmore: Why didn't he team it across to the railroad?

Mr. Smythe: I expect the expense would be too great.

Examiner Burchmore: Would that expense be greater than to construct a special railroad?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Mr. Bowles owns a tap-line somewhere, doesn't he?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: I thought I remembered the name.

Mr. Smythe: He may own a tap-line somewhere, but not in that vicinity.

Examiner Burchmore: What is the length of the haul that
3402 the New Orleans, Natalbany & Natchez has on the lumber of the Natalbany Lumber Company?

Mr. Smythe: About a mile.

Examiner Burchmore: One mile in the case of the two mills at Mason?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: How many feet in the case of the mill at Natalbany?

Mr. Smythe: About fifteen hundred, or two thousand.

Examiner Burchmore: Well, how much of that fifteen hundred feet is within the plant or the yard of the mill?

Mr. Smythe: It is all in the yard, in order to deliver the cars so that the I. C. engines can get them.

Examiner Burchmore: That is all.

Mr. Brady: I might suggest that he understands about the division of rates.

Examiner Burchmore: What is the general territory in which most of the lumber from this district is sold?

Mr. Brady: I don't think he knows about that. He only knows this, he knows about the charges between the railroad company and the lumber company, because he contracts for the railroad
3403 company with the Natalbany Lumber Company with reference to moving the lumber.

Examiner Burchmore: Most of the lumber goes to Chicago?

Mr. Smythe: You had better take the books, they are more satisfactory.

Examiner Burchmore: Do you know the rates to Chicago?

Mr. Smythe: In general, yes, Sir. You had better take the books, because they can answer better than I can.

Examiner Burchmore: You stated that the railroad company received three cents per hundred pounds for moving the lumber into the mill.

Mr. Smythe: For moving the logs into the mill, yes, Sir.

Examiner Burchmore: What does it receive for moving the lumber out of the mill?

Mr. Smythe: Two cents on the lumber that goes into the territory upon which the division is.

Examiner Burchmore: There is some lumber upon which it receives nothing?

Mr. Smythe: Practically.

Examiner Burchmore: Is there any lumber upon which it receives more than two cents?

Mr. Smythe: Not to my knowledge.

Examiner Burchmore: Two cents, then, is the usual division on the lumber.

3404 Mr. Smythe: Yes, Sir.

Examiner Burchmore: Does the Natalbany Lumber Company own any other private railroad in this vicinity?

Mr. Smythe: No, Sir; not to my knowledge, Sir.

Examiner Burchmore: It doesn't own any private railroad running out of Natalbany?

Mr. Smythe: No, Sir.

Examiner Burchmore: By private railroad, I do not intend to refer to an incorporated tap-line.

Mr. Smythe: No, I know.

Examiner Burchmore: It is ostensibly a common carrier. This Company has joint through rates on lumber with the Illinois Central?

Mr. Smythe: I understand so.

Examiner Burchmore: Are you familiar with these rates?

Mr. Smythe: No, Sir.

Mr. Brady: We have another witness. You see, it is a different department.

Mr. Brady: Now, Mr. Smythe, I want to ask you one question: Does the railway company unload the logs into the pond in the lumber company?

3405 Mr. Smythe: Yes, Sir.

Mr. Brady: Is there any charge made for that?

Mr. Smythe: Yes, Sir.

Mr. Brady: What is that charge?

Mr. Smythe: It costs us—we have a contract for unloading them in there, and it costs us twelve and a half cents a car to unload the cars.

Examiner Burchmore: Twelve cents and a half to unload the logs where?

Mr. Smythe: In the pond at Natalbany.

Mr. Brady: That is the charge for that particular work?

Mr. Smythe: Yes, Sir.

Mr. Brady: It is not done for nothing, then?

Mr. Smythe: No, Sir; that is the charge.

Mr. Brady: Mr. Smythe, you were asked something about the roadbed a few minutes ago. I will ask you to be a little more definite. Is it such a roadbed as would carry the tonnage of a regular railroad?

Mr. Smythe: Yes, Sir.

Mr. Brady: What about your bridges and your fills, etc., is it standard construction?

Mr. Smythe: Yes, Sir.

3406 Mr. Brady: Do you know what is the purpose of the road with reference to being extended?

Mr. Smythe: Yes, sir.

Mr. Brady: To what point—Do you know whether the

Board of Directors of the road have taken any steps looking toward the amendment of the charter so as to reach some railroad connection?

Mr. Smythe: I know that is the purpose of the Board of Directors.

Examiner Burchmore: If you will state that purpose very briefly we will accept your statement.

Mr. Brady: The Board of Directors of the railroad company this year passed a resolution whereby the charter was authorized to be amended so as to extend the road from its present western terminus to Baton Rouge, Louisiana, there of course to form a river and railroad connection. I might state something with reference to this territory if you wish.

Examiner Burchmore: I understand there is other lumber in that territory.

Mr. Brady: Yes, Sir; there is other lumber there. It is the purpose of the railroad company to build into Baton Rouge from its main line, and to develop a territory now undeveloped by
3407 railroad companies.

Examiner Burchmore: It seems to be going in the wrong direction for Baton Rouge.

Mr. Brady: Yes, Sir; but that is the purpose of it, Mr. Smythe will indicate to you.

Mr. Brady: Mr. Smythe, I will ask you whether we have made any survey, or not?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Does the Natalbany Lumber Company own any timber in the direction of the surveys?

Mr. Brady: I don't know about that; I think they own some.

Mr. Smythe: They own possibly ten or twelve miles in the direction of that road.

Examiner Burchmore: Have they bought any timber in that direction?

Mr. Smythe: No, Sir.

Mr. Brady: What is the nature and character of the territory, Mr. Smythe, between the terminus and Baton Rouge, through which you propose to extend this line, with reference to being good farming territory, or otherwise?

Mr. Smythe: I can only say honestly that it is one of the finest agricultural prospects I have ever seen in Louisiana.

3408 Mr. Brady: What about stores along your right of way, mercantile establishments and corporations?

Mr. Smythe: Oh, there are several.

Mr. Brady: Do you carry freight for these?

Mr. Smythe: Yes, Sir; we are the only common carrier in that part of the country.

Mr. Brady: What is the population of those little towns along the right of way?

Mr. Smythe: Such as?

Mr. Brady: Well, such as Little River, and others.

Mr. Smythe: Well, taking first Woodhaven is a little flag-station. It is surrounded by a good farming country; but, of course, the

population right at Woodhaven is not great, but there are a good many people living in the vicinity.

Mr. Brady: Who handles that freight, that product?

Mr. Smythe: We do.

Mr. Brady: Take Little River, what is the condition?

Mr. Smythe: Little River is very small, except there is a mill at Little River.

Mr. Brady: Who handles that freight?

Mr. Smythe: The N. O. N. & N.

3409 Mr. Brady: Johnson?

Mr. Smythe: Johnson is simply a little flag-station; there are a few farmers there.

Mr. Brady: Georgeville?

Mr. Smythe: Nothing but a flag-station.

Mr. Brady: Montpelier?

Mr. Smythe: Montpelier is a litttle town on the site of an old County Seat.

Mr. Brady: How many people?

Mr. Smythe: Six or seven hundred, probably.

Mr. Brady: Storey?

Mr. Smythe: Storey is a flag-station and a camp.

Mr. Brady: How about the farming country around Montpelier?

Mr. Smythe: Good. A mile and a half East of Montpelier is the Tickfaw River, and the Tickfaw River Bottoms have been known to be as fertile a river bottom as any in the country.

Mr. Brady: Does this railroad furnish shipping facilities for that territory?

Mr. Smythe: There is no other way.

Mr. Brady: How far North before you reach the territory

3410 of another railroad?

Mr. Smythe: About eight or nine miles.

Mr. Brady: How far South?

Mr. Smythe: About the same distance.

Examiner Burchmore: Do those farmers consume all they raise, or ship some?

Mr. Smythe: They ship a certain proportion.

Mr. Brady: State the character of merchandise shipped, or the freight shipped.

Mr. Smythe: Well, from that section this year the shipment is light, for the reason that that was a cotton growing country, and, of course, as everybody knows in this country, the boll-weevil has given that country a drubbing like most every other place, and they are going in the corn business.

Examiner Burchmore: This line of questions may be followed up by the request that you file a statement of your tonnage for the fiscal year ending June 30th, 1910, similar to the statement that I requested last night from the other companies.

Mr. Brady: In connection with Mr. Smythe's testimony, we offer Tariff——

Examiner Burchmore: Please do not file any tariffs al-
3411 ready filed with the Commission. We will get that a little later. You may file, Mr. Brady, the Time Table and any tariffs which this company has, that are not filed with the Commission.

Mr. Brady: I will ask permission later to ascertain what has been filed and what has not, and to forward to you that which has not.

Examiner Burchmore: It may be done.

Mr. Brady: I ask, not to file, but in this connection to refer Mr. Smythe's testimony to the annual reports made. I want to connect his testimony by reference to those reports. I believe you declined to let us file it?

Examiner Burchmore: Well, you have filed your annual reports.

Mr. Brady: Yes, Sir; but in order to make the testimony clear here, we want Mr. Smythe's testimony to refer to the reports.

Examiner Burchmore: Will you also file a map as I requested last night?

Mr. Brady: Yes, Sir; we have a tracing here, and tender for your inspection the tracing.

Examiner Burchmore: Is it a large document?

3412 Mr. Brady: It is pretty large.

Examiner Burchmore: We would prefer small maps; the stenographer has a trunk full already.

Mr. Brady: We also offer the charter, showing the intents and purposes.

Examiner Burchmore: That is the charter of the railroad as a common carrier under the laws of Louisiana?

Mr. Brady: Of Louisiana.

Examiner Burchmore: Well, it need not be filed.

Mr. Brady: I will ask you, Mr. Smythe, whether this railroad has been adjudged by the courts of Louisiana and by the orders of the Railroad Commission of the State of Louisiana, a common carrier?

Mr. Smythe: Yes, Sir.

Mr. Brady: I will ask you whether or not you make reports to the Railroad Commission of the State of Louisiana and comply with their orders?

Mr. Smythe: Yes, Sir; in every instance.

Examiner Burchmore: What is the basis on which you pay taxes in Louisiana, do you know?

Mr. Smythe: No, sir.

Mr. Brady: Exempt from taxation, like all others?

3413 ROBERT STEINBOCK was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is the total capital stock of the New Orleans, Natalbany & Natchez Railway Company?

Mr. Steinbock: There is three hundred thousand dollars.

Examiner Burchmore: How much has been issued?

Mr. Steinbock: Fifteen hundred and fifty shares, one hundred and fifty-five thousand dollars.

Examiner Burchmore: Was that stock issued for cash?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: Cash was paid in for it?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: That cash was used to purchase the railroad from its prior owners?

Mr. Steinbock: It was used for the construction of the road.

Examiner Burchmore: That entire capital stock is owned by the stockholders of the Natalbany Lumber Company in proportion to their holdings in the lumber company, with the exception of four shares?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: In whose hands are those four
3414 shares?

Mr. Steinbock: Those four shares are,—Mr. Brady has one share, Mr. Smythe one share, Mr. Davis has one share, Mr. Richardson has one share.

Examiner Burchmore: Those gentlemen are all officers or stockholders in the lumber company?

Mr. Steinbock: They are not.

Examiner Burchmore: Are any of them officers in the lumber company?

Mr. Steinbock: They are not.

Examiner Burchmore: Have they any connection with the lumber company?

Mr. Steinbock: They hold positions with the lumber company.

Examiner Burchmore: Employees of the lumber company?

Mr. Steinbock: Employees, yes, Sir.

Examiner Burchmore: Are those not directors' qualifying shares?

Mr. Brady: I don't exactly catch your meaning. These four?

Examiner Burchmore: These four shares.

Mr. Brady: I don't think there is one of us that has a thing to do with the Natalbany Lumber Company.

3415 Examiner Burchmore: How long have those four shares been outstanding in those names?

Mr. Steinbock: They were issued in 1908.

Examiner Burchmore: To these four men?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: For cash?

Mr. Steinbock: Yes.

Examiner Burchmore: Are those four men directors of the railroad company?

Mr. Steinbock: They are.

Examiner Burchmore: All of them?

Mr. Steinbock: All four, yes, Sir.

Examiner Burchmore: How long have they been directors of the company?

Mr. Steinbock: Since January 25, 1910.

Examiner Burchmore: When was this railroad incorporated?
Mr. Steinbock: June 4, 1902,—I should have said January 4, 1902.
Examiner Burchmore: Is this railroad a paying proposition?
Mr. Steinbock: It is.
Examiner Burchmore: What dividends has it paid?
Mr. Steinbock: None.
3416 Examiner Burchmore: It has paid no dividends?
Mr. Steinbock: No dividends.
Examiner Burchmore: Has it accumulated a surplus?
Mr. Steinbock: It has.
Examiner Burchmore: What is the extent of that surplus?
Mr. Steinbock: Seventy-three thousand, nine hundred and fourteen dollars.
Examiner Burchmore: Seventy-three thousand, nine hundred and fourteen dollars?
Mr. Steinbock: Yes, Sir.
Examiner Burchmore: About fifty per cent of its capitalization?
Mr. Steinbock: Yes, Sir.
Examiner Burchmore: How many years has it required to accumulate this surplus?
Mr. Steinbock: Well, this surplus was acquired in the last three years.
Examiner Burchmore: Is there any bonded indebtedness?
Mr. Steinbock: No bonded indebtedness.
Examiner Burchmore: Any other indebtedness aside from current liabilities?
Mr. Steinbock: No, Sir.
3417 Examiner Burchmore: Who owns the right of way upon which the railroad is run?
Mr. Steinbock: The railroad company.
Examiner Burchmore: Purchased outright?
Mr. Steinbock: Yes, Sir.
Examiner Burchmore: Any of it acquired through condemnation proceedings?
Mr. Steinbock: Yes, Sir; but I don't know how much.
Examiner Burchmore: And was the price of that portion purchased through condemnation proceedings the same as the price of the portion purchased outright?
Mr. Steinbock: I couldn't say.
Examiner Burchmore: Can you inform me what employés there are in the general office of the railroad company?
Mr. Steinbock: Two.
Examiner Burchmore: Who are they?
Mr. Steinbock: The Auditor and the Chief Clerk.
Examiner Burchmore: Do these employés receive compensation also from the lumber company?
Mr. Steinbock: Yes, Sir.
Examiner Burchmore: Also from the railroad company?
Mr. Steinbock: One of them does.
3418 Examiner Burchmore: Which one?
Mr. Steinbock: The Auditor.

Examiner Burchmore: Who is the Auditor?

Mr. Steinbock: I am the auditor.

Examiner Burchmore: Is the major portion of your salary paid by the railroad company?

Mr. Steinbock: No, Sir; by the *railroad* company.

Examiner Burchmore: What proportion of your salary is paid by the railroad company?

Mr. Steinbock: Forty per cent.

Examiner Burchmore: You render forty per cent of your time for the railroad company?

Mr. Steinbock: Yes, I guess so.

Examiner Burchmore: Are the officers of the railroad company compensated by the railroad company?

Mr. Steinbock: They are not.

Examiner Burchmore: Has any portion of the net earnings from operation been expended on additions and betterments during the past several years; in other words, does the railroad company use a portion of its profits from operation in improving its line?

Mr. Steinbock: Yes, Sir.

3419 Examiner Burchmore: Give me some further information in that connection, if you can.

Mr. Steinbock: Do I understand if they made any improvements?

Examiner Burchmore: Have they paid for any improvements to the line from the profits of operation?

Mr. Steinbock: From the surplus account, you mean?

Examiner Burchmore: Yes.

Mr. Steinbock: No, Sir.

Examiner Burchmore: Not from the present surplus account, but from the funds which would have gone to the surplus account.

Mr. Gutheim: You said you had a present surplus of seventy-three thousand, nine hundred and fourteen dollars, which has not been divided but kept in the business. Is that not offset by the cost of road equipment account?

Mr. Steinbock: Yes, Sir.

Mr. Gutheim: At the present time, then, your cost of road and equipment would amount to approximately two hundred and thirty thousand dollars?

Mr. Steinbock: More than that.

Examiner Burchmore: Then you have a large surplus in

3420 the treasury in the form of cash?

Mr. Steinbock: No, Sir.

Mr. Brady: I would like to ask permission to file with the Examiner a copy of the resolution of the *D*oard of Directors, passed the early part of this year, authorizing an amendment to the charter.

Examiner Burchmore: Such a resolution was passed?

Mr. Brady: Oh, yes, Sir.

Examiner Burchmore: Well, I don't care to see it, if you say it was passed.

Examiner Burchmore: When was this railroad constructed?

Mr. Brady: I will have to put somebody else on the stand for that, because he came in after.

Examiner Burchmore: Is the cash of the railroad company mingled with the funds of the lumber company?

Mr. Steinbock: No, Sir.

Examiner Burchmore: Kept separately?

Mr. Steinbock: Kept separately.

Examiner Burchmore: In the bank?

Mr. Steinbock: In the bank, yes, Sir.

Examiner Burchmore: How do you collect charges from the lumber company?

3421 Mr. Steinbock: We make an entry on our books, passing from one account to the other.

Examiner Burchmore: Well, does a check pass to cover the entry?

Mr. Steinbock: No, Sir; just a journal entry.

Examiner Burchmore: Well, then, there is all one bank account for the two companies?

Mr. Steinbock: No, the railroad company owes the Natalbany Lumber Company an open account, and we credit up the amount of their freight to this account. In other words, we are reducing the open account of the Natalbany Lumber Company.

Examiner Burchmore: What is that open account?

Mr. Steinbock: It represents moneys advanced to the railroad company.

Examiner Burchmore: For what purpose?

Mr. Steinbock: Buying different things.

Examiner Burchmore: On construction account?

Mr. Steinbock: Some on construction account.

Examiner Burchmore: What has been the total cost of construction of the road to date?

Mr. Steinbock: $297,298.72.

3422 Examiner Burchmore: That includes equipment?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: You say they have a bank account for the railroad?

Mr. Steinbock: Yes, sir.

Examiner Burchmore: That bank account covers only transactions with the lumber company, does it not?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: So far as the lumber company is concerned, the money transactions are purely of a book-keeping character?

Mr. Steinbock: Book-keeping character.

Examiner Burchmore: I asked you if there was any indebtedness, other than bonded indebtedness, other than current liabilities, and I understood you to say there was not. How about this amount you owe the lumber company?

Mr. Steinbock: Yes, Sir; the company does owe that.

Examiner Burchmore: Do you pay interest on that?

Mr. Steinbock: Yes, Sir.

Examiner Burchmore: At what rate?

Mr. Steinbock: Five and a half per cent.

Examiner Burchmore: What is the customary rate of in-
3423 terest on loans of that magnitude in this vicinity?

Mr. Steinbock: I think it is about that much.

Mr. Brady: The legal rate is five per cent.

Mr. Brady: This indebtedness to the lumber company by the railroad company, was because of money loaned to the railroad company that the railroad company used in the construction of its roadbed?

Mr. Steinbock: Yes, Sir.

Mr. Brady: And buying equipment?

Mr. Steinbock: Yes, Sir.

Mr. Brady: Is that being reduced?

Mr. Steinbock: It is.

Mr. Brady: That indebtedness is being reduced.

Mr. Steinbock: Yes, Sir.

3424 O. L. BENWAY was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Are you an officer of this railroad company?

Mr. Benway: I am Secretary and Treasurer.

Examiner Burchmore: Are you an officer of the Lumber Company?

Mr. Benway: I am Secretary of the lumber company.

Examiner Burchmore: Who owns this lumber company?

Mr. Benway: It is owned principally by the Dinkman family.

Examiner Burchmore: Do the Dinkman interests own any other lumber company?

Mr. Benway: They do.

Examiner Burchmore: You are a witness in the other cases?

Mr. Benway: I was called.

Mr. Brady: Mr. Benway, what distance is it that the N. O. N. & N. Railroad carries or ships the lumber of the Natalbany Lumber Company?

Mr. Benway: They carry it from half a mile to a mile, I would say.

Mr. Brady: What remuneration is paid it for that service?

3425 Mr. Benway: They get three cents for hauling the logs into the mills, and that includes the switching and handling of the lumber to the Illinois Central when it is shipped out.

Mr. Brady: What else does it get for that service?

Mr. Benway: It gets a two cent division from the Illinois Central for lumber going into a certain territory, the Central Freight Association. I think it is designated.

Mr. Brady: State whether or not there is an agreement or understanding that this division that it gets is in payment of the service that it renders in the moving of the lumber of this company to the tracks of the Illinois Central?

Mr. Benway: It is.

Examiner Burchmore: I don't quite understand that.

Mr. Brady: Well, I will make a statement that will give it to

you. This railroad company pulls these logs as other railroad companies do, but charges no switching charge for switching the lumber from the lumber company's plants to the Illinois Central Railroad, being paid for this service by the division of rate which it gets.

Examiner Burchmore: The two cent division of rate on certain lumber is intended to cover the cost of switching all lumber
3426 to the junction?

Mr. Brady: That is my understanding. In other words, handling their business exactly like all the other lumber companies.

Examiner Burchmore: In other words, you say it is worth a cent and a half to switch the lumber, and instead of paying that amount on all lumber, the Illinois Central pays two cents on certain lumber?

Mr. Brady: You could call it that. However, that division does not go entirely to them, for the reason that it has the same arrangement that other lumber companies have with reference to the logs going into the woods.

Mr. Brady: I will ask you to state how the logs are handled, how they are billed.

Mr. Benway: The billing is made out once a month, covering the logs which have been brought in for that month, charging the lumber company three cents per hundred pounds. That includes delivering the logs in the pond.

Examiner Burchmore: That twelve and a half cents that was referred to is then included in the three cents per hundred pounds?

3427 Mr. Benway: That is my understanding. Mr. Smythe didn't exactly understand that. The railroad company delivers the logs into the pond.

Examiner Burchmore: Is that three cents subsequently credited in any form on the outbound rates?

Mr. Benway: If I understand it, I say No. I understand your question. No, it is not credited on the outbound rates.

Examiner Burchmore: Pine Grove is the junction between one of these private tram-lines and the railroad?

Mr. Benway: Yes, Sir.

Examiner Burchmore: Are their joint through rates published from Pine Grove to C. I. A. territory?

Mr. Benway: Well, our line has recently been extended to Pine Grove. To answer your question, taking Montpelier, for example, it has with reference to Montpelier. And I might add, in pulling these logs, they come in to the main line from different points, and they are all billed from Montpelier.

Examiner Burchmore: That is when lumber is moved out for inter-state destinations, it is billed as originating from Montpelier?

3428 Mr. Benway: No, Sir; it is billed from Natalbany. You asked the question some time back, who issued the bills of lading? The Natalbany Lumber Company make out the bills of lading and this lumber is delivered to the Illinois Central by the N. O. N. & N. trains.

Examiner Burchmore: What rate does the Illinois Central charge on these shipments?

Mr. Benway: Their regular tariff rates, out of which we get two cents for certain territory.

Examiner Burchmore: That is, they charge two cents from Natalbany and don't show your railroad as participating in the movement, so far as the bill of lading is conecerned?

Mr. Benway: No, Sir; this Illinois Central tariff, as brought out in the other case last night, provides for lumber brought in over the N. O. N. & N.

Examiner Burchmore: You were present last night in the case of the Natchez, Columbia & Mobile?

Mr. Benway: ——.

Examiner Burchmore: The practice is similar?

Mr. Benway: Yes, Sir.

Examiner Burchmore: And the rates.

Mr. Benway: Yes, Sir.

3429 Examiner Burchmore: And the refund is made at the end of a stated period, of two cents?

Mr. Benway: For lumber that goes in a certain district, yes, Sir.

Mr. Brady: There is no difference in the method of handling the lumber by the two companies, except that there is no switching charge made.

Examiner Burchmore: What is the rate in cents per one hundred pounds, from Montpelier as compared with the rate from Natalbany?

Mr. Benway: Two cents higher.

Examiner Burchmore: So the total earnings of the New Orleans, Natalbany & Natchez Railway Company are four cents?

Mr. Benway: From lumber that is moved off of their railroad.

Examiner Burchmore: Now, is this three cents that is collected on the inbound movement of logs, credited in any shape?

Mr. Benway: No, Sir; it is not.

Examiner Burchmore: Well, then, how much does this lumber company have to pay to get its logs into the mill and lumber out of the mill?

3430 Mr. Benway: It pays three cents to get the logs in, that is all.

Examiner Burchmore: Three cents to get the logs in, and then what rate of freight?

Mr. Benway: And they pay the regular Illinois Central rate of freight, and the two cents comes back to the railroad company.

Examiner Burchmore: From Montpelier it is twenty-six cents to Chicago.

Mr. Benway: The lumber company pays three cents for its logs into the mill.

Examiner Burchmore: And subsequently pays twenty-four cents to the Illinois Central?

Mr. Benway: For the lumber that goes out.

Examiner Burchmore: Now, disregarding the question of the cost of logs, and looking at the matter as if the lumber was the

same and there was no waste, they would pay three cents in and twenty-four cents out, a total of twenty-seven cents.

Mr. Benway: That is right.

Examiner Burchmore: That three cents would not be credited against the total of twenfy-seven cents?

3431 Mr. Benway: No, Sir. I might add that that covers the extra service the N. O. N. & N. renders in switching the lumber and delivering it to the Illinois Central.

Examiner Burchmore: It has to pay twenty-seven cents, whereas the through rate from Montpelier is twenty-six cents?

Mr. Benway: Yes, Sir.

Examiner Burchmore: The extra cent——

Mr. Benway: That covers the work that they do in handling the lumber from the mill. However, it is the intention that every one pays the same.

Examiner Burchmore: I understand. Now, of that twenty-seven cents, the N. O. N. & N. receives in the first instance three cents for the logs; later it receives two cents from the Illinois Central, making five cents. The Illinois Central receives in the end twenty-two cents?

Mr. Benway: Yes, Sir.

Examiner Burchmore: Which is two cents less than its standard rate from Natalbany?

Mr. Benway: Yes, Sir.

Mr. Gutheim: As a matter of fact, this rate of three cents per hundred pounds is not a rate that is actually based on a

3432 tariff, but is a rate of one dollar per thousand feet on the logs, between the lumber company and the railroad, is it not?

Mr. Benway: No, it is based on the three cents per hundred pounds.

Mr. Gutheim: Our reports as to your company show that the arrangement between the lumber company and the railroad is on the basis of one-fifty per thousand feet to the pond, and that the logs are scaled when they go from the pond into the mill, and that the entire financial transaction is based on that final scaling.

Mr. Benway: It is evidently an old report that you have reference to. It was changed about a year ago to the arrangement to which I now refer.

Mr. Gutheim: So that at the present time you are actually paying three cents per hundred pounds?

Mr. Benway: Three cents per hundred pounds.

Mr. Gutheim: Is that on actual weight?

Mr. Benway: It was averaged. A number of cars were actually weighed to get an average, and now it is an estimated weight based on that weighing.

Mr. Gutheim: What is the estimated weight?

3433 Mr. Benway: The estimated weight is ten thousand pounds.

Mr. Brady: This rate that you speak of that the Illinois Central charges from Natalbany, is a blanket rate and covers the point of shipment along your line of railroad?

Mr. Benway: Well, no; the stations are named on our road.

Mr. Brady: I understand that, but it applies to the different stations.

Mr. Benway: Yes, Sir.

Mr. Brady: The Illinois Central publishes your tariff?

Mr. Benway: It publishes a tariff in which we concur.

Mr. Brady: It shows your rate?

Mr. Benway: Yes, Sir.

Mr. Brady: And shows the manner in which the lumber is shipped?

Mr. Benway: It does.

Examiner Burchmore: Are the joint class rates in effect over your road?

Mr. Benway: Including other commodities, yes, Sir.

Examiner Burchmore: What are your divisions on those rates?

Mr. Benway: I would have to refer to our tariff.

Examiner Burchmore: Are your tariff sheets on file with
3434 the Commission?

Mr. Benway: I think they are.

Examiner Burchmore: They are not customarily filed, you understand?

Mr. Benway: Pardon me, I will ask our Auditor. They are on file, are they not?

Mr. Steinbock: Yes, Sir.

Mr. Benway: They are on file.

Examiner Burchmore: I don't think they are on file, unless you sent them in in answer to a special request.

Mr. Brady: They are not on file, and I would ask permission to file them in connection with Mr. Benway's testimony.

Mr. Benway: I think they were sent in within the last two or three months.

Examiner Burchmore: Can you inform us with reference to the traffic of the road at all?

Mr. Benway: To some extent.

Examiner Burchmore: In a general way, about what proportion of the traffic is furnished by the Natalbany Lumber Company?

Mr. Benway: I can guess at that. I think our Auditor can give you that more correctly. I will make a guess, though,
3435 I will say about eighty per cent.

Examiner Burchmore: Does the lumber company have any commissaries along the line?

Mr. Benway: It has, yes, Sir.

Examiner Burchmore: Do you include the merchandise sent to these commissaries in that eighty per cent?

Mr. Benway: No. In fact, the principal commissary is on the Illinois Central and not on our road. The commissary is right on the side of the Illinois Central, the principal commissary. In further answer to your question, I might add, there are numerous small stores along our line.

Examiner Burchmore: I wish in preparing the statement of traffic, which should be given in tons and in dollars as well, that you

would indicate what proportion of the merchandise was handled on account of the lumber company. For example, if any shipments of machinery went into the mill, we want that shown as lumber company traffic and not miscellaneous traffic.

Mr. Benway: I think we have that here.

Mr. Brady: We will furnish it to you just like the books show.

Examiner Burchmore: Has there been any change in the
3436 last year or two in your general practice with respect to the handling of logs and lumber?

Mr. Benway: I would say No, except we have tried, as we have learned the rules of the Commission, to comply with them a little more fully.

Mr. Brady: With reference to your billing of lumber. It was formerly from Mason?

Mr. Benway: Yes, Sir; we formerly billed our lumber from Mason.

Examiner Burchmore: When was that changed?

Mr. Benway: The first part of this year, some time.

Examiner Burchmore: What was the reason for that change?

Mr. Benway: It was just thought best.

Examiner Burchmore: This refund arrangement is recent?

Mr. Benway: No, Sir; that has been in vogue for several years.

Examiner Burchmore: Done solely as a matter of convenience?

Mr. Benway: Yes, Sir; in fact it was formerly billed from Alexandria, although we changed it to this station on our line and found it didn't work as advantageously for us, and then changed it back for convenience.

3437 Examiner Burchmore: In the past year or two, has there been any change in basis of compensation for the movement of logs into the mill?

Mr. Benway: I think the results are practically the same. We formerly did charge so much per thousand, as your record seems to indicate.

Examiner Burchmore: Is the result the same?

Mr. Benway: About the same; it possibly nets the railroad a little more now.

Examiner Burchmore: Have you handled about the same amount of logs during the fiscal year ending June 30, 1910, as you handled during the preceding fiscal year?

Mr. Benway: We have handled considerably more. We have built another mill. When the railroad was first organized we had one small mill. Now we have one small mill and two large ones.

Examiner Burchmore: What was the reason of this change in the basis of compensation for hauling the logs in?

Mr. Benway: The revision of our rates and methods and complying with the Commission's ruling, and taking all things together, it was thought better to change the basis.

Examiner Burchmore: Was it considered that the previous
3438 method was at all irregular, or anything of that kind?

Mr. Benway: No, Sir, not that it was irregular, we thought that the present method was more regular.

Examiner Burchmore: Both were regular, but the present was more regular.

Mr. Benway: Yes, sir; that is hardly good grammar, but that is about what I mean.

Examiner Burchmore: When was this railroad first constructed?

Mr. Benway: As my memory serves me, in 1902.

Examiner Burchmore: Was it constructed about the same time that the first mill of the lumber company was opened?

Mr. Benway: No, Sir; the present company bought the railroad.

Mr. Brady: What do you mean by "the present company bought the railroad"?

Mr. Benway: The present stockholders of the railroad company bought it after it had been built.

Mr. Brady: There is no one here that knows anything about that better than myself. I represented the Dinkman interests in the purchase of this plant and in the purchase of this railroad. The
3439 railroad stock was purchased and the lumber company stock was purchased, and each assigned the stock to particular persons.

Examiner Burchmore: Of course there were certain legal steps, but wasn't the purpose the purchase by the Dinkmans of the lumber and mill and everything?

Mr. Brady: Well, the Dinkmans were in the North and the matter was placed in my hands, and in the hands of another man, who is not here, and I cannot get him, and the idea was that the railroad was worth a certain sum of money, that is the stock of it, and the stock of the lumber company was worth a certain amount of money, and then a certain amount of money was paid over to the original stockholders of these companies, and a certain proportion went for the purchase of the stock of the railroad company, and a certain proportion went for the purchase of the stock of the lumber company.

Examiner Burchmore: But there had previously been an identity between the former owners of the railroad company and the former owners of the lumber company?

Mr. Brady: I don't know.

Examiner Burchmore: I think the substance of it was that the Dinkman interests bought this whole railroad and timber
3440 as one enterprise. It looks that way, in substance.

Mr. Brady: Well, in substance you might state that, and yet we went into detail. The question of how much rolling stock and how many engines, and all that, and what this railroad was worth, and whether or not they would pay a certain sum for it, and they would not buy one without buying the other.

Examiner Burchmore: Mr. Dinkman bought the railroad, not as a railroad alone, but because he had other interests there at the same time?

Mr. Brady: It is fair to say that in the purchase, the railroad prospect, the ability to build into Baton Rouge and to connect with the Mississippi River and the local traffic, was all taken into considera-

tion and urged on Mr. Easterling, I believe, who represented the purchasers with me.

Examiner Burchmore: Has this company any contract with the Illinois Central Railroad Company of any kind, except division sheets and tariffs?

Mr. Benway: No, Sir; there is this understanding, their two cent rate.

Examiner Burchmore: There is no written contract?

Mr. Benway: No, Sir; there is no written contract.

3441 Examiner Burchmore: You don't have any trackage agreements?

Mr. Benway: No, Sir.

Examiner Burchmore: You heard Mr. Smythe and Mr. Steinbock testify with respect to this company. Are there any corrections that you think ought to be made in their testimony?

Mr. Benway: I don't think of any that has not been made.

Mr. Brady: You spoke a moment ago of a contract with reference to the division of rates. It is just simply what is shown in the record?

Mr. Benway: Yes, Sir. There was one point, excuse me. It was stated that the lumber and staves were the principal industries along the line; that was partly correct. There is, however, these numerous stores, and there is considerable merchandise shipped to these stores during the course of the year.

Examiner Burchmore: How many carloads a year?

Mr. Benway: I think our records will show there are many carloads.

Examiner Burchmore: Not over five thousand pounds per annum.

3442 Mr. Benway: I wouldn't think so.

Examiner Burchmore: Well, your tonnage statements already filed, and to be filed, will show that?

Mr. Benway: Yes, Sir.

Mr. Brady: Mr. Benway, who is it that receives salaries from the railroad company?

Mr. Benway: It has its local men, first, along its line; in its general office it has its accountant and chief clerk, the accountant paid entirely by the railroad company, and our auditor's salary is divided between the lumber company and the railroad company.

Mr. Brady: Mr. Smythe is General Manager?

Mr. Benway: Mr. Smythe is General Manager.

Examiner Burchmore: He receives a salary?

Mr. Benway: He receives a salary from the railroad.

Examiner Burchmore: That makes three?

Mr. Benway: Yes, Sir.

Mr. Brady: I will ask you if any other officers of the railroad company render any material services?

Mr. Benway: There are others who render services, and, I might say, that we do interchange forces.

Mr. Brady: Are they paid?

3443 Mr. Benway: We mean to have them paid in proportion to the services rendered to the different companies.

Examiner Burchmore: Does the General Manager draw a salary from the lumber company?

Mr. Benway: He draws a salary from the lumber company.

Examiner Burchmore: From both companies?

Mr. Benway: From both companies.

Examiner Burchmore: What is his salary from the railroad company?

Mr. Benway: For that, and another road that will be brought out, one hundred and fifty dollars per month.

Examiner Burchmore: Is that seventy-five dollars for this road?

Mr. Benway: About a hundred dollars for this road.

Examiner Burchmore: Does he render that amount of service to this road?

Mr. Benway: He does.

Mr. Brady: I will ask you whether or not the president renders any material services? It is shown that he does not get any salary.

Mr. Benway: He does render some services, yes, Sir.

Mr. Brady: Well, I asked material services.

3444 Mr. Benway: Well, I would say——

Mr. Brady: Does he perform any services at all other than advise?

Mr. Benway: Well, no; in an advisory capacity.

Mr. Brady: Does the president do any more than advise, if he is asked any questions?

Mr. Benway: That is all.

Mr. Brady: And they get no salaries?

Mr. Benway: No, Sir.

Mr. Brady: That is the best hearing we are prepared to make. If there is anything further that the Examiner would like, we will be glad to furnish it.

Examiner Burchmore: Any communication that you may address to the Commission containing any additional facts with reference to your road, will be placed on record and accepted for what it may seem to be worth.

3445 *Kentwood, Greensburg & Southwestern Railway Company.*

Examiner Burchmore: We will now take up the case of the Kentwood, Greensburg & Southwestern Railway Company.

Mr. Brady: I will call Mr. O. C. Pantall. Now, let me state what I will show by Mr. Pantall. I expect to show by Mr. Pantall that he represented the purchasers from the old owners and incorporators both of the Kentwood, Greensburg & Southwestern Railroad Company and the Amos Kent Lumber and Brick Company, and that he knows something of the physical condition of the road, its rolling stock, though not at present connected with it.

O. C. PANTALL was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Mr. Pantall, what is you occupation and place of residence?

Mr. Pantall: Hammond, Louisiana.

Examiner Burchmore: What is your occupation?

Mr. Pantall: Lumberman.

Examiner Burchmore: By whom are you employed?

Mr. Pantall: Natalbany Lumber Company.

Examiner Burchmore: Do you receive any salary from the Kentwood, Greensburg & Southwestern Railway Company?

3446 Mr. Pantall: No, Sir.

Examiner Burchmore: Do you receive any salary from the Amos Kent Lumber and Brick Company?

Mr. Pantall: No.

Examiner Burchmore: Are you an employé of the Kentwood. Greensburg & Southwestern Railway?

Mr. Pantall: No, Sir.

Examiner Burchmore: Do you know what the N. T. & J. is?

Mr. Pantall: No, Sir.

Examiner Burchmore: Is there a private tram-road connecting with the Illinois Central at Tangipahoa?

Mr. Pantall: I think there is a small line there, but I am not familiar with the name.

Examiner Burchmore: The Kentwood, Greensburg & Southwestern Railway connects with the Illinois Central at Kentsmill?

Mr. Pantall: At Kentsmill.

Examiner Burchmore: It has no other railroad connections?

Mr. Pantall: No, Sir.

Examiner Burchmore: Is there any other private tram-road connected with it?

Mr. Pantall: None other than the Amos Kent Lumber & Brick Company.

3447 Examiner Burchmore: They have private trams?

Mr. Pantall: Yes, Sir; logging.

Examiner Burchmore: Do you know the length of this railroad?

Mr. Pantall: It is about sixteen miles, I believe.

Examiner Burchmore: Narrow, or standard gauge?

Mr. Pantall: Narrow gauge.

Examiner Burchmore: What is its equipment?

Mr. Pantall: Well, I believe——

Examiner Burchmore: How many locomotives?

Mr. Pantall: Seven, I believe.

Examiner Burchmore: Does it operate any of these locomotives?

Mr. Pantall: It operates four.

Examiner Burchmore: And leases three to the lumber company?

Mr. Pantall: Leases three to the lumber company.

Examiner Burchmore: Does it own any passenger cars?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: How many,

Mr. Pantall: Two, I believe, I am not sure; that is, they are home-made passenger cars.

3448 Examiner Burchmore: Freight cars remodelled?

Mr. Pantall: No, not exactly that; they are built something like on the style of the caboose.

Examiner Burchmore: Aside from these passenger cars, has it any cabooses?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: How many?

Mr. Pantall: Well, I am not prepared to answer that.

Examiner Burchmore: How many freight cars, and what is their character?

Mr. Pantall: Well, they have box cars and regular flat cars. The flat cars are used as logging cars. Now, as to the exact number, I don't know.

Examiner Burchmore: Are those cars all used by the railroad company?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: They are not leased to the lumber company?

Mr. Pantall: No, Sir.

Examiner Burchmore: They are not used by the lumber company except for the movement of their logs.

Mr. Pantall: That is all.

3449 Examiner Burchmore: I assume that it is admitted that the Kentwood, Greensburg & Southwestern is owned by the Amos Kent Lumber & Brick Company?

Mr. Brady: Permit me to make a statement. The stockholders of the Amos Kent Lumber and Brick Company are identical with the stockholders of the Kentwood, Greensburg & Southwestern Railroad Company, except three or four other stockholders than those of the lumber company, who own about nineteen shares of stock in the railroad company. The controlling interest of the railroad company and the lumber company being identical.

Examiner Burchmore: Who are the holders of these nineteen shares of stock? Have they any relation to the lumber company?

Mr. Brady: No, Sir, no relation.

Examiner Burchmore: Did they purchase their stock?

Mr. Brady: I will just go ahead and state the reason.

Examiner Burchmore: If you will.

Mr. Brady: Mr. Davis is related to the Dinkman family, and, I suppose, paid for his stock. Mr. Richardson is a stockholder, and while he is not related directly to the Dinkman family, still he is a friend of the family, and the attorney, and the stock was

3450 placed in friendly hands. That is just about the history of it.

Examiner Burchmore: Legally there may be a complete separation between the two companies, but in a substantial sense, the two companies are identical in interest.

Mr. Brady: Legally they are entirely separate, and separately

managed and controlled, but so far as the financial industry is concerned, it is as you state.

Examiner Burchmore: We are not dealing with technicalities in this examination.

Mr. Brady: Well, we have to deal, Mr. Examiner, under the laws of Louisiana and Mississippi, very largely in legal technicalities, when you get in the hands of the Commissioners.

Examiner Burchmore: I am not saying what the Commission or the Courts may hold. I will assume that a legal separation is enough.

Mr. Brady: I wanted to assure you that we were not resorting to these technicalities for the purpose of misleading but we do to comply with the law.

Examiner Burchmore: Has the Amos Kent Lumber and Brick Company more than one mill?

3451 Mr. Pantall: Just one at Kentsmill.

Examiner Burchmore: Is there any private track connecting the Illinois Central with the mill?

Mr. Pantall: You mean the K. G. & S. W. The K. G. & S. W. being a narrow gauge road, have to make the necessary arrangement to transfer their freight to the standard equipment of the I. C. cars, and therefore we have our own cars in there, the K. G. & S. W. have a spur in there for the purpose of transferring.

Examiner Burchmore: Who places the empty cars at the mill?

Mr. Pantall: You mean the I. C.?

Examiner Burchmore: Who places the empty I. C. cars for loading with lumber?

Mr. Pantall: The I. C.

Examiner Burchmore: And the Illinois Central takes them away?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: The track connecting the Illinois Central with the mill being a standard gauge track?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: Is there any brick mill on this line?

Mr. Pantall: There is a brick mill located at Kentsmill,

3452 right at, or near, the saw-mill.

Examiner Burchmore: It is owned by this Brick Company?

Mr. Pantall: The Amos Kent Brick & Lumber Company.

Examiner Burchmore: Do they get the clay for the brick right there at the mill?

Mr. Pantall: Right there at the mill, is my understanding, or a little ways out, you know, practically at the mill.

Examiner Burchmore: Are you competent to testify with reference to the rates and division of rates?

Mr. Pantall: No, Sir.

Examiner Burchmore: Are you competent to testify with respect to the manner of billing logs and lumber?

Mr. Pantall: No, Sir.

Examiner Burchmore: What is the character of this road, is it well constructed?

Mr. Pantall: Very well constructed.

Examiner Burchmore: What is the weight of the rails?
Mr. Pantall: Thirty-five, and some forty, I believe.
Examiner Burchmore: Are the ties in good condition?
Mr. Pantall: Good condition, yes, Sir.
Examiner Burchmore: The rails securely spiked down?
3453 Mr. Pantall: Yes, Sir.
Examiner Burchmore: Who owns the right of way?
Mr. Pantall: I am not prepared to answer that.
Examiner Burchmore: Are there any bridges?
Mr. Pantall: Yes, sir.
Examiner Burchmore: Are they substantially built?
Mr. Pantall: Yes, Sir.
Examiner Burchmore: Is it a road that goes up hill and down grade?
Mr. Pantall: Well, it is graded to a certain extent, but it still goes up and down.
Examiner Burchmore: It isn't like that road we had yesterday that was so rough they couldn't use their couplers?
Mr. Pantall: No, Sir; the road is in very good condition.
Examiner Burchmore: Are there any other mills on the line?
Mr. Pantall: Yes, Sir.
Examiner Burchmore: How many, and what are they?
Mr. Pantall: I believe there are four saw mills, about four saw mills.
Examiner Burchmore: Are they of large capacity?
Mr. Pantall: No, Sir; small.
3454 Examiner Burchmore: Where do they get their logs?
Mr. Pantall: They get them from the timber out there in that territory.
Examiner Burchmore: Do they bring them in by tram?
Mr. Pantall: No, Sir, by team, generally.
Examiner Burchmore: How far do they haul them by team?
Mr. Pantall: Well, sometimes a quarter, half, sometimes three miles; different distances.
Examiner Burchmore: Is the expense of teaming very great in that country?
Mr. Pantall: Well, I should think it would be.
Examiner Burchmore: Have you any idea what the average cost of teaming logs is to the mill?
Mr. Pantall: Well, it is of course different in different localities, it is all according to the country; it costs all the way from a dollar and a half to three dollars a thousand, just according to the difference in the haul.
Examiner Burchmore: What does it cost to tram logs to the mill?
Mr. Pantall: Well, now, that depends too; sometimes logs can be trammed to the mill say from twenty-five cents to a dollar a thousand; it is all according to the amount of stumpage that
3455 stands on the land through which your spur is being built; that is, if you have a great amount of stumpage, you can log a great deal cheaper.

Examiner Burchmore: That cost that you gave, twenty-five cents, does that include the cost of putting the tram there?

Mr. Pantall: In one way it would, too; but the best way to figure is so much a mile for the tram, and then get the amount of stumpage that goes to that tram and then you can readily see how much.

Examiner Burchmore: Well, a small mill that brings its logs in by team, can hardly compete with the larger mill that has a tram, can it?

Mr. Pantall: No, Sir.

Examiner Burchmore: How is this lumber that is made by these independent mills along the line transported, it has to be hauled in narrow gauge cars?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: Down to the junction of the Illinois Central?

Mr. Pantall: Down to the junction of the Illinois Central, and then transfered to the standard I. C. cars.

Examiner Burchmore: Who transfers it?

3456 Mr. Pantall: Why, the railroad company.

Examiner Burchmore: The Kentwood, Greensburg & Southwestern?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: Do they make any charge?

Mr. Pantall: Yes, Sir, there is a tariff.

Mr. Brady: I will say this, that the Railroad Commission of Louisiana has permitted a certain charge for the service.

Examiner Burchmore: What about the Interstate Commerce Commission?

Mr. Brady: I don't think it is Interstate.

Examiner Burchmore: Do these mills ship lumber outside of the State of Louisiana?

Mr. Pantall: I am not prepared to answer that. My impression is that they ship most of their lumber South.

Examiner Burchmore: Are those cars and locomotives equipped with couplers and air-brakes?

Mr. Pantall: That is another question I am not prepared to answer.

Mr. Brady: I put him on chiefly to show how the stock was acquired.

Mr. Brady: Mr. Pantall, who was it that originally owned

3457 the Amos Kent Lumber and Brick Company stock, and the capital stock of the railroad company?

Mr. Pantall: The Kents and Moberly, and, I believe, another party in Chicago, I don't remember his name, held one share.

Mr. Brady: And some other persons around Kentwood, several persons, didn't they?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: Who was Mr. Kent?

Mr. Brady: He was the man that originally built the mill.

Examiner Burchmore: He is not the Y. & M. V. Superintendent?

Mr. Brady: No, Sir.

Mr. Brady: To whom was the stock of this lumber company

sold by the original owners? Who purchased it from the original owners?

Mr. Pantall: We did.

Mr. Brady: Who do you mean by "we," Mr. Pantall?

Mr. Pantall: Why, the Dinkman interests purchased the stock.

Mr. Brady: Who acted in the capacity as their representatives in the purchase?

Mr. Pantall: You and I.

3458 Mr. Brady: Who purchased the stock of the railroad?

Mr. Pantall: The same people?

Mr. Brady: State whether or not there was an estimate placed upon the value of the railroad at the time it was purchased?

Mr. Pantall: There was.

Mr. Brady: Was it with the two propositions, so far as estimating values are concerned, determining the value of each, were they separate from each other?

Mr. Pantall: Entirely.

Mr. Brady: What consideration was paid by the purchasers for the railroad stock?

Mr. Pantall: We had to pay one hundred thousand dollars.

Mr. Brady: That hundred thousand dollars went to the payment of the stock?

Mr. Pantall: Yes, Sir, of the railroad company, the K. G. & S. W. We bought the stock.

Mr. Brady: You bought the right to the stock?

Mr. Pantall: Yes, Sir.

Mr. Brady: Had the stock in the railroad been paid for by the original subscribers?

Mr. Pantall: Some of it had, and some had not.

3459 Mr. Brady: That that had been paid for, you had assigned.

Mr. Pantall: Yes, Sir.

Mr. Brady: And that that had not been paid for, you paid for by paying the money into the treasury of the railroad company?

Mr. Pantall: Yes, Sir.

Mr. Brady: The stock was afterwards issued?

Mr. Pantall: Yes, Sir.

Mr. Brady: Originally, the stockholders in each of these companies were not the original stockholders?

Mr. Pantall: How is that?

—. The persons who are now stockholders in each of these companies are not the original holders of the stock in these companies?

Mr. Pantall: No, Sir.

Examiner Burchmore: When was this saw mill of the Amos Kent Lumber & Brick Company established?

Mr. Pantall: You mean the original.

Examiner Burchmore: The original saw mill, yes.

Mr. Pantall: Well, I am not prepared to say.

Examiner Burchmore: Years ago?

Mr. Pantall: Yes, a long time.

Examiner Burchmore: When was this railroad first built?

3460 Mr. Pantall: I presume at the time the mill was originally built.

Examiner Burchmore: Is there anyone here who knows that?
Mr. Pantall: I don't know, Sir.
Examiner Burchmore: When was this brick yard established?
Mr. Pantall: At the same time, possibly.
Examiner Burchmore: What is the total capitalization of this railroad?
Mr. Pantall: Well, that I am not prepared to say.
Mr. Brady: What is there at the Eastern terminus of this road, in the way of a town?
Mr. Pantall: Well, there is a town out there by the name of Frieler.
Mr. Brady: Is there any town or municipal corporation through which the road extends?
Mr. Pantall: Yes, Sir, Greensburg.
Mr. Brady: What is Greensburg?
Mr. Pantall: The Parish Seat of that County.
Mr. Brady: State whether or not your road carries mail?
Mr. Pantall: It does.
Mr. Brady: Do you know, Mr. Pantall, whether it is the purpose of the owners of the stock of this railroad company
3461 to have it remain a permanent railroad?
Mr. Pantall: I believe it is, yes, Sir.
Mr. Brady: You stated something about some mills being along the road. Are there any mercantile establishments along the road?
Mr. Pantall: Yes, Sir; some at Freiler and also at Greensburg.
Mr. Brady: What railroad facilities have the people of that Parish, which is St. Helena Parish, other than this road?
Mr. Pantall: None.
Mr. Brady: Does it carry passengers for that Parish?
Mr. Pantall: It does.
Mr. Brady: It is the outlet, then?
Mr. Pantall: Practically the outlet.
Mr. Brady: For St. Helena Parish?
Mr. Pantall: Yes, Sir.
Mr. Brady: And has been for how many years?
Mr. Pantall: For a great many years, just how many I cannot say.
Mr. Brady: Don't you know the objective point of this road?
Mr. Pantall: No, Sir.
3462 Mr. Brady: The Western point, I mean?
Mr. Pantall: No.
Mr. Brady: You don't know?
Mr. Pantall: No, Sir.
Mr. Brady: The purpose of the stockholders of this railroad company, as I understand it, is to let it remain a permanent railroad; to connect with the Natalbany,—New Orleans, Natalbany & Natchez Railway, so as to form a connection at Baton Rouge for that section of the country, thereby furnishing railroad facilities to a section and territory of Louisiana that is now without them.
Examiner Burchmore: But this New Orleans, Natalbany & Nat-

chez railroad is aiming towards Baton Rouge, and the Kentwood, Greensburg and Southwestern is apparently aiming at Chicago.

Mr. Brady: I don't know that these maps are correct. They are not actually connected now. I am stating the purpose of the owners.

Examiner Burchmore: There is at present a through line of railroad to Baton Rouge via Hammond?

Mr. Brady: Yes, Sir; I understand that, but that does not help Greensburg. There is an untouched virgin forest in there
3463 not owned by these people.

Examiner Burchmore: That forest will furnish a large amount of logs for these mills?

Mr. Brady: It may do it.

Examiner Burchmore: Has this railroad any stations?

Mr. Pantall: It has.

Examiner Burchmore: At Greensburg?

Mr. Pantall: Yes; Freiler is the name of the station there.

Examiner Burchmore: And what other points?

Mr. Pantall: If you will allow me to refer?

Examiner Burchmore: Certainly.

Mr. Pantall: The first station on the line is Kentsmill, flag-station Carpenters——

Mr. Brady: What is at that flag-station?

Mr. Pantall: It is practically a junction point, I believe.

Examiner Burchmore: Junction point for what?

Mr. Pantall: It is possibly where the logs come in, let me see. In this connection, I am not prepared to testify where these stations are and the number of people there.

Examiner Burchmore: You can give us a general idea,
3464 you have been there.

Mr. Pantall: There is Morris Crossing, Youngs, Phillips, Hutchins and Chapman; these are all flag-stations.

Examiner Burchmore: Any buildings there?

Mr. Pantall: At some of those places. Freila, there is a station there with an agent, and that is about all, probably one or two others.

Examiner Burchmore: At what points are there agents?

Mr. Pantall: At Freiler and Kentsmill.

Examiner Burchmore: Do you use the Illinois Central Station at Kentsmill?

Mr. Pantall: No, Sir.

Examiner Burchmore: You have a station of your own?

Mr. Pantall: Yes, Sir.

Examiner Burchmore: Is there anything in that station except the agency?

Mr. Pantall: No, Sir.

Examiner Burchmore: What is it that you had in mind that is close by?

Mr. Pantall: Well, the office and the store are in another part of the building. Now along these stations I think there is three or four saw-mills; in fact, the day I was over there I think there was
3465 about six carloads of lumber ready to be hauled in to the I. C.

Examiner Burchmore: These are all small mills?

Mr. Pantall: Yes, Sir, small mills.
Examiner Burchmore: Are there any track scales for weighing carload shipments?
Mr. Pantall: I believe not.
Examiner Burchmore: Are there any special facilities for handling less than carload freight, that you recall?
Mr. Pantall: Yes, they have the transfer.
Examiner Burchmore: They have warehouses where it can be stored?
Mr. Pantall: Yes, Sir.
Examiner Burchmore: Can you inform us as to the number of men employed on the road?
Mr. Pantall: No, Sir.
Examiner Burchmore: Do they operate a regular train service?
Mr. Pantall: Yes*a*, Sir.
Examiner Burchmore: How many trains a day?
Mr. Pantall: I am not prepared to answer.
Examiner Burchmore: They have a time-table?
3466 Mr. Pantall: Yes, Sir.
Mr. Brady: Yes, Sir. In this connection, while I think of it, I submit this same answer, or statement in connection with this railroad, and I offer our time-table.
Examiner Burchmore: And it is understood that you are called upon for the same information, and you have the same rights in this case as in the case just disposed of.
Mr. Brady: Yes, Sir.
Examiner Burchmore: We will so consider it. You will make a similar record in this case.

(The paper so offered and identified was received in evidence and thereupon marked Kentwood, Greensburg & Southwestern Railway Company Exhibit No. 1, received in evidence December 13, 1910, and is attached hereto.)

Mr. Brady: The main officers of this company, one of them is in Rock Island, and I have to resort to piecemeal testimony.

3467 T. A. SOWELL, was called as a witness, and having been duly sworn, testified as follows:

Mr. Brady: He is the book-keeper. With reference to the separation of the lumber company's business and the railroad company's business, I think he will be able to show.
Examiner Burchmore: What is the capital stock of this road?
Mr. Sowell: Authorized capital three hundred and fifty thousand.
Examiner Burchmore: And how much has been issued?
Mr. Sowell: One hundred thousand.
Examiner Burchmore: Are there any bonds?
Mr. Sowell: No, Sir.
Examiner Burchmore: Any other indebtedness?
Mr. Sowell: Well, no.
Examiner Burchmore: Just current liabilities?
Mr. Sowell: Just current liabilities.

Examiner Burchmore: This company did not borrow any money from the lumber company?

Mr. Sowell: No; not that I am familiar with.

Examiner Burchmore: Has it paid any dividends on
3468 stock?

Mr. Sowell: No, Sir.

Examiner Burchmore: What surplus has it accumulated, if any?

Mr. Sowell: I think it has about twelve thousand dollars.

Examiner Burchmore: How many years has it required to accumulate that surplus?

Mr. Sowell: Well, I couldn't say; I took charge of the books last March, and I haven't gone back.

Examiner Burchmore: About what is the net income this year?

Mr. Sowell: Net income from operating revenue, ten thousand dollars.

Examiner Burchmore: What is the total operating revenue?

Mr. Sowell: Fifty-five thousand, four hundred and ten dollars and seventy-five cents.

Examiner Burchmore: Has this company been improving its line and adding any better facilities out of its earnings?

Mr. Sowell: Yes, Sir, spending it back into the road.

Examiner Burchmore: Has it a cash surplus?

Mr. Sowell: No, Sir.

Examiner Burchmore: It keeps its bank account separate from the lumber company?

Mr. Sowell: Yes, Sir.

3469 Examiner Burchmore: How do you collect charges from the lumber company for its traffic?

Mr. Sowell: You mean for its logging account?

Examiner Burchmore: Well, for any service rendered?

Mr. Sowell: We pass it through journal entries; they charge us on their lumber books and we give them credit on ours.

Examiner Burchmore: What do they charge you on their lumber books?

Mr. Sowell: Various things.

Examiner Burchmore: Are the employés of the lumber company actually paid by the paymaster of the lumber company?

Mr. Sowell: Well, they were up to a few months ago, the K. G. & S. W. began paying their own payroll.

Examiner Burchmore: Does the Amos Kent Lumber Company do the purchasing for the railroad company, as a practical matter?

Mr. Sowell: Well, the same purchasing agent is the purchasing agent for both companies.

Examiner Burchmore: Well, I mean does the lumber company books show any transactions in which the railroad company is interested?

3470 Mr. Sowell: At times, yes, Sir.

Examiner Burchmore: Does the railroad company handle any cash in its transactions with the Amos Kent Lumber Company?

Mr. Sowell: It has. It has paid its auditor in cash sometimes.

Examiner Burchmore: Are you competent to testify with respect to rates and divisions?

Mr. Sowell: No, Sir.

Examiner Burchmore: Are you advised with respect to the billing?

Mr. Sowell: No, Sir. Only the local billing as far as the lumber has been brought out. In regard to the log billing, it is the same as is on the Natalbany Lumber Company, the billing is made once a month.

Mr. Gutheim: On your last report to the Commission for the year ending June 30, 1910, you show as a liability $47,950.26 on account of audited vouchers and wages. Now, does that represent actually, or approximately, the net indebtedness due by the railroad to the lumber company?

Mr. Sowell: Yes, Sir.

Mr. Gutheim: And that accrues——

3471 Mr. Sowell: Some of them, you know, is vouchers that is due other people beside the lumber company.

Mr. Gutheim: But the great majority is on the account due the lumber company?

Mr. Sowell: The lumber company, yes, Sir.

Mr. Gutheim: And that account accrues on charges on the part of the railroad against the lumber company for freight services, and charges from the lumber company against the railroad for supplies furnished the railroad and for wages paid by the lumber company to the railroad employés?

Mr. Sowell: Yes, sir.

Mr. Gutheim: So it represents in fact the balance due at the end of the fiscal year of the running account between the two companies?

Mr. Sowell: Yes, Sir.

Mr. Gutheim: And on that balance, does the railroad company pay interest to the lumber company?

Mr. Sowell: It has not been, but the question has been raised, and at the close of this fiscal year there will be interest charged.

Mr. Gutheim: As the matter stands, you need practically the entire amount of that open account, plus the capital stock

3472 outstanding, to offset your cost of road and equipment?

Mr. Sowell: Yes, Sir.

Mr. Gutheim: So it practically represents expenditures in the property which are in the property itself?

Mr. Sowell: Yes, Sir.

Examiner Burchmore: Do you know when this railroad was constructed?

Mr. Sowell: No, Sir, I don't; only from the record here.

Examiner Burchmore: What does the record indicate?

Mr. Sowell: They say "Organized January 25, 1906."

Mr. Brady: I can enlighten you a little there. Before the present owners of the stock of the railroad company and the lumber company purchased the stock, the former owners separated the two companies by securing a charter for the lumber company, and by con-

veying—I mean a charter for the railroad company, the lumber company having already been chartered,—and by conveying to the railroad company the right of way and rolling stock, and in fact the railroad formerly owned by the lumber company. That was done before the present owners acquired the stock.

Examiner Burchmore: Do you know whether this railroad
3473 was built at the same time the mill was opened?

Mr. Brady: My information is this railroad is forty or fifty years old.

Examiner Burchmore: It was not a common carrier until 1906?

Mr. Brady: It was not a common carrier, but my impression is that it was held by the Courts to be a common carrier.

Examiner Burchmore: Of course, a railroad may be a common carrier and not be owned by a man. Wasn't the lumber mill there before the railroad was built?

Mr. Brady: I think so. That is my understanding about it. I think the two commenced to grow together.

Examiner Burchmore: Were you counsel for this railroad company at the time it was incorporated?

Mr. Brady: No, Sir; it was incorporated before the present owners purchased the stock, and it was gotten out by the attorneys representing the former stockholders.

Examiner Burchmore: Do you know the purpose of the incorporation?

Mr. Brady: The purpose—it was held to be a common carrier, and it was the purpose to separate the business of the lumber company from the railroad, and to establish the railroad and to
3474 keep them entirely separate to comply with the laws of the State and the orders of the Railroad Commission of the State. They were adjudged to be a common carrier and they had to be permanent. The idea was it was going to be a permanent railroad, and it was just as well to be one in every sense of the word.

Examiner Burchmore: Was the stock of the company issued for cash?

Mr. Sowell: I think so.

Mr. Brady: I can tell you about that. Part of that was issued to the original owners of the Amos Kent Lumber and Brick Company, but was not paid for, and the purchasers who now own the stock paid for the stock that had not been paid for, that is, paid for it by paying the money into the treasury of the railroad company; and that which had been issued and paid for was assigned to them for a consideration, namely, the value of the stock.

Examiner Burchmore: I presume that when the railroad was incorporated in 1906, stock was issued in exchange for the road.

Mr. Brady: My understanding about that was that the stock had been issued before the railroad became complete, the charter
3475 had been gotten out by the incorporators. The lumber company conveyed the entire stock to the railroad company for the one hundred thousand dollars, and I think, I am not sure, paid for, then the present owners of the railroad company came in to purchase that stock which had not been issued but subscribed for,

and was paid for by them by paying the money into the treasury of the railroad company; that stock that had been paid for was assigned to the present stockholders of the railroad company.

Examiner Burchmore: Are there any bonds?

Mr. Brady: I want to state this. I am stating that as an occurrence in 1906, I believe, and I think I am correct about it.

Examiner Burchmore: You are sufficiently familiar with the railroad to be able to testify as to the number of employés?

Mr. Sowell: Well, no; I don't think I can, I have never been over the road.

Examiner Burchmore: Who owns the right of way upon which this railroad is built?

Mr. Sowell: The railroad company, I think.

Examiner Burchmore: How much of this railroad has
3476 been there for forty years?

Mr. Sowell: I couldn't say.

Examiner Burchmore: Well, is there any part of it of recent construction?

Mr. Sowell: Yes, Sir, a part of it, I believe; but I am not competent to answer that.

Examiner Burchmore: Is there a proposition on foot to consolidate these two railroads?

Mr. Brady: No, Sir; the only proposition that there is on foot is one on the part of the stockholders of this road, and is to extend it so as to connect with the New Orleans, Natalbany & Natchez Railway, and in that way get an outlet to Baton Rouge. We will file a map with you showing the proposed extension.

Examiner Burchmore: Show that on the same map, if you will.

Mr. Brady: Yes, Sir, we will.

Examiner Burchmore: What officers of the railroad company hold inter-State passes?

Mr. Sowell: I don't know.

Mr. Brady: You stated formerly that there was a system of accounting between the lumber company and the railroad
3477 company, and the employés of the railroad company were paid by the lumber company. Has that system been changed?

Mr. Sowell: Yes, Sir.

Mr. Brady: Who pays the employés of the railroad company now?

Mr. Sowell: The railroad company.

Mr. Brady: Who are you employed by?

Mr. Sowell: The railroad company.

Mr. Brady: Who pays you?

Mr. Sowell: The railroad company.

Mr. Brady: Have you any connection with the lumber company?

Mr. Sowell: Yes, Sir.

Mr. Brady: What connection have you with the lumber company?

Mr. Sowell: Well, I occasionally do a little book-keeping, but I am not the book-keeper of the lumber company.

Mr. Brady: You are known as an employé of the railroad company?

Mr. Sowell: Yes, Sir.
Mr. Brady: And paid by it?
Mr. Sowell: Yes, sir.
3478 Mr. Brady: Who else is employed by it?
Mr. Sowell: The Auditor.
Mr. Brady: And part of his time is taken and he receives part payment of his salary from the railroad company?
Mr. Sowell: Yes, Sir.
Mr. Brady: Who else in your office?
Mr. Sowell: No one.
Mr. Brady: Does the president and vice-president render, or do the president and vice-president render any regular service to this road?
Mr. Sowell: No, Sir.
Mr. Brady: They receive no salaries, do they?
Mr. Sowell: No, Sir.
Examiner Burchmore: I thought you were secretary of the lumber company?
Mr. Sowell: No, Sir.

Whereupon at 12:30 P. M. a recess was taken until 2 o'clock P. M.

3479 After recess.

T. L. SMYTHE was called as a witness, and having been duly sworn, testified as follows:

Mr. Brady: You have been sworn, have you, Mr. Smythe?
Mr. Smythe: Yes, Sir.
Mr. Brady: Mr. Smythe, what position do you hold with the Kentwood, Greensburg & Southwestern Railway Company?
Mr. Smythe: General Manager.
Mr. Brady: How long have you been General Manager?
Mr. Smythe: Since last February.
Mr. Brady: How many engines have you, locomotives, I mean?
Mr. Smythe: Seven.
Mr. Brady: How many engineers?
Mr. Smythe: Seven.
Mr. Brady: How many firemen?
Mr. Smythe: Seven.
Mr. Brady: How many brakemen?
Mr. Smythe: Seven.
Mr. Brady: How many stations?
Mr. Smythe: Two.
Mr. Brady: How many cars?
Mr. Smythe: Seventy.
3480 Mr. Brady: How many derricks, pile-drivers and things of that sort?
Mr. Smythe: One pile-driver.
Mr. Brady: How many bridges? Estimate it.
Mr. Smythe: Twenty.
Mr. Brady: How many people live in Greensburg?

Mr. Smythe: Three hundred.

Mr. Brady: How many live in Freiler?

Mr. Smythe: About two hundred.

Mr. Brady: What is the character of the territory between the railroad facilities on the North and the railroad facilities on the South for the people; the distance between the railroads North and South, in other words?

Mr. Smythe: They are nearly about equal.

Mr. Brady: Well, how many miles North to a railroad, and how many miles South?

Mr. Smythe: About fourteen miles North, and possibly about twelve miles South, twelve or thirteen.

Examiner Burchmore: To a common carrier railroad?

Mr. Smythe: Yes, Sir.

Mr. Brady: Well, is there any other railroad that is not a common carrier?

3481 Mr. Smythe: No, Sir.

Examiner Burchmore: What is this N. T. & G.?

Mr. Smythe: I never heard of it.

Mr. Brady: Is there any such road there?

Mr. Smythe: There is a little road that goes East from there.

Mr. Brady: What is the name of that road?

Mr. Smythe: They go East.

Examiner Burchmore: Well, the map maybe has the road running the wrong way.

Mr. Brady: I will ask you whether or not the railroad company owns any spur-tracks that run down in the territory along the route of this railroad?

Mr. Smythe: No, Sir.

Mr. Brady: Who owns the spur-tracks that connect with this road?

Mr. Smythe: The Amos Kent Lumber and Brick Company and C. P. Bradley.

Mr. Brady: I will ask you, Mr. Smythe, whether there is any discrimination, or any service for the Amos Kent Lumber and Brick Company different from that of the public service rendered by that railroad?

3482 Mr. Smythe: None to my knowledge.

Mr. Brady: You are the General Manager?

Mr. Smythe: None whatever, at least, that is the answer.

Mr. Brady: What about the spur-track belonging to Bradley, what is the length of it?

Mr. Smythe: Five or six hundred feet.

Mr. Brady: You take up logs that are loaded on cars, then, along this line?

Mr. Smythe: Yes, Sir.

Mr. Brady: For Bradley and the Amos Kent Lumber and Brick Company?

Mr. Smythe: We don't haul logs for Bradley.

Mr. Brady: What do you haul?

Mr. Smythe: Lumber.

Mr. Brady: Do you haul any other class of commodities?

Mr. Smythe: He has a little mill, and we haul his lumber, and we haul for him other commodities, just the same as we do for the other people along the road.

Mr. Brady: Who is Bradley, Mr. Smythe?

Mr. Smythe: He is a little saw-mill man; has a little saw-mill.

Mr. Brady: Will you please give the names of the owners
3483 of saw-mills along this railroad?

Mr. Smythe: Yes, Sir.

Mr. Brady: Al- right.

Mr. Smythe: Now, I am not exactly sure I remember the initials. Bradley is one, and Rutledge, and Frieler, and Prewett.

Mr. Brady: I will ask you whether or not the Railroad Commission of Louisiana has lately issued an order against the Kentwood, Greensburg & Southwestern Railway Company, compelling it to put in a side-track and transfer facilities so as to be able to handle the freight of its patrons expeditiously?

Mr. Smythe: Yes, Sir.

Mr. Brady: Have you complied with that order?

Mr. Smythe: We are complying just as rapidly as the men can get to work on it. We have a switch from the Illinois Central and our switch built, the only thing is the little duct between it; we will have it in service in a week.

Mr. Brady: Mr. Smythe, what is the character of the territory through which this road runs, with reference to being a farming community?

Mr. Smythe: There are a good many good farms in there,
3484 and the lands are good, and the people who are farming in there seem quite successful.

Mr. Brady: Has this road done anything toward the development of that territory ?

Mr. Smythe: No doubt.

Mr. Brady: What is the character of freight it carries?

Mr. Smythe: Merchandise, farm products and lumber.

Mr. Brady: Farm products?

Mr. Smythe: Cotton, cotton-seed, fertilizer and products produced in an agricultural community.

Mr. Brady: Do you know anything about the tonnage carried for the public over this road?

Mr. Smythe: No; only from our records.

Mr. Brady: Do you know when this road commenced to be extended westward?

Mr. Smythe: No, Sir; a good while ago.

Mr. Brady: Do you know when it was built through the town of Greensburg and to the town of Freiler?

Mr. Smythe: Only as I have been informed; in 1905.

Mr. Brady: That is the incorporation. I mean before that.

Mr. Smythe: Oh, no, Sir.

Mr. Brady: You don't know about that.

3485 Mr. Brady: I would like to state in this connection, that this road commenced to be constructed in 1850, and was con-

structed further westward as the timber was cut, until they built to the town of Freiler, through the town of Greensburg in 1904, I believe.

Mr. Brady: Do you know whether or not it has been adjudged by the Courts of Louisiana as a common carrier?

Mr. Smythe: It has.

Mr. Brady: Do you know whether or not it was exempted from taxation under the Constitution of 1898?

Mr. Smythe: No, Sir; I never heard that.

Examiner Burchmore: When did this railroad first begin to receive divisions on shipments of lumber.

Mr. Smythe: The records will show that.

Examiner Burchmore: What records?

Mr. Smythe: The books.

Examiner Burchmore: Well, can you ascertain and advise us?

Mr. Brady: I will introduce the records.

Examiner Burchmore: Where does this man Bradley get his logs?

Mr. Smythe: From about three-quarters of a mile to a mile.

Examiner Burchmore: Does he bring them by tram?

3486 Mr. Smythe: No, Sir.

Examiner Burchmore: By team.

Mr. Smythe: Ox teams, and so forth.

Examiner Burchmore: Is that done at a considerable expense to him?

Mr. Smythe: Well, that is entirely his business, you know.

Examiner Burchmore: Does Bradley get his logs from land owned by the Amos Kent Lumber & Brick Company?

Mr. Smythe: No, Sir.

Examiner Burchmore: The Amos Kent Brick and Lumber Company manufactures brick?

Mr. Smythe: Yes, they used to, but not very much of it now.

Examiner Burchmore: Well, does that brick move out in the same manner as lumber?

Mr. Smythe: Yes, Sir.

Examiner Burchmore: Are there joint through rates on brick?

Mr. Smythe: I think so.

Mr. Brady: Who is the superintendent of the Amos Kent Brick & Lumber Company?

3487 Mr. Smythe: Captain Reid.

Mr. Brady: Do you manage or control the affairs of that lumber company at all?

Mr. Smythe: None whatever.

O. L. Benway was called as a witness, and having been duly sworn, testified as follows:

Mr. Brady: I offer Mr. Benway for the purpose of allowing you, Mr. Examiner, to ascertain about the division of rates, and for the purpose of showing the compensation that the lumber company pays to the railroad company for service in hauling logs.

Examiner Burchmore: Are the rates and divisions, and the method

of billing on this road, similar to the methods and divisions on the New Orleans, Natalbany & Natchez?

Mr. Benway: They are.

Examiner Burchmore: It has the same refund arrangement with the Illinois Central?

Mr. Benway: Yes, Sir.

Examiner Burchmore: And the lumber is billed from Kentsmills?

Mr. Benway: Kentsmills, yes, Sir.

3488 Examiner Burchmore: Who issues the Bill of Lading?

Mr. Benway: The Illinois Central; the agent at Kentwood signs and issues the bills of lading.

Examiner Burchmore: And the billing on these movements is essentially the same as on the movements from Natalbany?

Mr. Benway: Essentially the same. But excuse me, the question just asked on bricks. There are no joint rates on brick. The K. G. & S. W. has nothing to do with the brick.

Examiner Burchmore: Never touches the brick?

Mr. Benway: No, Sir.

Examiner Burchmore: What division is accorded the Kentwood, Greensburg & Southwestern?

Mr. Benway: Two cents on lumber going into this Central Freight Association territory.

Examiner Burchmore: That is two cents in addition to the revenue they receive inbound?

Mr. Benway: Yes, Sir.

Examiner Burchmore: What are the rates from the points along the line on lumber; are they two cents higher than the rate from Kentsmills?

Mr. Benway: Yes, Sir; two cents higher than the rate

3489 from Kentsmills.

Examiner Burchmore: Then to form the rate on lumber from points along this road, an arbitrary of two cents is added.

Mr. Benway: Yes, Sir.

Examiner Burchmore: That two cents is retained by the K. G. & S. W.

Mr. Benway: Well, it comes back in the same way, settled by the Illinois Central, where lumber is billed out on through bill of lading.

Examiner Burchmore: The Kentwood, Greensburg & Southwestern receives from the Illinois Central a division of two cents out of the division rate. What service do they render for that division?

Mr. Benway: On the lumber shipped off of the K. G. & S. W. from other mills.

Examiner Burchmore: In the case of any lumber.

Mr. Benway: All lumber shipped off of our road, they get two cents in addition to this two cents extra division in this territory.

Examiner Burchmore: Making a total of four cents?

Mr. Benway: In this certain territory. Other territory

3490 they get only two cents. The other territory, excuse me, within the State, they get their legal rate less the State law ten per cent.

Examiner Burchmore: What is the legal rate?

Mr. Benway: Three cents.

Examiner Burchmore: What does the Amos Kent Brick & Lumber Company pay to this railroad to get its logs into its mill?

Mr. Benway: Three cents per hundred pounds.

Examiner Burchmore: So that the situation is the same as it is at Natalbany?

Mr. Benway: Practically the same.

Examiner Burchmore: In the case of a carload of lumber shipped by the Bradley people, what rate is applied?

Mr. Benway: If it is the legal rate, shipped to Kentsmills, three cents.

Examiner Burchmore: If it is shipped to Chicago?

Mr. Benway: The Illinois Central rate plus three cents.

Examiner Burchmore: And out of that your company gets four cents?

Mr. Benway: Yes, Sir.

Examiner Burchmore. What about the cost of transferring?

3491 Mr. Benway: Plus the transfer charge of fifty cents per thousand.

Examiner Burchmore: Does the tariff provide for this transfer charge?

Mr. Benway: It does, the Illinois Central tariff, in which we concur.

Examiner Burchmore: What does that amount to per hundred pounds. As a matter of fact, is that rate not published in your tariff as two cents per hundred pounds?

Mr. Benway: I think it is.

Examiner Burchmore: So that the Bradley people really pay——

Mr. Benway: Well, they pay the same as all other people; they pay this tariff rate, which on their bill of lading on the Illinois Central, is fifty cents per thousand feet.

Examiner Burchmore: That amounts to two cents per hundred pounds?

Mr. Benway: Practically two cents per hundred pounds.

Examiner Burchmore: A shipper who ships his lumber on your line has to pay twenty-six cents to Chicago, plus a two cent transfer charge?

Mr. Benway: That is right.

3492 Examiner Burchmore: The Amos Kent Brick and Lumber Company pays twenty-six cents plus a cent——

Mr. Benway: Three.

Examiner Burchmore: They pay three, but two cents of that is applied on the joint rate.

Mr. Benway: Yes, Sir.

Examiner Burchmore: Other shippers are penalized one cent.

Mr. Benway: No, Sir, they are charged practically the same for the services rendered; if they were located like the Amos Kent Lumber and Brick Company, they would be paying exactly the same.

Examiner Burchmore: Well, as a matter of fact, the service is

the same, is it not? I call your attention to the fact that the logs, as I understand it, are unloaded there at the mill pond by the railroad employees under that three cent rate.

Mr. Benway: Yes, Sir.

Examiner Burchmore: Well, isn't the unloading practically the same as a transfer?

Mr. Benway: No, the train is brought to the pond and the logs are dumped over very easily.

Examiner Burchmore: Has there been any complaint
3493 against this charge of two cents for transferring?

Mr. Benway: Not to my knowledge.

Mr. Brady: I will state that the question came up before the Railroad Commission of Louisiana, and the transfer charges fixed were conceded to be just.

Mr. Brady: Mr. Benway, the unloading of these logs, the railroad company makes a charge for that, does it not?

Mr. Benway: Not to the lumber company; it is included in the three cents.

Mr. Brady: In fixing that three cents, it was determined that twelve cents a car should be paid for unloading, was it not?

Mr. Benway: No, I don't think so.

Mr. Brady: You think that Mr. Smythe is in error when he says representing the railroad company he made that charge?

Mr. Benway: He said that in connection with the other railroad company.

Mr. Brady: That is not true in connection with this railroad?

Br. Benway: No, the train crew unloads these logs.

Mr. Brady: After the logs are unloaded, who is it that makes the transfer of the product of the Amos Kent Lumber
3494 & Brick Company to the cars of the Illinois Central?

Mr. Benway: The Amos Kent Brick & Lumber Company.

Mr. Brady: Who makes the transfer for Bradley?

Mr. Benway: The railroad does.

Mr. Brady: So there is service rendered Bradley that is different in character and expense from that rendered to the Amos Kent Lumber and Brick Company?

Mr. Benway: Entirely.

Mr. Brady: Which accounts for the difference in rate?

Mr. Benway: Yes, Sir.

Mr. Brady: I will ask you if it is the purpose, or has been the purposes of this railroad company to discriminate or furnish different rates.

Mr. Benway: It is the purpose to treat them all exactly the same, the Amos Kent Lumber and Brick Company as an outside party.

Mr. Brady: We want to introduce, in connection with Mr. Benway's testimony, this local tariff and the division sheet of this railroad company with the Illinois Central.

Examiner Burchmore: They may be received in evidence.

(The paper so offered and identified was received in evidence

and thereupon marked Kentwood, Greensburg & S. W. Rail-
3495 road Company Exhibit No. 2, Witness Benway, received in evidence December 13, 1910, and is attached hereto.)

Mr. Brady: We want to refer, in connection with Mr. Benway's testimony, to the annual report made by this railroad company to the Railroad Commission.

Mr. Benway: I will suggest in connection with that, that this tariff shows as a station Coles, which was originally built as a spur track.

Mr. Brady: This railroad, we have gotten in this sort of attitude out there. The lumber company built a spur-track from the main line of this road down through the piney woods, and the lumber company wanted to move it, and the railroad Commission of Louisiana would not let them move it, and it makes the railroad company keep that spur-track down there, the Railroad Commission requires that that station be shown. It is not the railroad company's property.

Examiner Burchmore: Does the Amos Kent Lumber and Brick Company have any commissaries and stores?

Mr. Benway: It has at Kent's Mill.

Examiner Burchmore: When was this lumber company's plant built?

Mr. Benway: It was originally built years ago.

3496 Examiner Burchmore: In 1850?

Mr. Benway: I imagine; but it has been renewed since then, and an entirely new mill built.

Examiner Burchmore: Was this road originally built to bring logs to the mill?

Mr. Benway: It was. I wasn't there at that time, but I understand that was the purpose.

Mr. Brady: I would like to introduce Mr. Thames.

T. R. THOMAS was called as a witness, and having been duly sworn, testified as follows:

Mr. Brady: Do you know whether or not this railroad company pays a privilege tax for doing business in Louisiana?

Mr. Thames: It pays an ad valorem tax.

Mr. Brady: Do you know whether or not it is exempt, as other railroads are?

Mr. Thames: Yes, sir.

Mr. Brady: Do you know whether it has been adjudged by the Courts of Louisiana a common carrier and entitled to such exemption?

Mr. Thames: Yes, Sir; there was a suit styled Tax Collec-
3497 tor against the K. G. & S. W. Railroad before the record shows that the charter was made.

Examiner Burchmore: Where is that case reported?

Mr. Brady: It is reported in one of the Louisiana Annuals. I don't remember the number of it. It was about 1904, before it was chartered, it was held to be a common carrier and entitled to this exemption from paying taxes. That is true, isn't it?

Mr. Thames: Yes, Sir; under the Constitution of 1898, railroads were exempted from taxation for ten years. This road had been carrying freight and acting as a common carrier without a charter, and the State attempted to collect taxes on it, and the question was adjudicated as to whether or not it was a common carrier, and it was held to be a common carrier notwithstanding it didn't have a charter.

Mr. Brady: Then came the incorporation.

M. M. CRUSE was called as a witness, and having been duly sworn, testified as follows:

Mr. Brady: I will ask you whether or not there has been an order by the president of the Kentwood, Greensburg & South-
3498 western Railroad Company, requesting you to ascertain the interest due from that company to the Amos Kent Lumber and Brick Company, and after it has been ascertained, to arrange for the payment of it?

Mr. Cruse: Yes, Sir.

Mr. Brady: You were sent, I believe, by the president of this company to do this particular auditing and determine the exact relations about this indebtedness and accrue the interest and see that it was properly ordered paid?

Mr. Cruse: I was.

Examiner Burchmore: At what rate?

Mr. Cruse: At five per cent for the years 1906 and 1907, and 1908 too, I think, and five and a half per cent for 1909 and 1910. I might add that it will be done. It has not been done, I find, but it will be done.

Mr. Brady: Mr. Cruse, this railroad company has a president and a vice-president, a traffic manager, a general manager and an auditor?

Mr. Cruse: Yes, Sir.

Mr. Brady: Do the president and vice-president render any service, or are they just nominal?

Mr. Cruse: Just nominal.

3499 Mr. Brady: They receive no salaries?

Mr. Cruse: No salaries whatever.

Examiner Burchmore: What annual passes are issued by this railroad?

Mr. Cruse: I couldn't give competent testimony about that, because I have nothing to do with the issuing of them.

Mr. Brady: My understanding is that there are two passes issued by this railroad, one to the president of the road and one to the claim agent, probably to the secretary and treasurer of the road.

Mr. Brady: I will ask whether either of those representatives of the road are out on the road selling lumber, or use these passes in the sale of lumber?

Mr. Cruse: None whatever.

Examiner Burchmore: These are passes from the Illinois Central?

Mr. Cruse: Yes, Sir.

Mr. Brady: You can state that these passes are not used by the officers of the lumber company in securing sales of lumber?

Mr. Cruse: They are not.

3500 Mr. Brady: I think that closes our case.

Examiner Burchmore: I think you have covered it sufficiently.

3501 *Fernwood & Gulf Railroad Company.*

Examiner Burchmore: The Fernwood & Gulf, I believe, should be taken up next.

Mr. Green: If your Honor please, in view of the difficulties of definition of the status of the parties to this hearing, we have prepared a statement, and also a deposition, or affidavit, of the material facts in respect to it and we would ask your Honor to refer *to* the parts of it that refer to our status in this hearing, to the Commission, and ask that it be filed. And in order to save time, I will ask that your Honor will allow us, through this witness, Mr. Enochs, who makes this affidavit, to read the statement in this affidavit, and to be further examined as it may suit the pleasure of the Court. It will save a great deal of time. You will find that the material facts are stated there, and it will save the stenographer the necessity of taking down the questions and answers, and furnish your Honor with the information in a substantial way. It is difficult, we have never seen the pleadings, we have never been made a party to the suit, and we don't know exactly where we are. I will ask your Honor to refer to the Commission for its action, the parts of that statement which refer to our status; the other parts as to the facts in

3502 the case, I will ask that we may be allowed to read in evidence.

Mr. Brady: I wish you would let this go in the record in the former case. I don't intend to be unfair to you, but I overlooked it. That same question was pleaded in the petition which we filed. We set up the fact in there that the rate is reasonable, and this division rate is a matter that concerns the two companies individually, and the question is res adjudicata as far as we are concerned. I would ask that you make that a part of the record.

Examiner Burchmore: This document may be placed on record for the information of the Commission and for such action as it may deem proper, and it will be understood that it is referred to as a part of Mr. Enochs' testimony in this case.

(The paper so offered and identified was received in evidence and thereupon marked Fernwood & Gulf Railroad Company, Exhibit No. 1, witness Enochs, received in evidence December 13, 1910, and *it* attached hereto.)

Mr. Green: Mr. Enochs, you have read this document and know the statements therein made to be true?

Mr. Enochs: I have made an affidavit to that.

3503 I. C. ENOCHS was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: I will ask questions, and I think I can be very brief. Mr. Enochs, the Fernwood & Gulf Railroad extends, through a connection with the Illinois Central at Fernwood, easterly through a number of stations, including Tylertown, as far as Kokomo, and a little beyond Kokomo?

Mr. Enochs: That is true.

Examiner Burchmore: Its accredited length of main line is thirty-three miles.

Mr. Enochs: Not exactly, approximately thirty-three miles, thirty-two and eighty-nine one-hundredths, I believe.

Examiner Burchmore: Is it standard gauge?

Mr. Enochs: Yes, Sir.

Examiner Burchmore: The Fernwood Lumber Company was organized in 1889.

Mr. Enochs: Yes, Sir.

Examiner Burchmore: Established its milling plant at Fernwood at that time.

Mr. Enochs: Yes, Sir. The milling plant was established there before the Fernwood Lumber Company was organized. I
3504 owned the mill. My brothers and I owned the mill prior to the incorporation of the Fernwood Lumber Company.

Examiner Burchmore: Mr. Green, will it not be satisfactory if instead of having this filed in the record, it be simply filed as an exhibit in connection with Mr. Enochs' testimony. I will not examine Mr. Enochs at length, but will assume that this statement is fair and complete.

Mr. Green: I think so, yes, Sir. Now, there are several exhibits to go with that.

Examiner Burchmore: Will you attach the exhibits that belong to this document?

Mr. Green: Yes, Sir.

Examiner Burchmore: I just wish to ask one or two questions. They may be covered by this statement, and they may not be. I understand that during the year 1909, this road was sold by the Fernwood Lumber Company to the Fernwood railroad corporation?

Mr. Enochs: Yes, Sir.

Examiner Burchmore: For one hundred and twenty-five thousand dollars, the mileage being twenty-one miles.

Mr. Enochs: Twenty-one miles, approximately, yes, Sir.

Examiner Burchmore: At that time a written agreement
3505 was entered into between the two corporations.

Mr. Enochs: That is true.

Examiner Burchmore: This agreement expressly reserved to the lumber company the trackage right to operate logging trains over that road during the life,—or perpetually?

Mr. Green: During the term that the Fernwood Lumber Company is engaged in business in Marion County, Mississippi.

Examiner Burchmore: The lumber company expressly reserved free trackage rights over this road?

Mr. Enochs: That is true.

Examiner Burchmore: And over any extension that may later be built by the Fernwood & Gulf Railroad Company?

Mr. Enochs: Yes, Sir. That is to say, the contract speaks for itself, and your Examiner had a copy of that when he was at our place.

Examiner Burchmore: The officers and employés of the lumber company's mills are transported free of charge over the railroad?

Mr. Enochs: The officers.

Examiner Burchmore: And employés.

Mr. Enochs: The employés are not transported free of charge over the railroad; the contract allows the employés of the
3506 lumber company to be transported on the log trains but not on the trains of the railroad company. That is my recollection of it, but, of course, it speaks for itself.

Examiner Burchmore: Well, that agreement is attached to your statement?

Mr. Green: We refer to it as being on file with the Commission. We gave it to Mr. Mason.

Examiner Burchmore: That was Mr. Hanson, I believe.

Mr. Green: Mr. Mason, we call it Mason there.

Examiner Burchmore: Mr. Enochs, will you have furnished for the Commission, a statement of your tonnage for the fiscal year ending June 30, 1910, such statement to show the total amount of lumber handled on account of the Fernwood Lumber Company, and the total amount of logs handled for them in tons; also the total amount of various supplies and merchandise that you have been transporting for the lumber company, or on its account, and the traffic for the general public in lumber and products of various kinds?

Mr. Enochs: Yes, Sir.

Examiner Burchmore: You make reports to the Commission?

Mr. Enochs: My report is on file, and it shows,—it is a tonnage statement.

3507 Examiner Burchmore: Of various commodities?

Mr. Enochs: Various commodities other than the tonnage which originated out of the lumber at Fernwood. It was an oversight that that was not added to it. I can make from my records a tonnage statement of the lumber manufactured at Fernwood and moved from there by railroad. That is what you desire?

Examiner Burchmore: I will state what I desire. A statement of the tonnage transported by the railroad for the account of the Fernwood Lumber Company; also of logs for the account of the Fernwood Lumber Company; and of commodities transported for the account of all other lumber companies, or shippers. The statement also to show the tonnage of farm products and all merchandise and other character of freight handled for the general public, and handled for the interests that control this road. The figures should be given in tons and also in revenues.

Mr. Green: We will furnish such statement.

Examiner Burchmore: Another thing. Will you furnish a map of the road. It may be a reference map, but should be drawn to scale, and show the location of the mill and the junction points, and the whole lay of the land?

3508 Mr. Green: We have a map, but it is on a larger scale than your Honor will require. We will have it reduced.

Mr. Green: These are the station houses. We want to offer them in evidence to show the character of station houses we have.

Examiner Burchmore: They may be received in evidence.

(The photographs so offered and identified were received in evidence and thereupon marked Fernwood & Gulf Railroad Company, Exhibits Nos. 2, 3 and 4, Witness Enochs, received in evidence December 13, 1910, and are attached hereto.)

Mr. Green: In connection with this statement, we have the privilege tax assessment of the Railroad Commission of the State of Mississippi, assessing this railroad for a privilege tax, as a railroad, in order that it may classify for classification to pay a privilege tax for a railroad business.

Examiner Burchmore: You say, Mr. Green, that this railroad was taxed on a special basis, as a railroad corporation, and is not taxed either as other corporations or persons are taxed?

3509 Mr. Green: No, Sir; this road is assessed under the Constitution and laws of Mississippi, as a railroad, by the Mississippi State Railroad Commission, for ad valorem taxes; it is also assessed for a privilege tax, which requires that the State Railroad Commission shall classify the several railroads of the State according to their revenues, and imposing a tax of so many dollars per mile of line operated, and the assessment that we show you is the classification and mileage of the Fernwood & Gulf Railroad by the Mississippi Railroad Commission, whereby they classify it as third class and for twenty-one miles, and assess it at ten dollars per mile privilege tax.

Examiner Burchmore: You need not offer in evidence the documents mentioned, the statement will suffice, if you will explain what a third-class railroad is.

Mr. Green: The Railroad Commission assesses them as first, second, third, and narrow gauge tax; it classifies them for privilege tax.

Examiner Burchmore: What is a first class railroad?

Mr. Green: It is classified relatively to its revenues, gross earnings.

Examiner Burchmore: The classification has no relation to the status of the road as a common carrier?

3510 Mr. Green: No, Sir; all railroads in the State of Mississippi are common carriers under the Constitution and under the laws.

Examiner Burchmore: In what class, if any, would the private logging road belonging to a lumber company be classed?

Mr. Green: It would be placed within no class; it would not come within the jurisdiction of the State Railroad Commission to assess these roads. A logging road would not be held responsible as a common carrier in our State. We show also the privilege tax receipts paid on this railroad as a common carrier in the railroad business. I would also state, your Honor, that the assessments of railroad property are made by the State Railroad Commission, as contra-distinguished from assessments made by lumber or logging roads, by the County Assessor.

Examiner Burchmore: The record will show your statement to that effect.

Mr. Green: Now, if your Honor please, in connection with this statement of Mr. Enochs, I have the orders of the Mississippi Railroad Commission referred to in that statement.

3511 Examiner Burchmore: These are orders directed to the Fernwood & Gulf Railroad Company as a common carrier?

Mr. Green: By the Railroad Commission of Mississippi. It has powers to supervise common carriers. Unless your Honor wishes to encumber the record with them——

Examiner Burchmore: We don't care for them; it is sufficient to exhibit them.

Mr. Green: We also wish to exhibit with this statement of Mr. Enochs, the time-table of the Fernwood & Gulf.

Examiner Burchmore: That may be received.

Mr. Green: That is attached to the statement.

Mr. Green: We have referred in this statement to the several tariffs in which the Fernwood & Gulf has joined with other common carriers, giving the I. C. C. numbers in the statement, and, of course, your Honor does not wish these to be more than referred to. As a part of the statement of Mr. Enochs, we have filed the official list of the officers and agents and stations of the Fernwood and Gulf Railroad Company, showing the list of stations and mileage, the agents and the stations at which there are agents, the stations and the character of enterprises that are at the several stations.

3512 Examiner Burchmore: It may be marked and received.

Mr. Green: And, in that connection, we wish to call the attention of your Honor to the number and character of the industrial enterprises that are along this line of railroad.

Examiner Burchmore: That is set forth inn the statement?

Mr. Green: This official list is merely an exhibit to that statement, and referred to in it. With that statement is also filed the division sheet with the Illinois Central of the Fernwood & Gulf, and the division sheets of the New Orleans & Great Northern which connects at Fernwood with the Illinois Central, and at Tylertown with the New Orleans & Great Northern. And these are made exhibits to that statement.

Examiner Burchmore: The Fernwood & Gulf connects with the Illinois at Fernwood, and with the New Orleans and Great Northern at Tylertown.

Mr. Green: Yes, Sir. We will also furnish to your Honor a plat of the switches at Tylertown.

Examiner Burchmore: Just one or two questions: Where is your mill located with respect to the junction point?

Mr. Enochs: It is located at Fernwood.

3513 Examiner Burchmore: How far from the right of way of the Illinois Central?

Mr. Enochs: It is situated in the bend here (indicating).

Examiner Burchmore: A few hundred feet?

Mr. Enochs: Of course, the mill is located at an agle from the station, and if you run from the switch head it is about twenty-six hundred feet; if you run at right angles it is fifteen hundred feet.

Examiner Burchmore: The Fernwood Lumber Company owns certain private logging tracks connecting with this railroad?

Mr. Enochs: How is that?

Examiner Burchmore: The Fernwood Lumber Company owns certain private logging tracks connecting with this railroad?

Mr. Enochs: Up in the woods, they do.

Examiner Burchmore: Does your statement refer to those tracks at all?

Mr. Enochs: I don't think it does.

Examiner Burchmore: Well, are those private tracks operated by the railroad company?

Mr. Enochs: No, Sir.

Examiner Burchmore: The lumber company has engines that operate over those tracks?

3514 Mr. Enochs: Yes, Sir.

Examiner Burchmore: Does the statement refer to that fact?

Mr. Enochs: No, Sir; not as logging tracks we operated, because we took it that we were called only as to the operation of the railroad.

Examiner Burchmore: Did you know, Mr. Enochs, that the majority of tap roads east of the Mississippi River do not receive allowances or divisions?

Mr. Enochs: The majority of tap roads?

Examiner Burchmore: Do not receive divisions or allowances.

Mr. Enochs: Do you mean that the majority of lumber companies which haul logs by rail do not?

Examiner Burchmore: Yes, Sir.

Mr. Enochs: I do.

Examiner Burchmore: How does your road differ from the general run of tap roads east of the Mississippi River?

Mr. Enochs: Because my road performs in good faith transportation services for the public.

Examiner Burchmore: Does it perform any transportation service in connection with your own lumber?

3515 Mr. Enochs: The Fernwood & Gulf Railroad own the physical property throughout the length of this road; the logging trains run in over the Fernwood & Gulf rails, from the woods to the mill.

Examiner Burchmore: Were you present this morning when the

testimony was taken in the case of the New Orleans Natalbany & Natchez Company?

Mr. Enochs: I was.

Examiner Burchmore: Is your method about the same as theirs?

Mr. Enochs: No, Sir; quite different.

Mr. Green: Your Honor, before passing from that, I would like to call your attention to the letter in that regard, which is the commencement of the giving of divisions to the lumber railroads.

Examiner Burchmore: The letter referred to is on page 415 of Volume 1 of the Transcript of Record in Illinois Central Railroad Company vs. Interstate Commerce Commission, before the Supreme Court of the United States, at the October Term 1906, calendar No. 588.

Mr. Green: That is the commencement of the giving of divisions on the Illinois Central, and you will see the principle upon which the Illinois Central proceeded.

3516 Examiner Burchmore: Is there any other statement you wish to make, Mr. Enochs?

Mr. Enochs: No; we are here to give you such information as you desire.

Examiner Burchmore: Well, just this one question, or this one line of questions. The lumber company hauls its own logs into the mill?

Mr. Enochs: It does.

Examiner Burchmore: All the way?

Mr. Enochs: Yes, Sir.

Examiner Burchmore: And the railroad company does not touch the logs coming in?

Mr. Enochs: No, Sir.

Examiner Burchmore: Then after the logs have been milled, they are loaded on cars at the mill by the mill employés?

Mr. Enochs: Yes, Sir.

Examiner Burchmore: Who furnishes these cars?

Mr. Enochs: The Ilinois Central furnishes them in one instance, and the Fernwood & Gulf furnishes them in the other instance. The Fernwood & Gulf furnishes them when they are hauled for connection at Tylertown.

Examiner Burchmore: Take the Illinois Central case.

3517 Mr. Enochs: They furnish the cars.

Examiner Burchmore: The Illinois Central furnishes the cars, but the Fernwood & Gulf Locomotive places the cars at the Mill?

Mr. Enochs: The map which we will file will show the Illinois Central tracks and the Fernwood & Gulf tracks.

Examiner Burchmore: Who puts the empty cars at the mill?

Mr. Enochs: Sometimes the Illinois Central switching crew and sometimes the Fernwood & Gulf switching crew does it and they are sometimes switched by the Fernwood Lumber Company.

Examiner Burchmore: When the car is loaded, who takes it away from the mill to the Illinois Central?

Mr. Enochs: The same inter-change or switching is pursued with respect to loaded cars as with cars yet to be loaded.

Examiner Burchmore: Sometimes the Illinois Central does it with its crew and sometimes the Fernwood & Gulf Railroad Company does it with its crew.

Mr. Enochs: Yes sir.

Examiner Burchmore: In all cases however the Illinois Central grants division of the rate?

Mr. Enochs: No, not in all cases. The Illinois Central
3518 grants a division of rate only to empties.

Examiner Burchmore: I mean, irrespective of which engine gets the cars?

Mr. Enochs: If the Illinois Central gets the haul, why it gets the rate.

Examiner Burchmore: It gets the division if the car moves out of the Illinois Central?

Mr. Enochs: Yes sir.

Examiner Burchmore: In the case of New Orleans and Great Northern shipments?

Mr. Enochs: The Fernwood & Gulf hauls the car back to Tylertown.

Examiner Burchmore: What proportion of your lumber goes out over the Illinois Central, if any?

Mr. Enochs: That varies. At this time, about 75% of our lumber is going out over the Illinois Central. At one time last year about 75% went out over the New Orleans and Great Northern. As a matter of fact, most of our stuff was going out over the New Orleans and Great Northern, until they had a stock at Meridian over the New Orleans and Northeastern, and it demoralized things and got congestive.

3519 Examiner Burchmore: Does this statement indicate the proportion of your tonnage that goes each way from the mill?

Mr. Enochs: No, it does not figure it by proportion. We make a statement here showing how much tonnage—how many cars of lumber—moves over the Fernwood & Gulf Railroad.

Examiner Burchmore: Mr. Enochs, will you furnish us also with a statement of the total number car loads of lumber that moved out last year over the Illinois Central, and that which moved out last year over the New Orleans and Great Northern. We would also like to have it show which one of them gave a division and which one does not.

Mr. Enochs: All right.

Examiner Burchmore: I think there is nothing further unless you have some questions you wish to ask, Mr. Green?

Mr. Green: I want to call your Honor's particular attention to the basis of the division with the Illinois Central and with this Company as shown by exhibit "1" to the Fernwood and Gulf statement. On lumber shipped from Fernwood, Mississippi, manufactured at that point from logs brought in from stations on the Fernwood & Gulf Railroad, the Gulf and Fernwood Railroad will
3520 be allowed two cents per hundred pounds through the freight claim department. I would like to ask you about the size of the towns?

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Examiner Burchmore: Does your statement indicate that?
Mr. Green: No, not the population of the town.
Mr. Enochs: What is it you want?
Mr. Green: Mr. Enochs, what is the population——
Examiner Burchmore: Can't you file the population of each town and industries—show the size of the town and population and industries?
Mr. Green: And the extent of service performed for each?
Examiner Burchmore: Yes, and if you think any other statement should be filed to fully set forth the case, you may have that permission, but I suggest that you don't cumber the record.
Mr. Green: I would suggest, your Honor, that if there is any other information, which in the course of inquiry, occurs to your Honor, we would gladly furnish it.
Mr. Enochs: How soon would you desire this?
Examiner Burchmore: As soon as it could be prepared.

3521 *Kentwood and Eastern Railway Company.*

(Appearances: Robert R. Reed, Esq. Attorney for the Kentwood and Eastern Railway Company.)

Examiner Burchmore: Have you filled out a print slip—appearance slip—Mr. Reed?
Mr. Reed: No.
Examiner Burchmore: Please do so.

MR. GEORGE A. KEYES, was called as a witness, and having been first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: What is your name and occupation, Mr. Keyes?
Mr. Keyes: George A. Keyes, General Manager of the Kentwood and Eastern Railway Company.
Examiner Burchmore: Are you an officer of any lumber company?
Mr. Keyes: No, sir.
Examiner Burchmore: The Kentwood and Eastern Railway Company connects with the Illinois Central at Kentwood, La.
Mr. Keyes: Yes sir.
Examiner Burchmore: And with the New Orleans and
3522 Great Northern at Warnertown?
Mr. Keyes: Yes, Warnerton,—W-a-r-n-e-r-t-o-n.
Examiner Burchmore: Warnerton?
Mr. Keyes: Yes, sir.
Examiner Burchmore: What is the length of its line approximately?
Mr. Keyes: Our Hackley line is 30.2 miles in length from Kentwood.
Examiner Burchmore: Is that broad or narrow gauge?

Mr. Keyes: Narrow gauge.

Examiner Burchmore: And your other line?

Mr. Keyes: Our other line is 25.18 miles in length.

Examiner Burchmore: Then you have two lines out of Bolivar Junction?

Mr. Keyes: Yes, sir. We have a three rail line from Kentwood to Bolivar Junction, a distance of 3.34 miles.

Examiner Burchmore: The third rail line? Only one train can pass over it at once?

Mr. Keyes: Yes, sir.

Examiner Burchmore: It is a narrow and standard gauge line combined.

3523 Mr. Keyes: Yes sir.

Examiner Burchmore: Then from Bolivar Junction, the line runs out east?

Mr. Keyes: Out east to Hackley.

Examiner Burchmore: And that is the line which is thirty miles in length?

Mr. Keyes: Yes sir.

Examiner Burchmore: From Bolivar Junction *and* other line run southeast through Wilmer to Foley, Louisiana?

Mr. Keyes: Yes sir.

Examiner Burchmore: A distance of about 20 miles?

Mr. Keyes: It is 25 miles from Kentwood.

Examiner Burchmore: Are there any private tram lines?—Any private tram lines connecting with those roads?

Mr. Keyes: Well, there is what you might call a tap line from Brookdale on the Hackley line. Brookdale is a point a little west of Warnerton.

Examiner Burchmore: Running southward?

Mr. Keyes: That runs in a northerly direction.

Examiner Burchmore: How far?

Mr. Keyes: I think in the neighborhood of four or five miles of track. It runs to a saw mill located about a little over a half a mile north of our line and the rest of their trackage is a logging one.

3524 Examiner Burchmore: Who was tram line built by—who does it belong to?

Mr. Keyes: A concern known as the Bassfield Lbr. Co.

Examiner Burchmore: Before we pursue this line of inquiry further, I understand that the Kentwood and Eastern Railway Company is controlled through its ownership *or* stock by the stockholders of the Brooks Scanlan Company.

Mr. Keyes: Yes sir.

Examiner Burchmore: Are the stockholders of the two companies substantially identical?

Mr. Keyes: Practically so. There are a few stockholders in the lumber company who are not in the railroad company but all the stockholders in the railroad company are stockholders in the lumber company.

Examiner Burchmore: This company that owns a private tram line that you have just referred to, what is its name?

Mr. Keyes: The Bassfield Lumber Company.

Examiner Burchmore: Is the Bassfield Lumber Company related in any way to the Brooks Scanlan?

Mr. Keyes: In no way whatever.

Examiner Burchmore: Where do they get their timber?

Mr. Keyes: They have quite a large tract of timber north
3525 of our railroad.

Examiner Burchmore: Is there any other tram line connected with this road?

Mr. Keyes: No tram lines. There are what you might call logging spurs—possibly what you might call a tram line.

Examiner Burchmore: Connecting——

Mr. Keyes: Belonging to the Brooks Scanlan Lumber Company. There is one logging concern that owns logging spurs on which the Brooks Scanlan Company have no interest except that this Company is logging for the Brooks Scanlan Company. They advance them their money. I don't know just how much trackage they have. They have one locomotive and a number of cars.

Examiner Burchmore: The Brooks Scanlan Company?

Mr. Keyes: No, this logging outfit I have spoken of.

Examiner Burchmore: Where is the mill located?

Mr. Keyes: At Foley.

Examiner Burchmore: That is at the end of your southern line?

Mr. Keyes: Yes, sir.

Examiner Burchmore: Where are the mills of the Brooks Scanlan Company located?

3526 Mr. Keyes: At Kentwood.

Examiner Burchmore: Right on the tracks of the Illinois Central?

Mr. Keyes: Practically so—the Illinois Central sidetracks. They run into them. One of them is on the right of way, I believe, of the Illinois Central, and the other may be four hundred feet distant.

Examiner Burchmore: How many locomotives has the Kentwood and Eastern?

Mr. Keyes: They own nine.

Examiner Burchmore: Part narrow gauge and part standard gauge?

Mr. Keyes: Yes, sir. Five narrow and four standard.

Examiner Burchmore: How many cars does it own?

Mr. Keyes: They own 6 passenger cars, 48 box cars, 182 flat cars, two coal cars, 52 logging cars, nine work cars and four cabooses.

Examiner Burchmore: Part of those cars in each class are narrow gauge and part standard gauge?

Mr. Keyes: All the cars—of these cars—152 are narrow gauge and 51 standard; of the locomotives, five are narrow and four standard gauge.

3527 Examiner Burchmore: What weight of rail is used on the line?

Mr. Keyes: In the Hackley line, it is practically 35 and 40. There is a little 30 pound rail. On our Bolivar line it is all 56 pound rail.

Examiner Burchmore: Your standard gauge line is a lighter rail?

Mr. Keyes: No, sir, the Bolivar line running to the south is a standard gauge.

Examiner Burchmore: Are you contemplating changing the other line to standard gauge—your southern line?

Mr. Keyes: The Southern line is now standard; the eastern is narrow.

Examiner Burchmore: Are you contemplating a change in that?

Mr. Keyes: Not seriously.

Examiner Burchmore: How is the road constructed?

Mr. Keyes: Substantially and with easy grades and long curves. Our standard gauge line is fairly easy grades, the maximum I believe is 1.4 against the loads and a little heavier against the empties. The narrow gauge line for a distance follows the general lines of
3528 country, but from Mount Herman east, there was considerable grading done and a great many bridges built.

Examiner Burchmore: What sort of country does it run through?

Mr. Keyes: It is a pretty rough rolling country.

Examiner Burchmore: Any farms?

Mr. Keyes: A great many; pretty well developed.

Examiner Burchmore: Any box factories on the line?

Mr. Keyes: No box factories, no sir.

Examiner Burchmore: Do those farmers make staves and such stuff?

Mr. Keyes: Not for shipment, no, sir.

Examiner Burchmore: What sort of lumber do you make on the line there—do you get there?

Mr. Keyes: Why, we get a great deal of hewn timber and some cross ties and then we have a number of mills—small mills—on the two lines.

Examiner Burchmore: Pony mills?

Mr. Keyes: Well, I don't know that you would call them Pony mills; all the way from fifteen to forty thousand feet daily capacity.

3529 Examiner Burchmore: Have you any other industries along the line?

Mr. Keyes: There are saw mills. We have in all 32 saw mills.

Examiner Burchmore: How many controlled by Brooks Scanlan?

Mr. Keyes: Two owned by them and one saws for them.

Examiner Burchmore: Where is that?

Mr. Keyes: At Foley.

Examiner Burchmore: That is the mill you referred to a moment ago?

Mr. Keyes: Yes, and in addition to the mill, we have those turpentine stills; four of which are controlled by or operated by the Brooks Scanlan Company.

Examiner Burchmore: Are the other two—do the other two have the turpentine privilege farmed out by Brooks Scalan?

Mr. Keyes: No, sir.

Examiner Burchmore: They do not get the turpentine from the Brooks Scanlan Lumber Company woods?

Mr. Keyes: No.

Examiner Burchmore: Continue.

3530 Mr. Keyes: We have also seventeen cotton gins located along the two lines.

Examiner Burchmore: The Brooks Scanlan Lumber Company has no relation to these cotton gins?

Mr. Keyes: None whatever.

Examiner Burchmore: And these are all the industries?

Mr. Keyes: We serve a large farming section. In 1909 we handled 5,636 bales of cotton.

Examiner Burchmore: Was that an extraordinary number for your road?

Mr. Keyes: No, sir, the amount has been growing less in the last two or three years.

Examiner Burchmore: It has been growing less?

Mr. Keyes: Yes, sir.

Mr. Reed: That is on account of the boll weevil?

Mr. Keyes: The first is due to the entrance of the New Orleans and Great Northern in our recent territory, and in 1910, we handled but 4,572 bales and that was due to the boll weevil, and this year the crop is even better.

Examiner Burchmore: When was this road constructed?

Mr. Keyes: The Hackley line—the last of it was con-

3531 structed in 1904; it was before we took possession of it.

Examiner Burchmore: When was the construction begun?

Mr. Reed: I expect I will have to help him.

Mr. Keyes: It is a good many years ago.

Mr. Reed: It was begun by the Banner Lumber Company probably in 1896 or 1897.

Examiner Burchmore: 1896 or 1897?

Mr. Reed: Yes, sir.

Examiner Burchmore: Their mill was constructed at the same time?

Mr. Reed: The Banner Lumber Company mill was. The Brooks Scanlan Company bought from them in 1905, the first day of November.

Examiner Burchmore: When was this railroad incorporated?

Mr. Keyes: December 5, 1905.

Examiner Burchmore: After you bought it?

Mr. Keyes: Yes, sir.

Examiner Burchmore: The Brooks Scanlan Co. then purchased this mill and the railroad all at one investment?

Mr. Keyes: Yes, sir.

Examiner Burchmore: At a lump price?

3532 Mr. Reed: I don't think Mr. Keyes knows that.

Mr. Keyes: As far as I know.

Mr. Reed: They bought quite a quantity of timber lands on the timber estimate of $2.40 a thousand and bought the mill at an estimate of some $50,000.00 and the railroad at $112,000.00. That is my recollection. I prepared the deeds and represented them.

Examiner Burchmore: That included both lines of the Railroad?

Mr. Reed: No, sir.

Examiner Burchmore: When was the other line of railroad constructed?

Mr. Keyes: The construction work was started in 1906.

Examiner Burchmore: After the incorporation of the railroad?

Mr. Keyes: Yes, sir.

Examiner Burchmore: The mills on that line were opened subsequently?

Mr. Keyes: Yes, sir.

Examiner Burchmore: I presume, practically, simultaneously with the completion of the road?

3533 Mr. Keyes: The small mills?

Examiner Burchmore: Yes, the mills in which you are interested.

Mr. Keyes: The Brooks Scanlan mill?

Examiner Burchmore: Yes.

Mr. Keyes: They had already one mill which they purchased at the same time.

Examiner Burchmore: I am thinking of the mill at Foley.

Mr. Keyes: That mill began operations in May, I think, of this year; that is recently constructed.

Examiner Burchmore: How was the railroad corporation originally financed?

Mr. Keyes: It has been financed by the Brooks Scanlan Company. It has a capital stock of $100,000.00.

Examiner Burchmore: How much of that is issued?

Mr. Keyes: All of it.

Examiner Burchmore: And paid in?

Mr. Keyes: Yes, sir.

Examiner Burchmore: Was that paid in by the stockholders of the Brooks Scanlan as such?

3534 Mr. Keyes: Not as stockholders of the Brooks Scanlan Company, no, sir.

Examiner Burchmore: The same interests control it?

Mr. Keyes: Yes, sir.

Examiner Burchmore: Whom, the Brooks Scanlan Company—any other syndicate?

Mr. Keyes: No, sir.

Examiner Burchmore: Is there any relation between your Company and any other lumber Company?

Mr. Keyes: They have other interests in other parts of the country.

Examiner Burchmore: But not in around that part of the country?

Mr. Keyes: No, sir.

Examiner Burchmore: Who furnished the steel rail out of which this new line was constructed?

Mr. Keyes: All bought of the Carnegie Steel Company.

Examiner Burchmore: Are there any bonds of this Company?

Mr. Keyes: No, sir.

Examiner Burchmore: Has it any indebtedness aside from current liabilities?

Mr. Keyes: Only such amounts as we owe to the Brooks Scanlan Company.

3535 Examiner Burchmore: What does that amount to in round figures?

Mr. Keyes: I think at the present time, something like $220,000.00.

Examiner Burchmore: You owe the Brooks Scanlan Company $220,000.00. Do you pay interest on that indebtedness?

Mr. Keyes: Yes, sir.

Examiner Burchmore: At 6%?

Mr. Keyes: We have paid it as high as 7%, it depends on the market.

Examiner Burchmore: You pay the market rate?

Mr. Keyes: Well, we pay—I don't know just how they arrive at their interest rate but I know that when money is scarce, we have to pay a higher rate of interest.

Examiner Burchmore: You do not govern the rate of interest by the earnings of the road?

Mr. Keyes: No, sir.

Examiner Burchmore: Has the road paid any dividends?

Mr. Keyes: No, sir.

Examiner Burchmore: Has it a surplus?

Mr. Keyes: It has no surplus cash. It has a surplus account—a Profit and Loss Account—but the funds have all been used

3536 in additions and betterments and paying off the indebtedness.

Examiner Burchmore: What was the original cost—the cost of the road as far as you are concerned?

Mr. Keyes: The road and equipment has cost us $491,651.74 up to June 3,—the last fiscal year.

Examiner Burchmore: What is this surplus you have referred to in amount?

Mr. Keyes: May I look at the report?

Examiner Burchmore: Certainly.

Mr. Keyes: $127,936.04 on June 30, 1910.

Examiner Burchmore: Is that a cash surplus or book surplus?

Mr. Keyes: It is a book surplus.

Examiner Burchmore: And where is it in money?

Mr. Keyes: It has been used in additions and betterments, and, to some extent, in reducing our indebtedness. No dividends have been declared.

Examiner Burchmore: I know very little about accounting, and don't know what it all means, but I assume that our accountant will. It is all shown in your annual report, at any rate?

3537 Mr. Keyes: Yes, sir.

Examiner Burchmore: Who is the creditor of the Kentwood and Eastwood Railroad Company?

Mr. Keyes: E. F. Brooks of Minneapolis.

Examiner Burchmore: Is he the President of the Brooks Scanlan Company?

Mr. Keyes: He is Vice-President of that Company.

Examiner Burchmore: Are the other officers of the railroad Company also officers of the lumber company?

Mr. Keyes: The President, Vice-President, and Secretary and Treasurer are—they hold offices in both companies.

Examiner Burchmore: You are not an officer of the Lumber Company?

Mr. Keyes: No, sir.

Examiner Burchmore: Your entire compensation is paid by the railroad company?

Mr. Keyes: All of it.

Examiner Burchmore: And your entire time devoted to its service?

Mr. Keyes: Entirely.

Examiner Burchmore: What other officers of the railroad company are paid for their services?

3538 Mr. Keyes: The President, Vice-President and——

Examiner Burchmore: State their salaries, if you will?

Mr. Keyes: The salary of the President and Vice-President—I will have to explain that—it is $7500.00 a year each?

Examiner Burchmore: From the Railroad Company?

Mr. Keyes: No, I will explain that later. The salary of the Secretary is $5,000.00 making a total of $20,000.00. This is divided between the Brooks Scanlan Company and the Railroad Company in the proportion of the capital stock or practically so.

Examiner Burchmore: What is the proportion of the capital stock?

Mr. Keyes: It is about one to fifteen. In other words, we pay about $1200.00 a year—that proportion of the salary of those officers.

Examiner Burchmore: In your opinion, is that a reasonable division?

Mr. Keyes: I think so.

Examiner Burchmore: Of salaries?

Mr. Keyes: I think so.

Examiner Burchmore: Do the directors receive a $20.00 gold piece for attending Directors' meetings?

3539 Mr. Keyes: Not that I know of.

Examiner Burchmore: That is the custom with the larger railroad lines, I understand. I understand that aside from any legal question, that the tap line corporations and the lumber corporations are substantially identical in interest through stock ownership?

Mr. Keyes: Both are controlled by the same interest.

Examiner Burchmore: How many men are there in the general offices of the railroad?

Mr. Keyes: In the general offices?

Examiner Burchmore: Yes?

Mr. Keyes: Myself—there are four.

Examiner Burchmore: Who receive their entire compensation from the railroad Company?

Mr. Keyes: Yes sir.

Examiner Burchmore: Do they devote their entire time to the Railroad Company?

Mr. Keyes: Yes, sir.

Examiner Burchmore: What stations do you have—what stations has the Company—I mean, stations that are designated with names?

Mr. Keyes: Well, we have many of them.

3540 Examiner Burchmore: Which of those stations have station buildings and which ones have agents?

Mr. Keyes: Well, we have a number of stations where we have no agent, but where we have passenger pagodas. Our first station building outside of Kentwood is at Mount Herman. That is a point with about 100 inhabitants, and we have an agent there. Do you want me to explain the industries at this place.

Examiner Burchmore: Yes.

Mr. Keyes: At that point, there is one bank, one saw mill, and one gin and four merchants. At Brockdale, a place of one hundred inhabitants, there is one saw mill, two gins and four merchants. At Warnerton, 175 inhabitants, one mill one gin and four merchants. At Hackley, about 400 inhabitants, four mills, six gins, 15 merchants and two stills. These points have all agents.

Examiner Burchmore: Do the agents at those points devote their entire time to the Railroad Company's service?

Mr. Keyes: Yes sir.

Examiner Burchmore: They are not storekeepers who work for the Railroad too?

Mr. Keyes: No sir, purely railroad employees. Then we

3541 have a large number of other stations where there are saw mills located where there are really a few people.

Examiner Burchmore: Well, review them very briefly.

Mr. Keyes: Well, I might say that at these other stations, at Hackley, which I mentioned, we have three banks.

Examiner Burchmore: Yes?

Mr. Keyes: And also Mount Herman. There are 22 mills there small mills—located on the two lines, in addition to those I have just enumerated, in which the Brooks Scanlan Company has no interest whatever. In addition to that, there is one mill that is sawing for Brooks Scanlan, and two that are owned by Brooks Scanlan Company.

Examiner Burchmore: Do these mills obtain their lumber from land owned by Brooks Scanlan Company?

Mr. Keyes: No sir.

Examiner Burchmore: Is there any further statement you wish to make as to industries and towns on your line? Does that complete the statement?

Mr. Keyes: Well, I think I have mentioned that at Kentwood—Kentwood is a town of over four thousand people—and we have an

agent and have large shops—quite a large transfer force—

3542 station force. We have about 800 to 1000 feet of platform for transferring lumber and a steam derrick used for that purpose and a freight hoist one hundred and fifty feet in length. And

there are about a hundred and twenty five or thirty merchants, I guess in Kentwood.

Examiner Burchmore: I thought Kentwood is on the Illinois Central.

Mr. Keyes: Yes, but we have joint rates with New Orleans and Kentwood, and also do business——

Examiner Burchmore: You enable the N. O. & G. N. to go into Kentwood?

Mr. Keyes: Yes sir.

Examiner Burchmore: Has that resulted in any reduction in rates to Kentwood merchants?

Mr. Keyes: No sir we publish the same rates.

Examiner Burchmore: They get better service?

Mr. Keyes: Yes sir.

Examiner Burchmore: Has the Brooks Scanlan Company any engines or cars of its own?

Mr. Keyes: Yes sir.

Examiner Burchmore: What use is made of those locomotives?

Mr. Keyes: They use them on their logging spurs.

3543 Examiner Burchmore: But they don't move over your line?

Mr. Keyes: Except from their headquarters Camp to their different logging spurs.

Examiner Burchmore: They have trackage rights have they?

Mr. Keyes: There is no agreement but we allow them to use our tracks in reaching their own logging spurs.

Examiner Burchmore: Without charge?

Mr. Keyes: Without charge.

Examiner Burchmore: Do the track or road employees of the railroad Company perform any services on behalf of the Brooks Scanlan Lumber Company?

Mr. Keyes: No sir; with one exception: on the narrow gauge line, the Lumber Company has a spur out about 12 miles from Kentwood—a logging spur which they have constructed and which they maintain. We do run our engines in on that track for logs, and for doing so we receive additional revenue.

Examiner Burchmore: What is that revenue?

Mr. Keyes: It is an additional revenue of $1.00 per car.

3544 Examiner Burchmore: For the service up to your line?

Mr. Keyes: Yes sir; by doing that, we get that additional revenue?

Examiner Burchmore: Do you have any passenger trains?

Mr. Keyes: I might state that this is the only instance in which our engines perform that service. Heretofore, the Brooks Scanlan Company have always had an engine out there.

Examiner Burchmore: How long have you been doing that?

Mr. Keyes: Some few months—to deliver their loads to the Main line; that is what they are supposed to do.

Examiner Burchmore: Do you have any passenger trains or mixed trains?

Mr. Keyes: Yes sir.

Examiner Burchmore: How many?

Mr. Keyes: On the Hackley line, we run a straight passenger train daily between Hackley and Kentwood. In the morning, we run a passenger train making connection between Hackley and Warnerton, with the New Orleans and Great Northern southbound passenger train, and in the evening we make another run to make connection with the New Orleans and Great North- -bound
3545 passenger train. That is between Hackley and Warnerton.

Examiner Burchmore: These trains run on a regular schedule?

Mr. Keyes: Yes sir.

Examiner Burchmore: You have a time table?

Mr. Keyes: Yes sir.

Examiner Burchmore: Will you offer a copy of that in evidence?

Mr. Keyes: Yes sir.

Examiner Burchmore: How many freight or logging trains do you run daily?

Mr. Keyes: Well, in addition to that train, on the Bolivar line, we run two schedule mixed trains daily—two each way—that handles no logs whatever; that is a commercial business. On the narrow gauge line, we also run our local freight train each way daily except Sundays; it handles no logs whatever.

Examiner Burchmore: Do you have any log trains in addition to this?

Mr. Keyes: Yes sir.

Examiner Burchmore: Are they regularly scheduled?
3546 Mr. Keyes: Yes sir.

The time table requested by the Examiner was at this time offered and identified, and was received in evidence and thereupon marked Kentwood and Eastern Railway Company Exhibit No. 1, received in evidence December 14, 1910, page — and is attached hereto.

Examiner Burchmore: You carry passengers of course?

Mr. Keyes: Well, we carry passengers on our mixed trains and passenger trains, not on local freight trains or logging trains.

Examiner Burchmore: They buy tickets?

Mr. Keyes: Yes sir.

Examiner Burchmore: And sometimes pay fares?

Mr. Keyes: Yes sir.

Examiner Burchmore: You carry the United States Mail?

Mr. Keyes: Yes, a daily average of 4.92 pounds.

Examiner Burchmore: Do you carry express?

Mr. Keyes: We handle—the American Express Company operates over our Hackley line.

Examiner Burchmore: They have a messenger?

Mr. Keyes: Our conductor acts as messenger jointly.
3547 Examiner Burchmore: He is paid for that?

Mr. Keyes: Yes, sir.

Examiner Burchmore: With respect to your freight traffic, in a general way, that can be obtained from your annual report filed with the Commission?

Mr. Keyes: Yes sir.

Examiner Burchmore: Have you any other data?

Mr. Keyes: I can give you the tonnage and revenue, if you wish.

Examiner Burchmore: Read the figures.

Mr. Keyes: During the year—the fiscal year—ending June 30th, 1910, we handled a total tonnage of 351,566 tons.

Examiner Burchmore: Just a moment——

Mr. Keyes: That statement is not in shape to file. Of this amount the Brooks Scanlan Company logs amounted to 250,014 tons or 82.9 per cent; other freight of the Brooks Scanlan Company amounted to 64,020 tons or 21 per cent, and freight shipped by others 45,132 tons or 15 per cent. I should have said that the other freight of the Brooks Scanlan Company amounted to 6420 tons or 2.1 per cent. Now, I have included in this 6,420 of Brooks Scanlan freight, 2,926 tons that went to their contractors which I presume
3548 you consider the same thing.

Examiner Burchmore: That is correctly included.

Mr. Keyes: The total revenue was $211,427.89; of this amount $139,996.50 or 72.4 per cent—do you want the freight or the total revenue?

Examiner Burchmore: The freight.

Mr. Keyes: The freight was—72.4 per cent of the freight accrued on Brooks Scanlan logs. $5,201.01 or 2.7 accrued on Brooks Scanlan other freight; $48,097.40 or 24.9 per cent accrued on freight shipped by others. Passengers and other things amounted to $18,000.00 or 9.8 per cent.

Examiner Burchmore: The particulars are given in the annual report?

Mr. Keyes: Yes sir.

Examiner Burchmore: But the figures in reference to the division of freight tonnage are not shown?

Mr. Keyes: The total tonnage and total revenue is shown in the report; the division I guess, is not.

Examiner Burchmore: Your Company had a tariff for passenger fares?

Mr. Keyes: Yes sir.

Examiner Burchmore: Is that filed with the Interstate
3549 Commerce Commission?

Mr. Keyes: Yes sir.

Examiner Burchmore: You are sure of it?

Mr. Keyes: Yes sir I am pretty certain.

Examiner Burchmore: Does the freight tariff name the rates over this line?

Mr. Keyes: Yes sir.

Examiner Burchmore: Reference will be made to our tariff files for this tariff.

Mr. Keyes: I have even the index.

Examiner Burchmore: Is that index on file with the Commission?

Mr. Keyes: Yes sir.

Examiner Burchmore: Then there is no need to file it here.

Mr. Keyes: All right.

Examiner Burchmore: You participate in joint through class rates with the Illinois Central Railroad?

Mr. [illegible]: Yes, and in the New Orleans and Great Northern rate.

Examiner Burchmore: Are all the stations on your line grouped [illegible] the same rate?

Mr. [illegible]: No. Our class and commodity rates from [illegible]—that is, Chicago, Cincinnati or St. Louis, etc.—to [illegible] are made from New Orleans, and from New Orleans to [illegible] there are two groups.

Examiner Burchmore: One on the northern line?

Mr. [illegible]: No, one group for the eastern end of our Hackley line.

Examiner Burchmore: That is a sufficient particularity.

Mr. [illegible]: That would be for the portion that is east of the New Orleans and Great Northern Railroad?

Mr. [illegible]: Yes, sir.

Mr. [illegible]: You understand that the Great Northern road cuts the [illegible] in two?

Examiner Burchmore: It does cut it or runs across it. I presume you cross the New Orleans and Great Northern?

Mr. [illegible]: No, they cross us. We were there first.

Examiner Burchmore: You have any trouble getting cars?

Mr. [illegible]: No, sir.

Examiner Burchmore: Are the rates on lumber grouped from all [illegible] on the road?

Mr. [illegible]: No, sir; different rates apply from our different stations.

Examiner Burchmore: To interstate points?

Mr. [illegible]: Yes, sir.

Examiner Burchmore: Explain that just a little.

Mr. [illegible]: Well, take Chicago for instance. From Hackley the through rate is [illegible] cents a hundred, or one and a half cents from Kentwood.

Examiner Burchmore: What is it from Foley?

Mr. [illegible]: From Foley and Hunter, the rate is 25 cents or one cent [illegible] from Kentwood. From all other stations the rate is the same as the Kentwood rate except that all cases where there is a transfer from standard gauge to narrow gauge a charge of fifty cents a thousand feet is made in addition.

Examiner Burchmore: That amounts to two cents per hundred pounds?

Mr. [illegible]: Scarce a cent.

Examiner Burchmore: What divisions does your company receive out of those rates on lumber?

Mr. [illegible]: On the 25-cent rate from Hackley, we receive four cents, plus the transfer charge; on Hunter and Foley, we receive three and a half cents, and the transfer when there is any, and on the other points, two and a half cents per hundred plus the transfer charge.

Examiner Burchmore: Then, the lowest division you receive is two and a half cents?

Mr. Keyes: Yes sir.

Examiner Burchmore: Is there any lumber traffic on which you receive no commission?

Mr. Keyes: On which what?

Examiner Burchmore: On which you receive no division—on which you earn nothing?

Mr. Keyes: No sir.

Mr. Reed: Explain that?

Examiner Burchmore: Do you handle any lumber on which you do not get a division with the Illinois Central?

Mr. Reed: You can explain that. His question does not mean that you do not get a compensation from the railroad but that you don't get compensation at all for?

Examiner Burchmore: Well, either way.

Mr. Keyes: Well, now you understand, on these rates I have just mentioned, these divisions—our proportion of the through rate—that does not come out of the Illinois Central rate.

3553 Examiner Burchmore: It comes out of the through rate?

Mr. Keyes: Certainly.

Examiner Burchmore: Are there any through rates out of which you receive no division at all?

Mr. Keyes: From the Illinois Central?

Examiner Burchmore: In which the Illinois Central takes the whole rate?

Mr. Keyes: There are shipments which are billed on the sums of the locals.

Examiner Burchmore: To what territory?

Mr. Keyes: Well, to points south of the Ohio river; principally our through rates are to points north of the Ohio and East of the Mississippi river.

Examiner Burchmore: What are your local rates in a general way?—Higher or lower than the division?

Mr. Keyes: A little higher.

Examiner Burchmore: Do those through rates carry a milling in transit provision?

Mr. Keyes: No.

Examiner Burchmore: You receive from three and a half cents to four cents division. Just what service do you render for that division?

3554 Mr. Keyes: Well now—you are speaking of miscellaneous lumber shipments?

Examiner Burchmore: No, I refer to shipments handled for the Brooks Scanlan Lumber Company.

Mr. Keyes: From the woods to the Illinois Central?

Examiner Burchmore: Yes.

Mr. Keyes: Well, we handle the logs to the mill.

Examiner Burchmore: Under any billing?

Mr. Keyes: There is no billing that accompanies each car.

Examiner Burchmore: It is filled out afterwards?

Mr. Keyes: We have a daily report from our conductor on each car of the lumber they handle and where received, and we also have

a record on our despatcher's train sheets against which we check the conductor's reports.

Examiner Burchmore: You unload logs at the mill?

Mr. Keyes: No sir.

Examiner Burchmore: What additional service do you render?

Mr. Keyes: We do nothing but haul the logs to the Mill.

Examiner Burchmore: The Illinois Central hauls them away from the Mill?

Mr. Keyes: They haul the lumber.

3555 Examiner Burchmore: They set the empty car at the mill?

Mr. Keyes: Yes sir.

Examiner Burchmore: The practices of your road, so far as the Illinois Central shipments are concerned, are about the same as those of one or two other companies we have had to-day?

Mr. Keyes: Practically so.

Examiner Burchmore: Is there any representative from the Illinois Central, as to why you get a division?

Mr. Keyes: We charge a regular tariff rate to the mill, depending on the distance the log is handled.

Examiner Burchmore: Five or six cents?

Mr. Keyes: Two and a half and three cents. Our local log tariff is two and a half cents for a distance of 15 miles; further than fifteen miles, three cents, and we haul all logs to the mill at tariff rates. On shipments moving out that are sawed from these logs going to points at which we have through rates, our claim is made up——

Examiner Burchmore: In the manner described this morning?

Mr. Keyes: Yes sir.

Examiner Burchmore: I think we are informed with respect to that.

3556 Mr. Keyes: Credit for the amount is given.

Examiner Burchmore: How about the New Orleans and Great Northern shipments?

Mr. Keyes: We have no rates to points north. We have through rates to New Orleans and Slidell.

Examiner Burchmore: You haul lumber to the New Orleans and Great Northern on shipments to New Orleans do you?

Mr. Keyes: Yes sir.

Examiner Burchmore: From your mill?

Mr. Keyes: There has been -o shipment moving from Kentwood up to the present time.

Examiner Burchmore: Where do the shipments move from?

Mr. Keyes: From towns along our narrow gauge line.

Examiner Burchmore: Have you any mill on that narrow gauge line?

Mr. Keyes: None of our own.

Examiner Burchmore: The New Orleans and Great Northern gets no Brooks and Scanlan Company lumber?

Mr. Keyes: No sir.

Examiner Burchmore: All the Brooks Scanlan Company lumber goes over the Illinois Central.

3557 Mr. Keyes: Except such as they may ship locally.

Examiner Burchmore: Now, our questions so far have appiel to the Brooks Scanlan Company lumber. How about lumber handled for other interests that have no relation to the Brooks Scanlan Lumber Company. What service do you render there?

Mr. Keyes: We handle the Lumber to the Illinois Central for our proportion of the freight.

Examiner Burchmore: You get no haul on the logs?

Mr. Keyes: No sir.

Examiner Burchmore: You receive the same net revenue as the railroad, in the end, on Brooks Scanlan stuff, that you get on other people's stuff?

Mr. Keyes: Exactly.

Examiner Burchmore: Your road has a supply of tickets and way bills?

Mr. Keyes: Yes sir.

Examiner Burchmore: Bills of Lading, etc.

Mr. Keyes: Yes sir.

Examiner Burchmore: Where are your general offices?

Mr. Keyes: At Kentwood.

Examiner Burchmore: In the same building with the depot
3558 there?

Mr. Keyes: We are in the same building as the Brooks Scanlan Company.

Examiner Burchmore: In the same building as the Brooks Scanlan Company, I mean?

Mr. Keyes: Yes sir.

Examiner Burchmore: Do you use the Illinois Central depot at Kentwood?

Mr. Keyes: Well, it is right nearby, we have no depot. We have transfer facilities and all that.

Examiner Burchmore: The Illinois Central issues Bills of Lading on outbound lumber?

Mr. Keyes: Yes sir.

Examiner Burchmore: From the Brooks Scanlan Lumber Company mills?

Mr. Keyes: Yes sir.

Examiner Burchmore: In the same manner described this morning in the cases o- other roads?

Mr. Keyes: Yes sir.

Examiner Burchmore: Your road files a report with the Interstate Commerce Commission as required by the act to regulate
3559 commerce?

Mr. Keyes: Yes sir.

Examiner Burchmore: Do you keep your accounts in conformity with the prescribed system of accounts?

Mr. Keyes: Yes sir.

Examiner Burchmore: Do you ever have any accidents on the road?

Mr. Keyes: Very few.

Examiner Burchmore: Do you report those to the Commission?
Mr. Keyes: Yes sir.
Examiner Burchmore: Are your cars equipped with safety appliances?
Mr. Keyes: All that are required to be by the commission.
Examiner Burchmore: Do you post your tariff at the stations?
Mr. Keyes: Yes sir.
Examiner Burchmore: Have you a resident agent in Washington?
Mr. Keyes: Yes sir
Examiner Burchmore: Do you have resident agents at all the stations? You know the new law requires the Railroad Company to have a resident agent at each station whose name must be posted at the depot, and to whom the general public can go for
3560 information respecting rates, etc.
Mr. Keyes: I don't believe we have a resident agent.
Examiner Burchmore: I suggest that you look into that phase of the law.
Mr. Keyes: Where can that be found?
Examiner Burchmore: In the act to regulate commerce, as amended at the last session of Congress.
Mr. Keyes: I know we sent out placards to all our stations but I really have forgotten what that was for. I know I copied it out of the act.
Examiner Burchmore: Well, if you complied with that, all right; if you have not do so.
Mr. Keyes: I know I studied it over. I have forgotton just what it covered.
Examiner Burchmore: Your train men work in accordance with the hours of service law?
Mr. Keyes: Generally. Sometime they work over, but it is only when caused by accident or something of that kind.
Examiner Burchmore: You have the valuation of the road and equipment?
Mr. Keyes: Yes sir.
Examiner Burchmore: You stated that the road has not
3561 paid dividends?
Mr. Keyes: No sir.
Examiner Burchmore: Is the C. H. Stevens Logging Company on your line?
Mr. Keyes: The Stevens Logging Company used to saw for the Brooks Scanlan people.
Examiner Burchmore: Is that the Foley people?
Mr. Keyes: Yes sir.
Examiner Burchmore: Has the Stevens Logging Company gone out of business?
Mr. Keyes: Yes sir.
Examiner Burchmore: Who succeeded it?
Mr. Keyes: J. E. Hurd & Co.
Examiner Burchmore: Spell it.
Mr. Keyes: H-u-r-d.
Examiner Burchmore: Where located?

Mr. Keyes: At Scanlan where the Stevens Logging Company used to be located.

Examiner Burchmore: That is not the Company that sends logs to Foley?

Mr. Keyes: No sir.

Examiner Burchmore: What do they do—cut logs?

3562 Mr. Keyes: They do the logging for the Brooks Scanlan Company—load logs on cars and deliver the cars to the main line of the Kentwood and Eastern Railroad Company. They construct all the logging spurs. The Stevens Logging Company used to be contractors for the Brooks Scanlan Company.

Examiner Burchmore: This two cent allowance that the Illinois Central refunds at the end of the month——

Mr. Keyes: Two and a half.

Examiner Burchmore: Two and a half cents—who does that go to?

Mr. Keyes: Well, it goes back to the shipper for the reason that they are charged full freight on their logs.

Examiner Burchmore: It goes back to the Brooks Scanlan Company?

Mr. Keyes: Yes sir.

Examiner Burchmore: Does it go back to other people on the line that ship lumber?

Mr. Keyes: No, for the reason that, in the first place, they are only charged the actual rate.

Examiner Burchmore: The net rate, in the first place?

Mr. Keyes: Yes sir. It is impossible to do that on a mill-

3563 ing in transit proposition.

Examiner Burchmore: It seems to me that the Brooks Scanlan Company are better off at the end of the transaction by two and a half cents than their competitors. Maybe I am wrong about that?

Mr. Keyes: I think so.

Examiner Burchmore: Does the Brooks Scanlan Company pay the same amount substantially in the end on its log and lumber shipments over the Illinois Central as those other people pay?

Mr. Keyes: Exactly.

Examiner Burchmore: Did you ever complain of the car supply of the Illinois Central?

Mr. Keyes: We have complained to the Illinois Central.

Examiner Burchmore: Is your car supply reasonably satisfactory?

Mr. Keyes: Well it is pretty satisfactory right at the present time. It has not been all along in the past.

Examiner Burchmore: Does any officer of the Illinois Central Railroad Company own any stock in the Kentwood and Eastern Railway Company?

Mr. Keyes: No, sir.

3564 —. Are they interested in the Brooks Scanlan Company?

Mr. Keyes: No, sir.

Examiner Burchmore: Neither the railroad nor its officers are interested in this enterprise?

Mr. Keyes: None whatever.
Examiner Burchmore: Who are the Brooks Scanlan people?
Mr. Keyes: Well, Mr. M. J. Scanlan is of Minneapolis, Minnesota.
Examiner Burchmore: What is his business?
Mr. Keyes: Lumberman.
Examiner Burchmore: With interests elsewhere in the country?
Mr. Keyes: Yes sir.
Examiner Burchmore: Extensive interests?
Mr. Keyes: Yes, sir.
Examiner Burchmore: Who are the others?
Mr. Keyes: D. F. Brooks, A. S. Brooks, and E. R. Brooks.
Examiner Burchmore: Who are the Messrs. Brooks?
Mr. Keyes: Who are they?
Examiner Burchmore: Yes.
Mr. Keyes: They are lumbermen, all of them in Minneapolis. Those four are the principal stockholders.

3565 Examiner Burchmore: Are they interested in any other lumbering operations on the Illinois Central so far as you know?

Mr. Keyes: No sir.
Examiner Burchmore: What are their other interests?
Mr. Keyes: They have timber in Oregon—out there; not as the Brooks Scanlan Company, but interested personally—in Oregon—and they have several large tracts in British Columbia, and the Bahama Islands.
Examiner Burchmore: None in this part of the country—in the South?
Mr. Keyes: As I say, they have operations in the Bahama Islands.
Examiner Burchmore: None in the southern states?
Mr. Keyes: I don't know but what they have some timber in Florida.
Examiner Burchmore: Are there any questions you desire to ask Mr. Reed?
Mr. Reed: Yes. Mr. Keyes, how is the assessment of your road made?
Mr. Keyes: It is made by the state Board of assessors on valuation.

3566 Mr. Reed: Your Honor understands that the Parish assessor, *assessing* ordinary property, and we have a separate Board of assessment for public carriers.

Examiner Burchmore: That has been stated in other cases today.
Mr. Reed: It was stated with respect to the State of Mississippi, and it is also true in the State of Louisiana.
Examiner Burchmore: I believe the Granada, Greensburg and Southwestern said so. What kind of a railroad is that?
Mr. Keyes: Which?
Examiner Burchmore: Your competitor, the Granada, Greensburg and Southwestern?
Mr. Keyes: It is like our narrow gauge line.
Examiner Burchmore: A first class railroad I guess?
Mr. Keyes: I guess pretty fair for a narrow gauge railroad.

Examiner Burchmore: As good as yours?

Mr. Keyes: I don't think so.

Examiner Burchmore: You are going to connect up with it?

Mr. Keyes: Not that we have any intention of doing so.

3567 Examiner Burchmore: You are not going to be a part of that trunk line—the K. G. & S. W. and the N. O. & G. N.?

Mr. Brady: It is our purpose to submit just such a proposition. That is our purpose, to submit that very proposition; we have figured it all out. That was our intention.

Mr. Reed: Are you not also exempt to a part of your railroad during a number of years, under a constitutional exemption for railroads provided for in the constitution of the State of Louisiana?

Mr. Keyes: Yes sir.

Mr. Reed: Speaking of hauling timber for the Brooks Scanlan Lumber Company, how far on your narrow gauge road east of Kentwood have they timber to haul?

Mr. Keyes: Why, their hauling now is from what we call 12 mile spur. I think they have a little timber east of that point but very little.

Mr. Reed: And your railroad runs out about 18 miles further east?

Mr. Keyes: Yes, further east than 12 mile spur.

Examiner Burchmore: Why did you build it for that distance?

3568 Mr. Keyes: We did not; the road was already built when we took possession.

Examiner Burchmore: Why was it built? Was their timber there?

Mr. Keyes: The original owners had a body of timber out there. In fact, our company has logged some timber within a few miles of there, but it is practically exhausted, so far as their holdings are concerned.

Mr. Reed: Hackley is in Washington Parish?

Mr. Keyes: Yes sir.

Mr. Reed: And since cutting the timber out in Washington Parish, or more than 12 or 13 miles east of Kentwood, you still maintain the road east of the eastern limit of the Brooks Scanlan Company's timber, about 18 miles?

Mr. Keyes: About 18 miles, yes sir.

Mr. Reed: Do you remember when they quit cutting out east of the 12 mile point?

Mr. Keyes: I think it has been something like a year.

Mr. Reed: You still continue to run the road over to Hackley?

3569 Mr. Keyes: Yes sir.

Mr. Reed: Mr. Keyes, you received regular instructions from the Interstate Commerce Commission in regard to the equipment of your road and schedules and all that?

Mr. Keyes: Yes sir.

Examiner Burchmore: That question does not mean much, because the Interstate Commerce Commission's bureaux send letters

and instructions to everybody whose names appear in any railroad guide book of any character.

Mr. Reed: I will ask you this: you are recognized by the State Railroad Commission as being a subject to its jurisdiction?

Mr. Keyes: Yes sir.

Mr. Reed: Speaking of your passenger trains you are running them according to schedule and under the order of the Louisiana Railroad Commission?

Mr. Keyes: We are compelled to put on regular passenger trains by the Commission.

Examiner Burchmore: You have heard the request made on other companies for maps showing the settlements, etc. Perhaps that tonnage statement will suffice?

3570 Mr. Keyes: I have got another separation there.

Examiner Burchmore: That will suffice, but I request a map.

Mr. Reed: Of both the roads?

Examiner Burchmore: Of both parts; it is all called for of the whole line. The character of map already described today.

Mr. Reed: Where shall we forward this?

Examiner Burchmore: To the Interstate Commerce Commission with mention of this case. Is there any other statement you wish to make, Mr. Keyes?

Mr. Keyes: I have made an estimate of the lumber shipments since July 1, or from July to October inclusive, of this year.

Mr. Reed: That is included in the statement, a copy of which you have filed. Do you intend to file that?

Mr. Keyes: It is not exactly in order.

Mr. Reed: No.

Mr. Keyes: That was a copy I had.

Examiner Burchmore: Give it to the stenographer to check the figures from. I would not put it in the record unless you desire to offer it in evidence.

3571 Mr. Reed: I expect it will save time.

Examiner Burchmore: Is there any objection to putting it in evidence.

Mr. Keyes: I don't know that there is.

Examiner Burchmore: We will take it for what it is worth. Is there any further statement, Mr. Keyes? It seems to me that Mr. Reed has covered the road rather fully?

Mr. Reed: If there should be any other information you want, we will be very glad to furnish it.

Examiner Burchmore: The Commission will request any further information that it may feel it is necessary, but if you feel you have left out any points and it is material, you are at liberty to advise the commission in the form of a written communication which will be placed in the record and given such weight as it may seem to merit, but I would advise you not to do that unless the matter that you have omitted seems to be very important. Will you also kindly file your division sheets?

Mr. Keyes: The division sheets and maps?

Examiner Burchmore: Yes sir.
Mr. Keyes: All right.

3572 *Kentwood and Eastern Railway Company.*

G. A. KEYES, recalled, testified as follows:

I failed to state in the examination that our narrow gauge line from Kentwood to Mile Post, and from Bolivar Junction to Hackley, a mileage of 28.28 miles is leased by the Kentwood and Eastern Railway Company from the Brooks Scanlan Company.

Examiner Burchmore: On what basis?

Mr. Keyes: At an annual rental of $10,000.00 and taxes.

Examiner Burchmore: Well, what is the value of that road?

Mr. Keyes: Well, we don't know what it cost, but the Lumber Company figured it about $120,000.00.

Examiner Burchmore: Do you maintain the line?

Mr. Keyes: Yes, sir.

Examiner Burchmore: The railroad maintains the line?

Mr. Keyes: Yes, sir.

Mr. Reed: There is one other statement you omitted to make.

Mr. Keyes: The number of passengers we handled last year was not brought out.

Mr. Reed: That is shown by your annual report?

3573 Mr. Keyes: Yes, but I have figured it the first four months of this present fiscal year?

Mr. Reed: And what is that?

Mr. Keyes: On the basis of those figures during the present fiscal year, we will have handled over 53,000 passengers.

Examiner Burchmore: At a revenue of——

Mr. Keyes: It figures three cents a mile.

Examiner Burchmore: Is that all?

Mr. Keyes: I don't know that there is anything else, unless you want to know something else about the rental. The mileage between Kentwood and Hackley is 30.02, but part of that original line has been abandoned.

Mr. Reed: The Kentwood and Eastern Railway Company has constructed and owns a mileage equal to that abandoned.

3574 The estimate- of lumber shipments referred to by the witness, Mr. Keyes, on pages 198-199 were not filed with the stenographer.

By MR. REED:

and thereupon marked "Defendants' Exhibit 'A,' received in evidence, Index containing list of tariff publications in effect on November 1st, 1909, marked Exhibit "A."

The document so offered and identified was received in evidence and thereupon marked "Defendant's Exhibit 'A,' received in evidence December 13, 1910," page —, and is attached hereto.

By MR. REED:

We also offer freight tariff covering allowances for mileage on

private cars, issued September 29, 1909, and effective of November 1st, 1909.

The document marked "B," the said freight tariff, so offered and identified was received in evidence, and thereupon marked "Defendant's Exhibit 'B', received in evidence December 13, 1910," page —, and is attached hereto.

By MR. REED:

Counsel for defendant further offers in evidence, local distance tariff of class and commodity rates applying between all stations on traffic having origin, destination and entire transportation within the State of Louisiana for the Kentwood and Eastern Railway, issued September 29th, 1909, effective October 20th, 1909, marked Defendant's Exhibit "C."

3575 The document so offered and identified was received in evidence and thereupon marked "Defendant's Exhibit 'C,' received in evidence December 13, 1910," page —, and is attached hereto.

By MR. REED:

Counsel for defendant further offers and files in evidence, Car service rules and rules governing the furnishing of cars for the Kentwood and Eastern Railway Company, issued September 15, 1909, effective intrastate, September 20, 1909, and interstate, October 15, 1909, marked Defendant's Exhibit "D."

The document so offered and identified was received in evidence and thereupon marked "Defendant's Exhibit D," received in evidence December 13, 1910, page —, and is attached hereto.

By Mr. REED:

Counsel for defendant further offers in evidence, Local Distance tariff of Class and Commodity rates applying between all stations on Interstate Traffic only, for the Kentwood and Eastern Railway Company, issued September 29, 1909, effective November 1st, 1909, marked Defendant's Exhibit "E."

The document so offered and identified was received in evidence, and thereupon marked "Defendant's Exhibit 'B,' received

3576 in evidence December 13, 1910," page —, and is annexed hereto.

3577 *Doniphan, Kensett and Searcy Railway Company.*

(Appearance, W. L. Stocking, Esq., Attorney.)

H. R. KILPATRICK, was called as a witness, and being first duly sworn, testified as follows:

Direct examination.

Examiner Burchmore: What is your occupation Mr. Kilpatrick?

Mr. Kilpatrick: Secretary-Treasurer and General Manager of the Doniphan, Kensett and Searcy Railway Company and also Treasurer and General Manager of the Doniphan Lumber Company.

Examiner Burchmore: I assume it is a fact, Mr. Kilpatrick that the Doniphan, Kensett and Searcy Railway Company in a substantial sense, is controlled by the stockholders of the Doniphan Lumber Company through ownership of a majority of the stock?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: Will you describe just in a general and substantial way, that control?

Mr. Kilpatrick: Mr. Carter is President of the Doniphan Lumber Company and also the Doniphan Railroad Company and of course is Chief Executive. I am General Manager of both companies and have charge of local conditions.

3578 Examiner Burchmore: Well, are the stockholders of the two companies identical?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: And do the stockholders own their stock in proportion?

Mr. Kilpatrick: Yes, the stockholders of the Railroad own stock in the same proportion that they do in the lumber company.

Mr. Stocking: Pardon the interruption. There are a few shares held for purposes of organization, on the outside.

Examiner Burchmore: The Doniphan Railroad connects with the Iron Mountain at Kensett, Arkansas?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: And with the Rock Island at Searcy, Arkansas?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: What is the Missouri and North Arkansas road?

Mr. Kilpatrick: You can call it a truck line, but — is a line of some three hundred or more miles from Joplin, Missouri, to Helena, Arkansas.

3579 Examiner Burchmore: Is that controlled by the same lumber interests?

Mr. Kilpatrick: No, sir, that is owned and controlled by Mr. Princis and Mr. Scolan principally—St. Louis capitalists.

Examiner Burchmore: Is the Railroad entirely divorced from milling operations?

Mr. Kilpatrick: I think, so far as I know.

Examiner Burchmore: Is it part of any railroad system?

Mr. Kilpatrick: None at all according to my knowledge.

Examiner Burchmore: You also connect with that railroad at Searcy?

Mr. Kilpatrick: We do.

Examiner Burchmore: What sort of country does your railroad traverse?

Mr. Kilpatrick: It is level, comparatively flat country.

Examiner Burchmore: Timbered?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: Forests on the line—extensive forests?

Mr. Kilpatrick: No, sir.

3580 Examiner Burchmore: A farming country?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: Are there any forests on the line?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: Are there any forests near the line?

Mr. Kilpatrick: From 12 to 30 miles north of the line, there are extensive forests.

Examiner Burchmore: Are there any private tram lines or loggine road connected with the Doniphan Railroad at Searcy?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: Any box factories on the line?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: Stave factories?

Mr. Kilpatrick: Yes, sir, there is. I would like to explain that by saying that there is a stave factory at Searcy, and that their plant is on our connection of the M. & N. A. We could stop cars or unload anything for them there but we have no direct track connection there with them. We did not furnish them a switch. They are not, strictly speaking, on our line, but we have served
3581 them and could.

Examiner Burchmore: What other industries are there on the line aside from saw mills?

Mr. Kilpatrick: We serve the oil mill and the plant at Searcy; we have no direct switching to their property, but we run to it at and at various times, we set cars of coal for them on our main line, and at other times, we set empty cars on our main line, for them to load with ice. At other times we deliver commodities to them through a switch and connection with the Rock Island. By paying that switching charge, we can deliver them wherever they like in their property, coal, cotton seed or anything of that character.

Examiner Burchmore: Has this industry any relation with your road?

Mr. Kilpatrick: None whatever.

Examiner Burchmore: Has Mr. Carter any interest in it?

Mr. Kilpatrick: Not at all.

Examiner Burchmore: Is it wholly unrelated to the lumber and railroad company?

Mr. Kilpatrick: Wholly so.

Examiner Burchmore: What mill has the Doniphan Lum-
3582 ber Company on your line?

Mr. Kilpatrick: We have one plant located at Doniphan.

Examiner Burchmore: Where is that in relation to Kensett?

Mr. Kilpatrick: It is almost due north one and a half miles from there.

Examiner Burchmore: In other words, a mile and a half from the Iron Mountain Junction?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: How far from the Rock Island Junction?

Mr. Kilpatrick: Approximately five and a half miles.

Examiner Burchmore: When was the road constructed?

Mr. Kilpatrick: That part of it from Doniphan to Kensett, a mile and a half, was constructed in the summer of 1906.

Examiner Burchmore: When was the mill at Doniphan opened?

Mr. Kilpatrick: To the best of my recollection, about the first of 1908.

Examiner Burchmore: Subsequent to the building of the road?

3583 Mr. Kilpatrick: The road was built earlier than the road was completed. The road was built to carry the material when the machinery went into the construction of the mill.

Examiner Burchmore: Then your first junction was with the Iron Mountain?

Mr. Klpatrick: Yes, at Kensett.

Examiner Burchmore: Where did you get the rails to build the road from?

Mr. Kilpatrick: Leased from the Iron Mountain.

Examiner Burchmore: On what basis?

Mr. Kilpatrick: On the basis, I believe, $29.50 a ton and an anual rental of 5%.

Examiner Burchmore: Any account for the depreciation—did you take any account of that?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: What does that $29.50 per ton represent? What did it represent?

Mr. Kilpatrick: The price of the rail material plus the freight. It was an arbitary price fixed by the Railroad company at which we could buy the rail if we cared to at any time within the

3584 life of the contract or lease. I believe the contract stipulates that if we turn the rail back, whatever is missing or lost and is not in practically the same condition that they turn it over to us in, we have to settle for on that basis.

Examiner Burchmore: Have you subsequently purchased the rail?

Mr. Kilpatrick: No, sir, we still lease it.

Examiner Burchmore: If you turn that rail back in 20 years do you get anything for it?

Mr. Kilpatrick: It would be worthless. It is a pretty hard question. I think we would make it our business to turn it quicker than that if it was going to pieces.

Examiner Burchmore: The Iron Mountain has no use for rusty rail?

Mr. Kilpatrick: We would give it back.

Examiner Burchmore: Would they pay you $29.50, or $10.00, or something substantially less?

Mr. Kilpatrick: You understand, the lease only runs two years and of course, at any period in there, if the rail got so bad that we thought we had better turn it in we would turn it in.

Examiner Burchmore: It only runs two years longer or

3585 ran two years from the beginning?

Mr. Kilpatrick: In two year periods is my recollection.

Examiner Burchmore: Who constructed the road—a contractor hired by the Lumber Company?

Mr. Kilpatrick: No, sir, the railroad company constructed it and the Lumber Company financed it.

Examiner Burchmore: Does that statement apply to the entire present line of the railroad?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: When did you build east of Doniphan?

Mr. Kilpatrick: West of Kensett?

Examiner Burchmore: West of the line—between Kensett and Searcy?

Mr. Kilpatrick: That was constructed in 1907.

Examiner Burchmore: I see. Kensett is intermediate to Doniphan and Searcy—a Y-shaped road? I did not perceive that. I thought Doniphan was between Searcy and Kensett?

Mr. Kilpatrick: No.

Examiner Burchmore: What seemed to be the two termini or points of connection or really not termini to the road at all. What was the purpose in building across to Searcy?

Mr. Kilpatrick: The purpose was two-fold. We felt that we could do a considerable amount of commercial business and at the same time better the railroad facilities of that Lumber Company.

Examiner Burchmore: And at the same time receive a higher division by reason of the competition of trunk lines with each other for your traffic?

Mr. Kilpatrick: I don't think so. I don't think our divisions were raised.

Examiner Burchmore: There was no increase in the divisions incident to the new connection?

Mr. Kilpatrick: Not to my knowledge or recollection. The advantage to the mill was a local one. A car supply and greater terminal.

Examiner Burchmore: Have you any mill save that of Doniphan?

Mr. Kilpatrick: No sir.

Examiner Burchmore: Has the Lumber Company had any other mill?

Mr. Kilpatrick: For some eleven years they operated a mill in southeastern Missouri at a point called Doniphan.

Examiner Burchmore: Doniphan, Missouri?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Did they have a tap road there?

Mr. Kilpatrick: Not to my knowledge.

Examiner Burchmore: Would you know it if they had?

Mr. Kilpatrick: I think so yes sir. I was not connected with that operating company and for that reason, I hesitate to speak.

Examiner Burchmore: Then the Lumber Company is an old corporation, comparatively?

Mr. Kilpatrick: Comparatively so, yes sir.

Examiner Burchmore: They formerly operated elsewhere?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Does it now operate anywhere else?

Mr. Kilpatrick: No.

Examiner Burchmore: How was this road originally financed—who furnished the money?

Mr. Kilpatrick: The Lumber Company.

Examiner Burchmore: And took in exchange capital stock?

Mr. Kilpatrick: No.

Examiner Burchmore: Is this a case where the Lumber Company declared a dividend and the stockholders used the dividend
3588 to build a railroad or buy its stock?

Mr. Kilpatrick: Not that I know of, no sir.

Examiner Burchmore: That is a perfectly proper way of doing, but I wanted to know if it was done here? How was it financed?

Mr. Kilpatrick: Directly by the owners of the Lumber Company. The Lumber Company itself actually furnished the funds.

Examiner Burchmore: And subsequently had railroad stock issued to cover it?

Mr. Kilpatrick: To the Lumber Company?

Examiner Burchmore: To the stockholders?

Mr. Kilpatrick: No, the Railroad company and the lumber company were absolutely separate. When the railroad company needed funds, they called upon the lumber company charged the railroad with the funds and turned them over to the railroad.

Examiner Burchmore: What is the total capital stock of the railroad company and how much is issued?

Mr. Kilpatrick: $100,000.00 all issued.

Examiner Burchmore: Issued for cash?

Mr. Kilpatrick: No, part of it—I think $12,000.00 was
3589 paid in cash.

Examiner Burchmore: And the balance was paid for out of the moneys advanced by the Lumber Company?

Mr. Kilpatrick: The balance was issued to take up and pay for the original company which was called the Doniphan, Kensett and Searcy Railroad Company.

Mr. Stocking: Mr. Examiner, if you will permit, I can make a statement which will simplify.

Examiner Burchmore: Yes.

Mr. Stocking: There was a railroad company originally called the Doniphan, Kensett, and Searcy Railroad Company—Mr. Witness, you will correct me if I am in error. It was created under the laws of Arkansas, and stock was subscribed and 5% of that $45,000.00, making $2,250.00 was under the laws of Arkansas, paid to the Railroad Company and all of the stock issued. The Railroad Company then constructed the idea and the lumber company furnished the funds from time to time as it needed it. In 1899, there was a re-organization by which a new corporation was organized under the laws of Arkansas, by the name of the Doniphan, Kensett and Searcy Railway Company, organized under the provisions of the Arkansas statute by which a corporation—a railway cor-
3589*a* poration—may be organized for the purpose of purchasing another railroad, and paying for it in its stock. There was $12,000.00 of stock subscribed to the Doniphan Kensett and Searcy Railway by the same stockholders who paid that $12,000.00 at full par value in cash out of their net funds. The balance of the $100,000.00 was turned over to the old Company, the railroad company,

for the balance, and was by the old Arkansas Company, distributed by way of a dividend to its stockholders. Do I make that plain?

Examiner Burchmore: That is your understanding, Mr. Kilpatrick?

Mr. Kilpatrick: Yes, sir.

Mr. Stocking: If I said 1899 I meant 1909, when the new company was organized.

Examiner Burchmore: I think that that is apparent. Has the Railroad any bonded indebtedness.

Mr. Kilpatrick: No sir.

Examiner Burchmore: Has it any indebtedness other than current liabilities?

Mr. Kilpatrick: I believe not, it owes the Lumber Company still, but has no bonded indebtedness or anything of that sort.

3590 Examiner Burchmore: What does it owe the Lumber Company?

Mr. Kilpatrick: Mr. Smythe there is the auditor.

Mr. Stocking: We will put the auditor on the stand if your Honor pleases.

Examiner Burchmore: Will you inform me with respect to the present directors and officers of the Company?

Mr. Kilpatrick: I believe I would rather have you ask Mr. Smythe who has the record. I can say about the officers but I am not sure about all the directors.

Mr. Stocking: You have the request of the Association over in your pocket which will show who they are.

Examiner Burchmore: Mr. Smythe can answer that offhand. What is the mileage of this road?

Mr. Kilpatrick: Six miles in operation and seven miles under construction.

Examiner Burchmore: Our records seem to show a mileage of 7.44 miles, standard gauge, does that include sidings?

Mr. Kilpatrick: Yes that is the main line.

Examiner Burchmore: That is standard gauge?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Do you hold any trackage rights?

Mr. Kilpatrick: We have trackage rights over the Missouri

3591 and North Arkansas.

Examiner Burchmore: From where to where?

Mr. Kilpatrick: For a distance of fifty miles north of Searcy.

Examiner Burchmore: What do you go way up there for?

Mr. Kilpatrick: For logs, a logging train.

Mr. Stocking: There are forests up there.

Examiner Burchmore: There are no forests around Doniphan?

Mr. Kilpatrick: No sir.

Examiner Burchmore: That explains the absence of private tap lines?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Tell me a little about that, you run up 50 miles to the forests?

Mr. Kilpatrick: We have a contract with the Missouri and North Arkansas which expires on December 31,1910, whereby we operate

this logging train over their rails for a distance not exceeding fifty miles, and for which we pay them on a basis of three cents per hundred pounds.

Examiner Burchmore: You pay three cents per train mile?

3592 Mr. Kilpatrick: Three cents per hundred pounds for the movement. Out of that three cents, the Missouri and North Arkansas allow 75% for the operation of the train.

Examiner Burchmore: When you say "we pay" you mean the lumber company pays three cents?

Mr. Kilpatrick: The Railroad Company.

Examiner Burchmore: Then they actually only pay 25% of three cents?

Mr. Kilpatrick: No, the Railroad, the Doniphan Kensett and Searcy Railway Company pay the Missouri and North Arkansas three cents per hundred pounds for all logs which the Doniphan, Kensett and Searcy Railway transport over their lines. Then the Missouri and North Arkansas Railway allow the Doniphan Kensett and Searcy Railway 75% of the amount for their engine service—train service—for operation. Then the Doniphan Kensett and Searcy Railway Company charges the Doniphan Lumber Company two cents per hundred pounds for every hundred pounds of logs it delivers to them at their plant.

Examiner Burchmore: Now, you say you pay three cents to the Missouri and North Arkansas, does that cash actually pass?

3593 Mr. Kilpatrick: Actually passes.

Examiner Burchmore: Then you say you are allowed 75% of that? How are you allowed it?

Mr. Kilpatrick: The bill is for the total number of pounds transported each month at three cents per hundred pounds, and then on their bill they set at 75% that amount as a credit and we pay them by actual check the difference.

Examiner Burchmore: 25%?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Well if you are charged by the Missouri & North Arkansas Railway a three cents charge for their trackage right, it would seem that you might properly charge the Lumber Company three cents. Why do you charge less?

Mr. Kilpatrick: We base our charge to the Lumber Company on the rough lumber rate applicable in the State of Arkansas which at that time was two cents? We applied the state rate. The Missouri and North Arkansas, for reasons better known to themselves, files a special tariff covering that situation raising that rate to three cents, and allowing us 75% of the tariff.

Examiner Burchmore: What do you think those reasons

3594 are? Have you any idea?

Mr. Kilpatrick: No I have not. It was the traffic manager's proposition and it is an unusual arrangement, but it is in actual existence.

Examiner Burchmore: Well, is it not in order that other mills

and connections may not be advised on the exact payment that you make?

Mr. Kilpatrick: I think not, I think all of it is of record, and I know a regular tariff is filed with the Arkansas Commission.

Examiner Burchmore: Providing for a 75% allowance?

Mr. Kilpatrick: I am not so sure about that.

Mr. Stocking: May I interrupt? As I understand it, instead of making a trackage contract which would give a certain department of the road the credit—I mean a certain department of the Missouri and North Arkansas the credit in this business, they wanted the credit to go to the traffic department of the road for some reason of their own.

Examiner Burchmore: It was expected to increase some figures or decrease others?

Mr. Stocking: I think for some purpose of their own they wanted to swell the traffic of the road.

3595 Mr. Kilpatrick: That was our surmise, but I don't know that, and for that reason, I did not go into it. I know the traffic manager, and he was trying to build up a record for himself. If the traffic department would get the credit for so much per hundred pounds instead of the operating department getting it, it would appear in his favor.

Examiner Burchmore: Are there private tram lines running from the Missouri and North Arkansas into the woods of the Doniphan Company?

Mr. Kilpatrick: One is just started—seven miles under construction: It is not a private tram, it is a separate branch of the Doniphan, Kensett and Searcy Railway.

Examiner Burchmore: That is seven miles under construction?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Where does it connect with the Missouri and North Arkansas?

Mr. Kilpatrick: At Letona.

Examiner Burchmore: The traffic is actually moving from some points between Letona and the junction?

Mr. Kilpatrick: Letona is the junction. There is nothing moving yet. Our track is still being laid; the grade work

3596 is under course.

Examiner Burchmore: Where do you get your logs now?

Mr. Kilpatrick: Load them on the main line of the Missouri and North Arkansas.

Examiner Burchmore: Which runs through your woods?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Has the Missouri and North Arkansas any other tram lines or tap line connections up with Letona?

Mr. Kilpatrick: Nothing nearer than I think forty miles above there. There they have a connection with a private road un-incorporated—a private road belonging to a cooperage concern.

Examiner Burchmore: Has the Railroad Company any stations? Station buildings, I mean?

Mr. Kilpatrick: One station building at Searcy.

Examiner Burchmore: Is that station building used also by the Missouri and North Arkansas?

Mr. Kilpatrick: No sir, simply by the Doniphan, Kensett and Searcy Railway.

Examiner Burchmore: Where do you meet the Rock Island?

Mr. Kilpatrick: We meet the Rock Island where we cross them.

3597 Examiner Burchmore: The Rock Island terminus is at Letona?

Mr. Kilpatrick: Correct.

Examiner Burchmore: The Rock Island crosses the Iron Mountain at Higginson?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: Did the Rock Island build from Higginson to Searcy to meet your road?

Mr. Kilpatrick: No sir, it did not.

Examiner Burchmore: Why did they build?

Mr. Kilpatrick: I cannot tell you; I think they bought the property from a small line, some several years before.

Examiner Burchmore: A small tap line?

Mr. Kilpatrick: I think there was a short line that was constructed from Searcy through Higginson down there, and below Higginson and finally it was extended to Devil's Bluff itself on the main line of the Rock Island, which at that time I believe was the Choctaw Oklahoma and Gulf.

Examiner Burchmore: That is the main line from Little Rock to Memphis?

Mr. Kilpatrick: Correct.

Examiner Burchmore: Do you know the name of the road
3598 from Devil's Bluff to Higginson?

Mr. Kilpatrick: That was a regular tap line. No, I don't reme-ber the exact name. May I correct that?

Examiner Burchmore: Yes.

Mr. Kilpatrick: I believe the Searcy and Des Arc.

Examiner Burchmore: Do you know who owned that road?

Mr. Kilpatrick: I do not. I think it was sold to the Rock Island or to the Choctaw, or the Choctaw sold it to the Rock Island. It was recently purchased—since our annual report was made.

Examiner Burchmore: What use is made of its cars?

Mr. Kilpatrick: They will be used some for camp cars, and two cars in its construction work on its seven miles and some will be used in the regular traffic as the same develops.

Examiner Burchmore: They are second hand box cars?

Mr. Kilpatrick: Yes, bought from the Chicago and Great Western Railway.

Examiner Burchmore: In good condition?

Mr. Kilpatrick: The cars are in active service today and are on the road loaded with corn and other products.

Examiner Burchmore: Have you any water tanks for the
3599 locomotives?

Mr. Kilpatrick: Yes, sir, one.

Examiner Burchmore: Where do you get the fuel for your locomotives?

Mr. Kilpatrick: We buy it on the open market from the different coal companies?

Examiner Burchmore: It moves interstate?

Mr. Kilpatrick: I think at the present time it is moving intrastate, but it has moved interstate.

Examiner Burchmore: Where do you take delivery of that coal?

Mr. Kilpatrick: Sometimes we take delivery at Doniphan and sometimes at Kensett.

Examiner Burchmore: It also moves in such a way that you get a division out of it. Does it not?

Mr. Kilpatrick: Generally yes. I think we have had a few cars of coal that we have not had a division on.

Examiner Burchmore: How many flat cars have you?

Mr. Kilpatrick: We have twenty one standard flat cars. Automatic couplers entirely equipped with air.

Examiner Burchmore: How many logging cars?

Mr. Kilpatrick: 20 comprise our logging cars. We log on the standard flat cars.

3600 Examiner Burchmore: You do not have additional logging cars?

Mr. Kilpatrick: None whatever.

Examiner Burchmore: Any passenger cars?

Mr. Kilpatrick: No sir.

Examiner Burchmore: Cabooses?

Mr. Kilpatrick: Two.

Examiner Burchmore: Working cars? That includes—you have none in addition to those already described?

Mr. Kilpatrick: Only one, and one of those a caboose—it has a platform and is housed over. It answers for a caboose—for a caboose and for a working car. Answers both purposes.

Examiner Burchmore: Have you any derricks or shovels or pile drivers?

Mr. Kilpatrick: No.

Examiner Burchmore: Any hand cars?

Mr. Kilpatrick: Yes. We had two at the time our annual report was made, and I think we purchased two since.

Examiner Burchmore: Has the lumber company any equipment of its own?

Mr. Kilpatrick: No sir.

3601 Examiner Burchmore: Does it lease any from the Railroad Company?

Mr. Kilpatrick: No sir.

Examiner Burchmore: The number of employees in the different departments of the Railroad, I assume, are given in the annual report?

Mr. Kilpatrick: They are.

Examiner Burchmore: With exactness.

Mr. Kilpatrick: They are:

Examiner Burchmore: How many train crews have you?

Mr. Kilpatrick: Two.

Examiner Burchmore: One for each locomotive?

Mr. Kilpatrick: Yes. One operates the log train, and the other operates our commercial train.

Examiner Burchmore: What general office employees are there?

Mr. Kilpatrick: We have the general agent at Searcy. He has a clerk. At Doniphan, we have an agent who devotes a part of his time to the Railroad and a part of it to the Lumber Company, and who acts jointly.

Examiner Burchmore: How about that agent at Searcy? Exclusively in the employ of the Railroad Company?

3602 Mr. Kilpatrick: Exclusively.

Examiner Burchmore: What other general officers are there to receive salaries? Not by name?

Mr. Kilpatrick: Our auditor receives a salary, but his salary is divided between the Doniphan Lumber Company, the Saline River Lumber Company, the Saline River Railroad Company and the Doniphan Kensett and Searcy Railway Company.

Examiner Burchmore: Is that division of salary supposed to be in proportion to the services rendered?

Mr. Kilpatrick: I presume so. Our President made that division, whatever it was. I cannot answer that absolutely. I received a salary as General Manager.

Examiner Burchmore: You are also an employee of the Lumber Company?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: What is your salary from the Railroad Company alone?

Mr. Kilpatrick: $50.00 per month.

Examiner Burchmore: You devote a substantial part of your time to the Railroad Company?

Mr. Kilpatrick: Yes sir.

3603 Examiner Burchmore: Do you run any regular passenger or mixed trains?

Mr. Kilpatrick: No we do not.

Examiner Burchmore: An irregular service?

Mr. Kilpatrick: Our service is exclusively freight; we have no passenger service.

Examiner Burchmore: Do you run any regular freight trains?

Mr. Kilpatrick: We run a regular local freight train.

Examiner Burchmore: Every day?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: From Searcy to Kensett?

Mr. Kilpatrick: From Doniphan to Kensett and Kensett to Searcy and return.

Examiner Burchmore: One long trip daily?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Do you have any public time tables for them?

Mr. Kilpatrick: We do not.

Examiner Burchmore: You have a time table?

Mr. Kilpatrick: We have an employees' schedule card that they leave at Doniphan at certain times.

3604 Examiner Burchmore: Do you have a telephone or telegraph line for the operation of your road?

Mr. Kilpatrick: We have a telephone line.

Examiner Burchmore: With boxes along the road?

Mr. Kilpatrick: No, we have an instrument in the Iron Mountain station at Kensett, and our phone at Doniphan, and at the station in Searcy.

Examiner Burchmore: Does your logging train operate in a regular way over the Missouri and North Arkansas?

Mr. Kilpatrick: It is somewhat irregular. It *has* handled as an extra train.

Examiner Burchmore: But it makes one trip each way daily?

Mr. Kilpatrick: That is the interstate schedule, but some days we do not go out, as they may be laid up for some cause or another.

Examiner Burchmore: How many cars on that train as an average?

Mr. Kilpatrick: An average of 18.

Examiner Burchmore: I assume you do not carry the mail?

Mr. Kilpatrick: We do not.

Examiner Burchmore: Your annual report shows figures relative to your freight traffic—I presume your annual report for

3605 1910 has been filed with the Commission?

Mr. Kilpatrick: I believe it has.

Examiner Burchmore: Are you familiar with the figures as to the freight traffic?

Mr. Kilpatrick: Not as familiar as our Auditor.

Examiner Burchmore: Well, this contract with the Missouri and North Arkansas? Is it filed with the Commission?

Mr. Kilpatrick: I don't know, but my impression is that it is not. It is strictly an intra-state affair. May I ask you a question outside of the record? Does it need to be filed?

Examiner Burchmore: Why, I think not, that is, if it has no relation whatever to interstate traffic. I am not sure, but I think it does not need to be filed, but the examiners of the commission have access to it?

Mr. Kilpatrick: Oh, yes, we have always been perfectly open to all those things to anyone that comes around.

Examiner Burchmore: Do you publish any tariff of your net issues?

Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Filed with the Interstate Commerce Commission?

3606 Mr. Kilpatrick: Yes sir.

Examiner Burchmore: Reference will be made to the tariff files. Please state in your own way the basis of the joint rates on lumber over your line?

Mr. Kilpatrick: We have joint rates and divisions in connection with the Iron Mountain and Chicago, Rock Island and Pacific, and

the Missouri and North Arkansas to respective territories. The rates are the same and the divisons are the same.

Examiner Burchmore: Over the different roads?

Mr. Kilpatrick: Yes—we get three cents—a division of three cents to points east of the Mississippi river, and north of the Ohio river and on West point shipments we get a division of four cents. We actually handle that tonnage with our own power.

Examiner Burchmore: Are the rates from Doniphan the same as from Kensett over your line, as from Kensett over the Iron Mountain?

Mr. Kilpatrick: I think they are.

Examiner Burchmore: Are they the same from Searcy as on the Rock Island?

Mr. Kilpatrick: Yes sir.

3607 Mr. Kilpatrick: They are carried as a common point.

Examiner Burchmore: There are no milling in transit rates on your line?

Mr. Kilpatrick: None whatever.

Examiner Burchmore: And no possibility of using such rates?

Mr. Kilpatrick: We see no present action of any.

Examiner Burchmore: I ask the latter question because in another case, already heard, it developed that the Iron Mountain had under its power of attorney, given short lines, milling in transit rates, and several short lines were parties to the milling in transit rates without knowing it, and I thought possibly you might discover you were giving milling in transit rates?

Mr. Kilpatrick: Possibly so.

Examiner Burchmore: But you have no opportunity to use it?

Mr. Kilpatrick: No.

Examiner Burchmore: There is no other mill on your line?

Mr. Kilpatrick: No other mill. I want to put in there that there is a coal and wood yard located on our tracks in Searcy into which place we put a switch in for them. There is also a concrete block concern located on our tracks adjacent thereto and we serve them.

3608 Examiner Burchmore: You receive a division of three and four cents. Now, what service do you render for that division?

Mr. Kilpatrick: When a shipment moves by the Iron Mountain we transport the empty to the plant of the lumber company and we transport the load back and deliver it to them a distance of one and a half miles. When a shipment is routed by the Rock Island we perform the same service over a distance of five and a half miles. When a shipment is routed by the Missouri and North Arkansas we transport it six miles.

Examiner Burchmore: On these movements of lumber over the Doniphan Railroad, who issues the Bill of Lading?

Mr. Kilpatrick: The Doniphan, Kensett & Searcy Railway Company.

Examiner Burchmore: Where are they issued as a matter of fact?

Mr. Kilpatrick: At Doniphan.

Examiner Burchmore: By a clerk up there?

Mr. Kilpatrick: By a regular employee of the railroad.

Examiner Burchmore: Do you issue through bills?

3609 Mr. Kilpatrick: We do.

Examiner Burchmore: Which shows your company as the initial line and participating in the haul?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: How do you settle with connecting carriers; by an inter-line settlement?

Mr. Kilpatrick: Yes, sir, monthly.

Examiner Burchmore: That is true of all three connections?

Mr. Kilpatrick: Yes, sir. I have got the October settlement with me. Would you care to examine them?

Examiner Burchmore: I don't think so. You have a full line of stationery and forms, etc.? You have all that for the railroad?

Mr. Kilpatrick: Everything.

Examiner Burchmore: Where are the general offices and financial headquarters?

Mr. Kilpatrick: At Doniphan.

Examiner Burchmore: In the Lumber Company building?

Mr. Kilpatrick: Yes, sir.

Examiner Burchmore: In the same room?

3610 Mr. Kilpatrick: The office is quite commodious and the railroad enjoys a part of it.

Examiner Burchmore: Is it your endeavor to comply with all the Federal and State laws regarding common carriers?

Mr. Kilpatrick: We have done so to the best of our knowledge, both as to accident reports and hours of service—we follow all forms and make strict reports.

Examiner Burchmore: Are you an officer of the Saline River Railroad Company?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: Are you an officer of the Saline River Lumber Company?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: It is your understanding that these companies are also controlled by the Carter interests?

Mr. Kilpatrick: Mr. Carter is the chief executive of all of them.

Examiner Burchmore: Does Mr. Carter control any other lumber interests to your knowledge?

Mr. Kilpatrick: He has one other interest in Canada, but

3611 he is not the controlling member.

Examiner Burchmore: You stated there were no mills on the line?

Mr. Kilpatrick: No sir.

Examiner Burchmore: Is there anyone else who wants to get lumber on your line?

Mr. Kilpatrick: Nobody else that we know of; if so we would welcome them.

Examiner Burchmore: Is there anything else to be cut there?

Mr. Kilpatrick: No, there is no timber.

Examiner Burchmore: Did you testify with respect to the tonnage of the railroad?

Mr. Kilpatrick: No I have not. You had better let Mr. Smythe do that. He is more familiar with the figures.

Examiner Burchmore: Is there anything further?

Mr. Stocking: I want to ask a few questions.

Examiner Burchmore: All right.

Mr. Stocking: How large is the town of Searcy?

Mr. Kilpatrick: Three thousand inhabitants.

3612 Mr. Stocking: It is the county seat of White County?

Mr. Kilpatrick: It is.

Mr. Stocking: What industries are there at Searcy?

Mr. Kilpatrick: Searcy has—do you want me to repeat?

Mr. Stocking: State everything you think of.

Mr. Kilpatrick: An oil mill, an ice plant, a stave factory, and a concrete block concern; it has two wholesale grocery houses one of which does an annual business of $400,000.00.

Mr. Stocking: And it is a pretty good retail point for the surrounding country?

Mr. Kilpatrick: An exceptionally good one. One retail store I know of there does an annual retail business of $250,000.00.

Examiner Burchmore: I presume that company enables the Iron Mountain to get in there?

Mr. Stocking: That is just what I was getting to. In order to make one thing clear that I think was left uncertain, was the Rock Island going into Searcy before the Doniphan Kensett and Searcy Railway was built?

Mr. Kilpatrick: It was.

Mr. Stocking: Now prior to the construction of the

3613 Doniphan Railroad, how were shipments to Searcy over the Iron Mountain *belted*?

Mr. Kilpatrick: In the year 1906, in the early part, there was in existence a merchants' transportation company or mule line which enjoyed rates and divisions in connection with the Iron Mountain on traffic into Searcy. Shortly after we began the construction of the first mile and a half from Kensett to Doniphan and which construction was started prior to the incorporation, the rates and divisions with the mule line transportation company were cancelled. That is history and I wanted to get it in. It is quite important with the construction of the road and if you will bear with me we will go on with it.

Mr. Stocking: Go on.

Mr. Kilpatrick: We approached the parties in Searcy who were interested and owned this transportation company suggesting that our interests would probably be glad to construct a railroad from Kensett to Searcy for commercial purposes. Our advances in this direction were met with favor and we next interviewed Mr. Stith who was then Traffic Manager of the Missouri Pacific—

3614 Iron Mountain system—Mr. Stith advised us to build the road from Kensett to Searcy. He said at that interview

that it was contrary to the policy of his company to enter into any contracts prior to the construction of the road, as such actions theretofore had resulted in some boomerang proposition, casting reflection upon the Missouri Pacific Railroad. Mr. Stith however at that time stated that if we would build this piece of road that they would join us in endeavoring to get the Searcy business and would treat us in the matter of rates and divisions on the same basis as present rates and divisions into Searcy by way of Higginson and the C. R. I. & P.

Mr. Stocking: Right there I want to make it plain. The Iron Mountain runs to Higginson at points south of Kensett does it?

Mr. Kilpatrick: That is correct?

Mr. Stocking: And there it has a junction with the Rock Island?

Mr. Kilpatrick: Yes sir.

Mr. Stocking: And by arrangement with the Iron Mountain and Rock Island the Iron Mountain would give the Rock Island a division on all freight destined for Searcy?

3615 Mr. Kilpatrick: That is correct.

Mr. Stocking: And was there anything said in that conversation between you and the representative of the Iron Mountain about your taking the freight at Kensett if you would build that road, and giving you the division instead of the Rock Island?

Mr. Kilpatrick: That was the verbal understanding and has since been put into effect.

Mr. Stocking: Well then, when you built the road, did they cancel their divisions with the Rock Island and haul all of their freight by your road?

Mr. Kilpatrick: They did.

Mr. Stocking: And you have been carrying that freight ever since?

Mr. Kilpatrick: We have.

Mr. Stocking: All right. Go ahead.

Mr. Kilpatrick: Don't get away from Mr. Stith.

Mr. Stocking: All right, finish that.

Mr. Kilpatrick: In winding up the interview with Mr. Stith he said that if we at any time decided to sell this line, we were about to construct, they desired the first opportunity to purchase.

3616 Mr. Stocking: Then as I understand you, before you constructed this road from Kensett to Searcy, you notified the merchants and shippers of Searcy and were encouraged by them to build it for the purposes of their traffic, and you interviewed the officials of the Iron Mountain and were encouraged by them to build it, being assured that the Iron Mountain would cancel their division with the Rock Island and give you all their Searcy business?

Mr. Kilpatrick: That is correct.

Mr. Stocking: And they actually did so?

Mr. Kilpatrick: Yes, the citizens of Searcy, by way of encouragement to the line, raised the funds to purchase the right of way and station grounds and trackage yards within the corporate limits:

Mr. Stocking: Now, what kind of a road bed is that between Kensett and Searcy?

Mr. Kilpatrick: It is a rock bed and macadamized.
Mr. Stocking: A substantial railroad dump, is it?
Mr. Kilpatrick: Yes sir.
Examiner Burchmore: Does the Missouri and North Arkansas operate over your line? between Kensett and Searcy?
3617 Mr. Kilpatrick: No they parallel us.
Examiner Burchmore: Were they constructed before or after you?
Mr. Kilpatrick: After.
Examiner Burchmore: Do they participate in a traffic arrangement now with the Iron Mountain?
Mr. Kilpatrick: I believe they do have some division with them.
Examiner Burchmore: You have a considerable merchandise movement between Searcy and Kensett on your line?
Mr. Kilpatrick: Yes sir.
Examiner Burchmore: Does any merchandise move between Kensett and Doniphan?
Mr. Kilpatrick: A considerable movement.
Mr. Stocking: You comply with all the safety regulations?
Mr. Kilpatrick: Yes sir.
Mr. Stocking: You have stated that?
Mr. Kilpatrick: Yes sir.
Mr. Stocking: You keep your books as required by the rules of the Commission?
Mr. Kilpatrick: Entirely so yes sir.
Mr. Stocking: You issue not only intra-state but inter-
3618 state Bills of Lading?
Mr. Kilpatrick: We do.
Mr. Stocking: You have issued foreign bills?
Mr. Kilpatrick: Yes, we have shipped to Russia.
Examiner Burchmore: I think that is all brought out in my examination, except Russia.
Mr. Stocking: I wanted to get the foreign bills in there. Now, at the time that this road was projected, it was known that the Missouri and North Arkansas would parallel our line?
Mr. Kilpatrick: It was not.
Mr. Stocking: And the anticipated profits have been cut down by that competition?
Mr. Kilpatrick: Yes sir.
Mr. Stocking: We had reason to believe that we would do a larger commercial business even than we have done, because of the competition that has unexpectedly come in by the Missouri and North Arkansas?
Mr. Kilpatrick: That is correct. In addition thereto, we have never installed any passenger service because of the two lines already serving this town with from 8 to 12 trains per day,
3619 in and out; and we have felt that we could add little or nothing to that service, and to attempt to maintain it would be at a loss, for that reason.

3929 [illegible], was called as a witness and being first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: What is the total capital stock of the railroad—the Dominion Kenova & Searcy Railway Company?

Mr. Smythe: $100,000.00.

Examiner Burchmore: How much of that is issued and outstanding?

Mr. Smythe: All of it.

Examiner Burchmore: Issued for cash, how much?

Mr. Smythe: $25,000.00.

Examiner Burchmore: What dividends have you paid?

Mr. Smythe: None.

Examiner Burchmore: Did I ask you what the surplus was?

Mr. Smythe: No.

Examiner Burchmore: Have you any surplus?

Mr. Smythe: We have.

Examiner Burchmore: Explain that surplus—the amount of that surplus and where it is and what it represents?

Mr. Smythe: On June 30, 1910 we had a credit to surplus account of $13,961.14.

3932 Examiner Burchmore: How long did it take you to accumulate that surplus?

Mr. Smythe: The profits for the fiscal year just ending amounted to $9,961.73.

Examiner Burchmore: The road then is making money?

Mr. Smythe: Yes sir.

Examiner Burchmore: It is indebted, however, to the Lumber Company?

Mr. Smythe: Yes sir it is.

Examiner Burchmore: How that $9,000.00 take account of the interest of the debt.

Mr. Smythe: It is accrued profits after all charges have been made including interest due to the Lumber Company.

Examiner Burchmore: Now, is that a book surplus or cash surplus?

Mr. Smythe: Over half of it was cash on hand at the end of the fiscal year.

Examiner Burchmore: What became of that cash?

Mr. Smythe: At the present time?

Examiner Burchmore: Yes.

Mr. Smythe: The company is building an extension of the road seven miles long.

Examiner Burchmore: They are using that cash in increasing the line?

Mr. Smythe: Yes sir.

Examiner Burchmore: Are the supplies for this company purchased by the lumber company?

Mr. Smythe: No sir.

Examiner Burchmore: Purchased by the railroad company?

Mr. Smythe: Purchased by the railroad company, yes sir.

Examiner Burchmore: Do you perform any inter-change switching?

Mr. Smythe: We do at Searcy.

Examiner Burchmore: At $3.00 or $2.00 a car.

Mr. Smythe: Three Dollars a car.

Examiner Burchmore: Do you have any contract with any of the railroad companies we have referred to providing for rates or divisions aside from the trackage contract already mentioned.

Mr. Smythe: None that I know of.

Examiner Burchmore: Do you know of any, Mr. Kilpatrick?

Mr. Kilpatrick: No, our divisions are covered by open division, so that——

3623 Mr. Smythe: Nothing except what is on file with the commission.

Mr. Kilpatrick: If I may interrupt you we have a new trackage contract with the Missouri and North Arkansas which goes into effect on January 1, 1911 and runs for ten years on the basis of $1.00 a train mile.

Examiner Burchmore: Will you file that train mile contract with the commission?

Mr. Kilpatrick: Yes sir.

Mr. Stocking: You mean a copy of it?

Mr. Kilpatrick: If you feel it is necessary. This is simply for logging purposes.

Mr. Stocking: I can have it copied by the stenographer and handed to you before we close.

Examiner Burchmore: Hand it to the official reporter in the other room. Who are the officers and directors of the railroad company and what is their relation to the lumber company?

Mr. Smythe: The directors are C. J. Carter, W. L. Stocking, H. R. Kilpatrick, C. E. Emmert, A. E. Hartsell. The officers are C. J. Carter, President, C. E. Emmert, Vice-President, H. R. Kil-

3624 patrick, Secretary and Treasurer and also General Manager.

Examiner Burchmore: With the exception of Mr. Kilpatrick, these officers and directors occupy similar positions with the lumber company?

Mr. Smythe: I could not say as to that. Mr. Carter is also President of the Lumber Company; Mr. Stocking, Secretary, Mr. Kilpatrick: Treasurer of the Lumber Company.

Examiner Burchmore: Then I understand that the tap line corporation and the lumber corporation are substantially identical in interest, aside from any legal question of separation?

Mr. Stocking: Yes sir.

Examiner Burchmore: Is there any other statement you would care to make at this time, Mr. Smythe:

Mr. Smythe: Nothing, unless you want to find out about the tonnage—what percentage?

Examiner Burchmore: What percentage of the tonnage is furnished by the Doniphan Lumber Company approximately?

Mr. Smythe: About 73%.

Examiner Burchmore: What percentage of the revenue?

Mr. Smythe: This revenue—I had better correct that—73%

of the revenue is furnished by the Doniphan Lumber
3625 Company.

Examiner Burchmore: What percentage of the tonnage; have you that figured?

Mr. Smythe: 85%.

Examiner Burchmore: Have you given any testimony as to divisions?

Mr. Stocking: Yes sir.

Examiner Burchmore: And as to class and commodity rates?

Mr. Smythe: The tariffs are on file.

Examiner Burchmore: What are the class and commodity divisions? The same as the local rate?

Mr. Kilpatrick: Approximately 20 and 25%; 25% on Memphis territory and 20% on St. Louis territory.

Examiner Burchmore: What does that yield you in cents per hundred pounds in a general way?

Mr. Kilpatrick: You have got me there.

Examiner Burchmore: Do you get five or ten cents?

Mr. Kilpatrick: Yes, we have an arbitrary division sheet up until a very short time ago.

Mr. Smythe: It runs fifteen, twelve and ten cents per hundred weight—about that.

Examiner Burchmore: You are going to file your di-
3626 vision sheets in this case?

Mr. Stocking: I don't know. Does the commission want us to do it?

Mr. Kilpatrick: The Missouri Pacific issue division sheets and I presume they file them.

Examiner Burchmore: They are not ordinarily filed with the Commission. I suppose you need not file them until they are called for. I think that is all. Mr. Stocking may have some questions to ask in the morning. I request this, that you furnish a map of your line drawn to scale and showing this line fifty miles away, if you will, but you can cut out the scale, in between.

Mr. Kilpatrick: You mean this disconnected branch that we are building?

Examiner Burchmore: Yes. You heard this same request made of some other companies for a map?

Mr. Kilpatrick: Yes.

Examiner Burchmore: Please furnish the same kind of map I requested of the other companies?

Mr. Kilpatrick: Blue prints?

Examiner Burchmore: Yes, blue prints will do showing the
3627 mills, towns etc. and also we would like a statement of the tonnage of the road for the fiscal year ending June 30, 1910 to check with the statement showing the total tonnage of lumber for the Doniphan Lumber Company and the total amount of logs for that Company and showing the amount of other freight for that company and the amount of freight for the public. I wish if possible, and if not too much trouble, that you would supply that between the two lines—subdivide it and show the totals. By the two lines,

I mean your line to Doniphan and your line to Searcy. See if you cannot divide it.

Mr. Stocking: Do you understand what is wanted, Mr. Smythe?

Mr. Smythe: Yes, but what details do you wish?

Examiner Burchmore: You can show cotton for instance, and such commodities, but you need not show drygoods or merchandise; coal you might show; the others you can put under merchandise.

Mr. Stocking: You understand what the Examiner wants now?

Mr. Smythe: Yes.

Examiner Burchmore: A substantial compliance with the request is all that is necessary.

3628 *Adjournment.*

Whereupon at 5:30 o'clock p. m., an adjournment was taken until the next day, Wednesday, December 14th, 1910, at 9:30 o'clock a. m.

3629 NEW ORLEANS, LOUISIANA, *December* 14, 1910.

Examiner Burchmore: Mr. Kilpatrick, what is the approximate value of the mill at Doniphan?

Mr. Kilpatrick: Approximately two hundred and fifty thousand.

Examiner Burchmore: That includes the ground upon which it is built?

Mr. Kilpatrick: Everything.

Examiner Burchmore: What is the value of the buildings and machinery?

Mr. Kilpatrick: You mean everything exclusive of the real estate?

Examiner Burchmore: Exclusive of the land, yes.

Mr. Kilpatrick: Probably two hundred and twenty-five thousand.

Examiner Burchmore: Would it be possible to remove that mill to another location?

Mr. Kilpatrick: Part of it, yes; it was done.

Examiner Burchmore: When was that done?

Mr. Kilpatrick: In 1906, the saw-mill, part of it, was removed to its present site.

Examiner Burchmore: What is your impression as to the cost of that removal?

3630 Mr. Kilpatrick: You mean the erection, or just the actual transportation, and so on?

Examiner Burchmore: I mean the cost of removal, exclusive of the freight.

Mr. Kilpatrick: I couldn't give you any figures on that.

Examiner Burchmore: One hundred thousand dollars?

Mr. Kilpatrick: I wouldn't want to guess at it.

Examiner Burchmore: Has the Doniphan Lumber Company contemplated the erection of a mill at Latona?

Mr. Kilpatrick: No, sir.

Examiner Burchmore: What is the explanation for the maintenance of a mill at one point, namely, Doniphan, when the logs have to be brought in fifty miles by railroad?

Mr. Kilpatrick: When that mill was first located there, it was located on the bank of Little Red River. The railroad over which the railroad of the D. K. & S. operates log trains and has trackage rights, was not constructed, and it was contemplated that the mill be logged by river, and it was to a limited extent, and that proved somewhat unsuccessful, and when this railroad was built we established that arrangement and logged by rail.

Examiner Burchmore: As I unlerstand it, logs were
3631 brought by river to the mill?

Mr. Kilpatrick: They were when the mill first started.

Examiner Burchmore: They are no longer?

Mr. Kilpatrick: In limited quantity, they are.

Examiner Burchmore: Where is that from?

Mr. Kilpatrick: From about a hundred miles up the river.

Examiner Burchmore: Is that from the vicinity of Latona?

Mr. Kilpatrick: Not exactly, from that direction, yes, sir.

Examiner Burchmore: Are the timber holdings in the vicinity of Latona sufficient to justify the Doniphan Lumber Company to erect a mill at that point?

Mr. Kilpatrick: It would not be a mill of the capacity of the mill at the other point.

Examiner Burchmore: What is the total timber holdings of the Doniphan Lumber Company?

Mr. Kilpatrick: I would say, in acreage, sixty-five thousand acres, approximately.

Examiner Burchmore: How many feet?

Mr. Kilpatrick: Approximately two hundred and fifty million.

Examiner Burchmore: I think the question of divisions was fully developed yesterday, was it not?

3632 Mr. Kilpatrick: I think it was, yes, sir.

Mr. Duncan: With regard to the removal of the mill at Doniphan. How many houses has the Doniphan Lumber Company at Doniphan?

Mr. Kilpatrick: About seventy-five.

Mr. Duncan: Would it be practicable at all to remove these houses into the forest?

Mr. Kilpatrick: It would not.

Mr. Duncan: As to the cost of moving the mill, I will ask you if as a matter of fact the mill proper, that is to say, the machinery located there, and as you state moved there, the plant cost one hundred thousand dollars and we bought it for ten?

Mr. Kilpatrick: That is correct.

Mr. Duncan: Isn't it a fact that it would be practically ruinous to that two hundred and fifty thousand dollar investment there to undertake to take it up and remove it into the forest now?

Mr. Kilpatrick: Yes, it would be.

Mr. Duncan: One thing I wanted you to explain about your testimony of yesterday. You said yesterday that the railway company charges the mill company two cents per hundred pounds. Is
3633 that right?

Mr. Kilpatrick: It is.

Mr. Duncan: Isn't it a fact that that charge is made in pursuance of the rule made by the Railroad Commission of Arkansas, allowing that minimum charge upon raw material, on the condition that the product of it shall be shipped over the railroad that makes that agreement?

Mr. Kilpatrick: It is.

Mr. Duncan: The railroad company, as you said, pays the M. & N. A. three-fourths of a cent on that same tonnage, so the net earning to the railroad, to the Doniphan, Kensett & Searcy is one and one-quarter cents per hundred pounds?

Mr. Kilpatrick: That is correct.

Mr. Duncan: You stated yesterday that the service which the Doniphan, Kensett & Searcy railway rendered for which it got the divisions from the trunk lines, consisted in the carriage of the manufactured product from the mill to the respective lines. I will ask you if it is not true that it hauls those logs from distances varying from fifteen to fifty miles to the mill to be manufactured, initiating that business, at this low price of one and one-quarter cents, which is not in itself compensatory?

3634 Examiner Burchmore: Do you contend that this division on the lumber is supposed to also cover the expense of moving the logs into the mill?

Mr. Duncan: The fact is that——

Examiner Burchmore: Is that the purpose?

Mr. Duncan: I will say frankly to your Honor, I don't understand the proposition in its full scope. I understood it was.

Examiner Burchmore: There is no milling and transit rates on the line?

Mr. Kilpatrick: We have none, no.

Examiner Burchmore: Well, if a part of these divisions is intended to take care of the movement of the logs in, or if the effect of those divisions is to take care of a part of the expense of moving the logs in, does it not mean that the division — the value of the service rendered?

Mr. Kilpatrick: No, it does not, because the extent of the output is carried five and four and a half miles, and that is not an unreasonable amount to pay for that service. The Court tariff of Arkansas, which is now in effect, I think, allows four and four and a half for the same service.

3635 Mr. Duncan: The Doniphan, Kensett & Searcy has exercised the right of eminent domain in the Courts of Arkansas, has it not?

Mr. Kilpatrick: It has.

Mr. Duncan: Does the agent they have at Searcy solicit freight business from the industries and merchants of Arkansas?

Mr. Kilpatrick: He does.

Mr. Duncan: He obtains it and ships it over the road?

Mr. Kilpatrick: He does.

Mr. Duncan: The Doniphan, Kensett & Searcy is assessed by the State of Arkansas as a railroad?

Mr. Kilpatrick: It is.

Mr. Duncan: And pays those taxes?
Mr. Kilpatrick: It does.
Mr. Duncan: Who loads the logs on the car?
Mr. Kilpatrick: The Doniphan Lumber Company.
Mr. Duncan: The mill company does not perform that service?
Mr. Kilpatrick: The railroad does not.
Mr. Duncan: The railroad company does not perform that service?

Mr. Kilpatrick: It does not.

3636 Mr. Duncan: The road, as you stated yesterday, is rock ballast and of a permanent character?

Mr. Kilpatrick: It is.
Mr. Duncan: There is a public at either end of the line to be served by a common carrier?
Mr. Kilpatrick: There is.
Mr. Duncan: The company holds itself out as willing to serve the public as a common carrier, and does serve them as a common carrier?
Mr. Kilpatrick: It does at all times.
Mr. Duncan: And under the laws of Arkansas, is obligated to do so?
Mr. Kilpatrick: It is.
Mr. Duncan: Taking the character of the road and the towns at the termini of it into consideration, is it in your opinion a railroad and common carrier that will be in existence as a common carrier when the saw-mill itself will have passed away by reason of the exhausting of the timber?
Mr. Kilpatrick: I believe that the railroad will continue in operation regardless of the saw-mill operations.

Examiner Burchmore: Is that true of the line north of

3637 Kensett?

Mr. Kilpatrick: Well, I am not so sure, but there are some indications at this time that it will remain as a railroad.

Examiner Burchmore: Suppose that the Iron Mountain railroad should cancel the divisions with your road on lumber, would the result of that cancellation, in your opinion, be the removal of the mill from Doniphan to Latona?
Mr. Kilpatrick: I don't think it would be; I think it is an impracticable thing to do.
Examiner Burchmore: What is the total volume of logs, approximately, that is floated down the river at the present time, or for the past year?
Mr. Kilpatrick: During the floating or driving season, approximately three million feet.
Examiner Burchmore: What proportion does that bear to the amount of logs brought down by railroad?
Mr. Kilpatrick: About one-eighth.
Mr. Duncan: The amount that would be brought down the river would grow less, and finally disappear entirely, in a short time?

3638 Mr. Kilpatrick: That has been the case.

Mr. Duncan: It has been found impracticable to log by river?

Mr. Kilpatrick: The timber that is coming down the river now is practically inaccessible, and must come that way.

Mr. Duncan: Mr. Examiner, I have our President here. I have nothing to ask him, I submit him to you if you want to ask him anything.

Examiner Burchmore: I don't think there are any further questions that need be asked about this company.

Mr. Duncan: Mr. Kilpatrick, you have a statement there showing the tonnage of the road since our last annual report?

Mr. Kilpatrick: It is our last settlement for October.

Mr. Duncan: I would like to have you read that into the record, it is very short.

Mr. Kilpatrick: Our carload movement in October, we have four cars of coal, four cars of flour, two cars of hay, two cars of cotton bagging, one car of shingles, two cars of potatoes, one car of pickles, one car of corn, one car of emigrant outfit, two cars of cotton ties, one car of hydrants, one car of soda fixtures, one car of ce-

3639 ment, and two cars of brick. We had outbound that month, six cars of cotton, eight cars of livestock.

Examiner Burchmore: How much lumber?

Mr. Duncan: This was the commercial business. I didn't ask the lumber tonnage sheet, your Honor.

Mr. Kilpatrick: Approximately fifty-five cars of lumber outbound.

Examiner Burchmore: Was any of that carload of shingles, the emigrant outfit, or the cement or brick,—were any of those shipments either intended for the use of the Doniphan Lumber Company, or its employés?

Mr. Kilpatrick: Not any of it.

Examiner Burchmore: For whom was the carload of flour?

Mr. Kilpatrick: I think it was for the Searcy Transfer Company.

3640 *Paragould & Memphis Railway Company.*

Examiner Burchmore: I will call the case of the Paragould & Memphis Railway.

Examiner Burchmore: The Paragould & Memphis Railway Company case called, and not present.

Mr. Jeffries: It is so small and so unimportant as far as the Iron Mountain is concerned, I haven't it mentioned on my list.

Mr. Perkins: The Iron Mountain has no arrangements with it at all.

Examiner Burchmore: I think that you withdrew those arrangements, if I am not mistaken. It is Mr. T. N. Vail's road, and is up there in Arkansas.

Mr. Perkins: I think it connects with the Paragould and Southwestern, and they have some kind of connection with the Paragould & Frisco, but not with the Iron Mountain.

3641 *Prescott & Northwestern Railroad Company.*

Mr. McRae: I would like the record to show that this testimony is taken in the case of I. C. 3512, which is consolidated with the general record on the petition of the Prescott & Northwestern Railroad Company and H. M. Stevens, Complainants, against the St. Louis, Iron Mountain and Southern and the Kansas City Southern Railway Company, and upon the separate answers filed before the Commission of the St. Louis, Iron Mountain & Southern Railway Company and of the Kansas City Southern Railway Company. The only issue involved in these pleadings are the general issues raised as to the through rates and tap lines. Nevertheless these petitions were filed and answers made, and we want the record to show that the testimony is submitted upon these pleadings.

W. M. BEMIS was called as a witness, and having been duly sworn, testified as follows:

Mr. McRae: We will try to develop most of the case through Mr. Bemis, in order to expedite the matter, but if there is any question in regard to traffic matters which he cannot answer, we will call Mr. Helbig.

Examiner Burchmore: Are you an officer of the Prescott
3642 & Northwestern Railroad Company?

Mr. Bemis: I am.

Examiner Burchmore: What officer?

Mr. Bemis: President.

Examiner Burchmore: Are you also an officer of the Ozan Lumber Company?

Mr. Bemis: I am.

Examiner Burchmore: What is the geographical location of this line?

Mr. Bemis: It begins at Prescott, in Nevada County, Arkansas, and runs in a northwesterly direction through Nevada, Hempstead and Pike counties, to its terminus at Helbig.

Examiner Burchmore: Helbig?

Mr. Bemis: Helbig, H-e-l-b-i-g.

Examiner Burchmore: Where is that with reference to Little Rock, Texarkana, or some other well known point?

Mr. Bemis: Ninety-six miles south of Little Rock, and forty-eight miles north of Texarkana.

Examiner Burchmore: Your junction with the Iron Mountain is at Prescott?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Has your line a junction with any
3643 other railroad?

Mr. Bemis: It has at Tokio, with the Memphis, Dallas & Gulf.

Examiner Burchmore: Is that the line formerly known as the Memphis, Paris & Gulf?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: When was the name changed?

Mr. Bemis: Several months ago; I don't know just when.

Examiner Burchmore: What is the character of territory served by this line, is it a farming country?

Mr. Bemis: Originally a timber country, very rough, and in the last fifteen or eighteen years has developed to a large area in an agricultural way after the timber was taken off.

Examiner Burchmore: Where is the mill of the Ozan Lumber Company located?

Mr. Bemis: It is on the Prescott & Northwestern, at Dian, about one mile from the Iron Mountain station.

Examiner Burchmore: How far is it from the rails of the Iron Mountain?

Mr. Bemis: The centre of the mill proper is probably sixteen or seventeen hundred feet.

3644 Examiner Burchmore: Well, what is the distance from the eastern fence of the mill yard to the Iron Mountain?

Mr. Bemis: The mill yard is not fenced.

Examiner Burchmore: Well, the eastern boundary.

Mr. Bemis: The eastern boundary is about a thousand feet.

Examiner Burchmore: Is there any private spur-track running from the Iron Mountain into the mill yard?

Mr. Bemis: No, Sir.

Examiner Burchmore: What other lumber industries are there along the line?

Mr. Bemis: H. M. Stevens has a mill at Blevens, Arkansas, E. T. Wells at Wallaceburg, Kilgore Lumber Company at Kilgore, D. Scott at Westbrook, Brooks Reece Lumber Company at Norvelle, W. J. Cantley at Helbig.

Examiner Burchmore: Any industries at Wortham?

Mr. Bemis: No, Sir.

Examiner Burchmore: There formerly were mills there?

Mr. Bemis: I couldn't say, I don't recognize that name.

Examiner Burchmore: Wortham.

Mr. Bemis: Not in a milling way.

Examiner Burchmore: Is there anything at Dotson?

Mr. Bemis: There was a mill at Dotson; whether they are
3645 still operating or not, I don't know, I don't think they are.

Examiner Burchmore: A small mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Do you know whether they have closed down?

Mr. Bemis: I know they have not been running for some time.

Examiner Burchmore: Any other mills or industries on the line?

Mr. Bemis: I think that includes them all.

Examiner Burchmore: Any staves or stave bolts made along the line?

Mr. Bemis: Stave bolts are shipped off the line; staves are made and shipped.

Examiner Burchmore: Are there any private railroad or tram lines connected with the Prescott & Northwestern?

Mr. Bemis: That of the Ozan Lumber Company.

Examiner Burchmore: Where does it connect?

Mr. Bemis: Their main line connects at Helbig, and runs about eight miles northwest to Cox. From points on that line, the logging spurs are run out.

Examiner Burchmore: Is that private tram-road owned by
3646 the Ozan Lumber Company?

Mr. Bemis: The rail fastenings were furnished by the Prescott & Northwestern. The ties and all other things necessary to the construction and operation, are furnished by the Ozan Lumber Company.

Examiner Burchmore: Who operates this private tram?

Mr. Bemis: The Ozan Lumber Company.

Examiner Burchmore: With its own locomotives?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is there any payment for the use of those rails?

Mr. Bemis: They pay the Prescott & Northwestern one dollar per thousand for the haul of logs on the main line between Cox and Helbig; this dollar per thousand also includes the rails that are furnished, the fastenings and cars.

Examiner Burchmore: But I thought the lumber company operated the private tram-road?

Mr. Bemis: The lumber company brings the logs with its own engines up to the main line between Cox and Helbig; the main line then of the Prescott & Northwestern takes these logs and carries them to Helbig.

3647 Examiner Burchmore: We will develop that part of the case later. What is the Pike County Lumber Company?

Mr. Bemis: They were absorbed by the Ozan Lumber Company.

Examiner Burchmore: When were they absorbed?

Mr. Bemis: From the purchase of their stock.

Examiner Burchmore: Recently?

Mr. Bemis: Well, in the last twelve or fourteen months.

Examiner Burchmore: Are there any other private tram roads connecting with your line?

Mr. Bemis: Not at this time.

Examiner Burchmore: There were formerly other connections?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: When was the Prescott & Northwestern Railroad first constructed, and how much of it was built originally?

Mr. Bemis: The Prescott & Northwestern was organized on October 16, 1890, by R. L. Powers, W. B. Waller, and other citizens of Prescott. The road had been completed a distance of eight or nine miles, and the then owners were then either unable or unwilling to make further necessary extensions. They became involved in litigation and sold the road to Benjamin Whitaker, and other citizens of Prescott.

3648 Examiner Burchmore: In what year was this sale?

Mr. Bemis: In January 1892.

Examiner Burchmore: The first eight or nine miles of the road was constructed by contractors hired by these parties?

Mr. Bemis: I don't know.

Examiner Burchmore: When was the mill at Dian first opened?

Mr. Bemis: The mill was constructed,—construction begun about the First of the year 1890.

Examiner Burchmore: Then the mill and the original railroad of the Prescott & Northwestern were opened about the same time?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Were they part of the same enterprise?

Mr. Bemis: No, Sir. The milling company had no interest in the road at its organization.

Examiner Burchmore: When was the road extended beyond this eight or nine miles?

Mr. Bemis: Extensions were made from time to time, I can't say just when, I can't give you just the time.

3649 Examiner Burchmore: When did the line reach Helbig?

Mr. Bemis: I think in 1906, some time in 1906.

Examiner Burchmore: So substantially the whole of the present line was completed in 1906?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: When was the railroad company incorporated as a common carrier?

Mr. Bemis: October 16, 1890.

Examiner Burchmore: How was the Railroad Company originally financed, what was its original capital stock, and how much was sold, and who furnished the money?

Mr. Bemis: The capital stock was one hundred and twenty-five thousand dollars.

Examiner Burchmore: In the beginning.

Mr. Bemis: In the beginning, I know nothing as to the manner nor the method of financing it at that time.

Examiner Burchmore: Please state in your own way the history of the financial side of this corporation, as fully as you can.

Mr. McRae: Let me ask him a question right there. You know in 1902 how much stock was issued, do you know?

Mr. Bemis: In 1902? Yes, Sir, in 1902.

3650 Mr. McRae: State what that was.

Mr. Bemis: Thirty thousand dollars. The railroad was organized by these citizens of Prescott for the purpose of developing the territory lying northwest of Prescott, as I understand it. They induced Bemis and Whitaker to build a mill on their line at Prescott, and under some arrangement of which I have no knowledge, R. L. Powers was to furnish logs. The milling company, or the milling interest, had no interest in the road.

Examiner Burchmore: Direct or indirect?

Mr. Bemis: Direct or indirect, except for some money that was loaned the railroad. Mr. Powers and the railroad were unable to go ahead with their contract with Bemis and Whitaker, were unable to make further extensions and furnish the timber, and in 1892 the road was reorganized, the firm of Bemis & Whitaker taking on a con-

trolling interest in the railroad company. There were at that time some twelve or fourteen local stockholders. The capital stock of the company was reduced at that time to thirty thousand dollars, that being the estimated value of the road at that time.

Examiner Burchmore: Of the eight or nine miles of road?

3651 Mr. Bemis: Yes, sir.

Examiner Burchmore: Bemis & Whitaker were bought out by the Ozan Lumber Company, or, is the Ozan Lumber Company merely the incorporation of the previous owners?

Mr. Bemis: Bemis & Whitaker were bought out by the Bemis interests. That is wrong. The Ozan Lumber Company bought out Bemis & Whitaker.

Examiner Burchmore: And at the same time they bought out Bemis & Whitaker, they bought out the controlling interest of the railroad?

Mr. Bemis: I don't know that the purchases were identical in point of time; I don't know as to that.

Examiner Burchmore: I assume that the Prescott & Northwestern at the present time is substantially controlled, from the ownership of stock, by the Ozan Lumber Company or its stockholders.

Mr Bemis: The stockholders in both companies are identical.

Examiner Burchmore: And hold their shares in proportion?

Mr. Bemis: Exactly.

Examiner Burchmore: How long has that condition maintained?

Mr. Bemis: That has been practically the condition since

3652 the Ozan Lumber Company, or the stockholders of the Ozan Lumber Company, have owned the road.

Examiner Burchmore: How many years, since 1906?

Mr. Bemis: Oh, yes, Sir; that has been since 1901.

Examiner Burchmore: The stock was reduced to thirty thousand dollars in 1892, I believe you say?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Was there any bonded indebtedness at that time?

Mr. Bemis: Not that I know of.

Examiner Burchmore: What increase, or increases, have been made in the capital stock since that time?

Mr. Bemis: None whatever.

Examiner Burchmore: So the present capitalization is thirty thousand dollars?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What bonds have been issued?

Mr. Bemis: No bonds. There is a mortgage for three hundred and fifty thousand dollars that has been given to the Ozan Lumber Company for money borrowed.

Examiner Burchmore: And interest is paid on that indebtedness?

3653 Mr. Bemis: It is charged to them, it is not paid.

Examiner Burchmore: Well, that practically amounts to bonds, it is the same thing in result. And out of this three hundred and fifty thousand dollars, the additional lines have been constructed?

Mr. Bemis: No, Sir; at the time the mortgage was given the Prescott & Northwestern owed the Ozan Lumber Company a little more than the three hundred and fifty thousand dollars.

Examiner Burchmore: That indebtedness has since been reduced out of the surplus earnings?

Mr. Bemis: No, Sir; it has since increased two hundred and twenty thousand dollars.

Examiner Burchmore: What is the present indebtedness?

Mr Bemis: Five hundred and seventy odd thousand dollars.

Examiner Burchmore: Out of that five hundred and seventy odd thousand dollars, these new additions and improvements have been made?

Mr. Bemis: The railroad company has practically no credit, and the Ozan Lumber Company has financed it and furnished
3654 the money from time to time, both for construction and equipment. The railroad has never earned anything, practically.

Examiner Burchmore: Is the vice-president of the lumber company at the present time also vice-president of the railroad company?

Mr. Bemis: No, Sir.

Examiner Burchmore: What officers are common to both companies?

Mr. Bemis: A. C. Bemis is manager of the Prescott & Northwestern, and vice-president of the Ozan Lumber Company.

Mr. McRae: Aren't you mistaken about that, isn't he secretary?

Mr Bemis: I am, he is secretary.

Examiner Burchmore: Of which company?

Mr. Bemis: Of the Ozan Lumber Company. W. M. Bemis is president of both companies. J. W. Bemis is vice-president of the Ozan Lumber Company, and O. H. Helbig is secretary and treasurer of the Prescott & Northwestern.

Examiner Burchmore: The two last named gentlemen are not officers of the lumber corporation?

Mr. Bemis: No, Sir, Mr. Helbig is secretary and treasurer of the Prescott & Northwestern, and has no connection with the
3655 Ozan Lumber Company.

Examiner Burchmore: Are you the Mr. Bemis of the firm of Bemis & Whitaker?

Mr. Bemis: No, Sir, that was my father.

Examiner Burchmore: Aside from the question of legal separation of the two companies, I understand that in a substantial sense the tapline corporation and the lumber company are practically identical in interest, from your statement. Leaving aside any question of the legal separation, the existence of two entirely separate and distinct corporations, they are controlled by the same interests, and substantially the same in interest?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: I think that is a fair statement, Mr. McRae

Mr. McRae: The fact is that with the exception of Mr. Helbig

who has no connection with the Ozan Lumber Company, the stock is held in the same proportion in both companies.

Examiner Burchmore: How did Mr. Helbig acquire his stock in the railroad company?

Mr. Bemis: I think the share was given him for the purpose of qualifying him as an officer of that company.

3676 Examiner Burchmore: What is the mileage of the Prescott & Northwestern Railroad Company at the present time?

Mr. Bemis: Forty-one miles.

Examiner Burchmore: Is that all main line?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Our report indicates forty-four miles of standard gauge road.

Mr. Bemis: Three miles of siding.

Mr. Berlin: I would be glad to see the report, if it is different *to* this.

Examiner Burchmore: No, the figures agree, with that explanation. Are there any extensions at the present time seriously contemplated?

Mr. Bemis: No, Sir, we have discussed at various times possible extensions, but at this time there is nothing contemplated in the way of an extension, unless it be an extension west from Highland, and that would depend entirely upon the results in the next year or two in coal and wood growing.

Examiner Burchmore: What is the nearest approach that you make to the line of the Queen & Crescent?

3677 Mr. Bemis: I can't say; I think it is fifteen or twenty miles.

Examiner Burchmore: Any river between?

Mr. Bemis: I don't know.

Examiner Burchmore: You haven't actively contemplated any connection with that road?

Mr. Bemis: No, Sir; it has been talked of just in a general way, but there has been no serious consideration in that direction.

Examiner Burchmore: Does the Prescott & Northwestern hold any trackage rights over the Iron Mountain?

Mr. Bemis: No, Sir.

Examiner Burchmore: Does the Ozan Lumber Company enjoy any trackage rights over the Prescott & Northwestern?

Mr. Bemis: No, Sir.

Examiner Burchmore: What is the weight of rail of which this railroad is constructed?

Mr. Bemis: Fifty-six and sixty-three pounds, with the exception of about two miles of forty pound.

Examiner Burchmore: Where is that forty pound rail, at the end of the line?

Mr. Bemis: No, Sir; it is between Westbrook and Belton.

3678 Examiner Burchmore: I observe you have two lines that might be described as branch lines.

Mr. Bemis: They have been abandoned, the rails taken up.

Examiner Burchmore: So at the present time there is a single main line between the two termini?

Mr. Bemis: Prescott to Helbig.

Examiner Burchmore: There are no branches?

Mr. Bemis: No, Sir.

Examiner Burchmore: Are there any heavy grades on the line, or is it pretty well graded?

Mr. Bemis: We have some heavy grades on the western end of the line. The character of the country is such as to make a low grade line almost impossible on account of the excessive cost. We have one heavy grade on the western end of the line, but this can be easily reduced, and will be, if we ever get money enough to do it.

Examiner Burchmore: Well, without going into the particulars of ballast, curves, etc., will you say that this road is substantially as well constructed as the branch lines of the principal carriers from the southwest through Arkansas?

Mr. Bemis: I have often heard those that traveled over
3659 both lines say that ours was the best.

Examiner Burchmore: Better than the Iron Mountain main line.

Mr. Bemis: Better than the Iron Mountain branch lines.

Examiner Burchmore: Better that most of the Iron Mountain branch lines?

Mr. Bemis: I wouldn't say that.

Examiner Burchmore: What station buildings have you on the line?

Mr. Bemis: We have a station on building at Dian that is used jointly by the Ozan Lumber Company and the Prescott & Northwestern; we have a station at Blevins, a station at Belton, Tokio, Highland and Norvelle.

Examiner Burchmore: You mean station buildings?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What is the character of these buildings?

Mr. Bemis: They serve the purpose. They were built for that purpose alone, with one exception, that at Highland.

Examiner Burchmore: And that at Dian?

Mr. Bemis: And that at Dian, yes, Sir.

Examiner Burchmore: Well, with the exception of those
3660 two buildings, are the stations a small frame structure?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: With agents in them?

Mr Bemis: No agent who occupies the station all of the time, except at Norvelle and Tokio.

Mr. McRae: And Prescott.

Mr. Bemis: And Prescott.

Examiner Burchmore: Did you mention Prescott as a station building?

Mr. Bemis: And Dian.

Examiner Burchmore: Dian and Prescott are about the same thing?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Have you any track scales?

Mr. Bemis: No, Sir.

Examiner Burchmore: You have warehouses at these stations for the receipt and delivery and storage of L. C. L. freight?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: How many locomotives has the railroad company? And what other equipment?

Mr. Bemis: We have two 8-wheelers weighing 35 tons; one 4-wheeler switch engine weighing 25 tons; two 10-wheelers
3661 weighing 55 tons, and one Mogul weighing 62 tons, and 103 cars of all descriptions.

Examiner Burchmore: Itemize those cars.

Mr. Bemis: 40 flat-cars, 13 coal cars, all of which are being converted into flat-cars, 21 box cars, 20 skeleton cars that are not now in use, 7 gravel cars, 1 caboose and 1 combination passenger and baggage car.

Examiner Burchmore: Those gravel cars, are they used for hauling gravel for the right of way?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: There is no gravel bed on your line that sends out gravel on the Iron Mountain?

Mr. Bemis: There is a gravel bed on our line in connection with the Dallas & Gulf. A large quantity of gravel was delivered to the Kansas City Southern and Frisco.

Examiner Burchmore: Was this sold to these railroads, or transported for the public?

Mr. Bemis: The gravel was used almost entirely by the Kansas City Southern and Frisco, for ballasting purposes.

Examiner Burchmore: Who owned the gravel beds?

Mr. Bemis: They belonged to a party named McMahon, and I think the Ozan Lumber Company is claiming an interest in
3662 forty acres.

Examiner Burchmore: Is the Ozan Lumber Company selling any gravel?

Mr. Bemis: If it is finally determined that they have a right or an equity in that property, I suppose they will sell it, I don't know.

Examiner Burchmore: Are your cars equipped with the necessary safety devices required by the Acts of Congress?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is there any telephone or telegraph service on the road for the dispatching of trains and the transaction of railroad business?

Mr. Bemis: Telephone service.

Examiner Burchmore: With instruments in your various stations?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is that telephone line owned by the railroad company?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Are there any wires leased to the lumber company?

Mr. Bemis: No, Sir.

3663 Examiner Burchard: Does the lumber company use the wires?

Mr. Bemis: Should the occasion arise.

Examiner Burchmore: How many crews, how many section gangs are engaged in track work on the road?

Mr. Bemis: We have four section gangs.

Examiner Burchmore: Do they spend any part of their time at work on the private logging-road of the Ozan Lumber Company?

Mr. Bemis: No, Sir.

Examiner Burchmore: You have how many station agents?

Mr. Bemis: Six.

Examiner Burchmore: Those men devote their entire time to agency work, or are some of them agents located at station towns?

Mr. Bemis: Mr. Helbig can better answer that question.

Examiner Burchmore: You may answer now, Mr. Helbig.

Mr. Helbig: I think they are all merchants in a way, unless it is the one at Tokio, I don't know whether he is engaged in business, or not.

Examiner Burchmore: Are they paid on a commission basis?

Mr. Helbig: Our agent at Tokio is on a salary.

3664 Examiner Burchmore: Are they employed also by the lumber company?

Mr. Helbig: No, Sir.

Examiner Burchmore: The arrangement made with those agents who devote only a part of their time to the railroad service, is substantially the same as the arrangement made by some trunk lines for agencies at small towns?

Mr. Helbig: Yes, Sir.

Examiner Burchmore: How many train crews have you, Mr. Bemis?

Mr. Bemis: We have two.

Examiner Burchmore: Only two train crews for seven or eight locomotives?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What employés are there in the general office? First, let me ask: The general office of the railroad company is in the same rooms and the employés mingle with those of the lumber company?

Mr. Bemis: The general office is in the same building, of which building the Prescott & Northwestern practically occupy three rooms out of five. The rooms are communicating, and, of course, the employés of both commingle.

3665 Examiner Burchmore: How many clerks are there in the general office of the railway company who devote their entire time to the railway service?

Mr. Bemis: There is one.

Examiner Burchmore: And that clerk receives his entire compensation *for* the railroad company?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Are there any joint employés?

Mr. Bemis: Mr. L. P. Beidelman, the Auditor, is an employé of the Ozan Lumber Company, who performs the service for the Prescott & Northwestern but receives no compensation, getting his entire pay from the Ozan Lumber Company.

Examiner Burchmore: Does the railroad company pay the lumber company anything on account of his services?

Mr. Bemis: No, Sir.

Examiner Burchmore: Do you run any passenger trains? If so, what are they? Are they run on regular schedules?

Mr. Bemis: We run a train which is usually a passenger train, but which we at times make a mixed train of when our other train has more than it can take care of.

Examiner Burchmore: The other train being a freight train?

3666 Mr. Bemis: Yes, Sir; a mixed train.

Examiner Burchmore: Well, you have one mixed train and one train that is purely a passenger train at times, and at other times is also a mixed train?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Are these trains run on regular schedule?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Have you a time table?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Will that be filed in evidence.

Mr. Bemis: Yes, Sir.

Examiner Burchmore: How many freight, or logging trains, do you run daily aside from the two trains just referred to?

Mr. Bemis: Our mixed train hauls logs, local freight and carload freight of all classes.

Examiner Burchmore: Do you have any other freight trains?

Mr. Bemis: At times we have to send out extras to clean up if enough stuff accumulates.

Examiner Burchmore: What is the average, or usual, number of cars for this mixed train?

Mr. Bemis: Ten or fifteen cars.

3667 Examiner Burchmore: How many of these are logs?

Mr. Bemis: Usually ten cars.

Examiner Burchmore: That is the extent of the daily movement of logs?

Mr. Bemis: It is at this time.

Examiner Burchmore: Is it the usual extent the year round?

Mr. Bemis: Sometimes, when we are accumulating logs in the pond, we operate an additional train.

Examiner Burchmore: And at other times there is a corresponding reduction?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Do you handle the United States mails?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: You have several post-offices along the line?

Mr. Bemis: We have nine post-offices along the line.

Examiner Burchmore: Does any express operate over your line?
Mr. Bemis: The Wells-Fargo.
Examiner Burchmore: Under a contract?
3668 Mr. Bemis: Yes, Sir.
Examiner Burchmore: Your train conductors are their messengers?
Mr. Bemis: Yes, Sir.
Examiner Burchmore: Your agents act also as agents of the express company?
Mr. Bemis: Yes, Sir.
Examiner Burchmore: What is the extent of your passenger traffic? State it per day, month or year, per train. The annual report shows the total passenger mileage?
Mr. Bemis: Yes, Sir. Our passenger revenue for 1909-1910 was $6,305.04.
Examiner Burchmore: That was for one fiscal year?
Mr. Bemis: Yes, Sir.
Examiner Burchmore: Do the passengers travel on tickets as a usual thing?
Mr. Bemis: We try to have them.
Examiner Burchmore: Do you charge excess cash fare; do you make an extra charge where a cash fare is paid on the train?
Mr. Bemis: I don't think we do; I don't think that under the law we are permitted to.
3669 Mr. McRae: Don't you know that under the law you cannot?
Examiner Burchmore: Are employés of the mill company, or other employés of the Ozan Lumber Company transported free of charge?
Mr. Bemis: No, Sir.
Examiner Burchmore: Suppose they are traveling on lumber company business, is fare paid for them?
Mr. Bemis: It may be possible that there has been some arrangement for the transportation of employés of the Ozan Lumber Company. Mr. Helbig can answer that question.
Mr. Helbig: All the Ozan hands. We do not pass anybody but our own employés.
Examiner Burchmore: I suppose you issue passes to some employés on your line?
Mr. Helbig: Not to employés. We issue sometimes complimentary passes.
Examiner Burchmore: You have a less than carload traffic?
Mr. Bemis: Yes, Sir.
Examiner Burchmore: What is the extent of that traffic, in a general way.
Mr. Bemis: I have the number of passengers carried in 1910.
3670 Examiner Burchmore: You may state that.
Mr. Bemis: Fifteen thousand, four hundred and eighty-seven passengers carried.
Examiner Burchmore: That is for the fiscal year 1910?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: I didn't ask,—it is understood, of course, that any statistics given in the annual report will be referred to by the Commission as there set out.

Mr. McRae: I would like it understood that all facts stated in that report will be made part of the record.

Examiner Burchmore: Any tariff or record on file with the Commission may be referred to by Counsel, as though it was a part of the record.

Mr. McRae: We would like to have it understood that it is now made a part. And Mr. Bemis can give that, if he desires.

Examiner Burchmore: What is that?

Mr. McRoe: The passenger traffic.

Examiner Burchmore: He has given that.

Examiner Burchmore: Now, the less than carload traffic, Mr. Bemis?

Mr. Bemis: I can't give the earnings on less than carload stuff.

3671 Examiner Burchmore: Your annual report shows the total carload traffic, does it not?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Does it not show the total less than carload? Possibly it don't show the total carload traffic, I thought it did.

Mr. Bemis: I don't think it does.

Examiner Burchmore: Well, give me some idea on that subject.

Mr. Bemis: The inbound tonnage last year was 6827 tons; the outbound, other than the tonnage derived from the Ozan Lumber Company, was 34,674 tons.

Examiner Burchmore: That is the total tonnage, carload and less than carload?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Exclusive of the Ozan Lumber Company outbound lumber?

Mr. Bemis: Yes, Sir, and logs.

Examiner Burchmore: Do you know what proportion of that tonnage is less than carload?

Mr. Bemis: No, Sir.

Examiner Burchmore: You handle, however, a substantial

3672 amount of less than carload freight?

Mr. Bemis: Yes, Sir, of all character.

Mr. Helbig: For the year ending June 30, 1910, our merchandise movement, less than carload lots, was 879 tons.

Examiner Burchmore: What were your revenues on that?

Mr. Helbig: I don't believe it shows.

Examiner Burchmore: I don't know that it is important.

Examiner Burchmore: What further information are you able to give with respect to your freight traffic and its character and extent? Make such statement as you can.

Mr. Bemis: The principal movement is logs and lumber, for the Ozan Lumber Company. The movement is general in character,

both of forest products for other people and outbound and inbound merchandise of all descriptions that are raised or used in an agricultural way.

Examiner Burchmore: What proportion of your total tonnage does the logs and lumber of the Ozan Lumber company comprise?

Mr. Bemis: Seventy-one per cent of our total.

Examiner Burchmore: That is, seventy-one per cent of the tonnage?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What about the revenue?

3673 Mr. Bemis: The percentage of revenue from the Ozan Lumber Company business is thirty-nine per cent of the whole; we get sixty-one per cent of our revenues from the general public.

Examiner Burchmore: Well, on about seventy per cent of the tonnage, you get about thirty-nine per cent of the revenues?

Mr. Bemis: Yes Sir. You see the lumber and the logs are really counted twice, the inbound tonnage on the logs, we also include the tonnage on the lumber outbound.

Examiner Burchmore: Some companies have given their statistics in the same way that you have in regard to the traffic, and have also stated them a little different. They have given the total tonnage of lumber out of the mill and then have shown the total tonnage of logs into the mill, and also the difference between the two.

Mr. Bemis: Yes, Sir.

Examiner Burchmore: So as not to count the logs twice, once in the shape of logs and the second time in the shape of lumber. Have you made any such separation of the figures?

Mr. Bemis: The estimated log tonnage, 80,000 tons; the lumber outbound, 23,118 tons.

3674 Examiner Burchmore: Does the lumber company have any commissaries or company stores along the line?

Mr. Bemis: No, Sir.

Examiner Burchmore: Does it receive any considerable quantity of mill supplies?

Mr. Bemis: No, Sir, except such stuff as is used by the Ozan Lumber Company at Prescott, and that comes through the Iron Mountain at Prescott.

Examiner Burchmore: It is not handled by the Prescott & Northwestern?

Mr. Bemis: There may be some commodities on which there is a rate to Dian,—I am not sure of that,—out of which the Prescott & Northwestern derives some compensation.

Mr. Helbig: In most cases the Ozan freight is billed to Prescott proper, but we do have joint rates to Dian, and in such cases we get a percentage.

Examiner Burchmore: Would that percentage be three dollars per car?

Mr. Helbig: Twenty-five per cent of the rate.

Examiner Burchmore: From the river?

Mr. Helbig: From wherever it originated.

Examiner Burchmore: That being less than carload stuff,
3675 I suppose nothing originates east of St. Louis.

Mr. Helbig: Well, I might add that all of our stuff from the east is billed from the river.

Examiner Burchmore: You haven't described the towns along the line have you?

Mr. Bemis: No, sir.

Examiner Burchmore: Just make a brief general statement with reference to the towns, their population and character and the business and industries of each, in a very general way.

Mr. Bemis: The town of Blevins has some five or six stores, population I should guess maybe one hundred people, it has a saw-mill, a gin and a canning factory. The town of Kilgore has a saw-mill; just what the population is I cannot say, as the mill is not now being operated. Belton is a town of some four or five stores and a population of some twenty-five or thirty. Tokio is a new town, the junction of the M. D. & G., has a number of stores and some population. The towns along the line are all small, but, we hope, growing.

Mr. McRae: You have not referred to Highland or Nashville.

Mr. Bemis: We operate a train jointly with the Memphis,
3676 Dallas & Gulf, this train being operated to Nashville.

Examiner Burchmore: Where is Nashville, on the M. D. & G.?

Mr. Bemis: Yes, sir.

Examiner Burchmore: You operate this train jointly from Prescott to Nashville?

Mr. Bemis: Yes, Sir; we operate the train to Nashville on a revenue basis. From Tokio to Nashville, for the use of the track of the M. D. & G., we give them one-third of the passenger earnings.

Mr. McRae: What is the population of Nashville?

Mr. Bemis: I couldn't say.

Mr. McRae: You can't state?

Mr. Bemis: No, Sir, possibly three thousand.

Mr. McRae: It is the County Seat?

Mr. Bemis: Yes, Sir.

Mr. McRae: Highland?

Mr. Bemis: Highland has one store and is the general office of the Arkansas Planting Company, which has a large area planted, something like two thousand acres.

Mr. McRae: Norvelle?

Mr. Bemis: Some five or six houses.

Mr. McRae: Stores?

3677 Mr. Bemis: I think one or two stores.

Examiner Burchmore: Are those last two towns on your line?

Mr. Bemis: Yes, sir.

Mr. McRae: Helbig, what is there?

Mr. Bemis: I don't think there are any stores at Helbig at all.

Examiner Burchmore: What is your tonnage in farm products, in a general way?

Mr. Bemis: We handled 1846 tons of agricultural products, 98 tons of products of animals, and merchandise and miscellaneous 585 tons; that stuff originating on the Prescott & Northwestern. That is from July 1, 1909 to July 31, 1910.

Examiner Burchmore: Not to June 30th?

Mr. Bemis: No, Sir. This statement was made up so as to include the peach movement during July, the fruit movement.

Examiner Burchmore: What is the extent of that peach movement during July?

Mr. Bemis: We handled 68 cars of peaches, and, I think, 15 cars of cantaloupes.

Examiner Burchmore: About what is your revenue on a carload of that fruit?

3678 Mr. Bemis: Mr. Helbig can answer that.

Mr. Helbig: Twenty-five dollars, twenty-five for peaches.

Examiner Burchmore: What is the revenue on the St. Louis & Iron Mountain?

Mr. Helbig: They get seventy-five dollars on the car.

Examiner Burchmore: You publish local passenger tariffs?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Those tariffs are filed with the Commission?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Do you have any local freight rates on carload, or less than carload freight traffic named between points on your line filed with the Interstate Commerce Commission so as to be applicable to Inter-State traffic?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: I will request that you file as part of this record, copies of any tariffs that do not bear I. C. C. numbers.

Mr. Bemis: We have only one, which is known as the Court tariff.

Examiner Burchmore: It is not necessary to file this one.

3679 The other tariffs already being filed, need not be filed now.

Mr. McRae: It is understood in this connection that all of the I. C. C. tariffs which the Prescott and Northwestern has made, or in which it has concurred, are made part of the record in this case.

Examiner Burchmore: Yes, Sir.

Examiner Burchmore: And you also say that the Court tariff is on file?

Mr. Bemis: The Commission has a copy of it.

Mr. McRae: And that may be considered as a part of the record?

Examiner Burchmore: Yes, Sir. As a matter of fact the tariffs on file with the Commission, and our filed copies, are more accessible than those filed in this record.

Examiner Burchmore: Your company has also a number of joint tariffs issued by the Iron Mountain railroad, and perhaps by others?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Are there joint rates to points on your line from Inter-State points applying to class freight?

Mr. Helbig: Yes, Sir.

3680 Examiner Burchmore: And some commodity rates?

Mr. Helbig: Yes, sir.

Examiner Burchmore: On peaches?

Mr. Helbig: Peaches, merchandise, as a matter of fact, practically everything.

Examiner Burchmore: The general basis of the division on class rates is twenty-five per cent of the through rate, or twenty-five per cent of the rate to the river?

Mr. Bemis: Yes, sir; these rates are based on the Mississippi River.

Examiner Burchmore: You are not a party to joint rates to Chicago, or points east of the Mississippi River?

Mr. Bemis: They break at St. Louis.

Examiner Burchmore: Will you testify to a division of rates on lumber, or are those questions to be asked Mr. Helbig?

Mr. Bemis: I can answer.

Examiner Burchmore: What are your divisions?

Mr. Bemis: To Texas, one cent; to all points east of the river, except Missouri Pacific points in Missouri, five cents; to all points west of the Missouri River, and including Missouri Pacific
3681 points in Missouri, six cents; to Rock Island Oklahoma points, three and a half cents.

Examiner Burchmore: Do the joint rates on lumber apply to Dian as a point of origin?

Mr. Bemis: We consider it a milling and transit privilege, and apply from Helbig through, although the lumber is billed from Dian.

Examiner Burchmore: Are there joint through rates from Helbig to Inter-State destinations on lumber the same as the Iron Mountain rates from Prescott?

Mr. Bemis: I think so.

Examiner Burchmore: The junction rate applies back on the line?

Mr. Bemis: Yes, sir.

Examiner Burchmore: What is the service for which this division is paid?

Mr. Bemis: The service we perform consists in the movement of the logs from Helbig to Prescott, a distance of forty-one miles. Inasmuch as it required four carloads of logs to make one carload of lumber, this is equivalent to a lumber movement of one hundred and sixty-four miles. When the lumber is milled, if delivery is to be made to the Iron Mountain, the loaded cars are moved
3682 from the Prescott & Northwestern tracks to a point on the Iron Mountain called the transfer track, a distance of about twelve hundred feet. In the event that delivery of lumber is made to the Memphis, Dallas & Gulf, there is an additional service consisting of the hauling of the empty cars from Tokio to Prescott and the return of the loaded cars to Tokio, making a total movement of thirty miles empty and thirty miles on the load.

Examiner Burchmore: Do you interchange any traffic with the Memphis, Dallas & Gulf aside from this joint train that you spoke of?

Mr. Bemis: Yes, sir, in a general way, on joint stuff.

Examiner Burchmore: What proportion of your stuff moves out over the M. D. & G.?

Mr. Bemis: A very small proportion.

Examiner Burchmore: Is the same proportion of division accorded on that?

Mr. Bemis: We have no rates from the M. D. & G. to the Mississippi River, but to simple freight territory we get the same, and to western trunk lines we get the same.

Examiner Burchmore: The same rates and same division?

Mr. Bemis: The same rates and same division.

3683 Examiner Burchmore: Do you turn over very much lumber to that other road?

Mr. Bemis: Very little.

Examiner Burchmore: How long has there been a connection between the two companies?

Mr. Bemis: I should think perhaps fifteen or eighteen months.

Examiner Burchmore: When that connection was established, was there an increase in your divisions received from the Iron Mountain?

Mr. Bemis: Yes, sir.*

Examiner Burchmore: When you established divisions in connection with the M. D. & G., was there subsequently an increase in the divisions?

Mr. Bemis: No, sir.

Examiner Burchmore: The divisions have remained the same. Just for a matter of information, with what companies does the Memphis, Dallas & Gulf connect?†

Mr. Bemis: With the Kansas City Southern at Ashdown, and with the Iron Mountain at Nashville.

Examiner Burchmore: The Memphis, Dallas & Gulf is a party to this proceeding?

3684 Mr. Bemis: It is a party to this proceeding.

Examiner Burchmore: Your company has a complete supply of stationery forms, bills of lading, way-bills, etc.?

Mr. Bemis: Yes, sir.

Examiner Burchmore: Does it comply with the State and Federal laws regulating railroads, such as the safety appliance acts and the accident laws?

Mr. Bemis: It does, yes, sir.

Examiner Burchmore: Have you posted tariffs at stations where they are accessible to shippers?

Mr. Bemis: You will have to ask Mr. Helbig about that.

Examiner Burchmore: Mr. Helbig, the question was: Do you post your tariffs at stations where they are accessible to shippers?

Mr. Helbig: Well, all of our agents are supplied with tariffs, and, in addition, we have tariffs posted at the office in Prescott.

Examiner Burchmore: What is the valuation of the road, with equipment?‡

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* "No, sir." See letter P. & N. W. R. R., 3/11/11.

† Also St. L. & S. F. (Record, 4930).

‡ Letter P. & N. W., 3/11/11.

Mr. Bemis: The cost of the road was $547,797.70; the cost of equipment $84,278.29, that is to say, less the reserve for depreciation, making a total of $580,140.16.

3685 Examiner Burchmore: You charge depreciation?

Mr. Bemis: Yes, sir.

Examiner Burchmore: At what rate?

Mr. Bemis: Under the rules of the Interstate Commerce Commission.

Examiner Burchmore: You keep your books in accordance with the requirements of the Interstate Commerce Commission?

Mr. Bemis: Yes, sir.

Examiner Burchmore: Does the right of way upon which this railroad runs belong to the railroad company?

Mr. Bemis: Yes, sir.

Examiner Burchmore: Does it lease any right of way?

Mr. Bemis: No, sir.

Examiner Burchmore: The private tracks of the Ozan Lumber Company which are operated in part by the railroad company, is not considered part of the system, being leased lines?

Mr. Bemis: No, sir.

Examiner Burchmore: You handle no traffic over these lines for the general public?

Mr. Bemis: No, sir.

Examiner Burchmore: Has your road paid any dividends?

Mr. Bemis: No, sir.

3686 Examiner Burchmore: Has it been conducted at a loss, or at a profit?

Mr. Bemis: It has been conducted at a loss.

Examiner Burchmore: That has been its history?

Mr. Bemis: Yes, sir.

Examiner Burchmore: Have you any prospects of its becoming profitable?

Mr. Bemis: We hope so; we have spent lots of money.

Examiner Burchmore: From what source do you look for this improvement?

Mr. Bemis: We believe that we have the finest fruit country in the Southwest, and hope to build up a very large tonnage in peaches, cantaloupes and general truck.

Examiner Burchmore: Do you receive any salary from the railroad company?

Mr. Bemis: No, sir.

Examiner Burchmore: Do any other officers, who are not employed by the Ozan Lumber Company, receive any salary?

Mr. Bemis: Yes, sir; Mr. O. H. Helbig, the Secretary and Treasurer.

Examiner Burchmore: Is he an officer in both companies?

Mr. Bemis: No, sir.

3687 Examiner Burchmore: He receives his entire salary from the railroad?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is the interest paid on this five hundred and seventy odd thousand dollars owed to the lumber company?

Mr. Bemis: No, Sir; it is simply charged; they never earned enough to pay even a small portion of the interest.

Examiner Burchmore: Then the unpaid interest each year is added to the amount of the indebtedness?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Well, a part of this indebtedness, I assume, is accounted for in the purchase of the rail?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What was the cost of that rail?

Mr. Bemis: I don't remember now; it is practically all of it fifty-six pound relay rail.

Examiner Burchmore: Well, did it amount to fifty-six thousand dollars?

Mr. Bemis: Just guessing at the quantity and guessing at the price, I should say there was forty or fifty thousand dollars' worth of rail.

3688 Examiner Burchmore: Have you those figures, Mr. Helbig? Is your estimate about the same?

Mr. Helbig: Yes, Sir; I would think so.

Examiner Burchmore: Now, you said a few moments ago that Dian and Prescott are practically the same place. Tell me a little about that. I understood that Dian was a mile from Prescott.

Mr. Bemis: Well, it is, in one corner.

Examiner Burchmore: Do you use the Iron Mountain depot at Prescott?

Mr. Bemis: No, Sir, but we have entered into a contract, it has been prepared, whereby we use their depot at Prescott, or, I ought to say, their new depot that they are going to build.

Examiner Burchmore: Where do your trains terminate at Prescott?

Mr. Bemis: We bring them up to the junction between the Iron Mountain and the Prescott & Northwestern, the interchange. We have what we call a transfer track, on which the Iron Mountain sets both the loads and the empties. On the stuff that the Prescott & Northwestern delivers to the Iron Mountain, we take that

3689 stuff and put it on what we call the Iron Mountain transfer track. One track belongs to the Prescott & Northwestern, and the other to the Iron Mountain.

Examiner Burchmore: There was formerly operated a saw-mill at Kilgore?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Why was that saw-mill closed down?

Mr. Bemis: It was sold by the Garrettson & Gleason Lumber Company, as I understand it, to some Canadian investors, and my further information is that they have gotten into a legal squabble of some kind, and until that is settled the mill will probably lie idle.

Mr. McRae: Right in that connection, I would like to have you state, if you know, about the holdings of that company.

Mr. Bemis. Only in a general way. I understand they paid something like two hundred and forty thousand dollars for the property there. I may be misinformed about that, but I know they have a large amount of timber.

Mr. Miller. It is hardwood?

Mr. Bemis. Yes, Sir.

Mr. Miller. You don't understand that that mill has been shutdown because it has no holdings to cut, but only until this litigation can be settled. And is it possible, or practicable, without a division of rates, for them to handle that stuff without the operation of your road?

Mr. Bemis. I don't think so.

Examiner Burchmore. How did that company gets its logs to its mill?

Mr. Bemis. They hauled, I think, all that was cut there, by wagon.

Examiner Burchmore. Well, was it possible for them to compete with your mill which has a private tram-road, whereas they have to use mules or horses?

Mr. Bemis. Yes, Sir, they are now in the same situation that we were in, they will have to build a railroad to get the timber.

Examiner Burchmore. Well, they cannot continue in operation by using wagons to get their logs?

Mr. Bemis. No, Sir; there is a physical limit, you understand. A man can haul logs by wagon to a certain limit; beyond that point, a railroad will become necessary.

Examiner Burchmore. They will build a railroad to connect with your line?

Mr. Bemis. That is my understanding.

Examiner Burchmore. Will your company be willing to make that connection with them?

Mr. Bemis. Yes, Sir, we will be glad to.

Examiner Burchmore. Will you operate it for them?

Mr. Bemis. No, Sir.

Examiner Burchmore. They will have to have their own engines?

Mr. Bemis. They will have to have their own engines and their own operation.

Examiner Burchmore. You would not be willing to operate that road on the same basis as you operate the Ozan Lumber Company?

Mr. Bemis. I think we would if the road would get the same revenue that they get from the Ozan Lumber Company.

Examiner Burchmore. If they laid down the track, would you be willing to operate it for the same charge?

Mr. Bemis. I think we would.

Examiner Burchmore. Are there any other saw-mills on your road at this time?

Mr. Bemis. Yes, Sir, small mills. I gave them some time ago in my testimony.

Examiner Burchmore. These mills get their logs by wagon?

Mr. Bemis. Yes, Sir, I think they do.

Examiner Burchmore: From the woods only to the mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Do any of those saw-mills haul their lumber from the mill to the railroad by wagon?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: They do that profitably?

Mr. Bemis: I don't know.

Examiner Burchmore: You don't pay any cartage charges to them for carting the lumber to your line?

Mr. Bemis: No, Sir.

Examiner Burchmore: You charge them the regular rate, and they have to stand the expense?

Mr. Bemis: Yes, Sir; there is no reason why they should not.

Examiner Burchmore: Well, that expense is very much larger than the expense of the Ozan Lumber Company, to get its lumber to your line?

Mr. Bemis: No, Sir; I don't think so. The idea is this, the Ozan Lumber Company performs the same service in moving
3693 their logs from their timber to their tap-line that the small man performs in moving his logs from his timber to his mill. They both have to move the stuff in wagons to some point.

Mr. McRae: You can't take a railroad to every tree?

Mr. Bemis: No, Sir; you can load the logs on the cars without the intervention of wagons.

Examiner Burchmore: Well, these tramroads do run to something very near every tree, you move them around so. I don't think that that question need be gone into any further. You say there is a limit to profitable wagon hauling, and when you get beyond that you have to build a railroad?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And there is a limit to the extent that you can build a private tramroad profitably?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: If your division on lumber were increased, you could go further into the woods with your tram line?

Mr. Bemis: Well, you might increase the division so as to
3694 make anything profitable, provided the business will stand it.

Examiner Burchmore: Just one more line of questions and I will conclude. That is as to the method of handling and billing those logs and lumber. Will you testify as to that, or will Mr. Helbig?

Mr. Bemis: Well, Mr. Helbig can.

Mr. Helbig: The lumber is billed at Dian, and we also issue bills of lading.

Examiner Burchmore: You issue way-bills on the lumber?

Mr. Helbig: Yes, Sir; bill them there to all points on other lines.

Examiner Burchmore: Now, let me see if I understand the practice correctly. The empty logging cars are taken out into the woods along the main line of the private tram-road.

Mr. Bemis: Yes, Sir.

Examiner Burchmore: The locomotives of the lumber company place these logging cars on the short branch of the tram-line?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And they are loaded with logs by the logging employés. When loaded they are taken out by the lumber company locomotives and crews and placed, or assembled on
3695 the main line of the tram-road?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And then over the main line of the Prescott & Northwestern?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And sets them at the mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What compensation does the Prescott & Northwestern get for that?

Mr. Bemis: They get one dollar per thousand feet.

Examiner Burchmore: What per cent does that amount to on the final output of lumber, two cents?

Mr. Bemis: Yes, Sir; a little over that, about three cents.

Examiner Burchmore: There is no billing at all that accompanies the cars to the mill?

Mr. Bemis: No, Sir; except the conductor carries the report out and hands it in.

Examiner Burchmore: Are the logs scaled out in the woods?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Who scales them?

Mr. Bemis: The scaler of the lumber company.

3696 Examiner Burchmore: The railroad company does not scale the logs?

Mr. Bemis: No, Sir.

Examiner Burchmore: When the train reaches Dian, the conductor reports the quantity of logs he has brought in?

Mr. Bemis: The number of cars.

Examiner Burchmore: A bill of lading is then issued to cover those cars?

Mr. Bemis: A record is made, that is all.

Examiner Burchmore: Then subsequently when the lumber is shipped out of the mill, a bill of lading is issued by the Prescott & Northwestern at Dian?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Where is that bill of lading headed?

Mr. Bemis: It is headed Dian.

Examiner Burchmore: The lumber, then, originates at Dian, according to the bill of lading, and not at Helbig?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: The bill of lading does not indicate that the lumber is manufactured from logs that come from beyond?

Mr. Bemis: No, Sir.

3697 Examiner Burchmore: And the same is true as to the waybill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Then the rate that is applied to the lumber is the published joint rate from Dian?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And not the published joint rate from Helbig?

Mr. Bemis: No Sir; but the rate- from Dian to Helbig are the same.

Examiner Burchmore: The cars on which the lumber is loaded for Interstate transportation, are supplied by the Iron Mountain?

Mr. Bemis: Yes, Sir; entirely.

Examiner Burchmore: Disregarding for the moment the question of shipments that go over the M. D. & G., how are those cars set at the mill empty? Are they taken at the Iron Mountain interchange track by the locomotive of the Prescott & Northwestern?

Mr. Bemis: They are delivered at the transfer track at Prescott.

Examiner Burchmore: And there the Prescott & North-
3698 western crew take the empty cars to the mill?

Mr. Bemis: I can show you in a minute how that is done. All cars are set on this track (indicating on map).

Examiner Burchmore: Mr. Bemis, will you state in the record how an empty car furnished by the Iron Mountain gets on to the private track at the saw-mill, where it is loaded?

Mr. Bemis: Well, there is no private track at the saw-mill.

Examiner Burchmore: Well, there is some side-track there.

Mr. Bemis: The cars are loaded at the planing mill.

Examiner Burchmore: All the cars are loaded at the planing mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is there any side-track at the planing mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is that side-track ilentical with the interchange track?

Mr. Bemis: No, Sir.

Examiner Burchmore: How far does the Iron Mountain engine take the empty car?

3699 Mr. Bemis: About twelve hundred feet.

Examiner Burchmore: Where does it place it?

Mr. Bemis: On this transfer track.

Examiner Burchmore: That transfer track is owned by the Prescott & Northwestern?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Well, the Iron Mountain goes on the Prescott & Northwestern track for several hundred feet?

Mr. Bemis: For about twelve hundred, and we, in turn, go on the tracks of the Iron Mountain for the same distance, and consider——

Examiner Burchmore: How far does the engine pull the empty car from the transfer track to the planing mill?

Mr. Bemis: The switching movement would probably take three or four hundred feet.

Examiner Burchmore: The planing mill is not located on this same transfer track?

Mr. Bemis: No, Sir.

Examiner Burchmore: On a different side-track?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Then the car is loaded with lumber?

Mr. Bemis: Yes, Sir.

3700 Examiner Burchmore: The engine of the Prescott & Northwestern, that crew and that engine, take this car from the side-track at the planing mill, and haul it down to the Iron Mountain right of way?

Mr. Bemis: Carry it and place it on the Iron Mountain transfer track.

Examiner Burchmore: Then they go twelve hundred feet over your rails with the empty car, and you go for several hundred feet over their rails with the loadel car?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Now, do you handle any lumber for people other than the Ozan Lumber Company?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Give an example of some other saw-mill.

Mr. Bemis: Well, we handle all of this lumber that originates on the line.

Examiner Burchmore: In the case of lumber that originates on the line, say at Tokio,——

Mr. Bemis: Yes, Sir.

Examiner Burchmore: You haul the car empty from the Iron Mountain railroad up to the saw-mill?

Mr. Bemis: Yes, Sir.

3701 Examiner Burchmore: The car is furnished by the Iron Mountain?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And then you haul it loaded back to the Iron Mountain?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And then you receive the same division that you receive on the Ozan Lumber Company track?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And render a greater service?

Mr. Bemis: We do a greater service on the Ozan Lumber Company track.

Examiner Burchmore: On the lumber itself, you render a greater service on the other mills?

Mr. Bemis: Hauling freight is a matter of tonnage; it costs to haul the tonnage.

Examiner Burchmore: You say you perform a very much greater service on Ozan Lumber Company lumber than you do on lumber for other saw-mills, because you carry the logs into the mill?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Take a car of Ozan lumber that

3702 moves over the Memphis, Dallas & Gulf, you receive a car for that movement from the Memphis, Dallas & Gulf?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: You haul it down to the mill empty?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: It is loaded, then you haul it back to the Memphis, Dallas & Gulf?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: A distance of——

Mr. Bemis: Thirty miles.

Examiner Burchmore: The bill of lading is issued then at Dian, in such a case?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: And the through way-bill is issued at Dian?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Mr. McRae, I suggest that you file with the Commission for its information, a map similar to that which we have called for from other companies, a small sized map drawn to a scale. It may be a rough map or blue print, but should be drawn to scale. Showing the entire line, including side-tracks and
3703 spur-tracks, showing all the saw-mills and interchange tracks with other railroads, and, in brief, showing the entire lay of the land.

Mr. McRae: We will endeavor to do that as soon as practicable, after we get a copy of the testimony to indicate what is wanted.

Mr. McRae: Mr. Bemis, you have a freight depot at Dian?

Mr. Bemis: Yes, Sir.

Mr. McRae: You have an arrangement with one of the defendant carriers, the St. Louis, Iron Mountain & Southern Railway, for the joint use of the freight depot which we have in contemplation?

Mr. Bemis: Yes, Sir.

Mr. McRae: I will ask you to state if the lumber tonnage does not bear a lower rate than any other tonnage except, perhaps, coal?

Mr. Bemis: I think it does.

Mr. McRae: And that, then, is the reason for the disparity between the tonnage and the revenue, as referred to by the Examiner and to which he called your attention.

Mr. Bemis: Well, there is really a double service performed there, we handle in logs what we again handle in lumber.

3704 Mr. McRae: The mill at Kilgore to which you have referred, is that a yellow pine proposition, or a hardwood proposition?

Mr. Bemis: It is a hardwood proposition; they have some yellow pine, but practically all their timber is hardwood.

Mr. McRae: I understand that under the same conditions you would perform the same service for them as you do for the Ozan Lumber Company.

Mr. Bemis: Yes, Sir; I would be glad to.

Mr. McRae: Is the business, outside of transporting forest products, increasing, or decreasing?

Mr. Bemis: Increasing.

Mr. McRae: Do you operate under a tariff published by the different carriers, which provide for a milling in transit privilege, in which you concur?

Mr. Bemis: Yes, Sir.

Mr. McRae: The J. H. Bemis, you stated was your father, a member of the firm of Bemis & Whitaker, has he any interest in either the Prescott & Northwestern Railroad, or in the Ozan Lumber Company?

Mr. Bemis: Practically none; he has a small amount of stock in the Prescott & Northwestern.

3705 Mr. McRae: No interest in the lumber company, and no substantial interest in the railroad company. His interest in the railroad company is simply to provide for the Board of Directors, as provided for by the laws of Arkansas?

Mr. Bemis: Yes, Sir.

Mr. McRae: In speaking of the probabilities of extending your road to the northwest, I will ask you if when you stated that you now have no proposition pending for that, is it not because you were not able to get the money to do it?

Mr. Bemis: Yes, Sir; that is undoubtedly the reason.

Mr. McRae: And not because you do not think with the proper capital it could be developed into a paying proposition if extended?

Mr. Bemis: Beyond any question it could.

Mr. McRae: Have you not also been importuned to build South to connect with what is known as the Beardsley road, on the Cotton Belt, to, I believe, Alexandria?

Mr. Bemis: Yes, Sir.

Mr. McRae: Is that not a practical proposition, if it could be financed?

Mr. Bemis: I think it is.

3706 Mr. McRae: That would require only the building of the road through Nevada County?

Mr. Bemis: Yes, Sir, thirty-five miles.

Mr. McRae: You say that you had no connection with the Prescott & Northwestern Railroad when it was organized, but do you not know that the people of Prescott subscribed a bonus of between eight and ten thousand dollars in order to have it constructed and built?

Mr. Bemis: Yes, Sir, that is my information.

Mr. McRae: Has the construction, since the reorganization and your connection with it, been of a substantial character?

Mr. Bemis: Yes, Sir.

Mr. McRae: And with a view of making it a permanent investment?

Mr. Bemis: Yes, Sir.

Mr. McRae: What has your company done to encourage the development of the country along the line of the road?

Mr. Bemis: We have established an experimental farm and we have spent quite a good deal of money, I expect ten or fifteen thousand dollars on it; we have distributed seeds and plants; we have had the farmers congregate and discuss the various things that

3707 can be produced more profitably than the things they are now producing, and I think that can be.

Mr. McRae: Did you advertise the resources of that country in any newspapers?

Mr. Bemis: Yes, Sir; we advertised in a number of newspapers, and issued our own advertising matter.

Mr. McRae: You issued a folder?

Mr. Bemis: Yes, Sir.

Mr. McRae: Is that one of them?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: It may be filed in the record.

(The paper so offered and identified was received in evidence and thereupon marked Prescott & Northwestern Railroad Company Exhibit No. 1, Witness Bemis, received in evidence December 14, 1910, and is attached hereto.)

Mr. McRae: Were you exhibitors in the land show at Chicago?

Mr. Bemis: I think we had as creditable a booth as any similar proposition.

Mr. McRae: And you incurred that expense because you have faith in that country?

Mr. Bemis: Yes, Sir.

3708 Mr. McRae: If you can get a sufficient number of people——

Mr. Bemis: Yes, Sir. We have a large quantity of clays of various kinds, and a number of things which will offer for transportation.

Mr. McRae: How far does the road run from the diamond fields of that county?

Mr. Bemis: About four or five miles.

Mr. McRae: Is there a bona fide shipping public along that line?

Mr. Bemis: Yes, Sir.

Mr. McRae: How long has it been such?

Mr. Bemis: For the past ten or twelve years.

Mr. McRae: Does, or does not, the management of that railroad give shipping service to that public, to all on like terms and conditions?

Mr. Bemis: Yes, Sir; we try to give them all equal service.

Mr. McRae: What has been developed in the way of the development of the country?

Mr. Bemis: Well, there have been large areas that we denuded a good many years ago, that is, the Ozan Lumber Company, that have been opened up for settlement. There are a good many

3709 farms in that country that was all timber when I first went in there.

Mr. McRae: Through what counties does the road run?

Mr. Bemis: They pass through Nevada, Hempstead and Pike. Pike County, fifteen years ago the folks in that county were about as illiterate a bunch, their principal occupation was making corn enough to feed their hogs and make "Moonshine" whiskey, and they had no schools at all, and their scrip was only worth thirty cents on the dollar, and during that time there have been constructed just three of these lines, and since then the scrip is worth one hundred cents on the dollar, and I think, beyond question, we have seen a wonderful change in that country since we have been there.

Mr. McRae: You say three roads have been built through that county in that time?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: What railroads do you refer to?

Mr. Bemis: The Arkansas & Southwestern, which is not a part of the Iron Mountain, the Memphis, Dallas & Gulf and the Memphis & Southwestern.

Mr. McRae: Have you traveled over it?

Mr. Bemis: Yes, Sir.

3710 Mr. McRae: What does the traffic, both passenger and otherwise, indicate?

Mr. Bemis: I can't say as to that, the portion in Pike County, I can't say what its traffic is.

Mr. McRae: Well, if you have traveled it, you know whether it is great, or small.

Mr. Bemis: It is not very large.

Mr. McRae: Is it not true that the beginning of what is now known as the Guerdon & Fort Smith Branch of the Iron Mountain, was built for the Smithton Lumber Company, incorporators?

Mr. Bemis: Yes, Sir; that is the outgrowth of the railroad that belonged to the Smithton Lumber Company.

Examiner Burchmore: From looking at the map, Mr. Bemis, it appears that by means of your train service from Prescott to Nashville, you have established competition with the Arkansas and Louisiana line, from Hoke to Nashville?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is that a part of the Iron Mountain system?

Mr. Bemis: Yes, Sir.

Mr. McRae: What has been the increase in the population

3711 along the line of your road in Nevada, Hempstead and Pike counties, since you have been connected with it?

Mr Bemis: I couldn't tell you in numbers, but through a country that had practically no one in there, except along certain roads, there have grown up a great many communities and a great many people.

Mr. McRae: Do you not serve as many as twenty thousand people along the line of your road?

Mr. Bemis: Well I don't know that I would care to testify as to that. I don't know, I expect if you take it all in, we do.

Mr. McRae: What does the census returns show the increase in population of these three counties to be?

Mr Bemis: I haven't seen them.

Mr. McRae: Well, if I tell you that it is twenty to twenty-five per cent, would you be willing to express an opinion as to whether the increase in that part of the county is greater or less than in other parts of the county?

Mr. Bemis: I am satisfied that the increase is very much greater in that section than it was in the more settled part of the State.

Mr. McRae: You have been engaged in the saw-mill busi-

3712 ness and the railroad business since 1892. You have some knowledge of what we call short line railroads. Have you

known of any incorporated railroad in that section of the State that has not developed into a road of value to the community in which it is built?

Mr. Bemis: I know of a number that have developed, yes Sir, into roads of that kind. I assume also that there are others that are starting out that will develop into these.

Mr. McRae: Can you name some, in addition to those you have named, that began as short line railroads, that have developed into parts of systems, that operate in Arkansas?

Mr. Bemis: Yes, Sir. The Arkansas Southern, which I think now belongs to the Rock Island, is one; the Texarkana & Fort Smith is another. They both grew out of tap-line propositions.

Examiner Burchmore: The Commission is familiar with the fact that a great many short line roads have become component parts of great systems.

Mr. McRae: I would like to get it in the record. Can you name another, the Louisiana and Arkansas is another?

Mr. Bemis: Yes, Sir; the L. & A. is another.

Mr. McRae: In your opinion, would it have been possible
3713 to build any of these roads, with the sparsely settled population, without through rates, joint rates, and a division thereof?

Mr Bemis: I don't think so; no, Sir.

Mr. McRae: When did you acquire the greater part of your timber holdings for the Ozan Lumber Company?

Mr. Bemis: Well along between the years,—well, we acquired the greater part of them from 1902,—no 1900 up to this time, 1900 to 1907.

Mr. McRae: What, if any, timber holdings did you have when you and your associates acquired the control of the railroad?

Mr. Bemis: We had practically no timber at that time.

Examiner Burchmore: But you were in the mill business since 1892.

Mr. Bemis: Yes, Sir; but we had a railroad and a mill and no timber.

Mr. McRae: How did you get your timber?

Mr. Bemis: We bought the timber as we got to it.

Mr. McRae: Is it not true that at that time there were no great bodies of timber through which this railroad penetrated?

Mr. Bemis: Yes, Sir, except at the extreme western end.

3714 Mr. McRae: Since that time you have built about thirty miles of the main line of the road?

Mr. Bemis: Yes, Sir.

Mr. McRae: And now, where is situated the most extensive of your holdings?

Mr. Bemis: At the extreme west of the line.

Mr. McRae: I believe you stated already, have you, that the original stockholders of the Ozan Lumber Company had no connection with, or interest in the organization of the railroad.

Mr. Bemis: No, Sir.

Examiner Burchmore: I think that question has been gone into fully.

Mr. McRae: Now, Mr. Bemis, I will ask you to state,—have you found what classes of property and what amount of tonnage, the total, that the road transported during the year 1909-10.

Examiner Burchmore: I think he gave the tonnage statistics fully.

Mr. Bemis: The total tonnage, 144,619; the balance of the tonnage has been stated.

Mr. McRae: What did you receive for that tonnage?

3715 Mr. Bemis: $80,463.85.

Mr. McRae: Did he state how many passengers he carried?

Mr. Bemis: Total gross revenue $89,107.11.

Mr. McRae: You have stated that you run two trains a day each way, or a regular published schedule. I will ask you if the company furnishes separate compartments for the white and the colored, as required by the Arkansas law?

Mr. Bemis: Yes, Sir.

Mr. McRae: In connection with the movement of the products of the orchard, does the refrigerator service apply through that orchard country over the line?

Mr. Bemis: Yes, Sir; the movement has to be through refrigerator cars.

Examiner Burchmore: The ice is furnished by the Iron Mountain?

Mr. Bemis: The ice and the refrigerating charges are included in the rate; the A. R. T. people furnish the ice.

Mr. McRae: Does the Prescott & Northwestern carry the mail to Nashville?

Mr. Bemis: Yes, Sir.

Mr. McRae: And haul the business you have named along the line?

3716 Mr. Bemis: Yes, Sir.

Mr. McRae: How long has it had the carrying of the mail to Nashville?

Mr. Bemis: Several months.

Mr. McRae: What road was it carried by?

Mr. Bemis: The Iron Mountain.

Mr. McRae: How did you get it?

Mr. Bemis: Because we were able to give them quicker service by five or six hours than the Iron Mountain.

Mr. McRae: We introduce this proof to show that this railroad is able to take care of the business as a railroad.

Mr. McRae: You have testified about the operation of trains?

Mr. Bemis: Yes, Sir.

Mr. McRae: How many section houses have you?

Mr. Bemis: We have four groups of section houses.

Mr. McRae: One for each section?

Mr. Bemis: Yes, Sir.

Mr. McRae: What will the total receipts and total expenditures for the year 1909-10 show?

Mr. Bemis: Total receipts for 1909-10, $79,210.64; the total expenses $74,817.58, showing a gain of $4393.06, less
3717 taxes $3073.61, showing a net gain of $1319.45.

Mr. McRae: Gain over what?

Mr. Bemis: Operating revenue over expenses.

Examiner Burchmore: Those taxes are quite substantial. Are you taxed on the same basis as other common carrier roads?

Mr. Bemis: Yes, Sir.

Mr. McRae: You are assessed by the Tax Commission as a railroad?

Mr. Bemis: Yes, Sir.

Mr. McRae: On the mileage basis, like the main lines of other railroads?

Mr. Bemis: Yes, Sir.

Mr. McRae: Does your company report to and comply with the regulations of the Arkansas Railroad Commission?

Mr. Bemis: Yes, Sir.

Mr. McRae: Are the books of the railroad company kept separate from that of the Ozan Lumber Company?

Mr. Bemis: Yes, Sir.

Mr. McRae: Bank account separate?

Mr. Bemis: Yes, Sir.

Mr. McRae: Is the railroad company a member of the American Car Association, American Railway Association?

3718 Mr. Bemis: Yes, Sir.

Mr. McRae: Do you pay a per diem for your cars?

Mr. Bemis: Yes, Sir.

Mr. McRae: Do you collect demurrage from the Ozan Lumber Company and other industries that you serve?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: It seems to me we have covered it rather fully, with the exception of one or two questions that perhaps have not been asked. I presume that the Officers of the Prescott & Northwestern, or some of them, enjoy annual passes over the Iron Mountain and other roads?

Mr. Bemis: Yes, sir; Mr. Helbig, Mr. H. E. Bemis and myself.

Examiner Burchmore: These passes are used?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: The Ozan Lumber Company manufactures pine lumber?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: No hardwood?

Mr. Bemis: No hardwood.

Mr. McRae: You sell your hardwood timber to those who manufacture hardwood?

3719 Mr. Bemis: Yes, Sir.

Mr. McRae: In reference to your transportation, I will ask you if you have exchange with the Santa Fe?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: When were divisions on lumber shipments first established with your company?

Mr. Bemis: It has been fourteen or fifteen years ago.

Examiner Burchmore: When all the timber along the line has been finally cut off, will this railroad be taken up, or continued in operation?

Mr. Bemis: We cannot take it up, as I understand it. We are proceeding on the theory that we have a good country and will develop enough transportation to make it profitable.

Examiner Burchmore: How much timber rights does the Ozan Lumber Company own along this territory?

Mr. Bemis: Forty thousand acres.

Examiner Burchmore: About how many million feet in there?

Mr. Bemis: I think there is upwards of two hundred and fifty million.

Mr. McRae: In reference to the probability of taking up the line of the Prescott & Northwestern Railroad, I will ask you if
3720 under the laws of the State of Arkansas, the road is not dedicated to the public and cannot be taken up.

Mr. Bemis: That is my understanding.

Examiner Burchmore: Well, you have already taken up a part of the railroad.

Mr. Bemis: No, Sir. Those were not parts of the railroad; they were shown on the map by the Railroad Commission, but were never claimed as a part of their line, they were simply temporary spurs.

Mr. McRae: In reference to the divisions, I will ask you if before you purchased any substantial timber—you have already stated that at the time you acquired the road you had very little,—you had an agreement with the Iron Mountain people that you would have the usual divisions if you acquired and constructed the road?

Mr. Bemis: Yes, Sir.

Examiner Burchmore: Is that a written, or a verbal agreement?

Mr. Bemis: It is a verbal agreement, which is customary.

Examiner Burchmore: You have no written agreement with the railroad company covering the diivsion of rates, except tariff sheets?

Mr. Bemis: No, Sir.

3721 Mr. McRae: As I understand you to say, that the company would not, and could not have constructed this road without the promise and expectation of through rates and a division of rates?

Mr. Bemis: Yes, Sir. I desire to add that we have spent between eighteen and nineteen thousand dollars in ballasting our line with gravel during the years 1907 to 1910.

BURT JOHNSON was called as a witness, and having been duly sworn, testified as follows:

Mr. McRae: What is your name, residence and business, Mr. Johnson?

Mr. Johnson: Burt Johnson.

Mr. McRae: Upon what railroad do you live?

Mr. Johnson: I live at Highland, located on the Prescott & Northwestern.

Mr. McRae: How long have you resided at Highland, and how came you to settle there?

Mr. Johnson: I located there a little over six years ago. Be-

fore I located I was hunting a location for a commercial
3722 peach orchard, and found the location I was looking for there. I was looking for a peculiar location. When I was going in the peach business, I wanted to go where I could raise peaches every year, and I found that to be the case there.

Mr. McRae: Had a railroad been constructed to that point at that time?

Mr. Johnson: No, Sir; it was located about nine miles from there.

Mr. McRae: Having found this ideal peach orchard land, what did you do before purchasing, with reference to conferring with the complainant carrier, and the defendant, the St. Louis & Iron Mountain?

Mr. Johnson: I first wrote a letter to the Missouri Pacific up in St. Louis, and told them I wanted to locate a commercial peach orchard, and they refefred it to their commercial department, and soon the representative called to see me and told me they were willing to show me anything they had on their lines. I told them what I wanted was if I located there I would have competitive rates.

Mr. McRae: What understanding did you have with the Prescott & Northwestern?

3723 Mr. Johnson: I had a consultation with the Prescott & Northwestern, and had the understanding that they were to maintain their track for a number of years.

Examiner Burchmore: Any given number of years?

Mr. Johnson: Well, yes, I had a written contract with the Prescott & Northwestern for fifteen years, and also the Missouri Pacific sanctioned—while I had no written contract, they gave me to understand—and have to this day carried out their agreement with me.

Examiner Burchmore: Is there any objection to filing this written contract?

Mr. McRae: No objection.

Examiner Burchmore: Is there any information to be derived from it?

Mr. McRae: I don't know.

Examiner Burchmore: Dated what year?

Mr. McRae: About six years ago.

Examiner Burchmore: Did you feel it necessary to tie the Prescott & Northwestern up with a contract so they would not remove their railroad?

Mr. Johnson: We hadn't located there yet, and I wasn't going a long ways back from the Iron Mountain, you under-
3724 stand. The Iron Mountain said they would rather locate me on their land, but I said "You have no fruit land on your line."

Mr. McRae. You had this understanding with the Prescott & Northwestern, before the Prescott & Northwestern had reached that point?

Mr. Johnson: Yes, Sir.

Mr. McRae: And part of the contract was the construction of the railroad to that place?

Mr. Johnson. Yes, Sir.

Mr. Mellen. Can you tell how much you have expended, you and your associates, your company.

Mr. Johnson. We have expended up to this date something like two hundred and twenty-five thousand dollars.

Mr. Mellen. How many cars of peaches did you transport last year?

Mr. Johnson. Sixty-six.

Mr. Mellen. What do you expect next year?

Mr. Johnson. Of peaches something between four and five hundred cars next year. We expect to plant, there will be planted on the line about eight hundred acres of cantaloupes, probably run something like one hundred cars of cantaloupes.

Mr. Mellen. What is your market for those peaches?

Mr. Johnson. North and East.

Mr. Mellen. Is it possible for you to sell them away in competition with other fruit growers without through rates?

Mr. Johnson. No, Sir.

Examiner Hutchinson. You couldn't pay more than one hundred dollars a car?

Mr. Johnson. Not going to compete with other people.

Examiner Hutchinson. You don't care whether it is a through rate or not, as long as you don't have to pay over one hundred dollars?

Mr. Johnson. The way I look at that matter, is that the Prescott & Northwestern will have to give us that service, and unless they get paid for it,—I am one of those fellows that believe in paying for services.

Mr. Mellen. What are the possibilities of the soil for fruit growing?

Mr. Johnson. Take the particular ridge that I am on, I would judge there is forty or fifty thousand acres tributary to this railroad that is what we call perfect air drainage. I mean by that that we will have fruit every year, or nearly so. Now the peculiarities of this is a high elevation and low country. The general elevation of this country is about three hundred and fifty feet, and on the particular ridge it runs from seven to eight hundred feet.

Mr. Mellen. From your knowledge as an expert peach man, you believe you can produce a peach crop every year.

Mr. Johnson. Yes, Sir. I have had it proven so.

Mr. Mellen. And the surrounding country, during the time you have been there, does not?

Mr. Johnson. Does not, no Sir, and other fruits and vegetables the same way.

Mr. Mellen. From your knowledge of that country, is it possible with the present conditions, without joint rates and joint through rates on all kinds of products, for the Prescott & Northwestern to give the kind of service and keep the railroad?

Mr. Johnson. They cannot.

Mr. Mellen. Does the company endeavor to meet the demands of the shipping public?

Mr. Johnson: Yes, Sir.

Mr. McRae: Well, if you know anything special that the
3727 company has done in order to develop the country, you may state it.

Mr. Johnson: Well, they have done a great many things. Now, at our particular point, I have one packing house located nearby, they put in a switch there at their own expense.

Mr. McRae: How long?

Mr. Johnson: That switch, I suppose, is probably three hundred yards long.

Mr. McRae: About how much did it cost?

Mr. Johnson: I don't know, the railroad company put that in themselves.

Examiner Burchmore: That is your packing house?

Mr. Johnson: Yes, sir. We have another packing house located about a little over a mile and a half off the line, to which we are now building a spur. We are building that, though, under the regular terms of railroading, we are building the grade and furnishing the ties, and they are doing the rest.

Mr. McRae: What is the condition of the country from the end of the line where it was when you first entered this country with a view of locating your orchard and now, as compared with
3728 the number of people in it, the condition of the people there, you might call the land I located on run-down country, the part that I took. This railroad was the first railroad that ever crossed that ridge.

Mr. McRae: What is the extent of the orchard?

Mr. Johnson: Something like twenty-two hundred acres.

Mr. McRae: Well, do you expect to plant more?

Mr. Johnson: Yes, Sir; we are still planting.

Mr. McRae: How much more do you contemplate planting?

Mr. Johnson: Well, we will plant about two hundred acres more this Spring, that is, in that vicinity.

Mr. McRae: In all, how much do you contemplate taking in?

Mr. Johnson: Well, there is no telling, we might take in fifty thousand acres.

Examiner Burchmore: It seems to me that you have developed your interest in this country, and shown the extent of the traffic. You have shown that you are interested in continuing the traffic of that road.

Mr. Johnson: Yes, Sir.

Mr. McRae: I want to show that this railroad that runs through this country is susceptible of development.

Mr. McRae: What was land worth then?

Mr. Johnson: Our first land, we bought from five to
3729 fifteen dollars an acre.

Mr. McRae: What are the lands worth now?

Mr. Johnson: They are worth all the way from fifteen to thirty dollars, that is, the raw lands.

Mr. McRae: What are the orchards worth?

Mr. Johnson: All the way from one hundred and fifty to two hundred and fifty. If your Honor will permit me, I can illustrate.

Examiner Burchmore: I think you have fully proved the point. I think that you have proved that the country is being developed.

Mr. McRae: It will take a little time, and unless you deny him the right to make the statement, I would be glad——

Examiner Burchmore: You can take two or three minutes.

Mr. Johnson: I might state further that along the line, the fruit and vegetable and also the peanut industry is growing very largely, they are developing in every way.

Examiner Burchmore: You heard Mr. Bemis' testimony describing the railroad and its physical characteristics and the territory that it serves. You think this testimony is in the main correct?

3730 Mr. Johnson: Yes, Sir, I think so.

Examiner Burchmore: Did you purchase your land from the Ozan Lumber Company?

Mr. Johnson: No, Sir; none of it.

H. M. STEVENS was called as a witness, and having been duly sworn, testified as follows:

Mr. McRae: Mr. Stevens, state your name and residence.

Mr. Stevens: H. M. Stevens. I live at Blevins, Arkansas.

Mr. McRae: Is Blevins situated on the Prescott & Northwestern Railroad?

Mr. Stevens: Yes, sir.

Mr. McRae: How far from Prescott?

Mr. Stevens: Fourteen miles.

Mr. McRae: Are you engaged in the mercantile business at Blevins?

Mr. Stevens: I am.

Mr. McRae: Did you hear Mr. Bemis' statement as to the character of services that he rendered and the character of the road that he had?

Mr. Stevens: Yes, Sir.

3731 Mr. McRae: Do you think this substantially correct?

Mr. Stevens: Yes, Sir.

Mr. McRae: Is this company furnishing shipping facilities to the shipping public along that road?

Mr. Stevens: Yes, Sir.

Mr. McRae: Does the road seek to meet that demand?

Mr. Stevens: It does, yes, Sir.

Mr. McRae: Is there any other way for the products of the neighborhood in which you live to get to market, except over the Prescott & Northwestern?

Mr. Stevens: There is not, no Sir.

Mr. McRae: Do the shippers along the road use it for practically all of their business?

Mr. Stevens: They do.

Mr. McRae: What do you know in your community as to what the management of the Prescott & Northwestern has done toward encouraging the development of the country.

Mr. Stevens: They have done a great deal according to my knowledge; they have encouraged truck growing; also they went so far as

to furnish seed free of charge, shrubbery plants free of charge to the growers throughout the country.

Mr. McRae: You raise and ship potatoes to foreign mar-
3732 kets at the station at which you live?

Mr. Stevens: We do, yes, Sir.

Mr. McRae: How many carloads did you ship last year?

Mr. Stevens: We shipped seven last year, but on account of the freeze; if it hadn't been for the freeze, I expect we would have shipped more than fifty. We had a big crop of potatoes, but the freeze came and killed them, and consequently killed off our crop.

Mr. McRae: You were born and raised in that community?

Mr. Stevens: Yes, Sir; born and raised.

Mr. McRae: Will you tell the difference between the condition of the people before the railroad and now?

Mr. Stevens: I couldn't hardly begin to tell, there is such a big difference. When the railroad first began to head our way, the people were not raising anything but corn and cotton, and hardly making a living, and since the road is coming in there, they are able to raise any kind of produce, cantaloupe, peanuts, and ship it out and get a ready market.

Mr. McRae: Isn't it true that the building of this railroad in and through the neighborhood of Blevins has developed it into
3733 one of the most pro-perous communities anywhere in that part of the country?

Mr. Stevens: It has.

Examiner Burchmore: Judge McRae, I think it will suffice to ask Mr. Stevens if he fully corroborates and confirms the testimony heretofore offered with reference to the development of the country.

Mr. McRae: With the understanding that the Commission is satisfied that the country is being developed, we are willing to stop.

Examiner Burchmore: It seems to me that you have made as strong a record as you can reasonably make on the improvement of the country and the possibilities of the country.

Mr. McRae: We sincerely hope the Commission will take that view of it.

Mr. McRae: You operate a saw-mill?

Mr. Stevens: Yes, Sir.

Mr. McRae: What kind of lumber do you get?

Mr. Stevens: Hardwood, principally.

Mr. McRae: Do you buy that hardwood from the Ozan Lumber Company?

Mr. Stevens: No, sir.

3734 Mr. McRae: Where do you get your timber?

Mr. Stevens: From different parts of the woods.

Mr. McRae: You are satisfied with the rates?

Mr. Stevens: I am.

Mr. McRae: And with the terms you receive from this company?

Mr. Stevens: Yes, Sir; fully satisfied.

Mr. McRae: That is all. We had a witness from Nashville, but he is not present. We want to prove by that witness that the people of Nashville are not only satisfied with the service, but they are

anxious to have it kept up. And I will state in that connection that it is a fact, that we wish that service to be continued to Ashdown.

Examiner Burchmore: You as Counsel state that, the witness would not testify to that effect.

Mr. McRae: Yes, Sir.

Examiner Burchmore: Well, I think that will suffice.

Mr. McRae: I am informed that he would state that the service to Nashville is the best that goes to Nashville at this time.

Mr. McRae: I wanted to file the petition of 7 shippers from Kilgore; 25 from Blevins; 19 from Dotson; 5 from Dixon;
3735 16 from Redlands; 18 from Belton; 33 from Tokio; 39 from Highland; and 2 from Norvelle.

(The papers so offered and identified were received in evidence and thereupon marked Prescott & Northwestern Railroad Company, Exhibit- Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, received in evidence December 14, 1910, and are attached hereto.)

Mr. Bemis: In addition to the industries already mentioned, there are the following firms getting out ties and piling and staves: Western Tie and Timber Company, St. Louis, Mo.; J. K. Wortham, Belton, Ark.; John Ball, Belton, Ark.; W. L. Nelson, Blevins, Ark.; Gibson & Cunningham, staves, Dallas, Texas; another concern from Chicago; Henry Gund, Lacrosse, Wis.

Mr. McRae: We refer to a letter or communication addressed by the Chairman and his Associate Commissioners, of the Arkansas Commission, to the Interstate Commerce Commission, dated August 27, 1910. You have that letter, and we ask that it be understood as being a part of the record. I will not encumber the record with a copy of it.

Examiner Burchmore: What is the Chairman's name?

Mr. McRae: Falconer.

3736 Examiner Burchmore: It will be understood that the Commission will refer to that letter. We will adjourn until two o'clock.

3737 After Recess.

Saginaw and Ouachita River Railroad Company.

(T. M. Mehaffy, Esq., Attorney representing the Saginaw and Ouachita River Railroad Company, Present.)

FRANK NEIMEYER, was called as a witness, and having first been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: I understand that the Saginaw and Ouachita River Railroad Company is controlled by the stockholders of the Saginaw Lumber Company through stock ownership?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: And that the Saginaw Lumber Company,

in turn, is controlled by the A. J. Neimeyer interest, which control the Neimeyer Lumber Company?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: And who are interested in the lumber and the mills which we refer to?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: What is your position with the Saginaw and Ouachita River Railroad Company?

Mr. Neimeyer: Secretary and Treasurer.

3738 Examiner Burchmore: Are you an officer of the Saginaw Lumber Company?

Mr. Neimeyer: Secretary and Treasurer.

Examiner Burchmore: Mr. A. J. Neimeyer is President of both Companies?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Who is Auditor of the Railroad Company?

Mr. Neimeyer: C. J. Trowbridge.

Examiner Burchmore: Who is the Traffic Manager of the Railroad Company?

Mr. Neimeyer: We have a General Manager, F. N. Van Houten.

Examiner Burchmore: Is Mr. Trowbridge an officer of the Lumber Company?

Mr. Neimeyer: He is not.

Examiner Burchmore: Is Mr. Houten an officer, and if so what office?

Mr. Neimeyer: No office.

Examiner Burchmore: Is he not the General Manager of the Lumber Company?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Then you correct your remark?

Mr. Neimeyer: Yes, he is General Manager of the Lumber

3739 Company—rather Superintendent or whatever you call him. He is not Manager.

Examiner Burchmore: Well, he is an officer or employed?

Mr. Neimeyer: Employed as Superintendent.

Examiner Burchmore: I understand that the Saginaw and Ouachita River Railroad connects with the Iron Mountain System at Saginaw Junction, Arkansas?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: And that from that point it runs on to the east bank of the Ouachita River?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: At a point known as Saginaw?

Mr. Neimeyer: The Post-Office is known as Saginaw—the billing point—is known as Ouachita.

Examiner Burchmore: Does it cross the river?

Mr. Neimeyer: No sir.

Examiner Burchmore: Does this railroad connect with any other main line railroad?

Mr. Neimeyer: No sir.

Examiner Burchmore: What is its total rail mileage?

Mr. Neimeyer: Two and three-fourths miles including switches.

3740 Examiner Burchmore: And how much is the net main line?

Mr. Neimeyer: I think two and a half miles.

Examiner Burchmore: Are there any private tram lines connecting with this Railroad?

Mr. Neimeyer: There are not.

Examiner Burchmore: Are there any other private tram lines in that vicinity which originate traffic for this railroad?

Mr. Neimeyer: Across the Ouachita River on the west side.

Examiner Burchmore: That is the private tram road of the Saginaw Lumber Company?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: What is the mileage of that private tram road?

Mr. Neimeyer: Between 12 and 14 miles.

Examiner Burchmore: How much of that would you describe as being main line?

Mr. Neimeyer: None of it.

Examiner Burchmore: It is all short spurs?

Mr. Neimeyer: Well, it extends into the timber—I suppose you would call it all main line. There are no branches from it that I know of. It is just one line I think.

3741 Examiner Burchmore: How do you cross the river with traffic?

Mr. Neimeyer: We bring our logs in on the west side of the river and unload them and roll them into the river and they are floated across to the saw mill, which is on the east bank of the Ouachita River.

Examiner Burchmore: The river acts as a mill pond?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Are there are industries along the line of the Saginaw and Ouachita River Railroad?

Mr. Neimeyer: There is a saw mill that manufactures furniture stock and hardwood, gum and oak—manufactures furniture stock.

Examiner Burchmore: Where is that mill located?

Mr. Neimeyer: Near Ouachita.

Examiner Burchmore: Well, the road is only two miles long, and it has to be near both ends of its road line?

Mr. Neimeyer: It is much closer to Ouachita than Saginaw Junction.

Examiner Burchmore: Within a few hundred feet?

Mr. Neimeyer: About three hundred yards I would say.

3742 Examiner Burchmore: From the end of the line?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Where does that mill get its logs?

Mr. Neimeyer: Buys them from individuals.

Examiner Burchmore: Where do those individuals get the logs?

Mr. Neimeyer: They haul them by wagon.

Examiner Burchmore: From north and south of the line?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Those logs do not come across the river?
Mr. Neimeyer: No sir.
Examiner Burchmore: Is this hardwood gum and oak timber, cut on land owned by the Saginaw Lumber Company?
Mr. Neimeyer: It is not.
Examiner Burchmore: Nor in which it has stumpage rights?
Mr. Neimeyer: None at all.
Examiner Burchmore: What is the population of Saginaw?
Mr. Neimeyer: Possibly 250.
Examiner Burchmore: How many of that number are employees of the Saginaw Lumber Company, including their
3743 families?
Mr. Neimeyer: 250.
Examiner Burchmore: The entire town is composed of Saginaw Lumber Company people?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Are there any stores there?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: There is a company store at that point?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Is there any other store there?
Mr. Neimeyer: None at all.
Examiner Burchmore: This may be described in common parlance as a Company town?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Any farms along the railroad?
Mr. Neimeyer: Yes sir, there are.
Examiner Burchmore: Well, do they ship anything over the Railroad?
Mr. Neimeyer: Very little. They are so close to the Iron Mountain that they can haul by wagon and only have the one haul. It is cheaper for them.
3744 Examiner Burchmore: Are there any stave makers on the line?
Mr. Neimeyer: No sir.
Examiner Burchmore: Then the only industries that ship over this line are the saw mills of the Saginaw Lumber Company and this small mill near Ouachita?
Mr. Neimeyer: There are some little freights less than car load lots shipped.
Examiner Burchmore: But not by industries?
Mr. Neimeyer: No sir, not by industries.
Examiner Burchmore: When was this railroad constructed?
Mr. Neimeyer: I could not tell you; it has been there fifteen or sixteen years.
Examiner Burchmore: When was the saw mill built?
Mr. Neimeyer: Well, there has been a sawmill there that long, I think, and that one burned down and the new one was rebuilt.

Examiner Burchmore: Well, was the saw mill established and the railroad open about the same time?

Mr. Neimeyer: I rather think so.

Examiner Burchmore: That is your impression?

Mr. Neimeyer: Yes, that is before my time though.

3745 Examiner Burchmore: Well, was this saw mill first established by the Saginaw Lumber Company, or was it purchased by them for prior owners?

Mr. Neimeyer: Purchased by them from prior owners?

Examiner Burchmore: In what year was the purchase?

Mr. Neimeyer: I could not tell you exactly, I think 1895.

Examiner Burchmore: You have been operating the saw mill since that time?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Is it your understanding that the logs for this mill were formerly obtained on the east side of the river?

Mr. Neimeyer: No sir.

Examiner Burchmore: Always have been carried across the river?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Does the Saginaw Lumber Company own any saw mills along the railroad?

Mr. Neimeyer: It does not.

Examiner Burchmore: What is the extent of its timber holdings across the river?

3746 Mr. Neimeyer: At the present time?

Examiner Burchmore: Yes.

Mr. Neimeyer: About 5,000 acres, including agricultural land—6,000.

Examiner Burchmore: How much timber is there in feet?

Mr. Neimeyer: About 24,000,000 acres.

Examiner Burchmore: About Twenty four million?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: When was the railroad Company incorporated if you know?

Mr. Neimeyer: In 1905.

Mr. Mehaffy: Counsel tenders in evidence a certified copy of the articles of incorporation which seems to be dated in June 1905 and under which this corporation is formed as a common carrier railroad under the laws of Arkansas.

The charter so offered and identified was received in evidence, and thereupon marked "Defendant's Exhibit #1, received in evidence December 14th, 1910," page —, and is attached hereto.

Examiner Burchmore: It will not be necessary to file this charter but it will be noted that it was tendered in evidence and the statement will appear on the face of the record.

3747 Mr. Mehaffy: Right at this point? I also tender a certified copy of the order of the Board of Incorporators that was introduced in the other case applying to the other road this morning.

Examiner Burchmore: That was dated in June 1905?

Mr. Mehaffy: I beg pardon.

Examiner Burchmore: That was dated in June 1905?

Mr. Neimeyer: That is the proper date, isn't it?

Examiner Burchmore: Yes, that is correct. The total capital stock of this railroad, as provided for in the charter, seems to have been $25,000.00. Was that amount of stock actually issued in the beginning?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Was it fully paid for?

Mr. Neimeyer: In cash, no sir.

Examiner Burchmore: How was it paid for?

Mr. Neimeyer: It was carried as an asset in the Saginaw Lumber Company's books to the amount of $25,000.00. You understand Mr. Examiner, the road was already built and was incorporated afterwards.

Examiner Burchmore: The stock was issued in exchange for the railroad, in fact?

3748 Mr. Neimeyer: Yes.

Examiner Burchmore: The railroad had previously belonged outright to the Saginaw Lumber Company?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Has the Saginaw Railroad company any bonds?

Mr. Neimeyer: No sir.

Examiner Burchmore: Any other indebtedness?

Mr. Neimeyer: No sir.

Examiner Burchmore: The railroad corporation, therefore and the lumber company, are substantially identical in interest at the present time and have been since the date of incorporation of the railroad, although they are distinct and separate corporations?

Mr. Neimeyer: Well, there is quite a number of stockholders in the Saginaw Lumber Company that own no stock in the railroad company.

Examiner Burchmore: What are the total holdings of those stockholders?

Mr. Neimeyer: In the Lumber Company—the holdings of the lumber company that are not in the railroad company?

Examiner Burchmore: Yes.

3749 Mr. Neimeyer: I would think 60%.

Examiner Burchmore: Then a minority interest in the lumber company owns this railroad?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Then how does this minority interest get to acquire the railroad?

Mr. Neimeyer: I understood that in the begin-ing—that prior to the incorporation, the lumber company owned the railroad. They did in fact.

Examiner Burchmore: Sir?

Mr. Neimeyer: They do in fact.

Examiner Burchmore: They do to-day in fact?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: This railroad is a standard gauge?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Does it hold any trackage rights over the Iron Mountain?
Mr. Neimeyer: None at all.
Examiner Burchmore: Does it accord trackage rights to any other company?
Mr. Neimeyer: No sir.
Examiner Burchmore: What is the weight or rail?
3750 Mr. Neimeyer: 56 pounds I think.
Examiner Burchmore: Who furnished that rail?
Mr. Neimeyer: I could not tell you.
Examiner Burchmore: Is it owned by the railroad company?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Is the right of way on which this road is constructed owned by the railroad company?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: In fee?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: What is the nature of the ballast?
Mr. Neimeyer: Why, it is just a dirt road: I don't think there is any ballast.
Examiner Burchmore: Any grades in the road?
Mr. Neimeyer: None at all.
Examiner Burchmore: Any bridges?
Mr. Neimeyer: A few small ones.
Examiner Burchmore: Any station buildings?
Mr. Neimeyer: None at all.
Examiner Burchmore: Any side tracks other than those at the mill at Ouachita?
3751 Mr. Neimeyer: None at Ouachita, no sir.
Examiner Burchmore: Any inter-change track with the Iron Mountain?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Who owns that inter-change track?
Mr. Neimeyer: The Saginaw and Ouachita River Railroad Company.
Examiner Burchmore: Is the private tram line of the Saginaw Railroad Company west of the river, narrow or standard gauge?
Mr. Neimeyer: Narrow.
Examiner Burchmore: That is built of lighter tails?
Mr. Neimeyer: Yes thirty five pounds.
Examiner Burchmore: Is that private tram road operated by the Railroad Company?
Mr. Neimeyer: No sir.
Examiner Burchmore: Do any engines owned by the railroad Company, or cars owned by the railroad company, move over this private tram road?
Mr. Neimeyer: No sir.

Examiner Burchmore: Then the railroad company has nothing to do with the private tram road?

3752 Mr. Neimeyer: None at all.

Examiner Burchmore: Do the joint through rates purport to apply over that private tram road?

Mr. Neimeyer: I never considered it as such.

Examiner Burchmore: Well, on the face of the tariff, do they so apply?

Mr. Neimeyer: No sir.

Examiner Burchmore: How many locomotives has the railroad Company?

Mr. Neimeyer: One.

Examiner Burchmore: How many cars?

Mr. Neimeyer: One caboose which is used as a passenger accommodation car for passengers, and freight and mail.

Examiner Burchmore: Any other cars?

Mr. Neimeyer: No sir.

Examiner Burchmore: Our reports show one passenger car and one freight car? Is that all the same car?

—: That is the only one I know of.

Examiner Burchmore: Then our record should show one half of a passenger and one half of a freight car.

Mr. Neimeyer: I did not make that report.

3753 Examiner Burchmore: Well I did not make it. I suppose the man looked at the car and filled out both blanks. How many employees are engaged in track work on this railroad?

Mr. Neimeyer: I think there are two or three. It varies, there are not many.

Examiner Burchmore: They only devote a part of their time to the railroad?

Mr. Neimeyer: They do no other labor, only to the road, but they do not work at that in certain seasons of the year—only the dry season.

Examiner Burchmore: You have no station employees?

Mr. Neimeyer: No sir.

Examiner Burchmore: You have no train crew?

Mr. Neimeyer: One train crew.

Examiner Burchmore: How many employees are there in the general office on a salary basis?

Mr. Neimeyer: Only one. You mean in the general office, clerks and bookkeepers?

Examiner Burchmore: Yes.

Mr. Neimeyer: Why, there is not any that devotes his entire time.

3754 Examiner Burchmore: What is the total compensation paid to this general office force by this railroad?

Mr. Neimeyer: Well, we have an auditor who receives $50.00 and the General Superintendent and the Clerks and Bookkeepers, figures $595.83.

Examiner Burchmore: Per month or per annum?

Mr. Neimeyer: Per month.

Examiner Burchmore: The Auditor gets $50.00 per month?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Does the Auditor receive any salary from the lumber company?
Mr. Neimeyer: I don't think he receives any from the Saginaw Lumber Company.
Examiner Burchmore: But he receives some from the Little Rock Maumelle and Western?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Are these salaries amounting to $595.83 paid to the men or to the company?
Mr. Neimeyer: Paid to the lumber company.
Examiner Burchmore: To cover the services rendered by these employees to the railroad company?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Are your trains or any of them
3755 operated on a regular schedule?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Have you any public time table?
Mr. Neimeyer: No sir, we have had a typewritten copy made several times.
Examiner Burchmore: How many trains daily have you?
Mr. Neimeyer: Two.
Examiner Burchmore: Two each way?
Mr. Neimeyer: Yes sir, two each way.
Examiner Burchmore: Do those trains connect with the Iron Mountain train?
Mr. Neimeyer: The passenger trains?
Examiner Burchmore: Yes.
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Does the train consist of one car and one engine?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: How many freight trains do you run daily?
Mr. Neimeyer: It is a combination train.
Examiner Burchmore: Then there is more than one car in train is there?
3756 Mr. Neimeyer: If there is any lumber to be brought out, there are—we have empties to go in.
Examiner Burchmore: Do you carry the United States mail?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Under a regular railroad contract?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: That contract is with the Post Office Department?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Do you carry express?
Mr. Neimeyer: No, no express.
Examiner Burchmore: Do you carry passengers for hire?
Mr. Neimeyer: Yes sir.

Examiner Burchmore: Those passengers purchase tickets?

Mr. Neimeyer: No sir, no tickets; cash fare.

Examiner Burchmore: What were the total receipts during the past year, or during any period that you figure, for passenger traffic?

Mr. Neimeyer: Three hundred and Twenty-nine Dollars and Eighty-five cents.

Examiner Burchmore: For the last fiscal year?

3757 Mr. Neimeyer: Yes sir.

Examiner Burchmore: How many passengers were carried one mile?

Mr. Neimeyer: 3,298 I guess if the figure the way I see it here.

Examiner Burchmore: Then the fare is 10 cents?

Mr. Neimeyer: 10 cents, yes sir; we could figure that out of course.

Examiner Burchmore: That is not the number of passengers carried one mile, but the total number of passengers carried?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: What was your total freight tonnage for any period?

Mr. Neimeyer: Last year—the fiscal year—my figures show 9274 tons. I notice there is a little difference between our annual report and those figures.

Examiner Burchmore: What is that statement?

Mr. Neimeyer: I see that my report shows 9274 tons.

Examiner Burchmore: Is that the total tonnage of freight?

Mr. Neimeyer: Yes, lumber and all commodities.

Examiner Burchmore: Well, that is quite a falling off

3758 from the previous year, isn't it?

Mr. Neimeyer: I had not noticed that.

Examiner Burchmore: For the fiscal year 1909, this report claims approximately 15,000 tons; is that incorrect?

Mr. Neimeyer: I could not tell you.

Examiner Burchmore: Well, do you think it is incorrect?

Mr. Neimeyer: Well, I don't know as it would be; I think we shipped a good deal more possibly in the year previous than we did in the past fiscal year.

Examiner Burchmore: What proportion of this total tonnage was furnished by the Saginaw Lumber Company?

Mr. Neimeyer: Practically all of it.

Examiner Burchmore: Would you say that 99% was a reasonable estimate?

Mr. Neimeyer: Well, 98 or 99—something like that.

Examiner Burchmore: What was the remainder of that tonnage—the nature of the remainder of your traffic?

Mr. Neimeyer: Flour and grain and groceries.

Examiner Burchmore: The major portion of that miscellaneous traffic was intended for the company's store, was it not?

Mr. Neimeyer: Yes sir.

3759 Examiner Burchmore: Did you handle any traffic for other persons than this company's store?

Mr. Neimeyer: Very little I suppose; I am quite sure.

Examiner Burchmore: As much as one hundred tons?
Mr. Neimeyer: No, I would rather think not.
Examiner Burchmore: As much as ten tons?
Mr. Neimeyer: Possibly so.
Examiner Burchmore: You have regular passenger fares?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: And your tariff rate is ten cents per ride?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Do you have any local freight rates published?
Mr. Neimeyer: We have published them, but they have not been approved.
Examiner Burchmore: Published but not approved by the State commission?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Are they on file with the Interstate Commerce Commission?
Mr. Neimeyer: I don't think so, as yet.
3760 Examiner Burchmore: You are a party to joint rates on lumber with the Iron Mountain system?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Is the rate from Ouachita on lumber the same as the Iron Mountain rate from Saginaw Junction? Does the Junction point rate apply back on your line?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: Then you take the same rate from your mill that you would take if located on the Iron Mountain really?
Mr. Neimeyer: Well, everything is billed from Ouachita.
Examiner Burchmore: I mean, the rate in cents per hundred pounds published is the same from your mill as if you were on the Iron Mountain really?
Mr. Neimeyer: I think so.
Examiner Burchmore: What division do you receive on lumber traffic?
Mr. Neimeyer: 7.4 cents.
Examiner Burchmore: Where does the major portion of this lumber go to? Is there any particular territory?
Mr. Neimeyer: To the North Central States.
3761 Examiner Burchmore: The division there is four cents?
Mr. Neimeyer: Well, we have system points—what we call system points. The Iron Mountain and the Missouri Pacific points we get three and four cents to; four to St. Louis and three cents from connected lines.
Examiner Burchmore: Is there any traffic on which you receive only two cents?
Mr. Neimeyer: Not to my knowledge.
Examiner Burchmore: Have you ever received a division exceeding four cents?
Mr. Neimeyer: Not that I know of.
Examiner Burchmore: What service does this railroad Company

render for which it should be paid three or four cents per hundred pounds as a division?

Mr. Neimeyer: The empty cars are switched in on the interchange track of the Iron Mountain and to the train which they operate from Ouachita to Saginaw Junction, and return—goes to the Interchange track and takes those cars to Ouachita and they are loaded with lumber and the lumber is hauled back to this interchange track.

Examiner Burchmore: Who issues the Bill of Lading?

Mr. Neimeyer: The Railroad company.

3762 Examiner Burchmore: The Saginaw and Ouachita River Railroad Company?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: These divisions are not supposed to take care partially of the expense of bringing the logs into the mill?

Mr. Neimeyer: No sir.

Examiner Burchmore: What is the maximum charge that you know allowed by the State Commission of Arkansas for switching movements of two miles?

Mr. Neimeyer: I could not tell you. My recollection is that it is—two miles—did you say?

Examiner Burchmore: Yes.

Mr. Neimeyer: I think the limit is three miles.

Examiner Burchmore: What is the amount?

Mr. Mehaffy: My recollection is that it is $3.00.

Examiner Burchmore: Per car?

Mr. Mehaffy: Yes sir. It is said to be now as high as $8.00, and five miles is the minimum.

Examiner Burchmore: Does this railroad comply with the state and interstate laws governing the conduct of interstate carriers?

3763 Mr. Neimeyer: Yes sir.

Examiner Burchmore: It files the necessary reports with the commission?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Keeps its accounts in the prescribed manner?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Is the road operated at a profit or at a loss?

Mr. Neimeyer: At a profit.

Examiner Burchmore: What dividends has it paid since its incorporation?

Mr. Neimeyer: I don't know as to dividends; it is in the annual report.

Examiner Burchmore: They will be shown in the annual report filed with the Commission?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: How long have these reports been filed—ever since incorporation?

Mr. Neimeyer: I think so.

Examiner Burchmore: What was the purpose of the incorporation of this company?

3764 Mr. Neimeyer: To be able to serve the public as a common carrier.

Examiner Burchmore: Well, it was already there? It did not require to be incorporated to serve anyone did it?

Mr. Neimeyer: Well, to do business as a railroad, and to be run as a railroad, I think it would be better to be incorporated than not.

Examiner Burchmore: Were you advised by the St. Louis and Iron Mountain and Southern Railroad Company to incorporate this railroad?

Mr. Neimeyer: Not to my knowledge.

Examiner Burchmore: When were divisions first accorded to this road?

Mr. Neimeyer: They have been receiving divisions for years. I could not say just when.

Examiner Burchmore: Prior to 1905?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Was this railroad incorporated in order to legalize its divisions?

Mr. Neimeyer: I don't know.

Examiner Burchmore: Well, you don't answer no.

Mr. Neimeyer: No sir.

3765 Examiner Burchmore: Has the railroad a surplus at the present time?

Mr. Neimeyer: Has it a surplus?

Examiner Burchmore: Yes.

Mr. Neimeyer: I think so.

Examiner Burchmore: What is the amount of that surplus?

Mr. Neimeyer: I am not sure whether it has or not.

Examiner Burchmore: If I say that the report dated May 25, 1910, shows net revenue of $4,343.06 from the operation of the road for the fiscal year ending June 30, 1909, during which year the total receipts were $9,153.50, would you say that the figures were substantially accurate and in accord with your impression?

Mr. Neimeyer: I think so.

Examiner Burchmore: This report shows, as to the disposition made of the net revenue, that it is being allowed to accumulate. Is that the usual disposition made of net revenues on your road?

Mr. Neimeyer: I think it is, although I am not familiar with that as I might be.

3766 Examiner Burchmore: It is your understanding, though, that this road is operated at a substantial profit?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Are your division sheets filed with the commission?

Mr. Neimeyer: Yes sir.

Cross-examination:

Mr. Mehaffy: Mr. Neimeyer, this road performs all the services of a common carrier just as any main line does—takes all the property or persons that offer for transportation?

Mr. Neimeyer: Yes sir.

Mr. Mehaffy: I believe you said that it complies with all the regulations and rules of the Interstate Commerce Commission and the Railroad Commission of Arkansas?

Mr. Neimeyer: Yes sir.

Mr. Mehaffy: Do you know how it is taxed by the authorities of Arkansas—whether as other railroads by the same body?

Mr. Neimeyer: Just the same.

Mr. Mehaffy: You are controlled and regulated by the
3767 Arkansas Railroad Commission?

Mr. Neimeyer: Yes sir.

Mr. Mehaffy: Now, Mr. Examiner, there are some three or four general questions I want to ask that do not particularly apply to this railroad, but they do apply to the intervener's contentions?

Examiner Burchmore: Very well.

Mr. Mehaffy: You have been asked by the Examiner about incorporating this road. I will ask you if it is not true that the railroad company—any railroad company—cannot condemn rights of way or exercise the right of eminent domain at all without being incorporated as a railroad company?

Mr. Neimeyer: That is my understanding of the law.

Mr. Mehaffy: As a common carrier?

Mr. Neimeyer: Yes sir.

Mr. Mehaffy: In many of these localities—most of them in fact—the timber on these roads cannot be reached in any other way but by a railroad, can they?

Mr. Neimeyer: That is my understanding.

Mr. Mehaffy: And in order to reach those bodies of timber, it is necessary, of course, to cross tracts of land now and then that
3768 belong to private individuals that you could not cross at all without you had the power to condemn?

Mr. Neimeyer: Yes sir.

Examiner Burchmore: Mr. Mehaffy, what is the application of these questions to this case?

Mr. Mehaffy: I said they did not apply to this case particularly, but the questions were asked by the intervener on yesterday and I had no opportunity to ask any such questions.

Examiner Burchmore: This testimony would be applicable more especially to the Little Rock, Mammelle and Saline? This road has condemned no property?

Mr. Mehaffy: No sir.

Examiner Burchmore: The line across the river was not obtained through condemnation proceedings?

Mr. Mehaffy: No sir; I stated to your Honor that they did not apply to this case.

Examiner Burchmore: I understand.

Mr. Mehaffy: This road was already in operation and owning its right of way, I believe you said, before it was ever incorporated?

3769 Mr. Neimeyer: Yes sir.

Mr. Mehaffy: Of course, there was no necessity for it to incorporate for that purpose.

Mr. Neimeyer: No sir.
Mr. Mehaffy: You charge ten cents a mile on this road?
Mr. Neimeyer: No sir.
Mr. Mehaffy: Ten cents——
Mr. Neimeyer: For the entire distance, two and one half miles.
Mr. Mehaffy: What is the fare?
Mr. Neimeyer: Ten cents.
Mr. Mehaffy: I mean, what is the law—it is three cents?
Mr. Neimeyer: I believe it is about that.
Examiner Burchmore: Two more questions. Do the officers of this railroad company receive any interstate transportation as such officers?
Mr. Neimeyer: Yes.
Examiner Burchmore: I believe you have testified in connection with the —— and Great Western that certain officers of that
3770 corporation receive free interstate transportation?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: In addition to the gentlemen mentioned in that connection, are there any other officers of that company who receive transportation of this company.
Mr. Neimeyer: Only the President and Secretary.
Examiner Burchmore: They receive that as officers of this particular Company?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: They use these passes?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: What is the distance from Saginaw Junction to St. Louis?
Mr. Neimeyer: Three Hundred——
Examiner Burchmore: About three hundred miles?
Mr. Neimeyer: No, three ninety and some odd miles.
Examiner Burchmore: Nearly four hundred miles?
Mr. Neimeyer: Yes sir.
Examiner Burchmore: What is the car load rate on lumber from Saginaw Junction to St. Louis?
Mr. Neimeyer: 18 cents I believe.
3771 Examiner Burchmore: What is your division of the 18 cent rate when applied from Ouachita?
Mr. Neimeyer: Four cents.
Examiner Burchmore: Then, for a haul on the empty car of two miles and a small fraction and a haul of a loaded car of about two miles, you receive four cents per hundred pounds?
Mr. Neimeyer: Yes sir; it is two and a half miles.
Examiner Burchmore: Leaving fourteen cents for the Iron Mountain haul of four hundred miles, approximately.
Mr. Neimeyer: Yes sir.
Examiner Burchmore: In your judgment, is that a fair and adequate division of the rate to be accorded to the Iron Mountain?
Mr. Neimeyer: Yes, I would think so.
Examiner Burchmore: The Iron Mountain has no reasonable right to expect a larger division of that rate?

Mr. Neimeyer: No.

Mr. Mehaffy: Referring back to condemnation, I want to ask you if you do not know that these trunk lines and other railroads cannot condemn land in Arkansas for private industries; in other
3772 words, if it is just to get to a saw mill or other industry, that they are not authorized to condemn?

Mr. Neimeyer: No, that is my understanding, that they are not.

Mr. Riddell: Have you in your experience—can you recall an understanding, or have you ever heard of one, where in the division of rates between a short originating line and a long trunk line, the basis is mileage?

Examiner Burchmore: That is not the Commission's understanding, but that basis obtains.

Mr. Neimeyer: No.

Mr. Riddell: Is it not the general custom to give the originating line a much larger proportion of the relative pro rata because of the fact that it originates the tonnage?

Mr. Neimeyer: Yes sir.

Mr. Riddell: You say you have been getting a division for sometime on this road? How many years was it?

Mr. Neimeyer: I don't know exactly but several years.

Mr. Riddell: Is it as much as seven years?

Mr. Neimeyer: More than that.

Mr. Riddell: Well your division is the same now as it was
3773 originally?

Mr. Neimeyer: I think so.

Mr. Riddell: On the St. Louis rate?

Mr. Neimeyer: I think so.

Mr. Riddell: The rate to St. Louis prior to 1903 was sixteen cents, I believe. Do you know that to be a fact?

Mr. Neimeyer: No I do not.

Mr. Riddell: The point I was trying to make Mr. Examiner was that—and I know this by reason of the fact that the Iron Mountain argued it about a different case before Commissioner Harlan—that when the rate was sixteen cents the said line got the same proportion as then—all of the increase went to the Iron Mountain when the increase was made.

Mr. Neimeyer: I am quite sure that we received the same division ever since we received any; what the rate was at that time I do not know.

Mr. Jeffrey: Mr. Neimeyer, if the Iron Mountain rate was made on the same scale that your divisions are made on, the rate would be on Yellow Pine from Ouachita Junction to St. Louis about $8.00 per hundred, would it not?

3774 Mr. Neimeyer: That would be about the calculation, I guess.

Mr. Jeffrey: You think that is a fair rate?

Mr. Neimeyer: Is it?

Mr. Jeffrey: Yes.

Mr. Neimeyer: I think not.

Mr. Jeffrey: I would like to make a statement for information. I am informed—through my connection with the Iron Mountain and Missouri Pacific—that following a decision of the Vicksburg-Shreveport case, known as the first tap line case, decided by Commissioner Prouty, the Missouri Pacific advised the traffic department that it would be illegal to pay an allowance or a division of any kind to an unincorporated tap line; but that it would be legal to pay a division to an incorporated tap line; and I am informed that following that decision—that opinion of the legal department—that the traffic department advised all lumber interests along their line, wherever they had been giving an allowance, which I believe was the custom at the time, that they would no longer do so unless their lines were incorporated, and new lines they advised that they had to be incor-
3775 porated. I thought I would get that in the record.

Examiner Burchmore: Is there any further statement you desire to make, Mr. Neimeyer?

Mr. Mehaffy: There may be some exhibits we want to file.

Examiner Burchmore: We desire a map of the road drawn to scale, and that map should show the private tram line of the lumber company as well as this railroad itself, and it should show the mill location and refer to the Iron Mountain system, and any other information that will be necessary to make up a complete map of this region.

Mr. Neimeyer: That will all be furnished.

Examiner Burchmore: We would also like a statement for the last fiscal year of the total tonnage of lumber handled on account of the Saginaw Lumber Company and the total tonnage of other freight handled on account of that Company or handled on account of — for persons or firms in which that company is interested, and, separately set out, the figures on traffic for the general public, lumber and merchandise. State those figures in tons and in dollars.

Mr. Mehaffy: What time would you suggest for that?

3776 Examiner Burchmore: At your convenience, in a week or fortnight. They may be mailed to the commission.

3777 Roosevelt and Western Railroad Company.

(Appearances, Charles T. Coleman, Esq. Attorney for the Roosevelt and Western Railroad Company).

J. P. SCHUH, was called as a witness, and having been first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Where do you reside, Mr. Schuh?

Mr. Schuh: Cairo, Illinois.

Examiner Burchmore: Are you an officer of the Roosevelt and Western Railroad Company?

Mr. Schuh: Yes sir.

Examiner Burchmore: You are President?

Mr. Schuh: President.

Examiner Burchmore: Where is the line of the Roosevelt and Western Railroad?

Mr. Schuh: It runs west from a new station called Roosevelt on the M. H. & L. branch about half way between Tallulah and Lake Providence.

Examiner Burchmore: The M. H. & L. Branch of what?

Mr. Schuh: It used to be called the M. H. & L. branch of the Iron Mountai-; it is from McGee to Ferriday.

Examiner Burchmore: Where is that on the map—up
3778 near Ruston?

Mr. Schuh: Here it is (indicating).

Mr. Gutheim: Was formerly known as Stamboul?

Mr. Schuh: Yes sir.

Mr. Gutheim: What lumber company has a mill on this line?

Mr. Schuh: The J. B. Schuh Lumber Company—my own concern.

Mr. Gutheim: Where is that mill located?

Mr. Schuh: 18 miles west of Roosevelt where the junction is—where we meet the Iron Mountain.

Examiner Burchmore: What is the name of the mill or station?

Mr. Schuh: Lynchville.

Examiner Burchmore: What is the total mileage of this railroad?

Mr. Schuh: Eight miles.

Examiner Burchmore: At Lynchville, the road divides into two branch lines?

Mr. Schuh: Yes, but the one going straight out is just now being laid.

Examiner Burchmore: Eight miles are in operation?
3779 Mr. Schuh: Yes sir.

Examiner Burchmore: This road runs through a timber country?

Mr. Schuh: Yes sir.

Examiner Burchmore: Are there any farms on the line?

Mr. Schuch: Yes, three large farms.

Examiner Burchmore. How long have these farms been in operation—a, long period of time?

Mr. Schuh: Well, I don't know how long, but that railroad was built there about nine years ago, I think they started out.

Examiner Burchmore: Are there any other industries along the line besides this saw mill and these farms?

Mr. Schuh: No. sir.

Examiner Burchmore: No small mills?

Mr. Schuh: No sir.

Examiner Burchmore: Any farmers or local inhabitants who cut staves and other small forest products?

Mr. Schuh: No sir, no other forest products that comes off the property.

Examiner Burchmore: When was this railroad constructed?
3780 Mr. Schuh: In 1909—in the spring of 1909, a little over a year ago.

Examiner Burchmore: And the whole of the present line was constructed at that time.

Mr. Schuh: No, not all of it; we have added about three miles to it since that time.

Examiner Burchmore: That three miles is on that southern branch line beyond the mill?

Mr. Schuh: Yes sir.

Examiner Burchmore: When was the mill opened?

Mr. Schuh: In June 1907.

Examiner Burchmore: The mill was opened before the line was built?

Mr. Schuh: Yes sir.

Examiner Burchmore: How do you get your lumber from the mill to the railroad?

Mr. Schuh: We got it out with wooden tram and mule—we tried to—before.

Examiner Burchmore: You had a wooden tram line?

Mr. Schuh: Yes sir.

Examiner Burchmore: Was that tram line incorporated?

3781 Mr. Schuh: No sir.

Examiner Burchmore: Did it have any name?

Mr. Schuh: No sir.

Examiner Burchmore: Or receive any division?

Mr. Schuh: No sir.

Examiner Burchmore: It was just about the same as a wagon haul?

Mr. Schuh: Just a wagon haul.

Examiner Burchmore: Did it have any cars?

Mr. Schuh: No sir. Well——

Examiner Burchmore: Kind of wagon cars?

Mr. Schu-: Yes, sir no wheel trucks—tram trucks.

Examiner Burchmore: When was this railroad incorporated?

Mr. Schuh: The fourth of May 1909.

Examiner Burchmore: About the time the construction began?

Mr. Schuh: Yes sir.

Examiner Burchmore: What was the total capital stock of the railroad?

Mr. Schuh: $50,000.00.

Examiner Burchmore: What was that entire capital stock issued?

3782 Mr. Schuh: No sir.

Examiner Burchmore: How much was issued?

Mr. Schuh: Only $15,000.00.

Examiner Burchmore: Was that paid for in cash?

Mr. Schuh: No sir.

Examiner Burchmore: How much was paid for—paid for or by the lumber company—of this road?

Mr. Schuh: The entire road.

Examiner Burchmore: The right of way and constructing of the railroad?

Mr. Schuh: The constructing of the railroad with the equipment?

Examiner Burchmore: The railroad was at that time completed for the purchase price for the distance completed?

Mr. Schuh: Yes sir.

Examiner Burchmore: Has any additional capital stock been issued since thag original $15,000.00?

Mr. Schuh: No sir.

Examiner Burchmore: That is the present capital stock?

Mr. Schuh: Yes sir.

3783 Examiner Burchmore: How were the extensions of the line financed?

Mr. Schuh: Well, now, when we originally bought that road, we bought it for $10,000.00? I don't quite understand you, I don't believe. Since that there has $5,000.00 in stock more been issued, which makes the $15,000.00 paid up.

Examiner Burchmore: Was this $5,000.00 in stock given to the lumber company, or given at its direction in exchange for the railroad turned over?

Mr. Schuh: Yes sir.

Examiner Burchmore: It was not used in building the road?

Mr. Schuh: No it had already been built then.

Examiner Burchmore: Who furnished the steel rails out of which this road was constructed?

Mr. Schuh: Why, we leased the rails from the Iron Mountain Railroad.

Examiner Burchmore: Was that old rail?

Mr. Schuh: Yes sir.

Examiner Burchmore: What is the rate of payment for the rail?

3784 Mr. Schuh: Six per cent on the valuation per ton—$29.00 a ton.

Examiner Burchmore: That valuation represents the fair market value of the rail?

Mr. Schuh: Yes, $29.00 a ton. I think the contract reads: I have not it here with me but that is the rate.

Examiner Burchmore: You have the privilege of turning it back?

Mr. Schuh: Yes or buying it.

Examiner Burchmore: How long does that lease run?

Mr. Schuh: Eight years.

Examiner Burchmore: This railroad then, was incorporated and constructed subsequent to the first announcement of the commission in the so-called Star Grain and Lumber Company case?

Mr. Schuh: I don't know when that was.

Examiner Burchmore: Did you ever hear of the tap line question?

Mr. Schuh: Yes sir.

Examiner Burchmore: Before you built this road?

Mr. Schuh: Read it in the lumber journal?

3785 Examiner Burchmore: Before you built this road Mr. Schuh?

Mr. Schuh: Just about that time I think.

Examiner Burchmore: Mr. J. M. Kennedy is Vice-President of the railroad Company?

Mr. Schuh: Yes sir.

Examiner Burchmore: Is he an officer of the J. P. Schuh Lumber Company?

Mr. Schuh: He is not; he is not connected with it.

Examiner Burchmore: Is that lumber company incorporated?

Mr. Schuh: No sir.

Examiner Burchmore: It is a co-partnership between individuals?

Mr. Schuh: Just an individual business.

Examiner Burchmore: Lee Shields is Secretary Treasurer of the Railroad Company?

Mr. Schuh: Yes sir.

Examiner Burchmore: Do you receive any salary from the railroad Company?

Mr. Schuh: He has no interest in it whatever; he is in the lumber company.

3786 Examiner Burchmore: Do you receive any salary from the railroad?

Mr. Schuh: No sir.

Examiner Burchmore: Do these other gentlemen receive salaries from the railroad?

Mr. Schuh: No sir.

Examiner Burchmore: The Railroad pays no salaries to its officers?

Mr. Schuh: No sir, it has not got it to pay.

Examiner Burchmore: Do you own the entire capital stock of the railroad company?

Mr. Schuh: Yes, practically so.

Examiner Burchmore: Except directors' qualifying shares?

Mr. Schuh: Yes sir.

Examiner Burchmore: Who owns those?

Mr. Schuh: Mr. Kennedy and Mr. Shields and several other parties.

Examiner Burchmore: They did not buy these for cash did they?

Mr. Schuh: No I gave them the shares of stock for services rendered in helping me get the rights of way and

3787 drawing up the papers etc.

Examiner Burchmore: What proportion of the timber lands or timber rights along this railroad do you own or hold?

Mr. Schuh: We own all of it that the road is now on. I have drawn a lead pencil mark around it—9600 acres.

Examiner Burchmore: These lands are timber holdings enclosed in pencil lines on this sketch which will be received in evidence marked Exhibit # —, are owned by your company?

Mr. Schuh: No, not the lands.

Examiner Burchmore: The land or timber rights?

Mr. Schuh: The timber rights yes sir; we do not own the land.

Examiner Burchmore: Well then, the tap line corporation is substantially owned by yourself—this road at this time?

Mr. Schuh: I expect to have to divide up that ownership later on.

Examiner Burchmore: You hold no trackage right from the Iron Mountain system?

Mr. Schuh: No sir.

Examiner Burchmore: Is this a narrow or standard gauge
3788 system?

Mr. Schuh: Standard gauge.

Examiner Burchmore: What is the weight of the rail?

Mr. Schuh: One and one eighth mile, the main line from Roosevelt to Lynchfield station is 56 pounds: the other is thirty five and forty.

Examiner Burchmore: Is the road graded?

Mr. Schuh: Yes sir.

Examiner Burchmore: Balla-ted?

Mr. Schuh: Not ballasted.

Examiner Burchmore: Do you have any station buildings?

Mr. Schuh: No sir I would not call it a station building?

Examiner Burchmore: How many locomotives?

Mr. Schuh: One.

Examiner Burchmore: Was that purchased second hand from the railroad Company:

Mr. Schuh: No I bought that from some railroad company but not the Iron Mountain I have forgotten who I did buy it from.

Examiner Burchmore: How many cars have you and what
3789 description?

Mr. Schuh: Fourteen.

Examiner Burchmore: Logging cars.

Mr. Schuh: Ten of them are logging cars.

Examiner Burchmore: What are the other four?

Mr. Schuh: Two are box cars and two slab cars—refuse cars I would say.

Examiner Burchmore: What are these box cars used for?

Mr. Schuh: Well, we use them for taking men and almost anything up and down the line to work.

Examiner Burchmore: Work cars?

Mr. Schuh: Work cars.

Examiner Burchmore: Have you any station agent?

Mr. Schuh: One at Lynchville.

Examiner Burchmore: Does he devote his entire time to the station business?

Mr. Schuh: No not his entire time.

Examine Burchmore: He works also for the lumber company?

Mr. Schuh: Yes sir.

Examiner Burchmore: What proportion of his salary does he get from the railroad Company?

Mr. Schuh: He gets half of it.

3790 Examiner Burchmore: You have one train crew?

Mr. Schuh: Yes sir.

Examiner Burchmore: Do they do any work for the lumber Company?

Mr. Schuh: They do not.

Examiner Burchmore: What other employees has the Railroad Company if any?

Mr. Schuh: Besides the agent and the train crew, it has the section foreman and a section gang of five; it varies; sometimes it is three and sometimes eight or nine.

Examiner Burchmore: Do you run your trains on regular schedule?

Mr. Schuh: No sir.

Examiner Burchmore: An irregular service?

Mr. Schuh: Irregular service.

Examiner Burchmore: You carry passengers for hire?

Mr. Schuh: No.

Examiner Burchmore: Do you carry any merchandise for the general public?

Mr. Schuh: Yes sir.

Examiner Burchmore: How extensive is that movement?

3791 Mr. Schuh: Well, it is all that is offered. This year at the present time I think it is about 600 tons, consisting of rice, cotton, cotton seed meal and hay.

Examiner Burchmore: Well, those are farm products?

Mr. Schuh: Farm products, that's all.

Examiner Burchmore: Do you handle anything else but farm products or lumber?

Mr. Schuh: Nothing else.

Examiner Burchmore: You do not carry mail or express matter?

Mr. Schuh: No sir.

Examiner Burchmore: How much lumber does your railroad haul for the Schuh Lumber Company?

Mr. Schuh: This year so far I believe it has hauled about four and a quarter million feet or about fifty five hundred to six thousand tons.

Examiner Burchmore: Does your lumber company haul the logs to the mill?

Mr. Schuh: Yes sir.

Examiner Burchmore: And hauls the lumber out of the mill?

Mr. Schuh: Yes sir.

3792 Examiner Burchmore: The cars are furnished for the lumber shipments——

Mr. Schuh: They are furnished by Iron Mountain; their system cars, and our engine goes out that mile to the station and gets them and brings them back and when they are loaded our crew and engine brings them out to the Iron Mountain main line.

Examiner Burchmore: Does your lumber company have any locomotives?

Mr. Schuh: No sir.

Examiner Burchmore: Any cars?

Mr. Schuh: No sir.

Examiner Burchmore: Then the Railroad Company hauls the logs from the woods into the mill?

Mr. Schuh: Yes sir.

Examiner Burchmore: What is its pay for that service?

Mr. Schuh: They get one cent a thousand for that. I allow them that for the simple reason that our division—the service of making the switch out to the main line and back with system cars take about all the revenue that we derive, which is the division.

3793 Examiner Burchmore: Is there any bill of lading or way bill issued for the movement of logs into the Mill?

Mr. Schuh: My instructions are to issue way bills.

Examiner Burchmore: Then way bills are issued after the logs reach the mill?

Mr. Schuh: No, they are billed out to wherever the camp is.

Examiner Burchmore: You send way bills out before the logs are shipped?

Mr. Schuh: Oh, No, they go with the train crew; they bring them with the train of logs.

Examiner Burchmore: Then the train crew have a way bill with them when the- bring their logs in?

Mr. Schuh: Supposed to have, but I regret to say that they forget it about half of the time.

Examiner Burchmore: That does not affect the promptness of the movement at all, does it?

Mr. Schuh: No.

Examiner Burchmore: The conductor does not hesitate about bringing in logs for which he has no billing?

Mr. Schuh: I don't know whether he hesitates or not.

3794 Examiner Burchmore: Who issues the Bills of Lading on outbound shipments of Lumber?

Mr. Schuh: Our agent at Lynchville.

Examiner Burchmore: He also issues through way bills?

Mr. Schuh: Yes sir way bills and through Bills of Lading.

Examiner Burchmore: Are not the rates from Lynchville to Interstate points the same as Iron Mountain rates from Roosevelt to Interstate destination?

Mr. Schuh: Yes sir.

Examiner Burchmore: What is your division on freight?

Mr. Schuh: Two cents.

Examiner Burchmore: Uniformly two cents?

Mr. Schuh: Uniformly two cents.

Examiner Burchmore: Are you aware that other carriers connecting with the St. Louis Iron Mountain and Southern Railway in many cases receive as high as four and five cents?

Mr. Schuh: I have heard so to-day and yesterday.

Examiner Burchmore: That is the first you knew of it?

Mr. Schuh: That is the first I knew of that.

3795 Examiner Burchmore: Is your division of two cents reasonable and satisfactory or excessive?

Mr. Schuh: It is not satisfactory, but I presume it has to be sufficient.

Examiner Burchmore: You do not file any tariff with the commission yourself, do you?

Mr. Schuh: Yes sir.

Examiner Burchmore: What are those, local tariffs?

Mr. Schuh: Local and interstate tariffs, both.

Examiner Burchmore: You are a party also to the joint tariff published by the St. Louis Iron Mountain and Southern Railway Company?

Mr. Schuh: Yes, concurrent tariff.

Examiner Burchmore: This tariff may be referred to by the commission from its own files.

Mr. Schuh: Yes sir.

Examiner Burchmore: Are there any joint rates published on lumber as applying from points west of Lynchville?

Mr. Schuh: I think so, and also they are published—that is, I know it is on lumber. I am quite sure it is on lumber, and

3796 locally from points west of Lynchville on farm products?

Examiner Burchmore: Well, are there milling in transit privileges in connection with these joint rates from Lynchville?

Mr. Schuh: That is my impression.

Examiner Burchmore: This division accorded by the St. Louis Iron Mountain and Southern Railway is intended partly to pay for the movement of logs into the Mill?

Mr. Schuh: I don't know how they intend it; I would suppose so.

Examiner Burchmore: On the face of the tariff, it purports to cover also log movements into the mill?

Mr. Schuh: That is my impression, yes sir.

Examiner Burchmore: This one cent that you collect from the railroad company for hauling logs into the mill, you do not credit that one cent against freight charges outbound?

Mr. Schuh: No sir.

Examiner Burchmore: It just stands?

Mr. Schuh: That is what I figure is a loss on the movement which I am called upon individually to make.

3797 Examiner Burchmore: Well then, the lumber company actually pays the Lynchville rate to St. Louis for example on the lumber, plus one cent on the logs they have got in?

Mr. Schuh: I don't think I understand you.

Examiner Burchmore: Well, then, the lumber company actually pays the Lynchville rate to St. Louis for example on the lumber plus one cent on the logs they have got in?

Mr. Schuh: If I understand you correctly I think not. They simply get the junction point rate.

Examiner Burchmore: They pay the Roosevelt rate to St. Louis which is eighteen cents?

Mr. Schuh: Yes sir.

Examiner Burchmore: But the shipment is actually billed as originating either at Lynchville or some point west of there?

Mr. Schuh: Yes sir.

Examiner Burchmore: What points are there west of Lynchville?

Mr. Schuh: Two stations, Crooks Spur and Maxwell.

3798 Examiner Burchmore: Does any of your lumber move out under billing reading Maxwell?

Mr. Schuh: I cannot remember that it does.

Examiner Burchmore: Does any move out reading as Crook's ill?

Mr. Schuh: I think not.

Examiner Burchmore: It is all billed Lynchville?

Mr. Schuh: Yes, for the reason I suppose that I have never been dvised different and our agent is there and the office is there, and or that reason, I suppose.

Examiner Burchmore: That is all right. I just wanted to ascer- in the fact. You have regular forms of stationery and way bills nd bills of lading, etc.?

Mr. Schuh: Yes sir.

Examiner Burchmore: You endeavor to comply with the State nd Federal laws regulating Railroads?

Mr. Schuh: We try to and I believe we do.

Examiner Burchmore: Is your car equipped with a safety device?

Mr. Schuh: No sir, it is not.

Examiner Burchmore: You know it ought to be?

799 Mr. Schuh: Well, I don't know. I know we move system cars entirely and they have their own equipment. We have ot got that on the log cars.

Examiner Burchmore: But your combination passenger and reight car?

Mr. Schuh: It is not a passenger car.

Examiner Burchmore: Oh, that is not the road that has the com- ination?

Mr. Schuh: No.

Examiner Burchmore: I was thinking of some other road. Your ocomotive has air brakes?

Mr. Schuh: No.

Examiner Burchmore: Well, I recommend that you look up the afety appliance law.

Mr. Schuh: We have the air brakes there and it originally had ir brakes, but I was there a week ago and the air-brakes broke and n order to get at them they took them off and I gave instructions to ave it repaired and put it on.

Examiner Burchmore: But you did not want to stop the Railroad while you were doing it?

Mr. Schuh: Certainly not.

800 Examiner Burchmore: Has the road paid any dividends?

Mr. Schuh: Positively not.

Examiner Burchmore: Is it making any money?

Mr. Schuh: Positively not.

Examiner Burchmore: Do you think it will make money?

Mr. Schuh: Well, if business picks up it will; it should.

Examiner Burchmore: Well, would the cancellation of the divis- on accorded to that railroad seriously impair its prosperity?

Mr. Schuh: I think it would. It is operating now under a loss of about Fifteen Hundred Dollars a year. Of course, if we take off its only revenue, which is that two cents division, it would naturally ose $2,000.00 or $3,000.00 more.

Examiner Burchmore: Are there any other saw mills on the line?

Mr. Schuh: No sir.

Examiner Burchmore: You spoke of one line that is now in course of construction. Where is that headed for?

Mr. Schuh: It is headed if we can last and hold out, to the county seat in the other parish.

Examiner Burchmore: What is the name of that county seat?

3801 Mr. Schuh: Floyd, in West Carroll Parish.

Examiner Burchmore: What is the distance from Floyd to Lynchville?

Mr. Schuh: About 20 miles—19 miles.

Examiner Burchmore: Is the town of Floyd offering any bonus for the construction of that line to it?

Mr. Schuh: Yes, they have; the individuals composing the Police Jury—what we call in our country County Commissioners—have indirectly through our secretary there sent me word that they would be willing to help on the building of the road, and to vote either a one or two mill tax towards the road going there.

Examiner Burchmore: Now, in going west towards Floyd, what is the distance of the western limits of your timber holdings from Lynchville?

Mr. Schuh: From three to three and a half miles.

Examiner Burchmore: If this projected line then is extended three and a half miles west of Lynchville, the rest of the line will be beyond your timber holdings?

Mr. Schuh: Yes, we have no interest back there.

3802 Examiner Burchmore: What is the extent of your timber holdings within that three and a half miles on this projected line?

Mr. Schuh: We have three sections in there to clean up—about ten or twelve million feet.

Examiner Burchmore: Did you give the distance between Lynchville and the Junction point of the St. Louis Iron Mountain and Southern Railway?

Mr. Schuh: Yes, as one and one-eighth mile.

Examiner Burchmore: Does this railroad perform all of the service on that main line between Lynchville and Junction point?

Mr. Schuh: Yes it does.

Examiner Burchmore: Has the St. Louis, Iron Mountain and Southern Railway an interchange track there at Lynchville?

Mr. Schuh: An interchange track?

Examiner Burchmore: Yes, a side track.

Mr. Schuh: Yes, it has a side track.

Examiner Burchmore: Does the St. Louis, Iron Mountain and Southern Railway train set the empty cars on this side track for delivery to the Roosevelt and Western?

3803 Mr. Schuh: We have a special spur connecting with the side track and it sets them directly on our spur—on our main line; it would be a spur of theirs, but they set them on our main line.

Examiner Burchmore: Then, do the engine and cars of the

Roosevelt and Western perform any service in carrying those empties to Lynchville?

Mr. Schuh: Every bit.

Examiner Burchmore: I think it was all brought out.

Mr. Coleman: And all service bringing them back?

Mr. Schuh: All service bringing them in and taking them out.

Mr. Coleman: Speaking of these agricultural products, what is the prospect of an increase in rice acreage along the Roosevelt and Western if you know?

Mr. Schuh: Well, last year was the first year of the rice industry back there, and they put in about a thousand acres and the party that owned a big lot of land back there says that if we keep our spur in there for him he would put in another thousand this coming year.

Examiner Burchmore: How many cars of rice did you
3804 haul this last year?

Mr. Schuh: I think it was 22 cars we hauled for him—cars of rice.

Mr. Coleman: If that rice is not hauled over the Roosevelt and Western, how does it reach the markets?

Mr. Schuh: Well, he can only haul it, as he says, about two months in the year and then he has got to go 12 miles around.

Examiner Burchmore: This map will suffice for the commission's purposes.

Mr. Schuh: It is not drawn to scale, but I am not an engineer and have no high priced people.

Examiner Burchmore: What proportion of the tonnage at the present time is supplied by your lumber company?

Mr. Schuh: Oh I should say the great majority of it; probably 95%.

Examiner Burchmore: Do you make annual reports to the commission?

Mr. Schuh: Only in part. When they called for their report last year, the fiscal year, you see, I was not operating yet although we were incorporated in May. Then I filed the publication with
3805 the State commission and then got out my tariffs, but it was in November before we operated under their tariff, and under the Commission's ruling; inasmuch as at that time we could only run or operate about five months, we did not have an annual statement to make but I am prepared to make them for this year from January 1st to date.

Examiner Burchmore: Have you filed the report that was due the first of November for the fiscal year ending June 1st, 1910—for the six months that you operated?

Mr. Schuh: No, I did not know they would accept it for six months; I thought they wanted it for a whole year.

Examiner Burchmore: I understand. You are required to render a report for a fraction of a year.

Mr. Schuh: If I remember correctly the Commission answered my letter and said "Very well; wait until you have the year's operation and then report."

Examiner Burchmore: That is sufficient.

Mr. Schuh: If the commission orders me to do so, I will get up a report.

3806 Examiner Burchmore: Will you then, in this case, either send in yourself, or have your counsel do so, a statement showing the total lumber tonnage of the road handled on behalf of the J. P. Schuh Lumber Company and the total traffic handled for other people during a given period?

Mr. Schuh: The tonnage for 1910?

Examiner Burchmore: Any given period that you can give it.

Mr. Schuh: Very well.

Examiner Burchmore: And the revenues as well as the tonnage?

Mr. Schuh: Do you want me to include——

Mr. Jeffrey: What was the first date you got your division?

Mr. Schuh: I am not sure but I think the 27th of November.

Mr. Jeffrey: The 27th of November 1909?

Mr. Schuh: Yes sir.

Examiner Burchmore: The first payment of division?

Mr. Schuh: Yes. No, it went into effect the 27th of October and they settled the 27th of

3807 November for the four or five days in October and from that time on, monthly I get it right along.

3808 *Tioga and Southeastern Railroad Company.*

(Appearances: Walter H. Saunders of St. Louis, Attorney for the Tioga and Southeastern Railroad Company.)

Mr. Saunders: In this case, we have filed no complaint and I would want to know what the record should show on that point.

Examiner Burchmore: It is my understanding that the commission regards it as unnecessary for a tap line road in these southwestern states to file any complaint or petition in these proceedings; my understanding being that all such companies have been made parties to this record, by order of the commission if they had not already been parties in some other form. My understanding is that no tap line is prejudiced by its failure or will be prejudiced by its failure to file a complaint or other pleadings. The issues have been raised on pleadings already filed and the mere appearance of a carrier here would cure any defect that there might be technically in that regard. I do not know that there are any such technical defects. Should it become necessary and be found necessary later on, or advisable for you to file a petition of any kind, I am under the impression that the Commission will entertain your application to file a petition perhaps nunc pro tunc. At any rate I am sure will

3809 not be prejudiced by your failure to file a petition.

Mr. Saunders: That will be entirely satisfactory to us.

O. H. COOPER was called as a witness, and having been first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: You are the General Freight Agent of this Railroad?

Mr. Cooper: I am also Superintendent, in other words, I am the man on the ground.

Examiner Burchmore: You receive your salary from the Railroad Company?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do you receive any salary from the Lumber Company?

Mr. Cooper: Yes, partly from the Lee Lumber Company?

Examiner Burchmore: Is your salary divided half and half?

Mr. Cooper: Not quite. I receive more—the major portion—from the lumber Company.

Examiner Burchmore: Is your salary with the Railroad Company in proportion to services rendered?

Mr. Cooper: Yes sir.

3810 Examiner Burchmore: The Tioga and South Eastern Railroad Company I understand connects with the St. Louis, Iron Mountain and Southern Railway system at Tioga?

Mr. Cooper: Yes sir.

Examiner Burchmore: With the Louisiana Railway and Navigation Company also, at Ems?

Mr. Cooper: Yes sir.

Examiner Burchmore: What is the character of the country through which it runs? It is a timber country along the Tioga and South Eastern Railroad?

Mr. Cooper: The Railroad has no timber for about fifteen miles, except just a little that surrounds the mill at Tioga.

Examiner Burchmore: Are there any farmers on the line?

Mr. Cooper: Yes quite a number.

Examiner Burchmore: I am trying to find out on the map.

Mr. Cooper: It is only six miles from Jackson.

Examiner Burchmore: Then Ems is the terminus of the branch line of the Louisiana Railway and Navigation Company?

Mr. Cooper: Yes sir, we are figuring on building it to Jena in Catahoula Parish.

3811 Examiner Burchmore: Do they stop when they reach your road?

Mr. Cooper: Yes sir.

Examiner Burchmore: Where is the saw mill of the Lee Lumber Company?

Mr. Cooper: Tioga.

Examiner Burchmore: How near is that to the track of the St. Louis, Iron Mountain and Southern Railway?

Mr. Cooper: Right at the track.

Examiner Burchmore: Now, the saw mill is located on the St.

Louis, Iron Mountain and Southern Railway, and the Tioga and Southeastern Railroad?

Mr. Cooper: The tracks go down there and join our tracks in front of the Planing Mill, which is situated near the station of the St. Louis, Iron Mountain and Southern Railroad at Tioga.

Examiner Burchmore: It is understood that you will file a map of this road along the line of our request on other companies?

Mr. Cooper: Yes sir. How long will we have to file it?

Examiner Burchmore: About a fortnight or so.

Mr. Cooper: We want to show the complete holdings of
3812 everybody along the lines?

Examiner Burchmore: Are there any other saw mills along the line?

Mr. Cooper: Not at present.

Examiner Burchmore: Have there been in the past?

Mr. Cooper: There was at the time of the purchase. We purchased the railroad to the mill from another company in 1905, and there was at that time.

Examiner Burchmore: When was this railroad constructed, prior to 1905, it must have been about 10 or 11 miles at the time you made the purchase?

Mr. Lee: About ten miles of the old track when we bought it in 1905.

Examiner Burchmore: Shall I ask you about the financial end of it?

Mr. Cooper: I want to explain why I asked him? I am a stockholder in this company, but until 1907, I was not.

Mr. Lee: He was not connected with it at all then.

Examiner Burchmore: Who are the present officers of this Railroad?

Mr. Cooper: S. R. Lee is the President—S. H. Fullerton, Vice-President, and J. A. O'Shea Secretary and Treasurer.

3813 Examiner Burchmore: Are these general officers also of the Lee Lumber Company?

Mr. Cooper: Identically the same, yes sir.

Examiner Burchmore: Who owns the Lee Lumber Company?

Mr. Cooper: It is a stock company.

Examiner Burchmore: Are the stockholders of these two companies substantially the same?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do they hold their shares in proportion?

Mr. Cooper: Yes sir.

Examiner Burchmore: When did the Lee Lumber Company begin lumbering operations in this region?

Mr. Cooper: When we purchased this plant it was already erected, and its railroad had ten or 11 miles in 1907, I think the latter part of April, I should say.

Examiner Burchmore: Then you purchased the railroad and saw mill, and some timber land properties, all as one going concern in 1905?

Mr. Cooper: We incorporated the railroad as soon as we got hold of the property.

Examiner Burchmore: The Railroad was incorporated in 1905?

3814 Mr. Cooper: It was incorporated in May, 1905—on May 18, 1905.

Examiner Burchmore: What was the capital stock of the railroad Company?

Mr. Cooper: $150,000.00.

Examiner Burchmore: How much of that stock was issued at the time of its incorporation?

Mr. Cooper: $50,000.00.

Examiner Burchmore: How much of it has been issued since?

Mr. Cooper: No.

Examiner Burchmore: Was that $50,000.00 issued for cash or in exchange for the Railroad?

Mr. Cooper: In exchange for the railroad. It was issued as a sort of stock dividend to the stockholders of the lumber company, was it not?

Mr. Cooper: Yes sir.

Examiner Burchmore: Then, in a substantial sense, apart from the fact that they are distinct and separate corporations, the tap line and the lumber company are substantially one in interest?

Mr. Cooper: Yes sir.

Examiner Burchmore: When was the mill built at Tioga?

Mr. Cooper: The present mill was built in 1907.

3815 Examiner Burchmore: Well, was there a mill on the ground?

Mr. Cooper: There was a mill on the ground and it burned and the present one was built.

Examiner Burchmore: When was the old mill built?

Mr. Cooper: Before out time, I think about 1900, though——

Examiner Burchmore: Was there any other mill in this vicinity? Has there been any mill on this road?

Mr. Cooper: On this road, yes sir, at the time we made the purchase, there were two mills.

Examiner Burchmore: You purchased both of these mills?

Mr. Cooper: No sir.

Examiner Burchmore: The mill you purchased then, was the one at Tioga?

Mr. Cooper: Yes sir, at Tioga.

Examiner Burchmore: Who owned it before you did?

Mr. Cooper: The Louis Werner Saw Mill Company Limited of St. Louis.

Examiner Burchmore: Was Mr. Fullerton interested in that corporation?

Mr. Cooper: Which?

Examiner Burchmore: The Louis Werner Saw Mill Company.

Mr. Cooper: No sir.

3816 Examiner Burchmore: Is the Louis Werner Saw Mill Company a going concern to-day?

Mr. Cooper: Yes sir.

Examiner Burchmore: Where are its holdings to-day?

Mr. Cooper: They have several of them, I don't know.

Examiner Burchmore: Do they control any tap line?

Mr. Cooper: I think they do, I think the record in the other room shows that. Mr. S. R. Burcs was on the stand yesterday for this Company, you were asking about.

Examiner Burchmore: The Louis Werner Saw Mill Company as I understand is interested in or controls the Craven, Magnolia and Western Railroad?

Mr. Cooper: Yes. I know that from Mr. Burcs' testimony yesterday and from the advertisements.

Examiner Burchmore: Were the gentlemen who now control the Lee Lumber Company formerly interested in the Louis Werner Saw Mill Company?

Mr. Cooper: No sir.

Examiner Burchmore: What about these other small mills that used to be there?

Mr. Cooper: You will have to ask Mr. Lee. There were two of them. Mr. Lee will explain.

3817 Mr. Cooper: That was before I took charge in 1907.

Examiner Burchmore: What is the mileage of this Railroad?

Mr. Cooper: 15 miles of main line and three miles of switches including two "Y's" that we have. Besides that, we own still several miles of track, some of which is being used in logging operations in the woods.

Examiner Burchmore: These are private tram lines that connect with your road?

Mr. Cooper: Yes, the Lee Lumber Company connection; they do not show on that map, nor on mine. They are movable tracks such as are used for logging.

Examiner Burchmore: What is the extent of these private tracks?

Mr. Cooper: At present about five miles.

Examiner Burchmore: Has the Tioga and Southeastern Railroad any station building?

Mr. Cooper: A small station building at Tioga—just a small freight building.

Examiner Burchmore: How many locomotives has it?

Mr. Cooper: Five.

Examiner Burchmore: You operate all these locomotives for yourself?

3818 Mr. Cooper: No, we operate one on the main line of service, and two I think are idle part of the time, a larger part of the time I should say—and the other two are rented to the Lee Lumber Company for operations of the spurs in the woods.

Examiner Burchmore: What is the basis of that rental?

Mr. Cooper: $10.00 a day.

Examiner Burchmore: Does that $10.00 a day include the pay of the crew?

Mr. Cooper: No.
Examiner Burchmore: Does that include fuel?
Mr. Cooper: No sir.
Examiner Burchmore: Just simply the locomotive?
Mr. Cooper: Yes sir.
Examiner Burchmore: Does that $10.00 in your opinion yield a reasonable profit to the Railroad Company?
Mr. Cooper: Yes sir.
Examiner Burchmore: It takes care of the depreciation on the locomotive and also yields a reasonable profit?
Mr. Cooper: I think so.
Examiner Burchmore: Has the Railroad Company any bonds?
Mr. Cooper: None whatever.
3819 Examiner Burchmore: Any other indebtedness?
Mr. Cooper: No sir.
Examiner Burchmore: Its entire capitalization then is $50,000.00 outstanding?
Mr. Cooper: Yes sir.
Examiner Burchmore: What cars has it?
Mr. Cooper: Fifty two log cars, that is all.
Examiner Burchmore: Does it own these cars and that locomotive?
Mr. Cooper: Yes sir. All the Railroad property belongs to the Railroad.
Examiner Burchmore: It operates these cars?
Mr. Cooper: Yes sir.
Examiner Burchmore: It does not lease them to others?
Mr. Cooper: No sir, it does not lease them.
Examiner Burchmore: How many men are there engaged in track work on this railroad?
Mr. Cooper: They range from 12 to 15.
Examiner Burchmore: How many gangs?
Mr. Cooper: Two gangs a part of the time, and part of the time only one.
Examiner Burchmore: Do these men put in any part of
3820 their time working on the private tram road of the Lee Lumber Company?
Mr. Cooper: No sir.
Examiner Burchmore: Their entire time is devoted to the Railroad track maintenance?
Mr. Cooper: Yes sir.
Examiner Burchmore: Have you any station employees?
Mr. Cooper: None except at Tioga where we have an agent who does the billing and such as that.
Examiner Burchmore: Does he devote his entire time to the Railroad service?
Mr. Cooper: No sir.
Examiner Burchmore: He works also for the Lee Lumber Company?
Mr. Cooper: Yes sir.

Examiner Burchmore: What is his salary from the Railroad Company?

Mr. Cooper: Three quarters of his salary, or do you want to know exactly the amount? $75.00 per month, three quarters of his salary is that amount.

Examiner Burchmore: How many crews are there in the railroad service?

3821 Mr. Cooper: One train crew.

Examiner Burchmore: For Six Locomotives?

Mr. Cooper: Well, wait—you mean on the whole?

Examiner Burchmore: No I mean in the railroad service?

Mr. Cooper: There are only five locomotives. Did I say six?

Examiner Burchmore: Perhaps not.

Mr. Cooper: I think I only said five. Five is all we have.

Examiner Burchmore: The men who operate the locomotives in the service of the private tram road are not carried on the Railroad Company pay roll?

Mr. Cooper: Not at all, no sir.

Examiner Burchmore: How many employees are there in the general offices of the Railroad Company who devote their entire time and receive their whole compensation from the Railroad Company?

Mr. Cooper: None.

Examiner Burchmore: The general office work of the Railroad Company then, is done by the employees of the Lumber Company?

Mr. Cooper: No, the work is done by this man I refer to;

3822 he does the general office work for the railroad Company in connection.

Examiner Burchmore: He is the entire clerical force?

Mr. Cooper: Yes, sir.

Examiner Burchmore: Are the trains run on regular schedule?

Mr. Cooper: No schedule. We make two round trips a day, one in the morning and one in the afternoon.

Examiner Burchmore: Do they carry passengers?

Mr. Cooper: No, sir.

Examiner Burchmore: Freight service purely?

Mr. Cooper: Purely freight service.

Examiner Burchmore: They do not carry mail or express?

Mr. Cooper: No, sir.

Examiner Burchmore: What is the total freight tonnage of the road in amount?

Mr. Cooper: You just want it for the fiscal year ending the year 1910?

Examiner Burchmore: Yes.

Mr. Cooper: The total for the fiscal year ending 1910 on lumber, logs and staves was 44,358 tons; less than car load lots, 464

3823 tons.

Examiner Burchmore: Was there any forest product handled for the Lee Lumber Company?

Mr. Cooper: No, sir, except in the case of five cars of staves which were handled for outside parties.

Examiner Burchmore: Were those staves made from timber cut on the Lee Lumber Company land?

Mr. Cooper: No sir.

Examiner Burchmore: That was timber in which the Lee Lumber Company——

Mr. Cooper: Had no interest.

Examiner Burchmore: Never had any interest?

Mr. Cooper: No sir, we never had any interest. It was farmers' timber who lived in that neighborhood.

Examiner Burchmore: What class of timber does the Lee Lumber Company cut? Yellow Pine?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do they sell that lumber?

Mr. Cooper: Yes sir.

Examiner Burchmore: I mean do they sell it wholesale or retail?

Mr. Cooper: We sell all of our stuff thru wholesalers.

3824 Examiner Burchmore: You have sales agents?

Mr. Cooper: No sir, nothing except from the office. It is sold by letter wholesale unless someone calls there and buys it.

Examiner Burchmore: Was the lumber manufactured at this mill or on the old mill formerly sold by the Colonial Lumber Company?

Mr. Cooper: No sir.

Examiner Burchmore: Did you ever hear of the Colonial Railway system?

Mr. Cooper: Never did, no sir.

Examiner Burchmore: Until this hearing?

Mr. Cooper: No sir. I must admit that it is a new one to me.

Examiner Burchmore: This railroad was not a part of your system?

Mr. Cooper: No sir, not by any fault of ours, not up to date.

Examiner Burchmore: Mr. Lee, did you ever hear of that system?

Mr. Lee: Never until I heard it spoken of yesterday and today. I have heard of the Colonial Lumber Company but never

3825 heard of any system.

Mr. Cooper: I will further state that there has been no lumber sold to these people since I took charge.

Mr. Lee: The Tioga and Southeastern Railroad Company has no connection in any way, shape or form with the Colonial system or Lumber Company in any way. They own no stock with us and we own no stock with them.

Mr. Cooper: I think that is a case where somebody borrowed our tracers.

Examiner Burchmore: Has the Lee Lumber Company any direct or indirect relations to any other lumber company?

Mr. Cooper: No sir.

Mr. Lee: For your information, I have a little stock in some lumber company but the Lee Lumber Company has nothing to do with it.

Examiner Burchmore: Your holdings are minority holdings?

Mr. Lee: Yes, very much so.

Examiner Burchmore: I assume from your statement that almost

the entire tonnage of the road is supplied by the Lee Lumber Company?

Mr. Cooper: From one half to one percent perhaps by out-
3826 side parties.

Examiner Burchmore: Have you published any regular local rates applying over your road?

Mr. Cooper: Yes, we have them on file with the Interstate Commerce Commission. I have a copy here.

Examiner Burchmore: You are parties to the joint rates published by the St. Louis Iron Mountain and Southern Railway?

Mr. Cooper: Yes sir.

Examiner Burchmore: And the Louisiana Railway and Navigation Company?

Mr. Cooper: Yes.

Examiner Burchmore: What proportion of your tonnage moves outbound over the St. Louis Iron Mountain and Southern Railroad and what proportion over the Louisiana Railway and Navigation Company?

Mr. Cooper: I could not say exactly on that, but I would say approximately 90% over the St. Louis Iron Mountain and Southern and 10% over the Louisiana Railway and Navigation Company.

Examiner Burchmore: When did the St. Louis Iron
3827 Mountain and Southern Railway connect with your road?

Mr. Cooper: They have been connected there something like three years, have they not Mr. Lee?

Mr. Lee: Three years approximately.

Mr. Cooper: Three years approximately; I am not sure.

Examiner Burchmore: Did they build up there for the especial purpose of making connection with your road?

Mr. Cooper: Not especially. They have a track from there going in the direction of Jena. They stopped construction because of the so-called panic of 1907, suppose that had something to do with it.

Examiner Burchmore: Are there milling in transit privileges in effect on your road?

Mr. Cooper: Yes, with the St. Louis Iron Mountain and Southern Railroad.

Examiner Burchmore: Does the St. Louis Iron Mountain and Southern Railroad give you the benefit of the same rate in cents per hundred pounds as the joint rate from points of origin along your line, as applies from grouped stations on its own line?

Mr. Cooper: Yes sir.

Examiner Burchmore: What divisions do you receive out
3828 of these rates?

Mr. Cooper: You want the St. Louis Iron Mountain and Southern first?

Examiner Burchmore: Yes, the St. Louis Iron Mountain and Southern first.

Mr. Cooper: We get four cents from Little Rock to Memphis, Cairo, Thebes, Washington Missouri, and east—no, west to Washington Missouri, I should have said, west of Washington Missouri, we get five cents.

Examiner Burchmore: Is there any track on which you receive no division at all?

Mr. Cooper: Where do you mean?

Examiner Burchmore: Over the St. Louis Iron Mountain and Southern Railway?

Mr. Cooper: Yes, some local points on which we receive no division whatever.

Examiner Burchmore: Do you have any earnings at all on which traffic?

Mr. Cooper: The Railroad Company?

Examiner Burchmore: Yes.

Mr. Cooper: The switching yes sir.

Examiner Burchmore: A switching charge of some sort?

3829 Mr. Cooper: I don't quite understand that question.

Examiner Burchmore: When you receive no division, you mean that there is no joint rate?

Mr. Cooper: No joint rate?

Examiner Burchmore: That the division obtains only on shipments to Arkansas—and to points in Arkansas and Louisiana?

Mr. Cooper: Yes sir.

Examiner Burchmore: In a general way?

Mr. Cooper: Yes sir.

Examiner Burchmore: Has there been any material increase in your divisions in recent years?

Mr. Cooper: Yes, I could not state the exact time now from memory.

Examiner Burchmore: About three years?

Mr. Cooper: Since then, about the time we connected with the Louisiana Railway and Navigation Company, that is, the date they published a tariff including this was on March 10, 1910 I think.

Examiner Burchmore: Was that increase in division a direct or indirect result of the new connection with the Louisiana Railway and Navigation Company?

3830 Mr. Cooper: In connection with the published rate, I think so.

Examiner Burchmore: In other words, a little competition there was the life of trade?

Mr. Cooper: Yes sir.

Examiner Burchmore: Did the first overtures with respect to increasing the division come to you from the St. Louis Iron Mountain and Southern Railroad Company or from you to the St. Louis Iron Mountain and Southern Railroad Company?

Mr. Cooper: Mr. Lee can tell you that. I don't know.

Mr. Lee: I will explain that. The increase in our division took effect I think about a year ago, and we have been operating and sending tonnage over the Louisiana Railway and Navigation Company long before the increase in our division took place between the St. Louis Iron Mountain and Southern Railroad Company and the Tioga and Southeastern Railroad Company?

Examiner Burchmore: But that had been a matter of negotiation?

Mr. Lee: No I negotiated it. I negotiated it myself and asked for an increase in the division and told them we were not making enough money.

3831 Examiner Burchmore: Did you use the argument that you had another connection available?

Mr. Lee: I told them we could get other connections if we wanted to, the Chicago Rock Island and Pacific lines are near our railroad, and several others, and we could make a number of shipping points if we wanted to.

Examiner Burchmore: Do you contemplate an estension over to the Rock Island business?

Mr. Lee: No sir, never had any such proposition at all.

Examiner Burchmore: Has there been any material change in your methods and practices in taking the transportation or with respect to the manner of billing or with respect to the rates and divisions since December 1909?

Mr. Cooper: 1909?

Examiner Burchmore: Yes, in last year?

Mr. Cooper: I don't understand that question.

Examiner Burchmore: The point is this. An examination of the affairs of your road was made by the commission about a year ago—by its accounting department. Are the conditions that exist today and the method and practices substantially the same as those then in effect?

Mr. Cooper: Yes sir.

3832 Examiner Burchmore: So that a report rendered then say in a general way, describes the situation?

Mr. Cooper: Yes sir, in a general way.

Examiner Burchmore: Now you receive a division running from four to five cents per hundred pounds from the St. Louis Iron Mountain and Southern Railway? Do you receive the same proposition or basis of division from the Louisiana Railway and Navigation Company?

Mr. Cooper: No sir. Not quite.

Examiner Burchmore: Well, substantially the same?

Mr. Cooper: Yes sir. Substantially the same except that they deliver into the territory of the Missouri Kansas and Texas Railroad, which the St. Louis Iron Mountain and Southern does not.

Examiner Burchmore: Are those division sheets in possession of the commission.

Mr. Cooper: I don't know whether they are or not. I assume that they are, and if not, we will make one.

Examiner Burchmore: If not, a request will be made upon you for one of them.

Mr. Cooper: Yes sir.

Examiner Burchmore: Has your company a supply of

3833 Bills of lading, way bills, printed with its name on them?

Mr. Cooper: Yes sir.

Examiner Burchmore: And other forms necessary for the conduct of a railroad business?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do you comply with the state and Federal laws regarding the safety appliances and accidents and rates, etc.?

Mr. Cooper: Yes sir.

Examiner Burchmore: That is your effort?

Mr. Cooper: Yes sir.

Examiner Burchmore: You keep your system of accounts in accordance with the requirements of the Interstate Commerce Commission?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do you charge depreciation on equipment?

Mr. Cooper: Yes sir.

Examiner Burchmore: At what rate?

Mr. Cooper: Well I would have to refer to the books. I do not keep the books, you understand, but I could get you that later on.

3834 Examiner Burchmore: What is the valuation of this road and its equipment?

Mr. Cooper: For the fiscal year ending June 30, 1910, it was $134,987.62.

Examiner Burchmore:: Your total capital is $50,000.00?

Mr. Cooper: Yes sir.

Examiner Burchmore: Well, how was the rest of this road financed?

Mr. Cooper: By the saving of what we made, that is, the earnings of the railroad Company.

Examiner Burchmore: It never has paid any dividend?

Mr. Cooper: No sir.

Examiner Burchmore: You have used your net earnings and surplus to improving and extending the road?

Mr. Cooper: Yes sir. Except what we have on hand at present.

Examiner Burchmore: What is your present surplus on hand?

Mr. Cooper: Now on hand $20,000.00, between $19,000.00 and $20,000.00.

Examiner Burchmore: On a capitalization of $50,000.00?

Mr. Cooper: Yes sir.

Examiner Burchmore: Have any dividends been author-

3835 ized?

Mr. Cooper: No sir.

Examiner Burchmore: Have you planned any extension of the road to take up this surplus?

Mr. Cooper: Yes sir.

Examiner Burchmore: Through what territory?

Mr. Cooper: In a southeasterly direction, about ten miles.

Examiner Burchmore: Extending your line out from the end?

Mr. Cooper: Yes sir.

Examiner Burchmore: Towards the Mississippi river?

Mr. Cooper: Yes sir, towards the Mississippi river and Marksville, a point on the Texas and Pacific Railroad Company as our prospective destination on the Red River.

Examiner Burchmore: You receive a division of from four to

five cents from the St. Louis Iron Mountain and Southern system? What service do you render for this division?

Mr. Cooper: We haul the logs from Violet, to Tioga, where they are milled in transit.

Examiner Burchmore: Are there any Bills of Lading issued on these inbound movements of logs?

Mr. Cooper: No sir. Only in this way, that the man in charge of the train brings a list of these logs—car loads logs—to this
3836 agent each night.

Examiner Burchmore: Does the conductor of the train report?

Mr. Cooper: Yes sir.

Examiner Burchmore: Will you furnish the commission with a copy of that form?

Mr. Cooper: It is not a report. He writes on a list how many car loads of logs handled to-day.

Examiner Burchmore: Is that not a printed report blank?

Mr. Cooper: No sir. A slip of paper.

Examiner Burchmore: Are these slips filed away?

Mr. Cooper: Yes sir.

Examiner Burchmore: What payment is made by the lumber company to the Railroad company for any inbound movement of logs?

Mr. Cooper: Nothing except the division we receive from the Railroad.

Examiner Burchmore: Don't you pay $4.50 per car load on these in-bound logs?

Mr. Cooper: No sir. Well, let me make that plain to you. We pay $5.00 per car on inbound logs on which we do not receive any division of the through rate.

3837 Examiner Burchmore: $5.00 per car?

Mr. Cooper: Yes, the Lee Lumber Company pays——

Examiner Burchmore: You formerly paid $4.00 per car?

Mr. Cooper: I don't think so. We figured on a basis of four cars. I think there is a mistake there. We figured on four cars to the car load of lumber, and they pay $5.00 per car, which would makeit $20.00 on the carload of lumber. On that, we do not receive a division.

Examiner Burchmore: On lumber on which you receive a division, your division amounts in round number to $24.00 per car.

Mr. Cooper: Somewhere—does it amount to that?

Examiner Burchmore: 60,000 pounds.

Mr. Cooper: They don't average that, Mr. Examiner—they average—they don't average more than——

Examiner Burchmore: Well, $20.00 then?

Mr. Cooper: $20.00 is somewhere nearer to it.

Examiner Burchmore: Just on the basis of your figuring on the logs?

Mr. Cooper: Yes sir.

Examiner Burchmore: Your earnings should be about $20.00 per car?

3838 Mr. Cooper: Yes sir.

Examiner Burchmore: Now the Lee Lumber Company operates its leased engines over the private tram road?

Mr. Cooper: Yes sir. They go out and in. They lease the engines.

Examiner Burchmore: Where does this company receive cars loaded with logs?

Mr. Cooper: At the "Y." At Tioga.

Examiner Burchmore: At the "Y" at Tioga?

Mr. Cooper: That is the terminus of this line.

Examiner Burchmore: It hauls the car load of logs to the mill?

Mr. Cooper: Yes sir.

Examiner Burchmore: Who unloads them?

Mr. Cooper: The train crew of the Lee Lumber Company and the train crew assists in unloading.

Examiner Burchmore: Is the train crew bound to do that?

Mr. Cooper: There is no question about it.

Examiner Burchmore: They would probably be discharged if they refused?

Mr. Cooper: We never have told them that.

Examiner Burchmore: They do that as a matter of course?

3839 Mr. Cooper: Yes they have to make two trips a day, and it is natural they want to get back and make the second trip as early as possible.

Examiner Burchmore: Do they step out and unload the second time?

Mr. Cooper: Yes sir.

Examiner Burchmore: I should think they would be in a hurry to get back to dinner?

Mr. Cooper: Yes sir.

Examiner Burchmore: Well does the Lumber Company pay the railroad company for the time that its employees devote to the unloading of logs?

Mr. Cooper: No sir.

Examiner Burchmore: Then it is just a gratuitous service?

Mr. Cooper: How is that?

Examiner Burchmore: It is just a gratuitous service?

Mr. Cooper: Yes sir.

Examiner Burchmore: Now the mill at Tioga is located directly on the track of the St. Louis Iron Mountain and Southern Railroad?

3840 Mr. Cooper: Well practically. The North "Y" which extends up from the Tioga and Southeastern Railroad and connects with the St. Louis Iron Mountain and Southern Railroad track, where they pick up the loads, is owned by the Tioga and Southeastern Railroad Company up to a point in front of the Planing Mill of the Lee Lumber Company?

Examiner Burchmore: Who furnishes the cars—the empty cars for outbound movements of lumber? The St. Louis Iron Mountain and Southern Railway?

Mr. Cooper: Yes sir.

Examiner Burchmore: I suppose those empty cars at the mill—who places those empty cars at the mill for loading?

Mr. Cooper: The St. Louis Iron Mountain and Southern Railroad Company shoves them in there up to our platform; that is, as far as the rails go.

Examiner Burchmore: And the engine of the Tioga and Southeastern Railroad Company does not touch that empty car?

Mr. Cooper: Not unless it is necessary to make a switch.

Examiner Burchmore: Well, that is unusual?

3841 Mr. Cooper: It is unusual—the switching is unusual for the reason that they have the platform extending nearly one half mile long—from the saw mill and Planing Mill, making quite a long platform to load on.

Examiner Burchmore: The mill employees load that car with lumber?

Mr. Cooper: Yes sir.

Examiner Burchmore: Then how does that car load of lumber go on the St. Louis Iron Mountain and Southern rail? Does the St. Louis Iron Mountain and Southern Railroad move it?

Mr. Cooper: Yes sir.

Examiner Burchmore: Then the lumber practically is not handled by the Tioga and Southeastern in case of shipment moving out over the St. Louis Iron Mountain and Southern Railroad?

Mr. Cooper: What is that?

Examiner Burchmore: Then the lumber practically is not handled by the Tioga and Southeastern in case of shipment moving out over the St. Louis Iron Mountain and Southern Railroad?

Mr. Cooper: No sir.

3842 Examiner Burchmore: I suppose that this division of three or four cents—that is, three or four cents out of the joint rates carries any of the cost of transporting the logs into the mill?

Mr. Cooper: Yes sir.

Examiner Burchmore: Now in case of the 10% traffic that moves out over the Louisiana Railway and Navigation Company, that is not true?

Mr. Cooper: No sir.

Examiner Burchmore: But the divisions they receive are the same?

Mr. Cooper: Yes sir.

Examiner Burchmore: Practically?

Mr. Cooper: Practically.

Examiner Burchmore: Who issues the Bill of Lading on outbound shipments of finished lumber?

Mr. Cooper: Our agent.

Examiner Burchmore: What point is shown as the point of origin on this Bill of Lading?

Mr. Cooper: Violet.

Examiner Burchmore: But the lumber is not loaded out of Violet?

Mr. Cooper: No it is not loaded there, this is to cover the shipment of the log.

3843 Examiner Burchmore: Is there a way bill issued on that movement? a through bill issued on the movement of the lumber?

Mr. Cooper: Yes sir.

Examiner Burchmore: Then the through way bill is also marked Violet?

Mr. Cooper: Yes sir.

Examiner Burchmore: The same as the Bill of Lading?

Mr. Cooper: Yes sir.

Examiner Burchmore: Does your way bill or bill of lading or both of them indicate on the face that the lumber has been milled in transit?

Mr. Cooper: No sir it does not.

Examiner Burchmore: It simply reads Violet or whatever point it may be?

Mr. Cooper: The tariff though refers—the fact that the lumber could be milled in transit.

Examiner Burchmore: I understand it is covered by the tariff: I am simply trying to establish the fact?

Mr. Cooper: It is, yes sir.

3844 Examiner Burchmore: We can read the tariff, but cannot tell from the tariff what the practice is. Of course, there is no extensive milling in transit of the logs coming in?

Mr. Cooper: No sir.

Examiner Burchmore: No lumber manufactured from logs that have not come in from the Railroad?

Mr. Cooper: No sir.

Examiner Burchmore: There is no river near the mill?

Mr. Cooper: No sir.

Examiner Burchmore: You cannot float logs down to the mill?

Mr. Cooper: No sir, we do not buy any put in the pond there.

Examiner Burchmore: This other way bill which is issued by your agent shows the Tioga and Southeastern Railway as the initial carrier and shows that Tioga is the Junction point, I assume?

Mr. Cooper: Yes sir.

Examiner Burchmore: Are not the division rates shown on the face of the way bill?

Mr. Cooper: No sir.

3845 Examiner Burchmore: This is covered by inter-line settlements?

Mr. Cooper: Yes sir.

Examiner Burchmore: Rendered monthly?

Mr. Cooper: Yes sir.

Examiner Burchmore: Do the officers of your company receive any free interstate transportation?

Mr. Cooper: Yes sir.

Examiner Burchmore: What officers receive annual passes?

Mr. Cooper: Mr. Lee, Mr. O'Shea and myself.

Examiner Burchmore: Are those passes actually used?

Mr. Cooper: Yes sir, sometimes.

Examiner Burchmore: Well, do the recipients of those passes ever pay fare over the railroad for which the passes read?

Mr. Cooper: No sir.

Mr. Jeffery: Over the Iron Mountain?

Mr. Cooper: Yes sir. We receive transportation over the Louisiana Railway and Navigation Company, the St. Louis Iron
3846 Mountain and Southern and the Louisiana and Arkansas.

Examiner Burchmore: That is the whole extent of your free transportation?

Mr. Cooper: Yes sir.

Examiner Burchmore: I think that is all. Have you any spur track agreement with the St. Louis Iron Mountain and Southern Railway?

Mr. Cooper: We bought this plant and they tried to get an agreement but we would not go into any because the connections were already made.

Examiner Burchmore: The track was all paid for as far as you know?

Mr. Cooper: Yes sir.

Examiner Burchmore: As a matter of fact there is a private side track connecting your mill trackage with the St. Louis Iron Mountain and Southern?

Mr. Cooper: Yes sir.

Mr. Saunders: Mr. Cooper, you said the company was chartered. Do you know whether or not this is a certified copy of the charter I have here.

Mr. Cooper: That was furnished to us.

Examiner Burchmore: Will you state the facts of it being
3847 incorporated without offering it in evidence?

Mr. Cooper: The Tioga and Southeastern Railroad Company was incorporated under the laws of the State of Louisiana on *June* 7, 1905 as appears by the certificate of the Secretary of State of Louisiana.

Examiner Burchmore: It was incorporated as a common carrier railroad?

Mr. Saunders: Yes sir.

Examiner Burchmore: It describes the route over which the line was to be constructed?

Mr. Cooper: I am looking for it.

Examiner Burchmore: Your statement, I presume, will be sufficient. The record would show that you tendered and we accepted the fact.

Mr. Saunders: This charter was recorded both at the recorder's office at Alexandria and with the Secretary of State's office at Baton Rouge? Now, Mr. Burchmore, you ask if any extension was contemplated. Did you ask that?

Examiner Burchmore: I asked that question.

Mr. Saunders: In what direction do you contemplate this
3848 construction?

Mr. Cooper: A southeasterly direction.

Mr. Saunders: And for what purpose?

Mr. Cooper: For the purpose of supplying the territory with railroad facilities.

Mr. Saunders: What demand is there in that direction for railroad facilities?

Mr. Cooper: It is quite a big farming district and besides there are heavy holdings of timber in there.

Mr. Saunders: Well, belonging to whom?

Mr. Cooper: Not belonging to us; some that does belong to the Lee Lumber Company.

Examiner Burchmore: Other timber which could be acquired?

Mr. Cooper: It is the class of timber that we would not acquire; it is hardwood mostly there.

Cross-examination:

Mr. Saunders: Now, state whether or not any large body of hardwood timber has been sold in that territory within the past few months to a stave company?

Mr. Cooper: Yes the Lee Lumber Company sold to the
3849 Alexandria Stave Company the Oak timber on their land.

Mr. Saunders: What transportation facilities will the Stave Company have?

Mr. Cooper: Over the Tioga and Southeastern Railway only; the only way they have to get it out of there.

Mr. Saunders: Do you know where the Alexandria Stave Company proposes to locate its mill?

Mr. Cooper: On the line of the Tioga and Southeastern Railway at or near Violet. Violet is merely the headquarters of the logging; that is the main camp of the Lee Lumber Company.

Mr. Saunders: Now, you spoke of farmers along the track of the Tioga and Southeastern Railway. State whether or not there has been any colonization scheme put in operation recently.

Mr. Cooper: Yes, the firm of Cook and Alexander, of Alexandria, La., a real estate firm have purchased from the Lee Lumber Company some 16,000 acres. In addition to this they have something like 5,000 acres along the line of the Tioga and Southeastern Railway Company between Violet and Tioga and they have mapped off towns with a view of colonizing.

3850 Mr. Saunders: Do you know whether that scheme is now being actively pushed or not?

Mr. Cooper: Yes, Mr. Alexander was in Chicago last week—I think about 10 days ago—and had just returned from there, where he has arranged for colonizing all these lands.

Mr. Saunders: What is the distance from Violet to Tioga?

Mr. Cooper: Fifteen miles.

Mr. Saunders: Now the timber which is now being cut by the Lee Lumber Company, I understand, is centered at Violet?

Mr. Cooper: Yes sir.

Mr. Saunders: And all those logs were hauled not less than 15 miles?

Mr. Cooper: Yes sir.

Mr. Saunders: Is all the timber cut out between Violet and Tioga?

Mr. Cooper: Practically all of it. There is a little around the mill not being cut—a couple of sections, I would say, of cut over timber around the mill. Outside of that, the land is all cut over.

3851 Mr. Saunders: Do you propose to build to Marksville?

Mr. Cooper: That is our intention.

Mr. Saunders: And there you will connect with what road?

Mr. Cooper: The Texas and Pacific Railway.

Mr. Saunders: At what distance will that be from Violet?

Mr. Cooper: From Violet?

Mr. Saunders: Yes.

Mr. Cooper: At a distance of about 25 to 30 miles.

Mr. Saunders: Now, in earning the division which is accorded you by the Louisiana Railway and Navigation Company, you haul the finished product from the Mill at Tioga back to Ems which is a distance of what?

Mr. Cooper: Nine miles.

Mr. Saunders: Does the Louisiana Railway and Navigation Company assist you in hauling the finished product from the Mill to Ems?

Mr. Cooper: No sir.

Mr. Saunders: And your compensation for that service is the division accorded you?

Mr. Cooper: Yes sir. There is one question you did not ask me.

3852 The Tioga and Southeastern own the right of way of the Tioga and Southeastern Railroad.

Mr. Saunders: Was that right of way deeded to them?

Mr. Cooper: Yes, it is on record in Rapides Parish.

Mr. Saunders: It has fee simple title to it?

Mr. Cooper: Yes sir.

Mr. Saunders: In regard to the rail, what weight of rail has it?

Mr. Cooper: Thirty-five pounds.

Mr. Saunders: What is the condition of that road today?

Mr. Cooper: You mean——

Mr. Saunders: As to physical condition?

Mr. Cooper: It is surfaced up—we have no ballast.

Mr. Saunders: Well can you haul trains over it?

Mr. Cooper: Yes, it is in good condition; the trackage in good condition.

Examiner Burchmore: I do not know that the legal classification of a railroad depends on the state of its road bed or its rail?

Mr. Jeffrey: You say that 10% of your tonnage comes over the Louisiana Railway and Navigation Company, and 90% over the St. Louis Iron Mountain and Southern Railway?

3853 Mr. Cooper: Yes sir, approximately.

Mr. Jeffrey: Is it not a fact that most of your business is north and east of the Mississippi?—is it not a fact that the principal lumber tonnage over the Tioga and Southeastern moves into the north and the east and points on the Great Lakes around Chicago?

I think you get better service by the St. Louis Iron Mountain and Southern to these points than via the Louisiana Railway and Navigation Company?

Mr. Cooper: Yes, but I don't know that the greater part of it goes to that territory.

Mr. Jeffrey: I will ask your traffic man.

Mr. Cooper: I am the traffic man but I don't think it.

Mr. Lee: I will answer that question. The only reason why the majority of the lumber goes over the St. Louis Iron Mountain and Southern Railway track, and not over the Louisiana Railway and Navigation Company's track, is it is sold to St. Louis Iron Mountain and Southern Railway points, you understand, and such stuff only moves over the Louisiana Railway and Navigation Com-
3854 pany as is sold at points where we have divisions with the Louisiana Railway and Navigation Company.

Examiner Burchmore: You ship as far as possible over the St. Louis Iron Mountain and Southern?

Mr. Cooper: Yes sir.

Examiner Burchmore: And you ship over the Louisiana Railway and Navigation Company only when necessary to reach its territory?

Mr. Cooper: That is the idea.

3855 S. R. LEE was called as a witness and having been previously sworn (Mr. Lee and Mr. Cooper were sworn by the examiner at the same time and before Mr. Cooper gave his testimony) testified as follows:

Direct examination:

Examiner Burchmore: You say there was a saw mill formerly on the line that is not here now.

Mr. Lee: Yes, sir, two of them.

Examiner Burchmore: Tell me about those saw mills?

Mr. Lee: I will tell you that all this existed in 1905. It is shown that we incorporated there then. We found the railroad there—a private institution you understand—and also the mill and we incorporated the railroad under the laws of the state as a common carrier and also incorporated the mill plant. There were two small mills located on this little line we bought. The Tioga and Southeastern was the name when we bought it. They had a contract with the Louis Werner Saw Mill Company to handle their sawed timber from their little mill located on this railroad, the Tioga and Southeastern, to the junction of the St. Louis Iron Mountain and Southern at Tioga. When we incorporated this road—and our tariff—
3856 joint tariffs—were filed with the other rates we continued to haul the lumber for these two mills. Under a contract with the Louis Werner Saw Mill Company, we made them a flat rate and they enjoyed the same tariff and the same rates that the mill of the Lee Lumber Company enjoyed, that originated at the junction at Tioga with the St. Louis, Iron Mountain and Southern. In other words, a flat rate.

Examiner Burchmore: How did they come to close up?

Mr. Lee: They cut out their holdings—cut out their timber holdings—exhausted their timber holdings.

Examiner Burchmore: And were unable to acquire other timber?

Mr. Lee: There was none for them to acquire. One of them operated about 2 years and we bought the institution and cut out all the timber they had and there was no more there for them to buy. The old saw mill plant or sites are there yet on the property.

Examiner Burchmore: I don't think I will ask any other questions.

Cross-examination:

Mr. Saunders: Mr. Lee, will you describe the traffic con-
3857 ditions at present and the transportation on that road?

Mr. Lee: The track conditions?

Mr. Saunders: The traffic.

Mr. Lee: The prospect of traffic conditions on our road for an extension is very good, outside of tonnage that may be purchased by the interests of the Lee Lumber Company.

Mr. Saunders: State why.

Mr. Lee: Well for the reason that the Alexandria Cooperage Company located at Alexandria operates several mills all over the south, and hire him, Blow and Company, of Louisville—that is only a branch concern of their general business—it has bought a large tract of oak timber.

Mr. Saunders: Where?

Mr. Lee: Situated near our line and our proposed line, you understand.

Mr. Saunders: Yes.

Mr. Lee: And is developing that territory, we will develop the tonnage they produce there by manufacturing this oak timber into staves. They are stave people and they have arranged to build a mill there on our line and they came to me before they bought this property and asked me if we contemplated developing that
3858 country and if I thought there would be a permanent road there and they could do business there, and I told them yes.

Mr. Saunders: What tonnage will they have?

Mr. Lee: Well, I don't know just what their present holdings will produce, but several thousands of cars, and the prospect is—the probability is—that they will buy a great deal more lumber because it is available in that section of the country that we propose to go through.

Mr. Saunders: Is this a farming country?

Mr. Lee: Sir?

Mr. Saunders: Is this a farming country?

Mr. Lee: Well, in a way it is. It has been largely a timber country of course but there are some farms being operated now on the lands that the timber has been removed from.

Mr. Saunders: Do you know anything about this colonization scheme which Mr. Cooper testified about?

Mr. Lee: I do.

Mr. Saunders: State briefly what the facts are?

Mr. Lee: Well, those real estate agents referred to by Mr. Cooper bought 16,000 acres of land that our road, The Tioga and
3859 Southeastern Railroad Company, runs right through, and Mr. Alexander, a member of that firm, attended a land congress in Chicago and spent ten days there and there arranged to colonize that country and has sold some of it with a view of settling up the territory as the timbers are cut off from it.

Mr. Saunders: How long a cut has the Lee Lumber Company had?

Mr. Lee: I would judge from 7 to 10 years.

Mr. Lee: How many million feet?

Mr. Lee: How many million feet?

Mr. Saunders: Yes.

Mr. Lee: I suppose about two hundred and fifty million feet approximately in that period. That is a mere guess. It is the raw product in the woods and there is no way of definitely measuring it.

Mr. Saunders: You stated that the road had been incorporated as a common carrier under the laws of the State of Louisiana. State whether or not it is taxed under the laws of this state?

Mr. Lee: It is not.

Mr. Saunders: Why not?

3860 Mr. Lee: For the reason that there is a law in the State of Louisiana exempting new railroad projects from taxation.

Mr. Saunders: You mean the constitutional provision of 1898?

Mr. Lee: Yes, sir.

Mr. Saunders: Providing that roads constructed within 10 years should be exempted from taxation?

Mr. Lee: Yes, sir.

Mr. Saunders: And this road was constructed within that time?

Mr. Lee: Yes, sir, and we enjoy that exemption from taxation.

Mr. Saunders: You are subject to the jurisdiction of the commission—the state railroad commission of Louisiana?

Mr. Lee: Yes, sir, absolutely.

Mr. Saunders: They exercise jurisdiction over you?

Mr. Lee: Yes, sir; I will state in that connection that the railroad appraisers or assessors assessed our railroad on one occasion and we took it up with the state authorities—with the attorney general—and he advised the commissioners that we were a railroad and were protected from taxation under the constitutional act
3861 of 1898.

Mr. Saunders: At the time this small mill or the cut of these small mills was hauled, you handled it with that difference that they handled it over their spur lines to the Tioga and Southeastern from their mill?

Mr. Lee: Yes, sir.

Mr. Saunders: Did you take up those spurs?

Mr. Lee: Yes, sir.

Mr. Saunders: Did you obtain permission from anybody to do that?

Mr. Lee: Obtained permission from the Railroad Commission of

Louisiana showing that there was nothing to be performed there and they allowed us to remove the spur track.

Mr. Saunders: Have either you or your company any interest direct or indirect in the Alexandria Cooperage Co.?

Mr. Lee: None at all.

Mr. Saunders: Any interest, direct or indirect, in this colonization scheme?

Mr. Lee: Not a dollar.

Mr. Saunders: The Lee Lumber Company sold the land?

3862 Mr. Lee: We sold the property.

Mr. Saunders: That was the extent of your interest?

Mr. Lee: Yes, sir. Of course, we are interested in having the property built up in the country.

Mr. Jeffrey: When were your divisions increased with the St. Louis, Iron Mountain and Southern Railway?

Mr. Lee: Why were they?

Mr. Saunders: What were they increased from?

Mr. Lee: I think they were increased about a half cent per hundred pounds approximately to some points. I don't recall that quite to memory but I think the figures are about a half cent.

Mr. Saunders: What was the gist of the negotiations?

Mr. Lee: Well, I took the matter up with Mr. Jackson, the Vice-President and Head of the Traffic Department, at St Louis—went to St. Louis to see him—and I told him that with the tonnage originating on our road, that I thought we ought to get a larger division of it; that we originated the freight on our line and I did not think we were getting enough division out of the tonnage on our line. It was not because we had connected with the Louisiana Railway and Navigation Company that I asked for an increase

3863 in divisions. The Louisiana and Arkansas runs within one hundred yards of our railroad, and the Chicago, Rock Island and Pacific cuts across their line within one hundred yards of our railroad, and for a long time——

Examiner Burchmore: Within one hundred yards?

Mr. Lee: Yes, sir.

Examiner Burchmore: Well, does not the proximity of the Chicago, Rock Island and Pacific and your actual connection with the Louisiana Railway and Navigation Company constitute quite a powerful argument when discussing it with the St. Louis, Iron Mountain and Southern?

Mr. Lee: I should think so.

Examiner Burchmore: I should think so.

Mr. Jeffrey: Even though a silent one.

Examiner Burchmore: It would hardly need to be set out.

Mr. Lee: It goes without saying that competition is the life of trade.

Mr. Jeffrey: Did you ever have any negotiation with the Chicago, Rock Island and Pacific? Did they ever want you to connect up there?

Mr. Lee: No, sir, never have had any negotiations. I

3864 have had negotiations with the Louisiana and Arkansas, and they have surveyed a connection with the Tioga and South-

eastern and have sent a civil engineer down there but it has never been put into effect.

Examiner Burchmore: Have you any contract with any railroad?

Mr. Lee: No, sir, none whatever with anybody. We have no contract to deliver any certain amount of tonnage to any railroad or anybody else.

Mr. Saunders: I see the charter provides that you should build a road beginning at or near the town of Tioga on the St. Louis, Iron Mountain and Southern Railway line and thence in a general southeasterly direction, through the parishes of Rapides and Avoyelles, and through the parishes southeast thereof, with such branch lines and connections, upon such course and routes as may be selected and deemed advisable by the Board of Directors of said company?

Mr. Lee: Yes, sir.

Examiner Burchmore: Have you heard the request made to-day for maps?

Mr. Saunders: No, sir, I was not present but we will take pleasure——

3865 Examiner Burchmore: Furnish a map of your road drawn to scale—a blue print or pen and ink sketch—showing the line of road and the forests and the connecting roads and connecting tram lines and all your geography.

Mr. Lee: Yes, sir, we will and we will be able to show the holdings of the Lee Lumber Company in that vicinity and the holdings of other parties that the Lee Lumber Company has no interest in.

Examiner Burchmore: That may properly be included but you may put anything in the map you want if you will put that much. Draw it to a scale and don't make it too large.

Mr. Lee: We want to show the possibilities of the railroad, aside from the Lee Lumber Company who own a very small per cent of the lands in the territory we are developing.

Examiner Burchmore: One other request. Will you furnish a statement of your tonnage for the fiscal year ending June 30, 1910 showing the total logs or log tonnage, stated separately, annually handled for the account of the Lee Lumber Company,—the total amount of their traffic handled for the Lee Lumber Company

3866 or for stores or companies in which it is interested and then show separately the traffic handled for the general public.

Mr. Lee: We will be very glad to do so.

Examiner Burchmore: That latter figure may be divided by commodities, or not; also show how much of your tonnage and which class of it went to the St. Louis Iron Mountain and Southern?

Mr. Lee: That is of record and we will be very glad to do so.

Examiner Burchmore: Kindly show the figures in tons and in dollars and cents?

Mr. Saunders: That will show inbound and outbound?

Examiner Burchmore: Yes.

Mr. Lee: We have no disposition except to show you facts in the case, and anything you want we will give it to you.

Mr. Jeffrey: Your geographical situation is that you connect with the St. Louis Iron Mountain and Southern, and are within ten miles of the Louisiana and Arkansas and of the Chicago Rock Island and Pacific?

Mr. Lee: Yes sir.

3867 Examiner Burchmore: Are there any rivers between these lines?

Mr. Lee: No sir.

Examiner Burchmore: No mountains?

Mr. Lee: No mountains and no rivers.

Mr. Jeffrey: Except the Iron Mountain.

Mr. Lee: I want to make an explanation that we are under no obligations to no railroads, the Iron Mountain or anybody else.

S. R. LEE, recalled, testified as follows:

Mr. Saunders: Mr. Lee, in regard to the Tioga and Southeastern Railroad Company about which you have testified this afternoon, state whether or not it holds itself out to the general public as a common carrier?

Mr. Lee: It does.

Mr. Saunders: State whether or not it takes all business tendered it.

Mr. Lee: It does.

Mr. Saunders: State whether or not under its charter it is now required to operate a passenger traffic.

Mr. Lee: I don't think the charter requires it.

3868 Mr. Saunders: Will you operate a passenger traffic when conditions require it.

Mr. Lee: Absolutely. We stand ready to do it whenever conditions require it. I don't think it is stipulated.

3869 *Victoria, Fisher and Western Railroad Company.*

(Appearances: J. D. Riddell, Esq. Attorney for the V. & F. & W. Railroad Co.)

W. W. WARREN, was called as a witness and having been first duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Mr. Warren, state your office with the Victoria Fisher and Western Railroad Company, and your office if any with the Lumber Company?

Mr. Warren: General Manager.

Examiner Burchmore: Of both companies?

Mr. Warren: Yes sir:

Examiner Burchmore: Do you receive salaries from both companies?

Mr. Warren: The Railroad Company pays the lumber company

$1,000.00 per year which is supposed to be for a part of my salary and a part of the office clerks.

Examiner Burchmore: That $1,000.00 a year pays for your services and the services rendered by these clerks of the lumber company, who perform the entire general office work of the Railroad Company?

Mr. Warren: Yes it is supposed to be.

Examiner Burchmore: Are there any other officers of the railroad company who receive salaries or compensations from
3870 the railroad company?

Mr. Warren: No sir.

Examiner Burchmore: Does the Traffic Manager receive any compensation from the lumber company?

Mr. Warren: From the lumber company?

Examiner Burchmore: Yes.

Mr. Warren: I think not:

Examiner Burchmore: There are other salaried officers however. of the railroad company?

Mr. Warren: None whatever other than what I have said. This $1,000.00 a year is supposed to cover all.

Examiner Burchmore: Is $1,000.00 a year the total salaries of the officers and clerks of the railroad?

Mr. Warren: That is, at the general office at Fisher.

Examiner Burchmore: Then there are other general officers of the railroad located elsewhere who receive salaries from the Railroad?

Mr. Warren: Not as officers. The Traffic manager—I would not call him a general officer.

Examiner Burchmore: He is also connected with the other lumber companies?

Mr. Warren: Yes sir.

3871 Examiner Burchmore: I have been referring to the lumber company. I mean by that the Louisiana Long Leaf Lumber Company which I understands, controls this railroad through ownership or mutual ownership of the capital stock.

Mr. Warren: The stock of the two companies are held by the same stockholders in the same relative proportion.

Examiner Burchmore: This Railroad connects with the Texas and Pacific Railway at Victoria, La., and with the Kansas City Southern at Fisher Louisiana?

Mr. Warren: Yes sir.

Examiner Burchmore: Its outside mileage is what?

Mr. Warren: Thirty-one miles main line and twenty-five miles used in sidings and logging spurs.

Examiner Burchmore: That track is all standard gauge?

Mr. Warren: Yes sir.

Examiner Burchmore: What is the weight of the rail?

Mr. Warren: From forty to sixty pounds; mostly forty.

Examiner Burchmore: It has how many locomotives?

Mr. Warren: Five.

Examiner Burchmore: How many freight cars?

Mr. Warren: Just a minute. There are three box cars,
3872 one flat car and one hundred and five log cars and four caboose cars.

Examiner Burchmore: How long has it owned all this equipment?

Mr. Warren: Since its incorporation and purchase from the Lumber Company some eight years ago, and—well some of it has been acquired since then.

Examiner Burchmore: Are all those locomotives and cars operated by the lumber company, or are some of them leased or loaned to the Lumber Company?

Mr. Warren: The Railroad Company operates all of that property—owns all of that property.

Examiner Burchmore: Operates all of what property?

Mr. Warren: Operates all of the property.

Examiner Burchmore: None of these locomotives are operated by the Lumber Company?

Mr. Warren: No sir.

Examiner Burchmore: Are there any private tram roads connected with this road?

Mr. Warren: No sir.

Examiner Burchmore: No privately owned logging spurs?

Mr. Warren: No sir.

3873 Examiner Burchmore: Where is Fisher, Louisiana relative to some well known city?

Mr. Warren: About 80 miles south of Shreveport.

Examiner Burchmore: In the Long Leaf belt?

Mr. Warren: It is about where one quits and the other begins; it is mixed.

Examiner Burchmore: When was this railroad constructed?

Mr. Warren: Part of this railroad was commenced probably 25 years ago from Victoria Southwest and under a charter, as I understand it, taken out by the Robeline and Sabine Pass Railway.

Examiner Burchmore: Tha- was a connection carrier railroad?

Mr. Warren: I don't know anything about how they conducted their affairs but in the year 1900, the Louisiana Long Leaf Lumber Company purchased that piece of road and continued it on to Fisher.

Examiner Burchmore: A distance of 25 miles?

Mr. Warren: A total distance of about 25 miles.

Examiner Burchmore: How much was this additional construction?

3874 Mr. Warren: About eight or nine miles. Then in 1902 the railroad property was all acquired by the Victoria and Fisher Railroad Company.

Examiner Burchmore: It was incorporated at that time?

Mr. Warren: In November I think 1902. Part of the line was commenced westerly from Fisher in 1900, I think.

Examiner Burchmore: How many mills has the Louisiana Long Leaf Lumber Company, where are they located and how are they designated?

Mr. Warren: There is one pine mill at Victoria, a pine mill at Fisher and a hardwood mill at Fisher.

Examiner Burchmore: What is the distance from Victoria mill to the junction with the Texas and Pacific Railway?

Mr. Warren: From the saw mill?

Examiner Burchmore: At Victoria.

Mr. Warren: There is only one mill, at Victoria.

Mr. Riddell: Most of the lumber is loaded at the Pla-ingg Mill.

Examiner Burchmore: Then, from the Planing Mill?

Mr. Warren: In one direction it is about, I suppose, one hundred yards, but in the direction that the lumber moves, it is probably a quarter of a mile.

3875 Examiner Burchmore: Will you file later with the commission a map of the character heretofore described?

Mr. Warren: Yes sir.

Mr. Riddell: You want that to cover the ejtire line?

Examiner Burchmore: Yes sir.

Mr. Warren: Yes sir. You don't want it made by an engineer; you want it approximately correct?

Examiner Burchmore: I want it drawn to scale and such a map as I might draw if I started to do it myself. It does not need to be on an engineer's form, a blue print or a pen and ink sketch, in order that they may get the information from it correctly, and drawn to scale. Make it of reasonable size. What is the distance from the respective mills at Fisher to the Junction with the Kansas City Southern Railway at Fisher?

Mr. Warren: From the saw mill on past the Planing Mill to the Kansas City Southern Railway transfer, is very nearly a mile. The Saw Mill and the Planing Mill are something like 1000 feet apart.

Examiner Burchmore: Both of the two mills at Fisher
3876 are hardwood mills?

Mr. Warren: No, that is a pine mill. The Hardwood mill —the saw mill—is probably half or three quarters of a mile distant and the Planing Mill is about a mile.

Examiner Burchmore: These are all the mills that the Company owns?

Mr. Warren: Yes sir.

Examiner Burchmore: And none of these mills are located directly on the rails or directly adjacent to the right of way of the Texas and Pacific Railway or Kansas City Southern?

Mr. Warren: No sir, they are all on the tracks of the Victoria Fisher and Western Railroad.

Examiner Burchmore: When were these mills built and open?

Mr. Warren: As I said, the Victoria property was acquired by purchase. There has been a mill there for over 25 years.

Examiner Burchmore: Take that mill. That mill was built—your understanding is that the mill was opened about the time this railroad was first built?

Mr. Warren: The Texas and Pacific?

3877 Examiner Burchmore: No the Victoria Fisher and Western Railroad.

Mr. Warren: My understanding then, is that originally they built a small mill there and probably logged that by team and then that mill burned and they started out with a narrow gauge railroad, after building the present mill, and just what was done, I don't know, only from appearances.

Examiner Burchmore: It appears that originally this railroad, as it originally stood, was largely a logging proposition in connection with one of those mills, in the beginning.

Mr. Warren: I presume so.

Examiner Burchmore: However far it may have gone away from that since?

Mr. Warren: Yes sir.

Examiner Burchmore: Does this railroad have any trackage rights from either of the two railroads above mentioned?

Mr. Warren: No sir.

Examiner Burchmore: Its engines do not go off its own line?

3878 Mr. Warren: No sir.

Examiner Burchmore: What station buildings have you?

Mr. Warren: None.

Examiner Burchmore: You use the Texas and Pacific or Kansas City Southern depot at the point of connection?

Mr. Warren: No, sir.

Examiner Burchmore: Have you any team tracks for the receipt and delivery of car load freight other than those at these mills?

Mr. Warren: Well there are team tracks at the mills and sidings along the main line.

Examiner Burchmore: These sidings are passing sidings and stumpage sidings?

Mr. Warren: Some are only blind sidings with only one end.

Examiner Burchmore: Are the cars and locomotives equipped with safety devices?

Mr. Warren: So far as required. My understanding is that with the skeleton type of logging cars, they are not required to be so equipped.

3879 Examiner Burchmore: How many section gangs are there?

Mr. Warren: Five.

Examiner Burchmore: They devote—do these men work also part of the time for the lumber Company?

Mr. Warren: No sir. On special occasions they might be——

Examiner Burchmore: Independently hired?

Mr. Warren: Yes, they are independently hired?

Examiner Burchmore: How many train crews have you?

Mr. Warren: Four.

Examiner Burchmore: I believe you said your locomotive performed no service off your own rails?

Mr. Warren: I did.

Examiner Burchmore: Do you have any passenger trains or passenger train service?

Mr. Warren: We are not incorporated as a passenger line.

Examiner Burchmore: You carry only freight?

Mr. Warren: Yes sir.

Examiner Burchmore: Do your freight trains run on regular schedule?

Mr. Warren: Yes, sir, only as necessary.

Examiner Burchmore: How many freight trains do you
3880 run a day?

Mr. Warren: From Fisher there are two train crews that make three to four three trips daily and from Victoria there is one that makes two trips daily. The service between Fisher and Victoria is taken care of just as required.

Examiner Burchmore: Have you the figures with respect to the total freight tonnage of your road and how that is divided?

Mr. Warren: I think so.

Examiner Burchmore: Give those figures in your own way. You could examine him briefly regarding the tonnage figures, Mr. Riddell.

Mr. Riddell: I believe you have figures showing the total forest products handled for the Louisiana Long Leaf Lumber Company?

Mr. Warren: Yes sir.

Examiner Burchmore: Will you state what it is?

Mr. Warren: The total tonnage of forest products furnished by the Louisiana Long Leaf Company was 315,496 tons.

Examiner Burchmore: And the revenue?

3881 Mr. Warren: The revenue $116,373.90.

Examiner Burchmore: And what was the tonnage of other freight handled for the Louisiana Long Leaf Company?

Mr. Warren: 245 tons.

Examiner Burchmore: And the revenue?

Mr. Warren: $1,972.96.

Examiner Burchmore: How many tons of forest products did you handle for people other than the Louisiana Long Leaf Lumber Company?

Mr. Warren: 920 tons; revenue $890.49.

Examiner Burchmore: And other freight?

Mr. Warren: 15 tons.

Examiner Burchmore: How much revenue?

Mr. Warren: $44.87.

Examiner Burchmore: As I get the figures, practically 90% of your traffic on a tonnage basis is handled for the Louisiana Long Leaf Lumber Company?

Mr. Warren: I guess so.

Examiner Burchmore: On a revenue basis, what would be the percentage—about the same?

Mr. Warren: Yes or a little more.

Examiner Burchmore: A little more which way?

3882 Mr. Warren: For the controlling interest.

Examiner Burchmore: You participate in joint rates with the Texas and Pacific Railway and the Kansas City Southern Railroads? I refer to joint rates on lumber to interstate destination?

Mr. Warren: We do.

Examiner Burchmore: Are those rates the same in general from both connecting roads?

Mr. Warren: I think generally so. There are exceptions though

Examiner Burchmore: For example, I suppose the local territory —each company reserves that to itself?

Mr. Warren: There is some difference in Texas—quite a little bit.

Examiner Burchmore: You receive divisions out of those joint rates—are those divisions on the same basis from the two connecting lines?

Mr. Warren: Yes sir.

Examiner Burchmore: What are those joint rates? What is their basis? That is to say, are the rates from all of your mills to interstate destination the same as the rates from grouped stations in that vicinity on the Texas and Pacific Railway and Kansas City
3883 Southern?

Mr. Warren: They are generally so. There are no other rates from stations on our line to Sante Fe points and probably other lines, but there are rates from Junction Point.

Examiner Burchmore: But where there are joint rates from points on your line they are the same as junction points.

Mr. Warren: Yes, with the same exception of Texas. There is an arbitrary of one and a quarter cents.

Examiner Burchmore: Are those rates on a milling in transit basis?

Mr. Warren: Yes sir.

Examiner Burchmore: Then they cover the movement of the logs into the mill and the subsequent movement of lumber out?

Mr. Warren: They cover the movement of the log from the junction of the spur track with our main line up to the junction with the trunk line.

Examiner Burchmore: I thought you said there were no spur tracks.

Mr. Warren: I must have misunderstood you. You said
3884 team tracks.

Examiner Burchmore: I asked if there were any private tram roads?

Mr. Warren: Not private, they belong to the railroad Company.

Examiner Burchmore: The rates do not cover transportation from them?

Mr. Warren: No sir.

Examiner Burchmore: What do you charge?

Mr. Warren: $1.50 per thousand feet.

Examiner Burchmore: For moving over this branch line?

Mr. Warren: Yes sir.

Examiner Burchmore: The explanation is that the joint rates do not apply off the main line?

Mr. Warren: Off the main line points only.

Examiner Burchmore: All your stations are on the main line?

Mr. Warren: Yes sir.

Examiner Burchmore: Do you have any joint rates with those other lines on class freight?

Mr. Warren: Yes sir.

3885 Examiner Burchmore: Well, are those rates limited in extent or to all parts of the country—in all directions?

Mr. Warren: Limited.

Examiner Burchmore: What are your divisions out of those joint rates?

Mr. Warren: On classes and commodities?

Examiner Burchmore: Yes.

Mr. Warren: On freight moving from the Atlantic Seaport territory or New Orleans over the Texas and Pacific our division is thirty per cent.

Examiner Burchmore: Thirty per cent of the New Orleans rate?

Mr. Warren: Yes, of the New Orleans rate.

Examiner Burchmore: Have you any other rate?

Mr. Warren: I think there is a rate on oil from Port Arthur, Texas, to Victoria or Fisher—the same division.

Examiner Burchmore: You burn oil in your locomotives?

Mr. Warren: No sir.

Examiner Burchmore: Do you have any joint rate on the coal you use in your locomotive?

Mr. Warren: We do not use any?

3886 Examiner Burchmore: Wood burning locomotives?

Mr. Warren: Wood burning.

Examiner Burchmore: That is you use the waste from your saw mill operations?

Mr. Warren: Part of it. The railroad buys it from the saw mill.

Examiner Burchmore: Now what divisions do you receive on lumber?

Mr. Warren: From three fourths of one cent to four cents.

Examiner Burchmore: Those divisions are in a general way uniform for both carriers?

Mr. Warren: They vary.

Examiner Burchmore: They vary with the territory, or does it make any difference to your railroad company whether the lumber moves out over the Texas and Pacific Railway or the Kansas City Southern Railroad?

Mr. Warren: It makes a difference in a good many cases, as I understand it.

Examiner Burchmore: Which road is more liberal or allows a larger division, or is it sometimes one way and sometimes the other?

3887 Mr. Warren: That is pretty hard to answer Mr. Examiner.

Examiner Burchmore: Well, tell me what you can about it.

Mr. Warren: We receive the highest division from the Kansas City Southern Railroad.

Examiner Burchmore: On their traffic to Kansas City?

Mr. Warren: Local traffic.

Examiner Burchmore: That is at six cents division?

Mr. Warren: I did not say six cents, I said four cents as a maximum.

Examiner Burchmore: Now you receive a division of four cents on this lumber traffic supplied by the Louisiana Long Leaf Lumber Company. What service do you render for which you are paid four cents?

Mr. Warren: The milling in transit service and placing and switching of empty and loaded cars, weighing of loads and delivery to our mill.

Examiner Burchmore: You handle the logs to the mill and the lumber out?

Mr. Warren: Yes sir.

Examiner Burchmore: Is there any billing covering an
3888 inbound movement of logs, other than on conductor's reports such as have been mentioned here this evening?

Mr. Warren: We have a conductor's report on a special form showing the lade of each car.

Examiner Burchmore: And that is the only billing that accompanies the car in?

Mr. Warren: That is all.

Examiner Burchmore: Have you got a copy of that form which you can file with the commission?

Mr. Warren: I can file one.

Examiner Burchmore: You might send one in. Now, when the lumber has been manufactured, it is loaded into empty cars that I assuje, are supplied by the Texas and Pacific Railway or the Kansas City Southern as the case may be? They furnish the equipment?

Mr. Warren: Yes sir.

Examiner Burchmore: Who sets the cars at the mill?

Mr. Warren: We do.

Examiner Burchmore: The Railroad company?

Mr. Warren: The Victoria Fisher and Western.

Examiner Burchmore: They are then loaded by the mill em-
ployees, switched by the Victoria Fisher and Western or
3889 moved by the Victoria Fisher and Western over to the trunk line?

Mr. Warren: They are.

Examiner Burchmore: What billing is the lumber handled on?

Mr. Warren: Bill of Lading.

Examiner Burchmore: Who issues that Bill of Lading?

Mr. Warren: It is taken out in the case of shipments moving from Victoria,—it is taken out on the Victoria Fisher and Western Bill of Lading, and, if delivered to the Kansas City Southern, it is taken out on Kansas City Southern Bill of Lading.

Examiner Burchmore: Now, Victoria is a junction with the Texas and Pacific. Now, as the Victoria Mill, I understand the Victoria Fisher and Western railroad agent issues the bill of lading covering the lumber, and that bill of lading is dated Victoria, or dated along the line somewhere?

Mr. Warren: Along the line.

Examiner Burchmore: At the point of origin?

Mr. Warren: Supposed to be.

Examiner Burchmore: As a matter of fact it makes no
3890 difference because the receipts are the same.

Mr. Warren: Yes sir, and we use one point for convenience.

Examiner Burchmore: The agent also issues a way bill which corresponds to the bill of lading?

Mr. Warren: No sir, we do not issue any way bills.

Examiner Burchmore: Just simply switch the car over to the Texas and Pacific Railway?

Mr. Warren: Yes sir.

Examiner Burchmore: How does the Texas and Pacific know where the car is going?

Mr. Warren: The Bill of Lading is delivered to their agent.

Examiner Burchmore: Whoever executes the Bill of Lading?

Mr. Warren: No, the bill of lading is executed by the Victoria Fisher and Western; in some cases the shipments are turned over on transfer bills with advanced charges.

Examiner Burchmore: On a transfer bill?

Mr. Warren: That is a kind of a bill a belt road issues in big cities. I have had no experience in big cities.

3891 Examiner Burchmore: I think the commission know what that means. Now take the case of lumber originating at Fisher and moving on the Kansas City Southern—manufactured at Fisher. The Kansas City Southern executes the bill of lading?

Mr. Warren: Yes sir.

Examiner Burchmore: And shows the point of origin as *as* Fisher?

Mr. Warren: Cane.

Examiner Burchmore: Where is Cane?

Mr. Warren: That is the name of the line west.

Examiner Burchmore: That is the junction with the Kansas City Southern railroad?

Mr. Warren: No that is the junction with logging spurs with the main line of the Victoria Fisher and Western Railroad. Runs six miles west of Fisher.

Examiner Burchmore: Crosses the Kansas City Southern?

Mr. Warren: Yes sir.

Examiner Burchmore: He shows the point of origin as Cane. That is not on his line?

Mr. Warren: Our line.

Examiner Burchmore: The Kansas City Southern—you
3892 said the Kansas City Southern executes the Bill of lading?

Mr. Warren: The Louisiana Long Leaf Lumber Company write their bill of lading and show this point of origin and deliver that shipment to the Kansas City Southern and deliver the Bill of Lading to the Kansas City Southern.

Examiner Burchmore: You are familiar with the Bill of Lading?

Mr. Warren: Yes sir.

Examiner Burchmore: You know what it looks like?

Mr. Warren: Yes sir.

Examiner Burchmore: Don't you know that a bill of lading reads

something in this wise or to this effect: Received by the Kansas City Southern Railroad Company, from so and so, consignor, at a certain point? That is the way it starts out? It is a receipt for property? and then it continues, That is it agreed that it shall be transported to some destination. How can it acknowledge receipt of lumber at Cane when it is on its line?

Mr. Warren: I may be a little mixed.

Mr. Riddell: Is it not a fact that the Kansas City Southern says that the property was received at Fisher, but originated at
3893 Cane?

Mr. Warren: Yes sir, that is the idea.

Examiner Burchmore: This Bill of Lading is dated at Fisher?

Mr. Warren: Yes sir.

Examiner Burchmore: As a matter of fact, have the logs come from Cane in every case?

Mr. Warren: Yes, because Cane is the junction of all the logging spurs west of Fisher.

Examiner Burchmore: The Fisher mill manufactures lumber exclusively from logs coming in from the west?

Mr. Warren: As a general thing. Once in a while they come from the east.

Examiner Burchmore: Does any lumber move from the Fisher mill over your main line and out over the Texas and Pacific?

Mr. Warren: Yes sir.

Examiner Burchmore: Any great volume of lumber?

Mr. Warren: At times quite a great deal.

Examiner Burchmore: Does any move in an opposite direction from the Victoria mill over the Kansas City Southern?

3894 Mr. Warren: Not so much, some.

Examiner Burchmore: You don't wish to make that statement any more definite?

Mr. Warren: I think not.

Examiner Burchmore: You get the same five cents division for lumber moving over the entire line?

Mr. Warren: We don't get five cents?

Examiner Burchmore: Well, four or three cents?

Mr. Warren: We get the same division on lumber shipped from the mill by the opposite junction as if it was shipped out at the junction nearest the mill.

Mr. Riddell: In other words, you don't get additional compensation for the increased service?

Mr. Warren: No.

Examiner Burchmore: You get the same division no matter what service you perform?

Mr. Warren: Yes sir.

Examiner Burchmore: Do you file a tariff of your own issuance with the Interstate Commerce Commission?

Mr. Warren: Yes sir.

Examiner Burchmore: You are also a party to the joint
3895 tariff.

Mr. Warren: Yes sir.

Examiner Burchmore: It would be unnecessary to explain these tariffs; file them in these proceedings and they will be ref-rred to by the Commission. The Victoria Fishe- and Wester- Railroad Company has forms of bills of lading and way bills represented?

Mr. Warren: Yes sir.

Examiner Burchmore: It complies with the state and federal statutes regulating common carrier?

Mr. Warren: Endeavors to do so.

Examiner Burchmore: Do you keep your accounts in accordance with the system prescribed by the Interstate Commerce Commission?

Mr. Warren: Yes sir.

Examiner Burchmore: Do you post at your station—you have no station—do you—where do you post your tariff for the information of the public?

Mr. Warren: They are at our office. They are not posted, however.

Examiner Burchmore: Well, did anybody ever come and ask to see this tariff?

3896 Mr. Warren: Any shippers?

Examiner Burchmore: Yes.

Mr. Warren: Possibly so; I don't recall any instance now.

Examiner Burchmore: Have you stated the value of this road with its equipment, or without its equipment?

Examiner Burchmore: What is that valuation?

Mr. Warren: The motive power, $27,378.96, and the rolling stock $53,799.54.

Examiner Burchmore: And the road itself?

Mr. Warren: $258,851.98.

Examiner Burchmore: What is the total capitalization of the road?

Mr. Warren: $300,000.00.

Examiner Burchmore: That is the capital stock?

Mr. Warren: Capital stock?

Examiner Burchmore: Is that actually issued?

Mr. Warren: Yes sir.

Examiner Burchmore: Actually paid for?

Mr. Warren: It represents a dividend on the capital stock of the Long Leaf Lumber Company paid to its stockholders.

Examiner Burchmore: Has this railroad company ever

3897 paid any dividend, and if so, what is the extent of this dividend?

Mr. Warren: No sir.

Examiner Burchmore: Has it accumulated a surplus?

Mr. Warren: I think so, if I can find it.

Examiner Burchmore: Well, that surplus is shown in your annual report, but I would like this record to show in some general way its extent and whether it is a book-keeping surplus or an actual surplus?

Mr. Warren: It represents an actual surplus and is re-invested.

Examiner Burchmore: Surplus that has been invested in betterments and additions?

Mr. Warren: Yes sir; on June 30, 1910, it appears to have been $13,509.17.

Examiner Burchmore: How long had it taken to accumulate that surplus?

Mr. Warren: We were incorporated in 1902.

Examiner Burchmore: What is the extent of the betterments and additions that have been paid for out of the net operating
3898 revenues of this railroad Company since its incorporation?

Mr. Warren: The purchase of additional equipment and improvements on the roadway and widening of cuts and some grades and ballasting with some rocks and with sand. It is an ordinary dirt road though.

Examiner Burchmore: What does it all amount to in dollars—$50,000.00?

Mr. Warren: I would not like to venture a guess; I hardly know.

Examiner Burchmore: Haven't you any impression about it? This road makes $10,000.00 a year, does it not?

Mr. Warren: This road makes $10,000.00 a year, sometime; I think it did better than that last year.

Examiner Burchmore: I think so too, but I made it moderate at $10,000.00. What was the net operating revenue last year?

Mr. Warren: I know we have to pay an income tax. The net earnings were $66,374.79, but fro- that is to be deducted $47,655.88, which represents the abandoned spur tracks and depreciation on rolling stock and other property. I believe we are required to carry an accrued depreciation account and get permission of
3899 the commission before we can charge any of that into income account, so that the actual net income was about $16,000.00 or $17,000.00.

Examiner Burchmore: The next year it will be very much larger than that because you won't have all this depreciation—what else did you call it?

Mr. Warren: Abandoned spurs?

Examiner Burchmore: Abandonment of property account.

Mr. Warren: I believe we will. That goes on always.

Examiner Burchmore: Do those abandoned spurs all belong to the lumber company—don't they?

Mr. Warren: Yes sir.

Examiner Burchmore: What timber holdings has this Louisiana Leaf Lumber Company in the territory served by the Fisher and Western Railroad? By timber holdings, I don't mean ownership of land in fee, but I mean such ownership, plus stumpage rights?

Mr. Warren: There is about 95,000 acres uncut.

Examiner Burchmore: How much cut?

Mr. Warren: 75, or 80,000.

Examiner Burchmore: How much land do other people own around there? Any?

3900 Mr. Warren: Not a great deal no. There are other lumber companies that own timber that adjoins us on either

side and in the m-ddle, but not that would be served by our railroad, or that could be served by our railroad.

Examiner Burchmore: Are there any towns on the line?

Mr. Warren: No sir.

Examiner Burchmore: Has the Lumber Company any commissaries on the line?

Mr. Warren: At Victoria and Fisher.

Examiner Burchmore: Their supplies move over the line don't they?

Mr. Warren: Some.

Examiner Burchmore: What passes do the officers of this company hold from other railroads?

Mr. Warren: Oh, over the Iron Mountain and the Texas and Pacific and the Kansas City Southern.

Examiner Burchmore: There are a number of such exchanges?

Mr. Warren: A number of such exchanges made.

Examiner Burchmore: And they are actually used?

Mr. Warren: I use mine.

3901 Examiner Burchmore: You never pay a fare where you have got a pass?

Mr. Warren: I don't think I ever forgot that I had one. I have paid when I did not have one though.

Examiner Burchmore: Who owns the right of way on which this railroad is constructed?

Mr. Warren: The Company.

Examiner Burchmore: You referred to a $1.50 charge per thousand feet for taking the logs off those private spurs—branch spurs—and taking them to the main line.

Mr. Warren: I would like to explain that that covers the cost of the construction of those spurs and the operating of those spurs and removing of them when no longer needed.

Examiner Burchmore: Is that charge published or filed?

Mr. Warren: We consider that as a purely local movement within the state.

Examiner Burchmore: Do the trains stop at all when they reach the main line? Don't they keep on going?

Mr. Warren: Sometimes they keep on but as a rule we have to stop and throw the switch.

3902 Examiner Burchmore: Is it not merely an indivisible part of the whole haul from the tree to the mill?

Mr. Warren: We never considered it was a part of the through movement.

Examiner Burchmore: All the tracks belong to the railroad Company?

Mr. Warren: Yes sir.

Examiner Burchmore: The engine goes the whole way from the tree to the mill?

Mr. Warren: Yes sir.

Examiner Burchmore: Then, what substantial reason is there for drawing this line at the junction between this spur track and

the main line and requiring the Long Leaf Lumber Company to pay up to this invisible line, and not requiring it to pay beyond?

Mr. Warren: They are temporary tracks that are constructed solely for the purpose of bringing logs to the main line.

Examiner Burchmore: Then, the common carrier accommodates its patrons by building temporary spur tracks off in the woods to get that timber?

Mr. Warren: Yes sir.

3903 Examiner Burchmore: Do you accommodate any other patrons besides the Louisiana Long Leaf Lumber Company?

Mr. Warren: We would, and we have put in sidings for the benefit of other people on which to load their lumber. If they had enough lumber to justify the construction of a spur, we would build it.

Examiner Burchmore: Are there any small mills along this line?

Mr. Warren: One between Fisher and Victoria, ten miles from Victoria.

Examiner Burchmore: Is that in operation?

Mr. Warren: Not right now; it burned recently; but we have no timber there.

Examiner Burchmore: Are they going to rebuild?

Mr. Warren: I don't know.

Examiner Burchmore: They cannot compete with your lumber mill without getting the same rate?

Mr. Warren: Oh, they have to bring their logs in by team, but we have to haul ours by team to our spurs.

Examiner Burchmore: But a much less distance?

Mr. Warren: Sometimes as far; as a rule it is not so.

3904 Mr. Riddell: I believe you said the road was incorporated—I am not certain?

Mr. Warren: Yes sir.

Examiner Burchmore: It holds itself out to the public as a common carrier?

Mr. Warren: Yes sir.

Examiner Burchmore: That is all the public there is to that?

Mr. Warren: Yes sir.

Mr. Riddell: You are recognized by the state railroad commission of Louisiana as a common carrier?

Mr. Warren: Yes sir.

Mr. Riddell: You own your own rail?

Mr. Warren: Yes sir.

Mr. Riddell: The same as your other property.

Mr. Warren: Yes sir.

Examiner Burchmore: You are taxed as a common carrier?

Mr. Warren: Yes sir our valuation is assessed by the State Board of Railroad appraisers.

Mr. Riddell: Do you operate any track scales for weighing of car load freight?

Mr. Warren: We do at Fisher.

3905 Examiner Burchmore: One?

Mr. Warren: Yes, at Fisher, Louisiana.

Cross-examination:

Mr. Riddell: Is Victoria just east of the terminus of that line, in close proximity to Natchitoches, Louisiana?

Mr. Warren: About 12 miles distant.

Examiner Burchmore: What is the population of Natchitoches?

Mr. Warren: Between 3,000 and 5,000.

Examiner Burchmore: Have you ever been approached by the people of Natchitoches with a view of having your line extend there?

Mr. Warren: We have.

Examiner Burchmore: Have you ever been offered any substantial encouragement to do it?

Mr. Warren: We were offered $30,000.00 I think about two years ago and the Natchitoches people told me to-day that they believed they would give me $50,000.00.

Mr. Riddell: Well, do you imagine that they were prompted to do that by a desire to have your line build further so that
3906 the Louisiana Long Leaf Lumber Company could ship its lumber to Natchitoches?

Mr. Warren: I did not get the question.

Mr. Riddell: I say, do you imagine that the consideration that prompted them in making that offer was a desire to enable the Louisiana Long Leaf Lumber Company to ship its lumber to Natchitoches?

Mr. Warren: I hardly think so.

Examiner Burchmore: Where is Natchitoches? Is the junction of the two lines—of the Texas and Pacific Railway with the Louisiana and Northwestern Railway?

Mr. Warren: Yes, sir.

Mr. Riddell: Now, Natchitoches is served already by two railroads, is it, the Texas and Pacific Railway and the Louisiana and Northwestern?

Mr. Warren: Yes, sir, it is.

Examiner Burchmore: Each of those lines is more important as to length anyhow, than the Victoria, Fisher and Western?

Mr. Warren: Yes, sir.

Examiner Burchmore: Is it the intention to make the Victoria, Fisher and Western Railroad a part of a through line with
3907 the Louisiana and Northwestern?

Mr. Warren: None in the world.

Examiner Burchmore: The conclusion you reach from the Natchitoches people is that it was an advantage to them to have the Victoria, Fisher and Western in the town?

Mr. Warren: Yes, and they are anticipating that there would be a through train service over our line, and the Louisiana and Northwestern.

Examiner Burchmore: The Victoria, Fisher and Western Railroad does not have through rates on forest products to all territories of destination?

Mr. Warren: It does not.

Examiner Burchmore: In the absence of through rates—take for instance the tonnage, moving through the Kansas City Southern to

Texas points, you have the same revenue on that, probably, do you not?

Mr. Warren: We charge our legal interstate rate.

Examiner Burchmore: And that legal rate is materially in excess I believe of your proportion of the through rate?

Mr. Warren: Yes, sir.

3908 Examiner Burchmore: You would charge from four to six cents a hundred pounds on shipments going through the medium of the Kansas City Southern into Texas, whereas your proportion of a through rate, where there is a through rate to Texas in connection with the Kansas City Southern, varies from one-quarter of a cent to two cents per hundred pounds, does it not?

Mr. Warren: Yes, sir.

Examiner Burchmore: Did I ask you for a map?

Mr. Warren: Yes, sir, you did.

Examiner Burchmore: Did I ask you for a statement of the tonnage such as I have asked other railroads?

Mr. Warren: I think the stenographer has it in the record.

Examiner Burchmore: If I did not, I wish you would furnish such a statement.

Mr. Riddell: We have read it into the record, as far as products and other freights handled for the controlling interests and the other interests.

Examiner Burchmore: Has there been any material change in your manner of taxing transportation or in your rates and

3909 divisions in the last year?

Mr. Warren: No, sir.

Examiner Burchmore: The road is conducted substantially as it formerly was?

Mr. Warren: Yes, sir.

Examiner Burchmore: So that a report rendered to the commission by examiners in the field would probably describe the present condition and operation of the road about as accurately as it described conditions existing at that time?

Mr. Warren: The report was made by the examiner of the Commission?

Examiner Burchmore: Yes.

Mr. Warren: I should think so.

Examiner Burchmore: That is, if the report was true then, it would be true now?

Mr. Warren: I think so.

Examiner Burchmore: In a substantial sense?

Mr. Warren: Yes, sir.

Whereupon, at 5:30 o'clock P. M. an adjournment was ordered by the Examiner until the next day, at 9:30 A. M., in the main room.

3910 At 9:30 o'clock A. M., pursuant to announcement,

Special examiner George P. Boyle opened the hearing in the case of The Gould Southwestern Railway Company in an adjoining room, where the following proceedings were had:

Gould Southwestern Railway Company.

Examiner Boyle: We will now take up the case of The Gould Southwestern Railway Company.

H. L. ROSENTHAL was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Boyle: State your name, residence, and official position, Mr. Rosenthal?

Mr. Rosenthal: H. L. Rosenthal, Chicago, Illinois; Traffic Manager.

Examiner Boyle: Of what railroad?

Mr. Rosenthal: The Gould Southwestern Railway Company.

Examiner Boyle: Located where?

Mr. Rosenthal: In Lincoln County, Arkansas.

Examiner Boyle: How long is that line?

Mr. Rosenthal: 25½ miles.

Examiner Boyle: And extends between what places?

3911 Mr. Rosenthal: Between Eastman and Star City.

Examiner Boyle: Have you a map of your railroad, or something that will represent it to assist us in locating it?

Mr. Rosenthal: Yes, sir.

Examiner Boyle: Do you offer this as an exhibit?

Mr. Rosenthal: Yes, sir.

Examiner Boyle: It will be received and filed as "Exhibit Rosenthal 1."

Mr. Gutheim: Just where does your road lie, so we will be able to locate it on the map?

Mr. Rosenthal: It starts from a point 74 miles southeast from Little Rock on the Valley Division of the St. Louis, Iron Mountain & Southern Railway and runs in a southwesterly direction.

Mr. Gutheim: Is this road a standard or narrow gauge?

Mr. Rosenthal: Standard gauge.

Mr. Gutheim: The main line mileage is what?

Mr. Rosenthal: The main line mileage is 19½ miles, I be-

3912 lieve.

Mr. Gutheim: And your connection is the St. Louis, Iron Mountain & Southern Railway,—that is your only connection?

Mr. Rosenthal: Yes.

Mr. Gutheim: At Gould?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: Now, what particular industry does your line serve, and what furnishes the majority of your tonnage?

Mr. Rosenthal: There are about eight or ten mills along the line, in addition to which there is the town of Star City, which town has around a dozen stores, several of them being more or less wholesale stores.

Mr. Gutheim: Star City is southwest of Gould in the timber?

Mr. Rosenthal: Yes.

Mr. Gutheim: And the principal industry on the road is at Esterbrook—the lumber company?

Mr. Rosenthal: No, sir.

Mr. Gutheim: What is the name of the lumber company
3913 that furnishes the larger proportion of your tonnage?

Mr. Rosenthal: There is not only one company that furnishes the majority of the tonnage; the biggest individual shipper on the road is Mr. R. E. Muse.

Mr. Gutheim: R. L. Muse—What is the—the Newhouse mill and lumber company's plant?

Mr. Rosenthal: The Newhouse mill and lumber company's plant are not operating any plant whatsoever on the line of the Gould Southwestern Railway now.

Mr. Gutheim: How long since they have operated?

Mr. Rosenthal: About—I don't think they have operated since May, 1908.

Mr. Gutheim: Have the Newhouse Mill & Lumber Company any relation as far as community of interest goes, with the Esterbrook Lumber Company?

Mr. Rosenthal: There are several stockholders of the Newhouse Mill & Lumber Company, who also own stock in the Esterbrook Company.

Mr. Gutheim: Did the Newhouse Mill & Lumber Company succeed the Esterbrook Lumber Company in its operations on this line?

Mr. Rosenthal: They succeeded in the operation of mill
3914 out or in this territory during the year 1906.

Mr. Gutheim: So that the Esterbrook Lumber Company has not operated since 1906?

Mr. Rosenthal: No, sir.

Mr. Gutheim: And the Newhouse Mill & Lumber Co. has not operated since May, 1908?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: To what extent are the Esterbrook Lumber Company, or the Newhouse Mill & Lumber Company interested in the railroad, directly or indirectly, that is except as shippers?

Mr. Rosenthal: There is not—I should like——

Mr. Gutheim: That is, did the Esterbrook Lumber Company, or its successors, the Newhouse Mill & Lumber Company control the railroad by reason of direct or indirect stock ownership?

Mr. Rosenthal: Yes, sir, in this way: That the owners of the Newhouse Mill & Lumber Company, are more or less identical with the Gould Southwestern Railroad Company.

Mr. Gutheim: Is it not a fact that they are identical
3915 that the stockholders are the same?

Mr. Rosenthal: No, not identical.

Mr. Gutheim: How much stock of the Gould Southwestern Railroad Company is owned by individuals who have no interest whatever in the Newhouse Lumber Company?

Mr. Rosenthal: I really don't know how much.

Mr. Gutheim: Well, about how much?

Mr. Rosenthal: Well, I cannot say, because I am not familiar with it; it is comparatively little.

Examiner Boyle: You are not qualified to testify on that, are you?

Mr. Rosenthal: I am not qualified to testify on that.

Examiner Boyle: Is there any witness who can tell these things? That it is a small proportion?

Mr. Gutheim: Will you make a statement as counsel?

Charles T. Coleman: I understand that the majority of the stock in the Gould Southwestern Railway Company is owned by stockholders of the Newhouse Lumber Company; just what the
3916 exact proportion is, I am not informed.

Mr. Gutheim: To state it in another way: Does the Newhouse Mill & Lumber Company or its stockholders own anything, except what is necessary to qualify them as directors?

Mr. Rosenthal: No, sir; I can answer that.

Mr. Coleman: I will state that we have had the financial man here for a week, but he was called away, and he can state the exact status of the stock holdings if it is desired to submit it.

Mr. Gutheim: You may file the statement as part of the evidence, and show the list of stockholders and their respective holdings, and the extent to which each of these stockholders are interested in the Newhouse Mill & Lumber Company.

Mr. Coleman: Yes, we will do it.

Mr. Gutheim: Is the suspension of operation of the Newhouse Mill & Lumber Company a temporary suspension, or is it permanent on account of the exhaustion of the timber?

3917 Mr. Rosenthal: It is a permanent suspension, but not on account of the exhaustion of the timber, and it really is in this way. The Newhouse Mill & Lumber Company has disposed of practically all of the timber with the exception of a little over a thousand acres, and it is only a question of a short time when they will dispose of that timber.

Mr. Gutheim: Has the timber that has been disposed of, been purchased by one individual or one company or corporation?

Mr. Rosenthal: No, sir it has been disposed of to several, I understand.

Mr. Gutheim: What is the name of the largest purchaser?

Mr. Rosenthal: I don't think I know.

Mr. Gutheim: Do you know whether or not the purchasers are those small mills along the line you have spoken of?

Mr. Rosenthal: Yes, sir, some of them.

Mr. Gutheim: About what is the total acreage that has been disposed of actually or presumably.

Mr. Rosenthall: You mean that has been disposed of, these
3918 outside interests?

Mr. Gutheim: To the various interests.

Mr. Rosenthal: About 617 acres.

Mr. Gutheim: That is substantially all of the remaining timber to be cut, the product of which will be shipped over this road?

Mr. Rosenthal: No, that is a very small proportion of the standing timber along the road.

Mr. Gutheim: Well, as a matter of fact we seemed to have reached a point where there is a large amount of timber remaining to be cut, but owing to some stand of the Newhouse Lumber Company which controls the road; but these owners are not operating and presumably do not intend operating the mill.

Mr. Rosenthal: That part is true; they don't intend to operate a mill.

Mr. Gutheim: So that you wish us to infer, the road is not to be operated or built by the Newhouse Mill & Lumber Company, out of the territory through the ones interested in the railroad so far as the active operation was concerned?

Mr. Rosenthal: That is true.

Mr. Gutheim: What other industries are there along the
3919 line outside of the lumber industries that furnish the traffic?

Mr. Rosenthal: There are several large plantations growing cotton and other agricultural products, and in addition to that, practically the whole of Lincoln County and its inhabitants there, are more or less contiguous to the road, and more or less dependent upon the road for transportation and supplies.

Mr. Gutheim: What is the population? First, for instance, at Star City?

Mr. Rosenthal: Yes, that is——

Mr. Gutheim: That depends entirely on the Gould Southwestern Railway Company for railroad service.

Mr. Rosenthal: Between there and Gould.

Mr. Gutheim: Gould is the southwestern terminus of the line?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: What population is there, giving the names of the communities and the population of each, between Gould and Star City?

Mr. Rosenthal: Why, there is between Gould and Star
3920 City, three or four towns.

Mr. Gutheim: Name them.

Mr. Rosenthal: Would amount in population approximately—Champerico, Arkansas, about fifty or seventy-five I believe; that is the only real settlement that is directly on the line of the road, but Lincoln County is one of the oldest settled counties in the State of Arkansas, and scattered all through it are small towns and villages, which we do not directly run through; that is, through the villages, but whom we cater to.

Mr. Gutheim: Well, what is the approximate population of the villages dependent on the Gould Southwestern Railway—what is it?

Mr. Rosenthal: Between five and ten thousand.

Examiner Boyle: That is the city located at that eastern terminus, is what?

Mr. Rosenthal: Gould.

Examiner Boyle: I notice the road extends beyond Gould?

Mr. Rosenthal: Yes, sir, to Benners.

3921 Examiner Boyle: What is the population of that place?

Mr. Rosenthal: I don't think there are any permanent residents there.

Mr. Gutheim: About what is the population?

Mr. Rosenthal: I don't think there are any people living there. It's just a station.

Mr. Gutheim: Nobody at all?

Mr. Rosenthal: Yes, there are several people immediately around.

Mr. Gutheim: The population is less than one hundred?

Mr. Rosenthal: Yes; you mean around——

Mr. Gutheim: In Benners?

Mr. Rosenthal: There are no people in Benners at all; it is just a station—a lumber mill, and forest products.

Mr. Gutheim: Is that the only station east of the St. Louis Iron Mountain & Southern Railway?

Mr. Rosenthal: No, west Arkansas is also a station.

Mr. Gutheim: What is the population of that place?

Mr. Rosenthal: That is a mill point.

Mr. Gutheim: What is the population?

3922 Mr. Rosenthal: That is a mill town, the people don't live there; they live over at Gould.

Mr. Gutheim: What sort of a mill is there?

Mr. Rosenthal: It is a big saw mill.

Mr. Gutheim: What is its capacity?

Mr. Rosenthal: About 20,000 feet per day.

Mr. Gutheim: It runs pretty regularly?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: Who owns the mill?

Mr. Rosenthal: That mill is operated by R. L. Muse.

Mr. Gutheim: Was this town of Star City a settled community when the Gould Southwestern Railway built into that country?

Mr. Rosenthal: Yes, sir; it has been in existence since before the Civil War.

Mr. Gutheim: Where is the mill that was formerly operated by the Newhouse Mill & Lumber Company?

Mr. Rosenthal: At West Arkansas.

Mr. Gutheim: Where is West Arkansas on your line?

Mr. Rosenthal: It is a mill that is now operated by Mr. R. L. Muse, just east of Gould.

Mr. Gutheim: Just how far east of your St. Louis & Iron

3923 Mountain Railway is it?

Mr. Rosenthal: I should judge it to be about one-eighth of a mile.

Mr. Gutheim: And the service on the product of the mill, and West Arkansas, to the St. Louis Iron Mountain & Southern Railroad has been performed during the operation of the saw mill by the Gould Southwestern Railway?

Mr. Rosenthal: Entirely.

Mr. Gutheim: The St. Louis Iron Mountain & Southern Railway, does not handle the traffic?

Mr. Rosenthal: No, sir.

Mr. Gutheim: Was this railroad constructed by the Newhouse Mill & Lumber Company, or the Esterbrook Lumber Company that preceded it?

Mr. Rosenthal: Well, I think I had better give you the history of the transaction.

Mr. Gutheim: Go ahead.

Mr. Rosenthal: During the latter part of 1906.

Examiner Boyle: Well, just state when the road was built.

Mr. Rosenthal: Yes, sir, the Esterbrook Lumber Co., built the mill, and they controlled some money—during that same
3924 summer——

Examiner Boyle: What summer?

Mr. Rosenthal: Summer of 1906; the Newhouse Mill & Lumber Company, they took over all the interests of the Esterbrook Lumber Company, and then the Newhouse Lumber Company proceeded to build a track running from the property at Benners there is a station called Weber, about three miles west of Gould—southwest, and in November of that year, owing to the fact that two parties had asked us—in fact, more than two had asked us to extend the road so as to handle their product, the railroad was incorporated and took over the line formerly owned by the Newhouse Mill & Lumber Company; that was about three miles. And since that time the Gould Southwestern Railroad Company has extended it from Weber to its present length.

Mr. Gutheim: So that, the railroad practically was built contemporaneously with the mill proper?

Mr. Rosenthal: Yes, sir, the first section was.

Mr. Gutheim: And the rest of it has been built in parts since the operation of the mill.

Mr. Rosenthal: No, sir.

3925 Mr. Gutheim: Not at all.

Mr. Rosenthal: No, sir.

Mr. Gutheim: Do you mean it was all built, this twenty-one miles of the main line at the solicitation of parties living along that main line?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: As a matter of fact has the whole twenty-one miles of line been used for the handling of logs for the Newhouse Mill & Lumber Company?

Mr. Rosenthal: No, sir; the line was not completed into Star City at all, until after the mill had ceased operation.

Mr. Gutheim: Do you mean that the construction went on after the mill had ceased operations?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: It went on to Star City presumably for local tonnage, not the tonnage of your people at all?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: As a matter of fact, have the Newhouse Mill & Lumber Company done any cutting to the southwest of the St. Louis Iron Mountain & Southern Railway.

3926 Mr. Rosenthal: To the southwest.

Mr. Gutheim: That is the line I understand which runs in a generally southwesterly direction from the St. Louis Iron Mountain & Southern, or have all their timber operations been to the eastward of the St. Louis Iron Mountain & Southern Railway?

Mr. Rosenthal: Their timber operations at the time the mill was running extended all the way to Benners, and up to Weber.

Mr. Gutheim: All east of the St. Louis Iron Mountain & Southern Railway?

Mr. Rosenthal: No, Weber is west of the St. Louis Iron Mountain & Southern Railway. I might add at that time—you will notice that Weber is right here; we formerly had a line running from one mile west of Evans to Champion, through Weber, but that line has been taken up since, and we built this cut-off.

Mr. Gutheim: So that your use for logging no one line, except that east of the St. Louis Iron Mountain and Southern, and for a distance of three miles west of the St. Louis Iron Mountain & Southern Railway?

3927 Mr. Rosenthal: It has been used for logging.

Mr. Gutheim: I am referring to the logging of the Newhouse Mill & Lumber Company.

Mr. Rosenthal: No, sir.

Mr. Gutheim: Does the Newhouse Mill & Lumber Company own any timber west of the St. Louis Iron Mountain & Southern Railway beyond that three mile limit?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: How extensive are their holdings there?

Mr. Rosenthal: Eleven or twelve hundred acres.

Mr. Gutheim: Eleven or twelve hundred acres?

Mr. Rosenthal: I think it is less than that; I don't know how extensive it is; but the holdings are compaaratively small.

Mr. Gutheim: Was the railroad constructed by the lumber company itself,—that is, operating for the railroad, or was it constructed by some regular railroad construction company?

Mr. Rosenthal: It was constructed by the railroad company itself.

Mr. Gutheim: That is by the Gould Southwestern Railroad Company?

3928 Mr. Rosenthal: Yes, sir, by the Gould Southwestern Railroad Company.

Mr. Gutheim: Now, about the financing of the original construction; that was money furnished by the Esterbrook Lumber Company, originally?

Mr. Rosenthal: No, by the Newhouse Mill & Lumber Company —that is, the original three miles?

Mr. Gutheim: Yes.

Mr. Rosenthal: Yes, sir, the Newhouse Mill & Lumber Company.

Mr. Gutheim: The Newhouse Mill & Lumber Company. And they also furnished the money for the construction of the road I take it, you say, twenty-one miles?

Mr. Rosenthal: They did it in this way; they lent money to the Gould Southwestern Railroad Company on the Gould Southwestern Railway Company's notes.

Mr. Gutheim: What is the outstanding capital stock at the present time?

Mr. Rosenthal: Fifty-one thousand dollars.

Mr. Gutheim: What other indebtedness is there over and above that?

3929 Mr. Rosenthal: Do you mean bonded indebtedness?

Mr. Gutheim: Yes, bonded indebtedness.

Mr. Rosenthal: There is no bonded indebtedness.

Mr. Gutheim: What portion of the indebtedness is it that is applicable to construction account?

Mr. Rosenthal: Well, the indebtedness of the Gould Southwestern Railway Company—I believe the only indebtedness about one hundred and ten thousand dollars which they owe the Newhouse Mill & Lumber Co., on notes.

Examiner Boyle: Those notes represent what?

Mr. Rosenthal: They represent money that the Gould Southwestern Railway Company borrowed from the Newhouse Mill & Lumber Company.

Examiner Boyle: For what purpose?

Mr. Rosenthal: The Gould Southwestern Railway Company used the money for the construction and equipment of the road.

Mr. Gutheim: Now, that money was used for the original construction. Is it also a fact that the financial transaction of the railroad company had been done through the Newhouse Lumber Company's running account kept between both companies, so that

3930 the amount now due from the railroad company represents the net balance that is due, to date, both for construction and operation of the road.

Mr. Rosenthal: No, I don't think so; in other words, what you mean is, that the Newhouse Mill & Lumber Company paid the bills of the Gould Southwestern Railway and charged them up with it?

Mr. Gutheim: Yes, and got credit for what service the Gould Southwestern Railway Company performed for them.

Mr. Rosenthal: No; the accounts are handled as separate corporations.

Mr. Gutheim: So, the fifty thousand dollars of stock outstanding, and the indebtedness amounting to one hundred and seventy thousand dollars represents nothing but the cost of the road, and the equipment?

Mr. Rosenthal: Practically.

Mr. Gutheim: That would be at the rate of about ten thousand dollars per mile?

Mr. Rosenthal: Yes, sir, about it.

Mr. Gutheim: And that indebtedness is due the Newhouse Mill & Lumber Company. What interest is paid by the Gould

3931 Southwestern Railway Company?

Mr. Rosenthal: Six per cent.

Mr. Gutheim: At the present time, are the officers of the Gould Southwestern Railway Company the same as the officers of the Newhouse Mill & Lumber Company?

Mr. Rosenthal: Well, I should judge they are practically the same.

Mr. Gutheim: They are substantially the same?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: What weight of rail is there on this line?

Mr. Rosenthal: I think fifty-six pounds.

Mr. Gutheim: Throughout?

Mr. Rosenthal: No, with the exception of a very small section which is lighter weight, and which will be replaced within the coming six months, I believe.

Mr. Gutheim: Are there any bridges?

Mr. Rosenthal: Eleven.

Mr. Gutheim: Are they substantial bridges?

Mr. Rosenthal: Yes, sir.

3932 Mr. Gutheim: Are any of them iron or steel?

Mr. Rosenthal: No, sir, they are all wooden structures.

Mr. Gutheim: Are there any station buildings on your line?

Mr. Rosenthal: Two.

Mr. Gutheim: Where are they located?

Mr. Rosenthal: At Gould and at Star City.

Mr. Gutheim: Gould is the junction with the St. Louis Iron Mountain & Southern Railway; is that the St. Louis Iron Mountain & Southern Railway Company's depot also?

Mr. Rosenthal: No, sir, they have a separate depot.

Mr. Gutheim: There is a post office at Star City?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: And also at Champion?

Mr. Rosenthal: Yes, sir, so I understand.

Mr. Gutheim: And your line carries the mails for both places?

Mr. Rosenthal: No, sir, not yet; there was an application made, and I know an inspector was over the road about sixty days ago, and he passed favorably on it, and recommended giving the

3933 Gould Southwestern Railway Company a mail contract.

Mr. Gutheim: Have you any facilities for weighing carload shipments on your line?

Mr. Rosenthal: No, sir.

Examiner Boyle: You have no track scales at all?

Mr. Rosenthal: No, sir.

Examiner Boyle: Has the lumber company any track scales?

Mr. Rosenthal: No, sir.

Examiner Boyle: You rely upon whom for your weights?

Mr. Rosenthal: Our rates are, as far as local rates are concerned, *are* practically card rates, and when the stuff goes off the line, then we use the per hundred pounds rates, and depend on the St. Louis Iron Mountain & Southern Railway for our weights.

Mr. Gutheim: What equipment do you operate at the present time?

Mr. Rosenthal: Two locomotives and one combination coach and baggage car, one wrecking train; and there are four cars that are principally used for the—we have no use for them except the work train.

Mr. Gutheim: Have you any regular freight cars?

Mr. Rosenthal: We use foreign line equipment entirely.

3934 Mr. Gutheim: Is all of your equipment, equipped with safety devices as required by the Federal Acts?

Mr. Rosenthal: Yes, sir, with the exception of these four cars which are used for work train purposes entirely, and do not go off the line; as a matter of fact, I don't think these four cars have been used in the last six months; I think they are out of commission.

Mr. Gutheim: What facilities have you for dispatching trains, have you any telegraph or telephone lines?

Mr. Rosenthal: We have a telephone line.

Mr. Gutheim: And are your trains so dispatched?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: About how many employees do you have on the road work?

Mr. Rosenthal: Two section crews, of six men each. With one foreman; we have train crews of three men each, and we have one or two others whom I do not know.

Mr. Gutheim: Have you any agency employees?

3935 Mr. Rosenthal: Yes, sir, we have one at Gould, and one at Star City.

Mr. Gutheim: Is the Gould agent a joint agent with the St. Louis Iron Mountain & Southern Railway?

Mr. Rosenthal: He is not.

Mr. Gutheim: Do the men—the railroad employees, work for the railroad solely, or do they work also for the Newhouse Mill & Lumber Company?

Mr. Rosenthal: They are railroad employees solely.

Mr. Gutheim: How many trains do you run daily?

Mr. Rosenthal: Four, two each way.

Mr. Gutheim: Both of them passenger and freight trains?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: Do you observe the hours of service?

Mr. Rosenthal: Yes.

Mr. Gutheim: These trains run on regular schedules, connecting with the St. Louis Iron Mountain & Southern Railway trains, I suppose?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: Do you have any arrangements for handling express business?

Mr. Rosenthal: We handle all express business.

Mr. Gutheim: As a railroad?

3936 Mr. Rosenthal: As a railroad, yes, sir.

Mr. Gutheim: And not under an express contract?

Mr. Rosenthal: No, sir, not under an express contract?

Mr. Gutheim: About what is the extent of the passenger traffic?

Mr. Rosenthal: Between eight hundred and one thousand per month, and constantly increasing.

Mr. Gutheim: You know about the special statement that has been called for to give in full the rates showing the total tonnage, the total revenue for the fiscal year ending June 30, 1910, and showing

the division of the tonnage and revenue, so that we may know what accrues on the business of the Newhouse Mill & Lumber Company, and what accrues on the business of the outside general public.

Mr. Gutheim: As a matter of fact, just what does your total tonnage handled for all parties other than the Newhouse Mill & Lumber Company consist of?

Mr. Rosenthal: Of lumber and forest products, cotton and grain, agricultural implements; all merchandise etc.

Mr. Gutheim: Do you have through rates with the di-
3937 visions allowed to your company on lumber and forest products?

Mr. Rosenthal: We do.

Mr. Gutheim: And on classes and commodities generally?

Mr. Rosenthal: We do.

Mr. Gutheim: What division is allowed to the Gould Southwestern Railway on the lumber and forest products?

Mr. Rosenthal: Before replying to that, I would like to make this statement, that our lumber rates and forest products from off our stations, are not predicated upon the division of the rates applying within a radius of a mile of Gould, which includes the station of Benner and Grandt inclusive; further on we add an arbitrary running from two cents per hundred pounds to five cents per one hundred pounds over the Gould rates; and in the division of these rates we get two cents per one hundred pounds, plus the arbitrary.

Mr. Gutheim: Now, as I understand it, the junction point or Gould rate applies to all points within a radius of one mile from Gould?

Mr. Rosenthal: Practically.

3938 Mr. Gutheim: Now, what mills are located within that radius?

Mr. Rosenthal: The mill at West Arkansas, and the mill at Grandt.

Mr. Gutheim: Who owns the mill at West Arkansas?

Mr. Rosenthal: R. L. Muse operates the mill; that is his mill.

Mr. Gutheim: For whom?

Mr. Rosenthal: For himself.

Examiner Boyle: What is its capacity?

Mr. Rosenthal: I think it is a twenty thousand foot mill.

Mr. Gutheim: He does not own the mill?

Mr. Rosenthal: It was leased to him by the Newhouse Mill & Lumber Company under a three year lease.

Mr. Gutheim: Right here I want to say that in this statement of tonnage you are to show particularly the tonnage of R. L. Muse as the tonnage of the controlling interest, and show it separately from all the other tonnage.

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: What is the mill at Grandt?

Mr. Rosenthal: It is a mill owned by Mr. A. J. Keller.

3939 Mr. Gutheim: Has Mr. Keller any connection with the Newhouse Mill & Lumber Company?

Mr. Rosenthal: No, sir.

Mr. Gutheim: As a matter of fact is not the preponderance of the tonnage furnished by this mill which is now operated by Mr. Muse?

Mr. Rosenthal: No, sir.

Mr. Gutheim: I understood you to say in the beginning of the examination, that that was the largest mill?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: And that Mr. Muse was the heaviest shipper?

Mr. Rosenthal: I said the heaviest individual shipper.

Mr. Gutheim: That is what I mean, the heaviest individual shipper?

Mr. Rosenthal: Yes, sir, he is the heaviest individual shipper.

Mr. Gutheim: Out of these rates from these two mills, you get a division of what?

Mr. Rosenthal: Two cents per 100 pounds on interstate traffic.

3940 Mr. Gutheim: Two cents for all stations on interstate traffic?

Mr. Rosenthal: Yes, sir.

Examiner Boyle: Don't the card rate apply?

Mr. Rosenthal: The card rate was on local shipments between points on our line.

Mr. Gutheim: From the mills outside of the one mile radius, you have a rate which is made up by adding your arbitrary to the junction point rate?

Mr. Rosenthal: Yes sir, the division we get is that arbitrary plus two cents.

Mr. Gutheim: Yes, and the fact is, that all shippers outside of this one mile radius have to pay your local arbitrary over and above the junction point rate in order to reach their market?

Mr. Rosenthal: They can——

Mr. Gutheim: And all of the arbitrary accrues to your company together with the two cents allowed out of the junction point rate?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: None of these mills that are outside of the one mile radius are controlled by the Newhouse Mill & Lumber Company?

3941 Mr. Rosenthal: Not that I know of.

Mr. Gutheim: So that the Newhouse Mill & Lumber Company, the lessor of the Newhouse property, in any case, pays more than the junction point rate?

Mr. Rosenthal: He pays—that is on the finished product shipped out of his mill?

Mr. Gutheim: Yes, on the finished product shipped out of his mill.

Mr. Rosenthal: He does pay the local freight rates on everything shipped into the mill.

Mr. Gutheim: We will get to that on the matter of divisions again; is the division of the junction point rate, based on the milling in transit theory?

Mr. Rosenthal: I should judge it is.

Mr. Gutheim: Well, do you know that as a matter of fact from your knowledge of the tariffs?

Mr. Rosenthal: Yes, sir; I should judge it is.

Mr. Gutheim: What is the haul from the timber to the mill, out to the west—to west?

Mr. Rosenthal: Well, the haul is anywhere from three miles to twenty miles.

Mr. Gutheim: And what is the rate? Is it paid per thousand feet or per logging car, taking the haul on the logs, and the
3942 lumber, being the differential of the mill to the railroad company.

Mr. Rosenthal: It runs from five to twelve dollars and a half per car, according to the tariff.

Mr. Gutheim: That is the tariff published on the authority of the Arkansas State Railroad Commission?

Mr. Rosenthal: Yes, sir, published and filed with the Arkansas State Railroad Commission.

Examiner Boyle: Is there any lumber consumed locally at Gould?

Mr. Rosenthal: Practically none.

Examiner Boyle: It is all shipped out?

Mr. Rosenthal: Yes, sir. Very little lumber is consumed at other points on the Line.

Examiner Boyle: It is more or less a negligible quantity?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: The service that the Gould Southwestern Railway Company performs on the lumber is a one-eighth of a mile haul at most?

Mr. Rosenthal: Yes, sir, on the finished product.

Mr. Gutheim: On the finished lumber.

3943 Mr. Rosenthal: Yes, sir.

Mr. Gutheim: The general offices of the company are also at Gould?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: You are complying with the Federal law in regard to the publication of tariffs?

Mr. Rosenthal: We do.

Mr. Gutheim: And also filing all monthly and annual reports?

Mr. Rosenthal: We do.

Mr. Gutheim: Does the road operate on a paying basis?

Mr. Rosenthal: There has been a deficit for the last two years.

Mr. Gutheim: Well, what is the net profit and loss account at the present time? Does it show a surplus or a deficit?

Mr. Rosenthal: At the present time?

Mr. Gutheim: Yes.

Mr. Rosenthal: I think there is a slight surplus; very slight however.

3944 Mr. Gutheim: Have you ever paid any dividends?

Mr. Rosenthal: No, sir, all of our money that ever comes in is turned right back into the company for betterments.

Mr. Gutheim: When you made the statement at the opening of the examination, that the Newhouse Mill & Lumber Company would

not probably operate again, you meant that they would not run their mill proper? That the property would be operated by a lessee, as a matter of fact?

Mr. Rosenthal: Part of the timber has been sold by the Newhouse Mill & Lumber Company——

Mr. Gutheim: Has it been sold by the Newhouse Lumber Company and taken by Mr. Muse?

Mr. Rosenthal: I don't think so.

Mr. Gutheim: Have you any knowledge of his timber holdings in the vicinity that are still served by that railroad?

Mr. Rosenthal: Sometimes he is in the habit of buying logs; I don't think he owns very much timber land himself, but he is in the habit of buying logs—is in the habit of buying them within
3945 a radius of forty or fifty miles of Gould and some logs come from points on the St. Louis Iron Mountain & Southern into his mill, and some are hauled in by wagons, and sold by various people at Gould.

Mr. Gutheim: That is all Mr. Examiner at this time, except that it should be definitely understood, that traffic that is handled by this road for account of Mr. Muse, is to be considered as traffic for the controlling interest.

Mr. Rosenthal: The Gould Commission Company, you don't want to have——

Examiner Boyle: That is a matter for argument.

Mr. Gutheim: For the purposes of the commission when these industrial industries are taken into consideration.

Examiner Boyle: Just a moment. We are getting into an argument on this, and I presume that counsel should interpose an objection.

Mr. Gutheim: The proposition is this, when this industrial railroad examination started working, the Commission requested the Examiners to ascertain how much traffic is controlled directly or indirectly by the interests controlling the railroad, and in-
3946 asmuch as the Newhouse Mill & Lumber Company control this railroad and own the mill, and control the operation of the mill, the Commission will take the stand in this examination, that they are the controlling interest, and the fact that you have been requested to prepare the statement showing the business of Mr. Muse separately will enable them to take it if they so desire, and see what is the business for the general public.

Mr. Coleman: I object to the fact stated; I would not object to signing it if it is agreed that this shall be considered traffic furnished by the community interests.

Examiner Boyle: You could not afford to do that at present. I just want to ask you one question. When this Gould Southwestern Railway Company built this road, how did they get the right-of-way? Did they own the property, or get it through condemnation proceedings.

Mr. Rosenthal: They bought the property.

3947 Examiner Boyle: Outright?

Mr. Rosenthal: Yes, sir; outright. No, part of it they

received as a donation from the people at Star City, and some people along the line, which consisted partly of right-of-way would not sell a piece on which they started condemnation proceedings, but for which they finally paid $100.00 and bought the right-of-way; all other right-of-way was bought outright or donated.

Examiner Boyle: Do they own any more, or did they buy any more than enough for the actual roadbed; did they buy any acreage on either side?

Mr. Rosenthal: In the country, as far as the main line is concerned, all they own is just the right-of-way, which I think is something like fifty feet wide.

Examiner Boyle: The statement which the Examiner has asked you to submit, will show the proportion of through traffic as compared to lumber traffic, will it not?

Mr. Rosenthal: Yes, sir.

Examiner Boyle: That should be made distinct. Can you
3948 now give approximately about what your proportion is?

Mr. Rosenthal: I can state as far as——

Examiner Boyle: I just want it approximately.

Mr. Rosenthal: As far as the twelve months ending November 30th this year are concerned—do you want the tonnage itself?

Examiner Boyle: The total tonnage for the twelve months.

Mr. Rosenthal: The total tonnage for the twelve months was about ninety three million pounds; the merchandise was about seven million pounds.

Examiner Boyle: Being eighty-six million pounds about, of timber and lumber?

Mr. Rosenthal: No, there was about two million pounds of cotton and cotton seed; that would be about nine to ten million pounds; other than forest products.

Examiner Boyle: Which would leave about eighty-three million pounds of forest products?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: What arrangements do you have regarding car interchange to and from the mill now operated by Mr.
3949 Muse? Are your cars handled on a per diem basis with the railroad company, or are they handled by the St. Louis Iron Mountain & Southern Railway on a demurrage basis with the Newhouse Mill & Lumber Company.

Mr. Rosenthal: All cars are handled on a per diem basis by the Gould Southwestern Railway in connection with the St. Louis Iron Mountain & Southern Railway Company; that is a regular per diem agreement.

Mr. Gutheim: How long has that agreement been in effect.

Mr. Rosenthal: That agreement has been in effect I believe for about a year. The Gould Southwestern Railway was on the industrial basis.

Mr. Gutheim: That is, you had a regular free time allowance for switching?

Mr. Rosenthal: No, we had a blanket allowance of three days' free time on cars going on our line.

Mr. Gutheim: What was the occasion for the change in the method of handling the cars interchanged, in the settlement thereof.

Mr. Rosenthal: We found it more economical to use a per diem basis than a three day basis.

3950 Mr. Gutheim: That is, you mean that you had to pay too much per diem on the old basis?

Mr. Rosenthal: Exactly so.

Mr. Gutheim: As a matter of fact, was all of the demurrage paid when the change was made?

Mr. Rosenthal: It has nearly all been paid. The rest, a small balance due, which will be paid some time within the next month or two.

Mr. Gutheim: How much was paid, or how much accrued prior to the change from the demurrage to the per diem basis?

Mr. Rosenthal: I think about five or six hundred dollars.

Mr. Gutheim: That amount was in dispute, was it not?

Mr. Rosenthal: It was.

Mr. Gutheim: And the entire amount has not yet been paid to the St. Louis Iron Mountain & Southern Railroad, but will be shortly: Was there any settlement?

Mr. Rosenthal: In what way?

Mr. Gutheim: On the basis of allowance on additional free time, or cutting down the amount that is due?

Mr. Rosenthal: No, the only allowance- made were on

3951 certain cars which were in dispute on which we proved our statement, and they withdrew the demurrage from all those particular cars.

Mr. Gutheim: You stated that the agent at Gould was not a joint agent. How long has the agent there been the agent solely of your road?

Mr. Rosenthal: About two years, I believe.

Mr. Gutheim: Prior to that time was he a joint agent?

Mr. Rosenthal: Partly—part of the time he was, and part of the time we had separate agents.

Examiner Boyle: Just distinguish that a little more definitely.

Mr. Rosenthal: When we first started we had a joint agent, and then we had a separate agent, and then we had a joint agent again; we had several disputes with the St. Louis Iron Mountain & Southern Railroad regarding the proportion of salaries and other minor items, and we withdrew from the joint agent proposition, and then we went back, and finally withdrew about two years ago.

Mr. Gutheim: What was the date that the mill property —

3952 leased to the present operators?

Mr. Rosenthal: About a year and a half ago, I believe.

Mr. Gutheim: And at that time was any of the timber of the Newhouse Mill & Lumber Company, the owner, leased for cutting?

Mr. Rosenthal: Some of the timber was sold outright to him.

Mr. Gutheim: Have you a copy of the lease that shows the nature of the operation at the present time?

Mr. Rosenthal: I have not with me.

Mr. Gutheim: Is there anything in the lease that provides for logging operations by the railroad company in connection with the present operations of the mill?

Mr. Rosenthal: Not that I know of, simply a lease of the business.

Mr. Gutheim: Will you furnish us with a copy of the lease under which the mill is presently operated?

Mr. Rosenthal: I think we can do it—we will do that.

Examiner Boyle: Are there any other questions for this
3953 witness?

Mr. Coleman: Yes, I want to ask some.

Mr. Coleman: The Newhouse Mill & Lumber Company went out of business, and abandoned all of its operations in that territory in 1908?

Mr. Rosenthal: Practically, yes, sir.

Mr. Coleman: And leased the mill to Mr. Muse?

Mr. Rosenthal: It did.

Mr. Coleman: How about their timber holdings—put them on the m-rket?

Mr. Rosenthal: I think they did.

Mr. Coleman: And since then this timber has been sold to a large extent to various parties, except about one thousand acres—it is down to a thousand acres.

Mr. Rosenthal: Yes, sir.

Mr. Coleman: Are the rest of their holdings still on the market for sale?

Mr. Rosenthal: They are, and they expect to have them disposed of within a comparatively short time. As a matter of fact I am informed that the Newhouse Mill & Lumber Company is
3954 practically in a state of liquidation.

Mr. Coleman: Now, they operated a store did they not, when they were operating the mill?

Mr. Rosenthal: They did.

Mr. Coleman: Did they sell that store?

Mr. Rosenthal: They did.

Examiner Boyle: What sort of a store was it?

Mr. Rosenthal: A commissary store.

Examiner Boyle: For the logging people?

Mr. Rosenthal: For everybody around there; it was a store in Gould—there were only two stores in Gould.

Examiner Boyle: Did they pay the employés off in commissary checks?

Mr. Rosenthal: No, paid them in cash.

Mr. Coleman: That was a general merchandise store?

Mr. Rosenthal: Yes, sir, a general merchandise store.

Mr. Coleman: Did they dispose of that at the same time?

Mr. Rosenthal: Yes, sir, they did.

Mr. Coleman: Now, at the time that this road was ex-
3955 tended, and filed the articles of incorporation, what bonus was offered and paid by the citizens of Star City?

Mr. Rosenthal: A bonus of approximately twenty thousand dol-

lars was offered by the citizens of Star City, and has practically all been paid to date.

Mr. Coleman: Star City is the county seat of Lincoln County?

Mr. Rosenthal: Yes, sir.

Mr. Coleman: Has it any railroad facilities except this Gould Southwestern Railway?

Mr. Rosenthal: It has not.

Mr. Coleman: This map which you have filed as exhibit Rosenthal 1, does it show the ownership of the land contiguous to this railroad?

Mr. Rosenthal: It does.

Mr. Coleman: And those are the cleared farms now being cultivated by the people?

Mr. Rosenthal: It does, almost all of them.

Examiner Boyle: When you say these are the cleared farm lands, Mr. Rosenthal, to what do you refer?

Mr. Rosenthal: All this land along the line on either side of the Gould Southwestern Railway.

3956 Examiner Boyle: All this land along the line of Gould Southwestern Railway, how far back does it extend?

Mr. Rosenthal: Oh, practically two, three, four, or five miles, across there, I think.

Examiner Boyle: The extent of the lands—it is about three or four inches?

Mr. Rosenthal: It must be further than that, because the scale is small.

Mr. Coleman: As a matter of fact, is not the territory from Gould to Star City well settled territory, that has been settled for a great many years?

Mr. Rosenthal: Yes, sir.

Mr. Coleman: Are there numerous farms on either side of the track within a radius of four or five miles of the track?

Mr. Rosenthal: There are.

Mr. Coleman: Has the Newhouse Mill & Lumber Company any interest in the operations of Mr. Muse?

Mr. Rosenthal: They have not.

Mr. Coleman: They had no part in these operations or disposition of these products?

Mr. Rosenthal: Absolutely not.

Mr. Coleman: These arbitraries that you spoke of,

3957 have they been arranged according to a distance from Gould?

Mr. Rosenthal: They have, on a graded scale, in accordance with the mileage.

Mr. Gutheim: That is in accordance with the Arkansas Railroad Commission's tariff?

Mr. Rosenthal: No, sir; they are lower than the Arkansas Railroad Commission's regulations.

Mr. Coleman: How is the property of the Gould Southwestern Railway assessed by the authorities in Arkansas, as railroad, or as private property?

Mr. Rosenthal: As railroad property, by the Board of Assessors.

Mr. Coleman: By the State Board of Assessors?

Mr. Rosenthal: Yes, sir.

Mr. Coleman: Are there any wholesale merchants at Star City?

Mr. Rosenthal: Three, I think.

Mr. Coleman: Are they dependent entirely on the Gould Southwestern Railway for their merchandise?

Mr. Rosenthal: Yes, sir.

3958 Mr. Coleman: Can you tell about what territory is supplied in a general way from Star City?

Mr. Rosenthal: Practically—well, ten miles every way from Star City, and as a matter of fact the Gould Southwestern Railway cuts into Lincoln County, practically splitting the whole county; the St. Louis Iron Mountain & Southern Railway as you will notice just tips the corner of it. The Gould Southwestern Railway starts from that corner and cuts diagonally into the county; practically takes across the entire county.

Mr. Coleman: Has Star City received any new growth since the completion of the road into it?

Mr. Rosenthal: They have; there have been quite a number of expensive improvements, including a sixty thousand dollar courthouse, and quite a number of new people from outside; an increase in the amount of general merchandise business, and a much bigger and better town since the Gould Southwestern Railway Company has gotten into it—a much more progressive place.

Mr. Coleman: In handling your passenger traffic, do you sell tickets?

Mr. Rosenthal: We do.

3959 Mr. Coleman: State how the employees of the Gould Southwestern Railroad Company are paid, and by whom?

Mr. Rosenthal: The employees of the Southwestern Railway are paid by the Gould Southwestern Railway itself.

Mr. Coleman: I believe that you stated the books of the railroad company are kept in accordance with the rules of the Interstate Commerce Commission?

Mr. Rosenthal: They are.

Mr. Gutheim: Does the Gould Southwestern Railway Company own the rails that it uses?

Mr. Rosenthal: It does not; it has leased them from the St. Louis Iron Mountain & Southern Railroad.

Mr. Gutheim: The entire rails?

Mr. Rosenthal: Yes, sir.

Mr. Gutheim: And what is the consideration that is paid to the St. Louis Iron Mountain & Southern Railroad?

Mr. Rosenthal: It pays it on the basis of six per cent. according to the valuation.

Mr. Gutheim: And the valuation is what?

3960 Mr. Rosenthal: Twenty eight dollars, I believe, per ton, f. o. b. Gould.

Mr. Gutheim: Now, the fifty thousand dollars of capital stock; was that capital stock paid for in cash or issued in the shape of bonus?

Mr. Rosenthal: Fifty-one thousand dollars.

Mr. Gutheim: Well, firty-one thousand dollars.

Mr. Rosenthal: It was issued in consideration of the value of the property turned over to it by the Newhouse Mill & Lumber Company, and distributed among the stockholders of the Newhouse Mill & Lumber Co.

Mr. Coleman: I should like to tender in evidence the contract between the Gould Southwestern Railway, and the St. Louis Iron Mountain & Southern Railway for the lease of those rails.

Examiner Boyle: Do you offer that in evidence?

Mr. Coleman: I think we have it here; at any rate I will supply it.

Examiner Boyle: It will be received in evidence.

The contract so offered and identified, was thereupon received in evidence, and marked "Defendants' Exhibit Rosenthal No. 2", received in evidence December 15, 1910, page 51, and is at-
3961 tached hereto.

Mr. Coleman: I might add that our rails are covered by four leases, and this is the latest; the terms are exactly the same in all of them.

Mr. Gutheim: Do you know what the total valuation is, on which you pay six per cent?

Mr. Rosenthal: I should judge it to be about one hundred thousand dollars; I can get the exact figures and give them to you later. In fact it covers all of our twenty-five and one-half miles of rail.

Mr. Gutheim: Do you know what the actual property was that was conveyed to the Gould Southwestern Railway in consideration of the fifty thousand dollars of stock to the Newhouse Mill & Lumber Co.

Mr. Rosenthal: It consisted of the right-of-way and equipment; in fact, everything they owned.

Mr. Gutheim: At that time?

Mr. Rosenthal: At that time.

Mr. Gutheim: There was no built railroad?

Mr. Rosenthal: There was no built railroad.

Mr. Gutheim: You mean just the bare right-of-way?

3962 Mr. Rosenthal: Yes.

Mr. Gutheim: At the time it was built from this place called Benners over about to Weber.

Mr. Rosenthal: It was built from there over this way, but that has been taken up since, and the line extended further east.

Mr. Gutheim: The total mileage was what, then?

Mr. Rosenthal: I should judge it was about five to six miles—I should judge five to six miles.

Mr. Gutheim: That is to say you paid them about ten thousand dollars per mile for the railroad line, the rails you do not own?

Mr. Rosenthal: That is it; yes, sir.

Examiner Boyle: Are there any further questions, gentlemen?

Mr. Coleman: What is the character of the country in which this road is constructed with reference to the cost of constructing it?

Mr. Rosenthal: It has to cross a great many bayous.

Mr. Gutheim: You gave the number of bridges you have?

Mr. Rosenthal: Yes sir.

Examiner Boyle: All that is in the record I think.

3963 Mr. Coleman: How about the grades?

Mr. Rosenthal: Furthermore, the soil is a gumbo mud, and it is a very expensive proposition to handle it, because it generally happens in Arkansas, once you build on that gumbo mud it has to be re-built.

Mr. Coleman: What do you mean by gumbo mud?

Mr. Rosenthal: A sort of clay that seems to absorb water.

Mr. Coleman: It requires constant attention and repair?

Mr. Rosenthal: It is very treacherous; we have had to re-build our entire road two or three times.

Mr. Coleman: On either side of these bayous, is it a very rich level country—buckshot land?

Mr. Rosenthal: Yes, sir, very rich country.

Mr. Coleman: What is the largest bridge you have?

Mr. Rosenthal: Bayou Bartholomew, I believe.

Mr. Coleman: What's the length of that bridge.

Mr. Rosenthal: Two hundred feet.

Whereupon at 11 o'clock A. M., on the 15th day of December 1910, the hearing of the above entitled matter was closed.

3964 *The Liberty White Railroad Company.*

For the defendant: W. B. Mixon, Esq.

Mr. Mixon: I wish to state that we have a sworn historical and statistical statement along the lines of those questions that have been asked the witnesses here, that will, I think, facilitate the handling of this matter.

Examiner Boyle: We will have to examine the witness, and you may have the witness introduce it as an exhibit.

Mr. Mixon: It gives a great deal of testimony that you desire.

W. M. WHITE, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Boyle: What is your name, address, and official connection with The Liberty White Railroad Company?

3965 Mr. White: W. M. White; Address, McComb, Mississippi; President and General Manager of The Liberty White Railroad Company.

Examiner Boyle: You may let the witness introduce this document if you wish.

The statement so offered and identified was received in evidence, and thereupon marked "Defendant's Exhibit No. 1", received in evidence December 15, 1910, and is attached hereto, page 2.

Examiner Boyle: How long have you been president and general manager of the Liberty White Railroad?

Mr. White: A year and a half.

Examiner Boyle: How long has the road been in existence?

Mr. White: It has been in operation since July 20, 1904.

Examiner Boyle: Who was your predecessor?

Mr. White: The president was J. J. White; I have always been General Manager, and I was formerly General Manager.

Examiner Boyle: What relation was J. J. White to you?

Mr. White: He is my father.

3966 Examnier Boyle: You have offered this historical outline of your railroad in evidence, Mr. White?

Mr. White: Yes, sir.

Mr. Gutheim: The Liberty White Railroad runs from McComb, Mississippi, on the Illinois Central Railroad to Liberty, Mississippi, with another branch line from McComb City to New Holmesville, Mississippi, is that right?

Mr. White: Our main Line extends from New Holmesville, Pike County, Mississippi, to Liberty in Amite County, Mississippi.

Mr. Gutheim: Have you a copy of your rate sheet that you could offer in evidence?

Mr. White: Yes, sir, I offer it in evidence as L-B No. 2.

The rate sheet so offered and identified, was received in evidence, and thereupon marked "Exhibit L-B No. 2", received in evidence December 15, 1910, page No. 3, and is attached hereto.

Mr. Mixon: The Liberty White Railroad Company has not only a connection with the Illinois Central Railroad, but an inter-section; that is to say, its main line extends across the Illinois Central Railroad?

3967 Mr. White: Yes, sir, our main line crosses the Illinois Central Railroad at McComb.

Examiner Boyle: How long is the Liberty White Railroad?

Mr. White: Our main line is 33 and 6-10ths miles.

Examiner Boyle: When you say "main line" then you necessarily suggest that there is a branch line; what is that?

Mr. White: There is a branch line owned by J. J. White Company, which extends from Irene, a point on the main line of the Liberty White Railroad 7 & 6-10ths miles west of McComb City, to a point known as Keith, Mississippi, in Amite County.

Examiner Boyle: What is that distance?

Mr. White: Ten miles over this branch line.

Examiner Boyle: How long did you say your main line was?

Mr. White: 33 & 6-10ths miles.

Examiner Boyle: That would make your entire mileage about forty-three miles?

Mr. White: Forty-three and six tenths miles up to the time of our last report.

Mr. Gutheim: Now, Mr. White, what is the nature of the
3968 traffic furnished by the various locations along your line, principally?

Mr. White: The nature of the traffic is the same as that generally done by any common carrier.

Mr. Gutheim: What are the commodities which furnish the largest proportion of the tonnage?

Mr. White: The largest proportion of the tonnage at present is forest products.

Mr. Gutheim: What are the principal industries shipping forest products?

Mr. White: Well, the various mills located along the line. We would like to offer in connection with the industries, a list of industries which was gotten out prior to any knowledge of this hearing, and we would like to offer this exhibit which will show a list of those industries.

Examiner Boyle: Have you got it with you?

Mr. White: Yes, sir. It was gotten up——

Examiner Boyle: You have already offered in evidence as exhibit 2 the map of your railroad, have you not?

Mr. White: Yes, sir.

3969 Examiner Boyle: Mr. White you now offer as exhibit 2 a pamphlet which shows on the back the line of your railroad, with the industries shown therein, to which you now refer?

Mr. White: Yes, sir.

Mr. Gutheim: What is the largest shipper of forest products on your line?

Mr. White: The largest shipper is the J. J. White Lumber Company.

Mr. Gutheim: To what extent is the J. J. White Lumber Company interested in the Liberty White Railroad Company?

Mr. White: The J. J. White Lumber Company as an organization is not interested in the Liberty White Railroad Company or its operation; practically the same stockholders owning the J. J. White Lumber Company, own The Liberty White Railroad Company.

Mr. Gutheim: The holdings being in substantially the same proportion in each company?

Mr. White: Yes, sir, practically.

Mr. Gutheim: Now, you stated there were a number of other mills—these mills are all shown in the list of other industries

3970 which are shown in this exhibit 2?

Mr. White: Yes, sir.

Mr. Gutheim: When was this road built?

Mr. White: This road was built—that is the part that is shown in the statement.

Examiner Boyle: That will be sufficient then to avoid any question of this character.

Mr. Gutheim: I think you said the road was originally constructed by Mr. J. J. White or in his interest?

Mr. White: No, sir, not what is known as The Liberty White Railroad; that is also answered in the statement.

Mr. Gutheim: The Liberty White Railroad, we understand, is the successor of the road originally located by the J. J. White Lumber Company interests?

Mr. White: The Liberty White Railroad Company is the successor to a part of that road.

Mr. Gutheim: That is such part of the road as remains permanent?

Mr. White: It is now that part of the road which extends from McComb to Irene; that was their right-of-way formerly occu-
3971 pied by the J. J. White Lumber Company's private narrow gauge logging road.

Mr. Gutheim: Now, was the road built contemporaneously with the lumber industry by Mr. J. J. White?

Mr. White: The road—the narrow gauge railroad which is not used, and never was used by The Liberty White Railroad Company, was built of course as a logging road to bring in logs to his saw mill.

Mr. Gutheim: But that was the original property which was taken over by The Liberty White Railroad as a corporation?

No, sir; thirteen and one-half miles of this narrow gauge right-of-way is now used by The Liberty White Railroad; this thirteen and one half miles of narrow gauge railroad was sold by J. J. White to The Liberty White Railroad.

Mr. Mixon: We have it all here.

Mr. Gutheim: What was the consideration paid?

Mr. Mixon: We have the deed here which will show the consideration.

Mr. White: I don't remember the consideration, the deed
3972 will show that; I think it was one hundred thousand dollars.

Mr. Gutheim: That was for thirteen and odd miles of narrow gauge construction?

Mr. White: No, sir; no equipment. We never took the narrow gauge equipment.

Mr. Gutheim: Was the construction originally and subsequently of The Liberty White Railroad itself proceeded with as the needs of the White Lumber Company demanded, or was the road built upon the solicitation of citizens of settled communities?

Mr. White: This road was built upon the solicitation of the citizens of Liberty principally; about twelve miles of railroad was built through a country that the timber had been removed from.

Mr. Gutheim: From Irene to Liberty?

Mr. White: From a station known as Glading.

Mr. Gutheim: Just beyond Irene?

Mr. White: Yes, sir.

Mr. Gutheim: And from Glading to Liberty, was that portion of the road built at the solicitation of the residents of Mississippi?

3973 Mr. White: Yes, sir, and the people living along the line.

Mr. Gutheim: At that time, that was cut-over country?

Mr. White: Practically all, yes, sir.

Mr. Gutheim: Did the White interests have any timber remaining to be cut in that section?

Mr. White: They had no timber remaining to be cut between Glading and Liberty, with the exception of some little timber that they acquired in the vicinity of Liberty, that was cut within the first few months of the railroad's operation.

Mr. Gutheim: Was that constructed by the railroad corporation itself, or by a railroad construction company upon contract?

Mr. White: By the railroad corporation itself.

Mr. Gutheim: And was it paid for by money received from the sale of its securities, or out of the lumber?

Mr. White: At the time the Liberty White Railroad was built, Mr. J. J. White owned the present lumber interests as an individual, and he of course, furnished the money for the building of the road, and afterwards took this in stock.

3974 Mr. Gutheim: Now, the line from McComb, east to New Holmesville; what was the occasion for the construction of that road?

Mr. White: The occasion of the construction of the road from New Holmesville was the traffic, perhaps with the expectation of extending this part of the road to some other railroad connection on the east.

Mr. Gutheim: The New Orleans & Great Northern Railroad?

Mr. White: Well, possibly yes.

Mr. Gutheim: You did not get to the New Orleans & Great Northern or any other line, did you?

Mr. White: We have made no connection with the New Orleans Great Northern Railroad, but we have made a survey, and I have a plat here to show that survey.

Mr. Gutheim: But the building of that branch was primarily to get another outlet for the tonnage of the J. J. White Lumber Company, and not at the solicitation of parties served along the line?

By Mr. White: It was intended as shown in our statement.

Examiner Boyle: You can answer the question "yes" or

3975 "no."

Mr. White: Will you read that question, Mr. Stenographer.

(Question read by stenographer). But the building of that branch was primarily to get another outlet for the tonnage of the J. J. White Lumber Company, and not at the solicitation of the parties served along the line?

Mr. White: No, sir, not as far as the Liberty White Railroad Company is concerned; its operation and management are entirely separate from the J. J. White Lumber Company, and the J. J. White Lumber Company is known to it as a shipper, the same as any other shipper on its line.

Mr. Gutheim: Well, the construction cost was financed in the same way, as the construction from Glading west, to Liberty, by Mr. White?

Mr. White: Yes, sir.

Mr. Gutheim: And he took in exchange for the cost of construction, securities of the Liberty White Railroad Company?

Mr. White: No, sir.

Mr. Gutheim: It is represented by floating indebted-

3976 ness?

Mr. White: Yes, sir, the cost of the road from McComb to New Holmesville stands as an indebtedness to Mr. J. J. White; I would like to explain in this connection, that Mr. J. J. White has retired from any active connection with any of his interests.

Mr. Gutheim: What is the outstanding indebtedness of the Liberty White Railroad, stocks and bonds, and floating indebtedness at the present time?

Mr. White: That is shown in the annual report.

Mr. Gutheim: Give it to me, will you?

Mr. White consults the annual report and says: Capital stock oustanding three hundred thousand six hundred dollars.

Mr. Gutheim: Now, are there any bonds outstanding?

Mr. White: There are no bonds outstanding; bonds have been issued, but have never been placed upon the market.

Mr. Gutheim: The debt that is due to Mr. J. J. White——

Mr. White: It is approximate one hundred and thirty-four thousand dollars.

3977 Mr. Gutheim: That shows there, the entire indebtedness?

Mr. White: Yes, sir.

Mr. Gutheim: The stock outstanding is at the rate of approximately ten thousand dollars per mile for the whole line?

Mr. White: Yes, sir.

Mr. Gutheim: I understand the debt that is due to Mr. White represents money that was used in the construction of the road from McComb east to New Holmseville?

Mr. White: Yes, sir and a small indebtedness that was left over, that he did not take in stock in the original construction, as I recall it.

Mr. Gutheim: So that the whole outstanding indebtedness applicable to the construction of the Liberty White road is, approximately, $434,600.00?

Mr. White: Yes, sir, approximately; of course I would not give the exact figures, because the exact figures are shown in our report.

Mr. Gutheim: The exact figures are with the report?

Mr. White: Yes, sir.

3978 Examiner Boyle: And contains further in the exhibit which you have offered in evidence?

Mr. White: Yes, sir, contained further in the exhibit which I have offered in evidence; it is $464,608.6 that is the cost of the road and equipment of the road up to June 30th 1910; that is the actual cost.

Mr. Gutheim: What rate of interest, if any, is paid upon the indebtedness due to Mr. J. J. White?

Mr. White: Nothing.

Mr. Gutheim: Are the officers of the Liberty White Railroad at the present time, the same persons who serve as officers of the J. J. White Lumber Company?

Mr. White: No, sir.

Mr. Gutheim: Are any officials of the J. J. White Lumber Company, connected as officials of the railroad?

Mr. White: Yes, sir, but not in any active capacity.

Mr. Gutheim: In what capacity?

Mr. White: Mr. J. W. Johnson, for instance, the vice-president of the railroad company, is also vice-president of the lumber company. Mr. Johnson is only active—he is not active in his official capacity to the railroad company, except during the absence of myself.

3979 Mr. Gutheim: The road is standard gauge throughout, at the present time?

Mr. White: Yes, sir.

Mr. Gutheim: It has what weight of rails?
Mr. White: Sixty pounds.
Mr. Gutheim: Are there any bridges to speak of?
Mr. White: Yes, sir, quite a number—one bridge across the Amite river. The bridge is about thirty-four hundred feet long.
Mr. Gutheim: Now, what sations have you with station buildings, and with agents for these towns on the statement, you may say?
Mr. White: Yes, this town in the statement—we would like to introduce in the evidence as exhibit here, photographs showing the stations and depots—I would simply like to exhibit these to the Examiner so that it will go in the record that we did exhibit them.

(The witness hands to Mr. Gutheim a number of photographs of depots and buildings along the line of The Liberty White Railroad.)

Mr. Gutheim: These are sufficient to show that the build-
3980 ings are substantial buildings.
Are there any special grades on the road?
Mr. White: Our maximum grade is two per cent.
Mr. Gutheim: The ballast is the natural ballast of the country?
Mr. White: No, sir, we have part of our track that is ballasted with cinders, and a little that is with gravel, but very little with the gravel.
Mr. Gutheim: Do you have any team tracks, or tracks for the weighing of carloads—scale tracks?
Mr. White: We have team tracks at all of these stations.
Mr. Gutheim: What equipment do you operate at the present time?
Mr. White: We show the equipment in this exhibit No. 1.
Mr. Gutheim: And is the equipment all equipped with regard to the Federal Act with safety appliances?
Mr. White: Yes, sir.
Mr. Gutheim: Do you have any working equipment?
Mr. White: That is also shown in exhibit No. 1; yes,
3981 we have a wrecking train, a pile driver, and a general run of equipment.
Mr. Gutheim: What service have you for the dispatching of trains?
Mr. White: We dispatch by telephone, and by the regular train dispatcher system.
Mr. Gutheim: How many road crews have you, and the number of men in them?
Mr. White: That is also stated in Exhibit No. 1.
Mr. Gutheim: And the same is true as to the station employees, and the train employees?
Mr. White: Yes, sir.
Mr. Gutheim: You may state as a matter of fact, outside of exhibit 1, how many agency stations you have on the line?
Mr. White: Well, I will name them; at New Holmesville we have an agent, and at McComb City.
Mr. Gutheim: Is the McComb agent joint with the Illinois Central Railroad?

Mr. White: The McComb agent is not a joint agent so far as freight business is concerned.

Mr. Gutheim: He is a joint ticket seller?

3982 Mr. White: Yes, sir, he is a joint ticket seller, but entirely under the control of The Liberty White Railroad.

Examiner Boyle: If any one else offered a shipment, would you sign for it?

Mr. White: No, sir, not over the Illinois Central; he is not joint agent over the Illinois Central.

Mr. Gutheim: Who would sign for the Illinois Central?

Mr. White: The Illinois Central agent.

Examiner Boyle: He is separate and distinct, Mr. White?

Mr. White: Yes, sir.

Mr. Gutheim: What other agency stations are there?

Mr. White: Glading, Robinson, Marshallton and Liberty.

Mr. Gutheim: At none of these points named, with the exception of McComb, has any other railroad facilities, except what are offered by the Liberty-White Railroad Company?

Mr. White: No, sir.

Mr. Gutheim: Are all of these agents, agents solely and

3983 employees of the Liberty-White Railroad Company?

Mr. White: No, sir, none of our employees have any connection with the J. J. White Lumber Company.

Mr. Gutheim: What passenger and freight train service do you run?

Mr. White: We operate two passenger trains per day, and a local freight train each day, and such other freight trains that are necessary.

Mr. Gutheim: Are the passenger trains straight passenger trains or mixed?

Mr. White: Straight passenger trains.

Mr. Gutheim: Do you run a Sunday service?

Mr. White: Yes, sir, two round trips per day.

Mr. Gutheim: Do you handle the United States mail for the United States Post Office at those towns named?

Mr. White: Yes, sir.

Mr. Gutheim: Under a regular Government contract?

Mr. White: Yes, sir.

Mr. Gutheim: Do you have an Express service?

Mr. White: Yes, sir, American Express service.

Mr. Gutheim: You have the usual basis of earnings there, about forty per cent?

3984 Mr. White: I think it is about forty-five per cent.

Mr. Gutheim: You think it is about forty-five per cent?

Mr. White: I think that is what it is.

Mr. Gutheim: About how much is your passenger traffic?

Mr. White: That is shown on the statement; I think it will run seventeen to eighteen thousand dollars per year.

Mr. Gutheim: Now, if the statement does not contain all the data asked for as to tonnage and revenue; that is the total tonnage and total revenue for the last fiscal year, showing separately that accruing on the business of the J. J. White Lumber Company, and

that accruing on the business of the general public, that statement should be filed with the Interstate Commerce Commission?

Mr. White: I would like to say in that connection that the way our business is run, we have not known the J. J. White Lumber Company in the handling of its logs, any more than the handling of any other company's logs, they being billed and charged on a regular published tariff on file with the Interstate Commerce Commission.

3985 Examiner Boyle: Just before we get off this question, Mr. White, is the statement for which the Examiner has asked you, in the statement which you have filed as exhibit 1?

Mr. White: No, sir.

Examiner Boyle: You will file it?

Mr. White: Yes, sir, but it will be necessary for us to go through all of our records; for the reason all of these logs are way-billed.

Examiner Boyle: We anticipate that you will have to go through your way-bills, Mr. White.

Mr. White: There was no reason for us to separate it.

Examiner Boyle: You will separate them and file the statement, please?

Mr. White: Yes, sir, I will do so.

Mr. Gutheir: That statement will be for the last fiscal year?

Mr. White: Yes, sir, we will be very glad to furnish it.

Mr. Gutheim: Does the forest products produce the preponderance of your tonnage?

Mr. White: Well, yes, the general run of tonnage—cot-

3986 ton and cotton seed.

Mr. Gutheim: The cotton and cotton seed make up the greatest quantity of tonnage outside of forest products?

Mr. White: Yes, sir, and fertilizer and that class of stuff.

Mr. Gutheim: About what proportions are they?

Mr. White: We will show that in the statement.

Examiner Boyle: Can you state it off-hand, just approximately, if you haven't it handy, don't bother.

Mr. White: I cannot state it for the mill company as I have said.

Mr. Gutheim: That can be shown in the statement, Mr. White. Now, your business is conducted all on rates contained in the tariffs filed with the Interstate Commerce Commission?

Mr. White: Yes, absolutely.

Mr. Gutheim: Is the log haul for the J. J. White Company performed upon a tariff basis or upon a contract basis?

Mr. White: It is performed upon a tariff basis.

Mr. Gutheim: Are logs hauled locally for other producers other that the J. J. White Company?

3987 Mr. White: Yes, sir.

Mr. Gutheim: Who pay upon the same tariff?

Mr. White: Upon the same basis exactly as the J. J. White Lumber Company.

Mr. Gutheim: Now, on shipments outgoing, of forest products, you have through rates in connection with the Illinois Central Railroad?

Mr. White: Yes, sir.

Mr. Gutheim: Also on classes and commodities?

Mr. White: We have no divisions on classes; our through rates on classes are made up on a combination of locals, and on a great many commodities we have; yes.

Examiner Boyle: What is the local up to junction point—a blanket rate covering the entire line?

Mr. White: No, sir, it is on a mileage scale.

Examiner Boyle: And varies just about how much?

Mr. White: Our first class rate for instance, from McComb to Liberty, 25 miles, is fifty cents per 100 pounds.

Mr. Gutheim: Now, does the junction rate—the McComb rate on forest products shipped over the Illinois Central Railroad
3988 apply back to points back on your entire line?

Mr. White: No, sir, we add two cents to this rate.

Mr. Gutheim: And what division do you get out of the through rate on the business?

Mr. White: On the business originating at McComb we get a division of two cents.

Mr. Gutheim: On business originating at McComb, you get a division of two cents applying to all destinations?

Mr. White: Not all destinations, no, sir; only to central and eastern territory.

Examiner Boyle: No matter what the point of origin on your line?

Mr. White: It does not make any difference at the point of origin, as I stated we get two cents from the junction.

Mr. Gutheim: Out of the junction point rate?

Mr. White: We add two cents to make the rate from the other point.

Mr. Gutheim: You might term that a sort of blanket rate
3989 on traffic moving over your line?

Mr. White: No, we get four cents up to the junction point.

Mr. Gutheim: Where is the mill of the J. J. White Lumber Company?

Mr. White: At McComb.

Mr. Gutheim: Is the product of that mill handled out by the Liberty-White Railroad Company?

Mr. White: No, sir, not in the main.

Mr. Gutheim: That is, the largest proportion of the tonnage shipped by the J. J. White Lumber Company's mill is taken out by the Illinois Central Railroad?

Mr. White: Yes, sir.

Mr. Gutheim: How much is there on the haul of those logs that are brought to that mill by the Liberty-White Railroad?

Mr. White: Well, the logs they are now getting, are being hauled by the Liberty-White Railroad, a distance of seventeen and six-tenths miles, practically.

Mr. Gutheim: That is from the timber now on the branch that runs from Irene south, through Irene to McComb?

3990 Mr. White: Yes, sir.

Mr. Gutheim: And for this service the Liberty-White Railroad receives what compensation?

Mr. White: Five dollars per car.

Mr. Gutheim: Plus a two cent division out of the McComb rate when the shipment goes out?

Mr. White: Yes, sir.

Mr. Gutheim: You said that in some instances the product of the J. J. White mills is handled by the Liberty-White Railroad?

Mr. White: That is instances where they load on The Liberty-White track, and the cars are moved by The Liberty-White Railroad through the Liberty-White interchange.

Mr. Gutheim: And what proportion of the product of the mill is so handled?

Mr. White: It is quite small.

Mr. Gutheim: And the haul is how much by the Liberty-White Railroad Company to reach the Illinois Central Railroad interchange?

Mr. White: Well, it won't run over five hundred or six hundred feet.

3991 Mr. Gutheim: On these other lumber companies' business, do you get the same rate of five cents on the logs, plus four cents per 100 pounds out of the through rate?

Mr. White: Well, for instance, the rates as I remember it from Chicago to McComb is twenty-four cents; the rate then from Irene, a point on our line, at which there is a mill located, would be twenty-six cents. The Liberty-White Railroad Company gets five dollars per car for hauling the logs to the Irene mill, plus four cents out of the twenty-six cent rate.

Mr. Gutheim: And in the case of the J. J. White Lumber Company's shipments, the Liberty-White Railroad Company then would get five dollars per car to McComb, plus four cents per 100 pounds out of the twenty-four cent rate?

Mr. White: Yes, sir.

Mr. Gutheim: But it would perform no haul on the finished product, whereas in the case of the mill at Irene, it would perform the haul from Irene to McComb?

3992 Mr. White: Yes, sir; it would perform the haul from Irene to McComb—a seven and a half mile haul in that case, and of course it would also be necessary, if we had no tonnage or rather in loading to have an empty at Irene, it would be necessary to haul this empty to Irene, and pay a per diem on it.

Mr. Gutheim: Now, are there any other mills at McComb, besides the mill of the J. J. White Lumber Company?

Mr. White: No, sir.

Mr. Gutheim: So that, the J. J. White Lumber Company is the only mill on your line that ships on the junction point rate?

Mr. White: Yes, sir.

Mr. Gutheim: All other mills pay a two cent arbitrary above the

junction point rate, in consideration of which you perform a haul on the mill product to the junction point?

Mr. White: Yes, sir.

Mr. Gutheim: It is your understanding, that the Illinois Central Railroad's allowance of two cents to you out of the McComb rate, is on account of the milling in transit basis?

Mr. White: Yes, sir.

3993 Mr. Gutheim: It being arranged for by the same statement that has been made in most of the Illinois Central Railroad's tariffs applicable on business from this territory?

Mr. White: Yes, sir.

Mr. Gutheim: Are the general offices of your railroad—the Liberty-White Railroad Company in McComb?

Mr. White: Yes, sir.

Mr. Gutheim: Do you use the same offices with the J. J. White Lumber Company, or have separate offices?

Mr. White: We do not use the same offices; we use the same building; the general offices of the Liberty-White Railroad Company occupy the entire second floor of the building which is occupied by the two interests.

Examiner Boyle: Who owns the building?

Mr. White: The J. J. White Lumber Company.

Examiner Boyle: Does the Liberty-White Railroad pay any rental for that office?

Mr. White: It has not paid any rental so far, because the building has only been put up recently.

3994 Mr. Gutheim: At the present time you are making monthly reports to the Interstate Commerce Commission?

Mr. White: Yes, sir.

Mr. Gutheim: Are you acting in compliance with the safety appliance Act?

Mr. White: Yes, sir.

Mr. Gutheim: And the Car Service Act?

Mr. White: Yes, sir.

Mr. Gutheim: Is your road being operated at the present time on a profitable basis?

Mr. White: The Liberty-White Railroad has made some slight profit, yes, sir.

Mr. Gutheim: Have you ever paid dividends?

Mr. White: We paid our first dividend during the last annual meeting; we paid a dividend of two per cent.

Mr. Gutheim: And what are you carrying in your surplus account?

Mr. White: Our surplus up to that time was about nine thousand dollars; this dividend of course, will be deducted from it.

3995 Mr. Gutheim: Do the officials of the Liberty-White Railroad,—you spoke of some inactive officials, do they receive any compensation from the railroad company?

Mr. White: The only other active official that I spoke of, and he is the only one that is active at times.

Mr. Gutheim: That is the vice-president?

Mr. White: Yes, sir.

Mr. Gutheim: And his compensation is fixed from time to time according to his services?

Mr. White: Yes, sir.

Mr. Gutheim: Does the road own all of its equipment outright?

Mr. White: Yes, sir.

Mr. Gutheim: Does it rent any?

Mr. White: No, sir.

Mr. Gutheim: Now, this branch track?

Mr. White: I want to change that: it does not lease any: of course we have an equipment truck—an equipment mortgage made up in the form of a lease, which is shown in the annual statement.

3996 Mr. Gutheim: These do not run in favor of the J. J. White Lumber Company?

Mr. White: No, sir, not any one.

Mr. Gutheim: This branch that runs from Irene into the timber is operated under trackage rights for the J. J. White Lumber Company?

Mr. White: This branch extending from Irene to Keith, as a traffic proposition, is operated by a trackage right, and serves any industry located on this line.

Mr. Gutheim: What other industries are there on the line?

Mr. White: Well, that will be shown by the list of industries there; there are a number of saw mills, and lessees, that handle the general run of merchandise into these points.

Mr. Gutheim: That line is owned by the J. J. White Lumber Company is it not?

Mr. White: Yes, sir.

Mr. Gutheim: What consideration do you pay for the trackage privilege?

Mr. White: Three hundred dollars per month.

3997 Mr. Gutheim: And they maintain the track?

Mr. White: Yes, sir.

Mr. Gutheim: Do you operate on the logging spurs at the end of the track?

Mr. White: No, sir, the J. J. White Lumber Company owns no equipment except two Shay locomotives which are used on their logging spurs. Our empty cars, are just the ordinary run of flat cars which we deliver to them at Keith, and their locomotives take these flat cars out of their own spurs, and load them, and deliver them back to the Liberty-White Railroad Company at Keith.

Mr. Gutheim: So that the entire logging spur operation is done by the locomotives of the J. J. White Lumber Company, and by the employees of the J. J. White Lumber Company?

Mr. White: On the logging spurs?

Mr. Gutheim: Yes, at its spurs?

Mr. White: Yes, sir.

Mr. Gutheim: These locomotives are loaned outright, and not leased by the J. J. White Lumber Company from the J. J. White Lumber Company?

3998 Mr. White: No, sir, they are the property of the J. J. White Lumber Company.

Mr. Gutheim: The rails of the road are owned outright, and not leased from the Illinois Central Railroad Company?

Mr. White: Twelve miles are leased by the Illinois Central Railroad, on a twelve year contract, based on a valuation, I think, of about twenty-one dollars per ton, for which we pay six per cent interest.

Mr. Gutheim: With the privilege of purchase at any time?

Mr. White: With the privilege of purchase at any time, and in the nature of a traffic agreement for the use thereof.

Mr. Gutheim: Is that ten miles of rail laid on the main line from New Holmesville, or from McComb to Liberty, or is it used on the branch from Irene down to Keith?

Mr. White: No sir, it is not laid on the Irene branch; it is distributed at various points on the main line.

Mr. Gutheim: Do you know what the total compensation or total valuations are, on which you pay a rate of interest on that
3999 rail?

Mr. White: Why, it is approximately twenty-two thousand dollars; those are not exact figures however.

— Examination:

Mr. Mixon: Mr. White, I will ask you what business you have been engaged in solely since going into business, since leaving school?

Mr. White: Oh, well, of course up to the time the Liberty-White Railroad was built, and since, my business has been entirely with the operation and management of the Liberty-White Railroad.

Mr. Mixon: Have you ever been connected in any official capacity or active employment with the J. J. White Lumber Company?

Mr. White: No, sir; I have not been in active employment of any kind with Mr. J. J. White.

Mr. Mixon: Have you ever studied the lumber business with a view of engaging in its manufacture?

Mr. White: No, sir, I know no more of the manufacture of lumber than any one not at all familiar with it.

Mr. Mixon: I will ask you, if upon leaving school and the commencement of the construction of the Liberty-White Rail-
4000 road Company, did you begin to devote your entire time to the railroad business, and railroad operations?

Mr. White: Yes, sir.

Mr. Mixon: I will ask you if you attend meetings of railway officials?

Mr. White: Yes, sir, I do.

Mr. Mixon: I will ask you what railroad association you are a member of?

Mr. White: Well, that is all stated in our exhibit No. 1.

Mr. Mixon: I will ask you if other railroads on application or otherwise, grant you transportation as a railroad president?

Mr. White: Yes, sir; I have never since my connection with the

Liberty-White Railroad Company been considered any other than a railroad man.

Examiner Boyle: Did they also grant transportation to your predecessor?

Mr. White: No, sir; Mr. J. J. White who was formerly president of the Liberty-White Railroad Company, and who owns the J. J. White Lumber Company interests, never travelled on a pass of any kind.

4001 Examiner Boyle: Did he have a pass?

Mr. White: No, sir; I mean Inter-state passes; of course, on some of these small local railroads he may have probably; I can't say as to that.

Mr. Mixon: Now, Mr. White, I will ask you if, prior to the organization of the Liberty-White Railroad, which you have stated Mr. J. J. White owned and operated, as a logging road, were they ever operated as common carriers?

Mr. White: No, sir.

Mr. Gutheim: You mean that the common carrier operations never started until you went west of Liberty?

Mr. Mixon: Yes, sir.

Mr. Mixon: You stated awhile ago that the timber had been practically all cut over from Glading to Liberty, and that that was a farming country; is not that the fact also from Irene to Liberty, that there is practically no timber shipped from Irene; that the J. J. White Lumber Company had cut the timber.

Mr. White: Well, of course in answering that question, I
4002 had particular reference to the new construction from Glading to Liberty. But it is a fact, that at the time of the building of the Liberty-White Railroad the timber had not only been cut out from Irene to Liberty, but it had been cut practically from McComb to Liberty.

Mr. Mixon: I will ask you to state whether the organization and the beginning of operations of the Liberty-White Railroad was proposed for the aid and assistance of the J. J. White Lumber Company.

Mr. White: Of course, the J. J. White Lumber Company was not in existence at the time, as a lumber proposition——

Mr. Mixon: I mean, was it proposed as a lumber proposition, or as a railroad proposition?

Mr. White: Entirely as a railroad proposition.

Mr. Mixon: I will ask you whether or not there has been a survey from New Holmesville to Tylertown—I believe you said there had.

Mr. White: Yes, sir.

Mr. Mixon: That has been recently?

Mr. White: Yes, sir, it has been recently made.

Mr. Mixon: Was it not made prior to any knowledge of this hearing?

4003 Mr. White: Yes, sir; it was made prior to any knowledge of this hearing; when I say recently, I say it has been made within the last year.

Mr. Gutheim: Do you know of any effort being made to finance any part of the new construction?

Mr. White: Yes, sir; efforts have been made, and considerable of the right-of-way has been obtained.

Mr. Gutheim: That will give you a connection with the New Orleans & Great Northern?

Mr. White: Yes, sir.

Mr. Gutheim: And also your connection with the Illinois Central Railroad which you already have?

Mr. White: Yes, sir.

Mr. Mixon: I would ask you, Mr. White, if the abolition of these divisions—these joint or through rates—whether or not that would tend to cripple your railroad proposition, or tend to retard it in its development of the country?

Mr. White: Yes, sir; there could be no doubt of that.

4004 Examiner Boyle: What is the proportion of traffic that moves on the joint rates, as compared with that which moves on the combination rates?

Mr. White: Could you give the exact proportions.

Examiner Boyle: Will you show that in the statement which you are to file?

Mr. White: Yes, sir.

Mr. Mixon: Mr. White, here is another question: You spoke about carloads of logs for the several milling companies or individuals on your line, further out on a basis of five dollars per car: upon what grounds did you make the basis of five dollars per car?

Mr. White: It is based on an arbitrary, or a participation in the shipments.

Examiner Boyle: Mr. White, if the joint through rates were cancelled, and divisions with your line were cancelled, would there be any likelihood of a petition for reduction on the rates from junction points to final destination?

Mr. White: A petition for reduction of rate?

Examiner Boyle: Yes, or an application for reduction.

4005 Mr. White: From whom?

Examiner Boyle: From the industries on your line, or from any one at all.

Mr. White: Well, we are likely to get a petition for a reduction in rates at any time.

Examiner Boyle: I don't mean the rates on your own road, but would there be any application for reduction of rates from junction points; that would leave the situation one whereby you would charge your own local rate up to the junction point, plus the other rate beyond?

Mr. White: Well, of course, if we were not enabled on shipments, for instance, originating at points out on our line, if we were not able to get these divisions out of the McComb rate it would be necessary in the actual operation of the proposition to raise our rates and naturally our shippers would be dissatisfied, of coure, as to what action they might take, I cannot say.

4006 Mr. Mixon: Have you a rate for logging purposes where you do not participate in the arbitraries, but participate in the joint rate?

Mr. White: Yes, we have a published rate as shown in our tariff on file with the Commission, which is ten dollars per car applying on logs hauled from points beyond our line in which we do not participate in any way in the re-haul or re-shipment of joint rate.

Examiner Boyle: Your road then, you say, would be under a disadvantage if the joint through rates were cancelled, and you were left only to charge your locals to junctions?

Mr. White: I don't think there would be any doubt about that as a general proposition.

Examiner Boyle: But you are not operating just along that situation; that is, you charge in some instances, local rates up to junction points.

Mr. White: As I said, on classes the joint rate is made up by a combination of locals, but there are a great many commodities, which is heavy tonnage, such as the lumber business or logging business on which there are joint rates; in some instances the same as the junction rate, and in other instances the
4007 same as the junction rate, out of which we get a division.

Examiner Boyle: I think we won't go into that any further. I think your statement will show just the commodities moving on this combination of rates, and the commodities moving under the joint through rate?

Mr. White: Yes, sir.

Mr. Mixon: I would like for you to give approximately the cost of the depot at McComb—the cost of construction.

Mr. White: Well, I don't remember the exact cost of that depot.

Examiner Boyle: Give it approximately.

Mr. White: About twenty-five hundred dollars.

Mr. Mixon: And the one at New Holmesville?

Mr. White: The depot at New Holmesville would run from fifteen hundred to eighteen hundred dollars; that is simply the cost of construction, and it would be alike on the depot at Glading, Robinson and Marshallton; the depot at Liberty, is similar to the structure at McComb.

Mr. Mixon: It cost about twenty-five hundred dollars?

4008 Mr. White: Yes, sir.

Mr. Mixon: And at those places you maintain permanent agents who devote their entire time to the business of the railroad?

Mr. White: Yes, sir; that has been brought out.

Mr. Mixon: And you also stated that your employees are not employed by the J. J. White Lumber Company?

Mr. White: Absolutely none.

Mr. Mixon: In regard to the indebtedness of the J. J. White Lumber Company for the construction of your line of railroad east of McComb, I will ask you to state what was the understanding at the time that Mr. J. J. White advanced this money?

Mr. White: The understanding is, that Mr. J. J. White will take this indebtedness to him in stock, and of course, it will be distributed among his children as has been done with his other stocks.

Mr. Mixon: Mr. J. J. White is about eighty years old?

Mr. White: Yes, sir.

Mr. Mixon: And has retired from active business?

Mr. White: Yes, sir.

4009 Mr. Mixon: And owns no other industries, other than stock in other industries which he owned?

Mr. White: He did own a controlling interest in these other industries, up to the time be distributed his stock among his children.

Mr. Mixon: At one time he owned an interest in a cotton mill?

Mr. White: A controlling interest, yes, sir.

Mr. Mixon: Who owned that cotton mill?

Mr. White: Mr. J. J. White Jr.

Mr. Mixon: A son of J. J. White Sr.?

Mr. White: Yes, sir.

Mr. Mixon: Did he have any connection with the lumber company?

Mr. White: No, sir.

Mr. Mixon: That cotton mill has been sold?

Mr. White: Yes, sir.

Mr. Mixon: Now, you have testified you were engaged in the railroad business?

Mr. White: Yes, sir.

Mr. Mixon: Your other brother in the cotton mill business?

Mr. White: One of them.

4010 Mr. Mixon: How many other brothers have you?

Mr. White: I have one other brother.

Mr. Mixon: There are three boys?

Mr. White: Yes, sir.

Mr. Mixon: And the third brother; what business was he engaged in?

Mr. White: He is in active charge of the J. J. White Lumber Company.

Mr. Mixon: I will ask you if you have been instrumental in promoting any business enterprises or anything like that along your line of road?

Mr. White: Yes, sir; we have a regularly organized land and industrial department, devoted at this time to the establishment of small farmers on the line.

Mr. Mixon: That is stated in exhibit No. 1. I will ask you if you are individually or personally connected with any business enterprises at Liberty. Are you not the president of the bank there?

Mr. White: I am president of the Liberty bank, yes, sir.

Mr. Mixon: Was that bank organized after the Liberty-White Railroad was built?

4011 Mr. White: That bank was commenced with the construction of road to Liberty.

Mr. Mixon: In contemplation of the road being constructed through?

Mr. White: Yes, sir.

Mr. Mixon: Had there been a bank there before?

Mr. White: Not to my knowledge.

Mr. Mixon: The town is 117 years old; is there anything else you want to state?

Mr. White: Nothing, except I would like to file as an exhibit our time-tables, and rate sheets and time sheets, from the beginning of the operation.

Examiner Boyle: They will be received and filed.

Thereupon, the Time-tables, etc., so offered and identified, were received in evidence, and marked "Defendant'- Exhibit L-B-3" received in evidence December 15th 1910, page 48, and are attached hereto.

Mr. Mixon: Can you sell tickets from any point on your line to other points—interstate points?

Mr. White: We sell inter-line tickets from any of our agency stations to points on other lines, and check their baggage ac-
4012 cordingly, and in turn tickets are sold from points on other roads to points on our road, and baggage is checked accordingly. We also issue a mileage book by order of the Mississippi Railroad Commission—joint mileage book—and issue our own individual mileage books.

Mr. Mixon: Do you pay a privilege tax as a railroad exclusively as such, in Mississippi?

Mr. White: Yes, sir, we pay a privilege tax of ten dollars per mile.

Mr. Mixon: Are you assessed by the Mississippi Railroad Commission?

Mr. White: Yes, sir.

Mr. Mixon: Have you ever been sued as a railroad company?

Mr. White: Yes, sir; a number of times.

Whereupon, at 12:30 O'clock P. M., on the 15th day of December, 1910, the hearing of the above entitled matter was closed.

Recess was taken at 12:30 o'clock until 2 O'clock P. M.

4013 After Recess.

NEW ORLEANS, LOUISIANA,
December 15, 1910—2:15 p. m.

Zwolle & Eastern Railroad Co.

Examiner Boyle: We will now take up the case of the Zwolle & Eastern Railroad.

C. W. TORNEY, was called as a witness, and being duly sworn, testified as follows:

Examination:

By Mr. Gutheim: Where do you live?

Mr. Torney: At Zwolle, Louisiana.

Mr. Gutheim: What is your occupation?

Mr. Torney: Agent of the Zwolle & Eastern Railroad.

Mr. Gutheim: Just where is that located?

Mr. Torney: Sabine parish.

Mr. Gutheim: And it has a junction with what other line?

Mr. Torney: With the Kansas City Southern Railroad Company.

Mr. Gutheim: It runs from the Kansas City Southern
4014 Railroad, west?

Mr. Torney: Yes, sir.

Mr. Gutheim: In the direction of Blue Lake?

Mr. Torney: Yes.

Mr. Gutheim: Which is the terminus, and what is named as Blue Lake Station.

Mr. Torney: Yes, sir; Blue Lake Station.

Mr. Gutheim: Just what is there at Blue Lake station?

Mr. Torney: There is a "Y," where the products are received for transportation.

Mr. Gutheim: The "Y"—in other words, Blue Lake station is the location temporarily of the logging operations of the Sabine Lumber Company?

Mr. Torney: No, sir.

Mr. Gutheim: Are your logging operations on beyond Blue Lake?

Mr. Torney: No, sir, at the present time they are several miles this side.

Mr. Gutheim: This timber up to Blue Lake is cut out?

Mr. Torney: Yes, sir, the pine timber is.

4015 Mr. Gutheim: You have no other connection, except with the Kansas City Southern Railroad Company?

Mr. Torney: No, sir.

Mr. Gutheim: What is there along the line of the Zwolle & Eastern Railroad going west from Zwolle in the line of community?

Mr. Torney: Well, there is a station known as Gibson; one mile from Gibson is the Hull, Gibson & Driver Company, manufacturers of hardwood.

Mr. Gutheim: They have a hardwood mill there?

Mr. Torney: Yes, sir, at a point one mile from Zwolle; then six miles from Zwolle is a station known as Red, the camps of the Sabine Lumber Company, and near the station at Blue Lake is the camp of the Hull, Gibson & Driver Company.

Mr. Gutheim: This Hull, Gibson & Driver Company is taking out the hardwood?

Mr. Torney: Yes, sir.

Mr. Gutheim: It is cut and taken down to the mill at Gibson?

Mr. Torney: Yes, sir.

Mr. Gutheim: The pine is being taken out at the camp of
4016 the Sabine Lumber Company, and taken down to the mill of the Sabine Lumber Company at Zwolle?

Mr. Torney: In their camp——

Mr. Gutheim: The mill of the Sabine Lumber Company is at Zwolle, is it not?

Mr. Torney: Yes, sir.

Mr. Gutheim: Does all of the timber that is being milled at Gibson, by the Hull, Gibson & Driver people, come off the holdings of the Sabine Lumber Company?

Mr. Torney: No, sir.

Mr. Gutheim: Is the hardwood that still remains—has that been sold to them on the stump?

Mr. Torney: Only a small portion of the hardwood in that section has ever belonged to the Sabine Lumber Company.

Mr. Gutheim: Well, what is the community at Gibson. Is it simply a community of ordinary dwellings, and the erection of the hardwood mill, or was it there before the mill was there?

Mr. Torney: Yes, sir, practically the dwellings of the hardwood mill.

Mr. Gutheim: Is there a Post Office there, or are they dependent upon Zwolle?

4017 Mr. Torney: They depend on Zwolle.

Mr. Gutheim: The community at the logging establishments of the Sabine Lumber Company is merely a temporary community that goes along with the logging operations?

Mr. Torney: Yes, sir.

Mr. Gutheim: And what is the community at Blue Lake?

Mr. Torney: It is practically the same as at the railroad, and at the hardwood camp.

Mr. Gutheim: Are there any farms along the line of the railroad?

Mr. Torney: Yes, sir.

Mr. Gutheim: Do they conduct extensive operations in so far as they deliver products to your line for shipment, or receive shipments over your line?

Mr. Torney: Yes, sir, it is an extensive business to some extent.

Mr. Gutheim: Merely in connection with what comes to your line?

Mr. Torney: Yes, sir.

Mr. Gutheim: About when was the Zwolle & Eastern Railroad built?

4018 Mr. Torney: I have been connected with the road only for a short time—something over two years.

Mr. Gutheim: It was built before that time?

Mr. Torney: Yes, I have endeavored to obtain that information, and as well as I can find out, the road was organized in connection with the Sabine Lumber Company, or by the Sabine Lumber Company about 1899.

Mr. Gutheim: And the road was built practically contemporaneously, or started with the erection and beginning of operations by the mill?

Mr Torney: Either by them or by their predecessors.

Mr Gutheim: That is to say, it was practically one operation at the start?

Mr. Torney: Yes, sir, at the beginning.

Mr. Gutheim: Was it separate-y incorporated from the beginning?

Mr. Torney: No, sir.

Mr. Gutheim: When was it incorporated?

Mr Torney: In 1904.

Mr. Gutheim: And upon incorporation, the property was

4019 taken over from the Sabine Lumber Company, I take it?

Mr. Torney: Yes, sir.

Mr. Gutheim: What consideration was given to the Sabine Lumber Company by the Zwolle & Eastern Railroad Company for the railroad property?

Mr. Torney: Somewhere between ninety and one hundred thousand dollars.

Mr. Gutheim: Cash or stock?

Mr. Torney: Part cash, and the balance was on demand.

Mr. Gutheim: Well, at the beginning the lumber company either put up the money or built the railroad, or else built the railroad itself as part of its logging operations?

Mr. Torney: Yes, sir.

Mr. Gutheim: And by its sale of the railroad to the corporation, was there merely a transfer of the securities of the railway company to the lumber company, together with a note for the balance?

Mr. Torney: I am not certain about that transfer.

Mr. Gutheim: Well, at the present time, does the Sabine Lumber Company own any security of the railroad company, or do
4020 the stockholders of the Sabine Lumber Company own the securities, or a majority of the securities of the Zwolle & Eastern Railroad Co.?

Mr. Torney: Since the incorporation of the Zwolle & Eastern Railroad Company it has paid out its obligations to the Sabine Lumber Company.

Mr. Gutheim: So that the only outstanding indebtedness now, is represented by the stock?

Mr. Torney: The stock has also been paid off.

Mr. Gutheim: Paid off by the lumber company, but it is held by the lumber company, is that a fact?

Mr. Torney: No, sir.

Mr. Gutheim: Do you mean there is no stock outstanding?

Mr. Torney: It is in the hands of the owners.

Mr. Zwiebold: The stockholders of the Sabine Lumber Company are identical with the exception of one with the stockholders of the Zwolle & Eastern Railroad Company—a small portion of stock only.

Mr. Torney: Something like two hundred—the amount of stock that is not held.

Mr. Zwiebold: The amount of railroad stock is held in proportion to that?

4021 Mr. Gutheim: That is held by a stockholder not interested in the Sabine Lumber Company?

Mr. Torney: It is two hundred dollars.

Mr. Gutheim: Now, at the present time, do the same individuals hold the same official relations to both the Sabine Lumber Company, and the Zwolle & Eastern Railroad Company?

Mr. Torney: I believe so.

Mr. Gutheim: And the operation of the railroad company is looked after by the mill superintendent?

Mr. Torney: The mill has a manager, and the railroad company has a superintendent.

Mr. Gutheim: Does the railroad superintendent devote all of his

time to the railroad, or does he also act in a supervising capacity for the lumber company?

Mr. Torney: He has duties attached to the lumber company.

Mr. Gutheim: Woods superintendent?

Mr. Torney: Yes, sir.

Examiner Boyle: Who pays his salary?

Mr. Torney: The railroad pays a proportion, approximately, that he devotes to the time of the railroad duties.

4022 Examiner Boyle: How much time does he devote—what proportion to the lumber company, and what proportion to the railroad company?

Mr. Torney: I think approximately half and half.

Mr. Gutheim: How many miles of main line are there?

Mr. Torney: Thirteen.

Mr. Gutheim: And of spurs and sidings?

Mr. Torney: About four miles.

Mr. Gutheim: Is it all standard gauge?

Mr. Torney: Yes, sir.

Mr. Gutheim: What is the weight of rail?

Mr. Torney: Some thirty-five, and some forty-five pounds.

Mr. Gutheim: Is the road ballasted with anything but the natural ballast of that section?

Mr. Torney: No, sir.

Mr. Gutheim: Are there any bridges to speak of?

Mr. Torney: Yes, there is one bridge, which is, I should judge about three-eighths of a mile in length.

Mr. Gutheim: Is there much of a grade?

Mr. Torney: No grades; no grade at all.

4023 Mr. Gutheim: Have you any station buildings along the line?

Mr. Torney: No, sir.

Mr. Gutheim: What is there at Zwolle: a joint building with the Kansas City Southern Railway?

Mr. Torney: No, sir, the building of the Sabine Lumber Company is occupied by the Zwolle & Eastern Railroad Company's business.

Mr. Gutheim: How much equipment have you—locomotive and cars?

Mr. Torney: Three locomotives, between fifty and sixty logging cars, one box car, and one combination passenger and baggage car.

Mr. Gutheim: Are you using that passenger car in regular passenger service?

Mr. Torney: Yes, sir.

Mr. Gutheim: I take it that the logging cars are not equipped with air brakes?

Mr. Torney: No, sir.

Mr. Gutheim: Are the trains run on regular schedule?

Mr. Torney: Yes, sir.

Mr. Gutheim: Are they dispatched by telegraph or tele-

4024 phone?

Mr. Torney: No, sir.

Mr. Gutheim: Is your equipment all owned, or part leased from the lumber company?

Mr. Torney: It is all owned by the railroad company.

Mr. Gutheim: Do you lease any of it to the lumber company for its operations?

Mr. Torney: No, sir.

Mr. Gutheim: Who conducts the operations on the logging spurs; the Sabine Lumber Company?

Mr. Torney: The railroad company; the Sabine Lumber Company owns no logging spurs.

Mr. Gutheim: It owns no locomotives and cars?

Mr. Torney: No, sir.

Mr. Gutheim: It owns no rail equipment?

Mr. Torney: No, sir.

Mr. Gutheim: These logging spurs—the material for the equipment of the logging spurs is owned by the Zwolle & Eastern Railroad Company?

Mr. Torney: Yes, sir.

4025 Mr. Gutheim: Who constructs the logging spurs and tracks over which your company transports the logs down to the mill?

Mr. Torney: The Zwolle & Eastern Railroad.

Mr. Gutheim: What compensation does the Zwolle & Eastern Railroad get for that service?

Mr. Torney: It handles the rough and finished product of the enterprise.

Mr. Gutheim: You mean it gets one hundred per cent of the product of the Sabine Lumber Company?

Mr. Torney: Yes, sir.

Mr. Gutheim: Do you have any station employees at Zwolle?

Mr. Torney: Yes, sir.

Mr. Gutheim: Is he employed jointly with the lumber company there?

Mr. Torney: Yes, he is a joint employee.

Mr. Gutheim: Does the railroad maintain a regular railroad crew, or are all employees of the lumber company?

Mr. Torney: Regular railroad crews.

Mr. Gutheim: How may men in a crew?

Mr. Torney: One crew of about five men, and another crew

4026 of from eight to ten men.

Mr. Gutheim: Are the train employees solely railroad men, or do they also perform lumber services in the freight department?

Mr. Torney: Railroad men only.

Mr. Gutheim: The general office employees are all men connected with the lumber company?

Mr. Torney: With the exception of the men in the woods.

Mr. Gutheim: Are they joint with the Kansas City Southern Railway?

Mr. Torney: No, sir.

Mr. Gutheim: How many men have you in the general office who devote their entire time to the railroad company's service?

Mr. Torney: None of them.

Mr. Gutheim: You have just said with the exception of the freight men, in answer to a question as to whether the general office employees were all general with the lumber company. Do you have any men in the general office who perform nothing but railroad service, or do they all act jointly with the railroad company, and the lumber company, performing services for both?

4027 Mr. Torney: All of the employees at Zwolle are in the general offices, performing services for both the railroad company and the lumber company.

Mr. Gutheim: And their compensation is divided between both companies?

Mr. Torney: Yes, sir.

Mr. Gutheim: Are they paid direct by both companies, or does the lumber company pay the entire charge, and charge a portion to the railroad company?

Mr. Torney: Some are paid direct, and some are handled the other way.

Mr. Gutheim: Your passenger service is all on mixed trains?

Mr. Torney: Yes, sir.

Mr. Gutheim: Is there any Sunday service?

Mr. Torney: No, sir.

Mr. Gutheim: You stated that the trains run on regular schedules?

Mr. Torney: Yes, sir.

Mr. Gutheim: Are there any published time-tables, other than in the official guide?

4028 Mr. Torney: I did not know that our time table was published in the official guide.

Mr. Gutheim: Are there general time tables published?

Mr. Torney: Yes, sir; we have a local time table.

Mr. Gutheim: How many trains do you run daily?

Mr. Torney: Two trains each way.

Mr. Gutheim: Do they connect with the Kansas City Southern Railway Company?

Mr. Torney: Yes, sir.

Mr. Gutheim: About how many carloads do you handle out of the woods with your logging train in one train?

Mr. Torney: Eighteen cars is considered a full train.

Mr. Gutheim: Do you carry any United States mail?

Mr. Torney: No, sir.

Mr. Gutheim: Have you any express service?

Mr. Torney: No, sir.

Mr. Gutheim: About how much does your passenger traffic amount to?

Mr. Torney: About sixty dollars per month.

Mr. Gutheim: How many passengers, about, does that

4029 mean?

Mr. Torney: About two hundred.

Mr. Gutheim: Is that passenger traffic done on a regular ticket basis, or is it all done on the basis of cash fares?

Mr. Torney: We have two ticket agencies that sell tickets; and parties boarding the trains at other points pay cash fares.

Mr. Gutheim: One of the agents of course, is at Zwolle; where is the other?

Mr. Torney: At Red.

Mr. Gutheim: That is a point beyond Blue Lake?

Mr. Torney: No, sir; it is the point where the Sabine Lumber Company camps are located.

Mr. Gutheim: There is no passenger traffic to speak of beyond Red?

Mr. Torney: Yes, sir, there is some little passenger traffic beyond there.

Mr. Gutheim: At this point, Mr. Zweibold, the Commission would ask you to furnish a statement showing the gross tonnage, the gross revenue for the fiscal year ending June 30th 1910, divided between the gross tonnage, and the gross revenue accruing on business
4030 of Sabine Lumber Company, including forest products, and merchandise for its commissary, if any; and the tonnage and revenue accruing on the other business of the general public.

Mr. Zwiebold: Mr. Torney has those figures.

Mr. Gutheim: If he has them, they may be submitted now.

Examiner Boyle: They may be submitted regularly. You understand that you are to submit this information.

Mr. Torney: Yes, sir.

Mr. Gutheim: Something over ninety-five per cent of the total tonnage is handled for the Sabine Lumber Company?

Mr. Torney: No, sir.

Mr. Gutheim: You say "no, sir"; about what percentage is handled for the Sabine Lumber Company?

Mr. Torney: Approximately seventy per cent; and the greater part of the balance is the business of the Hull, Gibson & Driver people—hardwood timber, going down to the hardwood lumber mill, and coming from Gibson over to the Kansas City Southern Railway —the greater portion of the remaining thirty per cent.

4031 Mr. Gutheim: And that hardwood timber as a matter of fact, about all of it comes from cut-over lands of the Sabine Lumber Company?

Mr. Torney: No, sir.

Mr. Gutheim: A good part of it does?

Mr. Torney: No, sir.

Mr. Gutheim: I believe you said you left your hardwood timber there when you operated at Blue Lake.

Mr. Torney: We own two hundred and forty acres of hardwood timber.

Mr. Gutheim: Do you mean that the Hull, Driver & Gibson people is cutting off of its own holdings?

Mr. Torney: Yes, sir.

Mr. Gutheim: Is there any pine on those holdings?

Mr. Torney: None that I know of.

Mr. Gutheim: Is there any relation that you know of between the Hull, Gibson & Driver Company and the Sabine Lumber Company?

Mr. Torney: No, sir.

Mr. Gutheim: Do you publish any local tariffs?

Mr. Torney: Yes, sir.

Mr. Gutheim: Do you file them with the Interstate Commerce Commission.

4032 Mr. Torney: I take it for granted that they are.

Mr. Frazer: They are filed with the Louisiana Rail-Road Commission?

Mr. Gutheim: You may submit those.

Mr. Gutheim: You are a party to the various tariffs published by the Kansas City Southern Railway Company?

Mr. Torney: To some of them.

Mr. Gutheim: You are a party of course to the rate on lumber, and articles taking rates?

Mr. Torney: I think we are.

Mr. Gutheim: Do you have joint rates on classes and commodities with the Kansas City Southern Railway?

Mr. Torney: No, sir.

Mr. Gutheim: That is, everything except forest products moves on a combination of locals?

Mr. Torney: Yes, sir.

Mr. Gutheim: What division do you get out of the rates from Zwolle out of forest products, I mean?

Mr. Torney: Here are the division sheets.

Mr. Gutheim: Will you file with the Commission the division sheets showing the divisions allowed your line?

4033 Mr. Torney: Yes, sir. I want also to file the Time-Tables which I showed you a minute ago.

Mr. Gutheim: Very well.

The time tables so offered and identified, were received in evidence, and thereupon marked "Defendant's Exhibit 1", received in evidence December 15, 1910, page 21, and is attached hereto.

And the division sheets, so offered and identified were received in evidence, and thereupon marked "Defendant's Exhibit No. 2", received in evidence December 15, 1910, page 21 and are attached hereto.

Mr. Gutheim: Will you indicate the general run of divisions in cents per 100 pounds that accrue to your line?

Mr. Torney: From nothing to four cents per one hundred pounds.

Mr. Gutheim: And the average division per one hundred pounds would be about what?

Mr. Torney: I would judge it would be about one and a half or one and three-quarter cents.

4034 Examiner Boyle: On what shipments do you get nothing; is that shown in your division sheet?

Mr. Tor-ey: Yes, sir.

Mr. Gutheim: Are these divisions to your road made on a Milling and transit basis?

Mr. Torney: I understand so.

Mr. Gutheim: So that on the basis of service performed by the Zwolle & Eastern Railroad for the average division of one and three-

quarter cents, it is a log haul from a point known as Red at the present time, to the mill at Zwolle, who takes care of the lumber haul from the mill at Zwolle to the Kansas City Southern Railroad.

Mr. Torney: The Zwolle & Eastern Railway handles part of it, and furnishes the loading track where the balance of it is loaded.

Mr. Gutheim: How much of a haul does the Zwolle & Eastern Railroad perform on the portion that it handles?

Mr. Torney: Approximately half a mile.

Mr. Gutheim: Can you say what proportion it does so handle?

Mr. Torney: As a rule, I should judge approximately
4035 twelve per cent of the Sabine Lumber Company's shipments.

Mr. Gutheim: Now, does the Zwolle & Eastern Railway handle logs for the Hardwood Lumber Company?

Mr. Torney: Yes, sir.

Mr. Gutheim: And what charge does it make for that haul?

Mr. Torney: Two dollars per one thousand feet, log scale.

Mr. Gutheim: Well, do the rates on hardwood lumber apply from Gibson on the milling and transit basis?

Mr. Torney: Yes, sir.

Mr. Gutheim: And notwithstanding that, you make a charge for the log haul in case the Hardwood Lumber Company, but made no charge against the Sabine Lumber Company in the case of pine?

Mr. Torney: I do not remember having so stated.

Mr. Gutheim: I understand you to say that no charge was made for the local log haul performed for the Sabine Lumber Company?

Mr. Torney: If I said so, it was not correct.

Mr. Zwiebold: What the witness said was, there was no
4036 separate charge for services on moving the logs which were being loaded up out on the spurs, but not on main line; that was included with the charge for carriage from the spur to the main line.

Examiner Boyle: What Mr. Zwiebold says is correct, Mr. Torney, is it not?

Mr. Torney: Yes, sir; that there is a charge on hauling the pine logs to the mill.

Mr. Gutheim: Now I would like to ascertain the total outstanding capital stock that is applicable to the cost of the construction, and to equipment on the thirteen miles of main line, and the four miles of spurs and sidings of the Zwolle & Eastern Railroad?

Mr. Torney: I don't quite understand that question.

Mr. Gutheim: What is the outstanding capital stock at the present time?

Mr. Torney: I don't understand that; I understand the meaning of the word "outstanding" to be——

Mr. Gutheim: What is the amount of capital stock that is in the hands of the stockholders?

4037 Mr. Zwiebold: In the certified copy of the articles of incorporation of the Zwolle & Eastern Railroad on file, showing the capital stock to be twenty thousand dollars.

Mr. Gutheim: Is that all outstanding?

Mr. Zwiebold: Yes, the stock is at a large premium, because the plant is worth much more.

Mr. Gutheim: I understand you to say that the *depth* of the rail road company to the lumber company had all been paid out?

Mr. Torney: Yes, sir.

Mr. Gutheim: So that at the present time the only indebtedness is this twenty thousand dollars of the capital stock?

Mr. Zwiebold: That is a fact; there is only twenty thousand dollars of capital stock. Originally the consideration for the transfer was something like ninety-five thousand dollars, of which twenty thousand dollars was paid by capital stock issued, and for the balance, there was a debt which has since been paid, of seventy-five thousand dollars. Why they are carrying it on such a small capitalization, is something I don"t know. The stock is at sev-

4038 eral times the premium.

Mr. Gutheim: The general offices of the road are at Zwolle?

Mr. Torney: Yes, sir.

Mr. Gutheim: You are complying with the Federal laws as to safety appliances, accident reports, and all that?

Mr. Torney: Yes, sir, with the exception of the safety appliances which as I understand it do not apply to our equipment.

Mr. Gutheim: Does the road pay dividends, or has it paid dividends?

Mr. Torney: No, sir.

Mr. Gutheim: The surplus I take it has been applied from time to time in settlement of this debt, which was due to the lumber company?

Mr. Torney: Yes, sir.

Mr. Gutheim: When was the last of that debt paid?

Mr. Torney: I am not certain; but I think it was only about two years ago.

4039 Mr. Gutheim: Since the payment of that debt, has there been a reduction in the rate of the log haul?

Mr. Torney: No, sir.

Mr. Gutheim: Do any of the general officers of the Zwolle & Eastern Railroad company receive salaries?

Mr. Torney: Yes, sir.

Mr. Gutheim: What salaries are paid to them, and to whom?

Mr. Torney: The secretary and treasurer receives, I think, twenty-five dollars, per month; the auditor receives twenty-five dollars per month; the timekeeper receives twenty-five dollars per month, and the general passenger and freight agent receives ten dollars per month.

Mr. Gutheim: In view of the fact that the debt due to the Sabine Lumber Company upon the construction of the road has been entirely wiped out, and that the outstanding indebtedness up to the present time consists only of twenty thousand dollars of stock, will you say if it is not a fact that the timber holdings of the Sabine Lumber Company in and about Zwolle, are pretty nearly cut out?

4040 Mr. Torney: No, sir.

Mr. Gutheim: They are not?

Mr. Torney: No, sir.

Mr. Zwiebold: What length of time have you, about, to continue cutting?

Mr. Torney: I should say about four to five years on that.

Mr. Zwiebold: How much has the Hull, Driver & Gibson Company to cut?

Mr. Torney: Five to six years yet.

Mr. Zwiebold: Five to six years?

Mr. Torney: Yes, sir.

Mr. Zwiebold: Now, in addition to the service you rendered to the Sabine Lumber Company, and the Hull, Gibson & Driver Company, do you haul any other traffic?

Mr. Torney: Yes, sir.

Mr. Zwiebold: What is it?

Mr. Torney: Any general freight that offers for transportation.

Mr. Gutheim: That will appear on the statement, Mr. Zwiebold.

Mr. Torney: It is covered by ties, piling, staves, etc.

Mr. Zwiebold: Do you have bills of lading?

Mr. Torney: Yes, sir.

4041 Mr. Zwiebold: And printed tickets?

Mr. Torney: Yes, sir.

Mr. Zwiebold: Have you specimens with you?

Mr. Torney: Yes, sir.

Mr. Zwiebold: Will you produce them?

Mr. Torney: Sure; here they are.

(The witness here produced a number of printed forms of bills of lading, way bills, expense bills, tickets, etc.)

Mr. Zwiebold: Indicate what you have in your hand there.

Mr. Torney: These are——

Examiner Boyle: Just get him to state what they are, Mr. Zwiebold.

Mr. Zwiebold: What are they?

Mr. Torney: Stationary of the Zwolle & Eastern Railroad, consisting of letterheads, blank checks, expense bills, bills of lading (uniform blanks).

Examiner Boyle: Uniform Bills of Lading?

Mr. Torney: Yes, sir, both straight and shippers' order notify, and export also; blank way bills, and tickets.

Examiner Boyle: Do you issue inter-line way bills?

4042 Mr. Torney: No, sir.

Examiner Boyle: How do you bill freight from these points on the Zwolle & Eastern Railroad to destinations beyond your line?

Mr. Torney: To the junction point.

Examiner Boyle: Locally?

Mr. Torney: Yes, sir, locally.

Mr. Zwiebold: You also have printed forms of tickets as they are in use by your company?

Mr. Torney: Yes, sir.

Mr. Zwiebold: Look at this paper which I hand to you, and state what it is?

Mr. Torney: That is a blue print of the Zwolle & Eastern Railroad Company's main line.

Mr. Zwiebold: Showing the location of the stations, mills and etc.?

Mr. Torney: Yes, sir.

Mr. Zwiebold: And of the Hull, Gibson, Driver Company's mill?

Mr. Torney: Yes, sir.

4043 Mr. Zwiebold: And of the "Y" you spoke of?

Mr. Torney: Yes, sir.

Mr. Zwiebold: And also the proposed extension of the line under the charter into Texas, which is yet unbuilt?

Mr. Torney: Yes, sir.

Mr. Gutheim: Do you mean, Mr. Zwiebold, that you are going to cross the Sabine River?

Mr. Zwiebold: Yes, that is what we intended to do, but we concluded that the bridge construction would be so terrific that it would not justify us in so doing.

Mr. Gutheim: I thought that was the situation of the Long-Bel people, when they proposed to the Sante Fe to build down there.

Examiner Boyle: Do you issue through passenger tickets to points on your lines, and to points on other lines?

Mr. Torney: No, sir.

Examiner Boyle: You only issue local tickets from your various points up to the junction points?

Mr. Torney: Yes, sir.

4044 The map so offered and identified, was received in evidence, and thereupon marked "Defendants' Exhibit No. 3," received in evidence December 15, 1910, Page 31, and is attached hereto.

Examiner Boyle: Are there any further witnesses?

Mr. Zwiebold: I have no further witnesses.

Mr. Frazer: The tariff sheet reference and division sheets, that is all in.

Whereupon, at the hour of 3 o'clock on the 15th day of December, 1910, the hearing of the above entitled matter was closed.

4045 *The Blytheville, Leachville & Arkansas Southern Railroad Company.*

NEW ORLEANS, LOUISIANA,
December 15th, 1910—3 p. m.

Examiner Boyle: We will now take up the matter of the Blytheville, Leachville & Arkansas Southern Railroad Company; are you ready?

Mr. McClelland: Yes, sir.

R. L. MCCLELLAND was called as a witness, and having been duly sworn testified as follows:

Direct examination:

Examiner Boyle: What is your name, residence, and official connection with this road?

Mr. McClelland: R. L. McClelland, Chicago, Illinois, Traffic Manager of the Blytheville, Leachville & Arkansas Southern Railroad Company.

Examiner Boyle: How long have you been so?

Mr. McClelland: Ever since it was organized.

Examiner Boyle: Just where does this particular railroad lie?

Mr. McClelland: In Craighead County, Mississippi
4046 County, Arkansas, and Dunklin County, Missouri.

Examiner Boyle: How long is it?

Mr. McClelland: Very close to fifty-two miles; fifty-one and a fraction miles.

Examiner Boyle: What main lines of railroads do you strike?

Mr. McClelland: We have three junction points.

Examiner Boyle: Where?

Mr. McClelland: At Leachville, Arkansas, we connect with the Frisco, and the Jonesborough, Lake City & Eastern Railroad; and at Jonesborough, with the Paragould Southeastern Railroad, which is a part of the Cotton Belt Line, and at Blytheville, with the St. Louis & San Francisco Railroad.

Examiner Boyle: What is that line of railroad at Leachville—at Albard?

Mr. McClelland: That is the Frisco.

Examiner Boyle: Does your road operate over that?

Mr. McClelland: We do.

Examiner Boyle: Do you lease that line?

Mr. McClelland: We have a trackage privilege.

Mr. Gutheim: You said you had connection with the Frisco, and the Jonesborough, Lake City & Eastern Railroad, at what
4047 point?

Mr. McClelland: At Leachville; yes, sir. At this point, Mr. Examiner, if it is your pleasure, I could facilitate this hearing by giving the history of this company from the organization down to the present time.

Examiner Boyle: That is what we are after.

Mr. McClelland: Well, you can follow it from there. The Blytheville, Leachville & Arkansas Southern Railroad Company was incorporated in May, 1908, under the laws of the State of Arkansas as a common carrier. The capital stock is two hundred and fifty thousand dollars, of which one hundred and fifty thousand two hundred dollars was paid in, in cash. Shortly after this railroad was organized they purchased from the Chicago Mill & Lumber Company certain railroad properties in Mississippi County, Arkansas, together with the railroad equipment owned at that time by the Chicago Mill & Lumber Company.

The consideration of this purchase was one hundred and fifty thousand dollars, of which one hundred and twenty-six thousand dollars was right-of-way, rails and fastenings, and the balance was to cover the purchase of personal property, rolling stock, engines,
4048 water tanks, etc.

The Chicago Mill & Lumber Company immediately ceased to operate any part of this railroad, and as I recall now, on June 27th, 1908, the railroad company started operations.

We have a line extending from Blytheville, Arkansas, in Mis-

sissippi County, to Glenco, and Littleton, Arkansas, that is a distance of approximately two and one-half miles from Glenco.

We have a line extending to a point called Chickasawba, Arkansas, where we connect with the Paragould Southeastern Railroad, which is really a branch of the Cotton Belt system.

We have a branch road from the Paragould Southeastern Railroad to Arbyrd, Missouri, and from Arbyrd, Missouri, we have trackage rights to Leachville, Arkansas, over the Frisco system. At that point we connect with our own line, which extends in a general southern direction, a distance of about twenty miles, due south, and a trifle west.

We have joint through rates and through routes in connection with the Frisco system at Blytheville; with the Paragould
4049 Southeastern Railroad at Chickasawba, and with the Frisco system at Leachville, Arkansas.

The divisions allowed our company on division "C" as provided in through tariffs, is two cents per 100 pounds.

On all traffic we have milling in transit rates on our line. All of our rough material is brought into the milling point on local interstate rates, covered by tariff duly filed with the Interstate Commerce Commission. The receiver of the raw material can ship the manufactured product over any line that he may desire; there is no restriction whatever, with the exception of one producing point on our line, all of our stations are competitors with the Jonesborough, Lake City & Eastern Railroad, a short line independent road, but a line which has never been considered by the Commission as being a tap line or having any lumber affiliations.

Out of the divisions which we receive from the Frisco system, and the Paragould Southeastern Railroad which are the same as the divisions which are allowed to the Jonesborough, Lake City & East-
ern Railroad for performing the same identical service as
4050 we do in point of mileage and everything else.

We also have filed with the Railroad Commission of Arkansas, Arkansas local tariffs, covering purely State business which moves from points in Arkansas to points in Arkansas, involving intra-State movement.

We now have passenger service installed, which was inaugurated from Leachville to all points south of our line. We have four trains per day with passenger service, and the equipment which we utilize in giving this service, is gasoline motors, with passenger coach as a trailer. The passenger business that we now have is very limited, but we were compelled to inaugurate this service, due to the fact that we had been advised unofficially by the Arkansas Railroad Commission, that complaints had been filed, and that some action on our part was necessary.

Our trains at Leachville connect with the Frisco system passenger trains at that point, and also with the Jonesborough, Lake City & Eastern Railroad passenger trains.

Our company has complied, ever since its incorporation with all the provisions of the Interstate Commission, or orders of the
4051 Commission in reference to accounting, in reference to safety appliances, and in reference to hours of labor.

We have always been compelled to comply with the Arkansas law relative to equipping our locomotives with electric headlights, and various other features which they insist upon.

We have exercised the right of eminent domain in one instance only. Our line owns its own right-of-way, much of which has been purchased at a very high price, especially in and about the town of Blytheville, Arkansas.

We have fifteen stations on our line, beginning at Blytheville, Chickasawba, Glenco, Littleton, Leachville, Clearwater, Springfield, Orr, Wallace, Rockey, Hancock, Wiedeman, Lepanto Junction, and Shaw. All of which towns we serve.

The population of the city of Blytheville is five thousand. There are a number of industries—lumber industries in the town, among which are the American Handle Company, the Cord-Morrow Package Manufacturing Company, and the Blytheville Lumber Company.

Examiner Boyle: You say you serve Lepanto?

4052 Mr. McClelland: Lepanto Junction.

Examiner Boyle: Do you serve Lepanto?

Mr. McClelland: Lepanto Junction; Lepanto is further south.

Examiner Boyle: You have not completed your line to Lepanto?

Mr. McClelland: That is eighteen miles south. At Blytheville we now serve these industries which I have just named.

Our line does not reach these industries *along;* the foreign lines, the Frisco, Cotton Belt and Jonesborough, Lake City & Eastern, can perform such service, and switch deliver to us.

The so-called community of interest in this case—the Chicago Mill & Lumber Company have no ownership, and are not represented in any way in any of these industries which I have named.

Examiner Boyle: State where the Chicago Mill & Lumber Company is located.

Mr. McClelland: At Glenco, Arkansas.

Examiner Boyle: And that is where there is a switch?

Mr. McClelland: No, sir, not yet. At Chickasawba we

4053 do not serve any of the industries, because there are none.

At Glenco, we serve a population of about two hundred, and that is the point where the Chicago Mill & Lumber Company's plant is located. At Littleton, we serve approximate- one hundred and fifty people, and at that point is located the mill of the Little Lumber Company, and the storage yards of the E. Sondheimer Lumber Company. We have no interest whatever in any form or fashion with the E. Sondheimer Lumber Company and the Little Lumber Company. In fact, they are competitors of the so-called community of interests,—the Chicago Mill & Lumber Company.

At Leachville, owing to our trackage contract which I will explain in detail later, we have no industries.

At Clearwater, the first station south of Leachville, or close to that point, we serve the plant of the P. B. Cowan Saw Mill Company. In this industry we have no interest whatever. I am speaking now of the community of interests.

Proceeding on down the line, the next industry that we reach,

is located at Shaw, Arkansas. It is the plant of the Chap-
4054 man-Dewey Lumber Company. The Chapman-Dewey Lumber Company owns very large holdings in and about the country through which we traverse, upwards of sixty thousand acres of land.

The Chicago Mill & Lumber Company,—our so-called community of interest,—owns approximately fifty thousand acres of land, which can be served by this railroad.

In addition to these two owners, whom I have mentioned, the Boynton Land & Lumber Company also owns large tracts of land; and various other small holders whom I cannot now recall.

The community of interest is in no way connected with the Chapman-Dewey Lumber Company, nor with the Boynton Lumber Company, in fact they are competitors of the community of interest.

It is our intention to construct our line to the point which is now marked on the map called Truman. At Truman there is now being constructed a very large veneer and saw mill plant, which is owned by the same interests which owns the Singer Manufacturing Company—in other words, the Singer Sewing — Manufacturing Company. I do not recall the name under which they are
4055 operating.

At Truman, most of the material which will be manufactured in this plant at Truman, is for their manufactury at Cairo, Illinois.

The interest of the Chapman-Dewey Company in this semi-raw material to Cairo, the Frisco Railroad con not serve the Singer's interests in this particular traffic, for the reason that they have no line to Cairo, and the nearest point which they reach to Cairo, is Thebes, Illinois, and the lines extending from Thebes to Cairo demand an arbitrary of three cents from Thebes, that, under ordinary conditions being the Ohio crossing rate, which is the same as Cairo; consequently the tonnage which we will soon be able to avail ourselves of after extending the line, can be carried by our line up to Poinsett, Craighead County, Arkansas, where it will be delivered to the Paragould Southeastern; this is part of the Cotton Belt system, and it can be built direct to Cairo, their line extending to that point, at a lesser rate than the Frisco can possibly carry it.

The line when first taken over by the Railroad Company, that is after it was purchased from the Chicago Mill & Lumber Com-
4056 pany consisted of the following pieces of track; there was about ten miles of track and right-of-way extending due south and west on the Jonesborough Lake City & Eastern Railroad, called Big Lake, Arkansas; this line of track extended a distance of a little over ten miles. They also had a piece of track extending due south from Leachville, extending a distance of about five miles. They also had a piece of track extending from Glenco, Arkansas, to Blytheville, altogether approximating seventeen or eighteen miles.

The track which was purchased, and the right-of-way which was purchased on the line extending south and west from Big Lake has since been abandoned. In fact it was the purpose of the railroad company immediately after purchasing the same, to take it up

and utilize it elsewhere, and there was a provision in the deed of transfer, which provided, that we were to secure—the railroad company was to secure the same area of right-of-way as had been deeded to us on this Big Lake line; that has all bee taken up and abandoned, and the property reverted back to its original owner, and we have used the rail in extending our own line.

Our line is constructed practically, of fifty-six pound
4057 steel.

Our line is equipped with five locomotives, one Baldwin consolidated, 65-ton locomotive, three Rod engines of approximately thirty tons each, and one Shay improved engine of approximately forty tons; also one switch engine; we also have eighty——

Examiner Boyle: That makes six locomotives?

Mr. McClelland: We have got six—only five in commission, one is abandoned; it is beyond repair. I would like to make that correction.

We have eighty-six flat cars—standard flats, two caboose cars, one box car and two coal cars.

The Examiner will please note on the map that on all business which we handle from points south of Leachville to Glenco, Littleton, Chickasawba, and Blytheville, that we perform a distinctly interstate service, from point of actual physical construction, and as I have previously explained, that movement is provided for by local Interstate tariff duly filed with the Interstate Commerce Commission.

At Glenco, we have a railroad track scale,—a standard Fair-
4058 bank track scales, and we are members of the Western Railway Weighing & Inspection Bureau, and have a duly sworn weigh master at that point, where all business destined to interstate points—and where all traffic destined to interstate points via the Paragould Southeastern Railroad, or Chickasawba, via the Frisco, or Blytheville is weighed.

At Leachville, we have no track scale, and the Frisco system performs the service of weighing. Corrections issued as is customary between connecting carriers.

I would like to have the privilege of filing later as an exhibit, a statement showing the community of interest tonnage, and the outside tonnage etc. I have got figures here in the rough, but I want the figures to be absolutely correct—we will furnish that later.

Examiner Boyle: That would have been asked for anyhow, and you will have that privilege.

Mr. McClelland: For the ten months from January 1st, 1910 to October 31st, 1910, the community of interest tonnage was 96.60
per cent, and the outside tonnage 3.40 per cent.

4059 During the last ten months our outside tonnage in which we have no interest whatever has increased over the corresponding last year over 131 per cent, or at the rate of 157 per cent per annum.

This large increase is explained in this wise: When our line was first constructed, we did not reach the foreign tonnage producing port which we had in view when the railroad was incorporated; since that time, and particularly so during the last year, we have extended our road approximately sixteen miles.

Our line south of Leachville is built, or rather constructed on the line of survey which was originally made by the Frisco system.

You will note from the map that Leadville is the terminus of the Frisco system, and the Frisco system branches stop at Leachville, Arkansas.

The purpose at the time the Frisco made this survey, at my own solicitation, — to connect up their line from Leachville to Lepanto, Arkansas,which is shown on the map. Lepanto, Arkansas, is on what used to be known as the Tyronza & Central Railroad, which is now part of the Frisco system. The Frisco system before
4060 making this survey, sent parties out, who made a very careful investigation of the territory over which this line was proposed to be built and their reports were so flattering as to prospective tonnage, that they immediately had a survey made of the line, and an estimate of the cost was made. The Frisco system up to this time fully intended to construct this line, but financial conditions came about, which made it impossible for them to raise the money so to do.

We received, as I have previously stated, two cents per 100 pounds as a division of the through rate on lumber and forest products, from all our connections, with the exception of the Jonesborough, Lake City & Eastern Railroad. This line finds it impossible to make a similar arrangement with us, for the simple reason that they were allowed by the Trunk lines the same divisions as we ourselves received.

Our line in handling the manufactured products through the interchange at Leachville, Arkansas, with the Frisco system, performs actual service on the manufactured product of approximately twenty miles.

At Blytheville our line performs a service of almost two
4061 and one half miles, and at Chickasawba a service of one and one-half miles; at Littleton, a service of approximately two miles, which we feel is compensation only commensurate with the service that we actually perform on the community shipments.

That is all, Mr. Examiner.

Mr. Gutheim: The mill of the Chicago Mill & Lumber Company is at Chickasawba?

Mr. McClellan: No, sir.

Mr. Gutheim: Where is it located?

Mr. McClellan: At Glenco, Arkansas.

Mr. Gutheim: How much difference is there, geographically speaking, between Chickasawba and Glenco?

Mr. McClellan: About one and one-half miles; that is Chickasawba on our road is over the route that we must travel in order to deliver the business to the Paragould Southeastern Railroad at Chickasawba.

Mr. Gutheim: Our record shows that the whole trackage of this road, in and about Glenco, Littleton, Chickasawba and Blytheville, is one and a half miles.

Mr. McClelland: That is incorrect.

Mr. Gutheim: What is the actual mileage?

4062 Mr. McClelland: I think I gave you that out of my mind, but I wil give it to you absolutely correct. Glenco is 4,661 feet, and Blytheville, 4,911 feet.

Mr. Gutheim: That is the total trackage in feet in and about that point?

Mr. McClelland: That makes it a little over two and one half miles?

Mr. Gutheim: No, is not 9,572 feet but one and three-quarter miles?

Mr. McClelland: I didn't say 9,572 feet?

Mr. Gutheim: You said 4,661 feet, and 4,911 feet.

Mr. McClelland: I beg your pardon, you are right; this two and one-half mileage—I didn't just catch you.

Mr. Gutheim: 4,661 refers to the mileage sheet?

Mr. McClellan: No, sir, to the mile.

Mr. Gutheim: 46.61 miles, is that it?

Mr. McClelland: No, sir. That distance is 2.51 miles.

Mr. Gutheim: You mean taking the difference between the mile posts?

Mr. McClelland: Certainly so.

4063 Mr. Gutheim: Now, from Chickasawba you go over the Paragould Southeastern Railroad to Arbyrd—the Paragould Southeastern or Cotton Belt proper?

Mr. McClelland: Yes, sir.

Mr. Gutheim: You have a contract providing for your traffic rights, have you?

Mr. McClellan: Yes, sir.

Mr. Gutheim: Will you file a copy of that with the Interstate Commerce Commission?

Mr. Coleman: We now tender the contract, as evidence, which is a joint contract with both lines, and may be introduced for both parties.

Examiner Boyle: By both lines, you mean the Paragould Southeastern Railroad and the Frisco system?

Mr. McClelland: Yes, sir; it is a tri-party agreement.

Examiner Boyle: It will be received and filed.

The agreement so offered and identified, was received in evidence and thereupon marked "Defendants' Exhibit A-1," received in evidence December 15th 1910, page 19, and is attached hereto.

Examiner Boyle: Then from Arbyrd, you go south from Leachville on the Frisco system?

4064 Mr. McClellan: Yes, sir.

Mr. Gutheim: That is covered by this same package contract?

Mr. McClellan: Yes, sir.

Mr Gutheim: The Frisco gets into Blytheville by an entirely different line does it not?

Mr. McClellan: It does, sir.

Mr. Gutheim: The manufactured product of the Glenco mill is delivered largely to the Frisco system at Leachville?

Mr. McClellan: No, sir.

Mr. Gutheim: It is all delivered at Blytheville?

Mr. McClellan: Yes, sir.

Mr. Gutheim: Where you have a two and one-half mile haul?

Mr. McClellan: Yes, sir, on the business now for the Frisco.

Mr. Gutheim: Where do you make deliveries to the Cotton Belt?

Mr. McClellan: At Chickasawba.

Mr. Gutheim: How much of a haul is it from the Glenco mill to Chickasawba?

Mr. McClellan: Approximately one and one-half miles—
4065 very close to it.

Mr. Gutheim: Now, you are familiar with this tri-party contract?

Mr. McClellan: Yes, sir.

Mr. Gutheim: Does that contract permit you to take any local business off of the Paragould Southeastern Railroad on the Blytheville, Leachville & Arkansas & Southern Railroad Company?

Mr. McClellan: Most assuredly not, sir.

Mr. Gutheim: It does not permit you to take any local business off the Frisco from Arbyrd and the Frisco?

Mr. McClellan: No, sir.

Mr. Gutheim: So, when you speak of business going over that line south of Blytheville, you refer entirely to what originates on your line south of Leachville?

Mr. McClelland: I do, sir.

Mr. Gutheim: That is your own line?

Mr. McClellan: It is, sir.

Mr. Gutheim: How much trackage do you own in and about Glenco; that is not used within the limits of your mill proper, or is not used to get the products of your mill to the Frisco system, or the Jonesborough, Lake City & Eastern?

4066 Mr. McClellan: The whole, sir?

Mr. Gutheim: Well, primarily——

Mr. McClellan: Well, of course within the plant limits——

Mr. Gutheim: Particularly the part of the track used as plant facilities?

Mr. McClelland: Why, I should say offhand possibly five or six hundred feet.

Mr. Gutheim: How large a mill is it; what is the capacity; what is its capacity?

Mr. McClelland: It is a large mill with a capacity of sixty-five thousand, to seventy-five thousand feet per day.

Mr. Gutheim: And it has only about five or six hundred feet of track to serve it?

Mr. McClelland: I did not say so, sir.

Mr. Gutheim: You said that was the track used exclusively for mill service?

Mr. McClellan: It is not used exclusively for that service.

Mr. Gutheim: How much is used primarily for the mill in addition to the five hundred or six hundred feet so used exclusively?

4067 Mr. McClellan: I should double it, sir.

Mr. Gutheim: Blytheville, you stated, was a town of about five thousand people?

Mr. McClellan: Yes, sir.

Mr. Gutheim: Do you have any connection with any other industries in Blytheville?

Mr. McClellan: No, sir.

Mr. Gutheim: Does the Frisco, under the package contract permit you to do any business in Blytheville?

Mr. McClellan: There is no such provision in the contract one way or the other.

Mr. Gutheim: Do you, as a matter of fact, take any business out of Blytheville, that is not going to some local point on your line?

Mr. McClellan: Up to the present time we have taken very little, if any.

Mr. Gutheim: Now, does this trackage arrangement with the Paragould Southeastern Railroad and the Frisco system, permit you to haul anything but logs?

Mr. McClellan: Yes, sir.

Mr. Gutheim: But nothing except what is handled south of Leachville?

Mr. McClellan: It does not so provide, and I can state very quickly if the Examiner desires, just what that provision

4068 is.

Mr. Gutheim: We can pass that; it is in the contract. Now, does the Cotton Belt R-ilroad get into your mill and load direct at Glenco?

Mr. McClellan: No, sir.

Mr. Gutheim: All of the tracks by which any other carrier can get into your mill at Glenco are owned by your own road?

Mr. McClellan: No, sir.

Mr. Gutheim: What other carrier gets in on its own tracks?

Mr. McClellan: The Jonesborough, Lake City and Eastern Railroad.

Mr. Gutheim. Does it get any of the business?

Mr. McClellan: Yes, sir.

Mr. Gutheim: Even the other carriers in order to get that business, they all give the Jonesborough, Lake City & Eastern Railroad a division, as well as give you a division also?

Mr. McClelland: That is not so, sir.

Mr. Gutheim: How much business did you send out over the Jonesborough, Lake City & Eastern Railroad during last year?

4069 Mr. McClelland: The Chicago Mill & Lumber Company to whom I presume you refer——

Mr. Gutheim: Yes.

Mr. McClelland: It shipped out approximately three hundred or four hundred cars over that road.

Mr. Gutheim: This Frisco line from Arbyrd down to Leachville—where does the Frisco line go from Leachville?

Mr. McClelland: Nowhere; it stops there.

Mr. Gutheim: Where do they go from Arbyrd?

Mr. McClelland: From Arbyrd, their line extends up into Missouri.

Mr. Gutheim: Over the joint track?

Mr. McClelland: I do not understand the question, Mr. Examiner.

Mr. Gutheim: Over the joint track, or does it go up here in this direction; there is no division on the map.

Mr. McClelland: Their line extends directly north.

Mr. Gutheim: It is projected on the map?

Mr. McClelland: Yes, sir——

Mr. Gutheim: This Chapman-Dewey Lumber Company, is a Kansas City concern?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Is not part of their land cut over?

Mr. McClelland: Very little of it, sir.

4070 Mr. Gutheim: Are they not trying to dispose of their entire lands, because they don't want to cut any more timber out down there?

Mr. McClelland: No, sir.

Mr. Gutheim: Now, was this Paragould Southeastern Railroad ever owned by the Chicago, Mill & Lumber Company?

Mr. McClelland: No, sir, it used to be owned by a Mr. Hasty.

Mr. Gutheim: Was it not owned by a predecessor of the Chicago Mill & Lumber Company?

Mr. McClelland: No, sir.

Mr. Gutheim: Was the line from Leachville south constructed by the Chicago Mill & Lumber Company originally?

Mr. McClelland: They had about five miles which has since been re-built since we took over the track .

Mr. Gutheim: And at that time was the Frisco in that country between Arbyrd and Leachville?

Mr. McClelland: At that time, they were.

Mr. Gutheim: And from the very start the Chicago Mill & Lumber Company began logging over the Frisco system and the Paragould Southeastern system to Glenco?

Mr. McClelland: No, sir.

Mr. Gutheim: How did they get their logs to Glenco.

4071 Mr. McClelland: The logs moved previous to the construction of our road, the incorporation of it, via the Jonesborough, Lake City & Eastern Railroad.

Mr. Gutheim: But it was never owned by the Chicago Mill & Lumber Company?

Mr. McClelland: No, sir.

Mr. Gutheim: And never controlled in any way by them?

Mr. McClelland: We loaned them fifty thousand dollars, and had very hard work getting it back.

Mr. Gutheim: Didn't you ever have any stock in that concern?

Mr. McClelland: We had one share.

Mr. Gutheim: At the present time, what is the total owned mileage of your company?

Mr. McClelland: Almost twenty-two miles.

Mr. Gutheim: That is the owned mileage?

Mr. McClelland: Yes, sir.

Mr. Gutheim: And your outstanding stock is, $157,700.00?

Mr. McClelland: Yes, sir.

Mr. Gutheim: And the amount that is due the Chicago Mill & Lumber Company in bonds, was $150,000.00?

Mr. McClelland: I have said nothing of that kind, sir.

4072 Mr. Gutheim: What was it you said whereby there was $126,000.00 used for right-of-way, and $124,000.00 issued for equipment on the same?

Mr. McClelland: That is incorrect in toto; I never made such a statement.

Mr. Gutheim: I have the figures which I put down.

Mr. McClelland: I can explain that if you will permit me.

Mr. Gutheim: All right.

Mr. McClelland: The capital stock was $250,000.00, of which $150,700.00 was paid in cash; we purchased the railroad company—purchased it from the Chicago Mill & Lumber Company for $126,000.00—well, I was a little bit wrong, the company paid for the right-of-way, and the rails, track, and fastenings, $127,360.09, for which a deed was issued by the Chicago Mill & Lumber Company. In addition to that they paid the difference between that amount $150,000.00 for the personal property consisting of locomotives, water tanks, cars, and various other railroad equipment.

Mr. Gutheim: Then, what is the total outstanding indebtedness at the present time?

Mr. McClelland: To whom?

Mr. Gutheim: Of the company—of the railroad company.

4073 Mr. McClelland: I could not give that, except in round figures. I presume we probably owe thirty thousand or forty thousand dollars.

Mr. Gutheim: Let us know the term of the indebtedness; is it bonds?

Mr. McClelland: There is no bonds outstanding.

Mr. Gutheim: You said the outstanding stock is one hundred and fifty thousand dollars?

Mr. McClelland: I do not understand you; you say outstanding; I don't get you.

Mr. Gutheim: What I mean by outstanding——

Mr. McClelland: That has been sold?

Mr. Gutheim: That is the question identically, the stock that is outstanding?

Mr. McClelland: That is one hundred and fifty thousand seven hundred dollars, outstanding.

Mr. Gutheim: Am I correct in the figure of twenty-two miles of railroad which you own?

Mr. McClelland: Yes, sir.

Mr. Gutheim: What I am getting at now is just what you have

charged to the cost and construction on that twenty-two miles of road?

Mr. McClelland: I cannot give you that exactly, sir—I
4074 can give it to you, the total cost of new equipment and every appurtenance necessary for the operation of the road, $252,-884.74.

Mr. Gutheim: Then, how was the difference between that figure and the stock that was issued, financed?

Mr. McClelland: We have earned during the first year ending June 30, 1909, which was our first fiscal year according to the Interstate Commerce Commission's rule—our net earnings were $13,-149.00 and covering the period for the year ending June 30th 1910, the net corporate earnings were $18,961.00.

Mr. Gutheim: Now, let us get back to the other question. I want to find out how the difference between the $252,000 expended for the cost of the road, equipment and capital stock outstanding was financed?

Mr. McClelland: The money was borrowed from the bank.

Mr. Gutheim: That is what I want to know.

Mr. McClelland: You never asked the question before.

Mr. Gutheim: I beg your pardon; what bank was the money borrowed from?

Mr. McClelland: I could not give the name of the bank; it was a St. Louis bank where we keep *out* bank. I can, if necessary, furnish the name if it is desired.

4075 Mr. Gutheim: Do you know who was on the paper, besides the railroad?

Mr. McClelland: No, sir, I do not know who was on the paper.

Mr. Gutheim: Does not the Chicago Mill & Lumber Company figure on the paper in any way?

Mr. McClelland: Not to my knowledge; I am quite sure they did not, sir.

Mr. Gutheim: To what extent are the officials of the Chicago Mill & Lumber Company, connected with the railroad company at the present time?

Mr. McClelland: As far as stockholders are concerned?

Mr. Gutheim: To what extent are the officials of the Chicago Mill & Lumber Company connected with the railroad as officials?

Mr. McClelland: Mr. Whitman, the vice-president of the Chicago Mill & Lumber Company is president of the railroad. Mr. A. C. Lange, the secretary of the railroad company is general superintendent of the Chicago Mill & Lumber Company; I think that is all of the officers that are officers of the other company.

4076 Mr. Gutheim: I believe in your general statement you spoke of the community of interest referring to the Chicago Mill & Lumber Company?

Mr. McClelland: Yes, sir.

Mr. Gutheim: You are expected to file a statement showing the extent of the stock holdings in the railroad by the Chicago Mill & Lumber Company?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Well, that is as definitely as you can put to what extent is the interest of the Chicago Mill & Lumber Company in the Blytheville, Leachville, Arkansas & Southern Railroad Company?

Mr. McClelland: I could not advise you definitely sir, as to that—as to the identity of interest in both companies, as far as stockholders are concerned, but we can and will furnish a statement showing the exact status of the stock holdings—each one of the stockholders in the railroad, as compared with the stockholders in the Chicago Mill & Lumber Company. We do not deny the community of interest in any of its features.

Mr. Gutheim: One point I want to be sure about. Does any other mill company, as such own any — the stock?

4077 Mr. McClelland: No, sir.

Mr. Gutheim: Your track is all standard gauge is it not?

Mr. McClelland: Yes, sir.

Mr. Gutheim: You mentioned the weight of the rail. Is it ballasted with anything other than the ordinary ballast of that country?

Mr. McClelland: Sand.

Mr. Gutheim: I take it from your map that it is a pretty wet country; that you have a number of bridges?

Mr. McClelland: Yes, we have a number of bridges and trestles.

Mr. Gutheim: This proposed extension that you are building down here seems to go into what is known as "the Sunk Lands"? Is that being put down as a permanent railroad in The Sunk Lands?

Mr. McClelland: The road does not go into the Sunk Lands.

Mr. Gutheim: It goes over very nearly in that water section.

Mr. McClellan: It is just on the other side of the so-called Sunk Lands, to the west; a very thickly timbered country, as well

4078 as an agricultural country, way above water level.

Mr. Gutheim: Is your line being put down from Lepanto south, upon a permanent basis?

Mr. McClellan: At Lepanto Junction?

Mr. Gutheim: Yes.

Mr. McClelland: Yes, sir.

Mr. Gutheim: You have no—that is, save the Chicago Mill & Lumber Company, you have no mill operation of any sort at Leachville?

Mr. McClelland: No, sir, absolutely none.

Mr. Gutheim: At Springfield or Clearwater?

Mr. McClelland: No, sir.

Mr. Gutheim: At Orr?

Mr. McClelland: No, sir.

Mr. Gutheim: At no other point down to Lepanto Junction?

Mr. McClelland: No, sir.

Mr. Gutheim: What kind of a country was that before you went in there; was it settled?

Mr. McClelland: No, sir, the country as far fown on the line as you have gone, was not settled; there is a very large settlement

however—an old settlement called Clinton settlement along the St. Francis River, which has been there for many years.

4079 Mr. Gutheim: That is down almost to Lepanto?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Now, there are seven settlements between Leachville and Lepanto?

Mr. McClelland: Yes, sir.

Mr. Gutheim: And that was an unsettled country before the railroad went down there?

Mr. McClelland: Yes, sir.

Mr. Gutheim: What is the nature of those communities at the present time. What population is there at Clearwater?

Mr. McClelland: It is a very small hamlet of about thirty or forty people.

Mr. Gutheim: Is it the remains of a logging community?

Mr. McClelland: A logging community was originally there, yes, sir.

Mr. Gutheim: How about Springfield?

Mr. McClelland: Just the same.

Mr. Gutheim: How about Orr?

Mr. McClelland: The same.

Mr. Gutheim: How about Walters?

Mr. McClelland: The same.

4080 Mr. Gutheim: How about Rockey?

Mr. McClelland: The same.

Mr. Gutheim: How about Hancock?

Mr. McClelland: About one hundred people there.

Mr. Gutheim: Is that the remains of a logging community also?

Mr. McClelland: Why, a logging community was there, yes, sir.

Mr. Gutheim: And how about Weideman?

Mr. McClelland: The same.

Mr. Gutheim: Lapanto Junction is the present situation that you are logging at?

Mr. McClelland: No, sir.

Mr. Gutheim: What is the present situation at Lepanto Junction?

Mr. McClelland: That is the present situation of the Chaoman-Dewey Saw Mill; all of the employees of the saw mill live in and about there; there is also quite a large agricultural community which gets into Shaw.

Mr. Gutheim: There is not very much population along that line from Leachville to Lepanto Junction all told?

4081 Mr. McClelland: I should say not to exceed three to four thousand, sir.

Mr. Gutheim: Three or four thousand in the community there that are the remains of logging communities?

Mr. McClelland: I didn't say that.

Mr. Gutheim: I asked about the various communities; I spoke along the country that you went through?

Mr. McClelland: I wish to strike out the answer because I misunderstood you. No, that is the general population, about as given to you.

Mr. Gutheim: Then there are no industries in those towns that

could produce any outbound traffic, except what is incidental to such communities?

Mr. McClelland: Why, yes; the Standard Basket & Veneer Manufacturing Company of Cape Girardeau, Missouri, bring out timber along that line.

Mr. Gutheim: Is that manufactured along your line, or does it go to Cape Girardeau?

Mr. McClelland: Absolutely the raw material is handled at Leachville, and shipped out as lumber.

Mr. Gutheim: Does the Chapman-Dewey Lumber Company's product go out over your line?

Mr. McClelland: It does, sir.

4082 Mr. Gutheim: You spoke I believe of a very large increase one hundred and thirty-one per cent in ten months, and one hundred and fifty seven per cent for the year?

Mr. McClelland: Yes.

Mr. Gutheim: In the last year's business from provisions hauled for the general public.

Mr. McClelland: Yes, sir.

Mr. Gutheim: On a tonnage basis about how much would that make in the general public business?

Mr. McClelland: That would bring up the outside tonnage to about 21,000,000 pounds.

Mr. Gutheim: To twenty-one million pounds?

Mr. McClelland: Yes; I think that would be about the increase; that increase of one hundred and fifty-seven per cent, as I presume it will be.

Mr. Gutheim: Our record to June 30, 1909 shows, that out of 5,607 carloads, four-tenths of one per cent was handled for the general public, and out of a total revenue of $43,040.40, forty-two thousand four hundred and nine, ninety-six dollars was on traffic furnished by the Chicago Lumber Company.

Mr. McClelland: That is undoubtedly true sir, at that time.

4083 Mr. Gutheim: So that the difference has all come up in your estimation, out of the extension of the line from Leachville?

Mr. McClelland: And the location of the E. Sondheimer Lumber Company at Littleton, and the securing by our company of the tonnage of the Little Lumber Company.

Mr. Gutheim: Does the E. Sondheimer Lumber Company have the Jonesborough Lake City & Eastern Railroad outlet?

Mr. McClelland: They do, sir.

Mr. Gutheim: How long has it been at Littleton?

Mr. McClelland: Why, they have purchased, and had also shipped in,—purchased a great deal of lumber; the Little Lumber Company manufactured it at Littleton; it has a yard there, and they make direct shipments to the mill from Littleton.

Mr. Gutheim: How long has it been at Littleton? That is, with the Jonesborough Lake City & Eastern connection.

Mr. McClelland: I should say that their first location there was about the middle of July, or the first half of July, of this year.

Mr. Gutheim: But I understood you to say they had been there for some time?

4084 Mr. McClelland: The Little Lumber Company people have.

Mr. Gutheim: Does the Jonesborough Lake City & Eastern Railroad get any traffic whatever from the E. Sondheimer & Company?

Mr. McClelland: The E. Sondheimer Company is not a mill.

Mr. Gutheim: What is it?

Mr. McClelland: It buys principally from the Little Lumber Company, and also ships a little in there; he is not a mill, he is a distributor; I did not answer your question very well in my answer.

Mr. Gutheim: Very well, go ahead.

Mr. McClelland: The Santa Fe Railroad was unable to furnish cars, and that has been very frequent of late; and the Jonesborough Lake City & Eastern could not furnish cars so they could get the business over the roads; they can reach it the same as ourselves.

Mr. Gutheim: Now, are the card distances that are mentioned on this tariff providing for traffic rights on which the compensation is based, the actual distances or arbitrary distances, assumed for the purposes of the contract?

4085 Mr. McClelland: I don't think a survey was made, but they are the distances according to the mile post and time table; they are supposed to be accurate.

Mr. Gutheim: And part of the consideration for the use of the tracks by those two companies—did you make any arrangement as to the division of the tonnage?

Mr. McClelland: The contract has a provision whereby we are to divide in so far as we can, the local tonnage which originates on our line destined to points on their lines, equally between the cotton belt—or the Paragould Southeastern, and the Frisco systems.

Mr. Gutheim: Now, you pay fifty cents per mile on your trackage right, do you not?

Mr. McClelland: Yes, sir.

Mr. Gutheim: I suppose you carry some business for the general public and get a revenue on it; does that revenue stay in your treasury entirely, or part given for consideration of your trackage rights, to those two companies?

Mr. McClelland: We were forced to enter into a contract with them to give up ninety per cent of the tonnage which originates on our line, and moves over their roads.

4086 Mr. Gutheim: You said ninety-five per cent of the tonnage?

Mr. McClelland: Ninety-five per cent of the gross revenue; pardon me.

Mr. Gutheim: When you take the E. Sondheimer Company's business out of Littleton, where do you deliver it to your connection?

Mr. McClelland: It depends on the way altogether how it is routed.

Mr. Gutheim: Do you take it to Leachville?

Mr. McClelland: No sir, we get——

Mr. Gutheim: Where do you take it?

Mr. McClelland: If it is routed via the Frisco we handle it via

Blytheville, and if it is routed via the Cotton Belt—The Paragould Southeastern Railroad, we handle it to Chickasawba.

Mr. Gutheim: Just how much goes out by the Cotton Belt—is there much?

Mr. McClelland: Why, it depends entirely on the market conditions and has been so for months.

Mr. Gutheim: Your revenue, as a matter of fact, the revenue which accrues, is on a switching service, on that business, is
4087 it not?

Mr. McClelland: No, sir.

Mr. Gutheim: If you have some business in Blytheville or Glenco that is going to Leachville or beyond, you take over that tonnage at the regular rate, how much revenue does your company get out of the rate; what percentage of the rate accrues to your company as revenue?

Mr. McClelland: On all freight which moves over the lines of the parties to the package contract, we must give them ninety-five per cent of the gross revenue.

Mr. Gutheim: So that, for the purpose of doing a little common carrier business, you are giving up ninety-five per cent of what you would ordinarily earn on ordinary or all other business on your line?

Mr. McClelland: Exactly so.

Mr. Gutheim: Does the Fris- system or the Paragoul- Southeastern Railroad perform any service over that line?

Mr. McClelland: Over our line?

Mr. Gutheim: No, over that joint track.

Mr. McClelland: They each involve a division of the serv-
4088 ice over it, and they are protecting their interests solely, when they insist upon that being made a part of the contract.

Mr. Gutheim: Well, that contract means you are prohibited from doing any business over there unless you want to do it for nothing.

Mr. McClelland: No, sir; we have connections with the Frisco at Leachville.

Mr. Gutheim: Well, the Frisco would not give you much business going to Leachville, if they can give it to you at Blytheville if it is originating around there.

Mr. McClelland: You misunderstood me; if we get a carload of live stock, or cotton, or anything of that sort, we can haul and deliver to the Frisco at Leachville; the volume of tonnage from Blytheville and south is very small.

Mr. Gutheim: But what I am getting at is this: the Frisco does not go south of Leachville?

Mr. McClelland: No, sir.

Mr. Gutheim: If you are going to take it to Blytheville and give it to the Frisco system at Leachville—are going to take it from Blytheville, Leachville, Chickasawba or from Arbyrd and
4089 Leachville, and there give it to the Frisco, the Frisco is going to have the pleasure of hauling it back to Arbyrd in order to get it out?

Mr. McClelland: What tonnage are you referring to?

Mr. Gutheim: I refer to tonnage—you say given to your road at Leachville and comes from Glenco?

Mr. McClelland: I said that our arrangement was such that we could deliver it that way; you can see for yourself that it would be utter folly to perform any such service.

Mr. Gutheim: That is the reason I wanted to have it, to find out what your company performs.

Mr. McClelland: The reason we have just an arrangement, and joint arrangement into Leachville, is to take care of the business which originates south of Leachville.

Mr. Swacker: Where is this Singer business going to originate, south of Leachville?

Mr. McClelland: Yes, sir.

Mr. Swacker: Now, supposing some of that wanted to move on the Cotton Belt, would you have to give up ninety-five per cent of that too?

4090 Mr. McClelland: No, sir.

Mr. Swacker: Why not?

Mr. McClelland: For the simple reason that that arrangement whereby we pay, it would all be billed through direct, and provides that on business originating on our line, destined to points on the other lines, that we shall receive our share; there is nothing in the contract which would in any way affect that.

Mr. Gutheim: Did you include in your general statement anything in reference to the number of men which you have out on the road?

Mr. McClelland: I do not believe I did, sir.

Mr. Gutheim: About how many road crews do you have?

Mr. McClelland: I can tell exactly; I can tell you what we have.

Mr. Gutheim: All right.

Mr. McClelland: About twenty-seven section men; three crews, as I recall it.

Mr. Gutheim: Have you any station employees?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Solely in your own service or joint?

4091 Mr. McClelland: At Leachville we have a joint agency with the Frisco, and with the Jonesborough Lake City and Eastern; at Glenco we have our own agent.

Mr. Gutheim: Have you any other agency

Mr. McClelland: No, no other agency.

Mr. Gutheim: The Leachville depot is a joint building?

Mr. McClelland: Yes, sir.

Mr. Gutheim: How about Glenco; do you have an agent there?

Mr. McClelland: Yes, sir.

Mr. Gutheim: That is at the freight depot?

Mr. McClelland: No, sir, we have a freight platform there, and the agent's office is in the building occupied by the Chicago Mill & Lumber Company, but it is boarded off entirely free from the mill office.

Mr. Gutheim: Is there anything in the line of stations buildings on the line between Leachville and Lepanto Junction.

Mr. McClelland: Nothing at all except platforms, and cinders and such.

Mr. Gutheim: And at Glenco is your employee, also an employee of the Chicago Mill & Lumber Company?

Mr. McClelland: I don't think so; I don't think he per-
4092 forms any service for the Lumber Company; it is possible though that he does.

Mr. Gutheim: You don't know whether his compensation is received from the Lumber Company?

Mr. McClelland: He is presumed to work entirely for the railroad company.

Mr. Gutheim: In your statement, did you say anything with reference to the train service?

Mr. McClelland: Yes, sir, I covered that, I believe.

Mr. Gutheim: Logging for the Chicago Mill & Lumber Company is now being performed south of Lepanto Junction entirely, is it not?

Mr. McClelland: No, sir.

Mr. Gutheim: Is it along the line between Leachville and Lepanto Junction?

Mr. McClelland: As far as our railroad is concerned, yes, sir.

Mr. Gutheim: Now, do you get logs in from other directions over your line?

Mr. McClelland: Yes, sir.

Mr. Gutheim: How about the spur operations connected with the line of this road; is that attended to and conducted by the
4093 Chicago Mill & Lumber Company

Mr. McClelland: We have no logging spurs whatever.

Mr. Gutheim: You log direct from your main line?

Mr. McClelland: No, sir; if you will allow me I will explain.

Mr. Gutheim: Go ahead.

Mr. McClelland: Where there are no spurs—we run those spurs out into the roads; we run spur sidings, which we place along the right-of-way of the railroad.

Mr. Gutheim: They just run off every thousand feet or so?

Mr. McClelland: No, every mile or two on the right of way to different extent—the siding does not extend off the right of way, and the mill company perform their own services with logging teams and contractors hauling the timber in as to all other shippers on our line.

Mr. Gutheim: So it is merely an industrial side-track parallel with your main line to hold the business?

Mr. McCleland: That is the idea.

Mr. Gutheim: The actual logging operations are done on vehicles which do not run on rails?

Mr. McClelland: Yes, sir.

Mr. Gutheim: So that the Chicago Mill & Lumber Company as such, is not operating any railroad property in this
4094 vicinity?

Mr. McClelland: With this exception, the Chicago Mill & Lumber Company as well as any other shipper of forest products on our line, have the privilege and do lease from us from time to time a switch engine to handle the log loader which belongs to the

Mill Company up and down the line, for which they pay a daily rental of fifteen dollars a day, which includes the engine crew etc. That is the only connection the Chicago Mill & Lumber Company has with the railroad.

Mr. Gutheim: The small operators of forest industries along the line, particularly in and about Glenco, do that to get in all their timber or raw material over the line of the Chicago Mill & Lumber Company?

Mr. McClelland: No, sir.

Mr. Gutheim: Do you handle any passenger service—was that in your statement?

Mr. McClelland: Yes, sir.

Mr. Gutheim: The United States mail also?

Mr. McClelland: No mail.

Mr. Gutheim: Any express?

Mr. McClelland: Yes; will you allow me to make a little
4095 explanatory note?

Mr. Gutheim: Yes.

Mr. McClelland: The express business is handled on the basis of less than carload freight rates, and taken care of in the motor cars.

Mr. Gutheim: Have you an express contract?

Mr. McClelland: No, sir, no express contract.

Mr. Gutheim: What is the division that you get in cents per one hundred pounds from your connections to whom you deliver fifty per cent of your traffic?

Mr. McClelland: Two cents per one hundred pounds.

Mr. Gutheim: That comes out of the junction point rate?

Mr. McClelland: Yes, sir.

Mr. Gutheim: How about the Chapman-Dewey Lumber Company's mill; what do they pay over and above the junction point rate?

Mr. McClelland: They pay the junction point rate at Leachville, sir.

Mr. Gutheim: Out of them you get the same two cents?

Mr. McClelland: Yes, sir.

Mr. Gutheim: In the case of the Chapman-Dewey Lumber
4096 Company, you perform a haul of some fifteen miles?

Mr. McClelland: Twenty miles.

Mr. Gutheim: Well, say twenty miles.

Mr. McClelland: Yes.

Mr. Gutheim: And you get the same two cents there that you get on the hauls from Glenco for the Chicago Mill & Lumber Company?

Mr. McClelland: Yes, sir.

Mr. Gutheim: What consideration or rate does the Chicago Mill & Lumber Company pay for the local lumber haul to the Glenco mill?

Mr. McClelland: That varies, sir; it is an interstate mileage tariff, which is used by all shippers on our line, and is graded from two cents upwards, according to the distance.

Mr. Gutheim: You mean all shippers of logs on your line?

Mr. McClelland: Yes, but it is a regular mileage tariff; classes and commodities are also provided for in the mileage tariff.

Mr. Gutheim: In your passenger business, do you handle it on regular tickets or on a cash fare basis?

4097 Mr. McClelland: We have only had passenger business——

Mr. Gutheim: You spoke of that.

Mr. McClelland: —for a very short time; I believe everything is in order, and tickets are being issued to my knowledge.

Mr. Gutheim: Your line publishes regular local tariffs and files them with the Commission?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Do not the Chapman-Dewey Lumber Company run an industrial railroad, unincorporated, that serves Lepanto Junction plant?

Mr. McClelland: They are at Shaw's.

Mr. Gutheim: That is their road shown in white on the map?

Mr. McClelland: They have no road whatever.

Mr. Gutheim: They did have a road?

Mr. McClelland: They never had a road, sir. The reason the road shows as it does, was that at that point we have all of our construction stuff located there on this siding, to take care of construction work; the Chapman-Dewey Lumber Company provide for their logging in the same manner as the Chicago Mill & Lumber Company does, by hauling two to three miles by team.

4098 Mr. Gutheim: Is your road being operated on a paying basis?

Mr. McClelland: Yes, sir.

Mr. Gutheim: Have you paid any dividends at all?

Mr. McClelland: No, sir.

Mr. Gutheim: The surplus has been handled in what way?

Mr. McClelland: It has gone into betterments.

Mr. Gutheim: Used in the construction of this road south of Leachville.

Mr. McClelland: Yes, sir.

Mr. Gutheim: Now you said that you had borrowed more or less money from a bank for the construction of your road also. Where did you get the rail for your road south of Leachville; at least for part of it that was built most recently?

Mr. McClelland: We purchased it sir, in the market, from any place we could.

Mr. Gutheim: It was relay rail?

Mr. McClelland: It was used rail, yes, sir.

Mr. Gutheim: Did it come from Cairo-Memphis South Railroad Transportation Company?

Mr. McClelland: No, sir.

4099 Mr. Swacker: You spoke of the Boynton Land & Lumber Company.

Mr. McClelland: Yes, sir.

Mr. Swacker: They have a private industrial road there, haven't they, not incorporated?

Mr. McClelland: They have a plant on our line, sir.

Mr. Swacker: They just bought on your line, is that the idea?

Mr. McClelland: They own stumpage and timber on our line; they have a plant as I understand it, at Paulding, Missouri; I know nothing about their operations.

Mr. Swacker: I suppose you know very little about the affairs of the Chicago Mill & Lumber Company also?

Mr. McClelland: Why, I know something of their affairs, yes.

Mr. Coleman: You say there are no milling in transit privileges on your line?

Mr. McClelland: No, sir.

Mr. Coleman: Are there any milling in transit privileges on that part of the Jonesborough Lake City & Eastern Railroad which competes with yours?

4100 Mr. McClelland: There are, certainly.

Mr. Coleman: Can you name the points at which those privileges are allowed by their tariff?

Mr. McClelland: Yes, sir, the privileges are allowed at all points providing the shipper wishes to take advantage of the milling in transit provision, and signs a contract guaranteeing that he will ship out-bound a certain percentage of the logs in-bound; that is covered by regular tariff. Certain percentages is prescribed.

Mr. Coleman: What is the western terminus of the Jonesborough Lake City & Eastern Railroad?

Mr. McClelland: Jonesborough, Arkansas.

Mr. Coleman: That is an old town, isn't it?

Mr. McClelland: Yes, sir.

Mr. Coleman: What connecting carriers connect with the Jonesborough, Lake City & Eastern Railroad at that point?

Mr. McClelland: The Frisco and Cotton Belt systems.

Mr. Coleman: What is the first station on the Jonesborough, Lake City & Eastern Railroad, east of Jonesborough?

Mr. McClelland: As I recall it, Nettleton.

Mr. Coleman: What connecting carriers are at Nettle-

4101 ton?

Mr. McClellan: The St. Louis, Iron Mountain & Southern.

Mr. Coleman: What is the eastern terminus of the Jonesborough, Lake City and Eastern Railway?

Mr. McClelland: On the Mississippi River, at Barfield, Arkansas.

Mr. Coleman: Do you know the length of that line?

Mr. McClelland: I think it is about sixty miles—sixty-two or three, something of that sort.

Mr. Coleman: I think it is eighty-five; I want you to be sure.

Mr. McClelland: That provides for the branch which runs from Dale to Osceola; I did not include that in my calculation.

Mr. Coleman: Has the Blytheville, Leachville & Arkansas Southern Railroad Company exercised the right of eminent domain?

Mr. McClelland: Yes, sir.

Mr. Coleman: By proceedings in court?

Mr. McClelland: Yes, sir.

Mr. Coleman: Will you identify the map which has been referred

to as a correct map drawn to scale, and file it as exhibit 2 in your testimony?

4102 Mr. McClelland: I do, sir.

The map so offered and identified was received in evidence and thereupon marked "Defendants' Exhibit No. 2", December 15th 1910, received in evidence, page 57, and is attached hereto.

Mr. Coleman: I would like to offer in evidence the deed from the Chicago Mill & Lumber Company to the Blytheville, Leachville & Arkansas Southern Railroad Company, and also the bill of sale, both of which have been referred to.

Examiner Boyle: Well, you may have the witness offer them.

Mr. McClelland: I have the originals here, and I will have copies made as soon as I reach home, and send them to the Interstate Commerce Commission.

Mr. Coleman: I ask leave for the witness to prepare copies and file them.

Examiner Boyle: To be properly certified?

Mr. McClelland: Yes, sir.

Mr. Coleman: You have a joint depot at Leachville?

Mr. McClelland: Yes, sir.

Mr. Coleman: Was that depot constructed by the owners

4103 under an order from the Arkansas Railroad Commission?

Mr. McClelland: Yes, sir.

Mr. Coleman: They issued an order compelling you all to build a depot there?

Mr. McClelland: Yes, sir.

Mr. Gutheim: That is the depot of the three lines there?

Mr. McClelland: Yes, sir, the old depot burned down.

Mr. Coleman: I want to make it clear about the right-of-way of the original ten miles of track, which was afterwards taken up; is it not a fact that the contract provided that when that track was taken up, the right-of-way should revert to the Chicago Mill & Lumber Company, and in consideration of that they were to deed to the Blytheville, Leachville & Arkansas Southern Railroad Company an equivalent right on this land as finally extended?

Mr. McClelland: That is true.

Mr. Coleman: And that was afterwards done?

Mr. McClelland: Yes, sir.

Mr. Swacker: Was the timber all cut out on that line then?

4104 Mr. McClelland: I think it was, sir.

Mr. Coleman: You spoke of the Chicago Mill & Lumber Company owning one share of the Stock of the Jonesborough Lake City & Eastern Railroad?

Mr. McClelland: Yes, sir.

Mr. Coleman: Is it not a fact that the Chicago Mill & Lumber Company loaned the Jonesborough, Lake City & Eastern Railroad, fifty thousand dollars, at the time that they extended their line from Barfield, on the Mississippi?

Mr. McClelland: Yes, sir.

Mr. Coleman: And they gave as part security for that loan—the railroad company issued to the Chicago Mill & Lumber Company one share of stock so that the Lumber Company could have a member on the board of directors as security?

Mr. McClelland: That is true.

Mr. Gutheim: Do the officials of your company receive any exchange transportation—free transportation from connecting carriers?

Mr. McClelland: They certainly do, yes, sir.

Mr. Gutheim: And you issue free transportation to them in exchange?

4105 Mr. McClelland: Yes, sir.

Mr. Gutheim: What carriers favor you with such transportation?

Mr. McClelland: Practically all carriers in the country, sir.

Mr. Gutheim: What arrangements are there at Glenco providing for the interchange of cars; are settlements made on a per diem or demurrage basis?

Mr. McCleland: Our interchange is all after Leachville, Jonesborough, and Blytheville,—but I will say for these points we have no interchange; at Glenco at the present time there is no arrangement for it between our connections; we insisted upon being placed upon the per diem arrangement, and in the interval the charge are being packed up against us; I don't know just what adjustment will be made of them.

Mr. Gutheim: They are being packed up against you, you mean the charge is being made on a demurrage basis?

Mr. McClelland: At the present time, no, sir.

Mr. Gutheim: How long has that arrangement been going on?

4106 Mr. McClelland: I could not tell you offhand; some considerable time.

Mr. Gutheim: Since the operation of the railroad as a corporation?

Mr. McClelland: No, sir.

Mr. Gutheim: This contract provides that the party of the second part, which is the Blytheville, Leachville & Arkansas Southern Railroad, shall not transport any passengers on its trains, and that the *agreement* shall not transport any freight on its trains, except that which originates on its own rails, destined to points on its own rails: that absolutely prohibits you doing any business which originates here, unless it is going over here to the line south of Leachville.

Mr. McClelland: That is true sir; I never knew a trackage contract between traffic—trunk line carriers that have any other provision.

Mr. Swacker: Referring to the exchange of transportation, were any of the recipients of it—had any of them any duties connected with the Chicago Mill & Lumber Company?

Mr. McClelland: Yes, sir.

4107 Mr. Swacker: They used them in the business of the Chicago Mill & Lumber Company?

Mr. McClelland: Not in selling business; they used it personally, generally; they make general use of the transportation.

Examiner Boyle: Does this Blytheville, Leachville & Arkansas Southern Railroad assess demurrage against the Chicago Mill & Lumber Company?

Mr. McClelland: They certainly do, yes, sir; against every shipper on our line. That is provided by a tariff covering it.

Mr. Coleman: Is the Blytheville, Leachville & Arkansas Southern Railroad assessed by the State Railroad Board of Assessors as a railroad, or as private property?

Mr. McClelland: By the State Board of Railway Assessors.

Mr. Swacker: Is there any other contract in existence between the Chicago Mill & Lumber Company and the Blytheville, Leachville & Arkansas Southern Railroad Company, other than this bill of sale and the transfer of the old line?

Mr. McClelland: Absolutely none.

Whereupon, at the hour of 4:30 o'clock P. M. on the
4108 15th day of December 1910, the hearing of the above entitled matter was closed.

4109 *The Mississippi Valley Railway Company.*

NEW ORLEANS, LOUISIANA, *December 15th*, 1910.
4 p. m.

Examiner Boyle: We will now take up the case of the Mississippi Valley Railway Company.

J. H. MCFARLAND, was called as a witness, and being duly sworn, testified as follows:

Direct examination:

Mr. Gutheim: Where do you live?

Mr. McFarland: Caruthersville, Missouri.

Mr. Gutheim: Your occupation is what?

Mr. McFarland: At the present time I am general manager of the Tyler Land & Timber Company.

Mr. Gutheim: Have you any official connection with the Mississippi Valley Railway Company?

Mr. McFarland: I am manager of the road.

Mr. Gutheim: Have you a map of your line that will show us the general geographical location?

Mr. McFarland: Yes, sir.

Mr. Gutheim: Will you offer it in evidence?

Mr. McFarland: Yes, sir, here it is.

4110 The map so offered and identified, was received in evidence, and thereupon marked "Defendant's Exhibit No. 1", received in evidence, December 15th 1910, and is attached hereto.

Mr. Gutheim: Will you indicate on this map the location of your road?

Mr. McFarland: This is it here.

(Witness indicates on the map.)

Mr. Gutheim: It runs from Tyler on the Mississippi river in a general westerly direction through junction, Cooter, Steele, where it has a connection with the Frisco, and thence through Denton to a termius called Dolphin.

Mr. McFarland: Yes, sir.

Mr. Gutheim: And the total mileage is, Mr. McFarland——

Mr. McFarland: I think it is fifteen and forty-one hundredths miles.

Mr. Gutheim: What is the nature of the territory that is served by this road? What are the industries that are located thereon, and furnish traffic for it?

Mr. McFarland: It is a farming country at the present time, and has a number of cotton gins at the industries, and one stave mill.

4111 Mr. Gutheim: What industry furnishes the majority of the tonnage that the road handles?

Mr. McFarland: No one industry furnishes a majority of the business. The independent business will amount to about two-thirds of the business of the road—independent outside business—outside of the Tyler Land & Timber Company, will amount to about two-thirds of the business along the road.

Mr. Gutheim: The Tyler Land & Timber Company, of which you speak, is the concern which controls the railroad, is it not?

Mr. McFarland: Yes, sir.

Mr. Gutheim: Is that control exercised through stock ownership?

Mr. McFarland: Yes, sir.

Mr. Gutheim: Has the stock actually been issued?

Mr. McFarland: Not to my knowledge; my information is that it has not been issued.

Mr. Gutheim: So, there is no indebtedness represented by stock; is there any bonded indebtedness?

Mr. McFarland: Yes, sir.

Mr. Gutheim: About how much in bonds is outstanding?

4112 Mr. McFarland: Ninety thousand dollars.

Mr. Zwiebold: The stock is supposed to have been issued, but the records of the former owners and stockholders have been mislaid. We are trying to locate them, but have been unable to do so, and we are arranging to issue the stock, in case we cannot locate the prior stock issue. We are trying to locate through a man named Tyler.

Mr. Gutheim: Do I understand that the books of the company show no liability on account of a stock issue?

Mr. McFarland: Not so far as we can locate the record.

Mr. Zwiebold: That is it, Mr. McFarland.

Mr. McFarland: Well, there has not been any stock issued.

Mr. Zwiebold: There are no separate books of record of the railroad company, but separate items of account in the books of the Tyled Land & Timber Company, indicate the timber company's busi-

ness, and the railroad company's business; that is the situation is it not, Mr. McFarland?

Mr. McFarland: Yes, sir; no separate books have been kept by the railroad company.

4113 Mr. Gutheim: Do you know who holds the outstanding bonds of the company?

Mr. McFarland: William V. Colley of Liberty, Missouri.

Mr. Gutheim: Is there any other indebtedness at the present time?

Mr. McFarland: Yes, as of the Tyler Land & Timber Company's books, it furnished a part of the money for building that road; it will be thirty-seven thousand dollars.

Mr. Gutheim: So at the present time there is a debt of about one hundred and twenty-seven thousand dollars—an indebtedness which was used originally in the construction of the railroad.

Mr. McFarland: That is my information; yes, sir.

Mr. Gutheim: The railroad owned, is about how long?

Mr. McFarland: It is now about fifteen and forty-four one hundredths miles long.

Mr. Gutheim: Was this railroad constructed about the time the Tyler Land & Timber Company began operating in this country?

Mr. McFarland: Yes, sir.

Mr. Gutheim: How was it constructed——

4114 Mr. McFarland: Let me qualify that a little bit. The railroad was built before the organization of the Tyler Land & Timber Co.

Mr. Gutheim: By the predecessor of the Tyler Land & Timber Company?

Mr. McFarland: Yes, sir.

Mr. Gutheim: And the predecessor of the Tyl*and* Land & Timber Company was engaged in the same business as the Tyler Land & Timber Company?

Mr. McFarland: No, sir, they were engaged in the lumber business.

Mr. Gutheim: What was the name of that company, do you know?

Mr. McFarland: Seller & Tyler; that was a brother of Walter Tyler, and J. A. Seller; then J. A. Seller & Company.

Mr. Gutheim: When the property was owned by Seller & Tyler, and then by J. A. Seller & Company, was it a separately incorporated railroad?

Mr. McFarland: They built and incorporated the railroad company, just prior to selling the entire business out.

Mr. Gutheim: The land through which it runs is largely cut over?

4115 Mr. McFarland: No; part is farm land; nearly all of it is cleared up at the west end, tha tis different land, cut over land.

Mr. Gutheim: Where is the mill of the Tyler Land & Timber Company?

Mr. McFarland: Here at Tyler.

Mr. Gutheim: On the river?

Mr. McFarland: It is not on the river; the levee runs along the river there, about a quarter — from the river bank.

Mr. Gutheim: The railroad, so far as you know, was originally built as a part of the development of the timber industry by the original owners, and built with their money, and held by them and so used?

Mr. McFarland: Yes, I guess that is about correct.

Mr. Gutheim: How far do you go from Tyler along the road before you strike any timber which is now being cut for the purposes of the Tyler Land & Timber Company?

Mr. McFarland: On the main line we would have to go to the end of the line; there is a spur that runs down here, (Witness indicates on map), where we have been getting logs and timber off the tract: we have no saw mill.

4116 Mr. Gutheim: Well, at the present time, are any officers of the Tyler Land & Timber Company officers also of the railroad company?

Mr. McFarland: Yes, sir.

Mr. Gutheim: All of them?

Mr. McFarland: Yes, they are officers, but they don't hold just the same offices; we don't have them listed or named as the same officers.

Mr. Gutheim: But the same individuals?

Mr. McFarland: The same individuals, yes, sir.

Mr. Gutheim: These branches that you speak of that run off here from junction south to Arkansas, a little distance west, are they owned by the railroad company?

Mr. McFarland: Yes, that has been taken out.

Mr. Gutheim: This branch running to the south has been taken out?

Mr. McFarland: Down to about the state line; there is then another lumber line, that is about—another line on that run out, which runs into their timber, which was built to haul logs.

4117 Mr. Gutheim: Proceeding west from Tyler, is there any settlement at Junction?

Mr. McFarland: No, sir, there is a settlement *there is a settlement* at Forks, going over there on the train.

Mr. Gutheim: Is there any settlement at Cooter?

Mr. McFarland: Yes, there is a little settlement there.

Mr. Gutheim: Have you an agency at Cooter?

Mr. McFarland: Yes, we have a man there to deliver freight and take receipts?

Mr. Gutheim: Have you a station building?

Mr. McFarland: We have a building at Cooter.

Mr. Gutheim: What is the situation at Steele; do you have an agent at that point?

Mr. McFarland: At Steele, yes; we pay the Frisco to run over their track over to their depot, and have the services of their agent, and whatever services their agent renders us, we adjust the total with them.

Mr. Gutheim: How much of the Frisco tracks do you use?
Mr. McFarland: Only a few steps.
Mr. Gutheim: Then at Denton is there a community
4118 there?
Mr. McFarland: Yes, two stores, and a man who takes receipts and delivers freight for us.
Mr. Gutheim: How about the situation at Dolphin?
Mr. McFarland: There is no settlement there.
Mr. Gutheim: About what population would you say is served by your line, to which you render railroad service?
Mr. McFarland: Well, that would be a pretty broad statement to make; in this country—a farming country, I could hardly estimate what it amounts to.
Mr. Gutheim: Is it five thousand people?
Mr. McFarland: No, sir, there would not be that many. I should think two thousand would be pretty close to it.
Mr. Swacker: How much do you pay the Frisco at Steele for the use of its tracks?
Mr. McFarland: Four hundred dollars per annum.
Mr. Gutheim: Your road is a standard gauge, is it not?
Mr. McFarland: Yes, sir.
Mr. Gutheim: What is the weight of rail?
Mr. McFarland: Sixty pounds.
Mr. Gutheim: Have you any bridges?
Mr. McFarland: Four trestles — three trestles and one bridge.
4119 Mr. Gutheim: What equipment do you have?
Mr. McFarland: Two locomotives and about forty logging cars; flats, they call them.
Mr. Gutheim: Have you any passenger cars?
Mr. McFarland: We have a combination car; one end is used for baggage and the other end for passengers.
Mr. Gutheim: Is this equipment all fixed up with safety appliances as required by the Federal law?
Mr. McFarland: Well, I am not familiar with what is required by the Federal law.
Mr. Gutheim: Well, logging equipment does not have to have air brakes, but are your locomotives taken care of, or equipped with safety appliances?
Mr. McFarland: The large one has the equipment that you speak of, I think, but I don't believe the smaller one has. We don't use the small one, except in cases of emergency.
Mr. Gutheim: Have you a telephone or telegraph line?
Mr. McFarland: A telephone line has just been put in.
Mr. Gutheim: Is it used in dispatching trains?
Mr. McFarland: No, sir.
4120 Mr. Gutheim: About how many men have you employed in the railroad operations—for the use of the railroad altogether?
Mr. McFarland: The operating crew on the train, section men and all?
Mr. Gutheim: Yes; train crews, section men, and all?

Mr. McFarland: About twenty-seven all the time, and then we use what we call the "log loading crew" part of the time; when not in use loading logs.

Mr. Gutheim: Are your general offices at Tyler?

Mr. McFarland: Yes, sir.

Mr. Gutheim: In the offices of the Tyler Land & Timber Company?

Mr. McFarland: Yes.

Mr. Gutheim: The general office work is performed by employees —for the joint account of both companies?

Mr. McFarland: Yes.

Mr. Gutheim: Who pays their compensation?

Mr. McFarland: The Tyler Land & Timber Company.

Mr. Gutheim: The Tyler Land & Timber Company simply charges on this account on its books, the railroad company with the fixed proportion due for their services?

Mr. McFarland: We have never undertaken to separate
4121 or determine what proportion the railroad ought to be liable for.

Mr. Gutheim: The railroad is not charged at all?

Mr. McFarland: Not with any salaries.

Mr. Gutheim: What train service do you have?

Mr. McFarland: The train runs out to Steele twice a day.

Mr. Gutheim: That is from Tyler?

Mr. McFarland: In fact it goes to Dolphin once a day, and then to Steele in the evening.

Mr. Gutheim: Does it run on regular schedule?

Mr. McFarland: Yes, sir.

Mr. Gutheim: Have you any published time tables?

Mr. McFarland: No, sir; we have published no time table; of course sometimes there may be a little delay, but pretty nearly always on time.

Mr. Gutheim: Do you handle any mail?

Mr. McFarland: Yes.

Mr. Gutheim: To Steele and what points?

Mr. McFarland: To Cooter entirely.

Mr. Gutheim: Nothing west of Steele?

Mr. McFarland: No, sir.

Mr. Gutheim: Have you any express business?

4122 Mr. McFarland: No, sir; the only express comes at Steele, and the agent gets it for our road, and the conductor will bring it out; that is the only express business.

Mr. Gutheim: About how much passenger service do you have?

Mr. McFarland: What it amounts to in dollars?

Mr. Gutheim: Yes, and the number of passengers say per month.

Mr. McFarland: Well, I would have to figure that out; it runs from three thousand to thirty-six hundred dollars per year; they average about twenty cents apiece, I suppose about sixteen thousand passengers or something like that per year.

Mr. Gutheim: At this point, Mr. Zwiebold, will you have the witness prepare the usual statement of tonnage and revenue, show-

ing the tonnage and revenue accruing on the business of the Tyler Land & Timber Company, and that accruing on business from the outside general public?

Mr. Zwiebold: Yes, sir.

Mr. Gutheim: You have through rates in connection with the Frisco at Steele?

4123 Mr. McFarland: We have had until recently, and they cancelled out everything, except the rates on timber and timber products; that is really what I suppose it amounts to.

Mr. Gutheim: Does all of your product go out via the Frisco, or do you ship some via the river?

Mr. McFarland: We don't exactly ship any by the river, but we bring in logs by the river; we have a contract, but we don't do any shipping that way.

Mr. Gutheim: Do you have a local freight tariff?

Mr. McFarland: We have never published any local freight tariff.

Mr. Gutheim: What charges do you make for the hauls locally on your line?

Mr. McFarland: For merchandise and such stuff as that, we have to handle, we have always undertaken to charge about ten cents per one hundred pounds, and for what few carloads we have had, they have been paying less than five dollars from Steele; we have always charged five dollars per car on grain and cotton seed and cotton, from Cooter and Denton and one or two points. We have to haul these things—it is eight dollars from Cooter, and ten dollars from Tyler.

4124 Mr. Gutheim: That covers practically all of the commodities which you move, I suppose?

Mr. McFarland: Yes, about all.

Mr. Gutheim: And the rates on staves that are put on a connection with the Frisco via Steele, what division does your line get?

Mr. McFarland: Two cents per one hundred pounds.

Mr. Gutheim: When you have rates on merchandise and classes and commodities, what did you get out of those rates?

Mr. McFarland: We got twenty-five per cent of whatever the Frisco rate was; twenty-five per cent of their haul.

Mr. Gutheim: Is the two cent division on the staves, a division of the milling in transit business?

Mr. McFarland: I don't know that I understand that. Going entirely over the Frisco road, as I understand it; we had the same rate we do to Steele, and Carruthersville.

Mr. Zwiebold: The division you receive from the Frisco, does not include any payment for the hauling of the logs?

4125 Mr. McFarland: Oh, no; no, sir. The Tyler Land & Timber Company simply pays the railroad company five dollars per car for blocks and logs.

Mr. Gutheim: Do you handle any ticket business or passenger business on regular tickets, or on cash fares?

Mr. McFarland: On cash fares and some ticket business.

Mr. Gutheim: Do you have any way bills and bills of lading of your own?

Mr. McFarland: Yes, sir.

Mr. Gutheim: Do you bill staves through from Tyler to destination?

Mr. McFarland: Yes, sir.

Mr. Gutheim: And haul them locally to Steele? You bill them locally on Steele?

Mr. McFarland: No, entirely through to destination.

Mr. Gutheim: Is the railroad a paying proposition?

Mr. McFarland: No, sir; it has never paid expenses.

Mr. Gutheim: Who finances the deficit?

Mr. McFarland: The Tyler Land & Timber Company.

Mr. Gutheim: And that deficit is a part of the amount that stands on your books as due them?

Mr. McFarland: No, sir; no part of it.

4126 Mr. Gutheim: How is it handled then?

Mr. Ziebold: Do you charge it to profit and loss?

Mr. McFarland: The interest—we simply have the interest upon the bonds, and it is charged to that account; that interest account. The Tyler Land & Timber Company—it is charged off, and that is put on the books; these two items have not been carried separately; if they were the road would be away behind by reason of the fact that the Tyler Land & Timber Company simply pays the deficit; that is all there is to it.

Mr. Gutheim: Are you filing monthly and annual reports with the Interstate Commerce Commission?

Mr. McFarland: No, sir.

Mr. Swacker: On this business—this spur extending down toward Arkansas; that is moved over to the river and forwarded by car from Tyler?

Mr. McFarland: No, sir; there has been no business over that spur; that went to the river. That all went up to Steele.

Mr. Swacker: That all went up to Steele?

Mr. McFarland: Yes, sir

Mr. Swacker: And then out via the Frisco?

Mr. McFarland: Yes, sir.

4127 Mr. Swacker: You say you have no published tariff?

Mr. McFarland: No; that was a local haul; it was a contract that Mr. Franklin made.

Mr. Swacker: That is an interstate haul?

Mr. McFarland: Yes, it would be; they do come out of Arkansas into Missouri.

Mr. Gutheim: That is, the spur from the plant runs through junction south?

Mr. McFarland: They own all in Arkansas.

Mr. Gutheim: Do you operate it for them?

Mr. McFarland: Well, we take cars down and deliver them, and we pull back to Steele.

Mr. Gutheim: You take them down as far as the track goes?

Mr. McFarland: Yes, sir, down to the end of the track; to their timber.

Mr. Gutheim: They do the operation on that basis?

Mr. McFarland: No, sir; we ship down on their track, and they

load the cars, and then we go down and hitch on and pull them back.

Mr. Gutheim: Do the officers of your company get any free transportation from connections?

Mr. McFarland: Two of them.

4128 Mr. Gutheim: Whose?

Mr. McFarland: Some from the Frisco, or something beyond the Frisco; we have had C. & D. I.

Mr. Gutheim: Who are the two officials that receive them?

Mr. McFarland: Mr. Franklin and myself.

Mr. Gutheim: What is Mr. Franklin's position with the Stave Company?

Mr. McFarland: Vice-President of the Stave Company, and he always calls himself president of the railroad company.

Mr. Zwiebold: Do you run passenger trains on Sunday?

Mr. McFarland: Yes, it is a mixed train that delivers freight, every day in the year.

Mr. Zwiebold: Including Sunday?

Mr. McFarland: Yes, sir.

Mr. Zwiebold: Among the outside industries on the line, is this about a correct list, W. A. Green, E. M. Mackey, the Cooter Supply Company, etc.?

Mr. McFarland: Those are about all of the industries with which the Tyler Land & Timber Company, or any of the stockholders of the company have no interest.

Mr. Zwiebold: Yes.

4129 Mr. McFarland: The Tyler Land & Timber Company has no interest, but one of the stockholders holds a little in the stores of the Cooter Supply Company there at Cooter; I don't know how much, but he owns a small interest in it.

Mr. Zwiebold: The others are entirely independent?

Mr. McFarland: Yes, sir.

Examiner Boyle: They are competitors of your company?

Mr. McFarland: We have no interest in them in any way; I don't know about their being competitors;

Examiner Boyle: They are in the stave and lumber business?

Mr. McFarland: No, sir.

Examiner Boyle: What are they?

Mr. McFarland: Cotton gins and stores.

Examiner Boyle: You said the traffic of the Tyler Land & Timber Company is about one-third of the traffic of your road?

Mr. McFarland: Yes, sir.

Examiner Boyle: The other two-thirds is represented by independent tonnage?

Mr. McFarland: Yes, sir.

4130 Mr. Swacker: That is not one-half of the output of the mill, but such as agricultural products; is that included in the one-half?

Mr. McFarland: They don't handle any agricultural products.

Mr. Swacker: Don't they own farms?

Mr. McFarland: There are some rented — farmers; they haul to

Cooter and Steele; we have never had anything to do with the product of that road; the ordinary hauls for the Tyler Land & Timber Company, logs to the mill, and staves, away from it occasionally, some lumber around to build a house perhaps.

Mr. Gutheim: You are not keeping separate books for the railroad company?

Mr. McFarland: No, sir.

Mr. Gutheim: Still you have a separate account on the Tyler Land & Timber Company's books?

Mr. McFarland: Yes, that is the way it is carried.

Mr. Gutheim: Does the country which your company runs over, hold out pretty good prospects for farming?

Mr. McFarland: In and adjacent to Tyler, it has just been put into farms.

Mr. Zwiebold: You are now arranging to separate your accounts and keep proper book accounts and reports and statistics
4131 and data, as soon as you can understand their requirements?

Mr. McFarland: Yes, I am ready to do it if it is necessary.

Examiner Boyle: You have not considered it necessary?

Mr. McFarland: I simply didn't know whether it was necessary or not.

Mr. Zwiebold: Look at that blue print of your line which has been marked Exhibit No. 1, and which is marked "Mississippi Valley Railroad", and which represents a map of the Mississippi Valley Railway Company located in Missouri, and connecting with the Frisco Railroad at Steele, Missouri.

Mr. McFarland: Yes, sir.

Mr. Zwiebold: What is the name of your railroad?

Mr. McFarland: The name of our railroad is, The Mississippi Valley Railway Company; this legend on Exhibit 1, is an error.

Mr. McFarland: Relative to the logging from Hull, Arkansas to Steele, I want to say that logging has been completed entirely, and we will have no more of that.

4132 Mr. Zwiebold: You will have no more haul on that traffic?

Mr. McFarland: No, sir.

Mr. Zwiebold: Your company owns the right-of-way which was acquired by purchase or otherwise,—and part acquired by condemnation out to junction?

Mr. McFarland: Yes, sir.

Mr. Zwiebold: When you run home, you want to ascertain and furnish definitely the information which has been requested?

Mr. McFarland: Yes, sir.

Mr. Zwiebold: And furnish the information to be furnished to the Commission?

Mr. McFarland: Yes, sir.

Whereupon, at the hour of 4.30 O'clock P. M., on the 15th day of December 1910, the hearing of the above entitled matter was closed.

4133 *The Black Bayou Railroad Company.*

NEW ORLEANS, LOUISIANA, *December* 15, 1910,
4:30 P. M.

Examiner Boyle: We will now take up the case of the Black Bayou Railroad Company.

W. H. WELCH, was called as a witness, and after being duly sworn, testified as follows:

Direct examination:

Mr. Gutheim: What is your name?
Mr. Welch: W. H. Welch.
Mr. Gutheim: Where do you reside?
Mr. Welch: Myrtistown, Louisiana.
Mr. Gutheim: And your occupation is what?
Mr. Welch: I am the President and General Manager of the Southern Lumber Company, and the President and General Manager of the Black Bayou Railroad Company.
Mr. Gutheim: Have you a map of the Black Bayou Railroad Company?
4134 Mr. Welch: I did not bring one with me; I can furnish one later, if you want it.
Mr. Gutheim: Will you do so?
Mr. Welch: Yes, sir.
Mr. Gutheim: Will you describe the general geographical location of the Black Bayou Railroad Company?
Mr. Welch: Yes, sir; the Black Bayou Railroad begins at Myrtistown, Louisiana—the postoffice is called Myrtistown, but the town is called Myrtis, and runs in a southwesterly direction about seven miles, and we are building now——
Mr. Gutheim: Where is Myrtistown?
Mr. Welch: Myrtistown is half way between Texarkana and Shreveport; on the Kansas City Southern Railway—exactly half way; thirty-five miles to each place.
Mr. Gutheim: This line running from Myrtistown, seven miles across—southwest into Texas?
Mr. Welch: Yes, sir.
Mr. Gutheim: How much of your line is in Texas?
Mr. Welch: About three miles.
4135 Mr. Gutheim: What is the terminus in Texas?
Mr. Welch: Do you mean where we are headed to?
Mr. Gutheim: No, where you are building to.
Mr. Welch: Well, right out in the middle of the woods at the present time.
Mr. Gutheim: There is no locality or community there of any consequence?
Mr. Welch: No, sir, just in the woods.
Mr. Gutheim: What does the Black Bayou Railroad serve principally?

Welch: Well, at the present time on account of the Black Railroad being a new road, the only commodity it hauls at esent time, is logs.

Gutheim: Logs for what company?

Welch: Logs for the Southern Lumber Company.

Gutheim: To what extent is the Southern Lumber Company sted, or the stockholders interested in the Black Bayou Rail- Company?

Welch: The Black Bayou Railroad Company is a separate ration organized under the laws of Texas as a common carrier; e reason that I ascertained, as I ascertained when I took out the Charter, that you cannot get a charter in Texas, unless you agree to become a common carrier.

Mr. Gutheim: Did you take out a charter to become a on carrier, or did you take out a charter so as to qualify to e divisions?

Welch: Well, I will answer that question by stating, that course built the road to have it make money, and the only we could get anything—any earnings on the road, would be gh divisions.

Gutheim: Well, when was the road built?

Welch: Well, I want to make a little explanation as we go there.

ck Bayou Railroad was in existence for a number of years e our road—called the Black Bayou Railroad. The parties who d it originally, sold out to another company, and this party during the panic.

bought out the old railroad; we took up the old tracks; at any we did along places, and built in the swamp, and we have re- the road, and are building it now, from Myrtistown in a westerly direction. We are building it in first-class shape. 't know of any other line of road that is built any better than this one.

Mr. Gutheim: When you say "we bought the old Black Bayou Railroad", do you refer to the Southern Lumber any?

Welch: The Southern Lumber Company bought the Black u Railroad and the other assets, including the Black Bayou ber Company, which was very small, and amounted to prac- y nothing.

Gutheim: It was a chartered company?

Welch: We bought it for the rails and equipment. Then count of this old company being in trouble during the panic, charter was forfeited, and they got out a new charter—we got new charter early in this year under which we are now oper-

e have no connection whatever with the old Black Bayou oad Company, except that we use the steel and equipment they

Gutheim: Well, it practically amounts to this then, that

you bought the steel and fastenings and ties of what was formerly called the Black Bayou Railroad Company?

Mr. Welch: We never used any of the ties, no, sir.

Mr. Gutheim: Who now owns the stock of the present Black Bayou Railroad Company?

4138 Mr. Welch: The stockholders of the Black Bayou Railroad Company.

Mr. Gutheim: And they are the stockholders of the Southern Lumber Company?

Mr. Welch: Practically, yes, sir.

Mr. Gutheim: Practically—to what extent are there any holdings in the Black Bayou Railroad Company not held by the stockholders of the Southern Lumber Company?

Mr. Welch: It is necessary, in order to conform to the laws of the State of Texas under which we are organized to have so many directors in the State of Texas, and consequently we have two or three small stockholders who are not stockholders in the Southern Lumber Company.

Mr. Gutheim: That is an arrangement, simply to properly qualify directors under the requirements of the State of Texas laws?

Mr. Welch: Yes, sir, practically speaking.

Mr. Gutheim: So that the stock ownership of the Black Bayou Railroad is really identical with that of the Southern Lumber Company?

Mr. Welch: Practically so, but not entirely so.

4139 Mr. Gutheim: Is the mill of the Southern Lumber Company situated at Myrtistown?

Mr. Welch: Yes, sir.

Mr. Gutheim: So that the property of the company—that owned by the Black Bayou Lumber Company——

Mr. Welch: I could not say that the mill is at Myrtistown; we have built a new plant, you understand; I can say that it was owned by the Black Bayou Railroad and the Black Bayou Lumber Company.

Mr. Gutheim: Your building of the present railroad, was practically contemporaneous with the beginning of milling operations by the Southern Lumber Company, at this time?

Mr. Welch: Yes, sir.

Mr. Gutheim: And has extended today—the construction of the present road is done by the Southern Lumber Company?

Mr. Welch: Yes, sir.

Mr. Gutheim: Was the completed road sold to the present railroad corporation in exchange for its securities?

Mr. Welch: The Southern Lumber Company built the

4140 railroad, furnished all of the money to build it—and the stockholders of the Black Bayou Railroad Company have stock in the same proportion that they have stock in the Southern Lumber Company.

Mr. Gutheim: Now, is there any indebtedness of the railroad, outside of the stock?

Mr. Welch: Nothing except what they owe the Southern Lumber Company.

Mr. Gutheim: How much does that indebtedness amount to?

Mr. Welch: It amounts to a little over the amount of the capital stock.

Mr. Gutheim: And the capital stock issue, was what?

Mr. Welch: Fifty thousand dollars.

Mr. Gutheim: And there is an indebtedness of about fifty-five thousand dollars?

Mr. Welch: About a little over fifty thousand dollars; I don't think it is quite fifty-one thousand dollars altogether.

Mr. Gutheim: Then, as it stands, you have about one hundred thousand dollars of indebtedness?

Mr. Welch: No, you misunderstand me. The stock amounts to fifty thousand dollars, while the railroad costs about fifty-one
4141 thousand dollars; not quite fifty-one thousand dollars.

Mr. Gutheim: What you mean then is, that the indebtedness of the railroad to the Southern Lumber Company, is the extent of that cost, over fifty thousand dollars?

Mr. Welch: Well, I haven't the exact figures right with me.

Mr. Gutheim: So that, the road and equipment cost on that basis, say a little over fifty thousand dollars?

Mr. Welch: Yes, sir.

Mr. Gutheim: And the present officers of the road are also the officials of the Southern Lumber Company?

Mr. Welch: Not entirely so, no, sir.

Mr. Gutheim: To what extent are they the same individuals?

Mr. Welch: I hold the same offices in both companies.

Mr. Gutheim: President and General Manager of both companies?

Mr. Welch: Yes, sir.

4142 Mr. Gutheim: What other railroad officers hold offices in the Southern Lumber Company.

Mr. Welch: The second vice-president, and the assistant general freight agent of the railroad, is also secretary and treasurer of the Southern Lumber Company; that is the only other office I think held by them in both companies.

Mr. Gutheim: You said the railroad was seven miles long—about three miles in the State of Texas; is it standard gauge?

Mr. Welch: Yes, sir.

Mr. Gutheim: What weight of rail is used?

Mr. Welch: The first two miles, thirty-five pound steel; all the balance, sixty pound steel rail, and we are going to take up the light steel, which as has been said, is about two miles, and re-place it with sixty pound steel.

Mr. Gutheim: You have no station buildings?

Mr. Welch: No, not yet; you understand we are simply going out where we have nothing but timber; we will have that as a department when we have business to justify it.

Mr. Gutheim: What equipment have you?

4143 Mr. Welch: One locomotive and twenty-six logging cars; one steel car and two hand cars.

Mr. Gutheim: The steel car is used in the reconstruction of the so-called logging spurs?

Mr. Welch: Yes, sir.

Mr. Gutheim: Is that logging spur construction done by the railroad company?

Mr. Welch: The spur construction is done by the railroad company, yes, sir.

Mr. Gutheim: Is there any payment by the Lumber Company for that service?

Mr. Welch: I want to explain to you that we have just practically started operations; I have all the figures, and I am going to make the proper charges and get all the figures on the books; I just simply have not put them on the books; we expect to make a charge and put it all down one day.

Mr. Gutheim: That logging spur work, is solely for the logging by the Southern Lumber Company?

Mr. Welch: The log haul is included in the spur; that is what we call expense money.

Mr. Gutheim: That means including the construction of the spur?

4144 Mr. Welch: Yes, sir; these figures—I understand it is an arbitrary, just making the road show an earning; we may change that a trifle just one way or the other.

Mr. Gutheim: You have no telegraph or telephone service?

Mr. Welch: No, not yet; no, sir. It is not necessary yet.

Mr. Gutheim: Is there any independent operation of the railroad, with an independent corps of employees, or is the work done by the Southern Lumber Company's employees?

Mr. Welch: Employees of the Lumber Company?

Mr. Gutheim: Yes.

Mr. Welch: Do you mean all of the work?

Mr. Gutheim: Yes.

Mr. Welch: All of the work is done by the railroad company's employees?

Mr. Gutheim: You have a regular corps of railroad men—train men?

Mr. Welch: Yes, we have a section crew, and a construction crew, and then we have a train crew.

4145 Mr. Gutheim: What office facilities have you at Myrtistown?

Mr. Welch: The Southern Lumber Company have offices there.

Mr. Gutheim: Are the railroad employees at that point general employees of the railroad company and of the Lumber Company?

Mr. Welch: Practically—well, practically two of them.

Mr. Gutheim: Are they compensated by the Lumber Company solely?

Mr. Welch: They have not done any work—what work has been done in the office has been done by myself: on account of we handled nothing but logs, it was very easy to keep track of it so far.

Mr. Gutheim: You are not in passenger service at all?

Mr. Welch: Not yet; we are not running any passenger trains at all.

Mr. Gutheim: How many log trains do you run daily, and about how many cars in a train?

Mr. Welch: We run about four trains per day, and have been hauling about eight cars to the train, which we will increase very much in the future.

Mr. Gutheim: You handle no mail or express, I take it?

4146 Mr. Welch: We have no place to go to; we haven't got that far along.

Mr. Gutheim: Such passengers as are carried, are carried free?

Mr. Welch: Well, we carry no passengers, except when they get on of their own free will, you understand.

Mr. Gutheim: The entire tonnage at the present time, consists of logs going into Myrtistown, and general camp supplies, going from Myrtistown out, I take it?

Mr. Welch: Yes, sir.

Mr. Gutheim: And that is all for account of the Southern Lumber Company?

Mr. Welch: Yes, that is—of course, like I explained to you, we expect a railroad company to get proper compensation for doing the work.

Mr. Gutheim: In this instance it will not be necessary to furnish a statement of tonnage and revenue.

Mr. Welch: Yes, sir.

Mr. Gutheim: Have you published a local tariff?

Mr. Welch: No, sir, we concur with the Kansas City Southern Railway in their tariff.

Mr. Gutheim: On lumber and forest products only?

Mr. Welch: Anything we haul.

4147 Mr. Gutheim: How is it on your classes and commodities; do you have any through rate in-bound to your logging camps?

Mr. Welch: In-bound where?

Mr. Gutheim: In-bound to your logging camps.

Mr. Welch: Not yet, no, sir; when we get ready to do business, of course we will make this little local tariff.

Mr. Gutheim: What division does the Kansas City Southern Railway allow you on shipment of lumber and forest products?

Mr. Welch: I have not their contract with me, but it ranges as I recall it, from one cent to four cents.

Mr. Gutheim: Will you file with the Interstate Commission a copy, a copy of your contract with the Kansas City Southern Railway Company which provides for these divisions?

Mr. Welch: Yes, sir; where do you want this file sent?

Mr. Gutheim: Just address it to "Edward A. Mosely, Secretary Interstate Commerce Commission, Washington, District of Columbia.

Mr. Gutheim: Does the Kansas City Southern Railway

4148 take out the product of your mill direct, or is it handled by the Black Bayou Railroad Company's equipment?

Mr. Welch: I don't know as I quite understand that.

Mr. Gutheim: Does the Black Bayou Railroad Company's locomotives take your lumber from where it is loaded at the mill, to the

Kansas City Southern Railway's interchange, direct, or, does the Kansas City Southern Railway, with its own power, go right to the Southern Lumber Company's mill?

Mr. Welch: The Kansas City Southern Railway Company goes in and takes out the lumber itself.

Mr. Gutheim: So that the entire service that is performed by the Black Bayou Railroad Company is, the log haul to the mill.

Mr. Welch: At the present time, yes, sir.

Mr. Gutheim: The division therefore is, presumably on a milling in transit basis?

Mr. Welch: Yes, sir; we get a division of the freight rate on the milling and transit arrangement.

Examiner Boyle: Applying from where?

Mr. Welch: Where the logs originate on our road.

Mr. Gutheim: The railroad has not paid any dividends
4149 yet, has it?

Mr. Welch: No, sir; it has not been in business long enough.

Mr. Gutheim: Do any of the general officers receive any salary from the railroad corporation?

Mr. Welch: No, sir; none have done any work but myself, and I have not felt like asking for any yet; I expect to do so soon.

Mr. Gutheim: Does the Kansas City Southern Railway furnish transportation?

Mr. Welch: Yes.

Mr. Gutheim: Does more than one individual of your company get such transportation?

Mr. Welch: Yes.

Mr. Gutheim: How many of them?

Mr. Welch: I believe there is three.

Mr. Gutheim: Yourself and two others?

Mr. Welch: Yes, sir.

Mr. Gutheim: Do you have any free transportation, other than transportation over the Kansas City Southern Railway?

Mr. Welch: I have not personally. I have not personally, and I don't know of the other officers if they have; I don't know.

4150 Mr. Gutheim: Are you keeping separate accounts for the railroad corporation—that is, do you intend to?

Mr. Welch: I have statistics covering everything that we have done up to date—construction and handling these logs; I have them in shape for being put in the books—to make these entries, just like the Interstate Commerce Commission requires; but I will ask you now if I will have to *ask you if I will have* to write them the kind of accounts they want kept?

Mr. Gutheim: Well, if you will address the Secretary of the Commission, I will see that you are furnished with and kept supplied with all the publications of the Commission, on the matter of uniform classification of accounts.

Mr. Welch: All right, sir; I wish you would.

Mr. Swacker: You say that the old Black Bayou Railroad was taken up?

Mr. Welch: Yes, sir; we took it up ourselves.

4151 Mr. Swacker: Well, was the timber all cut out where it was?

Mr. Welch: All that went along; some of the timber out there—on account of all being such small stuff; it was not enough to justify fixing up the track; I would like to state the fact, our road is now going toward a country that has been largely settled up; it was an old country—we are going towards Jefferson, one of the richest towns in Jefferson, and Jefferson gets all of this farming products, cotton, etc, that our road is going to traverse; There is an in-land town between Myrtistown and Jefferson, called Smithland, and I have been informed that Smithland handles about five thousand bales of cotton per year that they have to haul in there by wagons to Jefferson, as well as haul the other farm products. I have been also informed by merchants of Smithland, that they do a large merchandise business with these little points of about one and a half million dollars per year.

Mr. Gutheim: Your line as now constructed, runs through the timber country?

4152 Mr. Welch: We *we* have it built now?

Mr. Gutheim: How far is Jefferson?

Mr. Welch: From Myrtis to Jefferson is twenty-seven miles.

Mr. Gutheim: How far from your terminus in the woods, is it to Jefferson?

Mr. Welch: I think it is twenty-two miles—twenty miles.

Mr. Gutheim: And Smithland is between the present terminus of the railroad and Jefferson?

Mr. Welch: Yes.

Mr. Gutheim: Do you own any of the timber between the present terminus of the railroad and Jefferson?

Mr. Welch: We own the timber——

Mr. Gutheim: Has Jefferson any railroad facilities?

Mr. Smith: We own the timber within three miles of Jefferson; they have connections with the Texas & Pacific Railway, and the Missouri, Kansas & Texas Railway, and the Jefferson & Northeastern Railroad.

Mr. Gutheim: How far is Smithland from Jefferson?

Mr. Welch: It is either fourteen or fifteen miles.

Mr. Gutheim: So that it is about five or six miles from

4153 your present end of track?

Mr. Welch: No, it is seven or eight miles from our present end of the track.

Mr. Gutheim: What time does your road begin operations?

Mr. Welch: Do you mean when we got the charter out?

Mr. Gutheim: No, when you began operations.

Mr. Welch: Why, I should judge it was about March or April in this year.

Mr. Gutheim: 1910.

Mr. Welch: Yes, we began building it then, I believe, before we bought this old Black Bayou Railroad Company, we entered into a contract with the Kansas City Southern Railway. On account of

us building this railroad and doing business with them, they were to give us this division; a copy of this contract is what I am going to submit to the Interstate Commerce Commission.

Mr. Gutheim: That contract was entered into prior to the construction of your railroad, and on the strength of it, you engaged in the construction of your railroad and in the operation of
4154 the saw mill?

Mr. Welch: Yes, sir.

Mr. Welch: I would like to tell you another thing about our road, and that is this: That we are in what is called "The Caddo Oil Field", and we have no doubt but what they will strike oil along our road in different places. Another thing I wish to tell you is, our road is headed in the direction of the Iron Ore Fields which lay on our line.

Whereupon, at the hour of 4:45 O'clock P. M. this day, December 15th 1910, the hearing of the above entitled matter was closed.

Final adjournment, of principal hearing, December 17, 6:30 p. m., without date.

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TESTIMONY AND EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 329.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 330.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 331.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 332.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 333.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 334.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 335.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 336.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1913.

IN THE

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., PETITIONERS,

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THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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I. Stephenson 6898
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4155 ST. LOUIS, MO., *January* 23, 1911.

Met pursuant to notice in the Hotel Jefferson, at 10:00 A. M. Before John S. Burchmore, Special Examiner.

Appearances:

S. H. Cowan, Esq., (Fort Worth, Texas),
Frank Andrews, Esq., (Houston, Texas) and
W. T. Hancock, Esq., (Houston, Texas), for the Miller Lake Lumber Company, et al., intervenors.

F. C. Dillard, Esq., (Chicago, Ill.) and
J. P. Blair, Esq., (New Orleans, La.) for Morgan's Louisiana & Texas Railroad & Steamship Company, and Louisiana Western Railroad Company.

F. C. Dillard, Esq., (Chicago, Ill.) and
H. M. Garwood, Esq., (Houston, Texas) for the Texas & New Orleans Railroad Company; Houston, East & West Texas Railway Company; Houston & Texas Central Railway Company; Gulf, Harrisburg & San Antonio Railway Company; and also with
H. W. Seaman, Esq., (719 Rookery, Chicago, Ill.) for the Tremont & Gulf Railway Company, and the Groveton, Lufkin & Northern Railway Company.

4156 J. S. Hershey, Esq., (Chicago, Ill.) and
James L. Coleman, Esq., (Railway Exchange, Chicago, Ill.) for the Santa Fe System Lines.

James C. Jeffery, Esq., (Chicago, Ill.) for the Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company.

Thomas C. McRae, Esq., (Prescott, Ark.) for the Prescott & Northwestern Railroad Company; H. M. Stephens; Western Tie & Timber Company; Caddo & Choctaw Railroad Company; Dorcheat Valley Railroad, and Louisiana Railway Company.

Charles F. Ziebold, Esq., (St. Louis, Mo.) for the Zwolle & Eastern Railway Company; Mississippi Valley Railway Company.

John A. Sargent, Esq., (Kansas City, Mo.) Vice-President and General Manager, Missouri & Louisiana Railroad Company.

George C. Greer, Esq., (Beaumont, Texas) and
H. M. Garwood, Esq., (Houston, Texas) for the Beaumont Transportation Company.

J. D. Riddell, Esq., (Kansas City, Mo.) for the Salem, Winona & Southern Railroad; Victoria, Fisher & Western Railroad Company, and the Ouachita & Northwestern Railroad Company.

4157 N. S. Brown, Esq., (St. Louis, Mo.) for Mangham & Northeastern Railroad Company; Luehrman & Western

Railway Company; and Natchez, Ball & Shreveport Railway Company.

Luther M. Walter, Esq., (Chicago, Ill.) and

T. J. Gaughan, Esq., (Camden, Ark.) for Fordyce & Princeton Railroad Company; El Dorado & Wesson Railroad Company, and Ouachita Valley Railway Company.

Luther M. Walter, Esq., (Chicago, Ill.) for Arkansas Southeastern Railroad Company; Galveston, Beaumont & Northeastern Railway Company; Mansfield Railway & Transportation Company; Peach River & Gulf Railroad Company; Riverside & Gulf Railroad Company; Trinity Valley & Northern Railroad Company; Nacogdoches & Northeastern Railroad Company; Gideon & North Island Railroad Company; Homan & Southeastern Railroad Company; Louisiana & Pine Bluff Railway Company; Fourche River Valley & Indiana Territory Railway Company, and Lake Charles Railway & Navigation Company, et al.

Thomas C. McRae, Esq., (Prescott, Ark.) for Beirne & Clear Lake Railroad Company.

4158 Walter H. Saunders, Esq., for the Warren, Johnsville & Saline River Railroad Company; Gulf & Sabine River Railroad Company; Little Rock, Sheridan & Saline River Railway Company; Tioga & Southeastern Railway Company; Mill Creek & Little River Railway and Navigation Company, and Bernice & Northwestern Railway Company.

W. R. Thurmond, Esq., (Kansas City, Mo.) and

J. Walter Farrar, Esq., (Kansas City, Mo.) for the Louisiana & Pacific Railway Company; Sibley, Lake Bisteneau & Southern Railway Company, and the Woodworth & Louisiana Central Railway Company.

Martin Walsh, Esq., (Nashville, Ark.) for Memphis, Dallas & Gulf Railway Company.

D. B. Holmes, Esq., (Kansas City, Mo.) and

H. M. Garwood, Esq., (Houston, Texas) for Louisiana Central Railway Company.

Henry Quellmalz, Esq., for the Brookings & Peach Orchard Railway Company.

James W. Orr, Esq., (Atchison, Kansas) for Beaumont & Great Northern Railroad Company.

John T. McKay, Esq., (Kennett, Mo.) for the Paragould & Memphis Railway Company.

4159 Howard Coles, Esq., (Blissville, Ark.) for the Mississippi, Arkansas & Western Railroad Company.

J. C. Rich, Esq., (Mobile, Ala.) for the Washington & Choctaw Railway Company.

Messrs. Blair, Drayton & Hillyer (Washington, D. C.) by Charles H. Bates, Esq., and

Charles S. Hillyer, Esq., for the Timpson & Henderson Railroad Company.

Samuel D. Snow, Esq., (Chicago, Ill.) and

Edgar A. Bancroft, Esq., (Chicago, Ill.) for the Deering Southwestern Railway Company.

Luther M. Walter, Esq., (Chicago, Ill.) and
J. D. Barksdale, Esq., (Ruston, La.) for the North Louisiana & Gulf Railroad Company.
Fred H. Wood, Esq., (St. Louis, Mo.) for the New Orleans, Texas & Mexico Railroad Company; Orange & Northwestern Railroad Company.
Henry M. Armistead, Esq., (Little Rock, Ark.) for the Perla Northern Railway Company, and Malvern & Freco Valley Railway Company.
J. T. Burlingame, Vice-President and General Manager, for the Washington & Choctaw Railway Company.
4160 George A. Keyes, Esq., (Kentwood, La.) for the Kentwood & Eastern Railway Company.
Messrs. Andrews, Ball & Streetman, (Houston, Texas) for Burrs Ferry, Browndell & Chester Railway Company.
W. M. Burrow, Esq., (New Orleans, La.) for the Louisiana Railroad Commission.
Sidney F. Andrews, Esq., (539 Pierce Building, St. Louis, Mo.) for the Arkansas Eastern Railroad Company.
Samuel H. West, Esq., (St. Louis, Mo.) for the St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas, and Paragould Southeastern Railroad Company.
E. K. Voorhees, Esq., (St. Louis, Mo.) General Freight Agent, for the St. Louis & San Francisco Railroad Company.
O. E. Perkins, Esq., (St. Louis, Mo.) for the St. Louis, Iron Mountain & Southern Railway Company.
C. J. McPherson, Esq., (St. Louis, Mo.) for the Missouri Pacific Railway Company.
C. L. Marsilliot, Esq., (Memphis, Tenn.) for the Crittenden Railroad Company; Helena & Parkin Railroad Company, and Tyronza & St. Francis River Railroad Company; and also, with
4161 J. F. Gautney, Esq., (Jonesboro, Ark.) for the Manila & Southwestern Railroad Company.
Messrs. Saner & Saner, (Dallas, Texas) by
(Jno. S. Saner, Esq.), for the Caro Northern Railway Company.
W. Q. Church, Esq., (Kansas City, Mo.) for the Louisiana Central Railroad Company.
Edward B. Peirce, Esq., (Chicago, Ill.) and
W. F. Dickinson, Esq., (Chicago, Ill.) for the Chicago, Rock Island & Pacific Railway Company.
E. A. Frost, Esq., (Shreveport, La.) for the Mansfield Railway and Transportation Company.
N. S. Brown, Esq., (St. Louis, Mo.) and
F. R. Pierce, Esq., (St. Louis, Mo.) for the Southern Pine System: Enterprise Railroad Company; Griffen, Magnolia & Western Railway Company; and Saline Bayou Railroad Company.
N. S. Brown, Esq., (St. Louis, Mo.) and
H. E. Hardtner, Esq., (Urania, La.) for the Natchez, Urania & Ruston Railway Company.
N. S. Brown, Esq., (St. Louis, Mo.) and
Thos. W. Frye, Esq., (St. Louis, Mo.) for the L'Anguillo Railway Company.

4161*a* S. W. Moore, Esq., (Kansas City, Mo.) for the Kansas City Southern Railway Company.

Messrs. Moore & Moore, (Texarkana, Ark.) by (Henry Moore, Esq.) for Homan & Eastern Railroad Company, and Louisiana & Arkansas Railway Company.

W. S. Hobbs, Esq., (Warren, Ark.) for Warren & Ouachita Valley Railway Company.

John S. Kirkpatrick, Esq., (Kansas City, Mo.) for the De Queen & Eastern Railway Company, and Sabine & Eastern Railway Company.

T. J. Gaughan, Esq., (Camden, Ark.) for the Crossett Railway Company; Louisiana & Pine Bluff Railway Company; and El Dorado & Wesson Railway Company.

4162 Examiner Burchmore: Gentlemen, the Commission has assigned for further hearing today at this place the case commonly known as the Tap Line proceeding, in which a number of separate complaints and proceedings have been consolidated. I assume that the nature of the proceeding is understood by all. I am instructed to announce this morning that we will take up the cases of individual roads here with the probability that we can complete that phase of the case by Thursday night, and the intervenors' testimony will be taken thereafter. Commissioner Harlan is expecting to reach here Thursday morning, and Thursday night an adjournment will be taken to Chicago, and the hearing will be completed at Chicago. That is the present plan; of course, this plan may be subject to some variation as the necessities require.

Mr. Garwood: Would it be safe to assume, then, that the witnesses as to the interventions may not appear before Thursday?

Examiner Burchmore: I think it is certain we cannot get through the individutal lines before Wednesday night. It is possible the intervenors may put in some testimony on Thursday. We will expedite the hearing as much as possible. It is my purpose
4163 to call first a list of the roads that have not as yet been heard. This list is possibly incomplete, and if counsel representing the several lines will respond when their roads are called, we will know what companies we have yet to hear, and during the noon hour we can make up a list of the cases in the order in which they will be called, so that by afternoon we will be able to indicate the order of the individual cases. For this morning we have listed five companies.

The Beaumont & Great Northern is present, represented by Judge Orr of Atchison. The hearing with respect to that road will not be in connection with the present case, but really in connection with a formal complaint they have had on file for some time and in which the record has been closed but is re-opened for the purpose of taking this further testimony. That case is No. 1984 on our docket.

The Arkansas Southeastern, is that road ready?

Mr. Walter: Ready.

Examiner Burchmore: El Dorado & Wesson Railway?

Mr. Walter: Resady.
Examiner Burchmore: Fordyce & Princeton Railway?
Mr. Walter: Ready.
4164 Examiner Burchmore: Ouachita Valley Railway?
Mr. Walter: Ready.
Examiner Burchmore: The Natchez, Ball & Shreveport Railway?
Mr. Brown: Ready.
Examiner Burchmore: Paragould & Memphis Railway?
Mr. McKay: Ready.
Examiner Burchmore: Any counsel who are present and have not already filed appearances in the case at New Orleans will kindly hand their appearance to the reporter during the morning, otherwise they will not be noted as having appeared in the case.
Portland & Southeastern?
Memphis, Dallas & Gulf.
Mr. Walsh: Here.
Examiner Burchmore: Galveston, Beaumont & Northeastern
Mr. Walter: That, with the other two Peach River lines, will be ready for Wednesday. The witnesses will be here that morning.
Examiner Burchmore: The Gulf & Sabine River Railroad?
Mr. Garwood: I think Mr. Saunders represents that road. If you will hold that open for a little while. That is a Louis-
4165 iana Line, I believe.
Examiner Burchmore: The Mansfield Railway & Transportation Company.
Mr. Walter: Ready.
Examiner Burchmore: The Sabine & Eastern Railway?
(No response.)
Examiner Burchmore: The Peach River & Gulf, and Riverside & Gulf will go over until Wednesday.
The Timpson & Henderson?
Mr. Hillyer: We are ready.
Examiner Burchmore: The Trinity Valley & Northern?
Mr. Walter: Ready.
Examiner Burchmomre: Nacogdoches & Northeastern?
Mr. Walter: Ready.
Examiner Burchmore: Gideon & North Island?
Mr. Walter: The same.
Examiner Burchmore: Round Pond Terminal Company?
(No response.)
Examiner Burchmore: Wyandotte & Southeastern?
(No response.)
Examiner Burchmore: The Newport Packet Company?
(No response.)
Examiner Burchmore: Dardenelle, Ola & Southern Railway?
4166 (No response.)
Examiner Burchmore: Antoine Valley Railroad?
(No response.)
Examiner Burchmore: The Beirne & Clear Lake Railroad?
(No response.)
Examiner Burchmore: The Brookings & Peach Orchard?

Mr. Quellmalz: Here.
Examiner Burchmore: Elmore & Southwestern?
(No response.)
Examiner Burchmore: The Greenfield & Southeastern?
(No response.)
Examiner Burchmore: Helena, Parkin & Northern?
(No response.)
Examiner Burchmore: Homan & Southeastern?
Mr. Walter: Ready.
Examiner Burchmore: The Kearney & Sheridan?
(No response.)
Examiner Burchmore: Lester & Ouachita Valley Railway?
(No response.)
Examiner Burchmore: Louisiana & Pine Bluff Railway?
Mr. Walter: Ready.
Examiner Burchmore: Luehrmann & Western Railway?
4167 Mr. Brown: Ready.
Examiner Burchmore: Mississippi, Arkansas & Western Railway?
Mr. Coles: Here.
Examiner Burchmore: The Englewood, Alexandria & Southwestern?
(No response.)
Examiner Burchmore: The Norman's Southeastern?
(No response.)
Examiner Burchmore: Poplar Bluff & Dan River?
(No response.)
Examiner Burchmore: Prescott, Reader & Fordyce?
(No response.)
Examiner Burchmore: Scott County Railroad?
(No response.)
Examiner Burchmore: Schwartz & Ouachita City?
(No response.)
Examiner Burchmore: Tyronza & St. Francis River Railway?
(No response.)
Examiner Burchmore: West Point Railroad?
(No response.)
Examiner Burchmore: Williamsville, Greenville & St. Louis?
(No response.)
4168 Examiner Burchmore: Wills Point?
(No response.)
Examiner Burchmore: Anderson & Saline River Railway?
(No response.)
Examiner Burchmore: Bodcaw Valley Railway?
(No response.)
Examiner Burchmore: Durham Transportation Company?
(No response.)
Examiner Burchmore: England & Clear Lake Railway?
(No response.)
Examiner Burchmore: Martindale & Ouachita Railroad?
(No response.)

Examiner Burchmore: Rison & Mount Elba?
(No response.)
Examiner Burchmore: In connection with that road there is a letter filed in the record dated September 21st, and written by the manager, E. W. Farrar, which says in part "Has been discontinued since about the 1st of June. We are in no way using this road and the track is being taken up and disposed of."
Washington & Choctaw?
Mr. Garwood: J. C. Rich is here, and myself, and we are ready.
4169 Examiner Burchmore: Kendall & Sulphur Springs Railway?
(No response.)
Examiner Burchmore: This company advised the Commission on September 21st, 1910, as follows: "We got these rates when we were cutting pine, but were denied them when we went into hardwood, and on this account were forced out of business We have surrendered our charter and gone out of business." So of course they will want no hearing.
Pollok & Angelina Valley Transportation Company.
(No response.)
Examiner Burchmore: Loring & Western Railway?
(No response.)
Examiner Burchmore: Louisiana & Eastern Railway?
(No response.)
Examiner Burchmore: Louisiana Central Railroad?
Mr. Garwood: That is ready.
Examiner Burchmore: Lake Charles & Northern Railroad?
Mr. Garwood: That must be a mistake, that is not a tap line.
Examiner Burchmore: I think that is perhaps a mistake. Shreveport, Noble & Southern Railroad?
(No response.)
4170 Examiner Burchmore: Kingston Railway Company?
(No response.)
Examiner Burchmore: Osceola, Little River & Western Railroad?
(No response.)
Examiner Burchmore; Tyronza & St. Francis River Railway?
(No response.)
Examiner Burchmore: St. Francis River Railroad?
(No response.)
Examiner Burchmore: Beaumont & Saratoga Transportation Company?
Mr. Garwood: It is ready.
Examiner Burchmore: Livingston & Southeastern?
(No response.)
Examiner Burchmore: Mangham & Northeastern?
Mr. Brown: Ready.
Examiner Burchmore: Jefferson & Northwestern?
(No response.)
Examiner Burchmore: Shamrock & Western?
(No response.)

Examiner Burchmore: Houston & Brazos Valley?

(No response.)

4171 Examiner Burchmore: Meto Valley Railway?

(No response.)

Examiner Burchmore: Onalaska & Northwestern?

(No response.)

Examiner Burchmore: Bay Shore Lumber Company?

(No response.)

Examiner Burchmore: We will take up first the Beaumont & Great Northern.

Mr. Walter: You did not call the North Louisiana & Gulf; that is a Rock Island connection.

Examiner Burchmore: I had intended to inquire if there were any other roads which had been omitted. Are there any other roads?

Mr. Snow: The Deering Southwestern is represented here; S. D. Snow.

Examiner Burchmore: Is the Alabama Central Railroad present?

Mr. Walter: Mr. Childs will be here, I think, on Wednesday.

Mr. McRae: I was not present when you began the call, and did not quite understand the purpose of it. Was it simply to ascertain who was present?

Examiner Burchmore: Yes.

4172 Mr. McRae: Did you call the Beirne & Clear Lake?

Examiner Burchmore: Yes.

Mr. McRae: That is represented and present.

Examiner Burchmore: Any other companies?

Mr. McRae: No other that I represent. May I inquire the order in which the hearing will be proceeded with?

Examiner Burchmore: That will be announced this afternoon. Have counsel any inquiries or motions?

Mr. Saunders: The Gulf & Sabine River is ready.

Mr Jeffery: Your Honor, at the last hearing of the Tap Line investigation a request was made on the St. Louis, Iron Mountain & Southern Railway to furnish certain exhibits, contract agreements with various lumber companies, and I will hand to the reporter for filing in this investigation spur track agreement between the St. Louis, Iron Mountain & Southern Railway Company and the Farrell Lumber Company; spur track agreement between the St. Louis, Iron Mountain & Southern Railway Company with the Farrell Lumber Company; there are two separate agreements, I think one is supplemental to the other; spur track agreement between Farrell Miles Lumber Company, and St. Louis, Iron Mountain & Southern.

4173 There are still two spur track agreements that have been requested by the Commission that I will file during the course of the day. I have not had copies made yet.

(The papers above referred to were marked filed, of January 23rd, 1911, and are attached hereto.)

Examiner Burchmore: I intended to ask also whether any of the roads that were heard at New Orleans had any further statements to put in in connection with their cases?

Mr. Garwood: For the Tremont & Gulf and the Groveton, Lufkin & Northern, we wish to file contracts for each of those lines. Your Honor may possibly remember that the witnesses testified in those cases that there was a contract which had been practically consummated but had not been formally signed and reduced to writing, and during the day we would like permission to introduce those contracts.

Examiner Burchmore: They may be filed.

Mr. Saunders: The Warren, Johnsville & Saline River Railroad Company would also like to file a statement with regard to the authorization of the road and certain details which were requested.

Mr. Farrar: Could an ex parte affidavit be filed with reference to certain figures?

Examiner Burchmore: In connection with a case already
4174 heard?

Mr. Farrar: Yes.

Examiner Burchmore: What is the company?

Mr. Farrar: The Louisiana & Pacific. I simply heard of some evidence this morning in the nature of information and figures, perhaps, but it has not come from our own people, but would be from an outside shipper. It is too late to get him here now.

Examiner Burchmore: If you will forward that to the Commission with a letter requesting it to be filed, it will have an examination and will be ruled on then.

Mr. Cowan: Let us have a copy of it, of course.

Mr. Farrar: Yes.

Mr. McRae: In the case of the Prescott & Northwestern, a shipper and owner of a considerable lot of timber on that road has indicated that he would like to submit a petition or statement or ex parte affidavit showing how the cancellation will affect him. He is not here today. He is a citizen of La Crosse, Wisconsin, and he may not be able to get the statement here during this hearing. If he does, he would like to submit it, and if not, he would like to file it with
the Commission. It does not affect the Prescott & North-
4175 western except on the general proposition, but it affects the shipper, and I would ask that he be allowed to do that.

Examiner Burchmore: That will be taken in the same way.

Mr. McRae: Henry G. Gund, I think is his name.

Mr. Coleman: I would like to ask if there is any objection to having these people brought here to be cross examined?

Mr. McRae: None whatever.

Mr. Coleman: I think that would be preferable to any affidavits. We might want to cross examine them.

Mr. McRae: I do not know how long the Commission will be here, but there is no reason why they would not be willing to submit to examination if they can get here. I am not certain they can get here during this sitting.

Mr. Coleman: I think if it is anything material we would insist upon the right to cross examine. We all had to come here.

Examiner Burchmore: The nature of this statement is that a certain shipper wishes to state to the Commission that he proposes

to ship so many carloads of something during the next year and if that witness appears here during the course of the trial we will expect you to mention the fact, Mr. McRae.

4176 Mr. McRae: Certainly. The nature of the statement will be this, that he purchased a large holding of hardwood timber on the line of the Prescott & Northwestern Railroad with the understanding that he would have the same rate from his mill as on the main line, and that he would not have bought this timber and he could not handle it if he has to pay the local rates into Prescott and from thereon, and it will show the effect of the purchase and the extent of it.

Examiner Burchmore: It will be understood if the witness comes to St. Louis during the pendency of this trial, you will produce him in court?

Mr. McRae: Certainly.

Examiner Burchmore: And if not, you can send his affidavit to the Commission and they will examine it and see whether it can be received.

Mr. McRae: Yes.

Examiner Burchmore: We will take up now the Beaumont & Great Northern Railroad with the Arkansas Southeastern and the El Dorado & Wesson and the Fordyce & Princeton, and the Ouachita Valley listed in the order they are called, all being Rock Island connections, and having been postponed from New Orleans.

4177 WILLIAM CARLISLE was then duly sworn, and the testimony given by him will be found in the record in Docket No. 1984.

After which, at 12:15 P. M., a recess was taken until 1:30 P. M.

4178 After Recess.

1:30 P. M.

Arkansas Southeastern Railroad.

F. G. RICE was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are the General Freight Agent of the Arkansas Southeastern Railroad Company?

Mr. Rice: Yes, sir.

Examiner Burchmore: You are also the General Passenger Agent?

Mr. Rice: Yes, sir.

Examiner Burchmore: The line of your company connects with the Chicago, Rock Island & Pacific at Randolph, La?

Mr. Rice: That is right.

Examiner Burchmore: And in what direction does its line extend from that point?

Mr. Rice: Southeasterly to Farmerville, La.

Examiner Burchmore: Where a connection was made with the Iron Mountain?

Mr. Rice: Yes, sir.

Mr. Walter: You do not mean that a connection now exists?

Mr. Rice: The connection proper is not made; the grading is up to the Iron Mountain. We are not operating into Farm-
4179 erville at present.

Examiner Burchmore: How far from Farmerville are you at present?

Mr. Rice: About two miles.

Examiner Burchmore: What is the total main line mileage of the road?

Mr. Rice: 27.72 miles approximately.

Examiner Burchmore: How many miles of spurs and sidings have you?

Mr. Rice: 20.6 we report as main line, which includes about 3 miles of sidings.

Examiner Burchmore: Have you sold any part of your line in recent months?

Mr. Rice: Yes, sir—no, we have not sold any; previous to the 1910 reports, we reported mileage that did not belong to the Arkansas Southeastern Railway, that is lumber line that was not operated.

Examiner Burchmore: That was all branch line mileage?

Mr. Rice: Branch line mileage.

Examiner Burchmore: Logging spurs?

Mr. Rice: Logging spurs.

Examiner Burchmore: Of the Summit Lumber Company?

Mr. Rice: Of the Summit Lumber Company.

4180 Examiner Burchmore: In what part of the state is this road situated?

Mr. Rice: The Northeastern part of Louisiana. I have a profile here, your Honor, if you would like to lay it before you, showing our mileage to Farmerville and the underneath one is the proposed extension to Monroe.

Examiner Burchmore: What is this road that is marked on the first map as the "F. S. Railroad?"

Mr. Rice: The Farmerville Southern, which is a part or a branch of the Iron Mountain System.

Examiner Burchmore: Is it your purpose to offer these as exhibits?

Mr. Rice: Yes, sir.

Examiner Burchmore: We will have them marked at this time.

(The papers so offered and identified, were received in evidence and thereupon marked Arkansas Southeastern Railroad Exhibits Nos. 1 and 2, Witness Rice, received in evidence January 23, 1911, and are attached hereto.)

Examiner Burchmore: The Summit Lumber Company has mills on your line?

Mr. Rice: They have.

Examiner Burchmore: More than one mill?

Mr. Rice: One mill located at Randolph.

4181 Examiner Burchmore: What is the distance from that mill to the right of way of the Rock Island Railroad?

Mr. Rice: Approximately 150 yards, the mill itself.

Examiner Burchmore: Is there any private switch track or Rock Island switch track which connects that mill with the Rock Island right of way?

Mr. Rice: No.

Examiner Burchmore: The only means of getting from the loading platform at the mill to the Rock Island is over the rails of the Arkansas Southeastern?

Mr. Rice: Not the only way, no, but all interchanges are made over the Arkansas Southeastern; but there is one loading track which connects with the Rock Island.

Examiner Burchmore: You have one loading track on this railroad and one on the Rock Island?

Mr. Rice: No, the loading track is properly the property of the Arkansas Southeastern, but as I stated, it makes a connection with the Rock Island, but it is not used as an interchange track.

Examiner Burchmore: Is that shown on the map?

Mr. Rice: No, it is not shown in detail. At the extreme left, it is not shown on that profile.

4182 Examiner Burchmore: Will you kindly prepare and send to the Commission a map of the town of Randolph and vicinity, showing the tracks of the two roads and the mill and the loading track, and a large map of the terminal?

Mr. Rice: I will.

Mr. Cowan: And the other track which he says is not used by the road.

Examiner Burchmore: Yes, showing all the tracks.

Mr. Rice: All the tracks at Randolph, yes, sir.

Examiner Burchmore: When was the mill of the Summit Lumber Company opened for operation?

Mr. Rice: I could not answer that definitely; something like ten years.

Examiner Burchmore: The Summit Lumber Company built that mill itself?

Mr. Rice: No, I believe not; I believe they bought it and added to it.

Examiner Burchmore: They bought it ten years ago?

Mr. Rice: Approximately.

Examiner Burchmore: When was this railroad incorporated?

Mr. Rice: November 15th, 1904.

Examiner Burchmore: Was that previous to the construc-

4183 tion of the road?

Mr. Rice: Previous to some of it.

Examiner Burchmore: There was a railroad there at that time?

Mr. Rice: There was.

Examiner Burchmore: And that railroad extended from the present junction with the Rock Island over a part of the distance traversed by the present line?

Mr. Rice: That is true.

Examiner Burchmore: When was that railroad first constructed?

Mr. Rice: Well, I have not the date, other than prior to 1900.

Examiner Burchmore: At the same time the mill was opened?

Mr. Rice: I think so; I cannot answer definitely.

Examiner Burchmore: Your impression is however, that when the sawmill was opened for operation at Randolph, there was a logging road built or available for bringing in the logs?

Mr. Rice: Yes, sir.

Examiner Burchmore: And several years later this logging road was incorporated as a railroad?

Mr. Rice: That is true.

Examiner Burchmore: What was the purpose of the in-
4184 corporation of the railroad, if you know?

Mr. Rice: In order to get through rates and divisions and conduct the railroad as a common carrier, and handle whatever shipments were tendered us.

Examiner Burchmore: Were there at that time any other saw mills in that vicinity?

Mr. Rice: I think not at that time.

Examiner Burchmore: Were there are any other shippers whose traffic promised to be considerable in amount?

Mr. Rice: Well, not dated that far back, possibly not.

Examiner Burchmore: What was the total capitalization of this railroad when first incorporated?

Mr. Rice: $500,000.

Examiner Burchmore: Was that whole amount issued?

Mr. Rice: All issued.

Examiner Burchmore: Do you know what they paid for the railroad that they then acquired?

Mr. Rice: They paid $254,597.73.

Examiner Burchmore: How many miles of road did they acquire for that sum?

Mr. Rice: 20.6 miles.

Examiner Burchmore: Then the whole of the present line
4185 was then in operation?

Mr. Rice: Of the present line, yes, sir.

Mr. Walter: Exclusive of the Farmerville extension.

Mr. Rice: Well, that is not included in that 20.6 miles.

Mr. Walter: That is the length of the extension.

Examiner Burchmore: I do not believe I quite understand that. What is the extent of that extension?

Mr. Rice: 9.72 miles.

Examiner Burchmore: That has been built within the last two years?

Mr. Rice: Well, within the last four years.

Examiner Burchmore: That is a part of the present main line?

Mr. Rice: That is true.

Examiner Burchmore: When the railroad was acquired therefore by the present corporation in its mileage so acquired, there was included some logging road that has since been taken up?

Mr. Rice: Yes, sir.

Examiner Burchmore: How was this extension of the line financed?

Mr. Rice: It was financed by the Messrs. Silverthorne.

Examiner Burchmore: Do you mean they borrowed
4186 money on notes, or how did they finance it?

Mr. Rice: They put up the money or advanced the money for the construction of the road.

Examiner Burchmore: For the construction of the road or the extension?

Mr. Rice: Well, the extension and construction of the Farmerville extension.

Examiner Burchmore: What was the cost of that extension, if you know?

Mr. Rice: To date it is approximately $75,000.

Examiner Burchmore: I understood you to say the Arkansas Southeastern previously or at least at one time operated some of the logging roads of the Summit Lumber Company. Were those lines operated under trackage arrangements or lease or what?

Mr. Rice: Well, at that time when they were operated the Arkansas Southeastern maintained the logging spurs and the Summit Lumber Company paid them for hauling their logs, in lieu of their maintaining the expense of the logging road, while they did not own spurs from the main line. That arrangement, however, has been discontinued.

Examiner Burchmore: The discontinuance of that arrangement involved no payment of money one way or the other;
4187 they simply made a new arrangement.

Mr. Rice: Other than in selling some equipment at that time, the Arkansas Southeastern Railroad owned all the locomotives, and when they gave up the maintenance of the logging spurs they sold to the lumber company three locomotives.

Examiner Burchmore: You said when the railroad was first incorporated there was $500,000 of stock issued. You further explained that $254,000 in round figures, was paid for the constructed road.

Mr. Rice: That is true.

Examiner Burchmore: What became of the difference between that sum and the $500,000?

Mr. Rice: Well, the Messrs. Silverthorne, as I stated, were to put up the money for the construction of the Farmerville extension.

Examiner Burchmore: Are we to understand when the railroad was first incorporated practically the entire capital stock was issued to the Messrs. Silverthorne?

Mr. Rice: That is right.

Examiner Burchmore: And not for cash?

Mr. Rice: And not for cash.

Examiner Burchmore: They paid for it partly by turning over the constructed road valued at $254,000, and partly by
4188 promising to advance further sums of money in the future?

Mr. Rice: Yes, sir.

Examiner Burchmore: And as a matter of fact they have since paid in $75,000 in advances?

Mr. Rice: That is true.

Examiner Burchmore: So they hold some $125,000 of stock for which they have not paid any cash?

Mr. Rice: Well, it is charged to them; that stock is charged to them.

Examiner Burchmore: Who controls the Summit Lumber Company, if you know?

Mr. Rice: I could not state that.

Examiner Burchmore: The president of this railroad is Mr.——

Mr. Rice: J. S. Blackwell.

Examiner Burchmore: How long has he been president?

Mr. Rice: Since the first of the year, January 1st.

Examiner Burchmore: Was he not elected president on July 1st, 1910?

Mr. Rice: No, sir, January 2nd, 1911.

Examiner Burchmore: Who was president previous to his election?

Mr. Rice: W. E. Silverthorne.

4189 Examiner Burchmore: Who is now the Vice-President?

Mr. Rice: A. K. Silverthorne.

Examiner Burchmore: And Secretary?

Mr. Rice: F. G. Rice. That is effective January 2nd.

Examiner Burchmore: Mr. W. H. Fields was formerly Secretary?

Mr. Rice: Yes, sir.

Examiner Burchmore: And A. E. Silverthorne was formerly treasurere. Who occupies that position at present?

urer. Who occupies that position at present?

Examiner Burchmore: And the Auditor is T. E. Slocum?

Mr. Rice: He was Auditor at the time that report was made. I have that title at present.

Examiner Burchmore: And the General Manager?

Mr. Rice: A. E. Silverthorne.

Examiner Burchmore: The Traffic Manager is G. F. Thomas.

Mr. Rice: That is correct.

Examiner Burchmore: Are those gentlemen also officers of the Summit Lumber Company, and if so, what is their position?

Mr. Rice: Mr. A. K. Silverthorne and A. E. Silverthorne are officers of the Summit Lumber Company, but I cannot state their official title; I am not familiar enough.

Examiner Burchmore: Are you employed by the Summit Lumber Company in any capacity?

4190 Mr. Rice: No.

Examiner Burchmore: Is Mr. G. F. Thomas related in any way to the Summit Lumber Company?

Mr. Rice: Not at all.

Examiner Burchmore: Then aside from the two gentlemen you have mentioned, none of the officers of this railroad are employed or connected with the Summit Lumber Company?

Mr. Rice: Not in any way.

Examiner Burchmore: Do you know who the present directors of this railroad are?

Mr. Rice: J. S. Blackwell, A. K. Silverthorne, A. E. Silverthorne, A. A. Barksdale and F. G. Rice.

Examiner Burchmore: Who is Mr. J. S. Blackwell?

Mr. Rice: I understand that he is a real estate man located in Muscatine, Iowa, that is his home address.

Examiner Burchmore: Do you know what his stock holding is in this corporation?

Mr. Rice: Not definitely, but have been informed that he holds large interests.

Examiner Burchmore: Does he own any stock in the Summit Lumber Company?

Mr. Rice: No, sir.

Examiner Burchmore: Are you sure about that?

4191 Mr. Rice: Yes, sir.

Examiner Burchmore: Any member of his family own stock in the Summit Lumber Company?

Mr. Rice: No.

Examiner Burchmore: Does he hold this stock of the railroad absolutely or in trust for some one else?

Mr. Rice: He holds it in his own name.

Examiner Burchmore: Well, is it in his own right?

Mr. Rice: As I understand it, it is.

Examiner Burchmore: Does this stock pay dividends?

Mr. Rice: No, sir, it has not done so far.

Examiner Burchmore: Who is Mr. Barksdale?

Mr. Rice: Mr. Barksdale is an attorney at Ruston, La.

Examiner Burchmore: Does he own any considerable amount of stock in these two companies?

Mr. Rice: A nominal amount in the railroad.

Examiner Burchmore: Simply a director's qualifying share?

Mr. Rice: Yes, sir.

Examiner Burchmore: How many shares do you own of the railroad stock?

Mr. Rice: One.

Examiner Burchmore: Do you have that certificate in

4192 your possession?

Mr. Rice: Not at present, no.

Examiner Burchmore: You have endorsed it in blank?

Mr. Rice: I have not received it as yet.

Mr. Walter: You were only elected director on the 2nd of January?

Mr. Rice: On the 2nd of January.

Examiner Burchmore: Have you a list of the stockhalders of this railroad?

Mr. Rice: I have not one here, no.

Examiner Burchmore: Do you know who they are in a general way?

Mr. Rice: Yes, sir.

Examiner Burchmore: Is it not a fact that this railroad company is, in a substantial sense at least, owned by the stockholders of the lumber company?

Mr. Rice: Well, I believe not, since Mr. Blackwell has been taken

into the organization. I have been informed that Mr. W. E. Silverthorne, who owned practically the controlling interest of the stock of the road, had sold the bigger portion of it to Mr. Blackwell.

Examiner Burchmore: Was that a cash sale?

4193 Mr. Rice: I could not answer that.

Examiner Burchmore: Do you have any impression as to the extent of the stock of this railroad which is outstanding in the hands of persons having no relation to the lumber company?

Mr. Rice: As I understand, Mr. Blackwell owns approximately 60 per cent of the railroad stock.

Examiner Burchmore: Do you know of your own knowledge that Mr. Blackwell is not connected with this lumber company in any capacity?

Mr. Rice: Yes.

Examiner Burchmore: You know of your own knowledge that he is not a stockholder of this lumber company?

Mr. Rice: Yes.

Examiner Burchmore: You have examined the stock lists of the lumber company?

Mr. Rice: No.

Examiner Burchmore: Do you know whether it is a fact that he holds that in his own right without any obligations to anyone else in connection with that stock?

Mr. Rice: So far as I know he holds it in his own right.

Examiner Burchmore: Do you know any fact that might lead you to think that perhaps he did not hold it in his own right?

4194 Mr. Rice: No, sir.

Examiner Burchmore: Does the Arkansas Southeastern have trackage rights over any other road?

Mr. Rice: No, none at all.

Examiner Burchmore: Do you give trackage rights to anyone else?

Mr. Rice: No.

Examiner Burchmore: What is the weight of rail in your line?

Mr. Rice: 60 and 35 pound.

Examiner Burchmore: How much of each?

Mr. Rice: About 40 per cent of 35 pound and the balance 60 pound.

Examiner Burchmore: How long have you had that 60 pound rail?

Mr. Rice: I could not state definitely; say four years, between three and four years.

Examiner Burchmore: What is the character of construction of the road, that is with reference to bridges and curves and grades and ballast, and so forth?

Mr. Rice: No ballast, and wooden trestles.

Examiner Burchmore: Any sharp curves?

Mr. Rice: No, there are no very sharp curves and no very
4195 steep grades. I cannot state the degree of curvature or grades, but the annual report covers that, however, and the number of bridges.

Examiner Burchmore: What station buildings or other structures have you?

Mr. Rice: We have a station at Caloway and one at Tugwell City; they are shown on the profile that is offered as part of the record.

Mr. Walter: Have you photographs of those buildings?

Mr. Rice: Yes. If your Honor will care to accept these, I have photographs of the stations.

Mr. Walter: They will give you some idea of the construction.

Examiner Burchmore: We might look at them, but we would hardly care to file them in the record.

Mr. Walter: Oh, no, just for your own information.

Mr. Rice: (Referring to photographs.) There is Tugwell and there is Caloway, and some of the track also.

Examiner Burchmore: What was the cost of this station at Tugwell, in a general way?

Mr. Rice: About $450 each; both those stations were constructed at the same time.

Examiner Burchmore: Any permanent agents located in
4196 those stations?

Mr. Rice: We have no agents at present. We expect to put in agents when we get connected at Farmerville.

Mr. Walter: These stations were approved by the Louisiana Commission, do you know?

Mr. Rice: I believe so, but I would not answer positively on that.

Examiner Burchmore: With reference to your equipment, how many locomotives has the railroad?

Mr. Rice: Two.

Examiner Burchmore: It owns both those locomotives?

Mr. Rice: Yes, sir.

Examiner Burchmore: Operates them?

Mr. Rice: Owns them and operates them.

Examiner Burchmore: How many locomotives did it sell to the lumber company?

Mr. Rice: Three.

Examiner Burchmore: Previous to the sale it had five?

Mr. Rice: Yes, sir, that is correct.

Examiner Burchmore: Can you advise us what price was paid for those locomotives by the lumber company?

Mr. Rice: As well as I remember, the three locomotives were between $12,000 and $14,000, but that is accounted for in the
4197 annual report you have there. I have not the figures before me, but approximately $12,000 or $14,000.

Examiner Burchmore: What is the relation between that price and the price that the railroad company paid for the locomotives when they acquired them?

Mr. Rice: The usual depreciation allowance made for the time between the purchase price from the lumber company and the sale to them.

Examiner Burchmore: Can you give us the rate of depreciation?

Mr. Rice: Well——

Examiner Burchmore: How many years did you have those locomotives, and about what rate per year did you charge off?

Mr. Rice: I don't think I can answer that question offhand. However, I figured the depreciation that is set forth in the Interstate Commerce Commission's rulings. I believe they specify a certain percentage for depreciation.

Examiner Burchmore: How many box cars have you?

Mr. Rice: None.

Examiner Burchmore: Any flat cars?

Mr. Rice: 18.

Examiner Burchmore: Are those logging cars?

Mr. Rice: No, sir.

4198 Examiner Burchmore: Have you any logging cars?

Mr. Rice: 73.

Examiner Burchmore: Do you operate those yourself?

Mr. Rice: Yes, sir, we do.

Examiner Burchmore: Does the Summit Lumber Company use them at times?

Mr. Rice: They do.

Examiner Burchmore: They are used in hauling the Summit Lumber Company's logs to the mill?

Mr. Rice: Yes.

Examiner Burchmore: Has the Summit Lumber Company any logging cars of its own at all?

Mr. Rice: None at all.

Examiner Burchmore: You said 18 flat cars. What use is made of them?

Mr. Rice: Hauling timber and lumber shipments that can be loaded on flat cars, and any other freight that may be offered us that could be properly loaded on flat cars.

Examiner Burchmore: Those cars do not leave your rails?

Mr. Rice: No, sir.

Examiner Burchmore: Any passenger equipment?

Mr. Rice: One combination car.

4199 Examiner Burchmore: Any motor car or hand cars?

Mr. Rice: One motor car.

Examiner Burchmore: What use is made of that motor car?

Mr. Rice: For general inspection work; the trainmaster uses it, the superintendent uses it, the superintendent mostly; in cases of wrecks and in emergency calls we may have.

Examiner Burchmore: Do these cars and locomotives have the proper safety devices?

Mr. Rice: The locomotives and five of the cars and the combination car are all equipped with automatic couplers and air.

Examiner Burchmore: The logging cars are not?

Mr. Rice: They are not.

Examiner Burchmore: Or the other flat cars?

Mr. Rice: No, sir.

Examiner Burchmore: But you endeavor to comply with the Safety Appliance Act?

Mr. Rice: We do.

Examiner Burchmore: Which makes an exception in favor of logging cars under certain circumstances?

Mr. Rice: Yes, sir.

Examiner Burchmore: Is the railroad equipped with telegraph and telephone service?

4200 Mr. Rice: Telephone.

Examiner Burchmore: Do you own that telephone service?

Mr. Rice: The Arkansas Southeastern owns it.

Examiner Burchmore: Does the Summit Lumber Company make use of the telephone?

Mr. Rice: Yes, jointly; they have a connection from our main line to their camps which they use in transacting their business.

Examiner Burchmore: How many train crews have you, and how many men?

Mr. Rice: One train crew.

Examiner Burchmore: The other locomotive is used for relief work then?

Mr. Rice: For relief, or for work trains.

Examiner Burchmore: You only have one train crew. Do you have an extra engineer who runs the work train?

Mr. Rice: Yes, we use an engineer in the shops; we manage to keep him busy in the shops when he is not on the road.

Examiner Burchmore: You have no station agents?

Mr. Rice: One, at Randolph.

Examiner Burchmore: He is a joint employé with the Rock Island Railroad?

Mr. Rice: No, he is paid solely by the Arkansas South-

4201 eastern Railway.

Examiner Burchmore: Is he employed also in any connection by the Summit Lumber Company?

Mr. Rice: Not at all.

Examiner Burchmore: Your annual report sheet seems to show Mr. R. T. Smith, Mrs. McKay and J. B. Smith.

Mr. Rice: Did you state Mrs. McKay?

Examiner Burchmore: I am just reading your report.

Mr. Rice: Possibly I should have included her as an agent. She only handles the little telephoning at the station of McKay in passing the trains, she reports the passing of the trains and I classified her as an agent.

Examiner Burchmore: Who is R. T. Smith?

Mr. Rice: Agent at Randolph.

Examiner Burchmore: Who is J. B. Smith?

Mr. Rice: He was agent at a station named Luter, which we have abolished since the report was made.

Examiner Burchmore: You seem to have two machinists, two carpenters and eight other shop men reported on your rolls.

Mr. Rice: That is approximately correct. It fluctuates a little bit according to the demands for labor.

Examiner Burchmore: Does it require that large force in
4202 your shops to keep your equipment in order?

Mr. Rice: It does; there is a great deal of work on the logging cars.

Examiner Burchmore: Do those men also repair the locomotives of the Summit Lumber Company?

Mr. Rice: Yes, sir.

Examiner Burchmore: What charge do you make the lumber company?

Mr. Rice: The actual cost plus ten per cent in addition.

Examiner Burchmore: How many section gangs have you?

Mr. Rice: Three.

Examiner Burchmore: Are there any other employees on the road whom I have not included in these names?

Mr. Rice: I believe not.

Examiner Burchmore: Let me ask about the general officers. You have four general officers apparently who receive a salary from the railroad company?

Mr. Rice: That is the President, Vice President, General Manager and General Superintendent.

Examiner Burchmore: How about your counsel——

Mr. Rice: He receives a salary.

Examiner Burchmore: And the Auditor?

Mr. Rice: He receives a salary.

4203 Examiner Burchmore: That is six.

Mr. Rice: I may not have classified them under the heading of general officers.

Examiner Burchmore: You have two headings here, general officers, President, Vice President, General Manager and General Superintendent, and other officers, General Freight Agent, Traffic Manager——

Mr. Rice: General Attorney and Auditor.

Examiner Burchmore: M. M., that is Master Mechanic, I suppose.

Mr. Rice: Yes, sir.

Examiner Burchmore: And two other words here, it looks like "Ind. Agent."

Mr. Rice: That was a man we had on the roll for a while as Industrial Agent. We have discontinued his services some time ago.

Examiner Burchmore: Then the total compensation of the ten general and other officers seem as to have been about somewhat in excess of $8,000 a year.

Mr. Rice: That is true, between $8,000 and $9,000.

Examiner Burchmore: The details of that will be found of course in the annual report?

Mr. Rice: Yes, sir.

4204 Examiner Burchmore: Do you issue any time tables?

Mr. Rice: One (handing paper).

Examiner Burchmore: How many trains a day are there covered by that time table?

Mr. Rice: Two trains.

Examiner Burchmore: That is a mixed train eastward and one mixed train westward daily?

Mr. Rice: That is true.

Examiner Burchmore: How many cars are there in that train as a usual thing?

Mr. Rice: Well, an average of 15 cars.

Examiner Burchmore: This combination coach and 14 other cars?

Mr. Rice: Yes, sir.

Examiner Burchmore: Do you have any special logging trains besides this train?

Mr. Rice: We run logging trains, yes, sir.

Examiner Burchmore: Do you handle logs on this train?

Mr. Rice: Not on that train, no, sir.

Examiner Burchmore: Do you have any merchandise cars on which you handle less than carload traffic?

Mr. Rice: Frequently.

Examiner Burchmore: Do you put that on one of your box
4205 cars or in the combination car?

Mr. Rice: We put it in a box car and some of it in the combination car, according to conditions.

Examiner Burchmore: I intended to say flat car. You have no box cars?

Mr. Rice: We are using box cars in getting a good deal of our products from the woods, such as staves and forest products, and if we have to haul empties out to load the staves and we have sufficient, we load it in the box car.

Examiner Burchmore: You use Rock Island cars?

Mr. Rice: Yet, sir.

Examiner Burchmore: Do you pay per diem for those cars?

Mr. Rice: We do.

Examiner Burchmore: Do you desire to file that time table as an exhibit?

Mr. Rice: Yes.

(The time table so offered and identified, was received in evidence and thereupon marked Arkansas Southeastern Railroad Exhibit No. 3, Witness Rice, received in evidence January 23, 1911, and is attached hereto.)

Examiner Burchmore: Do you handle the United States mail?

Mr. Rice: No.

Examiner Burchmore: Any express matter?

4206 Mr. Rice: No.

Examiner Burchmore: Do you carry passengers for hire?

Mr. Rice: Yes, sir.

Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Rice: Last year ending June 30th, 1910, it was $778.90, and for the five months ending November 1st, 1910, $300.45.

Examiner Burchmore: How many passengers did you carry during that year, have you the figures?

Mr. Rice: I have not the figures here before me. As well as I remember, about 1700. It is covered, however, by the report which you have.

Examiner Burchmore: Apparently 1096 passengers.

Mr. Rice: 1096?

Examiner Burchmore: Carried 15,578 miles. Your company has a hospital?

Mr. Rice: We employ a surgeon or physician, and we assess our hospital fee, and out of that the surgeon or physician or company's doctor is paid, out of that fee.

Examiner Burchmore: What was the extent of your total freight traffic for the last fiscal year?

Mr. Rice: $51,891.81.

4207 Examiner Burchmore: And the passenger traffic was how much?

Mr. Rice: $778.90.

Examiner Burchmore: You had other sources of revenue, according to the report, amounting to $608.60?

Mr. Rice: Yes, sir.

Examiner Burchmore: Making your total operating revenue $53,279.31?

Mr. Rice: That is correct.

Examiner Burchmore: On the other side of the book the operating expenses apparently aggregated——

Mr. Rice: $87,233.76.

Examiner Burchmore: What was your operating ratio then, 163.72?

(No reply.)

Examiner Burchmore: To revert to the freight traffic, the total tonnage of freight inbound and outbound for that year was how much?

Mr. Rice: 73,150 tons.

Examiner Burchmore: Have you figures there giving an analysis of that tonnage?

Mr. Rice: I have a statement showing the comparison between the Summit Lumber Company's traffic as compared with other

4208 shippers, which I would like to put in as part of the record.

Examiner Burchmore: That may be filed, but will you please summarize it verbally.

Mr. Rice: Lumber and logs—do you want the tonnage and revenue, your Honor?

Examiner Burchmore: Yes.

Mr. Rice: Lumber and logs, tons——

Mr. Cowan: Give it separately, lumber and logs.

Mr. Rice: Lumber, 22,961 tons. Logs, 42,635 tons. Revenue on the lumber and logs $47,031.21. That is under the heading of Summit Lumber Company business. Staves, other shippers, I refer to other than the Summit Lumber Company, 405 tons, revenue $397.

Shingles, other shippers, 1098 tons, $824.24.

Grain and grain products, Summit Lumber Company, 274 tons, $134.57; other shippers 85 tons, $42.74.

Hay, Summit Lumber Company, 130 tons, $59.80; other shippers 22 tons, $66.00.

Flour, other shippers, 84 tons, $46.10.

Other mill products, other shippers, 21 tons, $79.89.
Cotton and cottonseed, other shippers, 143 tons, $173.40.
Examiner Burchmore: What period is that?
4209 Mr. Rice: The year ending June 30th, 1910.
Examiner Burchmore: What is the figure for cotton and cottonseed?
Mr. Rice: 143 tons.
Examiner Burchmore: Is that all inbound or outbound?
Mr. Rice: Outbound.
Examiner Burchmore: Cotton and cottonseed are a product of agriculture.
Mr. Walter: There is also meal and hulls added.
Mr. Rice: I have the meal and hulls separated.
Examiner Burchmore: The report I have before me says 8 tons of cotton.
Mr. Rice: Of cotton?
Examiner Burchmore: And a total of 51 tons of products of agriculture of all kinds moving outbound.
Mr. Rice: You will find below there in miscellaneous tonnage that I threw all the tonnage that was not classified into miscellaneous, outside of merchandise.
Examiner Burchmore: What was the total again?
Mr. Rice: 143 tons, $173.40.
Cottonseed meal and hulls, 43 tons, $31.53.
Examiner Burchmore: I did not get that. You said you
4210 had how many tons of cotton and cottonseed?
Mr. Rice: 143.
Examiner Burchmore: How much of cottonseed hulls?
Mr. Rice: 43.
Examiner Burchmore: That means 186 all together?
Mr. Rice: 186.
Examiner Burchmore: This report shows 8 tons of cotton and 150 tons of miscellaneous freight outbound, which makes 158 total.
Mr. Walter: Was not the meal and hulls inbound?
Mr. Rice: Cottonseed meal and hulls, yes, that is inbound.
Examiner Burchmore: I just wanted that explained.
Mr. Walter: That is right.
Mr. Rice: Shall I proceed?
Examiner Burchmore: Yes.
Mr. Rice: Fertilizer, 164 tons, $148.30.
Scrap iron, 15 tons, $13.50.
Examiner Burchmore: Whose scrap iron is that?
Mr. Rice: It was from the station at Caloway, some scrap iron picked up by a merchant located at Caloway.
Coal, 4,431 tons, $1584.01.
Castings and machinery——
4211 Examiner Burchmore: You are getting down to the small items. Are there any other large items on the list?
Mr. Rice: No.
Examiner Burchmore: Give the total for the Summit Lumber Company and for the other shippers?
Mr. Rice: Summit Lumber Company, total 66,063 tons; revenue

$47,429.81; other shippers, tonnage, 7,087 tons; revenue $4,462. Percentage of the total, Summit Lumber Company 90.6; other shippers 9.4.

Examiner Burchmore: That is the percentage of tonnage or revenue?

Mr. Rice: Percentage of revenue, that is. The percentage of tonnage is 90.32 for the Summit Lumber Company, and 9.68 for the other shippers.

Examiner Burchmore: You say other shippers. Who do you include in that term "other shippers"?

Mr. Rice: All the shippers other than the Summit Lumber Company. That was my understanding at the meeting at New Orleans, that the tap lines were to render a statement showing separately the tonnage as shipped by the mill that is located on the line, and all other shippers.

Examiner Burchmore: That includes employés of the Summit Lumber Company?

4212 Mr. Rice: That includes everything that is not shipped in the name of or consigned to the Summit Lumber Company.

Examiner Burchmore: Does the Summit Lumber Company have any stores up there?

Mr. Rice: Not at all.

Examiner Burchmore: Well, this nine per cent of tonnage furnished by outside interests, is it your impression that the employés of the Summit Lumber Company received any substantial part of that nine per cent?

Mr. Rice: No, sir, not a substantial part. I have a statement here if it is in order to read it briefly; it is in detail, that I want to file as part of the record, showing our last five months' tonnage.

Examiner Burchmore: Suppose you give the totals only.

Mr. Rice: That is what I would like to give you. I am bringing this in to show the increase in our outside business. Total tonnage and revenue for the five months ending November, 1910, are as follows:

Summit Lumber Company, 25,519 tons, revenue $4,569.64.

Other shippers, 2,723 tons, revenue $2,830.19.

The percentage of the Summit Lumber Company to the whole is 61.7 and other shippers 38.3, that was the percentage of reve-

4213 nue. The percentage of tonnage of the Summit Lumber Company was 90.3 and other shippers 9.7.

Examiner Burchmore: Is that so much an increase in outside tonnage as a falling off in the lumber company's tonnage?

Mr. Rice: It is a great increase in the total outside tonnage. The lumber company's tonnage was comparatively the same as it would be for the same period in the previous year.

Examiner Burchmore: I want to know about this increase in outside tonnage. Is it not explained by the cotton movement during those months?

Mr. Rice: No, our cotton business so far has been very light. We have increased our tonnage principally in staves. We have a stave mill located on our line which has shipped a great many staves; in

fact between four and five times as much in this period of five months as they shipped the entire year last year. It is a new plant.

Examiner Burchmore: Who owns that plant?

Mr. Rice: A. P. Kirby.

Examiner Burchmore: Is Mr. Kirby a stockholder in the Summit Lumber Company?

Mr. Rice: Not connected in any way at all.

Examiner Burchmore: Does not the Summit Lumber
4214 Company furnish the stave timber to this mill?

Mr. Rice: I could not answer that question. I do not think they do altogether. They may furnish some, but I think Mr. Kirby has a good deal of timber interests on that part of the line. Mr. Kirby lives at Farmerville.

Examiner Burchmore: What is your passenger fare?

Mr. Rice: Five cents a mile.

Examiner Burchmore: Do you file that with the Interstate Commerce Commission?

Mr. Rice: We have, yes, sir.

Examiner Burchmore: Do you sell any tickets?

Mr. Rice: We do from Randolph. I have a copy of the passenger tariff if you would like it to go on record. It is filed with the Commission as stated.

Examiner Burchmore: There is no need to file it here if it is filed with the Commission.

Mr. Rice: Excuse me, I am wrong about the passenger tariff. It is not filed with the Interstate Commerce Commission. It is only filed with the Louisiana Commission.

Examiner Burchmore: I do not believe we want it.

Mr. Walter: No, you need not put it in. It is entirely state traffic, the passenger is.

4215 Examiner Burchmore: Do you publish and file with the Interstate Commerce Commission class or commodity rates applying between Randolph and stations on your line?

Mr. Rice: We do.

Examiner Burchmore: Are you a party to joint rates on class freight in connection with the Rock Island Railroad?

Mr. Rice: Yes, sir.

Examiner Burchmore: Any commodity rates other than on lumber?

Mr. Rice: Yes, sir.

Examiner Burchmore: Do you file with the Commission an index of your tariffs?

Mr. Rice: We do.

Examiner Burchmore: You also have joint rates on lumber over the Rock Island Railroad?

Mr. Rice: Yes, sir.

Examiner Burchmore: Where do those rates apply from?

Mr. Rice: From all of our stations that are listed on our station lists.

Examiner Burchmore: How many stations are there, five or six?

Mr. Rice: Five at present.

Examiner Burchmore: Those stations are Randolph——
4216 Mr. Rice: Randolph, Randolph Junction, McKay, Calloway, Laphiew and Luter.
Mr. Walter: And Tugwell City?
Mr. Rice: No operation. We have Tugwell City on our extension.
Examiner Burchmore: What are the junction points between the logging road and the Arkansas Southeastern?
Mr. Rice: Luter is a junction point. Lephiew is a junction between the Arkansas Southeastern and the Lephiew Shingle Mill. They have a shingle mill located at Lephiew and he has a logging line of his own seven or eight miles long at the station called Lephiew.
Examiner Burchmore: Does he operate that himself?
Mr. Rice: Yes, sir.
Examiner Burchmore: Is it a standard gauge logging road?
Mr. Rice: Yes, sir.
Examiner Burchmore: Does he use your cars at all?
Mr. Rice: Not in logging.
Examiner Burchmore: The Summit Lumber Company's private tracks are standard gauge?
Mr. Rice: Standard gauge.
Examiner Burchmore: What is the station at Randolph, is that the junction point between your line and the Rock Island?
4217 Mr. Rice: Yes, sir.
Examiner Burchmore: And Randolph Junction, is that the mill?
Mr. Rice: That is the terminus of the yard.
Examiner Burchmore: How far is it from Randolph to Randolph Junction?
Mr. Rice: About three quarters of a mile.
Examiner Burchmore: Then Randolph Junction must be the other side of the mill, in respect to the other railroad?
Mr. Rice: It is in respect to the Rock Island, yes, sir.
Examiner Burchmore: The rates on lumber from points on your line to interstate destination reached by the Rock Island are the same as the rates to the same points from the Rock Island station at Randolph, are they not?
Mr. Rice: Yes, sir.
Examiner Burchmore: You add no arbitraries, when it comes to a shipment originating on your line?
Mr. Rice: Interstate shipments, I understood you?
Examiner Burchmore: Yes.
Mr. Rice: Yes.
Examiner Burchmore: How about state shipments?
Mr. Rice: We have no through rates on state shipments.
Examiner Burchmore: What is the explanation for that
4218 failure to join in rates to state points?
Mr. Rice: Well, we have not so far been able to get satisfactory rates or divisions on local shipments. We have the matter under consideration. We have been holding back our joint state rates until we could make our connection at Farmerville, where we can handle it all at one time.

Examiner Burchmore: You mean the Rock Island would not give you any division on state business?

Mr. Rice: Well, they would give us a division, but not the division which we thought justified us in handling the business, that has been our experience so far.

Mr. Walter: Is it not true in Louisiana that the through rate is made up of the combination of locals on each line less than 10 per cent?

Mr. Rice: That is true where there is no established rate from the junction point.

Examiner Burchmore: Do the state authorities of Louisiana offer any objection to your entering into any joint rate with the Rock Island?

Mr. Rice: No, sir.

Examiner Burchmore: What are the divisions which your road receives from the Rock Island?

Mr. Rice: From one to four cents on lumber. On mer-
4219 chandise 12, 10, 9 and 7 on the first four classes.

Examiner Burchmore: On what traffic do you get a division of four cents on lumber?

Mr. Rice: Nebraska and Colorado points.

Examiner Burchmore: How long have you been receiving four cents on such traffic?

Mr. Rice: Approximately between three and four years, I believe, between three and four.

Examiner Burchmore: Did you ever receive more than four cents?

Mr. Rice: No, sir.

Examiner Burchmore: Were you aware that there are certain tap line roads in Louisiana and Arkansas that have been receiving five cents on Nebraska traffic?

Mr. Rice: I could not state positively.

Examiner Burchmore: You did not know that fact. When were divisions first accorded your road by the Rock Island?

Mr. Rice: From the information that I have at hand in 1907, June 16th, 1907.

Examiner Burchmore: Then it took you three years after your incorporation to persuade the Rock Island to give you divisions?

4220 Mr. Rice: I was not connected with the company that far back and I could not answer you in that respect.

Mr. Walter: The Rock Island until 1907, did not have much of a line down there south of Randolph, did it?

Mr. Rice: No. They took over the Arkansas Southern in 1906 and 1907, as well as I remember.

Examiner Burchmore: Did you formerly get a division in connection with the Arkansas Southern?

Mr. Rice: No, sir.

Examiner Burchmore: Sure about that?

Mr. Rice: Yes, sir.

Examiner Burchmore: Have you any contract with the Rock Island governing the division of the rate?

Mr. Rice: None other than the division sheets issued by them.

Examiner Burchmore: When did you commence to project or extend your line towards Farmerville?

Mr. Rice: As well as my knowledge of the matter goes, about two years ago.

Examiner Burchmore: What was the purpose of that extension?

Mr. Rice: Well, we figured we would open up territory and it would give us some good business especially on the passenger
4221 line. There is a good deal of farming country over on the Farmerville line that is not timber country, which we could develop, and it makes an opening from points around Farmerville which are almost isolated now. In other words, Farmerville is a very hard point to reach from the Rock Island now.

Examiner Burchmore: Did the Rock Island urge you to build over there?

Mr. Rice: Not that I know of.

Examiner Burchmore: I gathered from your response to the previous question that it was desirable for the Rock Island to get into Farmerville, and you were building over to open up that line.

Mr. Rice: It would be desirable to them, it would be a mutual arrangement in a way; it would give the Rock Island a great deal of business that they turn off to the Eldorado & Wesson now, for Farmerville.

Examiner Burchmore: It would also give you a second outlet to the markets for your lumber?

Mr. Rice: That is true. There has been a great deal of demand from the residents of Farmerville for our company to open up that line, as I stated before, for the reason that they are very much
4222 handicapped in getting in and out.

Examiner Burchmore: The mill of the Summit Lumber Company seems to be 500 or 600 feet, as I understood you to say, from the line of the Rock Island Railroad.

Mr. Rice: Yes, directly in a direct line.

Examiner Burchmore: And within three-quarters of a mile by rail.

Mr. Rice: That is true.

Examiner Burchmore: Who furnishes the cars for outbound movements of lumber?

Mr. Rice: The Rock Island.

Examiner Burchmore: And the Arkansas Southeastern places those empty cars at the mill for loading, and subsequently moves them out to the Rock Island?

Mr. Rice: The Arkansas Southeastern performs the service They have an interchange track for receiving them from the Rock Island.

Examiner Burchmore: On a shipment of lumber from the Randolph plant destined say to St. Louis, what point would be shown as the point of origin?

Mr. Rice: Luter, La.

Examiner Burchmore: You bill it back to the woods and
4223 apply the milling in transit rate?

Mr. Rice: We bill it as originating at Luter, and apply the milling in transit rate.

Examiner Burchmore: How are the logs taken up to the mill?

Mr. Rice: By the Arkansas Southeastern locomotive; the Arkansas Southeastern operates the logs from the delivering point on the Summit Lumber Company's logging line to the mill.

Examiner Burchmore: Then you interchange the traffic, practically speaking, with the Summit Lumber Company's private road at junction points?

Mr. Rice: At the junction point, we furnish them the empties to load their logs on, and return them empty again after hauling to the mill.

Examiner Burchmore: What compensation do you receive for handling the logs up to the mill?

Mr. Rice: That is covered by the tariffs, the through rate covers the handling of the logs from the woods to the mill.

Examiner Burchmore: You have no agent at Luter?

Mr. Rice: No, sir, not at present. The agent at Randolph issues bills of lading at present.

Examiner Burchmore: Does he issue bills of lading before the logs reach the mill?

Mr. Rice: No.

4224 Examiner Burchmore: There is as a matter of fact no billing covering the movement into the mill?

Mr. Rice: No billing covering that movement of the logs; it is handled on the conductor's train sheet.

Examiner Burchmore: The conductor makes that sheet out as he is on his way down to the mill and hands it in.

Mr. Rice: When he is leaving the junction from the logging road he makes it and turns it in with his report showing the number of cars he has handled in the train.

Examiner Burchmore: In 1909 this railroad company apparently had an operating deficit of $25,000 or $26,000.

Mr. Rice: That is correct, as well as I remember.

Examiner Burchmore: How did you take care of that deficit?

Mr. Rice: Well, Messrs. Silverthorne, as I stated, had been paying the operating expenses of the road.

Examiner Burchmore: They paid it on account of their capital stock?

Mr. Rice: On account of their capital stock.

Examiner Burchmore: Is the same true of your deficit for 1910, which was apparently $38,000?

Mr. Rice: It is.

4225 Examiner Burchmore: I want to ask one or two questions about your operating expenses. The mileage of your road is about 20 miles of main line?

Mr. Rice: 20.6.

Examiner Burchmore: Your maintenance of way and structure account for the last fiscal year was $43,777.25. That seems to be $2,200 a mile.

Mr. Rice: Well, part of that expense, as I stated earlier in the hearing, was owing to the fact that we were at that time maintain-

ing the logging spurs, that is, part of that period, in fact up to the 1st of May, 1910. Since that time we have maintained only the main line; in other words the lumber company looks after their logging spurs. That accounts for the heavy maintenance for the railroad.

Examiner Burchmore: What is the length of those logging spurs?

Mr. Rice: Between 12 and 13 miles in all, so far as I know.

Examiner Burchmore: That is the total length of your road at that time was about 32 or 33 miles?

Mr. Rice: 36 miles, about.

Examiner Burchmore: Then you think it did cost you nearly $1,500 a mile to maintain your road?

Mr. Rice: Yes, sir.

4226 Examiner Burchmore: Is there anything about the character of the road which requires a heavy maintenance expense?

Mr. Rice: Not having any ballast it requires a previous heavy section force, considering the number of tons of logs handled, to maintain the track.

Examiner Burchmore: Then it cost a good deal to keep moving these logging spurs around for the lumber company too, did it not?

Mr. Rice: We had nothing to do with moving the logging spurs.

Examiner Burchmore: Did you not furnish the rails and fastenings, and so forth?

Mr. Rice: No, the steel belonged to the Summit Lumber Company.

Examiner Burchmore: When did you sell these locomotives to the lumber company?

Mr. Rice: The 1st of May, 1910.

Examiner Burchmore: Previous to that time you had been operating the logging trains clear up into the woods?

Mr. Rice: Yes, sir.

Examiner Burchmore: What did they pay you for taking the logs out of the woods?

Mr. Rice: $2.00 a thousand.

4227 Examiner Burchmore: In addition to your present pay?

Mr. Rice: That is right.

Examiner Burchmore: Do you remember what that amounted to per year or per month?

Mr. Rice: Well, approximately $4,000 a month.

Examiner Burchmore: Has this road ever paid any dividends?

Mr. Rice: It has not.

Examiner Burchmore: Lost money all the time?

Mr. Rice: Yes, sir.

Examiner Burchmore: That is all I have to ask at this time.

Mr. Walter: When will the steel be laid into Farmerville, speaking approximately?

Mr. Rice: Sixty days.

Mr. Walter: Has the corporation taken any action looking towards any further construction?

Mr. Rice: A resolution has been passed by the Board of Directors to extend the road with all possible haste to Monroe, La.

Mr. Walter: That is shown on Exhibit No. 2 of the proposed route?

Mr. Rice: Yes, sir, on the profile No. 2.

Mr. Walter: What sort of territory is that through which
4228 the Arkansas Southeastern extends?

Mr. Rice: In general, do you mean?

Mr. Walter: Yes, just describe it briefly.

Mr. Rice: Very good farming country for approximately half of the mileage between Farmerville and Randolph, opening up and developing a very good farming country, stock raising, cotton and peanuts.

Mr. Walter: Have you a list of the important industries or shippers along your line?

Mr. Rice: I have.

Mr. Walter: We offer that list in evidence, showing the shippers, with the nature of the commodity and the station where located.

(The paper so offered and identified, was received in evidence and thereupon marked Arkansas Southeastern Railroad Exhibit No. 5, Witness Rice, received in evidence January 23, 1911, and is attached hereto.)

Examiner Burchmore: Are any of those persons employed by the Summit Lumber Company?

Mr. Rice: That are shown on that sheet?

Examiner Burchmore: Yes.

Mr. Rice: None at all, other than the Summit Lumber
4229 Company plant, of course, which is included in the list of shippers.

Mr. Walter: Has there recently been located a hardwood mill on that line?

Mr. Rice: Yes, at Lophiew, La.

Mr. Walter: What is the name of it?

Mr. Rice: W. F. Usrey & Company.

Mr. Walter: When did that concern commence to do business?

Mr. Rice: The first shipment made by them was December 9th, 1910.

Mr. Walter: About what was their output daily?

Mr. Rice: I am informed that their output at present is 20,000 feet per day of hardwood lumber.

Mr. Walter: Can you state with reasonable certainty whether or not there is a probability of a material and substantial increase of the tonnage and of the passenger service especially after you have completed your Farmerville connection?

Mr. Rice: Well, there is no question as to the passenger business after we get into Farmerville. I should say on a very conservative figure we will have five times the passenger business we have now.

Mr. Walter: What about freight tonnage?

4230 Mr. Rice: The freight tonnage ought to treble itself.

Mr. Walter: I think you may ask him, Judge Cowen, if you care to.

Mr. Cowen: How long have you been with the road?
Mr. Rice: 16 months.
Mr. Cowen: Has Mr. Blackwell bought in there before you came?
Mr. Rice: No, sir.
Mr. Cowen: He bought in afterwards?
Mr. Rice: Afterwards.
Mr. Cowen: Did you know anything about the occasion of his buying in at all?
Mr. Rice: I am not familiar with it at all.
Mr. Cowen: Can you imagine any reason why a man would want to make an independent investment in a railroad losing money like this one is?
Mr. Rice: I could not answer that question. I don't know his object at all, as I stated. I don't know anything of what his intentions are or what his object was in buying the stock.
Mr. Cowen: Do you know anything about his business relations with the Summit Lumber Company?
4231 Mr. Rice: I understand he has no connection whatsover.
Mr. Cowen: But do you know anything about it?
Mr. Rice: Only from information which has been given me.
Mr. Cowen: Have you ever wondered why he bought this stock if he was not connected with the lumber company?
Mr. Rice: No.
Mr. Cowen: Ever make any inquiry about that?
Mr. Rice: No, sir.
Mr. Cowen: What sort of lumber does the Summit Lumber Company handle, pine?
Mr. Rice: Pine lumber.
Mr. Cowen: What sort of an outlet did they have before the Rock Island Railroad was built, do you know?
Mr. Rice: I am not familiar with it that far back.
Mr. Cowen: Why is not Mr. Blackwell here, if his connection with the road is longer than yours?
Mr. Rice: I could not state that.
Mr. Cowen: Why are not these other men here, Silverthorne, to give the history of the thing?
Examiner Burchmore: Mr. Silverthorne is here, is he not?
Mr. Cowen: Is he?
Mr. Rice: He is in the city.
4232 Mr. Cowen: Do you know who built this railroad to begin with?
Mr. Rice: The Summit Lumber Company.
Mr. Cowen: How long did that company own it before it became an incorporated railroad, do your records show that?
Mr. Rice: According to my records approximately six years.
Mr. Cowen: It was incorporated at what date?
Mr. Rice: October, 1904, I believe is the date.
Mr. Walter: November 15th.
Mr. Rice: November 15th, 1904.
Mr. Cowen: You said there was paid for it $254,000.
Mr. Rice: Yes, sir.

Mr. Cowen: Do your records show how the payment was made?

Mr. Rice: My record shows that it was credited up to the Summit Lumber Company.

Mr. Cowen: Credited to the Summit Lumber Company, on whose books?

Mr. Rice: On the railroad books.

Mr. Cowen: And do your records show that it still stands that way?

Mr. Rice: Yes, sir.

Mr. Cowen: They performed all of the important offices of buying it but paying for it.

4233 Mr. Walter: He did not understand your question, I guess.

Mr. Rice: I don't understand.

Mr. Cowen: You said it was credited to the lumber company on the railroad company's books.

Mr. Rice: Yes, sir.

Mr. Cowen: And I asked you if it still stood that way and you said yes.

Mr. Rice: Yes.

Mr. Cowen: Then I remarked they did all the important things about buying it except paying for it, the railroad company did everything about buying the railroad except paying for it.

Mr. Rice: They still owe for it.

Mr. Cowen: And issued stock on the credit of what it owed?

Mr. Rice: Well, the Messrs. Silverthorne financed the road and the stock was issued to them in lieu of their financing the road.

Mr. Cowen: Well, they financed it originally when it was built.

(No reply.)

Mr. Cowen: Did they finance this $254,000 credit?

Mr. Rice: Yes, I understand they did.

4234 Mr. Cowen: By building the road previously?

Mr. Rice: Yes, sir.

Mr. Cowen: And when the railroad company took over the property it issued capital stock, is that correct?

Mr. Rice: Issued capital stock.

Mr. Cowen: How much did it issue?

Mr. Rice: $500,000.

Mr. Cowen: For which the railroad company had paid nothing?

Mr. Rice: Yes, the railroad company had paid nothing for it.

Mr. Cowen: How much money do you think Mr. Blackwell paid for the portion of the stock in that sort of a concern?

Mr. Rice: I could not state.

Examiner Burchmore: I suggest this witness did not know about Mr. Blackwell. Cannot Mr. Silverthorne appear later in the day?

Mr. Walter: I think he can, yes, sir.

Examiner Burchmore: Well, we will request that he appear later.

Mr. Walter: All right. Let me just ask, Silverthorne furnished this $254,000?

Mr. Rice: Yes, sir.

4235 Mr. Walter: And then took the stock in exchange for the money he had advanced and was to advance?

Mr. Rice: That was the arrangement.

Mr. Cowen: I am interested in that maintenance of way account. I find it cost you as much for maintenance of way and structures as it does the Baltimore & Ohio per mile of line, and I would like some explanation of that, because it seems so unusual.

Mr. Rice: Well, as I stated previously, nine months in the last fiscal year the Arkansas Southeastern Railroad was operating the woods spurs.

Mr. Cowen: That would have made altogether how many miles?

Mr. Rice: Something like 36 miles in all.

Mr. Cowen: So it would have made something like $1200 a mile even then?

Mr. Rice: Yes, something like that. Those woods spurs, of course, are moved around a great deal.

Mr. Cowen: But you said you did not cover the expense of moving them.

Mr. Rice: If I did I made an erroneous statement. We operated the woods spurs at that time, whatever work was necessary in shifting the track.

4236 Mr. Cowen: Was the track shifted during that period?

Mr. Rice: From what I know of logging—I am not very familiar with logging—but I understand they are, because we had a steel gang which was continually working, about 40 men in the steel gang, so I judge they were shifting their track from time to time.

Mr. Cowen: Have you any separate account showing what it cost for maintenance of way and structures on this line outside of logging spurs?

Mr. Rice: No.

Examiner Burchmore: What has it cost you for the five months of this year to maintain your own line?

Mr. Cowen: Yes, that is a pertinent question.

Mr. Rice: I have not those figures before me. I can file them during the day, or tomorrow.

Mr. Walter: We will file them.

Examiner Burchmore: Or we will have Mr. Silverthorne give them when he comes.

Mr. Walter: He has nothing to do with that management.

Examiner Burchmore: Well, you can advise us when he comes.

Mr. Rice: Yes, I have the reports with me, but not in the room. Our maintenance, however, has decreased 50 per cent approxi-

4237 mately since we abandoned the operation of the logging spurs.

Mr. Cowen: You mean the aggregate or per mile?

Mr. Rice: The aggregate, the gross.

Mr. Cowen: I see you have a large list of officers here for this short mileage and small tonnage. Do they perform any service in connection with this railroad, the President, Vice President, Superintendent—there is a long list of officers.

Mr. Rice: All of them perform service.

Mr. Cowen: Do you have interchange passes with other railroads?

Mr. Rice: Some, those who give them to us we interchange with.

Mr. Cowen: All your officers get passes from the Rock Island?

Mr. Rice: Not all of them, no, sir.

Mr. Cowen: For what reason?

Mr. Rice: We have never requested it.

Mr. Cowen: Do the officers of this railroad who have passes from the Rock Island have anything to do with the lumber company's business, any of them?

Mr. Rice: Not that I know of.

4238 Mr. Cowen: I thought you said some of them are officers of the lumber company?

Mr. Rice: They are. At present none of our officers have any Rock Island transportation.

Mr. Cowen: None of your officers?

Mr. Rice: None of them, no.

Mr. Cowen: At present, this is right after the 1st of January.

Mr. Rice: Yes; I say at present.

Mr. Cowen: Before the 1st of January they did?

Mr. Rice: Some of them had Rock Island transportation before the 1st of January.

Mr. Cowen: And those were officers connected with the lumber company, some of them?

Mr. Rice: One of them that I know of.

Mr. Cowen: Who is that?

Mr. Rice: The General Superintendent.

Mr. Cowen: You spoke of some passenger traffic?

Mr. Rice: Yes.

Mr. Cowen: Are those mainly employés of the lumber company?

Mr. Rice: No, sir.

4239 Mr. Cowen: Any of them employés of the lumber company?

Mr. Rice: Some of them.

Mr. Cowen: Do you charge the employés of the lumber company anything?

Mr. Rice: Yes, sir.

Mr. Cowen: So when they are going back and forth from the mill or any other place to the woods they pay the same as others?

Mr. Rice: The same rate of fare.

Mr. Cowen: I was curious to know who has scrap iron out there to ship?

Mr. Rice: Well, as well as I remember, I could not state definitely as to the consignor, but at this station of Caloway there are several little cotton gins located around there, and a carload of scrap was picked up and shipped to Eldorado to the Eldorado Foundry, and beyond that I could not state definitely.

Mr. Cowen: I thought maybe it was old sawmill scrap.

Mr. Rice: No, there is no sawmill out there at that particular place.

Mr. Cowen: Well, you have a single mill?

Mr. Rice: Yes, sir.

4240 Mr. Cowen: I see by this map there is a logging road that seems to belong to somebody that has either a shingle mill or a pine mill located there.

Mr. Rice: Shingle mill at Lephiew.

Mr. Cowen: Does he get a division of the rate?

Mr. Rice: No, he gets no division.

Mr. Cowen: Does he pay the same rate on his stuff in and out as prevails at the junction point of the Rock Island Road?

Mr. Rice: On interstate traffic, yes.

Mr. Cowen: And on state traffic he does not?

Mr. Rice: On state traffic he does not; he pays the local.

Mr. Cowen: Pays the local rate to the junction point?

Mr. Rice: Less 10 per cent.

Mr. Cowen: There is a hardwood man who has a mill on your line?

Mr. Rice: Yes, sir.

Mr. Cowen: Does the same thing prevail with him?

Mr. Rice: The same thing prevails with him as with the shingle man.

Mr. Cowen: Then somebody has a pine mill.

Mr. Rice: A man named W. T. Carr.

Mr. Cowen: How is it as to him?

4241 Mr. Rice: He gets the same rate that any of the other shippers get from stations on our line.

Mr. Cowen: Does he get the same rate on his lumber as prevails at the point where you join with the Rock Island?

Mr. Rice: Yes, sir, on interstate.

Mr. Cowen: But on state traffic he would have to pay the local rate?

Mr. Rice: Yes, sir.

Mr. Cowen: Since the Louisiana Commission intervened in here and seemed to be so anxious to help the tap liners, I wish you would tell me why it is, if you know, they did not make joint through rates for the State of Louisiana?

Mr. Rice: They are making joint through rates about as fast as they can come to them.

Mr. Cowen: They have had a long time in which to do this.

Mr. Rice: That is true, but they are continually issuing orders for joint through rates; for instance, we have the petroleum rate, and then they came along with the rice rate, and then on native grown hay.

Mr. Cowen: But they have not made it on lumber?

Mr. Rice: They have not made it on lumber.

Mr. Cowen: You say that is pretty rich farming country?

4242 Mr. Rice: It is considered pretty good farming country.

Mr. Cowen: I see you shipped out 143 tons of cotton and cottonseed?

Mr. Rice: Yes.

Mr. Cowen: And shipped in 164 tons of fertilizer?

Mr. Rice: Yes, sir.

Mr. Cowen: I was curious to know how it was that you got such a farming country that cannot ship out over 143 tons of cotton and cottonseed and had to ship in 164 tons of fertilizer.

Mr. Rice: What I mean by good farming country, I meant the soil is good, it is just a question of developing it, which the farmers are commencing to do now.

Mr. Cowen: A good place to use fertilizer?

Mr. Rice: Well, on some crops, yes, sir.

Mr. Cowen: What other crops are there? There does not seem to be anything else; you ship in hay, flour and grain and ship out cotton and cottonseed.

Mr. Rice: There will be approximately 100 cars of peanuts shipped out over our line this year. I get that from good authority.

Mr. Cowen: The fertilizer is shipped in for the peanuts?

Mr. Rice: They won't need any fertilizer for that.

4243 Mr. Cowan: Is it used for the cotton?

Mr. Rice: Yes, sir.

Mr. Cowan: It takes a ton of fertilizer for a ton of cotton and cottonseed, does it?

Mr. Rice: You understand, I do not say we got all the cotton that was raised over there. The Iron Mountain runs within five or six miles of our tracks and they have through rates at present.

Mr. Cowan: Maybe they ship in some fertilizer also.

Mr. Rice: I don't know about that, of course.

Mr. Walter: You do not know that all of that fertilizer went to the use of things that were shipped out. They might use it for their own consumption.

Mr. Rice: Of course we did not get all the product out.

Mr. Cowen: If the witness testifies they can consume fertilizer except in agriculture——

Mr. Walter: The people have to have something to live on, you know.

Mr. Cowan: But they do not eat fertilizer.

Mr. Walter: They use it to grow things with.

Mr. Rice: As a matter of fact, fertilizer is used very extensively all through that country wherever they grow anything, you

4244 know that.

Mr. Cowen: That is the reason I thought it was not such a good farming country. Now, you are acquainted with Mr. Carlisle, who was on the stand this morning.

Mr. Rice: No.

Mr. Cowen: You have never made any overtures to him to sell him this road?

Mr. Rice: I do not know him at all.

Mr. Cowen: In regard to the staves, I believe you asked, Mr. Examiner, in regard to the staves?

Examiner Burchmore: Yes.

Mr. Cowen: This grain and hay was all inbound shipments?

Mr. Rice: Yes, sir.

Mr. Cowen: Is it not a fact that some of that was shipped in to "shipper's orders, notify," and some is taken by the lumber company?

Mr. Rice: Yes, sir, some of it.

Mr. Cowen: Do you know how much?

Mr. Rice: I believe I read that, what the Summit Lumber Company got.

Mr. Cowen: You said your list just contained what was shipped

by the lumber company, and I thought these "shipper's orders, notify," would not be on your list.

4245 Mr. Walter: It is divided both as to the Summit Lumber Company and others.

Mr. Rice: I show the Summit Lumber Company in one list and the others separate.

Mr. Cowen: Well, I thought the settlers would raise all the grain and more too.

Mr. Rice: That is not a grain country.

Examiner Burchmore: He showed most of the grain was assigned to the lumber company.

Mr. Walter: Yes, 274 tons against 85.

Mr. Cowen: Going to the question of rates, you say you get four cents division on stuff shipped to Colorado and Nebraska?

Mr. Rice: Yes, sir.

Mr. Cowen: Do you get that to Oklahoma, certain groups?

Mr. Rice: Three and a half cents to Oklahoma.

Mr. Cowen: Have you the aggregate amount of divisions received on lumber? I think you stated the number of tons of lumber?

Mr. Rice: Yes, sir.

Mr. Cowen: Have you the aggregate of the divisions you received?

Mr. Rice: The aggregate amount in revenue?

4246 Mr. Cowen: From divisions, so as to divide the tonnage into it so as to see how much you actually get on the average.

Mr. Rice: In revenue?

Mr. Cowen: Yes, or maybe you have the figures as to the amount.

Mr. Rice: No. Do you mean per annum?

Mr. Cowen: What I am trying to get at is to get these figures to determine how much is the actual average you get from divisions. You said you got from one cent to four cents.

Mr. Rice: Our average is about two and a half cents at present.

Mr. Cowen: Will you please state the aggregate amount you receive or divisions on lumber?

Mr. Rice: The aggregate amount?

Mr. Cowen: Yes.

Mr. Rice: The aggregate, 12 cents.

Mr. Cowen: You received during the year in your settlements with the other railroads, the Rock Island, so many dollars, that they paid you out of divisions alone.

Mr. Rice: I believe I understand your question now.

Mr. Cowen: How much was it, and what was the amount,

4247 and then you can divide the tonnage into it which you gave the Rock Island, and that will give the amount.

Mr. Rice: Approximately $1200 a month.

Mr. Cowen: Do you recollect the average for the year?

Mr. Rice: Something like $15,000, I should think.

Mr. Cowen: But you have not the exact figures?

Mr. Rice: No.

Mr. Cowen: And the tonnage?

Mr. Rice: I have the tonnage. The tonnage was 22,961 on lumber.

Mr. Cowen: Does most of your lumber go to the points where you get the four cent division?

Mr. Rice: No, sir, not most of it; it is pretty well divided. I should say, between Central Freight Association territory and Western territory.

Mr. Cowen: Just please file when you come back on the stand the exact amount you received from the Rock Island in divisions on lumber and the tonnage which was thus handled that produced that division.

Mr. Rice: For what period?

Mr. Cowen: For the year ending June 30th, 1910.

Mr. Rice: The total amount of revenue received from the Rock Island together with the tonnage on lumber for the year?

4248 Mr. Cowen: Yes, so we can divide the tonnage into the earnings from that source. Now I understood you to say you performed the service of delivering the cars to your loading track, of the Summit sawmill?

Mr. Rice: We do.

Mr. Cowen: And you receive them at the Rock Island junction?

Mr. Rice: At Randolph, the Rock Island junction at Randolph.

Mr. Cowen: And haul them how far?

Mr. Rice: Three-quarters of a mile.

Mr. Cowen: And the lumber company loads them?

Mr. Rice: Yes, sir.

Mr. Cowen: And you haul them back?

Mr. Rice: Yes, sir.

Mr. Cowen: Have you formed any estimate of what it cost you to perform that service?

Mr. Rice: No, I could not state that.

Mr. Cowen: Have you any idea about that?

Mr. Rice: No, I could not make any estimate.

Mr. Cowen: Have you any estimate of what it cost you to haul the logs from the Summit Company's junction with the spur

4249 line to the unloading track?

Mr. Rice: I have never made any estimate.

Mr. Cowen: How far is it?

Mr. Rice: 17 miles.

Mr. Cowen: This pine mill has a logging road.

Mr. Rice: Not the pine mill but the shingle mill.

Mr. Cowen: What sort of shingles do they make?

Mr. Rice: Cypress.

Mr. Cowen: What division do you get from the Rock Island Road on that?

Mr. Rice: Two cents higher than on pine.

Mr. Cowen: What do you get on hardwood?

Mr. Rice: The same as pine.

Mr. Cowen: Four cents?

Mr. Rice: One to four cents, nothing over four.

Mr. Cowen: Is the shingle mill located right on your line or off the line?

Mr. Rice: Right on the line.

Mr. Cowen: Who sets the cars in there for loading?

Mr. Rice: The Arkansas Southeastern.

Mr. Cowen: And it takes the cars out?

Mr. Rice: The Arkansas Southeastern does.

4250 Mr. Cowen: Your road has been operating on a deficit. I believe you said Mr. Silverthorne paid that?

Mr. Rice: Yes, sir.

Mr. Cowen: How does he get the money back?

Mr. Rice: Well, he holds the stock of the company.

Mr. Cowen: If the company keeps on earning a deficit of course the stock will be worth minus something.

Mr. Rice. That is true, but we hope however——

Mr. Cowen: You do not know, of course, how much he got from Mr. Blackwell?

Mr. Rice: No, I am not familiar with that transaction at all.

Mr. Cowen: Mr. Blackwell is not here?

Mr. Rice: No.

Examiner Burchmore: Mr. Silverthorne is to be here.

Mr. Cowen: You say you are going to build to Monroe?

Mr. Rice: The resolution has been passed to that effect.

Mr. Cowen: How is that to be financed?

Mr. Rice: I could not state. That was at a recent meeting——

Mr. Cowen: And this Farmerville, is it——

Mr. Rice: The Farmerville extension.

Mr. Cowen: Who is to pay for that?

4251 Mr. Rice: I presume it will be financed the same as the other has been.

Mr. Cowen: The Iron Mountain reaches Farmerville, does it, or by a branch line?

Mr. Rice: Yes.

Mr. Cowen: Any sawmill at Farmerville?

Mr. Rice: Not that I know of.

Mr. Cowen: Is the timber of the Summit Lumber Company on the line extending to that place?

Mr. Rice: No.

Mr. Cowen: How much timber land does the Summit Lumber Company own?

Mr. Rice: I could not state. I know they have no timber on our Farmerville extension, in fact there is no timber on that line.

Mr. Cowen: Have they timber on your other line?

Mr. Rice: Yes, sir.

Mr. Cowen: How much timber does this hardwood mill own?

Mr. Rice: I could not state.

Mr. Cowen: Do they get most of their hardwood from the Summit Lumber Company?

Mr. Rice: I think so.

Mr. Cowen: Do you know whether that enterprise is owned

4252 by the same people who own the Summit Lumber Company?

Mr. Rice: It is owned by outside parties exclusively.

Mr. Cowen: You do not know what sort of contract they have with the Summit Lumber Company?

Mr. Rice: No.

Mr. Walter: We will give you that in just a moment.

Mr. Coleman: Will you turn to your traffic statement, Mr. Rice, and get the coal item?

Mr. Rice: The coal item?

Mr. Coleman: Yes. Have you that divided between the Summit Lumber Company and outsiders?

Mr. Rice: No, I haven't it divided.

Mr. Coleman: You do send some coal in for outside people?

Mr. Rice: For the Summit Lumber Company, yes.

Mr. Coleman: Don't any of the other mills get any?

Mr. Rice: No. The Summit Company burns wood mostly, and the other mills burn wood altogether.

Mr. Coleman: Do you aim to give the same rates on the inbound shipments to all of the Arkansas Southeastern shippers, do you make preferences in favor of the lumber company?

Mr. Rice: No.

Mr. Coleman: I may not have this correctly, but I thought
4253 you said their inbound shipments for the Summit Company of hay were 130 tons; is that right?

Mr. Rice: Yes.

Mr. Coleman: And the revenue $59.00.

Mr. Rice: Yes, sir.

Mr. Coleman: And other shippers 22 tons, revenue $66.00?

Mr. Rice: Yes.

Mr. Coleman: You charged them $7.00 more for hauling 22 tons, for the outsiders, than for hauling 130 tons for the Summit Lumber Company?

Mr. Rice: That is true. That shipment for outsiders was local shipments from a store in Randolph to the store in the woods. The Summit Lumber Company shipments are billed through to our station at Luter with some exceptions, but this other shipper, it was a local shipment to him.

Mr. Coleman: Where did his shipments come from?

Mr. Rice: I could not state.

Mr. Coleman: Why wouldn't he get the through rate?

Mr. Rice: He would. We have a merchant on the line who ships through frequently. You will notice on his grain he got 85 tons of grain and most of that was billed through——

Mr. Coleman: I am referring to the hay now.

Mr. Rice: That was a local shipment.

4254 Mr. Coleman: But he had the privilege of sending it through, did he?

Mr. Rice: He had the privilege of ordering it wherever he purchased it, billed through.

Mr. Coleman: But he did not do it?

Mr. Rice: He possibly got out of hay; he has a store at Randolph, and he may have been out at the other store and for that reason could not wait until he got it through from Kansas City or St. Louis or wherever he might buy it.

Mr. Coleman: He has a separate house at Randolph?

Mr. Rice: This particular merchant has.

Mr. Coleman: Your shipments all come billed through to Luter?

Mr. Rice: Yes, sir.

Mr. Coleman: It is up in the woods?

Mr. Rice: It is the closest point to the camp.

Mr. Coleman: The local man at Randolph, does he pay the local down to Luter?

Mr. Rice: He pays the local when he makes any local shipments. When he makes through shipments, he would participate in the through shipment or rate.

Mr. Coleman: How would he make a through shipment?

4255 Mr. Rice: Take out a through bill of lading at Caloway.

Mr. Coleman: I understood you only had one agent, at Randolph?

Mr. Rice: That is true, but the agent there could issue the bill of lading the same as any other freight prepay station on the line, the agent in the opposite direction would handle the bill of lading.

Mr. Coleman: So you do not issue the bill of lading always where the shipment originates?

Mr. Rice: Not always, but as a rule in most instances those fellows have the bill of lading made out and handed to the conductor, and if they don't have it ready, they hand him the shipping instructions and he carries it to Randolph, and the regular bill of lading is returned to the shipper.

Mr. Coleman: The same man, does he pay the local out to Randolph?

Mr. Rice: Yes, he pays the local on his interstate shipments, and the local less 10 per cent on his state shipments.

Mr. Coleman: You do not mill the hardwood at all, do you, the Summit Lumber Company?

Mr. Rice: The Summit Lumber Company, no; it is outside operations.

4256 Mr. Coleman: The hardwood that is furnished to this same man is a by-product, the little that is mixed in with your main line holdings.

Mr. Rice: To some extent. I think the Summit Lumber Company furnishes the stave man, but I think he buys from outside holders. I could not say.

Mr. Coleman: That probably applies to Usrey & Company?

Mr. Rice: Usrey & Company runs the hardwood mill, yes.

Mr. Coleman: Those three section gangs, how many men in each gang?

Mr. Rice: They would average three all the year round.

Mr. Coleman: You have spoken of one gang of forty men.

Mr. Rice: That was the steel gang, when we were maintaining the logging spurs.

Mr. Coleman: Where were those three gangs located?

Mr. Rice: The first one is located at Randolph, the second at ten miles out at McKay and the third one at Luter, which is the junction with the Farmerville Branch, that is where the Farmerville Branch begins——

Mr. Coleman: That is also a junction with the logging road?
Mr. Rice: Yes.
Mr. Coleman: Do they aid the lumber company any?
4257 Mr. Rice: No.
Mr. Coleman: Never do?
Mr. Rice: No.
Mr. Coleman: Never help them?
Mr. Rice: It keeps them busy looking after their own end. The lumber company have possibly more men on the tracks than we do, on account of moving the steel.
Mr. Coleman: How many locomotive crews have you got up on the logging road?
Mr. Rice: What are you speaking of, the Summit Lumber Company's logging road?
Mr. Coleman: Yes.
Mr. Rice: I could not state that. I am not familiar with their logging arrangements.
Mr. Coleman: You said you sold three locomotives to the lumber company?
Mr. Rice: Yes.
Mr. Coleman: Are they in use?
Mr. Rice: So far as I know. I could not state definitely.
Mr. Coleman: You do not know as to that?
Mr. Rice: I could not state positively. I know they used two of them, and I could not say whether the three are actively en-
4258 gaged all the time.
Mr. Coleman: Do they run over their rails down to Luter or Randolph?
Mr. Rice: To Luter only.
Mr. Coleman: Then the other engine picks them up there?
Mr. Rice: The Arkansas Southeastern handle the logs from and to the junction point.
Mr. Coleman: The lumber company pays the railroad company for hauling the logs from Luter to the mill?
Mr. Rice: No.
Mr. Coleman: Where do they begin to charge?
Examiner Burchmore: I think we have been over that rather fully. He said the joint rate paid for hauling the logs into the mill.
Mr. Rice: The milling in transit, the tariff provided it.
Mr. Coleman: It occurred to me the road was getting paid twice. Haven't they a trackage agreement?
Mr. Rice: No.
Examiner Burchmore: Mr. Coleman, you will recall they formerly received $2.00 a car for hauling the logs up to the junction point with the main line in the days when they operated the logging spurs.
4259 Mr. Rice: Yes, that is what he probably had confused.
Mr. Coleman: I see now.
Mr. Rice: That has been discontinued.
Mr. Coleman: Do you know the reason several of your old systems were discontinued about that time, do you know a reason for that?

Mr. Rice: The reason was that we decided that inasmuch as the tariffs covered the transportation of the logs from the junction of the logging road to the mill, we could not or should not make any charge for that service. However, as I understand it, that was before my time, but it was in the way of a mutual arrangement in which the lumber company would pay for the hauling of the logs and they took care of their logging spurs, but we decided it was not a fair division, that is the railroad was losing money by it, and the lumber company should look after their logging in every detail.

Mr. Cowen: I want to ask the witness some questions in regard to the five months' comparison, which I overlooked. You stated you earned from the Summit Lumber Company $4,569.64 and $2,830.19 from others.

Mr. Rice: Yes.

Mr. Cowen: Will you state what the operating expenses were for that five months?

4260 Mr. Rice: You have asked for that and I am going to file that.

Mr. Cowen: I did not know I had asked for that.

Mr. Rice: Yes, you asked me for the operating expenses for those five months, which I said I have not here, but I have them in the building. The monthly reports will cover that.

Mr. Cowen: I would like that.

Mr. Rice: Yes, sir.

Mr. Cowen: It is shown you handled 2,723 tons, or a little over $1.00 a ton whereas in the previous year you handled 7,087 tons at $4,462 or about 60 cents a ton. I wanted to ask whether there was any change in the rates.

Mr. Rice: No, but in the previous year there was a lot of coal on which we only got 25 cents a ton and in this statement there was no coal at all.

Mr. Cowen: I was going to ask if it was due to the difference in the tonnage, and that finally explains it.

Mr. Rice: Yes.

Mr. Cowen: And during the five months you have just given it would naturally include cotton and cottonseed movement, which would have a good rate?

4261 Mr. Rice: Well, hardly to November, not much cotton moves.

Mr. Cowen: What were the months you gave?

Mr. Rice: July to November inclusive. Not very much cotton moves in November.

Mr. Cowen: No, but there is certainly a vast amount of it which moves between July and November.

Mr. Rice: No, between July and November?

Mr. Cowen: September, October and November is the big cotton movement, is it not?

Mr. Rice: Not in my experience in railroading. We have very little——

Mr. Cowen: Well, that is the season down there.

Mr. Rice: Very little cotton moves before November. The season does not open until about the middle of October.

Mr. Cowen: That is true of the farming country in Louisiana. Now in the item of maintenance of way and structures, did it not include the laying of that 60 pound steel?

Mr. Rice: Yes, sir.

Mr. Cowen: And that involved charging all that steel to operating expense and taking up the other for use elsewhere?

Mr. Rice: Yes, sir.

Examiner Burchmore: Is that correct under the Commis-
4262 sion's system of accounting, to charge that re-laying with heavier steel against your maintenance of way?

Mr. Rice: I think so, yes, sir. It is renewals of rails, renewals of track and comes under renewal of track and maintenance of way.

Mr. Cowen: I suppose you renewed a good many ties while you were doing that?

Mr. Rice: Yes, it is a very heavy expense all the time, and there is another feature which caused our maintenance to be very heavy, when we took the road over from the Summit Lumber Company it was in very bad shape physically, and we have been put to a lot of expense in putting it up to good shape.

Mr. Cowen: Practically reconstructed.

Mr. Walter: During that five months you had a large increase in stave tonnage?

Mr. Rice: Very large.

Mr. Walter: And that mostly paid a local rate?

Mr. Rice: Yes, you might say it all paid the local rate.

Mr. Walter: Most of it went to New Orleans?

Mr. Rice: It is divided between New Orleans and Arkansas points, Junction City, Arkansas.

4263 Mr. Walter: That road is well laid?

Mr. Rice: Yes.

Mr. Walter: Very good condition?

Mr. Rice: Very good condition considering it is not ballasted, and will compare favorably with any of the lines which are not ballasted.

Mr. Walter: It does business for anybody that presents it and on equal terms, as by your tariffs provided?

Mr. Rice: Yes, sir.

Mr. Walter: If anybody ships from a point where there is a joint rate you accord him the joint rate?

Mr. Rice: Yes, sir.

Mr. Walter: And if there is not a joint rate you give him the local rate?

Mr. Rice: Yes, sir.

Mr. Coleman: Do you get a division with the Rock Island on the staves?

Mr. Rice: No, we get the local rate.

Mr. Coleman: Why don't you get a division with them on that?

Mr. Rice: We have no through rates with the Rock Island to

points south of Little Rock so far; it is just a matter of time,
4264 getting these things together and agreeing on our rates.

Mr. Coleman: In other words, you do not have a division on staves. Is not that so because the Summit mill is not interested in staves?

Mr. Rice: Well, that is not the reason, if that is the question you put; no, sir. I am very anxious to get—I am handling now with the Rock Island a through rate to New Orleans on staves of 15 cents against the present rate of 17½ cents, and I am very anxious to put in just as many rates as we possibly can, that will be to our advantage, that is where we can make some money, for the benefit of the shipper on the line. There is no preference, if you are intimating that, as to the Summit Lumber Company. We want all the business we can get.

Mr. Coleman: It would not be to your advantage to put in a through rate with the Rock Island which gave your railroad company less than the local, would it?

Mr. Rice: Of course it would, because that would develop some business, we would not get otherwise.

Mr. Coleman: In other words, more staves would move.

Mr. Rice: That is the idea exactly, and more hardwood lumber.

Mr. Coleman: There was a little spur track mentioned which was not included on the blue print. What is that used
4265 for?

Mr. Rice: Well, there is one on this profile that I have here, that is the shingle mill. W. H. Lephiew has a mill located on our line, and he has somewhere between seven and eight miles of logging spurs of his own.

Mr. Coleman: And you do not operate it?

Mr. Rice: We do not operate it in any shape or form.

Mr. Coleman: Does he?

Mr. Rice: Yes, he does all his own logging.

Mr. Coleman: And that was the spur track which was omitted from your profile?

Mr. Rice: No, I think that is on here.

Examiner Burchmore: The spur track Mr. Coleman has in mind, as I understand it, is one that you referred to as being at the mill, connecting it with your line.

Mr. Coleman: That is the one.

Mr. Rice: That is right at Randolph, that is a different proposition.

Mr. Coleman: What about that?

Mr. Rice: It is our main line, as you might say, in our Randolph yard mills. It goes to the planer, but it also connects with the Rock Island tracks. It is strictly the Arkansas Southeastern property.

4266 Mr. Coleman: Do I understand you to say it was not used at all?

Mr. Rice: Yes, it is used entirely by the Summit Lumber Company in shipping; it is a loading track at Randolph.

Mr. Coleman: It is loaded on that track?

Mr. Rice: It is loaded on that track and it goes over our tracks

to the interchange. We have an established interchange at Randolph, and handle the cars to the interchange.

Mr. Coleman: It is a physical connection?

Mr. Rice: Yes. None of our engines, though, go on the Rock Island rails other than at the interchange.

Mr. Coleman: Is this considered an Arkansas Southeastern or a Rock Island interchange?

Mr. Rice: It is joint.

Mr. Coleman: The Rock Island puts its engines in on the track?

Mr. Rice: Yes, sir.

Mr. Coleman: And pulls it out from your mill?

Mr. Rice: No, the interchange track is not near the mill, it is three-quarters of a mile from the mill.

Examiner Burchmore: I think that has all been explained. Mr. Coleman is talking about one thing and you are talking about another.

4267 Mr. Coleman: I want that little spur track explained.

Mr. Rice: It is really a loading track at the planing mill, but it does connect with the Rock Island rails.

Mr. Coleman: Then I asked you if you ever did use it?

Mr. Rice: Yes, sir.

Mr. Coleman: And you said yes, it was constantly being used for interchange.

Mr. Rice: No, used by the lumber company for loading.

Examiner Burchmore: But the connection with the Rock Island is not used?

Mr. Rice: No. Those cars are interchanged through our interchange track. We have a joint interchange track. The Rock Island pull out loads we give them and give us empties, and we pull down the loads they give us and give them loads or empties.

Mr. Coleman: And that is three-quarters of a mile from the mill?

Mr. Rice: I judge half to three-quarters of a mile.

Mr. Coleman: And the other was how far?

Mr. Rice: The loading track is about 100 yards from the Rock Island tracks.

Mr. Coleman: Why do you haul it half a mile when you can connect in 100 yards?

4268 Mr. Rice: The service we have to perform to reach those tracks, we have to pull it through our yard possibly a quarter of a mile.

Examiner Burchmore: I think we have gone far enough with that. Is there anything further.

Mr. Walter: That is all from this witness.

(Witness excused.)

H. L. HATCHETTE, was called as a witness, and having been duly sworn, testified as follows:

Mr. Walter: State your full name?

Mr. Hatchette: H. L. Hatchette.

Mr. Walter: What is your business?

Mr. Hatchette: Hardwood saw milling.

Mr. Walter: What concern?

Mr. Hatchette: W. S. Usrey & Company.

Mr. Walter: Where is that located?

Mr. Hatchette: 12 miles east of Randolph, La., on the Arkansas Southeastern Railway.

Mr. Walter: When was that mill built?

Mr. Hatchette: I commenced it on the 7th day of last October, and just finished up about the 1st of December.

4269 Mr. Walter: What is its capacity?

Mr. Hatchette: About 20,000 daily of hardwood, that is about our average cut since we have started up.

Mr. Walter: You ship that to what point?

Mr. Hatchette: I ship principally to Memphis and Cairo.

Mr. Walter: What is the rate to Memphis?

Mr. Hatchette: I have a 12 cent rate to Memphis and 14 cents to Cairo.

Mr. Walter: What does that hardwood cost you delivered at your mill?

Mr. Hatchette: I pay the Summit Lumber Company $10.25 per thousand feet log scale for my logs.

Mr. Walter: What does that cost you to mill and put on board the car?

Mr. Hatchette: I figure $3.25 to $3.50 per thousand feet, as nearly as I can get it, about $3.25 pays the cost of unloading from the log car, cutting the logs and loading it on the cars after manufacture.

Mr. Walter: How much do you get for your lumber at Memphis or Cairo?

Mr. Hatchette: You are speaking of the general average, log scale, now?

4270 Mr. Walter: Yes.

Mr. Hatchette: I judge—well, I know, about $16.50 to $17.00 per thousand feet on the basis of the log scale.

Mr. Walter: What would it be on the lumber bought, delivered at Memphis?

Mr. Hatchette: Well, it is about the same, that is what I am getting at, that is about what I am figuring on, you know. I have a margin of about $3.00 to $3.50 a thousand profit on the lumber I cut out of it. I will explain that now, if you please.

Mr. Walter: Go ahead.

Mr. Hatchette: If I got the first class logs I could make more than that, but I am only getting the lower class, the lighter class of logs.

Mr. Walter: Speak a little louder.

Mr. Hatchette: I am getting the low class, the wormy and knotty logs, and I am manufacturing those logs very closely, I am doing my own filing, that is where I split up my thumb last Friday (indicating). I am a practical man and do my own work and I get all there is in the log. I am helping to try to develop that country, as a good citizen should, and $3.00 will cover my net profit, but I am satisfied with it and am making a little money.

4271 Mr. Walter: What would be the effect on your mill if the joint rates are abolished and you have to pay five cents local to the Rock Island point?

Mr. Hatchette: You would wipe me out of business.

Mr. Walter: What will that figure you?

Mr. Hatchette: We figure six pounds to the foot, $3.00 a thousand, just about swallows up what I make out of it. I cannot ship to New Orleans today, because that is in the same state, and I cannot get a joint rate. R. E. Riggs, who is an exporter in New Orleans, has been trying to buy stuff from me, and I cannot sell him; and I cannot cut for the Rock Island because I have to go over 12 miles west to Randolph, and I cannot pay my local rate, and I have put every dollar I have and every dollar I can borrow right in that mill.

Mr. Walter: The effect of abolishing the joint rate and the collection of the local means putting you out of business?

Mr. Hatchette: It is going to ruin me.

Mr. Walter: And the joint rate means the difference between the profitable investment and the price of the logs?

Mr. Hatchette: Yes, I am making a little money there and can as long as I am shipping.

Mr. Cowen: When did you make this contract to buy this lumber and put up the mill?

4272 Mr. Hatchette: I moved my family over there on the 7th day of last October, and I made the contract about a week before that. I did not know that there was an opportunity until a friend of mine came over to where I had a job working by the day 18 miles below Natchez. I was a bookkeeper there, but I had been a hardwood miller. M. E. Lenning of Cape Girardeau, if he is here, can testify to that——

Mr. Cowen: Of course, I supposed when you erected a saw mill at this place, you found out what your rates would be out?

Mr. Hatchette: I tried to find out and I am still finding out some things, but I found I had a joint rate, I was told I had.

Mr. Cowen: To New Orleans?

Mr. Hatchette: No, but to interstate points, points outside the State of Louisiana. I thought when I went in I could get to New Orleans, but I found later I could not do it, but I can get into Cairo and Memphis.

Mr. Cowen: Did you buy a given quantity of timber, or contract for as much as you could use?

Mr. Hatchette: For a five years' supply, all that I could cut, but I have to cut 20,000 feet a day, and I am doing it.

4273 Mr. Cowen: Does the amount you pay for the timber depend upon the rate you get on the lumber?

Mr. Hatchette: No, they do not care nothing about me over there, the Summit Lumber Company don't know me, it is just the money I pay them is all they look for.

Mr. Cowen: In buying in there for the development of the country then, you do not care much more for them than they do for you?

Mr. Hatchette: Not a bit, you have it just right, Judge.

Mr. Cowen: Suppose the rate on the Rock Island were reduced four cents per 100 pounds there, and your rate were left the same, you would still be all right?

Mr. Hatchette: Well, I will tell you, friend, I suppose it is an old game which I have heard a long time about, I don't know about that. It would be all right to me if that holds good before the courts, it would be all the same to me. I don't care where it comes from.

Mr. Cowen: Suppose other people's hardwood rate to Memphis and New Orleans were on an equality with yours?

Mr. Hatchette: That would be all right, but look here—I want to suggest to you that as I am situated now, unless I do get relief that way, that I am a broken merchant, I cannot do business and
4274 cannot run my mill, if I am compelled to pay a local rate of five cents from my mill into Randolph, I am simply broken up.

Examiner Burchmore: Couldn't you team your stuff across?

Mr. Hatchette: Not 12 miles, no. That day has passed. We could ten years ago, but we cannot now.

Mr. Cowen: There must be a good many people in Arkansas, for example, in this case we have heard the evidence of the Crittenden Lumber Company and railroad, which manufacture hardwood a great deal closer to Memphis than you do, and who get very much less rates than you do to Memphis. I would like to know how, with the knotty logs you say you have to handle, you can sell in Memphis when they have lower rates.

Mr. Hatchette: There is a whole lot in the man and in the business and in the way he cuts his timber. I do not hire any high priced work, but I do my own high priced work and stay in my overalls, and glory in it. I am not making a big profit, but am making a living and paying my expenses and don't owe any man a dollor.

Mr. Cowen: You are not interested in this Arkansas railroad?

Mr. Hatchette: Oh, no, not a bit.

Mr. Cowen: Or in the Summit Lumber Company?

Mr. Hatchette: No, not a bit. I just want their timber.

Mr. Cowen: What you want is to have an equality of rates
4275 with other men making hardwood lumber?

Mr. Hatchette: That is on the Rock Island, I cannot cut one foot for the Rock Island, simply because I cannot deliver it at Randolph without paying that extra five cent rate. Mr. Thompson, the agent at Little Rock, has been there to deliver *to* stuff to him, and here in St. Louis, Mr. F. C. Taylor, of the American Car & Foundry Company, I returned him a bill the day before yesterday. I could not cut it because I had to deliver it f. o. b. the cars at Randolph, and had to pay the extra five cents, because I could not get the connection. But when you swipe me off the map from Memphis and Cairo where I have the joint rate, you will cut me out of business.

Mr. Cowen: Does not the Rock Island have joint rates with its connections *with its connections* to St. Louis?

Mr. Hatchette: I don't know about that, but they collect eight cents from my mill to St. Louis, and 15 cents from Randolph.

Mr. Cowen: So the road is not now according through joint rates on hardwood?

Mr. Hatchette: They are giving 12 cents to Memphis and 14 cents to Cairo, which looks pretty good to me.

Examiner Burchmore: Do you know what the rates are from Randolph to Memphis and Cairo?

4276 Mr. Hatchette: I think it is the same, at least I have the word of a gentleman over there that it is.

Mr. Cowen: So Memphis is the only point you can ship to without paying something above the other rate?

Mr. Hatchette: Memphis and Cairo, but that is the only place I want to ship to.

Mr. Cowen: You don't know why the Rock Island would have a joint rate with the Arkansas Southeastern to Cairo and not also have one to St. Louis?

Mr. Hatchette: No, sir. I could not tell you anything about that, I don't know.

Mr. Cowen: If you had the 18 cent rate from your place without paying any local, and the same rate from Randolph to St. Louis, would you be satisfied?

Mr. Hatchette: No. I cannot ship any lumber on the 18 cent rate.

Examiner Burchmore: The Randolph rate is 15 cents.

Mr. Cowen: I thought he said it was 18 cents.

Mr. Hatchette: No.

Mr. Cowen: Then you cannot get on your lumber any through rate to any other place except Memphis and Cairo.

4277 Mr. Hatchette: That is all I have tried to get yet. I have made no application for through rates beyond because I have a lumber trade established in Memphis and Cairo that takes all my output.

Mr. Cowen: Well, get yourself a traffic manager——

Examiner Burchmore: Do you have private spur tracks?

Mr. Hatchette: No. I have a little bit of side track, about 160 feet long, when they took the logs in, and I load them on the skidway.

Examiner Burchmore: Did you build that side track?

Mr. Hatchette: No, it was there when I bought in there in October.

(Witness excused.)

A. E. SILVERTHORNE, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are an officer and director in the Arkansas Southeastern Railroad?

Mr. Silverthorne: Yes.

Examiner Burchmore: You were formerly the President of this railroad?

Mr. Silverthorne: No. I was always General Manager and Secretary.

4278 Examiner Burchmore: Mr. Rice testified that Mr. J. S. Blackwell, of Muscatine, Iowa, was elected President of this railroad in January, 1911.

Mr. Silverthorne: The 2nd of January, I think.

Examiner Burchmore: How long has Mr. Blackwell been a stockholder in this railroad?

Mr. Silverthorne: I don't know. I think for several months, I guess seven or eight months.

Examiner Burchmore: From whom did he acquire his stock?

Mr. Silverthorne: He has not had any stock transferred on the books yet. I don't know who he got it from. I rather imagine he got it from W. E. Silverthorne in New York.

Examiner Burchmore: Are you not pretty sure he did?

Mr. Silverthorne: No. I am not positive, because Mr. W. E. Silverthorne has some stock yet, which he has not sold.

Examiner Burchmore: Is there anybody else from whom he could have acquired it?

Mr. Silverthorne: Yes, there are two or three other sources.

Examiner Burchmore: But is it not your impression that he got it from W. E. Silverthorne?

Mr. Silverthorne: I think he got most of it from him.

4279 Examiner Burchmore: Is Mr. Blackwell an officer or employé of the Rock Island Railroad?

Mr. Silverthorne: No.

Examiner Burchmore: Connected with it?

Mr. Silverthorne: No; he is a relative of W. C. Brown, of the New York Central, but not connected with the Rock Island in any way.

Examiner Burchmore: What is his business?

Mr. Silverthorne: I think he is in the real estate business.

Examiner Burchmore: Banker?

Mr. Silverthorne: Well, he is a director in one of those national banks in Muscatine; I don't remember the name of the bank now. He is a real estate man in banks.

Examiner Burchmore: Is he a director of any other railroad company?

Mr. Silverthorne: That I do not know.

Examiner Burchmore: So far as you know he is not?

Mr. Silverthorne: No, I do not know whether he is or is not. I don't know one way or the other.

Examiner Burchmore: Do you know how much stock he owns in this Summit Lumber Company?

4280 Mr. Silverthorne: He is not a stockholder, he has not any.

Examiner Burchmore: You know that for a fact?

Mr. Silverthorne: Yes.

Examiner Burchmore: Has he any other connection with the Summit Lumber Company?

Mr. Silverthorne: No, not at all.

Examiner Burchmore: Does he own any land down there in Louisiana?

Mr. Silverthorne: Well, he does not where we are.

Examiner Burchmore: From whom did the Summit Lumber Company acquire their timber holdings down there?

Mr. Silverthorne: From the residents, and there must have been hundreds of them.

Examiner Burchmore: Did Mr. Blackwell have a part in selling any of the land?

Mr. Silverthorne: No, not that I know of.

Examiner Burchmore: You are acquainted with the lines of this railroad down there, the physical layout of the place?

Mr. Silverthorne: Yes.

Examiner Burchmore: There is a pine mill up there along the line that has a private logging road of its own. I understand.

4281 Mr. Silverthorne: Well, it is hardwood and cypress shingles.

Examiner Burchmore: It is a shingle factory. That has the private tram line?

Mr. Silverthorne: Yes, sir, shingles and hardwood.

Examiner Burchmore: The Arkansas Southeastern Railroad Company corporation bought the railroad that had previously been owned by the Summit Lumber Company, running from Randolph towards Farmerville, and did not buy the private logging lines of the Summit Lumber Company.

Mr. Silverthorne: That is right.

Examiner Burchmore: Why did not they buy those logging roads?

Mr. Silverthorne: Well, they were chartered to build through to Monroe and would not have any use for them.

Examiner Burchmore: Would not have any use for them? You know railroads customarily have not only main lines but branch lines and feeders.

Mr. Silverthorne: The railroad was not in the logging business and would not have any use for logging spurs.

Mr. Walter: Those spurs are moved too, right along, are they not?

Mr. Silverthorne: Yes, they change from time to time.

4282 Examiner Burchmore: Suppose you did incorporate those logging lines up there in the woods——

Mr. Silverthorne: We could not take them up if we did that.

Examiner Burchmore: Sure about that?

Mr. Silverthorne: No, I am not a lawyer.

Examiner Burchmore: Don't you know in this case here we have had two or three companies that have told us they had taken up their incorporated logging roads and moved them around?

Mr. Walter: They have not shown when the charter expired.

Mr. Silverthorne: I do not know, they might do it, but I would not like to try it.

Examiner Burchmore: Was that the controlling reason?

Mr. Silverthorne: We never considered it at all. We were building through to Monroe and did not want a logging spur.

Examiner Burchmore: Suppose you did incorporate this into

your regular main line system, would that be any benefit to the railroad company?

Mr. Silverthorne: No, it would be a detriment, I should think.

Examiner Burchmore: What would be a detriment?

Mr. Silverthorne: They would not want to keep them up
4283 and go into the logging business.

Examiner Burchmore: Couldn't they keep them up and go into the railroad business on them?

Mr. Silverthorne: It would depend on where it would lead them. It probably would not lead them anywhere, after the logs were logged off they would have to take them up and move them somewhere else.

Examiner Burchmore: Is it not a fact that the result of this policy to incorporate these logging roads is that you have a monopoly up there in those woods and there cannot anybody else ship from those woods as the result of this failure to incorporate into the policy.

Mr. Silverthorne: That is not the reason so far as I know it. The reason so far as I know it is that we would not want to incorporate a temporary piece of track. We are glad to haul anything anybody will bring to us.

Examiner Burchmore: There is another pine mill on your road?

Mr. Silverthorne: Yes.

Examiner Burchmore: Where do they get their logs?

Mr. Silverthorne: They have their own timber.

Examiner Burchmore: How do they get their logs down
4284 to the mill?

Mr. Silverthorne: This pine mill has its own roads from a place called Lephiew.

Examiner Burchmore: I thought they did not have.

Mr. Silverthorne: That is the hardwood and cypress shingle mill.

Examiner Burchmore: There is a little pine mill up there too?

Mr. Silverthorne: Yes, I forgot that, up at Caloway.

Examiner Burchmore: Where do they get their logs?

Mr. Silverthorne: I think they are hauled in on a wooden tram or by team, which connects with their mill.

Examiner Burchmore: It costs them something to bring those logs in?

Mr. Silverthorne: Yes, it will cost them just about as much as though they had a railroad.

Examiner Burchmore: They do not get any allowance?

Mr. Silverthorne: Not a cent, but they get the benefit of the through rate.

Examiner Burchmore: Are not they seriously handicapped in a close market by the fact it costs them so much to bring their logs into the mill?

Mr. Silverthorne: No, I do not think they are, because
4285 they have a very short haul; they are right near the timber, and they have not any railroad to keep up.

Mr. Cowen: As I understand the stock in this railroad company

has never paid any dividends, and the operation shows a deficit every year?

Mr. Silverthorne: Yes, sir.

Mr. Cowen: And it appears from the statement of the manager of the road that Mr. Silverthorne takes care of the deficit, and I do not know whether you are the gentleman or the other man, W. E.?

Mr. Silverthorne: It is not W. E.; there are three or four of us.

Mr. Cowen: Do you all together take care of the deficit?

Mr. Silverthorne: What do you mean by the debts, the deficit?

Mr. Cowen: I may have pronounced it wrong, but that is what I mean.

Mr. Silverthorne: We have not been able to break even on the road yet because it has been under construction and it has also had new industries going in, and we hope to get it so it will break even.

Mr. Cowen: My question was who takes care of them?

Mr. Silverthorne: Well, we have taken care of them.

4286 Mr. Cowen: Do you charge that up on the books of the lumber company?

Mr. Silverthorne: The lumber company has nothing to do with the railroad.

Mr. Cowen: Then Silverthorne pays this expense out of his own pocket?

Mr. Silverthorne: Yes.

Mr. Cowen: And it has been very large?

Mr. Silverthorne: Yes, sir, it has been large.

Mr. Cowen: During the time that is going on Mr. Blackwell, apparently unconnected with the lumber company or the railroad or the Rock Island, steps in and buys a lot of this stock?

Mr. Silverthorne: Yes.

Mr. Cowen: And he is a banker and real estate man?

Mr. Silverthorne: Yes.

Mr. Cowen: Do you know how he came to do it?

Mr. Silverthorne: No, I do not know.

Mr. Cowen: Have you heard how he came to do it?

Mr. Silverthorne: No, sir.

Mr. Cowen: Does he hold it as collateral security, or as owner?

Mr. Silverthorne: I don't know. I think he holds it as

4287 his own, I would not be sure.

Mr. Cowen: He was elected President of the road?

Mr. Silverthorne: Yes.

Mr. Cowen: Was that at a meeting which you attended?

Mr. Silverthorne: Yes.

Mr. Cowen: Was he there?

Mr. Silverthorne: No.

Mr. Cowen: Who voted his stock at that meeting?

Mr. Silverthorne: His stock was not voted, there was enough without it.

Mr. Cowen: How did you come to elect him president of the road?

Mr. Silverthorne: He requested it.

Mr. Cowen: Well, I would suppose you would know all about it.

Mr. Silverthorne: I said he requested it.

Mr. Cowen: I say I would suppose you would know all about how he came to get this stock.

Mr. Silverthorne: I did not ask him how he came to buy the stock.

Mr. Cowen: It would seem curious that a man would buy stock and seek to be president of a road when the road had lost money all the time and had very poor prospects.

4288 Mr. Silverthorne: Maybe he thought otherwise, and maybe he thought it had good prospects.

Mr. Cowen: I wondered if you knew that was the reason he bought it?

Mr. Silverthorne: I don't know, but I say that might have been his reason.

Mr. Cowen: The past operations would not tend to show much profit?

Mr. Silverthorne: No, they would not.

Mr. Cowen: In what way is the deficit paid, in cash or charged on somebody's books somewhere?

Mr. Silverthorne: It is paid in cash.

Mr. Cowen: To whom is it paid?

Mr. Silverthorne: To the treasurer of the road.

Mr. Cowen: What has been the total amount of that deficit which has been paid?

Mr. Silverthorne: I would have to look at the books for that. I have not the figures, but it has been large.

Mr. Cowen: It seems that this railroad, from what the manager says, was sold by the lumber company to the railroad company, is that correct?

Mr. Silverthorne: Yes.

4289 Mr. Cowen: And that the way it was paid for——

Mr. Silverthorne: Was in money.

Mr. Cowen: I was about to ask you, and I am glad you answered, because your manager said it was paid for by crediting the lumber company with the $254,000 on the books. That was the only reason I wondered how it was. It was paid for in money?

Mr. Silverthorne: Yes.

Mr. Cowen: By the railroad company to the lumber company?

Mr. Silverthorne: The Silverthornes paid for the road through the lumber company and took the stock and bonds of the railroad in payment.

Mr. Cowen: They paid for the railroad, though, when they built it, did they not?

Mr. Silverthorne: Yes.

Mr. Cowen: Did the lumber company build the railroad, and did the transaction show on the lumber company's books or did the Silverthornes build the railroad?

Mr. Silverthorne: The lumber company built the railroad and the transaction showed on their books.

Mr. Cowen: It was in that condition when the railroad was incorporated, was it?

Mr. Silverthorne: Yes, sir.

4290 Mr. Cowen: And thereupon the railroad corporation paid money you say, for the railroad to the lumber company?

Mr. Silverthorne: Yes.

Mr. Cowen: Is that right?

Mr. Silverthorne: The Silverthornes paid the money to the lumber company and the lumber company took the railroad stocks and bonds in payment for that debt, and then turned the stocks and bonds over to the Silverthornes.

Mr. Cowen: Then the manager was mistaken as to the method in which it was done?

Mr. Silverthorne: Yes, he was mistaken on that.

Mr. Cowen: How much did the road originally and actually cost for construction?

Mr. Silverthorne: Up to date it stands between $300,000 and $400,000.

Mr. Cowen: That simply means the grading, rails, ties, structures and equipment as acquired or constructed from time to time?

Mr. Silverthorne: Well, that is what it stands up to the present time.

Mr. Cowen: That is the book value?

Mr. Silverthorne: That is what it has cost.

Mr. Cowen: Well, do you know whether that appears to be
4291 the book value of it?

Mr. Silverthorne: I presume it does.

Examiner Burchmore: Haven't we rather a full record on this?

Mr. Cowen: Yes, I think so. Does the lumber company own any of the stock in the railroad company?

Mr. Silverthorne: Not a bit.

Mr. Cowen: Why was the railroad sold by the lumber company to the railroad company?

Mr. Silverthorne: The railroad company—the lumber company sold out the road because they wanted to extend it through to Monroe, and in the end be able to sell the road entirely to one of the trunk lines. By building it through to Monroe we can sell it to the Iron Mountain or the Vicksburg, Shreveport & Pacific or the Rock Island; we have three shots to sell it.

Mr. Cowen: Have you any contract?

Mr. Silverthorne: No, but we would like to do like they have done out in Texas, if we could. I understand some of the railroads out there have got a pretty good price.

Mr. Cowen: Well, you might sell Mr. Carlisle.

Mr. Silverthorne: Well, I might ask you.

4292 Mr. Cowen: No, I don't buy because I haven't got money enough.

Mr. Silverthorne: You don't know of any road in Texas having been sold?

Mr. Cowen: Mr. Carlisle testified to having bought one which has been having a deficit.

Mr. Silverthorne: You do not think the Santa Fe would want to buy any more roads?

Mr. Cowen: Not in that locality.

Mr. Silverthorne: Any other in Louisiana?

Mr. Cowen: Not in your locality.

Mr. Silverthorne: I understand they pay pretty good prices.

Mr. Cowen: I don't know what the Santa Fe pays. Do you have any arrangement with either one of these railroads for a sale when you are completed?

Mr. Silverthorne: Well, there was an understanding with one of them that they were to take it over when we had it extended a certain distance beyond Farmerville.

Mr. Cowen: Without going clear through to Monroe?

Mr. Silverthorne: Yes, sir, but that was made after we had made our charter and had taken over the road.

Mr. Cowen: How much timber land has the lumber company approximately?

4293 Mr. Silverthorne: You mean how much timber or how much land?

Mr. Cowen: State it either way you wish.

Mr. Silverthorne: I will state it the easiest way. We have about 181,000,000 feet of timber.

Mr. Cowen: How long do you calculate that cutting will last?

Mr. Silverthorne: About eight years.

Examiner Burchmore: Does this railroad own its own right of way?

Mr. Silverthorne: Yes, sir.

Examiner Burchmore: It has not leased it from the lumber company?

Mr. Silverthorne: No, the lumber company owned very little of the property along where the road went.

Mr. Garwood: I note from the trend of counsel's question that when a short line loses money he considers that an evidence that it is a poor proposition and ought never to have started, and if it makes money, he considers that as an evidence that its stockholders were also stockholders of some lumber company, or getting an unfair advantage. Proceeding on his theory is not the only way a

4294 short line railroad can be a railroad is to absolutely break even.

Mr. Silverthorne: Well, it is pretty hard to make them break even now.

Examiner Burchmore: Is that your answer?

Mr. Silverthorne: I did not really get the trend of his question.

Mr. Cowen: Well, it is an argument, Mr. Silverthorne, and entirely unjustified.

Mr. Garwood: It was a reply to the argument counsel has been making all through his cross-examination.

Examiner Burchmore: Mr. Blackwell is related to W. C. Brown?

Mr. Silverthorne: He is a nephew or second cousin or something like that. He is some connection.

Examiner Burchmore: Do you know anything more about Mr. Blackwell than has been stated?

Mr. Silverthorne: No; as a matter of fact, I do not know how much stock he has got. He hasn't it transferred on the books, and

we cannot tell, except he had bought in some stock and wanted to know what our plans were, and if he could not be elected president, and thought it would be a good connection.

Mr. Cowen: I would like to know how he could be elected
4295 as president and not appear on the books as a stockholder.

Mr. Silverthorne: Well, he has not had his stock transferred on the books, or at least he had not when I saw the books last.

Examiner Burchmore: Where are the books?

Mr. Silverthorne: They are at Randolph, La.

Examiner Burchmore: Does Mr. Rice have them?

Mr. Silverthorne: He hasn't them here, and I do not think he did have those.

Examiner Burchmore: I think it is pertinent to request counsel to advise the Commission——

Mr. Silverthorne: How much he has?

Examiner Burchmore: How much stock Mr. Blackwell has and from whom he acquired it, and when he acquired it.

Mr. Silverthorne: We can find that out.

Mr. Walter: We will furnish it to you.

Examiner Burchmore: Is Mr. Blackwell at St. Louis?

Mr. Silverthorne: I don't think he is. I think he is at Muscadine, Iowa.

Mr. Cowen: I think the manager said he owned a majority of the stock.

Examiner Burchmore: He did.

Mr. Silverthorne: Who?

4296 Examiner Burchmore: Mr. Rice said he had a majority.

Mr. Silverthorne: As I understand it, 60 or 70 per cent.

Mr. Cowen: It looks as if he would have to vote.

Mr. Silverthorne: The other people would vote the way he said, I guess.

Examiner Burchmore: Would it not be proper to have Mr. Blackwell execute and file an affidavit in this case, indicating how much stock he has and from whom he acquired it, and showing his relation with the lumber company.

Mr. Walter: We will show it.

Mr. Silverthorne: He has not anything to do with the lumber company at all?

Examiner Burchmore: Well, we would like to have him say so.

Mr. Silverthorne: We have not any objection to showing it.

Mr. Coleman: How much do the Silverthornes own?

Mr. Silverthorne: 30 to 40 per cent.

Mr. Coleman: And it is probable that Mr. Blackwell owns the rest?

Mr. Silverthorne: I think he does. When I say the Silverthornes, I mean two; there is a third of them that holds some, but how much he holds and how much Mr. Blackwell holds I don't know.

4297 Mr. Coleman: Do you mean you elected a president of the road at a stockholders' meeting at which only 40 per cent of the stock was represented?

Mr. Silverthorne: It was at a directors' meeting. We do not have to have the stock; a majority of the directors have to be present and not the stockholders.

Mr. Coleman: It was simply at his request that you elected him?

Mr. Silverthorne: Yes. Well, we knew that he had acquired a lot of stock and we were very glad to do it at his suggestion. At a directors' meeting you do not have to have stockholders.

Mr. Coleman: You know Mr. Blackwell pretty well, don't you?

Mr. Silverthorne: Yes.

Mr. Coleman: And you wanted to put a 40 per cent stock man in charge of the whole thing over your own holdings?

Mr. Silverthorne: 40 per cent? About 60.

Mr. Coleman: He has 60 per cent?

Mr. Silverthorne: He has got about 60 per cent.

Mr. Walter: We will furnish that information.

Mr. Cowen: You said a while ago there was an understanding that some railroad company was to take it over, and I do not
4298 care to inquire the name of it.

Mr. Silverthorne: Go ahead and ask it, if you want to.

Mr. Cowen: Very well, I will ask it.

Mr. Silverthorne: Well, I won't answer it, though.

Mr. Cowen: I did not want to ask it until you suggested it, but what I wanted to ask was this, if that railroad company, whatever one it was, directly or indirectly furnished, advanced, loaned or in anywise put up any money or material——

Mr. Silverthorne: No, I wish they had.

Mr. Cowen: In the construction of this railroad or for any part of extension of it

Mr. Silverthorne: No, but I wish they had.

Mr. Cowen: Was there an understanding that they would do so?

Mr. Silverthorne: There was not.

(Witness excused.)

Examiner Burchmore: The next road is the Fordyce & Princeton Railroad.

Mr. Cowen: Before we proceed with this investigation, I would like to make a request that there be filed by the lumber company or the Arkansas Southeastern Railroad Company, whoever the
4299 Commission might desire to get it from, a statement showing the stockholders of the lumber company and of the railroad company, say for June, 1910, and January 1st, 1911.

Mr. Walter: The entry has not been made up. Suppose you make it to date, for the owners of the company.

Examiner Burchmore: You might make it January 20th. Mr. Blackwell came in subsequent to January 1st.

Mr. Cowen: That is all right. My point is to get the owners of the stock in the two companies as of a date previous to the transfer and of a date since.

Mr. Coleman: And the directors also.

Mr. Walter: We will be very glad to furnish anything that will throw light on that.

Mr. Coleman: Of the Summit Lumber Company and of the railroad company, and also the directors who elected Mr. Blackwell at his request.

Mr. Walter: We will give you a copy of the minute book.

Examiner Burchmore: If the stockholders' list as taken from the books is not accurate, I mean if you know there has been some transfer since, there is no objection to your showing that in a footnote.

Mr. Walter: Yes, we will show it.

4300 *Fordyce & Princeton Railroad.*

W. T. MURRAY, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are Secretary and General Manager of the Fordyce & Princeton Railroad?

Mr. Murray: Yes, sir.

Examiner Burchmore: That railroad seems to connect with the St. Louis Southwestern at Fordyce, Arkansas?

Mr. Murray: eYs, sir.

Examiner Burchmore: And to run from thence——

Mr. Murray: Also with the Rock Island.

Examiner Burchmore: At the same point?

Mr. Murray: Yes, sir, Fordyce.

Examiner Burchmore: And it runs thence in what direction?

Mr. Murray: In a northwesterly direction, with a branch more northerly.

Examiner Burchmore: This branch line crosses the Rock Island?

Mr. Murray: Yes, sir. Well, both lines cross the Rock Island. The branch line at a point some seven miles north of Fordyce and the old line about 18 or 19 miles north.

4301 Examiner Burchmore: And the main line of this Fordyce & Princeton Railroad, for practically its entire length, parallels the line of the Chicago, Rock Island & Pacific?

Mr. Murray: That is true of the original line but not of the branch.

Examiner Burchmore: Not of the branch which ran up towards Trigg and Old Junction?

Mr. Murray: Well, the Old Junction Line does parallel the Rock Island very nearly.

Examiner Burchmore: Which was built first, the Fordyce & Princeton, or the Rock Island?

Mr. Murray: The Fordyce & Princeton, very much longer.

Examiner Burchmore: The Rock Island has paralleled your line instead of paralleling theirs?

Mr. Murray: Yes, sir.

Examiner Burchmore: Was the Rock Island built before the Fordyce & Princeton was incorporated?

Mr. Murray: No, sir.

Examiner Burchmore: The mill of the Fordyce Lumber Company is located at or near Fordyce?

Mr. Murray: Yes, sir.

Examiner Burchmore: What is the distance from the mill to the junction of the Fordyce & Princeton with the Rock
4302 Island?

Mr. Murray: It is approximately three-quarters of a mile.

Examiner Burchmore: How far from the junction with the St. Louis Southwestern?

Mr. Murray: About one and one-eighth miles.

Examiner Burchmore: Is there any station at these junction points?

Mr. Murray: No, sir. You mean where we connect with the two trunk lines?

Examiner Burchmore: Yes.

Mr. Murray: No station there except the Trunk Line stations.

Examiner Burchmore: The Trunk Line station is located at the junction between the two trunk lines, is it not?

Mr. Murray: Well, very close to it, yes, sir.

Examiner Burchmore: Do they have two stations?

Mr. Murray: Yes, sir, separate stations about a quarter of a mile apart, I should judge.

Examiner Burchmore: You have shown here a point known as Cynthia?

Mr. Murray: Cynthiana.

Examiner Burchmore: Where the so-called new line joins the old main line?

4303 Mr. Murray: Yes, sir.

Examiner Burchmore: Is there any station there?

Mr. Murray: Yes, sir. It is not a regular passenger station however. We have no passenger service.

Examiner Burchmore: No passenger service on the road?

Mr. Murray: No.

Examiner Burchmore: You are incorporated as a freight carrier only?

Mr. Murray: Yes, sir.

Examiner Burchmore: Is there any town at Cynthiana?

Mr. Murray: No town.

Examiner Burchmore: Anybody live there?

Mr. Murray: Well, there are a couple of farmhouses close by it. It is a billing point and junction point. There are sidings there.

Examiner Burchmore: Just across the Rock Island on the new branch is Dobbs Mill?

Mr. Murray: Yes, sir.

Examiner Burchmore: Is there anything there?

Mr. Murray: There is a little hardwood mill there. The new branch line has only recently been taken over by the Fordyce & Princeton Railroad and we have no through rates in effect from points beyond Cynthiana on the new branch.

4304 Examiner Burchmore: Then the line from Cynthiana through Dobbs Mill and up into the woods to Triggs was formerly a private logging road?

Mr. Murray: Yes, sir, recently built.

Examiner Burchmore: When was it built?
Mr. Murray: Built last year.
Examiner Burchmore: Built by the lumber company?
Mr. Murray: Yes, sir.
Examiner Burchmore: When was it taken over by the Fordyce & Princeton Railroad Company?
Mr. Murray: Taken over this month.
Examiner Burchmore: That line ends apparently at Trigg?
Mr. Murray: Yes, sir.
Examiner Burchmore: What is Trigg?
Mr. Murray: Trigg is a little country village in Cleveland County.
Examiner Burchmore: Any timber around Trigg?
Mr. Murray: There is timber all around Trigg, more or less.
Examiner Burchmore: Going up on the main line what is the distance to—I find a point marked Bryant's Spur.
Mr. Murray: Yes, sir.
Examiner Burchmore: Any town there?
4305 Mr. Murray: No town.
Examiner Burchmore: What is that?
Mr. Murray: Bryant's Spur is a billing station on the Fordyce & Princeton Railroad where we have sidings, and a couple of families there and a bridge tender lives there.
Examiner Burchmore: What do you cross at Bryant's Spur?
Mr. Murray: We cross a very wide bottom known as Bryant's Creek bottom, a long trestle.
Examiner Burchmore: Then I see Old Junction, which is apparently the end of the line of this railroad?
Mr. Murray: Yes, sir.
Examiner Burchmore: Anything there?
Mr. Murray: Nothing there except it was a junction with the Fordyce Lumber Company's logging roads.
Examiner Burchmore: You have a bridge across the More River just north of Dobbs Mill?
Mr. Murray: Yes, sir.
Examiner Burchmore: What is the character of that bridge?
Mr. Murray: A trestle, not a steel bridge.
Examiner Burchmore: That is a single track railroad?
Mr. Murray: Yes.
Examiner Burchmore: Standard gauge?
Mr. Murray: Yes.
4306 Examiner Burchmore: What is the character of the roadbed and rail?
Mr. Murray: The roadbed is very good: the rail is 45 and 40 pound on the main line excepting there is a little 30 pound on the old road.
Examiner Burchmore: What is the mileage from Fordyce over the old line to Old Junction?
Mr. Murray: 22½ miles.
Examiner Burchmore: What is the branch line from Cynthiana to Trigg?
Mr. Murray: Six miles.

Examiner Burchmore: Are the two items the total of your mileage?

Mr. Murray: Yes.

Examiner Burchmore: You have no branch lines?

Mr. Murray: No.

Examiner Burchmore: What is the total mileage of the logging roads of the Fordyce Lumber Company?

Mr. Murray: They have approximately seven or eight miles of spur track into the timber.

(Map produced by witness at this point was received in evidence and thereupon marked Fordyce & Princeton Railroad
4307 Exhibit No. 1, Witness Murray, received in evidence January 23, 1911, and is attached hereto.)

Examiner Burchmore: The mill at Fordyce is owned by the Fordyce Lumber Company?

Mr. Murray: Yes.

Examiner Burchmore: The Fordyce Lumber Company owns or controls at least this railroad company?

Mr. Murray: Not as a company it does not, no, sir.

Examiner Burchmore: Are the stockholders of the two companies identical?

Mr. Murray: They are.

Examiner Burchmore: Do they have the same officers?

Mr. Murray: Well, I say they are; they are practically the same.

Examiner Burchmore: What difference is there in the holdings?

Mr. Murray: The only difference in their holdings is that the stock of the railroad company is held entirely by individuals, while a portion of the stock of the lumber company is held by a company.

Examiner Burchmore: But the two companies are identical in interest?

4308 Mr. Murray: Practically so.

Examiner Burchmore: Is there anybody that is interested in the one company that has no interest whatever in the other, I mean a real interest, not on the face of the stock book, but——

Mr. Murray: No, sir, I think not. I will just make an explanation for your information. There is quite a lot of the stock of the Fordyce Lumber Company held in the Crossett Land & Investment Company's name, while the holdings in the railroad company are held by the Estate of Mr. E. S. Crossett personally.

Examiner Burchmore: But that estate is interested in the other company?

Mr. Murray: Yes, sir.

Examiner Burchmore: Who is president of this railroad?

Mr. Murray: Mr. E. C. Crossett.

Examiner Burchmore: He is also president of the Fordyce Lumber Company?

Mr. Murray: He is now.

Mr. Gaughan: You might state when he became so.

Mr. Murray: He just became president of the lumber company Saturday. His father was president and died recently.

Examiner Burchmore: He died while we were at New Orleans, if I recollect.

4309 Mr. Murray: Yes, sir.

Examiner Burchmore: E. S. Crossett was formerly president of the railroad also?

Mr. Murray: Yes, sir, but at the December meeting of the railroad Mr. E. C. Crossett was elected president before his father was deceased.

Examiner Burchmore: Who is Vice President of the lumber company?

Mr. Murray: E. C. Gates.

Examiner Burchmore: He is also Vice President of the railroad?

Mr. Murray: Yes.

Examiner Burchmore: And Mr. Watzek is treasurer of both companies?

Mr. Murray: Yes.

Examiner Burchmore: You are not an officer of either company?

Mr. Murray: No.

Examiner Burchmore: You are manager of both companies?

Mr. Murray: Yes.

Examiner Burchmore: Do you receive a salary from the railroad company?

Mr. Murray: No; there is a charge for my services to the
4310 railroad company as well as the lumber company, but it is all paid by the lumber company.

Examiner Burchmore: Is there any officer of this railroad company who is paid by the railroad itself?

Mr. Murray: Yes.

Examiner Burchmore: Who?

Mr. Murray: The Auditor, he is a joint employee, however.

Examiner Burchmore: He receives money directly from the railroad?

Mr. Murray: Yes, sir. I say money directly; there is a portion of his salary that is charged to the railroad company for his services. He is an employee of the lumber company.

Examiner Burchmore: And he gets all his money from the Paymaster or the cashier of the lumber company?

Mr. Murray: Yes, sir; well, he is the Paymaster.

Examiner Burchmore: You said you got a salary from the railroad?

Mr. Murray: It is handled in the same way.

Examiner Burchmore: Is there anyone else whose salary is handled in the same way?

Mr. Murray: Yes, sir, there is an agent.

Examiner Burchmore: That agent is located at Fordyce?

4311 Mr. Murray: Yes.

Examiner Burchmore: He actually works in the mill?

Mr. Murray: Not in the mill but in the office.

Examiner Burchmore: In the mill office?

Mr. Murray: Yes, sir, clerical work.

Examiner Burchmore: And he devotes his days to the service of the two companies?

Mr. Murray: Yes.

Examiner Burchmore: He does not work one day for one and another day for the other?

Mr. Murray: No.

Examiner Burchmore: When did the mill begin operations at Fordyce?

Mr. Murray: 1890. There was a little mill before that, but I think the present interests acquired the property in 1890.

Examiner Burchmore: Fordyce was then located only on the Iron Mountain?

Mr. Murray: On the Cotton Belt.

Examiner Burchmore: And no other railroad there?

Mr. Murray: No, sir.

Examiner Burchmore: The Fordyce Lumber Company
4312 then owned this mill and opened it at that time?

Mr. Murray: There was a little mill there and they acquired it without a railroad.

Examiner Burchmore: There was no railroad, though.

Mr. Murray: Well, they did have, the Fordyce & Princeton Railroad was incorporated in 1890, and was in existence at that time, but perhaps just was only in length as long as from the distance out from the Cotton Belt to the mill or one mile further.

Examiner Burchmore: It did not reach out into the woods?

Mr. Murray: No.

Examiner Burchmore: The Fordyce & Princeton was incorporated at the same time the lumber company was?

Mr. Murray: Yes.

Examiner Burchmore: Practically the enterprise opened up as one enterprise?

Mr. Murray: It was essentially the same, yes, sir.

Examiner Burchmore: When did they begin the construction of lines out into the woods?

Mr. Murray: I presume immediately.

Examiner Burchmore: The purpose of those new lines was to bring logs into the mill?

4313 Mr. Murray: I presume it was.

Examiner Burchmore: And the line was extended from time to time he got farther into the country.

Mr. Murray: Yes.

Examiner Burchmore: How many locomotives have you?

Mr. Murray: One.

Examiner Burchmore: How many cars?

Mr. Murray: 71.

Examiner Burchmore: Are those all logging cars?

Mr. Murray: No.

Examiner Burchmore: Any box cars?

Mr. Murray: Four.

Examiner Burchmore: Those box cars are used for what purpose?

Mr. Murray: Handling beams, merchandise, stave bolts, and other shipments offered.

Examiner Burchmore: They do not go off your line?

Mr. Murray: No, sir.

Examiner Burchmore: Are those cars all equipped with safety appliances?

Mr. Murray: Two box cars have automatic couplers and air brakes, and the others have not.

Examiner Burchmore: Do you ever put any interstate
4314 freight into those other cars?

Mr. Murray: No, sir.

Examiner Burchmore: Do you have any time tables?

Mr. Murray: Yes, sir.

Examiner Burchmore: You do not publish one, do you?

Mr. Murray: No.

Examiner Burchmore: How many trains a day do you run?

Mr. Murray: Two.

Examiner Burchmore: One in each direction?

Mr. Murray: Two in each direction.

Examiner Burchmore: That is, you mean from up along the line down to Fordyce?

Mr. Murray: From Fordyce out and then back, twice.

Examiner Burchmore: One train crew?

Mr. Murray: One train crew.

Examiner Burchmore: How many men are there in your track crews?

Mr. Murray: Well, it varies. I think by our last statement we had 23 men in the track crews.

Examiner Burchmore: How many crews?

Mr. Murray: Two.

Examiner Burchmore: Do those men also take care of the private logging tracks of the lumber company in the woods?

4315 Mr. Murray: No.

Examiner Burchmore: The lumber company itself maintains those tracks?

Mr. Murray: Yes.

Examiner Burchmore: Has the lumber company any locomotives?

Mr. Murray: Yes, sir, three Shay geared engines.

Examiner Burchmore: Where do they operate?

Mr. Murray: In the woods, in the timber holdings of the Fordyce Lumber Company.

Examiner Burchmore: I presume two of them are up in the woods up on the new line and one up in the woods by the old junction.

Mr. Murray: At the present time they are only used, two of them; at times they use all three, and when they do it is usually two on one line and one on the other.

Examiner Burchmore: Has the lumber company any logging cars of its own?

Mr. Murray: No.

Examiner Burchmore: It uses yours?

Mr. Murray: Yes.

Examiner Burchmore: What is the total capitalization of this railroad?

4316 Mr. Murray: Authorized $140,000.

Examiner Burchmore: How much is outstanding?

Mr. Murray: $108,600.

Examiner Burchmore: Have you any bonds?

Mr. Murray: No bonds.

Examiner Burchmore: Any other indebtedness?

Mr. Murray: Yes, sir, we have outstanding some $37,000 in notes.

Examiner Burchmore: What do those notes cover, what is the purpose of their issue?

Mr. Murray: Part of the purchase price of this six miles from Cynthiana to Trigg in Cleveland County.

Examiner Burchmore: They were issued recently?

Mr. Murray: Yes, sir.

Examiner Burchmore: Is it proposed to take those notes up from the profits of operation?

Mr. Murray: No, they are just the regular notes; there were three notes given, one payable in a year, one in two years and one in three years with six per cent interest.

Examiner Burchmore: How do you expect to meet those notes when they fall due?

Mr. Murray: Out of the earnings of the road.

Examiner Burchmore: That is what I meant, you expect

4317 to pay them out of the earnings and not by issuing bonds.

Mr. Murray: I misunderstood your question.

Examiner Burchmore: How much stock did you issue when the road was originally incorporated?

Mr. Murray: I do not know, I was not with them. I do not think the stock was issued at the initial beginning, right when they started.

Examiner Burchmore: What is the valuation of this road?

Mr. Murray: Well, it is fully the capital and the indebtedness of the road.

Examiner Burchmore: What do you report to the Commission as the cost of the road and equipment?

Mr. Murray: We have reported $108,600 as the cost of the road, but we have not reported to the Commission since we acquired this other road.

Examiner Burchmore: For how many miles is that $108,600?

Mr. Murray: That is for the 22½ miles.

Examiner Burchmore: That is about $5,000 a mile?

Mr. Murray: Yes, sir.

Examiner Burchmore: That includes equipment?

Mr. Murray: Yes, sir.

Examiner Burchmore: Is that all it cost to build the road?

4318 Mr. Murray: I presume so. There has been since I have been there, which is a term of about five years, considerable. Not a large amount, but a considerable amount of permanent improvements made that have been charged to income account, so that the cost of the road is in excess of $108,000.

Examiner Burchmore: But those figures are shown in your annual report in some form?

Mr. Murray: Yes, sir.

Examiner Burchmore: What dividends has this road been paying?

Mr. Murray: It never has paid but one.

Examiner Burchmore: When was that?

Mr. Murray: We paid five per cent dividend last year.

Examiner Burchmore: How much of a surplus have you?

Mr. Murray: We have no surplus.

Examiner Burchmore: A deficit?

Mr. Murray: We have no deficit to speak of. We ought not to have paid that five per cent dividend. It was brought about—we thought we had the money and did have it in hand, but the Commission—it appearing we did have money on hand the Board of Directors declared a dividend of five per cent on the capital stock, but the Commission afterwards took us to task about some
4319 depreciation entries which had not been properly made and those when made created a reserve that wiped out this money that we had disbursed. Our operating expenses has been very close to our operating revenue.

Examiner Burchmore: And yet you have expended out of your income account certain substantial sums in the improvement of the road, and you have put money back into the road?

Mr. Murray: Yes, sir. I do not know whether you would call it substantial sums or not.

Examiner Burchmore: Well, $15,000 or $20,000?

Mr. Murray: No, $10,000 would cover all, possibly less.

Examiner Burchmore: Do you make annual and monthly reports to the Interstate Commerce Commission?

Mr. Murray: Yes, sir.

Examiner Burchmore: Do you keep your accounts in conformity with the Commission's system of accounts?

Mr. Murray: Yes, sir.

Examiner Burchmore: What rate of depreciation do you charge on equipment?

Mr. Murray: I have forgotten just what that rate is; it is the rate that is prescribed, I think.

Examiner Burchmore: You said you carry no passengers and I assume you do not carry mail or express?

4320 Mr. Murray: No, there has been no demand for that service, as we have not been serving any towns, and the Rock Island parallels our old road very nearly, as you see by the plat. This new territory and this new line we have taken over will serve a community and several villages, and it was taken over on that account. We have performed all the services and hauled all the freight that has been offered us, and have had no demand for passenger service and have not put it on.

Examiner Burchmore: Will you inform us with respect to your freight traffic during the past year?

Mr. Murray: Yes, sir. Do you mean—just what information do you desire?

Examiner Burchmore: What figures have you available?

Mr. Murray: Well, I have a recapitulation drawn from our annual statements. Will you have this?

Mr. Gaughan: Get it in the record in a general way.

Mr. Murray: Do you want it read, or filed as a statement?

Mr. Gaughan: It is short, just read it in.

Examiner Burchmore: Just read that.

Mr. Murray: This is a recapitulation of the tonnage for the year ending June 30th, 1910, and shows lumber tonnage handled 23,815 tons which was 83 per cent of the total tonnage, carrying a revenue of $27,323.13. There was a tonnage of other forest prod-
4321 ucts, staves and bolts, for the same period, of 4,288 tons, 15 per cent, bringing in a revenue of $1977.57. Of hay and grain there were 264 tons handled locally, .92 of one per cent, and a revenue of $180. Merchandise miscellaneous, 263 tons, .93 per cent, revenue $500. Total tonnage 28,632 tons, total revenue of $29,980.70. Would you like me to give the divisions between the lumber company and outside?

Examiner Burchmore: Yes.

Mr. Murray: This tonnage divides as follows:

Originating with the lumber company, 23,815 tons of lumber. Hay and grain 264 tons, which is .92 per cent, a total of 24,079 tons, or 84 per cent.

Outside tonnage, staves, bolts, 4,288 tons, 15 per cent.

Merchandise 250 tons, .87 per cent.

Miscellaneous, 15 tons.

A total outside tonnage of 47533 tons, or 16 per cent.

Examiner Burchmore: That is the biggest year you ever had on outside traffic, is it not?

Mr. Murray: I do not recall. I have not my previous tonnage reports. I do not think is has varied very much.

Examiner Burchmore: You show 4,288 tons of staves and
4322 bolts. Who furnishes the stave lumber out of which those staves were manufactured?

Mr. Murray: The tonnage came to us from the Hampton Stave Company, and outside parties consigned to them. If you are inquiring to see whether there was any of that stumpage which was lumber company stumpage, I can answer that the Hampton Stave Company in addition to holding large timber holdings of their own in our territory do work the stave timber or part of it in which the Fordyce Lumber Company owns part of it, but they handle it themselves and work it up, and it is handled and delivered to them at Fordyce. It is not on our line.

Examiner Burchmore: What stores are there on your line?

Mr. Murray: We have no stores excepting a store at Trigg and there is a store at the lumber company's camp, not run by the company, however.

Examiner Burchmore: Do they farm out the privilege?

Mr. Murray: The Fordyce Mercantile Company, an independent corporation, operates the store out there.

Examiner Burchmore: Who owns the Fordyce Mercantile Company?

Mr. Murray: It is owned very largely by Mr. Chester Edgar. The Fordyce Lumber Company has no financial interest in it at all.

4323 Examiner Burchmore: Has Mr. Edgar any interest in the Fordyce Lumber Company?

Mr. Murray: No.

Examiner Burchmore: What relation is he to C. V. Edgar?

Mr. Murray: He is a brother.

Examiner Burchmore: He is a brother of the Secretary of the lumber company?

Mr. Murray: Yes, sir.

Examiner Burchmore: But has no interest in the lumber company?

Mr. Murray: No.

Examiner Burchmore: How much does he pay the lumber company for having the privilege of the store up there?

Mr. Murray: He does not pay anything for the privilege. There is an arrangement between the Fordyce Mercantile Company and the Fordyce Lumber Company, whereby on such accounts as they ask us to collect they pay a percentage for the collection, but that is not all their account, and he rents buildings from us at Fordyce.

Examiner Burchmore: What rental does he pay?

Mr. Murray: It is a nominal rental of, I think, $75.00 a month perhaps, for a large store and warehouse, and other things.

4324 Examiner Burchmore: Are the rates from stations on your line on the lumber on a milling in transit basis?

Mr. Murray: Yes, sir.

Examiner Burchmore: They cover the logs into the mill and the lumber out?

Mr. Murray: Yes.

Examiner Burchmore: The junction point rates apply back on your line?

Mr. Murray: Yes.

Examiner Burchmore: What divisions do you receive from the Rock Island Railroad on interstate shipments of lumber?

Mr. Murray: From two to four and a half cents.

Examiner Burchmore: Is four and a half cents the largest amount?

Mr. Murray: The maximum, yes, sir.

Examiner Burchmore: You have never received any more than that?

Mr. Murray: No.

Examiner Burchmore: How much do you receive from the Cotton Belt?

Mr. Murray: From one to two and a half or three cents, I think there is a three cent division to points on their own line in

4325 Texas. I am not sure as to that.

Examiner Burchmore: That seems to be the fact.

Mr. Murray: Yes.

Examiner Burchmore: How long have you been receiving divisions from the Cotton Belt Railway?

Mr. Murray: I don't know how long, but I presume a long period of years, ever since I have been connected with the company.

Examiner Burchmore: How long have you been receiving as much as three cents?

Mr. Murray: I think that arrangement has extended over perhaps the entire period.

Examiner Burchmore: Away back into the nineties, do you mean?

Mr. Murray: I do not know. I was not there, and I have not the information you ask.

Examiner Burchmore: But back as far as 1903 or 1904 anyway?

Mr. Murray: I think that is correct. My connection with the Fordyce Lumber Company, and the Fordyce & Princeton Railroad Company dates since December, 1905.

Examiner Burchmore: They were receiving them then?

Mr. Murray: Yes, sir.

4326 Examiner Burchmore: Have they ever received more than three cents from the Cotton Belt?

Mr. Murray: No.

Examiner Burchmore: The present divisions are as liberal as they have ever had from the Cotton Belt.

Mr. Murray: Yes, sir.

Examiner Burchmore: When did you first receive divisions from the Rock Island?

Mr. Murray: As soon as we connected with them.

Examiner Burchmore: That was in the fall of 1907?

Mr. Murray: I think it was in perhaps June, 1907.

Examiner Burchmore: And has your company any contract with the Rock Island?

Mr. Murray: It has.

Examiner Burchmore: A copy of such contract was filed with the Commission?

Mr. Murray: Yes, sir.

Examiner Burchmore: It seems to be dated November 5th, 1907. The Fordyce Lumber Company is also a party to that contract.

Mr. Murray: Yes.

Examiner Burchmore: Are you familiar with the terms of

4327 that contract?

Mr. Murray: I have read the contract, yes, sir.

Examiner Burchmore: It seems to be a standard form of contract that the Rock Island has with a number of short line railroads?

Mr. Murray: I have never seen any other contract except the one with the Crossett Railway; it is identical with that, I think.

Examiner Burchmore: The Rock Island filed with the Commission at the same time a dozen or more contracts, and this seems to be similar.

Mr. Murray: Yes, sir, I think there is no difference.

Examiner Burchmore: It provides that the Fordyce & Princeton Railroad Company shall receive divisions from the Rock Island varying from two cents to four and one-half cents per 100 pounds on lumber?

Mr. Murray: Yes, sir.

Examiner Burchmore: It also provides that the Fordyce Lumber Company will furnish them a substantial part of its tonnage.

Mr. Murray: I do not think it is the Fordyce Lumber Company, but the Fordyce & Princeton Railroad Company; I think the contract perhaps reads that the Fordyce Lumber Company shall deliver—no, I think it is like I stated, the Fordyce & Prince-
4328 ton Railroad.

Examiner Burchmore: What was it you understood?

Mr. Murray: I understood the Fordyce & Princeton Railroad Company guaranteed the tonnage, but not the lumber company.

Examiner Burchmore: Well, the lumber company is also a party to the contract.

Mr. Murray: Yes, sir, it is a party to the contract.

Examiner Burchmore: And the contract speaks for itself.

Mr. Murray: Yes, sir.

Examiner Burchmore: I presume when the Rock Island built in there to Fordyce and this contract was entered into, your company began to give the major portion of its tonnage to the Rock Island.

Mr. Murray: No, sir, not immediately. I do not think that our records would show that.

Examiner Burchmore: Well, the contract obligated you to give more than 50 per cent of your tonnage to them?

Mr. Murray: Not more.

Examiner Burchmore: At least 50 per cent.

Mr. Murray: At least 50 per cent under certain conditions, and one of those conditions was that there should be a sufficient supply of cars, but I rather think the first year the Rock Island was in there they were not able to furnish 50 per cent of the equip-
4329 ment, and therefore did not get 50 per cent of the business.

Examiner Burchmore: Where is Bryant's Switch?

Mr. Murray: Bryant's Switch is 11½ miles from Fordyce.

Examiner Burchmore: On the old main line?

Mr. Murray: Yes, sir.

Examiner Burchmore: Bryant's Switch is the billing point for most of your traffic over the Rock Island?

Mr. Murray: It has been for the major part of it, but Cynthiana from this time on or Trigg as soon as can be applied from Trigg, the major portion will be.

Examiner Burchmore: There are no logs originating at Cynthiana.

Mr. Murray: The logs we are receiving now, or a good portion of them, have been coming off the lumber company's spur beyond Cynthiana and delivered to the road at Cynthiana.

Examiner Burchmore: On the finished lumber the only service by the road is to move the empty car from the main line of the Rock Island or Cotton Belt up to the mill and then the loaded cars back.

Mr. Murray: Yes, but we have the side track in both their yards.

Examiner Burchmore: The interchange track?

4330 Mr. Murray: Yes, sir.

Examiner Burchmore: But the allowance is intended to and does cover the movement of the logs from the junction with your line and the logging tracks of the lumber company down to the mill?

Mr. Murray: Yes, sir, it is intended to cover all the service performed.

Examiner Burchmore: And you receive no additional compensation from the lumber company?

Mr. Murray: No, excepting as it has happened, if you will refer to the complaint, there was a time when we sent our engine and material back on the lumber company's spur from Old Junction, and at that time we charged them $1.00 a car additional for that service.

Examiner Burchmore: When did you cease doing that?

Mr. Murray: As soon as we ceased to send the engine back after them.

Examiner Burchmore: What date was that?

Mr. Murray: That was about the date we began to get logs at Cynthiana. They still have a spur out there, and if we go out there we will charge them again.

Examiner Burchmore: Have you any contract with the Fordyce Lumber Company?

4331 Mr. Murray: No written contract.

Examiner Burchmore: What contracts have you?

Mr. Murray: It is just that understanding, they will pay us $1.00 a car on any logs it is necessary for us to send our engines off our rails to get.

Examiner Burchmore: Is there any billing to cover the movement of the logs into the mill?

Mr. Murray: Nothing but slip billing, such as has been described here.

Examiner Burchmore: Made out by the conductor?

Mr. Murray: Yes, sir.

Examiner Burchmore: The agent who makes out the bills of lading at Fordyce is a joint agent of the Fordyce & Princeton Railroad and the Fordyce Lumber Company, a joint employé?

Mr. Murray: Yes, sir.

Examiner Burchmore: Does he make out any waybills?

Mr. Murray: Yes, sir.

Examiner Burchmore: Through waybills?

Mr. Murray: We waybill through, yes, sir.

Examiner Burchmore: Do you settle with the Rock Island on an interline basis?

Mr. Murray: Yes, sir, and with all the other roads.

Mr. Gaugham: Describe the territory into which the For-
4332 dyce & Princeton Railroad Company, is now constructing its line of road, that is in between Moro Creek and Saline River.

Mr. Murray: You have reference to the line we have just taken over?

Mr. Gaughan: Yes.

Mr. Murray: Well, that is a territory that lies between the Moro

and the Sabine River and contains quite a large farming community with several country villages, and is so situated between this river and this creek that the people can hardly get out in winter time to their trading points on account of these places; it is a territory to be served.

Mr. Gaughan: With railroad facilities, would Fordyce naturally be their market?

Mr. Murray: It is their natural market.

Mr. Gaughan: Is this Moro Creek a stream that it is difficult to pass during the winter and spring seasons?

Mr. Murray: It is very bad, the bottom is over a mile and a half to two miles wide, and the roads are terrible, and it overflows badly.

Mr. Gaughan: Are there other forest products in this territory to haul in addition to pine?

Mr. Murray: There are.

Mr. Gaughan: To what extent?

4333 Mr. Murray: The Hampton Stave Company own considerable acreage, a large acreage of hardwood timber land, and the Saline Lumber Company own a large acreage of timber land beyond the land of the Fordyce Lumber Company, and the hardwood timber is in the hands of the farmers very largely in that territory.

Mr. Gaughan: Is there any other railroad in that territory except the Fordyce & Princeton?

Mr. Murray: There is not.

Mr. Gaughan: And the Rock Island has not paralleled your line through there yet.

Mr. Murray: No.

Mr. Gaughan: That is in Cleveland County, is it not?

Mr. Murray: Yes, sir.

Mr. Gaughan: The old line of road was principally in Dallas County?

Mr. Murray: Entirely so.

Mr. Gaughan: This Moro Creek is the dividing line between Dallas and Cleveland Counties?

Mr. Murray: Yes, sir, it is the boundary.

Mr. Gaughan: Would you be able to approximate the number of shippers over at Trigg and the other villages in that vicinity that would be patrons of the railroad?

4334 Mr. Murray: I would not. So far as the merchants are concerned, there would be few at this time, but there are a very large number of others who use our line for the transportation of their staves and bolts which they make themselves and sell to the Hampton Stave Company at Fordyce.

Mr. Gaughan: Is it your purpose to encourage passenger service up into that territory?

Mr. Murray: It has been and is.

Mr. Gaughan: You say it has been and is?

Mr. Murray: Well, it is. We do not want to encourage it if we are not a common carrier, but we expect to if we are.

Mr. Gaughan: Well, do you think there is sufficient population

over in that territory with the natural increase that would come, to justify passenger service?

Mr. Murray: I think that together with the revenue that may be derived from a mail contract, that it would be.

Mr. Gaughan: Has any application been made to you by the people over there for the handling of mail?

Mr. Murray: We have been approached on the subject by several. We have made no application to the government, if that is what you mean.

Mr. Gaughan: You have not to the government?

Mr. Murray: No.

4335 Mr. Gaughan: This road has been operating under a charter as a common carrier for about how many years?

Mr. Murray: 20 years, 21, I guess.

Mr. Gaughan: Do you know whether this railroad company has ever exercised the right of eminent domain?

Mr. Murray: I do not know whether it has or not; not since my incumbency.

Mr. Gaughan: As a matter of fact it did, but I do not know whether it was since you came there or not.

Mr. Murray: I do not think it has since I have been in charge.

Mr. Gaughan: Does it own its own right of way?

Mr. Murray: It does.

Mr. Gaughan: Have you any telephone line on your road?

Mr. Murray: The lumber company owns a telephone line which parallels the railroad. The railroad does not own a telephone line.

Mr. Gaughan: That is all.

Mr. Cowan: It appears you receive from the lumber from the Fordyce Lumber Company, $27,000 on 23,000 tons, and it would therefore appear that you must have received your maximum divisions most of the time on the lumber you sent out. I will ask

4336 you to state whether it is a fact that your shipments mainly go to the points where you receive the maximum divisions from the Rock Island and the Cotton Belt.

Mr. Murray: I would say that a considerable proportion of the shipments move to points on which the division is four cents and four and a half cents.

Mr. Cowan: It would seem to figure that.

Mr. Murray: Yes, sir.

Mr. Cowan: Generally speaking, in the lumber business in that part of the country, do you know whether the mills having connections with the roads receiving divisions, do ship their output mostly to the points where they get the best divisions?

Mr. Murray: I have no information outside of ourselves.

Mr. Cowan: Do you happen to know whether or not you get the same division into the same territory from Fordyce from the Cotton Belt Line that other roads like yourselves, tap lines, we will call them, get from the Rock Island and Cotton Belt?

Mr. Murray: I don't know.

Mr. Cowan: It appears also in the statement we have here that a

large part of your additional revenue from other traffic for the year 1908, at least, was from switching, $1145 for switching.

Mr. Murray: Yes, sir.

Mr. Cowan: What would that be for?

4337 Mr. Murray: That was before the Arkansas Railroad Commission had required the Rock Island and the Cotton Belt to connect their two lines, and all the shipments from points on the Rock Island to points on the Cotton Belt rails and also all shipments from Cotton Belt points to points on the Rock Island rails, were handled by the Fordyce & Princeton.

Mr. Cowan: You connected the two roads?

Mr. Murray: Yes, sir; we do connect the two roads.

Mr. Cowan: At present do you do any switching for them?

Mr. Murray: Very little; it has been eliminated by the Arkansas Railroad Commission forcing them to make a physical connection.

Mr. Cowan: Do you know anything about the lumber mills in that part of the country, situated so that they do not get any division of the rates?

Mr. Murray: Do I know anything about them?

Mr. Cowan: Do you know of such?

Mr. Murray: No, I do not know of any lumber mill that gets a division of the rate.

Mr. Cowan: I mean that do not get it through the means of a tap line, where they have one. Do you know of anyone that logs and operates a logging road into the mill situated on a main line, which does not get a division from the main line?

4338 Mr. Murray: I have no knowledge of such.

Mr. Cowan: No knowledge on the subject?

Mr. Murray: No.

Mr. Cowan: That is all.

Mr. Coleman: Have you any other commodities which have joint rates other than on lumber?

Mr. Murray: We have a joint rate in on coal.

Mr. Coleman: That is mostly for your own use?

Mr. Murray: Mostly for the use of the company.

Mr. Coleman: Nothing else out?

Mr. Murray: No.

Mr. Coleman: Where does the four and one-half cent division apply to?

Mr. Murray: To points on the Rock Island-Frisco rails, where they get the whole haul.

Mr. Coleman: I know, but what territory?

Mr. Murray: It applies to any territory on their own rails.

Mr. Coleman: I mean there is a graduated scale of divisions. Where is the four and one-half cents, on what haul would that apply, do you know?

Mr. Murray: That applies to any point on their rails.

Mr. Coleman: And what does the two cent apply to.

Mr. Murray: The two cent division applies to Memphis proper.

4339 Mr. Coleman: You do not know about the lumber company, do you?

Mr. Murray: Yes, sir.

Mr. Coleman: Where does most of their traffic go?

Mr. Murray: A very substantial proportion goes to Oklahoma, although we ship all over the Central States.

Mr. Coleman: That is all.

Mr. Gaughan: Did you state the consideration for this new line of road recently purchased?

Mr. Murray: I do not think I did.

Mr. Gaughan: State it.

Mr. Murray: It was $42,000. I think I did state the amount of the notes.

Mr. Gaughan: Was the difference paid in cash?

Mr. Murray: $5,000.

Mr. Coleman: You never asked for a joint rate out on any of the other stuff, did you?

Mr. Murray: What other stuff?

Mr. Coleman: Anything that might originate on your railroad, local produce.

Mr. Murray: There has not been anything originating there except in small quantities that have been handled locally.

Mr. Coleman: There never have been any requests for a
4340 rate out on anything but on lumber?

Mr. Murray: No.

Mr. Coleman: And the rate in is on coal, and that comes to you alone.

Mr. Murray: Yes, sir.

Mr. Garwood: Does the Fordyce Company ship much lumber, if any, to Texas?

Mr. Murray: No.

Mr. Garwood: Does it ship any?

Mr. Murray: I think we have made shipments to Texas, but we have no representative in that field.

Mr. Gaughan: You have not been shipping much to anybody last year, have you?

Mr. Murray: No.

Mr. Cowan: It appears that stave bolts, 4200 tons yielded $1900, that would be on a less basis of divisions than the lumber?

Mr. Murray: There is no division on that. That was entirely local business.

Mr. Cowan: That was the local rate from the shipping point?

Mr. Murray: Yes, sir, the stave mill is not on our road.

Mr. Cowan: They haul it to you?

4341 Mr. Murray: No, we haul it to Fordyce and they handle it from our tracks to the mill.

Mr. Cowan: You haul the bolts from points on your road?

Mr Murray: Yes.

Mr. Cowan: What is the rate in Arkansas on stave bolts?

Mr. Murray: I think it is approximately four cents, but I am not sure as to that.

Mr. Walter: It is the regular court tariff, is it not?
Mr. Murray: Yes, sir, whatever the regular court tariff is.

(The statement testified to by the witness, and heretofore identified, was received in evidence and thereupon marked Fordyce & Princton Railroad Exhibit No. 2, Witness Murray, received in evidence January 23, 1911, and is attached hereto.)

Mr. Gaughan: Up to what time does your statement cover?
Mr. Murray: That covers the year reported to the Commission, ending June 30th, 1910.
Mr. Gaughan: Has your outside business increased any since that was made?
Mr. Murray: Practically no change to date.
Mr. Gaughan: Is there any certainty of an increase in the outside tonnage now?
4342 Mr. Murray: There is.
Mr. Gaughan: Explain from what source?
Mr. Murray: The Sparkman Manufacturing Company of Fordyce have recently consummated a deal with the Fordyce Lumber Company for the delivery of its hardwood logs on its cars to a point of connection with the lumber company's logging roads, to the Fordyce & Princeton, and we will have that tonnage which we did not have before.
Mr. Gaughan: Where is their plant being built?
Mr. Murray: In the City of Fordyce.
Mr. Gaughan: What approximately will that tonnage amount to?
Mr. Murray: I have no definite means of knowing excepting I would think it would increase our outside hardwood tonnage perhaps double or treble. I know it will be more than double.
Mr. Gaughan: What will they make out of it?
Mr. Murray: The Sparkman Manufacturing Company make everything, from spokes to lumber.
Mr. Gaughan: All kinds of hardwoods?
Mr. Murray: Yes, sir.
Mr. Gaughan: What sized city is Fordyce?
Mr. Murray: About 4,000 people, we claim that; I guess perhaps the census would give us a little less.
4343 Mr. Gaughan: They take it a little closer?
Mr. Murray: Yes, sir.
Mr. Coleman: Does the lumber company supply the wood to this new company?
Mr. Murray: They will deliver it. The contract contemplates delivery on board of the cars in the woods.
Mr. Coleman: They are just there to utilize the by-product which your mill company does not care to handle.
Mr. Murray: Not for us alone. They are a large establishment, and they have simply purchased this tonnage which has not been moved heretofore.
Mr. Coleman: So of course it is an advantage to the mill company to have that hardwood utilized?
Mr. Murray: Well, I don't know whether it is or not at this time.

I am rather inclined to think it would be more valuable to keep it, but it does mean additional tonnage for the railroad company.

Mr. Gaughan: They also purchase logs from other people?

Mr. Murray: Yes, sir; up and down the trunk lines, and wherever they can buy the timber.

Mr. Walter: The Fordyce Lumber Company's interest in the logs ceases before the railroad company takes hold of them?

Mr. Murray: Yes, sir.

4344 Mr. Coleman: The Sparkman Mill is to be on the line of your railroad?

Mr. Murray: No.

Mr. Coleman: Where is that?

Mr. Murray: It is in the city of Fordyce.

Mr. Coleman: Your railroad will haul them from the mill and deliver them to them?

Mr. Murray: No, from the place the logs are received in the woods to the City of Fordyce. We get no outbound tonnage from them at all.

Mr. Coleman: You make the price on the logs delivered at Fordyce?

Mr. Murray: No.

Mr. Coleman: I mean to the Sparkman Manufacturing Company.

Mr. Murray: No. They buy them delivered on cars at a point in the woods.

Mr. Coleman: Then they pay the freight down to Fordyce?

Mr. Murray: Yes, sir, the Arkansas rate.

Mr. Coleman: The Arkansas local rate?

Mr. Murray: Yes.

(Witness excused.)

4345 Mr. Garwood: Before adjourning I would like to file in the record of the Groveton, Lufkin & Northern case, as a supplemental exhibit, the trackage contract between the Trinity County Lumber Company and the Groveton, Lufkin & Northern Railroad Company.

(The paper so offered and identified, was received and marked "Filed," as of January 23, 1911.)

Mr. Garwood: Your Honor may recall that Mr. Anderson testified during the trial that the contract under discussion had been practically agreed upon, but through negligence or inadvertence had not been signed, and I will file a copy of it.

I also file for the record of the Tremont & Gulf Railroad, some tonnage statistics which the Auditor was requested by the Commissioner to add to the statement which he would file.

(The paper so offered and identified, was received and marked "Filed," as of January 23, 1911.)

Mr. Walter: On behalf of the Shreveport, Houston & Gulf, I desire to file the statistics called for at the earlier hearing, also the map of the same road.

(The papers so offered and identified, were received and marked "Filed," as of January 23, 1911.)

4346 Mr. Walter: In the Angelina & Neches River, I desire to file a statement of revenue and tonnage which was also called for.

(The paper so offered and identified, was received and marked "Filed," as of January 23, 1911.)

Mr. Jones. I would like to know when the Mississippi, Arkansas & Western Road is to be heard?

Examiner Burchmore: Probably not until Wednesday.

Mr. Jones: If it could be a day longer than that, I would like it better.

Examiner Burchmore: I can put it at the foot of the list if you want it to go to the foot of the list.

Mr. Jones: How long will that be?

Examiner Burchmore: Thursday or Friday. You had better be here Thursday morning.

(Whereupon, at 5:30 P. M. the hearing in the above entitled matter was adjourned to January 24th, 1911, at 9:30 A. M.)

4347 ST. LOUIS, MO., *January* 24, 1911.

Met pursuant to adjournment at 9:30 A. M.

Examiner Burchmore: I will announce that this morning we will call up in the following order, following the Ouachita Valley Railway, the El Dorado & Wesson, the North Louisiana & Gulf, the Deering Southwestern, and the Beirne & Clear Lake. We will make no announcement further than that.

I also wish to make the announcement, to avoid any inconvenience on the part of counsel or witnesses, that following the hearing of the individual cases remaining on the docket, which will be taken up in order, the intervenors will be heard as far as possible: the intervenors will be reached probably Thursday, certainly on Friday, here at St. Louis, finishing on Monday at Chicago. In other words, instead of adjourning as previously announced to Chicago on Friday, we will not meet in Chicago until Monday.

Mr. Cowan: When you say finish on Monday in Chicago, you mean finish at the hearing beginning in Chicago on Monday.

Examiner Burchmore: I do not know whether we will adjourn Monday night in Chicago or not. Commissioner Harlan will preside. At any rate we will adjourn to Chicago on Monday morning.

4348 Mr. Cowan: In view of that I wish to ask your Honor for some subpœnaes. I suppose all I need to do is to write out what I want.

Examiner Burchmore: You can take that matter up with me during the noon hour.

Mr. Armistead: I represent the Malvern & Freeo Valley Railway. That road had its case up at New Orleans and a witness was called

unexpectedly, and we were called — for various statements supplementary to his testimony, and have just finished their preparation. I have them with me. Will it be in order to file them now.

Examiner Burchmore: Yes.

Mr. Armistead: They are all under seal and numbered and identified, and a letter accompanying them explaining the tenor of them.

(Papers so offered and identified, were received and marked "Filed", as of January 24, 1911.)

Mr. Walter: May I ask about what length of time the intervenors expect to occupy in the introduction of testimony?

Mr. Cowan: I do not konw. It depends on the cross examination. Probably five days.

4349 *Ouachita Valley Railway Company.*

C. A. BUSHNER, was called as a witness, and having been duly sworn, testified as follows:

Examiner Gutheim: What is your name?

Mr. Bushner: C. A. Bushner.

Examiner Gutheim: You live where?

Mr. Bushner: Millville.

Examiner Gutheim: Arkansas?

Mr. Bushner: Yes, sir.

Examiner Gutheim: What official connection have you with the Ouachita Valley Railway?

Mr. Bushner: I am its manager.

Examiner Gutheim: Have you a map of that road which you can file?

Mr. Bushner: I have it, yes, sir.

Examiner Gutheim: Will you have it marked, please.

(The map so offered and identified, was received in evidence and thereupon marked Ouachita Valley Railroad Exhibit No. 1, Witness Bushner, received in evidence January 24, 1911, and is attached hereto.)

4350 Examiner Gutheim: Going to the map, this road runs from Millville in a southerly and southeasterly direction to Stark?

Mr. Bushner: Yes.

Examiner Gutheim: What is the trunk line connection at Milleville?

Mr. Bushner: The Cotton Belt.

Examiner Gutheim: And at Stark?

Mr. Bushner: The Rock Island.

Examiner Gutheim: About what is the length of the main line of the road?

Mr. Bushner: About 28 miles.

Examiner Gutheim: Do you have an extensive mileage of spurs or sidings?

Mr. Bushner: No, not belonging to the Ouachita Valley.

Examiner Gutheim: What is the nature of the territory along the line of this road?

Mr. Bushner: In what particular?

Examiner Gutheim: Well, what industries are located on it?

Mr. Bushner: There is practically none aside from the Freeman-Smith Lumber Company at Millville.

Examiner Gutheim: You have a *located* here marked Locust Bayou.

Mr. Bushner: Yes, sir.

4351 Examiner Gutheim: What sort of a locality is that, any extensive population there?

Mr. Bushner: Probably 150 people; it is a little agricultural community with three or four stores, but no industries aside from agriculture in that neighborhood.

Examiner Gutheim: Where are the logging operations at present of the Freeman-Smith Lumber Company?

Mr. Bushner: Right at present they are about four miles from Millville.

Examiner Gutheim: That is going towards Stark?

Mr. Bushner: Yes, sir, right up at the top.

Examiner Gutheim: Is this Locust Bayou the remains of what was once a logging camp?

Mr. Bushner: No, that community as I understand it, has been there for years and years.

Examiner Gutheim: Before the railroad?

Mr. Bushner: Yes, sir.

Examiner Gutheim: What is the extent of the interest of the Freeman-Smith Lumber Company in this railroad?

Mr. Bushner: It is practically identical with the lumber company.

Examiner Gutheim: You mean the stockholders in both corporations are the same individuals?

4352 Mr. Bushner: Yes, sir.

Examiner Gutheim: Holding their stock in about the same proportion?

Mr. Bushner: Yes.

Examiner Gutheim: Was the road constructed by the Freeman-Smith Lumber Company?

Mr. Bushner: Yes, sir.

Examiner Gutheim: About how long ago?

Mr. Bushner: I think the road was built about 18 years ago. My association with the company has only been for the last ten months, and I know but little of its previous history.

Examiner Gutheim: Can you say when it was incorporated?

Mr. Bushner: I think in 1904.

Examiner Gutheim: About what is the valuation of the road as carried on the books?

Mr. Bushner: The 28 miles I think is valued at $77,000.

Examiner Gutheim: 28 miles, $77,000?

Mr. Bushner: Yes.

Examiner Gutheim: What is the indebtedness of the Ouachita Valley Railway at the present time?

Mr. Bushner: They have no indebtedness except that which is current.

Examiner Gutheim: To whom is the indebtedness that
4353 offsets the cost of the road due?

Mr. Bushner: The road itself was taken out of the assets of the Freeman-Smith Lumber Company, and transferred into the incorporation of the railway by dividend.

Examiner Gutheim: By dividend?

Mr. Bushner: Yes. The dividend——

Examiner Gutheim: Does $77,000 represent the actual value of the railroad, 28 miles in length, and the equipment of it?

Mr. Bushner: No, $100,000 for the equipment and the railroad.

Examiner Gutheim: How much?

Mr. Bushner: $100,000. There was $23,000 in equipment, and $100,000 for the railroad.

Examiner Gutheim: So that the 28 miles of road and equipment which you have has $100,000 valuation on your books?

Mr. Bushner: Yes.

Examiner Gutheim: Has that been the valuation carried since the incorporation of the company?

Mr. Bushner: Yes, sir.

Examiner Gutheim: And the amount of that $100,000 was paid by the Freeman-Smith Lumber Company?

Mr. Bushner: Yes, sir.

4354 Examiner Gutheim: Who are the present officers of the railroad?

Mr. Bushner: Mr. M. C. Smith is President, J. A. Freeman, Vice President, and myself its manager.

Examiner Gutheim: And do all three individuals have an official connection with the Freeman-Smith Lumber Company?

Mr. Bushner: Yes, sir.

Examiner Gutheim: About in the same capacity?

Mr. Bushner: Just about, yes, sir.

Examiner Gutheim: Will you explain briefly the character of the road from the standpoint of grading and weight of rail and number of bridges, buildings, and so forth?

Mr. Bushner: The iron is 30 pound iron; the bridges are well built bridges. That however has all been done since the road was bought, and was done with money that the road earned. I expect there is something over a mile and a quarter of bridges, all told. The grade through which the road is built is very easy, naturally, and a very level country, being very inexpensive. The ties are all standard, 18 standard ties to the rail.

Examiner Gutheim: Are the bridges steel or timber?

Mr. Bushner: They are timber.

Examiner Gutheim: Have you any buildings at any of
4355 your stations?

Mr. Bushner: We have one only, at Millville.

Examiner Gutheim: What equipment do you have?

Mr. Bushner: There are about 70 log cars, 2 cabooses, a motor car and 5 locomotives.

Examiner Gutheim: And the track and equipment is all standard gauge?

Mr. Bushner: Yes, sir.

Examiner Gutheim: About how many men do you have in your railroad service?

Mr. Bushner: I expect 60 or 65 men.

Examiner Gutheim: All employed entirely in the service of the railroad?

Mr. Bushner: Yes, sir.

Examiner Gutheim: Or partially also in the service of the lumber company?

Mr. Bushner: Well, all those are employed directly in the service of the railroad.

Examiner Gutheim: How about the general officers, are they all strictly in the service of the railroad?

Mr. Bushner: No.

Examiner Gutheim: Are their wages paid entirely by the railroad or partially by the railroad and partially by the lumber
4356 company.

Mr. Bushner: You mean these two office employés?

Examiner Gutheim: Yes.

Mr. Bushner: They are paid partly by the railroad and partly by the lumber company. We have only two such, however.

Examiner Gutheim: About how extensive is your train service?

Mr. Bushner: We run one train a day to Stark and return.

Examiner Gutheim: Is that a freight mixed or——

Mr. Bushner: Freight mixed, yes, sir.

Examiner Gutheim: Does it run on a regular schedule?

Mr. Bushner: Yes, it does.

Examiner Gutheim: Published time cards?

Mr. Bushner: The Rock Island trains are down there at 12:20 in one direction, and another at 2:20, and these trains meet the Rock Island connections.

Examiner Gutheim: Do you handle any United States mail or express?

Mr. Bushner: No.

Examiner Gutheim: Can you furnish us with a statement showing the total tonnage and revenue of the road for the last fiscal year divided between the tonnage and revenue accruing on the
4357 business of the Freeman-Smith Lumber Company and that accruing on the business of the outside public?

Mr. Bushner: I can show you the tonnage but not the revenue. I prepared that statement and did not understand I expect correctly, but I have the tonnage, which will give the idea you want, I guess.

Examiner Gutheim: You can state the figures of the tonnage.

Mr. Bushner: This is for the last 18 months, instead of 12 months.

Examiner Gutheim: Beginning and ending when?

Mr. Bushner: Beginning July 1st, 1909, until January 1st, this year. The outgoing freight originating on our line by the Freeman-Smith Lumber Company is:

Logs, 149,647 tons.
Lumber, 24,268 tons.
Forest products from others, originating on our line, 425 tons, and other agricultural products from others, 25 tons, or a total of 450 tons originating from other sources, as against 173,915 tons originated by the Freeman-Smith Lumber Company. However, I want to call your attention to the fact that this 173,000 tons includes the logs in to the mill; they are milled in transit.
Examiner Buchmore: That is, you show the tonnage of the logs, and of the lumber which comes out of the logs?
4358 Mr. Bushner: Yes, both.
Examiner Gutheim: So that substantially all of the traffic is furnished by the Freeman-Smith Lumber Company?
Mr. Bushner: A very large portion of it.
Examiner Burchmore: How much lumber did you handle exclusive of logs?
Mr. Bushner: In feet?
Examiner Burchmore: No, in tons.
Mr. Bushner: 24,268.

(The paper so offered and identified, was received in evidence and thereupon marked Ouachita Valley Railway Exhibit No. 2, Witness Bushner, received in evidence January 24, 1911, and is attached hereto.)

Examiner Gutheim: Will you prepare and file another statement showing this division not only on the basis of tonnage but also on the basis of revenue?
Mr. Bushner: All right, I will do so.
Examiner Gutheim: And send it to the Commission?
Mr. Bushner: All right, sir.
Examiner Burchmore: Also separate your statement into the fiscal year and into the six months subsequent.
Mr. Bushner: All right, I will do that.
Examiner Gutheim: Does all this lumber move on joint
4359 rates to which the Ouachita Valley Railway is a party?
Mr. Bushner: Practically all of it.
Examiner Gutheim: And does it move under through rates via both your connections?
Mr. Bushner: Yes, sir.
Examiner Gutheim: What divisions do you receive on lumber from the Cotton Belt?
Mr. Bushner: The Cotton Belt ranges from one to two and a half cents.
Examiner Gutheim: And from the Rock Island what divisions do you get?
Mr. Bushner: Two to five cents.
Examiner Gutheim: Referring to your map again, where are your logging operations at the present time?
Mr. Bushner: About four miles from Millville, away up at the head of the map.
Examiner Gutheim: And the logs are milled at Millville?

Mr. Bushner: Yes, sir.

Examiner Gutheim: And thence delivered to the Cotton Belt?

Mr. Bushner: A part.

Examiner Gutheim: How much of a haul do you perform with your own power in hauling your manufactured products to the Cotton Belt at Millville?

4360 Mr. Bushner: Nothing.

Examiner Gutheim: The Cotton Belt takes it out with its own power?

Mr. Bushner: Yes, sir.

Examiner Gutheim: How much of a haul do you perform in making deliveries to the Rock Island at Stark?

Mr. Bushner: We worked for that; it is 28 miles.

Examiner Gutheim: Do you have to run trains to Stark for the express purpose of making that delivery, or does the lumber go over on your logging trains?

Mr. Bushner: That train is run for the express purpose. We would be obliged to run that train for that purpose alone in any event when we go below Stark.

Examiner Burchmore: From which direction are you logging from Millville?

Mr. Bushner: Just south.

Examiner Burchmore: How long have you been logging there?

Mr. Bushner: We have been there six or seven months and will be there until probably next September.

Examiner Burchmore: Where were you logging previous to that time?

Mr. Bushner: Down below Stark.

4361 Examiner Burchmore: And for that purpose you utilized the private logging tracks of the lumber company?

Mr. Bushner: In logging we use the iron of the logging company, yes, sir; that is correct.

Examiner Gutheim: When you were logging below Stark, it was not necessary to run your trains specially from Millville to Stark for the purpose of effecting delivery of the lumber to the Rock Island?

Mr. Bushner: It certainly was.

Examiner Gutheim: Could not they have taken it out on the same logging trains?

Mr. Bushner: Not and comply with the Interstate Commerce law. That caboose which handles that freight is equipped with standard appliances, and the logging cars are not.

Examiner Gutheim: How long ago did the Rock Island come into this country, so as to give you the second connection?

Mr. Bushner: I think it was 1906.

Examiner Gutheim: And at the time they came in, did you make a contract with the Rock Island providing for divisions to be allowed your line?

Mr. Bushner: Yes, there was a contract made with us, that was prior to my connection with this company.

4362 Examiner Gutheim: And that contract is the one which named the divisions of two cents to five cents per 100 pounds?

Mr. Bushner: Yes, sir.

Examiner Gutheim: As a matter of fact about what is your average division per 100 pounds?

Mr. Bushner: Do you mean to the Rock Island, or to all roads?

Examiner Gutheim: Received from the Rock Island.

Mr. Bushner: I will just have to guess at that. I presume it would be about three and a half cents, and possibly four.

Examiner Gutheim: To put it another way, most of your shipments via the Rock Island go to the points to which you receive the highest divisions?

Mr. Bushner: Yes.

Examiner Gutheim: Does your contract with the Rock Island provide that you are to deliver to that line any certain portion of the tonnage of the Freeman-Smith Lumber Company?

Mr. Bushner: Yes—what is that?

Examiner Gutheim: Does it provide you are to deliver to the Rock Island any fixed portion of the tonnage of the Freeman-Smith Lumber Company?

Mr. Bushner: I have not seen that contract. I know the
4363 nature of all the contracts which were made, and whether that contract was made by the railroad or the Freeman-Smith Lumber Company, or jointly, I am not prepared to swear; but all the mills in there, when the Rock Island showed up on the horizon of our troubles to furnish relief, did agree to furnish them with a substantial quantity of tonnage and were very glad to do it.

Examiner Gutheim: As a matter of fact, there is a copy here which shows that the lumber company is a party to the contract and provides 50 per cent, at least, to go to the Rock Island.

Examiner Burchmore: It is a standard form of Rock Island contract.

Mr. Bushner: I think they are all alike.

Examiner Gutheim: Do you publish any local tariffs?

Mr. Bushner: We use the court tariff.

Examiner Gutheim: Is that filed with the Interstate Commerce Commission?

Mr. Bushner: I think it is.

Examiner Gutheim: Do you have any trouble rates on commodities other than lumber and forest products?

Mr. Bushner: Out of Millville?

Examiner Gutheim: Out of Millville or into Millville?

Mr. Bushner: There are some that I know; I do not
4364 know—yes, we have rates on hay and feed stuffs and coal and fertilizers into Millville, and other commodities; I do not remember them all.

Examiner Gutheim: Are those via both trunk lines?

Mr. Bushner: No.

Examiner Gutheim: Which one?

Mr. Bushner: The Rock Island.

Examiner Gutheim: Do those rates apply also to Locust Bayou?

Mr. Bushner: Yes, sir.

Examiner Gutheim: What divisions do you get on the inbound commodity rates?

Mr. Bushner: I could not answer that.

Examiner Gutheim: Is that provided for in the contract, do you know?

Mr. Bushner: No, I think not. I do not think that was embodied in the contract at all.

Examiner Gutheim: Do you make annual and monthly reports to the Interstate Commerce Commission?

Mr. Bushner: Yes, sir.

Examiner Gutheim: That is all.

Mr. Gaughan: I see from your statement, Mr. Bushner, not a great quantity of forest products have been handled from
4365 that territory by this railway except forest products originating from the Freeman-Smith Lumber Company. I wish to ask you whether or not the Freeman-Smith Lumber Company does any hardwood business?

Mr. Bushner: No, sir.

Mr. Gaughan: Is there any substantial quantity of hardwood in that territory?

Mr. Bushner: Yes, there is a great deal of it.

Mr. Gaughan: Has that been developed yet?

Mr. Bushner: No.

Mr. Gaughan: I wish you would let your evidence show the extent of that tonnage, and whether or not it will be developed soon, or whether the prospects are that it will.

Mr. Bushner: You wish me to make a statement in regard to that now?

Mr. Gaughan: Yes.

Mr. Bushner: I have had examined recently three of the better townships; the estimate is not complete, of the hardwood; but I have these figures with me for other purposes, and on these three townships I find something like 22,000,000 feet, and gauging what remains unexamined by what we have examined I should judge we would have on our own land something like 60,000,000 feet
4366 of hardwood; that is my rough estimate of it now.

Mr. Gaughan: How would that quantity of hardwood compare with the total quantity of hardwood in the territory; that is to say, when you include hardwood held by others than the Freeman-Smith Lumber Company.

Mr. Bushner: There is considerably more held by others than by the Freeman-Smith Lumber Company, as the Freeman-Smith Lumber Company bought their land for pine, and have been disregarding the hardwoods. What they have is just an accidental possession.

Mr. Gaughan: Is there any other railroad in that territory by which the hardwood can be marketed, except this railroad?

Mr. Bushner: No, not in that territory.

Examiner Burchmore: How far is it from your line to the Beardon & Ouachita River Railroad?

Mr. Bushner: Well, you understand that the bulk of the hardwood, Mr. Burchmore, lies along the Ouachita River, in those townships that approach it, and Moro Creek, which does not show on my plat, and our road is between the Beardon River and the Ouachita River.

Mr. Gaughan: There is no other line between your road and the Ouachita River timber land?

4367 Mr. Bushner: No.

Mr. Gaughan: Does your plat show by any markings the holdings of the Freeman-Smith Lumber Company?

Mr. Bushner: Yes, that line dotted in red is the holdings of the Freeman-Smith Lumber Company.

Mr. Gaughan: Does that mean the holdings of that company of land or coal and timber?

Mr. Bushner: That means the timber holding, that is, the land upon which we own the timber. A portion of it is timber deed and a portion warranty deed or fee simple stuff. I made an error in that map. That includes something like 10,000 or 11,000 acres of land which belongs to other parties, and we own only the timber, and it is shown there as being ours in fee simple, one would think, which is not correct.

Mr. Gaughan: Do you own both hardwood and pine, or only the pine?

Mr. Bushner: Some we only own the pine and some the hardwood and pine.

Mr. Gaughan: What proportion of the pine timber of the Freeman-Smith Lumber Company between Millville and Stark has been cut?

Mr. Bushner: Well, practically all of it. There is a little
4368 stretch southwest of Stark, between our road and the Rock Island which is not cut, but when this cut which we are now on is finished, about four miles from the mill, it practically cleans up all the territory between Stark and Millville.

Mr. Gaughan: Why did you move your logging operations back from east of Stark to the place where you are now operating?

Mr. Bushner: We had some short time timber deeds which were expiring or would expire next fall, and it was necessary to cut that timber before they did expire.

Mr. Gaughan: Do you carry passengers on your road?

Mr. Bushner: Yes, sir, and charge fares.

Mr. Gaughan: Does your statement show the number of passengers you carried, for instance, during the past six or eight months?

Mr. Bushner: The annual reports filed with the Commission show it.

Mr. Gaughan: The annual report shows all that?

Mr. Bushner: Yes.

Mr. Gaughan: What did these forest products consist of other than pine, as covered by your statement?

Mr. Bushner: That was stave bolts and manufactured
4369 staves, that is rough riven manufactured staves, not finished; and ties also.

Mr. Gaughan: Do you know about how many different people are engaged in that work?

Mr. Bushner: No, I do not. That was done before my association with the company.

Mr. Gaughan: What kind of ties are used in the railroad?

Mr. Bushner: By ourselves?

Mr. Gaughan: Yes.

Mr. Bushner: Standard oak ties, 6 x 8 feet.

Mr. Gaughan: You make your reports to the Commissions?

Mr. Bushner: Yes.

Mr. Gaughan: Both State and Federal?

Mr. Bushner: Yes.

Mr. Gaughan: What class of roadbed have you?

Mr. Bushner: We have a good roadbed and a good road. The only objection to it, of course, is the light steel which we are contemplating changing to heavier steel. The grade is very light, and there was not a great deal of work required to build a good road. It is well ditched, surfaced, and excellent tied. That is made necessary by the light steel, however.

4370 Mr. Gaughan: Do you own the right of way?

Mr. Bushner: Yes.

Mr. Gaughan: Do you know whether any condemnation suits have been maintained?

Mr. Bushner: I understand there were three or four condemnation suits; there is one I know which has been settled since my connection with the company, in last spring.

Mr. Gaughan: What is the character of the land through that territory, speaking of it from an agricultural point of view?

Mr. Bushner: It is very good. The soil is rich, and there is a large part of that territory which is adapted to rice raising, and it has been experimented with, and it has been demonstrated that it will raise rice; and there is much of it being farmed now by the cotton farmers, and successfully farmed.

Mr. Gaughan: If you think of any other matter you would like to bring out, you may do so.

Mr. Bushner: Well, you will note—I do not know whether this is of any importance to the Commission; if it is they can use it, and if not, they can disregard it—you will note there is a line from Locust Bayou to Camden. Camden is a town, I should judge, of

4371 3,000 people. The Board of Trade of Camden have approached us, and I have their letter with me, wanting us to make this extension and build this road into that territory. That territory perhaps from Locust Bayou to Camden is the richest agriculturally tributary to Camden, and I am told that practically three-quarters of the business done in Camden from the farmers develops right in through that territory. We have that under consideration, of course, awaiting a decision of these troubles we are now having.

Examiner Burchmore: Has the Rock Island recommended that building into Camden?

Mr. Bushner: No, sir.

Mr. Gaughan: He may file that letter?

Mr. Bushner: I wish to say in connection with that that the citizens of Camden are so anxious to have that connection and have us build the road, that they have offered to build a bridge across the Ouachita River, which would be a very expensive job, as it is a very tortuous stream, and to give us terminal facilities in Camden and also the right of way all the way from Locust Bayou into the town.

Examiner Burchmore: What is the distance from your line for the first five or ten miles south of Millville to the line of the
4372 Beardon & Ouachita River?

Mr. Bushner: Really I could not tell you. I don't suppose it is over four miles.

Mr. Garwood: I see a line there from Thornton on the Cotton Belt to Hampton in Clark County. What line is that?

Mr. Bushner: That belongs to the Thornton & Alexandria.

Mr. Garwood: Is that in connection with the Cotton Belt?

Mr. Bushner: Not to my knowledge. I think it is an independent line.

Mr. Gaughan: It is an independent line.

Mr. Garwood: What is the distance across country between your line and the Thornton & Alexandria?

Mr. Bushner: I think about ten miles. Hampton is about ten miles, I should judge.

Mr. Garwood: That line makes quite a curve down southwesterly toward your line. Now what is the distance as you go farther up above that southward curve, say from Locust Bayou across their line, of the Thornton & Alexandria?

Mr. Bushner: I could not tell you.

Mr. Garwood: It would be quite aways across the country?

Mr. Bushner: I should judge 10 or 12 miles, but really I do not know that.

Mr. Garwood: If it is only ten miles to Hampton, if you
4373 draw an air line across, it would be much farther, would it not?

Mr. Bushner: What is the township number Hampton is in?

Mr. Gaughan: 1317.

Mr. Bushner: It is not ten miles north of us, then.

Mr. Gaughan: From Locust Bayou to Hampton is about 12 miles.

Mr. Garwood: Is there any other railroad development in that large territory between your line and this Thornton & Alexandria line at all?

Mr. Bushner: I think none aside from the Cotton Belt——

Mr. Garwood: Well, I know, between——

Mr. Bushner: I think not.

Mr. Garwood: What is the character of the country in there?

Mr. Bushner: I do not know that country. I have never been in it.

Mr. Garwood: You do not know?

Mr. Bushner: No.

Mr. Garwood: I did not get the length of your line.

Mr. Bushner: 28 miles.

Examiner Burchmore: The Stout-Greer Lumber Company has a

private tram road extending from the Thornton & Alexandria
4374 from Hampton apparently in a southerly or westerly direction. How near does that tram road come to your line?

Mr. Bushner: I could not answer that, Mr. Burchmore. I would say about 10 or 12 miles, but I have never been on it, and have never seen it on the map, and I have nothing to judge from further than a guess.

Examiner Gutheim: Is the financial operation of the road successful?

Mr. Bushner: Why I think we will—we have not been, simply because we have had to spend all we could make and more too, to get the road in the shape it was necessary to get it to haul the trains over the light steel and change these bridges and put in these additional ties. For instance, it is requiring more ties in that track to hold up those trains on the light steel than a standard railroad is calling for, and all those take time and money.

Examiner Gutheim: Have you ever paid any dividends?

Mr. Bushner: No.

Examiner Gutheim: Are you carrying at the present time a deficit or a surplus?

Mr. Bushner: I think there is a deficit, yes, sir—no, there is not a deficit since the date of the incorporation. There was a loss-
4375 last year and the year before, and since we have been working on the road to get it in shape for the Rock Island's business.

Examiner Gutheim: Has the net result of your incorporation been a loss or a gain?

Mr. Bushner: I think there has been a slight gain over the former period of years.

Examiner Gutheim: Do you carry a cash account of your own for the railroad, or are all the financial operations transacted through the cash of the Freeman-Smith Lumber Company?

Mr. Bushner: No, they are entirely apart. They have their own banking connections and systems.

Mr. Cowan: I figure that your lumber and logging tonnage bears the ratio of one to six; that is to say, the tonnage of lumber and the tonnage of logs which you gave would indicate that six tons of logs makes a ton of lumber.

Mr. Bushner: Six tons of logs make one ton of timber? No, that is wrong.

Examiner Burchmore: I believe this is the point. You had 143,000 tons——

Mr. Cowan: 149,000.

Mr. Bushner: That does not signify anything at all. You cannot check from that.

Examiner Burchmore: The point is this, all your logs that
4376 went into the mill moved over this railroad?

Mr. Bushner: Yes, sir.

Examiner Burchmore: Part of the lumber moved from Millville down to Stark?

Mr. Bushner: Yes, sir.

Examiner Burchmore: And the balance of the lumber did not move over the road?

Mr. Bushner: We did not handle it, and it does not go into those reports.

Examiner Burchmore: It was handled over the Cotton Belt?

Mr. Bushner: Yes.

Mr. Cowan: I supposed he got divisions out of it, and he has given the tonnage that got a division.

Mr. Bushner: We got a division, but the railroad did not haul it or receive anything on it except its pay as due to the division.

Mr. Cowan: You get a division on the basis of so much per hundred pounds?

Mr. Bushner: Yes.

Mr. Cowan: You are therefore bound to keep an account, or I suppose you are, of the number of hundreds of pounds you have?

Mr. Bushner: Yes, sir.

4377 Mr. Cowan: From the number of hundred pounds you get at the tons?

Mr. Bushner: Yes.

Mr. Cowan: Now you say your road handled for the lumber company, 24,265 tons of lumber?

Mr. Bushner: Yes, sir.

Mr. Cowan: That would carry to my mind the suggestion that you got divisions on that.

Mr. Bushner: Yes.

Mr. Cowan: Now, how was that?

Mr. Bushner: We did. That was lumber that was actually handled over our rails and delivered to the Rock Island.

Mr. Cowan: 24,000 tons to the Rock Island?

Mr. Bushner: Yes, sir.

Mr. Cowan: Now how many tons did you deliver to the Cotton Belt?

Mr. Bushner: I do not know.

Mr. Cowan: Do the books show?

Mr. Bushner: No, they should not show. We did not handle that tonnage a foot over our rails. We haul the raw logs in——

Mr. Cowan: How did you manage to get at a settlement with the Cotton Belt then as to the one, two or three cents per

4378 hundred pounds

Mr. Bushner: Well, that is correct, too; we keep a record of that all right.

Mr. Cowan: Don't you keep a record of the number of hundreds of pounds as well as the amount of money?

Mr. Bushner: Yes.

Mr. Cowan: Why do you say your books do not show it?

Mr. Bushner: It shows it, but not in the way you are figuring it shows it. We do not take the tonnage into account in our books. We keep a record of the car and of its weight when returned, but we do not show it as tonnage which we handle, because we did not handle it.

Mr. Cowan: You mean the books of the railroad company do not show——

Mr. Bushner: Does not show the tonnage handled that they did not handle. It is the revenue.

Mr. Cowan: How did you manage to get a division from the Cotton Belt?

Mr. Bushner: Simply because we milled that stuff in transit at Millville, it originates on our line, and we have hauled that from these points, from Stark or Locust Pond Point to Millville, and they are paying us the milling in transit rate.

Mr. Cowan: You hauled what?

4379 Mr. Bushner: Logs.

Mr. Cowan: You did not haul any lumber from there?

Mr. Bushner: No.

Mr. Cowan: When you bill the lumber out, where do you bill it from?

Mr. Bushner: From Millville.

Mr. Cowan: It does not show to have been billed from your line at all?

Mr. Bushner: It does not show right on our bills, that is right. The bills should show the original point of shipment, which they do not show.

Mr. Cowan: When you make a settlement with the Cotton Belt, you settle on the basis of the amount of lumber it ships from your mill?

Mr. Bushner: Yes, sir.

Mr. Cowan: And you do have the tonnage, and by tonnage I mean the number of pounds, on the books kept by the Auuditor?

Mr. Bushner: Yes, sir.

Mr. Cowan: And you have the number of hundred pounds that you settled on the basis of two cents per hundred pounds or four cents per hundred pounds, or whatever it may be.

4380 Mr. Bushner: Yes, sir.

Mr. Cowan: You are bound to have that?

Mr. Bushner: Yes.

Mr. Cowan: Will you put in your statement the tonnage, and by tonnage I mean weight of the lumber, which the Cotton Belt shipped from your mill?

Mr. Bushner: Do you want it included in this statement?

Mr. Cowan: Yes.

Mr. Bushner: I will do that.

Mr. Cowan: You have not it before you?

Mr. Bushner: No, I have not, but I will do it.

Mr. Cowan: Do you recall now about what proportion of your lumber goes to the Rock Island?

Mr. Bushner: The proportions have been changing some in the past year. For the first six months of this year I can give you only what I know since my association with this company—for the first six months of this year, we about equally divided our Rock Island and Cotton Belt deliveries. However this was done for a purpose, a selfish one, and which proved us to be rather foolish in the end, possibly. That was so that during the car shortage we could get a

little better service from the Cotton Belt and a little better to
4381 them, but it did not work, and when we went around to talk to the Cotton Belt about the things we had done, and wanted them to do for us, they sent us some place else, and we wore out a pair of shoes turning from one to the other, and then we turned practically all the business to the Rock Island, deciding if we patronized one road better than the other, we would get better car service from it.

Mr. Cowan: During the year 1910, do you have some general recollection of the proportion of lumber going to each road?

Mr. Bushner: No, I do not, simply because I was not on the ground and there is nothing to show it.

Examiner Burchmore: Show that tonnage of lumber moving over the Cotton Belt, as a separate item.

Mr. Bushner: I will do that in this report.

Examiner Burchmore: Show it separately.

Mr. Bushner: Separately.

Mr. Cowan: I would like for you to show the amount of divisions which you get on the traffic delivered to the Cotton Belt separately from the traffic delivered to the Rock Island. You have an estimate of the tonnage of logs, 149,647 tons, which would indicate that there had been some record and some calculation and not a
4382 mere guess on the tonnage. How was that kept, and why was it kept?

Mr. Bushner: Well, that was necessary; we needed to keep it. We kept that separate simply because it was strictly a business matter to keep it. We hauled it and handled it.

Mr. Cowan: Nobody paid any freight on it?

Mr. Bushner: Oh, yes.

Mr. Cowan: Who paid freight on those logs?

Mr. Bushner: The Freeman-Smith Lumber Company.

Mr. Cowan: To whom?

Mr. Bushner: To the O. V. Railway.

Mr. Cowan: What freight did they pay on these logs?

Mr. Bushner: They pay $4.00 a car. They operate under a contract between the Freeman-Smith Lumber Company and the Ouachita Valley Railway.

Mr. Cowan: And the Freeman-Smith Lumber Company pays $4.00 a car over and above what you get as a division from the railroad on the lumber?

Mr. Bushner: Oh, yes, sir.

Mr. Cowan: But that is not estimaed by the tonnage but by the car.

Mr. Bushner: That is by the car, yes, sir.

Mr. Cowan: So you would not keep tonnage statistics for
4383 that?

Mr. Bushner: I will tell you how that is arrived at. We keep track of these cars; we know from experience how many thousand feet of logs each car will carry, and it figures on our cars about 2200 feet, if I remember correctly; and we know that it is ex-

pected that a log weighs eight pounds to the foot, and in that way we arrive at the actual tonnage.

Mr. Cowan: I would like to know what you mean by the foot.

Mr. Bushner: Board foot, log scale.

Mr. Cowan: How do your logging cars compare with those that are in common use?

Mr. Busher: At other plants?

Mr. Cowan: Those that are in common use, do you have a standard car?

Mr. Bushner: No, it is a regular skeleton car used for that purpose. There is a difference in the width, some of them are built with 11 foot bunkers and some a little wider, and ours are 10 feet.

Mr. Cowan: The reason I am asking, you are among the very few men who has figures as to how much logs will weigh by the carload and how much when reduced to lumber, and for that reason I am asking you for the general purpose of the record,
4384 whether you have got similar cars to what other lumber companies use?

Mr. Bushner: There is no standard; one logging operation will use a car with one width of bunker, and another with another, and another will use a flat car.

Mr. Cowan: You said the figures I gave there, one to six cents—of course, I was assuming this was all the lumber out of the logs. About what would be the ratio of the tons of lumber as shipped out commercially on your railroad to the tons of logs shipped into the mill: in other words, about how many tons of logs would it take to make a ton of lumber as lumber is ordinarily moved, after being dried and planed.

Mr. Bushner: The log will weigh, and it is expected generally in our territory, 8 pounds to the foot, or 8000 pounds to a thousand feet; that is in the log. Immediately that it has been milled into the ordinary product that we put it into the lumber, from. That 8000 pounds will weigh green 4000 pounds, which would indicate that there is 50 per cent of that log lost in sawing and removing the edging and trimming. Dry that 4000 feet of dry lumber, and that is the condition we ship actually all our stuff, I should judge our average weight would be down in the neighborhood of 2300 pounds.

Mr. Cowan: Somewhere near one-quarter?

4385 Mr. Bushner: Yes, sir, in that neighborhood.

Mr. Cowan: That is after being dressed and dried?

Mr. Busher: Yes.

Mr. Cowan: That is pine?

Mr. Bushner: Yes, sir, short leaf.

Mr. Cowan: Would there be a difference in long leaf?

Mr. Bushner: Yes, sir, it would be heavier.

Mr. Cowan: What would that difference be?

Mr. Bushner: Probably ten per cent greater in weight for the finished product. I do not know what the log weighs.

Mr. Cowan: That is because it does not dry out so much?

Mr. Bushner: Because it is more heart and a sappy piece of lumber

will dry out much more than a heart piece; it is just as dry but it is naturally heavier.

Mr. Cowan: You spoke of an extension of your road being under consideration to Camden.

Mr. Bushner: Yes, sir.

Mr. Cowan: As I understand, your timber holdings would not be on that line?

Mr. Bushner: No, not from Locust Bayou into Camden.

Mr. Camden: If you built that line you would connect Camden with the Cotton Belt?

4386 Mr. Bushner: With the Cotton Belt and Iron Mountain.

Mr. Cowan: You do not need that line as an outlet for your lumber?

Mr. Bushner: No.

Mr. Cowan: It would be built, if at all, purely as a commercial proposition?

Mr. Bushner: Yes.

Mr. Cowan: And that is good farming country in there?

Mr. Bushner: Yes.

Mr. Cowan: I presume from what you have said it is already in farm?

Mr. Bushner: Let me read, with your permission, something which will show it better than I can. Here is a letter from Mr. Fred D. James, who is Secretary of the Board of Trade of Camden. This was written May 25th, 1909, and is addressed to Mr. Freeman, who is president of this railroad:

"The citizens of Camden are desirous of getting better railroad facilities than those we now enjoy."

Their facilities are now the Iron Mountain and Cotton Belt, which they never have much enjoyed.

"Preferably connection with the Rock Island at some contiguous point. Now since your road taps the Rock Island at a point

4387 below Hampton in Calhoun County and is within ten miles of Camden it is thought possible that you might be interested in a proposition to extend your road to Camden and thus give us the relief sought and at the same time put your road in line for more business and better business. eW feel that Campden has the physical location to make a much larger town than at present and we only lack the railroad facilities to make it such.

Would it not add something to your latter day achievements to have a large hand in the greater development of this section, aside from any pecuniary advantages you might receive? The section through which your road passes is rich in resources and unlimited in possibilities, and under the influence of the improvement which we suggest it would expand to an unthought of extent.

We would be pleased to have your views on this matter, and beg to say that if you can see your way clear to take this matter up this Board stands ready to lend you every reasonable assistance and hearty co-operation.

Awaiting your earliest convenience, and with best wishes, I am,

Very truly,

(Signed) FRED D. JAMES, Sec'y."

4388 Mr. Walter: What was the date of that letter?
Mr. Bushner: May 25, 1909.
Mr. Cowan: I suppose that is so long ago that has probably been dropped.
Mr. Bushner: Oh, no. I was called down to Camden in April or May of this year and this group of men wanted to meet me, and I met probably 60 or 75 very enthusiastic citizens of Camden who wined me and dined me and treated me very nicely, and among other things they offered to build the bridge across the river at Camden. You are familiar, I suppose, with the Ouachita River in Camden; and to furnish us terminal facilities in Camden and a right of way from Locust Bayou into the town. That was about eight months ago, about the time our troubles blew up.
Mr. Cowan: And you have it under contemplation now?
Mr. Bushner: Yes, sir, we have it, yes, sir.
Mr. Cowan: What do you figure it would cost you to build from Locust Bayou over to the bridge?
Mr. Bushner: It is going to be a very expensive job; there are probably two or three miles in the bottoms in which the trestle will be a very expensive feature. Aside from that, the lay of the country is very similar to what is up through our territory
4389 and there would be practically no grades in there.
Mr. Cowan: As a general *proclamation*, about what would cost a mile?
Mr. Bushner: I have not gone far enough with it to give you any estimate on that.
Mr. Cowan: Is this country between Camden and Locust Bayou ready settled up with farms?
Mr. Bushner: There are a great many farms in there.
Mr. Cowan: I do not understand from your evidence that there are any farms on your line between Millville and Stark.
Mr. Bushner: Millville and Stark, you mean from Locust Bayou to Stark.
Mr. Cowan: I thought your line ran from Millville on the Cotton belt down to Locust Bayou and down to Stark.
Mr. Bushner: Locust Bayou, I have just said, that all through there it is highly developed.
Mr. Cowan: Well, the amount of stuff you handled for other people seemed to have been so small——
Mr. Bushner: Well, I can explain that. Millville is not today a trade center for those farmers. You understand the way they trade
and do their business. They gin a bale of cotton and will
4390 give you the cottonseed to haul, but they will haul the bale of cotton down to Camden and make a connection down there. Those people at Locust Bayou I expect all do their business down there.
Mr. Cowan: So your railroad does not get the tonnage of agricultural products?
Mr. Bushner: No, it does not, what it should get.
Mr. Cowan: And I don't suppose it was built for that purpose?

Mr. Bushner: No, it was not originally. We want to develop it into that, however.

Mr. Cowan: You own land, of course, in a large amount around there?

Mr. Bushner: Yes.

Mr. Cowan: When this road was originally built, was there an organized railroad company which built it, or was it built by the mill company?

Mr. Bushner: Do you mean was it incorporated later?

Mr. Cowan: No, was it built by the railroad company or the mill company?

Mr. Bushner: In its construction by a railroad contractor for the mill company? I could not tell you. That was years ago. I have only been associated with the road ten or eleven months, but
4391 I know nothing of the previous history.

Mr. Cowan: There is somebody who does know?

Mr. Bushner: I do not think so, unless Mr. Gaughan.

Mr. Gaughan: You will remember Mr. Freeman's testimony is in this record in the Star Grain case, and he went into all that.

Mr. Cowan: That is all stated?

Mr. Gaughan: Yes.

Mr. Cowan: Is it correct to state that the mill company constructed the railroad before the railroad was organized?

Mr. Gaughan: Yes.

Mr. Cowan: When was it that they bought it?

Mr. Gaughan: About 1904.

Mr. Cowan: You do not know anything about the arrangement of these divisions unless something is shown in the contract?

Mr. Bushner: No, I do not.

Mr. Cowan: Do you of the country to which your lumber goes for consumption?

Mr. Bushner: In a general way, yes.

Mr. Cowan: State that please.

Mr. Bushner: I expect that 65 per cent of our lumber is consumed in the States of Ohio, Indiana and Illinois; we have
4392 some business in Iowa and some in Oklahoma, Kansas and Nebraska, and some in Missouri; but the larger part of it goes into that territory, probably 40 per cent of our lumber, or 35 per cent, goes into Illinois.

Mr. Cowan: What division do you get in that territory known as Central Freight Association territory?

Mr. Bushner: On all stuff shipped via the Rock Island, and that would be routed that way. We get a five cent division on points on their line in the State of Illinois via St. Louis.

Mr. Cowan: And on the Cotton Belt?

Mr. Bushner: We get 2½ cents, that is on this side.

Mr. Cowan: Then if you can avoid it, you do not ship anything on the Cotton Belt that goes to Illinois?

Mr. Bushner: The way the lumber business has been for the last few years, if it showed up, you did not ask much about how it affected the railroad, you simply took it.

Examiner Burchmore: But until the last two years——

Mr. Bushner: Oh, naturally in one of these Siamese twin corporations they are going to help each other out, certainly.

Mr. Cowan: Who are the twins? I don't quite follow you.

Mr. Bushner: The Freeman-Smith Lumber Company and the Ouachita Valley Railway. I admitted right on the start that the interests were absolutely identical, and there is no disput-
4393 ing it.

Mr. Cowan: I know you did, and I appreciate your candor.

Mr. Bushner: Why, of course.

Mr. Cowan: How long do you estimate that the lumber of the lumber company will last at the rate of cutting which you now have or contemplate?

Mr. Bushner: I spoke a little while ago of the estimate I was having made of the tract, and I only have part of it in. I think we will have probably 10 or 11 years' work.

Mr. Cowan: That is of the pine lumber?

Mr. Bushner: That is with the pine.

Mr. Cowan: Then you will have considerable hardwood?

Mr. Bushner: We probably won't handle that ourselves.

Mr. Cowan: Now your physical connection at the mill at Millville I suppose, from what you have said, is simply a connection of the Cotton Belt tracks right up to your planing mill and loading platform?

Mr. Bushner: Yes, sir.

Mr. Cowan: And you are adjacent to the Cotton Belt Railroad?

Mr. Bushner: Yes.

Mr. Cowan: And there are no other saw mills on your line or served by you?

4394 Mr. Bushner: No.

Mr. Cowan: Do you haul the traffic which you do haul for other people on local rates to the junction point, or on through rates?

Mr. Bushner: Yes, sir.

Mr. Cowan: Local rates?

Mr. Bushner: Well, business that is local. What class of business do you refer to?

Mr. Cowan: I am referring to the small amount you have for other people.

Mr. Bushner: Practically all that moves on local rates, simply because it is destined to points right in the neighborhood and there are no through rates published to them. Of course, they would get the same service as the Freeman-Smith Lumber Company would, shipping to the same points.

Mr. Cowan: Do you ship any lumber to points within the State of Arkansas?

Mr. Bushner: Yes.

Mr. Cowan: Do you get any divisions on that?

Mr. Buschner: No. However, our railroad gets the court tariff

allowance, and the Freeman-Smith Lumber Company pays for it.

4395 Mr. Cowan: For example, suppose you were shipping from the Cotton Belt station, you have no service to perform on the lumber?

Mr. Bushner: No.

Mr. Cowan: But if you are shipping on the Rock Island, you would have to haul it down there, and the Freeman-Smith Lumber Company would pay the freight at the local rate.

Mr. Bushner: Yes.

Mr. Cowan: Have you an idea about the quantity of lumber that is thus delivered in Arkansas?

Mr. Bushner: There is not a great deal; I don't suppose we have handled over 10 or 15 or 20 cars this last year in that way.

Mr. Cowan: This court tariff is simply an advance over the Arkansas Commission's tariff, is it not?

Mr. Bushner: As I understand it, it was a compromise. The Railroad Commission kept reducing rates and reducing rates and the railroads kept complaining, and they went before the Federal Judge there in our district and got an injunction restraining the Commission from reducing rates further, and between the court and the railroads and the Commission they compromised upon a

4396 rate which should be effective while this case was pending before the Federal court and——

Mr. Cowan: I understand that.

Mr Bushner: And in some instances it raises, and in some it lowers; it was a compromise tariff.

Mr. Cowan: At all events, so far as through rates and the application of through rates is concerned, the application remained the same?

Mr. Bushner: Yes, sir, it did not affect that.

Mr. Cowan: Do you know any reason why the Arkansas Commission was so interested in securing tap line allowances on interstate freight and has not adopted the same line of policy on state freight?

Examiner Burchmore: First, is the Arkansas Commission interested in having the tap line divisions maintained on interstate traffic, as you understand their attitude?

Mr. Bushner: I don't believe I can answer your question, Judge. Give me a little more of it, and maybe I can better understand it.

Mr. Cowan: The Arkansas Commission, as I understand it, has interested itself in behalf of sustaining the tap line divisions in through rates on interstate shipments of lumber that are involved in this case.

Mr. Bushner: Yes, sir.

4397 Mr. Cowan: I wondered if somebody in Arkansas who has a railroad operating there and who gets the tap line divisions from interstate shipments and does not get it from the state—I wondered if they would know why the Arkansas Commission had not themselves, having the power to do it, of course, had not done as much for the tap line roads on Arkansas traffic as they are asking

the Interstate Commerce Commission to do on interstate traffic, and that was the reason for my question.

Mr. Bushner: I do not know as I can answer it. It would be all a guess.

Mr. Walter: Well, as a matter of fact there is a one line rate and a two line rate, the two line rate being less per mile than if it was a one line haul. Is not that true?

Mr. Bushner: Yes.

Mr. Cowan: Is anybody certain of that?

Mr. Armistead: Do you mean under the court tariff?

Mr. Cowan: Yes. In Texas it is the other way.

Mr. Walter: It is not so in Louisiana or in Arkansas.

Mr. Garwood: He said to some extent it was a given per cent less than the sums of the two locals. He did not say that the two line rates——

Mr. Cowan: I think he intended to say that, but he did
4398 not. I think that is what you meant, was it not, Mr. Walter?

Mr. Walter: No, they make a rate for a two line haul which would be a little less than the same rate per mile if it was only a one line haul.

Mr. Gaughan: No, that is wrong——

Mr. Cowan: It would seem strange if they did that.

Examiner Burchmore: I think the Commission is informed on that.

Mr. Cowan: At all events, the witness cannot give any reason for that other than would be a guess.

Mr. Bushner: No, I cannot.

Mr. Cowan: We can find the other out when we examine the tariffs. Now for the purpose of getting at something pertaining to the operation, I wish you would include in your statement the number of train loads of logs hauled to the mill and the number of carloads. Let that be added to it. I had a memorandum of that, and should have called your attention to it some time ago, because it gives us for other cases some information that might not be easy to get.

Mr. Bushner: Yes, sir.

Mr. Cowan: Do you know any saw mill in Arkansas where the operation is based upon bringing the logs to the mill by a railroad where the mill is located on a trunk line, that the railroad
4399 which brings them in to the trunk line does not get a division of the rate.

Mr. Bushner: No, I do not know of a mill in Arkansas which is situated that way that they do not get a division of the rate. By that I mean those that I am intimate with and have knowledge of. I know they get a division. The others I don't know anything about.

Mr. Cowan: I was led to ask that because you said when the Rock Island got through that country all the interested saw mills in the country receiving that additional outlet, received a contract similar to the one you had.

Mr. Bushner: I want to qualify that. I mean all in our immediate territory. You take, for instance, the branch from Fordyce,

built over to Crossett, tapping the two large mills at Crossett and the Fordyce Lumber Company and our company and the Edgar Company, those concerns I am intimate with.

Mr. Cowan: You are confining your answer, of course now, to your district.

Mr. Bushner: Yes.

Mr. Cowan: If a mill is logging its mill similarly to what you are by a railroad, with a mill situated on the main line, having to perform a similar service to yours, of bringing the logs in at
4400 probably a somewhat similar cost, and it should not get a division, would not that mill be at a material disadvantage, assuming the common ownership of the railroad and the mill?

Mr. Bushner: It would unless it had compensating advantages.

Mr. Cowan: Assuming that other conditions were equal——

Mr. Bushner: Everything else being equal, of course they would be at a disadvantage.

Mr. Cowan: Is it not your opinion that on that account, seeing the willingness of the railroads to give the tap lines divisions, that practically all the saw mills in Arkansas which are logged by railroads, do get divisions.

Mr. Bushner: I did not get the last of it.

Mr. Cowan: Is it not your opinion that practically all the saw mills get those divisions?

Mr. Bushner: I think so, yes; it is my opinion that they do.

Mr. Cowan: That being the case it is a fact, is it not, that the trunk line railroads do not really get the rates of freight that are published, that is it does not go into the treasury from the place where the saw mills are located on their lines, but they get the rate less the divisions given.

4401 Mr. Bushner: Yes, sir.

Mr. Cowan: So the standard of earnings in the State of Arkansas would be somewhat similar to what they are from the stations that your line ships from?

(No reply.)

Mr. Cowan: Are you acquainted with the subject in Louisiana?

Mr. Bushner: With what?

Mr. Cowan: The same matters pertaining to the operation of sawmills in Louisiana?

Mr. Bushner: Well, in a general way. I have been in the milling business and in the milling territory for 18 years, and my information is just general.

Mr. Cowan: Where were you located before here?

Mr. Bushner: I have always been actively engaged in this section of the country, with the Gates interests and the Freeman-Smith interest.

Mr. Cowan: What interests?

Mr. Bushner: The Gates, that was the Crossett Lumber Company, at Crossett, the Gates Lumber Company at Wilmar, and this company.

Mr. Cowan: Are the conditions in Louisiana with respect to tap line allowances where logs are logged by a railroad, similar?

4402 Mr. Bushner: I do not know about that.

Mr. Cowan: Do you ship any lumber to Texas?

Mr. Bushner: No, I do not think we have shipped a car there since I have been with the company.

Mr. Cowan: Do you ship to Oklahoma?

Mr. Bushner: Yes.

Mr. Cowan: What are your divisions to Texas, or have you any?

Mr. Bushner: Yes, we have divisions, I think—you mean the Cotton Belt, do you not?

Mr. Cowan: Yes.

Mr. Bushner: I do not know. I know what you are driving at, though, and I will say to you that it is my understanding that there was a three cent division allowed to points on the Cotton Belt in Texas; in fact I have seen tariffs or division sheets that had that three cent division that has since been discontinued. Pardon me, but I presume that was what you wanted.

Mr. Cowan: You say you know what I am driving at, and I am curious to know if you know something I do not know, and I would like to know what you think I am driving at.

Mr. Bushner: You will have to pardon me, but we have no occasion to use those divisions and we ship nothing in there.

4403 Mr. Cowan: The Rock Island does not give you as high a division on the Texas lines as they do into Illinois?

Mr. Bushner: No.

Mr. Cowan: If the rates should be so adjusted that all mills were placed on an equality, what objection would there be to cancelling out the tap line divisions, if the rates could be so adjusted without divisions as to put the mills on an equality?

Mr. Bushner: What would be the equity in that? What about these fellows down in Texas getting the same rate into consuming territory that we do, with 1,500 miles less haul?

Mr. Cowan: That is the case now, and rates to Louisiana I suppose are substantially the same to Illinois as they are from your territory.

Mr. Bushner: It is a blanket from the entire territory. Would it be equitable for the man who operates in southeast Texas to receive the same rate on his product from a railroad company into Illinois as Mr. Foster up here at Malvern, we will say?

Mr. Cowan: Well, the rates have been established on the theory that that would be so.

Mr. Bushner: If that was all equalized we would say yes.

4404 Mr. Cowan: Suppose that everybody from the pine forest territory could have their rates so adjusted that everybody got equivalent privileges under the present system of blanket rates, what objection would there be to doing that?

Mr. Bushner: I will have to go right back to my own individual case. If you will refer to our reports and the record for the last year, we have spent thousands of dollars getting a tram line which we have not denied was not an ordinary logging road, which it was originally, and getting into condition to do business, and we have got it there or practically have got it there now, and I should not

think—it would be rather unfair to myself now to say that my railroad should not continue as I had planned and presumed it was going to be and earn the money it has been earning for the last 20 or 25 years. We have actually spent money on those roads.

Mr. Cowan: Well, I was just asking for the reason, as you have given it.

Mr. Bushner: Yes, sir.

Mr. Cowan: That is all.

Mr. Garwood: Is it not a fact that it is universally conceded by the trunk lines that by reason of the scales of wages that they
4405 pay by contracts with labor unions, the constructive mileage that they have to pay for that the employés do not actually earn, and a great many considerations of that sort, that the operation of short tap lines by trunk lines is not considered profitable from the trunk line standpoint, or practicable.

Mr. Bushner: I do not——

Mr. Garwood: That is the general opinion among trunk line railroads, is it not?

Mr. Bushner: I think so.

Mr. Garwood: Is it not also the general opinion among the trunk lines that it is more profitable to them as an operating proposition and as a financial proposition to give divisions to the local short roads that constitute their feeders for the origination of this tonnage, than it would be for them to build out into the territory and operate such short lines?

Mr. Bushner: There is no question about that, or in my mind about the truth of that proposition.

Mr. Garwood: Then if these short lines are not initiated and operated by the only people who could or would feel impelled to do it, it must follow that the tonnage lies idle, the country is
4406 undeveloped and the trunk line does not get the tonnage at all.

Mr. Bushner: There is no question about that line of reasoning, that the tap lines have developed those countries.

Mr. Garwood: And originated tonnage to the direct benefit of the trunk lines and relieved them of the expense of constructing and operating the short lines?

Mr. Bushner: Yes.

Mr. Garwood: Which is universally considered to be unprofitable

Mr. Bushner: And have developed the territory with it.

Mr. Garwood: And developed the territory?

Mr. Bushner: Yes.

Mr. Garwood: Counsel has asked you as to a comparison of the conditions of a milling interest served by a tap line which receives compensation for its services and these which do not. Is it not your opinion as a practical man that the liabilities, the duties, the risk upon the immense investment made and the interest upon that investment more than offsets, or at least offsets, any supposed advantages that might accrue from it.

Mr. Bushner: You give me that in just too long a dose.

Mr. Garwood: Well, I am propounding the questions, as-
4407 suming all the facts that he put into all his questions. Is it not a fact that the controlling interests of the lumber company that also constructs the short line railroad, by reason of the construction of a legal railroad, assume liabilities to the government, Safety Appliance Acts, Headlight Acts, Full Crew Act, Ashpan Act, liabilities of insurer as common carriers, personal injuries and an unlimited list of governmental liabilities that the other man is relieved from?

Mr. Bushner: Yes.

Mr. Garwood: Then they also take the risk of a large investment?

Mr. Bushner: Yes.

Mr. Garwood: The interest on that large investment is an element?

Mr. Bushner: Yes.

Mr. Garwood: Now, taking into consideration all of those factors, can it be possible that the man who has a mill served by a tap line interest has any market or competitive value over the fellow that does not.

Mr. Bushner: Well, all those things are true—I would have to think a whole lot about that answer. I do not like to answer
4408 that question, if you will excuse me.

Mr. Garwood: Perhaps the question is too long.

Mr. Bushner: It is too long for a person to answer without a stenographer.

Mr. Garwood: Well, the witness says all those propositions are true, and I think that is a sufficient answer to the question.

Mr. Bushner: It sounds like one of those hypothetical questions.

Mr. Cowan: I wanted to ask a question or two in view of your statement that those things are true. For example, Mr. Garwood assumed in his statement, or rather you expressed the opinion that the trunk lines you believed thought they could not operate these short lines except with certain burdens which he mentioned, of the Full Crew Law and the Hours of Labor, and so on. Is it your judgement that your railroad company can operate your line cheaper than the Rock Island or the Cotton Belt could do it?

Mr. Bushner: Yes, I believe we can. I believe we can in so far accomplish so much by one man in ten hours—I believe we can buy some materials cheaper.

Mr. Cowan: You also embraced in that general proposi-
4409 tion, and I suppose intended to convey the thought that that would be so with other tap lines similarly situated to what yours is, that they could operate cheaper than the trunk lines could operate them.

Mr. Bushner: I will qualify that a little. What I intended to say is I believe work that is closely supervised by persons who are as interested as a fellow is—take my position with reference to this company, I see it all; I am president and general manager of the whole thing so far as interest goes, and it stands to reason I can get better efficiency for the expenditure of $1.50 for a man than Mr.

Nelson. You lose a lot of interest before you get to the section gang.

Mr. Garwood: You have no union labor contracts to make

Mr. Bushner: No.

Mr. Garwood: You do not contract with firemen, engineers, conductors, trainmen, and switchmen?

Mr. Bushner: No.

Mr. Cowan: It has been a question of considerable discussion recently before the Commission, as to whether the trunk lines are getting a proper efficiency in their operation and I wondered if Mr. Brandeis was right about it.

Mr. Bushner: I don't know anything about their operations except what I can see. I know that a great deal of work I see
4410 being done by the Cotton Belt employés, the quality of the work is all right, but the quantity of it would not be satisfactory over on the Ouachita Valley Railroad at all.

Mr. Cowan: That is because there is not somebody there to see to it?

Mr. Bushner: Simply because there is no one interested.

Mr. Cowan: If the tap line railroad can be operated cheaper by the company owning it, and if the trunk lines could not operate them except at an undue burden, as put in Mr. Garwood's question, I would like to ask you if you happen to know what would have induced the Southern Pacific to buy the Lake Charles & Northern?

Mr. Bushner: Well, I am not probably sufficiently familiar——

Mr. Garwood: You do not think that is a tap line, do you, Judge?

Mr. Cowan: It was when you bought it, and I just wondered why you bought it, if the assumption in your question is true.

Mr. Garwood: That is a trunk line.

Mr. Bushner: I expect some railroads would like to buy that Arkansas & Louisiana, which was presumed to be a tap line.

Mr. Cowan: That has grown to be so large I presume they
4411 would.

Mr. Bushner: That is the trouble with this one, it was going to grow so big, and the opportunity was there, and they took the chance to absorb it. I am not familiar with the situation, it is just a long guess.

Mr. Garwood: Do you understand the railroad employés' theory of constructive mileage, that is an engineer, for instance, is to be paid for say 100 miles run, and paid on that basis, under his contract, and if his run may be 50 miles less than that, he nevertheless collects his wages on the basis of the 100 mile run?

Mr. Bushner: No, I do not understand that except in a rough way.

Mr. Garwood: I will give you an example. The distance from Houston to Galveston in Texas is, by the Galveston, Harrisburg & San Antonio, 56 miles only, yet the G. H. & S. A. pays its trainmen for a hundred mile run, notwithstanding it is but 56 miles. Now if that one single rule is of any general operation it must follow it would cost the trunk line more to operate a tap line or a short line railroad than it would these local railroad companies that are not subject to any such rules.

4412 Mr. Bushner: The units of all the tap lines being so short, take for instance ours, it is 28 miles, which is over the average length.

Mr. Armistead: I may have misunderstood the question which was put to you or the answer you gave to it. I understood Judge Cowan to ask you if it were not true that practically all the mills in Arkansas get divisions from the trunk lines.

Mr. Cowan: I meant of course those that had roads.

Mr. Bushner: I meant of course, in my opinion.

Mr. Armistead: Yes, and what was your answer.

Mr. Bushner: I told him all those with which I had acquaintance, that I was intimate with to know that feature of their business, were receiving divisions, and it was my opinion the other mills in the state were receiving them.

Mr. Armistead: You have not had access to or prepared or seen any statistics on this subject, have you?

Mr. Bushner: No.

Examiner Burchmore: Have you some special point you wish to bring out?

Mr. Armistead: I wish to correct the statement.

Examiner Burchmore: We all know what he means. He does not mean any sawmill is getting a division for sawing logs.

Mr. Armistead: No, I did not have that in mind, but the
4413 important extent of the business down there is done by non-tap line companies.

Mr. Bushner: The Judge describes the proposition, it was a sawmill that had a railroad in connection with it.

Mr. Cowan: If Mr. Armistead wants to bring out certain statistics I would like to have them brought out.

Examiner Burchmore: What is your point.

Mr. Armistead: He says he has never seen any such statistics. He said all the mills, meaning all the tap line mills, get divisions, practically. I want to show the number of companies which do not have tap lines which compete with tap line mills.

Mr. Bushner: That is the question I answered. I told you the mills that I was intimate enough to know their vitals did receive divisions.

Mr. Armistead: Through their indirect—

Mr. Bushner: Or their railways.

Mr. Armistead: Through the railways?

Mr. Bushner: Yes, sir, they did receive divisions, the mills I was intimate with. Now I presumed that other mills similarly situated in the state also received divisions. I think that was practically my answer.

Mr. Armistead: I do not care to pursue it any further. I
4414 see he does not know what I am after.

Examiner Burchmore: Any mill that did not have a tap line and did not get a division in the State of Arkansas, and we will say hauled its lumber by wagon, would be at some disadvantage, would it not?

Mr. Bushner: Now you get right back to the tap line and the

trunk line. Why is it those little fellows who haul the lumber in by wagon can make their lumber and sell it as cheap as the fellow who has the railroad?

Examiner Burchmore: Is it your understanding they can?

Mr. Bushner: Yes, sir, I know it, and they do do it.

Examiner Burchmore: What is the explanation.

Mr. Bushner: Usually they make a small quantity which can be peddled out in a small community. I had an illustration of it a few days before leaving home. A fellow who had a little bit of a mill at Locust Bayou wanted me to sell two or three carloads of lumber, and he wanted $10.00 for it, and I could not get $6.00, and I told him, and he says I can sell it right there for $10.00, and I says that is the place to sell it. They make it in small quantities and they go and squat on a small piece of timber, and they have the friendship of the community and get their business, and with the larger corporation everybody is its enemy.

4415 Mr. Armistead: For the smaller piece of timber they are not obliged to log it by railroad.

Mr. Bushner: No.

Mr. Armistead: And consequently the owners of those companies would not have to invest in railroads?

Mr. Bushner: No, they do not even invest in timber sometimes.

Mr. Armistead: And undertake the hazard of such an operation.

Mr. Bushner: No.

Examiner Burchmore: But take a sawmill that has a logging railroad which is not incorporated, and does not get any divisions, such a mill would be under some disadvantage.

Mr. Bushner: I do not know of any such. I think they are all incorporated, every short line in Arkansas.

Mr. Garwood: About what is the limit——

Mr. Bushner: I would like to know myself.

Mr. Garwood: Wait a minute. In the matter you have in mind I doubt if there is a limit, but what is the distance that a mill can be profitably operated by team?

Mr. Bushner: By team?

Mr. Garwood: Yes.

Mr. Bushner: I understand you mean how far can you haul logs without moving the mill?

4416 Mr. Armistead: No, without a railroad.

Mr. Garwood: Log it with teams.

Mr. Bushner: I understand you are hauling your logs by wagon to a given centre and milling them, and the question is how far you can go back for logs or before you had better move your mill. I have never operated that way, but from observation I have had of those men they will work out about two and a half miles, maybe three miles as a maximum, but about two and a half miles is the average maximum haul.

Examiner Burchmore: Suppose they move their mill back when they get back that far, how far can they haul the lumber from the mill to the railroad?

Mr. Bushner: I have had lumber hauled 10, 11 or 12 miles.

Examiner Burchmore: Does that lumber get into the Memphis market or St. Louis?

Mr. Bushner: Yes, it is usually a rough character of lumber and delivered to a planing mill; and that was my business at that time, and I ran the planing mill and dressed the lumber.

Mr. Armistead: The last question suggests one other. In case the mill has been constructed permanently with the plan to mill there and cut off all of a large acreage, it would not be economical to move that mill?

4417 Mr. Bushner: No.

Mr. Armistead: Is it not a fact that a great many of these mills, in fact most of them, are owned by companies which have as much as 20,000 to 100,000 acres of land, and that they cost from $75,000 to $500,000 to construct.

Mr. Bushner: Yes, the average cost, I think, that is expected by the average mill man is about $1.00 a thousand for his stumpage. If he has 200,000,000 or 300,000,000 feet of stumpage he puts a building up in such a way that his improvement alone will not cost him over $1.00 a thousand for the stumpage, or in the case of 200,000,000 feet, hopes to build a mill which will dispose of that for $200,000. That is the figure they usually work towards.

Mr. Armistead: The economy of this operation is not in moving a large mill back to the timber, but it is in getting the timber out by a railroad to the mill?

Mr. Bushner: What was the first part of the question?

Mr. Armistead: I say it is considered a more sensible part of the proceeding to haul the timber to the mill than the mill to the timber.

Mr. Bushner: Yes.

Mr. Coleman: Do you regard the haul from the woods down as an incident of transportation or manufacture?

4418 Mr. Bushner: It is an incident of transportation, taking it as a whole, that they are dual institutions, in the case of the Siamese twins.

Mr. Cowan: I think there have been some very important suggestions brought out a minute ago which I would like to inquire about. I do not think it is clear in the record as to the amount of investment which you say would be estimated in the construction of the plant to the ratio of the number of million feet of lumber you had in the stumpage. By the plant do you mean the mill and the railroad or just the mill?

Mr. Bushner: As I replied to this young gentleman here, I just answered it in a way, and I am taking the two together, the two corporations, and I have nothing to conceal in that line, the Freeman-Smith Company and the Ouachita Valley.

Mr. Cowan: You mean the sum of the investment?

Mr. Bushner: Yes.

Mr. Garwood: He misunderstands your question, if you will permit me. I understand his statement to be that the cost of the mill to profitably operate a large tract will be about $1.00 a thousand feet of the lumber in the tract. That statement had no reference to the cost of a mil-way, but was confined to the cost of the mill.

4419 Mr. Bushner: No, you are in error there.

Mr. Cowan: Let the witness explain.

Mr. Bushner: He is in error. Judge Cowan is correct.

Examiner Burchmore: We will pursue that no further. I think that is perfectly plain.

Mr. Coleman: The point is this, if the $1.00 investment includes the haul to the mill, the witness's answer that the transportation from the woods down to the mill is an incident of transportation is obviously incorrect.

Examiner Burchmore: Is that a matter of fact or interpretation?

Mr. Coleman: It does not matter what we call it, we want to bring out the facts.

Mr. Garwood: The reason I made that point was, I saw the address of the president of the American Lumberman the other day, which stated——

Mr. Bushner: Let me do a little explaining which will make this all clear. Take the average mill, take the Crossett Lumber Company, one of the biggest institutions we have. They built a mill and today they have a railroad investment which is large, but on the day of the construction of that mill the timber was right around the

4420 mill. They did not have to buy 40 or 50 miles of 45 pound steel, one mile was all they wanted, and that is the way that property worked out, and for the original investment required to handle that traffic I understand the Crossett Lumber Company's investment stood about $1.00 a thousand.

Examiner Burchmore: Including the original rail?

Mr. Bushner: Yes.

Examiner Burchmore: And it remained a dollar as they extended their forests?

Mr. Bushner: Yes, sir, it earned itself, and earned its way out.

Mr. Gaughan: In your statement you said that the Freeman-Smith Lumber Company paid to the railroad company $4.00 a car on the logs.

Mr. Bushner: Yes.

Mr. Gaughan: That as I understand it, was for the haul from out in the woods to Stark and not the haul on the main line of road?

Mr. Bushner: Well, no, not as I understand it. That $4.00 a car is for the haul of the log from the woods or Stark, rather, we will call that the originating point, and delivering it into the pond.

4421 Mr. Gaughan: Who unloads the logs?

Mr. Bushner: The Ouachita Valley Railway.

Mr. Gaughan: Where did the railway company pick up the car of logs?

Mr. Bushner: The car of logs is always in the possession of the railway company. There is a contract existing between the Ouachita Valley Railroad Company and the Freeman-Smith Lumber Company, and the spur tracks in the woods, while the iron is owned by the Freeman-Smith Lumber Company, the Ouachita Valley Railway Company obligates themselves to deliver here and there as needed the logs, and the logs are put in and loaded on the cars by the Freeman-Smith Lumber Company and are transported from that point

to the mill by engines and equipment of the Ouachita Valley Railroad Company for $4.00 a car.

Mr. Gaughan: That point, as I understand it, is not on the line of the railway company, is it?

Mr. Bushner: It is not.

Mr. Gaughan: It is on the spur track?

Mr. Bushner: It is on the spur track or adjacent to it.

Mr. Gaughan: The spur track is *conducted* by the Freeman-Smith Lumber Company itself, is it not?

Mr. Bushner: No, it is constructed by the Ouachita Valley
4422 Railway.

Examiner Burchmore: What spur track are you talking about?

Mr. Gaughan: That goes out into the timber.

Examiner Burchmore: Is that spur track still there?

Mr. Bushner: It is this movable track which is built and moved throughout the timber.

Examiner Burchmore: You are not logging down there?

Mr. Bushner: No.

Examiner Burchmore: But your track is still there?

Mr. Bushner: We have some iron over there.

Examiner Burchmore: I think that ought to be shown on this map, if it is there.

Mr. Bushner: Well, that is not incorporated.

Examiner Burchmore: I know it, but show it as unincorporated track.

Mr. Bushner: We have considerable more up in there (indicating).

Examiner Burchmore: Up to the unincorporated tracks there?

Mr. Bushner: I show none of that there.

Examiner Burchmore: Put that all in.

Mr. Bushner: All right.

Mr. Gaughan: You say the railroad company constructs those spur tracks?

4423 Mr. Bushner: Yes.

Mr. Gaughan: And it gets no other consideration for that except the $4.00?

Mr. Bushner: Not from the Freeman-Smith Lumber Company.

Mr. Gaughan: That is what I mean.

Mr. Bushner: No.

Mr. Gaughan: That is all the consideration it gets?

Mr. Bushner: Yes.

Mr. Coleman: But from its connecting line it gets its division of the through rate?

Mr. Bushner: Yes.

Mr. Coleman: So you have included in your investment $1.00 down to the mill——

Mr. Bushner: What is that dollar down to the mill? I have not said anything about that in this question.

Mr. Coleman: I guess it is plain enough.

Examiner Burchmore: You get $4.00 a car for moving the logs?

Mr. Bushner: Yes.

Examiner Burchmore: Is there any drawback to the lumber company when the lumber goes out?

Mr. Bushner: No, that goes strictly into the Ouachita Valley treasury.

4424 Examiner Burchmore: Then you get $4.00 over and above your division?

Mr. Bushner: Yes.

Mr. Walter: But the service you render brings the cars from the woods up on to your main line?

Mr. Bushner: Yes.

Mr. Walter: In other words, the $4.00 covers the extra service over and beyond the main line service?

Mr. Bushner: If we are confused I think we can straighten it out.

Examiner Burchmore: Can you file a copy of that contract?

Mr. Bushner: Yes.

Examiner Burchmore: I think that will answer. Why have you not incorporated those logging roads?

Mr. Bushner: Do you mean those spurs?

Examiner Burchmore: Yes.

Mr. Bushner: Well, they should not be incorporated: it is a movable track, it is just like a wagon road, you move through the woods, and you have little switches up here and you tear it out and abandon it.

Examiner Burchmore: But the railroad runs it and operates its trains over it?

Mr. Bushner: Yes, it builds them.

4425 Examiner Burchmore: Is it not a fact——

Mr. Bushner: Excuse me. They have down at the gravel pit where they take gravel for the Cotton Belt, acres and acres of ground, and they will run a *bank* up to that dirt and they will take that dirt down and move that track. Should those temporary tracks be included in the articles of incorporation of that railroad?

Examiner Burchmore: They always are, are they not?

Mr. Bushner: I do not know.

Examiner Burchmore: Don't they report them to the Interstate Commerce Commission?

Mr. Bushner: But they move it back to this bank and to that bank and have eaten out acres and acres, and should that line all be left and incorporated as a common carrier with due service?

Examiner Burchmore: I ask you whether they should.

Mr. Bushner: I have to ask the question back, because I do not see why they should be.

Examiner Burchmore: Is there any reason why they should not be?

Mr. Bushner: Yes, the same reason as with the Cotton Belt.

Examiner Burchmore: What is that reason?

Mr. Bushner: Simply because it is put there for just an

4426 immediate picking up of a load; there is tonnage which is going to be delivered at that point, and it is a convenient

place to put it, and we put the spur in there and get it out and that is all we ever expect to be delivered at that point.

Examiner Burchmore: Is it not a fact that the result of your failure to incorporate your logging road is that you have a monopoly up there in the woods?

Mr. Bushner: No, you are mistaken in that. It is not in our minds at all.

Examiner Burchmore: That is what I ask you.

Mr. Bushner: That is not the reason, if that is what you are leading to. The fact of the matter is under our contract as I understand it, although there is some confusion about it, if a man would offer me a car of logs up in the woods I would handle it.

Mr. Cowan: I would like to ask some of the good Arkansas lawyers here if there is anything in the Act with respect to railroads which would prevent any railroad from incorporating with the right to put down such spurs as it may need for the purpose of getting business for the road, and then abandoning these spurs as it pleases.

Mr. Bushner: How about the side track contracts that the
4427 Cotton Belt has all throughout the State of Arkansas? Would not that cover it? They put those in. Take our side track put in by the Cotton Belt at Millville, they can remove it on 30 days' notice.

Mr. Armistead: The answer to that question is that a railway in Arkansas cannot exercise the power of eminent domain for the purpose of building a switch or a spur. It can only exercise it for the purpose of constructing that part of its line which is devoted to a public use, in the nature of a common carrier.

Mr. Cowan: Does not that include all necessary turnouts, switches and so forth, in the ordinary language of acts of Legislatures?

Mr. Armistead: Sidings, turnouts and terminals, but it does not include spurs or laterals which are to be devoted to private use.

Examiner Burchmore: Your answer, as I take it, refers simply to the matter of eminent domain, but is there anything in the State Law which prevents a railroad from putting down temporary tracks where the owners of that property freely deed or lease it to the railroad?

Mr. Armistead: No.

4428 Mr. Cowan: The fact of a cottonseed oil mill, which may be burned, is an example.

Mr. Armistead: There is nothing to prevent it.

(Witness excused.)

4429 *El Dorado & Wesson Railway Company.*

C. V. EDGAR, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are President of the El Dorado & Wesson Railway Company?

Mr. Edgar: Yes, sir.

Examiner Burchmore: You are also President of the Edgar Lumber Company?

Mr. Edgar: Yes, sir.

Examiner Burchmore: The El Dorado & Wesson Railway Company connects with the Chicago, Rock Island & Pacific at El Dorado, Arkansas?

Mr. Edgar: It does.

Examiner Burchmore: And extends from that point in a southwesterly direction to the town of Wesson?

Mr. Edgar: It does.

Examiner Burchmore: That is its main line?

Mr. Edgar: That is the entire extent of the road.

Examiner Burchmore: Then at Wesson are there any other railroads connecting with its line?

Mr. Edgar: It connects with the logging road of the Edgar
4430 Lumber Company at Wesson.

Examiner Burchmore: By what name is that logging road known?

Mr. Edgar: The Cornie Valley Railroad. It is not incorporated.

Examiner Burchmore: What is the mileage between El Dorado and Wesson?

Mr. Edgar: 10.19 miles.

Examiner Burchmore: That is the total mileage of this railroad?

Mr. Edgar: It is.

Examiner Burchmore: For what distance does the Cornie Valley Railroad extend out of Wesson?

Mr. Edgar: Some 22 to 25 miles.

Examiner Burchmore: That is on its main line or main tracks?

Mr. Edgar: No, not over 12 to 15 miles, of what you might call main line. That has been moved in different directions, they have some 22 miles of steel, if I remember correctly, part of it used in temporary tracks, and part of it in what would be known as main line logging road.

Examiner Burchmore: What is the distance from Wesson
4431 to the village or cross road known as Cornie?

Mr. Edgar: Known as Cornie?

Examiner Burchmore: Yes, which is indicated on this tracing.

Mr. Edgar: I would have to refer to the map. That is sectional.

Examiner Burchmore: About ten miles?

Mr. Edgar: About ten miles, or eleven miles.

Examiner Burchmore: What is Cornie, a settlement?

Mr. Edgar: A small country post office there, country settlement. If your Honor pleases, it was my intention to testify in regard to the matter of the construction of this road, the matter leading up to it and its relationship to the Edgar Lumber Company and for detailed information I would ask Mr. Niehuss to testify, as he is more familiar with that.

Examiner Burchmore: Are you prepared to give your testimony in a narrative form without questioning?

Mr. Edgar: Yes, I think so.

Examiner Burchmore: Suppose you do that.

Mr. Edgar: In the matter of the stock ownership of the Edgar Lumber Company and the El Dorado & Wesson Railway Company, so far as the principal stockholders are concerned, the inter-
4432 ests are identical. Further, in regard to that, at the time of the construction of this road, each stockholder of the Edgar Lumber Company was given the opportunity of subscribing for a proportionate amount of stock in the railroad. A large part of them, especially the larger stockholders, what might be called the principals of the company, availed themselves of this, and others of the smaller stockholders did not.

This mill was located on a little branch spur which was apparently originally a logging spur of the old Arkansas Southern Railway Company. Some of the men with whom I am associated and who now form the Edgar Lumber Company, became interested in the way of purchase of some stock in what was then the H. C. McDaniel Lumber Company of Wesson, who owned this plant and some of the timber. It was found that the facilities for handling the tonnage from that territory, which was some five miles away from the Arkansas Southern tracks, were inadequate and unsafe. The operations of the company in which we took an interest in there, appeared not to be successful, they were not making any money under their present form of operation. Later some of the other stockholders of this company were bought out, and still later the Edgar Lumber Company was organized, and quite a con-
4433 siderable tract of adjoining timber was purchased.

Examiner Burchmore: When was the Edgar Lumber Company organized, about what year?

Mr. Gaughan: 1904.

Mr. Edgar: 1904, was it?

Mr. Gaughan: I think so.

Mr. Edgar: About seven or eight years ago. Later the Edgar Lumber Company bought the H. C. McDaniel Lumber Company's holdings and lumber property as a total. The railroad inlet to the country being so inadequate and there appearing to be a railroad proposition in there, the people with whom I was associated with myself conceived the idea of building a railroad from Wesson to El Dorado, the county seat of Union County. We put an engineer in the field and got regular engineer's estimates on the work with a profile, a copy of which I should like to place before you. We ascertained the expense of putting this railroad through there. We had a conference with the Iron Mountain people, who have a road into El Dorado, and later with the Rock Island people, who were also just preparing to build in there at that time, and who had taken over the Arkansas Southern Railway, running south from El Do-
rado. Our former connection having been with this Arkan-
4434 sas Southern, or what is known as the Rock Island at a place called Cornie, 13 miles south of El Dorado, they seemed desirous of retaining that tonnage, and we entered into a contract with the Rock Island Road, a copy of which contract is on file with the Commission, arranging with them a contract for delivering them the entire tonnage of the road for a certain period, and arranging

the divisions of through rates. After all this had been done we constructed the road and have since operated it as a common carrier.

Examiner Burchmore: When did you construct the road?

Mr. Edgar: The contract was made about four years ago, and it was constructed during that year. I think our contract was entered into the 1st or 2nd of February, and the road was constructed during that year.

Examiner Burchmore: How did you get your lumber to market before that time, originally?

Mr. Edgar: There was a logging spur of about four and a half or five miles, running from Cornie, a point 13 miles below El Dorado, on the Arkansas Southern, out to Wesson. This spur belonged to the Arkansas Southern Railway Company. When we went into the lumber company down there, we found that the lumber company was hauling or delivering their lumber, getting their empty cars at Cornie and delivering the loads back there to that point. Cor-
4435 nie is not shown on that map, it has been left off.

Examiner Burchmore: The Cornie to which you are now referring is between Junction City and Upland on the line of the present Rock Island?

Mr. Edgar: Yes, sir.

Examiner Burchmore: The spur track ran from Wesson to that point, and it has since been taken up?

Mr. Edgar: Yes, sir, since the construction of the El Dorado & Wesson.

Examiner Burchmore: What was the purpose of building the El Dorado & Wesson Railroad?

Mr. Edgar: To give railroad facilities to that tereritory in there.

Examiner Burchmore: Was that the sole purpose of this road?

Mr. Edgar: Including the facilities that it would give to the lumber in which we were interested.

Examiner Burchmore: Well, that lumber company already had facilities for reaching the market through its private line out to Cornie.

Mr. Edgar: I might repeat a conversation that might throw some light on that. When we had our conference in Chicago with
4436 the Rock Island people, the interview was opened by a statement by one of the officials that he understood the object of the interview was our contemplated purchase of the Cornie Branch or this spur that ran out to Wesson from Cornie. I was obliged to interrupt him and say that was not contemplated at all, and he wanted to know why, and I told him because they had nothing to sell; it seemed to have been a very temporary logging spur that was put in there. It was built through a bottom with no dump whatever, and every time it rained it washed out. It was built up hill and down dale and was no railroad at all for the handling of any heavy tonnage or anything but a very temporary logging spur.

Examiner Burchmore: Who owned that spur?

Mr. Edgar: It belonged to the Arkansas Southern Railway Company. I suppose it was built probably at the time that they were a logging road or to bring logs to their road. The rail on that ran

from 20 to 30 pounds, and from 6 inches to 30 feet long. It had become an impossible proposition.

Examiner Burchmore: What was the length of the rail?

Mr. Edgar: From 6 inches to 30 feet. Some of the rails were spiked at the ends, and others had angle bars.

Examiner Burchmore: I understood you to say that the El
4437 Dorado & Wesson was built to afford this country an outlet. What is the character of the country?

Mr. Edgar: That is an old country in there; it seems to have been settled away along before the war times. There are old cemeteries there. I noticed the cemetery right in El Dorado, with burying dates of people who died in 1842. It is the scene of the old stage road through that country before the war. There was an old farming community, evidently years and years ago. I met a man out at Three Creeks just out beyond Wesson there a few weeks ago in an old store on one of these stage roads, and I asked him how long it had been settled, and he told me he came there in 1847 and there was a store there then.

Examiner Burchmore: You spoke of Three Creeks. What other interests are there at Wesson and west thereof?

Mr. Edgar: I spoke of El Dorado, which is the county seat of Union County——

Examiner Burchmore: Yes, but that is on the Rock Island, and needed no additional facilities so far as reaching the market is concerned.

Mr. Edgar: I simply used that as an illustration as to the old settlement of the country there.

4438 Examiner Burchmore: What was there between Wesson and El Dorado, or at Wesson, that would induce a railroad to build from El Dorado to Wesson?

Mr. Edgar: The principal item was the operation, present and contemplated, of the Edgar Lumber Company.

Examiner Burchmore: What is the character of the country west of Wesson, that is along through the territory traversed by the Cornie Valley rails?

Mr. Edgar: It is similar to what it is between El Dorado and Wesson.

Examiner Burchmore: Three Creeks, is that very much of a village?

Mr. Edgar: I believe it is something like 100 people there at the old place where I met the man in the store who went there in 1847.

Examiner Burchmore: Do they have any merchandise or farm produce to ship?

Mr. Edgar: That is not on the line of the El Dorado & Wesson.

Examiner Burchmore: How do they get to and from Little Rock or Memphis, or wherever they want to go with their stuff?

Mr. Edgar: By wagon to Junction City or El Dorado.

4439 Examiner Burchmore: Do they not need a railroad just as badly as Wesson needed one?

Mr. Edgar: Yes, sir. I think they need one through there.

Examiner Burchmore: Well, are they going to get one?

Mr. Edgar: That depends somewhat on what the Interstate Commerce Commission do with the El Dorado & Wesson Railway proposition. As a matter of fact, however, there is at the present time directly through the town of Three Creeks grading going on which it is the intention of the El Dorado & Wesson Company to take over as an extension of their line.

Examiner Burchmore: Are they going to take over the Cornie Valley, is that in contemplation?

Mr. Edgar: We contemplate taking over some five miles of that after it is reconstructed.

Examiner Burchmore: How long has that five miles of track of the Cornie Valley, to which you have just referred, been in place?

Mr. Edgar: That was there when we went there originally; it belonged to the old original company in there, and was the first part of their logging railroad; I suppose it has been there from 10 to 15 years.

Examiner Burchmore: Why did not the El Dorado &
4440 Wesson buy those rails at the time they bought the rest of the railroad?

Mr. Edgar: The El Dorado & Wesson did not buy; they built the road from El Dorado to Wesson.

Examiner Burchmore: I should say at the time they built from El Dorado to Wesson, why they did not buy or lease the Cornie Valley rails for five miles west thereof through this rich agricultural country?

Mr. Edgar: It is not in its present condition suitable. As an officer of the company I would not wish to recommend the operation of that five miles of road, especially that particular five miles, as a common carrier and take the responsibilities of doing so, on account of its construction. In explanation I might say that while it has since that time been somewhat improved, there was one 8 per cent grade on that five miles of track, and we did not wish to operate it as a common carrier.

Examiner Burchmore: Is Three Creeks as big a city as Wesson?

Mr. Edgar: No, I suppose there are some 800 people in Wesson as against probably 100 people out there.

Examiner Burchmore: I was just inquiring, it seems in 1904 or
1905 your interest built a railroad from Wesson to El Dorado
4441 primarily, as you have stated, to open up the country?

Mr. Edgar: Yes.

Examiner Burchmore: And give that country, an old country an outlet to market, and there was at that time a railroad of some character for five or six or ten miles west of Wesson through an equally fertile and prosperous country which you did not take over in any way; and I wanted to see why you did not open that country up. It would be a feeder for your other line apparently.

Mr. Edgar: Well, your Honor, it is a part of the development of our original railroad idea. We felt that there was a railroad proposition in there. The El Dorado & Wesson was immediately necessary to the starting of that proposition, and was all we could afford to build at that time. We are now going ahead with the enlarged

proposition and we are figuring to take over those five miles of reconstructed logging railway, and to construct in a southeasterly direction there crossing the State Line into Louisiana with a prospect of going to Homer and possibly to Minden, Louisiana. I wouldn't say in regard to this proposed extension that the engineer's work has been done on this; we have the engineer's profiles and estimates of cost.

4442 Examiner Burchmore: How far is your road from the nearest part of the Griffen, Magnolia & Western?

Mr. Edgar: I do not know.

Examiner Burchmore: What is the capitalization of this road?

Mr. Edgar: $50,000.

Examiner Burchmore: All outstanding?

Mr. Edgar: Yes.

Examiner Burchmore: Was that issued for cash?

Mr. Edgar: Yes, sir, in this way: If you will refer to the contract with the Rock Island people, you will find the entire transaction outlined there. We borrowed from the Rock Island Railway with certain exceptions, the money with which to build the El Dorado & Wesson Railway.

Examiner Burchmore: That was in advance of the construction?

Mr. Edgar: Yes, sir; well, we billed against them monthly for the expenditures of the previous month, with the exception that we were to pay the preliminary engineering work and buy our own right of way and certain other things provided for in the contract.

Examiner Burchmore: You were to furnish your own cross ties?

4443 Mr. Edgar: I think they were paid for by the Rock Island. I would not say positively without referring to the contract.

Examiner Burchmore: You say the contract provided—of course the contract speaks for itself and it is on file with the Commission.

Mr. Edgar: Yes.

Examiner Burchmore: But we want this record to contain some reference to it. You say the Rock Island agreed to loan you the money to construct the railroad?

Mr. Edgar: They did.

Examiner Burchmore: Up to a certain maximum sum?

Mr. Edgar: They did.

Examiner Burchmore: $100,000 was the maximum, and they did actually loan you the money?

Mr. Edgar: They did.

Examiner Burchmore: How was that loan to be repaid?

Mr. Edgar: It was to be repaid, principal and interest, in the divisions accruing to the road under the contract, settled on monthly balances.

Examiner Burchmore: And that repayment was to be made out of the divisions during the first five years of operation?

Mr. Edgar: Four years, with a possible five year provision, if it was not paid off in that time.

4444 Examiner Burchmore: Then any balance remaining was to be paid by the El Dorado & Wesson to the Rock Island on demand?

Mr. Edgar: Yes, sir; on demand.

Examiner Burchmore: Was there any balance at the end of five years?

Mr. Edgar: It is just four years now, and there is still a balance that has not been asked for.

Examiner Burchmore: Then you have not paid for the road yet?

Mr. Edgar: Not entirely.

Examiner Burchmore: That contract also fixed the amount of divisions which would be accorded to you by the Rock Island as I understand.

Mr. Edgar: It did.

Examiner Burchmore: What was that amount?

Mr. Edgar: Four and five cents were the principal amounts; that has been varied, in accordance with the provisions in the contract where some rates were lowered.

Examiner Burchmore: Five cents on lumber to points reached by the Rock Island and Frisco, and four cents to other points outside the State of Arkansas?

Mr. Edgar: Yes.

Examiner Burchmore: To whom was the capital stock of
4445 the road issued?

Mr. Edgar: You will notice the contract provides that the El Dorado & Wesson were to pay for certain things themselves, engineering, right of way, and so forth. It also purchased its own equipment including cars, engine, railroad scales and other necessary things. The Edgar Lumber Company assisted the railroad company to the extent of taking care of these amounts during the construction of the road, and at the time of the completion of the road and the payment for the rolling stock this amount which had been put in and charged by the Edgar Lumber Company to the El Dorado & Wesson Railway Company amounted to $50,000 of actual cash which had been paid out for the railroad company by the lumber company. The lumber company declared a cash dividend of 20 per cent on its capital stock which would amount to $50,000. At this time the privilege was given all stockholders of the Edgar Lumber Company to subscribe for a proportionate amount of stock in the El Dorado & Wesson Railway Company. Most of them took advantage of this, and gave to the El Dorado & Wesson Railway Company a sight draft on the Edgar Lumber Company for the amount of money that was due them from this cash dividend. Those
who did not wish to invest in the railway company, and
4446 there were a number, principally among the smaller stockholders, received their 20 per cent cash dividend in cash from the Edgar Lumber Company.

Examiner Burchmore: Do you know how many such stockholders there were?

Mr. Edgar: I understand in round numbers that there are some fifty stockholders in the Edgar Lumber Company, and some thirty odd in the railroad company; that is just in a general way.

Examiner Burchmore: That is the total number of stockholders?

Mr. Edgar: The total number of stockholders, yes.

Examiner Burchmore: How many stockholders in the lumber company did not elect to take railroad stock, in shares, I mean, how many such stockholders, measured by their shares?

Mr. Edgar: Measured by their shares?

Examiner Burchmore: Yes.

Mr. Edgar: It did not amount to anything; it was not more than probably a couple of thousand dollars of cash that the Edgar Lumber Company was obliged to pay out on account of this transaction.

As I say, they were mostly the small holders. In turn the
4447 sight drafts were accepted by the Edgar Lumber Company from the railroad company in payment of the $50,000 account which the railroad company owed to the lumber company.

Examiner Burchmore: Did the Edgar Lumber Company take those shares which were refused by its stockholders?

Mr. Edgar: No, sir, they were divided up among some of the other stockholders. For instance, I took $500 more than my share, and some few others did and paid the cash to the railroad company for the extra shares.

Examiner Burchmore: I presume that the Rock Island Road holds notes covering the indebtedness?

Mr. Edgar: They have never asked for any other evidence than the contract, although the contract provides we were to furnish such bonds or notes as they might request; but it has been carried entirely as an open account and has never been closed up.

Examiner Burchmore: If the Rock Island should now request you for notes or bonds to cover that indebtedness under the contract as I read it, the Edgar Lumber Company would join in those notes as an endorser or co-maker.

Mr. Edgar: I do not remember as to that point. The Edgar Lumber Company would be willing to do so; there is no legal
4448 reason why they should not.

Examiner Burchmore: Do you recollect whether in that contract the Edgar Lumber Company, which was a party to it, agreed to give the Rock Island its shipments during the ensuing years?

Mr. Edgar: I suppose that the reading of the contract is that they would give the El Dorado & Wesson Railway Company tonnage at Wesson.

Examiner Burchmore: As a matter of fact I think the contract provides that for a period of four years the Edgar Lumber Company shall ship its entire product over the El Dorado & Wesson in connection with the Rock Island.

Mr. Edgar: It does.

Examiner Burchmore: And at the end of four years not less than 50 per cent of its traffic over the El Dorado & Wesson in connection with the Rock Island?

Mr. Edgar: That was the agreement.

Examiner Burchmore: Now at the present time the mills of the Edgar Lumber Company are located at Wesson?

Mr. Edgar: They are.

Examiner Burchmore: They have no mills elsewhere?

Mr. Edgar: They have not.

Examiner Burchmore: That is about 10 miles from the
4449 Rock Island?

Mr. Edgar: It is.

Examiner Burchmore: How many locomotives has this railroad?

Mr. Edgar: One.

Examiner Burchmore: One passenger car?

Mr. Edgar: Correct.

Examiner Burchmore: How many freight cars?

Mr. Edgar: I think five. Mr. Niehuss can give you that detailed information. There are five boxes and three flats, is my recollection.

Examiner Burchmore: Shall we defer any question with respect to the rates and divisions until Mr. Niehuss comes?

Mr. Edgar: He is more familiar with those questions.

Examiner Burchmore: And also the questions as to the general operation of the road?

Mr. Edgar: If you please.

Examiner Burchmore: And if necessary we will recall you again to the stand on anything he cannot advise us about.

Mr. Edgar: Yes.

Examiner Burchmore: Have you any questions, Mr. Gaughan?

Mr. Gaughan: What rate of interest did the El Dorado & Wesson pay to the Rock Island for the loan of this money?

4450 Mr. Edgar: Five per cent.

Mr. Gaughan: Was there any special reason why you should have borrowed the money from the Rock Island in preference to any other concern?

Mr. Edgar: Except as a matter of convenience, as they were interested in the proposition, and an opportunity to make a loan. We could have borrowed it elsewhere.

Mr. Gaughan: Do you remember or do you know how the spur track that extended from the Arkansas Southern at Cornie Junction to Wesson was operated during the life of the H. C. McDaniel Lumber Company?

Mr. Edgar: It was not operated at all except as used by the lumber company for taking the cars to Wesson and returning them, so far as I know; the railroad company did not operate it.

Mr. Gaughan: The railroad company, as a matter of fact, never did operate that road?

Mr. Edgar: Not since my knowledge of it.

Mr. Gaughan: It really was not in condition to be operated by anybody?

Mr. Edgar: Not at all; it was absolutely an impossible proposition, and an unsafe proposition.

4451 Mr. Gaughan: So it was not a practical proposition to remove this mill, was it?

Mr. Edgar: Not at all.

Mr. Gaughan: What do you know about the population of El Dorado?

Mr. Edgar: I believe at the present time El Dorado has something

like 7,000 people. It has grown very materially in the last three or four years. It used to be, I suppose, more like 4,000 three or four years ago.

Mr. Gaughan: The advantage in having the connection between Wesson and some standard line of railroad at El Dorado in preference to Cornie Junction was the additional business that the point would furnish, was it not?

Mr. Edgar: It was a practical point into which to build a railroad, a practical terminus and connection for a line of railroad. The Iron Mountain also being there, whereas Cornie was nowheres except an imaginary point, just simply a junction of the tracks at a frog pond.

Mr. Gaughan: El Dorado is the county seat of the county?

Mr. Edgar: El Dorado is the county seat of the county.

Mr. Gaughan: All your business at the county seat and other peoples' business in that community could be reached by this
4452 railroad?

Mr. Edgar: Yes, sir, and also the mail facilities were very materially improved for that territory down there when this road was put into operation and the contract taken for mail.

Mr. Gaughan: Does the El Dorado & Wesson carry the mail?

Mr. Edgar: They do.

Mr. Gaughan: Do you know how many post offices are served by distribution of mail from Wesson?

Mr. Edgar: I understand five.

Mr. Gaughan: Prior to the construction of that road what were the mail facilities at Wesson and that community?

Mr. Edgar: By wagon from El Dorado.

Mr. Gaughan: Have you a telegraph station at Wesson?

Mr. Edgar: We have not.

Mr. Gaughan: Telephone?

Mr. Edgar: Telephone.

Examiner Burchmore: That post office we were referring to near the Cornie Valley Railway, were your proposed extension, where they had that very old cemetery; how do they get their mail?

Mr. Edgar: That is distributed from the Wesson post
4453 office. We have a contract for mail from El Dorado, the county seat, to Wesson, and the Wesson post office then becomes a distributing post office for the five or six country post offices out in these old settlements where the small settlements are.

Examiner Burchmore: The Cornie Valley does not handle any mail?

Mr. Edgar: No. In case of the extension of the incorporated road and the operation of it, to Three Creeks, I would suppose the Three Creeks post office would then become the distributing office for those post offices which are near it and carry it that much nearer.

Mr. Gaughan: That is all we care to ask this witness. We will reserve the other questions for Mr. Niehuss.

Examiner Burchmore: Judge Cowan, all questions in regard to rates and operations, will be reserved for the other witness.

Mr. Cowan: You spoke of one of the difficulties of operating this piece of road which I probably cannot describe, was a three per cent grade, or an eight per cent, was it?

Mr. Edgar: Eight per cent.

Mr. Cowan: And you said that that was prohibitive of operating it as a common carrier as a practical thing. Had that road
4454 theretofore been used for the purpose of hauling logs?

Mr. Edgar: Yes, sir.

Mr. Cowan: I wonder why it would not be as burdensome in the case of hauling logs as anything else with an eight per cent grade?

Mr. Edgar: That grade has been in part corrected since that time even for logging purposes.

Mr. Cowan: The point I mean to draw out is that it is just as necessary to have a substantially built road with proper grades for hauling trains of logs as it is anything else in economical operation.

Mr. Edgar: I would rather take chances on logs than human lives.

Mr. Cowan: Yes, but for economical operation, for mere business reasons.

Mr. Edgar: Oh, indeed, yes.

Mr. Cowan: That is recognized by saw mill men everywhere, is it not?

(No reply.)

Mr. Cowan: If you have a considerable distance to haul your logs, you used a substantially built track to operate over, whether you get divisions or not.

Mr. Edgar: Yes, if the track is to be in there for any
4455 definite length of time. To just take out a few cars you might go up over a hill.

Mr. Cowan: What they call the main line?

Mr. Edgar: Yes, sir.

Mr. Cowan: For example, your Cornie Valley Railroad leading west from Wesson, you haul logs on that, I believe?

Mr. Edgar: Yes, sir.

Mr. Cowan: How much of that is of the main line and of good construction, all of it?

Mr. Edgar: No, from 10 to 12 miles might be called main line logging road.

Mr. Cowan: Is that substantially the same character of road as between Wesson and El Dorado?

Mr. Edgar: Oh, no, indeed.

Mr. Cowan: If you extend it on as you contemplate then you will make that a similar road?

Mr. Edgar: Only such part of it as we use, and then there will be some change of location in the five miles that we will use.

Mr. Cowan: In regard to the stock subscription and loan of money, let me see if I understand correctly. The Rock Island loaned $100,000 to the railroad company, did it?

4456 Mr. Edgar: Yes, sir.

Mr. Cowan: And that is carried in the open account now?

Mr Edgar: Yes, sir.

Mr. Cowan: There was $50,000 in addition to that which was acquired for purposes of construction and otherwise which the lumber company advanced?

Mr. Edgar: Yes, sir.

Mr. Cowan: That was paid back to the lumber company by declaring a dividend amounting to $50,000?

Mr. Edgar: Yes, sir.

Mr. Cowan: And thereupon the stockholders receiving the dividend subscribed to the capital stock of the railroad company?

Mr. Edgar: Yes, sir.

Mr. Cowan: And paid the money for it?

Mr. Edgar: Money or sight draft, its equivalent.

Mr. Cowan: And the railroad company paid it back to the lumber company?

Mr. Edgar: Yes, sir.

Mr. Cowan: So that the lumber company's debt was discharged and it became a money investment by the stockholders in the stock of the railroad company in that way?

Mr. Edgar: It did, and that was the intention.

4457 Mr. Cowan: And that is the total amount of stock outstanding?

Mr. Edgar: It is.

Mr. Cowan: And the indebtedness of the road is $100,000 less what has been paid upon it?

Mr. Edgar: Less what has been paid, and in the matter of bookkeeping, as the bills payable were reduced, it was passed to surplus account.

Mr. Cowan: Was there any distinction drawn between divisions on lumber traffic which was to be applied to the discharge of interest and principal of the debt of the Rock Island and traffic other than that lumber traffic?

Mr. Edgar: No, if I understand the question correctly, there is no difference made in favor of the lumber company whatever; the same rates apply to everyone.

Mr. Cowan: What I mean is this, you discharge that indebtedness by the divisions of the Rock Island which were due on traffic you handed to them?

Mr. Edgar: Yes, sir.

Mr. Cowan: And that was independent, whether it was lumber traffic or any other traffic?

Mr. Edgar: Any traffic.

4458 Mr. Cowan: Is it to be paid except by divisions of rates?

Mr. Edgar: The contract provides if it is not paid by the expiration of four years, which are just up now, the Rock Island Company has the right to demand the balance due them in cash.

Mr. Cowan: If the divisions on lumber were to be cut off, I judge from the report of your earnings it will be necessary then for the railroad company, having no other asset than the railroad, to either go into bankruptcy or sell out to the Rock Island or somebody else has got to put up the money.

Mr. Edgar: No.

Mr. Cowan: Who would that be? Suppose the Rock Island should demand today the payment of that money, the railroad has not got it?

Mr. Edgar: The railroad company would borrow the money and pay it to the Rock Island Company.

Mr. Cowan: It would involve raising whatever balance is due by someone?

Mr. Edgar: Yes, if the Rock Island demanded it, and I suppose they would if there was no other way of getting it.

Mr. Cowan: What amount of interest is charged on this open account?

4459 Mr. Edgar: Five per cent.

Mr. Cowan: About how much has been paid on the principal and interest, and how much remains?

Mr. Edgar: There was something like $112,000; it overran the amount of the contract, and there still remains unpaid somewhere between $40,000 and $50,000. I would have to refer to the figures to see.

Mr. Cowan: You spoke of the settlement of the country and divisions on this line of railroad. If you did not get divisions from the lumber traffic, would there be any other traffic which would support and keep up this railroad?

Mr. Edgar: Our statements show that the road has now become self sustaining as to operating expenses and upkeep, independent of the divisions received on lumber tonnage.

Mr. Cowan: That is all.

Mr. Garwood: Do you know what wages you pay your engineers, firemen and brakemen?

Mr. Edgar: Mr. Niehuss can give you that information. I haven't it.

Mr. Garwood: What lumber interest owned the Arkansas Southern?

Mr. Edgar: I cannot say; that was before my day down in there.

4460 Mr. Garwood: Was it the Beardsley interest?

Mr. Edgar: No, that is farther down from there.

Mr. Garwood: That is a road which runs from up in Arkansas down in Louisiana and crosses the Vicksburg, Shreveport & Pacific?

Mr. Edgar: At Ruston, and is now a part of the Rock Island System.

Mr. Garwood: But it was constructed and owned originally by lumber interests?

Mr. Edgar: I so understand.

Mr. Garwood: It has been suggested that it was the Buchanan interests, which also own the Louisiana & Arkansas, that constructed it. Was that so?

Mr. Edgar: I think not. I am not positive. I think a man by the name of Browne at Camden, and a man named Cargyle and some of those interests; I am not positive. Perhaps Mr. Niehuss

can give you some more information. That is early history with which I am not familiar.

Mr. Coleman: Do you expect to be able to pay the Rock Island the remaining unpaid loan when it becomes due?

Mr Edgar: Oh, yes, indeed. We never would have constructed it if we had not seen our way of paying it.

Mr. Coleman: When does it become due?

4461 Mr. Edgar: The 1st of February, as I recollect, that is they have a right to call on it.

Mr. Coleman: Of this year?

Mr. Edgar: Yes, sir.

Mr. Coleman: And you will be able to pay it?

Mr. Edgar: We can by going out and borrowing it. We have credit sufficient to do so if they call for it.

Mr. Coleman: After it is paid up, will you still get a division from the Rock Island?

Mr. Edgar: That is the expectation, yes, sir.

Mr. Coleman: So is not the practical effect of that deal that the Rock Island built a railroad which they allow to be paid for out of freight earnings?

Mr. Edgar: They participated in the building of it to a large extent.

Mr. Coleman: Well, they loaned the money which was to be paid back out of freight earnings on lumber traffic?

Mr. Edgar: Yes, sir.

Mr. Coleman: And what will be done after four years of that traffic——

Examiner Burchmore: It seems to me that is argumentative.

Mr. Coleman: On the 1st of February the railroad company will own this railroad and you will still be getting divisions

4462 from the Rock Island?

Mr. Edgar: We own it now with the exception of this open account against us.

Mr. Coleman: That is all.

(Witness excused.)

Whereupon, at 12:45 P. M., a recess was taken until 2:00 P. M.

4463 After Recess.

2:00 P. M.

C. W. NIEHUSS, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are the Treasurer and Superintendent of the El Dorado & Wesson Railway?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And also Secretary and General Manager of the Edgar Lumber Company?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Are you connected with any other lumber company?

Mr. Niehuss: No, sir.

Examiner Burchmore: How long have you been an officer of this railroad?

Mr. Niehuss: Since its incorporation.

Examiner Burchmore: What were the purposes of the incorporation and construction of this line of railway?

Mr. Niehuss: The purposes have already been stated, I think, by Mr. Edgar, and of course one of the purposes was to have better facilities for the output or product of the Edgar Lumber Company; and the other purposes were to build a railroad for the development of that territory.

4464 Examiner Burchmore: The territory east of and including Wesson?

Mr. Niehuss: West and including Wesson, west and southwest of Wesson.

Examiner Burchmore: This road does not run west and southwest of Wesson?

Mr. Niehuss: No, it only runs to Wesson, but the intention has been all along and was at the beginning that this road would not stop at Wesson, but at some time it would be extended beyond Wesson.

Examiner Burchmore: What was the cost of construction of the El Dorado & Wesson Railway per mile?

Mr. Niehuss: The cost of construction was about $14,500 per mile.

Examiner Burchmore: And that was paid for, or financed by the Rock Island Railroad?

Mr. Niehuss: As was stated this forenoon.

Examiner Burchmore: What did the Cornie Valley Railroad cost per mile of road to build?

Mr. Niehuss: I am unable to say, because part of that was constructed when I went there, and on account of the road not being incorporated but belonging to the lumber company, we

4465 did not keep any accurate records of the cost of construction. I might state that the cost of the El Dorado & Wesson does not include equipment.

Examiner Burchmore: The equipment was paid for by the Edgar Lumber Company originally, and they were reimbursed by the railroad company through the sale of stock, as I understand it?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: The Rock Island Railroad only met the expense of construction of the road itself?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Or part of that cost?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: What was the total sum advanced by the Rock Island?

Mr. Niehuss: I do not have the exact figures, but I believe Mr. Edgar stated $112,000 or $113,000; my recollection was a little bit more than that. I do not remember exactly; it was between $110,000 and $120,000 as I remember it.

Examiner Burchmore: Mr. Edgar testified, as I recall it, that this railroad has the locomotive and some nine or ten freight cars and passenger and combination cars.

Mr. Niehuss: It has seven, four box cars and three flats,
4466 and a passenger and baggage car.

Examiner Burchmore: Are those cars and that locomotive equipped with safety couplers and air brakes?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: What rolling stock has the Cornie Valley Railroad?

Mr. Niehuss: They have four locomotives, about 75 logging cars, three flat cars, and two box cars.

Examiner Burchmore: How long have they owned those locomotives?

Mr. Niehuss: I think they have had them all about six years; I suppose they would run from eight to five years old.

Examiner Burchmore: Do those locomotives ever pass over the rails of the El Dorado & Wesson Railway?

Mr. Niehuss: They pass over the rails of the El Dorado & Wesson Railroad in the yard there at Wesson.

Examiner Burchmore: To and from the mill?

Mr. Niehuss: Right at the mill there is an interchange of switching and it is necessary for the Edgar Lumber Company's locomotives to go on the El Dorado & Wesson rails in order to get the logs into the mill.

Examiner Burchmore: In other words, the Edgar Lumber Company, through this agency, the Cornie Valley Railroad,
4467 performs the entire service of taking the logs from the woods and placing them in the mill pond?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And in order to perform that service they have to avail themselves of the spur track or other rails at Wesson around the mill?

Mr. Niehuss: They do. They go on to the siding of the El Dorado & Wesson Railroad and back into the Edgar Company's unloading track at the pond.

Examiner Burchmore: Does the El Dorado & Wesson locomotive ever pass upon the rails of the Cornie Valley Railroad?

Mr. Niehuss: Yes, sir, in order to do their switching there at Wesson they pass over the rails of the Cornie Valley.

Examiner Burchmore: Do the cars of the El Dorado & Wesson ever move over the Cornie Valley Railroad?

Mr. Niehuss: They do at times.

Examiner Burchmore: To what extent and for what purpose?

Mr. Niehuss: Well, occasionally they are sent out over the Cornie Valley Railroad for loading, especially on handling cotton seed and any products that the farmers in that community have to ship. The El Dorado & Wesson cars are sent out there and unloaded and brought in by the Cornie Valley engines and turned over to
4468 the El Dorado at Wesson.

Examiner Burchmore: The El Dorado & Wesson cars move out to points on the Cornie Valley?

Mr. Niehuss: Yes, sir, they are carried out by the Cornie Valley engines when necessary.

Examiner Burchmore: Do those cars ever pass off the rails of the El Dorado & Wesson on to the Rock Island or the Iron Mountain?

Mr. Niehuss: No, sir, they do not.

Examiner Burchmore: The cars are so used then in purely local movement from or to El Dorado or Wesson?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Do you ever receive empty cars from the Rock Island or Iron Mountain Railroad for loading with freight other than lumber at points on your line?

Mr. Niehuss: We do.

Examiner Burchmore: What commodities, for example?

Mr. Niehuss: Staves and stave bolts, cottonseed and anything of that kind that we can get hold of to ship.

Examiner Burchmore: Do you pay per diem on those cars?

Mr. Niehuss: We are not in the per diem associations, we pay demurrage $1.00 a day after 48 hours.

4469 Examiner Burchmore: And you charge demurrage against your shippers?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Do you have any demurrage tariff on file with the Interstate Commerce Commission?

Mr. Niehuss: That is covered in our tariff 100-A.

Examiner Burchmore: Are the lumber rates from points on your line on a milling in transit basis?

Mr. Niehuss: They are not.

Examiner Burchmore: Don't your tariffs contain a milling in transit privilege?

Mr. Niehuss: No, sir.

Examiner Burchmore: Are you acquainted with Philip Sabyl?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Who is he?

Mr. Niehuss: He got out some pipe staves, I believe they call them, out on the Cornie Valley Railroad and shipped them to New Orleans.

Examiner Burchmore: Is he still located on your line?

Mr. Niehuss: He does not live out there; he got out some staves; I don't think he has any more out there. If he has I do not know it. I do not know where he lives; I have seen him out there several times.

4470 Examiner Burchmore: Was he an extensive shipper over your line?

Mr. Niehuss: I think he shipped possibly four cars.

Examiner Burchmore: Do you recall whether he had a controversy with the El Dorado & Wesson Railroad Company in connection with his traffic, and if so, what was the nature of that controversy?

Mr. Niehuss: I do not remember that he had any controversy with the El Dorado & Wesson. He had a controversy with me in regard to the rate over the Cornie Valley to Wesson.

Examiner Burchmore: Then the Cornie Valley charged him something?

Mr. Niehuss: Yes, sir, they could not afford to haul the empty car 15 miles out and the load in without getting paid for it.

Examiner Burchmore: Do you recall what the Cornie Valley Railroad charged Mr. Sabyl for that service?

Mr. Niehuss: I think it was $20.00 a car, that is my recollection.

Examiner Burchmore: For a movement of what length?

Mr. Niehuss: The car moved about 13½ miles, if I remember correctly, some of it, and I think some of it moved further than that.

4471 Examiner Burchmore: Do you remember the fact with respect to his shipments, in a general way.

Mr. Niehuss: I never talked to him very much about the shipments. All the conversation I had with him about the shipments was that he asked me if we could not reduce the rate from the point of origin into Wesson, and I told him we could not because the class of stuff he handled was stuff which sold for about $75.00 a thousand, as I understand it, the very highest class of staves which can be gotten out.

Examiner Burchmore: Well, Mr. Sabyl, I preume, advised your company that he had some staves out there that he wanted to ship, in advance of the actual movement, and I assume that you furnished him an empty car there at the point of loading on the Cornie Valley Railroad.

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And he loaded that car, I assume. Did the Cornie Valley Railroad accept that car when so loaded by Mr. Sabyl and haul it over its line to Wesson?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And there deliver it to the El Dorado & Wesson Railroad?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: The El Dorado & Wesson then
4472 received it from the Cornie Valley Railroad and hauled it to the junction with the Rock Island?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And from that point it passed on to some destination?

Mr. Niehuss: I think it was destined to St. Louis, that is my recollection.

Examiner Burchmore: Who issued the bills of lading on those carloads of staves?

Mr. Niehuss: The El Dorado & Wesson.

Examiner Burchmore: Where did they issue those bills?

Mr. Niehuss: At Wesson.

Examiner Burchmore: What was the point of origin as shown in those bills?

Mr. Niehuss: Wesson.

Examiner Burchmore: Did the bills of lading indicate that the stuff had come in over the Cornie Valley?

Mr. Niehuss: I do not think they did. They were billed out as advance charges, and there were advance charges billed out.

Examiner Burchmore: The bill of lading showed the advance charges of the Cornie Valley Railroad?

4473 Mr. Niehuss: Yes, sir.

Examiner Burchmore: The Cornie Valley Railroad is a private carrier?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And yet it handled these carloads of staves in connection with the El Dorado & Wesson Railroad and the Rock Island for the movement to New Orleans?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And the Cornie Valley Railroad charged $20.00 per car.

Mr. Niehuss: Yes, sir.

Examiner Burchmore: What did the El Dorado & Wesson receive?

Mr. Niehuss: Three cents per hundred pounds.

Examiner Burchmore: Do you recollect what the approximate weight of those cars was?

Mr. Niehuss: No, sir, I do not remember.

Examiner Burchmore: 15 tons?

Mr. Niehuss: I don't remember what the weight of them was. I never did see the weight.

Examiner Burchmore: What would be your impression as to the amount of charges that the El Dorado & Wesson received.

4474 $10.00 or $15.00?

Mr. Niehuss: Yes, sir, I suppose if the cars weighed 60,000 pounds, in that case it would be $18.00.

Examiner Burchmore: For what distance did they haul these staves?

Mr. Niehuss: A fraction over ten miles, the full length of the line.

Examiner Burchmore: The Cornie Valley Railroad had no rate on file with the Commission to cover such a movement?

Mr. Niehuss: No, sir, they are not an incorporated road and did not consider it necessary.

Examiner Burchmore: Do you understand it necessary in order to be under the jurisdiction of the Interstate Commerce Commission that a railroad has to be incorporated as a common carrier?

Mr. Niehuss: We did not consider that the Cornie Valley Railroad was a common carrier.

Examiner Burchmore: Does the Cornie Valley Railroad receive any considerable amount of traffic from persons residing or doing business along its line for movement in connection with the El Dorado & Wesson?

Mr. Niehuss: There was quite a good deal of tonnage last year. I think we hauled some 50 or 75 cars of staves for the Little

4475 River Cooperage Company, which were shipped to Texarkana, Arkansas.

Examiner Burchmore: What did you charge on those staves?

Mr. Niehuss: We charged on those staves $10.00 a car.

Examiner Burchmore: Just half what you charged Mr. Sabyl.

Mr. Niehuss: Yes, sir; the staves were not worth one-fifth as

much money and the value was considerably less than the staves Mr. Sabyl shipped.

Examiner Burchmore: Do you understand it is the practice of railroads to make one price on first class staves, and another rate on second class staves?

Mr. Niehuss: I undertand that a private carrier has a right to charge any rate that they wish to charge.

Examiner Burchmore: What charge does the El Dorado & Wesson make on these staves to which you have referred?

Mr. Niehuss: Three cents per hundred pounds.

Examiner Burchmore: That would approximate $18.00 a carload?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Are there any joint rates on staves from Wesson to interstate destinations?

Mr. Niehuss: We have through billing arrangements: I
4476 do not know what the New Orleans rate is.

Examiner Burchmore: If the Cornie Valley Railroad is now receiving traffic from persons other than the Edgar Lumber Company, which it moves to Wesson and there delivers to the El Dorado & Wesson Railroad, the question occurs to me why the Cornie Valley Railroad is not absorbed by the El Dorado & Wesson as part of its system and as a traffic producing line.

Mr. Niehuss: I think it was explained by Mr. Edgar before noon that the Cornie Valley Railroad, the nature of the construction of the road is such that we would not want to haul passengers over it and be responsible; we would not feel like sending our passenger train over the Cornie Valley rails to carry passengers. It has 35 pound rail against 60 pound on the El Dorado & Wesson, and it never was built for a standard construction road.

Examiner Burchmore: We have discussed the question of staves. Now with respect to the matter of logs and lumber handled for the account of the Edgar Lumber Company, I understood you to testify that the logs are handled into the mill by the Cornie Valley Railroad without any assistance from the El Dorado & Wesson Railroad?

Mr. Niehuss: Yes, sir, that is correct.

Examiner Burchmore: Does the Edgar Lumber Company
4477 pay its agent, the Cornie Valley Railroad, any charge for handling these logs?

Mr. Niehuss: In reality the Edgar Lumber Company is handling the logs; the Cornie Valley Railroad is not a separate corporation: it is not incorporated at all.

Examiner Burchmore: Do they keep any books, the Corine Valley Railroad?

Mr. Niehuss: The Cornie Valley Railroad does not: they merely have an account on the Edgar Lumber Company's books.

Examiner Burchmore: Does the Edgar Lumber Company in its books make any charge of one cent or two cents or three cents per 100 pounds or per 1000 feet or a charge per carload?

Mr. Niehuss: It does not.

Examiner Burchmore: As a bookkeeping matter?

Mr. Niehuss: No, sir. We have our expense accounts divided up, but the Edgar Lumber Company does not make any charge at all. They pay the bill themselves.

Examiner Burchmore: We will assume that certain logs that have moved into the mill from the Cornie Valley have been manufactured into lumber and are ready to move to an interstate destination, where some sale has been effected; the empty car for such a movement would be furnished, I assume, by the Rock Island Railroad?

4478 Mr. Niehuss: It usually is.

Examiner Burchmore: Or by the Iron Mountain?

Mr. Niehuss: Yes.

Examiner Burchmore: We will assume the case where the Rock Island places the car; it is to be assumed that the El Dorado & Wesson hauls that empty car from El Dorado down to Wesson?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And there places it at the mill?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: It is loaded with lumber by the mill employés, and is ready to move to an interstate destination just as any other shipment might be ready for transportation. Who issues the bill of lading?

Mr. Niehuss: The El Dorado & Wesson Railroad.

Examiner Burchmore: What employé of the El Dorado & Wesson Railroad?

Mr. Niehuss: We have an agent at Wesson.

Examiner Burchmore: Where is his office in Wesson?

Mr. Niehuss: In the lumber company's office.

Examiner Burchmore: He is also an employé of the lumber company?

Mr. Niehuss: He draws $85.00 a month from the railway company and $15.00 from the lumber company; because his work
4479 with the lumber company is merely checking invoices for the lumber company, and he did not need all his time to do the work of the railroad company and therefore the arrangement was made to give him a little additional work.

Examiner Burchmore: We will assume that this shipment we are discussing is going to Memphis, where the division I believe is five cents, is it not?

Mr. Niehuss: I think so; we get five cents from the Rock Island line to point on the Rock Island system.

Examiner Burchmore: This bill of lading issued by your agent at Wesson would show Wesson as the point of origin?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: It would show Memphis as the destination and would also show, I assume, the published joint rate filed with the Interstate Commerce Commission?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: And that rate from Wesson to Memphis is the same as the rate from El Dorado to Wesson?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: That is true of all destinations?

Mr. Niehuss: Not all.

Examiner Burchmore: To which joint rates are published?

4480 Mr. Niehuss: No; we have to Seaboard territory, for instance, the Boston rate is three cents higher from Wesson than from El Dorado.

Examiner Burchmore: Generally speaking, however, the rates are the same?

Mr. Niehuss: Yes, sir, generally speaking they are.

Examiner Burchmore: Does the bill of lading indicate that the logs have come in over some other railroad?

Mr. Niehuss: It does not.

Examiner Burchmore: Does the bill of lading show any charge or allowance made either to the Cornie Valley Railroad or retained by the El Dorado & Wesson Railroad?

Mr. Niehuss: They do not.

Examiner Burchmore: They simply show the joint through rate?

Mr. Niehuss: They simply show the joint through rate.

Examiner Burchmore: Who issues the waybill?

Mr. Niehuss: The El Dorado & Wesson Railway.

Examiner Burchmore: A joint through waybill to Memphis?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: What does that waybill show in addition to the information carried on the bill of lading?

4481 Mr. Niehuss: Well, it shows the joint through rate.

Examiner Burchmore: Does it also show the El Dorado & Wesson's proportion?

Mr. Niehuss: I am not sure about that; I do not bill the lumber out. Mr. Chaple, the man we employ there, makes out the waybills.

Examiner Burchmore: He is not present?

Mr. Niehuss: No, he is not present. It is made out in regular form, whatever it is.

Examiner Burchmore: Is it not a fact the waybill shows the Rock Island proportion of the rate separate from your portion?

Mr. Niehuss: I think it does; I think they show both proportions.

Examiner Burchmore: Do not the waybills also show advance charges of two cents per 100 pounds that represents the part of the earnings that is assigned to the Cornie Valley for its earning?

Mr. Niehuss: The Cornie Valley gets no earnings whatever.

Examiner Burchmore: Do not the waybills show two cents per 100 pounds as a split of that division?

Mr. Niehuss: It does not.

4482 Examiner Burchmore: You are sure about that?

Mr. Niehuss: Yes, sir. They may show an advance charge rate.

Examiner Burchmore: We will take the waybill, that does show an advance charge; what sort of an advance charge is that?

Mr. Niehuss: For instance, on staves the car is turned over to the El Dorado & Wesson with instructions to bill out $10.00 charges on the car, for instance, or whatever the charge may be, by the Cornie Valley Railroad.

Examiner Burchmore: That is in the case of staves, but now about

lumber, does not the lumber show such an advance charge on the waybill at times?

Mr. Niehuss: No, sir, there is no lumber shipped out; the Cornie Valley Railroad has not handled any lumber.

Examiner Burchmore: But my question was as to what the waybills showed?

Mr. Walter: You are speaking of lumber from the Edgar Lumber Company?

Examiner Burchmore: At Wesson. Is there anybody else that ships lumber out of Wesson?

Mr. Niehuss: There are two small mills shipping off of the El Dorado & Wesson Railroad.

4483 Examiner Burchmore: Where are they located?

Mr. Niehuss: Along the line of the El Dorado & Wesson.

Examiner Burchmore: Are there not any pine mills or shippers along the line of the Cornie Valley?

Mr. Niehuss: No, sir.

Examiner Burchmore: Has the Edgar Lumber Company any interest in the Cornie Stave Company?

Mr. Niehuss: None whatever.

Examiner Burchmore: Have the stockholders of the Edgar Lumber Company any interest directly or indirectly in the Cornie Stave Company?

Mr. Niehuss: None that I know of except I think we have one stockholder who has a small amount of stock in the Cornie Stave Company.

Examiner Burchmore: That is a very unimportant holding of his?

Mr. Niehuss: Yes, sir, very small.

Examiner Burchmore: But these shipments of staves on which the Cornie Valley Railroad is charged $10.00 to $20.00 were interstate shipments as well as state shipments?

Mr. Niehuss: I think some were interstate and some were state shipments; the majority of them were state shipments.

Examiner Burchmore: Is there any provision in the State

4484 Law of Arkansas which forbids a common carrier such as the El Dorado & Wesson purports to be, from accepting property from a private railroad owned by a shipper and advancing charges to that railroad?

Mr. Niehuss: If there is I do not know it; I am not familiar with it.

Examiner Burchmore: How long has the Cornie Stave Company been engaged in business on your line?

Mr. Niehuss: Eight years to my knowledge. I have been there eight years, and they have been shipping more or less during that time.

Examiner Burchmore: Reference was made this morning in connection with the map filed by Mr. Edgar, to the proposed extension southward through Three Creeks and on southward to some town which I have forgotten the name of. Is it not a fact that the Edgar

Lumber Company has extensive timber holdings down in that direction?

Mr. Niehuss: The Edgar Lumber Company have about 6,000 acres of timber land midway or a little more than half way between Wesson and Homer, Louisiana.

Examiner Burchmore: And this new extension would cross the Arkansas-Louisiana State Line?

Mr. Niehuss: Yes, sir.

4485 Examiner Burchmore: Is not that the real purpose of that extension, to reach the Edgar Lumber Company's holdings down there, the primary object?

Mr. Niehuss: It is not the real purpose of the extension. Of course the Edgar Lumber Company would go down there to get that timber; however if they only wanted to go down there and get that timber they would not expend $15,000 to build a line of railroad.

Examiner Burchmore: They have not spent anything yet to build the line of railroad.

Mr. Niehuss: They have spent about $20,000.

Examiner Burchmore: For surveys?

Mr. Niehuss: For surveys and grading and the right of way. We just let a contract for grading of five miles, and the contractors began work last week, standard construction.

Examiner Burchmore: Where has the Edgar Lumber Company raised the money to build this Cornie Valley Railroad?

Mr. Niehuss: I suppose they got it out of their earnings, or from lumber shipped, whether it was earnings or not I do not know; it was built like all other logging railroads.

Examiner Burchmore: The cost of constructing the El Dorado & Wesson Railroad, was apparently taken from divisions re-

4486 ceived from the Rock Island on business. Now did not those divisions help to build this Cornie Valley Railroad?

Mr. Niehuss: They did not, because at the time the Cornie Valley Railroad never did get any divisions.

Examiner Burchmore: Has the El Dorado & Wesson ever paid any dividends?

Mr. Niehuss: No, sir.

Examiner Burchmore: Have the operating expenses exceeded the earnings?

Mr. Niehuss: No, sir.

Examiner Burchmore: What has been done with the net return from operation?

Mr. Niehuss: We have a surplus account.

Examiner Burchmore: What is the amount of that surplus account?

Mr. Niehuss: I think it is about $40,000.

Examiner Burchmore: How long has it taken to build up that surplus?

Mr. Niehuss: It has been in operation since the latter part of 1907.

Examiner Burchmore: I know, but when did you begin to acquire a surplus?

Mr. Niehuss: As soon as there were any earnings, after the
4487 beginning of the operation; I do not remember just at what time.

Examiner Burchmore: Was there a deficit the first few years?

Mr. Niehuss: No.

Examiner Burchmore: Then it has been earning money from the beginning?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Is that an actual surplus or a book surplus?

Mr. Niehuss: Actual surplus.

Examiner Burchmore: You have got that cash on hand?

Mr. Niehuss: No, I did not understand; it is a book surplus. We have not got the cash; the cash is paid out and applied on the indebtedness of the road, and when that was liquidated of course the amount of surplus was increased.

Examiner Burchmore: It was paid to the Rock Island, you mean?

Mr. Niehuss: Yes, sir.

Mr. Walter: The Rock Island credited you instead of paying cash on these divisions, and entered up the credits on their books?

Mr. Niehuss: That applies to shipments to points on the
4488 Rock Island proper, but beyond the Rock Island proper we settle on interline accounts, the same as any other railroad would, and when the settlement comes to us, we put the money in the bank and check it out and send the Rock Island a voucher for it.

Examiner Burchmore: How many trains do you run a day?

Mr. Niehuss: One each way.

Examiner Burchmore: On a regular time table or schedule?

Mr. Niehuss: Yes, sir (producing paper).

Examiner Burchmore: That is a mixed train?

Mr. Niehuss: That is a mixed train.

Examiner Burchmore: Do you carry passengers?

Mr. Niehuss: We do.

Examiner Burchmore: What is the extent of your passenger traffic?

Mr. Niehuss: I think we carried something like 9,000 passengers last year.

Examiner Burchmore: What fare do you charge?

Mr. Gaughan: Have you a statement showing all those things accurately?

Mr. Niehuss: I have not a statement. The annual statements will show that. This does not show that accurately.

4489 (The time table so offered and identified was received in evidence, and thereupon marked El Dorado & Wesson Exhibit No. 1, Witness Niehuss, received in evidence January 24, 1911, and is attached hereto.)

(A paper was here handed the witness.)

Examiner Burchmore: Will you give those figures from that statement?

Mr. Niehuss: The statement of freight received and forwarded

for twelve months ending November 30th, 1909, forwarded by Edgar Lumber Comapny:

Cars.	Commodity.	Weight tons.	Earnings.
1,335	Lumber	29,549	$25,965.75
26	Wood	399	130.00
1	Scrap	31	44.35
L. C. L.	Merchandise	10	32.51

Total tonnage furnished by the Edgar Lumber Company:

1,362 cars		29,989 tons	$26,172.61

Forwarded by other than the Edgar Lumber Company:

124 cars	Staves & Bolts	3,353 tons	$2,011.89
7 "	Cotton Seed	149 "	161.70
8 "	Various items	165 "	105.45
L. C. L.	Merchandise	12 "	55.28
	Total—		
139 cars.		3,679 "	$2,334.32

4490 1,558 Way-bills forwarded.

Received by the Edgar Lumber Company, which the Edgar Lumber Company used:

16 cars	Feed	286 tons	$286.37
7 "	Flour	107 "	107.04
8 "	Hay	95 "	109.47
52 "	Coal	2,070 "	508.31
54 "	Various items	1,258 "	916.13
L. C. L.	Merchandise	583 "	1,814.32
	Total—		
137 cars.		4,399 tons	$3,741.64

Received by other than the Edgar Lumber Company:

5 cars	Fertilizer	103 tons	$90.60
2 "	Hay	24 "	19.20
L. C. L.	Merchandise	78 "	257.66
	Total—		
7 cars		205 tons	257.66
	Total received—		
144 cars.		4,604 tons	$4,109.10
	Total received and forwarded—		
1,645 cars.		38,272 tons	$32,616.03

4491 1088 Way-bills received.

Ticket sales, that is cash fares, there are no tickets sold	$4,400.10	
Express	261.00	
U. S. Mail	326.64	
Total		$4,987.74
Total gross earnings		$37,603.77

U. S. Mail Contract No. 147,052.

Examiner Burchmore: That is for the twelve months ending November 30th, 1909?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Do you also have the twelve months ending November, 1910.

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Without reading all those figures, do they show much of an increase?

Mr. Niehuss: Well, I can give you the increase without reading the figures, just give you the totals?

Examiner Burchmore: Yes.

Mr. Niehuss: Forwarded by Edgar Lumber Company in 1909, 29,000 tons against 37,000 tons in 1910.

Examiner Burchmore: Read the exact figures in the summary.

Mr. Niehuss: Forwarded by the Edgar Lumber Company
4492 in the year 1909, 29,989 tons, revenue $26,172.61. In the year ending November 30th, 1910, 37,647 tons, revenue $32,502.90.

Other than Edgar Lumber Company, for the year ending Nov. 30th, 1909, 3,679 tons, revenue $2,334.32. Year ending November 30th, 1910, 6,119 tons, revenue $3,962.20, that is forwarded.

Now the received:

Received by Edgar Lumber Company in the year ending November 30th, 1909, 4,399 tons, revenue $3,741.64.

For the year ending November 30th, 1910, received by Edgar Lumber Company, 3,636 tons, revenue $3,700.24.

Received by other than Edgar Lumber Company, 1909, 205 tons, revenue $367.46, against the year ending November, 1910, 456 tons, revenue $572.75.

Passenger earnings for the year 1909, $4,400, against $5,218.10 in 1910.

Express $261.00 against $341.53.

The mail contract was the same, $326.64.

Examiner Burchmore: You will file those as exhibits?

Mr. Niehuss: Yes, sir.

4493 (The statement so offered and identified, was received in evidence, and thereupon marked El Dorado & Wesson Exhibit No. 2, Witness Niehuss, received in evidence January 24, 1911, and is attached hereto.)

Mr. Walter: You might make the distinction in the total earnings for the year ending 1909 as compared with 1910.

Mr. Niehuss: Total earnings for 1909, $37,603.77 against $46,624.32 in 1910.

Examiner Burchmore: What were your operating expenses for the last year or this period covered by these statements?

Mr. Niehuss: I overlooked getting the operating expenses; they are about the same though as shown in the annual statement. They do not vary hardly any.

Examiner Burchmore: Do you know what the operating income is in this year approximately, that is the excess of receipts over disbursements?

Mr. Niehuss: No, I do not off hand. I did not get that information. It is about the same as shown in the annual statement.

Mr. Walter: We will furnish that.

Examiner Burchmore: Are there any other interests that own any timber out there on the Cornie Valley Railroad?

Mr. Niehuss: The Cornie Stave Company own some timber out there.

4494 Examiner Burchmore: Well, that is hardwood timber?

Mr. Niehuss: That is hardwood timber, yes, sir.

Examiner Burchmore: Is that on the land you have already cut the pine on?

Mr. Niehuss: No, they own most of the land. They also own a small amount of pine, however it is not very large.

Examiner Burchmore: Has the Cornie Stave Company ever made complaint of the fact that the Cornie Valley Railroad is a private enterprise and not a common carrier?

Mr. Niehuss: No, sir, not to my knowledge.

Examiner Burchmore: They are satisfied to pay $10.00 over the Wesson rate?

Mr. Niehuss: I don't know whether they are satisfied or not; they have been paying it.

Examiner Burchmore: Have they made any complaint about it?

Mr. Niehuss: No, sir, not to my knowledge. Of course they would like to have it eliminated if they could.

Examiner Burchmore: Do you know what their attitude is on the question involved in this proceeding?

Mr. Niehuss: I do not.

Examiner Burchmore: Is there any other interest that has any timber out there west of Wesson in the territory traversed

4495 by the Cornie Valley Railroad?

Mr. Niehuss: There is a man by the name of Sparkman who holds about 4,000,000 feet of pine.

Examiner Burchmore: Is he cutting his pine?

Mr. Niehuss: No, sir, not cutting any. He bought this up I think, two years ago.

Examiner Burchmore: Do you know why he is not cutting?

Mr. Niehuss: No, sir, I do not.

Examiner Burchmore: Suppose you incorporated the Cornie Valley Railroad as a part of the El Dorado & Wesson, I mean the en-

tire main line of the Cornie Valley, not its temporary logging spurs; would not the result of that incorporation be that this other man that you mention down there in the woods would be able to reach interstate markets in competition with the Edgar Lumber Company, whereas now he is unable to do so.

Mr. Niehuss: I think that timber was bought with the expectation of this proposed line going through, and I do not doubt but what when we get the road constructed through that he will operate and cut that timber, or else sell it; I am satisfied he bought with the belief that the El Dorado & Wesson would be extended.

Examiner Burchmore: If the El Dorado & Wesson incorporated road is not extended into his woods, he will never be able to
4496 cut profitably?

Mr. Niehuss: Well, I don't know whether he will or not, I could not say about that.

Examiner Burchmore: Where are his woods, out along the proposed line of extension, or along the present Cornie Valley?

Mr. Niehuss: Along the proposed line of extension.

Examiner Burchmore: What is the nearest big lumbering operation near you in this territory which has a tap line connected with it?

Mr. Niehuss: On the north side we have the Griffen, Magnolia & Western Railroad, the Griffen Milling Company or the Louis Werner Saw Mill Company it is, at Griffen, and on the south or southeast we have the Bernice Lumber Company, that is down in Louisiana.

Examiner Burchmore: Do they connect with the Rock Island?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Do you know what their divisions are?

Mr. Niehuss: No, I do not.

Examiner Burchmore: What is the name of their railroad?

Mr. Niehuss: I don't know.

Mr. Gaughan: The Bernice & Northwestern.

Examiner Burchmore: If I say that the testimony already
4497 taken with respect to the case of the Bernice & Northwestern indicates that that road has a mileage of approximately 27 miles, and that it receives an allowance of one to four cents per 100 pounds, what would be your answer to this question: Their maximum allowance is four cents and their usual allowance is somewhat less than four cents, we will assume. Your allowance is five cents per 100 pounds from the Rock Island. Is it reasonable and fair for you to receive for a haul of 10 or 15 miles an allowance of five cents, when the Bernice Lumber Company only receives three or four cents for 27 miles?

Mr. Niehuss: I think under the circumstances it is; the circumstances are these: that we built a standard constructed railroad, and spent $166,000 to build ten miles and equip it, and we are carrying passengers and we are responsible for the safety of those passengers and the safety of that freight.

Examiner Burchmore: Do you understand that the Bernice &

Northwestern is not a substantially built road and does not assume all the obligations of a common carrier?

Mr. Niehuss: No, I do not know anything about how the railroad is built; I have never been over it.

Mr. Walter: Do they operate the full 27 miles, does the record show?

Examiner Burchmore: I am not positive what the record
4498 shows, but I have a memorandum of it.

Mr. Gaughan: My recollection is it was 12 miles.

Mr. Walter: And carries no passengers.

Mr. Gaughan: That is a freight road.

Mr. Walter: And that total mileage is due to two branches and not one main line.

Examiner Burchmore: Well, the lumber market at present is a very close market, is it not?

Mr. Niehuss: Yes.

Examiner Burchmore: Does it occur to you that the Edgar Lumber Company or its allied corporation receiving five cents per 100 pounds on lumber to Rock Island markets, has a substantial advantage over the Bernice Lumber Company, which only gets two or three cents and assumes all the obligations of a common carrier?

Mr. Niehuss: I do not think the Edgar Lumber Company has any advantage. In fact those divisions range from one and one-half cents to five cents.

Examiner Burchmore: What divisions?

Mr. Niehuss: That the Edgar Lumber Company gets.

Examiner Burchmore: Yes, on the Iron Mountain——

Mr. Niehuss: They do not get any on the Iron Mountain.
4499 We have no through joint rate on the Iron Mountain except through the Rock Island to points on the Iron Mountain in Missouri.

Examiner Burchmore: What is your division?

Mr. Niehuss: One and one-half cents to five cents.

Examiner Burchmore: To what point do you get one and one-half cents?

Mr. Niehuss: Points in Texas.

Examiner Burchmore: Do you ship any to Texas?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Any substantial amount?

Mr. Niehuss: We don't ship any great amount, but we have shipped some business to Texas.

Examiner Burchmore: Do you know what your average earning is on your lumber that you haul in connection with the Rock Island?

Mr. Niehuss: No, I have never figured out the average earning.

Mr. Cowan: You stated about four and one-half cents for 1910.

Examiner Burchmore: Yes, your figure is 29,549 tons of lumber handled for the Edgar Lumber Company during the year
4500 ended November 30th, 1909, and receipts were $25,965.75, $25,000 on 29,000 tons, which is a shade under five cents; apparently the bulk of your lumber must carry the four or five cent division.

Mr. Niehuss: It may be possible. I have not figured it out.

Examiner Burchmore: Could this mill at Wesson continue in operation if the El Dorado & Wesson Railroad Company went out of business?

Mr. Niehuss: I suppose they would have to.

Examiner Burchmore: Have to continue in business?

Mr. Niehuss: They could not continue in business unless they had an outlet for their product through some railroad; they are isolated from any trunk line.

Examiner Burchmore: In other words, if the El Dorado & Wesson ceased to do business, and no other railroad built into Wesson, the Edgar Lumber Company would have to close up its mill there.

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Suppose the Cornie Valley Logging road was tied up and you had to depend on oxen or mules to get your logs into the mill, would the mill continue in operation?

4501 Mr. Niehuss: It would starve to death in 30 days.

Examiner Burchmore: What is that?

Mr. Niehuss: It could not possibly operate.

Examiner Burchmore: It seems that the El Dorado & Wesson is absolutely essential to the operation of the mill in its present location.

Mr. Niehuss: Either the El Dorado & Wesson or some other railroad, they would have to have a railroad in order to get their finished product to the market.

Examiner Burchmore: Would any other railroad system be justified in building in there at the present time in view of the traffic around there which is available for movement?

Mr. Niehuss: I do not know whether they would be or not.

Examiner Burchmore: And the private logging road of the Cornie Valley Railroad is equally essential to the conduct of the mill at Wesson?

Mr. Niehuss: Yes, sir.

Mr. Walter: The same thing is true of the Rock Island and the Iron Mountain, if they were not there you would not be able to do business.

Mr. Niehuss: No, we could not do business if we did not

4502 connect at El Dorado or some other point.

Mr. Gaughan: How far have you gone in the matter of building a road from Wesson down to Homer?

Mr. Niehuss: We have, beginning five miles out from Wesson or say ten miles out, we have constructed two and one-half miles of standard construction, nothing over one per cent grade, and we have got back within five miles and let contracts last week for the grading. There are 28 teams at work cutting the right of way and grading this line. We completed the survey from Wesson to Minden, Louisiana.

Mr. Gaughan: Have you got that map yet showing the survey or profile of that line?

Mr. Niehuss: I have a profile from Wesson to Homer, and from Homer to Minden.

Mr. Gaughan: Please let them be filed as exhibits.

(The maps so offered and identified, were received in evidence and thereupon marked El Dorado & Wesson Exhibits Nos. 3 and 4, Witness Niehuss, received in evidence January 24, 1911.)

(Exhibits Nos. 3 and 4 were afterwards withdrawn by counsel.)

Mr. Gaughan: What has been done by the people at Ho-
4503 mer, if anything, toward extending aid in the construction of this railroad?

Mr. Niehuss: The citizens of Homer have voted a $50,000 tax to aid in the construction of this road into Homer.

Mr. Gaughan: What weight of steel have you on the El Dorado & Wesson?

Mr. Niehuss: 60 pound.

Mr. Gaughan: Do you remember what the greatest grade is?

Mr. Niehuss: The greatest grade of any length is one per cent; there are two or three short, what you might call momentum grades of one and one-half per cent.

Mr. Gaughan: Is that a rough country through which this is constructed?

Mr. Niehuss: Very rough, as the profile will show; there are some pretty good hills.

Mr. Gaughan: Have you any scales to weigh cars?

Mr. Niehuss: We have 100 ton Fairbanks track scales.

Mr. Gaughan: Where are the scales?

Mr. Niehuss: At Wesson, on the El Dorado & Wesson tracks.

Mr. Gaughan: Do you know whether or not the El Dorado & Wesson is a member of the Weighing Association?

Mr. Niehuss: They are.

4504 Mr. Caughan: Does the El Dorado & Wesson comply with the State and Federal laws with reference to common carrier railroads?

Mr. Niehuss: They do.

Mr. Gaughan: Did you file a copy of your time table?

Mr. Niehuss: Yes, sir.

Mr. Gaughan: Have you filed with the Interstate Commerce Commission your tariffs?

Mr. Niehuss: Yes, sir.

Mr. Gaughan: I believe that is all.

Mr. Cowan: In regard to the track scales which have just been asked about, what has that to do with the matter of whether a railroad in a common carrier and entitled to a division of rates?

Mr. Niehuss: I don't know that it has any except the El Dorado & Wesson weights are accepted.

Mr. Cowan: Is it not a matter at least of convenience if not of necessity that a saw mill putting out as much business as the Edgar Lumber Company should need to protect itself by having track scales for the purpose of weighing its product and knowing for themselves what they are doing?

Mr. Niehuss: It would not make any difference to the saw mill company, because they would get the weights anyway.

4505 Mr. Cowan: If the saw mill company pays the freight it makes a difference?

Mr. Niehuss: I understand that, but the lumber would be weighed before it reached destination, and the saw mill company would get the weight, the same as they are getting them now.

Mr. Cowan: When this lumber is weighed there, is that the weight on which the freight is paid or is it paid on a delivered weight when the delivering line weighs it?

Mr. Niehuss: It is paid on the weight at Wesson, unless there is any error found in the weight, when of course it is corrected if it is re-weighed.

Mr. Cowan: Do you know whether there is any arrangement whereby if the divisions would be cut out in this case that the Rock Island would take over the El Dorado & Wesson?

Mr. Niehuss: Not to my knowledge.

Mr. Cowan: Is there any such agreement, Mr. Gaughan?

Mr. Gaughan: There is not.

Mr. Cowan: Do you recall the ratio of operating expenses to the gross earnings?

Mr. Niehuss: No, sir. Our annual report would show that. I did not compare the figures for this meeting.

4506 Mr. Cowan: If I made my figures correctly you get about 8 cents a ton mile for hauling this lumber. What is the distance?

Mr. Niehuss: A fraction over ten miles.

Mr. Cowan: Estimated on the ton mile basis, it would be somewhere around eight cents apparently. Have you in mind what the earnings would be to the places where you ship the lumber on the average per ton mile, the through rate?

Mr. Niehuss: Do I know what the through rate is?

Mr. Cowan: No, have you in mind what the average per ton mile earnings would be?

Mr. Niehuss: No, sir, I do not know.

Mr. Cowan: Have you ever investigated generally what are the average earnings per ton mile on lumber on the Rock Island or any other system of road?

Mr. Neihuss: I have not.

Mr. Cowan: If the Rock Island Railroad earns 6 mills per ton per mile on the average for about 450 or 500 miles average haul, would you say that 12 times that much per ton mile for your road would be a fair basis?

Mr. Niehuss: I don't know that that is the case and consequently I am not prepared to answer your question.

Mr. Cowan: Let me see what service your railroad performs.

4507 The lumber company loads the lumber at the mill?

Mr. Niehuss: Yes.

Mr. Cowan: And all you have to do is to hau' it on your railroad from there on to El Dorado, that is correct?

Mr. Niehuss: Yes, sir.

Mr. Cowan: How many cars do you move per day, generally speaking?

Mr. Niehuss: I suppose between four and five cars a day.

Mr. Cowan: When you get into El Dorado what service do you perform there with the car?

Mr. Niehuss: We simply deliver the loads at El Dorado and place them on the side track.

Mr. Cowan: Is that an exchange track alongside of your track?

Mr. Niehuss: Yes, sir.

Mr. Cowan: And the Rock Island takes it from there and puts it into their train?

Mr. Niehuss: Yes, sir.

Mr. Cowan: Have you ever made any figures as to what it cost you for the actual service independent of the maintenance of the property, per carload, or for some unit for the handling of the lumber from Wesson to El Dorado?

Mr. Niehuss: Nothing more than is figured out in the
4508 annual report, and I think it gives that information. I do not remember what it was.

Mr. Cowan: I imagine it does not give that information if it is just on the regular form. It gives the aggregate and the rate per ton mile, but it does not separate between freight and passenger expenses and between the expenses for the l. c. l. and the local and small business and your lumber business.

Examiner Burchmore: It might be, on a road whose tonnage is so largely lumber, that you could arrive at that result by taking the total of their transportation expenses and dividing it by the number of carloads of lumber handled, and come somewhere near it.

Mr. Cowan: I imagine it could undoubtedly, but I do not think it could be taken from the annual report because those figures are not a part of such reports, and I wondered if he had ever made the figures. The cost of handling this lumber per car exclusive of the matter of maintenance consists of the train service of taking the loaded car from the mill to El Dorado and returning the empty car for the purpose of loading.

Mr. Niehuss: I suppose the expense of keeping up the track
4509 would be figured in as an element.

Mr. Cowan: I said exclusive of maintenance.

Mr. Niehuss: Yes.

Mr. Cowan: What do you pay your engineer and fireman, on what basis do you pay them?

Mr. Niehuss: Engineer $75.00 a month, and the fireman $1.50 a day.

Mr. Cowan: Do they belong to the engineers' and firemen's association of railroads?

Mr. Niehuss: They do not.

Mr. Cowan: Does the organization of Locomotive Engineers & Firemen recognize your railroad as a common carrier?

Mr. Niehuss: I do not know whether they do or not. Some of them are mighty anxious to get down there.

Mr. Cowan: I think they would raise the wages if they did. Do you have contracts with any labor organizations?

Mr. Niehuss: We do not.

Mr. Cowan: And there are no rules and regulations prescribed by them for the wages and hours of your men?

Mr. Niehuss: No.

Mr. Cowan: Something has been said here about the burden of the Hours of Service Law as prescribed by the Act of Congress. You are not required to hold your men over 16 hours on
4510 trains?

Mr. Niehuss: No, sir.

Mr. Cowan: And that subject has never come up?

Mr. Niehuss: No.

Mr. Cowan: I notice in the coal which you ship inbound to the lumber company, that you shipped in 2,070 tons of coal and the revenue was $508.00, which if I figure correctly is 24½ cents a ton. Do you know any reason why the small amount of coal coming in to the Edgar Lumber Company should move over the same track in that direction at 24½ cents as compared to 86 cents a ton in the case of lumber moving in the opposite direction?

Mr. Niehuss: I do not know of any reason except that the tariff provides that we are allowed 27½ cents a ton, and there is no reason why we should not collect it.

Mr. Cowan: You are allowed 27½ cents in the local tariff?

Mr. Niehuss: Yes.

Mr. Cowan: This coal then moves on the local tariff?

Mr. Niehuss: I do not mean local tariff, but we are allowed 27½ cents a ton on interstate coal shipments.

Mr. Cowan: Over that part of the line?

Mr. Niehuss: Yes, sir, both by the Iron Mountain and the Rock Island.

4511 Mr. Coleman: You have a joint through rate inbound on coal?

Mr. Niehuss: Yes, sir.

Mr. Cowan: I find too, that of 3,025 tons of various items of merchandise—it does not say merchandise but says "various," 3,025 tons, the earnings were $1,764. That is tons received by the Edgar Lumber Company, and if I figure it correctly, that would be 55 cents a ton. Do you conceive that the various articles constituting that 3,000 tons should be hauled in at 55 cents a ton while your division with the Rock Island should equal 85 cents a ton?

Mr. Niehuss: I do not konw; we have tariffs in effect covering all those rates and anything that comes in there the railroad company collects its published rate.

Mr. Cowan: Of course you get all you can, that is proper and nobody would object to that, but I was wondering if your division with the Rock Island did not appear to be too high as measured by what you actually get on the local freight rates or on business coming in?

Mr. Niehuss: I should say not, if the Rock Island will pay it.

Mr. Cowan: That is all.

Mr. Garwood: What wages do you pay your brakemen?

Mr. Niehuss: Our conductor and fireman both act as brake-
4512 men; the fireman gets $1.50 a day and the conductor $60.00 a month.

Examiner Burchmore: Why did not the Rock Island build from El Dorado to Wesson itself?

Mr. Niehuss: I don't know why they did not unless they realized they could not operate a short line road like that to advantage

Examiner Burchmore: You mean there was not enough traffic on it?

Mr. Niehuss: No, I mean that I believe the El Dorado & Wesson as operated at present can be operated much cheaper than if owned by the trunk lines.

Examiner Burchmore: How much cheaper?

Mr. Niehuss: I don't know, I have never figured it out, but the matter of these wages coming up with the employes and one thing and another, I am satisfied they are a good deal less than they would be if owned by a trunk line.

Examiner Burchmore: Would it have cost the Rock Island $40,000 more to operate that railroad for five years than it cost you to operate it?

Mr. Niehuss: I could not say about that.

Examiner Burchmore: Do you think your efficiency is $8,000 a year greater than the Rock Island's efficiency.

4513 Mr. Niehuss: I am not figuring it that way.

Examiner Burchmore: I just wanted to see why it was, if you had any knowledge or impression, that the Rock Island instead of building itself from El Dorado to Wesson allowed you to build and paid for the road.

Mr. Niehuss: I don't know why it was. If the Rock Island ever intimated that they wanted to build a railroad out there I do not know anything about it. We merely went to the Rock Island and told them we were going to build a railroad to El Dorado.

Mr. Coleman: I did not get it clear whether there was an outbound through rate on staves.

Mr. Niehuss: I think there is a through rate to New Orleans. There is through billing arrangement, and where there is no through rate the local rate applies.

Mr. Coleman: Where was this joint agent located?

Mr. Niehuss: I did not say anything about a joint agent.

Mr. Coleman: You said something about a man who got $85.00 from the railroad and $15.00 from the lumber company.

Mr Niehuss: Yes, sir. I said the agent at Wesson received $85.00 from the railroad company and received the sum of $15.00 from the lumber company for doing a very small amount of work which consisted of checking invoices.

4514 Mr. Coleman: Are there other agents along the line?

Mr. Niehuss: One.

Mr. Coleman: He is the only one you have?

Mr. Niehuss: He is the only one.

Mr. Coleman: He makes out the waybills and bills of lading.

Mr. Niehuss: The conductor acts as agent at El Dorado during the time the train remains there, which is about three hours.

Mr. Coleman: Do you claim you comply with all the Federal Interstate Commerce laws?

Mr. Niehuss: Yes, sir.

Mr. Coleman: You know there is a provision in the Interstate Commerce Law which makes it a penalty for a railroad agent to disclose to a shipper the shipments of another shipper?

Mr. Niehuss: I do not know that it has been violated.

Mr. Coleman: What is that?

Mr. Niehuss: I don't know that that has been violated.

Mr. Coleman: Well, if an outside man ships some stuff to this man, $85.00 of whom is railroad company and $15.00 lumber company, don't you suppose the $15.00 worth of lumber company in that man would know of the outside shipment?

4515 Mr. Niehuss: If you chop him up that way, if it was his head he might know it, and if his feet I don't think he would.

Mr. Coleman: I wanted to know if you thought that law was complied with.

Examiner Burchmore: There are some Federal laws that are not fully complied with by all railroads.

Mr. Coleman: I will drop it, I guess.

Mr. Gaughan: Counsel asked you to explain why it was that the revenue on lumber was considerably higher than the revenue on coal. As a matter of fact this lumber is originated on the line of the El Dorado & Wesson Road, is it not?

Mr. Niehuss: Yes, sir.

Mr. Gaughan: And your coal is not?

Mr. Niehuss: The coal is not.

Mr. Gaughan: Do you know whether or not it is the custom among railroads for the originating lines to get the largest percentage of the revenue, other matters being considered?

Mr. Niehuss: Yes, sir.

Examiner Burchmore: Is that the invariable custom, is it not the custom for the road for whom the traffic is local to get the fat end of the divisions, whether it be the——

Mr. Walter: To what?

Examiner Burchmore: To whom the traffic is local and

4516 non-competitive.

Mr. Coleman: Is it not a fact that the initial line furnishes the car when it gets that big division.

Examiner Burchmore: I think those are facts, so far as they are facts, which are well within the knowledge of the Commission.

Mr. Gaughan: I did not propose to pursue it any further, except I wanted it in the record.

Mr. Coleman: May I ask whether you have joint rates on anything else besides staves and lumber outbound?

Mr. Niehuss: We have through rates.

Mr. Coleman: Well, on which you get a division, I mean.

Mr. Niehuss: We get a certain per cent of the through rate.

Mr. Coleman: On what have you got that?

Mr. Niehuss: We have class and commodity rates.

Mr. Coleman: On what?

Mr. Niehuss: On everything. We have through rates on practically everything.

Mr. Coleman: Outbound?

Mr. Niehuss: Outbound and inbound.

Mr. Gaughan: I would like the witness before he leaves the stand, to file a statement showing the other stores and enterprises served by the El Dorado & Wesson besides the Edgar Lumber Com-
4517 pany.

Mr. Cowan: Let him tell it, and then we will all see it in the record.

Examiner Burchmore: How many are there?

Mr. Niehuss: Six or seven, that is all.

W. D. Brakefield, General Merchant, at Wesson.

Kinard Company, General Merchants.

Ulmer Brothers, General Merchants.

P. F. Simmons, Cotton Gin.

J. R. Burns, and a man by the name of

C. C. Braswell, has a small mill located about four and a half or five miles from the El Dorado & Wesson Road, and ships out a small amount of lumber. It is not any great amount of tonnage.

Mr. Garwood: That is the only railroad that serves them?

Mr. Niehuss: Yes, sir. And the Cornie Stave Company, they are located at Junction City; they however, ship quite a good many staves over the road.

The New Port Stave Company, of El Dorado, Arkansas, have been buying timber along the road of the El Dorado & Wesson for the past two years. That material which they get is shipped out by farmers along the road.

Examiner Burchmore: May we have Mr. Braswell send to
4518 the Commission a statement as to his attitude toward the railroad and what he thinks of its practices?

Mr. Niehuss: Yes, sir.

Mr. Cowan: In view of the last suggestion about the merchants, I wish to call attention to the statement in the questions to the witness—the question is where you state that in 1910 l. c. l. merchandise amounted to 13 tons, was that the total business you sent to the merchants, or did they get their merchandise in some other way besides by the railroad.

Mr. Niehuss: I do not think the railroad company handled nearly all the merchandise they sold.

Mr. Cowan: How did they get it?

Mr. Niehuss: What the railroad company did not handle I suppose they hauled it by wagon. I don't know how they got it.

Examiner Burchmore: That is two tons apiece.

Mr. Cowan: For a year. I also see that the Edgar Lumber Company had 19 tons of merchandise, so they had the other fellows skinned in the ratio of 19 to 15 tons.

Mr. Walter: They had 78 tons of merchandise inbound for other than the lumber company.

Mr. Cowan: I see.

4519 (Witness excused.)

Mr. Garwood: Mr. Commissioner, in view of your suggestion to the witness, that he send a letter asking as to the attitude of one of these independent merchants, I would like to ask if the Commission would like information of that general character from people located along these various lines? We could have brought so much of that here that you would have to charge carload rates on it, but I did not know that it was desirable. We would like to do it if you think that the Commission would like to have it.

Examiner Burchmore: One of these short line railroads has sent in such letters and they form a file that thick (indicating) and it is impossible to even read them.

Mr. Garwood: That is what I apprehended, but——

Examiner Burchmore: But in the case of this road the Commission received quite a vigorous complaint from this Mr. Sabyl to whom reference has been heretofore made, as to the rates and practices of this system, and we want to see what their other lumber shipper thought about it.

Mr. Gaughan: Received a complaint about what?

Examiner Burchmore: That complaint to which I refer was the subject of correspondence between the Commission and Mr.

4520 Niehuss.

Mr. Gaughan: A good many questions have been asked by the Examiner with reference to these stave shipments, and if you read the decision of the Supreme Court of Arkansas in the case of the Cornie Stave Company against the Edgar Lumber Company, all that will be cleared up.

Mr. Coleman: What is it about?

Mr. Gaughan: The decision about those shipments.

Mr. Coleman: How will it clear it up?

Mr. Gaughan: It will show the ground of complaint. There was an old contract made by the H. C. McDaniel Lumber Company which seems to have been inherited by the Edgar Lumber Company. Under that contract the Cornie Stave Company was to have an advantage out over this logging road. The Edgar Lumber Company declined to give it to them or at least took the position that it did not desire to do it.

Examiner Burchmore: On what ground?

Mr. Gaughan: On the ground that that created a monopoly in favor of the Cornie Stave Company. The Supreme Court however ruled against the Edgar Lumber Company and held that they must carry it out, and of course, that made an apparent discrimination against other stave shippers. The Supreme Court said that that was a private carrier and had the right to charge anyone what it pleased and it could carry for one and for no other, and therefore it

4521 must stand by this contract.

Examiner Burchmore: Did the force of that judgment or decree apply over the El Dorado & Wesson?

Mr. Gaughan: No, it had nothing to do with it.

Mr. Walter: I think it does appear in this case that all shippers

on the El Dorado & Wesson get the benefit of the blanket rate, and so it might follow that all will get it.

Mr. Cowan: I want to ask Mr. Edgar one question.

C. V. EDGAR, was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Cowan: The question was asked awhile ago of the other witness why the Rock Island had not furnished the money to build this railroad considering it seemed to be a very paying piece of property, and I was tempted to ask you the question if the Rock Island were not in the fix that if they loaned you the money and you built the railroad, they make a contract with you for the tonnage, whereas if they built the railroad you would still be open to build one over to the Iron Mountain and take the divisions; was that matter discussed between you and the Rock Island when you made the contract?

4522 to 4525 Mr. Edgar: You understand that originally we had this temporary or insufficient connection at Cornie with the Arkansas Southern which passed to the Rock Island Road. They then built through and connected with the northern end of that at El Dorado, and made it a part of the present Louisiana Division. We started to build to El Dorado, having in mind that we were going to build to the Iron Mountain Road because the service and the railroad facilities and everything down at Cornie or going out to this then small road of the Arkansas Southern were not considered sufficiently advantageous, and it was more advantageous to build to the county seat and have our connection there, in order to get cars and as there were a great many merchandise cars coming in there, and you understand how those things are. And the Rock Island people got wind of that, that we were figuring on building up there and connecting with the Iron Mountain, and they knew what our tonnage had been up there and made some investigation and found it was probably going to be increased, and they came to us and said, "Here, let us make an arrangement with our people up in Chicago to take this matter up with you; we want to retain that tonnage which we have been getting at Cornie." And we went up and had such a conference with them, that the contract was the outcome of it.

4526 Now as to just why they did not adopt the policy of building the tap line themselves I do not know. One Rock Island man who was in the conference said that he was in favor of their building themselves and not allowing us to build, but he was overruled by higher authority and they decided it was best for us to build. Why I do not know, of course.

(Witness excused.)

O. E. HODGE, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: You are President of the North Louisiana & Gulf Railroad Company?

Mr. Hodge: Yes, sir.

Examiner Burchmore: That railroad runs from a connection with the Rock Island System at a point known as Hodge in the State of Louisiana in a westerly and southerly direction to a point known as Shady?

Mr. Hodge: No, sir, it runs to Danville. It did run to Shady, but we got permission from the Commission to change that, and it runs to the western end, which is Danville, and we have a connection with the Louisiana & Northwest at Bienville.

Examiner Burchmore: What is that mileage?

Mr. Hodge: Ten miles from Hodge to Danville.

Examiner Burchmore: That is ten miles?

Mr. Hodge: Ten miles from Hodge to Danville.

Examiner Burchmore: Where is Shady?

Mr. Hodge: Two and a half miles from Danville.

Examiner Burchmore: When did you build from Shady
4528 to Bienville?

Mr. Hodge: It is not built from Shady to Bienville, they are the two termini.

Examiner Burchmore: There are two separate lines of railroad?

Mr. Hodge: Yes.

Examiner Burchmore: One from Hodge to Shady——

Mr. Hodge: From Hodge to Danville, a distance of ten miles.

Mr. Walter: That is beyond Shady.

Mr. Hodge: And the other end is from Bienville east.

Examiner Burchmore: To where?

Mr. Hodge: To Walsh.

Examiner Burchmore: We want to get this straight, so we will not have to ask any more questions. The road connects with the Rock Island at Hodge, and runs in a westerly and southerly direction through a point called Shady, which was formerly the terminus, on to where?

Mr. Walter: The Shady spur has been taken up.

Mr. Hodge: We run south to Danville.

Examiner Burchmore: Where was Shady?

Mr. Hodge: Out on the end of this track (indicating).

Examiner Burchmore: And between Danville and Shady
4529 those tracks have been removed?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Then the other division of your road runs from a connection with the Louisiana & Northwest at Bienville in a generally northerly direction to Walsh?

Mr. Hodge: No, that is westerly.

Examiner Burchmore: And it is projected east to Danville?

Mr. Hodge: Yes, sir, southeast to Danville. It is laid to Liberty Hill. They are laying the track betwen Danville and Walsh.

Examiner Burchmore: I see you have Danville, a station on your present line, and also a place known as Danville on the proposed line which is under construction. Are those two different places?

Mr. Hodge: No, those are the same place.

Examiner Burchmore: Then the two lines will connect?

Mr. Hodge: Yes, sir, they are graded.

Examiner Burchmore: Do you desire to offer this in evidence?

Mr. Walter: Yes.

(The map so offered and identified, was received in evidence and thereupon marked North Louisiana & Gulf Exhibit No. 1, Witness Hodge, received in evidence January 24, 1911, and is attached hereto.

4530 Examiner Burchmore: Who owns this railroad?

Mr. Hodge: The stockholders of the North Louisiana & Gulf.

Examiner Burchmore: Are they officers and stockholders of any other institution?

Mr. Hodge: Yes, sir, in the Huie-Hodge Lumber Company.

Examiner Burchmore: The stockholders of the two companies are identical?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Are the officers the same?

Mr. Hodge: No, sir, they are not.

Examiner Burchmore: The same president?

Mr. Hodge: No, sir, they are not the same.

Examiner Burchmore: The officers are entirely different?

Mr. Hodge: No, not altogether; some are and some are not.

Examiner Burchmore: State what officers are common?

Mr. Hodge: The Secretary is the same in the lumber company as in the railroad company; I think that is all.

Examiner Burchmore: Referring first to the line that connects with the Rock Island at Hodge, where are the saw mills located on that line?

Mr. Hodge: There is one located at Hodge.

Examiner Burchmore: Right at Hodge?

Mr. Hodge: Yes.

4531 Examiner Burchmore: What distance from the Rock Island rails?

Mr. Hodge: Just a very short distance.

Examiner Burchmore: A few hundred feet.

Mr. Hodge: Not more than that.

Examiner Burchmore: Any other saw mill on that line?

Mr. Hodge: There is a saw mill at Danville.

Examiner Burchmore: That is ten miles away?

Mr. Hodge: Yes, sir.

Examiner Burchmore: At the other end of the same line?

Mr. Hodge: Yes, sir.

Examiner Burchmore: When was the line from Hodge to Danville constructed?

Mr. Hodge: I don't know exactly; it was prior to my connection with the company, but I think it was in the years between 1903 and 1906, at the time it was incorporated.

Examiner Burchmore: Had there previously been any mill at Danville?

Mr. Hodge: Before the construction of the road?

Examiner Burchmore: Yes.

Mr. Hodge: No, sir.

Examiner Burchmore: Had there previously been any mill at Hodge?

4532 Mr. Hodge: Yes, sir.

Examiner Burchmore: For what length of time?

Mr. Hodge: The mill was built there in 1900.

Examiner Burchmore: And some railroad was built immediately?

Mr. Hodge: The Arkansas Southern, which is the Rock Island now.

Examiner Burchmore: No, but when the mill was opened up at Hodge, did they not at the same time put in a short logging road of some character?

Mr. Hodge: Yes, sir.

Examiner Burchmore: And that developed into this railroad through successive stages?

Mr. Hodge: Yes, sir.

Examiner Burchmore: When was this railroad incorporated?

Mr. Hodge: In 1906.

Examiner Burchmore: Are you able to give the month?

Mr. Hodge: I can give it right here (referring to annual report). January 22nd, 1906.

Examiner Burchmore: The entire line from Hodge to Danville was then in operation?

Mr. Hodge: Yes.

4533 Examiner Burchmore: Did the line then extend as far as Shady?

Mr. Hodge: It did. Now I say at that time; I do not know whether it did or not; I was not connected with the line.

Examiner Burchmore: But at one time the line from Danville to Shady was operated by this corporation?

Mr. Hodge: Yes, sir.

Examiner Burchmore: When was the line out of Bienville constructed?

Mr. Hodge: I don't know when it was constructed; it was somewhere about 1907, I think, it was bought by the lumber company.

Examiner Burchmore: When was it acquired by this lumber company.

Mr. Hodge: In 1909.

Examiner Burchmore: Then the Huie-Hodge Lumber Company bought this railroad extending eastward from Bienville in 1909?

Mr. Hodge: Yes, sir.

Examiner Burchmore: From whom did they purchase it?

Mr. Hodge: From the D. C. Richardson-Taylor Lumber Company or their receiver.

Examiner Burchmore: Was there then a mill in existence
4534 on that line?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Where?

Mr. Hodge: At Bienville.

Examiner Burchmore: How close to the tracks of the Louisiana & Northwest Railroad?

Mr. Hodge: A short distance, a few hundred feet.

Examiner Burchmore: Any other mill on that line?

Mr. Hodge: You mean on the North Louisiana & Gulf?

Examiner Burchmore: Yes?

Mr. Hodge: No.

Examiner Burchmore: That mill was also owned by the D. C. Richardson-Taylor Company?

Mr. Hodge: Yes, sir.

Examiner Burchmore: That company was in bankruptcy?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What sent them into bankruptcy, do you know?

Mr. Hodge: I do not know.

Examiner Burchmore: Was their railroad incorporated as a common carrier?

Mr. Hodge: No.

Examiner Burchmore: Were they getting any divisions?
4535 Mr. Hodge: I don't know.

Examiner Burchmore: What do you think about it?

Mr. Hodge: All I know is that they had a charter or had commenced to get a charter for the road known as the Bienville & Quitmann, and I do not know whether they ever have got it or not, or got any division or not.

Examiner Burchmore: You do not know what it was that sent them into bankruptcy?

Mr. Hodge: Well, I have heard.

Examiner Burchmore: Tell us what you have heard.

Mr. Hodge: The Richardson-Taylor Lumber Company operated a number of plants and owed a good deal on their property in the fall of 1907, and were not able to meet their obligations when they came due, and a receiver took charge of it.

Examiner Burchmore: Their failure was not due to the fact that they were unable to compete with other lumber companies who were receiving divisions, whereas they were not?

Mr. Hodge: I think not. They had mills in different places over the country, some in Mississippi and some in Louisiana.

Examiner Burchmore: The Huie-Hodge Lumber Company acquired the division of railroad running out of Bienville and the mill at Bienville at the same time and in the same transaction?
4536 Mr. Hodge: Yes, sir.

Examiner Burchmore: And then sold the railroad to the North Louisiana & Gulf.

Mr. Hodge: Yes, sir.

Examiner Burchmore: What was the consideration which passed between the Huie-Hodge Lumber Company and the North Louisiana & Gulf Railroad?

Mr. Hodge: The consideration was an exchange of the track which was built from Danville to Shady for the other track; the lumber company wanted to use that for logging purposes and it was just a matter of exchange; the mileage was about the same, and the railroad company wanted to make the connection from Danville to Walsh.

Examiner Burchmore: The railroad had previously owned the line from Danville to Shady?

Mr. Hodge: Yes, sir.

Examiner Burchmore: And they gave it to the lumber company?

Mr. Hodge: Part of it from Danville to Shady, all the railroad from Danville to Shady.

Examiner Burchmore: And obtained in return this new road?

Mr. Hodge: Yes, sir.

4537 Examiner Burchmore: A very short time after that the line from Danville to Shady was taken up?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What became of it?

Mr. Hodge: I say a short time; it was used a good while for logging purposes by the lumber company and moved to some other place, a logging spur.

Examiner Burchmore: And the track is now somewhere in the woods in the shape of logging track?

Mr. Hodge: I think so, yes, sir.

Examiner Burchmore: What was the purpose of the incorporation of the North Louisiana & Gulf Railroad Company?

Mr. Hodge: Well, we thought—the purpose was to perform the services of a railroad and we thought we had an opportunity to develop it into a paying proposition.

Examiner Burchmore: How many locomotives has the North Louisiana & Gulf?

Mr. Hodge: Five.

Examiner Burchmore: Where are they at work or where are they placed?

Mr. Hodge: One of them is on the Bienville Division and there are four on the Hodge Division. The lumber company uses two of the locomotives.

4538 Examiner Burchmore: What do they pay for those two locomotives?

Mr. Hodge: They pay a rental for the locomotives for a haul of 25 cents a thousand.

Examiner Burchmore: What cars does the North Louisiana & Gulf own?

Mr. Hodge: They own, I think, about 70 logging cars and six box cars, and six or seven flat cars and one combination car.

Examiner Burchmore: Where are those cars running?

Mr. Hodge: They run between Hodge and Danville and between Walsh and Bienville.

Examiner Burchmore: Part of them on one division and part on the other?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What is the capitalization of this railroad?

Mr. Hodge: The authorized capital is one and one-half million dollars.

Examiner Burchmore: What is the outstanding capital?

Mr. Hodge: $200,000.

Examiner Burchmore: Was that issued for cash?

Mr. Hodge: The railroad was built by the lumber com-
4539 pany and was sold to the railroad company for the consideration of $200,000. It was not paid first when the road was organized, but was afterwards paid for in cash.

Examiner Burchmore: You mean cash was actually paid into the treasury of this railroad for its stock?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Or was it a bookkeeping transaction?

Mr. Hodge: It was paid in money.

Examiner Burchmore: And then was it paid out to the lumber company for the railroad?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What was the cost of that railroad, the southern division?

Mr. Hodge: It was sold for $200,000. The actual cost of construction I do not know. It was before I went there and I do not know.

Examiner Burchmore: What was the mileage of that division?

Mr. Hodge: 13 miles; it is ten miles to Danville now.

Examiner Burchmore: It cost them 13 miles, $200,000——

Mr. Hodge: That included equipment too, in the consideration.

Examiner Burchmore: What was the value of the equipment?

Mr. Hodge: I don't know what it was. They just took
4540 the whole thing in one transaction.

Examiner Burchmore: It cost, say, $12,000 a mile.

Mr. Hodge: Something like that.

Examiner Burchmore: Has it ever paid any dividends?

Mr. Hodge: No.

Examiner Burchmore: Any surplus?

Mr. Hodge: Well, it has been about a break; there was a year or two they had a little surplus and then there was a year that was a loss.

Examiner Burchmore: How many train crews have you?

Mr. Hodge: We have one regular crew.

Examiner Burchmore: And the lumber company has two?

Mr. Hodge: Yes, sir—I don't know how many the lumber company have; you mean to operate the train—Yes, they have two on each division.

Examiner Burchmore: You cannot run one locomotive with two

crews, and yet I understood you to say you had one locomotive on each division for train service.

Mr. Hodge: The lumber company operates that locomotive on the Bienville Division; that is temporary, however, on account of the connection we are putting in there.

Examiner Burchmore: How many track crews have you, section gangs?

4541 Mr. Hodge: Two or three.

Examiner Burchmore: And a large number of employés engaged in construction?

Mr. Hodge: Yes.

Examiner Burchmore: Any general office employés?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Who are they?

Mr. Hodge: Well, there is a president and superintendent and an auditor.

Examiner Burchmore: And do they also work for the lumber company ?

Mr. Hodge: Part of them do; the auditor does not; all do but the auditor.

Examiner Burchmore: Do you run any passenger or mixed trains?

Mr. Hodge: One mixed train.

Examiner Burchmore: One mixed train on the southern division?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Have you a time table?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Published time card?

4542 Mr. Hodge: Yes, sir. We did have one. I haven't one with me.

Examiner Burchmore: Do you meet the Rock Island trains?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Carry passengers?

Mr. Hodge: Yes, sir.

Examiner Burchmore: How many passengers, and what is the extent of your passenger traffic?

Mr. Hodge: Last year, that is by the last annual report, we carried 3200 passengers, and the revenue was about $800.

Examiner Burchmore: Do you carry the mail?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Any express matter?

Mr. Hodge: No express.

Examiner Burchmore: You have joint through rates with the Rock Island on lumber?

Mr. Hodge: Yes, sir, on lumber.

Examiner Burchmore: And on any class rates?

Mr. Hodge: No, sir.

Examiner Burchmore: Do you have any joint through rates with the Louisiana & Northwest?

Mr. Hodge: On lumber.

Examiner Burchmore: Do you publish any local rates or fares, and file them with the Interstate Commerce Commission?

4543 Mr. Hodge: Yes, sir.

Examiner Burchmore: You are also a party to tariffs published by other railroads?

Mr. Hodge: Yes, sir, on lumber rates.

Examiner Burchmore: When did the Rock Island first join in joint rates with your company?

Mr. Hodge: I think in 1906.

Examiner Burchmore: When did the Louisiana & Northwest establish joint rates with your company?

Mr. Hodge: I think in 1909. I think it was about the time we bought the property or close to that time.

Examiner Burchmore: Can you inform us with respect to the extent and nature of your freight traffic for the past fiscal year?

Mr. Hodge: Yes, sir, I think I can. The revenue from freight was $33,433.90 and passengers $790.45 and other transportation revenue $399.91.

Examiner Burchmore: What does that last item cover?

Mr. Hodge: Other transportation revenue.

Examiner Burchmore: Is that for hauling logs?

Mr. Hodge: No, sir, that is for mail. I am giving this as it is given to the Commission in the monthly reports.

Examiner Burchmore: But you received $399.00 from the

4544 United States for handling the mail?

Mr. Hodge: I think that item is all covered by the mail. I am not sure about it, but I think it is mostly, if not all.

Examiner Burchmore: What was your total operating revenue for that year?

Mr. Hodge: $34,604.45.

Examiner Burchmore: Is that a great increase over the previous year?

Mr. Hodge: Yes, sir. From July, 1908, to June, 1909, the revenue was $17,698.21.

Examiner Burchmore: What were your operating expenses for the period last referred to?

Mr. Hodge: $23,926.20.

Examiner Burchmore: Then you had a deficit for that period?

Mr. Hodge: Yes, sir.

Examiner Burchmore: How about the present year or last year?

Mr. Hodge: We had a gain last year of $5,099.57.

Examiner Burchmore: Your operating expenses were how much?

Mr. Hodge: $29,504.94.

Examiner Burchmore: And the present year promises to be equally profitable?

Mr. Hodge: I think so.

4545 Examiner Burchmore: Do you sell any tickets to your passengers?

Mr. Hodge: Well, we collect the fare.

Examiner Burchmore: You collect it on the train?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Have you any agents that could sell tickets?

Mr. Hodge: Yes, sir, we have sold tickets at times; I do not think we are selling them now.

Examiner Burchmore: Where are your agents?

Mr. Hodge: We have a joint agent at Hodge and also at Bienville.

Examiner Burchmore: Those are joint agents, you mean, with the other railroad?

Mr. Hodge: Yes, sir.

Examiner Burchmore: You pay half their expenses?

Mr. Hodge: We pay half their expenses and the Rock Island pays half.

Examiner Burchmore: Have you any contract with the Rock Island Railroad with regard to that joint station at Hodge?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Are you familiar with the terms of that contract?

4546 Mr. Hodge: Well, I think I am fairly familiar.

Examiner Burchmore: Do you recognize the following clause as being in that contract: "It is to the advantage and interest of both parties hereto, meaning the Rock Island Railroad and the North Louisiana & Gulf, that a depot and station be opened at said Village of Hodge, to be maintained so long as the operation of the saw mill plant of the said Hodge Lumber Company shall continue?"

Mr. Hodge: I think that is in the contract.

Examiner Burchmore: Does that evidence any intention to move the depot when the saw mill ceases to operate?

Mr. Dodge: I don't know; I think that was more to protect the Rock Island Company than with the intention of moving the depot. The North Louisiana & Gulf Railroad Company paid for the construction of the depot.

Mr. Walter: Is that between the two railroads, or between the lumber company and the railroad?

Mr. Hodge: Between the two railroads.

Examiner Burchmore: Will you file a copy of that contract? We have not a copy of it.

Mr. Hodge: I thought we had filed that with you. We can do it.

4547 Mr. Walter: Yes, we will file a copy. I was asking for information.

Examiner Burchmore: I have a memorandum which indicates it was between the two railroads.

Mr. Hodge: It is between the two railroads.

Mr. Walter: We will file it.

Examiner Burchmore: Another provision of this contract is noted on this memorandum as follows, and I ask you if you recognize it: "Upon written request of the North Louisiana Company, the Rock Island Company will transfer any of the joint employees at said station who are unsatisfactory to the North Louisiana Company." Do you recall that provision in the contract?

Mr. Hodge: I think it is in it.

Examiner Burchmore: Then the Rock Island Railroad, as a matter of fact, hires the agent there, and you participate in his salary?

Mr. Hodge: Yes, sir; that is, they reserve that right in the contract. However, we have about as much to do with hiring him as the Rock Island, and there has been no friction with them on that account.

Examiner Burchmore: Do you have any other contract with the Rock Island?

4548 Mr. Hodge: Yes, sir, we have a steel contract, for leasing of steel rails.

Examiner Burchmore: Is that contract filed with the Commission?

Mr. Hodge: I do not know whether it is or not.

Examiner Burchmore: I will request that a copy be filed in connection with this case, unless you find you have already filed one with the Commission, in which event you can call attention to your previous letter submitting it.

Mr. Hodge: Yes.

Examiner Burchmore: Are you conversant with the terms of that contract?

Mr. Hodge: Yes, sir, fairly so.

Examiner Burchmore: Describe it in a general way.

Mr. Hodge: It is simply a contract leasing to us about 12½ miles of steel rails for a term of ten years, with the valuation in the contract, I forget what the steel is valued at; and it is to pay five per cent interest on the total amount.

Examiner Burchmore: Was that new steel?

Mr. Hodge: No.

Examiner Burchmore: Re-laying rail.

Mr. Hodge: Yes, sir.

4549 Examiner Burchmore: And is there any privilege by which you can turn back the rail at any time?

Mr. Hodge: Yes, sir, we can either buy it or turn it back.

Examiner Burchmore: Then I presume you would not sustain a great loss if you took up the railroad and abandoned operations?

Mr. Hodge: Not that particular part of it, but that is only a part of the rail.

Examiner Burchmore: Do you own the right of way on which you built?

Mr. Hodge: Yes, sir.

Examiner Burchmore: In fee simple?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Did you acquire any of it by condemnation?

Mr. Hodge: Yes, sir.

Examiner Burchmore: I am referring now to the Southern Division.

Mr. Hodge: No, I do not know about the Southern Division. This connection between Hodge and Walsh, we had expropriation suits for the right of way to secure some of it that way.

Examiner Burchmore: But the other questions I asked you had in mind the Hodge Division?

4550 Mr. Hodge: Yes, sir.

Examiner Burchmore: As to the re-laying rail.

Mr. Hodge: No, it is not on the Hodge Division, it is on the Bienville Division, this Rock Island rail.

Examiner Burchmore: Then you have just recently gotten that rail?

Mr. Hodge: From the Rock Island?

Examiner Burchmore: Yes.

Mr. Hodge: It was rail that the Rock Island had turned over to the Bienville & Quitman or the D. C. Richardson-Taylor people, and when we bought that property the rail was there.

Examiner Burchmore: And this is rail which you inherited?

Mr. Hodge: Well, we made another contract with them after the purchase.

Examiner Burchmore: Did the D. C. Richardson-Taylor Lumber Company propose to build across there from their mill to a connection with the Rock Island?

Mr. Hodge: I think so.

Examiner Burchmore: And their intention was not to connect with your road?

Mr. Hodge: No, sir.

Examiner Burchmore: And your company, I mean your lumber company, when it acquired the property up there, changed

4551 the course of that extension so as to connect with your own former line?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Do you know what the purpose of that extension from the mill on the Louisiana & Northwest across to the Rock Island was?

Mr. Hodge: I don't understand.

Engineer Burchmore: What was the purpose to be effected by that extension?

Mr. Hodge: There were several purposes. We thought to have a connection with more than one road would be to our advantage, and we went through a country that was pretty good farming country and it gave us several advantages.

Examiner Burchmore: In what ways would that double connection be to your advantage?

Mr. Hodge: Well, it gives us an opportunity to handle our outbound freight and inbound freight to better advantage.

Examiner Burchmore: Does it give you any better basis of divisions?

Mr. Hodge: We hope it will; I do not know that it will.

Examiner Burchmore: Is there any negotiation now under way between your company and the Rock Island looking to the execution of a contract or agreement of any kind?

4552 Mr. Hodge: No, sir.

Examiner Burchmore: I will ask you with respect to the

joint rates on lumber over your line in connection with the Rock Island. Are those rates on a milling in transit basis?

Mr. Hodge: They are.

Examiner Burchmore: And apply from Danville to interstate destinations?

Mr. Hodge: Yes, sir; that is on the Danville Division.

Examiner Burchmore: I am asking with respect to that division. Then the lumber that you turn over to the Rock Island is billed as having originated at Danville and not at Hodge?

Mr. Hodge: Yes.

Examiner Burchmore: Yet your mill is at Hodge.

Mr. Hodge: Yes.

Examiner Burchmore: Is there any billing covering the inbound movement of logs to the mill?

Mr. Hodge: No.

Examiner Burchmore: Who handles those logs to the mill, describe the course through which they pass.

Mr. Hodge: They are delivered to the railroad company at Danville, and they haul them to Hodge, and they are milled in transit there and the lumber is loaded and re-shipped.

4553 Examiner Burchmore: The Huie-Hodge Lumber Company has some private tram road up in the woods connecting with that division?

Mr. Hodge: Yes, sir.

Examiner Burchmore: They load the logs on cars belonging to the railroad company?

Mr. Hodge: Yes, sir.

Examiner Burchmore: And with the engines which they lease from the railroad company, they haul those logs to Danville?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What engine hauls them from Danville down to Hodge?

Mr. Hodge: The North Louisiana & Gulf engine hauls them from there, with the North Louisiana & Gulf crew.

Examiner Burchmore: Not the same engines which brought the logs from the woods?

Mr. Hodge: No, sir.

Examiner Burchmore: Is there any billing covering that movement into the mill?

Mr. Hodge: Of the logs?

Examiner Burchmore: Yes.

Mr. Hodge: No.

Examiner Burchmore: Does the conductor make any re
4554 port to the mill?

Mr. Hodge: Yes, sir, he makes a daily report of the number of cars.

Examiner Burchmore: Any station at Danville?

Mr. Hodge: Yes, sir; you mean a depot?

Examiner Burchmore: Anything there except a spot?

Mr. Hodge: There is a saw mill there.

Examiner Burchmore: You have two saw mills?

Mr. Hodge: We have three, one at Hodge, one at Danville and one at Bienville, that is, the lumber company has.

Examiner Burchmore: Is the lumber which is sawed at Danville planed at Hodge?

Mr. Hodge: Yes, sir.

Examiner Burchmore: No planer at Danville?

Mr. Hodge: No, sir.

Examiner Burchmore: Then as a matter of fact all your timber does stop and go through some process at Hodge?

Mr. Hodge: Not all of it. Some of it is shipped rough and is not dressed. This applies especially to hardwood.

Examiner Burchmore: Now take a carload of logs which has moved from the woods in the manner you have described and is there cut up into rough lumber and dressed or not dressed, as the case may be, what compensation does this railroad receive
4555 for the haul to the mill at Hodge?

Mr. Hodge: They receive a part of the through rate on the milling in transit rate.

Examiner Burchmore: And nothing additional?

Mr. Hodge: And nothing additional.

Examiner Burchmore: What service do they perform in connection with the outbound movement of lumber from that mill?

Mr. Hodge: Some of it they switch on the track around to the connecting track of the Rock Island and some of it they haul from the Danville mill.

Examiner Burchmore: I am speaking now of the Hodge mill. Does the Rock Island ever pick up the cars of the Hodge mill itself.

Mr. Hodge: Yes.

Examiner Burchmore: Does it usually do that?

Mr. Hodge: Well, part of the time, I guess about half.

Examiner Burchmore: Then sometimes the Rock Island Railroad places the empty car at the mill and sometimes takes away the loaded car?

Mr. Hodge: Yes.

Examiner Burchmore: And sometimes, about as often as not, it is the North Louisiana & Gulf Railroad which places such
4556 empty cars and takes away the loaded cars?

Mr. Hodge: Yes, sir.

Examiner Burchmore: In the case however of the Danville mill, all the empty cars are hauled to the mill by the North Louisiana & Gulf, and all the loaded cars are loaded from the mill at Danville and turned over to the Rock Island at Hodge?

Mr. Hodge: Yes, sir.

Examiner Burchmore: What is the division accorded by the Rock Island to this road?

Mr. Hodge: It ranges from one and one-half cents to four cents.

Examiner Burchmore: What is your prevailing division

Mr Hodge: I do not know, I guess it would average about three cents.

Examiner Burchmore: Do you think that is an adequate division?

Mr. Hodge: Well, I don't know, it does not show very well for

year before last, but then we were at considerable expense; I think it is only reasonable.

Examiner Burchmore: Are you satisfied with that division?

Mr. Hodge: No, sir.

Examiner Burchmore: What makes you dissatisfied with it?

Mr. Hodge: Well, I think if we can get other improve-
4557 ments on our road—this service performed by our road is enough, I think, to demand a little more than that rate.

Examiner Burchmore: You would be satisfied with that division, would you not, if no one else got any more, that is to say, does not your dissatisfaction arise out of the fact that you have knowledge of other short line railroads similarly situated or which you think are similarly situated, which get four or five cents where you get three?

Mr. Hodge: We try to get all we can.

Examiner Burchmore: You heard the testimony in this last case that we took, the El Dorado & Wesson?

Mr. Hodge: I heard part of it.

Examiner Burchmore: You heard they got four and five cents?

Mr. Hodge: No, I did not hear that. I was not in there all the time.

Examiner Burchmore: Do you think it is fair for the Rock Island to pay them four or five cents and only three or four cents to you?

Mr. Hodge: That depends on circumstances, upon the cost of construction of the road and the service performed in different ways, I think.

Examiner Burchmore: Does not the Edgar Lumber Com-
4558 pany, which receives a division of five cents, have quite a substantial advantage over the Huie-Hodge Lumber Company, receiving three or four cents when it comes to selling lumber in a very close market.

Mr. Hodge: I don't consider that has anything to do with it. The Edgar Lumber Company is running a mill, and the El Dorado & Wesson is a railroad, and they perform a certain service and they have money invested in a railroad, I suppose, with the understanding, or at least an attempt to make a reasonable rate on the investment, and it depends altogether on the investment from a railroad standpoint.

Examiner Burchmore: Your capitalization is a good deal greater than the El Dorado & Wesson's capitalization?

Mr. Hodge: Do you mean the paid in capital or the authorized capital?

Examiner Burchmore: The authorized certainly is, and I thought the paid in was about the same.

Mr. Hodge: I don't know what the paid in was.

Examiner Burchmore: Well, this railroad and lumber company are Siamese twins like the corporations we heard of this morning?

Mr. Hodge: They are very closely connected.

Examiner Burchmore: You suggest that the amount of the
4559 investment might justify a difference in the amount of the divisions, as I understood your answer.

Mr. Hodge: Partly so, and the service too, which you have to render.

Examiner Burchmore: Suppose we assume that the El Dorado & Wesson pays a dividend of seven per cent, earns seven per cent on its investment, and gets a division of five cents and it is owned in a substantial sense by the Edgar Lumber Company; now, suppose your company, which controls the North Louisiana & Gulf only receives a dividend of say four or three per cent——

Mr. Hodge: Do you mean a division or a dividend?

Examiner Burchmore: A dividend on its stock in the North Louisiana & Gulf, or suppose, as seems to be the fact, that the North Louisiana & Gulf with its division of only three cents, is not able to pay any dividend at all; would not your lumber company be at a substantial disadvantage in the market in the sale of lumber?

Mr. Hodge: The lumber company?

Examiner Burchmore: Yes.

Mr. Hodge: No, I do not see how they could be; I do not see how they could be at all. The railroad company would be
4560 at a disadvantage from an operating standpoint if some other railroad—that is, they could not make the showing on the investment. Mr. Edgar might manage his road in a way to make more, and from the cost of operation, than we do or something of that kind.

Examiner Burchmore: That suggests this sort of a question. Suppose the North Louisiana & Gulf Railroad, which is substantially controlled by the Huie-Hodge Lumber Company, was receiving an extremely liberal division of nine or ten cents or a very large amount so it was making a great deal of money on its investment; and suppose the Huie-Hodge Lumber Company had an opportunity to sell a very large volume of lumber at a price which would enable it just to break even on the cost of cutting and the value of the log, and the Huie-Hodge Lumber Company could well afford to sell that lumber at an even break without any profit and look to the earnings from its stock in the railroad to make the transaction profitable to it, could it not?

Mr. Hodge: Well, I think the rate could be made high enough to appear as a rebate. On the other hand it is every man's right to make the best investment he can, and since the two companies are separate in their incorporated capacity I cannot see from an
4561 incorporated standpoint, how the relation could exist in any other way.

Examiner Burchmore: Perhaps I have allowed the question to drift into the line of argument rather than confining it to questions of fact. We have not asked about the North line, the Bienville Division. What allowances does the Louisiana & Northwest Railroad make to you on lumber?

Mr. Hodge: Two cents.

Examiner Burchmore: A straight two cents?

Mr. Hodge: Yes, sir.

Examiner Burchmore: To practically all points?

Mr. Hodge: Yes, sir.

Examiner Burchmore: Is there a full line of rates in over that division?

Mr. Hodge: You mean on lumber?

Examiner Burchmore: Yes.

Mr. Hodge: You mean can we reach all territory?

Examiner Burchmore: Yes.

Mr. Hodge: Well, no. We can reach most, but not all.

Examiner Burchmore: And what is the manner of conducting transportation on that division, similar to the Southern Division?

Mr. Hodge: Yes, sir.

4562 Examiner Burchmore: In other words, the railroad company hauls the logs to the mill?

Mr. Hodge: Yes, sir, and the lumber is billed from Walsh, the point of origin of the logs, and milled in transit.

Examiner Burchmore: Who handles the loaded lumber from the mill to the Louisiana & Northwest?

Mr. Hodge: It is about the same as the other; it is handled by the North Louisiana & Gulf to the switch track and there is switched around.

Examiner Burchmore: What is the usual length of haul of the logs up there?

Mr. Hodge: It is about four miles

Mr. Walter: You say you are connecting up the two divisions?

Mr. Hodge: Yes, sir.

Mr. Walter: When will the steel be laid and in condition for operation through from Bienville to Hodge?

Mr. Hodge: In about 60 to 90 days.

Mr. Walter: Along the line of railroad between Bienville and Hodge, do you have other shippers than those connected with or identical with the Huie-Hodge Lumber Company?

Mr. Hodge: Yes, sir, we have other shippers.

4563 Mr. Walter: Just name those shippers and state what they ship and approximately the amounts?

Mr. Hodge: In building our connection between Walsh and Danville we pass through a town called Liberty Hill. There are several stores there. Our steel is laid there now, and there will be shipments of cotton and merchandise from there.

Mr. Walter: Any agricultural or producing region around Liberty Hill?

Mr. Hodge: Yes, sir it is a good farm country and a fair average for the state

Mr. Walter: Do you have any other shippers of forest products along your line other than the Huie-Hodge Lumber Company?

Mr. Hodge: Yes, sir, there are a number of other shippers who have been shipping over our road.

Mr. Walter: What do they ship?

Mr. Hodge: Staves, stave bolts and ties.

Mr. Walter: Is there a salt mill or mine along your line?

Mr. Hodge: Yes, sir, there is a company putting in a salt factory.

Mr. Walter: What is the name of that concern?

Mr Hodge: The Central Salt & Mining Company, I believe is the name of it.

4564 Mr. Walter: About what output do they have or will they have when they got into operation?

Mr. Hodge: About three cars a day.

Mr. Walter: Are they now operating?

Mr. Hodge: No, sir.

Mr. Walter: I believe the proprietor of that concern testified at the New Orleans hearing, did he not?

Mr. Hodge: Yes, sir.

Mr. Walter: He explained the track and arrangement he had with the railroad?

Mr. Hodge: Yes, sir.

Mr. Walter: Is there a cotton gin at Liberty Hill?

Mr. Hodge: Yes, sir.

Mr. Walter: How many people would you say, speaking approximately, live between Hodge and Bienville that could or would be served by your line of road?

Mr. Hodge: I would have to guess at that.

Mr. Walter: Well, just an approximate rough guess.

Mr. Hodge: I would say from 2,000 to 6,000 or 5,000, something like that.

Mr. Walter: Have you ever exercised the right of eminent domain?

Mr. Hodge: Yes, sir.

4565 Mr. Walter: Was there any litigation in the court?

Mr. Hodge: Yes, sir.

Mr. Walter: Was that carried to the Appellate Court?

Mr. Hodge: It was.

Mr. Walter: Did that involve your existence as a common carrier?

Mr. Hodge: It did.

Mr. Walter: Was there an opinion handed down by the Appellate Court?

Mr. Hodge: Yes, sir.

Mr. Walter: We offer that opinion as an exhibit in this case, in that it was held by the Appellate Court, the Court of last resort for that case, that the North Louisiana & Gulf was a common carrier, and as such entitled to condemn property for its use.

Examiner Burchmore: A common carrier under what law?

Mr. Walter: Under the laws of the State of Louisiana, the only law applicable to that case.

(The paper so offered and identified, was received in evidence and thereupon marked North Louisiana & Gulf Exhibit No. 2, Witness Hodge, received in evidence January 24, 1911, and is attached hereto.)

4566 Mr. Walter: In that contract with the Rock Island for the rental of the steel rails, can you state whether or not there was a tying up of the tonnage of the North Louisiana & Gulf to the Rock Island?

Mr. Hodge: There was not.

Mr. Walter: There was a straight out and out rental of rails for a money consideration?

Mr. Hodge: Yes, sir.

Mr. Walter: And no other consideration?

Mr Hodge: No, sir

Mr. Walter: Do you carry for any and all that offer?

Mr. Hodge: Yes, we do.

Mr. Walter: You charge the published tariff rates whether state or interstate?

Mr. Hodge: Yes, sir.

Mr. Walter: Has the State Railroad Commission of Louisiana exercised jurisdiction over your line as a common carrier?

Mr. Hodge: They have.

Mr. Walter: Prescribing rates?

Mr. Hodge: They have.

Examiner Burchmore: Has the Interstate Commerce Commission ever entered any order against your company?

Mr. Hodge: None that I know of.

4567 Mr. Walter: And you hope it won't.

Mr. Hodge: Yes.

Examiner Burchmore: I meant in the exercise of its jurisdiction over the reasonableness of rates.

Mr. Walter: Has there ever been any complaint before the Interstate Commerce Commission that your rates were unreasonable as applied to interstate transportation?

Mr. Hodge: None that I know of.

Mr. Walter: Can you state whether or not your property as railroad property is exempt from taxation and is so recognized by the State Board of Appraisers of the State of Louisiana?

Mr. Hodge: It is.

Examiner Burchmore: Your railroad gets a division out of joint rates with the Rock Island which, we might say, averages three or four cents?

Mr. Hodge: Yes, sir.

Examiner Burchmore: It comes out about even in its operations with that source of income?

Mr. Hodge: It has in the past; we think with the new connections and with the new territory which we are going to serve we will be able to make a little money.

4568 Examiner Burchmore: You are an officer of the lumber company?

Mr. Hodge: I am.

Examiner Burchmore: Now I ask you as an official of the lumber company and wholly disregarding your relation to the railroad, suppose the Rock Island Railroad should cut down the division that it accords to the North Louisiana & Gulf to two cents, and instead of paying three or four cents would refuse to pay more than two cents, would you as a lumber enmployee or officer feel that your interests were in any way injured?

Mr. Hodge: I think not, no, sir.

Examiner Burchmore: What would be the result of that reduction of divisions?

Mr. Hodge: It would simply decrease the revenue of the railroad.

Examiner Burchmore: It would decrease the revenue of the railroad, and I presume as the railroad has been breaking even, it would mean that the railroad would accumulate a deficit every year?

Mr. Hodge: Well, that would be true as it has been operated the last three or four years.

Examiner Burchmore: You mean without any increase of
4569 tonnage?

Mr. Hodge: Yes, sir.

Examiner Burchmore: We will assume it keeps right on in the same way without any increase in tonnage and its division is so decreased by the Rock Island from four cents to two cents, and it earns only half as much on the lumber that it interchanges with the Rock Island. Now the result will be that instead of a small profit each year or breaking even, there will be a deficit and the operating expenses will exceed the operating income, or at least we should assume that that would happen. Where would this railroad get the money to meet its indebtedness?

Mr. Hodge: It would have to do the same as any other, I suppose. If the concern has not got money enough to pay its outstanding obligations it will have to make some other arrangements or secure the money in some other way.

Examiner Burchmore: In what other way could they secure this money?

Mr. Hodge: They might be able to extend the road farther and increase their revenue.

Examiner Burchmore: They might raise some other rates, that is what the trunk lines do.

Mr. Hodge: They might do that.

4570 Examiner Burchmore: They might make a charge for hauling the logs into the mill?

Mr. Hodge: Yes, they might do that.

Examiner Burchmore: Well, what else could they do?

Mr. Hodge: I don't know what else they could do.

Examiner Burchmore: They might charge the deficit against the stockholders in some way.

(No reply.)

Mr. Walter: What is the answer to that?

(Question read.)

Mr. Hodge: I don't know just how they would handle that.

Examiner Burchmore: Does this railroad charge anything for the logs hauled?

Mr. Hodge: No, sir.

Examiner Burchmore: Well, they could charge something, could they not?

Mr. Hodge: Sure.

Examiner Burchmore: And as business men they would charge something, if they had to, in order to make a living?

Mr. Hodge: If they had to, they would.

Examiner Burchmore: Then if they did make a charge for the log haul, of course it would hit the lumber company directly, would it not?

4571 Mr. Hodge: It would cost the lumber company more.

Examiner Burchmore: It would increase the cost of the lumbering operations if that thing were done?

Mr. Hodge: Yes, sir.

Examiner Burchmore: We have several ifs in that.

Mr. Hodge: I understand.

Mr. Walter: Wherever there is a shipper of lumber on the line of one of these short roads similarly situated as your own line of railroad, those shippers are given the same rate to markets of destination, are they not?

Mr. Hodge: Yes, sir.

Mr. Walter: It extends the blanket rate?

Mr. Hodge: Yes, sir.

Mr. Walter: There are a number of argumentative questions which we might ask, but we will let those go. Do you want to state anything further?

Mr. Hodge: Not that I know of.

Mr. Cowan: Do you haul logs to the saw mill for nothing?

Mr. Hodge: No, sir. We handle the logs on a milling in transit rate. The railroad company hauls the logs from points of origin along its line to the mill to be manufactured or milled in transit, and they get part of the through rate for the service they do.

4572 Mr. Cowan: Then the pay for hauling the logs down to the saw mill at Hodge is paid in precisely the same way you get for hauling the lumber that is sawed at Danville out to Hodge?

Mr. Hodge: There is no charge made or billing made for the logs from the points of origin to the mill; just a milling in transit.

Mr. Cowan: But you get pay in each case, in the one case by hauling the lumber down to Hodge from their mill, and in the other for hauling the logs down to Hodge, out of the division which is given you by the Rock Island when the lumber goes out?

Mr. Hodge: Yes, sir.

Mr. Cowan: And that is the only pay you get for your services in each case?

Mr. Hodge: Yes, sir.

Mr. Cowan: Suppose they did not pay you any division at all, you would have to charge for hauling the logs?

Mr. Hodge: Yes, sir, and for the lumber too.

Mr. Cowan: Suppose they paid you a division on the lumber at Danville, if you had no saw mill at Hodge, would it be more profitable to haul the lumber product from the log down to Hodge from Danville on the four cent division, than it would be to haul
4573 the logs down there and receive the four cent division on the lumber when shipped out of Hodge.

Mr. Hodge: Well, I don't know. I do not think there would be a great deal of difference.

Mr. Cowan: Have you had any meetings of this railroad company, have you ever attended a meeting at which officers were elected?
Mr. Hodge: Yes, sir.
Mr. Cowan: Where and when was that held?
Mr. Hodge: At Hodge, and the meetings are held annually.
Mr. Cowan: At Hodge?
Mr. Hodge: Yes, sir.
Mr. Cowan: In what office?
Mr. Hodge: In the office of the railroad company.
Mr. Cowan: And is that in the building occupied by the lumber company?
Mr. Hodge: Yes, sir, the railroad company occupies the upstairs of the building and the lumber company is downstairs.
Mr. Cowan: At this meeting was anybody there interested in the lumber company?
Mr. Hodge: The stockholders, yes, sir; the stockholders of the railroad company and lumber company are practically the same.
4574 Mr. Cowan: Did they elect officers?
Mr. Hodge: Yes, sir.
Mr. Cowan: Were the parties present induced to elect the particular officers because of their interest in the lumber company or in the railroad company?
Mr. Hodge: In the railroad.
Mr. Cowan: Was any other business transacted?
Mr. Hodge: Well, whatever business was necessary to come before the meeting was transacted.
Mr. Cowan: Did you have anything to do with this extension or further construction which you have been examined about?
Mr. Hodge: There is nothing that I remember about definitely.
Mr. Cowan: You elected directors also at that time?
Mr. Hodge: Yes, sir.
Mr. Cowan: Have you had any meeting of the directors?
Mr. Hodge: Yes, sir.
Mr. Cowan: And were they the same as represented the lumber company?
Mr. Hodge: The directors were all present, and they are interested in the railroad company and lumber company alike.
Mr. Cowan: Going back to the investment in the property
4575 when this saw mill business was established there, they built a railroad for the purpose of serving the saw mill?
Mr. Hodge: Yes, sir.
Mr. Cowan: And that was all one investment?
Mr. Hodge: I think it was. I was not there.
Mr. Cowan: And that was put in by individuals, of course.
Mr. Hodge: You mean the stockholders?
Mr. Cowan: The capital was supplied by individuals?
Mr. Hodge: Yes, sir.
Mr. Cowan: Who became stockholders in the lumber company when organized?
Mr. Hodge: That is right.

Mr. Cowan: And they continued in that attitude, in owning and operating a railroad down to 1906, I believe you stated.

Mr. Hodge: Yes, sir.

Mr. Cowan: How long had the Rock Island railroad been built when you incorporated this lumber company's road as a railroad?

Mr. Hodge: Well, sir, I could not tell you.

Mr. Cowan: Have you any approximate idea how long the Rock Island had been built?

Mr. Hodge: Do you mean the track? The railroad that was acquired by the Rock Island? The Arkansas Southern Rail-
4576 road Company built the track in through that country in 1900, about six years before this time; but afterwards the Rock Island acquired it, and I don't remember what time it was.

Mr. Cowan: Well, you had your saw mill at Hodge before the Rock Island acquired the road?

Mr. Hodge: Yes.

Mr. Cowan: And you had your railroad running from Danville before the Rock Island acquired that road. Now——

Mr. Hodge: I don't know whether it was or not.

Mr. Cowan: Well, it runs from somewhere down there?

Mr. Hodge: Yes.

Mr. Cowan: Did you have your sawmill at Danville before the Rock Island acquired the road?

Mr. Hodge: I could not say; it was before I went there.

Mr. Cowan: Is that pine or hardwood at Danville?

Mr. Hodge: It was pine at one time, but it is hardwood now.

Mr. Cowan: And the one at Hodge is pine?

Mr. Hodge: Yes, sir.

Mr. Cowan: Do you know whether any sum of money was paid out of the rates to the lumber company or to this railroad previous to the acquisition of that railroad by the Rock Island?

4577 Mr. Hodge: What was the question?

(Question read.)

Mr. Cowan: Had the railroad company or the lumber company either, that is what I mean, obtained any division of the rate or other payment out of the through rates previous to the time the Rock Island came through?

Mr. Hodge: I think not, they had never received any part of the through rate before they were incorporated, the railroad company or lumber company never did.

Mr. Cowan: They had hauled logs into the mill at Hodge on their railroad just as they did thereafter?

Mr. Hodge: Yes, sir, I presume they did.

Mr. Cowan: The change then was in the incorporation of the railroad by the parties who owned it and the saw mill?

Mr. Hodge: Well, it partly was.

Mr. Cowan: Upon making that change, a contract was made with the Rock Island for a division of the rate?

Mr. Hodge: After it was incorporated they made their contract on the division of the rate.

Mr. Cowan: How long have you been engaged in the lumber business and acquainted with shipping?

Mr. Hodge: I judge ten or twelve years.

4578 Mr. Cowan: Do you know anything about the payment of rebates to lumber shippers previous to the Hepburn Law?

Mr. Walter: Judge, I do not know what the witness' answer is going to be, but if you are going into this question it opens up a wide field, and I do not know what it has to do with the issues here.

Mr. Cowan: I will ask it in a little different form and it will not open it so wide.

Mr. Walter: Show what it has to do with this case and we may have no objection.

Mr. Cowan: Is it not a fact that after the passage of the Hepburn Law and the enforcement of the law against rebates, that the division of the rates practically took the place of rebates that were paid theretofore?

Mr. Garwood: That is purely an opinion, and we must object to a question of that sort. It involves a statement by counsel that a division has taken the place of a rebate and that it is a rebate. That is a question of law to be determined by the courts, and I think the question is improper from several different points of view, that ought to suggest themselves to counsel without our making any exception to it, and I think on reconsideration he will withdraw it.

Mr. Cowan: Well, I will withdraw it. Do you know how

4579 the money was furnished to build this railroad?

Mr. Hodge: No, sir.

Examiner Burchmore: He said it was built by the lumber company and turned over to the railroad company.

Mr. Cowan: I thought there was some additional line. Do you know who determined the price that the railroad company would pay for the railroad?

Mr. Hodge: I do not. That was made before I was connected with either the lumber company or the railroad company.

Mr. Cowan: If you build your connection which you are now building, and the Rock Island pays you four cents and the other road, I think it is the Louisiana & Northwest or some such name, but whatever it is, pays you only two cents, the Rock Island would not need any contract to get your tonnage, would they, in consideration of leasing you the rails? You would send it over there anyhow?

Mr. Hodge: I do not think that has very much to do with it. There would be considerably more service performed in taking it across there, and it would be much more than an even break, the additional cost to do it.

Mr Cowan: Does this projected line go through timber belonging to the lumber company?

Mr. Hodge: Some, yes, sir.

4580 Mr. Cowan: To what extent?

Mr. Hodge: You mean in acres or thousand feet or percentage?

Mr. Cowan: Any way you want to tell it.

Mr. Hodge: I guess the lumber company owns half of the timber.
Mr. Gowan: Between Danville and——
Mr. Hodge: And Bienville.
Mr. Cowan: And is it scattered all through between Danville and Bienville?
Mr. Hodge: Yes, there is some along in different places.
Mr. Cowan: So if you ever log that section of the country you will have to have a railroad in there anyhow?
Mr. Hodge: Yes, sir, but not one as we are building it; we could put in logging spurs.
Mr. Cowan: In some directions extending from Danville you have some lumber spurs extending in that direction?
Mr. Hodge: Yes, sir.
Mr. Garwood: Is the mill at Danville a hardwood mill?
Mr. Hodge: Yes, sir.
Mr. Garwood: And the mill at Hodge is a pine mill?
Mr. Hodge: A pine mill.
Mr. Garwood: Have you a mill at Bienville?
Mr. Hodge: Yes, sir.
4581 Mr. Garwood: That is a pine mill, is it?
Mr. Hodge: Yes.
Mr. Garwood: How far is Hodge Junction from Jonesboro, the connection of the Tremont & Gulf with the Rock Island?
Mr. Hodge: From Hodge to Jonesboro is about two miles. We have a survey from Hodge to Jonesboro to that connection.
Mr. Garwood: You have a survey from Hodge also to connect with the Tremont & Gulf at Jonesboro?
Mr. Hodge: Yes, sir.
Mr. Garwood: Is that in immediate prospect of completion?
Mr. Hodge: We have had grade stakes and everything placed on that survey.
Mr. Garwood: Do you know what, if any, lumber interests constructed the Arkansas & Southern which is now a part of the Rock Island System?
Mr. Hodge: Yes, sir.
Mr. Garwood: What?
Mr. Hodge: Mr. Huie, who is connected with our lumber company, was at one time auditor, and one of the principal stockholders in the Arkansas Southern Railroad Company, during the time of its construction.
Mr. Garwood: What lumber interests, who were the other
4582 people that built the Arkansas Southern?
Mr. Hodge: There was Mr. Henderson and Mr. Cargyl. They at that time owned a sawmill in Arkansas, and the road was built a little at a time, and in about the same way we are building ours.
Mr. Garwood: It was started at El Dorado?
Mr. Hodge: Yes, sir.
Mr. Garwood: And built southward about 17 miles?
Mr. Hodge: Yes, sir.
Mr. Garwood: And it stopped there quite awhile before it went on.

Mr. Hodge: Two or three years.

Mr. Garwood: And then gradually extended——

Mr. Hodge: Built to Ruston, and there they rested awhile, and built to Winnfield.

Mr. Garwood: Is that the southern terminus?

Mr. Hodge: That is the southern terminus of that road at that time, that is when they sold to the Rock Island.

Mr. Garwood: That constitutes now the Rock Island line in Louisiana?

Mr. Hodge: Yes, sir—no, they built from Eunice to Alexandria.

4583 Mr. Garwood: That is subsequent construction?

Mr. Hodge: Yes, sir.

Mr. Garwood: All of that is now part of the Rock Island?

Mr. Hodge: Yes, sir.

Mr. Garwood: Is it not a fact that the same people that built the Arkansas Southern are now constructing the Memphis, Dallas & Gulf?

Mr. Hodge: Yes, sir, they are practically the same.

Mr. Garwood: What length is that road——

Examiner Burchmore: We will go into that road tomorrow.

Mr. Hodge: I do not know, anyway.

Mr. Garwood: This Louisiana & Northwest Road, about what length of line is that?

Mr. Hodge: I think about 120 miles.

Mr. Garwood: Is that an independent railway organization or has it any connection with any of the other systems? I am asking purely for information, I do not know.

Mr. Hodge: Well, I do not know either, but I think it is separate; it has no connection with any other trunk line.

Mr. Coleman: About this condemnation suit, were you a witness in that, or do you know anything about it?

Mr. Hodge: I do not think I was a witness in that; I know something about it, however.

4584 Mr. Coleman: Where was that land located that you wished to condemn?

Mr. Hodge: It was on the line between Danville and Walsh, the new line that we are now building.

Mr. Coleman: That is the line that you contracted the rail for, as I understand?

Mr. Hodge: Partly so.

Mr. Coleman: Was that a logging road at the time?

Mr. Hodge: At the time we bought it?

Mr. Coleman: Yes.

Mr. Hodge: Well, as I stated, I think they had made application for a charter.

Mr. Coleman: The point I want is, was that a logging road at the time the condemnation proceedings were instituted?

Mr. Hodge: Oh, no; that was not a logging road; it was the North Louisiana & Gulf. It was last year.

Mr. Coleman: I noticed the court said in its opinion: "The next

point urged is in reference to the line of railway stated in the charter not being in a course that would take in and cover the property of the defendant over which the right of way is demanded in this suit." In other words, there was a variation from the railroad as laid out. Did that cover a logging spur?

4585 Mr. Hodge: No, sir, it covered a branch line going to Shreveport, and that is this line, and that was the point that was discussed there.

Mr. Coleman: You testified about the railroad not paying any taxes. Do you know if the lumber company pays any taxes on the logging roads?

Mr. Hodge: The spurs in the woods?

Mr. Coleman: Yes.

Mr. Hodge: Yes, they do.

Mr. Coleman: It does?

Mr. Hodge: Yes, sir.

Mr. Coleman: That is all.

(Witness excused.)

4586 *The Bierne & Clear Lake Railroad.*

J. G. GREENE was called as a witness, and having been duly sworn testified as follows:

Examiner Gutheim: What is your full name?

Mr. Greene: J. G. Greene.

Examiner Gutheim: Where do you live?

Mr. Greene: Beirne, Arkansas.

Examiner Gutheim: Your official connection with the Beirne & Clear Lake Railroad is what?

Mr. Greene: Secretary and Treasurer.

Examiner Gutheim: Will you describe the general location of the railroad, the Beirne & Clear Lake?

Mr. Greene: It starts at Beirne, Arkansas, and runs in a southeasterly direction.

Examiner Gutheim: To what point?

Mr. Greene: To the Little Missouri River.

Mr. Garwood: Could you ask him to locate that by the state and county?

Mr. McRae: State what county?

Mr. Greene: It is in Clark County, and runs to Nevada County.

4587 Examiner Gutheim: You have a connection with the Iron Mountain at Beirne?

Mr. Greene: Yes, sir.

Examiner Gutheim: About what is the mileage of your road?

Mr. Greene: Four and a half miles, incorporated.

Examiner Gutheim: And how much do you operate unincorporated?

Mr. Greene: Four and a half miles.

Examiner Gutheim: Who owns that?

Mr. Greene: The Penn Lumber Company.
Examiner Gutheim: Is this a standard or narrow gauge road?
Mr. Greene: Narrow gauge.
Examiner Gutheim: How much equipment do you have?
Mr. Greene: Two locomotives and twelve cars.
Examiner Gutheim: Are those all logging cars?
Mr. Greene: Yes, sir.
Examiner Gutheim: Do you pay the Penn Lumber Company any consideration for the privilege of operating over their tracks?
Mr. Greene: Yes, sir.
Examiner Gutheim: How much?
Mr. Greene: $25.00 a month.

Examiner Gutheim: Where is the mill of the Penn Lum-
4588 ber Company located?

Mr. Greene: About half a mile from the junction point of the Iron Mountain at Beirne.
Examiner Gutheim: And is the product of the mill delivered to the Iron Mountain with the power of the Beirne & Clear Lake Railroad, or does the Iron Mountain take it out with its own power?
Mr. Greene: The Beirne & Clear Lake takes it all out.
Examiner Gutheim: That is, you have a third rail operation there?
Mr. Greene: Yes, sir.
Examiner Gutheim: Is there any traffic producing operation along the line of the Beirne & Clear Lake with the exception of the operation of the Penn Lumber Company?
Mr. Greene: There is now, but they are just starting.
Examiner Gutheim: What is it?
Mr. Greene: A hickory pole and shaft mill and a small stave mill.
Examiner Gutheim: They are located where?
Mr. Greene: At or near Hartley.
Examiner Gutheim: That is a point about four and a half miles out?

Mr. Greene: Yes, sir.

Examiner Gutheim: What is the relation between the Penn
4589 Lumber Company and the railroad company?

Mr. Greene: None, except the officers are the same, practically.
Examiner Gutheim: Well, is there any community of interest in the stock ownership of the two corporations?
Mr. Greene: They are two separate corporations but several of the stockholders are the same and several are not.
Examiner Gutheim: To what extent are they the same? Do the same individuals control the policies of both companies through stock ownership?
Mr. Greene: Yes, sir.
Examiner Gutheim: And as a matter of fact what proportion of the stock of the railroad company is held by individuals who have no stock interest in the lumber company?
Mr. Greene: A little over two-thirds.
Examiner Gutheim: A little over two-thirds——
Mr. Greene: Are owned by the same stockholders.

Examiner Gutheim: So that one-third is entirely outside?
Mr. Greene: Well, less than one-third.
Examiner Gutheim: When was this road incorporated?
Mr. Greene: March 10th, 1909.
4590 Examiner Gutheim: Prior to that time was it operated as a logging tram by the Penn Lumber Company?
Mr. Greene: Prior to what?
Examiner Gutheim: Prior to the date of the incorporation?
Mr. Greene: Just a little.
Examiner Gutheim: It was built by the Penn Lumber Company?
Mr. Greene: No, sir.
Examiner Gutheim: Built by somebody and paid by them?
Mr. Greene: Yes, sir.
Examiner Gutheim: And when transferred to the incorporated railroad company what did the Penn Lumber Company receive in return?
Mr. Greene: $8,000.
Examiner Gutheim: In stock?
Mr. Greene: No, sir, in cash; $6,600 of it was cash, and the balance was services.
Examiner Gutheim: About how much of your traffic at the present time is produced by the Penn Lumber Company? Can you give us a statement showing the actual figures, tonnage and revenue, divided between the business of the Penn Lumber Company and the business of any other individuals?
Mr. Greene: Up to this time it has been practically all the Penn Lumber Company's product.
4591 Examiner Gutheim: About how much tonnage is there that has been produced in the last fiscal year?
Mr. Greene: I just have up to June; it was very small. I just have up to June 30th, 6,215 tons. That is just for ten months ending June 30th.
Examiner Gutheim: Does that include logs and lumber or timber only?
Mr. Greene: Logs and lumber.
Examiner Gutheim: In what proportion are the two?
Mr. Greene: The lumber is 1,225 tons and logs 4,990 tons.
Examiner Gutheim: What division, if any, do you receive from the Iron Mountain?
Mr. Greene: Two cents.
Examiner Gutheim: Two cents to all points?
Mr. Greene: Yes, sir, one and two cents; I think it is all two cents now.
Examiner Gutheim: And are those divisions on the milling in transit basis?
Mr. Greene: Yes, sir.
Examiner Gutheim: When were they made effective?
Mr. Greene: Soon after the date of our charter, about 30 days after, March 15th.
Examiner Gutheim: How long prior to the time divisions
4592 were received had the road been in operation?
Mr. Greene: It had been laying practically idle for quite a while.

Examiner Gutheim: Had it been operated prior to the time of its laying idle?

Mr. Greene: Yes, sir.

Examiner Gutheim: By the same people, the Penn Lumber Company?

Mr. Greene: No, by another concern.

Examiner Gutheim: Do you know whether the other concern ever received any divisions?

Mr. Greene: I understand that they did for awhile, and then they were cancelled on account of not being incorporated.

Examiner Gutheim: So when the Penn Lumber Company began operating the mill it was understood that in order to receive divisions you had to have your road incorporated?

Mr. Greene: Yes, sir.

Examiner Gutheim: Does the railroad receive any revenue in addition to the divisions that are paid to it by the Iron Mountain?

Mr. Greene: For the services it does beyond the incorporated part of the railroad, it does.

Examiner Gutheim: And that is collected from the Penn
4593 Lumber Company?

Mr. Greene: Yes, sir.

Examiner Gutheim: For the log haul?

Mr. Greene: Yes, sir.

Examiner Gutheim: At what rate?

Mr. Greene: $3.00 a thousand.

Examiner Gutheim: Do you publish any local tariffs?

Mr. Greene: Yes, sir.

Examiner Gutheim: And are they on file with the Interstate Commerce Commission?

Mr. Greene: Yes, sir.

Examiner Gutheim: Are you now keeping separate accounts for the railroad operation?

Mr. Greene: Yes, sir.

Examiner Gutheim: Do you make monthly and annual reports to the Interstate Commerce Commission?

Mr. Greene: We are now, yes, sir.

Examiner Gutheim: Is the operation as now conducted a profitable one?

Mr. Greene: It is about breaking even now.

Examiner Gutheim: So that if your divisions from the Iron Mountain were withdrawn you would be operating at a deficit?

Mr. Greene: Yes, sir.

4594 Examiner Gutheim: In that case you would be compelled to increase the rate charged to the Penn Lumber Company for logs in order to break even, would you not?

Mr. Greene: I do not know as I understand your question.

Examiner Gutheim: In the event that the Iron Mountain withdrew the division of two cents per 100 pounds, in order to break even in the railroad operation, you would be compelled to charge the Penn Lumber Company a rate greater than the $3.00 now being charged for the log haul?

Mr. Greene: Yes, sir.

Examiner Gutheim: Speaking as a lumber man for a minute, would not that increase in rate on the logs be reflected in the increased cost of the logs when they got to the mill?

Mr. Greene: Yes, sir.

Examiner Gutheim: And that being the case would not the lumber cost you more when it was finally shipped?

Mr. Greene: Yes, sir.

Examiner Gutheim: So if you had no division your lumber would cost you more, and your margin of profit would be less at the same price?

Mr. Greene: Yes, sir.

Examiner Gutheim: About how much of a road crew do
4595 you have?

Mr. Greene: Section crew, do you mean?

Examiner Gutheim: Yes.

Mr. Greene: One.

Examiner Gutheim: What train service do you operate?

Mr. Greene: One train and one switch engine crew.

Examiner Gutheim: Do you have any passenger service?

Mr. Greene: No.

Examiner Gutheim: Is the train operated on schedule?

Mr. Green: Yes, sir.

Examiner Gutheim: Are there any bridges or sharp curves or steep grades on the line?

Mr. Greene: There is one bridge.

Examiner Gutheim: Are there any buildings to speak of, owned by the railroad company?

Mr. Greene: Well, there is one station.

Examiner Gutheim: About what is the cost of road written up at the present time on the books?

Mr. Greene: $8,000.

Examiner Gutheim: That is all.

Examiner Burchmore: Suppose that as the result of this proceeding, the Beirne & Clear Lake Railroad should be deprived of any divisions out of joint rates on lumber; suppose that should happen; what would become of the railroad in your opinion?

4596 Mr. Greene: Well, I doubt if we could operate it.

Examiner Burchmore: Would you just simply take off your train and let it lie there, or take up the road, or what would happen?

Mr. Greene: That would have to remain to be seen; I could not predict that.

Examiner Burchmore: What would the lumber company do if that should happen?

Mr. Greene: They would have to make some other arrangements.

Examiner Burchmore: Move their mill, do you mean?

(No reply.)

Examiner Burchmore: You simply cannot prophecy what would happen?

Mr. Greene: No, sir.

Mr. McRae: Don't you know you would have to quit business?
Mr. Greene: Well, we could not make any money.
Examiner Burchmore: Does this stave manufacturer get his stave bolts off the lands of your company?
Mr. Greene: No, sir.
Examiner Burchmore: He does not buy stave timber from your lumber company?
Mr. Greene: No, sir.
4597 Examiner Burchmore: Does he have to pay a local rate in addition to the junction point rate, or does he get a through rate on his staves?
Mr. Greene: He gets a through rate if he ships them.
Mr. McRae: What were the receipts of your road last year if you remember it. If you haven't it, we will not take much time to get it.
Mr. Greene: $4,438.55.
Mr. McRae: What were the expenses?
Mr. Greene: The total expenses were just a little over that amount.
Mr. McRae: Have you ever paid any divisions on the road?
Mr. Greene: No.
Mr. McRae: You are assessed as a railroad under the laws of the State of Arkansas?
Mr. Greene: Yes, sir.
Mr. McRae: You report to the Arkansas Commission?
Mr. Greene: Yes, sir.
Mr. McRae: Do you concur in the tariffs of the Iron Mountain and the other roads over which you ship?
Mr. Greene: Yes, sir.
Mr. McRae: What timber holdings has the Penn Lumber Company along in the country through which this road of yours
4598 is built?
Mr. Greene: We own about one-third of the timber.
Mr. McRae: How is the other timber land held?
Mr. Greene: By several individuals.
Mr. McRae: In no way connected with the Penn Lumber Company?
Mr. Greene: No.
Mr. McRae: Or with the Beirne & Clear Lake Railroad?
Mr. Greene: No, sir.
Mr. McRae: Describe this country through which the railroad is built, and state if there is any way to get the products from across the river in Nevada County to Beirne, timber or other products to the Iron Mountain from that direction, except by rail?
Mr. Greene: It would be impossible to get them out without rail.
Mr. McRae: Why?
Mr. Greene: It is a swampy low country across the Little Missouri River.
Mr. McRae: Practically it is a little costly to build the road, but there is no other way to get the product across the river?
4599 Mr. Greene: That is true.
Mr. McRae: Have you had any solicitation from anyone

beyond there in the country where the mill company owns the road, to extend this road?

Mr. Greene: Yes, sir.

Mr. McRae: What is the character of the country on that side of the river?

Mr. Greene: Good farming country out there.

Mr. McRae: On the other side of the river?

Mr. Greene: Yes, sir.

Mr. McRae: That part of the road has not been acquired by the Beirne & Clear Lake?

Mr. Greene: Except by a lease.

Mr. McRae: But it is not owned by it?

Mr. Greene: No.

Mr. McRae: Before you bought these timber holdings and the tram road, I believe you bought from Yaeger Brothers?

Mr. Greene: Yes, sir.

Mr. McRae: Before you made that purchase, did you consult with the Iron Mountain as to divisions?

Mr. Greene: I did, yes, sir.

Mr. McRae: What did they tell you?

Mr. Greene: They told us we could depend on the divisions
4600 if we would incorporate our road.

Examiner Burchmore: Who told you that?

Mr. Greene: Mr. J. C. Lincoln of the Iron Mountain.

Examiner Burchmore: When was that?

Mr. Greene: In 1906.

Examiner Burchmore: But you did not incorporate until 1909?

Mr. Greene: No, sir.

Mr. McRae: As a matter of fact, is it not impossible to transact your mill business or your railroad business if you would get no divisions?

Mr. Greene: I would consider it so, yes, sir.

Mr. McRae: You would not have made this purchase but with the understanding that you would have these divisions?

Mr. Greene: No, sir. We found that out before we would invest or could invest.

Examiner Burchmore: Well, why could you not? What is the reason you could not?

Mr. Greene: That amount of profit would be taken from it.

Mr. McRae: Is it not true it is too far to haul it by wagon, and there is no other way to transport it except by rail?

Mr. Greene: Yes, sir, that is true.

4601 Mr. McRae: Some questions have been asked here of the relation of the small operator without a railroad to the operator with a railroad. Now will you state, if you know, what relative position the larger mill owner who has a railroad, we will say owned in common with the other, and who receives a division, bears to the owner of a small mill who has no railroad?

Mr. Greene: I do not consider that he has any advantage.

Mr. McRae: Well, is it not true that the small owner who hauls his logs to the mill with the wagon performs the same service as the

large mill owner with a railroad, when the latter has hauled his logs to the railroad?

Mr. Greene: I consider it is the same; it is practically the same work.

Mr. McRae: You have had practical experience, you have operated both ways?

Mr. Greene: Yes, sir.

Examiner Burchmore: Then if you are paid for hauling your logs by the railroad, should not he be paid for hauling his logs by mule?

Mr. Greene: He does not have to maintain a railroad when he hauls by mule.

4602 Examiner Burchmore: I do not say as much, but should he not be paid the cost of feeding the mule.

Mr. Greene: If he carries them——

Mr. McRae: But does not the fellow who hauls to the railroad have to have mules to haul it to the railroad?

Mr. Greene: Certainly. It costs just as much to get the logs to the railroad as the small man has to pay to get his logs to the mill.

Mr. McRae: Is it not true they are not in the same position for the reason that the small owner has his logs at the mill ready to cut while the larger owner with the railroad still has the additional service and expense of transporting his logs to the mill from the delivery point by team, and in addition to that the railroad has to be financed?

Mr. Greene: Yes.

Mr. McRae: Is it not true that the divisions cannot amount to a rebate as against the small mill owner until the amount received is enough to cover the cost of the operation and the cost of maintenance and the interest on the investment and a sinking fund sufficient to wipe out the investment by the end of the life of the mill company operating it?

Mr. Greene: I would not consider it a rebate until that time.

4603 Examiner Burchmore: Suppose it does equal all that, and more too, would it be a rebate?

Mr. Greene: I should not think so. I should think they were entitled to a reasonable profit.

Examiner Burchmore: Suppose it was an unreasonable profit, and a very gross profit.

Mr. Greene: I would not consider it a rebate.

Examiner Burchmore: Then as a matter of fact all the conditions Judge McRae lays down you regard as immaterial, it would not be a rebate anyway.

Mr. Greene: I would not consider it a rebate, no, sir.

Mr. McRae: It would not be a rebate as he states, until these expenses have been met and provided for.

Mr. Greene: No.

Mr. McRae: And after that it might be. Do you know of any cases in your experience where the divisions have amounted to enough to cover those items I have mentioned?

Mr. Greene: It has not with us; I do not know of any.

Mr. McRae: Is it not true that when this has been done that the large owner has made no advance, but he has simply got back what he put in.

Mr. Greene: Yes, sir.

4604 Mr. McRae: And has he not had the burden of financing and carrying on this investment, and has been subjected to the risk and hazard of losing his investment, a burden which the small owner does not assume and which he does not take.

Mr. Greene: Yes, sir.

Mr. Armistead: You were asked by Mr. Burchmore, the Examiner, if in case your tap line gets a division there should not also be a division accorded the mill owner who hauls his logs to a mill with a team of mules. Is it not a fact that the difference is this, that the railroad property is dedicated to public use, and subjected to all the laws of Congress and the state in regulating that property, and that it must be so devoted for all future time, and the mule is private property and may be disposed and handled of as the mule owner sees fit, is not that the distinction?

Mr. Greene: I consider it so.

Mr. Coleman: The mule is generally the subject of governmental control too. Does this incorporated part go down to the Little Missouri?

Mr. Greene: Yes, and across it.

Mr. Coleman: And then beyond that is the tram?

Mr. Greene: Yes.

4605 Mr. Coleman: These timber owners, are they on the incorporated part of the tram line?

Mr. Greene: Right near the junction.

Mr. Coleman: But on the tram really, is it not?

Mr. Greene: No—well, it is just as near one as the other; they are down the river.

Mr. Coleman: Why didn't you incorporate into the timber, all the way?

Mr. Greene: At the time we bought the property we intended to take that end up across the river.

Mr. Coleman: But that is the only reason?

Mr. Greene: Yes.

Mr. Coleman: Do you get a lower tax on railroad property in that state than on other pooperty?

Mr. Greene: I think it is higher.

Mr. Coleman: You said you bought the property in 1906.

Mr. Greene: Yes.

Mr. Coleman: And you were then told by the Iron Mountain that you could not have any allowance until you incorporated?

Mr. Greene: Yes.

Mr. Coleman: Did they stick to that statement?

Mr. Greene: Yes, sir.

4606 Mr. Coleman And you did not incorporate until 1909?

Mr. Greene: No.

Mr. Coleman: What did you do for your division between 1906 and 1909?

Mr. Greene: We were in litigation down there, and not operating to any extent.

Examiner Burchmore: What was the character of that litigation?

Mr. Greene: It was about land titles.

Examiner Burchmore: But before you were incorporated you received no divisions?

Mr. Greene: No.

Mr. McRae: You do not mean you were in litigation with the Iron Mountain?

Mr. Greene: No.

Mr. McRae: But with the people you bought from?

Mr. Greene: Yes, sir.

Examiner Burchmore: After you did incorporate you did receive allowances?

Mr. Greene: Yes, sir.

Examiner Burchmore What difference was there in the service you rendered, or the obligations you actually bore
4607 before and after your incorporation?

Mr. McRae: They did not operate before they incorporated.

Examiner Burchmore: Yes, he did, pardon me.

Mr. Greene: As a railroad company we did not.

Examiner Burchmore: You ran your trains over your tracks just the same?

Mr. Greene: To a small extent; they had a few little bills they cut.

Examiner Burchmore: But it was done in the same manner that you now run your trains?

Mr. Greene: Practically, yes, sir.

Examiner Burchmore: The only difference being that you are incorporated and hold yourselves out to the public as a common carrier?

Mr. Greene: As a common carrier, and accept anything that is offered us to carry.

Examiner Burchmore: Before you were incorporated you would have taken anything that anybody offered you to carry, would you not, for a reasonable sum of money ?

Mr. Greene: If we were paid for it, yes, sir.

Mr. Garwood: Does that road connect with any other road besides the Iron Mountain?

4608 Mr. Greene: No, not any.

Mr. Coleman: If you build in the same direction that you are now headed from Beirne into this farming country, do you then approach another railroad?

Mr. Greene: Not anywheres near, no. There is a little town over there they want us to come to, and we have practically decided to go to it.

Mr. McRae: But you go into a country that has no railroad and that needs one?

Mr. Greene: Yes, sir.

Examiner Burchmore: Is your engine equipped with an automatic coupler?

Mr. Greene: No, sir.

Examiner Burchmore: Do not the Safety Appliance Acts apply to your railroad?

Mr. Greene: I do not know that they do.

Examiner Burchmore: Have you ever sought the advice of counsel on that question?

Mr. Greene: Yes, sir

Examiner Burchmore: What does he think about it?

Mr. Greene: He said they did not, only on stuff that moved out of the state.

4609 Examiner Burchmore: You are claiming to be within the jurisdiction of the Interstate Commerce Commission on the rate question under the Act to Regulate Commerce. I might express the opinion that you are surely subject to the same extent as to the other law.

Mr. Greene: We aim to comply, if it is required.

Mr. McRae: The road is subject to that requirement. I never asked him if he had complied with it.

Examiner Burchmore: Is it practical to put a safety coupler on?

Mr. Greene: We will put it on if required.

Examiner Burchmore: You have a third rail connection with the Iron Mountain?

Mr. Greene: Yes, sir.

Examiner Burchmore: Can you use automatic couplers on a locomotive that operates over a three track line?

Mr. Greene: We would have to put on four for the yard; we can do it.

Examiner Burchmore: You would have to have some special form of coupler?

Mr. Greene: No, we would have to arrange the track so it would be in the centre, that is all.

4610 Mr. Coleman: You have not taken any steps toward locating this line beyond the tap line?

Mr. Greene: No.

Mr. Coleman: Your only through rate is on lumber?

Mr. Greene: Yes.

Mr. Coleman: Not on staves or merchandise?

Mr. Greene: Yes, it is.

Examiner Burchmore: Can you furnish us a map of your line?

Mr. Greene: Yes, sir.

(Witness excused.)

4611 *Deering Southwestern Railroad.*

S. P. REYNOLDS, was called as a witness, and having been duly sworn, testified as follows:

Mr. Bancroft: Where do you live?

Mr. Reynolds: Caruthersville, Mo.

Mr. Bancroft: How long have you lived there?

Mr. Reynolds: 17 years.

Mr. Bancroft: What business have you been engaged in during that time?

Mr. Reynolds: I am a civil engineer by profession, engaged in developing southeast Missouri so far as I was able.

Mr. Bancroft: What interests have you in southeast Missouri, particularly in Pemiscot and Dunklin Counties?

Mr. Reynolds: I own quite a bit of land in Pemiscot County.

Mr. Bancroft: What particular development have you been engaged in?

Mr. Reynolds: I have been engineer of the lower St. Francis levee district in Missouri, which is to protect that district from the overflow of the Mississippi River; and also have been organizing drainage districts to reclaim this land after it was levied.

4612 Mr. Bancroft: What is the character of the land?

Mr. Reynolds: Sedimentary deposit, Mississippi bottom land, very fertile in nature.

Mr. Bancroft: What crops are raised in Pemiscot and Dunklin Counties? If you know where the Deering Southwestern is located.

Mr. Reynolds: I do. Corn, cotton, alfalfa, all kinds of vegetables.

Mr. Bancroft: How much of the land is cleared from the line of the Deering Southwestern, between Deering and Caruthersville, how much is in cultivation generally.

Mr. Reynolds: About 65 to 70 per cent.

Mr. Bancroft: Are you familiar with the railroad facilities of that portion of the state?

Mr. Reynolds: Yes, sir, I am.

Mr. Bancroft: And have been for how many years?

Mr. Reynolds: Ever since I have been in the county.

Mr. Bancroft: What public purposes does this railroad serve within your knowledge?

Mr. Reynolds: It will help to move the crops grown on these lands and will give us a connection with territory that it is difficult now to reach; for instance, the southern end of Dunklin County, we can reach it by railroad in round-about ways. We hope to get

4613 through this road a direct connection with that territory.

Mr. Bancroft: In a general way what extent of population is served by this road between Caruthersville and Hornersville?

Mr. Reynolds: I suppose 8,000 to 10,000 peaple.

Mr. Bancroft: Caruthersville, how many are there in that community?

Mr. Reynolds: Something like 4,000 in the town of Caruthersville.

Mr. Bancroft: What business besides lumber business does and will this road have, in your judgment, when completed through to Hornersville?

Mr. Reynolds: There are a number of factories in the town of Caruthersville that are dependent on timber coming from along the lines of railroads and the river. The building of this road will make accessible to the town of Caruthersville other bodies of timber and——

Mr. Bancroft: What inducements, if any, have the people of Caruthersville and that vicinage offered for the completion of this line?

Mr. Reynolds: They have purchased the right of way and
4614 terminal ground to the extent of $12,000 to $15,000.

Mr. Bancroft: Have you any interest in the railroad or any allied interests of the railroad?

Mr. Reynolds: None at all.

Mr. Bancroft: Your interests are entirely with Caruthersville as your property in that neighborhood?

Mr. Reynolds: Yes, sir, that is true.

Mr. Bancroft: What has been the growth of Caruthersville in the last few years, if any?

Mr. Reynolds: In 1895 the population was about 500; in 1900 something like 2,000, and about 4,000 at the present time.

Mr. Bancroft: What new industries, to your knowledge, will be started and carried on upon the line of this railroad and as the result of its completion?

Mr. Reynolds: Two or more cotton gins, and——

Mr. Bancroft: Where?

Mr. Reynolds: One at Braggadocio and one at Blazer.

Mr. Bancroft: Where is Blazer?

Mr. Reynolds: At the junction of this road with the Frisco.

Mr. Bancroft: And any other?

Mr. Reynolds: And perhaps an elevator in the next year at Blazer.

4615 Mr. Bancroft: As the timber is cut off from this land in this neighborhood, what use is made of it?

Mr. Reynolds: Of the land?

Mr. Bancroft: Yes.

Mr. Reynolds: It is at once converted into farms.

Mr. Bancroft: What is the relative value of the land as timber and as farm land?

Mr. Reynolds: A piece of virgin timber in that territory perhaps would be worth $50.00 to $60.00 an acre today for timber purposes; that is a fertile soil, and the timber is very large and fine. And when the timber has been removed the land is worth $20.00 to $40.00 per acre in the cut-over state. When improved for farming it becomes worth $50.00 to $100.00 an acre unless you go adjacent to the town of Caruthersville, and then of course, the prices are very much higher on account of the advantages there.

Mr. Bancroft: What public need was there for the construction of this line?

Mr. Reynolds: Being very fertile land and a heavy rainfall in that district makes the roads very bad, so the transportation of the crops and of the timber grown there is very difficult unless we have railroads. The railroads will also bring in material for building the public roads and thus improve the country.

4616 Mr. Bancroft: Caruthersville is the county seat of Pemiscot County?

Mr. Reynolds: It is.

Mr. Bancroft: What means of communication were there between it and Hornersville and the country around to the west and southwest before this line was built?

Mr. Reynolds: Across the country for nine months of the year it was impassible but by travelling over two or three lines of railroad we could reach Hornersville.

Mr. Bancroft: How large a place is it?

Mr. Reynolds: I am not able to say the population of Hornersville, but when I speak of Hornersville I speak of the district or territory.

Mr. Bancroft: How is the country between those two points settled, especially I will call your attention particularly to the point between Deering and Caruthersville.

Mr. Reynolds: Is what?

Mr. Bancroft: How thickly settled?

Mr. Reynolds: I suppose the population between Caruthersville and Deering would number something like 4,000 people.

Mr. Bancroft: Outside the town of Caruthersville?

Mr. Reynolds: Yes.

4617 Mr. Bancroft: What is there in the town of Braggadocio, which I see is one of the towns on this plat?

Mr. Reynolds: It is a small village that has remained constant in population for a great many years, which has begun to grow since they began to build the railroad from Deering to Caruthersville.

Mr. Bancroft: Are there any stores there?

Mr. Reynolds: More stores are being established, and a bank, and people are beginning to build houses there, and the place is starting to grow.

Mr. Bancroft: Is there a village or town named Game?

Mr. Reynolds: Yes, sir.

Mr. Bancroft: Where is it?

Mr. Reynolds: About one half a mile south of the station of Game on this road, and something like three or four miles southwest of Caruthersville.

Mr. Bancroft: How large a settlement is there?

Mr. Reynolds: The country is well developed now.

Mr. Bancroft: The country is well settled now?

Mr. Reynolds: Yes, sir.

Examiner Burchmore: What is the name of that settlement?

Mr. Reynolds: They call it Game. The United States post office was at that place until the rural route was established.

4618 Examiner Burchmore: Is there any considerable amount of people who desire to travel between Caruthersville and Hornersville?

Mr. Reynolds: Yes, sir, it gives us an outlet to the southwest which we have not had heretofore, because we can there reach a railroad that goes on into the Paragould and the Cotton Belt, southwest.

Examiner Burchmore: I am not speaking now of freight, but of passengers.

Mr. Reynolds: Yes, I meant to indicate that that gives us an outlet to the southwest.

Examiner Burchmore: There would not be any great number of

passengers desiring to travel between Caruthersville and Hornersville?

Mr. Reynolds: Well, frequently we do go in the roundabout way that we have. I cannot say what number of passengers would make that trip.

Examiner Burchmore: Braggadocio was formerly a logging town or mill town?

Mr. Reynolds: No, it is an old settled district.

Examiner Burchmore: How much time will be saved in
4619 going from Caruthersville to the southwest by using this new railroad over to Hornersville?

Mr. Reynolds: We ought to make the round trip in half a day if the schedule is as I understand it, and at present it takes from something like half past five in the morning to something like 9:30 at night.

Examiner Burchmore: I thought that you said that the building of this railroad from Caruthersville to Hornersville would enable the citizens of the former place to get into Texas and down there some place?

Mr. Reynolds: I don't know that I said Texas. I said it gave us a southwest outlet.

Examiner Burchmore: I thought you said southwest, and that you meant Texas.

Mr. Reynolds: Well, suppose we want to go down the Paragould or any of those lines——

Examiner Burchmore: It is simply an outlet for travel which might be called more or less local.

Mr. Reynolds: Well, yes.

Examiner Burchmore: Not long distance travel.

Mr. Reynolds: We are in a peculiar position. People along the Illinois Central in Tennessee, if they want to come over from
4620 Dyersburg, 18 miles across, have to go to Memphis or Cairo at present to get across, or if someone between those points wants to go to Paragould, they can cross the river at our place and have this railroad to take them to the southwest.

Examiner Burchmore: How can they go now, with the new railroad?

Mr. Reynolds: I say they can cross the river to our place and then go on.

Examiner Burchmore: As to freight, leaving aside the question of convenience to passengers, take the line running west from Caruthersville and up to the point of intersection of the Frisco between Caruthersville and the junction with the Frisco, the line of the Deering Southwestern apparently runs very close, that is within a couple of miles not only to the Frisco on the north and——

Mr. Reynolds: And the Frisco on the south.

Examiner Burchmore: Yes.

Mr. Reynolds: That is a detour line.

Examiner Burchmore: The farmers along there cannot complain that their territory is inadequately served, can they?

Mr. Reynolds: I have land close to what is called Canedy
4621 Switch. If I want a car I must go to Caruthersville, 7 miles, or to Hayti, 5 miles, over a difficult road in order to see the agent and get a car sent out, and it may be four or five days before I get it.

Examiner Burchmore: No doubt it would be very much more convenient.

Mr. Reynolds: I am looking after the development of the country.

Examiner Burchmore: And west from the junction point with the Frisco to the town of Deering, the distance from the Deering Southwestern right of way to other railroads is very much greater, comparatively.

Mr. Reynolds: Yes, sir.

Examiner Burchmore: You are acquainted with the town of Deering?

Mr. Reynolds: I have been there a time or two.

Examiner Burchmore: What sort of a town is it?

Mr. Reynolds: It is quite a little place; it is a manufacturing town.

Examiner Burchmore: A company town, is it not?

Mr. Reynolds: Largely so, yes, sir.

Examiner Burchmore: Is not the whole town owned by the Wisconsin Lumber Company?

4622 Mr. Reynolds: I don't know, I suppose so.

Examiner Burchmore: This map seems to indicate that.

Mr. Snow: We will show all that by Mr. Montgomery.

Mr. Coleman: Is Caruthersville the county seat?

Mr. Reynolds: Yes, sir.

Mr. Coleman: How long has it been?

Mr. Reynolds: Since 1898, I think. Formerly it was Gayoso, and it moved into the river, and they moved it back two or three times, and finally they made Caruthersville the county seat.

Mr. Bancroft: Did you have anything to do with building this Frisco detour line to Caruthersville?

Mr. Reynolds: Yes, sir.

Mr. Bancroft: When was that built?

Mr. Reynolds: In July, 1897, I made the survey from Caruthersville to Blythesville, Arkansas, 28 miles. The road was built in the year 1899 and 1900.

Mr. Bancroft: How did it happen to be built in this line shown on the map?

Mr. Reynolds: The timber adjacent to the river was giving away and we built the road originally to get the timber.

Mr. Bancroft: It was a logging road, was it?

4623 Mr. Reynolds: Yes, sir, lumber and logging road, supplying factories in Caruthersville and mills along the line of road; and later on it was decided to extend the road to Luxora, Arkansas and the road from Portageville up to Lilburn or Pawpaw was purchased by our company and a connection built from Caruthersville north to Portageville.

Mr. Bancroft: That was long before the Frisco was in that country?

Mr. Reynolds: Yes, sir.

Mr. Bancroft: And it afterwards became a part of the Frisco, as it is now?

Mr. Reynolds: Yes, sir.

Examiner Burchmore: Are you acquainted with the Mississippi Valley Railroad, which connects with the Frisco at Steele?

Mr. Reynolds: Yes, sir.

Examiner Burchmore: Is that a tap road?

Mr. Reynolds: Well, I suppose you would call it a tap road; it is built from the river across the Frisco to the west of Steele something like four miles, I should say.

Examiner Burchmore: Did you serve a part of the line of the Deering Southwestern?

Mr Reynolds: I did not.

(Witness excused.)

4624 A. C. TINDLE, was called as a witness, and having been duly sworn, testified as follows:

Mr. Bancroft: Where do you live?

Mr. Tindle: Caruthersville, Mo.

Mr. Bancroft: How long have you lived there?

Mr. Tindle: 32 years.

Mr. Bancroft: What is your business?

Mr. Tindle: Banking business and cotton business, cottonseed oil business.

Mr. Bancroft: Are you in a bank at Caruthersville?

Mr Tindle: I am.

Mr. Bancroft: What is your relation to it?

Mr. Tindle: Cashier of the Pemiscot County Bank.

Mr. Bancroft: How long have you been in such bank?

Mr. Tindle: 15 years.

Mr. Bancroft: How are you connected with the cotton business, what is the business, cotton gins?

Mr. Tindle: I am President of a company that owns and operates several cotton gins.

Mr. Bancroft: Where are they?

Mr. Tindle: Located in Pemiscot County and New Madrid County.

Mr. Bancroft: Any of them at Caruthersville?

4625 Mr. Tindle: One.

Mr. Bancroft: And in the oil business what is your relation?

Mr. Tindle: I am President of the Missouri Cotton Oil Company, a corporation which owns and operates seven cotton gins; they own and operate a cottonseed oil mill.

Mr. Bancroft: Where is the cottonseed oil mill and what is its capacity?

Mr. Tindle: The cottonseed oil mill is located in Caruthersville and has a capacity of 50 tons per day, maximum capacity.

Mr. Bancroft: Are you acquainted in that part of the country with the railroad facilities and the natural resources, and the character of the investors?

Mr. Tindle: I think so.

Mr. Bancroft: And have you been all these years?

Mr. Tindle: I think so.

Mr. Bancroft: What need in your judgment, and what public end does the Deering Southwestern Road serve, extending as it does now to Caruthersville from Deering, and thence southwest to Hornersville?

Mr. Tindle: That will open up a section of country that heretofore has had no outlet, and as the people of Caruthersville
4626 think, it will be of benefit to Caruthersville.

Mr. Bancroft: Have you any interest in the road itself, or any allied interests at all?

Mr. Tindle: I have no interest in the railroad.

Mr. Bancroft: You are interested in the industries you have mentioned?

Mr. Tindle: I am, and in the general development of the country.

Mr. Bancroft: Did you cooperate with other citizens of Caruthersville to offer inducements to the railroad to construct this line?

Mr. Tindle: I did.

Mr. Bancroft: What inducements were offered by your town and your citizens?

Mr. Tindle: We offered them the right of way from Deering into Caruthersville, and sufficient land for terminal facilities.

Mr. Bancroft: How much land was furnished for terminal facilities at Caruthersville?

Mr. Tindle: 20 acres.

Mr. Bancroft: Where are those 20 acres with reference to the Mississippi River and the town of Caruthersville.

4627 Mr. Tindle: In the corporate limits of this town of Caruthersville and extending nearly to the banks of the Mississippi River.

Mr Bancroft: Practically to the banks?

Mr. Tindle: Practically to the water's edge.

Mr. Bancroft: To your knowledge how long have the people of Caruthersville been directly interested and endeavoring to secure this line?

Mr. Tindle: Some five or six years.

Mr. Bancroft: What are the industries to be served at Caruthersville and in the country along that line besides those that you are directly interested in that you have mentioned?

Mr. Tindle: There is a hoop mill and stave mill and handle factory and an egg case factory; also I might add a grain elevator.

Mr. Bancroft: How many different business houses are there in Caruthersville and in that neighborhood, business stores and shops and factories, in Caruthersville at the present time, in a general way?

Mr. Tindle: I should say about 100.

Mr. Bancroft: What is the character of the soil along the line of this road?

4628 Mr. Tindle: Very fertile soil and very productive.

Mr. Bancroft: What are the chief crops?

Mr. Tindle: Corn, cotton, alfalfa and wheat; the principal crops are corn and cotton.

Mr. Bancroft: What is the average yield?

Mr. Tindle: A bale of cotton per acre.

Mr. Bancroft: How about the corn?

Mr. Tindle: 60 to 75 bushels per acre.

Mr. Bancroft: What do you know of new industries to be located on this line?

Mr. Tindle: I know of two cotton gins that will be located on this line, and one corn warehouse, one or two stores that I have heard of that will be located along the line.

Mr. Bancroft: Has there been a development of this country in and around Caruthersville recently, and if so, to what extent?

Mr. Tindle: Yes, Caruthersville is growing all the time. The country in general surrounding Caruthersville is being opened up very fast.

Mr. Bancroft: This land was originally overflowed by the Mississippi River and levees have been erected?

Mr. Tindle: Yes, sir.

4629 Mr. Bancroft: And by drainage it has been made tillable land?

Mr. Tindle: Yes.

Mr. Bancroft: And secure against overflow?

Mr. Tindle: Yes.

Mr. Bancroft: What quantity of cotton business, for instance, in your judgment, will this road do, or would it have done if it had been completed last year, from your knowledge of the situation that you have?

Mr. Tindle: Well, I figure that it could have handled 600 or 800 bales of cotton.

Mr. Bancroft: And how about other crops or products that would have been brought to Caruthersville if this road had been in service last year?

Mr. Tindle: It would be hard to tell how much corn it would have handled, but a great deal.

Examiner Burchmore: How many carloads of cotton?

Mr. Tindle: 600 or 800 bales, and we figure about 25 bales to the car.

Examiner Burchmore: 25 bales to the car?

Mr. Tindle: Yes, sir.

Examiner Burchmore: There are about 500 pounds to the

4630 bale?

Mr. Tindle: Yes, sir.

Examiner Burchmore: It is uncompressed, 25 to the car?

Mr. Tindle: Yes, sir, right through from the cotton gin.

Mr. Bancroft: The line from Deering to the southwest runs through a country that has not yet been cleared of the timber?

Mr. Tindle: That is true.

Mr. Bancroft: And that is being cleared, is it, and developed?

Mr. Tindle: As fast as the merchantable timber is removed the timber left is being cut off and the land is being cultivated.

Mr. Bancroft: And devoted to agriculture?

Mr. Tindle: Yes.

Mr. Bancroft: I think that is all.

(Witness excused.)

Whereupon, at 6:15 P. M., a recess was taken until 8:00 P. M.

4631 Evening Session.

8:00 P. M.

F. B. MONTGOMERY, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: Will you please state your connection with the Deering Southwestern?

Mr. Montgomery: I am the President and General Manager of the Deering Southwestern Railway. I was going to suggest or ask, if you will permit me to make a general statement, I think I can hurry it along a great deal, and if I do not cover what you want, of course you can get it afterwards.

Examiner Burchmore: That is very good.

Mr. Montgomery: If that is agreeable and in line with that, I will start with the incorporation of this railway. It was incorporated in 1903 to run from Deering ten miles southwest. I cannot tell you the name of the point, but somewhere near Hickory Landing. In 1905 the charter was amended, and the amendment covered an extension to Hornersville. In 1910, I think July 1910, another amendment to the charter covering the line from Deering to Caruthersville. I became connected with this railway in 1905, about July, I think. At that time there was five or six miles of
4632 line built. Shortly after I became connected with the railway, as you heard testified before, your Honor, the Caruthersville people came to Chicago and took up with us the subject of building to Caruthersville; and that was early in 1906. A little later on I went down and went over the line. I rode in a wagon from Caruthersville over to Deering, and the distance is about 13 miles. The country for about nine or ten miles of that was then under cultivation and occasionally a small patch of timber was in there, but as a general thing the timber has been cut out; and as I say, the country was under cultivation, cotton, corn, wheat and everything that grows in that section. I saw an opportunity to build a line over to Caruthersville, and I thought and told our people that there was a fine opportunity to build a railroad over there, and I thought it would be a paying investment. There was a magnificent agricultural country in there to be developed and some timber to get into, small patches,

and incidentally I thought there would be an opportunity to get to the river and accomplish some good purposes for Caruthersville.

Of course the panic along in 1907 upset plans, and it was only in this year that we finally got started on the construction of the
4633 railroad. The Caruthersville people felt that we would open up a fine territory for them, and a territory that had no adequate transportation facilities. Much of the territory, at least that part west of the main line of the Frisco, which is the north and south line through Hayti there, had no facilities worth while at all. There is no station on that line, although one half mile south of where our Blazer station will be, that is at the crossing, they have a team track or a side track off of which they have been handling logs; I do not think any other kind of freight has been handled there. The line to Caruthersville is finished, that is the last spike will be driven tomorrow or certainly Thursday. We have also built about two and one-half miles of the line towards Hornersville.

Examiner Burchmore: Beginning where?

Mr. Montgomery: Two and a half miles from the end of the track. The end of the track at this time is at Converse. You will notice that down on the line.

Mr. Snow: How far is that from Deering?

Mr. Montgomery: About 10 or 11 miles from Deering, and there is still about 8 miles to build into Hornersville. We have a contract with Hornersville to build in there in a certain time, I believe the period is the end of this year. We are going ahead now
4634 building the road. The dump or the grade is virtually, well, about two-thirds completed. In order to cover the Elk Chute ditch that you see down towards the lower end of the blue print, we have to put in about 2200 feet of trestle, but we hope to get into Hornersville by the 1st of May. The line into Caruthersville we will begin operating about the 15th of February to the 1st of March. We would begin on that immediately except that part of the dump is green and soft and we want to put ballast on it in the shape of sand and silica. Of course, we expect to see considerable development through there as you heard the witnesses testify this evening; and it is my intention to handle all that traffic through there both in and out bound, that we can. We will have joint tariffs with the Frisco through Blazer on in and out bound freight, on classes as well as commodities.

Some of the benefits of this railroad to that country I think can be made apparent when I say to you that both Caruthersville and Hornersville are now local on one railroad. Caruthersville is on the Frisco, and it also has the river, of course, which is of some benefit to Caruthersvile; but Hornersville has the Paragould & Southeastern, a branch of the Cotton Belt System only, and our line building in there opens up that territory to both Caruthersville in one
4635 direction and Hornersville in the other, and we believe will give them the benefit of competition between carriers and incidentally we ought to be able to help the Hornersville people out some through the river transportation and the short haul from Caruthersville down there, the length of the line, when completed, will

be about 31½ miles. We shall operate freight trains and passenger trains and carry the mail. The government has asked us as to our facilities for transporting mail and we have made a request for a contract in the regular form. We have not yet decided as to express service. I feel that the service that is ordinarily performed by an express company we will be able to perform on our regular trains for the reason—except perhaps the store door delivery and the collection of freight.

I have a schedule or time card about complete covering trains in both directions twice a day; that is, we will make two round trips a day. I think that is about as far as I can go perhaps, unless there is something you would like me to tell you.

Examiner Burchmore: We would like to know who owns this railroad.

4636 Mr. Montgomery: The railroad stock is held in the name of individuals for the interest of the International Harvester Company.

Examiner Burchmore: The 1909 annual report to the Commission is quoted here in these words: "Its capital stock is held for the benefit of the International Harvester Company."

Mr. Montgomery: That is correct, yes.

Examiner Burchmore: What mills are there on the line?

Mr. Montgomery: There is a mill at Deering, and there are one or two little mills farther down in the timber. All of these mills belong to the Wisconsin Lumber Company.

Examiner Burchmore: And what is the relation, if any, between the Wisconsin Lumber Company and the International Harvester Company?

Mr. Montgomery: The International Harvester Company owns the Wisconsin Lumber Company's stock.

Examiner Burchmore: Are you an officer or otherwise related to the Wisconsin Lumber Company?

Mr. Montgomery: I do not occupy any official capacity, no.

Examiner Burchmore: Or with the International Harvester Company?

Mr. Montgomery: I am Manager of the Traffic Department only of the International Harvester Company, and also of the Wis-

4637 consin Lumber Company.

Examiner Burchmore: What equipment has this road at the present time?

Mr. Montgomery: We have four engines, one of them in fact is out of service, however; it has about lived its usefulness. We have 67 logging cars of the ordinary logging capacity, meaning the two trucks and a rack over the top of them. We have 12 flat cars. We have under contract ten box cars and two passenger cars, that is one straight passenger and one combination passenger and baggage car; hand cars and push cars, and that sort of thing.

Exminer Burchmore: Do any of these cars go off your line?

Mr. Montgomery: No, sir, not at this time.

Examiner Burchmore: Are any of those new cars intended to go off your line?

Mr. Montgomery: They are bought particularly for the purpose of furnishing facilities for the industries and shippers on our own line. If they are not needed there, of course we will probably use them off the line, but we are trying to look after our own industries and shippers first.

Examine Burchmore: Have you been carrying passengers?

Mr. Montgomery: We have been carrying passengers, running a mixed train.

4638 Examiner Burchmore: Have you been charging fare for those passengers?

Mr. Montgomery: Yes.

Examiner Burchmore: For how long a period have you charged fare?

Mr. Montgomery: I think ever since we began running that particular train, that is since we have been furnishing facilities for passengers; I cannot tell you the exact date, but it must be a year and a half or two years.

Examiner Burchmore: Has the Wisconsin Lumber Company any private spur tracks down in that neighborhood?

Mr. Montgomery: Yes, it has logging spurs; they are not shown on here. I gathered from something you asked a witness this afternoon that you would like to have them shown, and we would be glad to have them shown.

Examiner Burchmore: You might show them in red ink on this map.

Mr. Montgomery: Yes, I will be glad to do it or have it done. I do not know that I can locate them. One of them, however, is about one-half mile north of what is shown there as Hickoryville Landing Road, or about a mile north of there, I guess.

Examiner Burchmore: Extending in what direction?

4639 Mr. Montgomery: Extending both east and west.

Examiner Burchmore: Are you able to advise us of the length of those private tracks?

Mr. Montgomery: I do not know, I have never been on them; probably two or three miles in each direction, or something like that.

Examiner Burchmore: This map may be marked.

(The map so offered and identified, was received in evidence and thereupon marked Deering Southwestern Exhibit No. 1, Witness Montgomery, received in evidence January 24, 1911, and is attached hereto.)

Examiner Burchmore: This map has been marked Exhibit No. 1, and if you will take it and mark it——

Mr. Montgomery: I will be glad to do it.

Examiner Burchmore: Has the Wisconsin Lumber Company any equipment or rolling stock?

Mr. Montgomery: It has a small engine and a log loader.

Examiner Burchmore: Does that engine move at any time over the rails of the Deering Southwestern?

Mr. Montgomery: It has moved over our rails, but only in case

of accident to our own engine, so it would move probably once or twice in the last three or four years, that is all. These logs,
4640 it may interest you to know, are delivered at the connection of this logging spur to our main line, and there our engine and crew take hold of them and haul them up to the mill.

Examiner Burchmore: The Deering Southwestern furnishes the cars for the logs?

Mr. Montgomery: We furnish the log cars, yes, sir.

Examiner Burchmore: Then from that point of connection between the private logging spur and the main line of the Deering Southwestern your company with its own engines, hauls the logs to the mill at Deering?

Mr. Montgomery: Yes.

Examiner Burchmore: Who unloads the logs at Deering?

Mr. Montgomery: They are unloaded by the mill people. We have nothing whatever to do with them except haul them up there and put them on the side track.

Examiner Burchmore: What charge, if any, do you make for that service?

Mr. Montgomery: We make a charge of $1.00 per thousand feet on the logs; that will run about one cent per 100 pounds.

Examiner Burchmore: One cent per 100 pounds on the logs or on the lumber?

4641 Mr. Montgomery: We figure about one cent per 100 pounds on the logs; perhaps a little more than that, I do not know. They usually figure about ten pounds to the foot down in that country.

Examiner Burchmore: How far is the mill from the rails of the Frisco System at Deering?

Mr. Montgomery: The mill is between three-eighths and a half a mile; we call it half a mile; it is nearer a half than three-eighths.

Examiner Burchmore: How many mills are there at Deering?

Mr. Montgomery: Only one.

Examiner Burchmore: Will you describe the manner in which the lumber, the finished product, is handled from the transportation standpoint from that mill to interstate destinations?

Mr. Montgomery: The empty car is set on a connecting track, side track, at our connection, what we call Deering Junction, and we go there and get the empty car and spot it for loading and after it is loaded we take the car back there and leave it on that connection for the Frisco. We waybill it through to interstate destination; settlements are made through the accounting department. We also issue a bill of lading.

Examiner Burchmore: Now this blue print seems to show
4642 Deering Junction as west of Deering.

Mr. Montgomery: That is an error there, Mr. Examiner. Deering Junction is on the other side.

Examiner Burchmore: Who owns the yard tracks there at the mill?

Mr. Montgomery: They are owned by the Wisconsin Lumber Company.

Examiner Burchmore: Are they leased by the railroad?

Mr. Montgomery: No, sir; our annual report last year, I think, showed that we owned them, but since that time they have been sold to the lumber company at the actual cost.

Examiner Burchmore: Do you remember the date of that sale?

Mr. Montgomery: I cannot tell you, but I will be glad to advise you if you would like to know.

Examiner Burchmore: We would like to know.

Mr. Montgomery: Yes.

Examiner Burchmore: Those tracks were formerly owned by the Wisconsin Lumber Company and leased to the Deering Southwestern Railway, were they not?

Mr. Montgomery: No, I think they were owned; I think they were paid for and built by the railway company. I may be wrong about that. They were there, or most of them at least were
4643 there, before I had anything to do with the property or knew anything about it.

Examiner Burchmore: A report of an examination made of the property in April, 1910, by a representative of the Commission, states that he was informed there were 1.15 miles of leased track, being yard track, at Deering, and that the owner of such track was the Wisconsin Lumber Company.

Mr. Montgomery: Well, there was no lease. I do not know where your examiner got the information, but there was no lease.

Examiner Burchmore: He further indicates that the plant officials do not know that any consideration is paid for the use of those tracks.

Mr. Montgomery: Well, there was no consideration paid, because we did not lease them; at least, there was no official lease of them.

Examiner Burchmore: At the present time, however, those tracks are owned by the Wisconsin Lumber Company?

Mr. Montgomery: They are the property of the Wisconsin Lumber Company, yes, sir.

Examiner Burchmore: Are they used in any way by the railroad?

Mr. Montgomery: We use them occasionally to store empty cars on, or something of that sort, if we have them.

4644 Examiner Burchmore: Who owns the track at the mill on which the empty cars are placed and loaded?

Mr Montgomery: Well, they are all owned by the Wisconsin Lumber Company. The railroad only owns the main track through there except up the other way.

Examiner Burchmore: Do not those private tracks which are owned by the Wisconsin Lumber Company connect with the Frisco tracks?

Mr. Montgomery: No, sir.

Examiner Burchmore: Then it is not possible to get from the loading track to the Frisco in any way except over the rails of the Deering Southwestern?

Mr. Montgomery: That is correct.

Examiner Burchmore: Is it or not a fact that the Frisco formerly placed the cars on the loading track?

Mr. Montgomery: That was before my time, and I really cannot tell you. The railway was incorporated in 1903. I take it since that time, at least, all the work was done by them. When I had to do with it in 1905, since that date at least, the railroad has done all the work.

Examiner Burchmore: What is the length of the haul that they perform?

Mr. Montgomery: The length of the haul varies all the
4645 way from a quarter to a half a mile, I should say: that is their loaded haul.

Examiner Burchmore: The Deering Southwestern Railway is and has been a party to the joint rates with the Frisco System?

Mr. Montgomery: With the Frisco, yes, sir.

Examiner Burchmore: I refer particularly to lumber and forest products.

Mr. Montgomery: Yes.

Examiner Burchmore: Are those rates the same as the rates from stations in that territory on the Frisco proper?

Mr. Montgomery: Yes, sir.

Examiner Burchmore: What is the division or allowance?

Mr. Montgomery: The Deering Southwestern gets two cents per 100 pounds.

Examiner Burchmore: Under all rates?

Mr. Montgomery: Yes—well, to nearby local stations on the Frisco, of course, there is a combination of locals; but to all interstate points and St. Louis and——

Examiner Burchmore: What is your billing station at the mill?

Mr. Montgomery: Deering.

Examiner Burchmore: Deering on the Deering Southwestern?

4646 Mr. Montgomery: Yes.

Examiner Burchmore: What is the local rate from Deering on the Deering Southwestern to Deering on the Frisco?

Mr. Montgomery: There is but one Deering down there. The Frisco carry Deering in their tariff by error. It has been carried that way for a number of years.

Examiner Burchmore: You refer to a combination of locals. I want to know what the local was?

Mr. Montgomery: Well, our local would be two cents per 100 pounds, the same as our proportion up to Deering Junction.

Examiner Burchmore: And where there are no joint rates you would really charge two cents over the Frisco rate?

Mr. Montgomery: Yes.

Examiner Burchmore: Are the rates on a milling in transit basis?

Mr. Montgomery: No, sir.

Examiner Burchmore: Have there ever been milling in transit rates?

Mr. Montgomery: Not since I have had to do with it, and I do not know before that.

Examiner Burchmore: Is not your station known as Deering Junction?

4647 Mr. Montgomery: We have Deering and Deering Junction; Deering Junction is where we connect with the Frisco.

Examiner Burchmore: Then your local is from Deering to Deering Junction?

Mr. Montgomery: From Deering to Deering Junction, yes, sir. Of course, our connection now with the Frisco is at Blazer; that is where our deliveries will be made.

Examiner Burchmore: What is the mileage from Deering to Blazer?

Mr. Montgomery: About seven miles.

Examiner Burchmore: What would become of the line of the Frisco from Deering to Pascola when you cease to interchange traffic with them at that point?

Mr. Montgomery: I really do not know. Of course, that is up to the Frisco. One of their officials stated to me recently that he would be very glad to get rid of that excuse for a railroad down there.

Examiner Burchmore: Pascola is on two lines of the Frisco apparently.

Mr. Montgomery: Two branches, yes, sir; one branch runs from Caruthersville down to Kennett, Mo., a little town not shown on that map, some 5 or 10 miles west of what is shown on the

4648 map; and the other runs through Deering to a little town known as Wardell, about 6 or 7 miles east of Pascola; these were all logging lines. The Kennett line was a logging line built by Mr. J. C. Houck, as I understand, and there is really nothing on that line except logs and timber products.

Examiner Burchmore: When was the line from Deering to Pascola built?

Mr. Montgomery: I don't remember.

Examiner Burchmore: Was it built in the interest of the International Harvester Company or its subsidiary companies?

Mr. Montgomery: I do not think so; I do not know about that.

Examiner Burchmore: I notice about half of that line is over land of the Wisconsin Lumber Company, the south half.

Mr. Montgomery: Well, it runs into the Wisconsin Lumber Company's property at two or three places.

Examiner Burchmore: Do they haul any lumber for your company?

Mr. Montgomery: No, I think not; I am sure they do not.

Examiner Burchmore: It is all cut out, is it?

Mr. Montgomery: Well, it has been cut over, I think that land up there; of course they just touch the Wisconsin Lumber

4649 Company's land in two or three spots, but there is timber in there being taken out by a concern at Pascola, the Pascola Stave Company, I think.

Examiner Burchmore: What other stations are there on your line at the present time, disregarding the extension, besides Deering and Deering Junction?

Mr. Montgomery: I will get the list, if you will permit me.

(Referring to paper) Deering Junction will not appear on our new line or on our extension to Caruthersville, because we will not make any interchange there and there is nothing else there except that connection. The next station will be Braggadocio, which——

Examiner Burchmore: I was asking first with reference to the present line without regard to the extension.

Mr. Montgomery: That would be in the other direction from Deering.

Examiner Burchmore: Yes, the old line.

Mr. Montgomery: There is Reeds Mill, about 3.8 miles south of Deering; that shows on there perhaps you will discover.

Examiner Burchmore: Yes.

Mr. Montgomery: Then there is Nicholson, County Line,
4650 Gobler, Hickory Landing Road, Hickoryville Junction.

Right there, Mr. Examiner, Hickoryville Junction is erroneously placed on there; that should be north of Hickory Landing Road really. I do not know, our engineer made several bungles on this map. And then Converse, which is the end of the line. Hickoryville Junction is where this logging line of the Wisconsin Lumber Company goes off.

Examiner Burchmore: Did the engineer make this blue print from an examination of the road?

Mr. Montgomery: He has been over the road several times.

Examiner Burchmore: Perhaps he overlooked the stations as he passed by.

Mr. Montgomery: Probably so.

Examiner Burchmore: What is there at these different stations passing tracks?

Mr. Montgomery: There is little or nothing at this time. Those stations were where the logging spurs of the Wisconsin Lumber Company branched out into the timber at different times, and they were established there, and the timber is cut over and we expect it will be cleared and used there by farmers.

Examiner Burchmore: Where is the station located that is
4651 referred to in your tariffs by the name of Camp.

Mr. Montgomery: Camp is really the end of the line, and now Camp does not exist. Converse is really the same as Camp.

Examiner Burchmore: Was that a migratory station?

Mr. Montgomery: Yes, it was; as the line was extended we would call it Camp rather than name it something else.

Examiner Burchmore: I understood you to say there have been no milling in transit arrangements on this road so far as you are advised since your connection with it.

Mr. Montgomery: That is correct.

Examiner Burchmore: I have what purports to be a copy in lead pencil of the substance of St. Louis & San Francisco I. C. C. No. 5514, Joint Freight Tariff No. 200-C, to which the Deering Southwestern Railway is a party, Supplement No. 44, effective 11-1-08, stopping shipments in transit: Shipments moving from points on the Arkansas Eastern Railway and other lines named, including the Deering Southwestern Railway, may be stopped at points on these

lines or at junction points of delivery to this line, for the purpose of storing, sawing, re-sawing or further manufacture into articles described in tariff and the through rate in effect at the time the shipment leaves point of origin to final destination to be
4652 applied to the commodity re-shipped. Endorsed: "Copied at Tariff Bureau of the Commission, April 30, 1910."

Mr. Montgomery: Are we shown as a party to that?

Examiner Burchmore: Yes, sir, in this copy.

Mr. Montgomery: Have we filed our concurrence?

Examiner Burchmore: I do not know.

Mr. Montgomery: I do not think so, no, not to my knowledge, at least we have never used any milling in transit basis there that I remember.

Examiner Burchmore: Well, the report of the examiner visiting your property at the time mentioned a few minutes ago, indicates that outbound lumber is handled on joint rates under the milling in transit arrangement.

Mr. Montgomery: Well, I do not know, of course, where he got his information.

Mr. Snow: What is the date of that report?

Examiner Burchmore: April, 1910.

Mr. Montgomery: That may be simply carried in the tariff, but we have never considered that we were ever using a transit rate at all, Mr. Examiner.

Examiner Burchmore: Well, are you sure that as a matter of fact the Frisco did not formerly place the empty cars at the mill
4653 and take away the loaded cars?

Mr. Montgomery: Not since I have been there.

Examiner Burchmore: I do not mean at the mill, but at the storage track there near the mill?

Mr. Montgomery: Well, down at the connection with us—the Frisco, I think I can explain perhaps some of that to you—the Frisco came in there and as a general thing they take water at the Wisconsin Lumber Company's mill. They do take their whole train up there, and they have a caboose on this train and they carry a few passengers. The service is very poor in there; the train comes in there at any time between nine o'clock in the morning and noon, and goes right out immediately. All they do is to pick up the cars and go right out; there is a lapse of ten minutes in the time card of the train there. They probably bring their whole train up to the mill while they take water, and the interchange is certainly at the point of connection which I spoke of there.

Examiner Burchmore: And commencing with February 1st or March 1st——

Mr. Montgomery: It will be at Blazer.

Examiner Burchmore: Do you have any agent at Deering or Deering Junction?

Mr. Montgomery: We have an agent at Deering, yes, sir;
4654 not at Deering Junction.

Examiner Burchmore: Is he employed also by the Wisconsin Lumber Company?

Mr. Montgomery: No, he is not. We have appointed a new agent in there within the last 15 days, since the line was completed out to Blazer; his name is R. G. Ransome. He has no connection whatever with the lumber company.

Examiner Burchmore: Has your agent at Deering heretofore been an employé of the lumber company?

Mr. Montgomery: Heretofore we have used some of the clerical help of the lumber company.

Examiner Burchmore: They issue through bills of lading?

Mr. Montgomery: Yes, sir.

Examiner Burchmore: Joint waybills?

Mr. Montgomery: Joint through way bills, yes, sir.

Examiner Burchmore: Do those waybills show the through rate or simply the proportion of the rate retained by the Deering Southwestern?

Mr. Montgomery: I really cannot tell. I have not seen a copy. I know we bill to destination and settle through the accounting department.

Examiner Burchmore: Your local rate on soft coal from
4655 Deering to Deering Junction is one cent per 100 pounds?

Mr. Montgomery: One cent per 100 pounds.

Examiner Burchmore: Less than carload freight, what is your local rate?

Mr. Montgomery: Five cents per 100 pounds.

Examiner Burchmore: That is from Deering to Deering Junction?

Mr. Montgomery: Yes.

Examiner Burchmore: What will be the rate down to——

Mr. Montgomery: There has been a general rate in there until this new line extension, when we put in the Missouri distance tariff rate. That tariff was filed with the Commission and took effect January 1st, but due to several clerical errors or oversights in the tariff instructions, we are amending it now.

Examiner Burchmore: Where are the books of account of the Deering Southwestern?

Mr. Montgomery: The books are kept at Deering, Mo. Under the Missouri law they are required to be kept there, and also copy, of course, is kept.

Examiner Burchmore: Who is the chief accounting officer?

Mr. Montgomery: A. G. Huckin is the Auditor, and his
4656 office is in Chicago.

Examiner Burchmore: What other officers has this railroad besides yourself and Mr. Huckins?

Mr. Montgomery: Mr. Huckin is also general freight agent of the railroad, and he has a chief clerk and five or six assistants, that is clerks, in the office; and it has a Vice President, Mr. S. D. Snow. It has a Secretary and Treasurer, and it has an engineer of construction and a superintendent, nine trainmen and 14 section men, and a section foreman. That is the regular force. At this time, of course, we have a large construction force at work on the line.

Examiner Burchmore: What are the salaries of those general officers as paid by this railroad?

Mr. Montgomery: They are paid by this railroad, yes.

Examiner Burchmore: I mean what are their salaries from this railroad?

Mr. Montgomery: How much, do you mean?

Examiner Burchmore: Yes. I suppose they are not considerable in amount.

Mr. Montgomery: Well, these officers are also officers of two or three other roads, the Illinois & Northern, the Chicago, West
4657 Pullman & Southern, with which you are doubtless familiar.

Examiner Burchmore: Yes, I just inquired as to what their salaries are from this railroad.

Mr. Montgomery: From this railroad their salaries are—no, not very considerable. Do you want the amount?

Examiner Burchmore: Some or all of them.

Mr. Montgomery: I think I can give you the amount. For example, Mr. Huckin's salary as Auditor and General Freight Agent is $430 a year; and the others are something in proportion to that.

Mr. Snow: I think you mean that is the proportion paid him by the Deering Southwestern.

Mr. Montgomery: Yes. That is not Mr. Huckin's salary by any means. I thought you understood the point exactly.

Examiner Burchmore: I assumed he got somewhere from $5.00 to $50.00 a month from this railroad.

Mr. Montgomery: From this railroad, yes, sir. Of course, the chief clerk and the clerical help in Mr. Huckin's office their salaries are distributed among the several railroads I have spoken of.

Examiner Burchmore: That distribution is made as nearly as possible on an equitable basis.

4658 Mr. Montgomery: Yes, sir, on the basis of traffic as nearly as we have been able to figure it.

Examiner Burchmore: What traffic has the Deering Southwestern Railway handled in the past other than that furnished by the Wisconsin Lumber Company?

Mr. Montgomery: It has handled traffic for the account of other people, a number of other people, but the lumber and timber and so forth of course originates on the land of the Wisconsin Lumber Company and the inbound, you might say, is for the account of the Wisconsin Lumber Company.

Examiner Burchmore: Practically all the tonnage is Wisconsin Lumber Company traffic?

Mr. Montgomery: Well, Wisconsin Lumber Company and some for the International Harvester Company, of course. I have not prepared any statistics. I will be very glad to file the statistics, if you like, as to our tonnage, and for whose account the transportation is performed.

Examiner Burchmore: Well, I think we should like to have some figures.

Mr. Montgomery: I will be glad to do that.

Examiner Burchmore: I would like to know now if it is not a fact that the Wisconsin Lumber Company and the International

Harvester Company and their employees have forwarded or
4659 received practically the entire traffic that this road has handled in the past.

Mr. Montgomery: Or their employees? I do not think I get your point there.

Examiner Burchmore: I mean you may have some traffic moved in there——

Mr. Montgomery: Oh, inbound; yes; I should say that is correct, but the outbound, there is a little of that traffic which is sold f. o. b. cars at the mill, and the transportation is not performed for the account of either of those corporations.

Examiner Burchmore: I understand, but it is lumber or forest products in which they have had an interest.

Mr. Montgomery: Well, they owned the timber, of course, and sawed the lumber.

Examiner Burchmore: Have you the total operating revenues and operating expenses for the past fiscal year, or years available here?

Mr. Montgomery: I have them for 1909 and 1910. I have copies, at least, of them. Of course, these are all filed with the Commission.

Examiner Burchmore: Just give the figures.

4660 Mr. Montgomery: These were the figures which were taken off of the reports to the Commission.

Examiner Burchmore: Do you desire to file that as an exhibit?

Mr. Montgomery: I did not intend to file it. I will be glad to read in anything you wish.

Examiner Burchmore: Suppose you read the totals of the expenses and revenue.

Mr. Montgomery: The total operating revenue for the year ending June 30th, 1910, was $23,836.94. The total operating expenses for the same period was $22,662.89. Net operating revenue $1,174.05.

Examiner Burchmore: I understood you to say when you first became connected with this company in 1905, there were five or six miles of this road built and in operation.

Mr. Montgomery: Yes, as I recollect it, the line was at that time either to Nicholson or County Line as shown on here.

Examiner Burchmore: Were there at that time any private tracks extending on in the same general direction?

Mr. Montgomery: Beyond those points?

Examiner Burchmore: Yes.

Mr. Montgomery: No. The only tracks of any sort there were the logging spurs which ran into the timber to the east towards the Mississippi River.

4661 Examiner Burchmore: When was the next extension of the line made?

Mr. Montgomery: Well, the line has been extended at several different times; I cannot recall the exact date.

Examiner Burchmore: It has not been extended as a railroad by the taking over of logging lines previously laid down.

Mr. Montgomery: None whatever. It may interest you to know that the line from Deering down to about County Line there, is laid, as I recall it now, with 60-pound steel. Beyond there to Converse, and also from Deering to Caruthersville, the rails are 75-pound steel, and from that you will get an idea how the line is built, for an entirely permanent purpose.

Examiner Burchmore: What sort of a town is Deering and what is its population?

Mr. Montgomery: Deering has a population at this time of about 375 people. It is the mill town of the Wisconsin Lumber Company. I presume most of those people are employés or the families of the employés of that company.

Examiner Burchmore: That is a company town?

Mr. Montgomery: Yes, I think that is what it would be called.

Examiner Burchmore: From this blue print it might be
4662 assumed that the town was owned by the Wisconsin Lumber Company, that is the ground.

Mr. Montgomery: I think the ground is owned by them, yes, sir.

Examiner Burchmore: The houses are owned by them and rented to employés, are they not?

Mr. Montgomery: I think so. I cannot really tell you about that because I do not know anything about it.

Examiner Burchmore: Do you know whether they run the store or stores?

Mr. Montgomery: There is a store there, I think, run by them.

Examiner Burchmore: In connection with the Frisco you mentioned in your opening statement some logs, I have forgotten what those logs were.

Mr. Montgomery: What is that, Mr. Examiner?

Examiner Burchmore: In connection with the Frisco in your opening statement you said something about some logs moving?

Mr. Montgomery: Logs?

Examiner Burchmore: Yes, in connection with the Frisco, and I wanted to ask you about it.

Mr. Montgomery: I do not remember. Was that on that line up to Pascola, is that what I was talking of?

4663 Examiner Burchmore: No.

Mr. Montgomery: I really don't remember.

Examiner Burchmore: I think you mentioned there was some loading point south of Blazer where the Frisco handled a good many logs.

Mr. Montgomery: Half a mile south of Blazer the Frisco have a track in there where they load logs.

Examiner Burchmore: Whose logs are those, do you know?

Mr. Montgomery: I really don't know.

Examiner Burchmore: You do not know where they go?

Mr. Montgomery: I do not know where they go.

Examiner Burchmore: At the bottom of the blue print is the Missouri-Arkansas State Line?

Mr. Montgomery: Yes.

Examiner Burchmore: And the land or timber holdings of the Wisconsin Lumber Company seem to end right at the State Line, at least there is a cross mark.

Mr. Montgomery: I think that is correct. I cannot testify positively as to that, but I think that is correct.

Examiner Burchmore: I wondered if they did not have some timber land across the line down in Arkansas?

Mr. Montgomery: I do not think so, but I could not say.

Examiner Burchmore: Is it not one purpose of the exten-
4664 sion of the line from Hickoryville down into Hornersville or in that direction to open up additional forests of the Wisconsin Lumber Company?

Mr. Montgomery: Of course it runs through the Wisconsin Lumber Company's timber lands, and it naturally will open them up as it goes through there.

Examiner Burchmore: It runs through those timber lands and for the entire distance, at least as far as the Paragould Southeastern Railroad.

Mr. Montgomery: From Deering, yes.

Examiner Burchmore: Are you going to get trackage rights over the Paragould Southeastern across the river?

Mr. Montgomery: Yes, sir, we hope to, we are trying to close a contract to that effect.

Examiner Burchmore: It is not the intention to build a new trestle across the Little River?

Mr. Montgomery: We do not want to. It will cost a large amount.

Examiner Burchmore: Who owns the right of way on which is laid the rails of the Deering Southwestern?

Mr. Montgomery: A 50-foot strip is owned by the railroad.

Examiner Burchmore: It was purchased from whom?

4665 Mr. Montgomery: The Wisconsin Lumber Company.

Examiner Burchmore: Do you remember on what basis?

Mr. Montgomery: The fact is the right of way was given to the Deering Southwestern, and that is also true of a right of way for the Paragould & Southeastern that you see shown there. They also gave that line a right of way through there.

Examiner Burchmore: Was that originally a tap line?

Mr. Montgomery: I do not know. I would not be surprised. All the railroads in this part of the county were originally so-called tap lines for the purpose of taking timber out, logging.

Examiner Burchmore: Were you influenced in building down or planning to build down to Hornersville by the idea of getting a new connection with another railroad, another outlet to the Cotton Belt.

Mr. Montgomery: Primarily we were influenced in building down there by the Hornersville people; they were anxious to have us come in there. We did not overlook any of the advantages in going to Hornersville and among them being that of another line of railroad. Of course, we try to see everything of that sort there is in sight.

Mr. Snow: You have enumerated the various employés of the

Deering Southwestern Railway; the office force and the operators, trainmen and all that sort of thing. I wish to ask you
4666 whether any of those various employés are in the employ or perform any duties or receive any compensation from either the Wisconsin Lumber Company or the International Harvester Company?

Mr. Montgomery: They do not.

Mr. Snow: None of them?

Mr. Montgomery: Not in any way.

Mr. Snow: Their duties then are entirely in the railroad service?

Mr. Montgomery: For the Deering Southwestern Railway and several others I mentioned, of course.

Mr. Snow: Will you refer to your map before you, or to your list of stations, and tell us what is the first station located on the line of your railroad west of Caruthersville?

Mr. Montgomery: West of Caruthersville the first station is Tyndall.

Mr. Snow: This is located how far from the City of Caruthersville?

Mr. Montgomery: Well, that is about three miles from the station in Caruthersville.

Mr. Snow: What was the object and purpose of locating that station there?

Mr. Montgomery: Well, the object was, in serving the
4667 town of Game, which is just a short distance below there, and up to that time which had no direct railroad transportation.

Mr. Snow: Do you know what the population of Game and the settlement there is?

Mr. Montgomery: I think in Game and right surrounding there probably 150 people.

Mr. Snow: Is there any business done at Game?

Mr. Montgomery: Yes, there are four stores and a small grist mill there, as I recall it.

Mr. Snow: What is the next station west, and why was that located where it was?

Mr. Montgomery: The next is called Sherrill; that was about two miles west of Tyndall, and was located there because at that point the country roads seem to come together and we felt that by having a station there we could serve the people living in that community; these roads affording easy access to the railroad line there.

Mr. Snow: Will the Deering Southwestern Railroad at Tyndall or Sherrill station handle any traffic for the Wisconsin Lumber Company?

Mr. Montgomery: No.

Mr. Snow: Or the International Harvester Company?

4668 Mr. Montgomery: No, none whatever.

Mr. Snow: What sort of freight will be handled at these stations?

Mr. Montgomery: Well, at this time it seems clear that products of agriculture, almost exclusively, will be handled. There may be

some little timber around in that territory but I do not think very much. Cotton, wheat, corn and hay.

Mr. Snow: What is the next station west?

Mr. Montgomery: The next station west is Blazer.

Mr. Snow: Where is that located?

Mr. Montgomery: Blazer is 6.8 miles west of the Caruthersville station, and at that point we cross the main line of the Frisco Railway, and there is where the interchange of freight will take place beween the railways.

Mr. Snow: Is that an agency station located at Blazer?

Mr. Montgomery: Blazer will be an agency station, yes.

Mr. Snow: All of the lumber and forest products and other commodities in and out of Deering will be interchanged with the Frisco at Blazer station?

Mr. Montgomery: At Blazer.

Mr. Snow: And that is a distance of how far, did you say, from Deering?

Mr. Montgomery: From Deering it is a matter of about
4669 seven miles.

Mr. Snow: What is the next station west?

Mr. Montgomery: The next station west is Farris, Farris Switch, Farris Swith is 8.6 miles west of Caruthersville.

Mr. Snow: Any particular purpose or object in locating that station there?

Mr. Montgomery: That station was located there for the same reason that Sherrill was located where it is, because the country roads converge at that point, and incidentally Mr. Farris, a very large farm owner there, asked us when we were building through there if we would give him a switch and a station for himself, and for the general public at that point.

Mr. Snow: Will any traffic of the Wisconsin Lumber Company or the International Harvester Company be handled at that station?

Mr. Montgomery: No, none whatever.

Mr. Snow: Have they any industries or interests or forest at that point to be served by the railroad?

Mr. Montgomery: No interests whatever that I ever heard of.

Mr. Snow: And what is the next station on your line west?

Mr. Montgomery: Braggadocio, 10.4 miles west of Caruthersville.

4670 Mr. Snow: What is there at Braggadocio?

Mr. Montgomery: It is a settlement of 300 or 400 people, I should say, with four or five stores. When I say that much population, of course, I mean within a radius of half a mile around Braggadocio.

Mr. Snow: Is this station one at which the Wisconsin Lumber Company or the International Harvester Company will do any business?

Mr. Montgomery: None whatever.

Mr. Snow: Was it established there for the accommodation of these companies?

Mr. Montgomery: Neither of them will have any service performed there by this railway that I know of.

Mr. Snow: Was the station located there at any special request of the citizens of the town of Braggadocio?

Mr. Montgomery: The station was located there at the request of the Braggadocio people, yes, sir.

Mr. Snow: What, if anything, have the citizens and towns-people at Braggadocio done towards the promotion and extension of this railroad through their town to Caruthersville?

Mr. Montgomery: They gave us a five acre plot at that point at which to locate this station and also $1,000 in money; that is in the shape of a contract, as I recall it.

4671 Mr. Snow: The distance between Braggadocio and Caruthersville is what, along the line of this road?

Mr. Montgomery: 10.4 miles along the line of this road.

Mr. Snow: Does that extend through the timber at all?

Mr. Montgomery: There is some little timber, but very little.

Mr. Snow: How much timber?

Mr. Montgomery: Oh, probably, I should say, a mile altogether of the ten miles is through timber.

Mr. Snow: What is the balance of the land through which this road extends for that distance?

Mr. Montgomery: Very rich farm country, well settled up, thickly settled up.

Mr. Snow: Has the Wisconsin Lumber Company or the International Lumber Company any interest whatever, or any lands to be served by the Deering Southwestern Railway between these points?

Mr. Montgomery: None whatever.

Mr. Snow: Was the Deering Southwestern Railway extended from Braggadocio east to Caruthersville and the Mississippi River with any intention of benefiting either of these companies.

Mr. Montgomery: I do not understand so. It was ex-
4672 tended at the request and to satisfy the Caruthersville people and the Braggadocio people and serve the interests in between there.

Mr. Snow: You have personally conducted negotiations with the people of Caruthersville and Braggadocio with reference to the extension of this line, have you?

Mr. Montgomery: Yes, I have.

Mr. Snow: What was done by the citizens of Caruthersville to induce the building of this line into their city?

Mr. Montgomery: The citizens of Caruthersville gave us the entire right of way between Braggadocio and Caruthersville and 20 acres of terminal property inside of the city limits of Caruthersville. Now in connection with that right of way we paid, I think, $3200, to help the Caruthersville people out.

Mr. Snow: What are the business interests located in or about Caruthersville; by that I mean factories, manufacturing plants, stores and that sort of thing, who are interested in and will be shippers over the line of your railroad?

Mr. Montgomery: There are quite a number of them; I have a list of them here, if you would like it.

Mr. Snow: We have a list here which I am going to hand to you which purports to show a list of the merchants and manu-
4673 facturers at both Braggadocio and Caruthersville. I will ask you if you will, to examine that and state whether or not it was prepared under your direction, and what it contains?

Mr. Montgomery: Yes, this list was prepared under my direction and contains a list of the merchants, manufacturers and shippers generally at Braggadocio and Caruthersville.

Mr. Snow: We would like to file that as an exhibit.

(The paper so offered and identified, was received in evidence and thereupon marked Deering Southwestern Exhibit No. 2, Witness Montgomery, received in evidence January 24, 1911, and is attached hereto.)

Examiner Burchmore: With reference to that list, what is the total tonnage you expect those shippers to furnish in the course of a year?

Mr. Montgomery: Well, that is rather hard to state anything very intelligently on, Mr. Examiner, but this is a rich country through here, and as I say, thickly settled up. It grows corn, cotton, wheat and hay in immense quantities, and naturally consumes a great deal of merchandise of all kinds, and we expect to do everything we can to persuade those people to ship all of that over our line. I intend to have a soliciting agent in there to build
4674 up that business.

Mr. Snow: It is a fact, is it not, that the greater part of the business men included in that list, have personally contributed money to the building of this railroad and the purchasing of the right of way, and have stated and said that they would handle some of their business over our line.

Mr. Montgomery: Yes, quite a number of them. I would not venture a statement as to the number.

Mr. Snow: The larger part of them?

Mr. Montgomery: I would say a large number of them, yes, sir.

Mr. Snow: And it is a fact, is it not, that a large number of them have subscribed to the fund which was raised by the city.

Mr. Montgomery: I have not seen the subscription list but I understand it was general throughout the town.

Mr. Snow: Between Braggadocio and Caruthersville along the right of way of the Deering Southwestern, what is the character of the crops produced and raised, just in a word. I think perhaps that has been given.

Mr. Montgomery: It is agricultural products of all sorts in there.

4675 Mr. Snow: Do you know whether or not the Wisconsin Lumber Company owns the land or any part of the land over which the Deering Southwestern extends from Deering to Caruthersville?

Mr. Montgomery: Yes, it does.

Mr. Snow: How much of that land?

Mr. Montgomery: I should say between Deering and—oh, between Deering and Caruthersville?

Mr. Snow: Yes.

Mr. Montgomery: Probably a matter of a mile and a half altogether, I should say there.

Mr. Snow: By that you mean that the Wisconsin Lumber Company owns about a mile and a half of the land adjoining the right of way of that road?

Mr. Montgomery: Yes.

Mr. Snow: The adjoining land for the remaining distance t. Caruthersville is owned by other individuals?

Mr. Montgomery: Well, it is owned by a lot of individuals. Their names are shown on this blue print.

Mr. Snow: None of them have any financial interest or otherwise in the Wisconsin Lumber Company?

Mr. Montgomery: I never heard of it if they have, no. If I may interrupt just a minute, I think I have overlooked one
4676 station that we are locating, and that is Ward Avenue in the City of Caruthersville; we will have two stations in Caruthersville, one around near the river and the other at Ward Avenue, that is the west side of the town about a mile from the station first referred to. That station was located there at the request of several or a few of the Caruthersville people who will live out nearer there than they do — the other one, and they thought it was a matter of convenience to them, and as we are going to operate this for the benefit of the traveling public and shippers, we were very glad to put in a flag station there, and that is all it will be.

Mr. Snow: What are your terminal facilities in Caruthersville?

Mr. Montgomery: We are trying to make a contract with the Frisco Railway for joint use of their terminals for the time being. We have this 20 acre plot in there, but we are not yet ready to build our yard and terminals on that, so I thought we might as well use the Frisco if we could arrive at satisfactory terms, and I think we can.

Mr. Snow: Are these tracks of the Deering Southwestern Railway built over, upon or across any of the public streets of that city?

4677 Mr. Montgomery: They are.

Mr. Snow: Under what authority, if you know, are they so built as will — the railroad be operated?

Mr. Montgomery: Under an ordinance of the City Council signed by the Mayor of the city.

Mr. Snow: Are you familiar with that ordinance?

Mr. Montgomery: I have read the ordinance, yes, once or twice.

Mr. Snow: I will ask you to examine this copy (handing paper) and see if it is a copy of the ordinance of the City Council of the City of Caruthersville.

Examiner Burchmore: As a matter of fact it will be sufficient if you state it is a copy, Mr. Snow.

Mr. Montgomery: Yes, this is a copy.

Mr. Snow: I will state it is a copy, and I want to introduce it in evidence, as it contains the authority of that railroad to operate over those public highways.

(The paper so offered and identified, was receive in evidence and thereupon marked Deering Southwestern Exhibit No. 3, Witness Montgomery, received in evidence January 24, 1911, and is attached hereto.)

Mr. Montgomery: You already have a copy of that.

Mr. Snow: Not in this record, however.

4678 Mr. Montgomery: No, not in this record.

Mr. Snow: I have copies of three contracts made with the citizens of Caruthersville and Braggadocio and Hornersville respectively. These contracts provide for the furnishing and procuring of the right of way by deed by the citizens and the donation of certain sums of money and they further constitute a contract between the citizens of those various towns and the railroad to operate this as a public railroad for their use and convenience and benefit during the period of years. Those contracts have been filed with the Commission, and I wish to ask if it will be necessary for me to file them in this record, or will they be admitted as evidence.

Examiner Burchmore: If they are filed with the Commission they will be considered as in evidence by a mere reference to them.

Mr. Snow: Very well.

Examiner Burchmore: What period of years do they cover, may I ask?

Mr. Snow: A period of ten years.

Mr. Coleman: What is the gist of them?

Mr. Snow: If you desire, I will read them.

Mr. Coleman: No.

Mr. Snow: The gist of them is to the effect that the Deer-

4679 ing Southwestern will operate at least one train a day for the carriage of both passengers and freight from Caruthersville to Hornersville and for a period of ten years, and in case they fail to comply with that agreement with them there is a forfeiture clause with reference to the right of way which was donated to the company.

Examiner Burchmore: They will simply forfeit their right of way?

Mr. Snow: Yes. That right of way was purchased and secured by these citizens for the railroad.

Mr. Montgomery: Am I correct in understanding that the forfeiture is the money that this right of way cost?

Mr. Snow: Let us see just what it is, as long as that question has been asked. It has been some time since I read the contracts. They were made some time ago:

"Said Second Party further stipulates and agrees with said First Parties to operate and maintain on its railroad between the points herein stated, both daily freight and passenger trains, and to, in every way, perform the duties of a common carrier in the transportation of freight and passengers for the public whenever and

wherever its service may be required and in accordance with
4680 the law from and after the completion and building of its railroad between the points herein stated, and that the maintenance and operation of its trains between Caruthersville, Missouri, and Deering, Missouri, shall continue after said railroad shall have been built for at least a period of ten (10) years from and after May 1, 1911, and the maintenance and operation of its trains between the extension of said railroad from Deering, Missouri, to Hornersville, Missouri, shall continue after said extension shall have been built for at least a period of ten (10) years from and after May 1, 1912; and agrees that if said railroad, between the points as herein stated, be not operated and maintained for both daily freight and passenger service for a period of ten (10) years from and after the dates above stated, then the cost of securing the right of way and terminals herein described shall be repaid to the First Parties herein."

Mr. Montgomery: That was my recollection.

Mr. Snow: Your recollection was as usual, entirely correct.

Examiner Burchmore: How long will you be cutting timber down in this vicinity?

Mr. Montgomery: Really, I have not any idea.

Examiner Burchmore: As long as ten years?

4681 Mr. Montgomery: I do not really know. I think it is entirely proper for me to say that had nothing to do with that contract however, nor the period covered by it.

Examiner Burchmore: Does that clause in the contract evidence any doubt in the minds of the Caruthersville people as to the permanent character and bona fide character of this railroad?

Mr. Montgomery: I really don't know.

Mr. Snow: They are putting up good money for it, and want to be sure they are getting their money's worth.

Mr. Coleman: Why did they fix that ten year period?

Mr. Snow: It was a suggestion by them that they wanted a contract for at least ten years. We did not put it in on our own suggestion.

Examiner Burchmore: If the railroad stays ten years they will get their money's worth anyhow.

Mr. Snow: Well, we hope so. We hope to give them the service. I will ask you how this right of way has been secured, if you know, by purchase, donation, condemnation or how?

Mr. Montgomery: Well, some of it, of course, has been bought. I understand some of it was donated and certainly ten different parcels of the right of way have been condemned by the
4682 Deering Southwestern Railway under the right of eminent domain.

Mr. Snow: Under the right of eminent domain under the State law?

Mr. Montgomery: Yes.

Mr. Snow: I think you have stated what the character of the rail was as laid?

Mr. Montgomery: Yes, sir, 75 pound.

Mr. Snow: Do you know what the maximum grade of the road is?

Mr. Montgomery: Not to exceed one-half per cent.

Mr. Snow: How about the curvature?

Mr. Montgomery: Well, the curvature is very light with the exception of one place in Caruthersville where we have about a seven degree curve. The rest of it is three or four.

Mr. Snow: How much bridge and trestle work have you along the right of way?

Mr. Montgomery: When the line is completed into Hornersville we will have a mile altogether in the 31 miles.

Mr. Snow: Have you stated what the authorized capital stock of the Deering Southwestern is?

Mr. Montgomery: The capital stock is $400,000 paid in in cash.

4683 Mr. Snow: That has been issued, has it?

Mr. Montgomery: That has been issued.

Mr. Snow: And paid for?

Mr. Montgomery: Paid for, yes.

Mr. Snow: Does the Deering Southwestern file with the Interstate Commerce Commission in accordance with the law?

Mr. Montgomery: It does.

Mr. Snow: Does it make to that body its annual and monthly and special reports?

Mr. Montgomery: It does, every report that is either required or asked for by the Commission.

Mr. Snow: Are its accounts kept in accordance with the prescribed forms and rules of the Commission?

Mr. Montgomery: Strictly so.

Mr. Snow: Is the Deering Southwestern, if you know, recognized by the Missouri State Railroad Commission, as a public railroad, and under its jurisdiction and control?

Mr. Montgomery: It is.

Mr. Snow: Does it file its reports to that body?

Mr. Montgomery: Yes.

Mr. Snow: Does it file its freight tariffs with that body?

Mr. Montgomery: It does.

4684 Mr. Snow: Has the Deering Southwestern filed any passenger tariffs?

Mr. Montgomery: We have not filed a passenger tariff. The Missouri State Law does not require us to file one. The only tariffs we have issued has been a local tariff between stations on our line. That has not been filed with the Interstate Commerce Commission. We will be very glad to file one if the Commission likes. It is on the basis of three cents per mile. The Missouri statutes would allow us four cents a mile, but we are only going to charge three, but if we issue any joint passenger tariffs with the Frisco on interstate traffic, of course it will be filed.

Mr. Snow: So far as you know now, the passenger service will be wholly a local service?

Mr. Montgomery: I think so.

Mr. Snow: There will be no through tickets issued?

Mr. Montgomery: No; at least I see no occasion for issuing tickets at this time.

Mr. Snow: Does the Deering Southwestern Railway comply with the Federal law with reference to equipping its locomotives and cars with safety appliances?

Mr. Montgomery: It does.

Mr. Snow: Does it also comply with the state laws in that
4685 respect?

Mr. Montgomery: It does.

Mr. Snow: You referred in your statement, or else in response to an inquiry by the Examiner, the fact that there was a connection formerly of the Deering Southwestern with the Frisco at a station called Deering Junction.

Mr. Montgomery: Yes.

Mr. Snow: And that station has now been discontinued?

Mr. Montgomery: That station is discontinued now, yes, sir.

Mr. Snow: What was the character of the service existing over that line between Deering and Pascola?

Mr. Montgomery: The service was very poor. It has always been very poor since I have known anything of it.

Examiner Burchmore: I think you have described that adequately.

Mr. Snow: I wanted to bring out rather more clearly the point.

Mr. Montgomery: Well, there is one train scheduled a day. The time card calls for it to leave Pascola at 8:20 in the morning and arrive at Deering at 9:20. The schedule time out of Deering is 9:30 and Pascola about 10:20. There is no close passenger con-
4386 nection with that train in either direction at Pascola. People going to or coming from Deering on that train would be required to lay at Pascola several hours in each direction.

Mr. Snow: Is there any mail service?

Mr. Montgomery: There is no mail service performed by the Frisco. The Wisconsin Lumber Company have a Star Route contract in there with the government between Pascola and Deering, and that is the only mail that is delivered at Deering at this time.

Mr. Snow: What were the passenger facilities for a person who wished to go from Deering, we will say, to Caruthersville; by what route would they get across to Caruthersville or to Hornersville, state very briefly.

Mr. Montgomery: The only railroad, of course, is to use this train. The train is very irregular, and as I say, it makes no connection at Pascola by three or four hours in either direction, and it is a very long, tedious and roundabout way.

Mr. Snow: So there was no real satisfactory feasible means of getting from and to these various towns?

Mr. Montgomery: None whatever except to ride horseback or drive a team; certainly none by railroad.

4687 Mr. Snow: And when the Deering Southwestern is completed and in operation between these points, how long will it take to go from one point to the other?

Mr. Montgomery: Our first schedule will be on the basis of about

one hour, but we will reduce that to 45 minutes just as soon as the track is in proper shape, that is in the course of 60 days.

Examiner Burchmore: In connection with your testimony I understand when the Examiner got there and went over that property he arrived at Pascola on the Frisco at 6:00 o'clock and felt it was advisable to walk rather than wait for the train.

Mr. Montgomery: 90 per cent of the people do just that.

Mr. Snow: I would like to have the examiner sworn and take his testimony on that.

Mr. Montgomery: Not only that, but if I may say a word, a man getting into Deering on business, as I have just testified, if he uses that train, has just ten minutes to transact business in the town or else lose over 24 hours.

Examiner Burchmore: Is there a hotel there?

Mr. Montgomery: Yes, but I do not recommend it to you.

Mr. Snow: We filed a specific complaint in this case,
4688 and I would like to ask Mr. Montgomery whether the various tariffs to which reference is made in the case of the Deering Southwestern versus the St. Louis & San Francisco, et al., are the tariffs to which the Deering Southwestern is a party?

Mr. Montgomery: Yes.

Mr. Snow: Have these various tariffs been cancelled by supplements filed by the various railroads, parties thereto?

Mr. Montgomery: They have.

Mr. Snow: That is, there has been an attempt to cancel them?

Mr. Montgomery: Yes, the Interstate Commerce Commission have suspended the cancellation, I understand.

Mr. Snow: As stated in this complaint?

Mr. Montgomery: As stated in this complaint.

Mr. Snow: Will you state what the effect upon the Deering Southwestern will be if these cancellations go into force and effect?

Mr. Montgomery: Well, the effect on the Deering Southwestern may not be very serious because we will collect our revenue just the same, but the effect on the industries that may be located on that railway or that are now located there, will probably be right serious in that they will have to pay our tariff rate in addition to whatever rate the Frisco charges.

4689 Mr. Snow: What will be the effect upon the various industries along your line in case they are cancelled?

Mr. Montgomery: I just answered that.

Examiner Burchmore: What would be the effect if the Frisco rate was reduced by two cents from Deering and the joint rate was cancelled?

Mr. Montgomery: The effect would be, of course, that the industry shipping the lumber or timber products would be on the same rate that they are now, but the Frisco would probably reduce their rate probably from all the other territories two cents per 100 pounds from any other mills that might be located on their railroad and would therefore get the benefit of a less rate than from Deering or from any other point on the Deering Southwestern Railway.

Examiner Burchmore: Suppose the joint rate remained the same as it is now, and independent of any action by the Commission sup-

pose the Frisco System reduced your division from two cents to one cent, what effect would that have on this situation?

Mr. Montgomery: It would have rather a serious effect perhaps on the Deering Southwestern unless we wanted to continue our
4690 rate in there of two cents per 100 pounds, and our industries would have to pay one cent over the through rate.

Examiner Burchmore: You would have to charge two cents for your logs instead of one cent?

Mr. Montgomery: No, I do not think we would make any change in the logging rate; I think that service is fairly remunerative in itself and it is on about the same basis as the Frisco charges in that territory.

Examiner Burchmore: Then as I understand, you think you would raise the joint rate by one cent?

Mr. Montgomery: Yes, I think we would have to.

Examiner Burchmore: What is the character of the Frisco Road between Hayti and Caruthersville?

Mr. Montgomery: It originally was a logging road and is about that character today. Of course they run their day passenger trains over there and passenger trains from Kennett run over that branch, and they also operate a passenger train between Caruthersville and Memphis, a local train which operates over that branch; but the line does not compare in any way physically with their main line proper.

Examiner Burchmore: How about the line from Caruthersville to the south?

Mr. Montgomery: Well, that is a very good piece of rail-
4691 road in there.

Examiner Burchmore: Does your company expect to originate any outbound tonnage at Caruthersville?

Mr. Montgomery: We certainly do.

Examiner Burchmore: Well, what?

Mr. Montgomery: Well, we hope to handle outbound traffic in connection with the river there, for example, and also any local tonnage there may be there through the Cotton Belt into Texas and the southwest.

Examiner Burchmore: Do you expect to haul anything across the Cotton Belt destined to St. Louis and the north?

Mr. Montgomery: If we can persuade the Cotton Belt to put in joint freight rates and they will stand the test of the long and short haul clause, yes. We will do everything we can to get them in.

Examiner Burchmore: Do you think the Frisco, through Blazer, would put in any joint through rates over your line from Caruthersville?

Mr. Montgomery: I doubt that. I think the Frisco would figure as I would, that they would have their own rails out of Caruthersville.

Examiner Burchmore: Is it not rather generous of them to be willing to give you their terminals at Caruthersville?

4692 Mr. Montgomery: They are very glad to do that. We are paying them for them. I cannot tell you just what the basis of that payment will be, because it has not been agreed to, but at

Hornersville we have virtually agreed with the Cotton Belt on a very reasonable basis, I figure, and yet very fair basis to them. It certainly is no donation.

Examiner Burchmore: The line of the Frisco between Hayti and Caruthersville is a rather poor road?

Mr. Montgomery: A right poor road, yes.

Examiner Burchmore: Do you think they contemplate abandoning that road and running the service through Hayti and Blazer via your road?

Mr. Montgomery: I have offered Mr. Gray, the Vice President, trackage rights over our road if he wants to operate trains that way. He has not said yet what he will do.

Examiner Burchmore: That would enable them to abandon that road?

Mr. Montgomery: Yes, sir, and I do not understand there is any traffic in there to speak of that they serve on that branch, and that probably is also true to Grassy Bayou, from Caruthersville down towards Memphis, when they connect with the main line. There is a little station in there called Canedy near the main line again.

4693 Examiner Burchmore: That you said was a much better railroad?

Mr. Montgomery: No, not until you get to the main line there running south from Hayti.

Examiner Burchmore: Well, it is a possibility that the Frisco may abandon this line east of Hayti and Canedy and exercise trackage over your road.

Mr. Montgomery: I am not sure that is a possibility. We have offered them that right, but I do not know what their obligations are in that territory, whether they can abandon it or not, but I will be very glad to have them use our line if they want to, on a fair basis.

Examiner Burchmore: What was the purpose of building there from Deering to Caruthersville?

Mr. Montgomery: It was built at the request and solicitation of the Caruthersville people and at Braggadocio.

Examiner Burchmore: Well, but from your point of view, what was the incentive?

Mr. Montgomery: The incentive was that it looked like a good business proposition and of course there was an open country in there with no railroad transportation and a very rich country.

Examiner Burchmore: And it looked like a good business

4694 proposition in what way?

Mr. Montgomery: From an investment standpoint.

Examiner Burchmore: You mean that valuable traffic could be developed there?

Mr. Montgomery: I think undoubtedly so.

Examiner Burchmore: If you have come to that conclusion, it must be that you have some figures or data with respect to the amount of tonnage which would be originated on that line. How much

traffic do you expect each shipper between Caruthersville and Deering, not including those located at Caruthersville, to furnish?

Mr. Montgomery: I cannot tell you as to the tonnage. All I can tell you as to tonnage would be a mere guess, but that territory produces a magnificent crop of corn and the corn is now teamed into Caruthersville. It also produces cotton and the bulk of the cotton is teamed into Caruthersville. There is hay which is also teamed into Caruthersville. We shall use every effort to get all of that. Now the hay crop consists of alfalfa, and it is cut, so I am reliably informed, three and four times a year, and will average a ton to the acre at each cutting. Of course——

Examiner Burchmore: Do you know how much corn is hauled into Caruthersville at the present time?

4695 Mr. Montgomery: I cannot tell you, of course, but the records of the Fricoo will show. There is an immense amount of it. For instance, I was in Caruthersville Friday and Saturday of last week, and there were a great many wagon loads of corn coming in there.

Examiner Burchmore: How far in do the farmers haul the corn?

Mr. Montgomery: All the way in from Braggadocio and down the big road south of Braggadocio for miles.

Examiner Burchmore: Do you know how much cotton is taken into Caruthersville?

Mr. Montgomery: I understand Caruthersville handled about 8,000 bales of cotton this year.

Examiner Burchmore: Some figure was mentioned of 800 bales of cotton in connection with your movement.

Mr. Montgomery: Yes, I shall be disappointed if our movement is not several times 800 bales, but of course, cotton in there depends a good deal on the gins in the country. If the gins are established, as we are reliably informed that they will be, so that this cotton may be baled along the line of our railroad, of course we will haul all that cotton in there. There is a gin at this time at Braggadocio but the owner of that, so I am reliably informed, is going to

4696 at once move that gin near our station at Braggadocio and very considerably increase the size of it. That is one of several developments in there.

Examiner Burchmore: How large a proportion of the several thousand bales of cotton is teamed in from farms within that triangle enclosed within the three lines of the Frisco System of which Caruthersville, Canedy and Hayti would be the points?

Mr. Montgomery: I should say every bit of it raised in there is teamed in there.

Examiner Burchmore: Would it be 4,000, 5,000 or 8,000 bales?

Mr. Montgomery: Of course, the County of Pemiscot, as I learn, has produced about 16,000 bales of cotton; about half of it goes into Caruthersville and the other half will either get to Hayti or to Steele and stations down on the Frisco farther south there.

Examiner Burchmore: Then these very bad wagon roads that our friend the engineer testified about this afternoon, do not prevent the farmers from teaming their stuff considerable distances?

Mr. Montgomery: The bad wagon roads, of course, happen after considerable of the cotton has moved, and of course those roads are being improved all the time through there, but certain it
4697 is that with a rainfall of somewhere between 40 and 60 inches during the winter and spring months, the wagon roads cannot be particularly good.

Mr. Coleman: Do you get two cents now from the Frisco?

Mr. Montgomery: Two cents per 100 pounds, yes.

Mr. Coleman: You haul that how far?

Mr. Montgomery: Well, we will haul that to Blazar, about seven miles. The service heretofore has been somewhere in the neighborhood of half a mile, not to exceed that.

Mr. Coleman: And you have not any understanding with the Frisco that you are to get a better division at Blazar?

Mr. Montgomery: None whatever, no.

Mr. Coleman: You expect to support the additional line by its local earnings?

Mr. Montgomery: Well, you mean by local earnings, what originates on the line there, or what comes in as well? Of course there is a lot of traffic which will come in from points along that line.

Mr. Coleman: First, take up the earnings which will come from the agricultural development along the line?

Mr. Montgomery: I think that line will pay, yes, with the development in there, and the traffic that naturally will come
4698 and go and will increase, of course, as the industries are located along there.

Mr. Coleman: What do you figure it will cost to operate that line?

Mr. Montgomery: I have not figured anything very close on the cost of operation, but certainly not any more relatively than it has cost us not to operate.

Mr. Coleman: Under your old operations at two cents per half a mile and under your new operation you do not know what it will cost and what the new tonnage will be?

Mr. Montgomery: We can furnish a very fair conclusion as to what the cost will be by what our cost has been, and when it gets in proper shape to operate over, it will not probably cost as much relatively as it has been costing.

Mr. Coleman: Do you expect to get an average of two cents for each half mile?

Mr. Montgomery: I never heard of any rates being made that way and we do not expect to make ours that way.

Mr. Coleman: I know, but you were comparing the new line with the old line. On the old line you get two cents for the half mile.

Mr. Montgomery: Because that was all the haul we had then.

4699 Mr. Coleman: If you are going to compare them, do you expect to get two cents for every half mile?

Mr. Montgomery: No.

Mr. Coleman: That is not really what you are comparing, the operation of the old line?

Mr. Montgomery: I was not comparing the old operation except as to the cost of operation, that is all.

Mr. Coleman: Where is the 20 acres terminal to be?

Mr. Montgomery: Over in the city limits of Caruthersville, over towards the river.

Mr. Coleman: Is that to be devoted to railroad uses?

Mr. Montgomery: Entirely so, or whatever use the railroad desires to put it to, for switch yards, and we may locate some industries on there. I have not any in mind.

Mr. Coleman: You did not reckon you would need 20 acres of terminals for that railroad?

Mr. Montgomery: I don't know what it is going to need. Three miles across the Mississippi River is the Illinois Central, and it is not beyond the possibilities that we may have a transfer in with the Illinois Central, and you cannot tell what you will need; 20 acres is not too much of a terminal for any railroad to have of any
4700 consequence, and we expect to have one of consequence.

Mr. Coleman: You said some stuff went out f. o. b. from the mill, outbound lumber?

Mr. Montgomery: Yes.

Mr. Coleman: Is that consigned mostly to the Harvester people?

Mr. Montgomery: No. I said besides the Harvester Company.

Mr. Coleman: Does your lumber go into competition with other hardwood lumber?

Mr. Montgomery: Yes, sir, it is sold, some of it.

Mr. Coleman: And that would be sold f. o. b. the mill?

Mr. Montgomery: Yes. Of course, the Harvester Company's lumber is also shipped f. o. b. the mill, but that is not what I had in mind when I was talking then.

Mr. Coleman: Could you give an estimate of how much is outside business?

Mr. Montgomery: I cannot, but I am going to file a statement in this case showing it as near as I can.

Mr. Coleman: Under the laws of what state are you incorporated?

Mr. Montgomery: Missouri.

Mr. Coleman: How long is your charter?

4701 Mr. Montgomery: I do not know.

Mr. Coleman: No idea?

Mr. Montgomery: No, I have not any idea.

Mr. Snow: I think I have a copy of the charter here somewhere.

Mr. Coleman: Well, while he is looking it up, let me ask if you made any proposition to the Frisco as to how much you would charge them for trackage over the new line?

Mr. Montgomery: That question has not come up. The whole question of their using the track came up in the last ten days; I wrote and asked Mr. Gray if he thought it would be a good scheme, and he wrote me back asking me for a map to show what it was, and that is as far as we have got at this time.

Mr. Coleman: As to new traffic coming inbound, what would you expect to come in.

Mr. Montgomery: We expect to haul all sorts of merchandise in

there, because there are a number of stores at these points, Braggadocio and Game.

Mr. Coleman: About how much per year?

Mr. Montgomery: I do not know, but we expect to have some rates in with a boat line, and I saw a report of the merchandise in on one boat recently down there amounting to more than 100 tons. Of course, it did not all go west, but a good pro-

4702 portion of it went west.

Mr. Coleman: Have you joint rates inbound now with the Frisco?

Mr. Montgomery: No, we have not.

Mr. Coleman: Do you expect to have?

Mr. Montgomery: We do.

Mr. Coleman: Have you applied for them?

Mr. Montgomery: We have.

Mr. Coleman: And joint rates outbound also?

Mr. Montgomery: Exactly.

Mr. Coleman: On everything?

Mr. Montgomery: On everything.

Mr. Coleman: Then we are safe in concluding that your estimate of what this railroad is to earn is not based on any close study.

Mr. Montgomery: It is based on as close study as any intelligent man can make by riding over the country—I have ridden over it 20 times in the last three or four years and studied it closely, and talked to the merchants, both at Caruthersville and Braggadocio and all along there, as to the amount of business.

Mr. Coleman: What rate are you going to charge on alfalfa?

4703 Mr. Montgomery: I do not know.

Mr. Coleman: Have not given any thought to that?

Mr. Montgomery: We are going to charge the Missouri distance rate in the State of Missouri.

Mr. Coleman: Suppose it is consigned outside?

Mr. Montgomery: I do not know; we will put them in competition with other growers of hay if we can.

Mr. Coleman: Now as to the other commodities, you have not yet determined what rates you are going to charge on them?

Mr. Montgomery: The joint rates will be on the basis of, I think, five cents over Hayti, as I recollect; I am not sure about that; I have not had much to do with that feature of it. We have a General Freight Agent who does that.

Mr. Coleman: As a matter of fact you have not been able to take any given amount of tonnage and muitiply it by any given amount or rate to reach your income?

Mr. Montgomery: No.

Mr. Coleman: But you built the railroad without doing that?

Mr. Montgomery: We built the railroad because we felt very sure of the country through which we were going, and in which we will operate.

Mr. Snow: The charter is 99 years from 1903.

4704 Mr. Coleman: Do you know how deep the Mississippi River is at that point?

Mr. Montgomery: It varies according to the time of year and how much water there is there, I do not know, no, but there is always water there, navigable water.

Mr. Coleman: Sometimes it is pretty deep, is it not?

Mr. Montgomery: Yes, sir, sometimes it is pretty deep.

Mr. Coleman: Is it swift current?

Mr. Montgomery: Quite a current, but there are steamboats going up and down and towboats with coal all the time.

Mr. Coleman: In your idea of connecting up with the Illinois Central did you mean by ferry or bridge?

Mr. Montgomery: By ferry, of course.

Mr. Snow: I would like to state right in that connection that according to this ordinance from the City of Caruthersville we have the dockage rights from the city for the maintenance of a wharf.

Mr. Coleman: You also mentioned you might possibly let that go to an industrial concern.

Mr. Montgomery: Let what go?

Mr. Coleman: Some of that 20 acres.

Mr. Montgomery: If we do not have need for it and some
4705 concern wants to locate there and do business with us, we will be very glad to locate them.

Mr. Coleman: Under your charter to build the railroad, do you not understand that if you maintain your road for only ten years and then take it up, you would have to give up your right of way anyway?

Mr. Montgomery: I had not thought of that point, because I have no idea it will ever be taken up.

Mr. Coleman: Who thought of the ten year agreement with the citizens?

Mr. Montgomery: The citizens of Caruthersville.

Mr. Coleman: And who thought of it on behalf of your railroad?

Mr. Montgomery: I thought of it, and Mr. Snow thought of it; we were both in conference with the citizens of Caruthersville, but it was presented by them, wanting to know if we would enter into a contract covering that period, and we said we would after other matters were made satisfactory.

Mr. Coleman: As a matter of fact you do not consider that ten year assurance amounts to anything?

Mr. Montgomery: It amounts to the fact we will operate a railroad there for ten years. What happens beyond that I do not know, of course.

4706 Mr. Coleman: But you do not consider it required that agreement to make you give up your right of way?

Mr. Montgomery: No.

Mr. Snow: That was put in to satisfy the Caruthersville and Hornersville people. It was not suggested by us, but they wanted some positive assurance.

Mr. Coleman: Do you consider, Mr. Montgomery, that the two cents division you got from the Frisco was reasonable for the service?

Mr. Montgomery: Yes, for the service we performed, I think it was.

Mr. Coleman: You did not furnish any cars?

Mr. Montgomery: No, we did not furnish any cars.

Mr. Coleman: Your railroad was not what would be called a very expensive railroad?

Mr. Montgomery: No, about the same class as any other railroad in that territory.

Mr. Coleman: You are a member of the general—what do you call it, the Illinois Shippers' Association?

Mr. Montgomery: The Illinois Manufacturers' Association?

Mr. Coleman: The Illinois Manufacturers' Association, yes.

Mr. Montgomery: The Deering Southwestern Railway?

Mr. Coleman: No, no, but you yourself.

4707 Mr. Montgomery: The International Harvester Company is.

Mr. Coleman: And I believe you took a prominent part and manifested considerable interest in the recent rate advance case.

Mr. Montgomery: I was interested in that case, yes.

Mr. Coleman: Did you testify?

Mr. Montgomery: I did not.

Mr. Coleman: Should we understand that you consider two cents for half a mile reasonable for all lines?

Mr. Montgomery: You can understand that for the service performed by the Deering Southwestern Railway at that point two cents per 100 pounds is not unreasonable according to my judgment.

Mr. Coleman: Will you tell me in what respect the service you render is superior to that rendered by the trunk lines whose rates you are contesting?

Mr. Montgomery: I do not know of any service performed by many trunk lines under circumstances of that sort or to the extent that we performed that they get less than two cents per 100 pounds except probably switching around some local community, and that is generally on a reciprocal basis between railroads.

Examiner Burchmore: It does not seem to me this is very

4708 profitable on this question anyhow.

Mr. Coleman: I just wanted to see. It seemed to me there was considerable change of opinion, that is all. I do not think I need to go any further.

Mr. Montgomery: I do not think you had better bother about my opinion on the rate case, if that is what you are leading up to.

Mr. Coleman: The only thing was, I understood your company was very much interested—that they thought that the rate advance was unreasonable, and here in another situation you think two cents per 100 pounds for half a mile is very reasonable.

Examiner Burchmore: Is there any two cent rate involved in the advanced rate cases?

Mr. Coleman: There is no advance of two cents per 100 pounds.

Mr. Montgomery: Might I make a statement? I do not want Mr. Coleman to misunderstand it. The International Harvester Company took this position in the rate case, that under the present Commerce Act the Interstate Commerce Commission may on complaint, or may on their own initiative investigate and pass upon the

reasonableness or the justness of any advance or rate made by any common carrier after January 1st, 1910. The Harvester
4709 Company's position was that they wanted the facts presented to the Interstate Commerce Commission. If that Commission say the railroads are entitled to additional revenue through a blanket rate advance, the International Harvester Company will not complain. Now I acted individually in that case as Chairman of the Transportation Committee of the Illinois Manufacturers' Association and also as the Chairman of the Shippers' Committee in that rate case, representing all the shippers in the United States that were parties to the meeting of May 17th, 1910, and over 400 of them were there representing most of the communities, shippers' associations and individual shippers in the United States. I just wanted to mention that so you would be clear. The International Harvester Company has not said whether the railroads are entitled to an advance in rates or not.

Mr. Coleman: No, I just wanted your personal opinion.

Mr. Montgomery: Well, my personal opinion might not appear well in print.

Examiner Burchmore: I have one more line of questions. This blue print apparently shows the projection of your line from Hornersville south on the west bank of the Little River Swamp?

Mr. Montgomery: Yes.

4710 Examiner Burchmore: Do I understand that is going to Blytheville?

Mr. Montomery: That is going nowhere; it was extended to the State Line. There are several opportunities south of the State line to connect with other railroads, and while we were making an amendment to the charter we amended it to the State Line. There was no definite destination in mind.

Examiner Burchmore: Are there any lands or woods owned by the Wisconsin Lumber Company down in that direction?

Mr. Montgomery: They own to the State Line as I understand.

Examiner Burchmore: Yes, but this line——

Mr. Montgomery: I cannot state positively, but I think on that side of the Little River also that line is planned there, but I am not positive about it.

Mr. Snow: There is nothing over the line.

Examiner Burchmore: The Frisco seems to have received some pretty hard knocks this evening. Mr. Wood, do you care to ask any questions?

Mr. Wood: No questions.

(Witness excused.)

Whereupon, at 10.15 P. M., an adjournment was taken to January 25th, 1911, at 9:30 A. M.

4711 ST. LOUIS, MO., *January* 25, 1911.

Met pursuant to adjournment at 9:30 A. M.

Present:

Parties as before.

Homan & Southeastern Railroad.

C. B. KELLY, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is your connection with the Homan & Southeastern?

Mr. Kelly: President.

Examiner Burchmore: Are you connected with any lumber company, and if so, what one?

Mr. Kelly: I am connected with the Homan Lumber Company.

Examiner Burchmore: In what capacity?

Mr. Kelly: President.

Examiner Burchmore: Are you a stockholder in both companies?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Are the other officers of the two companies identical, or substantially so?

4712 Mr. Kelly: Well, part of them; Mr. J. A. Browne, Vice President of the Homan & Southeastern, has no connection with the Homan Lumber Company; H. E. Townsend has no connection with the Homan Lumber Company.

Examiner Burchmore: What is Mr. Townsend's position?

Mr. Kelly: He is simply a director in the Homan & Southeastern.

Examiner Burchmore: How many shares does he hold?

Mr. Kelly: One share.

Examiner Burchmore: Are there any other officers in the railroad company who are not also connected with the lumber company?

Mr. Kelly: No, sir.

Examiner Burchmore: By whom is this railroad owned?

Mr. Kelly: The majority of the stock is owned by J. A. Browne, of North Manchester, Ind.

Examiner Burchmore: How long has Mr. Browne owned the stock?

Mr. Kelly: Since September, 1909.

Examiner Burchmore: Do you know from whom he acquired it?

Mr. Kelly: Yes, sir; from the Homan Lumber Company.

Examiner Burchmore: Does Mr. Browne own any stock in the Homan Lumber Company?

4713 Mr. Kelly: No, sir.

Examiner Burchmore: What is his relation to the Homan Lumber Company?

Mr. Kelly: None whatever.

Examiner Burchmore: How did he happen to buy this stock?

Mr. Kelly: The Homan Lumber Company sold their holdings of

stock in the Homan & Southeastern, and also sold their plant to J. A. Browne in September, 1909.

Examiner Burchmore: They sold their lumber plant to Mr. Browne?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Does he now own that lumber plant?

Mr. Kelly: Yes, sir; the Homan Lumber Company operated it, however, for a year and three months under a lease, operated the lumber plant, I mean.

Examiner Burchmore: What is the extent of your stock ownership in this railroad?

Mr. Kelly: One share.

Examiner Burchmore: Is there any other person who owns more than one share excepting Mr. Browne?

Mr. Kelly: No, sir.

Examiner Burchmore: The mill and lumber plant are now in operation?

4714 Mr. Kelly: Not at the present time; the mill was destroyed by fire on the 20th of December, and is being rebuilt.

Examiner Burchmore: By whom is it being rebuilt?

Mr. Kelly: J. A. Browne & Company.

Examiner Burchmore: Who is interested in J. A. Browne & Company aside from Mr. Browne?

Mr. Kelly: Henry Mills, H. E. Townsend, and one or two small stockholders.

Examiner Burchmore: Have those gentlemen any interest in this railroad?

Mr. Kelly: Only a nominal one, I think; I am not informed as to their holdings, but my impression is that J. A. Browne holds the majority of stock.

Examiner Burchmore: The mill was destroyed by fire in September, 1909?

Mr. Kelly: No, sir, in December, 1910.

Examiner Burchmore: Who was operating it at the time it was destroyed?

Mr. Kelly: The Homan Lumber Company.

Examiner Burchmore: Under lease?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Are you able to acquaint us with

4715 the terms of that lease?

Mr. Kelly: Yes, sir. Here was the situation: When Browne bought this plant the Homan Lumber Company had about cut out what timber they had; they had enough to run about a few months, and Mr. Browne was not quite ready to commence his operations, and we fixed up a deal by which we leased the plant for a year and got some additional timber, enough to run on for that time, until such time as he was in a position to take the lumber plant over and operate it himself.

Examiner Burchmore: Then I take it Mr. Browne has some timber holdings down in that locality?

Mr. Kelly: Yes.

Examiner Burchmore: Along the line of the Homan & Southeastern Railway?

Mr. Kelly: Yes, sir.

Examiner Burchmore: What is the extent of his holdings?

Mr. Kelly: I don't know the extent, but I think he has about four to five years' run.

Examiner Burchmore: From whom did he acquire that timber?

Mr. Kelly: Well, he has owned it for about four years; from whom he acquired it I do not know.

Examiner Burchmore: Not from the Homan Lumber Company?

4716 Mr. Kelly: No.

Examiner Burchmore: And not from any persons interested in that company so far as you know?

Mr. Kelly: No.

Examiner Burchmore: From whom did the Homan Lumber Company acquire its timber?

Mr. Kelly: They bought it from a receiver, at a receiver's sale.

Examiner Burchmore: Who was this receiver?

Mr. Kelly: He was receiver for a lumber company that failed in 1906.

Examiner Burchmore: Do you recall the name of that company?

Mr. Kelly: C. B. Kelley Lumber Company.

Examiner Burchmore: You were interested in that company?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Is the Homan Lumber Company virtually a reorganized corporation that took over the Kelly Lumber Company?

Mr. Kelly: No, it is not a reorganized company; they simply bought the property from the receivers.

Examiner Burchmore: Well, what I mean is the persons who are now interested in the Homan Lumber Company were for-

4717 merly interested in the Kelley Lumber Company?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Although it is entirely a new venture?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How long have you been interested in lumbering and the mill business in the vicinity of Homan?

Mr. Kelly: Six and a half years.

Examiner Burchmore: When did the Kelley Lumber Company go out of business?

Mr. Kelly: In 1904.

Examiner Burchmore: Had they previously been in business elsewhere?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Where?

Mr. Kelly: Newport, Arkansas.

Examiner Burchmore: And you abandoned that plant?

Mr. Kelly: Yes, sir.

Examiner Burchmore: And moved to Homan, Arkansas?

Mr. Kelly: Yes.

Examiner Burchmore: Was there any mill at Homan when you went in business there?

Mr. Kelly: None.

4718 Examiner Burchmore: You started up a new operation?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Was there any railroad there, I mean any Homan & Southeastern Railroad?

Mr. Kelly: No.

Examiner Burchmore: Any logging tracks?

Mr. Kelly: No.

Examiner Burchmore: Then you built a mill in 1904 at or near Homan?

Mr. Kelly: Yes, sir.

Examiner Burchmore: At the same time did you build any railroad, either private or public?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Please describe the railroad as then built.

Mr. Kelly: We built about six miles.

Examiner Burchmore: Was that a standard gauge?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Was it incorporated as a railroad?

Mr. Kelly: Not at the time.

Examiner Burchmore: Built as a private logging road?

Mr. Kelly: Yes, sir.

4719 Examiner Burchmore: For about six miles?

Mr. Kelly: Yes.

Examiner Burchmore: When was the Homan & Southeastern Railway incorporated?

Mr. Kelly: In 1906.

Examiner Burchmore: What was the extent of the line on the date of the incorporation?

Mr. Kelly: About six miles, possibly seven.

Examiner Burchmore: Is that line now in existence as a whole?

Mr. Kelly: No, we changed the line and rebuilt it.

Examiner Burchmore: After the incorporation and purchase of the road you changed the road and rebuilt it?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Have you made more than one change in the line?

Mr. Kelly: No, sir.

Examiner Burchmore: What was the purpose of incorporating this railway?

Mr. Kelly: It was for the purpose of getting a division.

Examiner Burchmore: Had the Homan Lumber Company been receiving any divisions or allowances, either under the tariff

4720 or otherwise, in connection with the movement of its lumber?

Mr. Kelly: Before incorporation?

Examiner Burchmore: Before incorporation.

Mr. Kelly: No, sir.

Examiner Burchmore: Then previous to the incorporation it had not in any way held itself out as a common carrier?

Mr. Kelly: No, sir.

Examiner Burchmore: By whose advice or counsel did you incorporate this railroad?

Mr. Kelly: I did it on my own advice.

Examiner Burchmore: Well, what suggested the idea to your mind, if any suggestion came to you?

Mr. Kelly: Well, I might explain that there was another road incorporated before the Homan & Southeastern, that was operated by the Kelly Lumber Company; I do not mean it was operated by them, but it was owned by them and that was called the Homan & Southern; but after this reorganization, we reincorporated and rebuilt the road and that is the situation.

Examiner Burchmore: Did the Homan & Southern ever get any divisions?

Mr. Kelly: Yes, sir.

Examiner Burchmore: When was the Homan & Southern
4721 incorporated?

Mr. Kelly: I think in 1904 or 1905.

Examiner Burchmore: About the same time the lumber company commenced operations?

Mr. Kelly: Yes, sir, about the same time.

Examiner Burchmore: Was the Homan & Southern incorporated after the logging road was built, or did it itself construct that road?

Mr. Kelly: A short time after it was built it was incorporated.

Examiner Burchmore: And it took over the tracks previously built by the lumber company?

Mr. Kelly: Yes, sir.

Examiner Burchmore: And paid for them in cash or in some other form?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How did the Homan & Southeastern Railroad acquire this road?

Mr. Kelly: The property was sold by the receiver as a whole, and the Homan & Southeastern when they incorporated, incorporated for such a sum—they divided the property. The Homan & Southeastern Railway was incorporated for $27,000 and the lumber company for $50,000.

4722 Examiner Burchmore: How was the stock issued?

Mr. Kelly: The stock was issued to H. G. McBurney as Trustee, the majority of it.

Examiner Burchmore: As Trustee for whom?

Mr. Kelly: For the Homan Lumber Company.

Examiner Burchmore: And Mr. McBurney re-issued it to others?

Mr. Kelly: When the sale to Browne was made the stock was reissued to J. A. Browne.

Examiner Burchmore: Then the stock or the majority of the stock was held in the name of Mr. McBurnee as Trustee until it was passed over to Mr. Browne?

Mr. Kelly: Yes, sir.

Examiner Burchmore: And that was in 1909?

Mr. Kelly: 1909, yes, sir.

Examiner Burchmore: The capitalization of this railroad is $50,000?

Mr. Kelly: No, sir, $27,000.

Examiner Burchmore: I thought I understood $50,000 a moment ago?

Mr. Kelly: The lumber company.

Examiner Burchmore: And the railroad is incorporated for $27,000?

4723 Mr. Kelly: Yes, sir.

Examiner Burchmore: That is the total of the authorized stock?

Mr. Kelly: Yes, sir.

Examiner Burchmore: And it is all issued?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Are there any other saw mills on your line?

Mr. Kelly: No, sir.

Examiner Burchmore: How many mills has the Homan Lumber Company at that point?

Mr. Kelly: They have not any now.

Examiner Burchmore: Well, I mean how many mills do you operate—you are rebuilding one mill?

Mr. Kelly: Browne & Company are rebuilding the mill, and the Homan Lumber Company at the present time is building a mill, but not at Homan.

Examiner Burchmore: Where is that mill?

Mr. Kelly: On the Red River, one mile from the Iron Mountain Railroad.

Examiner Burchmore: How far is that from this locality?

Mr. Kelly: Three and a half miles from Homan.

Examiner Burchmore: Is it near the Homan & Southeastern?

4724 Mr. Kelly: Yes, sir.

Examiner Burchmore: Do you expect to be served by the Homan & Southeastern?

Mr. Kelly: That arrangement has not yet been made; I do not know whether it will be made or not, and I do not think it will.

Examiner Burchmore: How near are you to the rails of the Homan & Southeastern?

Mr. Kelly: Three and a half miles.

Examiner Burchmore: Then it would be necessary to extend this railroad to reach your new mill?

Mr. Kelly: I expect so; not necessarily, however.

Examiner Burchmore: I say, in order to reach your new mill the rails would have to be extended?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How near are you to the Iron Mountain?

Mr. Kelly: One mile.

Examiner Burchmore: Are you building a road across from your mill to the Iron Mountain?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Is your road incorporated?

Mr. Kelly: No.

Examiner Burchmore: What is the character of that road?

4725 Mr. Kelly: It is for the purposes of hauling the lumber from the new mill to the railroad?

Examiner Burchmore: Do you expect to incorporate it?

Mr. Kelly: I have not thought of it, and do not think I shall.

Examiner Burchmore: If you do not incorporate I don't presume you will receive any division?

Mr. Kelly: No.

Examiner Burchmore: Can you afford to operate that road and haul your lumber for one mile from the mill to the railroad and bear the entire cost of that operation yourself and sell your lumber in competition with Mr. Browne, for example, who does not bear such cost?

Mr. Kelly: I think I can.

Examiner Burchmore: How do you figure that out?

Mr. Kelly: Well, it is a much smaller mill, about half the capacity of the other mill, and the reduced expenses of operating and all that sort of thing, I think, will enable me to manufacture the lumber as cheaply as I could before.

Examiner Burchmore: It is the fact, then, that the mill is smaller and can be operated more economically which enables you to compete?

Mr. Kelly: Yes, sir.

4726 Examiner Burchmore: But you could not put a large mill at that point and compete to advantage?

Mr. Kelly: I could not.

Examiner Burchmore: Are there any farms along the line of the Homan & Southeastern?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How many farmers?

Mr. Kelly: I don't know; there are a good many; some large farms are being cleared up at the present time. A large amount of land has changed hands in the past few months and they have commenced to clear up and open up quite a large farming territory.

Examiner Burchmore: What is the present mileage of this railroad?

Mr. Kelly: 12 miles.

Examiner Burchmore: When it took over the road in 1906, I understood there were six or eight miles?

Mr. Kelly: About six or eight, somewhere along there.

Examiner Burchmore: Then you have constructed four or five since?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How were those extensions paid for?

4727 Mr. Kelly: Paid for by the company, the railroad company.

Examiner Burchmore: Where did they get the money?

Mr. Kelly: Some of it was loaned to the company by the Homan Lumber Company, and the balance was paid out of earnings.

Examiner Burchmore: Is the road ballasted?
Mr. Kelly: No.
Examiner Burchmore: Do you have any trackage rights over the Iron Mountain?
Mr. Kelly: No, sir.
Examiner Burchmore: Any bridges?
Mr. Kelly: Yes, sir.
Examiner Burchmore: What is the character of those bridges?
Mr. Kelly: Wooden.
Examiner Burchmore: Substantially built?
Mr. Kelly: Yes, sir.
Examiner Burchmore: How heavy a load would they stand up under?
Mr. Kelly: Well, we take loaded standard cars out there when necessary.
Examiner Burchmore: Do you have to run them very slowly over those bridges?
Mr. Kelly: Yes, sir, we run slowly.
4728 Examiner Burchmore: Have you any station buildings?
Mr. Kelly: No, sir.
Examiner Burchmore: Any track scales?
Mr. Kelly: No, sir.
Examiner Burchmore: Any special facilities along the line for handling traffic?
Mr. Kelly: Only a platform and storehouse for cottonseed.
Examiner Burchmore: Where is that storehouse?
Mr. Kelly: A little place called Hervey, about eight miles.
Examiner Burchmore: Where is the loading platform?
Mr. Kelly: Right along the road.
Examiner Burchmore: They are at Hervey?
Mr. Kelly: Yes, sir.
Examiner Burchmore: That is also intended for cotton?
Mr. Kelly: Yes, sir.
Examiner Burchmore: What is the capacity of that warehouse?
Mr. Kelly: Two or three carloads.
Examiner Burchmore: Did you ever have it full?
Mr. Kelly: Yes, sir.
Examiner Burchmore: I have not asked you what railroads you connect with. I understand the Homan & Southeastern connects with the Iron Mountain at Homan, Arkansas?
4729 Mr. Kelly: Yes, sir.
Examiner Burchmore: Does it connect with any other railroad?
Mr. Kelly: No, sir.
Examiner Burchmore: What is the distance from the mill at Homan with the Iron Mountain rails?
Mr. Kelly: About 1000 feet, 1500 possibly.
Examiner Burchmore: Possibly less than 1000?
Mr. Kelly: Well, I—yes.
Examiner Burchmore: Where is the station known as Arthur?

Mr. Kelly: It is what — supposed to be the terminus of the Homan & Southeastern.

Examiner Burchmore: Where is Arthur, away out in the woods?

Mr. Kelly: No, it is at the mill.

Examiner Burchmore: The mill then is known as Arthur?

Mr. Kelly: Yes, sir.

Examiner Burchmore: You mentioned Hervey. Is there any other station on your line?

Mr. Kelly: There is one, what we call a station or shipping point at Dooley Ferry Road.

Examiner Burchmore: Where is that?

Mr. Kelly: That is about eight miles, I think.

Examiner Burchmore: What is the name by which the end of the railroad is designated?

4730 Mr. Kelly: There is no name; it ends in the woods.

Examiner Burchmore: Those tracks out in the woods are moved to and fro?

Mr. Kelly: No, sir. Well, I wish to say that they have been, but from now on they will not be, except spurs will be run out at times: at least I think that is the intention of Mr. Browne.

Examiner Burchmore: Are there any logging spurs out there at the present time?

Mr. Kelly: One.

Examiner Burchmore: Are those owned by this railroad?

Mr. Kelly: Yes.

Examiner Burchmore: Operated by this railroad?

Mr. Kelly: Yes.

Examiner Burchmore: Are you cutting timber and logs at the present time?

Mr. Kelly: Browne & Company have up to a very short time ago up to the time the mill was destroyed by fire they were logging, but they ceased logging operations then.

Examiner Burchmore: They were logging when you were operating the mill?

Mr. Kelly: Yes, sir—well, the Homan Lumber Company had been running on its own logs, and Browne & Company,

4731 expecting to take the plant over the 1st of January, had commenced logging operations, but had not hauled any logs to the mill.

Examiner Burchmore: When do you now expect to relinquish the operation of this mill?

Mr. Kelly: The Homan——

Examiner Burchmore: The Homan Lumber Company, when do they expect to give up this mill?

Mr. Kelly: They have already given it up.

Examiner Burchmore: Then you have no connection with the milling on that line?

Mr. Kelly: No, not a bit.

Examiner Burchmore: What is your relation to Mr. Browne?

Mr. Kelly: None whatever.

Examiner Burchmore: Are you employed in any capacity by the Browne Lumber Company?

Mr. Kelly: No, sir. I wish to say that sooner or later Mr. Browne or some of his connections will be in the management of this little road. That change has not been made, for no particular reason, except that Mr. Browne has not been down there, and has not instructed us as yet as to who he wishes elected President or Secretary-Treasurer.

Examiner Burchmore: Do you receive a salary from the Homan & Southeastern Railroad?

4732 Mr. Kelly: No, sir.

Examiner Burchmore: Have you a very vital interest in its welfare?

Mr. Kelly: Except to see it succeed.

Examiner Burchmore: How many locomotives are there on this railroad?

Mr. Kelly: Two.

Examiner Burchmore: Both operated?

Mr. Kelly: Yes, sir, at times.

Examiner Burchmore: How many train crews do they maintain?

Mr. Kelly: Two at times.

Examiner Burchmore: And at other times——

Mr. Kelly: When necessary.

Examiner Burchmore: What did the Homan & Southeastern do with the other locomotive that they had?

Mr. Kelly: They sold it.

Examiner Burchmore: To whom was it sold?

Mr. Kelly: It was sold to a company at Houston in which Mr. West is interested, some iron company. I really don't know the company now.

Examiner Burchmore: Was it sold for scrap?

Mr. Kelly: Well, it was not much account, and they bought it for light work.

4733 Examiner Burchmore: How many cars have you?

Mr. Kelly: We have 15 logging cars and two flat cars.

Examiner Burchmore: Those cars remain on your line at all times?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Are they equipped with safety appliances?

Mr. Kelly: No.

Examiner Burchmore: The locomotives have automatic couplers?

Mr. Kelly: Yes, sir, I think they do; I am not positive, however.

Examiner Burchmore: Do you have any hand cars or motor cars?

Mr. Kelly: We have hand cars, but no motor cars.

Examiner Burchmore: Those are used by the track men?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How many section gangs have you?

Mr. Kelly: During 1910 I think we had two going most of the time, on account of changing the tracks, and——

Examiner Burchmore: Changing the tracks in the woods?

Mr. Kelly: Changing the spurs and keeping the main line up.

Examiner Burchmore: I understand all the tracks in this vicinity that connect with the main line of the Homan & South-
4734 eastern are incorporated into this system as part of the railroad?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Is your property in that regard different from that of other tap lines or other short roads in this part of the country?

Mr. Kelly: I do not think it is.

Examiner Burchmore: Have you been listening to the testimony in this case?

Mr. Kelly: Some of it.

Examiner Burchmore: You have heard a number of short line roads, that did not own the logging spurs up in the woods because it was not deemed advisable to own and operate tracks of a transitory character.

Mr. Kelly: I heard some of that talk

Examiner Burchmore: You have not found any difficulty in that regard?

Mr. Kelly: No, sir, because our spurs are little short affairs and are only temporary, and we considered it part of the necessary work that the railroad had to do.

Examiner Burchmore: How many trains do you run a day?

Mr. Kelly: It depends entirely on the work of the mill.

4735 Examiner Burchmore: You run an irregular service then?

Mr. Kelly: No, not entirely irregular; a logging train always goes out in the early morning and returns in the early evening.

Examiner Burchmore: Then you ran one train a day round trip when the mill was in operation?

Mr. Kelly: Yes, sir, and some days two.

Examiner Burchmore: Did that train run at regular hours of the day?

Mr. Kelly: We intended to have it do so, to have it run on regular hours.

Examiner Burchmore: Did you have any time table?

Mr. Kelly: No.

Examiner Burchmore: People along the line knew when the train was expected?

Mr. Kelly: No.

Examiner Burchmore: Did you carry any passengers?

Mr. Kelly: No—we carried them, yes, sir.

Examiner Burchmore: Free?

Mr. Kelly: Free.

Examiner Burchmore: Where did they ride?

Mr. Kelly: Well, some times on the logging cars and some times on the engine.

4736 Examiner Burchmore: Did you require them to execute any formal release from liability for injuries?

Mr. Kelly: No.

Examiner Burchmore: Were any of them ever hurt while riding on your train?

Mr. Kelly: No.

Examiner Burchmore: Suppose there is a farmer up there at this cotton loading platform who telephoned down to the general office of the railroad that he had a carload of cotton he wanted to move right away, would you send a train up there and get it?

Mr. Kelly: No, sir.

Examiner Burchmore: Maintain a special service where shipments were necessary?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Would you regard the movement of a carload of cotton as quite an event?

Mr. Kelly: Well, rather.

Examiner Burchmore: You do not handle mail?

Mr. Kelly: No.

Examiner Burchmore: Do you publish any tariffs yourselves?

Mr. Kelly: Yes, sir.

4737 Examiner Burchmore: Where are they filed?

Mr. Kelly: We publish the state court tariff.

Examiner Burchmore: But you do not file any tariff with the Interstate Commerce Commission?

Mr. Kelly: Only a joint tariff with the Missouri Pacific.

Examiner Burchmore: Well, you are a party to tariffs of other carriers?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Do you have any joint rates with the Iron Mountain on cotton and cottonseed.

Mr. Kelly: No.

Examiner Burchmore: Do you have them on class rates?

Mr. Kelly: No.

Examiner Burchmore: You have joint rates on lumber?

Mr. Kelly: On lumber only.

Examiner Burchmore: Suppose these farmers on your line ship cottonseed, where do they ship it to?

Mr. Kelly: The cottonseed that has been shipped from Hervey has gone to Hope, a local point about 20 miles north of Arthur or Homan.

Examiner Burchmore: That is a purely state movement?

Mr. Kelly: Yes, sir.

4738 Examiner Burchmore: You have not been shipping any cotton interstate?

Mr. Kelly: No.

Examiner Burchmore: Is that handled on through billing over the Iron Mountain?

Mr. Kelly: Yes, sir.

Examiner Burchmore: You mean you issue a through waybill?

Mr. Kelly: Yes, sir.

Examiner Burchmore: As well as a through bill of lading?

Mr. Kelly: Yes, sir.

Examiner Burchmore: What are your earnings on that cotton?

Mr. Kelly: It is either five or six cents.

Examiner Burchmore: Who furnishes the car?

Mr. Kelly: The Iron Mountain.

Examiner Burchmore: You have joint rates on lumber with the Iron Mountain. Do those rates apply to practically all interstate territories?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Are the rates from Arthur, which I understand is your mill and milling point, the same as the rate from Homan on the Iron Mountain?

Mr. Kelly: No, sir.

4739 Examiner Burchmore: What is the difference?

Mr. Kelly: One cent per 100 pounds.

Examiner Burchmore: One cent higher?

Mr. Kelly: Yes, sir.

Examiner Burchmore: What is your division out of those rates?

Mr. Kelly: Five cents.

Examiner Burchmore: Five cents on all traffic?

Mr. Kelly: It is five cents on lumber to St. Louis and East St. Louis, and four cents to Kansas City and points beyond.

Examiner Burchmore: Where does most of your lumber move to?

Mr. Kelly: Very largely to east of St. Louis at the present time; it changes from time to time.

Examiner Burchmore: You say your divisions are four and five cents. Do you mean four cents plus the one cent arbitrary?

Mr. Kelly: Our division is five cents, but there is one cent arbitrary, so that really the Iron Mountain pays four cents and the lumber company pays one.

Examiner Burchmore: So in the case of a four cent division it is three cents?

Mr. Kelly: Yes, sir.

4740 Examiner Burchmore: Your mill I understood you to say was about 1000 feet from the Iron Mountain, and by that I refer to the mill which your company formerly operated?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How far is the loading track at that mill from the Iron Mountain?

Mr. Kelly: It commences within a very short distance from the Iron Mountain and extends down to the mill and beyond the mill.

Examiner Burchmore: Who places the empty cars at the mill for loading?

Mr. Kelly: The Homan & Southeastern.

Examiner Burchmore: Who hauls the loaded cars away?

Mr. Kelly: The Homan & Southeastern.

Examiner Burchmore: And places them on some interchange track where they are taken by the Iron Mountain?

Mr. Kelly: Yes, sir.

Examiner Burchmore: The shipments are billed as originating at Arthur?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Just where is Arthur with reference to the mill and the Iron Mountain?

Mr. Kelly: We figure that Arthur is at the mill.

4741 Examiner Burchmore: Has Arthur ever been anywhere else?

Mr. Kelly: No, sir.

Examiner Burchmore: Are your rates on a milling in transit basis, or have you no milling in transit privilege?

Mr. Kelly: Well, we consider them so.

Examiner Burchmore: What did the Homan & Southeastern charge for hauling the logs out to the mill?

Mr. Kelly: They made no charge direct to the lumber company but the one cent which the lumber company has to stand on the lumber shipments was the compensation which the railroad company got for hauling the stuff.

Examiner Burchmore: Then the division or part of the division was supposed to cover the logs into the mill?

Mr. Kelly: Yes, sir.

Examiner Burchmore: I am curious to know about this station Arthur: What is there there by which I would know I had arrived at a station?

Mr. Kelly: I would like to explain. The station had previously been called Homan, and we expected to call it Arthur when we made this change, and the buildings which the lumber company erected were to be on the south side of the track where the mill is.

4742 But after we started in we concluded it would be better to separate the colored houses from the white, that is have them on different sides of the track, and so we built most of the houses on the north of the railroad tracks, and have continued to call the place Homan; and we had started out to call it Arthur, and we continued to do so; in fact it was suggested to us it would be better for us to continue to call the shipping point Arthur.

Examiner Burchmore: Suppose a man was walking down the tracks, how would he know when he came to Arthur?

Mr. Kelly: It would be a pretty hard guess.

Examiner Burchmore: Well, I might say that the report of an examiner of the Commission who went over the property in July, 1909, would seem to indicate that he walked down the whole length of the line, and when he got to the far end of it he thought he was to Arthur, for he says, Arthur is ten miles from the mill.

Mr. Kelly: Well, he was misinformed.

Examiner Burchmore: He seems to have been informed on most of the points covered by his report by Mr. H. G. McBurney. As a matter of fact was there not formerly out there in the woods a station designated as Arthur.

Mr. Kelly: I never considered that there was.

4743 Examiner Burchmore: If anyone went down there to verify that fact they could not tell by walking down the railroad where Arthur was?

Mr. Kelly: He could not.

Examiner Burchmore: Then the question is whether it is really

important to know where Arthur is on the road, if you cannot find it.

Mr. Kelly: I do not consider it is important.

Examiner Burchmore: You do not know whether your rates are on the milling in transit basis so far as the tariffs themselves read?

Mr. Kelly: No.

Examiner Burchmore: Have you an agent at Arthur who issues bills of lading?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Who is that person?

Mr. Kelly: R. L. Phillips.

Examiner Burchmore: Does he devote his entire time to the service of the railroad?

Mr. Kelly: No.

Examiner Burchmore: He is employed also by the lumber company?

Mr. Kelly: Yes, sir.

Examiner Burchmore: He issues bills of lading that cover
4744 shipments of lumber to interstate destination?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Does he also issue joint waybills?

Mr. Kelly: Yes, sir.

Examiner Burchmore: How do you settle the freight charges with the Iron Mountain?

Mr. Kelly: They furnish us with a list of shipments each month with the weights and divisions.

Examiner Burchmore: They furnish you a statement of the waybills?

Mr. Kelly: Yes, a statement of the waybills and the correct weights showing the amount of our division and the amount of their earnings.

Examiner Burchmore: Then while the mill was in operation and you were handling lumber you paid those bills thus rendered by the Iron Mountain?

Mr. Kelly: No, I don't know that I quite understand you.

Examiner Burchmore: I do not understand what the fact is, and want you to tell me what the fact is.

Mr. Kelly: You asked me how we settled with them, did you not?

Examiner Burchmore: Yes.

4745 Mr. Kelly: We do not settle with them; they settle with us.

Examiner Burchmore: I see. I was thinking of prepaid shipments.

Mr. Kelly: No, sir.

Examiner Burchmore: Most of the shipments are collect?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Then the Iron Mountain furnishes you with a statement and sends you the money to cover the statement?

Mr. Kelly: Yes, sir.

Examiner Burchmore: To whom do they pay that money?

Mr. Kelly: To the Homan & Southeastern.

Examiner Burchmore: What does the Homan & Southeastern do with the check or draft?

Mr. Kelly: It deposits it in the bank.

Examiner Burchmore: They do not turn it over to the Homan Lumber Company?

Mr. Kelly: No.

Examiner Burchmore: Are the accounts of the Homan Lumber Company, and the Homan & Southeastern Railroad separately kept?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Do they keep a separate bank ac-
4746 count?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Does the railroad now have the same bank account that Mr. Browne or the Browne Lumber Company has?

Mr. Kelly: The railroad account continues the same as it did before.

Examiner Burchmore: Mr. Browne does not mingle his funds with the railroad funds?

Mr. Kelly: No, sir.

Examiner Burchmore: Do you have any free passes?

Mr. Kelly: Not at the present time.

Examiner Burchmore: How long since you have had them?

Mr. Kelly: Since the 1st of January.

Examiner Burchmore: Do you expect your passes to be renewed by the Iron Mountain?

Mr. Kelly: I don't know; I have not heard from them on the subject.

Examiner Burchmore: You have been receiving free interstate annual passes as an officer of this railroad?

Mr. Kelly: Yes, sir.

Examiner Burchmore: And you have used them in your travels?

Mr. Kelly: What little I have traveled I have used them.

Examiner Burchmore: You referred to a loans by the
4747 Homan Lumber Company to the Homan & Southeastern Railway which enabled the latter to extend its line. Do you recall the particulars of those loans?

Mr. Kelly: Well, from time to time as they needed money the lumber company advanced it to pay such bills as they had.

Examiner Burchmore: Has the railroad any indebtedness of that kind at the present time?

Mr. Kelly: To the Homan Lumber Company the railroad company has an indebtedness.

Examiner Burchmore: What is the amount of that indebtedness?

Mr. Kelly: On December 31st it was $6,260.80.

Examiner Burchmore: Do you recall what the amount of the loan had been at previous times?

Mr. Kelly: It varied from time to time.

Examiner Burchmore: What was the largest amount, if you can recall?

Mr. Kelly: I think this is the largest amount it has had.

Examiner Burchmore: How has the railroad paid back these advances, so far as they have been repaid?

Mr. Kelly: When ever they had a surplus of money they have given a check to the Homan Lumber Company on account.

Examiner Burchmore: Do you know what the road has cost to build?

4748 Mr. Kelly: I do not.

Examiner Burchmore: Is that shown in the annual reports you have rendered to the Interstate Commerce Commission?

Mr. Kelly: I could not tell you. Mr. McBurney has attended to all that.

Examiner Burchmore: Is he here?

Mr. Kelly: He is not.

Examiner Burchmore: Well, you understand the road has reported to the Interstate Commerce Commission?

Mr. Kelly: I could not say as to that, but I presume a report has been filed, for last December I asked him if he had filed a report, and he said he had not, but he had received the blanks and was going to make one out. Whether he has done so I could not say, but I presume he has.

Examiner Burchmore: I see you file monthly reports according to the report of our examiner made in 1909, which indicated you were about to file annual reports. Has the road any surplus?

Mr. Kelly: No.

Examiner Burchmore: Ever paid any dividends?

Mr. Kelly: No.

Examiner Burchmore: Has it been operated at a loss?

4749 Mr. Kelly: No, I do not think it has.

Examiner Burchmore: And you have paid for improvements out of the net earnings?

Mr. Kelly: With the exception of what indebtedness it has at the present time. It started in without any indebtedness, and with the improvements it has made it has at present an indebtedness of somewhere around $7,000.

Examiner Burchmore: Were those improvements worth very much more than $7,000?

Mr. Kelly: Well, I would think so.

Examiner Burchmore: Well, you built four miles of railroad?

Mr. Kelly: Yes.

Examiner Burchmore: What is that worth a mile?

Mr. Kelly: I would say $2,500.

Examiner Burchmore: What is the character of that country through which the railroad is built?

Mr. Kelly: Very flat level country.

Examiner Burchmore: It is not difficult to build the road?

Mr. Kelly: No.

Examiner Burchmore: What is the weight of the steel?

Mr. Kelly: Part of it 35 and part 56 pound, second hand, or re-layers.

4750 Examiner Burchmore: What was your total freight tonnage for the last year?

Mr. Kelly: The tonnage for 1910 according to the figures given me by the bookkeeper was 10,650 tons.

Examiner Burchmore: How much of that was lumber?

Mr. Kelly: 10,344 tons.

Examiner Burchmore: What does the balance of the tonnage consist of?

Mr. Kelly: Cotton seed.

Examiner Burchmore: And nothing else?

Mr. Kelly: Nothing else—well, I wish to modify that; there was some small amount of other traffic, but I did not separate it.

Examiner Burchmore: You say there was that weight of lumber. Do you include the logs in that weight?

Mr. Kelly: No.

Examiner Burchmore: Then you also handled the logs?

Mr. Kelly: Yes.

Examiner Burchmore: What was the tonnage of logs?

Mr. Kelly: I can only estimate that.

Examiner Burchmore: What would be the basis of your estimate, do you mean you would say four times or five times the weight of the lumber?

4751 Mr. Kelly: Understand, this is a hardwood proposition and most of the stuff is green, consequently the weight per 1,000 feet is much greater than on pine shipments. I would say that probably the logs weighed twice as much as the timber. The timber would average about five and a half to six pounds per foot, or 6,000 pounds per 1,000 feet, and the logs, I think, would weigh about 12,000 to 13,000 pounds per 1,000 feet.

Examiner Burchmore: This is a hardwood mill?

Mr. Kelly: Yes, sir.

Examiner Burchmore: For the previous year ending June 30th, 1909, your tonnage was very much heavier, explained no doubt by the destruction of the mill.

Mr. Kelly: The tonnage in the previous year was heavier on account of shipments having been all oak, while in 1910 the shipments were largely cotton wood which would weigh very much less.

Examiner Burchmore: What were your shipments for the previous year?

Mr. Kelly: I have not the figures with me.

Examiner Burchmore: I have here a statement of 29,710 tons for the fiscal year 1909 with revenue $9,067.02. That tonnage is the total of all classes of freight, and I presume the major portion of it, 99 per cent, judging from your figures there was lumber.

4752 Mr. Cowan: 29,350 is the figure I have reported for lumber.

Examiner Burchmore: Is that the fiscal year 1909?

Mr. Cowan: Yes.

Examiner Burchmore: Against operating revenue in excess of $9,000, the operating expenses were $8,388.62, apparently, so you had a small margin of profit.

Mr. Kelly: Yes.

Examiner Burchmore: Now your new mill down at—what is the name of the place you are building?

Mr. Kelly: Well, we have not named it yet. However, it is just one mile west of Clipper Spur.

Examiner Burchmore: Is it not a fact that the Iron Mountain road is building that spur from its line over to your mill?

Mr. Kelly: It is not.

Examiner Burchmore: No part of that spur?

Mr. Kelly: Not one cent's worth.

Examiner Burchmore: Have you negotiated with that company to put in a spur track?

Mr. Kelly: I have, and I saw them yesterday and they compelled me to pay for the switches and rails and they agreed to refund the cost of that spur at the rate of $2.00 per car.

4753 Examiner Burchmore: For what length of that spur, the entire length?

Mr. Kelly: No, about 150 feet.

Examiner Burchmore: And the remaining portion of the mile of its length you will have to pay for yourself?

Mr. Kelly: Yes, sir.

Examiner Burchmore: Without any refund?

Mr. Kelly: Without any refund.

Mr. Walter: Mr. Kelly, so far as the people in that vicinity wanted service by your railroad, you gave it to them?

Mr. Kelly: Yes, sir.

Mr. Walter: Now, as to this new mill, I do not know whether you understood the query which was put to you. You said you could compete with the small mill, with the mill of Mr. Browne, where the railroad received divisions.

Mr. Kelly: Well, I say that I can. Possibly I cannot, but I think so.

Mr. Walter: Can you operate a large mill or a small mill cheaper, per thousand?

Mr. Kelly: I think we can operate a small mill cheaper per thousand than we can a large mill.

Mr. Walter: Why is that?

4754 Mr. Kelly: Well, in the first place the investment is very much less; it does not require an expensive organization. There are a number of things that make it possible for the small mill to manufacture lumber cheaper.

Mr. Walter: You have a locomotive of your own there at that mill?

Mr. Kelly: Yes, sir.

Mr. Walter: That locomotive could pull a dozen cars about as cheaply as it could pull one?

Mr. Kelly: I think so.

Mr. Walter: On things of that sort the larger mill could be operated cheaper per thousand than the small mill, is not that true?

Mr. Kelly: Yes, sir.

Mr. Walter: I do not know of any other question I care to ask.

Mr. Cowan: You are equally as well prepared to carry all the people to the moon who don't desire to go, as you are to carry the traffic that is offered you?

Mr. Kelly: You mean the Homan & Southeastern?

Mr. Cowan: The Homan & Southeastern.

Mr. Kelly: Now what is your question?

4755 Mr. Cowan: I say you would be as well prepared to carry people to the moon that don't want to go, as you are to carry people who do not want to go on your line, or the Homan & Southeastern?

Mr. Kelly: Yes, sir.

Mr. Cowan: I noticed in the report of the revenue that the entire revenue was supplied by the lumber company for the year 1909, and all the tonnage except 360 tons. I suppose you have already testified before I came in of what your tonnage consisted other than that supplied by the lumber company?

Mr. Walter: Where did you get that information?

Mr. Cowan: From the report of the examiners to the Commission.

Mr. Walter: Was that furnished to you by the Commission?

Mr. Cowan: No, it was not furnished by the Commission, but by an attorney whom I employed.

Mr. Walter: Has it no certificate of the Commission as being correct?

Mr. Cowan: No.

Mr. Walter: Then we object to any foundation being laid upon that basis.

4756 Mr. Cowan: Then I will ask him.

Mr. Walter: That is all right.

Mr. Cowan: Is it true that the tonnage was practically all supplied by the lumber company for the year 1909?

Mr. Kelly: Yes, sir.

Mr. Cowan: I remarked that I supposed you had testified in regard to what it was. I am anxious to know about the tariffs. You said you had tariffs with the Iron Mountain. That is on lumber, I suppose?

Mr. Kelly: Yes, sir.

Mr. Cowan: The output of the mill?

Mr. Kelly: Yes, sir.

Mr. Cowan: How did you come to file those tariffs, who originated the idea? Did somebody suggest it to you, or how was it?

Mr. Kelly: I think it probably was suggested.

Mr. Cowan: Well, you know it was suggested, do you?

Mr. Kelly: I do not know that it was. Mr. McBurney attended to those things very largely, and I presume he may have had some information that caused him to do that.

Examiner Burchmore: I believe those facts were brought out rather fully in the opening part of his testimony. This railroad succeeded a previous railroad and there was a receivership.

4757 Mr. Cowan: He took up the tariffs after I came in and he said he did not file any other tariffs except with the Iron Mountain, and I wanted to know if he knew whether the Iron Mountain prepared the tariffs or his road prepared them.

Mr. Kelly: We filed the court tariffs.

Mr. Cowan: I am speaking of the interstate tariff.

Examiner Burchmore: He does not file any.

Mr. Kelly: No, we did not file any.

Mr. Cowan: You said you concurred in the Iron Mountain tariff. Now, I suppose somebody suggested that you concur in the tariffs, and I wanted to know how it came about?

Mr. Walter: A joint rate cannot be made without power of attorney from everybody in the tariff. This tariff says one cent higher than the joint rate named in the tariff. Of course he has to concur in it——

Mr. Cowan: That one cent per 100 pounds goes for what?

Mr. Kelly: Towards paying the cost of handling the logs and lumber.

Mr. Cowan: And it is one cent per hundred pounds on the lumber, is it?

Mr. Kelly: Yes, sir.

4758 Mr. Cowan: And not charged as a charge against the logs, and how do you estimate that in settlement between the railroad company and the lumber company?

Mr. Kelly: We do not have any settlement with the lumber company at all.

Mr. Cowan: The lumber company has to pay the one cent, does it not?

Mr. Kelly: Yes, but the Iron Mountain charges provide for that.

Mr. Cowan: They charge in the through rate one cent more?

Mr. Kelly: Yes, sir.

Mr. Cowan: So the shipper when he gets the lumber pays that?

Mr. Kelly: Yes, sir.

Mr. Cowan: To whom do the rails belong that were used in the construction of the road? Were they obtained from the Iron Mountain?

Mr. Kelly: No, sir.

(Witness excused.)

Mr. Garwood: May I interrupt at this point. In the examination of the Missouri & Louisiana case there were a number of

4759 statements called for which the witness agreed to furnish afterward, and I would like to file them. I think they cover all the propositions asked for by the Examiner. There are maps of terminals and a large envelope containing papers.

(The envelope was received and marked "Filed" by the Missouri & Louisiana Railway, as of January 25, 1911.)

Mr. Kelly: I wish to modify one answer I made a while ago in testimony as to the relative operation on a large mill, I had in mind a hardwood mill only.

Examiner Burchmore: Is the Gideon & North Island ready?

Mr. Walter: I have not heard from them.

Examiner Burchmore: The Brookings & Peach Orchard.

Mr. Walter: We will not be ready until this afternoon. May that be passed indefinitely until any day in the week?

Examiner Burchmore: Yes. The Luehrmann & Western.

(No response.)

Examiner Burchmore: The Timpson & Henderson.
Mr. Hillyer: Ready.

4760 *Timpson & Henderson Railway.*

C. W. GRAY was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: You are the Traffic Manager of the Timpson & Henderson Railway.
Mr. Gray: I am, yes, sir.
Examiner Burchmore: How long have you been connected with that road?
Mr. Gray: Three years last October.
Examiner Burchmore: You mean with that road and its predecessor, the Timpson & Northwestern?
Mr. Gray: Yes, sir.
Examiner Burchmore: When did the Timpson & Henderson succeed the Timpson & Northwestern?
Mr. Gray: It was organized August 5th, 1906. It began operations, however, on November 21st, 1909.
Examiner Burchmore: Was there any change noticeable in the operation of the railroad when the corporation changed?
Mr. Gray: Yes, sir.
Examiner Burchmore: What took place in the operation of the railroad, what difference?
4761 Mr. Gray: Do you mean as to the amount of traffic handled?
Examiner Burchmore: I mean was there any difference before and after the change in the corporations of the railroad?
Mr. Gray: There has been some increase in the towns, and more people served, and the traffic has been increased in amount.
Examiner Burchmore: Was there any change in the officers of this railroad when the corporation changed?
Mr. Gray: Some changes, yes, sir, in the Board of Directors and other operators.
Examiner Burchmore: But the operating officials were the same before and after?
Mr. Gray: Yes, sir, with the exception of one party, the auditor was changed; we have a new auditor.
Examiner Burchmore: The Timpson & Henderson Railway connects at Timpson with the Houston, East & West Texas Railway and the Texas & Gulf Railway?
Mr. Gray: Yes, sir.
Examiner Burchmore: And extends from that point to Henderson, where a connection is made with the I. & G. N.?
Mr. Gray: Yes, sir.
Examiner Burchmore: What is its mileage?
Mr. Gray: 34 miles main line, 1.18 of sidings.
4762 Examiner Burchmore: What equipment has it?
Mr. Gray: One locomotive, one passenger coach, one combination coach and four box cars.

Examiner Burchmore: Do those box cars ever go off of this line?

Mr. Gray: We do not now send them off. They have been in service off the line, however.

Examiner Burchmore: You also make use of the equipment of other carriers for carload freight which you interchange?

Mr. Gray: Yes, sir.

Examiner Burchmore: Do you pay for those cars on a per diem basis?

Mr. Gray: Per diem basis, yes, sir.

Examiner Burchmore: When was the Timpson & Northwestern Railway incorporated?

Mr. Gray: Incorporated March 12th, 1901.

Examiner Burchmore: 1901?

Mr. Gray: Yes, sir.

Examiner Burchmore: The Ragley Lumber Company has mills on your line?

Mr. Gray: They have one.

Examiner Burchmore: Where is it located?

Mr. Gray: At Bagley, Texas.

4763 Examiner Burchmore: Where is Bagley with reference to the terminal point of this road?

Mr. Gray: It is between nine and ten miles of Timpson, and about 24 or 25 miles of Henderson, 9 to 10 miles northeast from Timpson.

Examiner Burchmore: When was this mill opened at Ragley?

Mr. Gray: It was opened before the road was constructed. I do not know, but it was along about 1899 or 1900, I think.

Examiner Burchmore: A part of this railroad was built through thereafter?

Mr. Gray: Yes, sir.

Examiner Burchmore: Which part?

Mr. Gray: The part extending from Bagley to Timpson.

Examiner Burchmore: That gave the lumber company an outlet to the market?

Mr. Gray: Yes.

Examiner Burchmore: Was the road at that time incorporated?

Mr. Gray: I think the road was perhaps constructed in about 1900, and it was incorporated a year later.

Examiner Burchmore: Who are the persons who are interested primarily in the Ragley Lumber Company, if you know?

Mr. Gray: I do not know all the stockholders. I know the principal stockholders. W. C. Ragley, M. J. Ragley, F. Ragley
4764 and J. B. Wilson of Dallas; those are the principal stockholders.

Examiner Burchmore: The Messrs. Ragley, I assume, practically control the company?

Mr. Gray: Well, yes, the Ragley Lumber Company does, yes, sir.

Examiner Burchmore: I mean the Messrs. Ragley practically control the Ragley Lumber Company?

Mr. Gray: Yes.

Examiner Burchmore: Has the Ragley Lumber Company any private logging spurs or other private tracks?

Mr. Gray: Yes, sir, they have a logging spur.

Examiner Burchmore: Where does that connect with the Timpson & Henderson Railroad?

Mr. Gray: At Pine Hill, Texas, or near Pine Hill, about a quarter of a mile from Pine Hill, Texas.

Examiner Burchmore: How far is that from Ragley?

Mr. Gray: 11 miles.

Examiner Burchmore: How long have the private logging spurs of the Ragley Lumber Company been located at that place?

Mr. Gray: Well, about the last five months at that particular place.

Examiner Burchmore: Previously they connected with
4765 your line at or near Long Branch?

Mr. Gray: Yes, sir.

Examiner Burchmore: And they took the spurs up bodily and moved them over to the other connection?

Mr. Gray: To Pine Hill, yes, sir.

Examiner Burchmore: What is the aggregate length of these logging spurs?

Mr. Gray: About four miles, at present. They are extending them some now.

Examiner Burchmore: Are those private logging spurs incorporated?

Mr. Gray: No.

Examiner Burchmore: They are operated as part of the plant?

Mr. Gray: Yes, sir.

Examiner Burchmore: Does the Ragley Lumber Company have any trackage rights over the Timpson & Henderson?

Mr. Gray: Yes, sir.

Examiner Burchmore: From Ragley to Pine Hill?

Mr. Gray: To Pine Hill, or the connection with their spur, a short distance from Pine Hill.

Examiner Burchmore: How many locomotives has the Ragley Lumber Company?

Mr. Gray: They have in use two. They had three, but
4766 only two in service. One of them is out of commission.

Examiner Burchmore: Do they own those locomotives?

Mr. Gray: Yes.

Examiner Burchmore: Does the Timpson & Henderson Railroad lease any of those locomotives?

Mr. Gray: Not at the present time.

Examiner Burchmore: They formerly leased one?

Mr. Gray: Yes, sir.

Examiner Burchmore: When did that lease terminate?

Mr. Gray: The latter part of February, 1910.

Examiner Burchmore: What was the occasion of the termination of that lease?

Mr. Gray: The road purchased an engine. At that time they did not own a locomotive or engine of their own, and they pur-

chased a new engine, and did not need that engine in service and turned it back to the Ragley Lumber Company.

Examiner Burchmore: Did not the Timpson & Henderson Railway formerly own one locomotive, and at the same time lease one from the Ragley Lumber Company?

Mr. Gray: No, only for a short period. That was during February that they leased one locomotive and owned one, but the locomotive they owned came in about February 15th; the
4767 lease expired probably February 25th, or something like that.

Examiner Burchmore: Do you recall what the consideration was for the use of that locomotive?

Mr. Gray: $1800 a year, $150 a month.

Examiner Burchmore: Who repaired it?

Mr. Gray: The Ragley Lumber Company.

Examiner Burchmore: What was the cost of this locomotive?

Mr. Gray: The repair work, do you mean?

Examiner Burchmore: What is the cost of such a locomotive in the condition that that one was?

Mr. Gray: I could not tell what would be a fair value for it. I do not know enough about locomotives to give you the value.

Examiner Burchmore: What did they pay for their new locomotive?

Mr. Gray: The Timpson & Henderson?

Examiner Burchmore: Yes.

Mr. Gray: The cost shows on the books, ten thousand dollars and something, $10,956.63 to be exact.

Examiner Burchmore: Is that a better locomotive than the one they were leasing?

Mr. Gray: Oh, yes, much better.

Examiner Burchmore: Who is the President of the Timp-
4768 son & Henderson Railway?

Mr. Gray: W. G. Ragley.

Examiner Burchmore: He is also President of the Ragley Lumber Company?

Mr. Gray: Yes, sir.

Examiner Burchmore: He was formerly the President of the Timpson & Northwestern?

Mr. Gray: Yes, sir.

Examiner Burchmore: Are any of the other officers of this railway connected in any way with the Ragley Lumber Company?

Mr. Gray: Yes, sir.

Examiner Burchmore: Please give the details of that connection?

Mr. Gray: Well, the superintendent of the railway is a stockholder in the Ragley Lumber Company, and is also Vice President of the Ragley Lumber Company.

Examiner Burchmore: What is his name?

Mr. Gray: F. Ragley, he is one of the Ragley family.

Examiner Burchmore: Any other officer of the railroad that is interested in the lumber company?

Mr. Gray: M. J. Ragley, Assistant Secretary of the railway, is Secretary of the lumber company also.

Examiner Burchmore: Is that all?

4769 Mr. Gray: That is all with the exception of individual stockholders, that is all the officers.

Examiner Burchmore: Who are the directors of the railroad, did you give their names?

Mr. Gray: Yes, I have their names. I will read their names off to you: W. G. Ragley, J. B. Edwards, Frank Ragley, A. Prycer, M. J. Ragley, E. B. Alford, J. E. Norvell, J. C. Hickey and Homer Harris.

Examiner Burchmore: Will you tell me how many shares each of those directors had in the railroad stock?

Mr. Gray: I have a list of the stockholders with the shares, which I can show you.

Examiner Burchmore: Do you propose to offer that in evidence?

Mr. Gray: Well, we would like to offer it in evidence.

(The paper so offered and identified, was received in evidence and thereupon marked Timpson & Henderson Railway Exhibit No. 1, Witness Gray, received in evidence January 25, 1911, and is attached hereto.)

Examiner Burchmore: Is it or not a fact that the Messrs. Ragley own the majority of capital stock of the Timpson & Henderson Railway?

4770 Mr. Gray: It is a fact, yes, sir.

Examiner Burchmore: What is the extent of their holdings and the proportion of their holdings to the total capital of this railroad?

Mr. Gray: The Ragley family hold 57.4 per cent of the capital stock.

Examiner Burchmore: That leaves about 45 per cent outstanding in other hands?

Mr. Gray: Something like that, yes, sir, 42.6 to be exact.

Examiner Burchmore: Who are the minority stockholders?

Mr. Gray: Various individuals living in Henderson, Texas, mostly, and some at Timpson, Texas.

Examiner Burchmore: Do any of those individuals hold their stock in trust or as agent for Messrs. Ragley or the Ragley Lumber Company?

Mr. Gray: No.

Examiner Burchmore: All bona fide outside holders?

Mr. Gray: Yes, sir.

Examiner Burchmore: How long have those persons held their stock?

Mr. Gray: Since the organization of the Timpson & Henderson Railway in August, 1909.

Examiner Burchmore: Then with the reorganization of

4771 the road, outside persons living principally in Henderson, became largely interested in the capital stock?

Mr. Gray: Yes, sir.

Examiner Burchmore: The extent of their interest being about 40 per cent.

Mr. Gray: Nearly 42 per cent.

Examiner Burchmore: Do you know what those persons paid for their stock in this railroad?

Mr. Gray: Paid money, in cash.

Examiner Burchmore: How much per share?

Mr. Gray: $100.

Examiner Burchmore: Has the stock paid any dividends?

Mr. Gray: No, sir, not yet.

Examiner Burchmore: Do you know what their object was in buying this stock?

Mr. Gray: I have some idea; I do not know as to the individual objects.

Examiner Burchmore: What is your idea?

Mr. Gray: My idea is that the most of these people who purchased stock in the railroad are Henderson citizens, and desired a railroad, as well as for probably some investment, and to build the town up.

Examiner Burchmore: Would you say that the sale of the
4772 stock in 1909 to the citizens in Henderson amounted to or was in lieu of making up a subscription list to aid the railroad?

Mr. Gray: Well, no, I should not say so.

Examiner Burchmore: In the case of a number of short line railroads we have been told that the citizens of this or that town or locality have made up a subscription and purchased part of the right of way or otherwise aided the railroad to build or improve its line?

Mr. Gray: It probably might have been some reason. I never discussed it with those individual stockholders as to just why they bought, but I am satisfied they wanted the railroad.

Examiner Burchmore: Could you take this stock list and endorse on it in red or black ink by some symbol the stockholders who are also interested in the Ragley Lumber Company?

Mr. Gray: I did not on that one.

Examiner Burchmore: I say can you?

Mr. Gray: Yes, sir, I can.

Examiner Burchmore: Put a little star opposite the names of those persons.

Mr. Gray: Yes, sir; or I can call the names.

Examiner Burchmore: How many names are there?
4773 Mr. Gray: Seven.

Examiner Burchmore: Well, read off the names?

Mr. Gray: William Bryne.

Examiner Burchmore: He owns 20 shares in the railroad apparently.

Mr. Gray: Yes, sir. Andrew Prycer.

Examiner Burchmore: He apparently has 25 shares in the railway?

Mr. Gray: Yes, sir. W. G. Ragley.

Examiner Burchmore: 1224 railroad shares.

Mr. Gray: Yes, sir. Mrs. W. G. Ragley.

Examiner Burchmore: Ten shares in the railroad?

Mr. Gray: Yes, sir. M. J. Ragley.

Examiner Burchmore: 100 shares.
Mr. Gray: Correct. Frank Ragley.
Examiner Burchmore: 100 shares.
Mr. Gray: And J. B. Wilson.
Examiner Burchmore: 500 shares.
Mr. Gray: Yes, sir.
Examiner Burchmore: Those are all the persons who are stock holders in the Ragley Lumber Company, as you understand it?
4774 Mr. Gray: Yes, sir.
Examiner Burchmore: What is the total number of shares in this railroad outstanding?
Mr. Gray: 2,500.
Examiner Burchmore: If your mathematics are correct the seven persons whose names you read hold 2079 shares.
Mr. Gray: 1979, I believe.
Examiner Burchmore: 1979?
Mr. Gray: If I have added them correctly, yes, sir.
Examiner Burchmore: That is a good deal more than 60 per cent, is it not?
Mr. Gray: 79.
Examiner Burchmore: I understood that the Ragley Lumber Company through its stockholders only had about——
Mr. Gray: 57, that was the Ragley family, I believe I stated.
Examiner Burchmore: Well, I believe that was the question. Then the stockholders of the Ragely Lumber Company are interested as stockholders in this lumber company to the extent of nearly 80 per cent?
Mr. Gray: Those seven are as individual stockholders, yes.
Examiner Burchmore: Is their holding of stock in the Ragley Lumber Company by these seven people substantially in the same proportion as their holding in the railway company?
4775 Mr. Gray: That is probably so, I cannot say. I am not familiar with the Ragley Lumber Company's interests at all, or their stockholders.
Examiner Burchmore: Are there any other saw mills on or near your line?
Mr. Gray: Yes, sir. We have several little sawmills located near the line and one directly on the line, and then we have a big planer on the line at Long Branch, Texas.
Examiner Burchmore: Who owns that planer?
Mr. Gray: The Panola Lumber Company.
Examiner Burchmore: Has that company any connection with the Ragley people?
Mr. Gray: No.
Examiner Burchmore: What are these small mills you refer to?
Mr. Gray: Well, they are little country mills. We have two small mills within a radius of two miles of Long Branch that feed this planer. Then we have a couple of saw mills near Pine Mill that ship lumber.
Examiner Burchmore: Are the owners of those mills stockholders in the railroad?

Mr. Gray: Those little mills I have been speaking of? No.

4776 Examiner Burchmore: Is there a saw mill at Acme?

Mr. Gray: I don't know where Acme is. It is not on our road.

Examiner Burchmore: Has the Ragley Lumber Company any other mills besides those at Ragley?

Mr. Gray: No.

Examiner Burchmore: Has the company any bonds?

Mr. Gray: No bonds, no, sir.

Examiner Burchmore: Any other indebtedness aside from current liabilities?

Mr. Gray: Yes, sir, it has an obligation, a loan, amounting to $45,000.

Examiner Burchmore: Who holds that loan?

Mr. Gray: Mr. W. G. Ragley.

Examiner Burchmore: What was the money used for that was realized from that loan?

Mr. Gray: Construction purposes.

Examiner Burchmore: When was the loan made?

Mr. Gray: September 1910.

Examiner Burchmore: Any new lines constructed since that time?

Mr. Gray: No.

Examiner Burchmore: That money was used to wipe out

1777 some former indebtedness?

Mr. Gray: It was used to pay for some of the construction of the road from Pine Hill to Henderson, probably the indebtedness had not all been paid for, for the construction of that road, and it was to take care of current items.

Examiner Burchmore: What is the total cost of the road including or excluding equipment?

Mr. Gray: Excluding or including, did you want it?

Examiner Burchmore: Either or both.

Mr. Gray: Well, the total cost including equipment of road, December 31st, was $294,553.93.

Examiner Burchmore: And without the equipment?

Mr. Gray: $272,434.35.

Examiner Burchmore: And the road was paid for by the capital stock which was sold for $250,000, plus the loans?

Mr. Gray: Yes, sir.

Examiner Burchmore: Had there been any other loans aside from the $45,000, the one to which you referred?

Mr. Gray: No.

Examiner Burchmore: You said the road had not paid any dividends. Have they paid interest on their loan?

Mr. Gray: They have made one payment of interest, yes, or one payment on that loan which included interest.

4778 Examiner Burchmore: This is a standard gauge line?

Mr. Gray: Yes, sir.

Examiner Burchmore: What is the weight of the rail and character of the roadbed?

Mr. Gray: The rails that are on the line are 56 pound, I believe it is.

Examiner Burchmore: Have you any ballast?

Mr. Gray: No, that road is not ballasted.

Examiner Burchmore: Any bridges or trestles?

Mr. Gray: We have quite a number of trestles, but I have not that information with me, and in that respect I would like to make our annual report to the Interstate Commerce Commission a part of the record, because that contains the information about bridges.

Examiner Burchmore: It is understood any information shown in your annual report may be referred to freely.

Mr. Hillyer: We would also include any information that might be contained in the monthly reports during 1910, that he might wish to make use of.

Examiner Burchmore: Certainly, any documents which are on file publicly with the Commission. How many train crews has this road?

Mr. Gray: Only one train crew.

4779 Examiner Burchmore: How many section gangs?

Mr. Gray: We have three regular gangs; sometimes we put on an extra one, but only three regular.

Examiner Burchmore: Do you repair or do any work on the private logging spurs we have been talking about?

Mr. Gray: No, sir, none at all.

Examiner Burchmore: Do you lend your men to the lumber company for that purpose?

Mr. Gray: No, sir, we do not lend them.

Examiner Burchmore: Do you have any stations?

Mr. Gray: Yes, sir.

Examiner Burchmore: Of course, you have stations from a tariff standpoint, but I was referring to station buildings.

Mr. Gray: Yes, sir, we have four depots.

Examiner Burchmore: Where are those depots, and designate whether they are agency stations, and also describe the character of the buildings, if you can, very briefly.

Mr. Gray: We have a station at Ragley which consists only of a warehouse and a very small station and an agent; at Long Branch we have a depot——

Mr. Hillyer: Do you know what it cost to build that depot at Ragley?

Mr. Gray: No, I do not. The cost was very light though;

4780 it did not amount to much. But at Long Branch we have a very nice depot. I however do not know what the cost of the stations were separately. I can give you the cost of the station buildings and station grounds, however. The total cost of all the station buildings. We have a station and an agent at Pine Hill also, and one at Henderson.

Examiner Burchmore: Do those agents devote their entire time to your service?

Mr. Gray: To our service and the express company; yes, sir.

Examiner Burchmore: What express company operates over your line?

Mr. Gray: Wells Fargo.

Examiner Burchmore: The agent at Ragely, is he employed sometimes by the Ragley Lumber Company?

Mr. Gray: Not at all, no, sir.

Examiner Burchmore: Is he a storekeeper?

Mr. Gray: No, sir.

Examiner Burchmore: Do you have any published time tables?

Mr. Gray: Yes, sir.

Examiner Burchmore: What is the extent of your regular service?

Mr. Gray: We operate one train each way daily.

4781 Examiner Burchmore: Is that a mixed train?

Mr. Gray: Yes, sir.

Examiner Burchmore: Do you run any purely freight trains?

Mr. Gray: No, sir; we have not so far. If we ever should have occasion to run them we would run them.

Examiner Burchmore: Do you carry passengers for hire?

Mr. Gray: Yes, sir.

Examiner Burchmore: What is the basis of your fare?

Mr. Gray: Three cents a mile, per capita.

Examiner Burchmore: Do you carry the mail?

Mr. Gray: Yes, sir.

Examiner Burchmore: Have you any telegraph service?

Mr. Gray: No telegraph service, no.

Examiner Burchmore: Telephone.

Mr. Gray: Telephone, yes, sir.

Examiner Burchmore: Your cars and locomotives are equipped with automatic couplers and other devices required by the Safety Appliance Act?

Mr. Gray: Yes, sir.

Examiner Burchmore: What was the extent of your passenger traffic?

Mr. Gray: For the calendar year 1910 we handled between 23,000 and 25,000 passengers.

4782 Examiner Burchmore: What was the revenue they contributed to your road?

Mr. Gray: $8,864.70.

Examiner Burchmore: What was the express revenue for that period?

Mr. Gray: I haven't it exactly, but it averages about $45 or $50 a month, our proportion of it.

Examiner Burchmore: And the mail?

Mr. Gray: It is a fixed basis of $123.29 a month.

Examiner Burchmore: Do you publish and file with the Interstate Commerce Commission local tariffs naming rates between points on your line?

Mr. Gray: We do not publish any individual tariffs at all.

Examiner Burchmore: Do you have joint rates and class rates with the main line connections?

Mr. Gray: Yes, sir.

Examiner Burchmore: Any commodity rates other than on lumber?

Mr. Gray: Yes, sir.

Examiner Burchmore: Do the Texas common point rates apply to the stations on your line?

Mr. Gray: Yes, sir, to some points, and some points it is less than the Texas common points, but we are in the Texas common
4783 point grouping.

Mr. Garwood: I thought I had them here, but I find I have the lumber zones delineated on another map, if you want it.

Examiner Burchmore: Do you know the extent of the lumber zone in which you are located, the extent of the rate zone?

Mr. Gray: Yes, sir. To interstate points we have a 16 and 18 cent rate. We are on the 16 and 18 cent basis to St. Louis, Thebes and Cairo.

Examiner Burchmore: What division do you receive out of that rate?

Mr. Gray: Two cents out of St. Louis and Cairo rates.

Examiner Burchmore: What are the divisions you receive on traffic turned over to the Houston, East & West Texas?

Mr. Gray: Well, it varies. Do you mean on lumber?

Examiner Burchmore: On lumber and forest products.

Mr. Gray: It will average about three cents per 100 pounds, that is the average. The interstate average is probably three and a half cents per hundred pounds.

Examiner Burchmore: What are the divisions, how do they range in amount?

Mr. Gray: Well, on business in to Rock Island points in Kansas and Colorado where we can handle in connection with the Kansas City Southern from Shreveport we get four cents per hundred
4784 pounds. Most of our lumber in connection with the Houston, East & West Texas to interstate points is handled over that route.

Examiner Burchmore: Do you get any divisions in connection with movements over the Texas & Gulf?

Mr. Gray: No, sir, we have no divisions with them.

Mr. Garwood: That is a Santa Fe property, your Honor.

Examiner Burchmore: Do you interchange any lumber with them?

Mr. Gray: No, sir, not unless we are forced to on Texas business. We have interchanged some Texas lumber, but no interstate lumber at all.

Examiner Burchmore: Do you simply have joint rates with that road?

Mr. Gray: We have had, yes, sir. I think they were cancelled in 1908, in September, I believe.

Examiner Burchmore: What division did you receive previous to the cancellation, do you remember?

Mr. Gray: One and one-half cents per 100 pounds at that time.

Examiner Burchmore: To all points?

Mr. Gray: To all points, yes, sir.

Examiner Burchmore: What divisions are accorded by the
4785 International & Great Northern to lumber traffic which you tender to them?

Mr. Gray: I stated awhile ago that we received two cents per 100 pounds to all points east of the Mississippi River that base on St. Louis and Cairo, and all points north, Missouri, Iowa, and so forth, we receive three cents per 100 pounds. The division varies from two to three cents in connection with the I. & G. N.

Examiner Burchmore: Are your lumber rates on a milling in transit basis?

Mr. Gray: Not at the present time. I have had that basis in, but it is cancelled now and we are not using it.

Examiner Burchmore: Did you avail yourself of the privilege when you had it?

Mr. Gray: I did not. The shippers did. I published the provision for them myself.

Examiner Burchmore: Did the Ragley Lumber Company use it?

Mr. Gray: No.

Examiner Burchmore: Do you sell any tickets to your passengers?

Mr. Gray: Oh, yes.

Examiner Burchmore: You endeavor to comply with all the State and Federal laws regarding carriers?

4786 Mr. Gray: We do.

Examiner Burchmore: The Ragley Lumber Company at the present time has and previously has had trackage rights over your line from the junction of its private spurs with your road to Ragley?

Mr. Gray: Yes, sir.

Examiner Burchmore: Any contract covering those rights?

Mr. Gray: There is a contract and we wish to make it a part of the record.

Examiner Burchmore: Have you it for filing?

Mr. Gray: Yes, sir.

(The paper so offered and identified, was received in evidence and thereupon marked Timpson & Henderson Exhibit No. 2, Witness Gray, received in evidence January 25, 1911, and is attached hereto.)

Examiner Burchmore: What are the terms of that contract in a general way?

Mr. Gray: From a revenue standpoint it provides that the Ragley Lumber Company shall pay the Timpson & Henderson 25 cents per train mile for operating over that piece of track for the trackage rights, and they are at all times subject to the orders from the train despatcher of our road.

4787 Examiner Burchmore: That is 25 cents a train mile loaded and empty both, or simply loaded?

Mr. Gray: Both ways, loaded and empty, per train mile.

Examiner Burchmore: This agreement is apparently dated November 21st, 1909, and signed by Mr. W. G. Ragley as President of the Timpson & Henderson and by W. G. Ragley as President of the Ragley Lumber Company?

Mr. Gray: Yes, sir.

Examiner Burchmore: Its term is one year?

Mr. Gray: Yes, sir.

Examiner Burchmore: So that apparently it expired on November 21st, 1910.

Mr. Gray: Well, that is true, there is a duplicate of that contract which has been made and entered into again. However, it had not been executed and I could not bring the copies.

Examiner Burchmore: As a practical matter, they have continued the force and effect of this contract?

Mr. Gray: That is it exactly.

Examiner Burchmore: Was there any contract between the Timpson & Northwestern and the Ragley Lumber Company of a similar nature?

4788 Mr. Gray: No, sir.

Examiner Burchmore: But when the Timpson & Northwestern was operating this road, the Ragley Lumber Company had the same trackage right, did they not?

Mr. Gray: They did not have any trackage right at all and did not operate over the Timpson & Northwestern.

Examiner Burchmore: How did they get their logs to the mill?

Mr. Gray: They logged in another direction entirely; they had no logging land on the Timpson & Northwestern. They got their logs in on a private line into Ragley.

Examiner Burchmore: That line ran into Ragley?

Mr. Gray: The logging road did, yes, sir.

Examiner Burchmore: Have you figures which you desire to put in evidence with regard to your freight traffic?

Mr. Gray: We have, yes, sir. My attorney has a copy.

Mr. Hillyer: They are very short, and I would like to have him read it in the record.

Mr. Gray: The freight revenue for the year ending December 31st, 1910, was $39,491.10; passenger revenue $8,864.70. Other transportation revenue $2,359.02. Non-transportation revenue $253.57. Total operating revenue $50,968.39.

4789 Examiner Burchmore: That is very much larger revenue than you had for the fiscal year ending June 30th, 1910, is it not?

Mr. Gray: Yes, sir, much larger.

Examiner Burchmore: Have you the operating expenses there?

Mr. Gray: I have the total operating expenses. My figures do not show them divided under the heading of the separate accounts.

Examiner Burchmore: What was the total?

Mr. Gray: $35,293.01.

Examiner Burchmore: Then you had quite a large net operating revenue?

Mr. Gray: The net revenue was $15,675.38.

Examiner Burchmore: What disposition was made of that revenue?

Mr. Gray: It is carried in our account to income credit.

Examiner Burchmore: You will soon be paying dividends at that rate, won't you?

Mr. Gray: We will pay off that indebtedness, and probably will be paying dividends, yes. We hope to.

Examiner Burchmore: Have you any figures dividing
4790 those operating revenues as between the traffic supplied by the Ragley Lumber Company and other traffic?

Mr. Gray: I have not that, no, sir, but I have the number of ton of freight that were supplied by the Ragley Lumber Company and it probably would give you some idea.

Examiner Burchmore: All right, give us those figures.

Mr. Gray: My figures show that the Ragley Lumber Company shipped 11,385 tons.

Examiner Burchmore: For that calendar year?

Mr. Gray: Yes, sir, which amounts to 27½ per cent of the total tonnage.

Mr. Hillyer: What percentage of the lumber company?

Mr. Gray: It amounts to 43.4 of their total lumber shipped.

Examiner Burchmore: Have you any further figures on the freight tonnage?

Mr. Gray: Yes, sir, I have the tonnage divided in one or two commodities. It shows lumber and other forest products 26,189.7. cotton 3,067.5 and all other commodities 12,207.2. Total tonnage 41,464.4.

Examiner Burchmore: Of which lumber tonnage 26,000, how much was supplied by the Ragley Lumber Company?

Mr. Gray: 11,385 tons supplied by the Ragley Lumber Company. I also have a little further statement with regard to freight
4791 movement which I would like to state in the record.

Examiner Burchmore: What is it?

Mr. Gray: The number of carloads of lumber supplied by the Ragley Lumber Company was 506 cars; by other lumber shippers 523 cars; ties 57 cars, flour, grain and grain products 86 cars; fertilizers 40 cars, potatoes 28 cars; all other commodities 424 cars.

Mr. Hillyer: Give that total cotton shipment.

Mr. Gray: In addition to that I want to state for the record 12,270 bales of cotton.

Examiner Burchmore: Do the Messrs. Ragley have any interest in any other manufacturing enterprise down there in Texas in this vicinity?

Mr. Gray: Not that I know of.

Examiner Burchmore: Do they buy or sell cotton?

Mr. Gray: No, sir, not at all.

Examiner Burchmore: Were they interested directly or indirectly in any of the other traffic you have referred to?

Mr. Gray: No, sir.

Examiner Burchmore: Do they have any company stores at Ragley?

Mr. Gray: They are probably interested in a little merchandise traffic; yes, they have a commissary there.

4792 Examiner Burchmore: Do you know the extent of their traffic there?

Mr. Gray: No, sir. It does not amount to but very little. I do not know to what extent it does amount. They have a store with probably $6,000 or $7,000 of stock in it or $8,000, I do not know what that amounts to.

Examiner Burchmore: What would you say it would amount to at the outside figure, not more than how much?

Mr. Gray: It would not amount to more than 8 or 10 carloads of freight in the whole year.

Examiner Burchmore: Have you assigned to the Ragley Lumber Company in that new distribution of traffic, the lumber which has been manufactured at their plant but which is sold f. o. b. point of origin and shipped on account of someone else?

Mr. Gray: I do not believe I understand what you are driving at.

Examiner Burchmore: You mentioned 11,000 tons in round numbers of lumber handled for the Ragley Lumber Company by the Timpson & Henderson Railway?

Mr. Gray: Yes, sir.

Examiner Burchmore: Is that the entire output of the Ragley Mill?

4793 Mr. Gray: That is, yes, sir—it was last year. It was all that was shipped.

Examiner Burchmore: As a matter of fact, previous to the period you have given, the Ragley Lumber Company contributed the major portion of the tonnage of this railroad, did it not?

Mr. Gray: That is a fact, yes, sir.

Examiner Burchmore: When did that cease to be a fact?

Mr. Gray: When the extension into Henderson was completed about November 21st, 1909.

Examiner Burchmore: I have no further questions at present.

Mr. Hillyer: We have here a copy of the charter and the amended charter, showing the manner in which the Timpson & Henderson began operation in Texas, and if it is permissible I would like to offer the certified cop-es of the charter and amended charter.

Examiner Burchmore: I do not think it is necessary to file that. This railroad is incorporated as a common carrier under the laws of Texas?

Mr. Hillyer: Will you answer that, Mr. Gray.

Mr. Gray: That is correct, yes, sir.

Mr. Hillyer: Is it incorporated under the laws of Texas relative to the incorporation of railroads as common carriers in Texas?

4794 Mr. Gray: It is, yes, sir.

Mr. Hillyer: What was the trackage of the Timpson & Northwestern?

Mr. Gray: A little above nine miles.

Mr. Hillyer: From what point to what point?

Mr. Gray: From Timpson to Ragley.

Mr. Hillyer: At the time of the incorporation of the Timpson & Henderson, what tracks did the Ragley Lumber Company own outside of the Timpson & Northwestern?

Mr. Gray: Well, they had logging spurs; they had one logging spur which was extended to Long Branch and Pine Hill. They had several of those. Those logging roads are put out in one section of the timber and moved from time to time as the occasion may necessitate.

Mr. Hillyer: Which is the farthest point from Ragley, Pine Hill or Long Branch.

Mr. Gray: Pine Hill.

Mr. Hillyer: Did the Ragley Lumber Company own a continuous line from Ragley to Pine Hill?

Mr. Gray: They did, yes, sir.

Mr. Hillyer: When the idea was conceived to incorporate the Timpson & Henderson Railroad, what additional tracks had to be built to carry the road from Pine Hill to Henderson?

4795 Mr. Gray: Between 11 and 13 miles.

Mr. Hillyer: Was that all new construction?

Mr. Gray: That was all new construction, yes.

Mr. Hillyer: When the Timpson & Northwestern sold out to the Timpson & Henderson, what was the consideration which was paid for the tracks from Timpson to Ragley, if you can give it.

Mr. Gray: I haven't those figures here. I can give it to you from Timpson to Pine Hill, Timpson to Ragley I think was somewheres about $140,000.

Mr. Hillyer: To make that answer a little clearer, what was the consideration paid by the Timpson & Henderson jointly to the Timpson & Northwestern and the Ragley Lumber Company for the line from Timpson to Pine Hill?

Mr. Gray: $152,000.

Mr. Hillyer: Was the Timpson & Northwestern owned entirely by the Ragley Lumber Company stockholders at that time?

Mr. Gray: I think it was. I do not think there was anyone else interested in it but the Ragley Lumber Company's stockholders.

Mr. Hillyer: Please explain how the $152,000 paid by the Timpson & Henderson was paid. Was it paid in cash and if not, how?

Mr. Gray: No, sir, it was not. It was paid by an issue

4796 of stock.

Mr. Hillyer: Explain the distribution of that stock, please.

Mr. Gray: Well, the stockholders in the Ragley Lumber Company, who desired to take out stock in the railroad, were paid for this road with this stock. In other words, the Ragley Lumber Company was paid this amount, $150,000, and those stockholders who desired it took it out in stock and those who did not, as I understand it, Mr. Ragley took their proportion of the stock.

Mr. Hillyer: The capital stock of the Timpson & Henderson is $250,000, is it not?

Mr. Gray: Yes, sir.

Mr. Hillyer: What was done with the remaining stock in the company?

Mr. Gray: It was subscribed for and paid in cash.

Mr. Hillyer: By whom, mostly.

Mr. Gray: By individuals, mostly citizens of Henderson. However, there are one or two I think at Timpson, and other places.

Mr. Hillyer: What was the extent of that cash sale of stock?

Mr. Gray: $98,000.

4797 Mr. Hillyer: What was the cost of building the new line from Pine Hill into Henderson?

Mr. Gray: The actual cost of the construction of the road itself was $120,434.35.

Mr. Hillyer: Then you did not have enough cash from that cash sale of stock to pay for the extension from Pine Hill to Henderson?

Mr. Gray: Hardly, no, sir.

Mr. Hillyer: What did the railroad company do for the purpose of obtaining that balance?

Mr. Gray: They negotiated a loan for $45,000.

Mr. Hillyer: How is that loan secured?

Mr. Gray: By deed of trust.

Mr. Hillyer: Covering what?

Mr. Gray: Covering the Timpson & Henderson's property.

Mr. Hillyer: Who is the holder of that?

Mr. Gray: W. G. Ragley.

Mr. Hillyer: What rate of interest does the railroad company pay on that loan.

Mr. Gray: Six per cent.

Mr. Hillyer: When was it made?

Mr. Gray: The loan was made on September 22nd, 1910.

Mr. Hillyer: What are the terms of payment?

4798 Mr. Gray: I don't believe I could give you that information offhand.

Mr. Hillyer: Have you the right to curtail that loan at any time?

Mr. Gray: Yes, sir.

Mr. Hillyer: Has the company as a fact curtailed that loan to any extent?

Mr. Gray: They have made a payment of $8,000 on it.

Mr. Hillyer: When?

Mr. Gray: On December 22nd, 1910.

Mr. Hillyer: Do you lease any equipment at the present time?

Mr. Gray: No, sir.

Mr. Hillyer: What arrangements have you with your trunk lines about supplying cars for traffic which originates on your line?

Mr. Gray: We have no arrangement whatever; we simply order empty cars or equipment from them, and usually have very little trouble in securing it. We have no definite arrangements with them.

Mr. Hillyer: What per diem do you pay for those cars when on your line?

4799 Mr. Gray: We pay the standard rate of per diem, 30 cents a day, prescribed by the American Railway Association.

Mr. Hillyer: Are you a member of that association?

Mr. Gray: I am not, no, sir.

Mr. Hillyer: Is the Timpson & Henderson subject to any demurrage rules, with its connecting carriers?

Mr. Gray: It is subject to the demurrage laws of Texas.

Mr. Hillyer: Where is the Ragley plant located?

Mr. Gray: Located at Ragley, Texas.

Mr. Hillyer: How far is that from the main line of the Houston, East & West Texas?

Mr. Gray: About ten miles.

Mr. Hillyer: State if you know, why the mill was located at that point?

Mr. Gray: In the original place?

Mr. Hillyer: Yes.

Mr. Gray: I do not know, but I presume it was to get it in the heart of their timber. The timber holdings or the biggest part of it was out there some eight or ten miles from Timpson, and I presume they put it out there to get it in the heart of the timber and possibly reduce the expense of the log haul.

4800 Examiner Burchmore: Did they expect to haul their lumber over to the main line of railroad?

Mr. Gray: That is what they built the railroad for, was to haul the manufactured lumber over there.

Examiner Burchmore: They could not have hauled the lumber by wagon or team?

Mr. Gray: I do not think so at all.

Examiner Burchmore: Could they have operated their mill successfully if they had had to stand the cost of hauling the lumber by railroad over to Timpson or Henderson?

Mr. Gray: I do not know. By railroad?

Examiner Burchmore: If they had had to pay out of their own pockets the expense of running this railroad?

Mr. Gray: I doubt if they could. I am not prepared to state, however. I know very little about the lumber business, the cost of manufacturing lumber, but I hardly see how.

Mr. Hillyer: What other position do you hold with the Timpson & Henderson Road at this time?

Mr. Gray: At the present time I am in charge of its accounts, in addition to the traffic work.

Mr. Hillyer: You gave a list of the directors awhile ago?

Mr. Gray: Yes, sir.

4801 Mr. Hillyer: I will ask you how many of those directors are stockholders in the Ragley Lumber Company?

Mr. Gray: Four of them.

Mr. Hillyer: How many are not?

Mr. Gray: Five.

Mr. Hillyer: Have you a published time card of your schedule?

Mr. Gray: We have, yes, sir.

Mr. Hillyer: I would like to offer that in evidence.

(The time card so offered and identified, was received in evidence and thereupon marked Timpson & Henderson Exhibit No. 3, Witness Gray, received in evidence January 25, 1911, and is attached hereto.)

Mr. Hillyer: What passenger connections do you make at either end of your line, Mr. Gray?

Mr. Gray: I do not believe I understand you.

Mr. Hillyer: Do you make close connections or poor connections with your passenger trains at either end of your line?

Mr. Gray: We make connections with two or three trains at both ends of the line, fair connections.

Mr. Hillyer: I would like to give the post office department's official number of that postal contract. It is route No. 150,158.

4802 Mr. Gray, do you have joint arrangements with either of your connecting carriers at either junction point?

Mr. Gray: We have joint facilities with the Houston, East & West Texas, and have a joint agent.

Mr. Hillyer: Where is that?

Mr. Gray: At Timpson.

Mr. Hillyer: Have you any connection whatever with the Ragley Lumber Company?

Mr. Gray: None whatever, no, sir.

Examiner Hillyer: You have stated all of the officers who are interested in both companies, have you?

Mr. Gray: I have, yes, sir.

Mr. Hillyer: State if you know, the extent of the Ragley Lumber Company's remaining timber which would be handled by the Timpson & Henderson Railroad Company?

Mr. Gray: My understanding is that—I do not know the amount of timber they have left, but they expect to be cut out entirely within the next year, but I could not state how much timber they have. I do not really know.

Mr. Hillyer: I just wanted to know how long that cut would last.

Mr. Gray: But the cut will not last longer than a year or so.

4803 Mr. Hillyer: What divisions do you have with your connecting lines on cotton?

Mr. Gray: We receive 23 cents on cotton to Houston and Galveston in connection with both the Houston, East & West Texas and the International & Great Northern, and we receive 20 cents per 100 pounds in connection with the Santa Fe, that is a flat basis.

Mr. Hillyer: Are the rates with the other carriers influenced by the point where the cotton is compressed after it leaves your line?

Mr. Gray: Oh, yes, of course. There are all kinds of compressing and concentration arrangements and back haul arrangements in Texas. I do not know whether it would be necessary to go into detail about that. I am willing to if you want it.

Mr. Hillyer: I think that is all. How many trestles are there on your line between Timpson and Henderson?

Mr. Gray: I could not answer that, but it is on record with the Commission.

Mr. Hillyer: Do you not know in a general way?

Mr. Gray: No, I would not like to state, but there are some eight or ten, maybe more.

4804 Mr. Hillyer: What is the basis of your divisions with your connecting carriers on other stuff which originates on your line, on inbound or outbound traffic.

Mr Gray: For example, I presume I would have to make an example on that to make it clear, on St. Louis, Kansas City, Vicksburg and New Orleans we receive 30 per cent of the proportion accruing south of either of those crossings or basing points on through rates beyond. We also receive 30 per cent of the St. Louis, Kansas City and New Orleans flat rate to our local stations, and 20 per cent to

Henderson in connection with the Houston, East & West Texas. Our basis with the I. & G. N. and Missouri Pacific and Cotton Belt when routed in connection with the I. & G. N., when it takes it to interstate points, is 25 per cent.

Mr. Hillyer: Are you a party to any tariffs with the Santa Fe on inbound stuff from any point?

Mr. Gray: I am a party to one tariff which the Santa Fe is also a party to, and I presume you want to know if we have any rates in connection with the Santa Fe?

Mr. Hillyer: Yes.

Mr. Gray: There is one tariff in which the Santa Fe have not exceptions to our line, and that applies from New Orleans to Texas common points, and we have naturally some shipments in connection with the Santa Fe on that rate.

4805 Mr. Hillyer: What percentage of the New Orleans rate do you absorb?

Mr. Gray: We absorb 25 per cent in those cases.

Mr. Coleman: Have you that tariff here?

Mr. Hillyer: I think we can give you Mr. Leland's number of it. Have you Mr. Leland's number of that tariff?

Mr. Gray: I cannot give it from memory, I haven't it with me.

Mr. Coleman: We cannot hear you.

Mr. Gray: I say I cannot furnish you that.

Mr. Hillyer: Did you say the Santa Fe did not concur in that tariff, or did?

Mr. Gray: They do, they are a party.

Mr. Hillyer: And do the rates apply in connection with the Santa Fe on your line?

Mr. Gray: I will explain that and make it clear. The Santa Fe people contended it did in one or two cases, and I contended that it did not, but they won out in a case, and we had to handle through shipments on the rates published in that tariff.

Mr. Hillyer: What was that?

Mr. Gray: It was a shipment of merchandise freight from New Orleans to points on the T. & H.

4806 Examiner Burchmore: Has the Timpson & Henderson been recognized as a common carrier by the Railroad Commission of Texas?

Mr. Gray: Yes, sir.

Examiner Burchmore: What form did that recognition take?

Mr. Gray: I do not know just exactly how you mean, but the Commission formally recognized the road and took jurisdiction over it.

Examiner Burchmore: When did they do that?

Mr. Gray: In 1901, when they first took jurisdiction over the Timpson & Northwestern.

Examiner Burchmore: As a common carrier railroad?

Mr. Gray: Yes, sir.

Examiner Burchmore: That was before it was incorporated?

Mr. Gray: No, it was incorporated in 1901 or 1903.

Examiner Burchmore: Has it always recognized the railroad as a common carrier?

Mr. Gray: Yes, sir.

Examiner Burchmore: I was under the impression——

Mr. Gray: I may be mistaken as to the date.

Mr. Garwood: May I ask a question right here. To show that it did is it not a fact that it approved the mortgage or trust deed securing that $42,000?

4807 Mr. Gray: Yes, sir.

Mr. Garwood: Did they not send their engineer over the road at that time before they gave their official approval to the mortgage?

Mr. Gray: Yes, sir.

Examiner Burchmore: What valuation did the Texas Commission place on this road, if any?

Mr. Gray: I have not the exact figures. I think as well as I remember it was something like $6,600 a mile for the purpose of that loan, but I am not sure.

Examiner Burchmore: That was the full valuation they assigned to the road, irrespective of that?

Mr. Gray: I do not know, I would not answer that. Probably a little more than that.

Examiner Burchmore: Who routes the lumber you receive from the Ragley Lumber Company?

Mr. Gray: Well, I usually do or the shippers generally show it on their bills of lading.

Examiner Burchmore: You mean the Ragley Lumber Company usually specifies the routing?

Mr. Gray: They do, but I take the liberty sometimes of changing it if I want to, if I have two routes.

4808 Examiner Burchmore: Do you get their consent to changing it?

Mr. Gray: I always mention it to them, yes, sir.

Examiner Burchmore: And they always consent?

Mr. Gray: In some cases they have. They are very often—the party they sell the lumber to demands a delivery by a certain road, and of course we have got to respect the routing in that case; but where there is no routing specified or where they specify a routing that is to our disadvantage, I usually change it and notify them of the fact or ask their permission to change it. If they do not specify a route I will route it to the best advantage.

Mr. Hillyer: How do the divisions you receive on lumber traffic compare with the divisions you receive on the other traffic handled by your road?

Mr. Gray: Well, we——

Mr. Hillyer: Proportionately, or speaking comparatively.

Mr. Gray: We get a much better division on merchandise and other commodities than we do on lumber.

Mr. Hillyer: Can you from the figures you have there give us approximately the amount of inbound tonnage and the amount of outbound tonnage of your road just approximately?

4809 Mr. Gray: I could not give you the amount. I might recall these items again, and I could tell you practically what was in and out bound stuff in that carload movement.

Mr. Hillyer: If you will.

Mr. Gray: I showed a total of 1032 cars of lumber. That was all outbound stuff. I showed 57 cars of ties, that was all outbound stuff, 86 cars of grain and grain products, which is inbound. 40 cars of fertilizer, inbound. That 424 cars of other commodities was both in and out, and the 12,270 bales of cotton all outbound. I cannot give the carloads of that because it moved three or four bales in the car.

Mr. Hillyer: Has there been any attempt by either of your connecting carriers to cut out any of the through routes and rates which they have with you except the lumber rates.

Mr. Gray: Not that I am aware of, no.

Mr. Hillyer: They still continue to recognize you as a common carrier as to all other commodities but lumber, is that a fact?

Mr. Gray: Yes, sir.

Mr. Hiller: Mr. Gray, are any of the divisions on lumber which you receive from your connecting carriers, what would be known in this proceeding as milling in transit allowances?

4810 Mr. Gray: No, sir, none whatever.

Mr. Hillyer: To the Ragley Lumber Company or any other shipper on your line?

Mr. Gray: Not now. I explained to the Examiner a while ago that I had had in not a milling in transit but a planing in transit arrangement for the benefit of one or two shippers on our line, but that had been cancelled. The Ragley Lumber Company of course did not use it, so we have no such arrangement of any nature now.

Mr. Hillyer: I want to ask you to take that list which you made of the names of your principal carload shippers. Have you that with you?

Mr. Gray: Yes.

Mr. Hillyer: Let it be marked.

(The paper so offered and identified, was received in evidence and thereupon marked Timpson & Henderson Exhibit No. 4, Witness Gray, received in evidence January 25, 1911, and is attached hereto.)

Mr. Hillyer: Are any of those parties whose names appear on here except that of the Ragley Lumber Company, interested in any way in the Ragley Lumber Company?

Mr. Gray: None.

4811 Mr. Coleman: Can we have a copy of it?

(Paper handed Mr. Coleman by Mr. Hillyer.)

Mr. Hillyer: Mr. Gray, I want to ask you briefly to give us, if you will, a description of the different towns or switches located along your line, and what goes on there.

Examiner Burchmore: Make it very brief.

Mr. Gray: We have a little switch known as Garrison Switch, which was recently put in to accommodate a gin and other enterprises at an inland town by the name of Caledonia. Ragley has a population of about 500 people, three stores, and serves a few merchants and farmers at an inland town by the name of Hickey.

Mr. Hillyer: Is there a cotton gin at Hickey or Ragley?

Mr. Gray: One at Ragley, yes, sir.

Mr. Hillyer: Is that owned by the Ragley Lumber Company?

Mr. Gray: No. Long Branch has a population of 300 people, one planing mill and five stores, a hotel, barber shop, and a drug store, and two saw mills within two miles that both ship from this point.

Mr. Hillyer: Is that point dependent entirely on the Timpson & Henderson for its railroad service?

Mr. Gray: Yes, sir. From Long Branch we serve an inland town by the name of Clayton, about four or five miles distant.

4812 Mr. Hillyer: Is there another town with a very interesting name there near that station?

Mr. Gray: Also we have a town by the name of Jumbo about three miles distant. Long Branch has handled about 700 bales of cotton this season. At Pine Hill there is a population of about 300 people, five stores, one bank, one post office, a residence, hotel and two saw mills, and it serves a little inland town by the name of Fair Play, five miles distant, also a little inland town by the name of Brockfield. This place has handled about 3,300 bales of cotton this season.

Mr. Coleman: What station is that near?

Mr. Gray: That is near Long Branch, between Long Branch and Henderson, about three miles from Long Branch.

Mr. Coleman: How far from Henderson?

Mr. Gray: Between 11½ and 13 miles.

Examiner Burchmore: Proceed as rapidly as possible.

Mr. Hillyer: I think this will be important, if the Examiner will permit it.

Examiner Burchmore: Where is the balance of your 12,000 bales which you handled last year?

Mr. Gray: I have a list made up if you wish. We handled a little over 7,000 bales out of Henderson.

Examiner Burchmore: I thought you had 11,000 out of

4813 Pine Hill?

Mr. Gray: No, 3,000.

Examiner Burchmore: Well, that is enough. Is the rest of your line as good traffic producing as the portion south of Pine Hill?

Mr. Gray: Yes, sir.

Mr. Hillyer: If you will indulge me, I do not think it will take more than five minutes to get the balance of this in.

Examiner Burchmore: All right.

Mr. Gray: We have another little town, Hall, one store located in a thickly settled community. Pool Switch, one store, one saw mill and a cotton gin, and a population of possibly 100 people. Howeth has two stores, a post office and a little saw mill. Timpson and Henderson, I will not read those descriptions, I do not presume it is necessary. They are towns of about 3,000 or 4,000 population, doing both wholesale and retail business.

Mr. Hillyer: I wish you would state the facts in connection with that new enterprise which is held up pending the outcome of this tap line hearing.

Mr. Gray: The planing mill or lumber establishment you
4814 are talking about, I presume?

Mr. Hillyer: Yes.

Mr. Gray: There are parties who own timber between our line and points on the Houston, East & West Texas, the distance is approximately the same. They have practically completed arrangements or had completed arrangements to locate this planer on our line and had cleared off the ground and it was the intention to lay out a little town site, and the ground has been cleared for a switch, and they intend to establish this planer on our line and log and put little saw mills in their timber, but my understanding is from them that if those rates are cancelled they will be unable to locate on our line, and they intend to move on the H. E. & W. T.

Examiner Burchmore: Who are these people?

Mr. Gray: A party by the name of Elliott & Meely, it is a partnership.

Examiner Burchmore: Are the Ragley people interested in that partnership?

Mr. Gray: No.

Examiner Burchmore: Do they own any of the land?

Mr. Gray: No.

4815 Examiner Burchmore: Where is this proposed location of the planing mill?

Mr. Gray: Between Ragley and Long Branch, about half way. They are on that map.

Examiner Burchmore: Where are their timber holdings, west of there?

Mr. Gray: They are south, between there and the Houston East & West Texas line.

Examiner Burchmore: Are they also between there and the Caro Northern Railroad?

Mr. Gray: Yes, sir, some parts of it are located towards the Caro Northern. The biggest part of it is not very close to them, however.

Examiner Burchmore: Do they consider going up to the Caro Northern?

Mr. Gray: No, they have not been before me with that fact. They have considered building on our line and have cleared the ground.

Examiner Burchmore: Do you have any agreement with the Rock Island regarding divisions?

Mr. Gray: None whatever, only through our connections. We publish regular division sheets to which the Rock Island are a party.

4816 Examiner Burchmore: Have you got an agreement with the Kansas City Southern?

Mr. Gray: No, with the exception of those divisions.

Examiner Burchmore: But I understood your statements of divisions to indicate you received the maximum division on shipments destined to Rock Island points.

Mr. Gray: That is correct.

Examiner Burchmore: Why do you get a larger division from the Rock Island than the other lines?

Mr. Gray: That is probably true because the Rock Island Lines allow the lines south of junction points, Shreveport and North Texas junction points more than other roads will.

Examiner Burchmore: Did you write this letter of February 2nd, 1910, to Messrs. Brooks & Woolworth, Carthage, Texas (handing paper).

Mr. Gray: Yes, sir, I wrote that letter.

Examiner Burchmore: Is that the original letter?

Mr. Gray: I presume it is, that is my signature.

Examiner Burchmore: You see it says "Signed" down opposite your name, and I thought perhaps it was a copy.

Mr. Gray: I do not know who put that "signed" there. That is my signature.

4817 Examiner Burchmore: Perhaps it is as well to file it as part of your testimony.

(The paper so offered and identified, was received in evidence and thereupon marked Timpson & Henderson Exhibit No. 5, Witness Gray, received in evidence January 25, 1911, and is attached hereto.)

Examiner Burchmore: With that letter you enclosed to Messrs. Brooks & Woolworth, who are apparently general attorneys for your company, a copy or supposed copy of the petition which the Panola County Lumber Company and others were contemplating filing with the Interstate Commerce Commission?

Mr. Gray: Yes.

Examiner Burchmore: Do you know whether such petition was actually filed?

Mr. Gray: It was not filed, no, sir.

Examiner Burchmore: And in transmitting that petition you stated that the purpose of the petitioners was to secure a restoration of the old joint rates on lumber formerly in effect over your line in connection with the Santa Fe, which had been cancelled in 1908.

Mr. Gray: Yes, sir.

Examiner Burchmore: You further said that on your part
4818 as representing the Timpson & Henderson Railroad you were entirely willing to re-establish those joint rates and join with the Santa Fe in reasonable divisions?

Mr. Gray: Yes, sir.

Examiner Burchmore: But that the Santa Fe was unwilling to restore them. The co-complainants, the Panola County Lumber Company in that contemplated action included the Ragley Lumber Company?

Mr. Gray: I presume so. I do not know.

Examiner Burchmore: They are named in that petition. The copy also contains the name of W. A. Elliot, of Ragley, Texas. Who is he?

Mr. Gray: He is a lumber shipper; he is one of the parties I mentioned in connection with that lumber planing establishment.

Examiner Burchmore: Who are Patterson & McDuffy of Ragley?

Mr. Gray: Merely lumber shippers from that territory.

Examiner Burchmore: Joseph Slay & Company.

Mr. Gray: That is a little saw mill operator, but he is out of business now, however.

Examiner Burchmore: By whose suggestion did you write that letter, if anyone.

Mr. Gray: By no one's suggestion. I made a copy of that petition, I think, that I got from the Panola County Lumber Company, and wrote that letter on my own suggestion.

4819 Examiner Burchmore: You composed the letter yourself?

Mr. Gray: Certainly.

Mr. Hillyer: You told the Examiner that the weight of the rails on this right of way was what?

Mr. Gray: 56 pounds, if I am not mistaken.

Mr. Hillyer: What part of the road does that refer to, the whole of it?

Mr. Gray: The whole of it. There may be, however, a mile or two, or three or four miles that the steel is not quite that heavy. I am not sure, but I think there is between Ragley and Long Branch some lighter steel. In other words, the heavy steel has not been placed all over the road, but with the exception I have stated.

Mr. Cowan: You have been attending these hearings, I suppose you were here yesterday?

Mr. Gray: I was here part of the time.

Mr. Cowan: You get, as I understand, from shipments which you give to the Houston, East & West Texas, and which you may deliver to Rock Island connections by way of Shreveport, destined to points east of Cairo and Thebes——

Mr. Gray: No, not through Cairo and Thebes, but we have got divisions in connection with the Houston, East & West Texas

4820 moving to points east of the river, or anywhere else that base on Thebes, Cairo or St. Louis.

Mr. Cowan: Where do you connect with the Rock Island?

Mr. Gray: We route our stuff by the Kansas City Southern north of Kansas City to all points located on the Rock Island Railway.

Mr. Cowan: That goes east?

Mr. Gray: No.

Mr. Cowan: How do you get east to the Mississippi River on these divisions?

Mr. Gray: In connection with the Missouri Pacific.

Mr. Cowan: Over the International & Great Northern?

Mr. Gray: Yes, sir.

Mr. Cowan: You get two cents on that?

Mr. Gray: Yes, sir.

Mr. Cowan: I thought you said you reached the Rock Island in some way and got two cent divisions from territory covered by them in Kansas?

Mr. Gray: I said in connection with Houston, East & West Texas and the Kansas City Southern through Kansas City, Mo., to all points north of Kansas City located on the Rock Island Railway.

4821 Examiner Burchmore: West of the Mississippi River?

Mr. Gray: West of the Mississippi River.

Mr. Cowan: Then you get four cents in that case?

Mr. Gray: We get four cents in that case to all points north of Kansas City to any points we have through rates on any railroad, for that matter.

Mr. Cowan: Going through the Mississippi River gateways to the east you get two cents per 100 pounds?

Mr. Gray: Yes, sir.

Mr. Cowan: Are you able to state with any degree of approximation what proportion of lumber going off your line moves to points east of the Mississippi?

Mr. Gray: Well, it is a very small proportion, I can hardly give you that, but it is a small proportion. There is not much stuff shipped east of the Mississippi.

Mr. Cowan: You naturally would ship where you would get the best divisions if you could?

Mr. Gray: No, we have nothing to do with these shipments, it is simply a matter of the customers or territory in which the lumber companies deal.

Mr. Cowan: Well, certainly, but the Ragleys are interested and officials in your railroad, and naturally would want their tim-
4822 ber sold in that territory where their railroad would get more divisions.

Mr. Gray: But I do not mind saying that the biggest proportion of the lumber goes to other territory; in fact I guess at present the biggest portion is going to Texas territory.

Mr. Cowan: What divisions do you get in Texas?

Mr. Gray: All the way from two to four cents, and five in one or two cases.

Mr. Cowan: Do you think as a railroad man that it is fair to your railroad to get only two cents out of an 18 or 16 cent rate to St. Louis and east when the Arkansas Southeastern Road gets five cents division out of the same rate?

Mr. Walter: Where do they get five cents?

Mr. Gray: I do not know anything about the Arkansas and Louisiana lines.

Mr. Cowan: Without naming any railroads, take those which get three and four cents or five cents, where you get two or three——

Mr. Gray: I do not know of any Texas lines that get that amount out of that rate to St. Louis and Cairo. There may however be, but if there is, I do not know it, and I have seen practically all their division sheets. But if you ask me the question as to whether I consider that a fair return on the investment I should state that
4823 I do not know that I do. I have however, agreed to that basis, but I have contemplated several times the cancelling of the rates, and that is a matter that is individually left up to me, there is no one ever asked me about it. I published that rate without the knowledge of any one else.

Mr. Hillyer: Just one or two more questions? Do you publish any tariffs which are filed with the Texas Railroad Commission, or are you a party to any tariffs which are published and filed with the Texas Railroad Commission?

Mr. Gray: We are a party to all Texas tariffs, yes, sir.

Mr. Hillyer: Do you publish any tariffs which are filed with the Interstate Commerce Commission?

Mr. Gray: We do not publish any interstate tariffs or any individual tariffs at all. We concur in tariffs by power of attorney with Mr. Leland of St. Louis, and other individual lines; we concur in several individual lines' tariffs.

Mr. Garwood: I understood you to say that you have joint through interstate rates on lumber with the Santa Fe in Texas?

Mr. Gray: Well, not divisions. That is a matter of course, in Texas—you understand we have got to handle lumber regardless of whether there is any agreed bases or not. We have no division sheets with them.

4824 Mr. Garwood: You have no divisions with them.

Mr. Gray: No; it is divided on our revenue pro rate.

Mr. Garwood: It is divided on a revenue pro rate?

Mr. Gray: Yes, sir, it is, if we should handle any with them, and where we do.

Mr. Garwood: What would be the basis of your pro rate, your local rate?

Mr. Gray: We would use our local rate against their local, yes.

Mr. Garwood: What is your local rate?

Mr. Gray: Well, it would vary from 5 to 7 and 8 cents according to the mileage hauled.

Mr. Garwood: Do you ship out lumber to Santa Fe points?

Mr. Gray: We do ship considerable lumber—the road does not, but the shippers on our line, of course, ship considerable lumber.

Mr. Garwood: I mean those who move off your line.

Mr. Gray: To Santa Fe territory in the Panhandle part of the state, yes, considerable.

Mr. Garwood: A gentleman here asks if you know who are the main shippers of that lumber?

Mr. Gray: I do.

Examiner Burchmore: I do not think that is important to

4825 go into here.

Mr. Garwood: I did not, but Mr. Coleman suggested the question. What division of the cotton rate did you say you got with the Santa Fe?

Mr. Gray: We get 20 cents on all cotton we turn over to the Santa Fe.

Mr. Garwood: That was a voluntary agreement upon the part of the two carriers as to the division of the rate?

Mr. Gray: Yes, sir.

Mr. Garwood: How do the divisions which you receive on interstate shipments of lumber compare with your locals up to Timpson or Henderson as the case may be, accordingly as they move out over the I. & G. N. or over the H. E. & W. T. or the Kansas City Southern.

Mr. Gray: Our local rates to our junction points are considerably higher than our division on through interstate business, of course.

Mr. Garwood: Your local rates are higher than your division of the through rate?

Mr. Gray: Always, yes, sir. Our minimum local is five cents per 100 pounds. We do not reach that on any interstate business at all. our proportion of the interstate rate does not reach that much.

4826 Mr. Garwood: You said as I remember that on the lumber that moves out via Henderson the I. & G. N. and thence over the Iron Mountain to Mississippi River Crossings you get a division of about two cents or of two cents?

Mr. Gray: Two cents, yes, sir.

Mr. Garwood: But on that which moved via the Houston, East & West Texas and the Kansas City Southern and thence over the Rock Island to points west you get four cents?

Mr. Gray: Yes, sir.

Mr. Garwood: Now it is a fact, is it not, that the through rates to the Mississippi points are lower than the total through rates to the western points you have mentioned, which you reach by the Rock Island?

Mr. Gray: Yes, sir, it is a fact, certainly; very much lower.

Mr. Garwood: I notice on your list of stockholders, just taking them at random, some ladies, a Mrs. Dobson who has 20 shares, which would be $2,000. I will ask you if you know it to be a fact that these ladies are large real estate owners round about the town of Henderson.

Mr. Gray: I do not know whether it is a fact or not. I am not acquainted with them at all.

4827 Mr. Garwood: Have you any information upon it?

Mr. Gray: I have no information to that effect, no, sir.

Mr. Garwood: I did not catch the total amount of stock that is owned by outside parties, citizens of Henderson and others who have no connection with the Ragley Lumber Company, the total amount of it.

Mr. Gray: 521 shares is the exact amount.

Mr. Garwood: 521 shares that are owned by outside parties?

Mr. Gray: Outside parties altogether.

Mr. Garwood: Those are largely citizens of Henderson. I noticed a man by the name of Wilson. He is a banker in Dallas, is he not?

Mr. Gray: That is my understanding, yes, sir.

Examiner Burchmore: He is one of the Ragley Lumber Company people, is he not?

Mr. Gray: He is one of the stockholders of the Ragley Lumber Company.

Examiner Burchmore: He is not one of those 521.

Mr. Garwood: Is Mr. Wilson a stockholder of the Ragley Lumber Company?

Mr. Gray: Yes, sir.

Mr. Garwood: Well, Mr. Hickey is a banker. Has he any

4828 interest in the Ragley Lumber Company?

Mr. Gray: No.

Mr. Garwood: I see Senator C. L. Brachfield. He is the old Senator from that district.

Mr. Gray: Yes, sir.

Mr. Garwood: He has five shares?

Mr. Gray: Yes, sir.

Mr. Garwood: Has he any interest in the Ragley Lumber Company?

Mr. Gray: No interest whatever.

Mr. Garwood: In other words, this stock is owned and generally distributed around through the town of Henderson.

Mr. Gray: Yes, sir.

Mr. Garwood: Was that coincident with the extension of your line?

Examiner Burchmore: He testified that it was.

Mr. Garwood: And was it for that purpose?

Mr. Gray: That is my information.

Mr. Garwood: The stock was subscribed for and paid in for the purpose of inducing the building of your road to Henderson?

Mr. Gray: Yes, sir.

Mr. Garwood: You have stated you connect with the Texas & Gulf also?

4829 Mr. Gray: Yes, sir.

Mr. Garwood: The Texas & Gulf is a Santa Fe property, is it not?

Mr. Gray: Yes, sir, that is my understanding.

Mr. Garwood: It was a lumber road built by a lumber man by the name of Griggsby, was it not?

Mr. Gray: I am not sure about it. I only know one party who was connected with the construction of that road in the first place. It was a lumber road as I understand it.

Mr. Garwood: They call it the Griggsby Branch now, the Santa Fe does?

Mr. Gray: I think that is correct.

Mr. Garwood: Well, is that a fact? I want to be certain about it.

Examiner Burchmore: Is what a fact?

Mr. Garwood: That that is now called the Griggsby Branch of the Santa Fe.

Mr. Gray: I do not know whether it is or not. It is called the Texas & Gulf.

Mr. Garwood: Generally speaking it is known as a lumber road which has recently been acquired by the Santa Fe interests?

Mr. Gray: It is probably so. I would not make that

4830 statement, I do not know.

Mr. Garwood: I suppose that will be admitted?

Mr. Coleman: No, you testify to it if you want to.

Mr. Garwood: I do not want to testify to it.

Examiner Burchmore: Well, the witness is not possessed of that knowledge.

Mr. Garwood: But is it generally understood that it was a local road up there?

Mr. Gray: Yes, sir, it was generally understood in the first place.

Mr. Garwood: Do you know that the Texas Commission has recently applied the single line rates to that road and the Santa Fe on the ground it is a common ownership?

Mr. Gray: I know the single line rate—that the Commission have prescribed that basis. I do not know on what ground, but presume it is on the ground of common ownership, though.

Mr. Garwood: That is under the rule adopted by the Railroad Commission of Texas, that where two different lines are under a common ownership that the single line rates apply?

Mr. Gray: Yes, sir.

Examiner Burchmore: The witness has already testified
4831 he understands it is a part of the Santa Fe System.

Mr. Hillyer: Will the Timpson & Henderson Railroad Company lose the Ragley Lumber Company as a shipper when that lumber that they own there now is cut out?

Mr. Gray: Yes, sir.

Mr. Hillyer: Inside of a year?

Mr. Gray: Probably, yes, sir.

Mr. Coleman: This rate on cotton you say you get a division with the Santa Fe on, that is state business, is it not?

Mr. Gray: It also covers export business, which I presume would be interstate business as I understand it.

Mr. Coleman: Have you delivered any of that for export by the Santa Fe?

Mr. Gray: We have delivered them considerable of that cotton. I do not know whether it has been exported or not as yet, but I presume it will be.

Mr. Coleman: In answer to a question of Mr. Hillyer, you stated the railroad had only withdrawn the lumber joint rates. You did not mean by that that the Santa Fe had joined in any rates, did you?

Mr. Gray: No.

Mr. Coleman: Except as you stated that one instance, in one of Leland's tariffs.

4832 Mr. Gray: That is all. That is the only case in which the Santa Fe do not carry exceptions.

Mr. Coleman: And you thought that did not apply, and you say our people thought it did.

Mr. Gray: Yes, sir.

Mr. Coleman: Don't you think it was put in there by mistake, it being a Leland publication, and containing all those different lines.

Mr. Gray: Well, I will tell you, to make a statement about that, I had thought that it was in the first place, but the general freight agent of that end of the Santa Fe down there requested me to leave the rate in and proposed a basis of divisions to me for that rate.

Mr. Coleman: The Texas Railroad Commission compels us to join in that cotton rate, do they not?

Mr. Gray: Well, that cotton rate is published in an interstate tariff of the Santa Fe, one of them is.

Mr. Hillyer: You say that cotton movement over the Santa Fe is governed by the tariff on file with the Interstate Commerce Commission?

Mr. Gray: Part of it, yes, sir.

Examiner Burchmore: Let us not pursue that question any further. I think he has admitted——

4833 Mr. Hillyer: He is trying to show that that is an intrastate movement, governed by the Texas Commission. As a matter of fact it is an export rate.

Examiner Burchmore: He has made his point in the record, and the tariff is on file with the Commission, if it is there.

Mr. Coleman: 3,000 bales of cotton originated at Henderson.

Mr. Gray: I did not make that statement. Something over 7,000 pounds.

Mr. Coleman: What road was that turned over to?

Mr. Gray: Some of it to the Santa Fe and some of it to the Houston, East & West Texas, and some to the International & Great Northern.

— Coleman: What junction point?

Mr. Gray: Timpson and Henderson.

Mr. Coleman: And the cotton at Pine Hill, where was that turned over?

Mr. Gray: It was handled through both junction points the same as the other. Some of it to the Santa Fe, some to the Houston, East & West Texas, and some to the International & Great Northern.

Mr. Coleman: Did the bulk of it go by any particular junction point, take Henderson, did the bulk of the Henderson cotton move by way of Timpson?

4834 Mr. Gray: It probably did, yes, sir.

Mr. Coleman: To secure the long haul on your road?

Mr. Gray: Well, we are not particular about the long haul.

Examiner Burchmore: It does not seem to me that is important to the issues in this case.

Mr. Coleman: I want to know what proportion of business moves between Ragley and Henderson.

Mr. Gray: It is probably divided—you mean which moves between Ragley and Henderson?

Mr. Coleman: Yes, the line which you constructed at the solicitation of the citizens of Henderson.

Mr. Gray: If I understand you, what you want is what proportion of the business has moved over the line with the exception of Ragley or what proportion Ragley gets. I presume that is what he is driving at. I do not know, but if that is the case I should say all of it but 27½ or 30 percent.

Mr. Coleman: Is on the new line?

Mr. Gray: Well, we handle some business at Timpson that moves over the new line, to get there of course.

Mr. Coleman: You built seven or eight miles of railroad between Ragley and Henderson?

Mr. Gray: Between Ragley and Henderson?

Mr. Coleman. Yes. How long has it been built?

4835 Mr. Gray: About 25 miles.

Mr. Coleman: The Timpson & Northwestern went to Ragley and then built to Henderson, a connection with the I. & G. N. at Henderson?

Mr. Gray: Yes, sir.

Mr. Coleman: How long is that road?

Mr. Gray: Henderson to Ragley is about 25 miles.

Mr. Coleman: What does the local business between Henderson and Ragley amount to?

Mr. Gray: I do not know, I have not those figures.

Mr. Coleman: Can you make it up, Henderson to Timpson, without including business originating at Henderson or originating at Timpson.

Mr. Gray: Could we operate without business originating at Timpson and Henderson, do you mean?

Examiner Burchmore: He wants to know how much traffic moves over each section of the road.

Mr. Gray: I cannot give it to you.

Mr. Coleman: In other words, the citizens of Henderson could get out on a railroad?

Mr. Gray: Yes.

Mr. Coleman: And the citizens of Timpson could get out on a railroad.

4836 Mr. Gray: Yes, sir.

Mr. Coleman: I want to know what business originates between Timpson and Henderson but excluding those two points.

Mr. Gray: We originated about 300 carloads of lumber at Long Branch and as I testified, some 700 bales of cotton, and at Pine Hill probably 144 cars of lumber and 3300 bales of cotton. Two or three cars of potatoes at Pine Hill, a car or two at Howeth Switch, and 25 to 30 carloads of lumber, besides the local merchandise stuff and a few carloads of implements. I do not know that I can give you any more.

Mr. Hillyer: There are a number of other points.

Examiner Burchmore: It is all in the record. Would it involve much labor to prepare a statement of the freight received at each of your stations along the line, and indicate how much freight from each station went through Henderson and how much through Timpson?

Mr. Gray: If it is of any importance I do not think it would. I would be glad to make it if the Examiner wants it, but I do not understand what would be the object in arriving at what went through Timpson and Henderson.

Mr. Hillyer: What Mr. Coleman has asked is a question the purpose of which is to bring out the extent of the business on the line of the Timpson and Henderson Road exclusive of Timp-

4837 son and Henderson, irrespective of which way it moved?

Mr. Coleman: That is right.

Examiner Burchmore: Can you tell us how much that traffic is?

Mr. Gray: Not any more than I have told him. I have told him about 300 cars of lumber, 700 bales of cotton, and probably 33 cars of cottonseed out of the two places——

Mr. Hillyer: Are you sure you have covered everything that originated at those points.

Mr. Gray: No, there are other little items. We handled some 10 carloads of live stock out of Pine Hill last year, and inbound

stuff, we probably handled 25 to 30 cars of grain and grain products for Pine Hill, inbound stuff.

Mr. Coleman: What else?

Mr. Gray: We have probably handled inbound 15 to 20 carloads of cottonseed products.

Mr. Coleman: None of that went to Timpson or Henderson?

Mr. Gray: No, to Pine Hill.

Mr. Coleman: On the outbound stuff, none originated at Timpson or Henderson at all, but in between.

Mr. Gray: This business I am describing, yes,

Mr. Coleman: Well, the outbound you described a minute ago, none of it originates at Timpson or Henderson?

4838 Mr. Gray: No.

Mr. Hillyer: If the Examiner will permit me, I will have Mr. Gray prepare a statement in detail, which will give that information and furnish Mr. Coleman a copy and ask that it be made a part of the record.

Examiner Burchmore: Very well.

Mr. Coleman: I want to know if you know the reason why the people of Henderson needed a railroad connecting Ragley with Henderson.

Mr. Gray: They did not need a railroad to connect Ragley with Henderson that I know of, but the business men there undoubtedly thought they needed another railroad to induce competition, which they did not have. But so far as connecting Ragley with Henderson, I don't suppose they wanted it for that particular purpose.

Mr. Coleman: In other words, Henderson could get out by way of Timpson Junction and the Houston, East & West Texas?

Mr. Gray: Yes, sir.

Mr. Walter: What is the contention, that if they can ship out over one line they should not have more than one line?

Examiner Burchmore: I presume it is as to the necessity for a new railroad.

4839 Mr. Hillyer: What has been the effect of rates on Henderson since this new road has been put in there?

Mr. Gray: Some rates have been reduced.

Mr. Coleman: Some of the heavier stockholders, that is the 25 share men, are big shippers at Henderson, are they not?

Mr. Gray: Some of them.

Mr. Coleman: Cotton shippers, are they not the big shareholders of the outside individuals?

Mr. Gray: Not altogether, not the largest cotton shippers, no.

(Witness excused.)

Examiner Burchmore: It is understood you will file a copy of this tracing as an exhibit later.

Mr. Hillyer: Yes.

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

4840 After Recess.

2:00 P. M.

Gideon & North Island Railroad.

L. M. SARFF, was called as a witness, and having been duly sworn, testified as follows:

Mr. Walter: State your full name?
Mr. Sarff: Full or initials?
Mr. Walter: Initials will do.
Mr. Sarff: L. M. Sarff.
Mr. Walter: Where located?
Mr. Sarff: I am located—at the mill?
Mr. Walter: Yes, where is your mill?
Mr. Sarff: South of Gideon, on the Gideon & North Island.
Mr. Walter: What sort of a mill is it?
Mr. Sarff: It is a saw mill.
Mr. Walter: For hardwood?
Mr. Sarff: Yes, sir.
Mr. Walter: What is your shipping point?
Mr. Sarff: Sarff.
Mr. Walter: How far is Sarff from Gideon?
Mr. Sarff: About five miles.
4841 Mr. Walter: And at that point the Gideon & North Island connects with what line?
Mr. Sarff: Just an extension, just on that line running south.
Mr. Walter: How far is it from there to Malden?
Mr. Sarff: About 12 miles, I would judge.
Examiner Burchmore: From where to Malden?
Mr. Walter: Sarff: Sarff is a shipping point on the Gideon & North Island.
Mr. Sarff: Yes, sir.
Examiner Burchmore: From Sarff to Malden is 12 miles?
Mr. Sarff: I would think so.
Examiner Burchmore: I only ask it, because I happened to turn to Gideon & North Island Railroad I. C. C. No. 1, which in item 9 seems to show the distance from Sarff to Malden as 6 miles, the station 12 miles from Sarff being known as Glendale.
Mr. Walter: Do you know where Mumma is?
Mr. Sarff: Yes.
Mr. Walter: Is that your switch?
Mr. Sarff: Yes, sir, at the present time.
Mr. Walter: Where do you get your logs?
Mr. Sarff: We get them just east of Mumma.
4842 Mr. Walter: Off the railroad?
Mr. Sarff: Yes, sir. We haul them there.
Mr. Walter: By rail or by wagon?
Mr. Sarff: By wagon.
Mr. Walter: You do not have any logs hauled on the railroad, do you?
Mr. Sarff: No, sir.

Mr. Walter: What is your mill capacity?
Mr. Sarff: About 15,000 to 20,000 feet, a small mill.
Mr. Walter: What becomes of that lumber?
Mr. Sarff: It is shipped over the Gideon & North Island Railroad to the northern markets.
Mr. Walter: What rates do you compare with the rates on the Frisco?
Mr. Sarff: One cent higher, an 11 cent rate.
Mr. Walter: That is to St. Louis?
Mr. Sarff: Yes, sir, 11 cents to St. Louis.
Mr. Walter: What would be the effect on your business if the Gideon & North Island applies the local rate of 3½ cents for the movement from your mill out to the Frisco and then applies the Frisco rate from there on to St. Louis, of 10 cents. It would
4843 make your rate 13½ cents as against your present rate of 11 cents.
Mr. Sarff: Yes, sir.
Mr. Walter: What effect would that have?
Mr. Sarff: It would naturally hurt the business so much that I could hardly afford to operate, that is all.
Examiner Burchmore: Is the local rate 3½ cents?
Mr. Anderson: I think so.
Examiner Burchmore: For what distance?
Mr. Anderson: It is about four miles.
Examiner Burchmore: 4½ miles from where to where?
Mr. Anderson: To Gideon.
Examiner Burchmore: From Gideon to Sarff?
Mr. Anderson: Gideon to Mumma, that is the station at which he loads.
Examiner Burchmore: I see. You may proceed.
Mr. Walter: The Anderson Lumber Company, or the United States Cooperage Company have no interest in your mill?
Mr. Sarff: No.
Examiner Burchmore: That is your own individual operation?
Mr. Sarff: Yes, sir.
Mr. Walter: Do you know whether there are other shippers of hardwood located along the Gideon & North Island, who would be affected similar to yourself in case the joint rates are abol-
4844 ished?
Mr. Sarff: Yes, sir.
Mr. Walter: Just state who those people are.
Mr. Sarff: Well, there is a gentleman by the name of Creek, he really has not shipped any yet, but he is putting in a mill right now south of me.
Mr. Walter: That will be a hardwood mill?
Mr. Sarff: That will be a hardwood mill, yes, sir.
Mr. Walter: Who else?
Mr. Sarff: That is all on that line right below there.
Mr. Walter: How about Mr. Dunn?
Mr. Sarff: Well, he has a large tract of timber.
Mr. Walter: Where is he located?

Mr. Sarff: On the Gideon & North Island farther south.

Mr. Walter: Any shipments he would have would be on the Gideon & North Island?

Mr. Sarff: Yes, sir.

Mr. Walter: Are you acquainted with the soil throughout that territory?

Mr. Sarff: I surely am.

Mr. Walter: Can you state whether or not that is fertile soil and brings good crops?

4845 Mr. Sarff: Yes, sir.

Mr. Walter: The next thing after the timber is taken off is the development of the land for agriculture?

Mr. Sarff: Yes, sir.

Mr. Walter: What is your output, Mr. Sarff, for a year, about how many cars?

Mr. Sarff: Well, about 100.

Mr. Walter: About 100 cars?

Mr. Sarff: Yes, sir, 100 to 125.

Mr. Walter: Does most of that go to St. Louis or Kansas City or points outside of the State of Missouri?

Mr. Sarff: Yes, sir, almost exclusively to St. Louis or west of here, St. Louis or Kansas City. The delivery is in St. Louis, though.

Mr. Walter: That is all I want to ask this witness.

Mr. Cowan: I just want to ask one question. Suppose that at the time the rates were changed the trunk line rates from the junction point of the main line were reduced.

Mr. Sarff: I did not just understand the question.

Mr. Cowan: I say suppose the trunk line rates were reduced at the time the divisions were cancelled out.

Mr. Sarff: That is something I do not know anything about, of course.

4846 Mr. Cowan: It might be adjusted so it would not hurt you then.

Mr. Sarff: Of course, I have got to depend on the Gideon & North Island to get out. I could not haul it from my place to the Frisco at any point by wagon.

Mr. Cowan: If they make a through rate from your place over the Frisco something near what you get now, you would not be concerned in how they divided it, in how the two roads divided it?

Mr. Sarff: I do not quite catch the meaning yet.

Mr. Cowan: All right, that is all.

Examiner Burchmore: You are excused, but I shall ask you to return to the stand after the official of the road has testified.

N. V. TURNER, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: What is your connection with the Gideon & North Island Railroad?

Mr. Turner: General Manager and Secretary.

Examiner Burchmore: With what trunk lines and at what points does this railroad connect?

4847 Mr. Turner: It connects with the Frisco at Gideon and at Malden.

Examiner Burchmore: And indirectly via the Frisco it reaches the Cotton Belt through Malden?

Mr. Turner: Yes.

Examiner Burchmore: What is your mileage?

Mr. Turner: 21 miles of main line.

Examiner Burchmore: What additional track?

Mr. Turner: We have about ten miles of spurs and switches.

Examiner Burchmore: What is the nature of those spurs and switches, are any of them logging roads?

Mr. Turner: They are spurs built out from the main line into the woods, so as to go out for logs.

Examiner Burchmore: Are there any private logging roads owned by shippers that connect with your line?

Mr. Turner: No, sir, not a foot.

Examiner Burchmore: Then as I understand it, the Gideon & North Island Railroad owns all the logging feeders?

Mr. Turner: Yes, sir.

Examiner Burchmore: That has not embarrassed you any, the fact that you own those feeders?

Mr. Turner: Sir?

Examiner Burchmore: You have not been embarrassed

4848 at all by owning and operating those logging roads that are feeders?

Mr. Turner: Well, at any time that we get the logs all cut out of one section, then we will move the feeder to some other point, wherever the timber is accessible.

Examiner Burchmore: You have had no difficulty of any kind as the result of owning those logging spurs?

Mr. Turner: Why, I could not——

Examiner Burchmore: What I mean is, you have heard the testimony in the last few days, and have heard a number of officials testify, as I understood their testimony, that their short line railroads do not own the logging spurs, because it was inconvenient and difficult to operate them.

Mr. Turner: I did not hear any testimony of that kind. I have only been in here two or three times, and did not happen to be in here when anything of that kind was sprung.

Examiner Burchmore: As a matter of fact the lumber companies located on your road do not own or operate any logging spurs?

Mr. Turner: No.

Examiner Burchmore: And have not in the past?

Mr. Turner: No, the railroad company takes care of all the spurs, switches and main line, and all.

Examiner Burchmore: Are you an officer of any lumber
4849 company?

Mr. Turner: I am an officer in the United States Cooperage & Handle Company.

Examiner Burchmore: Where are their mills located?

Mr. Turner: At Malden, or right close to Malden.

Mr. Walter: He has a map there which perhaps will aid you very greatly.

Examiner Burchmore: Do you desire to offer this in evidence?

Mr. Walter: Yes.

Examiner Burchmore: You cannot give us a small copy of it?

Mr. Walter: We can make one by hand if in no other way, which will serve to show the location.

Examiner Burchmore: Well, we will receive this in evidence.

(The map so offered and identified, was received in evidence and thereupon marked Gideon & North Island Exhibit No. 1, Witness Turner, received in evidence January 25, 1911, and is attached hereto.)

Mr. Walter: Explain the location?

Mr. Turner: Here is Malden (indicating), and right off south of Malden about three quarters of a mile from the main part of the city is the United States Cooperage Works. This road is built down through five points and Baxter and Sarff and Mumma, and here is where Mr. Sarff's mill is. Here is a creek where Mr.
4850 Creek is going to put in a mill, and here is Glendale, and on down to North Island, and our proposition is to go on down to Kennett, Kennett City.

Mr. Walter: What is the northern terminus of the road at the present time?

Mr. Turner: Malden.

Mr. Walter: And the southern terminus is North Island?

Mr. Turner: Yes, sir.

Mr. Walter: Where is Gideon?

Mr. Turner: Right here (indicating).

Mr. Walter: Gideon is half way between Malden and North Island?

Mr. Turner: Yes.

Mr. Walter: And are those private logging branches from five points to O'Neil?

Mr. Turner: No.

Mr. Walter: That is part of your regular road?

Mr. Turner: Yes.

Mr. Walter: And south from Baxter.

Mr Turner: We built that through there in order to get through a slough so the timber could be gotten from beyond the slough. It was impossible to haul it.

Mr. Walter: Is that permanent road?

4851 Mr. Turner: That part will be taken away. This is permanent road.

Mr. Walter: That is from Baxter to Gideon?

Mr. Turner: From Malden to Gideon.

Examiner Burchmore: A short distance south of Glendale I observe another branch extending in an easterly direction. Is that a logging spur or a permanent line?

Mr. Turner: That is just a spur.

Examiner Burchmore: The mill of the United States Cooperage Company is near Malden?

Mr. Turner: Yes, sir, just outside the corporate limits.

Examiner Burchmore: How close is it to the tracks of the Frisco?

Mr. Turner: Oh, it is several hundred feet, that is from a switch that they have.

Examiner Burchmore: Don't you have immediate access from your plant to the rails of the Frisco there at Malden without passing over the Gideon & North Island Railroad.

Mr. Turner: How is that now please?

Examiner Burchmore: At Malden, is it not possible for cars to move directly to your loading track from the Frisco without passing over the Gideon & North Island Railroad at all.

Mr. Turner: Providing we would haul the stuff out and
4852 load it on the tracks. We have private tracks all through our yards.

Examiner Burchmore: You would have to team it a short distance?

Mr. Turner: Yes, sir.

Examiner Burchmore: You have also a loading track right in your yard?

Mr Turner: Yes.

Examiner Burchmore: That connects with the Gideon & North Island?

Mr. Turner: No, the loading track is our own. The Gideon & North Island tracks are here, and we connect right at the edge of the yards with the Frisco Road.

Examiner Burchmore: Can you not give us a little pencil sketch of Malden showing your mill plant there with the buildings and the tracks that run through the mill plant at Malden?

Mr Turner: It can be gotten for you.

Mr. Walter: We will do that.

Examiner Burchmore: Just a little pencil sketch or ink sketch that will illustrate that.

Mr. Turner: But we deliver all of the cars down at their junction.

4853 Examiner Burchmore: You mean near Sarff?

Mr. Turner: No, there is a junction. This switch running down here, their main line comes down here (indicating), and instead of going straight north it makes a turn and goes away over here (indicating).

Examiner Burchmore: I understand there is a spur line that runs from the Frisco some distance from Malden right into your yard?

Mr. Turner: Yes, sir, right up to the yard.

Examiner Burchmore: And that is the interchange track between the two railroads?

Mr. Turner: Yes, sir.

Examiner Burchmore: Now you cannot get to the Cotton Belt from your railroad at Malden without passing for a fraction of a mile over the tracks of the Frisco?

Mr. Turner: Yes, it would be about three quarters of a mile, I should judge.

Examiner Burchmore: Are you personally interested in the Gideon-Anderson Lumber & Mercantile Company?

Mr. Turner: No, not a dollar.

Examiner Burchmore: Have you ever been?

Mr. Turner: Never have.

Examiner Burchmore: The United States Cooperage &
4854 Handle Company use hickory.

Mr. Turner: No.

Examiner Burchmore: What do they use?

Mr. Turner: They used to use ash, but they have cut out the handle proposition entirely now.

Examiner Burchmore: What do you understand they are making?

Mr. Turner: Staves and headings.

Examiner Burchmore: Does the Gideon-Anderson Lumber & Mercantile Company have a mill on your line?

Mr. Turner: Yes, sir.

Examiner Burchmore: What is the location of that mill?

Mr. Turner: Right close there at Gideon.

Examiner Burchmore: On your rails?

Mr. Turner: Yes.

Examiner Burchmore: Is it close to the rails of the Frisco at Gideon?

Mr. Turner: The Frisco Road runs right by their plant.

Examiner Burchmore: Would it be equally convenient to load a car on the Frisco at Gideon?

Mr. Turner: There are a few kinds of lumber that they could load on the Frisco switch.

Examiner Burchmore: What kinds, for example?

Mr. Turner: Well, take the green oak.

4855 Examiner Burchmore: Why could they not load other material?

Mr. Turner: Because they have to have places to let it dry, and the amount they cut there, they have to have space to dry it.

Examiner Burchmore: The Frisco runs through one part of the yard——

Mr. Turner: It does not through the yard, but it is at the side of the yard.

Examiner Burchmore: And the Gideon & North Island passes the other side?

Mr Turner: No, the Gideon & North Island has a spur up here. Here at Sarff is where the main line runs through. The Gideon &

North Island runs through Sarff, and there is a branch which runs up to where the mill is at Gideon, and we have switches all through the yard.

Examiner Burchmore: The Gideon & North Island has switch tracks running through the yards of the Gideon-Anderson Lumber & Mercantile Company.

Mr. Turner: Yes, sir.

Examiner Burchmore: Will you give us a little sketch of Gideon similar to that which you are to furnish at Malden?

Mr. Turner: We can.

4856 Examiner Burchmore: Are there any other mills on your line?

Mr. Turner: Yes, sir, the mill at Mumma owned by Mr. Sarff, and at Five Points, owned by Mr. Castleman.

Examiner Burchmore: Is he here?

Mr. Turner: Yes, sir.

Examiner Burchmore: Does he propose to testify?

Mr. Walter: He will be called.

Examiner Burchmore: Mr. Creek's mill is not open yet?

Mr. Turner: No, and at the present time the O'Neil mills have just got cut out.

Examiner Burchmore: Will you take up your lines between Five Points and O'Neil?

Mr. Turner: No, we will take up our line from this point here (indicating).

Mr. Walter: What point?

Mr. Turner: Where the line branched off from the spur at West Norris to where the O'Neil Mills were.

Examiner Burchmore: That will be taken up?

Mr. Turner: That will be taken up.

Examiner Burchmore: Why will you leave the balance of that line down?

Mr. Turner: On account that there is plenty of timber left
4857 in here, and we have been requested by numbers of people to put a line in there because they want to market their timber.

Examiner Burchmore: Has the Anderson Company or the United States Cooperage Company no timber down there?

Mr. Turner: No. Excuse me, we have a very small amount out here away down in Section 8, but we do not intend to run a line to this, quite, but it will be right up in through here (indicating).

Examiner Burchmore: Will you be cutting that within the next few years?

Mr. Turner: Yes.

Examiner Burchmore: And handling the logs by team?

Mr. Turner: We will be handling the logs by team up to this track, because it is impossible for a person to log in that land over a mile. If you do, you are going to lose all your profits. It has been tried too often.

Examiner Burchmore: Who are the other officers of your railroad?

Mr. Turner: Mr. Anderson.

Examiner Burchmore: What is his office?

Mr. Turner: He is President, W. P. Anderson. M. S. Anderson is the Treasurer, and Mr. Menntemyer.

4858 Examiner Burchmore: You are the general manager?

Mr. Turner: Yes, sir.

Examiner Burchmore: Is Mr. W. P. Anderson or M. S. Anderson interested in the United States Cooperage Company?

Mr. Turner: I believe that Mr. Anderson has got a small amount of stock in the company.

Examiner Burchmore: Is Mr. Menntemyer a stockholder?

Mr. Turner: No, sir.

Examiner Burchmore: Is he a stockholder of the railroad, Mr. Menntemyer?

Mr. Turner: No.

Examiner Burchmore: He is simply in fact an employé of the road?

Mr Turner: Yes, sir.

Examiner Burchmore: Are the United States Cooperage & Handle people generally speaking, stockholders of this railroad at the present time?

Mr. Turner: Two.

Examiner Burchmore: Who are they and what is the extent of their holdings in the railroad?

Mr. Turner: I have got 300 shares and my son has got 100.

Examiner Burchmore: What is your son's position?

Mr. Turner: He has no position as an officer of the road,

4859 any more than he is an agent for the road over at Malden.

Examiner Burchmore: What proportion of the stock of the United States Cooperage & Handle Company do you and your son own?

Mr. Turner: I think it is 175 shares that I own, and my son owns ten.

Examiner Burchmore: What is the total number of shares in that corporation?

Mr. Turner: 500.

Examiner Burchmore: Who are the other stockholders?

Mr. Turner: You have pretty near got me; there are 18 I know of.

Examiner Burchmore: Are they interested in any way in this railroad?

Mr. Turner: No.

Examiner Burchmore: Not directly or indirectly?

Mr. Turner: Not directly or indirectly.

Examiner Burchmore: Any other railroads interested in this railroad?

Mr. Turner: No.

Examiner Burchmore: The President of this railroad, W. P. Anderson, is he a stockholder in the Gideon-Anderson Lumber & Mercantile Company?

4860 Mr. Turner: Yes, sir.

Examiner Burchmore: Is he President of that company?

Mr. Turner: I understand he is president of that company.

Examiner Burchmore: How many shares has he in the railroad?

Mr. Turner: 600.

Examiner Burchmore: How many shares has Mr. M. S. Anderson in your railroad?

Mr. Turner: 100.

Examiner Burchmore: What is the total number of shares in the railroad?

Mr. Turner: 1200.

Examiner Burchmore: We have accounted for 1100 apparently, 600 and 100 owned by the officers, and 300 by yourself and 100 by your son. Who owns the other shares?

Mr. Turner: Mr. M. V. Mumma.

Examiner Burchmore: Does Mr. Mumma own stock in the Gideon-Anderson Lumber & Mercantile Company?

Mr. Turner: I think he does.

Examiner Burchmore: Do you know whether it is a substantial interest, a large interest?

Mr. Turner: No, it is not a large interest.

Examiner Burchmore: But his holding in that company is in some proportion to the holding he has in this railroad?

4861 Mr. Turner: I do not think that it is.

Examiner Burchmore: Then the entire stock of this railroad seems to be owned by persons who are stockholders in the United States Cooperage & Handle Company, the Gideon-Anderson Lumber & Mercantile Company, and by a gentleman who owns a mill down at Mumma; I say these shippers practically control the railroad.

Mr. Turner: Well, Mr. Sarff does not own a dollar in the road.

Examiner Burchmore: Well, he is one shipper who does not own anything in the road?

Mr. Turner: Yes, sir.

Examiner Burchmore: But I say these three shippers own the railroad through the ownership of capital stock?

Mr. Turner: I don't quite get your point. These three shippers?

Examiner Burchmore: Yes, the Gideon-Anderson Lumber & Mercantile Company, the United States Cooperage Company and Mr. Mumma own the railroad?

Mr. Turner: Mr. Mumma is not a shipper.

Examiner Burchmore: I thought he had a mill at Mumma?

Mr. Turner: No, that is Mr. Sarff.

4862 Examiner Burchmore: Who is Mr. Mumma?

Mr. Turner: He is a man that runs the mercantile store there at Gideon.

Examiner Burchmore: He is a stockholder in the Gideon-Anderson Lumber & Mercantile Company?

Mr. Turner: Yes, he is a stockholder in the Gideon-Anderson Company. How much I don't know.

Examiner Burchmore: My question is, the stockholders of the Gideon-Anderson Lumber & Mercantile Company, together with you and your son, own all the stock in this railroad?

Mr. Turner: Yes, sir, but there are people who own stock in the

Gideon-Anderson Company, and also in the United States Cooperage Company who have not anything to do with the railroad.

Mr. Walter: And they are material stockholders?

Mr. Turner: Yes.

Mr. Walter: Own a material amount in the stores?

Mr. Turner: Yes, sir. Take it in the United States Cooperage Company, they own two thirds of the stock of the United States Cooperage Company.

Examiner Burchmore: Does Mr. Mumma own any timber in this territory?

Mr. Turner: I do not think that he does, not to my
4863 knowledge.

Examiner Burchmore: The store that he owns there at Gideon is a company store, is it not?

Mr. Turner: Well, he does not own it, he rents it for the company, is my understanding of it.

Examiner Burchmore: When was this Gideon & North Island Road incorporated as a railroad?

Mr. Turner: On the 30th day of April, 1908, is when we got our papers.

Examiner Burchmore: When was the mill at Malden open for business?

Mr. Turner: About 4 years ago.

Examiner Burchmore: When was the mill at Gideon opened?

Mr. Turner: Well, I think that that has been opened about eight or nine years.

Examiner Burchmore: When was the construction begun on the railroad which is now the Gideon & North Island, extending from Malden south say to Five Points?

Mr. Turner: From Malden south?

Examiner Burchmore: Yes.

Mr. Turner: It was commenced before we commenced operating, as we had to get the first log over that road to commence operations.

Examiner Burchmore: What year was that?

4864 Mr. Turner: It was 1906.

Examiner Burchmore: How much of a railroad was built there in the beginning?

Mr. Turner: I think about four miles.

Examiner Burchmore: Down about to Five Points?

Mr. Turner: Well, it was beyond Five Points. We went on east.

Examiner Burchmore: Over that same branch that is down in there?

Mr. Turner: Yes, sir, about to here (indicating).

Examiner Burchmore: Out to the extreme point to which the railroad now runs in Section 24?

Mr. Turner: Yes, sir.

Examiner Burchmore: That railroad then constructed has remained in place to the present time?

Mr. Turner: Yes, sir.

Examiner Burchmore: Any renewals of the rails or changes in the rails?

Mr. Turner: Only just when one would break we would replace it.

Examiner Burchmore: What was the next part of this railroad which was built?

Mr. Turner: It started south.

4865 Examiner Burchmore: From Five Points south?

Mr. Turner: Yes.

Examiner Burchmore: When was it extended?

Mr. Turner: About three years ago, I believe.

Examiner Burchmore: From Five Points to where?

Mr. Turner: It went from Five Points to Baxter.

Examiner Burchmore: When was it built from Baxter to——

Mr. Turner: The next year it went on through.

Examiner Burchmore: On to Gideon?

Mr. Turner: Yes.

Examiner Burchmore: When was the first part of this line built out of Gideon?

Mr. Turner: Well, that was before I went down in there, but I made hunting trips through that country every once in awhile, and I think it was about two years prior, I think in 1904.

Examiner Burchmore: Was that built in order to enable the Gideon Mill to get logs from out in this country?

Mr. Turner: Yes, sir, I would suppose so.

Examiner Burchmore: How much of this railroad was in existence and operation when the Gideon & North Island was incorporated?

4866 Mr. Turner: 12 miles.

Examiner Burchmore: That means from Malden to Gideon?

Mr. Turner: No, it is south of Gideon about down to here (indicating).

Examiner Burchmore: Down to Mumma?

Mr. Turner: Yes.

Examiner Burchmore: Then the line was in existence from Malden through Sarff and Baxter to Mumma?

Mr. Turner: Right close to here (indicating).

Examiner Burchmore: And since that time you have extended the line from Glendale on south to North Island?

Mr. Turner: Yes, that is the case. If my memory serves me right, we called it Glendale right just below Creek, as it was nothing but a vast spot of timber.

Examiner Burchmore: In timber swamps?

Mr. Turner: Yes, sir.

Examiner Burchmore: This railroad was incorporated in 1908 as a common carrier railroad under the laws of Missouri?

Mr. Turner: Yes, sir.

Examiner Burchmore: And what amount of capital stock was issued at that time?

Mr. Turner: $120,000 was the amount that we——

Examiner Burchmore: That was the full amount issued, at that time?

4867 Mr. Turner: Yes, sir.

Examiner Burchmore: What consideration was paid for that stock?

Mr. Turner (producing papers): It was $43,000.
Examiner Burchmore: Please state the nature of that document which you are now placing in evidence?
Mr. Turner: The nature of it?
Examiner Burchmore: Yes, sir, what is it?
Mr. Turner: We made an arrangement with the two companies to take over their railroad, as there was several dissenting people in the company on account of the maintenance of the road.
Examiner Burchmore: I don't quite understand that. When did you make this arrangement?
Mr. Turner: Well, it was some time prior to April 30th, 1908.
Examiner Burchmore: Who made the arrangement? You said "we."
Mr. Turner: Well, we did at our meeting.
Examiner Burchmore: You mean the Gideon & North Island Railroad Company?
Mr. Turner: At the time that we had our meeting of the United States Cooperage Company we brought the matter up on ac-
4868 count of dissenting people in the cooperage company.
Examiner Burchmore: What were these people dissenting about?
Mr. Turner: Well, in regard to the maintenance or keeping up of the road. They were wondering if we could not dispose of it.
Examiner Burchmore: Why did you want to dispose of it or why did they want to dispose of it?
Mr. Turner: Well, I did not want to dispose of it.
Examiner Burchmore: What does that agreement provide for, or what is it?
Mr. Turner: This agreement is that we have leased the road for a ten year lease, and at the end of the ten years we are to take the road and pay for all of it, and we are to pay four per cent per annum on this amount.
Examiner Burchmore: Four per cent per annum plus this amount to whom?
Mr. Turner: To the United States Cooper- Company.
Examiner Burchmore: What are you paying in the meantime for the use of the road?
Mr. Turner: We are paying them four per cent.
Examiner Burchmore: Simply the interest on the value of the road each year?
4869 Mr. Walter: That contract calls for maintenance on your part?
Mr. Turner: Yes.
Mr. Walter: And in addition four per cent on the value of the road when you take it over?
Mr. Turner: Yes, sir.
Examiner Burchmore: Do you have to buy the road at the end of ten years, or is it an option?
Mr. Turner: If we do not it goes back to them.
Examiner Burchmore: It is simply an option on the part of the Gideon & North Island to purchase the road at the end of ten years?

Mr. Turner: We are not compelled to, but we are putting our earnings in the road, and if we would not, we would lose our efforts.

Mr. Walter: And all your improvements?

Mr. Turner: Yes, sir, and all our improvements.

(The two papers so offered and identified, were received in evidence and thereupon marked Gideon & North Island Exhibits Nos. 2 and 3, Witness Turner, received in evidence January 25, 1911, and are attached hereto.)

Examiner Burchmore: What is the life of the United States Cooperage Company's timber?

4870 Mr. Turner: All they have got will expire the 1st of next January.

Examiner Burchmore: Are they purchasing more timber?

Mr. Turner: No.

Examiner Burchmore: What will they do, go out of business?

Mr. Turner: No, sir.

Examiner Burchmore: Do you know what they are going to do by the 1st of January?

Mr. Turner: Yes, sir, I think I do.

Examiner Burchmore: Do you care to state?

Mr. Turner: Yes, it does not make any difference.

Examiner Burchmore: Well, I ask you.

Mr. Turner: At the present time they have found out that that soil is better for farming than it is for holding it in wood, and everybody now is ready to dispose of their timber, and it is for sale now all over the country, and put it into farms, and there are thousands of acres being deadened of the virgin timber standing right there, and they are going after it and are not going to wait.

Examiner Burchmore: Is anybody else buying timber down there besides the United States Cooperage Company and the Gideon-Anderson Lumber Company?

Mr. Turner: O'Neil is buying.

4871 Examiner Burchmore: Your contract with the United States Cooperage Company, I see names $18,000 as the purchase price of the railroad then leased to your company?

Mr. Turner: Yes, sir.

Examiner Burchmore: That document is marked Exhibit No. 2. Now Exhibit No. 3 seems to be an agreement between your company and the O'Neil Lumber Company.

Mr. Turner: Is that the O'Neil agreement? Excuse me, this is the one. That is a different one.

Examiner Burchmore: A different sort of contract?

Mr. Turner: Yes, a different sort of contract.

Examiner Burchmore: We will mark this Exhibit No. 4, it being agreement between the Gideon & North Island Railroad Company and the Gideon-Anderson Lumber & Mercantile Company.

(The paper so offered and identified, was received in evidence and thereupon marked Gideon & North Island Exhibit No. 4, Witness Turner, received in evidence January 25, 1911, and is attached hereto.)

Examiner Burchmore: Under this contract with the Gideon-Anderson Company marked Exhibit No. 4, you will pay $25,000 in the event that you purchase the railroad tracks, and so forth, leased under that agreement. How much railroad did
4872 you acquire from the Gideon-Anderson Lumber & Mercantile Company under this contract?

Mr. Turner: There was about six miles, I should judge, of main line.

Examiner Burchmore: Running between the county line separating New Madrid and Pemiscot County?

Turner: It did not go quite that far.

Examiner Burchmore: Well, the point then known as Glendale?

Mr. Turner: Yes, sir.

Examiner Burchmore: Northward to Gideon?

Mr. Turner: Yes, sir.

Examiner Burchmore: And no further?

Mr. Turner: I think that there was a little piece of track built north of the road at that time.

Examiner Burchmore: And under the contract or lease with the United States Cooperage Company, you acquired your railroad extending from or near Malden down close——

Mr. Turner: From near Malden down close to Baxter.

Examiner Burchmore: And the line from Baxter connecting up with the road which you acquired from the Gideon-Anderson Company had not yet been constructed?

Mr. Turner: No.

Examiner Burchmore: What did it cost you to construct
4873 that connecting link?

Mr. Turner: Taking it through there I think it cost about $3,000 a mile.

Examiner Burchmore: That was about three miles?

Mr. Turner: It would be about three miles.

Examiner Burchmore: When did you build from Glendale to North Island?

Mr. Turner: From Glendale to North Island, that has been put in there last year.

Examiner Burchmore: When did you open it for operation?

Mr. Turner: It was some time last year.

Examiner Burchmore: Do you know what that extension cost you?

Mr. Turner: There was one mile that cost us considerable.

Examiner Burchmore: Do you know what it cost as a whole from Glendale to North Island?

Mr. Turner: About $4,000 a mile.

Examiner Burchmore: And it is about six or seven miles?

Mr. Turner: Yes.

Examiner Burchmore: Have you done any grading or made any surveys for the proposed line shown on this blue print from North Island to Kennett?

4874 Mr. Turner: We have not.

Examiner Burchmore: What about the proposed extension of the line east from Sarff to Portageville?

Mr. Turner: There is a road through there.

Examiner Burchmore: Do you mean a wagon road?

Mr. Turner: It was a road during the war; there is a grade through there now.

Examiner Burchmore: You said some of the stockholders of the United States Cooperage Company disapproved of the continuance of this road as a part of the cooperage business, as I understood you?

Mr. Turner: Yes, sir.

Examiner Burchmore: Was there any dissent among the stockholders of the Gideon-Anderson Company with respect to the operation of their railroad down there?

Mr. Turner: Not that I know of.

Examiner Burchmore: They were all agreed that it was a wise thing to operate that railroad?

Mr. Turner: I did not take that matter up with the Gideon people.

Examiner Burchmore: One more thing about these two leases. In those two leases the railroad agrees, does it not, to build all

4875 temporary spurs into virgin timber not to exceed two miles, and not more than one spur on each side of the track to each section, when necessary to reach timber?

Mr. Turner: Yes, sir.

Examiner Burchmore: It also agrees to load the logs for the manufacturing companies out there in the woods and to transport them to Malden or Gideon respectively?

Mr. Turner: Yes, sir; we do that for them or anyone else that is along the line.

Examiner Burchmore: I notice you seem to have a couple of log loaders among your railroad equipment.

Mr. Turner: We have.

Examiner Burchmore: Do you load logs for anyone else as a matter of fact?

Mr. Turner: Yes, sir, we have done it and are still doing it.

Examiner Burchmore: Why did the Gideon & North Island Railroad Company lease this track from the cooperage company instead of purchasing it outright?

Mr. Turner: Well, it would have taken more money, and we did not care about——

Examiner Burchmore: Is that the only reason?

Mr. Turner: Well, that was the reason with me.

Examiner Burchmore: Does the same reason apply to the

4876 Gideon-Anderson Lumber & Mercantile Company's tracks?

(No reply.)

Examiner Burchmore: I mean you did not purchase those tracks, but leased them for the same reason.

Mr. Turner: To be sure.

Examiner Burchmore: What did you do with the $120,000 that you realized on the sale of your capital stock?

Mr. Turner: We have been building lines and purchasing cars and engines. We have purchased three locomotives since we have taken over this.

Examiner Burchmore: From whom?

Mr. Turner: We purchased two of them from the Davenport Locomotive Works and one from Hicks in Chicago.

Examiner Burchmore: Do you recall what you paid for them?

Mr. Turner: We paid $3600 for one, and I think it was about $5400 for one, and $5,000 for the other, for the one from Hicks.

Examiner Burchmore: How long have you owned these locomotives?

Mr. Turner: We have owned two of them for close on to two years. One of them went through the City of St. Louis only—well, it passed through here on Sunday and went out on Monday.

Examiner Burchmore: Do you own any freight cars?

4877 Mr. Turner: We have 12 flat cars, I believe.

Examiner Burchmore: Used for hauling logs?

Mr. Turner: Used for hauling logs or whatever we want to use them for. Take it for bolts, for instance.

Examiner Burchmore: Those are all the cars you own?

Mr. Turner: No, we own 70 logging cars.

Examiner Burchmore: You say we own 70 logging cars.

Mr. Turner: The railroad.

Examiner Burchmore: How long have they owned those cars?

Mr. Turner: Ever since we bought the road—well, not all of them, because we have purchased quite a number of the cars. I think there were only about 40 in the equipment at the time we got the road.

Examiner Burchmore: I thought you only leased the road. You did not buy it.

Mr. Turner: Well, since we leased it.

Examiner Burchmore: You do not own these cars, as a matter of fact, you lease them, do you not?

Mr. Turner: No, we bought them outright.

Examiner Burchmore: They are covered by these two agreements you have offered in evidence?

Mr. Turner: They are. That is the reason I said we surely

4878 expected to carry our agreement on through and not stop when the ten years is out.

Examiner Burchmore: This lease, Exhibit No. 2, says "this lease covers all the railroad track now built and belonging to the said first party, also all cars, engines and other railroad property and equipment of said first party, meaning the United States Cooperage Company." and it is a lease and not a bill of sale.

Mr. Turner: Just a little bit further than that is there not a statement that then when we pay the balance of it it is ours?

Examiner Burchmore: Well, but at the end of the ten years you can turn them back and not pay anything for them. Is not that a fact?

Mr. Turner: Well, I suppose a person could, but we do not intend to do that.

Examiner Burchmore: Well, you do not own the railroad running from Malden to Baxter; you lease it, do you not?

Mr. Turner: It is under a lease at the present time, but the only reason we did that was so we did not need to take and put up the money.

Examiner Burchmore: Is it not true you also lease the cars instead of owning them, in the same way?

4879 Mr. Turner: No, sir, any more than those that were on hand when we took it over.

Examiner Burchmore: How many were on hand?

Mr. Turner: I think about forty.

Examiner Burchmore: How many locomotives?

Mr. Turner: There were five.

Examiner Burchmore: Have you disposed of any of them?

Mr. Turner: We have disposed of all of them.

Examiner Burchmore: Sold them?

Mr. Turner: Yes, sir.

Examiner Burchmore: To whom?

Mr. Turner: We sold one of them to the Western Tie & Timber Company——

Examiner Burchmore: What did you do with the money you got from that sale?

Mr. Turner: We put it right into the railroad funds and went ahead and——

Examiner Burchmore: Did you give the Western Tie & Timber Company a bill of sale with it?

(No reply.)

Examiner Burchmore: The question is, it looked to me by

4880 reading the contract, that you had leased the locomotives instead of buying them, and I wanted to ascertain if that was not a fact.

(No reply.)

Mr. Walter: You replaced that locomotive with others, did you not?

Mr. Turner: Yes, sir.

Mr. Walter: New ones?

Mr. Turner: Yes, sir.

Mr. Walter: The old ones were only good for junk?

Mr. Turner: Yes, sir. One was the Hostler engine, and the other was a Shay geared engine, and had been worn out for 20 years.

Examiner Burchmore: Who owns the rails this railroad was built with?

Mr. Turner: I think there was about five miles of the rails that was at the Gideon part of it which belonged to the Frisco and still belongs to the Frisco, but the most of that rail was out on spurs.

Examiner Burchmore: Reverting to this——

Mr. Turner: The most of the rail that is in the main track is new rail.

Examiner Burchmore: Reverting to Exhibit No. 4, which is

your contract with the Gideon-Anderson Lumber & Mercan-
4881 tile Company, that contract provides that the Gideon & North Island Railroad shall assume four contracts given to Frisco on certain dates. Is it not a fact that those four contracts with the Frisco cover the steel that is in the tracks from Gideon southward, covered by this contract?

Mr. Turner: Not all of it.

Examiner Burchmore: How much of it?

Mr. Turner: I think there is about five miles all told that we got from them. There is quite a good deal of that in the spurs.

Examiner Burchmore: Can you furnish the Commission copies of those four contracts?

Mr. Turner: Yes.

Examiner Burchmore: We would like to have them. Suppose at the end of ten years you should make up your mind not to buy this railroad, but turn it back to the Gideon-Anderson Company, I assume the Frisco would take back their steel?

Mr. Turner: Their steel is only leased.

Examiner Burchmore: Then if the steel went back to the Frisco what would the Gideon-Anderson Company get?

Mr. Turner: There is about 31 miles of steel all told.

Examiner Burchmore: Did the Gideon & North Island
4882 Railroad Company purchase the steel rail used for new construction?

Mr. Turner: Yes.

Examiner Burchmore: From whom did they purchase it?

Mr. Turner: From the Illinois Steel Company.

Examiner Burchmore: Now I ask you what property does the capital stock of this company represent? You say you have $120,000 of capital stock. What does it cover or where is it?

Mr. Turner: We have got it in our right of way, in cars, engines, steel, ties, and whatever it takes to make and maintain a road.

Examiner Burchmore: You mean you have it in right of way and in equipment, steel, and so forth, outside of that part of the line which is leased?

(No reply.)

Examiner Burchmore: The substantial portion of this railroad is leased from the Gideon-Anderson Company and the United States Cooperage Company, and the balance of the road you own outright without any lease whatever?

Mr. Turner: Yes, sir.

Examiner Burchmore: Is the balance of the road which you own worth $120,000?

Mr. Turner: We have not paid in fully the $120,000, but
4883 I would think that it is.

Examiner Burchmore: Have you a copy of your last annual report to the Interstate Commerce Commission?

Mr. Turner: Yes, sir.

(Annual report produced.)

Examiner Burchmore: Your annual report to the Commission for the year ending June 30th, 1910, apparently shows, at least this

copy of it shows, that the Gideon & North Island Railroad Company owns three miles extending from Glendale to North Island, and one mile extending from Five Points to O'Neil, making four miles of road owned; that it operates——

Mr. Turner: How is that?

Examiner Burchmore: Making four miles of road owned.

Mr. Walter: The Commission has been asked to allow an amendment. That was a mistake, and the Commission granted the permission and it was corrected accordingly, as I am advised.

Examiner Burchmore: This copy indicates that you also reported that the United States Cooperage & Handle Company had seven miles of railroad extending from Malden to Sarff, which was operated under lease by the Gideon & North Island, and that the Gideon-Anderson Lumber & Mercantile Company had ten miles extending from Sarff to Glendale which was similarly operated by this
4884 railroad. Now counsel states a correction has been made in those figures by your company, and the permission of the Interstate Commerce Commission.

Mr. Walter: That is right.

Mr. Turner: We have 21 miles of main line, or had at the time this report was made.

Examiner Burchmore: What do you manufacture at Malden?

Mr. Turner: Staves and heading.

Examiner Burchmore: Do you have joint rates on staves and heading to interstate destination over the Frisco?

Mr. Turner: Yes, sir.

Examiner Burchmore: Have you any over the Cotton Belt?

Mr. Turner: No.

Examiner Burchmore: Have you any contract with the Frisco Railroad respecting divisions?

Mr. Turner: No.

Examiner Burchmore: The only contracts your company has with the Frisco are those contracts referred to in the document which you have filed which relate to steel rail?

Mr. Turner: That is all.

Examiner Burchmore: What is the rate from your mill at Malden to interstate destinations on staves and heading, the same as from the Frisco stations?

4885 Mr. Turner: One cent above.

Examiner Burchmore: One cent higher?

Mr. Turner: Yes, sir.

Examiner Burchmore: What are your divisions?

Mr. Turner: Three cents.

Examiner Burchmore: To all territory?

Mr. Turner: No, that is adding the one cent.

Examiner Burchmore: You mean three cents plus one cent?

Mr. Turner: No, it is two cents plus one cent, and to the Memphis gateway it is one cent plus one cent.

Examiner Burchmore: That same rate on staves and headings applies from all stations on your line?

Mr. Turner: Yes, sir, with the exception of O'Neil, but there is no mill there any more.

Examiner Burchmore: But from all shipping stations on your line the rates to interstate destinations on staves and headings in connection with the Frisco are the same as the Frisco's individual rates plus one cent?

Mr. Turner: Yes, sir.

Examiner Burchmore: And your divisions are two cents and three cents?

Mr. Turner: Yes:

4886 Examiner Burchmore: Including the one cent?

Mr. Turner: Including the one cent. There is an interline of two cents on the gateways of Thebes, St. Louis and Kansas City, and one cent on the gateway of Memphis.

Examiner Burchmore: What is manufactured at Gideon?

Mr. Turner: Well now, there are several manufacturers there.

Examiner Burchmore: I mean in the Gideon-Anderson Company's plant?

Mr. Turner: Well, they make lumber.

Examiner Burchmore: What sort, hardwood lumber?

Mr. Turner: Yes, sir.

Examiner Burchmore: What are their rates?

Mr. Turner: Just the same.

Examiner Burchmore: One cent above the Frisco?

Mr. Turner: Yes.

Examiner Burchmore: What are your divisions on their lumber?

Mr. Turner: Just the same.

Examiner Burchmore: The same as on staves and heading?

Mr. Turner: Yes.

Examiner Burchmore: Do you have any joint class rates in connection with the Frisco?

4887 Mr. Turner: Just on forest products.

Examiner Burchmore: No other joint rates?

Mr. Turner: No.

Examiner Burchmore: Do you publish and file with the Commission your local rates of freight?

Mr. Turner: Yes, sir.

Examiner Burchmore: On all commodities?

Mr. Turner: Yes.

Examiner Burchmore: And what points does your company have agents?

Mr. Turner: At Malden and Gideon.

Examiner Burchmore: Does the agent at Malden work for any other corporation or firm besides your railroad?

Mr. Turner: At the present time he does.

Examiner Burchmore: For whom?

Mr. Turner: The United States Cooperage Company.

Examiner Burchmore: Has there even been a time when he has not?

Mr. Turner: Yes, sir.

Examiner Burchmore: What about the agent at Gideon?

Mr. Turner: We have an agent at Gideon.

Examiner Burchmore: Is he also employed by the Frisco System?

4888 Mr. Turner: We have made arrangements with the agent of the Frisco to make out our bills of lading.

Examiner Burchmore: And your waybills?

Mr. Turner: And waybills.

Examiner Burchmore: Where does the mill at Malden obtain its material, its logs?

Mr. Turner: Out in the woods, close to Five Points, and of course we get them at different places along the line.

Examiner Burchmore: And the Gideon & North Island Railroad hauls those logs to the mill?

Mr. Turner: Yes, sir.

Examiner Burchmore: It loads the logs on the trains?

Mr. Turner: Yes, sir.

Examiner Burchmore: What does it charge for hauling the logs to the mill?

Mr. Turner: One and one-half cents per 100 pounds for loading and hauling.

Examiner Burchmore: That is paid to the Gideon & North Island by the United States Cooperage Company?

Mr. Turner: Yes, sir, or anyone else.

Examiner Burchmore: Do they get any part of that back?

Mr Turner: No.

Examiner Burchmore: Then the stuff is manufactured at

4889 Malden, and when you are ready to ship to an interstate destination, how do you get an empty car to the factory for loading?

Mr. Turner: The Frisco sets it in on the line there, and we go with our locomotives and put it wherever it is wanted.

Examiner Burchmore: How far does your locomotive move it?

Mr. Turner: Well, we move it—there are three loading spurs in the yard, and I judge it is between a quarter and half a mile.

Examiner Burchmore: Then when you load the cars your engine moves over to the Frisco interchange track?

Mr. Turner: Yes.

Examiner Burchmore: Your agent makes out a bill of lading and the waybill?

Mr. Turner: Yes.

Examiner Burchmore: Are you familiar with the practice down at Gideon?

Mr. Turner: Somewhat.

Examiner Burchmore: Is it similar down there?

Mr. Turner: Yes, sir.

Examiner Burchmore: As a matter of fact down at Gideon it very frequently happens, does it not, that the lumber is loaded directly on to the tracks of the Frisco?

4890 Mr. Turner: I don't remember now if there are two tracks north of the mill, or three. If there are three—I mean if there are only two tracks there, there is some of it loaded on the

Frisco track, but if there are three tracks it is on the Gideon & North Island track.

Mr. Walter: There is an occasional infrequent loading of the car on the Frisco rails?

Mr. Turner: There is one place there that I have seen them load some stuff on.

Examiner Burchmore: Where is Sarff?

Mr. Turner: It is east of Gideon.

Examiner Burchmore: How far from Gideon?

Mr. Turner: It is only a short way, about three quarters of a mile.

Examiner Burchmore: How far is it from Malden?

Mr. Turner: Eight miles.

Examiner Burchmore: Sarff was formerly located at the point where the line of the railroad crosses Sections 6 and 7, the line separating 6 and 7?

Mr. Turner: Yes, sir, there are several houses there, but we took up the switch there.

Examiner Burchmore: And moved it down to its present location at South Gideon?

4891 Mr. Turner: Yes.

Examiner Burchmore: When did you do that?

Mr. Turner: We took up the spur there some time last summer.

Mr. Walter: In connection with the statement I made one moment ago I desire to add that none of these cars that are loaded on the Frisco tracks are spotted by the Frisco engine. The cars are handled by the Gideon & North Island engine. Is not that right, Mr. Turner?

Mr. Turner: Yes, sir.

Examiner Burchmore: Do you carry any passengers?

Mr. Turner: No.

Examiner Burchmore: Run your trains on a regular schedule?

Mr. Turner: We aim to leave at a regular time each day.

Examiner Burchmore: How many trains a day each way?

Mr. Turner: Two each way.

Examiner Burchmore: All the way from Malden to North Island?

Mr. Turner: Well, at any point that we happen to pick up the logs.

Examiner Burchmore: It runs over the entire length of your line?

Mr. Turner: Yes, sir.

4892 Examiner Burchmore: What were your earnings and expenses last year?

Mr. Turner: The total earnings were $52,284.03. In regard to the expense, I have not got that.

Mr. Walter: The annual report will show that, I suppose.

Mr. Turner: Yes, sir.

Examiner Burchmore: Have you been making money?

Mr. Turner: Yes, sir, we have a little.

Examiner Burchmore: Paying any dividends?

Mr. Turner: No.

Examiner Burchmore: Any surplus?

Mr. Turner: We have put it right back into the road.

Examiner Burchmore: What was the character of your tonnage last year and from whom did you get it?

Mr. Turner: I have not got this thrown into tonnage, but just into pounds.

Examiner Burchmore: The annual report shows you had 101,778 tons of forest products and 1150 tons of merchandise and 80 tons of miscellaneous freight, making a total of 103,017 tons of outbound freight with no products of agriculture and no products of animals and no products of mines and no inbound freight. The forest products of course included the movement of logs from
4893 one point to another on your line, I presume.

Mr. Turner: Yes, sir.

Examiner Burchmore: The separate statement shows 27,263 tons of lumber carried in carload quantities. I have read those figures from this report. I will simply ask you if they are correct, if I have read them correctly they are correct?

Mr. Turner: Well, I rather think to the best of my knowledge they are. We had a party to go over the roads and fill out the book. I did not do it myself.

Examiner Burchmore: The figures as reported to the Interstate Commerce Commission are in your opinion correct?

Mr. Turner: Yes, sir.

Examiner Burchmore: And you did not handle any farm produce for the farmers down in there?

Mr. Turner: Not yet. It is coming, though. In two or three years we can talk to you quite differently, because there are thousands of acres being deadened and made ready for the plow.

Examiner Burchmore: How much of that forest product was furnished to your company for transportation by persons who had no interest or relation to the Gideon-Anderson Lumber &
4894 Mercantile Company or the United States Cooperage & Handle Company?

Mr. Turner: I will try to answer that question in just a moment. From the O'Neil Lumber Company we handled 5,830,000 pounds.

Examiner Burchmore: How much?

Mr. Turner: 5,830,000 pounds. It is not thrown into tons.

Examiner Burchmore: What percentage is that of your total traffic?

Mr. Turner: Of the outbound?

Examiner Burchmore: Well, go ahead with your statement.

Mr. Turner: I did not figure it out. The Gideon Cooperage Company furnished 6,736,000 pounds. Hutley & Buckley 178,000 pounds. The number of local consignments of merchandise was 2,826, that was the number of shipments.

Mr. Walter: The number of waybills?

Mr. Turner: Waybills and the number of pounds was 2,299,000.

Examiner Burchmore: What was that, logs?

Mr. Turner: No, feed and groceries and stuff that was shipped to different people along the line.

Examiner Burchmore: That includes the forage for the mill people down there, does it not?

4895 Mr. Turner: For the mill people?

Examiner Burchmore: For the logging people.

Mr. Turner: Well, I suppose so, yes, but the logging is nearly all let out in contracts and other people——

Examiner Burchmore: What is your relation to the O'Neil Lumber Company?

Mr. Turner: Nothing at all whatever.

Examiner Burchmore: I mean your personal relation?

Mr. Turner: Not at all.

Examiner Burchmore: What about the relation of the Gideon & North Island to the O'Neil Company?

Mr. Turner: Nothing at all.

Examiner Burchmore: What is that contract which is in evidence as Exhibit No. 3?

Mr. Turner: Well, that contract was in reference to—there is a different rate in existence between the companies—they own a mill or two mills which was a mile from our track, and they wanted us to haul their product, and the contract will show for itself.

Examiner Burchmore: What do you charge the O'Neil Company for handling their stuff?

Mr. Turner: Four cents above the Malden rates.

Examiner Burchmore: How far were they located from

4896 your main line?

Mr. Turner: They were located a little over a mile.

Examiner Burchmore: This contract as I glance at it hastily seems to indicate that the O'Neil Lumber Company before locating where they did, or before opening their operations, asked your railroad if you would build across to reach their place——

Mr. Turner: No, sir, that was not the idea.

Examiner Burchmore: What was the idea?

Mr. Turner: They were in their location and had their stuff cut and on the sticks.

Examiner Burchmore: And they had been teaming it across to the railroad?

Mr. Turner: Yes, sir.

Examiner Burchmore: And they asked you to build a railroad so as to reach them?

Mr. Turner: Yes.

Examiner Burchmore: And you said you would upon certain conditions?

Mr. Turner: We told them if they would build a road in there we would take their product and handle it and at the same rate we were charging everybody else.

4897 Examiner Burchmore: And that rate is how much?

Mr. Turner: One cent above the Malden rate.

Examiner Burchmore: I thought you said you charged them four cents above the Malden rate?

Mr. Turner: We did, but we asked them to connect with our road, and instead of their doing that they made the proposition that

they would pay four cents above the Malden rate providing we would furnish the iron and steel and lay the track.

Examiner Burchmore: Then what you actually did under this contract, and that is what this contract provides for, was to build across to their mill and take their traffic at four cents above the Malden rate.

Mr. Turner: Yes, sir, and we furnished the steel and had to go to the Illinois Steel Company and buy it.

Examiner Burchmore: Is that rate published with the Commission?

Mr. Turner: Yes, sir.

Examiner Burchmore: What is the name of their mill point?

Mr. Turner: O'Neil.

Examiner Burchmore: That is the track you are about to take up?

1898 Mr. Turner: Yes, sir.

Examiner Burchmore: You have built several spur tracks extending from your main line to different tracts of timber owned by the United States Cooperage Company, have you not?

Mr. Turner: Yes, sir.

Examiner Burchmore: What is the length of those spurs you have built, any thing up to two miles?

Mr. Turner: We have not built any that long.

Examiner Burchmore: Under that contract you agreed to build them up to two miles?

Mr. Turner: Yes.

Examiner Burchmore: Under that contract what do you charge them for going in there?

Mr. Turner: We get one and one-half cents to Malden and this one cent above the Malden rate out.

Examiner Burchmore: Then I understand you only charge them two and a half cents above the Malden rate, whereas you charge the O'Neil people four cents above the Malden rate.

Mr. Turner: I do not get it. Two cents above.

Examiner Burchmore: Two and one-half cents above?

Mr. Turner: Here is the reason of that. They furnish dry product which weighs less than one-half. We do not get the tonnage.

1899 Examiner Burchmore: Any further explanation you wish to make about that?

Mr. Turner: No, sir. Green material will weigh 10,000 pounds to the 1000 feet of lumber.

Mr. Walter: And one and one-half cents applies on logs?

Mr. Turner: Yes, sir.

Mr. Walter: And this four cents applied on lumber?

Mr. Turner: Yes sir.

Examiner Burchmore: But you haul the logs?

Mr. Turner: Yes, sir, we get the tonnage.

Examiner Burchmore: You ought to be paid for what you haul?

Mr. Turner: We do.

Examiner Burchmore: And not what becomes of it afterward?

Mr. Turner: We do.

Mr. Walter: Is it not pretty generally true that there is a less rate on logs for the same weight than on lumber?

Mr. Turner: We find that with all railroads, and I notice that the Cotton Belt will haul 50 miles at two cents in the log, but for the lumber they will charge about eight cents.

Examiner Burchmore: Take a shipment which originates at O'Neil and moves out to some place to the north or south through Memphis, how much money do you make on that shipment?

1900 Mr. Turner: 30,000 pounds to the car would make us about $18.00 a car to move it out there.

Examiner Burchmore: You charge the man at O'Neil four cents over the Malden rate?

Mr. Turner: Yes, sir.

Examiner Burchmore: And then get two or three cents more out of the Frisco?

Mr. Turner: We get two cents providing it goes north. If it goes south we only get one.

Examiner Burchmore: Then you get either five cents or six cents out of that shipment from O'Neil?

Mr. Turner: Yes, sir, but it cost us better than $3,000 to put that piece in, and as soon as the O'Neil shipments were made that was all for that track.

Examiner Burchmore: Does it not cost pretty nearly as much to build your private spurs into the woods of the cooperage company for the same distance?

Mr. Turner: Well, we have got so we do not have to buy any more rail, we just take it up and move it. We had to buy the rail for this.

Examiner Burchmore: Your revenues for the year 1910 seem to be, as shown in this report, $52,283.13, and your expenses

1901 $24,680.85, making your net revenue $27,602.46. Those figures seem to be approximately correct as you recall them?

Mr. Turner: I guess they are about right, but I do not think we took off everything for depreciation.

Examiner Burchmore: Don't you charge depreciation?

Mr. Turner: I think we left that out.

Mr. Walter: Was the interest charge included in that?

Mr. Turner: I do not think it was.

Examiner Burchmore: What was the interest charge?

Mr. Turner: Four per cent.

Examiner Burchmore: The interest charge was $1720 apparently.

Mr. Turner: Yes.

Examiner Burchmore: Leaving $25,882.46 after payment of interest.

Mr. Turner: But the depreciation was not taken off of that.

Examiner Burchmore: How much is your surplus?

(No reply.)

Examiner Burchmore: I want to know about this correction in the figures to your mileage given in the annual report on page 13. What is incorrect about that statement as given in this copy here?

You said you had corrected the figures with the Interstate Commerce Commission.

Mr. Walter: Mr. Anderson can tell you about that.

4902 Examiner Burchmore: Do you desire to ask some questions, Mr. Walter?

Mr. Walter: Just a few. Let us see if you can get at this lease. In 1908 you made a lease with the United States Cooperage Company for their track then built?

Mr. Turner: Yes.

Examiner Burchmore: And with the Gideon-Anderson Company of their track then built?

Mr. Turner: Yes.

Mr. Walter: And the valuations of those two tracks respectively were $18,000 and $25,000?

Mr. Turner: $18,000 and $25,000.

Mr. Walter: Making $43,000?

Mr. Turner: Yes, sir.

Mr. Walter: The consideration for that lease was four per cent and the construction of spurs to their timber holdings not to exceed two miles?

Mr. Turner: That was the idea.

Mr. Walter: You were to keep up these tracks in such condition as to be properly operated?

Mr. Turner: Yes.

Mr. Walter: At the end of ten years you could either surrender all the improvements you had put on the property, turn

4903 over the railroad to these two companies, or else pay them the $43,000?

Mr. Turner: That is less this per cent.

Mr. Walter: Forty per cent, or ten years at four per cent each year?

Mr. Turner: Yes, sir. This was supposed to be part of the purchase price, providing we kept it.

Mr. Walter: So there is no probability that at the end of ten years either the United States Cooperage Company or the Gideon-Anderson Company will receive any railroad?

Mr. Turner: They do not intend to so far as I have got anything to say about it.

Examiner Burchmore: Would it be against their interest to receive it, do you know?

Mr. Turner: I don't suppose it would: It would be against our interest.

Mr. Walter: You do not propose to let them have the railroad?

Mr. Turner: No.

Mr. Walter: You will keep your part of the contract by paying them the 60 per cent of the $43,000?

Mr. Turner: Yes.

Mr. Walter: And when you said you did not carry passen-

4904 gers you meant you did not carry passengers for hire?

Mr. Turner: That is the idea.

Mr. Walter: If you will look at your tonnage for the O'Neil Com-

pany, Gideon-Anderson Company, and United States Cooperage Company, and others, that shows the total interline tonnage at 74,582,000 pounds or 37,291 tons.

Mr. Turner: I guess I did not notice that.

Mr. Walter: I have reduced it to tons, and want you to look at it. How many cars does that show?

Mr. Turner: This I have is what has been shipped since July 1st, 1910 up to the 21st of December.

Mr. Walter: Have you not also got the 1910 tonnage?

Mr. Turner: That is what I was looking for awhile ago, but I did not notice it.

Mr. Walter: You have it there (handing paper). Do you recognize this statement?

Mr. Turner: Yes, sir. I saw it a little while ago, but I cannot find it.

Mr. Walter: Just use that. That shows a total interline tonnage of 37,291 tons, reducing the pounds to tons.

Mr. Turner: I see.

Mr. Walter: And the total tonnage shipped by others than the United States Cooperage Company and Gideon-Anderson
4905 Company amount to some 13,452 tons.

Mr. Turner: Yes.

Mr. Walter: At the same time there was handled by the railroad company of miscellaneous merchandise and so forth some 2,299,000 pounds, or 1149 tons. Is that right?

Mr. Turner: That is the idea, that is correct.

Examiner Burchmore: Who shipped this 13,452 tons of freight which was shipped by other people?

Mr. Walter: I can call it off to you, or give this memorandum to him.

Examiner Burchmore: Just tell us.

Mr. Walter: O'Neil Lumber Company, Gideon Cooperage Company, U. S. Cooperage & Handle Company, and Hutley & Buckley.

Examiner Burchmore: How much of each?

Mr. Walter: 2,915 tons for the O'Neil Lumber Company, 3,363 tons for the Gideon Cooperage Company, 7,079 tons for the United States Cooperage Company, and 89 tons for the Hutley & Buckley. That was for the year ending June 30th, 1910. Now have you similar tonnage for the last six months?

Mr. Turner: Yes, sir.

Mr. Walter: Let us have that.

4906 Mr. Turner: Well, I haven't the tonnage, but just the number of cars that are moved.

Mr. Walter: Give us the number of cars?

Mr. Turner: There has been 50 cars of ties and lumber moved by L. M. Sarff; 38 cars of lumber by C. W. Frick, and the Gideon Handle Company 24 carloads of handles; Gideon Cooperage Company 55 cars of staves; Griffin Lumber Company 4 cars of piling; 98 cars of staves and heading of the United States Cooperage & Handle Company.

Mr. Walter: Making a total of how many?

Mr. Turner: I did not run it over.

Examiner Burchmore: How about the Gideon-Anderson Lumber & Mercantile Company?

Mr. Turner: I have not got that down.

Mr. Walter: 269 cars for these outside parties. Have you the data showing the Gideon-Anderson shipments in cars?

Mr. Turner: No, he has not put that down.

Examiner Burchmore: Do you call the United States Cooperage Company an outside shipper?

Mr. Turner: There are a good many people in the United States Cooperage Company that have not got any interest at all whatever in the railroad company.

Examiner Burchmore: But you control the cooperage
4907 company, do you not?

Mr. Turner: No, sir.

Examiner Burchmore: Who does control it?

Mr. Turner: The majority of the stockholders.

Examiner Burchmore: Don't you own a majority of the stock?

Mr. Turner: I own a good chunk of it, but do not control it.

Mr. Walter: Do you own a majority?

Mr. Turner: No, about one-third.

Examiner Burchmore: Do not other stockholders in the railroad own enough to make your holdings more than half?

Mr. Turner: No, myself and my son are all that have any interest in the railroad. I own 175 shares and he owns 10, and there are 500 shares to the whole company.

Examiner Burchmore: In what company?

Mr. Turner: U. S. Cooperage & Handle Company.

Mr. Walter: Now in that territory all through there drainage systems have been constructed?

Mr. Turner: They have, eight in number.

Mr. Walter: That opens all that land so it can be used for agricultural purposes?

Mr. Turner: Yes, sir.

Mr. Walter: And you have moved comparatively a small
4908 amount of agricultural products the last year?

Mr. Turner: There has not been but a very little bit.

Mr. Walter: Small shipments of corn?

Mr. Turner: They are just commencing to raise agricultural products, because when we went in there four years ago it was all solid timber.

Mr. Walter: Do you know anything about the Pine Bluff Lumber Company?

Mr. Turner: Pine Bluff?

Mr. Walter: Yes.

Mr. Turner: No.

Mr. Walter: The people who own the land down by Mora, do they have any shipments going out over your line which you will probably move in the near future?

Mr. Turner: When they commence to work it, I do not think they have commenced on that timber yet.

Mr. Walker: They have quite a large amount?
Mr. Turner: Yes, sir.
Mr. Walker: It will all have to come out over your line?
Mr. Turner: Yes.
Mr. Walker: Have you any trackage rights over the Frisco?
Mr. Turner: We have.
4909 Mr. Walker: From what point, over what road?
Mr. Turner: From Gideon to Wardell.
Mr. Walker: How far is that?
Mr. Turner: About 43 miles.
Mr. Walker: You have a contract for the use of the track?
Mr. Turner: Yes.
Mr. Walker: What does that contract call for?
Mr. Turner: It calls for the movement of trains.
Mr. Walker: What compensation?
Mr. Turner: For 50 cents per thousand feet.
Mr. Walker: What do you move over that leased trackage or track-age right?
Mr. Turner: Logs and bolts.
Mr. Walker: Into your mill?
Mr. Turner: Yes, sir.
Examiner Burchmore: Where is Wardell?
Mr. Turner: Wardell is——
Examiner Burchmore: Beyond Tallapoosa?
Mr. Turner: It is the other route, you have to go on down to Kennett and from Kennett to Pascola, and Pascola to Wardell.
Mr. Walker: That would be east to Pascola and north to
4910 Wardell?
Mr. Turner: Yes, sir.
Mr. Walker: You do not seem to run into Kennett?
Mr. Turner: The Frisco has a road which runs down from Gibson and panhandles off through here to Kennett, and then the road from Kennett runs over here to Pascola, right about in here, and Wardell is about back in here (indicating).
Examiner Burchmore: Wardell is south of the county line between New Madrid and Pemiscot Counties, just east of the township line that crosses near Tallapoosa. Now I thought I asked you whether you had any other contracts with the Frisco and understood you to say that you did not. You forgot this one.
Mr. Turner: I did.
Examiner Burchmore: We would like a copy of that contract.
Mr. Walker: We will furnish the contract.
Mr. Walker: Do you know who W. J. Frick is?
Mr. Turner: Yes, sir.
Mr. Walker: What does he do and where is he located?
Mr. Turner: He has a mill at Baxter.
Mr. Walker: Is that on your line?
Mr. Turner: Yes.
Mr. Walker: He ships out over your line?
Mr. Turner: Yes, sir, he shipped out 38 cars since July.

4911 Mr. Walter: Let me ask you whether you furnish facilities on your line of railroad to everybody that offers freight and on equal terms where they are located equally?

Mr. Turner: Just exactly the same.

Mr. Walter: And you hold yourselves out and are equipped to perform common carrier service?

Mr. Turner: Yes, sir. We have loaded logs for Professor Pierce, a professor of schools of Malden who owns a part of Section 24, and hauled them to Mr. Castleman's mill and shipped the lumber out then over the road.

Mr. Walter: That is all.

Examiner Burchmore: Have you any questions, Judge Cowan?

Mr. Cowan: No questions.

Mr. Coleman: Has there been any recent change in the stockholders of the cooperage company?

Mr. Turner: There has been one change as I know of.

Mr. Coleman: What was that?

Mr. Turner: A man by the name of Miller bought 20 shares—no, 10 shares of a man by the name of Sigafoose.

Mr. Coleman: Has there been any recent change in the railway?

Mr. Turner: No, there has been no change made that af-
4912 fects the road at all. It is since the formation of the company.

Mr. Walter: Now just about five minutes for Mr. Castleman.

Examiner Burchmore: I would like Mr. Anderson to take the stand a moment.

(Witness excused.)

W. P. ANDERSON, was called as a witness, and having been duly sworn, testified as follows:

Examiner Burchmore: There are just two things I wanted to ask you. I am curious to know about the mistake made on page 13 of the annual report.

Mr. Anderson: Yes. That report was made out by a man who we supposed was a railroad man, and was overlooked by myself, and I immediately wrote to the Commission asking them to return the book, and they said they would substitute a leaf to be put in there and it would be done immediately.

Examiner Burchmore: What was the mistake on page 13?

Mr. Anderson: That it was 12 miles and he made it 17 miles. It was 12 miles we had built, and that was leased by the Gideon & North Island Railroad. There are two concerns.

4913 Examiner Burchmore: How is that divided between the two?

Mr. Anderson: Eight and five, five from the United States Cooperage Company and eight miles from the Gideon-Anderson Company.

Mr. Walter: You mean seven and five?

Mr. Anderson: Yes, twelve all together.

Examiner Burchmore: But that is the only mistake in this report.

Mr. Anderson: Yes, sir, all that I know of.

Examiner Burchmore: The report is accurate——

Mr. Anderson: Well, it is the first one we have ever made out.

Examiner Burchmore: I understand, but the report on page 13 is accurate in showing that only four miles are owned outright by this corporation.

Mr. Anderson: It is not correct so far as the realty is concerned, and that is where the mistake is.

Mr. Walter: How many miles do you own now aside from the twelve?

Mr. Anderson: We own 21 miles of main line and 12 miles of side track.

Examiner Burchmore: Explain how you figure that?

Mr. Anderson: Well, we have 21 miles of main track.

4914 Examiner Burchmore: In fee simple?

Mr. Anderson: Except this we have leased.

Examiner Burchmore: Has there been any change in the figures as shown in your annual report as corrected, has there been any change since the date of your annual report?

Mr. Anderson: We are building right along.

Mr. Walter: What is that date?

Examiner Burchmore: June 30th.

Mr. Anderson: We have built some side track and spurs.

Examiner Burchmore: It shows four miles owned. How much have you added to the line owned?

Mr. Anderson: Well, four miles is not correct, I told you. We have built a couple of miles since the report was made.

Examiner Burchmore: It makes about six or eight miles?

Mr. Anderson: No, it makes more than six or eight miles. It makes 12 miles, and 9 is 21 miles. We have built since the incorporation——

Examiner Burchmore: Suppose you were filling out a new report, at what figure would you make it?

Mr. Anderson: I would make that 12 miles.

Examiner Burchmore: Make what 12 miles, the figures now shown as what?

4915 Mr. Anderson: That was owned formerly by the Gideon-Anderson Company and the United States Cooperage Company, 12 miles. The balance of 21 miles would be the amount built since the incorporation, which would be 9 miles.

Mr. Walter: Has that leaf actually been corrected and sent forward?

Mr. Anderson: No, but it will be immediately. We have got permission to do it.

Examiner Burchmore: What is your total mileage at the present time of main line?

Mr. Anderson: I suppose about 22 miles. Most of our track we have built since that report has been mentioned.

Examiner Burchmore: Then you have only built one mile of main line since the report was made?

Mr. Anderson: I am just estimating it.

Examiner Burchmore: And you have not changed the title in any way to the miles of track which were originally owned by the cooperage company or the Gideon-Anderson Company?

Mr. Anderson: No.

Examiner Burchmore: I think that is understood then. You are familiar with the conditions and methods of transportation of the plant at Gideon?

Mr. Anderson: Just fairly well, yes, sir.

4916 Examiner Burchmore: You heard Mr. Turner describe the method of billing and moving shipments at Malden. I ask you whether the same method is pursued at Gideon?

Mr. Anderson: Well, I think it is something similar, only we have a man there that does nothing else. His compensation comes from the railroad only.

Examiner Burchmore: With what frequency does it happen that the Frisco Railroad takes a loaded car away from the factory at Gideon without assistance from the Gideon & North Island Railroad or its employees.

Mr. Anderson: I suppose it has happened a few times, but it is very seldom, and it is not the intention, and the handles that are shipped away from the handle company that are loaded have not been billed from Sarff but from Gideon.

Examiner Burchmore: How long have you been billing from Gideon instead of Sarff?

Mr. Anderson: We have only been billing from Gideon only what comes from the handle factory occasionally.

Examiner Burchmore: Was it not formerly your practice to bill shipments which were manufactured in the mill at Gideon as originating at Sarff?

Mr. Anderson: Yes, sir.

Examiner Burchmore: I mean the Gideon-Anderson mills.

4917 Mr. Anderson: Yes, sir.

Examiner Burchmore: When did you discontinue the practice?

Mr. Anderson: You understand our lumber yards are at Sarff and occasionally there is a green car of lumber shipped out from the mill, that is loaded and we set the car on the Frisco tracks.

Examiner Burchmore: You say your lumber yard is at Sarff?

Mr. Anderson: Yes, sir.

Examiner Burchmore: But your mill is at Gideon?

Mr. Anderson: Yes.

Examiner Burchmore: And what is the distance from Gideon to Sarff?

Mr. Anderson: Three-quarters of a mile.

Examiner Burchmore: Then you haul your lumber for three-quarters of a mile from the mill over to the yard?

Mr. Anderson: Yes, sir.

Examiner Burchmore: By wagon?

Mr. Anderson: No, by cars, standard flat cars.

Examiner Burchmore: And it is loaded on the Gideon & North Island at Sarff for interstate transportation?

Mr. Anderson: Yes.

Examiner Burchmore: There is a handle company there at Gideon?

4918 Mr. Anderson: Yes.

Examiner Burchmore: What rate do they pay?

Mr. Anderson: On the handles loaded right out on the main track they get a bill from Gideon.

Examiner Burchmore: And the Frisco charges its local rate?

Mr. Anderson: Yes, sir. We do not get any division on that at all.

Examiner Burchmore: What do you get for hauling the logs into the mill?

Mr. Anderson: The same price, one and a half cents.

Examiner Burchmore: Is there not a milling in transit rate down there?

Mr. Anderson: No.

Examiner Burchmore: Then on the O'Neil stuff and on the logs that are handled for the United States Cooperage Company and on the logs and lumber handled for the Gideon & Anderson Company, I understand you get a revenue on the logs into the mill of one and one-half cents?

Mr. Anderson: Yes.

Examiner Burchmore: And you subsequently get your full division on the outbound tonnage?

Mr. Anderson: Yes.

Examiner Burchmore: But on stuff handled for the Gid-

4919 eon Handle Company you seem to get one and one-half cents in and nothing out?

Mr. Anderson: Well, that was due to being loaded directly at the shed or track. We had no yards any place else, and it was loaded directly out on the track and we had not any right to charge anything.

Mr. Walter: Did you include the O'Neil Company as paying a revenue on logs?

Mr. Anderson: I did, but that is a mistake.

Mr. Walter: Yes.

Examiner Burchmore: How many loading tracks has the Frisco, at or near Gideon?

Mr. Anderson: Well, they own the passing track there, which is the only one they have used for years. They really have some rail laid down in our yard that belongs to them, but they do not use it and have not for a long time.

Examiner Burchmore: Where do they pick up a loaded car, loaded by the Gideon Handle Company?

Mr. Anderson: We put it on their passing track.

Examiner Burchmore: I thought you did not handle their product?

Mr. Anderson: Well, that is loaded on their passing track and taken out.

4920 Examiner Burchmore: Where are the cars loaded in the case of the Gideon-Anderson Company's shipments?

Mr. Anderson: They are loaded out at Sarff at this yard, except I said there was an occasional car of green lumber that has passed through in that way.

Examiner Burchmore: We want a map of Gideon so as to know how the thing lies?

Mr. Walter: We will give it to you, and also a map of Malden.

Examiner Burchmore: Is the Gideon Cooperage Company related in any way to the Gideon-Anderson Company?

Mr. Anderson: Yes, I have some stock in it.

Examiner Burchmore: What is the total stock of the Gideon Cooperage Company?

Mr. Anderson: 60 shares.

Examiner Burchmore: How much do you think you own?

Mr. Anderson: I think I own about 40 per cent.

Examiner Burchmore: Who owns the balance?

Mr. Anderson: Well, a man by the name of Phillips and Mr. Menntemyer.

Examiner Burchmore: How much does Mr. Menntemyer own in the Gideon-Anderson Company?

4921 Mr. Anderson: He owns one share, and nothing in the railroad.

Examiner Burchmore: However, he is auditor of the railroad, is he not?

Mr. Anderson: Yes, sir.

Examiner Burchmore: Is there anyone else who owns stock in the Gideon Cooperage Company, who also owns stock in this railroad?

Mr. Anderson: Yes, sir, my brother owns a little stock, I think it is one or two shares, in the cooperage company.

Examiner Burchmore: I think we would like to have a list of the stockholders of the Gideon Cooperage Company, the Gideon Handle Company and the United States Cooperage Company and the Gideon-Anderson Lumber & Mercantile Company, and the railroad, as of date today.

Mr. Walter: So far as they are of record today?

Examiner Burchmore: As of record today, but if the record is not correct, you are at liberty to indicate it in a foot-note.

Mr. Walter: We will do that, but if somebody has sold any and we do not know it, we cannot indicate it.

Examiner Burchmore: I think that is all, unless you have some statement you wish to make.

4922 Mr. Anderson: Yes. It has not been brought out very distinctly as to what we have down below on our line, and I want to say that we have a country that is developing into farms very fast. It was ditched about two years ago, and the ditch marks are not on there.

Examiner Burchmore: Along towards North Island?

Mr. Anderson: Yes, sir. There is a proposition that is costing between $5,000,000 and $14,000,000, and that is just being pushed now to completion, and part of it has been already completed. We have one concern down there, the Bluff City Lumber Company,

that claims they have 10,000 carloads of logs to come over our tracks. Beside that, Mr. Dunne has at least 8,000 cars, and we have to condemn land and go down through there, and there is another tract there which belongs to a Minneapolis concern, which will probably have 25,000 cars to ship over this road of virgin timber, and we have no interest in it whatever.

Examiner Burchmore: Have you any interest in that other company you just mentioned?

Mr. Anderson: No, sir, neither one of them.

Examiner Burchmore: No relation between the two companies?

Mr. Anderson: No.

Mr. Walter: These two concerns own both the land and
4923 the timber?

Mr. Anderson: Mostly, but not entirely.

Examiner Burchmore: Was there any dissent among the stockholders of the Gideon-Anderson Company with respect to continuing the operation of this railroad previous to the time it was leased?

Mr. Anderson: Yes, we have some people in our concern that did not think it paid to railroad, and did not want to advance the railroad interests and do not have any stock in the railroad.

Examiner Burchmore: What was their objection to the railroad at that time?

Mr. Anderson: Because we had never made a success up to that time of running a railroad, and hauling logs. It was a failure. We fixed up the track and began doing business in a railroad way, and have made money out of it.

Mr. Walter: How much longer will it take you to cut out the Gideon-Anderson Company's holdings at the present time?

Mr. Anderson: About three or four years.

Examiner Burchmore: But further timber is available for purchase down there?

Mr. Anderson: Well, we have been there about ten years in
4924 the lumber business, and we were offered timber, but we are not buying. We think our farms and railroad business will be better than the saw mill business.

(Witness excused.)

J. R. CASTLEMAN, was called as a witness and having been duly sworn testified as follows:

Mr. Walter: Your name is John Castleman?

Mr. Castleman: Yes, sir, that is what they call me for short.

Mr. Walter: You are doing business at Five Points?

Mr. Castleman: Yes, sir, I am.

Mr. Walter: Have you a hardwood mill there?

Mr. Castleman: Yes, sir.

Mr. Walter: What is its capacity?

Mr. Castleman: About 12,000 or 15,000 feet.

Mr. Walter: Where do you ship to?

Mr. Castleman: We ship to St. Louis, Chicago, Indianapolis and send a few carloads to St. Joseph up here.

Mr. Walter: Where do you get your logs?

Mr. Castleman: We get them here lately (indicating); well, for the last year, well, the last two years, principally all
4925 over this Gideon & North Island Road.

Mr. Walter: The railroad loads those logs and brings them down to your mill?

Mr. Castleman: Yes.

Mr. Walter: And charges you one and one-half cents per 100 pounds?

Mr. Castleman: Yes.

Mr. Walter: And then they take your lumber out?

Mr. Castleman: Yes.

Mr. Walter: They charge you one cent more than the Malden rate?

Mr. Castleman: Yes, sir, they charge me 11 cents and it is 10 cents from Malden.

Mr. Walter: Has this railroad company given you all the service you have asked?

Mr. Castleman: Yes, sir, and then they sort of hurry me up every once in a while.

Mr. Walter: Can you tell me what would be the result if you had to pay to the Gideon & North Island Railroad in addition to your one and one-half cents for your logs, the local rate of three cents down to Malden or Gideon, and then the ten cent rate on to market.

Mr. Castleman: Well, sir, the grade of timber I am work-
4926 ing and the price I get for it, I just would have to go and pull the saw for them, I guess, cutting poles.

Mr. Walter: Have you heard any complaint from the public as to the manner in which this railroad treats its patrons?

Mr. Castleman: All I have heard is that if they take it up they would always think hard of them or were going to sue them for damages.

Mr. Walter: I mean the way in which they are doing business now?

Mr. Castleman: No, I have never heard a word.

Examiner Burchmore: Where do you get your logs?

Mr. Castleman: I get them around there in the south of the mill, east of the mill—I buy some from the United States Cooperage Company and some from Mr. or Professor Douglas, from Jackson, from Keller, the newspaper man, and I have got about half a million feet already spoke for providing these people extend this road east so I can get it.

Examiner Burchmore: Do you team any of your logs to the mill?

Mr. Castleman: Oh, along this fall when it was dry, I would carry a load in at dinner time and one at night with a team. I had to take them in to water them, and at night I let them pull a load, but the rest of the logs I carried with a tram road, be-
4927 cause I could not haul them—that one and a half cents was much cheaper than I could haul them a mile and a half on the average with the wagon.

Examiner Burchmore: What would it cost you to haul them one or one and a half miles on a wagon if you had to do it?

Mr. Castleman: It depends on the time of the year. It would cost you $4.00 when it is dry and now you could not get them hauled.

Examiner Burchmore: $4.00 for how much?

Mr. Castleman: 1,000 pounds.

Examiner Burchmore: Against $1.50 by the railroad?

Mr. Castleman: Yes.

Examiner Burchmore: Is that rate a cheap rate?

Mr. Castleman: Yes, sir, cheap enough.

Examiner Burchmore: You think it is reasonable?

Mr. Castleman: Yes, sir.

Examiner Burchmore: Do you think they ought to raise it?

Mr. Castleman: No.

Examiner Burchmore: You think it is pretty high?

Mr. Castleman: Yes, sir, the price that timber is.

Examiner Burchmore: Who owns this railroad?

Mr. Castleman: I could not really tell you. It has been my understanding that the Gideon-Anderson and the United
4928 States Cooperage Company. I was there when they first hatched. I have been there fifty years, and that was my understanding all the while.

Examiner Burchmore: Did you ever work for the Gideon-Anderson Company?

Mr Castleman: No, sir, never worked there a minute for them.

Examiner Burchmore: Did you ever work for the United States Cooperage Company?

Mr. Castleman: Not any more than just saw by the thousand for them.

Examiner Burchmore: You run your mill for them at times?

Mr. Castleman: Oh, yes, they have a good deal of sawing done, and I sawed by the thousand.

Examiner Burchmore: They have always treated you well?

Mr. Castleman: Oh, he is a nice man.

Mr. Walter: Did the railroad say anything to you about extending the railroad up into Section 15 to reach certain timber you have up in there?

Mr. Castleman: Well, Mr. Diercks, a member of the firm, told me the other day they were going to run it up there if they could.

4929 Mr. Walter: You have some timber up in there?

Mr. Castleman: I spoke for it and have the refusal of it.

Examiner Burchmore: What firm is Mr. Diercks a member of?

Mr. Castleman: A stockholder in the United States Cooperage company, or said to be.

Examiner Burchmore: Have you heard that this railroad is going to be taken up when they get through cutting the timber?

Mr. Castleman: No.

(Witness excused.)

MARTIN WALSH, was called as a witness, and having been duly sworn, testified as follows:

Mr. Gaughan: Shall I proceed with the examination?

Examiner Burchmore: Yes.

Mr. Gaughan: Mr. Walsh, I wish you would state where the Memphis, Dallas & Gulf Railroad is located and give a general description of its physical condition.

Mr. Walsh: With the permission of the Commission I will file a map of it which shows actually where it is built and where it is not built. This map was issued by the State Commission of Arkansas, and shows plainly on there where it was built and where it was not built.

(The map so offered and identified, was received in evidence thereupon marked Memphis, Dallas & Gulf Exhibit No. 1, Witness Walsh, received in evidence January 25, 1911, and is attached hereto.)

Mr. Gaughan: This road runs from Ashdown through Nashville to Murfreesboro in the State of Arkansas?

Mr. Walsh: Yes, sir.

Mr. Gaughan: What size towns are Murfreesboro and Nashville and Ashdown?

4931 Mr. Walsh: Well, Nashville is about 3,000 and Ashdown about 2500, and Murfreesboro about 700.

Mr. Gaughan: Nashville is the county seat of what county?

Mr. Walsh: Howard County.

Mr. Gaughan: And Murfreesboro?

Mr. Walsh: The county seat of Pike County.

Mr. Gaughan: What county is Ashdown in?

Mr. Walsh: County seat of Little River County.

Mr. Gaughan: In what manner is this railroad constructed?

Mr. Walsh: The railroad was built by the T. M. Dodson Construction Company, who built a part of the Iron Mountain and the Kansas City Southern Railroads, old time contractors.

Mr. Gaughan: Standard gauge road?

Mr. Walsh: Standard gauge road.

Mr. Gaughan: What weight of steel?

Mr. Walsh: 60 pound is the lightest.

Mr. Gaughan: Is the track ballasted?

Mr. Walsh: It is a better road than any connection we have got, that is the Kansas City Southern, the Frisco and the Iron Mountain, in better physical condition. The roadbed shows for itself, we do not have to say what it is, we know it is right there.

Mr. Gaughan: What rivers does it cross?

4932 Mr. Walsh: The Little Missouri and the Little River.

Mr. Gaughan: What character of bridges are built across those streams?

Mr. Walsh: Steel.

Mr. Gaughan: Do you know when this road was incorporated?

Mr. Walsh: In 1903, first.

Mr. Gaughan: Has the authorized amount of stock been increased?

Mr. Walsh: Yes.

Mr. Gaughan: Since the original incorporation?

Mr. Walsh: Yes, sir.

Mr. Gaughan: What is the present authorized capital?

Mr. Walsh: $7,875,000.

Mr. Gaughan: State to what points this road is projected?

Mr. Walsh: The road has been surveyed from Red River to Terrell, Texas.

Mr. Gaughan: I do not mean the survey alone.

Mr. Walsh: Well, we figure on building that line from Dallas, Texas, to Memphis, Tenn., and then constructing that line from Dallas to the Gulf, and we may go to Hot Springs, but I don't know, so many people have started there we do not want to go.

Mr. Gaughan: What amount of donations have been act-
4933 ually subscribed to that road by the cities and town- through which it is projected?

Mr. Walsh: Something over a million dollars.

Mr. Gaughan: I wish you would state, if you have it in convenient form, the amount and character of tonnage carried by the Memphis, Dallas & Gulf during its last fiscal year?

Mr. Walsh: In the last fiscal year the total tonnage was 446,894 tons.

Mr. Gaughan: Please briefly state what it consists of, as to the class of the tonnage.

Mr. Walsh: I could not say that because we handle everything.

Mr. Gaughan: Read it out.

Mr. Walsh: Well, it will show for itself.

Mr. Gaughan: I want it to go in the record.

Mr. Walsh: I propose to file it as part of the record.

Mr. Gaughan: What part of it is lumber?

Mr. Walsh: 7.78 per cent by the community of interests.

Mr. Gaughan: Which was the item of tonnage that was the heaviest, what item of tonnage did you carry that exceeded any other item?

Mr. Walsh: Sand and gravel.

Mr. Gaughan: How many bales of cotton did you handle?
4934 Mr. Walsh: About 15,000 a year.

(The paper so offered and identified, was received in evidence and thereupon marked Memphis, Dallas & Gulf Exhibit No. 2, Witness Walsh, received in evidence January 25, 1911, and is attached hereto.)

Examiner Burchmore: What line are you talking about?

Mr. Walsh: The Memphis, Dallas & Gulf.

Examiner Burchmore: From Ashdown to Murfreesboro?

Mr. Walsh: In that particular sense, yes, sir.

Examiner Burchmore: You mean also including also the line out of Graysonia?

Mr. Walsh: No, because that was not in our physical report, at that time we did not own it.

Examiner Burchmore: You do not include the line that used to be——

Mr. Walsh: The Ultima Thule. Simply the Memphis, Paris & Gulf, because of course we have not got the statement for that road. This shows we handled 59,866 revenue passengers during that time on which we collected $24,488.54.

extent of an identity of stock ownership between the Memphis, Dallas & Gulf acquired any other railroads from other railroad companies?

4935 Mr. Walsh: Yes, sir, it has purchased the Antoine Valley and the Ultima Thule, Arkadelphia & Mississippi River Railroad.

Mr. Gaughan: Is the Antoine Valley constructed along the proposed route of the Memphis, Dallas & Gulf?

Mr. Walsh: Yes, sir, it is.

Mr. Gaughan: What amount of construction is necessary to connect the Antoine Valley and the Memphis, Dallas & Gulf at the Murfreesboro terminal?

Mr. Walsh: 18 miles, which we are working on now.

Mr. Gaughan: What amount of construction will be necessary in order to connect up from the eastern terminus of the Antoine Valley to the western terminus of the Ultima Thule, Arkadelphia & Mississippi River?

Mr. Walsh: About 28 miles. We have purchased terminals in Arkadelphia, part of our terminals have already been purchased. In fact our friends, the Iron Mountain, are suing us for them now.

Mr. Gaughan: Was the Memphis, Dallas & Gulf constructed as a lumber road primarily?

Mr. Walsh: No, it never was built into the timber interest owned by the community of interests; it never went through a mile of its timber and never was built in that direction.

4936 Mr. Gaughan: Is there a community of interests to the extent of an identity of stock ownership between the Memphis, Dallas & Gulf and the Nashville Lumber Company?

Mr. Walsh: Yes, sir.

Mr. Gaughan: Otherwise than that was there any connection between the railroad and the lumber concern?

Mr. Walsh: Not a bit; they are operated entirely independently.

Mr. Gaughan: Is it not a fact that the men in the two companies are entirely separate and distinct to this extent, that some of the stockholders are lumber men and some of them are railroad men and the railroad men look after the railroad and the lumber men look after the lumber.

Mr. Walsh: That is true in a general sense, yes.

Mr. Gaughan: I wish you would furnish a list of the principal enterprises located along this line.

Mr. Walsh: There are about 35 or 40 different concerns located on our line.

Examiner Burchmore: You mean on the old Memphis, Paris & Gulf?

Mr. Walsh: On all of them. We consider all of them as one, because we have to stand the expenses of all of them. I think you have that.

4937 Mr. Gaughan: No, I gave it back to you.

Mr. Walsh: There are 35 or 40 different industries located on the line anyhow. I do not find it here, but that can be added. I can get that at any time.

Mr. Gaughan: Are there any bonds on the Memphis, Dallas & Gulf?

Mr. Walsh: Yes, sir.

Mr. Gaughan: What amount?

Mr. Walsh: $420,000.

Mr. Gaughan: Do you know how much has been sold?

Mr. Walsh: That much.

Mr. Gaughan: In these enterprises, a list of which you have agreed to furnish, how many are the stockholders of this railroad company in any way interested in?

Mr. Walsh: Only in two.

Mr. Gaughan: Which are those two?

Mr. Walsh: The Graysonia & Nashville Lumber Companies, two mills. There are 27 or 30 mills they have no interest whatever in.

Examiner Burchmore: Where are those two mills located?

Mr. Walsh: One at Graysonia and one at Nashville.

Mr. Gaughan: I have a letter here written by Captain C. C.

4938 Henderson, who is unable to attend this hearing. He lives at San Antonio. He is the moving spirit in this railroad project. He has written a letter to Mr. Walsh. This letter was written the 20th day of January. I do not want to take up time by reading the letter, but I want it copied in the record.

Examiner Burchmore: I would like to look at it.

Mr. Gaughan: It tells the history of the railroad construction.

Examiner Burchmore: Do you think it is necessary to copy it into the record.

Mr. Gaughan: I do not think it is necessary, but yet I think it is entirely proper that the Commission ought to have the benefit of what is said in that letter in order to have a clear idea of the true status of this railroad company.

Examiner Burchmore: I will permit it to be filed as an exhibit but cannot allow it to be copied into the record.

Mr. Gaughan: Will you let the record show that we request it to be copied into the record, and then let it be attached as an exhibit?

Examiner Burchmore: Yes.

(The letter so offered and identified, was received in evi-

4939 dence and thereupon marked Memphis, Dallas & Gulf Exhibit No. 3, Witness Walsh, received in evidence January 25, 1911, and is attached hereto).

Examiner Burchmore: You have read that letter and believe the statements therein to be true in every particular?

Mr. Walsh: So far as I know they are absolutely true.

Mr. Gaughan: I will ask you to file your time tables in connection with your evidence, and you may say how many trains are operated daily over this road?

Mr. Walsh: At the present time we operate about 12 trains a day.

(The time table so offered and identified was received in evidence and thereupon marked Memphis, Dallas & Gulf Exhibit No. 4, Witness Walsh, received in evidence January 25, 1911, and is attached hereto).

Examiner Burchmore: From where and to where?

Mr. Walsh: From Ashdown to Murfreesboro, Nashville to Prescott, or Tokio, over the Prescott & Northwestern, Graysonia to McLeod and from Nashville to Sparkman.

Examiner Burchmore: The Prescott & Northwestern testified, as I recall their testimony, that they operated that train.

Mr. Walsh: They could not operate it without operating
4940 over our track and with an agreement with us.

Examiner Burchmore: They said they had an agreement by which you used their rails and they operated the trains?

Mr. Walsh: No, they use our rails.

Examiner Burchmore: Yes, but they operate the trains.

Mr. Walsh: Yes, but we consider it a train on our line.

Examiner Burchmore: I want to know how many trains you operate on your own line.

Mr. Walsh: I will tell you how many we operate. We have commenced to cut down our grade to .8 of one per cent, and before we tried to cut them down we operated 14 trains a day between Tokio and Ashdown, and since we have commenced cutting the grade down to .8 per cent, we have taken off trains in order that they would not interfere with the construction work.

Mr. Gaughan: Do you still operate a passenger train from Nashville or Murfreesboro to Texarkana?

Mr. Walsh: No, we took that off on account of our construction work.

Mr. Gaughan: Where do you operate it to?

Mr. Walsh: From Ashdown to Murfreesboro, and from Bellville to Sparkman.

4941 Mr. Gaughan: On what road is Ashdown?

Mr. Walsh: The Prescott & Northwestern, the Kansas City Southern, and the Memphis, Dallas & Gulf.

Mr. Gaughan: What railroad do you connect with at Nashville?

Mr. Walsh: The Iron Mountain.

Mr. Gaughan: What railroad do you connect with at Murfreesboro?

Mr. Walsh: None.

Mr. Gaughan: At Murfreesboro no other railroad serves the town except the Memphis, Dallas & Gulf?

Mr. Walsh: That is all.

Mr. Gaughan: I believe that is all I care to ask.

Examiner Burchmore: How many trains are operated over the old Antoine Valley at the present time?

Mr. Walsh: Nothing but the logging trains.

Examiner Burchmore: How about the Arkadelphia & Ultima Thule?

Mr. Walsh: That is a mixed passenger train service.

Examiner Burchmore: One train each way a day?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Could you furnish us with a list of
4942 the stockholders of the Memphis, Dallas & Gulf Railroad.

Mr. Walsh: Yes, sir.

Examiner Burchmore: Can you advise us and furnish a list of the stockholders of the Nashville Lumber Company?

Mr. Walsh: Well, that has been changed to the Graysonia & Nashville Lumber Company. I suppose that is what you want.

Examiner Burchmore: Yes.

Mr. Walsh: Yes, certainly.

Examiner Burchmore: Have you that list of industries with you?

Mr. Walsh: I haven't it here. It must be up in the room, but I will see that you get it.

Examiner Burchmore: I really wanted to know who they were, that is all.

Mr. Walsh: I could tell you lots of them personally that I know of.

Mr. Gaughan: Just name them.

Mr. Walsh: The Stevenson Company, J. C. Major, M. B. Lopidock——

Examiner Burchmore: Suppose we defer that and file your list later.

Mr. Walsh: Very well.

Examiner Burchmore: I have been reading this letter,
4943 Exhibit No. 3, and I think it had better be spread on the record, as it contains matters of information.

Mr. Gaughan: We think it should go in.

Examiner Burchmore: I think I will read a portion of it:

"In 1882 I conceived the idea of building a railroad across the southern part of Arkansas. Joined by some personal friends we had an instrumental survey made from the Mississippi River on the East to Red River on the west. Southern Arkansas being largely undeveloped at that time we were unable to finance the scheme.

In 1886 Dr. J. W. Brown of Camden and myself projected the Camden and Alexandria Railroad from Camden to El Dorado, Arkansas. This road was completed in 1890 and absorbed by the St. Louis, Iron Mountain and Southern Railroad Co. one year thereafter. It is now a part of their line from Gurdon, Arkansas to Natchez, Mississippi.

At this point my former associate withdrew. Undiscouraged however in the purpose to gratify my taste for railroad building I succeeded in interesting others and the Arkansas Southern Railroad Co. was organized and the road chartered. When out with our construction a few miles south of El Dorado Dr. J. W. Brown and others interested themselves with us in the new enterprise.

4944 The Arkansas Southern was completed from El Dorado, Ark., to Winnfield, La., distance one hundred and one miles. So direct was this line built that it did not depart from the range in which El Dorado is situated, between El Dorado and Winnfield, except in one place for a distance of half a mile. El Dorado and Winnfield being in the same range.

Our financial arrangements were practically completed for the building of the Arkansas Southern north from El Dorado to Little Rock and south from Winnfield to Colfax or Alexandria. At this juncture, however, a disagreement arose among the stockholders of the road and to avoid litigation the road was sold to the Rock Island Railroad Co. and is now a part of that system. This sale took place in 1903.

Immediately after the sale of the Arkansas Southern the old project to build a road across the southern part of Arkansas was revived. Accordingly the Memphis, Paris and Gulf Railroad Co. was organized in 1903 and a charter taken for the road. The incorporators of this new Company did not own an acre of timber and had no intention of buying any timber. The development of this enterprise was materially delayed by the death of Dr. J. W. Brown. The examination of the country to be traversed by the M. P. & G. was however not abated and in 1905 a proposition was made

4945 Pine Bluff to begin the construccion of the road west from that place. Pine Bluff did not accept our offer to them. Stockholders of the railroad company did not at that time have any interest in timber nor any plans for buying timber.

In the latter part of 1905 we were solicited by the citizens of Nashville, Ark., to begin our construction at that point and build west to Ashdown, Ark., which would give them an outlet over the Kansas City Southern and Frisco Railroads. A bonus was offered us by Nashville of about $20,000.00 and options of purchase of a large tract of timber land at about half its market value at that time. Securing tonnage, and tieing it on to our road, appealed to us and we accepted the proposition."

Do you understand by that last proposition that Mr. Henderson and his associates purchased quite a tract of timber in this country, and at the same time that they built towards Nashville and obtained this $20,000 bonus.

Mr. Walsh: No, they built out of Nashville and obtained the timber afterwards. What I wanted to explain to you is this, that the railroad proper has never been built into the timber interests or into the holdings of the timber interests. The Graysonia & Nashville Lumber Company owns its own independent railroad

4946 and its own locomotives and its own cars and own train crews, and receive no divisions.

Examiner Burchmore: We will come to that in a minute. I just want to finish this letter:

"The line between Nashville and Ashdown was at once located and built the most direct and practical route being adopted, without reference to timber. Distance 27 miles. In 1908 we built east to Murfreesboro from Nashville, distance 15 miles, the most direct and

practical route being used. The railroad company owned no timber east of Nashville nor had it ever owned any timber east of Nashville. In fact the railroad company at this time owned no timber, having sold its acquired holdings under the Nashville option to the Nashville Lumber Co. in 1906."

Then the purchase of timber referred to in the preceding paragraph of this letter was made not by Mr. Henderson personally or by the Nashville Lumber Company, but it was made by this railroad and later turned over to the lumber company.

Mr. Walsh: I do not know how you would figure it that way. The interests were exactly the same, but with the railroad is an entirely separate proposition and is a railroad.

4947 Examiner Burchmore: He then proceeds to point out that the preliminary work has been done at heavy expense towards the direction of Memphis, Tennessee and Dallas, and surveys have been made, and so forth.

"During 1909 & '10 preliminary work at heavy expense has been pushed forward between Memphis, Tenn., and Dallas, Texas, by this company. The line has been surveyed during this time between Ashdown, Ark., and Terrell, Texas. Location has been made east of Murfreesboro 20 miles, the right of way having also been secured almost the entire distance between Memphis and Terrell, Texas. Construction would have been in progress now east of Murfreesboro had it been decided after this location was completed that a better line could be secured further north which is now being surveyed. The latter line will cross the I. M. three miles north of Graysonia, the crossing of the first location.

In every particular, in the location and construction of this line, the essential characteristics of a purely commercial road to become a trunk line between Memphis, Tenn., and Dallas, Texas, have been scrupu-ously observed and complied with, as to alignment, curvature, grade, roadbed, bridges, rail and other essentials. Our line was projected as a common carrier, is being constructed and

4948 equipped as a common carrier, is performing the service daily as a common carrier, and is as truly entitled to the designation and recognition as much as any railroad in America. A large percentage of our most important systems of railroads began in a small way and moved slowly in their first stages but this did not or does not make them any less valuable to the communities they serve neither does it lessen their claims to a recognition as common carriers or trunk lines, or bona fide railroads.

The interest in timber and mills held by the stockholders of this railroad company is entirely incidental to the construction of the road and has no other significance except the attractiveness of tonnage to any railroad old or new. No concessions of any kind have been given at any time to the Nashville Lumber Company on account of the stockholders in the railroad company owning stock in the mill company.

In 1910 the Antoine Valley and the Ultima Thule roads were purchased by the M. D. & G. Co. and will be made links in the main line just as soon as the gaps can be filled in. If however the north

line is adopted out of Murfreesboro only a part of the Antoine Valley will be used as main line of the M., D. & G., the other being used as a spur to get into the mill at Graysonia. Both of these short
4949 lines are constructed almost in direct line with the original plans and direction of the M., P. & G. and was bought much cheaper than they could be built, or paralleled. The Ultima Thule was bought at half its original cost, having served its purpose as a mill road and was no longer of value to its owners.

I write in detail to show conclusively that the M., D. & G. Railroad is in no way an adjunct of or contributary to any lumber interests, and that holdings in the Nashville-Graysonia Lumber Company by some of the stockholders of the railroad company is due entirely to an outgrowth or secondary enterprise to a legitimate and bona fide commercial railroad undertaking, without reference in any way to industrial enterprises only so far as they do contribute to the well being of the railroad and development of the country being traversed.

Here it might be prudent for me to say that had my health not failed three years ago to such an extent as to compel me to give up for the time being active work that the M., D. & G. Railroad would have been completed and in operation before this from Memphis, Tenn. to Dallas, Texas. It is my first railroad effort and will likely be my last but I am determined to complete it unless defeated by a misconception and adverse ruling of our honorable I. C. C. This I do not apprehend if proper investigation is had."

4950 Examiner Burchmore: Are you an officer of the Nashville Lumber Company?

Mr. Walsh: No.

Examiner Burchmore: Or of, the Graysonia & Nashville Lumber Company?

Mr. Walsh: No.

Examiner Burchmore: Let me see that map.

Mr. Walsh: What I wanted to show you was this, here is the Memphis, Dallas & Gulf, or a part of it, and here is the Graysonia-Nashville Lumber Company running up into their timber (indicating).

Examiner Burchmore: I would like to ask a few questions with respect to the old Memphis, Paris & Gulf before it was taken over. The Memphis, Paris & Gulf ran through no timber district belonging to the Nashville people?

Mr. Walsh: I will tell you, the Memphis, Paris & Gulf Railroad was built from Nashville to Mineral Springs. All those towns are from 70 to 80 years old, and it was built through irrespective of any timber holdings. There is more independent timber in that vicinity than there is that is owned by the combined community of interests.

Examiner Burchmore: But the Nashville Lumber Company had quite a comprehensive system of private logging roads that
4951 connected at different points with the Memphis, Paris & Gulf, and extended out into their woods.

Mr. Walsh: They have right now, yes, sir, about 30 miles, or

something like that. They have four locomotives of their own, and I expect 125 or 130 cars of their own.

Examiner Burchmore: One of the mills of the Nashville Lumber Company is located at Nashville?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How near to the tracks of the connecting carrier at that point?

Mr. Walsh: It is on the line of the Memphis, Dallas & Gulf.

Examiner Burchmore: How far is the mill from the Iron Mountain?

Mr. Walsh: About half a mile. They have no track connection there though.

Examiner Burchmore: How are the logs gotten into the mill at Nashville?

Mr. Walsh: Under that statement I have handed you, we charged them $5.00 a car for bringing them from the junction.

Examiner Burchmore: You haul the logs in from the junction?

Mr. Walsh: We do not haul them, but we charge them $5.00 for using our track.

Examiner Burchmore: A trackage contract?

4952 Mr. Walsh: Yes, sir.

Examiner Burchmore: Was that contract filed with the Commission?

Mr. Walsh: There was no contract, it was a tariff filed with the Arkansas State Commission. Since that time you will find in our annual report we have made an agreement to handle the same thing for 50 cents.

Examiner Burchmore: Per mile?

Mr. Walsh: For the car.

Examiner Burchmore: For the whole haul or how much?

Mr. Walsh: For the whole haul. It has never been approved of, and I do not believe it has ever been signed.

Examiner Burchmore: That $5.00 charge you refer to covered Schaal?

Mr. Walsh: Or Matthews, or any place they moved timber in from.

Examiner Burchmore: Regardless of distance?

Mr. Walsh: Under 50 miles.

Examiner Burchmore: Did you have any over 50 miles?

Mr. Walsh: No, but at the same time we charged just the same for half a mile as for 18 or 20 miles.

Examiner Burchmore: The Memphis, Dallas & Gulf spotted the empty cars at Nashville for loading to the mill?

4953 Mr. Walsh: Yes, sir.

Examiner Burchmore: Those are furnished by the Iron Mountain?

Mr. Walsh: We have some of our own cars, and of course we get our equipment from our connections.

Examiner Burchmore: Are those cars all over the United States on lines of other roads?

Mr. Walsh: You mean our cars?

Examiner Burchmore: Yes.

Mr. Walsh: Only two of them, I believe.

Examiner Burchmore: You have two cars which you let go off your rails?

Mr. Walsh: I understand they got away by mistake, but I want to say to the Commission now that you have to pay for your cars anyhow, the company that gives you a car is not losing any money.

Examiner Burchmore: You pay per diem?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How much per day?

Mr. Walsh: The regular rate, whatever it is, but we have to pay it.

Examiner Burchmore: How far do you move the empty
4954 car and loaded car at Nashville from and to the mill and from and to the Iron Mountain?

Mr. Walsh: About half a mile.

Examiner Burchmore: What do you receive for that service?

Mr. Walsh: We get divisions which run up to six and one-half cents. I would say our general average is about five and a half cents.

Examiner Burchmore: What is the lowest division you receive?

Mr. Walsh: About four cents on anything that moves.

Examiner Burchmore: Four to six and one-half cents?

Mr. Walsh: Something like that.

Examiner Burchmore: You haul it half a mile?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How far does the Iron Mountain haul it?

Mr. Walsh: It depends where it goes; that is only out of that one mill.

Examiner Burchmore: I am asking about that one mill.

Mr. Walsh: Supposing that stuff comes from Ashdown, we haul it 27 miles and give it to them.

Examiner Burchmore: Where is your usual market for lumber from Nashville, where does most of it go?

4955 Mr. Walsh: I could not say.

Examiner Burchmore: What is a usual junction point for the Iron Mountain to take it to?

Mr. Walsh: Thebes.

Examiner Burchmore: The Iron Mountain hauls it all the way to Thebes?

Mr. Walsh: Yes, sir.

Examiner Burchmore: What do they get for hauling it to Thebes?

Mr. Walsh: They get the balance after what we get.

Examiner Burchmore: Do you know what that balance is?

Mr. Walsh: That is about 14 cents.

Examiner Burchmore: About 14 cents is the balance?

Mr. Walsh: Yes.

Examiner Burchmore: What is the length of their haul to Thebes?

Mr. Walsh: I do not know exactly.

Examiner Burchmore: 1000 miles or 500 miles.

Mr. Walsh: Well, I know it is not 500 miles.

Examiner Burchmore: I have not any idea.

Mr. Walsh: I know it is not 500 miles and it is not a thousand,

of course, because it is only 590 miles from here to Texarkana,
4956 and I know it is less than that.

Examiner Burchmore: Do you know how many cars you handle from the mill at Nashville in the course of a year?

Mr. Walsh: I could not say. I imagine 100 cars, or something like that.

Examiner Burchmore: You have another mill on this division of your system located at Graysonia?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Where is Graysonia?

Mr. Walsh: It is on the Gurdon & Fort Smith Division of the Iron Mountain.

Examiner Burchmore: That Gurdon & Fort Smith Division was formerly owned by Mr. Henderson or his lumber company according to his letter, as I remember it.

Mr. Walsh: No, that was the line below Camden, from Camden into El Dorado.

Examiner Burchmore: The Grayson-McLeod Lumber Company used to control that lumber company?

Mr. Walsh: I don't know.

Examiner Burchmore: Well——

Mr. Gaughan: The Grayson-McLeod people owned that mill and also owned that railroad.

Examiner Burchmore: That is on an entirely different
4957 part of your system?

Mr. Walsh: Now let me say something on that proposition——

Examiner Burchmore: Let us dispose of the Ashdown, Murfreesboro line before we run to the other part of the system.

Mr. Walsh: I do not think you have gone into it far enough yet.

Examiner Burchmore: All right, I want to know some more about it.

Mr. Walsh: You said where do we haul it to give it to the Iron Mountain. We do not have to give it to the Iron Mountain.

Examiner Burchmore: To whom else could you give it?

Mr. Walsh: We could haul it to Ashdown and give it to the Kansas City Southern or the Frisco, if we wanted to.

Examiner Burchmore: Do you do that?

Mr. Walsh: Sometimes.

Examiner Burchmore: How far is that haul?

Mr. Walsh: 28 miles.

Examiner Burchmore: What is your division?

Mr. Walsh: Five cents.

Examiner Burchmore: You do not haul it 28 miles and get five cents when you could haul it half a mile and get five cents?

4958 Mr. Walsh: Well, we just do.

Examiner Burchmore: What extent, what movement out in that direction is there?

Mr. Walsh: Just as I see fit to make it, it is up to me how much goes that way, and I am not going to treat my friends at the other end any better than I do at Nashville.

Examiner Burchmore: Then the lumber company does not regulate the routing of this stuff?

Mr. Walsh: No, I route it.

Examiner Burchmore: What proportion of the traffic is turned over to the Iron Mountain at Nashville, and what proportion goes through Ashdown?

Mr. Walsh: I split it up as near as I can.

Examiner Burchmore: Have you any contracts requiring you to split it up?

Mr. Walsh: No.

Examiner Burchmore: Have you any contracts between the Memphis, Paris & Gulf or the Memphis, Dallas & Gulf with the Frisco?

Mr. Walsh: No, sir, no contracts of any character whatever with any line.

Examiner Burchmore: Is that five cents you received for hauling a car from Nashville to Ashdown adequate revenue?

4959 Mr. Walsh: I don't know about that. I am going to get all I can.

Examiner Burchmore: Well, do you think you ought to have more?

Mr. Walsh: Yes, if I could get it.

Examiner Burchmore: Do you lose money in hauling it down there at that rate?

Mr. Walsh: I don't know about that.

Examiner Burchmore: Do you know what the Frisco charges for hauling it from Ashdown to Memphis? They have a line to Memphis, I suppose?

Mr. Walsh: Yes.

Examiner Burchmore: Do you know what they get?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How much?

Mr. Walsh: They get the difference between our division and what the through rate is.

Examiner Burchmore: What is the through rate?

Mr. Walsh: The through rate at the present time is 16 cents.

Examiner Burchmore: And you get how much?

Mr. Walsh: Five cents.

Examiner Burchmore: And they get 11 cents?

4960 Mr. Walsh: Yes, sir.

Examiner Burchmore: You haul it 28 miles?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How far do they haul it?

Mr. Walsh: I don't know, about 600 or 700 miles, I guess; it is a long way around that way.

Examiner Burchmore: When you couple up the lines of your system and have the through lines from Nashville to Memphis, what will your mileage be?

Mr. Walsh: 442 miles.

Examiner Burchmore: And you will get 16 cents for hauling lumber up there?

Mr. Walsh: We expect to. Now I want to say we have connections, we have got to haul lumber for two cents some places.

Examiner Burchmore: From where to where?

Mr. Walsh: Take a car of lumber that originates on the Prescott Northwestern, we have to handle that under a joint proposition.

Examiner Burchmore: I was going to ask about that, but wanted to get through with the Nashville mill if I could. They draw logs for the Nashville mill from this private logging road which runs from Schaal north to——

4961 Mr. Walsh: Yes, sir, but you know those logging roads are taken up. Of course, 10 or 12 miles will stay down all the time, but they take them up at the end and put them here and there where the timber is.

Examiner Burchmore: Does the Graysonia-Nashville Lumber Company receive any allowance whatsoever on account of this haul of the logs?

Mr. Walsh: Not one cent. They have asked for it several times though.

Examiner Burchmore: What logging roads have they besides those that connect with your line at Schaal?

Mr. Walsh: They have the one at Matthews and Graysonia and Leard.

Examiner Burchmore: Where is Matthews?

Mr. Walsh: Down below White Cliffs, just below Schaal on that map. They have about six miles.

Examiner Burchmore: Between Ashdown and White Cliffs?

Mr. Walsh: Between Ashdown and White Cliffs, which will probably be extended, they will probably run it down 15 miles.

Examiner Burchmore: But the only mill that the Graysonia-Nashville Lumber Company has on this particular division is that at Nashville?

Mr. Walsh: Yes, sir.

4962 Examiner Burchmore: What other mill on that line?

Mr. Walsh: The Stephenson Lumber Company, Major Stave Company, Haight & Sons Lumber Mill, Loperdock Lumber Company, Odell Lumber Company, and several others.

Examiner Burchmore: Do they have any private logging roads?

Mr. Walsh: No.

Examiner Burchmore: How do they get logs into the mill?

Mr. Walsh: Haul them in by team.

Examiner Burchmore: What is the capacity of those mills?

Mr. Walsh: Small. Most of them are small, although the Stephenson and the Major Stave Company are very large mills.

Examiner Burchmore: What do you suppose it costs them to get their logs to their mills?

Mr. Walsh: I have not any idea.

Examiner Burchmore: More than it costs the Graysonia-Nashville Company?

Mr. Walsh: I do not think it costs them as much. They have not got the capital invested.

Examiner Burchmore: Those mills are of a temporary character?

Mr. Walsh: No.

4963 Examiner Burchmore: Permanent?

Mr. Walsh: Practically, yes, sir; that is I would say they are practically permanent.

Examiner Burchmore: Are there any other private logging roads which connect with your line from Ashdown to Murfreesboro?

Mr. Walsh: No, although we have a man coming in who has asked for those same contracts we have — the lumber company, and he will get the same thing if he comes in.

Examiner Burchmore: The Prescott & Northwestern connects with your line at Tokio?

Mr. Walsh: Yes, sir.

Examiner Burchmore: How long have you had such a connection?

Mr. Walsh: About two years.

Examiner Burchmore: Do you have any joint rates on lumber in connection with them?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Do you turn any business over to them or do they turn it all over to you?

Mr. Walsh: Both ways, both give and take.

Examiner Burchmore: Do you know what the volume of the movement is in each direction?

Mr. Walsh: It does not amount to very much, but it is

4964 growing.

Examiner Burchmore: What lumber do you turn over to the Prescott & Northwestern?

Mr. Walsh: None.

Examiner Burchmore: You do not give them any lumber?

Mr. Walsh: No, they give us lumber.

Examiner Burchmore: Where is it destined?

Mr. Walsh: Fort Smith and different points.

Examiner Burchmore: How many carloads a month do you receive? Have you any idea?

Mr. Walsh: Not very many. I expect it will grow, though.

Examiner Burchmore: Two or three a month?

Mr. Walsh: Yes, more than that, I guess.

Examiner Burchmore: What advantage is it to the Prescott & Northwestern to deliver lumber to you at Tokio rather than to the Iron Mountain at Prescott?

Mr. Walsh: I suppose the lumber originates with them about four miles from Tokio. Why should they haul it to Prescott when they can consign it out by our line on the same rate and divisions?

Examiner Burchmore: Is it your impression they give you more lumber than the Iron Mountain?

Mr. Walsh: We know they do not.

4965 Examiner Burchmore: Why not?

Mr. Walsh: Because their mill is located at Prescott.

Examiner Burchmore: I thought the mill was nearer Tokio.

Mr. Walsh: No.

Examiner Burchmore: What advantage is there in giving you the lumber?

Mr. Walsh: Why shouldn't they? Say it originates west of Tokio, what would they want to haul it 40 miles for, when they can give it to us and haul it four?

Examiner Burchmore: Have they any lumber mills west of Tokio?

Mr. Walsh: No, but they have timber which originates there.

Examiner Burchmore: They give you the logs?

Mr. Walsh: It is a rough proposition, bolts or something like that, staves or stave bolts.

Examiner Burchmore: But no lumber comes to you?

Mr. Walsh: No finished lumber. Now I do not say no finished lumber, because they do ship some finished lumber too.

Examiner Burchmore: When you receive a carload of staves at Tokio from the Prescott & Northwestern, what division do you receive and what do they get?

Mr. Walsh: We get two and three cents, and they get four cents or five cents. We pay them just whatever the Iron Moun-
4966 tain would pay hem. It depends where the shipment goes. We have got to meet the situation as it exists.

Examiner Burchmore: But I thought you only got five or six cents out of the Frisco and the Iron Mountain.

Mr. Walsh: But this is a joint proposition, when it moves over the Prescott & Northwestern it is based on different divisions; we get two or three cents for our haul and they get the same as if they shipped by the Iron Mountain.

Examiner Burchmore: Then it is not a fact when you receive traffic from the Prescott & Northwestern that you divide your earnings with them?

Mr. Walsh: No.

Examiner Burchmore: But you get a certain payment and they get a certain payment.

Mr. Walsh: Yes, sir.

Examiner Burchmore: The trunk line gets less than if it came from a point on your line?

Mr. Walsh: Yes.

Examiner Burchmore: Is there anything else you wish to state about this line between Murfreesboro and Ashdown before we go to the next division?

Mr. Walsh: Nothing, only I want to make it plain that the busi-
ness of the community of interests on the entire line is only
4967 7.78 per cent of the whole.

Examiner Burchmore: Well, I do not think you have made it clear. You indicate, for example, that 250,980 tons of stone, sand and gravel moved over this line.

Mr. Walsh: Yes, sir.

Examiner Burchmore: Who owns the gravel pit which it came from?

Mr. Walsh: The Memphis, Dallas & Gulf Railroad.

Examiner Burchmore: To whom was it destined?

Mr. Walsh: It was sold to the Kansas City Southern, the Frisco, and the Iron Mountain Railroads.

Examiner Burchmore: What rate did you receive on that stuff?

Mr. Walsh: $5.00 a car.

Examiner Burchmore: Was it sold f. o. b. destination or point or origin?

Mr. Walsh: Sold f. o. b. at our junction with the other lines.

Examiner Burchmore: Then you paid yourself the $5.00, did you not?

Mr. Walsh: Yes.

Examiner Burchmore: Then that accounts for $27,067.23 out of your gross revenue of $118,815?

4968 Mr. Walsh: Yes.

Examiner Burchmore: I may ask you whether your counsel has ever advised you as to the applications, if any, of the so-called commodity clause in the Act to Regulate Commerce to the transportation of stone, sand and gravel by a railroad company?

Mr. Walsh: Not that I know of.

Examiner Burchmore: That stone, sand and gravel constitutes 56.16 per cent of the total tonnage, as I understand it?

Mr. Walsh: Yes.

Examiner Burchmore: But not revenue?

Mr. Walsh: Yes.

Examiner Burchmore: Under the heading of lumber you show other products of forests 135,096 tons. Is that logs?

Mr. Walsh: Yes. Logs and bolts and rough stuff.

Examiner Burchmore: How much of that was logs, in your opinion?

Mr. Walsh: I could not say; I guess 70 per cent of it, probably 65 or 70 per cent.

Examiner Burchmore: On that your revenue was $28,795.90. From whom did you collect that?

Mr. Walsh: Whoever the shipments were consigned to.

4969 Examiner Burchmore: Well, to whom were they consigned, in a large measure?

Mr. Walsh: I could not say that. They are consigned to everybody along the line.

Examiner Burchmore: Do you include in that the logs which moved on account of the mill at Nashville?

Mr. Walsh: Yes.

Examiner Burchmore: That includes this $5.00 per car charge?

Mr. Walsh: Yes, sir. It is my understanding that they pay cash just the same as anybody else.

Examiner Burchmore: What was the total amount you collected on such movement?

Mr. Walsh: I could not say any more than that statement shows.

Examiner Burchmore: This does not separate between stave bolts, and so forth.

Mr. Walsh: I could not say, it would be all a guess.

Examiner Burchmore: I want a guess; do you think it would be $25,000 that you got from the Nashville mill people for hauling their logs?

Mr. Walsh: I might as well guess at $100,000.

Examiner Burchmore: But there are only $28,000 total.

4970 Mr. Walsh: No, I would say not. I would say that is $18,000 probably. In fact I don't believe it will run that much.

Examiner Burchmore: Will you advise the Commission of the total amount of money paid to your company during the fiscal year ending June 30th, 1910, by or in the interest of or on account of the Graysonia-Nashville Lumber Company under that trackage arrangement between Schaal or other points, and Nashville?

Mr. Walsh: I will be very glad to.

Examiner Burchmore: By the total money paid, I mean of course the earnings that accrued on that business, whether it was paid or not. Some of it may have been carried in account in some way.

Mr. Walsh: What you mean is the revenue on that business which was handled during that period destined to them?

Examiner Burchmore: Yes. You have only got 7,090 tons of lumber. Was that the total output of that mill for a year at Nashville?

Mr. Walsh: I do not think that shows separate, does it?

Examiner Burchmore: I will ask you to explain this item in this statement, reading "Lumber 7,090 tons." Who furnished

4971 that lumber?

Mr. Walsh: All the different mills on the line.

Examiner Burchmore: Including the Nashville mill?

Mr. Walsh: Yes.

Examiner Burchmore: Then I ask you what is the total output of that mill at Nashville?

Mr. Walsh: Excuse me. Let me answer it. There is the total output of it right there (indicating).

Examiner Burchmore: 31,958 tons of lumber?

Mr. Walsh: Yes.

Examiner Burchmore: And the other figure, 7,090 tons is independent lumber?

Mr. Walsh: Outside lumber, yes, sir.

Examiner Burchmore: I see a lot of other items on here. For example, "Dressed meats, 119 tons." Was any part of that intended for the use at Nashville by the store owned by the Nashville Lumber Company?

Mr. Walsh: Not that I know of. I do not think any of it was.

Examiner Burchmore: Have they any company stores?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Where?

Mr. Walsh: Nashville.

4972 Examiner Burchmore: Have you included in this statement the tonnage transported for account of the company store at Nashville?

Mr. Walsh: The company store gets their principal business through the Iron Mountain and we do not touch it at all. Of course we do handle some business consigned to the store, but it is business which comes from Kansas City or in the west. Their principal business comes from Little Rock, and Arkadelphia, which we cannot handle.

Examiner Burchmore: You handled 204 tons of steel rail?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Where did that go?

Mr. Walsh: To the tap lines of the Graysonia Lumber Company.

Examiner Burchmore: In other words, in a substantial sense the figures carried at the bottom of the page and purporting to show traffic by the Nashville Lumber Company, are not exactly accurate?

Mr. Walsh: They are in that sense that they read there.

Examiner Burchmore: Just as they read?

Mr. Walsh: Yes, sir.

Examiner Burchmore: You have the Nashville Lumber Company's lumber and its other products separated, but you have
4973 not separated such items as steel rails intended for their logging spurs?

Mr. Walsh: Steel rails pay us revenue just the same as if it went to you or anybody else. It comes in under the tariff rates.

Examiner Burchmore: I understand, I was just commenting on this statement to try to bring out whether the statement at the bottom of the page that the Nashville Lumber Company shipments constitute 23.61 per cent of the revenue was correct?

Mr. Walsh: You will not find another item on the same page that you can say the same thing about that, though.

Examiner Burchmore: I do not know that I will, but I was simply examining the statement to see how complete it was.

Mr. Walsh: Of course rails are very prominent, they always show out on a short road.

Examiner Burchmore: Who used this 5,250 tons of coal?

Mr. Walsh: For our own company principally and the merchants along the line.

Examiner Burchmore: How much of that did you use, do you suppose?

Mr. Walsh: I expect four-fifths.

Mr. Gaughan: You mean the railroad?

Mr. Walsh: Yes, sir; the mill burns a good deal of their
4974 own refuse.

Examiner Burchmore: You have charged $3,000 plus for transporting 5,250 tons of coal, of which four-fifths was used by your road.

Mr. Walsh: Why shouldn't we? We get a division on our coal the same as if it went to somebody else.

Examiner Burchmore: I understand, but this is a tonnage and revenue statement.

Mr. Walsh: But it is part of our revenue if we get a division on it, and ought to appear in that statement.

Examiner Burchmore: This statement covers only this one division of the railroad and not the old Antoine Valley.

Mr. Walsh: Yes, sir. We did not have the other part of that railroad at that time.

Examiner Burchmore: I request, Mr. Gaughan, that you will furnish the Commission a little different statement than this, one indicating the total tonnage and total revenue from shipments

handled on account of the Nashville Lumber Company or anybody or any firm or enterprise in which it has an interest such as its company store, and also showing separately stated the revenue on shipments originated by or destined to independent mills or shippers or the general public, and showing as the third item if you so
4975 desire the tonnage and revenue of such things as coal used by the railroad itself, or the stone and sand from its gravel pits. This statement does not seem to be separated in that way.

Mr. Gaughan: I understand, but I had nothing to do with the preparation of that statement. I was employed just before noon in this case. But I will have it gotten up.

Examiner Burchmore: You will have it prepared?

Mr. Walsh: Well, I just hired the gentleman this afternoon, so I don't know——

Examiner Burchmore: I addressed him as counsel, thinking you would wish it forwarded through. Is there any line now built between Murfreesboro and Graysonia?

Mr. Walsh: We are working on the line right now.

Examiner Burchmore: Has the Graysonia-Nashville Lumber Company any private logging spurs up in that vicinity?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Where are they located?

Mr. Walsh: It runs out from Leard about five miles this way from Graysonia. We own the line from Graysonia out to McLeod.

Examiner Burchmore: When did you acquire it?

Mr. Walsh: July 1st.

4976 Examiner Burchmore: 1909?

Mr. Walsh: 1910.

Examiner Burchmore: Previous to that time who owned the mill at Graysonia?

Mr. Walsh: The Graysonia & McLeod Company.

Examiner Burchmore: Who owns it today?

Mr. Walsh: The Graysonia-Nashville Lumber Company.

Examiner Burchmore: When did they acquire that mill?

Mr. Walsh: I think the 1st of July, I am not sure.

Examiner Burchmore: On the same day the railroad was acquired?

Mr. Walsh: I think so, about that time.

Examiner Burchmore: The Graysonia-Nashville Lumber Company, let me ask whether it is your understanding that that is really a consolidation of two lumber companies?

Mr. Walsh: Yes, sir, it is. It is my understanding.

Examiner Burchmore: Were the persons who were interested previously in the two companies different persons?

Mr. Walsh: I do not understand that question just exactly.

Examiner Burchmore: I mean had there previously been a substantial identity of interests between the Graysonia Lumber Company and the Nashville Lumber Company?

4977 Mr. Walsh: No.

Examiner Burchmore: They were different people?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Different financial interests?

Mr. Walsh: Yes, sir.

Examiner Burchmore: And they combined into one big corporation?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Did anyone else come in with them?

Mr. Walsh: No.

Examiner Burchmore: Mr. C. C. Henderson was previously interested in the Nashville Lumber Company?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Did he have any interest in the Graysonia Lumber Company?

Mr. Walsh: Not that I know of. I do not think he did.

Examiner Burchmore: I requested a list of stockholders of the Graysonia-Nashville Lumber Company, and also of the Memphis, Dallas & Gulf Railroad. We would like those statements say as of date today or any convenient recent date. Could you also give us a list of the stockholders of the Graysonia Lumber Company as they were just previous to the transfer?

4978 Mr. Walsh: I do not know. I will ask for that information.

Mr. Gaughan: I will get it for you if I can.

Examiner Burchmore: I wish you would get it if you can.

Mr. Walsh: I think I can. I will say that the community of interests owns our railroad, there is not any question about it. They own it lock, stock and barrel.

Examiner Burchmore: How long will it be before the connection is made between the line at Murfreesboro and the line at Graysonia?

Mr. Walsh: It depends upon the financial conditions. We are trying to get the money now.

Examiner Burchmore: Are you engaged on it now?

Mr. Walsh: We are. We have our engineers on it now in fact.

Examiner Burchmore: You have not come to grading it yet?

Mr. Walsh: No.

Examiner Burchmore: The third length of this railroad is what was formerly the Arkadelphia & Ultima Thule?

Mr. Walsh: Yes. We got a *bag* there.

Examiner Burchmore: Have you any mill on that *bag*?

Mr. Walsh: We have five, but we only lose about $800 a month operating it.

4979 Examiner Burchmore: Who has a mill on that line?

Mr. Walsh: The Arkadelphia Mill Company, the Ohio Stave Company, and Miles & North.

Examiner Burchmore: Are any of those mills now owned by the Graysonia-Nashville Lumber Company?

Mr. Walsh: No.

Examiner Burchmore: From whom did the Memphis, Dallas & Gulf purchase the Arkadelphia, Ultima Thule & Mississippi River Railroad?

Mr. Walsh: From Grayson & McLeod.

Examiner Burchmore: Did Grayson & McLeod have any timber interests up there?

Mr. Walsh: They did years ago, but it has all been cut out many years ago.

Examiner Burchmore: What do those five mills do up there?

Mr. Walsh: Hardwood mills principally. Grayson & McLeod cut pine principally. Those are hard mills up there now, and of course some of that pine is growing up now that will be cut, I expect.

Examiner Burchmore: Where is the mill at Graysonia located?

Mr. Walsh: Well, it is about, I should say, 500 feet from the Iron Mountain's main line.

Examiner Burchmore: Does the Iron Mountain spot the
4980 empty cars to the mill?

Mr. Walsh: No, the Memphis, Dallas & Gulf does.

Examiner Burchmore: What divisions do you receive on that part of your railroad?

Mr. Walsh: Just the same as we do on the other; it is all the same, it is all one proposition.

Examiner Burchmore: What were the divisions before you acquired that railroad?

Mr. Walsh: I could not say.

Examiner Burchmore: You could not say whether they were less or more than they are now?

Mr. Walsh: I have understood some of them were more.

Examiner Burchmore: Are the rates on that division on the milling in transit basis?

Mr. Walsh: Yes, sir, all our rates are on the milling in transit basis, but we do not take advantage of it.

Examiner Burchmore: What, if anything, do you charge the Graysonia-Nashville Lumber Company for the hauling of the logs to Graysonia?

Mr. Walsh: That is the same proposition as on the main line, $5.00 a car, but they have a contract for 50 cents, which I do not think has been signed. You will find it in our annual report.

4981 Examiner Burchmore: The mills on the Arkadelphia Road, do they have the same rates and interstate divisions as apply from Arkadelphia on the Iron Mountain?

Mr Walsh: No.

Examiner Burchmore: An arbitrary higher?

Mr. Walsh: In some instances five cents higher, and in some three cents.

Examiner Burchmore: Can you not put in joint rates from points on that line?

Mr. Walsh: They are joint rates, but there is a discrimination against us.

Examiner Burchmore: Are you not able to remove that discrimination?

Mr. Walsh: We are going to try to get the Commission to do it. We do not know whether they will or not.

Examiner Burchmore: What is the reason for that discrimination?

Mr. Walsh: I don't know.

Examiner Burchmore: Of course, it is hardwood lumber, you say. What about the Graysonia mill, does that have the same rate that the Iron Mountain charges from its stations in that vicinity?

4982 Mr. Walsh: It does on some, and some it does not.

Examiner Burchmore: Tell me about the joint rates from that mill?

Mr. Walsh: You take the rate from Graysonia on the Iron Mountain to New York, it is 37 cents, and Graysonia on the Memphis, Dallas & Gulf it is about 46 cents.

Examiner Burchmore: Do you ship anything to New York?

Mr. Walsh: We cannot do it, the rate is against us.

Examiner Burchmore: Where do you ship?

Mr. Walsh: Different destinations, Western Trunk Line and Central Freight Association points. In that case they are just the same.

Examiner Burchmore: Well, where you ship the rates are the same?

Mr. Walsh: Yes.

Examiner Burchmore: And the divisions are the same as obtain on the other line?

Mr. Walsh: Practically, yes, sir, although the same hardwood proposition exists there; it is higher than it is on our main line by four or five cents.

Examiner Burchmore: Do not hardwood rates ought to be on a parity with the yellow pine rate?

4983 Mr. Walsh: They ought to be higher.

Examiner Burchmore: I mean ought there not to be the same relation between your pine and hardwood rates at Graysonia that exist between the pine and hardwood rates from nearby stations on the Iron Mountain?

Mr. Walsh: Yes, sir, that condition ought to exist every place.

Examiner Burchmore: Does it not?

Mr. Walsh: No, it does not.

Examiner Burchmore: Why?

Mr. Walsh: It is simply a discrimination, that is all.

Examiner Burchmore: You mean your railroad is a party to discriminatory rates?

Mr. Walsh: No, I mean the other fellow discriminates against us.

Examiner Burchmore: You do not ship any hardwood?

Mr. Walsh: Yes, but you cannot tell when we are going to.

Examiner Burchmore: Have you made any effort to get the Iron Mountain to reduce the hardwood rates?

Mr. Walsh: No, I have asked the Iron Mountain to adjust the situation. I believe in high rates, and I do not care how high they carry them, just so they carry the same from our stations as from their own.

4984 Examiner Burchmore: Do you want them to raise the yellow pine rates?

Mr. Walsh: I don't care whether they do or not, but I want them to carry the same rates all around.

Examiner Burchmore: You have not succeeded though in getting them to raise any rates?

Mr. Walsh: Yes, sir.

Examiner Burchmore: What rates?

Mr. Walsh: They have raised the hardwood rates from our line four cents per 100 pounds by my request, and I did not get anything out of the divisions by doing it.

Examiner Burchmore: You kept the same divisions?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Did that increase the revenue of the Iron Mountain to any extent?

Mr. Walsh: Certainly, just that much.

Examiner Burchmore: Is there any complaint on the part of the hardwood mills on your Ultima Thule Branch as the result of raising the rates on hardwood?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Did they complain?

Mr. Walsh: Some of them do.

4985 Examiner Burchmore: Can you name them?

Mr. Walsh: The Arkadelphia Mill Company and Miles & North, I think; at least they objected to the advance, but it went into effect. I do not know that they made any special complaint.

Examiner Burchmore: The Grayson & McLeod Company sold the Antoine Valley to the Memphis, Dallas & Gulf?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Did they reserve to themselves trackage rights over the Antoine Valley for their logging trains?

Mr. Walsh: They reserved no rights at all.

Examiner Burchmore: Has the Memphis, Dallas & Gulf any contracts with the Grayson & McLeod Lumber Company?

Mr. Walsh: None, but what is mentioned in the annual reports.

Examiner Burchmore: Are those filed with the Commission?

Mr. Walsh: No.

Examiner Burchmore: Will you file them for this case?

Mr. Walsh: Certainly.

Examiner Burchmore: Are there any contracts between——

Mr. Walsh: I want to state that that track contract is open to anybody.

4986 Examiner Burchmore: What sort of contract is it?

Mr. Walsh: Simply 50 cents a car; it has never been approved, but I have quoted it to other people, what we would call outside independent people, I have quoted them the same proposition.

Examiner Burchmore: Have you any other contracts which you took over when you took over these railroads?

Mr. Walsh: None at all.

Examiner Burchmore: Has the Grayson & McLeod Company gone out of business as a corporation?

Mr. Walsh: No.

Examiner Burchmore: What are they doing now?

Mr. Walsh: Lumber business.

Examiner Burchmore: Where?

Mr. Walsh: Here in St. Louis.

Examiner Burchmore: Have they any mills?

Mr. Walsh: They are part owners in our mills and in our line.

Examiner Burchmore: I understood that was a new corporation.

Mr. Walsh: It is a new corporation, I just say it in that way.

Examiner Burchmore: I mean has the Grayson & McLeod Lumber Company, as a separate corporation, continued in business?

4987 Mr. Walsh: Now I could not say, I think they have.

Examiner Burchmore: Where is the Clark & Pike County Railroad, do you know?

Mr. Walsh: No, I never heard of it.

Examiner Burchmore: What did you pay for the Antoine Valley Railroad?

Mr. Walsh: I don't believe it has been paid for yet.

Examiner Burchmore: What is the consideration for the purchase?

Mr. Walsh: The consideration was the Grayson & McLeod people sent an expert there to examine the property, and we sent our Chief Engineer to go with him and make an estimate on what the value of it was and we were to pay them in so much of our bonds or stock for the line as the appraisers made the price.

Examiner Burchmore: Has the road been appraised yet?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Do you know what that appraised value is?

Mr. Walsh: No, I do not.

Examiner Burchmore: Was it appraised before the sale was consummated?

Mr. Walsh: No—well, I do not know that the sale has
4988 been consummated yet, except it was taken in in that way, that it would be at that price. Now that part of it I could not say.

Examiner Burchmore: Well, the sale was consummated to the extent that your railroad has taken it?

Mr. Walsh: Yes.

Mr. Gaughan: I understand the sale was consummated and they agreed to abide by what these parties fixed the price at.

Examiner Burchmore: Is it not a fact that the Antoine Valley and the Grayson & McLeod mills and timber lands in that vicinity were all sold as a unit for a unit price?

Mr. Walsh: Not that I know of.

Examiner Burchmore: You do not know that they were not?

Mr. Walsh: No.

Examiner Burchmore: You do not know that the railroad was appraised previous to the sale?

Mr. Walsh: No, I do not.

Mr. Gaughan: I think it was sold on a price to be fixed by disinterested appraisers.

Mr. Walsh: Well, I know that.

Examiner Burchmore: Is there any contract of sale?

Mr. Walsh: None that I know of.

4989 Examiner Burchmore: Do you know what price was paid or agreed upon for the Ultima Thule Road?

Mr. Walsh: It was the same proposition on both, one was making a little money and the other one was losing a whole lot.

Examiner Burchmore: You referred to some suit brought by the Iron Mountain Railroad.

Mr. Walsh: That was for terminals. We bought some terminals in Arkadelphia and the Iron Mountain has brought suit against us for the ground that we purchased as part of our terminal.

Examiner Burchmore: On what ground?

Mr. Walsh: They want to condemn the property.

Examiner Burchmore: Has there been any judgment or decree in that proceeding?

Mr. Walsh: It opened up Monday and I have not heard from the case since. It is in Clark County.

Examiner Burchmore: Will you advise the Commission the result of that litigation?

Mr. Walsh: Yes, sir.

Examiner Burchmore: We have some literature here advertising an excursion that your company got up.

Mr. Walsh: Oh, that is the diamond fields.

4990 Examiner Burchmore: You were connected with the Memphis, Dallas & Gulf at that time?

Mr. Walsh: Yes, sir.

Examiner Burchmore: Was that excursion a success?

Mr. Walsh: No, we lost about $800, I think. We got stuck.

Examiner Burchmore: How many people took in that excursion?

Mr. Walsh: I should say about 400 to 600, between 400 and 600.

Examiner Burchmore: Where was the excursion from and to?

Mr. Walsh: From Texarkana, Ashdown and all around that country.

Examiner Burchmore: Did you induce any new settlers to come in as the result of that excursion?

Mr. Walsh: Well, I will tell you, there is plenty of room for new settlers, but our land is practically all settled up.

Examiner Burchmore: I will ask you whether you have seen the letter written by J. W. Bishop. It apparently is signed by him, and addressed to the Secretary of the Interstate Commerce Commission under date of January 16th, 1911.

Mr. Walsh: Yes, sir, I saw it.

Examiner Burchmore: Are the statements therein made correct so far as you understand?

Mr. Walsh: So far as I know they are absolutely correct.

4991 Examiner Burchmore: And your impression is they are correct even in particulars as to which you are not advised?

Mr. Walsh: Yes, sir, in every way.

Examiner Burchmore: That is filed in the case, so it will not be

offered as an exhibit. You received your entire compensation or salary from this railroad?

Mr. Walsh: Yes, sir.

Examiner Burchmore: You are not paid anything by the lumber company?

Mr. Walsh: No.

Examiner Burchmore: Is there any other salaried officer of the railroad?

Mr. Walsh: Practically all of them.

Examiner Burchmore: Are they also officers of the lumber company?

Mr. Walsh: No.

Examiner Burchmore: Does Mr. Bishop work for any lumber company?

Mr. Walsh: Yes, sir. I do not know whether he gets any salary from the lumber company. He gets $200 a month from the railroad company, but our auditor, general superintendent and all of them do not draw one cent from the lumber company.

4992 Examiner Burchmore: Have you any questions, Judge Cowan?

Mr. Cowan: No.

Mr. Gaughan: How many depot buildings have you?

Mr. Walsh: We have seven.

Mr. Gaughan: What is the character of the construction of those buildings?

Mr. Walsh: Well, they are better than the Iron Mountain and our other connections have got, that is for the same sized town.

Mr. Gaughan: Better than they have got in the towns in which you connect with them?

Mr. Walsh: Yes, sir, and all our agents sign bills of lading and are bonded, and we have no joint employés with any lumber company or anything else.

Mr. Gaughan: In answer to the Examiner's questions about that gravel, do you know that the deed to the land that this gravel comes from is in the name of the railroad company?

Mr. Walsh: No.

Mr. Gaughan: You never have had occasion to look up that title?

Mr. Walsh: No.

Examiner Burchmore: Do you know that it is not?

Mr. Walsh: No.

4993 Examiner Burchmore: Is it on the right of way of the railroad?

Mr. Walsh: One of the pits is located on the Prescott & Northwestern. We go in there and take gravel out.

Examiner Burchmore: Who receives the money for the gravel?

Mr. Walsh: The Memphis, Dallas & Gulf.

Examiner Burchmore: The purchase money?

Mr. Walsh: Yes. And we started to sell that gravel for 27 cents a yard and now we refuse 45 cents for it, because we are going to use it ourselves.

Mr. Gaughan: Do you know whether the amount you received for the gravel was the Arkansas Commission rate on gravel?

Mr. Walsh: No, it was less.

Mr. Coleman: There was one point, you said there was one division of five cents for a haul of a couple of miles?

Mr. Walsh: I did not catch you.

Mr. Coleman: I thought you said you got five cents per 100 pounds for hauling a couple of miles in one case, and then——

Mr. Walsh: No, we get it for a quarter of a mile.

Mr. Coleman: And then there is another case where you get the same division for hauling several miles?

Mr. Walsh: 27 and 41, sometimes we haul it 41 miles and sometimes 27 miles, and sometimes 30 miles.

4994 Mr. Coleman: And that the railroad company has the absolute choice as to the routing?

Mr. Walsh: The shippers let me route all the business.

Mr. Coleman: And that you sent some of it by way of the route where you only got five cents for the 27 miles or 30 mile haul?

Mr. Walsh: Yes, sir.

Mr. Coleman: Why do you do that?

Mr. Walsh: Do you think we want to *get* all our business to one line? What is our other connection going to do?

Mr. Coleman: If you got five cents a hundred pounds for hauling it a quarter of a mile, would it not pay you to do it?

Mr. Walsh: It would pay, but it is not good policy to do it.

Mr. Coleman: Would it take long to tell why it is not good policy?

Mr. Walsh: You ought to know that without my telling you.

Mr. Coleman: I must confess I cannot see why.

Mr. Walsh: We cannot keep friends down at one end if we send all our business out at the other end.

Mr. Coleman: That is the reason, is it?

Mr. Walsh: Yes.

Mr. Coleman: You do not send your own cars off the line,

4995 do you?

Mr. Walsh: No, we pay per diem on anybody's cars that we handle.

Examiner Burchmore: You charge $5.00 per car for hauling logs for the Graysonia-Nashville Lumber Company from any point to Nashville?

Mr. Walsh: Yes, sir, that is our charge, based on that statement.

Examiner Burchmore: That is based on your local freight tariff No. 2?

Mr. Walsh: Yes.

Examiner Burchmore: Or the issue now effective?

Mr. Walsh: Yes, sir.

Examiner Burchmore: I will ask you if that is the rate you charge the general public?

Mr. Walsh: Yes, sir.

Examiner Burchmore: What service do you render the general public for that rate?

Mr. Walsh: From 20 to 40 miles.

Examiner Burchmore: Any service in addition to hauling the logs?

Mr. Walsh: None at all, except furnish the car and load the stuff and haul it to destination point.

4996 Examiner Burchmore: Do you unload the logs at the Nashville mill free?

Mr. Walsh: No, we have nothing to do with them.

Examiner Burchmore: For what length of time has that been your practice, not to unload the logs?

Mr. Walsh: We never did.

Examiner Burchmore: Are you sure that is the fact?

Mr. Walsh: I know it. They have their own train crews and their own locomotives and everything, they have their own cars.

Examiner Burchmore: I thought you hauled it from the junction point?

Mr. Walsh: No, we charge them $5.00 for running over our track.

Examiner Burchmore: Do you charge them as much as you charge the public?

Mr. Walsh: Yes, sir, we discriminate against the lumber company, which is a fact, and they have got a holler coming.

Examiner Burchmore: Have they made any complaint?

Mr. Walsh: Yes, sir, that was the basis of this new contract.

Examiner Burchmore: Your new contract contemplates 50 cents a car?

4997 Mr. Walsh: Yes, sir.

Examiner Burchmore: Will that rate be open to the public?

Mr. Walsh: Yes, sir, it has been quoted to the public, to another man who is coming in there on the same terms.

Examiner Burchmore: Who is general manager of this railroad?

Mr. Walsh: C. C. Henderson.

Examiner Burchmore: Who is traffic manager?

Mr. Walsh: A. C. Ramsey.

Examiner Burchmore: What position does Mr. Ramsey hold, if any, with the Nashville Lumber Company?

Mr. Walsh: He is general manager of the Graysonia-Nashville Lumber Company.

Examiner Burchmore: Does he receive any salary from the railroad?

Mr. Walsh: I do not think he does, no.

Examiner Burchmore: How long have you been operating the Antoine Valley Railroad?

Mr. Walsh: Since the 1st of July.

Examiner Burchmore: How long have you been oyerating the Ultima Thule?

Mr. Walsh: The same time.

Examiner Burchmore: Will you furnish the Commission a statement of tonnage handled over those two branches or divis-

4998 ions, showing the period since the acquisitiion by the Memphis, Dallas & Gulf and as near down to date as possible, and separating that into tonnage with the classes of traffic, that is lumber, merchandise, and so forth, and also into different shippers.

Mr. Walsh: From July to January 1st?

Examiner Burchmore: If you can bring the figures up to January 1st or December 1st, if that is the latest you have.

Mr. Walsh: We can do that, yes, sir.

(Witness excused).

Whereupon, at 5.50 P. M., the hearing in the above matter was adjourned to January 26th, 1911, at 9.30 A. M.

4999 ST. LOUIS, MO., *January* 26, 1911.

Before James S. Harlan, Commissioner.

Other parties as before.

Commissioner Harlan: Gentlemen, it was understood last night that we would hear first this morning the Chairman of the Louisiana State Commission, who wishes to express some view on the general question. Mr. Meredith, will you take the stand.

Mr. Jeffery: At the last hearing your Honor asked for copies of our spur track agreements between the Oak Leaf Lumber Company and the St. Louis, Iron Mountain & Southern, and the Monroe Lumber Company and the St. Louis, Iron Mountain & Southern. I now hand these to the reporter for the purpose of having them incorporated in the record.

(Papers so offered were marked "Filed," as of January 26, 1911.)

Mr. Marble: I should like at this time to enter my appearance as attorney for the Commission in this matter.

5000 Mr. W. M. Barrow: I am requested by the Attorney General of Louisiana to ask if possible whether a ruling can be made at this time on his application for permission to present oral argument at Washington.

Commissioner Harlan: That application was received in Washington, and has been answered. The Attorney General has been notified that the Commission would be glad to hear from him by brief and orally, and perhaps we would like to suggest that we will assign not more than three-quarters of an hour to the Attorney General. It seems in that time he ought to be able to express his views.

J. J. MEREDITH.

Commissioner Harlan: Mr. Meredith, will you state your full name on the record?

Com. Meredith: My name is J. J. Meredith.

Commissioner Harlan: Where do you reside?

Com. Meredith: Columbia, La.

Commissioner Harlan: You are the Chairman of the Railroad Commission of the State of Louisiana?

Commissioner Meredith: Yes.

Commissioner Harlan: How long have you been a member
5001 of that Commission?

Commissioner Meredith: Since December, 1906.

Commissioner Harlan: Prior to that time had you had any special association with railroad matters?

Commissioner Meredith: No, sir.

Commissioner Harlan: Will you be kind enough to state what your business or profession was prior to the time you became a member of the State Railroad Commission?

Commissioner Meredith: Well, I was Sheriff of my parish for 20 years, and I am also intrested in planting.

Commissioner Harlan: What parish was that?

Commissioner Meredith: Caldwell.

Commissioner Harlan: Since becoming a member of the Commission have you had occasion to look into the matter of tap lines in your state or elsewhere?

Commissioner Meredith: Yes, sir.

Commissioner Harlan: If you have any suggestions or views that you desire to express, you may do so.

Commissioner Meredith: Yes, sir. I desire to state that after consultation with the Attorney General of the State of Louisiana who is the legal adviser of our state Railroad Commission, that we decided to enter a formal protest and intervention before this Commission against the cancellation of through rates and divisions be-
5002 tween the trunk lines and the branch lines and the so-called tap lines of the State of Louisiana.

In explanation, the constitution of the State of Louisiana creating the Railroad Commission gives it power to fix just and reasonable rates for the transportation of freight and passengers over the lines of railroad within the State of Louisiana, and to regulate and fix joint and through rates between the trunk lines of the state and the branch lines or short lines of the State of Louisiana. The Supreme Court of the State of Louisiana has defined a railroad or common carrier to be a railroad that has complied with the laws of the State of Louisiana by taking out a charter, by filing schedules and tariffs and otherwise complying with the laws of the State of Louisiana governing railroads and transportation. The statute of the State of Louisiana, No. 195, of the Acts of 1906, makes it the duty of the Railroad Commission of the State of Louisiana to appear before the Interstate Commerce Commission whenever in their judgment there is any matter to be considered affecting the rates of transportation within the State of Louisiana. It has been the policy of the State of Louisiana for some years past to encourage emigration and the investment of capital. This policy has not only been expressed by public
5003 sentiment everywhere, but it has been crystallized in the statutory legislation. Our Legislature passed an act exempting all lines of railroad from taxation that were built within a certain period of time, I believe for the period of ten years; and since that time on the expriation of this time the act has been revivified and the time extended for another period of ten years. The people of the State of Louisiana in various sections of our state have also voted special taxes to different roads as an inducement and an encouragement to build through certain sections of the state. Louisiana has long suffered from the

want of emigration and the investment of capital, and under the laws of our state the Railroad Commission not only deems it wise but their official duty and also their moral duty to lend whatever support and protection they can to the perpetuation of the short lines already built within our state that have complied with the laws of the state of Louisiana governing railroads, and to encourage the building of other railroads in the future. There are various short line railroads against which complaints have been filed before our Commission complaining of the service rendered and the equipment furnished, and our Commission has assumed jurisdiction over these
5004 roads, issued orders at various times which have been complied with, none of which I believe that I can recall at this time have ever been contested. I remember especially in September of 1909 when the great storm swept across the southern portion of the State of Louisiana, it blew down great forests of pine timber which was very valuable to the owners, and the owners of this timber petitioned to the Railroad Commission asking for more equipment and for extended facilities in this emergency in order to utilize the timbers before they should decay and go to destruction from worms and other causes. This complaint was made against the Kentwood, Greensburg & Southwestern Railroad, a short line of railroad connecting with the Illinois Central in the southern part of our state. Some of this timber belonged to local citizens there within the parish, and some of it belonged to non-residents and parties living at a distance. Our Commission issued an order for the extension of side track facilities, for the purchase of more cars and for the quick transportation of this lumber, and the order was complied with.

Commissioner Harlan: You speak of the transportation of lumber. Was it lumber or logs?

Commissioner Meredith: Both lumber and logs: We have
5005 also had application from other short lines of railroad against the service, asking for a change of schedule, asking for better accommodations for passengers, in which we have ordered the company to procure additional equipment and furnish adequate facilities for the business tendered to its line. These orders have been complied with.

We have also had complaints originating from Shreveport and Monroe against the freight rates charged by the Sibley, Lake Bisteneau & Southern Railroad, a short line of railroad leaving the Vicksburg, Shreveport & Pacific Railroad and extending southwest for a distance of some 40 miles. These complaints have been regulated, orders issued and the rates put into effect.

I desire to state further that my statements are intended to be confined to those lines of railroad that have complied with the laws of the State of Louisiana governing railroads and common carriers. I believe that is about all the statement I care to make.

Commissioner Harlan: Are the complaints and orders you refer to preserved in the archives of your Commission?

Commissioner Meredith: Yes, sir.

Commissioner Harlan: And were the orders entered in
5006 connection with the complaints which have been filed since you have been a member of the Commission?

Commissioner Meredith: Yes, sir.

Commissioner Harlan: Are there any questions to be asked?

Mr. Barrow: You have said a good deal about the service and improvement of equipment which has been required by the Railroad Commission of Louisiana. Do you recall any cases other than you have stated, where the Commission has been called upon to fix rates upon other commodities than lumber on these short lines within the state?

Commissioner Meredith: Yes, sir; the case of the Sibley, Lake Bisteneau & Southern was for the transportation of freight other than lumber.

Mr. Barrow: Do you recall the case of the Railroad Commission against the Woodworth & Louisiana Central?

Commissioner Meredith: Yes, sir. The Woodworth & Louisiana Central is a short line of railroad connecting with the Texas & Pacific Railroad some few miles below Alexandria. Complaint was made to the Commission against the rates charged on this road for the transportation of hay. The Commission adjusted that rate satisfactorily to the complainant and to the railroad company, and it was complied with, as can be seen by reference to the records
5007 of the Commission and the order on file.

Mr. Barrow: Have you been called upon since you have been Railroad Commissioner to make inspections of certain short lines to find out whether the facilities for furnishing transportation were adequate?

Commissioner Meredith: Yes.

Mr. Barrow: Have you made such inspections, or will you state what inspections you have made.

Commissioner Meredith: I made an inspection of the short line of railroad connecting with the Kansas City Southern in the Parish of Sabine, La. I do not recall the name of the short line now, the Louisiana Central, I believe, or something like that. I found the conditions pretty bad. There were no adequate facilities for the transportation of either passengers or freight. This matter was also taken up before the Commissioner and an order entered correcting these troubles, requiring the erection of a pagoda and place to take care of the freight and put on a coach for the accommodation of passengers.

Mr. Barrow: Do you recall any case especially in your Railroad Commission history where one short line of railroad has ab-
5008 sorbed another short line of railroad, and they are both now operated as common carriers?

Commissioner Meredith: Yes, sir.

Mr. Barrow: Will you state it?

Commissioner Meredith: The Watkins & Gulf extending from Alexandria to Lake Charles, has been absorbed by the Iron Mountain System, and is now a part of the Iron Mountain System. The Rochelle & Western, a short line of road extending from the Iron Mountain out into the forests some ten or fifteen miles has been absorbed by the Tremont & Gulf, which now connects the Iron Moun-

tain with the Vicksburg, Shreveport & Pacific Railway through a line of about 120 or 125 miles, I believe.

Mr. Barrow: Is there any law governing the Railroad Commission, or any law in the State of Louisiana which you know of, which prevents a lumber company from owning a majority of the capital stock of a railroad company?

Commissioner Meredith: No, sir, none that I know of.

Mr. Barrow: That is all I have to ask, Mr. Commissioner.

Commissioner Harlan: Judge Cowan, have you some questions?

Mr. Cowan: Judge Garwood wants to ask some questions first.

Mr. Garwood: Commissioner Meredith, you have had more or less litigation in Louisiana with trunk lines involving ques-
5009 tions of Louisiana rates, have you not?

Mr. Meredith: Yes, sir, we have had considerable litigation.

Mr. Garwood: I would like to ask you whether or not it is a fact that the trunk lines contend as a rule that it is not profitable for a trunk line to operate what they call tap or short line connections.

Commissioner Meredith: Yes, sir, they have contended that branch lines, as they term them, their own branch lines extending out from the trunk line, are not profitable.

Mr. Garwood: That is by reason of the scales of wages that they pay and what they call constuctive mileage, that is called for under their contract with the various labor organizations.

Commissioner Meredith: Yes, sir.

Mr. Garwood: And the necessity of idle equipment, and so forth, is it not?

Commissioner Meredith: Yes, sir, the expense of operation.

Mr. Garwood: I would ask you, Commissioner Meredith, whether or not from the general lines of construction now of the trunk lines in Louisiana, and the lay of your territory there, whether that state can reasonably expect the construction of other trunk lines in the state?

Commissioner Meredith: No, sir, I do not think that we
5010 can. The most of the trunk lines in the State of Louisiana extend north and south, a distance of some 30, 40 or 50 miles apart, as it may be, almost paralleling each other, and there are very few east and west lines. It leaves a territory in between these lines that is entirely removed from transportation, and that could only hope to be connected up with the trunk lines by intersecting roads running east and west.

Mr. Garwood: Then the only prospect for further railroad development in that state is the construction of short lines making connections with the already existing trunk lines on the ground?

Commissioner Meredith: That is the most reasonable prospect.

Mr. Garwood: I will ask you whether or not it is a fact that the construction of these short lines which assume the obligations of a common carrier and therefore the necessity to accept freight tendered to them from all sources, does not operate directly to the advantage of those who hold small patches of land along them?

Commissioner Meredith: Yes, sir.

Mr. Garwood: Does it not afford them a method of reaching the markets of the world from which otherwise they are entirely cut off?

5011 Commissioner Meredith: Yes, sir, it does.

Mr. Garwood: And it operates to their advantage as well as to the advantage of those holding larger bodies of land?

Commissioner Meredith: Yes, sir.

Mr. Garwood: Both timber and agricultural land?

Commissioner Meredith: Yes, sir, it has materially advanced the price and values of those properties adjacent to these lines.

Mr. Garwood: You are familiar in a general way with the development of the railroads of Louisiana, are you not?

Commissioner Meredith: Well, somewhat, yes, sir.

Mr. Garwood: I would ask you then to state if it is a fact whether or not in numerous cases short line roads that might be generally termed lumber enterprises to begin with, have developed into and become a part of trunk line systems, and if so, enumerate some of the instances.

Commissioner Meredith: Yes, sir. I just now enumerated the Watkins & Gulf, which has become a part of the Iron Mountain System. It was originally a lumber road, principally, its principal tonnage.

Mr. Garwood: How about the Louisiana & Arkansas?

Commissioner Meredith: Well, the Louisiana & Arkansas

5012 is very much a trunk line road now.

Mr. Garwood: What is its length?

Commissioner Meredith: I do not recall just now its length.

Mr. Garwood: It is over 200 miles, is it not?

Commissioner Meredith: Yes, sir.

Commissioner Harlan: Those details are already more or less before the Commision. I do not believe I would pursue that line further.

Mr. Garwood: To some extent and in an indefinite sort of way, perhaps they are.

Commissioner Harlan: The Commission, of course, is aware of the fact that many of these roads have grown into system roads. We might make up an infinite amount of time in developing the facts about each special road.

Mr. Garwood: I wanted to get it in an official way. There is one other road, I know that I have made some inquiry about, the Louisiana & Arkansas myself, but there is another road I want to ask about and see if he knows of any others. I am not as familiar with Louisiana as I ought to be.

Commissioner Harlan: Well, make it as short as you can, please.

Mr. Garwood: How about the Louisiana Railway & Navigation Company?

5013 Commissioner Meredith: Well, the Louisiana Railway & Navigation Company is a trunk line railway of our state.

Mr. Garwood: That runs from Shreveport down to New Orleans?

Commissioner Meredith: Yes, sir.

Mr. Garwood: That was constructed mainly by a gentleman by the name of Elmendorf, was it not?

Commissioner Meredith: Edenborn. And the Arkansas Southern has been taken over by the Rock Island.

Mr. Garwood: Are there any other examples that occur to you of the expansion of these lines into larger lines?

Commissioner Meredith: Well, not at this time. The Arkansas Southern as a log road used to go by the name of "The Arkansas Sorry" until the Rock Island took it over.

Mr. Garwood: It is now part of the Frisco. That is all.

Commissioner Harlan: Judge Cowan, have you some questions?

Mr. Cowan: Yes. Commissioner Meredith, are you Chairman of the Commission of Louisiana?

Commissioner Meredith: Yes, sir.

Mr. Cowan: And I believe, or at least I think I am correct, you filed an intervening petition in this case at the New Orleans hearing?

Commissioner Meredith: Yes, sir.

5014 Mr. Cowan: I assume that your Commission, of course, considered the matter before filing the petition?

Commissioner Meredith: Yes, sir; as stated, we discussed this with our Attorney General who is the legal adviser of the Commission.

Mr. Cowan: I assume that being a public official you are not more interested in the tap lines having divisions than you are in the people and business generally having a fair and equal rate to the markets of the world from the railroads of your state. I am correct in that.

Commissioner Meredith: I have no interest except a general and official interest in the matter representing the shippers.

Mr. Cowan: The point is what your want is for the interest of your state to have a schedule of rates whereby the products of your state may be marketed on favorable and just terms with the rest of the country?

Commissioner Meredith: Yes, sir, and our Commission contends that the divisions with the branch lines, between the trunk lines and branch lines and the denial of a division between the short lines and trunk lines, will create a discrimination in favor of the shippers along the branch lines and against those along the short lines.

5015 Mr. Cowan: If all your people engaged in the lumber business could have an equality in the rates to the markets of the world, removing discrimination against those in other states, would you be satisfied with regard to the question of divisions to the tap lines?

Commissioner Meredith: I do not want you to be under the impression that I am representing the lumber interests; it is the general shipping interests of the State of Louisiana.

Commissioner Harlan: I do not think Judge Cowan is questioning that.

Mr. Cowan: I agree with you, and I am speaking to you as an official. I am assuming you do occupy the position you have just

stated. But occupying that position, and coming to that point, I want then to inquire whether you have considered the effect of the decision that has heretofore been rendered in the Star Grain & Lumber case, on the interests in Louisiana.

Commissioner Meredith: I would have no objection at all to a rate that placed the State of Louisiana on a parity with other states in the shipment of lumber and its other products, provided that rate was just and reasonable. Our Commission considers that the general interest of the people, the consumer who pays the freight, is involved in this question as much so as the shipper himself.

5016 Mr. Cowan: Exactly, and of course, that is so as to all rates on important products in the country.

Commissioner Meredith: On all railroads and all rates, yes, sir.

Mr. Cowan: The interest which you as Commissioner, and when I say you I mean your Commission of course, I do not mean you individually—the interest which you want to represent is simply demanding that you be put on an equality with all the lumber interests which compete with your state in the common markets which each must patronize.

Commissioner Meredith: Well, we do not want to single out lumber. We want to be treated on a parity with all products.

Mr. Cowan: I know that, but of course this is a lumber hearing and I am speaking of the lumber in particular now.

Commissioner Meredith: Well, pardon me just a moment. In answer to that question, we consider that a division of joint rates would be cheaper to the consumer than it would to pay the rate to the trunk line and then the local rate over the short line, and representing the general interest of the country the Commission feels that a division of joint rates would be to the general interest of the country.

Mr. Cowan: I am led to inquire, and I do not mean that by way of criticism, Mr. Meredith, and I hope you will not
5017 consider that I do; it has been shown in the evidence that in the State of Louisiana on local shipments within the State, and I may remark at this time in the record that in the State of Arkansas on local shipments within that State, that neither Commission has provided for through joint rates on tap lines to serve their local consuming interests; and if I remember correctly in all cases, at least so far as I recollect, there is a local rate on the tap lines from the stations where lumber is produced to the trunk line connections, and the local rate from there to whatever point the lumber may be shipped as an intrastate proposition. Now I have asked the question heretofore why the Commissions of Louisiana and Arkansas who favor tap line divisions, have not provided for it as to their state rates. I ask that question of you.

Commissioner Merewith: Our Commission has provided for that. Our rate is the sum of the two locals less ten per cent.

Mr. Cowan: The sum of the two locals less ten per cent?

Commissioner Merewith: Yes, sir, on intrastate business.

Mr. Cowan: But that makes the rate higher from the tap line

station than it does from the trunk line connection. Now why is that? I am led to ask you.

Commissioner Merewith: What is that?

5018 Mr. Cowan: I say that makes the rate higher from the tap line stations leading away from the trunk line than it does from the trunk line stations to a given destination, say New Orleans.

Commissioner Meredith: I am not familiar with that arrangement, or these divisions. There has been an arbitrary arrangement between the companies with which I am not familiar.

Mr. Cowan: I know, but the Commission here is intervening, and so is the State of Arkansas, and they are asking that tap line divisions be kept in, so that the rate from points on tap lines for interstate traffic shall be the blanket rate just the same as it is from the junction point of the tap lines with the trunk line. Now in both states your rate is higher from the tap line station to points in your state, and I am led to inquire why it is.

Commissioner Meredith: The particular condition you inquire of possibly never has come to the attention of the Commission. Those cases are tried on their merits as they come up. The Commission——

Mr. Cowan: But when you file a petition with the Interstate Commerce Commission in which, if I understand, you ask that these tap line divisions be kept in, at least some tap line

5019 divisions so that the rate will be the same from a station on a tap line as it is from the junction point, and at the same time you do not make that arrangement in your own state, I am led to ask why you do not make it within your state if you believe it to be right.

Commissioner Meredith: Well, the matter has never been brought before us.

Mr. Cowan: Well, it ought to have occurred to you——

Mr. Barrow: I would like to object to the statement that we do not make that arrangement within the state, because the records of the state show we do.

Commissioner Harlan: What do you understand the arrangement is?

Mr. Barrow: The arrangement is 10 per cent less than the sum of the locals only applies in the absence of through rates being fixed.

Commissioner Harlan: Do you understand the rate from the junction point on state shipments in many cases extends to the end of the tap lines?

Mr. Barrow: Yes, sir, the tariffs on file with the Commission of Louisiana will show that to be the fact; that there are cases where the same rate applies to points out on the tap line as apply

5020 to the junction point, and not only that, but the records of the Commission will show the same rate applies frequently to a point on a branch line as applies to the junction point of the tap

line. I simply object because counsel seems to have that opinion very strongly——

Mr. Cowan: I do not think that is an objection. I am trying to get at the facts, and I think it is important. Here is a Commission which files an intervening petition——

Mr. Barrow: If you will permit us to file evidence on the subject——

Commissioner Harlan: What is the arrangement with respect to the Kentwood Road?

Mr. Barrow: The Kentwood, Greensburg & Southeastern carries two lines of tariffs, a distance tariff and a line of commodity rates. The distance tariff will apply in the absence of a commodity tariff on joint through shipments. The rule of the Commission is that ten per cent shall be deducted from that rate. Where a commodity rate has been established, however, the division——

Commissioner Harlan: Confine your observations to lumber, that is what we want to know.

Mr. Barrow: We have no specified rule in the State of Louisiana which applies to lumber. Our rule applies to all
5021 commodities.

Commissioner Harlan: But the Chairman of the Commission has just stated that on that road the local to the junction and the local from the junction is assessed on lumber with ten per cent off. Now that is not certainly applying one rate from the tap line point and the junction point.

Mr. Barrow: That is a fact, and that is true in the absence of an established commodity rate.

Commissioner Harlan: What is the general basis of lumber rates in Louisiana?

Mr. Barrow: There is no general basis. If there is an established commodity rate it prevails and the divisions are fixed by the two lines. In the absence of an established commodity rate the Commission has fixed a rule that ten per cent less than the mileage rate shall apply. For instance, in making a joint through rate from a point on the Kentwood, Greensburg & Southeastern to New Orleans, if there were a commodity rate from Kentwood on the Illinois Central and a mileage rate on the Kentwood, Greensburg & Southeastern, these two rates would be added together and ten per cent would be deducted from the mileage rate. It would not make any difference which road it applied to. But if a through
5022 rate had been established from a point on the Kentwood, Greensburg & Southeastern, the lines would be allowed to divide that according to their percentage arrangements.

Mr. Cowan: I would like to have the witness tell what the arrangement is, because he is Chairman of the Commission.

Commissioner Harlan: Very well, put your question.

Mr. Cowan: I want to know why the Louisiana Commission does not make a rule which gives the same rate from a station on the tap line to a man who has a saw mill there, and there are numbers of them which have been shown in evidence here, to New Orleans, that the man gets from the junction point on that tap line on the

trunk line to New Orleans. I think you should be able to explain that because you have——

Mr. Garwood: I do not think counsel should admonish the witness.

Commissioner Harlan: I do not think that was the intention.

Mr. Cowan: I assume the best of faith, and I want to say now I do not criticise the act of the Commission, but I wish to draw out the point that it is inconsistent, that they do not make such rates on intrastate business.

Commissioner Harlan: Can you answer the question, Mr. Commissioner?

5023 Commissioner Meredith: Well, sir, it is because those rates and divisions heretofore have been amicably arranged between the tap lines and trunk lines, and they have never been brought to the attention and investigation of the Commission, and our general rule applies; we have nothing but the general rule.

Mr. Cowan: If as I assume it to be the case, the object of the Railroad Commission is to do the best for the public interests, and that demands the maintenance of tap line divisions on interstate rates, why does not that same public interest demand the maintenance or establishment of the same sort of divisions as to the state rates on intrastate traffic.

Commissioner Meredith: I think the principle is the same.

Mr. Cowan: And the Commission has never acted in that matter?

Commissioner Meredith: No, sir.

Mr. Cowan: Has there ever been an application to the Commission to do so?

Commissioner Meredith: I do not recall any at this time, no, sir.

Mr. Cowan: For that reason, therefore, did the Louisiana Commision file this petition here asking the Interstate Commerce Commission to adopt a system which the Louisiana Commission had not then adopted as to state business.

5024 Commissioner Meredith: Because there were amicable arrangements existing between the lines that were satisfactory in the division of rates and tariffs.

Mr. Cowan: Suppose the trunk line rates on interstate traffic should be reduced, and the tap line divisions cancelled, and that the Interstate Commerce Commission should put in a differential higher from the tap line stations than now prevails in Louisiana, and as a result the sum total of the transportation charge to interstate destination was not greater than it is today, would that satisfy the Louisiana Commission?

Commissioner Meredith: All the Louisiana Commission asks is to be placed on a parity in the transportation of lumber and all other products over these roads that have been recognized as common carriers.

Mr. Cowan: Now in recognizing them as common carriers in Louisiana you have not extended through rates and divisions so that the rate would be the same from a tap line station as from the junction point. Suppose the Interstate Commerce Commission adopts the present system in Louisiana as to the interstate rates: Now are the

people of Louisiana thereby satisfied if the total charge is not
5025 greater than it is today, I mean the total revenue paid out.

Commissioner Meredith: I could not answer it, it would be a matter of opinion as to the people.

Mr. Cowan: Well, the Commission then, put it, the Louisiana Railroad Commission representing the people.

Commissioner Meredith: I suppose they would be.

Mr. Cowan: Mr. Meredith, we have had a good deal of trouble in trying to get some maps. No doubt you are perfectly willing to furnish them, but I would be very glad if you could furnish a fair supply of maps, the very excellent map of your state.

Commissioner Meredith: What is that?

Mr. Cowan: The map which you published.

Commissioner Meredith: Yes, sir. We have one to file here in evidence.

Mr. Cowan: I know that, but the difficulty is a lot of us are not able to get access to the file, and we would be glad to have a copy for our file.

Commissioner Meredith: We would be glad to present one to whoever wants it.

Mr. Cowan: I am much obliged to you. It is a very ex-
5026 cellent map. Now there has been a good deal of testimony that the Louisiana Commission had recognized the existence of these roads as railroads, and I am led to inquire what the Louisiana Commission has ever done and what it has a legal right to do in recognizing a tap line or a lumber road as a common carrier. I think that ought to be explained here by you.

Commissioner Meredith: I think I explained that in my statement, that we had exercised jurisdiction by fixing freight rates and regulating the service, and that these roads had been defined and recognized as common carriers by the Supreme Court of our state, and that the constitution gave us power.

Mr. Cowen: I understand. Now what railroads operating trains and engines in hauling logs to saw mills and which of necessity haul the logs in and the necessities of life, have not been recognized by the Commission?

Commissioner Meredith: That is a matter of record. I cannot answer from memory.

Mr. Cowan: Do you know if there are any?

Commissioner Meredith: Yes, sir, there are some. Our records will show those that have been recognized and that have complied with the law by filing charters, tariffs and schedules.

5027 Mr. Cowan: What do they have to do in order to be recognized?

Commissioner Meredith: They would have to take out a charter under the laws of the State of Louisiana. They would have to provide equipment and to issue tariff sheets and schedules holding themselves out to the public as common carriers.

Mr. Cowan: I suppose the Commission is acquainted with the fact that there is practically no public except the public connected

with the saw mill interests in a good many cases, which could be served by the lumber roads entering the forests.

Commissioner Meredith: In some instances there are, yes, sir.

Commissioner Harlan: Well, in those instances do you recognize such a road as a common carrier, where they have taken out a charter?

Commissioner Meredith: There are some of those roads that have not complied and have not taken out charters.

Commissioner Harlan: Suppose they have taken out a charter and have done other things required by your law, but there is no public there other than the lumber interests which own the road.

5028 Commissioner Meredith: We have never had occasion to pass upon that. We have never had a situation of that kind presented. They would have to provide passenger coaches and equipment, and publish——

Commissioner Harlan: Is that essential under your law to secure recognition from your Commission that there must be passenger coaches?

Commissioner Meredith: I think so, yes, sir.

Mr. Cowan: Have you a law in Louisiana which requires separate compartments for white people and negroes.

Commissioner Meredith: Yes, sir.

Mr. Cowan: Don't you know it to be a fact that a large number of these roads which have taken out charters and filed tariffs, and so on, and who are recognized or claim they are by your Commission, only provide one coach, which is a combination, having half the coach or such a matter for passengers both white and colored, without any separation.

Commissioner Meredith: I do not know of any short line—I know of instances of that kind that have come before our Commission. At one time we placed a fine of $2,000 for not providing separate equipment for the accommodation of black and white.

5029 Mr. Cowan: Have you made an investigation to find out to what extent the saw mill interests in Louisiana get divisions on the interstate rates, and to what extent they do not, so that you might answer the question to what extent does your lumber pay the trunk line rate and to what extent does it pay that less a division to the tap line.

Commissioner Meredith: No, sir. As I stated, that is a matter of detail that has been settled between the lines themselves.

Mr. Cowan: Well, that has not been settled. I am talking about the volume of the traffic.

Commissioner Meredith: And what was the question?

Mr. Cowan: I am talking about the volume of traffic.

Commissioner Harlan: State your question.

(Question repeated.)

Commissioner Meredith: I think the records of the Commission show the per cent in volume of business the lumber business covers; about 60 per cent of the volume on some of the roads.

Mr. Cowan: That is total tonnage?

Commissioner Meredith: Yes, sir.

Mr. Cowan: Of that 60 per cent of lumber, some people get divisions of the rates, and some people get five cents and some get two cents and some get none. Now I want to know how much
5030 of the lumber produced in Louisiana does not get any division and therefore has to pay the trunk line rate up to destination.

Commissioner Meredith: I could not answer that.

Mr. Cowan: Well now, Mr. Meredith, if the transportation cost should be adjusted on a fair basis, ought not all to get the reduction of the rate or not get it, in which latter case you could reduce the trunk line rate.

Commissioner Meredith: Ought not all the short lines?

Mr. Cowan: No, the lines, the mills, the man that makes the lumber, ought not all who are investing in the lumber business get the reduction on an equality or not get it, and in which latter case the trunk line rates should be reduced to make up for the tap line division.

Commissioner Meredith: I do not think that those who have failed to comply with the law governing common carriers are entitled to them.

Mr. Cowan: Comply with what law?

Commissioner Meredith: Of the State of Louisiana.

Mr. Cowan: Anybody can do that who has got a railroad, as I understand.

Commissioner Meredith: Some have not done it, though.
5031 Mr. Cowan: What ones? Have you in mind some that have not?

Commissioner Meredith: No, I do not recall now, but the records will show.

Mr. Cowan: Can a man stay in the lumber business with a tap line serving his saw mill which receives no division in competition with a man who gets a division of five cents per 100 pounds?

Commissioner Meredith: That is a matter of opinion.

Mr. Barrow: I think we can save a few questions by stating that we have prepared a statement which we expect to file, showing the lines recognized as common carriers.

Mr. Cowan: But those who have not been recognized may yet be getting a division on the interstate rates.

Commissioner Harlan: The last question goes to a different point.

(Question repeated.)

Mr. Cowan: I mean a man who does not get any division, can he stay in business in comparison or competition with the man who gets five cents per 100 pounds?

Commissioner Meredith: He might stay in awhile, but I would not think it is a good business proposition.

Mr. Cowan: That is quite manifest. What you want for
5032 the Commission of Louisiana is a fair adjustment which will serve the public interests of Louisiana.

Commissioner Meredith: That is all.

Mr. Cowan: And whatever will do that is all you are asking for.

Commissioner Meredith: Yes, sir.

Mr. Cowan: You are not asking that the interstate rates be made on a basis for the purpose of development of the agricultural and other industries of Louisiana aside from fair rates?

Commissioner Meredith: No, sir, not at a sacrifice.

Mr. Cowan: That is all.

Mr. Garwood: Counsel asked you the question if a lumberman who got no division of a rate could stay in competition very long with another lumber man who got a five cent division of the rate, and your answer to that self-evident proposition was that you did not suppose he could very long. But suppose that the lumberman who got a division in the way that counsel states it, got it as the owner of a railroad which demanded a large investment which he must carry with the coincident risks and governmental obligations which in a great many cases produces little or no profit,
5033 would he be at any serious advantage over the man that Mr. Cowan speaks of.

Commissioner Meredith: Well, I think there would be a compensating effect.

Mr. Garwood: Now, Louisiana is a lumber producing state rather than a lumber consuming state, is it not?

Commissioner Meredith: Yes, sir.

Mr. Garwood: Most every line in Louisiana has its own mills.

Commissioner Meredith: Yes, sir.

Commissioner Harlan: Do you mean most every mill in Louisiana has its own line?

Mr. Garwood: I mean by that, not in the sense of ownership, but there are lumber mills situated on every line. I did not apprehend that the question would be misunderstood.

Commissioner Harlan: I do not know that I did misunderstand it. Can you answer that question, Mr. Chairman?

Commissioner Meredith: What is the question?

Mr. Garwood: I say almost every line of railroad in Louisiana, has mills situated up and down it. As I understand the rate situation, the general basis of the rate is the sum of the locals less ten per cent, but on application through rates are made and the divisions are usually amicably adjusted between the carriers.

5034 Commissioner Meredith: Yes, sir.

Mr. Garwod: That is the situation?

Commissioner Meredith: Yes.

Mr. Garwood: There are through intrastate rates in Louisiana, although there is not much intrastate shipping between lines in Louisiana.

Commissioner Meredith: Yes, sir. The state is a lumber producing state rather than consuming. I think our records show about 60 per cent of the tonnage is lumber.

Mr Marble: Mr. Commissioner, does your law forbid discrimination?

Commissioner Meredith: Yes.

Mr. Marble: Does it forbid rebating?

Commissioner Meredith: Well, it forbids discrimination, and rebating I suppose, too.

Mr. Marble: Are the rates filed with you?

Commissioner Meredith: Yes, sir.

Mr. Marble: And is a departure from that rate which is filed with you an offence under the laws of Louisiana?

Commissioner Meredith: Yes, sir, subject to fine.

Mr. Marble: Are you enforcing that portion of the law?

Commissioner Meredith: Yes, sir.

Mr. Marble: Have you had any prosecutions under it?

5035 Commissioner Meredith: Yes, sir, we have imposed fines for violation of our rules and regulations.

Mr. Marble: So you do stand by the policy of the Act to Regulate Commerce, that there shall not be discrimination?

Commissioner Meredith: Yes, sir.

Mr. Marble: I have in mind a rather extreme case of a tap line in which the main line carrier practically runs past the pile of lumber on one side and the track belonging to the mill runs past it on the other side, and then runs up perhaps half a mile to a connection with the main line carrier's track. Would you say that in that case a joint rate should be made from the side of the pile of lumber which is on the mill track.

Commissioner Meredith: No, sir.

Mr. Marble: You would not allow such a thing as that?

Commissioner Meredith: No; in fact we are called upon to regulate that where there was a charge being made.

Mr. Marble: Supposing that mill track had complied with all the requirements of the State of Louisiana made for common carriers, would that make any difference

Commissioner Meredith: No.

Mr. Marble: Not at all. Why would you not allow it in that case?

5036 Commissioner Meredith: Because we would not consider that the service had been rendered: it is a mere side track right adjacent to the trunk line; no service commensurate with anything further than a switching charge.

Mr. Marble: You have spoken of the arrangement for the charging of the sum of the two locals less ten per cent. How high do your lumber rates run in Louisiana, what is your average haul and your average rate.

Commissioner Meredith: Our average rate is about seven cents per 100 pounds, I believe.

Mr. Marble: Would that seven cents be the sum of the two locals?

Commissioner Meredith: No, that is the local rate.

Mr. Marble: And that is the local rate upon the trunk line railroad

Commissioner Meredith: Yes, or any other road.

Mr Marble: What rates do your mill lines publish as their local rates, about how much?

Commissioner Meredith: We will assess them the same, they are governed by the same rates that our trunk lines are.

Mr. Marble: Seven cent rate

Commissioner Meredith: I do not recall.

5037 Mr. Marble: Could they have a seven cent rate for a haul one mile in length?

Commissioner Meredith: No, sir. As I say, we would not treat that as a haul; it would be a mere switching charge.

Mr. Marble: How much on the average would be published for a switching service one or two miles in length?

Commissioner Meredith: It might range from $2.50 to $3.00.

Mr. Marble: Per car?

Commissioner Meredith: Yes, sir.

Mr. Marble: Then you would take the $2.50 rate and the seven cent rate, which on a 50,000 pound shipment of lumber would be say $35.00, and that would make the sum of the locals $37.50 for the 50,000 pound car; then you would subtract ten per cent from that to get the rate from the point on the short line to the point on the main line, is that right?

Commissioner Meredith: No, sir, that would not be treated as a joint rate at all.

Mr. Marble: You spoke of an arrangement of the sum of the two locals less ten per cent being the rate from the point on the mill road to the point on the trunk line.

Commissioner Meredith: Yes, sir, but that would be a mere subterfuge, that would not be considered a haul, it would be a switching charge.

5038 Mr. Marble: You would add that switching charge to the main line rate?

Commissioner Meredith: Yes, sir.

Mr. Marble: Why do you not compel the main line to absorb that switching charge for one and a half or two miles?

Commissioner Meredith: We have never been called upon to pass on that.

Mr. Marble: Suppose the haul were three miles, would you call it a switching charge still?

Commissioner Meredith: It would depend on the merits in each case, and the location of the movement, and so on. In some places it might be called a switching charge, and in others it might not be.

Mr. Marble: Suppose it were out in the open country and outside of any incorporated municipality, would you call it a line service or a switching charge?

Commissioner Meredith: The Commission has never fixed any switching points for that character of service.

Mr. Marble: At what point or distance from the main line track does this sum of the two locals less ten per cent arrangement begin to appear. Recall one typical instance, please. I want to talk about it for a minute.

5039 Commissioner Meredith: I could not recall any particular place. I could name the roads on which those rates obtained.

Mr. Marble: You could not?

Commissioner Meredith: I could, I say; but as for any fixed distances, the Commission has never regulated that.

Mr. Marble: You never have regulated that?

Commissioner Meredith: Not the switching limits, you might term it. They have been adjusted between the companies on a basis of from about $2.50 to about $5.00 up to three to five miles.

Mr. Marble: Per car?

Commissioner Meredith: Yes, sir.

Mr. Marble: Do you regard that as a fair compensation for the mill road's haul?

Commissioner Meredith: For a service of that nature.

Mr. Marble: Does that result in a rate from the point on the mill road higher than the rate from the junction point of the two roads?

Mr. Meredith: Yes, sir.

Mr. Marble: Or lower?

Commissioner Meredith: It would increase the rate of the trunk line that much.

5040 Mr. Marble: You do not mean that, do you? It would decrease the rate of the trunk line, would it not? I see what you mean, it would make an addition to the rate of the trunk line from the junction point?

Commissioner Meredith: Yes, sir, it would increase the charge.

Mr. Marble: Can you name any instance where such a rate is, and tell us the amount of that increase in the rate?

Commissioner Meredith: No, I do not recall. The records are the best evidence.

Mr. Marble: You do not know whether it is one, two, three or five dollars increase per car over the rate from the junction?

Commissioner Meredith: I could not answer from memory.

Mr. Marble: Do you know whether or not after that increase has been made in the rate, the ten per cent reduction—well, you do know it reduces the earnings of the trunk line, do you not?

Commissioner Meredith: Yes, sir.

Mr. Marble: Somewhat below the rate of the junction?

Commissioner Meredith: Yes.

5041 Mr. Marble: That is to say, this ten per cent reduction from the sum of the two rates is entirely borne by the trunk line under your arrangement, is it?

Commissioner Meredith: No, sir, it is not intended to be that way. It is a matter that has been adjusted between the companies.

Mr. Marble: Do you regulate that adjustment?

Commissioner Meredith: That is our general rule, the sum of the two locals less ten per cent. We do not regulate the adjustment between the companies.

Mr. Marble: Have you made any arrangement as to which of the two companies should bear the ten per cent?

Commissioner Meredith: No, I do not recall any.

Mr. Marble: No such case has come before you?

Commissioner Meredith: No.

Mr. Marble: Let me ask you just as a matter of advice to the Commission, it is a matter of record here that some roads in your state get two cents per 100 pounds out of the joint rate as the allowance to the mill road. Supposing that two cents per 100 pounds were

increased to four cents, would you regard that as something which you should inquire into if it took place on a state haul, the carriers being agreed between them that it should be done?

Commissioner Meredith: If there was no complaint I should
5042 not think it would be incumbent upon the Commission to investigate it.

Mr. Marble: Suppose it were increased to six cents per 100 pounds?

Commissioner Meredith: If the carriers were satisfied with the conditions?

Mr. Marble: If the carriers, the mill road, and the trunk line seemed to be satisfied, and nobody complained, you would not concern yourselves about it?

Commissioner Meredith: Not so long as the rate as a whole was reasonable.

Mr. Marble: Supposing there were a mill at the junction paying the main line rates, and that the short road was owned by the mill shipping lumber over it, would that situation concern you?

Commissioner Meredith: Why yes, if there was a division there and the mill located on the trunk line of railroad, it would not be entitled to any division at all.

Mr. Marble: The mill on the trunk line would not be entitled to any division at all?

Commissioner Meredith: No.

Mr. Marble: But the mill owning the short line would be entitled to a division in your view?

5043 Mr. Walter: You do not mean the mill.

Mr. Marble: Well, let us say the combined industry. This is a case where the mill owns the railroad.

Commissioner Meredith: The short line of railroad having complied with the laws regulating common carriers would be entitled under our regulations to divisons.

Mr. Marble: And if that division were doubled some night you would not think that was a matter of any public concern whatever?

Commissioner Meredith: So long as the rate was reasonable and the companies between themselves did not complain, the Commission would take no cognizance of it.

Mr. Marble: You have spoken of the operation of these mill lines not being profitable or practicable for the trunk lines. Do you know of any case in which trunk lines have offered to build such lines, and the mills have declined and have built their own line in order to get divisions of the rates.

Commissioner Meredith: I do not.

Mr. Marble: Was the St. Louis, Watkins & Gulf built by lumber interests?

Commissioner Meredith: I think so.

Mr. Marble: Or by sugar interests?

Commissioner Meredith: Lumber interests, as I understand it.

5044 Mr. Garwood: In that connection I would like to ask if the first railroads in Louisiana were not built by the planters who tapped the steamboats in order to get their stuff out to the markets?

Commissioner Meredith: We have some railroads in the state built by planters.

Mr. Cowan: I would like to ask in such cases if the policy of the Louisiana Commission has been any different in regard to granting tap line divisions than it is today?

Mr. Garwood: They did not have any Commission then.

Mr. Cowan: I know they did not, and they did not have any tap line divisions. I was just emphasizing that point.

Commissioner Meredith: I am not familiar with it.

Commissioner Harlan: I would like to ask one question as to the application of your rate. I have here a list of a good many tap lines where the mill is within a matter of a few hundred feet of the main line of a regular carrier. Now in such a case, as I understand it, you would regard the movement of the manufactured lumber from the mill to the regular carrier as a mere switching movement.

Commissioner Meredith: Our Commission has so treated it, yes, sir.

Commissioner Harlan: What has been the attitude of your
5045 Commission with respect to the movement of the logs from out in the forest, say four, five or six miles, up to the mill, is that regarded as a movement by a common carrier under a state rate, or a movement by the plant of its own property to its own mill?

Commissioner Meredith: Well, the Commission has never been called upon to pass upon a condition of that kind that I can recall.

Commissioner Harlan: So your Commission has no——

Commissioner Meredith: No record that I recall.

Commissioner Harlan: No attitude with respect to the movement of logs to the mill?

Commissioner Meredith: None that I recall.

Mr. Barrow: Has not the Commission fixed milling in transit rates in the State of Louisiana?

Commissioner Meredith: Yes, sir.

Mr. Barrow: On main lines?

Commissioner Meredith: Yes, sir, they have provided for that.

Mr. Barrow: Do you recall on what commodities or some special instances?

Commissioner Meredith: Well, we have fixed it, I believe, on lumber and grain products, cottonseed and corn.

5046 Mr. Barrow: Have you fixed it on sugar cane moving from the fields to the mill?

Commissioner Meredith: Yes, sir.

Mr. Barrow: Is it not the general policy of the Railroad Commission of Louisiana to fix milling in transit rates wherever there is a reasonable demand for it?

Commissioner Meredith: Yes, sir, wherever the conditions require it.

Mr. Barrow: What would be the effect of the cancellation of these divisions on the rates on lumber?

Commissioner Meredith: Well, I should think that it would spoil the milling in transit rate.

Mr. Barrow: Would it make advances or reductions in the present rates which are paid on lumber?

Commissioner Meredith: It would make advances, I should think.

Mr. Barrow: From the tap line points, I speak of, to the connecting road points.

Commissioner Meredith: The Commission considers it would make advances, that the local rate would exceed the rate now obtained through a division.

Mr. Barrow: Has the State of Louisiana taken any active
5047 steps to secure reductions in interstate and intrastate rates that you know of?

Commissioner Meredith: Well, through the regulation by the Commission.

Mr. Barrow: Well, do you know of any action taken by the last Legislature to present cases to the Interstate Commerce Commission, special cases?

Commissioner Meredith: Yes, by the last Legislature there was an appropriation, I believe, of $15,000.

Commissioner Harlan: What is the relevancy of that question?

Mr. Barrow: I simply want to show that the State of Louisiana is interested in securing as low rates as possible and are opposed to any advances, and I do not think our people are in a position to stand them, and that this means an advance on all traffic to and from tap line points.

Commissioner Harlan: What means an advance?

Mr. Barrow: The cancelling of the divisions.

Commissioner Harlan: It would not be an advance if the lumber rates were at the same time reduced?

Mr. Barrow: No.

Commissioner Harlan: Well, we need not go back into that.

Mr. Barrow: Just one more question. When the railroad Com-
5048 mission's rate in the state of Louisiana is applied from the junction point, and the switching charge is paid from the junction point, is the full rate applied or is there a deduction made in that rate from the junction point on the main line.

Commissioner Meredith: No deduction where there is just a switching charge.

Mr. Barrow: I am speaking of the rate on the main line. You say the switching charge from the mill to the main line is $2.50. Now, from the main line point to destination in the State of Louisiana would the main line collect its full rate or its rate less ten per cent?

Commissioner Meredith: We have some instances where the switching charge is absorbed by the main line.

Mr. Barrow: Well, where it is not absorbed.

Commissioner Meredith: I do not recall just now.

Mr. Barrow: Well, you recall the rule of the Commission which says on all through shipments ten per cent less shall apply?

Commissioner Meredith: Yes.

Mr. Barrow: That rule would be applied on shipments of that character?

Commissioner Meredith: It should be, I think.

5049 Mr. Barrow: If there is a discrimination in favor of the tap line shipper by giving him a division of the through rate, could not that discrimination be eliminated by reducing the rates on lumber from other main line points so as not to exceed the main line's proportion of the through rates from the junction point.

Commissioner Meredith: What was that question?

Mr. Barrow: If there is discrimination in favor of the tap line shipper by allowing him a division of the through rate, could not that discrimination be eliminated by fixing the same rate from other points on the same line as the main line railroad receives as its proportion of the through rate from the junction point.

Commissioner Meredith: I should think so.

Mr. Marble: That last suggestion would be perfectly satisfactory to you, would it not?

Commissioner Meredith: Yes, sir.

Mr. Jeffery: I do not know whether it would be satisfactory to the railroads.

Mr. Marble: Of course, if these divisions of rates from points on the tap lines were cancelled, it would not increase the rates from points on the main line nor from points on the lines which are

5050 not receiving the allowances; it would only increase the rates from points on the tap lines which are receiving allowances now. That is true, of course.

Commissioner Meredith: I think so.

Mr. Marble: I am told that this is a case which has been discussed in the previous testimony. In case the lumber company owns the track and leases it to the railroad company is there any power in your Commission upon the completion of the lumbering operations to prevent the cancellations of that lease and the retirement from common carrier business of the railroad which has been operating the leased track?

Commissioner Meredith: No, sir, none that I know of.

Mr. Marble: What is your theory of the interest which moves the owners of these mill lines to incorporate as common carriers if the burdens of compliance with the law are so great as you have said? Why do they not do like some of your other lines have done, remain as mere private or plant facilities and escape those burdens?

Commissioner Meredith: I think he conforms with the law governing common carriers to protect himself against the expense of building his road out to the main line.

Mr Marble: The expense of what?

Commissioner Meredith: Building his railroad out to the main line.

5051 Mr. Marble: Building his railroad up to the main line?

Commissioner Meredith: Yes, sir; the short line railroad.

Mr. Marble: Well, he has built his track. Now why does he incorporate as a common carrier if the burdens are so great?

Commissioner Meredith: In order to save himself the expense, or to compensate himself for money expended in building a road to reach the trunk line.

Mr. Marble: By getting these divisions of rates?

Commissioner Meredith: Yes, sir; which would be paid to a branch line in case the trunk line built down there.

Commissioner Harlan: I understand your Commission desires only an equal opportunity for the lumber of Louisiana in the common markets.

Commissioner Meredith: That is all.

Commissioner Harlan: You do not desire any special advantage for your people?

Commissioner Meredith: No.

Commissioner Harlan: Do you recognize that one lumber interest does have an advantage where, having built a tap line and incorporated it, it gets a substantial division as compared with another lumber interest which has built a tap line, but has not incorporated it and gets no division.

5052 Commissioner Meredith: Yes, I think——

Commissioner Harlan: If you were told that there are altogether approximately 730 lumber companies that have built tap lines and have incorporated them and get divisions, and *and* that there are approximately 1478 lumber companies that have built tap lines and have not incorporated them and get no divisions, does it occur to you that the former would have an advantage over the latter in competing in the general lumber market?

Commissioner Meredith: I think the one would have the advantage over the other.

Mr. Marble: This map which you have presented, up to what date is that corrected?

Commissioner Meredith: It is for the last year, I believe. The date is there on it.

Mr. Marble: Have you been careful to show all the common carriers in your state on this map?

Commissioner Meredith: I think they are all there, yes, sir.

Mr. Barrow: We desire to file a copy of this, which is the official map.

(The map so offered was received and marked "Filed" as of January 25, 1911.)

5053 Mr. Barrow: And also a statement showing a list of the lines which have been recognized by the Railroad Commission as common carriers.

(The statement so offered was received and marked "Filed" as of January 25, 1911.)

Commissioner Harlan: Have applications been made to your Commission by tap lines for recognition, which have been refused?

Commissioner Meredith: None that I know of, Judge.

Mr. Barrow: I desire to file a copy of the Eleventh Annual Report of the Railroad Commission with its rules and regulations, and the laws governing it.

Commissioner Harlan: I think the annual report may be considered as filed. It is on file with the Commission.

Mr. Barrow: I desire to file a statement attached to our petition of intervention.

Commissioner Harlan: That need not be filed, if it is attached to the petition.

Mr. Cowan: For the purpose of the record, I desire to ask Mr. Barrow, you are Attorney General of the state, and Secretary of the Commission?

Mr. Barrow: I am at present Secretary of the Commission.
5054 I am representing the Commission in this case.

Commissioner Harlan: We will next call the Mansfield Railway & Transportation Company.

Mr. Mehaffy: If your Honor please, we have the Chairman of the Arkansas Commission here, and he would like to make a statement.

Commissioner Harlan: I am sorry you did not mention that sooner. We have set these cases for today, but before the conclusion of the hearing we will give you an opportunity to be heard.

Mr. Mehaffy: I do not think it will take but a little while.

Mr. Walter: We are perfectly willing to waive our rights to go ahead at this time, and yield to the Arkansas Commission.

Commissioner Harlan: I think the easiest course is to pursue the regular order.

5055 *Mansfield Railway & Transportation Company.*

E. A. Frost was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: Give your name to the reporter.

Mr. Frost: E. A. Frost.

Commissioner Harlan: Where do you reside?

Mr. Frost: Shreveport.

Commissioner Harlan: In the State of Louisiana?

Mr. Frost: Yes, sir.

Commissioner Harlan: What is your business?

Mr. Frost: Well, I am in the lumber business and railroad business right now.

Commissioner Harlan: With what lumber concern are you connected and in what capacity?

Mr. Frost: I am connected with the Frost-Johnson Lumber Company, President.

Commissioner Harlan: Is that an incorporated company?

Mr. Frost: Under the laws of Missouri.

Commissioner Harlan: How long have you been conducting lumbering operations?

Mr. Frost: Well, it was incorporated about four years ago
5056 and the capital was increased about three years ago in the summer.

Commissioner Harlan: When incorporated did it succeed some partnership or other association?

Mr. Frost: The original corporation?

Commissioner Harlan: Yes.

Mr. Frost: No.

Commissioner Harlan: Where is the Frost-Johnson Lumber Company conducting operations?

Mr. Frost: Well, we have seven plants.

Commissioner Harlan: Just hastily tell us about them.

Mr. Frost: One at Nacogdoches, Texas; Mansfield, La.; Noble, La.; Montrose, La.; Campti, La.; Alden Bridge, and we control the Union Saw Mill Company at Huttig, Ark. We own the stock of that company.

Commissioner Harlan: Do you control partly or wholly any other lumbering interests than those you have named?

Mr. Frost: We have a tract of timber in Livingston Parish, but we are not operating it.

Commissioner Harlan: Are you connected directly or indirectly with any other lumber companies except those named?

Mr. Frost: You mean the——

5057 Commissioner Harlan: The Frost-Johnson Lumber Company.

Mr. Frost: No, they have no other. I have named all their different interests.

Commissioner Harlan: Do you own any bonds issued by any other lumbering companies?

Mr. Frost: No, sir.

Commissioner Harlan: Has the Frost-Johnson Lumber Company a mill at each one of the operations you have named, except the last one, which is not being operated by you?

Mr. Frost: Yes, sir, we have.

Commissioner Harlan: Does the Frost-Johnson Company also own lumber forests at these various points?

Mr. Frost: Yes, sir.

Commissioner Harlan: State what is the aggregate holding in acreage by the Frost-Johnson Lumber Company at all these places?

Mr. Frost: The total acreage?

Commissioner Harlan: The total acreage.

Mr. Frost: I could not tell that accurately; I think it is about 325,000 acres of land, and that includes a good deal of denuded land, of course. I could not tell just how much timber land we have left,

5058 but I think our total acreage of land is in the neighborhood of 300,000 acres; that includes timber land where we own the fee to the land and timber rights.

Commissioner Harlan: And what is your annual output from all the mills?

Mr. Frost: We shipped 183,000,000 feet last year.

Commissioner Harlan: How many carloads was that?

Mr. Frost: I don't remember; I can get it though, today.

Commissioner Harlan: If you will. And is all of your lumber pine?

Mr. Frost: Well, we do not manufacture very much oak. Now and then we will cut a little oak, but we are yellow pine operators, and it is practically all yellow pine lumber.

Commissioner Harlan: And you are one of the larger operators are you not, in this country?

Mr. Frost: Well, there are quite a number down there that are a good deal larger than our company.

Commissioner Harlan: And you actively compete in all the yellow pine markets?

Mr. Frost: Yes, sir.

Commissioner Harlan: What of these lumbering operations does the Frost-Johnson Lumber Company own and operate what we call tap lines?

Mr. Frost: Well, we have a railroad at Nacogdoches, one at Mansfield, one at Huttig, Ark., and we own the Alden Bridge
5059 Road too.

Commissioner Harlan: Is there not one other road which you own?

Mr. Marble: What was the last one you named?

Mr. Frost: Alden Bridge.

Commissioner Harlan: I assume you are not using the word "own" in any technical sense. My point is what other railroads are controlled or owned by the Frost-Johnson Lumber Company.

Mr. Frost: One at Nacogdoches, Mansfield and Huttig, Ark.; the Louisiana & Pine Bluff, the Bodcaw Valley, which gets a portion or an allowance there.

Examiner Burchmore: Are you President of the Shreveport, Noble & Southern?

Mr. Frost: That is not incorporated.

Examiner Burchmore: It does not receive any allowances?

Mr. Frost: No.

Commissioner Harlan: Well, my question did not exclude any unincorporated companies, so tell us about this last road.

Mr. Frost: The Shreveport, Noble & Southern?

Commissioner Harlan: Yes.

Mr. Frost: Well, we originally got an allowance——

Commissioner Harlan: That has never been an incor-
5060 porated company?

Mr. Frost: No, it has not. It is a narrow gauge road built out there for the purpose of bringing logs in. Several years ago they did receive an allowance from the Kansas City Southern.

Commissioner Harlan: What was the lowest and the highest allowance?

Mr. Frost: It averaged about one and one-half cents to two cents.

Commissioner Harlan: What was the lowest and what the highest?

Mr. Frost: One cent was the lowest, and I am not sure, but I think there were a few points where they got three cents. Most of them were two.

Commissioner Harlan: Are you sure that three cents was the highest allowance that road got?

Mr. Frost: Well, it has been some time ago. I do not think they ever got more than three cents, I do not think they did.

Commissioner Harlan: That road was operated and owned by

the lumbering company, and its expense items were carried on the books of the lumber company?

5061 Mr. Frost: Well, I think they were carried separately. I do not remember about it.

Commissioner Harlan: It was not an incorporated company?

Mr. Frost: No. That is the reason that we dropped the division. We understood that in order to legalize those divisions under the construction placed upon it by the Commission several years ago, it would have to be incorporated and perform the service, so rather than take out a charter we dropped the divisions.

Commissioner Harlan: When did you drop the divisions?

Mr. Frost: That has been several years ago.

Commissioner Harlan: You can tell us later what the date was.

Mr. Frost: I think I can. I think I can get it today.

Examiner Burchmore: You are sure you have not received any allowances recently on the Shreveport, Noble & Southern?

Mr Frost: Oh, no.

Examiner Burchmore: Have you named all the railroads incorporated and not incorporated, in which you are interested.

Mr. Frost: Well, we have a logging road at Camti, and one at Montrose.

Examiner Burchmore: What is the road at Camti?

5062 Mr. Frost: Just a track built out in the woods for hauling timber.

Examiner Burchmore: Has it any name?

Mr. Frost: No.

Examiner Burchmore: Gets no allowances?

Mr. Frost: No.

Examiner Burchmore: What about your plant at or near Frostville?

Mr. Frost: That plant is cut out.

Examiner Burchmore: How recently?

Mr. Frost: It was cut out in August.

Examiner Burchmore: You had a railroad there?

Mr. Frost: Yes, sir, they had a road.

Examiner Burchmore: What was the name of that railroad?

Mr. Frost: Red River Valley.

Examiner Burchmore: Is that road still running?

Mr Frost: No.

Examiner Burchmore: What has become of it?

Mr. Frost: They have surrendered their charter or it expired.

Examiner Burchmore: Have they taken up the road?

M. Frost: I think they have, yes, sir.

Examiner Burchmore: When did they cease operations as

5063 a railroad?

Mr. Frost: Last summer.

Examiner Burchmore: 1910?

Mr. Frost: Yes.

Examiner Burchmore: And they received allowances up to the time that the last lumber moved?

Mr. Frost: Well, I think they did. I am only a stockholder in

that company; I have not handled it or had anything to do with it for about eight or ten years. I have some stock in the lumber company, but they did get an allowance there of one or two cents.

Commissioner Harlan: What acreage did you own there?

Mr. Frost: Of timber?

Commissioner Harlan: Yes.

Mr. Frost: They owned about 35,000 acres originally.

Commissioner Harlan: Has that been fully lumbered?

Mr. Frost: All the pine has been cut out. The oak is short there.

Commissioner Harlan: Has the mill been taken away?

Mr. Frost: No.

Commissioner Harlan: The mill is still there?

Mr. Frost: Yes, sir.

5064 Commissioner Harlan: Is it running?

Mr. Frost: No.

Commissioner Harlan: So that when you stopped lumbering you had no further use for this railroad?

Mr. Frost: Well, there was nothing that developed on the road. I think it was chartered for a short period, and there were no developments out there, there was nothing else to haul from that point unless we could have developed something in the hardwood, which we could not except in ties.

Commissioner Harlan: There was no other mill out there?

Mr. Frost: There was no mill on that line of road, because we owned all the timber in that territory.

Commissioner Harlan: That road reported to the Interstate Commerce Commission and to the State Commission?

Mr. Frost: I do not know how it was handled. I have not been——

Commissioner Harlan: Returning to the Mansfield Railway & Transportation Company, tell us what are the two termini of that road, and where it is?

Mr. Frost: I have just sent to my room to get the map. It runs from Mansfield to Hunter.

(Map produced.)

5065 Commissioner Harlan: In the State of Louisiana?

Mr. Frost: Yes, sir.

Commissioner Harlan: What is the distance between those two points?

Mr. Frost: It is about 15 miles.

Commissioner Harlan: By whom is the Mansfield Railway & Transportation Company owned?

Mr. Frost: I hold the stock of that company for the stockholders of the Frost-Johnson Lumber Company.

Commissioner Harlan: So it is practically the same investment?

Mr. Frost: Yes, sir, practically. While they own the stock it is a separate corporation, but I hold the stock as trustee for the stockholders of the lumber company.

Commissioner Harlan: When was that road incorporated?

Mr. Frost: It was incorporated in February, 1881.

Commissioner Harlan: When was the road itself built?

Mr. Frost: The road was built right after that by the citizens of Mansfield.

Commissioner Harlan: Was there not a road there before this railroad company was incorporated?

Mr. Frost: The Mansfield Railway & Transportation
5066 Company, I say was incorporated in 1881, and built by the citizens of Mansfield, the merchants, and they built from the town of Mansfield out to Mansfield Junction.

Commissioner Harlan: What was that distance?

Mr. Frost: About two miles. Then about four or five years ago I bought that original two miles of the Mansfield Railroad & Transportation Company, bought the property and the stock of the road.

Commissioner Harlan: About two years ago?

Mr. Frost: Four or five years ago.

Commissioner Harlan: When you purchased the railroad company, the railroad itself did not go beyond Mansfield Junction?

Mr. Frost: No.

Commissioner Harlan: What sort of a town is Mansfield?

Mr. Frost: I think there — about 2,000 or 2,500 people there.

Commissioner Harlan: Is it more or less an old town in that country?

Mr. Frost: It is one of the oldest towns in the State, the second oldest, I believe.

Commissioner Harlan: On what regular line is it?

Mr. Frost: The Texas & Pacific runs two miles south of
5067 the town, and the Kansas City Southern is probably a mile or a mile and a half east of it, but our line is the only one that goes uptown. We handle all the freight in and out of the town from both roads.

Commissioner Harlan: What sort of a place is Mansfield Junction?

Mr. Frost: There is nothing there except just the depot.

Commissioner Harlan: Is that on the Texas & Pacific?

Mr. Frost: Yes, sir.

Commissioner Harlan: And also on the Kansas City Southern?

Mr. Frost: Mansfield Junction was down below; you see after the Kansas City Southern built through there they did not go through Mansfield or Mansfield Junction; they crossed the T. & P. a mile and a half west of Mansfield Junction. They have recently built a new depot at that point, the T. & P. has.

Commissioner Harlan: After purchasing the stock of this company, what did you do with it, did you extend the mileage and if so in what direction and to what extent?

Mr. Frost: We extended it a distance of about 14 or 15 miles out to Hunter.

Commissioner Harlan: Crossing the T. & P. tracks?

Mr. Frost: Yes, sir.

5068 Commissioner Harlan: When did the Frost-Johnson Lumber Company acquire its acreage west of the T. & P. tracks?

Mr. Frost: Well, the De Soto Land & Lumber Company purchased most of the timber in there, and sold all their property to the Frost-Johnson Company.

Commissioner Harlan: When did you buy it?

Mr. Frost: Well, I was buying it at the time, but I had been making purchases down there before that. I bought it individually.

Commissioner Harlan: Is it now owned by the Frost-Johnson Company?

Mr. Frost: Yes, sir, all the property which was in the original purchase and all the property owned by the De Soto Land & Lumber Company was sold to the Frost-Johnson Company, and that included the stock and property of the Mansfield Railway & Transportation Company.

Commissioner Harlan: How many acres did you buy of the De Soto Land & Lumber Company?

Mr. Frost: I think at the time we took the property over, they had something like 60,000 acres of land and timber rights, some of which had been cut off.

Commissioner Harlan: And did they have a mill also?

5069 Mr. Frost: Yes, sir.

Commissioner Harlan: At what point?

Mr. Frost: At Oak Hill, about a mile and a half south of the town of Mansfield.

Commissioner Harlan: Did you buy the land or the stock of the De Soto Land & Lumber Company, and in that way acquire title?

Mr. Frost: I bought the property and they turned over the stock.

Commissioner Harlan: So that you own that lumber company also?

Mr. Frost: That is true.

Commissioner Harlan: You say that you have extended this Mansfield Railway & Transportation Company 14 miles west of Mansfield Junction?

Mr. Frost: Yes, sir. The De Soto Land & Lumber Company built some six or eight miles out there, which they sold to the railroad corporation. Then there were some tracks built by the lumber company, and that was sold, and that is the way the Mansfield Railway & Transportation Company acquired the mileage from the point in the town of Mansfield out to the town of Hunter.

Commissioner Harlan: The Frost-Johnson Lumber Company found a railroad built into Mansfield Junction?

5070 Mr. Frost: The Frost-Johnson Lumber Company was not in existence at the time I bought the Mansfield Railway & Transportation Company. It was there, yes, sir, and it was built and had been since 1881, and had been doing business ever since.

Commissioner Harlan: And had been built by the De Soto Lumber Company?

Mr. Frost: Not the original two miles.

Commissioner Harlan: No, I mean the mileage west of Mansfield Junction?

Mr. Frost: Yes, that was built by the lumber company and sold to the railroad company. Part of that now was built by the De Soto Land & Lumber Company, and sold to the railroad company, and then the Frost-Johnson Lumber Company have since added some more mileage to it.

Commissioner Harlan: Tell us about this De Soto Lumber Company just in your own way, all you know about it; when it was incorporated, and who owned it.

Mr. Frost: How it started?

Commissioner Harlan: Yes, what mills and what forests and what railroad it had.

Mr. Frost: Well, originally I went into that territory
5071 west of the town of Mansfield and southwest, and I found this block of timber and I bought it. My father and I together bought it individually. And a party came along and offered to buy it. We agreed on the price, and he organized the De Soto Land & Lumber Company, and when he went to get out his incorporation papers and organize his company, he came back to me and asked if I would go in with him on the manufacturing of that block of timber. I told him I would, and we organized the De Soto Land & Lumber Company about five years ago and took over this property that we owned individually, and then we went to buying additional timber, and have added from time to the holdings of the De Soto Land & Lumber Company up to the year 1908. During that year the Frost-Johnson Lumber Company bought the property of the De Soto Land & Lumber Company, and since that time the Frost-Johnson Lumber Company have added to their holdings that they acquired from the De Soto Land & Lumber Company.

Commissioner Harlan: So that now you have in all about 60,000 acres of land?

Mr. Frost: I don't know exactly. It is some——

Commissioner Harlan: Tell us about the construction of the railroad. I now know about the railroad from Mansfield to Mansfield Junction that was built by the citizens of Mansfield.

5072 Mr. Frost: That was the original two miles.

Commissioner Harlan: Yes.

Mr. Frost: I bought that, and then the De Soto Land & Lumber Company, when they built their mill down there, built some six or eight miles under their own management, the lumber company. The railroad company did not have anything to do with it. There was very little timber there, and they built it as quick as they could. After they got out some six or eight miles, we sold that track to the corporation known as the Mansfield Railroad & Transportation Company.

Commissioner Harlan: Which you had acquired in the meantime?

Mr. Frost: Yes, sir.

Commissioner Harlan: Or was it before you acquired it?

Mr. Frost: I acquired the property of the road some time after we bought the timber; it was about the time the De Soto Land &

Lumber Company was organized. I bought the road there from the stockholders that owned it at that time.

Commissioner Harlan: You have accounted for eight miles of road. Tell us about the rest of it.

Mr. Frost: I do not know just how many miles were built by the De Soto Land & Lumber Company, probably six or eight miles: from the point where the De Soto Land & Lumber Company
5073 left off, it was taken up by the Frost-Johnson Company, and extended to Hunter, and it is now turned over to the Mansfield Railway & Transportation Company.

Commissioner Harlan: Tell us what you found at Hunter, was it a town when you went there, or has it been built since?

Mr. Frost: There was just a store there, but there are quite a number of people who get their supplies there.

Commissioner Harlan: Is it what you call a company town?

Mr. Frost: The buildings there belong to the logging company.

Commissioner Harlan: And the land belongs to whom?

Mr. Frost: To the Frost-Johnson Company.

Commissioner Harlan: What do you mean by the logging company?

Mr. Frost: It is a separate corporation which does the logging for the mill company. They cut the trees and haul them in.

Commissioner Harlan: Is that owned by the Frost-Johnson Lumber Company?

Mr. Frost: It is right now. They were not very successful financially and we had to take it over.

Commissioner Harlan: Is it still maintained as a separate
5074 corporation?

Mr. Frost: As a separate corporation, and if we could get a good man we would like to turn over part of the stock to him.

Commissioner Harlan: How much did that six or eight miles cost that was built by the De Soto Land & Lumber Company?

Mr. Frost: In the neighborhood of $16,000 a mile.

Commissioner Harlan: Was it built by the company, or under a contract with a regular railroad constructor?

Mr. Frost: They got a man to do the grading and they did most of the work themselves.

Commissioner Harlan: Am I to understand that that was the actual cost?

Mr. Frost: I do not know that it cost exactly $16,000. I think that is about the price that the Mansfield Railroad & Transportation Company took it over at because they had had the money invested there several years, and they just agreed in the neighborhood of $16,000 a mile in figuring the value of that eight or ten miles, whatever was there.

Commissioner Harlan: So if that stock were put through a wringer no water would come out, is that it?

Mr. Frost: I do not think so.

Commissioner Harlan: What did you pay for the two miles
5075 from Mansfield to Mansfield Junction?

Mr. Frost: I paid $12,500 cash.

Commissioner Harlan: Did that include any equipment?

Mr. Frost: That included the equipment and road and stock in the corporation.

Commissioner Harlan: What equipment did the road have?

Mr. Frost: They had a locomotive and a car or two.

Commissioner Harlan: Passenger car?

Mr. Frost: Yes, sir. They handled passengers on it at that time, you know.

Commissioner Harlan: This is a broad gauge road?

Mr. Frost: Standard gauge.

Commissioner Harlan: What is the character of the rail that you use?

Mr. Frost: It is laid with 56 pound—well, we have some 60 pound, some 56, and there is some 52 pound rail.

Commissioner Harlan: Is it a ballasted road?

Mr. Frost: Well, it is not rock ballast, but it is surfaced and kept up in good shape.

Commissioner Harlan: Is it well graded?

Mr. Frost: Yes, sir. I have a profile here.

Commissioner Harlan: What equipment do you now have
5076 on that road?

Mr. Frost: We have one or two locomotives, five or six box cars that we use in service, and a passenger coach that we handle passengers in; it is a combination car; it has a partition in the middle, though, for white and colored.

Commissioner Harlan: Do you carry express matter and mail?

Mr. Frost: We have a contract with the government for carrying the mail. We have a contract with the Pacific Express Company for handling express and carry baggage, passengers, and anything that is offered.

Commissioner Harlan: Your contract with the express company covers the whole line?

Mr. Frost: Yes, sir, and if we extend it it covers whatever extension is made during the life of that contract.

Commissioner Harlan: Do you carry express matter to and from Hunter?

Mr. Frost: Yes, sir.

Commissioner Harlan: For whom?

Mr. Frost: Anybody that gets it.

Commissioner Harlan: For these stores?

Mr. Frost: Not only for the stores, but the express comes in there, not very much, but we handle it, whatever is shipped.

5077 Commissioner Harlan: Are they company stores?

Mr. Frost: The logging company owns the store at Hunter, but other people get their freight and express and mail. There is a post office at Hunter.

Commissioner Harlan: How many people live at Hunter?

Mr. Frost: I don't know, probably 75 or 100 people right there.

Commissioner Harlan: They are all more or less employees of the company?

Mr. Frost: Practically all employés of the logging company right

at that point. These other people live out in the country around there.

Commissioner Harlan: Is there any other point on your line between Hunter and Mansfield Junction?

Mr. Frost: Yes, sir, we have a station at Oak Hill and one at Barber and one at Burgess.

Commissioner Harlan: What is the character of the station at Oak Hill?

Mr. Frost: That is the lumber company's plant.

Commissioner Harlan: You mean the mill?

Mr. Frost: Yes.

Commissioner Harlan: And at Burgess?

Mr. Frost: There is not anything there except a side track.

5078 The train stops there to let people on and off. At Baker, Mr. Baker has a little store at his place.

Commissioner Harlan: Do you have a side track there?

Mr. Frost: Yes, sir, and a building——

Commissioner Harlan: Do you take less than car load freight?

Mr. Frost: Yes, sir.

Commissioner Harlan: At each of those stations?

Mr. Frost: Yes.

Commissioner Harlan: Have you an agent there?

Mr. Frost: We have an agent at Hunter and one at Mansfield.

Commissioner Harlan: But none at these intermediate stations?

Mr. Frost: No, we have an arrangement with Mr. Baker to look after the freight which comes in, and we built a house to put it in, but have no agent at that point.

Commissioner Harlan: How far is your mill from the Texas & Pacific main line?

Mr. Frost: The point from where the lumber starts on the car?

Commissioner Harlan: Yes, your planing mill. It is loaded at the planing mill, is it?

Mr. Frost: It is probably two and a half miles from there to where we deliver to the T. & P.

5079 Commissioner Harlan: Has the T. & P. a switch track of its own to your plant?

Mr. Frost: No, they have never had an engine on our rails.

Commissioner Harlan: You would not permit an engine to run on your rails?

Mr. Frost: Yes, we would, but they never have had occasion to, because we deliver the lumber to them at Mansfield Junction, which is the old original point.

Commissioner Harlan: By the country roads, how far is your plant from the Texas & Pacific main line?

Mr. Frost: I can show you on the map; it is only a short distance (indicating); here is where we load the lumber and there is the T. & P. tracks. This is our road and this is the Kansas City Southern and this is the original two miles from Mansfield Junction up into the town of Mansfield.

Commissioner Harlan: On this map point out where your loading point is for the manufactured lumber?

Mr. Frost: It is on this side of it right here (indicating).

Commissioner Harlan: How is that marked on the map?

Mr. Frost: There is the side track to the planing mill (indicating).

Commissioner Harlan: You load your manufactured lumber at a point on the map which is designated as the planing mill?

5080 Mr. Frost: Yes, sir.

Commissioner Harlan: And the track which runs past the planing mill belongs to your railroad company?

Mr. Frost: I do not understand the question.

Commissioner Harlan: The track which adjoins the planing mill belongs to the Mansfield Railway & Transportation Company?

Mr. Frost: It connects up with the main line. This is the Mansfield Railway & Transportation Company's main line.

Commissioner Harlan: The dotted line running from Mansfield Junction out to Hunter is the main line?

Mr. Frost: Yes, sir.

Commissioner Harlan: And over this—what is that?

Mr. Frost: The log pond.

Commissioner Harlan: Over the log pond is your main line?

Mr. Frost: This line here, it crosses the T. & P. at this point, but there is no interchange track there. This lumber is taken out and brought up to this point here and carried down to Mansfield Junction station.

Mr. Cowan: On which track does it go down.

Commissioner Harlan: We will come to that in a moment. How far is your planing mill from the main line of the Texas & Pacific by the dirt road?

5081 Mr. Frost: It does not show the scale, but from this planing mill over there I would not say it was further than a quarter or half a mile.

Commissioner Harlan: Has the Frost-Johnson Lumber Company or its predecessor, the De Soto Land & Lumber Company, ever hauled lumber over by wagon to the main line of the Texas & Pacific?

Mr. Frost: It never was accused of doing anything like that.

Commissioner Harlan: Is there a dirt road?

Mr Frost: Yes, there are dirt roads all around.

Commissioner Harlan: Is there a loading track over here near your planing mill?

Mr. Frost: Yes, sir; the planing mill, right in there belongs to the Sears Roebuck people. They have no saw mill but they buy their lumber all over the country and ship it over the T. & P. and the Kansas City Southern, and it is milled at that point and re-loaded. We have nothing to do with it.

Commissioner Harlan: How far is their plant from the Texas & Pacific?

Mr. Frost: They have a track coming in like this which connects with the Kansas City Southern and the Texas & Pacific.

5082 Their mill sets in this position, and they have loading facilities on both roads.

Commissioner Harlan: That line belongs to the main line, does it not?

Mr. Frost: I do not know. We never had anything to do with it.

Examiner Burchmore: Is the side track which passes the planer on which you load a private track belonging to the Frost-Johnson Lumber Company, or does it belong to the Mansfield Railway & Transportation Company?

Mr. Frost: I think practically all the sidings were taken over by the railroad when they purchased the line; that price included sidings and all property.

Commissioner Harlan: Is it so specified in the deed?

Mr. Frost: In the bill of sale?

Commissioner Harlan: Yes, in the bill of sale.

Mr Frost: I am not sure, I think it does.

Commissioner Harlan: Who owns the real estate on which this switch track is built?

Mr. Frost: The Frost-Johnson Company owns the real estate, but they leased the track there, a regular lease for the siding, if it has gone into the Mansfield Railway & Transportation Com-
5083 pany's property, and I think it did.

Commissioner Harlan: Who owns the real estate underneath the main line of the Mansfield Railway & Transportation Company?

Mr. Frost: We took right of way deeds as we built the road from those parties in the regular form.

Commissioner Harlan: Well, what is the distance from the planing mill to the main line of the Kansas City Southern?

Mr. Frost: This is the Kansas City Southern. It is just off their right of way probably 300 feet, but they have got no track connections in there at all, neither has the Texas & Pacific.

Commissioner Harlan: Did the Kansas City Southern ever have a switch track to your planing mill?

Mr. Frost: They cut in a siding in there temporarily for us when we moved the machinery in, and as soon as that was done it was taken out, because we had our own facilities. We built in there and used our own track.

Commissioner Harlan: When the De Soto Lumber Company owned that mill, did the Kansas City Southern have a switch track in to the planing mill?

Mr. Frost: No, I say when it was organized, and we com-
5084 menced to build the mill, the Kansas City Southern put in a little siding in here to accommodate us and get the machinery in. We had to unload the machinery; but that was all temporary, and when we built it was taken up.

Commissioner Harlan: When you say we, you refer to the De Soto Company?

Mr. Frost: Yes, the original company.

Commissioner Harlan: What is the distance from the planing mill to the junction of the main line of the Mansfield Railway & Transportation Company?

Mr. Frost: I think about 2,000 feet.

Commissioner Harlan: That is the only haul of the manufactured lumber that the Mansfield Railroad does, from the mill to its main line?

Mr. Frost: They go in here and switch all the lumber out. The Mansfield Railway & Transportation Company performs this service (indicating). The lumber company does not have anything to do with it. They go in there and take these cars out and deliver the Kansas City Southern cars to this point, and take the T. & P. lumber to Mansfield Junction.

Commissioner Harlan: —.

5085 Mr. Frost: I would say by the time we bring it up to our connection here, and then go down here, it would be probably two or two and a half miles.

Mr Marble: What is that distance to the point where you deliver cars to the Kansas City Southern?

Mr. Frost: About three quarters of a mile, the distance from the planing mill here to this point (indicating). We have an interchange track right here.

Commissioner Harlan: Have you stated the number of locomotives and logging cars that you own?

Mr. Frost: The lumber company owns the logging cars or the logging company; they own all the logging equipment. The Mansfield Railway & Transportation Company owns the locomotives and the passenger equipment and five or six box cars. They do not own any logging cars at all.

Commissioner Harlan: How many miles of track has the logging company?

Mr. Frost: I think they have about 20 or 25 miles of steel out in the different spurs.

Commissioner Harlan: Are there any other mills on the Mansfield line?

Mr. Frost: Yes, sir.

Commissioner Harlan: Where are they?

5086 Mr. Frost: There is a hardwood mill located just west of the Frost-Johnson Lumber Company's mill.

Commissioner Harlan: What is its annual output, do you know?

Mr. Frost: I have those figures in detail that I can file. I have a lot of other figures here.

Commissioner Harlan: Is there any other mill?

Mr. Frost: No other saw mill. There is a foundry and machine shop, the De Soto Foundry & Machine Shop.

Commissioner Harlan: Is it owned by the Frost Johnson Company?

Mr. Frost: No interest at all, and we have not got a dollar's worth of stock in it or in the hardwood lumber company.

Commissioner Harlan: What is the business of this foundry?

Mr. Frost: Castings and general machine shop work; they repair locomotives and saw mill machinery.

Commissioner Harlan: Is there any soft wood mill on your line?

Mr. Frost: Pine?

Commissioner Harlan: Yes.

Mr. Frost: No. There is a cottonseed oil mill at this point here (indicating). We have no interest in it at all.

5087 Commissioner Harlan: What point is that.

Mr. Frost: Just south of the town of Mansfield.

Commissioner Harlan: Does the logging road carry the logs for any other lumber company than the Frost-Johnson interests?

Mr. Frost: When the lumber company sold the track they reserved the right to operate logging trains over that track which they sold.

Commissioner Harlan: What lumber company do you refer to?

Mr. Frost: The De Soto Land & Lumber Company, that was the original, and the other was carried out under the same plan.

Commissioner Harlan: That belongs now to the Frost-Johnson Lumber Company. My question is whether the logging roads which the Frost-Johnson Company own indirectly carries logs for any interests than the Frost-Johnson interests?

Mr. Frost: Yes, sir, they carry logs for the Mansfield Hardwood Lumber Company.

Commissioner Harlan: Where are they delivered to your main line?

Mr. Frost: At different points, wherever the logging company brings them in.

Commissioner Harlan: What is the extent of that traffic?

Mr. Frost: I have got the percentage——

5088 Commissioner Harlan: We will get those figures a little later. Does the logging company carry pine logs for any other interest than the Frost-Johnson Company?

Mr. Frost: No other—there is no other pine mill on the road.

Commissioner Harlan: There is no other pine mill on the road, but are there any other pine forests there except what you own?

Mr. Frost: Yes, sir, we do not own all the timber lands.

Commissioner Harlan: Then my question is whether the logging company carries logs for any other interests than the Frost-Johnson Lumber Company?

Mr. Frost: The logging company?

Commissioner Harlan: Yes.

Mr. Frost: State the question again.

Commissioner Harlan: You have referred to a logging company that owns these tram lines out into the forest.

Mr. Frost: Yes, sir.

Commissioner Harlan: That is owned by the Frost-Johnson Company at this time.

Mr. Frost: The stock.

5089 Commissioner Harlan: Does that logging company carry logs for any other lumber company than the Frost-Johnson Company?

Mr. Frost: Up to the present time they have not, except the hardwood logs for the Mansfield Hardwood Lumber Company.

Commissioner Harlan: Where do the hardwood logs come from?

Mr. Frost: Different points along the line: most of them from down in the river bottom.

Commissioner Harlan: From lands owned by the Frost-Johnson Lumber Company?

Mr. Frost: Some, and some are not.

Commissioner Harlan: Well, most of them are owned by your company, are they not?

Mr. Frost: Well, most of his tonnage has come off of other people's property that he has manufactured up to date. The logging company hauls it in for him.

Commissioner Harlan: But does he get out those logs himself, or do you get out those logs you sell to him?

Mr. Frost: The logs we sell the logging company get them out for him.

Commissioner Harlan: Does he get out any hardwood logs on your property, or do you get them out and sell the logs to him?

Mr. Frost: We sell—he gets out some of those logs down
5090 there, that is, he hauls them under our instructions.

Commissioner Harlan: Just tell us in your own way just what that arrangement is. We want the absolute facts as you understand them. I am talking now about this hardwood mill, where does it get its stuff and from whom and how?

Mr. Frost: Originally we made a contract with him to sell him so much hardwood timber from our land, and we would deliver it to him at his mill at so much a thousand feet, and the logging company goes into the forest, cuts it and hauls it under their contract to his mill.

Commissioner Harlan: So when you haul that manufactured lumber out you are hauling out lumber which originally came from your own land?

Mr. Frost: Yes, but there is quite a good deal of hardwood there which we do not own.

Commissioner Harlan: And he may acquire it from other sources?

Mr. Frost: He may acquire it from other sources, he has that right and he has exercised it.

Commissioner Harlan: But the volume of his lumber comes from your own land?

Mr. Frost: No, sir, it does not.

Commissioner Harlan: What proportion of it?

5091 Mr. Frost: I think I could give you those figures. Not today, but after I get back from Shreveport.

Commissioner Harlan: Tell us something about the divisions that the Mansfield Railway & Transportation Company gets.

Mr. Frost: They get from one to four cents.

Commissioner Harlan: Has it ever gotten a higher division than four cents?

Mr. Frost: On lumber?

Commissioner Harlan: Yes.

Mr. Frost: No.

Commissioner Harlan: Did you not have a higher division out to Denver and Colorado points than four cents?

Mr. Frost: No, sir.

Commissioner Harlan: Is it your understanding that four cents is the highest division you have ever received?

Mr. Frost: I think that is the highest we have ever got.

Commissioner Harlan: About what is the average division you receive on all your outbound shipments?

Mr. Frost: I would say about three cents, two and a half to three cents.

Examiner Burchmore: Did you not once get a division of five cents on all traffic from the Texas & Pacific Railway?

Mr. Frost: Not on lumber.

5092 Examiner Burchmore: Is it not a fact that when this railroad was taken over by your interests the rates from points on its line to interstate destination via the Texas & Pacific Railway were raised two cents per 100 pounds in amount over the previous rate, or over the junction point rate, and you were allowed five cents as a division?

Mr. Frost: No, sir. When that mill was built there there were no shipments of lumber originating at that point, and the T. & P. I do not think had a tariff in of less than 20 cents to Texas common points, and the T. & P. reduced the rate and made it the same as the Kansas City Southern, I think originally, and then we got three cents per 100 pounds out of that.

Commissioner Harlan: What service do you perform for those divisions?

Mr. Frost: Well, the logs are hauled in over the rails of the Mansfield Railway & Transportation Company, and after it is manufactured into lumber they go into the planing mill and switch it out and haul it up to the connection with the Kansas City Southern and the connection with the Texas & Pacific.

Commissioner Harlan: Then that is a transit rate, is it?

Mr. Frost: Well, it is billed from Oak Hill.

Commissioner Harlan: That is the mill point?

5093 Mr. Frost: That is the mill point, but the raw material of course, comes from out on the line.

Commissioner Harlan: So that you understand that you are being paid partly for hauling the logs into the mill?

Mr. Frost: We figure it that way. It yields some profit on the investment.

Commissioner Harlan: How is the rate published, as a transit rate or a rate from Oak Hill only?

Mr. Frost: The lumber rate applies from points on our line.

Commissioner Harlan: What is the character of the billing when you receive logs at Hunter, is there any billing from that point into the mill?

Mr. Frost: No, that is hauled under the contract with the logging company.

Commissioner Harlan: So that so far as the records show you get a four cent division on some traffic, on lumber hauled from the mill, as far as the transportation records go.

Mr. Frost: Yes, sir. We get all the way from one to four cents on that lumber.

Commissioner Harlan: Where is the general office of your railroad company?

Mr. Frost: Mansfield.

Commissioner Harlan: Has it a building of its own?

5094 Mr. Frost: We have a building there that they handle freight in. We rent an office uptown in one of the office buildings.

Commissioner Harlan: How much of an office force have you?

Mr. Frost: We have got one man in the office, and then he has a man to handle the local freight there in town.

Commissioner Harlan: Tell us about the character of your tonnage, if you have the figures there.

Mr. Frost: I have it in detail here.

Commissioner Harlan: Very well. Let us know what tonnage other than lumber you move.

Mr. Frost: Taking this all the way through probably some of the questions—these items have been asked for. I can read the whole thing in a minute. The Mansfield Railway & Transportation Company was chartered in February, 1881. It now has main line track——

Commissioner Harlan: We have those figures. Confine your observation to the tonnage. We want to know about the tonnage.

Mr. Frost: There are some other details which you will probably ask later.

Commissioner Harlan: Very well.

Mr. Frost: Main line 15.85 miles; side track .30; Gauge
5095 4 feet 8½ inches. Maximum 1.5 per cent. Number of stockholders 5; number of directors 5.

Equipment consists of one locomotive, one box car and one passenger car, all equipped with safety appliances.

Station buildings at the following places: Mansfield, Bakers and Hunter.

One hundred ton 40 foot track scale at Oak Hill.

Track laid with 56 pound steel rail, oak ties. Some of that steel is 59 pound and some 52.

Number of employés about 25.

Total revenue from lumber $13,677.49.

Commissioner Harlan: What period was that?

Mr. Frost: I think that is the year ending June 30th, 1910.

Revenue from lumber from lumber company, $12,497.69. That is the Frost-Johnson Lumber Company.

Revenue from lumber from other shippers, which is nothing more than the Mansfield Har-wood Lumber Company, was $1,179.80.

Now the per cent of lumber revenue from the lumber company was 91.4 per cent, and the per cent of outside lumber 8.6.

Commissioner Harlan: Those percentages are simply of the lumber movement?

5096 Mr. Frost: That is lumber only. The per cent of lumber revenue from lumber company's lumber to the total freight revenue was 48.8 per cent.

Total revenue from other forest products $369.18.

Revenue from all other freight for lumber company, $1,982.16.
Revenue from all other sources, $9,588.36.
Commissioner Harlan: Can you analyze that last figure and give us some of the details?
Mr. Frost: I think it will all come out.
Commissioner Harlan: Very well.
Mr. Frost: The total freight revenue from lumber company's business from all sources was $14,479.85.
Total freight revenue from others, all sources, $11,137.34
The per cent of revenue derived from business from lumber company to total revenue was 56.52 per cent.
Number of passengers carried, 3,812.
Passenger revenue, $1,196.91.
Average amount received from each passenger 31.39 cents.
Passenger revenue per mile of road $76.32.
Number of tons of freight carried, 50,167.
Freight revenue, $25,617.19.
5097 The earnings from all sources were $27,096.95.
Per cent of earnings derived from lumber company's business to the total earnings from all sources, 53.44 per cent.
Total tonnage for the year ending June 30th, 1909, 35,684 tons.
Total tonnage for 1910, the same period, 50,167 tons.
Or an increase of 14,483 tons.
Total lumber tonnage for 1909 was 27,040 tons.
Total lumber tonnage for 1910, 28,596 tons.
Or an increase of 1,556 tons of lumber.
The total tonnage of merchandise for 1909, was 8,644 tons.
Total merchandise handled for 1910, was 21,571 tons.
Or an increase of 12,927 tons in merchandise, not lumber.
The freight revenue for the year ending June 30th, 1910 was $25,617.19; passenger revenue was $1,196.91. Express $12.85; Motor car rental $270.00. Operating expenses for the fiscal year were $19,764.06; taxes $892.80; hire of equipment $1,038.90.
We have a contract to carry the government mail which nets us yearly an amount of $423.60; based on $30.00 per
5098 *annum*.
Commissioner Harlan: Go back to that item of 25,000 tons, of merchandise, I believe, shipped during this last year. Have you any analysis of that tonnage?
Mr. Frost: Yes, sir. Now this is all in tons. Grain, 193 tons. flour 804 tons, other mill products 1646 tons.
Commissioner Harlan: Other mill products?
Mr. Frost: Yes, sir. That is other feed and stuff like that coming to the logging company, feed, chops, or any other products made from corn or wheat. Hay 468 tons, cotton 961 tons. We have handled there for the last five years an average of about 2500—well, about 3,000 bales. Last year we only got about 2200 or 2300, but this season we think we will handle something like 2500 or 3000. Do you want me to read all these figures? You have all this. It is in our report. It is just a lot of detailed figures.
Commissioner Harlan: Let me just run over that a minute.

Mr. Frost: It is filed with the Commission (handing paper.)

Commissioner Harlan: You have an item of 2500 tons of coal and some heavy stuff like coke and sand.

Mr. Frost: That coal, some goes to the lumber company and some to the De Soto Foundry Company. All the coke is for the De Soto Foundry & Machine Company.

5099 Commissioner Harlan: What about the coal?

Mr. Frost: Some for the De Soto Cotton Oil Company and some for the foundry and some for the lumber company.

Commissioner Harlan: And some for the railroad company?

Mr. Frost: And some for the railroad company.

Commissioner Harlan: Mostly it goes to the railroad company and the lumber company, does it not?

Mr. Frost: They would get a majority of the coal, although that is quite a foundry and they use quite a large portion during the year.

Commissioner Harlan: Quite a large portion of it would go to the railroad and the lumber company, would it not?

Mr. Frost: I would say offhand they would use more than half of it.

Commissioner Harlan: According to your figures here you seem to have received substantially more than half of the coal tonnage?

Mr. Frost: It may be in there.

Commissioner Harlan: Out of 2500 tons some 1700 tons went to the lumber company.

Mr. Frost: Well, I said a little over 50 per cent. I did not know that that showed it.

5100 Commissioner Harlan: I would like to have that filed.

(The paper so offered and identified, was received in evidence and thereupon marked Mansfield Railway & Transportation Company Exhibit No. 1, Witness Frost, received in evidence January 26, 1911, and is attached hereto.)

Commissioner Harlan: That does not show what part of the tonnage was confined to Mansfield and to Mansfield Junction.

Mr. Frost: Well, that is the total tonnage that we got from both those roads.

Commissioner Harlan: What part of all your tonnage moves only between those two points?

Mr. Frost: All the lumber tonnage moves to the Kansas City Southern and Texas & Pacific. That is the only connection we have.

Commissioner Harlan: I am now talking about the 25,000 tons of general merchandise that you said you moved last year?

Mr. Frost: That comes in from the T. & P. and the Kansas City Southern, and goes out over the same two roads, and the amount we handled locally from Mansfield to Hunter.

Commissioner Harlan: I understand that, but all that general merchandise does not pass over the whole length of your line.

5101 Mr. Frost: Not all of it.

Commissioner Harlan: I want to know what part of it moved between Mansfield and Mansfield Junction.

Mr. Frost: I do not know whether I have those figures or not. I cannot tell what moves between each station.

Commissioner Harlan: Well, you can ascertain that, can you not?

Mr. Frost: The tonnage handled between each station?

Commissioner Harlan: No, between Mansfield and Mansfield Junction.

Mr. Frost: I think I can.

Commissioner Harlan: The point is this, that line between Mansfield and Mansfield Junction was originally built by the citizens of Mansfield.

Mr. Frost: Yes, sir.

Commissioner Harlan: And apparently for a substantial purpose. Now you being the owner of this company, are now moving all the general merchandise that they formerly moved between those two points?

Mr. Frost: Yes, sir.

Commissioner Harlan: I want to know what part of your 25,000 tons of general merchandise moved only between Mansfield and Mansfield Junction.

5102 Mr. Frost: I can get that.

Commissioner Harlan: You can furnish a statement, I presume, and if so, I wish you would, showing during the last two years the total amount of tonnage inbound and outbound from each station on your line?

Mr. Frost: From each station?

Commissioner Harlan: From each station on your line.

Mr. Frost: Very well.

Commissioner Harlan: And that can be classified as between lumber and lumber products and general merchandise.

Mr. Frost: Do not our reports to the Commission show it? It does not show between each station, it only shows the tonnage.

Commissioner Harlan: I am talking now at each station. Your report to the Commission does not show that, and we want a report from you now covering the last two fiscal years showing the total tonnage inbound and outbound at each station on your line.

Mr. Frost: At each station?

Commissioner Harlan: At each station on your line, and classified as between lumber and lumber products and general merchandise not belonging to the Frost-Johnson Lumber Company, the railroad or its allied companies.

5103 Mr. Frost: Yes, sir, I can get that, but I think I have given the per cent of tonnage handled for other people than our own.

Commissioner Harlan: Yes, but we want it as to each station on your line. Do the locomotives of the railroad company go on to the logging line at all?

Mr. Frost: No, not unless they would have an accident out there and we would send an engine out.

Commissioner Harlan: The railroad company receives the loaded cars at Hunter or other junctions.

Mr. Frost: The logging company brings the logs into the mill.

Commissioner Harlan: Into the mill?

Mr. Frost: Yes, sir.

Commissioner Harlan: With its own locomotive?

Mr. Frost: Yes, sir, under their contract with the lumber company.

Commissioner Harlan: What is the basis of that contract, what compensation does the railroad company receive from the logging company?

Mr. Frost: When the lumber company sold that piece of track they reserved the right to operate their logging trains over it free.

5104 Commissioner Harlan: So the lumber company gets a free movement from Hunter and other junction points with the logging lines to its mill?

Mr. Frost: Yes, sir.

Commissioner Harlan: Then the division which you receive from the regular lines has no relation to any service performed by your line on the logs?

Mr. Frost: Well, when they sold that track, reserving the right, that was a part of the purchase price of the road. That was understood, that they were to have—that the railroad company should pay so much money for the track and reserving this free trackage was part of the purchase price, that was understood between the two companies.

Commissioner Harlan: But I understood that the railroad company purchased the track for its full cost.

Mr. Frost: Well, it was not—I do not know that it was exactly full cost.

Commissioner Harlan: Well, if anything a little more. I got the impression from what you said——

Mr. Frost: No, I think it is just about cost.

Commissioner Harlan: Very well, the railroad company then paid, we will say, practically cost for the railroad tracks.

5105 Mr. Frost: Yes, sir, they paid—that is substantially correct, but then the lumber company had gone into this territory and developed it. That does not necessarily mean that the property was not worth more than what it actually cost.

Commissioner Harlan: You are drawing a distinction between the actual cost of the track and its value to the lumber company.

Mr. Frost: To the railroad company.

Commissioner Harlan: Well, both the lumber company and——

Mr. Frost: Well, to both.

Commissioner Harlan: In other words, the lumber company insisted on getting its full cost and this free trackage right?

Mr. Frost: Yes, sir.

Commissioner Harlan: So the lumber company regarded it as being a greater value that mere cost?

Mr. Frost: Yes, sir, and we would not have sold it to an outsider at that cost.

Commissioner Harlan: But you sold it to an insider at about cost?

Mr. Frost: Yes, sir, reserving the trackage right.

5106 Commissioner Harlan: So the Mansfield Railway & Transportation Company performs no service at all on the logs?

Mr. Frost: None on the logs, no.

Commissioner Harlan: Does it perform any service for anyone on its main line beyond the point where the switching track joins the main line?

Mr. Frost: Out in the woods?

Commissioner Harlan: No, I am now talking about the main line from this switch track to Hunter.

Mr. Frost: They perform service there for everybody.

Commissioner Harlan: Who does?

Mr. Frost: The Mansfield Railway & Transportation Company.

Commissioner Harlan: It performs no service for the lumber company; the lumber company has a trackage right to the mill.

Mr. Frost: It does not haul in the logs, and does not perform any service for them except if they haul merchandise out there the lumber company pays the regular rate.

Commissioner Harlan: Confining myself to this hardwood mill, does the Mansfield Railway & Transportation Company perform any service for them.

Mr. Frost: If he buys logs down on the Texas & Pacific or the Kansas City Southern, they are delivered to us at our junction points, and then are switched over to the hardwood

5107 mill.

Commissioner Harlan: And there they are manufactured?

Mr. Frost: Yes, sir, and the Mansfield Railway & Transportation Company takes the manufactured product out and delivers it to the connecting line.

Commissioner Harlan: Do you send in a special locomotive and car for that purpose?

Mr. Frost: We have an engine, our passenger engine makes the passenger run and also does the switching and performs the service for all.

Crmmissioner Harlan: When it gets the logs from out in your woods, they are hauled in there by the logging company?

Mr. Frost: Yes, sir.

Commissioner Harlan: Under this same free trackage arrangement?

Mr. Frost: Well, they are hauled in under their contract with the lumber company. You see the lumber company transferred their rights to the logging company to operate that train in there, and they haul the logs in and deliver them in the pond; there is

no trackage paid to the Mansfield Railway & Transportation Company for the hauling of those logs.

Commissioner Harlan: In to the pond?

Mr. Frost: No.

5108 Commissioner Harlan: I am talking about the hardwood logs.

Mr. Frost: Well, they are hauled in in the same train.

Commissioner Harlan: In the same way?

Mr. Frost: In the same way.

Commissioner Harlan: So the Mansfield Railway & Transportation Company performs no service for that hardwood mill on the logs brought in from your woods, or the woods belonging to other people out in the same territory?

Mr. Frost: Out in that territory, but they do haul the logs in from the Texas & Pacific and the Kansas City Southern.

Commissioner Harlan: I understand, but I am talking about the movement from the other direction.

Mr. Frost: They do not handle those logs out there.

Commissioner Harlan: When logs are brought in from that direction and are manufactured by the hardwood mill, you carry out the manufactured product?

Mr. Frost: Yes, sir.

Commissioner Harlan: And what divisions do you receive on that?

Mr. Frost: We receive about the same divisions as we do on pine to certain territories, but the division is pretty thin, the way most of it has been moving, it has been moving south and

5109 the rate is low and we get in that territory about two cents per 100 pounds.

Commissioner Harlan: But if it goes in the other direction?

Mr. Frost: But if it goes to northern territory we get practically the same division we would on the pine.

Commissioner Harlan: Suppose the logs come into the hardwood mill from the other direction, where do you receive them from the Texas & Pacific?

Mr. Frost: At Mansfield Junction from the T. & P. and deliver the lumber back at the same point.

Commissioner Harlan: What division do you get for hauling those logs to the mill?

Mr. Frost: We get a two cents per 100 pound division on all the lumber out, going to certain territory, we will say.

Commissioner Harlan: So you get no special division on the logs, but you get a division on the manufactured lumber going out?

Mr. Frost: That is it.

Commissioner Harlan: And that includes your services of hauling the logs inbound?

Mr. Frost: There may be a switching charge or something like $1.00 a car, which is filed with the State Commission; I do not know whether there is a switching charge or not, but I

think they do get a nominal charge, probably $1.00 or
5110 $1.50.

Examiner Burchmore: Do you not get a switching charge of $2.50 from the Oak logs?

Mr. Frost: I could not say; whatever we get it is published.

Commissioner Harlan: Then you get a switching charge on the inbound movement of the logs, and a division on the outbound movement of the manufactured hard wood lumber?

Mr. Frost: We get a division on all the lumber that goes out, pine and oak.

Commissioner Harlan: And the switching charge on all the logs which go in?

Mr. Frost: I say I am not positive about that, whether it is $1.00, $1.50 or $2.50; I do not know just what it is.

Examiner Burchmore: Have you your tariffs here?

Mr. Frost: No, they are at Mansfield.

Commissioner Harlan: Do you know how much the logging company charges this hardwood mill for hauling logs in the other direction of the hardwood mill?

Mr. Frost: That is a matter of detail; they have a contract for whatever service they perform. The time is figured at a
5111 certain price, and the cutting is figured at a certain price, and the haul so much. They have a delivered price.

Commissioner Harlan: So the delivered price to the hardwood mill includes the price of hauling?

Mr. Frost: Yes, sir.

Commissioner Harlan: Is that filed with the Commission?

Mr. Frost: That is not a contract with the railroad company; it is a private contract.

Commissioner Harlan: It is carried by a locomotive on a rail line from the forest to the hardwood mill?

Mr. Frost: Yes, but it is not operated by the railroad company.

Commissioner Harlan: So it is not a published rate with the State Commission?

Mr. Frost: No, that is a private contract.

Commissioner Harlan: Then the lumber company has the right to refuse to receive that hardwood and haul it for the hardwood mill?

Mr. Frost: Under that contract, no, sir; they made a contract here to haul it.

Commissioner Harlan: Well, we will say then at the expiration of the contract it has the right to refuse to enter into any such contract?

5112 Mr. Frost: Yes, they have a right after the contract is over they probably would not want to renew it, because the conditions might not be the same.

Commissioner Harlan: Then it comes to this, does it not, that the Mansfield Railway & Transportation Company incorporated as a common carrier, conducts no operations as a common carrier for this hardwood mill from Hunter up to the mill?

Mr. Frost: Well, they furnish the tracks.

Commissioner Harlan: And that is done by the lumber company under a private contract and without any published rates?

Mr. Frost: Well, it is a private contract that the lumber company reserved when they sold the track, and that was part of the purchase price.

Commissioner Harlan: I so understand. And the Mansfield Railway & Transportation Company does not operate as a common carrier of lumber from Hunter up to your mill?

Mr. Frost: If anybody will tender us a car of lumber out, we will be mighty glad to carry it in.

Commissioner Harlan: We will confine the question to logs moving from the forest up to your mill.

Mr. Frost: If anybody will build a mill on our line under
5113 the same conditions as the Mansfield Hardwood Lumber Company, we will make the same conditions.

Commissioner Harlan: That is, you will let them operate as a private carrier over your line?

Mr. Frost: We will operate as we are now. We will haul them or we will have them hauled by the logging company under the same contract.

Commissioner Harlan: When you say "we", do you mean the lumber company or the railroad company?

Mr. Frost: The lumber company and railroad company would haul them under the contract.

Commissioner Harlan: Is not my statement an accurate statement of the situation, that between Hunter and the hardwood mill, and between Hunter and your mill, the Mansfield Railway & Transportation Company does not operate as a common carrier to people who have logs to ship?

Mr. Frost: Well, on logs, no; they do not haul any logs.

Examiner Burchmore: You own practically the entire standing timber tributary to the Mansfield Railway & Transportation Company?

Mr. Frost: No, sir.

Examiner Burchmore: You own all the pine?

Mr. Frost: We own it all in certain territories; not all of
5114 it, but we own the majority of the timber between there and the river.

Examiner Burchmore: You testified at the New Orleans hearing, as I recall the testimony, in 1908, that since the acquisition of this railroad your companies had bought practically all the pine timber tributary to that railroad.

Mr. Frost: Well, that was right along in a certain territory. If you get off a certain distance from it, we have not.

Examiner Burchmore: Get off how far?

Mr. Frost: Well, six, eight, ten miles; sometimes within a couple of miles we have not all the timber, but we——

Examiner Burchmore: Are there any other holdings of hardwood down there that you are not interested in?

Mr. Frost: Yes, sir.

Examiner Burchmore: How extensive?

Mr. Frost: Well, one man that I know of has got about 25,000 or 30,000 acres which is just below the end of our line, just below Hunter; it sets in three or four miles. There are quite a number of other large blocks in there, and in a great many instances, in buying this pine timber, we did not buy the hardwood, so we have very little interest in the hardwood timber that is left.

Examiner Burchmore: And yet the logging company is
5115 selling hardwood logs to the Mansfield Hardwood Company?

Mr. Frost: No, the logging company does not sell any logs. The lumber company sold these logs.

Commissioner Harlan: Have you filed a copy of the contract between the lumber company and the Mansfield Railway & Transportation Company, in which this right to run logging trains over your line is reserved?

Mr. Frost: I do not think we have, for the reason that is simply in the form of a bill of sale.

Commissioner Harlan: Is that an exclusive right?

Mr. Frost: To the lumber company?

Commissioner Harlan: Yes, has the lumber company reserved the right to do all the hauling of logs over that line?

Mr. Frost: I think the way the bill of sale—well, the way the trade was, the lumber company when it sold that piece of track reserved the right to operate their logging trains. Of course, that is all there is to it.

Commissioner Harlan: The result of that is, is it not, to give to the lumber company the absolute control of the cost to other people of hauling the logs over your line?

Mr. Frost: Well, that was not the intention, to shut anybody out.

Commissioner Harlan: No, but is not that the result of it?
5116 I want an answer yes or no.

Mr. Frost: There is a hardwood mill that has been built there last year, or the year before. This contract was made four or five years ago. That does not indicate that anybody has been cut out.

Commissioner Harlan: I am not asking you whether anybody has been shut out, but whether it is not a fact that no one can haul a log from Hunter over the lines of the Mansfield Railway & Transportation Company except under conditions dictated by the Frost-Johnson Lumber Company?

Mr. Frost: No, sir, they cannot, because the conditions are different to anything else which might come up, because they sold a piece of railroad——

Commissioner Harlan: It is a fact then, that the Frost-Johnson Lumber Company control the movement of logs over your line in this direction?

Mr. Frost: Between those points, yes, sir.

Commissioner Harlan: And the movement of logs is not controlled by your company, which professes to be a common carrier for the general public.

Mr. Frost: If anyone wanted to ship logs, there is a published rate on the logs.

Commissioner Harlan: A published rate from what point,
5117 from Hunter?

Mr. Frost: There is a rate on logs or lumber, there is a lumber rate.

Commissioner Harlan: I am talking about the logging rate now, about the movement of logs.

Mr. Frost: I do not think we have any logging rate and never had any application, although we might have shipped some logs. If we had, it is a rate in connection with the Texas & Pacific or the Kansas City Southern.

Commissioner Harlan: Does your charter permit you to tie up your rate and operations with one shipper?

Mr. Frost: No, sir, we did not tie them up.

Mr. Walter: In transporting logs, lumber or any other commodity over the railroad, the process of transportation involves not only the haul but furnishing and maintaining the roadbed?

Mr. Frost: Yes, sir.

Mr. Walter: And in the haul of all logs from Hunter out, the railroad company furnishes a roadbed and the rails and maintains them?

Mr. Frost: Yes.

Mr. Walter: They contribute that much to the expense of getting the logs to the mill?

5118 Mr. Frost: Yes, sir.

Mr. Walter: The only compensation they receive is out of the division upon the lumber?

Mr. Frost: That is right.

Mr. Walter: I will ask you whether if anybody presented a carload of logs at Hunter consigned to the foundry company or any concern other than the lumber company owned by the Frost-Johnson people, or the hardwood people, whether the railroad company would transport it?

Mr. Frost: Well, they would have to transport it.

Mr. Walter: Have you ever refused as a railroad company to transport any logs offered to you for shipment over the railroad?

Mr. Frost: No.

Mr. Walter: Instead of doing the hauling with your own engine and your own crew that service is performed by one of the agents of the Frost-Johnson people under a contract with the logging company?

Mr. Frost: Yes.

Mr. Walter: I will ask whether the railroad company has refused to perform any service for anybody in the way of transportation over your line?

Mr. Frost: No, sir.

5119 Mr. Walter: You have your local freight tariffs; do you publish a local freight tariff?

Mr. Frost: Yes, sir.

Mr. Walter: In addition to that is there a tariff of rates prescribed by the Louisiana Commission which would apply upon your railroad?

Mr. Frost: Yes, sir.

Mr. Walter: How often does your train go out to Hunter?

Mr. Frost: It makes a round trip every day on a regularly published schedule.

Mr. Cowan: May I interrupt for a moment to ask a question. There have been so many references to the Louisiana schedules of rates and the Arkansas schedule, and as none of us have them, and as I suppose there is one here, if we could have those copied by the stenographer into the record, the schedule of rates pertaining to forest products, it would be a big convenience to all of us. I just happen to mention it while I happen to think of it.

Commissioner Harlan: I would like to see it before ordering it copied.

Mr. Walter: Do you have any joint rates from points on your line to points in Louisiana on lumber?

5120 Mr. Frost: Yes, sir.

Mr. Walter: What is that rate as compared with the Mansfield rate?

Mr. Frost: Well, we have a rate of 12 cents per 100 pounds, I think, to New Orleans and points off our line in connection with the T. & P., the same as the Mansfield rate.

Mr. Walter: In other words, the rate from any point on your line is the same as the junction point rate?

Mr. Frost: I think that is right.

Commissioner Harlan: Do you own this track from Mansfield Junction down to the T. & P.?

Mr. Frost: Yes, sir.

Commissioner Harlan: And the right of way under it?

Mr. Frost: Yes, sir.

Commissioner Harlan: You own all the right of way except perhaps this switch track to the planing mill?

Mr. Frost: I think that belongs to the railroad company too; it was included in the bill of sale.

Mr. Walter: Do you in any way segregate the maintenance or operation of your line of railway as between Mansfield and Mansfield Junction business, and Mansfield and Hunter business?

Mr. Frost: The railroad company keep up the track to the
5121 Mansfield Junction and to Hunter; they operate their own train and keep up their own expenses, and have their own bank account and everything is kept separate from the lumber company business. They have nothing to do with it. They keep up the railroad and maintain it, and keep up all their expenses.

Mr. Walter: Does your passenger coach go out to Hunter?

Mr. Frost: Yes, sir.

Mr. Walter: I will ask whether you treat any part of your railroad separate and apart from any other part of the railroad, in other words, it is all a unit?

Mr. Frost: It is all the same.

Commissioner Harlan: Do you have your cars equipped with safety appliances?

Mr. Frost: Yes, sir.

Commissioner Harlan: And keep your accounts as required by the Interstate Commerce Commission?

Mr. Frost: Yes.

Commissioner Harlan: Do you report to the Commission?

Mr. Frost: Yes.

Commissioner Harlan: Have you appointed an agent at Washington?

Mr. Frost: Yes.

Commissioner Harlan: Who is your agent at Washington?

5122 Mr. Walter: Miss Tenneille.

Commissioner Harlan: What relation have you to the Frost-Johnson Lumber Company?

Mr. Frost: I am president.

Commissioner Harlan: Do you receive free transportation over your connections?

Mr. Frost: I have one or two passes.

Commissioner Harlan: Over what lines?

Mr. Frost: I have a T. & P. and a Kansas City Southern.

Commissioner Harlan: Did you come here to St. Louis on free transportation?

Mr. Frost: I have a trip pass to St. Louis on account of another road.

Commissioner Harlan: Do you occasionally go to Chicago on free transportation?

Mr. Frost: Well, I have been there on transportation.

Commissioner Harlan: Who else in your railroad company has free transportation?

Mr. Frost: Mr. Whited, Vice-President of the Mansfield Railway & Transportation Company has one or two passes.

Commissioner Harlan: What relation does he bear to the lumber company?

5123 Mr. Frost: He is practically the same as he is to the railroad company.

Commissioner Harlan: You are both engaged in pushing the interests of the lumber company as far as you can?

Mr. Frost: We push it all all we can.

Commissioner Harlan: And in pushing it you occasionally travel?

Mr. Frost: We have to.

Commissioner Harlan: And having to travel, you occasionally use free transportation?

Mr. Frost: If we have got it, we do.

Mr. Walter: You do not understand that under the statute the law prescribes what the purpose of your travel shall be when you ride on transportation?

Mr. Frost: No.

Mr. Gaughan: Logs may be transported either on flat cars or skeleton log cars?

Mr. Frost: Yes, sir.

Mr. Gaughan: So the railroad company is not without means of

transporting logs for other people in the event they should be tendered?

Mr. Frost: No.

5124 Mr. Marble: Did you inquire into the divisions received by the Mansfield Railroad before you purchased it?

Mr. Frost: Well, I looked into that as well as everything else that they had in the way of property, and all.

Mr. Marble: You are familiar with the divisions which were made before your purchase?

Mr. Frost: There were no divisions allowed on lumber up until that time; I do not think they had any division sheets in with any road on lumber. There was no lumber manufactured on that line.

Mr. Marble: I have before me what purports to be a division sheet between the Kansas City Southern, Texarkana & Fort Smith, in connection with the Mansfield tap line, which allows a division of $2.50 per car to the Mansfield tap line. I presume that means this road.

Mr. Frost: Yes, sir, that is known as the tap line.

Mr. Walter: What is the date?

Mr. Marble: March 5th, 1902, prior to the purchase.

Mr. Walter: Was it in effect at the time of the purchase?

Mr. Frost: That was simply a switching charge, if there was a car of lumber tendered or coming in there, they would switch it over for that.

5125 Mr. Marble: It is not down here as a switching charge, but as an allowance. I will ask you if your inquiry showed you there was an allowance between the Kansas City Southern and the Mansfield Road at the time of your purchase?

Mr. Frost: I do not remember. I think I saw that tariff or sheet, but that has been so long ago I do not remember just what it allowed for each item, I could not say.

Mr. Marble: This is not a tariff, but a division sheet (handing paper).

Mr. Frost: Well, a division sheet. I could not say whether I saw this—whether this is an exact copy of the one I looked at or not; I presume it is. Naturally if a man intends to buy a piece of property he looks up to see where they are earning their money.

Commissioner Harlan: You think you probably did not overlook it?

Mr. Frost: I did not aim to overlook it.

Mr. Marble: Did you make arrangements before purchasing the road, to change that division?

Mr. Frost: No.

Mr. Marble: How long after you operated the road did you change the division?

5126 Mr. Frost: I don't think it has ever been changed. If a car of lumber comes into Mansfield over the Kansas City Southern, we get $2.00 for switching it up to the town, the same as was in effect then.

Mr. Marble: This purports to be a percentage sheet, naming basis for dividing through rates between Kansas City, Mo., Shreve-

port, La., Texarkana, Texas, St. Louis, Mo., Memphis, Tenn., New Orleans, La., and defined territories, and Mansfield La. You understand that is intended to cover lumber coming into Mansfield?

Mr. Frost: There was no lumber shipped south until we built the mill there. That was intended to cover a car of lumber if a man wanted to build a house, he would buy a car on the Kansas City Southern or the Texas & Pacific, and ship it in, and that would be the amount the Mansfield Railway & Transportation Company would earn for handling that car.

Mr. Marble: There was no lumber manufactured at Mansfield or on this Mansfield Road until after you purchased it?

Mr. Frost: I do not think there was ever a car shipped over it until we purchased it; there was no mill in that territory shipping lumber, that is right on the road.

Mr. Marble: I will ask that this be put in evidence.

(The paper so offered and identified, was received in evi-
5127 dence and thereupon marked Mansfield Railway & Transportation Company Exhibit No. 2, Witness Frost, received in evidence January 26, 1911, and is attached hereto.)

Mr. Marble: Do you recall the basis of divisions with the Kansas City Southern for the first year or year and a half you operated this road?

Mr. Frost: We got from one to four cents.

Mr. Marble: When did you make the arrangement to get that division, as soon as you began to operate?

Mr. Frost: After we got ready to do business or before we commenced to ship lumber, I went up to Kansas City or made the arrangement.

Mr. Marble: Is it not a fact you operated that road from March 31st, 1905?

Mr. Frost: Well, we bought it; I do not remember the exact date we bought it.

Mr. Marble: Just about that time.

Mr. Frost: About that time.

Mr. Marble: And that your arrangement for divisions was not finally completed until April, 1907?

Mr. Frost: No, our arrangements were made before we commenced to ship the lumber.

5128 Mr. Marble: Were not the arrangements finally concluded in April, 1907, and made retroactive on all business?

Mr. Frost: There was some misunderstanding there, and we did not get the settlement made until later on, but the understanding was had before we got started or just about the time we commenced to ship lumber.

Mr. Marble: But the amount of divisions or the freight rate was not determined until April, 1907, and you did not get your division sheet until then?

Mr. Frost: I do not remember just when we got it, there was some delay.

Mr. Marble: Well, there was about that delay, from March, 1905,

to about April, 1907, before the exact amount of divisions was determined. I know you had a general understanding in regard to divisions, but the exact determination was not made, and then that determination was made retroactive at that time.

Mr. Frost: There was a good deal of delay, I do not know how much time elapsed from the time we commenced to ship until we got this settlement, but there was nothing given except what the original amount was; that is the amount they agreed on to start with.

Mr. Marble: Do you know whether as a matter of fact
5129 your divisional basis No. 2 was not actually compiled and issued until early in 1907?

Mr. Frost: I don't know just when it was.

Mr. Marble: And then was marked as effective September 1st, 1905?

Mr. Frost: I could not say just how it read. I know there was a delay in getting those matters fixed up, although we had the understanding and it was all understood just what we were to get right along, and the understanding was if they did not get this tariff out it would be handled on that basis.

Mr. Marble: Were they paying you divisions before they got the division sheet out?

Mr. Frost: I do not think so. I think it was all fixed up there and on every car we kept a record and one settlement was made.

Mr. Marble: One settlement was made after they got the division sheets out?

Mr. Frost: I do not know when they got the division sheet out, I do not remember about that.

Mr. Marble: Do you remember as a matter of fact you conducted business until the difference between $2.50 a car and the amount accruing on the division sheet amounted to about $9,500 and that then was paid in one settlement?

5130 Mr. Frost: Well, it was a good big amount.

Mr. Marble: About that much?

Mr. Frost: I could not say what it was. I know it was a good big amount.

Mr. Marble: What is your impression, what do you mean by a big amount, I do not mean to get it precisely.

Mr. Frost: I would say somewhere from $5,000 to $10,000.

Mr. Marble: Our information is $9,500.

Mr. Frost: Well, that is probably the correct amount.

Commissioner Harlan: And you got that from one to two years after your original verbal understanding?

Mr. Frost: Yes, sir. We had this all agreed to and in some way they failed to get it in shape that they wanted to make the settlement, and when I would go to them they would say we will settle it up. Just what caused that delay I don't know, but we were paid according to the report made.

Mr. Marble: I do not claim anything about this, your Honor, except this, that the amount of the division was fluid for some time, and then was fixed, and then a retroactive settlement made. I do

believe there was a general agreement, but the exact amounts were not determined.

Mr. Walter: The witness has stated the amounts agreed on were paid.

5131 Mr. Marble: I will ask you if you did agree upon the amount precisely, or if you had a general understanding which did not name divisions and precise amounts?

Mr. Frost: It might not have covered every point, but as near as we could figure out in a conference we agreed on the division, and that is just what we got.

Mr Marble: How did the $2.50 per car come to be paid if you had agreed upon something else?

Mr. Frost: $2.50 a car switching?

Mr. Marble: Yes.

Mr. Frost: We supposed that was the way to handle it at that time; we had a tariff out there which covered it.

Mr. Marble: You did not think you were going to get the $2.50 a car, and the division besides, did you?

Mr. Frost: No, we did not figure it that way.

Mr. Marble: It is not likely that lumber would be shipped from St. Louis to Mansfield.

Mr. Frost: I never heard of such shipment.

Mr. Marble: So the division sheet I handed you must have referred to outbound lumber: it is the only direction lumber could move in as between Mansfield and St. Louis.

Mr. Frost: There was no lumber ever shipped off that
5132 road until we built the mill, so far as I know. That was lumber which was coming from little mills in that territory, which would ship a car of lumber into Mansfield; they had a little lumber yard there, and they would ship lumber in over the Mansfield Railway & Transportation Company, and it was shipped in for a charge of $2.50. I think that would be all.

Mr. Marble: This purports to be a division of rates between Mansfield and St. Louis.

Mr. Frost: That is why I say it was not intended for that purpose. It was intended to cover a car of lumber coming in from the small mills.

Mr. Marble: Then it does not state what it is intended for on its face?

Mr. Frost: I am not enough of a rate man to throw any light on that, but I know that is what the $2.50 was intended to cover.

Mr. Marble: How heavily do you load your cars with outbound lumber?

Mr. Frost: We try to load them up to the marked capacity. Our cars averaged last year about 19,000 feet of lumber.

Mr. Marble: That would be about what, 60,000 pounds?

Mr. Frost: That varies, one car might have 19,000 feet and might weigh 75,000 pounds, and you might ship another car and
5133 it might not weigh but 38,000. I don't know just what the average weight of all the cars was, but the average amount of lumber is about 19,000 feet.

Mr. Marble: Do you regard your published switching rate of $2.50 a car on lumber between Mansfield, La., and Mansfield Junction, La., as reasonable?

Mr. Frost: Well, that depends.

Mr. Marble: You do publish that rate?

Mr. Frost: Yes, sir. You would not earn very much money on the investment if that is all the revenue that you got, was just switching cars of lumber.

Mr. Marble: Do you keep account of the weight of logs brought into your mill?

Mr. Frost: I could not say whether they weigh those cars; they probably estimate them. They get what the lumber weighs, and then figure the average. I do not know whether they keep the weight of those cars or not.

Mr. Marble: Are there waybills written up for those cars of logs?

Mr. Frost: They are billed in there by the Texas & Pacific or the Kansas City Southern.

Mr. Marble: No, I mean those coming off your line?

5134 Mr. Frost: No, they are not waybilled.

Mr. Marble: No transportation records kept of that movement?

Mr. Frost: Not on the tonnage, no, sir.

Mr. Marble: Nor the particular cars?

Mr. Frost: No, they are just logging cars, skeleton cars.

Mr. Marble: Who bears the expense of taking up and relaying the switch lines in the forest?

Mr. Frost: The lumber company or logging company, whoever does the logging. The logging company builds their spurs out into the trees and loads them on the cars and pull them in for so much money; that is all borne by the logging company or lumber company, who ever is doing the logging.

Mr. Marble: All borne by the logging company itself because of its relation to the lumber company?

Mr. Frost: Yes, sir.

Commissioner Harlan: The logging company has no revenue producing road?

Mr. Frost: No.

Commissioner Harlan: So the expense is borne by the Frost-Johnson Lumber Company.

Mr. Frost: On the spur tracks eventually, yes, sir.

Mr. Marble: Does the Frost-Johnson Company maintain a contract with the logging company so they are run as two

5135 separate organizations?

Mr. Frost: Yes, sir, the logging company is a separate corporation, incorporated under the laws of the State of Louisiana and they keep their accounts and they are just as separate and distinct as if it was an individual doing business with the Frost-Johnson Lumber Company.

Mr. Marble: Does the logging company cut the trees?

Mr. Frost: Yes, sir.

Mr. Marble: And brings them to the mill?

Mr. Frost: Yes.

Mr. Marble: Its duty is to make the tree into a log and deliver it at the mill?

Mr. Frost: Yes, sir, into the pond.

Mr. Marble: The lumber company furnishes it with the track over which it is to run under this contract it has with the railroad company?

Mr. Frost: Yes, sir.

Mr. Marble: You testified with regard to the ownership of the equipment, that it belongs to the lumber company?

Mr. Frost: Yes, sir, that is the equipment used in the logging service.

Mr. Marble: Is it your theory that the allowance of one
5136 to four cents per 100 pounds covers something more than the switching service of the lumber from the mill to the connection with the main line.

Mr. Frost: Yes, sir; we have an investment in that road out there and we do not get any earnings until we handle the car of the manufactured product.

Mr. Marble: You say the lumber company and railroad company are separate corporations?

Mr. Frost: Yes, sir.

Mr. Marble: I will ask you now it is that an allowance to the railroad company can compensate the lumber company, a separate corporation, for the expense of bringing the logs down there off their spur?

Mr. Frost: There is no compensation to the lumber company. The four cents per 100 pounds is paid to the railroad company.

Mr. Marble: What right has the railroad company for compensation for something it does not do?

Mr. Frost: It has to carry out the contract.

Mr. Marble: It is done by the lumber company.

Mr. Frost: It is carrying out the contract when they bought that from the lumber company.

Mr. Marble: Is it your theory that an allowance to your railroad in effect compensates the lumber company for some expense
5137 it has borne?

Mr. Frost: The lumber company went in and built the road and sold it at actual cost with the understanding they could have a free trackage. Now the railroad company has got the investment in the road, and the lumber company has the right to operate its logging trains over it.

Mr. Walter: But the railroad company furnishes the railroad over which the logs are hauled?

Mr. Frost: Yes, sir.

Mr. Marble: He has just said that the lumber company has an investment in the railroad——

Mr. Walter: No.

Mr. Marble: I will ask again, who furnishes the railroad?

Mr. Frost: The Mansfield Railway & Transportation Company owns the track from Mansfield to Hunter.

Mr. Marble: Subject to an easement in the lumber company to run its trains over it, so that that easement is the property of the lumber company?

Mr. Frost: The lumber company do not own the railroad.

Mr. Marble: But when they sold it they expressly refrained from selling that right; they had the entire property and sold only a modified property keeping in themselves an easement, the
5138 right to run their trains over the track.

Mr. Frost: That is the contract.

Mr. Marble: So the lumber company furnishes the track and not the railroad company; the lumber company has never divested itself of that right; is not that right?

Mr. Frost: I do not know whether that would be construed that way.

Mr. Marble: So far as the operation of the trains is concerned, you testify the railroad company bears no portion in that expense?

Mr. Frost: No.

Mr. Marble: And yet you say that this allowance by the trunk lines is intended to cover something more than the cost of bringing the lumber from the mill to the main line junction point.

Mr. Frost: It means this, that the railroad company is not going to get any earnings unless they can get this division, because they have already made a deal, and in buying this track the trackage rights were reserved.

Commissioner Harlan: Let me look at that agreement.

Mr. Frost: It was just a bill of sale. I haven't it here.

Commissioner Harlan: You haven't it here?

5139 Mr. Frost: No.

Mr. Marble: What did the railroad company really buy from the lumber company if it is not something on which it can make earnings?

Mr. Walter: You are entirely unfair in your examination, and I object to it. The witness has stated time and again that the railroad company owns those rails and all that the logging company has is the right to go over them.

Commissioner Harlan: The testimony of this witness is very clear. I put to him the question, if the lumber company was given the cost of that railroad, and he said afterward that the railroad company did not give its full value, that it had more of a value than it actually cost, and that it had more of a value to the lumber company, and then it developed that that extra value was reserved by the lumber company, and the witness so stated, that the extra value consisted in the reservation by the lumber company of the right free of charge to haul the logs over the lines of the Mansfield Railway & Transportation Company.

Mr. Cowan: And the logging company obtains that right through the lumber company and not through the railroad company.

Commissioner Harlan: Yes.

5140 Mr. Walter: But he did not say that right to haul the logging trains represented the entire difference between the value of the railroad and its cost.

Commissioner Harlan: If he did not, let him now explain it. I so understand it. I understood the railroad had a value to the lumber company in excess of the cash cost of $12,000 a mile, and that that extra value consisted in the right that it reserved free of charge to operate the logging trains over it. Now if that is not the meaning of the witness, let him now explain it.

Mr. Garwood: I understood the witness to state——

Commissioner Harlan: Pardon me, let the witness state if that was his meaning.

Mr. Marble: I should like to have the question read.

(The question was read as follows:)

"Mr. Marble: What did the railroad company really buy from the lumber company if it is not something on which it can make earnings?"

Mr. Frost: It bought the tracks from the lumber company.

Mr. Marble: It did not buy the absolute property in the track.

Mr. Frost: It bought the property.

5141 Mr. Marble: It bought it subject to the right of the lumber company to run logging trains over it.

Mr. Frost: They bought the track, and gave the lumber company the right to operate those trains over that part of the track.

Mr. Marble: Is that a profitable investment aside from the carriage of the logs?

Mr. Frost: It earned about one and one-half per cent, I think.

Mr. Marble: It earned one and one-half per cent on the $15,000 a mile?

Mr. Frost: I think so.

Mr. Marble: Without regard to these divisions on the lumber?

Mr. Frost: No, the total earnings were about one and a half per cent.

Mr. Marble: I am talking about the earnings of this road, which is used for logging operation which you say was sold to the railroad company subject to the right of the mill company to run its logging trains over it. Now what are the rights which went with that purchase after the withholding of that right to run logging trains is withheld from that sale, what is left, and what earnings does the railroad company have running up into the woods?

5142 Mr. Frost: Well, if it is extended, if we kept on extending it, it would be certainly a paying proposition, if we could induce larger people to come on that line.

Mr. Marble: As at present situated, it is a logging road?

Mr. Frost: Well, logs are hauled over it, but then we operate it separate and distinct, we run a passenger train out there, and haul local freight or cars or anything offered, and it is all operated separately from this logging company's trains.

Mr. Marble: You have furnished a list of your earnings from that operation?

Mr. Frost: Yes.

Mr. Marble: Is it not a fact there was a general discussion with general officers of one of the trunk roads, perhaps the Kansas City Southern, regarding the right to base divisions upon the Mansfield Road's ownership of these lines into the woods, and then there was some delay about tranferring its title by the milling company?

Mr. Frost: Well, I think it was about like this, they told us we would have to operate the road if we got the division they were paying, and we took it over and put the passenger trains on and commenced to operate that part of it as a common carrier. We had operated the other part, but it was only about two miles, and
5143 then the three miles, and they told us it ought to be operated all the way out if we were to operate it as a railroad, to make a railroad out of it. That came more as a matter of advice.

Mr. Walter: About how much does it cost per mile to maintain the roadbed from Hunter down to the Junction?

Mr. Frost: I have got the details which is in some of these figures here, and I can get it.

Mr. Walter: If you haven't it right at hand, if you can give an approximate estimate.

Mr. Frost: I do not remember just what it is. I will look it up.

Mr. Walter: We want to show that that is a material charge against the railroad in the hauling of these logs.

Commissioner Harlan: From what point?

Mr. Walter: From Hunter down to the mill, and the division is the only compensation to reimburse them for that expense.

Commissioner Harlan: This witness has stated it is the only compensation he gets.

Mr. Walter: We want to show how much it costs to maintain that roadbed.

Commissioner Harlan: Very well, he can show that later. That seems to be all.

5144 Mr. Cowan: Can you furnish us with the tariffs of this road?

Mr. Walter: Yes, the Commission has those.

Mr. Cowan: I mean, have you any copies?

Mr. Walter: No, I have only one copy here.

Commissioner Harlan: The Commission will adjourn at this point until 2:00 o'clock. You will be back, Mr. Frost.

Mr. Frost: Yes.

(The map and profile above referred to, was received in evidence and thereupon marked Mansfield Railway & Transportation Company's Exhibits Nos. 3 and 4, Witness Frost, received in evidence January 26, 1911, and are attached hereto.)

Whereupon, at 1:00 P. M. a recess was taken until 2:00 P. M.

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5145 After Recess.

E. A. FROST, resumed the stand, and further examination continued.

Commissioner Harlan: Have you a copy of that bill of sale, Mr. Walter, that the witness has referred to.

Mr. Walter: No. Is it possible to obtain a copy at the lumber company's office here?

Mr. Frost: I can furnish that information when I get home.

Commissioner Harlan: I mean can we have it here today?

Mr. Frost: I could not get it, because I have to get it from the records at Mansfield.

Mr. Walter: We can furnish a copy to the Commission.

Commissioner Harlan: Very well, if you will.

Mr. Marble: Going for a moment into the question of the ownership of the woods, and the logs along the line of the Mansfield Road by the Frost-Johnson Company, did I understand you to say there were other logs reached by your road than the logs owned by the Frost-Johnson Lumber Company?

Mr. Frost: Oh, yes.

Mr. Marble: How far are they from the tracks belonging to the Mansfield Road?

Mr. Frost: Well, some of them are close to the track, and some are—we own only about 40,000 to 50,000 acres, something like that in that territory——

5146 Mr. Marble: How far is it from your track?

Mr. Frost: Our timber?

Mr. Marble: No, how far is it from the track belonging to the Mansfield Railroad?

Mr. Frost: Well, we do not own all the timber in that territory.

Mr. Marble: I am asking how far from the track of the Mansfield Railroad is there timber not belonging to you.

Mr. Frost: There might be some half a mile or a quarter of a mile that we did not buy and have not bought; it is there for sale to anybody who wants to buy it.

Mr. Marble: I am not asking for the distance from the logging track belonging to the logging company, but from the track belonging to the Mansfield Railway & Transportation Company.

Mr. Frost: There is probably timber within half a mile of the Mansfield Railway & Transportation Company that we do not own.

Mr. Marble: Who owns the land in between the track of the Mansfield Railroad and this timber, the Frost-Johnson Lumber Company.

Mr. Frost: Well, we might own it and might not.

Mr. Marble: Is there any timber owned by anybody else
5147 that is immediately adjacent to the track of the Mansfield Railway & Transportation Company?

Mr. Frost: I remember one or two pieces which we went through that I do not think we have ever bought the timber. I think there is a school section that we went through, and I do not think that timber has been sold.

Mr. Marble: Belonging to the state?
Mr. Frost: It belongs to the School Board.
Mr. Marble: You have filed with the Interstate Commerce Commission your I. C. C. No. 2, local freight tariffs applying on classes and commodities between stations on the Mansfield Railway & Transportation Company?
Mr. Frost: I think so.
Mr. Marble: And that names a rate for the logs which is the same as the rate upon lumber, and a great many other products, and for five miles and under the rate is five cents per 100 pounds. Would that reach any timber not owned by the Frost-Johnson Company, five miles from Mansfield?
Mr. Frost: Yes, sir.
Mr. Marble: It would reach some?
Mr. Frost: Well——
Mr. Marble: Is it practicable to pay five cents per 100
5148 pounds on logs?
Mr. Frost: No, sir.
Mr. Marble: To manufacture?
Mr. Frost: No.
Mr. Marble: Is not the making of such a rate as that practically a denial of the use of the railroad to other owners of logs?
Mr. Frost: That was put in there just merely to cover it, but I do not think we have ever had an application for the shipment of logs, although I am not sure about that; I do not know whether we have shipped any logs out of there. We have shipped no pine logs.
Mr. Marble: Nobody could ship on that rate?
Mr. Frost: No.
Mr. Marble: Commercially could a man stand that rate?
Mr. Frost: No, I would say not.
Mr. Marble: Being questioned about the passes you remarked incidentally you came to St. Louis on a trip pass. You have not an annual pass that would bring you to St. Louis?
Mr. Frost: I did not at that time.
Mr. Marble: What?
Mr. Frost: I got a trip pass to come to St. Louis.
Mr. Marble: Is that because your 1911 annuals have not
5149 yet been issued?
Mr. Frost: The 1911 have not been issued.
Mr. Marble: And for that reason you came on a trip pass?
Mr. Frost: Yes.
Mr. Marble: What passes did you have last year?
Mr. Frost: I had Texas & Pacific, Kansas City Southern, Iron Mountain and Cotton Belt.
Mr. Marble: Missouri Pacific?
Mr. Frost: Well, the Iron Mountain and Missouri Pacific, yes, sir.
Mr. Marble: Did you have a Wabash pass?
Mr. Frost: I don't remember, I think I did. I don't remember whether I had one last year or not, I think I did, though.
Mr. Marble: Did you have an Alton pass, Chicago & Alton?

Mr. Frost: I did.

Mr. Marble: Did you have a Burlington pass?

Mr. Frost: I think I did.

Mr. Marble: Did you have a Chicago & Northwestern pass?

Mr. Frost: I don't think so; I am not sure about that, I do not think I had.

Mr. Marble: How many passes would you say you had?

Mr. Frost: I probably had six or eight.

5150 Mr. Marble: Did you have any passes east of Chicago?

Mr. Frost: On what line?

Mr. Marble: Any line, did the Wabash pass take you as far as the Wabash might go, would that take you to Pittsburg during the time the Wabash was operated into there?

Mr. Frost: I could not say whether it was a system pass or not.

Mr. Marble: What passes did you have east of Chicago, do you think?

Mr. Frost: I had the ones I have named, the Wabash and the Alton.

Mr. Marble: Did you have any New York Central pass?

Mr. Frost: No.

Mr. Marble: Or Pennsylvania?

Mr. Frost: No.

Mr. Marble: Baltimore & Ohio?

Mr. Frost: No.

Mr. Marble: Baltimore & Ohio Southwestern?

Mr. Frost: I don't think so.

Mr. Marble: Louisville & Nashville pass?

Mr. Frost: No.

Mr. Marble: Is it a common thing for you to get trip passes over roads which do not issue annuals to you?

5151 Mr. Frost: I do not get a trip pass very often, no, sir.

Mr. Marble: You get them as often as you need them?

Mr. Frost: No.

Mr. Marble: You do pay some fares in cash?

Mr. Frost: Yes, sir.

Mr. Marble: You use these passes, of course, as being personal to yourself regardless of the business on which you are traveling?

Mr. Frost: Well, I feel like if I am given a pass I am entitled to use it.

Mr. Marble: I understand that, I am simply asking for the fact. You use it regardless of the business on which you are traveling?

Mr. Frost: I use a pass, if I have it, and want to go, I use a pass.

Mr. Marble: How many officials of your road who also have passes in this same way?

Mr. Frost: I do not think there is but one.

Mr. Marble: One of them?

Mr. Frost: Yes.

Mr. Marble: Who was that?

Mr. Frost: Mr. F. T. Whited.

Mr. Marble: Does he have to do with the sale of lumber?

5152 Mr. Frost: No.

Mr. Marble: What is his relation to the lumber business?

Mr. Frost: He looks more after the manufacturing and these small railroads; he is an officer in those railroads.

Mr. Marble: General supervision of the business outside of canvassing for sales?

Mr. Frost: Yes.

Mr. Marble: These figures of tonnage other than logs and lumber which you have furnished, the feed and general supplies and groceries and all that sort of thing, you have of course, included the feed which you give to your own animals, as a matter of course.

Mr. Frost: That includes all the mill products that we have handled.

Mr. Marble: And the supplies for the men who are in your employ?

Mr. Frost: Yes, sir, but this statement shows the amount that was handled for the lumber company, and the amount handled for others.

Mr. Marble: I understand that the logging roads which are merely temporary, laid into the woods and taken up and re-laid, do not belong to the Mansfield Railway & Transportation Company?

5153 Mr. Frost: No, sir, not to the railroad company.

Mr. Marble: They belong to the logging company?

Mr. Frost: The logging company, and the steel belongs to the lumber company, and the logging company builds those tracks.

Mr. Marble: Is it not a fact that those branches are the ones which would come nearer to the timber owned by other people other than the Frost-Johnson Company?

Mr. Frost: Well, they would pass through timber not owned by the Frost-Johnson Lumber Company just the same as the main line of the road would.

Mr. Marble: You testified regarding certain track elsewhere of the Nacogdoches Company, I believe, that it was not incorporated.

Mr. Walter: No, not the Nacogdoches Company.

Mr. Marble: Which ones were they that you testified were not incorporated and upon which you were not getting an allowance?

Mr. Frost: Montrose and Campti.

Mr. Marble: The Shreveport &——

Mr. Frost: No mill at Shreveport; at Campti and Montrose?

Mr. Marble: Do those tracks lead into timber not owned by you?

5154 Mr. Frost: We own practically all the timber in that territory, in the territory of those two lines.

Mr. Marble: About the same proportion of the whole as you have with this Mansfield property, or less or more?

Mr. Frost: I would say we own more, because we practically own all the timber in that territory on those two lines.

Mr. Marble: You spoke of the agreements that you had for these divisions on the Mansfield Road. With what officials did you have conferences, with whom did you get those agreements, what officials of the Kansas City Southern?

Mr. Frost: I had a conference with Mr. Edson, and arranged those divisions.

Mr. Marble: Did you have a conference with Mr. Smythe?

Mr. Frost: Mr. Smythe was probably present, but I think the first conference was with Mr. Edson, and Mr. Smythe might have been present.

Mr. Marble: With the Texas & Pacific with whom were they had?

Mr. Frost: Mr. Thorn and Mr. Sargent.

Mr. Marble: Are you familiar with the lumber business and the conditions of it prior to 1905?

Mr. Frost: Yes, sir. I have been in the lumber business since 1891.

5155 Mr. Marble: It is true, is it not, that prior to 1905 in the lumber business, as in a great many other businesses, large rebates were given.

Mr. Walter: What do you expect to show by this?

Mr. Marble: I expect to find out what he knows about it and then I will ask another question. I want to know if he is familiar with the way freight rates were made prior to 1901 actually; that is to say, the arrangements with particular shippers with rebates from the published rates. I do not suppose anyone disputes that that was the fact in those days. I did not know that anyone did.

Mr. Frost: Well, I don't remember whether I understand just what you mean.

Commissioner Harlan: You mean you have no familiarity with rebates?

Mr. Marble: In the days when rebates were the rule, there were days prior to 1905, and up to about 1906, that rebates were freely given in the lumber business as in other business, were they not? That is a fact, is it not?

Mr. Frost: I could not say that there were any rebates given.

Mr. Marble: You don't know that?

Mr. Frost: I don't know about that. They would pub-

5156 lish a special tariff probably; they had what they called a construction rate.

Mr. Marble: That would be for the building of one of these roads, or for the building of a mill?

Mr. Frost: For the building of a mill, that machinery might go in there on a little less rate than published.

Mr. Marble: Were there such special tariffs published for the movement of lumber out, to your knowledge?

Mr. Frost: No.

Mr. Marble: Did lumber pay the tariff rates prior to 1905?

Mr. Frost: It paid the tariff rate, and prior to 1905 there were probably some of these roads that got an allowance out of the through rate just as they do now.

Mr. Marble: But you are not familiar with the payment of rebates to the mills prior to 1905 on their shipments.

Mr. Frost: Well, it was handled just about like it is now.

Mr. Marble: When did these divisions with tap lines first make their appearance?

Mr. Frost: Well, I could not say just when they did commence paying them.

Mr. Marble: They have been paying them since you be-
5157 came familiar with the lumber industry?

Mr. Frost: No.

Mr. Marble: What was done before that, were tariff rates paid without concessions, or was there a concession?

Mr. Frost: There was an allowance made in some instances, we will say, of two cents per 100 pounds.

Mr. Marble: To whom, to the mill?

Mr. Frost: To the road, although it was not an incorporated road.

Mr. Marble: Well, if it was not incorporated and was owned by the mill, it would be made to the mill naturally.

Mr. Frost: Well, it went to the mill—to the railroad; it was paid to the railroad company.

Mr. Marble: Although the railroad was not incorporated.

Mr. Frost: The railroad was not incorporated.

Mr. Marble: And had no identity.

Mr. Frost: Well, they were owned by the same interests.

Mr. Marble: And owned by the same firm or corporation.

Mr. Frost: Well, it was owned by the lumber company just like now, the stock of the roads is owned by the lumber company.

Mr. Marble: A check would be made to the lumber company in those days; I am not laying any trap for you; it is of *in*
5158 great consequence, and if you are not familiar with rebates in those days we will let the matter drop. If you are we would like to know.

Mr. Frost: I would say I am not very familiar with it, because the time I can remember back this is the way we handled these things.

Mr. Marble: You say prior to 1905 that allowance was around two cents per 100 pounds?

Mr. Frost: Well, in some instances we got two cents per 100 pounds and in some instances it might have been more. I would say it was an average of one to two cents.

Mr. Marble: Are the allowances generally larger now than then?

Mr. Frost: Some of them are because the roads have been extended?

Mr. Marble: But they are generally larger?

Mr. Frost: I would not say generally; I would say there are larger allowances than that paid, because take our Mansfield Railway & Transportation Company——

Mr. Marble: Because logs are farther away from the main line?

Mr. Frost: Yes, sir; take our Mansfield Road, we have
5159 more money invested and we feel we are entitled to a greater proportion than we were then.

Mr. Marble: Then as the mill has to go farther away from the main line to get its logs, the allowances have increased?

Mr. Frost: In some instances.

Mr. Marble: Did you know at all in the old days of special al-

lowances being made upon lumber for particular contracts in order to enable the mills to compete?

Mr. Frost: No, I had very little to do with the selling of our lumber.

Mr. Marble: That is all.

Examiner Burchmore: Are the joint rates on hardwood lumber to which your company is a party in connection with the Texas & Pacific to interstate destinations the same as the rates which the Texas & Pacific has from its own stations in this vicinity or are they an arbitrary higher?

Mr. Frost: Our rates, I think, are the same from any point on our line in connection with the Kansas City Southern or the Texas & Pacific to interstate points.

Examiner Burchmore: That is true of hardwood rates?

Mr. Frost: Well, the rates I think are the same as the pine.

Examiner Burchmore: Are the divisions the same as these
5160 yellow pine divisions?

Mr. Frost: The division on the hardwood?

Examiner Burchmore: Yes.

Mr. Frost: Yes, sir, practically the same.

Examiner Burchmore: Do you have any milling in transit rates on your line?

Mr. Frost: No.

Examiner Burchmore: Have you ever had milling in transit rates on this line?

Mr. Frost: No, sir, we have handled it just like it is now.

Examiner Burchmore: Then the rates under the tariffs have never covered or been intended to cover the movement of the logs into the mill?

Mr. Frost: No.

Examiner Burchmore: I call your attention to your testimony at New Orleans in 1908, particularly to page 1412 of the transcript; this is filed in Docket No. 1436, the Winn Parish case. Mr. Garwood's question is: "One of the counsel asked you about the service this railroad company rendered as to the lumber, and you stated it hauled the lumber from the mill to the junction point." Answer, by

Mr. Frost: "Yes, sir. Mr. Garwood: Is it not also a mill-
5161 ing in transit proposition, the hauling of the logs in on the main line to the mill? Mr. Frost: Yes, sir. Mr. Garwood: So that that additional service is also rendered? Mr. Frost: Yes, sir."

There is a little ambiguity perhaps in your answers, but they appear to indicate that the rates covered the logs into the mill as well as the lumber out, and that those rates were on a milling in transit basis.

Mr Frost: Well, the railroad company does not get any revenue out of those logs until they are manufactured into lumber.

Examiner Burchmore: If your testimony at that time is accurately reported here or should properly be interpreted to mean you had milling in transit rates, then it was in error?

Mr. Frost: It probably was, or I probably did not understand just what he meant by that.

Mr. Walter: What did the tariffs show at that time, Mr. Burchmore?

Examiner Burchmore: I do not know what they showed. I do not know that there is any milling in transit.

Mr. Walter: The tariffs ought to show.

Mr. Cowan: How is it, do they show?

Mr. Walter: I do not know. I am speaking of the time he
5162 testified.

Examiner Burchmore: That testimony was understood to mean that they had milling in transit and that it covered the shipment of the logs into the mill. He now states that is not true.

Mr. Walter: He is speaking of the present time now.

Examiner Burchmore: Well, it was not true at that time, was it?

Mr. Frost: We handled it then just as it is now.

Mr. Walter: The tariff might have been different.

Mr. Cowan: The witness says it was not.

Mr. Walter: No, but I am speaking, that we should know from the tariff itself.

Examiner Burchmore: In describing your freight traffic, you gave the revenue from all sources and the revenue from traffic supplied by the Frost-Johnson interests and stated as I recall it that 56 per cent of the total freight revenues were derived from traffic supplied by the Frost Johnson interests.

5163 Mr. Frost: I think that is correct.

Examiner Burchmore: Have you prepared any tonnage figures?

Mr. Frost: Yes, sir.

Examiner Burchmore: Can you give us the total tonnage of lumber supplied by the Frost-Johnson people?

Mr. Frost: I thought I gave that.

Examiner Burchmore: Was that in your statement?

Mr. Frost: Yes, sir, I think so.

Mr. Walter: Yes, sir.

Examiner Burchmore: Well, what was the percentage?

Mr. Frost: The total tonnage of lumber for 1910 was 28,000 tons. The total—I have not figured the percentage out. I can figure that out this afternoon.

Examiner Burchmore: What was the total tonnage of all freight?

Mr. Frost: It was 50,167 tons, that was for the year ending June, 1910.

Examiner Burchmore: How many trains a day do you run west of Mansfield?

Mr. Frost: We run one train each way a day.

Examiner Burchmore: On a regular schedule?

Mr. Frost: Yes, sir.

Examiner Burchmore: Do you have a local rate on lum-
5164 ber or logs, what might be called a switching rate as between Mansfield Junction and your mill, I have forgotten the name of the mill.

Mr. Frost: Oak Hill.

Examiner Burchmore: At Oak Hill.

Mr. Frost: We have a rate in, I think, that covers the movement of hardwood logs to the hardwood lumber company's mill.

Examiner Burchmore: Does that rate apply only to logs?

Mr. Frost: Switching—well, I could not say whether it just applies to logs or not. We have a tariff to cover the movement of those logs.

Examiner Burchmore: What is the rate?

Mr. Frost: I don't know exactly. I stated this morning that I did not know exactly what that rate was.

Mr. Marble: The tariffs are here, and do they cover more commodities than logs and lumber.

Mr. Frost: Well, I am not very familiar with that part of it because I do not look into those details.

Mr. Marble: Do you know why your switching tariff No. 4-B was cancelled, and your switching tariff No. 4-C put in? The only difference being that 4-B was filed with the Interstate Commerce Commission and 4-C is not; are you familiar with the reason for
5165 that?

Mr. Frost: No, that is handled down at Mansfield, and I am not familiar with it.

Commissioner Harlan: Who were the five stockholders of this railroad company?

Mr. Frost: There is Mr. Whited, Mr. Sample, Mr. Jenkins, Mr. Wood and myself.

Commissioner Harlan: What is the total capital stock of the company?

Mr. Frost: About $77,000 issued.

Commissioner Harlan: What bonded indebtedness has it?

Mr Frost: About $216,000, I think, is about the amount.

Commissioner Harlan: What does that cover?

Mr. Frost: That is notes for the purchase price of this track.

Commissioner Harlan: Then the total capitalization is $277,000?

Mr. Frost: No, the stock is $77,000, but they owe the note which they executed for the purchase price of this track which they bought from the lumber company.

Commissioner Harlan: Whose indebtedness is that, the railroad company's indebtedness?

5166 Mr. Frost: The railroad company owes that to the lumber company.

Commissioner Harlan: To the lumber company?

Mr. Frost: Yes.

Commissioner Harlan: And that is a lien on what property?

Mr. Frost: The railroad.

Commissioner Harlan: And the equipment?

Mr. Frost: Yes, whatever equipment belongs to the Mansfield Railway & Transportation Company.

Commissioner Harlan: Will you be good enough to file a copy of the contract between the lumber company and the logging company?

Mr. Frost: Yes, sir.

Commissioner Harlan: Judge Cowan, have you some questions?

Mr. Marble: I will ask that I. C. C. No. 5 and I. C. C. No. 2 of the Mansfield Railway & Transportation Company, and also switching tariff No. 4-C, which cancels I. C. C. No. 5, be placed in the record as exhibits.

(The papers so offered and identified, were received in evidence and thereupon marked Mansfield Railway & Transportation Exhibits Nos. 5, 6 and 7, Witness Frost, received in evidence January 26, 1911, and are attached hereto.)

5167 Mr. Garwood: Can this witness go through with the several companies he is interested in? I have one or two questions I want to ask, but I do not want to ask them until he gets through with all the companies.

Commissioner Harlan: He will be asked as to the others presently.

Mr. Cowan: Are those other companies to proceed while the witness is on the stand?

Commissioner Harlan: Yes, I think we might as well call them. If you have any questions to ask now——

Mr. Cowan: I have some questions as to this particular company at this time.

Commissioner Harlan: Very well, you may proceed.

Mr. Cowan: With regard to this milling in transit, I assume the milling in transit rate would be one published by the trunk line, and in that connection that they must have some regulations in the milling in transit tariffs, as I know they do have in the case of grain and other products which move on milling in transit, which leads me to ask the question, have you ever seen the tariffs on lumber of the Kansas City Southern and the Texas & Pacific, which I believe are your connections, which specify a milling in transit rate
5168 on lumber, which involves and includes the hauling of the logs by the tap line, I will call it, for the sake of a better name.

Mr. Frost: I do not think I have ever seen one. I am not very familiar with those things because it is a matter of detail and I do not keep up with it very closely.

Mr. Cowan: Several times in the hearing witnesses have testified that there was a milling in transit arrangement and that the rates or divisions allowed involved the payment for the haul of the logs In no case has any tariff of that character been filed that I know of, and I wondered if you had ever seen one or knew anything about it.

Mr. Frost: I am not familiar enough with it to say.

Mr Walter: I think it might be very well understood that all these tariffs are on file with the Commission and can be used to determine what the rate is.

Mr. Cowan: Of course we are bound to do it, but as we go through the hearing of a great many witnesses probably they are just as much mistaken as some others have been——

Mr. Walter: I myself know of tariffs which have milling in transit rates on logs which includes the logs down to the mill and the lumber out.

5169 Mr. Frost: Well, he asked me the question if I had ever seen them. I never have, but they might be in existence and I never have seen any of them.

Mr. Cowan: So far as you know the divisions which you get were not in fact based upon any such proposition as that, so far as you know.

Mr. Frost: All I know is we get a division on the lumber which we deliver.

Mr. Cowan: But my question is, so far as you know it is not based upon the milling in transit proposition, based on the tariff so far as you know.

Mr. Frost: I do not know.

Mr. Cowan: It was not done before the incorporation of this railroad company, that you know of, was it?

Mr. Frost: There was no lumber moved on the Mansfield Railway & Transportation Company until we commenced operations on that line.

Mr. Cowan: I thought you said there might be some lumber moved——

Mr. Frost: Some inbound but not outbound.

Mr. Cowan: Now the right of way of this railroad that we have under consideration, was that a donation by the lumber company and was there a deed to the right of way passed from the lumber

5170 company to the railroad corporation?

Mr. Frost: The deeds to the individual pieces of property as we went over them were taken to the lumber company or in my name individually, because some of the road was built there before we were ready to lay the track down there. That is, it was graded, and we bought the right of way from the individuals and paid them so much per acre for it. In one instance I think we paid about $150 for about half an acre.

Mr. Cowan: And that deed went to the railroad company?

Mr. Frost: Well, it is now the property of the railroad company. It might have been deeded from this owner to the lumber company, but it was for the purpose of the right of way.

Commissioner Harlan: I think we have all of those details, Judge Cowan.

Mr. Cowan: I overlooked one matter, in regard to the sale of your lumber and the handling of this product, that had better come in after he gets through the testimony of the other railroads, but I will want to ask something about it. I have several other questions which had better come after that. With whom was your agreement when you made the settlement with the Kansas City Southern and received the $9500?

Mr. Frost: With whom was the original agreement, you

5171 mean the original conference?

Mr. Cowan: With whom was the agreement made when you got the money?

Mr. Frost: It was in their accounting department. I had an arrangement with Mr. Edson and probably Mr. Smythe that we were to get a certain division and we commenced to ship the lumber

and this agreement was had before that time, and then when the thing rocked along there and was hung up in their office for some reason, I did not know why, until I understood they wanted to reduce those divisions and I would not accept it, then it was settled.

Mr. Cowan: And you settled on $9500 at a later period, upon an agreement you had made as to what the settlement should be at a previous date, that is the agreement was at a previous date.

Mr. Frost: Yes, sir, it was all agreed to, but in some instances they did not allow as much as the original arrangement.

Mr. Cowan: It was a compromise settlement made.

Mr. Frost: Well, it was less than they had agreed to pay, a less division.

Mr. Cowan: And what was the date of the settlement?

Mr. Frost: I don't remember. I never thought any more
5172 about it. We just made this arrangement and went ahead, and it was finally settled, and I don't remember just how long it was.

Commissioner Harlan: You got the check in May, 1907, did you not?

Mr. Frost: Our records show when we got it. It went to the Mansfield Railway & Transportation Company, and the books show when we got the money.

Mr. Cowan: Do you keep the operations of your business for this particular road and this particular mill separate from the operations of other mills and interests which you have?

Mr. Frost: Every department in our company is handled separately. Now this railroad company is handled just as though the Frost-Johnson Lumber Company had not a dollar's interest in it. The books are all separate, different employés, and they have their own accounts, make their own collections, pay their own bills, and everything is kept separately.

Mr. Cowan: Was the matter gone into with respect to the fact of separate employés of this railroad?

Commissioner Harlan: Yes, we went into those matters. That seems to be all.

Mr. Coleman: I would like to ask one question. This
5173 refers to the line of questioning by Examiner Marble about rebates prior to 1905. Your mill has always had more than one railroad as an outlet, more than one trunk line, is not that so?

Mr. Frost: Which mill?

Mr. Coleman: The mills along this particular railroad you are testifying about.

Mr. Frost: Well, we have had connections with the Kansas City Southern and the Texas & Pacific there all the time, yes, sir.

Mr. Coleman: I understand you did not deny that prior to 1905 rebates had been given; is that correct?

Mr. Frost: Well, I don't know about the rebates. There was an allowance made by some of these trunk lines if they would go out there and buy this timber; in other words, the trunk line said if you will go and build that railroad and buy that timber and bring the

tonnage there will be an allowance made to you of say two cents per 100 pounds or one cent or possibly more than that in some instances.

Mr. Coleman: Whenever that was made, it was as the result of competition between two trunk line railroads to get the business?

Mr. Frost: Not always.

5174 Mr. Coleman: Do you know of any cases where when your mill was served by one trunk line they voluntarily reduced the published tariff rate?

Mr. Frost: Well, they did not reduce the published tariff rate; they made an allowance for that haul.

Mr. Coleman: Where there was only one trunk line?

Mr. Frost: I know of one instance.

Mr. Coleman: Only one?

Mr. Frost: There might be more.

Mr. Coleman: What road was that?

Mr. Frost: It was on the Cotton Belt.

Mr. Coleman: I am speaking of your particular mill served by this road.

Mr. Frost: Well, that was our mill.

Mr. Coleman: That is all. As a general thing though, it is the result of competition between railroads?

Mr. Frost: Well, I do not know about that. I could not say.

Mr. Coleman: That is all.

Commissioner Harlan: That seems to be all. We will take up next the Louisiana & Pine Bluff.

Mr. Walter: This witness will not testify in that case, as he is not familiar with the details as is Mr. Johnson.

5175 Commissioner Harlan: We will call Mr. Johnson, but I would like to ask Mr. Frost to remain.

Mr. Frost, have you ascertained how many cars you shipped last year?

Mr. Frost: That is the number, 9,331, that were shipped last year.

Commissioner Harlan: Cars of lumber?

Mr. Frost: Yes, that is the total shipment from all the mills.

Commissioner Harlan: From all the mills?

Mr. Frost: Yes. Do you want just this particular mill, or all the mills? I understood you——

Commissioner Harlan: That is responsive to my question, all of your mills.

Mr. Walter: He has certain data there that he would like to file as an exhibit with his testimony that has not been covered, regarding outside business.

Commissioner Harlan: I so understood.

Mr. Walter: He has some personal memorandum on this, so he is going to furnish them later.

(Witness excused.)

5176 C. D. JOHNSON, was called as a witness herein, and having been duly sworn, testified as follows:

Direct examination:

Commissioner Harlan: Will you give your full name to the reporter?

Mr. Johnson: C. D. Johnson.

Commissioner Harlan: Where do you live?

Mr. Johnson: City of St. Louis.

Commissioner Harlan: What is your business?

Mr. Johnson: Lumber and short line railroads.

Commissioner Harlan: How long have you been engaged in the lumber business, and in what association or connection?

Mr. Johnson: Well, I have been in the business several years.

Commissioner Harlan: About how many?

Mr. Johnson: Eighteen or twenty years.

Commissioner Harlan: How long have you been connected in any capacity with short line railroads?

Mr. Johnson: Well, I should say ten years or longer.

Commissioner Harlan: And with what lumber concerns have you been associated?

Mr. Johnson: Well, I have been associated with several, but I am now President of the Union Saw Mill Company, Vice-presi
5177 dent of the Frost-Johnson Lumber Company, and I am a stock holder in the Carter-Kelly Lumber Company.

Commissioner Harlan: With what short line railroad are you now associated?

Mr. Johnson: President of the Louisiana & Pine Bluff Railroad.

Commissioner Harlan: How long have you been president?

Mr. Johnson: Ever since its construction.

Commissioner Harlan: Is that railroad owned by the Frost-Johnson Lumber Company?

Mr. Johnson: The stock is owned by the Union Saw-Mill Company, and the Union Saw Mill Company is owned by the Frost-Johnson Lumber Company.

Commissioner Harlan: So that really the three are practically one enterprise?

Mr. Johnson: Yes. Mr. Commissioner, if you will allow me, I have prepared a statement here that I can tell you all about that road, and the construction of it and the tracks that it has, and I can read it to you in five minutes and it will save a lot of time for all of us.

Commissioner Harlan: I was going to ask Mr. Marble to examine you, but perhaps that would shorten the time.

5178 Mr. Johnson: There are various contracts and quite a lot of things in connection with it, and I can read it to you and save a lot of time.

Commissioner Harlan: Very well.

Mr. Johnson: The Union Saw Mill Company was organized and incorporated in December, 1902, for the purpose of acquiring a large body of timber and timber land in Union County, Arkansas and Union Parish, Louisiana, and to engage in the manufacture of

lumber. Early in 1903 the Company commenced building a town and erecting its saw mill plants at a place now known as Huttig, Arkansas. As railroad facilities were necessary, a railroad company was organized and incorporated, which was known as the Little Rock & Monroe Railway Company, and the stockholders were substantially the same as those in the saw mill company. It immediately began to build its road from a connection with the El Dorado & Bastrop Railway, which is a part of the Iron Mountain, through the town of Huttig, to the city of Monroe, Louisiana, a distance of forty-four miles. At Monroe, connections were arranged with the V. S. & P. Railway as well as the Valley Division of the Iron Mountain Railway. Prior to the construction of this line, an
5179 understanding was had with the officials of the Iron Mountain Railway whereby, upon its being put into operation, certain divisions would be allowed on lumber tonnage.

By the early part of 1905 the road had been completed to the city of Monroe and terminal grounds purchased at that place; the steel had been laid to within three or four miles of Monroe and a steel draw bridge over the Ouachita River had been constructed. At this state, the officials of the Iron Mountain Railway Company signified the desire of their company to purchase the road, but we told them that we did not care to sell it for the reason that it was the key to our business and that we could not afford to sell the line. Negotiations followed, however, and as a result, the Iron Mountain purchased the road, and a contract between the Union Saw Mill Company and myself personally on one part and the St. Louis, Iron Mountain & Southern Railway Company on the other was entered into on March 18, 1905, under which all the stock and bonds of the Little Rock & Monroe Railway Company were sold to the St. Louis, Iron Mountain & Southern Railway Company, for the following considerations:

First, That the Iron Mountain Railway would secure the
5180 execution by the Little Rock & Monroe Railway Company, the El Dorado & Bastrop Railway Company and the Farmerville & Southern Railway Company of contracts granting the Union Saw Mill Company, or its assigns, the right to operate logging trains, with its own engines and crews, and under certain conditions and rules, over the lines of these roads at a charge of 35¢ per train mile.

Judge Cowan: May I interpose, that if the witness will give the dates of the transactions as he goes along, it will save us considerable trouble.

Mr. Johnson: I have given you the dates.

Commissioner Harlan: He has given most of them, but you can interrupt him where a date is omitted.

Mr. Johnson: This will go right into the record. I have given this gentleman a copy of it, and the dates are here, I think.

Examiner Marble: When was the road incorporated?

Mr. Johnson: If you will let me finish this.

Commissioner Harlan: We will go through with the statement and read it slowly, and we may interrupt with questions that are necessary, and then we will put further questions.

Mr. Johnson: That was the first consideration.

5181 Second. Prior to the sale of the Little Rock & Monroe Railway, the management of the Union Saw Mill Company had for a long while known of a large tract of timber land lying north of Huttig, and it had known approximately at what price this tract could be purchased. The Union Saw Mill Company already owned a great deal of timber land in that locality, and had the Little Rock & Monroe Railway not been sold, that road would have been extended northwardly to reach those holdings. However, at the time negotiations for the sale of the road were being conducted, the officials of the Iron Mountain Railway expressed the desire that the Union Saw Mill Company purchase the large track just mentioned, and also, as far as possible, whatever other timber could be had in its operating territory that could be railed to Huttig for manufacture into lumber. This we agreed to do, and I may add here that as a result, and in good faith of this understanding as to buying additional timber, the Union Saw Mill Company has since increased its holdings by many thousands of acres and has invested an immense amount of capital in timber property. As regards the particular tract in question, we immediately took an option on the

5182 same which we later exercised and the property was purchased at a price upwards of $1,200,000.00. As there were no railroad facilities for bringing out this timber, in closing the sale of the Little Rock & Monroe Railway, we tried to get the Iron Mountain people to agree to extend that road from Huttig so as to develop the territory to the north and northwest. They told us, however, that they preferred we build a line ourselves. Consequently a provision was made in the contract of sale whereby the Union Saw Mill Company and I personally became obligated to organize or cause to be organized a railroad corporation for the construction of a line of railroad which should be in effect an extension of the Little Rock & Monroe Railway northwardly from Huttig, Arkansas, so as to reach all of the timber in that direction. The contract provided further that the proposed new railroad be constructed and incorporated in such a way as to justify between it and the St. Louis, Iron Mountain & Southern Railway and its auxiliary lines the same division of rates on forest products as were then in effect from the Little Rock & Monroe Railway Company. In accordance with these provisions the present Louisiana & Pine Bluff Railway Company was organized and incorporated in March, 1905, with a

5183 capital stock of $300,000.00. The stock was subscribed by substantially the same people as were interested in the Union Saw Mill Company, and as the saw mill company owned all the terminals and railroad facilities at Huttig, as well as the engines, cars and other equipment that had been used on the Little Rock & Monroe Railway, all that property was turned over to the Louisiana & Pine Bluff Railway Company for stock in the new corporation, which stock is still held by the Union Saw Mill Company.

Third. The remaining consideration for the sale of the Little Rock & Monroe Railway, in addition to the considerations already

recited, was cash. This cash payment by the St. Louis Iron Mountain & Southern Railway Company amounted to exactly the actual cost of the road to us as shown by the books, records and receipted bills of the Little Rock & Monroe Railway Company. Therefore we received no profit whatever from the sale.

Copies of all the contracts I have mentioned are now on file with the Interstate Commerce Commission at Washington, having been sent to Secretary Edw. A. Moseley, on November 25, 1908.

5184 During 1910 an industry was located on the rails of the Louisiana & Pine Bluff Railway Company in which none of the stockholders, either of the Railway Company or of the Union Saw Mill Company are interested,—namely, the Wisconsin Lumber Company. This Company has erected a large saw mill plant at Huttig for the manufacture of hardwood lumber and other forest products, and its output amounts to one-third of the total lumber production at that point. Being located on our tracks, that industry is entirely dependent upon our road for transportation facilities and we are well prepared to serve them as our equipment is especially adapted to handling their particular kind of business.

The Louisiana & Pine Bluff Railway Company is subject to the federal Act regulating Interstate Commerce and the rules and regulations of the Interstate Commerce Commission, in addition to being bound by the laws of the State of Arkansas in intra-state business, and is endeavoring to comply with the same.

In conclusion I wish to state that all the contracts with the Iron Mountain Railway Company before mentioned, and all the understandings in connection with them, have so far been faithfully carried out and complied with by the Iron Mountain Railway Company, as well as ourselves.

5185 Here is a map that shows those lines and shows where these trackage contracts extend. (Producing map.)

Commissioner Harlan: Mr. Johnson, we will proceed on this point in the regular order. Mr. Marble, if you have some questions to put to this witness?

Examiner Marble: Mr. Johnson, in Washington we tried to prepare a map of this road from your annual reports and from the commercial maps at our disposal, from such data that we had. I would like you to look at it and see if it is correct, and if not indicate the way in which it should be corrected. (Showing witness map.)

Mr. Johnson: It is partially correct, part of it is there. It is correct as far as it goes.

Examiner Marble: What is there to be added?

Mr. Johnson: There is a connection in there between Dollar Junction and Huttig. Here is a line which we just made to go off this line, and these lines belong to the Iron Mountain (indicating).

Examiner Marble: If you will kindly mark this map and state the points.

Mr. Johnson: That is El Dorado, Arkansas there, and here is Dollar Junction right here (indicating).

5186 Examiner Marble: From El Dorado to Dollar Junction, you say that line belongs to the Iron Mountain?

Mr. Johnson: Yes sir, that is a line that we have trackage contracts on from El Dorado to White. I have one of these contracts that is on file with you, with the Commission. This line that we built, the Little Rock & Monroe Railway——

Examiner Marble: That is shown on it, is it not?

Mr. Johnson: Yes.

Commissioner Harlan: Well, between what points?

Examiner Marble: Between Huttig and this point here (indicating)?

Mr. Johnson: Through Huttig, yes.

Examiner Marble: That is shown on this map?

Mr. Johnson: Yes sir, and that is known as the Farmerville & Southern. That belongs to the Iron Mountain.

Examiner Marble: You refer there to the track running from Farmerville and joining the——

Mr. Johnson: That joins the road that we built—Mr. Harding, when he was with the Missouri Pacific, made an arrangement with me to use that piece of the Little Rock & Monroe.

Commissioner Harlan: Between what points?

5187 Mr. Johnson: Between Litro and Felsenthal, under the usual trackage arrangement.

Commissioner Harlan: This is substantially correct, then, this map?

Mr. Johnson: I think so. I have not looked at it closely, I would not say that it was. I think that it is correct of these lines, but I do not think that you have got the Louisiana and Pine Bluff on there correctly. I don't think that you have got that on. I think the other lines are all right.

Examiner Marble: Can you indicate in what respect these are wrong?

Mr. Johnson: You can look at this and you can see exactly where the Louisiana & Pine Bluff is located. The Louisiana & Pine Bluff is located from Huttig north through Dollar Junction.

Examiner Marble: How far north of Dollar Junction?

Mr. Johnson: About five miles.

Examiner Marble: Is the trackage constructed?

Mr. Johnson: The right of way and the grade is completed, that is all done, but I don't know whether they have laid the steel on it yet or not.

Examiner Marble: How far north of Dollar Junction

5188 have you got a railroad?

Mr. Johnson: It is not in operation very far north of there.

Examiner Marble: More than 200 feet?

Mr. Johnson: Oh, yes, more than 200 feet.

Examiner Marble: How far?

Mr. Johnson: I should say probably half a mile.

Examiner Marble: What other completed railroad have you that we have not shown?

Mr. Johnson: We have got this line through here (indicating).

Examiner Marble: That is what point?

Mr. Johnson: From Huttig to what we call E. & V. Junction, about 25 miles.

Examiner Marble: Who owns that track?

Mr. Johnson: Louisiana & Pine Bluff.

Examiner Marble: Does the Huttig Lumber Company own that track?

Mr. Johnson: No, sir, there is no Huttig Lumber Company.

Examiner Marble: I mean the Huttig Logging Company?

Mr. Johnson: No sir.

Examiner Marble: It does not?

5189 Mr. Johnson: No, the Huttig Lumber Company—the Louisiana & Pine Bluff Railroad Company own all this steel, and they furnish the Huttig Logging Company with the steel, and they do the balance of the work on these logging lines. These are log spurs, strictly log spurs. They are constructed by the logging company.

Commissioner Harlan: Who owns this line from Huttig?

Mr. Johnson: The Louisiana & Pine Bluff.

Commissioner Harlan: Does it own the real estate?

Mr. Johnson: Owns the track.

Commissioner Harlan: Does it own the real estate under the tracks?

Mr. Johnson: Yes sir.

Commissioner Harlan: And owns the steel?

Mr. Johnson: And the road bed.

Commissioner Harlan: And the sleepers?

Mr. Johnson: Yes.

Commissioner Harlan: Who paid the bill for the construction?

Mr. Johnson: The Louisiana & Pine Bluff built it. The Louisiana & Pine Bluff furnished the steel on that track, but the road bed and ties is owned by the logging company.

5190 Commissioner Harlan: When you said that I thought you meant the small logging road running into this——

Mr. Johnson: There is about ten miles of track right there.

Commissioner Harlan: Logging track?

Mr. Johnson: Yes, logging track strictly.

Mr. Coleman: I would like to ask if that logging road is incorporated?

Mr. Johnson: Yes, sir.

Examiner Marble: What is the relationship of the Louisiana & Pine Bluff Railroad Company to these trackage rights over the Iron Mountain tracks?

Mr. Johnson: Those trackage rights, the Louisiana & Pine Bluff Railway are operating on its own tracks, and over these roads the Union Saw Mill Company has trackage rights, and those trackage rights have been confined to the Louisiana & Pine Bluff Railway Company. The Louisiana & Pine Bluff Railway Company pays all the bills for the trackage there.

Examiner Marble: When were they assigned?

Mr. Johnson: I don't know whether they have ever been assigned formally or not.

Examiner Marble: Has the Union Saw Mill Company
5191 any right to assign those contracts?

Mr. Johnson: Yes, sir.

Examiner Marble: To anybody?

Mr. Johnson: With the consent of the Iron Mountain.

Examiner Marble: Has it ever gotten that consent?

Mr. Johnson: Well, I will tell you. I went to their legal department and asked if that could be done, and they said they would look into it and attend to it, and I never heard from them any more about it. This was some two or three years ago, and I was at Huttig one time and I asked to see those bills, and I found that they were presenting the bills to the Louisiana & Pine Bluff Railway, which was all right, so we never paid any more attention to whether they ever assigned them in writing or not.

Examiner Marble: The Iron Mountain began to render bills to the Louisiana & Pine Bluff Railway Company and you took that as an indication that the assignment had been made?

Mr. Johnson: Yes, sir.

Examiner Marble: And those bills for 35 cents per mile of that mileage are now paid by the Louisiana & Pine Bluff, are they?

Mr. Johnson: They always have been, I think. You un-
5192 derstand I am not familiar with all the little details. Mr. Scott is here and he will testify as to the details, but I think they have always been paid by the railroad.

Examiner Marble: What is the extent of that trackage right, what is your company hauling over that track, that is, what has it a right to?

Mr. Johnson: The contracts speak for themselves, and they have been on file with the Commission for two or three years, and they have the right—they have no right to haul anything except logs or forest products.

Examiner Marble: I think what Mr. Johnson says of the contract speaking for itself is quite fair, and I will go to that in a moment. Did you never have trackage rights over all of the tracks owned by the Iron Mountain, the tracks that were formerly the El Dorado & Bastrop, formerly the Little Rock & Monroe, formerly the Farmerville & Southern. They are all under the same——

Mr. Johnson: About 120 miles of them, I think.

Examiner Marble: They are all under the same conditions?

Mr. Johnson: Exactly the same, only the name of the corporation is changed.

Examiner Marble: There are three different contracts?

5193 Mr. Johnson: There was at that time; there was three different corporations, you see. There were the El Dorado & Bastrop Railway, the Farmerville & Southern Railway, the Little Rock & Monroe Railway, but they have since all been merged by the Iron Mountain into one company, all Iron Mountain, but the contracts are duplicates, triplicates, they are all alike.

Examiner Marble: Have you a copy of your letter of November

17, 1904, to Mr. Clarke, the letter in which you made the proposition for the sale of the Little Rock and Monroe Railway? Have you the correspondence files with you in that regard?

Mr. Johnson: No sir, I think I have a copy of the letter though, here.

Commissioner Harlan: What is the date of the letter?

Examiner Marble: November 17, 1904, written to Mr. C. S. Clarke, Vice-President of the Missouri Pacific Railroad.

Mr. Johnson: I have not got it here.

Examiner Marble: With your permission—it is a rather long letter, describing the road substantially in harmony with the statement that you have made here.

5194 Mr. Johnson: A letter from me to Mr. Clarke?

Examiner Marble: A letter from you to Mr. Clarke, from you as President of the Little Rock & Monroe Railway Company. It was before you made the sale and before the counter proposition which was made by Mr. Clarke. It is an offer to sell the Little Rock & Monroe, and I might read the portion that deals with this matter of the division, and of course I will read as much of it as you want, but I don't think that you will want any other part of the letter.

Mr. Johnson: I don't know as I can remember the details, the details of that letter there. We have a contract that is on file with the Commission, setting out the details of the sale.

Examiner Marble: I will read a portion of that letter——

Mr. Johnson: There was some correspondence about it, but I don't know whether that letter had anything to do with that contract.

Examiner Marble: Let me read it and see perhaps:

"Dear Sir: In line with the conversation had with you yesterday, as per your request I herewith make you the following proposition for the purchase by you of the Little Rock &

5195 Monroe Railway. I have decided I would sell the line for the following considerations:

"First: The continuations of the divisions that are now in effect which is five cents per hundred pounds on lumber delivered to your line.

"Second: The free use of the tracks from Felsenthal to the River, a distance of about thirty miles."

And then you go on with a financial history of the road which is substantially in harmony with the matter you read here. Further over in that letter you say:

"You will understand that the main essence of this sale would be the continuation of the present divisions." Do you recall that letter?

Mr. Johnson: Well, I do not; I guess that is probably all right.

Examiner Marble: It purports to be——

Mr. Johnson: That was part of the consideration of the sale, was the continuance of those divisions, part of the purchase price for the railroad.

Examiner Marble: In March, 1905——

Mr. Johnson: What was the date of that letter, Mr. Marble, the one you just read.

Mr. Walter: November 17, 1904.

5196 Examiner Marble: That is November 17, 1904, the first letter. Then on March 8, 1905, Mr. Clarke wrote you a letter containing a counter proposition.

Mr. Johnson: Yes.

Examiner Marble: Referring to a conference evidently which you had after writing this letter:

"Referring to our conference of this morning, beg now to advise you that subject to the approval of our President and Board of Directors, we will purchase from you all of the issued and outstanding capital stock of the Little Rock & Monroe Railway Company," and the entire property upon certain terms set forth here. Now, I am going to paragraph four, the paragraphs being numbered in the center.

Mr. Johnson: If you would not mind, I would rather you would read it all. I cannot get the sense of the letter unless you read it.

Examiner Marble: I am perfectly willing to do so, of course.

Mr. Jeffery: I handed in a copy of that letter to Mr. Burchmore the other day, and perhaps you can follow it.

Commissioner Harlan: I would suggest that Mr. Johnson look at that. Perhaps he may not want it all read, but we can

5197 put a copy into the record.

Mr. Johnson: There are no secrets here at all.

Examiner Marble: I do not mean that, but I don't think those first paragraphs have any relation to anything that is under consideration.

Mr. Garwood: Let it be understood that these letters are put into the record.

Examiner Marble: I go to paragraph four here. Do you want it all read?

Mr. Johnson: I prefer you read it all.

Commissioner Harlan: Let both letters be put into the record as exhibits to the testimony of this witness.

(The letters referred to are on pages 89, 90, 92 and 93 of a book in the possession of the Examiner, and were not marked, but are in the words and figures following, to-wit:)

Little Rock and Monroe Railway Co.

ST. LOUIS, MO., *Nov.* 17, 1904

Mr. C. S. Clarke, Vice-President, Missouri Pacific Railway, City.

5198 DEAR SIR: In line with the conversation had with you yesterday, and as per your request, I herewith make you the following proposition for the purchase by you of the Little Rock & Monroe Railway. I have decided that I would sell the line for the following consideration:

First, the continuation of the divisions that are now in effect, which is five cents per hundred pounds on lumber delivered to your

line. Second, the free use of the tracks from Felsenthal to the River, a distance of about thirty miles. On a basis of these considerations, we would be willing to accept $17,500.00 per mile, main line, for the road from Felsenthal to Monroe; the approximate distance is forty-four miles, which would amount to $770,000.00. We owe $525,000.00, which will become due January, 15th, 1907. Therefore, the basis of payment would be as follows: $245,000.00 cash, and you assume the $525,000.00, due on the date above mentioned. You understand, the line is not yet complete, but all the work is done from Felsenthal south thirty miles, and the track is now in good shape, of which our Farmerville Southern is using about six miles. On the thirtieth mile we are constructing a steel bridge across the Ouachita River which will be done about January 1st, 1905. All the grading and trestle bridging from there to
5199 Monroe has been finished. We would turn over to you the line in its entirety from Felsenthal to Monroe, with the exception of the sidings at our plant at Huttig. Those sidings we would reserve as well as all equipment. Therefore the property that we would sell you would be the road without any equipment whatever, but including all sidings with the exception of those at Huttig, which were built mainly for the use of the Union Saw Mill Co.

It would be necessary to incorporate in the contract a clause giving us the privilege of making connections with the main line at any point the Union Saw Mill Company might deem necessary for the connection of her logging spurs. You must take into consideration that the Little Rock & Monroe Railway is not constructed on the lines of a logging road. We carry a 6/10 maximum grade, 3 degree maximum curvature, 14 ft. crown roadbed, 30 feet in the cuts, and are putting down 18 standard White Oak ties to the rail, or about 3200 ties to the mile. The line is laid with 56 lb. relay steel purchased from the Cotton Belt. The steel is all of one punching and of one make.

The bridge across the Ouachita River is a steel structure-
5200 draw span 308″ 10′, rigid span 295″ 0′, with an 80 ft. Girder plate. The substructure consists of three concrete piers, besides the cylinder piers on the banks. I hereto attach plans of the bridge which is being erected by the Missouri Valley Bridge & Iron Works. You will understand the superstructure was purchased of the Missouri Pacific. It was considered too light for your new heavy engines on the main line, but we decided after having this bridge examined by competent engineers that it would be all right for several years on our line. The substructure is being put in by competent people and is being built so that in the event we sell this line and the purchasers find that this bridge is too light, they can change the same without interfering with the substructure.

You asked me for an option for thirty days. Will say that there is no use drawing a regular option, but you can have a reasonable length of time to decide whether you want the property or not. Will say, however, that I would like to know before thirty days for the reason that I am now about to place an order for some new

equipment—two engines, passenger coaches, box cars and flat cars.
Of course, in the event of a sale to you, we would not need
5201 the equipment. We have also made plans for a depot at Monroe. In the event of a sale to you this would be unnecessary as you would undoubtedly prefer to handle Little Rock & Monroe business through one depot. I do not like to ask you to be in a hurry, but you can readily see from our standpoint that it is necessary to act promptly in this matter, that is to say, it is necessary to act promptly for our mutual benefit. If you buy the line, you would not care to take over a lot of equipment that we would buy, as it might not suit you, and on the other hand, you would not care to have us build a depot in Monroe as you could undoubtedly handle the business cheaper through the one. You will understand that the main essence of this sale would be the continuation of the present divisions. We could not think of accepting this price for the road otherwise, for the reason that we have fortified it with enough tonnage to make it a paying proposition even if we never handled a pound of freight; for anyone else but ourselves. The tonnage is estimated as follows: 1,000,000,000 ft. of pine, 400,000,000 of hardwoods, total timber tonnage estimate 5,000,000,000 lbs. or in carloads of 40,000 capacity, 125,000 cars. In addition to the
5202 large timber tonnage, the lower portion of the Little Rock & Monroe Railway traverses a rich Cotton producing country with which you are perhaps familiar. If you are not, your Superintendent in that locality can give you sufficient information.

In order to produce the lumber tributary to this line, it will necessarily require a large amount of supplies such as feed, merchandise, tools, and labor. Labor, of course, is passenger traffic.

In regard to the indebtedness on the line, will say that 30 year 5% gold bonds have been provided for at the rate of $15,000.00 per mile on the main line and extension, copy of mortgage covering these bonds is submitted herewith. We would deliver to you all the bonds and all the stock together with the deeds for right of way, free and clear of all labor liens and indebtedness of all kinds, except as above mentioned.

Yours truly,

(Signed) C. D. JOHNSON,
President.

ST. LOUIS, MO., *March* 8, 1905.

C. D. Johnson, Esq., and Union Saw Mill Company, C. D.
5203 Johnson, President, St. Louis, Missouri.

DEAR SIRS: Referring to our conference of this morning, beg now to advise you that subject to the approval of our President and Board of Directors we will purchase from you all of the issued and outstanding capital stock of the Little Rock & Monroe Railway Company, and all of the mortgage bonds of said Company for such sum of money as in the aggregate will amount to the actual cost of the construction and completion of said railway, together with such sum as you have actually paid out as interest on actual cost of construction, or any part thereof.

This offer of purchase, conditional upon the approval aforesaid, is made with the following distinct understanding, namely:

(1) The actual cost of said Railway, principal and interest, shall be ascertained and agreed upon by representatives of your interests and our own who shall carefully investigate the matter and report thereon.

(2) You are to turn over to our interests all of said capital stock and bonds and give to our interests possession of said Railway
5204 free from all claims, demands, judgments, liens, assessments and taxes and other adverse interests, except the lien of said first mortgage of the Railway Company under which bonds have been issued.

(3) The right-of-way for the entire road shall be of the uniform width of not less than one hundred (100) feet with necessary additional right-of-way for station grounds and appurtenances. Title to all the right-of-way and depot grounds above mentioned to be perfect in the Little Rock & Monroe Railway Company and free and clear of all mortgage liens and other encumbrances, except the lien of the first mortgage of the Little Rock & Monroe Railway Company, and said right-of-way as regards any restrictions or conditions shall be made fully satisfactory to the undersigned and the interests which he represents.

(4) You shall organize a railroad corporation under the laws of the State of Arkansas for the construction of a line of railroad which shall be in effect an extension of the Little Rock and Monroe Railway northwardly from Huttig, Ark., near the present northern terminus of the Little Rock & Monroe Railway to reach timber lands now owned by you or by the Union Saw Mill Company, or in the interest of either. Such railroad shall be so incorporated and
5205 constructed as to justify between it and St. Louis, Iron Mountain & Southern Railway, and its auxiliary lines, the same divisions of rates on forest products as are now in effect between said Little Rock & Monroe Railway and said St. Louis, Iron Mountain & Southern Railway Company, and its auxiliary lines. All tonnage which can be controlled by you or the Union Saw Mill Company, or by the Railroad corporation to be organized, as aforesaid, shall be delivered to the St. Louis, Iron Mountain & Southern Railway Company, and its auxiliary lines exclusively. We are to have the right at any time to purchase from you all of the issued and outstanding capital stock of such new railroad corporation, and all outstanding bonds of such corporation, or to purchase the railroad itself, upon paying to you the actual cost thereof with such interest as you may have actually paid thereon.

(5) You are to have the right to operate logging trains on the Little Rock & Monroe Railway with your own crews, cars and motive power, but only in such manner and under such rules, regulations, terms and conditions as shall be fixed and established by our interests and not otherwise. You shall pay a trackage charge for
5206 use of said line not exceeding thirty-five (35) cents per train mile for trains not exceeding thirty-five (35) cars drawn with one engine, or any fractional part of such a train.

(6) You are to have the right to construct, at your own sole cost and expense, logging spurs from the Little Rock & Monroe Railway as will be found necessary for the development of your logging business, but always subject to rules, regulations, consent, supervision and control of our interests as to point of connection and manner of operating the same. We will put in all connections which we may deem reasonably necessary at your expense at such points as we may indicate, it being understood, however, that all tonnage from any spurs so constructed or from any and all property which you or your associates may control or be interested in on or in connection with the Little Rock & Monroe Railway shall be exclusively given to said Little Rock & Monroe Road and to St. Louis, Iron Mountain & Southern Railway, and its auxiliary lines.

(6) The term "auxiliary line" or "lines" as used in this memorandum, is understood to be a line or lines of a railroad coporation in which the St. Louis, Iron Mountain & Southern Railway Company either owns or controls a majority of the issued and
5207 outstanding capital stock.

It must be distinctly understood that this is merely a preliminary proposition subject to the approval of our President and Board of Directors, and that if same is approved all of the matters covered by this memorandum shall be included in a carefully prepared contract or contracts in detail which must be satisfactory in form to counsel for our company. It must be understood that said contract or contracts will be much more full in their terms than this memorandum and will cover all matters contained herein and in addition thereto all such incidental matters as our counsel may deem necessary in order to carry out the spirit of this proposition and to afford adequate protection to the interest of our Company in every way.

Yours truly,

C. S. CLARKE,
Vice-President."

Examiner Marble: Simply the Commissioner will note that the first paragraph is that the actual cost of the railway shall be ascertained by mutual appraisment; and the second paragraph is that Mr. Johnson's company was to turn over to the Iron Moun-
5208 tain interests all of the capital stock and bonds and give immediate possession and so forth; and the third paragraph was a statement referring to the width of the right of way, and that title to the right of way, station grounds, etc., shall be free and clear of mortgage, liens and encumbrances.

(4) You shall organize a railroad corporation under the laws of the State of Arkansas for the construction of a line of railroad which shall be in effect an extension of the Little Rock and Monroe Railway northwardly from Huttig, Ark., near the present northern terminus of the Little Rock & Monroe Railway to reach timber lands now owned by you or by the Union Saw Mill Company, or in the interest of either. Such railroad shall be so incorporated and constructed as to justify between it and St. Louis, Iron Mountain &

Southern Railway, and its auxiliary lines, the same divisions of rates on forest products as are now in effect between said Little Rock & Monroe Railway and said St. Louis, Iron Mountain & Southern Railway Company, and its auxiliary lines. All tonnage which can be controlled by you or the Union Saw Mill Company, or by the Railroad corporation to be organized, as aforesaid, shall
5209 be delivered to the St. Louis, Iron Mountain & Southern Railway Company, and its auxiliary lines exclusively. We are to have the right at any time to purchase from you all of the issued and outstanding capital stock of such new railroad corporation, and all outstanding bonds of such corporations, or to purchase the railroad itself upon paying to you the actual cost thereof with such interest as you may have actually paid thereon."

Mr. Johnson: You will find that differs in the bill of sale. That is, provided we went to sell the road.

Examiner Marble: Do you know why that last stipulation was put into paragraph four, that this road should be sold to the Iron Mountain, if you ever should want to sell it.

Mr. Johnson: Well, I suppose they wanted first the right to buy it. It is bound up in the bill of sale. The difference between the bill of sale and that letter is that they have the right to buy it provided we want to sell it.

Examiner Marble: I will acknowledge that there is a difference between this offer and a bill of sale.

Mr. Johnson: Under that letter, after that, it had a right to buy it in.

5210 Examiner Marble: You refused to allow them to buy it in.

Mr. Johnson: Yes, sir.

Examiner Marble: Are you familiar with the fact that one consideration in the Iron Mountain's deliberation upon this matter for the purchase of the Little Rock & Monroe Road was the fear that you would sell it to the Rock Island?

Mr. Johnson: Well, I don't know what thought was in their minds, you know, I could not anticipate it.

Examiner Marble: Was that discussed with you, between Mr. Russell, Mr. Harding and yourself?

Mr. Johnson: No, I never had anything to do with Mr. Russell on the sale of that road. That negotiation was all carried on with Mr. Clarke. I built the line while Mr. Harding was in charge of the road, but I sold it after Mr. Clarke came into the road.

Examiner Marble: Did it come to your knowledge at that time that they were concerned for fear the Rock Island would buy that road and thus secure this timber tonnage?

Mr. Johnson: Well, I don't know. There were two reasons for it as far as that is concerned. That was a good road, a well constructed road if they could use it, and it had connections
5211 with the V. S. & P., at the lower end, and it might have connections onto the Rock Island at the north end, that might have happened, but then I do not know what they anticipated when though bought it.

Examiner Marble: Did it come to your knowledge that they took that into consideration?

Mr. Johnson: No, I don't ever remember any conversation along those lines at all. They seemed to fear the V. S. & P. more than anything else. They were afraid the tonnage would go out that way.

Examiner Marble: This letter of the 8th, one paragraph of which I have just read, bears this addition:

"We hereby accept the above conditional proposition and agree that if the same is approved as therein specified we will faithfully comply with all and singular the terms and conditions thereof as therein expressed, and will execute such contract or contracts as may be necessary to fully carry out the spirit and intent of the proposition which is here and now definitely accepted by the undersigned."

Was that signed by you, do you know?

Mr. Johnson: Well, I could not say, sir. What was the
5212 date of that letter you just read?

Examiner Marble: March 8, 1905.

Mr. Johnson: I expect it was signed by me. I don't know. I carried on the negotiations for the sale of the road. I would say that probably it was signed by me.

Examiner Marble: Now, on March 18, 1905, you have already given that as the date the contract for the sale of the Little Rock & Monroe was made. The Little Rock & Monroe corporation was a party to that contract, the date for the sale by the Union Saw Mill Company and Mr. Johnson of all of its stocks and bonds, and that that carried with it the property.

Mr. Johnson: Yes, sir.

Examiner Marble: And the corporation as well. Paragraph nine of that contract provides that:

"(9) Said party of the second part will further secure the execution by said Little Rock and Monroe Railway Company of an agreement with the Union Saw Mill Company, granting to said Union Saw Mill Company the right to operate logging trains on the Little Rock and Monroe Railway, with its own crews, cars and motive power, but only in such number and under such rules, regulations, terms and conditions as may be fixed and estab-
5213 lished by said Little Rock and Monroe Railway Company after the transfer of the stock of said Little Rock and Monroe Railway Company to the party of the second part, or to such person or corporation as its may designate, as hereinbefore provided, and after the resignation of the present directors and officers of said Little Rock and Monroe Railway Company and the election in their stead of such persons as may be designated as directors and officers of said Little Rock and Monroe Railway Company by the party of the second part, as hereinbefore provided, and such trackage agreement shall provide for the payment by the Union Saw Mill Company to said Little Rock and Monroe Railway Company of thirty-five (35) cents per train mile for trains not exceeding thirty-five cars."

Mr. Johnson: What was that, the letter?

Examiner Marble: No, this is the contract.

Mr. Walter: The contract of March 18, 1905, between the Union Saw Mill Company and the Iron Mountain.

Examiner Marble: These trackage rights were made later, in the following July.

Mr. Johnson: Yes, sir, they were substantially agreed to in the bill of sale, but the details of the contract were not worked
5214 out until later.

Examiner Marble: And this contract also contains a provision for the exclusive tonnage, that is, all tonnage originating upon any and all of said spurs to be constructed by the Union Saw Mill Company, and to connect with this Iron Mountain track, that is, all of that tonnage should be delivered to the Iron Mountain.

Mr. Johnson: Yes, sir.

Examiner Marble: For further transportation.

Mr. Johnson: Yes, sir.

Examiner Marble: And that contract was made by Mr. C. D. Johnson, the Union Saw Mill Company, by Mr. Johnson, its president, the St. Louis, Iron Mountain & Southern Railway Company by Mr. George J. Gould, its president. Now, the next step was the contract of July 19, 1905, between the St. Louis, Iron Mountain & Southern Railway Company and the Little Rock & Monroe Railway Company, parties of the first part, and the Union Saw Mill, party of the second part, covering the trackage rights, that is your memory of it, is it?

Mr. Johnson: Yes, sir.

Mr. Cowan: Better put the substance of the contract in
5215 the record so that the record will have it.

Examiner Marble: Contract dated July 19, 1905, between the St. Louis, Iron Mountain & Southern Railway Company, Little Rock & Monroe Railway Company and the Union Saw Mill Company, granting to the Saw Mill Company the right to operate its logging trains, etc., over the lines of the Little Rock and Monroe Railway Company, between Felsenthal station, Arkansas, and the city of Monroe, Louisiana. That covers the Little Rock and Monroe track which you had sold in the preceding April?

Mr. Johnson: Yes, sir.

Mr. Cowan: What was the amount to be paid?

Examiner Marble: Thirty-five cents per train *mail* for a train not exceeding 35 *miles*.

Mr. Cowan: Excuse me for interrupting you.

Examiner Marble: That is all right. With the consent of everybody I will drop all the inducement, and come to the terms of the contract. Paragraph numbered first states:

"First. Said Little Rock and Monroe Railway Company hereby grants to said Mill Company the right, with its own locomotives and crews and with its own employés, to operate its logging trains over the line of said Little Rock and Monroe Railway Com-
5216 pany between Felsenthal Station and the city of Monroe, Louisiana, on the line of said Railway, for the purpose of transporting logs and other forest products to the saw mill plant

of said Mill Company at Huttig in the County of Union, State of Arkansas, and also for the purpose of hauling to and from its logging camps, boarding cars, log loaders and tools actually used by the Mill Company's employés at such logging camps, and coal for the Mill Company's locomotives, and for transporting from the store of said Mill Company at Huttig, Arkansas, to the logging camps of said Mill Company, feed and provisions for the men and horses actually engaged in work of logging at such camps, and also the employés of said Mill Company actually engaged in work at such logging camps, but not including herein general merchandise or persons other than those specifically mentioned above. The regular tariff rates of the Little Rock and Monroe Railway Company shall be paid to said Railway Company by the Mill Company on all other merchandise and all other persons transported over the rails of said Railway Company by the Mill Company. It is expressly understood and agreed that whenever the provisions of this section are broken by the Mill Company, the Railway Company shall thereafter
5217 have the right, at its option, to charge, and the Mill Company shall pay, full tariff rates on all merchandise, supplies, tools, machinery and passengers hauled over its rails by the Mill Company."

The seventh paragraph grants to the Mill Company "the right to build at its own sole cost and expense such spur tracks as may be deemed necessary by said Mill Company, for the purpose of reaching its timber lands adjacent to the line of said Little Rock and Monroe Railway Company," etc., provided that conections are to be made at the expense of the mill.

"Ninth. The Mill Company expressly covenants and agrees that it will use that portion of the tracks of the Little Rock and Monroe Railway Company, a right to the use of which is covered by this agreement, solely for the purpose of conveying logs, timber and other forest products from the lands adjacent to the line of railway of said Little Rock and Monroe Railway Company, to the saw mill plant of said Mill Company hereinbefore mentioned, for the purpose of manufacturing such logs and timber into lumber or other forest products at such saw mill plant. And said Mill Company fur-
ther covenants and agrees that it will use in such traffic only
5218 its own locomotives and cars and that in no event will it haul over the tracks of said Little Rock and Monroe Railway Company, or any portion of the same, more than thirty-five cars in a single train with one locomotive."

The tenth paragraph contains a covenant for the exclusive tonnage to the Iron Mountain Road by the Mill Company, and that any timber lands sold shall carry this provision along with it as a condition of the sale, so that the purchaser buying the timber land then belonging to the Union Saw Mill Company would equally be bound to ship all the product over the lines of the Iron Mountain Road.

Mr. Cowan: Is there a provision in regard to the rate?

Examiner Marble: I should say from my memory of this contract, there is no provision in it either way regarding the rate *of* to

be charged for the transportation of lumber or logs by the Iron Mountain Road or by you. There is a provision for thirty-five cents per train mile, but that is the only provision governing the charge for transportation.

Mr. Johnson: I do not remember about that particular
5219 point.

Examiner Marble: The bill of sale of the Little Rock & Monroe Railway, however, did provide that the Iron Mountain should maintain the Felsenthal rates from Huttig, did it not, provided that the rates from Huttig should not be higher than the rates from Felsenthal for lumber, out-bound?

Mr. Johnson: Well, I cannot say as to that. I have not referred to that contract hardly since it was made. There has been no occasion to look it up and I cannot answer it.

Examiner Marble: The eleventh paragraph in that contract reads:

"The Mill Company hereby expressly covenants and agrees that it will not voluntarily grant to any person or corporation other than the Railway Companies, parties hereto, or to a person acting in the interests of either of the Railway Companies parties hereto, a right of way for a railroad track over any lands owned or controlled by it hereinbefore mentioned, without the permission of the parties of the first part hereto."

Mr. Johnson: Well, that simply meant that in any case we could not stop them if they wanted to come. A railroad company could come in and condemn a right of way and get it.

5220 Examiner Marble: But you agree to voluntarily give them a right of way.

Mr. Johnson: I think that is right.

Examiner Marble: The twelfth provision is an agreement on the part of the Mill Company that it will not assign or transfer any of the rights and privileges secured to it under the provisions of this agreement without the consent in writing of the parties of the first part hereto, and each of them, having been first had and obtained.

Now, on the same day there was a contract between the St. Louis, Iron Mountain & Southern Railway Company and the Farmerville and Southern Railroad Company, parties of the first part, and the Union Saw Mill Company, granting the Union Saw Mill Company trackage rights over the Farmerville & Southern on the same terms, the contract being identical in form.

Mr. Johnson: Yes, sir.

Examiner Marble: Also a third contract between the St. Louis, Iron Mountain & Southern Railway Company and the Eldorado & Bastrop Railway Company, parties of the first part, and the Union Saw Mill Company, granting its right of way from——

5221 Mr. Johnson: El Dorado to White.

Examiner Marble: No, not from El Dorado, I believe at that time. There was a subsequent contract that extended your rights up to El Dorado, was there not?

Mr. Johnson: No sir, made that way originally.

Examiner Marble: You made a subsequent contract which gave you trackage away up to Northlet, I believe?

Mr. Johnson: Yes, sir, but the original contract was made from El Dorado to White.

Examiner Marble: You are right about that, and subsequently you went beyond El Dorado to Northlet.

Mr. Johnson: Yes sir.

Examiner Marble: On the same terms?

Mr. Johnson: Yes sir.

Examiner Marble: Is ii supposed to do business in the state of Louisiana.

Mr. Johnson: Arkansas.

Examiner Marble: Louisiana and Pine Bluff.

Mr. Johnson: Chartered under the laws of Arkansas.

Examiner Marble: It is supposed to do business in the state of Louisiana?

Mr. Johnson: I don't know whether it is or not. Our legal
5222 department is here, Mr. Gaughan, he can tell you.

Mr. Gaughan: I am not an attorney in Louisiana.

Mr. Johnson: We have never got any business in Louisiana, though, to amount to anything. We are operating in Arkansas you can see from this track.

Examiner Marble: You report to the Interstate Commerce Commission 45 miles of trackage extending from Felsenthal, Arkansas, to Monroe, Louisiana; also 32 miles of track from Litroe, Louisiana, to Farmerville, Louisiana.

Mr. Johnson: Yes, they are trackage contracts, we have trackage arrangements over that line. We only operate logging trains on it.

Mr. Walter: You are not going to try us for operating in violation of the law of Louisiana, are you?

Examiner Marble: No, but I would like to know how much of a railroad there is under these trackage rights and see what it amounts to.

Mr. Johnson: Those tracks there.

Examiner Marble: You have not considered these trackage rights of enough consequence, or at least you have not seen fit, whatever the reason may be, to domicile yourself in the state of Louisiana because of those trackage contracts.

5223 Mr. Johnson: To tell you the truth, I had never thought about it. We had not done much down there. We have been getting timber in Arkansas. If it is necessary to do that, we will have to do it.

Examiner Burchmore: Mr. Johnson, this map of yours shows that Louisiana and Pine Bluff as having a line of railroad from Farmerville to Logging Camp Number 3, in Louisiana.

Mr. Johnson: That track has just been built in there in the last six months, we have not moved in as yet, it is just constructed. We will move a camp in there probably in ten days from now.

Mr. Burchmore: You have another line running down for a short distance into Louisiana, branching off from your line west of Huttig.

Mr. Johnson: Well, that is a log line, the Logging Company operate on that.

Mr. Burchmore: That is not a part of the Louisiana and Pine Bluff?

Mr. Johnson: They own the steel but they do not operate it, that is operated by the Logging Company.

Examiner Marble: The Logging Company operates what?

Mr. Johnson: They operate these lateral spurs.

5224 Examiner Marble: The lateral spurs.

Mr. Johnson: Yes, sir.

Examiner Marble: Do they operate these trackage contracts over the Iron Mountain tracks?

Mr. Johnson: No, sir.

Examiner Marble: Who runs those trains containing your logs?

Mr. Johnson: Louisiana and Pine Bluff Railway. When it comes to the details of the operation, our Mr. Scott, who has personal charge of that road is here, and he can go into all those details with you better than I can. I live here in St. Louis, and Mr. Scott knows more about the details of that, how those things are handled, than I do.

Examiner Marble: What is the distance from Huttig to Dollar Junction?

Mr. Johnson: A trifle less than three miles, my collection is.

Examiner Marble: Are you familiar with the accounting of the Louisiana and Pine Bluff?

Mr. Johnson: No, sir.

Examiner Marble: Are you familiar with the charge made for depreciation in the last three years?

5225 Mr. Johnson: No sir.

Examiner Marble: Depreciation?

Mr. Johnson: No sir.

Examiner Marble: Who determines that?

Mr. Johnson: Mr. Scott.

Examiner Marble: Who makes up these annual reports?

Mr. Johnson: The auditor, I think, of our line. He is under Mr. Scott at Huttig.

Examiner Marble: You are not familiar with that?

Mr. Johnson: No sir, I am not familiar with the details of it.

Examiner Marble: Are you interested in the Frost-Trigg Lumber Company?

Mr. Johnson: They are out of business.

Examiner Marble: Do you control the Red River Lumber Company?

Mr. Johnson: No, never was interested in it.

Examiner Marble: Is Mr. Frost interested in it?

Mr. Johnson: No sir, Mr. E. W. Frost was President of the Frost-Trigg Lumber Company, and he was also President of the Red River Lumber Company. Both those companies are out of business. I was interested in the Frost-Trigg Lumber Company, but was

5226 never interested in the Red River Lumber Company.

Examiner Marble: Where does the Wisconsin Lumber Company gets its lumber?

Mr. Johnson: From the Union Saw Mill Company.

Examiner Marble: Buys it from the Union Saw Mill Company?

Mr. Johnson: Yes sir.

Examiner Marble: Is that logged then, by the Huttig Lumber Company?

Mr. Johnson: Yes sir.

Examiner Marble: You sell it delivered to its mills?

Mr. Johnson: Yes sir.

Examiner Marble: They handle hard wood?

Mr. Johnson: Yes sir.

Examiner Marble: While the Union is sawing pine?

Mr. Johnson: Nothing but pine.

Examiner Marble: How close do the Iron Mountain tracks go to your platform at Huttig, that old Little Rock and Huttig track?

Mr. Johnson: They go right through the town of Huttig.

Examiner Marble: How close to your plant?

Mr. Johnson: They go right close to it, I don't know just
5227 how close they go on the tracks into our plant. They go through the town of Huttig, and we built the road through there ourselves.

Examiner Marble: The sale of the Little Rock & Monroe by the Union Saw Mill Company expressly reserved those tracks into your plant as the property of the Saw Mill Company?

Mr. Johnson: I don't remember whether we reserved them or whether we bought them back from them. We own the tracks, though. I think we bought them back from them.

Examiner Marble: At any rate, they are your property?

Mr. Johnson: They are our property, and have been ever since we closed the deal with them.

Examiner Marble: They did not ever practically go with the Little Rock & Monroe for operation, you withheld them from the start, either reserving them or buying them back?

Mr. Johnson: Yes sir.

Examiner Marble: That is all.

Examiner Burchmore: As I understand you, Mr. Johnson, the line north from Huttig to Dollar Junction was constructed along about 1905 or 1906.

Mr. Johnson: Yes sir.

5228 Examiner Burchmore: And has been operated since that time by your Railroad Company?

Mr. Johnson: Yes sir.

Examiner Burchmore: Does that include all of the tracks that are shown on your map here between Huttig and Dollar Junction and White and Dollar Junction?

Mr. Johnson: Yes sir. The Louisiana and Pine Bluff own the depot at Dollar Junction, they own all the terminals there. They own all the terminals, about eight miles of track in here at Huttig, around these plants here, and I think about two and a half to three miles at Dollar Junction, possibly not that much.

Examiner Burchmore: Any around Dollar Junction?

Mr. Johnson: Yes, we own all that track in there (indicating on plat).

Examiner Marble: You have not operated that road for the last four or five years?

Mr. Johnson: We owned it ever since we built it, owned it ever since it was in there.

Examiner Burchmore: I understood you to say that you have some railroad north of Dollar Junction aside from the yards, right in Dollar Junction.

5229 Mr. Johnson: Yes sir, we cut off a right of way to build a grade in there about the time the panic come on, and we quit, got short of money and quit building.

Examiner Burchmore: Then you were grading in 1907 or 1908 north of Dollar Junction?

Mr. Johnson: Yes sir, we graded that, and my recollection is we graded it in the summer of 1907.

Examiner Burchmore: What was your purpose of extending the line north of Dollar Junction?

Mr. Johnson: That is a solid body of timber all through there, and we own the timber clear up to about that point.

Examiner Burchmore: You own a solid body of timber north of the Iron Mountain Railroad in and around Dollar Junction, up to as far as Wilmington or Pigeon Hill?

Mr. Johnson: Yes, about that much.

Examiner Burchmore: And the extension which you are now making is aimed to penetrate that whole tract of timber?

Mr. Johnson: Yes sir.

Examiner Burchmore: Are you aiming to make connection with the Rock Island Railroad?

Mr. Johnson: No sir.

Examiner Burchmore: That is not your present inten-

5230 tion?

Mr. Johnson: We haven't it in mind at this particular time.

Examiner Burchmore: How far are you grading from—planning to grade in the immediate future?

Mr. Johnson: Around ten miles.

Examiner Burchmore: About ten miles north of Dollar Junction?

Mr. Johnson: Yes, sir.

Examiner Burchmore: You don't know how far the steel is laid?

Mr. Johnson: I do not.

Commissioner Harlan: Is this timber north of Dollar Junction and Wilmington that you bought at the suggestion of the Iron Mountain?

Mr. Johnson: Well, it is intermixed; a great deal of it in there, yes.

Examiner Burchmore: From whom did you purchase that timber, various mills?

Mr. Johnson: No, we bought that tract that I refer to from Starrett and Hovey of Detroit, Michigan.

Commissioner Harlan: Are they lumbering there at all?

Mr. Johnson: No sir, they were timber people. They
5231 never operated any timber in the south.

Commissioner Harlan: Was any one lumbering up there when you bought?

Mr. Johnson: Yes, there was a mill went there.

Commissioner Harlan: Just tell me where that is, or was, Mr. Johnson.

Mr. Johnson: There is a mill right in here at Urbana, and they owned the timber in here (indicating on map).

Commissioner Harlan: You did not buy that timber?

Mr. Johnson: Yes, sir, we bought their timber, too.

Examiner Burchmore: North of Urbana?

Mr. Johnson: Yes sir.

Commissioner Harlan: You bought their mill also?

Mr. Johnson: No, we just bought their timber, and they shut their mill down.

Examiner Burchmore: How did they hapen to sell out?

Mr. Johnson: Well, I could not tell you that, I don't know.

Examiner Burchmore: Went into bankruptcy?

Mr. Johnson: No, no.

Examiner Burchmore: You have a logging road—a private logging road running north in that territory at the present
5232 time?

Mr. Johnson: We had one in there. I don't know whether it is there yet or not, but we had one up there, and that road was put in through their timber. I think one reason they sold was that they only had I think about forty million feet of timber in there and they quit timbering in through there.

Commisioner Harlan: Were they getting any divisions?

Mr. Johnson: I could not tell you. I don't know, I think they were.

Examiner Burchmore: Have any trains been operated north of Dollar Junction on this extension?

Mr. Johnson: Not yet, no sir.

Examiner Burchmore: Referring to the trackage rights which the Union Saw Mill has, as I understand it, reserved over the El Dorado & Bastrop Railway from El Dorado.

Mr. Johnson: They did not reserve them, they never had them to reserve.

Examiner Burchmore: I mean acquired.

Mr. Johnson: Yes, sir.

Examiner Burchmore: They availed themselves of those trackage rights from the beginning, since they have had them?

Mr. Johnson: Oh, yes.

5233 Examiner Burchmore: Are they still operating their logging out over that road?

Mr. Johnson: We operate both ways, over that road and over Louisiana & Pine Bluff, too.

Examiner Burchmore: Is the Louisiana & Pine Bluff Railroad

operating any trains over the tracks of the El Dorado & Bastrop Between Lawson or Urbana and Dollar Junction?

Mr. Johnson: Operate logging trains if they are working up in that country. We operate trains which leave Huttig and come up to Dollar Junction and go out over that track.

Examiner Burchmore: That train is now operated by the Louisiana & Pine Bluff Railroad?

Mr. Johnson: Yes, sir.

Examiner Burchmore: Does the Union Saw Mill Company at the present time operate any such logging trains?

Mr. Johnson: No, sir.

Examiner Burchmore: How long has the Louisiana & Pine Bluff been operating those logging trains over the tracks of the El Dorado & Bastrop.

Mr. Johnson: Well: I don't know just the date I am sure. I don't know the time at all.

Examiner Burchmore: Would you say one year or three
5234 or four months?

Mr. Johnson: For some time, I don't know just how long.

Examiner Burchmore: Three or four years or three or four months?

Mr. Johnson: I think two or three years.

Examiner Burchmore: That is under an assignment or what amounts to an assignment of those trackage rights?

Mr. Johnson: Well, it provided for the incorporation of a railroad. The railroad is owned by the Union Saw Mill Company. The Louisiana & Pine Bluff was not in existence at the time these contracts were made.

Examiner Burchmore: I am asking for a fact. You regard it as an assignment to the Louisiana & Pine Bluff of those trackage rights?

Mr. Johnson: Yes sir.

Examiner Burchmore: Did the Louisiana & Pine Bluff move logging trains over private spurs and up in the woods?

Mr. Johnson: No, those trains were set down there by the Logging Company.

Examiner Burchmore: As far as these logging trains are concerned, the rails of the El Dorado & Bastrop Railroad are treated by the Louisiana & Pine Bluff as though they composed part of
5235 its main line?

Mr. Johnson: Yes sir.

Examiner Burchmore: On your map, your blue print, you show a line operated by the Louisiana & Pine Bluff Railway, extending from a short distance—from a connection with the Little Rock & Monroe Railroad a short distance south of Huttig in a westerly direction, and northerly towards its connection with the El Dorado & Bastrop, known as the E. & B.?

Mr. Johnson: Yes, sir.

Examiner Burchmore:: Is that line now operated by the Louisiana & Pine Bluff Railway?

Mr. Johnson: Yes sir.

Examiner Burchmore: How long has it been so operated, or any part of it been so operated?

Mr. Johnson: I cannot answer that question. Mr. Scott is here and he will tell you all about it, just when it was put in operation and all about it.

Examiner Burchmore: May I ask you if you know whether that line was formerly a private logging road belonging to the Huttig Logging Company?

Mr. Johnson: No, I think not; the Huttig Logging Company never had money enough to build a road like that.

5236 Examiner Burchmore: Did the Union Saw Mill Company formerly own that road?

Mr. Johnson: No, sir, the Logging Company did not build any thing but the little lines.

Mr. Burchmore: These two spurs (indicating)?

Mr. Johnson: Yes sir.

Commissioner Harlan: Who built that line?

Mr. Johnson: The Louisiana & Pine Bluff.

Commissioner Harlan: They use the trackage of that line at this time?

Mr. Johnson: Yes, there is not much out there to get out of there but timber.

Examiner Burchmore: All you operate over that line is log trains?

Mr. Johnson: That is all. We do not perform any general service over that particular part of the road. We operate betwen Huttig and Dollar Junction, a general service, but on there is practically a logging service.

Examiner Burchmore: I think I will not ask any further questions on this line until Mr. Scott takes the stand.

Mr. Johnson: Yes, he can tell you just the time it was put in operation.

5237 Examiner Burchmore: I will ask you this: Do you know whether the Louisiana & Pine Bluff Railway has ever paid any taxes to the State of Arkansas or to any other taxing body on the line between Huttig and E. & B. Junction?

Mr. Johnson: I could not tell you.

Examiner Burchmore: You don't know that they have paid any such taxes?

Mr. Johnson: No, I don't know.

Examiner Burchmore: Do you know whether you have paid any taxes on your line between Huttig and Dollar Junction?

Mr. Johnson: We have paid taxes on it. I don't know just what part of the line it was paid on, but we have paid taxes. We have a man looking after all our taxes, and I don't know anything about the details of it.

Examiner Burchmore: We have discussed trackage rights over the El Dorado & Bastrop Railway. I will ask you whether the Union Saw Mill Company availed itself of the trackage rights that it acquired over the Little Rock & Monroe Railway?

Mr. Johnson: Whether it availed itself?

Examiner Burchmore: Yes, whether it moved logging trains over that road?

5238 Mr. Johnson: It has done it, I guess, in the past, but it is some time ago. We are not getting much of the timber there. The greater part of the timber we have been getting is off this other way. This is the Louisiana line right there (indicating on map).

Examiner Burchmore: The Louisiana state line?

Mr. Johnson: Yes, sir. Now, this timber in here has not been cut, we have not been working in there.

Examiner Burchmore: Is that virgin timber along the Little Rock & Monroe?

Mr. Johnson: Yes sir.

Examiner Burchmore: Are there any logging trains now being operated over the Little Rock & Monroe Railway south of Monroe by the Union Saw Mill Company or by the Little Rock & Pine Bluff Railroad?

Mr. Johnson: Why, there has been some oak hauled in there possibly.

Examiner Burchmore: Who hauled that oak?

Mr. Johnson: The Louisiana & Pine Bluff.

Examiner Burchmore: In other words, the same change has taken place in the exercise of trackage rights over the Little Rock & Monroe as has taken place on the El Dorado & Bastrop?

5239 Mr. Johnson: Yes, sir.

Examiner Burchmore: Is the same true of the trackage rights over the Farmerville & Southern?

Mr. Johnson: Yes sir.

Examiner Burchmore: On that blue-print you have indicated a line connecting with the Farmerville & Southern just south of Farmerville and extending to and beyond number three logging camp. When was the construction begun on that line?

Mr. Johnson: I think it was begun about seven or eight months ago, or a year ago.

Examiner Burchmore: Is the line in operation?

Mr. Johnson: Yes, sir; we will move a camp in there probably in another ten days or two weeks.

Examiner Burchmore: As a railroad it is not yet being actively operated?

Mr. Johnson: No, sir.

Examiner Burchmore: Are you moving any machinery or things of that kind down into those woods over that railroad?

Mr. Johnson: We have no machinery, no sir. The only machinery we use in the woods would be log loaders, you know.

Examiner Burchmore: Where will the logs that are cut

5240 down there be milled?

Mr. Johnson: Huttig.

Examiner Burchmore: That is fine timber?

Mr. Johnson: Yes, oak.

Examiner Burchmore: And the oak timber will be milled by the Wisconsin Lumber Company?

Mr. Johnson: Yes, sir.

Examiner Burchmore: Why are you going into that timber south of Farmerville instead of into your timber along the Little Rock & Monroe?

Mr. Johnson: Well, that timber over there is not owned in fee, that is, only a small portion of it. We don't own the land, we own the timber.

Examiner Burchmore: The timber right will be expiring soon?

Mr. Johnson: Yes sir, along the Little Rock & Monroe, up north there, we own all that in fee, but that we own over in there is more or less broken. There are farmers in there——

Commissioner Harlan: How many acres have you got down there?

Mr. Johnson: I don't know the acreage.

Examiner Burchmore: How many feet?

Mr. Johnson: There is about nine hundred million feet.

5241 Examiner Burchmore: How long will it take you to cut that?

Mr. Johnson: It will take about fifteen years, I guess, or sixteen.

Examiner Burchmore: When that is all cut, what will become of that property down south of Farmerville? Have you got any plans, or have you ever thought about it?

Mr. Johnson: That is a matter we can not figure that far ahead.

Examiner Burchmore: What did that road cost per mile to build down there?

Mr. Johnson: That is a cheap road. Part of it I guess probably cost five or six or seven thousand dollars a mile.

Examiner Burchmore: Do you consider five or six thousand dollars a mile cheap for a logging road?

Mr. Johnson: Yes.

Examiner Burchmore: I might say that we have testimony in this record within the last three or four days of more than one company that built its line for $2,000 or $2,500 a mile.

Mr. Johnson: Well, it all depends on the country largely, and the kind of road they build, or the engines they own, and on the capacity, how many loads they want and all about it.

Examiner Burchmore: What is the weight of your rails

5242 down there?

Mr. Johnson: Fifty-six pound rails.

Examiner Burchmore: It is a difficult railroad country?

Mr. Johnson: Pretty tough country, yes.

Examiner Burchmore: Take this line—take that part of this line that ran through the woods west of Huttig, and that branch that crosses the state line into Louisiana, that I take it from your testimony serves probably the timber holdings of your company?

Mr. Johnson: Well, there is timber all through there that we do not own, you see? We do not own it all by any means. Other mills hold the land that the tracks go over.

Examiner Burchmore: When that timber is all cut out, will your railroad continue to get business at that point?

Mr. Johnson: We cannot figure on that.

Examiner Burchmore: Is there a possibility that the rails will be taken up and it will go out of business?

Mr. Johnson: We have never taken up any, unless a little spur to haul logs on.

Examiner Burchmore: I thought Mr. Frost made reference to the fact that the Red River Valley Railroad had taken up its tracks and gone out of business.

5243 Mr. Johnson: I had nothing to do with that, never was interested in it.

Examiner Burchmore: Is anyone else doing any lumbering in the territory tributary to your lines west and south of Huttig?

Mr. Johnson: I don't think so. It is not customary in any country for more than one company to log the timber, as a matter of economy. One logging company can get the timber out much cheaper than three or four different parties.

Examiner Burchmore: Are any of the other owners down there having their land logged?

Mr. Johnson: There is sometimes an owner in there that we buy their timber from when we cut it, and they sometimes log it themselves. They have cut their timber and hauled it to one of our spurs for so much a thousand, and we bought the timber from the people in that way; that is timber that we do not own.

Examiner Burchmore: What kind of a——

Mr. Johnson: We cannot buy the land, they would not sell you the land, but they will sell you the timber.

Examiner Burchmore: What kind of a price do you pay for the timber that you acquire in that way?

5244 Mr. Johnson: Well, the Saw Mill Company is just as anxious to buy this timber, and probably more so, than the farmer is to sell it, and as a rule he keeps himself pretty well informed on the price of timber, and he knows about what it costs him to haul logs, and you have got to pay him about as much for his timber as—that is, the large logs from the farmer cost you about as much as your own, about the same.

Examiner Burchmore: He could not haul his logs, though, over to Farmerville or to some other point, a distance of three or four miles, say, and sell them any time?

Mr. Johnson: He could not haul them over there, and if it was not for us, if he could not get them out of there, he would pile up his logs and burn them, and the railroad would never get the haul.

Examiner Burchmore: When they come selling logs, you are the only customer the farmer can have?

Mr. Johnson: Not necessarily.

Examiner Burchmore: Who else can buy his logs?

Mr. Johnson: Well, if he has enough timber, he could put a little mill in there and saw them up himself.

Examiner Burchmore: How would he get the lumber out?

Mr. Johnson: We would haul it out for him.

5245 Examiner Burchmore: Would you haul lumber out for anybody?

Mr. Johnson: We would haul it if there was any there to haul.

Examiner Burchmore: But it is not in there generally?

Mr. Johnson: It is not economy to haul the lumber out, it is economy to haul the logs out.

Examiner Burchmore: I have before me a copy of what purports to be a copy of a letter you wrote to the Commission on July 12, 1910. There is just one statement in it——

Mr. Johnson: July what?

Examiner Burchmore: January 12, 1910.

Mr. Johnson: Oh, yes. What statement?

Examiner Burchmore (reading): "Under the laws of Arkansas we could not take up these tracks and go out of business even if we wanted to do so," you state in there. I simply want to ask you whether that is your understanding, that the Arkansas laws prevent a carrier from taking up its rails and going out of business when its traffic has disappeared?

Mr. Johnson: I think so. They can't prevent you from taking up any of that track, they could do it, but they do not always do it. They could do it.

5246 Examiner Burchmore: We have had one or two cases in connection with a proceeding where a former road has found that its traffic had expired, and they had taken up their road and gone out of business.

Examiner Marble: Do you have passes over trunk lines?

Mr. Johnson: I have a few.

Examiner Marble: Do you have passes on lines east of Chicago?

Mr. Johnson: I think not. I know I have not any this year.

Examiner Marble: Not yet.

Mr. Johnson: I expect to have some, though.

Examiner Marble: How many passes did you have last year?

Mr. Johnson: Oh, I could not tell you exactly, but I had passes over the Iron Mountain and the Burlington, the Chicago & Alton, the Wabash. I don't ask many people for passes. I do not ask for a pass unless it is over a line I want to use them on.

Examiner Marble: You don't gather them as souvenirs at all?

Mr. Johnson: Don't gather them as souvenirs, no sir, just only where I want to use the line.

Examiner Marble: You don't get what you want, what you need for your transportation?

5247 Mr. Johnson: I don't say that I get what I want, I get some passes, though.

Commissioner Harlan: Enough to get around with fairly well?

Mr. Johnson: Yes, sir.

Examiner Marble: When you travel on those lines for any purpose you use those passes, of course?

Mr. Johnson: Yes, sir.

Commissioner Harlan: Mr. Scott knows all about the allowances and the rates, application of rates, things of that kind?

Mr. Johnson: Yes, sir, he knows all about it.

Commissioner Harlan: Any further questions with this witness?

Mr. Walter: You have in your hand there a copy of your letter of July 12th?

Mr. Johnson: To Chairman Knapp?

Mr. Walter: Yes.

Mr. Johnson: Yes, sir.

Mr. Walter: Those statements in that letter generally represent the situation about as you judged was the facts?

Mr. Johnson: Yes, sir.

Mr. Walter: We ask to have that letter, a copy of it, put in as an exhibit.

Commissioner Harlan: The Commission has the letter. It
5248 may be referred to by counsel.

Mr. Walter: And put in this record?

Commissioner Harlan: It is not necessary to put it in the record. It may be referred to by counsel as if it were in the record. It is in the records of the Commission.

Mr. Walter: Mr. Johnson, will you explain in detail the value of those spur lines to the people who are in there?

Mr. Johnson: Well, I would state this, that in my opinion there has not enough importance been attached to the spur lines, strictly logging roads, for the reason that they furnish facilities for the farmers who are living in isolated parts of the country to sell their timber, and if it was not for the system of allowing those lines a division of the rates the roads would not be built. There are isolated parts of timber all over the south that would never be cut into lumber, the farmers would clear the land, pile the logs and burn them, and if that was done, the standard lines would lose the revenue from a large amount of tonnage, and the people would be deprived of that much timber, which they seem to be anxious to conserve all the timber there is in the country.

Commissioner Harlan: Let me interrupt you a moment. What line are you talking about?

5249 Mr. Johnson: I am talking about these strictly log spurs we have out here.

Commissioner Harlan: I thought so, but I understood you to say a moment ago that they got no division?

Mr. Johnson: I said if a road like this was deprived of its divisions, that these kind of tracks could not be built, the lumber company would not build a track out there For instance, there may be a couple of miles that there is no timber in at all, unless the road built those tracks they would not build them, and a man that has eighty acres of timber up in here would simply cut out the timber and burn it up.

Commissioner Harlan: Now, your statement is, as I understand it, unless the Louisiana & Pine Bluff Railroad Company got these divisions, the Union Saw Mill Company would not build these logging lines that join the Louisiana & Pine Bluff?

Mr. Johnson: They would not build all of them, they would build some, but there is a great many of those tracks that would not be built.

Commissioner Harlan: Just how are those two propositions re-

lated? Here is a railway company that gets divisions. A saw mill company builds a logging line connected with the railroad
5250 company. Now, on what theory do you say that the lumber company would not build those log lines if the railroad company did not get divisions?

Mr. Johnson: The Louisiana & Pine Bluff Railroad is providing you facilities for opening various tracts of timber for the Union Saw Mill Company, and what I mean to say is that if they were deprived of their earnings, there is a lot of that track that would never be built, back in those isolated parts of the country. For instance, there may be a tract of timber here three miles in between here, there is very little timber to be had, and you could not afford to build three to five miles of track to get that quantity of timber unless you got some divisions out of it.

Commissioner Harlan: When we analyze your statement, doesn't it all come back to this proposition, that unless the regular lines help to run and operate an instrument that the lumber company uses to haul its products, that these operations out here would not reach that point, isn't that what it means?

Mr. Johnson: I mean to say this, that there has to be transportation facilities provided by somebody in those isolated parts of the country for timber, it is a commodity we cannot get
5251 out any other way, and unless they receive some earnings on the tonnage that they create, they never will build the lines.

Commissioner Harlan: To whom do you refer when you say "they"?

Mr. Johnson: The lumber companies will never build them, they will never buy those isolated tracts. In the first place they will buy where they can get it in a solid body, they may buy it, but where it is through a scattered territory, located at some out of the way point, they will not buy it.

Commissioner Harlan: It just comes to this, that unless the Iron Mountain here helps the Lumber Company to operate all of these tracks, whether main line tracks or logging tracks, the logging company would get out———

Mr. Johnson: Helps the railroad company, not the lumber company, the railway company, the Iron Mountain helps the short line railway company.

Mr. Garwood: Mr. Johnson, as I understand, Mr. Harlan want-to get your position——

Commissioner Harlan: I think I understand, if you want to further understand the witness, all right.

Mr. Garwood: What does the railroad company do in the
5252 matter of aiding toward the construction of those short lines?

Mr. Johnson: The railway company builds the main line track and furnishes the steel for all these lateral lines—furnishes the steel, which is the biggest item of expense.

Mr. Walter: Now, Mr. Johnson, when you went down there what was the condition of all of this country?

Examiner Burchmore: I want to ask one or two more questions on this same matter.

Mr. Walter: Sure.

Examiner Burchmore: Did the railroad company furnish anything besides the steel for these branch lines?

Mr. Johnson: Furnishes the equipment, furnishes the engines and cars.

Examiner Burchmore: And do they furnish the laborers to lay those lines?

Mr. Johnson: No sir, furnish the labor to lay the main lines but not the lateral lines. Now, I understand you are talking about the little logging lines.

Examiner Burchmore: Logging lines.

Mr. Johnson: They furnish the steel and they furnish the equipment. The logging company take out the steel and lay it, put the ties under it, and when the timber is cut off on that par-
5253 ticular tributary to that track, they take it up and put it somewhere else.

Examiner Burchmore: You mean the Lumber Company?

Mr. Johnson: The Logging Company, the same thing, that is, the logging company and the lumber company is the same thing.

Examiner Burchmore: What if any of these branch roads indicated on that blue print are extended into timber in which the logging company or the lumber company is not interested?

Mr. Johnson: I think the lumber company is interested in some timber possibly in most of that country, but they do not own it all, and the timber at the back end of one of those tracks is the timber that I refer to, that they go a great deal further than they would go if they did not receive these divisions, but being able to get compensation for their tonnage they extend those tracks further than they would otherwise do.

Commissioner Harlan: We will pursue that just a moment. You say that the lumber company and the logging company are one and the same institution, in substance?

Mr. Johnson: Well the lumber company owns the logging company. They run separately, but they are owned by the same people.

5254 Commissioner Harlan: The lumber company pays the labor for constructing these logging roads?

Mr. Johnson: Yes sir.

Commissioner Harlan: The lumber company does not participate in these divisions, does it?

Mr. Johnson: No sir.

Commissioner Harlan: Except that it owns the railroad company.

Mr. Johnson: Never participates that way, because they never pay a dividend.

Commissioner Harlan: So that when you said that these logging roads would never be built except for these divisions, you said that with full knowledge of the fact that the lumber company as such, and as the owner of those logging roads, does not get any part of the division, that is so, is it not?

Mr. Johnson: Yes sir.

Examiner Marble: I have a question you might want to cross examine on.

Mr. Walter: I don't think I want to cross examine. I might want to rebut a little.

Examiner Marble: Have you had more than one charter in
5255 the state of Arkansas for the Louisiana and Pine Bluff, or an amendment to your charter?

Mr. Johnson: I think not.

Examiner Marble: I find that your report to the Commission for the year ending 1907 states that your railroad is chartered for twenty miles. It is my understanding of your charter that it is for twenty miles north of Huttig. Do you know whether that is right or not?

Mr. Johnson: I do not know, no sir, I do not know how that is.

Examiner Marble: You do not know whether you have a charter right to build this line or road which shows here as a red line on that blue print?

Mr. Johnson: I don't know how the charter reads.

Mr. Walter: Mr. Johnson, just state what condition you found that country in when you went down there before this road was built from Monroe to Farmerville?

Mr. Johnson: Well, there was not any of those roads built when we commenced to lay that down to Monroe.

Mr. Walter: What was it known as?

Mr. Johnson: It was known as the "dark corner".

Mr. Walter: You have gone in there and built a line of
5256 road to Monroe, is that right?

Mr. Johnson: Yes, sir.

Mr. Walter: The Iron Mountain connected up with that, bought it, and it forms part of its main line?

Mr. Johnson: Yes sir.

Mr. Walter: You built a branch to Farmerville?

Mr. Johnson: Yes sir.

Mr. Walter: Where it afforded railroad transportation to that part of Arkansas?

Mr. Johnson: Yes sir.

Mr. Walter: Is that right?

Mr. Johnson: Yes sir, and Louisiana.

Mr. Walter: Yes, part of Louisiana.

Mr. Johnson: Yes, sir.

Examiner Burchmore: What part of Louisiana?

Mr. Walter: All through that territory the farmers are located?

Mr. Johnson: Yes sir.

Mr. Walter: It aids more or less these farms in developing agriculturally?

Mr. Johnson: Yes sir.

Mr. Walter: This timber train stops on the farms?

5257 Mr. Johnson: Yes, sir.

Mr. Walter: What about that land after the timber is off?

Mr. Johnson: It is good agricultural land, fairly good.

Mr. Walter: I will ask you if at Farmerville there is not a very extensive marble industry?

Mr. Johnson: Marble?

Mr. Marble: Marble?

Mr. Johnson: At Farmerville, Louisiana?

Mr. Walter: Yes, sir.

Mr. Johnson: I think not.

Mr. Walter: Around there somewhere?

Mr. Johnson: I don't know of any.

Mr. Walter: That was my information. Mr. Johnson, have you ever been over the Trinity branch of the M. K. & T. in Texas?

Mr. Johnson: A good many years ago.

Mr. Walter: I will ask you if you know how the lands, as lands along that line compare in point of quality, of fertility with the lands up in Union County.

Mr. Johnson: Along the Trinity division, I don't think they are as good.

Mr. Walter: Isn't it a fact——

5258 Mr. Johnson: I have not been in that country for a good many years.

Mr. Walter: —that they are very poor, and the argument advanced by the examiner that after the timber is cut out there is nothing there, has not held good in that section, for with much poorer land there they have on that line several flourishing towns along that floating rib, as it has been called, of the M. K. & T., which was originally built for logging and lumber purposes?

Mr. Johnson: Yes, sir.

Commissioner Harlan: That seems to be all with this gentleman.

Mr. Cowan: One moment. Mr. Johnson, speaking of the division received by somebody for the business handled over these logging spurs, who gets that division? You said the lumber company did not get it, as I understood. Who gets it?

Mr. Johnson: The railway company.

Mr. Cowan: What railway company?

Mr. Johnson: Are you talking about any particular case?

Mr. Cowan: Logging spurs, service over logging spurs?

Mr. Johnson: Are you talking about the Louisiana and Pine Bluff?

5259 Mr. Cowan: Yes?

Mr. Johnson: The Louisiana & Pine Bluff Railway Company gets the division.

Mr. Cowan: For the service performed on the logging spurs by whom?

Mr. Johnson: They get that division for hauling the logs, furnishing the steel for extensions, for hauling the empty cars into Huttig and for hauling the lumber out.

Mr. Cowan: Well, who performs the service, what corporation performs the service?

Mr. Johnson: The Louisiana & Pine Bluff.

Mr. Walter: You did not understand the question, I think, Mr. Johnson.

Mr. Cowan: I understood the logging company performed the service.

Mr. Johnson: I did not understand your question?

Mr. Cowan: How is that?

Mr. Johnson: I did not understand your question?

Mr. Cowan: I misunderstood you if I now understand you correctly. I thought you had said a while ago that the logging company performed the service of the transportation on the logging spurs. Am I correct, is that what you said?

5260 Mr. Johnson: Yes sir.

Mr. Cowan: If the logging company performs the service it is the same as the lumber company, and if divisions are paid for that service, I want to know how you make it out that the lumber company don't get the divisions for the service which the logging company performs on their spurs for that part of the service?

Mr. Johnson: All the divisions we have that are received at that point go to the railroad company.

Mr. Cowan: What is the part the railroad company's service on the logging spurs, the track, performs for the lumber company?

Mr. Johnson: They only operate only for a few miles up to the main line track, where the railroad takes hold of it.

Mr. Cowan: Whatever the amount of it may be, insofar as there is compensation paid for it that——

Mr. Johnson: There is none for that.

Mr. Cowan: Does not get anything for service on logging spurs, is that it?

Mr. Johnson: No sir, they do not get anything for that. They get compensation——

Mr. Cowan: When you said that they extended them out
5261 further than they would, in order to get traffic, they are doing that as an act of benevolence for the benefit of the railroad company?

Mr. Johnson: You can figure that any way you like.

Mr. Cowan: I don't see how it can be figured otherwise, it don't get anything for it.

Mr. Gaughan: I would suggest that the interrogatories are argumentative.

Mr. Cowan: Mr. Johnson, how many lumber companies, or rather, saw-mill companies are owned by the same interests as the Frost-Johnson Lumber Company and the Union Saw Mill Company? How many different saw mill plants in different parts of the country?

Mr. Johnson: They own properties at six points, and they own the stock——

Mr. Cowan: Did you hear Mr. Frost's testimony this morning?

Mr. Johnson: Yes sir.

Mr. Cowan: Do you wish to correct him in any detail?

Mr. Johnson: No sir.

Mr. Cowan: How is the output of these various plants marketed, does each one market its own, or do you have common
5262 agents or agencies through which you market the entire output of all the mills?

Mr. Johnson: The Frost-Johnson Lumber Company has its own wholesale lumber department of its business, and they market their own lumber.

Commissioner Harlan: From all these mills?

Mr. Johnson: Yes sir.

Mr. Cowan: Each plant markets its own output?

Mr. Johnson: No sir, all the lumber that we produce is marketed through our own wholsesale department, known as the Frost-Johnson Lumber Company.

Mr. Cowan: No matter whether you get the product of the Union Saw Mill Company or not?

Mr. Johnson: No sir, it does not make any difference where it is produced, it is all sold through the same channel.

Mr. Cowan: Where is that agency, where is the office and place of business for that sales department?

Mr. Johnson: Well now, we have three places.

Mr. Cowan: Where are they?

Mr. Johnson: Shreveport, St. Louis and Chicago.

Mr. Cowan: Do you handle also the product of other mills
5263 than those which you have named, Mr. Johnson?

Mr. Johnson: No, we do not. We just handle our own lumber.

Mr. Cowan: And as to all these mills, are there divisions of rates there given to railroads which are connected with the same interests?

Mr. Johnson: No, sir, there is as many points where we get no divisions as there is where we get divisions.

Mr. Cowan: Is it an advantage to the investing interest—I am not speaking of corporations—in these properties, to have the divisions operate from places where they do have them, compared to the operation from places where they do not have divisions?

Mr. Johnson: Well, the mill in our group that made the most money last year per thousand has no divisions, and that mill made more money than any one we have got.

Mr. Cowan: You mean one that had no division?

Mr. Johnson: Yes sir.

Mr. Cowan: Where is that located?

Mr. Johnson: Campti, Louisiana.

Mr. Cowan: And they operated their mill by the railroad bringing logs in?

Mr. Johnson: Yes sir.

5264 Mr. Cowan: Is the service substantially of the character given to the mills, as in the other cases.

Mr. Johnson: Yes, sir.

Mr. Cowan: How did you come to make more money there if you did not get any divisions?

Mr. Johnson: I cannot explain. All I know is that they did it, and our statements will show that they did.

Commissioner Harlan: Do you find divisions rather expensive to maintain at the other mills?

Mr. Johnson: I don't know as they are expensive, sir, but the plant that made the most money for the Frost-Johnson Lumber

Company per unit is located at Campti, where they get no division at all at that point.

Examiner Burchmore: Is that a large or a small capacity?

Mr. Johnson: It is medium size. It might be in the management or it might be in the quality of the timber, it might be in the lay of the land, I don't know where it is, but it is there.

Mr. Cowan: It was not on account of not getting divisions?

Mr. Johnson: How is that?

Mr. Cowan: It did not make more money because it did not get divisions?

5265 Mr. Johnson: The divisions do not enter into it.

Mr. Cowan: To what market mainly do you ship your product, that is, what part of the country?

Mr. Johnson: Oh, that lumber goes all over: Texas, Colorado, Oklahoma, Kansas, Nebraska, Missouri. A large amount of it goes into Iowa and Illinois and Indiana, some goes down in New England, it goes everywhere.

Mr. Cowan: You have an idea of the locality to which most of it goes?

Commissioner Harlan: Judge Cowan, I suggest that these questions are rather general and apply to all these lines. There is a table in which we have the details of all the different mills and railroad companies.

Mr. Cowan: All right, I am perfectly satisfied.

Mr. Garwood: Let me ask you just one question. Did your sales department——

Commissioner Harlan: Judge Garwood, I think we had better defer that until we take up those general questions afterwards.

Mr. Walter: Mr. Johnson, are your holdings generally in a close compact body?

Mr. Johnson: Yes sir.

5266 Mr. Walter: That is all.

Mr. Coleman: I would like to ask, do you make a charge for the car which is delivered at the mill of the Johnson Lumber Company for hauling it?

Mr. Johnson: Well, now, I am not in charge of the details of this road, and I will have to ask you to excuse me from answering this kind of question.

Mr. Coleman: There is just one more. I don't believe it appears in evidence what the Iron Mountain paid you for that railroad.

Mr. Johnson: In cash?

Mr. Coleman: Whatever the arrangement was?

Mr. Johnson: It is covered by contracts, covered in the bill of sale, which is a matter of record.

Commissioner Harlan: $17,000 a mile, wasn't that it?

Mr. Johnson: I think so.

Commissioner Harlan: And some other consideration.

Mr. Johnson: About $580,000 in cash, I think, something like that.

Commissioner Harlan: I think that is all.

5267 F. W. SCOTT was called as a witness herein, and having been duly sworn, testified as follows:

Direct examination:

Commissioner Harlan: Give your full name to the reporter?
Mr. Scott: F. W. Scott.
Commissioner Harlan: Where do you reside?
Mr. Scott: Huttig, Arkansas.
Commissioner Harlan: What is your business?
Mr. Scott: Connected with the Louisiana & Pine Bluff Railway and the Union Saw Mill Company, secretary and treasurer of both companies.
Commissioner Harlan: Secretary and treasurer of both companies?
Mr. Scott: Yes sir.
Commissioner Harlan: How long have you been connected with each company?
Mr. Scott: Since their organization, or since they began construction.
Commissioner Harlan: As secretary of the railroad company, are you familiar with the allowances in the division of rates on logs and manufactured lumber?
Mr. Scott: Yes sir.
5268 Commissioner Harlan: Will you tell us, Mr. Scott, what allowances you are now receiving from any regular railroad company?
Mr. Scott: On lumber traffic we receive five cents on pine lumber and three cents on hard wood.
Commissioner Harlan: Is that the maximum allowance?
Mr. Scott: We get that on everything.
Commissioner Harlan: You get that on everything?
Mr. Scott: Yes sir.
Commissioner Harlan: Coming now to the allowances on hard wood, what service does the Louisiana & Pine Bluff perform for that allowance of three cents?
Mr. Scott: Well, the business is handled for the hard wood company there in the same manner it is for the pine, for the pine saw mill.
Commissioner Harlan: Where is the hard wood company?
Mr. Scott: It is located at Huttig also.
Commissioner Harlan: That is the Wisconsin Company?
Mr. Scott: Yes sir. The service is bringing the logs in from the lateral lines, where the trains are assembled by the logging line company.
Commissioner Harlan: Give us a typical point?
5269 Mr. Scott: I will say from—the logging company assembles a train at Pigeon Junction, for instance, right here, and our line goes and brings in the load after the train is assembled there, takes it to the mill and takes the empties back to that point.
Commissioner Harlan: Well now, you refer to the Louisiana & Pine Bluff line that runs west from Huttig——

Mr. Scott: To Pigeon Junction.

Commissioner Harlan: What company assembles the logging trains at Pigeon Junction?

Mr. Scott: The Huttig Logging Company operates those lateral spurs.

Commissioner Harlan: And that belongs to the Union Saw Mill Company?

Mr. Scott: Yes sir.

Commissioner Harlan: What hard wood do they bring in from the forests of the Saw Mill Company, the Frost-Johnson Lumber Company?

Mr. Scott: They bring in that hard wood in there.

Commissioner Harlan: Is there any other hard wood out here except the Frost-Johnson hard wood?

Mr. Scott: Yes sir, there is; the majority of it is owned
5270 by other people.

Commissioner Harlan: We will take a train of logs, hard wood logs, owned by other people, that are brought in by the Huttig Logging Company to Pigeon Hill, what sort of a movement is that, is it a movement on a published rate?

Mr. Scott: A milling in transit rate, where our tariffs provide that the out-bound rate on lumber covers the hauling of the logs from the point where they are delivered to the Louisiana & Pine Bluff Railway.

Commissioner Harlan: That was not quite my question. What is the movement up to Pigeon Junction, is that on any published rate?

Mr. Scott: No, those lines are operated by the logging railroad which has nothing further to do with it further than to deliver the stuff to the railroad company.

Commissioner Harlan: That logging company is not incorporated as a railroad company, is it?

Mr. Scott: No sir.

Commissioner Harlan: So it does not have to take these logs for these outside people unless it wishes to?

Mr. Scott: Well, they have always taken them. We never have refused to take them.

5271 Commissioner Harlan: But as a matter of law, so far as——

Mr. Walter: He is no lawyer.

Commissioner Harlan: No, but there are some people that are not lawyers that know some things.

Mr. Walter: You asked him as a matter of law.

Mr. Scott: As a matter of fact, we encourage anybody at all to log timber in that country, we are anxious for the tonnage.

Commissioner Harlan: We will assume as a matter of law that the Huttig Lumber Company does not have to take those logs in to Pigeon Junction unless it chooses to do so.

Mr. Scott: Well, it is under contract to take them out where they can be acquired.

Commissioner Harlan: Tell us about that contract, with whom it is made?

Mr. Scott: The Union Saw Mill Company is under contract with the Wisconsin Lumber Company to deliver to the Wisconsin mill, or to secure to that mill all of the tonnage that it owns or controls, and the saw mill controls the logging company, and naturally would compel it to bring this hard wood out.

Commissioner Harlan: I don't quite understand that. You say that this saw mill company has a contract with the Wis-
5272 consin Hard Wood Company?

Mr. Scott: Yes sir.

Commissioner Harlan: By which the Union Saw Mill Company undertakes to deliver that hard wood to the mill, is that it?

Mr. Scott: Well, the logs are sold delivered, yes sir, at a point in the Union Saw Mill Company, and then the Wisconsin Lumber Company has a right also to go out on the line anywhere and buy independently, and that is brought in by our railroad.

Commissioner Harlan: Mr. Scott, I may be a bit slow about this, but I want you to explain this as clearly as you know how, as to what is covered by that contract. What is the purpose of that contract, what are its provisions? We won't stop to read it, but I want you to tell me. Here is a saw mill that wants to get hard wood out here, and what does the Union Saw Mill Company undertake to do with respect to delivering that at the Wisconsin mill?

Mr. Scott: It undertakes to deliver it to the Louisiana & Pine Bluff Railway at points where these logging trains are assembled, and has an understanding with the railway that it is to haul it into that mill under the same conditions that the Louisiana &
5273 Pine Bluff Railway hauls logs to the Union Saw Mill Company's mill. The Louisiana & Pine Bluff Railway, while it does not own those lateral spurs built by the lumber company, yet it furnishes the steel and furnishes the cars on which the product out there is loaded, and in that way they can compel the logging company by the ownership of the rails and the equipment, their influence is sufficiently strong or would be if the case came up, to compel the logging company to bring that timber out to anybody that wanted to buy it. They control it in that way.

Examiner Burchmore: Is there any contract between the Louisiana and Pine Bluff Railway Company and the Union Saw Mill Company with respect to these steel rails or with respect to these private logging roads?

Mr. Scott: No written contract, it is verbal.

Examiner Burchmore: Is there any rental paid for the use of the steel?

Mr. Scott: No, sir.

Commissioner Harlan: Have you that contract between the Wisconsin Lumber Company and the Union Saw Mill Company?

Mr. Scott: No, I have not.

Commissioner Harlan: Would you be kind enough to furnish us with it hereafter, a copy of it?

5274 Mr. Scott: Yes sir.

Examiner Burchmore: Does the Wisconsin Lumber Company pay the Union Saw Mill Company for the service of hauling the logs up to the Junction with the Little Rock & Pine Bluff?

Mr. Scott: The logs are all bought at a stipulated price.

Examiner Burchmore: And that price is F. O. B. Huttig, or what basis?

Mr. Scott: The price is based on the logs delivered at Huttig. The Louisiana & Pine Bluff deliver them under the same arrangement they do those logs for the Union Saw Mill Company. The basis really is the furnishing the timber in the logs, cutting them, hauling them to the railroad where they are loaded on cars and delivered to the main line of the Louisiana & Pine Bluff, and then the Louisiana & Pine Bluff take the service from that point to the mill.

Examiner Burchmore: What does the Louisiana & Pine Bluff receive for that service in connection with the hard wood logs?

Mr. Scott: Only its division of the out-bound through rate, the out-bound rate.

Examiner Burchmore: The rates are on a milling in transit basis?

5275 Mr. Scott: Milling in transit rates, entirely.

Commissioner Harlan: Are they so published?

Mr. Scott: Yes sir; all our tariffs are.

Examiner Burchmore: You apply divisions on hard wood lumber, as I understand you?

Mr. Scott: Yes sir.

Examiner Burchmore: What is the basis of rates on hard wood lumber from Huttig on your lines to interstate destinations?

Mr. Scott: I think generally they are about two cents lower than the combined rates.

Examiner Burchmore: What relation do they bear to the hard wood rate from — to points of origin on the Missouri Pacific system—on the Iron Mountain system, in this vicinity?

Mr. Scott: So far as I know—I have not investigated that point very thoroughly—but as a general proposition I think they are about the same as other points in that part of the country.

Examiner Burchmore: The same as from Felsenthal?

Mr. Scott: The same.

Examiner Burchmore: Why did you accept less divisions

5276 on hard wood than you receive on pine lumber?

Mr. Scott: Well, we cannot get any more from the Iron Mountain; that is all they will pay. We have no other outlet. We cannot demand any more. We have to take what they will pay us.

Examiner Burchmore: Why do they refuse to pay more, do you know?

Mr. Scott: I don't know what their argument is, they don't pay any more, however.

Examiner Burchmore: What reason have they assigned for their refusal to accord you division on hard wood?

Mr. Scott: These rates were all established at the time before the sale of the Little Rock & Monroe Railway. They have never changed, and I do not know what their argument is, but those were the rates that were established when the Little Rock & Monroe Railway was built, and so they agreed to pay the same division rates to the Louisiana & Pine Bluff.

Commissioner Harlan: You have not attempted to get a higher division since?

Mr. Scott: No, we have not asked for any greater division. We have not been moving hard wood very long.

5277 Examiner Burchmore: How long has hard wood been moved out of Huttig?

Mr. Scott: The movement you may say is just commencing now. The mill was constructed or the construction begun just about a year ago, and it has been in operation only a short time, and the lumber that has been cut is now there, and has not been shipped out yet, that is, a very small proportion of it.

Examiner Burchmore: Until recently the hard wood rate was what you might call a paper rate from Huttig.

Mr. Scott: Well, there was no movement.

Commissioner Harlan: What service do you perform on the pine for which you get five cents?

Mr. Scott: Well, we perform the same thing that we do with the hard wood, on the hard wood logs.

Commissioner Harlan: Is the rate published as a milling in transit rate?

Mr. Scott: Yes sir, the conditions of both companies are exactly the same, perform the same service for one as they do for the other.

Examiner Burchmore: Are there any bills of lading issued covering the in-bound movement of logs to the mill?

Mr. Scott: No sir.

5278 Examiner Burchmore: Any way-bills issued?

Mr. Scott: No.

Examiner Burchmore: I assume that the conductor makes some sort of a report to a superior officer at the end of his run of the number of carloads of logs he has brought in?

Mr. Scott: We have a report of every train that comes in, showing how many cars it contains.

Examiner Burchmore: When the lumber is shipped to interstate destinations, of course it is loaded at Huttig, but where is it billed from?

Mr. Scott: Billed from Huttig.

Examiner Burchmore: And the origin is shown in the bill of lading as Huttig?

Mr. Scott: Yes sir.

Examiner Burchmore: Then how do you say that the rates are on a milling in transit basis?

Mr. Scott: The tariff provides that the rate extends back to the point where the log is delivered to the Louisiana & Pine Bluff Railway.

Commissioner Harlan: Then it is a lumber rate?

Mr. Scott: Yes, sir.

Commissioner Harlan: It is not a milling in transit rate,

5279 is it, it is a lumber rate?

Mr. Scott: It is lumber milled in transit, I suppose.

Commissioner Harlan: Is it published as a milling in transit rate?

Mr. Scott: It is published in our lumber tariffs, naming rate from Huttig, and that tariff goes on to say that those rates extend

back to where the log originated, to where it is delivered to the Louisiana & Pine Bluff, to cover the service performed on the log into the mill and out.

Mr. Coleman: I was going to ask how he checked his tonnage?

Mr. Scott: We don't have any occasion to check the tonnage, because it all comes, it has no other outlet.

Examiner Burchmore: What you mean is that the same rate applies from all sections of your line?

Mr. Scott: Yes sir.

Examiner Burchmore: It makes no difference whether the shipment originates in the form of lumber at Huttig or whether it originates in the form of logs at Pigeon Junction for example, and is milled in transit at Huttig, the same rate would apply anywhere?

Mr. Scott: The same rate applies.

Examiner Burchmore: The same division.

5280 Mr. Scott: Yes sir.

Examiner Burchmore: As a matter of fact, the rate is not used as a milling in transit rate, because you bill the lumber as originating at Huttig?

Mr. Scott: All the tariffs carry the rate back to the point of origin of the logs.

Commissioner Harlan: That is simply the tariff way of explaining the form of your billing, isn't it?

Mr. Scott: Yes, it would be impossible to bill each car from the point where the car originates, because we cannot follow each log all the way in.

Mr. Coleman: Before we get off this line, I would like to ask one or two questions.

Examiner Burchmore: Ask them here.

Mr. Coleman: An f.o.b. price at the mill on hard wood, what is that based on?

Mr. Scott: The f.o.b. price at the mill, I could not tell you. We have not had any connection with the hard wood mill at all.

Mr. Coleman: Anybody here that can?

Mr. Scott: Not that I know of.

Examiner Burchmore: For what distance north of Dollar

5281 Junction are the rails laid?

Mr. Scott: I would say approximately about half a mile north of Dollar Junction.

Examiner Burchmore: Has any rail been laid on it since New Years?

Mr. Scott: No sir.

Examiner Burchmore: When was the line west of Huttig which now connects with the Eldorado & Bastrop at E. & B. Junction constructed?

Mr. Scott: Well, the construction part of it commenced as long as five years ago I would say starting from E. & B. Junction south, via the Eldorado & Bastrop. Later on we built it through from Huttig, connected the two branches at Pigeon Junction.

Examiner Burchmore: How long has that line been considered part of this railroad system?

Mr. Scott: We have not been operating it, you might say, until within the last eighteen months to any extent, and as an operating proposition it has not been considered prior to that.

Examiner Burchmore: You are operating it as a part of the private track of the Union Saw Mill Company?

5282 Mr. Scott: Logging Company.

Examiner Burchmore: Of the Logging Company?

Mr. Scott: Yes, to some extent, not altogether.

Examiner Burchmore: Has the line been purchased by this railroad?

Mr. Scott: It was built by the railroad originally.

Examiner Burchmore: Did the logging company and the saw mill company furnish the labor for building this line?

Mr. Scott: The railroad company built its main line.

Examiner Burchmore: They built all that line?

Mr. Scott: Built it, yes sir.

Examiner Burchmore: For a considerable length of time it was operated or part of it was operated by the logging company?

Mr. Scott: No, only to a limited extent up there on the first of it that we built before we operted much in there.

Examiner Burchmore: Take the five or six miles out of the E. & B. Junction, how long were they operated by the logging company?

Mr. Scott: Only temporarily until the track had settled to an extent where heavy engines could go down on the line. For a time there we had some short time timber in there and the tracks

5283 were not in very good condition, and the logging company undertook to bring that out to a point where the Louisiana & Pine Bluff Company made a train and carried it into Huttig. That was just a temporary arrangement under which they performed the service out a little further than ordinarily.

Examiner Burchmore: Did they pay anything for the use of that track?

Mr. Scott: No sir, we considered that they were saving us an expense in operating *and* not requiring us to go down there.

Examiner Burchmore: Do you report to the Interstate Commerce Commission your annual report accurately and show the facts with respect to the construction and operation, particularly operation, of this line between Huttig and E. & B. Junction?

Mr. Scott: So far as I know they do.

Commissioner Harlan: Who unloads the logs, the employés of the railroad?

Mr. Scott: The railroad company, yes sir.

Examiner Marble: I have here the annual report of your road for the year 1907, your name is signed to that as treasurer at that time, isn't it?

5284 Mr. Scott: I was secretary and treasurer at that time.

Examiner Marble: And you signed this report here, this is your signature here, is it not?

Mr. Scott: I think so.

Examiner Marble: Your statement of traffic in this report gives 5.38 miles in one item, the next item 41.06 with the note against it: "Forty miles to represent temporary tracks built and being operated

by persons getting out timber to be manufactured on the lines of this company, steel rails and fastenings being furnished by this company." And 112 miles, with the note: "Represents trackage rights of the El Dorado & Bastrop Railway Company, Little Rock & Monroe Railway, Farmerville & Southern Railway being operated by persons getting out timber to be manufactured on lines of this company." Then the further note: "Mileage item 1-A used in all computations in this report. That is the item 5.38 miles. What was that 5.38 miles that you used for your computation?

Mr. Scott: That was the line at Huttig, between Huttig and Dollar Junction, around in that neighborhood.

Examiner Marble: Between Huttig and Dollar Junction?

Mr. Scott: Yes, sir.

Examiner Marble: It must be more than the line between
5285 Huttig and Dollar Junction.

Mr. Scott: We have built the lines together, and our report explains that.

Examiner Marble: Please explain that report.

Mr. Scott: It belongs to the railroad company, which is now acting as——

Examiner Marble: It includes that spur track in their Huttig plant, the 5.38 miles?

Mr. Scott: It includes that belt running around the plant.

Examiner Marble: All the tracks through the plant as well?

Mr. Scott: I think probably I reported that shown as side tracks separately.

Examiner Marble: I don't find any sidings shown here. Taking your reports for the two following years, you report only 5.38 miles, ignoring the 40 miles, ignoring trackage?

Mr. Scott: We have a letter from the Commission instructing us to leave that out of consideration altogether.

Examiner Marble: Why?

Mr. Scott: I don't know what their reason was. They ordered us to cut it out, and in making the report next year we left it out.

Examiner Marble: They did not give you the reason?

5286 Mr. Scott: I think possibly they stated some reason, but I don't remember what it was, but the letter ought to be on file here.

Examiner Marble: What reason moved you in your report of 1907 to use only 5.38 miles in the report?

Mr. Scott: That was the line owned. The other was leased and under trackage arrangements, and that part of the line was reported by the Iron Mountain as its railroad, and we cut it out in order not to duplicate the mileage down there.

Examiner Marble: Why didn't you put those forty miles of road as temporary track being operated?

Mr. Scott: We put that return in there for information. We did not operate it, you know.

Examiner Marble: Where was that mileage that forty miles?

Mr. Scott: The forty miles represent the steel rail that we turned

over to the logging company to build these little spurs, off of the main railroad, these lines here (indicating).

Examiner Marble: In your report for 1910, instead of reporting the forty miles that you report in 1907 as temporary tracks, in your report for 1910, you have given the mileage of the Louisiana & Pine Bluff Railroad from Huttig, Arkansas, to Dollar Junc-

5287 tion, 5.38 miles, and in the Louisiana & Pine Bluff Railway from Huttig, Arkansas, to E. & B. Junction, 21.62 miles?

Mr. Scott: Yes.

Examiner Marble: When was that track constructed, that latter portion of 21.62 miles?

Mr. Scott: Principally in the last eighteen months.

Examiner Marble: It was not constructed at the time you made your report for 1909?

Mr. Scott: Yes, sir, it was when——

Examiner Marble: Was it constructed at the time you made your report for 1909?

Mr. Scott: I don't think it was constructed at that time.

Examiner Marble: Who constructed that track?

Mr. Scott: The Louisiana & Pine Bluff Railway.

Examiner Marble: I will ask you if you are familiar with your charter rights. Have you a charter for anything except twenty miles northwest from Huttig?

Mr. Scott: The charter calls for twenty miles to be built in a northwesterly direction.

Examiner Marble: You give in that report something over twenty-seven miles.

5288 Mr. Scott: Well, the matter of charters down there in that country is very liberal. It permits a railroad to build as much as they want to. They never prohibit your building your line out just because it goes beyond the limits of your charter.

Examiner Marble: Why did you put that in again this year after leaving it out the two previous years?

Mr. Scott: It has not been very clear to us just what the Commissions wanted. We put it in there, and if they wanted it out we would cut it out. We reported it that way to show the acual state of affairs.

Examiner Marble: This year you make another statement, that only 5.38 miles were used for purposes of computation. I understand that you have used 147 miles, including all these trackage rights?

Mr. Scott: No, we have used—I think you will find that we have used twenty-seven miles, which includes this new line that we built. We used an average haul of twenty-five miles, the average haul for logs. Some of them come in under trackage rights, and some of them over our own lines.

Examiner Marble: Who determined the form of this report, did you do that yourself?

5289 Mr. Scott: No, we have a man for auditor, that makes up the reports.

Examiner Marble: You tell him what to put in that report, don't you?

Mr. Scott: Why, where he is in doubt about anything he usually comes to me.

Examiner Marble: He comes to you for instructions, does he?

Mr. Scott: Yes, sir.

Examiner Marble: Do you advise with him?

Mr. Scott: Yes, sir.

Examiner Marble: I note that your gross revenue per year, 1907, $76,061; 1908, $67,298; 1909, $72,875; 1910, $78,714. They vary but little?

Mr. Scott: Yes, sir.

Examiner Marble: The years when you reported only 5.38 miles of track were almost as large as the years when you reported 147 miles of track?

Mr. Scott: Well, we reported under substantially similar conditions for all those years. As I stated, we reported the mileage where we only had trackage rights, but usually cut that out.

Commissioner Harlan: Do you mean that you performed
5290 no railroad operation on those trackage rights?

Mr. Scott: Yes, sir, and we reported them to the Commission and they told us to cut them out, and the next year we cut them out altogether. They had correspondence with us about it.

Examiner Marble: In your report for 1910 you report $35,508.74 for maintenance of way.

Mr. Scott: Yes, sir.

Examiner Marble: Do you maintain any of the tracks of the Iron Mountain?

Mr. Scott: No, we pay a mileage of 35 cents per train mile.

Examiner Marble: Do you charge that 35 cents per ton mile as under the heading of maintenance of way?

Mr. Scott: We charge it in whatever account it properly belonged, I don't know just which.

Examiner Marble: I want to find out what tracks you have charged this $35,000 on, how many miles of track?

Mr. Scott: Well, possibly that charge was, the greater portion of it was this track lying west of Huttig.

Examiner Marble: And that is twenty-one miles long?

Mr. Scott: No, sir; that construction is charged to operating expense.

5291 Examiner Marble: Do you charge the cost of that construction in the maintenance of way?

Mr. Scott: A portion of it. We had some correspondence with the Commission as to how that ought to be handled and took it into our accounts as you suggested.

Examiner Marble: Well, now, you have told me that this twenty-one miles was not long in existence. If you made a report for 1909, and in that year you spent $3,000 more for tracks, or say $38,931.49, I will ask you what tracks you spent that amount of money on?

Mr. Scott: The same line was in course of construction at that time, not being operated.

Examiner Marble: You don't report it as being any expense in that year?

Mr. Scott: Well, we are not reporting the lines we are not operating.

Examiner Marble: But the construction of that new line was charged as maintenance of way, didn't you answer?

Mr. Scott: Well, we charged it in operating accounts.

Examiner Marble: Caused a discrepancy in the operating account, because of that new line?

Mr. Scott: Yes, sir.

5292 Commissioner Harlan: You mean the Commission instructed you to do that?

Mr. Scott: Yes, sir. We told them that we were building a line out there for the purpose of bringing in logs, and requested them to advise us as to whether to carry that as construction?

Commissioner Harlan: A little bit louder.

Mr. Scott: We asked for that advice, as to whether to carry that as a construction account, or whether we should charge it into operating expenses, and they wrote us back to take it into operating expenses, the same as the expenses of any other track that might be built to develop tonnage.

Commissioner Harlan: I would like to have a copy of that letter.

Mr. Scott: I will try to get it for you. I have not got it with me. That was several years ago and we followed their suggestion.

Examiner Marble: Did you charge into these items the maintenance of way and other operations, the cost of putting down and taking up these temporary logging roads out into the forests?

Mr. Scott: We had nothing to do with the logging company whatever.

5293 Examiner Marble: You say that you did not charge those in?

Mr. Scott: No, sir.

Examiner Marble: In your report for 1908, under the head of transportation expenses, you have shown cash, all items over all other transportation expenses, $73,537.37, and you have this note against it: "This item includes expenditures for temporary spurs, for the purpose of securing freight forest products, shipped and to be shipped by this line when manufactured?"

Mr. Scott: Yes, sir.

Examiner Marble: Then at that time this road was paying the cost of putting down and taking up those temporary tracks, in 1908?

Mr. Scott: We also built there on the main line track—the Louisiana & Pine Bluff has always constructed the main line track from which the Logging Company builds lateral lines.

Examiner Marble: Is that note in your handwriting?

Mr. Scott: Yes, sir.

Examiner Marble: You made that yourself?

Mr. Scott: Yes, sir.

Examiner Marble: Will you read it to the Commissioner and tell us what it means?

5294 Mr. Scott: Well, probably he had better ask me, I don't know what information you want to get into.

Examiner Marble: I want to know what that means, a statement that you put in the report to the Commission and you have sworn to as being correct. I want to know what it means?

Mr. Scott: It means just what it says.

Examiner Marble: It does mean that these temporary spurs for the purpose of securing forest products were at that time charged to this railroad company's expenses?

Commissioner Harlan: Suppose you point out on the map one of those spurs that was embraced in that item?

Mr. Scott: We built this main line track from Lawson, for instance, this line right down to here (indicating on map). This is one of them. The logging company built it out here (indicating).

Commissioner Harlan: It was a temporary track?

Examiner Marble: What was the temporary spur on which you spent $75,000.00?

Mr. Scott: This track right there, that track has been pulled up. We just put this on there to indicate the general manner in which that was brought out.

5295 Examiner Marble: You have indicated a line here running south from Lawson. There are similar lines running north to points between Lawson and Urbana.

Mr. Scott: Yes sir, we built those.

Examiner Marble: Were those what you call temporary tracks?

Mr. Scott: Yes sir.

Examiner Marble: They were built by the railroad company?

Mr. Scott: The Louisiana & Pine Bluff Railway, that is the main stem, with branches from it built by the logging company.

Examiner Marble: They were afterwards torn up?

Mr. Scott: Yes sir.

Examiner Marble: You call the stem, the main stem. The temporary track in this report was not built by the railway.

Mr. Scott: That is track built by the Louisiana & Pine Bluff, yes.

Examiner Marble: Mr. Scott, you say that is the kind of track that the Commission directed you to charge to operating expenses?

Mr. Scott: Yes sir.

Examiner Marble: Then it was not this track running west from Huttig there?

Mr Scott: Well, we report all of it in the same manner.

5296 Examiner Marble: Now, do you mean us to understand that you were advised by the Commission to charge to operating expenses this permanent track running west from Huttig?

Mr. Scott: That track is built out in the forests there to bring us logs.

Examiner Marble: Then it is a temporary track, is it, the track running south from Lawson?

Mr. Scott: Unless it develops into a feeder——

Examiner Marble: You will take it up?

Mr. Scott: Yes, probably, as we did with that track right there (indicating on map).

Examiner Marble: Why isn't all of that temporary track properly a charge against the logging company rather than the railway company?

Mr. Scott: The railway company builds a track up there to induce the getting out of freight that would not otherwise develop.

Examiner Marble: Why doesn't the company build all the temporary tracks if they are going to build a portion of it?

Mr. Scott: It builds what we term main line tracks out into the timber, and the logging company builds off from it.

5297 Examiner Marble: Now, that item of transportation expenses in your report for 1908 was a total of $85,447.07 including this item of $72,000. If you had taken up these temporary tracks the following year, that item of transportation expenses dropped from $85,000, to $32,000, but your maintenance of way item increased from $11,000, to $38,000. Now, does that simply mean that your railroad out of these divisions—out of its income, whatever it may be, has been bearing the expense of putting down and taking up these temporary tracks in the forests—in 1908 you charged these to transportation expenses and in 1909 and 1910 you charge it to maintenance of way?

Mr. Scott: Well, it is just like the report shows there.

Examiner Marble: I will ask you if that is not what you did?

Mr. Scott: Well, the last two times we may. I think at one time we charged it to transportation expenses. The matter came up with the Commission about that time——

Mr. Walter: What year is that for, please?

Examiner Marble: The large item in transportation was in the year 1908, and in 1909 and 1910 it has been shifted to the maintenance of way account. Now, that includes labor simply, does it

5298 not, because the steel had been furnished by the railroad company at the beginning and this same steel is used over and over again for these temporary tracks.

Mr. Scott: Yes sir.

Examiner Marble: So that these charges——

Mr. Scott: Labor and grading usually relaying the tracks. You have to buy new fastenings.

Examiner Marble: It don't include the steel?

Mr. Scott: No, no steel charge at all. That is carried as a material account.

Examiner Marble: How many engines does——

Commissioner Harlan: May I interpose just a moment before you reach the question of equipment?

Examiner Marble: I am now going to the question of depreciation?

Commissioner Harlan: But just one question. You say these are temporary lines. Take the one running south from Lawson, how long was the main stem of that temporary line built by the railroad company?

Mr. Scott: Some seven or eight miles.

Commissioner Harlan: And the one that runs north from a point between Lawson and Urbana, how long was that?

Mr. Scott: Well, the map there is on a scale of three-quarters of an inch to the mile.

5299 Commissioner Harlan: Will you indicate what other temporary lines were built by the railroad company?

Mr. Scott: This one here (indicating on map).

Commissioner Harlan: You refer to the one running north from P. & B. Junction?

Mr. Scott: Yes sir, and the one running north between Urbana and Lawson.

Commissioner Harlan: The one running south from Lawson?

Mr. Scott: The one running south from Lawson.

Commissioner Harlan: And running west from Urbana?

Mr. Scott: That was built by the logging company, these lines here that we have already enumerated and this line.

Commissioner Harlan: What about this line from LaPile?

Mr. Scott: They were built by the logging company.

Examiner Marble: The line west of Huttig was built by the railroad company?

Mr. Scott: Yes sir, the plan we have followed there where the timber was very scattered running through a farming community, the railroad company built the main line, the spurs were temporary, and where there was any stand of timber, the logging company built their main line up close to the mill.

5300 Examiner Marble: Take this main line here south of Lawson, built by the railroad company, what was the extent of the logging roads built by the lumber company that ran into that spur, what was the length of them?

Mr. Scott: They built a trifle more line than we did.

Examiner Marble: That is, the logging line exceeded the length of the spur.

Mr. Scott: Yes, sir.

Examiner Marble: What ultimate compensation did the railroad company get for the expense of building these spur lines, temporary spur lines?

Mr. Scott: Securing that tonnage, and got an additional freight rate.

Examiner Marble: It paid out 35 cents per train mile?

Mr. Scott: Yes sir.

Examiner Marble: Then all it got was the division?

Mr. Scott: And the manufactured product.

Examiner Marble: Got the whole?

Mr. Scott: Yes sir.

Examiner Marble: It did not charge anything for hauling the logs into the mill, did it?

Mr. Scott: No sir.

5301 Examiner Marble: It paid out 35 cents a train mile for hauling the logs, and it had no claim against the lumber company up to that point?

Mr. Scott: The lumber company is obligated to ship the tonnage back over the line.

Examiner Marble: What could it have done if you had not?

Mr. Scott: If it was their intention we would have hauled no logs in there.

Examiner Marble: Was there any charge made against the lumber dompany for hauling the logs?

Mr. Scott: No charge for the service performed by the Louisiand & Pine Bluff.

Examiner Marble: How much track is shown on that blue print which is not now in existe-ce, which has been torn up?

Mr. Scott: There is about 75 or 80 miles, I think, altogether.

Examiner Marble: Shown here, that has been torn up?

Mr. Scott: That is in existence.

Examiner Marble: There is about 75 miles?

Mr. Scott: They are always building about so much road, because they had that much steel. The logging company has used more steel than the Louisiana & Pine Bluff does to building these lateral lines. They have that much steel in service.

5302 Examiner Marble: Do you know how many of the tracks shown on this blue print are now in existence?

Mr. Scott: Well, practically all of these in here are still in existence (indicating on blue print).

Examiner Marble: Are these in existence over here (indicating)?

Mr. Scott: No, these are not. All of the tracks connected with the Louisiana & Pine Bluff running west from Huttig, are practically all of them still in existence.

Examiner Marble: Are the tracks to the west of that point still in existence (indicating on blue print)?

Mr. Scott: Yes sir, part of them, part of them taken up.

Examiner Marble: Part of them in existence and part taken up?

Mr. Scott: Yes sir.

Examiner Marble: Going to the tracks north of Pigeon Junction, are those tracks in existence to the west of your line?

Mr. Scott: Part of them in existence.

Examiner Marble: Are these tracks to the south of Lawson in existence?

Mr. Scott: No.

Mr. Cowan: What would you consider as the limit in mile-
5303 age for one of those stubs which come off the main line?

Commissioner Harlan: The limit of cost?

Mr. Cowan: No, the limit in mileage.

Mr. Scott: The mileage would be limited by the quantity of lumber that could be secured. If the tonnage was not there, we would not build the line.

Mr. Cowan: No, but one of them is seven miles long.

Mr. Scott: Yes, we are operating on one part of the time that is something over twenty-one miles long.

Mr. Cowan: So that there is no limit to the amount that you might—to the length of what you call those main line spurs, that is, you do not in your mind give a definite length for these spurs or stubs?

Mr. Scott: What we call main line roads is lines constructed by the Louisiana & Pine Bluff Railway.

Mr. Cowan: That is what I mean. One of them would be seven miles or twenty-one miles, and those tracks might be more or less?

Mr. Scott: Yes, sir.

Mr. Cowan: My point is, you have no fixed idea in your mind as to what the limit of those stubs would be?

Mr. Scott: The limit would be the timber, the extent of
5304 the line, of course. As long as we get out timber, we build the line.

Mr. Cowan: Any time the railroad wants—when the logging company wants to get out logs the railroad would construct a track practically down to the timber, does it?

Mr. Scott: The main line tracks run through the body of timber and the logging company would build out from them, maybe their branch line would be ten miles long.

Commissioner Harlan: When you removed those temporary spur tracks, did you get the consent of the Arkansas Commission?

Mr. Scott: No, sir.

Commissioner Harlan: Just took them up?

Mr. Scott: Just like any other industrial track that is put down to get traffic. That is done in the lumber district all the time. The Iron Mountain could have taken it up, if it had been built for that purpose.

Mr. Cowan: I would like to ask a few more questions while I am here, because I have to go to another hearing, if that is agreeable to Mr. Marble?

Examiner Marble: Certainly, Judge Cowan, or any time.

Commissioner Harlan: Go ahead, Judge Cowan.

Mr. Cowan: From what source other than the division of
5305 rates do you derive the income of this railroad company, the report of which has been referred to?

Mr. Scott: Freight and passenger business and mail. We get everything we can, we try to make money.

Mr. Cowan: Does part of that come from operation over the logging spurs?

Mr. Scott: We would not have any revenue at all if it were not for the logging spurs, if we did not have some spurs to bring logs in we would not have any tonnage at all.

Mr. Cowan: My question is, your freight and passenger earnings you said were part of your earnings, and if it were not for these logging spurs——

Mr Scott: Outside of the lumber business, our business is very meagre.

Mr. Cowan: Do you charge for carrying passengers over these logging spurs?

Mr. Scott: No sir.

Mr. Cowan: You do charge for carrying freight over logging spurs?

Mr. Scott: Yes sir.

Mr. Cowan: What sort of freight?

Mr. Scott: We charge to carry any freight that goes to
5306 points beyond our line. For months there is no freight out of there. It is built out into the forest country to carry forest

products. Where that shipment is going beyond our line and we get no revenue from the finished product, we charge a regular freight rate on it.

Mr. Cowan: Does the lumber company pay your freight rates over the logging spurs for hauling logs which the lumber company buys from farmers—I think they have been designated as such—in that locality served by the logging spurs?

Mr. Scott: All of the logs shipped into the mill at Huttig are handled by the Louisiana & Pine Bluff Railway Company free of charge, on condition that they be manufactured and milled out over the line. It is a milling in transit proposition. Nobody pays any freight on forest products that come in to the manufacturers on our road.

Commissioner Harlan: Suppose a farmer has a trainload of logs up here on one of these temporary spurs, would you make no charge against him for hauling those logs to a hard wood mill, we will say, a lumber mill?

Mr. Scott: We never had a condition of that kind come up. The logs are bought by the mills, delivered out on the tram road, where they are loaded by the logging company, where they have
5307 facilities for loading the logs, and then they are brought in just like any other timber.

Mr. Cowan: Do you have a tariff that would apply if anyone wanted to take advantage of it from these logging spurs?

Mr. Scott: I might answer that in this way, that we have never had any occasion to put in a tariff. The natural market for all of that product is right there on our railroad. They have never had any application or any request to put in freight rates, if it was requested we would put it in.

Mr. Cowan: Well, the market is to the lumber company, and could not be to anybody else, if nobody else had a freight rate on which they could bring it out.

Mr. Scott: Anybody can go down there and buy the timber.

Mr. Cowan: And ship it over these logging spurs?

Mr. Scott: If they wanted to, yes sir.

Mr. Cowan: What would be the freight rate?

Mr. Scott: We have not established any rate, there has not been any occasion to make a rate.

Mr. Cowan: Then does your road hold itself out as a common carrier, if it makes no rates for the product it carries?

Mr. Scott: Yes sir.

Mr. Walter: The state of Arkansas, tariff in the state of
5308 Arkansas applies on local business?

Mr. Scott: Yes, sir.

Mr. Cowan: Does that apply to the logging spurs?

Mr. Walter: He has stated that he does not operate the spurs, he operates the main line.

Commissioner Harlan: No, he has not said that, Mr. Walter. He said he did operate the timber spurs.

Mr. Scott: We operate the spurs for logging business.

Mr. Walter: The main line spurs?

Mr. Scott: The main line spurs for log traffic.

Mr. Cowan: In the operation of a train under a train mileage arrangement with the Iron Mountain, do you get the right to haul other freights than forest products on that arrangement?

Mr. Scott: No, sir.

Mr. Cowan: Do you in fact haul other freight over the Iron Mountain under the trackage rights?

Mr. Scott: No sir, we only haul freight that the contract provide for, none other.

Mr. Cowan: Now, what business does the Iron Mountain carry on on this road on which you have trackage rights?

Mr. Scott: It operates a line the same as any other railroad does over in that country.

5309 Mr. Cowan: What is there for the Iron Mountain to handle?

Mr. Scott: There are industries on the Little Rock & Monroe aside——

Mr. Cowan: Do you know what per cent of the—what proportion of the traffic hauled over the track, taking the aggregate at one hundred, what proportion of that is traffic hauled by your company having the trackage rights?

Mr. Scott: I could not say.

Mr. Cowan: Have you any idea about it?

Mr. Scott: I would say that the Louisiana & Pine Bluff, if you will consider the volume, handle more stuff than the Iron Mountain do, but two thirds of that volume is wasted when it is manufactured.

Mr. Cowan: The tonnage is greater that you handle?

Mr. Scott: The tonnage is probably more than the Iron Mountain handles.

Mr. Coleman: I am curious to know if some charge is made for hauling the hard wood down to the mill?

Mr. Scott: No.

Mr. Coleman: Not at all?

Mr. Scott: No sir.

Commissioner Harlan: Mr. Marble, you may proceed.

5310 Examiner Marble: How near the plant of the Union Saw Mill Company at Huttig are the tracks of the Little Rock & Monroe Railroad and the Iron Mountain?

Mr. Scott: Well, the Iron Mountain runs right by the plant on one side. The plant covers about 160 acres.

Examiner Marble: How near to the tracks of the Louisiana & Pine Bluff are the tracks of the Iron Mountain at that point?

Mr. Scott: I think our tracks are something over half a mile apart.

Examiner Marble: And the lumber loaded on the Louisiana & Pine Bluff Railroad at Huttig, on which you receive the division of rates, is hauled straight away from the Iron Mountain road for a distance of about three miles to another point on the Iron Mountain Road, before being delivered up by you, is it not?

Mr. Scott: The lumber is all delivered at Dollar Junction, yes sir.

Examiner Marble: Why don't you deliver it at Huttig?

Mr. Scott: Because it all goes north and they prefer to receive it up there.

Examiner Marble: Why do they prefer to receive it up there?

Mr. Scott: It relieves them of the haul, I suppose.

5311 Examiner Marble: How much haul does it relieve them of?

Mr. Scott: Going in that direction it relieves them of about five or six miles.

Examiner Marble: By relieving them of five or six miles of haul from one point on their line to another point on their line, you get this division?

Mr. Scott: Yes, sir.

Examiner Marble: Whatever this logging proposition may be, of course, I don't want to omit that.

Mr. Scott: No, we have invested there a good many hundred thousand dollars in railroad. We have had a plant there, and I think you will find on the statement we have a capacity here on all these tracks of some five or six miles of side track down there in Huttig. We haul these logs in there, develop this tonnage here, we bring the logs in here, bring in the empty cars and take out the loads, issue bills of lading, bill the freight out, and we perform the service that the Iron Mountain or any other railroad would perform.

Examiner Marble: You might say that you are the originating road also?

Mr. Scott: We are the originating road, yes sir.

Examiner Marble: Do you furnish cars for loading?

5312 Mr. Scott: Yes sir; we do furnish these cars.

Examiner Marble: Or does the Iron Mountain furnish cars for transportation?

Mr. Scott: We get so much per diem for all cars out on foreign tracks, and we pay per diem for cars on our tracks.

Commissioner Harlan: Do you assess any demurrage against the lumber company?

Mr. Scott: Yes sir.

Commissioner Harlan: According to the regular demurrage rules?

Mr. Scott: Yes sir, according to the regular demurrage rules.

Commissioner Harlan: But you don't undertake the investment for furnishing the cars for outbound lumber, do you?

Mr. Scott: We use any cars that we can get. We won't undertake to furnish cars to ship all the lumber out of Huttig, no.

Examiner Marble: You don't furnish any of the cars, do you, except as you pay a per diem on them?

Mr. Scott: No, our cars don't go off our lines.

Mr. Coleman: What is that per diem?

Mr. Scott: It is 35 cents I think a day for six months,

5313 and 25 cents for six months, during the dull season.

Examiner Marble: Do you know how many engines your road has?

Mr. Scott: Twelve.

Examiner Marble: How many engines does the Union Saw Mill Company own?

Mr. Scott: It does not own any.

Examiner Marble: How many engines does the Huttig Company own?

Mr. Scott: Not any.

Examiner Marble: How many cars, freight cars, does the Louisiane & Pine Bluff own?

Mr. Scott: It is shown on the statement.

Examiner Marble: Does the Huttig Logging Company own any cars?

Mr. Scott: No sir.

Examiner Marble: Or the saw mill company?

Mr. Scott: No. The equipment is furnished by the railroad company.

Examiner Marble: The equipment being used on these trains is furnished by the railroad company then.

Mr. Scott: We furnish the cars.

Examiner Marble: In figuring your depreciation account
5314 in your annual report to the Interstate Commerce Commission, have you included the depreciation of these engines and cars when they were on these temporary tracks at the Huttig Logging Company, such injury as they receive then?

Mr. Scott: We have figured ten per cent on that equipment account, reduced that much per year.

Examiner Marble: Ten per cent?

Mr. Scott: That is the basis we are working on.

Examiner Marble: How long have you had these engines?

Mr. Scott: Well, the road was established, I think, in 1905. We have been acquiring some along from time to time, and we have one under construction now.

Examiner Marble: Are you still using the equipment you bought in 1905?

Mr. Scott: Yes, sir.

Examiner Marble: Are you still using the engines you bought in 1905?

Mr. Scott: The engines are all in service with one exception.

Examiner Marble: Were they new when you got them?

Mr. Scott: Part of them were new, but second hand.

Examiner Marble: But second hand when you bought them?

5315 Mr. Scott: Yes sir.

Examiner Marble: Isn't it a fact that ten per cent per annum is the usual commercial depreciation in the lumber business rather than in the railroad business, and that you are taking that ten per cent lumber company practice, rather than railroad practice?

Mr. Scott: Never heard of the practice in the lumber business. I don't know whether any of them use that basis or not. That is the basis that we figure on that would take care of the renewals to that equipment. We considered that would be a proper charge.

Commissioner Harlan: Did I understand you to say a moment ago that the logging company had no equipment at all?

Mr. Scott: No railroad equipment.

Commissioner Harlan: No locomotives and no cars?

Mr. Scott: No locomotives and no cars. They own all the other equipments such as teams, wagons, etc?

Examiner Marble: Who operates the trains from the forest we will say to Pigeon Junction?

Mr. Scott: The logging company. They have several locomotives that we turned over to them to bring the trains up. They operate and pay for the service, but we furnish the locomo-
5316 tives and they keep those locomotives in repair.

Examiner Marble: They keep them in repair, but they don't pay any rental.

Mr. Scott: They keep the cars in repair, they keep all of the logging cars in repair. Of course, we use them jointly, but they pay the repair bill.

Examiner Marble: They do not pay any rent for them?

Mr. Scott: No sir, keep them in repair.

Examiner Marble: They operate them with their crews?

Mr. Scott: Yes sir, out on their local lines, they have full control.

Examiner Marble: To whom does the Louisiana & Pine Bluff furnish this equipment? Does it furnish it to the Huttig Logging Company or to the Union Saw Mill Company?

Mr. Scott: The Huttig Logging Company.

Examiner Marble: Free?

Mr. Scott: Free, on the condition that they keep it in repair.

Examiner Marble: Otherwise free?

Mr. Scott: Yes, sir.

Examiner Marble: With regard to these temporary tracks in the forest, that right-of-way is owned by the Union Saw
5317 Mill Company?

Mr. Scott: No, sir.

Examiner Marble: The land on which the temporary tracks are built?

Mr. Scott: The Union Saw Mill has granted the Louisiana & Pine Bluff Railroad a right-of way anywhere it builds its tracks, yes.

Examiner Marble: You have a general right to build tracks on the land of the Union Saw Mill Company?

Mr. Scott: Yes sir, on any land that they own they give us a right-of-way.

Examiner Marble: The steel is owned by the Louisiana & Pine Bluff Railway?

Mr. Scott: Yes sir.

Examiner Marble: And the equipment is owned by the Louisiana & Pine Bluff Railway, and is loaned for the repairs upon it?

Mr. Scott: The railroad equipment, yes sir.

Examiner Marble: And the ties are owned by whom, by the Huttig Logging Company?

Mr. Scott: They furnish their own ties. For their own
5318 track.

Examiner Marble: You say that the engines out on cer-

tain spurs do not work clear into the mill, but stop somewhere midway?

Mr. Scott: Engines operated by the Louisiana & Pine Bluff Railway work from the point where the logs are brought out by the logging company, between that point and the mill.

Examiner Marble: I want to know just how those cars are handled. These cars loaded out at the extreme end of a temporary spur are handled by the Huttig Logging Company?

Mr. Scott: Yes, the logging company bring them up to what we call the main line.

Examiner Marble: Who hires the workmen, the logging company?

Mr. Scott: Yes sir; they pay all expenses up to the point of assembling the train.

Examiner Marble: Do they hire the workmen directly?

Mr. Scott: Yes, sir, we have no——

Examiner Marble: And the conductor?

Mr. Scott: Yes, sir.

Examiner Marble: And the engineer?

Mr. Scott: Yes sir, pay all expenses.

5319 Examiner Marble: And they bring those cars down to a junction with another temporary track?

Mr. Scott: No, they bring them to a junction where the Louisiana & Pine Bluff is operating every day.

Examiner Marble: And that company's engine takes up the cars?

Mr. Scott: An engine operated by the Louisiana & Pine Bluff Railroad Company takes the cars.

Examiner Marble: On their engine?

Mr. Scott: Yes sir.

Examiner Marble: The first man does not attempt to bring them to the mill at all?

Mr. Scott: No, they stay out in the woods, bringing loads down, assembling the loads out on the main line.

Examiner Marble: With another train crew?

Mr. Scott: The logging company operate independently altogether of the Louisiana & Pine Bluff. The Louisiana & Pine Bluff operate on the main line, pays all expenses, furnishes its own train crew, and the logging company does the same down on these lateral lines.

Examiner Marble: And the train crew on the logging line does not run through down to the mill, nor any member of it?

5320 Mr. Scott: No, not unless in case of a wreck or a breakdown, or something of that kind, that they have to come in there to the shop.

Examiner Marble: An emergency?

Mr. Scott: An emergency, then they come up on the main line.

Examiner Marble: Because it is necessary to clear it up?

Mr. Scott: Yes sir.

Examiner Marble: Who determines which track is operated by the Louisiana & Pine Bluff and which by the Huttig Logging Company?

Mr. Scott: The track that the Louisiana & Pine Bluff builds is operated by it and the track that is built by the logging Company is operated by it.

Examiner Marble: Who determines which track should be built by one and which by the other?

Mr. Scott: The railroad elects to say whether it will build the track or not.

Examiner Marble: Is that you, do you decide that question?

Mr. Scott: Well, I don't know that it would be left entirely to me. I would consult Mr. Johnson about a matter of that kind if there was any doubt about it.

Examiner Marble: You would consult Mr. Johnson?

5321 Mr. Scott: Yes, sir.

Examiner Marble: Who does the Huttig Logging Company consult in regard to the building of a track by it, Mr. Johnson?

Mr. Scott: Consults the railroad company, yes sir.

Examiner Marble: What?

Mr. Scott: They would consult the railroad company.

Examiner Marble: That would be you?

Mr. Scott: Well, it might be me, or might be some other member of the company.

Examiner Marble: Mr. Johnson?

Mr. Scott: Yes; if any dispute came up about it he would finally decide it.

Commissioner Harlan: Are you paid a salary by both companies?

Mr. Scott: Yes, sir.

Commissioner Harlan: And Mr. Frost's salary is paid by both companies?

Mr. Scott: He receives a salary from the Louisiana & Pine Bluff Railway, none from the Saw Mill.

Examiner Marble: Would Mr. Prestridge determine that problem, as to which company should build certain tracks?

Mr. Scott: Probably all of us would decide it. I would

5322 consult with him.

Examiner Marble: You know that he is President of the Huttig Logging Company, is he not?

Mr. Scott: Yes sir.

Examiner Marble: And he is general manager of the railroad?

Mr. Scott: Yes, sir.

Examiner Marble: And manager of the Saw Mill Company?

Mr. Scott: Yes, sir.

Examiner Marble: I should say he would be in a very advantageous position to reconcile all interests in deciding those questions.

Commissioner Harlan: He would have to concur with himself, arrive at a conclusion. Does he receive a salary from each one of those companies?

Mr. Scott: Receives a salary from the Union Saw Mill Company, and the Louisiana & Pine Bluff Railway, not from the Huttig Logging Company.

Examiner Marble: Who compensates him for his work as President of the Huttig Logging Company?

Mr. Scott: Well, his position with them is merely nominal. He is President of the company, but does not take any active interest.

5323 Examiner Marble: In your reports for 1908 and 1909 you show that the Louisiana & Pine Bluff corporation was controlled by the Union Saw Mill Company; identically the same question in the report for 1910, name of the controlling corporation or corporations, you answer: "None." Was there a change between 1908 and 1909, and 1910?

Mr. Scott: The situation was the same then as now. The Union Saw Mill Company owned the stock of the Louisiana & Pine Bluff.

Examiner Marble: The situation was exactly the same in all three years?

Mr. Scott: I don't think it has changed during that time.

Examiner Marble: Why did you change your answer?

Mr. Scott: I had not noticed it.

Examiner Marble: You swore to it.

Mr. Scott: The Saw Mill Company controls the stock. Now, whether that carries with it the control that you speak of, I do not know. It controls the stock, and that is stated in the report.

Examiner Marble: I think that is all.

Commissioner Harlan: Have you prepared a statement of your tonnage and revenues, and all those facts?

5324 Mr. Scott: Yes sir.

Commissioner Harlan: Are they in such condition now that we can take them and look them over?

Mr. Scott: I have some statements here, nothing very elaborate, that I can give to you. I have a list of the stockholders if you care for it.

Commissioner Harlan: Let me have them that I may look at them over night and question you in the morning.

Mr. Scott: All right.

Commissioner Harlan: The Commission will adjourn at this point until eight o'clock tonight, and Mr. Burchmore will hold a hearing then, with a view of hearing two minor cases tonight. We will resume with this witness at 9:30 tomorrow morning.

Whereupon at six P. M. an adjournment was taken until eight P. M.

5325 ST. LOUIS, MO., *January* 27, 1911.

Met pursuant to adjournment at 9:30 A. M.

Present: Parties as before.

Before Commissioner Harlan.

Commissioner Harlan: Mr. Scott, you may resume the stand.

Mr. Cowan: In the course of this investigation, proceeding to the close of course in a few days, and considering the great importance of it to the consumers and the public generally, and to the lumber interests of the country, not merely in the yellow pine forests but in other parts of the United States, considering the importance of the subject to the Interstate Commerce Commission, which it may

be assumed is charged now with the duty of regulating practically the relative rates at least in which lumber interests and the public are all interested, it seems to us, and I make the suggestion because of the position that my clients find themselves in, that those who are in fact charged with the responsibility of the ownership and operation of the great saw mill and lumber interests in the country
5326 have to the public, and of course to their business interests more particularly, that these who are in fact the owners and who therefore shape the policies and determine what their traffic men and their operatives do, ought to be the men who are called as witnesses to give the Commission the benefit of their evidence and their judgment, like Mr. Johnson does and Mr. Frost does and like Mr. Kirby expects to do. Now I want to point out at this time one of the very large competing interests, the Long-Bell Lumber Company and to request of the Commission, and I make this public request in the hope that Mr. Long will come forward without the Commission requesting it, that Mr. R. A. Long, owning such a large interest as he does both in the manufacture and sale of lumber, be called and examined on the part of the Commission. I understand he has been present and about here in St. Louis during this investigation, and I think it but fair. And I announce now that I expect to put Mr. Kirby on the witness stand; some gentlemen have been asking me about that; and the Lutcher-Moore Lumber Company and Mr. Stevenson, large interests competitive with us, and to make their statements like the Frost-Johnson people have done, and I see no reason why Mr. Long ought not to come forward and subject himself to cross-examination on the policies of all these large
5327 interests, instead of having men in his employ undertake to present to the Commission the moving causes of the different things that were done by the Long-Bell Lumber Company. I do that because it seems fair to me and to the public interest, and that the Commission would like to inquire, and we certainly want that done, and I make that open request without intending any criticism of Mr. Long; I do not mean that, but in order that we all may lay the whole field before the Commission so that those who are at least to be affected by whatever the Commission does will have presented their side of it from the witness stand so that the public can get it and it may be made of record.

Mr. Garwood: I hardly understand the impressive and solemn way in which counsel has referred to the request for Mr. Long's presence here. I can say to counsel that Mr. Long's roads have been up and he has been within reach of the Commission and always will be within reach of the Commission, and so far as the testimony of the various milling interests are concerned, I beg to assure the counsel that they will always be in reach to give him all the testimony that he wishes and perhaps more. As the Commission well knows, his roads have been up——

Commissioner Harlan: Well, if Judge Cowan thinks that
5328 Mr. Long's testimony will add anything to the record, perhaps it is the duty of the Commission to ask Mr. Long to present himself and give his testimony. I understand that to be the purport of the suggestion of Judge Cowan.

Mr. Cowan: Yes, sir. We have got to lay our business bare and the people I represent come here as the real men who are interested, and I think it would be perfectly fair for Mr. Long to do likewise.

Commissioner Harlan: Judge Cowan, do you have reason to believe that the testimony of Mr. Long will add some material facts to the record?

Mr. Cowan: I think it ought to.

Commissioner Harlan: Then we will ask that Mr. Long be made available as a witness.

Mr. Walter: I would like to make an inquiry. Yesterday a question from the Commission made reference to some 750 mills as compared with so many hundred others. Now that is far beyond any knowledge that any of the lumber interests have, and we would like to have the information if it is reasonable to ask it, giving the names of those mills, their location, and the nature of their business.

Commissioner Harlan: That is all available in the records
5329 of the Commission; but, Mr. Walter, we will not encumber this record with such a list as that. The question was put to the witness simply to draw from him an expression of his view of the justice and the propriety of the lawfulness of the allowances to a certain number of mills when other mills compete generally in the same markets without allowances. Counsel is aware of the fact that east of the Mississippi River there are very few allowances made, and yet those mills compete more or less actively in the market in the same kind of lumber. The figures have no particular relevancy, but it was simply to draw from him his expression as to whether those conditions did not create a discrimination.

Mr. Walter: It was not, as I understand, anything like the number of mills that are commercial bodies, nor did it disclose the situation in the United States, the Pacific Coast, east, west or south?

Commissioner Harlan: Those mills are hardwood and softwood mills anywhere in the United States and——

Mr. Cowan: In connection with what Mr. Walter said I wish to call attention to the fact that each of the railroad companies publish a list, I believe they do, of the saw mills and the places where they are located and the distance they are from the prominent markets, and the character of the output and the name of the road
5330 serving them. I know the Cotton Belt has it, and I have requested and they have furnished it, and I presume the others have; and it would be a matter of convenience if they could furnish them to the counsel in the case. They are prepared in very good style and are convenient for reference, and I think if those are furnished in sufficient number so we could all have them, it would be worth while.

Mr. Garwood: In that connection, counsel for the intervenors gave notice to the various lines to produce certain testimony—not testimony, so much, but statistics along that line, and our Texas lines have endeavored to comply with that and I have that information which I will be glad to give counsel. I understood that notice applied to all the trunk lines interested, and therefore to the Gulf, Colorado & Santa Fe and the Atchison, Topeka & Santa Fe.

Mr. Cowan: Yes.

Mr. Garwood: I presume that information will be forthcoming from the Gulf, Colorado & Santa Fe.

Mr. Coleman: I believe we publish that, do we not?

Mr. Hershey: Does it refer to mills located on our line that are not served by tram roads?

Mr. Garwood: And those that are served by tram roads, your total output of lumber divided into interstate and intrastate
5331 shipments, and your cost per ton per mile and——

Mr. Hershey: I have not been requested to give such information.

Mr. Garwood: There was a general notice to all the trunk lines interested.

Mr. Cowan: That is right, and it was a comprehensive set of statistics covering the traffic on all lines.

Mr. Garwood: I supposed, of course, that applied to the Gulf, Colorado & Santa Fe.

Commissioner Harlan: If the request was not intended to apply to them, the Commission would like to have it.

Mr. Coleman: We will prepare such statistics.

Mr. Jeffery: The printed information you asked for as to the location and so forth, I do not know that the Iron Mountain has it, but if we have, I will be glad to furnish it.

Commissioner Harlan: Before we go further, I would like to ask the counsel and witnesses in the following roads to adjourn to the adjoining room, where Examiner Burchmore will hear them: The Mississippi, Arkansas & Western, the Jefferson & Northwestern and Paragould & Memphis. All those interested in those cases will be kind enough to go into the adjoining room.

5332 (The testimony in the above cases will be found in the record of the supplemental hearing.)

Mr. Wood: In connection with the request Judge Cowan has made for these lists, I think it might not be inappropriate to have it appear in the record that I inquired from our Traffic Department some time ago whether there was such a list in existence and I was informed that it was, but it was not to be relied upon to any great extent as accurately showing the capacity or the output of the mills, because of the manner in which the information is collected. Now we will be very glad to furnish Judge Cowan with that information and we will also expect to furnish him with the information that he requested at New Orleans, although I was not advised until this week of what it contemplated; but I might say that that contemplates a showing of the output from each mill, and if that is shown, that will be a more correct index of the situation than these lists.

Commissioner Harlan: It is understood that counsel will approximate the request as far as possible.

Mr. Garwood: Would it be possible to postpone the examination of this witness while Mr. Allen of the Arkansas Commission is called?

5333 Commissioner Harlan: As soon as we have finished with this witness we will call him.

F. W. SCOTT, resumed the stand, and further testified as follows:

Commissioner Harlan: Is this map accurate in the sense that it shows all the present conditions, all the present line operated by the Louisiana & Pine Bluff?

Mr. Scott: With the exception of industry tracks in and around Huttig I think it is correct. It does not show them on there.

Commissioner Harlan: Is there not another track running eastwardly to the river that is not shown on this map?

Mr. Scott: There was a track running to the river but that has been abandoned.

Commissioner Harlan: What was the western terminus of that track?

Mr. Scott: From Felsenthal to the river.

Commissioner Harlan: What was the distance of that trackage?

Mr. Scott: About three miles.

Commissioner Harlan: And by whom was it built and when?

Mr. Scott: It was built for the Little Rock & Monroe Rail-
5334 way Company.

Commissioner Harlan: When was that?

Mr. Scott: It was reserved out of the sale of the Little Rock & Monroe Railway Company.

Commissioner Harlan: Was it built about the same time the Little Rock & Monroe Railway was built

Mr. Scott: Yes, sir.

Commissioner Harlan: And when the Louisiana & Pine Bluff disposed of that line it reserved the line to which you have just referred?

Mr. Scott: Yes, sir, that line was reserved.

Commissioner Harlan: What did you call that branch?

Mr. Scott: Well, we call it the Lake spur.

Commissioner Harlan: There is a lake over there?

Mr. Scott: The lake is not shown on the map.

Commissioner Harlan: What is the name of the lake?

Mr. Scott: Grand Marie.

Commissioner Harlan: How long was it operated by the Louisiana & Pine Bluff?

Mr. Scott: About three years, for the purpose of getting logs from the river, running logs that were floated down the river to the mill.

Commissioner Harlan: Where did those logs come from?

Mr. Scott: They came from the Ouachita and Saline
5335 Rivers, some of them a distance of 150 miles, some 25 miles, anywhere along the river.

Commissioner Harlan: From lands owned by the Frost-Johnson Lumber Company?

Mr. Scott: No, sir, very few of them. Most of them came from outside sources.

Commissioner Harlan: That was a part of the system of the Louisiana & Pine Bluff Railway?

Mr. Scott: Yes, sir.

Commissioner Harlan: Of its incorporated property, so to speak.

Mr. Scott: Well, that part of it over there was never incorporated. However we operated over it, we built in there to take care of that traffic and the traffic broke up and we took it up.

Commissioner Harlan: Who furnished the capital to build it?

Mr. Scott: The railway company furnished the capital.

Commissioner Harlan: You said it was not incorporated; perhaps that is not a clear phrase to describe that condition.

Mr. Scott: It was built by the railway company.

Commissioner Harlan: And therefore it was an intergal part of that system, was it not?

Mr. Scott: Yes, sir, we operated over it.

5336 Commissioner Harlan: Afterwards were the rails taken up?

Mr. Scott: Yes.

Commissioner Harlan: Did you carry any of your own logs over those rails, I mean those logs that came from your own lands.

Mr. Scott: Yes, sir, that came from the lands of the Union Saw Mill Company.

Commissioner Harlan: But the greater part of them were logs purchased from other forests?

Mr. Scott: Yes, sir.

Commissioner Harlan: Were they purchased delivered at the landing?

Mr. Scott: Some were bought that way, and, some bought delivered at the different landings along the river and floated down.

Commissioner Harlan: But none were purchased f. o. b. the mill?

Mr. Scott: No.

Commissioner Harlan: You took up the rails and sleepers, the ties?

Mr. Scott: Yes, sir, we removed the track. The traffic played out and we had no further use for that track.

Commissioner Harlan: Any farms over in that country

5337 west of the river?

Mr. Scott: Yes, sir, it is about the same kind of country on, that side as on the other side.

Commissioner Harlan: Is that a cleared country on that side around the lake?

Mr. Scott: No, sir, it is on the overflow, the river overflows the whole bottom in the spring of the year.

Mr. Marble: You did not mean to say that that map was otherwise correct, did you? You testified that the track shown on that map had been torn up.

Mr. Scott: This track is not on that map.

Mr. Marble: But you testified that other tracks that are on that map have been torn up?

Mr. Scott: Yes, sir. Some of these logging spurs have been torn up. The map indicates where they have been built.

Commissioner Harlan: You handed me last night a series of exhibits which you had prepared to be a part of your testimony. Let those be marked.

(The papers so offered and identified, were received in evidence and thereupon marked Louisiana & Pine Bluff Exhibits Nos 1 to 7 inclusive, received in evidence January 27, 1911, and are attached hereto.)

5338 Commissioner Harlan: The one which the stenographer has marked Exhibit No. 1, shows the distribution of your capital stock. The company has $300,000 of issued stock from which according to this exhibit 2,990 shares belong to the Union Saw Mill Company. On this list there are the names of ten persons, including Mr. Frost and Mr. Johnson and yourself and your counsel and others who each hold one share.

Mr. Scott: Yes, sir.

Commissioner Harlan: I suppose that was to qualify them as incorporators?

Mr. Scott: Incorporators or directors, yes, sir.

Commissioner Harlan: And they hold those ten shares really in trust for the Union Saw Mill Company, I assume.

Mr. Frost: Yes, sir.

Commissioner Harlan: The next exhibit is entitled general balance sheet, and has been marked Exhibit No. 2. It purports to show the financial condition of your company on June 30, 1910. Among the assets is an item "cost of road, $136,000 plus." Do you understand that to have been the actual cost of constructing all the lines which you have described except those that were built out of operating expenses?

Mr. Scott: Yes, sir.

Commissioner Harlan: It includes this lake line which
5339 you have just mentioned?

Mr. Scott: No—that is included in that figure, that length of track that was taken over by the Louisiana & Pine Bluff was built before the organization of the Louisiana & Pine Bluff.

Commissioner Harlan: It includes the cost of the road running west from Huttig to the E. & B. Junction?

Mr. Scott: It includes the road running north of Huttig.

Commissioner Harlan: That road is how many miles in length all told?

Mr. Scott: We carry it at 5.38 miles, and it also includes all the side tracks and industry tracks.

Commissioner Harlan: But it did not include the road shown on this map running west from Huttig and thence north to that E. & B. Junction?

Mr. Scott: No. That part of the road is charged into the operating accounts.

Commissioner Harlan: Did it include the cost of the Monroe extension?

Mr. Scott: The Farmerville extension?

Commissioner Harlan: Well, what you call the Little Rock & Monroe, that is not included in this item, is it?

Mr. Scott: The Little Rock & Monroe was sold to the Iron Mountain.

5340 Commissioner Harlan: Therefore it is not in this item of cost of road?

Mr. Scott: No, the Louisiana & Pine Bluff was constructed after the sale of the Little Rock & Monroe.

Mr. Marble: Did that item include the cost of the steel on the road running from Huttig to the E. & B. Junction?

Mr. Scott: Yes, sir.

Commissioner Harlan: The next item is the equipment, $191,000 plus. Is it your under-standing that is the actual cost of the equipment?

Mr. Scott: Yes, sir.

Commissioner Harlan: Shown on another exhibit here?

Mr. Scott: The actual cost of equipment.

Commissioner Harlan: Then under the general heading of "working assets" you have an item for materials and supplies of $128,000. What does that mean?

Mr. Scott: That represents steel rail that we carried and which is used by the logging company in connection with getting out logs.

Commissioner Harlan: How many miles of such rail have you?

Mr. Scott: We had in service altogether approximately about 75 miles.

Commissioner Harlan: When you say 75 miles, that means

5341 miles of double rail, does it?

Mr. Scott: Yes, sir.

Commissioner Harlan: Is there any other material included in that item besides the rails?

Mr. Scott: Rails and fastenings, such as angle bars.

Commissioner Harlan: On the liability side you have an item entitled "Miscellaneous accounts payable $193,000 plus." What is that?

Mr. Scott: That is mostly indebtedness to the Union Saw Mill Company.

Commissioner Harlan: Of what nature, for what purpose?

Mr. Scott: Money advanced, and also the Union Saw Mill Company was indorser on notes of the Louisiana & Pine Bluff Railway. Originally I think the notes amounted to something over $200,000. The railway company was not financially able to take those notes up, and the Saw Mill Company had to pay them and charge them to the railway company account.

Commissioner Harlan: What did those notes represent?

Mr. Scott: They represented money that was borrowed.

Commissioner Harlan: For what purpose, I mean.

Mr. Scott: For the construction of this Louisiana & Pine Bluff Railway.

Mr. Marble: Did it not cover the cost of material bought

5342 by the Union Saw Mill Company for the construction of the railroad and charged to the railroad and notes given for that charge?

Mr. Scott: It was borrowed from a bank here in St. Louis and was used in purchasing equipment and buying material, and whatever we needed in connection with the railroad.

Commissioner Harlan: On the liability side is another item of capital stock $300,000. That is held by the Union Saw Mill Company. Now did they advance to the railroad company the cash for that stock?

Mr. Scott: Yes, sir.

Commissioner Harlan: And in addition they loaned you their credit to the extent of some $200,000 more?

Mr. Scott: Yes, sir.

Commissioner Harlan: And all that fund consisting of approximately half a million dollars was used in the construction of your rail line and purchase of your equipment?

Mr. Scott: Yes, sir.

Commissioner Harlan: Now does that item of approximately half a million dollars include anything on account of this Little Rock & Monroe Line?

Mr. Scott: No, sir.

Commissioner Harlan: That is all out of this account?

5343 Mr. Scott: The Little Rock & Monroe line was sold before we opened the books for this new road. This was built after the sale of that road and it had no connection whatever.

Commissioner Harlan: So that that line does not enter into these exhibits at all?

Mr. Scott: No.

Commissioner Harlan: Nor does the Farmerville Line enter into these exhibits?

Mr. Scott: No.

Commissioner Harlan: Do counsel desire to ask any questions in regard to this general balance sheet? The next exhibit is No. 3, which shows the equipment of your company, consisting of 12 locomotives and 234 cars of one kind and another, including one combination passenger coach.

Mr. Scott: Yes.

Commissioner Harlan: Exhibit No. 4 shows your total tonnage for the year ending June 30th, 1910, to have been 321,308 tons of which all consisted of lumber or lumber products except 3,835 tons. My understanding is that of the last named tonnage a considerable part consisted of bituminous coal; is not that true?

Mr. Scott: Yes, sir.

5344 Commissioner Harlan: As much as half, or perhaps more. Whose coal was that, was it used by the Saw Mill Company.

Mr. Scott: And in logging operations.

Commissioner Harlan: And by the railway company?

Mr. Scott: And by the railway company.

Commissioner Harlan: Then this exhibit shows the manufactured lumber and staves to the extent of 79,000 tons. It is my understanding from your testimony and the president of the company, Mr. Johnson, that a very large part of that consisted of lumber and

staves manufactured from logs that came from the lands of the Frost-Johnson Lumber Company.

Mr. Scott: The greater part of it, yes, sir.

Commissioner Harlan: Exhibit No. 5 shows the total revenue for the year ending June 30th, 1910, from passenger traffic of $587.24 and for mail $101.31; it shows no revenue from the express. Do you carry express matter?

Mr. Scott: No, we do not handle express.

Commissioner Harlan: At the foot of that exhibit are shown your operating expenses for that year, and you assigned to maintenance of way and structure an item of $35,000 plus. Was that a cash expenditure?

Mr. Scott: Well, we pay every month, yes, sir, the money that we actually spend for that service.

5345 Commissioner Harlan: Do you mean that you as Treasurer vouchered out that sum during that year in cash?

Mr. Scott: There may have been one or two bills that have not been paid.

Commissioner Harlan: I do not mean that, but it is a cash expenditure?

Mr. Scott: Yes.

Commissioner Harlan: You also have an item of maintenance of equipment to the extent of $29,000 plus. Was that also in the same sense a cash expenditure during that year?

Mr. Scott: Well, there is approximately $20,000 charged against that account for depreciation which is included in that amount.

Commissioner Harlan: And that of course was not in cash?

Mr. Scott: No.

Commissioner Harlan: As against the depreciation account, do you have a right of way account that absorbed some of that depreciation reserve?

Mr. Scott: No, we only charge against the credit account that we set up new equipment that we purchase to replace the old. Ordinary repairs are all charged into operating accounts.

Commissioner Harlan: Well, the operating account, do you
5346 mean the transportation expense?

Mr. Scott: Yes, sir, ordinary repairs are charged to transportation expense.

Commissioner Harlan: Do you know to what extent you replaced your equipment?

Mr. Scott: During that year we made no replacements, but we are making some this year. We have some——

Commissioner Harlan: Then you have an item in the same exhibit, transportation expense $29,000. That of course was a cash expense?

Mr. Scott: Yes, sir.

Commissioner Harlan: Making a total with the general expense added of $98,000 plus against your gross earnings of $78,000 plus, or a net loss of $20,000 plus, and showing also a ratio of operating expense to operating revenue of 125.49 per cent. Now considering that statement from the standpoint of cash, you lost $20,000 during that year?

Mr. Scott: Yes, sir.

Commissioner Harlan: And on another exhibit you show a total expense to profit and loss on the lost side of $85,000 plus.

Mr. Scott: That is the loss for the whole period since the road has been in operation.

5347 Mr. Walter: What exhibit number is that?

Commissioner Harlan: That is Exhibit No. 2. I want to ask this question just in that connection, whether the Frost-Johnson Lumber Company or the Union Saw Mill Company has at any time supplied the railroad company with cash?

Mr. Scott: Yes, sir, very frequently.

Commissioner Harlan: To make up these losses?

Mr. Scott: Whenever we get out of cash we call on them for it; that has been our practice. They have been furnishing the money to meet the bills when required, and charging it to our account; that is the Union Saw Mill, I should say, instead of Frost-Johnson Company.

Commissioner Harlan: The Union Saw Mill?

Mr. Scott: Yes, sir, the Union Saw Mill and not the Frost-Johnson

Commissioner Harlan: The next exhibit No. 6 shows that for the period of six months ending December 31st, 1910, your revenues on lumber and forest products in which the Union Saw Mill Company had no interest, amounted to $1,000. I will ask you if a part of that revenue and a large part did not come to you on logs taken from the Frost-Johnson forests?

Mr. Scott: That revenue represents shipments made by the Wisconsin Lumber Company, probably 50 per cent of it; the

5348 other 50 per cent is represented by shipments of staves made by various individuals, and to some extent shipments of lumber made by a small mill located adjacent to our line.

Commissioner Harlan: My inquiry goes a little beyond that to show whether most of the logs manufactured by these outside people did not come from the forest of the Frost-Johnson Company.

Mr. Scott: To some extent they did, but not altogether.

Mr. Coleman: May I ask a question at this point. I understood yesterday that you said that you got no revenue for hauling the hardwood logs down to the mill.

Mr. Scott: Where they are manufactured on our line we get no revenue on the inbound shipment of logs.

Mr. Coleman: Inbound?

Mr. Scott: Into the milling point; we only get revenue as it goes out on the manufactured product.

Mr. Walter: It is all a milling in transit rate, is it not?

Mr. Scott: Yes, sir.

Commissioner Harlan: Any further questions of this witness?

Mr. Marble: You testify that certain steel rails were included in these statements of cost of road, and certain other steel rails in the cost of materials and supplies.

5349 Mr. Scott: Yes, sir.

Mr. Marble: What is the distinction between the two lots of rails?

Mr. Scott: Well, that carried in the material account is rail that is used in logging service.

Mr. Marble: Belonging to the Huttig Logging Company?

Mr. Scott: It belongs to the Saw Mill Company but is used by the logging company in building out spurs into the timber.

Mr. Marble: Have you said just what you intended to, that it belongs to the Saw Mill Company?

Mr. Scott: It belongs to the railway company and which is used in getting out logs, and used for that purpose.

Mr. Marble: We want to be careful to distinguish between the railroad company and the saw mill company, so as not to get them confused. Have you an extension from Farmerville?

Mr. Scott: Yes, sir.

Mr. Marble: Was the cost of that extension shown in the cost of road in the balance sheet?

Mr. Scott: Well, that is constructed mostly within the last six months; it is not in that balance sheet.

Mr. Marble: In what account is the cost of construction of that road carried?

5350 Mr. Scott: It is charged to operating accounts.

Mr. Marble: That is new roads?

Mr. Scott: Yes, sir.

Mr. Marble: And it is by charging new road into operating account that you show a loss of $20,000?

Mr. Scott: That new line is charged into operating account.

Mr. Marble: And by subtracting that operating account from your income, you show a loss of $20,000.

Mr. Scott: That statement shows a loss.

Mr. Marble: Do you know the cost of that new road?

Mr. Scott: No, it is not in that statement, however, it has been built since that time, most of it.

Mr. Marble: This road to the west of Huttig, this 20 miles long, is also credited into operating account.

Mr. Scott: Yes, sir, that is the grade and ties.

Mr. Marble: If you had built more new road you would have had still greater loss.

Mr. Scott: Well, if we had built more road we might have had more revenue.

Mr. Marble: Your income has not increased according to your last four years' statements with your increase in mileage, has it?

Mr. Scott: The income has been pretty much the same for
5351 the last four years.

Commissioner Harlan: I understand you charge to operation the cost of that road west of Huttig because you expect to tear it up when the lumber has been taken off your line.

Mr. Scott: Unless there is something develops there that would justify us in keeping the road there and operating it.

Mr. Marble: Do you make a ton mile revenue computation for the Interstate Commerce Commission?

Mr. Scott: We filled out all the reports there. I think——

Mr. Marble: You show on your Exhibit No. 5 earnings per ton per mile of 9.7 mills. Now what mileage did you use in making that computation?

Mr. Scott: We used the distance that we handled the product.

Mr. Marble: The distance that you handled the product, the lumber?

Mr. Scott: The lumber and logs, both.

Mr. Marble: Now then, that is what I want to get at. Do you keep track of the shipments of logs so that you know the distance each shipment is handled.

Mr. Scott: We know the approximate distance.

Mr. Marble: How do you determine the approximate dis-
5352 tance?

Mr. Scott: In the report last year we approximated the distance of handling logs at 25 miles, that we hauled the logs in.

Mr. Marble: Is not that the maximum distance that you haul logs?

Mr. Scott: No, it is the average distance as near as we can get it.

Mr. Marble: What is the maximum distance that you hauled the logs last year?

Mr. Scott: I will say about 35 miles.

Mr. Marble: From what point would that be?

Mr. Scott: Up in the neighborhood of El Dorado.

Mr. Marble: Coming down the main line of the Iron Mountain to Dollar Junction and across from Dollar Junction to the mill?

Mr. Scott: Yes.

Mr. Marble: And does a considerable portion of your logging supply come from that point?

Mr. Scott: No.

Mr. Marble: What percentage?

Mr. Scott: I would not suppose more than 20 per cent.

Mr. Marble: What percentage comes across from points on
5353 the E. & B. Line direct to Huttig, your line from Huttig west?

Mr. Scott: The greater portion of the logs came over that line last year.

Mr. Marble: What distance are they hauled?

Mr. Scott: Probably 20 miles.

Mr. Marble: Then they come from the junction with the Iron Mountain Road, do they not?

Mr. Scott: Well, during that period most of them came from up in that neighborhood, yes.

Mr. Marble: You went clear up to the junction to cut the logs and the line is only 20 miles long.

Mr. Scott: We brought them around both ways; most of the time we operated over the Iron Mountain and brought them down by E. & B. Junction and Dollar Junction to Huttig.

Mr. Marble: Did you keep any sort of day by day records showing the particular distance any particular logs were hauled?

Mr. Scott: No, just averaged the distance.

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Mr. Marble: Just an offhand guess from your knowledge of the distance?

Mr. Scott: Yes, sir.

Mr. Marble: What relationship between the weight of the
5354 logs and the weight of lumber did you take into account in making that computation?

Mr. Scott: We figured the weight of the logs three times the weight of the lumber.

Mr. Marble: That is the way you determined the weight of the logs?

Mr. Scott: Yes, sir.

Mr. Marble: Now each pound of lumber you counted as four pounds of traffic in that computation?

Mr. Scott: Yes, sir.

Mr. Marble: And you made no charge against anybody for the haul of the three pounds of logs?

Mr. Scott: We made no charge for hauling logs manufactured on our railroad.

Commissioner Harlan: You take your operating expenses over all this trackage and on the other side you compute the figure that Mr. Marble has referred to on this short line between the mill and Dollar Junction.

Mr. Scott: We take all the operating expenses into the operating account; I do not know whether I understand. We operate over these tracks, and it goes in as part of our operating expenses, and we brought the material in and we figure we haul it an average distance of 25 miles.

5355 Mr. Marble: Do you compute your revenues on the short line from the mill to Dollar Junction and as against that you charge all your operating expenses over all these lines?

Mr. Scott: In arriving at the per ton mile haul we compute the distance we handle the stuff, logs in and lumber out.

Mr. Marble: To go to your report for 1907, are you familiar with that? Showing you the item on page 27 of that report, cost of road, equipment and permanent improvement, a total construction cost of $104,586 plus. In that amount of $104,000 interest and discount is charged as $29,699. Can you explain how so large an amount of interest and discount could arise, how it did arise and what the rate of interest paid was?

Mr. Scott: I think the rate of interest paid was six per cent.

Mr. Marble: How long did you pay six per cent to have it amount to $29,000 on less than $80,000?

Mr. Scott: The total investment in the road and equipment is approximately half a million dollars, and six per cent on half a million dollars for one year would be $30,000. The interest charges there are for the whole amount we had.

Mr. Marble: In this item on this page you have included
5356 interest on equipment cost as well, have you?

Mr. Scott: I would suppose so; that is the place provided for it to be put into the report.

Mr. Marble: Referring to the next page of the same report you show the total cost of construction, equipment and everything of this road, to June 30th, 1906, as $173,632 and the total cost to June 30th, 1907, as $268,998. Now I will ask you again how that item of $29,000 for interest and discount was figured.

Mr. Scott: Figured on money that we had borrowed or money that we owed; we probably had money on hand; it was not necessarily all spent.

Mr. Marble: You had borrowed money that you had not used, you think?

Mr. Scott: Well, that is my idea about it.

Mr. Marble: Do you remember anything about that?

Mr. Scott: I do not remember the details of it now, no.

Mr. Walter: Is that the year ending June 30th, 1907?

Mr. Marble: Yes. Was the cash paid in for your capital stock, $300,000.

Mr. Scott: The stock was subscribed by the Union Saw Mill Company.

5357 Mr. Marble: Yes, and they paid in $15,000 at first.

Mr. Scott: They did not pay cash; they had some equipment that they reserved in the sale of the Little Rock & Monroe Railway.

Mr. Marble: They did what?

Mr. Scott: They reserved equipment when the Little Rock & Monroe Railway Company was sold.

Mr. Marble: How much equipment did they reserve?

Mr. Scott: They had some locomotives and cars and steel rails, and so forth; I do not recall just how much.

Mr. Marble: They had the steel rails which you had loaned to the Huttig Logging Company?

Mr. Scott: No, the steel rails belonged to the Union Saw Mill Company, and it turned all that property it had over to the railroad company.

Mr. Marble: And then the railroad company loaned those to the Huttig Logging Company for these spurs out into the woods?

Mr. Scott: The steel rails and equipment that the saw mill company acquired when it sold the Little Rock & Monroe Railway was turned over to the Louisiana & Pine Bluff and charged to it, and the $300,000 stock was charged to the Union Saw Mill Company.

5358 Mr. Marble: What was the value of the property turned over by the Union Saw Mill Company?

Mr. Scott: I could not state.

Mr. Marble: Was it figured?

Mr. Scott: The value was figured, yes, sir.

Mr. Marble: Well, was it $300,000?

Mr. Scott: No, it did not amount to $300,000.

Mr. Marble: It did not?

Mr. Scott: No.

Mr. Marble: Was the value of these trackage rights over the Iron Mountain Road figured?

Mr. Scott: No.

Mr. Marble: You did not count that worth anything?

Mr. Scott: We did not put it on the books; there is nothing charged by the Saw Mill Company except at the cost price.

Mr. Marble: How much money was put up, do you know?

Mr. Scott: By whom?

Mr. Marble: By the saw mill company on account of this $300,000 capital stock?

Mr. Scott: It put up more in material and money, we still owe it $193,000.

Commissioner Harlan: Mr. Marble asks what cash was paid
5359 into the railroad company on account of this $300,000 capital stock?

Mr. Scott: It has paid in excess of that amount, that is the saw mill company——.

Commissioner Harlan: Just a moment. I understood you to say in response to a question from me that the saw mill company advanced $300,000 cash to the railroad company. You now explain that the saw mill company got that $300,00 of stock partly for property that it conveyed——

Mr. Scott: Property and cash together.

Commissioner Harlan: Now then, Mr. Marble's precise question is, how much cash the saw mill company paid to the railroad company on account of that stock?

Mr. Scott: Well, it took up obligations of the railway company to the extent of something over $200,000, that is one item, and it has advanced at various times——

Commissioner Harlan: But are not those obligations represented in another item of $193,000 on your balance sheet, miscellane-
5360 ous accounts payable? You explained to me that that represented——

Mr. Scott: Maybe I can explain it in this way: The railroad company and the saw mill company run open accounts with each other, and when this material was turned over to the railway company it was charged to it. When any money was advanced by the saw mill company, it was charged to the railway company, and when these obligations were taken up the saw mill company of course charged it to the railway company, and this $300,000 capital stock was charged against the saw mill company, and the difference in those accounts is represented by that $193,000 there.

Mr. Marble: The saw mill company then owes $193,000 on account of the $300,000?

Mr. Scott: No, the railway company owe the saw mill company $193,000.

Mr. Marble: Then it has received $493,000, is that right?

Mr. Scott: That much has been advanced, that amount in excess of the stock subscription.

Commissioner Harlan: You do not mean that. You do not mean that $493,000 has been advanced in excess——

Mr. Scott: No, I mean $193,000 in excess, making $493,000.

Commissioner Harlan: Putting it in another way, the saw mill

company has advanced in property and cash to the railroad company approximately half a million dollars, is that what you mean
5361 to say?

Mr. Scott: Yes, sir, they advanced all their money and the property out of which this railroad was built.

Commissioner Harlan: Then can you tell us what the road cost to construct the roadbed and to purchase the right of way and the ties and rails?

Mr. Scott: Approximately half a million dollars, as set out in that statement.

Commissioner Harlan: Can you tell us what value was placed on the physical property turned over by the saw mill company to the railroad company?

Mr. Scott: The value that was turned over to the railroad company had the same cost that the saw mill paid for it when it acquired it.

Commissioner Harlan: You have said that, but what was that amount?

Mr. Scott: I could not state. They bought some rails and locomotives——

Commissioner Harlan: That appears on the books of both companies, does it not?

Mr. Scott: Yes, sir.

Commissioner Harlan: I wish you would ascertain it and let us know later.

5362 Mr. Marble: Your report for 1907 which I have already shown you, on page 29 shows grand total construction, equipment, and so forth, $268,998. Then your report for June 30th, 1910, the investment since June 30th, 1907, total including equipment and track and general expenditures and law expenses, taxes, and everything, shows a further investment of $59,197.28, and in this item is a further charge of $15,358.57 or approximately one-quarter of the added amount for interest and commissions, making a total of $328,196.23, of which approximately $45,000 is interest and commissions, that is the grand total of cost of road and equipment and all expenses in organizing it, including taxes.

Commissioner Harlan: Are you able to reconcile that figure with your Exhibit No. 2?

Mr. Scott: That exhibit No. 2, those same figures appear on the report for that year. That is taken from the reports for that year: they are identical.

Mr. Marble: What I want to get at is this. You have $300,000 capital stock, which stock was turned over when you began operations, to the Union Saw Mill Company, so you are entitled to the use of that amount of capital without any interest or commission, and deducting your interest and commissions, you have
5363 charged up to date from the $328,000 would be considerably less than $300,000. Does it not mean that this road is bearing the cost of the logging for the Frost-Johnson Company, and that is the way these heavy expenses on the road appear?

Mr. Scott: No.

Mr. Marble: The laying of these temporary tracks you laid down and take up, and the loan of this equipment for the temporary track and the steel for the temporary track, is not that the story of the whole thing?

Mr. Scott: I would rather answer one question at a time.

Mr. Marble: Well, I will ask you what has been done with the balance of the money and property which you say has been received from the Union Saw Mill Company, the $300,000 for the capital stock and about $190,000 in addition, was that your figure? And you show in your report a total cost without deducting depreciation of your property including about $45,000 interest and commissions, and $328,196. I want to be informed about that.

Mr. Scott: I think you have misread your figures. We show equipment accounts there one hundred and ninety some thousand dollars, and we show cost of road at how much?

5364 Mr. Marble: I am giving you your total as I read it here of everything including equipment.

Mr. Scott: You look up beyond there and you will see a deduction made for depreciation.

Mr Marble: No, the deduction is made from that figure, bringing the net total down to $272,405.

Mr. Scott: What is it you want to know?

Mr. Marble: I want an explanation. You say you have had $300,000 in property and money, and about $190,000 more as I remember your figures, and you show here the total cost of your plant including equipment and everything and including about $45,000 interest at $308,000. Now I want to know what the road has done with the balance of the road and the property?

Mr. Scott: All the money has either been lost in operation or spent in building the road and equipping it. The reports which we have sent in to the Commission set out the exact status of affairs and the accounts as shown here are correct, and I think the Commission has accepted these reports and from an accounting standpoint I think they are correct. They have made no complaint about it, about this one.

Mr. Marble: This is not a complaint, this is simply asking 5365 you to explain.

Mr. Scott: Well, all the money that we have acquired has been invested in the road or lost in operation.

Mr. Marble: Or lost in operation.

Mr. Scott: There is about $80,000 loss there since we have been in operation.

Mr. Gaughan: Counsel asked the witness something about that commission entry. Mr. Johnson can explain that in just a word.

Commissioner Harlan: You mean commissions and discounts?

Mr. Gaughan: Commissions. The railroad company had to pay a commission to the concern it borrowed the money from, and that is that entry as I understand it.

Mr. Marble: Perhaps you can answer it, Mr. Johnson.

Commissioner Harlan: Mr. Johnson, give us the explanation.

Mr. Johnson: The Louisiana & Pine Bluff Railroad borrowed some $260,000 from the Mercantile Trust Company in this city,

paying them six per cent for the money, and a four per cent commission.

Mr. Marble: What was the necessity to borrow that to put up a plant worth less than $200,000 without the discounts and commissions, when its capital stock was $300,000 and it was all
5366 paid up.

Mr. Johnson: They needed the money to buy equipment, construct tracks, buy rails, and pay for labor.

Mr. Marble: Did that $260,000 figure in this item of $328,000 total cost of plant?

Mr. Johnson: I am not familiar with the balance of the accounting; I just wanted to explain that one thing.

Mr. Marble: If they had to borrow that money, what became of the $300,000 received for the capital stock?

Mr. Johnson: They have got all the property they ever had.

Mr. Marble: Is it your judgment that this figure in this annual report of the total cost is in error, to June 30th, 1910?

Mr. Johnson: I know we have got in the neighborhood of $500,000 invested in property at Huttig, the Louisiana & Pine Bluff Railway have got that much money invested in its property at exactly what it cost it.

Mr. Marble: I think the Commission ought to have some explanation of this balance sheet.

Mr. Scott: If you will permit me, I think I can clear the whole matter up in a moment.

Commissioner Harlan: Just a moment. Mr. Johnson, you
5367 say you know you have invested there half a million dollars. In making that statement you include the lines that have been removed, do you not?

Mr. Johnson: If they were charged to the road originally.

Commissioner Harlan: As a part of your investment?

Mr. Johnson: Yes, sir.

Commissioner Harlan: Mr. Scott wishes to make some explanation.

Mr. Scott: The attorney has referred to cost of road and equipment. Now in addition to that amount, if he will refer to our material account he will find $128,296 carried as an asset. That represents part of our property account in addition to the $328,000 that you are looking at there. That is the cost of road and equipment, and in addition to that we enter this equipment account, this steel rail account, which wants to be added, the balance sheet shows cost of road $136,428.36 and equipment $191,767.87.

Commissioner Harlan: Those two items added together make $328,196.23, which is the figure Mr. Marble has used.

Mr. Scott: Yes, sir. We have on hand cash $3,109.31; traffic and car service balances $14.10; miscellaneous accounts receivable $3,692.17; materials and supplies $128,296.04.

5368 Mr. Marble: Can you itemize that item of materials and supplies?

Mr. Scott: Steel rails and fastenings.

Mr. Marble: Steel rails and fastenings.

Mr. Scott: And angle bars.

Mr. Marble: How many miles would that be?

Mr. Scott: About 70 miles, something like that; 70 or 75.

Mr. Marble: And that is loaned to the Huttig Logging Company.

Mr. Scott: They use it in getting our logs.

Mr. Marble: Do they pay anything for the use of it?

Mr. Scott: No.

Mr. Marble: Do they pay any interest on that investment?

Mr. Scott: No.

Mr. Marble: Does the Huttig Logging Company ever figure as a shipper over your line, paying you anything for service you render them?

Mr. Scott: We handle their employés free of charge in and out on our logging trains. Where they ride on the passenger trains they pay fare.

Mr. Marble: Does it ever pay you anything, or does it appear on your books in any way as a customer of yours?

5369 Mr. Scott: The Huttig Logging Company?

Mr. Marble: Yes.

Mr. Scott: Yes, sir, the same as any other customer; we do quite a business with them.

Mr. Marble: How much during the course of a year?

Mr. Scott: I will correct that statement. Cut that out. The only expenses in which the Huttig Logging Company appear on our books is where they are called on in a wreck or something of that kind to go out and perform some little service.

Mr. Marble: And that is an infinitesimal amount, I suppose?

Mr. Scott: Yes, sir, a small amount.

Mr. Marble: Would it amount to $1,000 a year.

Mr. Scott: It would depend what the service was.

Mr. Marble: Why are you so good to the Huttig Lumber Company as to loan it this $128,000 of material and carry its employés free, and without charging interest for any service?

Mr. Scott: The Huttig Logging Company is engaged in getting out the logs and under our contract with the saw mill, under the arrangement there, those logs are all handled in free. The logging company and the saw mill, you might say, are one and the same thing, so far as getting out this traffic.

Mr. Marble: You regard them as one and the same thing?

5370 Mr. Scott: We furnish as stated yesterday and today, the steel which the logging company uses and we furnish the equipment on which the logs are loaded and the logging company in return for that keeps up the repairs on the equipment, on the cars that are used in the service, and keeps up repairs on the engine used in that service.

Mr. Marble: The engines and cars which it operates on the spurs?

Mr. Scott: On all the cars and engines it operates itself. We extend or would make the same arrangement with any other logging company that wanted to operate there in getting out tonnage to be manufactured on our railroad.

Mr. Marble: Mr. Johnson is here, and as this matter of free trans-

portation of employés has been mentioned, I should like to make reference to the contract of November 28th, 1905, between the El Dorado & Bastrop Railway Company, Farmerville & Southern Railroad Company, Little Rock & Monroe Railway Company, and St. Louis, Iron Mountain & Southern Railway Company, first parties, and the Union Saw Mill Company, second party, granting the mill company the privilege of running five vehicles, either railway, velocipedes, handcars, motor cars or speeders (so-called) for the transportation of the agents, officers or employés of the mill com-
5371 pany, its contractors, sub-contractors and their employés to and from the logging camps of the mill company located adjacent to the lines of said El Dorado & Bastrop Railway Company, Farmerville & Southern Railroad Company, and Little Rock & Monroe Railway Company, without compensation. That is a fair statement of that contract, is it not?

Mr. Johnson: The contract shows for itself; it is on file. All contracts are on file.

Mr. Marble: This contract is——

Commissioner Harlan: To whom does this motor car belong?

Mr. Johnson: I do not believe we have one in the service any more; it did belong to the Louisiana & Pine Bluff.

Commissioner Harlan: And operated over your lines?

Mr. Johnson: Yes, sir, just going out to the camps.

Commissioner Harlan: It was used by the officers of the lumber company?

Mr. Johnson: I think so. The lumber company and the railroad company; it has to move under train orders the same as any other train.

Mr. Cowan: Listening to your testimony I seem to gather that the operations and handling of your equipment, and by your
5372 I mean the railroad company, is done by the logging company. Is that right?

Mr. Scott: They handle the equipment out of the logging spurs where they take the cars out and load them and give them back to the railroad loaded and assemble the train.

Mr. Cowan: And bring them to where?

Mr. Scott: To a junction point with the Louisiana & Pine Bluff Railway, and assemble the train there. The Louisiana & Pine Bluff picks up the train and brings it to the mill and takes the empty cars to that point.

Mr. Cowan: The Louisiana & Pine Bluff Railway does that which you have just mentioned?

Mr. Scott: Yes, sir.

Mr. Cowan: What proportion of this equipment is used by the logging company and what proportion is used by the Pine Bluff Railroad?

Mr. Scott: Well, the rolling stock and cars are used by both. The same car they take out and load with the logs naturally we bring in.

Mr. Cowan: Do the same engines come on in or stay out here?

Mr. Scott: They have six engines that we furnished them.

Mr. Cowan: How many engines does the Pine Bluff Rail-
5373 road use?

Mr. Scott: Six.

Mr. Cowan: So they are equally divided there?

Mr. Scott: Yes.

Mr. Cowan: And you say that the logging company is essentially the lumber company; you said that several times.

Commissioner Harlan: Yes, he has said that several times.

Mr. Cowan: I want to know if the lumber company is not, as a matter of fact, operating therefore one-half of the equipment of the railroad company for its own purpose?

Mr. Scott: The Huttig Logging Company is operating one-half of the locomotives in getting out these logs. The lumber company owns the stock of the Huttig Logging Company.

Mr. Cowan: So the railroad company is to that extent operated by the lumber company?

Mr. Scott: No, the railroad is not operated at all; the railroad only operates from the point where the cars are set out loaded to it by the lumber company or logging company.

Mr Cowan: Well, that is a matter of argument; perhaps the argument is on the other side. You have a charter or something. Have you it here?

Mr. Scott: Yes, sir.

5374 Mr. Cowan: I wish you would produce a copy of that charter for the record. Your charter does not provide anything of the sort.

Mr. Scott: I do not understand the question.

Mr. Cowan: For operation of that character—well, the charter will show for itself.

Mr. Walter: And the laws of Arkansas might as well be annexed to it.

Mr. Cowan: Oh, yes. Does the charter provide for the building of this railroad up to these different places or just the 20 miles.

Mr. Scott: I will file a copy of the charter. It is a very extensive affair, and as Mr. Walter says, the laws of Arkansas provide.

Commissioner Harlan: That has been gone over fully. It appears the charter in terms provides for construction of 20 miles, and they have been operating 27 miles, and they have built some and torn it up.

Mr. Walter: The laws of Arkansas are to be available for the purposes of this and all other hearings.

Mr. Cowan: Yes.

How long have you been acquainted with the matter per-
5375 taining to the division of the rates, how many years have you personally been acquainted with them?

Mr. Scott: The division of rates with the Louisiana & Pine Bluff?

Mr. Cowan: And the Iron Mountain.

Mr. Scott: Ever since the organization of the road.

Mr. Cowan: Is it not a fact that before you constructed this railroad or rather before it was incorporated, that you were receiving divisions or some sort of compensation from the Iron Mountain?

Mr. Scott: Who was receiving it?
Mr. Cowan: What?
Mr. Scott: Who was receiving it?

(Question read.)

Mr. Cowan: I mean by you in that sense the investing interest that owned the plant.
Mr. Scott: No.
Mr. Cowan: Whether you call it railroad or saw mill or whatever you call it, the Iron Mountain was paying something out of the rate to somebody when it got the lumber.
Mr. Scott: The Iron Mountain was paying the same division of rate to the Little Rock & Monroe that it paid to the Louis-
5376 iana & Pine Bluff after it was incorporated and put in operation, and the rate is the same now as it was when they paid it to the Little Rock & Monroe before the sale.
Mr. Cowan: Has there ever been a time since the saw mill has been operating that the interests controlling it did not receive out of the rate paid the Iron Mountain a compensation substantially the same as you get today?
Mr. Scott: The situation is this, the saw mill company owned the stock of the Little Rock & Monroe Railway Company; it owned the stock of the Louisiana & Pine Bluff, and both of those railroads received the division of the freight rate.
Commissioner Harlan: There was no mill at Hutig before the Little Rock & Monroe Railroad was commenced; it was not a case of a mill that had a railroad which was unincorporated and then incorporated.
Mr. Walter: That is right.
Mr. Cowan: I got the idea somehow that the logs were brought into this mill and did not come in over either one of these railroads that are now in existence.
Mr. Scott: No other way except to come in over one or the other of the railroads.
Commissioner Harlan: I understand the construction of
5377 the mill and the railroad were at the same time.
Mr. Marble: I think it is a fact that the mill received divisions from the time the operation commenced, and the Little Rock & Monroe Company's divisions were immediately and without any lapse of time succeeded by the divisions of the Louisiana & Pine Bluff.
Mr. Scott: That is correct.
Mr. Cowan: I understand that there is a saw mill of the Wisconsin Lumber Company located on the tracks of the Louisiana & Pine Bluffs Railway?
Mr. Scott: Yes, sir.
Mr. Cowan: If that saw mill were located upon the Iron Mountain, then they would have to pay the freight rate on the logs to the mill?
Mr. Walter: Who would have to pay?
Mr. Cowan: The Wisconsin Lumber Company.
Mr. Scott: Yes, sir, unless they gave us the outbound tonnage.

Mr. Cowan: If they were located on the Iron Mountain they could not give it to you because it would not be outbound on your road.

Mr. Scott: We would not perform service free of charge.

5378 Mr. Cowan: The fact of their being located on your line therefore makes the Iron Mountain pay the cost of logging the Wisconsin Lumber Company's business.

Mr. Scott: No.

Mr. Cowan: Is not that true?

Mr. Scott: It does not have anything to do with the logging or the Wisconsin's business.

Mr. Cowan: Is not that the result?

Mr. Scott: I cannot see it that way.

Mr. Cowan: Do you know the reason it located on your line instead of the Iron Mountain?

Mr. Scott: It located on our line because our equipment and facilities were adapted to give them better service than they could get otherwise. Our road is specially equipped to handle that kind of business.

Mr. Marble: Do you have charge of the routing of the outbound shipments of lumber from Huttig?

Mr. Scott: No, sir.

Mr. Marble: Who does have that?

Mr. Scott: The shipments are routed by the people from whom we get orders—or by the milling interests; I do not know who it is routed by. The shipments are routed before they come to

5379 Huttig.

Commissioner Harlan: Is that true of the hardwood shipments?

Mr. Scott: I suppose so. We never route any unless there happened to be no routing furnished and then we put routing on them. We have handled very little hardwood up to date. Those shipments, as I say, are just commencing.

Mr. Marble: If I might ask Mr. Johnson a question, it will save some time. Did you have charge of the negotiations with the Wisconsin Lumber Company to get them to settle at Huttig?

Mr. Johnson: Yes, sir.

Mr. Marble: Is it a condition of the contract for the sale of the logs to them that the product of those logs shall be routed over the Louisiana & Pine Bluff Railway, and under this contract with the Iron Mountain?

Mr. Johnson: All the tonnage of the Wisconsin Lumber Company is tied to the rails of the Louisiana & Pine Bluff Railway Company.

Mr. Marble: And under this contract with the Iron Mountain, so that the Louisiana & Pine Bluff will get divisions?

Mr. Johnson: Yes.

5380 Mr. Marble: Do you know why the Wisconsin Lumber Company went to Huttig to locate on the tracks of the Louisiana & Pine Bluff instead of going on the tracks of the Iron Mountain at Dollar Junction?

Mr. Johnson: I suppose the principal reason is because Huttig is the most practical place in that part of the country to operate a

business like they have established. There are good schools and churches and libraries and water works and facilities are better there than anywhere else in that locality.

Commissioner Harlan: The town of Huttig was built after you built your mill.

Mr. Johnson: We built the town as well as the mill.

Commissioner Harlan: Why did you build at Huttig instead of on the rails of the Iron Mountain?

Mr. Johnson: We originally built it on the rails of the Little Rock & Monroe.

Commissioner Harlan: Well, those two enterprises went along together.

Mr. Johnson: We located the town of Huttig at that point on account of the supply of water. You have to have a supply of water for a big plant like that for the storage of logs, and so forth,
5381 and you have to locate the plant where you can get a supply of water, where you can build your plant. We have 60 or 70 acres of water for the storage of logs. That is the reason it is located where it is.

Commissioner Harlan: Did you make that pond?

Mr. Johnson: Yes, sir.

Mr. Coleman: Is the Wisconsin Lumber Company an International Harvester concern?

Mr. Walter: It so appears in this record.

Mr. Coleman: I want to know of this particular one.

Mr. Johnson: I think they are a subsidiary corporation of the International Harvester Company.

Mr. Coleman: Do they get back any of the division on hardwood that the Pine Bluff Road gets?

Mr. Johnson: I do not think they do.

Mr. Coleman: Do you know?

Mr. Johnson: I know they do not.

Mr. Cowan: Well, they used to, didn't they, a long time ago before the rebate law?

Mr. Johnson: The Wisconsin Lumber Company was not there. It has only been there a short time.

Commissioner Harlan: It appears from the testimony of
5382-3 both witnesses that that mill is just getting into operation and there have been very few shipments from it up to date.

Mr. Johnson: I will state this, however, that the Wisconsin Lumber Company never will get any part of the divisions on the hardwood lumber that moves from Huttig.

Mr. Coleman: I had no suspicion about it, but just wanted to know.

Mr. Cowan: I wanted to ask Mr. Scott another question. You have testified at length about what has been done by your railroad corporation and by the logging company and by the lumber company. Do you receive your directions from some head of the institution, or all the institutions?

Mr. Scott: I have local charge of the business there.

Mr. Cowan: Well, there is somebody above you that has the right to direct what you do, to direct the policy of all these companies?

Mr. Scott: Yes, sir, the Board of Directors have that right.

Mr. Cowan: And they are the same practically in each one of the corporations I have named.

Mr. Scott: They are practically the same, yes, sir.

Mr. Cowan: So therefore you cannot have any individual
5384 volition with respect to the railroad company that is not subject to the direction of the lumber company?

Mr. Walter: That is all a matter of argument and is consuming time.

Mr. Cowan: It is a very good argument.

Mr. Scott: We conduct a railroad business according to railroad rules and regulations.

Commissioner Harlan: The point which counsel wishes to bring out is this, whether there is not one underlying policy that controls these three investments. I assume that is the case.

Mr. Scott: The interest is practically the same.

Commissioner Harlan: And the policy that controls them is one general policy, to get the best out of that business?

Mr. Scott: To get the best results out of the business.

Mr. Cowan: One other question I wanted to point out in regard to the per ton mile earnings. It is figured on the annual report at 8.9 mills per ton per mile. I want to call attention to the fact and ask if it is not true, that the longest distance haul on the logs is 35 miles. I believe you said that was the maximum haul.

Mr. Scott: Well, approximately 35 miles.

5385 Mr. Cowan: Approximately?

Mr. Scott: About that, yes, sir.

Mr. Cowan: The average distance 25 miles, I believe you said?

Mr. Scott: For that period, yes, sir.

Mr. Cowan: At the rate of four cents per 100 pounds division, that would be 80 cents a ton, and at 35 miles, your longest distance, it would give you 23 mills, estimating the lumber as being the tonnage——

Commissioner Harlan: We will not stop on ton mileage figures now.

Mr. Scott: The reports are all figured out according to the rules of the Commission.

Mr. Walter: You operate a passenger train from Dollar Junction to Huttig?

Mr. Scott: Yes, sir.

Mr. Walter: Now I want to ask you about the facilities for passenger traffic between Huttig and Iron Mountain points.

Mr. Scott: Well, the facilities are very much in favor of our road.

Mr. Walter: Just illustrate, coming southbound from El Dorado or northbound from Collinston?

5386 Mr. Scott: The Iron Mountain train north bound starts from Collinston and runs to Gurdon. The only way you can make connection with that train or any close connection is to take our train from Huttig and catch that train at Dollar Junction. Southbound the Iron Mountain frequently does not make connection and it is a good deal nearer and a better place to stop. The people

patronize our road to go over to Huttig, and going beyond there we handle practically all the business between Huttig and Iron Mountain points up to the Junction of the Iron Mountain.

Mr. Walter: It is the only convenient and practical route from Huttig, is it not?

Mr. Scott: Yes, sir.

Mr. Walter: How many round trips a day do you make from Huttig?

Mr. Scott: We make two round trips.

Mr. Walter: Four trips daily over the road?

Mr. Scott: Yes.

Mr. Walter: How many passengers did you haul during the year ending June 30th, 1910?

Commissioner Harlan: That is all shown in the exhibits.

Mr. Scott: Something like 5,000 passengers approxi-
5387 mately.

Mr. Walter: Let me ask if the Louisiana & Pine Bluff with its engines does not perform all of the service either on the logs or on the finished product from the time they are taken off the spurs and brought up to the line of the Louisiana & Pine Bluff?

Mr. Scott: Yes, sir.

Mr. Walter: And for all the cars used in that logging service and all the engines used in that service are or are not they repaired by the logging company?

Mr. Scott: Yes, sir, they are all taken care of by the logging company.

Mr. Walter: About how many cars daily are delivered at Dollar Junction for transportation by the Iron Mountain?

Mr. Scott: An average of about 15.

Commissioner Harlan: You mean loaded cars?

Mr. Scott: Loaded cars, finished product of lumber.

Mr. Walter: And you take the empty cars back down to the mill?

Mr. Scott: Yes, sir, and pay per diem on them while we have them.

Mr. Walter: Those cars when delivered at Dollar Junction are or are not in train formation ready for the Iron Mountain to
5388 take hold of them and take them out?

Mr. Scott: Already assembled to go right out.

Mr. Walter: For all the service rendered by the Louisiana & Pine Bluff in hauling the logs to the mill and the lumber out, it is paid for out of the joint rates?

Mr. Scott: Yes, sir, out of the division of the rates which we get.

Mr. Walter: Have you anywhere in your testimony indicated the number of shippers or their names other than the Wisconsin Lumber Company and the Union Saw Mill Company?

Commissioner Harlan: The number is shown on the statement.

Mr. Scott: I have filed an exhibit.

Commissioner Harlan: It is not important to have the names. The number of outside shippers is shown.

Mr. Walter: And their tonnage is shown?

Commissioner Harlan: The tonnage is shown.

Mr. Cowan: I would like to ask the witness if he knows whether the books of the lumber company show any expenses for rail operation, logging operation?

Mr. Scott: The lumber company does not handle the logging operations; it is done through the Huttig Logging Company.

Commissioner Harlan: You mean by that its books do not
5389 show any expense for logging operations?

Mr. Scott: Well, the details of the account are carried by the Huttig Logging Company. The saw mill company pays the logging company so much per thousand feet on monthly settlement. It shows what the logging company does.

Mr. Cowan: There are no entries for rail operation or maintenance of equipment or anything of that nature——

Mr. Scott: That is all taken care of by the Huttig Logging Company.

Mr. Walter: The Huttig Logging Company pays for all the expenses which it has to go to to get these logs from the tree up to your line?

Mr. Scott: Yes, sir, and the saw mill pays it so much per thousand feet for that service.

Mr. Cowan: Can we not have a statement of the operation and expenses of the logging company, so as to see what that is compared with the expenses charged to this railroad company?

Commissioner Harlan: Is the logging company run at a yearly loss?

Mr. Scott: I think they have been making some money.

Commissioner Harlan: Have there been years when there was a deficit?

5390 Mr. Scott: Yes, sir, there always has been until the last two years.

Commissioner Harlan: The deficit was made good by the lumber company?

Mr. Scott: Well, the lumber company finally had to take the stock.

Commissioner Harlan: But the cash deficit of the logging company as a corporation was made good by the Union Saw Mill Company, was it not? When they needed cash they got it from that source.

Mr. Scott: I think possibly they borrowed the money themselves; I am not sure about that.

Commissioner Harlan: Will you find out about that?

Mr. Scott: Yes, sir; at times the Union Saw Mill Company has advanced it money.

Commissioner Harlan: I think that covers the point.

Mr. Gaughan: Formerly this logging company was a distinct corporation and that the Union Saw Mill Company had nothing to do with. The Union Saw Mill Company had to take up the stock.

Commissioner Harlan: I think it must appear that when the logging company needs cash it obtains it from the Union Saw
5391 Mill Company.

Mr. Gaughan: I assume so.

Mr. Coleman: When was the extension or spur to Lake Grand Marie built?

Mr. Scott: I think probably about 1905.

Mr. Coleman: Do you remember what charge was made against the railroad operation for building that?

Mr. Scott: I do not.

Mr. Coleman: Was that much like the other spurs which you had built off the main line?

Mr. Scott: No, this line was built out through a district there that at certain times the water gets 20 feet over the track——

Commissioner Harlan: I think that has all been covered.

Mr. Coleman: I just want to ask the witness if he did not testify that the spur over the Grand Marie you never considered as incorporated. You made that statement, I believe.

Mr. Scott: We took the track up.

Mr. Coleman: You made that statement yesterday, that you never considered it incorporated.

Commissioner Harlan: He made it this morning.

Mr. Scott: That might be a legal question. I would not say one way or the other.

5392 Mr. Coleman: I wanted to ask you what was there about the spur to Grand Marie which made you think it was not incorporated, and that the others were.

Mr. Scott: The spur was just like I have stated and explained. It was built down there to get traffic out of the river to be manufactured on our line, and the traffic played out and we pulled it up. It was an industry track put down there to get that business.

Mr. Coleman: Do you mean to say you charge to the operating expenses of a railroad for the construction of a spur which you never considered belonged to the railroad?

Mr. Scott: We considered it belonged to the railroad company of course. We paid for it, and it ought to be ours.

Mr. Coleman: Have you any inbound or outbound joint rates with the Iron Mountain?

Mr. Scott: Yes, sir.

Mr. Coleman: What have you got it on?

Mr. Scott: We have an inbound joint rate on coal.

Mr. Coleman: What else, merchandise?

Mr. Scott: Nothing else.

Mr. Coleman: Stores or merchandise?

Mr. Scott: No. The Iron Mountain like to handle that
5393 themselves.

(Witness excused.)

(The map previously referred to of the Louisiana & Pine Bluff was marked Louisiana & Pine Bluff Exhibit No. 8, Witness Scott, received in evidence January 27, 1911, and is attached hereto.)

Commissioner Harlan: We will call now the Chairman of the Arkansas State Commission.

5394 R. P. ALLEN was called as a witness, and testified as follows:

Commissioner Harlan: Will you give your full name to the reporter.

Commissioner Allen: R. P. Allen.

Commissioner Harlan: Where do you reside?

Commissioner Allen: Van Buren.

Commissioner Harlan: What is your business or profession?

Commissioner Allen: I am a member of the Railroad Commission.

Commissioner Harlan: Of the State of Arkansas?

Commissioner Allen: Yes.

Commissioner Harlan: How long have you been a member of that Commission?

Commissioner Allen: Four years.

Commissioner Harlan: Prior to that date what was your business or profession?

Commissioner Allen: I was a merchant.

Commissioner Harlan: At what point?

Commissioner Allen: At Van Buren.

Commissioner Harlan: In what line?

Commissioner Allen: Well, general merchandise.

5395 Commissioner Harlan: And you had been a merchant for how long?

Commissioner Allen: 20 years.

Commissioner Harlan: Were you a considerable shipper over the lines of railroads?

Commissioner Allen: Well, for a small country merchant, I was. I was in the cotton business, and handled cotton and fruit in addition to other business.

Commissioner Harlan: Had you made any special investigation of railway matters, rates and practices of railroads until you went on the Commission?

Commissioner Allen: No, sir, I had not.

Commissioner Harlan: Ever since you became Commissioner have you looked into the matter of tap lines in your state?

Commissioner Allen: Well, I could not say that I have given it very close attention.

Commissioner Harlan: Your Commission has not had to give any special attention to tap line matters?

Commissioner Allen: Of course we have given attention to rates; we have the same jurisdiction over tap lines as over trunk lines in the state.

5396 Commissioner Harlan: I understood you were here in fulfillment of the desire of your Commission to express some general views on this question.

Commissioner Allen: Yes.

Commissioner Harlan: If you will, state in your own way what you have to say on that subject.

Commissioner Allen: The laws of Arkansas governing railroads are very similar to those of Louisiana and the powers of the Commission, therefore, as I see them, are very similar. It is the duty of the Railroad Commission of Arkansas to make rates and enforce the

rates prescribed by the Commission and prevent discrimination and to require the railroads to furnish equipment. They have supervision over the physical construction or physical condition of tracks and bridges; they have the power to cause them to construct depots. They have jurisdiction over the equipment, the sort and kind of equipment they shall use, and they also have the power and are required by the law to take up matters referring to interstate commerce with the Interstate Commerce Commission.

5397 The interest that I have or that the Commission of the State has is this: when this question first came up of the cancellation of these joint rates, we were appealed to by a number of the officials of the short lines for a hearing or conference, rather. They wanted to put the proposition up to the Commission and see what their opinion was or whether they were willing or not to sign a protest to the Interstate Commerce Commission, or whether or not it would be a detriment to the state at large if this contract was cancelled. That meeting was granted, and it was an open public meeting and was attended by the entire Commission and the Governor of the state and the Attorney General, I believe, was invited, and the Commission's chief counsel. And after going into the matter thoroughly the Commission decided as a whole that if the short lines or tap lines, as they are called, chartered under the laws of the State of Arkansas, complied with all the rules and regulations of both the State and the Interstate Commissions and made their annual reports, that they were entitled to the same consideration that a trunk line was, and from our viewpoint, that they were common carriers.

5398 Commissioner Harlan: Did your deliberations go any farther and did you go beyond the law point, which I take to be the point which you have just stated, and consider the effect of these allowances on the lumber trade generally?

Commissioner Allen: Yes, sir; we thought it would have either one of two effects. If cancelled, it would either raise the rates in Arkansas or that it would discourage or retard the development or building of these short lines. If that was true we considered it would be very disastrous to the State of Arkansas, as we need more railroads, and the Commission as a Commission has always encouraged the building of railroads. Our experience has been that a great deal of the country has been developed and opened up, and both small farms and towns built along these lines, and that ultimately they become a part of the trunk lines. We do not believe that the trunk lines would build these little roads if they had to operate them, because experience teaches us that all these roads have to operate at a loss when they are first built, and that they could be operated as private roads at a much less expense than a trunk line could, for the reason that they employ their men by the month at a much lower salary than organized labor requires on trunk lines, and on many of them the conductor acts as superintendent and road master,

5399 and he is pretty nearly the whole thing except general manager on those short lines. If they become a part of the main lines or trunk lines under the laws of our state they then become a

part of the main line and single line rates apply and the employees would necessarily have to be paid for a full trip or a day if the road was only twenty miles long or fifteen miles long. I believe the contract with engineers and firemen is that they pay them for 100 miles or about $150 a month. Of course other employees, brakemen and firemen, have their compensation in the same proportion.

Another thing we know from practical experience that a number of these short roads, or lumber roads, or tap lines, have been built recently and have developed that part of the country wonderfully in the way of increasing population; they have built up towns, opened up farms, and have by increasing the tax valuation of the state, increased the revenues of the state. Many of those roads in our opinion would not have been built by any trunk line. Some of them now are almost on a paying basis, according to their reports.

At the present time the Railroad Commission of Arkansas is working under a Court Tariff. We do not prescribe the rates on
5400 the trunk lines, as the trunk lines have a temporary injunction against both our freight and passenger rates. The railroads immediately after they got the injunction put in a tariff of their own, which was absolutely prohibitive, in the opinion of the Commission, and we went before the Federal court and asked them to either require the railroad companies to put in a reasonable tariff to apply during this litigation or dissolve the injunction——

Commissioner Harlan: We know the general details of that litigation. What relation has it to the tap line question?

Commissioner Allen: It is simply this, I want to show this that when the Commission had the power to make rates that we invariably took care of the short tap lines by giving them a higher local rate than we did the trunk lines, although we have a distance tariff rate. We did that to encourage the short lines, because we believed that they developed the country.

Commissioner Harlan: What service do you understand the short lines perform on lumber, for which you allow them a higher local rate than you would an ordinary carrier?

Commissioner Allen: I do not know that it affects lumber at all. Most of our lumber is moved on a blanket rate, it is inter-
5401 state. The intrastate movement is very small and we have——

Commissioner Harlan: So you have not fixed any local rates on lumber?

Commissioner Allen: Yes, we have a local rate which applies to points where the lumber is consumed, a rate per hundred pounds.

Commissioner Harlan: Is that a distance tariff?

Commissioner Allen: Yes.

Commissioner Harlan: Then you have not fixed any special rates on lumber for these small lines?

Commissioner Allen: Yes, we have what we call a rough material rate, which applies to logs and lumber.

Commissioner Harlan: What service, considered from the standpoint of interstate shipments do you understand the tap lines perform on a shipment of lumber?

Commissioner Allen: They would not apply the rough material

rate, because that only applies to interstate shipments. We have a milling in transit rate where it is a one line haul.

Commissioner Harlan: I am not talking now about Arkansas rates, but you have looked into the general question, as I
5402 understand, so I want to know from you, what service do you understand the tap line performs on interstate shipments of manufactured lumber.

Commissioner Allen: I understand they get a division of the rate.

Commissioner Harlan: That is quite true, but what service do they perform for that division, what is their haul?

Commissioner Allen: They bring it off of their line to the main line.

Commissioner Harlan: You mean from the mill to the main line?

Commissioner Allen: Well, if the mill is near the main line I think that the trunk line would go in there and would get that lumber at the mill, and they would not perform any service. It would be loaded at the mill and the trunk line would perform that service.

Commissioner Harlan: That is ordinarily done by lines with respect to merchandise?

Commissioner Allen: Yes.

Commissioner Harlan: They go a mile or two or three miles sometimes without charge?

Commissioner Allen: Yes, sir; there is no charge for that
5403 service, as I understand it.

Commissioner Harlan: Is that your understanding of the interstate situation with respect to shipments of lumber?

Commissioner Allen: Yes, sir.

Commissioner Harlan: Have you any further suggestions to make?

Commissioner Allen: I do not know that I have.

Commissioner Harlan: Are there any questions to be asked.

Mr. Gaughan: Where the mill is located near the point of connection, the short line, as a rule, brings the logs in from the forest to the mill?

Commissioner Allen: To the mill, and the trunk line of course takes it at the mill.

Mr. Gaughan: Don't you consider that the bringing in of the logs from the forest to the mill where it is milled into lumber is a service rendered in the interstate shipment of lumber where it goes out to interstate points?

Commissioner Allen: It certainly is; yes, sir.

Mr. Garwood: Mr. Commissioner, may I ask if in order to obtain a railroad charter in Arkansas, application must be made to a charter board?

Mr. Allen: Yes.

5404 Mr. Garwood: Must there be an approval by the Attorney General, or something of that kind?

Commissioner Allen: By the board, as I understand it, which is composed of the Governor, Attorney General and Secretary of State, and the Commissioner of Agriculture and Mines.

Mr. Garwood: In other words, the issuance of a railroad charter in Arkansas is not a perfunctory matter, following upon the mere filing of a charter?

Commissioner Allen: No.

Mr. Garwood: It is passed upon by a board.

Commissioner Allen: By this board.

Mr. Garwood: Do I understand that in order to encourage the construction of these short line roads, you have authority under the Arkansas law, and you exercise that authority, to give them rates in excess of the usual generally applicable mileage tariff?

Commissioner Allen: Yes, sir; we do.

Mr. Garwood: And to that extent, do you permit these rates above the mileage tariff rate?

Commissioner Allen: Well, that depends on the showing of the road, the business that is done on the road, and has
5405 varied from 125 per cent to 150 per cent of the regular tariff.

Commissioner Harlan: But you have not done that on the lumber rate, as I understand?

Commissioner Allen: No, that is the general tariff; not on the——

Mr. Garwood: You say there is but little intrastate shipment of lumber, and that the greater part is interstate in its character?

Commissioner Allen: Yes, sir.

Mr. Garwood: Is Arkansas a large producer of staves and hard wood products?

Commissioner Allen: Yes, sir.

Mr. Garwood: What relative proportion of such products, particularly staves, does Arkansas produce, compared to the other hard wood producing states?

Commissioner Allen: I really could not say what the percentage is. I know Arkansas is a very large producer of staves.

Mr. Garwood: Is it not considered perhaps the greatest producer of staves and stave bolts?

Commissioner Harlan: That seems to be the general un-
5406 derstanding.

Commissioner Allen: I just want to modify my statement that your Honor asked on, with reference to the lumber. That advance does apply to lumber and everything else in the tariff as an intrastate business. For instance, if there was a carload of lumber moving over their track to a local point that took the flat local rate, they would get 125 or 150 per cent of the tariff, as the case might be.

Commissioner Harlan: But you have not so applied your authority on a two-line movement?

Commissioner Allen: No.

Commissioner Harlan: And the rough lumber rate you referred to a little while ago is a one-line movement: it is where the logs come into the mill?

Commissionenr Allen: The rough material rate only applies on one line, but if a carload of lumber were to move off a tap line to the city of Little Rock, that tap line would be entitled to its local, which would be 125 per cent of the tap line rate as one-line movement.

Mr. Garwood: In that connection I have not exactly caught from the testimony of witnesses here how your two-line intrastate rates are made. Would you kindly explain that?

5407 Commissioner Allen: Well, on what?

Mr. Garwood: Well, say on lumber.

Commissioner Allen: Take the mileage on both lines and deduct ten per cent.

Mr. Garwood: Coming back to the hard wood, I will ask you if you know if the production of hard wood is not as a rule upon a smaller scale than the production of yellow pine products?

Commissioner Allen: Oh, yes; very much.

Mr. Garwood: In other words, it is more largely from small landed interests, from small tracts?

Commissioner Allen: Yes.

Mr. Garwood: It is owned more often by farmers and local residents; is that a fact?

Commissioner Allen: I was going to say this, so far as my knowledge goes, most of the stave operators or shippers are men who are not connected with railroads at all; they are private citizens and corporations; that is my experience.

Mr. Garwood: I want to ask you whether or not it is a fact that the construction of these smaller roads enables this hard wood
5408 industry to get to market much more conveniently and in fact has brought on the market a great deal of that product which otherwise was inaccessible to the commercial world.

Commissioner Allen: It certainly has.

Commissioner Harlan: Is it not your understanding that the stave business and hard wood business generally is ordinarily merely a by-product of extensive yellow pine lumber operation?

Commissioner Allen: Well, I do not know that I understand your proposition.

Commissioner Harlan: Does not the hard wood to a large degree come from lands that are being lumbered by the yellow pine people?

Commissioner Allen: No, sir, I think not. We get most of our hard wood from the part of Arkansas where pine is very scarce.

Commissioner Harlan: I am now directing your attention to the tap lines, where tap lines are used and where they are in existence at all; is not the hard wood which comes over the tap line a by-product for the most part, of the lumber operations in the pine lands?

Commissioner Allen: Yes, sir, I would say they were.

5409 Commissioner Harlan: The hard wood mill is ordinarily owned by outside interests; is not that so?

Commissioner Allen: Yes, sir.

Commissioner Harlan: But for the most part the lumber that they use is from logs that come from the pine lands of people that also own the tap lines; is not that your experience in Arkansas?

Commissioner Allen: Well, that would be the case over these tap lines, because most of these tap lines are built through pine districts.

Mr. Garwood: It is also a fact, is it not, that these mills when they get in there on the tap lines have no connection with the pine lumber interests; that they not only buy the hard wood from the lumber lands, but they buy from all others within their reach?

Mr. Allen: Yes, sir.

Mr. Garwood: And the Commissioner uses the word "by-product." It is a by-product only in the sense that it is a coincident development with the lumber.

Commissioner Harlan: The record shows substantially the conditions which you indicate in your question.

Commissioner Allen: Yes.

5410 Mr. Garwood: From your knowledge of the railroad situation in Arkansas as a whole, I will ask you whether or not that state can reasonably expect any great amount of trunk line development in addition to that which you already have.

Commissioner Allen: I think not, sir.

Mr. Garwood: Then does it not follow that such additional mileage as Arkansas must have will come from the construction of short lines of the general character of those under investigation here?

Commissioner Allen: Unquestionably.

Mr. Garwood: It is for these reasons that the Railroad Commission of Arkansas has pursued the consistent policy of encouraging and assisting the development of the short lines?

Commissioner Allen: Yes, sir.

Mr. Garwood: Do your laws permit the Railroad Commission of Arkansas to make orders requiring additional equipment?

Commissioner Allen: They do.

Mr. Garwood: Do you upon complaint or upon your own motion make orders applicable to these short lines requiring additional equipment in such cases?

Commissioner Allen: We do. We require them to put on additional equipmpent.

5411 Commissioner Harlan: Do you recall such a case?

Commissioner Allen: Yes, sir. We have ordered on trains and special equipment on several of those logging roads.

Commissioner Harlan: Passenger trains and additional locomotives?

Commissioner Allen: Additional passenger service. We have ordered them to furnish equipment, freight cars for movements, and we have never ordered additional locomotives that I recollect. Where we have a complaint on any of those short lines to the effect that the passenger service is inadequate or the freight service, as the case may be, we cite them to appear before the Commission, and if in our opinion after the hearing——

Commissioner Harlan: I know what your general authority is, but my question was whether you recall specific instances where you have ordered locomotives. I understand you do not recall such cases.

Commissioner *Harlan:* Not on the locomotives; no.

Commissioner Harlan: You do recall cases where you have ordered a tap line, so-called, to purchase a passenger engine; do you recall such a case?

Commissioner Allen: I could not give the roads now——

5412 Commissioner Harlan: I do not ask for the roads, but whether you recall such a case.

Commissioner Allen: Yes, we have ordered passenger equipment.

Commissioner Harlan: Several cases?

Commissioner Allen: Yes, sir; two or three during my incumbency.

Commissioner Harlan: And they were tap lines, so-called?

Commissioner Allen: Yes, sir; independent lines.

Commissioner Harlan: Have you ordered tap lines to supply themselves with box cars in any case?

Commissioner Allen: I cannot say that we have.

Commissioner Harlan: Have you ordered them to supply themselves with flat cars or other form of open cars?

Commissioner Allen: No. We have ordered them to furnish cars, on a number of complaints, to the shippers; but of course if they get them from other lines, it was immaterial to the Commission. We required them to furnish cars for the movement of freight from their line and have required them to get better passenger facilities. We have required them to build depots and facilities of that kind.

Commissioner Harlan: For passengers?

5413 Commissioner Allen: Yes, sir.

Commissioner Harlan: Have you had a number of cases where you have ordered them to furnish cars to shippers?

Commissioner Allen: Well, we had a number in 1907 and 1908. Recently we have not had. We have had very little car shortage recently.

Commissioner Harlan: Those cases were predicated on the refusal of a tap line to furnish cars?

Commissioner Allen: No, they simply said they did not have the cars, as the main lines did. We had the same trouble with the main lines, and in fact a great deal more trouble with the main lines, because there was a shortage and congestion of freight. The tap lines have never refused to comply with any order, rule or regulation of the Commission that I remember of.

Commissioner Harlan: Have you ever ordered the regular lines, so-called, to furnish cars to tap lines or shippers on tap lines?

Commissioner Allen: No, sir.

Mr. Garwood: The main lines are usually glad to furnish the cars, when they have them, to the short lines, in order to get the tonnage?

5414 Commissioner Allen: Yes, sir.

Mr. Garwood: That is a universal practice everywhere?

Commissioner Allen: Yes, sir, it is in the state.

Mr. Garwood: You have authority also under the Commission law to inquire into the physical construction of railways, have you not, in order to see that it is brought up to a proper standard in order to discharge its duty to the public?

Commissioner Allen: Yes, sir.

Mr. Garwood: Do you exercise a general supervision over them in that way?

Commissioner Allen: We do.

Mr. Garwood: Is there any law in the State of Arkansas that prohibits or renders it illegal in any sense for a stockholder in a lumber company to be a stockholder in a railroad?

Commissioner Allen: No, sir.

Mr. Garwood: I would like to ask as to the undeveloped mining resources of Arkansas, if there are such.

Commissioner Allen: Yes, sir, there is a great part of the State of Arkansas——

Commissioner Harlan: That is very generally understood——

5415 Commissioner Allen: That is undeveloped and that has a wonderful amount of products such as zinc and coal and slate and boxite.

Mr. Garwood: In order to reach these there must be additional railroad development in the state?

Commissioner Allen: Yes, sir.

Mr. Garwood: I believe that is all.

Mr. Walter: Mr. Commissioner, would you consider it fair, just or reasonable to deny a man, a shipper, the right to a joint rate, or any other reasonable rate, solely because he bought the products that he mills or ships from somebody who was interested in a railroad?

Commissioner Allen: I do not.

Mr. Cowan: Commissioner Allen, briefly on what sort of system are your lumber rates made in the State of Arkansas?

Commissioner Allen: Well, we have a distance tariff rate in Arkansas on everything.

Mr. Cowan: Do you reach a maximum and then have a blanket rate above that?

Commissioner Allen: No, we have a distance tariff rate.

Mr. Cowan: And that grades up by what mileage generally?

5416 Commissioner Allen: About four hundred miles generally. It starts at five, ten, twenty, and the longer the distance it jumps ten miles at a time.

Mr. Cowan: So when you state you have a blanket system in Arkansas——

Commissioner Allen: No, I said that was interstate. I said the lumber moved out of Arkansas on a blanket rate.

Mr. Cowan: You had reference to the interstate?

Commissioner Allen: To the interstate, yes, sir.

Mr. Cowan: You have said that it was the desire of the Arkansas Commission to do something for the benefit of the tap line roads?

Commissioner Allen: Yes, sir.

Mr. Cowan: And I wondered what you have done with respect to the lumber rates in the State of Arkansas for shipments within that state, for the tap lines.

Commissioner Allen: We have not done anything for the lumber, for the reason that the tap lines have enjoyed divisions of the through rates that were satisfactory to them and to the trunk lines and consequently the Commission has taken no action in the matter. We felt that they were entitled to those divisions for the service performed on the raw material.

5417 Mr. Cowan: What division are you speaking of?

Commissioner Allen: The division between them and the trunk lines on interstate shipments.

Mr. Cowan: What about the divisions on state shipments?

Commissioner Harlan: He has explained they do not get any. On a two-line movement it is the distance tariff with ten per cent off.

Mr. Cowan: I understand that, but I am asking for these general statements.

Commissioner Allen: On a state shipment some of the roads get 125 per cent of our lumber rate and others get 133⅓ per cent, or did, under our old tariff, and others get 130 per cent; it just depends on the road, of the financial condition and the business done.

Mr. Cowan: That is under a general rule that applies to a two-line haul, without regard to whether it is a tap line, so-called, or two trunk lines.

Commissioner Allen: No, sir.

Commissioner Harlan: The rates you have last mentioned are rates for movements over single lines?

Commissioner Allen: Yes, sir.

5418 Mr. Cowan: It could not apply in the case of a tap line subject to tap line locals?

Commissioner Harlan: Unless it was a local movement.

Commissioner Allen: On its line. On a movement that the trunk lines get, they get 125 to 150 per cent, because it is a short line.

Mr. Cowan: I am asking what value that is to the tap line. Does it simply put a burden on the man who simply happens to have an independent mill on the tap line?

Commissioner Allen: It simply increases their revenue; that is all; we feel the tap lines ought to have a greater revenue because their haul is short and the shorter the haul the greater the expense, of course.

Mr. Cowan: Why have you not given the tap lines the division of the rates to local points in Arkansas?

Commissioner Allen: Because we have a distance tariff rate.

Mr. Cowan: You said a two-line haul was made up by deducting ten per cent?

Commissioner Allen: Yes.

Mr. Cowan: But you did not explain in that connection from what it is you deduct the ten per cent.

5419 Commissioner Allen: You would take the mileage on the two roads and then deduct ten per cent.

Commissioner Harlan: From the distance tariff?

Commissioner Allen: From the distance tariff, yes, sir.

Commissioner Harlan: Now, then, to follow up what Judge Cowan has in mind, I think, why have you not helped the tap lines on state movements by extending the junction rate to tap line points and giving them the division such as the tap lines are now getting on interstate shipments?

Commissioner Allen: Well, we have never been requested to. The arrangement with the tap lines has been, as far as we know, satisfactory, both to the people——

Commissioner Harlan: You are referring now to interstate shipments?

Commissioner Allen: Intrastate shipments.

Commissioner Harlan: In other words, as you understand it, the tap lines are content not to have the junction rate extended to points on their lines with respect to state shipments?

Commissioner Allen: I understand the tap lines have been satisfied with the rates given them by the Commission for local movements, and of course that was all we had any jurisdiction
5420 over.

Mr. Cowan: To pursue that question about the deduction of ten per cent, or to take an instance, I want to ship a carload of lumber from Texarkana, Arkansas to Hot Springs, Arkansas, and I ship it down on the Iron Mountain to the connection of the Rock Island, and then on the Rock Island. How would you find out what that rate would be, a shipment on the Iron Mountain from Texarkana to a junction point with the Rock Island and then over the Rock Island to Hot springs.

Commissioner Allen: If it moved over the Rock Island and Iron Mountain from Texarkana to Hot Springs the rate would be whatever that distance would be, with a differential, I think it is three cents, I think it is a three cent differential, provided that did not exceed the maximum. This is on a flat rate on lumber now that you refer to, is it?

Mr. Cowan: Yes, I am trying to get you to state to me, as representing the Arkansas Commission, how you make up a rate on the Iron Mountain from Texarkana to Hot Springs, if I want to move it over the Iron Mountain to a junction point with the Rock Island and thence to Hot Springs.

Commissioner Allen: You would take the whole mileage the whole distance; I do not know what the distance is.

5421 Mr. Cowan: Take the whole mileage?

Commissioner Allen: Take the whole mileage and add the differential, and I think it is three cents.

Mr. Cowan: A differential for what?

Commissioner Allen: For a two-line haul.

Mr. Cowan: And then do what?

Commissioner Allen: If it did not exceed the maximum, that would be the rate.

Mr. Cowan: Where does this deduction of ten per cent come in that you spoke of? You said that a two-line haul, you took the distance and deducted ten per cent. I am not questioning your statement as incorrect, but I simply do not understand it, and I give you this instance in order that you may work it out and show how it applies.

Commissioner Allen: I am not very familiar with the tariff because it is a Court tariff, a new tariff, but I think that is correct; that you take the mileage where there are two trunk lines who haul it, you take the total mileage and there is a differential. There are on many commodities, first and second class, and I think this was on lumber, and I think it is three or four cents. The differential is provided right at the bottom of the column.

5422 Mr. Cowan: The Texas Railroad Commission makes a differential higher for a two-line haul than it does for a one-line haul; that is, upon certain commodities.

Commissioner Allen: Yes.

Mr. Cowan: It has been stated in this case that a two-line haul in the State of Arkansas is cheaper than a one-line haul for the same distance; is that true?

Commissioner Allen: No.

Mr. Cowan: If I ship from Texarkana, Arkansas to Hot Springs by the Iron Mountain instead of the Rock Island, would that be cheaper?

Commissioner Allen: That would be cheaper, if it was a one-line haul, you would get the rate less the differential. It would be a differential of three cents, which would be the difference, I think, unless at competitive points, those trunk lines usually make the same rate.

Mr. Cowan: Having had that explained, I want to know where this ten per cent deduction comes in, in the case of a two-line haul.

Commissioner Allen: I was wrong about the ten per cent. It occurred to me that you took the two mileages, fifty miles on each line, and took the sums of those two locals and deducted ten per
5423 cent, but I am mistaken. It is a two-line haul with a differential on lumber.

Mr. Cowan: To clear the whole matter up, we should discard the consideration of that ten per cent proposition entirely and say that a two-line haul is a differential higher than a one-line haul between the same two points or for the same distance, in the State of Arkansas?

Commissioner Allen: It would not be at a competitive point. It would be at an intermediate point.

Mr. Cowan: In no case is the two line haul less than the one-line haul for the same distance?

Commissioner Allen: No.

Mr. Cowan: And in all cases the distance rate applies whether on a tap line or main line, or what, on lumber?

Commissioner Allen: Yes.

Mr. Cowan: Do you compile any statistics of the traffic and tonnage handled by railroads in the State of Arkansas on the plan of the Texas Railroad Commission?

Commissioner Allen: No.

Mr. Cowan: You make up no tonnage statistics?

Commissioner Allen: No, we do not.

Mr. Cowan: Do you have, in the State of Arkansas any
5424 public bureau or official who does furnish statistics with respect to the lumber production?

Commissioner Allen: No, sir.

Mr. Cowan: Do you apply a milling in transit in Arkansas on logs?

Commissioner Allen: Yes, sir.

Mr. Cowan: What is your rule on that subject?

Commissioner Allen: Well, for the movement of the logs or rough lumber over a one-line haul, we have a milling in transit rate which is very low; it runs from two cents to I believe the maximum is eight. We require the shipper to furnish the railroad company a

bond as a guarantee that they will give it the outbound haul of the product in order to get this low milling in transit rate. It was the custom of the railroad companies before the Commission was created, to use a rate of this kind, but they charged the flat rate or the full local rate and rebated the difference when the tonnage was given back to them, the tonnage out, the outbound haul was given to them. In the opinion of the Commission that worked a hardship on the small manufacturers or small mills, and kept a great deal of their capital tied up, and they were sometimes slow about
5425 getting the rebate back, and we required them to cancel that and just put in a flat milling in transit rate for this rough material.

Mr. Cowan: That is on logs, for example?

Commissioner Allen: Yes, on logs or rough lumber, and then give them the outbound haul, the tariff providing for what per cent they should have out on different articles manufactured.

Mr. Cowan: Does that milling in transit rate mean that there is the Arkansas distance tariff applied from the saw mill to whatever destination it is worked up?

Commissioner Allen: Yes, to the manufacturing point or planer.

Mr. Cowan: And that saw mill has the right to ship in on a rate from where the logs originate to the saw mill at a very low rate?

Commissioner Allen: Yes, sir, provided they give the same lines bringing them in the outbound tonnage.

Mr. Cowan: On the Arkansas distance tariff?

Commissioner Allen: Yes, sir, and if they fail to do that they are required to pay the flat lumber rate, the log rate.

Mr. Cowan: So that with the two rates on logs in such a case, one would be a low rate for the purpose of milling?

5426 Commissioner Allen: Yes, sir.

Mr. Cowan: And the other would be a much higher rate which would apply if they were not to mill the logs at all?

Commissioner Allen: Yes, sir; the local rate.

Mr. Cowan: But in no case are the logs hauled for nothing just for the lumber rate out of the mill?

Commissioner Allen: No.

Mr. Cowan: The interest of the Arkansas Commission I assume in this case is to secure for your producing interests the cheapest rates to the consuming markets of the product to be shipped?

Commissioner Allen: Well, our interest is to have just and reasonable rates, yes, sir; that is the object of the Commission.

Mr. Cowan: You do not want interstate rates made for the mere purpose of aiding the development of the state except that the interstate rates shall be reasonable both to the railroads and shippers?

Commissioner Allen: No, we do not want a rate that is unreasonable.

Mr. Cowan: What objection would you have to reducing the trunk line rates on interstate business and then adding a
5427 differential on the tap line, just like your state does, a differential higher to the tap line points, like in the case of state shipments?

Commissioner Allen: Reducing the interstate rates?

Mr. Cowan: Reducing the trunk line rates and then making a differential higher to the tap line points, a similar differential to what you make to the tap line points, on state business.

Commissioner Allen: Well, if that did not increase the rate, of course it would not affect the State of Arkansas at all.

Mr. Cowan: In other words, if the amount paid by the producing interests of Arkansas in the aggregate that went into the coffers of the trunk lines were not increased, Arkansas as a state would not be hurt?

Commissioner Allen: It would not hurt the people, but I imagine it would hurt some of the tap lines if you reduced their revenue.

Mr. Cowan: But the Commission of Arkansas is not particularly representing them?

Commissioner Allen: We are — them, just the same as the people, we are supposed to. I think a railroad is entitled to the
5428 same consideration that an individual is, if they invest their money, they are entitled to the protection of the Commission.

Mr. Cowan: You want the Interstate Commerce Commission to give them protection of a sort which the State Commission does not give them on lumber?

Commissioner Allen: As I say, the state Commission has given them the protection asked, and it has been satisfactory to them.

Mr. Cowan: If it is satisfactory to the state business, why ought not it to be so and on a similar system for the interstate?

Commissioner Allen: I could not say.

Mr. Cowan: That is all.

Commissioner Allen: If it would reduce their revenue, it would be unsatisfactory; I can see that.

Commissioner Harlan: I understood you to say there is a charter board in the State of Arkansas.

Commissioner Allen: Yes.

Commissioner Harlan: To which those——

Commissioner Allen: Who want to build railroads apply.

Commissioner Harlan: And the charter is issued after due
5429 consideration of the application, by that board?

Commissioner Allen: Yes, sir; if they are satisfied that they should have it.

Commissioner Harlan: Under the laws of the State of Arkansas, may a railroad which has been so chartered and constructed, in pursuance of its charter be torn up and moved elsewhere by those who have built it?

Commissioner Allen: I think not, sir. I think the laws of the state would prevent that, if there was any reason at all for maintaining that track, I think we would compel them to do it.

Commissioner Harlan: Suppose there is no reason; have they still the right to do it?

Commissioner Allen: Well, I think if there was no business along that line, for instance, built as you say by a lumber company, and they cut off all the timber and there was no farming interests there, that they could get permission to remove that track.

Commissioner Harlan: Does the law so provide?

Commissioner Allen: Well, I do not know anything, any particular law except the Commission law. I know the Commission has held a time or two that they had no right to discontinue their
5430 service and have issued orders to that effect.

Commissioner Harlan: It was your view, as I understand you to state it, that one of the special reasons why your Commission was interested in these tap lines was that they tended to build up the country?

Commissioner Allen: Yes, sir.

Commissioner Harlan: And make new farms?

Commissioner Allen: Yes.

Commissioner Harlan: And open up districts to population?

Commissioner Allen: Yes.

Commissioner Harlan: Suppose there are farmers that have gone there, a few of them, that can use this road, and perhaps have used it; do you think it would be right to tear up the rails?

Commissioner Allen: No; if there was any business there to amount to anything I think not.

Commissioner Harlan: Is it nevertheless not a common occurrence in your state for a lumber company without application to your Commission or to the charter board and without regard to the interests that may have used the road, farmers and others, when they get through, to tear up their rails?

Commissioner Allen: If it is, the Commission does not
5431 know about it. I will say during my term on the Commission for four years that we have never had a complaint to that effect except in two instances, and we have forbid both of these lines from removing their track. Those are the only two I know of. There may have been some removed. But there was no complaint by anybody to the Commission.

Commissioner Harlan: But according to your information, it is not of infrequent occurrence in the State of Arkansas to take up either the whole track or part of the track that has been laid by an incorporated company?

Commissioner Allen: I do not think it is. I think possibly some of these roads in an undeveloped country where they are cutting the logs might run a spur out to the timber which might be discontinued, but my opinion is if there were any farmers living along one of those roads, and there was any business there at all, as soon as they learned that the company was contemplating discontinuing the service there or removing the track they would appeal to the Commission for relief.

Mr. Garwood: Do your statutes provide any penalty for failure to run trains regularly, passenger trains, for instance?

5432 Commissioner Allen: The Commission has a rule requiring trains to be run on their schedule; that is, to start from junction points.

Mr. Garwood: Is there any pecuniary penalty for failure to obey the order of the Commission?

Commissioner Allen: Yes, sir, the penalty for violation of an order of the Commission is a fine of not less than $500 or more than $3,000.

Mr. Garwood: I wanted to get at whether, when they fail to discharge certain duties of common carriers they are not subject, as in our state, to a very severe pecuniary penalty and if they took up the track and went off, they might go off with a prosecution.

Commissioner Harlan: You mean if they disobey the orders of the Commission?

Mr. Garwood: Yes. I asked first if the statute did not provide such a penalty.

Commissioner Allen: The act creating the Commission provided that penalty.

Commissioner Harlan: That is for refusal to obey one of your orders?

Commissioner Allen: Yes, sir.

5433 Commissioner Harlan: But do you understand that the statute provides for a penalty against those who own the so-called tap line who tear up the rails when you have made no order?

Commissioner Allen: I could not say as to that, but so far as I know or my opinion is that the common law would prevent any railroad company from tearing up and removing their tracks.

Commissioner Harlan: My question was in a case where the track had been torn up, is there any penalty provided in your statute?

Commissioner Allen: I say I do not know that there is.

Mr. Walter: You could order that track restored, and then if they failed to comply with your order, the penalty would be imposed?

Commissioner Allen: I think it could.

Commissioner Harlan: We need not go into any speculations as to what you would do under given circumstances. The charters ordinarily issued in your state indicate the termini of a road that is proposed to be built, do they not?

Commissioner Allen: Yes, sir.

5434 Commissioner Harlan: Is there any penalty in the statutes of your state for failing to follow the route indicated and choosing another route or exceeding the track that is authorized in the charter and going beyond the terminus?

Commissioner Allen: I could not say as to that.

Commissioner Harlan: Mr. Commissioner, if it should appear that in a number of cases tracks have been removed after having been constructed and operated by a so-called incorporated tap line without complaint, it would tend to indicate, would it not, that there is no community there to be served by the so-called common carrier?

Commissioner Allen: I would think so, unless it was a spur track. The trunk lines remove spur tracks along the line; sometimes they are put in for special purposes.

Commissioner Harlan: In case a trunk line discontinues a branch or spur track and there is no complaint——

Commissioner Allen: The Commission would take no action.

Commissioner Harlan: Yes, and it also indicates there is no public there to be served.

Commissioner Allen: No public necessity for it. My experience is that most of these lines which have been discontinued are what I would call a spur track. For these lumber roads built out in different directions to get these logs, and so far as the main line of
5435 these short lines, I do not know of very many that have been discontinued; in fact, I do not know of any in the past four or five years.

Mr. Walter: You do not think that would indicate that that short line is any less a common carrier than in the case of a trunk line which took up a spur?

Commissioner Allen: Not at all.

Commissioner Harlan: Where a spur is taken up by a trunk line, that was laid for the purpose of getting those logs, and no protest follows from any outside interest, would it not follow also that the spur was laid somewhat with the expectation of getting divisions on the traffic coming from the spur?

Commissioner Allen: I would think that the spur would be laid by the company owning the tap line to reach timber that they could not get otherwise, and that as soon as the timber was cut off, they would probably remove it or put it in some other direction.

Mr. Garwood: Just one more question. To what extent, if any, have these short lines in Arkansas been acquired by the trunk lines or main systems and welded into parts of the trunk lines?

5436 Commissioner Allen: My experience has been during the last three or four years of my term on the Commission that as soon as these short lines became a paying proposition that they are absorbed by the trunk lines invariably.

Mr. Garwood: Has that been done to any very great extent, either before you went upon the Board or since that time within your knowledge?

Commissioner Allen: Yes, sir, it has; since I have been on the Board, a number of those lines have been absorbed by the Iron Mountain.

Commissioner Harlan: Do you know how many railroads have been chartered in your state since the state was organized?

Commissioner Allen: No.

Commissioner Harlan: Are those obtainable anywhere?

Commissioner Allen: Yes.

Commissioner Harlan: Will you obtain them?

Commissioner Allen: Yes.

Commissioner Harlan: Do you know how many railroads are now reporting to your Commission?

Commissioner Allen: I could not say that.

Commissioner Harlan: You can get those figures?

Commissioner Allen: Yes, sir.

5437 Commissioner Harlan: If you will, embody it in the same statement.

Commissioner Allen: I cannot get it here.

Commissioner Harlan: No, later, and send it to us at Washington.

Commissioner Allen: Yes, sir.

Mr. Cowan: I would like to ask the witness if there is a list of the industrial roads we are talking about or tap lines and those which do not get divisions, if you could furnish us a list of them, whether they are common carriers, chartered or not.

Commissioner Allen: What is that?

Mr. Cowan: A list of the railroads, whether chartered or not.

Commissioner Allen: That are common carriers?

Mr. Cowan: Whether common carriers or not, and the so-called tap lines. I assume there are a good many mills in your state which are logged by railroads which are not chartered.

Commissioner Allen: Yes, sir, we can give you a list of the short lines which are chartered under the state laws, and give you a list of the logging roads also.

5438 Commissioner Harlan: Do your records show which of those are receiving allowances and which are not?

Commissioner Allen: Yes, sir.

Commissioner Harlan: And it could be shown on the statement also?

Commissioner Allen: Yes, sir.

Mr. Coleman: I would like to ask if you can tell offhand the names of some of those short lines of railroad which were absorbed by trunk lines.

Commissioner Allen: Well, the Hot Springs & Western is one; it is a very important road now. And the Pine Bluff & Western, the Brinkley, Helena & Indian Bay road, and I think there are several others; I cannot recall their names, but those have all become parts of the trunk lines lately.

Mr. Coleman: I suppose there is a statute against discrimination in Arkansas.

Commissioner Allen: Yes.

Mr. Coleman: Is there any authority given to the Railroad Commission to make an arbitrary distinction between a trunk line railroad and a main line railroad?

Commissioner Allen: The Commission has the right to make any rate that they think proper and just for a tap line railroad,

5439 but that rate must apply to all people that can be served by that railroad. It is not a discrimination in the opinion of the Commission if everybody is served that can be served and pays the same rate.

Mr. Coleman: Cannot you answer that question directly yes or no? Is any power given to your Commission to make a distinction between one kind of a railroad and another? You know your powers.

Commissioner Allen: In what respect?

Mr. Coleman: In any respect. Are not all railroads considered as railroads? You do not make a distinction into classes, do you?

Commissioner Allen: No.

Mr. Coleman: I would like to put this question: Supposing that I owned a mill and had no tap line and was marketing lumber in competition with a mill which had a tap line, and that tap line was allowed a division of four cents per 100 pounds, and I was paying

the through rate, would you not consider that there was a discrimination against me as a private shipper of something like four cents per 100 pounds?

Commissioner Allen: I would not.

Mr. Coleman: Now, by what kind of reasoning do you
5440 arrive at that result?

Commissioner Allen: I think the man that got the four cents per 100 pounds division has an investment in a railroad. If he has his money invested in a railroad, he is entitled to reasonable compensation on his investment. You have no investment in a railroad, and you are running a saw mill and there would be no discrimination at all. That would be reasonable, and probably the four cents would be a reasonable rate.

Commissioner Harlan: Suppose Mr. Coleman has a railroad and it is doing for the community all that the other railroad is doing, and he gets no allowance and the other railroad does, does that involve no discrimination?

Commissioner Allen: I would think so; yes, sir.

Commissioner Harlan: Then if Mr. Coleman would simply incorporate his railroad and do nothing further for the community than he has been doing, that would equalize the situation?

Commissioner Allen: No, but as I understand Mr. Coleman's situation, there are two mills situated on a railroad——

Commissioner Harlan: No, but I have directed your attention to another situation, and I am assuming now that Mr. Coleman
5441 has a railroad; he has not taken out a charter in your state, but he is doing precisely what the other railroad is.

Commissioner Allen: If he is doing precisely the same service, he should get the same division.

Commissioner Harlan: Even though it is not a chartered railroad?

Commissioner Allen: Well——

Commissioner Harlan: Does not it present some difficulties to your mind?

Commissioner Allen: Yes, sir. If he had not a chartered railroad I would think so.

Commissioner Harlan: Supose Mr. Coleman sees fit to charter his road, and we will say the Iron Mountain allows him a division of two cents and allows the other road in the same general neighborhood a division of four cents, does that involve any element of discrimination?

Commissioner Allen: If it was the same service I should say that they ought to have the same consideration.

Mr. Coleman: Could you tell me off hand the distance tariff rate on lumber that you allow a main line or trunk line?

Commissioner Allen: No, I could not. I——

5442 Mr. Coleman: Could you give me any idea what it is based on?

Commissioner Allen: The tariff we are working on now is made under the order of the Court there, and I am not at all familiar with it but——

Mr. Coleman: You can tell within a cent or two per mile?

Commissioner Allen: Yes, sir. I think possibly the maximum for 300 miles is twelve or fifteen cents, which is about as near as I could get that.

Mr. Coleman: If I direct your attention to the fact that some tap lines are receiving two cents for half a mile haul and five cents for a mile haul, and that you are allowing the main lines only fifteen cents for a 300 mile haul, does not that raise in your mind some question as to whether you are treating the carriers all alike?

Commissioner Allen: No.

Mr. Coleman: It does not?

Commissioner Allen: No, sir.

Mr. Coleman: In answer to a question from Judge Garwood you stated that the only hope of the development of Arkansas was from the tap line railroads. Is that correct?

Commissioner Allen: That is correct.

5443–4 Mr. Coleman: Why do you state that?

Commissioner Allen: Because we cannot very well expect the trunk lines to build spurs. There are four trunk lines running through the state, and the country that is undeveloped is as a rule expensive country to build through. The trunk lines would rather the other fellow would build those railroads, and establish tonnage and towns and develop the country, and then absorb them, than to build them and carry them for years before they become a paying proposition.

Mr. Coleman: Now you also stated that the tap lines could not exist without the division received from the trunk lines.

Commissioner Allen: I did not say that.

Mr. Coleman: Well, do you mean to say that they can exist without it?

Commissioner Allen: I say they cannot exist without a reasonable compensation for their service, whether it comes in the shape of a division of a rate or whether it comes as a differential, it does not make any difference.

Commissioner Harlan: Mr. Commissioner, the yellow pine lumber people in your state compete substantially in the same markets, do they not?

Commissioner Allen: Yes, sir, I think so.

5445 Commissioner Harlan: And as a general proposition you would say that the rates should be so adjusted as to give them all a fair opportunity in competition with one another? I am saying by and large, taking the whole productive area in your state. Now, the interstate rate is a blanket rate?

Commissioner Allen: A blanket rate; yes, sir.

Commissioner Harlan: Ought not the general conditions under which that blanket rate is applied be such as to give all those mills a fair and equal opportunity in the general public markets?

Commissioner Allen: I would think so; yes, sir.

Commissioner Harlan: So that if there are some mills in your state that receive divisions because they own tap lines, and other mills in your state owning tap lines nevertheless receive no divisions, there is an obvious inequality in the conditions under which they compete in the general markets, is there not?

Commissioner Allen: Yes, sir, I would think so.

Commissioner Harlan: Now if you should be told that there are forty-one milling operations in your state operating tap lines from two to twenty miles long under precisely the conditions that
5446 other tap lines and other mills are operated that get no allowance in the way of divisions of the through rates, you would also say that they are at a disadvantage in the general market, would you not?

Commissioner Allen: Yes, sir.

Commissioner Harlan: Practically to the extent of the allowances received by the lines that do get allowances. That being so, is there not a condition of discrimination or inequality in Arkansas that ought in some way to be stopped?

Commissioner Allen: Well, I do not consider that there is.

Commissioner Harlan: You mean you doubt the facts that I have stated?

Commissioner Allen: Oh, no. You said if those conditions prevailed, I understood you to say.

Commissioner Harlan: Yes.

Commissioner Allen: My contention is this, that if there are two mills on one line, because one of the mills owns a railroad, that he was not entitled to a division or reasonable freight rate, or that the other man was being discriminated against if he did get that service—I mean as——

5447 Commissioner Harlan: Won't you be good enough to answer the question I have put? Assuming the fact that I have stated, that there are forty-one milling operations owning tap lines from one mile long up to twenty miles, operated under substantially the conditions that generally prevail in your state with respect to tap lines that do get divisions and that those forty-one tap lines get no divisions; now you have admitted that indicates a condition of inequality or discrimination.

Commissioner Allen: I would say it does; yes, sir.

Commissioner Harlan: My further question is whether in your judgment that is a condition that ought to be stopped in some way.

Commissioner Allen: Yes, sir, I would say so.

Commissioner Harlan: Very well. We will carry the suggestion a little farther. Suppose you were told that west of the Mississippi River tap lines as a rule received divisions although many do not, and that east of the Mississippi River there are a great many milling operations that have tap lines that are run under precisely the same general conditions that characterize the tap lines west of the river, and as a rule they receive no divisions; does not that in your
5448 judgment set up a basis of inequality in the general markets, a basis of discrimination?

Commissioner Allen: I would think so; yes, sir.

Commissioner Harlan: Would you not go further and say that in some way that ought to be stopped?

Commissioner Allen: Yes, sir, I do.

Commissioner Harlan: Assuming, of course, that the rate conditions are the same. Of course where the rate conditions differ, there

might be an absorption of those advantages. Any further questions?

Mr. Garwood: Just one question. Do you know of any case where a tap line does not get divisions that is incorporated; that assumes the burdens and expenses of a common carrier, that makes reports to the Government, that maintains separate organization apart from a lumber company and engages in all those expenses, is there any such case as that that you know of, where that railroad does not get a division?

Commissioner Allen: If there is any such case I do not know of it

Mr. Garwood: Have you ever heard of any such case?

Commissioner Allen: I never have.

Mr. Garwood: Then it is utterly impossible that the similarity of conditions could have existed in the cases in the question put to you by his Honor a moment ago; there can be no similarity in the conditions?

5449

(No reply.)

Mr. Cowan: The witness has not answered.

Commissioner Harlan: The witness has not answered it, but that is a matter for argument.

Mr. Garwood: It is a matter of assumption, just as your Honor's question was.

Commissioner Harlan: I think there is a good deal of assumption in it, and perhaps it is a question which had better be argued later, rather than be decided by the witness.

Mr. Garwood: I think it is exactly on the line of the hypothetical question propounded by your Honor.

Commissioner Harlan: Very well, if the witness has any opinion to express, he may.

Commissioner Allen: Well, I would say this, if a road is a chartered road, and complies with all the laws and regulations and requirements of the Commission, that it would certainly be entitled to more consideration and a greater revenue than a man who had built a logging road out here, solely for the purpose of marketing his own logs; he is not required to furnish any equipment or perform any public service; consequently, he would not be entitled to the same consideration

5450

Mr. Cowan: I want to ask a question in that connection. Suppose, as has been shown by the testimony in this case that a logging road is incorporated solely for the purpose of getting divisions out of the lumber that is hauled for its owner; do you think that it is entitled to the considerations you have mentioned?

Commissioner Allen: Well, my observation is that roads are compelled to incorporate or get charters from the state and incorporate in order to condemn the right of way and build through private property.

Mr. Cowan: It has been shown in this case that a number of them were incorporated for the sole purpose of getting the division, and I am asking you if in your opinion that sort of an incorporation entitles them to considerations——

Mr. Garwood: I would like to interpose the objection that the law does not inquire into the motive of the incorporators——

Mr. Coleman: Yes, it does.

Commissioner Harlan: You have the objection noted. The witness may answer.

5451 Commissioner Allen: If it is shown he incorporated solely for the purpose of receiving a rebate——

Mr. Cowan: A division of the rate, I said.

Commissioner Allen: Or a division in the rates, that his competitor did not enjoy, I think that would be wrong; but as I understand, all of these roads who do get a charter and comply with the laws do get this division.

Mr. Coleman: Mr. Commissioner, you stated experience teaches us all that these roads can be operated at much less cost by the saw mill owners than by the trunk lines. Is that so?

Commissioner Allen: By private corporations; yes, sir. I think that is so.

Mr. Coleman: I suppose you have looked into it considerably.

Commissioner Allen: Well, I have looked into it enough to form an opinion.

Mr. Coleman: You looked into the case of the Pine Bluff road, I suppose, more or less?

Commissioner Allen: No.

Mr. Coleman: Never looked into the case of this road?

Commissioner Allen: No.

5452 Mr. Coleman: If I tell you that the Pine Bluff Railroad, for a period of five or six years, has been charging for construction of pieces of track all the way from seven to twenty-one miles long and has been charging that to operating expenses, would you say that was economical railroad management?

Commissioner Allen: Well, I am not a judge of those things and am not competent to pass upon it.

Commissioner Harlan: I do not think we will go into that.

Mr. Coleman: You also mentioned the case of labor being less.

Commissioner Allen: Yes, sir.

Mr. Coleman: Do you know the engineers, firemen, conductors and brakemen are not members of the railroad organizations?

Commissioner Allen: I mean that they are all hired at a fixed salary on these little roads. My experience is that they are, and that their salary is about half what they would get on the main lines where they belong to the union organizations.

Commissioner Harlan: I think perhaps we are not adding to the value of the record by this line of examination.

5453 Mr. Cowan: Judge Harlan put in his question the conditions east of the river and west of the river. There is another point I would like to call to your attention in that, the rates from the producing territories of yellow pine, say to the common markets from points east of the river are on a basis two cents lower than they are from points west of the river, or to put it the other way, two cents higher west of the river, and the railroads do not give the divisions out of the rates east of the river, but do west of the river.

Commissioner Harlan: Pardon me; they do in some cases east of the river.

Mr. Cowan: But generally speaking, I understand they do not. Do you know any reason why the rates west of the river should be higher in order to allow the railroads to give the tap lines divisions west of the river?

Commissioner Allen: I do not, sir.

Mr. Walter: You do know that the Interstate Commerce Commission found the circumstances so different as to warrant different rates east of the river and west of the river?

Commissioner Allen: Yes, sir.

Commissioner Harlan: Do you undertake to control the rates and the relations of tap lines with other carriers, when they are not incorporated?

5454 Commissioner Allen: No, sir; not unless they put themselves up and make themselves common carriers.

Commissioner Harlan: Suppose they carry passengers free of charge, we will say, and they carry other freight.

Commissioner Allen: If they do that, that would not be noticed by the Commission.

Commissioner Harlan: Do you think that a division to a tap line ought to be higher because it reaches two regular lines, than a division accorded to a tap line in the same general locality that reaches only one regular line?

Commissioner Allen: I do not.

Mr. Walter: Suppose the New York Central and the Pennsylvania Railroads were operating in your state, would you say that one of those lines should be denied the right to a joint rate with the other solely because the biggest shipepr on the New York Central might be owned by the president of that road?

Commissioner Allen: No, sir.

Commissioner Harlan: Oh, well, that is a question of law, and it is a question about which no witness would have better judgment than anyone else.

5455 Mr. Walter: But it is asked all along, and has been made the feature of this investigation.

Commissioner Harlan: I have not understood that that question has been made a part of this record. I have understood from your general observations that you do not think that a tap line is entitled to a larger proportion of a through rate because it originates the traffic, and that is not the practice in the State of Arkansas, of allowing it a larger division on that ground.

Commissioner Allen: Well, yes, I think it ought to have a reasonable division because that is all they get out of it. If they originate the tonnage, they are certainly entitled——

Commissioner Harlan: To a higher division on that account?

Commissioner Allen: I do not know that you would say a higher division, but it seems to me if they originate the tonnage, they ought to get a reasonable return.

Commissioner Harlan: Well, ought they to have a bonus or premium on that ground?

Commissioner Allen: What do I understand that you mean by that? That if a tap line moves a carload of lumber five or ten miles

on their line that they originate, and it moves ten miles, that
5456 they should haul that and deliver it to the carrier for the same price as the main line rate would be for the same distance; do you mean that?

Commissioner Harlan: Yes, assume that state of facts; do you think that is right?

Commissioner Allen: No. I would not think they ought to perform that service for the same money; I think they would be entitled to a higher rate.

Commissioner Harlan: Do you think that they ought to have any higher proportion of the through rate than an ordinary switching line would have?

Commissioner Allen: Yes, sir.

Commissioner Harlan: Why?

Commissioner Allen: Well, simply because a switching charge is never considered a reasonable charge if that is all the company gets out of it. They switch cars at a loss, or they claim they do, but it is necessary, and there is an arrangement between the carriers of reciprocal switching, which they absorb, and that of course is very small.

Commissioner Harlan: Well, we have had instances on this record of tap lines that move the lumber all the way from twenty-five feet to three or four miles. Why should they have more than an
5457 ordinary switching line would have for like service: do you know any reason why?

Commissioner Allen: Well, I do not, unless it would be that a switching line would have very much less expense, a shorter line and have more business, that you could take an engine, for instance, and switch a dozen cars and you would require that same engine to switch one car off a tap line, and the volume of business would cut some figure as to the cost to the carrier for that service.

Commissioner Harlan: The volume of the business is the reason why the switching line ought to have less than the tap line for the same service?

Commissioner Allen: I say they would be justified in doing it for less if the volume of business was larger.

Commissioner Harlan: Supposing a tap line is a party to a joint through rate and moves a car twenty-five feet or we will say a mile: why should it have anything more than a reasonable switching charge for that service?

Commissioner Allen: Because my idea is that it produces the tonnage and they cannot possibly get any revenue for that service performed in switching that—I mean in handling that car, under a switching charge. The connecting line does get a revenue
5458 because it has a long haul, and it makes money where the producing line would probably do that service at a loss.

Commissioner Harlan: In other words, you think it ought to have a premium because the shipments originated on the tap line?

Commissioner Allen: Well, yes, I would put it that way.

Commissioner Harlan: On that general basis, ought not the Belt Switching Lines here in St. Louis that originate a great deal of ton-

nage have some sort of a premium instead of some sort of switching charge?

Commissioner Allen: I do not know anything about the conditions in St. Louis, but I can speak for Arkansas; we have in the city of Little Rock and in Fort Smith a switching limit. We have found it necessary in cities of that size in order to take care of the different manufacturers and industries. We have found also that the railroad companies had in the past what they called reciprocal charges of $2.00 a car, say.

Commissioner Harlan: Is there a separate switching company there?

Commissioner Allen: No.

Commissioner Harlan: Then perhaps the conditions would
5459 not be the same.

Commissioner Allen: But they have reciprocal switching arrangements, and if a car comes in over the Iron Mountain Road and goes to a manufacturer on the Rock Island, of course the car is placed over there for a charge of $2.00 and the Iron Mountain absorbs that $2.00, but they claim of course that that is a loss——

Commissioner Harlan: But that is of course a reciprocal arrangement.

Commissioner Allen: Yes, it is reciprocal, but that is how they do it. Now, we have what we call a city switching limit, town switching is what they call it, but that is performed by any of the railroads in Little Rock and not by a separate switching company.

Commissioner Harlan: That seems to be all.

Mr. Walter: That principle of recognizing the originating line is no new proposition, either, to the State Commission, if it has been recognized by the Interstate Commerce Commission?

Commissioner Allen: No.

Mr. Coleman: Do you understand that the tap line furnishes the cars to send this traffic out on the main line?

5460 Commissioner Allen: Sometimes they do, and sometimes they do not. I understand the trunk lines furnish a great many of these cars and are glad to do it in order to get the tonnage.

Mr. Coleman: The main reason that the initial carrier gets any advantage over the next carrier in the matter of rates is because it furnishes the car; is not that your understanding?

Commissioner Allen: No.

Mr. Walter: You know that all cars move indiscriminately?

Commissioner Allen: Yes.

(Witness excused.)

Whereupon, at 12:40 P. M., a recess was taken until 2:00 P. M.

5461 After Recess.

2.00 P. M.

Mr. Walter: Have you finished with the Louisiana & Pine Bluff?

Commissioner Harlan: Yes.

Mr. Walter: Mr. Johnson was to be recalled to be examined generally, I believe.

Commissioner Harlan: We are now going to take up the Nacogdoches & Southeastern.

Mr. Walter: If you do not want Mr. Johnson further on these lines he would like to be allowed to go to his office to look after some matters.

Commissioner Harlan: Will he be back later in the day?

Mr. Walter: Yes. He would prefer to be examined now if that could be arranged.

Commissioner Harlan: We will call next the Nacogdoches & Southeastern.

5462 *Nacogdoches & Southeastern Railroad.*

E. A. Frost resumed the stand and testified as follows:

Commissioner Harlan: You have already been sworn and your name is in the record and your general connection with the Frost-Johnson Lumber Company. I will now ask you about the Nacogdoches & Southeastern. What is it, a railroad company or railway company?

Mr. Frost: The Nacogdoches & Southeastern Railroad Company.

Commissioner Harlan: By whom was that company owned?

Mr. Frost: The stock of that company is held by several stockholders for the stockholders of the Frost-Johnson Lumber Company.

Commissioner Harlan: Is there an intervening milling corporation like the Union Saw Mill Company in the other case?

Mr. Frost: There is an operating lumber company there and the stock of that company is held by the Frost-Johnson Lumber Company of Missouri.

Commissioner Harlan: The stock of this railroad company is not owned by the milling company?

Mr. Frost: No, it is owned by the Missouri corporation.

5463 Commissioner Harlan: Have you a map of the road?

Mr. Frost: Yes, sir, a map and a profile.

Commissioner Harlan: Have you a financial statement?

Mr. Frost: I have a copy here on which are some memoranda. It is prepared similar to the one I prepared for the Mansfield Road. It gives all the details. The map is in several sections.

Commissioner Harlan: You have not a general map here of the road?

Mr. Frost: Not a minute map, no. That is an alignment map, and I have the profile of the road here.

(The statement referred to was afterwards produced and marked Nacogdoches & Southeastern Exhibit No. 1, witness Frost, received in evidence January 27, 1911, and is attached hereto.)

Commissioner Harlan: Now tell us where this company is first.

Mr. Frost: Nacogdoches, Texas.

Commissioner Harlan: Organized under the laws of the State of Texas?

Mr. Frost: The Frost-Johnson Lumber Company of Texas.

5464 Commissioner Harlan: I am talking now about the railroad.

Mr. Frost: That is a Texas corporation.

Commissioner Harlan: Organized under the general road law?

Mr. Frost: Of Texas; yes, sir.

Commissioner Harlan: And when was it organized?

Mr. Frost: I can give you the exact date; it was chartered December 24, 1904.

Commissioner Harlan: Had the railroad been built prior to that date by some one else?

Mr. Frost: Well, I could not say about that. We acquired that property last March, 1910, both the railroad and the lumber companies' property.

Commissioner Harlan: You acquired it by purchasing the stock in each company?

Mr. Frost: We purchased the property of the Hayward Lumber Company and the stock of the Nacogdoches & Southeastern Railroad Company.

Commissioner Harlan: What is the length of that road and what are its termini?

Mr Frost: We are operating about fourteen miles, from Nacogdoches to Woden.

Commissioner Harlan: And what regular line connections
5465 have you?

Mr. Frost: We connect with the T. & N. O.

Commissioner Harlan: At what point?

Mr. Frost: At Hayward; that is the mill point. Then we own the line—we have not made the connection with the Houston, East & West Texas, but the track is built.

Commissioner Harlan: When made, where will that connection be?

Mr. Frost: In the town of Nacogdoches, right in the Houston, East & West Texas depot.

Commissioner Harlan: And where is the mill situated?

Mr. Frost: At Hayward.

Commissioner Harlan: Where with reference to the T. & N. O.?

Mr. Frost: Well, it is right along the line of the T. & N. O.

Commissioner Harlan: How far from it?

Mr. Frost: I would say two or three hundred feet.

Commissioner Harlan: Has the T. & N. O. any spur track running into your planing mill?

Mr. Frost: No, we own the tracks into the mill.

Commissioner Harlan: Was there a spur track belonging
5466 to that company there when you purchased the railroad?

Mr. Frost: Not when we purchased it?

Commissioner Harlan: Was there at any time?

Mr. Frost: Not that I know of.

Commissioner Harlan: The T. & N. O. has no ownership at all in that spur track?

Mr. Frost: Not that I know of, no, sir.

Commissioner Harlan: It did not furnish the steel or the labor or the ties?

Mr. Frost: Not that I know of. It was listed in the property of the Nacogdoches & Southeastern Railroad Company when we bought it.

Commissioner Harlan: And that mill is owned by the Frost-Johnson Lumber Company of Texas?

Mr. Frost: The mill plant?

Commissioner Harlan: Yes.

Mr. Frost: Yes, sir.

Commissioner Harlan: When was that organized?

Mr. Frost: That was organized I think in March, about the time we purchased the property, probably a few days after we got the charter; we applied for the charter at the same time we closed the deal for the property.

5467 Commissioner Harlan: The entire stock of that company is owned by the Frost-Johnson Lumber Company of Missouri?

Mr. Frost: Practically all.

Commissioner Harlan: And practically all the stock of the railroad company is owned by the Missouri corporation?

Mr. Frost: Yes, sir.

Commissioner Harlan: Does the Frost-Johnson Lumber Company of Texas own any timber lands?

Mr Frost: Yes.

Commissioner Harlan: Where are they and what is their extent?

Mr. Frost: In the Southern portion of Nacogdoches County.

Commissioner Harlan: How many acres do you own?

Mr. Frost: We purchased from the Hayward people between 35,000 to 40,000 acres, I think.

Commissioner Harlan: Did you get the title in fee to that property?

Mr. Frost: We got such titles as they had; some of the timber they had just bought timber rights in.

Commissioner Harlan: Have you since acquired any other lands?

Mr. Frost: Well, we have bought some; not very much.

5468 Commissioner Harlan: What is your total holding down there now?

Mr. Frost: Acreage?

Commissioner Harlan: Acreage.

Mr. Frost: Timber and fee?

Commissioner Harlan: Yes.

Mr. Frost: I do not think it will run over 40,000 acres.

Commissioner Harlan: Since you have purchased this road, have you extended it at all?

Mr. Frost: We have six miles under construction, which is almost completed. That has been built under the supervision of the lumber company.

Commissioner Harlan: Of the Missouri Corporation?

Mr. Frost: No, sir, the Texas corporation.

Commissioner Harlan: Does that belong to the railroad company?

Mr. Frost: It has not been turned over to the railroad company yet.

Commissioner Harlan: What will your total mileage be when those six miles are completed?

Mr. Frost: It will be about 20 miles; it is a fraction over 20 miles; probably 21 miles.

5469 Commissioner Harlan: Are you now conducting any lumbering operations on this line?

Mr. Frost: Yes, sir, we are operating the mill.

Commissioner Harlan: Are you hauling logs from your woods there?

Mr. Frost: Yes, sir.

Commissioner Harlan: You are not hauling, though, on this six miles of extension?

Mr. Frost: Well, I do not think they have moved the logging camps on to the end of the extension as yet, but they might have moved down there in the last week or ten days.

Commissioner Harlan: When completed, that is to be turned over to the railroad company?

Mr. Frost: Well, it could be; it is still the property of the lumber company.

Commissioner Harlan: In other words, is that a logging road or is it to be a part of the permanent roadway of the railroad company?

Mr. Frost: We have not decided whether we would sell it to the railroad company or let the lumber company retain it. We are figuring to sell it to the railroad company and——

5470 Commissioner Harlan: But that is not to be done in the immediate future?

Mr. Frost: That deal has not been consummated and the transfer has not been made of the property.

Commissioner Harlan: What was the cost of this six mile extension?

Mr. Frost: I could not give the figures exactly, but it was pretty expensive work. I have not the figures and I do not know. It is on the lumber company's books.

Commissioner Harlan: Why was it expensive?

Mr. Frost: It is rough country and the grading was heavy.

Commissioner Harlan: Have you some cuts and fills?

Mr. Frost: Yes, sir; the profile shows it.

Commissioner Harlan: Any bridges?

Mr. Frost: Yes, sir.

Commissioner Harlan: Do you know about how much it cost per mile?

Mr. Frost: I could not give it accurately; probably ten or twelve thousand dollars a mile, or maybe fifteen thousand dollars for some of it. Say from eight to fifteen thousand dollars a mile.

5471 Commissioner Harlan: What did the line cost that you purchased last year?

Mr. Frost: We purchased the stock of the road with the property of the Hayward Lumber Company. We did not separate it. We took the cost according to their figures and figured that at about what we thought would be an average price or a correct price, and figured the other property, and paid them so much money for both properties; that is, the property of the Hayward Lumber Company and the stock of the Nacogdoches & Southeastern Railroad Company.

Commissioner Harlan: That is, you bought their forests and mill and the railroad at a given price?

Mr. Frost: Yes, sir.

Commissioner Harlan: Then you subsequently assigned so much of the purchase price to the railroad?

Mr. Frost: In arriving at the total value of all those properties, we figured each property separately.

Commissioner Harlan: What figure did you place on the railroad property?

Mr. Frost: Their statement showed that it cost something over $200,000.

Commissioner Harlan: Including equipment?

Mr. Frost: No, sir, the equipment was separate from that
5472 item. The total cost of the road, according to their books, up to June, 1910, and we just carried the books through as they started, showed $200,000.49, and the cost of equipment $38,516.

Commissioner Harlan: What is the amount of the capital stock of the railroad company?

Mr. Frost: The capital stock is $250,000, but there is only $245,400 issued.

Commissioner Harlan: Has it any bonded indebtedness?

Mr. Frost: No, sir.

Commissioner Harlan: What equipment has it?

Mr. Frost: They have two locomotives, one combination car, six box cars, two flat cars and fifty-four logging cars.

Commissioner Harlan: The combination car is the passenger?

Mr. Frost: Yes, sir, it is used for carrying passengers.

Commissioner Harlan: Tell us in your own way what the tonnage of this road is. If you have the figures for the last fiscal year, state them.

Mr. Frost: Shall I read just as I have them here? They might not come just as you call for them.

Commissioner Harlan: What have you there?

Mr. Frost: I have given you just the list of the equip-
5473 ment. The next is station buildings at Hayward and Woden, consisting of two waiting rooms, office and freight room. One 100-ton 40-foot Fairbanks track scale at Hayward. The track is laid with 45 and 56 pound steel, and they are all oak ties. We have about 20 employees in the service of that road.

Commissioner Harlan: That includes the engineers and trainmen?

Mr. Frost: Sectionmen and agents.

Commissioner Harlan: And office employees?

Mr. Frost: And the traffic man. This memorandum is of classified tonnage in carloads, handled for other than lumber company——

Commissioner Harlan: Just a minute. Let us find out something about Hayward. That is a new town, is it not?

Mr. Frost: That is where the mill is located.

Commissioner Harlan: What is the population? Well, we employ—probably 500 or 1000 people living around there. It is just south of the town of Nacogdoches, a town of probably three or four thousand people.

Commissioner Harlan: You own the town of Hayward, do you?

Mr. Frost: We own a certain amount of the property, but
5474 some of our employees live on other peoples' property adjacent to what we own.

Commissioner Harlan: Do you run a store?

Mr. Frost: We run a store; yes, sir. There are quite a number of other stores there.

Commissioner Harlan: Now, you were starting to state what?

Mr. Frost: This is a list of the classified tonnage, the report of which you have.

Commissioner Harlan: For what year?

Mr. Frost: For the year ending June 30, 1910.

Commissioner Harlan: Well, what was the gross tonnage during that year?

Mr. Frost: Well, I have not got the gross——

Commissioner Harlan: State the tonnage as you have it there.

Mr. Frost: This is subdivided here.

Commissioner Harlan: Very well.

Mr. Frost: Ties fifty-five cars; stave bolts, two cars; ash logs, thirty-eight cars; lumber, thirty cars; live stock, six cars; hay, two cars; oil, two cars; grain, two cars; sewer pipe, one car; railway material, eleven cars; other mill products, two cars; coal, one
5475 car; roofing, two cars. From July 1st, 1910 to December 31st——

Commissioner Harlan: What was the live stock, horses?

Mr. Frost: I think it was cattle shipped to some point out in Texas; I am not sure about it, I think it was.

Commissioner Harlan: Have you figures there showing how much of that tonnage was company tonnage?

Mr. Frost: I think I have later on in this statement. Now the classified tonnage for the last six months of last year, according to this report shows coal, seven cars; lumber, twenty-five cars; logs, five cars; live stock, six cars; other mill products, two cars; oil, four cars; railway material, fourteen cars; household goods and furniture, four cars; hay, two cars; fence posts, two cars; ice, two cars; cotton seed, two cars. Now, this sheet——

Commissioner Harlan: Can we look at these?

Mr. Frost: Yes, sir; it is just the same as the Mansfield figures I had yesterday. It is taken from the books.

5476 Commissioner Harlan: Will you let me look at those, unless you have some memoranda on them you do not care to show.

Mr. Frost: Yes, sir, I have some memorandums on them (handing paper).

Commissioner Harlan: This memorandum which you have just read is of tonnage for outside interests?

Mr. Frost: That is the way I understand it. I had it prepared.

Commissioner Harlan: 154 carloads all told?

Mr. Frost: Yes, sir.

Commissioner Harlan: Of which eleven were carloads of railway material?

Mr. Frost: That is possibly for the railroad company; I do not know why he got that item in there.

Commissioner Harlan: Well, this is a list of tonnage for other than the lumber company, so perhaps that is the reason it is put in.

Mr. Frost: That is the way I understand it.

Commissioner Harlan: Ties 55 cars, I suppose were for this new construction.

Mr. Frost: I think they were shipped, pine ties probably.

5477 Commissioner Harlan: You mean shipped out?

Mr. Frost: Yes, sir.

Commissioner Harlan: And not used by your railway company?

Mr. Frost: That is the way I understand the statement.

Commissioner Harlan: Is there any one here that knows about that?

Mr. Frost: No, sir, the man I had prepare those I did not bring along; I did not notice that item in there.

Mr. Walter: We will inquire and let you know definitely.

Commissioner Harlan: The sewer pipe, one carload.

Mr. Frost: I do not know what that was for.

Commissioner Harlan: What about the coal and the roofing, one carload of coal and two of roofing.

Mr. Frost: The coal was probably for the logging company, and he might have figured that that was an outside company.

Commissioner Harlan: Is that perhaps true of the roofing?

Mr. Frost: I could not say about that.

Commissioner Harland: Is it not possible that the six carloads of live stock were for the logging company also?

Mr. Frost: It is possible but I understood that they were shipping out five or six cars a day or two after I made a trip down

5478 there, they said they had shipped out some live stock to Texas, and I think that is the six cars they shipped.

Commissioner Harlan: The logging company?

Mr. Frost: No, a party went in there and bought them and shipped them out.

Commissioner Harlan: What about the hay, was not that probably for the company interests in some form or another?

Mr. Frost: I do not think so, because we used a great deal more hay than that, and it would be a greater number of cars.

Commissioner Harlan: You do not know about the oil or the two carloads of grain?

Mr. Frost: No.

Commissioner Harlan: You have not any accurate information in respect to this 154 cars?

Mr. Frost: Only the memorandum at the head of the list.

Mr. Walter: He can tell you about the oil, I guess.

Commissioner Harlan: What about the oil, do you know anything about that?

Mr. Frost: We have quite a number of oil wells at Oil City and they might have shipped the oil, and it might be two cars of oil they shipped from that point.

Commissioner Harlan: Is that on your line?

5479 Mr. Frost: Yes, sir.

Mr. Walter: How many wells are there?

Mr. Frost: Well, nobody knows; they are variously estimated at

any where from 20 to 100 wells; they are drilling there since we have gotten the track down to where they can have transportation facilities, they have commenced to operate in the field.

Commissioner Harlan: Is there not a pipe line leading from that field?

Mr. Frost: No; there was about 15 years ago, but it was three inch pipes, and they found it was so small they could not carry the oil through and abandoned the wells because there was no service.

Commissioner Harlan: Is it served by any other line?

Mr. Frost: No, it is about 18 miles from Nacogdoches.

Commissioner Harlan: And this was the total outbound shipment, two carloads?

Mr. Frost: I cannot say that that oil came from that field, but that is the only oil that I know of that they could ship.

Commissioner Harlan: It might have been an inbound movement?

Mr. Frost: It might have been an inbound movement. I can find out.

5480 Commissioner Harlan: Well, you have no more definite information about the 75 carloads that moved for the six months ending December 31st, 1910, as shown on this paper?

Mr. Frost: According to that report it was all outside business.

Commissioner Harlan: Well, it has 14 cars of railway material and 25 carloads of lumber.

Mr. Frost: That was outside lumber, two small mills down there.

Commissioner Harlan: The railway material must have been for your line?

Mr. Frost: That might have been for the logging company.

Commissioner Harlan: It must have been for the logging company or your new construction?

Mr. Frost: He lists it there as new railway material. It might have been pine ties shipped out to the creosoting plant.

Commissioner Harlan: You have another item here of ties. You cannot tell us definitely what that exhibit means?

Mr. Frost: No, but I can get that information.

Mr. Walter: We will furnish a detailed statement showing
5481 the consignee and consignor.

Commissioner Harlan: It is not the details we desire, but it is simply to know what portions, if any, of those carloads were inbound or outbound shipments of these allied interests.

Mr. Walter: That could only be shown by an examination of the way bills.

Commissioner Harlan: I suppose it can be ascertained in one way or another, but we do not care for the details except that one fact.

Mr. Walter: We will give you that one fact.

Mr. Frost: As I understand it, you want to know if there were any carloads in that list that the lumber company had anything to do with it?

Commissioner Harlan: The lumber company, logging company or railroad company.

Mr. Frost: I will furnish that information.

Commissioner Harlan: Or the store that you operate; any movement for the general investment here, if it is embraced in this list, we want to know about it.

Mr. Frost: Yes, sir.

Commissioner Harlan: According to the next statement, your total passenger revenues for the year ending June 30th,
5482 1910, were $322; miscellaneous revenue $2,788.25. What does that item embrace, miscellaneous revenues?

Mr. Frost: That would be all the earnings except the passenger earnings there.

Commissioner Harlan: Do you mean express matter, for instance, and mail, and that kind of matter?

Mr. Frost: We do not carry the express.

Commissioner Harlan: Well, that is quite a substantial item, and can you give us no clew to its meaning.

Mr. Frost: They have a contract with the lumber company, or they had a contract in effect when we bought it, and they leased the cars to the lumber company, or——

Commissioner Harlan: The railroad company leased the cars to the lumber company.

Mr. Frost: For a certain rental each year.

Commissioner Harlan: What was that rental?

Mr. Frost: I don't remember just what the amount was.

Commissioner Harlan: You have the contract, have you?

Mr. Frost: Yes, sir. That was turned over to us, and we have simply carried out the original contracts that they had.

Commissioner Harlan: And you rent the cars to the lumber company now just for what use?

5483 Mr. Frost: Logging cars for operating their logging trains only.

Commissioner Harlan: On the logging roads?

Mr. Frost: Yes, sir.

Commissioner Harlan: Or do they operate their trains on your line?

Mr. Frost: The railroad company leased these logging cars, 53 cars, I think, to the lumber company for the purpose of hauling logs and they operate that train into the mill over the Nacogdoches & Southeastern rails.

Commissioner Harlan: The lumber company operates the train?

Mr. Frost: Yes, sir, under trackage rental, so much a year.

Commissioner Harlan: Can you let us have a copy of that contract?

Mr. Frost: Yes, sir.

Commissioner Harlan: You think that explains this item of miscellaneous revenues?

Mr. Frost: I think that is part of the revenue, yes, sir.

Commissioner Harlan: What else is there in there, is there any demurrage?

Mr. Frost: Demurrage is carried in that, the item of de-
5484 murrage would be in that. The railroad company charges the lumber company demurrage on the cars that they hold overtime.

Commissioner Harlan: What is the character of this passenger traffic, is it largely made up of employés of the lumber company?

Mr. Frost: No, sir, it is not. The logging company employés are about the only employés that work for the lumber company in any way or the logging company, and I think they have a right to go out on the logging train. If they come on that train they pay their fare.

Commissioner Harlan: If they get on your combination coach they pay their fare?

Mr. Frost: Yes, sir.

Commissioner Harlan: But if they operate this train over your line they do not pay anything?

Mr. Frost: If they get on the logging train?

Commissioner Harlan: Yes.

Mr. Frost: I think that they allow some of the employés the right on that logging train, to operate it.

Commissioner Harlan: What passenger traffic have you other than your employés of some of the allied interests.

Mr. Frost: Take people living out along the line, four
5485 or five stores.

Commissioner Harlan: Are there such?

Mr. Frost: Yes, sir, farmers, and there are four or five stores at Woden. There is a list of them filed.

Commissioner Harlan: Is Woden a company town also?

Mr. Frost: No.

Commissioner Harlan: That was an old settlement?

Mr. Frost: I could not say how old it was. There are four or five stores.

Commissioner Harlan: Do you run a store there?

Mr. Frost: No, we have no store there. It is just a little country town.

Commissioner Harlan: A post office?

Mr. Frost: They have a post office there.

Commissioner Harlan: Your total revenues, according to this document were $13,000 plus, and your total operating expenses approximately $17,000, showing a percentage of operating expenses to operating revenue of 121.21. Was there an accumulated deficit in the accounts of the railroad company when you took it over from the Haywood people?

Mr. Frost: I do not think so. They probably owed a small amount, but it did not amount to very much.

5486 Commissioner Harlan: Well, there was a deficit for this year. Did that require you to go anywhere for cash?

Mr. Frost: Yes, sir, we owe the bank, the railroad company owes the Nacogdoches Bank for practically the same amount that they are short there, or did.

Commissioner Harlan: Is the indebtedness represented by a note held by that bank?

Mr. Frost: It is an overdraft that they have run with the local bank there, and they have handled their accounts separately, and have their own bank.

Commissioner Harlan: How long has it been carried as an overdraft?

Mr. Frost: Probably two or three months.

Commissioner Harlan: Are you a guarantor on that overdraft?

Mr. Frost: Yes, sir.

Commissioner Harlan: And the lumber company also?

Mr. Frost: The lumber company would guarantee the account or does guarantee it.

Commissioner Harlan: And it is so understood at the bank?

Mr. Frost: Well, yes, sir, it is understood that we would guarantee the account.

Commissioner Harlan: So in this short time the lumber
5487 company has furnished the railroad company in this way of credit with the necessary cash to conduct its operations?

Mr. Frost: Yes, sir. That overdraft——

Commissioner Harlan: Now you have here an item of some $4,000 for maintenance of equipment. What equipment is embraced in that account?

Mr. Frost: The list I just read, two locomotives and——

Commissioner Harlan: Does it include the logging cars?

Mr. Frost: 53 logging cars and five box cars——

Commissioner Harlan: And the logging cars are maintained then by the railroad company?

Mr. Frost: The lumber company keeps up the cars.

Commissioner Harlan: What do you mean by the maintenance of equipment here? I understood you to say it embraced the equipment mentioned on the previous statement.

Mr. Frost: The maintenance?

Commissioner Harlan: Yes.

Mr. Frost: That is what is costs the railroad company to keep up their own equipment.

Commissioner Harlan: And the logging car equipment is kept up by whom?

Mr. Frost: By the logging company or lumber company.

5488 Commissioner Harlan: Do you lease one of your locomotives to the logging company?

Mr. Frost: The railroad company, I think, has leased two locomotives to the lumber company.

Commissioner Harlan: So that the lumber company looks after the maintenance of that part of your equipment also?

Mr. Frost: I think so.

Commissioner Harlan: And it leaves the combination car and the refrigerator car—do you have a refrigerator car?

Mr. Frost: Well, it is listed as a refrigerator car, yes, sir.

Commissioner Harlan: What is it used for?

Mr. Frost: I do not know what they use it for. We used it to haul freight in. It was there when we bought the property.

Commissioner Harlan: Do you use it to haul fresh meat to the camps and supplies?

Mr. Frost: We would haul anything in it if we needed to haul it out there.

Commissioner Harlan: How many cars are left for the railroad company to look out for, the passenger coach and refrigerator car?

Mr. Frost: And the box cars and flat cars.

5489 Commissioner Harlan: Five box cars and two flat cars?

Mr. Frost: Yes, sir.

Commissioner Harlan: And it costs you $4200 a year in the way of maintenance?

Mr. Frost: That probably includes the cost of overhauling the locomotive during the latter part of last year.

Commissioner Harlan: Before you rented it to the logging company?

Mr. Frost: No, the railroad locomotive.

Commissioner Harlan: I understood you to say you had rented both your locomotives to the logging company?

Mr. Frost: No, the railroad company retains—they have two locomotives they use in their own service, and they overhauled one of those during the fall and that made that item show heavy, I think is the way that came up.

Commissioner Harlan: Have you rented any locomotives to the logging company?

Mr. Frost: They rent it to the lumber company, and the lumber company lets the logging company use them. That shows in the contract.

Commissioner Harlan: By whom was that locomotive overhauled by you or the lumber company?

5490 Mr. Frost: Well, if it was a railroad company locomotive the cost of repairing that was borne by the railroad company. If it was one of the locomotives that they leased to the lumber company, it was borne by the lumber company or the logging company.

Commissioner Harlan: I would like to get this accurately, and I am not sure that I have it. In this document you list your equipment, I mean the equipment of the railroad company, and among other things you show two locomotives. Now do you own any other locomotives than these two? I am now talking about the railroad company.

Mr. Frost: I am not familiar with just how many locomotives they had, and I am going by just what the statement says, and the contract with the lumber company.

Commissioner Harlan: Do you know whether the railroad company is using two locomotives now?

Mr. Frost: Yes, sir, they only use one, and they have one in case of emergency which they can use.

Commissioner Harlan: Do you know whether the lumber company is using any locomotives exclusively of the lumber line?

Mr. Frost: The lumber company uses a locomotive to haul

5491 logs in on the main line, and then the logging company used a locomotive out in the woods to bring the logs to the main line.

Commissioner Harlan: You do not know whose locomotive that is?

Mr. Frost: In the woods?

Commissioner Harlan: Yes.

Mr. Frost: It belongs to the lumber company.

Commissioner Harlan: What is the total mileage of the logging spurs that make junction with your railroad company?

Mr. Frost: I do not know just how many miles they have. This last six miles has just been completed, and they probably had 10 or 15 miles of other track prior to the purchase of that six miles of steel.

Commissioner Harlan: Who looks after the maintenance of that mileage?

Mr. Frost: The logging company.

Commissioner Harlan: Including the six miles that will ultimately be a part of your line?

Mr. Frost: The lumber company built that six miles and unless it is turned over to the railroad company the logging company will keep it up, under their contract with the lumber company.

5492 That might be changed.

Commissioner Harlan: Have you anything here indicating the cost of overhauling that locomotive?

Mr. Frost: No.

Commissioner Harlan: Do you know what it was?

Mr. Frost: Well, they overhauled one some time after we purchased the plant, and I say that was included in that large item, but I do not know and I could not say about that.

Commissioner Harlan: I note on another document that you have four stations listed, one called McClures, another Woden, another Dockville and another Oil City. Are they all on your line?

Mr. Frost: Yes, sir.

Commissioner Harlan: Which is the most distant station from Nacogdoches?

Mr. Frost: Oil City; that will be on the new extension.

Commissioner Harlan: So they are listed here in their order from Nacogdoches?

Mr. Frost: Yes, sir.

Commissioner Harlan: Tell us about McClures, what sort of town is that?

Mr. Frost: That is just a side track, flag station

5493 Commissioner Harlan: No post office and no settlement?

Mr. Frost: No, sir.

Commissioner Harlan: You indicate on this document that there is a J. J. Smith Lumber Company at McClures.

Mr. Frost: Well, the mill is there right near the siding that he hauls his lumber in.

Commissioner Harlan: Is that a hardwood mill?

Mr. Frost: Well, he cuts pine and hardwood, or did.

Commissioner Harlan: From your lands?

Mr. Frost: No, sir, not from our lands.

Commissioner Harlan: Do you haul anything for that company?

Mr. Frost: Well, if they have anything to haul we do, yes, sir.

Commissioner Harlan: Well, do they have anything to haul as far as you know?

Mr. Frost: Well, that list of lumber, 25 or 50 cars there, I presume came from those mills.

Commissioner Harlan: What about the town of Woden?
Mr. Frost: They have four or five stores there.
Commissioner Harlan: And Dockville.
Mr. Frost: That is a siding.
Commissioner Harlan: Is there a Nacogdoches Lumber
5494 Company?
Mr. Frost: Yes.
Commissioner Harlan: What relation has that to the Frost-Johnson Lumber Company?
Mr. Frost: We practically own it.
Commissioner Harlan: Is that the company that does the logging of your forests?
Mr. Frost: Yes, sir.
Commissioner Harlan: What about Oil City, how far is that from Nacogdoches?
Mr. Frost: I think that is about the 18th or 20th mile.
Commissioner Harlan: Then it must be on this new line?
Mr. Frost: I just stated it was on the new extension.
Commissioner Harlan: So your railroad has not reached that point?
Mr. Frost: No, sir, the main line has not.
Commissioner Harlan: How did these two carloads of oil reach your line if as you seem to think it came from Oil City?
Mr. Frost: I could not say that it came from Oil City; I do not know where they got that. That might have been for the company use; but I say I will have to file that information.
Commissioner Harlan: Is Dockville on the six miles, or on
5495 your own main line?
Mr. Frost: That is on the main line.
Commissioner Harlan: That is the terminus?
Mr. Frost: Yes.
Commissioner Harlan: On the next statement for the same fiscal year you have some figures at the top which I do not quite understand. One is total revenue from lumber. What is that amount?
Mr. Frost: $4,884.
Commissioner Harlan: What is the meaning of that figure?
Mr. Frost: That is the amount that was allowed for the lumber that we handled; the revenue from the lumber of the lumber company was $4,553 and the revenue that we derived from other shippers was $330.
Mr. Gaughan: Was that revenue from lumber from other shippers?
Mr. Frost: Lumber from other shippers.
Commissioner Harlan: What haul do you have on lumber?
Mr. Frost: We hauled that from those small mills out on the line probably 10 or 12 miles; but the lumber from the plant there at the mill is switched out and sent over to the Texas & New Orleans, and I do not suppose that we handled that a distance of over
5496 a quarter of a mile.
Commissioner Harlan: Well, do you place the cars on the interchange track?

Mr. Frost: Yes, sir, they set the empties on the interchange, and we pick them up and put them over to the loading track, and then they are switched out by our crew and they weigh them and set them back on the interchange track, the track that we have to deliver the loads on.

Commissioner Harlan: And what compensation do you receive for that service?

Mr. Frost: We get a division all the way from one to as high as four cents.

Commissioner Harlan: What is the highest division you have received?

Mr. Frost: Four cents.

Commissioner Harlan: You have several times referred to that as a switching movement. Do you so regard it?

Mr. Frost: Well, we figure that that covers the hauling of those logs from the forest to the mill, and then taking out the finished product and delivering it to the main line.

Commissioner Harlan: That is to say you haul the logs from the forest to the mill and that is a haul, and then when you take
5497 hold of the car that has the lumber in it, you regard that as a switching movement?

Mr. Frost: It is part of the service and covers the whole proposition.

Commissioner Harlan: It is part of the service, and you are paid for it, I understand that; but it is like an ordinary switching service, is it not?

Mr. Frost: Well, that part of it is; but I figure that the hauling from the forest to the mill and then the switching of the load out and hauling them over to the T. & N. O. is practically all the same, and is to be considered as one service.

Commissioner Harlan: For which you receive one compensation?

Mr. Frost: That is all.

Commissioner Harlan: What is the character of the rate which is applied to this haul on the logs by you?

Mr. Frost: Well, under this contract which was in effect when we bought that property, the lumber company pays so much a year rental for all that service, and it is not remunerative for the service that they get; that is, it is more of a nominal charge, probably $1,000 or $1,500 a year.

Commissioner Harlan: Don't you know what it is?

5498 Mr. Frost: I don't remember; that is in the contract. That contract I did not make. It was made and in effect when I bought the property.

Commissioner Harlan: Then you receive nothing directly from the lumber company, you do not haul its logs?

Mr. Frost: No, they operate that logging train under this contract, but the lumber company pays the railroad company a certain amount. I do not remember what that is.

Commissioner Harlan: Well, you regard it as a fair compensation for the privilege you have given them?

Mr. Frost: Well, taking into consideration the cost of the road, you could hardly count it a reasonable compensation.

Commissioner Harlan: Well, where they do all the work?

Mr. Frost: Well, we have to keep up the track. The railroad company keeps up the track.

Commissioner Harlan: So you actually have no haul of logs yourself?

Mr. Frost: The railroad company does not haul the logs.

Commissioner Harlan: Then why do you say that the division of one to four cents is for something more than the switching movement of the lumber to the interchange track.

Mr. Frost: Well, we have got a railroad there and we feel
5499 that we are entitled to something, a reasonable return on the investment.

Commissioner Harlan: But there is no actual railroad service performed by you?

Mr. Frost: Not on the logs, not hauling the logs except we furnish the track that they are hauled over.

Commissioner Harlan: I ask you again what is the character of the rate under which you get that division, is it a milling in transit rate?

Mr. Frost: Well now, I am not a rate man. I understand that the trunk lines figure that that is allowed on the proposition that the logs come from the forests, and they are milled, and then the lumber is hauled out by the railroad and delivered to the trunk line. I am not a rate man and I am not very familiar with it.

Commissioner Harlan: Is there anyone here that knows about the rates?

Mr. Frost: Well, the tariff would show.

Commissioner Harlan: You do not know?

Mr. Frost: I do not know.

Commissioner Harlan: Has your line since you acquired it, concurred in any new tariffs or published any new tariffs?

5500 Mr. Frost: That has been handled altogether by a man we have employed at Nacogdoches to handle that part of the business, and——

Commissioner Harlan: Well, do you know what the fact is, have you published or concurred in any new tariffs or are the tariffs which were in effect when your predecessor had control of the road, still in effect?

M. Frost: It is just like it was when we took it over. We have run the business right along as it had been, so far as I know, and if there were any tariffs to be filed from time to time, this man is there to look after it, and I presume he does; that is his only business, to look after the freight and the traffic handled by the railroad, and he does not work for the lumber company and is not on the payrolls, and does not devote any of his time to the lumber company business. All of his time is consumed by the railroad.

Commissioner Harlan: Coming back for a moment to this list you lease to the lumber company the right to run its trains over your track to the mill, and you get from $1,000 to $1,500 a year from the lumber company. You are not quite sure what the amount is.

Mr. Frost: I do not know, that is a guess; I do not know
5501 what it is. It is in the contract which was made prior to our purchase of the company.

Commissioner Harlan: Well, it is within those limits?

Mr. Frost: I do not know what the amount is.

Commissioner Harlan: You said a little while ago that you did not think the amount was reasonable.

Mr. Frost: No, I do not think it is enough to show any earning on the property for the reason we have not made any money. That is one reason, I figure, why it is not remunerative.

Commissioner Harlan: Do you think you have the right to rent your track and your facilities to a shipper for less than it is reasonably worth?

Mr. Frost: You see, that is something I had no control over. That contract was made there by the other people and I did not have anything to do with it.

Commissioner Harlan: But if the same interests own the railroad company that own the lumber company, you can annul that contract, can you not?

Mr. Frost: We can.

Commissioner Harlan: Then I put the question, is it a right use of its property for a railroad company to rent the property
5502 out for less than it is reasonably worth?

Mr. Frost: Well, that depends on what they expect to get.

Commissioner Harlan: Well, for what they do get. You know what they do get, and you know what the rent is, or about what it is, and you said it was not reasonable, and now I ask you, is it a proper use by a railroad company of its property to give to the larger shipper over its line the use of its facilities at less than those facilities are reasonably worth.

Mr. Frost: If they make a low rate on the logs in, and they control the tonnage and they get the revenue on the lumber out, I would say that that was all right.

Commissioner Harlan: You are satisfied with the arrangement?

Mr. Frost: Yes, sir, so long as we get the divisions on the lumber out we are satisfied.

Commissioner Harlan: That is to say, you give your facilities to a shipper for less than they are worth, because the railroad company gives you a division that covers satisfactorily that part of the value of your property?

Mr. Frost: Well, it is practically the same thing that the trunk lines put into effect when they make a rate on rough material to go
5503 to a factory to be milled, and where that same road gets the finished product out; that is the way I look at it. In other words, the trunk line will make you a very low rate on rough material if it goes to a point where they get the finished product out.

Commissioner Harlan: Well, the trunk line would not do that except under a published tariff that was available to all shippers.

Mr. Frost: We will be glad to file our contract with the Commission, and it has probably been filed. I do not know that the Hay-

wood people have ever filed that contract with the Interstate Commerce Commission, but we will file it.

Commissioner Harlan: Do you mean to say you will give anybody the right to run their trains over your line with a load of logs on a rental just as you do your own lumber company?

Mr. Frost: Well, if the conditions were exactly the same we might do that.

Commissioner Harlan: How is this rental paid, is it a gross sum per year or on the basis of train haul or car haul?

Mr. Frost: It is so much per year or so much per month; I do not think they have figured it out on a train mile basis at all. It is so much per month or per year.

5504 Commissioner Harlan: You have listed a lumber company at one of these points on your line at McClures, that is a station just outside of Nacogdoches. Assuming that it does really ship lumber it must also get some logs over your line?

Mr. Frost: No, they are hauled in there on wagons right close to the mill; it is a small mill, and they are hauled in with their own teams.

Commissioner Harlan: Do you haul logs for anyone over your line?

Mr. Frost: I do not know. We would.

Commissioner Harlan: There is no one there to haul logs to?

Mr. Frost: No, except those small mills, and they haul logs in there off of small tracts of timber.

Mr. Gaughan: There are a lot of ash logs carried, I believe.

Commissioner Harlan: I have here what purports to be a tariff issue under the authority of the Railroad Commission of Texas, called Supplement No. 2, to local freight tariff No. 500, governing movement of freight locally between points on the Nacogdoches & Southeastern, and it shows that effective November 1st, 1905,

5505 pine logs in train loads of ten or more cars, when transported 15 miles or less, between points, takes the rate of $2.00 a car. Is that tariff still in effect over your line?

Mr. Frost: I could not say.

Commissioner Harlan: You do not know what your rate schedules are?

Mr. Frost: No, sir, I do not.

Commissioner Harlan: And there is no one here that does?

Mr. Frost: Nobody here, no, sir.

Commissioner Harlan: Let that be marked.

(The paper so offered and identified, was received in evidence and thereupon marked Nacogdoches & Southeastern Exhibit No. 2, Witness Frost, received in evidence January 27, 1911, and is attached hereto.)

Commissioner Harlan: Here is Supplement No. 1 of the same freight tariff, which shows on the same date an effective rate of $5.00 a car applicable as follows: Merchandise in carloads when transported distances not exceeding 8 miles, between points, to meet wagon competition. Is that tariff in effect over your rails?

Mr. Frost: I do not know; that is handled by the traffic man down there. It is authorized under the Commission's rule.
5506 I believe.

Mr. Walter: What was the number of the tariff?

Commissioner Harlan: Railroad Commission 2,353.

Mr. Frost: Is that authorized by the State Commission?

Commissioner Harlan: Yes. Let it be marked.

(The paper so offered and identified, was received in evidence and thereupon marked Nacogdoches & Southeastern Exhibit No. 3, Witness Frost, received in evidence January 27, 1911, and is attached hereto.)

Commissioner Harlan: What is your relation to this railroad?

Mr. Frost: I am president.

Commissioner Harlan: Are you familiar with its books to some extent?

Mr. Frost: I get a statement from them at the end of the month, but I do not go into those details.

Commissioner Harlan: You have given a statement here of your miscellaneous revenue and your merchandise shipments. I would like to ask you whether that tariff of $5.00 a car is applied on these merchandise shipments in and out.

Mr. Frost: I could not say about that. I do not know just how that is handled. It is handled by the traffic man there at
5507 Mansfield.

Commissioner Harlan: I have Supplement No. 3 to the same local freight tariff issued under the authority of the State Commission, effective September 1st, 1906, showing a rate of $12.00 a car on pine ties in carloads for distances of 12 miles or less between points on your line. You do not know whether that is in effect now?

Mr. Frost: It might or might not be.

Commissioner Harlan: Or whether it has been applied to these tie movements shown on your exhibit?

Mr. Frost: If it has never been cancelled, I presume that is the rate applied.

Commissioner Harlan: Let that be marked.

(The paper so offered and identified, was received in evidence and thereupon marked Nacogdoches & Southeastern Exhibit No. 4, Witness Frost, received in evidence January 27, 1911, and is attached hereto.)

Commissioner Harlan: Do you know whether the through lumber rate was applied on those pine ties shipped by other interests?

Mr. Frost: No, sir.

Commissioner Harlan: There is no one here that knows about these matters?

5508 Mr. Frost: No, sir. They have either been handled on that tariff or on some supplement, though.

Commissioner Harlan: Well, if you as President of the road have not had occasion to talk with your freight traffic manager about new rates, I suppose it is fair to assume that these rates are still in effect, is it not?

Mr. Frost: Unless they have been cancelled by authority of the State Commission they are in effect.

Commissioner Harlan: And you have not heard of any change of rates?

Mr. Frost: No, sir, and he would not violate those rules; that is, I have every reason to believe he would not.

Mr. Cowan: I suggest the annual reports to the Texas Commission would be able to show all the cancellations.

Mr. Frost: He files a report with the Texas Commission.

Commissioner Harlan: Have you filed this contract or agreement with the Texas Commission?

Mr. Frost: I do not know whether that was filed or not.

Commissioner Harlan: I find on one of these documents a statement to the effect that 93.2 per cent of your total lumber revenue is from your lumber company.

Mr. Frost: That is just lumber tonnage.

5509 Commissioner Harlan: And that the percentage of lumber tonnage to the total tonnage is 87.93 per cent.

Mr. Frost: I think that is right.

Commissioner Harlan: That percentage might be substantially increased, that is the percentage of tonnage in which your allied interests are interested would be materially increased if it should appear that some of this merchandise, oil and coal and hay and live stock and other things, were moved for the allied interests.

Mr. Frost: Those figures of percentage there apply to lumber only. I have the percentage of all the freight.

Commissioner Harlan: Judge Cowan, have you any questions you wish to ask?

Mr. Cowan: Yes. Mr. Frost, what service does the railroad company in this case perform with respect to the logs, any?

Mr. Frost: They furnish the track and keep it up. They do not operate the train.

Mr. Cowan: And the service in regard to the lumber you have described as being a movement by the railroad.

Mr. Frost: Yes.

Mr. Cowan: And that is the only service the railroad company performs so far as operation is concerned?

5510 Mr. Frost: So far as operation is concerned it is.

Mr. Cowan: What is the use of the railroad company owning a track that it does not use? Why not just let the mill company own it and lease it to the logging company?

Mr. Frost: They own the track and get the tonnage, and it also furnishes a market for the timber in the territory it reaches.

Mr. Cowan: That would be the case also if the lumber company owned the track.

Mr. Frost: If the lumber company owned the track, it might.

Mr. Cowan: Did the lumber company at any time own the track?

Mr. Frost: I do not know.

Mr. Cowan: I mean the railroad track. How much timber land or timber have you in that vicinity?

Mr. Frost: Something like about 40,000 acres, I think, between 36,000 and 40,000 now.

Mr. Cowan: Uncut?

Mr. Frost: Some of that has been cut.

Mr. Cowan: How many years do you figure the operation will last at the present rate of cutting?

Mr. Frost: Well, that depends.

5511 Mr. Cowan: I say at the present rate of cutting.

Mr. Frost: It depends on how much more timber we can buy in that territory.

Mr. Cowan: I mean, supposing you bought no more, how long would it last?

Mr. Frost: You want to know how much timber our company owns in that county, is that it?

Mr. Cowan: As a general proposition.

Mr. Frost: We bought from the Haywood Lumber Company practically 270,000,000 feet.

Mr. Cowan: About how many years will that cutting last probably?

Mr. Frost: Well, we cut about 100,000 feet a day, it is a two band mill.

Mr. Cowan: I thought you might state about how many years it would last?

Mr. Frost: Well, I would say 10 years, maybe 12.

Mr. Cowan: Are there mills in that part of the country operating their own logging operations?

Mr. Frost: Other mills?

Mr. Cowan: Other mills by railroad?

Mr. Frost: Yes, sir, one.

5512 Mr. Cowan: And are there other such mills that do not get divisions, that is to say, the railroads they own do not get divisions?

Mr. Frost: There are two small mills on our line, the Angelina County Lumber Company at Keltys own quite a lot of timber mixed in with our holdings.

Mr. Cowan: Do they get divisions of the rates?

Mr. Frost: The Angelina County Lumber Company?

Mr. Cowan: You have testified that they do.

Mr. Frost: The railroad company might.

Mr. Walter: The Angelina & Neches River.

Mr. Frost: I do not know whether they do or not.

Mr. Cowan: These men on your line, of course, do not get any divisions.

Mr. Frost: No.

Mr. Cowan: You haul their lumber and do get a division out of that.

Mr. Frost: Yes, sir. We perform the service and get the same division there that we do on the other lumber.

Mr. Cowan: Well, is the Angelina County Lumber Company's tonnage one that is in prospect, that you expect to get, or not.

5513 Mr. Frost: Well, I do not like to answer that question.

Mr. Cowan: I am not trying to find out the business proposition, but I mean will your railroad tap their timber so that probably you will handle it.

Mr. Frost: Their timber, a great deal of it, is mixed in with our holdings, it is tributary of course, to our line. We might cut some of it and we might not.

Mr. Cowan: If they operate their mill with a railroad to handle their timber, they have got to be at the expense of hauling it by rail to their mill, of course.

Mr. Frost: Yes, sir.

Mr. Cowan: Or do the other thing, pay you.

Mr. Frost: We could not haul it for them. We have no track to their mill. Their mill is 25 miles away.

Mr. Cowan: Can a saw mill be operated successfully in that part of the country for an extensive operation except by the use of a railroad in that way?

Mr. Frost: You cannot operate any large saw mill without a large investment in railroad facilities.

Mr. Cowan: When you contemplated these various investments, this one as well as others you made, did you not regard the entire plant necessary for the operation as practically a single in-
5514 vestment of capital?

Mr. Frost: We took all the property into consideration and of course we could not have bought the railroad without the mill, or the mill without the railroad. I do not suppose the Haywood people would have sold it in that way. They made a price on the entire property, including the stock of the Nacogdoches & Southeastern. That is the way we closed the deal, on that basis.

Mr. Cowan: The necessity of hauling the logs to the mill by rail is exactly as important as making them up from the pond to the saw carrier, is it not?

Mr. Frost: No, a fellow that has a railroad and operates it has a great deal more expense than the small operators with the mill out in the timber.

Mr. Cowan: Well, you did not understand my question. The necessity of the movement of the logs by rail from the woods to the mill is exactly as important as the movement from the pond to the saw mill.

Mr. Frost: You have got to haul them on a railroad. It is impracticable to haul them any other way.

Commissioner Harlan: To go back to a question Judge Cowan touched upon, some of the Texas mills as he stated, do not
5515 receive allowances, and apparently there was one he had in mind near your mill, is not that so? Now in negotiating for the purchase of such a mill property and a railroad attached to it, and the forest attached to it, would you not take into consideration whether allowances were paid or not by the regular lines to the rail line that is owned by the mill?

Mr. Frost: That would probably be taken into consideration; a great many things are to be taken into consideration in purchasing the timber.

Commissioner Harlan: That is one of them, is it not?

Mr. Frost: It might enter into it.

Commissioner Harlan: In the purchase of these properties you

say it might enter into it. Did it not enter into it in your mind when you purchased this Haywood property?

Mr. Frost: We certainly figured that we got some value there in the railroad.

Commissioner Harlan: And some value in the divisions accorded to the railroad by the regular lines?

Mr. Frost: Yes, sir.

Commissioner Harlan: And that was a substantial element?

Mr. Frost: That was one of the considerations.

5516 Commissioner Harlan: So that you could afford to give more for such property, allowances being received, than you could if for a similar property that got no allowance.

Mr. Frost: Well, this timber when we bought that plant was 15 miles to the edge——

Commissioner Harlan: Just answer the question. That surely is true, is it not, that you could afford, two properties being substantially similar, to give more for the property where the railroad got an allowance than property where the tap line did not get any allowance.

Mr. Frost: Well, we had to take the railroad, and of course——

Commissioner Harlan: I am not talking now, Mr. Frost, about any given case or particularly this case; I am putting to you simply the hypothetical question.

Mr. Frost: Well, I would like to answer that in my own way.

Commissioner Harlan: Very well, go ahead.

Mr. Frost: As I said, we had to buy the railroad in order to get the other property, but I think that we would have preferred to have bought the timber and the plant and let somebody else own the railroad under the same conditions, because as the statement

5517 shows, we have not made anything on that part of the investment.

Commissioner Harlan: Do you mean to say you would buy a mill and a large acreage of timber land that had no railroad, or buy it with the expectation of lumbering it without yourselves building a railroad on it?

Mr. Frost: I know of a plant that was bought and the logs hauled over another man's railroad. The railroad was sold and the timber was out 30 or 40 miles possibly, from that mill, and the original builders sold that railroad to the trunk line and hauled the logs over it.

Commissioner Harlan: Would you not give less for the timber of a man who has to have his logs hauled over a railroad belonging to someone else than you would for the timber of a man who has a railroad of his own and divisions on that railroad.

Mr. Frost: That is a hard question to answer unless you know the conditions or the block of timber. The same conditions might not exist at both propositions.

Commissioner Harlan: Well, in this particular purchase did you give less for the Haywood property because it had a railroad attached to it with divisions than you would have given for it if it had

5518 no railroad attached to it and no divisions?

Mr. Frost: Did we give less——

Commissioner Harlan: Is the property worth more—well, I will not pursue that line of inquiry. It is a proposition which any one should consider perhaps. You say you are making up a connection with the Houston, East & West Texas at Nacogdoches.

Mr. Frost: That track is built within 200 or 300 feet of the Houston, East & West Texas track downtown, but the connection has not been made.

Commissioner Harlan: When was it built?

Mr. Frost: I do not know, it was built when we bought it.

Commissioner Harlan: You found it there in that condition?

Mr. Frost: It was there when we bought the property. We have not added anything to it. We have had it up with the Houston, East & West Texas people and have figured on making the connection, but we have not so far. We have not added anything to it.

Commissioner Harlan: Have you arrived at any agreement with them?

Mr. Frost: Not yet.

Commissioner Harlan: The basis of the connection is
5519 what, what is the difficulty?

Mr. Frost: There is trouble in getting the track in to make the connection. We have not ground enough.

Commissioner Harlan: Physical difficulties?

Mr. Frost: Physical troubles.

Commissioner Harlan: Have you had any understanding with them with respect to divisions after the connections have been made, if they can be made?

Mr. Frost: No, sir.

Commissioner Harlan: You will not make the connection unless you can get divisions allowed?

Mr. Frost: Well, I do not know, we might make the connections. You see the Houston, East & West Texas is owned, as I understand it, by the same people as the T. & N. O. We might make a connection down there for convenience; it would save us a good deal of delay.

Commissioner Harlan: But it would not be convenient without divisions to ship much of your tonnage over that outlet, would it?

Mr. Frost: Well, if we had that connection we might get the divisions.

Mr. Cowan: Do you have to do with the matter of manag-
5520 ing the sales department of your company?

Mr. Frost: Well, Mr. Johnson looks more after the selling of our lumber. I have always been at the mill until a few years ago they let me move to town, and since that time we have had a sales office at Shreveport. We handle some of the lumber from that point, but Mr. Johnson handles the majority of it through the St. Louis office and the Chicago office.

Mr. Cowan: Taking your Texas mill, to what points mainly does your traffic go?

Mr. Frost: It goes all over the state.

Mr. Cowan: Do you also ship interstate?

Mr. Frost: Yes, sir.

Mr. Cowan: And to what points mainly.

Mr. Frost: Any point that we can get it. If we have the lumber and the order fits the stock it goes to the mill.

Mr. Cowan: I did not know, you might tell us where your market mostly is for the interstate traffic, from that mill.

Mr. Frost: It would naturally go into Oklahoma and Missouri and Kansas and Nebraska.

Mr. Cowan: What division do you get on the interstate movement to Oklahoma?

Mr. Frost: I don't know exactly what we get on the inter-
5521 state. The division sheet shows for itself. It runs all the way from one cent up to three cents, I think, on interstate business.

Mr. Cowan: What is your opinion as to whether or not the fact of being allowed a tap line division, take the Texas mill, which is an important one. Do you know that in Texas there are a number of mills that get tap line divisions, that is to say, the railroad they own gets tap line divisions, and there are a number of equally important mills which do not get tap line divisions, that is a fact, is it not?

Mr. Frost: I do not know. I know we get the divisions I have stated on this particualr plant, but there might be others that get the same thing or more. I am not very familiar with the other operator's business. I could not say positively.

Mr. Cowan: Well, I thought you knew that to be a fact. It has been shown in this record.

Mr. Frost: Well——

Mr. Cowan: I will assume that to be a fact. Assuming that is a fact and that these mills have to be operated as you state practically by railroads as a plant facility—you did not use that term but I did.

5522 Mr. Walter: That is an assumption too.

Mr. Cowan: Well, he testified to that, that you had to operate them with a railroad.

Commissioner Harlan: We will have to get this question started all over again.

Mr. Cowan: Assuming that half the mills in Texas operate their mills by a railroad somewhat similar to what you do, but do not get tap line divisions, and half the mills in Texas operate their logging operations without divisions, and half get divisions and half do not, what is your opinion as to whether those who get divisions have an advantage in the market and in the operation of their business as against those who do not get them.

Mr. Frost: Well, you take two propositions identically the same, the timber purchased under the same conditions and in similar territory, and if one man gets a division and the other man does not get a division, there might be some difference but if one man has a railroad and sets himself up as a common carrier and has to go to the expense of keeping that up and complying with the laws, that division does not go to the lumber company but to the railroad company.

Mr. Cowan: You are the president of both companies, I
5523 believe, in this case.

Mr. Frost: Yes, sir.

Mr. Cowan: And the ownership is the same. What difference does it make in the end when the dividends from both concerns go into the same pocket.

Mr. Frost: We never got any dividends.

Mr. Cowan: Neither from the saw mill nor the railroad?

Mr. Frost: Not yet.

Mr. Cowan: Then what difference does it make if the same pocket must furnish the money to pay the deficits?

Mr. Frost: They are separate corporations. The railroad company down there or the stock of that company belongs to the Frost-Johnson Lumber Company.

Mr. Cowan: I understand that, but I am asking you what difference it makes whether they are separate corporations or not if at last the money must go or come from the same individual pocket.

Mr. Frost: Well, we have a railroad down there, and we have to comply with the laws and we have to keep up the railroad and have to run that train whether it earns any money or not, and this division goes to that railroad. Now if we only had logging spurs,
5524 if the Frost-Johnson Lumber Company's mill was located out at Oil City where there are nothing but spurs running out, then those logging spurs would not be entitled to any division, but the railroad company would be entitled to a division. It is a different proposition.

Commissioner Harlan: Is it your theory that these railroads are all conducted at a loss or ordinarily are conducted at a loss?

Mr. Frost: Well, this one is so far.

Commissioner Harlan: You think you would be better off if it were not a common carrier?

Mr. Frost: Well, it might be different conditions in there.

Commissioner Harlan: Well, I am talking about the same conditions, about the conditions confronting you. If it is such a disadvantage to operate under the law as you use that phrase, why do you do it, why do you incorporate your roads.

Mr. Frost: If this railroad were not allowed a division that mill would never have been built at that point; it would have been built out in the woods.

Commissioner Harlan: So that that division does contribute to the operation of the mill and the location of the mill and everything else.

Mr. Frost: Well——

5525 Commissioner Harlan: Just as a plain practical matter is not that the way it works out.

Mr. Frost: Well, of course they are closely allied companies, and while they are separate corporations——

Commissioner Harlan: We understand that, but we are talking about the effect of the division. You have spoken of the burdens in complying with the law. Now I put the question to you, if those burdens run into items of expense, why do you do it, why do you become a common carrier?

Mr. Frost: We become a common carrier expecting to get some compensation for the money that we invest in the railroad——

Commissioner Harlan: Is not the compensation more than the disadvantages of complying with the law?

Mr. Frost: Well, they might not be, or they might. But we might be making a common carrier out of it to develop the territory out there, and thereby sell the railroad by the time we got through cutting the timber, whereas it would not develop the country if we did not make it a common carrier.

Mr. Walter: In that country through there, Mr. Frost, all along that line of railroad out to Dockville, can you state whether
5526 or not you operate trains as a railroad company independent of these logging trains?

Mr. Frost: Yes, sir.

Mr. Walter: Haul traffic for anybody that offers it?

Mr. Frost: Yes, sir.

Mr. Walter: And under equal conditions to everybody who offers the traffic?

Mr. Frost: Yes, sir.

Mr. Walter: I believe you stated in your statement some ash logs?

Mr. Frost: Yes, sir.

Mr. Walter: So you do haul other logs?

Mr. Frost: Yes, sir, according to that statement it shows the number of cars.

Mr. Walter: The railroad tariffs of your connection concurred in by you will show whether or not it is a milling in transit proposition?

Mr. Frost: Yes, sir.

Mr. Walter: You furnish the service of moving the empty cars to the mill and the lumber out, and furnish a railroad for the movement of the logs?

Mr. Frost: Yes, sir.

Mr. Walter: You operate the passenger train daily over
5527 the line?

Mr. Frost: Yes, sir.

Mr. Cowan: Is that a mixed train or real passenger train?

Mr. Frost: Mixed train.

Mr. Cowan: You used the term passenger train.

Mr. Walter: I will ask you whether any property, whether it be lands or timber holdings, is as valuable without railroad transportation as with it?

Mr. Frost: It is not.

Mr. Walter: I will ask you whether or not a railroad property in and of itself is as valuable or more valuable when it has amicable relations with its connecting line?

Mr. Frost: I would consider it was more valuable.

Mr. Walter: We will be glad to have Mr. Smith testify, who is the man at Nacogdoches who knows of his own knowledge the various operations of this railroad, if the Commission cares to have him come, if you want to conduct a further examination.

Commissioner Harlan: You mean about rates?

Mr. Walter: Rates and ownership of this traffic, and the manner in which it is operated.

Commissioner Harlan: As I understand, you will make
5528 him available to the Commission if it desires further information?

Mr. Walter: Yes, if you will let us know in advance we can have him.

Commissioner Harlan: I just want to put another question to Mr. Frost: I do not want any misapprehension of some of the statements he has made to rest in my mind or on the record. Now Mr. Frost, I would like to ask again whether you meant to be understood as saying that as between a tap line that gets no allowances and a tap line that does, the advantage or disadvantage is with one or the other, and if so, with which?

Mr. Frost: Well, two tap lines, where the conditions are the same, and one gets a division and the other one does not, the one that does not would naturally be at some disadvantage; but that is not a parallel case as I understand it, with where the railroad gets the division.

Commissioner Harlan: You went on further to state that the disadvantage or the burdens of being a common carrier were such as to overcome or substantially overcome the advantage that such a line gets in its divisions.

Mr. Frost: Not altogether. I did not mean to say that the mere fact——

Commissioner Harlan: Is it not very far from overcoming
5529 the advantages of divisions?

Mr. Frost: That is one of the disadvantages, is the way I meant to put it, that they have laws to comply with and there is a certain liability there or risk that they have got to run as a railroad corporation that they might not have as just a logging road.

Commissioner Harlan: I think perhaps as it rests in the record by your previous statement, it gives an impression that you did not intend. I understood you to mean that the disadvantage of being a common carrier was so burdensome as practically to give such a line no advantages with a division over a line operating under like conditions without a division. Now you do not mean to say that at all, do you?

Mr. Frost: No, what I meant to say was, if there are two tap lines and one of these tap lines did not get a division and the other tap line did, there would be some disadvantage. But if it is a railroad, why that is a different proposition.

Commissioner Harlan: I know it is a different proposition, but——

Mr. Frost: We have the railroad there, and in addition to that we have the spur track down in the woods to haul the timber,
5530 and this division goes to the incorporated railroad which performs the service of a common carrier.

Commissioner Harlan: Mr. Scott this morning gave us the figures of one of your lines where the total revenues from divisions approximated $78,000 and the total expenses including the depreciation and all, approximated $98,000, showing a deficit of $20,000, and that was an incorporated line that did some business for others. Now assume another line operated under precisely the same con-

ditions that was not incorporated, it would have $98,000 of expense without any revenue, would it not?

Mr. Frost: Well, they would not have all the service to perform that the road performs that does operate as a common carrier.

Commissioner Harlan: Just answer this question first and we will get to the other. It would have the operating expense without any revenue?

Mr. Frost: If they operated as many trains as the incorporated road, they would, but they do not have to operate those trains.

Commissioner Harlan: No, they do not have to operate those trains. Now do you mean to have it appear in the record that
5531 in that case you operated enough trains and did enough outside business to absorb the benefit of $78,000 in allowances or to anywhere approximate the absorption of that amount of money?

Mr. Frost: I do not know whether I understand your question or not.

Commissioner Harlan: Well, judging from replies that you have heretofore made, you apparently wish to be understood as saying that the railroad that Mr. Scott had in mind this morning when he gave those figures, was at such a disadvantage because it had to take this outside traffic as a common carrier, that it got no proximate benefit from its revenues over another line operated in substantially the same conditions that was not a common carrier and got no revenues at all.

Mr. Frost: Well, I said that was one of the extra expenses that the incorporated road had to go to; just what proportion that is I could not say about that.

Commissioner Harlan: Well, it is a very small proportion, is it not, just as a practical business man, is it not a very small proportion?

Mr. Frost: Well, in some instances it is, and in others it might be very much greater.

5532 Commissioner Harlan: Can you imagine then why nearly all these roads have been incorporated if everyone is of your point of view, and——

Mr. Frost: Well, they have been incorporated to legalize this division, where they expected to operate it as a common carrier.

Commissioner Harlan: In other words, the division is something worth going after, is it not, notwithstanding the attendant obligations of being a common carrier?

Mr. Frost: Well, yes, of course.

Commissioner Harlan: Very well, that is all.

Mr. Walter: Let me ask this question, Mr. Frost. Reference was made to the Angelina Lumber Company. As a matter of fact the Angelina & Neches River Road has appeared here and it shows here there are divisions, so there can be no misunderstanding. Take the case of your line where you have invested in a railroad and lumber company, suppose the Santa Fe, for example, sees fit to loan to a competitor of your lumber company $3,000,000, we will say at four

per cent interest, and carries that fellow; I will ask you whether that more than compensates the advantage you get from any divisions?

Mr. Frost: It does.

5533 Mr. Cowan: What does that have to do with the matter of operating the logging roads? You say it more than compensates the other. What has it got to do with it.

Mr. Frost: Well if a man borrows money at four per cent, $3,000,000 at four per cent, he pays $120,000 a year interest.

Mr. Cowan: But what has that got to do with the operation of the railroad, to get logs to the mill?

Mr. Frost: The average lumber man pays six per cent or about that, or $180,000, therefore the fellow that borrows the four per cent money has got $60,000 saved in interest right to start with. Now on a proposition amounting to $3,000,000, I would say that he would manufacture 25,000,000 or 30,000,000 feet a year and he saves in the interest item alone $60,000 a year or about seven or eight cents per 100 pounds, or which would be about the same thing——

Mr. Cowan: Will you kindly answer my question. I do not ask anything about that. I asked you if that has anything to do with the matter of logging the mill by a railroad, the fact of lending him money——

Mr. Garwood: The fact or the ultimate effect of the testimony is a matter to be argued later.

Mr. Cowan: It has been referred to several times during 5534 the case, and I want to ask another question about it.

Commissioner Harlan: Just in that connection is it not true that three of the roads in which your company is interested have loaned their rails without charge to the lumber company in one case, I think the item on the account as exhibited by Mr. Scott, showed $123,000 invested in that form by the railroad company and loaned to the lumber company without charge.

Mr. Frost: Well, that was probably the Louisiana & Pine Bluff.

Commissioner Harlan: It was the Louisiana & Pine Bluff. That is equivalent to a loan of money without interest, is it not?

Mr. Frost: Well, there are other things which come into consideration.

Mr. Walter: In that case the logging company pays for keeping up the equipment which ran over the railroad and which was used by the railroad.

Commissioner Harlan: They did not pay any rental for the equipment.

Mr. Walter: No, but they maintained that and the railway equipment and——

5535 Mr. Coleman: The testimony was that the railway company owned the steel rail and allowed depreciation of them and built the spurs and did everything for the lumber company.

Mr. Walter: Oh, no.

Mr. Coleman: I beg pardon, that was the testimony.

Commissioner Harlan: It will stand on the record.

Mr. Cowan: The Lutcher-Moore Lumber Company I will assume, have got plenty of money and do not have to borrow any——

Mr. Frost: Well, they are very fortunate then.

Mr. Cowan: But you do have to borrow money—I don't know whether you do, but assume that you do——

Mr. Frost: Yes, sir, you are right.

Mr. Cowan: Do you think a division of the freight rates so as to equalize the advantages and disadvantages of capital you have invested and the rate of interest you have to pay—do you think that is what it is?

Mr. Frost: I do not see much difference in loaning money——

Mr. Cowan: Just answer the question. Do you think that or not?

Mr. Frost: Well, you will have to state it over.

Commissioner Harlan: Well, Judge Cowan, don't you think you can argue those points later.

5536 Mr. Cowan: Well, just one other question that I think is important. That last one was not, as it is a matter of argument. You operate as a common carrier with this road we have just been speaking about in Texas, by running one train a day each way?

Mr. Frost: Yes, sir.

Mr. Cowan: I want to know if you on that train handle this outside traffic that your report shows you get your revenue on?

Mr. Frost: I presume it is handled on the same train. It is a mixed train; we carry both freight and passengers.

Mr. Cowan: Can you state whether or not the amount of outside traffic you handle on that train produces a profit over and above the cost of operation of that train?

Mr. Frost: No, I have not those figures.

Mr. Cowan: Well, do you know whether it does or not?

Mr. Frost: I do not know; it has not been separated in our accounts.

Mr. Cowan: That is the only train operation your railroad has of its own?

Mr. Frost: Yes, sir, that is all we need.

Mr. Cowan: Outside of handling the lumber from the mill
5537 to the switch connection——

Mr. Frost: That train handles the lumber.

Mr. Cowan: It does that too?

Mr. Frost: Yes.

Mr. Cowan: If you did not have that traffic, and therefore did not have to run that train, would your railroad operations be more profitable than they are now?

Mr. Frost: If we did not have to run the train?

Mr. Cowan: Yes.

Mr. Frost: If we did not run the train we would not have any railroad.

Mr. Cowan: Then you might have a railroad and operate your other business over it without running a train?

Mr. Frost: It would not be a common carrier.

Mr. Cowan: Suppose it was not, suppose you did not have that train and did not have that traffic, would there be a saving in your operations by that fact?

Mr. Frost: I do not know whether I understand what you want. I do not understand your question.

Mr. Cowan: I want to know whether that train is a profitable proposition?

Mr. Frost: The operation of it?

5538 Mr. Cowan: The operation of that train, assuming you do have the railroad and have to have it for the lumber business, whether it is profitable to operate the train?

Mr. Frost: The statement ought to show for itself.

Commissioner Harlan: Well, do you know, Mr. Frost? If you do not, say so.

Mr. Frost: According to the statement, we have not earned any money on the proposition so far.

Commissioner Harlan: You refer to the whole account. Judge Cowan was referring to the operation of one train.

Mr. Frost: Well, I do not know.

Mr. Cowan: Then if your lumber business was not there, if that train does not produce a profit and your lumber business was not there, you could not operate the railroad at all, is not that true?

Mr. Frost: We could not operate any railroad profitably unless we had the tonnage.

Mr. Cowan: So the prime purpose therefore of the railroad is for the lumber business, because there is no profit out of the other.

Mr. Frost: Well, it is there——

Mr. Walter: He said he did not know.

5539 Mr. Cowan: I thought that might cause him to find out about it.

Mr. Frost: We have to operate it.

Mr. Coleman: That one cent division is on local Texas business, is it not?

Mr. Frost: I do not know: that might be on interstate or some points in Texas.

Mr. Coleman: Now in answer to question by Mr. Commissioner Harlan, you stated that you would have preferred to have bought that timber without the railroad.

Mr. Frost: I said I did not know, it might have suited us just as well to have bought the timber without the railroad and let them keep the railroad, but I did not suppose we could make that deal.

Mr. Coleman: Take this very case, you know the timber and know the railroad: would you have bought the timber without the railroad.

Mr. Frost: If we could at the right price we would.

Mr. Coleman: You stated however that a railroad was practically indispensable to the operation of a saw mill with a large output.

Mr. Frost: You have got to have a railroad to haul the logs.

5440 Mr. Coleman: Now did you not state that?

Mr. Frost: What is that?

Mr. Coleman: You stated that a railroad was practically indispensable to the operation of a saw mill of any magnitude.

Mr. Frost: I said you had to have a railroad to get the logs in to any large mill.

Mr. Coleman: That is only another way of saying it. In view of

those answers, do you still say you would have purchased the lumber tract without the Nacogdoches & Southeastern Railroad, if one is indispensable to the other?

Mr. Frost: You misconstrue my meaning. You have to have railroad tracks to haul the timber over. I said it was not practicable to haul it with teams, therefore you had to have a railroad to haul the logs to the mill.

Mr. Coleman: In view of that fact, would you have bought the timber without the Nacogdoches Railroad in there?

Mr. Frost: If we could have made satisfactory rates with them we might.

Mr. Coleman: It would depend on what amount of divisions you could receive?

Mr. Frost: We would not have accepted any divisions if we had not bought the railroad.

5541 Mr. Coleman: One more question. You were here Monday or Tuesday when Mr. Carlisle of the Beaumont & Great Northern, testified?

Mr. Frost: I was here part of the time when he was on the stand.

Mr. Coleman: You heard him say they sold a mill and railroad for four million and some hundred thousand dollars, and you heard him also say that he then as a private investment purchased back the railroad for five hundred and some thousand dollars.

Mr. Frost: I do not remember the exact figures.

Mr. Coleman: Well, he purchased the railroad back, and would have nothing to do with the lumber company. Is there a great difference of opinion between you and Mr. Carlisle on that general subject?

Mr. Frost: I don't understand what you are getting at.

Commissioner Harlan: Well, that can be argued later.

Mr. Coleman: All right, that is all.

Mr. Garwood: I have some figures here from the T. & N. O. which indicate that for the year ending June 30th, 1910, the Nacogdoches & Southeastern received divisions on interstate lumber of only

5542 $454.74. Was there any special condition that obtained up there during that year?

Mr. Frost: That ended the current month of 1910?

Mr. Garwood: June 30th, 1910.

Mr. Frost: The Haywood Lumber Company plant burned in the latter part of 1909, and they did not ship very much lumber.

Mr. Garwood: For the same year the figures indicate they received divisions on intrastate lumber of $2,418.64. For the year ending June 30th, 1909, the divisions on interstate stuff amounted, as my figures would indicate, to $2,946.09 and on intrastate stuff $2,060.49. Have you got figures in your possession that would indicate the——

Mr. Frost: No, sir, that was before we bought the plant, but one reason of the light shipments for the year ending June 30th, 1910, was on account of their mill burning.

Mr. Garwood: For the year ending June 30th, 1908, the intrastate divisions appeared to have amounted to $2,271.23 and the interstate divisions $2,413.59. If you have not those figures so that I

may verify their correctness, I will ask you to have your Mr. Smith verify those.

Mr. Frost: Yes, sir.

Mr. Garwood: You also connect with the Houston, East & West Texas at that point?

5543 Commissioner Harlan: He said not.

Mr. Garwood: Well, not direct physical connection; I think probably you reach the Houston, East & West Texas over the tracks of the T. & N. O. now, do you not?

Mr. Frost: Yes, sir.

Mr. Garwood: You are thinking of making the connection?

Mr. Frost: We have had that matter up.

Mr. Garwood: I think that they cross each other at Nacogdoches near the plant. I find that I have not the divisions actually paid by the Houston, East & West Texas if any, to that road. I will ask you to get those. The Railroad Commission map indicates that beyond the terminus of your road, there are a number of small communities, that is they are named on the map. I will ask you to state whether or not that country down towards the Attoic and in that direction is agricultural in its nature and susceptible of agricultural development?

Mr. Frost: Yes, sir.

Mr. Garwood: Is it fairly well settled for that country?

Mr. Frost: Yes, sir, there are a good many farmers in there.

Mr. Garwood: How far is it from the terminus of your line

5544 to the Santa Fe in East Texas?

Mr. Frost: I understand it is about 15 or 16 miles from the end of this new extension we have built.

Mr. Garwood: The Santa Fe is the only trunk line between the end of your line and the Sabine River?

Mr. Frost: Yes, sir.

Commissioner Harlan: The Washington & Choctaw and the Natchez, Ball & Shreveport cases will be called in the adjoining room presently. Those interested in either of those cases will kindly report in that room before Examiner Burchmore.

Mr. Garwood: The Gulf, Colorado & Santa Fe is the only trunk line in East Texas between the terminus of your line and the Sabine River, is it not?

Mr. Frost: Yes, sir, that is the only line.

Mr. Garwood: It runs practically parallel with the Sabine River?

Mr. Frost: Yes, sir.

Mr. Garwood: About what distance from the Sabine River?

Mr. Frost: Well, from 20 to 30 miles.

Mr. Garwood: There is no other trunk — between the Santa Fe and the Sabine River, is there?

5545 Mr. Frost: Nothing north of the town of Newtown, the Orange & Northwestern, I understand, have extended up to the town of Newtown. From there north the Santa Fe is the only track through Sabine or Shelby Counties.

Commissioner Harlan: You own timber lands down there?

Mr. Frost: No, sir—at what point?

Commissioner Harlan: Down in this country by the Sabine River?

Mr. Frost: No. We own——

Mr. Garwood: That is on the east side of the Sabine River, and we are now asking about the west side. So there are no trunk line facilities for the lumber in that country other than the Santa Fe Line?

Mr. Frost: No other trunk line.

Mr. Garwood: The Santa Fe, in that portion of the state, is composed of the Gulf, Beaumont & Kansas City, the Beaumont & Great Northern, purchased, I believe, from Mr. Kirby, and the Texas & Gulf, and that makes up the line with such new line as they have recently constructed, to Longview?

Mr. Frost: Yes, sir.

Mr. Garwood: Do you know of a large body of land along——

Commissioner Harlan: Mr. Garwood, is this pertinent to
5546 this particular case?

Mr. Garwood: Well, it is pertinent to the general situation, as I think your Honor will see. This witness knew of it personally, and I have got to leave in a minute to the next room.

Commissioner Harlan: Then if you will state the facts as you understand them.

Mr. Garwood: I will ask this question and then I am through. Do you know of a large body of pine land lying in that country to the east and south of you called the Kountze lands?

Mr. Frost: Yes, sir, in a way.

Mr. Garwood: Have you a knowledge of the extent of that body of land?

Mr. Frost: I do not know the exact acreage. They were very large holders and a good deal of it is——

Mr. Garwood: Who holds the title to that land?

Mr. Frost: I understand the records show the name of Mr. Gallup.

Mr. Garwood: Do you know who he is?

Mr. Frost: I understand he is a representative of the Santa Fe Railroad.

5547 Mr. Garwood: Can you state in a general way the extent of that body of land?

Mr. Frost: I do not know the acreage, but——

Mr. Garwood: In a general way is it not over 80,000 acres? What is it?

A Voice: 180,000 acres.

Mr. Garwood: Then that may go in the record, 180,000 acres.

Mr. Walter: Your Mansfield Line is extending west from Mansfield, and south?

Mr. Frost: Yes, sir.

Mr. Walter: And this line towards the Sabine River?

Mr. Frost: Yes, sir.

Mr. Walter: And this line is extending towards the Sabine River in a northerly direction?

Mr. Frost: Southeast.

Mr. Walter: Yes. Yesterday your attention was called to your

testimony at New Orleans in reference to the tariff, as to whether it was a milling in transit on the Mansfield Railroad.

Mr. Frost: Yes, sir.

(Mr. Walter here read from Kansas City Southern tariff I. C. C. No. 1945, effective November 24th, 1908, Supplement No. 12, effective September 30th, 1908, that Supplement No. 11 to I. C. C. No. 1945 and from Supplement No. 28, to I. C. C. No. 1945, effective January 15th, 1911.)

5548

Commissioner Harlan: I will direct the stenographer to strike all that out. We do not want to encumber the record with tariffs. Counsel is at liberty to refer to them in his brief or argument.

Mr. Walter: I think it is pertinent and I must insist——

Commissioner Harlan: The ruling is they will go out. You are at liberty to refer to the tariffs.

Mr. Walter: But I want to state in connection with his testimony he stated he was not familiar with it, and these tariffs give the dates which have relation to the hearing.

Commissioner Harlan: I do not wish to be misunderstood. That is all available to counsel in the argument of the case, but the Commission does not desire the expense of incorporating all this matter in the record.

Mr. Walter: Well, a reference to the tariff is all I care for.

Mr. Coleman: That has nothing to do with the Mansfield Railway either.

5549

Mr. Cowan: Is it not a fact that the Cotton Belt Railroad is only 10 or 12 miles from your eastern terminus at Nacogdoches?

Mr. Frost: From the Nacogdoches & Southeastern?

Mr. Cowan: Yes.

Mr. Frost: It must be 25 miles down there. They are right at the southern end of the county. I do not know the distance.

Commissioner Harlan: Did you not state to Mr. Smythe in June, 1908, that the Frost-Johnson Lumber Company did own lands west of the Sabine River, or the Frost-Trigg Lumber Company?

Mr. Johnson: The Frost-Johnson Company owns about 4,400 acres, but not in the territory Mr. Garwood had reference to.

Commissioner Harlan: Is that all you own west of the Sabine River?

Mr. Frost: Well, they own 4,400 acres just across the river, from the end of the Mansfield Road on the Texas side of the river, in Shelby County. Then three or four of us own individually just a small amount just below there, but the land Mr. Garwood had reference to, as I understood, was in a different part of the territory. We own no timber cut in that territory at all.

5550

Commissioner Harlan: Has the Texas Commission valued your railroad property?

Mr. Frost: The Nacogdoches & Southeastern? I understand that that is the law, that they put a value upon it before they recognized it; that is their rule.

Commissioner Harlan: Do you know what the value was?

Mr. Frost: I presume that it is equal to the capital stock that they allow to be issued.

Commissioner Harlan: The valuation underlies the right to issue stock.

Mr. Frost: The amount of stock issued is figured on the valuation.

Mr. Cowan: I would like to have the Frost-Johnson Company state the extent of their entire holdings of timber in this pine forest, and the character of the Frost-Johnson timber holdings.

Commissioner Harlan: You mean everywhere?

Mr. Cowan: In this district where these particular railroads operate.

Commissioner Harlan: That has been stated. We will take up next the Bodcaw Valley Railway.

5551 *Bodcaw Valley Railway Company.*

E. A. FROST resumed the stand and testified as follows:

Commissioner Harlan: Where is the Bodcaw Valley Railway?

Mr. Frost: It is built from the town Alden Bridge, Louisiana, in an easterly direction.

Commissioner Harlan: And what is its length, about 24 miles?

Mr. Frost: It is about 24—we had 24 miles of track, but part of it has been taken up out at the end; I do not know just how much they have of their main line in the incorporated part.

Commissioner Harlan: You do not know the length of the main line?

Mr. Frost: No, sir; I have not those figures. That property we purchased about two or three years ago from the Whited & Wheless Company and we got the stock of the road in the deal.

Commissioner Harlan: You purchased their mill and timber also?

Mr. Frost: Their timber, and also the stock of this road.

5552 Commissioner Harlan: You did not give any specific amount for the railroad?

Mr. Frost: No.

Commissioner Harlan: Or the equipment?

Mr. Frost: No, sir. They had the road incorporated and——

Commissioner Harlan: Under the laws of Louisiana?

Mr. Frost: Under the laws of Louisiana, and were getting a small division, and we simply took the property over and those arrangements were in effect at the time we bought it, and they have continued just as they were when we bought it, for ten or twelve years, as I understand.

Commissioner Harlan: You took over the stock, and what did it amount to?

Mr. Frost: I do not know just how much stock was outstanding. They reported to the Commission.

Commissioner Harlan: Have they any bonded indebtedness?

Mr. Frost: No.

Commissioner Harlan: It is a narrow gauge line, is it not?

Mr. Frost: Yes, sir.

Commissioner Harlan: What is the amount of timber you took in that purchase?

Mr. Frost: I think about fifty or sixty million feet.

5553 Commissioner Harlan: How many acres?

Mr. Frost: That was on possibly ten or twelve thousand acres.

Commissioner Harlan: What equipment did you get?

Mr. Frost: We got the equipment that they had with the road, locomotives and cars.

Commissioner Harlan: How many cars have you now? Three locomotives; is that about right?

Mr. Frost: I think so; yes, sir.

Commissioner Harlan: You have no passenger car?

Mr. Frost: No.

Commissioner Harlan: And no freight cars?

Mr. Frost: No; we have a car that they used to carry the employees out or carry any one else out that might want to go.

Commissioner Harlan: Then you have fifty-six logging cars?

Mr. Frost: I do not know just how many they have.

Commissioner Harlan: You have logging cars, though?

Mr. Frost: Yes, sir.

Commissioner Harlan: Are there any logging roads connected with that line that are owned by the mill company?

Mr. Frost: They have spur tracks out into the woods belonging to the mill company.

5554 Commissioner Harlan: And do they operate them?

Mr. Frost: To haul logs over; yes, sir.

Commissioner Harlan: Have they trackage rights over your line?

Mr. Frost: The logging company has; yes, sir.

Commissioner Harlan: Do you operate your line for the company's logs?

Mr. Frost: No, the logging company operates the trains under contract.

Commissioner Harlan: And you lease the locomotives and cars to them?

Mr. Frost: Yes, sir.

Commissioner Harlan: What is the rental that they pay?

Mr. Frost: I am not familiar with that.

Commissioner Harlan: Do they pay any rental?

Mr. Frost: Well, I do not know. I have not handled that.

Commissioner Harlan: Is there anyone here that knows?

Mr. Frost: No, sir.

Commissioner Harlan: It is a fact, then, that the logging company or the lumber company operates the entire line up to the mill?

Mr. Frost: Yes, sir.

5555 Commissioner Harlan: You do not have any outside tonnage to speak of on that line, do you?

Mr. Frost: There is very little.

Commissioner Harlan: Approximately none; occasionally you have a car or two?

Mr. Frost: The report shows, and I understood that that report had been filed right along with the Commission from time to time.

Commissioner Harlan: Our reports seem to indicate that you have an occasional carload of ties to move for outsiders.

Mr. Frost: Well, that is probably true.

Commissioner Harlan: When you have such a car to move, it is moved by the logging company, is it not, attached to its regular logging train?

Mr. Frost: Yes, sir.

Commissioner Harlan: When there is such a movement for outside parties of ties, do you know where they go to?

Mr. Frost: No, sir; I am not familiar with that.

Commissioner Harlan: What rate is paid on such movements?

Mr. Frost: Well, I do not know.

Commissioner Harlan: Do you know whether you publish any rates in connection with other lines, or on your own line
5556 for such movements?

Mr. Frost: When we took it over, I found they had filed concurrences in connection with the Cotton Belt tariffs on lumber, and inasmuch as it had been running that way for so long, I supposed it was all right.

Commissioner Harlan: Is it not a fact that you have a $3.00 per car rate that is open to everybody for the movement of cars of lumber from points on your line up to the junction?

Mr. Frost: That may be. They may have a rate of $3.00; I do not know.

Commissioner Harlan: And when there are such movements, the trains are actually hauled by the logging company?

Mr. Frost: Well, if they are, the railroad company probably compensates the logging company for that service.

Commissioner Harlan: You do not know whether such shipments go forward on a through rate from points on your line?

Mr. Frost: I do not think they go through on the through rate.

Commissioner Harlan: No; it is really a switching rate and a switching movement from points on your line to the junction.

Mr. Frost: Yes.

5557 Commissioner Harlan: What is the name of the mill corporation?

Mr. Frost: It is one of the Frost-Johnson Lumber Company's mills.

Commissioner Harlan: What is the actual corporate name of the company; is it a separate company?

Mr. Frost: No, that is a Frost-Johnson Lumber Company plant.

Commissioner Harlan: Is there a logging company?

Mr. Frost: Yes, sir.

Commissioner Harlan: What is the name of that logging company?

Mr. Frost: The Smith Logging Company.

Commissioner Harlan: Owned by the Frost-Johnson Lumber Company?

Mr. Frost: No, it is owned by Smith.

Commissioner Harlan: And it does the logging operations for the Frost-Johnson Company?

Mr. Frost: Yes, sir.

Commissioner Harlan: Now, what compensation does the Bodcaw Valley Railroad Company get for its service?

Mr. Frost: They get about two cents per hundred pounds
5558 on the lumber.

Commissioner Harlan: It is from one to two and a half cents, is it not, according to destination?

Mr. Frost: According to the gateway it goes through.

Commissioner Harlan: And your lowest division is one cent and your highest, two and a half cents?

Mr. Frost: I think it is two and a half cents.

Commissioner Harlan: Do you get more than that?

Mr. Frost: They might get three cents to one or two points.

Commissioner Harlan: What are those points?

Mr. Frost: Probably through Cairo or Thebes they might get three cents, although I do not know just what that division is. I would say an average of one and three-quarters or two cents.

Commissioner Harlan: According to a division sheet I hold before me of the St. Louis Southwestern Railroad Company, your highest allowance on that line seems to be two and a half cents.

Mr. Frost: What is the date of that?

Commissioner Harlan: The effective date does not seem to be shown.

Mr. Frost: I think that is correct.

5559 Commissioner Harlan: If you will be kind enough to ascertain what the fact is, and let us know?

Mr. Frost: Yes, sir; I can find out at the Cotton Belt office.

Commissioner Harlan: In case you get higher than two and a half cents.

Mr. Frost: It is not higher than three cents, and I think two and a half cents is the maximum.

Commissioner Harlan: What service do you perform for that compensation?

Mr. Frost: Well, we own the track out to the woods. We have an investment, and it is practically a milling in transit proposition. The logs are hauled in and manufactured into lumber, and taken over to the Cotton Belt.

Commissioner Harlan: Do you, as a matter of fact, perform any service at all?

Mr. Frost: Nothing only hauling the logs in.

Commissioner Harlan: Well, I understood that was done by the lumber company.

Mr. Frost: The logs are hauled in by the logging company under our instructions and over our tracks. I do not remember—I think we have a contract with them covering that.

5560 Commissioner Harlan: We would like a copy of that contract.

Mr. Frost: Yes, sir.

Commissioner Harlan: And that contract calls for a rental to be paid by the logging company to the railroad company?

Mr. Frost: It seems just the way the whole proposition is handled.

Commissioner Harlan: But the Bodcaw Valley Railway Company itself does not haul any timber, manufactured lumber or logs?

Mr. Frost: Well, they might haul it through this company under this trackage arrangement.

Commissioner Harlan: Well, the point is simple enough. The mill is on the tracks of your connection, is it not?

Mr. Frost: Yes, sir.

Commissioner Harlan: And the manufactured lumber is hauled from the mill by the regular line, and the empty cars are set there?

Mr. Frost: They are set in by the Cotton Belt, and we load them on that track. That siding may belong to the railroad company, but our railroad company does not handle the cars out.

Com. Harlan: You mean they are loaded there by the lumber Company?

5561 Mr. Frost: Yes, sir.

Commissioner Harlan: And the Cotton Belt or your other connection sets the empty cars there and takes them out again?

Mr. Frost: The Cotton Belt performs the service.

Commissioner Harlan: And you receive from the Cotton Belt these allowances?

Mr. Frost: Of one to two and a half cents, yes, sir.

Commissioner Harlan: How are the settlements made?

Mr. Frost: We make up an abstract of shipment, and send that statement to their offices, and settlement is made and they either send us a voucher, or give us authority to draw for that amount.

Commissioner Harlan: Suppose you draw on them, what becomes of the funds?

Mr. Frost: If they have any funds on hand it is turned over to the Frost-Johnson Lumber Company and applied—they keep a separate set of accounts.

Commissioner Harlan: Suppose they send you a voucher; you simply endorse it over to the lumber company, do you not?

Mr. Frost: It is handled in the regular accounting way, just——

Commissioner Harlan: Well, is not that the fact, is not

5562 the voucher itself endorsed by the railroad company directly to the lumber company?

Mr. Frost: In some instances it is; yes, sir.

Commissioner Harlan: Is not that the usual course of the vouchers?

Mr. Frost: I expect it is; it is handled by our accounting department and I do not know just how they handle it.

Commissioner Harlan: Has the Bodcaw Valley Railroad ever paid any dividends?

Mr. Frost: I think so.

Commissioner Harlan: What was the last dividend paid?

Mr. Frost: I don't remember just how much it was. The statement we filed shows that last year.

Commissioner Harlan: It was a dividend of twenty per cent, was it not?

Mr. Frost: I believe that is correct.

Commissioner Harlan: What other dividends has it paid?

Mr. Frost: I don't remember.

Commissioner Harlan: Summing up your statement, it is about this, as I understand it: The Frost-Johnson Lumber Company owns the mill and the adjoining timber lands, and also owns this narrow gauge railroad company; the logging is done by the Smith
5563 Company, and that company has trackage rights over your railroad up to the mill, and it pays the railroad company a yearly rental or some form of compensation.

Mr. Frost: That is in the contract; yes, sir.

Commissioner Harlan: As is shown in the contract for such use of the track?

Mr. Frost: Yes.

Commissioner Harlan: After the logs have been milled, the loaded cars are hauled out by your connection and empty cars are also set in there for loading.

Mr. Frost: Yes, sir.

Commissioner Harlan: The Bodcaw Valley Railroad Company itself does not perform any haul or any other transportation service?

Mr. Frost: They do not haul the manufactured products; no, sir, but they——

Commissioner Harlan: And they do not haul the logs, except as——

Mr. Frost: Well, through the subsidiary company, the Smith Logging Company.

Commissioner Harlan: The logs are hauled under the terms of this contract?

5564 Mr. Frost: Yes, sir.

Commissioner Harlan: Who are the parties to that contract?

Mr. Frost: The Smith Logging Company and either the Whited & Wheless—I do not remember whether that contract was entered into before or after we purchased it. After we purchased it, the Frost-Johnson Lumber Company of course would make the contract with the Smith Logging Company for the logging. Then the contract with the railroad would be between the railroad company and the Smith Logging Company. I am not familiar with it. It has been some time ago.

Commissioner Harlan: Is it not a fact that the contract is only between the lumber company and the logging company, and it is a contract for hauling the logs?

Mr. Frost: Well, the lumber company has a contract with the Smith Logging Company——

Commissioner Harlan: Is not that their contract, to cut down the timber and make the logs and then haul the logs to the mill?

Mr. Frost: Yes, sir, there is a contract between those two companies to that effect.

Commissioner Harlan: And that contract purports to establish the basis of compensation paid by the lumber company to
5565 the logging company for that labor?

Mr. Frost: Yes, sir.

Commissioner Harlan: Now, what is the other contract?

Mr. Frost: I do not remember; I will have to look it up and file it.

Commissioner Harlan: Is there another contract?

Mr. Frost: I think so. If there is, I can get it as soon as I return.

Commissioner Harlan: We would like to have a copy.

Mr. Frost: Yes.

Commissioner Harlan: Then does it not result from your statements that every dollar of money received from your connections is applied to the cost of getting the logs to the mill, and that there is no transportation service other than that?

Mr. Frost: Well, we have the investment there, and we figured that that was justified on the milling in transit proposition.

Commissioner Harlan: Well, that is the fact, is it not?

Mr. Frost: Yes, sir.

Commissioner Harlan: And besides paying to some one the full cost of moving the logs to the mill, you were able to
5566 get twenty per cent dividend last year on the investment in the railroad company?

Mr. Frost: Well, whatever we got, of course, was applied and paid out as dividends from that road.

Commissioner Harlan: And that dividend accrued to the benefit of the Frost-Johnson Lumber Company?

Mr. Frost: Well, after they pay their debts, yes, sir; that is correct.

Commissioner Harlan: Well, this was net revenue declared in the shape of dividends and all that went to the Frost-Johnson Lumber Company, did it not?

Mr. Frost: It was paid over to them; yes, sir.

Commissioner Harlan: Have you any questions, Judge Cowan?

Mr. Cowan: Yes, on this and the other cases. This logging company operation, referring to this and the other cases also, involves the use of equipment owned in part by the railroad company and in part by the lumber company, taking this and the other cases?

Mr. Frost: You mean——

Mr. Cowan: The logging company uses locomotives belonging to the railroad company and logging cars belonging to whom?

Mr. Frost: In some instances in some of our plants the
5567 cars belong to the railroad and in others to the lumber company.

Commissioner Harlan: In this case they all belong to the railroad?

Mr. Frost: I think so.

Mr. Cowan: There must be an operating expense account of this logging company which would show the cost of the repairs of equip-

ment, unless the railroad company is responsible for all repairs to equipment.

Mr. Frost: There is a record to show the cost of keeping the cars up.

Mr. Cowan: Who pays that, the railroad company or the logging company in all these cases?

Mr. Frost: That is in the contract.

Mr. Cowan: I am not familiar with the contract. I have not read it.

Mr. Frost: I said I would file the contract.

Commissioner Harlan: Well, do you know the facts?

Mr. Frost: I do not know just how it is; no, sir.

Mr. Cowan: It would seem to me that in the operating expenses of the railroad company, we will not be able to know to what extent the expenses—what real expense should be
5568 borne by the logging company and therefore in the operation of the saw mill business, and to what extent operating expenses are operating expenses of the railroad company, unless we have the operating expense account of the logging company for the maintenance of equipment. That is about the only thing I can think of, is the maintenance of equipment, because the railroad company maintains the track of course and hence I want to request that you have filed in the case a statement of the operating expense account of the logging company, at least in so far as it pertains to the service which they perform. I do not suppose you have that here.

Mr. Frost: No.

Mr. Cowan: I will ask you if you will furnish it. Can you state any reason, speaking generally, from your knowedlge of the business, why there should be a different division of the rate? It appears all through the case there are divisions ranging from one up to five cents, and in some cases possibly a little more. Why should there be a difference in the division, and how does it come about, if you know?

Mr. Frost: The difference is dictated by the trunk lines. They simply say they will allow one cent through one gateway and two cents through another, we have to take what we can
5569 get in that case.

Mr. Cowan: Is there any foundation for that allowance; is there any reason underlying it which would indicate it ought to be one cent here and two cents there and three cents another place?

Mr. Frost: I suppose they figure on the allowance they get from the connecting line. If they get ten cents at one point and 20 cents at another, they might make an allowance of two cents on the 20 cent point and one cent on the ten cent point.

Mr. Cowan: But you do not know any reason why, looking at it from the standpoint of what would be a reasonable division, why it should be one cent in one case and four cents in another?

Mr. Frost: I understand they figure it on the basis of the proportion they get out of the through rate.

Mr. Cowan: But they are not trying to cover a specific expense

of your company by making a rate of one cent to one place and four cents to another?

Mr. Frost: I do not know what they are trying to do: that is the proposition, as I understand it, that they figure the
5570 proportion or the allowance that they make is based on the amount that they get out of the through rate.

Mr. Cowan: Now, do you know whether the amount that they can get out of the through rate determines where they will try to have this traffic hauled to, I mean the amount that your first connection gets out of the through rate, whether they try to make it easy or had to go to a particular locality, depending on the divisions they can get for hauling it?

Mr. Frost: No, I do not think they care anything about where the lumber goes to.

Mr. Cowan: Providing that it goes to the place where they can get the most division?

Mr. Frost: They simply say there is an allowance of one cent through one gateway, and two cents through the other. That is all there is to it. We go ahead and ship the lumber.

Commissioner Harlan: In the case of a highly competitive market, you would bill an order through to destination by a connection that would give you the highest allowance, of course.

Mr. Frost: If we could route it and get the same rate, we would route it that way.

Commissioner Harlan: Yes, if the rate was the same.

5571 Mr. Frost: But you see we only have one route. If there is just one road, we do not connect with any other road, and our only outlet is the Cotton Belt, and they say, or did say to these people, this allowance will be made there, we will say, two cents per hundred pounds through Cairo and maybe one cent through some other gateway.

Mr. Cowan: But you do not know the underlying reason why they make the difference in one case from the other?

Mr. Frost: Not unless it is just what I stated, that they can afford to give that where they get a greater proportion of the through rate.

Mr. Cowan: Well, do you know whether, as a matter of fact, they do give you a higher division where they carry the lumber to places on which they get the largest division for themselves: do you know whether that is true or not?

Mr. Frost: No, I do not know anything about the proportions allowed them.

Mr. Cowan: Do you manufacture railway material?

Mr. Frost: No, sir.

Mr. Cowan: Bridge timbers, and the like of that?

Mr. Frost: No, I do not suppose we have shipped five cars of bridge material over that railroad in a year.

5572 Mr. Cowan: I am now talking of your general manufacturing proposition. Does the Frost-Johnson Lumber Company?

Mr. Frost: I thought you had reference to this particular mill.

Mr. Cowan: No, I am talking now on the general subject.

Mr. Frost: We have one mill that cuts some railroad material, but practically all that we cut is sold to the connecting line.

Mr. Cowan: So you are not extensively interested in that branch of the industry?

Mr. Frost: No.

Mr. Cowan: Do the logging companies in any case get any allowance from the railroad company or get any compensation for their service from the lumber company or otherwise dependent upon the amount of the division in any way?

Mr. Frost: No, sir.

Mr. Cowan: The logging company has a contract of so much per thousand feet, and that is paid by the lumber company; is that true?

Mr. Frost: Yes, sir.

Mr. Cowan: Will you file a statement also, Mr. Frost, or have it done, to show in connection with the request for operating
5573 expenses and maintenance of equipment of the logging company *of* the number of locomotives that each logging company uses, and the number of locomotives used by the railroad company over which they operate in such a case.

Mr. Frost: Do you mean all of the plants?

Mr. Cowan: Take your entire operation, yes. When you file an operating expense account for maintenance of equipment of the logging company, put in what they use in the way of locomotives. Do they use the cars?

Mr. Frost: The logging cars?

Mr. Cowan: I mean do they have anything to do with the maintenance of the logging cars?

Mr. Frost: The logging companies?

Mr. Cowan: Yes.

Mr. Frost: In some instances where the contract provides they are to do certain things.

Mr. Cowan: Wherever it does so provide, let the account show the expense of maintenance of logging cars, and how many logging cars they have. I will just leave it to you in making those statements, to file those statements where the contract requires the logging
5574 company to maintain the cars. There is no use to do it where the contract provides that the railroad company shall do it.

Mr. Frost: Yes, sir.

Mr. Cowan: That is all.

Commissioner Harlan: I wish you would file a statement covering the last three years, of your operating expenses, and show the different items.

Mr. Frost: Operating expenses on the lumber business?

Commissioner Harlan: No, on the Bodcaw line.

Mr. Frost: For the last three years?

Commissioner Harlan: For the last three years.

Mr. Frost: Yes.

Mr. Cowan: There is one thing I want to suggest, your Honor. They have asked us to furnish for the Kirby Lumber Company and others of the intervenors the cost of doing the lumber business. We have those figures, but we probably will object to making them pub-

lic property, while we would have no objection to having the Commission have them. But if we are going to do it, then the others should show them. We are not asking for it, but if that is going to be required of us, we should ask that the others do the same thing.

Commissioner Harlan: Have you your annual report here
5575 for last year?

Mr. Frost: Of the Bodcaw Valley Road?

Commissioner Harlan: Yes.

Mr. Frost: No, it was sent to the Commission.

Commissioner Harlan: I know, but have you a copy of it here?

Mr. Frost: No.

Commissioner Harlan: Can you give me any idea what made up this total of some $21,000 of operating expenses for the year 1909? I assume it was about the same last year.

Mr. Frost: I would have to get the statement, because I have not handled those matters, and I am not familiar with it. I can get it from our auditor, Mr. Dowell.

Commissioner Harlan: Mr. Walter, have you any questions?

Mr. Walter: No questions.

Commissioner Harlan: We will file this division sheet, which, by the way, Mr. Frost, was effective December 1st, 1909.

(The paper so offered and identified was received in evidence and thereupon marked Bodcaw Valley Railway Exhibit No. 1, witness Frost, received in evidence January 27, 1911, and is attached hereto.)

5576 Commissioner Harlan: Now, what other roads are the Frost-Johnson Lumber Company interested in? I have here the Old River and Kissatchie Railway.

Mr. Frost: Yes, sir.

Commissioner Harlan: What about that railway?

Mr. Frost: That is not an incorporated road. That was a name we
they called the road when they bought the plant down there.

Commissioner Harlan: Are you operating that road in any way?

Mr. Frost: Hauling logs over it; that is all. We do not get any division.

Commissioner Harlan: You do not get any division?

Mr. Frost: No.

Commissioner Harlan: Have you ever received any divisions?

Mr. Frost: Not at that point.

Commissioner Harlan: I mean in the operation of that road.

Mr. Frost: No.

Commissioner Harlan: How long have you owned it?

Mr. Frost: Only about two or three years.

Commissioner Harlan: Were any divisions ever received by the former owners?

5577 Mr. Frost: I do not know whether they had or not.

Commissioner Harlan: What about the Shreveport, Noble & Southern?

Mr. Frost: The division or the allowance was dropped there about three or four years ago.

Commissioner Harlan: What allowances did you receive?

Mr. Frost: An average of about two cents per hundred pounds.

Commissioner Harlan: Was that an incorporated company?

Mr. Frost: No.

Commissioner Harlan: Was the other an incorporated company?

Mr. Frost: No.

Commissioner Harlan: Was the Red River Valley an incorporated company?

Mr. Frost: Yes, sir.

Commissioner Harlan: Are you operating that now?

Mr. Frost: No.

Commissioner Harlan: When did you cease to operate that?

Mr. Frost: Some time during 1910.

Commissioner Harlan: What divisions were received?

Mr. Gaughan: That is not a Frost-Johnson Company.

Mr. Frost: That is not one of our plants.

Commissioner Harlan: No, but I think you or your father
5578 were interested in that road, were you not?

Mr. Frost: I had a little stock in the company and my father was interested.

Commissioner Harlan: But it is not one of the Frost-Johnson companies?

Mr. Frost: No.

Commissioner Harlan: Are you an officer of the Red River Valley Railway?

Mr. Frost: No.

Commissioner Harlan: Was your father?

Mr. Frost: Yes, sir.

Commissioner Harlan: It is not now receiving any allowances and it is not now in operation, do I understand?

Mr. Frost: No, they are not operating now and not getting any division, of course, as they are not operating.

Commissioner Harlan: What divisions did you receive?

Mr. Frost: When I was at the mill, which has been several years ago, they got one to two cents. I do not think they were ever increased any.

Commissioner Harlan: Was that incorporated?

Mr. Frost: It was incorporated. They incorporated three or four years ago or five years ago.

5579 Commissioner Harlan: Have you taken up that railroad?

Mr. Frost: I think most of it is taken up. I think they surrendered their charter.

Commissioner Harlan: And the equipment taken to other points?

Mr. Frost: I do not know about that. I do not know whether they have moved any of the equipment or not. I don't know just what shape it is in.

Commissioner Harlan: Mr. Frost, does the Frost-Johnson Lumber Company own any private car?

Mr. Frost: A private car?

Commissioner Harlan: Yes.

Mr. Frost: No, sir.

Commissioner Harlan: One or two of the lumber interests seem to own private cars. You do not own any and never have?

Mr. Frost: No.

Commissioner Harlan: Let me ask this general question, whether any of the sales officers of the Frost-Johnson Lumber Company have free transportation.

Mr. Frost: Not to my knowledge, and I do not think they ever have had.

Commissioner Harlan: Are there any questions *from* this
5580 witness?

Mr. Cowan: I would like to ask him in regard to that railroad or mill which he operates, where he does not get divisions. How extensive is that plant?

Mr. Frost: What is that?

Mr. Cowan: The Old River and some other name, I could not understand. Was it not the Old River?

Mr. Frost: At Montrose. It is the Montrose plant. We do not get any division there. We do not get any division there or at Campti.

Mr. Cowan: And how extensive is that?

Mr. Frost: At Campti we have a band and gang mill there, cutting about fifteen or eighteen million feet.

Mr. Cowan: On what road is that?

Mr. Frost: On the L. R. & N.

Mr. Cowan: If you were incorporated, could you not get divisions from that road?

Mr. Frost: No. We bought that block of timber there from Mr. William Edenborn, and he owned the railroad and the timber. It is kind of like an industrial proposition. We bought the timber from the same man that owned the railroad, and when he sold it to
us he figured the price so that we would not allow any divi-
5581 sion, and told us that, so even if we would incorporate, we would have a law suit if we ever established any division proposition with him.

Mr. Cowan: How many miles do you operate in connection with the logging business there?

Mr. Frost: The timber is close to the mill. We have a spur track running out from the mill to the edge of the timber, some eight or nine miles.

Commissioner Harlan: Will you read that answer please?

(Answer read.)

Commissioner Harlan: In other words, you gave less for that land because there was no division and you could not get any divisions?

Mr. Frost: Well, we probably took that into consideration.

Commissioner Harlan: In other words, a division does increase the value of land and the value of the selling price of timber land?

Mr. Frost: Well, it might. There are a good many things to

take into consideration, and in that we figured that at the price named us we could afford to take it and go ahead and operate it if we never got any divisions.

Mr. Coleman: I want to be sure I understand. It was the
5582 owner of the O. R. & N.——

Mr. Frost: The L. R. & N.

Mr. Coleman: Who owned both the timber and the little road and who sold the little road to you?

Mr. Frost: No, he owned the road on which we located.

Mr. Coleman: It was the owner of the L. R. & N. Company who made this sale to you and made this agreement?

Mr. Frost: He sold us the timber.

Mr. Cowan: This L. R. & N. road runs between Shreveport and New Orleans?

Mr. Frost: Yes, sir.

Mr. Cowan: And he owned this timber and sold it to you without any logging road, and you built your own logging road; is that right?

Mr. Frost: Well, we have the use of—he has a dump built out there that he intended to build over to some connection, I presume, and he gave us the use of that dump.

Mr. Cowan: The grade?

Mr. Frost: Just the grade.

Mr. Cowan: What sort of a railroad is this eight or ten miles you have built out?

Mr. Frost: Just an ordinary logging road.

5583 Mr. Cowan: What weight of steel?

Mr. Frost: We have on parts of it 56 pound, and some of it is 35 pounds to 45 pounds.

Mr. Cowan: Is it necessary in the economical operation of logging trains where you are hauling heavy tonnage to have a good substantial road for that purpose?

Commissioner Harlan: I think this witness has stated that.

Mr. Frost: The better track, the more economically you can handle the logs.

Mr. Cowan: What others do you operate where you do not get divisions; where you have a railroad in connection with the saw mill?

Mr. Frost: This Montrose proposition, we bought that timber there. We have never got any division on that. It is very light——

Mr. Cowan: What does it connect with?

Mr. Frost: With the T. & P.; it is just built over the hills and not graded very much, just about like an ordinary spur.

(Witness excused.)

5584 Commissioner Harlan: We will now call the Trinity Valley & Northern.

Mr. Walter: I think the Examiner has set the Trinity Valley & Northern and the Peach Orchard lines for tonight. The Peach River lines are ready here.

Commissioner Harlan: Judge Cowan, I think one of you, perhaps

Judge Garwood or you, asked Mr. Johnson to remain in order to ask him some general questions.

Mr. Cowan: Yes, I wanted to do that, and started in on it yesterday and your Honor said you wanted to go into the detail of these various cases first.

Commissioner Harlan: Are you ready to put those questions now?

Mr. Garwood: Yes, I can put those questions now. I had a memorandum of it, but I have mislaid it.

Mr. Cowan: I have a few questions.

5585 C. D. JOHNSON was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Cowan: What is the total cut approximately of the Frost-Johnson interest represented by you gentlemen?

Mr. Frost: Approximately 183 million feet of lumber in 1910.

Mr. Cowan: Pine?

Mr. Johnson: Pine.

Mr. Cowan: What per cent of that goes east of the Mississippi River, say?

Mr. Johnson: I can give you that in detail in a day or two.

Mr. Cowan: All right; I would rather let it go, then.

Mr. Johnson: I can give it to you accurately.

Mr. Cowan: If you will, I will be obliged to you. And if you can, give what goes on or off the Missouri River.

Mr. Johnson: I will give it to you by states.

Mr. Cowan: That will be very good. You stated the other day your sales agencies. Is it or not a fact that since the lumber market has been somewhat dull or at least I hear the lumber men all say that, and assume it to be true, that there has been a sharp
5586 competition between mill men in the supplying of extensive contracts for railroads, and so forth, and large dealers who own retail yards, has there been a sharp competition in the sale?

Mr. Johnson: There always has been sharp competition, but we handle very little of that kind of business. Our company manufactures very little railroad material. Nearly all of our lumber goes to smaller yards throughout the country, towns of 10,000 people and under. We do not handle many large contracts with any one concern.

Mr. Cowan: Do you know whether it is a fact that there is a uniformity in the retail price to the consumer by the retail yards in given cities, for example, take a city like Wichita, Kansas, or Atchison, or Topeka, or a place like Omaha or Fort Worth, Texas, and the like of that—whether there is a uniformity in the price at which lumber is sold to the consumer at any given point.

Mr. Johnson: I do not think there is much uniformity about the price.

Mr. Cowan: I am speaking now of the price of the lumber yard retailers.

Mr. Johnson: I know; the retail men. Their competition is about

as lively as anybody else's. They are competing all the time
5587 with each other. My observation is there is no uniformity about their prices.

Mr. Cowan: In what manner would a sale of lumber be made by your concern at some town you may name in Kansas or Oklahoma, is it done by sending a man out there to solicit the business, or by an order sent to your house here?

Mr. Johnson: It is done in various ways. We have 24 or 25 salaried men traveling in various parts of the country soliciting orders for lumber. Then we follow that with correspondence and send them our prices and write to the dealers for orders, and so forth.

Mr. Cowan: Do you print weekly or monthly prices of standard sorts of lumber that go out to your customers?

Mr. Johnson: We have no; we change our prices sometimes in a day.

Mr. Cowan: Either daily, weekly or monthly lists?

Mr. Johnson: We usually wire these men or call them on the phone and tell them what price to make, to raise the price of this or lower the price of that.

Mr. Cowan: What I am speaking of is a price list. Do you print a price list which forms the basis of price to begin on, although you may sell below it?

5588 Mr. Johnson: There is a sort of basis price list and then they use concession sheets from that.

Mr. Cowan: You do it substantially I suppose as concerns like the Kirby Lumber Company? They print a list, I think they do, as I have seen it introduced in some of these cases, and other concerns print a list of prices, and that is mailed out over the country.

Mr. Johnson: We have not sent out what is known as a printed list broadcast in several years. Most of our lumber is sold through our traveling men and correspondence, and we quit the issuance of a general price list several years ago.

Mr. Cowan: The price at which you actually sell to the retailer is not a matter that is accessible to your competitors, I presume?

Mr. Johnson: No, sir; I guess they find out our prices most all the time, but ——

Mr. Cowan: You have, though, a list price and then you sell, dependent on circumstances, sometimes with concessions of greater or less amounts from that price list?

Mr. Johnson: Yes, sir.

Mr. Cowan: And your salesmen of course are furnished
5589 with those?

Mr. Johnson: They get their instructions from us, and we make our prices in accordance with the stocks we have on hand.

Mr. Cowan: Now, suppose you come to Wichita, Kansas, I just use it because I happen to think of the place, and your traveling salesman wants to sell lumber to some lumber yard there, the retailer of course gets his price from your salesman or maybe he gets it by telephone, anyway, you are finding out what price your competitor may make that man for the same sort of bill?

Mr. Johnson: No, sir, we do not pay any attention to it. We set our own prices, and let our competitors do the same.

Mr. Cowan: Is there any uniformity in the price which different lumber manufacturers make on the same style of material, the same kinds of lumber?

Mr. Johnson: Well, sometimes they probably quote the price pretty close together, and other times it will vary from $2.00 to $3.00 a thousand for the same items; it depends how bad they want the order, and what condition the order files are in at the mills.

Mr. Cowan: Do you, in the operation of your business,
5590 have a figure on your stock which you will not go below, and which figure involves or means a profit in your business of not less than so much? Do you have a basis where you will not go below it, because if you did you would not get much profit.

Mr. Johnson: There has been no bottom price I have heard of in the last three or four years.

Mr. Cowan: Well, that is the way I have heard it. That being the case, is it not a fact that the man who is situated where he can mill his lumber and fix a delivered price to the retailer to whom he sells, I believe you call him the dealer, to the best advantage; that is, where the mill owner or operator can make the most profit, then he is more likely to change his price to get the order than the man who is at a higher expense in making the delivered price.

Mr. Johnson: Well, the expense of making the lumber does not have much to do with the price you sell it at. You have got to sell it at the best price you can get for it, regardless of what it costs you. We are operating eight saw mills and it costs a different price at each place. The cost of each place is different, because the conditions are different. Possibly one plant can produce lumber cheaper than another plant, better equipment and better
5591 arranged and possibly the logging operations can be carried on cheaper at one place than it can at another, and there are no two saw mills that I know of that mill lumber at exactly the same price; they all vary.

Mr. Cowan: Do you estimate in the preparation of your saw mill business——

Mr. Walter: Just a moment. How much longer will this method of questioning continue?

Mr. Cowan: Just a minute.

Mr. Walter: There are some other tap lines to be heard, ... witness will be available next week at Chicago.

Mr. Johnson: I do not know whether I will or not. I would prefer to finish it here.

Mr. Cowan: Just one other question at this time. Do you carry on the books of your various companies or in the aggregate your timber at an estimated value per thousand in the forest, counting that as being one of the items of cost in the production of lumber? I understand some saw mills carry the timber at so much a thousand feet and so much at another price, which is an item of expense to which is added all the other expenses of production. Some carry it at $4.00 a thousand, and others at five.

5592 Mr. Johnson. All our timber has been carefully estimated, and it is carried on our books at exactly what it costs the company, $3.00 a thousand, and the interest charge is added on it, and it is a trifle higher than $3.00. Now, when that timber is manufactured at these various plants the manufacturing department is charged with $4.00 a thousand for the timber as they cut it; that is what the saw mill pays for its raw material, $4.00 a thousand, and the land and timber gets credit for $4.00 a thousand.

Mr. Cowan. I have heard that——

Mr. Johnson. Was that the information you wanted?

Mr. Cowan. Yes. I just wanted it in the record; it had not been testified to before. So that a saw mill, in estimating how much its lumber in its yards has cost it to put it there, estimates some amount, generally a fixed amount, of so much for the raw material.

Mr. Johnson. We use an arbitrary price, $4.00 a thousand.

Commissioner Harlan. What does that include?

Mr. Johnson. That is standing timber, that is for the tree, the raw material which goes into the manufacturing department at $4.00 per thousand.

Commissioner Harlan. Is that $4.00 per thousand at the
5593 mill?

Mr. Johnson. No, sir, in the woods before the tree is cut.

Mr. Cowan. And what scale do you use?

Mr. Johnson. Why, we use the Doyle Scribner scale, the customary scale in that part of the country we are operating in.

Commissioner Harlan. You say it costs more at some mills than at other mills to get out your lumber?

Mr. Johnson. Yes, sir.

Commissioner Harlan. When you figure out the total cost of the operation of each mill, do you include the railroad operations and the results of the railroad operations?

Mr. Johnson. No, sir; they have nothing to do with the cost of making the lumber.

Commissioner Harlan. When you figure out at the end of each year the results of your milling operations at any given point, and want to ascertain what that investment has earned and what it has cost, do you include the results of the railroad operations in the general round-up of the figures?

Mr. Johnson. There has never been but one of our railroads which ever paid a dividend, and I did not know that until Mr. Frost testified here awhile ago, about a little bit—it was the first
5594 dividend we ever received.

Commissioner Harlan. That is not the question. I want to know how you figure up your investment at each one of these places. In figuring it up at the end of the year, do you not figure up the railroad operations whether they give you a profit or deficit, as a status?

Mr. Johnson. No, sir; they are not taken into account at all. I would be glad to show you one of our cost sheets——

Commissioner Harlan. If there is a loss in the railroad operation at a particular mill, and Mr. Scott so indicated this morning, in

getting at the returns on that investment at that particular place, do you not include that loss?

5595 Mr. Johnson: If there is a loss, it would show in this way, that particular railroad company would owe the Frost-Johnson Lumber Company the amount of money that it might have loaned it, and it would appear as an asset on our books. It has nothing whatever to do with the cost sheet; The railroad operations do not enter into our lumber cost sheets in any way or form.

Commissioner Harlan: What about the railroad where you get no allowance, and the railroad is not incorporated?

Mr. Johnson: The same thing: Our books are kept exactly the same at all these points. Our lumber books and cost sheets are all kept alike. We have those accounts uniform. The raw material is all charged at the same price, and the logging is in at what it costs; and the sawing and all these various costs in detail, and the railroad operations have nothing whatever to do with the cost of making lumber.

Commissioner Harlan: I have so understood in a general way, but I again put the question to you: You have an investment down there in this Mansfield Territory, to use that name to describe what I mean; it includes a lumber mill and forest and a railroad. Now, it is a matter of no interest or concern to you to know what return you are receiving on that investment, and can you know

5596 without including the results of the operation of the railroad?

Mr. Johnson: Our lumber business is one cost, our railroad business is another, and there is no profit at all in the operation of these lines, and if there was a profit in them it would not be taken into account in the manufacure of lumber.

Commissioner Harlan: Well, you have said that before.

Mr. Johnson: Well, I say it again.

Commissioner Harlan: Now I ask the question again: You have an investment in a given territory, and you want to know whether that is paying you, and if so, how much. Now, do you include the railroad operations in ascertaining that?

Mr. Johnson: We have approximately a million dollars of railroad equipment—— .

Commissioner Harlan: I am putting a particular question to you with reference to a particular investment in a particular part of the country. Now I would like your answer, not a general answer, but an answer to that question, which is, when you come to ascertain how much of a return you are getting on your total investment down in this Mansfield territory, do you ignore the railroad

5597 operations, and the result of the railroad operations?

Mr. Johnson: Absolutely ignore it.

Mr. Coleman: You are carrying on your lumber books the loans which have been made to the railway companies covering certain deficits in operation? That is correct?

Mr. Johnson: That is correct.

Mr. Coleman: You have stated that with one exception these railroads have never made a dividend, but all have run at a deficit, and always will.

Mr. Johnson: I did not say they always would. I said they always had.

Mr. Coleman: Well, do you except any improvement in the situation?

Mr. Johnson: We hope there will be.

Mr. Coleman: Unless there is a material improvement ultimately, the lumber company will have a debt against the railroad company which the railroad company never can pay. You would have to figure that in figuring your investment, would you not?

Mr. Johnson: Well, if the railroad owns the lumber company some day we will try to get the money.

5598 Mr. Coleman: But under present circumstances you have no hope of ever running those railroads—at the time the loan was made you had no prospect of ever running the railroad without a deficit?

Mr. Johnson: Well, I did not say that. We always have had hopes.

Mr. Coleman: That is all.

Commissioner Harlan: Let me pursue my inquiry a little further. You say in ascertaining the amount of your return on your investment in the Mansfield territory you absolutely ignore the result of railroad operations in these other territories where you have investments.

Mr. Johnson: Yes, sir.

Commissioner Harlan: Then when you prepare a trial balance of the investment of the Frost-Johnson Lumber Company, you absolutely exclude the results of the railroad operations.

Mr. Johnson: Yes, sir.

Commissioner Harlan: What, because of this 20 per cent dividend on the Bodcow Valley Railroad, was that ignored?

Mr. Johnson: I think that was taken—it ought to have been taken into profit and loss account of the Frost-Johnson Com-

5599 pany.

Commissioner Harlan: In that case the result of the operations of that road were not ignored, and did get into the accounts of the Frost-Johnson Lumber Company.

Mr. Johnson: That is where they would belong if there was any profit.

Commissioner Harlan: That is where you would look for them?

Mr. Johnson: Yes.

Commissioner Harlan: Very well. If there was a deficit at Mansfield, would it likewise be found somewhere in the accounts of the Frost-Johnson Lumber Company?

Mr. Johnson: No, sir; that would be found in an item of indebtedness of the Mansfield Road to the Frost-Johnson Lumber Company.

Commissioner Harlan: But it would not be found in the Frost-Johnson Lumber Company's accounts?

Mr. Johnson: Yes, it would be found in their accounts. Their accounts would show they had that much money coming from that railroad company.

Commissioner Harlan: In other words, the results of the operations of all these railroads do get into the accounts of the Frost-Johnson Lumber Company, as shown in the yearly trial
5600 balances.

Mr. Johnson: They do not.

Mr. Cowan: In the case of the Mansfield investment, if you lose $20,000, that is to say if you had to pay the money out, the Frost-Johnson Company had to pay the money, do you mean to say your cash account would not show that you paid that out?

Mr. Johnson: If you would loan somebody money that does not necessarily carry with it that you have lost that money.

Mr. Cowan: Oh, no——

Mr. Johnson: They may earn it in two, three or five years from now and pay it back to you.

Mr. Cowan: That might be so, but the prospect here does not seem to be very good on that end of it. But your account must show——.

Mr. Johnson: It shows just like I told you.

Mr. Cowan: That there is that much paid out that is not available, therefore, for dividends or for surplus?

Mr. Johnson: Those accounts show just like I have stated they show.

Mr. Cowan: I mean do you charge off from year to year in the Frost-Johnson Lumber Company's statement any of the in-
5601 debtedness that the railroads owe you so far as an asset of the Frost-Johnson Lumber Company is concerned?

Mr. Johnson: No, sir.

Mr. Cowan: You carry it then as an asset?

Mr. Johnson: Yes, sir.

Mr. Cowan: Non-revenue producing.

Mr. Johnson: Dead asset, until you get the money. Some day we hope to get the money.

Commissioner Harlan: If you never get it to that extent the investment of the Frost-Johnson Lumber Company is impaired, is it not?

Mr. Cowan: Yes, it might be to whatever the extent of that indebtedness might be.

Mr. Cowan: I thought you were about to say a while ago when interrupted, that you would be glad to show him, and you went that far, and I suppose you meant some sort of annual statement you might have, whatever it was. I would like to show what it was you said.

Mr. Johnson: I told Commissioner Harlan: I would be glad to show him our detailed cost sheets showing him exactly what it cost to make lumber at each point, showing just what they are made up of. I do not know as we would have any particular objec-
5602 tion to filing them with the Commission. We would talk it over. I cannot think of any objection to it right now.

Mr. Cowan: I did not know what you had in mind. You did not complete the statement a while ago.

Commissioner Harlan: The cost sheet of any particular operation,

we will say again in the Mansfield territory, would it show what disposition is made of the operating expenses of the logging road?

Mr. Johnson: No, sir. Those logs come to us at an arbitrary price. The logging company owns its own teams and tools and equipment in the woods, and puts these logs on the car up to our various points at a rigid price, and all the details of the cost of cutting the tree, hauling the log up to the spur track, building the spur track and laying the track and operating it, is kept by them. They keep all that on their books.

Commissioner Harlan: It is precisely for that reason that I used the word "result," as I tried to get from you information as to whether you carried the results of the operations of the railroad companies in the accounts of the Frost-Johnson Lumber Company, or whether you carry the results of the operations of the
5603 logging company into the accounts of the Frost-Johnson Lumber Company in order to ascertain whether, for example, in the Mansfield region, your whole investment there is returning an adequate reward, and if so, what the amount of it is, and I understood you to say those things were ignored.

Mr. Johnson: Well, I do not know; I think possibly to make that plain we would have to file our cost sheets. I have stated it is plainly as I can, that the railroad operations do not enter into the cost of making our lumber.

Mr. Walter: We will file the cost sheet. We will talk it over.

Commissioner Harlan: I do not think it is at all necessary unless Judge Cowan would be interested.

Mr. Cowan: No, I just asked him what it was that he said he would submit.

Mr. Gaughan: I rather think that the witness and the Commissioner have a misconception of the idea. The books of the logging company would show, I think, all that the Commissioner is inquiring about, and the books of the railroad company would show its business and the books of the mill company would show its
5604 business, and taking the three sets, it would show it all.

Commissioner Harlan: I do not think there is any misunderstanding on my part what I wanted to get from this witness, or any misunderstanding of what he said.

Mr. Walter: Suppose they own bank stock, the income on that bank stock would have nothing to do with the cost of lumber.

Commissioner Harlan: I have not at any time spoken of the cost of lumber, the cost of running the mills or railroad or logging company. I directed the attention of the witness to the investment of the Frost-Johnson Logging Company lands and a railroad company, and a logging company, and asked him whether the results of the operations of the railroad company appeared in the accounts of the Frost-Johnson Lumber Company with respect to that total investment, and he said they did not, they were absolutely ignored.

Mr. Walter: All these separate corporate investment- of the Frost-Johnson Lumber Company are kept separate and distinct by themselves, is not that right?

Mr. Johnson: Yes.

Mr. Walter: You do not segregate as to *tes* territory at all?
5605 Mr. Johnson: No.

(Witness excused.)

Commissioner Harlan: Is the Trinity Valley & Northern here?

Mr. Walter: It is here. I do not know whether it is in the room at this moment. We were told that that case and the Brookings and Peach Orchard case would be taken up to-night. Now the Peach River lines are all here, and they were before the Commission at New Orleans, and have been here all this week, and we would like, if it would not be asking too much, to get them heard to-night.

Commissioner Harlan: How many cases are involved?

Mr. Walter: Only three. Only one is getting a division, and the other two are not, and complaints are on file in all three cases. It will be impossible for one of those witnesses to be in Chicago next week.

Commissioner Harlan: Have your witnesses come forward and be sworn.

(Several witnesses were then sworn.)

Mr. Walter: On the general organization of the concern Mr Miller will testify, and as to the detailed traffic the other witnesses will testify.

5606 *Galveston, Beaumont & Northeastern Railway, Riverside & Gulf Railway, Peach River & Gulf Railroad.*

A. W. MILLER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Commissioner Harlan: Where do you reside?

Mr. Miller: Galveston, Texas.

Commissioner Harlan: What is your business?

Mr. Miller: I am engaged in the lumber business and railroad business.

Commissioner Harlan: With what companies?

Mr. Miller: I am President of the Miller-Vidor Lumber Company.

Commissioner Harlan: And of what railroad company?

Mr. Miller: Connected with the Galveston, Beaumont & Northeastern, the Riverside & Gulf Railway, and the Peach River & Gulf Railway Company.

Commissioner Harlan: I direct your attention first to the Peach River & Gulf Railway Company. What are the termini
5607 of that line, and how long is it?

Mr. Miller: The Peach River & Gulf Railway extends from Timber, which is its junction station with the Gulf, Colorado & Santa Fe about 14 miles southeast.

Commissioner Harlan: To Midline, Texas?

Mr. Miller: Yes, sir, it crosses the Houston, East and West Texas, at Midline, Texas.

Commissioner Harlan: It is a standard gauge road?
Mr. Miller: Yes, sir.
Commissioner Harlan: It owns no locomotives, does it?
Mr. Miller: Yes, sir, it owns two.
Commissioner Harlan: How many does it lease?
Mr. Miller: It does not lease any at present.
Commissioner Harlan: What freight cars has it?
Mr. Miller: It has about thirty cars.
Commissioner Harlan: What is its capital?
Mr. Miller: $100,000.
Commissioner Harlan: It is all issued?
Mr. Miller: Yes.
Commissioner Harlan: And is owned by the Lumber Company or the same interests that own the lumber company?
Mr. Miller: Yes, sir, it is owned by individuals for the
5608 benefit of the lumber company.
Commissioner Harlan: Substantially one investment, is it not?
Mr. Miller: Yes, sir.
Commissioner Harlan: Where is the mill situated?
Mr. Miller: The mill is situated at the junction point at Timber.
Commissioner Harlan: How far from your connection?
Mr. Miller: The saw mill is situated right at the connection.
Commissioner Harlan: The connection of the Peach River & Gulf Railroad with what other line?
Mr. Miller: With the Santa Fe.
Commissioner Harlan: Has the Santa Fe a switch track into your planing mill, or alongside?
Mr. Miller: I think we own the tracks there.
Commissioner Harlan: Do you own the real estate?
Mr. Miller: Yes, sir.
Commissioner Harlan: When you say "we," do you mean the lumber company or the railroad company?
Mr. Miller: The railroad company.
Commissioner Harlan: Has it a deed to the real estate
5609 on which this track is built?
Mr. Miller: I could not say whether that land stands in the name of the lumber company or the railroad company.
Commissioner Harlan: Do you know who furnished the steel, who built the switch tracks?
Mr. Miller: My impression is that we had the tracks built by the Santa Fe at our expense.
Commissioner Harlan: As a matter of fact is not the saw mill itself on property that does not belong to the mill company?
Mr. Miller: No, sir.
Commissioner Harlan: It does belong to the mill company?
Mr. Miller: The saw mill is situated on the mill company's lands.
Commissioner Harlan: Can you ascertain who owns the real estate on which this switch track is built?
Mr. Miller: Yes, I can furnish you that information, but I can

say to you now that it belongs either to the lumber company or railroad company.

Commissioner Harlan: I would like to know which one it belongs to, and also who furnished the steel. Was that furnished by the Santa Fe?

Mr. Miller: Well, those tracks were built in there——

Commissioner Harlan: Is it not true you have a switch
5610 track agreement with the Santa Fe?

Mr. Miller: Possibly we have. Those tracks were put in there some eight years ago, and I do not recall the circumstances now.

Commissioner Harlan: I wish you would ascertain that fact too, and if you have such an agreement let us have a copy of it. What steel is used on this line?

Mr. Miller: 35 and 40 pounds.

Commissioner Harlan: Ballasted, is it?

Mr. Miller: The track is surfaced.

Commissioner Harlan: Have you any logging lines adjoining it?

Mr. Miller: Spurs.

Commissioner Harlan: Spurs?

Mr. Miller: Yes, sir.

Commissioner Harlan: By whom are they owned?

Mr. Miller: By the railroad company.

Commissioner Harlan: The spurs into the woods are owned by the railroad company?

Mr. Miller: Yes, sir.

Commissioner Harlan: What is the total mileage of the spurs?

5611 Mr. Miller: Well, we have not asked about that recently. I suppose we have possibly twenty miles all told of main line and spurs.

Commissioner Harlan: Does the lumber company own any logging roads connected with your main line or your spurs?

Mr. Miller: No, sir.

Commissioner Harlan: Does the lumber company operate any road at all?

Mr. Miller: No, sir.

Commissioner Harlan: You operate the main line and the spurs?

Mr. Miller: We operate all the trains.

Commissioner Harlan: And the lumber company has no locomotives and no cars.

Mr. Miller: No.

Commissioner Harlan: Who loads the cars in the woods?

Mr. Miller: The lumber company's woods crews load them.

Commissioner Harlan: Do not your train crews participate in that?

Mr. Miller: No.

Commissioner Harlan: How many train crews have you?

Mr. Miller: Well, we operate one train a day, one round
5612 trip a day, and we have one crew, and then we have the switch crew.

Commissioner Harlan: And it is your understanding that the train crew does not assist at all, but simply stands by while the loading is being done?

Mr. Miller: I could not say definitely as to that. I suppose they are kept busy, and are used whenever they can be.

Commissioner Harlan: Is it not your best recollection and judgment that they do participate in the loading of the cars?

Mr. Miller: No, it is not.

Commissioner Harlan: Well, they unload them at the farm, do they not?

Mr. Miller: Yes, sir, they help in the unloading.

Commissioner Harlan: What charge does the railroad make to the lumber company for hauling the logs to the mill?

Mr. Miller: I would prefer to have Mr. Hole, who is with me, and who is General Manager of this and the other roads, answer that. He has it in his head and right, and I would prefer him to answer.

Commissioner Harlan: Are you familiar with the account?

Mr. Miller: In a general way.

Commissioner Harlan: You are also familiar with its traffic?

5613 Mr. Miller: In a general way.

Commissioner Harlan: Does it carry any outside traffic?

Mr. Miller: It carries the outside traffic that is offered.

Commissioner Harlan: Has it any mail or express?

Mr. Miller: No, it has no mail or express.

Commissioner —: Passenger traffic?

Mr. Miller: It carried passengers when they are offered; there is very little passenger traffic.

Commissioner Harlan: You do not run any passenger coach?

Mr. Miller: We run a coach, yes, sir.

Commissioner Harlan: You do not have a schedule time card?

Mr. Miller: Yes, sir, we have a departing and arriving time; there is more or less irregularity in the operation.

Commissioner Harlan: Does it move every day?

Mr. Miller: Oh, yes.

Commissioner Harlan: One or more trips?

Mr. Miller: One trip a day, and sometimes an extra trip.

Commissioner Harlan: To what point?

Mr. Miller: Well, it moves out to——

Commissioner Harlan: To Midline?

Mr. Miller: At present we are not operating that track to Midline. We have temporarily discontinued it on account of

5614 the loss of a long bridge which burned down last year.

Commissioner Harlan: How far do you run your passenger coach?

Mr. Miller: About ten miles.

Commissioner Harlan: To what point?

Mr. Miller: To a place we designate on the line as Walkerville.

Commissioner Harlan: Do you sell tickets?

Mr. Miller: No.

Commissioner Harlan: Have you printed tickets?

Mr. Miller: No.

Commissioner Harlan: Do you make a charge?

Mr. Miller: Yes, sir.

Commissioner Harlan: What is your ordinary daily revenue for passengers?

Mr. Miller: I could not say.

Commissioner Harlan: I understood you were familiar with the finances.

Mr. Miller: In a general way.

Commissioner Harlan: It is very small?

Mr. Miller: Yes.

Commissioner Harlan: Most of your traffic is for the lum-
5615 ber company?

Mr. Miller: Yes.

Commissioner Harlan: You have no traffic outside except you are asked to move a carload of steel?

Mr. Miller: Yes, sir, steel cars and logs, miscellaneous stuff for other people.

Mr. Cowan: About what is the percentage of that traffic from them?

Mr. Miller: Mr. Hole can give you that information.

Commissioner Harlan: Has the company any bonded indebtedness?

Mr. Miller: No.

Commissioner Harlan: Any current account in the form of notes?

Mr. Miller: Yes, it owes some money.

Commissioner Harlan: To who?

Mr. Miller: To the lumber company.

Commissioner Harlan: What is the aggregate amount of that?

Mr. Miller: I have not got those figures.

Commissioner Harlan: Well, it is to cover what you call deficit in operation?

Mr. Miller: Yes, and investment.

5616 Commissioner Harlan: I direct your attention to the Galveston, Beaumont & Northeastern Railroad Company. That seems to run from Vidor, Texas to what, De Sanque?

Mr. Miller: Yes, sir.

Commissioner Harlan: What is the length of the main line?

Mr. Miller: The main line all told, as operated now, is about 17 miles, which includes six miles of trackage rights over the Kansas City Southern Railway.

Commissioner Harlan: Of your own main line you only have about eight miles?

Mr. Miller: About 11 miles.

Commissioner Harlan: What spurs and trackage have you?

Mr. Miller: I could not say exactly. I presume four or five miles.

Commissioner Harlan: By whom is that company owned?

Mr. Miller: It is owned by various parties. I have a list of the stockholders of all these lines here, which I would be glad to file, if you want it.

Commissioner Harlan: I do not want the stockholders, but it is

owned by the lumber company with which it is connected, is it not, substantially the same people?

Mr. Miller: It is a $100,000 corporation; $93,000 is held
5617 by the Central Trust Company of Illinois, and the balance is held by the individuals.

Commissioner Harlan: In what interest is that stock held?

Mr. Miller: In the interest of bondholders.

Commissioner Harlan: The company has a bonded indebtedness?

Mr. Miller: It is a collateral—that stock is held——

Commissioner Harlan: Let me put just a general question which will shorten up the examination. What company owns the mill at Vidor?

Mr. Miller: There is no mill at Vidor?

Commissioner Harlan: Where is it?

Mr. Miller: At Beaumont.

Commissioner Harlan: What company owns that?

Mr. Miller: The Miller-Vidor Lumber Company.

Commissioner Harlan: Substantially the same interests that own that company own the railroad?

Mr. Miller: Yes, sir.

Commissioner Harlan: So practically for all purposes it is one investment by the same people?

Mr. Miller: In a large measure.

Commissioner Harlan: How do the logs get to the mill; just describe the method.

5618 Mr. Miller: The railroad company operates the spur track.

Commissioner Harlan: The train is loaded out on the spur track and carried by the railroad company to what point?

Mr. Miller: They are carried over the rails of the Galveston, Beaumont & Northeastern to Vidor, which is the junction with the Kansas City Southern, and then operated over the Kansas City Southern tracks into the town of Beaumont, through the town of Beaumont to the sawmill.

Commissioner Harlan: The saw mill is on the tracks of the Kansas City Southern?

Mr. Miller: The saw mill is on the tracks of the Kansas City Southern, yes.

Commissioner Harlan: In other words the Galveston, Beaumont & Northern has no tracks at the mill?

Mr. Miller: Yes, it has some tracks at the mill.

Commissioner Harlan: Well, just explain that. Do your logging trains get on to those tracks in delivering the logs at the mill?

Mr. Miller: Yes, sir.

Commissioner Harlan: Where is the pond, is it near the mill?

Mr. Miller: Yes, the mill is situated on the banks of the Neches River, and our boomage cranes are in that river. The Kan-
5619 sas City Southern originally owned a track connection just outside the limits of Beaumont which runs down to our saw mill. We added to that some tracks of our own in order to reach the river, and we operate our own trains for logs and for lumber, and for all commodities moved in or out of that saw mill.

Commissioner Harlan: Now the Kansas City Southern still owns the track that it originally owned into the mill?

Mr. Miller: It owns the tracks, but we operate it under lease.

Commissioner Harlan: Under trackage agreement?

Mr. Miller: Yes.

Commissioner Harlan: And you carry your logs off that track on to the pond or the river, do you?

Mr. Miller: Yes, sir.

Commissioner Harlan: And they are there dumped into the river?

Mr. Miller: Yes.

Commissioner Harlan: By employees of the railroad company?

Mr. Miller: Yes.

Commissioner Harlan: Then the logs are taken out of the river by the mill?

Mr. Miller: Yes, sir.

5620 Commissioner Harlan: And manufactured?

Mr. Miller: Yes.

Commissioner Harlan: And the loading of cars with manufactured lumber is done on the tracks of the Kansas City Southern?

Mr. Miller: On tracks the title to which is in the Kansas City Southern, but which are ours under right of operating contract, and we have in the yard at Beaumont what we call our interchange tracks where we deliver all our traffic and get all our empty cars. The mill is located, as you will see by that map, about three miles away from the yards in Beaumont, and we go in there on that interchange with our engines and get the empty cars, and take them down to our plant, and load them, and after a while we take them back and put them on that interchange where they are delivered to our connections at Beaumont.

Commissioner Harlan: Tell us what this trackage arrangement is, and how much it costs you.

Mr. Miller: I cannot do that from memory. That contract was made some years ago. I made it, but I haven't it in mind. I would be glad to file a copy, if you require it.

Commissioner Harlan: Is it a yearly rental, or a per train

5621 rental, or per car rental?

Mr. Miller: I think originally we figured on a per ton mileage basis, but that was rather cumbersome and expensive to check up, and we finally sort of compromised it on either a monthly or annual basis.

Mr. Walter: Mr. Hole can tell you about that.

Mr. Cowan: I did not get the haul to and from the interchange track.

Mr. Miller: About three miles, making about a six mile movement down and up.

Commissioner Harlan: Who sets the empty car at the mill?

Mr. Miller: The Galveston, Beaumont & Northeastern.

Commissioner Harlan: You take the loaded car back to the interchange track?

Mr. Miller: Yes.

Commissioner Harlan: I do not want to encumber the record with

more details of your finances than seems to be necessary, but what is the bonded indebtedness of your railroad company?

Mr. Miller: The railroad company has no direct bonded indebtedness.

Commissioner Harlan: Well, just tell us what that situation is.

5622 Mr. Miller: The timber lands belonging to the lumber company located in Orange and Jasper Counties are bonded, and the stock of the railroad company is deposited under a certain agreement as additional security for that obligation.

Commissioner Harlan: For the obligation covering the land?

Mr. Miller: Yes, sir.

Commissioner Harlan: Now you do not know about the traffic on that road?

Mr. Miller: No.

Commissioner Harlan: Let me ask in a general way, have you any outside traffic?

Mr. Miller: In a general way.

Commissioner Harlan: Do you carry passengers?

Mr. Miller: Yes.

Commissioner Harlan: Mail?

Mr. Miller: Yes.

Commissioner Harlan: Express?

Mr. Miller: We have no express contract. We carry some out.

Commissioner Harlan: Any general merchandise?

Mr. Miller: Yes.

5623 Commissioner Harlan: To what towns? Have you any towns on your line?

Mr. Miller: There is a considerable settlement along the line.

Commissioner Harlan: You do not take any merchandise back and forth from any point on the track from the Kansas City Southern where you have trackage rights?

Mr. Miller: No.

Commissioner Harlan: You do not originate or deliver any traffic there?

Mr. Miller: No.

Commissioner Harlan: The tonnage mainly is your own lumber, is it not?

Mr. Miller: Principally.

Commissioner Harlan: The other is very small, as I understand?

Mr. Miller: I think we have filed reports for all of these roads with your Commission, and I think they show in detail exactly what it is.

Mr. Walter: There is a detailed statement attached to each group of these three lines.

Commissioner Harlan: Perhaps the other witness can give

5624 those details. Do you recall that your trackage arrangements involve a payment by you, the railroad company, to the Kansas City Southern, of $27.50 a train? Does that refresh your recollection?

Mr. Miller: No, sir.

Commissioner Harlan: You are not prepared to testify?

Mr. Miller: I do not understand that that is the case.

Commissioner Harlan: The Riverside & Gulf is a Texas corporation organized under the general railroad laws?

Mr. Miller: Yes.

Commissioner Harlan: Owned by whom?

Mr. Miller: By stockholders.

Commissioner Harlan: It runs from Milvid Junction to what other Points?

Mr. Miller: It runs from Milvid Junction to a point called Coy.

Commissioner Harlan: Standard gauge?

Mr. Miller: Yes, sir.

Commissioner Harlan: About sixteen miles long?

Mr. Miller: I do not think there is but about 12 miles of main line there. There is probably 20 or 25 miles of tracks, spurs and turnouts.

Commissioner Harlan: It is all owned and operated by the railroad.

5625 Commissioner Harlan: Where is the mill?

Mr. Miller: The mill is situated at Milvid, about 1½ miles south of Milvid Junction.

Commissioner Harlan: Your connection is the Gulf, Colorado & Santa Fe?

Mr. Miller: Yes, sir.

Commissioner Harlan: Any other connection?

Mr. Miller: No.

Commissioner Harlan: How close is the mill to the main track of the Gulf, Colorado & Santa Fe?

Mr. Miller: About one mile.

Commissioner Harlan: Has it a spur track running into the planing mill, the Gulf, Colorado & Santa Fe?

Mr. Miller: No.

Commissioner Harlan: There is a connecting track there, is there not?

Mr. Miller: There is a connecting track there, built by the Riverside & Gulf Railway.

Commissioner Harlan: Who furnished the steel?

Mr. Miller: The Riverside & Gulf.

Commissioner Harlan: Who owns the land?

Mr. Miller: The land is held under an escrow agreement by parties for the lumber company.

5626 Commissioner Harlan: Does the railroad company own the fee of that land?

Mr. Miller: It has the right to take the title at any time it wants it.

Commissioner Harlan: But it has not taken the title?

Mr. Miller: We consider for all practical purposes it has the title.

Commissioner Harlan: What about its general right of way—does it own it?

Mr. Miller: In the same way, we have about forty thousand acres of land.

Mr. Cowan: This railroad runs over land of the lumber company?

Mr. Miller: Yes, sir.

Commissioner Harlan: What arrangement has it for acquiring the right of way title?

Mr. Miller: It has the understanding that the right of way will be conveyed, and deeds will be executed any time it is desirable to have it done.

Commissioner Harlan: Does that depend upon the performance of some condition precedent, the payment of any money or completion of any other act?

5627 Mr. Miller: Yes, sir.

Commissioner Harlan: Tell us what that is.

Mr. Miller: I do not know that I could explain it to you without going into it at too much length, but in substance it means by the payment of so much per acre the railroad company may acquire the fee to the right of way 100 feet wide.

Commissioner Harlan: The mill is owned by the Miller-Vidor Lumber Company?

Mr. Miller: One of the mills on the line.

Commissioner Harlan: Are there two mills on the line?

Mr. Miller: Yes.

Commissioner Harlan: Pine mills, both of them?

Mr. Miller: Pine and hardwood.

Commissioner Harlan: Who owns the other mill?

Mr. Miller: The other mill is owned by T. B. Allen & Company.

Commissioner Harlan: That is an outside interest altogether?

Mr. Miller: Yes, sir.

Commissioner Harlan: I will ask you the same general question in this case: Does the Miller-Vidor Lumber Company own the Riverside & Gulf Railway, or the same interests own both companies?

5628 Mr. Miller: The stock is owned by individuals for its benefit.

Commissioner Harlan: And it is the same general investment?

Mr. Miller: To a large measure.

Commissioner Harlan: Who does the logging on that road?

Mr. Miller: Do you mean who cuts down the timber?

Commissioner Harlan: Yes.

Mr. Miller: And loads the cars?

Commissioner Harlan: Yes.

Mr. Miller: The lumber company.

Commissioner Harlan: There is not any logging company or incorporated company that does the work?

Mr. Miller: No.

Commissioner Harlan: I suppose in this case the same crew helps load the logs as in the other case?

Mr. Miller: I do not think any of our train crews help load the logs. I think the men do help discharge the cars when they get in to where they are ready to dump them.

Commissioner Harlan: Do you mean to say those men just stand around idle and do no work?

Mr. Miller: I will explain to you that we load our logs with steam

appliances requiring a certain class of more or less skilled
5629 labor, and a loader, for instance, is equipped with a crew which loads a train. After those logs are cut down, which is also done by an entirely different class of labor from train hands or men, those logs are drawn up with wire cables by a steam skidder, and that is also handled by a class of men different from the train men. There is nothing there that the ordinary brakeman on a train is either qualified or is expected to do.

Commissioner Harlan: Is the steam loader on wheels?

Mr. Miller: Self-propelling.

Commissioner Harlan: It is not attached to the train?

Mr. Miller: No; both the loader and skidder are self-propelling.

Commissioner Harlan: I do not want to get down to a particularly fine point, but while the process is going on of having the steam loader load those cars, is not the train crew at hand on the cars?

Mr. Miller: No, the train crew would not be there at that time. We operate on that line three locomotives and a self-propelling skidder and a self-propelling loader, and about, I should judge, 60 to 70 mixed cars of various kinds. The main line crew would be moving their train back and forth while another train is being made
5630 up, and if anybody was there it would be the men of the switching crews.

Commissioner Harlan: Well, the switch crews are paid by the railroad company?

Mr. Miller: Yes, sir.

Commissioner Harlan: Do they participate in the loading of the cars?

Mr. Miller: I think not.

Commissioner Harlan: You think they are sufficiently busy in switching?

Mr. Miller: I think so.

Commissioner Harlan: What about this steam loader—is that the property of the railroad company?

Mr. Miller: It belongs to the lumber company.

Commissioner Harlan: And the employees are paid by the lumber company?

Mr. Miller: Yes, sir.

Commissioner Harlan: What service does the railroad company perform for the lumber company besides hauling its logs?

Mr. Miller: It moves all the empty equipment from Milvid Junction to Milvid, and from Milvid Junction to Allendale, the location of the Allen Company's Mill.

5631 Commissioner Harlan: Who does the yard work?

Mr. Miller: The railroad company.

Commissioner Harlan: Of all the saw mills?

Mr. Miller: Yes, sir. And after these cars are loaded it delivers the loaded cars back to the junction.

Commissioner Harlan: Where is the Allen mill?

Mr. Miller: About half a mile south of the Milvid mill.

Commissioner Harlan: What is its output?

Mr. Miller: It has an output of about, I suppose, four hundred cars a year.

Commissioner Harlan: Is it a pine mill?

Mr. Miller: It is a hardwood mill, practically.

Commissioner Harlan: Do you haul logs for it?

Mr. Miller: No.

Commissioner Harlan: It gets them by wagon?

Mr. Miller: No, they haul them themselves.

Commissioner Harlan: And they have a road of their own?

Mr. Miller: No, they have built some spurs of their own, but they have a trackage right over our main line.

Commissioner Harlan: What do they pay for that?

Mr. Miller: They pay about 90 cents a loaded car.

Commissioner Harlan: For going over your line to the Gulf, Colorado & Santa Fe junction?

5632 Mr. Miller: No. For going over our main line from their spur connection to our mill.

Commissioner Harlan: Let me understand about that. Their mill then is not at the junction of their spur with your line?

Mr. Miller: No, sir, their mill is on our main line, and their spurs are some miles away.

Commissioner Harlan: Where does their spur join your line, at the mill?

Mr. Miller: Some miles away from the mill.

Commissioner Harlan: They pay you 90 cents a car for the privilege, with their own equipment, of hauling their logs from a junction to their mill on your line?

Mr. Miller: Yes, sir, that enables them, with proper notice to us, so we may put in the proper track connections at any point on our main line where they want to get off into their timber, which is more accessible, of moving up and down the line.

Commissioner Harlan: And wherever the spur happens to be the rate is 90 cents a car?

Mr. Miller: Yes, sir.

Commissioner Harlan: It does not vary according to distance?

Mr. Miller: No, it is not regulated by the mileage.

5633 Commissioner Harlan: After the hardwood is manufactured, who gets the haul to the Santa Fe?

Mr. Miller: The Riverside & Gulf.

Commissioner Harlan: What is the charge?

Mr. Miller: It is shown in the tariff. Mr. Hole can give you that in detail, and also file the tariffs.

Commissioner Harlan: What is the International Transportation Company?

Mr. Miller: The International Transportation Company is not in existence.

Commissioner Harlan: What was it?

Mr. Miller: It was a company chartered under the transportation laws of Texas some years ago by myself and associates, for the purpose of doing some transportation service up in Grimes County, Texas.

Commissioner Harlan: Not related to this enterprise?

Mr. Miller: No.

Commissioner Harlan: I observe that two of these lines according to your report, sustained a loss last year, that is, there was a net deficit as a result of its operation. Who took care of those deficits?

Mr. Miller: Well, that is a sort of inroad on the invest-
5634 ment, and merely shows that the operation of the lines last year was not profitable.

Commissioner Harlan: When you speak of the investment, you mean the general investment of the lumber company, and——

Mr. Miller: The investment in the railroad company.

Commissioner Harlan: Well, who took care of the matter of supplying the cash?

Mr. Miller: Well, if that loss was of such a nature that actual money was required to meet it, it would be obtained from the treasury of the lumber company.

Commissioner Harlan: On the other hand, one of the other companies showed a net gain from operation of $3300. Was the balance paid over to the lumber company in the same way?

Mr. Miller: No, it would stand to the credit of the treasury of the road.

Commissioner Harlan: Was it not paid on the interest account on the bonds?

Mr. Miller: The interest on the bonds has been met, yes.

Commissioner Harlan: Just how was it met? Would not this $3300 be used for that purpose, as far as it would go?

Mr. Miller: No, the obligation on the bonds is a direct obligation of the lumber company, and the lumber company is charged with the payment of the sinking fund and interest on those bonds.
5635 The collateral trust agreement was in the nature of an additional surety, and the most available thing we had was the stock in this railroad company which we put up. That makes it clear, I think.

Commissioner Harlan: Now, you have three mills and three railroad companies?

Mr. Miller: Yes, sir.

Commissioner Harlan: And what is the name of the company that guides and controls all of those companies and directs the policy of them?

Mr. Miller: Well, I guide and control the three railroad companies largely, with the assistance of Mr. Hole, who is a practical railroad and traffic man.

Commissioner Harlan: Is there any association or company that directs the policy of this investment?

Mr. Miller: No; for convenience we designate these roads as the Peach River Lines.

Commissioner Harlan: That is simply a name?

Mr. Miller: That is simply a name, and no organization.

Commissioner Harlan: But the three railroads are substantially one and the same investment by the same people?

Mr. Miller: I hardly think that would be a fair way to express it. The interests are largely identical, but they are distinct
5636 and separate corporations.

Commissioner Harlan: That is to say you take a mill and its railroad line at one point and the interest of the stockholders may differ somewhat from the interest of the stockholders in the mill at another point.

Mr. Miller: Let me explain it.

Commissioner Harlan: If you will, in your own way. You know what I am after.

Mr. Miller: The Miller-Vidor Lumber Company owns these timber lands and saw mills. At each of these mills there is a railroad organization separate and distinct with its book accounts kept and reports made, and have been for some years. The stock is either held by parties who also own stock in the lumber company, or is held in the interest of parties who own stock in the lumber company. To that extent the interests are identical.

Commissioner Harlan: Does the lumber company carry open accounts with these various mills and various railroad companies?

Mr. Miller: I do not know what you mean by that, sir. The lumber company has a system of accounting, operating accounting with each plant, of course, by which it determines how it is being operated, and the results from time to time. The railroad
5637 company has its own system of accounts and reports to the commission.

Commissioner Harlan: But is it not one cash account?

Mr. Miller: The Miller-Vidor Company has an account with the Peach River Lines. I regret to say that we frequently have had to borrow money from them, and of course that is set up on their books.

Commissioner Harlan: You do not mean that the lumber company has borrowed money from the railroad?

Mr. Miller: No.

Commissioner Harlan: You mean the other way?

Mr. Miller: The railroads have borrowed money, particularly in the case of the Peach River & Gulf, and the Riverside & Gulf, which up to August, 1908, both participated in a division of the through rate in connection with the Santa Fe road. The Peach River & Gulf at that time had an outlet also over the Southern Pacific system from which it received divisions, and the properties were barely self sustaining at that time. They took away these divisions, and we lost our bridge on the Peach River & Gulf line, and in the meantime this agitation came up and not knowing the result, we did not like to spend seven or eight thousand dollars in rebuilding that bridge, and we have been getting along and
5638 borrowing from the lumber company to keep matters going.

Commissioner Harlan: The results of the operation of these three railroads are shown in the accounts of the Miller-Vidor Lumber Company just as the mill operations are?

Mr. Miller: No, sir, not in the same way but——

Commissioner Harlan: But they are there.

Mr. Miller: If there is any money owing to-day by the railroad line to the lumber company, it would stand as a separate item on the lumber company's books.

Commissioner Harlan: Do you have an agent in Washington?

Mr. Miller: Yes, sir, we have a representative there.

Commissioner Harlan: Who is the agent for these lines?

Mr. Miller: We have one man who attends to it. I do not recall his name now; I never met him.

Commissioner Harlan: You are keeping your books under the system prescribed by the Interstate Commerce Commission?

Mr. Miller: Yes.

Mr. Walter: Miss Tenniele is the agent.

Commissioner Harlan: Have you safety appliances on the Riverside & Gulf?

Mr. Miller: It is not fairly equipped with safety appliances. The Galveston, Beaumont & Northwestern is equipped
5639 throughout, and on that line we pay standard wages, and employ that class of men.

Commissioner Harlan: By standard wages you mean union wages?

Mr. Miller: Yes, sir, the other lines not being in a position at present to participate in any state division we have not gone to the expense of equipping them, but we would like to do so, of course, if the situation was not too uncertain.

Commissioner Harlan: Do you pay any attention to the hours-of-service law on these three railroads?

Mr. Miller: Yes, sir, we observe them.

Commissioner Harlan: Have you any questions to put to the witness, so far as we have gone?

Mr. Cowan: No, I think not.

Mr. Coleman: You do not mean to testify you ever received a division from the Santa Fe on the Riverside & Gulf?

Mr. Miller: I do.

Mr. Coleman: Is it not a fact that you did not build in there until after 1908?

Mr. Miller: No, sir.

Mr. Coleman: After the division was cancelled?

Mr. Miller: No.

5640 Mr. Coleman: And you mean then that you did receive divisions?

Mr. Miller: I do.

Mr. Coleman: Was that on Texas business?

Mr. Miller: On what business?

Mr. Coleman: Was it on interstate business?

Mr. Miller: On interstate business.

Mr. Coleman: As to the Peach River & Gulf you often made overtures to the Santa Fe for a division on that road, to Mr. Coleman?

Mr. Miller: No, sir, I did not make any overtures; he made the overtures.

Mr. Coleman: Did you not frequently make overtures for a divi-

sion, and were you not as many times turned down until the Santa Fe built into De Ridder, Louisiana?

Mr. Miller: No.

Mr. Coleman: Did you ever receive a division before the Santa Fe built into De Ridder?

Mr. Miller: I have not information when the Santa Fe built into De Ridder. I do not know anything about it.

Mr. Coleman: When did you first receive a division from the Santa Fe then?

Mr. Miller: I think that the tariffs on file with the Com-
5641 mission would show that. I should say about 1902 or 1903, and up until August, 1908.

Mr. Coleman: I want to ask you definitely, did you ever receive a division on the Riverside & Gulf from the Santa Fe on interstate business?

Mr. Miller: I do, most emphatically.

Mr. Coleman: What was that division?

Mr. Miller: From one to three cents according to my recollection. tion.

Mr. Walter: Do you say he did not?

Mr. Coleman: Absolutely.

Mr. Walter: There is something to be inquired into, to see if he did or did not.

Mr. Miller: Well, you are mistaken about that, Mr. Coleman.

Mr. Coleman: I also wish to state that on the Peach River & Gulf Railway no division was ever paid until the Santa Fe built into De Ridder, Louisiana, and then in order to compete with the Kansas City Southern, a division was given for a short time, but was taken out as soon as——

Mr. Miller: If it is permitted, I would like to make a contrary statement.

5642 Commissioner Harlan: I understood there was another witness who could give more of the details, and we will perhaps suspend that question until tomorrow.

Mr. Walter: Is there anything further from this witness?

Commissioner Harlan: Were you about to make some statement in reply to Mr. Coleman?

Mr. Miller: Yes. Mr. Coleman says there were no divisions paid this road until they built into De Ridder. My impression is they are mistaken, divisions were paid to the Peach River & Gulf in order to compete for its traffic with the Southern Pacific lines. It has put in divisions for itself, and there was—let me see if I have not some dates on that.

Commissioner Harlan: I suggest, Mr. Coleman, that we take up that question in the morning.

Mr. J. J. Coleman: Will Mr. Miller be here in the morning?

Commissioner Harlan: Yes. I understood the other witness would know more of the details.

Mr. Miller: It was in 1904.

Mr. J. J. Coleman: I simply wanted to state on the controversy as to whether Mr. Miller solicited the divisions from me, or whether

I from him, that I would like to cross examine him on that point.

5643 Commissioner Harlan: How long will it take?

Mr. J. J. Coleman: It will take only a few minutes.

Commissioner Harlan: You may ask him.

Mr. J. J. Coleman: Did you ever receive a division from the Santa Fe on lumber business coming from the Peach River & Gulf prior to the time that you received them from the Houston, East & West Texas?

Mr. Miller: I think not.

Mr. J. J. Coleman: How long were you operating the Peach River & Gulf, delivering lumber to the Santa Fe, before you made a physical connection with the Houston, East & West Texas?

Mr. Miller: I should not think for more than a year; possibly a year and a half, but it did not seem to me it could have been that long.

Mr. J. J. Coleman: That is the best of your judgment on that?

Mr. Miller: Yes.

Mr. Coleman: Do you remember any conversations in advance of that connection, with me, apprising me of your plan to connect with the Houston East & West Texas?

Mr. Miller: I do not remember any conversations with you. I did, however, take it up in letter to Mr. Biddle, who at that

5644 time, I believe, was connected with your line.

Mr. Coleman: You do not remember calling my attention to the disabilities you had in competing with others who had tap line divisions?

Mr. Miller: Mr. Coleman, I do not remember those things in detail. You used to come in my office there, and we used to talk about everything on earth, hours at a time. I do not remember all we talked about now.

Commissioner Harlan: I think under the circumstances your own testimony on that point would be the fairest way to get at the matter of divisions. We will adjourn now to meet at nine o'clock tomorrow morning.

Whereupon, at 6 o'clock,, p. m., the hearing in the above matter was adjourned to Saturday, January 28, at 9 o'clock, A. M.

5645 *Alabama Central Railroad Company.*

(After the formal adjournment, Commissioner Harlan then proceeded to hear the case of the Alabama Central Railroad, at the request of counsel, who stated it would be impossible for him to be present on Saturday).

ROBERT W. CHILDS, 826 Federal Building, Chicago, Illinois, then entered his appearance for the Alabama Central Railroad.

ALBERT RUSSELL was called as a witness, and having been duly sworn and examined, testified as follows:

Commissioner Harlan: State your full name.

Mr. Russell: Albert Russell.

Commissioner Harlan: Where do you reside, and what is your business?

Mr. Russell: Manchester, Alabama; Vice-President and General Manager of the Alabama Central Railroad.

Commissioner Harlan: How long have you been associated with that railroad?

Mr. Russell: Since its organization in 1906.

5646 Commissioner Harlan: Was it organized under the laws of the State of Alabama?

Mr. Russell: It was.

Commissioner Harlan: What is its outstanding capital and authorized capital?

Mr. Russell: $100,000.

Commissioner Harlan: Who holds the capital stock in that company?

Mr. Russell: Its stockholders.

Commissioner Harlan: Are they practically the same that hold the stock of the Manchester Lumber Company?

Mr. Russell: No, sir, they are not.

Commissioner Harlan: What is the difference?

Mr. Russell: They own less than forty per cent of the stock of the Manchester Lumber Company.

Commissioner Harlan: That is to say that the minority of the stockholders of the lumber company own a majority of the stock of the railroad company, or all of the stock of the railroad company?

Mr. Russell: All of the stock of the railroad company.

Commissioner Harlan: How many stockholders has the railroad company?

5647 Mr. Russell: Three.

Commissioner Harlan: And those three form a minority of the stockholders of the lumber company?

Mr. Russell: Yes.

Commissioner Harlan: Now, do they own the stock of the railroad company in their own right?

Mr. Russell: No.

Commissioner Harlan: Or as Trustees for the lumber company? or stockholders of the lumber company?

Mr. Russell: In their own rights.

Commissioner Harlan: Do you know that?

Mr. Russell: Yes, sir.

Commissioner Harlan: How do you know it?

Mr. Russell: Well, I am familiar with the transactions and the——

Commissioner Harlan: When was the transaction, and what do you call the transaction?

Mr. Russell: I am familiar with the incorporation of the railroad company, and I know who paid the money and who bought the stock and paid for it.

Commissioner Harlan: These three have been the stockholders of the railroad company since its incorporation?

5648 Mr. Russell: Yes, sir.

Commissioner Harlan: And they furnished the $100,000 with which to build it?

Mr. Russell: Yes, sir.
Commissioner Harlan: What did it cost, $100,000?
Mr. Russell: It cost about $90,000.
Commissioner Harlan: $90,000?
Mr. Russell: Yes, sir.
Commissioner Harlan: It is six miles long, is it?
Mr. Russell: It is nearer 7; about 6.7 miles.
Commissioner Harlan: It has a spur about .20 of a mile long; it is less than six miles long, is it not?
Mr. Russell: No, I think it has 6.7 miles of main line.
Commissioner Harlan: What equipment has it?
Mr. Russell: It has one locomotive and one combination passenger coach and express and mail, and small freight which is handled in that car.
Commissioner Harlan: What freight cars has it?
Mr. Russell: It has none.
Commissioner Harlan: Were you Vice-President and General Manager of this road when it was organized and from its organization?
5649 Mr. Russell: Yes, sir.
Commissioner Harlan: Did you have charge of the construction of the line?
Mr. Russell: Yes, sir.
Commissioner Harlan: It was built under your supervision?
Mr. Russell: Yes, sir.
Commissioner Harlan: And you know what it cost?
Mr. Russell: Yes, sir.
Commissioner Harlan: Was it built through a construction company?
Mr. Russell: No.
Commissioner Harlan: Built by contract?
Mr. Russell: No.
Commissioner Harlan: How was it built?
Mr. Russell: Built by hired teams and hired labor under my own supervision.
Commissioner Harlan: And you know it cost ninety thousand dollars, or in that neighborhood?
Mr. Russell: Yes, sir.
Commissioner Harlan: Did that include the cost of the equipment you have just described?
Mr. Russell: Yes, sir.
5650 Commissioner Harlan: And what did you do with the extra ten thousand dollars; was that working capital?
Mr. Russell: That has not been paid in.
Commissioner Harlan: That has not been paid in?
Mr. Russell: No.
Commissioner Harlan: From what sources was this $90,000 derived, from these three stockholders?
Mr. Russell: Yes, sir.
Commissioner Harlan: Do they own the stock in equal shares, or substantially equal shares?

Mr. Russell: No, sir.

Commissioner Harlan: What is the authorized and issued stock of the lumber company?

Mr. Russell: $150,000.

Commissioner Harlan: And how much do these three stockholders own in the lumber company?

Mr. Childs: I might facilitate this matter here, your Honor. One owns, I think, all except two or three qualifying shares, so all the stock in the Alabama Central is owned practically by one man. that is right, is it not?

Mr. Russell: One man owns all the stock of the Alabama Central excepting two shares; I have one share to qualify as a
5651 director, and L. M. Russell, my brother, has one share to qualify as a director.

Commissioner Harlan: Are you a shareholder in the lumber company?

Mr. Russell: Yes, sir.

Commissioner Harlan: And your brother is?

Mr. Russell: Yes, sir.

Commissioner Harlan: And the other stockholder is?

Mr. Russell: The other stockholder is.

Commissioner Harlan: What proportion of the stock of the lumber company does he hold?

Mr. Russell: He holds less than forty per cent; I do not know exactly how much.

Commissioner Harlan: Who are the other stockholders in the lumber company?

Mr. Russell: There are ten or a dozen others. I have a list there.

Commissioner Harlan: What we want to know, the Commission in this investigation wants to get at all the information it can with the utmost accuracy and candor, not for the purpose of going after any particular company, but for the purpose of ascertaining what broad general principle runs through the situation, and
5652 what we ought to do with it, and we expect the co-operation of all these small companies in our efforts to find out what should be done with the situation. So I have asked the question of all the witnesses here in a very general way, without going into detail whether the interest is substantially the same in the railroad and in the connecting industry.

Mr. Russell: Yes, sir.

Commissioner Harlan: And to avoid prolixity, they have all said that it was substantially the same. Now, is there any fact within your knowledge that would justify you in making the same statement here? Of course the big stockholder in the railroad owning less than forty per cent, or about forty per cent of the stock in the lumber company may still represent the substantial investment in that lumber company. Now, is that the case here?

Mr. Russell: No, it is not.

Commissioner Harlan: We have had one or two instances where the stock was held by members of the family, and in that way there was a difference in the investment. Are there any such conditions here?

Mr. Russell: No, there are not. The other sixty or more
5653 per cent is owned by, oh, seven or eight other owners.

Commissioner Harlan: And they are not related in any way to the stockholder that owns forty per cent?

Mr. Russell: Yes, Mr. Barton's sister owns some.

Commissioner Harlan: Who is the stockholder that owns all but two shares of the railroad?

Mr. Russell: Mr. Barton.

Commissioner Harlan: What members of his family own stock in the Manchester Lumber Company?

Mr. Russell: His sister owns some stock.

Commissioner Harlan: How much does she own?

Mr. Russell: Have you that paper, Mr. Childs? We had the ownership of all the shares, but it seems I have mislaid it.

Mr. Childs: I think I can remember it. She owns about forty shares, does she not?

Commissioner Harlan: Have you the list?

Mr. Childs: I have not the list.

Mr. Russell: He mislaid it.

Mr. Childs: And Mr. Barton owns about 400 shares, does he not?

Commissioner Harlan: Mr. Barton must own more than
5654 400 shares, does he not own approximately 600?

Mr. Russell: Forty per cent of $160,000.

Commissioner Harlan: That would be sixty thousand, would it not?

Mr. Childs: I know he owns four hundred and some odd shares, four hundred and thirty odd shares.

Commissioner Harlan: Well, his sister owns forty. Now, what other member of his family?

Mr. Childs: His son-in-law owns three hundred, does he not?

Mr. Russell: I think that is it.

Mr. Childs: And the rest of the stock is divided amongst various people not connected with the family in any way?

Mr. Russell: Yes, sir.

Mr. Childs: I think that is the situation.

Commissioner Harlan: Are those people connected with any other investments of Mr. Barton?

Mr. Russell: No, not that I know of.

Commissioner Harlan: Are they officers or employees of any other company in which he is any way interested?

Mr. Russell: No.

Commissioner Harlan: Are they bondholders?

5655 Mr. Russell: No.

Commissioner Harlan: Have they any other indirect interest in this railroad company?

Mr. Russell: None whatever.

Commissioner Harlan: What is the business of the Manchester Lumber Company?

Mr. Russell: They have a saw mill at Manchester, Alabama.

Commissioner Harlan: And what other business have they?

Mr. Russell: They have a store, general merchandise store.

Commissioner Harlan: At what point?

Mr. Russell: At Manchester.

Commissioner Harlan: What else?

Mr. Russell: They own timber.

Commissioner Harlan: How much timber?

Mr. Russell: About 140,000,000 feet.

Commissioner Harlan: How many acres?

Mr. Russell: 26,000 acres.

Commissioner Harlan: What other business have they? Give me all the information you have, Mr. Russell.

Mr. Russell: Well, that is all. They build logging roads and haul in their logs to manufacture lumber, and run the store: I think that is all.

5656 Commissioner Harlan: Have they any coal business?

Mr. Russell: No.

Commissioner Harlan: Any coal on the land they own?

Mr. Russell: Yes, there is coal, on all the land they own.

Commissioner Harlan: Who mines that?

Mr. Russell: The coal is not being mined now.

Commissioner Harlan: Who owns the coal?

Mr. Russell: The Tennessee Coal & Iron Company owns about thirty thousand acres in the neighborhood of Manchester. We have a map here which will show it.

Commissioner Harlan: Who owns the coal under your land?

Mr. Russell: The Jasper Land Company owns the most of it.

Commissioner Harlan: Who owns the Jasper Land Company now?

Mr. Russell: L. B. Musgrove owns most of it.

Commissioner Harlan: Is he a stockholder in the Manchester Lumber Company?

Mr. Russell: No, sir, he has no interest whatever.

Commissioner Harlan: Let me understand this. The Manchester Lumber Company owns about 26,000 acres of land, and the coal under it is owned by the Jasper Land & Coal Company?

Mr. Russell: The Jasper Land Company. They originally owned the entire tract of timber and the land in fee simple, and

5657 when they sold the timber and surface rights they segregated the mineral rights, and they still are in the Jasper Land Company.

Commissioner Harlan: And the coal is not being mined?

Mr. Russell: No, sir.

Commissioner Harlan: As I understand it, no stockholder of the Jasper Land Company has any relation directly or indirectly with this railroad company, or with the Manchester Lumber Company?

Mr. Russell: That is right; there is no connection in any way.

Mr. Childs: The same thing is true of the Tennessee Coal & Iron Company with those large tracts of coal.

Mr. Russell: Yes, sir.

Commissioner Harlan: Does the Tennessee Coal & Iron Company own coal under the land of the Manchester Lumber Company, or adjoining?

Mr. Russell: In a few instances under land which the Manchester Lumber Company owns, and largely in adjoining tracts.

Commissioner Harlan: What is the character of the lumber on this tract of land?

Mr. Russell: Long leaf yellow pine.

5658 Commissioner Harlan: What is the output of the mills?

Mr. Russell: About sixty thousand feet a day.

Commissioner Harlan: Are you an officer of the mill company?

Mr. Russell: Yes, sir.

Commissioner Harlan: What is your capacity?

Mr. Russell: Vice President and Manager.

Commissioner Harlan: Are the officers of the railroad company identical with the officers of the mill company?

Mr. Russell: No. Mr. Barton is president of the railroad company, but is not an officer of the lumber company. The president of the lumber company is Mr. L. M. Russell.

Commissioner Harlan: The same auditor?

Mr. Russell: Yes, sir.

Commissioner Harlan: And you keep separate books of account?

Mr. Russell: Yes, sir.

Commissioner Harlan: The railroad accounts are kept as we prescribe?

Mr. Russell: Yes, sir.

Commissioner Harlan: Have you appointed an agent in Washington?

Mr. Russell: Yes.

5659 Commissioner Harlan: Who is he?

Mr. Russell: I will have to furnish that later. I do not just recall his name.

Commissioner Harlan: You have no logging cars?

Mr. Russell: No, sir. I would like to say right there that the records given to the Commission a year or two ago, show that we owned some freight cars, but these were freight cars that the railroad company was using that belonged to the Frisco Railroad, and we expected to buy them from the Frisco, but when they finally got possession, the Manchester Lumber Company bought the cars instead of the railroad company.

Commissioner Harlan: So you have no cars?

Mr. Russell: The Alabama-Central has no freight cars, with one exception.

Commissioner Harlan: You have one locomotive?

Mr. Russell: One locomotive, and no combination car.

Commissioner Harlan: Do you run passenger trains?

Mr. Russell: Yes, sir.

Commissioner Harlan: On time card?

Mr. Russell: Yes, sir.

Commissioner Harlan: Do you sell tickets?

5660 Mr. Russell: We collect cash fares on the train, and have a cash register in the car.

Commissioner Harlan: Do you publish joint rates on passenger traffic?

Mr. Russell: No.

Commissioner Harlan: Just local?

Mr. Russell: Just local.

Commissioner Harlan: Do you have any express matter?

Mr. Russell: Yes, we have a ten year contract with the Southern Express Company which gives them exclusive rights over our railroad.

Commissioner Harlan: And you carry express, do you?

Mr. Russell: We carry express.

Commissioner Harlan: Have you reported your revenues to the Commission on your express matter?

Mr. Russell: No, there has been only one month that we received any revenue since the contract went into effect.

Commissioner Harlan: What was that?

Mr. Russell: $4.96 for the last month of the year.

Commissioner Harlan: And you carry mail, you said?

Mr. Russell: Yes, sir.

Commissioner Harlan: That amounted to what, last year?

5661 Mr. Russell: The mail revenue amounted to $294.97.

Commissioner Harlan: 96 cents, was it not?

Mr. Russell: I have 97 cents.

Commissioner Harlan: And your passenger revenue was $280.50?

Mr. Russell: Yes, sir, I think that was it.

Commissioner Harlan: Now your total revenue was what?

Mr. Russell: The total revenue was $13,014.25.

Commissioner Harlan: That was for what fiscal year?

Mr. Russell: 1909 to 1910.

Commissioner Harlan: And of that the controlling interest furnished how much, or rather the lumber company, put it in that way.

Mr. Russell: 85 per cent.

Commissioner Harlan: Have you that in the form of an exhibit?

Mr. Russell: I will put it in. I will have to mail it to you. It is not in shape.

Commissioner Harlan: Did those revenues accrue to you under published interstate rates?

Mr. Russell: About forty per cent of the freight accrued from interline settlements.

Commissioner Harlan: Just tell us on what basis.

5662 Mr. Russell: How I figure that?

Commissioner Harlan: No, not the percentage, but how your railroad is paid, upon what basis.

Mr. Russell: Well, now I have——

Commissioner Harlan: Is it in the form of a division of through rates?

Mr. Russell: About forty per cent of the amount is a division of the through rates, and the other is made up of local rates.

Commissioner Harlan: I am talking now especially about interstate shipments of lumber. Do you participate in through rates to interstate points?

Mr. Russell: Yes, sir.

Commissioner Harlan: You are a party to such joint through rate?

Mr. Russell: Yes, sir, on all railroads.

Commissioner Harlan: And you received divisions on those from all the railroads?

Mr. Russell: Yes, sir.

Commissioner Harlan: What are those divisions, what is the minimum amount, and what is the maximum?

Mr. Russell: I have it right here exactly; it is 48——

5663 Commissioner Harlan: I do not want the amount; we want the basis of your revenue on interstate shipments on lumber moving under joint through rate. Now in cents per hundred pounds, what is your division of the through rate?

Mr. Russell: Two cents per hundred pounds.

Commissioner Harlan: Is that the only division you get?

Mr. Russell: Yes, sir.

Commissioner Harlan: And what service do you perform?

Mr. Russell: We haul the empty cars from Jasper down to Manchester, and switch them into the side track or the shipping tracks of the lumber company, and haul the loaded cars back to the delivering track at Jasper.

Commissioner Harlan: Where is the mill, at Jasper?

Mr. Russell: At Manchester, seven miles north of Jasper.

Commissioner Harlan: Jasper is the logging point?

Mr. Russell: Jasper is the point where the Alabama-Central connects with the trunk lines. There are three trunk lines at Jasper, the Illinois Central, the Frisco and the Southern, and the Manchester Lumber Company's mill is at the northern terminus of the Alabama Central Railroad, about seven miles.

Commissioner Harlan: So that you haul the manufactured

5664 lumber?

Mr. Russell: We haul only the manufactured lumber.

Commissioner Harlan: And in doing that you use the ties of your connections?

Mr. Russell: Yes, sir.

Commissioner Harlan: On the other side of the mill is there any logging road?

Mr. Russell: Yes, sir, the Manchester Lumber Company have their logging road there.

Commissioner Harlan: And has its own equipment?

Mr. Russell: Has its own logging cars and locomotives.

Commissioner Harlan: And does all that service for itself?

Mr. Russell: Not entirely. They assemble their load to a central point about four miles north of the mill and the Alabama Central engine and crew go out to this point and bring in the train load of cars. The lumber company pay the railroad company fifty cents a thousand for this service, log scale.

Commissioner Harlan: That is to say the Alabama Central goes beyond the mill point on to the rails owned by the lumber company?

Mr. Russell: Yes, sir.

Commissioner Harlan: With its locomotive only?
5665 Mr. Russell: With its locomotive only.
Commissioner Harlan: It hauls the empty logging cars out into the woods with its own crew?
Mr. Russell: With its own crew.
Commissioner Harlan: The brakemen are paid by the Alabama Central Railroad Company?
Mr. Russell: Yes, sir.
Commissioner Harlan: And there the cars are loaded by whom?
Mr. Russell: At this central point four miles north of Manchester the Manchester Lumber Company's engine takes the empty log cars out to its spurs in the woods where they are loaded, and it takes them back three or four at a time, and assembles them at this central point where the Alabama Central engine takes the entire train and brings it into the mill.
Commissioner Harlan: And you throw them into the pond?
Mr. Russell: They leave them there at the pond, and the saw mill pond men empty the cars and take charge of them at that point.
Commissioner Harlan: And you get what for that service?
Mr. Russell: 50 cents a thousand log scale.
Commissioner Harlan: How many thousand log scale can
5666 you carry in a logging car?
Mr. Russell: About 3,000 feet.
Commissioner Harlan: Considering that as a source of revenue is it not a fact that more than 87 per cent of your total revenues came from the lumber company? For the fiscal year 1909 did you not get as much as 97½ per cent of your total revenues from the movement of lumber and lumber products?
Mr. Russell: No, I think we got less than ninety per cent.
Commissioner Harlan: What about the tonnage?
Mr. Russell: I have never figured what that tonnage amounts to on those logs. We do not look upon that as tonnage for the Alabama Central; it is merely lending its engine to the Manchester Lumber Company to perform this service.
Commissioner Harlan: When was the mill built at Manchester?
Mr. Russell: In 1906 and 1907.
Commissioner Harlan: And that was at the same time the railroad was being constructed?
Mr. Russell: Approximately the same, yes, sir.
Commissioner Harlan: Has the railroad company any bond issue outstanding?
Mr. Russell: No.
Commissioner Harlan: Has the lumber company any bond
5667 issue outstanding?
Mr. Russell: No, sir.
Commissioner Harlan: Is there any lien of any kind on the railroad's property?
Mr. Russell: No, sir.
Commissioner Harlan: And not on the lumber company's property?
Mr. Russell: No, sir.

Commissioner Harlan: Is your engine equipped with safety appliances required by law?

Mr. Russell: Yes, sir.

Commissioner Harlan: Standard couplers?

Mr. Russell: Yes, sir, automatic standard couplers and air brakes.

Commissioner Harlan: Mr. Russell, do you know any other Alabama-Central Railroad or Alabama-Central Railway in Alabama?

Mr. Russell: There is the Alabama-Central Railway down in the neighborhood of Montgomery or Autaugaville.

Commissioner Harlan: You are not interested in that?

Mr. Russell: No. There is a conflict of names that one of us is going to change.

5668 Commissioner Harlan: Has there been any offer to the public recently of any bonds on this lumber company's property or timber land or railroad or the mill property?

Mr. Russell: No, sir.

Commissioner Harlan: You file your financial reports with the Commission?

Mr. Russell: Yes, sir.

Commissioner Harlan: I recall some advertisement recently in one of the magazines of an issue of bonds that I had in some way connected in my mind with this investment. That is a mistake, is it?

Mr. Russell: That is a mistake.

Mr. Childs: I can testify to that, if it is necessary. I know that does not pertain to this company.

Commissioner Harlan: Do you know to what I refer, have you seen the advertisement?

Mr. Childs: No, but I know there has been no issue of bonds offered.

Commissioner Harlan: Mr. Childs, have you any suggestion or any information as to the financial relation between these two companies other than that testified to by this witness?

5669 Mr. Childs: As to the financial relation?

Commissioner Harlan: Yes, as to the identity of the investment, the practical or circumstantial identity of the investment directly or indirectly.

Mr. Childs: Yes, I think I have. The Railroad Company is practically owned by one stockholder with the exception of two qualifying directors, who own one share each. The stock in the Manchester Lumber Company, I think something like 36 or 37 per cent is owned by the man who owns the railroad stock. The controlling interest of the stock in the Manchester Lumber Company, which is paid up, is owned by seven or eight other parties, so that it is practically controlled by parties outside of the controlling interest in the railroad company. And I can further state that I know that they are handled absolutely as two independent propositions, the railroad company and the lumber company, and that the railroad company is a railroad company that was organized for the purpose of extensions as the charter will show, from both ends.

Commissioner Harlan: Well, the reason I have persisted in that

inquiry is simply this, here is a large investment in timber
5670 lands which cannot be operated economically except in connection with a tap line, and a tap line has been constructed and was constructed at the time the mill was constructed, about the time when this general investment was made by the lumber company and a railroad six miles long in itself could not be an investment that Mr. Barton would care to make for itself as a railroad operation——

Mr. Childs: There is no doubt about that, Your Honor, but the railroad is so constructed, as will be shown by the testimony of the man who constructed it, that it shows that it is a permanent proposition, and the way the operations of the railroad are carried on it will be demonstrated it is an independent proposition and a road that is built there for the purpose of being continued, and I know that that is the purpose, and I know that negotiations are being carried — now with that object in view.

Commissioner Harlan: I assume, of course, that you are familiar with the facts. Nevertheless, here is an investment of $100,000, approximately, made some years ago, say it is now in its fifth year, and the net revenue for the fiscal year 1909 was but $1192, according to your reports. Was there any net revenue last year?

Mr. Russell: Yes, sir.

Commissioner Harlan: What was it?

5671 Mr. Russell: The gross revenue——

Commissioner Harlan: I am talking about the net. What was the net last year?

Mr. Childs: Do you mean the profit?

Mr. Russell: The profit of the year's operation, does that mean?

Commissioner Harlan: Of the railroad company, yes.

Mr. Russell: About $1,000.

Commissioner Harlan: Well, they were less last year than the year before, and you have indicated no immediate prospect of extending this line so as to get enough traffic to make it a satisfactory investment for Mr. Barton.

Mr. Childs: As I understand, the business improved during the last year?

Mr. Russell: Yes, sir.

Mr. Childs: They have made more money during last year than before.

Commissioner Harlan: According to the statement of the witness the net revenue was less than it was the year before. The cost of operation was larger, apparently.

Mr. Childs: The net revenue; do you mean the profit?

Commissioner Harlan: The net revenue from operation.
5672 You have the gross revenue from operation, and on the other side of the account you have the operating expenses, and the difference between the two gives the net revenue from operation or net deficit.

Mr. Childs: There was a deficit as I understand, the year before, and a profit last year as the direct result of increased traffic.

Commissioner Harlan: The witness answered the net revenue last year was $1,000, and you suggest a deficit.

Mr. Childs: The year before. Is that correct, Mr. Russell?

Mr. Russell: I think there was a deficit the year before.

Commissioner Harlan: How could that be a satisfactory investment to Mr. Barton? From the extent of this investment I presume he is a business man accustomed to making investments, and the record is left in rather an unusual shape, if left at this point, because here is a business man who is interested in this railroad to the extent of $900,000, and he and his family are interested in the lumber company to the extent of $75,000 or $80,000, and on the railroad he gets a deficit one year, and a profit of $1,000 next year. Have you any explanation to offer?

5673 Mr. Russell: Yes, an adequate one.

Mr. Childs: It goes into a new country and a rich country, and a country underlaid with coal property. There are many railroads which do not earn money the first year——

Commissioner Harlan: It has been five years in operation.

Mr. Russell: Since the fall of 1907.

Commissioner Harlan: Well, it is in its fourth year.

Mr. Childs: Yes, it has been operated a little over three years. And there are many roads which have not made a profit the third or fourth year of their existence.

Commissioner Harlan: That is quite true, but they are roads where the investment was larger, and the road longer, and you have shown no such situation here.

Mr. Childs: If you will give us an opportunity, we will show you.

Commissioner Harlan: That is what we want.

Mr. Childs: Have you the charter of this road?

Mr. Russell: Yes.

Commissioner Harlan: We will not receive the charter in the record. We have not received any of the charters, but if you will state what points are mentioned in the charter, that will be sufficient.

5674 Mr. Childs: In a general way, what does the charter provide for as — the building of the Alabama Central?

Mr. Russell: I will read two extracts that will give that idea very briefly.

Article B of the charter: "The objects for which the corporation is formed is to servey, locate, construct, operate and maintain a railroad for transportation of freight and passengers, and for general railroad purposes to survey, locate, construct, operate and maintain branch lines of railway to coal mines, blast furnaces, quarries, saw mills and other manufacturing or industrial plants situated on its line of railway——"

Commissioner Harlan: This does not help the record at all.

Mr. Childs: It provides for the building of the railroad from a point north of Manchester to a point north of——

5675 Commissioner Harlan: Yes, what are those points?

Mr. Russell: From Decatur, Alabama, to Tuscaloosa.

Commissioner Harlan: What is the distance between those points?

Mr. Childs: Tuscaloosa is south of Manchester; I do not know just what the distance is; Decatur is here (indicating). There has been built from Cullman running in a southeasterly direction a line of road of which five miles has been constructed, and 17 miles has been graded, and as I understand it the steel has been purchased for this 17 miles of railroad, which will bring Manchester within some 25 or 30 miles of the point graded, and in the country between Manchester and this road is Julianna; the country is very heavy with coal, very fine coal, almost equal to the Pocahontas coal, a fine steam coal, and there are negotiations now with mining people to extend tracks from the Alabama Central to the mine for the purpose of getting an outlet herein supplying the traffic to the Alabama Central. We have letters here to substantiate that showing that there are negotiations of that kind.

Commissioner Harlan: Is Mr. Barton a railroad man?

Mr. Childs: No, I do not know how extensively he is.

5676 Commissioner Harlan: Is he interested in the road running south from Cullman?

Mr. Childs: He is not.

Commissioner Harlan: Is that all the statement that you care to make as to the genesis of this line, the Alabama-Central and its present outlook and purposes of its owners?

Mr. Childs: Further I will say that there has been a survey made through here from Manchester running northeast towards the Louisville & Nashivlle road, and an engineer has gone through this whole territory and made reports on the mineral condition, the character of the coal, and he is the engineer of the Alabama-Central Railroad. Further, there have been surveys made south of Jasper and towards Tuscaloosa.

Commissioner Harlan: In the interest of what company?

Mr. Childs: In the interest of the Alabama Central, made by the engineer employed, and paid for by the Alabama-Central. Is that correct?

Mr. Russell: Yes.

Mr. Childs: I state this for the purpose of showing that there is more to this Alabama-Central than merely a tap line, or as a road to this lumber company. They are now negotiating a spur to

5677 a coal property three miles away, and I have no doubt that will be put in shortly, if negotiations go through.

Mr. Russell: I think they will go through, and we will build that spur very soon.

Mr. Childs: I have here state maps showing the wealth of the country here, which we would like to file as an exhibit.

Mr. Russell: That is the state map of the Warrior Coal Basin.

Commissioner Harlan: That may be filed.

(The map so offered and identified was received in evidence, and thereupon marked "Alabama-Central Exhibit No. 1, Witness Russell. January 28th, 1911," and is attached hereto.)

Mr. Childs: South of Manchester the country is very rich with coal.

Commissioner Harlan: Have you a blue print of this?

Mr. Childs: We will file this original.

Commissioner Harlan: A blue print would be a little more satisfactory to the Commission. You may make one and file it. Mr. Swacker suggests the inquiry whether Mr. Barton is interested in any of these coal properties.

Mr. Childs: Mr. Barton owns no coal property in that
5678 district that I know of.

Commissioner Harlan: Is he interested in any company that owns coal properties in that district?

Mr. Childs: He owns no interest in any coal property.

Commissioner Harlan: Is he contemplating any such investment?

Mr. Childs: I think not, not that I know of.

Commissioner Harlan: We would not go into the details at all, but as bearing upon the general nature of this investment it is desirable to know whether Mr. Barton's resources and investments extend beyond the railroad company and lumber company.

Mr. Childs: Yes, sir.

Commissioner Harlan: Are we to understand that the investments in these two companies is a rather small proportion of his means?

Mr. Childs: I do not know; I could not say.

Commissioner Harlan: Who is Mr. Barton?

Mr. Childs: Mr. E. M. Barton, of Chicago. Further in connection with this coal I can state over in here along the Northern Alabama Railroad there are a dozen coal mines that are mining the Black Creek seam. Are those mining at a profit, Mr. Russell?

5679 Mr. Russell: Yes, sir, they have been running continuously.

Mr. Childs: I understand there is one mine that last year made a profit of $90,000 out of this same seam that comes up and appears in the coal region here.

Mr. Russell: That is the Empire coal property.

Commissioner Harlan: Is there any further information you wish to offer?

Mr. Childs: I would like to offer some.

Commissioner Harlan: Mr. Swacker suggests a question which is very pertinent and very relevant to this inquiry, and that is why when these investments were all made at one time the two properties were segregated.

Mr. Childs: The railroad property and the lumber company?

Commissioner Harlan: The building of the mill and the building of the railroad.

Mr. Childs: For the reason that it was contemplated, and as the charter shows, to build additional mileage, and to run the road further north and further south.

Commissioner Harlan: That does not get very far. We have had a great many companies here which were chartered to reach
5680 certain points; we had on one day half a dozen companies which were all chartered to reach Hot Springs, Arkansas, but they had been built fifteen years and never a mile built in the

direction of Hot Springs, and never any intention to build in that direction. Now when you exhibit a charter which gives you the right to build from Tuscaloosa up to Decatur, it does not signify very much.

Mr. Childs: I understand all that.

Commissioner Harlan: There is one railroad company that is called the Atlantic & Pacific, and which has been chartered and in operation for twenty-five or thirty years and has about two miles of road.

Mr. Russell: I would like to have the opportunity to give some information on how the railroad was built, and the expense that the railroad has gone to to condemn right of way through the center of Jasper to build a permanent road.

Commissioner Harlan: That is not the point. You have explained all that.

Mr. Swacker: We understand why there were two corporations. Why were the interests in the two corporations not made relatively the same at the time, what was the reason for that?

Mr. Childs: I do not know. The corporations from their
5681 inception have been in the same form in which they are now, the stock in each corporation is held at the present time as it was held four years ago.

Mr. Swacker: Can you explain what was the reason that that basis that was determined upon was followed, while they were not all relatively the same in each company?

Commissioner Harlan: This is the point, Mr. Childs, which Mr. Swacker has in mind. It has been said here repeatedly that you cannot run a mill economically without a railroad, and the same people that invested their money in that mill and in the purchase of that timber land must have contemplated that a railroad would be built to serve the mill and get its products out to the regular line. Now, Mr. Swacker's question is why, with that knowledge in mind on the part of every man who owns a share of stock in the mill, others should build the railroad and hold it for going on four years with no adequate return on the investment.

Mr. Childs: Well, the parties who own the railroad own—as I said, less than forty per cent of the stock of the Manchester Lumber Company, and I cannot state why stock in the railroad company was not sold to individuals, unless the man who built the road wished to own the stock himself.

5682 Commissioner Harlan: He is in the attitude of bearing for nearly four years a burden without any substantial return in the interest of a company of which he owns less than forty per cent.

Mr. Childs: Yes, that is true.

Commissioner Harlan: And of thus giving 60 per cent of the capital in that lumber company returns on the investment that could not otherwise be received at all. Now that situation stands on the record without explanation.

Mr. Childs: There is no evidence here as to any returns on the part of the lumber company.

Commissioner Harlan: Well, I suppose it was a going concern, and does utilize its timber and is selling it in the open market.

Mr. Childs: Yes, but you know the condition of the market.

Commissioner Harlan: Yes, it is very bad now.

Mr. Childs: And it has been for three years.

Mr. Russell: It has been for three years under the same conditions; the condition of the coal market is what prevented the coal mines from opening up, which expected to be opened up two or three years ago.

Commissioner Harlan: That is very true, but nevertheless the investment was made in the lumber company by sixty per
5683 cent of the stockholders with the expectation of making a profit, and they could not get a profit without a railroad, and others undertook to build that railroad, which in itself could not be run at a substantial profit as much as the mill and the mill's traffic before they can make any profit.

Mr. Childs: Necessarily the railroad was built originally to make an outlet for the mill, but that was not the only object in putting the railroad in there. It was a big enterprise.

Mr. Swacker: Would the lumber company's stockholders be content to allow the railroad company to make a profit with the lumber market in this condition, the railroad company making the profit off of this traffic supplied by the lumber company?

Mr. Childs: Decidedly so. There has never been a cent of divisions or money received for freight paid by the railroad company over to the lumber company. It is none of the lumber company's business what the railroad company receives.

Mr. Swacker: You misunderstand me. Suppose the railroad were a profitable institution, did you think 60 per cent of the
5684 stockholders of the lumber company would be content to sit and make no money in the lumber business, and allow the minority interests in the lumber business to make a profit out of the railroad, that is, when their investments were made coincident?

Mr. Childs: That is a pretty hard question to answer.

Commissioner Harlan: Have you any further information to give us?

Mr. Childs: In regard to this railroad I have, yes, considerable. Mr. Russell, I believe the map will show the trunk lines passing through Jasper.

Commissioner Harlan: Yes.

Mr. Childs: Did any of the railroads passing through Jasper, or any trunk line furnish any money, rails or other material for the building of the Alabama-Central?

Mr. Russell: They did not.

Commissioner Harlan: We would assume there was nothing of that kind.

Mr. Childs: With reference to Jasper, Mr. Russell, does the Alabama-Central run into Jasper, and if so, how does it connect with the other railroads in Jasper?

Mr. Russell: I have a map I would like to present to show
5685 that.

Mr. Childs: Will you produce that map? I think it is

pertinent to the situation. Now, referring to this map, will you point out the Illinois Central Railroad?

(Witness indicates.)

Commissioner Harlan: I believe we can work that out from the map without any special explanation of it.

Mr. Childs: The Alabama-Central Railroad runs right down directly into the center of the town, does it not?

Mr. Russell: Yes, this point here on 19th Street is less than two blocks from the center of the city, this square.

Mr. Childs: And have they connections here with three railroads?

Mr. Russell: Three railroads, yes, sir.

Mr. Childs: About what did it cost to condemn that land right through the center of the town?

Mr. Russell: It involved suits that amounted to about $15,000; they are not all settled yet.

Mr. Childs: There was a judgment entered for something like $12,000 on one piece, was there not?

Mr. Russell: No, one piece was $6,500, and others amount-
5686 ing to about $15,000 altogether.

Mr. Childs: Did the railroad have an offer of a right of way around outside the town to connect with the trunk lines?

Mr. Russell: We had an offer of a right of way to the east of the town coming in and paralleling the Frisco to this connection.

Mr. Childs: An offer free of charge?

Mr. Russell: Free of charge.

Mr. Childs: And in place of that they built through the center of the town at a large expense?

Mr. Russell: Yes, sir.

Mr. Childs: And the town where they went through the streets gave them a right to go through the streets by ordinance.

Mr. Russell: They gave them a franchise.

Mr. Childs: That is merely for the purpose of showing it is the idea to have the permanent road.

Commissioner Harlan: Can you furnish a blue print of that?

Mr. Russell: Yes.

Mr. Childs: Has this road exercised the right of eminent domain?

Mr. Russell: Yes, sir.

5687 Mr. Childs: When this railroad was first started, was there a proposition made by the Southern Railroad as to leasing rails to the Alabama Central on condition that they would furnish to the Southern road the traffic, and if so, what was that proposition made by the Southern road?

Commissioner Harlan: Well, it was not consummated.

Mr. Childs: It was not consummated.

Commissioner Harlan: Then we need not go into the details.

Mr. Childs: Simply for the purpose of showing that the Alabama-Central was building a permanent road and not taking a cheaper way to bring this lumber out. Do you know why the railroad built into Jasper instead of making that outside connection?

Mr. Russell: What outside connection?

Commissioner Harlan: We will assume from Mr. Childs' state-

ment that that indicates the permanent character of this investment. This road desires to be a permanent feature of that community.

Mr. Russell: Yes.

Mr. Childs: Was any of the money used in building the railroad advanced by the lumber company, or was it built absolutely independent of the lumber company?

5688 Mr. Russell: Absolutely independent.

Mr. Childs: It was built by the Alabama-Central Railroad?

Mr. Russell: Yes.

Mr. Childs: You understand that the lumber company as a corporation owns no interest in the railroad, and vice versa?

Commissioner Harlan: That is understood.

Mr. Childs: Does the railroad own its own right of way?

Mr. Russell: It does.

Mr. Childs: Has the road any stations?

5689 Mr. Russell: Yes, sir.

Mr. Childs: How many stops or platforms has it between Manchester and Jasper?

Mr. Russell: It has four.

Mr. Childs: Has the road an agent?

Mr. Russell: Yes, sir.

Mr. Childs: Paid exclusively by the road?

Mr. Russell: Yes.

Mr. Childs: Does he bill the freight from Manchester out?

Mr. Russell: Yes, sir.

Mr. Childs: Interstate shipments and state shipments?

Mr. Russell: Yes, sir.

Mr. Childs: Has the road put in side tracks for the use of independent shippers?

Mr. Russell: It has a side track——

Commissioner Harlan: I think that will all be covered by the exhibit of your traffic, if you have such an exhibit, showing your traffic; that is all we need. It makes no difference whether they have side tracks or not, if they have outside traffic, that is the point, and I understand the witness will furnish that exhibit and an analysis of all traffic for the last two years, showing what came from the lumber company and what from outside

5690 interests?

Mr. Russell: Yes.

Mr. Childs: State what other saw mills are on this line served by the railroad.

Commissioner Harlan: Will that appear in this exhibit?

Mr. Russell: No, not without being asked. The other shippers——

Commissioner Harlan: That is really all covered by the traffic exhibit. If you will show us what your outside traffic is and the amount of it.

Mr. Childs: Is it not material to show that there are several other saw mills furnishing lumber?

Commissioner Harlan: That is all covered by an exhibit of outside traffic.

Mr. Childs: You want in detail who the shippers are?

Commissioner Harlan: You can give it that way if you like.

Mr. Russell: Then that will appear in the exhibit.

Mr. Childs: In constructing this road, did they put in a steel bridge over a stream instead of a wooden bridge.

Mr. Russell: Yes, in crossing Black Water Creek we put in a deck truss steel bridge, 125 foot span.

Mr. Childs: Did you put in fills instead of wooden
5691 trestles?

Mr. Russell: Yes, we have some fills twenty feet high.

Mr. Childs: What is the weight of rail?

Mr. Russell: Sixty pound.

Mr. Childs: Standard gauge?

Mr. Russell: Standard gauge.

Mr. Childs: What is the maximum weight of the cars which pass over the Alabama Central line?

Mr. Russell: We carry the largest equipment that the trunk lines have, 50-ton cars.

Mr. Childs: Who owns the land along the right of way from Manchester to Jasper?

Mr. Russell: The Jasper Land Company own about two miles, and the rest of the land is owned by farmers and individuals.

Mr. Childs: As to the money paid to the section crew and employees, that may come in as an exhibit?

Commissioner Harlan: You mean the salaries?

Mr. Childs: Yes.

Commissioner Harlan: Yes; we have that information anyway.

Mr. Childs: What is the maximum grade of this road?

Mr. Russell: One and one-half per cent.

Mr. Childs: What is the maximum curvature?
5692 Mr. Russell: Eight degrees.

Mr. Childs: The Alabama Central Railroad hauls no logs, does it?

Commissioner Harlan: I think that has been covered.

Mr. Childs: The Manchester Lumber Company has no land between Manchester and Jasper.

Mr. Russell: No.

Mr. Childs: Are there any contracts or agreements of any kind between the Manchester Lumber Company and the railroad company that you know of?

Mr. Russell: No, there are none that I know of.

Mr. Childs: No contracts or agreements of any character?

Mr. Russell: No.

Mr. Childs: Where does the lumber company get the money which it has to build the spur tracks that go into the woods, that comes from the lumber company itself?

Mr. Russell: It comes from its earnings.

Commissioner Harlan: The railroad company does not furnish the steel?

Mr. Russell: No, it has no connection whatever.

Mr. Childs: And the steel of the Alabama Central Railroad was purchased from a concern in Chicago, was it not?

5693 Mr. Russell: Yes, sir.
Mr. Childs: New rails?
Mr. Russell: New rails.
Mr. Childs: New 60 pound rails?
Mr. Russell: Yes, sir.
Mr. Childs: Is there an agent at Manchester ready to receive shipments at all times for shippers?
Mr. Russell: Yes, sir.
Mr. Childs: And are all shippers treated exactly the same by the railroad as the Manchester Lumber Company?
Mr. Russell: All have exactly the same treatment.
Mr. Childs: About how many passengers does the railroad company carry?
Commissioner Harlan: That will be shown on the exhibit.
Mr. Childs: The lumber company employees do not ride free on the road, do they?
Mr. Russell: No, sir, the lumber company pays the railroad company for hauling its employees.
Commissioner Harlan: By the month or a fixed sum?
Mr. Russell: It pays for them at the end of the month. A record is kept each day, and then they settle at the end of the month.
5694 Commissioner Harlan: At a local rate?
Mr. Russell: At the local rates; yes, sir.
Mr. Childs: How many people are there right around Manchester that are tributary to the Alabama Central Railroad?
Mr. Russell: There are 500 people in Manchester and the territory within five or six miles of Manchester, north of Manchester, about 5,000 people.
Mr. Childs: The railroad company solicits business amongst those people?
Mr. Russell: Yes, sir.
Mr. Childs: Does the railroad company conform to all the rules and regulations of the Alabama Railroad Commission?
Mr. Russell: It does.
Mr. Childs: Has the Alabama Central filed a tariff with the Alabama Railroad Commission?
Mr. Russell: Yes, sir; we have an intrastate tariff.
Mr. Childs: Will you produce that tariff? I would like to file that with the Commission, if there is no objection.
Commissioner Harlan: That can be referred to instead of being filed.
Mr. Childs: It does file such a tariff?
Mr. Russell: Yes.
5695 Mr. Childs: Is this road recognized by the Railroad Commission as a common carrier in every respect?
Mr. Russell: It is.
Mr. Childs: Trains are operated on schedule time?
Mr. Russell: Yes, sir.
Mr. Childs: Does the Manchester Lumber Company, and do all other shippers pay demurrage on cars?
Mr. Russell: Yes, sir; they all pay demurrage.

Mr. Childs: And the railroad pays demurrage to the trunk lines on cars kept over 48 hours?

Mr. Russell: Yes, sir.

Commissioner Harlan: Are you sure of that?

Mr. Russell: Yes, sir, the railroad company gets 48 hours free time from the trunk lines, and it in turn charges the shippers after 48 hours free time.

Mr. Childs: Have you at times paid the railroad demurrage?

Mr. Russell: The railroad company every month has to pay demurrage to the trunk lines.

Mr. Childs: Where is the through billing made out?

Mr. Russell: The through billing is all done by the agent at Manchester.

Mr. Childs: Do you take less than carload traffic in lumber
5696 and other merchandise?

Mr. Russell: Yes, sir.

Mr. Childs: You take anything?

Mr. Russell: All classes and commodities.

Mr. Childs: Whenever called upon to do so, you set a car on a loading track for shippers independent of the Manchester Lumber Company?

Mr. Russell: Yes, sir, as soon as we can get a car from the trunk line we set it in.

Mr. Childs: The railroad operates its own trains with its own crews, exclusive of any employees of the lumber company?

Mr. Russell: Yes, sir.

Mr. Childs: Has the railroad ever paid any dividends?

Mr. Russell: No.

Mr. Childs: Have you had any trouble with any shippers other than the Manchester Lumber Company at any time with regard to rates?

Commissioner Harlan: I do not think we will go into those details.

Mr. Childs: There has been some question here which I have heard in the other hearings as to the attitude of other shippers towards the railroad. Do you wish to go into that question
5697 at all?

Commissioner Harlan: I think not. I think that is not pertinent.

Mr. Childs: I wish to show that all were satisfied with the situation.

Commissioner Harlan: I think that can be assumed, in the absence of special complaint.

Mr. Childs: Does this railroad perform all the functions of a common carrier?

Mr. Russell: All functions.

Mr. Childs: In every respect?

Mr. Russell: Yes, sir.

Mr. Childs: It issues its bills of lading in the ordinary prescribed form?

Commissioner Harlan: I think all those operating questions have been substantially gone over and can be left out.

Mr. Childs: Have there been some personal injury suits against the road?

Mr. Russell: Yes, sir. There has been one who got a judgment of $3,500.

Mr. Childs: And we settled one or two claims.

Mr. Russell: We settled some claims out of court.

5698 Mr. Childs: With regard to the divisions, how long have you been getting divisions from the two roads which grant divisions to the Alabama Central?

Mr. Russell: The Frisco commenced giving divisions in May, 1908 and the Illinois Central in April, 1909.

Mr. Childs: You received no divisions the first year that you operated?

Mr. Russell: No.

Mr. Childs: And the giving of divisions to the road had nothing to do with the building of the road; in other words, the division is not paid by the trunk lines for the purpose of paying back any loans made by the trunk lines or anything of that kind?

Mr. Russel: No.

Mr. Childs: I think that has been made clear your Honor.

Commissioner Harlan: I think so.

Mr. Childs: Are you now getting the same divisions you did at first?

Mr. Russell: Just the same.

Mr. Childs: What rate does the State of Alabama allow for intrastate shipments from Manchester to Jasper?

Mr. Russell: Fifty per cent more than first class roads on

5699 all classes and commodities.

Mr. Childs: Taking into consideration the comparison of the rate or of the division and the rate allowed by the state, how much does the state allow?

Commissioner Harlan: Do they have any joint through rates between points in the state?

Mr. Russell: No, it is always figured on a combination of locals. There are no joint rates.

Commissioner Harlan: And you are allowed fifty per cent more than the distance tariff?

Mr. Russell: The Alabama Commission divides the roads into four classes, first, second, third and fourth class roads, and we are in the fourth class, but in our tariff we are allowed to charge fifty per cent more than first class roads.

Commissioner Harlan: Do you have lumber shipped from the mill to points in the state?

Mr. Russell: Yes, sir, a great deal.

Commissioner Harlan: And are your earnings on such shipments larger than your division on interstate shipments?

Mr. Russell: Yes, sir; we are allowed two and one-half cents on intrastate shipments, and two cents on interstate.

Mr. Childs: I wish to bring that out to show that the di-

5700 vision is less than the intrastate rate. What percentage of the through rate does your division amount to, for example, on the Buffalo rate?

Commissioner Harlan: I do not think we need to go into that.

Mr. Childs: The Manchester Lumber Company does not share in the division either directly or indirectly in any respect, does it?

Mr. Russell: No.

Mr. Childs: Have you any contracts with any trunk lines giving to any one trunk line a certain percentage of your business?

Mr. Russell: No, there is no such contract.

Mr. Childs: You are unhampered by any such arrangements?

Mr. Russell: Yes.

Mr. Childs: You have division sheets here, have you? I suppose those are all on file with the Commission.

Commissioner Harlan: I doubt it, but there is no occasion for the division sheets. The witness has stated two cents and two and a half cents on state movements.

Mr. Russell: Yes. I would like to say that the Jasper rate applies from Manchester only to points of destination north of the
5701 Ohio River and out of that through rate we get two cents. To other points we add our local of two cents.

Mr. Childs: The Alabama Central files tariffs with the Interstate Commerce Commission now, does it not?

Mr. Russell: In that it concurs with the tariffs filed by the Frisco and Illinois Central.

Mr. Childs: It has concurred in those tariffs?

Mr. Russell: Yes, sir.

Mr. Childs: I think we have gone into the condition of the country north of Manchester pretty thoroughly.

Commissioner Harlan: I think that is all in.

Mr. Childs: May we file as exhibits the letters and documents showing negotiations for the opening up of coal mines?

Commissioner Harlan: I think your statement covers that. You have stated the matter rather fully.

Mr. Childs: Of course I have not been under oath.

Commissioner Harlan: Well, you are counsel in the case and we will accept it.

Mr. Childs: May we file with the Commission the engineer's report as to what is contained throughout this country, the natural resources?

Commissioner Harlan: I think that has been covered by
5702 your statement practically. The record indicates now that it is a lumber region and extensively underlaid with coal of a valuable character.

Mr. Childs: There is one question in regard to that, north of Manchester in Winston County, how much hard wood is there?

Mr. Russell: The Government reports show more than 700 million feet in Winston County, which commences six miles north of Manchester.

Mr. Childs: Who owns that lumber?

Mr. Russell: A great deal of it is Government land. I do not know of any one holder that has more than two or three thousand acres.

Mr. Childs: The Manchester Lumber Company owns none of that?

Mr. Russell: They own none of that.

Mr. Childs: Is any one who is interested in the Manchester Lumber Company in any way interested in that hard wood?

Mr. Russell: Not that I know of.

Mr. Childs: In regard to the agricultural conditions of the country around Manchester, is that developing?

Mr. Russell: Yes, sir; it is developing slowly.

Mr. Childs: They raise cotton and corn?

5703 Mr. Russell: There are about 4,000 bales of cotton brought into Jasper from the north every year, and it is hauled as far as 25 or 30 miles.

Mr. Childs: Propositions have been made by several concerns have there not—I will withdraw that question.

Commissioner Harlan: I think you have covered the matter rather fully, Mr. Childs, and if anything further occurs to you which you deem essential, if you will write to me there will be no trouble about getting it into the record.

Mr. Childs: Very well; if there are any facts which I wish to submit, I can?

Commissioner Harlan: Yes. But I just wished to express the view that I think you have covered the case very thoroughly as it stands.

(Witness excused.)

Whereupon, at 7:45 P. M., the hearing of the above matter was closed, and the Commission adjourned as per previous announcement to Saturday, January 28, 1911, at 9:00 A. M.

5704 ST. LOUIS, MO., *January* 28, 1911.

Met pursuant to adjournment at 9:00 A. M.

Present: Commissioner Harlan and parties as before.

Continuation of Hearing of Peach River Lines.

A. W. MILLER was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Walter: What is that section of Texas in which your lines lie commonly known as?

Mr. Miller: It is what we call down there the Big Thicket.

Mr. Walter: What is the nature of the land after the timber has been removed?

Mr. Miller: It is all river bottom country; I don't suppose there is any more fertile land in the world than along the Trinity River.

Mr. Walter: Has the lumber company, say at Milvid, done anything toward trying out the land?

Mr. Miller: We have opened up some experimental farms there, raising corn and other food crops.

Mr. Walter: How is it as to fruit, say peaches?

Mr. Miller: It is not so much as to peaches down there,
5705 but there are some varieties grown.

Mr. Walter: More agricultural than for fruit raising?

Mr. Miller: Yes.

Mr. Walter: What other mill than your own is located at Beaumont?

Mr. Miller: There are several small mills there, and the Kirby Company have a large mill there.

Mr. Walter: Is that what is known as the Reliance Mill?

Mr. Miller: Yes, sir.

Mr. Walter: Can you say whether or not, under the Texas tariffs, they have made a rate in on logs which is refunded when a certain amount of timber goes out?

Mr. Miller: Yes, they get their logs hauled free.

Mr. Walter: That is, there is a refund provided there is a shipment out of the lumber?

Mr. Miller: On each car of lumber they get a corresponding refund on the inbound logs; that is, the number of logs equivalent to produce that car of lumber, generally fixed at about three cars of logs, so that the railroad's carriage of logs into that mill does not cost anything.

Mr. Cowan: You do not mean to create the impression that it is not accorded to anybody else?

5706 Mr. Miller: I did not hear you.

Mr. Cowan: Anybody else can get the same privilege?

Mr. Miller: Well——

Mr. Cowan: Oh, well, the Texas Commission never made a special rate for the Kirby Lumber Company.

Mr. Walter: We make no contention but what the rate is open to everybody.

Mr. Miller: I would not agree with you about that, because those milling in transit rates on logs have applied between a good many points in Texas at various times, but the lines that were carrying them have objected to putting them in, one road saying "While we put these rates in years ago, we will not any more," and the Commission would not insist upon it, if the railroad did not want to put them in.

Commissioner Harlan: Will the Louisiana Central report in the next room before Examiner Burchmore? And the Gulf & Sabine River. You may proceed, Judge Cowan.

Mr. Cowan: Do you have any milling in transit on the Kansas City Southern?

Mr. Miller: No, sir.

Mr. Cowan: Well, if you wanted to buy logs up on the Kansas City Southern and have them haul them down to you under
5707 the same circumstances, how would you arrange to have it done?

Mr. Miller: I do not know how the Kansas City Southern regards those arrangements. It is a matter I have never had up with them.

Mr. Cowan: You have never made application for them?

Mr. Miller: No, not to that line.

Mr. Cowan: You bring your logs in by trackage arrangement. that is, you use their track and haul the logs in?

Mr. Miller: Well, we use a small part of their track; yes.

Mr. Cowan: When you send your lumber out, what do you get out of it as a division of the rate?

Mr. Miller: I am not familiar with the divisions.

Commissioner Harlan: The next witness will testify as to that.

Mr. Marble: The first examination of this witness I did not hear.

Commissioner Harlan: Let me explain in a rough manner. The mill of this company is a short distance from the tracks of the Kansas City Southern, and is reached by the track of that line. What is that mill?

Mr. Miller: At Beaumont.

5708 Commissioner Harlan: They have a trackage arrangement over the Kansas City Southern from a point where their own line joins that line, and they operate their logging trains over their own line to the Kansas City Southern and then over the switching track of the Kansas City Southern to the bank of the river, where their logs are dumped into a boom and the logs on being taken out and sawed, are loaded onto the cars on the Kansas City Southern switching track, but the empty cars and loaded cars also are hauled back and forth to the interchange track by this line, under a trackage arrangement.

Mr. Walter: Three and a half miles to the interchange track.

Mr. Marble: Does that operation which has been described come within the milling in transit tariffs prescribed by the Texas State Commission?

Mr. Miller: No, sir.

Mr. Marble: It does not?

Mr. Miller: No, sir; the divisions that we earn on that traffic are paid to us for the movement of those loaded and empty cars. We have to haul the cars about seven miles, three and a half miles from the interchange track in the city yards down to the saw mill, and then after we load them, we have to get them back there.

5709 Mr. Marble: The milling in transit regulations of the Texas State Commission apply upon movements of logs by the line carrier, do they not, and the subsequent movement of lumber by that line carrier?

Mr. Miller: I think so.

Mr. Walter: We put in the record that tariff, and it had noted "Do not file with the Interstate Commerce Commission."

Mr. Marble: Do you know whether the carriers have voluntarily extended those regulations to interstate shipments as well?

Mr. Miller: I do not think it makes any difference where the destination is, whether state or interstate.

Mr. Marble: The tariffs will tell.

Mr. Walter: Yes.

Mr. Cowan: The Texas Railroad Commission, after personal examination of your line, declined to recognize it as a common carrier?

Mr. Miller: Which line do you mean?

Mr. Cowan: Well, any of them.

Mr. Miller: The Commission never examined our Galveston, Beaumont & Northeastern line, so far as I know. They did
5710 examine it a year or so ago the Riverside & Gulf line on the complaint of the Allen Company for some relief which the Riverside & Gulf was in nowise responsible for, and the matter of cars being scarce.

Mr. Cowan: Well, passing that subject, they do not recognize your line as a common carrier?

Mr. Miller: No.

Mr. Cowan: So there are no Texas rates applying from points on your line?

Mr. Miller: Not unless the consignments move interstate.

Mr. Cowan: I said Texas; I meant intrastate.

Mr. Miller: We earn some divisions on Texas business that move interstate.

Mr. Cowan: Other than interstate business—you get divisions interstate, but do not get it on state business.

Commissioner Harlan: The next witness will give all those details.

Mr. Coleman: That is true of the Peach River Road: it is not recognized, is it?

Mr. Miller: It is not recognized.

Mr. Coleman: And I understand you have made application in each case for a rate, and have been refused.

5711 Mr. Miller: I do not think any application we have ever made has been refused; nothing has ever been reached on it.

Mr. Walter: We introduced in the record last night a ruling of the Commission that they were without power to pass upon it; that the mere organization caused the laws automatically to apply to common carriers, and that letter is in the record.

Mr. Cowan: In New Orleans it was claimed that the Commission did have power to do it, and they went on to show how they did it.

Mr. Walter: The decision of the Commission is in the record.

(Witness excused.)

C. W. HOLE was called as a witness, and having been duly sworn testified as follows:

Commissioner Harlan: State your name.

Mr. Hole: C. W. Hole.

Commissioner Harlan: Where do you reside and what is your business?

Mr. Hole: I reside at Galveston, and am general manager of the Peach River Lines.

5712 Commissioner Harlan: They consist of what?

Mr. Hole: The Galveston, Beaumont & Northeastern; Riverside & Gulf, and Peach River & Gulf.

Commissioner Harlan: They belong to the Miller-Vidor Lumber Company?

Mr. Hole: Yes, sir.

Commissioner Harlan: We will take up the Galveston, Beaumont & Northeastern first. Mr. Miller described the general location of that line yesterday and its relation to the mill. I wish you would tell us something about the traffic of that company. Take up the traffic for the last fiscal year. What was the gross tonnage?

Mr. Hole: The tonnage for the fiscal year ending June 30, 1910——

Commissioner Harlan: Let me ask first, have you the figures in the form of an exhibit?

Mr. Hole: Yes, sir.

Commissioner Harlan: Have you copies?

Mr. Hole: Yes, sir, I gave that to you yesterday and they were handed back for some reason or other.

Commissioner Harlan: In the figures for that year you show revenue on lumber and logs of the Beaumont Saw Mill to the
5713 amount of $13,000 plus. Is that all the traffic that line has?

Mr. Hole: Practically so.

Commissioner Harlan: You have no mail, passenger or express earnings?

Mr. Hole: No, sir.

Commissioner Harlan: And I observe in the reports for that year that you show a deficit of $1,140.15.

Mr. Hole: Yes, sir.

Commissioner Harlan: Have you shown what your operating expenses are here?

Mr. Hole: I have not them on that exhibit, but it is on file. It was omitted when that was copied by the stenographer.

Commissioner Harlan: Can you tell me what is the general salary list of that company, just the aggregate salary list for the officers of that company?

Mr. Hole: About $1,800 a year.

Commissioner Harlan: And for the six months ending January 1st, 1911, you had no outside traffic to speak of.

Mr. Hole: Lumber and logs.

Commissioner Harlan: What was the source of that revenue? Of course I know it is on the lumber and logs, but who paid
5714 it to you?

Mr. Hole: The logs are handled: we have a joint track arrangement with the Kansas City Southern from Vidor to a point just below Beaumont, and the mill is located on the river bank. It is served by a joint track of the Kansas City Southern and the Galveston, Beaumont & Northeastern.

Commissioner Harlan: Why do you call it a joint track?

Mr. Hole: Because we pay for a joint trackage arrangement over the road.

Commissioner Harlan: But it was built by the Kansas City Southern?

Mr. Hole: It was originally built, as I understand it, by the owners of the mill, and then transferred to the Kansas City South-

ern and it becomes a joint property. The Galveston, Beaumont & Northeastern pay to the Kansas City Southern for the use of those tracks an interest which amounts to about in round numbers $105 a month.

Commissioner Harlan: Well, it is a minimum of $27.50 per train?

Mr. Hole: No, it is $105 a month, for the joint tracks, at the mill, connecting from down below, as shown on the map. The joint track arrangement is on a wheelage basis from Vidor
5715 to Beaumont, by which we pay the Kansas City Southern $27.50 per train of fifteen cars, and then a proportionate rate of $1.00, $1.50 and so on for the increased numbers.

Commissioner Harlan: Can you tell us what was the total amount paid by you under those trackage arrangements to the Kansas City Southern during the last fiscal year?

Mr. Hole: I have not got it here. I can furnish it to the Commission if they so desire.

Commissioner Harlan: If you will, do that.

Mr. Hole: Yes.

Mr. Walter: We will furnish it.

Commissioner Harlan: Proceed and answer my inquiry as to what was the source of this revenue.

Mr. Hole: The Kansas City Southern allow us for performing the service of hauling the empty cars in and the lumber out a division of from one-half cent to three cents per 100 pounds.

Commissioner Harlan: Is that your highest division on any traffic?

Mr. Hole: With the exception of one point, which is Fort Smith, Arkansas, and possibly we have maybe one or two cars a year which we handle to that point, which is four cents.

5716 Commissioner Harlan: What is the highest division you have ever received from the Kansas City Southern on any traffic?

Mr. Hole: Four cents.

Commissioner Harlan: And the service performed by your line, as I understand you, is to haul empty cars from Beaumont under this trackage arrangement to the mill, and the loaded cars from the mill back to Beaumont, to the interchange track?

Mr. Hole: Yes, sir, we haul the loaded car of lumber; we handle our own logs into the mill over our line, and the joint track of the Kansas City Southern into the mill, and then from the Beaumont yards we handle the empty cars into the mill over the joint track and the lumber back.

Commissioner Harlan: So the division has no relation at all to the movement of the logs over your own line and the line of the Kansas City Southern to the mill?

Mr. Hole: None whatever.

Commissioner Harlan: Now, I understand that you receive some logs via the river.

Mr. Hole: I presume they do. I have nothing whatever to do with the mill. I have no doubt they do.

5717 Commissioner Harlan: Have you ever received any shipments of lumber by way of the river to carry on to Beaumont or elsewhere?

Mr. Hole: No.

Commissioner Harlan: Any traffic from outside interests in that way?

Mr. Hole: There is none in there which would come in that way.

Commissioner Harlan: You never move any cotton or anything of that kind in that way for the farmers?

Mr. Hole: No.

Commissioner Harlan: Have you ever been a railroad man at any time?

Mr. Hole: All my life.

Commissioner Harlan: Are you familiar with cases where railroads without expense switch in empty cars and take out loaded cars over switch tracks leading to industries?

Mr. Hole: I do not recall any right now, only the log haul you were just discussing into Beaumont.

Commissioner Harlan: Is it not quite a common practice with railroads to spot cars on spur tracks without charge?

5718 Mr. Hole: Yes.

Commissioner Harlan: To industries, on their lines?

Mr. Hole: Certainly.

Commissioner Harlan: And to take the loaded car away without charge?

Mr. Hole: When with their own service.

Commissioner Harlan: With their own service?

Mr. Hole: Yes.

Commissioner Harlan: And it is also not uncommon for railroads to make a charge for such a service, is it not?

Mr. Hole: It all depends on conditions. There are a great many places where the service is a little bit heavy; you might say, or the distance is over the average length. It all depends on the conditions under which the track was put in. There are so many different contracts and various contracts. It would be hard to answer explicitly without picking out a separate contract.

Commissioner Harlan: If this service of putting the empty car into the mill and taking the loaded away were performed by the Kansas City Southern, you would call it a switching service?

5719 Mr. Hole: No—in that case possibly it would be a switching service, but in the case where we handle the logs over our own line into there and the lumber out, they have no service to perform.

Commissioner Harlan: I understand that, but if they did perform it, you would call it an ordinary switching service?

Mr. Hole: I don't know what they would term it; whether they would charge us for it or not.

Commissioner Harlan: If the service was performed by the Kansas City Southern under the Texas tariff, what would it be? Would it not be called a switching service?

Mr. Hole: Not within that limit. My recollection is it would not come within the switching limit there. The distance is prescribed.

Commissioner Harlan: The distance——

Mr. Hole: I think it is three miles; I think that is the distance of the switching limit. That is my recollection of it.

Mr. Marble: This tonnage and revenue statement which you have shown shows the total income of the Galveston, Beaumont & Northeastern?

Mr. Hole: Yes, sir.

5720 Mr. Marble: Was that received in allowances entirely?

Mr. Hole: Allowances from the Kansas City Southern?

Mr. Maeble: Yes.

Mr. Hole: No.

Mr. Marble: What other sources of income have you?

Mr. Hole: In handling the railroads which are handled separate entirely from the mill operations, I have nothing to do with the mill interest, we charge the Beaumont Saw Mill Company, we make a charge against them for hauling the logs in there, and the Galveston, Beaumont & Northeastern pays the trackage to the Kansas City Southern and we charge the saw mill company for the service performed.

Mr. Marble: And the Kansas City Southern pay the amount as compensation for the carriage of the logs, to the lumber company?

Mr. Hole: That compensation is made up of the amount of money charged the saw mill company and the division paid by the Kansas City Southern as total earnings, the interstate earnings is in that, as well as the earnings of the local work.

Mr. Marble: When you get divisions from the Kansas City Southern, how do you distribute that as between the lumber

5721 from Beaumont and logs to Beaumont?

Mr. Hole: What was the query?

Mr. Marble: If I understand your answer correctly, when you receive $100 allowance from the Kansas City Southern you distribute on your books a part of that as against the carriage of logs to the mill, and another part as against the carriage of lumber from the mill?

Mr. Hole: No.

Commissioner Harlan: That is not an allowance is it?

Mr. Hole: No; I handle that just the same as any other railroad company would handle a bale of cotton or anything else.

Commissioner Harlan: It is a payment made by your company to the Kansas City Southern for the use of this switch track?

Mr. Hole: For the use of the track by the Galveston, Beaumont & Northeastern.

Mr. Marble: I am trying to get at the origin of these two separate portions of income. Who pays for the carriage of the logs?

Mr. Hole: The Beaumont Saw Mill Company, which is owned by the Miller-Vidor Company, pay the railroad company for

5722 the carriage of the logs.

Mr. Marble: Take the first statement, July 1st, 1909 to

July 1st, 1910, you received from the lumber company $9,312 entirely, as shown there.

Mr. Hole: Yes, sir.

Mr. Marble: Who paid the $3,921; was it on lumber from the Beaumont Saw Mill?

Mr. Hole: That was the earnings on lumber moved from the Beaumont Saw Mill.

Mr. Marble: Who pays that?

Mr. Hole: The Kansas City Southern Railroad pay that to us as our division for handling that property.

Mr. Marble: And that is all the Kansas City Southern paid you?

Mr. Hole: Yes, sir.

Mr. Marble: They did not pay any portion of this other amount?

Mr. Hole: No; they pay no proportion whatever on the logs.

Mr. Walter: Now, he has similar data for each of the other lines.

Mr. Coleman: I would like to ask what the net result of the operation of your railroad is. Does it show a profit or
5723 loss?

Mr. Marble: A deficit of $1,140 for the year.

Mr. Coleman: Now, has it always shown a deficit?

Commissioner Harlan: It showed a deficit the year before of $359.59.

Mr. Coleman: I would like your opinion as to whether under present circumstances it could ever show anything but a deficit.

Mr. Hole: Why, yes, after these matters are settled with the Interstate Commerce Commission as to what the status is going to be in regard to these tap lines, I think I can make that line clear up its deficit.

Mr. Coleman: Did it clear up the deficit when you were getting the division before the agitation began?

Mr. Hole: We did not begin to operate it until two years ago.

Mr. Coleman: Well, during those two years.

Mr. Walter: It shows a deficit.

Mr. Swacker: You answered that the $3,921.43 was all divisions received from the Kansas City Southern?

Mr. Hole: Yes, sir.

Mr. Swacker: Are there not some shipments that moved
5724 out on which your revenue is not absorbed?

Mr. Hole: No, sir.

Mr. Swacker: Does all your traffic move over the Kansas City Southern?

Mr. Hole: Every bit of it.

Mr. Swacker: Do you get allowances on all of it?

Mr. Hole: Yes, sir.

Mr. Swacker: Irrespective of destinations?

Mr. Hole: Yes, sir.

Mr. Marble: How about shipments to Texas points?

Mr. Hole: We get a switching charge.

Mr. Marble: What is the amount?

Mr. Hole: $1.50 a car.

Mr. Marble: Who pays that?

Mr. Hole: The Kansas City Southern.

Mr. Marble: They absorb it?

Mr. Hole: Yes, sir.

Commissioner Harlan: Does that take in the empty and the loaded car out?

Mr. Hole: Yes, sir; they pay us $1.50 a car for switching, for the service performed on handling the lumber out to Texas points.

5725 Mr. Swacker: Do they place the empties in that case?

Mr. Hole: No; we do the entire service.

Mr. Marble: The service is the same on state and interstate shipments, so far as your road is concerned?

Mr. Hole: Yes, sir.

Mr. Marble: Why do you get so much less on state than on interstate shipments?

Mr. Hole: Our road is not recognized by the Texas Commission, but in order to take the engines out of the terminal yards, they allow us $1.50.

Commissioner Harlan: Have you appointed an agent in Washington?

Mr. Hole: Yes.

Commissioner Harlan: Who is he?

Mr. Hole: His name is Tennielle, I believe.

Commissioner Harlan: Do you keep your books as required by the Interstate Commerce Commission?

Mr. Hole: Yes, sir.

Commissioner Harlan: When did you start to do that?

Mr. Hole: I made a report of 1909 and 1910.

Commissioner Harlan: You made annual reports to the Commission?

5726 Mr. Hole: Yes, sir.

Commissioner Harlan: About when did you start to keep your books in accordance with our prescribed system of accounts?

Mr. Hole: Two years ago.

Commissioner Harlan: The report that we have here indicates that your statement was, when inquiry was made, that you had not opened general books of account, but were waiting until the disposition of this tap line question.

Mr. Hole: The opening of our general books in all probability—yes, that is the case, but we have a full record of all of it separate. But I explained to the Examiner when he was there, that we had not opened a general set of books in the general way, until the matter was settled.

Commissioner Harlan: In other words, you are keeping the accounts in the office and on the books of the lumber company, are you not? You are keeping them separately, but they are on the books of the lumber company?

Mr. Hole: They are on separate books of their own. They are kept in the office.

Commissioner Harlan: Do you have safety appliances on your equipment?

Mr. Hole: The Galveston, Beaumont & Northeastern is
5727 fully equipped. We have——

Commissioner Harlan: Is the engine equipped with air brakes?

Mr. Hole: Air brakes and automatic coupler and standard cars.

Commissioner Harlan: Do you obey the Hours of Service Law?

Mr. Hole: Yes.

Commissioner Harlan: What do you understand in substance that law to be?

Mr. Hole: The hours of service law?

Commissioner Harlan: Yes.

Mr. Hole: A sixteen hour regulation.

Commissioner Harlan: Are the salaries of the officers and employees of the company carried on the books of the lumber company?

Mr. Hole: The salaries of the officers?

Commissioner Harlan: Yes.

Mr. Hole: My salary is the only one there is connected with the railroad company. I am the only one.

Commissioner Harlan: What about the employees?

Mr. Hole: They are paid by the mill at Beaumont and charged to the railroad company.

5728 Commissioner Harlan: The railroad company itself does not keep any bank account, does it?

Mr. Hole: I am sure I don't know. Mr. Miller is the treasurer. I do not know how he keeps it.

Commissioner Harlan: But the pay checks are all the checks of the lumber company?

Mr. Hole: I presume so. I do not know.

Commissioner Harlan: Well, that is so with your salary, is it not?

Mr. Hole: Yes, sir.

Commissioner Harlan: Mr. Miller, do you keep a bank account for the railroad company?

Mr. Miller: At present I do not. I clear my railroad matters through the treasury of the lumber company. I did at one time have a bank account as treasurer of the Peach River Lines, but I would be away from home and it would be overdrawn and it kept me in so much hot water that I finally got the treasurer to keep it clear for me.

Commissioner Harlan: The account was a little too active for a railroad company?

Mr. Miller: Well, I was outside too much for the bank.

Mr. Coleman: In answer to a question by Commissioner
5729 Harlan you stated that you did not think that the distance from the mill to the junction point was within the switching limit.

Mr. Hole: Yes, sir.

Mr. Coleman: You also stated to Examiner Marble that on Texas business you got the Texas switching tariff of $1.50 a car.

Mr. Hole: Yes, sir.

Mr. Coleman: Do you wish to change your opinion as to whether your mill is in the switching limit?

Mr. Hole: No reason to change it.

Commissioner Harlan: Now, taking up the Riverside & Gulf, on a document here, which I find it marked Exhibit No. 2 are shown the earnings of the Riverside & Gulf Railway for the fiscal year ending July 1st, 1910 and gross earnings are shown at $40,000 plus. Have you a copy of that exhibit?

Mr. Hole: Yes, sir.

Commissioner Harlan: You note 964 tons of agricultural products. Let me ask whether the lumber company there has a store.

Mr. Hole: At Milvid?

Commissioner Harlan: Yes.

5730 Mr. Hole: Yes, sir.

Commissioner Harlan: Were any of those products shipped for that store in or out?

Mr. Hole: They were consigned to the Miller-Vidor Saw Mill Company.

Commissioner Harlan: Is not that true of all this tonnage; was it not company tonnage?

Mr. Hole: Practically so, except the Allen Lumber Company, which was the hard wood proposition there.

Commissioner Harlan: We will take up that company. Where do they get their logs?

Mr. Hole: They have an arrangement whereby they are taking the hard wood out of that section, and they change their spurs from time to time to wherever they may be cutting and haul their logs in over the Riverside & Gulf Railroad Company to their mill, which is about a mile and a half from Milvid Junction.

Commissioner Harlan: Does their logging line join your line at the mill?

Mr. Hole: No.

Commissioner Harlan: It is some distance south of it?

5731 Mr. Hole: They pick up their spurs and as indicated, they change those spurs to our main line in cutting out the timber.

Commissioner Harlan: They use their own equipment?

Mr. Hole: They use their own equipment over our line.

Commissioner Harlan: And you make them a charge of ninety cents a car for hauling it in?

Mr. Hole: We make them a charge of ninety cents a car for hauling it in.

Commissioner Harlan: Where do their logs come from?

Mr. Hole: It comes from various points along the main line, they are cutting out, and when they get through cutting out one tract they pick up and lay into another one.

Commissioner Harlan: Are they cutting on the lands of the Miller-Vidor Lumber Company?

Mr. Hole: I am sure I don't know whose lands they are cutting on. I am not posted as to that.

Commissioner Harlan: I think you said they were, Mr. Miller.

Mr. Miller: No; if it was brought up, I said they were not.

Commissioner Harlan: You have no interest, then, in that?

Mr. Miller: We have no relation or sale between us, or anything of the kind.

5732 Commissioner Harlan: Who carries the hardwood lumber out from their mill?

Mr. Hole: We do.

Commissioner Harlan: And you have a haul of about a mile and a half to the Santa Fe?

Mr. Hole: Yes, sir.

Commissioner Harlan: And what revenue do you receive for that service?

Mr. Hole: Two cents per hundred pounds.

Commissioner Harlan: That is paid by whom?

Mr. Hole: T. B. Allen & Company.

Commissioner Harlan: What rate do they get on the lumber; do they get the junction point rate?

Mr. Hole: I can explain that to you in this way:

Commissioner Harlan: Very well.

Mr. Hole: When we first put in the line, we were getting a division practically of two cents to all interstate points. Not being recognized by the Texas Commission, while this litigation has been going on, and when that division was cancelled, I continued to charge as a matter of record the two cents per hundred pounds. You see, the Santa Fe cut off our division in August, August 25, 1908,

5733 which we were getting, practically two cents per hundred pounds on the interstate business out of there, and as a matter of record, I have kept it up in the same way.

Commissioner Harlan: Then that item of $5,268 is not a cash item, or is it a cash item?

Mr. Hole: The item of lumber is $2,485 for the Allen Lumber Company.

Commissioner Harlan: The item to Allen logs of $5,268 is a cash item; that is, the payment was made by the Allen Lumber Company?

Mr. Hole: It is charged against them; I do not know whether it was ever been collected or not.

Commissioner Harlan: Tell us about that. Why has it not been collected?

Mr. Hole: Well, there is an agreement of some kind; I do not know exactly what it is, in regard to handling the logs in there; I mean in regard to the payment. The agreement was made with the Miller-Vidor Lumber Company in some way whereby they put in a contract with Allen & Company to handle the logs in there, and in keeping the railroad records I assessed it at that charge.

Commissioner Harlan: But have not collected the amount?

5734 Mr. Hole: But have not collected the amount; that is, to my knowledge.

Commissioner Harlan: Not having been recognized by the State Commission, you publish no rates with the State Commission?

Mr. Hole: No.

Commissioner Harlan: So you can charge whatever you like?

Mr. Hole: Well, I charge within the limit as prescribed by the Commission.

Commissioner Harlan: That is to say, the charge you enter up against the company, but do not collect or have not collected, is based on the Texas Commission rates?

Mr. Hole: Yes, sir.

Commissioner Harlan: Now, I understand you have not collected the $2,485 shown on this account as your charge for hauling the Allen Lumber Company's hard wood lumber.

Mr. Hole: To the junction?

Commissioner Harlan: You have not collected that.

Mr. Hole: No.

Commissioner Harlan: Did you at any time collect such charge from the Allen Lumber Company?

Mr. Hole: No; it was paid to us in our division by the
5735 Santa Fe.

Commissioner Harlan: What sort of a rate was that when the Santa Fe allowed you two cents per hundred pounds?

Mr. Hole: It was the published through rate to interstate points.

Commissioner Harlan: It was a rate on manufactured lumber?

Mr. Hole: It was a rate on manufactured lumber entirely.

Commissioner Harlan: It was the junction rate, and also applied from points on your line?

Mr. Hole: It was the blanket rate.

Commissioner Harlan: Did that cover the service of hauling the logs to the mill?

Mr. Hole: No, sir, it did not enter into the service at all; that is, there was nothing published in regard to the logs.

Commissioner Harlan: Mr. Coleman, if you have any understanding about that different from what the witness has said, you may put it in at this time.

Mr. Coleman: No, I have not, but I would like to inquire on what basis the $2,485 accrued. Was it on so much a hundred pounds?

Mr. Hole: Yes, sir.

5736 Mr. Coleman: How much?

Mr. Hole: Two cents per hundred pounds.

Mr. Coleman: The same as the division?

Mr. Hole: Yes, sir.

Mr. Walter: I was going to ask Mr. Coleman if he was not willing to say this morning that there were divisions paid to the Riverside & Gulf.

Mr. Coleman: I can only say that our auditors were instructed to search the records and report everything that was paid. In view of the statement made, I am going to have a re-examination made. I think it is an inconsequential matter, but just so that the Commission may understand it——

Commissioner Harlan: If you will advise the Commission and refer to the testimony of Mr. Hole, so we will know where to look at it.

Mr. Coleman: I know it does not come in this connection at all.

Mr. Miller: We can furnish the evidence of half a dozen parties who handled the vouchers.

Commissioner Harlan: That will not be necessary, in view of the testimony of this witness.

5737 Mr. Coleman: It occurred to me that the auditor might have credited the payment in connection with some other road of yours. It will be looked up. This I know, there was a division in effect on the tariff at the time, but we were of opinion that nothing had ever been paid under it, because the mill——

Commissioner Harlan: Mr. Hole, that sum of $2,485 you have charged against the Allen Lumber Company on their interstate shipments?

Mr. Hole: Yes, sir.

Commissioner Harlan: What charge do you make against them when the lumber is destined to Texas points?

Mr. Hole: I said, sir, it is state and interstate.

Commissioner Harlan: State and interstate?

Mr. Hole: Yes, sir, the same division; that is, the same rate, two cents per hundred pounds on state and interstate.

Commissioner Harlan: Where a shipment is a state shipment your charge on the logs is just the same; that is a trackage arrangement?

Mr. Hole: Yes, sir.

Commissioner Harlan: Now, you also show on the same exhibit No. 2, your gross revenues for a period of six months ending January 1st, 1911, itemized as the previous statement is

5738 itemized. I assume that that is all company material, except hard wood of the Allen Lumber Company.

Mr. Hole: The same as it is before.

Commissioner Harlan: Who is the agent in Washington of this company?

Mr. Hole: The same agent.

Mr. Walter: It is a lady, Mrs. Tennielle, who is the American Lumberman representative at Washington.

Commissioner Harlan: You have opened a set of books for this company?

Mr. Hole: Yes, sir.

Commissioner Harlan: When did you do that?

Mr. Hole: About a year ago, in the same manner we did with the others.

Commissioner Harlan: It has no bank account?

Mr. Hole: No, I think Mr. Miller attends to it.

Commissioner Harlan: The accounts of the railroad company are cleared through the banks of the lumber company?

Mr. Hole: As far as I know.

Commissioner Harlan: The checks of the lumber company are used in payment of its labor bills?

Mr. Hole: The same applies to all three of the roads.

5739 Commissioner Harlan: Did you make a profit on the operations of that road during the last fiscal year?

Mr. Hole: Taking the earnings as I explained to you, and the expenses, it shows a net earning of $3,292.18.

Commissioner Harlan: And for the last six months there is also a slight net earning?

Mr. Hole: Yes, sir.

Commissioner Harlan: But of course that it not a cash net earning in view of the fact that you have not made your collections from the Allen Lumber Company?

Mr. Hole: No.

Mr. Miller: I might explain that the ninety cents per car for movement, or the trackage for logs is paid promptly each month.

Commissioner Harlan: Suppose the Allen Lumber Company does not make these payments to you, what is going to become of that charge you have against them?

Mr. Hole: That is a matter to be adjusted by Mr. Miller as treasurer. I do not know what disposition he would make of it.

Commissioner Harlan: Mr. Miller, are you collecting that amount under any rate?

5740 Mr. Miller: I am receiving ninety cents per car.

Commissioner Harlan: You are collecting the ninety cents per car?

Mr. Miller: Yes, sir.

Commissioner Harlan: Then this item of $2,485 is a cash item?

Mr. Miller: I have charged it to them. Whatever the ninety cents a car amounts to has been paid.

Commissioner Harlan: I understood this witness to say, and I understood you to say a moment ago, that it had not been collected. There is quite a difference between charging it up against the Allen Lumber Company and collecting the cash. Now, what is the fact?

Mr. Miller: The facts are that all this amount is charged up, and as much as was represented by the ninety cents a car has been collected.

Commissioner Harlan: Why do you make a distinction in your relations to that company between the collections on the logging service and the collections on this switching service to the junction point?

Mr. Miller: Well, sir, it grows out of a condition that we could not foresee. When we located that saw mill there, we could

5741 not locate it on the main line of the Santa Fe Railroad, because it is in the bottom land, and no place to locate it. We had to have a pond and a reasonably healthy condition in order to maintain a pond there——

Commissioner Harlan: Assuming those conditions——

Mr. Miller: And we located this mill over in the woods, and built this track to connect it up with the Santa Fe, and then extended it on south. When Allen & Company sought a location there, they came to me and talked about it, and I had at that time an understanding with the Santa Fe that they would allow divisions on that business, and I thought the matter was definitely and finally fixed, and did not know that any question would ever be raised, and with

that idea in my head, I assured Mr. Allen if he put his plant on my railroad, that I was interested in, we would give him the same blanket rates on that road that he would get from any other road. I supposed that condition was permanent and had no idea the situation would ever be raised or changed. Mr. Allen then put a plant there and expended, I suppose, $175,000 or such a matter, and of course I have got to make good on that promise; I cannot back out, so far as this outbound lumber is concerned; we have to pro-
5742 tect the blanket rate out, and that has got to be paid by somebody.

Commissioner Harlan: When you say "we" you mean the railroad company?

Mr. Miller: Yes, sir.

Commissioner Harlan: On interstate shipments—you have interstate shipments, I mean.

Mr. Miller: On any shipments. The lumber from his mill, of course the payment for the use of our tracks for moving his logs is a matter of contract.

Commissioner Harlan: I have so understood, that that was your view.

Mr. Miller: That is entirely outside from my agreement to maintain the blanket rate from his station on our railroad.

Commissioner Harlan: On what published rate do you move this hard wood lumber to the junction point?

Mr. Miller: We move it on those local rates from between Allendale—we apply from all stations on that line up to the junction that rate.

Mr. Marble: There is a line of questions which relate not only to this road, but the one concerning which testimony was given before. Taking the Galveston, Beaumont & Northeastern, your rate on logs appears to be 20 cents per ton?

5743 Mr. Hole: From where?

Mr. Marble: Your rate on logs to the Beaumont saw mill.

Mr. Hole: $3.00 per car.

Mr. Marble: It is not based on a ton rate, then?

Mr. Hole: No.

Mr. Marble: Do you weigh the cars?

Mr. Hole: We estimate them.

Mr. Marble: Unless my figures are wrong, it figures out in each of these three exactly twenty cents a ton.

Mr. Hole: Estimated 30,000 pounds.

Mr. Marble: You estimate each car at 30,000 pounds?

Mr. Hole: Yes, sir.

Mr. Marble: And that makes your charge that amount?

Mr. Hole: That makes the tonnage basis.

Commissioner Harlan: You are now speaking of the revenue on the logs?

Mr. Hole: On the logs?

Commissioner Harlan: Hauled to the saw mill?

Mr. Hole: To the Beaumont saw mill.

Commissioner Harlan: What kind of revenue do you call that? Is that revenue that you get as a common carrier?

Mr. Hole: Yes, sir; I figure it so.

5744 Commissioner Harlan: Under the authority of what published rate?

Mr. Hole: It is a state rate.

Commissioner Harlan: But you have not been recognized as a common carrier by the state, have you?

Mr. Hole: No, but we hope to be, and that was kept in order to keep a full record of the railroad transactions which could be shown at any time.

Commissioner Harlan: That is some $19,000, is it not?

Mr. Hole: $9,000.

Mr. Marble: $9,000 for the first period, and for the next six months, $4,900.

Commissioner Harlan: Has that actually been collected, or have you just kept a record of it?

Mr. Hole: Kept a record of it, and charged it against the lumber company. It was done to keep a record of the transactions of the railroad in its entirety.

Commissioner Harlan: Have you made any actual cash collections on any of the agricultural or merchandise movements shown on that account?

Mr. Hole: No.

Commissioner Harlan: It is simply all a matter of book

5745 entry?

Mr. Hole: Book entry; yes, sir.

Commissioner Harlan: And there is no authoritative rate under which those charges are made against the lumber company?

Mr. Hole: There could be none, because we are not recognized by the Commission of Texas.

Mr. Marble: You are not asking the Interstate Commerce Commission to recognize that portion of your line which brings the logs to the mill as a common carrier?

Mr. Hole: No.

Mr. Walter: We maintain that the whole road is an integral part. If it is a common carrier, it is all a common carrier; it does not apply to one mile, and then leave out the next.

Mr. Marble: Have you published any rates from the point where the mill is, or from the junction out to the points on your line from which the logs come?

Mr. Hole: No, sir.

Mr. Marble: Supposing the interstate shipments would come destined to the mill company, how would you make up your rates?

Mr. Hole: Upon the local rates, based on the Texas rate.

5746 Mr. Marble: Have you that filed with the Interstate Commerce Commission?

Mr. Hole: No, the Texas Commission rates I have not filed.

Mr. Marble: So you have not filed rates on that portion of the line as yet, at any rate?

Mr. Hole: No.

Mr. Marble: This charge of $3.00 per car, and this is the question I started to ask some time ago, I would like to know precisely what is done by this company in the way of transportation of logs. Where do you go to get that?

Mr. Walter: This is the Galveston, Beaumont & Northeastern?

Mr. Marble: The Galveston, Beaumont & Northeastern. Just what service does the railroad company perform for that?

Mr. Hole: They haul the logs from the point of origin in the woods to the mill.

Mr. Marble: It goes to the tree?

Mr. Hole: In the woods; yes, sir.

Mr. Marble: There are no spur tracks operated by a logging company?

Mr. Hole: No.

Mr. Marble: Does it load the logs?

Mr. Hole: No.

5747 Mr Marble: It takes the logs loaded on the cars?

Mr. Hole: After they are loaded by the mill company.

Mr. Marble: Does it lay the temporary spur tracks?

Mr. Hole: Yes, sir.

Mr. Marble: And takes them up?

Mr. Hole: And takes them up.

Mr. Marble: And replaces them as occasion arises?

Mr. Hole: As is needed.

Mr. Marble: And your expense account upon which this deficit is based, includes that cost of laying and removing and replacing the spur tracks in the forest?

Mr. Hole: It does.

Mr. Marble: Does it include any new construction other than that?

Mr. Hole: There has been no new construction in the last two years. It would include it, as fast as the line is extended.

Commissioner Harlan: Is it your understanding that all these railroad companies dump the logs into the pond?

Mr. Hole: All of them?

Commissioner Harlan: Yes; I mean your three companies.

Mr. Hole: At the point of destination?

5748 Commissioner Harlan: Yes.

Mr. Hole: Yes, sir.

Commissioner Harlan: And they participate in the loading of the logs out in the woods?

Mr. Hole: No.

Commissioner Harlan: That is all done by steam loaders?

Mr. Hole: That is all done by steam loaders.

Mr. Marble: Mr. Hole, the Louisiana & Pine Bluff Railway, which was under examination yesterday, did not undertake to charge the cost of laying those extreme spur tracks and removing them and relaying them, as a transportation charge, as I understood it, but started at some point which it considered as the main line to which those spurs came, the cost of the spurs being charged to logging operation. Do you think that is proper——

Mr. Walter: We object to any question of that sort.

Mr. Marble: Do you think that procedure is proper, or that the procedure you have adopted of charging that as a transportation charge is proper?

Commissioner Harlan: What was the question?

(Question read.)

Mr. Walter: We think it makes no difference what the
5749 Pine Bluff Road should have done in charging up certain items. This witness can tell about his own road, or what he would do under certain conditions, but the question is not proper.

Commissioner Harlan: The question does not ask him to pass upon the propriety of the charge of the Pine Bluff.

Mr. Walter: He says it is the proper way.

Commissioner Harlan: I take it the intention of the question was to ask the witness, as an expert in handling his business, whether his method is the proper method or some other method.

Mr. Walter: We want the Pine Bluff record read, and I ask that Mr. Marble's question be stricken out.

Mr. Marble: I am perfectly willing that it be stricken out. Do you think your policy of charging the cost of laying and removing the logging spurs in the forest is proper?

Mr. Hole: I do.

Mr. Marble: Why do you count that as a transportation expense rather than as a logging expense?

Mr. Hole: As a general proposition, the man that has charge of the railroad and is experienced in handling those things can handle them to much better advantage for the railroad company than
5750 to permit their cars to go out on tracks which are laid as a rule by people who do not understand the situation; that is, physical.

Mr. Marble: Do the logging companies have this experience you speak of?

Mr. Hole: Some of them do, and some do not.

Mr. Marble: That is all.

Commissioner Harlan: Now, I direct your attention, Mr. Hole, to Exhibit No. 3, being a statement of the tonnage and revenue of the Peach River & Gulf Railway for the year ending July 1st, 1910. You show their revenue on logs and lumber. That movement was for the controlling interest, was it not?

Mr. Hole: Yes, sir.

Commissioner Harlan: You had no outside traffic of any kind?

Mr. Hole: None of any consequence.

Commissioner Harlan: On the foot of that statement you have these words, "75 consignees." What is the meaning of that?

Mr. Hole: I was showing there the probable number or aggregate number of consignees to whom the lumber was consigned, that is what it was for. It is a matter of record.

5751 Commissioner Harlan: To interstate and state points?

Mr. Hole: To interstate and state points, yes, sir.

Commissioner Harlan: This company keeps no special bank account?

Mr. Hole: No; it is kept the same as the others.
Commissioner Harlan: It is cleared through the accounts of the lumber company?
Mr. Hole: Yes, sir.
Commissioner Harlan: Have you opened any general books for this company?
Mr. Hole: Only in the same style as the others.
Commissioner Harlan: You have the same agent at Washington?
Mr. Hole: Yes, sir.
Commissioner Harlan: Do you file annual reports with the Commission?
Mr. Hole: Yes, sir.
Commissioner Harlan: What equipment has that line?
Mr. Hole: Three engines and thirty cars.
Commissioner Harlan: Are they equipped with safety appliances, as required by law?
Mr. Hole: No, sir; they are not.
5752 Mr. Miller: We have a coach there, too, Mr. Hole.
Mr. Hole: Yes, there is one coach.
Commissioner Harlan: Do you have a passenger coach?
Mr. Hole: Yes, sir.
Commissioner Harlan: You make no use of it?
Mr. Hole: Very little.
Commissioner Harlan: You have no earnings from passenger business?
Mr. Hole: No.
Commissioner Harlan: That road is not recognized by the state commission as a common carrier?
Mr. Hole: No.
Commissioner Harlan: What allowances do you get there?
Mr. Hole: Since August 25, 1908 we get none.
Commissioner Harlan: Your connection is the Santa Fe?
Mr. Hole: The Santa Fe on the north, and we did have a connection with the Houston, East & West Texas on the southeast as shown there.
Commissioner Harlan: What became of that connection?
Mr. Hole: As Mr. Miller explained, we had a bridge that burned out there, and until this matter was settled, it has not been restored.
Commissioner Harlan: So that you are now getting no
5753 allowance?
Mr. Hole: None whatever.
Commissioner Harlan: Are you charging up any items against the lumber company?
Mr. Hole: Just the same as I did on the other line.
Commissioner Harlan: For what service?
Mr. Hole: For hauling the logs.
Commissioner Harlan: For hauling the logs?
Mr. Hole: Yes, sir.
Commissioner Harlan: Just tell us about that—well, if you are not getting any allowances, I do not think we need go into the details, but perhaps you might tell us where the mill of the lumber company is.

Mr. Hole: It is located on the line of the Santa Fe at Timber, Texas.

Commissioner Harlan: And your forests are where, out beyond Midline?

Mr. Hole: No, they are between Midline and Timber.

Commissioner Harlan: Does the lumber company operate its own trains over your line?

Mr. Hole: No, sir.

Commissioner Harlan: Does it operate these spur tracks?

5754 Mr. Hole: No, sir.

Commissioner Harlan: It has no spur tracks?

Mr. Hole: No, it has no spur tracks.

Commissioner Harlan: You build the spurs as required by the lumber company?

Mr. Hole: The same as in the other case.

Commissioner Harlan: You follow the for-st?

Mr. Hole: Yes, sir.

Commissioner Harlan: What charge do you make against the lumber company for hauling the logs to the mill.

Mr. Hole: $3.00 per car.

Commissioner Harlan: Has it been collected, or is that still charged up?

Mr. Hole: It is still charged up to them.

Commissioner Harlan: Have you not a charge of $9.00 a car on some traffic?

Mr. Hole: No, not that I know of.

Commissioner Harlan: I have here an item to the effect that the lumber company pays you $9.00 a car from points on your line to points on your connecting carrier line, and $3.00 on logs from point on your line to the point of manufacture.

5755 Mr. Hole: I assume where that $9.00 comes in is where we make the average of 45,000 pounds of lumber per car at two cents per hundred pounds; that is how that is arrived at, and in the matter of keeping a record of tonnage——

Commissioner Harlan: What record are you keeping at the rate of two cents per hundred, and against whom and for what service?

Mr. Hole: Figuring on the same basis we were allowed before by the Santa Fe, before it was cancelled, of two cents per hundred pounds.

Commissioner Harlan: And you are charging that against the lumber company?

Mr. Hole: Yes, sir.

Commissioner Harlan: What service on the manufactured lumber do you perform?

Mr. Hole: We perform no service on the manufactured lumber delivered to the Santa Fe, but we did perform the service of twelve miles on the lumber delivered to the Houston, East and West Texas, and the Santa Fe allowed us the division in order to get the business.

Mr. Marble: I would like to ask one question more on the line which I followed a moment ago. This matter of the tem-

5756 porary track. From your railroad experience, do you percieve any distinction that should be drawn between the mill

and the tree, that some of the tracks should be regarded as carrier tracks and some as logging tracks, or is it all one thing?

Mr. Hole: Well, in our case it is all one thing.

Mr. Marble: The temporary tracks and the more permanent tracks which lead away from the mills seem to you to be all part of one plant?

Mr. Hole: All parts of the railroad plant. The lumber plant I have nothing to do with whatever.

Mr. Marble: And the temporary tracks seem to you to be just as much a part of the railroad plant as the more permanent parts which lead away from the mill?

Mr. Hole: Yes, they serve their purpose.

Commissioner Harlan: Suppose the joint rate is not re-established between your line and the Santa Fe line, what becomes of that two cent charge?

Mr. Hole: It would still be charged against the lumber, and would be a matter to be arranged between them, and as they are identical——

Commissioner Harlan: Would you regard it as a lawful
5757 charge which could be collected against them as a common carrier?

Mr. Hole: I am sure I could not say.

Mr. Marble: Is this two cent rate published with the Interstate Commerce Commission?

Mr. Hole: Yes, sir.

Mr. Marble: Do you not consider you have a legal duty to collect it?

Mr. Hole: I should judge so.

Mr. Marble: And collect it at current intervals, instead of holding it in reserve.

Mr. Hole: That is a matter to be entirely handled by the treasurer and people who have that in charge.

Commissioner Harlan: What do you say to that question, Mr Miller?

Mr. Miller: I did not hear it.

Commissioner Harlan: The question is put to this witness, what is to become of the charge of two cents per hundred pounds that you make against the lumber company if the joint rate is not re-established with the Santa Fe?

Mr. Miller: I believe if the system of making blanket rates on lumber is done away with, then the rates will be made on
5758 combinations at or through junctions, and we shall then insist, and I shall insist as an officer of the railroad company, of the lumber company paying us these arbitrary amounts of two or three cents per hundred pounds, whatever they are, up to the junctions, making their through rates that much higher.

Commissioner Harlan: You would insist upon it with the Allen Company and with your own company?

Mr. Miller: No, we have an agreement. I expect to remedy the situation with the Allen Company by building this Riverside & Gulf to another outlet. In connection with Mr. Keith we expect to estab-

lish a joint line of railroad of about 75 miles, and I consider that condition temporary.

Commissioner Harlan: What is the contract your lumber company has with the Allen Lumber Company?

Mr. Miller: Well, it is not a contract; it is a verbal agreement I made with Mr. Allen if he would locate his saw mill on our railroad, we would give him the same rates he would get on any other railroad.

Commissioner Harlan: Was the Santa Fe a party to that understanding in any way?

Mr. Miller: Only to this extent, they had assured me they
5759 would pay this division, and had division sheets and were paying them, and I had no reason to believe there would be any change. You will see from the report we are filing with the Interstate Commerce Commission that railroad is handling about 200,000 tons of stuff, and I believe we can make it handle a great deal more than that, and I think we can make it well worth while to put some more money into it and make it a better railroad and control a very large amount of tonnage.

Commissioner Harlan: As I understand it, you regard the railroad which hauls these logs for the Allen Lumber Company as a common carrier.

Mr. Miller: That is not the case. In the first place, my relations with Mr. Allen began as an individual before this railroad proposition was organized, and we had memorandum agreements between us which bound our assigns and successors, and when the railroad company was organized, of course they were charged with carrying out those agreements.

Mr. Coleman: I would like the dates on that.

Mr. Miller: We do not do any logging for Allen; they do their own logging. They simply have the right to run their train over
our main line, for which they pay a fixed amount per car
5760 which is paid in money each month.

Commissioner Harlan: Have you the written contract?

Mr. Miller: I haven't it here.

Commissioner Harlan: We would like to have a copy.

Mr. Miller: I can prepare copies and file them.

Commissioner Harlan: And also a copy of the assignment of that contract or its obligations to the railroad company. You have that?

Mr. Miller: The original agreement between Mr. Allen and myself was, I think, confirmed in writing by an interchange of letters.

Commissioner Harlan: Let us have a copy of the letters.

Mr. Coleman: Might I ask that he fix the date? Could you fix the date of your first understanding with Mr. Allen, Mr. Miller?

Mr. Miller: Yes, sir.

Mr. Coleman: Just in a general way.

Mr. Miller: About July, 1906.

Mr. Coleman: That was before you had built your railroad?

Mr. Miller: That was before I acquired those lands.

Mr. Coleman: That was before you built the railroad?

Mr. Miller: Yes, sir.

5761 Mr. Cowan: I want to ask you, Mr. Miller, you said you would insist on the lumber company paying the railroad company that two cents per hundred pounds under certain conditions named in the question awhile ago.

Mr. Miller: Yes, sir.

Mr. Walter: I must object to any questions on that subject unless they come from the Commission.

Commissioner Harlan: I put that question to you, Mr. Miller. I put the question again. In case that joint rate is not re-established, I understood you to say you would insist on the collection of the two cents from the Allen Lumber Company as a local movement. Is that so?

Mr. Miller: Yes, sir, the situation would be like this. Mr. Allen and myself made these contracts between us as individuals and Mr. Allen then conveyed his rights to a corporation and afterwards I formed what was known as the Miller-Vidor Saw Mill Company, a Texas corporation, and I organized the Riverside & Gulf Railway company and another Texas corporation. The agreements I had with Allen about his rates were taken over from me by the Miller-Vidor Company, and after awhile it went out of business and the charter was dissolved, and its obligations were taken
5762 over by the Miller-Vidor Lumber Company, which at present stands for it. The railroad company I have always regarded as a common carrier and have tried to preserve the records in such a way that when the questions were eventually settled, there could be an adjustment between the companies which would show the outcome of the thing. While it is true to a large extent the same parties would be at interest, still, so far as the operations of the corporations go, or their records, it will show the exact state of affairs.

Mr. Cowan: I would like to get the Commissioner to accommodate Mr. Walter and myself, and to ask one question, and that is to whom would he insist that payment would be made by the lumber company to the railroad company. He says he would insist upon it. I want to know from whom.

Commissioner Harlan: Well, I will put that question.

(Question read.)

Mr. Miller: I don't know that I can understand such an involved question as that.

Mr. Cowan: You refer——

Mr. Walter: The Commissioner will put the question so you can understand it.

(Question again read.)

5763 Mr. Cowan: The point I want to draw out is——

Commissioner Harlan: If the rate is not re-established, to whom is this two cents to be paid?

Mr. Miller: If the rate is re-established, I expect to collect those divisions, so much of them as have not been outlawed, from the connections, whenever we get to that decision.

Commissioner Harlan: My question is, if it is not re-established.

Mr. Miller: If it is not re-established, I will collect it from the lumber company.

Commissioner Harlan: You mean the railroad company will collect it from the lumber company?

Mr. Miller: Yes.

Commissioner Harlan: What lumber company?

Mr. Miller: The Miller-Vidor Lumber Company.

Commissioner Harlan: Then in other words, the Miller-Vidor Lumber Company regards the obligations that the railroad company has with the Allen Lumber Company as its obligations?

Mr. Miller: Yes, sir, and the contracts so state.

Mr. Cowan: Speaking through the Commission, if I may——

Commissioner Harlan: I am entirely willing to put your
5764 question, Judge Cowan.

Mr. Cowan: I am trying to punctuate the point that there is no volition between this railroad company and the lumber company. To what individual would you apply to collect that money? You represent the railroad company and the lumber company. To what individual would you apply to collect the money?

Commissioner Harlan: I think it sufficiently appears, to whatever individual he applied, he would look to the Miller-Vidor Lumber Company to make good the bond.

Mr. Cowan: The point is, there is an identity of the two concerns, so that of necessity there is no insistence about it. He would decide whether to do it or not——

Commissioner Harlan: That can be assumed on the record already made.

Mr. Marble: I suggest it might be well to apply to the Interstate Commerce Commission also, inasmuch as your rates now are the combination, and you propose to collect a rate less than that combination.

Mr. Coleman: May I ask Mr. Hole one question? What line is it that has the bridge burned down?

Mr. Hole: The Peach River & Gulf.

5765 Mr. Coleman: You said the Santa Fe allowed you a division on the Peach River & Gulf to get the business away from the Houston, East & West Texas; is that right?

Mr. Hole: Well——

Mr. Coleman: It was not until the Houston, East & West Texas made a connection with them that they gave you the division?

Mr. Hole: The division was made before I took charge of the railroad property, and the Santa Fe put in a line of divisions with us and accepted the business at Timber, and consequently we did not build to the Houston, East & West Texas at Midline because it saved a 12 mile haul.

Mr. Coleman: If you know this, I want you to say this, and if not, say so.

Mr. Walter: I think that is uncalled for.

Mr. Coleman: He says the Santa Fe people put in the division——

Commissioner Harlan: Put your question and frame it properly.

Mr. Coleman: Is it not so that the Santa Fe did not give you a division until the Houston, East & West Texas connected
5766 with your rails?

Mr. Hole: I do not know, because I was not there.

Mr. Coleman: When you say the Santa Fe did it to get the business from the Houston, East & West Texas you do not know what you are talking about.

Mr. Hole: I most certainly do, because if they put in the division they expected to get the business, and they would not put it in as a paper rate.

Commissioner Harlan: That seems to be all.

Mr. Cowan: I would like to ask one question, that is, whether or not the two cents for hauling to the Houston, East & West Texas was a sufficient compensation that would make it profitable for your mill to haul it twelve miles in order to get the two cents.

Mr. Hole: Would it make it profitable?

Mr. Cowan: In your opinion; you know the property and you are a railroad man. Would it be sufficiently profitable to haul it to the Houston, East & West Texas twelve miles to get a division of two cents rather than let the Santa Fe handle it at the mill for two cents?

Mr. Hole: Certainly it would be better to let the Santa Fe have it.

5767 Mr. Cowan: The two cents per hundred pounds would not pay for handling it?

Mr. Hole: Practically it would pay the expense, yes, and possibly with the development otherwise it would enter into part of the earnings.

Mr. Cowan: Do you operate these railroads now as common carriers?

Mr. Hole: I try to, yes, sir.

Mr. Cowan: What item of expense do you go to over and above what you would have were you not operating them as common carriers?

Mr. Hole: I don't know as I go to any. I keep them in physical condition so they can be operated.

Mr. Cowan: That is all.

Mr. Coleman: I would like to ask Mr. Miller if he regards a railroad as necessary to the operation of an extensive saw mill.

Mr. Miller: Yes.

(The statements so offered and identified were received in evidence and thereupon marked Peach River Lines Exhibits Nos. 1, 2 and 3, Witness Hole, received in evidence January 28, 1911, and are attached hereto.)

5768 Commissioner Harlan: There is now a contested case to be heard, the Southwestern Produce Distributors, against the Wabash Railroad. I understand Mr. Ziebold desires to make a statement, and we will hear it now.

Mr. Ziebold: You Honor will remember at the hearing in New

Orleans I presented a number of requests for certain information. At the suggestion of Mr. Examiner Burchmore, I renewed the requests in a letter to the Commission, to which I received a reply from your Honor, and in which your Honor suggested, among other things, that I renew the request at this continued hearing, and at the opening of the case on the part of the intervenors, which I understand, however, will only take place in Chicago possibly on Monday. I will not be able to be there at that time, and would not be able to present it in person——

Commissioner Harlan: Very well; we will hear the request now. We will wait until the parties in the adjoining room are notified.

Mr. Walter: While Judge Cowan is coming, I desire to file certain exhibits. A map of the Bearden & Ouachita River Railroad, and also a map of the line of railroad and the timber holdings of the Thornton & Alexandria Railroad, and the lumber
5769 company affiliated therewith.

Commissioner Harlan: They may be received.

(The papers referred to were marked "Filed.")

Mr. Marble: Judge Cowan is not there, but Mr. Coleman will hear it.

Mr. Ziebold: The requests made at that time were three in number. The first was to the general effect that the trunk lines parties to this proceeding be requested to file with the Commission a narrative statement of their origin and growth, showing in detail the new lines constructed and otherwise to indicate the manner of their origin, development and extension and growth to their present dimensions. The purpose of the testimony being to show that in their origin these trunk lines of today were of no greater extent, mileage or importance than the so-called tap lines now under consideration at this hearing. As to this your Honor suggested it might not throw much light on the proceedings, but it would involve considerable labor and effort on the part of the trunk lines to furnish the information, and that it is a matter of common knowledge, especially as respects the Iron Mountain, that that was a matter practically of development and extension. Now, if we may take it
5770 that it is conceded by the Commission as part of the record in evidence in this proceeding that that is the fact, and that it was the situation and the manner of growth and extension of these trunk lines, then we will not wish to urge the request any further, being satisfied with that concession on the part of the Commission as to that request.

Commissioner Harlan: Perhaps "Concession" is not quite the right word to use in this connection. It has been my understanding, and I have no doubt the understanding of the Commission, from time to time various so-called tap lines have been incorporated into the systems of regular lines; whether they become a part of the main line or part of a lateral or branch line, attached to such system, I do not know at this moment. I suppose there are cases where tap lines have become part of the main line of a regular car-

rier. I think that is generally known, and I believe I stated in my letter to you that that knowledge was in the general possession of the Commission.

Mr. Ziebold: But this is the particular point, with all deference to the Commission. The matter may not end before the Commission; it may be removed to some other tribunal.

5771 Commissioner Harlan: Are there any suggestions to be made on behalf of any one with respect to this request of Mr. Ziebold's?

Mr. Coleman: I do not see how it has any bearing on the matter. We could have the historian furnish that, if the gentleman wants to prove it, and it can be proven; I suppose he can do it as well as anyone.

Mr. Marble: I would like to say it seems to me as a stipulation or admission that that would be exceedingly loose and indefinite, and would presuppose an agreement as to facts which certainly does not exist here on any point. That is to say, it supposes that we are agreed as to the character of the present tap lines. Now, then the tap lines sharply distinguish themselves one from another in their own arguments. Now, which ones would this mean, and which trunk lines would it mean? Their histories are different one from the other, and a blanket assimilation of the two, one with the other, without any distinction as to facts would be without any accuracy and without any force to anybody.

Mr. Ziebold: The question, I understand, is going to be on the construction of what is a common carrier, within the meaning of the Interstate Commerce Act. The question is going to be

5772 further, when the Commission comes to construe what is a common carrier under the Interstate Commerce Act, whether that construction shall be liberal and in favor of the so-called short lines, and to carry out the fundamental purpose of the Act, or whether the construction shall be strict and technical, and which might be against the so-called short lines. We take it, for instance, that the fundamental purposes of the Act to Regulate Commerce is to prevent discrimination and compel reasonable and just rates. But from our position we contend that the intended ultimate beneficiary of the Act was not as seemingly is taken for granted here at times, the shippers and the carrier, but the general public, the consuming public. If we could persuade the Commission that that is the fact, then under the general rule of law that all acts should be construed broadly to carry out their intended purpose and to operate in favor of the intended beneficiary, then this act should be construed broadly and liberally in favor of the short lines to encourage the extension and operation and building of existing short lines into future trunk lines, in order thereby to furnish competition and increase transportation facilities, which would then be had

5773 at reduced rates, and operate to the benefit and advantage of what we claim to be the intended beneficiary, the general consuming public. That is why I consider the objection immaterial and irrelevant.

Commissioner Harlan: Mr. Garwood, speaking for the regular

lines with which you are associated, have you any suggestions to make?

Mr. Garwood: I just wish to say this, your Honor, with reference to that, speaking now for those lines. Of course we have not the slightest disposition to withhold any reasonable amount of information that anyone connected with the litigation would demand. It occurred to me, however, and I so stated at the time the notice was served at New Orleans, that to produce a connected history of these lines would involve a vast amount of labor; it would involve as to our lines the digging up of ancient acts of the legislature, special acts permitting acquisitions and amending of charters and things of that sort. Now, it occurs to me that the proposition that a court, to a certain extent, will take judicial knowledge of the course of location and the general history of a railroad would cover the proposition for all purposes that the gentlemen would
5774 need it. It is a matter of industrial history as to the growth of these lines, and in argument before courts and commissions, such matters are covered rather by historic references than by the actual production of testimony. Now, if we were to go into that, we would fill the record. I have endeavored from time to time, perhaps at some little length, by apposite examples in the immediate territory involved, to illustrate the proposition which I think the gentleman is trying to reach, and from time to time in the evidence, as your Honor will recollect, I have referred to particular lines for the purpose of that argument, so far as it may throw any light upon the general discussion. I hardly believe any strong purpose would be subserved by calling upon us here to furnish an accurate history, detailed history, of all of these lines. I can state to the gentleman in a general way, how our Texas lines grew up, but I would not like to file an exhibit without it was accurate, as to dates, acquisitions, and so forth, and it would entail a vast amount of labor. I have often thought just for my own and for my clients' information I would some time compile that work, but the immensity of it has kept me from doing it for my own uses up to this time.

Commissioner Harlan: The Commission rather more
5775 freely than a court does take judicial notice of facts which are somewhat of common knowledge, and it is our duty to advise ourselves what the fact is sometimes, and I am impressed by the suggestion of Mr. Garwood, that we have the right and perhaps in this case it would be our duty to look into this matter. Would it not suffice all your purposes if you were advised by the Commission that in presenting your argument you might direct our attention to what you understand to be the history of a typical line or one or two typical lines in that regard, and the Commission could then, so far as it might deem it necessary to be more fully advised, take its own means of looking into the matter? That would give you the opportunity of using in argument what you understand to be the facts, and to argue the case from that point of view.

Mr. Garwood: I wish to state, Mr. Commissioner, that I have

never heard it questioned that in the matter of general history of this sort, even in an argument before a court, that as illustrative, that not being the direct point at issue, that as matter of history you are at liberty to refer to such things, and the value of your reference will of course depend upon the accuracy of it, even if presentations of matter of this character on ultimate argument before
5776 courts.

Mr. Ziebold: That will be satisfactory to me, although I will state briefly that the gentleman evidently misapprehends my request. I am not asking for a historical review of the details of the roads. I am only asking in a general way, which could be covered in one or two pages of typewriting. The original construction, as has been requested, of these lines was so many miles, and its present construction so many miles. The original construction was so much, and in the intervening years it grew from fifteen miles to 500 miles; or whether that construction was the original line of its own construction or whether the 500 miles today is the combination of ten other short lines, each so many miles long, to that general effect is what I want.

Commissioner Harlan: Most of that is indicated in one way or another in the records of the Commission, and of course the entire records of the Commission are available to the counsel and to the Commission, and so it seems to be that perhaps your point is fully met by the suggestion that you are at liberty to refer to such facts and argue upon it.

Mr. Cowan: Before that point is passed, I would like to state that my recollection is in the examination of Poor's Manual
5777 you will find the history of every railroad in the country, if you will go back through those volumes.

Mr. Ziebold: If it is admitted that that manual states the fact correctly for the purpose of this record, that is satisfactory.

Mr. Cowan: I just make that suggestion because I happen to know there is a great deal of information contained in that work.

Mr. Coleman: We do not want anything in the record to be taken as admitting anything of that sort. It may be so, and it may be argued, but we are not admitting anything.

Commissioner Harlan: It is not to be understood that there is any admission in the record on this point.

Mr. Ziebold: The second request was that the Santa Fe file with the Commission a statement indicating the various short lines purchased by it, and the considerations therefor and the contract obligations connected therewith as to those short lines, and the associated lumber or other interests connected with them. The purpose of this evidence being to show that the short lines in the Santa Fe territory now practically represented by the intervenors here, have been turned over to the Santa Fe under purchases and con-
5778 tractual conditions by which they have received considerations equivalent to the divisions now enjoyed by the short lines. As to this request, your Honor suggested that it be renewed at the further hearing, when the intervenors present testimony in support of their contention. In other words, we contend that hav-

ing received their divisions in the form of trackage rights and other privileges, that fact should be shown.

Commissioner Harlan: Without passing upon the general relevancy of that request to this inquiry, it is obvious, I think, that it ought not to be made at this time. Your own statement indicates the possibility that that information may be brought out when the intervenors are before us, and if it is not convenient for you to be at Chicago, you will at least have an opportunity of examining the record and what is disclosed at that time, and this request will be shown in the record and will be passed upon later.

Mr. Ziebold: My idea was that if the information was filed, I might not find any occasion for cross examining at all; if it was sufficiently ample for my purpose.

The third request was that the intervenors file with the Commission a statement of their lumber and their price lists f. o. b.
5779 the mill and their delivered price lists, and their various concession sheets in use now and for the past few years. As to this your Honor stated you will recall none of the parties have been required to give the details of their lumber business. And I wish to call your Honor's attention to this distinction. That is correct as stated, but with this distinction, that in this proceeding the lumber companies or lumber interests associated with the so-called short line railroads who are not a party to this proceeding, because of which it was held they could not inquire into their private business, but only of the railroads, but as concerns the intervenors, they are here as lumber companies, claiming their business is being discriminated against, and that presents quite a different situation and to my mind makes it entirely competent for them to be called upon for this information.

Commissioner Harlan: Well, Mr. Ziebold, surely that request ought not to be passed upon until the intervenors' case is before the Commission, and besides that, and in addition to that, the Commission is always very careful not to embarrass commercial enterprises by requiring information that may be embarrassing,
5780 particularly information that might be of use to their competitors. Now, so far, we have not gone into those questions, and I do not see how, fairly, we could, but yet at the same time something may develop when the intervenors' case is before the Commission that may make it entirely proper.

Mr. Ziebold: How can it be embarrassing to the intervenors to inquire into their business, when they are here asking relief, and leave to be heard, on the ground that their business is being discriminated against on account of these divisions? Suppose it would appear from their price lists and concession sheets that they were receiving higher prices and greater net revenue without the divisions than are the lumber companies which enjoy the divisions.

Commissioner Harlan: It still might be a prejudice against them.

Mr. Ziebold: That should be immaterial. They have called the prejudice upon themselves. They cannot ask for privileges without assuming the obligations.

Mr. Garwood: Might I suggest I gave a little notice to produce

when we were exchanging courtesies of that character at New Orleans. I made it as broad as I thought the situation demanded, in order that the intervenors might be on notice as to the pos-
5781 sible scope of the inquiry, as we conceived it might be material and proper, but it occurs to me that all of those are questions which will properly arise when the case comes up, and can be disposed of at that time.

Commissioner Harlan: It may be that it will be proper from the general point of view and more immediately from the point of view of what is brought out by the intervenors, but obviously it is not a proper question to be passed upon now, and as Judge Garwood has made practically the same request, I presume you would be willing to have him look after the matter at Chicago.

Mr. Ziebold: I certainly will, if that is his intention, to achieve the same result.

Mr. Walter: May I inquire if it is definitely understood that we will resume labor in Chicago on Monday at ten o'clock?

Commissioner Harlan: Yes. There may be one or two cases which Examiner Burchmore has in the adjoining room, but with that exception, we will resume in Chicago Monday morning.

Mr. Cowan: Before you adjourn there is a matter I have intended to call attention to, and all the attorneys have con-
5782 curred in it, to whom I have spoken, and that is in the idea when we come to brief and argue this case the difficulty must be apparent, and when the Commission comes to consider it, that also appears; nothing is exemplified so well as the necessity for a correct or substantially correct map. Here are a hundred, or how many hundreds I don't know, but a great many railroads with their various connections and situations relative to the main line, and each other, and I want to make the request, and I have understood that counsel on the other side join in that request, and would be glad to do it, that the Commission have this data, and having the maps which are filed, that it compile in some form or some sort of scale maps, taking Arkansas as one and Louisiana as another and Texas as another, so there will appear on the map all the trunk lines and all the tap lines, and that will enable us at a glance to see the situation. Of course it is a considerable expense, and will cost several hundred dollars and a great deal of work, but the Commission is the only body which can do it, because you have very capable examiners, as everybody recognizes, who are so intimately acquainted with the subject that they, in connection with a good map maker at Washington, will be able to compile a map
5783 so we can all use it with profit.

Commissioner Harlan: You mean, for instance, a map of the State of Arkansas, indicating generally the tap lines? You do not mean a map that would indicate the switch connections and the relation of the mill?

Mr. Cowan: No, that would be impossible on a map of ordinary scale.

Commissioner Harlan: I think we can do that.

Mr. Cowan: I do not know how we can brief the case unless we

do that. There was another thought we talked about in addition to that, and that is, how are we going to handle the case and brief it in any reasonable time without the documents that have been filed as exhibits? A great many documents have been filed, and no copies prepared or furnished, practically, and it did not seem it was practicable to do it at the time the parties had their documents and we were hurrying along as best we could, and there was no opportunity for copies to be made. It was not negligence exactly and there was no purpose to refuse it, but now suppose we go there, Mr. Andrews and I, representing the intervenors; we want to get this record for the purpose of briefing our case, and going
5784 over these documents. The Commission's rule, of course, does not permit the records to be taken away from the Commission's office, but there is no place there to do it, hardly, and I wondered if the Commission would itself desire to have some sort of brief abstract made of the material points; I do not mean all the documents, but the most material things that its examiners might think were material, some brief abstract made for our convenience, or at least the convenience of those who see fit to use them, of the filed documents that are to be used. Of course if any gentleman prefers not to rely upon that abstract, that is all right, but I do not know how we can ever brief and handle this case in argument unless we have some sort of brief abstract of the documents which we do not possess, and which are not explained in detail in the oral testimony of the witnesses.

Mr. Walter: On that request, I think it would hardly be within the province—I shall hardly say a proper manner of dealing with this case, since I think it is apparent to all that there has scarcely been an inquiry by the Commission in any condition of affairs that has been conducted more zealously and with more idea of going into the infinite detail than this hearing here, and I think we
5785 should not care to have it tried upon an abstract of facts or a record which the examiners might think was proper; that is, with all due regard to the ability of the examiners, but I think the scope of this inquiry has indicated that we had better furnish our own reference to the record.

Commissioner Harlan: Of course counsel for particular roads will do that. All that they seem to think essential they will put before the Commission in their briefs.

Mr. Walter: Yes. At the general hearing I do not think it should be left to an abstract.

Mr. Coleman: I would suggest it would be far cheaper to print the exhibits furnished by the various tap lines, the whole of them, than to force your examiners to spend probably months abstracting them, and we could print several copies of them, like a record in the Circuit Court, which would serve the purpose.

Commissioner Harlan: The Commission will endeavor in some way, and as broadly as possible, to meet the suggestions which Judge Cowan has made, and we will leave every particular line at liberty to present its case to the Commission as it chooses. But the
5786 Commission will endeavor to carry out the suggestion of Judge Cowan.

Whereupon, at 11:00 A. M., an adjournment was taken to Monday, January 30, 1911, at 10:00 A. M., at Chicago, Illinois.

5787 ST. LOUIS, MISSOURI,
January, 26, 1911—8 o'clock, p. m.

Supplemental hearing held before Special Examiner John D. Burchmore.

Met pursuant to notice.

Beaumont & Saratoga Transportation Company.

Mr. Garwood: Your Honor, I will state by way of preliminary, that this road is not chartered under the general railroad statute, but chartered simply as a transportation company for goods, wares and merchandise, and it does not include passengers. I will state that by way of preliminary. It is a common carrier, but it is not under the general railroad statute.

R. E. MASTERSON was called as a witness herein, and having been duly sworn, testified as follows:

Direct examination:

Examiner Gutheim: What is your name?
Mr. Masterson: R. E. Masterson.
Examiner Gutheim: And your residence?
Mr. Masterson: Voth, Texas.
Examiner Gutheim: What is your occupation?
Mr. Masterson: Traffic Manager.
5788 Examiner Gutheim: Of the railroad of the Beaumont & Saratoga Transportation Company?
Mr. Masterson: Yes, sir.
Examiner Gutheim: You may describe the general location of this road and if you have a map you can——
Mr. Masterson: I will let you look at that map and I have another one (handing map to Mr. Gutheim).
Examiner Gutheim: Will you attach that as an exhibit to your testimony?
Mr. Masterson: Yes, sir.

(The map so offered and identified, was received in evidence, and thereupon marked "Masterson Exhibit No. 1, received in evidence January 26, 1911," and is attached hereto.)

Examiner Gutheim: If you can, Mr. Masterson, will you state generally what you know about the physical and financial operation of this company?
Mr. Masterson: Yes, sir. Do you want me to first state where it runs from?
Examiner Gutheim: Yes, if you will.
Mr. Masterson: All right. In that connection you will notice that

it starts at a station called Voth on the Santa Fe, goes from
5789 Voth on the Santa Fe to Voth on the T. & N. O. The original station on the Santa Fe was called Funston, but has recently been changed to Voth. From Voth on the T. & N. O. it extends in a westerly direction to a station called Pelt. The distance from Voth on the Santa Fe to Voth on the T. & N. O. is three-quarters of a mile. From Voth on the T. & N. O. to Pelt, the western terminus, is a distance of twelve miles. Now, this branch was once extended from the station we called Sour Lake Junction on the map to Brazier, a connection on the Beaumont, Sour Lake & Western. You will notice that we have that line dotted.

This extension—the rails on this extension from Sour Lake Junction to the town of Brazier, has been taken up, but it was originally taken over as a branch of the Beaumont & Saratoga Transportation Company, but since the agitation of tap line divisions came about, we took up that as well, but it is our intention to replace it provided we are successful. Between Voth on the Sante Fe and Voth on the T. & N. O. is located the Keith Lumber Company. We have a station in there that we call Keith's Mill, which is what we call a regular station of the Beaumont & Saratoga Transporta-
5790 tion Company.

Now, the end of the track toward Saratoga, as stated previously, is called Pelt. No station has been erected there yet. It is the intention to erect a small depot, as there are in the neighborhood of twelve or fifteen farmers there, they are anxious for us to establish a depot and they want to petition the Government and ask for a post office. It is quite a neighborhood of farmers and stock raisers there, and they haven't any post office or means of transportation any nearer than Sour Lake, about six or eight miles.

The Beaumont & Saratoga Transportation Company is an original corporation, incorporated in 1906, and took over some properties that were originally held by the Keith Lumber Company. The capital stock of it is $20,000, all of it issued and outstanding, but it is held in trust by one of the stockholders of the Keith Lumber Company for the Keith Lumber Company.

The indebtedness of it is at the present time around $99,000, which amount is owed to the Keith Lumber Company. The railroad company does not carry the financial account itself, but all receipts being turned over to the Keith Lumber Company, they support the railroad.

5791 The railroad owns four locomotives, two of which are rented to the Keith Lumber Company, and it owns seven flat cars, which it only uses in transporting freight about on its own lines. The locomotives and flat cars are all equipped with safety devices and the railroad, as Judge Garwood said, does not do any passenger business. We are just incorporated as a transportation company to provide for the transporting of goods, wares, and merchandise. Of course, we have no passenger business, do not have any mail or carry any express, and we do not file any local tariffs, but we have local notices we have posted stating that we have a local rate of 8 cents per 100 on merchandise between points

on the line; $3.50 per car for logs. This is just a local notice posted up, not in the nature of a tariff. Between the connection on the Santa Fe, which is called Voth, and the connection on the T. & N. O., which is called Voth, is located Keith's Mills, and the Beaumont & Saratoga Transportation Company owns all of the track between these two connections which the mill is located on, and this is the track where the exchange of lumber is made to the trunk lines. We have not been doing all of the switching there.

5792 The Beaumont & Saratoga Transportation Company, not getting any division on intrastate business, and not a division on all interstate points, we have allowed the T. & N. O. and the Santa Fe to go in over the track and switch out such cars as they would have to go, and we switch out part of them. We make no distinctions, going for such cars as we get a division on, where we do the switching, and they do the same thing.

Examiner Gutheim: Is that all?

Mr. Masterson: Yes, sir.

Examiner Gutheim: This road is a standard gauge line throughout?

Mr. Masterson: Yes, sir.

Examiner Gutheim: About how heavily built is it?

Mr. Masterson: You mean——

Examiner Gutheim: The weight of the rail.

Mr. Masterson: The weight of the rail?

Examiner Gutheim: Yes.

Mr. Masterson: Yes. About three-fifths of them 40 pounds, one-fifth 35 and one-fifth, 56 and 60.

Examiner Gutheim: What is the total mileage that you now operate from Voth on the Sante Fe to Pelt, that is, the main

5793 line mileage.

Mr. Masterson: We count it twelve miles.

Mr. Gutheim: What was the date that the branch from Sour Lake Junction down to Brazier was taken up?

Mr. Masterson: It was taken up about March, 1910.

Examiner Gutheim: At Brazier did you have a Frisco connection?

Mr. Masterson: Yes, sir.

Examiner Gutheim: But notwithstanding that you took up the track from Sour Lake Junction down to that point.

Mr. Masterson: Yes, sir.

Mr. Gutheim: As a matter of fact, were you logging on that track?

Mr. Masterson: Prior to that time the Keith Lumber Company built the spur down there, the logging road, and about that time they got through cutting timber down there and we took it over as a railroad track and made our connection with the Beaumont, Sour Lake & Western, and kept them in possibly until after the Keith Lumber Company removed their logging camp from that section.

Mr. Gutheim: During the time that you operated there was no logging by the Keith Lumber Company going on on that

5794 branch?

Mr. Masterson: No, sir. If it was, it was only a short time. I don't think it was any time at all.

Examiner Gutheim: Isn't the line from Sour Lake Junction to Pelt a comparatively new piece of property?

Mr. Masterson: It has been constructed there, I presume, a year, maybe about that time I think.

Examiner Gutheim: And are any of the timber holdings of the Keith Lumber Company located along that line between Sour Lake Junction and Pelt?

Mr. Masterson: Yes, sir.

Mr. Gutheim: And are they logging in that vicinity at the present time?

Mr. Masterson: Well, they have branched a little south now and then run a distance westerly from Pelt, the Keith Lumber Company have.

Examiner Gutheim: At the time that the railroad property was taken over by the incorporators of the railroad company, was it extended from Voth on the Santa Fe to Sour Lake Junction and then down to Brazier?

Mrs Masterson: No, sir.

Examiner Gutheim: How far had it been built?

5795 Mr. Masterson: I think—my impression is that it was two miles out from Voth.

Examiner Gutheim: That is, it was a little beyond Voth on the T. & N. O.?

Mr. Masterson: Yes, sir.

Examiner Gutheim: Well, what is this town noted on the map as Saline?

Mr. Masterson: Saline is one of our spurs. There is a couple of farmers living over there, and also a water tank.

Examiner Gutheim: Was it anything before the road was built out there for the purpose of getting out the timber?

Mr. Masterson: No, sir.

Examiner Gutheim: That is, the road had extended that far as the extent of the lumbering operations of the Keith Mill?

Mr. Masterson: Yes, sir.

Examiner Gutheim: How about the station called Moon?

Mr. Masterson: Moon is a tie camp and also a spur of the Keith Lumber Company, where they branch north.

Examiner Gutheim: Are the ties taken off by individual contractors from the lands of the Keith Company?

Mr. Masterson: Most of them are tie contractors, cutting

5796 the ties from land of one or two other parties that live out there.

Examiner Gutheim: And was Sour Lake Junction originally a logging camp of the eKith Mill also?

Mr. Masterson: No, sir; the track was built to Sour Lake Junction by the railroad after it was incorporated.

Examiner Gutheim: The construction of this road has proceeded from time to time about contemporaneously with the logging needs of the Keith Lumber Company?

Mr. Masterson: Yes, sir.

Examiner Gutheim: You said outside of $20,000 worth of capi-

tal stock that was held in trust by the Lumber Company, there was a debt of about $95,000, which was also due the Lumber Company. Is any interest paid on that indebtedness?

Mr. Masterson: It bears 6 per cent interest, but so far the railroad has not been able to pay it.

Examiner Gutheim: They do not pay it, they just write it up?

Mr. Masterson: Yes, sir.

Examiner Gutheim: Did you get any divisions from the Frisco Line, with which you formerly had connection at Brazier?

Mr. Masterson: Yes, sir, we did.

5797 Examiner Gutheim: Notwithstanding which you took up the tracks from Sour Lake down to that point?

Mr. Masterson: I did not understand that.

Examiner Gutheim: I say, notwithstanding that fact you took out the line from Sour Lake Junction down to Brazier?

Mr. Masterson: We took it out about the time they began to talk about cancelling us out.

Examiner Gutheim: Had the division connection with the Frisco actually been cancelled?

Mr. Masterson: No, sir. I don't think they had, but they had notified us in view of the decision of the Commission, that they were going to.

Examiner Gutheim: What is the nature of Brazier, is there any community there of consequence?

Mr. Masterson: Turpentine camp was built there about the time we entered, but I don't know whether it is still in existence or not. It only amounted to two or three families living at that point.

Examiner Gutheim: So that Brazier as a community probably did not suffer by a discontinuance of the railroad by this company?

Mr. Masterson: No, sir.

5798 Examiner Gutheim: Now, you get no divisions from the Santa Fe?

Mr. Masterson: No, sir, we don't get any.

Examiner Burchmore: Why did you take the road up going out to Brazier?

Mr. Masterson: How is that?

Examiner Burchmore: Why did you take up your rails on the line running down to Brazier?

Mr. Masterson: Just at the time the tap line division was brought about, the Beaumont, Sour Lake & Western addressed us a letter stating that in view of this star grain case that they thought they had better cancel their divisions with us, and we figured that they were going to do so, and about that time the Keith Lumber Company needed some steel to extend their logging spur up about Pelt, also they purchased some additional steel, and we decided to let them take up that steel on that branch.

Examiner Burchmore: Did the railroad sell the lumber company this steel down there then?

Mr. Masterson: No, sir, the railroad owns all the steel and rents it to the lumber company.

Examiner Burchmore: Then the lumber company at the
5799 present time has borrowed that steel from the railroad company?

Mr. Masterson: Yes, sir; rented it really.

Examiner Burchmore: Paying rental for it?

Mr. Masterson: Yes, sir, we charge them a consideration of three dollars per car for hauling the logs in, and $100 per month track rental, for rental of the steels, and we furnish them such steel as they need for operating logging spurs.

Examiner Burchmore: What divisions do you now get if any, from the T. & N. O.?

Mr. Masterson: The T. & N. O. has not given us any for about a year. We originally got from one to three cents from them, the three cents only applying to Mexican points at points on the Colorado Southern west.

Examiner Gutheim: Then as a matter of fact, you are not now getting any divisions at all?

Mr. Masterson: No, sir.

Examiner Gutheim: Neither on lumber nor any other commodity?

Mr. Masterson: No, sir.

Examiner Gutheim: Inbound or outbound?

Mr. Masterson: No, sir.

5800 Examiner Gutheim: What is the distance approximately from your Keith Mills to Voth on the Santa Fe and Voth on the T. & N. O.

Mr. Masterson: Three-quarters of a mile.

Examiner Gutheim: The haul on the finished lumber you say is sometimes made by your power, sometimes by the power of either of those trunk lines?

Mr. Masterson: Yes, sir.

Examiner Gutheim: There is no agreement between the companies as to which shall do it in any particular case?

Mr. Masterson: No, sir.

Examiner Gutheim: They don't come and get it. When you want to get it out, you simply send your locomotives over with it?

Mr. Masterson: That is right.

Examiner Gutheim: Does the Keith Lumber Company conduct any railroad operations itself?

Mr. Masterson: Only logging spurs.

Examiner Gutheim: Do they actually conduct them?

Mr. Masterson: Yes, sir, they own the logging cars, and the locomotives are two that we rent them.

Examiner Gutheim: What is the consideration that they
5801 pay you for that rental?

Mr. Masterson: It is included in that $125.00 per month, and a consideration of $3.00 per car for hauling the logs.

Examiner Gutheim: In addition to furnishing them steel for the logging spurs, does the railroad company, as a part of its operating expenses, lay down these spurs and take them up and move them?

Mr. Masterson: No, sir.

Examiner Gutheim: Who stands that expense?

Mr. Masterson: The Keith Lumber Company.

Examiner Gutheim: Then the $3.00 a car charge that you speak of includes the transportation and also the rent of the locomotives and cars?

Mr. Masterson: That and the consideration of $125.00 per month.

Examiner Gutheim: Can you furnish us with a statement that will show the tonnage that has been handled by the road in the last fiscal year?

Mr. Masterson: Yes, sir.

Examiner Gutheim: Divided up between the business for the logging company and the business for the general public?

Mr. Masterson: Yes, sir.

5802 Examiner Gutheim: And showing the same division on the revenue?

Mr. Masterson: Yes, sir.

Examiner Gutheim: If you will file them as an exhibit in connection with your testimony.

Mr. Masterson: All right.

Examiner Gutheim: If you will read the results of that statement into the record.

Mr. Masterson: Outside public, 750 tons.

Mr. Cowan: What is the revenue?

Mr. Masterson: $257.59. Outbound lumber delivered to the T. & N. O. and Frisco, 4,140 pounds.

Examiner Burchmore: Don't you mean tons instead of pounds?

Mr. Masterson. Tons, yes, sir.

Mr. Cowan: Revenue?

Mr. Masterson: $1,795.90. Logs for Keith Lumber Company, 96,224 tons, $18,288.00. Then switching, $460.00, that is all.

Mr. Coleman: What is that switching for?

Mr. Masterson: That was charged against the Keith Lumber Company for switching—they have shipped a good deal of lumber by water, and the principal part of it was switching cars from

5803 the planer or mill down to their loading docks and the approaches.

Examiner Gutheim: Does the railroad keep separate accounts, Mr. Masterson?

Mr. Masterson: Yes, sir.

Examiner Gutheim: How long has it been doing so?

Mr. Masterson: Since it was organized.

Examiner Gutheim: On a separate set of books of its own?

Mr. Masterson: How is that?

Examiner Gutheim: On a separate set of books of its own?

Mr. Masterson: Yes, sir.

Examiner Gutheim: Is it keeping those accounts in conformity with the classification prescribed by the Interstate Commerce Commission?

Mr. Masterson: Yes, sir.

Examiner Gutheim: Do you make any annual or monthly reports to the Commission?

Mr. Masterson: Yes, sir.

Examiner Gutheim: How long have you been making your annual reports?

Mr. Masterson: Why I presume all the time. I have had about a year and a half, I have helped to make the two last ones.

5804 Examiner Gutheim: You don't know if any were made prior to that time?

Mr. Masterson: No, sir, I am pretty sure there was. We had a man then that attended to the railroad business altogether. I was not familiar with his work though.

Examiner Gutheim: What is the nature of the tonnage of 750 tons that you handled for the general public, Mr. Masterson?

Mr. Masterson: It included merchandise that we had hauled for different individuals on the line, pipe that we had hauled for the oil companies to operate a pipe line out in the neighborhood of Pelt, and a few ties which we would haul out for the Santa Fe Railroad Company.

Examiner Gutheim: Coming out of the tie camps that you speak of?

Mr. Masterson: Yes, sir.

Examiner Gutheim: What revenue do you charge or what rate do you charge on ties compared to the rate that you charge on the logs?

Mr. Masterson: We charge five dollars per car on the ties and three dollars per car on the logs.

Examiner Gutheim: That three dollars per car also carries
5805 along with it the lease, for a nominal consideration, of the locomotives and steel for the spurs?

Mr. Masterson: Yes, sir.

Examiner Burchmore: You spoke of some lumber that moved by water?

Mr. Masterson: Yes, sir.

Examiner Gutheim: What water line handled that lumber?

Mr. Masterson: We loaded it on what we call Pine Island Bayou. It goes down the bayou and empties into the Natchez river, and from the Natchez river to Port Arthur and Sabine, Texas.

Examiner Burchmore: What is the name of the company that handled it?

Mr. Masterson: Handled the water transportation?

Examiner Burchmore: Yes.

Mr. Masterson: The Keith Lumber Company do it, deliver the lumber to Port Arthur, where it is delivered alongside the steamers.

Examiner Burchmore: Does the Gulf Coast Navigation Company operate up in that water?

Mr. Masterson: Why, I am not sure. You might ask Mr. Keith that. He says they do not.

5806 Examiner Burchmore: Who owns that pipe line?

Mr. Masterson: The Gulf Line Pipe Company.

Examiner Burchmore: Have you any contract between your railroad and any other railroad?

Mr. Masterson: No, sir.

Examiner Burchmore: Any contract between your railroad company and the Keith Lumber Company?

Mr. Masterson: Agreement for hauling the logs and pay rent for the locomotives and rails.

Examiner Burchmore: Is that reduced to writing?

Mr. Masterson: We have the contract written, but I do not know that it has ever been properly executed, but we filed a local notice covering the shipment of logs, which we post, and that includes the cost of transporting the logs and the $125 per month would include the rental of the steel and locomotives.

Examiner Burchmore: This written contract that you think may not have been executed, does it accurately describe the actual operations between the two companies?

Mr. Masterson: I think I wrote it up, and I simply stated that in consideration of three dollars per car, the Keith Lumber Company should pay to the railroad—they agreed to haul the
5807 logs from any point on their line into the mill, and then for the $125 per month to give them the right to pass the caboose over the main line of the railroad, and the use of the two locomotives.

Mr. Garwood: Just one or two questions, your Honor. How far is the town of Batson from your present terminus of Pelt, just approximately?

Mr. Masterson: Seventeen miles, if I remember.

Mr. Garwood: Is it the purpose of this line to extend there?

Mr. Masterson: It is.

Mr. Garwood: Has a survey been made?

Mr. Masterson: Yes, sir.

Mr. Garwood: What sort of a place is Batson and what are the industries that are there?

Mr. Masterson: It is a town of about twenty-five hundred inhabitants, consists of one saw mill of about ten thousand feet per day capacity.

Mr. Garwood: Any oil wells located there?

Mr. Masterson: Yes, sir.

Mr. Garwood: How many?

Mr. Masterson: Two hundred and fifty was the report our
5808 engineer gave us.

Mr. Garwood: I would ask you if the oil production there is very large?

Mr. Masterson: Yes, sir, we have a summary of the productions—not the tonnage, but the oil productions for the year 1910, as 1,206,213 barrels.

Mr. Garwood: In other words, it is a large oil producing territory there, and it is your purpose to go over there in the near future: you have had your survey already made through there?

Mr. Masterson: Yes, sir.

Mr. Garwood: It is a town of considerable commercial importance by reason of the oil development there?

Mr. Masterson: Yes, sir, and no other railroad reaches the place, either.

Mr. Garwood: It now has no railroad facilities?

Mr. Masterson: No, sir.

Mr. Garwood: You stated that you had some 35 pound rails. Were you not in error about that, Mr. Masterson?

Mr. Masterson: It might be 35 pounds. That steel is being used by the Keith Lumber Company in their logging spurs, but I show them as the property of the railroad, and the quan-
5809 tities that I gave included all that was being used by the Keith Lumber Company.

Mr. Garwood: Will you please file the financial statement—have you it? Can you not attach it there and file it with the stenographer as Exhibit No. 1?

Mr. Masterson: I have filed "Masterson No. 1."

Mr. Garwood: File your financial statement as Exhibit No. 2.

Mr. Masterson: Yes, sir.

Mr. Garwood: That includes your tonnage?

Mr. Masterson: I have one that includes our tonnage.

Mr. Garwood: Make a separate exhibit of that and file it.

Mr. Masterson: All right.

(The analysis of earnings of Beaumont & Saratoga Transportation Company so offered and identified, was received in evidence and thereupon marked "Masterson Exhibit No. 2, received in evidence January 26, 1911," and is attached hereto.)

(The statement of tonnage and earnings so offered and identified was received in evidence and thereupon marked "Masterson Exhibit No. 3, received in evidence January 26, 1911", and is attached hereto.)

5810 Mr. Gutheim: Mr. Masterson, how long ago was this survey through Batson completed?

Mr. Masterson: We have had two surveys made, and the last one was completed the latter part of 1910, that makes the second survey.

Mr. Gutheim: You have never built this railroad any further from time to time, but it was needed for the logging purposes of the Keith Lumber Company?

Mr. Masterson: No, sir, we have not.

Mr. Gutheim: As a matter of fact, are there any oil refineries in Batson, or are they just taking out crude oil and piping it?

Mr. Masterson: Taking out crude oil.

Mr. Gutheim: Where is it refined?

Mr. Masterson: Beaumont, I think.

Mr. Gutheim: It is piped to Beaumont, I think, isn't it?

Mr. Masterson: Yes, sir.

Mr. Coleman: You said you did not get any intrastate divisions?

Mr. Masterson: No, sir.

Mr. Coleman: I suppose that means you were not ever recognized by the Texas Commission?

5811 Mr. Masterson: No, sir, we were not.

Mr. Coleman: You were not?

Mr. Masterson: No, sir.

Mr. Coleman: The three dollars switching charge where it is for water haul, does anybody absorb that switching?

Mr. Masterson: The railroad charges it to the lumber company.

Mr. Coleman: I know, but then does anybody absorb, any other carrier absorb that switching?

Mr. Masterson: No, sir, when it is switched from the Keith Lumber Company's mill, it is put on barges and carried away by water.

Examiner Gutheim: Those barges belong to the Keith people?

Mr. Masterson: It is a water shipment.

Mr. Coleman: What is the purpose of the three dollar switching charge? Why do you make that exception?

Mr. Masterson: Five dollars.

Mr. Coleman: Five dollars, why do you make that exception?

Mr. Masterson: That is what the railroad company charges against the lumber company for switching their cars down
5812 there to the wharf to load into barges.

Mr. Coleman: But is that a longer haul than when you interchange with the railroads?

Mr. Masterson: Well, practically the same.

Mr. Coleman: Why do you make the charge in one case and not make it in the other?

Mr. Masterson: The railroad charge of switching?

Mr. Coleman: Yes, sir.

Mr. Masterson: I don't know whether the railroad company would charge it or not. You know, they come in and get about as many cars—about as many as they carry out themselves, but charging a part of the switching charges.

Mr. Coleman: But you are charging the Keith Lumber Company a switching charge in one instance and not doing it in others?

Mr. Masterson: Yes, sir.

Mr. Coleman: Have you told us the real reason for that?

Mr. Masterson: Well, you see when we make a shipment of lumber out and do that switching, there are some of those cars that we would receive divisions from the railroads, and the railroad would possibly set out the cars that we would receive a division on, and the Beaumont & Saratoga Transportation Company would
5813 set out the cars that they did not receive any division on, and we counted it as an off-set between the railroads for doing that switching.

Mr. Coleman: Did you ever make application to the Commission for recognition as a carrier?

Mr. Masterson: The State Commission?

Mr. Coleman: Yes.

Mr. Masterson: I don't think we have.

Mr. Coleman: Why not?

Mr. Garwood: Your Honor, I just said a moment ago that this road is not incorporated under the general railroad statute, that it is incorporated merely as a transportation company under the gen-

eral corporation statute as a carrier of goods, wares and merchandise.

Exminer Burchmore: I think that covers the point.

Mr. Coleman: That is all.

Mr. Garwood: I would like, your Honor, to file the report of the engineer on the Batson proposition, where we expect to grade.

Examiner Burchmore: It may be received.

(The statement so offered and identified was received in evidence and thereupon marked "Masterson Exhibit No. 4, received in evidence January 26, 1911", and is attached hereto.)

5814 Cross-examination:

Mr. Cowan: Mr. Masterson, do you know the genesis of this corporation, this transportation company?

Mr. Masterson: No, sir, I was not with them when they first organized and commenced operations.

Mr. Cowan: When did you begin with them?

Mr. Masterson: I became connected with the railroad a little over a year ago. Mr. Keith is here and he could testify about the organization of it, Mr. Cowan.

Mr. Cowan: Who employed you?

Mr. Masterson: I worked in that capacity, for the railroad and the Keith Lumber Company.

Mr. Cowan: I want the individual who employed you.

Mr. Masterson: Mr. Keith.

Mr. Cowan: Isn't Mr. Keith the president of both companies?

Mr. Masterson: He is vice-president of the railroad and president of the Keith Lumber Company.

Mr. Cowan: Who is president of the railroad.

Mr. Masterson: B. R. Norval.

Mr. Cowan: He is also connected with the Keith Lumber Company?

5815 Mr. Masterson: Yes, sir.

Mr. Cowan: Were you there when this prior arrangement was made about that switching?

Mr. Masterson: No, sir, it was in effect when I went there.

Mr. Cowan: You found that?

Mr. Masterson: Yes, sir.

Mr. Cowan: You didn't know anything about how that happened?

Mr. Masterson: No, sir; I presume it was just an agreement between the railroad company and the lumber company.

Mr. Cowan: You presume that, but your presumption may be in error?

Mr. Masterson: I couldn't hardly say that, I would not be—I don't know; I was not there at the time it was organized.

Mr. Cowan: You know the railroad company and the lumber company are practically the same?

Mr. Masterson: Yes, sir, practically the same. I expect the same employees possibly, serve both companies, unless it was the superintendent of the railroad.

Mr. Cowan: Has the railroad company made any money?

Mr. Masterson: It has not showed any profits yet.

5816 Mr. Cowan: What is the object of operating it?

Mr. Masterson: The object of the railroad is to extend on into Batson.

Mr. Cowan: If it is not making any money, what do they want to extend there for?

Mr. Masterson: We figure that we will make some money when we get into that town.

Mr. Cowan: Doing what?

Mr. Masterson: Hauling out merchandise and possibly incorporate there as a carrier of passengers and such as that.

Mr. Cowan: How far would it be to extend the road to Batson?

Mr. Masterson: I think it is seventeen miles, sixteen or seventeen?

Mr. Cowan: Any railroad in the vicinity of Batson?

Mr. Masterson: No, sir, none reaching Batson.

Mr. Cowan: How near?

Mr. Masterson: I believe eight miles. The Saratoga appears to be the closest.

Mr. Cowan: What railroad is that?

Mr. Masterson: How is that?

Mr. Cowan: What railroads are those?

5817 Mr. Masterson: At Saratoga, the Santa Fe only.

Mr. Cowan: The Santa Fe is a rather enterprising company.

Mr. Masterson: I don't know whether they are making any money out of Batson or not—out of Saratoga.

Mr. Cowan: It is a rather enterprising company, the Santa Fe Railroad?

Mr. Masterson: I would not be able to answer that.

Mr. Cowan: They probably have got as good arrangements for building railroads as you have.

Mr. Garwood: You can take that as admitted on the record.

Mr. Cowan: But they have not built to Batson.

Mr. Masterson: No, sir.

Examiner Burchmore: That would be a branch line of the Santa Fe to Batson, and this line would have a main line in there.

Mr. Cowan: I will let him make that argument. The Santa Fe have not seen fit to build into Batson?

Mr. Masterson: Not that I know of.

Mr. Cowan: And you have not seen fit to build into Batson?

Mr. Masterson: We are headed that way now.

Mr. Cowan: For how long have you been headed that way?

Mr. Masterson: For five years, but we are getting at it in earnest now.

5818 Mr. Cowan: Have you ever consulted with Mr. Carlisle, in regard to expense?

Mr. Masterson: No, sir, it might be if he would interchange here, we would.

Mr. Cowan: You have been showing a deficit in the operation.

Mr. Masterson: On the interest on our indebtedness which we propose to pay to the Keith Lumber Company if we should earn it.

Examiner Burchmore: I want to ask if you build into Batson, do you expect to go beyond that point?

Mr. Masterson: Yes, sir, that is the intention.

Examiner Burchmore: You would then parallel the——

Mr. Masterson: That is the Riverside & Gulf.

Examiner Burchmore: You would parallel the county line?

Mr. Cowan: Now, Mr. Masterson, of course you are testifying under oath.

Mr. Masterson: Yes.

Mr. Cowan: Do you conscientiously state—you say you expect to extend to Batson, do you conscientiously state the fact that
5819 you absolutely intend—when I say you, I mean the people who put money into this property—actually intend to construct this line on to Batson?

Mr. Masterson: Well, I would rather have Mr. Keith to testify to that, because he is the man who is behind the enterprise.

Mr. Cowan: I wanted to see if Mr. Masterson knew that.

Mr. Masterson: That is the information he has given me, and I have reason to believe it.

Mr. Cowan: How much experience have you had in railroad operation?

Mr. Masterson: I have not had very much.

Mr. Cowan: Is it your opinion—you are testifying now—is it your opinion that the extending of this line to Batson would pay any reasonable interest on the amount of money necessary to build that road?

Mr. Masterson: Yes, sir, according to our calculations it would be a good investment.

Mr. Cowan: How much would it cost to build it?

Mr. Masterson: We figure, $7,500 per mile.

Mr. Cowan: Seventeen miles?

Mr. Masterson: Yes, sir.

Mr. Cowan: How much traffic do you think you would get?

5820 Mr. Masterson: We got it figured up about very near $10,000 per month.

Mr. Cowan: How do you get that amount?

Mr. Masterson: We got it itemized here according to the report of the engineer.

Mr. Cowan: $120,000 a year?

Mr. Masterson: Yes, sir.

Mr. Cowan: That being a guess, who figured that?

Mr. Masterson: Mr. Milliken, he gave us the figures, and we figured it out.

Mr. Cowan: You say "he gave us". Gave who, you and Mr. Keith?

Mr. Masterson: Yes, sir.

Mr. Cowan: Your present track has been built five years?

Mr. Masterson: No, sir, it was started two miles about five years ago and we have constructed ten miles in five years.

Mr. Cowan: I thought you said you had been trying to go on five years.

Mr. Masterson: No, I did not.

Mr. Cowan: The traffic on the present line has declined very much over previous years?

5821 Mr. Masterson: The traffic you say has declined?

Mr. Cowan: Yes, that is my understanding.

Mr. Masterson: No, sir, it has increased.

Mr. Cowan: 1910 shows an increase?

Mr. Masterson: Over 1909.

Mr. Cowan: Of what, traffic?

Mr. Masterson: Yes, sir.

Mr. Cowan: What sort of traffic?

Mr. Masterson: The principal item was the logs it hauled for the lumber company.

Mr. Cowan: But of course that would be cut out in time?

Mr. Masterson: Several years, yes.

Mr. Cowan: I notice that in the figures you gave 750 tons of merchandise for which you get $257.

Mr. Masterson: That was on our outside business.

Mr. Cowan: Outside business?

Mr. Masterson: Yes, sir.

Mr. Cowan: But the Keith Lumber Company is an outside corporation as far as Batson is concerned. They are not located at Batson, they have no business there?

Mr. Masterson: No, sir, they are not at present.

Mr. Cowan: If you own eight miles of road and you only

5822 get 750 tons at $257, how do you expect to maintain a railroad on any such returns as that?

Mr. Masterson: We expect to come into Batson where the tonnage and revenue is bound to be increased on account of the size of the place.

Examiner Burchmore: Judge Cowan, I think you would ascertain this possibly by asking him to state exactly what size tonnage he figures on getting.

Mr. Cowan: Answer that question.

Mr. Masterson: When we get into Batson we figure on getting in and outbound merchandise.

Examiner Burchmore: From where to where?

Mr. Masterson: From Batson to Voth. Of course from Voth we will get and deliver to the trunk lines $2,775.75.

Mr. Cowan: I want to get the tons.

Mr. Masterson: We have not got any tons figured out. It is in pounds.

Examiner Burchmore: What are your pounds?

Mr. Masterson: 2,775,750.

Mr. Cowan: 2,775,750?

Mr. Masterson: Yes, sir.

Mr. Cowan: What do you figure you can get a ton on that?

5823 Mr. Masterson: We have it figured here 10 cents per hundred.

Mr. Cowan: How is that?

Mr. Masterson: We have it figured here 10 cents per hundred.

Mr. Cowan: How much would that be a ton?

Mr. Masterson: That would be about one-half.

Examiner Burchmore: You mean five cents a hundred pounds, don't you?

Mr. Masterson: Ten cents a hundred.

Mr. Cowan: Ten cents a ton or a hundred?

Examiner Burchmore: Don't you mean a dollar a ton?

Mr. Masterson: Well, yes, we did figure that.

Mr. Cowan: He said a hundred.

Mr. Masterson: A hundred pounds, ten cents a hundred pounds, that would be $2 00 per ton.

Mr. Cowan: Why do you figure that when you are hauling 750 tons on your line as it is today, a short line haul, and you are getting only 34 cents a ton? Who made those figures?

Mr. Masterson: Getting how much?

Mr. Cowan: 34 cents a ton.

5824 Mr. Masterson: Well, you see this last figure I gave you was counting the merchandise mostly, local freight.

Mr. Cowan: One for the other?

Mr. Masterson: That included some carload shipments such as iron pipes for the pipe line company.

Mr. Cowan: Don't you suppose you would have to handle a lot of iron pipes out of Batson?

Mr. Masterson: Not locally very much.

Examiner Burchmore: I doubt very much whether it would serve a useful service to analyze those figures that he says are an engineer's estimate, as I understood him.

Mr. Cowan: Is there any prospect of this railroad being built?

Mr. Masterson: There have been some steps taken lately that looks very much like it is going to be built to me.

Mr. Cowan: Without this railroad the Keith Lumber Company could not operate to Batson?

Mr. Masterson: You say the Keith Lumber Company could not operate to Batson?

Mr. Cowan: Yes, could not operate its business without this railroad.

Mr. Masterson: No, sir; the Keith Lumber Company could not reach it from Voth.

5825 Mr. Cowan: They would have to have this railroad in order to operate?

Mr. Masterson: Yes, sir.

Mr. Cowan: That is all.

Examiner Burchmore: That is all.

Mr. Garwood: Mr. Keith is here. The nature and operations of the road have been very well covered but he is here to answer any questions.

J. F. KEITH was called as a witness herein, and having been duly sworn, testified as follows:

Direct examination:

Mr. Garwood: Mr. Keith, you heard the questions propounded to Mr. Masterson as to your intention to extend to Batson. I will ask you if that is your intention, whether you have had it surveyed, and if so, the nature and character of the development at Batson?

Mr. Keith: Have made the surveys, yes.

Mr. Garwood: Is it your intention to extend there?

Mr. Keith: Yes, sir.

Mr. Garwood: What is the character of the business that you expect to get at Batson, what is the character of the commu-
5826 nity, its population and so forth. State it.

Mr. Keith: At first I will say that I would like to correct the statement that Mr. Masterson made, in reference to that rail. We have 25 miles of rail, and all of the light 35 pound rails we loan to the Keith Lumber Company. The present track from Funston on the Santa Fe to Felt is all new 40 pound or 50 pound rail. There is not a light rail in that track any lighter than 40 pounds.

We have had a survey made to Batson, and an estimate of the cost and financial arrangement practically made to build it in there. I don't remember just what the total was, but we have had a man there checking it up for two or three months. We figured at the rate of 10 cents per 100 pounds, because it is costing the people 25 cents per 100 now to haul it in by wagon, and I might state further that we have had a survey made and expect to extend the road further than Batson or to a connection with the Riverside & Gulf, where we are promised a good deal of tonnage if we do that. We have a statement of tonnage here that we have hauled and what we expect.

Mr. Garwood: How much of a place is Batson and what is the character of the business that is done there?

5827 Mr. Keith: Well, Batson has got 23 stores. They produced the last two months of last year 105,000 barrels of oil each month, most of which is now piped away. We figured on getting about 5 per cent of that amount to go by rail.

Mr. Garwood: That is all I care to ask.

Cross-examination:

Mr. Cowan: Why do you expect to get 5 per cent of the oil shipments?

Mr. Keith: Well, from inquiries among the purchasing oil companies, with something like two hundred and fifty producing companies, they are nearly all owned by one concern, and they want facilities so that they can sell it as fuel, ship it out, but as it is now they are compelled to give it to the pipe line.

Mr. Cowan: I suppose if they had to buy it, it would go by the pipe line.

Mr. Keith: How is that?

Mr. Cowan: You say that they are shipping it by the pipe line now.

Mr. Keith: Yes, sir.

Mr. Cowan: Don't you suppose the pipe line can haul it cheaper than you can?

5828 Mr. Keith: As it is now, the producing company has to accept the price the pipe line will give it, it is not optional with it, they have to pipe it out.

Mr. Cowan: You have no contract with them to give you any percentage of this oil?

Mr. Keith: I have got the promises of some, which I believe in their word.

Mr. Cowan: As long as you hauled cheaper?

Mr. Keith: How is that?

Mr. Cowan: As long as you haul it cheaper.

Mr. Keith: No, they think they can get a better price for it.

Examiner Burchmore: You are an officer of the Keith Lumber Company?

Mr. Keith: Yes, sir.

Examiner Burchmore: What is your relation to that company?

Mr. Keith: I am president.

Examiner Burchmore: Do you control the company?

Mr. Keith: Yes, sir.

Examiner Burchmore: You are president of this railroad?

Mr. Keith: No, sir, I am vice-president of the railroad.

5829 Examiner Burchmore: What is your stock holding in that railroad?

Mr. Keith: Well, the ownership of the Keith Lumber Company and the railroad is the same. Well, practically the same.

Examiner Burchmore: Does the Keith Lumber Company or its mill labor under any disadvantage with other mills in Texas which are located on short lines of railroad that do receive allowances in selling your lumber in the market?

Mr. Keith: I cannot say that we do.

Examiner Burchmore: Is that mill just as well off as it was when the railroad formerly had joint rates?

Mr. Keith: The mill?

Examiner Burchmore: Yes.

Mr. Keith: The mill itself, yes. We do not look upon the divisions we get out of the railroad as any benefit, but I will tell you, we have an investment there now of $124,000 in that railroad, in the railroad itself, and of course if there is nothing done with it when we get through logging that timber out of there, it is practically a loss, so we have gone to a good deal of expense to build that better than a tram road. It is a standard gauge line, put up as

5830 well as a road can be put up, with a broad right of way about 100 feet wide through the woods. We have built it out there with a view of extending it on and making a railroad of it.

Examiner Burchmore: Is it a common carrier under the State Law of Texas?

Mr. Keith: Yes, sir.

Examiner Burchmore: I understood it was not a railroad corporation under the laws of Texas.

Mr. Keith: The Company at the time we incorporated, our attorney told us that we would be just as well to incorporate under this special transportation Act.

Examiner Burchmore: It is a common carrier?

Mr. Keith: A common carrier, yes, sir, we carry goods for other than the Keith Lumber Company.

Examiner Burchmore: I did not mean whether it was a common carrier. I asked if it was under the state laws of Texas.

Mr. Garwood: That is a mooted question.

Examiner Burchmore: You heard Mr. Masterson's testimony?

Mr. Keith: Yes, sir.

Examiner Burchmore: Was it correct in every respect, as
5831 you understood it except in the respect to the steel rails?

Mr. Keith: Practically so, yes, sir; not in every particular, because Mr. Masterson does not know all about the actual operation. He is an office man. For instance, in one particular there he stated that they had been a corporation for five years. Well, we incorporated that road in 1906. You see that would only be about four years.

Examiner Burchmore: Well, that is near enough.

Mr. Keith: Yes, sir. I thought it was, too, but it is in a way correct, yes, sir.

Mr. Cowan: Mr. Keith, if the Commission in this case would agree to recognize your railroad as a common carrier, would you agree to build on to Batson?

Mr. Keith: Yes, sir, I would enter into a contract to do it.

Mr. Cowan: If you built it on to Batson and it thereafter became a common carrier, because it has no other purpose than that, don't you know that they would be bound to recognize it as a common carrier?

Mr. Keith: I think we will build it whether they do or not, but we would like to have the divisions to help it. It is a hard matter to finance it if you have got the Commission against you
5832 on that.

Mr. Cowan: How long will your timber last?

Mr. Keith: Well, we have about ten years' run. We cut about 25,000,000 a year and we have 225,000,000.

5833 Mr. Cowan: Who was the agreement made with by the railroad company charging the Keith Lumber Company five dollars a car?

Mr. Keith: Well, it was just a charge that we made for the service which they did switching cars.

Mr. Cowan: But you know the Keith Lumber Company and the railroad company are two separate identities?

Mr. Keith: Yes, sir.

Mr. Cowan: Who did the railroad company make the contract with to charge the lumber company five dollars a car? Wasn't that what Mr. Masterson said?

Mr. Keith: Yes, sir, those are the switching charges.

Mr. Cowan: I am trying to find out who the railroad company made such a contract with, what individual did it.

Mr. Keith: Well, I gave orders to charge that much and the Keith Lumber Company had to pay it. We don't switch for anybody else but them.

Mr. Cowan: You are the president of the lumber company?

Mr. Keith: Yes, sir.

Examiner Burchmore: I think that is a sufficient answer, Judge Cowan.

Mr. Cowan: I think it might be pertinent to inquire
5834 whether he did it as President of the Lumber Company or Vice-President of the Railroad Company.

Examiner Burchmore: Who gave these different orders to the subordinates in the railroad company?

Mr. Keith: We have a railroad superintendent who does nothing else but look after the railroad. Of course he does what I say, and he charges the Keith Lumber Company a fixed charge.

Examiner Burchmore: Which did you do it for?

Mr. Keith: I fixed the charge for the railroad company to charge and agreed to pay it for the Keith Lumber Company. It is practically the same ownership.

Examiner Burchmore: That is the answer you will want to make?

Mr. Keith: Yes, sir.

Examiner Burchmore: What was the use of that, what purpose did it serve?

Mr. Keith: It was to get revenue, to produce revenue. We could not afford to run the railroad for nothing. They do switching for others besides the Keith Lumber Company.

Examiner Burchmore: Where did you switch from and where to?

Mr. Keith: Well all about. We would switch cars out of
5835 the planer and mill up to the assembling track, and then as Mr. Masterson said, from the mill and planer around to those barges where we load for export, and then we switch hewn ties and piling in and out on the road for all of which we have a fixed charge of five dollars.

Examiner Burchmore: Do you publish tariffs?

Mr. Keith: Well, we do not publish it, we post it, keep it posted.

Examiner Burchmore: For whom?

Mr. Keith: Sir?

Examiner Burchmore: For whose observation?

Mr. Keith: Well, for the public.

Examiner Burchmore: Does the public pay anything down there?

Mr. Keith: How is that?

Examiner Burchmore: Does the public pay any switching charges?

Mr. Keith: Some.

Examiner Burchmore: How many cars?

Mr. Keith: How many?

Mr. Burchmore: Yes, how many in a year, say?

Mr. Keith: Well, the statement here will show, that total statement would cover.

Examiner Gutheim: About 6,295 handled, according to that statement.

5836 Examiner Burchmore: All for the Keith Lumber Company?

Mr. Keith: No, it was not all for the Keith Lumber Company. We switched some for the Santa Fe, some for the Gulf Pipe Line Company, and, I think some for the individuals that got out piling and ties on that line.

Mr. Cowan: Who owns the Gulf Pipe Line Company?

Mr. Keith: I think Mellen in Pittsburg.

Examiner Burchmore: Do you make that switching charge when you are switching to a railroad?

Mr. Keith: To a railroad?

Examiner Burchmore: Yes.

Mr. Keith: Yes, sir—do you mean switching out for the other railroads?

Examiner Burchmore: Yes.

Mr. Keith: Oh, no, they don't pay any switching, the Keith Lumber Company pays for the switching going out to the roads.

Examiner Burchmore: Suppose anybody else had a car switched out to a railroad, would you charge them for it?

Mr. Keith: Yes, sir, we charge for it.

Examiner Burchmore: Do you have any such cars?

Mr. Keith: Yes, sir.

Examiner Burchmore: Consisting of what?

5837 Mr. Keith: What is that?

Examiner Burchmore: Consisting of what?

Mr. Keith: Occasionally a car of feed, hewn ties, piling.

Mr. Burchmore: Do you get a division of the rates?

Mr. Keith: Iron pipe—no, don't get any division rate.

Examiner Burchmore: Then does the railroad company to whom you switch it, absorb that switching charge?

Mr. Keith: No, sir.

Examiner Burchmore: Does anybody absorb it in case you switch the car?

Mr. Keith: The owner of the stuff pays it.

Examiner Burchmore: What do you mean by that?

Mr. Keith: What is that?

Examiner Burchmore: Just what do you mean by that? You say the owner of the stuff pays it.

Mr. Keith: For instance, if the Gulf Pipe Line Company there wants some pipe switched out along their line, we charge them that tariff on it, the switching charge, and they pay it.

Examiner Burchmore: When you switch lumber down to the barges, does anybody absorb it?

Mr. Keith: The Keith Lumber Company pays it.

5838 Examiner Burchmore: Any of the transportation charges, would the transportation company absorb it?

Mr. Keith: No, sir.

Examiner Burchmore: That is all.

Mr. Coleman: You made the remark that when the railroad commission is against you, it is hard to finance a road.

Mr. Keith: Yes, sir.

Mr. Coleman: Did you apply to them?
Mr. Keith: Apply to whom?
Examiner Burchmore: He said that he did not. Mr. Masterson said——
Mr. Coleman: He said he did not know.
Mr. Keith: No, we have not applied to the state yet for recognition.
Mr. Coleman: So far as you know, if you apply, you can get it, if that is done?
Mr. Keith: It is our intention to apply, yes.
Mr. Coleman: Now you said there was about 105,000 barrels of oil shipped out of Batson produced every month?
Mr. Keith: Yes, sir.
Mr. Coleman: And you could get about five per cent?
Mr. Keith: In November and December—yes.
5839 Mr. Coleman: What would five per cent of that be?
Mr. Keith: You could figure it as near as I can. I have got the statement here, I have got it figured here.
Mr. Coleman: How much would that weigh?
Mr. Keith: I will tell you, our outbound oil shipments for 1910, by pipe line, was 1,206,213 barrels. We figured on 5 per cent of that which would be 5,025 barrels per month.
Mr. Coleman: How many pounds is it?
Mr. Keith: About 1,206,213 barrels.
Mr. Coleman: In your 5,000 barrels?
Mr. Keith: 5,025 barrels.
Mr. Coleman: How much would that weigh?
Mr. Keith: 1,206,213 pounds.
Mr. Coleman: 5,000 barrels would weigh 1,000,000 pounds?
Mr. Keith: 1,206,213 pounds.
Examiner Burchmore: Twenty pounds to the barrel.
Mr. Coleman: Twenty pounds to the barrel?
Examiner Burchmore: Two hundred pounds to the barrel, isn't it?
Mr. Hershey: Two hundred and seventy pounds.
Mr. Keith: That is right. I thought it was right, about
5840 300 pounds to the barrel.
Mr. Coleman: The Texas common point rate is about 10½ cents?
Mr. Keith: I don't know.
Mr. Coleman: Have you figured your revenue from that road without knowing what the rate on oil would be?
Mr. Keith: I know what I would charge to haul it, from Batson to a connecting line.
Mr. Coleman: You would have to accept a division of the Texas rate or a proportion, wouldn't you?
Mr. Keith: Well, I might to a point beyond, yes, sir, I expect so.
Mr. Coleman: This is not going to stop at the town of Voth, is it?
Mr. Keith: Oh, no.

Mr. Coleman: It would go off the line and go to other territory?
Mr. Keith: Yes, sir.
Mr. Coleman: And you would only get a division of 10½ cents?
Mr. Keith: I figure on 5 cents a hundred.
Mr. Coleman: You would figure on getting one-half of the
5841 rate?
Mr. Keith: Yes.
Mr. Coleman: Judge Cowan suggests——
Examiner Burchmore: How did you manage to get that? If the rate is 10½ cents, how can you get 5 cents out of it? If you should make a joint rate and agree on divisions, you would have to accept settlement on the basis of proportion?
Mr. Keith: You understand that these figures are estimated. I am not very well up on rates, but I have been told that I could get five cents a hundred by building in there and I believe I can.
Examiner Burchmore: You had better inquire of the man who made the estimate. Did any railroad man tell you that?
Mr. Keith: No, no railroad man.
Mr. Coleman: Suppose you got five cents a hundred pounds on oil, that would only, as I have figured it, amount to $803.00 a month?
Mr. Keith: $603.00 we got it.
Mr. Coleman: Do you figure you could maintain those eleven additional miles—seventeen miles of railroad to do all that hauling for $603.00 a month?
Mr. Keith: No, señor, but there is a lot of other business
5842 here. I have got other tonnage here, if you want to hear it.
Examiner Burchmore: That is in the record.
Mr. Keith: Yes, that is in the record.
Mr. Coleman: That is all.
Mr. Garwood: Anything you want to ask, Mr. Keith?
Mr. Keith: No, I don't believe there is.

5843 *Poplar Bluff & Dan River Railroad Company.*

Mr. Garwood: With reference to this road I wish to say, your Honor, that Mr. Ruth, the representative of this road, is here, but I ascertain on inquiry that he has not filed his reports with the Commission, and he does not care to appear, but he is here subject to the orders of the Commission. If the Commission wish to put him on, they may do so, but personally he does not care to.
Examiner Burchmore: May I ask what the meaning of his indifference to this proceeding is?
Mr. Garwood: He is not indifferent to it, your Honor. He has not had the benefit of counsel in the method of conducting his operations and has not filed his reports with the Commission, and for that reason he does not care personally to go on the stand unless it is the desire of the Commission. If the Commission wish to make any inquiries of him, he is of course here ready to respond.
Examiner Burchmore: Is it your understanding that he proposes

or desires to continue to participate in joint rate transportation in connection with other interstate carriers?

Mr. Garwood: I suppose that it would be his purpose to
5844 await the further action of the Commission in the matter. My belief is, from the statements that he has made, that the probabilities are that after he has taken counsel with his legal counsel, that such concurrences as he has given will doubtless be withdrawn, but that is a matter for him to further determine. I would not undertake to speak for him.

Examiner Burchmore: Mr. Jeffery, our information is that this Poplar Bluff & Dan River Railway is a connection of the Iron Mountain. I wonder if there is any information that you could give us in a general way with respect to that company, or any statement that you could make to enlighten us at all.

Mr. Jeffery: Except that on February 28, 1906, Mr. Burnett, then assistant general freight agent, wrote to Mr. J. C. Lincoln, assistant freight traffic manager, that he, Mr. Burnett, had talked with Mr. Ruth about Mr. Ruth's railroad and that Mr. Ruth convinced him that it was a common carrier in all senses of the word, and he recommended that divisions be allowed to it on lumber. On March 2, 1906, Mr. Lincoln wrote to Mr. Burnett, authorizing him allowonces of two cents and three cents, and on March 5, 1906, Mr.
5845 Burnett instructed Mr. Rausch, who was then the chief rate clerk, to make a local rate of two cents higher than the junction point rate and allow a division of four cents. Mr. Burnett, I may say, died about a year ago, and Mr. Lincoln left the service of the company a couple of years ago, but from correspondence that we have been able to find on the subject, evidently at the time they were satisfied it was a common carrier.

Mr. Garwood: It was really chartered, my understanding is, as a common carrier in its charter.

Examiner Burchmore: I think we shall have to require Mr. Ruth to take the stand.

Mr. Garwood: Very well.

H. I. RUTH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Mr. Ruth, when was the Poplar Bluff & Dan River Railroad Company incorporated?

Mr. Ruth: In February, 1906.

Examiner Burchmore: Do you know when the line was built?

5846 Mr. Ruth: No, sir, I do not.

Examiner Burchmore: Previous to that time?

Mr. Ruth: Yes, sir.

Examiner Burchmore: How much previous to that?

Mr. Ruth: Six or eight years, I suppose.

Examiner Burchmore: You are interested in the Hargrove-Ruth Lumber Company?

Mr. Ruth: Yes, sir.
Examiner Burchmore: What is your relation to that Company?
Mr. Ruth: I am president and treasurer of the company.
Examiner Burchmore: Is that a corporation?
Mr. Ruth: Yes, sir.
Examiner Burchmore: What is the extent of your interest in that company?
Mr. Ruth: I own sixty per cent of the stock.
Examiner Burchmore: In whose hands is the balance of the lumber company's stock?
Mr. Ruth: It is in the hands of two other stockholders, H. V. Mingo and C. H. Hargrove.
Examiner Burchmore: What is the extent of your ownership of stock in this railroad?
5847 Mr. Ruth: I own all but four shares of the stock.
Examiner Burchmore: And those four shares are in the hands of the directors?
Mr. Ruth: Yes, sir, Mr. Mingo.
Examiner Burchmore: Where is the mill of the Hargrove & Ruth Lumber Company located with reference to this line?
Mr. Ruth: By the side of the line.
Examiner Burchmore: This railroad connects with the Iron Mountain at Poplar Bluff, Missouri?
Mr. Ruth: Yes, sir.
Examiner Burchmore: In what direction does it extend from that point?
Mr. Ruth: South of it.
Examiner Burchmore: Poplar Bluff is one end of the line, isn't it?
Mr. Ruth: Yes, sir.
Examiner Burchmore: What is the length of the line?
Mr. Ruth: We own and operate twenty-two miles.
Examiner Burchmore: How long have you been operating that length of road?
Mr. Ruth: About a year, I think.
Examiner Burchmore: Previous to that time what was
5848 your length?
Mr. Ruth: It has been lengthened out from time to time.
Examiner Burchmore: Have you been taking up tracks and laying them in other places?
Mr. Ruth: Yes, sir, part of that spur track.
Examiner Burchmore: Were there any spur tracks that connect with this railroad that are not owned or operated by this railroad company?
Mr. Ruth: No, sir.
Examiner Burchmore: The Hargrove-Ruth Lumber Company has no logging spurs?
Mr. Ruth: No, sir.
Examiner Burchmore: It has no locomotives or cars?
Mr. Ruth: No, sir.

Examiner Burchmore: How many locomotives has this railroad?
Mr. Ruth: Two.
Examiner Burchmore: How many cars?
Mr. Ruth: Six, I think.
Examiner Burchmore: This is a narrow gauge road?
Mr. Ruth: Yes, sir.
Examiner Burchmore: Are you contemplating widening it?
5849 Mr. Ruth: We have not, no, sir.
Examiner Burchmore: Is there a mill at Poplar Bluff?
Mr. Ruth: Yes, sir.
Examiner Burchmore: How near to the right-of-way of the Iron Mountain railroad?
Mr. Ruth: The Iron Mountain has a spur track into the mill.
Examiner Burchmore: And the lumber that is manufactured in that mill is, as a matter of fact, loaded directly from the mill onto the cars of the Iron Mountain?
Mr. Ruth: Yes, sir.
Examiner Burchmore: On its track?
Mr. Ruth: On its track, yes, sir.
Examiner Burchmore: It would simply involve at least unnecessary labor to load the lumber onto your narrow gauge cars and then transfer it to the junction?
Mr. Ruth: Yes, sir.
Examiner Burchmore: You haul logs into that mill?
Mr. Ruth: Yes, sir.
Examiner Burchmore: What are you paid for hauling the logs to the mill?
Mr. Ruth: We charge the Hargrove-Ruth Lumber Com-
5850 pany, one dollar per thousand.
Examiner Burchmore: A dollar per thousand what?
Mr. Ruth: Feet.
Examiner Burchmore: That is on manufactured lumber?
Mr. Ruth: No, on the log scale.
Examiner Burchmore: On the log scale?
Mr. Ruth: Yes, sir.
Examiner Burchmore: Didn't you formerly charge a dollar per thousand on the basis of the manufactured lumber?
Mr. Ruth: No, everything to the Hargrove and Ruth is a dollar a thousand on log measurement.
Examiner Burchmore: What divisions do you receive or have you been receiving from the Iron Mountain?
Mr. Ruth: We get two cents.
Examiner Burchmore: Plus a two cent arbitrary?
Mr. Ruth: Yes, sir.
Examiner Burchmore: In other words, the rate from stations on your line is two cents higher than the Iron Mountain rate?
Mr. Ruth: Yes, sir.
Examiner Burchmore: And you get that two cents and also an additional two cents out of the Iron Mountain treasury?
5851 Mr. Ruth: Yes, sir.
Examiner Burchmore: Are you familiar with tariffs and tariff terms?

Mr. Ruth: No, sir, I am not.

Examiner Burchmore: Do you know whether the rates on your line are on a milling-in-transit basis?

Mr. Ruth: No, sir, I think not.

Examiner Burchmore: The Iron Mountain Railroad pays you two cents and allows you an additional two cents. I don't understand what those amounts are, what service do you render for which you should receive that money?

Mr. Ruth: Well we have extended the line into the timber and are bringing out this raw material so that it can be turned over to the Iron Mountain.

Examiner Burchmore: You haul logs then?

Mr. Ruth: Haul logs, stavebolts and ties.

Examiner Burchmore: I am speaking now of the lumber or logs that belong to the Hargrove-Ruth Lumber Company.

Mr. Ruth: Yes, sir, we are hauling logs strictly for the Hargrove-Ruth Lumber Company.

Examiner Burchmore: You don't haul any stavebolts?

Mr. Ruth: No, sir.

5852 Examiner Burchmore: All the service that you perform in connection with their traffic is the carriage of the logs?

Mr. Ruth: Of the logs, yes, sir.

Examiner Burchmore: Do you issue any bills-of-lading?

Mr. Ruth: Do I, yes, sir.

Examiner Burchmore: Your railroad does?

Mr. Ruth: Yes, sir.

Examiner Burchmore: What bills-of-lading?

Mr. Ruth: I issue bills-of-lading from the Poplar Bluff & Dan River Railway.

Examiner Burchmore: But on what sort of traffic?

Mr. Ruth: On the lumber as it is shipped out from the mill.

Examiner Burchmore: Then although you do not actually haul the lumber as a railroad, yet you do issue the bills-of-lading?

Mr. Ruth: Yes, sir, this lumber when it is cut at the Hargrove-Ruth Lumber company's mill is taken into the yards and put in piles and some of it is put on skids and shipped from there. Then when the Hargrove-Ruth Lumber company is ready for the shipment to go forward, the Poplar Bluff & Dan River Railway

5853 Company issues a bill-of-lading and bills out the shipment.

Examiner Burchmore: What is the point of origin as shown?

Mr. Ruth: Ruthville is the billing station, Ruthville.

Examiner Burchmore: Where is Ruthville?

Mr. Ruth: Ruthville is supposed to be at the other end of the line, where the logs originate.

Examiner Burchmore: If I got on your engine and rode out there on the line, would I know when I came to Ruthville?

Mr. Ruth: Yes, sir, if I should tell you so. It is a little camp of about twenty-one houses.

Examiner Burchmore: There is no station there?

Mr. Ruth: No, sir.

Examiner Burchmore: Do you issue any waybills?

Mr. Ruth: Yes, sir.
Examiner Burchmore: What sort of waybills?
Mr. Ruth: We issue the regular waybill.
Examiner Burchmore: Interline waybills?
Mr. Ruth: Yes, sir.
Examiner Burchmore: How do you pay the charges, how do you pay or receive your charges on traffic interchanged with the Iron Mountain?
5854 Mr. Ruth: It is up at Poplar Bluff that the charge is paid.
Examiner Burchmore: Has your railroad been making money?
Mr. Ruth: Yes, sir.
Examiner Burchmore: Paid any dividends?
Mr. Ruth: Well we have it in the surplus account, we have not paid any dividends yet.
Examiner Burchmore: What is the capitalization of the road?
Mr. Ruth: We have $56,000.00 invested in the line.
Examiner Burchmore: How much is the authorized stock?
Mr. Ruth: Fifty thousand.
Examiner Burchmore: Have you ever issued any stock?
Mr. Ruth: Yes, sir.
Examiner Burchmore: How much?
Mr. Ruth: Fifty thousand.
Examiner Burchmore: Was that paid up in cash?
Mr. Ruth: No, physically it was not paid up.
Examiner Burchmore: How was it paid up?
Mr. Ruth: We just turned the road over to the Poplar Bluff & Dan River Railway.
5855 Examiner Burchmore: How much of a road did you turn over to them?
Mr. Ruth: Well we had—I really don't know how many miles there were.
Examiner Burchmore: Eight or ten miles?
Mr. Ruth: Eight or ten miles I suppose.
Examiner Burchmore: From whom had you acquired that railroad?
Mr. Ruth: We purchased that from some man by the name of Reidel who lives in Reading.
Examiner Burchmore: He had been running the road previously?
Mr. Ruth: No, he had purchased it under a receiver's sale.
Examiner Burchmore: Had it previously been operated as a railroad?
Mr. Ruth: As a tram road.
Examiner Burchmore: But not incorporated?
Mr. Ruth: No, sir.
Examiner Burchmore: It had not received any divisions?
Mr. Ruth: No, sir.
Examiner Burchmore: You purchased that railroad, and
5856 at the same time purchased some track?
Mr. Ruth: Yes, sir, the same line which the company had.

Examiner Burchmore: And you and your associates purchased the mill and the timber and the road at the same time?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Did you pay any particular amount of money for the railroad itself?

Mr. Ruth: No, sir, it was not incorporated.

Examiner Burchmore: What surplus have you?

Mr. Ruth: I think $19,000.00.

Examiner Burchmore: Is that a cash surplus or a book surplus?

Mr. Ruth: Book surplus.

Examiner Burchmore: And in addition to that $19,000.00, you have extended your line for 17 miles?

Mr. Ruth: We have extended——

Examiner Burchmore: Out of the profits?

Mr. Ruth: No, sir.

Examiner Burchmore: You put more money——

Mr. Ruth: No, sir, not out of the profits.

Examiner Burchmore: Where did you get the money to extend the line?

5857 Mr. Ruth: We took it out of our pockets.

Examiner Burchmore: What did you put back into your pockets in exchange for that?

Mr. Ruth: We had issued the stock for it, $50,000.00.

Examiner Burchmore: Then where you built the road in your accounts is represented by $56,000.00?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Do you handle anything except lumber and stavebolts and things of that kind?

Mr. Ruth: No, sir.

Examiner Burchmore: Is this railroad a common carrier?

Mr. Ruth: Yes, sir, we claim ourselves to be a common carrier.

Examiner Burchmore: Did you once report to the Commission that you were not a common carrier?

Mr Ruth: Well, I did in this way: I did not understand fully what a common carrier meant. I thought that a common carrier meant one that carried passengers and carried mail and all kinds of commodities, and at that time we were strictly hauling logs, staves and lumber.

Examiner Burchmore: You thought that a common carrier was one that carried common then. Do you have any passes over

5858 the Iron Mountain road?

Mr. Ruth: I have had, I have not now.

Examiner Burchmore: Do the salesmen for your company have any passes?

Mr. Ruth: No, sir.

Examiner Burchmore: Do you do any selling yourself?

Mr. Ruth: Do I?

Examiner Burchmore: Yes.

Mr. Ruth: Yes, sir.

Examiner Burchmore: Do you use your pass when you travel around to sell lumber?

Mr. Ruth: I do.

Examiner Burchmore: How long have you had a pass from this railroad, the Iron Mountain Railroad?

Mr. Ruth: I don't know. I have had it ever since I am incorporated as a common carrier.

Examiner Burchmore: When did you get that pass?

Mr. Ruth: When did I?

Examiner Burchmore: Yes, sir. You had had it for several years?

Mr. Ruth: Yes, I have had it.

Examiner Burchmore: That is a state pass?

5859 Mr. Ruth: Just a state pass.

Examiner Burchmore: Not good outside of the state?

Mr. Ruth: No, only good on the Iron Mountain in the state, good from Poplar Bluff to St. Louis.

Examiner Burchmore: Do you know Mr. Quelmette who has a mill on your line?

Mr. Ruth: No, sir.

Examiner Burchmore: There are four other mills on your line?

Mr. Ruth: Yes, sir, Mr. Heck has a mill on my line.

Examiner Burchmore: Are there four other mills on your line?

Mr. Ruth: Yes, sir.

Examiner Burchmore: At Poplar Bluff?

Mr. Ruth: No, near Poplar Bluff on the line.

Examiner Burchmore: Along down the line?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Do you haul their stuff for them?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Haul any logs for them?

Mr. Ruth: No logs.

Examiner Burchmore: Just their lumber and so forth?

5860 Mr. Ruth: Lumber, staves bolts and ties.

Examiner Burchmore: Taking the hardwood lumber?

Mr. Ruth: Yes, sir.

Examiner Burchmore: What rates do they pay your company?

Mr. Ruth: We charge them four dollars a car.

Examiner Burchmore: That is for hauling their lumber from where to where?

Mr. Ruth: Up to Poplar Bluff—from where it originates on our line to Poplar Bluff.

Examiner Burchmore: That is, for a mill that is located out on the line?

Mr. Ruth: Yes, sir.

Examiner Burchmore: How much does one of your cars hold?

Mr. Ruth: They are supposed to load about twenty-five hundred feet.

Examiner Burchmore: How many thousand pounds?

Mr. Ruth: About fifteen thousand pounds.

Examiner Burchmore: It is a little over two cents and a half to three cents a hundred pounds they pay on their lumber?

Mr. Ruth: Well, that depends altogether on the condition

5861 of it. We figure it about two cents a hundred.

Examiner Burchmore: What rate of freight do they pay to the Iron Mountain?

Mr. Ruth: What rate of freight do they pay the Iron Mountain?

Examiner Burchmore: Yes, they ship out over the Iron Mountain, don't they?

Mr. Ruth: Yes, sir, it goes out over the Iron Mountain.

Examiner Burchmore: What does the Iron Mountain get?

Mr. Ruth: The Iron Mountain gets—we transfer the lumber at Poplar Bluff onto Iron Mountain cars and bill it as from the Poplar Bluff & Dan River Railroad.

Mr. Burchmore: Then you bill it at the same rate that you bill your own shipments?

Mr. Ruth: Yes, sir.

Examiner Burchmore: In other words, two cents over the Iron Mountain rate?

Mr. Ruth: Yes, sir.

Examiner Burchmore: So that the shipper pays the Iron Mountain people that Iron Mountain rate and also $4.00 a car?

Mr. Ruth: Yes, sir, but that has to go back to the shipper.

5862 Examiner Burchmore: That four dollars is a small car?

Mr. Ruth: I mean two cents a hundred, when they have paid the freight I refund two cents, that is, two cents that the Iron Mountain pays me.

Examiner Burchmore: You had some agreement with the Iron Mountain railroad that they would give you divisions some years ago, didn't you?

Mr. Ruth: Yes, sir.

Examiner Burchmore: With whom did you make that arrangement?

Mr. Ruth: Mr. Burnett.

Examiner Burchmore: You heard Mr. Jeffery's statement about the correspondence bteween Mr. Burnett and Mr. Lincoln?

Mr. Ruth: Yes, sir.

Examiner Burchmore: I suppose that referred in some way to your conversation with Mr. Burnett. What was your arrangement with Mr. Burnett?

Mr. Ruth: Well, when I got this line I went to Mr. Burnett and asked him what would be necessary for me to do to obtain divisions.

5863 He told me that if I would incorporate and would agree to give their line all the business, he would make an interline with me, as they call it.

Examiner Burchmore: On your own traffic?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Well how about the staves of these other men out on the line?

Mr. Ruth: The staves that go to the factory over there, I do not get anything out of them.

Examiner Burchmore: Don't get anything?

Mr. Ruth: I don't bill that stuff, that is, I only bill such stuff that I bring up and transfer to the Iron Mountain cars. There are two plants located at Poplar Bluff on my line, the Binal-Ashcraft Manufacturing Company and the Hanna & Young Handle Works.

Examiner Burchmore: You don't get anything on those staves?

Mr. Ruth: Then I don't do any more than to push in the raw

material to their tracks and they bill it out over the Iron Mountain themselves.

Examiner Burchmore: Aren't you paid anything at all for that service?

Mr. Ruth: I get four dollars a car.

Examiner Burchmore: There are four other mills located
5864 at Poplar Bluff whose raw material is brought in over your railroad and the manufactured product shipped out over the Iron Mountain?

Mr. Ruth: There is the Hanna & Young Handle Company, the Binal-Ashcraft Manufacturing Company, and W. T. Morrison Company's mill. Those are the mills.

Examiner Burchmore: At the time that you agreed with Mr. Burnett for the Iron Mountain, that divisions would be given your road on traffic supplied by Hargrove & Ruth, was it not understood that you would not receive any divisions on traffic that was handled for these other four mills?

Mr. Ruth: Only for the Hanna & Young and the Binal & Ashcraft.

Examiner Burchmore: Those two?

Mr. Ruth: Yes, sir.

Examiner Burchmore: That was the understanding?

Mr. Ruth: Yes sir.

Examiner Burchmore: Why was it so understood?

Mr. Ruth: Well, I really could not say, only he made that request of me.

Examiner Burchmore: You have no knowledge of his reason for this?

5865 Mr. Ruth: No, I don't know why he did that, he made that request.

Examiner Burchmore: You don't know whether your mill gets a milling-in-transit privilege?

Mr. Ruth: I do not; no, sir.

Examiner Burchmore: I take it, you do. Of course, we can refer to the tariff to ascertain the facts; but these other mills, you take and bill their traffic as originating up in the woods and move it out over the Iron Mountain?

Mr. Ruth: Yes, sir.

Examiner Burchmore: You handle it locally for four dollars?

Mr. Ruth: Four dollars a car is what I get from those mills.

Examiner Burchmore: Do you publish that charge?

Mr. Ruth: No, sir.

Examiner Burchmore: Just a charge that you know about yourself, you do not get out any tariff?

Mr. Ruth: No, sir.

Examiner Burchmore: Have you any safety-couplers on your engines?

Mr. Ruth: No, sir.

5866 Examiner Burchmore: What kind of couplers have you?

Mr. Ruth: We have the ordinary pin and link couplers.

Examiner Burchmore: Do you haul any traffic over your line except logs.

Mr. Ruth: No, sir, that is all I haul.

Examiner Burchmore: Have you any cars except logging cars?

Mr. Ruth: I have logging cars and then I have what is termed a flat car in which stay bolts are hauled.

Examiner Burchmore: You also haul manufactured lumber though?

Mr. Ruth: They are hauled on those flat cars, but we haul on the log cars usually.

Examiner Burchmore: Has there been any complaint against your road or against your manner of doing business by these other mills down there?

Mr. Ruth: Not that I have heard of.

Examiner Burchmore: They are all satisfied?

Mr. Ruth: If they are not I don't know it.

Examiner Burchmore: Have you had any relations with the Arkansas State Commission?

Mr. Ruth: No, sir.

Examiner Burchmore: Or the Missouri State Commission?

5867 Mr. Ruth: No, sir.

Examiner Burchmore: How much revenue have you received from other shippers during the past year, and how much from Hargrove & Ruth?

Mr. Ruth: I think I can tell you. For the year 1910, I received from other shippers $2,437.22.

Examiner Burchmore: How much from the Iron Mountain on——

Mr. Ruth: From the Hargrove & Ruth Company, $6,190.35.

Examiner Burchmore: Anything from the Iron Mountain Railroad?

Mr. Ruth: From interlines?

Examiner Burchmore: Yes.

Mr. Ruth: I got $8,997.14.

Examiner Burchmore: That interline was all Hargrove & Ruth business?

Mr. Ruth: Yes, sir, and on some timber shipped by the Hearne Tie & Timber Company.

Examiner Burchmore: That last figure covers that?

Mr. Ruth: Yes, sir.

Examiner Burchmore: What did it cost you to operate your road last year?

Mr. Ruth: It cost me $7,895.62.

5868 Examiner Burchmore: What was your profit?

Mr. Ruth: The difference would be about $10,000.00

Examiner Burchmore: How long before your timber there will be cut out.

Mr. Ruth: It will take eight or ten years to complete the work.

Examiner Burchmore: How many of your carloads does it take to make a standard carload on the Iron Mountain?

Mr. Ruth: Well, I should think it would take eight.

Examiner Burchmore: You mean eight carloads of your logs will manufacture into one carload of standard lumber?

Mr. Ruth: To make a carload of lumber it takes four carloads, that is, if it is on the basis of 10,000 feet to a carload.

Examiner Burchmore: That means that in order to give the Iron Mountain one carload of lumber, you have to haul four carloads of lumber over your line?

Mr. Ruth: Yes, sir.

Examiner Burchmore: Is there anything further you wish to say, Mr. Ruth?

Mr. Ruth: I have nothing further to say.

Mr. Garwood: I have no questions.

5869 Examiner Burchmore: This seems to be all.

Whereupon, at 10:00 o'clock P. M., an adjournment was taken until Friday, January 27, 1911, at 9:30 o'clock A. M.

5870 ST. LOUIS, MISSOURI, *January* 27, 1911—
9:30 a. m.

Supplemental hearing held before Special Examiner John D. Burchmore.

Met pursuant to adjournment.

Paragould & Memphis Railroad Company.

JOHN W. VAIL was called as a witness and having been duly sworn, testified as follows:

Examiner Burchmore: Please give your name to the stenographer.

Mr. Vail: John W. Vail. I just wish to state that I will answer as to the organization of the railroad, but the details concerning the divisions, freights and such as that, Mr. Merryman will answer that.

Examiner Burchmore: You are president of the Paragould & Memphis Railroad Company?

Mr. Vail: Yes, sir; I am president.

Examiner Burchmore: I will be glad if you will tell us about the organization of this railroad in your own way.

Mr. Vail: Well, the articles of incorporation were gotten
5871 about November 20, 1902, with an authorized capital stock of $525,000, of which there was $60,000 subscribed, and $48,950 was paid in. We paid cash for all the stock in this way, that the railroad at this time was about nine miles long. It was an asset of the Decatur Egg Case Company. We reduced our capital stock of the Decatur Egg Case Company at 85 cents on the dollar, and took stock in the P. & M. for $48,950, which was then the value of the railroad which was owned by the Decatur Egg Case Company. The stockholders of the railroad at that time were John W. Vail, W. H. Niblick, A. T. Vail, S. N. Vail, Daniel Sprang, D. L. Quinn, E. A. Vail, J. E. Thomas and J. B. Hale, making a total of 4,890½ shares on the value of $100 per share.

Examiner Burchmore: Those gentlemen were also interested in the Decatur Egg Case Company?

Mr. Vail: At that time they were, with the exception of J. B. Hale.

Examiner Hale: What was his holding in the railroad?
Mr. Vail: His was one share.
Examiner Burchmore: He was a director?
Mr. Vail: He was a director.
5872 Examiner Burchmore: But the rest of you held stock in the Decatur Egg Case Company in about the same proportions?
Mr. Vail: In about the same proportions, yes, sir.
Examiner Burchmore: Can you tell me about the growth of this railroad company and the change in its ownership, just make a little history of it?
Mr. Vail: Right after that reorganization, or articles, rather, of incorporation, we started to build the P. & M. railroad and added on to it about eight and one half miles of track.
Mr. Burchmore: That was in addition to the nine you already had?
Mr. Vail: Yes, sir; that was in addition. That line went then into Manila in Mississippi County, Arkansas.
Examiner Burchmore: Let me ask you first, where were these nine miles?
Mr. Vail: It was out as far as Geneva, that is a station on our line.
Mr. Burchmore: From Paulding to Geneva, you mean?
Mr. Vail: No; from Cardwell to Geneva, Paulding being our first station.
Examiner Burchmore: You connected at Cardwell with
5873 the Cotton Belt?
Mr. Vail: The Frisco connected with us at that time. At Cardwell we are connected with the Cotton Belt and Paragould and Southeastern.
Examiner Burchmore: You did not get any traffic from the Southeastern at that time?
Mr. Vail: No, not at that time.
Examiner Burchmore: They were not built, or you just did not get it?
Mr. Vail: We had no connection with it at that time, we had no working agreement with it.
Examiner Burchmore: I don't think you finished your statement of the history of the road.
Mr. Vail: Well, as I say, the roadbed was a very good roadbed, the grade being in some places as much as six feet. We laid this with good ties and 56 pound steel rails. We then opened up stations at Manila, Arkansas, had a station at Buckeye, a station at Geneva, a station at Paulding, Missouri, and a station at Cardwell. We then——
Examiner Burchmore: When did you open those stations?
Mr. Vail: Right after we had got our line finished.
Mr. Burchmore: That was in 1903 or 1904?
5874 Mr. Vail: Probably 1903.
Examiner Burchmore: And your line was how long?
Mr. Vail: Seventeen miles and a fraction,—17.10
Examiner Burchmore: Now you may continue.

Mr. Vail: We then bought us a passenger coach and instituted a regular line which we have kept up to the present time. We make a round trip over our line from Cardwell to Manilla, we carry passengers and freight. Then in the afternoon we make an extra run from Cardwell to Paulding to connect with the Frisco Railroad, in addition to the main run we make in the forenoon to Manila.

Examiner Burchmore: At the present time you have about thirty miles of track, have you not?

Mr. Vail: Twenty-seven miles and a quarter, I believe it is.

Examiner Burchmore: You have accounted for only 17 miles in your statement.

Mr. Vail: Yes, sir. In 1906 we began a line running south from Cardwell about eight miles, which has been completed, and we make one trip a day over this part of the line.

Examiner Burchmore: That is a branch line?

Mr. Vail: Well, we designate it as the straight line, and we designate the main line as the air line.

5875 Examiner Burchmore: Have you any map of your road?

Mr. Vail: We haven't any here with us, no, sir.

Examiner Burchmore: I wonder if you could make a little rough sketch?

Mr. Merryman: I think I can make a rough sketch.

Examiner Burchmore: What is the present outstanding stock holding of this road?

Mr. Vail: $58,950.

Examiner Burchmore: And you have issued an additional $10,000 of stock?

Mr. Vail: $10,000, yes, sir.

Examiner Burchmore: Was that paid for in cash?

Mr. Vail: Yes, sir.

Examiner Burchmore: To whom was it sold?

Mr. Vail: It was sold to French Quinn.

Examiner Burchmore: Who is Mr. Quinn?

Mr. Vail: French Quinn was an ex-cashier, or an assistant-cashier, of the old Adams County Bank, Decatur, Indiana.

Examiner Burchmore: He is your banker, isn't he?

Mr. Vail: No, sir.

Examiner Burchmore: I thought you were in Indiana.

Mr. Vail: I am from Indiana, yes, sir.

5876 Examiner Burchmore: Does Mr. Quinn now hold that stock?

Mr. Vail: He holds fifty shares of it.

Examiner Burchmore: Who holds the other fifty?

Mr. Vail: Fifty shares passed into the hands of a man named R. K. Allison, and he and Quinn, they hold it jointly together. What arrangement they have I do not know.

Examiner Burchmore: Who holds the balance of the stock, the other $48,950 of stock, the same gentlemen whom you referred to a few minutes ago?

Mr. Vail: No, sir. John W. Vail, R. K. Allison, R. S. McClellan——

Examiner Burchmore: You might give the number of shares as you read the names.

Mr. Vail: John W. Vail, 131½ shares; R. K. Allison and Quinn—now I think that that is the way it is—50 shares; R. S. McClellan, 12 shares; C. R. Vail, 299 shares; D. L. Quinn, 4 shares; S. N. Vail, 24½ shares; E. A. Vail, 15½ shares; J. B. Hale, 1 share; A. Burdick, 1 share; Dan R. Vail, 1 share; French Quinn, 50 shares; making $58,950.

Examiner Burchmore: Who is D. L. Quinn?

Mr. Vail: He is a brother of French Quinn, and is in the
5877 employ of the Paepcke-Leicht Lumber Company of Chicago.

Examiner Burchmore: Do they buy anything from you?

Mr. Vail: How is that?

Examiner Burchmore: Do they buy any lumber from your firm?

Mr. Vail: No, sir. I do not manufacture lumber.

Examiner Burchmore: Do they buy any material from your companies in which you are interested?

Mr. Vail: No, sir.

Examiner Burchmore: They do not cut lumber down in that territory?

Mr. Vail: No, I think not. They moved some timber from a mill there by the name of Joe Thomas, which used to be a former stockholder of our mill, and he bought a saw mill for them and they bought lumber from his mill; that was last year.

Examiner Burchmore: I will ask you to furnish us with a map of your road. It does not need to be an elaborate map, but we would like it to show—to be drawn to a scale.

Mr. Vail: I think we have sent you one.

Mr. Merryman: I don't think so, Mr. Vail.

Mr. McKay: We will furnish that.

5878 Examiner Burchmore: I want it to show the mills along the line, all the mills.

Mr. McKay: Yes, sir.

Examiner Burchmore: Suppose you don't make it any larger than this table at the largest. (Indicating table.)

Mr. Vail: Oh, no, we will not make it as large as that.

Examiner Burchmore: As small as you can with clearness.

Mr. Vail: You want it made on a scale, and to show the mills along the line?

Examiner Burchmore: Yes, sir.

Mr. McKay: The location of the tracks?

Examiner Burchmore: Yes, sir. Any map will do, a map such as you or I would draw.

Mr. Vail: All right, we will get you one.

Examiner Burchmore: How many of the stockholders in your railroad company or interested in the stave or box companies in which you *are* your associates are interested?

Mr. Vail: Well, myself, I have stock in the Cardwell Stave Company and in the Buffalo Stave Company. Then in the Indiana Stave Company Mr. E. A. Vail has stock. He also has stock in the

Paulding Stave Company. Now that is — far as I can speak intelligently about the stock.

5879 Examiner Burchmore: Who is C. D. Vail?

Mr. Vail: C. D. Vail is my wife. When I speak for myself, why I speak for 299 shares.

Examiner Burchmore: Are Messrs. Allison or Quinn, either one of them, interested in any of these companies?

Mr. Vail: No, sir.

Examiner Burchmore: Directly or indirectly in any way, shape or manner interested?

Mr. Vail: In no shape or form whatever.

Examiner Burchmore: They are not trustees under a mortgage or anything of that kind?

Mr. Vail: No, sir.

Examiner Burchmore: Can you tell me how they acquired their stock?

Mr. Vail: Well, we have a lumber company called the Cardwell Mill & Lumber Company on our line. Mr. Allison was the principal stockholder of this concern. Mr. Quinn helped form the organization with Mr. Allison, and by some crook or turn, I don't know how it was, Mr. Allison got hold of 50 shares of Mr. Quinn's stock. They held it jointly, and that stock is hypothecated at the old Adams County Bank in Decatur, Indiana. That is the history that I have.

5880 Examiner Burchmore: Who did you say was the cashier of that bank?

Mr. Vail: The cashier now is Mr. Ecke.

Examiner Burchmore: Yes, but there was one of these stockholders that you said was interested.

Mr. Vail: Ex-assistant—he used to be assistant-cashier.

Examiner Burchmore: Who was that?

Mr. Vail: French Quinn. That was several years ago.

Examiner Burchmire: Well, Messrs. Quinn and Allison are both interested in the Cardwell Mill & Lumber Company?

Mr. Vail: Yes, sir.

Examiner Burchmore: That is an Indiana concern?

Mr. Allison: No. It is in the hands of bankruptcy.

Examiner Burchmore: How long have they been bankrupt?

Mr. Vail: They went into bankruptcy about ten or twelve days ago.

Examiner Burchmore: Do you know what is the occasion of their bankruptcy, what caused their downfall?

Mr. Vail: Jealousy and selfishness on the part of R. K. Allison.

Examiner Burchmore: It has nothing to do with your railroad?

5881 Mr. Vail: No, sir; not in any way, shape or form.

Examiner Burchmore: It is not because of any change in your rates or because——

Mr. Vail: Oh, no, not at all; just as I stated.

Examiner Burchmore: The rates have been cancelled in connection with your line, some of them, haven't they?

Mr. Vail: Yes, sir.
Mr. Merryman: That is lumber products.
Examiner Burchmore: Did the Frisco cancel all your joint rates?
Mr. Merryman: They certainly did.
Examiner Burchmore: Did the Cotton Belt cancel?
Mr. Merryman: No.
Mr. Vail: No, sir; they gave us notice.
Examiner Burchmore: I did not know they had cancelled all of the joint rates.
Mr. McKay: I have just got an extension order.
Mr. Vail: Yes. We notified the commission.
Examiner Burchmore: It has been cancelled, but they extended the time?
Mr. Vail: They protected us——
Examiner Burchmore: They have protected you in everything?
5882 Mr. Vail: No, just—I would rather Mr. Merryman would give you that.
Examiner Burchmore: I will ask Mr. Merryman.
Mr. McKay: He is more familiar with the details.
Examiner Burchmore: Are you interested in the Cardwell Mill & Lumber Company?
Mr. Vail: No, sir.
Examiner Burchmore: Who sells their lumber?
Mr. Vail: Allison sold their lumber.
Examiner Burchmore: Their lumber goes to the Paepcke-Leicht Lumber Company?
Mr. Vail: No, I don't know that.
Examiner Burchmore: Do you manufacture any lumber yourself?
Mr. Vail: No, sir.
Examiner Burchmore: I understand that you, Mr. Vail, practically control the Cardwell Stave Company?
Mr. Vail: Yes, sir.
Examiner Burchmore: You and your associates?
Mr. Vail: Yes, sir.
Examiner Burchmore: And the same is true of the Buffalo Stave Company?
5883 Mr. Vail: Yes, sir.
Examiner Burchmore: How about the Cardwell Box Company?
Mr. Vail: Well now, speaking for the present time, I moved the Buffalo Stave Company from Geneva, Missouri into—and have set it up in Cardwell Box Company, have leased the building from my wife, who bought in the Cardwell Box Company as it was sold under sheriff's sale.
Examiner Burchmore: The Cardwell Box Company——
Mr. Vail: Was a defunct institution and was bought in by my wife, and I moved the Buffalo Stave Mill in, and we are running now the Buffalo Stave Mill in the Cardwell Box Company's building.

Examiner Burchmore: And the Cardwell Box Company is out of business?

Mr. Vail: It is out of business, yes, sir.

Mr. McKay: And has been for some time?

Mr. Vail: Yes, it is for some time.

Examiner Burchmore: What caused them to become defunct?

Mr. Vail: I used to be president of the Decatur Egg Case Company, and we owned the building and the assets, or rather the building and machinery that afterwards became the Cardwell Box Company, and the Cardwell Box Company was formed
5884 I went out as president and there was a new president and a new secretary and manager put in, and those three men made a failure in manufacturing, consequently they went to the bad. Although I was a stockholder in the concern at the time it went defunct, yet I was not an active member in the concern.

Examiner Burchmore: Did you have a controlling interest in it?

Mr. Vail: No, I did not at that time.

Examiner Burchmore: Who controlled it?

Mr. Vail: Well, it was equally divided. I was a stockholder, W. H. Niblick was a stockholder, who is now the receiver, and the two Quinn boys.

Examiner Burchmore: Well, let me ask you who owns this railroad?

Mr. Vail: Well——

Examiner Burchmore: You have the stockholders, but who controls it?

Mr. Vail: I just gave you the names of the present stockholders. John M. Vail is the largest stockholder and controls the railroad; that is, he acts as president and general manager.

Examiner Burchmore: What became of the Decatur Egg
5885 Case Company?

Mr. Vail: After we organized our railroad, the Decatur Egg Case Company drew out of the manufacturing business and ceased to do business. Although the Decatur Egg Case Company owns some land in the neighborhood of Cardwell, I still act as the president of the company, we have not an active company, we simply own some land down there. We are selling them off and want to go farther south. These lands do not border on the P. & M. Railroad, only one section. The biggest part of our lands is south of Manilla, seven miles from our railroad, and the balance is lying over on the P. & S. E. and Frisco Railroads.

Examiner Burchmore: The original nine miles of this railroad were built to serve the Decatur Egg Case Company?

Mr. Vail: The Decatur Egg Case Company when they first came into Cardwell, they bought timber off of 8,000 acres of land that belonged to William Hunter, and they ran in a southeasterly direction, and we built our railroad down through that 8,000 acres of timber and hauled it in to the Decatur Egg Case Company. When that was finished, then the Egg Case Company quit manufacturing goods.

Examiner Burchmore: What was the purpose of the ex-
5886 tension of your line in 1906 to Manilla?

Mr. Vail: We went over that land several times, we saw it was very fertile country, the ground was nice and sandy and very productive, and we had bright prospects of becoming great railroad men, and we built down through there to serve the public.

Examiner Burchmore: Did you own any timber down in that direction?

Mr. Vail: No, sir.

Examiner Burchmore: You did not own any timber there?

Mr. Vail: No, not a foot.

Examiner Burchmore: At Manilla you connected with the Jonesboro, Lake City & Eastern?

Mr. Vail: Yes, sir; J. L. C. & E.

Examiner Burchmore: What system is that part of?

Mr. Vail: They are simply a separate corporation from——

Mr. McKay: Extending from Jonesboro to Blytheville, Arkansas. I think local men own it.

Examiner Burchmore: Is that supposed to be controlled by the people who own some mills?

Mr. McKay: No, sir.

Mr. Vail: No.

5887 Examiner Burchmore: Is that much of a railroad?

Mr. Vail: Yes, sir; it is a very good railroad for that part of the country.

Mr. McKay: The stock is owned and controlled by two men, one by the name of Brown, and Kerfoot.

Mr. Merryman: About eighty miles of road.

Mr. Vail: A good road.

Mr. McKay: They have no milling interests at all.

Examiner Burchmore: Has this railroad paid any dividends?

Mr. Vail: No, sir.

Examiner Burchmore: Have you got a surplus?

Mr. Vail: No, sir; we have no surplus.

Examiner Burchmore: Are you losing money?

Mr. Vail: No.

Examiner Burchmore: What is the state of your finances?

Mr. Vail: Well, we have a first mortgage on our railroad of $25,000, which is held by the old Adams County Bank of Decatur, Indiana. We pay them 6 per cent interest semi-annually on that loan. We have always kept the interest up, and the balance of our earnings goes into construction, making our road better. Two or three years ago we took up 35-pound steel lying between Paulding and Cardwell and laid it with 60-pound steel, and we
5888 have taken some of our earnings and built this eight miles south of Cardwell. The road owes the Decatur Egg Case Company a second mortgage of $90,000.

5889 We have been charging this interest up on the books until this last year when our Mr. Merryman forgot it for the simple reason that nobody called his attention to it, but we have

not been able to pay the Decatur Egg Case Company any interest on this mortgage.

Examiner Burchmore: What is the rate of interest on that $90,000?

Mr. Vail: Six per cent.

Examiner Burchmore: The first mortgage is $25,000?

Mr. Vail: Yes, sir.

Examiner Burchmore: What use was made of the money raised by that mortgage?

Mr. Vail: We used it in the extension of and improving our road at the time that we built from the end of the nine miles that I first spoke about, to Manilla. We had no bank at Cardwell, and as the pay rolls would come due, we would issue requisitions—the P. & M. Railroad would issue requisitions against the old Adams County Bank, Decatur, Indiana, and when they could come up there, the Decatur Egg Case Company, having money, would go in and take up these requisitions, and the debt was increased until this
5890 $90,000 was made.

Examiner Burchmore: What did that nine miles extension into Manilla cost?

Mr. Vail: That nine miles into Manilla cost in the neighborhood of about six or seven thousand dollars a mile.

Examiner Burchmore: Is that all built?

Mr. Vail: All built, yes, sir.

Examiner Burchmore: Is it a difficult country to build through?

Mr. Vail: Yes, sir, a difficult country to build through, that is, we call it difficult; of course it would not be called difficult, not through mountains, or anything like that. We have built bridges——

Examiner Burchmore: Is the road well built?

Mr. Vail: The road is well built. One trouble that we had in there has been the breaking of the levee of the Mississippi river, which came in there on two different occasions and washed us out, and we have had to expend a large amount to put it back again. We had to get more money and still have it to change some places six feet, six or seven feet.

Examiner Burchmore: What use was made of that
5891 $90,000, a similar use?

Mr. Vail: That made part of the $90,000, and then the other improvements, building south of Cardwell, added some more to the $90,000 debt.

Examiner Burchmore: Your present mileage is twenty-seven miles?

Mr. Vail: Twenty-seven miles and a fraction.

Examiner Burchmore: What did the road cost?

Mr. Vail: Well, the book value of our road now stands about $220,000.

Examiner Burchmore: Less than $10,000 a mile?

Mr. Vail: Less than eight, I guess it is.

Mr. Merryman: Just a little over eight, $8,200.

Examiner Burchmore: Suppose you had not had all this breaking down of the levee, what would your road have cost?

Mr. Vail: Well, we would have had it down then to about $6,000, I guess.

Examiner Burchmore: But the road is well built?

Mr. Vail: The road is well built.

Examiner Burchmore: You are well equipped with rolling stock?

Mr. Vail: We consider it well equipped.

5892 Examiner Burchmore: We can bring out the details by Mr. Merryman, he can give us those?

Mr. Vail: Yes; that is right.

Examiner Burchmore: Did you hear the testimony we took yesterday about a road in there that cost $16,000 a mile?

Mr. Vail: Yes, sir.

Examiner Burchmore: What did you say about that road?

Mr. Vail: I would say the fellow was telling a story.

Examiner Burchmore: Perhaps others might think so. He did not say that it cost $16,000 a mile, either, as I understood it, he said that was the book value. You have got as good a road as he has from his description?

Mr. Vail: Yes, I think we have a better.

Examiner Burchmore: Your road is as well built as most of these short line railroads in Missouri, or better?

Mr. Vail: We have had the engineers of the Frisco Railroad over our railroad. We have had the engineer of the Cotton Belt over our railroad, and they submitted statements on it unbeknown to us to the Mercantile Trust Company, because we tried to make a loan, and we have got those figures here that show that we are all right.

Mr. McKay: We have a better road than the Frisco

5893 Railroad had when it was first built up here.

Examiner Burchmore: A better road than they have got now?

Mr. McKay: No, not better than the Frisco has now.

Mr. Merryman: You might state that the County seems to think that we are the best road in that part of the country. It has assessed us at least $4,400 a mile higher than any line around there.

Examiner Burchmore: Have you paid it?

Mr. Merryman: No, we have not paid it and we are not going to pay it.

Examiner Burchmore: You contemplate floating an additional loan?

Mr. Vail: Yes, sir.

Examiner Burchmore: May I ask for what purpose?

Mr. Vail: Build our road into Paragould, and south of Manilla, about fifteen miles.

Examiner Burchmore: What is the purpose of those extensions?

Mr. Vail: To get our road in better running condition than it now is.

Examiner Burchmore: Have you bought any timber down in that direction?

5894 Mr. Vail: Yes, south of Manilla we go into an unbroken forest for ten miles.

Mr. McKay: Not belonging to you, though?

Mr. Vail: Oh, no, it don't belong to us.

Mr. McKay: No.

Examiner Burchmore: Have you any interest in it?

Mr. Vail: No.

Mr. Burchmore: Are you thinking of buying some of that timber?

Mr. Vail: No.

Examiner Burchmore: All hardwood?

Mr. Vail: Well, considerable hardwood. We call it soft principally, gum and cottonwood.

Examiner Burchmore: The factories in which you are interested, are they going to continue in operation indefinitely?

Mr. Vail: Oh, yes, but we do not take anything off our lands to speak of. We are getting our timber now from wagons that come in.

Examiner Burchmore: Your timber comes in by wagons?

Mr. Vail: Comes in now by wagons.

Examiner Burchmore: Into the mill by wagons?

5895 Mr. Vail: Yes, the bulk of it does. Of course we get some timber off of our own road, but not enough to——

Examiner Burchmore: Do you haul your staves and so forth out?

Mr. Vail: Yes, sir.

Examiner Burchmore: You haul the stuff out that the Buffalo Stave Company and these other industries in which you are interested manufacture?

Mr. Vail: Yes, sir.

Examiner Burchmore: What I might call your main line runs from Cardwell to Paulding?

Mr. Vail: To Manilla.

Examiner Burchmore: Running out of Cardwell, the first section through which it passes, section 11, is owned by you people?

Mr. Vail: Owned by the Decatur Egg Case Company.

Examiner Burchmore: I mean by you, that is by the Decatur Egg Case Company?

Mr. Vail: Yes, sir.

Examiner Burchmore: In which you are largely interested?

Mr. Vail: Yes, sir.

5896 Examiner Burchmore: You control that company?

Mr. Vail: Yes, I control it.

Examiner Burchmore: Is there any timber standing in that section?

Mr. Vail: No, sir.

Examiner Burchmore: Any timber that is, to speak of?

Mr. Vail: No, sir; they are all cut off.

Examiner Burchmore: Then from a point a fraction of a mile out of Cardwell you have what I should call a branch line extending through Sections 11, 14, 22 and 27?

Mr. Vail: Yes, sir.

Examiner Burchmore: And along that line you apparently own considerable land in Section 14, the northeast quarter of Section 22, through which your railroad passes the entire length?

Mr. Vail: Yes, sir, we own the land.

Examiner Burchmore: Is there any timber on that land?

Mr. Vail: No, sir.

Examiner Burchmore: There seems to be no timber along your line which you own?

Mr. Vail: No, sir.

Examiner Burchmore: Or which the company in which
5897 you are interested owns?

Mr. Vail: No, there is 217 acres there.

Examiner Burchmore: But in the southwest quarter of Section 27 you do own——

Mr. Vail: 217 acres.

Examiner Burchmore: Of timber?

Mr. Vail: Timber.

Examiner Burchmore: And that is within a mile of your railroad?

Mr. Vail: Three-quarters I will call it.

Examiner Burchmore: Are you cutting timber on that?

Mr. Vail: No, sir, it is swamp.

Examiner Burchmore: It is all a swamp and you cannot get into it?

Mr. Vail: No, sir.

Examiner Burchmore: Any other timber?

Mr. Vail: We own on Section 23, 200 acres.

Examiner Burchmore: And your railroad does not pass through Section 23?

Mr. Vail: No, sir.

Examiner Burchmore: I would be glad if you would show the land holdings on your map, and indicate whether there
5898 is any timber on it. On the Paragould & Southeastern Railway, which runs east from Cardwell, do you own any land east of Cardwell?

Mr. Vail: Yes.

Examiner Burchmore: You own then the whole of Section 6 through which that railroad passes?

Mr. Vail: Yes, sir.

Examiner Burchmore: A considerable part of Section 1?

Mr. Vail: Yes.

Examiner Burchmore: All of Section 36?

Mr. Vail: 36

Examiner Burchmore: And a little of Section 2?

Mr. Vail: Yes, sir.

Examiner Burchmore: The road does not pass through Section 36?

Mr. Vail: No, sir.

Examiner Burchmore: And the land that you own in Section 2 is near the northeast quarter, whereas the railroad, the Paragould & Southeastern, passes through the south half?

Mr. Vail: Yes, sir.

Examiner Burchmore: Are you cutting any timber in those sections?

5899 Mr. Vail: No, sir.

Examiner Burchmore: Does the Paragould & Memphis Railroad have any trackage rights over any other railroad?

Mr. Vail: No, sir.

Examiner Burchmore: Operates no trains?

Mr. Vail: No.

Examiner Burchmore: Let me ask you, where do you get the timber which is used in the factories in which you are interested?

Mr. Vail: We get it around here. We get it a little further back here.

Examiner Burchmore: Give the sections.

Mr. Vail: The main road runs out on this—the main wagon road runs out here. (Indicating.)

Examiner Burchmore: And north of Cardwell?

Mr. Vail: Yes, sir.

Examiner Burchmore: In other words, all the stave material and so forth is being brought in by wagon, practically speaking?

Mr. Vail: The bulk of it is.

Examiner Burchmore: Isn't that rather an expensive process?

5900 Mr. Vail: Yes.

Examiner Burchmore: You buy it f. o. b., you buy it delivered at the mills?

Mr. Vail: Yes, sir.

Examiner Burchmore: It is not being cut on your land?

Mr. Vail: No, we have none to cut, only this up here (indicating) that we have not touched as yet. It is all in litigation now.

Examiner Burchmore: Have you bought—got any logging spurs connected with your railroad anywhere?

Mr. Vail: No, sir.

Examiner Burchmore: Have you got any spur tracks of any kind?

Mr. Vail: No, sir.

Examiner Burchmore: Will you, without referring to any map—will you tell me where the different—what different mills are located on your line? I refer to mills that are in operation.

Mr. Vail: Well, the Cardwell Box Company is in operation, which we classify as the Cardwell Stave Company, Mill No. 2.

Examiner Burchmore: Where is that mill?

5901 Mr. Vail: That is in the old box factory that we have. It is on the transfer track between the Cotton Belt, between the P. & S. E. Railroad and the P. & M. Railroad. The Cardwell Stave Company is located on the same track. The Indiana Stave Company is located west of our depot at Cardwell, on the tracks of the P. & M. The Lawson Stave Company is located on the spur tracks that run south of Cardwell.

Examiner Burchmore: What does it manufacture?

Mr. Vail: Lumber.

Examiner Burchmore: You are not interested in that?

Mr. Vail: No, sir. The Paulding Stave Company is located at Paulding on the tracks of the P. & M. Railroad.

Examiner Burchmore: They manufacture staves?

Mr. Vail: They manufacture staves. Now, the Manilla Stave Company is located on the tracks of the J. & L. C. at Manilla. Now, that is the lumber industries of any consequence on our line. Of course we have one mill located on what we call the Cardwell Stave Company switch.

Mr. McKay: Give its name.

Examiner Burchmore: That is in Cardwell?

Mr. Vail: That is in Cardwell.

5902 Examiner Burchmore: That switch connects with the P. & S. E.?

Mr. Vail: No, that connects with the P. & M.

Examiner Burchmore: Doesn't it connect with the other roads?

Mr. Vail: No.

Examiner Burchmore: What is the name of that company?

Mr. Vail: John Green, called the John Green saw mill.

Examiner Burchmore: Then you have another saw mill, you say?

Mr. Vail: Yes, sir; that is the Walker & Thomas mill. That is located on the spur track south of Cardwell, leading out from our main track south.

Examiner Burchmore: Are there any more manufacturing enterprises on your line?

Mr. Vail: That is the extent of the lumber manufactories.

Mr. Merryman: There is a shingle mill on the end of this stub that you have forgotten.

Mr. Vail: I thought you should bring that out.

Examiner Burchmore: The Century Sawmill Company.

Mr. Vail: Yes, we have a saw mill out at the end of

5903 our spur out there, called the Century Saw Mill Company.

Mr. Merryman: Bele & Knight.

Examiner Burchmore: Let we ask you so that we will have it in concrete shape; would you mind giving us a list, a typewritten list of all the enterprises on your spur line?

Mr. McKay: Yes, sir.

Examiner Burchmore: In connection with the names of such enterprises indicate what they manufacture, what their output is, how much of it you handle. You might also indicate if you please, where they get their raw material, I mean where, geographically speaking, where they go to to get it. I would also like to know with respect to each industry, what persons are interested in that industry, either stockholders or otherwise, own any stock in your railroad, and what the extent of their interest is in the two corporations. I don't want you to go to a great deal of trouble and pry into other companies' affairs in order to answer this question, but give us the best answer you can in the form of a statement, which we will file with your testimony later. I think the Commission

will want that. Do you have any free passes over the Cotton Belt and Frisco?

5904 Mr. Vail: Yes, sir.

Examiner Burchmore: Have an annual?

Mr. Vail: Yes, sir.

Examiner Burchmore: How long have you had it?

Mr. Vail: We got them in about ten days ago I believe

Examiner Burchmore: That is for the year 1911?

Mr. Vail: 1911, yes.

Examiner Burchmore: Did you have 1910 passes?

Mr. Vail: Yes, sir.

Examiner Burchmore: Where did you use that pass?

Mr. Vail: Between Cardwell and St. Louis.

Examiner Burchmore: Is that a convenient road to take from Cardwell to St. Louis?

Mr. Vail: Yes, sir.

Examiner Burchmore: Did you have that pass the entire year of 1910?

Mr. Vail: Yes, sir—No, not the entire year. We got that pass some time in February, wasn't it?

Mr. Merryman: I think it was.

Examiner Burchmore: They were a little slow in getting it to you?

Mr. Vail: Yes, very slow.

5905 Examiner Burchmore: Did you have one the previous year?

Mr. Vail: Yes, we had, we had one previous years.

Examiner Burchmore: Have you any other annual passes at the present time?

Mr. Vail: Yes, sir, I have the Alton, the Clover Leaf, Frisco, the Chicago, Milwaukee & Puget Sound, I believe is one, and some little minor roads.

Examiner Burchmore: Do you use those passes?

Mr. Vail: Do I use them?

Examiner Burchmore: Yes.

Mr. Vail: Yes, when I come into the city. I never have used a pass going west or north of St. Louis in my life.

Examiner Burchmore: Where is your home?

Mr. Vail: My home is in Decatur, Indiana.

Examiner Burchmore: Do you have annual passes that you can go from Decatur to Cardwell on?

Mr. Vail: Yes, sir, that is the Clover Leaf.

Examiner Burchmore: And also on which you can travel between St. Louis and your residence?

Mr. Vail: Yes, sir.

Examiner Burchmore: Has any railroad cut off your annual passes within the last year or two?

5906 Mr. Vail: Well, it is a little early now to state that. We feel in hopes that we will get them, but they are awful slow in coming.

Examiner Burchmore: There wasn't any road that refused you an annual last year?

Mr. Vail: Oh, yes, we were refused.

Examiner Burchmore: That had previously given you one?

Mr. Vail: Yes, I think so. I think the Wabash would not give us any last year. I never did have a pass over the Wabash. My brother at Washington, D. C. has one.

Examiner Burchmore: Did you have any difficulty with the Trunk Line railroads, the longer railroads last year and the year before in connection with your annual passes, did any of them cut them off and tell you you must not use them? Weren't you deprived of the use of free passes for a while?

Mr. Vail: No.

Examiner Burchmore: I thought I remembered you—I think it was you that was in Washington and talked with me a year ago or less and complained that you could not use your passes.

5907 Mr. Vail: That was my brother, S. N. He might have said this, that if we are put on the tap line list, why then we will not be able to get any passes, and it has been a question with the big railroads as to whether we are a common carrier or whether we are a tap line. For instance, we got word from the Missouri Pacific here last week, stating that just as quick as the Interstate Commerce Association said that you are a common carrier, we will freely grant you passes.

Examiner Burchmore: Did those other railroads want you to give them passes?

Mr. Vail: Oh, they sent in their request, yes, sir, for passes.

Examiner Burchmore: You have no difficulty in persuading them to ride over the road?

Mr. Vail: Not when they want to fish and hunt.

Examiner Burchmore: Then your road is used by railroad officials to come down to the finishing grounds?

Mr. Vail: Oh, yes, we have them annually.

Examiner Burchmore: Do you have any parlor cars on your line?

Mr. Vail: Cardwell is a great place to entertain these traveling freight agents.

5908 Examiner Burchmore: I want now to ask whether the officers of this railroad have annual passes over other railroads?

Mr. Vail: Our Mr. Merryman and F. N. Vail, and Dan Vail, the officers, have.

Examiner Burchmore: You travel around on these passes for these stave companies, don't you?

Mr. Vail: Never.

Examiner Burchmore: Have no active part in their management and direction?

Mr. Vail: Oh, I am the head of the concern and direct the policy under which they generally operate, but——

Examiner Burchmore: You never travel on their business?

Mr. Vail: My stuff is sold invariably f. o. b. car Cardwell, and

the bulk of it goes right here in the city of St. Louis, so that I have no need to do so.

Examiner Burchmore: I know, but you travel down here sometimes to look over the factory?

Mr. Vail: No, I am living down at Cardwell now, have been down there for——

Examiner Burchmore: You come up to St. Louis sometimes to talk with your people up here about staves?

5909 Mr. Vail: Oh, I come up here quite frequently. I know I was up here this week a couple of times.

Examiner Burchmore: I mean the passes are valuable to you as a stave manufacturer?

Mr. Vail: Yes, sir, the passes are valuable to me the same as they would be to anybody.

Examiner Burchmore: The same is true of your brother, I presume?

Mr. Vail: My brother, we have had him out on the road in the interest of the P. & M. Railroad exclusively for the last two years.

5910 Examiner Burchmore: What did he travel around for the railroad so much for?

Mr. Vail: Well we have been trying to negotiate a loan. We have run him from one point to another, New York, Boston, Philadelphia, and all over.

Examiner Burchmore: It seems to me your brother complained to me in his conversation at Washington, that it was quite a hardship in connection with the operation of the stave factory to be cut off in passes, and a disadvantage.

Mr. Vail: I would not know.

Examiner Burchmore: Could you imagine his making such a statement?

Mr. Vail: I would not know what reason he would make such a statement as that for.

Examiner Burchmore: In fact, I think he said it would be pretty near as bad to be cut off from the use of passes as to have your company cut off the price on staves.

Mr. Vail: Our Mr. Merryman can tell you whether or not there is anything like that.

Examiner Burchmore: What do you think about that, Mr. Merryman?

Mr. Merryman: Somebody had a pipe dream.

5911 Examiner Burchmore: I thought perhaps it was a fact.

Mr. Merryman: I am sure Vail would not say anything like that.

Examiner Burchmore: I know he felt rather badly about the passes, as I recall it.

Mr. Vail: A man that manufactures good cooperage stock don't have to take and run around over the country trying to sell it.

Examiner Burchmore: Who do you sell that stock to? Do you make an annual report to the Interstate Commerce Commission?

Mr. Vail: Yes, sir.

Examiner Burchmore: I think that is all I care to ask now.

Cross-examination:

Mr. McKay: Mr. Vail, the Decatur Egg Case Company are not in business now any more?

Mr. Vail: No, sir.

Mr. McKay: And have not been for some five years?

Mr. Vail: Five years about.

Mr. McKay: Not shipping anything over these lines?

Mr. Vail: No.

5912 Mr. McKay: The stave companies which you are interested in do not have any interest in the P. & M. Railroad, do they?

Mr. Vail: No.

Mr. McKay: Nor the P. & M. Railroad has no interest in the stave companies?

Mr. Vail: No, sir.

Mr. McKay: Except such as you happen to be individual holders in both companies?

Mr. Vail: Yes, sir.

Mr. McKay: No part of your salary as president of the P. & M. is paid by either of the stave companies, is it?

Mr. Vail: No, sir.

Mr. McKay: Or no part of your salary as an officer in the stave company is paid by the P. & M. Railroad?

Mr. Vail: Not a cent.

Mr. McKay: They have separate and individual accounts?

Mr. Vail: They do, and bank accounts too, have had from the day that they started.

Mr. McKay: Do you transport freight and passengers?

Mr. Vail: Yes, sir.

Mr. McKay: Do you solicit business other than the business which is controlled by the interests which you are directly connected

5913 with along your lines?

Mr. Vail: We do.

Mr. McKay: Do you ever refuse transportation to any freight or passengers?

Mr. Vail: No, sir.

Mr. McKay: You hold yourself out as common carriers?

Mr. Vail: Yes, sir.

Mr. McKay: And solicit business?

Mr. Vail: Yes, sir, we solicit business.

Mr. McKay: Do you publish a time table?

Mr. Vail: Yes, sir.

Mr. McKay: Do you publish rates and tariffs?

Mr. Vail: Yes, sir, we have our division sheets.

Mr. McKay: About what percentage of the business handled over your road originates on the interests in which you are interested?

Mr. Vail: Well, I will leave Mr. Merryman to give the details of that part of the business.

Mr. McKay: He is more familiar with the details of that than you?

Mr. Vail: Yes, sir, that is right.

Mr. McKay: Have you an agreement with the Frisco and
5914 the Cotton Belt heretofore as to divisions of freight shipped over your line?

Mr. Vail: Yes, sir.

Mr. McKay: Does the Frisco railroad charge the same rate to persons along their line from Paulding that they do all persons who ship over your line?

Mr. Vail: No, they give a cheaper rate.

Mr. McKay: They give a cheaper rate?

Mr. Vail: They give a cheaper rate.

Mr. McKay: In other words if you ship—if the shippers ship stuff over your line out to Paulding, they have to pay a higher rate than a party who happens to live on the line at Paulding?

Mr. Vail: Yes, sir.

Mr. McKay: That is all, I believe.

Direct examination:

Examiner Burchmore: Are you Mr. J. W. Vail?

Mr. Vail: Yes, sir.

Examiner Burchmore: You are, I understand, General Manager of the Buffalo Stave Company?

Mr. Vail: Yes, sir.

5915 Examiner Burchmore: Hold the same office on the Cardwell Stave Company?

Mr. Vail: Yes, sir.

Examiner Burchmore: You are President of the Cardwell Box Company?

Mr. Vail: Well, that is a defunct institution.

Examiner Burchmore: Yes, and you are President and General Manager of the railroad?

Mr. Vail: Yes, sir.

Examiner Burchmore: I want to ask you if as the result of this proceeding or say in the end your railroad were to go on doing business as a common carrier on interstate shipments, your rates were so adjusted that a shipper on that line would have to pay something more than the local rate on the Frisco, say a combination of the locals was made, what would be the effect on your railroad of the necessity of charging the sum of the locals?

Mr. Vail: Well I don't know as it would make any difference, I mean particular difference on our railroad, for the simple reason that we are hauling now under our divisions, and of course if they were cancelled we would simply have to increase them, which we would do, but it would work a hardship on the manufacturers
5916 along our line.

Examiner Burchmore: Is it an interstate movement from Cardwell to St. Louis?

Mr. Vail: Yes, sir.

Mr. McKay: Not from Cardwell to St. Louis, it does not have to pass through——

Examiner Burchmore: It is all within Missouri?

Mr. Vail: Yes, that is right.

Examiner Burchmore: It is all within the state?

Mr. Vail: It would not be when you moved by way of the Cotton Belt. The Cotton Belt would be interstate.

Examiner Burchmore: Your line runs down into Arkansas?

Mr. Vail: Yes, sir.

Examiner Burchmore: Does it connect with any other railroad in Arkansas?

Mr. Vail: The J. L. C. & E. at Manilla.

Examiner Burchmore: Do you have a physical rail connection?

Mr. Vail: No, sir, we have our crossing put in there, but we are not connected up with a Y.

Examiner Burchmore: How long ago did you put in that crossing?

5917 Mr. Vail: It has been in now about a year.

Examiner Burchmore: Then there is no way by which an engine or train could pass from one railroad to the other?

Mr. Vail: No.

Examiner Burchmore: You team the stuff that you interchange there, don't you?

Mr. Vail: Yes, sir.

Examiner Burchmore: Charge anything for teaming?

Mr. Vail: No, sir.

Examiner Burchmore: Free transfer?

Mr. Vail: Yes, sir.

Examiner Burchmore: Who bears the cost of the teaming?

Mr. Vail: The man that loads the stuff.

Examiner Burchmore: You charge your local rates for the material?

Mr. Vail: No, we have a division with the Frisco.

Examiner Burchmore: How do you charge the shipper for the transfer?

Mr. Vail: You asked if we paid the teamster for hauling the products on our line, and I said no.

Examiner Burchmore: Suppose a shipment originates on

5918 your line, I don't care, at any point, take Cardwell, and it is going via Manilla and the J. L. C. & E. to some point, what rate do you charge that line, do you have a through rate?

Mr. Merryman: Yes, sir, we have a through rate.

Examiner Burchmore: Who pays the teamsters?

Mr. Merryman: It is absorbed by the two railroads, the J. L. C. & E. and the P. & M.

Examiner Burchmore: That is all I want to know. Do you hire a teamster all the time?

Mr. Merryman: Have a regular drayman there, yes, sir.

Examiner Burchmore: That is all I care to ask you, Mr. Vail, at this time.

Mr. McKay: That is all, I believe, now.

C. A. MERRYMAN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Mr. Merryman, what is your connection with the railroad?

Mr. Merryman: Auditor.

Examiner Burchmore: Do you work for anybody else?

5919 Mr. Merryman: No, sir.

Examiner Burchmore: Your duties with this railroad relate purely to accounts?

Mr. Merryman: And I publish the rates too.

Examiner Burchmore: You are a traffic officer, too?

Mr. Merryman: Yes, sir.

Examiner Burchmore: You keep your accounts in accordance with the system prescribed by the Interstate Commerce Commission?

Mr. Merryman: As near as I can, yes, sir.

Examiner Burchmore: What rate of depreciation do you charge?

Mr. Merryman: We never have charged off any depreciation at all.

Examiner Burchmore: The rules of the Commission require it.

Mr. Merryman: Yes, sir.

Examiner Burchmore: What is the explanation for your failure to charge depreciation?

Mr. Merryman: Well one reason that we never charged off any depreciation, that there has not any been charged off, is because

5920 that we rebuilt about two years ago, and most all the tracks there were really in better shape after the rebuilding than they were when we bought the track, and the same way with our locomotives.

Examiner Burchmore: You ought to charge depreciation on them.

Mr. Merryman: There really should be, and I am trying to arrange my books so that I can give an exact accounting for this year.

Examiner Burchmore: You do not understand that the Commission prescribes any particular rate of depreciation?

Mr. Merryman: I understand.

Examiner Burchmore: You don't have anything to do with the operating of this railroad?

Mr. Merryman: In a way, yes.

Examiner Burchmore: The conductors report to you, you mean?

Mr. Merryman: Yes, sir.

Examiner Burchmore: You don't have anything to do with the running of trains?

Mr. Merryman: Well, I assist Mr. Vail, yes, sir.

Examiner Burchmore: Who is general superintendent of the road, the man that orders things done?

5921 Mr. Merryman: John Green.

Examiner Burchmore: Is he present?

Mr. Merryman: No, sir.

Examiner Burchmore: Does he work for anybody else?

Mr. Merryman: No.

Examiner Burchmore: Does this railroad lease any track?
Mr. Merryman: No, sir.
Examiner Burchmore: Don't they lease——
Mr. Merryman: Well, we lease some siding there at the P. S. E. Railroad.
Examiner Burchmore: Will you show the location of that leased track on your map, so I can see just where they are?
Mr. Merryman: I will.
Examiner Burchmore: What do you pay for that track?
Mr. Merryman: We pay $5.00 a month.
Examiner Burchmore: Do you always pay?
Mr. Merryman: Yes, sir.
Examiner Burchmore: Do you have any contracts with the Paragould South-Eastern covering that track?
Mr. Merryman: Yes, sir.
Examiner Burchmore: We would like a copy of that contract, if you please.
5922 Mr. Merryman: We entered into a new contract and I think we pay nine dollars. It was five and then it was raised to nine.
Examiner Burchmore: Are the two contracts the same except with respect to the amount of the payment?
Mr. Merryman: I think they are.
Examiner Burchmore: You can furnish us with either one or both contracts, as you prefer.
Mr. McKay: We will furnish you with both of them.
Examiner Burchmore: What is the distance from the factory or plant of the Buffalo Stave Company to your junction with the Iron Mountain?
Mr. Merryman: We have no connection with the Iron Mountain
Examiner Burchmore: I mean with the Cardwell & South-Eastern?
Mr. Merryman: About ten miles.
Examiner Burchmore: How far over to the Frisco?
Mr. Merryman: Six.
Examiner Burchmore: It is a little under five, isn't it?
Mr. Merryman: Sir?
Examiner Burchmore: About five, isn't it?
5923 Mr. Merryman: I believe it is 8.96 is the exact mileage. I think from Geneva to Cardwell I think it is 8.92.
Examiner Burchmore: From what company did you say?
Mr. Merryman: You said from the Buffalo?
Examiner Burchmore: I have the mileage from the Buffalo Stave Company to the Frisco, as 4.84 miles.
Mr. Merryman: The road is 17.7 miles main line and 7.92.
Examiner Burchmore: I will tell you, you might show on that statement your different industries. You might indicate the distance of each industry from the Frisco and from the Cotton Belt and from the J. L. C. & E. so we can have it right before us.
Mr. Merryman: All right.
Examiner Burchmore: How many locomotives do you own?
Mr. Merryman: Two.

Examiner Burchmore: Operate them both?
Mr. Merryman: No, sir, only operate one.
Examiner Burchmore: The other is for relief?
Mr. Merryman: Yes, sir.
Examiner Burchmore: How many train crews have you?
Mr. Merryman: One.
Examiner Burchmore: Make one round trip a day?
5924 Mr. Merryman: Make one round trip on the main line from Cardwell to Manilla; we make one trip from Cardwell to Roller, Arkansas, and we make a trip in the evening from Cardwell to Paulding.
Mr. McKay: We connect in the evening with the Frisco going north.
Mr. Merryman: We make connections with the Frisco and the J. L. C. & E.
Examiner Burchmore: You may file a copy of your time table, if you care to.
Mr. McKay: Yes, sir.
Examiner Burchmore: You have how many passenger cars?
Mr. Merryman: One.
Examiner Burchmore: Have a caboose?
Mr. Merryman: Yes, sir.
Examiner Burchmore: Those trains are mixed trains, or passenger?
Mr. Merryman: They are mixed.
Examiner Burchmore: Do you run any purely freight trains?
Mr. Merryman: On the spurs.
Examiner Burchmore: With what frequency?
Mr. Merryman: Every day.
5925 Examiner Burchmore: One train a day?
Mr. Merryman: Yes, sir.
Examiner Burchmore: How many freight cars have you?
Mr. Merryman: We have got about—we had 73, 20 of them under lease, 53, and there is about 30 of them left, about 20 I think got to be rebuilt.
Examiner Burchmore: From whom do you lease those cars?
Mr. Merryman: They are leased of the Cardwell Mill and Lumber Company.
Examiner Burchmore: Cardwell Mill and Lumber Company?
Mr. Merryman: Yes, sir, they own their own equipment.
Examiner Burchmore: That is a new company, I have not heard of them. Who are they?
Mr. Merryman: It was discussed a while ago. It was the defunct institution that we were talking about that went into the hands of a receiver.
Mr. McKay: The Lawson Lumber Company, I believe Mr. Vail called it.
Mr. Vail: No, the Cardwell Mill and Lumber Company I called it.
Examiner Burchmore: Is Mr. Vail interested in that company?

5926 Mr. Merryman: No, sir.

Examiner Burchmore: What do you pay for those cars?

Mr. Merryman: Nothing.

Examiner Burchmore: Lease them for nothing?

Mr. Merryman: Yes, sir, we pay in this way. We keep up the repairs on the cars and they keep those cars in their own service.

Examiner Burchmore: What use is made first of those cars?

Mr. Merryman: Four hauling timber.

Examiner Burchmore: From where to where?

Mr. Merryman: From their tracts of timber into Cardwell.

Examiner Burchmore: Those are logging cars, are they?

Mr. Merryman: Yes, sir, flat cars, standard flat cars.

Examiner Burchmore: What do you charge them for hauling those logs in?

Mr. Merryman: The same rate that we charge all other shippers.

Examiner Burchmore: What is that rate?

Mr. Merryman: $1.75 on gum, sycamore and cypress, and $2.00 a thousand or two cents a hundred on oak and ash.

Examiner Burchmore: Do you haul their lumber out?

Mr. Merryman: Yes, sir.

5927 Examiner Burchmore: In all cases?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Wherever it is going?

Mr. Merryman: Yes, sir.

Examiner Burchmore: What do you charge them for hauling the lumber out?

Mr. Merryman: We charge them the regular published through tariff rate.

Examiner Burchmore: What is your division on that rate?

Mr. Merryman: It is according to where the shipment is moved.

Examiner Burchmore: I mean what is the line of division, one to five cents or what?

Mr. Merryman: We get all the way from two to four cents on a car.

Examiner Burchmore: What is your St. Louis division?

5928 *Examiner Burchmore: What is your St. Louis Division?*

Mr. Merryman: According to the product, from three to three and a half.

Examiner Burchmore: Where does most of the stuff go, all over the country?

Mr. Merryman: All over the country, yes, sir.

Examiner Burchmore: What would be your average division?

Mr. Merryman: The average division is about three cents.

Examiner Burchmore: How far do you haul that lumber?

Mr. Merryman: We haul that lumber from a mile to four.

Examiner Burchmore: One mile to four?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Are those rates on a milling in transit basis?

Mr. Merryman: They are not.

Examiner Burchmore: You don't refund the charge, any part of the inbound charges?

Mr. Merryman: No, sir.

Examiner Burchmore: That is true of all the logs that you handle?

Mr. Merryman: Yes, sir.

5929 Examiner Burchmore: You have no milling in transit rates at all?

Mr. Merryman: No, sir—I believe in Tariff C. & E. I. 2800-A they have a milling in transit rate from Cardwell to Mount Vernon.

Examiner Burchmore: Well, but the milling in transit is not on your line?

Mr. Merryman: No. You understand that on this rate of 1¾ cents on gum and sycamore and 2 cents on oak, you understand that we give them that rate provided they give us the out haul.

Examiner Burchmore: That is a kind of a proportionate rate in there?

Mr. Merryman: Yes, sir, that is it exactly.

Examiner Burchmore: Will they always give you the outhaul?

Mr. Merryman: Yes, sir.

Examiner Burchmore: What would you charge them if they did not?

Mr. Merryman: It would be a cent higher.

Examiner Burchmore: One cent higher?

Mr. Merryman: Yes, sir.

5930 Examiner Burchmore: If we found that the joint tariffs contained a milling in transit privilege, your answer would be that there is no milling in transit actually performed on your line?

Mr. Merryman: No, sir, there is not.

Examiner Burchmore: Do any logs move off of the line?

Mr. Merryman: Yes, there are a few, not very many.

Examiner Burchmore: What use is made of the freight cars that you own as distinguished from those that you lease?

Mr. Merryman: We use ours to—our logging cars are used by Walker & Company, and by the John Green mills.

Examiner Burchmore: Are they used for hauling logs?

Mr. Merryman: Hauling logs or lumber locally, or any other product that we might happen to get hold of from anyone.

Examiner Burchmore: You charged them the same rate that you referred to?

Mr. Merryman: Absolutely, yes, sir.

Examiner Burchmore: Do any of those cars go off of the line into use all over the country?

Mr. Merryman: No, sir, we run them—some we have interchanged with the Frisco as far as Kewanee.

5931 Examiner Burchmore: You confine your cars to your own tracks?

Mr. Merryman: Practically confine them to our own tracks, yes.

Examiner Burchmore: For taking a movement over the Frisco or the Cotton Belt, you require those companies to furnish the cars?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Do you pay a per diem?

Mr. Merryman: We do.

5932 Examiner Burchmore: Can you give me figures as to the amount and character of your freight tonnage?

Mr. Merryman: How is that?

Examiner Burchmore: Can you give me figures as to the amount and character of your freight tonnage?

Mr. Merryman: Yes, sir. I have it right here. You mean the diversified tonnage?

Examine Burchmore: I mean all the tonnage of the road, all the items. If you will put the statement in evidence I will just ask you to give the details. I would ask that you file this statement as Exhibit No. 1.

(The statement so offered and identified was received in evidence and thereupon marked "Merryman's Exhibit No. 1, received in evidence January 27, 1911," and is attached hereto.)

Examiner Burchmore: The total freight tonnage—this is for what year?

Mr. Merryman: This is for this last year, June 30, 1910.

Examiner Burchmore: Did you prepare this statement?

Mr. Merryman: Yes, sir.

Examiner Burchmore: It is correct?

Mr. Merryman: As near as I know, yes, sir.

5933 Examiner Burchmore: It agrees with your annual report?

Mr. Merryman: Yes, sir, it does.

Examiner Burchmore: It shows the total freight tonnage inbound and outbound, as 77,289 tons.

Mr. Merryman: Yes, sir.

Examiner Burchmore: Inbound and outbound?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Of which 75,470 tons was lumber and logs?

Mr. Merryman: Yes, sir, lumber, logs and both, shipped in there.

Examiner Burchmore: And the balance was agricultural products, 712 tons of live stock, 62 tons of coal, 404 tons miscellaneous. Manufactures, 66 tons; merchandise, junk and so forth, 575 tons.

Mr. Merryman: Yes, sir.

Examiner Burchmore: The statement seems to indicate that 97.63 per cent of the total was what might be called forest products?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Have you any statements showing how much tonnage was furnished by the different companies that

5934 we have referred to? Of the stave companies?

Mr. Merryman: Well, I will tell you. I have a statement which was gotten out at the time that your inspector came to Cardwell and inspected our records. It was 18 per cent at that time.

Examiner Burchmore: 18 per cent of what?

Mr. Merryman: Of the total tonnage.

Examiner Burchmore: Was furnished by whom?

Mr. Merryman: By the Cardwell Stave Company and the Buffalo Stave Company in which Mr. Vail had an interest.

Examiner Burchmore: That was for the fiscal year ending 1909, wasn't it?

Mr. Merryman: Yes, sir.

Examiner Burchmore: How about the year 1910?

Mr. Merryman: That I cannot tell you.

Examiner Burchmore: The same percentage, about?

Mr. Merryman: No, sir, not near as much.

Examiner Burchmore: You mean it would be 14, 12, or lower than 18?

Mr. Merryman: Yes, sir, it would be lower.

Mr. McKay: You could explain that, couldn't you?

Mr. Merryman: I could, yes.

5935 Examiner Burchmore: I would be glad to know how much each of the companies named had purchased in the last year.

Mr. McKay: We will try to give it to you covered in a statement.

Examiner Burchmore: I desire to know simply the operating expenses and the revenue and the net earnings for the last year.

Mr. McKay: They are in there, too.

Examiner Burchmore: The operating revenues on this statement are $38,942.42.

Mr. Merryman: That is right.

Examiner Burchmore: And the expenses, $30,589.67.

Mr. Merryman: That is right.

Examiner Burchmore: Making the profit derived from the operation of $8,352.75?

Mr. Merryman: Yes, sir.

Examiner Burchmore: I see you have taxes, $894.59?

Mr. Merryman: Yes, sir.

Examiner Burchmore: I thought you said you were not going to pay any taxes?

Mr. Merryman: Well, this was taxes paid in Arkansas. This was from last year's report.

5936 Examiner Burchmore: Are you going to pay taxes in Missouri?

Mr. Merryman: Well, we intend to pay taxes but we do not intend to pay what they have got us assessed at if there is any way out of it. They have got us assessed higher than the P. & S. E. Railroad, a branch of the Frisco.

Examiner Burchmore: Your operating ratio is 77 per cent?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Do you desire, Mr. Merryman or Mr. McKay,—do you desire to put all these statements in evidence?

Mr. McKay: We will file them all in evidence, yes, sir, if it won't encumber the record.

Examiner Burchmore: I think they may all be received and filed, if you will mark them in order, Mr. Reporter.

(The statements so offered and identified were received in evidence and thereupon marked respectively "Merriman Exhibits num-

bers 2, 3, 4, 5, 6, and 7, received in evidence January 27, 1911," and are attached hereto.)

Examiner Burchmore: Do you get and file tariffs at your stations?

Mr. Merryman: Yes, sir.

5937 Examiner Burchmore: How long have you had them there?

Mr. Merryman: Ever since the Commission issued those rulings.

Examiner Burchmore: You have an agent at Manila, Arkansas?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Has he got a file of tariffs?

Mr. Merryman: Yes, sir.

Examiner Burchmore: How long has he had it?

Mr. Merryman: He has had it, I think, about two years, I don't remember exactly. He was given a file of tariffs at the same time that the agents at Cardwell and Paulding were given them.

Examiner Burchmore: Our examiner reports in November, 1909, that the agent at Manila did not have any tariffs; he reports that you did not have any tariffs showing the rates with the Paragould, Southeastern, and the Jonesboro——

Mr. Merryman: He certainly had a copy of all the tariffs I had.

Examiner Burchmore: He stated, according to this report—the agent explained to the examiner that he billed his freight to

5938 the Paragould Southeastern points by using local rates to Cardwell, Missouri, and at that point the freight is rebilled. Is that correct?

Mr. Merryman: Well, no. The rate must apply, the local rate in many instances, but we always rebill shipments at Cardwell.

Examiner Burchmore: You mean re-waybill them?

Mr. Merryman: Re-waybill them, yes, sir.

Examiner Burchmore: Do you have a tariff on file of your own issuance with the Interstate Commerce Commission?

Mr. Merryman: Yes, sir.

Examiner Burchmore: In your opinion, you comply with every requirement of the Act governing interstate commerce?

Mr. Merryman: As near as we possibly can.

Examiner Burchmore: You have safety couplers all over?

Mr. Merryman: Yes, sir, we use them on our engines and on our coaches.

Examiner Burchmore: Do your employés obey the Hours of Service law?

Mr. Merryman: Yes, sir, I make a report of that every month.

Examiner Burchmore: Do any special trains run over your line?

5939 Mr. Merryman: No—Oh, there have been a few.

Examiner Burchmore: I mean passenger trains.

Mr. Merryman: Yes, sir, there have been a few; none within the last year.

Examiner Burchmore: You heard Mr. Vail's testimony. Was there any correction you would make in that testimony other than the corrections interposed, or is it substantially correct as you understand it?

Mr. Merryman: Why, yes.

Examiner Burchmore: What about the Vail Heading Company?

Mr. Merryman: They have dismantled their mill and it is not in business any more, as I understand it. The machinery has been moved away to a point called Hornersville on the P. & S. E. Railroad.

Examiner Burchmore: Machinery moved over to that railroad?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Who owns that railroad?

Mr. Merryman: It is a branch of the Cotton Belt known as the Paragould Southeastern.

Examiner Burchmore: Does Mr. E. A. Vail take any active part in the affairs of this railroad?

5940 Mr. Merryman: No, sir.

Examiner Burchmore: When you receive traffic from the Buffalo Stave Company or the other companies in which Mr. Vail is interested, do you receive any routing instructions from those shippers?

Mr. Merryman: Sometimes we do and sometimes we don't.

Examiner Burchmore: They usually leave the traffic unrouted, don't they?

Mr. Merryman: Why, sometimes they do.

Examiner Burchmore: They usually give no routing instructions?

Mr. Merryman: Quite often they put their routing instructions on the bill of lading.

Examiner Burchmore: Do you always obey them implicitly?

Mr. Merryman: As nearly as we possibly can.

Examiner Burchmore: Don't you handle the traffic furnished by those industries in such a way as to get the best divisions of the rates that you can?

Mr. Merryman: Well, they usually ask for a car and if we possibly can, if we receive a better division over the Frisco on the shipment, why, we route it Frisco. We simply give them a Frisco car, because practically the same rates do apply by way of

5941 the Frisco as the Cotton Belt.

Examiner Burchmore: Isn't it a fact that it frequently happens that a carload of material originating at Cardwell and shipped by the Buffalo Stave Company—Are they in business now?

Mr. Merryman: No, they are not in business.

Examiner Burchmore: What company is in business?

Mr. Merryman: The Cardwell Stave Company.

Examiner Burchmore: Shipped by the Cardwell Stave Company originating at Cardwell, moves over your line down to the junction of the Frisco and then out, instead of moving over to the junction with the Cotton Belt and going out over a more direct route? That is, isn't there frequently an unnatural or indirect routing of traffic in order that you may—your company may get a better division?

Mr. Merryman: There is none, no, for the simple reason that this shipment moving out over the Frisco will get to St. Louis, with the Mississippi River Crossing, as quick as and quicker than if you take it by way of the P. S. E. on the Cotton Belt.

Examiner Burchmore: Is there any stave factory at Geneva?

5942 Mr. Merryman: Not now.

Examiner Burchmore: How recently was there a factory?

Mr. Merryman: They are still jointing staves at that point, I think.

Examiner Burchmore: Suppose a carload of staves were shipped from Geneva, destined to St. Louis, and the rate is 14 cents.

Mr. Merryman: The rate was 15 cents.

Examiner Burchmore: How would that move?

Mr. Merryman: Move either by way of the Frisco to the junction at Paulding, Missouri, or by way of Cardwell over the P. S. E.

Examiner Burchmore: Suppose it goes by Paulding and the Frisco, what division would you receive?

Mr. Merryman: Four and a half.

Examiner Burchmore: And that goes at a through rate of 15 cents?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Suppose it goes via Cardwell, what rate would you charge?

Mr. Merryman: Four and a half—What rate would we charge?

5943 Examiner Burchmore: Yes.

Mr. Merryman: The same rate.

Examiner Burchmore: Would you receive four and a half cents?

Mr. Merryman: Yes, sir.

Examiner Burchmore: How long has that been true?

Mr. Merryman: That has been true about ever since I have been with the company, I think about four or five years.

Examiner Burchmore: Wasn't the rate to St. Louis over your line 14 cents?

Mr. Merryman: No, sir.

Examiner Burchmore: Wasn't your division formerly three cents?

Mr. Merryman: How long ago?

Examiner Burchmore: A year or so ago.

Mr. Merryman: No, sir, we have always received that division as long as I have been with them, received a division of four and a half or five, Geneva to St. Louis.

Examiner Burchmore: I would like to know if this has ever been the practice: instead of billing shipments from Geneva to St. Louis, through from point of origin to destination, moving it via the Belt and Frisco, has such shipment ever been billed to Cardwell

5944 on your local rate and on arrival at Cardwell a new bill of lading issued, the local rate paid up to Cardwell, and the traffic hauled back again to Paulding and delivered to the Frisco on through billing, showing Cardwell as the point of origin, not Geneva, and St. Louis as the destination, and giving you a three cent division out of this second movement, so that instead of getting your three or four cent division out of the Geneva to St. Louis rate, you get your local rate from Geneva to Cardwell plus a three or four cent division of the joint rate from Cardwell to St. Louis given by the Frisco; in other words, getting six or seven cents out of the total rate instead of

your regular local out of the joint rate and creating an unnatural movement of the car?

Mr. Merryman: We did, yes, sir.

Examiner Burchmore: How often did you do that, or when?

Mr. Merryman: Oh, that was done—that was going on at the time that that agent was there, and I reported that to him, told him and asked him if there was any ruling against doing that.

Examiner Burchmore: Well, is there any explanation you care to make of that?

5945 Mr. Merryman: Any explanation?

Mr. Burchmore: Yes, as to the frequency with which you did it.

Mr. Merryman: We simply did it because we derived more revenue out of that business by doing it.

Examiner Burchmore: I understand.

Mr. Merryman: And the through rate was not affected.

Examiner Burchmore: The shipper paid the same through rate?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Was that done with any traffic that was shipped by the industries in which Mr. Vale has any interest?

Mr. Merryman: No, there wasn't any other point it could have been done, there wasn't any other shipper out there at that point.

Examiner Burchmore: All of the competitive business, that is, business that could move over either the Frisco or Cottonbelt you routed as via Frisco because its divisions were larger than the Cottonbelt?

Mr. Merryman: Not always, no.

Examiner Burchmore: Whenever you can you move via

5946 the Frisco?

Mr. Merryman: No, not always. We divide it. Sometimes we give the Cotton Belt part of our shipment in order to enjoy service in car shortage. We felt it was only right to give them a portion of the business because they helped take care of us.

Examiner Burchmore: The operating expenses that you referred to a few moments ago for the last fiscal year, the previous fiscal year, the operating expenses as I have the figures, were $41,889.38. That was for the fiscal year 1909. That seems to be quite a high operating expense. Did you include in that any items for betterments for the line?

Mr. Merryman: No, I want to tell you about that. There was for two or three years there that—for the last two or three years that we have been continually bettering our roadbed, and the bridges have been piled, and a better class of ties have been put in.

Examiner Burchmore: You have spent some $41,000 on it?

Mr. Merryman: Yes, instead of putting that in the betterment account, it was placed in the operating expense; in the last year's report you will notice that we have a betterment account of $20,000.

That was not itemized, and that is my explanation of that,

5947 simply used in operating expenses.

Examiner Burchmore: You also spent some $2,500 or $3,000 for rebuilding second hand locomotives?

Mr. Merryman: Yes, sir.

Examiner Burchmore: The track which your company leases from the Cotton Belt system leads, as I understand it, from the Cardwell Stave Company to the Cotton Belt rails?

Mr. Merryman: Connects up with our track about 60 feet east west of the Cardwell Stave Company's plant.

Examiner Burchmore: What is the object of leasing that track?

Mr. Merryman: Well, I believe Mr. Vale probably is more familiar, but I believe I can explain it. When the Decatur Egg Case Company located at Cardwell, they entered into some arrangement with the P. S. E. Railway Company for the use of a siding, or the P. S. E. Railway Company agreed to put in this siding provided the Decatur Egg Case Company would pay them five dollars a month for the use of the track, and that arrangement was handed over to the P. & M. Railroad Company, and it has been kept up ever since.

5948 Examiner Burchmore: You made the same arrangement the Egg Case Company previously had?

Mr. Merryman: Yes, sir, made with the railroads?

Examiner Burchmore: Which was satisfactory to the Egg Case Company and was satisfactory to this railroad company?

Mr. Merryman: How is that?

Examiner Burchmore: An arrangement that was satisfactory to the Egg Case Company, previously, was satisfactory to this railroad company when it came into possession?

Mr. Merryman: I don't know whether it was or not. I was not with the company at that time. I presume it was.

Examiner Burchmore: I was just placing an interpretation on your answer, that is all.

Mr. Merryman: Yes.

Examiner Burchmore: Is it essential to the properity of this railroad that it should have a joint through rate with the Frisco and Cotton Belt that is the same in amount as the local rates of the Cotton Belt and the Frisco from the territory down there, or could you prosper with the existence of a joint rate equal to the sum of the local rates, out of which you would receive your local rate division?

5949 Mr. Merryman: No, sir. I don't think we could, because the rates in the immediate territory of Paragould, Blytheville and Leachville would be a great deal less than our combination, and we would not be able to compete from—our manufacturers would not be able to compete with those manufacturers along those other railroads.

For example, the present rate of freight from Manilla, Arkansas to St. Louis is 15 cents. If these rates were cancelled it would take a combination rate of 3½ cents on our line and 13½ cents on the Cotton Belt, which would make a total through combination of 17 cents, and that would be an increase of 200 cents per 100 pounds.

Examiner Burchmore: What is the Frisco's local rate from Paulding?

Mr. Merryman: Twelve and a half cents.

Examiner Burchmore: Then you have been charging two and a half cents more than the local rate of the Frisco?

Mr. Merryman: How is that?

Examiner Burchmore: Then you have been charging two and a half cents higher than the Frisco's rate?

Mr. Merryman: Yes.

Examiner Burchmore: In a sense then you have been charging a combination of locals.

5950 Mr. Merryman: It is not a combination of locals, because the two and a half cents difference is less than our local rate.

Examiner Burchmore: Did I ask you whether the joint rates are the same from points on your line, that the local rates of the Frisco are?

Mr. Merryman: They are not, no, sir.

Examiner Burchmore: How much higher?

Mr. Merryman: They are two cents higher now.

Examiner Burchmore: Have been for how long?

Mr. Merryman: Since January 5th of this year.

Mr. McKay: As we understood it there was information gotten out that they were going to cancel these rates and they cancelled this rate January 5th, and then increased the rate into St. Louis one cent.

Examiner Burchmore: That is a state rate, though, exclusively?

Mr. Merryman: Yes, sir.

Examiner Burchmore: Your intrastate rates are just the same?

Mr. Merryman: Yes, sir. They increased it one cent, making the rate 14-½ cents off of our line, 12-½ from Paulding on

5951 their line.

Examiner Burchmore: Your joint rates have always been higher than the Frisco local rates in that territory?

Mr. Merryman: They have not, no, sir.

Examiner Burchmore: That is what I want to get at.

Mr. Merryman: The rate about two years ago was the same to Thebes, Illinois, a rate of 10 cents, but the St. Louis rate has always been a cent and a half higher up to a short time ago, and they have made an increase now and it is two cents higher.

Examiner Burchmore: That forced you to raise the rates?

Mr. Merryman: The Cotton Belt raised it in the first place and it required the Frisco to meet the increase.

Examiner Burchmore: That had no relation to this proceeding?

Mr. Merryman: No, it was done before that.

Examiner Burchmore: Could you conveniently give us the total amount of freight originating on each station on your line and delivered to shippers at each station on your line, a statement of tonnage by stations?

Mr. Merryman: I can get that up, yes, sir, but I haven't it here.

5952 Examiner Burchmore: If you could get that up and make that statement show the forest products in one column and the other freight in another column, classified any way you wanted.

I want simply the forest products and other freight, and if that will not be too much of you, we would like to have it. Those are the only things that occur to me, Mr. McKay.

Mr. McKay: Mr. Merryman, you maintain a station at Cardwell for passengers and freight?

Mr. Merryman: Yes, sir.

Mr. McKay: You maintain a joint station out at Paulding?

Mr. Merryman: Yes, sir.

Mr. McKay: Together with the Frisco?

Mr. Merryman: Yes, sir.

Mr. McKay: You pay part of the expenses for maintaining and operating that station?

Mr. Merryman: We pay half of it, yes, sir.

Mr. McKay: You also maintain a station and have an agent at Manilla, Arkansas?

Mr. Merryman: Yes, sir.

Mr. McKay: You pay your employés about the usual rate of employés' wages?

5953 Mr. Merryman: Yes, sir.

Mr. McKay: Comply with the law requiring certain hours to be kept?

Mr. Merryman: Yes, sir.

Mr. McKay: Have equipped your engines and freight cars with the appliances required by the Interstate Commerce Act?

Mr. Merryman: Yes, sir.

Mr. McKay: Do you consider the differential in the freight received by you from the other railroads in shipping freight over your road to points on their road commensurate with the labor you perform?

Mr. Merryman: I do not think they are any too high, not enough.

Mr. McKay: You don't think they are any too high?

Mr. Merryman: No, sir.

Mr. McKay: I don't think of any more, Mr. Commissioner.

Examiner Burchmore: If anything further occurs to you I guess you are at liberty to indicate it, or any corrections in your testimony, but I think we have a good deal of information already in the record in the shape of a statement by Mr. Vail, and also in the shape of our regular reports.

5954 Mr. McKay: You are through with us, we may go?

Examiner Burchmore: I am. If you desire to write a brief you understand what the Commission's arrangement is on that.

Mr. McKay: Yes.

Examiner Burchmore: Your briefs would be due March 1st. It is understood that the briefs will be limited to one of ten printed pages, and any questions there might be concerning the briefs should be taken up with the secretary of the Commission.

Mr. McKay: That must be filed with the Commission on or before March 1st?

Examiner Burchmore: Yes.

Mr. McKay: Is it optional with the company whether they file a brief or orally argue the case?

Examiner Burchmore: We cannot give you an opportunity to argue the case orally, but limit it to a brief.

You are not required to file a brief, but it might be well to do so.

5955 *Mississippi, Arkansas & Western Railway.*

HOWARD W. COLES was called as a witness, and being duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: What is your name?

Mr. Coles: Howard W. Coles.

Examiner Burchmore: In the case of Theodore Fathauer Company vs. The St. Louis, Iron Mountain & Southern Railway Company, decided by the Commission on June 2, 1910, some testimony was taken respecting this road, the Mississippi, Arkansas & Western, and the Commission said that the allowance made by the defendant, the Iron Mountain, to the tap line company, the Mississippi, Arkansas & Western, was clearly prohibited by the principles laid down in the Star grain case. I would like to ask to have it stated into this record at this point how extensive the testimony was that was offered in that proceeding with respect to the character of this road and its operations.

Mr. Jones: I think it was pretty general, was it not, Mr. Jeffery? You conducted that case more than I did.

Mr. Jeffery: Why, your honor, I appeared down at Little
5956 Rock, Arkansas, and the Mississippi, Arkansas & Western was represented by Mr. Percy of Arkansas. I would say that they only went into the character of the road in a very general way, and I had always assumed myself, without endeavoring to pass on it, whether it was a common carrier or not—I had always assumed that the decision must have been written with the idea that they had other testimony or other examinations before them at the time other than what was given there, because the point involved in that case was not whether this company was entitled to divisions, or whether it was a common carrier. The sole question was whether the charge of one cent that it levied itself as a common carrier on lumber sent to Theodore Fathauer in Chicago was an excessive charge.

Mr. Jones: That is all. The balance was outside of the case.

Examiner Burchmore: Let me state my understanding of the case, what I really know about it. I have never seen the testimony in the case, but my impression is it was heard before Examiner McCornack. As I recall the facts in this case, along in 1907 or 1908, at least a long time ago, the Fathauer Company wrote to the Commission in an informal way and I re-
5957 member answering the letter, or having a part in the answer, and the trouble they complained about, an employé or representative of their company had gone down to Shults to buy some

lumber, and examined it, it was stacked up in the yards of this Bliss-Cook Oak Company at Shults. He looked it over, decided they were not too many, not more than he needed, and he bought those piles of lumber and he saw them loaded on freight cars on the Iron Mountain. He went away and the lumber in due time arrived in Chicago. When their traffic department cashier came to check over the expense bills situated in Chicago, he discovered that the Iron Mountain had charged him, not the regular rate from Shults on the Iron Mountain to Chicago, but a rate one cent higher.

Mr. Jeffery: Just a second, your honor. It was not the Iron Mountain that levied the rate. It was the two roads together. You see, Shults is on the Mississippi, Arkansas & Western.

Examiner Burchmore: I understand, but this, as I recall it, was when the shipment arrived in Chicago, it was the last road here——

Mr. Jeffery: The Wabash.

5958 Examiner Burchmore: The Wabash collected one cent more than the shipper thought they were going to collect, that is, did not collect the local rate from Shults on the Iron Mountain to Chicago, but collected a joint rate that applied somewhere back on the line of the Mississippi, Arkansas & Western.

Mr Jeffery: Yes.

Examiner Burchmore: But this man up in Chicago did not know anything about the Mississippi, Arkansas & Western, and he was quite shocked to be charged a rate from some other point of origin, when he had picked out the lumber at Shults. Is Shults a junction point?

Mr. Jones: No, Blissville.

Mr. Jeffery: The point of doubt was as to whether this one cent charge, was a proper charge, and the Commission held it was not.

Examiner Burchmore: And the Commission also discussed the propriety of allowing a two cent charge. They evidently went into it pretty fully with the information they had, and I know they ordered reparation.

Mr. Coles: When he says he bought the lumber and did not know anything about what freight rate was going to be

5959 charged, the records of the Bliss-Cook Oak Company show there is a contract that they had with him, showing conclusively that he signed the contract agreeing to buy f. o. b., whatever it was, an arbitrary of one cent.

Mr. Jones: A contract you had with him?

Mr. Coles: A contract the Bliss-Cook Oak Company had with the Theodore Fathauer Company.

Examiner Burchmore: Counsel states that it is his purpose—or that they have filed a petition for rehearing in the Fathauer case. I will ask you if you care to state what the grounds are upon which you urge a rehearing?

Mr. Jones: I have not determined. I have not gone far enough into it. I think that the two cent rate decision there, in your decision that the two cent rate was cut out, that that went further than what was before the Commission, for one thing. I have not given consideration yet to the question of pleadings.

Examiner Burchmore: The Commission deciding a case uses not only the facts brought in evidence by the parties on the hearing, but avails itself of all the knowledge it has acquired from any sources, through any official sources, but sometimes it avails itself of any fact that is stated in the annual reports of the carriers,
5960 or any fact that it has in its files as having been ascertained by one of its employés. It is not a judicial body.

Mr. Jones: One point I would expect to state, the Commission held there that the fact that the stock of the two corporations was held by identically the same people practically would make it hardly two separate corporations. I do not think that would make any difference; in fact, the evidence was not as full on that as the evidence seems to be now in the report. The facts appearing from the report here now, it may be shown that about that time that the Bliss-Cook Oak Company actually owned 90 per cent of the stock of the railroad. I think still the railway corporation would be a common carrier, just the same.

Examiner Burchmore: Do you still have joint rates with the Iron Mountain on lumber and other foreign products?

Mr. Coles: Yes, I think the last tariff we issued of this suspension——

Mr. Jeffery: It was suspended, though.

Mr. Coles: We issued a supplement.

Mr. Jeffery: The Commission ordered that the supplement—may I make a little statement, your honor?

5961 Examiner Burchmore: Certainly.

Mr. Jeffery: Immediately on receipt of the Commission's decision, which you will notice does not contain an order to the cutting off of the allowance—they say that the allowance is illegal, but they only report here on reparation. Now, immediately on receipt of that I wrote to our traffic department and advised them that in view of the Commission's attitude on this case, that they should immediately cut out the allowance, not waiting for the order of the Commission, which they did, or very shortly afterwards, very shortly after they got my letter they did, and in conjunction with the other suspensions that were made, the Commission suspended the cancellation notice or tariff, but as it now stands, pursuant to the Commission's suggestion in the decision, the company cut off the division, and the Commission, in conjunction with the numerous other suspensions, suspended that tariff.

Mr. Coles: And we have never billed a car of lumber, or anything else from our line since this order was made.

Mr. Jones: That is, you billed no more from——

Mr. Coles: Billed nothing else off our road after we received this order.

5962 Mr. Jeffery: So that in this particular case the cutting out of the tap line division here was practically based on the decision of the Commission in that particular case.

Examiner Burchmore: Do you file annual reports with the Interstate Commerce Commission?

Mr. Coles: Yes, sir.

Examiner Burchmore: How long have you been filing those reports?

Mr. Coles: Annual reports?

Examiner Burchmore: Yes.

Mr. Coles: I could not say.

Examiner Burchmore: Did you file an annual report for the year ending June 30, 1910?

Mr. Coles: Yes, sir.

Examiner Burchmore: Did you ever file an annual report before?

Mr. Coles: Yes, sir.

Examiner Burchmore: For what year?

Mr. Coles: Filed several, but I could not say just how many.

Examiner Burchmore: Any annual reports?

Mr. Coles: Annual reports?

5963 Examiner Burchmore: Yes.

Mr. Coles: That is an annual report.

Examiner Burchmore: Isn't it a fact that the first annual report your company ever made to the Interstate Commerce Commission was one for the fiscal year ending June 30, 1909?

Mr. Coles: This one, you mean (indicating report)?

Examiner Burchmore: No, I say for the year ending June 30, 1909, this is for the year 1910.

Mr. Coles: Yes, sir; I don't remember as to that.

Examiner Burchmore: You don't know that you filed more than two reports?

Mr. Coles: No, sir, I don't know that.

Examiner Burchmore: Do you make monthly reports to the Interstate Commerce Commission?

Mr. Coles: Yes, sir.

Examiner Burchmore: Do you make accident reports to the Interstate Commerce Commission?

Mr. Coles: No, I don't think we do. I don't remember ever having any accidents.

Examiner Burchmore: Do you have safety appliances on your cars and engines?

Mr. Coles: We have air brakes and automatic couplers on
5964 all cars that we ship to interstate points, but local shipments on the road, we just have air brakes on the engines, and regular couplings on the logging cars, but all the box cars we own have automatic couplers.

Examiner Burchmore: But you sometimes run a train that has cars in it that are equipped with air brakes and other cars that are not equipped with air brakes?

Mr. Coles: Yes, sir.

Examiner Burchmore: And in that train you will have some stuff that is going to or coming from interstate points?

Mr. Coles: Going to or coming from?

Examiner Burchmore: Yes.

Mr. Coles: We do not have any shipments that are coming from interstate points.

Examiner Burchmore: But in that train you do have some stuff going out of the state?

Mr. Coles: Sir?

Examiner Burchmore: In such trains composed of air brake and non-air brake cars, you have freight that is going to interstate points?

Mr. Coles: Yes, we may have a few in a train.

Q. Do you ever have a train that has no interstate freight
5965 in it, has no goods in it that are going out of the state.

Mr. Coles: Do we ever have a train?

Examiner Burchmore: Do you ever run a train that has nothing on it that is going outside of the state?

Mr. Coles: That is, on a train that we handle with automatic couplers and air brakes.

Examiner Burchmore: Do you have logging trains and other trains separate?

Mr. Coles: Yes, sir.

Examiner Burchmore: Handle any logs on any other train? Are the logs all handled on log trains?

Mr. Coles: Yes, sir, on logging cars.

Examiner Burchmore: And in logging trains?

Mr. Coles: Yes, sir.

Examiner Burchmore: How long have you been receiving divisions from the Iron Mountain Railroad out of joint rates?

Mr. Coles: Since March 1st, 1905.

Examiner Burchmore: Not previous to that time?

Mr. Coles: Well, we did not have anything to do with it then. The other company had charge of it then.

Examiner Burchmore: What other company?

Mr. Coles: The Chicot Lumber Company.

5966 Examiner Burchmore: Do you wish to examine?

Mr. Jones: I will ask him a question or two.

Cross-examination:

Mr. Jones: What is the length of this road?

Mr. Coles: Sir?

Mr. Jones: What is the length of this road?

Mr. Coles: Eight miles, main line, and a mile and a half yard track.

Mr. Jones: What is the character of the country through which it runs as to being agricultural land, rich land, fit for settlement?

Mr. Coles: Well, it is very good land, it could not be any better.

Mr. Jones: Bottom lands, is it?

Mr. Coles: How is that?

Mr. Jones: Bottom land, is it, not subject to overflow?

Mr. Coles: Choice land.

Mr. Jones: Such as would be settled readily?

Mr. Coles: Yes, sir.

Mr. Jones: Is there any kind of settlement along it now?

Mr. Coles: Yes, sir.

5967 Mr. Jones: You handle some freight then and some passengers.

Mr. Coles: Yes, sir.

Mr. Jones: You can tell just in a general way about that part.

Mr. Coles: We handle some passengers on a caboose, carry them out and in, but we do not make any charge for it.

Mr. Jones: You make no charge for passengers there?

Mr. Coles: No, sir.

Mr. Jones: But haul whoever offers to be hauled?

Mr. Coles: Yes, sir.

Mr. Jones: It is pretty much the same way with the freight, isn't it?

Mr. Coles: Well, local freight; yes, sir, just freight going to the parties living along the line.

Mr. Jones: But general freight is different?

Mr. Coles: Yes, sir.

Mr. Jones: Do you have any general freight out of there aside from logs that go over to the Iron Mountain railroad?

Mr. Coles: Nothing but lumber and some staves.

Mr. Jones: Where do the staves come from?

5968 Mr. Coles: The staves came from along our line.

Mr. Jones: They don't belong to the Bliss-Cook Oak Company?

Mr. Coles: No, sir.

Mr. Jones: To independent people?

Mr. Coles: Yes, sir.

Mr. Jones: You had a joint rate for them with the Iron Mountain Railroad, did you?

Mr. Coles: Yes, sir.

Mr. Jones: You say there is some people settling in along the road now?

Mr. Coles: Yes, sir.

Mr. Jones: Has the Iron Mountain a track into the yards of the Bliss-Cook Oak Company?

Mr. Coles: No, sir.

Mr. Jones: Has it a switch in there on which cars could be loaded?

Mr. Coles: Not without considerable expense to the company—to the lumber company.

Mr. Jones: How do you mean, expense, what would be the distance to haul it over?

Mr. Coles: Have to haul it over here (indicating).

5969 Mr. Jones: Over to a siding there is there?

Mr. Coles: On the Mississippi, Arkansas & Western Railway siding and then to the Iron Mountain siding.

Mr. Jones: You mean over the tracks of the Iron Mountain and over the tracks of the Mississippi, Arkansas & Western?

Mr. Coles: The Iron Mountain has a siding running north of Blissville, about 500 feet, and south about four or five hundred. The Mississippi, Arkansas & Western connects at a point about half

way on the north end of that siding, to a point about half way to the south end of the siding, towards the siding.

Mr. Jones: Now, where is the lumber company's yard situated, on the tracks of the Mississippi, Arkansas & Western?

Mr. Coles: Yes, sir.

Mr. Jones: The Iron Mountain cars run in on those tracks and are loaded in the yards?

Mr. Coles: Yes, sir.

Mr. Jones: Who does that switching, which road switches them in there?

Mr. Coles: Why, our engine and crew switches——

Examiner Burchmore: You say your engine and crew?

Mr. Coles: Yes, sir; our engine and crew.

5970 Examiner Burchmore: Whose engine and crew do you mean by "our"?

Mr. Coles: I mean the Mississippi, Arkansas & Western—engine and crew.

Mr. Jones: Have you stated yet that you are superintendent of that road?

Mr. Coles: No.

Mr. Jones: You had better state that.

Mr. Coles: The engine and crew takes the cars from the siding of the Iron Mountain and places them at the loading point of the lumber company. On an estimate I should say that the Mississippi, Arkansas & Western Railroad Company handles the cars, both empty and loaded, about a mile and a half.

Mr. Jones: You are the superintendent of that railroad, are you?

Mr. Coles: Superintendent and general freight agent, yes, sir.

Mr. Jones: You maintain a regular crew there, railroad crew?

Mr. Coles: Yes, sir.

Mr. Jones: How many engines have you got and how

5971 many cars have you got?

Mr. Coles: We have four engines.

Examiner Burchmore: Those are reported.

Mr. Coles: They are in there, yes. 16 box cars, 4 flat cars, 53 log cars, a total of 73.

Examiner Burchmore: I have a few more questions.

Mr. Jones: All right, go ahead. I have very little more that I care to ask.

Examiner Burchmore: I refer now as a basis for some of these questions to your annual report for the fiscal year ending June 30, 1910. This is the annual report, Form C, for switching terminal companies. Was that form sent you by the Interstate Commerce Commission for filing that?

Mr. Coles: Was that form sent us?

Examiner Burchmore: Yes.

Mr. Coles: That book, you mean (indicating report)?

Examiner Burchmore: Yes, the form itself.

Mr. Coles: Yes, sir.

Examiner Burchmore: This is simply a copy of the report as made to the Commission.

Mr. Coles: Yes, sir.

Examiner Burchmore: Is it a correct copy?

5972 Mr. Coles: Yes, sir, as far as I know it is. I have never checked it over. Signed by the president of the company.

Examiner Burchmore: It is a signed copy, at least?

Mr. Coles: Yes, sir.

Mr. Burchmore: I want to get these into the record, although they are before the Commission. On page 11, you state, in answer to the question: "Did any other corporation or corporations", and so forth, "control the respondent on June 30, 1910? Answer. Yes."

The next question you answered: "Please indicate on form control of respondent?" "Yes, sir."

Sub-question, asking for form of control, whether sole or joint, you state "Sole".

Manner in which control was established. "Acquiring majority of stock."

"Extent of the control." "Own 98 per cent of the above stock."

On page 13 is the question: "Are the tracks of the respondent operated primarily in the interest of any industrial, manufacturing or other corporation, firm or individual?" "If so, give the names," and so forth. "Answer: The Bliss-Cook Oak Company, Blissville, Arkansas."

5973 The mileage is indicated in the report as eight miles of main track, and one and a half miles of siding. I will ask you at this point whether the Bliss-Cook Oak Company has any side track or other lines down there in addition to the lines of this railroad?

Mr. Coles: The Bliss-Cook Oak Company has about twenty miles, I should say, just an estimate, of spurs that lead off from the main line of this railroad, which are operated by the lumber company in delivering logs to the main line.

Examiner Burchmore: I will turn to those in a minute. On pages 20 and 21 you indicate that the total capital stock is $220,000 in the form of 2200 shares of $100 each, and explain that the proceeds of the issue of stock which was made at the beginning was used to construct the road as the present management understands.

Mr. Coles: Yes, sir.

Examiner Burchmore: That is your understanding?

Mr. Coles: Yes, sir.

Examiner Burchmore: So the present management, as a matter of fact, acquired the whole railroad from the former owners?

Mr. Coles: Yes, sir.

5974 Examiner Burchmore: On page 22, under explanatory statements, it is indicated that $220,000 of mortgage bonds, issued in 1902, and maturing in 1922, were made to complete the road, as the present management understands. These bonds, as the report says, are held by the Chicot Lumber Co., predecessor of the Bliss-Cook Oak Company. At the time the Bliss-Cook-Oak Company purchased all the assets of the Chicot Lumber Company about six years ago, the Bliss-Cook Oak Company at the same time acquired all the stocks and bonds in the Mississippi, Arkansas & West-

ern Railway held by the Chicot Lumber Company. I will ask you whether it is your opinion that this railroad eight miles long cost $440,000?

Mr. Coles: No.

Examiner Burchmore: The total capitalization seems to be $220,000 of stock and $220,000 of bonds, and that makes $440,000 of capitalization, does it not?

Mr. Coles: Yes, sir.

Examiner Burchmore: You seem to make it show that that was used to build the railroad?

Mr. Coles: As far as we understood, the other company—have you got the charter there of the road?

5975 Examiner Burchmore: There is some water in that stock, though.

Mr. Coles: Yes, sir.

Mr. Jones: Some water.

Mr. Jeffery: Some stock in the water, I guess.

Examiner Burchmore: In the articles of incorporation of this road, or, rather, the certified copy thereof, it appears that it is a railroad corporation under the laws of the State of Arkansas with a corporate existence of fifty years, and a capitalization authorized of $220,000; that it is to run from a point in Drew County on the bank of Bayou Bartholomew directly west of Blissville, easterly and northeasterly to Gaines Landing on the Mississippi River, entirely in the Counties of Drew and Chicot. I think that is an accurate statement.

Mr. Jones: Yes, sir.

Examiner Burchmore: I think it is unnecessary to put it in evidence, unless you insist.

Mr. Jones: What do you say about it?

Examiner Burchmore: The Commision will not question that you were incorporated under the state law.

Mr. Jones: That is all that we want, to show that we are

5976 incorporated under the state law.

Examiner Burchmore: On page 45 of the report, you indicate that the revenue for the year, the switching revenue, is $2,695.64, the same amount being the total revenue. Have you any explanation to make of that figure, or the items which it covers?

Mr. Coles: I think that is understood to mean under the class of the railroad.

Examiner Burchmore: No further explanation? I presume the report speaks for itself.

Mr. Coles: There is nothing further.

Examiner Burchmore: The Act to Regulate Commerce requires the carrier to report a general balance sheet each year on their annual report, as I recall the language of the act. On page 87 of this report is your general balance sheet. I notice one item—I am not familiar with accounting matters. And I do not quite understand the balance sheet, but it has got $11,000 noted in the column headed June 30, 1909, as interest on the funded debt paid by the Bliss-Cook Oak Company. I simply want to ask whether the Bliss-Cook Oak Com-

pany paid or pays interest on the funded debt of this rail-
5977 road?

Mr. Coles: I am unable to answer that question.

Examiner Burchmore: You don't know whether they do or not?

Mr. Coles: No.

Examiner Burchmore: I thought you were the accounting officer of that railroad?

Mr. Coles: No, sir, I am not the accounting officer; I am the superintendent and general freight agent.

Examiner Burchmore: I thought you were the auditor?

Mr. Coles: No, sir.

Examiner Burchmore: On page 91 you will find one general office clerk, certain train crews, number not given. How many train crews have you?

Mr. Coles: Two.

Examiner Burchmore: How many men?

Mr. Coles: Six.

Examiner Burchmore: Those men also work at times for the Bliss-Cook Oak Company?

Mr. Coles: Yes, sir.

Examiner Burchmore: And you report master mechanic and helpers, and section crews. The column for the number of them is left blank, and the total compensation of all employés is
5978 given as $8,685.97.

Mr. Coles: Yes, sir.

Examiner Burchmore: Distribution is also given, and the explanation is made on page 90: "It is impossible to give the number of days the above employés worked. They are employed to work for the Bliss-Cook Oak Company as well as the respondent, and their time is pro-rated as near as possible." That, in your opinion as an operating official, is correct, the explanation is correct?

Mr. Coles: Yes, sir.

Examiner Burchmore: On page 93, you give traffic car statistics, showing the number of cars handled, revenue, and so forth. I won't read the figures, but on page 92 you say: "The figures on the opposite page are based on the number of cars of logs delivered to the saw mill of the Bliss-Cook Oak Company, and the number of cars of lumber delivered to respondent by the Bliss-Cook Oak Company for shipment out. The cars on which the logs are hauled are small cars, or what are termed dolly cars." I will ask you whether you moved any logs for anyone else other than the Bliss-Cook Oak Company?

Mr. Coles: Yes, sir.

Examiner Burchmore: How extensively, how much?

5979 Mr. Coles: How much you mean a month?

Examiner Burchmore: What is the extent of such movements, yes.

Mr. Coles: About 100 cars, I should say, a year.

Examiner Burchmore: Sir?

Mr. Coles: 100 cars a year, I should say.

Examiner Burchmore: Who furnishes those logs?

Mr. Coles: Who furnishes those logs?
Examiner Burchmore: Yes.
Mr. Coles: The Fee-Crayton Lumber Company.
Examiner Burchmore: All these logs come from points along your road?
Mr. Coles: They came from points south of the switches that I indicated in my answer to Mr. Jones' question.
Examiner Burchmore: Were they teamed over to this railroad?
Mr. Coles: Yes, sir.
Examiner Burchmore: Loaded on cars belonging to your company?
Mr. Coles: Yes, sir.
Examiner Burchmore: They did not move over private logging spurs of the Bliss-Cook Oak Company?
5980 Mr. Coles: No, sir.
Examiner Burchmore: Where do they go to?
Mr. Coles: Went to Deermont, Arkansas, about eight miles north.
Examiner Burchmore: On the Iron Mountain?
Mr. Coles: Yes, sir.
Examiner Burchmore: Did you turn over the cars to the Iron Mountain?
Mr. Coles: Yes, sir.
Examiner Burchmore: The loaded cars?
Mr. Coles: Yes, sir.
Examiner Burchmore: And the Iron Mountain moved them down to that point?
Mr. Coles: Yes, sir.
Examiner Burchmore: Do you know whether milling in transit rates were charged on that stuff?
Mr. Coles: Milling in transit rates?
Examiner Burchmore: Yes.
Mr. Coles: No, sir.
Examiner Burchmore: What did you get for those logs?
Mr. Coles: We got $2.50 a car.
Examiner Burchmore: For the movement?
5981 Mr. Coles: Switching them from our tracks to the Iron Mountain.
Examiner Burchmore: What distance did they move over your line?
Mr. Coles: About 2,000 feet.
Examiner Burchmore: I thought they came from up in here somewhere (indicating on map), those logs.
Mr. Coles: They did come from out here; they were hauled up to one of the switches that was located around the yards of the Bliss-Cook Oak Company that belonged to the Mississippi, Arkansas & Western Railroad.
Examiner Burchmore: Why did they haul them clear over to the Iron Mountain?
Mr. Coles: Because they could deliver them to our tracks for less expense than they could to the Iron Mountain, notwithstanding the $2.50 per car.

Examiner Burchmore: Is there any other——

Mr. Coles: They could not get to the Iron Mountain without going considerably further.

Examiner Burchmore: How much further, a mile?

Mr. Coles: Yes, sir, I should say three quarters of a mile, anyhow.

5982 Examiner Burchmore: Is there any further explanation you can give of that matter?

Mr. Coles: Of what?

Examiner Burchmore: Of the matter you have just stated, the fact that this company teams their logs over to your loading tracks and that you switch them on your own cars and not on Iron Mountain cars?

Mr. Coles: Well, I did not—did I say on our own cars?

Examiner Burchmore: Well, I asked you whether those logs were loaded on Mississippi, Arkansas & Western cars or on Bliss-Cook Oak Company cars, and you said Mississippi, Arkansas & Western.

Mr. Coles: Well, I meant the Iron Mountain.

Mr. Burchmore: Do you know what the Iron Mountain charges those people?

Mr. Coles: No, sir, I do not know.

Mr. Jeffery: These logs that you say you bought from some other shipper than the Bliss-Cook Oak Company, were they sold to the Bliss-Cook Oak Company?

Examiner Burchmore: He did not say he bought them.

Mr. Coles: I said they shipped them for those people.

Mr. Jeffery: That you shipped for the other people, did

5983 you buy them from the other people?

Mr. Jones: The Bliss-Cook Oak Company bought them from those people.

Mr. Coles: No, sir; of course we did not, we would not have been shipping them to them if we had been buying them.

Mr. Jeffery: I did not know whether you did or not. Did they deliver some other logs that way that would be shipped by them to your mill?

Mr. Coles: No, sir.

Mr. Jeffery: Where did they haul to your mill?

Mr. Jones: They were hauled out there up the railroad, up to Deermont.

Mr. Jeffery: Taken up to another mill?

Mr. Coles: Taken up to Deermont.

Examiner Burchmore: Whose mill?

Mr. Coles: The Fee-Crayton Hardwood Lumber Company.

Mr. Jones: They have a mill at Deermont, have they?

Mr. Coles: Yes, sir.

Mr. Jeffery: Their mill?

Mr. Coles: Their mill, yes, sir.

5984 Examiner Burchmore: What relation if any exists between your company and the Bliss-Cook Oak Company?

Mr. Coles: None whatever.

Examiner Burchmore: Do they have any tap line railroad up there to their mill?

Mr. Coles: I could not say whether they have or not.

Examiner Burchmore: Do you know whether they have any rail at all up there?

Mr. Coles: They have got some trackage, I think.

Examiner Burchmore: Do you know whether it is incorporated?

Mr. Coles: Whether the railroad is?

Examiner Burchmore: Yes.

Mr. Coles: No, I don't know that.

Examiner Burchmore: You have handled these logs, this 100 carloads of logs for the Fee-Crayton Company. Have you handled anything else for anybody else besides this Bliss-Cook Oak Company? If so, what and for whom?

Mr. Coles: We handled some bolts.

Examiner Burchmore: How much?

Mr. Jones: Stave bolts?

Mr. Coles: Stave bolts, yes, sir.

5985 Examiner Burchmore: How many carloads?

Mr. Coles: About twenty, I should say.

Examiner Burchmore: For whom?

Mr. Coles: Handled them for Mr. Rush Alexander.

Examiner Burchmore: Who is Mr. Alexander?

Mr. Coles: He is just an ordinary working man, timber man, you might say.

Examiner Burchmore: In business for himself?

Mr. Coles: No, not as far as I know.

Examiner Burchmore: Who were those bolts sold to, or where did they move to?

Mr. Coles: They were moved to Deermont.

Examiner Burchmore: Did he have any connection with this company, the Fee-Crayton Lumber Company?

Mr. Coles: No.

Examiner Burchmore: How did it happen that this stuff went to Deermont?

Mr. Coles: There is a stave mill there besides the other.

Examiner Burchmore: Who owns that stave mill?

Mr. Coles: Mr. Katz.

Examiner Burchmore: What rate did they pay your company on those stave bolts?

5986 Mr. Coles: There might have been staves going to other people, but when they were billed out, their agent was down there and billed them out on an Iron Mountain bill of lading. All these were moved via Iron Mountain bill of ladings, for that matter. As to whom they went to I could not say positively.

Examiner Burchmore: Where was that Iron Mountain bill of lading issued?

Mr. Coles: At Blissville.

Examiner Burchmore: What was the point of origin on that bill of lading?

Mr. Coles: We charged simply for performing the switching.

Examiner Burchmore: Which the Iron Mountain absorbed?

Mr. Coles: No, sir, which the other railroads—they took the matter up with me, asked me what we would charge them, and I told them that we would do switching, for them on that class of stuff down there, for either two or two and a half a car, I would not be certain now, and they said that was perfectly satisfactory. I filed the tariff with the Arkansas Commission asking for that, and they waited I guess for a couple of weeks, and I wrote them,—at least I was up in Little Rock and I went up in the office. In the
5987 meantime these shipments—In the meantime, these parties to whom these shipments were going, kept after us to ship the stuff. We were not going to ship it until we got the tariff. When we got the notice that the tariff was approved by the Arkansas State Commission, we shipped the stuff out.

Examiner Burchmore: What distance did you move that stuff?

Mr. Coles: About two thousand feet.

Examiner Burchmore: They also took their staves down there?

Mr. Coles: On that road at the same place.

Examiner Burchmore: Have you moved anything else for the public in the last year or so that you can recall?

Mr. Coles: I may be a little too high, understand, on the amount of bolts and the amount of logs, and I may be a little low.

Mr. Jones: Let me ask you there if you don't move some stuff for people moving along the line all the time?

Mr. Coles: Yes, sir.

Examiner Burchmore: How much?

Mr. Coles: Well, just local shipments of stuff.

5988 Examiner Burchmore: What does that amount to, I mean?

Mr. Coles: I should say a car a week.

Examiner Burchmore: A carload a week?

Mr. Coles: Just in local shipments.

Examiner Burchmore: What do you get on that?

Mr. Coles: Nothing.

Examiner Burchmore: Haul it free?

Mr. Coles: Yes, sir.

Examiner Burchmore: You don't report that stuff to the Interstate Commerce Commission?

Mr. Coles: Sir?

Examiner Burchmore: You don't report that tonnage to the Interstate Commerce Commission?

Mr. Coles: No, sir, that we haul free.

Examiner Burchmore: Do you haul any logs or staves or anything else over that portion of your line that is west of this 2,000 feet or not, west of the loading track, I should say, back of this loading point?

Mr. Jones: That is east.

Examiner Burchmore: East of this loading point, do you move anything for anybody except the Bliss-Cook Oak Company, forgetting for a moment this local stuff that you say——

5989 Mr. Coles: You mean local shipments of stuff that we shipped from Blissville on our line?

Examiner Burchmore: Yes, either way, moved in either direction.

Mr. Coles: Yes, we move it for anybody.

Examiner Burchmore: Do you actually move anything?

Mr. Coles: Well, I stated about a car a week, I believe.

Examiner Burchmore: Anything else besides that stuff that you do not charge for?

Mr. Coles: In the way of what?

Examiner Burchmore: In the way of anything, grain, live-stock——

Mr. Coles: No, sir, we don't move anything else.

Examiner Burchmore: Staves?

Mr. Coles: The only staves that I said were moved from out on the line, going to interstate points—going to an interstate point.

Examiner Burchmore: What point out on the line, how far out on the line?

Mr. Coles: Just beyond Shults.

Examiner Burchmore: Those staves are handled by the
5990 Bliss-Cook Oak Company, aren't they?

Mr. Coles: No, sir.

Examiner Burchmore: How far do you move those staves?

Mr. Coles: Move them about two and a half to three miles.

Examiner Burchmore: How much do you get for them?

Mr. Coles: We get an arbitrary of one cent and our division from New Orleans, practically 2 cents.

Examiner Burchmore: I thought you said all those staves were loaded on the same track where the other stuff is loaded, 2500 feet from the Iron Mountain?

Mr. Coles: No, sir, I said stave bolts.

Examiner Burchmore: How many carloads of staves have you moved from out there on your line some distance from Blissville?

Mr. Coles: Five or six carloads since we have had control of the road.

Examiner Burchmore: You have received two or three cents a hundred pounds on that stuff?

Mr. Coles: Two or three?

Examiner Burchmore: Yes.

Mr. Coles: Yes.

Examiner Burchmore: What division do you receive on
5991 lumber that you receive for the Bliss-Cook Oak Company, two or three cents?

Mr. Coles: We have not done anything since this opinion was handed down.

Examiner Burchmore: Previous to that time you received two or three cents?

Mr. Coles: Yes, sir.

Examiner Burchmore: The rate, however, was one cent higher than the Iron Mountain rate?

Mr. Coles: Yes, sir.

Mr. Jeffery: You say you have not received anything since this opinion was rendered?

Mr. Coles: No, sir.

Mr. Jeffery: Isn't that on account of the fact that the Iron Mountain and the Mississippi, Arkansas & Western has a little difficulty about some freight claims?

Mr. Coles: No, not a bit.

Mr. Jeffery: But the tariff has been re-established, has it not, the division sheet?

Mr. Coles: No, sir, it was not on account of anything only the ruling of the Commission.

5992 Mr. Jeffery: But the tariff has been re-established, hasn't it?

Mr. Coles: No, sir.

Mr. Jeffery: The division sheet has been re-established?

Mr. Coles: No, sir.

Mr. Jeffery: Even under that division sheet you have not gotten anything?

Mr. Coles: We have not gotten anything, no, because we don't know—No, our division sheet is not—we have been waiting to reinstate the tariff.

Mr. Jeffery: So at the present time you are not getting divisions?

Mr. Coles: No, we are not getting anything.

Mr. Jeffery: You are not getting divisions of this kind?

Mr. Coles: No, sir, we are not billing them off of our road. We are performing the service for nothing under this opinion.

Mr. Jeffery: You are hauling those cars from Blissville to the junction point and not claiming any division, and not asking for anything?

Mr. Coles: We are not charging any arbitrary since this Fathauer against the Iron Mountain & Southern Railroad.

5993 There is a case which was decided June 2, 1910, which caused us to stop or to cease billing any shipments on our line. We have never known yet whether we are entitled to anything or not for performing the service. We have performed it for the Bliss-Cook Oak Company as well as anyone else, free of charge.

Examiner Burchmore: You have never charged the farmers out there anything for hauling their staves?

Mr. Coles: No, sir.

Examiner Burchmore: You are superintendent of the Bliss-Cook Oak Company?

Mr. Coles: Yes, sir.

Examiner Burchmore: Their letterhead—I show you their letterhead. (Showing witness letterhead.) Is that the letterhead you use now?

Mr. Coles: Yes, sir.

Examiner Burchmore: It says, "Saw mills, and flouring plants, Blissville, Arkansas, and Shults, Arkansas." Have you any plant at Shults?

Mr. Coles: No, sir.

Examiner Burchmore: Why do you put that on your letterhead if you have no plant there?

5994 Mr. Coles: I don't know why they put it on. I did not have charge of that.

Examiner Burchmore: Is it so that your customers of the Bliss-Cook Oak Company will understand why their charges are assessed from Shults?

Mr. Coles: Is it so that the Bliss-Cook Oak Company understands——

Examiner Burchmore: So that their customers will understand why their charges are assessed upon Shults basis instead of upon a Blissville basis?

Mr. Coles: Yes, they are all assessed.

Examiner Burchmore: Are the rates which are applied upon the Bliss-Cook Oak Company's traffic on a transit basis for hauling logs in, do they cover the logs in as well as the lumber out?

Mr. Coles: The logs are hauled to the mill. The Bliss-Cook Oak Company pays the railroad company for hauling in the logs.

Examiner Burchmore: Now, what service, when you were receiving a division of the freight—what service were you rendering for which you should receive that division?

Mr. Coles: We were hauling the logs, that is the service.

5995 Examiner Burchmore: You don't claim that the division the Iron Mountain gave you was supposed to recompense you for hauling the logs?

Mr. Coles: It was to recompense for hauling the logs.

Examiner Burchmore: They paid you for hauling the lumber, didn't they?

Mr. Coles: Yes, sir, that is what we got the division for.

Examiner Burchmore: For what distance?

Mr. Coles: I stated a while ago, about one mile and a half, moving in the empties and taking the loads out.

Examiner Burchmore: Did you say a quarter of a mile in each direction?

Mr. Coles: Yes, sir.

Examiner Burchmore: How much did that amount to a car, your division?

Mr. Coles: That we received from the Iron Mountain?

Examiner Burchmore: Yes, sir, when you received one.

Mr. Coles: You mean in shipping lumber out from points on the M. A. & W.?

Examiner Burchmore: Yes, to an interstate destination.

5996 Mr. Coles: How much did it amount to?

Examiner Burchmore: Yes.

Mr. Coles: Well, suppose a car weighed 50,000 pounds, it amounted to——

Examiner Burchmore: That was the usual ordinary weight?

Mr. Coles: Usual ordinary weight; $15.00.

Examiner Burchmore: You have carefully read the opinion which was rendered in the Faithauer case?

Mr. Coles: Yes, sir.

Examiner Burchmore: Is there any fact in that case stated as a fact, which is not a fact.

Mr. Coles: Yes, sir.

Examiner Burchmore: I ask you that question without reference to any conclusion, or any theory of law that case may contain—and I ask you what fact is incorrectly set forth in that opinion.

Mr. Coles: Mr. Lazinsky, I think, testified there—Mr. Lazinsky of the Chico Lumber Company testified that the Iron Mountain siding was used entirely for the purpose of loading lumber from those lumber piles of the Chico Lumber Company.

Examiner Burchmore: That is not a fact?

5997 Mr. Coles: No, sir.

Examiner Burchmore: He testified to it but it is not a fact?

Mr. Coles: No, sir, it is not a fact.

Examiner Burchmore: What further use is made of that siding?

Mr. Coles: Up to the end of 1905, he just says up to 1905.

Examiner Burchmore: Yes. Well, that was true up to 1905, wasn't it?

Mr. Coles: He says up to the first of 1905.

Examiner Burchmore: Yes.

Mr. Coles: No, sir.

Examiner Burchmore: What is true, what is the fact?

Mr. Coles: I went to take charge of that business on the first of October, 1904, and there wasn't any cars on the Iron Mountain Siding at the time I went to Blissville.

Examiner Burchmore: That fact then is incorrect?

Mr. Coles: Yes, sir. The secretary, I think, of the Theodore Faithauer Company testified to the same thing that Mr. Lazinsky did.

5998 Mr. Jones: Who testified?

Mr. Coles: That he was down there and saw some of the lumber being loaded, and that it was loaded on Iron Mountain tracks, and we billed it out, as originating on our line.

Examiner Burchmore: That is not a fact?

Mr. Coles: No, sir, that is not, from the Mississippi, Arkansas & Western.

Examiner Burchmore: Didn't the complainant testify that one of the cars which was the subject of this complaint was loaded under his direction or supervision and in his presence onto a car that was standing on rails belonging to the Iron Mountain?

Mr. Coles: The complainant? Faithauer was the complainant.

Examiner Burchmore: Didn't he so testify?

Mr. Coles: That is what I was talking about just now.

Examiner Burchmore: You think that that from your own knowledge, you know that that was incorrect?

Mr. Coles: Yes, I know that it was incorrect since I have been there.

Examiner Burchmore: You don't know whether it was correct or incorrect with respect to that particular car?

5999 Mr. Coles: There was never any car loaded on the Iron Mountain siding since the time I have been there.

Mr. Jones: You may state whether it would have to be hauled there with wagons, to be loaded there on that siding?

Mr. Coles: Yes, then we would have to make a trestle over the top of our siding, to get over to the Iron Mountain, to build up some way or other.

Mr. Jeffery: I will call your Honor's attention to the fact that on behalf of the Iron Mountain and on behalf of the Mississippi, Arkansas & Western there was a plat filed of the switch connections there. I think you will find a record of that in the other case.

Examiner Burchmore: I will ask you to run over this here during the noon hour and at 2 o'clock I will give you an opportunity to point out any other fact stated in the opinion as a fact, which to your knowledge is not correct. You may have that, but at 2 o'clock I should like to know what is incorrect in your opinion.

Mr. Coles: Yes, sir. Now, the reason that I say these were not correct, and which could have been proven to be incorrect, had we received notices that they were going to take depositions in
6000 Chicago for this hearing, for this case.

Mr. Jones: Explain that. You say you had no notice of them?

Mr. Coles: No, sir.

Mr. Jones: Did not know of those depositions?

Mr. Coles: No, sir, did not know they were going to be taken.

Examiner Burchmore: Are you sure there were any depositions taken in Chicago?

Mr. Coles: That is my understanding.

Mr. Jeffery: I think the depositions were taken at Little Rock and the hearing was in Chicago.

Mr. Jones: The deposition was taken down there, wasn't it?

Mr. Coles: No, it was not. That was taken in Chicago.

Examiner Burchmore: You received notice of the hearing in Chicago, the Mississippi, Arkansas & Western?

Mr. Coles: We did not receive any notice of the taking of depositions in Chicago.

Examiner Burchmore: The record will show what the fact is in that connection, with reference to it. We have the record.
6001 Of course, if no fact was brought out in those depositions which the Commission used, or if any fact was brought out that was admitted by you now to be correct, you could hardly complain.

Mr. Jones: No.

Examiner Burchmore: I said that I would be glad to permit you at 2 o'clock to give further testimony.

Mr. Jones: We have no further witness.

Examiner Burchmore: Do you desire to ask any additional questions?

Mr. Jones: Let me see, there was a question or two. I think the chairman of the taxing commission of Arkansas in his deposition stated that your company had paid no taxes as a railroad.

Examiner Burchmore: Until the year 1909.

Mr. Jones: Yes, until the year 1909. You may state now whether

you did pay for that year and previous years, whether they assessed you back, tell us how that was, whether you paid taxes?

Mr. Coles: We never paid any taxes to the Tax Commission or by their order, but the County of Chico and the counties that the Mississippi, Arkansas & Western goes through, assessed us at a
6002 higher rate on the sections that it went through. When the Arkansas Tax Commission went into—came into existence, which was last year, wasn't it?

Mr. Jones: Yes, it was the last session of the legislature two years ago.

Mr. Coles: They came in and assessed us back to 1903, including 1903.

Mr. Jones: You paid the taxes, did you?

Mr. Coles: How is that?

Mr. Jones: You paid the taxes, did you?

Mr. Coles: Yes, sir, we had to pay them.

Examiner Burchmore: The secretary of the Commission, the Arkansas Commission made the same statement, that you had filed no report, in his deposition he stated that you had never filed any report as a railroad before that commission. You may tell how that was, what talk you had with him afterwards?

Mr. Coles: G. W. Swain, the rate clerk, testified that the Mississippi, Arkansas & Western Railway Company never filed as an operating railroad any report with that commission as required by the laws of Arkansas. After the testimony was taken and everything was finished and through I was up at Little Rock, and I remem-
6003 ber after that I went around to see Mr. Swain on some other matters and I spoke to him about it, and I said—I asked him if we did not have a tariff on file in his office and he said we did, and I said: "Why did you testify like you did over there?" He said, "I didn't know what it was about. They asked me about the question and I answered them." I said, "Well, you never sent us any blanks to fill out, which is customary, which you sent out to other roads, and if we had filed our tariff in your office would it not make us an operating carrier whether these reports had been filed or not?" He said he was ready to change his testimony at any time.

Examiner Burchmore: Is that all?

Mr Coles: Yes.

Examiner Burchmore: I will offer in the record—or rather I will make reference at this point to the fact that on May 6, 1903, the secretary of the Commission wrote to the general manager, Mr. Lazinsky of this railroad, asking him to file accident reports. Mr. Lazinsky,—I guess that is his signature——

Mr. Jones: Yes, that is his signature.

Examiner Burchmore: And he replied: "I don't think that we come under the head of interstate commerce, as the lines
6004 of our road are operated only in the state of Arkansas." To which the secretary replied saying that the mere fact that a road lies in a single state won't finally determine such questions. The files of the Commission contain no later correspondence with

this company so far as I am advised on this subject and the company has never made any accident reports that I find.

Mr. Jones: Did it ever have any accidents?

Mr. Coles: How?

Mr. Jones: It never had anything to report did it?

Mr. Coles: Not since I have been with them.

Examiner Burchmore: Any employé of the railroad ever been injured?

Mr. Coles: Might have been some minor injuries.

Examiner Burchmore: Broken arms?

Mr. Coles: I don't remember of a man ever having a broken arm.

Examiner Burchmore: Ever have any derailments, where an engine ran off the track?

Mr. Coles: Oh, yes, I am only speaking for the time I was in the employ of the company.

Examiner Burchmore: I understand you are speaking from
6005 your information?

Mr. Coles: Yes, sir.

Examiner Burchmore: Is there anything further?

Mr. Coles: I think that is all.

Examiner Burchmore: You are at liberty to brief this case if you desire. Mr. Jeffery, have you any questions you wish to ask?

Mr. Jeffery: No, not any. I was just wondering if there was anything further in this case at all; I have two other cases.

Mr. Coles: I think not, except that I might ask that the parties advise the Commission with respect to this dispute about some freight claims.

Mr. Jeffery: I think that is up with the Commission now. If it is not, I will see that it is.

Examiner Burchmore: We will take a recess at this point until 2 o'clock.

Whereupon, at 12:30 o'clock P. M. a recess was taken until 2 o'clock P. M.

6006 ST. LOUIS, MISSOURI, *January* 27, 1911—2:00 p. m.

After Recess.

Examiner Burchmore: We will resume this hearing.

Mr. Jones: Instead of filing a motion for a rehearing in the Theodore Fathauer case, I have concluded that it would be better simply to refer to it, as I do not care to trouble the Commission with a motion to rehear. I understand the whole subject of rates with tap lines, this one along with the other, is continued to this hearing, and the whole matter can be presented, as I believe, in the brief in this case.

Examiner Burchmore: Your impression is as counsel that the larger question in which you are interested can be adequately disposed of in the present proceeding, and that it would be unnecessary to reopen the previous case?

Mr. Jones: That is my judgment, yes, sir.

Examiner Burchmore: The record will so indicate. Of course you may brief this case.

Mr. Jones: Yes, I will brief this case. Now, I want to refer a minute to the correspondence of Mr. Lazinsky. What is the date of that?

Examiner Burchmore: 1903.

6007 Mr. Jones: I want to ask Mr. Coles about Mr. Lazinsky, what connection he has with the railroad now, and when his connection ceased.

Mr. Coles: He has no connection whatever now.

Mr. Jones: When did his connection with the railway cease—with the railway company?

Mr. Coles: In October or November, 1904.

Mr. Jones: What date was it that Mr. A. P. Bliss took over the property and assets of the Chico Lumber Company, and the stock and bonds of this railway company?

Mr. Coles: March 1st, 1904.

Mr. Jones: 1905?

Mr. Coles: Yes, 1905.

Mr. Jones: The railway company was then—the stock in the railway company was then completely changed, was it not?

Mr. Coles: Was what?

Mr. Jones: Was changed entirely, put in other names; there was no person that had been connected with the railroad company prior to that connected with it after that?

Mr. Coles: Except——

Mr. Jones: Except probably Cook for a little while.

Mr. Coles: One.

6008 Mr. Jones: Except one, and he did not last long until he went out, did he?

Mr. Coles: No, sir.

Mr. Jones: Went out within a year, I believe?

Mr. Coles: December, 1904.

Mr. Jones: In 1905?

Mr. Coles: 1905.

Mr. Jones: I believe that is all. I just wanted to show this correspondence had nothing to do with the railway company.

Mr. Burchmore: That is all, Mr. Coles.

Mr. Coles: Your Honor, I want to correct one matter, I don't know whether you understood or not, and say that I did not receive notice of taking depositions in Chicago, understand, but I did receive a notice from the Commission of the hearing. The depositions had gone in and briefs been filed.

Examiner Burchmore: I so understood.

Mr. Coles: I did not know whether you understood that or not.

Mr. Jones: I guess that is all we can do now.

6009 *Mangham & North Eastern Railway Company.*

S. R. GREER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Brown: Mr. Greer has a very concise statement of the affairs of this company. I think it might shorten this if he would just read that into the record.

Examiner Burchmore: What is your business?

Mr. Greer: I am general manager and treasurer.

Examiner Burchmore: Mr. Greer, have you prepared a statement showing the date of incorporation, capitalization, number of shares issued, and the amount of cash paid in on the shares of stock issued, and the general business of this railway company?

Mr. Greer: I have.

Mr. Brown: Will you just read that statement into the record?

Mr. Greer: (Reading.)

Date of incorporation November 13th, 1905.

Total amount of stock authorized, 500 shares, $100.00 par. Outstanding.—300 shares, $30,000.00.

Realized from 300 shares $30,000.00.

6010 Expended for additions and betterments during year: June 30th, 1909 to June 30th, 1910, $13,603.75.

Investment Since June 30th, 1907.

Road		$26,212.05
Equipment		9,312.36
Total		$35,524.31
Charged off as depreciation		7,104.86
Net total		$28,419.45
Operating revenue		$13,403.09

Operating Expense.

Main. of ways and structures	$4222.33	
Main. of Equipment	2410.12	
Transportation Expense	1597.00	
General Expense	300.00	
Traffic	600.00	
		9,129.33
Net operating revenue		4,273.64
Less taxes		235.22
		4,038.42
Less Depreciation		7,104.86
Deficit		3,066.44

President, Walter Alexander, Wausau, Wisconsin.
Vice President, Alexander Stewart, Wausau, Wisconsin.
Tres. & Gen. Mgr., S. R. Greer, St. Louis, Missouri.
Sec'y & Supt. & Gen. Agt., J. W. Wilson, Mangham, La.

Tonnage.

Grain	141 tons.
Hay and other farm products	165 tons.
Lumber	8130 tons.
Other forest products	32816 tons.
Total	41252 tons.

Mr. Brown: What is your junction point?
Mr. Greer: Mangham.
Mr. Brown: That is on what main line road?
6011 Mr. Greer: That is on a branch of the Iron Mountain, originally the New Orleans and Northwestern.
Mr. Brown: You are incorporated under the laws of Louisiana?
Mr. Greer: We are.
Mr. Brown: And Mangham is Mangham, Louisiana?
Mr. Greer: Yes, sir.
Mr. Brown: What general direction does this road extend from Mangham?
Mr. Greer: East and northeast.
Mr. Brown: What is the length of the line?
Mr. Greer: About six miles of main line and two miles of spurs and siding.
Mr. Brown: Is that the length of the present mileage?
Mr. Greer: Yes, sir.
Mr. Brown: Six miles?
Mr. Greer: Yes, sir.
Mr. Brown: Is it standard gauge?
Mr. Greer: Yes, sir.
Mr. Brown: Of what weight rails is this main line made?
Mr. Greer: Mostly 40 pounds. We have a little 35 pounds and also a little 45 pounds, but there is probably 80 per cent of it 40 pound rails.
6012 Mr. Brown: You are also interested in the Stewart-Greer Lumber Company?
Mr. Greer: I am.
Mr. Brown: That company has a mill upon its line of railroad, has it?
Mr. Greer: It has.
Examiner Burchmore: May I interrupt just to see the location of this mill and the other tracks in and around Mangham, are they shown by this sketch that you lay before me?
Mr. Greer: Yes.
Examiner Buurchmore: May that be received in evidence?
Mr. Brown: Yes, it was prepared for that purpose.

(The sketch so offered and identified was received in evidence and thereupon marked "Greer Exhibit No. 1, received in evidence January 27, 1911," and is attached hereto and made a part hereof.)

Mr. Brown: The statement that you read into the record contained a list of the stockholders of the Stewart-Greer Lumber Company?

Mr. Greer: No, it did not. I have that here, however.

Mr. Brown: Just read it into the record.

Mr. Greer (reading): S. R. Greer, 1250 shares; Alexander
6013 Stewart, 625 shares; John Stewart, 312½ shares; Walter Alexander, 312½ shares.

Mr. Brown: Also a statement of the stockholders of the Mangham & North Eastern Railway Company?

Mr. Greer: Yes, sir.

Mr. Brown: Just read that into the record.

Mr. Greer (reading): Alexander Stewart, 100 shares; Walter Alexander, 100 shares; S. R. Greer, 99 shares; J. W. Wilson, 1 share.

Mr. Brown: Now, will you please state whether or not the present owners—the present stockholders of this railway company constructed the line?

Mr. Greer: Not all of it; all but about a mile and a half to two miles.

Mr. Brown: Will you please give the Examiner a brief history of the construction?

Mr. Greer: The road was incorporated in November, 1905 by some parties who organized the Richland Lumber Company, and the following year, May, 1906, the entire property, including the railroad, was bought by the Greer-Wilkinson Lumber Company.

Now, I do not recall just who the stockholders were in the
6014 railroad company, all of them, but in February, 1909, the present company, the Stewart-Greer Lumber Company, bought, or rather the parties to that deed bought both the railroad, mill and timber properties.

Mr. Brown: When this purchase was made in 1909, was there an appraisement made of this railroad property, and a separate appraisement made of the timber and mill property?

Mr. Greer: There was, yes, an itemized appraisement.

Mr. Brown: Did the present stockholders of the railroad company pay that appraised value in actual cash for the capital stock and property of the railroad company?

Mr. Greer: They did.

Mr. Brown: So that this railroad property represents an actual cash investment by the present stockholders?

Mr. Greer: It does.

Mr. Brown: Now, since the present stockholders acquired the property, have they expended in extensions and maintenance of way and betterments any additional money?

Mr. Greer: Yes, a considerable sum. It is shown on that statement.

Mr. Brown: The book value of your road is now something like $46,000?

Mr. Greer: No, about $42,000 assets.

6015 Mr. Brown: Yes, about $42,000. Now, does your road have any indebtedness?

Mr. Greer: It has an indebtedness of a little over $12,000.

Mr. Brown: To whom is that due?

Mr. Greer: That is owing to the Stewart-Greer Lumber Company.

Mr. Brown: Is that shown in the report which you make to the Interstate Commerce Commission?

Mr. Greer: It is.

Mr. Brown: The annual report?

Mr. Greer: Well, I believe it is not shown to whom it is owing, but that it is owing, yes.

Mr. Brown: Tell the Examiner what you have there in the way of equipment for handling business?

Mr. Greer: We have two locomotives and 24 cars.

Mr. Brown: These cars are flat cars or logging cars?

Mr. Greer: They were originally all logging cars. We have constructed one of them into a box car.

Mr. Brown: Now the locomotives, what character are they?

Mr. Greer: They are Shays.

Mr. Brown: How many train crews do you employ?

6016 Mr. Greer: Two.

Mr. Brown: Regularly employed?

Mr. Greer: Yes, sir.

Mr. Brown: Do you employ section men?

Mr. Greer: We do.

Mr. Brown: And keep up a corps of employees of that character?

Mr. Greer: Yes, we have two, sometimes three, section Crews—well, one of them is a construction crew.

Mr. Brown: This statement that you have read into the record shows the amount that you expended in the last year in that class of labor?

Mr. Greer: It does, extensions and betterments.

Mr. Brown: Do you pay any salary to any of the officers of the railroad company?

Mr. Greer: Only to the superintendent, who is also the secretary.

Mr. Brown: What salary does he get?

Mr. Greer: He draws $50 a month.

Mr. Brown: Do you have any agents?

Mr. Greer: We have an agent who is also the bookkeeper for the Stewart Greer Lumber Company and the railroad pays

6017 him $25 a month.

Mr. Brown: That is to compensate him for the work which he does for the railroad company?

Mr. Greer: For the railroad company, yes.

Mr. Brown: As distinguished from his labor for the lumber company?

Mr. Greer: That is right.

Mr. Brown: And that is separately accounted for in the account of the railroad company?

Mr. Greer: Yes.

Mr. Brown: What stations have you on the line?

Mr. Greer: We have the junction stations—of course you mean outside of Mangham.

Mr. Brown: Beyond Mangham.

Mr. Greer: We have Greer and Big Creek Camp.

Mr. Brown: Big Creek Camp, does that represent the end of the main line?

Mr. Greer: That was, yes, the end of the main line. We have extended the line somewhat beyond that point now.

Mr. Brown: At the end of the main line extending from the main line do you have what is called here lumber spurs?

Mr. Greer: Yes.

6018 Mr. Brown: Timber spurs, whatever they call them?

Mr. Greer: Yes.

Mr. Brown: How is that handled?

Mr. Greer: That is handled by the railroad company.

Mr. Brown: Does the railroad company at its own expense lay all these timber spurs?

Mr. Greer: It does.

Mr. Brown: And moves them from time to time?

Mr. Greer: It does. The cost of them is included in our maintenance of way.

Mr. Brown: Do you make a separate charge to the lumber company for that purpose?

Mr. Greer: Yes.

Mr. Brown: What is that charge?

Mr. Greer: That is based on a cent and a half a hundred.

Mr. Brown: Being $1.50 a thousand?

Mr. Greer: About $1.50 a thousand.

Mr. Brown: And that is to compensate you for the spur service?

Mr. Greer: Yes, that compensates the railroad company for taking up and moving, taking up and putting down the spurs.

Mr. Brown: What divisions do you get from main line

6019 railroads on the traffic which is handled by your railroad company?

Mr Greer: To tonnage coming to St. Louis or Mississippi River gateways, Cairo, Thebes, and so forth, we get two cents. We also get two cents to Pacific Coast points.

Mr. Brown: What is your highest division?

Mr Greer: Our highest division is to New Orleans, 3½ cents, but I want to explain in regard to that, Mr. Examiner, that while that may seem to be a large division out of a 14 cent rate, it was given us in order to put us on what the Iron Mountain claimed was an equality or nearly so, with points above us, west of us, further away.

Mr. Brown: What points do you have reference to?

Mr. Greer: I have reference particularly to Rayville and Monroe.

Mr. Brown: What was the rate from Rayville to New Orleans?

Mr. Greer: The Rayville rate is 10 cents, the export rate.

Mr. Brown: How far north is that from Mangham?

Mr. Greer: That is 12 miles north. Monroe is about 25 miles northwest. Both of those points have a 10 cent rate.

Examiner Burchmore: What is your rate?

Mr. Greer: Our rate is 14 cents.

6020 Examiner Burchmore: That is, your joint rate?

Mr. Greer: Yes, our joint rate, however, is the same as the rate from the junction.

Examiner Burchmore: What is your division?

Mr. Greer: It is 3½ cents.

Mr. Brown: On New Orleans business?

Mr. Greer: Even considering our joint ownership of the lumber company and the railroad, we are still to the bad a half a cent.

Examiner Burchmore: Then you are not on an equality by half a cent?

Mr. Greer: We lack one half cent of being on an equality with Rayville and Monroe. We also are one half cent higher in that respect than Memphis, which is 200 miles further away.

Mr. Brown: Aside from this New Orleans division, is your division uniformly two cents?

Mr Greer: No, we have a division of 3 cents to Kansas City.

Mr. Brown: On what shipments is that, to Colorado common points?

Mr. Greer: Well, Colorado we have two cents.

Examiner Burchmore: Omaha?

6021 Mr. Greer: Omaha, I think that is 3 cents. I would not be positive. We have never made any shipments to Omaha, but I think our division would be 3 cents to Omaha. Now that is given us, that additional cent is also given us there on some points west and northwest.

Examiner Burchmore: Do you operate in there on a milling and transit basis?

Mr. Greer: That is my understanding of it.

Mr. Burchmore: What transportation service does your railroad company perform for this division of the through rates?

Mr. Greer: We perform all the service from the woods to delivering the loaded cars on the Iron Mountain tracks. We also do all our own switching in and out and around our plant.

Examiner Burchmore: Do you understand that this division covers your compensation for this sort of service out in the timber, or does it cover from the junction——

Mr. Greer: No, I do not. I understand that covers the service that we render from Greer which is in the timber about three and a half miles. My understanding is that it compensates us for handling timber into the mill and the lumber out.

Examiner Burchmore: This plat that you have filed here, Greer Exhibit 1, indicates that all of the milling plant is upon the

6022 line of your railroad company, is that correct?

Mr. Greer: It is.

Examiner Burchmore: And do you perform all of the service in and out of the mill on the manufactured products?

Mr. Greer: We do.

Examiner Burchmore: Where does the Iron Mountain furnish the cars for the outbound——

Mr. Greer: They do not furnish them at all. They leave the cars on their own track.

Examiner Burchmore: Whereabouts?

Mr. Greer: Well, sometimes they are down below the town of Mangham, sometimes in the——

Examiner Burchmore: On their regular side tracks at Mangham?

Mr. Greer: On their regular side tracks at Mangham.

Examiner Burchmore: When the lumber company ships out a car, what service does your railroad company perform on that carload of manufactured lumber?

Mr. Greer: Well, we have to go out and get our cars on the Iron Mountain track, get the cars, load them and set them back again on the Iron Mountain track.

Mr. Brown: What distance is that each way?

6023 Mr. Greer: I beg your pardon?

Mr. Brown: What distance is that each way?

Mr. Greer: That varies, sometimes as much as a mile, other times less than a mile.

Examiner Burchmore: That exhibit shows the distance from the junction, does it, to the mill, 1825 feet?

Mr. Greer: Yes. That is from the junction. We get a large part of our lumber out in here. (Indicating.) This would extend further in proportion in this mill here.

Examiner Burchmore: How far below the junction of your road with the Iron Mountain are these cars placed by the Iron Mountain road?

Mr. Greer: Well, they are left wherever it is most convenient to them. Then frequently as the trains bring them in, should they go north, they are apt to set them at the lower end of the town and go out. Sometimes we get cars that have been brought in with merchandise and unloaded.

Examiner Burchmore: Does the Iron Mountain company perform any service whatever on your rails?

Mr. Greer: No, sir.

Examiner Burchmore: Do the locomotives ever come upon your rails?

6024 Mr. Greer: They never—occasionally one has come in to get water from our tank. They have never come in to perform any service.

Examiner Burchmore: They operate all those private spur tracks?

Mr. Greer: How?

Examiner Burchmore: The lumber company operates all those private spur tracks?

Mr. Greer: No, the railroad operates them.

Mr. Brown: That is the timber spurs you refer to?

Mr. Greer: The timber spurs.

Examiner Burchmore: Yes.

Mr. Greer: Well, that is all the spurs we have, of course, except our sidings, with a little short siding in the timber.

Mr. Brown: Does your company own all of the tracks shown on this exhibit 1?

Mr. Greer: It does.

Mr. Brown: You heard Captain Meredith's testimony yesterday concerning the application of joint rates within the state of Louisiana, did you?

Mr. Greer: Yes, sir; I heard part of it.

Mr. Brown: What is the rule on your road here, do the
6025 joint rates—does the same rate apply from stations on your line as applies from Mangham to points in Louisiana?

Examiner Burchmore: You mean there is a joint state rate over your line?

Mr. Greer: Or interstate rates, both of them are the same.

Mr. Brown: That is true whether it be state or interstate shipments?

Mr. Greer: Yes.

Mr. Brown: So far as your road is concerned. Do you file tariffs with the Interstate Commerce Commission?

Mr. Greer: We do.

Mr. Brown: Have you got them with you so you can give the tariff references?

Mr. Greer: No, I have not. We have them filed with the Commission, though.

Mr. Brown: You make your annual and monthly reports to the Commission?

Mr. Greer: We do.

Mr. *Greer:* You filed your reports for the fiscal year ending June 30, 1910?

Mr. Greer: We have.

Mr. Brown: Do you pay taxes as a railroad company to the
6026 state of Louisiana?

Mr. Greer: We do.

Mr. Brown: Did you pay them last year?

Mr. Greer: Yes, sir.

Mr. Brown: The statement that you first read into the record shows the amount of that payment, does it?

Mr. Greer: I don't believe it does, but our annual report shows it.

Mr. Brown: I think it does.

Mr. Greer: I know it does.

Mr. Brown: I think the statement shows it, too. Are you recognized by the railroad commision of Louisiana as a common carrier, in that you file tariffs and comply with the rules and regulations of that commission?

Mr. Greer: We are.

Examiner Burchmore: Do you know of any railroad that is not so recognized in the state of Louisiana?

Mr. Greer: No, I do not, Mr. Examiner; in fact I know very little about it, that is, I mean whether they are recognized. I don't know anything about whether they are recognized or not. I would like to

say further in regard to our rates and our divisions, that that
6027 section over there is all under a heavy penalty in the way of rates as compared with surrounding territory. About forty miles west is Vicksburg, Mississippi, just about due west. Vicksburg has a 20 cent rate to Chicago and common points surrounding Chicago in that district on gum, and a 21 cent rate on oak, while our rate on both is 24 cents.

6028 Examiner Burchmore: Then you are under a four cent disadvantage?

Mr. Greer: We are under a four cent disadvantage on gum and I believe a three cent disadvantage on [illegible] Indiana points and Illinois points.

Examiner Burchmore: Well what division do you get on those points?

Mr. Greer: We get two cents.

Examiner Burchmore: That helps to overcome that disadvantage?

Mr. Greer: Yes, to that extent.

Examiner Burchmore: Are there any lines across the river in the Vicksburg territory that are getting allowances?

Mr. Greer. Well I don't know about that. I will say we also have a heavier disadvantage for eastern points. Rayville, 12 miles north of us, gets a six cent lower rate to Boston. When the Rayville rate was put in there about a year ago or perhaps less than that to New Orleans, I went to the Iron Mountain and wanted the same rate, for all the Rayville tonnage goes right through Mangham on the same line that we ship out on, but they take it to Natchez, across the river there with it and give it to the Y. &
6029 M. V., and put it into New Orleans at 10 cents; but ours must go by the Texas Pacific, Iron Mountain and Texas Pacific, thereby making it an intra-state rate or haul, and they said they could not give me a 10 cent rate into New Orleans, and I said I did not see why they could not do that. He sais because Rayville was a competitive point, and I expressed the opinion that it had been my idea that the prime object of the Commission was to prevent just that sort of thing, men at competitive points having an advantage over men at non-competitive points, but the Iron Mountain officials assured me that that was not true, they would not give me the rate, although I proposed to route my shipments the same as the Rayville shipments went, so that while our division to New Orleans may seem large on the total, it is really not as large as it ought to be to put us on a parity with our neighbors.

Examiner Burchmore: That was all an informal proceeding that you have just described?

Mr. Greer: Yes. At the same time or about that time rather, along the early part of last year, when they had published a cancellation of our divisions, I wrote the Interstate Commerce Commission, calling their attention particularly to this advantage on
6030 our New Orleans shipments. We have a good many shipments there for export. Of course I got the usual reply, that I would have to take the matter up in a formal way, and they

would appoint a time for hearing, but as this cancellation was held in abeyance, I did not pursue it further.

Mr. Brown: Mr. Greer, do you handle any what is called sheer outside business, that is, business other than the Stewart-Greer Lumber Company?

Mr. Greer: We do some, not a large amount.

Mr. Brown: Your statement shows it in detail?

Mr. Greer: Our statement shows that.

Mr. Brown: And the tonnage and earnings, does it?

Mr. Greer: Yes, sir.

Examiner Burchmore: I would like to know how much it is and what it consists of.

Mr. Brown: It is shown on the statement there.

Mr. Greer: Have you that statement there?

Examiner Burchmore: I have it here 141 carloads of grain shown here?

Mr. Greer: Yes.

Examiner Burchmore: Was that all handled for the public?

Mr. Greer: Yes.

Examiner Burchmore: Wasn't that used at all for your
6031 teams over there at Monroe?

Mr. Greer: No, we don't keep any teams at Monroe.

Examiner Burchmore: Is that hay and other farm products an outbound movement?

Mr. Greer: That is practically all inbound movement. I think it is all inbound. They are just opening up farmers' produce there. I would like to say in that connection though, Mr. Examiner, that our road runs through a district that is very fertile. This is hardwood, our territory is all hardwood, consequently the lands are strong, good agricultural lands.

Mr. Brown: Are there any farms opening up in there?

Mr. Greer: There are some. We are hauling out within the last year some little agricultural products. There is one little mill located out on our line has gone in there recently and we have hauled a little, only a few cars altogether of lumber out for them.

Mr. Brown: Would that mill have any transportation facilities, any railroad transportation facilities if this road was not there?

Mr. Greer: No, sir, is could not operate if we were not there.

6032 Mr. Brown: Does the road hold itself out to transport all shipments that are offered, and have you afforded facilities for transporting all that has been offered to you?

Mr. Greer: We have, always.

Examiner Burchmore: Here is 8,130 tons of lumber shown on your statement. How much of that was hauled for the Stewart-Greer people?

Mr. Greer: A large part, I should say ninety-nine per cent of it.

Examiner Burchmore: And the other forest products, 32,816 tons, was that their logs?

Mr. Greer: The greater part of that was logs and ties.

Examiner Burchmore: The 8,000 tons of lumber are all included also in the 32,000 tons of logs?

Mr. Greer: No, sir.

Examiner Burchmore: They had previously moved as logs?

Mr. Greer: Generally.

Examiner Burchmore: So one figure includes the other in a sense, a second movement of the same stuff?

Mr. Greer: Yes, sir.

Examiner Burchmore: What percentage of that 32,816 tons of other for-st products would you say was moved out on account
6033 of the Stewart-Greer Lumber Company?

Mr. Greer: I should say ninety-nine per cent of it.

Examiner Burchmore: Referring to your statement as to the stockholders of the railroad and lumber company, I notice that Mr. S. R. Greer owns what seems to be one-half of the stock of the lumber company, and a third of the stock of the railroad, or 99 shares out of 300.

Mr. Greer: That is true.

Examiner Burchmore: I presume the other share held by Mr. Wilson is really held in the interest of Mr. Greer?

Mr. Greer: It was, that is right.

Examiner Burchmore: Mr. Alexander Stewart and Mr. Walter Alexander both own shares in the railroad and also in the lumber company. I will ask you what relation, if any,—family relation, if any, exists between Alexander Stewart and Walter Alexander?

Mr. Greer: No family relation.

Examiner Burchmore: I noticed the Alexander. Are they related in a business way?

Mr. Greer: Yes, they are related in a business way.

Examiner Burchmore: Do you know what their connection is?

Mr. Greer: They are two of the three members of the
6034 Alexander Stewart Lumber Company of Wausau, Wisconsin, and they are interested in a good many other enterprises.

Examiner Burchmore: John Stewart is the third member of that concern?

Mr. Greer: Yes, sir, however, he is a brother of Alexander Stewart's.

Examiner Burchmore: Without further discussion, I assume from these statements that we may regard the railroad, the Mangham & North Eastern Railroad Company and the Stewart-Greer Lumber Company as substantially in interest, aside from any technical question of difference in corporation?

Mr. Greer: That is true.

Mr. Brown: There is a petition signed by some citizens of Mangham with respect to this railroad company, Mr. Examiner. I don't know whether—what its evidentiary value is. I would simply like to file it.

Mr. Greer: I just present that as an evidence of the interest that the people in that community take in it, how they regard the cancellation as working to the detriment of the railroad and also as affecting their interests.

Mr. Brown: I want to be perfectly frank with the Commission.

That petition was prepared by Mr. Greer, and the signatures
6035 affixed.

Examiner Burchmore: It will be received in evidence.

(The petition so offered and identified, was received in evidence and thereupon marked "Greer Exhibit No. 2, received in evidence, January 27, 1911," and is attached hereto.)

Examiner Burchmore: I will ask you only one question concerning it. Are any of the persons whose names are signed to that petition employés of the railroad or lumber company?

Mr. Greer: I don't think there is one on there, I am quite sure there is not. Those people are business people of the town of Mangham, and people who own timber out along our line or near our line.

Mr. Brown: That is all we have to offer. If you would prefer, we can have a tracing made that would be better for your record.

Examiner Burchmore: This is very satisfactory. I might suggest that you put in a small map on a smaller scale, showing the railroad from start to finish, with the private logging spurs, leaving out the mills.

Mr. Brown: We will file this petition as Greer Exhibit 2, and the map as Exhibit 3.

6036 Examiner Burchmore: Does the railroad own its logging cars?

Mr. Greer: It owns all the equipment.

Examiner Burchmore: You transport no passengers for hire?

Mr. Greer: No.

Examiner Burchmore: How many carloads would you estimate you transported last year?

Mr. Greer: I really have not thought about it, Mr. Examiner. I think our logging cars carry about 3,000 feet per load.

Examiner Burchmore: Perhaps you explained about the Iron Mountain connecting with you.

Mr. Greer: I did.

Examiner Burchmore: But I did not get the explanation. I thought that the connecting carrier was the New Orleans & North Eastern.

Mr. Greer: No, New Orleans and North Western.

Examiner Burchmore: And that was taken over by the Iron Mountain?

Mr. Greer: Yes, sir, they owned it for a number of years, but operated it as a separate line.

Mr. Brown: Taken over by the Iron Mountain under the consolidation?

6037 Mr. Greer: Yes, sir, they are all Iron Mountain now, for about a year past. They have a number of small lines down there in that country.

Examiner Burchmore: Where is your general office?

Mr. Greer: St. Louis.

Examiner Burchmore: This road was formerly owned by the Greer-Wilkinson Lumber Company of Indianapolis?

Mr. Greer: Yes, sir.

Examiner Burchmore: Did you mention that?
Mr. Greer: Yes, I mentioned that.
Examiner Burchmore: Did you say that the present lumber company—the present owners of that company bought out the railroad and mill and timber all at one transaction?
Mr. Greer: Yes, sir.
Examiner Burchmore: Has the road paid any dividends?
Mr. Greer: It has not.
Examiner Burchmore: Has it been losing money?
Mr. Greer: Yes, a little, not a great deal.
Mr. Brown: In that connection, I noticed you charge off 20% for depreciation?
Mr. Greer: Yes, sir.
Mr. Brown: That accounts entirely for your deficit last
6038 year, doesn't it?
Mr. Greer: Yes, it would if it had not been deducted for depreciation and charged off last year. That was charged for the reason that on account of our not operating—we did not operate at all in 1908, the year following the panic, we did not think it advisable to and we operated only about half of 1909, consequently the road was not kept up very much and ran down a good deal, necessitating charging off a heavier depreciation this last year.
Examiner Burchmore: And the mill quit cutting?
Mr. Greer: Yes, the working conditions were unfavorable.
Examiner Burchmore: And the railroad went out of business at the same time?
Mr. Greer: No, we operated some with the railroad, we shipped a little timber.
Examiner Burchmore: For yourselves or for other people?
Mr. Greer: And then we were shipping lumber for ourselves, we export some timber.
Examiner Burchmore: Do the officers of this railroad have any passes over interstate railroads?
Mr. Greer: I had one that expired the 31st of December, on the Iron Mountain.
6039 Examiner Burchmore: An annual interstate pass?
Mr. Greer: Annual, yes.
Examiner Burchmore: Any other railroad pass?
Mr. Greer: No.
Examiner Burchmore: Do the other officers of the railroad have any passes?
Mr. Greer: No.
Examiner Burchmore: Do you use that pass whenever you travel over the Iron Mountain?
Mr. Greer: I do.
Examiner Burchmore: Do you perform any service—do you work in the interest of the lumber company?
Mr. Greer: I am not an active member of the lumber company, only an active stockholder.
Examiner Burchmore: You never pay passenger fare when you travel over the Iron Mountain?

Mr. Greer: Not on the Iron Mountain.

Examiner Burchmore: You have stated that you owe the Stewart-Greer Lumber Company $12,000.00?

Mr. Greer: Yes, sir.

Examiner Burchmore: Is that evidenced by mortgage or bonds or anything?

6040 Mr. Greer: No, it is a book account.

Examiner Burchmore: What did this eight miles of railroad cost you to build, what is its total value?

Mr. Greer: We show the cost of extensions and betterments in our statement there.

Examiner Burchmore: Do you recall what it cost a mile on the average?

Mr. Greer: I think about $3,500.00.

Examiner Burchmore: Is it well built?

Mr. Greer: It is for that character of road.

Examiner Burchmore: Well, is it a substantial road?

Mr. Greer: Yes, sir.

Examiner Burchmore: Is it as well built *that* those that we have been talking about the last few days in this hearing?

Mr. Greer: I think it is a great deal better than some of them, and perhaps not as good as some of the others.

Examiner Burchmore: What do you think of a short line railroad that is worth $16,000.00 a mile in the woods?

Mr. Greer: It seems to be a pretty good price for one. It would depend on how many bridges they had to build, and how well constructed the line is.

Examiner Burchmore: You would look a road over pretty

6041 carefully before you bought it at that price?

Mr. Greer: I rather think I would.

Examiner Burchmore: You spoke of another little mill out there in the woods. Where do they ship their lumber to?

Mr. Greer: Well they ship it to different points.

Examiner Burchmore: To New Orleans?

Mr. Greer: I don't know that they have.

Examiner Burchmore: Any outside of the state at all?

Mr. Greer: Yes, ship some to Missouri.

Examiner Burchmore: They have quite a disadvantage in rates down there?

Mr. Greer: They have not, no.

Examiner Burchmore: Over Monroe?

Mr. Greer: They have no greater disadvantage than we have.

Mr. Brown: Do they pay the same rate that you do?

Mr. Greer: They pay the same that we do, exactly.

Mr. Brown: You give them the benefit of the joint through rate, do you?

Mr. Greer: Oh, yes, we must do that, because our joint tariffs cover all points on our road.

Examiner Burchmore: Where do they get their logs?

Mr. Greer: They get logs from some of the landowners

6042 around there adjoining ours.

Examiner Burchmore: They do not buy timber from you?

Mr. Greer: Adjoining the lands of the Stewart-Greer Lumber Company, I mean.

Examiner Burchmore: They do not buy any logs from you?

Mr. Greer: No.

Examiner Burchmore: How do they get their logs to the mill?

Mr. Greer: They have their little mill right in the timber.

Examiner Burchmore: Is their mill right on the railroad track?

Mr. Greer: No, it is about a quarter or a half a mile from our line.

Examiner Burchmore: They team the lumber?

Mr. Greer: Draw the lumber over there.

Examiner Burchmore: Have they demanded or have you demanded to put in a side track for them there, to their mill?

Mr. Greer: No, I have not. I don't think it is a large enough proposition as yet at any rate.

Examiner Burchmore: What is their capacity in carloads a week or a month?

Mr. Greer: If they were running daily they probably would turn out a carload a day.

6043 Examiner Burchmore: They make hardwood?

Mr. Greer: Yes, all hardwood.

Examiner Burchmore: Do you know what it costs them to team their lumber over to the railroad?

Mr. Greer: They do not team any in bad weather, you know, they could not.

Mr. Brown: Have you any knowledge on the cost of the teaming of the lumber that you might enlighten the Examiner somewhat?

Mr. Greer: I have a good deal of knowledge. In that country where the rainfall is about 60 inches for at least six months in the year, it is impossible to truck lumber or logs or any other heavy commodity a distance of two miles or one mile; in fact, we put our track—have our track put down there so that our haul is never to exceed a half a mile.

Examiner Burchmore: What, in your opinion, would it cost to cart lumber, say a mile or a mile and a half? How much per thousand, do you think, during the season of the year that it was possible to do it?

Mr. Greer: Well it would cost two dollars a thousand during the dry season, and in the wet season it could not be done at all.

6044 Examiner Burchmore: Then a logging road is—or I should say a railroad of some character to bring the logs from the woods up to the mill is absolutely essential to the operation of any mill of any capacity?

Mr. Greer: Yes.

Examiner Burchmore: It is impracticable to team logs?

Mr. Greer: Oh it would be impracticable, decidedly so.

Examiner Burchmore: It would be equally impracticable to team the lumber for any distance from a mill over to a railroad?

Mr. Greer: Oh, yes.

Examiner Burchmore: And the railroad, it is about as necessary to have a railroad running into a mill, or running out, or vice versa?

Mr. Greer: Yes, a mill which produces any capacity absolutely must have a railroad.

Examiner Burchmore: Is the competition as close in the hardwood market as in the pine market now?

Mr. Greer: I think it is.

Examiner Burchmore: Can you give us a statement of the tonnage, separating it between that furnished by the Stewart-
6045 Greer Lumber Company and by others, to check up with the statement you have given?

Mr. Greer: No, I could not do so, it is so very small. I do give this tonnage on that statement on agricultural products.

Examiner Burchmore: Do you make any charge for those agricultural products?

Mr. Greer: Oh, yes, sir.

Examiner Burchmore: How long have you been charging for those?

Mr. Greer: Just this last year.

Examiner Burchmore: I think that is all.

Mr. Greer: I think only part of this last year.

Mr. Brown: Do you have joint commodity rates?

Mr. Greer: Yes.

Mr. Brown: Joint commodity class rates?

Mr. Greer: Yes, sir.

Examiner Burchmore: That seems to be all, Mr. Brown.

6046 *Jefferson & Northwestern Railway Company.*

F. I. CLARK was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: What is your name?

Mr. Clark: My name is F. I. Clark.

Examiner Burchmore: And you are the sole representative of the Jefferson & Northwestern Railway Company?

Mr. Clark: Yes, sir.

Examiner Burchmore: Mr. Clark, what is your connection with the Jefferson & Northwestern?

Mr. Clark: I am Vice-President and Manager.

Examiner Burchmore: How long have you been employed by this company in that capacity?

Mr. Clark: Well, I have been vice-president for the past ten years, I guess—ten years.

Examiner Burchmore: You are familiar with its operations?

Mr. Clark: Yes.

Examiner Burchmore: Has any other officer or employé of your company been present attending on this hearing?

Mr. Clark: No.

6047 Examiner Burchmore: You are thoroughly familiar with its practices, rates, and so forth?

Mr. Clark: Of the railway company?

Examiner Burchmore: Yes.

Mr. Clark: Yes.

Examiner Burchmore: You are also vice-president and general manager of a lumber company, of the Clark & Boice Lumber Company?

Mr. Clark: Yes.

Examiner Burchmore: How long have you been thus connected with that company?

Mr. Clark: For some time.

Examiner Burchmore: Who is president of the railroad?

Mr. Clark: A. B. Clark.

Examiner Burchmore: Are you in the same family?

Mr. Clark: Yes, he is my father.

Examiner Burchmore: He is also treasurer of the railroad company?

Mr. Clark: Yes, sir.

Examiner Burchmore: And occupies the same offices with the lumber company named?

Mr. Clark: Yes, sir.

6048 Examiner Burchmore: Who is secretary of this railroad?

Mr. Clark: C. E. Bancker.

Examiner Burchmore: And also secretary of the lumber company?

Mr. Clark: Yes, sir.

Examiner Burchmore: Are there any other officers of the railroad?

Mr. Clark: No, there are no others.

Examiner Burchmore: What employés has the railroad?

Mr. Clark: It has a bookkeeper, a roadmaster, master mechanic and trainmen, section men.

Examiner Burchmore: How many train men or how many train crews?

Mr. Clark: Well we always operate one and sometimes two.

Examiner Burchmore: How many section gangs?

Mr. Clark: Three.

Examiner Burchmore: Any other employés of the railroad, any agents?

Mr. Clark: None except that the bookkeeper acts as agent at North Jefferson.

Examiner Burchmore: And that bookkeeper is also employed by the lumber company?

6049 Mr. Clark: Yes, sir.

Examiner Burchmore: What is his pay or salary?

Mr. Clark: Well I would not be sure, but the railroad company pays half and the lumber company half, I think.

Examiner Burchmore: How about the roadmaster and the master mechanic?

Mr. Clark: They are entirely employés of the railroad company.

Examiner Burchmore: Do any of the officers of this railroad receive salaries?

Mr. Clark: Yes, the Secretary, Mr. Bancker, receives a salary.

Examiner Burchmore: His salary is divided between the two companies?

Mr. Clark: Yes, sir, divided.

Examiner Burchmore: What is the total mileage of this railroad?

Mr. Clark: It has now 32 miles of main line and about 3 miles of spur track.

Examiner Burchmore: You refer to the main line. Is that main line permanently located?

Mr. Clark: Permanently located.

6050 Examiner Burchmore: How long has it been permanently located where it is now? Has it ever been changed about any?

Mr. Clark: No, the mileage has always been just as it is.

Examiner Burchmore: But the spur tracks have been moved from time to time?

Mr. Clark: Yes, sir.

Examiner Burchmore: Has the lumber company or has any lumber company any private spur tracks connected with this railroad?

Mr. Clark: No, none whatever.

Examiner Burchmore: Then the private spur tracks that go into the woods which is being logged by this lumber company are owned by the railroad company?

Mr. Clark: Owned and operated by the railroad company, constructed by the railroad company.

Examiner Burchmore: And the lumber companies own the engines or cars?

Mr. Clark: No, sir, none.

6051 Examiner Burchmore: How many has the railroad?

Mr. Clark: The railroad has two locomotives and about twenty-five cars.

Examiner Burchmore: They are equipped with safety appliances?

Mr. Clark: The locomotives are; the cars are logging cars.

Examiner Burchmore: You have no cars that are not logging cars?

Mr. Clark: No.

Examiner Burchmore: Do you transport anything except logs?

Mr. Clark: Yes, we transport all kinds of commodities.

Examiner Burchmore: What do you carry the other commodities on?

Mr. Clark: We carry them on the cars of the trunk lines.

Examiner Burchmore: But you have no cars of your own that are loaded with anything?

Mr. Clark: We have two flat cars that we operate, we haul merchandise on them, or logs, either one.

Examiner Burchmore: Are those equipped with couplers?

Mr. Clark: No.

6052 Examiner Burchmore: You know the Safety Appliance Act requires common carriers to equip any car and all cars——

Mr. Clark: They are strictly logging cars, that is what they are. They are skeleton built logging cars with a platform in between.

Examiner Burchmore: But the exception in favor of logging cars in the act covering safety appliances concerns only logging cars which are used purely for logging purposes on which no other freight is loaded, so that apparently you need some information on that point. I simply state it for information.

I understand that the stockholders of the Clark & Boyce Lumber Company own the majority of the stock of the Jefferson & Northeastern Railway?

Mr. Clark: The distribution of the stock is the same in both the lumber company and the railroad company.

Examiner Burchmore: Could the Jefferson & Northeastern Railway be profitably operated or could it in fact continue to operate even at a loss—is its financial condition such that it could continue to operate if the traffic supplied by the Clark & Boyce Lumber Company were cut off from it?

Mr. Clark: Well, I think it could, yes. It produces
6053 enough—has enough tonnage to operate it for that tonnage alone, without the Clark & Boyce Lumber Company tonnage.

Examiner Burchmore: How long, in your opinion, has that state of affairs existed?

Mr. Clark: That change in operating the line?

Examiner Burchmore: Yes.

Mr. Clark: Well, I presume that it has continued for some time, a number of years.

Examiner Burchmore: As much as a year?

Mr. Clark: Yes.

Examiner Burchmore: The report on file with the Commission in its bureau of statistics and accounts, by an Examiner of Accounts who visited the property in January, 1910, and who conferred with the officers of your company, reports that the question: "Could the industrial railroad", meaning this railroad, "be profitably operated without the traffic supplied by the controlling interests", was answered by an official of your company: "Not under present conditions". Would you say that that answer was not a correct one?

Mr. Clark: Well, there is some considerable doubt about it. I feel satisfied in my mind that it could run without the business of the lumber company.

6054 Examiner Burchmore: How much business have you—how much revenue have you received during the past year, or during any given period, on revenue that was not supplied by the Clark & Boyce Lumber Company?

Mr. Clark: Well, I have a statement here showing the revenue for the past year, the business for the year 1910, that is, from January 1st to December 31st, 1910.

Examiner Burchmore: This is for the calendar year 1910?

Mr. Clark: Yes, the calendar year.

Examiner Burchmore: Was this statement prepared under your direction?

Mr. Clark: Yes, sir.

Examiner Burchmore: Will you file it as an exhibit?

Mr. Clark: Yes, sir.

The statement so offered and identified, was received in evidence and thereupon marked Clark Exhibit No. 1, received in evidence January 27, 1911, and is attached hereto.

Examiner Burchmore: You have north bound and south bound. In which direction——

Mr. Clark: It means in and out.

Examiner Burchmore: In bound is south bound,—how would you construe it?

6055 Mr. Clark: I don't know; the reason I said that, north and south. I did not know which way that would be meant, in and out.

Examiner Burchmore: Is the south bound business going away from you or coming towards your line?

Mr. Clark: The south bound coming toward the junction point.

Examiner Burchmore: Then the south bound stuff is the stuff that you turn over to the connecting railroad?

Mr. Clark: Yes, sir.

Examiner Burchmore: This shows the total traffic as 46,289 tons, with a total revenue of $28,889.25, and apparently shows that 86 per cent of revenue and 81 per cent of the tonnage came from the Clark & Boyce Lumber Company?

Mr. Clark: Yes.

Examiner Burchmore: Now, I observe in that statement 23 cars of iron ore. Who furnished that tonnage?

Mr. Clark: To explain that I will have to elaborate a little. This whole country that that road goes through has a large amount of iron ore and at Jefferson there is an iron furance which was built in 1888.

Examiner Burchmore: Where is that located, I might ask?

6056 Mr. Clark: It is right adjacent to the sawmill of the Clark & Boyce Lumber Company.

Examiner Burchmore: Do you have any interest in it?

Mr. Clark: No, none whatever, and it was operated by three different parties since then, three or four different parties. In 1899, when the Jefferson & Northwestern Railway Company was incorporated, it made a contract with this iron company, which was the Jefferson Iron Company, to furnish all of the wood and ore which it used, and the iron company operated a furnace there for about a year and practically all of its wood—it was a charcoal furnace, and the ore was furnished by the Jefferson & Northwestern Railway Company under a contract.

Examiner Burchmore: Where did you haul it from?

Mr. Clark: From out on the line, various places. Well, the furnace ran for about a year and went out of business.

Examiner Burchmore: During what part of the year 1910 was it running?

Mr. Clark: Well, it did not run during 1910.

Examiner Burchmore: You have got 23 car loads of ore moved in 1910.

Mr. Clark: Well, that particular ore had no connection
6057 with the furnace, but I wanted to explain the condition of the ore in that country, the fact that there is ore that has been made into iron, and this particular shipment that is shown on this statement was gotten out and shipped by a company which took leases on all the iron ore land that they could get in the country, and are organizing a company to mine and ship this ore to what ever market they can find. This particular shipment went to Philadelphia, by way of Galveston, and that was gotten out as a sample shipment and went to Philadelphia. They propose to develop that entire country, and as a matter of fact we are negotiating with them to sell them the railroad and operate it at the present time. During 1899, and several periods later, the tonnage of iron ore and wood for this Jefferson Iron Company was at least half, 50 per cent of the—I will take that back,—I mean as great as the tonnage of the Clark & Boyce Lumber Company.

Examiner Burchmore: I will ask you, Mr. Clark, whether the officers of your company have any passes over trunk line railroads?

Mr. Clark: No, but we have over the M. K. & T. three passes.

Examiner Burchmore: System passes?

6058 Mr. Clark: Well, last year we had one system pass and two Texas passes, I don't know what we have this year.

Examiner Burchmore: What officers of your railroad have such passes?

Mr. Clark: President, vice-president and secretary.

Examiner Burchmore: They use those passes whenever they travel, do they?

Mr. Clark: Yes, sir.

Examiner Burchmore: Do they travel very much on railroad business, purely railroad business?

Mr. Clark: Why, yes, they travel a good deal on railroad business.

Examiner Burchmore: Do you file annual reports with the Interstate Commerce Commission?

Mr. Clark: We have been filing——

Examiner Burchmore: Accident reports?

Mr. Clark: Yes, accident reports.

Examiner Burchmore: Any other reports?

Mr. Clark: I think the annual report we make, and I will say that I have noticed these reports that have been made by other railroads here, and in 1903, I think it was, we were sent a report in
6059 that book form, covering those large reports. We wrote to the Commission and told them that we were not prepared to fill out those reports, and they sent a smaller report for us to make. I don't remember just exactly what form that was, in fact I don't remember much about it, except that some form of annual report has been made out covering all of the facts as shown in those large books.

Examiner Burchmore: You did not file any——

Mr. Clark: Since then we have never been requested to make any other kind of a report by the Commission.

Examiner Burchmore: I might say, Mr. Clark, that the act to regulate commerce requires all railroads that are subject to its juris-

diction to make annual reports to the Interstate Commerce Commission, and it is not within the power of the Interstate Commerce Commission to excuse any such carrier, nor is it——

Mr. Clark: You know to what I refer, those smaller reports, giving mileage, or something; I don't remember what they did give.

Examiner Burchmore: The act to regulate commerce, of course, speaking for itself, it requires annual reports from carriers showing certain forms of information. Now, I understand that you
6060 made some reports in 1903 or 1904, but have not made any since, what we call annual reports.

Mr. Clark: We did not report in 1903, I don't think we have ever made one of those large book form reports.

Examiner Burchmore: Have you made any other sort of a report except accident reports, year by year?

Mr. Clark: Yes, we have made out a small report of some kind. I don't recall just what was on it; it was some form furnished by the Interstate Commerce Commission.

Examiner Burchmore: I will look into that and see what has been filed.

Mr. Clark: I will say that we can fill out those reports. We keep our books in accordance with the rules of the Interstate Commerce Commission.

Examiner Burchmore: You have got the rules and obey them?

Mr. Clark: Yes.

Examiner Burchmore: Did I ask you about your rates and divisions?

Mr. Clark: No.

Examiner Burchmore: What kind of lumber does the Clark & Boyce Company manufacture?

Mr. Clark: Pine.

6061 Examiner Burchmore: You have joint rates with the Rock Island to interstate destinations?

Mr. Clark: No, the M. K. & T.

Examiner Burchmore: With the M. K. & T., I mean.

Mr. Clark: Yes, sir.

Examiner Burchmore: To interstate destinations. Do you have any with the Texas & Pacific?

Mr. Clark: No.

Examiner Burchmore: Just with the M. K. & T.?

Mr. Clark: That is all.

Examiner Burchmore: Have you ever had any with the Texas & Pacific?

Mr. Clark: Yes, sir, we used to have them.

Examiner Burchmore: When were they cut out?

Mr. Clark: But we never had them interstate with the T. & P. We had intrastate in Texas with the T. & P., up until 1903 or 1904.

Examiner Burchmore: Are you recognized by the State Commission of Texas?

Mr. Clark: Not at the present time, no.

Examiner Burchmore: Have you ever been recognized by them?

6062 Mr. Clark: Yes, sir.

Examiner Burchmore: And they do not recognize you now?

Mr. Clark: No.

Examiner Burchmore: Do you know why they don't, any reason assigned?

Mr. Clark: It is the same, I guess, as most all similar roads in Texas. We have never made any—since 1903 and '4 they cut out us, among a great many logging roads and we never made any application to them to be recognized.

Examiner Burchmore: When was this railroad built?

Mr. Clark: It was started in about 1892.

Examiner Burchmore: Did this same corporation own it then?

Mr. Clark: No.

Examiner Burchmore: Who did own it?

Mr Clark: It was owned by—the first part of it was built by the Clark & Boyce partnership.

Examiner Burchmore: When was the railroad incorporated?

Mr. Clark: In 1899.

Examiner Burchmore: You were with it then?

Mr. Clark: Yes.

Examiner Burchmore: When was the mill built?

6063 Mr. Clark: The mill was built in 1881.

Examiner Burchmore: They operated for some time without any tram road?

Mr. Clark: Yes, sir, there was a river there, floated logs on the river.

Examiner Burchmore: Is the mill on the river now?

Mr. Clark: Well, it is not the identical mill there now that was there, built in 1881. The mill that is there now is a little way off from the river, but on the same ground that the original mill was.

Examiner Burchmore: Do you get any of your logs down by water?

Mr. Clark: We don't now, no; we did at that time.

Examiner Burchmore: How long has it been since you brought down any of your logs by water?

Mr. Clark: Not since the railroad was built.

Examiner Burchmore: Not since 1892?

Mr. Clark: About 1892.

Examiner Burchmore: Then this railroad was built originally to get logs down to the mill?

Mr. Clark: Yes.

Examiner Burchmore: Is the mill directly on the M. K.

6064 & T. railroad tracks?

Mr. Clark: No, it is not.

Examiner Burchmore: How far away from the M. K. & T.?

Mr. Clark: It is a little over a mile.

Examiner Burchmore: How far is it from the Texas & Pacific?

Mr. Clark: It is very close to the Texas & Pacific.

Examiner Burchmore: A quarter of a mile?

Mr. Clark: Hardly that much.

Examiner Burchmore: Do you have any track running directly from the mill to the T. & P. Railway?

Mr. Clark: Yes, sir.

Examiner Burchmore: I mean any track besides this railroad's track?

Mr. Clark: No, it is the Jefferson & Northwestern has a connection with the T. & P.

Examiner Burchmore: How long have you been receiving divisions on interstate rates?

Mr. Clark: Since 1905.

Examiner Burchmore: Then previous to 1905 you got along without any divisions?

Mr. Clark: No, we had divisions with the intrastate at that time.

6065 Examiner Burchmore: You were shipping lumber previous to 1905 to interstate points?

Mr. Clark: No, very little.

Examiner Burchmore: All state points?

Mr. Clark: All state.

Examiner Burchmore: Then you put in interstate divisions as soon as you began shipping extensively outside of the state?

Mr. Clark: Interstate.

Examiner Burchmore: What are the amounts of your joint rates with the M. K. & T., the same as the rates from the M. K. & T. on their line?

Mr. Clark: Yes, sir.

Examiner Burchmore: No higher?

Mr. Clark: No higher.

Examiner Burchmore: What are your divisions?

Mr. Clark: From two to five cents.

Examiner Burchmore: On what traffic do you get only two cents?

Mr. Clark: Some points on the Rock Island, as low as two cents.

Examiner Burchmore: What is your average, your usual

6066 division?

Mr. Clark: It is very near five cents.

Examiner Burchmore: As a matter of fact, that seems to be confirmed by looking at that statement. I notice on 10,200 tons of lumber you get $9,183.72, which is nearly a dollar a ton. I have not asked you what the name of the junction points with the other railroads are.

Mr. Clark: The junction is Jefferson.

Examiner Burchmore: You join the M. K. & T. at Jefferson?

Mr. Clark: Yes, sir.

Examiner Burchmore: Where do you join the Texas & Pacific?

Mr. Clark: At Jefferson.

Examiner Burchmore: A different part of Jefferson?

Mr. Clark: Yes, sir.

Examiner Burchmore: Is Jefferson much of a town?

Mr. Clark: Yes, about 4,000 people, I guess, four or five.

Examiner Burchville: Is your mill at Jefferson?

Mr. Clark: No, the mill is at North Jefferson.

Examiner Burchmore: What stations are there on your line?

Mr. Clark: There is Lanier and Luana.

6067 Examiner Burchmore: Are there any towns at those places?

Mr. Clark: There is a town at Luana.

Examiner Burchmore: What is the size of that town and what is the character?

Mr. Clark: Just a country village and post office, and a couple of stores and a cotton gin; I suppose 100 people right there. The entire road, however, I should say, the entire 32 miles of the road, 75 per cent of it goes through farms.

Examiner Burchmore: Where is the timber located along the road?

Mr. Clark: The timber is scattered through these farms.

Examiner Burchmore: Is there quite a large body at the far end of the road?

Mr. Clark: Of course during the past twenty years that this road—since the line was built, the timber has been cut off, and the land has been made into farms.

Examiner Burchmore: Clark & Boyce cut over most of that land, didn't they?

Mr. Clark: Yes, sir.

Examiner Burchmore: And they own the timber at the far end of the line?

6068 Mr. Clark: Yes, sir.

Examiner Burchmore: There are private logging spurs at the far end of the line?

Mr. Clark: I don't know what you mean by that. They are owned and operated by the railroad.

Examiner Burchmore: They run into the woods?

Mr. Clark: For the lumber company.

Examiner Burchmore: What is the extent of the timber holdings of the Clark & Boyce Lumber Company in this vicinity? Express it in feet, acres, or any other way.

Mr. Clark: About fifty million feet.

Examiner Burchmore: How long will it take you to cut that out?

Mr. Clark: About four or five years.

Examiner Burchmore: What will you do when that is gone?

Mr. Clark: The mill will be abandoned.

6069 Examiner Burchmore: What about the railroads?

Mr. Clark: The railroads will continue to operate. I will say that we are constructing and building road right along. We are now—the end of the road is now within about twelve miles of the Cotton Belt. We are down in that neighborhood and we are working as fast as we can today to get that line up——

Examiner Burchmore: Do you run through any more timber?

Mr. Clark: No, there is no more timber.

Examiner Burchmore: What is the purpose of making that connection?

Mr. Clark: Simply to have a railroad.

2475

Examiner Burchmore: Might it be suggested that you are building across to the Cotton Belt in order to sell the line you have now, to save it?

Mr. Clark: That is our idea exactly. We have considered it a valuable property and expect to get more than it has cost us out of it in some way, either by the sale of the property or by the operation of the road.

Examiner Burchmore: Are there any other saw mills along your line?

6070 Mr. Clark: There are a number of small saw mills and shingle mills that ship over our road. The past two or three years, however, have been so hard on lumber people that a great many of these small mills have not been run very extensively. In years past we have handled a great deal more outside lumber than we did in the last year.

Examiner Burchmore: Could you conveniently prepare a list of those other mills, giving the names of the owners, some idea of the capacity, where they are located, is there a station on the line from which they ship, whether they are on your railroad or whether they team their lumber across?

Mr. Clark: Yes, sir.

Examiner Burchmore: Indicating how much they have shipped?

Mr. Clark: Yes, sir.

Examiner Burchmore: And you may give any other information that you want. Are any of these independent mills owned by the Clark & Boyce Lumber Company?

Mr. Clark: No.

Examiner Burchmore: They do not buy any of their timber from you?

Mr. Clark: No, sir.

Examiner Burchmore: What rates do they pay?

6071 Mr. Clark: Just pay the joint rates, unless it is intrastate, in which we have to pay a division of the local.

Examiner Burchmore: Clark and Boyce have a combination of the locals on state business?

Mr. Clark: Yes, but they do not pay them, however.

Examiner Burchmore: Do not ship any?

Mr. Clark: No.

Examiner Burchmore: Let me ask you whether any of these mills have to team their logs to the mill?

Mr. Clark: Yes, they all do.

Examiner Burchmore: Do they have to team their lumber over to the railroads?

Mr. Clark: Yes, sir.

Examiner Burchmore: They bear that cost in addition to the joint rate?

Mr. Clark: Yes.

Examiner Burchmore: Does the railroad haul logs from the woods down to the mill for Clark & Boyce?

Mr. Clark: Yes, sir.

Examiner Burchmore: What compensation do they receive for that?

Mr. Clark: Five dollars a car.

6072 Examiner Burchmore: Clark & Boyce pay five dollars a car?

Mr. Clark: Five dollars a car.

Examiner Burchmore: When the lumber is shipped out do you call that a separate transaction entirely?

Mr. Clark: Absolutely.

Examiner Burchmore: You do not refund that five dollars?

Mr. Clark: No, sir.

Examiner Burchmore: The rates are not on a milling in transit basis?

Mr. Clark: No.

Examiner Burchmore: Applied simply from the mill, I mean on such shipments.

Mr. Clark: Yes, sir.

Examiner Burchmore: You also issue bills of lading?

Mr. Clark: Yes, sir.

Examiner Burchmore: Waybills?

Mr. Clark: Well, we do not make the waybills; we make expense bills and we issue an expense bill against the M. K. & T. for each shipment, and also against the Clark & Boyce Lumber Company for each shipment, or anybody else, whoever it is.

Examiner Burchmore: I see.

6073 Mr. Clark: There is only one station, that is at North Jefferson, where there is an agent and there is no necessity for way bills.

Examiner Burchmore: Then the M. K & T. pays you your proportion?

Mr. Clark: Yes, sir.

Examiner Burchmore: Pays you at the time you give them the cars, or monthly?

Mr. Clark: Monthly, we make a statement monthly, and a settlement covering both inbound and outbound freight, the business that is handled interchangeably between the two lines.

Examiner Burchmore: You make that statement with the general office of the M. K. & T.?

Mr. Clark: No, with the agent at Jefferson.

Examiner Burchmore: You say you pay $5.00 a car for getting those logs to the mills?

Mr. Clark: Yes, sir.

Examiner Burchmore: How long has that been the practice?

Mr. Clark: We figure that $2.00 a thousand feet.

Examiner Burchmore: Logging scale?

6074 Mr. Clark: Logging scale.

Examiner Burchmore: Is that more or less than $5.00 a car?

Mr. Clark: It is about the same.

Examiner Burchmore: It is simply more convenient to pay by the car?

Mr. Clark: Per car, and it makes a better record of the movement.

Examiner Burchmore: Has the Jefferson and Northwestern Railway Company any contract with the Clark & Boyce Lumber Company?

Mr. Clark: No, sir.

Examiner Burchmore: Of course you have a verbal agreement, I suppose, concerning those logs?

Mr. Clark: Yes, sir.

Examiner Burchmore: Do you publish any tariffs covering the logging charge?

Mr. Clark: No.

Examiner Burchmore: Is there any contract between the Jefferson & Northwestern and the Missouri, Kansas & Texas Railway?

Mr. Clark: Yes, sir.

6075 Examiner Burchmore: I mean the M. K & T. of Texas.

Mr. Clark: Well, I don't know. I don't think that—I think that contract has expired. There was one made to run a year, and I don't know that another one has been made or not.

Examiner Burchmore: I have a contract dated May 1, 1906, or February 1, 1906.

Mr. Clark: I think that is the last one that we made. We just renewed that from year to year, and finally dropped it.

Examiner Burchmore: What was the essence of that contract?

Mr. Clark: The essence of it was that by the provisions we were to get for business of all kinds which we gave to the M. K. & T. Railway——

Examiner Burchmore: And it also provided that you would give them all of the tonnage, didn't it?

Mr. Clark: I don't think it did. I made that contract and I have not looked at it in so long I have forgotten just what its provisions were.

Examiner Burchmore: As far as practicable, as far as it may be done consistently with the laws of the state of Texas, and

6076 with existing contracts, the parties hereto agree to interchange business exclusively with each other, and the division of revenue from traffic interchanged between them will be as follows: Lumber, 5 cents; cotton to Shreveport 50 cents; cotton to Massachusetts, etc., 20 cents per 100 pounds, and so on. I did not read the division concerning the division of rates. Doesn't that article seem to provide for exclusive interchange with them?

Mr. Clark: I do not understand it so.

Examiner Burchmore: The parties hereto agree to interchange business exclusively?

Mr. Clark: At any rate it has not been adhered to, because we give some business to the T. & P.

Examiner Burchmore: That contract is on file with the Commission?

Mr. Clark: That contract is on file with the Commission.

Examiner Burchmore: I have not read it carefully.

Mr. Clark: There is one question that may come in your mind on looking over that contract. I call your attention to one clause in there which may bother you and I want to explain. This provides

that the M. K. & T. engines shall do the switching.

6077 Examiner Burchmore: To and from the mill?

Mr. Clark: To and from the mill. At the time that the contract was made the Jefferson & Northwestern was narrow gauge.

Examiner Burchmore: When was it made standard gauge?

Mr. Clark: It was made standard gauge about three years ago, and the Jefferson and Northwestern had no engines with which to do switching, but ever since they have been—the Jefferson & Northwestern has changed its gauge, it has been doing its own switching and turning its cars over to the M. K. & T. at Jefferson, and the contract connection which was contemplated in that contract was built by the Jefferson & Northwestern a little over a mile, and has been operated and kept up by them since.

Examiner Burchmore: I am glad you undertook to explain that. I have another contract here which looks like the same kind of a contract made May 4, 1908, looks like the same contract.

Mr. Clark: I guess that is a repetition. Those were made from year to year, I think.

Examiner Burchmore: No, it is different. This is a trackage right to your company to operate its engines from Jefferson

6078 to Clark's Spur, for the purpose of hauling logs to your mill. Have you that trackage right still?

Mr. Clark: I don't know whether it is still in effect or not. We have not used it. We used it at that time and discontinued it.

Examiner Burchmore: To get out all your lumber?

Mr. Clark: Yes.

Examiner Burchmore: What did you charge for going up there and getting logs for them?

Mr. Clark: For the lumber company?

Examiner Burchmore: Yes, do you remember what you charged them the same charge, $2.00 per car?

Mr. Clark: Just the same, $5.00 or $2.00 a car.

Examiner Burchmore: $2.00 a car?

Mr. Clark: Yes, sir, at that time it was $2.00 a car and afterwards it was changed, as I said, to $5.00 per car. If I am not mistaken that provides for a charge to the M. K. & T. for $2.00 per car.

Examiner Burchmore: Who paid that?

Mr. Clark: The railroad company.

Examiner Burchmore: And you paid how much, $2.00 per car and received approximately $5.00?

6079 Mr. Clark: But the railroad company operated the entire service aside from furnishing the track.

Examiner Burchmore: I mean the Jefferson & Northwestern got $3.00 for the service it performed?

Mr. Clark: Yes.

Examiner Burchmore: Approximately $3.00?

Mr. Clark: Yes.

Examiner Burchmore: There are two large tie camps near the road?

Mr. Clark: Yes, sir.

Examiner Burchmore: You got $3.00 for the haul from your road?

Mr. Clark: Yes, sir.

Examiner Burchmore: Do you handle any other traffic for them up there?

Mr. Clark: Yes, sir, we handle a good deal.

Examiner Burchmore: Who are Hussey & Whelan?

Mr. Clark: They are tie contractors. They also have a mill on our line which they use for cutting bolts.

Examiner Burchmore: You have a contract with them dated July 30, 1909, but I don't seem to have a copy of that contract.

6080 Mr. Clark: Yes, sir.

Examiner Burchmore: Are you hauling ties for them under that contract?

Mr. Clark: Yes, sir.

Examiner Burchmore: What do you charge them?

Mr. Clark: Ten dollars a car.

Examiner Burchmore: From where to where?

Mr. Clark: From as far as Lanier, I think, possibly a little further.

Examiner Burchmore: What distance is that?

Mr. Clark: I have forgotten the distance. It only provides for a certain distance out on the line. It does not cover the entire line at that rate.

Examiner Burchmore: It shows between Jefferson and Luana.

Mr. Clark: Yes.

Examiner Burchmore: It does not give the distance.

Mr. Clark: No, Luana is eighteen miles.

Examiner Burchmore: Who furnishes the cars for those movements?

Mr. Clark: Whatever line it goes out over.

Examiner Burchmore: Have you any tariff to cover that ten dollar charge?

6081 Mr. Clark: Get that contract.

Examiner Burchmore: Is that sufficient compensation to you for that service?

Mr. Clark: Yes, sir.

Examiner Burchmore: You do not regard it as entirely inadequate?

Mr. Clark: No.

Examiner Burchmore: I have here what seems to be a copy of a letter filed by Mr. Barr, under date of January 7, 1909, to the National Lumber Cross Tie Company of Texarkana, wherein he quotes a rate of $10 a car on hewn gum, pine, cross-ties, poles, and stulles from any point on the Jefferson & Northwestern less than 18 miles out into Jefferson, prescribing the maximum load. Do you know whether they have been shipping anything under that?

Mr. Clark: Yes.

Examiner Burchmore: Are they still shipping?

Mr. Clark: Yes, sir.

Examiner Burchmore: And you are charging them ten dollars?

Mr. Clark: Yes, they ship—they have a large amount of those ties.

6082 Examiner Burchmore: I will ask you whether the ten dollar charge is a sufficient compensation for hauling those cars ten miles?

6083 Mr. Clark: I think so, that is, we are satisfied with it.

Examiner Burchmore: Can you give me a statement supplementing that you have placed in evidence, showing the amount of freight taken to and from each station on your line, by stations? Can you readily make up such a statement?

Mr. Clark: Covering what period?

Examiner Burchmore: Covering the calendar year 1910.

Mr. Clark: Yes, I can do that.

Examiner Burchmore: If you will, please.

Mr. Clark: Let me make a note of that.

Examiner Burchmore: Submit a statement of tonnage, station by station, in and out. I would also like a second statement containing more figures than the one you have put in evidence, or at least some final figures showing in one column Clark & Boyce traffic, and in the other column public traffic.

Mr. Clark: Yes.

Examiner Burchmore: You have not separated it on the basis of the statement herewith, you have just separated it in a footnote. Will you also furnish us with a map of your line showing mills, and so forth, into which——

Mr. Clark: I heard you describe the kind of a map that

6084 you wanted.

Examiner Burchmore: What is the average amount of money that you receive on a carload of lumber that comes from the Clark & Boyce Lumber Company mill and moves out over the M. K. & T.? What is your average division on a car?

Mr. Clark: About $22.

Examiner Burchmore: What service do you perform for that division?

Mr. Clark: We bring in the empties from Jefferson and place them at the loading platform and carry the loads back, that is, we would haul the logs in from the woods and deliver them.

Examiner Burchmore: I thought you had already been paid for hauling the logs $5 a car?

Mr. Clark: We are, but that might not be sufficient if the other was not taken into consideration; in fact it shows that it would not.

Examiner Burchmore: Your mill is three or four miles from the M. K. & T.?

Mr. Clark: A little over a mile.

Examiner Burchmore: A mile?

Mr. Clark: Yes, sir.

Examiner Burchmore: Suppose this railroad was taken up,

6085 suppose there was not any railroad between *the* your line and the M. K. & T., how long could your mill keep going? How long could you continue to sell lumber and team it across?

Mr. Clark: We could not do it at all.

Examiner Burchmore: So that that railroad across there is absolutely essential, of course for your operation?

Mr. Clark: It is.

Examiner Burchmore: It is just as essential as the M. K. & T. itself, is it?

Mr. Clark: Yes, sir.

Examiner Burchmore: Is it practical to team your logs to the mills from the woods?

Mr. Clark: It is impossible.

Examiner Burchmore: How far are your woods from the mill?

Mr. Clark: Thirty-two miles.

Examiner Burchmore: Than you have got to have a railroad from the woods down to the mill?

Mr. Clark: Yes, sir.

Examiner Burchmore: And that railroad is about as necessary as the other railroad, isn't it?

Mr. Clark: Yes, sir.

Examiner Burchmore: Both the railroad in and the rail-
6086 road out?

Mr. Clark: Yes, sir.

Examiner Burchmore: They are both essential to the operation of the mill?

Mr. Clark: Yes, sir.

Examiner Burchmore: You say these little mills that are out along your line do manage to continue in business with the short team haul that they have?

Mr. Clark: Yes, a very small business, however.

Examiner Burchmore: They, however, come under interstate shipments?

Mr. Clark: Yes, their shipments are all interstate; that is, if they get the benefit of the through rate. Occasionally they will ship intrastate or with a combination of local rates, but they do just exactly the same as the Clark & Boyce Lumber Company does, they sell their lumber outside of the state so as to get the benefit of lower rates and use their published rate.

Examiner Burchmore: Is there any other statement that you care to make, Mr. Clark?

Mr. Clark: Why——

Examiner Burchmore: I have no further questions.

6087 Mr. Clark: I do not know of anything except things that have occurred to me in connection with the questions which have been asked that I have heard of some of the others, and that is in regard to the discrimination against the mill that did not get a division for its line of railroad. I say that we own and operate a mill on the Texas & Pacific, I think about twenty-five miles north of Jefferson which gets no tap line division.

Examiner Burchmore: They have a branch logging line?

Mr. Clark: They have a logging road.

Examiner Burchmore: Is it incorporated?

Mr. Clark: Not incorporated.

Examiner Burchmore: What is the name of it?

Mr. Clark: It has no name, and that that mill operated on the road as an expense department of the mill makes its lumber cheaper than the mill in Jefferson.

Examiner Burchmore: Well, it does not haul its logs in 32 miles.

Mr. Clark: No, it does not, and that is why I say that a mill that is not incorporated does not get anything, is not discriminated against.

Examiner Burchmore: As a matter of fact in that par-
6088 ticular case it is not, but what distance do they haul their logs?

Mr. Clark: About five miles.

Examiner Burchmore: How big a railroad have you got?

Mr. Clark: That is the extent of the railroad.

Examiner Burchmore: Good condition, light rail?

Mr. Clark: Light rail, not anything like the same kind of a road that the Jefferson & Northwestern is.

Examiner Burchmore: Are there any other mills on that private road up there?

Mr. Clark: No, one at this place——

Examiner Burchmore: Yes or no.

Mr. Clark: No, sir.

Examiner Burchmore: Will you tell me where that mill is?

Mr. Clark: This was Kildare. Bancker is the name of the place. the post-office of Kildare, and the capacity of that mill is 40,000 feet a day.

Examiner Burchmore: And your other mill is how much?

Mr. Clark: Fifty.

Examiner Burchmore: You have a private logging road up there?

Mr. Clark: Yes, sir.

Examiner Burchmore: Is there anybody else in the vicinity
6089 of that logging road that uses it for any purpose?

Mr. Clark: No, sir.

Examiner Burchmore: It is just used as a part of the mill?

Mr. Clark: Part of the mill proper. It is entirely different from the service performed by the Jefferson & Northwestern road, the circumstances are entirely different.

Examiner Burchmore: What is the difference in circumstances?

Mr. Clark: The fact that their road is not incorporated as a common carrier, performs no service for outside parties, and the haul is short. It is not incorporated, it can operate so much more cheaply than the Jefferson & Northwestern can afford to operate the same service for the Clark & Boyce Lumber Company.

Examiner Burchmore: Would it be to their advantage if it was incorporated to get divisions?

Mr. Clark: Well, we have not considered it. I doubt very much if it will. It will never haul logs very far, and I hardly think that it will perform much service for outsiders.

Examiner Burchmore: You have got about as much of a railroad up there for your movement as some of these other railroads you have heard about the last few days, five miles long?

6090 Mr. Clark: Well, I have heard of some that were rather short. I have not heard of any that were quite as short as five miles since I have been here.

Examiner Burchmore: Are there mills in that vicinity, in the vicinity of this other property, which have incorporated their roads?

Mr. Clark: No, sir. There is one other statement I would like to make.

Examiner Burchmore: Certainly.

Mr. Clark: That is in connection with the—it seems that discrimination has been claimed on account of so-called tap lines on the Santa Fe that do not get their divisions. We also have a mill in Oklahoma——

Examiner Burchmore: On the Santa Fe?

Mr. Clark: No, on the Frisco, where we get no divisions, but under the Oklahoma Corporation Commission, the rates from that mill——

Examiner Burchmore: Is that an incorporated railroad?

Mr. Clark: No, sir. Up until last June there were through rates between all railroads in Oklahoma which enabled us from our mill on the Frisco to ship to points on the Santa Fe. We always
6091 found that we could get from 50 cents to $1.00 a thousand more for our lumber on the Santa Fe than we could in other places in Oklahoma.

Examiner Burchmore: I suppose you mean to refer to the fact that the Santa Fe Local markets are closed to outside mills?

Mr. Clark: Absolutely, yes, but that arrangement enabled us to get there when nobody else could.

Examiner Burchmore: Are there any other saw mills in Oklahoma?

Mr. Clark: About four of them.

Examiner Burchmore: You have got one of them?

Mr. Clark: Yes.

Examiner Burchmore: And they all do a fine business in Oklahoma, don't they?

Mr. Clark: Well, not exactly, no. Under the present conditions they are at a great disadvantage.

Examiner Burchmore: In what way?

Mr. Clark: On account of the fact that these commission rates have been enjoined by the railroads, and we have no joint rates at all.

Examiner Burchmore: No joint rates?

6092 Mr. Clark: In Oklahoma.

Examiner Burchmore: Between trunk lines?

Mr. Clark: Between trunk lines.

Examiner Burchmore: Does that extend the rate from the mill down in Texas and Louisiana?

Mr. Clark: Yes, we cannot get farther than about five miles off of the Frisco railroad on any other except a few of the smaller lines.

Examiner Burchmore: I presume if you want to make a sale of lumber in southern Oklahoma on the Rock Island system, you can ship cheaper from your Texas mill than you can from Oklahoma?

Mr. Clark: Yes, sir.

Examiner Burchmore: What is the capacity of your Oklahoma mill?

Mr. Clark: It is 60,000.
Examiner Burchmore: Where is that located?
Mr. Clark: Bokhoma.
Examiner Burchmore: Is there anything further, Mr. Clark?
Mr Clark: I don't think of anything except these statements which I will file for the other shippers on the Jefferson & Northwestern. I will make it as complete as I can. I will say
6093 that the country along the road is developing and they are encouraging the settlement by farmers. The lumber company owns about 30,000 or 20,000 acres of cut-over land which it is trying to colonize and to some extent is succeeding, for the farming country is good and the production of farm products is increasing, and this railroad is a large factor in the development of that country.

6094 *Natchez, Ball & Shreveport Railway Company.*

F. R. PIERCE was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Brown: Mr. Pierce, you are auditor of the Natchez, Ball & Shreveport Railway Company?
Mr. Pierce: I am.
Mr. Brown: What is the length of that line of road, Mr. Pierce?
Mr. Pierce: Thirty-four miles of main line.
Mr. Brown: What is your main line connection?
Mr. Pierce: The main line of the Rock Island, the L. & A. Railway and the Iron Mountain.
Mr. Brown: What point does it connect with the Iron Mountain?
Mr. Pierce: At Ball and at Pollock, Louisiana.
Mr. Brown: Do you cross the other lines that you mentioned?
Mr. Pierce: We do, the L. & A. and the Rock Island using the same tracks, the same rails.
Mr. Brown: Does the Rock Island come down over the L. & A. rails, or the L. & A. over the Rock Island rails, which
6095 way is it?
Mr. Pierce: The Rock Island over the L. & A. rails, I think the track belongs to the L. & A.
Mr. Brown: And you have a junction with them at that point of crossing?
Mr. Pierce: Yes, sir.
Mr. Brown: This is a standard gauge road?
Mr. Pierce: It is.
Mr. Brown: What sort of a line is it as to construction? Weight of rail, ballast and so forth?
Mr. Pierce: Fourteen miles of the track is 35 pound rails, 3,000 ties to the mile. The other, the balance of the road, is 56 pound steel, 3,000 ties to the mile, and all dirt road.
Mr. Brown: What equipment have you?
Mr. Pierce: Four locomotives, 65 to 70 flat cars, two cabooses.
Mr. Brown: Are these standard flat cars or logging cars?

Mr. Pierce: Standard flat cars.

Mr. Brown: And are the locomotives and cars equipped under the safety appliance act?

Mr. Pierce: They are.

Mr. Brown: I forgot to ask you, this point of junction
6096 near Pollock with the Iron Mountain, that is in Arkansas, isn't it?

Mr. Pierce: That is in Louisiana.

Mr. Brown: And your road is incorporated under the laws of Louisiana?

Mr. Pierce: It is.

Mr. Brown: Do you have any lumber mills on the line of this road?

Mr. Pierce: There are mills on the line of the road.

Mr. Brown: What is the principal mills?

Mr. Pierce: The principal mills are owned by J. F. Ball and Brother Lumber Company. They are located at Pollock and at Ball.

Mr. Brown: At the two points?

Mr. Pierce: At the two points.

Mr. Brown: Can you give a list of the stockholders of the railroad company, and also a list of the stockholders of this lumber company that you speak of?

Mr. Pierce: I cannot give you a list of the stockholders of the lumber company. I can give you a list of the stockholders of the railroad company.

Mr. Brown: You can read it right into the record, if it
6097 is brief.

Mr. Pierce: The stockholders of the railroad company are J. F. Ball, R. L. Ball.

Examiner Burchmore: Can you give the number of shares as you read them?

Mr. Pierce: I can. Do you wish it, Mr. Examiner?

Examiner Burchmore: Yes.

Mr. Pierce: J. F. Ball, 825; R. L. Ball, 35; J. W. Ball, 600; F. R. Pierce, 10; C. E. Hard, 10; R. P. Hunter, 10; J. B. Roberts, 10.

Mr. Brown: Who are the officers of the road, who is the president?

Mr. Pierce: J. F. Ball is president, R. L. Ball is vice-president; J. W. Ball is secretary and treasurer, F. R. Pierce is traffic manager and auditor.

Mr. Brown: Do you handle any products over that road—any traffic, I should say, over this road, except timber and timber products?

Mr. Pierce: We do.

Mr. Brown: About what per cent of the total traffic do you think constitutes this other business?

Mr. Pierce: It is small, probably not to exceed 5 per
6098 cent of the traffic is other than forest products. The territory traversed when we started the line was an unbroken forest and it has not been cleared to any considerable extent as yet.

Mr. Brown: Well, is there any development of this outside business, that is, agricultural products and things of that kind?

Mr. Pierce: There is. Our traffic on that kind of business is increasing more or less.

Mr. Brown: Is your road a party to joint through tariffs with the Iron Mountain and L. & A. road?

Mr. Pierce: We have no joint through tariffs with the L. & A.; we have with the Iron Mountain.

Mr. Brown: Do these joint through tariffs include lumber, timber products, also any class commodity joint rates?

Mr. Pierce: We have no class commodity joint rates. We have only through interstate rates on forest products.

Mr. Brown: Are you a party to the tariff authorizing milling in transit privileges on your line or in connection with the Iron Mountain?

Mr. Pierce: We are.

Mr. Brown: From any mill on your line?

Mr. Pierce: We are.

6099 Mr. Brown: At the end of the main line of the road does your railroad company operate any timber spurs?

Mr. Pierce: We do.

Mr. Brown: Explain to the Examiner how that is handled?

Mr. Pierce: We operate spurs for getting out logs. We own two log loaders, which we load logs with and bring them up to the main line.

Examiner Gutheim: Do you mean the railroad owns the log loaders?

Mr. Pierce: The railroad owns the log loaders.

Mr. Brown: Do you make any charge for that service?

Mr. Pierce: We do.

Mr. Brown: You make a separate and distinct charge from the division of the rates?

Mr. Pierce: We do.

Mr. Brown: What is your charge?

Mr. Pierce: $1.50 per thousand feet, predicated on log scale.

Mr. Brown: What are your divisions with the Iron Mountain under the tariff of joint rates?

Mr. Pierce: Any quantity?

Mr. Brown: Yes.

6100 Mr. Pierce: They vary from 1½ to 5 cents per 100.

Mr. Brown: What would you say about your average divisions?

Mr. Pierce: Well, a trifle over 3 cents, 3.2.

Mr. Brown: To what points does the 5 cent division apply?

Mr. Pierce: The 5 cents division applies to trans-Missouri territory on rails of the Missouri Pacific system.

Mr. Brown: Does it extend to Colorado common points?

Mr. Pierce: It does.

Mr. Brown: What per cent of your lumber tonnage in your opinion is handled by this Ball Lumber Company that is located near you?

Mr. Pierce: Practically nothing handled for them.

Examiner Gutheim: How much is handled for others?

Mr. Pierce: 100 per cent.

Mr. Brown: Have you any explanation to make to the Examiner pertaining to that last statement of yours, when you say practically nothing?

Mr. Pierce: J. F. Ball, or the lumber company, is located on our line, but their shipments are all made to consignees throughout the country, I could not say to whom, their name is legion, they are scattered all over the United States, and the car is handled for the consignee, not for the shipper.

6101 Examiner Gutheim: Very well, but how much of that lumber comes from the mills of the Ball Lumber Company?

Mr. Pierce: Oh, probably 95 per cent.

Mr. Gutheim: Only 95 per cent?

Mr. Pierce: Well, I am not certain as to that, but I would say that it is that amount.

Mr. Gutheim: And the lumber is sold f. o. b. point of origin?

Mr. Pierce: Sold f. o. b. destination as a rule. The reason I am not particularly interested in the sale of the lumber, we know how they sell it, but when we issue a bill of lading for it it goes to the man himself whose name is shown in the bill of lading as the consignee.

6102 Examiner Gutheim: Did you ever hear of a consignor stopping a shipment in transit?

Mr. Pierce: Such an occurrence has never come under my direct observation. I believe it could be done.

Mr. Brown: You understand that that is only in certain particular cases under peculiar conditions?

Mr. Pierce: I understand that.

Examiner Gutheim: Mr. Pierce, you say that the lumber belongs to the individual named in the bill of lading. Do those bills of lading all read straight or are they shipped out a good deal, "Shipper's order; notify"?

Mr. Pierce: We do not have a case of that kind once in six months.

Examiner Gutheim: The bills of lading are all made straight to the consignee?

Mr. Pierce: Yes, we object to that other class of shipments.

Mr. Brown: So in that sense, all of the consignees of these mills on your road are—you regard them as patrons of your road, and shippers over your road?

Mr. Pierce: They are our patrons, our shippers.

Examiner Gutheim: I would like to ask one question on
6103 this point. Do you solicit business from consignees?

Mr. Pierce: From consignees?

Examiner Gutheim: Yes.

Mr. Pierce: We have no traveling freight agents at all.

Examiner Gutheim: Does the consignee control the routing so far as you are concerned? Does he give you the routing instructions?

Mr. Pierce: He may or he may not, but he has the right to control it.

Examiner Gutheim: Do you as manager of the railroad ever receive from a consignee routing instructions on a carload of lumber?

Mr. Pierce: I have.

Examiner Gutheim: Directly from the consignee?

Mr. Pierce: I have.

Examiner Gutheim: Then he was also the consignor?

Mr. Pierce: I would not say so.

Examiner Gutheim: Did you ever receive a carload shipment to be transported to an interstate destination where the consignee was not also the consignor?

Mr. Pierce: Practically every shipment that we have, the consignee is the consignee alone, and his identity is entirely
6104 separate from that of the consignor.

Examiner Gutheim: But the consignee has nothing to do with the original contract of transportation with the railroad, has he?

Mr. Pierce: Surely he has. The original contract of transportation is evidenced by our bill of lading.

Examiner Gutheim: But the road issues the bill of lading?

Mr. Pierce: We issue a bill of lading to the consignor and a duplicate to the consignee if he wants it.

Examiner Gutheim: Do you enter into any contract with the consignee when you issue that bill of lading?

Mr. Pierce: We do.

Examiner Gutheim: What is the contract?

Mr. Pierce: A contract to transport it over our line and deliver it to our connection in good order, in safety.

Mr. Brown: The consignee is the beneficiary under that contract?

Mr. Pierce: He surely is.

Examiner Gutheim: I believe you said that your road is capitalized at $500,000.

Mr. Pierce: Yes, sir.

Examiner Gutheim: $280,000 only of that has been issued.

6105 Mr. Pierce: It has.

Examiner Gutheim: Issued to these stockholders that you have given a list of?

Mr. Pierce: It has.

Examiner Gutheim: Does your railroad company at this time, or has it at any time in the past, held itself out to all persons as a carrier of goods for hire, and accepted all that has been tendered, and provided facilities for the transportation of all freight and goods for hire that has been tendered you?

Mr. Pierce: We have.

Examiner Gutheim: Is that the fixed policy of the company?

Mr. Pierce: It is.

Examiner Gutheim: Do you make your report to the Louisiana Commission?

Mr. Pierce: We are making reports to the Louisiana Commission now.

Examiner Gutheim: Do you enjoy exemption from taxation as provided under the constitution and laws of the state of Louisiana?

Mr. Pierce: We have.

Examiner Gutheim: To railroad companies. Are you rec-
6106 ognized by the Railroad Commission of Louisiana as a common carrier?

Mr. Pierce: We are not at this moment, but we will be within three days.

Examiner Burchmore: Will you explain that answer? I did not quite understand it. Perhaps I did not get the words of that.

Examiner Gutheim: What did you mean by that, Mr. Pierce? Is it that this road was not included in the list which was filed here yesterday by Mr. Barrow, is that correct?

Mr. Pierce: That is correct.

Examiner Gutheim: Now have you any statement with respect to that omission to make to the Examiner?

Mr. Pierce: This statement I can make, I have got to acknowledge my own dereliction in the matter of my lack of promptness in past times as to the requirement of the Louisiana Commission in tardiness on my part in properly furnishing the required information to the Commission.

Examiner Burchmore: What was the nature of your omission?

Mr. Pierce: Failure to make proper reports to the commission.

Examiner Burchmore: You mean failure to make the re-
6107 ports required by the state law?

Mr. Pierce: Yes, sir; failure to see that the bookkeeper made the proper report.

Examiner Burchmore: Then you have never had any official relations to the State Commission of Louisiana?

Mr. Pierce: We never have.

Examiner Burchmore: How do you know that you are going to be recognized in three days?

Mr. Pierce: Because I have submitted the matter to the Commission and they assured me that we were entitled to recognition and would be recognized upon our complying with the rules of the Commission.

Examiner Burchmore: When and in what way did you present that matter?

Mr. Pierce: Informally.

Examiner Burchmore: Did you say when?

Mr. Pierce: I presented it on the 25th of this month.

Examiner Burchmore: All right.

Mr. Brown: Mr. Pierce, have you also made application to have the Commission file—the State Commission file with the Interstate Commerce Commission a supplemental statement showing
6108 your road, if action was taken favorably by the Louisiana Commission?

Mr. Pierce: I have.

Mr. Brown: I think that is all I want to ask.

Examiner Burchmore: Where is your connection with the L. & A., Mr. Pierce? I ask the question because an examiner of the

Commission who went over this property some time ago reported only the Iron Mountain connection.

Mr. Pierce: We cross it at Dry Prong and Bentley.

Examiner Burchmore: Dry Prong and Bentley?

Mr. Pierce: Yes, sir.

Examiner Burchmore: And you connect with both the L. & A. and the Rock Island at both those points?

Mr. Pierce: I think they use the same rails from Winfield south.

Examiner Burchmore: What I wanted to ascertain was whether the Rock Island operated over the entire rails of the L. & A. between those points; that is I want to know whether the Rock Island was operating over the L. & A. at Dry Prong and at Bentley also?

Mr. Pierce: They do.

Examiner Burchmore: Do you own all of the equipment that you enumerated?

6109 Mr. Pierce: We do not.

Examiner Burchmore: How much is leased?

Mr. Pierce: Twenty-seven cars.

Examiner Burchmore: Those are flat cars?

Mr. Pierce: Flat cars.

Examiner Burchmore: Who owns those cars and what is the consideration paid as rental?

Mr. Pierce: The St. Louis, Iron Mountain & Southern owns the cars. The consideration paid for rental is 30 cents per day.

Examiner Burchmore: Was that rate raised from 25 cents per day at the time that the general increase was made in per diem rate?

Mr. Pierce: I do not know the time.

Examiner Burchmore: Now, do I understand that the Ball Company had two mills on the line?

Mr. Pierce: Yes, sir.

Examiner Burchmore: Where are they located?

Mr. Pierce: At Ball and at Pollock.

Examiner Burchmore: Now, the stockholders whose names you gave us, have no relation as stockholders to the J. F. Ball & Brother Lumber Company?

6110 Mr. Pierce: I cannot testify to that from my own knowledge. I do not think there is any question but what several of them have, the principal ones.

Examiner Burchmore: Is it your general understanding that the three members of the Ball family who hold something more of the railroad stock than ten shares each, ten shares being the holding of four other individuals—is it your understanding that those three members of the Ball family own or control the policies of the J. F. Ball & Brother Lumber Company?

Mr. Pierce: Yes, that is my understanding.

Examiner Burchmore: You own ten shares of stock in this railroad. Have you a certificate evidencing that fact?

Mr. Pierce: There is a certificate issued evidencing that fact, but I haven't it in my possession.

Examiner Burchmore: As a matter of fact, you endorsed it in blank, didn't you?

Mr. Pierce: I did not.

Examiner Burchmore: Did you pay for that stock?

Mr. Pierce: No, sir, I did not.

Examiner Burchmore: Who did pay for it?

Mr. Pierce: It was not paid for in cash. It was issued to me for services.

6111 Examiner Burchmore: What was the nature of the services?

Mr. Pierce: The nature of the services was my services as auditor and traffic manager of the road.

Examiner Burchmore: Do you receive a salary from this road?

Mr. Pierce: I do.

Examiner Burchmore: Have you any objection to stating the salary?

Mr. Pierce: My salary is predicated on my services to five roads, it is divided among them, so that this road only bears its proportion.

Examiner Burchmore: You had been receiving a salary from these five roads or some of them, previous to the time you acquired stock in this company?

Mr. Pierce: I had not.

Examiner Burchmore: When did you acquire stock in this company?

Mr. Pierce: In 1903, I believe, I am not quite certain as to the date.

Examiner Burchmore: At the same time you became its traffic manager?

Mr. Pierce: At the same time I became its traffic man-

6112 ager, or soon afterwards.

Examiner Burchmore: Did your full salary commence at the same time you began your duties?

Mr. Pierce: I do not recall that, some time ago.

Examiner Burchmore: You did not receive this stock in lieu of salary?

Mr. Pierce: I do not recall that.

Examiner Burchmore: As a matter of fact, wasn't this certificate presented to you in consideration, as you remember it, of the fact that you were about to become traffic manager and were therefore available as a director?

Mr. Pierce: No, I think not. It was given me, at least, under my impression, because I had rendered value received for it.

Examiner Burchmore: If you cease your service with this company, if that occurs, do you think you will continue to own the stock?

Mr. Pierce: If I can dispose of it to advantage I will not.

Examiner Burchmore: To what advantage do you think you could dispose of it?

Mr. Pierce: The stock is not quoted at this time, Mr. Ex-

6113 aminer.

Examiner Burchmore: Do you think you could sell it?

Mr. Pierce: I think I could.

Examiner Burchmore: You are a director in the company?

Mr. Pierce: I am.

Examiner Burchmore: And the other three gentlemen who own shares are also directors?

Mr. Pierce: They are.

Examiner Gutheim: Do you know, Mr. Pierce, whether Mr. Herd, Mr. Hunter or Mr. Roberts, have any official relation with the J. F. Ball & Brother Lumber Company, of if they are employés of that company?

Mr. Pierce: I do not know. Mr. Herd is the book-keeper of the railway company. What the employment of Mr. Hunter and Mr. Roberts is I am not prepared to say.

Examiner Gutheim: Do you know where the residence of those gentlemen is that you have mentioned?

Mr. Pierce: Mr. Herd's residence is at Pollock. Where the two other gentlemen reside I do not know.

Examiner Gutheim: Now, in addition to the $280,000 capital stock outstanding does this railroad company have any considerable debt?

6114 Mr. Pierce: It has a debt of approximately $100,000 in open accounts, due to the J. F. Ball & Brother Lumber Company.

Examiner Gutheim: Is any interest paid on that debt.

Mr. Pierce: There has not been so far as I know. That is a detail of book-keeping, I would not be in a position to testify as to that.

Examiner Burchmore: Didn't you testify at New Orleans?

Mr. Pierce: I did.

Examiner Burchmore: For what companies?

Mr. Pierce: For the Enterprise Railroad Company, the Saline Bayou Railroad Company and the Griffin, Magnolia & Western Railroad Company.

Examiner Gutheim: Now, is that $100,000 of debt a debt which has arisen in the operation of the road from time to time, or is it a debt applicable to the construction cost of the road?

Mr. Pierce: I do not know.

Examiner Gutheim: Well, as a matter of fact——

Mr. Pierce: The information comes to me from the president that that debt exists and how it was accumulated I could not testify.

6115 Examiner Gutheim: Is your connection with the railroad as auditor, Mr. Pierce, an active or nominal connection in that capacity?

Mr. Pierce: It is active to a certain extent, but I do not keep the books.

Examiner Gutheim: Are the books, as a matter of fact, in Pollock or in St. Louis?

Mr. Pierce: They are in Pollock.

Examiner Gutheim: I asked you because our examiner who went down to Pollock and asked for the books, was told that he would have to go to St. Louis, and when he got to St. Louis he was told that he would have to go to Pollock.

Mr. Pierce: I think there is some mistake, Mr. Gutheim, to this extent, that any examiner who came to me with regard to this road, in St. Louis, and I would be the one to whom he would apply in St. Louis, would have received all the information that I could possibly get. There might have been some details in which I would have to ask him to see our bookkeeper at Pollock.

Examiner Burchmore: Just what books do you keep here?

Mr. Pierce: I keep the Interline accounts of the road.

Examiner Gutheim: That is what I understood from the report, Mr. Pierce.

6116 Mr. Pierce: Yes.

Examiner Gutheim: The examiner in St. Louis, as you say, was no doubt properly informed that the books were at Pollock, but the examiner at Pollock could not gain access to the books, he was told there that they were in St. Louis.

Mr. Pierce: The office there has been in a chaotic condition owing to some unfortunate tragedies that occurred at this place, and it has been quite difficult to get the books kept properly or to my satisfaction.

Mr. Brown: There is no disposition to conceal any of the affairs of this railroad company or its books or anything of that kind?

Mr. Pierce: Not the slightest whatever.

Mr. Brown: They are open for inspection to any examiner of the commission, of course?

Examiner Gutheim: I thought it might be well understood where we would have to go hereafter.

Mr. Pierce: Two men have been killed down there, and those books are not kept in the manner that we would like to have them kept, but we think they will be hereafter.

Examiner Burchmore: They are kept in Pollock?

Mr. Pierce: Kept in Pollock.

6117 Examiner Burchmore: Is there a provision of the statutes of Louisiana requiring a company organized in that state to maintain general offices in that state?

Mr. Pierce: I am not prepared to say, I never heard of it.

Examiner Gutheim: Now, can you say, Mr. Pierce, about what the footage of logs is that you take out of the woods, by this railroad in a year, say in the past fiscal year of the railroad?

Mr. Pierce: Our log tonnage in feet?

Examiner Gutheim: Footage, yes.

Mr. Pierce: Approximately thirty-five millions of feet.

Examiner Gutheim: Do you know how much was taken out in the year ending June 30, 1909, whether you operated to about that extent also?

Mr. Pierce: In 1909 my recollection is that our tonnage was light, business was very quiet on the road.

Examiner Gutheim: What relation would the actual footage actually handled have to the figure 35,000,000 feet in that year?

Mr. Pierce: I do not recall.

Examiner Gutheim: Well, was it 20,000,000 feet, would

6118 you say?

Mr. Pierce: I prefer not to hazard a rough statement.

Examiner Gutheim: You pay 1.50 per thousand for this spur work that is done by the railroad company?

Mr. Pierce: We collect $1.50 per 1,000 from them.

Examiner Gutheim: The lumber company pays the railroad company $1.50 per thousand for spur work?

Mr. Pierce: That is our charge.

Examiner Gutheim: That $1.50 is the charge on all of the logs that are handled into the mill?

Mr. Pierce: It is.

Examiner Gutheim: Do you know what proportion of your revenue is revenue derived from divisions out of the junction point rate?

Mr. Pierce: I do not.

Examiner Gutheim: Would you say that your divisions were as high as one-half of your total revenues?

Mr. Pierce: They should be.

Examiner Gutheim: Does the amount which the railroad charges up against the lumber company for this spur work go into your freight revenue account?

Mr. Pierce: I have forgotten how the commission has that
6119 kept. My recollection however is that there is a requirement for revenue from other sources than the movement of freight into which it goes.

Examiner Gutheim: But that would go into your gross revenues at the end?

Mr. Pierce: No, on the gross revenue——

Examiner Gutheim: The reason I ask is that your total revenue in the year that I have examined, seems to be $18,800. Assuming that half of it was divisions would leave about $9,400 that would have arisen on collections from the lumber company or charged against the lumber company for spur work. That would not account for anything like 35,000,000 feet, and the question in my mind is whether you are actually charging the lumber company $1.50 per 1000 on all of the footage that is handled.

Mr. Pierce: You may rest assured that we are.

Examiner Gutheim: Where does the credit go if it does not go into the gross revenue ultimately?

Mr. Pierce: Well, it goes into the gross revenue ultimately. There are errors in that set of books, in that set of accounts.

Examiner Gutheim: Is the revenue that comes to the rail-
6120 road from divisions credited to the revenue account or is it credited to the lumber company's account?

Mr. Pierce: Credited to neither, it is credited to freight earnings.

Examiner Gutheim: That is what I mean by the railroad company's account. You said that the railroad company own log loaders, and that this $1.50 per 1000 is supposed to compensate them for the work on the spurs, and also I suppose for the expense of carrying the investment in log loaders?

Mr. Pierce: It is compensation for the service rendered them, whether it compensates them or not.

Examiner Gutheim: Now, has the railroad operation been profitable to them, Mr. Pierce?

Mr. Pierce: My understanding is that it has not been profitable.

Mr. Brown: You have not received any dividends on your stock?

Mr. Pierce: I have received no dividends.

Examiner Gutheim: The operations for the year seem to indicate a net revenue of about $6,000. If no dividends are paid, those revenues operate to reduce the indebtedness due by this company.

6121 It shows that with an average division of three cents an approximate net revenue of about $6,000, and the whole making about $19,000, if your divisions were reduced to two cents, it would practically wipe out the profits of this company. Now, if it were further reduced, say to one cent, it would leave you with a net deficit, basing the question on this year's business, a deficit of about $6,000.

Mr. Pierce: I would not finance that deficit if it did occur. Probably the receiver would, put it up to him and see what he can do with it.

Examiner Gutheim: As a matter of fact, with the Ball Lumber Company still in business down there, wouldn't they come to the rescue and finance the deficit as a matter of fact?

Mr. Pierce: Well, I am a railroad man, not a prophet. I cannot tell what would happen under those conditions.

Examiner Gutheim: Suppose a receiver comes in, he would try and make this road pay, and he would raise the rates to it.

Mr. Pierce: He would try to, if the Commission did not stop him.

Examiner Gutheim: If he operated the business he would probably have to raise this rate of 1.50 per thousand for the log-

6122 ging expense. I take it that he would first take steps to try to raise the revenue over it.

Mr. Pierce: He might succeed in raising that rate without raising his finances. A higher rate does not always mean an increased revenue by any means. It might stop.

Examiner Gutheim: The tonnage would stop some.

Mr. Pierce: The tonnage would drop some, or it might drop out altogether.

Examiner Gutheim: Assuming that in order to make up the deficit that is occasioned by the reduction in divisions, the logging spur rate of $1.50 was increased, would not that be reflected in your cost of logging to the lumber company, or wouldn't the logging company find that its expense of the logs, its cost of the logs in that pond was greater than now?

Mr. Brown: Assuming that they moved the same amount of logs.

Mr. Pierce: Now you ask me to testify as to what would happen in there if this company——

Mr. Gutheim: I am assuming that the railroad found its average division reduced, and that as a result of that reduction in division, it finds itself facing a deficit, and it increases its only local rate,

6123 that is, the rate on log spur work. I ask if that would not compel the lumber company to pay more for the hauling of the lumber to the pond and increase the cost of the log in the pond above what it is now.

Mr. Pierce: Under all the conditions that you name, and the mill

doing business under this increased cost, of course it would increase the cost to the mill.

Examiner Gutheim: Which would ultimately result in the increased cost of the lumber?

Mr. Pierce: Increased cost of the lumber.

Examiner Gutheim: Has the extent of the service performed for parties other than the Ball Lumber Company, or for products other than the products of the Ball Lumber Company increased during the last year or two?

Mr. Pierce: It has.

Examiner Gutheim: Has it increased to any great extent?

Mr. Pierce: My recollection is that it has increased 100 per cent the last year.

Examiner Gutheim: Are there any communities located along the line of the road from the mills, out to the present logging camps?

Mr. Pierce: There are two or three small communities.

6124 Examiner Gutheim: Are they communities that were there prior to the advent of the road?

Mr. Pierce: No.

Examiner Gutheim: Have they been built up as the result of the original establishment of a logging camp where they now are?

Mr. Pierce: Well, they have been built—they have been started in that way and have grown to some extent by the opening up of the little agricultural resources of that country.

Examiner Gutheim: Are there any post offices, or are they merely collections of farms?

Mr. Pierce: There are post offices in three or four, I think.

Examiner Gutheim: Are they on the line or off the railroad?

Mr. Pierce: There are post offices at Dry Prong and there is a post office at——

Examiner Gutheim: Dry Prong is the junction point with the L. & A.?

Mr. Pierce: Yes.

Examiner Gutheim: I mean away from the junction.

6125 Mr. Pierce: There are a couple of post offices.

Examiner Gutheim: You do not handle any United States mail or express?

Mr. Pierce: We do not.

Mr. Brown: Mr. Pierce, your company issues its own bills of lading and way bills on shipments?

Mr. Pierce: We do.

Mr. Brown: They are the regular uniform bill of lading?

Mr. Pierce: They are.

Mr. Brown: Regular railroad form of way bill?

Mr. Pierce: Standard form of way bill, way bills on different roads vary.

Mr. Brown: Standard railroad form?

Mr. Pierce: Yes.

Mr. Brown: Do you make your reports to the Interstate Commerce Commission?

Mr. Pierce. We do.

Examiner Gutheim: Do you know if the Ball Company owns its timber in fee, or whether they operate under timber rights?

Mr. Pierce: I am not prepared to say. My impression is that they own it in fee.

6126 Examiner Gutheim: So that they are not obligated to cut every year in order to keep the interest charges from accumulating?

Mr. Pierce: I know of no arrangement to compel them to do that.

Examiner Burchmore: When this road was called at New Orleans you were present?

Mr. Pierce: Yes, sir, I was.

Examiner Burchmore: And you asked that the case go over, as I understood you?

Mr. Pierce: Yes, Mr. Examiner, you probably recall that we offered to go——

Examiner Burchmore: I was not there.

Mr. Pierce: We offered to go on with the examination of the road although the president was absent, and the papers had not come, and the Commissioner said that he would endeavor to get at the data with regard to this road in some other way.

At that time we did not understand that we were to go on at all. That is my recollection, Mr. Brown, that he told you he would find some other method of satisfying himself as to the condition of the road.

6127 Examiner Burchmore: Has there any change taken place in the stock ownership of the road recently?

Mr. Pierce: I do not know.

Examiner Burchmore: Not so far as you know?

Mr. Pierce: I do not know at all, not so far as I know.

Examiner Burchmore: Well, the books are in your care?

Mr. Pierce: The stock books?

Examiner Burchmore: Yes.

Mr. Pierce: Yes.

Examiner Burchmore: Has there been any change recently in the methods and practices of this railroad with respect to conducting transportation?

Mr. Pierce: I do not know of any.

Examiner Burchmore: You would know if it had changed any of its practices very materially.

Mr. Pierce: I would know if it changed its rates.

Examiner Burchmore: What is your position?

Mr. Pierce: Traffic officer.

Examiner Burchmore: You are traffic officer for certain other lines of railroad?

Mr. Pierce: Yes, sir.

Examiner Burchmore: Do any of those roads get any more

6128 liberal divisions that this road gets?

Mr. Pierce: Yes, some of them get more liberal divisions on some business than this line gets, they are not uniform.

Examiner Burchmore: Is there any road whose average division is higher than this road, any road that you represent?

Mr. Pierce: I never have compared them as to that. I would think not.

Examiner Gutheim: There is one question more, Mr. Pierce. Are the divisions of the through rates that you receive, the same by all its connections?

Mr. Pierce: We have no divisions with any line except the Iron Mountain. We have no through rate in—I testified that we had no through rates in with the L. & A.

Examiner Gutheim: Nor with the Rock Island?

Mr. Pierce: Or with the Rock Island.

Examiner Burchmore: Will you furnish us with a map of the whole line?

Mr. Pierce: If you desire. Those other tracks there are all ours. (Indicating on the sketch.)

Examiner Burchmore: Is that another line there?

Mr. Pierce: No, but I say, from this track over here. (In-
6129 dicating.) The Iron Mountain don't own any siding there at all.

Examiner Burchmore: Owns no siding at all?

Mr. Pierce: No, sir; no siding at all. There is one side track.

Examiner Burchmore: Which connects at both ends with the Iron Mountain?

Mr. Pierce: That is over here. (Indicating.) That transfer track there is ours, I am quite sure. (Indicating.)

Examiner Burchmore: The transfer track?

Mr. Pierce: That is it here. (Indicating.)

Examiner Burchmore: Here is another sketch which is marked Exhibit No. 2. What is the distance from your mills to the junction point?

Mr. Pierce: We haven't any mills.

Examiner Burchmore: I mean the mills that belong to the Ball Lumber Company.

Mr. Pierce: The Ball Lumber Company——

Examiner Burchmore: Or to the junction with the Iron Mountain Railroad? Does your railroad haul lumber from each of those two mills to this dock? (Indicating.)

Mr. Pierce: That spur is 711 feet, and this spur on the
6130 other plant is 842 feet.

Mr. Brown: We will offer those two sketches in evidence.

(The sketches so offered and identified, were received in evidence and thereupon marked respectively "Pierce Exhibits Nos. 1 and 2, received in evidence January 27, 1911," and are attached hereto.)

Examiner Burchmore: Has the J. F. Ball Lumber Company any locomotives of its own?

Mr. Pierce: Four—the J. F. Ball Lumber Company?

Examiner Burchmore: Yes.

Mr. Pierce: None so far as I know.

Examiner Burchmore: They do not down in that vicinity?

Mr. Pierce: No.

Examiner Burchmore: Were you asked whether your company has filed with the Interstate Commerce Commission annual reports?

Mr. Pierce: I was.

Examiner Burchmore: What was the answer?

Mr. Pierce: I said they did.

Examiner Burchmore: When did you file your first report?

Mr. Pierce: I do not recall.

Examiner Burchmore: Did you file one for the fiscal year
6131 ending June 30, 1909?

Mr. Pierce: I think we did. I am not positive. The blanks came through my hands, I know, and were sent to the Pollock office to be filed.

Mr. Brown: There was one filed for the year ending June 30, 1910, wasn't there?

Mr. Pierce: That was my impression.

Examiner Burchmore: Mr. Pierce, do you remember whether Henry Swacker of the Interstate Commerce Commission called on you at St. Louis in May, 1910, with respect to the operation of this road?

Mr. Pierce: I remember his calling on me with respect to the operation of all the roads with which I am connected and I presume it was at that time.

Examiner Burchmore: Do you remember whether he asked you the question whether the annual report of your road had been already filed with the Interstate Commerce Commission?

Mr. Pierce: I do not recall his asking that question, no.

Examiner Burchmore: He reported to the Commission that no annual reports had been filed, a fact which, if correct, the Commission must have been advised of, but that we would receive
6132 such reports, and said that—and quoted you as saying that you were writing your books, which were in poor condition, as you have explained, and would render an annual report in a few days. Of course it is idle to ask the question——

Mr. Brown: That report was filed

Examiner Burchmore: Now, the report rendered December 13, 1909 by another examiner of the Commission, the general office employés in Washington have erased the examiner's statement that annual reports had been filed by the Natchez, Belt & Shreveport Railway, and have written over that answer an indication that no annual report had been filed for that road, and that forms were being sent to them to render one.

Mr. Pierce: Well, the forms were properly sent to them and I have had no complaint from the Commission that they had not been filed. Is there any notation in the record as to monthly revenues and expense accounts?

Examiner Burchmore: There is now; there is a statement that you had filed accident reports.

Mr. Pierce: Hasn't the company filed a monthly revenue and expense account?

Examiner Burchmore: Very possibly, but it is not endorsed on this report, whether they are or not.

6133 Mr. Pierce: The blanks are going to them promptly and I have had no complaint.

Examiner Burchmore: My record is simply "silent" on it, that is all. Have you any figures with respect to the divisions as to the total, that is, what the aggregate of it is, with you here?

Mr. Pierce: I have no figures with me now. Our last annual report was put in the mail last Monday to come up here when we knew that the road was going on, and has not reached us for some reason.

Examiner Burchmore: Can you prepare and file with the Commission a statement showing the total amount of logs handled by your company during the last fiscal year for the J. F. Ball Lumber Company, or which went to different mills or mill ponds, the total amount of logs that were handled by your railroad company for that company, or which came out of its mills, the total amount of other freight of all descriptions, itemized in such manner as you may use, furnished by the Ball Company or consigned to it, or consigned by it to other persons, and separately stating the figures as to tonnage similarly itemized, supplied by other persons in which the Ball Company had no such interest as I have described?

6134 Mr. Pierce: On forest products only? Or all classes?

Examiner Burchmore: All classes of freight.

Mr. Pierce: All classes?

Examiner Burchmore: Yes.

Mr. Brown: I have a memorandum of that.

Examiner Burchmore: If you will show the tonnage as well as the revenue, you can go into such particulars as you choose to. We want that to show.

Mr. Brown: I think I understand what the Commission wants and we will give them that.

Examiner Gutheim: You might make a separate statement of the six months ending December 31st.

Mr. Pierce: Very well.

Mr. Brown: Mr. Pierce, have you any statement that you care to make on the general situation, especially as far as the question of this investigation might bear upon that question of discrimination as between the lumber mill that had the service of a short line railroad and a lumber mill that has no railroad service, if the Examiner would care for such a statement.

Examiner Burchmore: You ask me whether I want it?

Mr. Brown: Yes; do you care about it? For that phase of

6135 the question?

Examiner Burchmore: If you care to give it, we will listen to it.

Mr. Pierce: There has been apparently a suspicion that some place in that lumber territory, among the short line roads, there was something rotten, and that amounted to a discrimination in favor of certain people in the lumber business. My knowledge of the situation prompts me to believe that there is no discrimination in favor of any concern; that all of these short lines are treated alike, and that all shippers on these short lines receive the same treatment under substantially the same conditions. The question has been raised as to

whether or not a mill company located on a trunk line and that had in connection with it a short line road, or that might have a short line road unincorporated, would be at a disadvantage as against a mill company whose stockholders also owned a short line railroad which earned a portion of the through rate, and from my investigation among the mill people I find that the consensus of opinion among them is that there is no discrimination in a situation of that kind, and that the mill on the main line, if it has its timber close enough to the main line to enable it to haul the logs to the
6136 mill without the expense of building a railroad, has an advantage over the mill—over the combined interest of a mill and railroad, a large proportion of whose combined capital is put into the construction of a road.

Further, I have found that some mills put in tram roads to bring in their logs and receive no division, and it has not created a discrimination against them, because in cases of that kind it is invariably true that they put in the character of road that they do not want to incorporate, they do not hold themselves out to do any public service, and they have the further motive of using this tram road as a private institution. If it is even good enough to operate as a common carrier and hold itself out to do public service,—there is a further object in failing to incorporate or refusing to incorporate in the fact that the territory penetrated by it is left subject—the timber in it is left subject to the purchase of the one concern owning the tram road.

Examiner Gutheim: Mr. Pierce, are there any strictly private spur log roads or log spur tracks that connect with either of the systems of railroad that you serve as traffic manager?

Mr. Pierce: No.

6137 Examiner Gutheim: Is it the purpose—is it with the purpose of having a monopoly in the woods in the manner you have just described that induces lumber companies which are closely related to short line railroads sometimes to fail to incorporate their logging spurs as part of the railroad system?

Mr. Pierce: I would dislike to term it by as harsh a phrase as monopoly, Mr. Examiner.

Examiner Gutheim: I thought that was what you have just described, a private logging road that was not incorporated.

Mr. Pierce: I think the refusal to incorporate some of the lines that are really worthy of incorporation is predicated upon the belief that when they become incorporated then the rails are open to the public, and that another man might come into the territory and compete for the timber with the people who had put the line in there, and that for the purpose of avoiding competition and securing to themselves the timber in that territory, they refuse to incorporate, refuse to do public service.

Examiner Gutheim: In what quarter do you think that this suspicion of existing discrimination that you have just referred to, exists?

6138 Mr. Pierce: Do you mean in what minds?

Examiner Gutheim: In what minds.

Mr. Pierce: The general public mind has been educated more or less along the question of so-called tap lines in recent years, and the impression has gone out that these tap line divisions are divisions for rebates, and I am fairly well acquainted with practically all the lines in the southwest, and I sincerely believe in all conscience there is nothing in the nature of a rebate in connection with any of them, with any of their earnings.

Examiner Burchmore: I have heard testimony the last three or four days by more than one witness who appeared on behalf of short line railroads, individual railroads, who also had official relation to lumber companies served by those roads, where they charged that discriminations were existing in the matter of tap line divisions. We just had one man this morning who testified, as I understood his testimony—you may read it hereafter if you get the transcript—that his road had a rate of 14 cents, joint rate to New Orleans, and that the rate from some place else, I think it was Monroe, was 10 cents, and that that placed his mill at a serious disadvantage. He
6139 endeavored to persuade the Iron Mountain to reduce his rate to 10 cents, and they said they could not do that, but they would give him a division of three and a half cents to offset the disadvantage to which his mill was subject, which he said would have had an effect; that is, he said that even with the large division of three and a half cents which he received out of a 14 cent rate, he was then at a disadvantage with other mills at Monroe which paid the ten cent rate.

Mr. Pierce: Wasn't he discriminated against, not on account of division with his line, but in spite of it?

Examiner Burchmore: That is it.

Mr. Pierce: He was discriminated against in spite of the division on his line, and it would seem to me that the traffic official of that line was rather derelict if he allowed 14 cents down there from that point and a 10 cent rate from a point in neighboring territory.

Examiner Burchmore: You will notice that in that case he claimed that he was discriminated against to the amount of four cents, and the discrimination against him as a lumber man to the amount of four cents was reduced and minimized by the division to him as a railroad company of three and a half cents.

Mr. Pierce: He was unable to part his brains in the middle,
6140 I mean to say, where he was a lumber man and where he was a railroad man. He got himself crossed.

Examiner Burchmore: I just mention that as a case that appealed to me.

Mr. Pierce: He was discriminated against, not on account of the division, but in spite of it.

Examiner Burchmore: What do you think of this testimony that we took last night, of Mr. Ruth? It appeared that he was not only the president or chief officer of a short line of railroad, but also that he was very largely interested in a lumber mill on that line. In answer to a question, he stated that he had a pass over the Iron Mountain, and that that pass was good only in the state of Arkansas, and that he used it whenever he traveled in the state of Arkansas.

I think he further said that there were other mills in his vicinity which were located on short lines of railroad, and that the general officers of those other railroads and mill companies were receiving interstate passes over the Iron Mountain Railroad, and that he had endeavored to secure such interstate passes at times, but without results. Whether he testified as to all those facts, I am not sure, but later in a conversation with him, he mentioned some facts
6141 such as have been mentioned before, and complained because certain mill people who were related to the railroads had interstate transportation over railroads and were thus put at an advantage over and above him in his lumber business, he receiving merely a state pass.

Mr. Pierce: If you will allow me, that use of transportation received as a railroad official for the purpose of promoting the interests of his lumber business, would be entirely improper, not only on his part, but on the part of anyone else.

Examiner Burchmore: Does anybody do it?

Mr. Pierce: Not that I know of.

Examiner Burchmore: This man thought that was a serious discrimination against him as a mill man, as though there was a suspicion in his mind that the tap lines were——

Mr. Garwood: Mr. Examiner, isn't that rather a remote and consequential effect, rather than a direct and natural result? For instance, suppose a mill owner is a director in a trunk line corporation, as often happens, who is entitled as a railroad official to transportation. Of course he does not separate his employment when he travels. He naturally, when the occasion arises, would look
6142 after his milling interest, and yet isn't the discrimination in such a case so remote and consequential and indirect that it ought not to have any serious bearing upon the general question of the discrimination?

Examiner Burchmore: Do you think so?

Mr. Garwood: I hardly think so. I think it is too remote and too consequential, it is not sufficiently direct and proximate.

Examiner Gutheim: Mr. Pierce, this $1.50 per 1000 you say is a necessary charge to the lumber company for spur work in order to enable your railroad to come out whole financially I take it.

Mr. Pierce: We charge the $1.50, Mr. Gutheim, for the purpose of covering our expense in connection with the service rendered.

Examiner Burchmore: You have heard considerable of the testimony at New Orleans and here in St. Louis, and you will probably remember cases of roads who received absolutely no revenues save which came from the division of through rates, but which in their railroad operations performed all services necessary on logging cars without charging to the lumber company anything for spur
6143 work or for main line work either. Now, when the Ball Company pays you $1.50 per 1000 for spur work, you would consider that the Ball Company was at a disadvantage of $1.50 per 1000 of logs, compared with the lumber companies served by such a railroad as I have stated?

Mr. Pierce: I would think that the Ball Company would take

what they could. If some other line happened to perform the service for a mill there which would pay nothing, they are at liberty to do — as far as we are concerned, but we are going to charge them what we think is right.

Examiner Gutheim: In other words, you do not think that a railroad should pocket the loss of a lumber company on account of a poor location?

Mr. Pierce: I do not.

Mr. Brown: Mr. Garwood would like to ask a question.

Mr. Garwood: Mr. Pierce, from your general knowledge of the lumber trade can you say whether the sales agents of lumber companies, the stockholders of which also own an interest in tap lines, so-called, ever consider the railroad end of the matter at all in making sales of lumber, that is, the division that the railroad company gets?

Mr. Pierce: Well, I can only speak fully of my own knowledge. In the case of our own line we do not accept any
6144 dictation from any sales agents other than the consignee, and from talking to officials of other roads situated similarly to ours, I find that they pursue the same policy, that there is no account taken by the lumber interests in their lines as to the territory in which the stuff is to move?

Mr. Garwood: In other words, the sales agent meets the market as he finds it, without any regard to the operations of the railroad as such.

Mr. Pierce. No sales agent connected with any lumber company on our lines knows anything about what is the most favorable territory into which our lumber on our lines can go. He knows nothing about our division sheets or how our earnings arise.

Mr. Garwood: That is all.

Examiner Burchmore: Anything further you want to say, Mr. Pierce?

Mr. Pierce: I believe not, thank you.

6145 *Washington & Choctaw Railroad Company.*

J. T. BURLINGAME was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Rich: Will you kindly state your name?

Mr. Burlingame: J. T. Burlingame?

Mr. Rich: Mr. Burlingame, where is your railroad located, or rather the railroad of the Washington & Choctaw?

Mr. Burlingame: It starts at Yellow Pine, Alabama, and runs in a northeasterly direction, practically a northerly direction.

Mr. Rich: What is the length, the present length of the line?

Mr. Burlingame: The present mileage that we are operating is 25 miles. We have about three miles completed, that is, the grading has been finished, but the rails and the ties have not been laid, nor the surfacing completed. We have fifteen additional miles under construction.

Mr. Rich: You have then twenty-seven miles in operation and fifteen miles under construction?

Mr. Burlingame: No, sir, we have twenty-five miles in op-
6146 eration.

Mr. Rich: At what time in the near future will this fifteen miles now under construction be completed and ready for operation?

Mr. Burlingame: I presume in about four or five months.

Mr. Rich: How long has that railroad been in operation?

Mr. Burlingame: Since 1904.

Mr. Rich: You commenced the construction of it in 1904?

Mr. Burlingame: We did.

Mr. Rich: What timber holdings are there to be served by this railroad, milling interests, I mean.

Mr. Burlingame: The timber holdings of the E. W. Gates Lumber Company.

Mr. Rich: What was the extent of the timber holdings at that time?

Mr. Burlingame: In 1904 the E. W. Gates Lumber Company had something like 46,000 acres.

Mr. Rich: Have those holdings of the Gates Lumber Company been added to since that time?

Mr. Burlingame: They have not.

Mr. Rich: Now when the construction of this railroad was commenced, did you set out to build a logging road as distin-
6147 guished from a standard railroad?

Mr. Burlingame: We succeeded to the property. There was a logging road connected with it, a narrow gauge at that time. This line was abandoned and a standard gauge road built for the purpose of serving all those uses to which a common carrier is subjected.

Mr. Rich: Well now what in addition to serving the timber holdings there of the milling plants were the inducements that caused you to construct a standard railway?

Mr. Burlingame: The agricultural interests there.

Mr. Rich: Does this railroad as now constructed and operated extend beyond the holdings belonging to the mill interests?

Mr. Burlingame: Only some four or five miles beyond their holdings.

Mr. Rich: And the projected road is entirely outside of the timber holdings?

Mr. Burlingame: Beyond their holdings.

Mr. Rich: How many stations have you on this line, stations and sidings?

Mr. Burlingame: Well, I can name them very shortly, about five.

6148 Mr. Rich: About five?

Mr. Burlingame: About five.

Mr. Rich: Do you mean five stations and five sidings?

Mr. Burlingame: Yes, sir, all of our stations have sidings.

Mr. Rich: How many station buildings have you?

Mr. Burlingame: We have three station buildings.

Mr. Rich: What industries other than that of the Gates Lumber Company are served by this railway?

Mr. Burlingame: We have five other sawmills in which the E. W. Gates Lumber Company is not interested, neither do they furnish any of the stumpage for these mills. We serve, I expect, something like eight or nine gins and perhaps ten or fifteen stores.

Mr. Rich: Have you been making the statistical reports required by the State of Alabama and the acts of Congress to the Interstate Commerce Commission?

Mr. Burlingame: We have.

Mr. Rich: Is your railroad controlled and directed in its operation by the Alabama Railroad Commission?

Mr. Burlingame: It is.

Mr. Rich: Are its properties assessed for taxes as required by the laws of Alabama, governing the assessment of railroad prop-
6149 erties?

Mr. Burlingame: They are.

Mr. Rich: What was the total receipts, the gross receipts of your line last year, about?

Mr. Burlingame: About $59,000.00.

Mr. Rich: What portion or percentage of that was so-called tap line allowances?

Mr. Burlingame: $10,000.00.

Mr. Rich: Less than twenty per cent?

Mr. Burlingame: Yes, sir.

Mr. Rich: What is the fair value of the railroad investment now?

Mr. Burlingame: It cost us $250,000.00 plus.

Mr. Rich: So then your tap line allowances were about four per cent?

Mr Burlingame: About four per cent.

Mr Rich: On that investment last year?

Mr. Burlingame: Yes, sir.

Mr. Rich: Is the traffic upon which you receive no allowances growing or not?

Mr. Burlingame: It is increasing very rapidly.

Mr. Rich: What is the reason for that increase aside from
6150 the extension of your line?

Mr. Burlingame: There has recently been put on the market a tract of perhaps 60,000 acres belonging to the E. W. Gates Lumber Company for the purpose of colonization. There has recently been added to this territory maybe twelve to fifteen hundred people within the past eight months. Last year our receipts from all sources other than the E. W. Gates Lumber Company amounted to about eight per cent of our earnings. This year in the receipt of the same particular commodities, they are about 80 per cent of the entire earnings. It is in this ratio that our earnings are increasing, due to the settling up of these cut-over lands.

Mr. Rich: Did you have any inducements held out to you by the citizens of that section to extend that railway line?

Mr. Burlingame: We have received a petition from different citizens to extend our road off into the territory where we are going.

Mr. Rich: How many trains a day do you operate?

Mr. Burlingame: We operate on schedule one train, about four trains in all.

Mr. Rich: What classes of commodities other than lumber and forest products do you handle?

6151 Mr. Burlingame: All classes of commodities such as merchandise, farming implements, fertilizer, furniture, live stock and various other commodities.

Mr. Rich: Turpentine and naval stores?

Mr. Burlingame: Yes, both of them.

Mr. Rich: Cotton and cotton seed?

Mr. Burlingame: Yes, sir.

Mr. Rich: All other garden products, I suppose, that belong to that section?

Mr. Burlingame: Yes, sir.

Mr. Rich: Do you handle hewn timber and rough logs for export?

Mr. Burlingame: Quite a bit of rough lumber, hewn timber and round logs. By round logs I mean those that are in their natural state, not having been manufactured, but are merely prepared for export shipment by having the bark peeled and the ends painted. We handle quite a number of ship spars.

Mr. Rich: What character of equipment have you?

Mr. Burlingame: We have two engines, about forty logging cars, four flat cars, six box cars, pile drivers and such other equipment as is usual.

Mr. Rich: You are adding to that equipment as the vol-

6152 ume of traffic increases, I suppose?

Mr. Burlingame: As the demands make it necessary.

Mr. Rich: A good deal has been said during this hearing about discriminations as between sawmill operators, one receiving an allowance and the other not receiving an allowance. Have you heard of any complaints coming from the general public?

Mr. Burlingame: No, sir.

Mr. Rich: About this matter?

Mr. Burlingame: I have heard of no complaints coming from the public, nor neither do I believe that they are, from this fact, I do not believe that they are interested in the case.

Mr. Rich: Is it not a fact that the Railroad Commissions of the States of Alabama, Mississippi, and Arkansas, two of them are on record by their president or presiding officers, and the others ready to go on record as opposed to the proposed cancellation of these allowances?

Mr. Burlingame: They are.

Examiner Burchmore: With reference to Arkansas, if I understand the question, you have said that they are already on record on that proposition.

Mr. Rich: Yes, but what I am now seeking to show is that

6153 the public represented by those commissions—the people, in other words, are not concerned about this matter, but so far as there has been any official or authorized expression, it is in opposition to the proposed cancellation, that is the idea.

Examiner Burchmore: Is there any such expression on the part of either the citizens or public officers of the State of Alabama?

Mr. Burlingame: There will be, that is my information.

Mr. Rich: Have you ever known of any sawmill operator who received the allowance, to undersell his competitor who did not receive it, in any lumber market at any time?

Mr. Burlingame: No, I do not know of any such case.

Mr. Rich: Did you ever hear of a sale of lumber at a reduced price being based upon any such idea?

Mr. Burlingame: No, sir.

Mr. Rich: The question was asked today more than once, what service the tap lines perform with reference to interstate shipments. Will you be good enough to give us your views about that if you have any?

Mr. Burlingame: Well, in the first place, the tap line creates traffic, that is one service.

Mr Rich: How does it create it?

6154 Mr. Burlingame: It goes out in the woods and makes it possible for the milling company and the shipper to handle over its line a volume of tonnage that is not handled by the trunk line. For instance, in our own country in handling logs there, we are in what is called a turpentine section, and the weight of the logs is a good deal more than it would be in short leaf or in a territory that has not been turpentined, so we are handling about six pounds for every one pound that the trunk line does handle.

Mr. Rich: Of the manufactured product?

Mr. Burlingame: Yes, sir.

Mr. Rich: Now you are speaking now of conditions organized by the tap line out of which traffic ultimately originates. Isn't that always done at considerable expense?

Mr. Burlingame: Well, most assuredly so. We have a big investment down there that we have put in to handle it.

Mr. Rich: Could you not, as a matter of fact, instead of building a standard railroad, serve the same purpose practically at very much less cost if you built a logging road simply?

Mr. Burlingame: We had a road that was narrow gauge, that was not a standard——

6155 Examiner Gutheim: Let me ask you what do you mean by serving the same purpose?

Mr. Burlingame: I mean to bring the logs in to the mill.

Mr. Rich: Get the logs to the mill. As a matter of fact possibly the tap line allowances, so-called, induce largely the construction of standard short line railroads?

Mr. Burlingame: Absolutely so.

Mr. Rich: And as a general rule those standard short line railroads have left permanent transportation facilities in the territory in which they were constructed?

Mr. Burlingame: They have.

Examiner Gutheim: You mean that every tap line that has been put down has always acted as a means of permanent transportation facilities?

Mr. Burlingame: I mean every common carrier which serves a tap line purpose is still there where there is business to justify it.

Mr. Rich: You understand, Mr. Burlingame, that I am drawing a distinction between a logging road and a standard railroad. One, as I understand it, is a temporary construction.

Mr. Burlingame: I understand that he did not understand you that way.

6156 Mr. Rich: That is right, he does not seem to. As a general rule, the logging railroad as distinguished from the standard railroad, is a temporary structure that goes with the removal of the timber from the lands?

Mr. Burlingame: The logging could be more neatly compared, I should think, with such tracks as might be put in to a gravel pit on a trunk line, today they run over there and tomorrow they are fifteen feet further. It is the same way with a logging road connected with a road that is a tap line.

Mr. Rich: Do you know of any short line railroads in your section in Alabama that originally were tap line railroads, these logging roads serving mills that have grown into systems of railroads?

Mr. Burlingame: Yes, sir, a couple or three years ago there was a road that served a lumber company in the same county that is now a trunk line, and not cited to appear here.

Mr. Rich: You mean the Tombigbee Valley Railway?

Mr. Burlingame: Yes, sir.

Mr. Rich: Is there not another railroad operated in your county too that is now an interstate railroad?

Mr. Burlingame: Yes, sir a road that did serve the Vinegar Bend Lumber Company is such.

6157 Mr. Rich: That is now the Alabama & Mississippi Railway Company?

Mr. Burlingame: Yes, sir.

Mr. Rich: Let me ask you, do you know whether any other lines east of the Mississippi were cited to appear in this hearing other than those lines whose allowances were cancelled out by the railroads who served them?

Mr. Burlingame: There was no endeavor to get a cancellation of our division by our trunk line.

Mr. Rich: Did you receive notice of this proceeding?

Mr. Burlingame: No, we were not served with any notice of it, but the general impression was that all of those who did not come at the New Orleans hearing would be deprived of these divisions.

Mr. Rich: It was understood that a failure to appear would be understood as a waiver really of the allowance. Now, these five lumber mills on your line, they are your competitors in business?

Mr. Burlingame: Oh, certainly.

Mr. Rich: Did you ever hear any complaint from any of them that you were receiving an allowance on certain classes of product?

6158 Mr. Burlingame: None whatever.

Mr. Rich: They have made no complaint?

Examiner Burchmore: We have been fully advised as to the posi-

tion of these five mills in the way of a letter from each as to their attitude towards this railroad company.

Mr. Rich: I think so. Mr. Burlingame, the Gates Lumber Company's large mill on your line, what has it left in the way of timber holdings, I mean with respect to the time it will take to dispose of it?

Mr. Burlingame: They have scarcely anything left now, about 9,000 acres is the entire holding. They originally had 72—perhaps 72,000 acres.

Mr. Rich: I understood your general statement about the development that was now in progress along the line of railroad, the Washington & Choctaw, that as the timber is removed successful effort is being made to dispose of the land, the purpose being to bring it under cultivation?

Mr. Burlingame: The sale of the land has been contracted as fast as we cut the timber off of it.

Mr. Rich: Does the operation and maintenance of this standard railroad in that territory have any effect upon the sale of that property?

6159 Mr. Burlingame: Why, yes, it has a great effect upon it. In the first place it would be absolutely, I think, impossible to dispose of those lands to any reasonable farmer or business man if he was not provided with certain facilities to get out his product.

Mr. Rich: Has it not been the unbroken history of that sort of operation in the lumber region of the South for thirty years, that when the timber was removed, the lands were just barren wastes, without population, without return to anybody?

Mr. Burlingame: Yes, sir.

Mr. Rich: You say in the last six months six hundred families have gone in there?

Mr. Burlingame: Yes, about fifteen hundred people, I should say.

Mr. Rich: To become settlers of that territory?

Mr. Burlingame: Yes, sir.

Mr. Rich: And this railroad company is trying to get every acre of land under fairly intelligent and successful agricultural cultivation?

Mr. Burlingame: Well, an acre of timber in our country would produce about five thousand feet, that is, an acre of timber.

6160 After that timber has been removed I presume that by this idea of fertilizing that they now have, they may be able to produce a bale of cotton to the acre on it.

Mr. Rich: That is being done in that section, isn't it?

Mr. Burlingame: Yes, there are some of them doing it. Last year they put forth there greater efforts than before in trying to raise a corn crop, and some of them succeeded in getting as high as 60 bushels to the acre. That is those farmers along our line over there in the territory that has just been opened up, say within the past eighteen or twenty months. I want to say in connection with that, that it would be more highly profitable to the railroad to get the tonnage that would originate from agricultural conditions than it would be to get the tonnage that originates from the lumber interests, because that only comes once.

Mr. Rich: That is the end and the other recurs each year?
Mr. Burlingame: Yes, sir.
Mr. Rich: That is all for the present.

Cross-examination:

Examiner Gutheim: Mr. Burlingame, is the Washington & Choctaw Railroad incorporated as a common carrier under the laws of the State of Alabama?
Mr. Burlingame: Yes, sir.
Examiner Gutheim: And was incorporated as a railroad
6161 and common carrier?
Mr. Burlingame: It is now, yes, sir.
Examiner Gutheim: How long has it been so incorporated?
Mr. Burlingame: Well, the original charter that we got out was in the name of E. W. Gates Lumber Company, and the subsequent charter was in the name of the Choctaw & Washington Railroad Company.
Examiner Gutheim: What is the date of that subsequent charter?
Mr. Rich: Let me ask this question just there: I think we will facilitate the matter. Mr. Burlingame, when the charter was obtained in 1904, it was obtained, was it not, under the general incorporation law of Alabama?
Mr. Burlingame: Yes, sir.
Mr. Rich: With reference to manufacturing companies?
Mr. Burlingame: Yes, sir.
Mr. Rich: Tell, if you know, whether the general law authorizing the incorporation of such companies authorizes the construction or purchase of railroads to be operated as common carriers and gives them the right to charge compensation for such services as are rendered by common carriers?
Mr. Burlingame: It did.
6162 Mr. Rich: Hasn't that been so for years, you might say, the legislative policy or governmental policy of the State of Alabama, in order to aid in the building of these short line railroads?
Mr. Burlingame: It has.
Mr. Rich: I would like to incorporate into the record at the proper place that section of the Alabama statute.
Examiner Burchmore: You may do so now.
Mr. Rich: Section 1145, Chapter 28, Article V, reads as follows: "Additional Powers.—Such corporation, when duly organized, has, in addition, power to locate, construct and operate to and from its mines, furnaces, mills, factories, quarries or other works, railways, tramways, canals, tunnels, underground passages, or roads, or to acquire by purchase railways, tramways, canals, tunnels, underground passages, or roads, whereby a connection may be made to and with the principal place of its business, its mines, furnaces, mills, factories, quarries, or other works, and any public highway, turnpike, macadamized, plank, or other graded road, or railroad or navigable waters, or to or with its mines, ore-beds, coking or cooling
6163 grounds, or timber lands; or canals or aqueducts to and from its mills or factories, or furnaces, or quarries, or any waters or

watercourses; and such corporation has also power to transport, as a common carrier, persons or property on any railroad, or other road, or on any canal, or aqueduct, constructed or purchased by it, taking reasonable compensation. If necessary in the construction of such canals, aqueducts, railways, tramways, tunnels, underground passages, or roads, the corporation has power to condemn lands, or an interest or easement therein, or thereunder private property, for a way and right of way, in the mode prescribed by law, such way and right of way not exceeding one hundred feet in width throughout the whole length of such canal, aqueduct, railway, tramway, tunnel, underground passage, or road; and without the consent of the owner of the land, the same must not be constructed through the yard, garden, orchard, stable-lot, gin-house, barn, or through the curtilage of a dwelling-house; and such corporation has power to erect, at such place as may be deemed convenient for its uses, depots, or other buildings, or structures, or wharves; and may purchase, hire, or charter vessels or boats for the transportation of its products or property; and may aid in the construction of railroads, or in
6164 the establishment of lines of vessels or boats, running to and from such depots, or other buildings, or structures or wharves; but the owner of any land which may be taken under the provisions of this section, shall have the right to have all his property, of like kind with that transported by the corporation, carried by such corporation over or upon such canal, railway or tramway, upon the payment of a just and reasonable compensation for such carriage."

Examiner Gutheim: It is also your understanding, Mr. Burlingame, that railroads so chartered are subject to the jurisdiction of the Alabama State Railroad Commission in the same way that trunk lines of railroad are subject to their general jurisdiction?

Mr. Burlingame: Yes.

Examiner Gutheim: Have you any other connection with the exception of that with the Mobile & Ohio Yellow Pine?

Mr. Burlingame: Not at this time. Here is a blue print showing the location of our tracks.

Examiner Gutheim: Do you wish to offer that in evidence?

Mr. Burlingame: Yes.

(The blue print so offered and identified, was received in
6165 evidence and thereupon marked "Burlingame Exhibit No. 1, received in evidence January 27, 1911." consisting of one sheet, and is attached hereto.)

Examiner Gutheim: Are all of the tracks shown on this map connected with the line running from Yellow Pine north now built and in operation by the Washington & Choctaw Railroad Company?

Mr. Burlingame: No, sir.

Examiner Gutheim: What tracks are not now in operation?

Mr. Burlingame: There are two spur tracks leading off to the east that have been removed.

Examiner Gutheim: Will you point them out and describe them?

Mr. Burlingame: These two here and four or five down here. (Indicating on Exhibit 1.)

Mr. Rich: Down by Copeland?

Mr. Burlingame: Yes, one by Copeland. I will say that all of those spur tracks that were used for the purpose of logging only have been removed. That answers the question.

Examiner Gutheim: All these tracks that run to the east some distance north of Copeland in a general parallel way and connecting with what is marked "T. V. R. R.," are they still down?

6166 Mr. Burlingame: No, sir; they were taken up.

Mr. Gutheim: The so-called T. V. R. R., is that still down?

Mr. Burlingame: I think so. We have our holdings on there, but I don't know much about the railroad.

Examiner Gutheim: So that the only line that is now ready and in operation is the one that runs in a general northerly direction from Yellow Pine right up through Copeland and Omega——

Mr. Burlingame: Up to Matthews.

Examiner Gutheim: And a little beyond?

Mr. Burlingame: Over to Williams, quite a little distance beyond Williams now; we have a spur track that leads out from Matthews maybe four or five miles. That is just a logging track for the E. W. Gates Lumber Company.

Examiner Gutheim: Can you say when this blue print was made?

Mr. Burlingame: In 1907.

Examiner Gutheim: So that since then has it——

Mr. Burlingame: No, I will take that back,—since 1909.

Examiner Gutheim: So that since 1909 all these stations that it has been necessary to write in on this road in pencil have been located?

6167 Mr. Burlingame: No, sir; they were located long before the map was ever made.

Examiner Gutheim: But they were not shown on the map at the time it was made?

Mr. Burlingame: It was a matter of oversight on the draughtsman who drew the map, was all.

Examiner Gutheim: Going from Yellow Pine north you strike the place called Reynolds?

Mr. Burlingame: That is from Yellow Pine I should judge three miles.

Examiner Gutheim: What is over there?

Mr. Burlingame: There is nothing there but a side track and a place to store fertilizer.

Examiner Gutheim: Was Reynolds at one time a logging camp of the Gates Lumber Company?

Mr. Burlingame: It was not.

Examiner Gutheim: The Gates Lumber Company had considerable timber thereabouts?

Mr. Burlingame: They did not.

Examiner Gutheim: What have you got at the place called Moss?

Mr. Burlingame: There is a side track and an unloading
6168 platform for the purpose of storing grain and feed.

Examiner Gutheim: How much of a population is there at Moss?

Mr. Burlingame: It serves a community in all of perhaps maybe —well, one saw mill, two or three stores, and I presume 100 people.

Examiner Gutheim: There is a wagon road that runs from Moss over to Magnolia on the M. & O.?

Mr. Burlingame: No, sir, there is not now; there used to be in years gone by.

Examiner Gutheim: What is there at Copeland?

Mr. Burlingame: Copeland consists of three stores, one gin and one saw mill. You saw this large territory about Copeland is very productive, and it sustains a community of maybe a thousand people. six hundred at any rate.

Examiner Gutheim: At Omega is there a station built?

Mr. Burlingame: Omega is a new town that is being built at which there is a saw mill, one or two stores, seven or eight houses, and it also supplies quite a population. It is also the shipping point for a good deal of agricultural products that reach our lines. They are hauled for eight and ten and twelve miles to that point on our road.

6169 Examiner Gutheim: Are there any settled communities at the marks on the map north of Omega?

Mr. Burlingame: Yes, it is a settled country, practically a continuous farm all the way to the end of the line, in which there is no timber. Adjacent to the line at Wilting, which is the next place above Omega, we have a small ore mill which is being put in at that place.

Examiner Gutheim: Does your road handle any United States mail?

Mr. Burlingame: It does not.

Examiner Gutheim: What mail service have the communities that you mentioned?

Mr. Burlingame: They have none. They go to Bucatuma, about twelve or fifteen miles.

Examiner Gutheim: Over on the Mobile & Ohio?

Mr. Burlingame: Over on the Mobile & Ohio. If I mistake not there may be rural free delivery there, but I don't know.

Examiner Gutheim: Now, was this road from Yellow Pine north which was put down for twenty miles and now in operation put down at one time?

Mr. Burlingame: I did not catch that.

Examiner Gutheim: Was this road north from Yellow
6170 Pine about twenty-five miles now in operation put down at one time?

Mr. Burlingame: No; it was built as fast as we could build it, though.

Examiner Gutheim: When you said: "As fast as we could build it," did you refer to the railroad company as a railroad company, or the railroad company as a part of the one incorporation with the lumber company?

Mr. Burlingame: No; as a railroad company. Let me get that straight for you. We had a logging road to the mill, that is, the E. W. Gates Lumber Company had.

Examiner Gutheim: That mill was located at Yellow Pine?

Mr. Burlingame: Yellow Pine; they had a logging road. They commenced to build this standard gauge road previous to the time that they took up the logging property, and they built the railroad as fast as they could get it into some additional timber that the E. W. Gates Lumber Company might use until they got to the place where they had more timber. For instance, they built eight miles right here, and then they built twenty-five miles on top of the eight miles right here (indicating), and I suppose they were three months in building the twenty-five miles.

6171 Examiner Gutheim: Is there any timber there located up beyond Omega?

Mr. Burlingame: There is no timber from Matthews in that whole twenty miles.

Examiner Gutheim: Is there any beyond Matthews?

Mr. Burlingame: Except that which is in the hands of other people than the E. W. Gates Lumber Company.

Examiner Gutheim: Is there any beyond Matthews?

Mr. Burlingame: There is none except right at Matthews, which has been cut out.

Examiner Gutheim: You say there are fifteen miles of track under construction. How far has that construction proceeded?

Mr. Burlingame: We are now building one about three miles, between three and four miles beyond Williams.

Examiner Gutheim: These three stations that you spoke of, are they stations which are usually defined as open stations?

Mr. Burlingame: I don't know what you mean.

Examiner Gutheim: Stations with an agent?

Mr. Burlingame: What do you mean by an open station?

Examiner Gutheim: Do they have an agent of the railroad company there?

Mr. Burlingame: We have an agent at Matthews, we have

6172 an agent at Yellow Pine.

Examiner Gutheim: Are those gentlemen connected in any way with the Gates Lumber Company?

Mr. Burlingame: No, they are not.

Examiner Gutheim: How long have they been there?

Mr. Burlingame: Well, we got into Matthews about three or four months ago and they have been there since that time. We have always had an agent at Yellow Pine.

Examiner Gutheim: When the road was up as far as Omega, about fifteen miles was that?

Mr. Burlingame: Yes, it is about seventeen, about eighteen—seventeen.

Examiner Gutheim: Did you have any agent out there in the service of the railroad?

Mr. Burlingame: Oh, yes, we have always had a traveling agent on our train. We have also had an agent at Yellow Pine.

Examiner Gutheim: Isn't the agent at Yellow Pine also the Mobile & Ohio agent?

Mr. Burlingame: He never was the Mobile & Ohio agent.

Examiner Gutheim: The Mobile & Ohio agent does all the way billing for the Washington & Choctaw Railroad?

6173 Mr. Burlingame: No, sir, the Washington & Choctaw do their own way billing. I would like to say just one thing I want to explain, that there was an agent of the Mobile & Ohio who by some means or other conceived the idea that he wanted to be the freight agent of the Washington & Choctaw, and he succeeded in getting his name on the tariff of that company, but he was never their agent. We never paid him any money and he never did any work for the Choctaw & Washington Railroad, and how he got onto the tariff is more than I know, I cannot say.

Examiner Gutheim: Now these other mills along your line, do they have the same rates going out, say to destinations on the Ohio River and beyond as the Yellow Pine mill?

Mr. Burlingame: They enjoy the same rate of freight.

Examiner Gutheim: They pay an arbitrary of a cent above the rate from Yellow Pine?

Mr. Burlingame: No, sir; that junction point rate extends to every shipper of forest products.

Examiner Gutheim: Now, do any of these small mills get their timber in by your road?

Mr. Burlingame: They do not.

Examiner Gutheim: Does the Gates mill still get its timber

6174 by your road?

Mr. Burlingame: It does.

Examiner Gutheim: What is the local logging rate on that timber?

Mr. Burlingame: 3 cents a hundred.

Examiner Gutheim: That is not the 3 cents, the other division that you gave?

Mr. Burlingame: No, sir.

Examiner Gutheim: Then the division is——

Mr. Burlingame: The railroad keeps the division.

Examiner Gutheim: I mean, does the Gates Lumber Company pay 3 cents per 100 on logs in addition to which the railroad company gets 3 cents on lumber as its division?

Mr. Burlingame: The E. W. Gates Lumber Company pays to the Washington & Choctaw Railroad 3 cents per 100 for logs.

Examiner Gutheim: Just where are these 60,000 acres that you have said were open for colonization located, up beyond Matthews?

Mr. Burlingame: South of Matthews. This line east, there is where the 61,000 acres of land were opened, all the way down here (indicating).

Examiner Gutheim: Those six or seven hundred people

6175 that came in there are actually there?

Mr. Burlingame: They are bona fide settlers, they are there now, brought their families.

Examiner Gutheim: Taking up that question about whether or not the lumber company which owns a railroad which gets a division is thereby enabled to undersell a competitor who does not get a division, let us assume for a minute that he does not apply the

3 cents per 100 pounds to the selling price of the lumber, thereby underselling directly, by applying the division to the price that he is going to sell his lumber at, but if he gets the division of 3 cents, that division increases the revenue of his railroad, doesn't it?

Mr. Burlingame: Well, yes, but you understand what we have to do to get that revenue.

Examiner Gutheim: Yes, but he gets a division of 3 cents which goes into his road freight revenue?

Mr. Burlingame: Yes.

Examiner Gutheim: And having that division, he does not have to make as much money on the lumber because his operating expenses——

Mr. Burlingame: If I——

Examiner Gutheim: Just a moment. And in order to
6176 make money on his local rates he has to make the revenue equal the expense?

Mr. Burlingame: I don't see the connection between the lumber company and the railroad company.

Examiner Gutheim: Just answer the question.

Mr. Burlingame: I cannot, because there is no connection between them.

Examiner Gutheim: If this road's operating expenses are $25,000 a year and it gets divisions of $10,000, it must make up the $15,000 on local earnings?

Mr. Burlingame: Yes, sir.

Examiner Gutheim: Well now, if its divisions were cut out in order to come out even it would have to make $25,000 on local earnings, that is right?

Mr. Burlingame: To keep out of the hands of the sheriff, is that what you have reference to?

Examiner Gutheim: Yes.

Mr. Burlingame: If he has got to make $25,000 then——

Examiner Gutheim: He would have to increase rates, would he not, the railroad company would?

Mr. Burlingame: I don't know whether I could answer the question, whether he has to increase his rates or increase
6177 his tonnage or how he would overcome that point. He could increase his tonnage as well, increasing his revenue.

Examiner Gutheim: We will assume the tonnage is about the same, but your revenues have been reduced, and in order to come out whole, you would have to raise your local rates, is that a fact?

Mr. Burlingame: No, there is an assumption there that would not hold good, because if your tonnage remained the same your railroad is not going to be progressive, it is not going to go on.

Examiner Gutheim: If you carry 500,000 tons one year and 500,000 tons next year on the same line of road will there be any great difference in the operating expenses?

Mr. Burlingame: Why, yes, you would pay more for wages in one year that you will in another, as you are not embarrassed by the fact that last year you did not have equipment and this year you have.

Examiner Gutheim: Assume for the moment that the conditions were normal in both years, that you handled about the same tonnage, but in one year you got $10,000 out of divisions and in another year you did not. If you came out whole the first year,
6178 in order to come out whole the second year, would you not have to arrange to figure on $10,000 additional local earnings?

Mr. Burlingame: Well, I suppose it might run that way.

Examiner Gutheim: Assuming that your local log haul rate was increased, wouldn't that increase the cost of the logs in the pond to the lumber company that had to pay that increase that log haul rate?

Mr. Burlingame: You assume that the rate on logs is increased now?

Examiner Gutheim: Would not that result in an increased cost to the lumber company of the logs in its ponds?

Mr. Burlingame: If it increased the rate?

Examiner Gutheim: Yes.

Mr. Burlingame: Most assuredly.

Examiner Gutheim: So that your lumber in the long run would cost more on account of the fact that——

Mr. Burlingame: Lumber hasn't anything to do with the earnings of a railroad.

Examiner Gutheim: You have just said that when you increased the local rate on the loghaul to make up your revenue, that your lumber—your log is going to cost your lumber company
6179 more in the pond. That being the case, isn't the lumber going to cost more?

Mr. Burlingame: Well, I don't know but what that would be the case. I don't say——

Examiner Gutheim: We have got that far. If the lumber costs you more simply because you don't get divisions, you have not got such a big margin of profit if you are selling at the same price on account of this loss of divisions to this railroad?

Mr. Burlingame: I don't understand a question like that.

Examiner Gutheim: We have got to the point where your lumber is costing you more to manufacture on account of the loss of divisions of the railroad company. We have that fact. Mr. Burlingame, wouldn't your margin of profit be less when your price of lumber is the same as you sold in previous years when this road got divisions?

Mr. Burlingame: No, sir; if the railroads can haul that at 3 cents 100 pounds, the railroad would still be there getting this same amount of money.

Examiner Gutheim: You are going back to the point now where the E. W. Gates Lumber Company finds that its logs in the pond cost more than they did the previous year. Therefore its lumber costs more. Now, assuming the case of a lumber manufacturer
6180 who owns a tram road and is operating it, of the same nature as this, without divisions, is he not in the position that the Gates Lumber Company would be when its divisions were cut out asd he finds his margin of profit less?

Mr. Burlingame: How is a lumber company man interested in any of the profits of a railroad company?

Examiner Gutheim: I am saying this, that they are interested to the extent that its log haul was increased when the divisions were reduced, which resulted in an increased cost of lumber.

Mr. Burlingame: That is right.

Examiner Gutheim: Isn't there an increased cost of lumber caused by the lumber operator who was running the road bringing it to the railroad company and getting no division?

Mr. Burlingame: Is there such a thing as a man being a common carrier and getting no division?

Examiner Gutheim: Oh, yes, there are common carriers who are getting no divisions. There are railroads that are not incorporated as common carriers that perform the same service that you have mentioned which the tap lines were operating that are not getting divisions, doing identically the same thing in the lumber business?

6181 Mr. Burlingame: They are not all alike.

Examiner Gutheim: I guess that is all.

Examiner Burchmore: Are you acquainted with the Sumter & Choctaw Railroad?

Mr. Burlingame: I believe I am acquainted with the gentleman who owns it.

Examiner Burchmore: Who is that?

Mr. Burlingame: Mr. Allison, I think.

Mr. Rich: Who did you say owns it?

Mr. Burlingame: Mr. Allison, W. P. Allison.

Examiner Burchmore: That is down in your vicinity?

Mr. Burlingame: Yes, sir.

Examiner Burchmore: What sort of a road is it?

Mr. Burlingame: I don't know what kind of a road it is except it serves loggings interests.

Mr. Rich: Aren't you mistaken about Mr. Allison being the owner of that road?

Mr. Burlingame: No.

Examiner Burchmore: When was this railroad incorporated, I mean the Choctaw—Washington & Choctaw?

Mr. Burlingame: In 1904.

Examiner Burchmore: Incorporated as a standard guage then?

6182 Mr. Burlingame: It was incorporated under the title of the E. W. Gates Lumber Company in 1904, and subsequently got out a charter in that name.

Examiner Burchmore: Does it now have a separate charter?

Mr. Rich: Yes, sir.

Examiner Burchmore: When did you change it to a separate charter?

Mr. Rich: That was in 1910.

Examiner Burchmore: What is its capital stock at the present time?

Mr. Rich: Authorized, $700,000, actually paid in, $200,000. The investment stands the original owners $250,000.

Examiner Burchmore: Was it paid in by turning over the road?

Mr. Burlingame: Paid in by selling the road and some small addition in cash.

Examiner Burchmore: You spoke of those three trains that do not run on schedule.

Mr. Burlingame: Logging trains, doing the switching of the lumber.

Examiner Burchmore: Did you state what compensation the railroad received for carrying those logs?

6183 Mr. Burlingame: Three cents per 100.

Examiner Burchmore: Aren't the rates on your line on a milling in transit basis?

Mr. Burlingame: We get an allowance from the M. & O. of 3 cents, I think on a milling in transit basis, that is, the railroad does, but we charge the E. W. Gates Lumber Company as a railroad to handle their logs into the mill. The division has nothing to do with the other part of it.

Examiner Burchmore: That joint through rate on lumber applies from any point on your line to an interstate destination?

Mr. Burlingame: I would like to ask one question, if export business is interstate business?

Examiner Burchmore: Yes.

Mr. Burlingame: Then it does.

Examiner Burchmore: It does on exports?

Mr. Burlingame: Yes, sir.

Examiner Burchmore: How about domestic?

Mr. Burlingame: Yes, also on that.

Examiner Burchmore: Then if it applies from any station on your line, the joint interstate rate and the milling in transit privilege, isn't the Gates Lumber Company entitled to free move-

6184 ment of the logs from the point of origin to the mill and a movement of the lumber from the mill to destination at the joint through rate without any extra charge on the logs?

Mr. Burlingame: We do not consider that the E. W. Gates Lumber Company have anything to do with those privileges that accrue to the railroad.

Examiner Burchmore: Well, I was simply suggesting under the terms of the tariff if it is on a milling in transit basis which applies from all stations on your line to interstate destinations, the rate being the same from the point of origin, then hasn't the Gates Lumber Company as a shipper the right to demand the benefit of that joint through rate from any point on your line to the interstate destination without any additional charge on its logs?

Mr. Burlingame: We do not consider that it has that right.

Examiner Burchmore: How far is that mill from the tracks of the Mobile & Ohio Railroad?

Mr. Burlingame: The mill is maybe a quarter of a mile away from the M. & O.

Examiner Burchmore: Has the Washington & Choctaw Railroad Company——

6185 Mr. Burlingame: Mr. Commissioner, just a minute. I would like to say that the planer is located on the M. & O. tracks.

Examiner Burchmore: Does the Gates Lumber Company load its lumber from the planer into cars lying on the Mobile & Ohio tracks?

Mr. Burlingame: It does.

Examiner Burchmore: Then in case of a shipment of lumber loaded at that point moved into an interstate destination, what service does the Washington & Choctaw Railroad Company perform for which it should receive a division?

Mr. Burlingame: But a very small portion of the volume of the business handled comes from the planer, a majority of the product being shipped rough from the saw mill, in which event the M. & O. does not do any of the switching whatever.

Examiner Burchmore: Is that your full answer?

Mr. Burlingame: Yes, sir.

Examiner Burchmore: Why was this railroad incorporated separately as a common carrier railroad in 1909, if you know the reason?

Mr. Burlingame: For the purpose of assuming the privilege of eminent domain given us under our charter rights of 1904.

Examiner Burchmore: You already had that right as a
6186 charter right?

Mr. Burlingame: Yes, we thought it might be useful, and that is why we chartered the railroad.

Mr. Rich: May I ask a question?

Examiner Burchmore: Certainly.

Mr. Rich: I will ask you, has it not been under consideration by the owners of the railroad property for some time bonding the property or mortgaging the property and issuing bonds for the purpose of extending it?

Mr. Burlingame: It is the intention of the company to borrow money on securities issued by this railroad.

6187 Mr. Rich: In that connection was it not suggested to you by counsel and by others who were considering financing the property, that it would be better to separate the interests in the way which has been done?

Mr. Burlingame: It was suggested that the separation be made.

Mr. Rich: I think that is all.

Examiner Burchmore: You removed these logging spur tracks that were formerly connected with your road, that ran into the timber of the Gates Lumber Company?

Mr. Burlingame: We did.

Examiner Burchmore: Why did you remove them?

Mr. Burlingame: The E. W. Gates Lumber Company had no further use for them at that particular point and we relaid them at other points.

Examiner Burchmore: Have you put in any private tracks in order that farmers might get their fertilizer into different parts of their farms?

Mr. Burlingame: We have put in several special tracks of this description, and very recently for what we presumed to be permanent tracks.

Examiner Burchmore: Is the logging track that runs out
6188 from Matthews a permanent track or temporary?

Mr. Burlingame: It is a temporary track.

Examiner Burchmore: Did the Gates Lumber Company make you any special inducement to put that track down, beyond the promise that they would originate logs on which you would earn three cents?

Mr. Burlingame: The Gates Lumber Company built this as a spur of their own accord.

Examiner Burchmore: But did they charge the cost up to your road?

Mr. Burlingame: The railroad company participates to the extent of furnishing the rails only.

Examiner Burchmore: And they are compensated in your opinion for the use of the steel by the traffic that they get, the three cent charge on logs?

Mr. Burlingame: The compensation is for the repairs furnished, the engines and the equipment that belongs to the Washington & Choctaw Railroad.

Examiner Burchmore: Can you furnish us with a recent map of your road just as it stands today? It does not need to be an elaborate map.

Mr. Burlingame: We will do that.

6189 Examiner Burchmore: Does the Gates Lumber Company ship or sell any turpentine and resin?

Mr. Burlingame: It does not.

Examiner Burchmore: Does it farm out that privilege?

Mr. Burlingame: It formerly did but has no connection with the industry now.

Examiner Burchmore: Is this E. W. Gates Lumber Company related in any way to the Gates Lumber Company over in Arkansas or Louisiana?

Mr. Burlingame: They were formerly an offspring of that company.

Examiner Burchmore: But no connection at the present time?

Mr. Burlingame: None at the present time.

Examiner Burchmore: Do you know whether it is a fact that most short line railroads east of the Mississippi river as our information seems to be from this case, participate in joint rates with the trunk lines on lumber to Cairo, for example, have a joint rate that is one or two cents higher than junction point rates?

Mr. Burlingame: I understand that this condition is true on one road.

Examiner Burchmore: What road is that?

6190 Mr. Burlingame: On what I think is the A. & N. Railroad. I wish to say that very little of the product of our community reaches the interior market, that is when compared with the volume of the foreign products handled.

Examiner Burchmore: Do you know whether that is a fact on the Sumpter & Choctaw Railroad?

Mr. Burlingame: On the Sumpter & Choctaw Railway I cannot say.

Examiner Burchmore: Do you know whether those junction point rates apply to stations on their line?

Mr. Burlingame: I could not say.

Mr. Matthews: Have you a statement showing the traffic tonnage?

Mr. Burlingame: Only a memorandum of the tonnage, if that is what you desire.

Examiner Burchmore: We would like a statement of the tonnage similar to what we called for from the other road.

Mr. Rich: We will have that prepared.

Mr. Burlingame: It would not take but a few minutes if you want that copied.

Whereupon, at 6:30 P. M., a recess was taken until 8 o'clock P. M.

6191 After Recess.

JANUARY 27, 1911—8 o'clock p. m.

Brookings & Peach Orchard Railroad Company.

Mr. Walter: I want to say on behalf of the Brookings & Peach Orchard, that as far as that road is concerned, the auditor who had charge of the books has been recently married, and she left everything in a more or less disordered condition, and the records are in bad shape. Mr. Henry A. Quellmalz has been looking into the matter a little bit and if you want to hear from him, he will give you the best he can in a general way.

HENRY A. QUELLMALZ, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Please state your name?

Mr. Quellmalz: H. A. Quellmalz.

Examiner Burchmore: What is your relation to the Brookings & Peach Orchard Railroad?

Mr. Quellmalz: Secretary.

Examiner Burchmore: As secretary what are your duties?

6192 Mr. Quellmalz: Why, I sign a majority of the papers that come from the road, and I also sign checks.

Examiner Burchmore: Do you also attend to the correspondence of the road?

Mr. Quellmalz: Why no, we have left that all to our traffic manager, who has attended to all that correspondence.

Examiner Burchmore: Do you attend to the correspondence for the Interstate Commerce Commission?

Mr. Quellmalz: How?

Examiner Burchmore: Do you attend to the correspondence with the Interstate Commerce Commission?

Mr. Quellmalz: Do I intend to correspond?

Examiner Burchmore: Do you attend to it?

Mr. Quellmalz: No, sir, I do not.

Examiner Burchmore: Does the road render annual reports to the Interstate Commerce Commission?

Mr. Quellmalz: They did in 1909, but up to 1910 they did not. In the last three or four days I have been trying to make up this report, but I have not succeeded as yet, but I intend to give it to the Interstate Commerce Commission by the middle of next week.

Examiner Burchmore: Do you know on what dates such
6193 reports are supposed to be filed with the Commission?

Mr. Quellmalz: No, I don't know a thing about it.

Examiner Burchmore: Does your company make reports to the Commission of its accidents?

Mr. Quellmalz: If they have any, I think they did.

Examiner Burchmore: Do you know whether the road has reported accidents to the Interstate Commerce Commission?

Mr. Quellmalz: No, I do not, I could not answer that question. I don't think they ever had any.

Examiner Burchmore: I will say that the Secretary for the Interstate Commerce Commission wrote to the superintendent of your railroad, Mr. Joe Nester——

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: At Brookings, Arkansas.

Mr. Quellmalz: Yes.

Examiner Burchmore: Twice during the year 1908, asking him—calling his attention to the provisions of the Act to Regulate Commerce, requiring monthly reports of accidents, and no reply was ever received to either letter, and I am informed that the reports have not been filed.

Mr. Quellmalz: As I said before, I do not know of any accidents, of anyone ever having been injured.

6194 Mr. Walter: You are required to report whether there are any or not.

Mr. Quellmalz: I was not aware of that fact. I will see that they go in after this.

Examiner Burchmore: The Brookings & Peach Orchard Railroad connects with the Iron Mountain System, at Mollus?

Mr. Quellmalz: Mollus, Arkansas, Green county.

Examiner Burchmore: What is the length of this line?

Mr. Quellmalz: Approximately three miles.

Examiner Burchmore: Has it any side tracks?

Mr. Quellmalz: Why, it has one siding.

Examiner Burchmore: What is the length of that siding?

Mr. Quellmalz: About 120 feet.

Examiner Burchmore: Where is that siding?

Mr. Quellmalz: It is about 300 feet from the Iron Mountain I should judge. Here is a map that I drew of the railroad the best I could. It is a year since I have been on it. (Producing sketch.)

Examiner Burchmore: That siding connects at each end with the main line of your railway Company?

Mr. Quellmalz: With the main line of our railroad, yes, sir. This is the Iron Mountain Road and this is the saw mill.

6195 (Indicating on sketch.)

Examiner Burchmore: You are also secretary and treasurer

of the Henry Quellmalz Lumber Company?

Mr. Quellmalz: Secretary only.

Examiner Burchmore: Who is president of that railroad?

Mr. Quellmalz: Henry Quellmalz.

Examiner Burchmore: Is he the president of the lumber company you have just mentioned?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Who is vice-president of the railroad?

Mr. Quellmalz: Mr. Arthur Quellmalz.

Examiner Burchmore: Is he vice-president of this railroad?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: What other officers has the railroad, if any?

Mr. Quellmalz: Well, the railroad has Joe Nester, who is its general superintendent, and L. M. Rowan, general traffic manager.

Examiner Burchmore: Are those gentlemen or either of them officers of the lumber company?

Mr. Quellmalz: Why, Mr. Nester is agent of the lumber company.

6196 Examiner Burchmore: As such agent what are his duties?

Mr. Quellmalz: Why, he buys lumber and logs for the mill.

Examiner Burchmore: What is his salary from the railroad company?

Mr. Quellmalz: He does not get any salary.

Examiner Burchmore: Do any of these officers receive a salary from the railway company?

Mr. Quellmalz: Yes, Miss Rowan receives $15 a month.

Examiner Burchmore: Miss Rowan?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: She is also employed by the lumber company?

Mr. Quellmalz: No, not at present. She was.

Examiner Burchmore: She is now employed by the railroad company?

Mr. Quellmalz: Yes, sir, she is.

Examiner Burchmore: I will ask you whether the stockholders who own a controlling interest in this railroad company, are not also the controlling stockholders in the lumber company?

Mr. Quellmalz: They are, yes, sir.

Examiner Burchmore: Are the stockholders in the two

6197 companies precisely identical?

Mr. Quellmalz: Well, no.

Examiner Burchmore: What differences are there in the holdings?

Mr. Quellmalz: Mr. Quellmalz owns 80 per cent of the Quellmalz Lumber & Manufacturing Company, and I think, he owns about 91 per cent of the Brookings & Peach Orchard—97½ per cent of the Brookings & Peach Orchard Railroad.

Examiner Burchmore: Who owns the other 3 per cent of the railroad stock?

Mr. Quellmalz: Why, I own a share, Mr. Arthur Quellmalz owns one, Wallace J. Brown, Joe Nester, G. Frank, Adam Baget, Henry Pirtle, John Russell, W. D. Polk, and George Fleetwood.

Examiner Burchmore: Those gentlemen are directors in the railroad?

Mr. Quellmalz: Not all of them. There are seven directors.

Examiner Burchmore: The Quellmalz Lumber Company has a saw mill on or near this railroad?

Mr. Quellmalz: On the river, the Black River.

Examiner Burchmore: On the Black River?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: And the railroad terminates near
6198 or opposite the saw mill?

Mr. Quellmalz: Terminates right at the river, that is, the spur, the road, the main part of the road runs right in the center of the mill.

Examiner Burchmore: We can put this in evidence?

Mr. Quellmalz: If you want.

(The map so offered and identified, was received in evidence and thereupon marked "Quellmalz Exhibit No. 1, received in evidence January 27, 1911," and is attached hereto.)

Examiner Burchmore: Where does the Quellmalz Lumber Company's mill obtain its logs?

Mr. Quellmalz: Obtains its logs from its own timber land north of the mill, west of the mill and south of the mill on the Black River. They cut these logs and have them hauled to the river by teams, and there they are rafted and brought down to the mill proper.

Examiner Burchmore: For what distance do they haul those logs by teams?

Mr. Quellmalz: Why, all the way from a quarter of a mile.

Examiner Burchmore: Do you know how far down the river they float the logs?

Mr. Quellmalz: How far they float them down the river?
6199 Examiner Burchmore: Yes.

Mr. Quellmalz: About, I think, all the way up to twenty miles, from the farthest distance.

Examiner Burchmore: What is the name by which the station at the mill is known?

Mr. Quellmalz: Brookings.

Examiner Burchmore: And the junction with the Iron Mountain is Mollus?

Mr. Quellmalz: Mollus.

Examiner Burchmore: What is the distance from Brookings to Mollus?

Mr. Quellmalz: I think it is three miles.

Examiner Burchmore: The Brookings & Peach Orchard Railroad have joint rates on lumber with the Iron Mountain to interstate destinations?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: What division does it receive out of those rates?

Mr. Quellmalz: Three cents a hundred.

Examiner Burchmore: Uniformly three cents?

Mr. Quellmalz: I think so, yes, sir. It is a flat rate.

Examiner Burchmore: The rate from Brookings is one
6200 cent higher than the Iron Mountain rate from Mollus?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: In all cases?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: You say they get a division of three cents. Do you mean they get three cents over one cent, or plus one cent arbitrary, or three cents including the one cent arbitrary?

Mr. Quellmalz: Three cents including a one cent arbitrary.

Examiner Burchmore: So that the Iron Mountain receives two cents less than its local rate?

Mr. Quellmalz: I think so.

Examiner Burchmore: When was this railroad company incorporated?

Mr. Quellmalz: On May 16, 1908, under the statute of Arkansas.

Examiner Burchmore: As a railroad common carrier?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: What is its capital stock?

Mr. Quellmalz: Six thousand dollars.

Examiner Burchmore: Was that all issued?

Mr. Quellmalz: Yes, sir.

6201 Examiner Burchmore: For cash?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: When was the railroad built?

Mr. Quellmalz: Why, it was built—it was rebuilt in 1908. It was a narrow gauge railroad when the Quellmalz Lumber & Manufacturing Company bought out the Lloyd G. Harris Manufacturing Company.

Examiner Burchmore: In what year did they buy it out?

Mr. Quellmalz: 1907.

Examiner Burchmore: That was before the railroad was incorporated?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: They bought the mill and the timber at the same time?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Did they buy the river?

Mr. Quellmalz: I don't think they did.

Examiner Burchmore: I don't know what kind of a river that is, whether they could buy any rights on it.

Mr. Walter: Riparian rights?

Examiner Burchmore: Yes.

Mr. Quellmalz: It is not navigable.

6202 Examiner Burchmore: Did they buy the whole stream?

Mr. Quellmalz: No, they cannot.

Mr. Walter: I guess not.

Examiner Burchmore: Do they own on both sides of the stream?

Mr. Quellmalz: They own on both sides of the stream, yes.

Examiner Burchmore: Does the railroad own its own right of way?

Mr. Quellmalz: Yes, sir, it does.

Examiner Burchmore: Has it owned its right of way since the date of its incorporation?

Mr. Quellmalz: I think so.

Examiner Burchmore: Did it acquire any part of that right of way by condemnation?

Mr. Quellmalz: No, sir, I don't think they did.

Examiner Burchmore: Who owns the land on either side of the railroad?

Mr. Quellmalz: Why, to the best of my knowledge the Quellmalz Lumber & Manufacturing Company own part of it, and Wallace J. Brown the other part.

Examiner Burchmore: Who is Mr. Brown?

Mr. Quellmalz: Mr. Brown is a farmer living in the town
6203 of Brookings.

Examiner Burchmore: Do you know how much land he owns along the railroad?

Mr. Quellmalz: I could not tell you, no, sir.

Examiner Burchmore: Do the Quellmalz Lumber Company own the greater part of the land on each side of the road?

Mr. Quellmalz: Yes, sir, it does.

Examiner Burchmore: And they have sold Mr. Brown his present farm?

Mr. Quellmalz: No, they did not. He owned that farm before they ever came in there.

Examiner Burchmore: When was the line made a standard gauge line?

Mr. Quellmalz: Right after the incorporation.

Examiner Burchmore: What did the line cost, or what is its value?

Mr. Quellmalz: Well, they value it at about $220,000 now.

Examiner Burchmore: Are there any bonds on the line?

Mr. Quellmalz: No, sir, none at all.

Examiner Burchmore: Does it owe any money?

Mr. Quellmalz: Yes, sir; they owe $9,300.66.

Examiner Burchmore: To whom is that indebtedness owing?

6204 Mr. Quellmalz: To the Quellmalz Lumber & Manufacturing Company.

Examiner Burchmore: What use was made of the money thus obtained?

Mr. Quellmalz: They used it to buy steel with and ties, and rail equipment, equipment for the road.

Examiner Burchmore: Has the amount of money that has thus been owing to the Quellmalz Lumber Company ever been greater than it is now?

Mr. Quellmalz: No, sir, I don't think it has.

Examiner Burchmore: You stated, as I understood you, that $6,000 of capital stock was issued for cash. Was it not in fact issued in exchanged for the road acquired at the time of incorporation?

Mr. Quellmalz: Now, I do not exactly know. I think Mr. Quellmalz paid $6,000 for that railroad to the Quellmalz Lumber & Manufacturing Company.

Examiner Burchmore: And took the stock in exchange?

Mr. Quellmalz: I think so, yes, sir.

Examiner Burchmore: Did he give up part of the stock?

Mr. Quellmalz: No, I think he sold part of it.

Examiner Burchmore: For cash?

6205 Mr. Quellmalz: Yes, sir.

Examiner Burchmore: You own a share of stock?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Did you buy it?

Mr. Quellmalz: I certainly did.

Examiner Burchmore: Paid good money for it?

Mr. Quellmalz: I certainly did.

Examiner Burchmore: Why did you buy it?

Mr. Quellmalz: Why, I thought it would be a good investment.

Examiner Burchmore: Has the stock paid any dividends?

Mr. Quellmalz: None at all.

Examiner Burchmore: Do you think it promises to pay dividends?

Mr. Quellmalz: That is a hard question for me to answer now.

Examiner Burchmore: Any boat line on the Black River?

Mr. Quellmalz: We have just bought a boat and barge.

Examiner Burchmore: Who has purchased it?

Mr. Quellmalz: The Brookings & Peach Orchard Railroad.

Examiner Burchmore: Where will they operate or be run to or from?

6206 Mr. Quellmalz: It will run from Pocahontas, Arkansas, to Brookings, and from Wammus Point to Poplar Bluff.

Examiner Burchmore: What kind of freight do you expect to carry on those barges?

Mr. Quellmalz: Why, they expect to transport ties that are cut on different people's land around there, that is not reached by the railroad, down to Brookings Station, and from there take it to the Iron Mountain.

Examiner Burchmore: There is a rice farm right up there too, isn't there?

Mr. Quellmalz: Yes, they expect to haul out rice.

Examiner Burchmore: How soon will your boats be in operation?

Mr. Quellmalz: They expect to have them in operation the latter part of next month.

Examiner Burchmore: What did you pay for them?

Mr. Quellmalz: I could not answer that question; I don't know.

Examiner Burchmore: Do you know where the money was raised to pay for them?

Mr. Quellmalz: I don't know that.

Examiner Burchmore: Is that included in this $9,000 in-
6207 debtedness?

Mr. Quellmalz: No, sir.

Examiner Burchmore: Who owns the steel out of which this railroad is constructed?

Mr. Quellmalz: The Brookings & Peach Orchard Railroad.

Examiner Burchmore: Did the Iron Mountain furnish any part of that steel?

Mr. Quellmalz: The Iron Mountain Railroad furnished the steel for the spur, I think, that connects with the Brookings & Peach Orchard Railroad.

Examiner Burchmore: For what distance?

Mr. Quellmalz: That is something I do not know, I think about approximately 300 feet.

Examiner Burchmore: Have you any sort of contract or agreement with the Iron Mountain covering that track?

Mr. Quellmalz: No, sir, not that I know of.

Examiner Burchmore: Are there any depots or other structures on your line?

Mr. Quellmalz: No, sir, a few farm houses.

Examiner Burchmore: Any other saw mills along your line?

Mr. Quellmalz: Yes, sir, we have three saw mills in our vicinity who haul lumber to our city of Brookings. Gibbs-
6208 Stanage——

Examiner Burchmore: What is their capacity?

Mr. Quellmalz: About ten or eleven thousand feet a day. A gentleman by the name of Scott owns a saw mill, and he also owns all the timber that is around there, and he cuts about twelve or fifteen thousand feet a day, and a gentleman by the name of Ragsdale has a saw mill about, say, two miles from our city of Brookings, who cuts about 10,000 feet a day.

Examiner Burchmore: How far does Stanage haul his lumber?

Mr. Quellmalz: I should think about a mile.

Examiner Burchmore: How about the other man?

Mr. Quellmalz: Scott?

Examiner Burchmore: Yes.

Mr. Quellmalz: About the same distance.

Examiner Burchmore: Where do they get their logs?

Mr. Quellmalz: Why, they get their logs off of their own land outside of this gentleman by the name of Stanage, and he buys his lumber off of Henry Pirtle, who owns quite a tract of timber land around there, and also a gentleman by the name of Shue.

Examiner Burchmore: Does their mill make hardwood?

Mr. Quellmalz: Yes, sir.

6209 Examiner Burchmore: What does Quellmalz manufacture?

Mr. Quellmalz: Hardwood.

Examiner Burchmore: Do they ship any of their lumber over your line?

Mr. Quellmalz: They do, yes, sir.

Examiner Burchmore: The major portion of it?

Mr. Quellmalz: Why, they ship——

Examiner Burchmore: We will let the tonnage go for a little while, unless you want to bring it in at this time.

Mr. Quellmalz: It is immaterial to me. What was the last question?

Examiner Burchmore: Do they ship most of their tonnage over your line?

Mr. Quellmalz: Yes, sir, they do.

Examiner Burchmore: They do not ship any down the river?

Mr. Quellmalz: No.

Examiner Burchmore: What sort of a town is Brookings?

Mr. Quellmalz: About 150. It is a mill and a farm town. Farms all around it. They are clearing right along, putting it into cultivation.

Examiner Burchmore: Does the Quellmalz Company have any company store there?

6210 Mr. Quellmalz: Yes, sir, they do.

Examiner Burchmore: Are there any other stores there?

Mr. Quellmalz: None at all.

Examiner Burchmore: A post office?

Mr. Quellmalz: A post office, yes, sir.

Examiner Burchmore: Is there any town or settlement along the line, other than Brookings?

Mr. Quellmalz: No, sir, not along this railroad.

Examiner Burchmore: What is there at Mollus?

Mr. Quellmalz: There is just a house put up there by the Quellmalz people, who used to have a man out there flagging trains, and now our section foreman lives out there.

Examiner Burchmore: Is the road ballasted?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: How many locomotives have you?

Mr. Quellmalz: One.

Examiner Burchmore: Box cars?

Mr. Quellmalz: No, sir.

Examiner Burchmore: Any flat cars?

Mr. Quellmalz: We have two standard flat cars, and two small cars carrying about 10,000 pounds. The flat cars also——

6211 Examiner Burchmore: Ten thousand pounds?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: How many train crews have you?

Mr. Quellmalz: Only have one train crew.

Examiner Burchmore: How many section gangs?

Mr. Quellmalz: One.

Examiner Burchmore: Any employés in the general office who receive a salary?

Mr. Quellmalz: No, sir.

Examiner Burchmore: Do you run a regular train service?

Mr. Quellmalz: Why no, they run something once in a while, they run one train a day out and back, sometimes two or three days according to what business they have.

Examiner Burchmore: How many cars in a train?

Mr. Quellmalz: From two to three.

Examiner Burchmore: Do you carry passengers?

Mr. Quellmalz: No, sir.

Examiner Burchmore: Incorporated as a carrier only of freight?

Mr. Quellmalz: I don't know. I think they are incorporated as a railroad.

Examiner Burchmore: Do you carry the mails?

6212 Mr. Quellmalz: No, sir.

Examiner Burchmore: Express matter?

Mr. Quellmalz: No, sir.

Examiner Burchmore: What figures can you give me on your freight tonnage and the revenue from it?

Mr. Quellmalz: Last year we hauled 8,563 tons all told. Our revenue amounted to $5,072.49.

Examiner Burchmore: How much of that was lumber? Didn't you haul any other kind of freight?

Mr. Quellmalz: There was one carload of corn went out of there. It was loaded at Brown and went to Corning. That was all that I can remember.

Examiner Burchmore: Do you know what your earnings were on that car, can you remember?

Mr. Quellmalz: I do not, no, sir.

6213 Examiner Burchmore: How much of that lumber came from the Quellmalz saw mill?

Mr. Quellmalz: 88.8 per cent.

Examiner Burchmore: How many tons—have you got the figures?

Mr. Quellmalz: Yes, sir, I think I have. There was 960 tons from outsiders.

Examiner Burchmore: That will do. And what was the revenue from outsiders?

Mr. Quellmalz: $576.00.

Examiner Burchmore: Those outsiders were the three saw mills you mentioned a little while ago, those outsiders consisted of the three saw mills that you have mentioned?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: There was somewhat of an increased outside traffic over the previous year, was there not?

Mr. Quellmalz: Yes, sir, I think it was. They were not going the year before, just cut for a while. For one thing or another they could not get into the timber to get out their logs.

Examiner Burchmore: What were your total revenues for the year, the total operating revenues?

6214 Mr. Quellmalz: $5,072.49.

Examiner Burchmore: What was the operating expense?

Mr. Quellmalz: Well now there is a question that I can not answer because I have not got that far into the book. As far as I have gotten they are about $3,200.00.

Examiner Burchmore: You mean you have not got the accounts made up for the year?

Mr. Quellmalz: They are made up, they are all down, and one thing and another, but I did not get that part of the book——

Examiner Burchmore: Do you think you made a profit from operation last year?

Mr. Quellmalz: Yes, sir, I do.

Examiner Burchmore: Have you made a profit in previous years?

Mr. Quellmalz: No, sir.

Examiner Burchmore: Where did you get the money to make up the deficit?

Mr. Quellmalz: Why the Quellmalz Lumber and Manufacturing Company furnished the money.

Examiner Burchmore: The profits of this year, I assume, will properly be applied on the reduction of your debt that you
6215 were speaking of?

Mr. Quellmalz: No, sir, it won't. We intend to buy a couple of more cars and fix up the track a little.

Examiner Burchmore: Who furnishes the cars for the movement of lumber from the mill when furnished by other shippers at Brookings when destined to interstate points?

Mr. Quellmalz: The Iron Mountain Railroad.

Examiner Burchmore: They furnish the empty cars?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Then for this division of three cents, you haul the empty cars the entire length of your line and haul the loaded cars in the reverse direction the entire length of your line?

Mr. Quellmalz: Yes, sir, we do.

Examiner Burchmore: Who loads the lumber?

Mr. Quellmalz: The Quellmalz Lumber and Manufacturing Company.

Examiner Burchmore: Does your railroad issue any bills-of lading?

Mr. Quellmalz: They do; yes, sir.

Examiner Burchmore: Where is that actually issued?

Mr. Quellmalz: It is issued at Brookings, way-bills and
6216 bills-of-lading.

Examiner Burchmore: This bookkeeper that you mention, she is out there?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Has there been any complaint against your road which has come to your knowledge, by these other mills out there?

Mr. Quellmalz: None whatever, no, sir.

Examiner Burchmore: Do you have any passes over the Iron Mountain Railroad?

Mr. Quellmalz: The President, and the Agent—and the General Superintendent have.

Examiner Burchmore: They are also officers of the lumber company?

Mr. Quellmalz: Yes, sir.

Examiner Burchmore: Who did you say had Iron Mountain passes?

Mr. Quellmalz: Mr. Quellmalz, our president, and the general superintendent.

Examiner Burchmore: Mr. Joe Nester?
Mr. Quellmalz: Yes, sir.
Examiner Burchmore: Did you come to St. Louis on a pass?
6217 Mr. Quellmalz: Did I come? Yes, sir, I had a trip pass.
Mr. Walter: Do you mean to this present hearing?
Mr. Quellmalz: Yes.
Mr. Walter: He lives here.
Mr. Quellmalz: I live here in St. Louis.
Examiner Burchmore: Have you ever held or used an annual pass?
Mr. Quellmalz: No, sir.
Examiner Burchmore: Mr. Nester is a timber buyer for the lumber company, isn't he?
Mr. Quellmalz: Yes, sir.
Examiner Burchmore: Does he travel around the country sometimes to buy timber?
Mr. Quellmalz: Yes, sir, he does.
Examiner Burchmore: Does he pay fare when he travels on such trips?
Mr. Quellmalz: Well I don't know whether he does or not. I have never seen him use his ticket.
Examiner Burchmore: You suppose he uses a pass on the roads that he has it?
Mr. Quellmalz: Yes, I suppose so.
Examiner Burchmore: What is the rate to St. Louis from
6218 Brookings?
Mr. Quellmalz: Fourteen cents now.
Examiner Burchmore: What distance is that on the Iron Mountain from Mollus to St. Louis?
Mr. Quellmalz: I think it is about 205 miles.
Examiner Burchmore: Mr. Walter?
Mr. Walter: I don't think I have any questions I wish to cover. You have never refused to haul any traffic that has been offered to you by any of these outsiders?
Mr. Quellmalz: None whatever, no, sir.
Mr. Walter: That is all.

Cross-examination:

Mr. Coleman: Mr. Quellmalz, you referred to a barge line that you intended to operate in conjunction with the railroad. Have you decided upon the rates that you intend to put in effect?
Mr. Quellmalz: Not yet, no, sir.
Mr. Coleman: Do you intend to devote the capacity of that barge line to hauling ties?
Mr. Quellmalz: Well, yes, ties and bolts.
Mr. Coleman: Have you any idea of the basis of rates that
6219 you intend to put into effect?
Mr. Quellmalz: Why I don't know. I think that we will write to the Commission of Arkansas and ask them what we have a right to charge on that kind of transportation.
Mr. Coleman: You have fully decided on making the investment?

Mr. Quellmalz: Yes, I think we have.

Mr. Coleman: Well, in doing so, and canvassing the matter, you must have approximated the earning power of the barge line, did you not?

Mr. Quellmalz: Yes, we did.

Mr. Coleman: Now about what approximate revenue did you figure that the barge line and the railroad company should earn per hundred pounds on ties to the point of junction with the Iron Mountain road?

Mr. Quellmalz: Well about six cents.

Mr. Coleman: Six cents per hundred?

Mr. Quellmalz: Yes, sir.

Mr. Coleman: What?

Mr. Quellmalz: Yes, sir.

Mr. Coleman: What proportion of that did you expect to get from your connection—your standard railroad connection?

6220 Mr. Quellmalz: I do not get that question.

Mr. Coleman: Did you expect to get any or all of the six cents per hundred pounds from your connection—the Iron — road or its connection?

Mr. Quellmalz: No, we intend to operate those barges as a local transportation company, not in connection with the railroad.

Mr. Coleman: Not in connection with the railroad?

Mr. Quellmalz: That is, deliver the stuff to the railroad company, but we expect to make that a local charge.

Mr. Coleman: Then you expect, however, simultaneously that in handling the ties the railroad will get a proportion of the rate?

Mr. Quellmalz: Certainly, we want to increase the earnings of the railroad company as much as we possibly can.

Mr. Coleman: Now, what did you calculate that you would get from the amount accruing to the Iron Mountain and its connections and your railroad line on the ties?

Mr. Quellmalz: Well I don't know; I could not answer that question.

Mr. Coleman: You testified, however, that you had in
6221 mind an earning that the railroad was to get as a proportion of a through rate. Now, what proportion—have you no idea? You say you have planned on the investment.

Mr. Quellmalz: Well, they will get their regular division of three cents from the Iron Mountain Railroad.

Mr. Coleman: Then you have figured on three cents. What did you figure that your boat line would receive, three cents or the balance of the six?

Mr. Quellmalz: Yes, that is what we figured. We don't know whether it will pay or not. We have to try it out first.

Mr. Coleman: Not being safe in your judgment as to whether it would pay or not, it was intended, was it not, that your lumber company or some affiliated interests with your railroad or boat line would buy these ties?

Mr. Quellmalz: Well, no. We do not expect to sell those ties to our railroad or to the lumber company.

Mr. Coleman: But my question intended to ascertain from you whether as a commercial proposition someone affiliated with your railroad or your lumber company would go into the market and buy these ties.

Mr. Quellmalz: No, sir.

Mr. Coleman: You did not think——

6222 Mr. Quellmalz: No, sir.

Mr. Coleman: That that was the idea?

Mr. Quellmalz: No, sir, it was not.

Mr. Coleman: You say you are secretary of the company?

Mr. Quellmalz: Yes, sir.

Mr. Coleman: Do you enter into the matter of planning for investments of this kind?

Mr. Quellmalz: No, sir, I do not.

Mr. Coleman: Was it your expectation that your boat line would handle these ties from the dock onto the barge?

Mr. Quellmalz: Yes, it was.

Mr. Coleman: And discharge them and load them onto the cars?

Mr. Quellmalz: Yes, I think it was.

Mr. Coleman: Do you think it can operate that service for three cents a hundred?

Mr. Quellmalz: I think we could, yes, because we can load the cars right from the barge that we bring them down on and load them right——

Mr. Coleman: What becomes of the load?

Mr. Quellmalz: You can take them right from the barge. The barge is right level with the railroad tracks there, the surface of the car would be level and we could take the ties right off of the

6223 barges and transfer them onto flat cars, provided we could get the flat cars.

Mr. Coleman: Have you tried that to find out what it would cost?

Mr. Quellmalz: No, we have never tested it.

Mr. Coleman: Then you expect to load those ties onto a boat and take them up and load them onto cars and make a profit on three cents per hundred pounds?

Mr. Quellmalz: That is our intention, yes, sir.

Mr. Coleman: You spoke of someone in charge of the purchases of timber for your company riding on free transportation or having free transportation.

Mr. Quellmalz: I said that our general superintendent has transportation over the Iron Mountain Railroad.

Mr. Coleman: I understood you to testify that someone that bought timber for you had this transportation.

Mr. Quellmalz: Well, this gentleman is employed as agent of the Quellmalz Lumber Company. He does buy timber for the Quellmalz Lumber and Manufacturing Company; yes, sir, he is employed by them.

Mr. Coleman: Does he buy lumber also?

Mr. Quellmalz: Yes, sir, he does.

6224 Mr. Coleman: Do you haul logs in on other lines to your mill?

Mr. Quellmalz: No, sir.

Mr. Coleman: Have you mills elsewhere?

Mr. Quellmalz: No, sir.

Mr. Coleman: What occasion would there be for him to buy timber then?

Mr. Quellmalz: He floats it down the Black River.

Mr. Coleman: That is, he buys it down the Black River?

Mr. Quellmalz: Yes, sir.

Mr. Coleman: Then he would have no occasion to use this annual transportation for buying timber on these railroads?

Mr. Quellmalz: Why, yes, I guess he would have.

Mr. Coleman: What would you do with that timber?

Mr. Quellmalz: Well we would float it down the Black River to our sawmill which crosses the Iron Mountain tracks.

Mr. Coleman: Well, I mean buying timber on the railroad. Would you buy it on the Iron Mountain Railroad?

Mr. Quellmalz: Yes, sir.

Mr. Coleman: And pay a rate on that timber?

Mr. Quellmalz: We do not buy it on the Iron Mountain Railroad. We buy it on the Black River.

Mr. Coleman: You were asked the question as to whether
6225 an annual pass was ever used in connection with trips made by this man buying timber. I presume that he bought the timber where he used the transportation. He did not use the annual transportation of the Iron Mountain road on the river, did he?

Mr. Quellmalz: No. I don't think you understand that thoroughly. This timber is located along the Black River, and the Iron Mountain Railroad runs along the Black River and crosses the Black River at two intersections. Now, this timber lies in between the Black River and the Iron Mountain Railroad tracks.

Mr. Coleman: Does he buy lumber also?

Mr. Quellmalz: Yes, sir, he does.

Mr. Coleman: He would buy ties too, wouldn't he?

Mr. Quellmalz: Well, I don't know as he ever bought any ties.

Mr. Coleman: Are you sure now that it was not contemplated when you decided to make the investment in the barge line that your lumber company or your railroad company having this man as their buyer, would buy the ties?

Mr. Quellmalz: No, sir.

Mr. Coleman: Then it is to transport ties from different people?

6226 Mr. Quellmalz: That is the idea, yes, sir.

Mr. Coleman: Have you in mind any concern that will buy those ties?

Mr. Quellmalz: Why I don't know who would buy them, but there are people on the Black River above us who have land that they are clearing, and there is a good grade of lumber on that property outside of tie timber. Now, they clear that out and they make ties out of that timber, and they will give those ties to us to haul down to our railroad, you understand, and send them out, but

we have nothing to do with the selling of those ties or the purchase of those ties.

Examiner Burchmore: If they wanted to ship those ties out over the Iron Mountain Railroad instead of floating them down the Black River, how far would they have to team them to get them to the Iron Mountain?

Mr. Quellmalz: Seven miles, I think.

Mr. Coleman: And they could run them by barge down to the Iron Mountain road the same way?

Mr. Quellmalz: No, they could not run them down to the Iron Mountain road by barge.

Mr. Coleman: I understand your testimony to mean that you expect for three cents per hundred pounds you will be able to
6227 see a profit in handling those ties onto your barge, transporting them, taking them off of the barge and loading them on the cars?

Mr. Quellmalz: Well now I said I thought that that would be the charge. Now I am not sure.

Mr. Coleman: You know that your company has no purpose in mind of going in the market to buy them?

Mr. Quellmalz: I am positive of that, yes, sir.

Mr. Coleman: That is all.

Mr. Walter: There is just one question I want to ask. Three cents a hundred pounds would be how much per tie? How much would a tie weigh?

Mr. Quellmalz: A tie will weigh about from 170 to 200 pounds.

Mr. Walter: That is all.

6228 *Trinity Valley & Northern Railway Company.*

J. J. BALDERACH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Gutheim: State your name to the reporter.

Mr. Balderach: J. J. Balderach.

Examiner Gutheim: Where do you live, Mr. Balderach?

Mr. Balderach: Dayton, Texas.

Examiner Gutheim: What is your occupation?

Mr. Balderach: I was formerly treasurer and auditor of the Trinity Valley & Northern, but I hold the title of auditor of the Trinity Valley & Northern, about since the first of the year.

Examiner Gutheim: Will you describe the location of the Trinity Valley & Northern Railway?

Mr. Balderach: Yes, I have a map here that I would like to submit.

Examiner Gutheim: Will you file the map?

Mr. Balderach: Yes, for the record, and I will try to explain this more fully.

(The map so offered and identified was received in evidence and thereupon marked "Balderach Exhibit No. 1," received in
6229 evidence January 27, 1911, and is attached hereto.)

Examiner Gutheim: According to this map then, the road runs from Dayton on the T. & N. O. Railroad?

Mr. Balderach: Yes, sir.

Examiner Gutheim: In a sort of a general northerly direction?

Mr. Balderach: Northeasterly direction, I believe it is, more.

Examiner Gutheim: What is the other terminus?

Mr. Balderach: It is Fouts, Texas. We have extended the line eight miles north of Fouts to a place called Lumm, designated up here as Mile 18. That eight miles north of Fouts has not as yet been put in operation, but is expected to be put in the first of February, freight and passenger service will be extended to that portion of the line.

Examiner Gutheim: How much have you been operating up to the present time?

Mr. Balderach: Ten miles.

Examiner Gutheim: And your road to go into operation about the 1st of February will be eight miles further?

Mr. Balderach: Yes, sir; making a total of eighteen miles.

Examiner Gutheim: Is that road standard gauge throughout?

6230 Mr. Balderach: Yes, sir.

Examiner Gutheim: About how heavy a rail?

Mr. Balderach: Fifty pound rail.

Examiner Gutheim: Is that rail owned by the Trinity Valley & Northern Railroad?

Mr. Balderach: No, sir, it is leased.

Examiner Gutheim: Who from?

Mr. Balderach: Texas & New Orleans Railroad Company.

Examiner Gutheim: What is the consideration paid for the lease?

Mr. Balderach: $100 per mile per annum, or the equivalent of 4 per cent on $40,000.

Examiner Gutheim: Have you any other connection?

Mr. Balderach: Yes, sir.

Examiner Gutheim: Besides the T. & N. O. connection?

Mr. Balderach: Yes, sir, Fullerton, Texas, with the Beaumont, Sour Lake & Western Railway Company.

Examiner Gutheim: Is that a Frisco line?

Mr. Balderach: That is what they call the Frisco Lines in Texas.

Examiner Gutheim: What is the most important industry *of* the line of this road?

6231 Mr. Balderach: Forest products.

Examiner Gutheim: And what company owns the largest mill?

Mr. Balderach: The Dayton Lumber Company.

Examiner Gutheim: Where is that mill located?

Mr. Balderach: At Ladd, Texas, approximately a mile from the trunk line.

Examiner Gutheim: Is it all of a mile?

Mr. Balderach: Approximately a mile, it is about 5,000 feet.

Examiner Gutheim: How far is that from the Frisco connection at Fullerton?

Mr. Balderach: It is 4.8 miles.

Examiner Gutheim: Is the Dayton Lumber Company as a corporation, or through its stockholders, interested in the Trinity Valley & Northern Railway?

Mr. Balderach: Yes, sir; the controlling interest of the railroad company is held by the stockholders of the Dayton Lumber Company.

Examiner Gutheim: Is all the stock of the railroad company held by the stockholers of the Dayton Lumber Company?

Mr. Balderach: No, sir.

Examiner Gutheim: How much stock of the railroad com-
6232 pany is held by parties not connected with the lumber company in any way?

Mr. Balderach: Well, there is Mr. W. P. Cottingham, used to be secretary of the company, he owns one share, and S. H. Fullerton, of St. Louis, who is interested in the company, he does not own any stock in the lumber company. I cannot give you the shares. I think our report to the Railroad Commission of Texas shows the individual stockholders, 50 shares.

Examiner Gutheim: Mr. Fullerton owns 50 shares?

Mr. Balderach: Fifty shares.

Examiner Gutheim: Is he the only stockholder outside of the stockholders of the Dayton Lumber Company owning anything more than sufficient to qualify as a director?

Mr. Balderach: Sir?

Examiner Gutheim: I say, is Mr. Fullerton the only stockholder of the railroad not a stockholder of the Dayton Lumber Company who holds more stock than just what is necessary to qualify as a director?

Mr. Balderach: Well, I think there is Mr. L. J. Boykin. I am not positive, but I think he does not own any stock in the Dayton Lumber Company. He owns one share, I think, one or two
6233 shares of the railroad.

Examiner Gutheim: But the same individuals through stock ownership can control the policy of both these corporations?

Mr. Balderach: Yes, sir. As I stated before, the controlling interest of the railroad was held by the stockholders of the Dayton Lumber Company.

Examiner Gutheim: You say Mr. S. H. Fullerton has no interest whatever in the Dayton Lumber Company?

Mr. Balderach: Yes, sir.

Examiner Gutheim: Do you know whether any of the so-called Fullerton Companies have any interest in the Dayton Lumber Company?

Mr. Balderach: I am not familiar with the accounts of the Dayton Lumber Company.

Examiner Gutheim: The Chicago Lumber & Coal Company, do they have any interest in it?

Mr. Balderach: I have no connection with the lumber company at all. Never have seen their books, never have looked into the general subject.

Examiner Burchmore: Have you any opinion on that subject?

Mr. Balderach: No, sir, I have never formed any opinion because I have not investigated the business of the lumber
6234 company. I am not a lumberman.

Mr. Walter: Mr. Fullerton is here and he can tell you.

Examiner Gutheim: Mr. Balderach, does the Dayton Lumber Company sell its products direct through the Dayton Lumber Company or through a sales agent?

Mr. Balderach: Through a sales agency.

Examiner Gutheim: What sales agency?

Mr. Balderach: It is the Alf. Bennett Lumber Company of St. Louis.

Examiner Gutheim: Are the officials of the railroad company the same individuals who hold some official relation to the lumber company?

Mr. Balderach: Yes, sir.

Examiner Gutheim: About how much equipment do you have?

Mr. Balderach: We have eight flat cars, seven box cars, one passenger coach, or a total of sixteen cars of all classes, and one locomotive, all equipped with train brakes, automatic couplers, safety appliances, and so forth.

Examiner Gutheim: What is the investment of this company in the cost of its road and equipment?

Mr. Balderach: The latest trial balance that we have is of date October 31, 1910, and the physical property owned at that
6235 date is $122,059.38.

Examiner Gutheim: That covers the eighteen miles of road right up to Mile Post 18?

Mr. Balderach: Yes, sir.

Examiner Gutheim: Or only such part as was built up to last October?

Mr. Balderach: Up to October 31, 1910.

Examiner Gutheim: Was it practically all constructed at that time?

Mr. Balderach: No, sir; there has been quite a little construction work carried on since.

Examiner Gutheim: What is the total amount of capital stock outstanding?

Mr. Balderach: $25,000.

Examiner Gutheim: What other indebtedness does the company owe?

Mr. Balderach: We are indebted to the Dayton Lumber Company for about $62,537.87, if I remember the account correctly.

Examiner Gutheim: Have you any other outstanding indebtedness?

Mr. Balderach: Yes, we have some trust notes covering a
6236 purchase of five flat cars from the Hicks Locomotive & Car Works.

Examiner Gutheim: How much is that?

Mr. Balderach: It was originally $1,625, but the notes have been taken up as they matured, and we have decreased the indebtedness now to $180.53.

Examiner Gutheim: So that you seem to have about $87,000 outstanding in capital indebtedness?

Mr. Balderach: Yes, sir. Approximately $87,000, more or less.

Examiner Gutheim: How do you carry the rest of the amount, the difference between the equipment investment of $122,000 and this $87,000, as a surplus?

Mr. Balderach: No, that is not a surplus. Our voucher account, audited voucher account shows liabilities of $8,721.52. We have a pay check account which a portion of that represents, pay checks issued in favor of employés engaged in construction service. We also are indebted to several contractors for grading work, which has never been paid for.

Examiner Gutheim: How much is paid to the Dayton Lumber Company in the way of interest on the amount due it?

Mr. Balderach: 8 per cent per annum.

6237 Examiner Gutheim: Is that paid from year to year?

Mr. Balderach: Why, it has not been paid. It has been accrued. We have never had enough money to take up all our obligations, and if we ever do, we will pay them.

Examiner Gutheim: Does the road run its train on a regular schedule?

Mr. Balderach: Yes, sir; I have a time table here I would like to file into the record.

Examiner Gutheim: You may file that as your exhibit 2.

Mr. Balderach: All right, sir.

(The time table so offered and identified, was received in evidence and thereupon marked "Balderach Exhibit No. 2, received in evidence January 27, 1911", and is attached hereto.)

Examiner Gutheim: Do you operate both passenger and freight service?

Mr. Balderach: Yes, sir, we operate on a double daily service.

Examiner Gutheim: Do you carry any United States mail or express?

Mr. Balderach: Yes, sir, under formal contract entered into at the Post Office Department of the United States Govern-
6238 ment, effective November 1, 1910.

Examiner Gutheim: What other communities along the road are served by this company as a common carrier?

Mr. Balderach: Well, Dayton, Texas, is the junction point with the T. & N. O. Railroad Company, and it is assuming proportions as a distributing center, have five or six mercantile houses there, and those merchants supply the interior farmers, that is, I mean by interior farmers, the people living adjacent to the line of the Trinity

Valley & Northern for a distance of three to five miles. We have a station at Ladd, Texas, which is an open station, and we have several tie camps along the line. We also have an open station at Fouts, Texas, and we contemplate establishing an agency at Lumm station.

In connection with the Lumm station, I wish to state that it is located on what is known as Talkington Prairie, and it is an old settlement up there. The land is very productive, I understand, and we might possibly have a large town there some day—that is, I say a large town, a large country town, probably seven to eight hundred to a thousand people. Arrangements have been made to establish a town there. One of the merchants who has a grocery store
6239 and general merchandise establishment, having the post office, is going to move his place of business on our line.

Examiner Gutheim: Ladd, where you have an open station, is the site of the Dayton Lumber Company's mill is it not?

Mr. Balderach: Yes, sir.

Examiner Gutheim: And is the railroad station agent a mill employé or a lumber company employé?

Mr. Balderach: No, sir, the agent at Ladd, Texas, has no connection with the Dayton Lumber Company.

Examiner Gutheim: Now, at Fouts, where your line has opened a station, is that a logging camp of the Dayton Lumber Company?

Mr. Balderach: Yes, sir, it might be considered a logging camp. It was established there because the people who owned the land dedicated a town site. It was formerly called Rosswood. Messrs. Ross & Wood of Houston Texas, owned the land and dedicated a townsite that was named in their honor, but subsequently changed to Fouts, Texas; I presume in honor of our former president.

Examiner Gutherim: Well, is the agent at Fouts an employé of the lumber company?

Mr. Balderach: He was but he is not now.

6240 Examiner Gutheim: He is not now?

Mr. Balderach: No, sir.

Examiner Gutheim: This station called Lumm, is the Dayton Lumber Company logging in that vicinity at the present time?

Mr. Balderach: Yes, sir. I don't know whether they are logging right at Lumm, but I know it is north of Fouts.

Examiner Gutheim: Is there a camp at Lumm?

Mr. Balderach: No, the camp is at Fouts, Texas.

Examiner Gutheim: How far is that projected extension up to the Santa Fe connection at Lamb?

Mr. Balderach: I think it is about twelve miles.

Examiner Gutheim: Has there been any actual work done on that line?

Mr. Balderach: Yes, sir, our engineer, Mr. A. J. Wise, of Houston, Texas, has made a preliminary survey up through that territory and has just sent in his bill about thirty days ago for $450 for his services.

Examiner Gutheim: Now, do you make any distinction in the character of your railroad service between Dayton or Ladd and Fouts, and between Fouts and Lumm?

Mr. Balderach: We do not operate to Lumm now. The operation of the railroad has not been continued to Lumm because we
6241 do not have the rails for that portion of the line, but we have a service between Dayton and Ladd and Fouts and Fullerton. Our train No. 1 leaves Fouts and runs into Dayton, and our Train No. 2 leaves Dayton and runs down to Fouts. Train No. 3 leaves Fouts and runs to Ladd, and Train No. 4 leaves Ladd and runs out to Fouts.

Examiner Gutheim: There is some railroad operation north of Fouts up to Lamb at the present time, is there not?

Mr. Balderach: The Dayton Lumber Company's engine does a logging service.

Examiner Gutheim: That is the track extension that has recently increased your cost of road?

Mr. Balderach: Yes, sir. I might also say that in the month of December there was a crowd came out from Houston, went out to the northern terminus of our line, and we charged them for the train haul, also charged them for the additional equipment. That is the only revenue from train service on that portion of the line.

Examiner Gutheim: How long has the Dayton Lumber Company been running its logging trains between Lamb and Fouts?

Mr. Balderach: Why now, the Dayton Lumber Company has not been operating to Lamb, it is north of Fouts.

6242 Examiner Gutheim: Well, north of Fouts.

Mr. Balderach: Yes, sir—Well, it is over a year.

Examiner Gutheim: And what consideration do they pay to the Trinity Valley & Northern Railroad Company for the service?

Mr. Balderach: They now pay one dollar per train mile under a trackage contract. I don't know whether that contract has been filed with the Commission or not. If it has not, we will file a copy of it.

Examiner Burchmore: Suppose you file a copy.

Mr. Balderach: I have not a copy here, but the original. I will have a copy made from that and send it to you.

Examiner Gutheim: About how many cars in a train do you run?

Mr. Balderach: Why, I have some statistics here that show our average number of loaded cars in our freight trains for the last fiscal year, that I would like to offer.

Examiner Gutheim: This statement, Mr. Balderach, covers the general financial and operating statistics for the road for the fiscal year ending June 30, 1910?

Mr. Balderach: Yes, sir, the accounts are open for inspection.

Examiner Gutheim: You may file that as your Exhibit
6243 No. 3.

(The statement so offered and identified was received in evidence and thereupon marked "Balderach's Exhibit No. 3, received in evidence January 27, 1911", and is attached hereto.)

Mr. Balderach: The information concerning the number of cars on our trains from the statistical statement, shows that we have had 2.18 cars in each train, that is, as a statistical item, but the average

loaded freight cars in each freight train including mixed, is 2.18 cars.

Examiner Gutheim: Does that refer to the logging trains of the Dayton Lumber Company?

Mr. Balderach: No, sir, the logging trains of the Dayton Lumber Company do not enter into the statement now, that is, after this fiscal year. I would modify that statement by stating that from July 1, 1909, to December 31, 1909, the logs were hauled by our trains at a compensation of $5 per car covered by a special application made to the Railroad Commission of Texas. Subsequent to January 1, 1910 a contract was entered into between the Dayton Lumber Company and the Trinity Valley & Northern Railway Company, whereby the railway company was to receive a compensation of $1.50 per
6244 train mile. That contract was subsequently modified to a rate of a dollar per train mile, and the tonnage for the first six months of the fiscal year, ending June 30, 1910, is included in this exhibit as traffic movement for the fiscal year.

Examiner Gutheim: Can you say about how many cars per train the lumber company puts in logging trains?

Mr. Balderach: About nine.

Examiner Gutheim: And they would run about how many feet per car?

Examiner Balderach: I could not state as to the number of feet in each car.

Examiner Gutheim: Would these cars average about 3,000 feet?

Mr. Balderach: I could not answer that question because I don't know anything about the density of the load on those logging cars.

Examiner Burchmore: Characteristic logging cars, are they?

Mr. Balderach: Yes, sir, skeleton cars.

Examiner Gutheim: About how many miles would they pay that one dollar per train mile on the average?

Mr. Balderach: They operate four trains a day now.
6245 They run about 72, 76 or 78 miles.

Examiner Burchmore: Per day or per train?

Mr. Balderach: Per day, four trains per day; the mileage of the road is only 18 miles.

Examiner Gutheim: Do they pay a dollar per train mile on empties out as well as loads brought in?

Mr. Balderach: Yes, sir, all trains operated by the lumber company, the lumber company pay a dollar per train mile.

Examiner Gutheim: So bringing in two trains a day, with eight or nine cars each, would be about eighteen loaded cars a day?

Mr. Balderach: Yes, sir.

Examiner Gutheim: For which they would pay, if they traveled out fourteen miles, $56.00?

Mr. Balderach: If they traveled fourteen miles, yes, sir.

Examiner Gutheim: Are they traveling more or less than fourteen miles now?

Mr. Balderach: The last month that I have a bill against the Dayton Lumber Company shows that they operated about seventy-two miles a day.

Examiner Gutheim: Seventy-two miles?

Mr. Balderach: Yes, sir.

6246 Examiner Gutheim: So they would be paying about four dollars per car?

Mr. Balderach: Approximately.

Examiner Gutheim: Does that contract with the Dayton Lumber Company require the approval of the Texas Railroad Commission?

Mr. Balderach: I think it does.

Examiner Gutheim: Was it approved?

Mr. Balderach: Now, the contract was drawn up by Mr. Fouts, the former president of the company, and since that time there has been a change of officers, and I don't know whether that contract has been approved by the Commission or not. However, if you wish to be further informed in connection with that contract, I will try to make an investigation and advise you as to the facts.

Examiner Gutheim: I ask because I desire to know whether the State of Texas' special rate of $5.00 per car would be superseded by this contract without any comment from the Commission.

Mr. Balderach: As I said before, I don't know whether that matter has been taken up with the Commission or not. I am not in a position to answer. It may be, our former president took that

6247 matter up with the Commission and it probably authorized him to execute the contract. However, I will state that from the latest report of the Commission, it is shown that we have such a contract in effect with the Dayton Lumber Company.

Examiner Gutheim: That is a fact. Is it likely that the Dayton Lumber Company will log in any more to the mill at Ladd than they do at the present time?

Mr. Balderach: Well, sometimes they do. There is a lot of cut-over land there you know. They make a contract with these loggers to bring in the timber close to the track. Some has been brought to the mill within a distance of three to five miles.

Examiner Gutheim: The point is that on this contract rate of a dollar per ton mile, if they are logging near by the road, it makes their rate a great deal lower, but if they are going to log out further, it will make their rate per car much higher.

Mr. Balderach: I understand that. The extension you see, north of Lumm to Lamb, Texas, will increase the mileage of our line twelve additional miles. That is, when we built our extension up in that territory, and they still operate under the same basis,

6248 the rates per car will increase a considerable proportion.

Examiner Gutheim: Now, do you have through rates from the mill at Ladd on foreign products by both the T. & N. O. and the Frisco line?

Mr. Balderach: Yes, sir.

Examiner Gutheim: And what divisions acrue to the Trinity Valley & Northern out of those through rates?

Mr. Balderach: Well, we have numerous division sheets on file, and all of them carry a different division. On some I will state that on traffic destined to points east of the Mississippi River, moving by the New Orleans gateway, in connection with the T. & N. O. Rail-

way, the Louisiana Western, the M. K. & T., and the I. C. and their connections, we get two cents out of the proportion up to New Orleans. The proportion to New Orleans is eight cents, and the lines beyond New Orleans get the balance of the through rate. Traffic destined to points west of the Missouri river, we get 20 per cent of the Sunset's proportionate rate up to their connections with the lines leading west to the Texas gateways, leading out of Shreveport, Sherman, Denison, Fort Worth and Dallas gateways.

Examiner Gutheim: Is there any provision in the divis-
6249 ional arrangement whereby the Sunset lines must first receive a minimum revenue before you get any?

Mr. Balderach: There is a division sheet on file to that effect, but I wish to state that the Trinity Valley & Northern Railway Company does not route any lumber via that gateway.

Examiner Burchmore: Will you give us your reason why they do not?

Mr. Balderach: Why, yes. We route the lumber to the best advantage of the Trinity Valley & Northern, to secure to it the greatest revenue for the service performed. The division sheets that I have mentioned, the Sunset line received a minimum of eight cents.

Examiner Gutheim: You don't route it where they get seven cents?

Mr. Balderach: I don't understand your question?

Examiner Gutheim: You don't route it where the Sunset line will get seven cents and you get nothing?

Mr. Balderach: The Sunset Line reserves a minimum of eight cents.

Examiner Gutheim: What divisions do you get on the
6250 Frisco?

Mr. Balderach: Why, we get 2½ cents per hundred pounds where the rates are equal, and when the rates are lower via the Florida gateway in connection with the Frisco lines than via the Texas gateway in connection with the Sunset lines, we receive one cent and a half per hundred pounds.

I might say further, that at one time, when I first became connected with the Trinity Valley & Northern Railway Company, that our rate was lower via the Florida gateway than via the Texas gateway in connection with the Frisco and Santa Fe lines, and the Trinity Valley & Northern was not getting any division at all, and when that division was taken up with the Frisco officials, we told them that we would not give them any business at all unless they allowed us a division for the service performed by the T. V. & N. Railway Company.

Examiner Gutheim: Do you get any higher divisions than three cents?

Mr. Balderach: Yes, sir, our maximum division is four cents per 100 pounds, and that is on intrastate traffic, and we receive that division from the Sunset Central lines on a gradual division basis. Where the rate is 18¾ cents per hundred pounds from point of shipment to destination, local points or competitive points on the
6251 Sunset Central lines, we are allowed 4 cents per 100. Where the through rate is under 18¾, and over 15, or 15 cents, we

receive 3½ cents a hundred pounds. Between 15 and 10 we receive 3 cents, and under 10 cents we receive 2½. We also have division sheets in effect via the Frisco gateway allowing us practically the same division on competitive business. On traffic destined beyond the Sunset Central lines we receive 20 per cent of their proportion up to their immediate connection.

Examiner Gutheim: Does the statement which you have submitted show about what the average division was received by the Trinity Valley & Northern for each of the lines?

Mr. Balderach: For each of the lines, no, sir; I have not prepared any statement.

Examiner Gutheim: Does it show the general average division?

Mr. Balderach: On lumber it is 2½ cents on the average.

Mr. Walter: To be exact, 2.59.

Mr. Balderach: 2.575 of a cent, to be exact.

Examiner Gutheim: The figure that you gave just now is the average division, that is the average per 100 pounds of all revenues from divisions received, is it?

6252 Mr. Balderach: On lumber only. I think I will let you look at my statement here and I can give you a better idea of what it covers. Average receipts per 100 pounds, lumber, 2.575 cents.

Examiner Gutheim: Do you have through rates inbound and outbound on commodities other than forest products?

Mr. Balderach: Yes, sir. I would further add that I have prepared interline accounts, reporting proportions to our connections.

Examiner Gutheim: Via both roads?

Mr. Balderach: No, not via both roads; via the Frisco. We have interline accounts and through billing arrangements.

Examiner Gutheim: Do you have through rates via both roads?

Mr. Balderach: Yes, sir, we have through rates. Business originating on the Sunset Central lines and their connections, is handled on a transfer at Dayton and rebilled by our joint agent.

Examiner Gutheim: Will you give generally what divisions you receive on commodities other than forest products?

Mr. Balderach: On traffic originating in defined territory north of the Ohio River, the proportion up to the Mississippi river, we are allowed 12-½ per cent of the through rate. Traffic

6253 originating in seaboard territory, we take an arbitrary proportion up to New York, and we are entitled to our 12-½ per cent of the balance. That is on interstate shipments in less than carload lots. On carload shipments specific division sheets are issued, allowing our company various amounts. We get 3-½ cents per hundred pounds on carloads, and our minimum on less than carloads is 10 cents. On intrastate shipments, the divisions are based on revenue, using each line's local as a factor. That is, when the traffic originates on other than the Sunset Central lines or the Frisco lines. When the traffic originates on the Frisco lines, our division is based on the mileage arrangement. As the Sunset Central mileage increases our proportion decreases accordingly.

Examiner Gutheim: Now, are the divisions on lumber fixed on a milling in transit basis?

Mr. Balderach: No, sir, we have no milling in transit arrangement on our lines.

Examiner Gutheim: Well, on that haul that is performed by your company upon the product of the mill to the T. & N. O. is how much?

Mr. Balderach: The length of haul?

Examiner Gutheim: Yes.

Mr. Balderach: Approximately the haul is over three-
6254 quarters of a mile.

Examiner Gutheim: And that is always performed with the power of the Trinity Valley & Northern?

Mr. Balderach: Yes, exclusively.

Examiner Gutheim: The T. & N. O. power never goes on to your road at all?

Mr. Balderach: No, sir, the T. & N. O. does not operate on our tracks at all.

Examiner Gutheim: Likewise you haul approximately a distance of five miles to the Frisco.

Mr. Balderach: Yes, sir.

Examiner Gutheim: Now, does this statement of your financial and operating statistics for the year ending June 30, 1909, show the division of your tonnage and revenue?

Mr. Balderach: I wish to correct you there. That is for the fiscal year ending June 30, 1910.

Examiner Gutheim: I beg your pardon. Does it show the division of your tonnage and revenue, so that we can see what business is done for the Dayton Lumber Company and the revenue therefrom, and what business is done for the general public outside of the Dayton Lumber Company?

Mr. Balderach: Well, these financial statements and sta-
6255 tistical returns I have here for the fiscal year ending June 30, 1910 have not been segregated as between independent shippers and the Dayton Lumber Company. However, the statement shows for itself, and under the products of agriculture there is an item of corn, twenty-one tons that is an independent shipment. Under the products of the forest, ties, 4401 tons, wood, 1231 tons. stave bolts 2400 tons.

In manufactures we have, machinery 24 tons, ice 205 tons.

We have merchandise 604 tons, emigrant outfits, 10 tons.

A proportion of the merchandise is hauled for the Dayton Lumber Company, but it is such a small amount I don't think it would be of any value to have it in the report.

Examiner Gutheim: It is approximately correct to say that the items which you have mentioned are all the items that were handled for the general public?

Mr. Balderach: Approximately speaking. I have not prepared an exact statement from the waybills, because it entailed a good deal of clerical work, and I did not have the time to do it. I am the only one who handles the affairs of the railroad company, and

when I file my monthly reports with the Interstate Commerce Commission and the Railroad Commission of Texas, I think I have done a good month's work.

6256 Examiner Burchmore: It looks that way.

Mr. Balderach: I have. What was that, Mr. Examiner?

Examiner Burchmore: The figures you read, Mr. Balderach, seem to foot up 10 per cent of the total.

Mr. Balderach: On what stuff?

Examiner Burchmore: Outside.

Mr. Balderach: I have a little pencil memorandum here that I have prepared from my returns for the four months of the present fiscal year, which seems to indicate that the outside tonnage is approximately 29.72 per cent.

Examiner Burchmore: That is quite an increase in proportion. How do you explain it?

Mr. Balderach: It would be explained by the reason that the present fiscal year the log tonnage does not enter into our traffic statement. You will notice the log tonnage is 32,085 tons, or 51.33 per cent. If you eliminate the log tonnage the percentage of the other items would be much greater than it was.

Examiner Gutheim: Why do you eliminate the log tonnage?

Mr. Balderach: The log tonnage is now handled exclusively by the T. & N. O. Railway Company locomotives under trackage arrangement.

6257 Examiner Gutheim: Well, if you let that appear in evidence it will explain the difference.

Mr. Balderach: For the previous year.

Examiner Burchmore: Does the present report give those figures?

Mr. Balderach: Yes, that is the percentage of revenue of each item to the total amount of revenue.

Examiner Burchmore: Less than 20 per cent of the revenue last year was derived from outside operation.

Mr. Balderach: Of course if you take the percentage based on this statement here, you see this revenue from the log tonnage is 42 per cent, and if you eliminate that it makes the difference.

Examiner Burchmore: How about the percentage of revenue this year?

Mr. Balderach: The percentage of revenue this year is 28.52 per cent. I wish to state in connection with this exhibit here that I just prepared it from my returns on those four months' statements.

Examiner Burchmore: You think as an accountant that these figures you have given us are sufficiently accurate for——

Mr. Balderach: I think they are all right.

6258 Examiner Burchmore: The percentage of error would be very small?

Mr. Balderach: Very small.

Examiner Gutheim: Taking the revenues on the one item of logs including four months this year, how does it compare with the total of twelve months the previous year?

Mr. Balderach: I have not made any comparison of our revenue —Why, yes, I could give it to you. I am not able to give you that information, but I will state that the revenue from the log service was approximately $3,000 a month, and our revenue from the operations of the joint track with the Dayton Lumber Company is, for the four months ended October 31st, $3,739. There has been considerable decrease, however. The last bill I made against the lumber company for trackage aggregated, I think, about $1,500 for the month of November.

Examiner Gutheim: Referring to your statement for the period, July 1, 1910 to October 31, 1910, it should be—It reads 1911——

Mr. Balderach: It must be a typographical error.

Examiner Gutheim: What item in your revenue account covers the amount received from the Dayton Lumber Company for
6259 trackage at $1.00 per mile?

Mr. Balderach: That comes under revenue from transportation. You will find it right down below.

Examiner Gutheim: You will submit this four months' statement, also that statement of the fiscal and financial operations for the previous year?

Mr. Balderach: Yes, sir.

Examiner Gutheim: It may be filed as an exhibit.

(The statement so offered and identified was received in evidence and thereupon marked "Balderach Exhibit No. 4, received in evidence January 27, 1911", and is attached hereto.)

Examiner Gutheim: Now, who does the log spur work of the Dayton Lumber Company?

Mr. Balderach: The Dayton Lumber Company do their own work.

Examiner Gutheim: Who does the construction work?

Mr. Balderach: Sometimes, when they might be short-handed, we will run our section men over on their spur work and put our section foreman's report of the number of days engaged in that class of service—we bill on the Dayton Lumber Company for that amount of time and also probably of roadmaster's time
6260 for supervision.

Examiner Gutheim: Then where the men handle the traffic, including the use of the Trinity Valley & Northern power and equipment on the logging spurs here, does the Dayton Lumber Company operate its own railroad?

Mr. Balderach: The Dayton Lumber Company operate its own locomotives.

Examiner Gutheim: On the logging spurs?

Mr. Balderach: On the logging spurs.

Examiner Gutheim: In fact, does all of the log spur work at its own expense?

Mr. Balderach: At its own expense. In connection with that exhibit of operation—you might call it a general statistical statement—in that statement of July 1, 1910 to October 31, 1910, the total tonnage handled for the Dayton Lumber Company is 5,638 tons, 70.28 per cent. The tons we have hauled are 9,843, or 32.36

per cent. Revenue, $3,054.08, or 71.48 per cent. Tonnage for the independent shippers is 2,385 tons, or 29.72 per cent. The ton mileage is 20,572 tons, or 67.64 per cent. The revenue is $1,218.66, or 28.52 per cent. Now, these figures there would indicate that our general mileage is greater for independent traffic than
6261 it is for the Dayton Lumber Company. In other words, we perform a greater transportation service for the independent shippers than we do for the Dayton Lumber Company, and we are serving territory not heretofore reached by rail transportation. This tonnage of staves, wood, etc., is products that are being secured from independent land owners, and I might further add that if our charter should be revoked by the state, that there is a considerable lot of timber up there that could not be shipped out only by the Dayton Lumber Company, and if they wanted to ship that out the Dayton Lumber Company would inform them that they are not a common carrier.

Examiner Gutheim: Mr. Balderach, do you file statements similar to these, periodically from month to month?

Mr. Balderach: No, not from month to month. I prepared that memorandum for my own information.

Examiner Gutheim: Are they sent to the head office of the company?

Mr. Balderach: Our president, our former president, is located there, and I show them to him to show him what we are doing.

Examiner Gutheim: No reports of this nature are given to
6262 Mr. Fullerton, are they?

Mr. Balderach: They are available, and if Mr. Fullerton wants to examine it I will be glad to give it to him.

Examiner Gutheim: Do you make an annual report or a monthly report to the Interstate Commerce Commission?

Mr. Balderach: I think they are on file, yes, sir. I have had correspondence in regard to the annual reports afterwards, had a statement from Mr. Burley.

Examiner Burchmore: If you made the annual report, what does the correspondence relate to?

Mr. Balderach: One or two items there, in the preparation of my annual report I failed to make returns on a certain page. We had an increase in the bonded indebtedness under the physical charges, which is a very important question to be answered. In a hurry I omit things, and it was not our intention to do so, and he directed my attention to it, and also,—I don't know whether I have mentioned the fact in this record or not about the discrepancy which I was telling you about in the tonnage of the coal consumed by the locomotives.

Examiner Burchmore: The Commission has a rule about that.

Mr. Balderach: I don't know what they want in that case.
6263 I did not answer that letter. I addressed a letter to the Commission.

Examiner Burchmore: That is not a matter that is of any legal consequence.

Cross-examination:

Mr. Walter: Mr. Balderach, has the Trinity Valley & Northern Railway Company ever had occasion to condemn property?

Mr. Balderach: Yes, sir, we had several condemnation suits, in fact, the award of the condemnation court was carried to the County court, tried by a jury there, and the complainants have appealed the case to the court of civil appeals.

Mr. Walter: Who was that man who appealed?

Mr. Balderach: The condemnation proceedings were originally against a Mrs. Hood, and unknown heirs, and the condemnation commission awarded something like $33 or $40—I think it was about thirty-three and some odd dollars, and later on Mr. Chapman came in and filed objections to the condemnation award.

Mr. Walter: Who is this Mr. Chapman?

Mr. Balderach: Mr. Chapman, from the best information I can obtain, is holding a lot of land in trust for the Kirby Lumber Company.

6264 Mr. Walter: What are his initials? J. R.?

Mr. Balderach: I think it is J. R. Chapman.

Examiner Gutheim: And he made the contention that you were not a common carrier?

Mr. Balderach: He made the contention that we were not a common carrier, and he further stated that he had an interest in that land that was condemned, he was the owner of the timber, and the condemnation commission in making the award failed to segregate the amount of the award, and he did not know whether it was all to be paid to J. R. Chapman, or whether it was all to be paid to Mrs. Hood or the unknown heirs. A jury in the county court at Liberty tried the case, and they increased the allowance to about forty some odd dollars, and they segregated the award between the Chapman interest and the Hood interest.

Mr. Walter: Did the court decide that you were a common carrier?

Mr. Balderach: They found that we were a bona fide common carrier entitled to exercise the power of eminent domain.

Mr. Walter: Has that been decided by the Appellate Court yet?

6265 Mr. Balderach: Not that I know of. Briefs have been filed, and I think a decision will probably be rendered within the next thirty days, if it has not already been passed upon.

Mr. Walter: Has the railroad Commission of Texas had before it the status of your road?

Mr. Balderach: Why, yes, sir.

Mr. Walter: Did they make any formal notice to you by way of letter or otherwise?

Mr. Balderach: Yes, we have a letter here addressed—from the Railroad Commission of Texas addressed to Mr. L. Fouts, our former president of the Trinity Valley & Northern Railway Company, signed by Mr. E. R. McLean, secretary, which I will read into the record.

(Mr. Balderach here read the letter referred to, which is in the words and figures following, to-wit:)

"Railroad Commission of Texas.

"AUSTIN, June 10, 1909.

"Mr. L. Fouts, President Trinity Valley & Northern Ry., Dayton, Texas.

"DEAR SIR: In connection with your application of April
6266 15, 1909, for recognition at the hands of the Commission, as common carrier, I quote the following opinion of Commissioner Williams, which opinion is concurred in by Commissioner Colquitt, and is therefore, the action of a majority of the Commission on this case:

"'The Railroad Commission is given no authority to determine when railroad companies are common carriers. On the contrary, the law itself fixes the status of such companies, and does this absolutely and without reference to the judgment or opinion of the Commission. Every railroad company organized under the laws of Texas has the right to construct and operate a railroad and all railroads are declared to be public highways and all railroad companies common carriers.

"'A railroad company having a Texas charter and owning a Texas line is a common carrier by force of the statute, and it is its duty to operate its road as a common carrier, complying with the laws of the State regulating such carriers, and obeying and conforming to the authorized rates, rules and regulations of the State Railroad Commission.

"'A declaration by the Commission has, in my opinion, no effect whatever upon the status of a railroad company.

6267 "'In company with Commissioner Colquitt, I inspected the road of the Trinity Valley & Northern Railway Company a few weeks ago, and found it in possession of and operating a railroad and apparently acting toward and transacting business with the public as a common carrier of freight and passengers, and since that time, I have, without taking any official action, expressed the belief, and now believe, that the company is a common carrier by rail in Texas and bound by all the statutes of the State on that subject. That the present traffic consists largely of the products of the forests tributary to its line, and that its traffic and revenues will apparently be injuriously diminished when these forests shall have been cut away, does not seem to me to be material. The Railroad Commission is given no power to limit the construction of railroads to territory which in its judgment will be perpetually profitable, or in any respect to control the location of such lines. Indeed, it requires only a moment's consideration to realize that limitations against the extension of transportation facilities into territories which promise, so far as we can see at this moment, only a temporary traffic would be unfortunate and injurious. To mention only a few of the many

products of a like nature which will occur to the minds of
6268 all, who is there that would contend against the construction of railroads to the coal and oil fields, and to the ore beds of this country? Yet all these yield temporarily only, but will anyone contend that they are for this reason alone to be denied transportation and kept out of use?

" 'It seems to me that these considerations are irrelevant and that when a duly organized railroad company comes to own a line of railroad, the Commission's jurisdiction attaches by virtue of the statutes forthwith and without action on the part of the Commission.

" 'I believe we are without legal authority to recognize a railroad company as a common carrier, except as such recognition may be incidental to an enforced division of rates or the performance of some other duty legally incumbent upon the Commission.

" 'But, if we are to make a practice of recognizing other companies, then I am unwilling to discriminate against the Trinity Valley & Northern by refusing its application.'

Yours truly,

E. R. McLEAN, *Secretary.*"

6269 Mr. Walter: Has the Railroad Commission of Texas made any orders relative to the construction or change of your line?

Mr. Balderach: Yes. At the time of our application for recognition as a common carrier, the Railroad Commission made an inspection of our line, and they recommended that a large curvature be eliminated, which necessitated the expenditure of approximately $2,500, in excess of the original estimate of the cost of the property abandoned, and we subsequently made an arrangement to have that curvature eliminated. A contract was given a contractor and he has been cutting through some hills there, and incidentally reducing the curvature. The excess over the original cost is now being carried right on our general balance sheet as property abandoned, chargeable to operating expenses under authority from the Railroad Commission, which is approved by Commissioner Harlan.

Examiner Gutheim: That is charged in the account all right.

Examiner Burchmore: What was that?

Mr. Balderach: I said the excess—rather, not the excess, but the excess cost of constructing this, or in other words, eliminating this large curvature—what I mean by excess is the cost of the abandoned property over this original construction is being car-
6270 ried on the balance sheet of the Trinity Valley & Northern Railroad Company in the account caption, "Property Abandoned, Chargeable to Operating Expenses," which is carried under authority from the Interstate Commerce Commission in the form of a letter approved by Commissioner Harlan, and Mr. H. C. Adam personally.

Examiner Gutheim: Have you got that letter here?

Mr. Balderach: I think I have it here.

Mr. Walter: I have here various tables I want to offer in evidence.

(The tables so offered and identified were received in evidence and thereupon marked respectively "Balderach Exhibits Nos. 5 and 6, received in evidence January 27, 1911," and are attached hereto.)

Mr. Balderach: Here is the general balance sheet.

Mr. Walter: For what period?

Mr. Balderach: For the period ending October 31, 1910.

(The balance sheet so offered and identified was received in evidence and thereupon marked "Balderach Exhibit No. 7, received in evidence January 27, 1911," and is attached hereto.)

6271 Mr. Coleman: The through rates you mentioned, via New Orleans and the Illinois Central, they would use the Southern Pacific Lines?

Mr. Balderach: I don't know whether they would use the Southern Pacific. It moves in connection with the T. & N. O. Company, the Louisiana & Western, and the M. L. & T.

Mr. Coleman: Those are Southern Pacific lines?

Mr. Balderach: I don't know whether they are supposed to be called Southern Pacific. I don't know whether they are called the Southern Pacific lines in Texas. Of course, I don't know what interest might be held by the Southern Pacific Company.

Mr. Coleman: Via the T. & N. O. and the Louisiana and Texas is one of the lines going to New Orleans.

Mr. Balderach: Yes, sir, the Louisiana Western and the M. L. & T.

Mr. Coleman: Would that finally be moved up north of the Ohio River?

Mr. Balderach: The cars would move into Illinois, Michigan, Ohio, New York, Canada, some in Tennessee; that would not be north of the Ohio, though.

6272 Mr. Coleman: Those markets would all be available via the Frisco Route and Cairo, would they not?

Mr. Balderach: Yes, sir, but it is reasonable to presume just as sure as night follows day, that it is more economical to haul a carload of lumber loaded upon a car and receive 72 cents a hundred pounds for it, than to haul a carload five miles and only receive 2½ cents, and incur in connection with the operation of that five miles a possible liability of an accident or a wreck.

Mr. Coleman: That is not what I had in mind, if you will just answer my question.

Mr. Balderach: You just stated that the routes were available.

Mr. Coleman: I would like to ask you what your division is in connection with the Frisco and Rock Island?

Mr. Balderach: We have a division of two and two and a half cents of the proportion south of the crossing.

Mr. Coleman: Cairo?

Mr. Balderach: Cairo, two and a half cents.

Mr. Coleman: How long have those divisions been in effect?

Mr. Balderach: I don't know, but several years.

Mr. Coleman: Do you know whether the Trinity Valley & Northern ever received higher divisions via the Cairo Route I mentioned?

6273 Mr. Balderach: The divisions via the Frisco never exceeded two and a half cents. As I explained it in the beginning, those were rates via the Frisco, by which, I mean the Florida-Texas gateway, and were as much as or equal to the rates via the Texas gateway in connection with the T. & N. O. and its connections.

The Frisco rate was 2½ cents per hundred pounds, and the rates were lower via the Florida-Texas gateway than via the other gateway.

Mr. Coleman: I asked you whether they were ever changed. Are you familiar——

Mr. Balderach: Yes, I am familiar with the divisions, and they have not been changed other than as I have stated it in the beginning. At one time we operated a service there for which we received no division whatever, no compensation.

Mr. Coleman: Are you familiar with the testimony in the Chicago Lumber & Coal Company case?

Mr. Balderach: No, I have not read it.

Mr. Coleman: Were you with the Trinity Valley & Northern at the time that that case was heard?

Mr. Balderach: Yes, I think I was; yes, I was with the Trinity Valley & Northern at the time I think this decision was

6274 rendered, in December, 1909, wasn't it?

Mr. Coleman: Were you with them when the testimony was taken?

Mr. Balderach: I don't know when the testimony was taken in the Chicago Coal & Lumber Company case.

Mr. Coleman: This Chicago Coal & Lumber Company case testimony was heard in St. Louis and New Orleans.

Mr. Balderach: No, I don't know anything about it.

Mr. Coleman: Were you connected with the company at that time?

Mr. Balderach: When was the testimony taken, then I can answer your question.

Examiner Burchmore: December, 1908, taken in New Orleans.

Mr. Balderach: Then I was not. I entered the service of the Trinity Valley & Northern Railway in the capacity of auditor, on June 15, 1909.

Mr. Coleman: Did you ever have occasion to look up divisions prior to the time that you engaged your services with the Trinity Valley?

Mr. Balderach: Yes, sir, I checked over the inter-line accounts and made discrepancy statements, and in checking over our tissue copies of billings it was ascertained that a considerable

6275 number of way-bills had been forwarded covering shipments of lumber on which the T. V. & N. Railway was receiving no

returns. Now, I did not go back and investigate all of the divisions, but in checking over the billing and inter-line accounts, it was ascertained that a good number of waybills had been forwarded covering shipments of lumber on which the Trinity Valley & Northern Railway Company was entitled to two and a half cents, on which their line had never reported any revenue.

Examiner Burchmore: Will you examine your record and see whether you received anything out of that two and a half cents?

Mr. Balderach: Yes, sir; I have a copy of the interline accounts. They take up the way bill and report the revenue to the T. V. & N. Railway inter-line account, and I will examine those, and if we received a greater proportion than two and a half cents, I will be glad to inform the commission.

Mr. Walter: I think that is better than taking Mr. Coleman's memory.

Mr. Coleman: Do you understand, Mr. Walter, that the Rock Island Road may have given wrong divisions?

Mr. Walter: Sure. I should not be at all surprised.

6276 Mr. Balderach: If the Rock Island-Frisco lines gave us four cents per hundred they would get considerably more of our traffic. They will cut down my wages unless I get more business.

Mr. Coleman: You made mention of a contemplated extension of your line in connection with the Santa Fe.

Mr. Balderach: Yes, sir.

Mr. Coleman: Do you have serious intentions of connecting with the Santa Fe?

Mr. Balderach: Yes, sir, we have serious intentions. We don't know whether we will accept the survey to Lamb, or whether we will change the survey and go to Cleveland and connect with the H. E. & W. and the Santa Fe at Cleveland.

Mr. Coleman: Does the lumber company that is affiliated with your railroad have any timber adjacent to the Santa Fe?

Mr. Balderach: I don't know what the holdings of the lumber company are. Just as I stated in the beginning, I am a railroad employe, and I do not know what the holdings of the lumber company are and I am not interested in any way whatever in the operation of the lumber company, while I would like to see them be successful, that is all.

Mr. Coleman: Do you know what it is that is prompting your people to build to a connection with the Santa Fe?

6277 Mr. Balderach: I presume it is the same interest that prompted the people who held that land to try to prevent the Trinity Valley & Northern Railway from exercising the power of eminent domain. One of the attorneys of Mr. Chapman stated that the country through which the Trinity Valley Railway ran was very sparsely settled and of no value at all, but when it came to taking the Chapman property, it became very valuable all of a sudden.

Mr. Coleman: Through how many miles of country that has no timber would this land be extended?

Mr. Balderach: I am not sufficiently informed to tell you that, but if you would like——

Mr. Coleman: Approximately.

Mr. Balderach: But if you want any information of that fact I can consult our chief engineer there, and he can probably give it.

Mr. Coleman: You seem to have an idea in your mind that you people want to build up and connect with the Santa Fe because the Chapman interests are opposed to your connecting with them.

Mr. Balderach: No, not exactly. We have a large amount of investment down there.

6278 Mr. Coleman: There is nothing on that line that you would secure except wood, is there?

Mr. Balderach: There is cotton, grain and agricultural products.

Mr. Coleman: Are they moving now?

Mr. Balderach: They move over the Santa Fe Railway Company, and some of it goes to the Frisco sometimes.

Mr. Coleman: I am talking about connecting with the Santa Fe.

Mr. Balderach: We intend to connect with the Santa Fe.

Mr. Coleman: What is your purpose in connecting with the Santa Fe?

Mr. Balderach: We might be able to get some sort of a traffic arrangement out of it.

Mr. Coleman: Out of the Santa Fe?

Mr. Balderach: Yes, you never can tell.

Mr. Coleman: Have you received any encouragement from the Santa Fe?

Mr. Balderach: We don't necessarily have to wait for encouragement. We can carry on our construction, and when we see fit we might connect with the Cotton Belt. The Cotton Belt might

6279 probably want a deep water outlet there at that point, too.

Mr. Coleman: At Corsicana?

Mr. Balderach: Well, I don't know.

Mr. Coleman: A deep waterway outlet?

Mr. Balderach: We intend going down to deep water there. I presume you have read a great deal about this waterway they are going to have at the Mississippi. If we connect with the Cotton Belt we might extend further south and go even down to deep water.

Mr. Coleman: That is all that you have got tangible to——

Mr. Balderach: We have something tangible. We have considerable tonnage down there——

Mr. Coleman: I don't want to prevent you from making a statement; I only want to try to find out whether there was anything tangible that prompted you to connect with the Santa Fe, and unless you want to make a statement of your own, I don't want to encumber the record with any other information.

Mr. Balderach: I am trying to enlighten you to the best of my knowledge.

Mr. Coleman: That is all right.

Mr. Balderach: If I can.

6280 Mr. Walter: Can you tell me whether you have known of any encouragement by the Santa Fe or the Santa Fe inter-

ests to the building of any other railroads into that territory?

Mr. Balderach: Why, not that I have any recollection of, but it seems by the tariff that has been in effect that they have evidently encouraged some line. They have published through rates from certain lines in the past.

Mr. Walter: Do you refer to that tariff? (Indicating.)

Mr. Balderach: Yes.

Mr. Walter: I think we will offer that in evidence, as Exhibit 8 of this witness' testimony.

(The tariff so offered and identified was received in evidence and thereupon marked "Balderach's Exhibit No. 8, received in evidence January 27, 1911," and is attached hereto.)

Mr. Balderach: I will say that this is strictly an intrastate tariff and is not to be used for any purposes in arriving at through rates.

Mr. Coleman: You say it is an intrastate tariff?

Mr. Balderach: Yes, sir, intrastate tariff, railroad Commission of Texas tariff. It is Supplement No. 15, Railroad Commission of Texas Tariff, numbers 5*b*, 19*a*, 23*a*, and 30*a*.

6281 Mr. Coleman: Isn't it your understanding that the Commission prescribes through rates and compels the carrier to accept those rates with the connections that they indicate on intrastate business?

Mr. Balderach: Yes, sir, that is my understanding, but I had reference to interstate tariffs. I wish to state that the several lines here have milling in transit privileges.

Examiner Burchmore: Just mention those lines, the originating lines, certain ones there.

Mr. Balderach: Here is one over the Orange & Northwestern extending milling in transit privileges to Miller's Lake Lumber Company on very advantageous terms.

Mr. Coleman: If you admit that the Commission can prescribe the application of joint rates within the State of Texas in connection with the Santa Fe as well as any other road, wherein do we become responsible for the rates?

Examiner Burchmore: This tariff will speak for itself.

Mr. Coleman: It is well understood we are carrying as low as any other line.

Mr. Balderach: I wish to state in connection with your inquiry, that if it was not for the request of the Commission, these so-called short lines would not receive any division from the Santa

6282 Fe connections, because every time we forward a shipment to a local point on the Santa Fe we have got to make application for a billing order to determine the divisions. They are not published in the divisions with the side lines at all.

Mr. Coleman: If I am correctly informed, the Texas Commission can make operative through rates, intrastate from points on the Santa Fe with any line that they have recognized as a Texas common carrier, as well as with any other railroad. Now, having recognized your road as a common carrier, wouldn't we be compelled to carry through rates with you?

Mr. Balderach: Yes, sir, on intrastate shipments you would, but on interstate shipments it might be said that through rates for local points on the Santa Fe are not effective from side line connections, there is a differential of five cents over the trunk line rates.

Examiner Burchmore: I think that is clear.

Mr. Coleman: Mr. Balderach, the question that you have raised here was threshed out in the Chicago Lumber & Coal Case and in the Star Grain case.

Mr. Walter: It is going to be threshed out some more.

6283 Mr. Coleman: Let me ask you just one more question. What mill is on that line that you referred to?

Mr. Balderach: I think it is the Kirby Lumber Company's mill.

Examiner Burchmore: One of the intervenors in this case.

Mr. Coleman: The lumber company; the Kirby Lumber Company has no mill there.

Examiner Gutheim: Let me ask you, I want this matter understood——

Mr. Balderach: I understand that the Kirby Lumber Company is very deeply interested in the operation of that road, that they have large holdings there.

Examiner Gutheim: What mill do they have there?

Mr. Balderach: I cannot just name the mill. I know that the Kirby Lumber Company purchased the railroad. They also have quarries in connection with the line there—if I am not mistaken, there is a mill located there in which the Kirby Lumber Company is very deeply interested. I do not recall the name right now.

Examiner Gutheim: Do you mean J. H. Kirby or the Kirby Lumber Company?

Mr. Balderach: John H. Kirby and the Kirby Lumber

6284 Company.

Examiner Gutheim: Both?

Mr. Balderach: I think so.

Mr. Walter: Anything further you want to say?

Mr. Balderach: Not unless the Commission wishes further information.

Whereupon, at 10:30 P. M., an adjournment was taken until Saturday, January 28, 1911, at 9 o'clock A. M.

6285 ST. LOUIS, MISSOURI,

SATURDAY, *January* 28, 1911—9:00 o'clock a. m.

The Commission met pursuant to adjournment.

Present as before.

Louisiana Central Railroad Company.

W. Q. CHURCH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: State your name to the stenographer, please.

Mr. Church: W. Q. Church.

Examiner Burchmore: What is your connection with the Louisiana Central Railroad Company, Mr. Church?

Mr. Church: Traffic Manager.

Examiner Burchmore: Your railroad connects with the Gulf, Colorado & Santa Fe Railway?

Mr. Church: Yes, sir, at Cravens, Louisiana.

Examiner Burchmore: With any other railroad at Cravens?

Mr. Church: With the Lake Charles & Northern at Cravens.

6286 Examiner Burchmore: And connects with the Kansas City Southern at Pickering and Barham?

Mr. Church: Pickering and Barham.

Examiner Burchmore: What is the length of the line?

Mr. Church: The main line is recorded 32.96, with branches of 9.65, a total of 42.61 miles.

Examiner Burchmore: Do you include a statement of any trackage rights?

Mr. Church: We have no trackage rights at all.

Examiner Burchmore: Do you include joint tracks, jointly operated or jointly owned?

Mr. Church: Not at the present time.

Examiner Burchmore: Then I assume you have no trackage rights or joint trackage?

Mr. Church: No, none at the present time. We did have a couple of years ago, but the situation has been changed.

Examiner Burchmore: When was the Louisiana Central Railroad incorporated?

Mr. Church: June 9, 1904.

Examiner Burchmore: Under the code?

Mr. Church: Under the laws of Louisiana.

Examiner Burchmore: What was the capitalization?

6287 Mr. Church: $250,000.00.

Examiner Burchmore: Was that all?

Mr. Church: I think so.

Examiner Burchmore: Do you know what the consideration received for it was?

Mr. Church: I think it was to take up advances made by the Pickering interests to construct the line.

Examiner Burchmore: When the railroad company was incorporated there was already a railroad in existence which it took over?

Mr. Church: Part of this present line only, not all of it.

Examiner Burchmore: There was some railroad?

Mr. Church: Yes, sir, there was some.

Examiner Burchmore: What was that mileage they took over?

Mr. Church: I think about half of this mileage reported.

Examiner Burchmore: That would be about twenty miles?

Mr. Church: Something in that neighborhood, yes, sir.

Examiner Burchmore: Were any bonds issued at the time?

Mr. Church: No, no bonds at all.

Examiner Burchmore: Are there any bonds now?
Mr. Church: No, sir.

Examiner Burchmore: In what part of the State of Louisi-
6288 ana is the railroad?

Mr. Church: Southwest Louisiana.

Examiner Burchmore: That is the long leaf section?
Mr. Church: In the long leaf section, yes, sir.
Examiner Burchmore: Where are the mills of the W. R. Pickering Lumber Company situated with reference to this line?
Mr. Church: There is one mill at Barham at the end of that division and one mill at Pickering, and another at Cravens.
Examiner Burchmore: The railroad is not one direct through line?
Mr. Church: No, it is in two sections, one leading west of Barham, Louisiana, about 9½ miles.
Examiner Burchmore: And extending to what point?
Mr. Church: A point called Bayou Toro.
Examiner Burchmore: What is the mileage of that division, do you remember?
Mr. Church: It is 9½ about. I don't know the exact mileage.
Examiner Burchmore: And the mill on that division—that division is known as the Southern Division?
Mr. Church: No, Northern.

Examiner Burchmore: Northern Division?
6289 Mr. Church: Northern Division.

Examiner Burchmore: The mill on that division is how far from the track?
Mr. Church: It is right at Barham.
Examiner Burchmore: It is directly on the rails of the Kansas City Southern?
Mr. Church: Yes, sir.
Examiner Burchmore: The other division of the railroad known as the Southern Division——
Mr. Church: Yes, sir.
Examiner Burchmore: —extends from Pickering to Cravens?
Mr. Church: Pickering to Cravens, and a little ways beyond that.
Examiner Burchmore: Where are the mills on that division located?
Mr. Church: There is one mill at Pickering and another at Cravens.
Examiner Burchmore: How far is Pickering from Cravens?
Mr. Church: It is 19 miles and a fraction. We call it approximately 20 miles.
Examiner Burchmore: How far from the rails of the Santa Fe at Cravens is the mill there located?
6290 Mr. Church: I should say about half a mile. The Santa Fe does not reach the mill, however, at Cravens with any of their rails.
Examiner Burchmore: Do the two railroads have a connection at Cravens, I mean the Louisiana Central and the Santa Fe?

Mr. Church: Yes, sir.

Examiner Burchmore: Do they interchange any traffic?

Mr. Church: They interchange traffic about a mile and a half west of Cravens station.

Examiner Burchmore: How far from the Lake Charles & Northern rails is the mill at Cravens?

Mr. Church: The Lake Charles & Northern and the Santa Fe operate jointly at that point over the same tracks.

Examiner Burchmore: Are there any other sawmills or lumbering or other similar enterprises on the line of this railroad?

Mr. Church: Nothing, but on the Barham Division there are some small operators or stave men who are getting out occasional cars of stave bolts, I believe they call them.

Examiner Burchmore: But no other mills?

Mr. Church: No other mills, no, sir.

Examiner Burchmore: Now, discussing for a few minutes
6291 the Northern Division extending from Barham to Bayou Toro, when was the mill at Barham built?

Mr. Church: I think in 1902, or at least that is the time the Pickering people got interested in the property. It may have been built before then, but not very long.

Examiner Burchmore: The Pickering Lumber Company was interested in that mill in 1902?

Mr. Church: Yes, sir.

Examiner Burchmore: Was there any railroad there at that time?

Mr. Church: Yes, sir.

Examiner Burchmore: What was the character of that road and its length and what purpose did it serve?

Mr. Church: It served to bring in cars to the mill. It runs over a very rough country, and it is a country road that is built for logging.

Examiner Burchmore: Do you know what the mileage was?

Mr. Church: No, I don't know.

Examiner Burchmore: Standard or narrow guage?

Mr. Church: Narrow gauge.

Examiner Burchmore: I suppose the Pickering people operated this mill and the logging road from 1902 up to 1904 when
6292 the railroad was incorporated?

Mr. Church: Yes, sir.

Examiner Burchmore: What was the purpose of incorporating then?

Mr. Church: I presume to comply with the decision in the Central Yellow Pine case.

Examiner Burchmore: Had it been receiving any divisions out of joint rates previous to that time?

Mr. Church: That is before my connection with it, I don't know.

Examiner Burchmore: Have you any idea?

Mr. Church: I believe they were, although I would not state positively.

Examiner Burchmore: When the railroad was incorporated in

1904 and took over these rails that were then in place, did those rails, or has the railroad then in place, remained there?

Mr. Church: I think so.

Examiner Burchmore: They have not moved the road?

Mr. Church: No, not that end of it.

Examiner Burchmore: There have been, however, extensions of it?

Mr. Church: Not so far as the railroad is concerned. The
6293 lumber company have extended beyond there by their logging operations.

Examiner Burchmore: I will ask you with respect to the Southern Division which, as I understand it, extends from Pickering to Cravens?

Mr. Church: Yes.

Examiner Burchmore: When did the Pickering Lumber Company become interested down there?

Mr. Church: They have been at Pickering since 1897, I think, or 1898.

Examiner Burchmore: Was there any mill there before they went in there?

Mr. Church: No, sir.

Examiner Burchmore: When was the first railroad put into operation from Pickering and Cravens?

Mr. Church: The line was started about five years ago, that is the time that this Cravens mill was built. This present line was, however, not completed until 1907.

Examiner Burchmore: There wasn't any mill there?

Mr. Church: Not at Cravens until about five years ago. There was at Pickering.

Examiner Burchmore: When was the mill at Pickering put up?

6294 Mr. Church: That was put up twelve or thirteen years ago.

Examiner Burchmore: Was there any logging road connecting with the mill at Pickering?

Mr. Church: Yes, sir.

Examiner Burchmore: When was that put in?

Mr. Church: I think about the time the mill was constructed. However, it was before my connection with the company and I am not very familiar with its history.

Examiner Burchmore: When was the mill at Cravens built?

Mr. Church: About five years ago.

Examiner Burchmore: And they put in the logging road there at the same time?

Mr. Church: Well this line between Pickering and Cravens was afterwards constructed, but at the time the Cravens mill was built, the Missouri & Louisiana operated a line east of Neame. Neame is three miles south of Pickering, and they had an arrangement, that is, the Louisiana Central or the Pickering people with the Missouri & Louisiana to extend this Neame line into Cravens, and all the material for the construction of that mill was hauled over this line,

and after the completion of the mill and before the construction of the line between Pickering and Cravens, the line was used to market the output of the mill and take inbound freight.

6295 Examiner Burchmore: Inbound freight of what character?

Mr. Church: For the construction of the mill. You understand prior to five or six years ago there was no mill there at Cravens, and this track I speak of was just to take all the construction material out there.

Examiner Burchmore: Then with the incorporation of the railroad in 1904——

Mr. Church: 1904, yes.

Examiner Burchmore: That railroad incorporation took over certain logging and other tracts at Barham and at Pickering and at Cravens?

Mr. Church: Well Cravens was not in existence at that time.

Examiner Burchmore: But when the Cravens tracks had been constructed by the lumber company, they were turned over to the railroad?

Mr. Church: They were partly constructed by the railroad company and partly by the lumber company, and afterwards all turned over to the railroad company. I do not know what section, but that was the arrangement.

Examiner Burchmore: Your total mileage at present is how much?

6296 Mr. Church: 42.61.

Examiner Burchmore: How much has that cost?

Mr. Church: The total cost of the railroad up to June 30, was $411,683.66.

Examiner Burchmore: And your total capital stock at present is how much?

Mr. Church: $250,000.00.

Examiner Burchmore: How has the rest of the cost of the road been financed?

Mr. Church: The difference between the capital stock?

Examiner Burchmore: Yes.

Mr. Church: Why there has been something written off each year. I don't know exactly to what extent.

Examiner Burchmore: Was the money advanced by the Pickering Lumber Company to build the road?

Mr. Church: I imagine it was in the first instance.

Examiner Burchmore: And notes were taken. There weren't any bonds or anything of that kind?

Mr. Church: No—now I presume it was notes, I think it was notes.

Examiner Gutheim: There were, as a matter of fact, Mr. Examiner. I made an examination of this property and there was

6297 seven notes due the W. R. Pickering Lumber Company for about $75,000.00, originally $79,000.00, but it has been paid in part.

Examiner Burchmore: $250,000.00 and $79,000.00 makes only $330,000.00.

Mr. Church: They charge back for depreciation each year a certain amount. I don't know, but whatever the Commission's requirements are, is charged off.

Examiner Burchmore: But the road as a whole has not actually cost $450,000.00 in construction?

Mr. Church: In construction, yes. When the road was purchased by the Louisiana Central, they had an appraisement made of the property by the firm of Coates & Burchard, public appraisers, and the property was taken over on their appraisal, less some amount. I don't know exactly what the amount was.

Examiner Burchmore: The railroad paid less than the amount at which the road was appraised by this firm?

Mr. Church: There was some discrepancy between it. I don't know what it was, it was a less amount, yes.

Examiner Burchmore: It was a less amount?

Mr. Church: Yes.

Examiner Burchmore: I will ask you whether it is or is
6298 not a fact that the stockholders of the W. R. Pickering Lumber Company own practically the entire capital stock of this railroad?

Mr. Church: I think so. The ownership is practically the same although not identical.

Examiner Burchmore: Do you wish to explain the differences in the ownership?

Mr. Church: I am not familiar with the lumber company. I can give you a list of stockholders in the railroad company.

Examiner Burchmore: Have you that list typewritten?

Mr. Church: Yes, I have it on this sheet.

(Witness produces paper.)

Examiner Burchmore: The stockholders then are shown on this document which will be filed as Exhibit 1.

Mr. Church: Yes, sir.

(The statement so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 1, received in evidence January 28, 1911," and is attached hereto.)

Examiner Burchmore: This contains in condensed form a great deal of information about the road?

Mr. Church: Yes, sir.

Examiner Burchmore: You prepared that statement?
6299 Mr. Church: I did.

Examiner Burchmore: Is it correct?

Mr. Church: I believe it to be.

Examiner Burchmore: The statement indicates that you have 10 locomotives, 166 logging cars, 4 flat and box cars, 1 caboose, 1 combination passenger and baggage car, and 5 other cars?

Mr. Church: Yes, sir.

Examiner Burchmore: Those cars are equipped with safety appliances?

Mr. Church: The logging cars are not. I think the others are.

Examiner Burchmore: Do you run trains on either or both of your divisions on a regular published schedule?

Mr. Church: Why they have a schedule. It is not published only in a typewritten form.

Examiner Burchmore: On which division or divisions do you run passenger trains?

Mr. Church: On the Barham Division.

Examiner Burchmore: Carry any passengers on the other road?

Mr. Church: No, sir, not to any extent.

Examiner Burchmore: Well, not for fare?

6300 Mr. Church: I think not on that division. We only have a caboose car. I believe we do report some passenger earnings, but it is so small that it don't amount to anything.

Examiner Burchmore: Have you the figures as to your operating revenues, particularly your freight revenues from traffic for a given period?

Mr. Church: Yes, the last fiscal year.

Examiner Burchmore: What figures can you give us on that?

Mr. Church: The gross revenue for the last fiscal year is reported as $234,388.24; the operating expense, $163,013.53; gross operating revenue, $71,374.71; net operating revenue, $62,534.57

Examiner Gutheim: Just a moment, Mr. Church. You said gross operating revenue $71,374.71?

Mr. Church: Yes, sir.

Examiner Burchmore: The difference between the gross operating revenue and the gross revenue seems to be very substantial. May I inquire what additional revenue you had outside of operating revenues that went to make up the $130,000.00 gross revenue?

Mr. Church: The railroad company does the logging, that is, they lay the spur tracks out in the woods and handle all of the logs

6301 on those spur tracks up to the main line for I think $1.25 a thousand. That, I believe, would account for the larger portion of that difference.

Examiner Burchmore: Do they report the tracks when they are in the woods as part of their mileage?

Mr. Church: Part of the branch lines, I believe.

Examiner Burchmore: Does the lumber company not have any locomotives of its own?

Mr. Church: No.

Examiner Burchmore: Does the railroad report to the commission all of the tracks, including logging spurs, which it operates?

Mr. Church: All that it operates, yes.

Examiner Burchmore: There are some up there that it does not operate?

Mr. Church: The lumber company on the Northern Division have some track of their own.

Examiner Burchmore: Well, but that track is operated by the railroad company?

Mr. Church: No, it is operated by the lumber company.

Examiner Burchmore: How does the lumber company operate the track without any locomotives?

6302 Mr. Church: It is operated by a joint train service. The lumber company have in the neighborhood of ten miles of track.

Examiner Burchmore: What was your tonnage for the last fiscal year?

Mr. Church: Gross tonnage, 216,346.

Examiner Burchmore: Tons?

Mr. Church: Yes, sir, tons.

Examiner Burchmore: What of that was logs and timber?

Mr. Church: 214,814.

Examiner Burchmore: Leaving 1,542 tons of other freight tonnage?

Mr. Church: Freight tonnage.

Examiner Burchmore: May I ask what that other tonnage was and for whom it was transported?

Mr. Church: It was freight which was largely for the Pickering interests, although there was some outside freight in there. It represents various merchandise, grain, hay, feed and coal.

Examiner Burchmore: What was the per cent of tonnage supplied by outside interests—that is, outside interests, I mean those not related to the W. R. Pickering Lumber Company?

Mr. Church: I should think about ¾ of 1 per cent.

6303 Examiner Burchmore: It is shown on that statement?

Mr. Church: It is shown upon this statement, yes.

Examiner Burchmore: Exhibit 1?

Mr. Church: Yes.

Examiner Burchmore: Do you make an annual report to the Interstate Commerce Commission?

Mr. Church: We do.

Examiner Burchmore: Comply with all federal and state laws as far as known?

Mr. Church: We believe we do, we try to.

Examiner Burchmore: Has the road paid any dividends?

Mr. Church: No, sir.

Examiner Burchmore: Have you any surplus?

Mr. Church: Yes, sir, there is a surplus of $76,158.62.

Examiner Burchmore: How was that surplus accumulated?

Mr. Church: I think it has accumulated several years, it is a back surplus.

Examiner Burchmore: Doesn't that pretty near offset this indebtedness you spoke of a little while ago?

Mr. Church: Very nearly, yes, sir, but the indebtedness has not been taken up yet.

Examiner Burchmore: The indebtedness could be taken

6304 up by offsetting the book surplus against it?

Mr. Church: I am not fully posted as to that.

Examiner Burchmore: This railroad has joint rates on lumber in connection with the railroads with which it joins?

Mr. Church: We have joint rates on lumber and other commodoties only with the Kansas City Southern.

Examiner Burchmore: Don't have any with the Lake Charles & Northern?

Mr. Church: Not at the present time.

Examiner Burchmore: How long since you have had?

Mr. Church: We never have had with them.

Examiner Burchmore: Those joint rates apply from stations on each of your divisions?

Mr. Church: Yes, sir.

Examiner Burchmore: By the way, those two divisions have no physical connection with each other?

Mr. Church: No, they are 22 miles apart.

Examiner Burchmore: To get from one to the other you would have to move your trains over the Kansas City Southern?

Mr. Church: Yes, sir.

Examiner Burchmore: Do you move your trains over the Kansas City Southern?

6305 Mr. Church: Very rarely.

Examiner Burchmore: Those joint rates apply from stations on both of those divisions?

Mr. Church: Both divisions, yes, sir.

Examiner Burchmore: Are the joint rates on a milling-in-transit basis?

Mr. Church: They are.

Examiner Burchmore: On both divisions?

Mr. Church: Both divisions, yes, sir.

Examiner Burchmore: Is transit actually applied?

Mr. Church: Under the ordinary methods, yes, that is applied to the lumber interests.

Examiner Burchmore: That is to say, the joint rates are supposed to cover the movement of the logs into the mill?

Mr. Church: Into the mill, and the finished product out.

Examiner Burchmore: And the railroad actually moves the logs to the mill?

Mr. Church: Yes, sir.

Examiner Burchmore: Does it actually move the timber out of the mill?

Mr. Church: It does either from Pickering or from Cravens. Cravens nearly all—in fact, at Cravens the railroad handles

6306 all of the finished product either on switch or load movement, but at Barham it does not. At Pickering it does not, only on part of the business.

Examiner Burchmore: On most of the business or a small portion?

Mr. Church: Out of Pickering I would say 25 per cent it performs of the road service.

Examiner Burchmore: Are the joint rates to which you are a party on lumber the same in amount as the rates which the Kansas City Southern charges from stations on its line?

Mr. Church: Yes, sir, a blanket rate system.

Examiner Burchmore: There is no arbitrary added to it?

Mr. Church: No, sir.

Examiner Burchmore: What division does your railroad receive?

Mr. Church: From $3\frac{1}{4}$ to $5\frac{1}{2}$.

Examiner Burchmore: On what traffic do they receive $5\frac{1}{2}$ cents?

Mr. Church: That which is confined to Kansas City Southern rails. Kansas City and south as far as Neosho.

Examiner Burchmore: What is the rate to Neosho?

Mr. Church: Thirty-four cents.

6307 Examiner Burchmore: Do you remember the Kansas City rate?

Mr. Church: Twenty-four cents.

Examiner Burchmore: You get 5½?

Mr. Church: Yes, sir.

Examiner Burchmore: What is the Kansas City Southern mileage to Kansas City?

Mr. Church: 676 from Pickering, 654 from Barham.

Examiner Burchmore: And they get eighteen and a fraction cents?

Mr. Church: Yes, sir.

Examiner Burchmore: I was under the impression that you said that the movement of the logs into the mill, $1.50 a car, was charged by the railroad against the lumber company.

Mr. Church: No, that is for the spur work.

Examiner Burchmore: Out of the woods?

Mr. Church: Out of the woods, up to the main line.

Examiner Burchmore: But the railroad owns those spurs?

Mr. Church: Yes, sir.

Examiner Burchmore: Operates them?

Mr. Church: It operates them. You see the joint rates apply from the main line, not from these spurs.

6308 Examiner Burchmore: Those spurs are not known as stations, are they?

Mr. Church: No, they are movable spurs.

Examiner Burchmore: What is the average division, if you can give us an idea?

Mr. Church: 2.90 cents is the average division.

Examiner Burchmore: How do you obtain the average, how do you find or determine it?

Mr. Church: Use the range of divisions and divide that by the number of divisions.

Examiner Burchmore: I will ask you in actual practice what is the average amount per 100 pounds that you receive on lumber that moves out from points on your line?

Mr. Church: I never made any computation as to that. I could not.

Examiner Burchmore: What is your opinion?

Mr. Church: I should think about three cents would be a fair figure.

Examiner Burchmore: How long since you have received any division on traffic interchanged with the Gulf, Colorado & Santa Fe?

Mr. Church: August, 1908, I believe.

6309 Examiner Gutheim: Mr. Church, I notice in the statement of the holdings of capital stock, that some of the individual holdings are in fractions of shares. Does that indicate that that stock is held by them in a proportion similar to their holdings in one or the other of the Pickering Lumber companies?

Mr. Church: I could not say as to that. I do not know the holdings in the lumber companies at all.

Examiner Burchmore: Have you any opinion on that subject?

Mr. Church: I have never been able to get any information on that subject at all.

Examiner Gutheim: How much of a haul does the Louisiana Central perform in taking the product of the Cravens mill and delivering it to the Santa Fe or the Lake Charles & Northern?

Mr. Church: Practically a mile and a half.

Examiner Burchmore: For that you get no division of the through rate?

Mr. Church: Nothing from the Santa Fe but a switching rate of two and a half per car from the Lake Charles & Northern.

Examiner Burchmore: How much of a haul is it on the product of the Cravens mill to the K. C. S.?

Mr. Church: It may be practically nineteen miles.

Examiner Burchmore: That is compensated for by the
6310 division of the rate by the K. C. S. on a milling-in-transit basis?

Mr. Church: Yes, sir.

Examiner Burchmore: Do you make any deliveries of the product of the Pickering mill to the Lake Charles & Northern or the Santa Fe?

Mr. Church: We do.

Examiner Burchmore: And you have a 19 mile haul on that?

Mr. Church: Yes, sir.

Examiner Burchmore: You get no revenue out of the Santa Fe rates on that?

Mr. Church: No.

Examiner Burchmore: Do you get anything from the Lake Charles & Northern?

Mr. Church: No, sir.

Examiner Burchmore: The deliveries from the Pickering mill to the Kansas City Southern and from the Barham mill to the Kansas City Southern are all taken out by the Kansas City Southern power?

Mr. Church: Practically, yes, sir, not altogether at Pickering though.

Examiner Burchmore: What rate of interest is paid by the
6311 railroad to the Pickering companies on the notes that are held by the lumber companies?

Mr. Church: Six per cent.

Examiner Burchmore: Are the officials of the W. R. Pickering Lumber Company, the Pickering Land and Timber Company and the Louisiana Central Railroad Company the same individuals?

Mr. Church: Practically the same, yes, sir, although in the railroad company, Mr. W. A. Pickering is president, while in the lumber company, Mr. W. R. Pickering is president of the lumber company.

Examiner Burchmore: You testified that your average division at the present time, all of which is received out of rates via the Kansas City Southern, was about three cents.

Have the divisions out of those Kansas City Southern rates been increased within the last two or three years?

Mr. Church: They have not.

Examiner Burchmore: And about what was the average division before the date of the increase?

Mr. Church: About 1¾ average.

Examiner Burchmore: When was that increase made?

Mr. Church: November, 1909. November 1st, I think, 1909.

6312 Examiner Burchmore: Was that about contemporaneously with the period at which you were making up your connection with the Lake Charles & Northern or the Santa Fe rails at Cravens?

Mr. Church: Right when the Santa Fe were at Cravens several years ago, about six months afterwards I believe.

Examiner Burchmore: Now you have been dickering more or less, have you not, with the Lake Charles & Northern here lately, to effect an arrangement for the division of through rates via Cravens?

Mr. Church: Yes, sir.

Examiner Burchmore: And are those arrangements still going on?

Mr. Church: They are in statu quo at present.

Examiner Burchmore: Just where is the hitch?

Mr. Church: The entire tap line proposition.

Examiner Burchmore: Now, as a matter of fact, Mr. Church, are you making any deliveries to the Santa Fe at Cravens of the product of the Pickering or Cravens mills?

Mr. Church: Yes, sir.

Examiner Burchmore: And about what proportion goes out via the Santa Fe?

Mr. Church: That is rather small. I have not the figures exactly.

6313 Examiner Burchmore: Well, it has decreased gradually since the time the divisions were taken out?

Mr. Church: It has.

Examiner Burchmore: Is there as much that goes via the Lake Charles & Northern as goes via the Kansas City Southern?

Mr. Church: No, sir.

Examiner Burchmore: About what proportion would you say goes to each of the three companies, that is, out of those mills' output?

Mr. Church: At Cravens I think about 75 per cent of the output goes to the Kansas City Southern as a rule, and of the remainder perhaps—well perhaps equally divided. It varies at times. Sometimes the Lake Charles & Northern will get the bulk of it, and then again the Santa Fe will secure it. Out of Pickering, there is probably 75 per cent of that tonnage which goes via the Kansas City Southern, and I don't know but what it is greater than that. The balance is divided between the Santa Fe and the Lake Charles & Northern.

Examiner Burchmore: Now, how long have you been making a

separate charge against the Pickering division for the log spur work?

Mr. Church: I think about two years.

6314 Examiner Burchmore: Prior to that time did the railroad receive any revenue whatever out of the hauling of logs other than the revenue that accrued on the division of the milling-in-transit rate?

Mr. Church: I think there was an arrangement of so much per car for those, as I recall.

Examiner Burchmore: That was a separate charge for the regular road haul?

Mr. Church: Yes, sir.

Examiner Burchmore: What was the reason for republishing the tariff so as to make a distinction between a regular road haul and the logging spur work?

Mr. Church: I believe that it was made because—I think it was to increase the revenue of the Louisiana Central, that seemed to be the object.

Examiner Burchmore: As a matter of fact, it did increase the revenue, I believe, but was there not also the statement taken into consideration that the milling-in-transit rate contemplated only a charge for transportation service, whereas, log spur work was logging or timber service?

Mr. Church: I think so.

6315 Examiner Burchmore: And it was really an endeavor to make your milling-in-transit rate a transportation rate instead of a logging rate?

Mr. Church: That was our intention, to handle the logs strictly as a transportation proposition.

Examiner Burchmore: Do you have any contract with the Kansas City Southern under which you receive a division other than the division sheets?

Mr. Church: Nothing but division sheets.

Examiner Burchmore: Any contract with the Lake Charles & Northern that provides for the absorption of the $2.50 switching charge?

Mr. Church: No.

Examiner Burchmore: Do you publish any local tariffs and file the same with the Commission?

Mr. Church: We do.

Examiner Burchmore: And do those tariffs provide for the transportation of commodities other than forest products?

Mr. Church: Carry a full line of class and commodity tariffs—class and commodity rates, I should say.

Examiner Burchmore: Are you keeping your accounts according to the classification laid down by the Commission?

Mr. Church: I believe we are.

6316 Examiner Burchmore: Just to get it into the record, was this joint track that was formely operated by you, a track that was operated in connection with the Missouri & Louisiana Railroad of the Central Coal and Coke Company?

Mr. Church: Yes, sir.

Examiner Burchmore: Mr. Sargent testified in regard to that.

Examiner Gutheim: Yes, he testified as to the whole transaction.

Examiner Burchmore: Did you hear Mr. Sargent's testimony?

Mr. Church: No, I did not.

Examiner Burchmore: Do the officials of the Louisiana Central Railroad Company, or any of them, have annual passes over the Kansas City Southern?

Mr. Church: Yes, sir.

Examiner Burchmore: What officers?

Mr. Church: The president, vice-president, traffic manager and auditor.

Examiner Burchmore: Those are the officers?

Mr. Church: Those are the officers.

Examiner Burchmore: You mean that is all the officers there are?

Mr. Church: That is all the officers that have Kansas City
6317 Southern transportation. There is the general superintendent.

Examiner Burchmore: Those gentlemen are all officers of the lumber company?

Mr. Church: Yes, sir.

Examiner Burchmore: Do they have transportation over other railroads?

Mr. Church: Some.

Examiner Burchmore: For example, railroads running to Chicago?

Mr. Church: Yes, sir.

Examiner Burchmore: Any east of Chicago?

Mr. Church: I think Mr. W. A. Pickering has Pere Marquette transportation.

Examiner Burchmore: Do they use those passes?

Mr. Church: East of the river?

Examiner Burchmore: No, generally speaking, do they use their passes?

Mr. Church: When they travel, yes, sir.

Examiner Burchmore: Whenever they travel over the lines on which they are given?

Mr. Church: Yes, sir.

6318 Examiner Burchmore: But you refer to east of the river, they use their passes to Chicago?

Mr. Church: Oh, yes. I mean to say——

Examiner Burchmore: Has the Louisiana Central Railroad any private cars for its officials?

Mr. Church: No, sir.

Examiner Burchmore: They do not travel around the country in a private car?

Mr. Church: I think not.

Examiner Burchmore: Haven't any car and party passes?

Mr. Church: No, sir.

Examiner Burchmore: Do you know of any short line railroads that do have car and party passes?

Mr. Church: I have never seen any.

Examiner Burchmore: The Arkansas & Southeastern Railroad is a short line railroad, isn't it?

Mr. Church: Yes, sir.

Examiner Burchmore: Has that railroad got a private car?

Mr. Church: Not that I know of.

Examiner Burchmore: Do you know whether the officials of that railroad have car and party passes?

Mr. Church: I have never seen any, no, sir.

6319 Examiner Gutheim: Can you say approximately, Mr. Church, about what proportion of the revenues of your road arises from the division of rates via the Kansas City Southern, how much from switching absorbed by the Lake Charles & Northern, and how much from local charges?

Mr. Church: I do not know as I can give that to you definitely. I think the annual report perhaps separates that. I can give it to you and file it, if you desire.

Examiner Gutheim: Let me ask you, in the year which was examined by the Commission, approximately 20 per cent of your revenue arose on divisions of rates via the K. C. S. and the Santa Fe, the proportion of the K. C. S. being about three and the Santa Fe one. Taking into consideration that you no longer have divisions via the Santa Fe, but that the division via the K. C. S. has been increased, would you say that your revenue at the present time is made up approximately one-fifth by divisions or more than one-fifth?

Mr. Church: I should say approximately one-fourth.

Examiner Gutheim: Approximately one-fourth?

Mr. Church: Yes, sir.

Examiner Gutheim: So that in the year for which you have submitted statistics, in the neighborhood of $50,000.00 was

6320 received in divisions?

Mr. Church: I think it was about that figure.

Examiner Burchmore: Is your road also a party to inbound rates on classes and commodities via either of your three connections?

Mr. Church: Via the Kansas City Southern.

Examiner Gutheim: Will you give briefly the proportion of such rates which accrue to your line?

Mr. Church: On meat and grain products from defined territory we receive 20 per cent of the rate, that is, the Kansas City rate or division south of Kansas City. On coal from Arkansas and Indian Territory mines we receive 45 cents per ton. On merchandise from Shreveport we receive 30 per cent. From Beaumont and from Lake Charles we receive about 25 per cent. These are rates to Cravens only. That is the only point we have through rates and divisions.

Examiner Gutheim: And on that you have a haul of 19 miles?

Mr. Church: We have a 19 mile road haul, yes, sir.

Examiner Gutheim: Are the records of your company in such shape as permits you to make a division of the cost of road between the road actually used in road transportation service, and the road used on log spur work?

6321 Mr. Church: I think so.

Examiner Gutheim: Will you have a statement furnished and submit it in connection with your testimony that will show that division of the item of $411,683.65 shown on the statement?

Mr. Church: Yes, sir.

Examiner Gutheim: I believe also, Mr. Church, that your auditor, Mr. Ingels, can furnish a division of your expense of maintenance of way?

Mr. Church: I think so.

Examiner Gutheim: Between the logging spurs and the road transportation?

Mr. Church: I think so. In case you desire it, we will gladly furnish it.

Examiner Gutheim: If you will furnish that also. That is all, Mr. Garwood.

Cross-examination:

Mr. Garwood: Mr. Church, the map which I hold in my hand shows the Louisiana Central division extending from Pickering to Cravens correctly, does it?

Mr. Church: Yes, sir.

6322 Mr. Garwood: I introduce that in the record. Mark it exhibit 2.

(The map so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 2, received in evidence January 28, 1911," consisting of one sheet, and is attached hereto.)

Mr. Garwood: This map shows the connection of the Louisiana Central with the Jasper & Eastern at Cravens?

Mr. Church: Yes, sir.

Mr. Garwood: Correctly, does it?

Mr. Church: Yes, sir.

Mr. Garwood: The red lines being the tracks of the Jasper & Eastern?

Mr. Church: Yes, sir.

Mr. Garwood: I will mark that Exhibit 3 and introduce it in evidence.

(The map so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 3, received in evidence January 28, 1911," consisting of one page, and is attached hereto.)

Mr. Garwood: Just strike out "Jasper & Eastern", Jasper & Eastern or Santa Fe. This map which I hold in my hand repre-

6323 sents the Barham division?

Mr. Church: Barham division, yes, sir.

Mr. Garwood: I introduce that as Exhibit 4.

(The map so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 4, received in evidence January 28, 1911," consisting of one sheet, and is attached hereto.)

Mr. Garwood: This plat represents the connection of the Louisiana Central at Pickering with the Kansas City Southern?

Mr. Church: Yes, sir.
Mr. Garwood: The Kansas City Southern tracks being indicated in red?
Mr. Church: In red ink, yes, sir.
Mr Garwood: I offer that as Exhibit 5.

(The plat so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 5, received in evidence January 28, 1911," consisting of one sheet, and is attached hereto.)

Mr. Garwood: And this is the connection of the Barham division with the Kansas City Southern? (Indicating on plat.)
Mr. Church: Yes, sir.
Mr. Garwood: The Kansas City Southern being indicated
6324 in red?
Mr. Church: In red, yes, sir.
Mr. Garwood: I offer that as Exhibit 7.

(The plat so offered and identified, was received in evidence and thereupon marked "Church Exhibit No. 7, received in evidence January 28, 1911," consisting of one sheet, and is attached hereto.)

Mr. Garwood: Mr. Church, is the Louisiana Central as a whole substantially and permanently constructed?
Mr. Church: We think so.
Mr. Garwood: Can you indicate to the Commissioner the bridges and trestles there are on the line?
Mr. Church: We have ten bridges with a total length of 304 feet, and four trestles with a length of 28.94 feet.
Mr. Garwood: Do you own your own right-of-way?
Mr. Church: We do, yes, sir.
Mr. Garwood: By purchase?
Mr. Church: By purchase.
Mr. Garwood: What is the width of the right-of-way?
Mr. Church: One hundred feet, as a rule.
Mr. Garwood: What is the weight of your rail?
Mr. Church: Runs from 35 to 60 pounds.
6325 Mr. Garwood: Can you indicate in a general way the relative proportion of the heavier to the lighter kind of rail?
Mr. Church: I can not in tons. I have tried to get that information, but it has not been given to me yet. I think approximately 35 pound represent 50 per cent, and the balance is divided up.
Mr. Garwood: About how many ties to the mile have you in your road?
Mr. Church: About 3,000 as a rule.
Mr. Garwood: What character of ties?
Mr. Church: They are pine and oak, principally pine, however.
Mr. Garwood: Are your trains run on regular schedule?
Mr. Church: We try to observe the schedule.
Mr. Garwood: Do you dispatch them?
Mr. Church: By telephone, yes, sir.
Mr. Garwood: Does the road own its own telephone?
Mr. Church: It owns the telephone line.

Mr. Garwood: How many miles of pole line has it, how many miles of wire line?

Mr. Church: It has, I think, about 18 miles approximately of pole line with a double strand of wire. This is a metallic
6326 circuit.

Mr. Garwood: I believe you described its equipment?

Mr. Church: Yes, sir.

Mr. Garwood: You carry some passengers?

Mr. Church: Very few.

Mr. Garwood: Do you recall the testimony of Commissioner Meredith, of the Louisiana Commission, as to putting on an order against your road relating to passengers?

Mr. Church: I do.

Mr. Garwood: Did you comply with that order?

Mr. Church: We have, yes, sir.

Mr. Garwood: You therefore offer the facilities demanded by the Louisiana Commission?

Mr. Church: We do.

Mr. Garwood: And are prepared to hold yourself out as a road to carry all who shall offer?

Mr. Church: Yes, sir.

Mr. Garwood: While your passenger travel is not extensive, you are yet holding yourself out and offering facilities for all who do apply?

Mr. Church: We do, yes.

Mr. Garwood: Do you furnish facilities and hold yourself
6327 out as a road to transport all shipments of freight that may be tendered to you by the general public?

Mr. Church: Everything, yes, sir.

Mr. Garwood: Has the railway company any facilities for repairing its equipment?

Mr. Church: Yes, sir, they have their own shops.

Mr. Garwood: Where?

Mr. Church: At Barham, Cravens, and Pickering.

Mr. Garwood: I believe you indicate that you make your regular reports to the Interstate Commerce Commission?

Mr. Church: Yes, sir.

Mr. Garwood: As required by the statute and its rules and regulations?

Mr. Church: Yes, sir.

Mr. Garwood: Have you a Washington agent?

Mr. Church: We have, Mr. Charles A. Douglas.

Mr. Garwood: I believe you stated the length of the haul that you have on the finished product from Cravens to Pickering?

Mr. Church: Yes, sir, practically 19 miles.

Mr. Garwood: Can you indicate what tonnage moves from Cravens to Pickering on the Kansas City Southern?

6328 Mr. Church: I can prepare that, but I have it not.

Mr. Garwood: I thought possibly you might remember it.

Mr. Church: I have not got it separated, but it is relatively 75 per cent of the output of that mill.

Mr. Garwood: You indicated to the Commissioner, I believe, the distance of each of your mills at Crayens, Pickering and Barham, respectively, from the tracks of your trunk line connection.

Mr. Church: Well, I think so.

Mr. Garwood: If not, please state it, so that it may be in the record?

Examiner Burchmore: I think that was answered.

Mr. Garwood: I thought so, but——

Mr. Church: Yes, sir.

Mr. Garwood: About what is the per cent of your operating expense to your operating revenue?

Mr. Church: 69 and a fraction, practically 70 per cent.

Mr. Garwood: Where you have no through rates in from the junction points, do you apply the local Louisiana tariffs?

Mr. Church: Why we apply our distance tariffs.

Mr. Garwood: Your distance tariffs?

Mr. Church: Yes, sir.

6329 Mr. Garwood: What divisions did you have in with the Gulf, Colorado & Santa Fe before it cancelled in 1908, generally, indicate in a general way the amount of the division.

Mr. Church: We received 2 cents per hundred to the points on the A. T. & S. F. proper north of Purcell west of the Missouri River and one cent east of the Missouri River. Those are all the divisions we had with them. They applied exclusively to the Santa Fe rails.

Mr. Garwood: Did you have any divisions in to Texas points?

Mr. Church: No, sir, no Texas divisions.

Mr. Garwood: No Texas points at all?

Mr. Church: No, sir.

Mr. Garwood: Have you any divisions on inbound stuff in with the Santa Fe now?

Mr. Church: No, sir.

Mr. Garwood: Have you any divisions on any product other than lumber with the Santa Fe?

Mr. Church: We have no divisions.

Mr. Garwood: You have none at all with them?

Mr. Church: None at all.

Mr. Garwood: Since 1908?

Mr. Church: Nothing at all.

6330 Mr. Garwood: What buildings have you belonging to the railroad along the different lines?

Mr. Church: We have a small station at Cravens, and repair shops, coal chutes, water tanks, section houses, telephone stations——

Mr. Garwood: Have you a round house?

Mr. Church: Yes, at Pickering and Barham—I mean Pickering and Cravens.

Mr. Garwood: Pump houses and so forth?

Mr. Church: We have at Cravens what they term a round house that will accommodate three engines.

Mr. Garwood: I will ask you in a general way if you have all of the appliances, buildings, and so forth, necessary to operate a railway safely and expeditiously for the accommodation of the public?

Mr. Church: Yes, sir.

Mr. Garwood: Are you prepared to handle less than carload freight?

Mr. Church: We handle more or less of it, yes, sir.

Mr. Garwood: Are you prepared to do it safely and properly to the owners of the——

Mr. Church: We think so.

6331 Mr. Garwood: What station agents have you?

Mr. Church: We have agents at Cravens, Pickering and Barham.

Examiner Burchmore: Are they also employed by the lumber company?

Mr. Church: Yes, sir, they are.

Mr. Garwood: Can you state, Mr. Church, if you know, about what is the expected life of the plants of the lumber company at Pickering, Cravens and Barham?

Mr. Church: At Barham I believe the present holdings will be exhausted in about two years, possibly a little shorter time, but at Pickering and Cravens about fifteen.

Mr. Garwood: What is the character of the country and soil there, that is to say, is it adapted to agricultural development?

Mr. Church: I think it will be, yes, sir.

Mr. Garwood: Raising corn, cane and cotton?

Mr. Church: Corn, vegetables, fruit and cotton.

Mr. Garwood: Is there beginning any development?

Mr. Church: Yes, at Pickering, the company known as the Pineland Manufacturing Company who own about 30,000 acres of the cut-over land, are making strong efforts to induce immigra-

6332 tion in that neighborhood, and I am told that last year they brought in possibly fifty families in that neighborhood there, selling their land out to these farmers in small sections and various tracts. There have been more or less products shipped from Pickering on the Kansas City Southern that have been raised in that neighborhood.

Mr. Garwood: I will ask you whether or not at Pickering there is an experimental farm of considerable proportions representing quite a large investment of money?

Mr. Church: Yes, sir, that is being done by this Grannis Plantation Company, which is, I think, connected with the Pineland Manufacturing Company, it is the same interest. They have perhaps a mile and a half from Pickering, quite an extensive experimental farm and that is where this product is obtained from largely that they have been shipping recently.

Mr. Garwood: The natural outlet for that product, that is, the most direct outlet north to Kansas City would be via the Kansas City Southern, would it not?

Mr. Church: Yes, sir.

Mr. Garwood: That would move over your line?

Mr. Church: Yes, sir.

6333 Mr. Garwood: From Pickering, its connection with the Kansas City Southern?

Mr. Church: From points out on the line as these immigrants develop their land, we would expect to haul their product.

Mr. Garwood: What is the population of Pickering, Cravens and Barham?

Mr. Church: I think Barham is about 300, Pickering perhaps 1,000. Cravens I should say 12,000 people.

Mr. Garwood: Mr. Church, from your general knowledge of lumber conditions, I would ask you the question whether the question of tap line divisions, the amount of them, or whether they are received or not cuts any figure in the sale of lumber as far as you have observed the trade?

Mr. Church: As far as I know of, it does not.

Mr. Garwood: Can you tell in a general way the number of section men on your road?

Mr. Church: I do not remember the number exactly, but I think about 60.

Mr. Garwood: About 60.

Mr. Church: That is my recollection, possibly more.

Mr. Garwood: They are sufficient to keep the road up to a proper standard——

6334 Mr. Church: Yes, sir

Mr. Garwood: For the safety of the——

Mr. Church: That number is increased from time to time as the emergency requires, however.

Examiner Burchmore: Do they maintain those logging spurs out in the woods?

Mr. Church: Yes, they are operated by the railroad, yes.

Examiner Burchmore: They are all operated by the railroad aren't they?

Mr. Church: Yes, but beyond Barham there is a railroad track that we have nothing to do with.

Examiner Burchmore: I thought you operated trains over them

Mr. Church: Well we do operate trains but not to—they have their own gang that attends to the construction work.

Mr. Garwood: How many engineers have you on your road?

Mr. Church: I think eight.

Mr. Garwood: How many firemen?

Mr. Church: The same number.

Mr. Garwood: Conductors?

Mr. Church: Three, I believe.

Mr. Garwood: Section foremen?

6335 Mr. Church: I think there is seven section foremen.

Mr. Garwood: I have a note here that indicates 89 other trackmen. You stated that you thought you had about sixty section men.

Mr. Church: Those other trackmen, Mr. Garwood, are section men, and perhaps I should have stated a higher figure. I did not recall the figures.

Mr. Garwood: I believe you said that your road owned shops.

Mr. Church: Yes, sir.

Mr. Garwood: Have your own shop men?

Mr. Church: Our own shop men for repair work.

Mr. Garwood: Anything further that you care to say, Mr. Church?

Mr. Church: I do not recall of anything special.

Examiner Gutheim: Mr. Church, Judge Garwood asked you about Pickering, Barham and Cravens. Pickering is generally known as a mill town, isn't it?

Mr. Church: Yes, sir.

Examiner Gutheim: It owes its existence to the establishment of the Pickering Lumber Company's plant at that point?

Mr. Church: Originally, yes, sir.

Examiner Gutheim: Barham is in the same class?

6336 Mr. Church: I should say so.

Examiner Gutheim: Cravens is also served by the Lake Charles & Northern and the Santa Fe, isn't it?

Mr. Church: Yes, sir.

Examiner Gutheim: Judge Garwood also asked you about whether your road was equipped with the ordinary corporation service required. How many communities are there that the road serves outside of Pickering, Barham and Cravens, which are termini?

Mr. Church: Between Pickering and Cravens there are more or less farmers in there; no settlements of any consequence, however.

Examiner Gutheim: Any post offices or stores?

Mr. Church: There are some post offices, I believe, one or two and on the west arm there are several, several communities and post offices, but I am not familiar exactly——

Examiner Gutheim: Those post offices do not obtain their mail off your lines?

Mr. Church: No, we have no mail or express companies.

Examiner Gutheim: Now is the Pickering Lumber Company interested in the Pineland Manufacturing Company?

Mr. Church: No, sir, they are not.

6337 Examiner Gutheim: In the New Grannis Plantation Company?

Mr. Church: No, sir.

Examiner Gutheim: Now you said that approximately fifty families had been brought in for settlement.

Mr. Church: I am informed that.

Examiner Gutheim: And I judge from your answer to Judge Garwood's question, that they are generally located within about a mile and a half of Pickering?

Mr. Church: That is where this Grannis plantation is. They are located various distances, nearly all of them east, southeast and northeast of Pickering.

Examiner Gutheim: As a matter of fact, do they use your line in sending out anything? Is it not just as profitable and perhaps just as reasonable for them to turn in their farm products to the K. C. S. or to the trunk line direct?

Mr. Church: At the present time, yes, sir.

Examiner Gutheim: Are there any settlements on the other division of the railroad?

Mr. Church: There are beyond Bayou Toro, a few in there. Bayou Toro, by the way, is a post office and has been established about 60 years. That is an old community in there.

Examiner Gutheim: That is the western terminus of the Barham line?

6338 Mr. Church: Yes, sir.

Examiner Burchmore: Any cemetery there?

Mr. Church: There may be, I don't know.

Examiner Gutheim: You also said to Mr. Garwood that the divisions cut no figure in the price of the lumber. In your estimation do they cut any figure in the cost of the lumber?

Mr. Church: I don't think they are considered at all in that way.

Examiner Gutheim: Doesn't the fact that the Louisiana Central receive divisions result in a lower cost of manufacturing lumber to the Pickering Lumber Company, assuming that the Pickering Lumber Company owns the railroad?

Mr. Church: Assuming that, it perhaps would.

Examiner Gutheim: I think that is all.

Mr. Garwood: Just one more question. I wish you would state which lines were at Cravens first and how they came in there afterwards.

Mr. Church: The Louisiana Central was there at Cravens perhaps a year before any other line. Then afterwards the Santa Fe or the Jasper & Eastern was built in there, and later on the Lake Charles & Northern made some contract that resulted in the joint operation of that track from De Ridder east.

6339 Mr. Garwood: Do you know whether the Goulds own any large tracts of lumber lands in that vicinity?

Mr. Church: I understand they own quite a little timber land east of Barham.

Mr. Garwood: East of Barham?

Mr. Church: Yes, east of the Kansas City Southern toward the T. & P. line, between Shreveport——

Mr. Garwood: Approximately 100,000 acres?

Mr. Church: I think easily that. I have never had the exact figures, but I know they are interested there in our territory quite extensively, or were.

Mr. Garwood: They are popularly supposed to be the stockholders in a great many rail lines, some of which enter Louisiana and some of which enter Texas.

Mr. Church: Yes, sir.

Mr. Garwood: That is all, your Honor.

Examiner Burchmore: What railroads go into or near that tract of timber that you refer to as the Gould tract?

Mr. Church: I think the Texas & Pacific are the nearest, that is, besides the Kansas City Southern.

Examiner Burchmore: Any short line railroads run in there?

Mr. Church: I am not sure as to that. I am not very
6340 familiar with it.

Examiner Burchmore: Are the Goulds interested in short line railroads?

Mr. Church: I don't know.

Examiner Gutheim: As a matter of fact, Mr. Church, your line from Barham runs west of the K. C. S.?

Mr. Church: Yes, sir.

Examiner Gutheim: And I understand this timber of the Goulds is east of the K. C. S.?

Mr. Church: Yes, sir.

Examiner Gutheim: And so it is not likely your line will serve that timber at all?

Mr. Church: No, although the Pickering Company have some timber east of Pickering, but it is not likely that we will serve it.

Mr. Garwood: It is a fact, is it not, Mr. Church, that the connection of a short line railway, so-called, with a lumber mill by stockholding interests otherwise would have the same relation perhaps to the cost of production of lumber that a large mill and large complete machinery and a large investment would to small investments?

Mr. Church: I think so.

6341 Examiner Gutheim: Economical operation and transportation?

Mr. Church: I think so.

Examiner Burchmore: Mr. Coleman?

Mr. Coleman: Mr. Church, do you know whether the Pickering interests anticipated the extension of the Santa Fe, Jasper & Eastern line to and beyond Cravens before the Pickering interests decided to build its own line to Cravens?

Mr. Church: I think they did.

Mr. Coleman: Do you know that the matter was taken up by the Pickering interests with the Santa Fe?

Mr. Church: I do not.

Mr. Coleman: Were you with the Pickering interests at the time?

Mr. Church: No, not at that time.

Mr. Coleman: Do you know, Mr. Church, whether at the time that they anticipated the extension of the Santa Fe, they had not completed arrangements with the Missouri & Louisiana Railway for the operation of Louisiana Central trains over the Missouri & Louisiana into Cravens?

Mr. Church: I don't know anything about the details of that, Mr. Coleman.

Mr. Coleman: That is all.

6342 Mr. Garwood: Might I ask you a question, Mr. Coleman? Where is the Industrial Lumber Company? I don't recollect where its lands are situated.

Mr. Coleman: Pretty generally speaking, as I understand it, between Elizabeth and stations west or east of Cravens and Oakdale. That is known as the Wright-Blodgett tract, which was purchased from time to time, a portion to the Fullerton interest, a portion to the Pickering interests, and a portion to the Industrial Lumber Company.

Mr. Garwood: Could you say whether the Industrial Lumber Company had acquired those lands prior—that is all, Mr. Church—prior to the construction of the Jasper & Eastern?

Mr. Coleman: I think not, in fact I feel very positive that they were not acquired until it was determined to build a line to Cravens.

Mr. Garwood: I think that is all.

6343 *Gulf & Sabine River Railroad Company.*

S. H. FULLERTON was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Burchmore: Mr. Fullerton, please give your name to the stenographer.

Mr. Fullerton: S. H. Fullerton.

Examiner Burchmore: Mr. Fullerton, are you an officer of the Gulf & Sabine River Railroad Company?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: What is your office?

Mr. Fullerton: President.

Examiner Burchmore: Are you connected with any lumber company?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: If so, what companies?

Mr. Fullerton: I am connected with a good many lumber companies. I am president of the Gulf Lumber Company, Chicago Lumber and Coal Company——

Examiner Burchmore: That company owns the Gulf Lumber Company, I suppose, too?

6344 Mr. Fullerton: No, it owns some stock in the Gulf Lumber Company, but it does not own a controlling interest. President of the Bradley Lumber Company, British American Mills and Timber Company, Brown Lumber Company, Chicago Gulf Export Lumber Company, Chicago Lumber and Coal Company of Texas, Fullerton-Stewart Lumber Company, Fullerton & Powell Lumber Company—Hardwood Lumber Company, William Farrell Lumber Company, Fullerton-Moses Tie Company, Schultz Lumber Company, Switzer Lumber Company, Silver Lake Manufacturing Company, and I am vice-president of some others.

Examiner Burchmore: Are you interested in the Dayton Lumber Company?

Mr. Fullerton: No, sir.

Examiner Burchmore: Aren't you a stockholder in that company?

Mr. Fullerton: No, sir.

Examiner Burchmore: Any members of your family stockholders in that company?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: We had that case last night, Mr. Fullerton.

Mr. Fullerton: I was a stockholder in that company for
6345 some time, but I sold my stock to my son and he is a stockholder.

Examiner Burchmore: What is his name?

Mr. Fullerton: Robert W. Fullerton.

Examiner Burchmore: How long since you have been in that company?

Mr. Fullerton: Well I think I was in since its organization.

Examiner Burchmore: I mean how recently did you sell your stock?

Mr. Fullerton: Possibly six or eight months ago.

Examiner Burchmore: That is since June 30, 1910?

Mr. Fullerton: I could not tell you exactly whether it was since that time.

Examiner Burchmore: Are you now a stockholder or a director or both in the Trinity Valley & Northern Railway?

Mr. Fullerton: I am a stockholder. I am not an officer.

Examiner Burchmore: You are not a director?

Mr. Fullerton: No, sir.

Examiner Burchmore: Is your son a director in that company?

Mr. Fullerton: I think he is.

Examiner Burchmore: Does your son or do the members of your family control the Dayton Lumber Company?

6346 Mr. Fullerton: No, sir.

Examiner Burchmore: The Trinity Valley & Northern Railway?

Mr. Fullerton: No, sir.

Examiner Burchmore: The interest of your family or relatives is a minor one?

Mr. Fullerton: Minor.

Examiner Burchmore: Questions were asked last night and a witness said that you were present and would be able to answer several questions. When was the Gulf & Sabine River Railroad Company incorporated?

Mr. Fullerton: On September 1, 1906.

Examiner Burchmore: You were at that time interested in the corporation?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: What was and is its capitalization?

Mr. Fullerton: We have $100,000.00 capital.

Examiner Burchmore: Is that all outstanding?

Mr. Fullerton: All outstanding, yes.

Examiner Burchmore: Was it issued for cash or for property acquired?

Mr. Fullerton: The Gulf & Sabine River Railroad Company was organized before the Gulf Lumber Company was organized.

6347 The Gulf Lumber Company, the Chicago Lumber and Coal Company or its subsidiary company, bought its interest and incorporated or caused this railroad to be incorporated, and they afterwards sold that to the Gulf Lumber Company, and the Gulf Lumber Company acquired the timber holdings of the Chicago Lumber and Coal Company, together with this railroad company in the purchase.

Examiner Burchmore: Do you refer to the Gulf Lumber Company as a subsidiary corporation of the Chicago Lumber and Coal Company?

Mr. Fullerton: No, sir, it is an independent company, it is not a subsidiary company, because we do not control it.

Examiner Burchmore: I just wanted to get one or two of the general facts in a general way in the beginning so as to understand a little about the case. This railroad is built in two separate sections?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: One section is known as the Fullerton division?

Mr. Fullerton: Yes.

Examiner Burchmore: That connects with the Gulf, Colorado & Santa Fe and Lake Charles & Northern?

6348 Mr. Fullerton: Yes, sir.

Examiner Burchmore: At Nitram, Louisiana?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: And extends to Fullerton?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: A distance of approximately eighteen miles?

Mr. Fullerton: No.

Examiner Burchmore: What is that distance?

Mr. Fullerton: The main line from Nitram to Fullerton you have got on this paper as being 10.05 miles.

Examiner Burchmore: What is the distance between those two points?

Mr. Fullerton: I think the distance betwen Nitram and Fullerton now is 6.4.

Examiner Burchmore: How many locomotives and cars are there on that division?

Mr. Fullerton: Well the general manager can answer that better than I can.

Examiner Burchmore: Three or four locomotives and a number of cars?

Mr. Fullerton: The road has seven locomotives altogether.

6349 Examiner Burchmore: The other division of the railroad and the only other division it has is the Stables division?

Mr. Fullerton: That is all.

Examiner Burchmore: That connects with the Kansas City Southern at Stables, Louisiana?

Mr. Fullerton: Yes, sir.

Examiner Burchmore: And extends in what direction and for what distance?

Mr. Fullerton: South and west from Stables.

Examiner Burchmore: To a point known as Stevensville?

Mr. Fullerton: It extends to Klarpsville.

Examiner Burchmore: That is all.

Examiner Marble: It may be I will cover questions that your Honor has already passed, but if I do, you will bear with me. This timber was in the first instance bought by the Chicago Lumber and Coal Company?

Mr. Fullerton: The timber around Stables, a portion of it.

Examiner Marble: And the timber around Fullerton?

Mr. Fullerton: That was bought directly by the Gulf Lumber Company.

Examiner Marble: You have testified that there is no relation between the Gulf Lumber Company and the Chicago Lumber
6350 and Coal Company, have you?

Mr. Fullerton: What do you mean by relationship?

Examiner Marble: Well, does one own the stock of the other to any extent?

Mr. Fullerton: The Chicago Lumber and Coal Company is a stockholder in the Gulf Lumber Company, but the Gulf Lumber Company does not own any stock in the Chicago Lumber and Coal Company.

Examiner Marble: To what extent is the Chicago Lumber and Coal Company a stockholder in the Gulf Lumber Company?

Mr. Fullerton: I think we own about a third of the capital stock.

Examiner Marble: One-third?

Mr. Fullerton: Yes, about that.

Examiner Marble: Who owns the rest of the stock of the Gulf Lumber Company?

Mr. Fullerton: The stockholders, various people.

Examiner Marble: Is the Chicago Lumber and Coal Company the largest stockholder?

Mr. Fullerton: Yes.

Examiner Marble: Who is the next largest stockholder?

Mr. Fullerton: Well I don't know really who is.

6351 Examiner Burchmore: Mention some stockholders.

Mr. Fullerton: I am one of the largest individual stockholders personally.

Examiner Marble: What proportion of the stock of the Gulf Lumber Company do you own?

Mr. Fullerton: Of the Gulf Lumber Company?

Examiner Marble: Yes.

Mr. Fullerton: Well, I think I own possibly $350,000.00.

Examiner Marble: Give it as a fractional portion.

Mr. Fullerton: That would be ten per cent.

Examiner Marble: About ten per cent?

Mr. Fullerton: About that.

Examiner Marble: Do you own stock in the Chicago Lumber and Coal Company?

Mr. Fullerton: Yes, sir.

Examiner Marble: What proportion of that do you own?

Mr. Fullerton: Well I possibly own about one-seventh.

Examiner Marble: Now then I am taking more time about this than I should. Are those two companies practically controlled by the same interests?

Mr. Fullerton: No, I should not say so. While there are stockholders in the Gulf Lumber Company who are also stock-
6352 holders in the Chicago Lumber and Coal Company, there are quite a number of stockholders in the Chicago Lumber and Coal Company, who are not interested at all in the Gulf Lumber Company and quite a number in the Gulf Lumber Company not interested in the Chicago Lumber and Coal Company.

Examiner Marble: But they are controlled in harmony and have the same president?

Mr. Fullerton: I am president of both companies.

Examiner Burchmore: The Chicago Lumber and Coal Company had a former case before the Commission, involving lumber reparation. That case was partially heard at New Orleans in 1908, was it not, Mr. Saunders?

Mr. Saunders: Yes, sir.

Examiner Burchmore: Are you familiar with the record in that case, Mr. Saunders?

Mr. Saunders: Fairly so, I did not try the case.

Examiner Burchmore: I will ask Mr. Saunders or Mr. Fullerton whether the record in that case has any testimony as to the relation, if any, that existed between the Chicago Lumber and Coal Company and the Gulf Lumber Company?

6353 Mr. Saunders: My recollection is that there was a statement filed in there showing some relationship.

Mr. Fullerton: I don't think I know anything about it, that is, I don't think I ever read the testimony, and I was not present in the courtroom.

Examiner Burchmore: Has there been any change in—any substantial change in the stocks or ownership of the two companies since 1909?

Mr. Fullerton: Yes, there have been some changes.

Examiner Burchmore: Minor changes simply incident to purchases and sales of small holdings and stocks?

Mr. Fullerton: Yes, some rather large changes. I know of one party who sold $32,000, thirty or thirty-two thousand.

Examiner Marble: You are president of both of these companies, are you?

Mr. Fullerton: Yes, sir.

Examiner Marble: Are you the managing head, the executive head of both companies?

Mr. Fullerton: Executive head, yes, sir.

Examiner Marble: Have they other officers in common?

Mr. Fullerton: Well, yes, some of the directors that are
6354 directors of the Gulf Lumber Company are also directors in the Chicago Lumber & Coal Company, but there is none of them that takes any active control or any active management.

Examiner Marble: You have a Chicago Lumber & Coal Company of Texas, have you?

Mr. Fullerton: Yes, sir, it is a separate corporation.

Examiner Marble: Is its stock owned by the Chicago Lumber & Coal Company?

Mr. Fullerton: The majority of it.

Examiner Marble: All except directors' shares?

Mr. Fullerton: No, the party managing the business—That is a selling organization.

Examiner Marble: A selling organization?

Mr. Fullerton: Yes, sir, the Chicago Lumber & Coal Company is a selling organization. It does not manufacture any lumber and this Chicago Lumber & Coal Company of Texas is a subsidiary Company of the Chicago Lumber & Coal Company of Iowa, and that was organized to assist in selling the products of the Gulf Lumber Company, because we did not care to go into the State of Texas with our corporation.

Examiner Marble: Does the Chicago Lumber & Coal Company market the output of the Gulf Lumber Company?

6355 Mr. Fullerton: Practically all of it.

Examiner Marble: And these various other companies as well?

Mr. Fullerton: Yes, sir.

Examiner Marble: Various other companies in which you are interested?

Mr. Fullerton: Others in which we are not interested.

Examiner Marble: It is a selling company for some outside concerns in which you are not interested at all?

Mr. Fullerton: Yes, sir.

Examiner Marble: Going to the Gulf & Sabine River proposition, what did you say was the length of that road from Fullerton to Nitram?

Mr. Fullerton: The report says that there is 10.05 miles of main track from Nitram to Fullerton.

Examiner Marble: The distance from Nitram to Fullerton is five miles?

Mr. Fullerton: No, it is 6.04 miles, I think.

Examiner Marble: What is it that is five miles?

Mr. Fullerton: Originally it was built to the edge of the town of Fullerton—Fullerton is now an incorporated town, and in order to get to our mills where the logs were shipped to, it was 6.4

6356 miles from Nitram.

Examiner Marble: So that the distance from the mill to Nitram is 6.4 miles?

Mr. Fullerton: Yes, sir.

Examiner Marble: Who owns the stock of the Gulf & Sabine River Railroad?

Mr. Fullerton: It is owned by the same people that own the stock in the Gulf Lumber Company.

Examiner Marble: It is not owned by the Gulf Lumber Company then?

Mr. Fullerton: No, sir.

Examiner Marble: Is it owned by the same people in the same proportion?

6357 Mr. Fullerton: Well, it was originally that way, but I think that those things have changed, by reason of people selling their stocks in one and retaining their stock in the other, so that the proportion would not be the same now.

Examiner Marble: When was that five miles of track constructed?

Mr. Fullerton: I think it was in 1907.

Examiner Marble: After the purchase of this timber from around Fullerton by your Company?

Mr. Fullerton: Yes.

Examiner Marble: Was it constructed at the same time that you built your mill at Fullerton?

Mr. Fullerton: It was constructed before we built the mill.

Examiner Marble: The machinery for the mill then was brought in over that line?

Mr. Fullerton: Over that line, yes.

Examiner Marble: Did you attempt to secure the building of any trunk line or any other railroad to that point before you undertook to operate yourself?

Mr. Fullerton: I beg your pardon?

Examiner Marble: Did you attempt to persuade any trunk line to build a line to Fullerton before building this road your-

6358 self?

Mr. Fulerton: Not that I recollect of.

Examiner Marble: How?

Mr. Fullerton: I don't recollect having done so.

Examiner Marble: Did any trunk line offer to build to Fullerton?

Mr. Fullerton: Not that I recollect of.

Examiner Marble: Didn't the Santa Fe offer to build to Fullerton?

Mr. Fullerton: I don't think so.

Examiner Marble: Did any officer of the Santa Fe offer to build to Fullerton?

Mr. Fullerton: I think that Mr. Hershey and Mr. Coleman came into my office and said that they were constructing a line of railroad through that country and that it might possibly be changed; they had their right of way secured or located, but that it might be changed, if we would indicate, or if we wished to have them come closer to my property. That is my recollection of the conversation.

Examiner Marble: What did you tell them?

Mr. Fullerton: My recollection is that I told them that we expected to build the railroad ourselves.

6359 Examiner Marble: You expected to build the railroad yourself?

Mr. Fullerton: Yes.

Examiner Marble: Did you follow that up in any way to try to get the Gulf, Colorado & Santa Fe?

Mr. Fullerton: No, sir.

Examiner Marble: The Santa Fe Railroad to build?

Mr. Fullerton: No, sir.

Examiner Marble: You had your own plans and did not want them to build up to Fullerton, is that the idea?

Mr. Fullerton: I did not care. They had a right to do as they pleased, which they undoubtedly did do anyway.

Examiner Marble: Did you tell them that they were quite as near as you wanted them to get?

Mr. Fullerton: I don't recollect having told them anything of that kind.

Examiner Marble: Do you care to tell us why you did not try to get trunk line facilities, instead of having yourself removed at a distance from a trunk line?

Mr. Fullerton: Well, now, I think that is a business proposition That we had a right to determine for ourselves.

6360 Examiner Marble: A man starting a great industry, one would naturally think he would be pleased to have direct touch with a trunk line instead of being——

Mr. Fullerton: A person starting a great industry that furnishes a large amount of tonnage might wish to do the carrying part as well as the manufacturing part.

Examiner Marble: Was that the motive that impelled you in this matter?

Mr. Fullerton: Well, in all probability.

Examiner Marble: Now then, that road being built, the Santa Fe did not swerve from the line of its original survey, but constructed its road due east and north, to the northwest, and it goes through this town called Nitram. That is the Santa Fe line there now; you have a junction at Nitram with the Santa Fe tracks?

Mr. Fullerton: Yes, sir.

Examiner Marble: And you built from Fullerton down to Nitram?

Mr. Fullerton: Yes, sir.

Examiner Marble: Did the Santa Fe pay any divisions or allow interest to the Gulf & Sabine River Railroad?

Mr. Fullerton: I think not.

6361 Examiner Marble: Ever?

Mr. Fullerton: Not that I recollect of.

Examiner Marble: Did it refuse to pay?

Mr. Fullerton: I don't know that there was ever any formal request made of that company to establish rates and divisions.

Examiner Marble: An effort was made to get them.

Mr. Fullerton: Not by me, and I don't know whether it was attempted by anyone else. If it was, I do not know of it.

Examiner Marble: Didn't they at first pay you two cents for a time?

Mr. Fullerton: The Santa Fe?

Examiner Marble: Yes.

Mr. Fullerton: Not that I recollect of; I don't think they ever did

Examiner Marble: Didn't they offer you two cents?

Mr. Fullerton: I don't think so.

Examiner Marble: Or one cent?

Mr. Fullerton: I don't think they ever did.

Examiner Marble: Isn't it a fact that the Santa Fe Railroad offered you allowances of one or two cents, but refused to
6362 make a contract for any length of time?

Mr. Fullerton: Not to my knowledge.

Examiner Marble: Or some officer of the Santa Fe?

Mr. Fullerton: It never was reported to me if such offer was ever made.

Examiner Marble: If it was, if such a proposition to pay one cent on certain shipments and two cents on certain other shipments, but a refusal to make a time contract in the matter was made to any of your officials, it was not reported to you?

Mr. Fullerton: No.

Examiner Marble: You are not familiar with it?

Mr. Fullerton: No, sir.

Examiner Marble: From what road are you now getting divisions or allowances?

Mr. Fullerton: The Lake Charles & Northern.

Examiner Marble: The Lake Charles & Northern at its southern terminus begins at Lake Charles, Louisiana, does it not?

Mr. Fullerton: I think so.

Examiner Marble: And runs directly north to De Ridder?

Mr. Fullerton: Yes, sir.

6363 Examiner Marble: From that point it operates to Nitram over the tracks of the Gulf, Colorado & Santa Fe Railroad, does it not?

Mr. Fullerton: Yes, sir.

Examiner Marble: Has it anything to do with the securing of that trackage right of the Lake Charles & Northern over the tracks of the Santa Fe?

Mr. Fullerton: No.

Examiner Marble: Did you guarantee any tonnage to the Lake Charles & Northern before they made that arrangement with the Santa Fe?

Mr. Fullerton: Yes, we had an understanding that we would deliver a certain amount or proportion of tonnage.

Examiner Marble: A certain proportion of tonnage?

Mr. Fullerton: Yes, sir.

Examiner Marble: What proportion?

Mr. Fullerton: 80 per cent of timber from certain lands.

Examiner Marble: What proportion of output of the mills at Fullerton would that be?

Mr. Fullerton: Well, that would be 80 per cent.

Examiner Marble: 80 per cent of those mills at Fullerton?

Mr. Fullerton: Yes, sir.

6364 Examiner Marble: Were there any territorial descriptions as to destination, in the agreement as to destination?

Mr. Fullerton: Yes, there was; it was to points where they had rates and divisions.

Examiner Marble: Points where the Lake Charles & Northern had rates and divisions?

Mr. Fullerton: Yes, but where they did not have rates and divisions, of course it would not apply.

Examiner Marble: You are going beyond that 80 per cent in your actual routing of your shipments at the present time, are you not?

Mr. Fullerton: I think so.

Examiner Marble: You are shipping all of your output over the Lake Charles & Northern, are you not?

Mr. Fullerton: Yes, sir, practically.

Examiner Marble: Did you personally have charge of the arrangement for divisions with the Lake Charles & Northern?

Mr. Fullerton: No.

Examiner Marble: The negotiations?

Mr. Fullerton: No, I did not.

Examiner Marble: Who did?

Mr. Fullerton: Mr. C. I. Mallard, who was at that time
6365 president of the Gulf & Sabine River Railroad. I think he was the person who negotiated the divisions originally. Since that time Mr. Fleishel, the general manager, has attended to that.

Examiner Marble: Is Mr. Mallard here?

Mr. Fullerton: No.

Examiner Marble: Where is he?

Mr. Fullerton: He is at Norfolk, Virginia, lives there.

Examiner Marble: What is his present business?

Mr. Fullerton: Well, he is now president of the John L. Roper Lumber Company, and an officer in some railroad down there.

Examiner Marble: Is that one of your interests, Mr. Fullerton?

Mr. Fullerton: No, sir.

Examiner Marble: Did Mr. Mallard report to you from time to time?

Mr. Fullerton: Yes, sir.

Examiner Marble: In the progress of these negotiations?

Mr. Fullerton: Yes, sir.

Examiner Marble: With whom did he carry on these negotiations?

6366 Mr. Fullerton: Carried on the negotiations I think with Mr. Fay.

Examiner Marble: Mr. Fay of the——

Mr. Fullerton: Southern Pacific.

Examiner Marble: Of the Southern Pacific interests?

Mr. Fullerton: Yes, sir.

Examiner Marble: Had the Southern Pacific interests bought the Lake Charles & Northern, when those negotiations began?

Mr. Fullerton: I don't know.

Examiner Marble: When did those negotiations begin, can you fix the time?

Mr. Fullerton: Well, it was 1906, possibly the last of 1906 or 1907, I think, is when we bought the timber. It is possible that the negotiations were had about that time.

Examiner Marble: About the time of the purchase of the timber?
Mr. Fullerton: Practically.
Examiner Marble: But before the construction of your railroad there?
Mr. Fullerton: I think so.
Examiner Marble: Did you have those suggestions in mind when Mr. Coleman called upon you to suggest that the Santa Fe
6367 would build direct to Fullerton?
Mr. Fullerton: I don't know.
Examiner Marble: Had they been begun before he called upon you?
Mr. Fullerton: It is quite probable. I don't recollect the time when he called upon me.
Examiner Marble: Can you fix the time when the material for the mill was shipped in?
Mr. Fullerton: Well, it must have been in 1907; wasn't it?
Mr. Fleishel: Yes.
Examiner Marble: Were those divisions with Mr. Fay's interest agreed upon before the Gulf & Sabine River Railroad was constructed?
Mr. Fullerton: I think not.
Examiner Marble: Were they discussed with him before it was constructed?
Mr. Fullerton: Probably.
Examiner Marble: Well, now, certainly, was it all one concurrent transaction, is that what you mean to say, all going on at the same time?
Mr. Fullerton: No, I think not. I think the matter was discussed either with Mr. Fay or with some person representing the
6368 Southern Pacific interests.
Mr. Cowan: Which Mr. Fay was that?
Examiner Marble: Mr. Charles S. Fay, was it not?
Mr. Fullerton: I believe it was either Charles S. Fay or Thornwell, and I presume it was with Charles S. Fay.
Examiner Marble: I will ask you, Mr. Fullerton, in the railroad organization in the Southern Pacific, which is the superior of the two, in point of authority, Mr. Charles S. Fay, or Mr. Thornwell Fay?
Mr. Fullerton: Thornwell Fay.
Examiner Marble: What is his position?
Mr. Fullerton: I understand that he is general manager or vice-president of the Texas Lines, or Southern Lines of the Southern Pacific.
Mr. Cowan: Mr. Garwood can tell you all about it.
Examiner Marble: Did you have any communication with Mr. Thornwell Fay yourself?
Mr. Garwood: The Louisiana end of it, I have no connection with the Louisiana lines at all.
Mr. Cowan: I thought maybe you might know.
Mr. Garwood: Of course I know of it.
Mr. Fullerton: I did not catch your question.

6369 Mr. Garwood: Mr. Thornwell Fay is vice-president and general manager, both of the Louisiana lines and the Texas lines, and my understanding, while I have no connection with the Louisiana lines, Mr. Charles Fay is general freight agent of the Louisiana lines.

Examiner Marble: Did you personally have any communication with Mr. Thornwell Fay regarding this matter?

Mr. Fullerton: I don't think that I did personally.

Examiner Marble: Did you have any communication with any superior of Mr. Tornwell Fay?

Mr. Fullerton: I did not personally conduct these negotiations, and consequently I did not—I don't know.

Examiner Marble: Were there negotiations conducted and carried on with the officers of the Southern Pacific interests who were superior even to Mr. Thornwell Fay?

Mr. Fullerton: I think so.

Examiner Marble: Whom?

Mr. Fullerton: Some of the officers in New York.

Examiner Marble: With Mr. Harriman?

Mr. Fullerton: Yes, possibly with Mr. Harriman.

Examiner Marble: That is your understanding, that negotiations were carried on with Mr. Harriman in this matter?

6370 Mr. Fullerton: Yes, sir.

Examiner Marble: In carrying on those negotiations with Mr. Harriman, who represented you?

Mr. Fullerton: Mr. Mallard.

Examiner Marble: Were you familiar with the operations of the Gulf & Sabine Railroad?

Mr. Fullerton: Not with the actual operations.

Examiner Marble: The physical operations?

Mr. Fullerton: No.

Examiner Marble: Is there someone who is going to testify that is?

Mr. Saunders: Yes, Mr. Fleishel, our general manager.

Examiner Marble: I will gain nothing by examining this witness along that line

Mr. Saunders: Nothing at all.

Examiner Marble: What territory do your timber holdings around Fullerton cover in extent?

Mr. Fullerton: Well, we have got in the neighborhood of 140,000 acres, that is, the company owns that much.

Examiner Marble: Would you with a pencil on this map indicate roughly the outline of that territory, or someone else?

6371 Mr. Saunders: Mr. Fleishel will do it for you, Mr. Marble.

Examiner Marble: I will ask him to do it right now. The Examiner suggests to me that it would be well to have in the record a map which will indicate these facts which I have got up here in this informal way.

Mr. Fleishel: You mean a map showing the timber?

Examiner Marble: Yes, showing the railroad and the timber lands.

Mr. Fleishel: I have a railroad map here but I have not got the timber on it. But we will give you a timber map.

Examiner Marble: Showing both the timber cut over and still there.

Mr. Fleishel: Do you want that shown separately?

Examiner Marble: You may show those which still contain timber, and then show those on the map from which the timber has been removed.

Mr. Fleishel: This is merely a profile of the railroad showing the curvature. (Indicating profile.)

Examiner Marble: You will indicate it with red ink?

Mr. Fleishel: Yes, sir.

Examiner Marble: You have given the capital of this line as $100,000.

6372 Mr. Fleishel: Yes.

Examiner Marble: Was that all paid in at par?

Mr. Fullerton: Yes, sir.

Examiner Marble: And you have issued some bonds?

Mr. Fullerton: Yes, sir.

Examiner Marble: How much?

Mr. Fullerton: $300,000.

Examiner Marble: Were they sold at par?

Mr. Fullerton: No, sir.

Examiner Marble: What figure were they sold at?

Mr. Fullerton: About 50 per cent.

Examiner Marble: What is their rate of interest?

Mr. Fullerton: They are 5 per cent bonds.

Examiner Marble: That means that they are issued on a 50 per cent basis then?

Mr. Fullerton: Yes, sir—Well, yes, we got a little over 50 per cent for them.

Examiner Marble: That bond discount is carried in your account and reported to the Commission?

Mr. Fullerton: Yes, it is being distributed, a portion of it each year.

Examiner Marble: Distributed on what items?

6373 Mr. Fullerton: It is charged against the earnings, depreciation. It would have been too much to have charged off all at one time, so we charged it off from year to year.

Examiner Marble: Did you distribute it over the life of the bonds?

Mr. Fullerton: I don't know about that, whether it exceeds the life of the bonds or not.

Examiner Marble: What is the life of the bonds?

Mr. Fullerton: I think the bonds will mature in 1928. I rather think that they extend over the entire life of the bonds.

Examiner Marble: Who purchased those bonds?

Mr. Fullerton: The Gulf Lumber Company.

Examiner Marble: I think I will excuse Mr. Fullerton now, asking him to remain, of course, and put Mr. Fleishel on as to the practical operation of this road, unless there is any cross-examination that has not already been brought.

Mr. Cowan: No, I want to ask Mr. Fullerton the general line of questions we took up with Mr. Johnson yesterday, but we can do that better after we get through with all these details.

Examiner Marble: Very well, if everybody is agreed as
6374 to that.

(Witness excused.)

M. L. FLEISHEL, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner Marble: Will you give your name to the reporter?

Mr. Fleishel: M. L. Fleishel.

Examiner Marble: What is your present position, Mr. Fleishel?

Mr. Fleishel: I am general manager of the Gulf & Sabine River Railroad.

Examiner Marble: Have you any other business than that?

Mr. Fleishel: Yes, sir, I am general manager of the Gulf Lumber Company also.

Examiner Marble: As general manager of the Gulf Lumber Company what are your duties?

Mr. Fleishel: Well, I have charge of all operations.

Examiner Marble: All operations?

Mr. Fleishel: Yes, sir, outside of executive matters.

Examiner Marble: You have control of the routings of shipments made by the Gulf Lumber Company?

6375 Mr. Fleishel: No, sir. Those orders come to us routed. We have published tariff rates——

Examiner Marble: Who do those orders come to you from, from the Chicago Lumber & Coal Company?

Mr. Fleishel: Some of them, chiefly, they sell the bulk of it, the Chicago Lumber & Coal Company of Texas, and the Chicago Gulf Export Lumber Company.

Examiner Marble: These are selling agencies of the same general interests?

Mr. Fleishel: Yes, sir.

Examiner Marble: They sell practically all of your lumber?

Mr. Fleishel: They sell the major portion of it.

Examiner Marble: Would you put it as high as 95 per cent?

Mr. Fleishel: I would not say so.

Examiner Marble: More than 90?

Mr. Fleishel: Probably 90, yes, sir.

Examiner Marble: How long have you been in this position of general manager of these two concerns?

Mr. Fleishel: Ever since they were organized.

Examiner Marble: Were you connected with the enterprise before the corporations were organized?

Mr. Fleishel: Yes, sir.

6376 Examiner Marble: Did you have to do with the location there?

Mr. Fleishel: Yes, sir.

Examiner Marble: Did you have to do with any negotiations for rail facilities?

Mr. Fleishel: Yes, sir.

Examiner Marble: Do you know of any offer by the Santa Fe to pay divisions to the Gulf & Sabine River?

Mr. Fleishel: No, sir.

Examiner Marble: On any terms, whatever?

Mr. Fleishel: No, sir.

Examiner Marble: None were made to you?

Mr. Fleishel: No, sir.

Examiner Marble: Nor to anyone else that you know of?

Mr. Fleishel: Never heard of it.

Examiner Marble: Was there any refusal to give you those divisions?

Mr. Fleishel: Indirectly, I think there was.

Examiner Marble: To whom were those refusals given?

Mr. Fleishel: They were never given, of course, any more than looking toward them to this extent. Before the railroad was completed I went over to Galveston to see Mr. Marsh and Mr.
6377 Pettibone, in regard to some construction material that was delayed. The road in fact had been all laid before I got there, that is, all except the laying of the steel; and I had no authority at that time really to make any divisions, but in the course of conversation there probably was some talk with reference to putting in divisions.

Examiner Marble: Did they refuse to put in divisions?

Mr. Fleishel: I don't know that they did. I think they did.

Examiner Marble: Your impression is that they did?

Mr. Fleishel: Yes, sir, that is my impression, but they had already indicated their intention that they would not.

Examiner Marble: Yes; to you?

Mr. Fleishel: I don't know how much authority the people had that indicated it.

Examiner Marble: You took that as a refusal from the Santa Fe to put in those rates?

Mr. Fleishel: Yes, sir.

Examiner Marble: You took it as their refusal to put in any divisions then?

Mr. Fleishel: In a general way, yes, sir.

Examiner Marble: Did you take it as a refusal to put in divisions at any time?

6378 Mr. Fleishel: No, sir, my impression was that they intimated that they never would do it.

Examiner Marble: Never would do it?

Mr. Fleishel: No, sir.

Examiner Marble: You went away with that impression?

Mr. Fleishel: Yes, sir.

Examiner Marble: Was it after that that the negotiations with the Southern Pacific interests were first made?

Mr. Fleishel: I was not positive as to that because I did not conduct those negotiations.

Examiner Marble: That was before the road was built that you got that impression from them?

Mr. Fleishel: Yes, sir.

Examiner Marble: Before the mill was built?

Mr. Fleishel: Yes, sir. We also had some pretty extensive railroad plans, and they were not disposed to recognize us as a railroad, or in fact to take us at all seriously.

Examiner Marble: Are you familiar with any offer or proposition to build the Santa Fe to Fullerton?

Mr. Fleishel: Absolutely none, no, sir.

Examiner Marble: You are not familiar with that?

6379 Mr. Fleishel: No, sir, never heard of it.

Examiner Burchmore: The line to the north of Nitram, belonging to the Gulf & Sabine River Railroad was not constructed, was it, until after the other railroads got into Nitram?

Mr. Fleishel: Yes, sir; built before the Santa Fe got there.

Examiner Burchmore: Where did they get the steel?

Mr. Fleishel: I stated in the beginning, our line bought the steel.

Examiner Marble: You got the roadbed ready?

Mr. Fleishel: That was the reason I went to Galveston at that time, to see if we could not hurry things up; we could not get it in there, but the bridges and the grades were all built before they got there, and we were operating it into Fullerton within two weeks of their rail reaching the junction.

Examiner Marble: Do you know the amount of the divisions you are now receiving?

Mr. Fleishel: Yes, sir.

Examiner Marble: Have you a detailed statement of those with you?

Mr. Fleishel: Well, no, I haven't a copy of the division sheets, but I can tell you what they are.

6380 Examiner Marble: What are they?

Mr. Fleishel: On lumber, from one to four cents, a maximum of four and a minimum of one. On classes and commodities it is 25 per cent of the Lake Charles proportion.

Examiner Marble: 25 per cent of the Lake Charles proportion?

Mr. Fleishel: Yes, sir, either in or outbound.

Examiner Marble: That is to say, it is 25 per cent of the amount allotted for transportation north of Lake Charles, Louisiana to Fullerton?

Mr. Fleishel: That is the idea, yes, sir.

Examiner Marble: Now then, will you distinguish between the one cent business and the four cent business? On what shipments do you receive only one cent?

Mr. Fleishel: Well, business on which there is a short coast rate. Sabine Pass, Port Arthur, Galveston, and New Orleans.

Examiner Marble: Is that true on Domestic shipments to those points, as well as Export?

Mr. Fleishel: Yes, sir—that is, now I think so, but I would not be positive as to that. I think that is a fact, yes, sir. It does

6381 not make any difference anyway, because we don't ship anything for local consumption.

Examiner Marble: You said the division was from one to four cents?

Mr. Fleishel: Yes, sir.

Examiner Marble: What is your next figure above one cent?

Mr. Fleishel: Four cents on lumber.

Examiner Marble: On mill business, and on lumber you receive one cent, and on some business you receive four cents?

Mr. Fleishel: Yes, sir.

Examiner Marble: There is no figure in between?

Mr. Fleishel: No, sir.

Examiner Marble: Then on all shipments except to nearby coast points you receive four cents?

Mr. Fleishel: No, sir, on points in Louisiana east of Lake Charles, and also in Texas east of Houston, to which no lumber moves, however, the division is to be agreed upon in case there is any business offered, but there are no settled divisions, there are no division sheets at present covering business in that particular territory, and no business offered.

Examiner Marble: On business you actually move you receive four cents on shipments to all points except these Gulf
6382 Coast points that you named?

Mr. Fleishel: Yes, sir.

Examiner Marble: Suppose the business is routed through a nearby port to a coast point beyond, does that affect your division?

Mr. Fleishel: I don't follow your thought.

Examiner Marble: Take a shipment to New Orleans to be put on a vessel and carried to some coast point beyond New Orleans?

Mr. Fleishel: That in our idea is an export shipment. I am referring to Gulf points as well as export, if it goes to a vessel for movement to coast points such as New York, Boston or Philadelphia, or some such place, those are export and the same division sheets and tariffs apply.

Examiner Marble: You get what on those shipments?

Mr. Fleishel: One cent per hundred.

Examiner Marble: I mean from Fullerton to New York via New Orleans and Southern Pacific steamers.

Mr. Fleishel: We carry a division of one cent.

Examiner Marble: You would not get a division of four cents on that?

Mr. Fleishel: No, sir.

Examiner Marble: Did you ever get four cents on such
6383 shipments?

Mr. Fleishel: No, sir.

Examiner Marble: If the business were routed all rail to New York, what division do you get?

Mr. Fleishel: We have never shipped any. We are at such a marked disadvantage in the rate we have never shipped any.

Examiner Marble: What is your disadvantage in the rate?

Mr. Fleishel: I think about 15 or 20 cents a hundred.

Examiner Marble: You have not arranged joint rates through all-rail?

Mr. Fleishel: Not that I know of. Those tariffs may cover that, but I don't know. We have never shipped a car and probably never will.

Examiner Marble: It would make no difference in your divisions on shipments moving through gulf ports, whether the lumber was routed to the port and reshipped, or routed through the port, continuous transportation, to some point beyond?

Mr. Fleishel: Well, I think it would if I recall correctly. These tariffs provide a separate rate for lumber going to New Orleans or Galveston and when they rebill the same the rate is higher.

6384 Examiner Marble: Somewhat higher than the export rate?

Mr. Fleishel: Yes, sir, it is higher. I think it is probably two or three cents, maybe four cents higher. However, I don't know about that.

Examiner Marble: These shipments going beyond would be in the first instance so routed to get that lower export rate?

Mr. Fleishel: Well, we have never shipped anything beyond except to Boston, that is to New Orleans, consigned to New Orleans. These waybills for shipment to New Orleans must state that they are for export. There is also a custom with the Southern Pacific line whereby they charge a local rate in on shipments that move to New Orleans and refund if they get vessel receipts, showing that the product has moved outbound.

Examiner Marble: Do you actually ship through New Orleans to New York?

Mr. Fleishel: We have, yes, sir.

Examiner Marble: Any considerable business?

Mr. Fleishel: No.

Examiner Marble: To Boston?

Mr. Fleishel: No, not through New Orleans, through Port Arthur, chiefly.

6385 Examiner Marble: On that you get one cent?

Mr. Fleishel: Yes, sir.

Examiner Marble: Has there been any considerable business there?

Mr. Fleishel: Yes, there was quite a bit; there has not been so much recently.

Examiner Marble: Where does the bulk of your business go now?

Mr. Fleishel: Well, the bulk of it goes to foreign points I should say, we ship everything we can export.

Examiner Marble: You mean you prefer to sell export?

Mr. Fleishel: Yes, sir.

Examiner Marble: Why is that?

Mr. Fleishel: Because we get more money for the lumber.

Examiner Marble: A better price for the lumber?

Mr. Fleishel: Usually; it is the kind of material we like to get.

Examiner Marble: Will they take a different grade of lumber?

Mr. Fleishel: Some, yes.

Examiner Burchmore: A better grade or a poorer?

Mr. Fleishel: Better. Those fellows abroad are pretty

6386 smart; they get the best.

Examiner Marble: So that these grades of lumber you prefer to sell——

Mr. Fleishel: I mean that in a broad sense. We send them largely timber, large square timber.

Examiner Marble: Have you in your possession division sheets governing these joint rates to which your road is a party?

Mr. Fleishel: No, I have not. I think they are on file with the Commission.

Examiner Marble: Are you familiar with them?

Mr. Fleishel: Reasonably so. I do not handle them, you understand. We have an office force there in the railroad office that handles this matter, and it is only in a general way that I [illegible] about it.

Examiner Marble: Are you familiar with the division of this 16 cent rate from your points through to points on the Illinois Central and connections beyond?

Mr. Fleishel: Yes, sir.

Examiner Marble: Do you get a division of four cents out of that?

Mr. Fleishel: Yes, sir.

6387 Examiner Marble: Do you know what the Lake Charles & Northern would get for the haul from Fullerton to Lake Charles?

Mr. Fleishel: I should think four cents. Eight cents for the haul, and we get four and they get four.

Examiner Marble: Do you know what the road from Lake Charles to New Orleans would get?

Mr. Fleishel: No, I don't know that.

Examiner Marble: Or the Illinois Central?

Mr. Fleishel: No. It is rather an extreme case, though, because the freight rate there carries for 16 cents to Cairo proper, which is a basing point.

Examiner Marble: Don't you mean that the four cent division is from Fullerton to New Orleans, or from Nitram to New Orleans, and a 4½ cent division, rather, isn't that the case?

Mr. Fleishel: I think not; in fact I am quite sure that it is not.

Examiner Marble: And 7½ to the Illinois Central there at New Orleans?

Mr. Fleishel: I am quite sure that is not so. In the first place, I don't think we carry the division to Cairo proper, because it is a basing point, taking anywhere from 22 to 26 cents, and a higher rate.

6388 Examiner Marble: Are you familiar with the Southern division sheet, No. 943?

Mr. Fleishel: No, I don't know that I have ever seen it.

Examiner Marble: Were you familiar with the division of the 23 cent rate?

Mr. Fleishel: Say to an Illinois point?

Examiner Marble: Wherever they might be on the line of the Illinois Central.

Mr. Fleishel: No, I don't know that I am. I have at one time seen those Southern Pacific Division sheets, but it is purely memory with me. I don't know, but my impression is that on those rates that move through a 16 cent Cairo basis they are divided as

between our line and the L. C. & N., four cents each. Now, whether that is right or not, I do not know, but that is my impression.

Examiner Marble: In order that the gentleman may be apprised of what I am trying to get at, our information is that on say a 16 cent rate from Fullerton to a point on the Illinois Central, the division is four cents to the Gulf & Sabine River, 4½ cents to the Southern Pacific interests, from Nitram to New Orleans, and 7½ cents for the Illinois Central beyond, and our information
6389 further is that the division of the Lake Charles & Northern of that 4½ cents, is 1.1, while the road from the Lake Charles & Northern to New Orleans is 3.4 cents, giving us from a 16 cent rate to a 40 cent rate for the Lake Charles & Northern Division from Nitram to Lake Charles.

Now, that your memory has been refreshed respecting that, what have you to say concerning it?

Mr. Fleishel: I would be willing to state positively that I believe there never is a carload of lumber moved from a point on our line to a 16 cent point on the Illinois Central, not even one.

Examiner Marble: I am saying that that covers the rates up to 40 cents?

Mr. Fleishel: I don't know anything as to that, but I do not believe that there has ever been a carload of lumber from a point on our line to a point on the Illinois Central line that carried a less rate than 21 cents.

Examiner Marble: You have no point on——

Mr. Fleishel: Unless it be St. Louis proper. I don't think we have ever shipped a carload off our line to Cairo proper. We probably have shipped a few cars to St. Louis, but I am positive that we have not shipped any to Cairo proper.

6390 Examiner Marble: I have said nothing about the 16 cent rate to be made that does not apply equally on a 21 or 23 cent rate.

Mr. Fleishel: As to the proper division, I don't know about that.

Examiner Marble: I started with the 16 cent rate, because it was at the top of the sheet, and for no other reason.

Examiner Burchmore: Now, the 16 cent rate only applies to traffic moving via Cairo and beyond, taking that 16 cent rate in combination with some other rate beyond?

Mr. Fleishel: I suppose so, but that is made over the Illinois Central.

Examiner Marble: The Illinois Central and connections beyond.

Mr. Fleishel: Yes, Cairo would be a very different matter.

Examiner Marble: You are familiar with those conditions?

Mr. Fleishel: No, only I have seen frequently divisions—but this is purely memory—which gave two and a half.

Examiner Marble: Now then, I will ask that the Commission secure this Southern Pacific Division sheet and put it in
6391 the record.

Examiner Burchmore: Very well, that may be done.

Examiner Marble: And as your road is a party to that division, I will ask you to send it in.

Mr. Fleishel: All right, sir, if they will give it to us.

Examiner Marble: You are entitled to it.

Mr. Fleishel: I have one copy.

Examiner Marble: You haven't it here?

Mr. Fleishel: No.

Examiner Burchmore: You can make a copy of it?

Mr. Fleishel: I haven't it here. It is in our general office at the mill.

Examiner Marble: Does the Lake Charles & Northern develop any other business at Nitram than what is received by your line?

Mr. Fleishel: Practically none.

Examiner Marble: Do you know whether it has trackage rights running to intermediate points between De Ridder and Nitram?

Mr. Fleishel: Yes, sir, it does.

Examiner Marble: They have the right to receive freight at all points?

Mr. Fleishel: They have and do every day.

6392 Examiner Burchmore: Well, is that an unlimited right to go out there and take way freight between points—at points between Nitram and De Ridder that is destined, for example, to Kansas City or some other place?

Mr. Fleishel: Yes, sir, they do it every day in the week.

Examiner Burchmore: They can take traffic anywhere in the country?

Mr. Fleishel: I think it is provided that they cannot accept business between local points on the Santa Fe. For instance, I don't think they could take business at Cravens or De Ridder, but they can take business for Cravens to Lake Charles, or Cravens to New Orleans, or St. Louis or Chicago, or any other point except local points—except where the Santa Fe have rails, all the way.

Examiner Marble: Could it for Chicago, then?

Mr. Fleishel: Oh, yes.

Examiner Marble: Although the Santa Fe have rails all the way?

Mr. Fleishel: Yes, sir, they do it every day.

Examiner Marble: They do receive some lumber at Cravens from the Pickering concern?

Mr. Fleishel: Quite a bit, yes.

6393 Examiner Marble: Do you know how much they get on that?

Mr. Fleishel: Mr. Church testified to that this morning.

Examiner Marble: I think it was testified this morning that you got two and a half a car.

Mr. Fleishel: That is just a switching charge. It is on local freight out of Cravens.

Examiner Marble: You say that the Pickering people receive two and a half only?

Mr. Fleishel: Two and a half. I only know what I heard this morning. I have understood all along that they did. I did not

know that they were making that switching charge, but Mr. Church testified this morning that they did.

Examiner Marble: How far is their mill from Cravens?

Mr. Fleishel: Right in Cravens.

Examiner Marble: How far is it from the junction with this track?

Mr. Fleishel: They use the Santa Fe track. It is just as close as the Santa Fe is. The L. C. & N. does not own any track between Lake Charles and Cravens or De Ridder. It operates entirely over the Santa Fe tracks. Wherever the Santa Fe goes, the L. C. & N. goes.

Examiner Marble: I am talking about the length of the
6394 haul by the Pickering interests for which this two dollars and a half a car is paid. Are you familiar with that?

Mr. Fleishel: Yes, I should say it was a quarter of a mile, probably a half. I would not guess over that anyhow.

Examiner Marble: You would not say a mile and a half?

Mr. Fleishel: I would not, no, sir.

Examiner Marble: This rate that you have, that you have an allowance of four cents, is that on lumber or on the lumber and the logs?

Mr. Fleishel: On the lumber we charge and waybill the same. The logs that went into the mill were paid for, and the transaction ends right there.

Examiner Marble: What rate do you charge on logs?

Mr. Fleishel: $2.50 a car, and a copy of that tariff is filed with the Commission.

Examiner Marble: You regard that as an intrastate movement to the mill?

Mr. Fleishel: Yes, sir.

Examiner Marble: Why do you file them with the Interstate Commerce Commission?

Mr. Fleishel: I cannot answer as to that. We all have our tariffs——

6395 Examiner Burchmore: It is not filed with an I. C. C. number, is it?

Mr. Fleishel: Yes, sir, it is.

Examiner Marble: What is the average haul on those logs?

Mr. Fleishel: Oh, I should say four miles, right now.

Examiner Marble: Does the railroad company undertake the expense of maintaining the logging spurs to the trees?

Mr. Fleishel: No, sir, has nothing to do with it.

Examiner Marble: The logging company maintains those?

Mr. Fleishel: Yes, sir.

Examiner Marble: Why do you have that done by the logging company instead of the railroad company taking it and operating the road?

Mr. Fleishel: Well, the railroad has nothing to do with the spur tracks. We do not operate anything but main line tracks, operate those for our own traffic.

Examiner Marble: Do you cover that as a railroad proposition?
Mr. Fleishel: No, sir.
Examiner Burchmore: No temporary tracks?
Mr. Fleishel: No, sir.

Examiner Marble: Does the railroad take any burden of
6396 putting down temporary tracks afterwards to be taken up?

Mr. Fleishel: No, the only thing we do, we put in switch points; wherever they can show us that they have got business enough to justify us putting down a switch point for them to come out, we do it.

Examiner Marble: Your road regards the business on the timber tracks as a logging proposition rather than a railroad proposition?

Mr. Fleishel: Yes, they do not have anything to do with the railroad business.

Examiner Marble: Does the railroad furnish the equipment and cars that run——

Mr. Fleishel: Yes, sir, we furnish the cars.

Examiner Marble: But no locomotives?

Mr Fleishel: Well, we lease them one locomotive and charge them ten dollars a day.

Examiner Marble: Does that include the wages of the crew?

Mr. Fleishel: No, no; they only require one locomotive, and so we give it to them, but we charge them ten dollars a day. Sometimes they have got one engine, sometimes another. They have got to have an engine, and they don't need but one at a time.

6397-8 Examiner Marble: You are not actually engaged in construction operation on the two mile extension?

Mr. Fleishel: Not just at present. We are building the other way now. We have our force on the other line.

Examiner Marble: You have drawn the outline of the land owned by the lumber company here, and which entirely encloses both these extensions as they go out, they are situated entirely within the land of this lumber company?

Mr. Fleishel: Just at present, yes, sir.

Examiner Marble: So there is no business developed by those extensions at the present time?

Mr. Fleishel: Yes, sir, there has been some.

Examiner Marble: Except logging business and business in forest products for the lumber company?

Mr. Fleishel: Yes, sir, there has been some.

Examiner Marble: What other business is there?

Mr. Fleishel: We have hauled hardwood logs out there for other people.

Examiner Marble: Logs developed from the land of this same lumber company?

Mr. Fleishel: In some cases yes, and in some cases no, sir.

Examiner Burchmore: Do they haul hardwood logs by
6399 wagon to your road?

Mr. Fleishel: Yes, sir.

Examiner Marble: How far would they haul hardwood?
Mr. Fleishel: Oh, not very far, along that dry creek bottom there.
Examiner Marble: How many feet?
Mr. Fleishel: They don't have to haul them very far.
Examiner Marble: How many logs do you so carry?
Mr. Fleishel: Not very many. We do not bother with the hardwood ourselves.
Examiner Marble: What has been done beyond the construction of this two miles of road from Fullerton northeast on this proposed extension to Alexander?
Mr. Fleishel: Nothing except the survey.
Examiner Marble: Has the survey been made?
Mr. Fleishel: Yes, sir.
Examiner Marble: How serious a survey has been made?
Mr. Fleishel: Very serious, indeed.
Examiner Marble: Has the right of way been secured?
Mr. Fleishel: Not all of it.
Examiner Marble: Any of it?
Mr. Fleishel: We have had negotiations for right of way,
6400 practically all the way.
Examiner Marble: Have you secured any beyond the two miles?
Mr. Fleishel: No, we have arrangements but we haven't got any yet.
Examiner Marble: Beyond your own line?
Mr. Fleishel: Yes, sir.
Examiner Marble: But you have not secured any beyond your own line?
Mr. Fleishel: No, we have not taken the deeds to it.
Examiner Marble: Have you closed up?
Mr. Fleishel: No, sir.
Examiner Marble: Are those lands generally owned by other lumber companies up toward Alexander?
Mr. Fleishel: Yes; one interest down in Alexander.
Examiner Marble: What interest is that?
Mr. Fleishel: The Weyerhauser interests, they are not operating, however. Most of that land in between Pine Timber and Alexander is a fertile valley, there is no timber on it.
Examiner Marble: This extension is northwest that is going to Leesville?
6401 Mr. Fleishel: Yes, sir.
Examiner Marble: Why is the road from Stables shown as if you were going to connect up with that?
Mr. Fleishel: Because we are going to do it.
Examiner Marble: Have you secured that right?
Mr. Fleishel: Yes, sir.
Examiner Marble: From the present owners?
Mr. Fleishel: Yes, sir.
Examiner Marble: That would take you to Leesville?
Mr. Fleishel: That will take us to Leesville. We are going into Leesville over their line. They have already got five miles of it built.

Examiner Marble: That road also goes to Stables, doesn't
6402 it?

Mr. Fleishel: No, we are going to both places.

Examiner Marble: How are you going to Stables?

Mr. Fleishel: We branch off about three miles out here and run southeast of Leesville there. The reason I did not put it on there is because that division of the road is not chartered.

Examiner Marble: You are going to branch off and go into Stables and you say it is about three miles from some point on that road. This map is correct. It shows that road going into Stables, when as a matter of fact it runs into Leesville.

Mr. Fleishel: We did not intend that.

Examiner Marble: What road is this here? What is the name of that? (Indicating on map.)

Mr. Fleishel: That is the Sabine—Gulf & Sabine River.

Examiner Marble: The same one as between——

Mr. Fleishel: It was originally chartered as the Gulf & Sabine River.

Examiner Marble: Is that owned by the same corporation that owns the road from Fullerton to Nitram?

Mr. Fleishel: Yes, sir; it is part and parcel of it.

6403 Examiner Marble: That line runs to Stables through your timber lands?

Mr. Fleishel: Yes, sir.

Examiner Marble: For what distance?

Mr. Fleishel: Oh, about nine miles probably, nine and a half.

Examiner Marble: What corporation owns those timber lands?

Mr. Fleishel: The Gulf Lumber Company the greatest portion of them.

Examiner Marble: There is a logging road in that timber at the present time?

Mr. Fleishel: Yes, sir. Of course we consider it part of our main line.

Examiner Marble: Now, you have shown a proposed extension of that road down to the Sabine River opposite Orange?

Mr. Fleishel: East Orange.

Examiner Marble: On here you have just indicated and mentioned the roads of a number of other concerns.

Mr. Fleishel: The Lutcher & Moore Lumber Company.

Examiner Marble: Do they know they are to be a part of this line?

Mr. Fleishel: No, they don't and we don't either. We
6404 have had it up, however, we have been discussing it.

Examiner Marble: Then when you have marked this line from Baylor down to East Orange as constructed, you mean that there is a railroad there that somebody owns that you are going to get if you can?

Mr. Fleishel: That is it exactly.

Examiner Marble: In the same way with the stretch of track from Merryville north ten miles?

Mr. Fleishel: Yes, sir.

Examiner Marble: You do not own that road?
Mr. Fleishel: Oh, no.
Examiner Marble: Who does that belong to?
Mr. Fleishel: Belongs to the West Lumber Company.
Examiner Marble: Is it a logging road?
Mr. Fleishel: Yes, sir, laid with 60 pound rails.
Examiner Marble: Do they know that they are to be a part of this extension?
Mr. Fleishel: The same situation exactly as the other.
Examiner Marble: You are going to get it if you can?
Mr. Fleishel: Yes, sir, we have been negotiating with them.
Examiner Marble: This road to the north from the connection with the river is a logging road also, is it not?
6405 Mr. Fleishel: Which is that?
Examiner Marble: This part that you have marked as constructed, the extreme southern portion.
Mr. Fleishel: It belongs to the Lutcher and Moore Lumber Company.
Examiner Marble: That is their logging road?
Mr. Fleishel: I don't know whether that road is chartered or not?
Examiner Marble: That is our information, that it is not.
Mr. Fleishel: I think it is not.
Examiner Marble: Does not operate as a common carrier.
Mr. Fleishel: I am sure it does not.
Examiner Marble: What about this line to Merryville, that is a logging road also?
Mr. Fleishel: Yes, sir, that connects with the Santa Fe.
Examiner Marble: Do you happen to know whether or not they are incorporated?
Mr. Fleishel: I don't think they are.
Examiner Marble: They do not get any division?
Mr. Fleishel: I think not.
Examiner Marble: Is the Leesville road incorporated that you mention?
Mr. Fleishel: Yes, sir, it was. They are not getting any
6406 divisions, however.
Examiner Marble: Are they operating as a common carrier?
Mr. Fleishel: No, they are not.
Examiner Marble: When were they built?
Mr. Fleishel: Ten years ago. They were operating out the other way and possibly did.
Examiner Marble: When was it built?
Mr. Fleishel: I think about eight or nine years ago.
Examiner Marble: When was the present line built?
Mr. Fleishel: Within the last two years. I don't think they have ever operated as a common carrier.
Examiner Marble: What is the distance from Nitram to De Ridder?
Mr. Fleishel: It is nineteen and some fraction miles.

Examiner Marble: Covered by the tracks of the Santa Fe railroad?

Mr. Fleishel: Yes, sir.

Examiner Marble: The Lake Charles & Northern use their tracks?

Mr. Fleishel: Yes, sir.

Examiner Marble: What is the distance from De Ridder to Lake Charles?

Mr. Fleishel: Forty-two miles I think.

6407 Examiner Marble: Covered by the tracks of the Lake Charles & Northern?

Mr. Fleishel: Yes, sir.

Examiner Marble: Do you know the distance from Lake Charles to New Orleans?

Mr. Fleishel: 222 miles, I think.

Examiner Marble: Why do you show these proposed lines from Orange all the way up to Alexander as a part of this Gulf & Sabine River proposition on this hearing?

Mr. Fleishel: Because I wanted to show them where our plans were.

Examiner Marble: Well now, will you tell us what the significance of that is?

Mr. Fleishel: The significance is that we expect to be operating a railroad from east Orange direct to Alexander, Louisiana, in order to connect up with about seven other railroads. There is a strong demand for a railroad between, and east and west line in there. There is no means of communication now between the east and west part of that state anywhere. There is an urgent demand for an east and west line in that part of the state. Anybody going to the state capital, it takes longer than it does to go to Memphis or St. Louis.

6408 Examiner Marble: Now, there are roads practically as you suggest, in existence between Alexander and Orange at the present time, aren't there?

Mr. Fleishel: Not that short, nor anywhere near it, as the line we expect to build.

Examiner Marble: But I am speaking of the line between the two points.

Mr. Fleishel: Not that I know of. There is a road between Alexander and Lake Charles, a short road, which comes in and is a part of the Iron Mountain system.

Examiner Marble: And another between Lake Charles and Orange?

Mr. Fleishel: Well, it is the main line of the Southern Pacific.

Examiner Marble: Take those two together, that is even a shorter road than the one that you speak of, is it not?

Mr. Fleishel: I think not; it may be.

Examiner Marble: Maybe it is, but in any event there is not much difference.

Mr. Fleishel: But there is a vast territory in between those two railroads that has no communication with the world?

Examiner Marble: Well now, just where is that territory?

6409 Mr. Fleishel: It is between Leesville and Alexander particularly. There is about thirty miles of territory there that has no railroad at all, and I might say also that that territory west of Alexander there is the richest farming part of the state, there is no timber on it.

Examiner Marble: Is it your theory that the tonnage in that territory will move to the west and southwest?

Mr. Fleishel: I think a part of it will.

Examiner Marble: Or will it move generally to the east?

Mr. Fleishel: I think it will move out through Texas all the mills in that country, Alexander and in through there, take the shorter route to the coast.

Examiner Marble: Waiving the matter of the feasibility of that route at the present time, the entire earnings of the Gulf & Sabine River Road on interstate shipments are realized by this line from Fullerton to Nitram, 6.4 miles.

Mr. Fleishel: Yes, sir.

Examiner Marble: And as the situation now stands, all of the service which secures those earnings on interstate shipments is rendered by that road from Fullerton to Nitram?

Mr. Fleishel: Yes, sir.

Examiner Marble: At Fullerton and at Nitram and in

6410 between the two points?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: There has been no testimony offered as to the tonnage and earnings of this road, if I recollect the testimony correctly. Will you tell us what your total freight earnings were last year, freight tonnage?

Mr. Fleishel: Do you want the freight first? Do you want all the revenue itemized?

Examiner Burchmore: Yes, in that detail, if you have it.

Mr. Fleishel: Freight revenue, $110,941.93. This is the fiscal year ending June 30, 1910. Passenger revenue $3,809.25; Mail $220.65; Express $735.83; Telegraph and telephone service $652.08, total $116,359.71. Do you want the operating expenses?

Examiner Burchmore: What were the total operating expenses, just the total?

Mr. Fleishel: $103,072.21.

Examiner Burchmore: Have you separated the earnings from the two different divisions so that we can tell what you earned on the Fullerton division, and what was earned on the Stables division?

Mr. Fleishel: I don't think we have it separate, we have not here.

6411 Examiner Marble: Can you give us a statement of the earnings of the lines from Fullerton to Nitram?

Mr. Fleishel: Yes—I don't know that I can separate that for you for this reason. The railroad operates as a railroad, as an entirety. We do not *kssp* train crews separate, but use them wherever we can use them; and the same way with the terminal charges, switching and all that, things of that kind.

Examiner Burchmore: Your total freight earnings were $110,000?

Mr. Fleishel: Yes.

Examiner Burchmore: What is your impression as to the amount of that freight earnings that were earned on the Fullerton division?

Mr. Fleishel: I should think of the gross, probably $70,000 maybe seventy-five, maybe eighty, I don't know.

Examiner Burchmore: How much were the passenger earnings earned on the Fullerton division?

Mr. Fleishel: All of it.

Examiner Burchmore: And the mail?

Mr. Fleishel: All of it.

Examiner Burchmore: And the express?

6412 Mr. Fleishel: All of it.

Examiner Burchmore: Telephone and telegraph?

Mr. Fleishel: All of it.

Examiner Burchmore: What was your total of freight tonnage for the fiscal year?

Mr. Fleishel: 380,056 tons.

Examiner Burchmore: On which you earned $110,941?

Mr. Fleishel: Gross. Considerable of that was in less than carloads, though.

Examiner Burchmore: How much of that was logs and lumber?

Mr. Fleishel: Originating on the road, originating on our line, do you want it itemized the same way?

Examiner Marble: Yes.

Mr. Fleishel: Stone, sand and so forth, 157,000 tons; lumber 370,164; naval stores 3,650; iron 22; castings and machinery 6; household goods, one; merchandise, 35; miscellaneous, 795.

Now, tonnage originating on other lines, agricultural products, 968 tons.

Examiner Burchmore: This rich farming country originates no agricultural products?

Mr. Fleishel: There are no farms over the line of our road

6413 there except in small tracts?

Examiner Burchmore: Then I did not follow the testimony.

Mr. Fleishel: I said the line between Leesville and Alexander which we propose to develop. Then, animals 90 tons; Mining 119 tons; Manufactured products 2,958 tons; Merchandise 1,086 tons, Miscellaneous 5 tons; Total 5,226 tons. That was all tonnage originating on that line.

Examiner Burchmore: Let me ask you how much of this 370,164 tons of lumber came from the mills of the Gulf Lumber Company?

Mr. Fleishel: Well, practically all of it, the biggest portion of it.

Examiner Burchmore: I do not see any logs included in that statement.

Mr. Fleishel: I think that the logs—I think that the first item there includes logs.

Examiner Burchmore: What first item?

Mr. Fleishel: 270,164.

Examiner Burchmore: What about those naval stores, 3,650?

Mr. Fleishel: That is turpentine and resin, I believe.

Examiner Burchmore: Shipped for the Gulf people?

Mr. Fleishel: Yes, sir.

6414 Examiner Burchmore: 795 tons of miscellaneous freight, 35 tons of merchandise moving outbound. Who shipped that stuff?

Mr. Fleishel: Different people. I don't believe we shipped any of it.

Examiner Burchmore: You think the Gulf Lumber Company did not have anything to do with that?

Mr. Fleishel: No, sir.

Examiner Marble: What was it?

Mr. Fleishel: I don't know what that was, to tell you the truth. I don't have much knowledge of that, because we have two men in our office there that do nothing else.

Examiner Burchmore: I would like to have now, your opinion or your estimate or the actual figures if you have them, as to the amount of tonnage inbound and outbound handled for or on account of the Gulf Lumber Company, and the amount handled for other people.

Mr. Fleishel: I expect 90 per cent possibly for the Gulf Lumber Company.

Examiner Burchmore: Will you file with the Commission, if it is possible without too great inconvenience, a statement of the tonnage and revenues of freight inbound and outbound to and

6415 from each station on your line, station by station, every station?

Mr. Fleishel: Well, that would not show you much, because it is practically all from Fullerton. The only other shipping point on our line that amounts to anything is Rustville.

Examiner Burchmore: You have two divisions.

Mr. Fleishel: You want it separated for the two divisions?

Examiner Burchmore: Yes, I want a statement separated as to the divisions and separated as to stations, too.

Mr. Fleishel: Yes, I can do that.

Examiner Burchmore: Do the best you can on it anyway. We want also, if you can give it to us, a statement separating these different items of tonnage that you have just read, so as to show how much of each item was handled by the Gulf Lumber Company and the various companies in which it is interested.

Mr. Fleishel: That is a pretty good job, but I can get it.

Examiner Burchmore: Give it to us with substantial accuracy.

Examiner Marble: What statements are these that you have here? Perhaps some of them will show.

Mr. Fleishel: Those make no separation whatever.

6416 Examiner Marble: These statements that you have were brought to be put into the record, were they not?

Mr. Saunders: Yes, sir.

Mr. Fleishel: This is simply a copy of our annual report to the Commission on that line. The Commission has all this information I am reading here.

Examiner Marble: Have you any statement there that will show the number of tons of lumber shipped from Fullerton on joint rates?

Mr. Fleishel: It was all shipped from Fullerton on joint rates.

Examiner Marble: And you have put in a statement showing the number of tons?

Mr. Fleishel: Yes, sir.

Examiner Marble: Have you put in a statement showing the amount of revenue?

Mr. Fleishel: Yes, sir.

Examiner Marble: Received from divisions of those joint rates?

Mr. Fleishel: No, I don't know as I have.

Examiner Marble: Have you given us all of that revenue?

Mr. Fleishel: Yes, sir.

6417 Examiner Marble: What was the amount of that revenue on lumber?

Mr. Fleishel: $110,941, but quite a bit of that, of course, was on logs.

Examiner Marble: How much of that was on lumber?

Mr. Fleishel: On outbound lumber?

Examiner Marble: Yes.

Mr. Fleishel: Probably half of it.

Examiner Burchmore: Let us have a statement which will show that accurately.

Mr. Fleishel: All right, I will give it to you.

Examiner Marble: Probably $55,000 then was earned by this six miles of road by the carriage of lumber?

Mr. Fleishel: Not altogether on freight.

Examiner Marble: I am asking you only as to the carriage of lumber, simply the amount received for the carriage of lumber during the last year.

Mr. Fleishel: I will get that statment. I don't know. I will make that statement and give you that also.

Examiner Marble: Your Stables road has allowances for divisions, has it not?

Mr. Fleishel: Yes, very small.

Examiner Marble: How small?

6418 Mr. Fleishel: Averaging about three-quarters to one cent.

Examiner Marble: From what railroad do they receive those?

Mr. Fleishel: Kansas City Southern.

Examiner Marble: How long has it received that amount?

Mr. Fleishel: Oh, since before we bought the road, and ever since we have owned it.

Examiner Marble: Did it ever receive any larger amount than that?

Mr. Fleishel: We received a minimum of half a cent and a maximum of three cents, but I don't suppose there is one carload of lumber out of a hundred that is shipped on the three cent division. That applies only to Kansas City Southern local points, or Kansas City proper, and points south, and I don't suppose that our divisions there would average over three-quarters of one cent.

Examiner Marble: Can you give us a statement showing that?

Mr. Fleishel: We would not have kept it up if it had not been we were going to connect up with this line, because it costs us more than we get out of it, considerably.

Examiner Marble: Can you give us a statement showing
6419 the number of tons of lumber that are shipped on those joint rates through Stables?

Mr. Fleishel: Yes, sir.

Examiner Marble: And the revenue received?

Mr. Fleishel: Yes, sir.

Examiner Marble: What was the amount of the revenue, would you say?

Mr. Fleishel: I would not know. It is very small.

Examiner Marble: What do you charge at Stables for carrying logs into the mill?

Mr. Fleishel: $2.50 per car.

Examiner Marble: How long since you made that charge of $2.50 a car?

Mr. Fleishel: I don't recall, the tariff will show.

Examiner Marble: Did you once charge $4.00 a car there?

Mr. Fleishel: I think we did.

Examiner Marble: The latest charge is $2.50?

Mr. Fleishel: Yes, sir.

Examiner Marble: What was the occasion of the reduction?

Mr. Fleishel: Well, I don't know now. We put in—our traffic department issued a new tariff covering two and a half a car from the whole line for certain distances. Of course it had to
6420 apply on that line as well.

Examiner Burchmore: The haul is also longer now than it was when the rate was $4.00, isn't it?

Mr. Fleishel: I don't know as to that.

Examiner Marble: Necessarily so when you are cutting timber?

Mr. Fleishel: No, it is not necessarily so, at all; because they come back and go out on another spur, and we are not hauling as far as we were two years ago, or a year ago.

Examiner Marble: What was your arrangement or manner of charging for the carriage of those logs?

Mr. Fleishel: We just waybilled them in and collected the freight.

Examiner Marble: Does the subsequent shipment of lumber in any way affect those charges?

Mr. Fleishel: No, sir.

Examiner Marble: Did you have any system of making any refund on the logs in any case for any reason?

Mr. Fleishel: I don't think so. I am not in actual charge of the operation there except in a general way, but if there is any discrepancy our auditor has never reported it to me.

Examiner Burchmore: Your rates are not on a milling in transit basis, are they?

6421 Mr. Fleishel: No.

Examiner Burchmore: The rates from points of origin on your road are the same as the junction point rates?

Mr. Fleishel: Yes, sir.
Examiner Burchmore: No arbitrary.
Mr. Fleishel: No, sir.
Examiner Burchmore: Does this road own its own right of way?
Mr. Fleishel: Yes, sir.
Examiner Burchmore: Is that true of both divisions?
Mr. Fleishel: Yes, sir.
Examiner Burchmore: Do they own all the steel?
Mr. Fleishel: Yes, sir.
Examiner Burchmore: Where did they get the steel?
Mr. Fleishel: Bought it all around the country. We have all 60 pound rails. We bought some from the Blake-Pollock Iron Company here in St. Louis and we bought some from the Kansas City Southern, in fact, we bought the bulk of this rail that we have at Fullerton from the Kansas City Southern.
Examiner Burchmore: Do the officers of this railroad receive annual passes over other railroads?
Mr. Fleishel: Yes, sir.
6422 Examiner Burchmore: Has the Lumber Company any locomotives of its own?
Mr. Fleishel: No, sir, they have no railroad equipment of any kind.
Examiner Marble: Are you familiar with the operations of that Stables Road for the year ending June 30, 1908?
Mr. Fleishel: Only indirectly.
Examiner Marble: Do you know whether during that year you had a system of paying back to the lumber company a portion of the rates received for the carriage of logs inbound under certain circumstances?
Mr. Fleishel: Not to my knowledge, no.
Examiner Marble: Our information is on logs hauled to the mill that year, 6,963 cars, you collected $4.00 per car from the mill, but collected or charged, I don't know which, a total of $27,932.; that you figured that 4400 cars of these logs were turned in to lumber from which you got a division, and therefore you refunded $4.00 per car on those 4400 cars, a total of $17,600.
Mr Fleishel: I don't remember as to that. That was a traffic problem, if we should so refund it.
Examiner Marble: Is there any one here who would know about that?
6423 Mr. Saunders: I don't know. I think not.
Examiner Marble: That left you a net revenue on logs hauled of $10,332, and you received on divisions from the Kansas City Southern Railroad on mill products a total of $6,077.92. Do you know anything about that?
Mr. Fleishel: No, I do not.
Examiner Marble: On supplies hauled to the camp and naval stores out, you received $1,578.68 which left your total gross revenue for the year $17,988?
Mr. Fleishel: Yes, but a good deal of that was on local rates, I guess, in those shipments of logs.

Examiner Marble: You had a gross revenue on logs haule
$27,932, and you refunded $17,600 because you got division
the lumber shipped, is that right?

Mr. Fleishel: I think there was some traffic, just what no
we have had a great deal of argument with the Kansas City So
ern about the method of billing and the amount of divisions.
have never got one-fourth of what we should have.

Examiner Marble: Let us follow that a step further. Ass
that the net result of that would be that when your road rece
a division, the cost of the matured lumber to the mill
6424 pany was reduced, because you made a refund of the log
charge on account of the division?

Mr. Fleishel: That may be so if they were paying the frei
If we think that we are being overcharged by some trunk line
always try to get it back. We don't often do it but we always

Examiner Marble: If you got a division of the rates on lun
you counted that your logging rate was an overcharge?

Mr. Fleishel: No, I would not so consider it.

Examiner Marble: What would you consider an overcharge?

Mr. Fleishel: If we charged them more than the tariff rat
more than a reasonable rate I would call it an overcharge.

Examiner Marble: Why didn't you refund on all of the
brought in in the 6,963 cars, instead of 4,400?

Mr. Fleishel: I cannot answer that; I don't know.

Examiner Burchmore: Why did you refund the entire ch
on those cars?

Mr. Fleishel: I don't know that I can answer that.

Examiner Marble: There could not have been any attemp
reach a reasonable rate on logs without reference to the lun
movement?

Mr. Fleishel: No. That was probably in the nature
6425 milling in transit proposition.

Examiner Burchmore: Were the rates on a milling
transit basis at that time?

Mr. Fleishel: I don't know, I am sure.

Examiner Burchmore: What year was that?

Mr. Marble: The year ending June 30, 1908. Do you k
whether the same method has been followed in subsequent ye

Mr. Fleishel: No, it has not. Since we have had our railr
plans we have been working to get everything in our division
form.

Examiner Marble: You reduced the rate from 4 to 2½ and
out——

Mr. Fleishel: For a certain haul.

Examiner Marble: And cut out the refund?

Mr. Fleishel: For a certain haul, yes.

Examiner Marble: For a certain haul? I thought that 2½
for any haul.

Mr. Fleishel: Oh, no. Our tariff provides 2½ a car up to 5 mi
and then for points five to ten miles——

Examiner Marble: What length of haul is there on the logs

Mr. Fleishel: There will be, of course, quite a haul.

6426 Examiner Marble: I mean now.
Mr. Fleishel: I think probably five miles.
Examiner Marble: Well, under five miles.
Mr. Fleishel: Under five miles, 2½.
Examiner Marble: 2½ a car?
Mr. Fleishel: Yes, sir.
Examiner Marble: Then the 2½ rate is the rate on all shipments at the present time?
Mr. Fleishel: Yes, all that move at the present time.
Examiner Marble: All that can be moved.
Mr. Fleishel: With the exception of some logs that we carry on the other division.
Examiner Marble: Do you haul them more than ten miles?
Mr. Fleishel: I think we do on the Stables Division.
Examiner Burchmore: Do you have any joint rate on hardwood?
Mr. Fleishel: No, not here; this is a purely local movement. We haul the logs on a local rate there.
Examiner Marble: How much track have you there?
Mr. Fleishel: At Stables?
Examiner Marble: Yes.
Mr. Fleishel: Main line I think we have about 8½ miles;
6427 probably 9, or between that, and we have a spur system that is about 3 or 4 miles long.
Examiner Marble: How far from Stables is the junction with that spur?
Mr. Fleishel: I think that is at one end of the track there.
Examiner Marble: So that the entire length of the main line and that spur, you could not get out more than 10 miles from Stables?
Mr. Fleishel: No, sir.
Examiner Marble: That is all, I think.
Examiner Burchmore: Mr. Saunders?
Mr. Saunders: Mr. Fleishel, when the railroad company was first organized, where and to what points was it planned to build that road?
Mr. Fleishel: We first chartered the line from Leesville to Merryville.
Mr. Saunders: Was the charter subsequently amended?
Mr. Fleishel: Yes, sir, it was later amended, to run from Leesville to Alexander through Fullerton. We were going to build that railroad across to Alexander.
Mr. Saunders: Can you describe briefly the territory between Fullerton and Alexander which this road will penetrate?
6428 Mr. Fleishel: Well, the first 45 miles of it from Leesville toward Alexander is pine forest.
Mr. Saunders: Owned by whom?
Mr. Fleishel: It is owned by many more than by the Gulf Lumber Company, the Gould estate, Jay Gould estate, and Weyerhauser & South Land Company, Calcasieu Lumber Company, the Rupp estate, and more or less——
Mr. Saunders: Underwood?
Mr. Fleishel: Underwod estate.

Mr. Saunders: There are large timber holdings in there which are not directly or indirectly connected with the Gulf Lumber Company?

Mr. Fleishel: Yes. We do not own a fourth of them.

Mr. Saunders: Was the saw mill at Fullerton built before the railroad was started?

Mr. Fleishel: No, afterwards.

Mr. Saunders: You said there was need for a line running through that territory east and west so as to shorten time and facilitate traffic. Will you explain why that is?

Mr. Fleishel: There is absolutely no east and west railroad in that part of the state. A man going to Baton Rouge to the legislature or any place like that has to go up the road 75 or 100 miles and
6429 go down the same distance in order to get a railroad going into that part of the state, and he has got to lay over 24 or 36 hours in some of these little branch lines in order to make connections.

Mr. Saunders: You spoke of a rich farming territory between Fullerton and Alexander. How large a territory is that approximately?

Mr. Fleishel: I should judge it is twenty miles, about.

Mr. Saunders: You said that territory has no railroad facilities now?

Mr. Fleishel: Absolutely none. It is a big cane center up there, and there would be a sugar refinery built in Alexander this year if they had any transportation for the product out of there.

Mr. Saunders: Where was the rail purchased by the Gulf & Sabine River Railroad for its line?

Mr. Fleishel: The principal portion of it, I think, from the Blake-Pollock Iron Company in St. Louis.

Mr. Saunders: Did that rail move in on any special rate?

Mr. Fleishel: No, sir.

Mr. Saunders: Paid full tariff rate on that?

Mr. Fleishel: Yes, sir, so far as I know.

6430 Mr. Saunders: Were there any contracts oral or written by which any interest was given the right to that rail?

Mr. Fleishel: No, sir.

Mr. Saunders: Does it belong absolutely to the Gulf & Sabine River Railroad?

Mr. Fleishel: They have the absolute title, no string tied to it of any kind.

Examiner Marble: State whether or not any officer of any trunk line owns stock in the Gulf & Sabine River Railroad?

Mr. Fleishel: Absolutely none, I believe.

Mr. Saunders: Is there any stock owned in that way in the Gulf Lumber Company?

Mr. Fleishel: No, not to my knowledge unless it has taken place in the last month or so.

Examiner Burchmore: What was the purpose of that question, if I may ask.

Mr. Saunders: I want to show that it is disconnected from any trunk line proposition, it is an entirely independent railroad.

Do you operate daily trains there?

Mr. Fleishel: Yes, sir.

Mr. Saunders: On a schedule?

6431 Mr. Fleishel: We run four passenger trains a day.

Mr. Saunders: From what point to what point?

Mr. Fleishel: From Fullerton through Rustville to Nitram and back.

Mr. Saunders: Two round trips?

Mr. Fleishel: Two round trips a day.

Mr. Saunders: How are your trains equipped?

Mr. Fleishel: Just the same as any other passenger trains with electric lights in the trains and electric headlights on the locomotives.

Mr. Saunders: Does your equipment comply with the safety appliance act?

Mr. Fleishel: In every respect, yes, sir.

Mr. Saunders: Do you handle any freight on your passenger trains?

Mr. Fleishel: None at all, no, sir.

Mr. Saunders: Do you handle baggage?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Express?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Have you contracts with the United States government to handle mail?

6432 Mr. Fleishel: Yes, sir.

Mr. Saunders: Are your schedules published?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Where are they published.

Mr. Fleishel: All railway guides.

Mr. Saunders: Do you sell passenger tickets?

Mr. Fleishel: Yes, sir.

Mr. Saunders: From what points?

Mr. Fleishel: Between all stations.

Mr. Saunders: To what points?

Mr. Fleishel: From all stations on our line to and between all stations on our line, but we only sell through passenger tickets to points on other lines where we have special divisions. The Santa Fe doesn't make any through rates.

Mr. Saunders: Who makes your passenger rates?

Mr. Fleishel: The Railroad Commission of Louisiana.

Mr. Saunders: You mean local rates?

Mr. Fleishel: Intrastate rates, yes.

Mr. Saunders: Do you issue free passes?

Mr. Fleishel: Yes, we do, to officials of connecting lines.

Examiner Marble: I suppose that is strong proof that it is a common carrier.

6433 Mr. Saunders: Are these recipients ready to ride over your road?

Mr. Fleishel: Yes, we have had as many as five or six private cars over it in the last twelve months.

Mr. Saunders: Do you issue free transportation on your trains?

Mr. Fleishel: No, not to any one who is not entitled to it under the law.

Mr. Saunders: Have you a railroad freight agent?

Mr. Fleishel: Yes.

Mr. Saunders: Where is he located?

Mr. Fleishel: We have an agent at Fullerton, a joint agent at Nitram and a local agent at Rustville.

Mr. Saunders: Have you a train dispatcher?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Where located?

Mr. Fleishel: At Fullerton.

Mr. Saunders: Have you an express agent?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Where is he located?

Mr. Fleishel: He is at Fullerton.

Examiner Burchmore: Which of those gentlemen are em-
6434 ployed by the Lumber Company also?

Mr. Fleishel: None of them.

Mr. Saunders: Are those men working for the Gulf Lumber Company?

Mr. Fleishel: No, they have absolutely nothing whatever to do with the Gulf Lumber Company in any respect.

Mr. Saunders: Are they paid any part of their salary by the Gulf Lumber Company?

Mr. Fleishel: No, sir.

Mr. Saunders: What is the population of Fullerton?

Mr. Fleishel: About 1800.

Mr. Saunders: Is it an incorporated town?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Has it a mayor?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Municipal officers?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Police?

Mr. Fleishel: Yes, sir. Don't need them though, very bad.

Mr. Saunders: Do your agents furnish bonds?

Mr. Fleishel: Yes, sir.

6435 Mr. Saunders: To whom is that bond furnished?

Mr. Fleishel: Gulf & Sabine River Railroad.

Mr. Saunders: It is the regular bond furnished by freight agents to railroads ?

Mr. Fleishel: Yes, sir.

Mr. Saunders: I believe you stated you used 60-pound rail?

Mr. Fleishel: Yes, sir; we do not have any other kind.

Mr. Saunders: How is the tonnage of the trains on your line as compared with the tonnage of the trains of the Santa Fe and the Southern Pacific with which you make connections?

Mr. Fleishel: We haul about twice what they do. The reason is that *is* have a better road and heavier equipment.

Mr. Saunders: Have you got a heavier rail?
Mr. Fleishel: The rail, I think, is either 56 or 60 pound rail.
Mr. Saunders: Is your track ballasted?
Mr. Fleishel: Yes, sir.
Examiner Burchmore: Let me ask what road are you discussing now, the Fullerton Division or both divisions?
Mr. Fleishel: The Fullerton Division.
Examiner Burchmore: Just what do you mean by a
6436 heavier tonnage?
Mr. Fleishel: The trains we haul are heavier than either the Southern Pacific or the Santa Fe.
Examiner Burchmore: More cars in them?
Mr. Fleishel: More cars to the train and heavier locomotives to haul them, more tonnage and a heavier rail.
Mr. Saunders: How many locomotives have you?
Mr. Fleishel: Seven.
Mr. Saunders: What weight?
Mr. Fleishel: All the way from 42 to 80 tons, I think.
Mr .Saunders: How many loaded cars can you handle over your line?
Mr. Fleishel: We can pull 60 cars between Fullerton and Nitram.
Mr. Saunders: Have you done so?
Mr. Fleishel: Yes, sir.
Mr. Saunders: What is the maximum grade on your line?
Mr. Fleishel: Six-tenths of one per cent.
Mr. Saunders: Do you know what the maximum curvature is?
Mr. Fleishel: No.
Mr. Saunders: In comparison with the locomotives of the Southern Pacific and the Santa Fe with which you make
6437 connections, are your locomotives larger or smaller?
Mr. Fleishel: They are a good deal better than the branch line of those roads use. Of course on the main line they would not be.
Mr. Saunders: Has it ever happened that any of your cars have left your lines destined to points in other states?
Mr. Fleishel: Yes, sir, we have got some flat cars now that have been gone for fifteen months.
Mr. Saunders: Have you made efforts to get them back?
Mr. Fleishel: No, not specially. We are getting 35 cents a day for them, not *exorcised* over them at all.
Examiner Burchmore: You are a party to the per diem arrangement?
Mr. Fleishel: Yes, sir.
Mr. Saunders: You are a party to the per diem arrangement?
Mr. Fleishel: Yes, sir.
Mr. Saunders: So you get a per diem rate?
Examiner Burchmore: I don't think we will go into that.
Mr. Saunders: Do you charge demurrage?
Mr. Fleishel: Yes, sir; if they do not load the cars in forty-eight hours.
6438 Mr. Saunders: Have you a round house?
Mr. Fleishel: Yes, sir.

Mr. Saunders: How do you maintain your equipment?
Mr. Fleishel: How do you mean?
Mr. Saunders: Well, have you any machinists there to keep up your equipment?
Mr. Fleishel: Oh, yes.
Mr. Saunders: Do you have any team tracks?
Mr. Fleishel: Yes, sir; at Fullerton and Rustville, yes.
Mr. Saunders: What capacity are they?
Mr. Fleishel: They will hold about eighteen or twenty cars on one, and about ten or twelve on the other, and six or eight on the other at Fullerton; and at Rustville it holds about ten cars on the team track.
Mr. Saunders: Have you any scales on the tracks?
Mr. Fleishel: Yes, sir.
Mr. Saunders: What are they?
Mr. Fleishel: We have the latest type of 100 ton self-regulating team scales the same as they use on all of the trunk line roads.
Mr. Saunders: Where is that located?
Mr. Fleishel: Fullerton.
6439 Mr. Saunders: As a matter of fact do you weigh all cars before they go out?
Mr. Fleishel: Certainly; we could not bill them out if we did not.
Mr. Saunders: Have you a weigh-master?
Mr. Fleishel: Yes, sir.
Mr. Saunders: Under what jurisdiction is he?
Mr. Fleishel: The Western Railway Weighing Association.
Mr. Saunders: Is he an employee of the railway company?
Mr. Fleishel: Yes, sir; he is an employee of the railway company and the weighing association. He does not work for the Lumber Company in any respect.
Mr. Saunders: On the Fullerton Division do you haul any logs from Fullerton to Nitram?
Mr. Fleishel: I think not, no.
Mr. Saunders: The logs are hauled in from the road beyond Fullerton to the mill?
Mr. Fleishel: Yes, sir.
Mr. Saunders: And there manufactured?
Mr. Fleishel: Yes, sir.
Mr. Saunders: Have you milling in transit arrangements at Fullerton?
6440 Mr. Fleishel: No.
Mr. Saunders: Have you milling in transit arrangements at Stables?
Mr. Fleishel: No, I think not.
Mr. Saunders: Now, do you haul any other commodities from Fullerton and Nitram besides lumber and lumber products?
Mr. Fleishel: Yes, sir.
Mr. Saunders: Haul commodities in and out?
Mr. Fleishel: Yes, sir. Every day.
Mr. Saunders: Have you filed any local tariff with the Louisiana State Railroad Commission?
Mr. Fleishel: Yes, sir.

Mr. Saunders: I believe you stated that your passenger rates were made by the State Railroad Commission on intrastate traffic?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Are the local rates of freight higher or lower than the division you receive on outbound shipments to interstate points?

Mr. Fleishel: They are higher in all cases.

Mr. Saunders: Can you state approximately how much higher they are?

6441 Mr. Fleishel: Well, our local rate on lumber for any distance between Fullerton and Nitram is 5 cents a hundred, and our division will probably average 3 or 2¾ cents.

Mr. Saunders: You make reports to the Interstate Commerce Commission regularly?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Do you make them on the prescribed forms?

Mr. Fleishel: Yes, sir; in every case.

Mr. Saunders: Does your road make reports to the Louisiana State Railroad Commission?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Does it on the prescribed forms?

Mr. Fleishel: Yes, sir.

Mr. Saunders: Who owns the telegraph and telephone lines on the railroad?

6442 Mr. Fleishel: Well, at Nitram, the Western Union and ourselves together have some joint wires, but on our line we own it all, the railroad company.

Mr. Saunders: What about the telephone line?

Mr. Fleishel: Well the railroad company owns the telephone line, that is, we have the same situation in Nitram, we have the Southwest Telephone Company own part of the switchboard and we own part of it, and we have five joint wires there also.

Mr. Saunders: Are you familiar with the Louisiana law exempting railroads from taxation within a certain time after the adoption of the constitution of 1898?

Mr. Fleishel: Yes, sir.

Examiner Burchmore: The Commission is also familiar with that law.

Mr. Saunders: Is your road exempt from taxation?

Mr. Fleishel: Yes, sir.

Mr. Saunders: That matter was taken up with the Louisiana State authorities, and they ruled your railway was exempt from taxation as a railroad?

Mr. Fleishel: Yes, sir.

Examiner Marble: Your lumber is shipped in box cars?

6443 Mr. Fleishel: No, it is not.

Examiner Marble: In flat cars?

Mr. Fleishel: Yes, sir.

Examiner Marble: You spoke of some flat cars being away that went off your road loaded with lumber?

Mr. Fleishel: Yes, sir.

Examiner Marble: How many flat cars have you used for loading lumber?

Mr. Fleishel: We try not to let any of them get off our rails, but five or six, something like that.

Examiner Marble: Five or six have got away, do you mean?

Mr. Fleishel: Yes, sir, but our box cars leave our road all the time.

Examiner Marble: Are those box cars used for hauling lumber?

Mr. Fleishel: No, they are regular 60,000 pound flat cars.

Examiner Marble: How many large flat cars have you?

Mr. Fleishel: I don't remember, five or six.

Examiner Marble: How many box cars have you?

Mr. Fleishel: About the same number.

Examiner Marble: Five or six?

Mr. Fleishel: Yes, sir.

6444 Examiner Marble: Where are they?

Mr. Fleishel: We don't let them go off our line at all, just use them to handle local freight and stuff like that.

Examiner Marble: The empty cars for the shipment of lumber are furnished to you by the Lake Charles & Northern?

Mr. Fleishel: Yes, sir, we interchange at Nitram, we have a joint agent there.

Examiner Marble: Under an operating agreement?

Mr. Fleishel: Yes, sir.

Mr. Walter: You spoke of the large Gould estate. Is that near the Iron Mountain?

Mr. Fleishel: Yes, sir.

Mr. Walter: How large is that tract?

Mr. Fleishel: They have 104,000 acres right there in one bunch.

Mr. Walter: Is there a mill or has there been a mill there?

Mr. Fleishel: No, it runs around the wagon road up to——

Mr. Walter: Is there a mill there on the tract anywhere to cut that lumber?

Mr. Fleishel: No.

Mr. Cowan: It was stated by you or Mr. Fullerton that the Southern Pacific lines have certain lands.

6445 Mr. Fleishel: Yes, sir.

Mr. Cowan: What lands are those in points of acreage?

Mr. Fleishel: Probably 80,000 acres, probably 71,000 acres I should say.

Mr. Cowan: Is that land most accessible to your present operation?

Mr. Fleishel: Well, yes, I should think it was.

Mr. Cowan: Is it designated by boundaries?

Mr. Fleishel: No, sir, I think not.

Mr. Cowan: What is the aggregate of the land you have in the country?

Mr. Fleishel: About 140,000 acres.

Mr. Cowan: Your divisional agreement is in writing, I suppose?

Mr. Fleishel: No, sir, not that I know of.

Mr. Cowan: Is your timber scattered in that territory which you described where you expect to extend your line to Leesville through the other tract of 40 miles?

Mr. Fleishel: No, we haven't much timber much of the route, our timber does not go probably over one-fourth of the route.

Mr. Cowan: Your statement that has been called for will show of course, the amount of divisions in the aggregate and the
6446 sum total?

Mr. Fleishel: Yes, sir.

Mr. Cowan: That you receive?

Mr. Fleishel: Yes, sir.

Mr. Cowan: Is Fullerton a company town?

Mr. Fleishel: In a broad sense, yes, sir.

Mr. Cowan: Are there any other industries there except yours?

Mr. Fleishel: There are fifteen or twenty stores there.

Mr. Cowan: What is there to attract inhabitants there with the exception of your operations?

Mr. Fleishel: Well that is the chief attraction, I suppose.

Mr. Cowan: Was there a town there before you got there?

Mr. Fleishel: No, not right there.

Mr. Cowan: So it simply grew out of your enterprise?

Mr. Fleishel: Yes, sir.

Mr. Cowan: There is no farming around there?

Mr. Fleishel: Yes, sir, a little.

Mr. Cowan: Nothing commercially that you could——

Mr. Fleishel: Nothing of any special commercial value until you get in close to Leesville.

Mr. Cowan: The commercial importance of the town grows
6447 out of the fact that the people live there because they have been attracted there on account of the enterprise that you established?

Mr. Fleishel: Some of them, yes.

Mr. Cowan: Practically all of them, either directly or indirectly?

Mr. Fleishel: It depends on how direct you are going to be.

Mr. Cowan: There might be a doctor there and he might be there for the purpose of serving those people.

Mr. Fleishel: I would call him direct.

Mr. Cowan: Can you operate your trains more cheaply by handling the heavier trainloads, as you say, than your connecting lines?

Mr. Fleishel: Well I don't know as to that; I should think I could, yes.

Mr. Cowan: Do you pay your engineers and conductors on the basis of labor contracts with railroads generally, or so much per month?

Mr. Fleishel: No, sir, we do not.

Mr. Cowan: How much do you pay your engineers?

Mr. Fleishel: Three dollars a day.

6448 Mr. Cowan: That is about half what they get on the main line?

Mr. Fleishel: I think so, yes.

Mr. Cowan: Are there any expenses in the operation of your railroad or in the item of expense that is material where you pay out greater expenses than the Santa Fe or the Southern Pacific?

Mr. Fleishel: Well I don't know as to that; I don't know.

Mr. Cowan: What did your rails cost you per mile to construct that sort of road?

Mr. Fleishel: I think about seventeen or eighteen thousand dollars a mile.

Mr. Cowan: Including ballast?

Mr. Fleishel: Yes, sir.

Mr. Cowan: Can you maintain your track more cheaply having it ballasted and constructed in the form you have it than would be the case with your connecting lines?

Mr. Fleishel: Well, we can from now on, I think.

Mr. Cowan: That is what I mean.

Mr. Fleishel: From now on we can, yes.

Mr. Cowan: The maintenance of your equipment is not more expensive per mile of line than the Santa Fe or the Southern
6449 Pacific?

Mr. Fleishel: I think it has been, but now we have first class facilities for rebuilding, and our maintenance of locomotives will not be so great in the future.

Mr. Cowan: That is altogether on account of the rebuilding process?

Mr. Fleishel: Yes, sir.

Mr. Cowan: Do you know actually what it does cost you for hauling the lumber to the mill, delivering it to the junction point of your connecting line?

Mr. Fleishel: We don't haul any lumber to the mill.

Mr. Cowan: From the mill?

Mr. Fleishel: No, I do not. We do not keep those expenses separate.

Mr. Cowan: Just what do you expect the Interstate Commerce Commission to base its conclusions as to the rights of the roads you now have upon, what you will be doing after you get these other roads built?

Mr. Fleishel: I don't know——

Mr. Saunders: I object to that question, Mr. Commissioner.

Examiner Burchmore: I suggest we do not go into that.

Mr. Cowan: I want you to sustain the objection.

6450 Examiner Burchmore: Then withdraw the question.

Mr. Cowan: All right. Who holds the bonds that were issued?

Mr. Fleishel: My understanding is the Gulf Lumber Company does.

Mr. Cowan: Do you know whether they actually have them or whether they have been taken over, financed, as you call it, by the Southern Pacific interests?

Mr. Fleishel: I know that we have been trying to sell those bonds in the open market and have not been able to do so.

Mr. Cowan: These private cars that you speak of, those parties were up there for fishing?

Mr. Fleishel: Why no, as a general proposition they come up to see the road and the mills, the plant of the Gulf Lumber Company.

Mr. Cowan: You have got a newly constructed mill with the latest patterns of machinery of all sorts?

Mr. Fleishel: We think so; yes, sir.

Mr. Cowan: It is worth anyone's while to see, if they come up there?

Mr. Fleishel: Yes, sir, we think so, and a great many other people who have come up there think so.

6451 Mr. Cowan: In regard to the Lutcher-Moore proposition, there has been no arrangement made for that outside of negotiations?

Mr. Fleishel: Yes, sir, there is nothing, no negotiations concluded at all.

Mr. Cowan: That is all.

Examiner Marble: You testified regarding the excellence of your roadbed. How many cars of lumber did you say you had hauled with a single train?

Mr. Fleishel: We can haul from fifty to seventy cars with a heavy locomotive.

Examiner Marble: Have you ever done so?

Mr. Fleishel: The highest that I recall is fifty-three. We went down there one day with fifty-three cars.

Examiner Marble: What is your average train?

Mr. Fleishel: I should say about twenty-five cars.

Examiner Marble: That is an ordinary train?

Mr. Fleishel: That is about what we usually ship every day.

Examiner Marble: Those are not bigger trains than your connecting lines haul?

Mr. Fleishel: Yes, sir.

6452 Examiner Marble: How many cars do they haul in an average train?

Mr. Fleishel: Most of them I think would go from fifteen to twenty.

Examiner Marble: They would haul more if they had them?

Mr. Fleishel: I think they would if they could, if they had the roadbed to put them over.

Examiner Marble: What is the load of your cars, I mean the average load?

Mr. Fleishel: Forty tons or fifty—no, I should say thirty-five or forty tons. We load the cars as heavy as we can. We ship a great deal of big, square, green timber, you know that runs——

Examiner Marble: Thirty-five to forty tons is the average load, and twenty-five cars is the average train?

Mr. Fleishel: I should say so.

Examiner Burchmore: You said that you had endeavored to sell these bonds on the general market?

Mr. Fleishel: The Gulf Lumber Company have since they have had them.

Examiner Burchmore: Have they made any special efforts?

Mr. Fleishel: I think they have.

6453 Examiner Burchmore: Have you gotten out any literature?

Mr. Fleishel: No, we did not have enough to go behind the literature.

Mr. Garwood: It has been stated somewhere in this record that about 92 per cent of the Santa Fe tonnage from that Jasper & Eastern branch is lumber.

Mr. Fleishel: I should judge more than that. They have their mills and, of course, they get all of it.

Mr. Garwood: Did I understand you to say that the physical characteristics of your track were better than the Santa Fe and the Lake Charles & Northern?

Mr. Fleishel: I think they are, yes, sir, they all think so.

Mr. Garwood: That is all.

Mr. Saunders: Just one question. Judge Cowan asked you about the service you performed there in hauling the lumber from the mill over to Nitram. You haul the empty cars in from Nitram——

Examiner Burchmore: I think that is well understood.

Mr. Fleishel: Yes, sir.

Mr. Saunders: He also asked you if it would be less expensive to keep up the track hereafter than for some of the connecting carriers to keep up their track, as I understood his question.

6454 Is that due to the fact that you have spent more money originally and ballasted your road?

Mr. Fleishel: Yes, spent more in the track.

Mr. Saunders: You put in a better track and maintain it in better conditions than the connecting lines?

Mr. Fleishel: Yes, sir.

Examiner Marble: What is the capacity of these mills at Fullerton?

Mr. Fleishel: In what respect, as to tonnage?

Examiner Marble: Number of cars per day.

Mr. Fleishel: About thirty or thirty-five cars.

Examiner Marble: I am not talking about theoretical capacity, but what you actually do.

Mr. Fleishel: About twenty-five cars a day.

Examiner Marble: About one train a day?

Mr. Fleishel: Yes, sir.

Examiner Marble: Your business is normal at the present time?

Mr. Fleishel: Well I think it is a little below normal.

Examiner Marble: What is normal?

Mr. Fleishel: I don't know. During the fall we had a pretty severe car shortage and the shipments at that time were

6455 nothing like what they are now.

Examiner Marble: Your statements of tonnage handled and amount received will cover all that?

Mr. Fleishel: Yes, sir, there has been quite a material increase.

Mr. Garwood: What mills are there between De Ridder and Oakdale along the Santa Fe Line?

Mr. Fleishel: There is the Ludington—Wells & Van Schaack Lumber Company connecting with the Santa Fe line, and then there is the Cravens mill and the Little mill at Royal, and then the Santa Fe mills at Elizabeth.

Examiner Marble: Is the Elizabeth mill on the Santa Fe?

Mr. Fleishel: No, the others are.

Mr. Garwood: What is the general character of the country there outside of these mills?

Mr. Fleishel: Along the Santa Fe?

Mr. Garwood: Yes.

Mr. Fleishel: Nothing but pine forests.

Mr. Garwood: How many of those mills were there prior to the construction of the Santa Fe, if any?

Mr. Fleishel: None of them except the Cravens mill.

Mr. Garwood: That is all.

6456 Mr. Cowan: I did intend to examine Mr. Fullerton and I was going into the matter of the prices, marketing, and the methods of the sale of lumber and the like, but I guess that has been sufficiently gone into with that witness. If he happens to be in Chicago, we may take a little time to do it there.

Examiner Burchmore: Very well.

Mr. Saunders: It was simply general matters?

Mr. Cowan: Yes, he did not testify to much else.

Examiner Burchmore: Mr. Saunders, do you desire to offer this map in evidence?

Mr. Saunders: Yes, I will offer this map in evidence as Exhibit No. 2.

The statements you have called for we will, of course, make up and supply.

(The map so offered and identified, was received in evidence and thereupon marked "Fleishel Exhibit No. 2, received in evidence January 28, 1911," consisting of one page, and is attached hereto.)

6457 *England & Clear Lake Railroad Company.*

Mr. Saunders: Mr. Commissioner, the England & Clear Lake Railroad Company of Arkansas would like to be heard, and I am advised that about nineteen months ago, the Cotton Belt cut off the divisions it was then receiving and since that time it has received no divisions. However, since the Commission has ordered the road to appear, and I understand that the road was called in New Orleans two or three times, I think it is proper that Mr. Locke, the President of the road, should appear here before the Commission and offer to give testimony in regard to the status of his road. As stated above, the road has not been receiving any divisions for the past eighteen months. Our finished track consists of five miles, from a place called Lockeville to England, and the road has been extended five miles further through a very rich farming territory consisting of about 200,000 acres, that the road now serves.

Examiner Burchmore: When was this extension made?

Mr. Locke: In September.

Examiner Burchmore: In September last year?

Mr Saunders: Until that time the road was operating exclusively in the interests of a lumber company, wasn't it?

6458 Mr. Locke: Yes, sir.

Mr. Saunders: Was it not?

Mr. Locke: Yes, sir.

6459 Examiner Burchmore: Mr. Saunders, this road has been called repeatedly and has not answered, and it is too late to take it up now, and I may say further that if it receives no divisions and has no joint rates, why——

Mr. Fullerton: It would not be in court under those circumstances.

Examiner Burchmore: It is not exactly in court, and I suggest that if Mr. Locke as an officer of the lumber company thinks he ought to have joint rates on his shipments of lumber, it will be proper for him to file a complaint with the Interstate Commerce Commission as a shipper, asking for joint rates or through rates, or for proper rates, for reasonable rates, and such complaint will go through the usual course. Of course I suppose it would be more proper for him to await the outcome of this proceeding, and not make any such application, or possibly such a complaint at this time.

Mr. Saunders: I would like to suggest this, Mr. Commissioner, that Mr. Lock has a number of statements with him from shippers on his line, showing that he is serving a considerable shipping community, and if those statements can be filed, I would like to do so.

Examiner Burchmore: It is too late. This road has been called before repeatedly, and you ought to have appeared. If they
6460 are not getting any division now, it does not seem that the large question that is involved in this case is really an issue. It is a moot question with this road. The question in this case is whether the Short Line railroads, as I take it, that are related closely to lumber companies, may properly participate in joint through rates, or on what basis they may so participate on lumber that they handle through such roads. This is not a road that gets any divisions, and isn't it a moot question with this road?

Mr. Fullerton: I think it is.

Mr. Saunders: I think perhaps your Honor is right in your ruling, but at all events I desire the road to appear.

Examiner Burchmore: The record would indicate that he is here and desires to be heard. I may say further that if he desires to be heard at Chicago as a shipper or as one who feels that he is being discriminated against because others are getting divisions, I think his testimony could be taken, but not as to the rights of your road.

Mr. Saunders: Then I might say that at this time the road has not filed the report required by the Commission, but the report is now being prepared and he is endeavoring to comply with all the rules of the Commission, and subsequently perhaps he
6461–6464 can make an application as your Honor suggests, either as a railroad or as a shipper.

Examiner Burchmore: The hearing will be resumed at Chicago, Monday, at 10 o'clock.

Whereupon, at 1 o'clock P. M. an adjournment was taken until Monday, January 30, 1911, at 10 o'clock A. M. at Chicago.

[End of Volume III.]

Vol. IV.

TESTIMONY AND EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 329.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 330.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 331.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 332.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 333.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 334.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 335.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 336.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 20, 1913.

(23,980—23,986)

IN THE

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

VOLUME IV.

STAR GRAIN AND LUMBER COMPANY et al., Complainants,
against
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Defendants.

6465 CHICAGO, ILL., *January* 30, 1911.

Met pursuant to adjournment, in the Congress Hotel, at 10:00 A. M.

Present:

Commissioner J. S. Harlan.
Parties as before.

(Mr. Walter filed copies of Exhibits previously referred to and identified, of the Angelina & Neches River Railroad Company, Mansfield Railway & Transportation Company, and Nacogdoches & Southeastern Railway.)

Commissioner Harlan: Judge Cowan, are you now ready to proceed?

Mr. Cowan: Yes, sir. If your Honor please, we wish now to call attention to the request made at New Orleans for certain tonnage statistics of the Trunk Line railroads of the traffic which they receive from the tap lines, dividing it between those who do get and those who do not get divisions; and tonnage statistics of lumber which comes from mills which are not operated by railroads at all, and supposing that it is intended to be filed, having asked that
6466 it be done at this hearing, we want to press the matter that it may be filed as soon as it is practicable to be made up. Some of the roads have done so.

Commissioner Harlan: Is that information available on the part of the carriers?

Mr. Jeffery: As far as the Iron Mountain is concerned I feel it is a critical element of our defense to the case, and I have had our people prepare it, and I expect it will be here in a day or so. I may say that I did not know that Judge Cowan had made a request until the other day. I did not order a copy of the record, and was not there at the close of the hearing. However, I had ordered those statistics and data prepared anyhow for our defense.

Commissioner Harlan: What is the basis of your exhibit?

Mr. Jeffery: It is the basis of showing the tonnage originating on the main line, and originating on the tap lines, and the net revenue, you might say the ex-tap line allowances revenue, and our main line revenue.

Mr. Cowan: I think that is very important from all the lines. I am sure the figures are available. I do not want to point out now why I say it is very valuable, but I do think so, and Mr.
6467 Jeffery seems to have borne me out in that.

Mr. Wood: I was not aware that a request for such statistics had been made until the request was made at St. Louis last week, because it was made after I left New Orleans, and I was not advised. I took the matter up with our accounting officer, and it will be possible to give the information that Judge Cowan requests, I think, although I am advised to secure the same for a period of three years will take possibly two weeks, and possibly longer. Because while, of course, the figures are available in the accounting department, they are not consolidated now in such a way that they can be easily drawn off, and it will require a great amount of clerical labor to take out the items. But we are preparing to furnish that information both for the Frisco lines and for the Southwest lines, the New Orleans, Texas & Mexico. There is no difficulty about giving the figures. As I understand, Judge Cowan wants that originating on tap lines, and that which originates on the main line. Judge Cowan has also asked for a list of all mills and for the output of those mills. It will be impossible for us to give that information accurately.

We can furnish a list so far as we have it, and the estimated
6468 capacity of those mills as reported to us from time to time.

Commissioner Harlan: That is, reported by your own officials?

Mr. Wood: Reported by our own officials, and they get their information from various sources. As I said in St. Louis, we do not think those statements are to be relied upon to any great extent.

Another thing Judge Cowan has requested is a sketch showing the location of main line tracks, side tracks, and tap line tracks, and all mills. I will not say it is not possible to get it; it is possible to get it, but it would take a great deal of time, and would involve the expenditure of a great deal of money to furnish such sketches.

Commissioner Harlan: I assume Judge Cowan does not want a survey, but only a rough indication.

Mr. Cowan: That is all.

Mr. Wood: We have several hundred mills on the Frisco proper, and that would involve the making of several hundred separate blue prints. I do not know how long it would take. I know we are engaged now in an effort to give the Corporation Commission of Oklahoma blue prints in regard to enlargement of road,
6469 station grounds, and so forth, and I learned in that that it was quite a task just to make the blue prints.

Commissioner Harlan: Do you mean you think you cannot do that reasonably?

Mr. Wood: I do not think we can, Mr. Commissioner. I would make the suggestion that I think all these tap lines have been here before the Commission and they have furnished such information so far as their own roads are concerned, and the Commission, I believe, from its own investigation has a large amount of that data. Now we wish to co-operate in this matter just as far as we can, and if the

Commission desires sketches of all the tracks serving all of the lumber mills on our system, although there are several hundreds of them. we will try to furnish that information; but it will take a long time to get it, and the suggestion was that possibly we could supplement, by request from the Commission or Judge Cowan, by additional maps, such evidence as is already in the record, and that possibly from a practical standpoint that might satisfy the requirements.

Mr. Cowan: I think, so far as we are concerned, the yellow pine lines in Louisiana would be all that we would request, and that certainly would not involve much labor.

6470 Mr. Wood: You mean just the land from New Orleans to Houston?

Mr. Cowan: Yes. Our interest lies largely in the yellow pine, and not the hardwood proposition.

Mr. Wood: We can furnish you without very much delay a sketch of all the tracks on the line of the New Orleans, Texas & Mexico, which runs from New Orleans to Houston. We can at least furnish that.

Mr. Cowan: Yes.

Commissioner Harlan: Very well; for the present that will probably do. The Commission has a good deal of general information. We know in a general way the location of the switch tracks to the mill, but we do not know the location of the mill with respect to the main line in every case. If the Commission finds it needs additional information, we will request it.

Mr. Wood: We will give you all the information as to the New Orleans, Texas & Mexico.

Mr. Cowan: I think you will find the data very complete, and that was my reason for asking it, supposing it was in the engineer's record for each road.

6471 Mr. Garwood: In respect to the Texas & New Orleans, and the Houston, East & West Texas, I think we have the data as requested by Mr. Cowan. At any rate, I took his notice to produce copies of that, and gave it to the proper department, and I have the statistics requested, and have had them subject to Mr. Cowan's examination at any time, and I have them now. As to the blue prints or maps requested, I beg to say that I have got two large packages in my room which are supposed to contain all. I have not had time to go through each one, but I assume that they are all there. At any rate, they are subject to his inspection.

Commissioner Harlan: They are available in some form for the Commission?

Mr. Garwood: I think they contain everything he asks, and I am ready to deliver them for his inspection. At this time I would like to inquire of counsel if the copies of the various contracts, and the estimates that we asked the intervenors to have ready at this hearing will be available.

Mr. Cowan: I have been informed that they have been prepared. Of course there are some of those things that we would object to presenting, but I think that it is available so far as the parties could

make it up. It was my instruction to do it, and I think they
6472 have complied as nearly as they could.

My reason for asking the information about the maps and the tonnage statistics should be considered in connection with the request which I made at St. Louis the other day of the Commission to get some map maker to take up the matter so as to get a map that any of us can have some sort of comprehensive view of this case, and it seems to me the tonnage statistics likewise could be compiled by the accounting department, so that we would be in a position so that each one of us might have a correct copy. The Commission might have them printed, even.

Commissioner Harlan: We went over that matter at St. Louis. The Commission can get pretty fair information on that line.

Mr. Cowan: It was not for my personal benefit that I requested this, but for proper information for all parties.

Commissioner Harlan: Is the Rock Island here? I suppose you have asked them for statistics.

Mr. Cowan: Yes. It has been asked of every one.

Commissioner Harlan: You might make inquiry of railroad counsel after the session, and see what is being done in the matter.

Mr. Cowan: Yes. I have, but I put it in the record now,
6473 so that nobody would think I had waived it.

Mr. Coleman: I would like to ask Judge Cowan if the statement I have filed is satisfactory.

Mr. Cowan: I have not looked at it.

Mr. Coleman: It shows the tonnage revenue, but on account of our records having been destroyed, I understand it would have been impossible to furnish the detailed tonnage statistics.

Mr. Cowan: What records do you speak of being destroyed?

Mr. Coleman: The records showing the tonnage.

Mr. Cowan: You speak of the old records?

Mr. Coleman: Yes, at Galveston.

Mr. Cowan: That is a long time back.

Mr. Coleman: We have prepared the revenue, but we have not the tonnage.

Mr. Cowan: I will call Mr. Kirby.

6474 JOHN H. KIRBY, was called as a witness, and having been duly sworn and examined, testified as follows:

Mr. Cowan: Without intending to embarrass you, how old are you?

Mr. Kirby: Fifty.

Mr. Cowan: Where do you live?

Mr. Kirby: At Houston, Texas.

Mr. Cowan: How long have you lived in Texas?

Mr. Kirby: Fifty years, and a couple of morths.

Mr. Cowan: You are engaged in the lumber business

Mr. Kirby: I am.

Mr. Cowan: How long have you been engaged in that business?

Mr. Kirby: I have been engaged in the manufacture and sale of

lumber about 10 years; but I have been engaged in the timber business, buying and selling trees and logs, 25 years.

Mr. Cowan: Where have your operations been carried on in both lines?

Mr. Kirby: In southeast Texas always.

Mr. Cowan: Have you any experience in connection with railroad construction or operation?

Mr. Kirby: I have had some experience. I have built a
6475 railroad in Texas and operated it seven years.

Mr. Cowan: What road was that?

Mr. Kirby: That was the Gulf, Beaumont & Kansas City, now part of the Santa Fe system, running from Beaumont north to San Augustine.

Mr. Cowan: How far?

Mr. Kirby: From Beaumont to San Augustine is about 140 miles; but at the time I sold to the Santa Fe there was only 75 miles in operation; the balance was under contract. I became the contractor, and built it into San Augustine before delivery to the Santa Fe.

Mr. Cowan: At that time were you engaged in the lumber manufacture?

Mr. Kirby: No, sir.

Mr. Cowan: Had you ever been so engaged before?

Mr. Kirby: I had not.

Mr. Cowan: Was this road operated in connection with any lumber operations?

Mr. Kirby: No, sir.

Mr. Cowan: During the time you have been engaged in the lumber manufacture and timber business, have you been acquainted with the industry known as the yellow pine lumber manufac-
6476 turing business, and the commerce in the product, lumber product and forest products?

Mr. Kirby: Yes, sir; that was largely my business to know about such things, and I thought I did.

Mr. Cowan: In the course of the disposition of the output of the various mills engaged in the yellow pine district, is there not and has there not been competition between the producers at the various markets and points of sale and construction?

Mr. Kirby: Yes, sir, there has always been very sharp competition.

Mr. Cowan: Who do you consider the principal buyer from the manufacturers?

Mr. Kirby: Well, the buyers of yard stock are largely the dealers; that is, the retailers throughout the country, and the buyers of saw bills are the railroads and other large builders, I mean the buyers direct from the manufacturers. There are certain large industries like car companies and harvester companies, and people of that kind that buy largely for their own consumption, that buy direct from the manufacturer; but the general user of lumber buys it in a retail yard, buys from the retailer, and the retailer buys from the manufacturer.

6477 Mr. Cowan: Can a man who desires to build a house, for example at Fort Worth, or Chicago, or build some factory, buy the stuff direct from the manufacturer under the rules and regulations of the trade?

Mr. Kirby: Well, yes; not as a rule, because the manufacturers are not in the retail business, and their customers would not permit them to sell to their customers.

Mr. Cowan: A somewhat similar situation to what it would be if a man wanted to buy his groceries from a wholesale grocery man.

Mr. Kirby: Yes, sir, the principle is the same in nearly all merchandise.

Mr. Cowan: That is considered a moral element in the trade, in the wholesaling and retailing of almost all commodities?

Mr. Kirby: Yes, sir.

Mr. Cowan: In the ratio of the amount of consumption, what proportion, in your opinion, of the yellow pine material, is purchased by railroads in the country for their own use, if you can give us some approximate idea.

6478 Mr. Kirby: Well, under normal conditions the railroads buy from long leaf mills somewhere from 25 to 38 per cent of the output of long leaf mills; that is, when there is construction work going on, and the conditions throughout the country are normal, or what you would call prosperous. At the present time, or since the panic of 1907, the railroad purchases have been only for repairs and improvements, and they have probably not reached as much as ten per cent of the output of long leaf mills. Their purchases from short leaf mills I am not so well posted about, because that is largely car material or ties for treating plants.

Mr. Cowan: I observed in the testimony of Mr. Ripley given before this Commission in connection with the rate advance cases recently heard, that he estimated that the railroads of the company consumed fifty per cent of the forest products. How do you harmonize that with your statement?

Mr. Kirby: Well, forest products include hewn ties and piling, and all that sort of thing, the wood. In my statement here I was talking about the products of mills.

Mr. Cowan: I understand, but I wanted to punctuate the point.

Mr. Kirby: For instance, we furnish the Santa Fe about seventy-five or eighty million feet a year of hewn ties, and probably
6479 fifteen or eighteen million feet, I don't know just how much, of piling.

Mr. Jeffery: What number of ties does that amount to? Excuse me for the interruption.

Mr. Kirby: 2,500,000 six by eight, with a lot of switch ties, and I do not know how many sets; but we have never furnished them that much, 2,500,000, but we hope to.

Mr. Jeffery: That is a pretty large percentage of the total number they use, is it not?

Mr. Kirby: Well,——

Mr. Cowan: I think, if I may be permitted, I am going to try to give Mr. Kirby a pretty thorough examination on the direct, and it

would be a great accommodation to both myself and Mr. Kirby if counsel would let us go ahead with the direct examination, making their notes, because I will then be able to continue it with some regularity, which otherwise I could not.

Mr. Kirby: Well, I started to say, concluding that inquiry that you made, that while we sold the Santa Fe that much of forest products, we probably did not sell them ten million feet of lumber
6480 out of the mills. The figures are here, but I do not remember just what they are.

Mr. Cowan: What proportion of the ties used, speaking in general terms, are hewn, and what proportion sawn ties, and why are the hewn ties used?

Mr. Kirby: I have not seen the statistics to take the entire country, of what proportion are hewn. In our country down there the Santa Fe uses hewn ties in every case where they are available for the reason that they take treatment better, they are a little cheaper, and then they are a little bigger. Now the specification under which we furnish ties to the Santa Fe is that they shall have an 8 inch face; that is, we will take a little tree and hew two sides and peel the edges, and there is a tie. You put a seven inch tie plate under a big rail on a six by eight tie, and your spike is so near the edge it does not hold very well. But you take one of these pole ties you have more surface, and it is more desirable for that reason, and besides it is cheaper.

Mr. Cowan: Where are the points of the greatest consumption of lumber? I mean localities, when I say points, the greatest consumption of lumber of the sort we are talking about.

Mr. Kirby: Well, that changes, Judge. I would not know
6481 how to say, because I have not the statistics.

Mr. Cowan: But generally speaking, not by statistics, where are the general districts which consume yellow pine lumber?

Mr. Kirby: Oklahoma, Kansas, Nebraska, Iowa, Illinois—in fact, the whole country. We ship as far east by rail as Buffalo, New York, and ship as far west as Denver and beyond.

Mr. Cowan: You do not ship to the Atlantic Seaboard by rail?

Mr. Kirby: No.

Mr. Cowan: Is there any considerable amount of lumber shipped by the coastwise boats to the Atlantic Seaboard?

Mr. Kirby: There is a very large amount of yellow pine used in the New York district, but it does not come from our territory, so I am not posted. In the main it would come from Georgia, the Carolinas, and perhaps Alabama and Mississippi and Florida, ship into New York. I am not advised.

Mr. Cowan: You do not ship much in the northwest direction beyond Colorado common points?

Mr. Kirby: No.

6482 Mr. Cowan: You do go up on the Missouri River, Missouri River territory, and the states on each side as far north as Iowa and Nebraska?

Mr. Kirby: Yes, and we ship some into the Dakotas.

Mr. Cowan: What figure does the freight rate cut in the market places to which the lumber goes?

Mr. Kirby: The freight rate fixes the market for you, because the price is a delivered price always, and the cost to the consumer is what it costs to get the lumber to his locality.

Mr. Cowan: How do you figure the price in your mill—do you figure a price at the mill so that if I buy, living in Kansas City, and get a 22 cent rate or 24 cent rate, and another man buys at Denver who pays a 37 cent rate, do we get the same price at the mill?

Mr. Kirby: You do not. You get the mill price plus the freight rate.

Mr. Cowan: So the standard is the mill price and the freight rate added, and the dealer who purchases pays the whole thing?

Mr. Kirby: Yes, sir, he does. We base our price list on the common point rate to any point of destination, and our price list
6483 will be our mill price plus the freight rate to the common point of 17½ cents; if the freight rate is higher than that or lower than that, then the price is either raised or lowered to the buyer, according to what additional amounts he pays in freight.

Mr. Cowan: It was said by Mr. Johnson on the stand the other day that while his companies, and I believe he expressed himself generally that was the case with others, that lumber companies had price lists, that these lists are not adhered to, but the lumber is sold in competition with the trade, either maintaining the scale or discounting the price list, according to the circumstances. Is that your experience?

Mr. Kirby: That is true, yes, sir.

Mr. Cowan: Is that generally the case in the lumber trade?

Mr. Kirby: So far as I have any information, I see my competitors' prices once in a while, and hear of them through a dealer and I find that we have often quoted under him and he got the business; I don't know what he got, but I am convinced he did not get the price he was supposed to quote, so I take it there is not a salesman who adheres absolutely to his price list all the time.

6484 Mr. Cowan: When you spoke a while ago of the price list in connection with the freight rate, that is simply showing what the general rule is with respect to adding the freight to some standard price, and as a matter of quotation to the public.

Mr. Kirby: Yes, sir, all manufacturers who put out a price list of that kind, of the kind that I told you about. That is our practice, but all manufacturers sell at the mill price, that is every manufacturer's price is influenced by what it cost him to get the product from his mill to the point of sale.

Mr. Cowan: I understand that the blanket system of rates applies so that from a given territory the rates are the same from all points in the producing territory to any given market; for example, I may use Fort Worth, Kansas City and Chicago. Will you explain briefly the system that exists with respect to the blanket rates?

Mr. Kirby: I understand the blanket rate to have been put in—of course, I had nothing to do with putting it in—to promote the general thrift of the country. In the first place, not meaning to put one interest above the other, but in order that all manu-
6485 facturers under the blanket system are permitted to sell in all markets, so that they have an equal opportunity of get-

ting to those markets, and all buyers in those markets are permitted to obtain the competition of all manufacturers throughout all the territory for their trade, so that it is one of those plans to promote general thrift and equality of opportunity to every man, whether he be buyer or seller.

Mr. Cowan: And the object of that is, so far as the freight rate is concerned, to put both the manufacturer and the dealer on an equality?

Mr. Kirby: Well, it is to put manufacturers on an equality, and it is to give all dealers the benefit of competition from all manufacturing sections.

Mr. Cowan: Equally to each blanket territory where the rates apply.

Mr. Kirby: Yes.

Mr. Cowan: But for the object of equality, could the blanket system be justified, ignoring distance as it does?

Mr. Kirby: Well, I should think not. I think that is the sole purpose.

Mr. Cowan: Do you think the system is necessary?

Mr. Kirby: I do.

6486 Mr. Cowan: That is, because you think equality is necessary?

Mr. Kirby: Yes.

Mr. Cowan: Are you acquainted, or do you know the effect upon this equality that appears to be the general governing principle of having made these blanket systems, of railroads' divisions between themselves? I will give an example. Take the Rock Island and the Santa Fe, both connecting with the Denver & Rio Grande at Pueblo, and the Denver & Rio Grande is the purchaser of timber, ties or lumber in the yellow pine district. State whether or not the divisions that would be given as between the Denver & Rio Grande and the Rock Island, or the Denver & Rio Grande and the Santa Fe, would determine the locality to which the Denver & Rio Grande would go to buy a given sale of lumber.

Mr. Kirby: Yes, sir.

Mr. Cowan: It would determine it?

Mr. Kirby: The Denver & Rio Grande in that case, whatever its division was, could be used to reduce the cost of the lumber at its connection, of course, and it would be influenced as any other purchaser, it being desirous of buying as cheaply as it can; that

6487 would of course enable them to buy cheaper from a mill upon a line of road which gave a large division than they could from a mill upon a line of road which gave the Rio Grande the smaller division.

Mr. Cowan: That illustrates the necessity of having equality with respect to the divisions of rates as well as the rates themselves?

Mr. Kirby: Yes, sir.

Mr. Cowan: Do you have in mind an instance in which any important order of lumber was in fact transferred from one locality to another, on account of a change in the amount of division?

Mr. Kirby: I have in mind a particular instance, that is probably the one you had in mind when you formulated your question. The

Denver & Rio Grande were in the market some time ago for a large amount of ties. Our mills are located largely upon the Santa Fe, but we went after that business. We found that the Denver & Rio Grande's division on lumber tonnage originating at Santa Fe points and delivered on their line was about four cents, whereas with other lines of road down there they had in a division of seven cents, and the business after we had secured it as we thought on an equal freight basis was lost to us because of this condition. The
6488 other lines of road gave the larger division, and the Santa Fe mills lost out.

Commissioner Harlan: You are now referring to the effect of divisions where the railroad is the purchaser of the material.

Mr. Kirby: Yes, sir; and the effect, Judge, of the through rate, the net rate to the buyer or seller, and its influence upon the purchase.

Mr. Cowan: The place of purchase?

Mr. Kirby: Yes, sir.

Mr. Cowan: Was this division that the Denver & Rio Grande got which took the trade away from you in a given case changed, as you understand it, was the amount of that division changed after you had secured the order for the lumber?

Mr. Kirby: I so understood, Judge, but I am not sure about that, because I am not on the inside, but I was told that that was the reason for withdrawing the business from us, that other roads had increased their divisions, and they could buy cheaper.

Mr. Cowan: I suppose those orders for lumber from large
6489 concerns of that kind are generally subject to cancellation by either party under certain conditions. How is that?

Mr. Kirby. Oh, Yes.

Mr. Cowan: What is there to show that? When the order comes in is it generally stampd with a stamp, or has it written upon it "Subject to the right of cancellation within so many days"?

Mr. Kirby: No, it is just commercial practice.

Mr. Cowan: It is just a practice?

Mr. Kirby: It is just a universal practice. You go out and sell a dealer 100 cars of lumber, and if he concludes he does not want it, he cancels it. If you want his business in the future, you cannot afford to make him take it. You probably could, as a legal proposition, but you do not. It is the same with railroads, and any other purchasers.

Mr. Cowan: So in your opinion the divisions are capable, at least, of being so adjusted as to determine the place at which the purchase may be made by a connecting road which is the purchaser of supplies?

Mr. Kirby: Yes, sir, anything that reduces the cost of that transportation to the party interested in its delivery, whether it be the purchaser or the seller influences the sale, because the freight
6490 rate is a part of the cost in getting the lumber from the mill to the point of consumption.

Mr. Cowan: What is the extent of the pine forests, generally speaking, competing with each other in this yellow pine business?

Mr. Kirby: I could not tell you in billions of feet, because there

are no reliable statistics, but there are various estimates; but the area is from Georgia to Texas, including Missouri, Arkansas, Louisiana, Texas, Mississippi, Alabama, Florida and Georgia.

Mr. Cowan: At the present rate of cutting of yellow pine, what is the general opinion of well informed lumber men as to how long it will last?

Mr. Kirby: Around 15 years.

Mr. Cowan: What effect does concrete and steel construction have upon the consumption of lumber for building purposes generally?

Mr. Kirby: Well, they reduce the consumption in general lines. For instance, steel in the manufacture of cars has largely reduced the use of wood; and concrete in various kinds of construction has subsituted wood. But the statistics show that the per capita
6491 consumption in this country increases, notwithstanding the competition of steel and concrete, and other characters of construction.

Mr. Cowan: Will you describe the method of milling and lumber operations briefly in the past and the evolution up to the present time within your knowledge, of the yellow pine country and elsewhere, if you please.

Mr. Kirby: Do you mean the operation of the mills?

Mr. Cowan: Yes, the method of logging and milling.

Mr. Kirby: Well, it used to be at least 20 years ago, 28 years ago, when the Kountzes built a line of railroad down in East Texas, now part of the Southern Pacific, through the county where I was raised, in making ties, the practice was for the mill man to set up his little mill out in the forest, of course right on the railroad track, and he would haul his logs in with oxen. Then a little later, when his timber got farther away, he laid down wooden rails and put some mules on trucks and hauled his logs in in that way. And in a little while, in the process of evolution, he got in a little engine and put on that truck, and pulled his logs in with steam.

Mr. Cowan: Over the wooden rails?

Mr. Kirby: Over the wooden rails. Then he substituted
6492 steel or iron for the wooden rails, rather small to start with, and then got him some regular little locomotives; and so in the modern method of logging at the present time, we use the best character of railroad that we have got the money to build; other conditions of course being considered as to the permanency of it, that is the period you want to use it, and the best motive power. Where we used to haul logs with a couple of mules which would cost us 75 dollars, we now haul logs with a locomotive which will cost us $12,000. So that is the process of evolution insofar as the logging is concerned. The mills have operated in substantially the same way, and are still doing it. Formerly, 30 years ago, we did not have in our territory down there, any edgers or trimmers, or any method of utilizing the outside of the log; we used thick circular saws which cut half an inch; and now we used thin band saws and gangs, and then we have re-saws to take up the slabs, so we try to burn up nothing but the bark, and save every piece of lumber which is four inches wide and four feet long, and sometimes

smaller sizes. So there has been evolution both in the logging end and in the milling end, and it is going on constantly; they are improving every day in their methods.

6493 Mr. Cowan: I suppose the saving of sawdust which is converted into lumber now, compared with what it used to be, is a very large item.

Mr. Kirby: It is a very large item, and of course as the timber grows more valuable they use every device to save sawdust and waste of every kind insofar as the mill operations are concerned.

Mr. Cowan: Well, to-day is a railroad, and by that I am not talking about a corporation, but about a railroad, and the facilities used in operating it a necessity in a mill operation in the country in which we are talking about.

Mr. Kirby: Absolutely.

Mr. Cowan: Now will you state the number of sawmills which the Kirby Lumber Company has, where they are, and how they are operated, having relation in particular to the railroad operation in connection with these mills; and you may just take them up without my asking questions, and describe them in a brief way, of course, and give the circumstances and the situation surrounding each, and the matters pertaining to the manufacturing operation, and to the disposition of the products, the getting in of the logs, and so on. And in that connection I wish you would tell here,

6494 before you get very far along with it, the method in which they cut these trees and get them on to the tram. Nobody has told that, and we would like to have it go in the record along with this, and without my asking questions you may take up that subject.

Mr. Kirby: You have given me a big task, Judge.

Mr. Cowan: Well, you probably have a list of your mill there.

Mr. Hancock: I have a list here (handing paper).

Mr. Kirby: I do not think I need it.

Mr. Cowan: You are personally familiar with the whole matter from the stump to the bank account?

Mr. Kirby: Yes, sir, I have run rabbits where nearly every track is located down there. The Kirby Lumber Company owns thirteen mills, and with each one we have a railroad. At eleven of these mills the railroads are standard gauge, and of standard construction. At the other two they are narrow gauge. At Bronson we maintain about 12 miles of standard gauge railroad running easterly in the direction of Hemphill. Bronson is a town in Sabine County of 1,000 or 1200, I suppose, and Hemphill is the county seat of that

6495 county. Our railroad runs out within four or five miles of the county seat. We operate that railroad for the purpose of bringing logs to the mill, and for no other purpose.

Answering your question, I presume at this point as well as any, as to the method of getting the logs upon the car, in the first place those logs are sawn down—that is, the trees are sawn down and cut into log lengths by contract. I suppose every manufacturer pays about the same price for that service. Then some manufacturers pick up those logs after they are cut into log lengths with teams; but most

of them nowadays do it by steam. While we used to cart entirely with oxen, then we afterwards substituted mules as being quicker and more economical, but of late years most of us use steam. That is, we have a steam skidder, and sometimes we throw the cable out automatically on a line, but at other times it is carried out by a horse, and there is a tree out there 500 or 1,000 feet away which has been felled and cut into log lengths: the cable is carried out there and grabs on to the end of the log, and you pull it in by steam, your skidder being located upon your railroad, and being elevated
6496 so that your empty logging car can go under it; and then that skidder is sometimes as well a loader? that is, you have another derrick and drum, and you pick up that log when it has been brought in alongside your railroad track, and lay it on your car, and keep on that process until you load your car. Then your engine pulls ahead, and there is another empty. That is the process most manufacturers follow now, that is the steam process.

Mr. Cowan: Do you cut the trees next to the railroad first, or go farther away?

Mr. Kirby: No, you go away from the railroad so as to get the debris always behind you. Now, your distance will depend upon your cable, and upon the machine you are using. Sometimes they will go out a thousand feet. So you lay the railroad track, this temporary railroad track upon which you locate your skidder, and for anywhere from 400 to 1,000 feet on either side you are throwing out your cables and taking up all the trees beginning at the farthest extent of the length of your cable to start with, so that the tops are always thrown behind you, and not in the way of your operations. Then when all the timber in that area has been removed, your skid-
der is then put on another track lying parallel or substan-
6497 tially so, to that one the necessary distance away, so then the cable on one side of your loader will reach the point where you have just operated, and extend into the timber there. So that is the process at the present time. And that track expense, of course, is pretty large for laying these temporary tracks. You have got to have tracks sufficient to get your train over, although you do not tramp it, and you do not often pay much attention to grade, although you have to do some work, and of course clear your right of way; but the picking up of the track is a large expense in everybody's logging operation. Then it is brought off those spurs on to your main line.

Commissioner Harlan: Tell us a little about a skidder, and its construction, and the length. Is it a mere structure near the track for loading the logs on the track, or does it run out with the cable?

Mr. Kirby: No.

Commissioner Harlan: You haul the logs over the ground or have some sort of truck?

Mr. Kirby: We drag them right on the ground.

Commissioner Harlan: So the skidder is simply a structure at the railroad track to aid in loading?

6498 Mr. Kirby: Yes, sir, right over the track, and it is usually built so it can be elevated or lowered, but you make it stationary and tie it with guy wires.

Commissioner Harlan: Logs are pulled by the cable right over the ground?

Mr. Kirby: Yes, sir, and your railroad track runs under the skidder, and the log train comes down and backs under the skidder, and you pull through one car at a time, and when one car is loaded, the toggle chains are fastened to another at that point, and it is loaded.

Mr. Cowan: The length of your cable therefore, will determine the distance the spur loading tracks will be apart in the forest?

Mr. Kirby: Yes, sir. Sometimes you do not have a steam skidder but pull them in by mules and carts and lay them on skid poles by the side of the tracks, and another team will come along and move the logs on the logging cars; the same process as with the steam skidder, but instead of that the steam skidder shakes or pulls the log by cable, where your teams will cart them. That is the difference.

Mr. Cowan: On log wagons?

6499 Mr. Kirby: Yes, sir, a logging cart which runs astraddle of a log or two or three and drops them along the railroad track, and when your train is ready, there is another loading team that loads the logs on the car.

Mr. Cowan: Now, then when you get to where your junction point of the spur track is, in the practice with you, do you send the same engine on which spotted the ties for loading to the mill, or stop it and turn it over to another?

Mr. Kirby: Well, rarely so. There is a cable on this skidder as a rule that will handle your empties; you do not have to have the engine to pull your cars; the steam power that operates your skidder will move your train with the cable, rock it on to the track end.

Mr. Cowan: For loading purposes?

Mr. Kirby: For loading purposes. Now you take those cars when they are loaded and pull them off on the spur track and set them out on the main line until you have a train. We have a siding there on the main line. And you haul your loads there until a train is made up, and then ordinarily you have an engine that has already gone in perhaps with one train load, and it may be a train load of ten, or it may be a trainload of forty cars, it is different in different

6500 localities, and if the mill is not far away, they often run with a lighter load than if you have a longer haul. Then your main line engine will take up those cars and carry them into the mill, and that main line engine often operates solely on the main line, and does not do any loading or operation on the spur track.

Mr. Cowan: Is it customary to carry on loading at different spurs during the same time, so the main line engine will get the output from various spurs?

Mr. Kirby: Yes, sir, and where you do not load with steam, you are bound to have an engine to handle your train that you are loading.

Mr. Cowan: In that case you would have to have an engine?

Mr. Kirby: Yes, sir, where you do not load with steam, where you have not got a steam skidder or loader, where you load with mules or a force of that character, of course you have to have an engine to

operate the train, otherwise you might load one car or a few cars in a train, but you could not load consecutively, nor couple them up continuously.

Mr. Cowan: Does this method you have described generally apply to the principal saw mills in the country, so far as you know?

6501 Mr. Kirby: So far as I have any information, yes, sir.

Mr. Cowan: And it does apply to all your operations?

Mr. Kirby: Yes, sir.

Mr. Cowan: Is the loading or bringing in of logs to the spur tracks, in any case with you, done by the use of mules or teams, or do you in all cases use the loaders?

Mr. Kirby: No, we load some with teams. We operate at 12 or 14 points, and we only have six skidders.

Mr. Cowan: You may proceed with the description of your other mills now, having gone into the question of the detail of operation.

Mr. Coleman: If you do not object, there is one little point I am not clear upon. How would you use the skidder to get the car down?

Mr. Kirby: With a cable. You mean to move the train?

Mr. Coleman: Yes, from the loading point down to the junction.

Mr. Kirby: No, you could not do that; you could only move the train through your skidder. You could not move it beyond that.

Mr. Coleman: That is what I wanted to find out.

Mr. Cowan: Now, taking up this operation at this mill

6502 you have spoken of,—what was the name of it?

Mr. Kirby: Bronson.

Mr. Cowan: How do you get the logs to the place where they are sawed; I mean by that you first unload them in a pond?

Mr. Kirby: Yes. After we have gone through this process of loading the cars and making up the train, you haul it over your main line railroad to the saw mill, alongside of your log pond, and then you unload the logs off the cars into that pond. Then they are brought up with a bull chain out of that pond into the mill. The logs are sorted in the pond so as to fit your orders, and the logs you want to saw at any particular time are selected by the log pond man, and they are pushed on to the chain and carried up into the mill?

Mr. Cowan: How do you get your output of your lumber to the cars? You load it on to the main line track in this particular instance you speak of?

Mr. Kirby: The Santa Fe sends the cars into our mill, and we load them out. We load from a dry shed, or sometimes from the timber dock right at the mill, depending on what you have to load, or from the yard sometimes, if you are shipping rough

6503 stock.

Mr. Cowan: Are extensive lumber yards where lumber is stacked, necessary at large mill operations?

Mr. Kirby: Always, yes, sir.

Mr. Cowan: Is the planing mill operation carried on at the same building where the storing is done?

Mr. Kirby: Not in the same building, no; it is a separate building a few hundred feet away. The idea is——

Mr. Cowan: Yes, I just wanted to inquire why that was?

Mr. Kirby: Well, you save room and save insurance, and often for economy of operation. For instance, your stock that is not dry kilned will have to go in the yard and stay for sixty days to air dry, because you do not plane any wet stock or green stock; you do not use any of that character of stock in your planing mill. And you have to have your planing mill a little removed from your saw mill, otherwise you would carry the lumber away out there and stack it, and then bring it in, whereas now you stack it between the mill and the planing mill, and then you are always moving in the direction of the car loading track.

Mr. Cowan: How do you transport the lumber from the saw to the places to be stacked in the yard, or the dry kiln?

6504 Mr. Kirby: In most cases we do it on little dolly cars with a mule. The lumber is sorted on the sorting tables, and certain of it will go into the dry kiln, and it is loaded on cars and pushed into the dry kiln, which is usually about a hundred feet away, and the other lumber going into the yard is put on these dolly cars and pulled into the yard.

Mr. Cowan: When it goes to the planer, does it go through the same operation?

Mr. Kirby: The stuff will go to the planer either from the dry kiln or from the yard. Often the car on which this was loaded for the dry kiln sets in the dry kiln during the process of drying, and then when the process is complete, the same car is pushed on over to the planing mill, so you do not reload it.

Mr. Cowan: By car you mean a little dinky truck?

Mr. Kirby: It is a mere truck. We call it a car because it operates on rails, and for that purpose we have small steel rails.

Mr. Cowan: And when your lumber comes out of the planer then, it is carried by some sort of truck——

6505 Mr. Kirby: Carried by the same trucks to the car.

Mr. Cowan: To the railroad car, box or flat, or whatever it is loaded in?

Mr. Kirby: Yes, sir.

Mr. Cowan: This process from the stump to the loading on the car for transportation to market is one of continuous transportation as a part of the saw mill operation.

Mr. Kirby: All the time.

Mr. Cowan: Is there any way to segregate one from the other, so as to say one is not of the same necessity as the other?

Mr. Kirby: No, sir, they are all of the same consequence. You cannot get——

Mr. Walter: Some of these questions in form have not been objected to, but I would prefer Judge Cowan should ask the question so it will pass muster as to being leading or not.

Commissioner Harlan: You have observed the admonition of counsel. Will you endeavor to do what you can, Judge Cowan?

Mr. Cowan: I will do what I can to accommodate Mr. Walter in that particular.

6506 Now you may go ahead with your list of mills.

Commissioner Harlan: Let me ask about the Bronson mill. You say the Santa Fe puts the car at the planing mill?

Mr. Kirby: No, not at the planing mill. We do that ourselves. The Kirby Lumber Company does all the switching at the lumber mill.

Mr. Cowan: Is it done with a locomotive of your own?

Mr. Kirby: By our own locomotive, yes, sir; one of the locomotives which handles our logging train switches — the planing mill.

Commissioner Harlan: Where do you get the car from the Santa Fe?

Mr. Kirby: They set it out for us on a connecting track, their track; but the track into the planing mill, however, is our track.

Commissioner Harlan: Built by you?

Mr. Kirby: Built by us.

Commissioner Harlan: And in this case how long is that track?

Mr. Kirby: Well, I cannot give you that, sir. I could not even guess at it.

Mr. Marble: Is it a matter of miles?

6507 Mr. Kirby: No, it is not over 2,000 feet, I should not think, anyway.

Mr. Garwood: How long?

Mr. Kirby: I should not think it was over 2,000 feet; a mere estimate.

Mr. Cowan: What other buildings have you at your mill besides the saw mill and the planer and the dry kiln? You have an office, I suppose?

Mr. Kirby: Yes, sir.

Mr. Cowan: Have you any other buildings customarily?

Mr. Kirby: Well, we always have—now this town at Bronson, that is a country town; but in most localities our mills are located where we control all the property, and of course we have a great many buildings, residences for employees and store buildings, and grain houses and——

Mr. Cowan: But the tracks inside your plant reach ordinarily all the buildings?

Mr. Kirby: They would only reach the storerooms to store hay or potatoes, or anything of that sort used in our stores department.

Mr. Cowan: Do they come into your lumber yard?

Mr. Kirby: Oh, yes, they go all through the lumber yard.

6508 the tracks are all through the lumber yard and to the planing mill.

Mr. Cowan: Now at Bronson is the plant defined by a fence or other enclosure?

Mr. Kirby: No.

Mr. Cowan: How many miles or feet of track have you inside of what we might speak of as the plant itself where you switch back and forth?

Mr. Kirby: I can get you that later. I do not remember it.

Mr. Cowan: I do not know that it is important, but do you remember it in a general way?

Mr. Kirby: I should think there are about 2,000 feet of that planing mill track.

Mr. Cowan: That is to the Santa Fe interchange track?

Mr. Kirby: Yes.

Mr. Cowan: But I mean between your own buildings.

Mr. Kirby: Then there are a number of tracks laid about that planing mill, but I cannot tell you whether it is three or five.

Mr. Cowan: I do not know that it is important.

Mr. Kirby: But we handle all the cars to and from that
6509 Planing mill. Of course that is our business to get it to market. If we did not, we could not ship from that mill. Ordinarily, however, the Santa Fe comes into our planing mills and does that work, but they decline to do it at Bronson because the track is not constructed to suit them, and the physical conditions did not permit us to change it, so we do the work ourselves rather than abandon the mill.

Mr. Cowan: But at your mills the Santa Fe switches the cars in?

Mr. Kirby: Yes.

Mr. Cowan: And deposits them at the loading track?

Mr. Kirby: Yes.

Mr. Cowan: Whether in the planing mill or your storage yard.

Mr. Kirby: Yes.

Mr. Cowan: And when it is loaded they take it out?

Mr. Kirby: Yes, sir. We have a large double mill at Call, Newton County, which is two miles from the Santa Fe. We maintain the track and do all the switching from the mill at Call over to the main line of the Santa Fe. The Santa Fe sets the empty——

6510 Commissioner Harlan: Perhaps we will get at that mill in due course.

Mr. Kirby: Yes.

Mr. Cowan: How long is the main line and permanent track, or that which has been permanent in connection with the Bronson mill?

Mr. Kirby: That is about 12 miles.

Mr. Cowan: What sort of a railroad is that?

Mr. Kirby: It is a substantial standard gauge rail laid mostly with 35 pound new steel rail.

Mr. Cowan: What sort of locomotives do you use?

Mr. Kirby: Standard gauge locomotives. We use some rod engines, and a good many Shays, and I do not know about the assignment to Bronson, whether there is a Shay engine there, or whether they are rods.

Mr. Cowan: Do you haul other stuff than lumber at this mill?

Mr. Kirby: Other stuff than lumber?

Mr. Cowan: Yes.

Mr. Kirby: Well, we haul some stuff, yes.

Mr. Cowan: You have a statement, I believe, somewhere, as to all your mills, as to the amount of your traffic.

6511 Mr. Kirby: Yes, sir.

Mr. Cowan: And we will reach that when we have finished describing the various mills. Now describe the next mill.

Mr. Kirby: As I have started on Call, I will go to that and conclude it.

Mr. Andrews: Before you leave Bronson: You said you had 12 miles of main line track. You have not stated how much tram trackage you had to use at Bronson to get the lumber in.

Mr. Kirby: Well, I do not know just what that is, the spur tracks from the main line, I do not know just how much we have. Sometimes it is one thing, and sometimes it is another. I would have to know what section of land they were logging to know whether they had two miles of such track or four, and I do not know just where they operate.

Commissioner Harlan: On that point our records seem to indicate you have 7 miles at Bronson of what our people have regarded as main line track, and then underneath is a memorandum of twelve miles noted here in the timber track. Does that refresh your recollection as to the mileage of your permanent track at Bron-

6512 son?

Mr. Kirby: Well, we had been logging when I had the 12 miles in view over near Hemphill. In the last few months, perhaps within a year, it may have been as long as a year, we fell back to nearer timber, and this seven mile point would be on this nearer timber.

Commissioner Harlan: You still have five miles of track beyond which has not been taken up?

Mr. Kirby: We still have five miles beyond which have not been taken up, and which we cannot take up for a number of years, although there might be times when we are not using it.

Commissioner Harlan: Before you leave Bronson, it might be well to indicate whether you are hauling logs for anyone else over this 12 miles of track.

Mr. Kirby: No, nor at any other point.

Commissioner Harlan: Or any other merchandise?

Mr. Kirby: Well, we haul some merchandise for ourselves, and merchandise for the merchants that trade with us. They will consign the stuff shipper's order, and of course it is their freight until paid for.

Commissioner Harlan: On what sort of basis of compensation do you perform that service?

6513 Mr. Kirby: It is free. We do not charge anything for it. There is not enough of it to make it desirable from a railroad standpoint——

Commissioner Harlan: Well, is there a railroad standpoint; in other words, do you operate that railroad for the public as a common carrier?

Mr. Kirby: We do not, and we try to avoid that all the time, because in our state, Judge, that is not the only reason, but one of the reasons I might state here would be that you cannot take up a piece of road in Texas that is a common carrier, without the consent of the Legislature, and we would have a lot of investments there when our logging operations ended that would not earn interest on the spikes from the little traffic there is in the country.

Commissioner Harlan: Is there any community or outside interest on the Bronson line?

Mr. Kirby: Yes, the farmers along there, but their trade does not amount to anything much, and our front, about five miles to the front, is the town of Hemphill. There is no railroad there. It is the County seat. But there is not business enough there even at the town of Hemphill all thrown together to pay to operate
6514 a railroad where we have to run trains every day when the timber is done. Of course we could take it along with our present business and it would be a pick-up to that extent, but when we got through we would have a railroad there with no traffic, and perhaps no legislative consent to remove it.

Mr. Marble: Do you actually carry stuff that is offered to you by whoever offers it?

Mr. Kirby: Well, we do not as a rule. I do not know of anybody that has been refused, but it is generally understood that we do not do it. I do not know of anybody that has been refused, but we would like if they would not ask us.

Mr. Marble: You are willing to be a neighbor, but——

Mr. Kirby: Yes.

Mr. Cowan: You may describe your mill at Call, and the railroad operation.

Mr. Kirby: We have a large double mill at Call.

Mr. Cowan: What is meant by that? I have heard that expression several times.

Mr. Kirby: That is two sawmills under one shed; one is a circular saw mill, and the other a band saw mill. The Santa Fe owns the piece of track two miles long from our main line into Call.
6515 We maintain that piece of track, and we take empties for the Call mill at the Santa Fe junction.

Mr. Marble: What is the Santa Fe junction called?

Mr. Kirby: Call Junction, and we take them into the mill at Call and load them, and return the load to the Santa Fe at Call Junction.

Mr. Cowan: What is the length of your road?

Mr. Kirby: Our tram road running our of Call is thirty miles standard gauge part 60 pounds and part 35 pounds rail.

Mr. Cowan: Where does it run to?

Mr. Kirby: It runs northeasterly from Call up into that same county, Newton, at a point east of the town of Newton, about six miles, may be eight miles.

Mr. Cowan: Does it reach the town of Newton?

Mr. Kirby: It does not. It is tending in that direction. We will come right up through the town of Newton in time, because our timber comes right up to the town.

Mr. Cowan: What is the object of having the line thirty miles long?

Mr. Kirby: That is where our trees are, and we have to build to them.

Mr. Cowan: How far from Call is Kirbyville?

Mr. Kirby: Four miles.

Mr. Cowan: Is that also on the Santa Fe rails?

6516 Mr. Kirby: Yes. We have a double mill, circular and band at Kirbyville.

Mr. Cowan: I do not mean to go into that for a moment until we finish the operation of the railroad.

Mr. Kirby: We have 20 miles of standard gauge railroad extending northwesterly from Kirbyville up in the direction of Magnolia Springs, and we haul logs—all these lines are operated just as the Bronson line is operated in respect to the log haul.

Mr. Cowan: Is the manner and method of hauling logs on these main lines you speak of of your tram substantially the same?

Mr. Kirby: Substantially the same, yes, sir, at every point.

Mr. Cowan: Is it substantially the same as it is on these other lines serving other saw mills than the Kirby Lumber Company?

Mr. Kirby: Yes, sir. At Roganville we have about ten miles of——

Mr. Cowan: I want to get back to Call. How much spurs do you have at Call, what length of spurs?

6517 Mr. Kirby: Well, that depends largely upon where you are logging at a particular time. Generally there is in use there about five miles, and sometimes more, of these temporary spur tracks going out to your main line.

Mr. Cowan: All this railroad property and manufacturing property and everything connected with it belongs to the Kirby Lumber Company?

Mr. Kirby: Yes, sir.

Mr. Cowan: You have no separate railroad incorporation?

Mr. Kirby: No, nor organization.

Mr. Cowan: But you do keep separately your railroad operations?

Mr. Kirby: Oh, yes.

Mr. Cowan: Just like you would any other part of your manufacturing business?

Mr. Kirby: Yes, we keep separately what it costs us to feed a mule. You know we want to know what it costs in a particular mill, of course.

Mr. Cowan: Now as to the other mills, the amount of line of road and logging spurs and such special matters as you think material.

Mr. Kirby: We have at Roganville a single mill, and our tram road runs in the direction of the county seat of Newton

6518 County. We have been out very near to that county seat. We haul our logs about 12 or 13 miles to Roganville, and we do not do any business except for ourselves, and do not haul anything from that except for ourselves. Roganville is a country town in Jasper County, of four or five hundred people. There is no business of any consequence except our mill. Newton is the county seat of Newton County, and the Frisco road runs there, and it has no other railroad, and we are within two or three miles of the county seat, and there is no traffic in that country except our business.

Commissioner Harlan: Are there any farms there?

Mr. Kirby: A few.

Commissioner Harlan: What do they produce?

Mr. Kirby: Corn, and a little cotton and some sugar cane, potatoes and vegetables, generally for the supply of the mill trade. They have not anything much for shipment.

Commissioner Harlan: They send the cotton out, do they not?

Mr. Kirby: Yes, but a farmer rather than be bothered by you with only a bale or two would rather take it out on his cart two or three miles and save that cost, if it cost him anything, and a
6519 little road would not haul any cotton unless there was some way of rewarding the man who gave it to it as an inducement.

At Browndel we have a single hand mill and a re-saw with a capacity of about 80,000 feet a day, and we have, I think, about ten miles of railroad there, probably not more than six or seven operating at the present time. We have had much larger mileage around there in the past, because we have had a larger mill, and we are operating in another direction.

At Silsbee we have about forty miles of road. Silsbee is a town of 6,000 people located on the Santa Fe. Our railroad runs from Silsbee to Village, 24 miles, Village being a general town of probably 1,000 or 1,200 people, located on the Southern Pacific. We have there 23 miles or 24 miles of main line of railroad running between those two points, between the two termini. However, we spring tram roads off; we have two, one that logs the mill at Village, and one that logs the mill at Silsbee, and in those two tram roads we probably have 15 miles of temporary line that is taken up and shifted from time to time, as the timber supply in particular localities is exhausted.

There are some farmers along in that country, but they do
6520 not produce anything but hogs and cows for the locomotive to romp on; there is not any traffic much, except our own. We handle a good deal of stuff, merchandise, and foodstuff and grain, and all that sort of thing, but it is largely for our own use, and we make no charge. Sometimes we haul lumber from Silsbee over to Village in order to ship it out over the Southern Pacific, because it fits an order we have on the Southern Pacific, and we have got to move it.

Commissioner Harlan: That haul is how long?

Mr. Kirby: 24 miles. We do that ourselves and get nothing from the railroad or anybody else. The Mill Department, however, is debited in favor of the Logging Department $5.00 a car for that service, but that is just a method of keeping our accounts. Sometimes we take lumber from Village over to Silsbee. We often do that because we have no planing mill at Village, and we will take rough stock over to Silsbee and dress it and sometimes bring it back for shipment over the Southern Pacific.

Commissioner Harlan: Mr. Kirby, what becomes of this country after you have gone over it and cut down the trees, do you own the land?

Mr. Kirby: No.

6521 Commissioner Harlan: You do not own the land?

Mr. Kirby: No.

Commissioner Harlan: Is it taken up by farmers, in other words, is it a good country for agriculture?

Mr. Kirby: No, Judge, it is not a good country for agriculture, though there are areas down there that are capable of being made very productive by scientific farming with the right kind of fertilizer to aid it; because the soil is such that it holds the fertilizer well, and gives the very finest results, but in its natural state it is not productive except along the creeks.

Commissioner Harlan: Is it level country or hilly?

Mr. Kirby: As a rule it is fairly level country, but there are some sections rather hilly. Around Browndel and Bronson it is a hilly section. Up to the north it grows more hilly, but in the south part, down in the southern part of Jasper and Newton and Hardin Counties, and a large part of Tyler County, the country is practically level. Those forests reproduce themselves in the course of time. I do not know how long it would take.

Commissioner Harlan: Do they grow up in pine?

Mr. Kirby: They grow up in pine, yes, sir; that is, in
6522 the long leaf belt. Of course, in the short leaf there is another character of wood, but the soil in the territory growing long leaf pine does not seem adapted to any other but long leaf; that is, there is no natural growth up there. The country is open except for the long leaf pine, except for a little growth of brushwood along the creeks.

Mr. Marble: Do you have any hardwood in these tracts?

Mr. Kirby: Well, along the tracts there are oaks of all kinds.

Mr. Marble: Are you lumbering that?

Mr. Kirby: No, we confine our operations entirely to pine.

Mr. Marble: Is anyone lumbering that hard wood?

Mr. Kirby: Not in our locality. In fact, there is very little done in the hard wood way in Southeast Texas. I believe I have described all the tram roads.

At Fuqua on the Santa Fe, we have 12 or 14 miles of main line running down in the direction of an oil field at Saratoga. We operate that just as the others. It is a standard gauge railroad with steam locomotives and——

Commissioner Harlan: Where is the mill with reference to the Santa Fe's main line?

Mr. Kirby: It is on the main line, about 20 miles west of
6523 Koontz.

Mr. Cowan: How many mills have you altogether?

Mr. Kirby: 13.

Commissioner Harlan: Have you a mill at Bessmay?

Mr. Kirby: Yes, I had overlooked that. That is a double mill with two bands and a gang. We have been maintaining quite a large mileage there, probably 25 or 30 miles of main line. We are not maintaining quite so much now because we have moved in another direction. That is a standard gauge railroad laid in part with 60 pound rail, and in part with 35 pound, with seven locomotives, and used entirely to serve the mill; probably ten miles of tem-

porary line used in logging that mill nearly all the time, on account of its size.

Mr. Cowan: How many employees about, do you have at that mill? I mean in connection with the operation of that mill generally?

Mr. Kirby: I could not say, generally Judge. I would not want to make a guess at that.

Mr. Cowan: Well, a sufficient number to build up considerable of a town?

Mr. Kirby: The town of Bessmay is a town of probably
6524 2,000 people. The Bessmay and Buna, they call them all one; they are probably a mile apart. Our logging forces live at Buna, and the operating forces at Bessmay, but there is quite a little town around there, a number of stores and other establishments there; probably 2,000 people.

Mr. Cowan: Generally speaking you can give some idea. I have not any at all, and probably the Commission has not, and will want to know—what number of people does a large saw mill bring together as a community?

Mr. Kirby: Nearly any saw mill would bring together eight hundred to one thousand people, that is, as people.

Mr. Cowan: Who either live off the saw mill, or off one another?

Mr. Kirby: Yes, sir, there would not be much doing around Buna or Bessmay when the saw mill operation ceased. There are some farmers who raise stuff to trade with the saw mill people.

Mr. Cowan: Do they build their own houses?

Mr. Kirby: The saw mill company builds houses at local points. At large places like Kirbyville and Bronson and Roganville where there was a town before the saw mill was built, the residents of the town work at the mill, and they have their own homes.

6525 Mr. Cowan: Ford's Bluff you have not described.

Mr. Kirby: Ford's Bluff is a mill on the Santa Fe in Jasper County; it is a single mill, and it operates about 17 or 18 miles of narrow gauge tram road in logging. It will not do that permanently, but it is operating about that now, because the line north of the mill has not been withdrawn. We will probably operate less than that in the future, but we have been operating there about 17 or 18 miles of tram road for one little mill.

Commissioner Harlan: Is that mill on the Santa Fe?

Mr. Kirby: That mill is on the Santa Fe, and the spur line runs up the Naches River. This town is on the Naches River, and our line runs parallel to the river north, connecting almost with the Bessmay tram road.

Commissioner Harlan: Have you mentioned the Roganville mill?

Mr. Kirby: Yes, sir, I have described it.

Commissioner Harlan: And the Evadale?

Mr. Kirby: Yes, Ford's Bluff and Evadale are the same.

Mr Cowan: There are Mobile and Lyric which seem to be down on this list.

Mr. Kirby: Well, Mobile we are not operating.

6526 Mr. Cowan: Well, the plant is there.

Mr. Kirby: The plant is there. We had about 15 miles of narrow gauge. Those are the two narrow gauge, one at Ford's Bluff or Evadale, and one at Mobile.

Mr. Cowan: Where is that, please?

Mr. Kirby: It is in Tyler County, on the M. K. & T.

Mr. Cowan: And Lyric you have not described.

Mr. Kirby: That tram road was built to get ties. We have no saw mill on that railroad at all. We built a railroad out there 12 miles to get the ties for the Santa Fe.

Mr. Coleman: May I ask if Buna has another railroad.

Mr. Kirby: The Orange & Northwestern runs into Buna, Bessmay and Call.

Mr. Coleman: That is part of the Frisco line?

Mr. Kirby: That is part of the Frisco line.

Mr. Cowan: How do the conditions of the establishment of towns and the conditions with respect to farming and other production of lumber on the lines that you have described—the lines of the Kirby Lumber Company compare with the conditions on the tap lines, I will call them, serving other saw mills in that part of the state?

6527 Mr. Kirby: The conditions are substantially the same with all us lumber folks in the long leaf belt. They are substantially the same. Of course they vary in the short leaf. The character of the country, and the topography of the country changes, and the character of the logging and extent of the logging changes a little.

Mr Cowan: Does that extend along into Louisiana?

Mr. Kirby: Yes, clear up into Arkansas.

Mr. Cowan: When you say long leaf, you refer not only to Texas, but also in Louisiana?

Mr. Kirby: Yes, sir.

Mr. Cowan: You are personally familiar with the territory through this country?

Mr. Kirby: Yes.

Mr. Cowan: Varying in details, the general conditions *as* are substantially the same?

Mr. Kirby: The general conditions are substantially the same.

Mr. Cowan: The manner of logging operations and operating the saw mill and railroad to the mill are substantially the same?

Mr. Kirby: Substantially the same.

6528 Mr. Cowan: You have a statement showing the location and mileage, and the equipment and tonnage of logs, and camp supplies and operating expenses of your rail operations. Have you a statement of that kind?

Mr. Kirby: Yes, sir.

Mr. Cowan: You may file that table as an exhibit, but state the totals.

Mr. Kirby: We operate 206 miles of railroad, own 44 locomotives, 566 cars, and the approximate tonnage handled during the year ending June 30th, 1909, was 351,781 tons of forest products, and 6,277

tons of camp supplies in one form or another. The operating expenses of that 206 miles of railroad for that year was $399,683.24.

Mr. Cowan: Does that include any of the logging operations on the spurs?

Mr. Kirby: Yes.

Mr. Cowan: Is it all included?

Mr. Kirby: Yes.

Mr. Cowan: What is the proportionate cost of the logging operation on the spurs, if we estimated it say by the ton or carload, and the handling of those cars to the main line track, and the expenses of operation of the main line in pulling the logs to the mill, if you have some idea——

6529 Mr. Kirby: The main line expense should be relatively small as far as the expense goes.

Mr. Cowan: Why is that?

Mr. Kirby: Well, your main line expense involves only the maintenance, which is not much when your road is once in, and the movement of your trains over that part. That requires a very short time relatively. The time is consumed in making up your train, loading your cars, and so on, and when you run by steam you can run five or ten miles in a very short time. The expense, however, if you include interest account, would be another matter, because that would be a considerable item, your interest on the investment. But there is no interest on anything of that kind in these figures.

Mr. Cowan: That is because it is all one investment?

Mr. Kirby: Yes.

(The table so offered and identified was received in evidence, and thereupon marked Intervenor's Exhibit No. 1, Witness Kirby, January 30th, 1911, and is attached hereto.)

Mr. Walter: Will you not ask him why not, instead of suggesting to him?

Mr. Cowan: No, I believe I will decline to do that. Con-
6530 sidering the ratio of the investment in the railroad compared with the investment in the saw mill, is it or not your opinion that there would be any material difference in the cases at your mills to what would be the case with other mills if they had to have the same length of track.

Mr. Kirby: Substantially——

Mr. Garwood: Your Honor, it occurs to me that a general conclusion drawn from the entire record is one that the Commission should draw rather than counsel or the witness.

(Question read.)

Mr. Garwood: That depends upon various conditions covering a vast expanse of territory.

Commissioner Harlan: I am not sure that I understand that question, Judge Cowan.

Mr. Cowan: The point was in regard to the ratio of the expense or expenditures, perhaps it should be put, as between the saw mill and the railroad, whether in this case the ratio of investment is in his

opinion substantially the same or not with other saw mill interest where there would be a similar length of track or of railroad. In other words, he has a saw mill of a certain sort, and perhaps
6531 another lumber company has a similar saw mill and similar conditions some place else. Are there conditions in the country which would make them materially different as applicable to his mill than what they are applicable to others.

Commissioner Harlan: Do you feel you know enough about conditions elsewhere to give the Commission an opinion on that question? Have you gone over these other properties somewhat?

Mr. Kirby: Yes, there are neighboring properties down there in Louisiana. I have not been over Arkansas property to amount to anything, and all I know is what I have heard upon the witness stand here and general information.

Commissioner Harlan: I think considering the witness's wide experience he is competent to answer that question, and in substance I understand it to be whether if the conditions are substantially the same, he knows any reason why the cost of operating a railroad of like length with one of his railroads should be more at another mill than at his mill if the substantial conditions are the same.

Mr. Cowan: The cost of ownership and of operation of that part of the saw mill plant has a ratio to the cost of operating the saw mill.

6532 Mr. Garwood: I would ask that counsel's first question be read.

(Question read.)

Mr. Garwood: That question in that form I think it will be admitted, calls for the conclusion of the witness as applied to all mills everywhere regardless of the particular conditions applicable to each territory, and each mill.

Commissioner Harlan: Perhaps the question is subject to that criticism. Judge Cowan, suppose you direct the attention of the witness to his mills and other mills that he knows of where the conditions are substantially similar.

Mr. Cowan: I intended it to be confined to the part of the long leaf district where he is acquainted, and to ask whether there would be a different ratio of investment in railroads by reason of any local conditions that he knows of in his case, to what there would be in the other cases, if the length of track was similar.

Mr. Garwood. That is an entirely different question from that propounded by your Honor.

Commissioner Harlan: But we are going back to Judge Cowan's question.

Mr. Garwood: Yes. Now he asks if there should be, if I
6533 understand his question, a different ratio between the amount of the investment in the lumber railroad as compared to that investment in the milling properties with him than with some other enterprise. That, is seems to me in addition to other objections that readily occur, could not be relevant here because that is largely a matter of business judgment as to the ratio between the investments.

Commissioner Harlan: The witness may answer if he understands the question, for what it may be worth. What is your answer to the question?

Mr. Kirby: I do not know that I understand just what I am asked.

Mr. Garwood: I confess I do not either.

Mr. Kirby: But I can answer——

Commissioner Harlan: Judge Cowan will you put this question in some other form? I confess I have not grasped it, and apparently the witness has not grasped the point.

Mr. Cowan: The point to which I wish to direct his attention is the ratio of expenses for the railway part of plants and the sawmill part of plants, whether in his cases that would be fairly repre-
6534 sentative of what it would be anywhere in that district generally speaking, provided the length of the railroad was the same in each case, the ratio would be the same. Then length of railroad is not the same. We have longer railroads than anybody else, and our logging cost is higher than the average.

Mr. Cowan: I was asking about the amount of investment relatively in the railroad part of a sawmill plant and the sawmill part of it in your case compared to the relative investment of others, provided they have the same lengths of road.

Mr. Kirby: If they have the same length of road they all have the same investment, because the character of construction is substantially the same in every instance.

Mr. Cowan: The character of the country is the same, of course.

Mr. Kirby: Yes, sir.

Commissioner Harlan: You have stated if the character of the country and the length of the road and the use of it are substantially the same, the investment ought to be about the same substantially.

Mr. Kirby: Yes, sir.

Commissioner Harlan: What about the cost of operation? Do you know any reason why your road costs more or less to operate
6535 than another road doing substantially the same business, and of the same length, and in the same kind of territory?

Mr. Kirby: Our roads would cost more to operate than a road of the same length better built, but assuming that the construction cost is about the same, then the operating cost ought to be about the same. We think we are pretty economical in that line. Of course we do our best to get the work done as cheaply as possible.

Commissioner Harlan: Then to put what I first thought Judge Cowan had in mind, in my own way, suppose there are two mills substantially alike, with the same general modern devices, with the general same output, is there any reason why your investment in the railroad that is necessary to operate that mill should be any less or greater than the investment of the other mill providing the forests are the same distance from the mill.

Mr. Kirby: No reason, except sometimes there may be a physical reason; for instance, a man's timber may be beyond a creek or stream, and it would cost him considerable money to get across. There might be a physical reason of that kind, so——

6536 Commissioner Harlan: Of course, we would always understand that.

Mr. Kirby: Yes, but barring that, there is no reason why the cost should not be the same for operating both, the purchasing of the property and operating it.

Mr. Walter: We might suggest that instead of these generalizations that counsel produce here definite details as to these various matters he is asking about.

Commissioner Harlan: Well, you cannot produce details as to matters which do not lie within the absolute knowledge of the witness. He does not know the cost of other mills.

Mr. Walter: Yes, but of his own he ought to be informed.

Commissioner Harlan: Up to this time I must rule that the inquiry has been within bounds. I see nothing to strike from the record.

Mr. Walter: I am not asking that, but for further light.

Mr. Coleman: I endeavored to get a chance to say this before. It occurs to me that any question based upon a ratio of operating expenses to the mill investment should be determined. He has already stated what the operating expenses amounted to, $390,000. I think the proper way to solve the problem is to tell what the mill

6537 operations are, and then it would be a mathematical computation.

Commissioner Harlan: My attention was diverted. Will you state that again.

Mr. Coleman: The witness has stated in money the cost to operate the railroad which is an exact sum, and he is asked a question which requires him to state the ratio between the operating expenses of his railroad and mill expenses, and the operating expenses and expenses of another road and their mill expenses. He should not do that, but tell what milling expenses are, and then the question can go on.

Commissioner Harlan: Well, can you give us any figures that would enable us to test the accuracy of the statement you have just made?

Mr. Kirby: Of the mill operations?

Commissioner Harlan: Yes, you have given us on the exhibit which you had a moment ago, the cost of operating the various railroads. Now counsel suggests in order that we get an absolute basis for the judgment you have expressed, if we had in a particular case the cost of operating the mill——

Mr. Kirby: We could get to that cost. I haven't it at my

6538 finger tips. These figures——

Mr. Cowan: We will not want to put in the detailed cost of the operation of the mills. That branches, of course, immediately to the exact cost of the production of lumber and so on, which we have decided we do not want to supply.

Mr. Kirby: I would like to state in connection with this, Judge——

Mr. Coleman: And I wish to make this motion on behalf of the Santa Fe Railroad, to strike out the answer of the witness unless the ratio of the milling cost is given, and the reason for that will become obvious as we proceed in the case.

Mr. Marble: Mr. Commissioner, I do not understand that a man building a logging line out into the forests is entitled to any more or any less out of his freight rates, because his mill is a very expensive one or a cheap one, or economically managed or extravagantly managed. Now it may be that this is very relevant, but I do not perceive at the present moment what difference it makes what the ratio is.

Mr. Cowan: In order to save argument, we would have to decline to furnish the information. We have considered it.

6539 Let the matter be passed up to the Commission. If they should see fit to require it, even in that case we would only want to furnish it to the Commission. If these people want to know the exact expense of every bit of Mr. Kirby's business, we might want to learn it of the other men's business, but I do not think the lumber men here would desire and demand of one another that which would be an unfair advantage possibly, and could not be used for any valuable purpose here, as Mr. Marble has very well put it.

Mr. Garwood: It would seem to me that where the gist of the complaint in this case is a discrimination that is alleged to result from the construction and operation of railroads under a charter as common carriers, who as such are entitled to receive and do receive divisions of rates, where the intervenors and the witness complain that discriminations result as against them from those facts, that the inquiry into the cost of production, the selling price, his market, where he meets competition of others, is an unescapable field that the mind is naturally directed to, and it goes into that as the most necessary and proximate field of inquiry. If he has been excluded from a market——

Commissioner Harlan: Do you mean the mill cost is a proper inquiry here?

6540 Mr. Garwood: Yes.

Commissioner Harlan: I do not see why it should be, but I would like to have your views on the subject, Judge Garwood.

Mr. Garwood: The contention will be here that by reason of the operation of these short line roads which are also doing a common carrier business, or at least holding themselves out as such, by reason of money that they are supposed to make by the operation of the road, which if they make it goes ultimately to the pocket of the same stockholding interest, that thereby in some way, the lumber interest that also owns an interest in a railroad has an advantage in the production and sale of lumber. Now it would seem to me that you cannot escape the inquiry as to whether he is put at an advantage or disadvantage, or whether they are at an advantage or disadvantage. You cannot escape the inquiry into the cost of production and the selling price of the lumber. Why? Suppose they contend, as they must contend in order to sustain any such proposition as this, that they cannot sell as cheaply as those who are not situated as well as they are. That must be the contention; otherwise, I see no discrimination. Suppose they make that contention, and they

6541 must make it, then it certainly becomes an unescapable inquiry as to what you do sell at, and as to what the other man

sells at. If it should appear that his selling price is the one or the other, lower or higher than his competitors, it would certainly be relevant to that.

Then if he claimed that their cost of production is greater or less than his, certainly as resultant from the operations that we are inquiring into, it seems there is no way to get at any testimony that will be of the slightest benefit to Your Honors except by going into the actual cost. Now we have had opinions from almost everyone here. Why rest a case of this importance on opinions when we can get at the facts in the case?

Mr. Marble: May I be pardoned just one moment, because I think it was the thing I said which drew out the discussion from Judge Garwood. It seems to me the difficulty with Judge Garwood's view is this. He is assuming the Commission has jurisdiction over the entire field of industry. It has *not*. It is assuming that the discriminations which the Commission is set to correct are discriminations in anything affecting the marketing of products. We have no such jurisdiction. The Commission has jurisdiction to correct discriminations relating to transportation.

6542 Now then it might well be that Mr. Kirby's company bought its land at one dollar an acre, and that some other company bought its land at fifty dollars an acre, and that one must figure an income upon a small investment, and the other upon a large investment. It might be that Mr. Kirby's companies were favored in some way by the railroads, and that the other concerns were not, and you get into such a maze of indeterminable facts that nobody could tell them what the answer would be to any question. Now it may well be that the concern which pays the most for its land is the favored party in a discrimination by a railroad, an absolutely criminal discrimination, and that the concern which pays the least for its land is suffering from that discrimination, and yet through good investment it is such that it survives and crushes the favored party in the market. Now, then, this Commission is not set to correct the advantages which arise in any way except in the dealings with the railroad companies.

That brings me to my point. I do not believe the selling price of this lumber, or the cost of it at the mill is the thing which the Commission is set to correct at all, and the fact that the person

6543 discriminated against is crushed in the market is only evidence after all subject to explanation as to the way in which he suffers. If the Commission tries to cover too much ground it will succeed in covering none at all. If we have to take into consideration and undertake to correct the inequalities arising in any other way than transportation arrangements, we will spread over such a territory—I say we, through my employment by the Commission, but I should address them as an outsider—that it will succeed in getting a firm grip on nothing at all. So here, as far as I have to do with the matter, I shall argue that the Commission shall define in these cases what is transportation subject to the act, and having determined and draw a sharp line of cleavage between transportation subject to that and outside operations, then it should inquire

whether or not there is discrimination in the rates and the facilities for the transportation subject to the act and that advanages or disadvantages arising outside of that field do not concern the Commission. Now it may be that advantages under the act may arise otherwise than by divisions. I have that in mind during this discussion. There may be loans of money, contractual relationships, there may be devices by which the same result may be accom-
6544 plished for the concern which does not get divisions as for the concerns which do. Anything of that sort which arises with the transportation companies we should of course go into.

Mr. Walter: I was going to inquire whether this inquiry is to be limited to transportation companies. For example, take the investment here, in the railroad as compared with the investment in the mill, which he says bears a certain proportion; suppose the investment in the mill was made by the railroad or trunk line, are we not to look into that and see how it goes into the market? We are ready to offer anything that throws any light upon this, and there has not been anything asked but what has tended to the final result of getting to market, and we think this is one of the material questions.

Commissioner Harlan: No one has told us the cost of mill operations. That has not been asked of anyone.

Mr. Walter: But you have asked questions relating to it.

Commissioner Harlan: I think not.

Mr. Cowan: For the purpose of the record I will say first I subscribe to what Mr. Marble says with the one qualification,
6545 that in regard to the loan of money which may have been made by transportation interests, that I would have to disagree with him probably. I do not want to argue that now as it is not up. But in regard to the matter of discrimination and the matter of rates and advantages and disadvantages, I wish to say that there is nothing in the case either by questions I have propounded, by our petition, and nothing in the jurisdiction of the Commission under the Act which will enable the Commission to regulate, and therefore it would have no right to take proof to show that there was a discrimination arising out of anything except the transportation charge or some rule, regulation or practice in connection with it. And with that statement I will subscribe to what Mr. Marble has said.

Mr. Coleman: At this point, it seems to me, everybody agrees that the cost of the mill does not come into it, therefore the question asked Mr. Kirby, to compare his operating cost with his mill cost, and then compare that with his competitors, is plainly irrelevant, and I renew the motion that it be stricken out or at least; if you determine it is relevant, then we must insist on having the figures so we can figure with our lead pencils as well as Mr. Kirby.

6546 Commissioner Harlan: I think the suggestion made by Mr. Coleman is well taken, and all the evidence along this line may be stricken out except the one question, whether he knows any reason why it should cost more to operate another railroad in this same territory under like conditions than it costs him, and that is

asked this witness only as a test from one of long experience, of the figures that are already before the Commission.

Mr. Cowan: I do not think the Commission ought to exclude from this statement the actual amount that it did cost in operating expenses for operating the 206 miles of railroad.

Commissioner Harlan: No, my ruling expressly indicated that, as a test given by the actual experience of this witness of the correctness of figures, that are already in the record.

Mr. Walter: Have you figured in that the investment?

Mr. Kirby: No.

Commissioner Harlan: Just the cost of operation?

Mr. Kirby: Yes, sir.

Commissioner Harlan: Now proceed, Judge Cowan.

Mr. Cowan: The complaint of the Intervenors' petition, I wish to direct your attention to pages 2 and 3, of the intervening peti-
6547 tion, and reciting the names of certain railroads that operate in this territory, either themselves or by their connections, and transport lumber from these various tramways and saw mill industries either in hauling lumber or logs and charge therefor the regular through published rate, and allow the short lines and tramways divisions of said rate which inures to the benefit of the owners of the saw mills which said short lines and tramways serve, and to which they belong in whole or in part, which allowance or division of rates amounts to rebates, and an undue and unreasonable preference and charge in favor of the owners of the saw mills and shippers of lumber who own or are interested in the ownership and management of said short line railway serving such saw mill industries and constitute an unjust and unreasonable prejudice and disadvantage to the complainants and others similarly situated and shipping lumber under the same tariffs upon the same rates to the same and other interstate points, and who do not receive any such division or allowance out of the published rate. The effect is that complainants and others who do not enjoy such divisions and allowances are compelled to pay more for the same service in transportation of such lumber and the owners of saw mills and shippers who are the owners of and
6548 operating tap lines to receive such divisions of the rate."

Directing your attention to that allegation in the complaint, I desire to inquire with respect to the matter of divisions and how they operate, as is pleaded in the petition, to the disadvantage of those who do not get them.

Mr. Kirby: Well, those saw mill people who get divisions have the advantage to the extent of that division, whatever it may be, in getting to market. The equality of opportunity so far as transportation is concerned, is disturbed to that extent.

Commissioner Harlan: For example, or as an example, can you go into any more detail?

Mr. Kirby: Take the testimony that has been given on the stand. The Kirby Lumber Company, our rate to Chicago is 26 cents, and we pay 26 cents; and another man getting a six cent division would pay 20 cents. If a dealer in Chicago wanted to buy 100 carloads of

lumber, and often one dealer wants that much, a difference of five cents a thousand feet would make a difference of $750 on that order. Well, a difference of five cents a thousand feet is not more than three tenths of one cent per hundred pounds. Yet here is this fellow with his six cent division or his four cent division getting an ad-
6549 vantage that would not be five cents a thousand feet, but it would be $1.50 or $2.00 a thousand feet, and he is getting that out of the rate. Of course nobody objects is he can sell it for more, that is his business, and I think he should be commended; but I do not think he ought to get it out of the rate, the basis upon which all of us must figure.

Mr. Cowan: Now suppose that in all of these operations of lumber mills by means of logging roads through the sentence you used, and which generally seems to be in vogue, it was so arranged that everyone would be allowed an equal amount out of the through rate to the same point——

Mr. Kirby: That would not make any difference, that would be all right. But every miller gets to market then on the same basis. It is not a fact that one fellow pays a lower rate, that the rate is lower to the one man, and that it is higher to the other. If the rate is equal to all, it does not make any difference how much they get out of it.

Mr. Cowan: Do you think the amount of the divisions which should be allowed, if any were allowed to a railroad serving the saw mill, could in anywise be so adjusted as to be based on the cost of operation of that particular railroad?

Mr. Kirby: I do not know that I understand your question.

Mr. Cowan: Well, take a given railroad. Here is a rail-
6550 road of the Fullerton interests, we will say, down at Fullerton. Should the divisions they get be regulated by the cost of the operation of their railroad? Assume that they were entitled to a division, could it be done and equalized with somebody else, for example Mr. Crossett up in Arkansas, who may not make any money?

Mr. Kirby: Well, it is possible to do that, but I should not think it feasible; I should not think the regulating authority, which in this instance would be the Commission, would want to take up such detail as to that to base it on the profits of the operator, because they are not the operator.

Mr. Cowan: There would be such difference in the cost of operation of the different roads serving the saw mills by reason of their length and other conditions, that it would not be possible to have a division based upon the theory of paying the cost of the mill road operation.

Mr. Kirby: I should not think so at all.

Mr. Cowan: That would produce a worse inequality, if anything, than exists to-day?

Mr. Kirby: It would produce a great deal of confusion. You have no basis to figure on at all insofar as fixing the amount
6551 is concerned. If there is a division, everybody ought to get the same division, and everybody could get to market on the

same basis, but that is as to the transportation feature, and the fellow that has the high cost so far as his operation goes, timber costs or anything of that sort, that is his misfortune; it is not produced by the law, and cannot be regulated by the law I should not think.

Mr. Cowan: By an equal division if a division system should be adopted, do you mean a per cent of the rate, or so many cents per hundred pounds?

Mr. Kirby: So many cents per hundred pounds, I should think, would be a feasible method of handling it.

Mr. Coleman: May I ask Mr. Kirby, I do not quite get your answer. Do you mean that the tap lines should be handled so that every mill gets the blanket at the same rate?

Mr. Kirby: Yes, sir, that is what I mean, if any tap line division is to be allowed at all.

Mr. Coleman: That is the premise, yes.

Commissioner Harlan: How would you manage such a situation with your mill? You have one line that is 39 miles with a mill at each end. You have no haul to get to one line and 39 miles to get to the other. How would you meet such condi-
6552 tions?

Mr. Kirby: My statement was that I did not think the cost ought to be taken into consideration.

Commissioner Harlan: Of getting to the junction point?

Mr. Kirby: Of getting to the junction point.

Commissioner Harlan: Whichever road you take.

Mr. Kirby: Whichever road you take, yes, sir.

Mr. Marble: Would not that lead to the theory that if you went out from the main line to get your logs with your mill on the main line, that you ought to have the same division there?

Mr. Kirby: Any man that has got a sawmill ought to have the division, it does not make any difference how long his tram road is, whether one mile or forty, and he ought to have the same division because if his line is forty miles long, the chances are that he has overcome that disadvantage another way by buying cheaper lumber out there. But when he bought that timber he figured what it would cost to get it to transportation points, but those are conditions not created by the law, and I do not think the law can correct them. But as a transportation problem, the law can fix the condition on which we all go to market. If we are to maintain the blanket system, let us have it, but if there are to be favorites, I would like to have
6553 it figured in such a way so we could take care of ourselves if there was a way.

Mr. Cowan: Is it your opinion that the division system, considering the conditions with respect to the mill road serving them, the fact that in many instances they could not operate when the timber is gone, would it be practicable in your opinion to have equality upon any system of divisions, or do you think it is better to have the divisions all abolished and leave the blanket system of rates in effect? I am not speaking now of the legal right to abolish, but suppose there was nothing illegal in the way?

Mr. Kirby: I do not know whether it would make any difference

whether the divisions were paid or whether the divisions were withdrawn. What I contend for as a lumber man in the manufacture, and I think the principle is right, or I would not contend for it, I do not contend for it for any selfish reason of my own to get an advantage over my neighbor, but I contend for it because I think the principle is right, of equal opportunity for all insofar as the transportation feature is concerned. It is indispensable to every manufacturer, every fellow has got to go to market, he has got to use the railroad to get there. The rate to him under the blanket
6554 system is presumed to be the same, and the law forbids discriminations and favoritisms in those matters. I think we ought all to be on the same basis and paying the same rate. I am not discussing what that rate should be because I do not know, without any favoritism towards any. But insofar as manufacture is concerned, that is an economic matter that has to take care of itself all over the world. The law does not create the conditions under which we act, nor can it supply conditions that do not exist. It is a sort of doctrine of the survival of the fittest in that respect, the most capable will make money, and the incapable will fail, but certainly we ought all alike to have the opportunity to get to market on the same freight rate under the theory of industry in this country.

Mr. Cowan: Have you a statement by states of the output and sales of your mills?

Mr. Kirby: Yes.

(The statement referred to was received in evidence and thereupon marked Intervenors' Exhibit No. 2, Witness Kirby, January 30th, 1911, and the same is attached hereto.)

Mr. Cowan: I will ask you to read enough to illustrate some of summaries by months and by states. You might read the
6555 summary to show where the lumber goes to different states.

Mr. Kirby: This information was asked by Judge Garwood, and this paper was prepared in accordance with that request. This statement shows the states into which we have shipped lumber. It is the lumber delivery, the lumber that moved out of the mill from January, 1910 to November, 1910, both inclusive. We shipped into Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, New Mexico, New York, Ohio, Oklahoma, South Dakota, Texas, Wisconsin, Mexico and then there are some export, and Pennsylvania, Massachusetts, Tennessee, a little bit to Minnesota, a little bit to Canada.

Mr. Cowan: Give the number of cars to each state.

Commissioner Harlan: Take a given month.

Mr. Kirby: The total cars are out here in this column for the eleven months.

Commissioner Harlan: Very well.

Mr. Cowan: Take the whole eleven months and read the total number to each state.

Mr. Kirby: Colorado 23 cars; Illinois, 910 cars; Indiana, 439 cars; Iowa, 569 cars; Kansas, 1860 cars; Michigan, 317 cars;
6556 Missouri, 750 cars; Nebraska, 702 cars; New Mexico, 112 cars; New York, 64 cars; Ohio, 251 cars; Oklahoma, 1257 cars;

South Dakota. 72 cars; Texas, 2,933 cars; Wisconsin, 124 cars; Mexico, 23 cars; export shipments 546 cars; Pennsylvania, 54 cars; Massachusetts, 103 cars; Tennessee, 24 cars; Louisiana, 2 cars; Minnesota, 14 cars; Canada, 3 cars; Wyoming, 1 car; Maine, 2 cars.

Mr. Cowan: Does that pretty well represent generally the range and ratio of sales of lumber?

Mr. Kirby: Yes, sir; sometimes we sell more in one locality, and sometimes less. The quantity and the localities change, this is fairly representative of the area which it is distributed over.

Mr. Wood: Would you mind having him read the total number of cars. It is a matter of computation, but I have not the details.

Mr. Kirby: 11,781.

Mr. Wood: For what period is that?

Mr. Kirby: Eleven months, beginning January 1st and ending November 30th, 1910.

Mr. Cowan: Have you got a statement that shows the amount of material sold to the Santa Fe?

6557 Mr. Kirby: Yes, sir. You mean the stuff shipped by the Santa Fe or to the Santa Fe?

Mr. Cowan: Shipped by the Santa Fe is what I mean.

Mr. Kirby: Yes, I have a statement there. That is a number of these same cars, but if they are not all accounted for, probably that is the export business.

"Statement of carload shipments of lumber made by the Kirby Lumber Company from mills on the Santa Fe Line in Texas, and percentage showing proportion destined Santa Fe system points and points beyond." That is the statement?

Mr. Cowan: Yes. That is the output by the different mills you own?

Mr. Kirby: Yes, sir, from January 1st 1910, to November 30th, 1910, inclusive.

Mr. Cowan: Now read the substance of that statement; the summary will do, I guess.

Mr. Kirby: The total shipments were 11,133 cars.

Mr. Cowan: How many on the Santa Fe—I mean to Santa Fe points?

Mr. Kirby: 3,821 went to Santa Fe points, and 7,312 cars to points beyond.

Mr. Cowan: And what percentages?

6558 Mr. Kirby: The percentage to Santa eF points was 34, and the percentage beyond was 66. Of that 34 per cent, that is the lumber that stopped on Santa Fe rails, probably 50 per cent or more than that went to competitive points on the Santa Fe.

Mr. Cowan: Would not practically all large consuming points like Chicago, Kansas City, St. Jo——

Mr. Kirby: They are all competitors.

Mr. Cowan: Do they not consume by far the largest amount of the lumber?

Mr. Kirby: Yes. It is a very liberal estimate to say 50 per cent of this stopped at local points; probably not 20 per cent did.

Mr. Garwood: You have no separate estimates as to what goes to local points?

Mr. Kirby: No; we did not have an opportunity to make that up.

Mr. Garwood: Could that be done without great trouble?

Commissioner Harlan: Local Santa Fe points you mean?

Mr. Garwood: Yes.

Mr. Kirby: The Santa Fe might have it.

Mr. Cowan: We will file the statement he has just referred
6559 to.

Commissioner Harlan: Do I understand you cannot get that information?

Mr. Kirby: We could pick it out in time, but we have not had time to do it.

Commissioner Harlan: Would it be too much trouble to do that for us?

Mr. Kirby: We will try to get it if the Commission asks for it.

Mr. Cowan: Mr. Hancock's statement is that we would have to pick out the expense bills on the 11,000 cars.

Mr. Hancock: We would have to pick out those expense bills and some of those are gone. We can do it, but we cannot do it in a day.

Commissioner Harlan: Perhaps you could indicate a month or two which would be typical for lumber shipments, and that might meet your desire.

Mr. Garwood: Can we have—what would be a typical heavy and light month?

Mr. Kirby: The average is the same; they do not vary ten per cent.

Mr. Garwood: Take any two typical months.

6560 Mr. Kirby: You name the months.

Commissioner Harlan: You suggest some particular months.

Mr. Garwood: Take the first three months of last year.

Mr. Hancock: Can you make it two? It would be a whole lot less work.

Commissioner Harlan: Take January and March of 1910.

(The paper referred to was received in evidence, and thereupon marked Intervenor's Exhibit No. 3, Witness Kirby, January 30th, 1911, and the same is attached hereto.)

Mr. Cowan: You have a statement to show the total of all shipments covering the period from 1904 to November, 1910, and the amount of freight charges?

Mr. Kirby: Yes, sir.

Mr. Cowan: We will offer that as an exhibit.

(The paper so offered and identified was received in evidence, and thereupon marked Intervenor's Exhibit No. 5, Witness Kirby, January 30th, 1911, and the same is attached hereto).

Mr. Cowan: You may read that pretty largely into the record.

Mr. Kirby: Total number of cars shipped from 1904 to November 30th, 1910, inclusive, was 118,978 cars. Freight charges
6561 paid $8,896,306.79. Average per car $89.46. That is what we paid on commercial lumber only shipped by us for that

period. There was a lot of other lumber sold f. o. b. in the mills to the railroads and others, and the freight rate is not figured on.

Mr. Hancock: 19,534 cars in that total sold f. o. b. the mills, that is not figured on the average freight charge?

Mr. Kirby: Yes.

Mr. Hancock: The total number of cars upon which the freight charges were paid was 99,444.

Mr. Cowan: The freight rates have been the same from each blanket point during this period, have they not?

Mr. Kirby: Yes, sir.

Mr. Cowan: There have been no changes?

Mr. Kirby: Well, yes, there have been some little changes, but the blanket system has been maintained substantially.

Mr. Coleman: I would like to inquire the purpose of this. What light it sheds on the question, the amount of money paid by the lumber company in the past seven years. I confess I cannot see how that helps us here.

Commissioner Harlan: I do not understand that counsel objects to that testimony. If he does, I must overrule it. I think it
6562 bears a general relation to the question. It shows the extent of the business of this company, and affords a basis for some examination of the effect of the non-allowance of divisions to this Commission. That is one suggestion that may arise on this exhibit.

Mr. Coleman: There is no objection, if that is the understanding, but wherever a rate is involved I think we should know whenever changes in the rates have taken place, and that revenue should not be testified on any general rate where it has been changed.

6563 Mr. Cowan: Now you speak of the blanket system being necessary. Suppose the blanket system should be destroyed, and a mileage basis of rates established, what would be the result in the marketing of lumber in the various states and various points; what would be the change in the commercial side of the proposition?

Mr. Kirby: Of course the fellow nearest the market would have an advantage and a very substantial one; it would depend upon the amount of the rate, of course. He would have the advantage to the extent of his shorter mileage. I expect my mills would be ideally located; that is my judgment of the situation. The State of Texas alone consumes about as much lumber as she makes. Of course we would have the short mileage, and we would have an advantage in most sections of the State over Arkansas or Louisiana, our competitors.

Mr. Cowan: When you say "she consumes as much as she makes," you mean she consumes an amount in the aggregate equal to the output of Texas mills?

Mr. Kirby: Yes, she consumes the largest amount from Louisiana and Arkansas, but the quantity is about the same.

Mr. Cowan: Do you have in mind the amount of interstate lumber shipped into Texas, as shown from the Texas Commis-
6564 sion's annual report?

Mr. Kirby: No.

Mr. Cowan: At this point we will ask if counsel will not all con-

cede that we may use the statistical tables in the annual report of the Commission of Texas and their figures as to the amount of state and interstate traffic.

Mr. Garwood: I think that is understood, that it is to be used.

Commissioner Harlan: There being no objection, that will be understood.

Mr. Cowan: Do you remember to have observed the percentage of the lumber into Texas interstate as compared with intrastate?

Mr. Kirby: No, I do not recall.

Mr. Cowan: As a business man and acquainted with the industry, what is your opinion with respect to whether the Texas mills supply a majority of the lumber sold in Texas or whether they do not.

Mr. Kirby: They do not. Our concern is the largest in the state, and we do not make, of course, half as much as the state consumes, yet we do not sell over twenty-five per cent of our product in Texas.

6565 Mr. Cowan: What I meant was, if in your opinion the total consumption of Texas is supplied mostly from the state or outside points.

Mr. Kirby: From Louisiana.

Mr. Cowan: And your answer is Louisiana.

Mr. Kirby: Yes, sir. Of course Arkansas ships quite a lot in there.

Mr. Cowan: Are rates of freight from Louisiana through to Texas consuming points the same as from the Texas producing points to consuming points in Texas?

Mr. Kirby: Well, they are substantially the same. Of course we have sort of a mileage basis in Texas; not exactly a mileage basis, but the rates nearer the forest are a little lower. For instance, Houston has one rate and Galveston has one rate. That is water competition in there. San Antonio has another rate. San Antonio, Dallas and Fort Worth are common point territory and are all in the blanket system. But the mills situated near Houston have a little advantage in getting in there.

Mr. Cowan: And by the term common point territory, do you mean common point territory as to lumber and not the general transportation conditions?

6566 Mr. Kirby: No, we have general common point tariffs on lumber.

Mr. Cowan: So you mean you can ship from any point in Louisiana to Fort Worth on the general rate of 18¾ cents, and that is what you would pay from your mill to Fort Worth?

Mr. Kirby: Yes, sir; the rates are all the same to consuming points in Louisiana.

Mr. Cowan: If your Honor please, we have a few more questions. I had a long list to run over, but I want to have the opportunity of going over it during the recess. I think it will economize the time if we could adjourn at this point.

Whereupon, at 12.25 P. M., a recess was taken until 2.00 P. M.

6567 After Recess.

2:00 P. M.

Mr. Garwood: I have a telegram from Mr. S. P. Kennedy, Secretary of the Alabama Commission, to this effect:

"MONTGOMERY, ALA., *Jan.* 30, '11.

Mr. H. M. Garwood, Auditorium Annex:

What is known as tap lines in this state are largely and very nearly without exception common carriers in the strictest sense of the word in that in addition to their development of the lumber interests of this state they are aiding in the agricultural development and they are under the jurisdiction of this commission as intrastate carriers; this being true this commission thinks that it is nothing but equity that they should participate in through rates as common carriers; that is to say, all lines that are fulfilling the duties of common carriers kindly make known to the interstate commerce Commission the attitude of this commission.

S. P. KENNEDY, *Secretary.*"

And in accordance with his request I present the telegram
6568 and ask that it be made a part of the record. Now as to whether they desire leave to formally intervene in this case, this telegram does not state. I assume that you will be further advised.

Commissioner Harlan: The telegram will be received.

Mr. Cowan: Not to make an objection, but I would like to know if it be received that it be received on this condition that the member of the Alabama Commission sending that telegram come forward, as did the gentlemen from Louisiana and Arkansas to tell us the reason. We would like to have that, if such telegram is to be received as a matter of opinion, for the purpose of cross examination.

Commissioner Harlan: It has been the purpose of the examination to confine it as largely as it may to the conditions of the tap lines west of the river. Our understanding is that very few relatively of the tap lines east of the river are receiving allowances, and we will assume that whatever disposition will be made in this case will be controlling east of the river, without the necessity of another record, if the deposition is of a general nature. And if it is of a special nature, then we will take up the conditions east of
6569 the river. For what it is worth, and what bearing it may have, the telegram may be filed.

(The telegram above referred to was marked "Filed.")

J. H. KIRBY was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Cowan: What is the size of the town of Kirbyville?

Mr. Kirby: I think about 3,000 people.

Mr. Cowan: What industries are there there, apart from the saw mill industry, from which people can obtain a means of living?

Mr. Kirby: The main industry at Kirbyville and in fact the only

industry there, is the saw mill and the things incident or contingent on or supported by the saw mill. There is a bottling works and perhaps some few smaller things like that, a lot of stores and a couple of banks and a pretty good school.

Mr. Cowan: How can the people gather sustenance for the purpose of supporting these institutions you have just mentioned, except through the operation of the saw mill industry at that point?

Mr. Kirby: A very large percentage of the population of all the saw milling territory is supported directly or indirectly by
6570 the saw milling industry. The agricultural interests of that section are small relatively, and it is so in all saw milling territory; the agricultural interest is relatively small.

Mr. Cowan: To what extent is that dependent upon the sales, directly or indirectly to those who are operating the saw mill industry?

Mr. Kirby: It is very largely dependent. It is their local market for everything except cotton. Of course where they produce cotton they send it elsewhere. That is not marketed locally. But their sugar cane and corn and cabbages and peanuts and tomatoes and watermelons and all that sort of thing are marketed locally to the mill people, or those living directly or indirectly out of the milling industry.

Mr. Cowan: Taking Kirbyville as an illustration, supposing the Kirby mill were destroyed, and the railroad could not operate, assuming that the timber should take fire and burn and destroy the timber in the country tomorrow, what would necessarily become of the town of Kirbyville?

Mr. Kirby: Well, it would have to hunt a new location, if the men were employed, because there is no employment for them, or nothing to sustain them.

6571 Mr. Cowan: How many people are employed at your mills of a certain standard; say, a double mill or single mill?

Mr. Kirby: In a single mill it requires in the operating department, that is, the logging and manufacturing, about 225 people, and a double mill, depending upon its capacity. Our best mill would require about 600 men, and our Call mill about 500 men.

Mr. Cowan: What do you figure the population?

Mr. Kirby: It is usually about four to one, I think.

Mr. Cowan: That is, the direct employees?

Mr. Kirby: Direct employees, are, as I have named, about 225 for a single mill and about 500 for a double mill.

Mr. Cowan: And about four to one; that is, for the families, however, of the particular ones employed?

Mr. Kirby: Yes.

Mr. Cowan: Then come the doctors, school teachers and dentists?

Mr. Kirby: Well, there are not many of those. There are a few, but there are a lot of industries conducted at all these points, markets where fresh meats and other things of that kind are sold, and ice cream parlors and things for the entertainment of the
6572 people and their doctors and dentists and preachers, school teachers and all kinds of people necessary to make up a community.

Mr. Cowan: The reason I am asking these questions it has been testified several times in this case that by the construction and operation of these tap lines as common carriers they develop certain things in the community, and they have maintained all those things. My general question is whether or not the development is precisely the same, whether it is a common carrier or not, and results primarily from the saw mill industry.

Mr. Kirby: That is my judgment. It makes no difference whether it is a carrier or is not.

Mr. Cowan: How many men do you work altogether?

Mr. Kirby: In all the departments, including our hewn tie and piling department, and including the employees of sub-contractors, between 6,000 and 6,500 men.

Mr. Cowan: And that is the operation of the thirteen mills, is it?

Mr. Kirby: Yes, sir. Well, there are two mills not in operation now, but that is it substantially.

Mr. Cowan: And 200 miles of railroad is main line or main line and spurs?

6573 Mr. Kirby: It includes both, and then there are a lot of rails that may be laid today and up tomorrow.

Mr. Cowan: Does this 200 miles——

Mr. Kirby: There is 206 miles in operation all the time.

Mr. Cowan: Independent of the rails which you may have put down in other places?

Mr. Kirby: Yes, sir, independent of the rails we might have unlaid, or which may be laid today and up tomorrow.

Mr. Cowan: Do you have your locomotives equipped with air brakes?

Mr. Kirby: Some of them; most of them.

Mr. Cowan: What is your situation with respect to liabilities for injuries and the like to people?

Mr. Kirby: Our liability, I am advised, is substantially the same as a carrier, as a trunk line or any other line.

Mr. Cowan: In practical effect?

Mr. Kirby: In practical effect. We used to think down there that there was no liability for injuries resulting in death, but our Supreme Court whacked us one on that, and we recently had to pay a death claim of some $20,000.

Mr. Cowan: In regard to stock killed on the track, and the like, you spoke a while ago——

6574 Mr. Kirby: The same liability as a carrier, except this that where a railroad proper does not fence its right of way they cannot be heard to make any defense against any stock killing they may make, because that is prima facie negligence.

Commissioner Harlan: We mean under the laws of that state?

Mr. Kirby: Under the laws of Texas.

Mr. Cowan: There are a good many questions along that line that I might ask, but I will forego them, and you may take the witness.

Cross-examination:

Mr. Garwood: From your statement this morning I do not understand that you contend that you have been shut out of any market or that those whom you call your competitors have under sold you in any particular market by reason of any supposed divisions that the owning interests of the railroad serving those competitors may have received. You do not make that contention in this case?

Mr. Kirby: Well, I do not know about being shut out of any market. We get into market. We do not get in on the same basis that they do, where they have a lower rate.

Mr. Garwood: You do not contend in this case that you have been shut out of any consuming territory which may be
6575 served and is served by your competitors by reason of those divisions?

Mr. Kirby: I am shut out in so far as the same rate is concerned. I am not shut out entirely, because I might be willing to go there at a loss to market my stuff.

Mr. Garwood: You either do not apprehend the question or the answer does not reach the question. You do not contend that there is any lumber market from which you are shut out by reason of the fact that any competitor of yours is owned by the same interest that owns a short line.

Mr. Kirby: There are some localities where that might be true.

Mr. Garwood: Well, do you contend then that that is true?

Mr. Kirby: Well, I might give you a concrete example. At Galveston, for example, we cannot sell any lumber in Galveston because the Long-Bell Company gets divisions, and they can go to Galveston at a two cent rate against our eight cent rate. That is sufficient to keep us out of Galveston. But we might overcome the two cents or four cent division, but a six cent division could not be successfully overcome, consistent with any profit at all in the business.

Mr. Garwood: I understand you contend then, that Gal-
6576 veston is one market. Is that a large consuming market of lumber?

Mr. Kirby: Not very large. There was a large piece of work going on there recently, where we came in contact with that situation. I do not know now who sold the lumber. I did at the time. That was in the causeway construction.

Mr. Garwood: That is an intrastate market, and is not considered by lumbermen a large consuming market at any time?

Mr. Kirby: Well, it is not a very large city; it is not a large market relatively.

Mr. Garwood: It is not a distributing point in any sense, is it?

Mr. Kirby: No, not of lumber. All the lumber that goes to Galveston is for local use; that is the market I speak of. I speak of it in that sense.

Mr. Garwood: Is there any territory now that you can name from which you, as a producer of lumber, have been kept out by reason

of any division of a rate given to a short line road, the substantial interest in which is owned by a lumber company?

Mr. Kirby: There is not any market where we have
6577 actually been kept out, but I have not gone to market on the same rates, if that is what you mean, because——

Mr. Garwood: That is a matter of argument which I wish to avoid, as far as possible. The Commission, I think, has indicated a preference to hear the argument at the end of the investigation.

Mr. Kirby: I do not intend to make an argument, but I want to answer your questions intelligently.

Mr. Garwood: No, I do not mean that. I mean I did not want to argue the question with you myself. If you can, just state that as a——

Mr. Kirby: I do not know of any market where we have been absolutely shut out. We have rates to all markets, and go to all of them, but we do not go to them on the same basis as our competitors who get tap line divisions.

Mr. Garwood: So you reach all of the great lumber consuming markets?

Mr. Kirby: Yes, and less lumber consuming markets. We have rates to substantially all markets.

Mr. Garwood: You reach all markets?

Mr. Kirby: Yes.

Mr. Garwood: And they are all open to you?

6578 Mr. Kirby: Yes, sir.

Commissioner Harlan: Let me put just one question. Do you know of any market in this country that is supplied by competitors that get allowances and where you——

Mr. Kirby: Exclusively?

Commissioner Harlan: Exclusively. Of course you have rates there, that is, rates are published which you could use, but as a matter of fact, is there any market in this country supplied by your competitors to your exclusion?

Mr. Kirby: Well, there may be some, but I do not recall them just for the moment. There are localities where we do not sell any goods, but whether that is because of the rate——

Commissioner Harlan: Where goods are sold by others?

Mr. Kirby: Yes, sir.

Commissioner Harlan: That is the point I want to get at.

Mr. Kirby: I had not looked up that piece of information so as to make myself intelligent on that subject, but of course we do not sell everywhere, but we have rates to all points. Just to what extent rates to these particular points keep us from selling in that particular territory I am not prepared now to say.

6579 Mr. Garwood: At any rate the territory of which the Commissioner inquired has not been of sufficient importance to impress itself on your mind?

Mr. Kirby: It might have been very important, but I do not handle the sales department personally.

Mr. Garwood: I do not understand, either, that you contend that you have been undersold in the market by any of the mills, sub-

stantial interests, which also own short line railroads in various parts of the country. You do not make that contention, either, do you?

Mr. Kirby: I am undersold every day; otherwise I would have all the business to the extent of my ability to supply it.

Mr. Garwood: That is a matter of general competition?

Mr. Kirby: Yes.

Mr. Garwood: You all compete with each other vigorously, I understand, everywhere?

Mr. Kirby: Yes, sir.

Mr. Garwood: All the lumber men do that in all territory, wherever they can get a chance at each other, I understand that.

Mr. Kirby. Yes.

6580 Mr. Garwood: But the question is, are you substantially undersold, or do you contend that you are substantially undersold in any market by any of the interests that also own interests in short lines?

Mr. Kirby: All the time; every day.

Mr. Garwood: Can you name the places and times?

Mr. Kirby: I can gather you many instances. I have not got them at my finger tips just now. You go into any market in Texas; you go in any market in any part of the country where a tap liner enjoying a fat division is your competitor, he undersells you. He is able to do so, and if he is getting $1.50 and I am getting nothing, he can sell his lumber for ten cents lower than I can, and that takes the business. He has therefore made $1.40 more than I would have made had I sold the same bill, by reason of his tap line refund.

Mr. Garwood: You are also undersold occasionally and in the ordinary stress of business competition by mills who are not, as you term them, tap liners?

Mr. Kirby: That is true.

Mr. Garwood: That is a fact?

Mr. Kirby: That is true.

Mr. Garwood: Now, can you indicate to the Commission

6581 any substantial and continuous underselling as against your interests in any market by those lumber interests that also own an interest in these so-called short line roads?

Mr. Kirby: I think it is done every day. I doubt if there is a transaction in the whole country that does not involve that principle, and so to mention any one sale——

Mr. Garwood: That is a matter of opinion——

Mr. Kirby: It is not a matter of opinion. And——

Mr. Garwood: And I think we are endeavoring to get this to a question of fact as much as possible. Can you indicate, Mr. Kirby, any places or any mills where as a continued line of business, not a mere sporadic or occasional undersale, but where there is a substantial and continual underselling as against you or any interest that is also interested in short line railroads?

Mr. Kirby: I can give you any number of instances from our salesmen and from our sales managers——

Mr. Garwood: Can you mention any of them?

Mr. Kirby: But I never sold a car of lumber in my life, and so I cannot——

Mr. Garwood: Well, you of course are familiar in a general way with your business transactions?

6582 Mr. Kirby: Yes.

Mr. Garwood: Now, can you indicate any territory or any place where there is a continuous underselling as against your interest upon the part of any interest that is connected by ownership or otherwise with these short line railroads? I mean, so substantial and continuous as would indicate to your mind a continued line of policy? In other words, Mr. Kirby, I wish to separate that from such sporadic cases of competition where all of you go in and bid and one under-bids the other.

Mr. Kirby: The practice is so universal that you cannot mention an exception. I cannot mention an exception to the rule you have laid down. It applies in every sale, every sale.

Mr. Garwood: You are not, then, able to indicate to the Commission any particular place, time or territory?

Mr. Kirby: I cannot indicate from any information I have in hand here where our lumber went last month or the month before, or any other time, but every car of lumber in this list that I read over this morning, is sold on that basis in competition with the follow who gets to market at a lower price.

6583 Mr. Garwood: We understand the general proposition, of course. You all compete wherever you can. Now, you are not able to give any particular instances of that character. I will now ask you, since you say you are undersold, of course everybody else is occasionally undersold too, is he not?

Mr. Kirby: I presume he is, because these tap liners are competing with each other, as well as the rest of us.

Mr. Garwood: You are all competing; I understand that. I am now asking you if you can state to the Commission what you have received, say, during the past twelve months, as an average per thousand feet board measure for your product?

Mr. Andrews: Now, if the Commission please, we object to the question of what he received for the market price of his lumber, on the same grounds that we objected this morning upon the query of what it cost him in the mill to make it; that what he sells it for might prove nothing unless every other mill had its sales prices to lay down here before us.

Commissioner Harlan: I must confess I do not see the relevancy of this line of inquiry. Let me make this suggestion. Do you propose to argue as a matter of law, that if Mr. Kirby or similar interests are able, through better advantages or closer attention

6584 to business to absorb this difference in rates, that then there is no discrimination resulting from the divisions that are allowed to some and denied to him?

Mr. Garwood: I will state this, your Honor, and we wish it to go into the record, and go in as accurately as possible. I did not understand from the contention of Mr. Kirby this morning, that he made any contention that he was shut out of any market by reason

of these supposed allowances. I did not understand from his position this morning that he made any contention that he was forced to sell his product in order to sustain himself, at a lower price than he otherwise would have done, in order to meet this competition. The answers which he has now given, your Honor knows. Now he has gone this morning under the interrogation of his own counsel, largely into the question of his cost of operations.

Commissioner Harlan: Cost of operations of the railroad only?

Mr. Garwood: Yes, and of the whole plant, including his logging spurs, all of them, and he has been asked the general questions as to comparisons of these with other territories. He now advances the claim that he has been discriminated against. Now, as a
6585 matter of primary inquiry, I should have been disposed to agree largely with the position taken by Mr. Marble this morning, that the inquiry should have been limited at its inception to the proposition as to each particular carrier. But we have gone beyond that, and this branch of the inquiry is as to whether there is actually a discrimination against one situated as Mr. Kirby: Now, if we can show from Mr. Kirby himself, as I think we have shown so far as he has gone, at the outset, that there is no market in the United States from which he is eliminated; if we can show by him that he has ever been compelled to sell below these competitors in order to maintain the business, these very [illegible] which are connected with short line roads, I submit that there can be no question, if that may be a fact, that this is a matter of inquiry; I do not state that it will be shown or that it will not be shown; but we are inquiring as to whether it can be shown. If it should be shown that he is eliminated from no market, that he is not compelled to sell at any lesser price in order to maintain his markets, than his competitors, does not that bear directly and forcibly and with the most powerful probative force upon the proposition that as a competitive proposition and as a proposition of discrimination that he has no
6586 standing in the Commission. In other words, was there ever a case of discrimination that does not involve the question whether the man who claims to be discriminated against cannot get to the market as favorably as the man who it is alleged has the unfavorable discrimination, as against him? And I submit——

Commissioner Harlan: I understand your point fully, and I must sustain the objection to the inquiry. It seems to me you are dealing with the whole range of the business of the Kirby Company in ascertaining from the standpoint of the operation of their mills, their investment and everything else, they are able to get into the market and successfully compete with others. The inquiry before the Commission is whether there is a discrimination in the rates that these people have to pay.

Mr. Garwood: Yes, sir, and it has been permitted here to show in a general way that there is a discrimination. Doubtless Mr. Kirby thinks so, but that is a conclusion both of law and fact. Now, I urge this, because, speaking with all sincerity and candor——

Commissioner Harlan: Counsel always does, I know.

Mr. Garwood: I try to always. I cannot see how it is possible in

any tribunal to determine whether a man has been discrimi-
6587 nated against without we get the facts upon which discrimination can or cannot be proved. Now, it occurs to me that there ought not to be any disagreement between the court and myself upon that proposition.

Commissioner Harlan: I think there ought not, Judge Garwood, either——

Mr. Garwood: And so much so that in answer to the suggestion made by Mr. Cowan that it would involve the comparison of his prices with the prices of those who have interests by stock ownership or otherwise in the affairs of the lines that have been under investigation; now I wish to say to counsel that we are prepared to meet that very issue and prepared with the facts, and so much do we feel that we are entitled to this information—and I must confess that it never occurred to me that it, being such a necessary consequence in this inquiry—it never occurred to me for a moment that there would be objection upon the part of counsel that this should be inquired into——

Mr. Cowan: I would like to ask Mr. Garwood a question, if he will permit me at this point.

Mr. Garwood: I have no objection to your asking it, but whether I will answer, is another proposition.

6588 Mr. Cowan: If he does not know from the very start at New Orleans that we would object to going into the private business of any particular company, and that that same objection was being offered by others, and we consented there, as shown by the record, that we had no right to go into the private business of any concern in the matter.

Commissioner Harlan: I must insist upon the ruling. The objection is sustained.

Mr. Garwood: We wish to have it in the record so that we may avail ourselves of it and get our several questions in the record.

Commissioner Harlan: Very well.

Mr. Garwood: And that upon objection of counsel, or whether of counsel or upon objection by your Honor, the question was not permitted.

Commissioner Harlan: To that particular question I have already ruled that the objection to it is sustained. If you have some other questions, you may propound them.

Mr. Garwood: And the question which is not permitted to be answered is as to his average selling price for the year ending June 30, 1910 of all his lumber products sold.

Mr. Marble: At what point? At the mill?

6589 Mr. Garwood: At the mill.

Commissioner Harlan: I understand the objection is made and it is sustained. Have you some further questions, Judge Garwood?

Mr. Garwood: I will put it the calendar year instead of the fiscal year ending June 30, 1910.

Commissioner Harlan: Very well, the question will be so understood.

Mr. Garwood: We now repeat that question as to the several grades of lumber, B and better, No. 1, common, No. 2 common, and it goes down to 4, does it not?

Mr. Kirby: Yes.

Mr. Garwood: No. 3 and No. 4. We ask that those questions be incorporated in the record, and upon objection, the witness is not permitted to answer.

Commissioner Harlan: Your objection extends to those questions?

Mr. Cowan: Yes.

Commissioner Harlan: The objection is sustained.

Mr. Garwood: I wish to state in that connection, your Honor, that we will be prepared to prove upon the part of those interests which, as shown by this record, by stock ownership or other-
6590 wise, also own interests in the so-called short line roads, their average selling price for the same period——

Mr. Cowan: We do not object to that. We admit that now, as far as that is concerned.

Mr. Garwood: Certainly they will not object, but it only becomes material in the event the Commission permits the inquiry here. In connection with this testimony we are prepared to prove for the several interests involved, their average selling prices for the same material covering the same period of time, and will be prepared to prove that they have not undersold Mr. Kirby or the Kirby Lumber Company in the market.

Commissioner Harlan: Very well, is that all?

Mr. Cowan: We will not object to it when he offers it, and I would like to know why they have not offered it heretofore. They have been all here.

Mr. Garwood: The Commission understands why I couple the two things together.

Commissioner Harlan: Yes. Counsel stands ready to offer that testimony, I suppose not in behalf of all the tap lines.

Mr. Garwood: No, the substantial interests.

6591 Commissioner Harlan: Very well; the record will show it.

Mr. Cowan: I do not think the record should show that he offers it, because if he offers it and it is material——

Commissioner Harlan: We will not stop on it. Counsel has made the offer in good faith, and we will understand that he stands ready on behalf of a substantial number of tap lines represented in this inquiry to offer such testimony if the inquiry which he has been making of this witness had been allowed to proceed.

Mr. Garwood: Yes.

Mr. Coleman: Do I understand that relates to cost at the mill, or the selling price?

Mr. Garwood: We have not got to the cost. That is selling price.

Commissioner Harlan: The selling price in the general market.

Mr. Garwood: I intended to include in that statement, I am not sure whether I did or not, that the prices of the Kirby Lumber Company, the average sale prices, were less than the interests to which I have referred.

Commissioner Harlan: You mean your offer embraces testimony tending to so prove?

6592 Mr. Garwood: Yes.

Mr. Marble: Are those prices at the mill again?

Mr. Garwood: Yes, sir, at the mill.

Mr. Cowan: I think if your Honor please, Mr. Garwood is slipping up on the Commission here. I want to call attention to it. Mr. Kirby has testified he has been undersold. These gentlemen say they propose and would be prepared to prove that that is not so, if you permit him to prove by Mr. Kirby what his average prices are. I say Mr. Kirby has already testified that he is undersold, and in answer to Mr. Garwood. If he wants to prove that is not true, then put witnesses on to do it, and I undertake to submit that I would do it if the record is permitted. That is a different thing to stating the average price, the fact of being undersold has no relation to what the price was. It may have been 15, 20, 30 or 40 cents——

Commissioner Harlan: I do not understand that Judge Garwood offers to prove that Mr. Kirby was not undersold, but that the facts in his possession of the price in the market of other lumber, and also the information in his possession as to the Kirby prices, leaving the Commission to ascertain whether there was any underselling on that testimony or not.

6593 Mr. Cowan: I am taking what he said and putting in the record the proposition that he proposes to prove that, and I do not think it should go in the record.

Mr. Coleman: Do I understand that Judge Garwood offers to prove that Mr. Kirby's selling price at the mill is necessarily lower than the price of his competitors?

Mr. Garwood: Not necessarily lower, no.

Mr. Coleman: Or was lower?

Mr. Garwood: That it was lower.

Mr. Coleman: And that relates to the price he makes, and not the price he sells it for?

Commissioner Harlan: Your language is wrong. Mr. Garwood has not offered to prove anything, but simply to offer testimony tending to sustain the facts he has indicated might be sustained by such testimony.

Mr. Cowan: And that on the sole condition if Mr. Kirby had been permitted to testify as to the average price of lumber. We are getting into an interminable mix-up in the record.

Commissioner Harlan: That clearly appears. Will you proceed, Judge Garwood?

Mr. Garwood: I will now ask the witness what is his average cost of production for the calendar year ending December 31st

6594 on all classes of lumber mentioned in the prior interrogatory.

Mr. Andrews: And we object.

Commissioner Harlan: The objection is sustained.

Mr. Garwood: I would like to ask in that connection this question of the witness: Has he any personal objection to answering those questions?

Commissioner Harlan: Well, I do not think that is proper, to

produce a situation between the witness and his counsel. The question is overruled.

Mr. Garwood: We now ask the same question as applied to each grade of lumber as mentioned in the prior interrogatory.

Mr. Andrews: Same objection.

Commissioner Harlan: Objection sustained.

Mr. Garwood: We except to the rulings, so that we may lay a predicate, if it should be thought material and advisable, in view of further testimony adduced, to ask the ruling of the Commission that it be furnished.

Commissioner Harlan: Very well, the record will show the exception to the ruling.

Mr. Garwood: You stated in your examination this morning Mr. Kirby, that you built the Beaumont, Kansas City & Great
6595 Northern?

Mr. Kirby: Well, you have got the name wrong.

Mr. Garwood: The Gulf, Beaumont & Kansas City?

Mr. Kirby: Yes, sir.

Mr. Garwood: There is another railroad up there that I always confuse with it.

Mr. Kirby: Yes, sir; I built it.

Mr. Garwood: You sold that to the Gulf, Colorado & Santa Fe?

Mr. Kirby: Well, or the Atchison.

Mr. Garwood: The substantial interests; that or the Atchison?

Mr. Kirby: Yes.

Mr. Garwood: About what time was that sale made?

Mr. Kirby: June, 1900.

Mr. Garwood: Did you construct another railroad in that locality, the Gulf, Beaumont & Great Northern, or the Beaumont & Great Northern?

Mr. Kirby: That was an extension of the Gulf, Beaumont & Kansas City from Rogan north to San Augustine.

Mr. Garwood: What time did you construct that, and did you sell that to the Santa Fe, and if so, when?

6596 Mr. Kirby: I began that construction in 1899, but I had not completed it at the time I sold it to the Santa Fe, and then I became after selling that, the contractor and built the line into San Augustine.

Mr. Garwood: Was that sold at substantially the same time that you did the first road constructed?

Mr. Kirby: All sold together; yes, sir.

Mr. Garwood: When did you begin the construction of each of those lines?

Mr. Kirby: I began in 1893 the construction of the G. B. & K. C. at Beaumont, and the other line I began probably in 1898 or 1899, I don't remember just when; 1897 perhaps.

Mr. Garwood: Now, at the time you began this construction had you begun to acquire by purchase, option or otherwise lumber holdings in the territory through which these roads ran?

Mr. Kirby: Nothing of consequence, no, in that intermediate territory.

Mr. Garwood: Well, north of that?

Mr. Kirby: Yes, at the time I started the road, concerns that I represented had some timber interests up in the northern part of Jasper County, which is 115 or 120 miles from Beau-
6597 mont.

Mr. Garwood: Those were lumber companies, were they?

Mr. Kirby: No.

Mr. Garwood: What kind of company?

Mr. Kirby: They were Boston gentlemen, investors.

Mr. Garwood: Were you interested in any lumber company at that time?

Mr. Kirby: No, sir.

Mr. Garwood: About how much, in a general way——

Mr. Kirby: Yes, I had some interest in the Warren Lumber Company, over on the Southern Pacific.

Mr. Garwood: Were these Boston companies that you represented lumber companies or timber companies or——

Mr. Kirby: They were timber companies; they were not operators.

Mr. Garwood: They were not operators?

Mr. Kirby: No.

Mr. Garwood: How much did you acquire for them?

Mr. Kirby: Well, I do not know—what ones are you talking about; prior to the start of the railroad?

Mr. Garwood: Yes.

Mr. Kirby: I represented two companies in Texas, one
6598 the Texas & Louisiana Land & Lumber Company and one the Texas Pine Land Association. The two of them had scattered over the thirteen counties of east Texas probably 200,000 acres of land, 150,000 anyway.

Mr. Garwood: How much of that was in the section of the country through which you built these roads?

Mr. Kirby: Very little; that is, very little on the first 75 miles. After passing the town of Jasper up there on that new line, which was sold to the Santa Fe?

Mr. Garwood: Yes.

Mr. Kirby: And under construction at the time we sold to the Santa Fe, we run through quite a lot of timber land, probably 100,000 acres in that neighborhood. Of course we did not go through it all.

Mr. Garwood: Now, take the whole line, the two lines, about how much timber lands and timber rights did these parties own?

Mr. Kirby: Well, those two companies—are you talking about the people who built the railroad?

Mr. Garwood: No, I am talking about these companies for whom you said you were acting.

Mr. Kirby: They had somewhere between 150,000 and
6599 200,000 acres at that time. They sold out some ten years later, and had about that amount at that time.

Mr. Garwood: Did you own then, or did you subsequently acquire any interests in these companies and their holdings?

Mr. Kirby: I had a little interest then. I was on a commission

basis, and they paid for my services in stock. I did not have any money invested in either one of them.

Mr. Garwood: Did you have a substantial interest?

Mr. Kirby: No, not very substantial in either one of those two companies.

Mr. Garwood: Now, I understand the date of this sale to the Santa Fe was about 1900?

Mr. Kirby: June, 1900.

Commissioner Harlan: That is the sale of what branch?

Mr. Kirby: The G. B. & K. C. and the G. B. & G. N.

Commissioner Harlan: Both of them?

Mr. Kirby: Yes, sir.

Mr. Garwood: At that time had the Santa Fe constructed its branch from Somerville eastward?

Mr. Kirby: Yes, but not all the way.

Mr. Garwood: It was under construction?

Mr. Kirby: No, they had not built any in years?

6600 Mr. Garwood: How far did it come eastward from the connection with its main line at Cleveland?

Mr. Kirby: Cleveland?

Mr. Garwood: Yes, from Sommerville.

Mr. Kirby: I do not know what the distance is.

Mr. Garwood: They came to Cleveland?

Mr. Kirby: The line was completed a few miles east of Cleveland. They had a line probably for twenty years from Sommerville to Conroe, and then a man named Putnam built a little line running east, crossing the Houston, East & West Texas at Cleveland, and for a few miles east of Cleveland.

Mr. Garwood: They acquired that?

Mr. Kirby: They bought that.

Mr. Garwood: About how much mileage was that?

Mr. Kirby: I think about thirty miles from Conroe, perhaps.

Mr. Garwood: Then after the acquisition of your lines to the connection with that line——

Mr. Kirby: They built over to Silsbee to the connection, I think about seventy miles.

Mr. Garwood: At what time did you begin the acquisition of timber lands on your own account?

Mr. Kirby: After I sold the railroad and got some money.

6601 Mr. Garwood: After you sold the railroad, and then began the acquisition of timber land. About how much did you acquire at that time?

Mr. Kirby: Something over 200,000 acres. You mean personally?

Mr. Garwood: Yes.

Mr. Kirby: Of course I had interests in a good many concerns, partnerships and corporations and things, but my personal interest would have been about 225,000 or 230,000 acres.

Mr. Garwood: Without going into all these various companies and co-partnerships in which you were interested, about how much

did these companies and yourself personally own or control, either by fee title or timber rights?

Mr. Kirby: At what time?

Mr. Garwood: Well, prior to the organization of the Kirby Lumber Company, say.

6602 Mr. Kirby: Something like 500,000 acres.

Mr. Garwood: Five hundred or six hundred thousand?

Mr. Kirby: No, something like 500,000.

Mr. Garwood: Something about 500,000 acres?

Mr. Kirby: I think so.

Mr. Garwood: When you sold, and the Santa Fe acquired these lines of which I speak, had you in immediate contemplation your subsequent development in the lumber territory?

Mr. Kirby: I had in contemplation the purchase of timber lands over there when I sold the railroad. I did not expect to go to lumbering except I would log, but not manufacture. I did not have that in mind at that time.

Mr. Garwood: How much land did the Kirby Lumber Company acquire in its corporate name?

Mr. Kirby: I think something like 130,000 or 140,000 acres. Do you mean at that time?

Mr. Garwood: Yes. 130,000 or 140,000 acres.

Mr. Kirby: Yes.

Mr. Garwood: Was that in addition to the amount you owned, or had you transferred any of your personal holdings?

Mr. Kirby: No, none of my personal holdings were transferred to the Kirby Lumber Company at the time. That has been

6603 ten years ago since the lumber company was organized. Since that time we have had some transactions. Two years ago I had some personal land——

Mr. Garwood: I understand, you had your personal holdings which amounted to about 200,000 acres.

Mr. Kirby: Well, my proportion of this 500,000 we are talking about would have been about 230,000 acres.

Mr. Garwood: Now the 500,000 acres, did that include 130,000 acres of the Kirby Lumber Company, or was it separate?

Mr. Kirby: That is separate.

Mr. Garwood: So that you have 500,000 acres which you and your associates control, and 130,000 acres additional which the Kirby Lumber Company controls.

Mr. Kirby: We do not control that now, if that is what you are talking about. We sold it all in 1901.

Mr. Garwood: Yes, we will get at that later. Now, when was the Houston Oil Company organized?

Mr. Kirby: In July, 1901 it was started.

Mr. Cowan: If your Honor please, I do not think it appropriate to go into tracing out titles in the various controversies between

6604 the Kirby Lumber Company and the Houston Oil Company.

Commissioner Harlan: We have not got very far yet.

Mr. Cowan: We are just starting, and I know what he is starting into, and it will take the Commission two weeks to go into it.

Commissioner Harlan: We will not take much time on it.

Mr. Cowan: If they go into it at all——

Commissioner Harlan: Let us see what counsel is going to ask, and then we will determine.

Mr. Garwood: When was it organized?

Mr. Kirby: In July, 1901, was its charter.

Mr. Garwood: Did the Kirby Lumber Company sell any land to the Houston Oil Company?

Mr. Kirby: It did not.

Mr. Garwood: Did the Houston Oil Company acquire lands of its own?

Mr. Kirby: Yes, sir.

Mr. Garwood: To what extent did it acquire pine lands in that territory particularly?

Mr. Kirby: They bought something over 800,000 acres.

Mr. Garwood: Now in a general way I understand the Kirby Lumber Company operates the Houston Oil Company's
6605 land.

Mr. Kirby: We cut the timber from that land.

Mr. Garwood: That is what I mean by operating. You cut the timber from those lands?

Mr. Kirby: Yes.

Mr. Garwood: What do the joint holdings of the Houston Oil Company, the Kirby Lumber Company, and yourself amount to?

Mr. Kirby: Well, do you mean the present holdings?

Mr. Garwood: Yes, I will put it now.

Mr. Kirby: Well, I do not know just what area the Houston Oil Company has, but something over eight hundred thousand acres, and the Kirby Lumber Company has probably forty thousand acres, and I personally have probably twenty-five thousand acres, altogether may be nine hundred thousand acres in those interests.

Mr. Garwood: Have you at this time any option or right to purchase what is commonly known as the Kountze lands?

Mr. Kirby: Yes, sir.

Mr. Garwood: How many acres do they comprise?

Mr. Kirby: That is 180,000 acres, in round figures.

6606 Mr. Garwood: About where, in a general way, do they lie?

Mr. Kirby: Well, they lie in Angelina, Jasper, San Augustine, Sabine, Newton, Tyler, Hardin and Polk and Liberty Counties.

Mr. Garwood: From whom did you acquire that option?

Mr. Cowan: We object to that. It is just an attempt to go into the private business of the Kirby Lumber Company, and does not bear on the question of the rates.

Commissioner Harlan: I do not see that that is a relevant question.

Mr. Garwood: I will vary the question——

Mr. Cowan: We object to all such questions without having to get up at all for each question.

Commissioner Harlan: If you will indicate clearly to the Com-

mission just what you expect to prove, it may throw some light on the question.

Mr. Garwood: My next question would have indicated that.

Commissioner Harlan: Very well, then ask the next question first.

Mr. Garwood: That is very difficult to do. Did you acquire that option from what is commonly known as the Santa Fe interests?

Mr. Cowan: Our objection, you understand, goes to this
6607 whole line.

Mr. Garwood: I think that is pertinent, your Honor.

Commissioner Harlan: With what thought in mind? Let us see what the relevancy is. Counsel in making that statement may decide the question, leaving me no opportunity to know what his purpose is.

Mr. Garwood: I did not expect to indicate my entire line of what I expected to show by the witness. Of course an objection can be interposed to each particular question, when all the questions put together and their answers will conclusively show their materiality. If it is a fact, and this witness will know, that these lands are owned substantially by the Santa Fe interests, that those holdings combined with his own occupy an immense territory in that section served by the Santa Fe, we think that it will explain to this Commission the policy of the Gulf, Colorado & Santa Fe road which seeks to prevent the construction of short lines in that territory, and will also serve to explain contracts which will subsequently be called for and notices to produce which have been given, and which are in the record, and which I do not now stop to take time to discuss.

6608 Commissioner Harlan: Let me put the question somewhat bluntly, Judge Garwood. Are you undertaking to show to the Commission that there is something in the relation between the Kirby Lumber Company or Mr. Kirby, or any of these other companies you have mentioned and the Santa Fe that affects the transportation of this lumber favorably or unfavorably?

Mr. Garwood: Yes, sir, I think so, that unquestionably does, your Honor.

Commissioner Harlan: The question may be answered.

Mr. Cowan: We will simply have to advise the witness as to certain points not to answer those things we think ought not to be answered.

Mr. Garwood: Oh, of course.

Mr. Cowan: For that reason we want to make our objections as we go along to the questions we do not think should be answered. We do not want to be foreclosed by the fact of permitting one question to be answered, and not having the objection to the others sustained.

Mr. Coleman: Judge Garwood has practically offered to show some kind of a common plan in regard to the lands in question

Before the examination proceeds in detail, could Mr. Kirby
6609 indicate the percentage of those lands which are at all tributary to the Santa Fe, the percentage which are tributary to the Houston East & West Texas, a line which I believe Judge Gar-

wood indirectly represents with other railroads? In other words, before you go into that discussion, see what railroads the land is tributary to.

Mr. Garwood: That can be developed on cross examination.

Mr. Coleman: I think it should be developed now.

Commissioner Harlan: I think it is open to Mr. Coleman to bring that out later.

Mr. Cowan: I would like to make the suggestion at this point that so far as the contracts between Mr. Kirby and the Santa Fe are concerned, we are perfectly willing for the Commission to have them. We simply think it is not a matter to go into the record. Being willing to submit the contracts, they speak for themselves, and it would seem to me therefore, when we have offered to do that for the private information of the Commission subject to its ruling whether it should be made a public document, that ought to end the matter until the Commission should have decided——

Mr. Garwood: As a matter of course——

Commissioner Harlan: We have not reached the matter of the contracts now. Now what was the question?

6610 Mr. Andrews: You have reached the contracts in this way, that he is interrogating the witness as to the rights or options to acquire, and leaving the witness to make his statements and return to them, and that *we* may necessitate if carried on, the offering on our part of portions of the instruments and explanation, and the witness might answer a question propounded with reference to it that the answer would compel us to offer voluntarily other portions of it, whereas we propose to tender the contracts to the Commission without interrogating the witness as to the contents of the contracts, and then if the Commission decides they are to be made public and are to be given to the public, and his business affairs as contained in those contracts are to be given to the public, we are helpless in the matter. But if the Commission holds that they should not be so published, then we do not think that the witness should be interrogated as to the contents of them.

Commissioner Harlan: We have not reached that point yet, and of course the Commission will endeavor, as far as it lawfully may, and it has throughout this inquiry, to protect the commercial

6611 interests of any person engaged in the inquiry. But so far as the relations between any shipper and a carrier are concerned, we have brought those out, and it is the duty of the Commission to bring them out. Counsel offers, I assume in good faith, to make his questions relevant, and what he proposes to prove. We must get ahead. I think the question should be answered.

Mr. Garwood: It is not my purpose, of course, to inquire into the private business of any man except insofar as that private interest becomes affected with a public interest by reason of its direct relation to a transportation problem which is being probed by the Commission, and it has been continuously probed throughout this entire inquiry along the very lines that I have been proceeding upon.

(The previous question was then read as follows:)

"Did you acquire that option from what is commonly known as the Santa Fe interests?"

Mr. Kirby: Why couldn't I save time by stating the whole case from start to finish? You are inquiring about the Kountze lands?

Mr. Garwood: That is just with you. Of course I am bound to frame my interrogatories in a direct way so they can be objected to.

6612 Commissioner Harlan: Answer the question in your own way, Mr. Kirby.

Mr. Kirby: Answering the question, the present option contract on this land is held by Mr. David L. Gallup, as I understand, for the Atchison Railroad, that is with him. The title to the property is in Mr. Gallup, as I understand, and my option with Mr. Gallup to buy it.

Mr. Garwood: Is that option a recent option, or is it of long standing?

Mr. Kirby: Well, there were two. I obtained from Kountze Brothers in New York an option to buy these lands in 1900. Then I got a renewal of that option in 1901. I assigned the second option to the Houston Oil Company. They could not raise the money, the option price was $2,135,000, and the Houston Oil Company was to buy the land for the purpose of subjecting the timber to the timber contract with the Kirby Lumber Company which had been previously executed. The Houston Oil Company could not raise the money, and they extended me the privilege of exercising the option, if I could find the money, so I got Mr. Ripley of the Santa Fe to advance $2,000,000 to buy those lands, and took the title in Mr. Gallup, and gave him a five year option in which to repurchase the land. That option expired a long time ago, but a new

6613 option was executed with me in about July, 1909. The original transaction was in 1902.

Mr. Garwood: In order to acquire the original option, were you required to make any tonnage contract with the Santa Fe?

Mr. Kirby: Well, as a part of the transaction there was a tonnage contract.

Mr. Garwood: What was that tonnage contract?

Mr. Kirby: The lumber manufactured in mills located upon the Santa Fe rails in a certain territory—not all the mills, because one was excluded, but all mills east of the Neches River, if you get the location of the Santa Fe there you can see it——

Mr. Garwood: Yes.

Mr. Kirby: All lumber manufactured in mills east of the Neches River, the routing of that lumber was to be given to the Santa Fe so long as their rates were equal.

Mr. Garwood: Taking into consideration the 187,000 acres owned by the Santa Fe and the acreage owned by the Houston Oil Company which you were lumbering and the acreage owned by the Kirby Lumber Company and yourself, about how much lumber acreage would have been affected by that routing con-

6614 tract?

Mr. Kirby: Well, it only relates to that part of it east of the river.

Mr. Garwood: Yes.

Mr. Kirby: And it only relates to that part of it that might move within five years.

Mr. Garwood: Yes, well, within five years.

Mr. Kirby: So that would probably relate to five hundred million feet of timber out of seven or eight billions.

Mr. Garwood: In addition to the contract upon your part to give that tonnage to that interest, were you required to make other concessions relative to the lumber which you would sell to the Santa Fe.

Mr. Kirby: That had no relation to this transaction, no. I know what you are referring to.

Mr. Garwood: Of course your information is more accurate than mine.

Mr. Kirby: Well, when the Kirby Lumber Company was first organized, I made a contract with the Santa Fe for their supplies, ties, and material of that kind.

Mr. Garwood: Let me be exact about that. You say that this tonnage contract had no connection with your option to pur-

6615 chase——

Mr. Kirby: I did not say that.

Mr. Garwood: That is what I want to get at.

Mr. Kirby: My option to purchase was conditioned first that I should repay the money with five per cent interest, and all carrying charges and that sort of thing——

Mr. Garwood: Of course.

Mr. Kirby: It being semi-annual interest as it accrued. Second, that up to the time of declaring this option, I should have performed that tonnage contract routing out of these local mills on the Santa Fe, and I would not have as a legal proposition any right to route it otherwise, as it originated with them; but under that contract, whatever that value was, they controlled the routing of that tonnage. Of course, I sold the way I pleased. I might sell it export but it has to move over those rails. And in the extent that in its march to market it could pass over their rails, I presume they would put it over their rails.

Mr. Garwood: Now, as a part of the option contract, did you make any agreement with the Santa Fe by which you would sell them any given amount of material per year, at any given price?

6616 Mr. Kirby: I do not think that was a part of that option contract, but there was a contract between me and the Santa Fe by which I was to sell them ties, and the price was fixed, hewn ties so much, and sawn ties so much, and then lumber up to a certain quantity per year.

Mr. Garwood: Was that an independent contract?

Mr. Kirby: They may have been tied together, I have not examined them in so long, but the contract was made, and my recollection is it had no relation to the option contract on the Kountze land, but it may have. I think not.

Mr. Garwood: In order that you may not be misled, I will say to you that my information is, and I will disclose the source of it in a moment to you, that it was a part of the original option contract, so you may refresh your memory about it, if you care to.

Mr. Kirby: Well, I could only refresh my memory by looking up the document itself.

Mr. Garwood: You have the document here with you?

Mr. Kirby: I do not know that it is here; I presume it is.

Mr. Garwood: If it is here, you can advise us of that fact?

Mr. Kirby: Yes.

Mr. Garwood: And also refresh your own memory about it.

6617 Mr. Kirby: Yes, sir. I——

Mr. Garwood: Now, what was that contract by which you agreed to sell a certain amount of material to the Santa Fe road at given prices?

Mr. Kirby: I agreed to furnish the Santa Fe road with a certain number of hewn ties and piling at a price fixed, and I agreed to sell the Santa Fe certain mill products up to ten million feet a year at 20 per cent under the monthly market to other people, of the same class of goods. While that was the agreement they bought about three million feet under that agreement each year, and the agreement of course fell in 1904 when the properties went in the hands of a receiver. It was in operation about 18 months.

Mr. Garwood: But it continued in operation that time?

Mr. Kirby: That is this material agreement you speak about.

Mr. Garwood: You agreed then, in addition to selling certain specified lumber at certain specified prices to sell them 10,000,000 feet a year at 20 per cent below the market price.

Mr. Kirby: No, that was not the agreement.

Mr. Garwood: Well, I——

Mr. Kirby: Twenty per cent below my price on the stuff
6618 they wanted, that is the price at which I sold to others. Very probably I did not sell anybody any material in that length of time, but then——

Mr. Garwood: You do not mean to say you would fix your price on it, and then sell it 20 per cent below that price?

Mr. Kirby: I certainly would, and that is what I did substantially.

Commissioner Harlan: You mean your price to the public?

Mr. Kirby: Well, we did not have any published. The Santa Fe's was special sawing, Judge, so there was no public.

Mr. Garwood: You were not considering the public?

Mr. Garwood: Mr. Hodges was a fine purchasing agent.

Mr. Garwood: I want to see if I understand it. I confess I do not. What did the contract mean by saying that you would sell at 20 per cent below the market price?

Mr. Kirby: It did not say that.

Mr. Garwood: I am talking merely from memory. You have the contract.

Mr. Kirby: It said 20 per cent below our prices on the same material to other customers during the same months. Well, we had no such customer.

Mr. Garwood: Such public as you had then——

6619 Mr. Kirby: There wasn't any. There was special sawing to the Santa Fe, and that is the only price made. Of course

the Santa Fe still got it at our price as cheap as everyone else, otherwise we would not have gotten any order.

Mr. Garwood: Will you explain what benefit the Santa Fe would have got out of the 20 per cent reduction——

Mr. Kirby: I cannot see any.

Mr. Garwood: Under your theory?

Mr. Kirby: I cannot see any for them, and as evidence that there wasn't any, they did not order but three million feet a year, although they had a right to call for ten million.

Mr. Garwood: Have you that contract?

Mr. Kirby: It is here among the papers.

Mr. Garwood: I wish you would get that and look up these particular provisions, because I confess the 20 per cent reduction is not clear, or its meaning, from your statement of it.

Mr. Kirby: I think it is very clear.

Mr. Coleman: I think if you had understood it you would not have persisted in that line of questions.

Mr. Garwood: That possibly may be correct, Mr. Coleman, but I think for your benefit that we will understand it thoroughly
6620 before we get through; with Mr. Kirby's assistance, I think we will make it perfectly clear. Now did the Santa Fe make any contract with you by which it agreed to cancel all through routes with its connections?

Mr. Kirby: Yes, sir,—no, not that.

Mr. Garwood: Now you say yes and no. Just explain that.

Mr. Kirby: This is what you are driving at, Judge. (Producing paper.) That is with the Atchison, Topeka & Santa Fe.

Mr. Garwood: Well, whichever it is, the Atchison, Topeka & Santa Fe or the Santa Fe.

Mr. Kirby: When I sold them my rights on the 28th of June, 1900, this is the original contract with the Santa Fe, I tried to get in a provision and I got it in this contract, that they would pursue the Missouri Pacific policy of maintaining their territory of cancelling out when they had completed over into East Texas and got their lines all constructed, their divisions with lumber originating lines. We made the contract, but it has never been enforced. There has never anything of that kindness been done.

Mr. Garwood: Well, that is a matter to be determined later. You have no objection to our seeing the contract?

6621 Mr. Kirby: No.

Mr. Cowan: I would like to ask Mr. Garwood if he knows any law which prohibited any such contract in 1900 and 1904.

Mr. Garwood: I do not care to state——

Commissioner Harlan: Counsel does not insist upon an answer. If he did, we would not stop to hear it. Proceed with your inquiry, Judge Garwood.

Mr. Garwood: We may see the contract, Mr. Kirby?

Mr. Kirby: Yes, sir. (Handing paper.)

Mr. Garwood: Will your Honor permit us to inspect it?

Mr. Kirby: The last clause is the only thing. Everything else relates to the sale of the securities of the road.

Mr. Andrews: And the date?

Mr. Kirby: June 28th, 1900.

Mr. Andrews: And the date of the charter of the Kirby Company?

Mr. Kirby: July 5th, 1901. A little over a year after. This is a personal transaction between me and the Santa Fe.

Mr. Garwood: Get that part of it. I do not care to see that part of the contract, except it relates to the transportation end of it.

Mr. Kirby: "Whereas the vendor"—that is what you want to see.

6622 Mr. Garwood: The clause of the contract to which you refer is this which I shall read: "And whereas, the vendor"——

Mr. Kirby: Kirby.

Mr. Garwood (Continuing): —"John H. Kirby is largely interested in timber lands adjacent to the lines of railroad of the Beaumont Company"—that is the company you were selling?

Mr. Kirby: Both companies.

Mr. Garwood "—and the proposed extensions thereof to be built by the Gulf, Beaumont & Great Northern Railway Company, and is prepared to engage in the business of manufacturing and dealing in lumber, ties, piling and timber, and is interested in the permanent adoption by the Atchison Company of the policy of promoting the advantageous distribution of the lumber, ties, piling and timber to be manufactured along the lines of the Beaumont Company, and of said extensions, therefore the Atchison Company agrees that upon the performance of this agreement by the vendor, and upon completion of the connection between said Montgomery branch, and the line of the Beaumont Company, and so long as the commercial demand for lumber, ties, piling and timber shall be supplied by ship-

6623 pers on the line of the Beaumont Company, it, the Atchison Company, so far as it legally may do so, will cause to be cancelled, all divisions of through rates upon lumber, ties, piling and timber between the lines in its systems and other connecting lines originating such lumber, ties, piling and timber in the States of Texas and Louisiana, and so far as it may lawfully do so it will refuse to make such divisions."

That is correctly read, is it?

Mr. Kirby: I think so.

Mr. Garwood: Now, Mr. Kirby, is there anything else in this contract relative to your transportation relations with the Atchison road?

Mr. Kirby: Not a thing. You mean that contract?

Mr. Garwood: In this contract here.

Mr. Kirby: Not a thing.

Mr. Garwood: I want to avoid reading the contract if I can.

Mr. Kirby: Not a thing. The balance of the contract relates to the sale and delivery of the road, and sale of its securities. Mr. Morowitz wrote the contract.

Mr. Garwood: Is there anything in this contract by which

6624 you bind yourself not to incorporate any road or anything of that kind?

Mr. Kirby: Not a line.

Mr. Garwood: I do not want to go farther than the transportation end of your contract.

Mr. Marble: May I see the contract?

Mr. Kirby: Yes.

Mr. Marble: Without stopping counsel, I wish to examine it.

(Paper handed to Mr. Marble.)

Mr. Garwood: What price did you get for those roads which you sold?

Mr. Kirby: Well, we got a good amount. I don't remember just now what it was. The original line, the 75 mile line, was bonded for $20,000 a mile, and——

Mr. Andrews: It does not seem to me that a road that was sold by an individual before the incorporation of the company which is now doing the business is legitimate subject matter for inquiry here.

Mr. Garwood: It possibly may be a little remote. I thought it was so immediately connected with it that it might shed some light on it.

Mr. Kirby: I did not get as much as the property was worth.

6625 Mr. Garwood: Well, I hope you got a good deal. I do not care to press it, if there is objection to it.

Commissioner Harlan: Well, counsel does object. Do you care to press the question?

Mr. Garwood: I thought it might shed light on the entire transaction, but it is not of sufficient moment to argue.

Commissioner Harlan: Then we will pass to something else.

Mr. Garwood: Whether in this contract or not, is there anywhere, or have you at any time made, any agreement with the Santa Fe in writing or orally by which you bound yourself not to incorporate your lines?

Mr. Kirby: No, sir.

Mr. Garwood: Or not accept divisions?

Mr. Kirby: No. The Santa Fe offered them, and I declined them.

Mr. Garwood: They offered to give you them?

Mr. Kirby: Yes, sir.

Mr. Garwood: Not the Santa Fe?

Mr. Kirby: Yes, sir. I am here to give you full information. I am the sole offender. The Santa Fe is not responsible for my not getting divisions.

Mr. Garwood: That was a voluntary exclamation of surprise. I thought the Santa Fe never did that. Of course I do not

6626 mean to question the accuracy of your statement, Mr. Kirby. What did they offer you?

Mr. Kirby: At the beginning the offer made was two cents per hundred pounds; then that offer was made while the receivership was pending upon my property, and the property was being administered by the federal court, and the proposition was that the lines should be incorporated, and the Santa Fe would immediately put in divisions with the lines of two cents per hundred pounds.

Mr. Garwood: What date was that?

Mr. Kirby: Well, that was four or five years ago.

Mr. Andrews: The receivership began on the first of February, 1904.

Mr. Kirby: And it closed in July, 1908, and it was before the panic in 1907, it must have been four years ago anyway.

Mr. Garwood: Now the Santa Fe on the date of that contract agreed with you to cancel out all through rates?

Mr. Kirby: Yes, sir.

Mr. Garwood: Did they do that?

Mr. Kirby: They never did.

Mr. Garwood: Never at any time?

6627 Mr. Kirby: Not that I have any information of.

Mr. Garwood: You expected them to do it, did you not?

Mr. Kirby: I did not.

Mr. Garwood: Why did you make the contract?

Mr. Kirby: Well, at the time I made the contract we had no rate from our territory down there in Southeast Texas, where I was largely interested, and which I often call my country, except Southern Pacific rates, and they were east and west rates, and did not go anywhere, and the Missouri & Pacific would not let us get into their territory, and the Southern Pacific had no general rates to the market, and I wrote this in here for the purpose of protecting our territory as much as I could when we got the Santa Fe in there, that we would have as wide rates as possible. And after the Santa Fe entered this territory, the whole rate situation has changed. We want interchanges with everybody, and it has never been to my advantage to ask the Santa Fe to cut out divisions. It might have been to a temporary advantage.

Commissioner Harlan: You mean cut out divisions?

Mr. Kirby: Cut out divisions with the originating line, because we all got a blanket rate, and we are supposed to go to market together.

Mr. Garwood: Well, you considered it a valuable contract

6628 to you if they would cut out divisions with all connecting lines, did you not?

Mr. Kirby: It might be a valuable contract to the territory down there, it might become so.

Mr. Garwood: I mean to you and your interests, the Kirby Lumber Company.

Mr. Kirby: I thought it was of some value to me at that time. The Kirby Lumber Company had not been dreamed of at that time.

Mr. Garwood: I know, but the Kirby Lumber Company succeeded to the benefits of that contract.

Mr. Kirby: Not necessarily, except that the Kirby Lumber Company has acquired large interests in the territory served by the Santa Fe road down there. I never conveyed this contract, or any right under it, to anybody else in the world.

Mr. Garwood: Can you estimate the value per thousand feet of lumber of that contract to cancel out through rates?

Mr. Kirby: I do not think it is worth five cents on a million feet of lumber, but I may be mistaken about it.

Mr. Garwood: I will ask you, after the receivership of the Kirby Lumber Company was instituted, if you did not allege in
6629 a pleading filed in court, that the Kirby Lumber Company had succeeded to the benefits of this contract, that this contract was in force after you had acquired the Kountze option, and that you yourself estimated the benefit to you and your interests of this cancellation of the through rate by the Santa Fe at not less than one dollar, or one dollar and fifty cents per thousand feet of lumber.

Mr. Kirby: You know, Judge when you lawyers go to prepare pleadings and present a case, you put everything in it you can. I understand something of that character was put into that pleading——

Mr. Garwood: But, Mr. Kirby, this was an equity answer——

Mr. Kirby: Prepared by the lawyers, nevertheless, is the point I make.

Mr. Garwood: And was it not signed and sworn to by you——

Mr. Kirby: I do not remember about that. We usually sign whatever you prepare for us.

Mr. Garwood: Would it refresh your recollection if I should show you the allegation?

Mr. Kirby: No, I read that in your notice, it was called to my attention then. I didn't really know until that time that it had ever been made.

6630 Commissioner Harlan: We will not stop on that, Judge Garwood. You have stated in substance.

Mr. Garwood: I think it is material in this connection, to see if I have stated its substance.

Mr. Kirby: That was not a contract with the Santa Fe Railroad Company, Judge, or any parties to this contract.

Mr. Garwood: This pleading purports to have been filed at some time subsequent to March 25th, 1905. Now I will ask you if in that pleading——

Commissioner Harlan: Will you be kind enough to let the witness read it?

Mr. Kirby: Whatever was in the pleading was stated in the pleading.

Commissioner Harlan: Will you let me see it, and let the witness see it.

Mr. Garwood: Surely, beginning at paragraph 13—paragraphs 13 and 14.

Commissioner Harlan: What do you want to do, read all this in the record?

Mr. Garwood: I will offer it at some time in the proceedings, your Honor.

Commissioner Harlan: Very well.

6631 Mr. Garwood: But I want to call the witness's attention to his allegation. You say this contract——

Mr. Kirby: You had better put the lawyer on the stand who drew them. They are not mine.

Mr. Andrews: It seems to me there can be but one possible purpose to read the declaration in the answer, and that purpose would

be in contradiction of what the witness has just stated. He has explained how the answer was made, and his connection with it, and it seems to me that is all that could be said in connection with it, with the question of a pleading in a case concerning a contract, that the witness says has never been enforced, and that no one here is ready to assert was ever in force, or is in force now, is immaterial and useless consumption of time.

Commissioner Harlan: The pleading seems to indicate that the contract gave an advantage to the witness. I would like to ask the witness whether that was or was not the fact. If it was not the fact, state why it was not the fact.

Mr. Kirby: I do not know of any advantage in the world that cancelling out divisions with the Santa Fe down there would be of any value to us at all. There is no local market on the Santa Fe to amount to anything, and since that contract was made, the Santa Fe has itself extended into Louisiana and has some 80 miles
6632 of road over there, so that under present conditions I cannot see any value in the world to such mills as we have on the Santa Fe from cancellation of rates.

Commissioner Harlan: Well, did you think it had a value at the time this answer was prepared and filed?

Mr. Kirby: I do not remember that I was consulted about that at the time, and I do not think it had any more value then than now, because the Santa Fe had extended into Louisiana then, is my recollection, at the time this pleading was prepared.

Mr. Garwood: How could your attorneys have drawn up an equity pleading of this character without that information from you?

Mr. Kirby: They would get it from the general records. You have prepared many a one without consulting your clients, knowing the facts yourself.

Mr. Garwood: Not when he has to sign it and swear to it——

Commissioner Harlan: I do not think we will stop longer on that.

Mr. Garwood: He asked me the question.

Commissioner Harlan: If you desire to offer it, it may be copied and attached as an exhibit.

Mr. Garwood: I wish to ask if you did not in that answer
6633 allege that this contract that we have just read, by which the Santa Fe agreed to cancel out all through rates would give the Kirby Lumber Company an advantage of about one dollar per thousand feet of lumber over and above what its competitors would receive, located on other lines of railway.

Commissioner Harlan: I think that sufficiently appears.

Mr. Kirby: So far as the allegation is concerned, the allegation is there, but of course nobody could find out the fact. Why would it be?

Mr. Garwood: That was your idea at the time?

Mr. Kirby: I do not think so; I do not think that feature was brought to my attention, but that document——

Mr. Garwood: Let us see whether or not you were correct about it. If through rates with connecting lines were cancelled out, your mill being situated on the Santa Fe, and your competitors not being situ-

ated on the Santa Fe, you would go in on the through Atchison rate, and your competitors would go into Atchison territory on the combination of the rates, and is it not entirely possible that when you set up in this equity pleading that you would get one dollar a thousand advantage over your competitors that you were alleging the actual absolute fact?

Mr. Kirby: No, sir, you do not state the fact, because we
6634 have got lots of competition on the Santa Fe rails. If I had a monopoly of the business of originating lumber on the Santa Fe, and then I had the monopoly of delivering lumber on the Santa Fe, that is one thing; but that condition does not exist.

Mr. Garwood: You say you had——

Commissioner Harlan: Will you oblige the Commission by proceeding to some other point? I think we have all in the record on that point that we desire.

Mr. Garwood: The witness stated——

Commissioner Harlan: Are you going to pursue that inquiry farther?

Mr. Garwood: I will tell you, the question I am going to ask right now——

Commissioner Harlan: Very well.

Mr. Garwood: The witness has stated that if he had a monopoly of the territory on the Atchison that would inure to his benefit. I am now going to ask him if he himself did not allege in the same pleading, and if it were not a fact that if his dealings with the Santa Fe were carried out, he would have the very monopoly that
6635 he says would have produced that result.

Commissioner Harlan: Can you answer that question?

Mr. Kirby: It may be alleged in the document, but then it is not the truth.

Commissioner Harlan: Very well.

Mr. Garwood: I want to ask him if he did not at that time allege that with his own holdings, and his co-related companies, with the Kountze land, and the Houston Oil Company's land, if he would not have practically all the territory along the Santa Fe, and that thereby the benefit of that contract would inure exclusively to him and his interest.

Commissioner Harlan: Are you asking him what he alleged?

Mr. Garwood: I am asking him if he alleged that in the pleadings.

Commissioner Harlan: The pleading shows for itself. The witness need not answer. Will you proceed with some other question.

Mr. Garwood: After these relations concerning which I have inquired were terminated, did you take up further relations with the Santa Fe interests relative to the financing of your properties?

Mr. Kirby: Well, I do not know what you mean by
6636 financing, Judge.

Mr. Garwood: That is a little general. That objection is well taken. I will ask you if you now owe the Atchison interests any amount of money in connection with these enterprises over there. Not outside; I want to confine it as to these properties situated on the Santa Fe.

Commissioner Harlan: You refer to this loan which has already been referred to?

Mr. Garwood: No, this is another branch of it.

Mr. Andrews: The objection is as to the form, and not as to the substance of the question. I am perfectly willing for the witness, without objection, to state what the transaction was, but in the form the question is put, it carries with it a conclusion which I object to in the form stated.

Commissioner Harlan: Perhaps you can re-form that question.

Mr. Garwood: I do not want to suggest any conclusion. All I want is the fact.

Mr. Andrews: Just let him tell it.

Mr. Kirby: We owe the Santa Fe some money. Is that what you want to get at?

Mr. Garwood: Well, that is the direction my question
6637 pointed.

Mr. Kirby: I borrowed from the Santa Fe in July, 1909, 18 months ago, $500,000, and gave them a mortgage on eight million dollars' worth of property, and I paid them interest at the rate of seven per cent per annum, and still owe $400,000 of that money.

Commissioner Harlan: When you say "I," do you mean the Kirby Lumber Company?

Mr. Kirby: Yes, sir.

Mr. Garwood: Does that loan embrace the Kirby Lumber Company's holdings as well as your own?

Mr. Kirby: It is no part of my own; I am not a party to that. It is a Kirby Lumber Company loan, and the Kirby Lumber Company executed a general mortgage upon all its assets. They are recorded down there in the deed records, to secure $500,000.

Commissioner Harlan: The mills, and lands, and railroads?

Mr. Kirby: Yes, sir.

Mr. Garwood: That mortgage was made to a trustee?

Mr. Kirby: The American Trust Company & Savings Bank of this city.

Mr. Garwood: What is the name, Chapman?

6638 Mr. Kirby: Well, Mr. Chapman is an officer of the bank. The bank has changed its name now, and has another name, but that was the name at the time.

Mr. Garwood: Did the Kirby Lumber Company convey to this party who holds this in trust, all of its properties?

Mr. Kirby: Well, substantially so, according to my recollection. It may not have the personal properties.

Mr. Garwood: I mean its landed properties.

Mr. Andrews: I beg pardon for the interruption, but there are two transactions. I think Mr. Kirby understood you as talking about one, and he answered as to the other. The mortgage was upon the entire property to secure $500,000, but the transaction with Chapman was in a different form.

Mr. Garwood: Just state it, please.

Mr. Kirby: The Kirby Lumber Company sold its land which in-

cluded my previous holdings which amounted to about 130,000 acres is my recollection, to Mr. J. R. Chapman, for three million dollars practically—I think that is about the sum. It was sold on a timber basis to Mr. Chapman, and then we took a contract back; the contract is personal to me, my personal option upon those lands to rebuy them in the course of five years; very similar to the Gallup
6639 option.

Mr. Garwood: I see, as counsel stated there are two transactions.

Mr. Kirby: Yes.

Mr. Garwood: You borrowed in one, $500,000 from the Atchison interest?

Mr. Kirby: Yes, sir.

Mr. Garwood: And that is secured by a mortgage?

Mr. Kirby: Yes, sir.

Mr. Garwood: And then you sold——

Mr. Kirby: In the other transaction.

6640 Mr. Garwood: In the other transaction for three million dollars, to the same interest, all of your timber holdings?

Mr. Kirby: No, certain of our timber holdings.

Mr. Garwood: About what proportion?

Mr. Kirby: We have 30,000 or 40,000 left; I don't know accurately just what it is.

Mr. Garwood: All but that?

Mr. Kirby: Yes. We sold up to three million dollars of value, because that was the sum of money we needed.

Mr. Garwood: The Kirby Lumber Company made one deed to Mr. Chapmon, acting for the Santa Fe?

Mr. Kirby: Yes.

Mr. Garwood: Then you made another deed, did you, in person?

Mr. Kirby: Yes, sir; instead of passing my lands over to the Kirby Lumber Company and having double record fees, I conveyed them direct to Mr. Chapman.

Mr. Garwood: And those two transactions covered all the land conveyed to the Santa Fe?

Mr. Kirby: Yes.

Mr. Garwood: So then, the Santa Fe, in addition to 187,000 acres of the Kountze land, has got title subject only to your
6641 option to repurchase *to* all of the other land with the exception of thirty or forty thousand acres?

Mr. Kirby: Well, about 130,000 or 140,000.

Mr. Garwood: The two deeds from you and the Kirby Lumber Company cover about 130,000 or 140,000?

Mr. Kirby: I think so.

Mr. Garwood: So the Santa Fe has fee titles to the 187,000 acres of the Kountze land and 130,000 acres acquired from you and from the Kirby Lumber Company?

Mr. Kirby: Whatever it is, I cannot testify as to the acreage exactly, but in that neighborhood.

Mr. Garwood: Now, in your examination this morning, as illustrative of the influence of divisions upon sales, you instanced a case

where the Denver & Rio Grande was in the market for a large supply of material?

Mr. Kirby: Yes, sir.

Mr. Garwood: And you tried to get the contract of sale? Do you know who did get the contract?

Mr. Kirby: Well, I have heard, but I don't know definitely. I do not recall; it is among our papers. I do not know whether Mr. Bonner knows, if he is here.

Mr. Garwood: I will ask you if it was not some lumber
6642 broker down there who got the contract?

Mr. Kirby: Part of it.

Mr. Garwood: And he went around and filled it up from this, that or the other lumber company?

Mr. Kirby: Well, any lumber broker has to do that.

Mr. Jeffery: What was that date?

Mr. Kirby: But it had bought all on Santa Fe land. He could not buy it on the Santa Fe where our mills were.

Mr. Jeffery: What date was that?

Mr. Kirby: Last year some time.

Mr. Jeffery: 1910?

Mr. Kirby: Yes, sir.

Mr. Garwood: You stated this morning, and I think correctly, that under the Texas laws, a common carrier regularly incorporated as such and holding itself out to the public as such, has not the right to take up its track when it gets through its operations, and as I understand, that was the reason why you never incorporated?

Mr. Kirby: No, it is only one of the reasons.

Mr. Garwood: That is one of the reasons why you never incorporated. The Texas laws as a rule are more or less strict and severe, are they not? I ask you these questions. You are a lawyer
6643 as well as a lumber man.

Mr. Kirby: No, I used to have a license, but there is a distinction.

Mr. Garwood: They are quite strict in both their laws and their decisions as to the requirements they make of common carriers, are they not?

Mr. Kirby: Well, we think so down there, you know. We sympathize with your clients who think that thing.

Mr. Garwood: Very often they need it. In their requirements as to full crews, equipment of trains of every character, the station facilities and conveniences around stations.

Mr. Kirby: Yes.

Mr. Garwood: All of those can be required, and a multitude of others that I do not now mention can be required by our laws and our Commission?

Mr. Kirby: Yes, sir.

Mr. Garwood: And they are enforced with more or less severity, are they not?

Mr. Kirby: On the trunk lines.

Mr. Garwood: Are they not enforced on other lines?

Mr. Kirby: I do not know of any tap line that is getting it applied to them.

6644 Mr. Garwood: Don't you know of tap lines that have been required to furnish equipment, and things of that kind?

Mr. Kirby: No.

Mr. Garwood: And if a tap line——

Mr. Kirby: That is, you mean required?

Mr. Garwood: Yes, required by the Commission.

Mr. Kirby: I know of them furnishing equipment, but then the word "required" is different.

Mr. Garwood: Don't you know of instances where they have been required to furnish the equipment?

Mr. Kirby: No.

Mr. Garwood: If the mere fact that you could not take up your rails was one of the reasons you would not incorporate as a common carrier, all these additional reasons would apply with added force?

Mr. Kirby: Yes, sir.

Mr. Garwood: In the State of Texas?

Mr. Kirby: Yes, sir.

Mr. Garwood: Now, you say that you carefully refrained from being acted upon as a common carrier, as far as you could?

Mr. Kirby: Yes.

6645 Mr. Garwood: Then those with timber lands adjacent to your various trams of course have no way of marketing that timber unless somebody else builds a line in there and incorporates it?

Mr. Kirby: They have the same way I have; they can build their own roads.

Mr. Garwood: Yes, they can build their own roads.

Mr. Kirby: Yes.

Mr. Garwood: But a man who cannot command a loan of three millions of dollars is not——

Mr. Kirby: We did not put any of that in a tram road, Judge.

Mr. Garwood: Is not apt to rush into and contract the obligation to build a railroad in Texas, as a general proposition, is he?

Mr. Kirby: I don't just understand the question. The man cannot borrow the money?

Mr. Garwood: A man who cannot raise large sums of money is not apt to do it, so that the small landholder located along any of your lines cannot get to market——

Mr. Kirby: Oh, yes, he can.

Mr. Garwood: With his stuff, without either he builds a

6646 road or somebody else builds it for him.

Mr. Kirby: That is true; there is no market whether he is a big or small landholder unless he has facilities to get to the trunk line.

Mr. Garwood: Unless he has facilities to get to the trunk line. Now, coming back just for a moment, you stated this morning that equality of rates was the prime consideration——

Mr. Kirby: In rate making; yes, sir.

Mr. Garwood: In your judgment. Of course you understand that

there can be no system of rates mathematically and theoretically perfectly equitable and just to everybody; that is a matter of impossibility.

Mr. Kirby: I presume it is; that is, considering the carrier and the consumer and the producer everywhere, perhaps all of them have some hardship somewhere.

Mr. Garwood: Don't you think a contract upon which the line upon which all your mills were situated would cut off people in the same business as yourself from through rates to consuming territory would be unjust to all of those that were situated on the connecting lines and who were cut off?

Mr. Kirby: It would depend entirely upon what the connecting line did to them. If you are under a blanket system where
6647 those things are reciprocated—but suppose no line in the country had any divisions with the originating line except the one I was on; I would be at a disadvantage against every lumber man who could get into the market, and I would be limited to one.

Mr. Garwood: Do you think that condition existed at that time?

Mr. Kirby: It did not altogether, but that was long before you were associated with the Southern Pacific, and we only had one line down there, and we suffered from "Southern Pacific fly."

Mr Garwood: I am not associated with the Southern Pacific. We are mutually correcting each other.

Mr. Kirby: Then I am sorry.

Mr. Garwood: I am associated with the Houston, East & West Texas and the Texas & New Orleans, so that the record may be straight.

Mr. Kirby: Well, the T. & N. O., when we did not have but that one railroad running east and west, we suffered from what we called "Southern Pacific fly" a very unjust designation of the Southern Pacific in that regard, because it did not have power to make rates when it had no rails.

6648 Mr. Garwood: It tried to do the best it could under the circumstances?

Mr. Kirby: I think so.

Mr. Garwood: You have not always been opposed to incorporation and allowance of divisions to short lines, have you?

Mr. Kirby: It is owing to what you call a short line. The length of the railroad does not determine its merits.

Mr. Garwood: Would you term your various lines short lines?

Mr. Kirby: They are nearly all short lines, but they are not railroads. There are lines shorter than mine that are called railroads.

Mr. Garwood: You stated a short time ago that the Santa Fe offered you two cents, was it?

Mr. Kirby: Yes, sir.

Mr. Garwood: And that you declined to take it.

Mr. Kirby: Well, that was probably an erroneous statement to say I declined. I asked them not to pursue the matter any farther until I could see Mr. Ripley. I wanted to discuss it with him, as to the necessity for it.

Mr. Garwood: At any rate you did not take it, but dropped it?

Mr. Kirby: Yes, sir.

6649 Mr. Garwood: I want to ask you if you did not at one time enter into a contract with Mr. Yoakum to incorporate all of your lines, and operate them as a common carrier?

Mr. Kirby: No, sir.

Mr. Garwood: Now, by "you," I mean the Kirby Lumber Company.

Mr. Kirby: I know what you are talking about. I sold to the Rock Island, or made a contract to sell to the Rock Island rather, about 140 out of our 200 miles of road, such mileage as they wanted in building a trunk line through that territory. They advanced $600,000 on the contract, but we got in litigation over the contract in the receivership and before the litigation was ended the period of time in which we would do these things had expired, and the Rock Island refused to go forward with it, but it was a sale to a railroad corporation to be organized for a certain consideration, reserving the trackage rights on a wheelage basis over the lines of road, and 49 per cent of the stock to be owned by the Kirby Lumber Company; it was a mere sale of these existing roads, but no stipulation as to any division to the Kirby Lumber Company unless there was an earning on the stock.

Mr. Garwood: Not to the Kirby Lumber Company, but to the——

6650 Mr. Kirby: To the Rock Island Road, who would own a majority of the stock, or to the railroad company.

Mr. Garwood: You say there was no stipulation as to the division?

Mr. Kirby: No, sir.

Mr. Garwood: Was not that——

Mr. Andrews: I beg your pardon for the interruption, but I think he does not understand the question you asked.

Mr. Garwood: I do not want to mislead him of course.

Mr. Andrews: I do not think the thing should be misstated. I think he understood you to ask if there was no provision in the contract for divisions.

Mr. Kirby: Yes, sir.

Mr. Andrews: I think you answered no, meaning that the Kirby Lumber Company would get anything.

Mr. Kirby: That is what I meant.

Mr. Andrews: There was a provision in there that your railroad company should receive a division?

Mr. Kirby: A division of what?

Mr. Andrews: A division of the through rates, with whoever handled the traffic out that originated on that road.

Mr. Kirby: Well, that would be a matter that could not

6651 concern the Kirby Lumber Company.

Mr. Andrews: I understand that, but I did not want you to misunderstand each other.

Mr. Garwood: He did say the Kirby Lumber Company, but I was about to call his attention to the error. The railroad would receive it?

Mr. Kirby: Yes, because the lumber was destined beyond its line.

Mr. Andrews: And the contract was made with Mr. Yoakum too, in name?

Commissioner Harlan: Well, the contract was not made effective, was it?

Mr. Kirby: No.

Mr. Garwood: The allowance of divisions to the railroad was a part of your plan of organization, was it not?

Mr. Kirby: Well, I do not know anything about that——

Mr. Garwood: Well, it was contemplated——

Mr. Kirby: It was contemplated they would earn some money on the transportation, on the tonnage that they handled, if that is what you mean, but——

Mr. Garwood: Certainly, but it was to get divisions.

Mr. Kirby: Of course it was to get divisions with the con-
6652 necting lines, but I do not remember about anything of that sort being in the contract, although it may have been.

Mr. Garwood: Well, the contract consisted of an exchange of letters between you and Mr. Yoakum, did it not?

Mr. Kirby: And B. F. Yoakum.

Mr. Garwood: That correspondence would show whether or not the question of divisions was discussed?

Mr. Kirby: Yes, and we would be perfectly willing for it all to go in, so far as that goes.

Mr. Garwood: Yes, we will look into that later. It is your opinion, then, that you expected to get divisions on the lumber tonnage that would be originated on the roads of the Kirby Lumber Company which you proposed to incorporate as a railroad?

Mr. Kirby: I had no idea, Judge, that trunk lines were so liberal in the matter of divisions——

Mr. Garwood: Well, I am asking you——

Mr. Kirby: Let me give you the reasons, I would like to answer your questions.

Mr. Garwood: All right.

Mr. Kirby: So I did not consider the matter of divisions and did not suppose that would be so profitable. But the condition
6653 of the contract was that we would realize on an asset which otherwise we could not.

Mr. Garwood: You say you did not realize they were so liberal in their divisions. Did you not have some exact divisions in mind?

Mr. Kirby: Not that I recall. Mr. Yoakum may have in his correspondence. I do not remember.

Mr. Garwood: My recollection is that you had the matter very well reasoned out, and that you had——

Mr. Kirby: That may be true.

Commissioner Harlan: I think we have covered this matter enough. It would not control the Commission, what this witness thought about that matter. It might affect his testimony, but I think he has sufficiently cleared that up.

Mr. Garwood: Your Honor, I think from a legal standpoint that this testimony is admissible, else of course I should not ask it.

Commissioner Harlan: I assume that is so, but——

Mr. Garwood: I think it shows the attitude of the intervenor, and gives us a side light upon the value of his opinions and his standpoint, and while I do not wish to pursue it to any undue length, and I think your Honor must acquit me of any dereliction
6654 in this regard——

Commissioner Harlan: I will acquit you if you stop at this point, Judge Garwood, but I think you have covered the thing fully, and that was the suggestion I made.

Mr. Garwood: Now, I will ask the witness if the contract did not contemplate that you would secure for this railroad that was to be made by the roads hitherto owned by the Kirby Lumber Company——

Commissioner Harlan: Have you some letter which indicates that? If so, be kind enough to state it.

Mr. Garwood: Yes, I was about to state it.

Commissioner Harlan: Very well.

Mr. Garwood: "A division on joint freight rates with connecting lines which will afford to the railroad company on all oil and lumber traffic delivered by it to connecting lines a revenue of not less than three cents per hundred pounds, and on all other traffic received by the railroad company delivered from or by the railroad company to other connecting lines a revenue of not less than five cents per hundred pounds, and if such divisions on business within the State of Texas are fixed at higher rates by the Texas Railroad Commission, in that event such higher rates shall also apply
6655 on interstate business."

Commissioner Harlan: Is that a letter?

Mr. Garwood: That is a letter from Mr. B. F. Yoakum to Mr. Kirby as president of the Kirby Lumber Company of date November 8, 1903.

Commissioner Harlan: Very well.

Mr. Garwood: That is a correct statement of the contract as set out in the letter?

Mr. Kirby: I guess that is correct. I do not recall that the matter of divisions was discussed.

Mr. Garwood: How many of those lines were included within this deal by which you were to incorporate a railroad and operate them?

Mr. Kirby: My recollection is there was about 140 miles, including about five or six miles of terminals in the city of Beaumont.

Mr. Garwood: What was the consideration of that deal?

Mr. Kirby: Well, Judge, the papers there show. I have not looked at them.

Mr. Garwood: I do not care to put it in——

Commissioner Harlan: You mean as stated in the contract?

Mr. Garwood: Yes.

6656 Commissioner Harlan: If you have it there, just state it.

Mr. Garwood: There was a good deal of it, and I did not want to stop to read it right now. It is quite a long contract.

Mr. Andrews: I can answer, if you want me to.

Mr. Garwood: I would be glad if you would.

Mr. Andrews: It was a million dollars, to be issued guaranteeing such additional amount as the Railroad Commission of Texas might authorize, less $1,000 a mile for stock. It was definitely known as one million dollars.

Mr. Garwood: That statement by Mr. Andrews is correct?

Mr. Kirby: That is my recollection of it. I think that is right.

Mr. Garwood: What was to become of the stock of the railroad company which was to be organized?

Mr. Kirby: My recollection is that the Kirby Lumber Company should own 49 per cent and the Rock Island or Mr. Yoakum the other 51 per cent.

Mr. Garwood: And the Kirby Lumber Company as such would own the stock directly of the New Railroad corporation?

Mr. Kirby: Yes, sir.

Mr. Garwood: And the Rock Island interests would own
6657 the majority of the other stock?

Mr. Kirby: Yes, sir.

Mr. Garwood: Now you actually incorporated that railroad?

Mr. Kirby: Well, there was a charter obtained.

Mr. Garwood: Did you not go so far as to make a transfer of all of your roads embraced within these preliminary negotiations to the newly organized corporation and make a deed?

Mr. Kirby: That may have been. I don't remember; I do not think so. Possibly it may have been so.

Mr. Garwood: I will state to you that is my understanding.

Mr. Kirby: Papers were executed for $600,000 that was advanced to us, but I do not think any transfer was actually made to the railroad company.

Commissioner Harlan: If counsel ascertains that afterward he may state it for the record.

Mr. Garwood: Who constructed the Orange & Northwestern Railroad?

Mr. Kirby: I do not know except from hearsay.

Mr. Garwood: Well, just state it.

Mr. Kirby: The Orange mill interests are supposed to have done it.

6658 Mr. Garwood: That runs from Orange to a connection with the Santa Fe about Buna?

Mr. Kirby: Yes, sir.

Mr. Garwood: And thence out to Newton?

Mr. Kirby: Yes.

Mr. Garwood: Do you know what interests own that railroad?

Mr. Kirby: The Frisco.

Mr. Garwood: I notice you have a mill at Call.

Mr. Kirby: Yes, sir.

Mr. Garwood: There is Call Junction and Call. Where is Call Junction?

Mr. Kirby: Call Junction is on the Santa Fe, and the mill at Call is on the Frisco.

Mr. Garwood: What is the production of that mill?

Mr. Kirby: It is about 150,000 feet a day.

Mr. Garwood: About what is your average output of cars of lumber?

Mr. Kirby: I suppose, running the mill day and night, as we often do, about 300 cars a month, maybe more than that.

Mr. Garwood: Can you state about what proportion of that traffic goes to the Frisco on which your mill is situated, and what to the Santa Fe?

6659 Mr. Kirby: There is not a great deal going to the Frisco now. Probably it will all go Frisco after a while.

Mr. Garwood: Has any been going to the Frisco up to this time to any great extent?

Mr. Kirby: Yes, sir.

Mr. Garwood: What proportion?

Mr. Kirby: I could not tell the percentage; it is not very large. Where the Frisco have better rates than the Santa Fe, if that is what you want to know. The Santa Fe, so long as the rates are equal, would have the right to the first call on the business out of that mill, but there are a number of points where the rates are not equal.

Mr. Garwood: And then you ship over the Frisco?

Mr. Kirby: Yes, sir.

Mr. Andrews: For your information, here is a statement as to the cars by the year, but not by the mill, which was offered in evidence. It gives the Santa Fe and other railroads, and shows those on the Frisco. It does not specify any individual mill.

Mr. Garwood: That proposition applies to all of these mills, wherever you have a connection with another line, the Santa

6660 Fe has the call on the traffic, provided the rates are equal?

Mr. Kirby: Yes, sir.

Mr. Garwood: And that is applicable to all of your mills wherever situated?

Mr. Kirby: Yes, sir—well, no; all mills east of the Neches River.

Mr. Garwood: And those west are not embraced within that agreement?

Mr. Kirby: No; you see we have some mills on your line and you get all of it.

Mr. Garwood: Now, you are a railroad man also, are you not, as well as a lumber man and a lawyer?

Mr. Kirby: Well, I am a director in a company—yes, I am president of a railroad company.

Mr. Garwood: What railroad is that?

Mr. Kirby: That is an important road down there, the Burrs Ferry, Browndel & Chester. You may not know it by its name, but doubtless you have transportation over it.

Mr. Garwood: I receive transportation over it?

Mr. Kirby: I had supposed Judge Andrews would exchange with you.

Mr. Garwood: I hope you will regulate that and put me on

6661 your list. Where does the Burrs Ferry, Browndel & Chester appear on the map?

Mr. Kirby: There is only eleven miles in operation. It begins at Rockland on the Southern Pacific and runs east eleven miles.

Mr. Garwood: Where is its ultimate destination?

Mr. Kirby: Well, the chartered termini west is at Chester, on that orphan of the M. K. & T., as they call it, and the east is at the Sabine River, about eighty miles.

Mr. Garwood: How far is it from connection with the Santa Fe?

Mr. Kirby: About twenty miles at the present time.

Mr. Garwood: What is the general character of that road?

Mr. Kirby: It is laid with new 60 pound rail, rock ballasted, and the best piece of property in east Texas for its length—I mean physically, I do not mean in earning power.

Mr. Garwood: Is it a common carrier?

Mr. Kirby: Yes, sir.

Mr. Garwood: What enterprises are situated along there?

Mr. Kirby: There is one saw mill owned by the Aldridge Lumber Company, and a rock quarry, I believe owned by Dar-
6662 ragh Brothers of Galveston, and a turpentine concern, a New Orleans concern, and there are three or four little neighborhood mills out there, but they have not shipped any in two or three years.

Mr. Garwood: Your chief tonnage is rock and lumber?

Mr. Kirby: A little more rock than lumber on the tonnage basis.

Mr. Garwood: Where do you ship your rock to?

Mr. Kirby: Sabine Pass, when there is any work going on there. It is crushed rock for construction material, concrete and road building.

Mr. Garwood: Then if there is not any jetty going on at Sabine Pass, your rock tonnage will be cut off very much?

Mr. Kirby: No, there is a large commercial demand for crushed rock for road building and building all that sort of thing.

Mr. Garwood: You say that is one of the best roads in east Texas?

Mr. Kirby: Physically.

Mr. Garwood: And you of course expect it to get better as the country develops, do you not?

Mr. Kirby: Well, I don't know that that will improve
6663 very largely, because we have it rock ballasted. I don't know much else to do to it.

Mr. Garwood: I mean its general business and conditions will improve as the country develops.

Mr. Kirby: I could not say that; after the lumber is cut out I don't know about its general business. Improve? I do not think so, because its tonnage will diminish of course.

Mr. Garwood: You think, then, that the lumber will disappear along the line very soon?

Mr. Kirby: No.

Mr. Garwood: About how long will the lumber tonnage be left there?

Mr. Kirby: That is something like asking how big is a piece of chalk; it depends how fast it is cut off. If it is not cut any faster than it is now, it would be there a hundred or two years.

Mr. Garwood: There is not much cutting going on, then, those mills are not large on that branch?

Mr. Kirby: No. I have graded that road over as far as the Santa Fe on my way to Sabine and got my bridges in and was ready to lay the track when the panic came on in 1907 and I stopped and have not done anything.

6664 Mr. Garwood: It is graded, then, to Browndel?

Mr. Kirby: Yes, sir, it crosses the Santa Fe there.

Mr. Garwood: You have a mill at Browndel?

Mr. Kirby: The Kirby Lumber Company has a mill at Browndel.

Mr. Garwood: When you complete over to Browndel you will have an additional outlet besides the Santa Fe, then, for your lumber, will you not?

Mr. Kirby: Where?

Mr. Garwood: If you build over to Browndel——

Mr. Kirby: Oh, for the product of that mill?

Mr. Garwood: Yes.

Mr. Kirby: Yes, of course that would be a two-line mill.

Mr. Garwood: You own a controlling interest in the stock of the Burrs Ferry, Browndel & Chester?

Mr. Kirby: I own it all.

Mr. Garwood: You own the whole thing, then?

Mr. Kirby: Yes, sir.

Mr. Garwood: You are a stockholder in the Kirby Lumber Company, are you not?

Mr. Kirby: Yes, sir.

Commissioner Harlan: Do you mean the Kirby Lumber Company owns it or you personally?

6665 Mr. Kirby: I do personally. The Kirby Lumber Company has no interest in it, and is not a shipper over it.

Mr. Garwood: But when you complete into Browndel you will then have an outlet for your lumber. You of course see no reason why the Burrs Ferry, Browndel & Chester should not receive a transportation charge for any lumber of yours that it might ship from Browndel over to the T. & N. O., do you?

Mr. Kirby: No, sir.

Mr. Garwood: None in the world?

Mr. Kirby: No.

Mr. Garwood: Well, neither do I; we agree thoroughly on that proposition. Now, are——

Mr. Kirby: There might a reason arise, however.

Mr. Garwood: Well, there would not be any from the condition of facts I have stated to you?

Mr. Kirby: No.

Mr. Garwood: Things might happen subsequently that would change things, but on that situation you see no reason why your road over there should not receive a transportation charge as one of the best roads in that section?

6666 Mr. Kirby: I see no more reason why the Kirby Lumber Company should deny the Burrs Ferry, Browndel & Chester a division or complain of a division than they could complain

of the Santa Fe or the Southern Pacific or anybody else that did. The Kirby Lumber Company did not build this road as a plant facility, and is in no way interested.

Mr. Garwood: But you did build it.

Mr. Kirby: I have not done it yet, because I have not built to get the product.

Mr. Garwood: But you are the Kirby Lumber Company.

Mr. Kirby: Not quite. I am 51 per cent.

Mr. Garwood: Are any officers of the Kirby Lumber Company or its employees officers and employees of the Burrs Ferry, Browndel & Chester Company?

Mr. Kirby: Yes, sir.

Mr. Garwood: Who?

Mr. Kirby: Well, I am president of both concerns.

Mr. Garwood: That is one.

Mr. Kirby: Mr. Hancock is the only other one. He acts as traffic manager of the Burrs Ferry, Browndel & Chester.

Mr. Garwood: Are there any others?

Mr. Kirby: I do not recall any other.

Mr. Garwood: Who is the general attorney of the Burrs
6667 Ferry, Browndel & Chester?

Mr. Kirby: That is Judge Hornsby.

Mr. Garwood: Has he any duties in connection with the Kirby Lumber Company?

Mr. Kirby: Yes, sir, he is connected with it as well.

Mr. Garwood: What place does he hold with the Kirby Lumber Company?

Mr. Kirby: He is land and tax commissioner.

Mr. Garwood: By virtue of their official position on the Burrs Ferry, Browndel & Chester, these officers are entitled to receive, and do receive, transportation, do they not?

Mr. Kirby: From some roads, yes.

Mr. Garwood: Do you?

Mr. Kirby: Well, not necessarily for that. I am a big railroad man, too. I am a director in other systems.

Mr. Garwood: Well, that is gratifying. What other system are you also a director of?

Mr. Kirby: The Frisco and the Santa Fe, local lines down there.

Mr. Garwood: You are a director in those roads?

Mr. Kirby: Yes, sir.

6668 Mr. Garwood: And of course you do not know whether the transportation which you receive is issued to you by virtue of your directorship in these larger systems, or by virtue of your connection with the Burrs Ferry, Browndel & Chester?

Mr. Kirby: I have not looked at the passes; in fact haven't been any this year. They used to be issued to me, however, on account of my directorship in those other lines. Whether they are on account of the Burrs Ferry now I do not really recall.

Mr. Garwood: I will say there is a general complaint, as appears from the record, of the very great scarcity of passes since the first

of January. I do not know the cause. You do considerable traveling for the interests of the Kirby Lumber Company, do you not?

Mr. Kirby: Well, some.

Mr. Garwood: So do these other officers that you mentioned?

Mr. Kirby: Well, it is pretty rarely that either Hancock or Hornsby are away on business for the Kirby Lumber Company.

Mr. Garwood: Now, when you travel on these free passes, you do not undertake to disassociate yourself as a railroad director as or a railroad president from yourself as president of the Kirby Lumber Company, do you?

6669 Mr. Kirby: No, sir.

Mr. Garwood: You travel in your general capacity, and do such business as comes to you in the general course of business?

Mr. Kirby: Yes, sir; wherever I am to go, if I have any transportation over the road, I use it.

Mr. Garwood: And you assume——

Mr. Kirby: That is what it is given to me for.

Mr. Garwood: You are entirely correct. Are you a large stockholder in—was it the Frisco and Santa Fe?

Mr. Kirby: Yes.

Mr. Garwood: Are you a large stockholder in those roads?

Mr. Kirby: No, sir; I do not own any stock in either one except the qualifying shares in the corporations of which I am a director, some of the little lines down there.

Mr. Garwood: You did not acquire that as an independent investment?

Mr. Kirby: No.

Mr. Garwood: That is merely a qualifying share?

Mr. Kirby: Yes.

Mr. Garwood: Do you participate in directing the general policies of the Frisco or Santa Fe?

6670 Mr. Kirby: I have not yet.

Mr. Garwood: You do ride, however, on the transportation; that is about the extent of your participation in the operations of the Santa Fe?

Mr. Kirby: Well, yes; but I attend directors' meetings of the other concerns, though.

Mr. Garwood: Of the Burrs Ferry, Browndel & Chester?

Mr. Kirby: No, of the Frisco and vote on mortgages and things of that sort.

Mr. Garwood: You help make a quorum?

Mr. Kirby: Yes.

Mr. Garwood: What mercantile establishments are there on the Burrs Ferry, Browndel & Chester?

Mr. Kirby: Well, all of these concerns that I have mentioned maintain stores. The Aldridge Lumber Company——

Mr. Garwood: They are merely commissaries largely?

Mr. Kirby: Yes, they have a good big store there, though.

Mr. Garwood: What towns or settlements are there on it?

Mr. Kirby: There are none except around these plants; that is,

on the eleven miles completed. Of course there is a town at Rockland, but that is a mill plant too.

Mr. Garwood: Does the Burrs Ferry, Browndel & Chester
6671 road receive divisions on interstate traffic?

Mr. Kirby: Yes, sir.

Mr. Garwood: And on state traffic?

Mr. Kirby: Yes, sir.

Mr. Garwood: Does it receive divisions from the Gulf, Colorado & Santa Fe?

Mr. Kirby: I think so.

Mr. Garwood: Your divisions on the Burrs Ferry, Browndel & Chester have not been cancelled by the Santa Fe or any of its other connecting lines; I mean no notice of cancellation has been given, so far as you know?

Mr. Kirby: No, I think not.

Mr. Garwood: Do you know what those divisions are with the Burrs Ferry, Browndel & Chester?

Mr. Kirby: Well, in a general way. I would rather speak from the tariffs, but they are from one to four cents.

Mr. Garwood: Have you any higher than four cents?

Mr. Kirby: I think not.

Mr. Garwood: You think those are reasonable divisions, don't you?

Mr. Kirby: Well——

Mr. Garwood: Considering that you originate the traffic——

6672 Mr. Kirby: I guess so. I would get more if I could, but that is all the T. & N. O. will let me have.

Mr. Garwood: You at least do not think they are unreasonably high?

Mr. Kirby: No.

Mr. Garwood: You would not be willing to concede that they were, would you?

Mr. Kirby: No.

Commissioner Harlan: I understood you to say that the Kirby Lumber Company is operating no mill on that line?

Mr. Kirby: Not at all. It has never shipped a pound of freight of any kind over that line.

Commissioner Harlan: Have you or the Kirby Lumber Company any interest in the Aldridge mills on that line?

Mr. Kirby: No, sir.

Commissioner Harlan: Or in the quarry?

Mr. Kirby: No, sir.

Commissioner Harlan: Have you any interest in any industry on that line?

Mr. Kirby: No, sir.

Commissioner Harlan: When I ask you about the interest, I mean direct or indirect or equitable or otherwise.

6673 Mr. Kirby: No, no interest. We have a lot of lumber land through the territory and there is a lot of this Gallup timber

which will have to come out some time, but none has ever moved yet.

Commissioner Harlan: Have you any interest in any of those industries on that line as holder of mortgages or bonds or any financial relation at all?

Mr. Kirby: No. At one time I endorsed Mr. Aldridge's note. Mr. Aldridge is a friend of mine who owns a mill and owns the stock in the corporation, but he has since paid it off, all but a little. There may be a little balance still outstanding.

Commissioner Harlan: It did not give you any interest in the operations of his property?

Mr. Kirby: No.

Mr. Walter: You have graded the line up to your mill at Browndel?

Mr. Kirby: You mean—yes, we crossed the railroad at Browndel near our mill.

Mr. Walter: You are building up to that mill?

Mr. Kirby: No, we are not now. We would if we had the money; that is, if I had the money.

6674 Mr. Walter: You have graded the road?

Mr. Kirby: Yes.

Mr. Walter: And made all preparations to get there?

Mr. Kirby: Yes, sir.

Commissioner Harlan: What is the length of the grade?

Mr. Kirby: About 20 miles from the end of the track over to the Santa Fe.

Mr. Walter: When you get up there, you expect to ship products of your mill over that line?

Mr. Kirby: That will depend upon circumstances. If it is any benefit, yes; otherwise not.

Mr. Walter: If you can get to the markets on the same rate you get over the Frisco, over the Browndel or Santa Fe, you would ship over your line?

Mr. Kirby: No, the Santa Fe would get the business then under our contract; that is, at the same rate.

Mr. Walter: Suppose the Santa Fe does not reach it?

Mr. Kirby: It does, though.

Mr. Walter: If it does not reach the point you are going to reach, you will ship over the Browndel, Burrs Ferry & Chester?

Mr. Kirby: Yes.

6675 Mr. Walter: You do not consider that that will interfere in anywise with the railroad's collecting and receiving just and reasonable rates, whether joint or local?

Mr. Kirby: No, so far as divisions are concerned with the connecting lines.

Mr. Walter: That is purely a railroad proposition?

Mr. Kirby: Yes, sir.

Mr. Walter: And it does not affect the Kirby Lumber Company in anywise?

Mr. Kirby: It does not, because the Kirby Lumber Company does not patronize it.

Mr. Walter: I say when you get to shipping over it, it will not affect the lumber company in anywise. It is a railroad proposition?

Mr. Kirby: It is a railroad proposition, but it could affect the Kirby Lumber Company; yes, sir. It could affect the majority interest in the Kirby Lumber Company very substantially. Suppose the connecting lines would give me ten cents.

Mr. Walter: But you say a reasonable rate is one to four cents. If you only get a reasonable allowance for that service, will that affect the Kirby Lumber Company at all?

6676 Mr. Kirby: If you perform the service, you are entitled to charge for it, in my judgment.

Mr. Walter: Who?

Mr. Kirby: If the railroad company performs the service, and is a bona fide carrier, it is entitled to make rates and charge for it.

Mr. Walter: Regardless of who owns the product which goes over it?

Mr. Kirby: The only feature there, I should think, which would authorize any interference with it, would be whether the rates created a condition of inequality amounting to discrimination.

Mr. Walter: We will suppose your line has reached Browndel and you are shipping over it. Here is the Aldridge plant. You now have a blanket rate reaching all markets. If the joint rate is cut out because of the ownership of the lumber shipped from the Kirby mills, you being president of the road, what would you say as to the effect upon the Aldridge plant?

Mr. Kirby: I do not think I followed you there.

Mr. Walter: I understood you to say this morning that the only justification for a blanket rate was the equality it put every-

6677 body upon.

Mr. Kirby: Yes, sir.

Mr. Walter: The Kirby Lumber Company is shipping from Browndel.

Mr. Kirby: Yes.

Mr. Walter: And the Aldridge company is shipping from its plant.

Mr. Kirby: Yes, sir.

Mr. Walter: Both over the Burrs Ferry, Browndel & Chester. We will suppose the joint rate has been cut out solely because and only because you happen to be the president and owner of the railroad, and a majority holder of the Kirby Lumber Company. What do you say as to the effect of that action upon the Aldridge plant?

Mr. Kirby: The Aldridge plant would be at a disadvantage.

Mr. Walter: What reason can you give for that?

Mr. Kirby: The only reason you could give for that would be that the Kirby Lumber Company was getting such divisions that it was occupying an advantageous position with respect to its competitors, creating a condition of inequality in rates to markets, and therefore the conditions would have to be regulated.

6678 Mr. Walter: Then you would make the Aldridge man pay more money by that action?

Mr. Kirby: Yes. Before I got any divisions with the T. & N. O.

after building this line he had to pay the local, and they are at a disadvantage.

Mr. Walter: Are you willing to say that the Aldridge plant located on that road should be compelled to pay upon the blanket rate solely because some other shipper on that line is interested indirectly through you in the railroad company?

Mr. Kirby: Not solely for that reason; no.

Mr. Walter: Is there any justification for that action at all in your mind?

Mr. Kirby: There would not be in this case, Mr. Walter, if that is what you are inquiring about.

Mr. Walter: Yes. Supposing your mill is operating and shipping over the line.

Mr. Kirby: Mr. Aldridge ought to have the same rate to market that everybody else located as he is here, and I understand that to be involved in this inquiry.

Mr. Walter: He is located upon a line of which you are the president, and you are also the president of the Kirby Lumber
6679 Company and the majority stockholder?

Mr. Kirby: Yes.

Mr. Walter: And we will suppose that line has been completed up to Browndel and you are shipping over it. Do you say the fact he now is entitled to the joint rate would be changed by your shipping over that line?

Mr. Kirby: I doubt if it would.

Mr. Walter: Do you think there is any justification for it at all——

Mr. Kirby: I doubt if there is any. The only objection I have is where they are put in as a plant facility; I think a carrier that is doing business in good faith is entitled to compensation for that business.

Mr. Walter: You say a railroad is necessary for the lumber business?

Mr. Kirby: Yes.

Mr. Walter: Which is the more necessary, the line leading from your mill to the market or the line leading from the tree to your mill?

Mr. Kirby: There is not either one more necessary. They are both indispensible.

Mr. Walter: How can you say one is a plant facility and
6680 the other is not?

Mr. Kirby: Because one is owned and directed by the plant, just the same as the carrier which hauls the logs into the mill. It is a plant facility, without which you cannot operate. You can build your plant on the other railroad, and of course you have to have the main railroad when you ship, but if you had your plant facility in the form of your railroad and no saw mill and therefore no plant, you would not have anything to ship.

6681 Mr. Walter: It is purely a question of ownership, is it not?

Mr. Kirby: No, sir, not necessarily a question of ownership at all.

Mr. Walter: Suppose I go down there and build a railroad, and you locate your mill on it, and I haul logs for you; is that railroad a part of your plant facility?

Mr. Kirby: Not necessarily, that railroad is not, but the railroad I build to get my logs on to your railroad is a plant facility.

Mr. Walter: Would you make any difference because one man built it or another man built it?

Mr. Kirby: No, but it would make a difference as to whether one is a trunk line and the other is not, whether one is a carrier performing service to the public, and the other is a mere plant facility. There is a distinction.

Mr. Walter: Where do you draw the line?

Mr. Kirby: I draw the line—the true basis of drawing the line is the interest served.

Mr. Walter: The interest served?

Mr. Kirby: It does not make any difference how long your tram road is, or the character of its construction, if it only serves
6682 one interest, or substantially one, it is a plant facility, a private property.

Mr. Walter: Then if I should say of all the tonnage hauled over the Santa Fe rails in Louisiana 98 per cent was lumber, would you say that it made any difference, the fact it is all one commodity?

Mr. Kirby: No, the Santa Fe does not own the tonnage, and if it did, I presume it would.

Mr. Garwood: Suppose it does substantially own the tonnage?

Mr. Kirby: Well, I think probably you ought to have a commodity law in that case.

Mr. Coleman: The remark of Mr. Garwood is uncalled for——

Mr. Garwood: I withdraw the statement.

Mr. Coleman: It is not personal to the Santa Fe, but I want to call your attention to the way the examination is proceeding. When Mr. Garwood started to examine Mr. Kirby, we asked the relevancy and materiality of it, and he promised to show it. He then proceeded to show that the Santa Fe controlled Mr. Kirby, and then switched around and showed that Mr. Kirby had some kind of contract by the signing of which he controlled us absolutely. He then went
6683 on to produce a contract with Mr. Yoakum which would show that Mr. Kirby did not consider anybody owned him. Mr. Walter is going into his opinions, and it seems to me we are wasting time.

Commissioner Harlan: I have had that view myself for some time, but at the same time Mr. Kirby has expressed some opinions about this, and I assume Mr. Walter wants to test this matter.

Mr. Walter: Yes, and I do not want his opinion to stand without some examination. This morning, Mr. Kirby, you spoke of equality. You are down in Southeast Texas.

Mr. Kirby: Yes, sir.

Mr. Walter: You have a line at Beaumont.

Mr. Kirby: Yes.

Mr. Walter: Let us take a line located in Southern Arkansas, started as a common carrier, serving two or three small mills, as well

as serving the larger interests. You understand that the effect of abolishing the joint rates altogether will mean those that are chartered as common carriers must charge their local rate up to the junction point.

Mr. Kirby: Yes, sir.

Mr. Walter: Now that mill is located 200 miles nearer the
6684 market than a mill, we will say, on this line. Here is a small mill on a small road chartered as a common carrier, and it has no interest whatever in the road. All the investment is there. What do you say as to your right to get to market on the same rate he does?

Mr. Kirby: That is the blanket system——

Mr. Andrews: Just a moment——

Commissioner Harlan: Yes, we will not go further into that.

Mr. Walter: The Burrs Ferry, Browndel and Chester has in effect a Texas rate, whereby it refunds rates on logs for the lumber companies down there.

Mr. Kirby: Yes.

Mr. Walter: Do you ship anything over the Orange & Northwestern to Beaumont?

Mr. Kirby: No.

Mr. Walter: Do you ship anything over the Orange & Northwestern to your mill?

Mr. Kirby: No.

Mr. Walter: Do you furnish logs to anybody else who ships over that line?

Mr. Kirby: No. Probably what you are inquiring about, we ship logs into Beaumont over the Beaumont & Sour Lake & Western.

6685 Mr. Walter: When those logs are sawed in your mill you have it refunded, have you?

Mr. Kirby: Yes, sir, that is for the main line haul, but not for the cost of maintaining our tram roads.

Mr. Walter: What difference is there in that road which hauls logs to your mill and anybody else's road, suppose you built it?

Mr. Kirby: The difference is entirely whether it is a plant facility and necessary for the business. We have got to maintain it, and the difference is whether it produces an equality of opportunity among the manufacturers. There is no difference to the public.

Mr. Walter: In that case the refund on your freight is refunded to you for no investment in that line?

Mr. Kirby: The amount I pay the Beaumont, Sour Lake & Western is refunded. None of my cost of logging is refunded.

Mr. Walter: On the road to your mill——

Mr. Kirby: Not from the junction point to the mill.

Mr. Walter: Is not that just as much of a necessity to you in marketing your logs as any other mill?

Mr. Kirby: No, because I would go and build my mill out there.

Mr. Walter: Then it is purely the location of the mill.

6686 Mr. Kirby: Insofar as that goes.

Mr. Walter: Suppose in every case the mill is built in the

forest, and only the lumber is hauled out; does that change the situation in your view as to the justness of the situation, of divisions to the railroad?

Mr. Kirby: Yes, sir.

Mr. Walter: They are justified then if they are reasonable?

Mr. Kirby: No, I do not think they are entitled to anything any more than the man who hauls his logs out, because the lumber is cheaper tonnage and easier to handle.

Mr. Walter: In calculating the cost of these operations of your road and spurs, what did you take into consideration?

Mr. Kirby: Track laying, maintenance of track and train expense; the whole expense.

Mr. Walter: Did you calculate in that the material you had to carry in order to lay these roads?

Mr. Kirby: The cost of material went in, of course.

Mr. Walter: It is not all down at all times, is it?

Mr. Kirby: Well, the material is not in, this is an operating cost, and not capital account.

Mr. Walter: This is purely the cost of laying the rails and
6687 hauling the logs over them?

Mr. Kirby: It is the operating cost. We charge the rails in the capital account. That would be in another account all together.

Mr. Walter: Does it go into the cost of moving your forest products?

Mr. Kirby: Not the value of the rails.

Mr. Walter: You have an average movement, I think you said, of 351,781 tons of forest products, and that the operating cost of that was $399,000, over one dollar a ton for the mere cost of operation.

Mr. Kirby: Yes, sir.

Mr. Walter: What was the average haul on those logs?

Mr. Kirby: Well, you could tell by looking at that table. I should say about 12 or 15 miles.

Mr. Walter: Then the average cost of transporting the logs was——

Mr. Kirby: It might be 20 miles.

Mr. Walter: Why do you increase it from 12 to 20?

Mr. Kirby: I was thinking about the length of the tram roads, because some of the tram roads including the spur line and
6688 the logs come from the spurs as well as from the main line, and we have one forty miles long.

Mr. Walter: It is a good deal more expensive to operate the short lines than the main line, is it not, that is the trunk line, per ton? It costs a good deal more to transport a ton over one of these short lines than over the main line?

Mr. Kirby: I do not know that the transportation is greater, but the——

Mr. Walter: Well, take all expenses then.

Mr. Kirby: The cost of laying those tracks, of course you do not construct them as substantially as you do your main line, but that is very frequent and constant, so it makes your terminal cost of that

kind much higher according to the movement per foot or yard that your main line cost.

Mr. Walter: And for the same distance a short line would be entitled to a greater compensation than would the main line for a similar distance?

Mr. Kirby: If you are going to absorb the cost, yes.

Mr. Walter: That is part of the business of a railroad, to take care of the cost out of its rates.

Mr. Kirby: No,I think not.

6689 Mr. Marble: These figures concerning which you have been questioned, was that three hundred thousand and some odd tons of lumber or logs?

Mr. Walter: Logs and forest products generally, whatever he hauled.

Mr. Kirby: Yes, ties and everything.

Mr. Marble: That is the weight of the inbound shipments of logs to your mill?

Mr. Kirby: Yes.

Mr. Marble: And the outbound shipments of lumber would be about how many thousand tons?

Mr. Andrews: Those are what are handled on the tram roads of the Kirby Lumber Company up to the mill.

Mr. Walter: And from the mill out to the trunk line road.

Mr. Andrews: No.

Mr. Walter: Does not that include the tonnage you hauled from Call to Call Junction?

Mr. Kirby: No.

Mr. Walter: How much was that tonnage?

Mr. Kirby: I do not remember the figures there. It is the number of cars shipped last year from Call, and most of them passed over the Santa Fe.

6690 Mr. Walter: Did this movement include the cost of that tonnage, the $399,000?

Mr. Kirby: No, this is logging cost there, and this is a mill operation, moving the lumber out there.

Mr. Walter: Why did you make a difference?

Mr. Kirby: One is one thing, and one another. You keep your mill and logging account separately.

Mr. Walter: That is, you would say the movement of the lumber was not a part of your plant facilities then?

Mr. Kirby: We have no facilities of that kind for moving lumber.

Mr. Walter: Don't you haul lumber sometimes from Call to Call Junction?

Mr. Kirby: We do, with the Santa Fe Railroad.

Mr. Walter: With your own engines?

Mr. Kirby: Yes, sir.

Mr. Walter: But you do not consider that part of your plant facility?

Mr. Kirby: It is not our plant facility.

Mr. Walter: Well, the movement?

Mr. Kirby: Our mill is on the Santa Fe Railroad.

Mr. Walter: You haul it two miles?

6691 Mr. Kirby: I perform a service over the Santa Fe Railroad.

Mr. Walter: Why didn't you include that in the cost of operating the railroad part of your mill?

Mr. Kirby: That is a mill cost.

Mr. Walter: That is a mill cost?

Mr. Kirby: Yes, sir.

Mr. Walter: Why should the movement of the finished material out be a part of the mill cost, when the movement of the logs in is considered otherwise as a railroad cost?

Mr. Kirby: Well, one is a movement of logs, and the other of lumber. In your mill cost you are making lumber and putting it in the market, and in the railroad cost you are getting the logs to the mill.

Mr. Walter: Then you make no difference in the cost of unloading——

Mr. Kirby: I do not understand.

Mr. Walter: What is the difference?

Mr. Kirby: One is logs, and the other is lumber. It may be two by four, or something else.

Mr. Walter: That is all the difference you know?

Mr. Kirby: There may be a little else.

6692 Mr. Walter: I wanted to know why you had logs in here and did not count the lumber cost of moving it by your engine.

Mr. Cowan: He already explained it fully, that it is a matter of accounting of the mill, that they kept it that way. Whether there is any good reason or not, they kept it. It was on the logging side of the account.

Mr. Walter: Then the movement of the lumber is not kept separately from the cutting of logs in the mill and drying of them and planing them?

Mr. Kirby: All the movement of lumber—there is no movement of lumber except loading it in the cars. It is part of your mill cost and loading expense.

Mr. Walter: I asked you if your engine did not take those loaded cars and move them.

Mr. Kirby: They certainly do.

Mr. Walter: I want to ask you why you do not include in your railroad operations the movement of the lumber as well as the logs.

Mr. Kirby: Because it is no part of the logging. I have no railroad operation. My accounts reflect my logging or my mill manufacture. I have no other kind of account.

Mr. Walter: Where would we find this account?

6693 Mr. Kirby: In the mill account.

Commissioner Harlan: I see the point. Counsel has a definite thought in his mind and wants to work it out of the witness. Can you answer the question?

Mr. Kirby: I cannot, except that it is a mere accounting matter. We have no purpose in it.

Commissioner Harlan: Are there any other questions?

Mr. Walter: Now you spoke of the $397,000 as the cost of the spurs and bringing your logs over the main line to the mill.

Mr. Kirby: Yes.

Mr. Walter: How much of that cost was spurs only, and how much main line?

Mr Kirby: We have not made up those figures. I could not tell you.

Mr. Walter: You have been in the business many years. What is your best judgment?

Mr. Kirby: Estimating it on the percentage basis, I should say the main line cost was probably thirty per cent of the total; that is just a guess. Main line and train service, that would include train service.

Mr. Walter: And by the spur service you mean only the
6694 small spurs which run out and pick up the log and bring it to the main line, including the team skidder and loader, and all that sort of thing?

Mr. Kirby: Yes, sir, it would not exceed that. That would be a very liberal estimate. That would be over 60 cents per thousand, and it would not cost that.

Mr. Walter: How much of your total investment is railroad property, and how much mill property?

Mr. Andrews: If the Commission please, I understood that that question was passed on almost directly this morning.

Commissioner Harlan: I hardly understood that the question put now was put this morning.

Mr. Andrews: The immediate question was not, but the question as to the value of his investment in milling interests was, and was the subject of discussion. We object to it, as to what his mills cost him.

Commissioner Harlan: The objection is sustained.

Mr. Walter: I think it is but fair to show that every one of these short lines that has been mentioned at all in any of these proceedings, leaving out of course the Burrs Ferry, Browndel, and Chester, have given every particle of information that has been asked for.

6695 Commissioner Harlan: I do not understand that question has been asked of any witness since the hearing started.

Mr. Walter: Of all of them.

Commissioner Harlan: That question as asked is, what is the value of the investment including the mill and railroad.

Mr. Walter: I asked him how much of it is railroad.

Commissioner Harlan: There is no objection to asking him how much is railroad cost, but you included the mill, and that is what counsel objected to.

Mr. Walter: Very well, let us have that railroad valuation.

Mr. Kirby: The valuation shown on our books, which is a good deal less than the cost, but that is the valuation placed on it by Price, Waterhouse & Company, is $1,503,861.30.

Mr. Walter: Does that include the equipment?
Mr. Kirby: Yes, sir.
Mr. Walter: And right of way?
Mr. Kirby: Right of way, and everything. We do not obtain any permanent right of way.
Mr. Walter: How much did it cost?
Mr. Kirby: I have not the figures, but more than that.
6696 Mr. Walter: How much?
Mr. Kirby: I could not tell you.
Mr. Walter: Just an estimate.
Commissioner Harlan: Can you give any impression on that question?
Mr. Kirby: I would not want to give any impression. We have increased our book value, but our book cost was less than the actual cost. We have written off since then 7½ per cent for depreciation.
Mr. Coleman: I would like to ask whether Mr. Kirby will be available during all the present hearing.
Mr. Kirby: Yes, I will be here.
Mr. Walter: You spoke a while ago about your company's inability to get into Galveston because of some division of the rate. Will you kindly state that again.
Mr. Kirby: No, I was talking about a specific instance.
Mr. Walter: Give us that specific instance.
Mr. Kirby: When the causeway down there was buying its stuff, the material for its construction, we bid on that business, and we found the condition to be such as I stated this morning.
Mr. Walter: What was it?
Mr. Kirby: Our rate was eight cents, and the Lake Charles
6697 rate to begin with was only six cents, and that is to meet water competition, and we do not complain of it, but when you take four cents division out of it, the Southern Pacific only gets two cents for hauling the stuff to Galveston.
Mr. Walter: Who was it gets four cents?
Mr. Kirby: The log mill company.
Mr. Walter: You are mistaken about that.
Mr. Davis: It is two cents.
Mr. Walter: Two cents is the correct division.
Mr. Davis: We get two cents regardless of the haul.
Mr. Marble: Going to this contract with the Santa Fe company, which has as one of its features, an agreement by the Kirby Lumber Company for exclusive routing when the rates are the same, you are still acting under that contract?
Mr. Kirby: Yes, sir.
Mr. Marble: That was a consideration on your part in that contract, that promise to the Santa Fe?
Mr. Kirby: Yes, sir.
Mr. Marble: What did it give you in return for that?
Mr. Kirby: Well, I do not know of anything that it gave actually, but the Santa Fe had these lands, and I wanted to buy them, and I made an option contract with them, and have an option con-
6698 tinuing as long as this routing exists, so that may be a consideration or not; but I wanted that timber for my mills when I needed to use it.

Mr. Marble: Could you have secured the option without that agreement?

Mr. Kirby: I doubt if I could.

Mr. Marble: Could you have secured the option at a higher rate of interest without that agreement?

Mr. Kirby: I very much doubt it.

Mr. Marble: Was there a concession to you in the rate of interest?

Mr. Kirby: I think not. They have loaned other people money for less.

Mr. Marble: Without such agreement for routing?

Mr. Kirby: I do not know what their agreements are.

Mr. Marble: You have stated that the interest on the amount loaned was five per cent?

Mr. Kirby: Yes.

Mr. Marble: And on this other amount——

Mr. Kirby: That is five per cent.

Mr. Marble: No, on the $500,000 you borrowed, you paid seven per cent?

6699 Mr. Kirby: Yes.

Mr. Marble: Why two per cent difference in the interest given on the two transactions?

Mr. Kirby: I do not know; that is what they charged for the money, and I have always had to pay what the other fellow charged me.

Mr. Marble: Was there an agreement for exclusive routing on the seven per cent contract?

Mr. Kirby: Well, my recollection is, Mr. Marble, that it is all involved, that the mortgage—no, I believe not. I was going to say that the mortgage related also to the routing, but possibly it does not.

Mr. Marble: Now, Mr. Kirby, you of course recognize that as far back as the history of secret or discriminatory rates or arrangement goes, there is constantly recurring this feature of a contract for exclusive routing of tonnage, and that is a valuable thing to the railroad company; it has always been, for which it usually gave something of value, and I want you to tell us precisely what you think about this contract. You know the suspicions about this contract which have been voiced throughout this hearing by other parties.

6700 Mr. Kirby: Yes. I do not see anything in the world objectionable to this feature, and insofar as routing my tonnage over the Santa Fe was concerned, I probably would have done so, even without any option contract or any other kind of contract, or anything else involved. The Santa Fe, however, assures to itself the performance on my part of the observation of the routing clause by holding these lands in the form of an option instead of selling them to me straight out on mortgage for that length of time.

Mr. Marble: That is to say the Santa Fe was the absolute owner of these lands to start with.

Mr. Kirby: Well, not to start with. They bought them under options which I held. They bought them from us, they became the owner.

Mr. Marble: There was a time when the Santa Fe was the owner?

Mr. Kirby: Yes, sir, and is now.

Mr. Marble: And is now?

Mr. Kirby: Yes, sir.

Mr. Marble: And your option is a privilege of buying at some time in the future?

Mr. Kirby: Yes.

6701 Mr. Marble: In the meantime are you cutting off of those lands?

Mr. Kirby: I cut some timber in my logging operations, if I come to a tract of land that would be left, anticipating that at some time I will exercise that option and that my tram road will be gone from there and the timber will be left, I cut it, and I pay $5.00 a thousand plus five per cent from the time these contracts were made, which at the present time is five and a quarter per cent. Next year it will be five and a half per cent. I pay for the stumpage cut from that land, and I have the option to cut as much or as little as I please under my option.

Mr. Marble: When you buy that timber in that way on the stumpage or when you shall finally exercise your option to buy the land itself your understanding is that the Santa Fe has reserved the right to control the routing of the traffic.

Mr. Kirby: No, sir.

Mr. Marble: On that land?

Mr. Kirby: There is no obligation as to when that shall be cut, but if it is cut during the period of the option of course it would apply, if it is in the proper locality because the Santa Fe tonnage contract does not apply to all our mills, and then the

6702 Santa Fe tonnage contract does not relate specially to this timber except as to—to illustrate what I mean, that Kountze land of probably 180,000 acres is largely on the Southern Pacific and not on the Santa Fe. I probably will not cut any quantity of that timber under my option contract until my routing contract has expired. For instance, the routing in relation to that tract only exists for a period of eight years, and in that period I will probably cut none of that timber of any consequence, so when I do buy that timber I am absolutely free to ship it any way I please.

Mr. Marble: Do you consider that you secured any concession on the amount of the purchase price of these lands by reason of making that stipulation as to the routing?

Mr. Kirby: No, sir, I am to pay them what is cost them, and they bought it through me.

Mr. Andrews: In all substantial respects, it is a loan?

Mr. Kirby: Well, it does not take that form, but that is the nature of it, with five per cent and the taxes and care and every charge connected with the carrying of the property.

Commissioner Harlan: So long as you do not avail yourself

6703 of the option, the five per cent is running and the Santa Fe controls the routing, if the option should become a purchase tomorrow, you would be released from their right to routing?

Mr. Kirby: No, they would not let me declare it tomorrow, under the contract. They would have the option of making me wait, and route the tonnage, so much as they had contracted for. They would have the option of making me wait for that period without declaring the option.

Mr. Garwood: Is that solely with reference to the Kountze land or the land——

Mr. Kirby: That is with reference to both bodies; that is the Chapman lands and the Gallup lands, except the Chapman lands are involved in the five year contract from July, 1909, and the Gallup lands for a ten year period.

Mr. Marble: Does it come to this, then, that if these transfers of these lands by you to the Santa Fe and the giving of the option, as I understand was the suggestion, was merely by way of securing a loan of money to you, that the Santa Fe Railroad is financing your operations there?

Mr. Kirby: Not my operations, but in so far as this particular timber tract, you might say they are doing that. They own it and they gave me an option to buy it in the future, and they
6704 bought it at my suggestion and at my request.

Mr. Marble: It might be about as an ordinary deed in trust, such as banks so frequently make when making loans, your transfer to them with the option to purchase back.

Mr. Kirby: We try to relieve them of that future, because there is no obligation on our part to buy it back.

Mr. Marble: You will buy it back or else lose your loan as an ordinary borrower on land would?

Mr. Kirby: I borrowed the value of it.

Mr. Marble: You borrowed the full value of it?

Mr. Kirby: Practically so.

Mr. Marble: Did you get any more than the full value in consideration of this agreement as to routing?

Mr. Kirby: No.

Mr. Marble: You think you struck that squarely.

Mr. Kirby: It is the substantial market value of the land. Of course the expert valued it some higher. I think there is probably twenty-five per cent difference between the expert's valuation of the stumpage, as he put in a lot of oak stumpage which we did not utilize.

Mr. Marble: What is the difference in the element of
6705 these two transactions which makes in your opinion the difference of the two rates of interest, between five and seven per cent?

Mr. Kirby: In one case the loan, if you call it a loan, is secured by timber land where the security is unquestioned and the title put absolutely in the lender or buyer, if you may call it. In the other case it is a mortgage by an industrial enterprise upon general assets that a banker or anybody else would not regard as favorable or in no way as substantial as the other. It is a difference in security, rather than otherwise.

Mr. Marble: Of course I have no judgment, but you know abso-

lutely about this thing and other gentlemen in the room will perhaps have their suggestions to make. It is your judgment, then, that the two rates of interest are not to be explained by the routing contract which was made at the time of the securing of the five per cent interest?

Mr. Kirby: No, and the securing of the other, they are all contemporaneous transactions; they certainly would not charge me a high rate of interest because I wanted to do them a favor in giving them the tonnage.

6706 Mr. Marble: Have you any other contracts with the Santa Fe Railroad other than those referred to here, which would affect the consideration of this problem?

Mr. Kirby: No, sir. The only other contract I have with them at all is their hewn tie contract which I mentioned this morning, and that is entirely on a percentage of profit basis. We get out the ties for them at the cheapest price we can, and they pay us for the use of our facilities and so forth fifteen per cent, or something like that. Fifteen per cent it is on the cost of the tie. It is supposed to represent our expense, profit and all that sort of thing.

Mr. Marble: Ties for the use of the Santa Fe Company?

Mr. Kirby: Yes.

Mr. Marble: Does the Santa Fe merchandise those ties at all?

Mr. Kirby: No, they treat them at their treating plant at Somerville. I suppose they sell their connections once in a while. I have heard of their selling their connections once in a while out of their treating plant up there. I think I have heard of them selling the Milwaukee and perhaps the Great Western, and they go out themselves and buy ties. I have heard of their buying ties at the creosoting plant at Texarkana on the T. & P.

6707 Mr. Marble: Does the Santa Fe Railway own any stock of the Kirby Lumber Company?

Mr. Kirby: Not a share.

Mr. Marble: Does the Kirby Lumber Company own any Santa Fe Railway Company stock?

Mr. Kirby: No, not a share.

Mr. Marble: Or any of its subsidiary corporations?

Mr. Kirby; No, not a share.

Mr. Marble: Has the Santa Fe any contingent interest of any sort in the profits of your lumber companies?

Mr. Kirby: Not a cent, in any form whatever.

Mr. Marble: Does it make any difference to the Santa Fe except in the freight money it receives for transportation whether or not you sell lumber next month?

Mr. Kirby: It does not.

Mr. Marble: Is this interest money to be at all affected in amount by the amount of lumber merchandised and shipped by you?

Mr. Kirby: No, sir, no obligation on my part to run any particular mill, but whatever material I may cut in certain localities must be delivered at points on the Santa Fe.

6708 Mr. Marble: Could you at all change the amount of that interest by shipping over some other line than the Santa Fe?

Mr. Kirby: No.

Mr. Marble: Would you cause your interest to increase if you did?

Mr. Kirby: I do not think so.

Mr. Marble: Would you cause your loan to fall due by making a breach of the contract in that respect?

Mr. Kirby: Well, I would forfeit the right to buy the land under the option agreement by breaching the contract.

Mr. Marble: That would be the penalty?

Mr. Kirby: That would be the penalty.

Mr. Marble: That is to say, then, you would cause a forfeiture of your right to pay the loan which the Santa Fe made you on this deed of trust?

Mr. Kirby: Yes, sir.

Mr. Marble: And your equity in the contract would be forfeited?

Mr. Kirby: Yes.

Mr. Marble: And that would be your penalty for breaking the contract?

Mr. Kirby: Yes.

Mr. Andrews: I do not know which you refer to when you
6709 say "deed of trust." Do you mean the $500,000, the Chapman transaction?

Mr. Marble: I mean the option agreement where you transferred the land.

Mr. Andrews: You said this deed of trust, and that was the only deed of trust given.

Mr. Marble: The other I had understood was practically a deed of trust, that is, that Mr. Kirby or Mr. Kirby's company owned the land and transferred it to the Santa Fe for its value and then took an option to repurchase at five per cent at some time in the future, and that that was really a loan, rather than a purchase for the interest of the Santa Fe, I understood you to say.

Mr. Andrews: I did not say it was a loan. I said it had the supposed effect of a loan. I merely wanted to distinguish the question as applying to the $500,000 loan about which you had asked him many questions concerning the interest rate.

Mr. Marble: That was at seven per cent.

Mr. Andrews: There is no forfeiture in that for the failure to do or otherwise, and nothing attached to it except the ordinary conditions of a mortgage of that class.

6710 Mr. Marble: I understand the thing, but in order that the record may be entirely clear, what you meant to say was that this option to buy certain lands which you transferred to the Santa Fe for value, your option to buy at five per cent is what you would lose if you violated this contract in regard to the routing?

Mr. Kirby: Yes, sir.

Mr. Marble: Then there would be no forfeiture under your contract by which you borrowed the $500,000 at seven per cent?

Mr. Kirby: No.

Mr. Marble: You have been asked a great many questions about the effect of Texas laws and rights of people operating under them,

and while hardly proper, I will pursue the thing one step further. You have testified that the Texas laws will not allow a road which has incorporated as a common carrier to take up its track without permission.

Mr. Kirby: Without the legislative permission, yes, sir.

Mr. Marble: Without legislative permission?

Mr. Kirby: Yes, sir.

Mr. Marble: Do the Texas laws require common carriers which are really such to qualify and take the obligations of the law?

6711 Mr. Kirby: I think not.

Mr. Garwood: Yes, they do.

Mr. Andrews: I do not understand what you mean by qualify and take the obligations of the law.

Mr. Kirby: I suppose something like taking an oath of office.

Mr. Marble: As I understood Mr. Kirby's testimony, he said one reason he did not incorporate as a common carrier was that if he did so he would incur certain obligations to continue in business. I was asking him simply if there is an obligation on his part if he is such common carrier to so qualify and not stay outside the law?

Mr. Andrews: There is nothing in the statute on the subject. I can give you a succinct history of the organization if you wish, but there is nothing in the statute of that character.

Mr. Marble: That is really all I care for. I understand your mill at Call is on the Frisco.

Mr. Kirby: It is on both, but it is not on the main line of the Santa Fe. The Santa Fe has a spur two miles long running into the mill.

Mr. Marble: So you make delivery to the Santa Fe at Call?

6712 Mr. Kirby: At Call Junction.

Mr. Marble: How far is that from Call?

Mr. Kirby: Two miles.

Mr. Marble: Where is your mill?

Mr. Kirby: At Call.

Mr. Marble: Does the Santa Fe come to the mill?

Mr. Kirby: No.

Mr. Marble: They require you to go to the junction?

Mr. Kirby: We perform that service. We have a line of road into the mill, but we maintain it and do the switching over it of empties and loads.

Commissioner Harlan: In two cases he does that, I understand.

Mr. Kirby: Call is the only place we do that except the planing mill at Bronson; that is, the planing mill service only on a switch, but this is a short line service over the Santa Fe's own rails in addition to doing the switching.

Mr. Walter: Who maintains that two miles?

Mr. Kirby: The Kirby Lumber Company.

Mr. Marble: This cost of operating the logging road which has been testified to, $399,000, do you include in that the cost of operating the skidder?

6713 Mr. Kirby: Yes.

Mr. Marble: The cost of *m*aking the log from the stump to the car?

Mr. Kirby: Yes, sir; that is part of the loading process.

Mr. Andrews: Here are the figures made up by the Interstate Commerce Commission's experts from which that is a summary, if you wish to look over them.

Mr. Hancock: This is an investigation of industrial lines, and this is the totals of the Interstate Commerce Commission.

Mr. Marble: We have the originals.

Mr. Andrews: Yes, and they will show you in detail what is taken into consideration.

Mr. Marble: For the sake of the record at this point, does it include the cost of cutting the tree and trimming up the log?

Mr. Kirby: To my understanding of the figures; I do not understand it includes that.

Mr. Marble: When you first opened your mill, was there timber immediately adjacent to the mill site which you cut?

Mr. Kirby: Yes, sir; some of the mills I am operating now were built long before the Kirby Lumber Company was ever
6714 dreamed of, like at Call, for instance, it was built some years before the Kirby Lumber Company was organized. But when we build mills ourselves in nearly every instance we started right out in the forest and worked the mill right in the forest.

Mr. Marble: In that instance would the skidder work at the mill in the first instance?

Mr. Kirby: No, we would pull it in with teams or mules.

Mr. Marble: I think that is all.

Mr. Walter: You said you were to pay the Santa Fe $5.00 a thousand stumpage. Now how long is that to continue?

Mr. Kirby: Until the option contract is declared.

Mr. Walter: Suppose you do not declare that option, can you go ahead cutting that timber and paying them the stumpage charge?

Mr. Kirby: Not after I waive the option, after the option period has expired.

Mr. Walter: When does that expire?

Mr. Kirby: On the Chapman lumber September 1st, 1914 and the Gallup timber September 1st, 1919.

Mr. Walter: Suppose you do not do anything whatever and keep on cutting the timber after September 1st, 1914, what would happen on the Chapman lumber?

6715 Mr. Kirby: If I kept on cutting the lumber?

Mr. Walter: Yes.

Mr. Kirby: I might cut enough at $5.00 a thousand to pay the whole $3,000,000 and then I would have enough for what is left.

Mr. Walter: So the $5.00 is applied on the purchase price?

Mr. Kirby: Yes, sir.

Mr. Walter: Up to that time, September, 1914, do you pay any interest unless you take over this property?

Mr. Kirby: No.

Commissioner Harlan: You pay interest on what you cut?

Mr. Kirby: No, we pay for it accordingly as we cut it, $5.00 for the first year, five and a quarter for the second year and five and a half for the third.

Commissioner Harlan: That would be five per cent.

Mr. Kirby: It would be for any period five per cent, but I pay it on the basis of the present value, paying $5.00 and paying five per cent interest.

Mr. Walter: So the only interest you are paying is that on which you are cutting the timber?

Mr. Kirby: No, I have to pay it all in the end.

6716 Mr. Walter: If you take it?

Mr. Kirby: If I take it.

Mr. Walter: But if not, it is simply a contract for stumpage?

Mr. Kirby: That is all it is, yes, sir.

Mr. Walter: Yes.

Mr. Kirby: But it is a contract for land as well.

Mr. Walter: You are buying not only the timber, but the land as you cut the trees?

Mr. Kirby: But the interest I have in it is the tree.

Mr. Walter: And the railroad has simply carried that for you. When you buy stumpage outside down there, what do you pay?

Mr. Kirby: I have paid different prices. Most of my consumption now is on Houston Oil Company's timber, and I pay $5.00.

Mr. Walter: Is that a pretty fair price?

Mr. Kirby: I think so; yes, sir. That is about the market value of the stuff.

Mr. Walter: And that is all increasing in value every year or not?

Mr. Kirby: I think so.

6717 Mr. Walter: Who is paying taxes on this timber?

Mr. Kirby: Which timber?

Mr. Walter: The timber you cut this year, who paid taxes on it last?

Mr. Kirby: The Houston Oil Company.

Mr. Walter: The Santa Fe timber, I mean.

Mr. Kirby: They pay it, and I will have to pay it when I buy it.

Mr. Walter: Suppose you do not buy it?

Mr. Kirby: Well, they pay it.

Mr. Walter: Up to 1919 you can hold the Gallup timber?

Mr. Kirby: Yes, sir.

Mr. Walter: On all you have not cut up to 1919 the Santa Fe has carried it and paid taxes and been without the use of the money?

Mr. Kirby: That is right.

Mr. Marble: Is that to be compounded or do you pay annually?

Mr. Kirby: Compounded.

Mr. Marble: But you do not pay it annually.

Mr. Kirby: I do not pay it annually until I declare the option. Of course I would not pay the interest then.

6718 Mr. Walter: But you pay the purchase price for the stumpage, I understand, which is figured to include interest?

Mr. Kirby: Yes.

Mr. Walter: You can violate that contract at any time and there is no penalty attached other than that you cannot take the property?

Mr. Kirby: Yes, sir, that is all.

Mr. Garwood: Do not the ordinary industrial bonds in that section of the country usually bear at least six per cent, and can you place them without pretty liberal discount, selling them, say, from 85 to 95 on the dollar?

Mr. Kirby: It depends entirely on the condition of the times. Three or four years ago five per cent was a reasonable interest rate for a lumberman to pay. Today he might have to pay ten per cent. I do not know. We are not in very good credit. We are not making money.

Mr. Garwood: There are not many of them less than six per cent that you know of?

Mr. Kirby: No, I think that is a pretty fair rate.

Mr. Garwood: And bonds usually have to be discounted some?

Mr. Kirby: Well, yes, the seller of the bonds usually discounts them, but the ultimate buyer usually pays par and
6719 sometimes a little more.

Mr. Garwood: You buy through the country adjacent to your territory other small tracts at considerably less than $5.00 do you not, from time to time?

Mr. Kirby: Sometimes; yes.

Mr. Garwood: You buy them as low as $2.00?

Mr. Kirby: Sometimes.

Mr. Garwood: Well, right often, don't you?

Mr. Kirby: No, it is not often. We pay, as a rule, around $3.00.

Mr. Garwood: $3.00 is a pretty fair average price for the small tracts?

Mr. Kirby: Yes. In our case we have not bought much because we have not had the means. We try to accommodate a neighborly farmer down there who has a little tract of land, and when our tram road goes in, at his price, and that is usually the small farmer's holding price, $2.50 or $3.00.

Mr. Garwood: You sometimes get it as low as $2.00?

Mr. Kirby: Yes. A man can go out in that forest country and buy little tracts here and there at a dollar and a half where the parties want to realize on it and want to sell.

Mr. Andrews: They are very small and very thin?

6720 Mr. Kirby: Yes.

Mr. Coleman: The Beaumont, Sour Lake & Western is a Frisco road?

Mr. Kirby: Yes.

Mr. Coleman: That is all.

Commissioner Harlan: We will adjourn at this point.

Mr. Cowan: Before your Honor adjourns, I assume your Honor is going to leave; I do not know, but if that be the case, I want to call attention to something which was remarked at New Orleans before we opened the hearing, in regard to the use of the record of facts obtained by the Examiner of Accounts and perhaps of the Commission on those subjects. What is expected may be done in regard to the use of those records? It was mentioned there, and it was left indefinite, and I do not know and would like to inquire.

Commissioner Harlan: We have made a point of bringing out in

this record substantially all the facts that we have in our own records with respect to the roads that came before us.

Mr. Cowan: Well, I thought so.

Commissioner Harlan: And in some respects our own records have been corrected by the testimony, so that this record is perhaps
6721 a more accurate record in respect to the roads which came before us than our own records.

Mr. Cowan: I am just inquiring.

Commissioner Harlan: There have been additions to equipment, mileage and in other ways, so our record is somewhat out of date and is corrected by this record.

Mr. Cowan: I just wanted to inquire.

Commissioner Harlan: I understand the hotel will put another room at our service tomorrow and we will be notified. We will adjourn to 9:30 tomorrow morning.

Mr. Garwood: I assume the several contracts inquired about, about which Mr. Kirby has testified, will be filed in the record, or copies of them? Will they?

Mr. Marble: I have not heard that statement made. You had better pursue it a little further.

Mr. Cowan: No, the Commission will have to require it if they do want them.

Commissioner Harlan: We will take that up tomorrow morning.

Whereupon, at 5:30 P. M. an adjournment was taken to Tuesday, January 31, 1911, at 9:30 A. M.

6722 CHICAGO, ILL., *January* 31, 1911.

Met pursuant to adjournment at 9:30 A. M.

Present: Parties as before.

J. H. KIRBY was recalled as a witness, and having been previously sworn, testified as follows:

Commissioner Harlan: Have you any questions of this witness, Mr. Marble?

Mr. Marble: Just a few.

Mr. Garwood: Just one question before you begin.

Mr. Marble: I will yield to Mr. Garwood.

Mr. Garwood: I would like to ask if it was not a part of your general plan in the acquisition of these large tracts of land to control as far as possible the pine lands of southeast Texas and southwestern Louisiana and surround and isolate and thereby control the tracts held in small ownership that would be surrounded by your lands and have no outlet except through or over your lands, and by your facilities?

Mr. Kirby: In my original purchases, when I had a little bit of money and wanted to cover a big territory, that was long before the Kirby Lumber Company was organized or thought of, I made my purchases with a view of building out. I would isolate a
6723 piece of timber if I could; that is, I would buy between them and transportation, and try to hold it so when I got some

money I could buy that too. But that had no relation to the Kirby Lumber Company, because that company did not buy any lands upon its own account of any consequence, and it did not have relation to the two companies organized at the same time, the Houston Oil Company and the Kirby Lumber Company, because there is more timber in Louisiana on the Louisiana side of the Sabine River than on the Texas side, and we bought none of that, or only a little tract.

Mr. Garwood: And that being your purpose——

Mr. Cowan: He has not said it was his purpose in the sense you put it.

Mr. Garwood: His answer stands for itself, and my question will not change his answer.

Mr. Cowan: It will not, when I call attention to it.

Mr. Garwood: That also was the effect.

Mr. Kirby: It never produced any effect like that of a control. The question you asked was control.

Mr. Garwood: Well, the natural effect of surrounding and isolating smaller ownerships and smaller tracts——

Mr. Kirby: Sometimes it would have that effect. The
6724 tracts we sought to isolate were not necessarily small ones, that would render them less attractive—I know why your question was asked, because I remembered that allegation in the pleading of the so-called strategic value of the so-called Kirby lands that went to the Houston Oil Company.

Mr. Garwood: Yes.

Mr. Kirby: Those were lands that I had acquired from ten years to one year prior to the organization of the Kirby Lumber Company and prior to its inception. Those were lands bought largely for myself and the Boston concerns I testified to yesterday, and purchased beginning in 1887.

Mr. Garwood: To put it in your own words in the pleading to which you refer: "That said Kirby controlled the opportunity of gathering into one body under one ownership the yellow pine timber and oil lands of southeast Texas and southwestern Louisiana, and that the lands so owned by said Kirby, his co-partnerships and corporations, were so located that they isolated and controlled large bodies of similar land." That is the idea that you now convey.

Mr. Kirby: Well, that is the allegation of the lawyers. Of course it had that effect to an extent, that is, the original purchases I made between 1887 and 1900, that 13 years, had that effect in
6725 instances.

Mr. Garwood: You say that is the allegation of the lawyers. That is practically your statement now, is it not?

Mr. Kirby: Yes, except to the extent of the control. It only controlled what we owned.

Mr. Garwood: That is the statement as your lawyers put it in your answer signed by yourself personally as well as by the Kirby Lumber Company, being the answer in equity——

Mr. Kirby: Yes, there is no misunderstanding on that between us.

Mr. Cowan: Mr. Garwood has got the book before him. I do not

think that Mr. Garwood intends to have Mr. Kirby state something that is not true.

Mr. Garwood: I could not do that if I had any such desire, which I certainly have not.

Mr. Cowan: You said yesterday that Mr. Kirby had sworn to this answer. Now, I would like for you to look there and state to the Court whether it is true or not.

Mr. Garwood: I said that on the general proposition that answers in equity are sworn to, and I state now that it is my purpose——

Mr. Cowan: That is a mistake.

6726 Mr. Garwood: That it is my purpose to introduce the answer. It was attested by the secretary. In turning it over rapidly yesterday I——

Commissioner Harlan: The answer will speak for itself. Are there any further questions?

Mr. Garwood: No.

Mr. Cowan: But when he offers in evidence a statement of fact in an answer, coupled with the statement that the answer was signed and sworn to by the witness, it is very important for me to point out in the record that the thing did not happen.

Commissioner Harlan: I do not think we will spend any more time on it.

Mr. Cowan: I think we are entitled to have it go in the record.

Commissioner Harlan: My recollection is there is a very respectable authority to the effect that pleadings are not receivable as admissions against interest anyway. I may be wrong about it.

Mr. Cowan: There is a conflict of authority, but if they are sworn to, it is a very different thing.

Commissioner Harlan: We will work it out some way and

6727 see what the effect of it is. Have you some questions, Mr. Marble?

Mr. Marble: Going to this contract between you and the Santa Fe Railroad Company, the contract under which you have the option to purchase the timber lands which you had at a previous time transferred to the Santa Fe Railway Company and the feature of the contract by which you cut trees from time to time as you come to them in your lumbering operations, what is the price you pay for stumpage?

Mr. Kirby: $5.00 for the first year; that is, the year ending June 30, 1910; $5.25 for the second year; that is, the year ending June 30, 1911, and then it would be $5.50, adding 25 cents each year, being substantially five per cent on $5.00.

Mr. Marble: The point I want to come to is this: Will that enable you to cut over these lands and take the timber at a price different from that expressed in your option to purchase?

Mr. Kirby: No, sir; these are mere payments on account of the option. If I should not declare that option at the end of the period, the result would have been that I would have bought back from the Santa Fe certain timber; that is, that I have already used at

6728 these prices, $5.00, $5.25, $5.50, and so forth. If I do declare my option, then the money I had paid in on account would

be credited against the $3,000,000 plus carrying charges and interest that the option calls for.

Mr. Marble: If you cut all the timber under the stumpage arrangement, would not that result in getting the timber for you at less than the price expressed in the option for the purchase?

Mr. Kirby: No, sir, it would not: If I cut all the timber and had paid the option price, then I would not pay any more. All the money they are entitled to have out of the timber is the option price plus carrying charges, taxes and so forth, with their interest.

Mr. Marble: What I am getting at is this, would not the stumpage at the $5.00 per thousand and the succeeding prices expressed in the contract be the cheaper way to take this timber?

Mr. Kirby: Oh, no.

Mr. Marble: That is what I want to get at.

Mr. Kirby: No. The Santa Fe took the timber over at substantially $3.00, and I am buying it back at $5.00 plus interest, so you see it will cost me 40 per cent more to take it under the cut-
6729 ting clause.

Commissioner Harlan: If you continue to cut and pay the Santa Fe under the option, there is enough timber there to meet the option fully, is there not?

Mr. Kirby: Yes, sir.

Commissioner Harlan: And leave you a lot of timber besides?

Mr. Kirby: Yes, sir.

Commissioner Harlan: And as the option price has thus been paid in full, you get all the timber back without charge at all?

Mr. Kirby: Without any further payment; yes, sir.

Mr. Marble: You are basing this answer on the estimates of skilled cruisers of the timber?

Mr. Kirby: Yes, sir.

Commissioner Harlan: Let me ask how the taxes are taken care of. You said yesterday the Santa Fe paid them.

Mr. Kirby: Yes, sir.

Commissioner Harlan: And you pay $5.00 and the next year $5.00 and five per cent?

Mr. Kirby: That is correct, on a stumpage price, you call it five per cent.

6730 Commissioner Harlan: But ultimately who pays the taxes?

Mr. Kirby: I will have it to do if I take the lands, but——

Commissioner Harlan: You will pay the taxes after you take the land, but who pays the past taxes?

Mr. Kirby: The Santa Fe pays the taxes currently.

Commissioner Harlan: Do you repay that?

Mr. Kirby: I repay that; that is part of the option price, at the end of the five years, or whenever I exercise the option I will have to reimburse them for all money they are out, whether taxes, titles, lawyers' fees, cruisers, or what not, plus interest on their disbursements from the time they were made by them up to the time I have repaid them.

Commissioner Harlan: And you think there is no doubt about

that proposition, that there is enough timber to repay the option price on the basis of the contract and leave you a lot of lumber besides?

Mr. Kirby: There is no doubt about it. The lands were cruised by John P. Braydon, of this city, who is a very experienced lumber man and timber man in that line of business, and selected by the Santa Fe for that purpose or by Price, Waterhouse & Company, I don't know which; at any rate, he came down there with his army of cruisers and examined the lands very carefully, and the
6731 thing was made on his report of the quantity of timber.

Mr. Marble: In referring to this deal, we have spoken of it as being between you and the Santa Fe Railway Company. Is that technically correct; is it the Santa Fe Railway Company, the corporation as such with which you have your dealings in this regard?

Mr. Kirby: Well, I don't know, Mr. Marble; my dealings have been with Mr. Ripley, the president of the Atchison Company, and of these other companies. Of course you know Mr. E. P. Ripley and who he is; and I don't know who furnished this money for the purpose, the Santa Fe or somebody else, as far as that goes.

Mr. Marble: Is the Santa Fe Railway Company, the corporation which is also a carrier, a party to the written contract?

Mr. Kirby: I think not.

Mr. Marble: You think it is not?

Mr. Kirby: I think not.

Mr. Marble: Whose name do you go to as meaning the Santa Fe?

Mr. Kirby: J. R. Chapman is the name in this contract, the same as D. L. Gallup is the name in the other contract.

6732 Mr. Marble: Who is J. R. Chapman?

Mr. Kirby: I do not know; I have been informed that he is connected with the American Trust Company and Savings Bank here; probably an active vice president and a man of affairs here in Chicago, but I have never met him personally, so I speak of these transactions as Santa Fe transactions, because in so far as the negotiations and closing and all that is concerned, I did it with Mr. Ripley. Now, whose money was used, I do not know. Mr. Chapman or the American Trust and Savings Bank sent the money which was paid to us for these lands to the First National Bank of Houston, Texas.

Commissioner Harlan: There is just one other question I would like to ask, and that is whether you wish the Commission to understand that upon the conclusion of this option contract and the repayment in the manner you have indicated and that the contract calls for of the option price, the results will be your results or the Kirby Lumber Company. In other words, is there any equity in this whole proposition accruing to the Santa Fe or Santa Fe interests, except as you have disclosed it in your testimony?

Mr. Kirby: Not a thing, Judge. The substance of the whole transaction is that they have loaned me this money, or I
6733 mean they have loaned the Kirby Lumber Company this money at five per cent interest.

Commissioner Harlan: And you are standing for yourself and

the company and not in any ultimate sense standing for the Santa Fe or Santa Fe interests?

Mr. Kirby: In no sense whatever. I stand solely for the Kirby Lumber Company and I have no personal interest except as a stockholder of the Kirby Lumber Company.

Mr. Walter: Now, you said that there was ample timber on the tract to take care of this entire three million dollars.

Mr. Kirby: Yes.

Mr. Walter: How much have you cut?

Mr. Kirby: In the past year and a half we have cut about $200,000 worth at $5.00 a thousand.

Mr. Walter: How many million feet would that be?

Mr. Kirby: Well, that would be 40 million feet, would it not?

Mr. Walter: Forty million feet?

Mr. Kirby: We hereafter will cut a good deal less, because the timber which we cut in the past year and a half was timber adjacent to existing tram roads, and there will not be any considerable quantity cut in the future, for the next two years probably.

6734 Mr. Walter: Was that all cut from these Santa Fe lands?

Mr. Kirby: And from the Chapman lands, that $200,000 yes, sir.

Mr. Walter: Does that include any that you bought in among the other timbers you were cutting near these trams?

Mr. Kirby: That item does not, but we have bought a few little tracts along there.

Mr. Walter: The 40 million feet does not include anything but Chapman timber?

Mr. Kirby: No.

Mr. Walter: You are sure of that?

Mr. Kirby: Yes, sir.

Mr. Walter: Now, how much was the report of the cruiser Braydon on that land?

Mr. Kirby: I cannot tell you the exact figures, but something like a billion feet.

Mr. Walter: Something like a billion feet?

Mr. Kirby: Yes, a little more or less.

Mr. Walter: Was it more or less?

Mr. Kirby: It was right in that neighborhood; it was substantially a billion feet. It was not all pine; some oak, ash, hick-

6735 ory and woods of that character.

Mr. Walter: And how much pine was there?

Mr. Kirby: I would have to get the figures. I haven't them in mind exactly, but I can approximate it.

Mr. Walter: About half of it pine?

Mr. Kirby: I should say there were 900 million feet of pine.

Mr. Walter: 900 feet of merchantable pine?

Mr. Kirby: I should say so, but those are approximate figures. I cannot testify exactly, but I can get you that information. Price, Waterhouse & Company, I could go to their office and get it.

Mr. Walter: Was that a desirable bargain from your standpoint?

Mr. Kirby: To sell the property for that money?

Mr. Walter: Yes.
Mr. Kirby: No, sir.
Mr. Walter: Why did you make that trade, then?
Mr. Kirby: Because I needed the money.
Mr. Walter: Then they did relieve you from very serious embarrassment, is not that true?
Mr. Kirby: Not necessarily. I needed the money. Of
6736 course if I didn't get it from the Santa Fe, I would go to somebody else.
Mr. Walter: Why did the Santa Fe do it instead of sending you to the banks?
Mr. Kirby: They are friends of mine.
Mr. Walter: Pretty close friends?
Mr. Kirby: They are. Mr. Ripley and I are close friends.
Mr. Walter: You mutually help each other as much as you can?
Mr. Kirby: Yes, sir.
Mr. Walter: Do you know the Southwestern Land or Lumber Company?
Mr. Kirby: I have heard of it.
Mr. Walter: Where is it located?
Mr. Kirby: My understanding is that it is incorporated under the laws of New Jersey, and its office, I think, is in New York. I understand it to be a concern of Santa Fe ownership.
Mr. Walter: Does it operate any mills?
Mr. Kirby: I do not know. I do not think so. It may, but I do not know.
Mr. Walter: Are you connected with it in any way?
6737 Mr. Kirby: No.
Mr. Walter: Directly or indirectly?
Mr. Kirby: No.
Mr. Coleman: I wish you would look over this list and tell me if it is in the main the correct list of the mills of the Santa Fe operating without tap lines (handing paper).
Mr. Cowan: That is, his and others, I suppose?
Mr. Coleman: These are without any tap lines; that is, without any railroad at all.
Mr. Kirby: I cannot testify as to all these, Mr. Coleman. I know such concerns are reputed to be over there, but I am not familiar with them at all.
Mr. Coleman: I wish you would look at this, a published list of all the saw mills located on the Santa Fe lines, and see if you have seen that before. That comes into the hands of the lumbermen, I take it.
Mr. Kirby: Well, I have not seen it before, that is a long list. I do not see anybody here who is not on the line, but I could not tell as to the accuracy of this.
Mr. Coleman: I wish to offer those two lists in evidence.

(The papers so offered and identified were received in evidence, and thereupon marked Santa Fe Exhibits Nos. 1 and 2,
6738 witness Kirby, received in evidence January 31, 1911, and are attached hereto.)

Mr. Coleman: The purpose is to show that in spite of insinuations which have been thrown in the record that Mr. Kirby and the Santa Fe have planned to stifle everybody, we have 46 little fellows on our line who operate with mules.

Reference was made repeatedly yesterday to a contract with the Santa Fe purporting to give control of your freight traffic to it. Did not that contract provide that all those things were to be done if they could lawfully be done?

Mr. Kirby: Oh, yes, all those contracts are with that end in view.

Mr. Walter: Did you say you had a mill at Mobile?

Mr. Kirby: Yes, sir.

Mr. Walter: Is that operating now?

Mr. Kirby: No.

Mr. Walter: On what line of road is it?

Mr. Kirby: The Katy.

Mr. Cowan: There is one question we want to ask Mr Kirby. Yesterday you testified that your railroad divisions of your operations was of the value carried on your books at so and so, and that that was based upon a valuation made by somebody. Now,

6739 I wish to get as nearly as you may be able to give it what the railroad investment was.

Mr. Kirby: Of this 206 miles?

Mr. Cowan: Yes.

Mr. Kirby: Well, substantially two and a half million dollars.

Mr. Walter: How do you arrive at that?

Commissioner Harlan: That was stated by the witness yesterday.

Mr. Kirby: The figures in the balance sheet I gave yesterday were one and a half million dollars, but in the construction of these roads we absorbed an operating expense; that is, the capital account on account of tram roads, construction of the roads, is absorbed largely in operating expense. For instance we will lay three or four miles of spur track and that is absorbed in operating expenses, all except the rails. Then that construction becomes permanent and it is put into the capital account only at its rail value.

Commissioner Harlan: It it — torn up, it only appears in the operating account?

Mr. Kirby: Yes.

Commissioner Harlan: So the two and a half million dol-

6740 lars you have just mentioned as the actual cost of the road does not include road that has been laid temporarily and taken up?

Mr. Kirby: No.

Commissioner Harlan: It does include the steel?

Mr. Kirby: Yes.

Mr. Walter: Is that the present value?

Commissioner Harlan: No, its book cost.

Mr. Kirby: Its book cost.

Mr. Walter: What do you say as to its comparison with the present value?

Mr. Kirby: its present value would depend on what you wanted

to use it for. If you wanted to call it a railroad and capitalize it, it is probably worth three or four million dollars.

Mr. Walter: That is something over $10,000 a mile?

Mr. Kirby: Yes, sir.

Mr. Walter: And you think it is worth considerably more than that?

Mr. Kirby: With the rolling stock and all that; yes sir. As a railroad, valuing your earthwork, your roadbed, your ties,
6741 your rails, your turn-outs, switches, spikes, and everything else as they do in valuing railroads, with a reasonable value for your right of way and all that, your property would have a railroad value of not less than $15,000 a mile.

Mr. Walter: That is about the average value of railroads of that type in east Texas?

Mr. Kirby: Yes, sir.

Commissioner Harlan: You mean that would be its value as it stands now, or are you speaking of a railroad of 200 and some miles, connected together?

Mr. Kirby: No, I am speaking of our railroads as they stand now, including the rolling stock.

Commissioner Harlan: Three or four million dollars?

Mr. Kirby: Yes, sir.

Mr. Walter: It is 35 pound steel?

Mr. Kirby: No, it is part 35 pound and part 60 pound.

Mr. Walter: How much 35 pound and what 60 pound?

Mr. Kirby: About half and half.

Mr. Walter: And it is divided into each road about half 35 pound and half 60 pound?

Mr. Kirby: No, some are all 60 pound and 35 pound. For in-
6742 stance, the narrow gauge roads would be laid entirely with 35 pound rail.

Mr. Marble: You have testified that two and a half million dollars is the actual cost of construction of this 206 miles?

Mr. Kirby: About that; I am using approximate figures.

Mr. Marble: And that appraisers who were appraising the property for loan purposes gave it a present actual value of about one and a half million dollars?

Mr. Kirby: No, they adopted the figures of the receivers. When the receivers were appointed they revalued all the properties of the Kirby Lumber Company, ignoring altogether their book values, cost values, and they got things down to the lowest basis possible, as you know those things are sometimes done. When Price, Waterhouse & Company were engaged to go out and revalue the properties they sent this Mr. Braydon, I told you about, and he gave the properties a higher value than the book values of the receivers, but for our bookkeeping purposes we retained the old value that the receivers had put on, and since that time we have written off seven and one-half per cent, as we write off five per cent a year for depreciation and the figures I gave yesterday, one and a half million, was the net present figure after deducting the seven and one-half per cent

from the receivers' figures and Price, Waterhouse & Com-
6743 pany's figures.

Mr. Marble: What is taken into consideration by the receivers or this appraiser in reducing the two and a half million to one and a half million?

Mr. Kirby: In our saw mill operations we try to absorb during the life of the timber all the plant cost, and the receivers in valuing these properties put them down to almost their wreckage value, that is, the value of the rolling stock and the rail. And it is safe operation and it is sound bookkeeping not to have a great big capital value there in a dead plant when your lumber is exhausted. Of course when your lumber is exhausted your mill is worthless, only for junk, and your railroad is only worth what you could sell it at second-hand. The ties are valueless, the rails would have second-hand value. As to the rolling stock, it would not be worth much.

Commissioner Harlan: But you have indicated it might have a value as a railroad.

Mr. Kirby: As a carrier, permanent and valued as railroads are valued, these properties of ours would run with their rolling stock an average of $15,000 a mile.

Commissioner Harlan: Do you think you could sell your
6744 properties for railroad purposes at $15,000 a mile?

Mr. Kirby: There is no demand for them, and I do not think we could sell them.

Mr. Marble: Is not that a little bit like trying to reach an estimate of the value of these properties on the theory that they are situated somewhere else than where they actually are?

Mr. Kirby: Of course I do not mean to say they are worth that. I mean to say as railroads, if you regarded them as such, they would have a certain book or cost valuation and estimated value. They might not be worth a cent, because they might not be able to earn interest on the spikes. That would be the case of our railroads unless they had the Kirby Lumber Company's tonnage.

Mr. Andrews: I think I can make plain what Mr. Kirby has been stating. The Texas Railroad Commission has a system of valuation of railroads without regard to commercial value, or any other sort of value except the actual cost of production or the cost of reproduction when they go to make the examination, and they value every spike at so much a pound and every tie at so much a tie and every rail at so much a pound, and take in all the
6745 elements which make an aggregate and give it as the value to that railroad. I presume that is what Mr. Kirby has in mind in speaking of valuing it as a railroad.

Mr. Kirby: That is it exactly. Under the Railroad Commission's rule for establishing values, our property would be about on that basis, and I understand nearly all railroads adopt substantially the same method.

Mr. Marble: In the case of your proposition at least, that would be a theoretical value and not an actual market value.

Mr. Kirby: Certainly; they are not worth it.

Mr. Marble: It has been suggested to me you should tell us who

assumes the hazards of storms or other calamaties which might affect the value of this timber and destroy it.

Mr. Kirby: What timber are you talking about?

Mr. Marble: The timber which you have the option to purchase from the Santa Fe.

Mr. Kirby: Well, that would be the Santa Fe's hazard; they take that risk.

Mr. Marble: And the increment of value, the unearned increment, would be the Santa Fe's insurance against that; that would be the other side of that?

6746 Mr. Kirby: I do not know that I just understand that question.

Mr. Marble: Well, as to the storms at any rate; that is the Santa Fe's hazard?

Mr. Kirby: Yes, sir.

Commissioner Harlan: Suppose they were destroyed by fire; is there and understanding by which that loss falls on you?

Mr. Kirby: No.

Commissioner Harlan: Of the Chapman timber?

Mr. Kirby: No.

Commissioner Harlan: Directly or indirectly?

Mr. Kirby: No, nor the Gallup, because this is in the form of an option. I am under no obligation in the world unless I exercise the option.

Commissioner Harlan: Then you wish the Commission to understand that the Santa Fe is not carrying this property for you except as you have described it; there is nothing left undisclosed?

Mr. Kirby: That is it.

Commissioner Harlan: No inference which can justly be drawn from anything you have said to that effect?

Mr. Kirby: That is absolutely true; there is nothing about
6747 it except that which I have disclosed here.

Mr. Garwood: Will you file the option contract or a copy of it?

Mr. Cowan: We have offered to furnish it to the Commission and have submitted it and will do it, but do not want to file it for the record as an exhibit.

Mr. Garwood: Will you permit us to inspect it?

Mr. Cowan: That is just the reason we would not file it as an exhibit. We do not see any purpose for it. I do not suppose there would be any objection to your personally inspecting it, because you are all friends, but when it goes to the public that would be a different thing. But I am not speaking for the company in that particular.

Mr. Garwood: Have you constructed any material amount of trams and bought any material amount of locomotives since 1903, the latter part of it, or the first of 1904?

Mr. Kirby: Oh, yes.

Mr. Garwood: About to what extent?

Mr. Kirby: I could not give you the figures. We bought quite

a good many locomotives and cars, and bought rails and relaid railroads and we have taken up some railroads.

Mr. Garwood: How much of that was replacement?

6748 Mr. Kirby: I could not tell you that without an examination of the accounts.

Mr. Garwood: In November, 1903, when you were preparing to incorporate and made your conveyance to Mr. Hilliard as security for the $600,000 loan from Mr. Yoakum, you valued all your railroad properties, including equipment of all characters at $1,219,436.60.

Mr. Kirby: No, that was only the 120 miles, or whatever it was, involved in that. That was the book value, at that time, of that property.

Mr. Garwood: That was the book value?

Mr. Kirby: Yes.

Mr. Garwood: How much have you built since then?

Mr. Kirby: Oh, a great deal. I could not tell you how much.

Mr. Garwood: Do these figures of yours make allowance for depreciation?

Mr. Kirby: Yes, sir.

Mr. Garwood: How much?

Mr. Kirby: That is the balance sheet figures I gave you yesterday of $1,503,000; that is after deducting depreciation for a year and a half, which would be seven and one-half per cent.

6749 Mr. Garwood: But the figures which you gave this morning of your total value——

Mr. Kirby: The figures I gave this morning of the total value of the property were the cost value of the property. Of course there is no cost value.

Mr. Garwood: There is no cost value?

Mr. Kirby: And the railroad value. For instance, if we were to be valued for railroad purposes.

Mr. Walter: Have you any rails from the Santa Fe?

Mr. Kirby: We have some; yes, sir.

Mr. Walter: What do you pay for those rails?

Mr. Kirby: Six per cent is my recollection, on a pretty high valuation, but I do not know what it is.

Mr. Walter: How many tons of rails, or how many miles?

Mr. Kirby: I don't know. We were to get 15 miles from the Santa Fe. I do not know how many have been delivered; I think six or seven. We got some from the Frisco.

Mr. Walter: What size?

Mr. Kirby: They are from 52 pounds to 60 pounds in different sections.

Mr. Cowan: I do not believe you stated the aggregate

6750 capacity of the Kirby mills, which you described yesterday.

Mr. Kirby: About 300 million feet a year; that is about what they could do.

Mr. Cowan: But of course the output does not amount to that. You showed what it was?

Mr. Kirby: Yes.

Mr. Cowan: In regard to the charging off point; in answer to

Mr. Marble, I believe you stated about it; just briefly what does that mean? You say the lumber company charges off, so when the timber is cut off——

Mr. Kirby: You carry into your depreciation account a sufficient sum so that at the end of your operations, for instance, say you have a mill property costing you $500,000 when you begin that goes into capital account, when you begin operations. When you finish operations, notwithstanding your mill from daily repairs you make upon it may be of as high efficiency as when you began, yet these repairs and renewals and betterments all being made from the operating account, and notwithstanding your mill is still of that high efficiency, yet it is of no value because there are no trees to operate on; it is of no value as a mill. Its value is what is the second-hand value of the machinery and other things you may take out
6751 of it. So it is good bookkeeping to write off a certain percentage of the value of that property every year, so that your capital account is substantially reduced or practically wiped out.

Mr. Cowan: At the end of your operations?

Mr. Kirby: At the end of your operations.

Mr. Cowan: Now that same thing applies with respect to your timber holdings?

Mr. Kirby: Yes.

Mr. Cowan: And to your railroad and whatever else is necessary as part of the means of carrying on your operations?

Mr. Kirby: Yes, sir; you would write off your timber holdings consumed every year, if you carried them in capital account, but from your mill and tram roads you write off an arbitrary sum?

Mr. Cowan: That is usual in timber operations?

Mr. Kirby: Yes, sir.

Mr. Cowan: And includes the mill, timber and railroad and everything else?

Mr. Kirby: Yes, sir.

(Witness excused.)

6752 J. W. LINK was called as a witness, and having been duly sworn, testified as follows:

Mr. Cowan: Where do you live?

Mr. Link: I live at Houston, Texas.

Mr. Cowan: Formerly you lived at Orange?

Mr. Link: Yes, sir.

Mr. Cowan: You have been engaged in the lumber and timber and saw mill business for a number of years?

Mr. Link: I have been actively engaged in the saw mill business from 1905 until January, 1910. I have been engaged in the timber business and in the purchasing of timber probably for fifteen years.

Mr. Cowan: You are acquainted with the location of the forests in Louisiana and Texas?

Mr. Link: Very well acquainted, yes, sir.

Mr. Cowan: Acquainted with the situation as to saw mill operations, tap lines, and so forth?

Mr. Link: Well, I think so, in a way.

Mr. Cowan: What was the business which you operated?

Mr. Link: Our company is the Miller-Link Lumber Company.

Mr. Andrews: Will your Honor suspend for a moment for a conference, by which we think possibly we may shorten the ex-
6753 amination materially?

Commissioner Harlan: Very well.

(Whereupon counsel withdrew for consultation.)

Mr. Link: You asked the name of the company, I believe.

Mr. Cowan: Yes.

Mr. Link: It is the Miller-Link Lumber Company.

Mr. Walter: That is the concern you are with now?

Mr. Link: No, sir, I am not with any concern now. That was the concern I was formerly interested in. I parted with my interest in the Miller-Link Lumber Company a year ago in January, and have no interest whatever now.

Mr. Cowan: Where does and where did the Miller-Link Lumber Company operate?

Mr. Link: The Miller-Link Lumber Company had a mill at Orange, Texas, and one at Newton, Texas, on the north end of the Orange & Northwestern, a little road running out from Orange 60 miles in length. The headquarters were at Orange.

Mr. Cowan: What was the extent of their timber holdings?

Mr. Link: Well, about three or four hundred million feet.

Mr. Cowan: Situated where?

Mr. Link: In the counties of Houston, Orange, Jasper and
6754 a little in Louisiana.

Mr. Cowan: How did the Miller-Link Lumber Company procure its logs to its saw mill?

Mr. Link: I think at the time I was with the company, and I think they operate in the same way and have the same logging arrangements, we had a tram road running out from a place called Bunker Hill on the Orange & Northwestern 27 miles north of the town of Orange. We had tram headquarters there, and had our tram road running into the forest. We cut the timber and logged it into the railroad with the Orange & Northwestern, and they hauled it down for us to the mill, for which we paid them, I believe, $1.25 a thousand feet. That was for the Orange mill. Now the Newton mill we logged from about ten miles south of Newton, and we had a trackage arrangement for which we paid them so much a mile, I don't remember what the compensation was. I think it was a difference in empties and loads, I think it was so much for an engine and so much for the empty train and so much for the load, but I am not clear as to whether it was fifty cents a mile, or something like that.

Mr. Cowan: Then when you milled the logs at Newton, what operations did you carry on there by rail as a part of your
6755 saw mill operation?

Mr. Link: We had our little tram road running out connecting with the railroad down south of Newton, and it went out into the woods.

Mr. Cowan: When the lumber was sawed and milled and ready for shipment, who handled it?

Mr. Link: The Orange & Northwestern was bound to handle it, because there was no other railroad running there.

Mr. Cowan: Did your saw mill operation involve the use of tracks to handle your lumber, or was it handled by the Orange & Northwestern?

Mr. Link: The Orange & Northwestern handled the lumber. We did not handle any lumber from the mill at all.

Mr. Cowan: How far was your planer from the main track of the Orange & Northwestern?

Mr. Link: About fifty feet, I think; that is, from the Orange & Northwestern spur. The main line, I believe, used to stop down about four or five hundred yards.

Mr. Cowan: And it was a spur out from that?

Mr. Link: Yes, it had the appearance of the main line, because it was the extension of the main line apparently, but I think it was considered as a spur. That was the end of the road, and this
6756 spur extended in a northerly direction and had the appearance of being an extension of the main line, but I think it was considered as a spur.

Mr. Cowan: In the case of the Orange mill, what was the operation there in connection with handling the lumber from the mill to the trunk line?

Mr. Link: We had two railroads at the time I was with the company operating in there, one the T. & N. O. and the other the Orange & Northwestern. Both had spurs and switches running into our yard, and sometimes we loaded part of the lumber out on one and part on the other. Generally we were shipping by both roads.

Mr. Cowan: Did your company get any division of rates?

Mr. Link: No, sir, we did not while I was with the company.

Mr. Cowan: What was the capacity of your mill?

Mr. Link: The Orange mill had a capacity of about 125,000 feet daily and the Newton mill about 60,000.

Mr. Cowan: Was your lumber marketed in the same general market you heard the witnesses testify that lumber is marketed in?

Mr. Link: Yes, we market it in the same general markets as other-, I presume.

6757 Mr. Cowan: You have sold out your interest in the Miller Link Lumber Company?

Mr. Link: I have no interest.

Mr. Cowan: Explain the method of operation of your tram roads to get your logs in in each case.

Mr. Link: Well, we build our trams out into the woods——

Mr. Cowan: Take Newton, for example.

Mr. Link: Well, Newton was a little peculiar in that respect because they never put in what you might call a permanent tram into the Newton mill. We had only owned that mill something like a year prior to the time I left there, and we owned very scattering tracts of timber south of Newton; that is, it was not compact bodies, and I think we only had three or four miles of railroad there, and we

would run out our track and have a camp and everything, but it was temporary in a way. We did not have what you would call a permanent tram road. The main timber lands were north. We were not operating that timber, and we simply ran out the spurs from the Orange & Northwestern two or three miles, I think was probably as long as any spur they had from that mill, and I was advised they are not operating those trams at all. I do not know whether they are operating the Newton mill at all, but I think it has been
6758 logged from down below, but they were all temporary tracks.

At the Orange mill it was a different operation. We had a permanent camp at Bunker Hill, and had commissary houses like an ordinary camp, and we had the main line track, and we built our spurs off from this main line that went into the timber. Of course we tried to lay out, and they always do, to lay out a main line which would take into consideration the timber holdings of the company, and they generally lay out a main line which will be of permanency, and build it so you can maintain it and run over it safely. They build it up better then they do the laterals or switches which run out into the forest sections of land. Our main line we built a little bit better track because we expected to stay there until we finally finished logging in that locality, whereas the spurs were merely here until this tract of timber was absorbed and then were taken up and moved.

6759 Mr. Cowan: How many miles of main line track?

Mr. Link: I think they have got probably eight to ten miles of track.

Commissioner Harlan: This is at Newton?

Mr. Link: No, sir, this is at the Orange mill, Bunker Hill, they call it.

Mr. Cowan: Are there other sawmills in your locality which you know of, which do not perform any materially different service in the matter of the railroad and logging operations and mill operations to what you do, who do get divisions of the rates, which you can point out?

Mr. Link: I think so, yes, sir.

Mr. Cowan: Have you any particular one in mind?

Mr. Link: Well, I do not know that I could particularize them, I guess I could. There are a number of them. I never could see much distinction between the fellow who was getting a division and the fellow who was not. They all necessarily now, in order to operate a sawmill of any capacity, must have a railroad. Of course you can operate a small mill in the old primitive way of hauling them in with ox teams, but in order to operate a mill, you might say of 25,000 capacity and up, it is practically impossible to log it
6760 other than by the modern way of having a tram road.

Mr. Cowan: Are there a good many of the mills operating by teams?

Mr. Link: Oh, little jerk water mills, you know, who will go in and cut off 160 acres, they put in a mill generally of a small and temporary character. Some mills probably cut as much as twenty thousand to twenty-five thousand feet, which operate for a time by

teams, but they are bound to be short lived, because when they get a mile or a mile and a half away they cannot do it. I think a two mile haul by ox team, they charge $2.50 per thousand for hauling the logs, and when you go to pay that and take the additional expense of hauling the lumber and all, it makes the tramming too high, and you cannot stand it.

Mr. Cowan: If the tramroads in Eastern Texas are to be considered as railroads, what would you have to say with respect to the relative amount of railroads in that community to other parts of Texas?

Mr. Link: If you were to make a map, I think that with all the tram roads in East Texas on it, it would look like we had a country which was rather dense in population, and a wonderful railroad knowledge. The roads are winding around there very thick,
6761 around every saw mill in the country, and there would be an immense mileage of railroad.

Mr. Cowan: How is the country generally with respect to its productive capacity other than of lumber?

Mr. Link: The country generally is a poor country; that is true of all piney wood country. When you get the timber off you get the principal part of its productiveness. It is not considered a good agricultural country, and not very productive of tonnage other than the natural growth of timber, similar of course to all pine wood country. The land is worth for agricultural purposes after the timber is cut off, and frequently sells, where it does sell, at about $2.00 an acre. You can tell from that about the value it has as a producer.

Mr. Cowan: How much agricultural development has there been in that country since you have been operating in buying and selling timber there for 15 years, in that pine wood country in East Texas?

Mr. Link: I think there is less agricultural development——

Mr. Garwood: Do you include in that all East Texas, Mr. Cowan? That is an im-ense scope.

Mr. Cowan: The part he is acquainted with, I should have
6762 stated. I meant to do that. That is where he has been buying.

Mr. Garwood: I do not want to see all East Texas indicted as not having agricultural possibilities. We are booming that country too much for that to go out to the public.

Mr. Cowan: Let us see what he says about it.

Mr. Link: There are some parts of East Texas which are fairly good agricultural land. You take what is known as Red River Country, around Nacogdoches, the earliest settlement in the state was in that country. But take the counties of Newton, Jasper, San Augustine and Tyler, and a number of counties known as the Long Leaf Belt, I do not believe there is as much farming in that country now as 15 years ago. Those people have quit the farms and followed up the sawmills, and you see more abandoned farms than you do new ones going in. I do not think there is as much farming there as there was prior to the development of the lumber industry in that country. The lands are poor, and those people seemed to make a

living there in former years, but now that other opportunities are offered such as tramlines and saw mills they have gone to work, and there is very little farming.

Mr. Cowan: These facts you have mentioned are perfectly well known and observable to everybody.

Mr. Link: I think so. I do not think it would apply to
6763 all East Texas. Probably the northern part of East Texas is better agriculturally, and there are probably hard wood countries, and what is known as the short leaf country, the lands are a little more productive than the long leaf.

Mr. Cowan: How is this condition you have just described in Louisiana as compared with Texas?

Mr. Link: I think it is very similar. The forests are very similar.

Mr. Cowan: Did you know in regard to the matter of export of lumber what arrangements existed in that part of the country as to seeking a market for export?

Mr. Link: Well, there is quite a good deal of lumber exported from that country. Now from our Orange Mill, we exported a good big per cent of our product, because we were on the water and had cheap transportation to Port Arthur, where we loaded on board a vessel. We probably exported 25 to 30 per cent of our product from the Orange mill, and from the Newton mill—from group of mills in that long leaf belt, there was a freight rate, I think, ranging from five to possibly eight cents per hundred pounds to Deep Water may be from four cents up to eight cents. When the export market was brisk, that is when freight rates on the sea were down, it generally shoved the lumber market upward, and frequently there
6764 were seasons of the year when there was a large amount of lumber being exported by the interior mills that had a rate of 5, 6, or 7 cents. And there were other times when those mills could not reach the export market very well for the reason that in order to absorb that freight rate to the ship, they could better afford to sell their lumber in the interior, whereas the mills located immediately on the water had the advantage in that they had a very light cost to put their lumber on board the ship, and I could not say what percent of the lumber of Southeast Texas and West Louisiana was exported, but quite an amount.

Mr. Cowan: What was the comparative price of the lumber lands which you were acquainted with, and what were they generally sold for in the pine districts you have mentioned in Louisiana and Texas, going back to the time you began operations, and coming up to this time, what has been the range of prices?

Mr. Link: Well, I do not know what you mean by the time we began operations——

Mr. Cowan: I mean when you went into the timber business.

Mr. Link: Say going back fifteen years you could buy the timber land in East Texas and Western Louisiana from $2.00 to $5.00 an acre. There might have been a little sold as high as $8
6765 or $10, but you could buy a large amount of average land for $5.00. I remember buying some for some clients, I think eighty thousand odd acres in one body, I bought it from various people, some from the railroad company, and a large quan-

tity from the Texas Central and different individuals. I think I bought up eighty thousand or ninety thousand acres of good virgin timber, and my recollection is that the average price was about $5.16 per acre. That was either in 1900 or in 1899. That same body of timber to-day I suppose would sell, if put on the market, for $75 an acre. It could not be bought for $100 from people who do not want to sell it, but if put on the market I am satisfied it would sell for $75, and might sell for $100. Stumpage was then from 50 cents to one dollar, and now the ruling price of stumpage, you might say, is five dollars. The present price of lumber I do not think justifies $5.00 stumpage, but at the same time since the panic —lumber fell off during the panic very rapidly, and has not recovered, so I am told. It had not up to the time I sold out. Timber did not seem to go off. The mill man was willing to sacrifice his lumber to keep up his interest payments, but he held on to his timber lands; so that while there has been a great deal of
6766 timber land selling, I do not think there has been any reduction in the price. I do not think there is very much to sell. They are pretty hard up, but seem to be holding on to all the timber lands expecting better times in the future, of course.

Mr. Cowan: Did the increase in land values mentioned result in any sense from the increase in the value of the land if the timber were off of it?

Mr. Link: No, there may be a little increase in the value of the naked land. There has been of all lands over the United States in the past few years. I have heard of some cut over land selling for as high as four or five dollars an acre in the past two or three years, but the ruling price used to be one dollar. You could buy it for one dollar an acre. But now I think the ruling price of the cut over timber land, if you found somebody who wanted to sell, might be considered $2.00 or $2.50. I do not think there is much selling. They are holding pretty well, and a great many are holding it for the growth of timber.

Mr. Cowan: Does it reforest?

Mr. Link: Well, it does in a way. It does not very rapidly, but pine grows pretty fast when it is given lots of water.

Mr. Cowan: That is long leaf?

Mr. Link: Yes. It does not grow as rapidly as the short
6767 leaf. Short leaf will reforest much faster than long leaf. Long leaf is a very slow growth.

Mr. Cowan: The conditions you have stated as to prices would apply generally to that long leaf belt of East Texas or Southwest Louisiana?

Mr. Link: Yes, sir, I think so.

Mr. Cowan: Did you have anything to do with the marketing of your lumber when you were engaged in the sawmill business with the Miller-Link Company?

Mr. Link: In a way I overlooked it—that is I tried to keep in touch with it, but we had a sales agent who had active charge of the marketing of lumber.

Mr. Cowan: But you had general knowledge of it?

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Mr. Link: Yes, I kept pretty well up to it, as well as I could.

Mr. Cowan: Will you state whether or not you thought or believed—I suppose it could not amount to more than a thought or a belief—or you may state whether or not you knew that those persons who had their investment in tap line railroads and sawmills, who were getting a division of the rate had any advantage of you in the marketing of the lumber.

Mr. Link: We thought so; that was my opinion, that is all
6768 I could give.

Mr. Cowan: You have been controverting this matter ever since the matter arose three or four years ago?

Mr. Link: Yes, sir, I was somewhat active in the matter when I was in the lumber business.

Mr. Cowan: What did you think that advantage was?

Mr. Link: Well, I thought that advantage was whatever the amount of division they got. I found——

Mr. Cowan: Did you in the course of entering this controversy, pay attention to the general situation in that part of the country?

Mr. Link: Yes, I looked at it pretty closely.

Mr. Cowan: Was it your opinion or not that that advantage generally applied in behalf of those who had divisions as against those who did not.

Mr. Link: I could not figure it out any other way, and if we operated a tram road the same way as the other fellow, and if he got a division from the trunk line and we did not, that he had the advantage.

Mr. Cowan: Did you feel any effect of it in the competitive sales of lumber?

Mr. Link: We thought we did after the panic. We did not
6769 notice any prior to the panic, because we were all getting a big price for the lumber, and that matter did not make much difference, we could sell our lumber anyway.

Mr. Cowan: You had money to burn, then?

Mr. Link: We had money to burn then, yes, but when the price dropped down three or four or five years ago, we began to feel it, or that is we thought we did.

Mr. Cowan: Are there any other points you have in mind which you would like to state, or that I have not asked you about?

Mr. Link: Well, I do not know of anything that I care to state unless somebody wants to hear it. I suppose the matter has been very thoroughly explained down there, and the conditions as they exist are pretty well known to everybody. I do not think of any explanation I have to make.

Mr. Cowan: That is all.

Cross-examination.

Mr. Garwood: Mr. Link, you stated that you thought that it was your opinion that you were at a disadvantage in the market to the extent of divisions. Now you have been requested to file here a statement by your company of your average selling price of your
6770 lumber for a given period stated in the notice; you have also been requested to file a statement of the average cost of pro-

duction; each of those statements being general in their nature, and also as applied to the several grades of the products. Now would not the production of those figures be more valuable in determining as compared with others whom you say have tramroads on which they get a division and a comparison of what the other man is selling at, and what you are selling at, and what it cost him to produce, and what it cost you to produce—would not that be more valuable than your mere general opinion or as you say, your thought on the subject?

Mr. Andrews: We object, if the Commissioner please, because that is asking a legal opinion from the witness as to the weight and value of his evidence.

Commissioner Harlan: The objection is sustained. That is a matter for the Commission to decide.

Mr. Garwood: Note our exception. All then that you propose to say on that subject is that after the panic when the shoe was pinching, that you thought in all likelihood the other fellow must have an advantage of you, that is about the size of it?

6771 Mr. Link: Yes, sir. As long as everybody was making plenty of money it was not noticeable whether that one fellow might be making any more than the other.

Mr Garwood: But when prices went down you discovered in a general way, without any figures to sustain it, but you just thought that the other fellow must have the advantage of you.

Mr. Link: No, I did not just think it, Judge. I did not know the extent of these divisions. I had heard rumors of this concern getting a division and that concern getting a division, but never have paid a great deal of attention to it, but when the fact became known better I could not figure it out, and I cannot yet why if there are two mills located similarly and are operating the same amount of railroad, and operating under similar conditions and paying for labor about the same, and one gets say four cents back from the trunk line, and the other one does not, I cannot analyze that question in my mind so as to figure that the fellow who is not getting a division is getting just as much out of his lumber as the other man. In other words, I cannot see why he does not have about four cents the advantage.

6772 Mr. Garwood: If it should appear that the other fellow, as you term it, never undersold you in the market at any place or time, substantially, other than that fugitive competition that you all have with each other, or if it should appear that the other fellow had not made anything especially out of his railroad, then of course your opinion would differ?

Mr. Link: Well, I do not know whether it would or not. I might be thoroughly convinced that he might not make a dollar, he might not. He might get a division and not make a penny, but at the same time we might sell lumber on the market at the same price and lose a dollar. He would have that advantage. He might not undersell, but he would be getting an advantage. In other words he would be getting more for his product than we would.

Mr. Garwood: That would be entirely conditioned upon the

proposition whether he made anything out of his railroad, would it not?

Mr. Link: We never figure in operating a sawmill on making anything from our railroad. It is just part of the expense of operation.

Mr. Garwood: You do not figure on making anything out of that?

Mr. Link: No, it is just part of the logging expense, and is charged up to logging expense.

6773 Mr. Garwood: If the other fellow never made anything out of his railroad, you cannot conceive he would have even remotely a small advantage of you by virtue of his stock ownership.

Mr. Link: If he got anything out of it at all he would get that much more than the fellow who did not get anything. Anything he would get would be that much over the other fellow, that is if they are located similarly. Of course there might be different conditions and one man might be entitled to it and the other not, but assuming they are similarly located and similarly situated.

Mr. Garwood: You then attach no importance to the proposition that simply because a man owns stock in a lumber company that he cannot own stock in a railroad?

Mr. Link: He can certainly do that, if he is able to, I guess.

Mr. Garwood: There is no reason why if he has really got a railroad he should not be permitted to earn on the transportation facilities?

Mr. Link: There is no question but what a man can be in the sawmill business and in the railroad business too. There is a difference in the way he operates his railroad in connection with the sawmill. I have always thought that the sawmill and railroad

6774 were two different propositions and should be.

Mr. Garwood: And there is no reason in your mind why a man who owns stock in a lumber company cannot also operate a railroad, provided it is a railroad.

Mr. Link: Yes, sir, none whatever provided it is a railroad.

Mr. Garwood: And your remarks are confined entirely to those cases where the railroad is substantially a plant facility and nothing else?

Mr. Link: Yes, that is exactly what I am getting at.

Mr. Garwood: It is a mere tram, in other words?

Mr. Link: Yes, that is what I would like to be understood as saying.

Mr. Garwood: And no further than that?

Mr. Link: If it is a railroad and complies with the law and after examining all the facts surrounding it it is shown that it is a common carrier within the meaning of common carrier, then there is no question but what the sawmill man would have a perfect right to have stock in it the same as any other citizen of the United States.

Mr. Garwood: And to earn reasonable rates on the products.

6775 Mr. Link: Yes.

Mr. Garwood: Who composed the firm of Miller & Link before you went out of it?

Mr. Link: The stock was owned by Mr. Miller and myself and one of Mr. Miller's boys. I owned half of it, and Mr. Miller and his son owned the other half.

Mr. Garwood: Who composes the firm now?

Mr. Link: I think Mr. Miller owns practically all the stock. I think Mr. Tam owns a little stock, and Mr. Miller's boy, but the company is practically owned by L. Miller. I sold my interest to Mr. Miller.

Mr. Garwood: Who built the Orange & Northwestern?

Mr. Link: It was promoted by Gilbert L. Moore, who is now dead, and I think at the time there were a number of Orange people interested in it, and Mr. Miller had some stock in it, and I had a little stock in it myself, a small amount. A number of local people were interested, but Gilbert L. Moore was the big stockholder.

Mr. Garwood: Was he interested in the lumber business?

Mr. Link: He was at that time. He sold out his interest in the lumber business about ten years ago.

Mr. Garwood: To whom?

6776 Mr. Link: To Lutcher Brown & Company, the Lutcher Brown people were his associates.

Mr. Garwood: That road was essentially a lumber road to start with?

Mr. Link: Well, it was built as an outlet to get to the Santa Fe. We only had one road then which was the Texas & New Orleans, and we always imagined we did not have very good shipping facilities, and that was built as an outlet for the lumber to get to the Santa Fe, and further to reach into that country up there, but it did not reach the timber holdings of any mill at that time operating in Orange. I do not think they owned an acre at that time. They might have owned a little, but it went through the Houston Oil Company's holdings mostly.

Mr. Garwood: Having but one road, whether correctly or not, the lumber company people felt they were not afforded sufficient facilities and could not get cars when they wanted them, and so they built over to Buna.

Mr. Link: That was the idea.

Mr. Garwood: A great part of that stock was held by the heavy lumber operators, was it not?

Mr. Link: I think so. They were the only people that had

6777 any means.

Mr. Garwood: And were interested in its construction Orange about that time was what sized town?

Mr. Link: About 4,000 perhaps.

Mr. Garwood: There was not anything at Buna?

Mr. Link: No, just a kind of logging camp, several hundred people.

Mr. Garwood: Kind of a logging camp?

Mr. Link: Yes, sir.

Mr. Garwood: So that the primary construction and the ownership of it was for the purpose of getting better facilities for the purpose of getting your lumber out to another connection, and getting

more cars, and in other words inducing the competitive element into the lumber situation.

Mr. Link: Yes, sir, and everything else, but the lumber being the principal product, of course that was the main thing.

Mr. Garwood: About when was that built?

Mr. Link: That must have been built about 1899, I am not sure.

Mr. Garwood: About 1899?

Mr. Link: Somewheres along that.

Mr. Hancock: 1900.

6778 Mr. Link: 1900.

Mr. Garwood: When did you build from Buna to Newton?

Mr. Link: It must have been three or four years later. The Frisco people built that. They bought the line from the Orange people.

Mr. Garwood: When did the Frisco people buy from the Orange people?

Mr. Link: It must have been five years ago—I cannot give the dates of those transactions.

Mr. Garwood: Do the Frisco people own the stock in it now substantially?

Mr. Link: I think so, or the Yoakum interest—I cannot follow it up.

Mr. Garwood: Oh, yes, but substantially the Frisco interests?

Mr. Link: Yes.

Mr. Garwood: Do any of your partners still own any interest?

Mr. Link: I think Mr. Miller owns a little, and he is president of it.

Mr. Garwood: He is president of it?

Mr. Link: Yes. I think he has been president of it all the time. I think he has about one share of stock.

6779 Mr. Garwood: Have the Miller-Link people got any contract of any kind relative to the transportation either of logs or lumber over that road?

Mr. Link: I have been told, and I could only speak from hearsay—up to the time I left the Miller-Link Company they had not. Let me understand your question. Any contract?

Mr. Garwood: Any contract——

Mr. Link: We had a contract prior to the time I left by which they hauled our logs for $1.25 a thousand.

Mr. Garwood: From where?

Mr. Link: From anywhere on the line to Orange.

Mr. Garwood: Anywhere between Buna——

Mr. Link: Anywhere between Newton and Orange.

Mr. Garwood: Anywhere between Newton and Orange?

Mr. Link: Yes, sir, when we delivered them f. o. b. cars they brought them down there for $1.25 a thousand feet log scale, which is about $5.00 a car.

Mr. Garwood: And you had your trams connected with the Orange & Northwestern?

Mr. Link: Yes, sir, we delivered them to them in train lots.

6780 and they generally ran a solid train of logs for us once a day of about thirty cars.

Mr. Garwood: That was a contract in force before you left them?

Mr. Link: It was in force practically during the entire period I was connected with the operation of the Miller-Link Lumber Company.

Mr. Garwood: Was there any provision in that contract for a refund of this charge in after the lumber went out?

Mr. Link: I think not. There was no provision in the contract we had for any refund. There had been some kind of a tariff placed on record allowing us so many cars of logs, so much return freight, if we got in so many logs and gave them back so much lumber we got so much return.

Mr. Garwood: Yes, that is it.

Mr. Link: But we never collected a cent of that tariff, in fact I did not know there was such a tariff for two or three years until someone told me there was one, and I looked it up and found there was, but we never got paid a penny from the railroad company. But they afterwards withdrew it.

Mr. Garwood: Did you ship out over that line?

Mr. Link: We shipped out over that line. That arrange-
6781 ment was made with Mr. Beard of the T. & N. O., and Mr. Hoe in some way, in which the Orange & Northwestern was to turn the stuff over to the Southern Pacific. I do not remember the details of it. That was before they went with the Frisco. That arrangement seems to have been made, this tariff was authorized by the Commission, and the fact is I don't know much about it, because we never lived up to it, and neither did they. We did not get anything at all; we never got a penny. I think Mr. Miller is trying to make them pay an amount that they owe him now. I understood that he has filed a claim there for quite a little amount of money.

Mr. Garwood: Would Mr. Miller know about that arrangement, that contract?

Mr. Link: Mr. Miller I presume would know about it. I do not think he knew much more about it than I did at the time. I suppose he has looked into them since.

Mr. Garwood: Was that the only contract you had relative to the transportation of those logs?

Mr. Link: I think the contract we had relative to the transportation of the logs was a written contract by which the Orange & Northwestern agreed to haul them, say 250,000,000 feet of timber,
6782 anywhere from the north end of the line to Orange for the sum of $1.25 per thousand feet, they to furnish the cars, and that contract provided further that all things being equal, we were to give them the return freight, but did not provide that we were to receive any compensation for giving them the lumber. It was a written contract that was entered into between the Miller-Link Lumber Company and the Orange & Northwestern Railroad. That is my recollection of that contract. I am sure there was no stipulation as to any return in it, but this tariff I speak about was some sort of verbal arrangement which had gone into effect prior to the time the contract was entered into. The fact is it was called to my attention, I remember, by Mr. Duff at Austin. They could not understand why

we had not got this return from the road. The Miller-Link Lumber Company had not up to the time I had left, received a penny, and that will be borne out by the Orange & Northwestern and the T. & N. O. records.

Mr. Garwood: The contract was that you were to pay $1.25 a thousand to the Orange & Northwestern?

Mr. Link: Yes, sir.

Mr. Garwood: It was owned by yourself practically?

Mr. Link: No, it was not. I did not have a penny's interest in it in the world.

6783 Mr. Garwood: Did you not say you were a stockholder?

Mr. Link: I was prior to the time this contract was executed, but this contract was made after it went into the hands of the Yoakum interests. I will draw the distinction. This return business when this tariff was promulgated was issued prior to the time this contract was made. The contract was made after that. I do not know how long before this tariff was got out, but it went into the hands of the Yoakum interests, and it was some kind of a contract between the Orange & Northwestern and the T. & N. O. I have the idea the Orange & Northwestern was to bring down the logs and to turn them over to the T. & N. O., and they were to give us some kind of a return for the log haul.

Mr. Garwood: Sort of a milling-in-transit proposition?

Mr. Link: Sort of a milling-in-transit proposition, but they did not do it. We never got anything out of it, and I understand Mr. Miller—in fact, some one told me not long ago that Mr. Miller was trying to make them pay him for that now.

Mr. Garwood: If there was a recovery of any sort against the road, would you have any interest in that recovery?

Mr. Link: No.

6784 Mr. Garwood: Did the Lutcher-Moore people use that road for the transportation of their logs into Orange?

Mr. Link: The Lutcher-Moore people never used that road for the transportation of their logs except I remember at one time they bought, I suppose eighteen or twenty million feet from a party up there, and it was delivered over that road. That was seven or eight years ago. I think it was three sections of land they bought from somebody, and they hauled it down over that road. I do not think they ever got another foot of log. The Lutcher-Moore people were operating on the other side over in Louisiana.

Mr. Garwood: Do you ship any lumber over the Orange & Northwestern?

Mr. Link: I always did when I was connected with the Company.

Mr. Garwood: Did the Lutcher-Moore people ship any over it?

Mr. Link: Yes, sir.

Mr. Garwood: Did they ship any lumber over it prior to its acquisition by the Frisco people?

Mr. Link: I presume so. I believe they always shipped over it more or less.

Mr. Garwood: Did the company collect the published rates
6785 from them?

Mr. Link: I assume so, I do not know.

Mr. Garwood: That is your understanding, of course.

Mr. Link: It is my understanding they collected the same rate as if it was going out over the T. & N. O.

Mr. Garwood: There was practically nothing shipped up from Orange to this place, Buna, except the products of these two mills, was there?

Mr. Link: Well, those were the principal shipments. There was quite a little incoming freight which came by the Santa Fe and the Orange & Northwestern at all times, merchandise and stuff of that kind. But I suppose——

Mr. Garwood: That did not amount to a great deal?

Mr. Link: No, but a pretty good line of business, though. They did quite a little business, not as compared with the other roads however.

Mr. Garwood: In the other way you used that for the shipment of your lumber?

Mr. Link: It was used largely just like the T. & N. O. The T. & N. O. shipped ten carloads of lumber out of Orange to one carload of anything else. Any road that ran in there would ship that.

6786 Mr. Garwood: No question but that is true. You never regarded the Orange & Northwestern in any sense as a plant facility of the Miller-Link or the Lutcher-Moore Companies, although you owned the stock in it?

Mr. Link: It was not a plant facility at all. It was a railroad.

Mr. Garwood: It performed a real transportation service?

Mr. Link: It was very easy for me in my own mind to distinguish a road of that kind from a plant facility.

Mr. Garwood: And it was incorporated as a railroad?

Mr. Link: Yes, sir.

Mr. Garwood: And in your judgment performed the services of a railroad?

Mr. Link: Yes, sir.

Mr. Garwood: And was therefore entitled to its legal charges?

Mr. Link: As I understand it, yes sir. That was my understanding.

Mr. Garwood: You spoke of the agricultural development of East Texas. The term East Texas includes a vast scope of territory.

Mr. Link: I understand it. I will limit it to those counties, Judge.

6787 Mr. Garwood: Just let me——

Mr. Link: The pine wood counties.

Mr. Garwood: You mean the counties of——

Mr. Link: Where the pine timber has been taken off.

Commissioner Harlan: Suppose you state the facts as you understand them with respect to this part of Texas. Is not that what you are inquiring about?

Mr. Garwood: I understand, your Honor, that some of the richest agricultural country in the world is in East Texas, and some of it

is right in the very country where these railroads are developing, and counsel's question just applies in a general sweeping way to East Texas, and I want Mr. Link to limit it.

Commissioner Harlan: We will let it stand on your statement.

Mr. Garwood: I hate to testify.

Commissioner Harlan: The Commission has asked you to make the statement. I think we will stand on that. I do not see the value of it except in a general way.

Mr. Garwood: I thought it was somewhat remote, but he has already stated——

Commissioner Harlan: You have corrected it, and the record will show you have given your view, and I think that is sufficient.

6788 Have you some other point you want to go into?

Mr. Garwood: No.

Mr. Walter: The panic of 1907 was very disastrous to the lumber interests.

Mr. Link: Yes, very disastrous.

Mr. Walter: And I believe you said that notwithstanding the hard times, a number of these men had to cut their lumber in order to meet the carrying charges, interest, and so forth.

Mr. Link: I suppose that is the case.

Mr. Walter: If a man had no interest charges to meet, he could have shut down and saved his timber?

Mr. Link: Yes, sir. There is not much in it by cutting it now.

Mr. Walter: You said our company got no division. You mean the Miller-Link Lumber Company?

Mr. Link: Yes, sir.

Mr. Walter: You do not understand that the lumber companies as such receive divisions, do you?

Mr. Link: The lumber companies?

Mr. Walter: Yes.

6789 Mr. Link: Well, now, I suppose they receive those through the incorporation of their tram roads, but my construction is and was, and my idea, of course that it is a mere matter of opinion, my impression and opinion has always been that in many instances those incorporated tram roads are merely part and parcel of the sawmill operation incident to it, and a necessary part of it.

Mr. Walter: You say your company got no part of it?

Mr. Link: No.

Mr. Walter: The lumber interests and your concern along it owned the Orange & Northwestern.

Mr. Link: At the time I was in the sawmill I did not have a penny of interest.

Mr. Walter: Well, other lumber people did?

Mr. Link: I think Mr. Miller owned one share. The Yoakum interests owned it, the Frisco people owned the Orange & Northwestern.

Mr. Walter: Were there any stockholders in the railroad company other than Mr. Miller who owned stock in lumber companies or timber lands along that line?

Mr. Link: I think we had a few directors there, and in order to

have a directorate they had a nominal amount of stock,
6790 one share, but I do not think there was five hundred dollars' worth all told owned outside the Yoakum people.

Mr. Walter: You are speaking after the Frisco took the road?

Mr. Link: Yes, sir.

Mr. Walter: I am speaking of the time the road was built.

Mr. Link: At the time the road was built it was built by a company organized there locally, and the saw mill people; that is Mr. G. B. Moore, who operated—by the way I do not know whether he built the road prior to the time he parted with his interests with the Lutcher-Moore people, or after.

Mr. Walter: It was built by lumber shippers along the railroad?

Mr. Link: Not entirely.

Mr. Walter: Not entirely, but built for that purpose?

Mr. Link: It was built from Orange to the Santa Fe to have shipments of lumber travel over it, and operate everything else, as a general railroad.

Mr. Walter: The large owners of that railroad when it was first built were men who were interested in the lumber traffic which moved over it?

Mr. Link: Yes, sir.

6791 Mr. Walter: That railroad received the division, did it not?

Mr. Link: I think it did.

Mr. Walter: How can you say your company received no divisions, and yet these lumber companies who have an incorporated railroad and receive it in substantially the same form as you receive it.

Mr. Link: If they have a road like the Orange & Northwestern as distinct from their manufacturing plant as the Orange & Northwestern was from ours, and operated as the Orange & Northwestern was operated and owned as the Orange & Northwestern was owned, they are certainly entitled to get a division, but their sawmill—if the facts will bear out the same as the facts will bear out the building and operation of the Orange & Northwestern, then there is no question but what they would be entitled to divisions. That is a question of fact, as I understand it, surrounding each particular proposition.

Mr. Walter: Now if you will just answer my questions, we will get along much faster.

Mr. Link: I want to make it plain.

Mr. Walter: That road, I believe you said, furnished a highway for the logs going into the mill.

6792 Mr. Link: No, it did not. I do not think there was a log hauled over that road four or five years after it was built.

Mr. Walter: Where did they come from?

Mr. Link: The logs came down the Sabine River at that time altogether.

Mr. Walter: How soon did you commence hauling logs over that part of the land extending from Buna to Newton?

Mr. Link: That road was constructed I think in 1900, and we started hauling logs there in 1905.

Commissioner Harlan: In the meantime they had hauled lumber?

Mr. Link: It was used as an outlet for lumber. I think the Lutcher-Moore Company had hauled a few logs, probably eighteen or twenty million feet prior to the time we hauled logs over it, but that is hearsay. There was not any logs hauled over it except the few months the Lutcher-Moore people used it, for five years.

Mr. Walter: But lumber did move out over it?

Mr. Link: Yes, sir.

Mr. Walter: Ninety per cent of the lumber came from mills who were interested in the railroad.

Mr. Link: I do not know that ninety per cent did, because I do not think it did. There were some mills that did not own
6793 any interest, the owners of the mills owned no interest in the roads, and of course they shipped more or less lumber over the roads.

Mr. Walter: But ninety percent was lumber?

Mr. Link: I suppose it was.

Mr. Walter: And a large portion of that 90 per cent was owned by interests who owned the railroad.

Mr. Link: A portion of it was. The Lutcher-Moore people at that time shipped over it to a large extent. I believe they owned a good big interest in the railroad. But at the time the Kirby Lumber Company operated a sawmill there, they owned, and they shipped over that road. The Bancroft Lumber Company shipped over it and the Kirby Lumber Company purchased the Bancroft plant, and the Orange Railroad Company owned no interest in the mill.

Commissioner Harlan: Was that your lumber Company?

Mr. Link: It was owned by the M. T. Jones interests at that time.

Mr. Walter: Do you know what percentage of the lumber that was shipped over this road prior to the time you indicate belonged to interests that were also part owners of the roads?

Mr. Link: No, it would require a detailed statement show-
6794 ing who shipped each car.

Mr. Walter: You have not any estimate?

Mr. Link: No.

Mr. Walter: Is it 50 or more than 50 per cent?

Mr. Link: I do not know; I should think it was more than 50 per cent anyway. If you will let me explain the number of mills at Orange it will give an idea. The Lutcher-Moore Company had two; the Kirby Lumber Company had one. These were of about the same capacity. The Orange Lumber Company had a big mill, and D. R. Wingate Lumber Company at that time had a mill, and all those mills, I assume, shipped more or less. I think probably Lutcher-Moore shipped a little bigger per cent than these other mills, but there was not more than half the lumber people in Orange who had any interest in this road at all. But it is hard to state when they are all shipping lumber to divide the per cent.

Commissioner Harlan: You have answered the question.

Mr. Walter: And the witness unduly prolongs his answers. I think we could save a great deal of time if he would answer responsively. At the time the lumber was moving over it the railroads received divisions?

Mr. Link: I guess they did.

6795 Mr. Walter: That movement of lumber was absolutely indispensible to reach the market?

Mr. Link: No, they could move it over the T. & N. O.

Mr. Walter: Could they reach the same market?

Mr. Link: I assume so.

Mr. Walter: When was the road extended to Newton?

Mr. Link: I think about four or five years later: I cannot give the year.

Mr. Walter: About 1905?

Mr. Link: I think the road was extended in about 1904.

Mr. Walter: Was there a mill at Newton?

Mr. Link: No mill there at that time.

Mr. Walter: Was there no mill along up that line?

Mr. Link: One of the Kirby Lumber Company's mills at Call.

Mr. Walter: Any log haul from this extension from Buna any time after it opened this extension from Buna to Orange?

Mr. Link: We hauled logs there, yes, sir.

Mr Walter: That was absolutely indispensible to get those logs to the mill?

Mr. Link: Yes, sir, it was necessary to haul those particular logs over that road.

6796 Mr. Walter: Was not that railroad then the plant facility?

Mr. Link: It was then owned——

Mr. Walter: I am asking whether it was a plant facility.

Mr. Link: I don't understand.

Commissioner Harlan: Let us confine what the relation to the plant was. By whom was the railroad owned at that time.

Mr. Link: It was owned by the Frisco interests, I think all the stock was owned by the Frisco except a few shares held by some other people.

Commissioner Harlan: But the extension was also made by the Frisco?

Mr. Link: The extension was also made by the Frisco, and paid for by Frisco interests.

Commissioner Harlan: Counsel's question is whether at that time the railroad was a plant facility, and if so, to what plant?

Mr. Link: I cannot understand that it was a plant facility at all. It was serving no particular plant, but everybody along the line.

Mr. Walter: That is your distinction?

Mr. Link: Yes, sir.

6797 Mr. Walter: If the railroad serves everybody along the line it is not a plant facility, and if it serves only the interest that owns it it is a plant facility.

Mr. Link: I——

Mr. Marble: It strikes me that question is for the Commission to decide.

Mr. Walter: There has been no objection to the witness answering——

Mr Marble: I am suggesting that we might get something of value out of the examination——

Commissioner Harlan: Well, the objection is made.

Mr. Marble: I am not objecting.

Commissioner Harlan: Then I will make the objection. That is a question for the Commission to decide. You may bring out the fact, and the fact seems to be that at this time the road was owned by the Frisco, and the extension of it was owned by the Frisco.

Mr. Walter: Does the ownership of the road make any difference in your judgment?

Commissioner Harlan: You need not answer that question. That is a matter of judgment. We cannot spend time on objections of that kind.

6798 Mr. Walter: I hope I shall not have to make them. I want to find out the fact as to the operation of this road. He has given his judgment not based upon particular figures, but his thought as to whether he was discriminated against. I want to ask him whether he thinks the ownership of the road makes any difference as to whether it is a plant facility or not, if he distinguishes on the plant facility.

Commissioner Harlan: I think that is a question of law, but still answer the question.

Mr. Walter: Do you think the ownership of this railroad makes any difference as to whether it is or is not a plant facility?

Mr. Link: Whether the ownership makes any difference?

Mr. Walter: Yes, as to whether it is or is not a plant facility.

Mr. Link: Yes, I do.

Mr. Walter: Now, explain.

Mr. Link: It does not necessarily make a difference. In other words I can own a sawmill and a railroad, and the railroad would not be a plant facility, while on the other hand I can own a sawmill and railroad, and it would be a plant facility.

Commissioner Harlan: Confine your answer to this road.

6799 Mr. Link: This road was not a plant facility, according to my understanding.

Commissioner Harlan: It was extended out into the woods by the Frisco?

Mr. Link: Yes, sir.

Commissioner Harlan: And then it commenced to haul logs to your mill?

Mr. Link: Yes, sir.

Commissioner Harlan: Did you regard it as your plant facility?

Mr. Link: No.

Commissioner Harlan: Or a facility attached to your plant?

Mr. Link: I certainly did not, because it was operated as a general common carrier.

Mr. Walter: I understood you to say that during the last year prior to your leaving the lumber company, all your logs for the Newton mill were brought in over spurs to the main line of the Orange & Northwestern.

Mr. Link: Yes, sir.

Mr. Walter: Now, then, did the Orange & Northwestern
6800 Railroad from the junction point with your spurs to the mill afford you a plant facility?

Mr. Link: They afforded us a plant facility, and we paid for it.
Mr. Walter: You paid for it?
Mr. Link: Yes, sir.
Commissioner Harlan: Suppose you had built the road yourself, would you regard it as a facility attached to your plant?
Mr. Link: If I had built the road and operated it as the Orange & Northwestern has been operating, I would not consider it a plant facility.
Commissioner Harlan: Explain why.
Mr. Link: Because that road has been operated—in the first place it was not built in connection with any sawmill, and did not bring logs to any particular sawmill, or take lumber from any particular sawmill; it did not run out into anybody's forest, or at least any particular timber holdings of any company.
Commissioner Harlan: You now refer to the whole road?
Mr. Link: I now refer to the whole road, yes, sir.
Commissioner Harlan: My question referred to the exten-
6801 sion by the Frisco from your mill into the woods you were lumbering. Suppose you had built that extension and had hauled your logs over it to the mill.
Mr. Link: I do not think you exactly understand the situation.
Commissioner Harlan: Perhaps not.
Mr. Link: It did not build from our mill into the woods. This road was first built from Orange thirty miles to a place called Buna.
Mr. Andrews: That was the connection with the Santa Fe?
Mr. Link: That was the connection with the Santa Fe. Then afterwards I think it was contemplated to build through to Marshall, two or three hundred miles; at any rate they built on to Newton, the county seat of Newton county. We had no mill at that time on that line. It was at the other end of the line. Afterwards when it was in operation for three or four years, we bought a mill at Newton, at the extreme other end of the road. We ran our spurs out about ten miles south of Newton and cut the timber, and logged it over the Orange & Northwestern to Newton, and paid them a trackage of probably fifty cents a train mile; I do not remember the exact amount, but we paid them, I think, 50 cents a train mile.
Mr. Walter: Whose engine hauled those logs?
6802 Mr. Link: Our engine.
Mr. Walter: That is the lumber company's engine?
Mr. Link: Yes, sir.
Mr. Walter: You simply had trackage rights?
Mr. Link: Yes, sir.
Mr. Walter: But you think the trackage rights did not change the situation at all as to whether the road over which they ran was a common carrier or not?
Mr. Link: I did not so understand. They furnished the pilot to run our trains over, and we had to pay them.
Mr. Walter: Who is president of the lumber company?
Mr. Link: Which lumber company?
Mr. Walter: The Miller-Link Lumber Company.
Mr. Link: Mr. Miller.

Mr. Walter: He is also president of the railroad?

Mr. Link: Yes, sir.

Mr. Walter: Does he have transportation over the various lines?

Mr. Link: I think so, yes, sir.

Mr. Walter: Are you connected in any way with the Orange & Northwestern?

Mr. Link: No, sir.

6803 Mr. Walter: Any lumber company?

Mr. Link: No, sir, not at this time.

Mr. Walter: At any time during the last year?

Mr. Link: No; I sold the last interest I had in the lumber business on the 20th of January, 1910.

Mr. Walter: Then you are not an intervenor in this case?

Mr. Link: No, sir, not at this time.

Mr. Walter: Mr. Miller, the president of that concern, would be much better able to give information as to all the facts in connection with his operation?

Mr. Link: He would, for the last year, for I do not know anything whatever of the operation in the last 12 months.

Mr. Walter: Is Mr. Miller here?

Mr. Link: I have not seen him.

Mr. Walter. Do you know whether or not he is here?

Mr. Link: I do not think he is.

Mr. Cowan: He was at New Orleans, but he is not here.

Mr. Walter: Is it not true that during all this time either by a contract or under an understanding, logs when hauled over the Orange & Northwestern to the mill when sawed into lumber, and the lumber shipped out were the basis of a refund for each three cars of logs in proportion to one car of lumber going out.

6804 Mr. Link: Was there an understanding of that character?

Mr. Walter: Yes.

Mr. Link: There was no understanding of that character not so far as I know, except this tariff I spoke to Judge Garwood about.

Mr. Walter: This tariff is the one which controls the operation, is it not?

Mr. Link: That tariff was in effect there for two or three years, it seems, and I did not know it.

Commissioner Harlan: That has been fully covered, except the element which counsel states, 3 to 1. If you want to press any question on that, go ahead, but otherwise this witness has fully explained the matter.

Mr. Walter: I want to ask whether or not, whenever a carload of lumber goes out, the refund is made on the inbound log rate on three cars.

Mr. Link: They never made us a refund of a penny.

Commissioner Harlan: Is that what the tariff meant?

Mr. Link: I think that is what the tariff meant.

Mr. Walter: That tariff is in effect to-day, is it not?

Mr. Link: That tariff was cut out a year before I sold out the company.

6805 Mr. Walter: Then if the tariffs in this record will show there has been a tariff during that entire time, you are mistaken about it?

Mr. Link: Yes. If it was not changed I am certainly mistaken, but that is my information, that the tariff was changed.

Mr. Walter: I want to ask you this question. You know about the Burrs Ferry, Browndel and Chester road?

Mr. Link: I was a director in that road once for a little while. I don't know much about it.

Mr. Walter: It was organized as a common carrier, and chartered as such?

Mr. Link: I understand so.

Mr. Walter: And was operated as such serving a quarry and certain lumber interests?

Mr. Link: I think so. I know nothing whatever of the operation of that road. I have never seen it and been on it.

Mr. Walter: During the time you were a director?

Mr. Link: I never attended a meeting while I was director, and consequently I don't know much about it.

6806 Mr. Walter: Well, for the purpose of this question, take my statement as correct. The road then grades an additional mileage into Browndel where Mr. Kirby has a mill. Mr. Kirby proceeds to ship over that line, and he owns the railroad. What change, if any, do you think that change of fact warrants in the rates and revenues of that road?

Mr. Link: I do not think his building that road, as I understand it, across from the T. & N. O. to the Santa Fe—that is, it was projected across there; it is about 12 miles built, and the rest is graded to Browndel?

Mr. Walter: Yes.

Mr. Link: You want to know my opinion there as to what would be the effect if he were to build into Browndel, and ship Browndel lumber——

Mr. Walter: Ship Kirby lumber, the owner of the railroad.

Mr. Link: I think he would have a perfect right to do it.

Mr. Walter: And on joint rates?

Mr. Link: Yes, sir.

Mr. Walter: Do you think there is anything immoral in that railroad receiving a division of the rates under those circumstances?

Mr. Link: No.

6807 Commissioner Harlan: Have you any questions, Mr. Marble?

Mr. Marble: No questions.

Mr. Cowan: The Browndel mill already has its plant facility?

Mr. Link: It already has its tram roads.

Mr. Cowan: And this could not be built in as a plant facility?

Mr. Link: Knowing the physical facts up there as I do, I would not consider this a plant facility at all.

Mr. Walter: Are you acquainted with the tram lines and their location to these various mills which you say you thought had advantages over you?

Mr. Link: In a general way I am, yes, sir.
Mr. Walter: What ones have you been over?
Mr. Link: What ones have I been over?
Mr. Walter: What ones have you been over prior to the time in 1907——
Mr. Link: You mean the plants that are receiving divisions?
Mr. Walter: Yes.
Mr. Link: I have not gone over the plants. I know the maps where they run into the woods in a general way, but I have never inspected their plants, because there is no way of getting to
6808 them unless you go out on their engines.
Mr. Walter: I understand you to say you do not know how these plant facilities were located at these various mills that you thought had an advantage.
Mr. Link: I know in a general way.
Mr. Walter: You say you have not seen them?
Mr. Link: I have seen some of them. I have never gone out and ridden over the tram roads going into the woods—I have on some of them.
Mr. Walter: You do not know what were lines having plant facilities and what were lines having main line connections?
Commissioner Harlan: It already appears he does not.

(Witness excused.)

6809 F. H. FARWELL was called as a witness, and having been duly sworn and examined, testified as follows:

Mr. Cowan: State your place of residence and your business and your experience in the business.
Mr. Farwell: Orange, Texas; I am a stockholder and director in the Lutcher-Moore Lumber Company at that point.
Mr. Cowan: How long have you been engaged in the lumber business?
Mr. Farwell: 17 years.
Mr. Cowan: What part do you look after?
Mr. Farwell: At the present time sort of all of it.
Mr. Cowan: Where is the spur owned by the Lutcher-Moore Lumber Company?
Mr. Farwell: In East Texas and West Louisiana.
Mr. Cowan: What is the extent of those spurs?
Mr. Farwell: You mean the acreage?
Mr. Cowan: Anyway you want to state it, yes.
Mr. Farwell: At Calcasieu and Vernon parishes in Louisiana we own about 100,000 acres, and about the same number in East Texas.
Mr. Cowan: Is that situated on or near the Sabine River in both cases?
6810 Mr. Farwell: Yes, sir, practically so, anyway.
Mr. Cowan: How far from Orange?
Mr. Farwell: Well, the lower end of our Louisiana land is approximately eighteen miles, that is the forest, but that of course was

cut over years ago. We are now operating about fifty miles from Orange.

Mr. Cowan: Now, as to the Texas lands, where are they located with respect to Orange?

Mr. Farwell: The lower edge of our Texas timber is in and around the town of Newton, the northern terminus of the Orange & Northwestern Railroad, in around there close by.

Mr. Cowan: That is how far?

Mr. Farwell: About sixty miles.

Mr. Cowan: Where are your mills?

Mr. Farwell: Orange.

Mr. Cowan: How many mills have you?

Mr. Farwell: Two.

Mr. Cowan: What is the aggregate capacity of the mills?

Mr. Farwell: About 350,000 feet daily.

Mr. Cowan: When were they located there?

Mr. Farwell: Lutcher-Moore's first operations in Orange were in 1877, and one of the mills is the outgrowth of that first plant.

6811 Mr. Cowan: Was there any railroad there then?

Mr. Farwell: I don't know. I have heard a great deal about the road from Houston in, but I do not know when it first went in.

Mr. Cowan: How do you get the logs to the mill?

Mr. Farwell: We tram them about 34 miles and dump them into the river at a little point we call Nibletts Bluffs, and then float or tow them from this point to Orange.

Mr. Cowan: What length of tram road do you operate?

Mr. Farrell: About 34 miles main line.

Mr. Cowan: How many miles of the logging spurs?

Mr. Farwell: That varies from five to seven miles, according to where we operate.

Commissioner Harlan: How long is the movement by water?

Mr. Farwell: About 18 miles.

Mr. Cowan: How long has the tram been there?

Mr. Farwell: It was started in 1886.

Mr. Cowan: And was built and extended in length from time to time?

Mr. Farwell: It extends in a northeasterly direction from time to time as we got into our body of timber.

6812 Mr. Cowan: Is your railroad incorporated?

Mr. Farwell: It is not.

Mr. Cowan: How much investment has your company in the railroad?

Mr. Farwell: We are carrying it on the books at the present time at around three hundred thousand dollars. I am not prepared to say what the investment is worth. I have never had it estimated.

Commissioner Harlan: The question is what it cost. Can you tell that?

Mr. Farwell: I cannot, no, sir.

Mr. Cowan: What sort of road is it?

Mr. Farwell: It is a good road. We only have 35 pounds steel

on the main line at the present time, but it has a good dump, and the bridges are very substantial, and the roadbed is a better roadbed than the Kansas City Southern, for it is an older roadbed, and kept up in better shape.

Mr. Cowan: Do you operate it for any other purpose than the sawmill interests?

Mr. Farwell: No, sir, excepting we—oh, we haul for the accommodation of wholesale houses in Orange, groceries and hardware
6813 and stuff like that for its stores at Stark, Louisiana, which is the crossing of the Kansas City Southern, and two or three little stores out in the woods.

Mr. Cowan: Any other sawmills than those at Orange?

Mr. Farwell: No other sawmills except those.

Mr. Cowan: Have you hardwood mills?

Mr. Farwell: Two cypress.

Mr. Cowan: Where?

Mr. Farwell: One at Donner, Louisiana, and one at Lutcher, Louisiana.

Mr. Cowan: Connected with this road?

Mr. Farwell: No, sir, it is over in the other part of Louisiana.

Mr. Cowan: How many trains a day do you run over this main track?

Mr. Farwell: Two.

Mr. Cowan: And one way is loaded and the other empty?

Mr. Farwell: No, two trains of loads go into the Bluff every day.

Mr. Cowan: But the cars have to go back?

Mr. Farwell: Yes, sir.

Mr. Cowan: What sort of locomotives and cars have you?

Mr. Farwell: On our main line we have a brand new Bald-
6814 win 50-ton locomotive, and we have five or six locomotives, but only keep two in the woods' end in use. The others are ready to use as we need them.

Mr. Cowan: Have you any railroad in Orange serving your mills that belongs to your company?

Mr. Farwell: Nothing but a little spur. Of course we own tracks into our mills, and the little spur tracks, perhaps nearly ¾ of a mile long from a certain point just above our upper mill around down to what we call our lower plant; we own that.

Mr. Cowan: Do you own the tracks connected with the main lines from which the lumber moves when it starts to market?

Mr. Farwell: As I say, at the upper mill we own the tracks in our yard, but at this mill the Southern Pacific engine goes in and takes the loads out, and at the lower one the Frisco goes in and takes the loads out.

Mr. Cowan: Do you get any division of rate from the Southern Pacific?

Mr. Farwell: Absolutely none from either.

Mr. Cowan: Your tracks connect with the Orange & Northwestern?

Mr. Farwell: Yes, sir.

Mr. Cowan: Do you get anything for hauling the merchan
6815 dise that you take to Stark?

Mr. Farwell: Oh, yes, we have three tugs, and about ten barges, and we have one little barge and one of the smaller tugs that makes trips two or three times a week as the merchandise is wanted up there, and we charge them about $7 a car or something like that for taking the stuff up and reloading it in our box car, and hauling it on up.

Mr. Cowan: Have you more than one box car?

Mr. Farwell: No.

Mr. Cowan: How are the main line engines equipped?

Mr. Farwell: The main line engine is equipped with air.

Mr. Cowan: Is it economy to operate a good track and good equipment, operating a railroad as you are, for the purpose you are operating it?

Mr. Farwell: Yes, sir, absolutely.

Mr. Cowan: Have you any damages to pay for injury to people or stock?

Mr. Farwell: Yes, sir, we do. There is more thoroughbred stock in that section than I ever thought existed.

Mr. Cowan: You are acquainted with the other plants in the country, sawmill plants and industry tracks?

6816 Mr. Farwell: Not in a specific way. I think I have learned more about railroads in the last couple of hearings at New Orleans and St. Louis than I ever did before.

Mr. Cowan: Do you know any other industry at which any other mill is logged partly by rail to the water, and then floated by water to the mill?

Mr. Farwell: There is one at Lake Charles, I believe; the Lake Charles Railway & Navigation Company, I believe they call it, that operates a railroad, and has a part of the Calcasieu River chartered as a common carrier and connecting with their mill.

Mr. Cowan: What do you mean by part of the Calcasieu River chartered——

Mr. Farwell: Well, I don't know just the point now, but they come down to a landing and the logs float from that landing to their mill. It is a Kelly-Webber mill, and I have been told, I have never been to the plant, but that the charter of the Lake Charles Railway & Navigation Company covers the whole proposition from the back end of their road down to their mill.

Commissioner Harlan: You do not mean they have laid a right of way in the river?

6817 Mr. Farwell: No.

Mr. Cowan: Do they get any division of the rate in that case?

Mr. Farwell: I don't know; I am not familiar with that feature.

Mr. Cowan: With what railroad do they connect at Lake Charles, or do you know?

Mr. Farwell: I do not care to say; the record would show that, and the rates and division sheets. I am not familiar.

Mr. Cowan: Does this sawmill company—I am asking for information now, I do not know as it has any relation——

Mr. Garwood: Can we not get it from somebody who knows?

Mr. Walter: It is in the record here.

Mr. Cowan: Does that sawmill interest have any relation to any of these big interests which have testified, may be it is one of the Long-Bell companies?

Mr. Walter: No, it was fully disclosed by the president of that road.

Commissioner Harlan: The record will show it.

Mr. Cowan: You get no division, you said, from either road?

Mr. Farwell: That is true.

6818 Mr. Cowan: Does any one else get any division?

Mr. Farwell: I do not know anything about the operations of the other mills. They are——

Commissioner Harlan: That is enough, if you do not know.

Mr. Cowan: What is the extent of farming or other business in the localities to which your road extends?

Mr. Farwell: Very little. I might answer that the reason of that is that the theory under which we are operating our forest is to save the little timber, and we have about 75,000 acres of cut-over land that at the present time will log reasonably good logs at four or five thousand feet to the acre, and the policy of our company is to hold that land and log it at some future time. That is why there is no farming in that section. We will not sell the cut-over land.

Mr. Cowan: You have heard the testimony of Mr. Kirby in regard to the method, manner and places of marketing the lumber in the general market. Is that substantially your view about it?

Mr. Farwell: I think so.

Mr. Garwood: Well, your Honor—that is a "me too" proposition.

6819 Commissioner Harlan: We will strike that out.

Mr. Cowan: Then you may state generally at what points in the United States you market your lumber.

Mr. Farwell: In the Northwest, in Texas, and through this portion of the Central Freight Association territory. Then we do quite a substantial business coastwise from Wilmington north.

Mr. Cowan: What is your situation respecting that latter traffic?

Mr. Farwell: The water traffic?

Mr. Cowan: Yes.

Mr. Farwell: We are on the Sabine River about thirty miles from Sabine Pass, and the Sabine River is forty or fifty feet deep, and we have a line of barges and our own tugs, and we load our outbound cargoes on lighters and put them alongside boat at Port Arthur or Sabine Pass; and we have been in that trade substantially for several years.

Mr. Cowan: Why don't you market all your lumber that way?

Mr. Farwell: We would if we could.

Mr. Cowan: You cannot get the sale for it?

Mr. Farwell: There are certain grades of stuff we cannot sell in a foreign market. They demand certain things.

Mr. Cowan: You do not select your trees out of a forest, you just log as you come to it?

Mr. Farwell: Our loggers have instructions as to how small a tree they must cut. When they have reached that minimum size they cut everything above it that is purchasable.

Mr. Cowan: What proportion of that timber in your case makes the lumber which would be exported, or which would go in the export trade?

Mr. Farwell: Our last year's sales show about thirty-three per cent of our product manufactured went by water.

Mr. Cowan: How do you prepare it for that purpose for export? I have heard they fixed it in some different form to what they do cutting into sizes of lumber.

Mr. Farwell: That would be a long story, Judge.

Commissioner Harlan: Then we won't go into it if it is not necessary.

Mr. Cowan: But they do ship very largely square timber.

Mr. Farwell: Yes, you have to cut your timber differently than you do your export stuff and all that sort of thing.

Mr. Cowan: Do you know whether or not in marketing your lumber in various parts of the United States that you are put at a disadvantage with those who get divisions of rates
6821 from your locality?

Mr. Farwell: Well, that is a much mooted question.

Commissioner Harlan: Is it a mooted question in your own mind?

Mr. Farwell: My theory of that is this: It is the man that makes the price that gets the business, and my opinion is that the man that has a chance at an advantage in some other way can, if he wants to, make the lowest price, which we all have to meet if we want to sell lumber.

Mr. Cowan: And it does not matter in what way he has that advantage?

Mr. Farwell: No.

Mr. Cowan: Then you have an advantage on the water transportation?

Mr. Farwell: Yes, sir.

Mr. Cowan: That is an advantage that arises by reason of your situation?

Mr. Farwell: Yes.

Mr. Cowan: Does your company operate on borrowed capital?

Mr. Farwell: No.

Mr. Cowan: Then you might have an advantage over somebody who might have to borrow to operate?

6822 Mr. Farwell: Oh, yes; if you want to look at it in that light. We have this timber land. Mr. Lutcher bought it years and years ago, when, in fact, a man who owned an acre of yellow pine lumber was looked upon with suspicion, because the more he owned, the poorer he was supposed to be.

Mr. Cowan: Now he is suspected of getting rebates.

(No reply.)

Mr. Cowan: Now, Mr. Farwell, is it or not your opinion that

transportation charges should be so made as to take care of the advantages and disadvantages which might arise by reason of location, situation, capital and the like?

Mr. Farwell: Yes, sir.

Mr. Cowan: Make transportation charges to equalize that?

Mr. Farwell: Why, I don't catch exactly your question.

Mr. Cowan: Well, you do not mean that the freight rate ought to take care of the differences in advantages between you and any other one?

Commissioner Harlan: I do not think we will go into that.

Mr. Cowan: I will withdraw that. I know that as well as anybody, and I don't suppose anybody ever attempted to do it. You have given what you carry your road at, and you said you could not give the cost, but can you state, did that cost cover the
6823 equipment?

Mr. Farwell: I said around $300,000 is what we are carrying our road and equipment at. It is a very nominal figure.

Mr. Cowan: What do you think it would be worth to construct it, estimated on what it actually costs you now to extend your main line from time to time?

Mr. Farwell: If you mean calculating the equipment, I should say it would be worth around $8,000 to $10,000 a mile, something in that neighborhood.

Mr. Cowan: I think there are no other questions, unless there is something you want to state.

Mr. Farwell: I do not know. The ground has been pretty well covered.

Mr. Coleman: I would like to ask, prior to the time that the Orange & Northwestern connected up with the Santa Fe, you then had but one road out, I understand?

Mr. Farwell: Yes.

Mr. Coleman: And that was the Southern Pacific connection, or the Houston & Texas Central?

Mr. Farwell: The T. & N. O.

Mr. Coleman: Prior to the time the connection was made, what was the car situation at Orange?

6824 Mr. Farwell: Well, that was one reason why the mills and people at Orange built the Orange & Northwestern, was to get relief from the car situation. Orange in a way was sort of a whistling station on the Southern Pacific, so far as empties were concerned.

Mr. Coleman: In other words, they would not furnish you with sufficient cars?

Mr. Farwell: We were a one-line point.

Mr. Coleman: That is all.

Cross-examination:

Mr. Garwood (handing paper): Will you kindly indicate to me there, there is Orange and there is Sabine, and just run a line there and show me how you get in there.

Mr. Farwell: Just about like that (indicating). I have a map here which I will give you, which will show it.

Mr. Garwood: If you will.

(Witness explains map to Mr. Garwood.)

Mr. Garwood: I understand you transport your logs over your tram line by cars and locomotives down to Nibletts Bluff and there put them in the river and *two* them down to your mill at Orange.

Mr. Farwell: Yes.

6825 Mr. Garwood: Now, is the cost of your barge line also figured into the cost of your transportation facilities which you gave to counsel?

Mr. Farwell: No, that is carried in what we call our river account?

Mr. Garwood: You do charge for the transportation services on your barge line, as I understand?

Mr. Farwell: Yes, if any stores up there want anything, we charge them so much for this barge load, which is substantially a good big carload of material.

Commissioner Harlan: Do you make any charge on the rail line?

Mr. Garwood: We will charge for a full load say $10 and credit the barge line with half and the railroad with half.

Commissioner Harlan: You are referring now to outside tonnage?

Mr. Farwell: I am referring now to outside tonnage of the wholesale grocery house or hardware or foundry.

Commissioner Harlan: Are you referring to your own logs, do you make any charge against your mill?

Mr. Farwell: Yes, sir, we charge $1.50 a thousand to the milling company for the handling of these logs from the back end

6826 of the spurs down to where they are dumped into the river.

Mr. Garwood: So you keep separate accounts, then, for your railroad and for your mill?

Mr. Farwell: Oh, absolutely; yes, sir. The saw milling interests or our incorporation papers do not take into account the timber end of it at all. The Lutcher-Moore Mill Company has an incorporation and owns the mill.

Mr. Garwood: And you have another corporation?

Mr. Farwell: Simply a partnership that owns the railroad and timber land.

Commissioner Harlan: It is practically the same investment?

Mr. Farwell: Yes, sir.

Commissioner Harlan: That is also true of the water line?

Mr. Farwell: Yes, sir.

Mr. Garwood: The same parties own the stock of the corporation which owns the mill?

Mr. Farwell: Yes, sir; absolutely.

Mr. Garwood: And the same parties as partners own the railroad and the barge line?

Mr. Farwell: That is true.

6827 Commissioner Harlan: And the timber?

Mr. Farwell: That is true.

Mr. Garwood: Now, you operate the transportation line in so far as the barges are concerned?

Mr. Farwell: Oh, yes, you might call it so.

Mr. Garwood: Can anybody who wants to ship up there?

Mr. Farwell: Yes, sir, we take anything that is offered.

Mr. Garwood: Then you are a common carrier as to that?

Mr. Farwell: Well, in a way, yes.

Mr. Garwood: You are a common carrier and you charge for your services?

Mr. Farwell: Yes.

Mr. Garwood: Well, now suppose one of these Orange merchants wanted to ship over some point on your logging road, would you do that service for him too?

Mr. Farwell: As I explained to you, there is a store at Stark, Louisiana, two of them. There is a store or two in here somewhere, and at this point here and there, and we are not interested in those stores at all, but whatever goes up there for them, we haul for them.

Mr. Garwood: What is your charge for your service from
6828 Orange up to the stores on your line?

Mr. Farwell: I just stated we charge them—we have no regular rates, but for this carload we will say we charge them $10, covering the barge and the rail line.

Mr. Garwood: How do you enter that on your books?

Commissioner Harlan: He has stated he set it half to the rail line and half to the water line.

Mr. Garwood: You then carry separate accounts for the barge line and for the rail line?

Commissioner Harlan: He so stated, and for the lumber company, all separate.

Mr. Garwood: Do you file tariffs covering these shipments?

Mr. Farwell: We do not.

Mr. Garwood: That is an interstate proposition, is it not; you start at Orange and go up a navigable river, and you are under the same control and you transport over into Louisiana. You say you transport for anybody that asks you and you charge for it. Are you not in a better fix than the man who has got to publish his tariff——

Mr. Coleman: Wait a minute. If your Honor please, I think that if there is any limit, it has been reached in that question.
6829 Mr. Garwood is trying to make the witness say that at law what he does makes him a common carrier. It does not at all. He is in precisely the same position as a man that has a team——

Commissioner Harlan: You are trying to make out that he is not?

Mr. Coleman: No, but what good will it do to get the opinion of the witness on it?

Commissioner Harlan: I think your objection is well taken. The whole field is open to Judge Garwood to argue on the statement made by the witness.

Mr. Garwood: I do not want to argue the facts or the law with the witness.

Commissioner Harlan: Let us get to some other field.

Mr. Garwood: I do get the fact that he is hauling for the public and makes a charge——

Mr. Coleman: He has not stated that.

Mr. Cowan: He said he carried what they offered him; some merchants down there.

Mr. Garwood: I will not stop to dispute that with counsel.

Commissioner Harlan: Take up some other line, then, Judge Garwood.

6830 Mr. Garwood: What is this town here (indicating). You deliver here at Nibletts Bluff?

Mr. Farwell: Yes. Like everybody, we have hopes, and at our last directors' meeting we decided to put surveyors into the field and survey that line. We have come to the conclusion that logging on the river is too expensive and we are going to quit it.

Mr. Garwood: What proportion of your business is export?

Mr. Farwell: I stated about 33 1/3 per cent of our business.

Mr. Garwood: Do you ship to New Mexico?

Mr. Farwell: Very little.

Mr. Garwood: Do you ship to Kansas and Oklahoma?

Mr. Farwell: Yes.

Mr. Garwood: Have you prepared a statement showing by states the number of thousand feet or number of cars that you shipped out during the past year?

Mr. Farwell: Yes.

Mr. Garwood: Have you that here?

Mr. Farwell: Yes.

Mr. Garwood: Will you let me see it, please?

(Witness produces paper.)

6831 Mr. Farwell: That simply shows the cars per month and the road over which they went, and it shows the total number of cars, but does not show the total cars by states. I have no reason why it does not, except that I only fixed up these statements the afternoon I left for St. Louis and have not had a chance to look at them.

Mr. Garwood: Without pausing to go into what the statement shows, will you put that in evidence as part of your cross examination?

Mr. Farwell: Yes.

Commissioner Harlan: I would like to have the map go in too, if you will.

(The map so offered and identified was received in evidence and thereupon marked Exhibit No. 1, witness Farwell, received in evidence January 31, 1911, and is attached hereto.)

(The statement so offered and identified was received in evidence and thereupon marked Exhibit No. 2, witness Farwell, received in evidence January 31, 1911, and is attached hereto.)

Mr. Garwood: You have been asked in this case to prepare a statement showing your cost of production and also your average selling price, both for all grades of lumber and for specific grades. Were those statements prepared?

6832 Mr. Andrews: Just a moment. If the Commission please, we deem it immaterial whether they were prepared or not, as the Commission has uniformly ruled they would not be admitted, and we will make the same objection.

Mr. Garwood: I make it for the purposes of the record.

Commissioner Harlan: And the objection is sustained.

Mr. Garwood: And I ask him if they were prepared.

Commissioner Harlan: That question may be answered, whether they were prepared.

Mr. Garwood: Were they prepared?

Mr. Farwell: They were.

Mr. Garwood: Have you got them here?

Mr. Farwell: Yes, sir, I have them with me.

Mr. Garwood: I now ask that they be produced.

Mr. Andrews: We make the same objection.

Commissioner Harlan: The objection is sustained.

Mr. Garwood: To which we except. Now, for the purpose of the record, I ask the witness, and of course you need not answer until after objection has been made, what was your average selling price for all grades of lumber, and separately for each grade during the past calendar year, and also what was your average production cost?

6833 Mr. Andrews: Same objection.

Commissioner Harlan: The objection is sustained.

Mr. Garwood: By selling price I mean as before, at the mill and with the freight rate excluded.

Commissioner Harlan: The objection to the modified question is sustained.

Mr. Garwood: Exception is taken. Now, for the purpose of the record, without bringing Mr. Link back, will you consider that the same question has been asked him for the Miller-Link Company?

Mr. Andrews: We will consider they have been asked, but as a matter of fact, Mr. Link has not any papers here about it. You can consider that the questions have been asked him.

Commissioner Harlan: The objection and ruling go to those same questions.

Mr. Cowan: Let it be understood that you have made that request of all these different industries, and that the right to it has been denied by the ruling of the Commission.

Mr. Garwood: Yes.

Commissioner Harlan: Therefore the questions need not be again put. It will be understood that that exception is saved to all the witnesses who may hereafter testify.

6834 Mr. Garwood: And in that same connection we make the offer that we stated yesterday to produce from the interest mentioned the same figures we would call upon the intervenors to introduce on this subject.

Mr. Andrews: The Commission understands that we have no objection to their offering that testimony if they wish to.

Mr. Cowan: But he offered it yesterday on the condition that we were required to furnish it, and we declined to comply with the condition, but there is no objection to their putting it in if they want to.

Mr. Garwood: Of course it is not material, if the other is not put in.

Commissioner Harlan: Your offer yesterday, then, was to prove by other sources the general cost, not the particular cost?

Mr. Garwood: Not his cost, no, but our own cost for each particular one.

Commissioner Harlan: In a general way?

Mr. Garwood. Yes, but giving definite figures for definite interests.

Mr. Andrews: Yesterday the offer was made specifically that for a substantial number, that was the term, if I recall it.

6835 Mr. Garwood: Yes.

Mr. Andrews: For a substantial number of those receiving divisions, the specific prices would be put in, about which he was asking the intervenors?

Mr. Garwood: Yes.

Mr. Andrews: We understood that was offered only upon the condition that the intervenors should be first examined upon the proposition and disclose their testimony, and the point that I rose to make a moment ago is that we still wish to be understood as not objecting to their offering their testimony, if they want to do it.

Commissioner Harlan: As a part of their case, and as a part of the condition referred to yesterday?

Mr. Andrews: Yes.

Commissioner Harlan: I think the record is clear on that point.

Mr. Cowan: I would like to make the suggestion by saying that they can prove the selling prices at places where they do not get divisions, or where they get one, two, three, four and five cents, and if the object of the evidence which they ask us to put in is to show what effect divisions have on the average price at the places where they sell the lumber or at the mill where they make it, they

6836 have got within their own power to show what it is in cases where they get divisions and do not, and in cases where they get little divisions and big divisions. I make that suggestion so that it may come into the record at this time.

Mr. Garwood: Thank you, sir.

Commissioner: Are there any further questions.

Mr. Garwood: I have no further questions.

Mr. Coleman: On this general subject of saving exceptions and making offers, counsel for the tap lines seem to be preparing a record. Now, I think perhaps it should appear just why the offers are refused and why the Commission refuses to make the private interests produce their private records or in other words, put it on certain grounds.

Commissioner Harlan: Well, the view of the Commission, so far

as I spoke for the Commission in ruling on these questions was that the injury was irrelevant to the issue now before us.

Mr. Coleman: And that applies to every offer?

6837 Commissioner Harlan: So far as I now recall them. There were some other offers on other questions.

Mr. Cowan: And the objection being sustained, that covers the entire range of the subject. If it should be excluded for any subject, it would be proper to exclude it.

Commissioner Harlan: I think it is now clear.

Mr. Walter: What is the extent of the production of your mills?

Mr. Farwell: About 60 million feet annually.

Mr. Walter: You spoke of several concerns up on your line of railroad. They furnish supplies for the men engaged in work there in your timber operations?

Mr. Farwell: Only one of them does. The balance of them are little country stores.

Mr. Walter: Then there is a farming community in there?

Mr. Farwell: Oh, more or less; it does not amount to much.

Mr. Walter: I do not know whether or not I have got the correct impression, but I understand you were discriminated against by reason of divisions given to connecting lumber interests; is that it?

Mr. Farwell: I do not know that I stated it in just those words. I believe I remarked that our experience in the sale of lum-

6838 ber was that the man who could make the lowest price usually got the business, and——

Mr. Walter: That is only one small element in making the price, the freight rate or the division of the freight rate.

Mr. Farwell: The freight rate shows the delivering end of the matter and is an important factor in the sale of the lumber.

Mr. Walter: You receive some revenue for that haul of that material?

Mr. Farwell: Yes, sir.

Mr. Walter: Do you take that into consideration in figuring the cost of your lumber?

Mr. Farwell: We do not. The——

Mr. Walter: You also go into the lumber market in competition with some of the intervenors in this case, do you not?

Mr. Farwell: I think we all find each other there.

Mr. Walter: Do you find the competition any keener and stronger between the intervenors in this case and yourself and the so-called tap line interests and yourself?

Mr. Farwell: I could not distinguish; neither could any other manufacturer distinguish one competitor from another in the open market.

Commissioner Harlan: If you received a division and he

6839 did not, could you draw a distinction then?

Mr. Farwell: I believe I remarked a little while ago——

Commissioner Harlan: I am talking now about your competitors in the country that are supposed not to get any allowances, and operating under the same general conditions and running their mills under the same general conditions. Now, if you were getting

an allowance and he did not know it, you could then enter the market in a way that would make a distinction in your mind, could you not?

Mr. Farwell: That is my opinion. If I had a division on our road or on our log haul, and if I wanted to—this is my idea about it—if I wanted to and the business was such that I wanted it, it would be immaterial whether I simply cut my price or simply threw away all or a portion of that division, so long as I maintained my mill value.

Mr. Walter: Then whether or not that division is taken into account, is to be determined by the figuring as to the sale price?

Mr. Farwell: As to the sale price.

Mr. Walter: And the only way to tell is to know the sale price?

Mr. Farwell: I suppose so.

6840 Mr. Walter: Were you connected with the Orange & Northwestern?

Mr. Farwell: Personally, no.

Mr. Walter: Did you have any relation to it?

Mr. Farwell: None whatever, excepting Mr. Link told about all the story of the company's relation to it.

Mr. Walter: Were you an officer?

Mr. Farwell: No.

Mr. Walter: Were you an officer in any railroad?

Mr. Farwell: None.

Mr. Walter: Any connection with any railroad now?

Mr. Farwell: None whatever, except I say I am really tentatively the manager of our tram road.

Mr. Walter: Were your superiors connected with the Orange & Northwestern?

Mr. Farwell: They were.

Mr. Walter: And at the time the operation went along, the Lutcher-Moore mill, you were then connected with the Lutcher-Moore mill?

Mr. Farwell: Yes, sir.

Mr. Walter: At that time was the railroad getting a division of the freight rates?

6841 Mr. Farwell: I presume so.

Mr. Walter: And the interests that were interested in the railroad were interested in the lumber mill?

Mr. Farrell: Now, don't get that confused as to the Lutcher-Moore railroad. It was built by the Orange interests for relief to get an outlet on another line of railroad, and we built some thirty-two miles northwest to Buna.

Mr. Walter: "We;" who?

Mr. Farwell: I say "we," the Orange interests, Mr. L. Miller, who was president of the Orange & Northwestern Railroad was at this time operating a store and I think a shingle mill. Mr. Alexander Gilmer was operating a saw mill in Orange at that time. We were operating one, and there was a rice mill and a foundry, and I know in particular a bank, all of which joined their interests together and

built this road, with this understanding, that it was to be operated as a railroad.

Mr. Walter: Common carrier?

Mr. Farwell: Yes, sir. Then later, in 1901, when the Lutcher interests purchased the Moore interests in our end of the company, Mr. Moore was the practical—he owned a majority of the stock of the Orange & Northwestern individually.

6842 Mr. Walter: That road then was constructed by shippers?

Mr. Farwell: By shippers.

Mr. Walter: Operated as a separate corporation?

Mr. Farwell: Yes, sir, absolutely.

Mr. Walter: Received divisions of the rate?

Mr. Farwell: I suppose they did.

Mr. Walter: Did those shippers receive any part of that freight rate?

Mr. Farwell: They never did.

Commissioner Harlan: Was the banker a shipper?

Mr. Farwell: No, but he was simply interested in the building of this road for an outlet to help the town out. It was a town road; it was not an individual road.

Mr. Walter: The great tonnage was lumber, was it not?

Mr. Farwell: Yes, sir.

Mr. Walter: Do you receive any logs over that road?

Mr. Farwell: No. Mr. Link testified, and I think substantially correct, when we purchased what we now call our lower mill in 1901 or 1900, we at that time had a contractor in our forest, and in order to just simply keep on operating that mill and not shut it

6843 down until we could get equipment, we sent our contractor over on the Orange & Northwestern, where we could buy some timber right alongside the railroad quick, and he logged that to our mill and kept it going until we could buy additional equipment and get into our own forest; that is all.

Mr. Walter: The Orange & Northwestern in furnishing those logs to your mill was just as essential to their milling and manufacturing as is your present tram line in Louisiana to your milling operations?

Mr. Farwell: Why, yes, and no. It was, because we used it. We could just as well, if we had wanted to, have bought or borrowed logs right there in the boom in Orange and continued our operation. We were not compelled to go onto that line of railroad to get those logs.

Mr. Walter: But as a matter of fact the railroad did furnish you the facility for getting those logs to the mill?

Mr. Farwell: Oh, yes.

Mr. Walter: And still furnishes the Miller-Link logs?

Mr. Farwell: Yes, they haul them over that road.

Mr. Walter: Would you say, speaking as a man who has had great experience in this matter, that these facilities afforded by the Orange & Northwestern in hauling those logs to that mill,

6844 were any more or any less a plant facility on that business than is your own railroad in hauling the logs over your present operation?

Mr. Andrews: It seems to me that is the very point for the Commission to determine from the physical facts.

Commissioner Harlan: We will take less time, perhaps, if the witness will answer, if he has any opinion.

Mr. Farwell: I would not care to say.

Commissioner Harlan: That is enough.

Mr. Walter: Why would you not care to say?

Mr. Farwell: It goes into matters I am not very familiar with——

Commissioner Harlan: That is enough. You have given a sufficient reason.

Mr. Walter: As a matter of fact, you are in charge of the part of the Lutcher-Moore interests that get the logs to the mill, are you not?

Mr. Farwell: I look after it from the log end until make our collections; yes, sir.

Mr. Walter: Let me ask if there is anybody better equipped to determine that question than Mr. Farwell.

Mr. Farwell: I started to say——

6845 Commissioner Harlan: Never mind. You need not answer that question.

Mr. Walter: You are an intervenor in this case?

Mr. Farwell: Our company is.

Mr. Walter: We want to point out that we think this is a most material question.

Commissioner Harlan: I suppose the questions mean that, but I have ruled them out.

Mr. Walter: We save an exception. Why did you not incorporate that line of road?

Mr. Farwell: Well, our attorneys advised us not to.

Mr. Walter: For what reasons?

Mr. Farwell: Well, I cannot tell you their reasons. They were the legal end of it. The prime reason was, it was their opinion, or so I understood at least, that it would be in a measure considered as a rebate, and we had better not do it.

Mr. Walter: Is that the reason?

Mr. Farwell: That is absolutely the reason.

Mr. Walter: Why was the Orange & Northwestern incorporated?

Mr. Farwell: I haven't any idea. As I explained a while ago, it was a town road and went out to connect with other trunk

6846 lines for the purpose of giving the town relief on outbonud movements of lumber or anything.

Mr. Walter: Do you understand there are tariffs in effect which allow a refund on logs hauled to your mill on the Orange & Northwestern?

Mr. Farwell: You mean the Lutcher-Moore?

Mr. Walter: Logs hauled down there, brought in by the Orange & Northwestern?

Mr. Farwell: I think there was.

Mr. Walter: And is now?

Mr. Farwell: I am not interested in it, and do not know. We haul no logs over that line.

Mr. Walter: You said the Orange & Northwestern hauled the logs for you that you bought up on that line.

Mr. Farwell: I said for a few months back we sent our contractor in there and got logs out on that. Just offhand, I would say that that refund was not in there at that time, but I would not care to say positively. But I know we got nothing.

Mr. Walter: That is, the lumber mill got nothing?

Mr. Farwell: The lumber mill got nothing.

Mr. Walter: You understand in all these cases that the
6847 railroad itself is the party and not the shipper, to the tariffs.

Mr. Farwell: I understand, but I would like to have you understand that the Lutcher-Moore Company, with whom I am connected, were not the controlling factor in the railroad.

Commissioner Harlan: Are you through with the witness?

Mr. Walter: Yes.

Mr. Marble: What is the name of this road which extends from the river into the forest?

Mr. Farwell: The Gulf, Sabine & Red River Railroad.

Mr. Marble: Are you on your way to Alexandria with that road?

Mr. Farwell: Mr. Fleishel has told you so, and I should like to say——

Mr. Marble: If you will pardon me one minute, I will say for the Commissioner, this matter came out at a hearing at which he was not present, that the Gulf & Sabine River Railroad has put in evidence of its lines, which shows lines constructed and intermediate connections to be constructed, which indicate that that line is to run from Orange to Alexandria, and the examination developed that the tracks of this witness' company were shown on that map
6848 as connected lines, and the explanation was made that they expected to connect up this road and make it reach from Orange to Alexandria. What about that plan?

Mr. Farwell: I can make a little explanation which may clear that up. Ever since I have been with Lutcher-Moore I have had drummed into me the fact that that road was going to Alexandria. It travels in a northeasterly direction, and we own a large body of timber in Vernon Parish immediately above and this road will ultimately serve the mills through this forest in Vernon Parish of some 70,000 acres, and in going there, we will cross the Santa Fe Railroad, and Mr. Fleishel, of the Gulf & Sabine, has spoken to us once or twice regarding the connecting up of his property and ours for the purpose of getting better facilities, and by that the town of Orange would get a substantial return, because we have hopes of his making Orange the southern terminus for his export movements, and it would not be such a bad proposition.

Mr. Marble: Is it a live proposition now or simply——

Mr. Farwell: Oh, no; we have just talked it over; there has nothing been done about the matter.

Mr. Walter: You have had it up in your directors' meet-
6849 ings, I suppose?

Mr. Farwell: Not that part of it. We did the building of

the southern and for about twelve miles, because the logging by the river we think is getting too expensive to operate.

Mr. Walter: You say your directors have not ordered the connecting up with the other road?

Mr. Farwell: No; there is nothing definite. We just have hopes.

Mr. Walter: It was discussed in an official manner, was it not, at your directors' and stockholders' meetings?

Mr. Farwell: This northern end may have been discussed, but we were more interested in the southern end, on account of the expense of logging by the river.

Mr. Walter: You would expect to get a division if you got that in?

Mr. Coleman: Oh, I object.

Mr. Farwell: Well, that is in the future.

(Witness excused.)

Whereupon, at 12:45 P. M., a recess was taken to 2:00 P. M.

6850 After Recess.

2:00 P. M.

Before John S. Burchmore, Special Examiner.

Examiner Burchmore: In the last question which was asked Mr. Farwell I do not know that I understood his answer, and I will ask the stenographer to read it.

(The question and answer were read as follows:)

"Mr. Walter: You would expect to get a division if you got that in?

"Mr. Farwell: Well, that is in the future."

Examiner Burchmore: Do you remember the question you were asked, if you would expect to get the division, and you said that was in the future?

Mr. Farwell: I don't quite catch the drift of it.

Mr. Andrews: To refresh your memory, they were asking you about building your road and connecting up with Mr. Fleishel's road, and he said if this was done, did you expect a division.

Mr. Farwell: You want an interpretation of that?

Examiner Burchmore: You said that was a thing for the future. Is it settled or agreed?

6851 Mr. Farwell: In no way, shape or form. Just to be frank with you, at our directors' meeting when the extension of the line from our present southern terminus to Orange was taken into consideration we decided to get estimates on what it would cost to build it, and the whole matter would hinge entirely upon what the decision of the Interstate Commerce Commission was on this subject of tap line divisions.

Mr. Cowan: If they say it is lawful and you are entitled to it, you want to go after it?

Mr. Farwell: Absolutely.

Mr. Cowan: And there are no strings upon you in getting it?

Mr. Farwell: Nothing in the world.

Mr. Walter: In other words, if the Commission does not interfere, you propose to develop that country?

Mr. Farwell: Yes, sir.

Mr. Cowan: No, no, wait a minute. You did not watch that gentleman.

Mr. Farwell: What was the question?

Mr. Cowan: Read the question and answer.

(The question and answer were then read.)

Mr. Walter: Now, you would not change that answer
6852 would you?

Mr. Farwell: I could expand on it, if you would like.

Mr. Cowan: What do you mean by developing the country, if the Commission does not interfere?

Mr. Farwell: That word "interfere" perhaps should not be in the question.

Mr. Cowan: Well, of course not.

Mr. Farwell: But if they are going to legalize tap line divisions, we expect to extend our road and get what we are entitled to.

Mr. Cowan: And all you can?

Mr. Farwell: Certainly.

Mr. Walter: You do not want anything you are not entitled to?

Mr. Farwell: No, sir, not a thing in the world.

Examiner Burchmore: Call your next witness.

6853 H. S. FILSON was called as a witness, and having been duly sworn, testified as follows:

Mr. Cowan: Where do you live?

Mr. Filson: My home is in Houston, Texas.

Mr. Cowan: What business are you engaged in?

Mr. Filson: In the manufacture of lumber.

Mr. Cowan: And what is the name of the company which you are interested with and represent?

Mr. Filson: The Alexander Gilmer Lumber Company.

Mr. Cowan: How long has that company been engaged in the manufacture of lumber?

Mr. Filson: Since 1905.

Mr. Cowan: Where are the plants of the company now located which are in operation?

Mr. Filson: The office and principal plant is maintained at Remlig, Jasper County, and the other mill is at Jasper, Jasper County, Texas.

Mr. Cowan: Have you a map of the plant, or any sketch of the situation on your tracks?

Mr. Filson: No, I have not with me.

Mr. Cowan: On what railroad; that is, what trunk line, are you located?

6854 Mr. Filson: The Center branch of the Santa Fe.

Mr. Cowan: That is not on the main line of the Santa Fe?

Mr. Filson: No, sir; I do not think they consider it a main line. It is a branch running from Beaumont north.

Mr. Cowan: That branch of the Santa Fe runs from where to where?

Mr. Filson: It runs from Beaumont north now, I believe to Long View.

Mr. Cowan: Where is your mill situated and each of your mills, with respect to the Santa Fe tracks?

Mr. Filson: Our Jasper mill is on the edge of the town of Jasper and about three-quarters of a mile west of the Santa Fe track. Our Remlig mill is seventeen miles north and about two miles east of the Santa Fe track.

Mr. Cowan: You have timber in both localities?

Mr. Filson: What is the extent of your timber holdings?

Mr. Filson: We have uncut something like 40 or 45,000 acres.

Mr. Cowan: Yellow pine?

Mr. Filson: Yes, sir.

Mr. Cowan: Taking up each of your mills, describe how they are situated with respect to the Santa Fe Railroad, and how they
6855 are operated with respect to the railroad operations as mill facilities.

Mr. Filson: I don't know as I know just what you want to get at.

(Question read.)

Mr. Cowan: I mean your own railroad operation.

Mr. Filson: We are connected with the Santa Fe at each mill by a spur track. As I stated, we are not on the Santa Fe rails.

Mr. Cowan: How far are each of your mills from the Santa Fe?

Mr. Filson: The Remlig mill is about two miles east of the Santa Fe, and the Jasper mill about three-quarters of a mile west of the Santa Fe.

Mr. Cowan: You reach the Santa Fe in what way?

Mr. Filson: We have a track from each mill to the Santa Fe, over which we get our empties at the Santa Fe stations and deliver our loads to them at the stations.

Mr. Cowan: Take your north mill; what one do you call that?

Mr. Filson: Remlig.

Mr. Cowan: How many miles of railroad have you in con-
6856 nection with your plant, from your plant to the Santa Fe and out to the timber?

Mr. Filson: We have these two miles from the Santa Fe to the mill, and then our logging operations in an opposite direction, and we had there a year ago fifteen miles, including spurs, and we have since added possibly two miles during the year.

Mr. Cowan: Is that railroad necessary to the operation of the mill?

Mr. Filson: Yes, sir, it is.

Mr. Cowan: What sort of road is it?

Mr. Filson: It is a standard gauge, of which ten miles that we call our main line is pretty good railroad. We have got about four miles of it in heavy steel and the balance in new 35 pound, which we are replacing as fast as we can with heavy steel, taking up the light rail and putting heavy in place.

Mr. Cowan: What is the weight of the heavier rail you are putting in?

Mr. Filson: 65 pounds.

Mr. Cowan: Is the heavy rail and the good construction a matter of economy in the operation of the mill and logging
6857 business?

Mr. Filson: I think it pays to build a good track for main lines where it is permanent, for the life of the timber.

Mr. Cowan: What sort of locomotives have you?

Mr. Filson: Our main line engine is a rod engine, built by Baldwin & Company, and weighs about 45 tons. Then we have three Shay engines which do the switching.

Mr. Cowan: What is a Shay engine? It has been mentioned several times.

Mr. Filson: A Shay engine is a geared engine and has three engines on the right hand side——

Mr. Cowan: Three cylinders, you mean?

Mr. Filson: Three engines on the right hand side; three vertical engines; and it is intended for heavy work, heavy grades, sharp curves, and things of that kind.

Mr. Cowan: Geared in the sense that the stroke of the piston turns some——

Mr. Filson: Turns a shaft, which is geared to the drivers.

Mr. Cowan: And that is geared so the power is applied to a slow movement?

Mr. Filson: Yes, sir.

6858 Mr. Cowan: Whereas, in the case of the rod, every two strokes of the piston turns the drivers around?

Mr. Filson: Yes, the drivers, like they ordinarily use on a railroad.

Mr. Cowan: What sort of equipment have you in use on your railroad?

Mr. Filson: At Remlig we have 35 log cars, I believe, and we have two flat cars and two cabooses.

Mr. Cowan: Do you carry anything else except your logs and your lumber?

Mr. Filson: Yes, sir; we do. We have a turpentine camp out at the end of the track, or near the end of it, and we haul their supplies to them and bring out their product to the Santa Fe at Brookland, which is our shipping point on the Santa Fe. Besides that we have hauled out for other parties considerable hard wood and some staves, loaded on our tram line.

Mr. Cowan: Then does this turpentine business have any relation to your company?

Mr. Filson: No.

Mr. Cowan: Do the producers of staves and hard wood have anything to do with your company?

6859 Mr. Filson: No.

Mr. Cowan: Do they get their timber from you?

Mr. Filson: No.

Mr. Cowan: Any farmers in the country there?

Mr. Filson: There are some farmers; yes, sir.

Mr. Cowan: Do you haul anything for them?

Mr. Filson: Well, yes; most of the farmers out there do their trading at our company store, and we haul stuff out to them, principally stuff that we sell them ourselves through our store.

Mr. Cowan: Do you haul anything to them that you do not sell at your store?

Mr. Filson: Well, if it is anything at all, it does not amount to much.

Mr. Cowan: You would do it, though, if they wanted you to, as a matter of accommodation?

Mr. Filson: Yes, sir.

Mr. Cowan: What quantity of stuff do you haul other than your logs and lumber product?

Mr. Filson: Well, I do not know; I have not got figures with me It would not amount to probably more than five or six cars a month.

6860 Mr. Cowan: Including both turpentine and staves?

Mr. Filson: Probably 100 cars a year would cover it.

Mr. Cowan: Do you have an arrangement whereby these people pay you for that?

Mr. Filson: We charge the turpentine people for hauling that stuff; yes, sir; and charge the people for hauling hard wood and staves.

Mr. Cowan: How far is the turpentine camp from the Santa Fe station?

Mr. Filson: About twelve miles.

Mr. Cowan: You haul your lumber from the mill to the Santa Fe station?

Mr. Filson: Yes, sir.

Mr. Cowan: Did you have any arrangement with the Santa Fe at any time for a switching allowance there?

Mr. Filson: Yes, sir; at one time they promised to pay us a switching charge on interstate business that remained on the Santa Fe rails.

Mr. Cowan: Going to Santa Fe stations?

Mr. Filson: Going to Santa Fe stations.

Mr. Cowan: As final destination?

Mr. Filson: Yes, sir.

6861 Mr. Cowan: How long was that in force?

Mr. Filson: Well, they only paid us for one month.

Mr. Walter: What month was that?

Mr. Filson: I think it was the first month we operated, probably January or February, 1906. We did not start up until 1906.

Mr. Cowan: February, 1906, you think?

Mr. Filson: Yes, sir.

Mr. Cowan: Who owns the rails from the Santa Fe Road to the mill?

Mr. Filson: They are rails we secured from the Santa Fe Company.

Mr. Cowan: Leased them?

Mr. Filson: Yes, sir.

Mr. Cowan: But that without rental?

Mr. Filson: The rails between the mill and Brookland we are not paying any rental for. We have other rails from them, however, that we are paying rental under their regular contracts.

Mr. Cowan: How is the engine equipped; with air brakes?

Mr. Filson: Our main line engine is equipped with air, yes, sir.

6862 Mr. Cowan: Do you do that because there is any law requiring you to, or as a matter of proper protection in operation?

Mr. Filson: The delivering of lumber to Brookland from our mill?

Mr. Cowan: No; do you get an engine with air brakes because any law requires you to do it?

Mr. Filson: I do not think there is any law requiring us to equip our engine with air.

Mr. Cowan: You simply prefer that?

Mr. Filson: Yes, sir; for that purpose.

Mr. Cowan: Do you carry any passengers over there?

Mr. Filson: Not for hire.

Mr. Cowan: Do you carry people who want to go back and forth?

Mr. Filson: Yes, sir, we do give them permission to ride on our trains.

Mr. Cowan: Do you have any liability for injuries and the like and running over stock?

Mr. Filson: Yes, sir, we have paid for stock, and we paid for a dog also.

Mr. Cowan: Do you not charge anything for men?

Mr. Filson: We do not charge anything for carrying them.

6863 Mr. Cowan: I say the men do not charge anything if you hurt them?

Mr. Filson: We have not hurt anybody by our railroad, that I remember.

Mr. Cowan: Going over to Jasper mill, you might take a piece of paper and show the Examiner about how your mill and terminus track and railroad are located and leave it with the Examiner.

Mr. Filson: I can do it roughly.

Mr. Cowan: That will be sufficient.

Mr. Filson: The Santa Fe runs north and south approximately. Brookland is about ninety miles north of Beaumont——

Mr. Cowan: Do not make the sketch too large.

Mr. Filson: You want to show the logging operations east of the mill?

Mr. Cowan: Yes.

Mr. Filson: Brookland would be about here, and our logging operations are about here (indicating). The turpentine camp is about here, and Jasper is seventeen miles south of here, and there the town of Jasper is located on this side of the track, and our mill is about here; that is about the way it is, roughly (indicating).

6864 Mr. Cowan: Where do you run your logging road from the mill at Jasper, parallel to the Santa Fe?

Mr. Filson: Yes, sir, it goes about seven miles north. Another turpentine camp is at the end of that logging road.

Mr. Cowan: And you lay your laterals out in the ordinary way that has been testified to here into the timber?

Mr. Filson: Yes, sir; at Remlig we are operating a separate steam skidder there, and can get our swiitches a little further, and at Jasper we use a combination loader and skidder and we have to get our tracks a little closer, still the topography of the country has a great deal to do with it.

Mr. Cowan: The ability to skid the logs?

Mr. Filson: Yes.

Mr. Cowan: How far generally are those tracks laid apart in the woods?

Mr. Filson: With our separate skidder, we find the practical distance is 600 feet. We find it cheaper to lay more tracks than to go a greater distance out for the logs. Going farther out it works a hardship on the horses used to pull the lines out.

Mr. Cowan: Your equipment down at the mill at Jasper, what have you there?

6865 Mr. Filson: We have a main line rod engine that we bought from the Lima Locomotive Works, that was their standard gauge and one of their latest type of engines for logging purposes; in fact all our machinery was bought new and built specially for the purposes it was intended for. Then we have a Shay engine there also that does the switching in addition to the main line engine.

Mr. Cowan: Do you get any allowance there from the Santa Fe for switching, or did you ever do so?

Mr. Filson: No, sir.

Mr. Cowan: How do you get the cars from the mill to the Santa Fe station; do you do the switching?

Mr. Filson: We go into the Jasper station and get our empties and take them out to the mill and when loaded take them back to the station at Jasper.

Mr. Cowan: What is your total investment in the railroad part of your plant, taking both plants?

Mr. Filson: The two places amount to about $160,000.

Mr. Cowan: What do you figure it costs you to build your main stem out from the Remlig mill?

Mr. Filson: Well, our grading costs about $2,500 a mile. It was originally laid with 35 pound steel, and it costs as
6866 much more per mile. Then there are the ties and the cost of putting it down.

Mr. Cowan: I thought you might have some general figure which would give some idea.

Mr. Filson: Five or six thousand dollars a mile.

Mr. Cowan: And laying it with heavy steel will raise that cost?

Mr. Filson: Yes, sir.

Mr. Cowan: About how much per mile; have you it in mind?

Mr. Filson: Possibly $1,500 or $2,000 more per mile.

Mr. Cowan: What is the capacity of your Remlig mill?

Mr. Filson: It gives us about three million feet a month, 150,000 a day, 130,000 to 150,000.

Mr. Cowan: What sort of mill is that?

Mr. Filson: Double band and circular.

Mr. Cowan: Have you any gangs at either of your mills?

Mr. Filson: We have at Jasper. The Jasper mill is a band and gang.

Mr. Cowan: What is the capacity of the Jasper mill?

Mr. Filson: About 85,000 to 100,000 board measure a day.

Mr. Cowan: Gang has been several times referred to, and
6867 for the purposes of the record, I wish you would state what a gang is.

Mr. Filson: Well, a gang mill—ours has 26 saws in it. It is a small gang. Twenty-six saws in a frame which goes up and down like this (indicating,) and make 26 or 24 boards at a time.

Mr. Cowan: Then you first must slab your logs?

Mr. Filson: We take two slabs off unless we are cutting the flitches.

Mr. Cowan: What is a flitch?

Mr. Filson: Two or three small boards.

Mr. Cowan: After you have got the width of your log so you can get the width of the gang, do you run through more than one log at a time?

Mr. Filson: Yes, sir; if it is small material, we can put in two or three logs.

Mr. Cowan: When it goes through the gang it cuts the entire log into boards?

Mr. Filson: Yes, sir, or two-inch lumber, whichever the saws are set to cut.

Mr. Cowan: What is the extent of the hard wood?

Mr. Filson: In that country the creek bottoms are covered
6868 with hard wood, but in our immediate section the bottom is not very wide, so there is not a great deal of hard wood in there.

Mr. Cowan: That depends on the width of the bottom?

Mr. Filson: It only grows in the bottoms.

Mr. Cowan: The pine trees are in a sandy, poor soil generally?

Mr. Filson: Pretty poor soil.

Mr. Cowan: Is that the case in that part of Texas, in the pine forests, and throughout western Louisiana?

Mr. Filson: That is the case in southeast Texas, and I think the same thing applies across the river in Louisiana.

Mr. Cowan: Where do you market your lumber?

Mr. Filson: Most of our lumber remains in Texas. We ship, however, to Oklahoma and Kansas and some to Chicago. Our trade is pretty widely distributed. We ship over a large territory. Some into New Mexico.

Mr. Cowan: Do you look after the sales department yourself?

Mr. Filson: No, we have a sales manager who handles the sales.

Mr. Cowan: You are in the general management of the business?

6869 Mr. Filson: Yes, sir.

Mr. Cowan: You might state what official position you hold with the company.

Mr. Filson: Secretary and treasurer and general manager.

Mr. Cowan: With whom do you compete at places where you sell lumber?

Mr. Filson: Well, we compete with everybody that ships into territory that we ship to. In some territory we compete with Pacific Coast stuff. I suppose we compete with white pine. Of course our principal competition is the other yellow pine mills.

Mr. Cowan: In what territories do you meet the yellow pine competition from Arkansas and Louisiana?

Mr. Filson: I think the Arkansas mills ship into central and northwest Texas, and I think the Louisiana mills ship to all parts of Texas.

Mr. Cowan: Do you know whether, or do you think you know whether the fact that mills in Louisiana and Arkansas under certain conditions, and some of them in Texas, get a division of the rate puts you at a disadvantage in the sale of lumber?

Mr. Garwood: We object to that question. That is asking an opinion without the facts upon which the opinion is based

6870 so that we may cross examine upon the facts upon which the opinion is based. We have sought at every time possible in this record to get in the only facts upon which such an opinion might properly be predicated and upon objection of counsel for intervenors, such questions have been objected to and have been uniformly sustained. Now, even an expert cannot state an opinion without the facts upon which his opinion is based. Now we say here is a bald, unsupported opinion without facts upon which an opinion might properly be predicated.

Mr. Cowan: Well, I do not care anything about it. We offer to prove it by other witnesses.

Examiner Burchmore: Do I understand you withdraw the question?

Mr. Garwood: You think the objection is good, do you?

Mr. Cowan: No, sir; don't take too many liberties with counsel.

Mr. Garwood: I will take the liberty of asking the question.

Examiner Burchmore: I understand the question is withdrawn.

Mr. Cowan: Are you acquainted with the other saw mills in the pine forests of Texas, and their location and how they are

6871 logged and how the business is handled?

Mr. Filson: Well, I have been in most of the mills in our immediate neighborhood, and in two or three in southwest Louisiana.

Mr. Cowan: Have you been to some of those who are getting tap line divisions?

Mr. Filson: I was at one time in a mill at De Ridder, which is owned by the Long-Bell Lumber Company.

Mr. Cowan: Is your railroad any more a necessary plant facility than the one of theirs which you saw there?

Mr. Filson: Well, our railroad is a necessity to our business. I do not see how they could get along without a railroad for bringing in logs.

Mr. Cowan: Do they ship lumber over into Texas?

Mr. Filson: I have heard of them shipping lumber over into Texas; yes, sir.

Mr. Cowan: Have you heard of them getting the business where you wanted to get it yourself in some cases?

Mr. Garwood: State the specific instance; when, where and under what circumstances, the price offered and the price sold at. I think that is the only way that such an answer can be given with any propriety.

6872 Mr. Cowan: I will stand by that question. He can answer it any way he pleases.

Mr. Filson: I cannot specify any specific case.

Mr. Garwood: That is what I thought.

Mr. Filson: But he got the business away from us.

Mr. Cowan: But you selling there and he selling there, it naturally follows that either he got the business from you or you from him?

Mr. Garwood: The objection to that——

Mr. Cowan: Well, he need not answer. I know that to be so.

Mr. Garwood: When you are willing to be sworn, Judge, we will take your statement.

Mr. Cowan: Have you any particular facts in connection with your mill that you would like to mention.

Mr. Filson: No, sir; I do not know of any.

Mr. Cowan: I think that is all.

Cross-examination:

Mr. Walter: Mr. Filson, you find competition pretty heavy with the tap line owners?

Mr. Filson: Well, we have found competition pretty hard with somebody lately. I suppose they are in the bunch.

6873 Mr. Walter: Could you distinguish as between the Kirby Lumber Company, the Industrial Lumber Company, the Lutcher-Moore Company or any other of the individuals?

Mr. Filson: I don't know as I could.

Mr. Walter: You cannot say, then, that this competition is any different from any other of the lumber companies than it is from the intervenors?

Mr. Filson: They are all after the business and somebody gets it.

Mr. Walter: What rate do you pay to Guthrie, we will say?

Mr. Filson: I am not familiar with freight rates. I think to Guthrie we have a 27½ cent rate. I am not sure about that, however, because I have no occasion to keep in touch with the rates.

Mr. Walter: Is it not 24 cents?

Mr. Filson: Possibly; I would not say.

Mr. Walter: You know where Nacogdoches is?

Mr. Filson: Yes, sir.

Mr. Walter: If I say to you that the rate from Nacogdoches which is nearer to Guthrie, is 27½ cents, what do you say as to whether your rate, three and one-half cents less, does not really and in effect afford you a three and one-half cent division
6874 to all intents and purposes on all your investment?

Mr. Filson: If we had a less rate to Guthrie than Nacogdoches we would have an advantage.

Mr. Walter: And it would be just the same advantage as if it were a division of the freight rate accorded to you?

Mr. Filson: Well, I think so; yes, sir.

Mr. Walter: You do not see any difference at all——

Mr. Marble: Do you agree to that, too, Mr. Walter?

Mr. Walter: I am talking to the witness. What do you say to that?

Mr. Filson: What is that?

Mr. Walter: What do you say to that?

Mr. Filson: What is the question?

Mr. Walter: Don't you in effect, get a division?

Mr. Filson: I don't think so; no, sir.

Mr. Coleman: Is there such a rate?

Mr. Walter: Is not that just the same effect as if you got a division?

(Previous question and answer read.)

Mr. Walter: Take any local point on the Santa Fe, where your local rate is three and a half cents less than it is from your
6875 competitor at Nacogdoches, do you say that the division of three and one-half cents makes any difference?

Mr. Filson: I say we have the advantage of that Nacogdoches mill if we have a three and a half cent rate less than they have.

Mr. Walter: Do you complain of that?

Mr. Filson: I have not complained of that; no, sir.

Mr. Coleman: What has that got to do with this case?

Mr. Walter: Is not that true of all points where the rate from Santa Fe points is less than it is from your competitors——

Mr. Filson: We have the advantage in places of that kind, of course.

Mr. Walter: Do you complain of it?

Mr. Filson: No, we are not complaining.

Mr. Walter: Do you think it is unlawful?

Mr. Filson: I would not say.

Mr. Cowan: That is not for him to say, whether he thinks it is unlawful or not.

Mr. Walter: You say you take these cars and haul them from Jasper to your mill, that is, the empties, and take them back?
6876 Mr. Filson: From Brookland. Jasper is the railroad station, and our mill is three-quarters of a mile west from there. We go from the mill to the station of Jasper and load them at the mill and take them back to the station at Jasper.

Mr. Walter: Suppose I came in there to buy that piece of line and operate it; do I render any more service to the mill than I do to the Santa Fe in getting the tonnage for the Santa Fe?

Mr. Filson: How is that?

Mr. Walter: Do I render any more service to you, delivering your tonnage over my road to the Santa Fe, than I do for the Santa Fe in going out and getting the tonnage for the Santa Fe?

Mr. Filson: If you come in there and switch those cars for us, you relieve us of that service?

Mr. Walter: Don't I also relieve the Santa Fe of that service?

Mr. Filson: Well, we are relieving them now.

Mr. Walter: Are you not rendering a service for the carrier?

Mr. Filson: Yes, sir.

Mr. Walter: And that is true of all these lines that oper-
6877 ate in that way?

Mr. Filson: Anybody similarly situated would be doing the same thing.

Mr. Walter: Are you not also serving the consumer in affording him a source of supply in taking it from the mill to the trunk line?

Mr. Filson: Yes, sir, and we are giving them facilities for getting their stuff out to the trunk line.

Mr. Walter: And one is just as necessary as is the service from Brookland on into Oklahoma.

Mr. Filson: I don't understand the question.

Mr. Walter: The service that is rendered over that track from Brookland to your mill is a service that is rendered for the shipper or consignee; it is also a service for the railroad in getting the tonnage for the main line, is it not?

6878 Mr. Filson: Yes, sir.

Mr. Walter: That service over that system is just as much a service in getting it to the consumer as is for a similar distance the movement by the Santa Fe over its lines?

Mr. Filson: Yes, sir; they would have to haul that stuff in some way if we did not haul it to them.

Examiner Burchmore: From where to where?

Mr. Walter: From this mill to the Santa Fe tracks.

Examiner Burchmore: I thought you called it Brookland?

Mr. Walter: Brookland is the loading point on the Santa Fe.

Examiner Burchmore: I thought Jasper was the loading point on the Santa Fe.

Mr. Filson: We have two. Our mill at Remlig is two miles from the Santa Fe and we have a post office there which we call Remlig.

Mr. Walter: In the same way if your mill was located at Guthrie, the hauling of that log from the end of the track of the railroad through to Guthrie would be a service likewise in transportation, would it not?

Mr. Coleman: I object to that kind of a question.

Mr. Walter: I should expect you would.

6879 Mr. Coleman: It is nothing for the witness to give his opinion on.

Mr. Walter: They have been doing that from the beginning of this investigation.

Mr. Coleman: Commissioner Harlan expressly ruled on it this morning.

Mr. Walter: No, he did not. What do you say to that, Mr. Filson?

Mr. Filson: If somebody hauls it up there somebody performs a service.

Mr. Walter: And it is just as necessary to move the logs some distance as it is to move the lumber.a distance, is it not?

Mr. Filson: It is necessary to get the logs into the mill, yes.

Mr. Walter: And whether the mill is located at Guthrie or at your point does not affect the consumer, does it? He has no concern where it is milled?

Mr. Filson: I don't suppose he cares.

Mr. Walter: You say you haul for everybody along the line?

Mr. Filson: We have hauled.

Mr. Walter: Do you refuse to haul for anybody?

6880 Mr. Filson: I don't know that we have refused to haul for anybody.

Mr. Walter: Is it not necessary for the development of that country for you to have railroads?

Mr. Filson: Well, railroads are good developers of the country.

Mr. Walter: Are not they the greatest developers in the transportation line?

Mr. Filson: I think so.

Mr. Cowan: Surely, it seems unnecessary to take time with that. We are sitting here paying hotel bills, and what is the use of proving that a railroad is necessary for the development of the country? If the Commission don't know that, they had better resign.

Mr. Walter: How long a haul do you have from your mill to Jasper?

Mr. Filson: From the mill to the station?

Mr. Walter: Yes.

Mr. Filson: Three-quarters of a mile.

Mr. Walter: Is it the same distance from Brookland to your mill?

Mr. Filson: From Brookland to our mill at Remlig it is

6881 two miles.

Mr. Walter: Does any other material go over that line than lumber?

Mr. Filson: We haul the products of the turpentine camp and some staves and hard wood.

Mr. Walter: Do you get any revenue for hauling those staves?

Mr. Filson: We have made a charge for it; yes, sir.

Mr. Walter: What charge do you make?

Mr. Filson: For staves we have charged them 3 cents per hundred pounds with a minimum of $12 a car, I believe.

Mr. Walter: For the two mile haul?

Mr. Filson: No, sir.

Mr. Walter: How far?

Mr. Filson: Wherever the cars are loaded on our tram road.

Mr. Walter: How far would that be on an average?

Mr. Filson: We haul the products of the turpentine camp about 12 miles.

Mr. Walter: Do you haul other materials?

Mr. Filson: Yes, sir.

Mr. Walter: Do you charge the same rate to everybody?

Mr. Filson: No, sir; we do not.

6882 Mr. Walter: On the same commodity you make a difference?

Mr. Filson: We are charging the turpentine camp $10 a car flat.

Mr. Walter: What do you charge for staves?

Mr. Filson: We charge 3 cents per hundred pounds with a minimum charge of $12 a car.

Mr. Walter: Which is the more valuable on the carload?

Mr. Filson: The naval stores.

Mr. Walter: Much more and the risk is much greater?

Mr. Filson: Yes, sir.

Mr. Walter: Why did you not incorporate that road?

Mr. Filson: Well, sir, we did not figure it would pay us to do so.

Mr. Walter: If you did that you would have to have some regulating authority over your charges, too, would you not?

Mr. Filson: Yes, sir.

Mr. Walter: I will ask you whether or not the liabilities entailed upon you by state legislation and state commissions would not be a very material item in operation, if you were incorporated?

Mr. Filson: We considered that when the matter was discussed.

Mr. Walter: And that is true, is it not?

6883 Mr. Filson: Yes, sir.

Mr. Walter: Now, I will ask you whether in determining the cost of your lumber you calculated into it the revenue derived from hauling this over your road for other people?

Mr. Filson: Our logging expenses got credit for whatever we charged for hauling stuff over the tram.

Mr. Walter: No, I am asking whether in figuring your cost of lumber you figured this in it?

Mr. Filson: The cost was reduced by the receipts for hauling this stuff.

Mr. Walter: Are you sure of that?

Mr. Filson: Yes, sir.

Mr. Walter: How much did it reduce it?

Mr. Filson: Whatever it amounted to.

Mr. Walter: Did you figure it in the cost of the lumber?

Mr. Filson: We give the logging expenses credit for whatever we got out of it.

Mr. Walter: I am asking if you figure that revenue in determining the cost of the lumber per thousand?

Mr. Filson: Yes, sir; we figure the lumber at the cost per thousand feet, and the logging got credit for whatever we got for hauling this stuff and reduced the cost that much.

6884 Mr. Walter: How much revenue did you receive?

Mr. Filson: Well, I believe I stated we hauled about ap-

proximately 100 cars a year; it would amount to $1000 in the course of a year's business. That is problematical, however.

Mr. Walter: How much have you invested in your mill?

Mr. Filson: You mean the mill itself?

Mr. Walter: The mill and timber.

Mr. Andrews: If the Examiner please, we have been making objections to that question and the objections have been sustained and we make the same objection in this case.

Examiner Burchmore: I believe objections have been offered to that line of questions and my impression is they have been sustained and exceptions have been noted.

Mr. Walter: I do not understand that the Commissioner ruled on that particular question.

Examiner Burchmore: As to the value of the mill investment?

Mr. Walter: The investment in the mill and timber.

Mr. Andrews: I do not remember whether it was before or after you came in yesterday, but this specific question was put to
6885 Mr. Kirby as to the cost of his mills, or the value of his mill properties, in connection with the statement that he had given of the cost of the railroad but had not given the cost of the mills, and upon objection the cost of the mills was excluded.

Examiner Burchmore: I think the Commissioner sustained that objection to that very question.

Mr. Walter: We will note an exception.

Mr. Garwood: For the purposes of the record will counsel consider that the question is asked of each of the witnesses, as to the Lutcher-Moore Company and the others?

Mr. Andrews: Yes.

Mr. Marble: That was agreed to this morning.

Mr. Cowan: No, that was applicable to the selling cost and the price of lumber.

Mr. Marble: Well this is the same class of testimony.

Mr. Cowan: Yes.

Examiner Burchmore: It is understood such objection will be noted.

Mr. Walter: Did you sell lumber any cheaper because of this revenue?

Mr. Filson: I do not think we did.

Mr. Walter: You say the greater portion of your lumber
6886 is sold in Texas.

Mr. Filson: Well, yes, sir. I have got the figures here, I believe.

Mr. Walter: All right, can you give us the figures showing us where your lumber was sold?

Mr. Filson: Yes, sir. (Produces paper.)

Mr. Walter: Do you sell it to the Santa Fe Railroad?

Mr. Filson: We try to sell them but have not been able to lately.

Mr. Walter: Mr. Kirby gets most of that business, doesn't he?

Mr. Filson: No, I don't think they have been buying much.

Mr. Walter: When they did buy were you able to sell them any?

Mr. Filson: Yes.

Mr. Walter: You sold most of your business on Santa Fe points?
Mr. Filson: No.
Mr. Walter: Put that statement in the record.
Mr. Filson: I do not think that is made just as you asked for it, but it will answer the purpose, probably.
Mr. Walter: Do you have sales agents?
6887 Mr. Filson: We have a general sales agent at the office and we have a man at Fort Worth on salary.
Mr. Walter: The man who is selling that lumber, does he take into consideration the freight charge in fixing his price?
Mr. Filson: You mean the cost of freight to get it from mill to destination?
Mr. Walter: No, in making up his figures to the consumer or purchaser does he consider the freight charges?
Mr. Filson: Yes, sir.
Mr. Marble: Concerning whom is this question asked?
Mr. Andrews: His sales agent.
Mr. Walter: You take a local point on the Santa Fe, you have a rate less, we will say, 3½ cents than your competitor off the Santa Fe——
Mr. Andrews: Just a moment. If the Examiner please, I am not willing for the statement to go in. I do not think counsel intends it that way, but it seems to me that would be the effect of it, that this witness would have a 3½ cent less rate to all Santa Fe points than people who are not on the Santa Fe.
Mr. Walter: No, I do not say that at all.
6887*a* Mr. Andrews: I did not think you meant it, but that is the way it sounded. Now, if that difference is between isolated points and you want to put them in evidence, we have no objection, but we do not want it to appear in the record that that is general.
Mr. Walter: I will confine my question to points in Oklahoma reached exclusively by the Santa Fe. I will ask you whether your salesman in fixing his price, his offer to the consumer or retailer or jobber or whatever it be, makes his price, taking into consideration the freight rates from your mill as compared with the freight rates from, say, Nacogdoches for example
Mr. Filson: He takes the freight rate into consideration.
Mr. Walter: And makes his price accordingly?
Mr. Filson: Yes, sir; he tries to get all he can for his stuff.
Mr. Walter: How is that sold, f. o. b. the mill?
Mr. Filson: No, sir; our stuff going to retail yards is sold delivered.
Mr. Walter: Who pays the freight?
Mr. Filson: The dealer pays the freight and charges it back to us and the invoice is made covering freight charges.
Mr. Walter: I will ask you whether in fixing that delivered
6888 price you take into consideration your freight rate as compared with the freight rate, for example, from Nacogdoches?
Mr. Filson: If a desirable piece of business shows up and we find

some other mill has a little lower rate than we have, we reduce our price.

Mr. Walter: Suppose your rate is less than his?

Mr. Filson: We would get all we could in that case.

Mr. Walter: You would maintain the rate from Nacogdoches, then?

Mr. Filson: We would try to take advantage of our advantage in the freight rate, yes, sir.

Mr. Walter: In fixing that price would you take into consideration this revenue you have received of $1,000?

Mr. Filson: It would not cut much ice, $1000 on the amount we ship.

Mr. Walter: It is wholly negligible, what your railroad earns?

Mr. Filson: Yes, sir, almost.

Mr. Walter: You do not take it into consideration at all?

Mr. Filson: Only we credit the logging cost——

Mr. Walter: But in fixing your selling price you do not take it into consideration at all?

6889 Mr. Filson: In fixing the selling price we do not take it into consideration at all.

Mr. Walter: Would you have any objection to letting us know your average selling price?

Mr. Andrews: Just a moment. Counsel who represent the intervenors have objections, and as long as they are willing to retain the counsel, it seems to me that it is an improper question and the same objection was made on yesterday and sustained by Mr. Commissioner Harlan, when Mr. Kirby was being examined.

Examiner Burchmore: The objection will be sustained.

Mr. Walter: We would like to have go into the record in connection with the witness's testimony the table furnished by him showing destination points and the amounts sold in various states.

(The paper so offered and identified was received in evidence and thereupon marked Exhibit No. 1, Witness Filson, received in evidence February 1, 1911, and is attached hereto.)

Examiner Burchmore: Is that an exhibit to your testimony?

Mr. Filson: Yes, sir; I understood they have asked for it.

Mr. Andrews: They have offered it. We have no objec-

6890 tion to their offering it.

Mr. Marble: You have been questioned somewhat as to the necessity of certain operations for getting lumber into the market. The first necessity is for the tree to grow in the soil, is it not?

Mr. Filson: Yes, sir.

Mr. Marble: Then you must put in a mill?

Mr. Filson: Yes, sir.

Mr. Marble: And you must chop down the tree?

Mr. Filson: Yes, sir.

Mr. Marble: You must transport the log to the mill either with oxen or with a railroad?

Mr. Filson: In some manner; yes, sir.

Mr. Marble: And you must there saw the tree into lumber?

Mr. Filson: Yes, sir.

Mr. Marble: And prepare the lumber for shipment and load it on the cars?

Mr. Filson: Yes, sir.

Mr. Marble: And take it out to the main line carrier?

Mr. Filson: Yes, sir.

Mr. Marble: And the main line carrier must take it across state lines and to destination?

6891 Mr. Filson: Yes, sir.

Mr. Marble: If the living tree is to go to the retail yard for sale, each one of these operations is absolutely necessary, is it not?

Mr. Filson: Yes, sir.

Mr. Marble: Could any one be omitted and the tree go to the yard?

Mr. Filson: No, it could not.

Mr. Marble: And it was in that way that you testified, was it, that this transportation from your mill to the main line carrier was as neccessary as the transportation by the main line carrier?

Mr. Filson: It was necessary; yes, sir.

Mr. Marble: And I presume you are willing to leave it to the Interstate Commerce Commission to decide which of those operations is transportation subject to the Act to regulate commerce and which is outside the Act?

Mr. Filson: Yes, sir.

Mr. Marble: And I shall leave it to the Commission instead of to you.

Mr. Walter: There are two operations, one is converting and the other is carrying, are there not?

6892 Mr. Filson: Yes, sir.

Mr. Walter: Can you see that it makes any difference where the carrying is done, whether it is before there is any milling done or after it is all done or whether the milling is done with transportation on each side?

Mr. Filson: There is a limit to the practical distance to where you could carry the log before manufacturing it. I do not think you could carry it to Guthrie and manufacture it up there.

Mr. Walter: But within reasonable limits.

Mr. Filson: Well, the reasonable limits would be considerably less than from our mill to Guthrie.

Examiner Burchmore: It does not seem to me to be profitable to carry that further because it would readily occur that logs are sometimes carried 500 miles and then manufactured into baskets.

Mr. Walter: I wanted to see if it was any less transportation service because it is a log than lumber.

Mr. Walter: Let me ask you whether logs are not transported across the Atlantic Ocean and there manufactured?

Mr. Filson: Yes, sir; we have shipped them, that is, we have sold them to people who have shipped them.

6893 Mr. Walter: And they mill them over there?

Mr. Filson: Yes, sir; in Germany.

Mr. Garwood: Have you prepared any statement in addition to that showing the states and countries to which you have shipped your product during the past year or so or is the one you introduced in evidence the only one you have prepared?

Mr. Filson: That is the only one.

Mr. Andrews: Your trans-Atlantic transportation of logs was square timber?

Mr. Filson: No; round timbers.

Mr. Andrews: Pine logs or hard wood?

Mr. Filson: Pine logs.

Mr. Andrews: Is that indulged in extensively?

Mr. Filson: I understand there is quite a little movement out of New Orleans, but this is the only Texas shipment I ever heard of.

Mr. Andrews: There is a great deal of hardwood shipped that way, is there not?

Mr. Filson: Yes, sir; of hickory and cedar.

Mr. Andrews: And ash, particularly.

Mr. Filson: Hickory, ash and cedar are generally shipped
6894 in the round.

Mr. Coleman: Just to pursue Mr. Walter's questions to an absurdity, does the transportation line over in Germany absorb the ocean haul on the log?

Mr. Garwood: I object to the question on the ground the gentleman himself says it is an absurdity, and if so I do not think it would throw any light on the situation.

Mr. Marble: I don't suppose the witness knows.

Mr. Filson: No, I do not know.

Mr. Cowan: There was one question I forgot to ask you, why your mill was located away from the Santa Fe track?

Mr. Filson: At Remlig the main reason was to get on an unfailing supply of water?

Mr. Cowan: You have to be at a place where you can get water?

Mr. Filson: Water is an absolute necessity to a saw mill, and plenty of it.

Mr. Cowan: I suppose Mr. Walter will not contend that the rates from Nacogdoches to Texas points are different than the rates from Santa Fe points to the same blanket territory?

Mr. Walter: It is a great deal different to Oklahoma points, due entirely to the action of the Santa Fe carrying out certain promises referred to in this record.

6895 Mr. Cowan: You just answered the question I asked you, and then went on to something else I did not ask. I asked it with a view of asking this witness and trying to get some information.

Mr. Walter: All right.

Mr. Cowan: I observe in your statement that in your shipment to Texas points on the Santa Fe there was 1,733,334—feet, I suppose that is.

Mr. Filson: That is in feet; yes, sir.

Mr. Cowan: Whereas to Texas points not touched by the Santa Fe there was 8,477,434 feet, which is very nearly one-third of your entire

output. I observe also in your statement that to Oklahoma points local to the Santa Fe you shipped 714,125 feet, whereas to local points in Oklahoma not touched by the Santa Fe you shipped 993,369 feet. Would those figures indicate to your mind that your relations to the rates confine you to sales on the Santa Fe railroad?

Mr. Filson: They do not confine us to the Santa Fe rails.

Mr. Cowan: If a man from Nacogdoches was shipping lumber for the purpose of sale to Guthrie, Oklahoma, what route could he take, do you know?

Mr. Filson: No, sir; I do not know, but I——

6896 Mr. Marble: The Commission would know that.

Mr. Filson: But he can get it in there over other roads than the Santa Fe and get the same rates. I do not think Guthrie is a local point.

Mr. Walter: I qualified that to make it a local point.

Mr. Cowan: But you used Guthrie as an illustration and I wanted to show it was not a local Santa Fe point.

Mr. Walter: But I qualified it.

Mr. Cowan: What railroads are there at Nacogdoches?

Mr. Filson: I think it is the Houston, East & West Texas, and I do not know what other line.

Mr. Cowan: The T. & N. O.?

Mr. Filson: The T. & N. O. I believe, yes, sir; both Southern Pacific.

Mr. Cowan: Do you know of any saw mills in your district, and by that I mean in the district that takes this same blanket rate to different interstate destinations which have to pay a higher rate than you do to get to the same consuming points which are the important places of consumption, like large towns and cities?

Mr. Filson: No, sir; the large towns I think are all on the same basis. There are other ways to get into them. Those high

6897 rates only apply to strictly Santa Fe points, as I understand it.

Mr. Cowan: But if you did have a lower rate of 3 or 3½ cents per hundred pounds than your competitors, you would have necessarily that much advantage of them?

Mr. Filson: We would have that much advantage and would work that field pretty strong too.

Mr. Cowan: It does not make any difference whether you would have that given as a division of rates or a lower blanket rate?

Mr. Filson: No matter how we got it we would have the advantage.

Mr. Cowan: Then the man who has the division of the rate shipping from Nacogdoches over the Houston, East & West Texas to Guthrie would have the same advantage that you have by his trunk line?

Mr. Filson: To the sum that he gets as a division he would have an advantage over us.

Mr. Walter: You know the rate from Nacogdoches to the Santa Fe connection over the Houston, East & West Texas and thence over the Santa Fe to Guthrie is 3½ cents higher than if it went over

the Houston, East & West Texas without touching the Santa
6898 Fe rails?

Mr. Filson: I do not know.

Mr. Walter: If the tariff shows that——

Mr. Filson: It is so; yes, sir.

Mr. Walter: Do you know any explanation for that on the part of the Santa Fe?

Mr. Filson: No, sir; I do not.

Mr. Cowan: You do not think the man would use it when he could get there cheaper the other way, do you?

Mr. Filson: I think he would ship the cheapest route.

(Witness excused.)

I. STEPHENSON, was called as a witness, and having been duly sworn, testified as follows:

Mr. Cowan: Where do you live?

Mr. Stephenson: I live in Louisiana.

Mr. Cowan: And what part?

Mr. Stephenson: Ludington.

Mr. Cowan: Where is that?

Mr. Stephenson: On the Kansas City Southern, south of Shreveport.

Mr. Cowan: On what railroad?

6899 Mr. Stephenson: Kansas City Southern.

Mr. Cowan: How far is that from Lake Charles?

Mr. Stephenson: About sixty miles, I guess.

Mr. Cowan: And from Beaumont?

Mr. Stephenson: Something about 90 miles I believe.

Mr. Cowan: And from Orange?

Mr. Stephenson: I don't know just what it is.

Mr. Cowan: Are you engaged in the manufacture of lumber?

Mr. Stephenson: Yes, sir.

Mr. Cowan: What is the name of the lumber company with which you are connected?

Mr. Stephenson: Ludington, Wells and Van Schaick Lumber Company.

Mr. Cowan: Where is your mill located?

Mr. Stephenson: At Ludington.

Mr. Cowan: Where is your timber located?

Mr. Stephenson: Both east and west of there.

Mr. Cowan: Nearby or far away?

Mr. Stephenson: Right there, 12 miles each side of us.

Mr. Cowan: What is the extent of your timber holdings?

Mr. Stephenson: About 50,000 acres uncut.

Mr. Cowan: What character of logging operations do you
6900 carry on?

Mr. Stephenson: We have about 11 miles of logging road or tram is what we call it.

Mr. Cowan: How much of that is what has been denominated as main line, or rather, permanent track?

Mr. Stephenson: Well, there is about 6½ miles of it is main line.

Mr. Cowan: And the balance logging spurs?

Mr. Stephenson: And the balance logging spurs and part of the main line which will be taken up when the timber is cut off.

Mr. Cowan: Do you have any other railroad connection except the Kansas City Southern?

Mr. Stephenson: Yes, sir, we have the Santa Fe and the Lake Charles & Northern.

Mr. Cowan: Do they all reach your mill?

Mr. Stephenson: They are five miles from the mill, about.

Mr. Cowan: How do you reach those roads from your mill?

Mr. Stephenson: Over our tram roads.

Mr. Cowan: Do you haul your lumber to those roads?

Mr. Stephenson: Yes, sir, and we receive cars from them on the Santa Fe line at Ikes and bring them to the mill and load
6901 them with lumber and return them again.

Mr. Cowan: Who performs that service?

Mr. Stephenson: The lumber company with the tram road.

Mr. Cowan: Do you get anything for it?

Mr. Stephenson: No, sir.

Mr. Cowan: How do you get your cars from and to the Kansas City Southern at Ludington?

Mr. Stephenson: We put them on our Y in connection with their siding and our station, and we take them from there to the planing mill and saw mill.

Mr. Cowan: Who does that?

Mr. Stephenson: The lumber company.

Mr. Cowan: Do you get anything for that?

Mr. Stephenson: No.

Mr. Cowan: How does your track compare with the Kansas City Southern?

Mr. Stephenson: I guess it is just about the same thing, maybe a little better than most places in our section.

Mr. Cowan: Are you acquainted with the mill and location at Fullerton?

Mr. Stephenson: Not very well.

Mr. Cowan: Have you been there?

6902 Mr. Stephenson: I have been there once, yes, sir.

Mr. Cowan: They handle the cars and lumber in connection with the road with which they connect about six miles, I believe?

Mr. Stephenson: That is what I understand, something like that.

Mr. Cowan: Is this service you perform in going over to the Santa Fe and the L. C. & N. and different materially *to* the character of service they perform in hauling the lumber?

Mr. Stephenson: I don't know that it is.

Mr. Cowan: How many cars do you take out at a time?

Mr. Stephenson: It is according to how many we can get. We have taken as high as 20.

Mr. Cowan: Is the track whereby you connect with the Santa Fe

and the L. C. & N. the same main track over which you haul your logs to the mill?

Mr. Stephenson: Within about half a mile of it.

Mr. Cowan: How is that?

Mr. Stephenson: About half a mile of spur from our main line to the connection with the Santa Fe.

Mr. Cowan: Otherwise it is the same track you handle your logs over?

6903 Mr. Stephenson: Otherwise it is the same track we handle our logs over, yes, sir.

Mr. Cowan: Do you handle logs over more track than you do the lumber?

Mr. Stephenson: Yes, sir.

Mr. Cowan: Have you ever had any division of the rates, or any allowances for this service?

Mr. Stephenson: Yes, sir. Not from the Santa Fe or the L. C. & N.; we did at one time from the K. C. S.

Mr. Cowan: But you do not get it from them now?

Mr. Stephenson: No.

Mr. Cowan: What service did you perform at that time different from what it is now?

Mr. Stephenson: Not any different.

Mr. Cowan: Have you had any chance to get divisions from the L. C. & N. and the Kansas City Southern of late?

Mr. Stephenson: I have had from the Kansas City Southern about a year ago.

Mr. Cowan: Did you take it?

Mr. Stephenson: No, sir.

Mr. Cowan: Why?

Mr. Stephenson: Well——

6904 Mr. Garwood: What proposition does this illustrate? Is it going into this witness's reasons for doing or not doing a thing? What is the materialty of it?

Mr. Cowan: I do not care to ask it, but I supposed you would ask it and I thought I would beat you to it.

Mr. Garwood: That is a very violent supposition, that I shall do or not do a particular thing.

Mr. Cowan: I do not think it is violent. It may not be justified but I supposed you would ask it.

Examiner Burchmore: Has that question been asked of any other witness?

Mr. Marble: It was asked of Mr. Farwell. I do not think myself that it is relevant, though, but it was asked by Mr. Walter, I believe.

Examiner Burchmore: There seems to be a general objection. We will proceed with some other question.

Mr. Cowan: What is the output of your mill?

Mr. Stephenson: Thirty-five to forty million feet a year.

Mr. Cowan: To what places do you ship your lumber for market?

Mr. Stephenson: Texas, Missouri, Illinois, Oklahoma and the last few months of last year there was a great deal went to places in

Louisiana and east of the river, some places that we don't
6905 know anything about.

Mr. Cowan: Have you any list of the states to which you shipped?

Mr. Stephenson: No, sir.

Mr. Cowan: Do you export any?

Mr. Stephenson: No, sir; only a few cars.

Mr. Cowan: Why don't you export?

Mr. Stephenson: That is a line of business we don't know anything about. We have not done any.

Mr. Cowan: Do you ship mostly over the Kansas City Southern or the Santa Fe?

Mr. Stephenson: Since we have had connection with the Santa Fe we ship mostly over that road on account of our markets being mostly over in that direction.

Mr. Cowan: Well, do you ship to any other places than Santa Fe stations of consumption when you ship on the Santa Fe?

Mr. Stephenson: Yes, sir.

Mr. Cowan: Do you get the same rates shipping to the same places as you would by shipping over the L. C. & N.?

Mr. Stephenson: Yes, sir. Some places we do. I guess almost every one of them that I know of.

6906 Mr. Cowan: Do you ship as far as Chicago?

Mr. Stephenson: Yes, sir.

Mr. Cowan: Your forest adjoins the Fullerton properties?

Mr. Stephenson: I believe they are east of us.

Mr. Cowan: It is the same general forest?

Mr. Stephenson: Yes.

Mr. Cowan: The same kind of timber?

Mr. Stephenson: Yes, sir; and I guess practically the same kind of timber; it is supposed to be.

Mr. Cowan: If the Fullerton interests get 4 cents per hundred pounds for taking their lumber to the L. C. & N. and you take your lumber there and do not get anything, do you figure that that would give them an advantage of you?

Mr. Garwood: We object to this question upon the ground that we have heretofore continuously endeavored to procure from every witness the facts upon which alone such an opinion could be predicated. Those facts, upon objection of counsel for Intervenors, have uniformly been excluded. Now, having deprived the court of the facts upon which alone the opinion could be based, we make the objection that the calling for an opinion without the facts upon which it alone can be based is improper.

6907 Mr. Marble: I should like to add to that the suggestion that it simply calls for an opinion of the witness. The effect of the freight he pays and the amount that is returned out of them to some one else is a conclusion the Commission can arrive at. I do not object at all but am simply calling *objection* to it.

Mr. Cowan: I am asking for a specific case in the same neighborhood. One man gets paid for hauling it and the other does not.

Mr. Garwood: We have gone over this a great many times and

counsel for the Intervenors have been allowed a latitude which is indeed, in my judgment, extraordinary, but where the effort has been made upon the part of those interested from our point of view to get all of the facts and put them freely before the Commission, that effort has been met upon the part of the other side by equally strenuous effort to keep the facts out, which up to this time, have been successful. It seems to me it is just simply calling for a general opinion or guess which ought not afford the Commission any light, and I think at this stage we ought to abandon that line of interrogatory.

Mr. Marble: Inasmuch as I made I believe, in the first
6908 place, the objection to the proposed plan that the presence or absence of discrimination should be proved by figures as to cost of manufacture or sale price, and inasmuch as the Commissioner is absent, who to my mind very properly ruled that that was not a way to prove discrimination subject to the act, I feel somewhat inclined to resent such a statement going into the record in this way at this time.

Mr. Garwood: What part of it?

Mr. Marble: Simply this. The counsel has spoken of extraordinary freedom being allowed the attorneys for the Intervenors or the other side. I do not know whether that includes me or not, and there is the implication that they had been unfairly dealt with. Mr. Garwood knows there is a distinction between jurisdiction subject to the act and jurisdiction not subject to the act.

Mr. Garwood: Yes.

Mr. Marble: And a distinction between jurisdiction of industrial acts, and the Commission in ruling upon the evidence had that distinction in mind, and I do not think this is the time to argue that matter or make any imputations of that sort.

Mr. Garwood: I do not care to argue it as a matter of
6909 course, but I think there ought to be a limit on that, and I now rise to see if we cannot put a limit upon it.

Mr. Marble: I thought this question called for an opinion and therefore that the objection was well made.

Mr. Cowan: I do not think Mr. Garwood is very serious. I think this is kind of made for the audience when he says we have tried to keep out facts. He knows we tried to keep out the ones we objected to, and I suppose he means that, and I am going to make the suggestion, which I think he will agree to, that what Mr. Garwood means was the evidence which was excluded, and he did not mean anything else.

Mr. Garwood: I could not have meant anything else——

Mr. Cowan: I did not intend to impute anything to counsel.

Examiner Burchmore: Do you feel the interests you represent will be prejudiced by an answer to that question?

Mr. Garwood: I would have no objection if we were permitted to follow it up, but to go through the same line of procedure and argument on questions every time it is asked is a waste of time.

Examiner Burchmore: I think the objection should be sustained.

Mr. Cowan: I will withdraw the question, Mr. Stephenson.
6910 I asked a good deal like Mr. Garwood makes the objection, more for the question of punctuating it than otherwise. I know as much about that as he does.

What are the conditions in that part of the country which is about to be developed by Mr. Fleishel's railroad, a map of which you saw, with respect to affording a country which would support a railroad other than the timber interests?

Mr. Stephenson: I did not see the map.

Mr. Cowan: Well, it is to be built in connection with Lutcher-Moore Company's road over to Alexandria, probably via Fullerton or that neighborhood.

Mr. Stephenson: I could not answer that.

Mr. Cowan: Well, it would have to go through your forest would it not?

Mr. Stephenson: No, according to that he would go west of us.

Mr. Cowan: You are not acquainted with the country through which it is planned to go?

Mr. Stephenson: No.

Mr. Cowan: Are there farming operations in your district?

Mr. Stephenson: Very few.

6911 Mr. Cowan: What sized town is there at the place where you have your mill?

Mr. Stephenson: Just a saw mill town.

Mr. Cowan: How many people?

Mr. Stephenson: There are about four hundred employés there and their families; and some towns on both sides of us.

Mr. Cowan: A population of how many for this 400 people

Mr. Stephenson: Maybe 1200 or 1500 people around there.

Mr. Cowan: Depending entirely on the saw mill interests?

Mr. Stephenson: Yes, sir.

Mr. Cowan: Is there any traffic to haul except for people who could not be there except for the saw mill operations?

Mr. Stephenson: Nothing to haul; only a little station at Ikes, there are some buildings going up and we haul some there.

Mr. Cowan: Do you haul lumber and stave bolts for people?

Mr. Stephenson: No.

Mr. Cowan: Do you haul any passenger cars?

Mr. Stephenson: No.

Mr. Cowan: Do you haul them on your lumber cars?

Mr. Stephenson: No, unless a person wants to go to the woods.

6912 Mr. Cowan: What sort of equipment have you?

Mr. Stephenson: Two locomotives, five flat cars, a water car, 42 logging cars and a motor car.

Cross-examination:

Mr. Walter: When you deliver to the Kansas City Southern how far do you have to haul the loaded cars?

Mr. Stephenson: From the saw mill it is about nearly three quarters of a mile and from the planing mill about half a mile.

Mr. Walter: When you haul it to the Santa Fe, how far?

Mr. Stephenson: About five miles.

Mr. Walter: Why do you haul the most of your tonnage that five miles?

Mr. Stephenson: Well, we have several reasons.

Mr. Walter: What are they?

Mr. Stephenson: The first one, when we located there we only had a connection with the Kansas City Southern and cars were scarce, and one thing and another, and we did not think they treaed us right compared with what they were doing with some others, and as soon as there was a chance to get a connection we built the road through and got it, and we give them a good many cars, just the same to the Kansas City Southern as we do
6913 to the others, the rates and all being the same, unless they had a surplus of cars and others had not, we would use the other line. We would give it to the L. C. & N. or to the Santa Fe or whichever road had them to offer.

Mr. Walter: What does it cost you to haul five miles?

Mr. Stephenson: We do not get any revenue.

Mr. Walter: Not revenue but cost.

Mr. Stephenson: I could not tell you. It is done in connection with our logging. We keep no separate account of it.

Mr. Walter: Why do you haul it that five miles other than to spite the Kansas City Southern?

Mr. Stephenson: It is right on our connecting lines to the wood where we go, so it is not out of the way to do it.

Mr. Walter: The car that carries the lumber does not go to the woods?

Mr. Stephensn: No, we stop about half way out.

Mr. Walter: You bring the logs down and haul the lumber back?

Mr. Stephenson: Yes, sir.

Mr. Walter: Why do you send it Santa Fe other than that?

Mr. Stephenson: No other reason.

Mr. Walter: You said a while ago something about markets.

6914 Mr. Stephenson: Well, that is all.

Mr. Walter: What about the markets on the Santa Fe which makes them desirable as against the Kansas City Southern?

Mr. Stephenson: We have a good many customers over in Texas that want it routed on the Santa Fe.

Mr. Walter: Those that live on the Santa Fe want Santa Fe routing of course.

Mr. Stephenson: Yes.

Mr. Walter: Let me ask you whether you get more for the same grade of lumber loaded at local points Santa Fe than you do when it is going Kansas City Southern?

Mr. Stephenson: Not that I know of, the same rate——

Mr. Walter: I am not speaking about the rate. The mill price of the lumber when it is sold Santa Fe local points as compared with the mill price delivered elsewhere.

Mr. Stephenson: The same.

Mr. Walter: You want to be understood as saying in this record that your mill price for the same grade of lumber delivered to a local Santa Fe point is the same as your mill price delivered to a Kansas City Southern point?

Mr. Stephenson: We figure about the same.

Mr. Walter: About the same is different than "the same."

6915 Mr. Stephenson: I cannot give you just the figures.

Mr. Walter: Don't you know as a matter of fact you get a better price for your lumber delivered at a local Santa Fe point?

Mr. Stephenson: No, sir; I do not.

Mr. Walter: Did you make any promise to the Santa Fe before they came to your place?

Mr. Stephenson: No, sir.

Mr. Walter: Did they buy anything from you?

Mr. Stephenson: Yes, sir.

Mr. Walter: How much?

Mr. Stephenson: I don't know the amount, but whenever we can get a bill in, price and all being equal.

Mr. Walter: When they were buying lumber rather freely did you not sell them a bit of lumber?

Mr. Stephenson: We have sold them quite a bit in the last few years and would sell them more if we could.

Mr. Walter: That price is satisfactory to you?

Mr. Stephenson: Yes, sir. I will not — that either, because it has not been satisfactory for the last two or three years.

Mr. Walter: You take the empty cars from the Santa Fe at what point?

6916 Mr. Stephenson: At Ikes.

Mr. Walter: Are you a member of the per diem association?

Mr. Stephenson: No, sir.

Mr. Walter: Do you pay per diem on these cars?

Mr. Stephenson: No.

Mr. Walter: Do you pay demurrage?

Mr. Stephenson: No.

Mr. Walter: Regardless of the time you keep them on there you do not pay demurrage?

Mr. Stephenson: We have not paid any yet, no, sir.

Mr. Walter: You sometimes keep the cars there several days without paying demurrage?

Mr. Stephenson: Sometimes they are at Ikes Station for several days on the Santa Fe.

Mr. Walter: Don't they wait at Ludington sometimes?

Mr. Stephenson: Sometimes, yes, sir.

Mr. Walter: A week or so.

Mr. Stephenson: I don't think that they have that long.

Mr. Walter: Three or four days?

Mr. Stephenson: Well, they might.

Mr. Walter: The Santa Fe making no charge for the time you keep those cars?

6917 Mr. Stephenson: No, sir; not that I know of.

Mr. Walter: How long ago was it you were getting these divisions?

Mr. Stephenson: In the latter part of 1907, I believe.
Mr. Walter: What was the amount of your division?
Mr. Stephenson: If I remember correctly it was 1 to 3 cents.
Mr. Walter: Now that was not any too much, was it?
Mr. Stephenson: I don't know anything about it.
Mr. Walter: You have an idea about it. Was that too much?
Mr. Stephenson: No, I don't know as it was.
Mr. Walter: A reasonable amount?
Mr. Stephenson: A reasonable amount I believe.
Mr. Walter: Have you anything to do with the sale of lumber?
Mr. Stephenson: Very little.
Mr. Walter: Then when you answer as to the price received on the Santa Fe as compared with other points you are not definitely informed upon that.
Mr. Stephenson: I may not be.
Mr. Walter: Why didn't you incorporate?
Mr. Stephenson: It was the opinion of our attorneys it was not according to law.
6918 Mr. Walter: To incorporate according to law was not according to law?
Mr. Stephenson: No, sir; it was a saw mill proposition.
Mr. Walter: If it was a saw mill proposition why did you accept divisions?
Mr. Stephenson: Well, that is the reason they stopped it.
Mr. Marble: I thought that question was objected to.
Mr. Coleman: I think it is objectionable.
Mr. Walter: What other reason was there why you were not incorporated?
Mr. Stephenson: No other that I know of.
Mr. Walter: Was the mere incorporation of your railroad what your attorney said was unlawful?
Mr. Stephenson: I don't know just how he fixed it. He said——
Mr. Walter: Just what did he say?
Mr. Cowan: Give the witness a chance to answer.
Mr. Stephenson: According to his opinion as attorney it was nothing but a logging road in connection with the mill.
Mr. Walter: And could not be incorporated?
Mr. Stephenson: That was his opinion of it.
Mr. Walter: Did he give you any opinion as to whether when you were incorporated as in the manner you were doing business
6919 you would be entitled to a division of the rates?
Mr. Stephenson: He did not.
Mr. Walter: So that his opinion was entirely upon the question whether there was any right to incorporate?
Mr. Stephenson: Yes.
Mr. Walter: Are you connected with any other railroad?
Mr. Stephenson: No, sir.
Mr. Walter: Have you any interest in a railroad in Michigan or in the north?
Mr. Stephenson: No.
Mr. Walter: None whatever?

Mr. Stephenson: No.

Mr. Walter: Has your lumber company?

Mr. Stephenson: No.

Mr. Walter: Is there not a very great need for an east and west line in Louisiana.

Mr. Stephenson: Yes, sir; I believe there is: somewheres north of us would be a good thing I think.

Mr. Walter: Don't you think that speaking by *and* large these short lines serve a great purpose in developing in that they afford existing links which when completed make a through line?

6920 Mr. Stephenson: Well, that is a question of the district they are in.

Mr. Walter: Is that the only answer you can give?

Mr. Stephenson: That is the only one I would give.

6921 Mr. Walter: In your own territory there what do you say to that question?

Mr. Stephenson: What is the question?

Mr. Walter: As to whether these existing short lines do not form available lines of railroad, which, when the links are bridged, give transportation across a wide area of country that otherwise would be without it?

Mr. Stephenson: I don't know of any of them.

Mr. Walter: Don't know of any of these lines that have been absorbed and become parts of systems?

Mr. Stephenson: Not that I know of.

Mr. Walter: How long have you been down in Louisiana?

Mr. Stephenson: Since 1903.

Mr. Walter: You have lumbered a good deal in the north, have you not?

Mr. Stephenson: Yes, sir.

Mr. Walter: Is that your experience there?

Mr. Stephenson: Up there we did not use logging roads.

Mr. Walter: How do you log up there?

Mr. Stephenson: Horses and sleds in the winter.

Mr. Walter: A good deal of that timber is away from the main line, is it not?

6922 Mr. Stephenson: Yes, sir.

Mr. Walter: How do you get to a railroad?

Mr. Stephenson: You don't get in. You go down the river in open times.

Mr. Andrews: I do not want to consume any time objecting, but it seems to me that is certainly not the subject of inquiry here.

Mr. Walter: It is probably a little bit afield, but I thought we might see whether a railroad was absolutely essential to the development of the lumber industry.

Mr. Marble: Why can we not stipulate that?

Mr. Coleman: That is our contention.

Mr. Marble: Why can we not stipulate that it is essential?

Mr. Walter: Would you be willing to stipulate that?

Mr. Marble: Certainly.

Mr. Walter: That in that country or in the lumber interests generally, that the lumber interests are not required to have a railroad?

Mr. Marble: I thought you said——

Mr. Walter: That it is not a part of the plant facility.

Mr. Marble: I will ask the reporter to read the suggestion Mr. Walter made. That is what I was willing to stipulate.

6923 Mr. Walter: I will ask you whether in Wisconsin the main line roads build these up to the mills and operate them.

Mr. Stephenson: In some places I believe they do.

Mr. Cowan: You can find out from me. I have been fishing up all over that country and find they have been taken up since the timber has been taken out.

Mr. Coleman: I can testify to that.

Mr. Cowan: You were made to say a few minutes ago in the form of question and answer——

Mr. Walter: I object to that. Mr. Stephenson knows I did not intend to make him say anything——

Mr. Cowan: That the sole reason for not incorporating was the mere matter of the opinion of your attorney that the matter of incorporation itself would be illegal, which leads me to ask the question where you got your advice?

Mr. Stephenson: Where?

Mr. Cowan: Yes.

Mr. Stephenson: Our attorneys at Milwaukee.

Mr. Cowan: And that was in the form of a letter?

Mr. Stephenson: No, sir; in the form of a conversation.

Mr. Cowan: What other object of incorporation could there have been except to get divisions?

6924 Mr. Stephenson: Well, that is the only one we knew of. In fact, we did not know of the division being made, or so much of it, when we took it up with them, and they said it was a logging proposition as they figured it, and not a railroad proposition, and until the——

Mr. Cowan: What did he advise you about your right to divisions?

Mr. Stephenson: He advised me to take it up with the Interstate Commerce Commission and let them give me a ruling whether we were entitled to the division or not, if we should incorporate.

Mr. Cowan: And if the Commission holds you are entitled to it, you will incorporate?

Mr. Stephenson: We will incorporate.

Mr. Cowan: And otherwise not?

Mr. Stephenson: And otherwise not.

Mr. Cowan: You said the Santa Fe had not charged you any demurrage on cars, and in view of the fact that the tariffs provide demurrage rules, and that would be a violation of law if they did not——

Mr. Stephenson: Not that I know of, I said.

Mr. Cowan: I wondered if you knew whether they make a

6925 demurrage charge which goes along with the freight charges.

Mr. Stephenson: Not that I know of, I said.

Mr. Cowan: You do not mean to be understood that they do not charge you demurrage where you hold a car off their line?

Mr. Stephenson: Not that I know of, I said.

Mr. Walter: But you were right in your answer, were you not, that the only opinion that your lawyer gave you was as to the legality of incorporating?

Mr. Stephenson: That is what I stated.

Mr. Cowan: I don't understand that.

Mr. Coleman: That is not so.

Mr. Cowan: He came back and he said he told him if the Interstate Commerce Commission——

Mr. Marble: What possible difference can it make? This lawyer has not qualified as learned in the law, and we do not know who it was.

Mr. Walter: That would not be a violent assumption.

Mr. Marble: But it would not be a statement of fact, and it would be going afield from the purposes of this inquiry anyway. The lawyer might have been mistaken and might have advised him he could legally take a rebate.

Mr. Coleman: Mr. Walter is trying to get him to say that
6926 it would be illegal to incorporate rather than illegal to receive a division.

Mr. Marble: I do not think Mr. Walter is trying to make him say anything.

Mr. Walter: Not at all.

Mr. Coleman: If it is going to go in, it should be put in right.

Mr. Walter: The witness stated it right.

Mr. Cowan: What do you say he said about it?

Mr. Walter: I am not saying anything.

Examiner Burchmore: I think we have gone far enough with the question. The witness has answered it four or five times.

Mr. Cowan: I want to move to strike out Mr. Walter's last question and the answer to it, wherein he repeated that the lawyer had not told the witness anything other than it was unlawful to incorporate, and the witness had previously said, in answer to my question, that the only purpose of incorporating was to get the divisions, and that it was the division that would be unlawful, and if he put it up to the Interstate Commerce Commission and they allowed it, he would incorporate. We understand that that is the testi-
6927 mony. I will waive going any farther.

Mr. Walter: You are not answering the question——

Examiner Burchmore: We will not go any farther on that question.

Mr. Cowan: I have no questions.

(Witness excused.)

JOSEPH MUTH was called as a witness, and having been duly sworn, testified as follows:

Mr. Cowan: You have stated your name?
Mr. Muth: Yes.
Mr. Cowan: Where do you reside?
Mr. Muth: At Elizabeth, Louisiana.
Mr. Cowan: What part of the state is that?
Mr. Muth: That is in the southwestern portion.
Mr. Cowan: On what railroad?
Mr. Muth: The Santa Fe.
Mr. Cowan: Is that the line that runs through De Ridder?
Mr. Muth: Yes, sir.
Mr. Cowan: How far are you from De Ridder?
Mr. Muth: About thirty miles.
Mr. Cowan: Which direction?
6928 Mr. Muth: East.
Mr. Cowan: What business are you engaged in there?
Mr. Muth: The manufacture of lumber.
Mr. Cowan: What is your relation to the company?
Mr. Muth: I am the auditor.
Mr. Cowan: Auditor of the company?
Mr. Muth: Yes.
Mr. Cowan: What is the name of the company?
Mr. Muth: The Industrial Lumber Company.
Mr. Cowan: Now, what is the location of your mill or mills?
Mr. Muth: Well, we have three mills. One is located at Elizabeth on the line of the Santa Fe Railroad; another one is located at Oakdale, on the Missouri Pacific and the Santa Fe, and the other one is about two miles southwest of Oakdale on our own line.
Mr. Cowan: Taking up the mill at Elizabeth; what is its capacity?
Mr. Muth: It is about to run night and day, but we only operate it one shift now, and the capacity is approximately 175,000 feet for a ten hour run.
Mr. Cowan: How do you get the logs to the mill?
6929 Mr. Muth: We haul them in over a tram road.
Mr. Cowan: How far does that tram road run from the mill?
Mr. Muth: Well, it connects Oakdale with Elizabeth by a roundabout route.
Mr. Cowan: That is, your tram road does?
Mr. Muth: Yes.
Mr. Cowan: What distance is that?
Mr. Muth: Thirty miles, approximately.
Mr. Cowan: Does that run through your forests?
Mr. Muth: Yes, sir.
Mr. Cowan: And you get your logs by laterals thrown out from that called logging spurs?
Mr. Muth: Yes, sir.
Mr. Cowan: What is the class of this road?
Mr. Muth: It is a fairly good tram road; it is a comparatively

flat country and not much grading necessary. It is 35 pound steel mostly.

Mr. Cowan: What equipment have you got on that line?

Mr. Muth: We have 116 cars.

Mr. Cowan: Logging cars?

Mr. Muth: Yes, sir. They are not all logging cars. Of those, seven are flat cars, and we have seven locomotives and a
6930 motor car besides the usual logging equipment such as steam loaders and skidders.

Mr. Cowan: How many locomotives did you say?

Mr. Muth: Seven.

Mr. Cowan: Is that road used for logging the mill at Oakdale?

Mr. Muth: Yes, sir.

Mr. Cowan: Is it used for logging the mill south of Oakdale?

Mr. Muth: Yes, sir.

Mr. Cowan: Does it run through any other forest than yours?

Mr. Muth: No. There is some land along or near the line which we do not own, but most of it is our land.

Mr. Cowan: Do you parallel the Santa Fe?

Mr. Muth: We do not parallel it. We make a curve around it. The Santa Fe runs between Elizabeth and Oakdale, and we go between the same points, but their line is only about nine miles, while ours is thirty miles long.

Mr. Cowan: You make a horseshoe out into the forest?

Mr. Muth: Yes, sir.

Mr. Cowan: What other railroad have you beside that?

Mr. Muth: We have at Oakdale the Missouri Pacific.

6931 Mr. Cowan: No, I mean what other tram road in connection with your mill?

Mr. Muth: We have no other tram road.

Mr. Cowan: Then go ahead with what you were going to say about the Missouri Pacific.

Mr. Muth: We have at Oakdale the Missouri Pacific, formerly the St. Louis, Watkins & Gulf, and the Santa Fe, and at Elizabeth the Santa Fe only.

Mr. Cowan: Do you use any of these roads under any trackage rights?

Mr. Muth: No, we do not.

Mr. Cowan: Have you a special tram road in addition to this for any of your other mills?

Mr. Muth: No, sir.

Mr. Cowan: What is the capacity of your mill at Oakdale?

Mr. Muth: They are approximately 85,000 apiece, board measure.

Mr. Cowan: Two of them there?

Mr. Muth: Yes, sir. Well, at Oakdale and South Oakdale.

Mr. Cowan: You are counting those as the two mills?

Mr. Muth: Yes.

Mr. Cowan: What do you do with the lumber output at
6932 Elizabeth?

Mr. Muth: We sell it.

Mr. Cowan: How do you get it to the railroad?

Mr. *Cowan:* The mill is located immediately on the Santa Fe railroad.

Mr. Cowan: Do you perform any service in regard to handling the cars between the Santa Fe and your mill?

Mr. Muth: Not at Elizabeth; we do not. We do at Oakdale and at the Calcasieu mill, as we call it.

Mr. Cowan: Does all of the lumber manufactured at the Elizabeth mill go out over the Santa Fe?

Mr. Muth: Yes, sir, it has to.

Mr. Cowan: Does all the lumber manufactured at Oakdale go out over the Santa Fe?

Mr. Muth: No.

Mr. Cowan: How is that divided?

Mr. Muth: The larger portion of it goes Santa Fe, but then considerable of it goes Missouri Pacific.

Mr. Cowan: Your rate is the same on both to the same points?

Mr. Muth: Not always.

Mr. Cowan: Well, generally speaking, say you were ship-
6933 ping to——

Mr. Muth: The Missouri Pacific does not generally make rates to Santa Fe local points, of course, and vice versa.

Mr. Cowan: Nor the Santa Fe to the Missouri Pacific local points?

Mr. Muth: No.

Mr. Cowan: But to all competitive points the rates are the same?

Mr. Muth: The rates are usually the same; yes, sir.

Mr. Cowan: How do you get your lumber from the Oakdale mill to the railroad?

Mr. Muth: We take the empty cars from the Santa Fe interchange track and put them on our loading tracks at the mill and load them and then set them back loaded with lumber on the Santa Fe interchange track.

Mr. Cowan: How far is that, about?

Mr. Muth: It is only a short distance for the Oakdale mill, but it is approximately a mile and a half the way we carry it at the Calcasieu mill.

Mr. Cowan: You own that track?

Mr. Muth: Yes, sir.

Mr. Cowan: What does it cost you for the operation of
6934 this logging road?

Mr. Muth: What do you mean?

Mr. Cowan: I mean the road between Elizabeth and Oakdale; have you any figures on the unit cost per ton or per car or otherwise to show what the expenses of the railroad operations are?

Mr. Muth: The cost of operation of the main line and the maintenance of the tram road for the year, per thousand feet of logs, was 71½ cents per thousand last year.

Mr. Cowan: That applies to the logs going to all the mills?

Mr. Muth: Yes, average cost.

Mr. Cowan: What would be about your average haul of logs, do you think?

Mr. Muth: Approximately fifteen miles on the main line.

Mr. Cowan: Does that expense include the logging on the log spurs or just the main line?

Mr. Muth: Just the main line.

Mr. Cowan: What is the name of this railroad?

Mr. Muth: It is not named. We call it the tram road.

Mr. Cowan: What is the aggregate of the investment in your railroad and equipment serving these mills?

6935 Mr. Muth: Our tram road account shows a net investment of $223,988.77. That includes the road and logging equipment.

Mr. Cowan: Road and logging equipment?

Mr. Muth: Yes, sir.

Mr. Cowan: Well, it includes all equipment you have given a list of?

Mr. Muth: Yes, sir.

Mr. Cowan: And the loaders and skidders and log spurs?

Mr. Muth: Well——

Mr. Garwood: I think we are going now into the very field where we were told to keep out; that is, the cost of equipment. Is not a skidder pretty much part of the mill, as well as anything else?

Mr. Cowan: Well, leave out skidders, just to save time, but I never saw so much quibbling about a small thing.

Mr. Muth: Do you want the separate items of the investment?

Mr. Cowan: No, the aggregate investment in your railroad you have already given.

Mr. Muth: Yes.

Mr. Cowan: That is sufficient for my purpose. How long have you been operating?

6936 Mr. Muth: Well, I think we commenced operating there about 1898 or 1899.

Mr. Cowan: Do you pay attention to the sales end of the business?

Mr. Muth: No.

Mr. Cowan: Have you any table or list showing the different states in which you market your lumber and the respective amounts in each?

Mr. Muth: I do not think we have. I do not think our record has been kept so we could give it very readily.

Mr. Cowan: Generally to what states do you send your shipments?

Mr. Muth: We sell in the Middle West very largely, Texas, some east of the river points, Mexico, and we export some.

Mr. Cowan: Somewhat similar to the market that is reached by your competitors in the same locality?

Mr. Muth: Yes, sir, very similar.

Mr. Cowan: Is there any other fact in connection with the case and your operations there that you want to speak of?

Mr. Muth: Not that I know of particularly.

Mr. Cowan: That is all.

6937 Cross-examination:

Mr. Walter: From whom did the Industrial Lumber Company buy its timber land?

Mr. Muth: A great many different people.

Mr. Walter: Did they buy any large amount from anyone?

Mr. Muth: Yes, sir, they bought a good many thousand acres from the Calcasieu River Lumber Company, and a good many more from the Wright-Blodgett Company.

Mr. Walter: In what name is the title to those lands? The Southwestern Land and Lumber Company?

Mr. Muth: The particular lands I am speaking of are in the name of the Industrial Lumber Company.

Mr. Walter: There are large bodies there in the name of the Southwestern Lumber Company, are there not?

Mr. Walter: That has been referred to in their records, I think, sufficiently. I have no more questions.

Mr. Garwood: I think all that was gone into perhaps in the original case.

Mr. Cowan: It was, and Mr. Muth——

Mr. Muth: I think that entire contract is in the record in the Star Grain and Lumber Case, at least it was so said to me in another hearing.

6938 Mr. Walter: You were there in about 1898 or 1899?

Mr. Muth: Yes, sir.

Mr. Walter: Was the Santa Fe there then?

Mr. Muth: No.

Mr. Walter: When did the Santa Fe come into the territory?

Mr. Muth: I don't think it commenced to operate to Oakdale until the latter part of 1907.

Mr. Walter: Do you know whether there is any arrangement made with the Santa Fe, to furnish most of the tonnage to the Santa Fe?

Mr. Muth: Made with the Santa Fe to furnish most of our tonnage?

Mr. Walter: Yes.

Mr. Muth: I think there is; yes, sir.

Mr. Walter: Does the Santa Fe take any cars from your mill loaded and turn them over at Oakdale to the Missouri Pacific?

Mr. Muth: Yes, sir—which mill do you mean?

Mr. Walter: Either one of them.

Mr. Muth: The Elizabeth mill and the Calcasieu mill; yes, sir.

Mr. Walter: Is the Calcasieu mill on the Santa Fe only or

6939 on the Missouri Pacific as well?

Mr. Muth: It is on our line only, and the Santa Fe is nearest, and they have a station called Calcasieu between Elizabeth and Oakdale.

Mr. Walter: How far is it from Oakdale?

Mr. Muth: Two miles.

Mr. Walter: On that the Santa Fe gets its division, does it not-

Mr. Muth: I don't know.

Mr. Walter: Do you pay any switching charge on it?

Mr. Muth: No; we forward it on the through rate.

Mr. Walter: So if the Santa Fe gets paid, it must come out of the through rate?

Mr. Muth: I should judge so.

Mr. Walter: For a two-mile haul?

Mr. Muth: Yes, sir.

Mr. Walter: Is that true of the Oakdale mill; does the Santa Fe turn over any cars loaded at the Oakdale mill and give them to the Iron Mountain?

Mr. Muth: We do not ship anything from this mill to the Iron Mountain, because there are no rates in effect.

Mr. Walter: No rates in effect?

6940 Mr. Muth: Not via the Santa Fe. If such a car were routed, it would be given to the Iron Mountain direct at Oakdale.

Mr. Walter: Do you have any logs hauled from the main line of the Santa Fe through Elizabeth to Oakdale.

Mr. Muth: No.

Mr. Walter: Any logs hauled at all on either of these main lines for your line?

Mr. Muth: No.

Mr. Walter: None at all?

Mr. Muth: I think there was a little storm timber maybe—I do not know, but I understood there was possibly half a million feet of storm timber which was hauled a year ago.

Mr. Walter: How were those logs paid for?

Mr. Muth: I don't know.

Mr. Walter: You don't know about that?

Mr. Muth: No, I think they were paid for by the Santa Fe, though.

Mr. Walter: All you know is in regard to the accounts of this lumber company?

Mr. Muth: Not entirely.

Mr. Walter: Do you go out and see the operation in any 6941 way?

Mr. Muth: Yes, sir.

Mr. Walter: What do you do in the way of looking after the operation?

Mr. Muth: I have no specific duties in that regard, but have kind of a general supervision.

Mr. Walter: Are there any other mills out on your line than your own?

Mr. Muth: No.

Mr. Walter: Anybody ships from there?

Mr. Muth: No.

Mr. Walter: Has anybody wanted to ship from out there?

Mr. Muth: No.

Mr. Walter: You do not haul anything for anybody except for the lumber company?

Mr. Muth: Directly or indirectly? There is a company store out at our logging camp.

Mr. Walter: Do you haul that material?
Mr. Muth: Yes.
Mr. Walter: Get any revenue from it?
Mr. Muth: No.
Mr. Walter: Do you haul anything for which you get revenue?
6942 Mr. Muth: From the Producers Turpentine Company, an affiliated corporation, we do; yes, sir.
Mr. Walter: What do you get for hauling that?
Mr. Muth: $5.00 a car.
Mr. Walter: Where do you haul that to?
Mr. Muth: Any point along the tram line where their turpentine is.
Mr. Walter: To what point?
Mr. Muth: Elizabeth.
Mr. Walter: Is it handled in tank cars?
Mr. Muth: No, on flat cars; barrels of crude gum.
Mr. Walter: Do you haul for anybody else any of that material?
Mr. Muth: No.
Mr. Walter: Has anybody else asked you to haul anything which you have refused to haul?
Mr. Muth: No.
Mr. Walter: Did you ever receive any divisions?
Mr. Muth: No.
Mr. Walter: You are not incorporated?
Mr. Muth: Not separately.
Mr. Walter: Just a nameless railroad?
6943 Mr. Muth: Yes, sir; merely a tram road.
Mr. Walter: What percentage of your business goes Santa Fe and what Iron Mountain?
Mr. Muth: I could not tell you exactly. The larger per cent goes Santa Fe.
Mr. Walter: A good deal larger percentage?
Mr. Muth: A good deal larger percentage.
Mr. Walter: Practically all of it?
Mr. Muth: No, not practically all.
Mr. Walter: Would you say 75 per cent?
Mr. Muth: I should say at least that much.
Mr. Walter: Is it as much as 90 per cent?
Mr. Muth: I should not think so.
Mr. Walter: Somewhere between 75 and 90?
Mr. Muth: Somewhere between 75 and 90.
Mr. Walter: Do you use the main line of the Santa Fe?
Mr. Muth: No.
Mr. Walter: Does the Santa Fe use your main line?
Mr. Muth: No.
Mr. Walter: You were able to give us the cost of operation on your main line only?
Mr. Muth: Yes.
6944 Mr. Walter: How do you get those figures?
Mr. Muth: The reason we can do that is because the

tram line main line runs between Oakdale and Elizabeth, and the main line engines do not leave the main line. The logs are sawed in the woods and skidded and loaded and brought to the junction point of the logging road with the main line, and trains are there made up and carried to the different mills by the main line engines.

Mr. Walter: You took for this $223,000 your main line engines with a train load of empty logging cars down to your junction with your spur?

Mr Muth: Yes, sir.

Mr. Walter: Leaving these cars there and taking up a load of loaded cars?

Mr. Muth: Yes, sir.

Mr. Walter: Now, then, the operation for that for how long a time was $223,000?

Mr. Muth: $223,000 was not the operating cost. That was the investment.

Mr. Walter: You said 71½ cents was the cost per thousand feet.

Mr. Muth: Per thousand feet of logs.

6945 Mr. Walter: For hauling over that main line?

Mr. Muth: Yes, sir.

Mr. Walter: How did you get that?

Mr. Muth: Well, we took the cost of keeping up the main line of road, and the cost of maintaining the logging cars and the cost of maintaining the main line engines and cost of paying the main line engine crews, brakemen and so forth, and added it al- together and divided by the number of logs hauled, and that is the answer.

Mr. Walter: You maintain those logging cars?

Mr. Muth: Yes, sir.

Mr. Walter: Those logging cars went off your main line into the spurs?

Mr. Muth: Yes, sir.

Mr. Walter: That is a much harder service on the spurs than on the main line, is it not?

Mr. Muth: Possibly so.

Mr. Walter: You made no allowance, then, for spur usage?

Mr. Muth: We did not make any allowance for spur wear and tear on the logging cars, because we did not — how to differentiate it.

Mr. Walter: Did you allow anything for depreciation?

6946 Mr. Muth: Not on those figures.

Mr. Walter: Would not that make some change?

Mr. Muth: It would add to the cost; yes, sir.

Mr. Walter: Would it add very much?

Mr. Muth: About eight per cent, I should judge.

Mr. Walter: Eight per cent on the investment, $223,000?

Mr. Muth: Well, possibly so, yes, sir.

Mr. Walter: How many thousand feet did you haul?

Mr. Muth: Approximately 63,000,000.

Mr. Walter: 63,000,000?

Mr. Muth: Log scale.

Mr. Walter: That would be 63,000 thousands.

Mr. Muth: Yes, sir.

Mr. Walter: And that eight per cent on the $223,000 would be about $17,000?

Mr. Muth: Yes, sir.

Mr. Walter: Now, 63,000 into that would give you about in the neighborhood of thirty cents, would it not, to be added to the cost?

Mr. Muth: Yes, a little less than thirty cents.

Mr. Walter: So it costs you about one dollar to haul on the main line?

6947 Mr. Muth: Of course our depreciation was figured on an estimated basis. We do deduct approximately eight per cent depreciation, but the $223,000 is not all main line, it covers the skidders, loaders and laterals in the woods and spurs in the woods, so you must not take it all from main line operation.

Mr. Walter: Would you say 25 per cent of that investment was in spurs and in engines used on the spurs?

Mr. Muth: I would have to figure that before I could say what it was.

Mr. Walter: Now, you have 71½ cents cost for hauling your lumber out per thousand?

Mr. Muth: Hauling the logs in.

Mr. Walter: How much of a haul do you make on the finished lumber?

Mr. Muth: We do not make any at Elizabeth. We make a few hundred yards at Oakdale and maybe a mile and a half at Calcasieu.

Mr. Walter: Is that counted at all into this logging cost?

Mr. Muth: No.

Mr. Walter: That would still further add to the cost of delivering to the trunk line?

6948 Mr. Muth: Yes, sir, but it had nothing to do with the logs.

Mr. Walter: But in taking from the spur and carrying the rough material through the mill and the lumber out, it would add rather materially to the cost per thousand of lumber?

Mr. Muth: It is a cost of manufacture of lumber, yes, sir, and we charge it to our aggregate expense.

Mr. Walter: You say it is an item of cost of manufacture?

Mr. Muth: In our opinion; yes, sir, in our accounts it is.

Mr. Walter: The way you keep your accounts?

Mr. Muth: The way we keep our accounts.

Mr. Walter: What difference does it make whether you count it manufacture or transportation, if the Santa Fe comes into the mill and takes the lumber out, then would you say it is a transportation haul?

Mr. Muth: At our Oakdale and Calcasieu mills they are somewhat differently situated than most mills. We have two mills there very nearly together and we have two lumber yards and we sell from them as a unit, and consequently we keep a switch engine there and load half a car at one mill and carry it up to the other and finish loading, and when we finish loading we hand it to the other, and the extra switch expense on that account is little or nothing. We have to maintain the switch engine anyway.

6949 Mr. Walter: That is not part of the manufacture, is it?

Mr. Muth: Yes, sir.

Mr. Walter: Delivering it to the Iron Mountain or Santa Fe you think is part of the manufacturing?

Mr. Muth: In our particular case I think it is, yes, sir.

Mr. Walter: What about this two mile haul?

Mr. Muth: The two mile haul of course at the mill would not be a part of it.

Mr. Walter: That would be a transportation haul?

Mr. Muth: Yes.

Mr. Walter: Are you a member of the Per Diem Association?

Mr. Muth: No.

Mr. Walter: Do you pay demurrage on cars?

Mr. Muth: We have not had to, because we do not hold them too long.

Mr. Walter: How long do you hold them?

Mr. Muth: Not more than 48 hours, except at Oakdale, where we do our own switching. We used to hold them 72 hours, but since that has been cancelled we only hold them 48 hours.

Mr. Walter: Do you have any bills for demurrage?

Mr. Muth: We have paid some demurrage; yes, sir.

Mr. Walter: You pay those bills, of course?

6950 Mr. Muth: Yes.

Mr. Garwood: Did I understand you to say that you were under contract obligations with the Santa Fe to deliver some portion of your tonnage to them?

Mr. Muth: No specified proportion, no.

Mr. Garwood: Are you — any contract obligations to deliver tonnage to them?

Mr. Muth: As I remember it, we are under obligations to deliver them the tonnage from those mills where the rates are equal.

Mr. Garwood: Where the rates are equal?

Mr. Muth: Yes, sir.

Mr. Garwood: Is it all the tonnage when the rates are equal or some specified proportion?

Mr. Muth: I don't remember the exact wording of the contract in that regard but——

Mr. Garwood: Have you the contract?

Mr. Muth: No, I think it is part of the record, though.

Mr. Garwood: Is it on file with the Commission?

Mr. Muth: I think it is part of the record in this same case.

Mr. Garwood: How is that, gentlemen?

6951 Mr. Coleman: That is in the Star Grain case.

Mr. Cowan: They all say it is; I do not know.

Mr. Garwood: If it is not in the record you will of course be glad to produce it?

Mr. Muth: Yes, sir.

Mr. Garwood: At the time the Santa Fe built in there, state whether or not it is a fact that your company took up or at least did not use a portion of its track that was practically parallel to the Santa Fe.

Mr. Muth: No, sir; we did not take up anything. We built eleven miles additional.

Mr. Garwood: Eleven miles additional?

Mr. Muth: Yes, sir.

Mr. Garwood: Do you use all of the track now that was there before the Santa Fe came in there?

Mr. Muth: Yes, sir.

Mr. Garwood: You do use part of the main line track of the Santa Fe?

Mr. Muth: No, only if we go on their tracks at Oakdale.

Mr. Garwood: I was under the impression, I may be wrong, I think I got it from some of these former hearings, and I wanted to see if it was correct, that you had a trackage contract of some
6952 character with the Santa Fe. Is that true?

Mr. Muth: I believe that is in the contract; yes, sir.

Mr. Garwood: Now, what does that trackage contract cover?

Mr. Muth: I think it permits us to use the main line of the Santa Fe at a trackage charge of fifty cents per thousand feet for logs.

Mr. Garwood: What part of the main line of the Santa Fe would you have occasion to use?

Mr. Muth: I could not tell you. Our present operations do not make it advantageous to use any part of it, and we probably will not for some years to come.

Mr. Garwood: Have you used any of it in the past is what I want to ascertain.

Mr. Muth: No, with the exception of that little storm timber I was telling you about, which was just an emergency.

Mr. Garwood: And the price is fifty cents a thousand feet?

Mr. Muth: Yes, sir.

Mr. Garwood: Logs?

Mr. Muth: Yes, sir.

Mr. Garwood: That is all.

Mr. Cowan: As you have gone into the matter of the trackage contract, I would inquire if there was some provision in the
6953 contract about taking up track. Judge Garwood asked you if you took up any.

Mr. Muth: We did not.

Mr. Cowan: There was some provision about taking up your track after the Santa Fe built in there?

Mr. Muth: I believe there was some provision we were to take up our then existing tram roads.

Mr. Cowan: But that never was insisted on and never was done?

Mr. Muth: Nothing was done and it was not spoken of.

Mr. Walter: Why was it put in the contract?

Mr. Muth: I am sure I cannot tell you.

Mr. Cowan: That is all.

(Witness excused.)

Examiner Burchmore: Have you any further witnesses?

Mr. Cowan: I have not any further witnesses here that we think would elucidate the case, or any particular point in the case that it

would be worth while to put on the witness stand. The intervenors asked the Commission at St. Louis to ask certain of the railroad officials to appear for examination, and at that time it was my intention to examine some of the traffic men with regard to the
6954 manner in which the system of rates on lumber in this territory and elsewhere in the United States had been made. My information is, however, that that has frequently been put before the Commission in the various investigations. I also wanted to call on the traffic managers to present the division sheets other than those applying in the district where the lumber is produced, so we might know what the range of the divisions was on lines reaching the lumber fields and then connecting with other lines which deliver the lumber to points of destination. I am informed that most of that has been presented to the Commission.

I want in that connection now to make the inquiry if the Commission has called for the division sheets in such a case. I suppose the railroads are not required to file division sheets except where the Commission may require them, and if that is known, I would like the information. Some of you gentlemen may know.

Examiner Burchmore: It is not customary for carriers to file division sheets.

Mr. Cowan: I know it is not, but I wondered if the Commission had called for them with respect to this traffic.

Examiner Burchmore: With respect to joint rates on lum-
6955 ber out of the southwest?

Mr. Cowan: With respect to divisions——

Examiner Burchmore: I think we have all the division sheets which apply over all these short line railroads.

Mr. Cowan: I understand that, but I am talking about division sheets when you get beyond that, what the delivering carriers and intermediate carriers get.

Examiner Burchmore: I think the same sheets show what all the carriers get, do they not?

Mr. Cowan: I do not think so. No doubt it does in some cases, and wherein it does not, if there are such cases, I wish to inquire of the Examiner if the Commission will ask for the filing of such division sheets as we may want in that matter without calling on any witness to produce them.

Examiner Burchmore: Can you file a specific request for certain classes of division sheets?

Mr. Cowan: I can, if that will serve the purpose. I am trying to shorten the hearing and not have to call witnesses to prove that situation, and call on them for division sheets. I suppose that will be called for if we request it. It is only with that understanding that I want to announce that we are through with our testimony.
6956 I suppose the trunk lines will be willing to furnish them. I do not know who are present—Mr. Jeffery, you will be willing to furnish them?

Mr. Jeffery: It is always a pretty large task to get up these division sheets; they have to be copied and we do not have them in printed form, but if it will help the case any and throw any light on the

contention of the intervenors or tap lines, we will be glad to do it. I cannot see myself how it will help the case, for this reason——

Mr. Cowan: We will not argue it now, but I will ask if you are willing to do it?

Mr. Jeffery: Then I will say briefly that I am not willing to do it. I would like to suggest that the divisions of these things very often do not help. At least five different times I have filed the divisions as to what we pay the short lines, but as to what we pay the long lines I do not think it will help any.

Examiner Burchmore: You will not need all the division sheets, will you, Judge Cowan? Certain representative ones will do?

Mr. Cowan: Why limit it? They are little documents that they all have printed.

Mr. Jeffery: What purpose do you want them for? What do you want to show by them? Maybe we will admit it.

6957 Mr. Cowan: I want to show how much each road gets to the point it is delivered, in order to show how much they get from the point where the lumber starts until it gets to that point, and I want to show as to each particular road, and I have no doubt the Commission will order them filed.

Examiner Burchmore: I will be glad to call it to the attention of the Commission——

Mr. Cowan: If the Commission did not require it, I could call a witness and ask him, but I do not think that is necessary. I am trying to avoid taking the time.

Mr. Jeffery: It is an awful job, your Honor.

Mr. Cowan: I do not think it is.

Mr. Marble: As I understand the matter, while the law is open to the interpretation that carriers should file these sheets, it has not been required by the Commission, but that upon the distinct understanding when called for they should be sent in, and in some cases to my knowledge division sheets have been secured for use when necessary, in order to determine issues before the Commission. My impression is these division sheets will be very useful, and that being my impression, my further impression is that if the request is presented through Examiner Burchmore, it will be required.

6958 But why not leave it that way, and if they should not order them, you could call your witness.

Mr. Cowan: That is precisely it. If the Commission calls for the division sheets I would not call the traffic managers whom I should otherwise call and examine.

Examiner Burchmore: Could you make that request specific now, or do you want all the division sheets, and if so, to what territories?

Mr. Cowan: I will say now that we want division sheets which apply to points in the Central Freight Association territory, in the Western Trunk Line Association territory and in the Trans-Missouri territory and to Texas and Oklahoma and New Mexico points. That will cover it.

Mr. Garwood: Is that just on lumber or everything?

Mr. Cowan: Just on lumber.

Examiner Burchmore: Yellow pine lumber or hard wood also?

Mr. Cowan: Yellow pine is all I care for.

Mr. Marble: It strikes me Judge Cowan has stated a larger request than he needs to make. The rates into C. F. A. territory in many cases break on base points, and the rates beyond the basing points would not be of interest in this inquiry. It is the division of
6959 the rates to which the tap line is a party that I think is important.

Mr. Cowan: That is what I am talking of, the joint rates.

Examiner Burchmore: And it will not be necessary to file such sheets as have already been filed.

Mr. Walter: We do not think it should be limited to the tap lines only. We think the Santa Fe division sheets will throw a little light.

Mr. Cowan: That is right; I am not exempting them. That means all trunk lines parties to this case, their divisions with other roads on through rates from originating territory to the points of delivery. I do not think it will be much of a job to file them.

Mr. Garwood: I would be glad if counsel could further consider the matter and get it down to as narrow a scope as will be useful to him. Of course we will be very glad to furnish him anything along that line that he desires, but I would be glad if he would limit it. I have about half a car load now of blue prints in my room upstairs, which I must insist that he take before he goes away.

Mr. Cowan: I am not through with my statement yet. I can only state one thing at a time.

Mr. Garwood: Pardon me, I thought you were through.

6960 Mr. Cowan: No, I am trying to get through the hearing this evening by seeing if I can eliminate the calling of certain witnesses, and it is all in good faith.

The requests made at New Orleans and repeated at St. Louis and again here for certain statistical information which I need not now describe—everybody knows what I mean—which Mr. Garwood has furnished; that is, he has it to furnish, for a part of this record, and which is to be furnished by the other roads, is as I stated yesterday morning, I believe, in no wise waived, and we ask it to be filed as promptly as conditions will permit by the trunk lines reaching the yellow pine territory.

Mr. Garwood: I will give it to you, Mr. Cowan.

Mr. Cowan: If it is just sent to the Commission. If you give me yours, I will simply turn it in.

Examiner Burchmore: It might be pertinent to inquire if counsel for the trunk lines present understand that their lines are preparing that information.

Mr. Cowan: I am informed in the case of the Cotton Belt that they have already sent that information to the Commission, and it is there. Mr. Dickinson asked me, intimating he is willing to
6961 furnish it, and Mr. Hughes said he was willing to furnish it, and Mr. Jeffery I believe said he was willing to furnish it for the Iron Mountain.

Mr. Jeffery: Yes; it is something we are very anxious to put in.

Mr. Cowan: And we will ask Mr. Coleman.

Mr. Coleman: The tonnage statistics?

Mr. Cowan: It is practically tonnage statistics, and the amount of lumber on which divisions are paid, and the amount on which none is paid.

Mr. Coleman: In the case of the Santa Fe, I submit the statement drawn up by our auditor, which shows the amounts paid up to the year 1907, I believe. Now, after that time——

Mr. Cowan: I think we had better have it down to date.

Mr. Coleman: That is just the point. In 1907 we no longer paid divisions to tap lines, and consequently we have no way of designating them in our way bills, you see.

Mr. Cowan: Your statement would show the absence of divisions.

Mr. J. J. Coleman: Judge Harlan accepted the statement we put in, which covered the amount of money we paid out during the time we were paying tap line divisions.

Mr. Cowan: We do not need to go back and restate that, if that is what you mean.

6962 Mr. J. J. Coleman: Now to be able to distinguish and select the lumber which came to us from the tap lines, or from the lines which we paid divisions to, as compared with some given us at a local point, we could not, for we have no means of designating it, we have no through billing. We explained it to Commissioner Harlan, and he said he thought the statement filed would be satisfactory to you, because it showed the final result.

Mr. Cowan: The point in this tonnage statement is to know how much of the tonnage is taken from mills which do not get tap line divisions from the trunk line road taking that tonnage, and how much of it comes from mills—I will use that expression—I do not mean to say the mills get the division, but you know what I mean—which do get the division. Then the aggregate amount of divisions that are paid to what we have been designating as tap lines. I can remember now those three important points in that request. There are probably some others.

6963 Mr. Jeffery: The blue prints are in there. You want the blue prints too?

Mr. Cowan: I want to get the blue print showing the connection with the main line tracks and saw mills on these respective lines. The reason I wanted that was because I was satisfied that in a majority of the cases here, or maybe not a majority, but in a good many cases, that that situation has not been shown like it would be in an engineer's office of the railroad company, because they have it in their offices with some accuracy.

Examiner Burchmore: Your requests are before the counsel and Commission.

Mr. Cowan: I would like to have those requests complied with so far as possible, and see that they are to be complied with, and if they are not, hoping that the Commission will make application to the roads to furnish the information in case they should not, we have no further examination from the trunk lines so far as we are concerned. The suggestions and requests that have been made heretofore with regard to what the Commission ought or ought not to do about calling witnesses we do not feel incumbent upon us to repeat, and with

this statement for the purpose of the record and in order that
6964 the audience may understand it, we rest our part of the case.

Mr. Wood: At this point I should like to interpose an objection in order that it may be spread upon the record along with Judge Cowan's request; an objection to the furnishing of these division sheets or a statement of the divisions as called for. I do not know of course what Mr. Marble had in mind in suggesting that he thought they would be helpful to a determination of the case. I cannot myself see how they can possibly bear upon any issue that is in the case, and that is our opinion in connection with the matter, and it involves a great deal of labor and detail and besides involves giving up information as to the internal management of the various railroad companies that are interested here and of their relations with each other in connection with a matter in which it seems to me that internal management and those relations have no possible relation to the case itself. We feel that we should interpose an objection to the request that Judge Cowan has made.

Mr. Marble: I would say simply that my idea was this: if the Commission — to decide that these short lines of railroad are altogether industrial facilities, that no division whatever should be allowed them on that account, then I do not see that the divisions would be
6965 of any assistance whatever. But if as to all of them or any of them the Commission is to decide that they are railroads entitled to switching allowances or to divisions of joint rates, then I can only speak for my own mind, that if I had to decide that question I should like to get the entire division of the joint rate out of which that division was to be made, so as to decide the reasonableness of the division.

Mr. Wood: You will understand those divisions vary, probably to the same point of destination, with respect to a great many different lines; and it is simply a matter of barter and trade between the railroads.

Mr. Marble: I understand, and there is no law governing it——

Mr. Wood: And they are no index, it seems to me of what a proper and fair division is.

Mr. Marble: I understand the weight of that testimony is open to very strong argument.

Mr. Cowan: But the same sort of differentiation arising from barter and sale applies on the divisions to the tap line.

Mr. Marble: You are going to argue the entire case if you start that.

Mr. Cowan: Then I will withdraw what I have said.

6966 Examiner Burchmore: Mr. Garwood, have you any witnesses whom you desire to introduce?

Mr. Garwood: Without reading it, your Honor, I will introduce in evidence the 13th, 14th and 15th paragraphs found on pages 103, 104, 105 and 106 of the joint and several answers of the defendants, Kirby Lumber Company and John H. Kirby, to the amended bill of complaint of the Maryland Trust Company, Trustee, Complainant, filed March 25, A. D. 1905, in the case of the Maryland Trust Company, Trustee, versus Kirby Lumber Company, and Houston Oil

Company of Texas, No. 54 in Equity, Circuit Court of the United States for the Southern District of the United States at Houston.

From the same answer I also introduce in evidence the 23d paragraph found on pages 110 and 111.

From the same answer I introduce that portion of the 35th paragraph found on pages 409 and 410, beginning at the word "that", on the first line of page 409.

I will not stop to read them at this time but will give them to the stenographer so he can spread them on the record.

Examiner Burchmore: I do not understand you desire those to be copies in the record?

Mr. Garwood: Well, that is the only copy I have got. I do
6967 not want to encumber the record with the whole of it. They are not very long.

Mr. Andrews: We interpose an objection. First, that the testimony is immaterial and irrelevant.

Second, that it is an unsworn pleading that the parties cannot be bound by.

And, third, that the substance, if not the exact language, has all been read into the record in the examination of the witness Kirby.

Mr. Coleman: On behalf of the Santa Fe I wish to interpose an objection that the Santa Fe is not a party to the proceeding and can in no way be bound by any opinions or allegations set forth in the pleading. It must be remembered that the Santa Fe Railway Company up to the time of the intervention of the intervening petitioners was the moving party in this case, and we object on the ground it is not binding upon us.

Mr. Cowan: This is the part which you had reference to yesterday or which you referred to?

Mr. Garwood: Yes, sir, largely.

Mr. Cowan: You did not refer to anything here now that you did not refer to yesterday?

Mr. Garwood: No, I think not.

Mr. Cowan: You gave certain pages.

6968 Mr. Garwood: I think it is covered.

Examiner Burchmore: The document will be received subject to the objections noted, but it cannot be copied into the record. I say that on the impression that your questions have covered it rather fully.

Mr. Garwood: Have we another copy?

Mr. Cowan: I think Mr. Hancock has a copy.

Mr. Coleman: I would like to ask if there was any paragraph of that which was not commented upon during the examination of the witness? It might save serving us with a copy of it.

Mr. Garwood: No, I think that covers whatever paragraph- are in there which refer to prior financial dealings of Mr. Kirby with the Santa Fe, which I took it from his testimony were merged into those about which he testified yesterday, and therefore I did not call attention to those other than those that I referred to by specific paragraph and page.

Mr. Coleman: Would you then object to furnishing us with one of those?

Mr. Garwood: That is the only one I have. It is subject to your inspection there.

Examiner Burchmore: You might take that book and mail us a typewritten copy of those sections.

Mr. Garwood: I will do that.

6969 Examiner Burchmore: And then you can keep the book.

Mr. Garwood: And I will be glad to give Mr. Coleman any of them he desires.

Examiner Burchmore: I take it there will be no objection to the filing of a typewritten copy?

Mr. Andrews: No, the objection goes to the form rather than to the substance. It is not even a signed copy, as far as that goes, but we do not make any objection on that ground.

Mr. Coleman: We do not waive our objection to the offer, however.

Mr. Garwood: We now ask that there be filed with the Commission a copy of the contract exhibited by Mr. Kirby yesterday, of January 28, 1900, was it?

Mr. Cowan: The one he pulled out of his *pcoet* and read from?

Mr. Garwood: Yes.

Mr. Andrews: June 28, 1900.

Mr. Cowan: I think he read that part of it.

Mr. Walter: Mr. Andrews knows about that.

Mr. Coleman: Mr. Garwood had it I think.

Mr. Garwood: I gave it back to Mr. Kirby.

Mr. Andrews: Just a moment. I presume we might as well make one objection to all of this as a conclusion, as they were all

6970 submitted yesterday to Commissioner Harlan and as I understand the matter he left without deciding the question. But the question was asked and the objections were all made, and when they are all in I will make the objection at one time so as not to interrupt you.

Mr. Garwood: Now as to the proposition made by the gentlemen that there may be private matters in there that you do not care to be made public, I of course recognize the force of that and I have no desire to have it made public, but I understood you to say you had no objection to filing the matter with the Commission.

Mr. Andrews: We have repeatedly offered to leave them with the Commission for inspection but not to file them as a record in the case.

Mr. Garwood: If you will furnish to me a copy of that paragraph of the contract to which reference was made, and also that paragraph which I think is immediately preceding it, relative to the construction of the branch of the Santa Fe from Somerville to Silsbee within a limited time, I would have no occasion for any of the other parts

Mr. Andrews: Furnish it to you personally?

Mr. Garwood: To go into the record.

6971 Mr. Andrews: That was read into the record yesterday.

Mr. Garwood: Substantially all of that was, I think, but

the preceding paragraph was not. I take it there would be no objection to that, so that difficulty might be obviated with reference to that.

Now, while the testimony was fairly well covered by Mr. Kirby yesterday I introduce copies of the Conveyances from the Kirby Lumber Company and Mr. Kirby to Mr. Chapman as testified to.

Mr. Andrews: Are those certified copies from the record?

Mr. Garwood: Yes, sir; I take it that they are correct. I note this, however, that that is a pencil signature for the clerk, which is a little unusual.

Mr. Andrews: If it is correct I do not care anything about it except that its correctness is ascertained.

Mr. Garwood: You might correct it if it is not.

Examiner Burchmore: Is there any objection to the filing of that agreement?

Mr. Andrews: I have no objection. It is a matter of public record.

Mr. Cowan: Assuming it is a correct copy.

Examiner Burchmore: Well, it is a correct copy as you
6972 understand?

Mr. Garwood: It is certified to by the clerk.

Mr. Cowan: We assume it is, but in case it is found to be incorrect it can be corrected.

(Paper referred to was marked and filed and is attached hereto.)

Mr. Garwood: As I understand it the relations of the Industrial Lumber Company and the Southwestern Lumber Company, of which Mr. Ripley is president, have been quite fully gone into at prior hearings, so we will not at this time take up any time to go into that, but in order that there may be record evidence in addition to the testimony heretofore given I file a certified copy of a conveyance or contract between the Southwestern Lumber Company and the Industrial Lumber Company.

Mr. Andrews: Where is that on record?

Mr. Garwood: Lake Charles, Louisiana, referring to the original contract of conveyance concerning which Mr. Parks has testified. I ask that it be filed as a part of the record.

(Paper marked and filed and is attached hereto.)

6973 Mr. Garwood: I now have a summation of the shipments by distribution to the various states of 51 yellow pine lumber concerns, all of which, with the exception of a few which are noted are interested in various short line railroads, from January to October 10th, showing the distribution by states, similar to the information that has been furnished by a number of intervenors. This compilation has been made under the direction of Mr. George K. Smith, of the Lumbermen's Association, and is statistical/y in its nature, and I could just spread it on the record.

Mr. Cowan: How many copies have you?

Mr. Garwood: That is the only one I have.

Mr. Andrews: If it is made up by the owners of those properties

personally, I have no objection to it, but I understand that he gets his statistics for his newspaper in a very different way from what you would get them.

Mr. Garwood: My understanding from him is that these are made up by reports from the owners of the property.

Mr. Andrews: I do not think those reports are made in a way which we would be willing for this to go in without objection, coming from that source. It may be that you can show that they are correct. We have no objection to the figures, but we would
6974 like to have assurance of their correctness.

Mr. Cowan: I wonder if the Department of Commerce and Labor, or the Forestry Department do not have those figures?

Mr. Garwood: I will just ask Mr. Smith how they are made up.

Examiner Burchmore: Do you wish him to take the stand?

Mr. Garwood: Yes.

6975 GEORGE K. SMITH was called as a witness, and having been duly sworn, testified as follows:

Mr. Garwood: Do you occupy any official relation with reference to the Lumbermen's Association?

Mr. Smith: I am Secretary of the Yellow Pine Manufacturers' Association.

Mr. Garwood: Was this statement which I now present to you made up under your direction?

Mr. Smith: It was.

Mr. Garwood: Please state to the Commission in what manner it was made up, and from what sources the information was gathered.

Mr. Smith: We have monthly report cards, which we call our clearing house, coming in from about 300 manufacturers. We selected 51 of these who are reporting regularly from month to month, and at the time this was made up, we had not the reports for November and December, consequently we took the ten months; and the original cards for each company are these jackets, from which the reports were compiled. They are authentic in that regard, in that they come in from each company each month showing the distribution by states, and if you would like to inspect them, or have any one inspect them, you are at liberty to do so.

6976 Examiner Burchmore: Would it be of interest to attach a blank card to your report, showing in what form the reports come in?

Mr. Smith: I would be glad to do it.

Mr. Garwood: Yes, we would be glad to do it.

Mr. Andrews: Would you let me see one of those cards?

Mr. Smith: Yes, sir. (Producing card.) Is there any particular firm you would like?

Mr. Andrews: No.

Mr. Smith: There is the Southern Lumber Company of Warren.

Mr. Andrews: There is one each month?

Mr. Smith: And they give the number of feet which go into each state? We have been doing this for a great many years. It was

not gotten up for any purpose such as this, to show where the lumber goes.

Examiner Burchmore: Are those reports considered confidential?

Mr. Smith: Yes, sir, they are not supposed to be given out to show where each shipper sells—but I do not consider it any breach of confidence to show where the total amount of lumber went.

6977 Examiner Burchmore: No, but I wondered if the mills were rendering reports to you in a confidenital way.

Mr. Smith: They are rendering them with the idea that the information as to what an individual mill is shipping to Ohio, say, is not to be given out, but to make up the total of all the mills shipments going into a single state to show the volume going into that state.

Mr. Andrews: Why did you select 51 or 52 out of the 300?

Mr. Smith: Well, we selected those, with very few exceptions—I notice one or two, that have tap lines. We could give others, if desired, but the request came to select those where the lumber originated on tap lines.

Mr. Andrews: Did you select all that have tap line divisions?

Mr. Smith: I do not think we did.

Mr. Andrews: Why did you omit some of them?

Mr. Smith: Simply we thought we had enough. We couldn't select more, if required.

Mr. Garwood: The time was short, I will state, Mr. Andrews, that we tried to cover the larger interest, and get as much as we could during the limited time that we could get the information.

Mr. Cowan: The principal manufacturers are represented?

6978 Mr. Garwood: Yes, I think so.

Mr. Andrews: You have 300——

Mr. Smith: No, we have 218 who have reported regularly for 12 months consecutively, and out of the 218 we selected 51.

Mr. Andrews: And these 51 are all concerns that get tap line divisions?

Mr. Smith: There are a few who do not.

Mr. Andrews: And they represent the more prominent lumber companies?

Mr. Smith: Yes.

Mr. Andrews: I really don't know, your Honor, anything about the accuracy of this, and I do not believe there is anything reflected about the accuracy of it from the statements made. I do not think we would insist upon any objection to it, if they want to put it in for whatever it is worth.

Mr. Cowan: Let that go with the suggestion that in case we should want any of the others Mr. Smith would be willing to make it up and forward it to the Commission.

Mr. Smith: Yes, sir, anything I have.

Mr. Garwood: Anything that is material to this inquiry.

Mr. Cowan: I mean anything of the same sort with re-

6979 gard to other companies.

Mr. Garwood: Yes.

Examiner Burchmore: What information is that statement intended to give?

Mr. Garwood: It is intended to show the movement of the lumber, states, and the amounts in which it goes to the different states.

Examiner Burchmore: It might be well to ask the witness whether he thinks that that statement clearly indicates the territory to which lumber moved, and the proportion in which it moved to those territories.

Mr. Garwood: It gives all the territory.

Mr. Smith: It gives all the states in the United States.

Examiner Burchmore: Well, you have selected certain mills. Does that fairly show the trend of traffic?

Mr. Smith: I think it is the fair average, because I believe the better class of mills distributes their products over a wider territory than the smaller class of mills.

Mr. Coleman: How many mills do not report to you?

Mr. Smith: Well, there are about 1700 mills on my mailing chain.

Mr. Coleman: And you only get reports from——

Mr. Smith: 300, and 218 regularly.

6980 Mr. Coleman: And then you selected fifty of those?

Mr. Smith: Yes, sir.

Mr. Coleman Were you advised or aided in your selection in any manner?

Mr. Smith: No, sir, only in the way of selecting those companies who are interested in short line railroads largely.

Mr. Coleman: I do not suppose it would have much value if it represents such a small proportion.

Mr. Garwood: That is a matter of argument.

Examiner Burchmore: I think it may be received for what it is worth.

Mr. Andrews: Does that show the list of concerns which are figured in the report?

Mr. Smith: Yes, sir, at the head of each column.

Mr. Garwood: It shows also the tap line that is connected with it?

Examiner Burchmore: Could you furnish a copy to Judge Andrews?

Mr. Garwood: How many copies have you got?

Mr. Smith: We have none, but that. It could me made up, if desired.

Mr. Garwood: If you could give us two more, one for us

6981 and one for the other gentleman, we would be obliged.

Mr. Coleman: I think we would like one, if it would be just as easy.

Mr. Smith: It would not be just as easy. It has to be made up with pen and ink.

Mr. Coleman: I would like one.

Mr. Andrews: May I ask you where these 1700 pine mills are located, in what states?

Mr. Smith: I could not tell you what states, but we keep a list

of the mills from Arkansas, Texas, Louisiana, Mississippi, Alabama, and a few in Georgia and Florida.

Mr. Andrews: And they are substantially those mills in Texas, Louisiana, Arkansas, Mississippi?

Mr. Smith: And Alabama.

Mr. Andrews: You do not have them all, do you?

Mr. Smith: No, we try to keep a list of mills of twenty thousand feet a day and up. Anything below that we do not attempt to keep track of because they are so movable that you cannot know where they are.

Mr. Andrews: Will you file that list of 1700 mills, with the location of them, with the Commission?

Mr. Smith: I would be glad to run our Addressograph chain, and send it to them, I think.

6982 Examiner Burchmore: In what form would it reach the Commission, in separate cards?

Mr. Smith: If you desire, or on strips, if you desire.

Examiner Burchmore: We would take it on a strip.

Mr. Smith: You know what an Addressograph is. We will transfer them in any way we can.

Mr. Andrews: I supposed it could be written on several sheets of legal cap. I see no objection to his running through a strip of paper.

Examiner Burchmore: Do you think it would be worth while to have it filed in this record?

Mr. Andrews: I can conceive of reasons why I might like to discuss it.

Mr. Coleman: Do all the large mills report to you from that country?

Mr. Smith: No.

Mr. Coleman: For instance the Kirby mills?

Mr. Smith: No.

Mr. Coleman: Long Bell?

Mr. Smith: No.

Mr. Coleman: Industrial?

Mr. Smith: No, sir.

6983 Mr. Coleman: Could you name a few others of the larger ones?

Mr. Smith: That do?

Mr. Coleman: No, that do not. I am merely getting at the value of that statement as representing the general situation.

Mr. Smith. Well, I think Lutcher-Moore do not, and the Great Southern Lumber Company at Bogaloosa does not.

Mr. Coleman: Well, that is enough.

Mr. Cowan: What about my freind, Mr. Johnson of the Frost-Johnson Company; does he report?

Mr. Smith: Yes, sir.

Mr. Walter: I might say you called for the last year's report. It is embraced in that list. I suppose you do not care to have it filed separately?

Mr. Cowan: What report?

Mr. *Cowan:* You asked us to file a statement of our tonnage, and it is in that. Now do you want an additional report filed for his line?

Mr. Cowan: I think you had better file it. That information comes from Mr. Smith, and I asked Mr. Johnson to file it, and I like to read his handwriting anyway. He doesn't mind.

6984 Mr. Walter: We will offer it now and have it in the record, for the year ending December 31st, 1910.

(The paper presented by the witness was marked Exhibit No. 1, Witness Smith, January 31, 1911). The exhibit was afterwards returned to the witness for the purpose of copying.

(Witness excused).

Mr. Garwood: We introduce a copy of letter of Mr. Kirby, as President of the Kirby Lumber Company to Mr. Yoakum, of date November 8th, 1903, as found in the records of the suit above referred to in the report of the Master in Chancery; that was the letter which was referred to by Mr. Kirby yesterday.

Mr. Andrews: To that we interpose the objection that the matter is irrelevant and immaterial, that no contract was ever consummated, and no transaction ever had under it, and no property was ever controlled by virtue of the contract in any way at all, and that the whole subject matter has long since expired, and is entirely dead and is wholly irrelevant and immaterial to any issue in this hearing; and the further objection that the substance of it has been read

6985 into the record on the cross examination of the witness Kirby already.

Examiner Burchmore: Do you desire to file that document?

Mr. Garwood: Yes, I will file a copy of it.

Examiner Burchmore: Judge Andrews' objection is noted on the record. I shall have to receive the document subject to that objection.

Mr. Andrews: I understand. I am merely going through the formalities.

Mr. Wood: What contract is that?

Mr. Garwood: A letter of Mr. Kirby to Mr. Yoakum of date November 8th, 1903, which has been referred to by Mr. Kirby in his examination yesterday.

Mr. Wood: I think I should have to interpose the same objection to the correspondence with Mr. Yoakum. I do not see that it bears on this controversy.

Examiner Burchmore: Your objection is noted, Mr. Wood.

(The paper referred to is filed, and attached hereto).

Mr. Garwood: Purely as a matter of form, to make the record clear in connection with the exceptions taken we renew the notice to produce which was made at the hearing at New Orleans on the 8th of December, 1910, as to your cost sheets, and so forth. You are familiar with the notice. I understand the gentlemen de-

6986 cline to produce such information.

Mr. Cowan: We have done it several times.

Mr. Andrews: We have repeatedly repeated it.

Examiner Burchmore: Is this the one which Mr. Diebold introduced?

Mr. Andrews: No, it is the one in regard to the cost, practice, and so forth.

Examiner Burchmore: Has any action been taken by the Commissioner?

Mr. Andrews: It was excluded.

Mr. Garwood: And I renew it, and I now make a formal request in pursuance of this notice, and it is formally refused, as I understand.

Mr. Coleman: In view of the importance you attach to several contracts in this case, I thought I would ask you if you would mind producing the Trust Company deed which Mr. Parker is trustee in, regarding the financing of the Beaumont & Great Northern Railway, and the dealings of Mr. Carlisle.

Mr. Garwood: Some one asked for some document.

Examiner Burchmore: With reference to that, let me say
6987 that the testimony with respect to the Beaumont & Great Northern is filed in a separate record made up in their case. Mr. Carlisle has forwarded to the Commission,—whether it was requested or not, I do not remember, but at any rate he has forwarded a copy of the second mortgage in which Mr. Orr is Trustee. It was my impression that at the hearing the first mortgage was filed.

Mr. Coleman: No, at that time I believe serious objection was made because that was irrelevant, and I believe the attorney for Mr. Carlisle qualified it is impertinent. Now it seems to have been considered by the gentlemen on the other side that such things are material. Mr. Carlisle in his testimony stated——

Mr. Garwood: Excuse me just a moment. I must insist, your Honor, that that hearing was closed, and Mr. Carlisle is not represented here, and I certainly should not break into any other man's case and assume to act for him in a case in which I have no connection.

Examiner Burchmore: I think your objection must be sustained, but I will say this, that I understand from what Mr. Coleman says that he desires that mortgage to be filed in connection with the Beaumont & Great Northern case, and his request or desire will
be brought to the attention of the Commission for such action
6988 as they may deem proper, together with the notice that Mr. Carlisle and his attorney were absent when the request was made here.

Mr. Coleman: I wanted to be a good deal easier than that. I understood from Mr. Carlisle that the Mr. Parker referred to was in Mr. Garwood's office, and I was going to ask Judge Garwood if he would request Mr. Parker to file just that part which was pertinent to the case. I did not wish to make the demand for the entire document, and I will leave it in that shape.

Examiner Burchmore: Let me suggest, if parties can agree on that matter here, it would be better, perhaps.

Mr. Garwood: I should certainly not accept any notices in a case in which I have no conceivable connection. Mr. Carlisle had an attorney there representing him who seemed to be entirely capable——

Examiner Burchmore: We will not discuss that any further at this time. Have you any further request to make, Judge Garwood?

Mr. Garwood: No.

Examiner Burchmore: May I inquire what further testimony, if any, counsel propose to introduce at this hearing, so we
6989 may ascertain whether it is wise to adjourn until tomorrow?

Mr. Coleman: It has just been suggested to me that the Beaumont hearing was very pertinent to this case, and that on motion to make it a part of this case it perhaps would be favorably considered. I take it there is no connection. It deals with the general proposition. I will make the motion for the consideration of the Commission that the record in the Beaumont case be made a part of this record.

Examiner Burchmore: Very well, your motion will be noted.

Mr. Garwood: Before closing, your Honor, I am not thoroughly familiar with the record in the Star Grain case, but my information is that that record shows that there were cancellations of through rates upon the part of the Santa Fe from points on the Iron Mountain, and its short line connections on March 1st, 1900; from points on the Kansas City Southern and its short line connections, March 1st, 1903; from the Frisco and points on its short line connection, March 31st, 1904; from points on the Cotton Belt and its short line connections, October 1st, 1907; from points on the short line connections of the T. & P., October 1st, 1907——

Examiner Burchmore: The Star Grain case contains some showing to that effect. Whether your dates are correct, I do not know.

6990 Mr. Garwood: Is that substantially correct?

Mr. J. J. Coleman: That is all in the Star Grain case.

Examiner Burchmore: It is all in there. Whether your dates are correct, of course I do not remember.

Mr. Garwood: If these dates are not correct, I would be glad if the Commission would call attention to it.

Mr. J. J. Coleman: Did I understand you to say that the record shows that the Santa Fe cancelled the rates?

Mr. Garwood: That is the impression I had.

Mr. J. J. Coleman: That is not the understanding with the Cotton Belt and T. & P.

Mr. Garwood: I understood the divisions allowed the Cotton Belt were so unsatisfactory to the Cotton Belt that they cancelled them.

Mr. J. L. Coleman: I think that is what the record showed

Mr. Garwood: So it is rather vague——

Mr. J. J. Coleman: I just wondered if you wanted to know if those are all included in that record. They are.

Mr. Garwood: We will have a few more witnesses, perhaps three or four, and it is now after five o'clock, and we can easily get through

with them tomorrow, that is if the cross examination is not too extensive.

Examiner Burchmore: So that counsel may make their
6991 plans, I would like to inquire how long you think it would take, and also whether there are other witnesses to be called by other parties.

Mr. Garwood: I think we will easily get through tomorrow.

Examiner Burchmore: Do the Trunk Lines propose to introduce any testimony?

Mr. Wood: It is not the present expectation of the Trunk Lines to introduce testimony. I wish to make that statement for all lines, but if there is any contrary policy, I presume it can be stated.

Examiner Burchmore: Any further statements counsel wish to make tonight?

Mr. Cowan: In connection with Mr. Wood's suggestion, we would like to know—I don't know whether we are entitled to it or not,—but we want to know what the position of the Trunk Lines may be, or rather what it is now, whether they are going to crawl to bed with us or the other follow. We are prepared to express that desire.

Mr. Jeffery: Do you also want to know what the Santa Fe's attitude is? I did not know whether you wanted any answer from them or would let their actions speak stronger than their words.

6992 Mr. Cowan: Their attitude would seem to indicate they are very strongly opposed to divisions.

Mr. Garwood: I do not think that is material. I do not think it matters much to the Commission.

Mr. Cowan: It does. They are the people who cancelled out the rates, and were the occasion of this proceeding. When they cancelled out their rates, the tap lines and others came in to tell the Commission "We want the Commission to suspend the cancellations", and they have sat here with their mouths closed—I do not say offensively, perhaps that is the best for all of us but——

Mr. Jeffery: So far as the Iron Mountain is concerned, we are in the attitude of the innocent bystander, and my only hope is that we do not get what the innocent bystander usually gets.

Mr. Cowan: I move to strike out the word "innocent". You are a bystander, all right.

Mr. Garwood: Well, I believe it is the general desire if the court can, to suspend about this time.

Examiner Burchmore: We will now adjourn to ten o'clock tomorrow morning.

Whereupon, at five o'clock P. M., the hearing in the above entitled matter was adjourned to Wednesday, February 1st, 1911, at 10 o'clock A. M.

6993 CHICAGO, ILL., *February* 1, 1911.

Met pursuant to adjournment at 9:30 A. M.

Present: Examiner Burchmore; other parties as before.

Mr. Walter: We will call Mr. Church.

W. Q. CHURCH was recalled as a witness and having been previously sworn, testified as follows:

Mr. Walter: What is your business, Mr. Church?

Mr. Church: Traffic manager of the Louisiana Central Railroad.

Mr. Walter: How long have you been in the railroad business?

Mr. Church: Twenty-eight years.

Mr. Walter: Briefly state what that experience was.

Mr. Church: Fifteen years with the Santa Fe, six years with the Kansas City Southern and five years with the Louisiana Central.

Mr. Walter: With the Kansas City Southern what was your position; what department?

Mr. Church: I have always been in the traffic department,
6994 practically.

Mr. Walter: Have you examined the current tariffs on lumber?

Mr. Church: I have.

Mr. Walter: Have you examined Southwestern Lines Tariff 48-B, I. C. C. No. 804?

Mr. Church: I have.

Mr. Walter: Have you prepared a statement as to what that tariff shows?

Mr. Church: Yes, sir.

Mr. Walter: Hand that statement to the stenographer. We offer it as an exhibit to this witness' testimony. He may briefly explain what it shows.

Mr. Andrews: I think we may be entitled to see it before it goes into evidence or otherwise.

Examiner Burchmore: What is it, a statement of what the tariff shows?

Mr. Walter: It is a brief statement of what the tariff contains.

Mr. Andrews: I do not know that we have any objection

Mr. Coleman: Well, I have. In your brief you can explain the tariff if you want to.

Mr. Walter: We shall insist that this witness, who is an
6995 expert tariff man, can state what he finds from the tariff

Examiner Burchmore: As I understand, Mr. Church, this is a short description or analysis of that tariff which you have made up?

Mr. Church: Yes, sir.

Examiner Burchmore: I think it may be received, subject to the objection. It may be inaccurate and reference may be made to the tariff itself as to whether it is accurate.

Mr. Walter: Yes.

Mr. Andrews: I have not any idea whether I have any objection to it, but I should like the privilege of seeing whether I have.

(Mr. Andrews then proceeded to examine the paper.)

Mr. Andrews: The first objection is that the tariff is the best evidence and that is on file with the Commission. The second objection is it merely states the conclusions of the witness. The third objection is that it appears upon its face to be not accurate in detail, in that it does not cover the entire subject matter about which it purports to speak, and therefore could not be accurate in the statements made. The fourth objection is that it is utterly irrelevant
6996 and immaterial to any issue we are hearing here. And in order to avoid repetition, if you will permit me to do so, I will make that objection to all the testimony that they are going to ask him about on this proposition and then say nothing more about it.

Mr. Coleman: I make the same objection.

Examiner Burchmore: The objection will be noted, and the document will be received for what it is worth, subject to those objections.

(The statement so offered and identified was received in evidence and thereupon marked Exhibit No. 1, witness Church, received in evidence February 1, 1911, and is attached hereto.)

Mr. Walter: About how many lumber producing roads in Missouri, Louisiana, Arkansas and Texas are named as parties to that tariff, in round numbers?

Mr. Church: Upwards of 215. I do not know accurately.

Mr. Walter: Of those roads, does your statement give the names of those that are given the right and do by that tariff participate in through rates to Santa Fe points.

Mr. Church: I think so.

Mr. Walter: I notice a list of the g[illegible]
6997 as to what is true of the Houston & Texas Central, the San Antonio & Aransas Pass, the Galveston, Harrisburg & San Antonio and the Trinity & Brazos Valley Railroad as to lumber producing tonnage from the main line.

Mr. Church: I do not think they produce very much. I do not know of any.

Mr. Walter: What is the condition of the lumber lands along the main line?

Mr. Church: They are practically cut out.

Mr. Walter: Now, what is the difference in that tariff between basis 5 and basis 6; what is its range?

Examiner Burchmore: Pardon me. Are you going into the question of the group adjustment of rates?

Mr. Walter: No, just the difference between these two.

Mr. Cowan: Does not the tariff show that?

Mr. Walter: Yes.

Mr. Cowan: What in the world can be the use of taking it up with the witness?

Mr. Walter: I will show you later. It is easier to take an objection to the question and let us proceed.

Mr. Church: The range is three and one-half cents.

Mr. Cowan: Of course I do not understand that answer.
6998 He says the range is three and a half cents. I would not know from that what he meant.

Mr. Walter: Give me an illustration.

Mr. Church: The rate from any typical point, say Perry, from group 5, is 24 cents. From group 6 it is 27½ cents. That is generally the range through this tariff to all Santa Fe consuming points. In some places the range may be greater, but that is the general average.

Examiner Burchmore: You mean that is the prevailing differential or difference?

Mr. Church: Yes, sir, the average.

Mr. Cowan: From where?

Mr. Church: Producing points on the Santa Fe and producing points on other lines.

Mr. Walter: That are parties to this tariff?

Mr. Church: Yes.

Examiner Burchmore: The difference between the Santa Fe rate from a point of origin on its line and another company's rate from a point of origin on its line is usually three and one-half cents in the groups you have given?

Mr. Church: In connection with the Santa Fe, yes.

Mr. Cowan: I suppose that means if they see fit to ship
6999 over the Santa Fe they have to pay that much more to do it?

Mr. Church: That is what this tariff shows.

Mr. Coleman: Now we are pretty well agreed that the tariff speaks for itself. If——

Examiner Burchmore: I understand this is simply preliminary.

Mr. Coleman: If they are going to go into that, we will merely promise our right to insist upon a very lengthy cross examination.

Mr. Walter: We have no objection to that.

Mr. Coleman: Well, it will use up time.

Mr. Walter: You have as much as we have. That is to say, when a shipment is made from one of these connecting lines over the Santa Fe, the basis is about three and a half cents higher than the local rates on the Santa Fe?

Mr. Church: Yes, sir.

Mr. Walter: I will ask you what effect that difference has upon the mills located exclusively upon the Santa Fe.

Mr. Church: It tends to give them a monopoly of that business.

Mr. Walter: What effect does that have upon the purchaser at these local points, of lumber.

Mr. Church: It restricts his purchasing.

7000 Mr. Cowan: I would like to inquire if these gentlemen are asking for through routes and rates and divisions with the Santa Fe in this proceeding.

Mr. Walter: A number of them that have filed complaints are asking.

Mr. Cowan: Who?

Mr. Walter: For example, the Peach River lines.

Mr. Cowan: Any others?

Mr. Garwood: The Beaumont & Great Northern ask for it.

Mr. Cowan: I am trying to get at your position, if you are trying to get joint rates with the Santa Fe I would be glad to see you have it, but I have never found out your position.

Mr. Garwood: I do not think we are called upon to argue the case at this point. We have several positions.

Examiner Burchmore: I do not think the Commission intends to go into the blanket rate question and the adjustment of rates at this time.

Mr. Walter: You will recall in this contract with Mr. Kirby, which was filed, dated along about 1900—we have shown the cancellations, and we want to show that the same situation which was promised under that contract, namely, an advantage to
7001 the Santa Fe producing mills, is still being accorded the intervenors in this case. That is the purpose.

Mr. Cowan: My remark is with the qualification of course that they cut out the divisions. When they do that, I think they are entitled to the through rate.

Mr. Walter: What can you say as to the St. Louis, Iron Mountain & Southern points?

Mr. Church: I think the range there is even greater, perhaps as high as nineteen cents against them.

Mr. Walter: That is to say, to reach a local point on the Santa Fe from some one of the Iron Mountain points in connection with the Santa Fe, they will have to pay as high as nineteen cents from certain points?

Mr. Church: That is my understanding.

Mr. Coleman: Can you give us an example of that right off the bat?

Mr. Garwood: I suggest the cross examination should be deferred.

Mr. Coleman: No, but you are going into something and the witness says he understands what the tariff says, and I think we are wasting a lot of time.

Examiner Burchmore: Unless there is serious objection to
7002 some of these questions, suppose we allow counsel to proceed with the direct examination.

Mr. Cowan: We made a serious objection at the start that to allow the witness to prove what is in a tariff before the Commission is absurd.

Mr. Walter: What would you say, Mr. Church, if you know, in a general way, is the comparison between the amount of tonnage that originates on the lines that are permitted to carry through rates with the Santa Fe, as compared to the tonnage which would be made available to consumers in Santa Fe territory if all the lines named in the tariff were permitted to carry through rates on a competitive basis?

Mr. Andrews: The fifth objection to that is that the witness has not shown himself qualified to answer the question as an expert or statistician or otherwise.

Mr. Cowan: We have no objection to his testifying if he knows, but he should not guess at it.

(Question read.)

Examiner Burchmore: Isn't that rather a large question to answer?

Mr. Walter: Well, if he can answer it——

Mr. Cowan: Let him take a shot at it if he thinks he
7003 can.

Examiner Burchmore: Give your opinion, Mr. Church.

Mr. Church: I think the percentage is perhaps eight to one.

Mr. Walter: Which would be the eight and which the one.

Mr. Church: By including these additional lines, you would have at least eight more sources of supply than you have at present.

Mr. Walter: Would it be eight times the tonnage probably available?

Mr. Church: I think so in a general way.

Examiner Burchmore: Is not the purport of your testimony something like this? You recall the Star Grain Case, as I remember it, opened up Santa Fe markets to the Cotton Belt mills, did it not, and you are now saying that the same condition that formerly obtained to the Cotton Belt mills going into the Santa Fe markets now obtains with respect to Iron Mountain mills, for example?

Mr. Walter: Exactly.

Examiner Burchmore: Can you not shorten it up by asking him that?

Mr. Walter: You are familiar with the Star Grain case?

Mr. Church: Yes, sir.

7004 Mr. Walter: The Commission made an order opening up joint rates to certain points on the Cotton Belt?

Mr. Church: Yes, sir.

Mr. Walter: Was that complied with by the Santa Fe, so far as you know?

Mr. Church: So far as the order is concerned; yes, sir.

Mr. Walter: When did that order expire, if it has?

Mr. Church: It expired, I think, the first of September, and the rates were restored to the old basis December 10, 1910.

Examiner Burchmore: Joint rates have been cancelled?

Mr. Church: The order of the Commission has expired, so they restored the same basis which obtained to other lines. That is, the restoration of the old rates from Cotton Belt main line points, but not from short lines.

Examiner Burchmore: Was that change suspended by the Commission?

Mr. Church: I do not know as to that.

Mr. J. J. Coleman: The rates in effect from Cotton Belt points to points on the Santa Fe other than to Oklahoma and New Mexico are the same as carried from mills on the Santa Fe.

Examiner Burchmore: At the present time?

7005 Mr. J. J. Coleman: Yes.

Mr. Walter: But the order in the Star Grain case when

it expired was no longer carried in effect by the Santa Fe and raised the rate?

Mr. J. J. Coleman: No.

Mr. Cowan: Let us let this witness answer. He is making his guesses.

Mr. Andrews: I rise again to protest, that it seems to me to be so utterly inadmissible to have a bunch of witnesses sit around here and talk about what a mass of records discloses, and I must again object that we are not only wasting time, but are getting a lot of valueless information.

Examiner Burchmore: If you could ask some general brief question——

Mr. Cowan: How long is it going to take on cross examination to show he does not know anything about it?

Mr. Garwood: It might possibly take you to eternity.

Mr. Cowan: Well, it will not.

Examiner Burchmore: Is it your understanding that in complying with the Commission's order in the Star Grain case the Santa Fe, or some of them, at least, by joint action of the carriers, extended those joint rates thus established back to the tap lines
7006 and gave the tap lines divisions of those rates?

Mr. Church: No.

Examiner Burchmore: They applied only from points on the Cotton Belt?

Mr. Church: That is all.

Mr. Walter: When that order expired, did the Santa Fe raise the rates from the Iron Mountain or reduce the rates from certain points, if you know, before the order expired?

Mr. Church: When the rates expired, did they raise them?

Mr. Walter: What action did they take?

Mr. Church: It is my understanding they raised the rates.

Mr. Cowan: Now the idea of a man saying his understanding, when the tariff shows.

Examiner Burchmore: That is his understanding. The Commission will refer to the tariffs.

Mr. Walter: We will proceed to the next tariff.

Mr. Cowan: It seems to me impossible to have a witness testify as to his understanding of the tariffs, when the tariffs speak for themselves.

Mr. Walter: Yes, the tariffs speak for themselves.

Mr. Cowan: And these gentlemen tell me he is entirely
7007 mistaken as to his understanding. That is the reason I object.

Examiner Burchmore: I will ask Mr. Walter to state the facts as he understands them, and allow reference to be made by the Commission to the tariffs for verification of his statement, if you wish it in the record.

Mr. Walter: My understanding is this, before the order expired in the Star Grain case they reduced the rate from Santa Fe points to these points in Oklahoma, for example, and thereby brought about the difference which the Commission had condemned——

Examiner Burchmore. Is it your understanding that the order in the Star Grain case did not fix any specific rate, but ordered them to maintain the Santa Fe rate from the Cotton Belt mills? I may be wrong, but that is my understanding.

Mr. Andrews: That illustrates the objection we have made. It is all of record, and we are sitting here guessing about it.

Mr. Walter: Let that go, and we will take up the next tariff. Have you examined Southwestern Lines Tariff 50-C, I. C. C. 768?

Mr. Church: I have.

Mr. Walter: That tariff names rates on lumber from certain lumber producing lines in Arkansas, Louisiana and Texas to
7008 points in Arizona, Arkansas, Colorado, Iowa, Kansas, Missouri, Nebraska, New Mexico, Utah and Wyoming?

Mr. Church: Yes, sir.

Mr. Walter: About how many lines are parties to that on which lines lumber is produced in greater or less degree?

Mr. Church: Upwards of 235.

Mr. Walter: Out of that total number, how many are permitted by that tariff to carry rates on lumber to Santa Fe System points except Santa Fe points in New Mexico?

Mr. Church: I think twenty.

Examiner Burchmore: You do not know whether any other tariff contains such rates from other system points?

Mr. Church: I have not examined any other tariffs recently.

Mr. Walter: Do you know of any others that do?

Mr. Church: No.

Mr. Walter: My information is that they do not. If that is not correct, let us have it stated now.

Mr. Coleman: You have an expert here. We will show you where you are incorrect, when our turn comes.

Mr. Walter: Briefly state the effect of that tariff on destination in Kansas, as to lumber rates.

Mr. Church: To local points it restricts the consumer's market.

7009 Mr. Walter: What is the differential, speaking in cents per hundred pounds? In this case we will offer the statement as prepared as to that tariff.

Examiner Burchmore: I think we are consuming time needlessly. I feel——

Mr. Walter: We will shorten it up by simply filing these statements and asking the witness if they are correct as he understands them.

Mr. Cowan: If he has figures, they may be all right, but I do not know.

Examiner Burchmore: I think you can cover the point by making the general statement that your understanding is that the general adjustment is so and so, and then in your brief you can refer to the tariffs themselves for what those tariffs show, and the Commission will go to the tariffs undoubtedly, rather than rely on the testimony of this or any other witness as to what the tariffs contain.

Mr. Walter: Have you prepared a statement as to tariff 50-C, I. C. C. 768?

Mr. Church: Yes.

Mr. Walter: Hand it to the stenographer.

Mr. Cowan: We make the same objection.

7010 Examiner Burchmore: It may be received subject to the original objections.

Mr. Cowan: Then it will be subject to cross examination as to a lot of statements in typewriting.

Examiner Burchmore: The objection will be noted.

(The statement so offered and identified was received in evidence and thereupon marked Exhibit No. 2, witness Church, received in evidence February 1, 1911, and is attached hereto.)

Mr. Walter: Are there any joint rates, so far as you have been able to find them, from any of those points to New Mexico points?

Mr. Church: No, sir.

Mr. Walter: Of those twenty lines that carry those joint rates, two of them are Santa Fe lines, are they?

Mr. Church: Yes, sir.

Mr. Walter: The Gulf, Colorado & Santa Fe, and the Texas & Gulf?

Mr. Church: Yes.

Mr. Walter: Is there any tap line, speaking in general terms?

Mr. Church: Burrs Ferry, Browndel & Chester.

7011 Mr. Walter: That is the nearest you can come to a tap line?

Mr. Church: Yes, sir.

Mr. Walter: Have you examined Santa Fe tariff 5,769-A, I. C. C. No. 4080.

Mr. Church: I have.

Examiner Burchmore: May I ask you what tap lines you would expect to find in a tariff of that sort?

Mr. Church: Under the situation, only that one.

Mr. Walter: Have you prepared a statement as to that tariff?

Mr. Church: Yes.

Mr. Walter: We offer it as Exhibit No. 3.

Examiner Burchmore: It may be received, subject to the objection made to the other statements.

(The statement so offered and identified was received in evidence and thereupon marked Exhibit No. 3, witness Church, received in evidence February 1, 1911, and is attached hereto.)

Mr. Walter: Does that exhibit show the differential as you get it from the tariff between the originating points outside of Texas and originating points in Texas destined to points named in that tariff?

7012 Mr. Church: There is a range from one and a quarter cents to ten cents, although the average range, I think, would be about one and one-quarter cents.

Mr. Walter: Over or under the Texas rate?

Mr. Church: Over the Texas rate.

Mr. Walter: Are there any joint rates from Kansas City Southern points to these points on the Santa Fe?

Mr. Church: None whatever.

Mr. Walter: You may examine the witness.

Examiner Burchmore: I will ask you to sum up your testimony, Mr. Church. That is, what the effect of it is, as you understand it.

Mr. Church: As I understand the effect of these rates, it restricts the shippers on other lines in producing territory and it also restricts the consumers in their purchase; their markets are very much restricted, and the Santa Fe local points have to buy from Santa Fe mills or from the mills located on the lines that are shown on those lists, which some of them are not very heavy producing lines, and where they are able to go off the Santa Fe, they do not always go on the same rate; they frequently have to pay a differential higher than the Santa Fe shipping points, so it does not as a rule
7013 produce a very satisfactory market for the consumer. It puts him at the mercy, in a way, of the dealers located on the Santa Fe. That is, the manufactures, I should say.

Examiner Burchmore: I had considerable doubt as to the admission of your testimony over the objection of counsel for the intervenors and for the Santa Fe, because it is so largely based on your opinion of what the tariffs show.

Mr. Church: Well, the tariffs speak for themselves.

Examiner Burchmore: And I did not wish to deny to the interests that Mr. Walter and Judge Garwood represent the full opportunity to present their case in that connection, but I must say now that I think you cannot rely very much on Mr. Church's testimony in your argument, but all should refer to your tariffs as to what the facts are.

Mr. Walter: He has filed statements.

Examiner Burchmore: I do not think the statements can be relied on fully, but reference should be made to the tariff.

Mr. Church: Reference is made to the tariffs, and I have endeavored to show the facts as I understand them to be, relying on the tariffs to show what they are.

Examiner Burchmore: I will ask counsel to limit their cross examination, with the thought that if there are any errors
7014 in the statements so made, an examination of the tariffs will develop those errors.

Mr. Cowan: But your Honor has asked him for an opinion on the traffic and the business. It necessarily is based upon what he knows, or is supposed to know about these tariffs. If he is in error on what he bases his opinion, the whole thing falls like a cob house. I want the stenographer to read Mr. Walter's question and the answer that Mr. Church gave, and I either want it stricken out or the opportunity for full cross examination to demonstrate whether he knows facts that would justify him in making the statement or not.

Mr. Walter: We request that he be given the right to cross examine.

(The question and answer referred to were then read as follows:)

"Mr. Walter: What would you say, Mr. Church, if you know, in a general way, is the comparison between the amount of tonnage that originates on the lines that are permitted to carry through rates with the Santa Fe, as compared to the tonnage which would be made available to consumers in Santa Fe territory if all the lines named in the tariff were permitted to carry through rates on a competitive basis?

7015 "Mr. Church: I think the percentage is perhaps eight to one.

"Mr. Walter: Which would be the eight and which the one?

"Mr. Church: By including these additional lines you would have at least eight more sources of supply than you have at present.

"Mr. Walter: Would it be eight times the tonnage probably available?

"Mr. Church: I think so, in a general way."

Examiner Burchmore: May I ask one question? That condition clearly obtained with reference to mills on the Cotton Belt, as I under-tand it, but the Commission in the Star Grain case opened up Santa Fe markets, if you can use that expression, to Cotton Belt mills by restoring the former basis of joint through rates. What was the result of that restoration in the matter of sales from mills on the Cotton Belt line in that respect?

Mr. Andrews: We object on the ground the witness has already shown that his knowledge does not entitle him to any opinion on the subject. He has no mill connection in the world, so far as his evidence discloses.

Examiner Burchmore: Have you any positive knowledge
7016 on that?

Mr. Church: No, I have not.

Examiner Burchmore: I will withdraw the question.

Cross-examination:

Mr. Cowan: You heard the question and answer read. I of course must assume you are a fair minded man. Do you still persist in making the answer to that question as a matter of evidence, or would you prefer that it be stricken out as an opinion that is too vague and uncertain to be the basis of evidence? If you insist, I want to cross examine, and if you do not, there would be no use in it.

Mr. Church: That percentage may not be correct, but from the general knowledge I have learned, I should say that it is very nearly correct.

Mr. Cowan: Well, percentage of what?

Mr. Charch: Shipments.

Mr. Cowan: To where?

Mr. Church: This territory involved.

Mr. Cowan: What territory are you talking about?

Mr. Church: Santa Fe local territory.

Mr. Cowan: And what do you mean by Santa Fe local territory?

7017 Mr. Church: What those words imply?

Mr. Cowan: In your meaning, yes.

Examiner Burchmore: You asked the percentage of what, and I ask how much is now moving to Santa Fe local points.

Mr. Church: I have not the figures.

Mr. Cowan: Have you any idea about how many million feet move to Santa Fe local points today?

Mr. Church: I have no figures.

Mr. Cowan: Have you any idea about how many million feet move to Santa Fe competing points?

Mr. Church: I have not any of those figures in feet or cars.

Examiner Burchmore: Do you know that any move?

Mr. Church: Yes.

Mr. Cowan: From where?

Mr. Church: I know from my own knowledge that shipments move to Santa Fe local territory.

Mr. Cowan: From where?

Mr. Church: Cravens, Louisiana.

Mr. Cowan: Where else, of your own knowledge?

Mr. Church: That is all of my own knowledge.

7018 Mr. Cowan: Now, you answered the Examiner that you did not know anything about what resulted when the Commission changed the rate system on the Cotton Belt?

Mr. Church: He asked me about information that I have no knowledge about. I have not any access to those figures.

Mr. Cowan: And you do not know what change that did produce; change in the rate basis? Well, you have already admitted that. Do you know how many carloads of freight are shipped to Santa Fe competing points off the Frisco lines?

Mr. Church: I have no access to those figures.

Mr. Cowan: Do you know how many are shipped from Rock Island points?

Mr. Church: I have no access to their figures.

Mr. Cowan: That would be the same as to each railroad?

Mr. Church: The only thing that I base my conclusion on is talk from people who do know.

Mr. Cowan: Who was that?

Mr. Church: Railroad people.

Mr. Cowan: Well, let them be called.

Mr. Church: That is up to you.

Mr. Cowan: You don't know yourself? Let us see what they told you. Who was it that told you it would increase it eight times?

7019 Mr. Walter: He never said they told him that.

Mr. Cowan: What did they tell you?

Mr. Church: I said that was my conclusion from conversation.

Mr. Cowan: It was not what they said, but you concluded it from what they said?

Mr. Church: They told me.

Mr. Cowan: Who was it?

Mr. Church: I have talked with various traffic people. I have

talked with Mr. Coleman, Mr. Hershey and Mr. Voorhees and Mr. Gorman, and a number of other railroad people.

Mr. Cowan: And they told you it would increase this movement?

Mr. Church: Well, in a general way, they gave me no figures, but that was the conclusion I reached by their conversation.

Mr. Cowan: You have the opinion it would restrict it, the fact that the rate from Cravens, say, to a Santa Fe point—or is that a Santa Fe point?

Mr. Church: Cravens is on the Santa Fe.

Mr. Cowan: I was asking you if you knew any place off the Santa Fe, which shipped to local points on the Santa Fe, or I thought I was.

Mr. Church: You asked me if I knew any point that shipped.

7020 Mr. Cowan: I meant the other thing. Of course Cravens would ship to a Santa Fe point, but I wanted to ask you if you know any place on any other line which does ship to local points on the Santa Fe.

Mr. Church: Hearsay only.

Mr. Cowan: Do you know of any point on the other lines that ship traffic to competing points on the Santa Fe?

Mr. Church: Yes.

Mr. Cowan: To competing points in Kansas?

Mr. Church: Yes.

Examiner Burchmore: May I interject a question? I want to ask this: have you any idea at all as to the extent of tonnage moving from mills on the other lines, Kansas City Southern, Iron Mountain, and so forth, in the Southwest, to Santa Fe local stations at the present time?

Mr. Church: At the present time I have no knowledge of those figures.

Examiner Burchmore: Do you know that anything moves?

Mr. Church: There may be some. I do not know how extensive. I do not think it is very heavy.

Examiner Burchmore: Your estimate is that tonnage would increase eight times if the rates were readjusted?

7021 Mr. Church: My conclusion is that that tonnage would have been about that ratio if the rates had been continued. It might not result that way if the rates were restored at the present time, because a good deal of the business is perhaps lost and operators are going in other territories for markets.

Examiner Burchmore: Have you any further facts you can state in support of your opinion?

Mr. Church: No, I have not.

Mr. Cowan: Were you through, your Honor?

Mr. Burchmore: It seems to me the witness has stated his opinion, and given a full statement of the basis on which it rests and disclaims any positive knowledge. I doubt whether it is worth while for us to examine further into that point.

Mr. Cowan: It is not that point I am going to examine into. It is another point, which I think your Honor will see the moment I ask the question. If you think it is not pertinent after I ask the

question, you can rule on it. It takes two questions to do this. You have stated it to be your opinion that if the Santa Fe local territory were opened up by giving the through routes and rates equal over the Santa Fe to what it would be, I suppose, to
7022 competing points on the Santa Fe from these originating points other than the Santa Fe, that it would increase the traffic about eight times, at least very materially increase the traffic to those local points, and I suppose you mean, would thereby afford to mills on these other lines commerce which they do not now enjoy; is that correct?

Mr. Church: That was my idea.

Mr. Cowan: Now, the reason they do not enjoy it is because the mills on the Santa Fe get a lower rate to those points; is that it?

Mr. Church: That is the idea.

Mr. Cowan: If, therefore, a mill situated on the other line gets a tap line allowance that goes to the practical owner of the property of three and one-half cents, wherein does the difference lie?

Mr. Church: There are a good many things, the character of the investment and the conditions are not equal. The man that has the lower Santa Fe rate, may not have any investment in a tap line.

Mr. Cowan: You would expect the rate to take care of that, would you, as a rate expert?

Mr. Church: The three and a half cents?

Mr. Cowan: Whether he had any investment in a tap line.

7023 Mr. Church: Well, I don't know as that results in a rate proposition.

Mr. Cowan: When a man goes out from the Long-Bell Lumber Company, for example, to sell a car of lumber, we will say at Crawford, Texas, you can find occasionally a place where there is no other railroad, but large enough to support one public school——

Mr. Garwood: I suggest the oratorical part of the interrogatories may be left out.

Mr. Cowan: I thought that would be the most pleasurable part. Suppose the Long-Bell Lumber Company goes out to Crawford, Texas, to sell a car of lumber, and Mr. Stephenson here goes out to sell a car of lumber to the man at Crawford. Mr. Stephenson gets no allowance whatever and pays the full Santa Fe rate to Crawford; Long-Bell would have to pay the differential above or could itself deliver the lumber with its own power, and let the Santa Fe take it, just like Mr. Stephenson does from his mill; now, how would the one be at an advantage over the other on account of the Santa Fe rate?

Mr. Church: I don't understand the Long-Bell people have any railroad or power of their own.

7024 Mr. Cowan: But I will assume that they do.

Mr. Church: I do not care to assume that they do, because I know they have not.

Mr. Cowan: You mean the Long-Bell interests do not own any railroad?

Mr. Church: I am speaking of the Long-Bell Lumber Company.

Mr. Cowan: I said interests.

Mr. Church: I have heard stated that the Long-Bell had no railroad interests.

Mr. Cowan: Well, assume that to be the case for the purpose of my question. Let me assume that to be the case, that they can deliver to the Santa Fe just on equal terms and get the same rate, or the Fullertons can do that same thing and get the same rate right on over to Crawford, wherein has one got an advantage over the other that you can see?

Mr. Church: Assume that to be the case; Mr. Stephenson perhaps has not the extent of investment that you say the Long-Bell Company have.

Mr. Cowan: Is that your answer?

Mr. Church: Yes, sir.

Mr. Walter: I think Judge Cowan misunderstood the witness' answer a moment ago as to that tonnage. He did not say
7025 the tonnage would move, but it would be available to the purchasers.

Mr. Cowan: I had it read over in order to see, and I asked him what would be the case, based on the talks he had with various traffic men.

Examiner Burchmore: I understood eight times the tonnage to be moved.

Mr. Walter: No; available for movement.

Mr. Church: I did not mean it would increase that much, because there would not be the market, but it would open up that much additional territory.

Mr. Walter: To the consumer?

Mr. Church: To the consumer; that is what I intended to convey.

Mr. Cowan: Why would it not move?

Mr. Church: There is not the demand for it. This territory takes so much lumber. You cannot increase it without some different condition.

Mr. Coleman: It is a paper proposition; is that it?

Mr. Church: The eight to one? I did not say so; no more than some of your rates are paper propositions.

Mr. Cowan: Let us see who you represent and what your
7026 interest is. Let us see what your opinion is based on.

Mr. Church: I think I explained that my opinion is based on talks with traffic people.

Mr. Cowan: You represent the Pickering interests, do you not?

Mr. Church: Yes, sir.

Mr. Cowan: And they own and operate a tap line. You testified about that.

Mr. Church: I have testified about the Louisiana Central.

Mr. Cowan: And they get a division?

Mr. Church: The Louisiana Central gets a division.

Mr. Cowan: Have you got any greater investment in proportion to the capacity of your mills than have other lumber interests?

Mr. Church: I do not know what the investments of the Pickering interests are in the mills.

Mr. Cowan: I mean investment in railroads.

Mr. Church: The Louisiana Central has a larger investment in their railroads than some others in that neighborhood.

Mr. Cowan: And some others have larger investments than you, dependent on the length of line?

Mr. Church: Yes, sir.

7027 Mr. Cowan: And amount of service performed.

Mr. Church: Yes, sir.

Mr. Cowan: Proportionate to the cost per ton of the output, are you able to say that your mill has a larger railroad investment than does Mr. Stephenson?

Mr. Walter: Now, let us have that cost per ton.

Mr. Cowan: If he wants to give it, he can.

Mr. Walter: We are going to object unless you first make your proffer of the cost, and give the basis of what the cost is, as compared one with the other, and then the witness can tell you.

(Question read.)

Mr. Cowan: Strike out the word cost. Proportionate to the volume of the output.

Mr. Walter: Now state the volume.

Mr. Cowan: That is absurd.

Mr. Garwood: I want to call attention at this time to the proposition that we have never been permitted to go into the cost of production at all. We made some slight endeavor to do it, but we were not permitted to, and we have of course acceded to that ruling. Now, if we start back into it, and the rulings are to be reversed, and I take it they are not, we will have to go back over all

7028 that and get our witnesses back here.

Examiner Burchmore: Will you ask your question again?

Mr. Cowan: Strike it out, and I will ask it again. Proportionate to the volume of the output, is the investment in railroad appliances of the Pickering Company greater than the investment of your competitors in that part of the country?

Mr. Church: It is greater than some. I do not know the extent of others.

Mr. Cowan: And probably less than others?

Mr. Church: It is probably less than some and greater than some.

Mr. Cowan: You can haul your traffic and deliver it to the Santa Fe without any difficulty?

Mr. Church: The Louisiana Central can, yes, sir.

Mr. Cowan: Well, that is you, is it not? Practically? Does not the lumber company own it?

Mr. Church: No, the lumber company does not own it?

Examiner Burchmore: That has been fully testified to.

Mr. Cowan: Suppose we take an interest which does get the four cent division of the rate, and the same people that own the lumber company own the railroad which gets it, and they

7029 are going out to Crawford and compete for this supposed sale of lumber, won't they have just as much advantage as if they delivered it to the Santa Fe and took the straight rate?

Mr. Church: Well, the Santa Fe does not join with any other lines to Crawford; it is a local point. They apply that rate from

their main line. The expense of getting that car to the main line may be different between the two situations.

Mr. Cowan: Exactly, and the people on the Santa Fe main line have to get the lumber to the main line, do they not, from the stump into the mill, they have to get it to the Santa Fe line?

Mr. Church: The Santa Fe main line does not participate with through rates with anybody.

Mr. Cowan: If their cost is equal in getting the lumber from the mill to the main line, wherein lies the advantage that they have?

Mr. Church: I do not understand the cost of getting it to them is the same in each instance.

Examiner Burchmore: We will have to turn to some other fact.

Mr. Cowan: You said there were not rates in by any other line via the Santa Fe to New Mexico.

7030 Mr. Church: I think there are none. The tariff is the best evidence.

Examiner Burchmore: Is it your understanding there are, Judge Cowan?

Mr. Cowan: We had the Roswell case up before the Commission and after the decision my clients told me the Santa Fe finally put in through rates from certain points, but I think they make a differential from certain points, but the rates are in. Now, will you name some important local point on the Santa Fe that consumes lumber?

Mr. Church: Woodward, Oklahoma.

Mr. Cowan: What is the line that runs out from there, building in this direction?

Mr. Church: This is a local Santa Fe point in Northwest Oklahoma.

Mr. Cowan: Name some in Texas.

Mr. Walter: You have got one there. What do you want to know about it?

Mr. Cowan: He says it is an important place, and has named it.

Mr. Church: I have been told it is about four or five thousand people.

7031 Mr. Andrews: How many cars of lumber a month does it consume?

Mr. Church: I have no figures. Mr. Coleman can tell you.

Mr. Coleman: Have you ever been there?

Mr. Church: I never have.

Mr. Cowan: I have tried too many law suits, and you have——

Mr. Church: There has been a good deal of increase in the population and immigration in that country. I am told that is the population.

Mr. Cowan: What other place is there on the Pan Handle lines of the Santa Fe in western Oklahoma?

Mr. Church: I don't know as to that country very well.

Mr. Walter: We will give you one, if you want it. Alva.

Mr. Cowan: You say that is only on the Santa Fe? You had better get your geography.

Mr. Walter: It is a junction point now; yes.

Mr. Cowan: Let us see if he can name some more.

Examiner Burchmore: We can refer to the tariffs for a list of the stations.

Mr. Cowan: But the witness has given an opinion which is undoubtedly based on want of knowledge——

Mr. Garwood: I think that is a gratuitous and uncalled-
7032 for and incorrect statement.

Mr. Cowan: I do not mean to reflect on the witness——

Mr. Garwood: I do not think you do, but it is just your general exuberance of spirit.

Mr. Cowan: I have not had any this morning.

Mr. Garwood: But I do not think counsel ought to fill the record with these unintended reflections on the witness. The witness is here and has shown his connections, and I think it is altogether improper for counsel to make such a statement.

Mr. Cowan: If it is improper, I withdraw my remark, but I do not want to withdraw the question.

Mr. Walter: Try Quinlan.

Mr. Cowan: Yes, let us see if he knows. Do you know how large a place it is?

Mr. Church: No, I do not.

Mr. Cowan: Go down into Texas on the Pan Handle lines——

Examiner Burchmore: Let me ask what your line of questions is going to be. Are you trying to get a list of towns——

Mr. Cowan: No, I am trying to find if the witness, who comes here and expresses an important opinion, has ever considered the real facts.

Mr. Garwood: It does not require proof to show there are
7033 thousands of local stations on a system as extensive as the Santa Fe, and for the benefit of counsel we can introduce a map of the Santa Fe, and all of its connections, which will show the points which are local and those which are not local.

Mr. Walter: And when the new census figures are announced, we will give him the population of all the towns.

Mr. Coleman: Why cannot counsel agree, in order to stop this to strike out the testimony of the witness, and let us get down to something substantial.

Mr. Walter: Not at all.

Mr. Coleman: Then we want to cross examine.

Examiner Burchmore: I think the cross examination has gone far enough.

Mr. Cowan: I think so too.

Mr. Coleman: I would like to ask if your 233 lumber producing roads, and 200 lumber producing roads do not include the tap lines?

Mr. Church: The tariff shows for itself.

Mr. Coleman: I know; we wanted that tariff to show for itself, but you have gone on to explain it. Tell me that.

Mr. Church: Some are short lines; yes, sir.

Mr. Coleman: How many?

7034 Mr. Church: That statement shows that twenty are taken as larger producing lines. The balance are not all short lines, because destination lines are shown, as well as originating line.

Mr. Coleman: If you do not know, say so, but——

Mr. Church: I have told you, I think, what the tariff shows.

Mr. Coleman: I want to know if you included all the tap lines, and if so, how many there are.

Mr. Church: I did not count the tap lines, as you call them, but the tariff speaks for itself, and shows trunk lines as well as short lines.

Mr. Coleman: Does the tariff distinguish them at all?

Mr. Church: No.

Mr. Coleman: I am asking you if you cannot distinguish them and tell me how many tap lines you included which get allowances.

Mr. Church: I do not know all the tap lines which get allowances. I have not access to their records.

Mr. Coleman: Well, in the question if it is your opinion there is a difference of say three and one-half cents in favor of a point open to one market and open to one producer and not to another;

7035 that is a discrimination against the one that cannot get in.

Mr. Church: Yes.

Mr. Coleman: That is our opinion too. That is all.

Mr. Walter: That seems to be settled.

(Witness excused.)

Mr. Coleman: This statement on Exhibit 1 should be stricken out: "The lumber tonnage produced by the lines permitted to carry through rates to Santa Fe points is a drop in the bucket, compared with the tonnage that would be made available to consumers in Santa Fe territory if all the lines participating in the tariff were permitted to carry through rates on a competition basis." Will you agree to strike that out as not surely reflected in the tariff from which the witness is said to have gained his knowledge?

Mr. Garwood: I think perhaps the expression "drop in the bucket" might come out.

Mr. Coleman: No, the whole paragraph.

Examiner Burchmore: That surely is not a description of anything in the tariff.

Mr. Walter: Let it go out.

7036 M. B. NELSON was called as a witness, and having been duly sworn, testified as follows:

Mr. Garwood: Where do you reside?

Mr. Nelson: Kansas City, Missouri.

Mr. Garwood: Have you any connection with the Long-Bell Lumber Company?

Mr. Nelson: Yes, sir, I am a director and general sales manager.

Mr. Garwood: How long have you held that position there?

Mr. Nelson: I have held the position of sales manager for some thirteen years, and a position as director for some seven years.

Mr. Garwood: Are you a stockholder in the Long-Bell Company?

Mr. Nelson: Yes, sir.

Mr. Garwood: Is that stockholding a substantial business interest?

Mr. Nelson: Yes, sir.

Mr. Garwood: In other words, it goes beyond any mere qualifying interest?

Mr. Nelson: Yes, sir.

Mr. Garwood: It is a substantial business interest?

7037 Mr. Nelson: Yes, sir.

Mr. Garwood: Do you own any stock in any way in either of the three railways in which other stockholders in the Long-Bell Company own stock interests?

Mr. Nelson: No, sir.

Mr. Garwood: None whatever?

Mr. Nelson: No, sir.

Mr. Garwood: I will ask you, Mr. Nelson, whether in making sales of lumber for the Long-Bell Company, your sales departments take into account in any way whatsoever any division of the rates that either of the roads in which other stockholders of the Long-Bell Lumber Company have any interest?

Mr. Nelson: None whatever.

Mr. Garwood: Is there any connection between the sales departments of your company and the railway departments in any sense?

Mr. Nelson: No more than any other line of railroad over which we ship.

Mr. Garwood: Do your salesmen know of the divisional arrangements which these roads that I have mentioned have with other railroads?

Mr. Nelson: Not with my knowledge.

7038 Mr. Garwood: And those arrangements are not taken into account in any manner whatsoever in the selling of lumber?

Mr. Nelson: No, sir.

Mr. Garwood: From your observation and experience in the selling of lumber, does that condition obtain generally with regard to other lumber interests, the stockholders in which are supposed to have stockholding interests in railroads?

Mr. Nelson: They do not so far as I have been able to learn.

Mr. Garwood: So far as you know that applies to all?

Mr. Nelson: Yes, sir.

Mr. Garwood: Have you any yards at local points in Kansas territory?

Mr. Nelson: Yes, sir.

Mr. Garwood: On the Santa Fe, I mean.

Mr. Nelson: Yes.

Mr. Garwood: Can you state what effect, if any, the cancellation of rates by the Santa Fe with its connections has on the lumber markets at local points in its territory, Santa Fe territory, in Kansas, for instance?

Mr. Nelson: It restricts the territory in which the yards located

at local points on the Santa Fe are able to purchase their
7039 lumber. The restriction with our yards in the State of Kansas is not quite so great as it is in the states of Oklahoma and New Mexico.

Mr. Garwood: I will ask you whether those rate arrangements, in addition to restricting the territory from which the local dealers can purchase, conversely does not also of course restrict the market in which the producing territories can sell?

Mr. Nelson: Yes, sir.

Mr. Garwood: I will ask you if it follows from both of those propositions that mills situated directly on the Santa Fe are given an advantage in all those local markets?

Mr. Nelson: It does give them an advantage.

Mr. Garwood: Does it tend to restrict the market of those situated on such local points to mills situated on the Santa Fe directly?

Mr. Nelson: It forces the dealers located at local points on the Santa Fe to buy largely of the mills that are located on the Santa Fe proper.

Mr. Garwood: You have mentioned Santa Fe territory in Kansas and Oklahoma. Does those same general conditions apply in New Mexico?

7040 Mr. Nelson: More so in New Mexico than either Kansas or Oklahoma.

Mr. Garwood: Can you give any illustrations?

and Oklahoma. Oo those same general conditions apply in New Mexico have, I believe the tariff will show, a five cent lower rate than from mills located on any other line of road.

Mr. Garwood: What effect does that have on first the dealer at such local point and also as to the producer not situated on the Santa Fe?

Mr. Nelson: Well, the lumber is consumed in almost all territory largely by farmers and settlers surrounding the stations and the dealer that is located at a local point on the Santa Fe is limited in his source of supply to the mills that can reach there on the Santa Fe rate. The dealer that is located on some other line of road has a much larger territory from which to buy his lumber. Consequently it gives the dealer located on some other line of railroad than the Santa Fe that advantage over the dealer located on the Santa Fe, and in making investments, our company has avoided, so far as possible, locating new yards on the Santa Fe for that reason, figuring that we would have an advantage by locating the yards on some other
7041 line, where we had a wider territory in which to purchase our lumber.

Examiner Burchmore: I shall have to ask what bearing this has on the issues in this case.

Mr. Garwood: I think it is quite apparent. It is in evidence here that a contract has been entered into by the principal intervenor with the Santa Fe road, in which the Santa Fe agreed to cancel out all joint rates. Now, we are showing that——

Examiner Burchmore: Do you think the record is full on that point?

Mr. Garwood: Yes; now, we are showing that there has been a continuous operation in consonance with the terms of that contract. I think we have gone far enough to illustrate it, and I was just closing when your Honor interposed the question.

Mr. Coleman: Mr. Kirby's testimony distinctly showed, and it is the only testimony in the case, that absolutely no action had ever been taken toward cancelling out the joint rates.

Mr. Walter: We are showing that it has been done.

Examiner Burchmore: I think we will not discuss the point any further. We can read the testimony in the case to see what
7042 it does show, and as to the rates, we can look to the tariffs to see what they are.

Mr. Garwood: Your yards do not always buy their lumber from the Long-Bell mills, do they?

Mr. Nelson: No, sir; they do not.

Mr. Garwood: In other words, they are conducted as any other independent yard, and buy where it is to their best advantage to buy their supplies?

Mr. Nelson: Yes, sir; the investment is treated on our books entirely separate, and treated as a separate corporation.

Mr. Garwood: You mentioned New Mexico. Have you a yard in New Mexico?

Mr. Nelson: We have one at Clovis, and perhaps we have others; I am not in charge of that department.

Mr. Garwood: Where do you buy your supplies for the Clovis, New Mexico, yard?

Mr. Nelson: We buy it wherever we think we can buy it to the best advantage.

Mr. Garwood: Do you purchase any there from mills situated on the Santa Fe?

Mr. Nelson: Yes, sir.

7043 Mr. Garwood: In large amounts?

Mr. Nelson: Whatever the requirements are.

Mr. Garwood: Whatever the requirements are?

Mr. Nelson: It might be considered large or small.

Mr. Garwood: What effect on your purchases at that mill does the cancellation of rates by the Santa Fe have?

Mr. Nelson: It forces us to pay a higher price for our lumber at that point on the rate of freight to Clovis than we would be forced to pay if that territory—if other shipping territory was opened up to us.

Mr. Garwood: That is all.

Cross-examination:

Mr. Cowan: Most of your supply at the Clovis yard you get from your own mills in Louisiana, do you not?

Mr. Nelson: No, sir.

Mr. Cowan: Where do you get most of it?

Mr. Nelson: I am not prepared—I have not any statement here which would show where we get the most of it. I do not handle the purchases personally. If it was thought necessary I could furnish

the Commission with a statement for the last five months showing where we have purchased it.

7044 Mr. Coleman: Do you handle the products of the De Ridder mill?

Mr. Nelson: I sell it, that is through the Sales Department of the Long-Bell Lumber Company.

Mr. Coleman: Let me ask you if you could not get into Clovis by way of the Santa Fe on the lower rates from De Ridder.

Mr. Nelson: We could by paying the L. & P. local rate of five cents.

Mr. Coleman: Is the L. & P. dominated by the Long-Bell interests?

Mr. Nelson: The L. & P. is owned by some of the stockholders that are stockholders in the Long-Bell Lumber Company.

Mr. Coleman: How far are they from the Santa Fe rails at De Ridder?

Mr. Nelson: I have no accurate measurements in my mind. Only a short distance.

Mr. Coleman: You have in Kansas, I believe, about forty yards at local Santa Fe points, have you not?

Mr. Nelson: No.

Mr. Coleman: How many?

Mr. Nelson: I could get you those figures.

7045 Mr. Coleman: You could give me a guess right now, could you not?

Mr. Nelson: Local Santa Fe points?

Mr. Coleman: Yes.

Mr. Nelson: I think we have only four or five at local points in Kansas.

Mr. Coleman: How many have you altogether?

Mr. Nelson: Retail yards?

Mr. Coleman: Yes.

Mr. Nelson: About 85, I think. I have not any list of them.

Mr. Cowan: You say that no consideration is given in selling lumber to the fact that the railway which I will call a tap line, in order to designate it, which is owned by the same individuals that own the lumber company or saw mill gets a division of the rate; that that does not bind its reflex in the selling price of the lumber.

Mr. Nelson: The division of the rate from the mill to destination has no bearing whatever upon the sale of our lumber.

Mr. Cowan: Nor on the price at which you sell it?

Mr. Nelson: Nor on the price at which we sell it It is immaterial with us what roads get the long or short haul, or the division

7046 of the through rate.

Mr. Cowan: And I understood you to apply that generally to other companies who sell lumber also.

Mr. Nelson: I do not know what they base theirs on. I only know what we base ours on. I understand, that is from hearsay——

Mr. Cowan: I am just seeing if I understood your evidence, in order that I might ask you a question. As I understood it, you testified that you make no difference in the price at which you sell

the lumber to the dealers on account of the fact that the Louisiana & Pacific Railroad is owned by some of the stockholders in your Long-Bell Lumber Company, and that that railroad gets a division of the rates. I think I have stated it correctly, have I not? That is what you said?

Mr. Nelson: I stated that it was immaterial.

Mr. Cowan: And that you made no difference in the price on account of that fact.

Mr. Nelson: No, we make no difference on account of the divisions we get, because we are not interested in it.

Mr. Cowan: That is what I understood you to say, and then I understood Mr. Garwood, or if my memory serves me, Mr. Garwood then asked you whether other lumber companies which have
7047 these short railroads serving them, make any difference in their selling price to the dealer on account of the fact that they do or do not get a division, and you answered that in this way, that you had never observed it if they did.

Mr. Nelson: I have no means of knowing. You are correct in that, that I have no means of knowing whether they did or not.

Mr. Cowan: I think you answered so far as you had observed, they did not.

Mr. Nelson: Yes, sir, so far as I observed.

Mr. Cowan: Then if it is immaterial as you have stated, and the practice is general to not make a difference, as you have stated it to be in the case of the Long-Bell Company and the Louisiana & Pacific division, what effect would it have, and what difference would it make if the Kirby Lumber Company should incorporate their railroad, and apportion out the stock of that incorporated railroad to the stockholders in the Kirby Lumber Company, or some of them, and upon that incorporation being perfected, should get a division of seven cents per hundred pounds from their mills to Galveston? Now, who would get the trade at Galveston, in your opinion?

Mr. Nelson: The chances are the man that gave the best
7048 service and had the lowest price for delivery at Galveston, would get the business.

Mr. Cowan: Would it be a disadvantage to your business if such a thing as I have stated should happen?

Mr. Nelson: Not if the Kirby Lumber Company had no interest in the railroad.

Mr. Cowan: I assumed in my question a case similar to the Long-Bell situation, that the stock in the incorporated road should be apportioned out to a portion of the stockholders in the Kirby Lumber Company, say to a majority interest. Now do you say that would not make any difference in your trade in Galveston if such a thing should happen?

Mr. Nelson: I do, so long as the same through rate applied from both mills.

Mr. Nelson: That is to say it would not affect the price of lumber nor enable the Kirby Lumber Company to undersell you, because of the fact that that seven cent division was given.

Mr. Nelson: Oh, I don't know what effect it would have on the price.

Mr. Cowan: Suppose that the through rate is charged from a Santa Fe station to New Mexico, and that Mr. Kirby, being an owner of 51 per cent of stock in the Kirby Lumber Company,
7049 should be given a rebate by the Santa Fe of all the rate to New Mexico, do you think that would make any difference in the price of the lumber delivered in New Mexico that he would sell compared to what you would sell, who did not get the rebate?

Mr. Nelson: That would depend entirely upon the fact whether Mr. Kirby took advantage of that and charged—took the rebate as a profit, or whether he took advantage of that and used his rebate to lower the price.

Mr. Cowan: Can you conceive of a case in which human nature has gone to the point that he would not take advantage of it?

Mr. Nelson: I do not know that my conception would be worth anything for the record.

Mr. Cowan: Now, Mr. Andrews suggests the question if it makes no difference to your company, the Long-Bell Lumber Company who gets the long haul or the short haul, or what division they get, why do you ship all your traffic practically over the Louisiana & Pacific Railroad?

Mr. Nelson: We start it over that road because of arrangements or contracts with the Louisiana Pacific, that is all.

Mr. Coleman: Referring to your De Ridder mill, you said that the only way you could get into our local Kansas points would be by paying this five or six cent local rate——

7050 Mr. Nelson: Five cent local rate.

Mr. Coleman: That is from your own mill up to our junction point, a very short distance.

Mr. Nelson: Yes.

Mr. Coleman: Now that could be performed as a switching charge, I suppose, at a very small expense?

Mr. Nelson: I am not a railroad man, I do not know what the switching charge—I cannot distinguish a switching charge from a charge of any other nature performed by the railroad company.

Mr. Coleman: You ship some stuff of course from your De Ridder mill. Over what road, in the main, does that move?

Mr. Nelson: I think it moves over the Louisiana & Pacific altogether.

Mr. Coleman: Now, then, what is the next connection with the Louisiana & Pacific?

Mr. Nelson: It depends on the destination.

Mr. Coleman: Will you name any road and any distance.

Mr. Nelson: The Frisco system, Southern Pacific, Iron Mountain, Kansas City Southern——

Mr. Coleman: Take the Frisco, how far is that from your
7051 mill?

Mr. Nelson: At De Ridder?

Mr. Coleman: Yes.

Mr. Nelson: I think 25 or 27 miles. I am not familiar with the exact distance.

Mr. Coleman: The Iron Mountain is how far?

Mr. Nelson: It is about forty-five miles.

Mr. Coleman: And you have to pay a rate on the Louisiana & Pacific on that business, do you not?

Mr. Nelson: If it is going to the junction point with the Iron Mountain, we pay the local rate between——

Mr. Coleman: What would that be?

Mr. Nelson: The local rate to Lake Charles where the delivery would be made, is five cents.

Mr. Coleman: If it was going on a joint through rate, what part of that would the Louisiana & Pacific get?

Mr. Nelson: I don't know.

Mr. Coleman: Do you mean to tell us that you as sales agent absolutely do not know the divisions you get with that railroad?

Mr. Nelson: I do.

Mr. Garwood: Mr. Nelson, if you have no personal objection, I would be obliged if you would state to the Commis-
7052 sioner what is the extent of your stock owning interest in the Long Bell Lumber Company.

Mr. Nelson: Would you want par value, or book value?

Mr. Garwood: Well, the par value.

Mr. Nelson: Inventory value?

Mr. Garwood: Yes.

Mr. Nelson: Or par value?

Mr. Garwood: Give your book value of it.

Mr. Nelson: About $270,000.

Mr. Andrews: I did not understand what value you were asking him about.

Mr. Garwood: I asked him the value, and he asked me whether it was par value or book value.

Mr. Andrews: But I did not know what the subject matter was.

Mr. Garwood: His stockholdings in the Long-Bell Company.

Mr. Andrews: His personal holdings?

Mr. Garwood: Yes. I will ask you if you own any interest in the stock of any railway in which other stockholders of the Long-Bell Company own stock.

Mr. Nelson: None whatever.

Mr. Garwood: None at all?

Mr. Nelson: No.

7053 Mr. Garwood: You therefore have no financial interest in any way in either of the railroads that have been testified to in this record?

Mr. Nelson: None whatever.

Mr. Garwood: Now you compete with the lumber interests such as the Pickering, the Central Coal & Coke Company, the Kirby Lumber Company, and others, do you?

Mr. Nelson: Yes.

Mr. Garwood: And your answer to the question as to whether the divisions in rates have any bearing on your sale is drawn from your

contract and competition with all of these varied interests in the market.

Mr. Nelson: I do not believe I caught that.

(Question read).

Mr. Nelson: I don't believe I understand.

Mr. Garwood: From your general observation of the trade, in other words, is what I am getting at. Your statements that so far as you have observed and know with others, independent of your own individual business, the divisions that are allowed these so called tap lines, have no effect on the sales of lumber; your opinion on that is drawn from your observation of the general trade as you
7054 have been thrown in contact with it?

Mr. Nelson: Yes, sir.

Mr. Garwood: Now do you have any transportation over any line of railroad?

Mr. Nelson: No.

Mr. Garwood: Free transportation, I mean.

Mr. Nelson: No, I have none whatever, that is all.

Mr. Cowan: Was the list of stockholders in the lumber company and the railroad company filed as requested at New Orleans?

Mr. Farrar: Yes, sir, all of them.

Mr. Cowan: In what particular part of the business is your stock ownership?

Mr. Nelson: Long-Bell Lumber Company. I have interests in other companies in which the Long-Bell Company are interested, and some in which they are not.

Mr. Cowan: When you said $270,000, that is the aggregate?

Mr. Nelson: On the investment in the Long-Bell Lumber Company, and not what is called the allied companies.

Mr. Cowan: Does the Long-Bell Lumber Company, as itself, as a corporation, operate the retail business?

Mr. Nelson: Yes, sir.

7055 Mr. Cowan: Or is it done under a separate corporation?

Mr. Nelson: No, it is done under the name of the Long-Bell Lumber Company proper, the only distinction being that a separate amount is set out for them to operate under.

Mr. Cowan: I guess the records taken at New Orleans will show the relations of those various companies. I do not want to go into that.

Mr. Andrews: Has a list of stockholders been filed?

Mr. Garwood: They have all been filed. I think it is very fully in the record.

Mr. Cowan: Does the Long-Bell Lumber Company handle the entire output of all these mills of subsidiary companies?

Mr. Nelson: Yes, sir, it does.

Mr. Cowan: Have you a statement showing the amount of lumber that you do ship to Santa Fe local stations?

Mr. Nelson: I haven't it here, but it could be furnished, if it is desired.

Mr. Cowan: I would like you to furnish that, I think, in view of the statement.

Mr. Andrews: Furnish a statement showing the amount of lumber shipped to Santa Fe local points, and the places from which you get it.

7056 Mr. Nelson: Well, you mean you want a statement of our retail yards for how long a period, that they bought their lumber?

Mr. Andrews: No, take a limited period, say the latest three months you can figure.

Mr. Nelson: Take some three months?

Mr. Andrews: September, October and November of last year; that would be the most recent business.

Mr. Nelson: You want where we purchased the stock?

Mr. Andrews: The point from which the yard was supplied, and the quantity used.

Mr. Nelson: I am not sure we can furnish a statement showing from what points the lumber was shipped, because some of this lumber is purchased from wholesalers who have bought the lumber from somebody else, and our records would not show the shipping points.

Mr. Andrews: The bill of sale would show the point of origin?

Mr. Nelson: I do not think we have in all cases the bills of sale on all shipments. The expense bill is returned to the shipper.

Examiner Burchmore: I wonder if you have in mind the

7057 same thought Judge Andrews has? As I understood Judge Andrews, he wanted to know how much the Long-Bell mill shipped into the local Long-Bell yards on the Santa Fe.

Mr. Andrews: No, I wanted to know the yard consumption, so to speak, determining that by the amount shipped into these local yards on the Santa Fe, and then I wanted the comparison as to where they were supplied from on the statement the witness has made that they did not supply all that lumber from their own mills. And I wanted the details for whatever they might be worth, and whatever they might show.

Mr. Cowan: Can the statement be furnished?

Mr. Garwood: Can you furnish that statement?

Mr. Nelson: I can furnish the statement as nearly correct as we can obtain from our records. As I state, in some cases we may not have the bills of lading to show just where the shipments originated.

Mr. Walter: The Santa Fe could give that information better perhaps.

Mr. Nelson: I think the Santa Fe could get from their own records a more correct statement.

Mr. Coleman: Why do you think that?

Mr. Nelson: You have a copy of the expense bills on record

7058 at your stations.

Mr. J. J. Coleman: You would first have to tell us where those yards are located.

Mr. Nelson: I could give you a list of our yards.

Mr. Andrews: Perhaps you can furnish the information without any trouble, if the inquiry be limited to lumber that originated from Santa Fe points. You would have that information, would you not?

Mr. Nelson: No, I do not know as we would. I do not think so any more than if it originated anywhere else. I am only assuming——

Mr. Andrews: Do the best you can.

Mr. Nelson: Yes.

Mr. Cowan: You do ship a substantial amount of lumber to Santa Fe local points?

Mr. Nelson: Yes, sir, we do. Our mill at Lufkin, Texas, is located on the Cotton Belt, and whatever material we can furnish to the local points in Kansas on the Santa Fe we furnish from that mill, because the rate from Lufkin to Kansas points is the same on the Cotton Belt that it is from local Santa Fe points, by order of the Commission.

Mr. Davis: How far is your mill at Lufkin—it is at Furber, within the corporate limits of Lufkin?

7059 Mr. Nelson: I do not know that it is within the corporate limits, but it is right in the town.

Mr. Davis: How far is the mill from the connection of the Houston, East & West Texas at Lufkin?

Mr. Nelson: Perhaps half a mile.

Mr. Davis: What rate is assessed on the Cotton Belt the business you desire to ship from Furber to Lufkin, when going to a point on the Houston, East & West Texas, where no through rate is applied?

Mr. Nelson: The Texas Commission rate of five cents, I believe.

Mr. Cowan: Are there other retail yards owned under other names than the Long-Bell Lumber Company that are under the general control of ownership of the Long-Bell Company?

Mr. Nelson: Yes, sir.

Mr. Cowan: And what companies are those?

Mr. Nelson: The Alfalfa Lumber Company.

Mr. Cowan: How many yards?

Mr. Nelson: I think there are 12 or 13.

Mr. Cowan: And what other company?

Mr. Nelson: So far as I know, the Long-Bell Lumber Company does not own or operate any yards under any other name. The stockholders of the Long-Bell Lumber Company own prac-

7060 tically all of the stock in the Minnetonka Lumber Company, but the Minnetonka Lumber Company has no connection whatever with the Long-Bell Lumber Company.

Mr. Cowan: Taking the yards that belong either to the Long-Bell Lumber Company, or some of the individuals associated in that company with one another in business, what is the total number of yards?

Mr. Nelson: I have not the correct number. I do not keep it in mind. If you want a statement to that effect, I could furnish it to you or to the Commission.

Mr. Cowan: Well, furnish it to the Commission. Mr. Farwell suggested a question, that he was under the impression there was somewhere around 200 yards belonging to various persons and corporations belonging to the Long-Bell Lumber Company.

Mr. Nelson: No, he is mistaken.

Mr. Cowan: Or in which Mr. Long had a substantial interest.

Mr. Nelson: Nothing like that number.

Mr. Cowan: This number which you gave a while ago in answer to Mr. Colenian applied only to the Long-Bell Lumber Company's yards proper.

Mr. Nelson: Yes, sir.

7061 Mr. Cowan: You would not want to make an estimate now until you furnished the list?

Mr. Nelson: No.

Mr. Farrar: We would say 86.

Mr. Andrews: The answer was 85 a while ago.

Mr. Farrar: I was under the impression it was 85, but a gentleman here says it is 86.

Mr. Nelson: I do not attempt to carry the number. They are buying and selling yards all the time, and that department is under Mr. Forsman.

Mr. Coleman: Could some one give the number of local yards, to save the trouble of making the statement?

Mr. Cowan: Just let the list be filed showing the yards and where each one is located.

Mr. Nelson: There are nine yards of the Alfalfa Lumber Company at the present time, and 19 owned by the Minnetonka Lumber Company.

Examiner Burchmore: Of what description, do you mean that are local to the Santa Fe?

Mr. Nelson: No, of all yards; I do not know the number. There are 68 Long-Bell proper.

Mr. Coleman: I believe Mr. Davis testified at New Orleans there was something like 30 at local points. I just wanted to know

7062 if you had sold any.

Mr. Nelson: I think the best way to get it is to file a statement showing where the yards are located.

(Witness excused.)

Mr. Garwood: Your Honor, we have testimony further to offer from the Sales Departments of lumber companies——

Mr. Andrews: Will you please name them?

Mr. Garwood: The Central Coal & Coke Company, the Pickering Lumber Company, the Chicago Coal & Lumber Company, the Missouri Lumber & Land Exchange Company, the Frost-Johnson Lumber Company, stockholders in which are also interested as stockholders in the various short lines as heretofore indicated in the record, whose testimony will be in general terms the same as that of Mr. Nelson, to the effect that the fact of divisions allowed short lines owned by stockholding interests in these several lumber companies have no effect in the sales of lumber made by their Sales Departments, and are not taken into account in any way whatsoever in those sales, and in their opinions have no effect upon the price; it being the general purport of such testimony substantially

as stated by Mr. Nelson. Now I understand that your Honor
7063 thinks that it is not desirable to go further with that line of testimony at this time, and it will be assumed that these witnesses would have testified along that line.

Mr. Andrews: I think, Judge, to shorten the time of this meeting, that we will be perfectly willing to agree, so far as the intervenors are concerned, that you have tendered the traffic men by name of each of the institutions you mentioned.

Mr. Garwood: These are the salesmen.

Mr. Andrews: The salesmen, and that each has testified concerning his business as Mr. Nelson has testified concerning the Long-Bell Lumber Company's business, with such incidental modifications as might be necessary as to the change in the individual cases. We do not care to exclude it, and we are willing to admit that that has been done, if agreeable to the Commission.

Mr. Garwood: With this addition, that the opinion of each witness that in his judgment, and from his observation of his own business and of others, that the allowances made by way of divisions to the tap lines, have no effect upon the sale of the lumber, even as a price or otherwise.

Mr. Andrews: Now, Mr. Nelson said that, and I am agreeing that these men testified to their business exactly as Mr. Nelson did, so it includes the whole thing, as he testified, only with such
7064 incidental changes as they might have.

Mr. Garwood: That is satisfactory.

Examiner Burchmore: I think we have already gone far enough on the point, and I believe Judge Andrews' suggestion meets the situation satisfactorily.

Mr. Garwood: I understand then, subject to exception as to its materiality, it will be considered that the witnesses so testified.

Mr. Cowan: Yes.

Mr. Garwood: That is all we have then.

Examiner Burchmore: Are there any other witnesses you desire to offer?

Mr. Garwood: No; that relieves us of a great deal of work.

Mr. Cowan: There is one thing, I think, wants to be given very serious consideration by all of the attorneys here, and put in the record so that you can lay the matter before the Commission when you return to Washington, and that is pertaining to the briefing and argument of this case. I do not know what the others may think about it, but we think on our side that it will be physically and practically impossible to brief this case in time for an argu-
7065 ment on March 15th. We are the people who are anxious to have this case decided, but there is hardly any use to attempt to do what is practically impossible. We think there ought to be some extension of time considered by the Commission. We are not ourselves now trying to point out what it ought to be, and *that* extension as short as may be in order to give opportunity to get this record in shape for briefing, and to brief it. You must understand that there are a number of statements that we have called for to be filed, and we may assume that it will be some little time

before some of them are filed, and some little time before the transcript of the testimony is made by the stenographer and furnished to the parties, and I just wanted to make that suggestion to go into the record.

Now, as to the matter of the Commission requiring exchange of briefs, before the date of argument, it is our belief that the railroad companies, the trunk lines, if they propose to file any brief of argument, and to argue this case before the Commission, ought to be required to present their briefs first. While they are defendants, they are the parties being investigated under this new power of the Commission, and they stand in the attitude of a judge nisi
7066 with an order to show cause, and we think the Commission ought to require the trunk line to present such briefs as they propose to file, if any, in the case, so that we may have them in order to have the right to answer them. Now we think that inasmuch as the tap lines, at least a number of them, filed their petitions asking the Commission to exercise this power under the law of suspending tariffs wherein these divisions were cancelled, stand in the next attitude of plaintiffs, and that the burden of proof is naturally upon the other parties, than us in the case, we think their briefs ought to be submitted to us, if there are going to be briefs submitted and exchanged for the argument in time that each party might reply. I do not mean by that that we should not proceed to the making of our briefs with diligence when the opportunity arises, before the other parties shall have presented their briefs as to that matter, but that we have the right to reply by brief before the date of argument to the briefs of the other side. I am not arguing the matter, and do not intend to, but am simply stating our position about that in order that the record may show.

Examiner Burchmore: I was intending to announce be-
7067 fore the adjournment that I think the Commission has formally notified the parties of the assignment of March 15th and 16th as the dates for the oral argument in this case.

Mr. Walter: Yes, sir.

Examiner Burchmore: I think notice to that effect was incorporated in the notice of this hearing.

Mr. Walter: Yes, sir, it was.

Examiner Burchmore: I think it was further announced by the Commission that the briefs of the parties would be due on March first.

Mr. Cowan: Yes, sir, that was the notice.

Examiner Burchmore: It being contemplated that each individual line might file a printed brief of not more than ten pages. I do not recollect whether the main briefs that were to be received from counsel representing all the tap lines, and in which the general questions were to be discussed were to be due on the same date or not, or whether the Commission fixed March first as the date for the intervenors' briefs.

Mr. Walter: Each one of the individual lines.

Mr. Cowan: I thought it was for all briefs.

Mr. Walter: No.

Mr. Coleman: I have so understood it, and that the tap
7068 lines were limited to a certain number of pages, and not the individual lines.

Examiner Burchmore: I mean the short lines. I was under the impression that counsel for the trunk lines had not intended to brief or argue the case, but counsel are present. I do not know——

Mr. Garwood: I do not assume for our lines that they would either file a brief or make any argument in the case.

Mr. Coleman: Of course it is our intention to file a brief and make an argument. I know there has never been any doubt about that.

Examiner Burchmore: Mr. Jeffery, what have you to say?

Mr. Jeffery: All I can say at this time is that I have not made up my mind yet.

Mr. Walter: Counsel indicated in his remarks that the burden rested somewhat on the short lines, and I am not saying anything further than to say that they did not file any tariffs which are complained of in this hearing.

Mr. Cowan: I put it on the ground that they had filed petitions asking the Commission to invoke the jurisdiction of suspending the tariffs. I said some of them. It was on that ground in part that I made my statement.

7069 Mr. Walter: I do not consider that we have any burden at all.

Mr. Coleman: Could not the matter be taken up and have the Commission determine the order in which briefs shall be filed?

Mr. Cowan: That was the object of my statement.

Examiner Burchmore: I understand that was the statement Judge Cowan made.

Mr. Coleman: In what class did you put us, as to filing a brief?

Mr. Cowan: I put you in the trunk line class.

Mr. Coleman: And require us to file the first brief?

Mr. Cowan: If you have any tariff cancelled out, you fall in that category, and if not, you do not.

Examiner Burchmore: May I make this suggestion. Would it not be convenient for counsel representing each of the several interests, to write the Commission at an early date within the next day or two making their suggestions as to their own briefs, and the briefs of other parties? The time is a little short perhaps, and yet it is desired to get this case in as soon as possible. The order suspending this tariff expires April 15th, as I recall it, and the Commission will have to take some action on that part of the matter before that time and if you can all write to the Commission within the next
7070 day or two, the matter will receive immediate action.

Mr. Garwood: I wish to concur in that portion of Judge Garwood's statement that it is going to be almost a physical impossibility to brief these cases within the time limited. I recognize the desirability and importance of as speedy a disposition of the matter as is possible, but——

Examiner Burchmore: Perhaps counsel can get together and make some concrete suggestion to the Commission.

Mr. Garwood: I think perhaps we can, but I know that Judge Cowan has to some extent limited by the same causes which limit me. I have to go from here to another hearing which will take us two or three days, I think. I do not wish, however, to be considered as concurring in the proposition that an intervenor who comes into a litigation with an entirely new and different cause of action in which he appears as in the attitude of a plaintiff, or as a proponent of a new cause of action can say that after he gets in with his new cause, that the burden of proof is on every one else in the record except himself. To the contrary, my understanding of the rule is that the burden of proof is very distinctly and directly upon him. I merely mention that so that my acquiescence in his first
7071 proposition may not be construed to be an acquiescence in the second as well.

Mr. Coleman: I would like to say that we have no objection to filing the first brief, if that is any advantage to anyone. We are as ready now as at any time, and if any matter arises we will claim the privilege of answering it in oral argument or by reply briefs.

Examiner Burchmore: Mr. Wood:

Mr. Wood: I would merely like to suggest that it occurs to me that whatever rule is fixed for the filing of these briefs that the time for the filing of the briefs by the intervenors should be sufficiently in advance of the oral argument at Washington, that the trunk lines may be advised of the position taken by the intervenors in their briefs. So far as I can see, there is no reason why the trunk lines should file any briefs in this case or participate in the argument, at least not at the present time. But I think that in view of certain suggestions that have been made by counsel for the intervenors from time to time and various vague and indefinite allegations in the petition of the intervenors, that we are entitled to have those briefs served upon us sufficiently in advance of the argument so
7072 that we may be advised of the intervenors' position.

Mr. Coleman: I would also like to suggest that since the time is necessarily short, that there be a kind of a gentleman's agreement if anyone should be three or four days late on his brief, no one will enforce the rule.

Examiner Burchmore: I do not know if the Commission would recognize a gentleman's agreement in regard to briefs. We are rather strict in that requirement.

Mr. Coleman: We have an immense record and some statements are to be made——

Examiner Burchmore: I think I will renew my suggestion that counsel get together, or each counsel advise the Commission in a letter as to their position.

Mr. Andrews: I rise to speak to that point. It will be impossible to have a consultation with counsel except those of us who are here. It is apparent it is impossible for us to agree what we are going to do about it, because each one seems to expect the other to do something in advance, and it seems to me the only solution of the proposition is for the Commission to set the order upon consideration of the question, and the time in consideration of the state of the

record. I apprehend, without knowing, that this record
7073 would not be accessible to counsel before the 15th of this month, and I also apprehend that counsel will not want to begin briefing until they can have the entire record, and probably those that want to make full briefs upon the subject will have to go to Washington to get the record in the Star Grain case, and to see the exhibits.

Mr. Garwood: That is the only way to do it.

Mr. Andrews: That will of course materially interfere with our making any agreement among ourselves as to what those movements should be, and I think therefore that will expedite the cause by agreeing here that we disagree about the proposition, and ask the Commission to take into consideration the entire situation and make such ruling about it as appears to be right.

Examiner Burchmore: Very well, the matter of dates for the briefs and the oral argument will be brought to the attention of the Commission. If there is nothing further, the case will stand adjourned without date.

Whereupon, at 12 o'clock M., the hearing in the above-entitled matter was adjourned without date.

Vol. V.

TESTIMONY AND EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 329.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 330.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 331.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 332.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 333.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 334.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 335.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 336.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1913.

(23,980—23,986)

[Filed in the United States Circuit Court May 6, 1918, and printed under direction of the Clerk.]

IN THE

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA ET AL., RESPONDENTS; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

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Louisiana & Pacific Railway Company's Exhibit No. 4	3

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

	Original.	Print
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Mansfield Railway & Transportation Company's Exhibit No. 2		28
Mansfield Railway & Transportation Company's tariff sheets		33
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a WASHINGTON, D. C., *May* 8, 1913.

To G. F. Snyder, Clerk United States Commerce Court, Washington, D. C.

DEAR SIR: Relating to exhibits introduced before the Commission in the Tap Line Cases, Nos. 90, 91, 92, and 93, you are requested to print only such exhibits as Dr. Needham and I designated to be printed during our conference in your office on May 8, 1913.

Yours truly, H. M. GARWOOD, *Att'y.*

1 Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers herewith attached are true copies of all the exhibits, except maps which are not attached hereto or made a part hereof, filed in the record in the proceeding entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, by the Louisiana and Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, Mansfield Railway and Transportation Company, and intervenors, Alexander Gilmer Lumber Company, Industrial Lumber Company, Kirby Lumber Company, Lutcher-Moore Lumber Company and Yellow Pine Manufacturers Association, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 30th day of April, 1913.

[Seal Interstate Commerce Commission, 1887.]

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

2 EXHIBIT No. 3.

Lumber Originating on Louisiana & Pacific Railway Company and Delivered to Connecting Lines for Six Months Ending October 31st, 1910.

	No. of cars.	Tons.	Revenue.	Aver. load. Tons.
G. C. & S. F. Ry. at De Ridder, La.	7	144	143.80	20.6
K. C. S. Ry. at De Ridder, La.	297	8,119	4,585.27	27.3
K. C. S. Ry. at Bonami, La.	140	3,587	2,424.97	25.6
K. C. S. Ry. at Lake Charles, La.	20	482	320.49	24.1
N. O., T. & M. R. R. at Fulton, La.	2,600	61,095	65,527.76	23.5
St. L., I. M. & S. at Lake Charles, La.	347	8,003	5,809.35	23.1
So. Pac. Ry. at Lake Charles, La.	2,271	61,410	39,932.88	27.0
Total	5,682	142,840	118,744.52	25.1

Forest Products Handled Locally on the Louisiana & Pacific Railway Company for Six Months Ending October 31st, 1910, for Other Than Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

	No. of cars.	Tons.	Revenue.	Aver. load. Tons.
Pine Knots.....	68	1,372	476.66	20.2
Lumber	8	137	136.95	17.1

Handled for Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

Lumber	80	2,259	714.97	28.2

Louisiana & Pacific.
Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 3. Witness, McLean. Complainants, ——. Date, 12, 13, '10. Defendants, ——. Steno., Philips.
See p. 1566.

3 All Parties.
Other than Lumber.

Statement of Carloads & Less Than Carloads Originating on the Louisiana & Pacific Ry. Co. for Six Months Ending October 31st, 1910, Delivered to Various Connecting Lines.

	Revenue.	Total tons.	Mdse.	H.H.goods & furnt.	Naval stores.	Miscl.	Fruits. & vegts.
G. C. & S. F. Ry.	10.94	2	1	1	..	..	..
K. C. S. Ry....	674.00	535	6	3	455	22	49
N.O.T.&M.R.R.	306.84	134	12	3	50	69	..
So. Pac. Ry....	94.68	66	6	2	26	32	..
St. L., I. M. & S. Ry.	16.10	3	2	1	..	..	..
Total...	1102.56	740	27	10	531	123	49
No. of Car loads	..	..	..	..	..25	7	4

(Here follows table, marked p. 4.)

Statement of Carloads and Less Than Carloads Received by the Louisiana & Pacific Railway Company from Connecting Lines for the Six Months Ending October 31st, 1910.

Handled for Industries Other Than Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

	Revenue.	Total tons.	Mdse.	H. H. goods & furnt.	Grain.	Hay.	Other mill products.	Sugar.	Packing-house products.	Oil.	Sand.	Other mfrs.	Other products, agriculture.	Flour.	Cement, brick & lime.	Other castings & machinery.
G. C. & S. F. Ry....	27.95	6	3	3												
K. C. S. Ry.....	129.00	110	9	1	62	23	15									
N. O., T. & M. R. R..	418.17	254	88	2	..	10	..	113	41							
So. Pac. R.....	183.72	106	7	..	..	..	..	..	..	99						
St. L., I. M. & S. Ry.	374.91	147	18	1	112	..	17									
Total	1,133.75	623	125	7	174	33	32	113	41	99						
No of carloads.....	....	..	..	..	8	3	2	6	3	7						

Handled for Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

G. C. & S. F. Ry....	13.99	4	4													
K. C. S. Ry.....	618.28	360	41	..	133	50	53	..	..	..	40	28	15	..	..	..
N. O., T. & M. R. R..	202.29	94	34	..	..	..	..	..	..	..	..	..	..	45	15	..
S. Pac. Ry.....	646.29	304	157	..	..	..	..	..	..	38	..	12	..	..	..	97
St. L., I. M. & S. Ry.	598.42	235	94	..	39	..	16	..	..	..	..	18	..	..	68	..
Total.....	2,079.27	997	330	..	172	50	69	..	..	38	40	58	15	45	83	97
					9	4	4	..	..	3	1	3	1	3	4	4

Local Freight Handled for Six Months Ending October 31st, 1910.

For Other Than Hudson River, King-Ryder, Longville, and Calcasieu Lumber Cos.

	Revenue.	Total tons.	Mdse.	H. H. goods & furnt.	Fruit & vegts.	Cement, brick & lime.	Other mfrs.	Wool.	Other cast'gs & macy.	Miscl.
	1,123.80	341	201	16	18	60	30	16	..	..
No. of carloads.....	.....	...	...	..	1	3	2	2	..	..

Handled for Above-named Lumber Companies.

	1,928.89	973	337	..	..	73	463	..	88	6
No. of carloads.....	.....	...	...	..	..	3	30	..	2	1

5 Louisiana & Pacific.

Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 4. Witness, Davis. Complainants, ——. Date 12, 13, '10. Defendants, ——. Steno., Philips.

See p. 1617.

Ex. A.

The annual reports of the Railroads to the Railroad Commission of Louisiana, for the year ending June 30th, 1910, show the following to be the percentages of the tonnage of lumber, logs and staves of all freight carried, including intrastate and interstate business.

Name of railroad.		Per cent of lumber, logs and staves.
Arkansas, Louisiana & Gulf Ry. Co		65.38%
Arkansas Southeastern Railroad Co		90.23%
Bernice & Northwestern Ry. Co		98.50%
Brimstone Ry. & Canal Co		8.23%
Brimstone	60.44%	
Petroleum and oils	27.36%	
Chicago, Rock Island & Pac. Ry. Co		68.41%
Dorcheat Valley Ry. Co—		
Lumber		19.98%
Logs		76.07%
Staves		3.46%
Gulf, Colo. & Santa Fe Ry. Co		92.25%
(Only two other commodities that exceed one (1%) per cent.)		
Gulf & Sabine River R. R. Co		97.39%
Houston & Shreveport R. R. Co. (Greatest tonnage of any single commodity)		36.91%
Illinois Central R. R. Co. (Greatest tonnage of any single commodity)		25.33
Kansas City Southern Ry. Co. (Petroleum and other oils 33.17%)		39.14%
6 Kentwood & Eastern Ry. Co		93.19%
Kentwood, Greenburg & Swn. Ry. Co		61.59%
Lake Charles Ry. & Nav. Co.		
Leesville East & West Ry. Co		100.00%
Loring & Western Ry. Co		100.00%
Louisiana & Arkansas Lumber Co.—		
Lumber		36.71%
Other forest products		51.51%
		88.22%
Louisiana & Nw. R. R. Co		70.90%
Louisiana Central R. R. Co		99.28%
Louisiana Railway Co		99.28%

Louisiana Western Railway Co. (Greatest tonnage of any singe commodity hauled)	27.58%
Mansfield Ry. & Transptn. Co	67.04%
Missouri, Kansas & Tex. Ry. Co. of Tex	45.99%
Monroe & Swn. Ry. Co.—	
Lumber	16.74%
Logs	82.70%
Morgans La. & Texas R. R. & S. S. Co. (Greatest tonnage of any single commodity hauled except one other)	24.44%
New Orleans & Northeastern R. R. Co	36.41%
New Orleans, Great Northern R. R. Co	77.53%
New Orleans, Natalbany & Natchez R. R. Co	98.02%
St. Louis, Iron Mountain & Southern Ry. Co.—	
Lumber	41.45%
Other forest products	11.26%
	52.71

Includes the following:
St. L. I. M. & S. Ry.
St. L. W. & G. Ry.
N. O. & N. W. R. R.
N. & W. R. R.
F. & S. Ry.
M. & L. R. Ry.

	North La. & Gulf R. R. Co.—	
	Lumber	93.70%
	Ties	3.46%
7	Ouachita & Northwestern Ry. Co	95.89%
	Opelousas, Gulf & N. E. R. R. Co	22.71%
	Red River & Gulf R. R. Co	96.52%
	Sabine & Northern R. R. Co	98.92%
	St. Louis Swn. Ry. Co.—	
	Lumber	42.27%
	Other forest products	11.90
	Texas & Pacific Ry. Co	24.17%
	Tremont & Gulf Ry. Co	87.28%
	Vicksport, Shreveport & Pac. Ry. Co	45.02%
	Victoria, Fisher & Western R. R. Co	99.89%
	Yazoo & Mississippi Valley R. R. Co	35.41%
	Zachary & Northeastern R. R. Co	92.29
	Zwolle & Eastern R. R. Co	99.40%
	Louisiana & Pacific Railway Co	96.49
	Sibley, Lake Bisteneau & Sou. Ry. Co	84.43%
	Woodworth & La. Cent. R. R. Co	93.00%
	Tioga & Southeastern R. R. Co. Over	90.00%

On all the railroads shown above, the tonnage of lumber, logs and staves hauled, exceeds the tonnage of any other single commodity, considering the three commodities named as one.

On 31 of the railroads named, the tonnage hauled of lumber, logs and staves, is over 50 per cent. of the entire tonnage hauled.

On all of the railroads named, the tonnage of lumber exceeds 25% of all tonnage hauled except on five of them.

8 I, W. M. Barron, Secretary of the Railroad Commission of Louisiana, do hereby certify that the above statement was made by me, from the original records on file in the office of the Railroad Commission of La. at Baton Rouge, La., & the same is correct.

W. M. BARRON,
Secretary R. R. Com. of La.

New Orleans, La., Dec. 12th, 1910.

Statement of Tonnage of Lumber and Forest Products Originating on the Louisiana & Pacific Ry. for the Fiscal Years Ending June 30th, 1908, June 30th, 1909, and June 30th, 1910, Showing by Whom Shipped, Tonnage Delivered to Each Connecting Line and Tonnage Having Final Destination on the Louisiana & Pacific Railway.

July 1st, 1907, to June 30th, 1908.

Name of shipper.	Delivered to					Dest'n on L. & P. Ry.	Total.
	G. C. & S. F. Ry.	K. C. S. Ry.	N. O., T. & M.	St. L., I. M. & S.	L. A. West.		
Hudson River Lbr. Co.....	14,570	19,686	10,328	....	....	1,412	45,996
King Ryder Lbr. Co.....	19,246	28,646	12,216	....	....	4,865	64,973
Calcasieu L. L. Lbr. Co.....	....	2,210	....	2,941	20,364	....	25,515
Deer Creek Lbr. Co.....	....	201	....	....	....	668	869
W. B. Strange.....	....	55	....	....	....	....	55
W. B. Wilson.....	....	....	....	....	....	49	49
*Total.....	33,816	50,798	22,544	2,941	20,364	6,994	137,457

July 1st, 1908, to June 30th, 1909.

Hudson River Lbr. Co.....	3,732	5,983	24,970	1,075	9,426	729	45,915
King Ryder Lbr. Co.....	5,145	12,371	38,383	1,030	13,732	1,352	72,013
Longville Lbr. Co.....	27	2,399	16,219	1,160	12,104	....	31,909
Calcasieu L. L. Lbr. Co.....	....	1,598	10,253	3,518	34,802	25	50,196
The Kern Company.....	....	119	....	....	....	....	119
S. P. Martin.....	....	....	....	....	57	....	57
C. S. Lewis.....	....	....	....	....	....	63	63
P. Valeton.....	....	....	386	....	....	....	386

THIS PAGE

J. L. Windle	....	....	....	....	59	....	59
*Total	8,904	22,470	90,211	6,783	70,180	2,169	200,717
July 1st, 1909, to June 30th, 1910.							
Hudson River Lbr. Co	90	5,014	21,537	2,422	17,738	124	46,925
King Ryder Lbr. Co	127	8,845	31,189	3,127	23,843	15	67,146
Longville Lbr. Co	23	4,780	33,691	4,273	29,735	200	72,702
Calcasieu L. L. Lbr. Co	19	2,399	16,775	3,537	32,811	133	55,674
J. O. Stout	....	....	31	....	....	....	31
Green Bros	....	....	....	....	....	28	28
J. Roberts	....	....	....	....	....	16	16
W. E. Brown	....	....	....	....	....	100	100
Levi Rollins	....	....	....	....	....	360	360
T. McKimon	....	....	....	....	....	140	140
*Total	259	21,038	103,223	13,359	104,127	1,116	243,122

10 *List of Stockholders of the Louisiana and Pacific Railway Company.*

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Bannister, F. J	2,700.00	2,700.00
Bannister, Edith M	300.00	300.00
Long, R. A	23,700.00	23,700.00
Long, Mrs. R. A	300.00	300.00
Sweet, Jennie L	300.00	300.00
Sweet, C. B	2,700.00	2,700.00
	$30,000.00	$30,000.00

Kansas City, Mo.

List of Bondholders of Record January 1st, 1911.

Name.	Address.	Amount.
Mary King	Excelsior Springs, Mo	$1,000.00
Calcasieu Trust & Savings Co.	Lake Charles, La	39,300.00
H. E. Sweet	De Ridder, La	5,000.00
C. A. Paxson	De Ridder, La	5,000.00
C. E. Moore	De Ridder, La	2,000.00
L. C. Congdon	De Ridder, La	3,500.00
F. A. Clapp	De Ridder, La	3,500.00
Geo. Kingery	Lake Charles, La	6,000.00
W. F. Ryder	Bonami, La	50,000.00
C. E. Ryder	Bonami, La	1,000.00
P. H. Lane	Bonami, La	400.00
A. L. Sweet	Kansas City, Mo	8,400.00
Rob't Stack	Woodworth, La	5,500.00
First National Bank	Kansas City, Mo	25,000.00
National Bank of Commerce	Kansas City, Mo	19,300.00
Commerce Trust Company	Kansas City, Mo	15,000.00
Southwest National Bank	Kansas City, Mo	17,500.00
Lumberman's National Bank	Houston, Texas	25,000.00
Cora Smith	Kansas City, Mo	1,000.00
Gate City National Bank	Kansas City, Mo	5,000.00
R. W. Swank	Lufkin, Texas	1,500.00
S. M. Morris	Lufkin, Texas	2,000.00
Charles Calise	Lufkin, Texas	200.00

Susan S. Morris	Rogers, Ark	1,000.00
Calcasieu Long Leaf Lumber Co	Lake Charles, La	96,300.00
King-Ryder Lumber Company	Bonami, La	108,800.00
Hudson River Lumber Company	De Ridder, La	95,000.00
Longville Lumber Company	Longville, La	50,500.00
		$593,700.00

PAGE BOUND

12 591. United States District Court for the Western District of Louisiana. United States of America vs. Louisiana & Pacific Railway Company. Judgment. Filed Feb. 20, 1911. Leroy B. Gulotta, Clerk, U. S. District Court. West. District of Louisiana.

13 District Court.

No. 591.

UNITED STATES OF AMERICA, Plaintiff,
vs.
LOUISIANA & PACIFIC RAILWAY COMPANY, Defendant.

This cause having come to be heard in due course, and the Court having considered the pleadings and the evidence in the case, by reason of the confession of the Defendant, as shown in its answer, and the law and the evidence being in favor of the Plaintiff and against the Defendant—it is therefore

Ordered, adjudged and decreed that the said Plaintiff, United States of America, do have and recover of the Defendant, Louisiana & Pacific Railway Company, the sum of One Hundred and no/100 Dollars ($100.00) and all costs of this proceeding.

Thus done, read and signed in open court on this the 20th day of February, A. D. 1911.

ALECK BOARMAN,
U. S. Judge.

Endorsed: No. 591. D. C. U. S. vs. Louisiana & Pacific Ry. Co. Judgment. Filed Feb. 20th, 1911. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

A true copy:
Attest:
[SEAL.]

LEROY B. GULOTTA,
Clerk U. S. District Court,
Western District of Louisiana.

14 Before the Interstate Commerce Commission.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.
v.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of the Tap Line Allowances and Divisions, Being Docket Nos. 3400, Sub. 6, 3400, Sub. 7, 3493, 3512, 3513, 3514, 3524, 2548, 2551, 2552, and 2564, Consolidated under Investigation and Suspension Docket No. 11.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

C. M. Boswell, being duly sworn on his oath states that he is the Superintendent of the Lake Charles and Northern Railroad Com-

pany, and the General Superintendent of the Louisiana and Pacific Railway Company.

That as such Superintendent of each of said roads, on or about the Twenty Eighth day of October, 1908, he has given instructions to the joint agents of the Lake Charles and Northern Railroad Company and the Louisiana and Pacific Railway Company, that when a shipment was offered to a point on the joint track of said railroad companies, between Lake Charles and De Ridder, or to a competitive point beyond said points, that the agents should require the shipper to designate over which line of road such shipments should be sent, and to the best of my knowledge and belief, and from personal conversation with agents, all such shipments have been taken over the road so designated by the shipper, and I know of no case in which the shippers did not designate the road over which such shipment was to go.

This affidavit is made in response to request made by R. S. Davis, Traffic Manager of the Louisiana and Pacific Railway Company, pursuant to the suggestion of the Commissioner who took the evidence at New Orleans on the 8th, to the 15th days of December, 1910.

C. M. BOSWELL.

Subscribed and sworn to before me this Twenty Ninth Day of December, 1910.

[SEAL.] ROBERT JONES,
Notary Public in and for Calcasieu Parish, La.

My commission expires Sept. 1st, 1915.

15 Before the Interstate Commerce Commission.

STAR GRAIN & LUMBER COMPANY
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of Tap Line Allowances and Divisions at New Orleans, December 8-17, 1910.

In re Louisiana & Pacific, Sibley, Lake Bisteneau and Southern, and Woodworth & Louisiana Central Ry. Companies.

STATE OF MISSOURI,
County of Jackson, ss:

A. L. Sweet being duly sworn on his oath states that he attends to the rendering of the property of the Louisiana and Pacfiic Railway Company for taxation and knows how such property is assessed.

That said property is assessed in the same manner as any other standard railroad property in the State of Louisiana, all of which will appear by the Report of the State Board of Appraisers for the

State of Louisiana for the years 1909 and 1910, and on pages 14 and 97 of the report for 1909 and on pages 15 and 105 of the Report for 1910.

A portion of said railroad is exempt from taxation under the constitution and laws of the State of Louisiana, exempting railroads from taxation for a period of ten years.

Affiant attaches hereto copies of that portion of the Report of the State Board of Appraisers of Louisiana above referred to and affiant states that said copies hereto attached are correct copies and correctly show the manner and amount of the assessments of said road for said years.

Affiant further states that he also prepares the renditions to the State Board of Appraisers for the Sibley, Lake Bisteneau and Southern and the Woodworth and Louisiana Central Railway Companies, which are assessed in the same manner and which assessments are shown on pages 29, 36, 103 of the Report for 1909 and on pages 30, 38, 111 of the Report for 1910, copies of which are hereto attached; and for the information of the Commission one complete copy of the Report to the State Board of Appraisers, for the years 1909 and 1910, showing assessments of all railroads in the State of Louisiana and showing that the Louisiana and Pacific, Sibley, Lake Bisteneau and Southern and the Woodworth & Louisiana Central Railways are assessed in the same manner as other railroads, is herewith transmitted.

This affidavit is made in response to the question of Commissioner Harlan, at the New Orleans hearing, as to how these roads were assessed.

A. L. SWEET.

Subscribed and sworn to before me this 16th day of January, 1911.

[SEAL.] R. T. DEMSEY,
Notary Public in and for
Jackson County, Missouri.

My Commission expires Feb'y 28, 1914.

16 Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years 1909 and 1910.

(The following from Page 14 of the Report for 1909 showing assessment certified for taxation for that year:)

Louisiana & Pacific Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Calcasieu Parish.

0.90 of a mile of main track at $3,500	$3,150.00
31.00 miles of logging spurs at 875	27,125.00
Rolling stock of the road	133,150.00
	$163,425.00

(The following from Page 97 of the Report for 1909 showing valuations placed on exempted Railroads for that year:)

Louisiana & Pacific Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Calcasieu Parish.

26.17 miles of main track at $3,500	$91,595.00
3.50 miles of side track at 875	3,063.00
	$94,658.00

(The following from Page 15 of the Report for 1910 showing assessment certified for taxation for that year:)

Louisiana & Pacific Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Calcasieu Parish.

2.58 *of a* mile- of main track at $3,500	$9,030.00
1.33 miles of side track at 875	1,163.00
Rolling stock of the road	133,150.00
	$143,343.00

(The following from Page 105 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Louisiana & Pacific Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Calcasieu Parish.

26.77 miles of main track at $3,500	$93,695.00
7.79 miles of side track at 875	6,916.00
	$100,611.00

Certified by me as a part of the affidavit of A. L. Sweet hereto attached.

My term expires February 28, 1914.

[SEAL.]

R. T. DEMSEY,
Notary Public in and for
Jackson County, Missouri.

17 Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years 1909 and 1910.

(The following from Page 29 of the Report for 1909 showing assessment certified for taxation for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Webster Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at 1,000	750.00
Rolling stock of the road	36,250.00
	$71,000.00

(The following from Page 103 of the Report for 1909 showing valuations placed on exempted Railroads for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Bienville Parish.

12.00 miles of main track at $4,000	$48,000.00
0.50 of a mile of side track at $1,000	500.00
	$48,500.00

Red River Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at $1,000	750.00
	$34,750.00

Webster Parish.

1.00 mile of main track at $4,000	$4,000.00
0.75 mile of side track at $1,000	750.00
	$4,750.00

Recapitulation.

21.50 miles of main track at $4,000	$86,000.00
2.00 miles of side track at $1,000	2,000.00
	$88,000.00

(The following from page 30 of the Report for 1910 showing assessment certified for taxation for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Webster Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at 1,000	750.00
Rolling stock of the road	36,250.00
	$71,000.00

(The following from Page 111 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Bienville Parish.

12.00 miles of main track at $4,000	$48,000.00
0.50 of a mile of side track at $1,000	500.00
	$48,500.00

Red River Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 miles of side track at $1,000	750.00
	$34,750.00

Webster Parish.

1.00 mile of main track at $4,000	$4,000.00
0.75 of a mile of side track at $1,000	750.00
	$4,750.00

Recapitulation.

21.50 miles of main track at $4,000	$86,000.00
2.00 miles of side track at $1,000	2,000.00
	$88,000.00

Certified by me as a part of the affidavit of A. L. Sweet hereto attached.

[SEAL.]

R. T. DEMSEY,
Notary Public, Jackson Co., Mo.

Term expires February 28, 1914.

18 *Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railroad * * * Business for the Years* 1909 *and* 1910.

(The following from Page 36 of the Report for 1909 showing assessment certified for taxation for that year:)

Woodworth & Louisiana Central Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

(The following from Page 38 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Woodworth & Louisiana Central Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

Certified by me as a part of the affidavit of A. L. Sweet, hereto attached.

My term expires February 28, 1914.

[SEAL.] R. T. DEMSEY,
Notary Public in and for Jackson County, Missouri.

19 Shreveport, Alexandria & Southwestern Railway System. Operating Sibley, Lake Bisteneau & Southern Railway Co., Woodworth and Louisiana Central Railway Co., Louisiana & Pacific Railway Co.

KANSAS CITY, MO., *January* 14, 1911.

Mr. W. R. Thurmond, General Attorney—Office.

DEAR SIR: Commissioner Harlan asked me for a comparison of L. & P. Co.'s indebtedness to the various Lumber Companies on its Line, as of date June 30th, 1908, compared with April 30, 1909. The following statement shows the comparisons:

	June 30, '08.	Apr. 30, '09.
Due Hudson River Lumber Company	$115,620.00	133,842.61
The increase is caused by L. & P. purchasing 36 Log Cars and 1 Caboose.		
Due King-Ryder Lumber Company..	$137,113.00	149,820.93
The increase is due to L. & P. purchasing 20 Log Cars, 5 Flat Cars and 1 Tank Car.		
Due Calcasieu Long Leaf Lumber Company	$109,816.57	151,611.34
The increase is occasioned as follows: L. & P. purchased from the Calcasieu Co. the following:		
3 new Standard Gauge Locos. $29,204.00		
Expense converting Log Cars from N. G. to S. G $843.44		
2 Shay Locos. formerly N. G. $7,000.00		

Yours truly,

P. C. RICKEY,
General Auditor.

P. C. R. D.

20 Woodworth & La. Cent.
Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 1. Witness, Stack. Complainants, ——. Date, 12, 14, '10. Defendants, ——. Steno., Philips.
See p. 1965.

Woodworth and Louisiana Central Railway Company.

Tonnage Handled for Twelve Months Ending June 30th, 1910.

	Tons originating on our line.	Tons received from other lines.	Total tons.
Farm products.....	2,144	177	2,321
Animal "	....	11	11
Mine "	....	199	199
Lumber "	39,773	48	39,821
Oils, etc.	....	40	40
Machinery	....	77	77
Cement and Brick.....	....	73	73
Furniture	....	8	8
Merchandise	....	67	67
Miscellaneous	40	150	190
Total.....	41,957	850	42,807

21 Shreveport, Alexandria & Southwestern Railway System, Operating Sibley, Lake Bisteneau & Southern Railway Co., Woodworth and Louisiana Central Railway Co., Louisiana & Pacific Railway Co.

KANSAS CITY, MO., ——, ——.

Statement of Freight Received and Forwarded by the Woodworth & Louisiana Central Railway Company, July, 1909, to June, 1910, Inclusive.

	Weight
Outbound:	
Lumber freight, originated by Rapides Lumber Company	79,788,112#
Misel. freight, originated by Rapides Lumber Company	17,964#
Misel. freight, originated by others	4,107,924#
Inbound:	
Misel. consigned to Rapides Lumber Company	1,606,978#
Misel. consigned to others	93,022#
Total	85,614,000#

12, 10, '10.

22 *Tonnage Handled by Woodworth & Louisiana Central Railway Co. for Six Months Ending November 30th, 1910.*

48,773,600# of lumber.
24,000# potatoes.
17,000# hay.
766,099# merchandise.
2,080,000# cane.

23 *List of Stockholders and Amount of Stock of the Woodworth & Louisiana Central Ry. Co.*

January 1, 1910.

Article #43.

Name	Shares	Amount
R. A. Long	205.2325	20,523.25
F. J. Bannister	.1938	19.38
J. W. Bolton	18.0697	1,806.97
F. P. Bolton	3.814	381.40
Robert Stack	4.752	475.20
C. B. Sweet	1.938	193.80
Mattie I. Stack	3.	300.00
Minna R. Bolton	2.	200.00
Mary C. Bolton	11.	1,100.00
	250.	25,000.00

24 *List of Stockholders and Amount of Stock of the Rapides Lumber Co., Ltd.*

January 1, 1910.

Name	Shares	Amount.
E. A. Long	1,059	$105,900.00
J. W. Bolton	150	15,000.00
Robert Stack	40	4,000.00
F. P. Bolton	30	3,000.00
C. B. Sweet	10	1,000.00
F. J. Bannister	1	100.00
	1,290	$129,000.00

25 *Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years 1909 and 1910.*

(The following from Page 36 of the Report for 1909 showing assessment certified for taxation for that year:)

Woodworth & Louisiana Central Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

(The following from Page 38 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Woodworth & Louisiana Central Railway Company.

C. B. Sweet, Vice-President, Kansas City, Mo.

Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

Certified by me as a part of the affidavit of A. L. Sweet, hereto attached.

My term expires February 28, 1914.

[SEAL.] R. T. DEMSEY,

Notary Public in and for Jackson County, Missouri.

26 MAR. 29, 1913.

The following exhibits are included in Mansfield Railway & Transportation Co. Exhibit 1, the cover being stamped:—

Mansfield Ry. & Trans. Co.
Interstate Commerce Commission Docket No. 11 I. & S. Exhibit No. 1. Witness, Frost. Complainants, ——. Date, 1, 26, '11. Defendants, ——. Steno., Philips.
See Page 5100.

Time Table No. 4.
General statement of length, equipment, revenues, etc.
Statement of capital stock, cost of road, tonnage, and operating revenues and expenses.
Letter from W. S. Wood, Sec. & Treas., to E. A. Frost, Pres., giving statistics of tonnage for year 1910.
List of firms and individuals served by M. R. & T. Co.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY.

Time Table No. 4—Cancels Time Table No. 3.

Effective November 1, 1910.

15	11	9	7	5	3	1	Mls.			2	6	4	8	10	12	16
P.M.	A.M.	A.M.	P.M.	P.M.	A.M.	A.M.		Leave.	Arrive.	A.M.	P.M.	A.M.	P.M.	A.M.	A.M.	P.M.
.....	.....	.....	*9.20	*8.30	*5.25	*4.30	0	.....Mansfield [1].....		5.20	9.15	5.55	9.50	.....	.....	.....
								Arrive.	Leave.							
.....	.....	.....	9.30	8.40	5.35	4.40	2	.....Mansfield Jct. [2].....		*5.10	*9.05	*5.45	*9.40	.....	.....	.....
								Leave.	Arrive.							
.....	.....	†7.30	.....	.....	.....	.....	0	.....Mansfield [1].....		.....	.....	.....	.....	9.30	.....	.....
†1.00	†7.00	7.45	.....	.....	.....	.....	1.5	..... Oak Hill.....		.....	.....	.....	.....	9.22	10.00	4.00
.....	.....	8.00	.....	.....	.....	.....	6	.....Bakers.....		.....	.....	.....	.....	9.10	.....	.....
.....	.....	8.15	.....	.....	.....	.....	11	.....Burgess.....		.....	.....	.....	.....	8.55	.....	.....
2.00	8.00	8.25	.....	.....	.....	.....	14	..... Hunters		.....	.....	.....	.....	†8.45	†9.06	†3.00
								Arrive.	Leave.							
.....	.....	.....	.....	.....	.....	.....				.....	.....	.....	.....	.....	.....	.....

* Daily; Motor Car Service.

† Daily, except Sunday; Trains Nos. 9 and 10 carry mail. Trains Nos. 11, 12, 15 and 16 Log Trains.

Connections: { [1] With Kansas City Southern Ry. [2] With Texas & Pacific Ry.

MANSFIELD, LA., *October* 18, 1910.

W. S. WOOD,
G. F. & P. A.

I. & S. DOCKET NO. 11 (TAP-LINE CASE).

21

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28 The Mansfield Railway & Transportation Company, Chartered February 16th, 1881.

Main Line Track 15.85.
Side Tracks .30.
Guage 4' 8½". Maximum grade 1.5%.
Number of Stockholders 5.
Number of Directors 5.

Equipment consists of one Locomotive, one Box Car and one Passenger Car, all equipped with safety appliances.

Station Buildings at the following places: Mansfield, Bakers and Hunter.

One One Hundred Ton 40 ft. Track Scale at Oak Hill.

Track laid with 56# steel rails. Oak ties.

Number of Employees, 25.

Total Revenue from Lumber	$13,677.49	
Revenue from Lumber from Lumber Company	12,497.69	
Revenue from Lumber from Other Shippers	1,179.80	
Per cent of Lumber revenue from Lumber Company lumber		91.4
Per cent of Lumber revenue from Other Shipping		8.6
Per cent of Lumber revenue from Lumber Company lumber to total Freight revenue		48.8
Total revenue from other Forest Products (All from independent sources.)	369.18	
Revenue from other freight for Lumber Co.	1,982.16	
Revenue from other freight Other Sources	9,588.36	
Total	11,570.52	
Per cent of other Freight revenue from Lumber Company		17.13
Per cent of other Freight revenue from Lumber Company to total freight revenue		7.74
Total Freight revenue Lumber Company business, all sources	14,479.85	
Total Freight revenue from others, all sources	11,137.34	
	25,617.19	
Per cent of revenue derived from business from Lumber Company to total Freight revenue		56.52
Number of passengers carried		3,812
Passenger revenue	1,196.91	
Average amount received from each passenger		.3139¢

Passenger revenue per mile of road		76.32
Number of tons of Freight carried		50,167
Freight revenue	25,617.19	cents.
Average amount received for each ton		51.06
Freight revenue per mile of road		1,616.22
Earnings from all sources	27,096.95	
Per cent of earnings derived from Lumber Company business to total earnings—all sources		53.44

29 Mansfield Railway & Transportation Company.

Capital Stock		$77,300.00
Total Tonnage for 1909		35,684 Tons
Total Tonnage for 1910		50,167 Tons
Increase		14,483 Tons
Total Tonnage (Lumber) for 1909		27,040 Tons
Total Tonnage (Lumber) for 1910		28,596 Tons
Increase		1,556 Tons
Total Tonnage (Merchandise) for 1909		8,644 Tons
Total Tonnage (Merchandise) for 1910		21,571 Tons
Increase		12,927 Tons

Operating Revenues for Fiscal Year Ending June 30th, 1910.

Freight		$25,617.19
Passenger		1,196.91
Express		12.85
Motor Car Rental		270.00
Total Revenue		$27,096.95
Less—		
Operating Expenses for fiscal year ending 6/30/10	$19,764.06	
Taxes	892.80	
Hire of Equipment	1,038.90	
		21,695.76
Net Income		5,401.19
Cost of Road		$284,171.12
Cost of Equipment		7,842.98
		$292,014.10

Percentage of income for year ending June 30th, 1910, to investment ..... .0185%

Contract with Government for carrying U. S. Mail will net us yearly an amount of $423.60 based on $30.00 per train mile per annum.

30	Freight Earnings	$13,138.42
	Passenger Earnings	810.27
Mail Earnings.....		70.60
Express Earnings.....		7.39
Miscellaneous		129.56
	Total Earnings from 7/1/10 to 12/31/10.....	14,156.24
	Less Operating expenses.....	10,781.70
		$3,374.54

An amount of 6,537.07 is revenue derived from Lumber including both lumber companies and independent shippers.

Pay per diem on all cars belonging to other lines and charge demurrage on cars held over free time.

MANSFIELD, LA., 1/19/11.

File W 314.

Mr. E. A. Frost, President M. R. & T. Co., Shreveport, La.

DEAR SIR: As per your request of the 18th inst. I submit below a statement of Classified Tonnage and Earnings by Commodities of the Mansfield Ry. & Transp'n Company, divided so as to show the tonnage and revenue of this Co. on shipments of the Frost-Johnson Lbr. Co. compared to that of all other shippers, for the fiscal year, ending June 30, 1910.

Commodities.	Total.		Del'd to and rec'd from F. J. Lbr. Co.		All other shippers.	
	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.
Grain	193	$119.63	84	$65.03	109	$54.60
Flour	804	496.80	64	48.52	740	448.28
Other Mill Prod	1,646	613.17	235	180.87	1,411	432.30
Hay	468	276.70	114	99.25	354	177.45
Cotton	961	1,298.60	....	.....	961	1,298.60
Fruits & Veg	123	74.59	....	.....	123	74.59
Other Prod. of Agl	2,113	427.67	....	.....	2,113	427.67
Live Stock	25	14.49	....	.....	25	14.49
Bituminous Coal	2,579	1,548.27	1,724	1,124.25	855	424.02
Coke	164	98.25	....	.....	164	98.25
Stone, Sand & Other Like Articles	129	42.41	....	.....	129	42.41
Other Prod. of Mines	103	61.34	....	.....	103	61.34
Lumber	28,819	13,677.49	25,545	12,497.69	3,274	1,179.80
Other Forest Prod	4,809	369.18	....	.....	4,809	369.18
Sugar	45	27.06	20	14.37	25	12.69
Iron, Pig & Bloom	881	527.44	....	.....	881	527.44
Other Csgs. & Mchy	646	520.32	12	9.85	634	510.47
Cement, Brick & Lime	384	73.23	....	.....	384	73.23

I. & S. DOCKET NO. 11 (TAP-LINE CASE). 25

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Commodities.	Total.		Del'd to and rec'd from F. J. Lbr. Co.		All other shippers.	
	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.
Wag'ns, Carr'gs	50	29.76	....	.....	50	29.76
H. H. Goods & Furn	246	154.91	8	7.45	238	147.46
Other Manufact'rs	45	27.14	....	.....	45	27.14
Merchandise	4,334	4,941.11	270	432.57	4,064	4,508.54
Miscellaneous	600	197.63	....	.....	600	197.63
Total	50,167	$25,617.19	28,076	$14,479.85	22,091	$11,137.34

Passenger Revenue	1,196.91	Total No. Consignees (est.)	961
Express Revenue	12.85		
Rental of Track for use of Motor Car	270.00		
Percentage of Lbr. tonnage to total tonnage	57.46%		

Yours truly,

W. S. WOOD,
Sec't'y & Treas.

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32 Firms and Individuals who are served by the Mansfield Ry. & Transportation Co. through freight facilities, as designated below:

Mansfield Station:

Bank of Commerce.
Peoples Bank.
Bonds Hotel.
J. C. Baker, Blacksmith.
Misses H. & L. Cale, Milliners.
Greening & Howell, D. Gds.
L. M. Graham, Grocer.
De Soto Jewelry Co.
J. S. & K. Dibool, Grocer.
Enterprise Print'g Co.
The Fair Mercantile Co.
The Farmer " "
Sam Goldblat, D. Gds.
J. W. Guy.
H. Hollingsworth, Livery.
M. Hollingsworth.
M. Hirsch, D. Goods & Mdse.
J. T. Henderson, Grocer.
The Journal Pub. Co.
B. N. Johnson, Grocer.
C. E. Jenkins Co. Ltd., Gen'l Mdse.
S. A. Kidd, D. Gds.
Mansf'ld Hdwe. Co.
B. D. Magee, Grocer.
The Model Co. Ltd., Ladies & Gents.' Furnishing Goods.
Mansf'ld Steam Bakery.
Old Reliable Market.
Pitchford & Ricks, Grocers.
Mansf'l*f* Gin Co.
Jno. T. Ricks, Cafe.
Rouse Racket Store.
J. A. Solomon, Grocer.
S. G. Sample Co. Ltd., Gen'l Mdse.
D. W. Saunders, Gen'l Mdse.
C. K. Sheppard, Furniture Co.
W. F. Town, Druggist.
J. B. Anthony, Grocer.
Wilcox & Wemple, Druggists.
J. B. Williams, Jr., Druggist.
Sydney Willer, D. Goods & Mdse.
Southern Telephone Co.
N. T. Stoma, Grocer.
De Soto Brick Co.
C. J. Brewer, Tinner.
T. A. Rielly.

Oak Hill:

Frost-Johnson Lbr. Co.
Mansf'ld Hardwood Lbr. Co.
" Lumber Yards.
" Ice Co.
Logan Lumber Co.
J. B. Hart, Grocer.
So. Mansf'ld Mercantile Co.
O. C. Wise, Grocer.
J. W. Jumel & Co., Grocers.

Baker Station:

N. P. Baker.
Norris & Kidd, Gen'l Mdse.
F. C. Lenoir.
Gullett Oil Co.

Hunter Station:

Mansfield Logging Co.
D. Derrick, Gen'l Mdse.

Planters residing off track:

J. T. Guy.
Nabors Bros.
W. B. Hewitt.
A. M. Rives.
J. W. Porter.
W. T. & S. A. Pegues.
T. J. Lawrence.
W. H. Harrison, Jr.
Jeff D. Williams.
C. C. Williams.
W. W. Williams.
A. J. Williams.

Mansfield—concluded:

De Soto Fdry. & Mch. Co.
De Soto Cotton Oil Co.
Mansfield Steam Laundry.
" H'dw'd Lbr. Co.

33 Mansfield Ry. & Trans. Co.

Interstate Commerce Commission Docket No. 11, I, & S. Exhibit No. 2. Witness, Frost. Complainants, ——. Date, 1, 26, '11. Defendants, ——. Steno., Philips.
See p. 5127.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

TEXARKANA AND FT. SMITH RAILWAY COMPANY.

"Port Arthur Route."

In Connection with Mansfield Tap Line.

Percentage Sheet.

T. & Ft. S. No. 174-A. (Cancels 174.) "Port Arthur Route" No. 84-B.

Naming Basis for Dividing Through Rates Between Kansas City, Mo.; Shreveport, La.; Texarkana, Tex.; St. Louis, Mo.; Memphis, Tenn.; New Orleans, La., and Defined Territories, and Mansfield, La.

(Industries Located on Mansfield Tap Line.)

Issued March 5th, 1902; Effective Dec. 23, 1901.

Arbitraries on—	Mansfield tap line.
Brick	$2.50 per car.
Cotton Seed	1½¢ per 100 lbs.
Cotton Seed Meal and Hulls	$2.50 per car.
Fertilizer	$2.50 per car.
Ice	$3.00 per car.
Lumber	$2.50 per car.
All other carload freight (except Cotton)	3¢ per 100 pounds.
All less than carload freight (except Cotton)	5¢ per 100 pounds.

The above arbitraries will be allowed the Mansfield Tap Line out of published rates between Mansfield, La., and all points.

E. E. SMYTHE,
G. F. A., The K. C. S. Ry., Kansas City, Mo.

CHAS. E. PERKINS,
G. F. A., T & F. S. Ry. Co., Texarkana, Tex.

Authority No. 5689.
K. C. Mo., March 5, 1902.

MANSFIELD, LA., *March* 9, 1911.

File W 314.

Mr. E. A. Frost, President, M. R. & T. Co., Shreveport, La.

DEAR SIR: I submit below a statement of Classified Tonnage, Inbound and Outbound at each station on our line, covering shipments received and forwarded by the Frost-Johnson Lbr. Co., for the Fiscal year ending June 30, 1910.

Commodities.	Grand total. Tons.	Total.		Oak Hill. Total.		Baker. Total.		Burgess. Total.		Hunter. Total.	
		In.	Out.	In.	Out.	In.	Out.	In.	Out.	In.	Out.
Grain	84	84	....	84							
Flour	64	64	....	64							
Other Mill Prod	235	235	....	235							
Hay	114	114	....	114							
Bitum'n's Coal	1,724	1,724	....	1,724							
Lumber	25,545	....	25,545	....	25,545						
S. Sugar	20	20	....	20							
C. Stgs & Mchy	12	12	....	12							
H. H. Gds. & Furn	8	8	....	8							
Merchandise	270	241	29	208	22	1	0	5	0	27	7
Total	28,076	2,502	25,574	2,469	25,567	1	0	5	0	27	7

Yours truly,

W. S. WOOD,
Sec't'y & Treas.

I. & S. DOCKET NO. 11 (TAP-LINE CASE).

35 MANSFIELD RAILWAY & TRANSPORTATION COMPANY.

MANSFIELD, LA., *March* 9, 1911.

File W 314.

Mr. E. A. Frost, President, M. R. & T. Co., Shreveport, La.

DEAR SIR: I submit below a statement of Classified Tonnage, divided so as to show the total tonnage received and forwarded by the Frost-Johnson Lbr. Co. and the total tonnage received and forwarded by all other shippers, for the Fiscal year ending June 30, 1909.

Commodities.	Total tons. Rec'd-For'd.	Frost-Johnson Lbr. Co. Tonnage. Inbound.	Outbound.	All other shippers. Inb'nd.	Outb'nd.
Grain	225	23	....	202	....
Flour	104	22	....	82	....
Other Mill Products	855	358	....	484	13
Hay	212	58	....	154	....
Cotton	856	....	....	....	856
Fruits & Vegetables	56	....	....	....	56
Other Prod. of Agl	696	....	....	425	271
Bituminous Coal	1,999	1,111	....	888	....
Coke	225	....	....	225	....
Stone, Sand & Other Like Articles	61	....	....	61	....
Other Prod. of Mines	78	15	....	63	....
Lumber	27,160	....	26,986	174	....
Other Forest Products	250	..	54	196	....
Petroleum & Other Oils	235	....	....	....	235
Sugar	86	51	....	35	....
Iron, Pig & Bloom	700	....	....	690	10
Iron & Steel Rails	204	204	....	....	....
Other Cstgs. & Mchy	142	56	....	24	62
Cement, Brick & Lime	282	....	....	172	110
Wagons, Carriages & Tools	46	....	....	46	....
H. H. Goods & Furniture	174	....	....	134	40
Other Manufactures	1,038	33	....	580	425
Total	35,684	1,931	27,040	4,635	2,078

Mansfield was the only station on our line until June 15, 1909, at which time this company purchased the 14 miles of road to Hunter, La., which includes the following stations: Oak Hill, Baker, Burgess and Hunter. The above, therefore, represents the tonnage moving between Mansfield and our two connections, The Texas & Pacific Railway and The Kansas City Southern Railway.

Yours truly, W. S. WOOD, *Sec'y & Treas.*

F. J. L. Co.		Other shippers.		Total.	
Inbound	1,931	Inbound	4,635	Inbound	6,566
Outbound	27,040	Outbound	2,078	Outbound	29,118
	28,971		6,713		35,684

(Here follows table, marked page 36.)

Mr. E. A. Frost, President, M. R. & T. Co., Shreveport, La.

DEAR SIR: I submit below a statement of Classified Tonnage, In shippers (except Frost-Johnson Lbr. Co.) for Fiscal year ending J

Commodities.	Grand total. Tons.	In.
Grain	109	10
Flour	740	7
Other Mill Prod	1,411	1,3
Hay	354	3
Cotton	961	
Fruits & Veg.	123	
Other Prod. of Agl	2,113	8
Live Stock	25	
Bituminous Coal	855	8
Coke	164	1
Stone, Sand & Other Like Articles	129	1
Other Prod. of Mines	103	1
Lumber	3,274	3
Other Forest Prod	4,809	4,6
Sugar	25	
Iron, Pig & Bloom	881	8
Other Cstgs & Mchy	634	2
Cement, Brick & Lime	384	
Wag'ns, Carri'gs	50	
H. H. Gds. & Furn	238	1
Other Manufact'rs	45	
Merchandise	4,064	3,8
Miscellaneous	600	
Total (except F. J. L. Co.)	22,091	15,5
Total (F. J. L. Co. Biz.)	28,076	2,5
Grand total	50,167	18,0

Yours truly,

W. S. WOOD,
Sec'y & Treas.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY.

File W 314.

MANSFIELD, LA., *March* 9, 1911.

Shreveport, La.

of Classified Tonnage, Inbound and Outbound at each station on our line, covering shipments received and forwarded by all for Fiscal year ending June 30, 1910.

	Grand total. Tons.	Total. In.	Out.	Mansfield. Total In.	Out.	Oak Hill. Total. In.	Out.	Baker. Total. In.	Out.	Burgess. Total. In.	Out.	Hunter. Total. In.	Out.
....	109	109	....	109	....	....	....	..	..	..	..	..	..
....	740	740	....	740	....	....	....	..	..	..	..	..	..
....	1,411	1,369	42	1,352	42	....	....	..	..	..	..	..	..
....	354	344	10	344	10	....	....	..	..	..	..	17	..
....	961	....	961	....	961	....	....	..	..	..	..	..	..
....	123	44	79	44	79	....	....	..	..	..	..	..	..
....	2,113	824	1,289	824	1,220	....	....	..	69	..	..	..	..
....	25	25	....	25	....	....	....	..	..	..	..	..	..
....	855	855	....	855	....	....	....	..	..	..	..	..	..
....	164	164	....	164	....	....	....	..	..	..	..	..	..
....	129	129	....	129	....	....	....	..	..	..	..	..	..
....	103	103	....	103	....	....	....	..	..	..	..	..	..
....	3,274	373	2,901	373	....	....	2,901	..	..	..	..	..	..
....	4,809	4,659	150	....	....	4,659	....	..	..	..	..	..	150
....	25	25	....	25	....	....	....	..	..	..	..	..	..
....	881	881	....	881	....	....	....	..	..	..	..	..	..
....	634	201	433	111	433	90	....	..	..	..	..	..	..
....	384	73	311	73	311	....	....	..	..	..	..	..	..
....	50	50	....	50	....	....	....	..	..	..	..	..	..
....	238	147	91	137	91	10	....	..	..	..	..	..	..
....	45	45	....	45	....	....	....	..	..	..	..	..	..
....	4,064	3,806	258	3,755	249	18	4	4	1	2	0	27	4
....	600	543	57	523	57	....	....	20	..	..	..	..	..
....	22,091	15,509	6,582	10,662	3,453	4,777	2,905	24	70	2	0	44	154
....	28,076	2,502	25,574	....	....	2,469	25,567	1	..	5	..	27	7
....	50,167	18,011	32,156	10,662	3,453	7,246	28,472	25	70	7	0	71	161

D.
& Treas.

37 Copy.

MANSFIELD RAILWAY & TRANSPORTATION CO.

General Offices.

E. A. Frost, President, Shreveport, La.
F. T. Whited, Vice-President, Shreveport, La.
W. S. Wood, Sec.-Treas., Mansfield, La.
S. H. Dowell, Auditor, Shreveport, La.

MANSFIELD, LOUISIANA, *Feb.* 25, 1909.

A called meeting of the Board of Directors of the Mansfield Railway and Transportation Company was held at its office this day.

Present, C. E. Jenkins, S. G. Sample, E. H. Payne and A. J. Peavy, a majority of the Board and a quorum.

Mr. E. H. Payne offered the following resolution, which after being seconded by Mr. Jenkins was regularly put and unanimously carried.

"Resolved that Seventy Five Thousand Dollars of the supplemental stock provided for in the amendment of the charter relating to that matter be issued and that it be issued to E. A. Frost.

Thereupon Mr. Jenkins offered the following resolution, which after being seconded by Mr. Sample was regularly put and carried unanimously:

"Resolved that the main tram road of the De Soto Land and Lumber Company from Mansfield, De Soto Parish, Louisiana, to Section Twenty One (21), Township eleven (11), Range Fourteen (14), in said Parish of De Soto, Louisiana, with all rights of way, etc., has been purchased by the officers of this company for and in the name of this Company for the consideration of One hundred Twenty-Eight Thousand Dollars (subject to the right of the vendor to use said track for logging purposes free of charge for the period of — years) and for said purchase price the six notes of the Company, Five for $20,000.00 each and one for $20,806.97 with 6 per cent per annum interest from date till paid, have been executed and signed in the name of the company by E. H. Payne, Secretary.

Now, said purchase having been made with the consent of all members of the Board of Directors, the same is formally ratified and made the act of the Company, as is also the act of the Secretary in executing and signing said notes which are hereby recognized and declared to be the valid obligation of the Company ab initio.

And the Secretary of the Company is authorized and directed to accept formal transfer of said property.

Thereupon, said resolutions having been adopted on motion of C. E. Jenkins duly seconded by Mr. Sample, it was moved and carried that the meeting adjourn subject to call.

(Signed) A. J. PEAVY, *Chairman.*

(Signed) E. H. PAYNE, *Secretary.*

38 Copy.

MANSFIELD RAILWAY & TRANSPORTATION CO.

General Offices.

E. A. Frost, President, Shreveport, La.
F. T. Whited, Vice-President, Shreveport, La.
W. S. Wood, Sec.-Treas., Mansfield, La.
S. H. Dowell, Auditor, Shreveport, La.

MANSFIELD, LOUISIANA, *April* 12, 1909.

Meeting of Board of Directors.

The new Board of Directors of the Mansfield Railway and Transportation Company in session in their office in the town of Mansfield, Louisiana.

The meeting being called to order, C. E. Jenkins seconded by E. H. Payne, placed in nomination for President, E. A. Frost, upon vote being taken E. A. Frost was declared elected.

E. H. Payne seconded by C. E. Jenkins placed in nomination for Vice President, A. J. Peavy, upon vote being taken A. J. Peavy was declared elected.

C. E. Jenkins seconded by A. J. Peavy placed in nomination for Secretary & Treasurer, E. H. Payne, upon vote being taken E. H. Payne was declared elected.

Motion of E. H. Payne seconded by A. J. Peavy that we declare a dividend of

Surplus Account	$22,215.62
and of	
Special Surplus Account	$40,584.38
Total	$62,800.00,

and issue stock for same to E. A. Frost, Trustee, to be held in trust by him to secure the notes given by the Mansfield Railway & Transportation Company to the De Soto Land & Lumber Company for purchase price of eight (8) miles of roadway, and Frost-Johnson Lumber Company for purchase price of six (6) miles of Roadway.

Carried.

There being no further business before the Board, meeting adjourned subject to the call of the president.

(Signed) A. J. PEAVY,
Vice-President.

(Signed) E. H. PAYNE, *Secretary.*

1

I. C. C. No 2

Mansfield Railway & Transportation Company

Local Freight Tariff No. 3

APPLYING ON

Classes and Commodities

Between Stations on

Mansfield Railway & Transportation Company

Governed by the Western Classification No. 45, F. O. Becker's I. C. C No. 3 and Southwestern Lines' Classification Exceptions and Rules, Circular No. 1-X, F. A. Leland's I. C. C. No. 546 and Supplements Thereto and Reissues Thereof.

Issued March 12, 1909. **Effective April 19, 1909.**

Railroad Commission of Louisiana Authority No. 5616 of December 8, 1908.

ISSUED BY

E. H. PAYNE
General Freight Agent
Mansfield, La.

39

8—

NOTES.

NOTE NO. 1. Rates will only apply on HAY grown in Louisiana and the carrier reserves the right to require certificate to that effect from shipper.

NOTE NO. 2. Household Goods and Emigrant Movables with or without live stock, between stations in Louisiana. Will not apply on interstate traffic.

In case of loss or damage the carrier's liability shall be limited to $5.00 per hundred pounds on H. H. Goods.

One man shall be allowed to accompany the live stock when shipped, free of charge, to care for same.

The number of live stock to be shipped in one car shall be limited to ten head.

When the shipper instructs the goods to be shipped via the shortest line between any two points in Louisiana, and the carrier on whose line the shipment originates shall fail to so route the shipment, then the shipper shall not be required to pay more for the transportation of the goods than through rate via the shortest route to destination.

NOTE NO. 3 LIVE STOCK—CAR LOADS.

RULES AND REGULATIONS GOVERNING SHIPMENTS OF LIVE STOCK.

Standard Cars are 29 feet to and including 30 feet 6 inches in length, inside measurement.

Rates on Horses or Mules when loaded in larger or smaller cars, will be made as follows, inside measurement:

Cars less than 29 feet, 94 per cent of the Tariff for standard cars.		
Cars over 30½ feet, to and including 32 feet	104	per cent.
Cars over 32 feet, to and including 33½ feet	107	per cent.
Cars over 33⅓ feet, to and including 36½ feet	110	per cent.
Cars over 36½ feet, to and including 38 feet	113	per cent.
Cars over 38 feet, to and including 40 feet	116	per cent.
Cars over 40 feet, to and including 42 feet	125	per cent.
Cars over 42 feet, inside measurement	140	per cent.

ON ALL OTHER LIVE STOCK AS FOLLOWS:

Cars less than 29 feet,	94	per cent.
Cars over 30½ feet, to and including 32 feet,	104	per cent.
Cars over 32 feet, to and including 33⅓ feet,	107	per cent.
Cars over 33⅓ feet, to and including 36 feet,	110	per cent.
Cars over 36 feet, to and including 38 feet,	113	per cent.
Cars over 38 feet, to and including 40 feet,	116	per cent.
Cars over 40 feet, inside measurement	125	per cent.

1. **The released rates on Live Stock named in this Tariff will apply only when shippers execute the usual Live Stock contract of the form furnished by this Company, and when the animals are released to not exceed the following declared valuations:**

Each Horse or Pony (gelding, mare or stallion), Mule or Jack	$75.00
Each Ox or Bull	30.00
Each Cow	20.00
Each Calf	6.00
Each Hog	6.00
Each Sheep or Goat	3.00

When the declared value exceeds the above, an addition of 25 per cent will be made to the rate for each 100 per cent or fraction thereof of additional declared valuation per head, such rate not to exceed the not released rates shown herein; animals exceeding in value $800.00 per head will be taken only by special arrangement.

On shipments of Live Stock made without limitation of carrier's liability at common law, this Company will charge 150 per cent of rates published herein. Under this rule shippers will have the choice of executing and accepting contracts for shipments of Live Stock with or without limitation of liability, the rates to be made as provided herein.

2. **Sheep in Double Deck or Tiered Cars.**—To or from stations, Sulphur Springs, Ark., and south, the rate on Sheep in double deck or tiered cars will be 125 per cent of the Cattle rate, except as otherwise shown in Tariff.

3. **Live Stock in Mixed Car Loads.**—The rate on mixed car loads of Live Stock will be the highest rate for any grade of stock in the car, and subject to authorized percentages for cars of different lengths.

NOTE NO. 4. The following weights are established to be used in ascertaining the rates on LIVE STOCK in less than car load quantities.

One Gelding, Mare, Pony, Mule, Cow or Cow and Calf	1,000 pounds.
Burros	750 pounds.
Stallions, Jacks, Bulls	1,500 pounds.
Calves, Sheep, Goats, each, in lots of five or more	100 pounds.
When in lots of less than five each	175 pounds.
Lambs, each, in lots of less than five	100 pounds.
When in lots of more than five	75 pounds.
Hogs for market, actual weight or estimated at	250 pounds.
Pigs and Stock Hogs	Actual Weight.
Sheep, for market	100 pounds.
Yearling Colts and Cattle	1,000 pounds.
Crated or boxed	Actual Weight.

3

NOTES—Continued.

NOTE NO. 8.—Rates shown in Tariff applying on Lumber, will apply on the following: Lumber (except Walnut, Cherry, Butternut, Holly and imported woods), also on Lumber creosoted or otherwise chemically treated, and the following articles when manufactured from woods other than Walnut, Cherry, Butternut, Holly and imported woods, in straight or mixed carloads, minimum weight 30,000 pounds per car:

Agricultural Implements, Sleigh and Vehicle Wood, in the rough, not further finished than rough sawed, rived or split from the bolt.
Base Boards.
Bed Slats.
Billets, wood.
Blocks, Corner, Base Head and Plinth.
Box Lumber or Shooks, including Scarfed Berry Box Material, in bundles or racks.
Carpenters' Mouldings.
Casing.
Ceiling.
Combined Lath and Sheathing.
Fence Posts.
Flooring (except wood carpet.)
Grain Doors.
Guttering, rough.
Handle Timber, sawed square, rived or split from the bolt, not further finished.
Hoop Poles.
Lath.
Logs (also walnut logs not squared).
Paving Blocks.
Pickets.
Piling.
Sawdust.
Shavings.
Shingles.
Spools (for barbed wire), knocked down.
Staves, Heading and Hoops.
Tank Material, sawed to shape, racked.
Telegraph and Telephone Poles.
Telegraph and Telephone Cross Arms, Pins, Brackets and Braces.
Ties (Yellow Pine).
Wainscoting.
Well Tubing.

Wherever a commodity rate is established it removes the application of Class rates between the same points on that commodity.

CLASS RATES
IN CENTS PER HUNDRED POUNDS.

Item No.	DISTANCES.	CLASSES.									
		1	2	3	4	5	A	B	C	D	E
1	5 Miles and under	20	18	17	16	14	14	12	11	10	9
	10 Miles and over 5	21	19	18	17	14	14	12	11	10	9
	15 Miles and over 10	23	21	20	19	16	16	13	12	11	10
	20 Miles and over 15	26	24	23	22	19	19	16	14	11	10
	25 Miles and over 20	28	26	25	24	21	21	18	16	14	10

COMMODITY RATES.

	COMMODITIES. Rates in Cents per Hundred Pounds, Except as Noted.	5 Miles and under.	10 Miles and over 5.	15 Miles and over 10.	20 Miles and over 15.	25 Miles and over 20.
2	Agricultural Implements, Binders Twine, and Wagons, straight or mixed carloads, minimum weight 20,000 lbs.	7	10	11	12	12
3	Brick, carloads, minimum weight 30,000 lbs.	3	4	5	5	6
4	Coal and Coke, minimum weight 30,000 lbs.	3	4	5	5	6
5	Corn, carload, minimum weight 24,000 lbs. Corn rates will apply on Rye, Oats, Barley, Cornmeal, Bran, Grain Screenings, Brewers Grits, Sorghum Seed and Mill Stuffs, Hominy, Hominy Feed, Grits, Brewers Meal Melons	5	6	7	8	8
6	Cotton Seed, in sacks, for planting purposes	8	9	12	14	16
7	Cotton Seed Meal, Cotton Seed Cake, Cotton Seed Hulls, straight or mixed carloads, minimum weight 24,000 pounds	5	5	6	6	7
8	Fertilizer, less than carloads, in lots of 2,000 pounds or more	10	14	16	16	18
9	Hay, (Native Grown. See note 1) carloads, minimum weights, viz: Cars 34 feet and less, 17,000; cars over 34 feet, 20,000	5	5	5½	5½	6
10	Hay, carloads, other than Native Grown, that is grown in Louisiana, minimum weights: Cars 34 feet and less, 17,000; cars over 34 feet, 20,000 pounds	5	6	7	8	8

(Continued on Page 4.)

4

COMMODITY RATES—Continued.

Item No.	COMMODITIES. Rates in Cents per Hundred Pounds, Except as Noted.	5 Miles and under.	10 Miles and over 5.	15 Miles and over 10.	20 Miles and over 15.	25 Miles and over 20
11	Household Goods (see note 2) rates per car	$15.00	$15.00	$20.00	$20.00	$20.00
12	Ice, carloads	4.4	4.4	4.4	4.4	4.5
13	Ice, less than carloads	10	10	10	10	15
14	Junk, carloads, minimum weight 30,000 pounds, consisting of Bones, in sacks or barrels; Brass, scrap in boxes, barrels or kegs; Copper, scrap in boxes, barrels or kegs; Glass broken, in boxes or barrels; Hoofs, Horns and Horn Pith, packed; Iron, scrap; Paper, scrap; Rags; Rope, old	6	6	6	6½	7
15	Lime, Cement, Plaster, carloads, minimum weight 24,000 pounds	5	6	7	8	9
16	Live Stock, carloads, rate per car, viz:					
	Horses and Mules	$10.00	$10.00	$11.00	$12.00	$13.00
	Cattle	9.00	10.00	10.00	10.00	10.00
	Sheep and Hogs	8.00	9.00	10.00	10.00	10.00
	See note 3.					
17	Live Stock, less than carloads (See note 4)	30	30	30	30	32
18	Lumber, carloads, minimum weight 30,000 pounds (See note 5)	5	6	7	8	9
19	Oil, fuel, in tank cars, carloads	6	6	6	6	6
20	Salt, carloads, minimum weight 30,000 pounds	5	5	6	7	8
21	Sand, Gravel, Clay and Stone, straight or mixed carloads, minimum weight 24,000 pounds	3	4	5	5	6
22	Sawdust and Shavings, straight or mixed carloads, minimum weight 24,000 pounds	3	3½	4	4	4½
23	Wheat, carloads, 24,000 pounds. Wheat rates will apply on Wheat, Flour, Rolled Wheat, Cracked Wheat and Crushed Wheat, Oat Meal, Rolled Oats, Oat Groats	6	7	8	8	9
24	Wood, carloads, rate per cord, minimum weight.					
	Cars 36 feet and under, 12 cords					
	Cars 40 feet and over 36 feet, 14 cords	$1.00	$1.00	$1.00	$1.00	$1.00

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 5
Cancels I. C. C. No. 1
(In lieu of I. C. C. No. 4 Rejected by Commission)

MANSFIELD RAILWAY & TRANSPORTATION COMPANY

SWITCHING TARIFF No. 4-B

CANCELS

SWITCHING TARIFF No. 4

AND

FREIGHT TARIFF No. 2

APPLYING BETWEEN

MANSFIELD JUNCTION, LA.

AND

MANSFIELD, LA.

AND

OAK HILL, LA.

When destined to or originating at points to and from which no through rates are published.

Issued August 9th, 1910. Effective September 15th, 1910.

Railroad Commission of Louisiana Authority No. 6720 of February 24, 1910.

Between	And	On	Rates.
Mansfield, La.	Mansfield Junction, La.	Brick, carloads	$2.50 per car.
		Cotton Seed, carloads	$2.50 per car.
		Cotton Seed Hulls and Meal, carloads	$2.50 per car.
		Fertilizer, carloads	$2.50 per car.
		Ice, carloads	$3.00 per car.
		Lumber, Lath, Shingles and Ties, carloads	$2.50 per car.
		All other carload freight, minimum weight 20,000 pounds	3 cents per 100 pounds.
		All less than carload freight	5 cents per 100 pounds.
Between	**And**	**On**	**Rates.**
Mansfield Junction, La.	Oak Hill, La.	Logs	$1.00 per car.
		Lumber	$2.50 per car.
Between	**And**	**On**	**Rates.**
Mansfield, La.	Oak Hill, La.	All carload freight	$2.50 per car.

W. S. WOOD,
General Freight Agent.

Mansfield, La., August 9th, 1910. File 40.

Mansfield Railway & Transportation Co.

Switching Tariff No. 4-C

CANCELS

Switching Tariff No. 4-B

APPLYING BETWEEN

Mansfield Junction, La.

AND

Mansfield, La.

AND

Oak Hill, La.

When destined to or originating at points in Louisiana to and from which no through rates are published

Issued August 24th, 1910. **Effective August 22nd, 1910.**

Railroad Commission of Louisiana Authority No. 6720 of February 24, 1910, and Amendment No. 1 of August 22, 1910.

Between	And	On	Rates.
Mansfield, La.	Mansfield Junction, La.	Brick, carloads	$2.50 per car.
		Cotton Seed, carloads	$2.50 per car.
		Cotton Seed Hulls and Meal, carloads	$2.50 per car.
		Fertilizer, carloads	$2.50 per car.
		Ice, carloads	$3.00 per car.
		Lumber, Lath, Shingles and Ties, carloads	$2.50 per car.
		All other carload freight, minimum weight 20,000 pounds	4 cents per 100 pounds.
		All less than carload freight	5 cents per 100 pounds.

Between	And	On	Rates.
Mansfield Junction, La.	Oak Hill, La.	Logs	$1.00 per car.
		Lumber	$2.50 per car.

Between	And	On	Rates.
Mansfield, La.	Oak Hill, La.	All carload freight	$2.50 per car.

ISSUED BY

W. S. WOOD,

GENERAL FREIGHT AGENT.

Mansfield, La., August 24th, 1910. File 40.

Only one Supplement to this Index will be in effect at any time.

Freight I. C. C. No. 17.
Cancels Freight I. C. C. No. 14.
Passenger I. C. C. No. 4.
Cancels Passenger I. C. C. No. 3.

Shreveport, Alexandria & Southwestern Railway System.

OPERATING

SIBLEY, LAKE BISTENEAU & SOUTHERN RAILWAY.
WOODWORTH & LOUISIANA CENTRAL RAILWAY.
LOUISIANA & PACIFIC RAILWAY.

CIRCULAR No. 9-A.

(Cancels Circular No. 9.)

INDEX

OF

FREIGHT AND PASSENGER TARIFFS, CLASSIFICATIONS, CLASSIFICATION EXCEPTIONS AND CIRCULARS

APPLYING FROM AND TO STATIONS ON LINES NAMED ABOVE.

THIS INDEX CONTAINS LISTS OF TARIFF PUBLICATIONS IN EFFECT ON OCTOBER 20, 1909.

ISSUED OCTOBER 20, 1909.

Issued by
R. S. DAVIS,
Traffic Manager.
Kansas City, Mo.

Authority No. 192.

T.-D. Pfg. Co.—500.

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EXPLANATION OF ABBREVIATIONS.

Initials.	Name in Full.	Initials.	Name in Full.
A. & V.	Alabama & Vicksburg Ry.	M. K. & T.	Missouri, Kansas & Texas Ry.
A. T. & S. F.	Atchison, Topeka & Santa Fe Ry.	M. K. & T. of T.	Missouri, Kansas & Texas Ry. of Texas.
A. C. L.	Atlantic Coast Line R. R.	M. O. & G.	Missouri, Oklahoma & Gulf Ry.
B. & O.	Baltimore & Ohio R. R.	Mo. P.	Missouri Pacific Ry.
B. S. L. & W.	Beaumont, Sour Lake & Western Ry.	M. L. & T.	Morgan's Louisiana & Texas R. R. & S. S. Co.
C. & O.	Chesapeake & Ohio Ry.	N. C. & St. L.	Nashville, Chattanooga & St. Louis Ry.
C. P. S. G. Ry.	Chester, Perryville & Ste. Genevieve Ry.	N. O. & N. E.	New Orleans & Northeastern R. R.
C. & A.	Chicago & Alton R. R.	N. & W.	Norfolk & Western Ry.
C. & N. W.	Chicago & Northwestern Ry.	N. P.	Northern Pacific Ry.
C. B. & Q.	Chicago, Burlington & Quincy R. R.	O. & N. W.	Orange & Northwestern R. R.
C. & E. I.	Chicago and Eastern Illinois R. R.	P. & G. S. S. Co.	Philadelphia & Gulf Steamship Co.
C. R. I. & P.	Chicago, Rock Island & Pacific Ry.	St. J. & C. I.	St. Joseph & Grand Island Ry.
C. M. & P. S.	Chicago, Milwaukee & Puget Sound Ry.	St. L. & S. F.	St. Louis & San Francisco R. R.
C. N. O. & T. P.	Cincinnati, New Orleans & Texas Pacific Ry.	St. L. B. & M.	St. Louis, Brownsville & Mexico Ry.
C. & S.	Colorado & Southern Ry.	St. L. E. R. & W.	St. Louis, El Reno & Western Ry.
C. & S. E.	Colorado & Southeastern Ry.	St. L. I. M. & S.	St. Louis, Iron Mountain & Southern Ry.
C. S. N. O. & P.	Colorado Southern, New Orleans & Pacific R. R.	St. L. K. C. & C.	St. Louis Kansas City & Colorado R. R.
D. & R. G.	Denver & Rio Grande R. R.	St. L. S. W.	St. Louis Southwestern Ry.
F. S. & W.	Fort Smith & Western R. R.	St. L. W. & G.	St. Louis, Watkins and Gulf Ry.
G. H. & S. A.	Galveston, Harrisburg & San Antonio Ry.	S. P. L. A. & S. L.	San Pedro, Los Angeles & Salt Lake R. R.
I. C.	Illinois Central R. R.	S. A. L.	Seaboard Air Line Ry.
K. C. M. & O.	Kansas City, Mexico & Orient Ry.	S. A. & S. W.	Shreveport, Alexandria & Southwestern System.
K. C. S.	Kansas City Southern Ry.	Sou.	Southern Ry.
K. S. & G.	Kansas, Southern & Gulf R. R.	S. P.	Southern Pacific System.
L. C. & N.	Lake Charles & Northern R. R.	T. C.	Tennessee Central R. R.
L. & A.	Louisiana & Arkansas Ry.	T. & N. O.	Texas and New Orleans R. R.
L. & P.	Louisiana & Pacific Ry.	T. & P.	Texas & Pacific Ry.
L. & N.	Louisville & Nashville R. R.	U. P.	Union Pacific R. R.
L. R. & N.	Louisiana Railway & Navigation Co.	V. S. & P.	Vicksburg, Shreveport & Pacific Ry.
L. W.	Louisiana Western R. R.	W. & L. C.	Woodworth & Louisiana Central Ry.
M. V.	Midland Valley R. R.		
M. R. & B. T.	Mississippi River & Bonne Terre Ry.		

NAMES AND ADDRESSES OF AGENTS ISSUING TARIFFS, ETC.

Agent.	Address.	Agent.	Address.
F. O. Becker	Great Northern Bldg., Chicago, Ill.	G. S. Maxwell	Century Bldg., St. Louis, Mo.
R. H. Countiss	149 Railway Exchange, Chicago, Ill.	T. H. Noonan	Cincinnati, Ohio.
W. R. Crow	Railway Exchange, Chicago, Ill.	T. W. Parker	Frisco Bldg., St. Louis, Mo.
F. H. Davis	Brisbane Bldg., Buffalo, N. Y.	W. A. Poteet	Kansas City, Mo.
W. H. Fitzgerald	Richmond, Va.	John D. Potts	Richmond, Va.
I. W. Gantt	Toledo, Ohio.	Jos. Richardson	Equitable Bldg., Atlanta, Ga.
J. P. Gay	Detroit, Mich.	W. J. Seligman	271 Broadway, New York City.
C. J. Haigh	Buffalo, N. Y.	L. M. Sentes	231 La Salle St., Chicago, Ill.
A. D. Hall	Wright Bldg., St. Louis, Mo.	M. P. Washburn	U. S. Trust Bldg., Louisville, Ky.
D. T. Lawrence	Boston, Mass.	W. F. Wilgus	Buffalo, N. Y.
F. A. Leland	Century Bldg., St. Louis, Mo.		

FIRST SECTION.

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE INITIAL CARRIERS.

SPECIFIC COMMODITIES.

I. C. C. No.	S. A. & S.W.No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
....	168	1	S. A. & S. W.	....	Brick, Fire and Fire Clay	De Ridder, La.	Longville, La.
2374	165-A	2	K. C. S.	30-A	Cantaloupes and Muskmelons	L. & P. stations	Northern and Western States.
....	28	3	L. & A.	472	Cotton	S. L. B. & S. stations	Minden, La.
537	186	4	L. & A.	960	Cotton	S. L. B. & S. stations	New Orleans, La.
2430	178-C	5	V. S. & P.	976-C	Cotton	S. L. B. & S. stations	New Orleans, La., etc.
2385	33-A	6	V. S. & P.	975-A	Cotton	S. L. B. & S. stations	Shreveport, La.
....	300	7	S. A. & S. W.	....	Cotton Seed	S. L. B. & S. stations	Ringgold, La.
600	278	8	F. A. Leland	12-I	Cotton Seed and Cotton Seed Products	Arkansas, Louisiana, etc	Texas points.
3940	221	9	C. N. O. & T. P.	R-1816	Cotton Seed Oil and Products	S. L. B. & S. stations	Eastern, Northern and Western points.
T	195	10	F. A. Leland	56	Cotton Seed Oil and Products	S. L. B. & S. stations	Eastern, Northern and Western points.
605	147-L	11	F. A. Leland	12-L	Fruits and Vegetables	Louisiana points	Eastern, Northern, Southern and Western points.
....	188	12	S. A. & S. W.	....	Hay (native grown)	Louisiana points	Louisiana points.
....	297	13	S. A. & S. W.	....	Hay	Ashton, La.	Alexandria, La.
....	161	14	M. L. & T.	330	Lumber	Woodworth, La.	Alexandria, La.
253	251	15	St. L. W. & G.	153	Lumber	W. & L. C. stations	Alexandria, La.
....	62	16	T. & P.	5953-P	Lumber	Woodworth, La.	Alexandria, La.
3874	67	17	Mo. Pac.	5643	Lumber	L. & P. and W. & L. C. stations	Cape Girardeau and points on C. P. & S. C. Ry.
3472	268-A	18	C. & E. I.	2300-A	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Central Freight Ass'n Territory and Eastern points.
7753	80	19	Mo. Pac.	5426	Lumber	L. & P. and W. & L. C. stations	C. & N. W. stations in Nebr. and S. Dak.
A-2103	120	20	M. K. & T.	2975	Lumber	S. L. B. & S. and W. & L. C. stations	Colo., Kas., Mo., Nebr. and Wyoming.
708	151-F	21	G. H. & S. A.	73-F	Lumber	L. & P. and W. & L. C. stations	Colo., Kas., Mo., Nebr., etc.
5120	124-A	22	St. L. & S. F.	904-A	Lumber	S. L. B. & S. stations	Colo., Ia., Kas., Mo., Nebr., etc.
1574	115-A	23	V. S. & P.	406-A	Lumber	S. L. B. & S. stations	Colo., Kas., Nebr., etc.
20	201	24	C. S. N. O. & P.	217	Lumber	L. & P. stations	C. S. N. O. & P., S. S. L. & W. and O. & N. W. stations.
4	218	25	C. S. N. O. & P.	102	Lumber	L. & P. stations	Eagle Pass, El Paso and Laredo for export.
2454-B	126-D	26	M. L. & T.	318-D	Lumber	L. & P. and W. & L. C. stations	Eastern, Northern and Western states.
9265	121	27	Sou.	W.L.Tar. 1	Lumber	S. L. B. & S. stations	Eastern and Northern states.
[illegible]	233	28	St. L. S. W.	4735	Lumber	S. L. B. & S. stations	Eastern and Northern states.
[illegible]	116-A	29	V. S. & P.	628-A	Lumber	S. L. B. & S. stations	Galveston, Tex.
2422-B	275	30	L. W.	357-P	Lumber	L. & P. stations	Ill., Ia., Mich., Minn., Mo. and Wis.
1945	84-B	31	K. C. S.	1671-B	Lumber	L. & P. stations	Ill., Ia., Kas., Mich., Mo., etc.
A-2627	118	32	M. K. & T.	2410	Lumber	S. L. B. & S. stations	Ia., Minn., Mo., N. & S. Dak., Wis.
9424	72-A	33	Mo. P.	4906-A	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Ia., Minn., Mo., N. & S. Dak. and Wis.
5313	125-C	34	St. L. & S. F.	546 C	Lumber	L. & P. and S. L. B. & S. stations	Ia. Minn. and Mo.
2831	149	35	St. L. S. W.	5164	Lumber	S. L. B. & S. stations	Ia. Minn. and Mo.
1893	206-A	36	V. S. & P.	741-A	Lumber	S. L. B. & S. stations	Ia. Minn. and Mo.
2592	250	37	K. C. S.	19-A	Lumber	L. & P. stations	Ind., Mich., New York, etc.
587	267	38	F. A. Leland	59	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Kas., Mo., Colo., Ariz., etc.
....	127	39	S. A. & S. W.	....	Lumber	De Ridder and Bon Ami, La.	Longville, La.
....	179	40	M. L. & T.	348	Lumber	L. & P. and W. & L. C. stations	Louisiana points on M. L. & T. and L. W.
2463	105	41	St. L. S. W.	4751	Lumber	S. L. B. & S. stations	Memphis, Tenn.
578	113-I	42	G. H. & S. A.	58-I	Lumber	L. & P. and W. & L. C. stations	Mexican points.

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE INITIAL CARRIERS—Continued.

FIRST SECTION—Continued. SPECIFIC COMMODITIES.

I. C. C. No.	S. A. & S.W.No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
1956	52-B	43	K. C. S.	1745-B	Lumber	L. & P. and S. L. B. & S. stations	Mid. Valley and M. O. & G. stations.
2386	268	44	St. L. & S. W.	5375	Lumber	S. L. B. & S. stations	Mo., Ark., Ia., Minn. and So. Dakota.
2129	87-B	45	K. C. S.	1772-B	Lumber	L. & P. stations	Missouri points on St. L. K. C. & C.
7916	66	46	Mo. P.	5467	Lumber	L. & P. and W. & L. C. stations	Missouri points on M. R. & B. T. Ry.
1478	86	47	K. C. S.	1725	Lumber	L. & P. stations	Mo. P. stations.
6228	75	48	Mo. P.	5116	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Mo. P. and D. & R. G. stations.
A-967	277	49	Mo. Pac.	1502	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations.	Milwaukee, and Racine, Wis.
583	187	50	L. & A.	1048	Lumber	S. L. B. & S. stations	New Orleans, La., etc.
1742-B	111-A	51	M. L. & T.	334-A	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	New Orleans, La., etc.
1718	154-A	52	T. & P.	34-A	Lumber	W. & L. C. stations	New Orleans, La.
2222	59-A	53	V. S. & P.	1089-A	Lumber	S. L. B. & S. stations	New Orleans, La.
2	279	54	T. & N. O.	176-E	Lumber	L. & P. and W. & L. C. stations	Northern and Eastern points.
C-8430	243	55	C. P. I. & P.	24000-B	Lumber	L. & P. and W. & L. C. stations	Northern, Southern and Western states.
2444-B	270	56	M. L. & T.	315-B	Lumber	L. & P. and W. & L. C. stations	New York, Penn. and New Jersey.
629	197-B	57	F. A. Leland	48-E	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Oklahoma points.
2314	50	58	K. C. S.	53	Lumber	L. & P. stations	Port Arthur for export.
2616	64-B	59	K. C. S.	1931-B	Lumber	S. L. B. & S. stations	Port Arthur for export.
2612	235-D	60	K. C. S.	1623-E	Lumber	W. & L. C. stations	Port Arthur for export.
2602	225-B	61	V. S. & P.	1181-B	Lumber	S. L. B. & S. stations	Port Arthur for export.
8056	82	62	Mo. P.	5497	Lumber	L. & P. and W. & L. C. stations	Ste. Genevieve and Mosher, Mo.
8440	43	63	Mo. P.	5546	Lumber	L. & P. and W. & L. C. stations	St. J. & G. I. stations.
1610	49-C	64	K. C. S.	1117-C	Lumber	L. & P. stations	St. Louis, Alton, etc., (via M. K. & T.)
2084	236-E	65	K. C. S.	1250-E	Lumber	L. & P. stations	St. Louis, Carondelet, etc. (via St. L. I. M. & S.)
2858	104	66	St. L. & S. W.	5373	Lumber	S. L. B. & S. stations	St. Louis, Cairo, Thebes, etc.
1705-B	204	67	Mo. Pac.	821-A	Lumber	W. & L. C. stations	St. Louis, Cairo, Thebes, etc.
2079	238-H	68	K. C. S.	1890-H	Lumber	L. & P. stations	St. Louis, Cairo, Thebes, etc.
A-2525	119	69	M. K. & T.	3370	Lumber	S. L. B. & S. stations	St. Louis, Alton, etc.
A-971	71	70	Mo. Pac.	1110-A	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	St. Louis, Cairo, Memphis, etc.
5413	122-C	71	St. L. & S. F.	200-C	Lumber	S. L. B. & S. stations	St. Louis, Memphis, Thebes, etc.
1723	39-C	72	K. C. S.	1546-C	Lumber	L. & P. and S. L. B. & S. stations	St. L. & S. F. for K. C. M. & O., K. C. C. & S. stations.
3166	76	73	Mo. P.	5592	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	St. L. & S. F. stations.
....	274	74	K. C. S.	2227-B	Lumber	L. & P. stations	Shreveport, La.
....	276	75	St. L. W. & G.	151	Lumber	W. & L. C. stations	Shreveport, La.
2	212	76	C. S. N. O. & P.	100	Lumber	L. & P. stations	Texas points.
48	214-A	77	C. R. I. & P.	11135-A	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Texas points.
1819	227-A	78	K. C. S.	1417-A	Lumber	L. & P. stations	Texas and New Mex. points.
524	164	79	L. & A.	960	Lumber	S. L. B. & S. stations	Texas points on So. Pac.
B-164	117	80	M. K. & T. of T.	1006	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Texas points.
2025-B	224	81	M. L. & T.	335	Lumber	L. & P. stations	Texas points.
551	115-H	82	G. H. & S. A.	28-H	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Texas points.
60	232	83	St. L. B. & M.	60	Lumber	W. & L. C. and L. & P. stations	Texas points on St. L. B. & M.
3970	123	84	St. L. & S. F.	599	Lumber	S. L. B. & S. stations	Texas, New Mex. and Okla. points.

AGE BOUND
IAL IN BOOK

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE INITIAL CARRIERS—Continued.

FIRST SECTION—Continued.

SPECIFIC COMMODITIES.

I. C. C. No.	S. A. & S.W.No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
2796	167	85	St. L. S. W.	2096	Lumber	S. L. B. & S. stations	Texas and New Mex. points.
2822	50	86	St. L. S. W.	5176	Lumber	S. L. B. & S. stations	Texas points on St. L. S. W. Ry. of Texas.
1266	103-A	87	T. & P.	10234-H	Lumber	L. & P., S. L. B. & S. and W. & L. C. stations	Texas points.
2464	138-A	88	V. S. & P.	1275-A	Lumber		
2590	272	89	K. C. S.	2216	Lumber	S. L. B. & S. stations	Texas points.
1542	40	90	V. S. & P.	376-A	Lumber	L. & P. stations	Vicksburg, Miss.
10	160	91	S. A. & S. W.	....	Potatoes	S. L. B. & S. stations	V. S. & P. stations.
2535	152-B	92	K. C. S.	29-B	Potatoes and Vegetables	Ashton, La.	Lamorie, La.
A-479	256	93	Mo. P.	720	Potatoes and Vegetables	L. & P. stations	Northern and Western States.
2359	234-B	94	K. C. S.	9-B	Refrigeration Charges	S. L. B. & S. stations	Northern and Western States.
542	43	95	F. A. Leland	66	Rice and Rice Products	L. & P. stations	Various Interstate Points.
8	6	96	S. A. & S. W.	....	Rosin and Turpentine	L. & P. stations	Various Interstate Points.
2525	176-F	97	K. C. S.	1958-F	Rosin and Turpentine	Bundick, La.	DeRidder, La.
2418-B	227-C	98	M. L. & T.	1166-C	Rosin and Turpentine	L. & P. stations	New York, N. Y.
....	211	99	T. & P.	J.B.535-A	Sugar Cane	Ashton, La.	New York, N. Y.
....	182	100	S. A. & S. W.	....	Sugar Cane	Ashton, La.	Cinclare, La.
1017	153	101	K. C. S.	1185-A	Watermelons	L. & P. stations	Lamorie, La.

GENERAL COMMODITIES.

....	259	102	K. C. S.	178	Commodities	L. & P. stations	K. C. S. stations.
....	298-A	103	S. A. & S. W.	....	Commodities	Ashton, La.	Lamorie, La.
2450-B	262-A	104	M. L. & T.	627-A	Commodities	L. & P. stations	Shreveport, La.

CLASSES AND COMMODITIES.

....	65	105	L. & A.	804	Classes and Commodities	S. L. B. & S. stations	Alexandria, La.
....	191-A	106	C. R. I. & P.	25565-A	Classes and Commodities	W. & L. C. stations	Alexandria, La.
623	255-C	107	F. A. Leland	45-C	Classes and Commodities	L. & P., S. L. B. & S. and W. & L. C. stations	Arkansas and Oklahoma Points
865	284	108	R. H. Counties	1-H	Classes and Commodities	L. & P. stations	California Terminals.
5	24	109	F. A. Leland	3	Classes and Commodities	L. & P., S. L. B. & S. and W. & L. C. stations	Defined Territories
266	285	110	W. A. Forest	1[illegible]	Classes and Commodities	L. & P. stations	Denver, Colo. Springs, etc.
614	249	111	F. A. Leland	1[illegible]	Classes and Commodities	L. & P. and W. & L. C. stations	Eagle Pass, El Paso and Laredo, Tex.
612	206-G	112	F. A. Leland	1[illegible]	Classes and Commodities	L. & P. stations	Houston, Galveston, Tex., etc.
626	248	113	F. A. Leland	2 Z	Classes and Commodities	Defined Territories	Houston, Galveston, Tex., etc.
....	271-A	114	S. A. & S. W.	....	Classes and Commodities	Lake Charles, La.	L. & P. stations.
4	1	115	S. A. & S. W.	....	Classes and Commodities	Louisiana points.	Louisiana Points (Distance Tariff).
607	250	116	F. A. Leland	6[illegible]	Classes and Commodities	L. & P. and W. & L. C. stations	Mexican points.
....	11	117	L. & A.	432	Classes and Commodities	S. L. B. & S. stations	Minden, La.
2426-B	257-C	118	M. L. & T.	569-C	Classes and Commodities	L. & P. stations	New Orleans, La.
2172	144	119	K. C. S.	2044	Classes and Commodities	L. & P. stations	New Orleans, Vicksburg, etc.
A 170	146	120	T. & P.	1215	Classes and Commodities	S. L. B. & S. stations	New Orleans, La.
....	226-A	121	L. & A.	365-A	Classes and Commodities	S. L. B. & S. stations	New Orleans, La.
2136-B	22-A	122	M. L. & T.	447-A	Classes and Commodities	S. L. B. & S. stations	New Orleans, La.
1851	3-B	122	V. S. & P.	521-B	Classes and Commodities	S. L. B. & S. stations	New Orleans and points on N. O. & N. E. and A. & V.
22	180	124	C. S. S. & S. P.	249	Classes and Commodities	Woodworth, La.	New Orleans, La.
....	193	125	I. R. & N.	1260	Classes and Commodities	Woodworth, La.	New Orleans, La.
....	116-A	126	M. L. & T.	468-A	Classes and Commodities	Woodworth, La.	New Orleans, La.
1619	69	127	T. & P.	J.B.3959-H	Classes and Commodities	W. & L. C. stations	New Orleans, La.
490	206	128	R. H. Counties	4-K	Classes and Commodities	L. & I. stations	North Pacific Coast Terminals.

THIS PAGE

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE INITIAL CARRIERS—Concluded.

FIRST SECTION—Continued. CLASSES AND COMMODITIES.

I. C. C. No.	S. A. & S. W. No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
8	293	129	C. M. & P. S.	126-A	Classes and Commodities	L. & P. stations	Seattle and Tacoma, Wash.
2380	30-C	130	V. S. & P.	206-C	Classes and Commodities	S. L. B. & S. stations	Shreveport and Monroe, La.
9	492	131	L. R. & N.	1259	Classes and Commodities	Woodworth, La.	Shreveport, La.
1542	26-A	132	T. & P.	J.B.565-H	Classes and Commodities	Woodworth, La.	Shreveport, La.
3295	292	133	No. P.	23500	Classes and Commodities	L. & P. stations	Spokane, Wash.
602	248-A	134	P. A. Leland	5-S	Classes and Commodities	L. & P. and W. & L. C. stations	Texas points.
2371	32-C	135	V. S. & P.	527-C	Classes and Commodities	S. L. B. & S. stations	Vicksburg and points on V. S. & P.
7	294	136	C. M. & P. S.	115-A	Classes and Commodities	L. & P. stations	Washington and Idaho points
					CLASSES.		
	277	137	S. A. & S. W.		Classes	De Ridder, La.	Bon Ami, La.
					MISCELLANEOUS SCHEDULES.		
					BILLING INSTRUCTIONS AND BASING BOOKS.		
					Application.		
1-A	303	138	F. H. Dowie	R.B.& B.13	East-Bound Billing Instructions (Commercial Express Line).		
2	304	139	J. W. Gantt	S.& A.C.2	West-Bound Billing Instructions (Lackawanna-Grand Trunk Line).		
B-12	305	140	L. M. Souders	R.B.& B.19	East-Bound Billing Instructions (Empire Line).		
35	306	141	T. H. Noonan	E.B.G.B.7	East-Bound Billing Instructions (Central States Despatch).		
4	307	142	W. F. Wilberg	R.B.& B.12	East-Bound Billing Instructions (Richard-Michigan Central).		
1	308	143	W. F. Wilson	R.B.& B.14	East-Bound Billing Instructions (Canada Southern).		
3	309	144	D. T. Lawrence	S.& A.G.10	East-Bound Billing Instructions (National Despatch-Great Eastern).		
C-A-748	310	145	D. P. Weber	R.B.& B.15-W	West-Bound Billing Instructions (Canadian Pacific Despatch).		
1	311	146	J. P. Gay	R.B.& B.13	East-Bound Billing Instructions (Grand Trunk Despatch).		
4	312	147	W. R. Crow	R.E.& B.17	East-Bound Billing Instructions (Erie Despatch).		
A-4090	313	148	Erie	R.B.5	East-Bound Billing Instructions (Erie Railroad).		
77	314	149	T. H. Noonan	E.B.G.B.18	East-Bound Guide Book (Continental Line).		
5740	316	150	B. & O.	I.C.C.5740	East Bound Billing Bases (Baltimore & Ohio).		
11	317	151	Un. Line	I.C.C.11	East-Bound Billing Bases (Star Union Line).		
1	318	152	N. Y. C. Lines	R.B.& B.11	East Bound Billing Bases (New York Central Lines).		
1-A	319	153	C. J. Haigh	R.B.& B.17	East-Bound Billing Bases (Reading Despatch).		
					CLASSIFICATIONS, AND CLASSIFICATION EXCEPTIONS.		
					Applies on	From	To
4	251	154	F. O. Becker	46	Western Classification	L. & P., S. L. B. & S. and W. & L. C. stations	State and Interstate points.
520	241	155	F. A. Leland	2-F	Exceptions to Classification	L. & P., S. L. B. & S. and W. & L. C. stations	Ark., Houston, Galveston, etc.
558	242	156	F. A. Leland	1-Y	Exceptions to Classification	L. & P., S. L. B. & S. and W. & L. C. stations	Louisiana, Texas and Mexico points.
9	5-A	157	G. S. Maxwell	1-A	Exceptions to Classification	L. & P., S. L. B. & S. and W. & L. C. stations	State and Interstate points.
					SWITCHING TARIFFS, TERRITORIAL DIRECTORIES, TRANSIT PRIVILEGES AND MISCELLANEOUS CIRCULARS.		
15	12	158	S. A. & S. W.	....	Absorption of Switching Charges of Connecting Line at DeRidder, Bon Ami, Longville and Lake Charles		
....	15	159	S. A. & S. W.	....	Bills of Lading, Signing.		
....	17	160	S. A. & S. W.	....	Minimum Weights on Shipments in Open Cars.		
594	19	161	F. A. Leland	2	Official List of Open and Prepay Stations.		
....	18	162	S. A. & S. W.	....	Rewelching Lumber Shipments.		
13	5-A	167	S. A. & S. W.	....	Switching Charges at Bon Ami, DeRidder, Fulton, Lake Charles, etc.		
....	4	164	S. A. & S. W.	....	Switching Charges at Lamorie, La.		
17	9-A	165	S. A. & S. W.	....	Tariff Index.		
496	11	166	F. A. Leland	1	Territorial Directory.		
2585	20	167	K. C. S.	189	Transit Privileges on Grain, Grain Products, ect., at Lake Charles, La.		
12	8	168	S. A. & S. W.	....	Transit Privileges on Lumber and Logs.		
....	7	169	S. A. & S. W.	....	Transportation of Intoxicating Liquors.		
....	13	170	S. A. & S. W.	....	Uniform Bill of Lading.		

E BOUND
L IN BOOK

SECOND SECTION.

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE DELIVERING CARRIERS.

I. C. C. No.	S. A. & S.W.No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
4515	209-C	171	A. T. & S. F.	8125-C	Refrigeration Charges	Santa Fe System points	L. & P., S. L. B. & S. and W. & L. C. stations.
2929	139	172	A. T. & S. F.	8234	Classes and Commodities	Santa Fe System points	Longville, La.
A-297	230	173	A. C. L.	....	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
A-4	230	174	C. & W.	....	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
4567	230	175	C. A. O.	13378	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
1861	169	176	C. & A.	1307-B	Grain and Grain Products	Lone Springs, Fulton, Glasgow, MO, etc.	S. L. B. & S. stations.
3952	196-B	177	C. & A.	1160-B	Grain and Grain Products	K. C. M. & O. stations (via St. L. S. W.)	S. L. B. & S. stations.
37	286	178	C. M. & P. S.	311-A	Lumber, Shingles, etc.	Washington, Idaho and Montana	L. & P. stations.
11	287	179	C. M. & P. S.	121-A	Classes and Commodities	Seattle and Tacoma	L. & P. stations.
7	294	180	C. M. & P. S.	115-A	Classes and Commodities	Washington and Idaho	L. & P. stations.
C-8706	189-C	181	C. R. I. & P.	15434-C	Hay	Arkansas stations	S. L. B. & S. stations.
C-8713	198	182	C. R. I. & P.	24817	Refrigeration Charges	Arkansas, Kansas and New Mexico	Interstate points.
....	191-A	183	C. R. I. & P.	23565-A	Classes and Commodities	Alexandria, La.	W. & L. C. stations.
26	291	184	C. S. N. O. & P.	772	Classes and Commodities	New Orleans, La.	L. & P. stations.
25	289	185	C. S. N. O. & P.	249	Classes and Commodities	New Orleans, La.	Woodworth, La.
859	295	156	R. H. Countiss	S.R.993	Lumber and Shingles	Calif., Nev., Oregon, etc.	L. & P. stations.
862	208	157	R. H. Countiss	S.R.981	Lumber and Shingles	North Pacific Coast points	L. & P. stations.
878	233	188	R. H. Countiss	588	Commodities	Seattle, Tacoma, etc.	Various points.
889	282	189	R. H. Countiss	3-G	Classes and Commodities	California Terminals	L. & P. stations.
898	288	190	R. H. Countiss	2-F	Classes and Commodities	North Pacific Coast Terminals	L. & P. stations.
2766	8	191	I. C.	B-2854	Classes and Commodities	New Orleans, La.	S. L. B. & S. stations.
1799	203	192	K. C. S.	1451-C	Petroleum, Oil, etc.	Texas points	L. & P. stations.
....	259	193	K. C. S.	178	Commodities	K. C. S. stations	L. & P. stations.
2075	133	194	K. C. S.	2990	Classes and Commodities	Beaumont, Texas	L. & P. stations.
2172	144	195	K. C. S.	2644	Classes and Commodities	New Orleans, Vicksburg, etc.	L. & P. stations.
....	132	196	K. C. S.	2091	Classes and Commodities	Shreveport, La.	L. & P. stations.
600	276	180	F. A. Leland	6	Gravel	Fulerton, La.	Bon Ami, and Longville, La.
464	56	199	F. A. Leland	12-L	Cotton Seed and Cotton Seed Products	Texas points	La., Ill., Kas., etc.
687	200	200	F. A. Leland	23-K	Grain, Grain Products, Seeds and Hay	Texas points	L. & P., S. L. B. & S. and W. & L. C. stations.
				47-B	Grain, Grain Products, Seeds and Hay	Western States points	L. & P., S. L. B. & S. and W. & L. C. stations.
659	236	201	F. A. Leland	28-J	Live Stock		
601	245	202	F. A. Leland	7-F	Live Stock	Tex., La. and Ark points	Colo., La., Kas., etc.
593	327	203	F. A. Leland	32-E	Packing House Products	Texas points	Defined Territories.
562	293	204	F. A. Leland	25-O	Petroleum, Oil, etc.	Texas points	Interstate points.
578	244-C	205	F. A. Leland	37-C	Sugar, Rice and Molasses	Texas points	L. & P. stations.
4	4	206	F. A. Leland	2	Classes and Commodities	Texas points	L. & P. stations.
589	207	207	F. A. Leland	57-A	Classes and Commodities	Atlantic Seaboard Territory	L. & P., S. L. B. & S. and W. & L. C. stations
590	216	209	F. A. Leland	58-A	Classes and Commodities	Defined Territories (points west of Ind.-Ill. state line.)	L. & P., S. L. B. & S. and W. & L. C. stations.
613	206-G	211	F. A. Leland	21-C	Classes and Commodities	Defined Territories (points east of Ind.-Ill. state line)	L. & P., S. L. P. & S. and W. & L. C. stations.
602	246-A	212	F. A. Leland	8-B	Classes and Commodities	Houston, Galveston and Texas points	L. & P. stations.
						Texas points	L. & P. and W. & L. C. stations

THIS PAGE VERTICAL

SECOND SECTION Continued.

I. C. C. No.	S. A. & S.W.No.	Index No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
506	25	213	F. A. Leland	20-U	Classes and Commodities	Texas points	L. & P., S. L. B. & S. and W. & L. C. stations
....	65	214	L. & A.	504	Classes and Commodities	Alexandria, La.	S. L. B. & S. stations.
....	11	215	L. & A.	432	Classes and Commodities	Minden, La.	S. L. B. & S. stations.
....	226-A	216	L. & A.	226-A	Classes and Commodities	New Orleans, La.	S. L. B. & S. stations.
A-116	146	217	L. R. & N.	1215	Classes and Commodities	New Orleans, La.	S. L. B. & S. stations.
....	192	218	L. R. & N.	1260	Classes and Commodities	New Orleans, La.	Woodworth, La.
....	192	219	L. R. & N.	1259	Classes and Commodities	Shreveport, La.	Woodworth, La.
A-8612	253	220	L. & N.	941	Petroleum, Oil, etc.	Cincinnati, Louisville, etc.	L. & P. stations.
A-655	223	221	Mo. P.	839	Coal and Coke	Memphis, Tenn.	S. L. B. & S. stations.
8487	15-A	222	Mo. P.	5165-A	Grain and Grain Products, Seeds and Hay	Kansas City, Omaha, etc. (Proportional)	S. L. B. & S. stations
8922	14-B	223	Mo. P.	5167-B	Hay and Straw	F. S. & W. stations	S. L. B. & S. stations
8456	36-A	224	Mo. P.	5164-A	Hay and Straw	Kansas, Mo. and Nebr. points	S. L. B. & S. stations
....	157	225	M. L. & T.	1122	Ice	Alexandria, La.	Woodworth, La.
2084-B	181-I	226	M. L. & T.	198-I	Salt	M. L. & T. Louisiana stations	S. L. B. & S. and W. & L. C. stations.
2430-B	262-A	227	M. L. & T.	657-A	Commodities	Shreveport, La.	L. & P. stations.
....	174	228	M. L. & T.	590	Classes and Commodities	Alexandria, La.	Woodworth, La.
....	194-A	229	M. L. & T.	606-A	Classes and Commodities	Lake Charles, La.	Woodworth, La.
2426-B	257-C	230	M. L. & T.	589-C	Classes and Commodities	New Orleans, La.	L. & P. stations.
2138-B	32-A	231	M. L. & T.	447-A	Classes and Commodities	New Orleans, La.	S. L. B. & S. stations
....	170-A	232	M. L. & T.	586-A	Classes and Commodities	New Orleans, La.	Woodworth, La.
1695-A	265	233	N. C. & St. L.	6	Coal and Coke	N. C. & St. L. Mines	S. L. B. & S. stations
1755-A	252	234	N. C. & St. L.	3	Classes and Commodities	N. C. & St. L. stations	Louisiana points.
3293	230	235	N. & W.	11091-A	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
3488	130	236	No. P.	24218	Lumber Buggies	Ashland, Wis.	Longville, La.
3	162	237	T. W. Parker	5	Coal, Coke and Coal Briquettes	Arkansas and Oklahoma points	L. & P., S. L. B. & S. and W. & L. C. stations.
3	296	238	P. & G. S. S. Co.	3	Classes and Commodities	Phila. and Seaboard Territory	L. & P., S. L. B. & S. and W. & L. C. stations.
206	295	239	W. A. Poteet	12-D	Classes and Commodities	Denver, Colo. Springs, etc.	L. & P. stations.
5486	231-F	240	St. L. & S. F.	473-F	Hay and Straw	St. L. & S. F. stations	S. L. B. & S. stations.
2462	61	241	St. L. S. W.	4165	Hay and Straw	Arkansas stations	S. L. B. & S. stations.
280	210	242	S. P. L. A. & S. L.	218-A	Refrigeration Charges	S. P. L. A. & S. L. points	L. & P., S. L. B. & S. and W. & L. C. stations.
A-705	230	243	S. A. L.	1020	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
16	266	244	W. J. Sedgman	1	Classes and Commodities	New York and Seaboard Territory	L. & P., S. L. B. & S. and W. & L. C. stations.
....	168	246	S. A. & S. W.	....	Brick, Tile and Fire Clay	DeRidder, La.	Longville, La.
....	209	246	S. A. & S. W.	....	Cotton Seed	S. L. B. & S. stations	Ringgold, La.
....	188	247	S. A. & S. W.	....	Hay (native grown)	Louisiana points	Louisiana points.
....	127	248	S. A. & S. W.	....	Lumber	Bon Ami and DeRidder, La.	Longville, La.
10	164	249	S. A. & S. W.	....	Potatoes	Ashton, La.	La gorie, La.
5	156	250	S. A. & S. W.	....	Rosin and Turpentine	Bundick, La.	DeRidder, La.
....	182	251	S. A. & S. W.	....	Sugar Cane	Ashton, La.	Lamorie, La.
....	295-A	252	S. A. & S. W.	....	Commodities	Ashton, La.	Lamorie, La.
....	271-A	253	S. A. & S. W.	....	Classes and Commodities	Lake Charles, La.	L. & P. stations.
4	1	254	S. A. & S. W.	....	Classes and Commodities	Louisiana stations (Distance Tariff)	Louisiana stations.
....	273	255	S. A. & S. W.	....	Classes	De Ridder, La.	Bon Ami, La.
A-2251	212	256	Sou.	5	Coal and Coke	Alabama, Tennessee, etc.	S. L. B. & S. stations
A-249	230	257	Sou.	....	Classes and Commodities	Virginia and Carolina points	L. & P., S. L. B. & S. and W. & L. C. stations.
A-97	261	258	T. C.	C. T. I.	Coal and Coke	Mines on Tennessee Central	S. L. B. & S. stations.
1632	27	259	T. & P.	I.B. 4479-H	Classes and Commodities	Alexandria, La.	Woodworth, La.
1329	69	260	T. & P.	I.B. 2958-H	Classes and Commodities	New Orleans, La.	W. & L. C. stations.
1342	26	261	T. & P.	I.B. 5685-H	Classes and Commodities	Shreveport, La.	Woodworth, La.
....	140-A	262	V. S. & P.	1466-A	Gravel	Gibler Gravel Pit, La.	Longville, La.
2336	282	263	V. S. & P.	P-90	Locking Cars	Shreveport, La.	S. L. B. & S. stations.
1851	31-B	264	V. S. & P.	531-B	Classes and Commodities	New Orleans, N. O. & N. E. and A. & V. stations	S. L. B. & S. stations.

SECOND SECTION—Concluded

LIST OF ALL FREIGHT TARIFFS AS TO WHICH THESE COMPANIES ARE DELIVERING CARRIERS—Concluded.

I. C. C. No.	S. A. & S. W. No.	Index No.	Issued by	Issuing Agent's Record or Agt.'s No.	Applies on	From	To
2546	35	285	V. S. & P.	304-C	Classes and Commodities	Shreveport and Monroe, La	S. L. B. & S. stations.
2331	32-C	286	V. S. & P.	327-C	Classes and Commodities	Vicksburg, Miss and V. S. & P. sta	S. L. B. & S. stations.
						Lines—	
36	279	287	M. P. Washburn	P 17 3	Iron, Pig	Arkansas Producing points	S. L. B. & S. stations.
35	280	288	M. P. Washburn	2	Pipe, Cast Iron	Southern Producing points	L. & P.; S. L. B. & S. and W. & L. C. stations.
33	282	289	M. P. Washburn	2	Classes and Commodities	Defined Territories (points south of Ohio River)	L. & P.; S. L. B. & S. and W. & L. C. stations.

MISCELLANEOUS SCHEDULES.

CLASSIFICATIONS, CLASSIFICATION EXCEPTIONS.

4	251	270	F. O. Bethell	46	Western Classification	State and Interstate points	L. & P.; S. L. B. & S. and W. & L. C. stations.
520	241	271	F. A. Leland	2-F	Exceptions to Classification	Ark., Houston, Galveston, etc	L. & P.; S. L. B. & S. and W. & L. C. stations.
548	242	272	F. A. Leland	1-Y	Exceptions to Classification	Defined Territories and Texas points	L. & P.; S. L. B. & S. and W. & L. C. stations.
9	6-A	273	G. B. Maxwell	1-A	Exceptions to Classification	State and Interstate points	L. & P.; S. L. B. & S. and W. & L. C. stations.

SWITCHING TARIFFS, TERRITORIAL DIRECTORIES, TRANSIT PRIVILEGES AND MISCELLANEOUS CIRCULARS.

2382	25	211	K. C. S.	151-D	Reconsignment of Grain, Grain Products, etc., at Shreveport, La.		
2456	21	275	K. C. S.	170-C	Transit Privileges on Grain, Grain Products, etc.		
2559	22	276	K. C. W.	177-A	Transit Privileges on Grain, Grain Products, etc., at Lake Charles, La.		
2565	20	277	K. C. S.	189	Transit Privileges on Grain, Grain Products, etc., at Lake Charles, La.		
594	19	278	F. A. Leland	3	Official List of Open and Prepay Stations.		
496	11	279	F. A. Leland	1	Territorial Directory.		
15	13	280	S. A. & S. W.	....	Abstract of Switching Charges of Connecting Line at DeRidder, Ben Ami, Lonesille and Lake Charles.		
....	15	281	S. A. & S. W.	....	Bills of Lading.		
....	17	282	S. A. & S. W.	....	Minimum Weights on Shipments in Open Cars.		
....	18	283	S. A. & S. W.	....	Revolving Lumber Shipments.		
13	5-A	284	S. A. & S. W.	....	Switching Charges at Ben Ami, DeRidder, Fulton and Lake Charles.		
....	4	285	S. A. & S. W.	....	Switching Charges at Lamorie, La.		
17	6-A	286	S. A. & S. W.	....	Tariff Index.		
....	16	287	S. A. & S. W.	....	Transit Privileges on Grain, Grain Products, etc.		
....	7	288	S. A. & S. W.	....	Transportation of Intersecting Liquors.		
....	12	289	S. A. & S. W.	....	Uniform Bill of Lading.		

THIRD SECTION.

NUMERICAL LIST OF I. C. C. NUMBERS, COVERING FREIGHT TARIFFS AND CIRCULARS ISSUED BY THESE COMPANIES, WITH INDEX TO DESCRIPTION IN FIRST AND SECOND SECTIONS.

I. C. C. No.	Index	I. C. C. No.	Index	I. C. C. No.	Index
4	117—254	12	168	15	196—280
8	96—256	13	165—284	17	195—286
10	91—249				

THIS PAGE
VERTICAL

FOURTH SECTION.

LIST OF ALL PASSENGER TARIFFS AND CIRCULARS PUBLISHED BY THESE COMPANIES AS INITIAL LINES.

TARIFFS.

I. C. C. No.	S. A. & S. W. No.	Issued by	Issuing Road or Agt.'s No.	Applies on	From	To
1	....	S. L. B. & S. L. & P.	1	Passenger Fares	S. L. B. & S. stations	S. L. B. & S. stations.
2	....		3	Passenger Fares	L. & P. stations	L. & P. stations.
		CIRCULARS.				
1	1	S. A. & S. W.	....	Transportation of Theatrical Companies, etc.	L. & P. stations	L. & P. stations.
4	9-A	S. A. & S. W.	....	Tariff Index		

FIFTH SECTION.

LIST OF ALL PASSENGER TARIFFS IN WHICH THESE COMPANIES ARE SHOWN AS PARTICIPATING OR DELIVERING LINES.

I. C. C. No.	Issued by	Issuing Road or Agent's No.	Applies	From	To
1797	C. & O.	26	Passenger Fares	Kentucky, Ohio and Virginia points	Various points.
1786	C. & O.	47	Passenger Fares	Kentucky, Ohio and Virginia points	Various points.
F-627	Jos. Richardson	N-11	Passenger Fares	Memphis, Tenn.	Various points.
C-5	W. H. Fitzgerald	C-5	Passenger Fares	Virginia and North Carolina points	Various points.
F-642	Jos. Richardson	1	Baggage Rates, Rules and Regulations	Southeastern points	L. & P., S. L. B. & S. and W. & L. C. stations.
1780	John D. Potts	9-1909	Stop-over Privileges	Chesapeake and Ohio points	Various points.

BOUND IN BOOK

56 Mansfield Railway & Transportation Company.

SHREVEPORT, LA., *April 12th*, 1913.

Mr. E. A. Frost, President, Mansfield Ry. & Transportation Co., Shreveport, Louisiana.

DEAR SIR: Beg to hand you herewith, extract from minutes of a meeting of the Board of Directors of this company, held at Mansfield, La., on Feb. 25th, 1909, relative to the purchase of eight miles of the main tram road from the De Soto Land & Lumber Company, from which it will be noticed that this company executed its notes aggregating $120,806.97 and it will be remembered that since this, we purchased six miles of additional track from the Frost-Johnson Lumber Company, for which we executed our notes for $96,000.00.

Wish to advise that we have paid interest in full to the Frost Johnson Lumber Company on the above notes to January 1st, 1910, amounting to $11,816.48.

Our books on March 31st of the current year, shows accrued interest on the above notes amounting to $42,277.41, being interest at six per cent per annum from January 1st, 1910, to March 31st, 1913, the monthly interest charge of $1,084.04, having been taken into account each month, and credited to accrued interest.

Yours very truly,

S. H. DOWELL, *Auditor*.

56*a* Mansfield Railway & Transporation Company.

Extract from Minutes of a Meeting of the Board of Directors of the Mansfield Railway & Transportation Company, Held at the Officers of the Company, in Mansfield, Louisiana, on February 25th, 1909.

Resolved: That, the main tram road of the De Soto Land and Lumber Company from Mansfield, De Soto Parish Louisiana, to Section Twenty One (21), Township Eleven (11), Range Fourteen (14), in said Parish of De Soto Louisiana, with all rights of way, etc., has been purchased by the officers of this company for and in the name of this company for the consideration of One Hundred Twenty Eight Thousand Dollars (subject to the right of the vendor to use said track for logging purposes free of charge for the period of — years) and for said purchase price, the six notes of the company, five for $20,000.00 each and one for $20,806.97, with a 6 per cent per annum interest from date till paid, have been executed and signed in the name of the company by E. H. Payne, Secretary. Now, said purchase having been made with the consent of all members of the Board of Directors, the same is formally ratified and made the act of the company, as is also the act of the Secretary in executing and signing said notes which are hereby recognized and declared to be the valid obligation of the company ad initio, and the Secretary of the Company is authorized and directed to accept formal transfer of said property.

(Signed) A. J. PEAVY, *Chairman*.

(Signed) E. H. PAYNE, *Secretary*.

57

No. 576.

SOUTHWESTERN LBR. CO.
to
INDUSTRIAL LBR. CO.

Sale of Land.

Know all men by these presents, that whereas the Southwestern Lumber Company, a corporation of Jersey City, State of New Jersey, herein represented by its President, E. P. Ripley, as shown by the certified copy of a resolution of the Board of Directors of said Company dated September 4th, 1907, hereto annexed is the present Owner and holder of same Sixty one thousand and odd acres of land and timber in the Parishes of Calcasieu, Vernon and Rapides, State of Louisiana, embracing among other lands, the two sections of land hereinafter specifically described which said sixty one thousand and odd acres of land and timber the said Southwestern Lumber Company is under an obligation to convey to the Industrial Lumber Company, a corporation of Beaumont State of Texas, under and in pursuance of an agreement between the said, Southwestern Lumber Company and the said Industrial Lumber Company, dated December 30th, 1905, and which agreement is made part of this present sale, and provided the said Industrial Lumber Company, shall perform all the conditions stipulated for it to perform to entitle it to the conveyance and benefits stipulated for it in the said agreement of December 30th, 1905; and whereas it is the common belief of the said Southwestern Lumber Company and the said Industrial Lumber Company, that the interest of both Companies will be better subserved by the Southwestern Lumber Company's making a present title to the said Industrial Lumber Company of the said Two sections of land hereinafter specifically described, rather than to wait until such time as the said Industrial Lumber Company,
58 would be entitled to such conveyance under the said Agreement of December 30th, 1905, to-wit; July 1st, 1918, with the distinct Understanding that the title to the said Two sections of land however shall be conditioned upon the said Industrial Lumber Company's discharging regularly and fully all the conditions and stipulations provided for it to perform in the said agreement of December 30th, 1905, to entitle it to a conveyance of the said Two sections of land, or land and timber embraced in the said agreement of December 30th, 1905, and shall, of course, fully and finally vest in the said Industrial Lumber Company, or its successors or assigns only when such said conditions and stipulations of the said agreement of December 30th, 1905, shall have been properly and fully performed; Now, therefore be it Known, That in consideration stated in the said agreement of December 30th, 1905, to-wit; The payment in the future by the said Industrial Lumber Company to the said Southwestern Lumber Company, of the sum of Two Million, Two Hundred and Ninety thousand nine hundred and Seventy two and twenty-one hundredths Dollars, together with various other sums and the carrying out of various and sundry

other obligations by the said Industrial Lumber Company, all as and in the manner, set forth in the said agreement of December 30th, 1905, and made part hereof, and as aforesaid, and being the consideration for the aforesaid Sixty one Thousand and odd acres of land and timber as above mentioned and embracing the said two sections of land hereinafter specifically described in the said Southwestern Lumber Company, represented herein and acting as aforesaid, through its undersigned President E. P. Ripley, and
59 under the authority aforeshown, does hereby grant, sell, convey, and deliver unto the said Industrial Lumber Company, representing and acting herein, and accepting through its President, Samuel Park, and under resolution of the Board of Directors of said Company, dated September 19th, 1907, and a certified copy whereof is hereto annexed, all and singular the following described property to-wit; Those two sections of land in the Parish of Calcasieu, State of Louisiana, more specifically described as Sections Twenty and Twenty-one, of Township Two, South Range Four West embracing Twelve Hundred and Ninety one and 57/100 acres more or less, it is understood that should the said Industrial Lumber Company, cut any timber on the said described two sections of land, such timber shall be paid for at the rate and in the manner set forth in the aforesaid agreement of December 30th, 1905.

This sale is made without any warranty of title on the part of the vendor herein except as against its own acts and the acts of those claiming by, through or under it. It is stated that *on* this restriction *is* warranty is not intended to cast any cloud upon the title to the said described two sections of land but that this provision is one of the terms of the aforesaid agreement of December 30th, 1905, based upon the particular relations of the said Southwestern Lumber Company, and Industrial Lumber Company, with regard to these said Sixty one thousand and odd acres of land and timber. It is further understood and assuming, of course, that such conveyance will be made, that when the said Industrial Lumber Company shall have conveyed the remainder of these sixty one thousand and odd acres of land and timber, to-wit; July 1, 1910, or at any other time, should the Conveyance be made at any other time, in pur-
60 suance of the said agreement of December 30th, 1905, the said Southwestern Lumber Company, shall then substantially quit-claim also, these within described two sections of land, admitting and setting forth that all the conditions attached to the complete vestiture of title to the within described two sections of land in the said Industrial Lumber Company or its assigns have been complied with. The said Southwestern Lumber Company, shall at the time also subrogate the said Industrial Lumber Company to all the rights and actions in warranty that it, the said Southwestern Lumber Company, might have against all other persons. All taxes due on the within conveyed property for the three years preceding the year 1907 have been paid, as is evidenced by the certificate of th Tax Collector of Calcasieu Parish, hereto annexed. Thus done and signed by the Southwestern Lumber Company through its aforesaid president, E. P. Ripley, in the County of Cook, State of

Illinois, this 17th day of September, A. D. 1907, and by the said Industrial Lumber Company, through its aforesaid President, Samuel Park, in the County of Jefferson, State of Texas, this 19th day of September, A. D. 1907.

(Signed) SOUTHWESTERN LUMBER CO.,
By E. P. RIPLEY, *President.*
INDUSTRIAL LUMBER COMPANY.
SAMUEL PARK, *President.*

STATE OF ILLINOIS,
County of Cook:

Before me, the undersigned authority personally came and appeared the above named E. P. Ripley to me personally well known, and known to me to be the Officer he pretends in the above instrument to be, who declared and acknowledged to me in the presence of the subscribing witnesses hereto, that he voluntarily signed and executed the said above and foregoing instrument for the uses and purposes therein set forth and in the capacity therein stated. In testimony whereof the said appearer has hereunto set his
61 hand in the presence of and together with said witnesses, males over twenty-one years of age residents of this county competent witnesses, and I said authority, have hereunto set my hand and seal in the presence of and together with said appearers and said witnesses in the County and State first above written, this 17th day of September, A. D. 1907.

[SEAL.] C. P. RIPLEY.

(Witnesses:)
CHAS. JENSEN.
E. J. ENGEL.
NELSON W. WILLARD.

STATE OF TEXAS,
County of Jefferson:

Before me, the undersigned authority, personally came and appeared the above named Samuel Park, to me personally known and known to be the Officer he pretends in the above instrument to be, who declared and acknowledged unto me in the presence of the subscribing witnesses hereto, that he voluntarily signed and executed the said above and foregoing Instrument for the uses and purposes therein set forth and in the capacity therein stated. In testimony whereof the said appearer has hereunto set his hand, in the presence of and together with the said witnesses, males over twenty-one years of age, residents of this County, competent witnesses, and I said authority, have hereunto set my hand and seal in the presence of and together with said appearer and said witnesses in the County and State first above written, this 19th day of September, A. D. 1907.

SAMUEL PARK.

(Witnesses:)
L. R. WILLARD.
F. W. LISKOW.

[SEAL.] M. E. BUCK,
Notary Public, Jefferson County, Texas.

Resolution of Southwestern Lumber Company.

SEPTEMBER 4, *A. D.* 1907.

A Meeting of the Board of Directors of the Southwestern Lumber Company, was duly convened and held at the Office of the Company at New York City, State of New York, this 4th day of September,
A. D. 1907, present the following Directors, Edward P. Rip-
62 ley, Victor Morawetz, A. E. Waterhouse, L. C. Deming, constituting a quorum. On motion duly made and seconded, the following resolution was unanimously passed.

Resolved. That in view of the relations subsisting between this Company and the Industrial Lumber Company, of Beaumont, Texas, under and in connection with a certain agreement of sale, executed between this Company and the said Industrial Lumber Company, under date of December 30th, 1905, and with regard to the Sixty-one thousand and odd acres of land and timber embraced under, or in contemplation of, the said agreement of December 30th, 1905, and of which said land and timber the sections of land hereinafter described are a part of the further fact that it is the belief of this Company that it is to the interest of this Company that this Company should make a present title to the said Industrial Lumber Company, of the said hereinafter described two sections of land, rather than to wait until such time as the said Industrial Lumber Company, might become entitled to a Conveyance of the said Two described sections of land under the said Agreement of December 30th, 1905, to-wit; July 1st, 1918, with the understanding only, that the full vestiture of title to the said two described sections of land in the said Industrial Lumber Company, shall be conditioned upon the full and complete compliance with all the provisions and conditions of the said Agreement of December 30th, 1905; That this Company, through its President, E. P. Ripley, do make a present conveyance of said hereinafter described two sections of land to the said Industrial Lumber Company, conditioned only upon the provisions and terms as above mentioned of said agreement of December 30th, 1905, and the said two described sections of land being
the following, to-wit; Sections Twenty and Twenty One, of
63 Township Two South of Range Four West of the Parish of Calcasieu, State of Louisiana, embracing Twelve Hundred and Ninety-one and 57/100 acres, more or less. It shall be stated, that, the Industrial Lumber Company shall cut any timber on the said described two sections of land, such timber shall be paid for at the rate and in the manner set forth in the aforesaid agreement of December 30th, 1905. That the President shall be entitled to stipulate that this Company will execute to the said Industrial Lumber Company, substantially a quit-claim deed to the said described two sections of land, admitting the complete carrying out of all the conditions and stipulations attaching to the full and final vestiture of title in the said Industrial Lumber Company, should, of course, such become the case, whenever this Company, shall

convey the remainder of the aforesaid Sixty One Thousand and odd acres of land, and timber to the said Industrial Lumber Company, The President shall also stipulate that at the time such quit-claiming is done, this Company, shall then also subrogate the said Industrial Lumber Company to all the rights of Warranty that it might have against all other persons. I, the undersigned hereby certify -he above and foregoing to be a true and correct copy of a resolution passed by the Board of Directors of the Southwestern Lumber Company at a meeting hold by the said Board at the place and upon the date above set forth.

Witness my signature and seal of Office this 4th day of September, A. D. 1907.

[SEAL.] L. C. DEMING, *Secretary.*

Resolution of the Board of Directors of Industrial Lumber Co.

BEAUMONT, TEXAS, *Sept. 19th,* 1907.

A meeting of the Board of Directors of the Industrial Lumber Company, was duly convened and held at the Office of the
64 Company at Beaumont, Texas, this 19th day of September, A. —. 1907.

Present the following Directors: Sam Park, Newton R. Wilson, R. M. Hollowell, Jos. Muth, constituting a quorum.

On motion duly made and seconded, the following resolution was unanimously passed. That whereas, it is to the interest of this Company to ask and accept from the Southwestern Lumber Company of Jersey City, New Jersey, a present title of sections Twenty and Twenty-one, of Township Two, South of Range Four West, of the Parish of Calcasieu, State of Louisiana, embracing Twelve hundred and Ninety one and 57/100 acres, more or less subject to all the conditions, for a full and complete vestiture of title to this Company of the agreement between this Company and the Southwestern Lumber Company, dated December 30th, 1905, and whereas the said Southwestern Lumber Company, has expressed a willingness to convey the said described land to this Company under such conditions and certain other special conditions as to the cutting of timber and final quit-claiming of the land to this Company, upon the fulfillment of all the conditions which this company, is obliged to perform, and also a subrogation at the time of such quit-claiming of all the said Southwestern Lumber Company's rights in warranty against all other persons, as to the said two described sections of land; That, therefore, be it Resolved, That this Company accepts such Conveyance from said Southwestern Lumber Company and that the President of this Company, Samuel Park, be and he is hereby authorized and requested to execute such a deed of Conveyance accepting the said title to the said described land, for and in the name of this Company. I, the undersigned hereby certify the above and foregoing to be a true and correct copy of a resolution passed by the Board of Directors of the Industrial Lumber Company, at a

meeting hold by the said Board at the place and upon the
65 date above set forth. Witness my signature and seal of Office this 19th day of September, A. D. 1907.

[COR. SEAL.] JOS. MUTH,
Ass't Sec'y.

I, the undersigned hereby certify that an examination of the Records of this Office show that all taxes assessed against Sections Twenty and Twenty-one of Township 2 South Range 4 West, of this Parish for the years 1904, 1905, and 1906 have been duly paid.

Witness my hand of Office in the parish of Calcasieu, State of Louisiana, on this 15th day of August, 1907.

D. J. REID,
Tax Collector,
Per E. H. ANDRUS, *Deputy.*

Filed Sept. 20th, 1907. No. 22397.

Recorded Sept. 21st, 1907.

M. E. CRAWFORD,
Deputy Clerk & Ex Officio Recorder.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud'l Dist. Court of La.

I hereby certify that the above and foregoing is a true and correct copy of a certain Sale of Land, from the Southwestern Lbr. Co. to Industrial Lbr. Company, recorded in Book 87 of *of* Conveyances, at page 569 et seq.

In testimony whereof, I hereunto affix my signature and seal of Office at Lake Charles, La., this 6th day of December, A. D. 1909.

[SEAL.] EUGENE J. LEVEGUE,
Deputy Clerk of Court.

Filed. Interstate Commerce Commission. Docket No. 11, I. & S. Exhibit No. —. Witness, —— ——. Complainants, —— ——. Defendants, —— ——. Date, 1-31-11. Steno., Philips.

66 *Statement of Shipments for Year* 1910.

Recapitulation.

States.	Feet, board measure.	Lath.	Cars.
Arkansas	1,158,042	.....	68
Colorado	2,353,966	25,000	102
Illinois	36,144,584	1,906,984	1,781
Indiana	15,016,738	3,729,150	731
Iowa	12,642,025	522,300	620
Kansas	8,275,881	363,550	381
Louisiana	2,069,866	145,000	141
Maryland	634,157	.....	31
Massachusetts	41,464	.....	2
Michigan	3,742,076	.....	196
Minnesota	1,818,724	86,250	90
Missouri	23,568,712	4,040,800	1,167
Nebraska	17,149,275	771,650	798
New Hampshire	21,120	.....	1
New Jersey	36,480	.....	1
New Mexico	785,560	.....	50
New York	1,232,415	.....	59
North Dakota	25,119	.....	1
Ohio	7,355,765	437,150	397
Oklahoma	14,337,766	.....	677
Pennsylvania	1,468,715	.....	71
South Dakota	1,750,528	21,400	92
Tennessee	1,709,682	.....	78
Texas	18,686,250	.....	990
Utah	166,209	.....	9
Wisconsin	4,362,205	.....	231
Wyoming	166,817	.....	8
West Virginia	117,557	.....	6
Canada	3,075,593	.....	192
Mexico	1,181,510	.....	64
	181,094,801	12,049,234	9,035

Filed. Interstate Commerce Commission. Docket No. 11, I. & S. Exhibit No. —. Witness, —— ——. Complainants, —— ——. Defendants, —— ——. Date, 1-31-11. Steno., Philips.

67 Interstate Commerce Commission. Docket No. 11, I. & S. Exhibit No. 2. Witness, Kirby. Complainants, —— ——. Defendants, —— ——. Date, 1-30-11. Steno., Philips.

See p. 6529.

Statement of Kirby Lumber Company's Tram Lines, Showing Mileage, Equipment, and Operations.

Location of industrial railroad.	Miles operated.	Number of locomotives.	Number of cars.	Approximate tonnage of lumber manufactured from logs handled year ending June 30th, 1909.	Approximate tonnage of camp supplies.	Operating expenses for year ending June 30th, 1909.
Silsbee—Village*	39.5	6	79	29,804	795	$33,729.00
Ford's Bluff (Evadale)	17.5	4	41	20,390	272	19,202.33
Bessmay—Buna	34	7	95	68,851	918	56,691.05
Call	30	7	144	58,246	1,553	80,265.55
Kirbyville	20	5	70	52,690	703	74,257.72
Roganville	14	3	28	21,378	285	29,813.49
Browndel	7	1	25	51,935	692	42,997.25
Bronson	7	2	17	23,661	316	18,327.51
Mobile*	12	4	30	.....	....	.....
Fuqua	13.5	3	34	17,503	233	29,219.45
Lyric	12	2	3	†7,323	510	15,179.89
Totals	206.5	44	566	351,781	6,277	$399,683.24

* Mill not in operation.
† Hewn Ties.

REMARKS.—No division of rates received. Made to compare Kirby Lumber Co.'s industrial railroads with other Tap Lines that are incorporated for the purpose of securing divisions of rates on lumber and other commodities, at rates varying from 1¢ to 6¢ per 100 pounds.

(Here follows table, marked p. 68.)

69 *Statement of Carload Shipments of Lumber Made by the Kirby Lumber Company from Mills on the G., C. & S. F. Railway Company in Texas and Percentages Showing Proportion Destined Santa Fe System Points and Points Beyond.*

From January 1st, 1910, to Nov. 30th, 1910, Inclusive.

From—	To Santa Fe points.		Beyond Santa Fe.	
	Cars.	%.	Cars.	%.
Beaumont	3	100	0	0
Silsbee	435	36	771	64
Call Jct.	732	35	1,355	65
Roganville	231	35	432	65
Fuqua	286	33	578	67
Bronson	229	34	451	66
Bessmay	851	32	1,838	68
Browndel	31	42	42	58
Kirbyville	773	37	1,329	63
Evadale	250	33	516	67
Totals	3,821	34	7,312	66

Interstate Commerce Commission. Docket No. 11. I. & S. Exhibit No. 3. Witness, Kirby. Complainants, —— ——. Defendants, —— ——. Date, 1-30-11. Steno., Philips.

See p. 6560.

	Santa Fe.	Other lines.	Total.	R. R. material sold f. o. b. mill.	Total shipments.
1904	12,950 Cars	4,501 Cars	17,451 Cars	2,094 Cars	19,545 Cars
1905	13,960 "	3,662 "	17,622 "	2,891 "	20,513 "
1906	11,040 "	5,011 "	16,051 "	5,182 "	21,233 "
1907	11,110 "	2,815 "	13,925 "	3,685 "	17,610 "
1908	7,722 "	1,642 "	9,364 "	553 "	9,917 "
1909	11,725 "	1,476 "	13,201 "	2,606 "	15,807 "
1910 to	11,133 "	697 "	11,830 "	2,523 "	14,353 "
11/30	79,640 Cars	19,804 Cars	99,444 Cars	19,534 "	118,978 Cars

* Freight charges paid on above..... $8,896,306.79
Average per car..... 89.46

Freight charges paid by Kirby Lumber Company, January 1st, 1904, to Nov. 30th, 1910, on Commercial (only) lumber.

All railroad material and a small per cent of commercial lumber sold F. O. B. Mills, but not taken into account of total charges paid, nor average per car. If taken into account, would increase considerably the average freight charges per car paid carriers.

Hewn Ties and Piling, shipments from Jan'y 1st, 1904, to November 30th, 1910:

Hewn Ties	872,942 Tons
Piling	214,540 "
Total	1,087,482 Tons

Interstate Commerce Commission. Docket No. 11, I. & S. Exhibit No. 4. Witness, Kirby. Complainants, —— ——. Defendants, —— ——. Date, 1-30-11. Steno., Philips.

THIS PAGE BOUND VERTICAL IN BOOK

71 THE STATE OF TEXAS,
County of Harris:

Know all men by these Presents: That Kirby Lumber Company, a corporation duly incorporated under and by virtue of the laws of the State of Texas, having its domicile and principal place of business in the County of Harris, State of Texas, for and in consideration of the sum of One Million, nine hundred and eighty thousand, three hundred and forty-eight and 26/100 Dollars ($1,980,348.26) in cash to it in hand this day paid by J. R. Chapman, the receipt of which is duly acknowledged, has Granted, sold and conveyed, and by these presents does Grant, Bargain, Sell and convey unto the said J. R. Chapman, of the County of Cook, State of Illinois, the several tracts or parcels of land and also the timber and timber rights hereinafter described lying and being situated in the Counties of Angelina, Hardin, Jasper, Jefferson, Liberty, Newton, Polk, Sabine, San Augustine, Shelby, Tyler and Montgomery, State of Texas, to-wit:

Angelina County.

825 acres out of Johnson Palmer League.
640 acres, the H. T. & B. Ry. Co. Sec. No. 33.
640 acres, the H. T. & B. Ry. Co. Sec. No. 35.
640 acres, the H. T. & B. Ry. Co. Sec. No. 37.
640 acres, the H. T. & B. Ry. Co. Sec. No. 39.
640 acres, the H. T. & B. Ry. Co. Sec. No. 36.

Hardin County.

1107 acres out of N. W. part of Joseph Carriere League.
All timber on N. E. Quarter of Joseph Carriere League.
105 acres, out of S. K. Van Meter League.
South 2/3 of William Kirk survey.
1000 acres out of Elijah Hunter League, covering Sillsbee Townsite, less Right-of-waf of G., C. & S. F. Ry. Co.
All timber on 885 acres, 665 acres and 714 acres out of R. A. Irion League.

Jasper County.

1280 acres, the James Agnew Survey.
300 acres out of Thomas B. Huling survey.
76 12/100 acres undivided out of 870 acres out of Stephen H. Everett Leg.
440 acres, out of 480 acres of Nathan Bonton survey.
71 acres undivided out of Elizabeth Davis survey.
32 acres undivided out of Jerome Davis survey.
64 acres undivided out of Enoch Grigsby survey.
166 acres undivided out of John James survey.
100 acres and 118 acres out of S. S. Lewis survey.
72 An undivided one half of 511 acres and 274 acres out of J. T. Lewis survey.
An undivided one fifth of 100 acres out of George W. Leonard survey.

176 acres out of M. B. Lewis survey.
An undivided 1/5 of 160 acres, the Daniel Morgan Survey.
80 acres, being north half of William L. Magel survey.
215½ acres out of John Singleton survey.
All timber on W. A. Isaac 160 acre survey.
Undivided ½ of Penelope Morgan 160 acre survey.
37 acres out of N. M. Hart survey.
17½ acres out of N. M. Hart survey.
North ½ and South East Quarter of Alfred Poole 138 7/10 acres survey.
80 acres off of north end of Parish Smith 160 acre survey.
103 1/3 acres out of William Seybold Labor.
103 1/3 acres out of T. & N. O. Ry. Co. Sec. No. 50.
All timber on South half of Elmira Wright 145 acre survey.
640 acres, the H. & T. C. Ry. Co. Sec. No. 76.
50 55/100 acres, 45 69/100 acres and 223 75/100 acres and 240 acres out of H. & T. C. Ry. Co. Sec. No. 66.
640 acres, the H. & T. C. Ry. Co. Sec. No. 250.
640 acres, the H. & T. C. Ry. Co. Sec. No. 254.
2658 acres, The Hezikiah R. Williams survey except that tract con- by L. W. Ludlow to John H. Kirby.
All pine timber 8 inches in dia. and upwards at the stump on an undivided 80 acres out of the Prince Dearmon 10½ acre survey.

Jefferson County.

107 acres more or less out of William H. Hodges Survey.

Liberty County.

All timber on 803 acres out of V. E. Dishal survey.
367½ acres the J. V. Tackaberry survey.
1862.7 acres more or less out of A. B. Razelle survey.
303 54/100 acres out of Daniel Danaho League.
All timber on 2200 acres out of Maurice Smith League and 1030 acres out of same survey.
All timber on F. H. Valaio 117 1/5 acre survey.
All timber on F. H. Valow 565½ acre survey.
All timber on M. E. Pulids League.
All timber on 2159 acres Margant Kennedy survey.
2214 acres, east ½ of Hugh Means League.
All timber on Colib Barker 1476 acre survey.
All timber on B. B. B. & Co. Ry. Co. Patent No. 491.
All timber on H. T. & B. Ry. Co., Sec. No. 16 being 640 acres.
All timber on 440 acres out of John Simmon's 640 acre survey.
All timber on Charles Smith 640 acre survey.
All merchantable pine timber on W. S. Keaghay survey of 1476 acres.
All timber on H. & T. C. Ry. Co. Sec. No. 152.
All timber on H. & T. C. Ry. Co. Sec. No. 154.
All timber on H. & T C. Ry. Co. Sec. No. 156.
All timber on 1106 1/10 out of South ½ of John Pleasants League.

1000 acres out of John Pleasants League.
1214 acres out of North ½ of John Pleasants League.
All timber on 160 acres out of John Pleasants League.
All timber on 5/6 interest out of 200 acres out of Stephen Nicholson League.
213 acres of Stephen Nicholson League.
All timber on two tracts of land, 462 acres and 200 acres out of Hugh Mean's League.
73 N. W. quarter of Hugh Means League.

Newton County.

1107 acres out of — containing (1/3) of the League patented to William J. Sneed, assignee of Charles McKim.
147 9/10 acres out of H. & T. C. Ry. Co. Sec. No. 11.
100 acres out of Friend McMahan 160 acre survey.
300 acres out of Taylor Thomason 320 acre survey.
640 Acres T. & N. O. Ry. Co. Sec. No. 7.
640 acres T. & N. O. Ry. Co. Sec. No. 5.
480 acres T. & N. O. Ry. Co. Sec. No. 3.
640 acres T. & N. O. Ry. Co. Sec. No. 1.
640 Acres T. & N. O. Ry. Co. Sec. No. 15.
320 acres T. & N. O. Ry. Sec. No. 11.
565 acres T. & N. O. Ry. Sec. No. 9.
640 acres T. & N. O. Ry. Sec. No. 7 brs. 14 acres belonging to Jasper & Eastern Ry. Co.
334 acres T. & N. O. Ry. Co. Sec. No. 5, brs. right-of-way of Jasper and Eastern Ry. Co.
615 acres T. & N. O. Ry. Co. Sec. No. 3.
526 acres T. & N. O. Ry. Co. Sec. No. 1 except right-of-way of Jasper & Eastern Ry. Co.
640 acres T. & N. O. Ry. Co. Sec. No. 9.
60 acres out of J. W. Whitman 160 acre survey.
49 acres out of A. S. Lewis 160 acre pre-emption.
191 69/100 acres out of H. & T. C. Ry. Co. Sec. No. 12.
640 acres T. & N. O. Ry. Co. Sec. No. 6.
640 acres T. & N. O. Ry. Co. Sec. No. 8.
334 acres T. & N. O. Ry. Co. Sec. No. 6.
592 acres T. & N. O. Ry. Co. Sec. No. 4.
640 acres T. & N. O. Ry. Co. Sec. No. 6.
640 acres T. & N. O. Ry. Co. Sec. No. 8.
10 acres Alvia Jones Survey.
738 acres out of Pleasant Davis 1/3 League.
542 acres T. & N. O. Ry. Co. Sec. No. 44.
1753 acres out of Henry Cachran League.
West ½ of 1476 acres of James McMahon survey.
600 acres out of Nancy Myers 640 acre survey.

Polk County.

860 acres out of James B. Word survey.
All timber I. & G. N. Ry. Co. Survey No. 41.
All timber on I. & G. N. Ry. Co. Survey No. 56.

Sabine County.

300 acres out of E. A. C. Johnson League.
103 acres out of Henry Nichols League.
100 acres out of T. C. Ry. Co. Sec. No. 1.
600 acres out of John S. Lane League.

San Augustine County.

278½ acres out Chichister Chaplin survey.
Undivided 100 acres out of 264 4/7 acres out of Noel G. Roberts League.
Undivided 200 acres out of 800 acres of Edmind Quirk survey.
723½ acres out of Major Smith League.
74 Undivided 1262 5/10 acres out of those 3 sections and being H. T. & B. R. R. Secs. Nos. 1, 3 and 5.
640 acres H. T. & B. R. R. Sec. No. 8.
Undivided 138 acres out of Block No. 7 out of S. D. McMahon League.

Shelby County.

1005 5/10 acres out of Jonathon Bittick Survey.
Undivided 284 acres out of 568½ acres out of George W. Cattle Sur.
57 acres out of Alford Conway Survey.
167 acres the George W. Cattle survey.
160 acres, the A. E. Dean survey.
160 acres, the J. A. Donly survey.
160 acres out of Hiram Eddy survey.
57 acres, the James A. Hinton survey.
230 acres out of Nealy Jimbro League.
100 acres out of Nealy Kimbro League.
320 acres R. O. Lusk survey.
115 acres out of John Merchant survey.
4195½ acres out of Rusk County School land.
172 out of Samuel Todd survey.
79½ acres out of Z. C. Walker survey.
87 3/10 acres out of Z. C. Walker survey.
300 acres out of Z. C. Walker survey.
Undivided 133½ acres out of J. L. Forsythe 160 acre survey.
Undivided 250 acres out of 421 acres out of M. M. Vann survey.
137 5/10 acres out of the Fannie Bunn 155 acre survey.
160 acres, the Wilson Clemons survey.
640 acres, Georgetown Railroad Co. survey No. 1.
Undivided 640 acres out of Fredrick A. Sherman survey.
160 acres, the J. Y. Whatly survey.
80 acres out of P. W. Wilkerson 160 acre survey.
514 4/10 acres, the C. M. Hill survey.
160 acres, the Henry Bomhill survey.
160 acres, the W. H. Owens survey.
160 acres less 6¾ acres, the Berry Tamplin survey.
640 acres, the W. M. Perry survey.
112 acres out of Edward Passmore survey.

160 acres, Peter Wankin survey.
90 acres out of B. F. Martin survey.
Undivided 109 12/100 acres out of C. M. Hill 218¼ acre survey.
173 1/3 acres, the C. M. Hill survey.
100 acres out of M. A. Alford 160 acre survey.
160 acres, the Nelson Etheridge survey.
1244 acres, the Lyda Alcom survey.
Undivided 143 acres out of F. W. Parker 160 acre survey.

Tyler County.

Undivided 200 acres out of the two tracts containing 211 acres respectively out of James Mitchell survey.
1024½ acres being two tracts out of the James Blount League.
All timber on 100 acres out of William Campbell League.
Undivided 1310 acres out of William Pamphlin 20½ Labor.
All timber on undivided 32 acres out of G. M. Buckhanan 160 acre survey.
160 acres, the L. D. Ballard survey.
75 All timber on the 200 acre, E. S. Pitts, assignee of B. B. B. & C. Ry. Co.
All timber on 160 acres, the William Chambers survey.
160 acres, the R. J. Commander survey.
47 1/3 acres, out of Benjamine Enloe 320 acres survey.
Undivided 853 1/3 acres out of those 3 certain tracts of land as follows: 640 acres E. T. T. T. Co. Sec. No. 1, 640 acres E. T. R. R. Co. Survey, No. 3 and 640 acre E. T. R. R. Co. Sec. No. 5.
All timber on 40 acres of Jessie Fulgham survey.
All merchantable pine timber on William Harris 320 acre survey.
All timber on 81 acres out of E. L. Jennings 160 acre survey.
All timber on 114¾ acres out of Fountain Lister survey.
All merchantable pine timber on 171¾ acres, the E. T. Nolen survey.
110 acres, the William Seamons survey.
6,300,813 sq. varas, the Fredrick Hellmiller survey.
640 acres, the Galveston & Brazos Navigation Co. Sec. No. 39 less 15 acres being right-of-way of T. & N. O. Ry. Co.
1220½ acres out of Emily Smythe survey of 1250 acres.
1280 acres, the John Wheat survey.
160 acres, the John Greenwood survey.
62 acres, the L. G. Shannan survey.
640 acres, the E. T. Ry. Co. Sec. No. 4.
All timber on 520 acres out of Galveston Brazos Navigation Co. Survey Sec. No. 35.
97¾ acres out of Mary Chate 237 acre survey.
593 46/100 acres out of Galveston Brazos Navigation Co. Sec. No. 40.
2153 acres undivided, out of Burrell Blackman League.

Montgomery County.

1779 acres, out of Elijah Votaw survey.
Reference is hereby made to all the deeds, patents and judgments

herein above particularly enumerated and to all the records thereof as above stated for particular descriptions of the lands and timber above conveyed, and it is understood that all of said deeds, patents and judgments mentioned in the preceding descriptions and the records thereof shall be considered referred to for particular descriptions as fully as if special reference had been made to each one.

In every instance where timber as timber rights are conveyed, exclusive of the land upon which such timber is located, it is understood that the grantee above named accepts the title to said timber and timber rights, subject to the terms, conditions and limitations under which such title is held by the Grantor herein.

To have and to hold the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said J. R. Chapman, his heirs or assigns forever.

And said Kirby Lumber Company does hereby bind itself and its successors to warrant and forever defend all and singular, the said premises unto the said J. R. Chapman, his heirs or assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In witness whereof said Kirby Lumber Company has executed these presents by its President, acting under oath only of resolutions of its stockholders and directors and its Secretary acting under such authority has hereto affixed its corporate seal upon this the 2nd day of July, A. D. 1909.

KIRBY LUMBER COMPANY.
By JNO. H. KIRBY, *Its President.*

Attest:
[L. S.] W. N. SHAW,
Secretary of Kirby Lumber Company.

76 THE STATE OF TEXAS,
County of Harris:

Before me, the undersigned authority on this day personally appeared John H. Kirby, known to me to be the person whose name is subscribed to the foregoing instrument as President of Kirby Lumber Company a corporation and known to me to be the President of said Kirby Lumber Company and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said Kirby Lumber Company and in his capacity as President thereof.

Given under my hand and seal of office this 3rd day of July, A. D. 1909.

[L. S.] W. L. COOK,
Notary Public, Within and for the County of Harris, State of Texas.

THE STATE OF TEXAS,
County of Harris:

Before me, the undersigned authority on this day personally appeared W. N. Shaw, known to me to be the person whose name is

subscribed to the foregoing instrument as Secretary of Kirby Lumber Company, a corporation and known to me to be the Secretary of said Kirby Lumber Company, and acknowledged to me that he executed and attested the same for the purposes and consideration therein expressed as the act and deed of said Kirby Lumber Company and in his capacity as Secretary thereof.

Given under my hand and seal of office, this 3rd day of July, A. D. 1909.

[L. S.] W. R. COOK,
Notary Public Within and for the County of Harris, State of Texas.

Filed for record Aug. 6th, 1909, at 8 o'clock A. M.
W. J. GARRETT,
County Clerk.

THE STATE OF TEXAS,
County of Harris:

Know all men by these presents, that I, Jogn H. Kirby, of the County of Harris, State of Texas, for and in consideration of the sum of ten dollars ($10.00) and other valuable considerations to me in hand this day paid by Kirby Lumber Company, a corporation duly incorporated under and by virtue of the laws of the State of Texas, with its principal office in the County of Harris, State of Texas, the receipt of which is hereby fully acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Kirby Lumber
77 Company, all of the following described tracts, pieces and parcels of land and also certain timber rights which are hereinafter more particularly described; said lands and timber lying and being situated in the Counties of Hardin, Polk, Jasper, Liberty, Newton, Sabine, San Augustine, Shelby, Tyler and Panola, State of Texas, and being more particularly described as follows: An undivided 420 acres out of a 640 acre survey, being the E. B. Jackson survey in Hardin County.

An undivided 160 acres of land out of the James H. Richardson 1280 acre survey in Hardin County.

An undivided 221 4/10 acres of land out of the S. one half of the Clayton Harper League in Liberty County.

200 acres out of the B. Tarkington League in Liberty County.

An undivided 31¼ acres out of a 125 acres of the Thomas B. Huling League in Jasper County.

80 acres out of the H. R. Williams 662 acre survey in Jasper County.

252 acres the Hannah Morgan Survey in Jasper County.

All the pine timber ten inches in diameter and upwards at the stump situated on the W. H. Turner survey in Jasper County.

An undivided two thirds interest of a certain 245 6/100 out of Ed Goode League in Jasper County.

78 An undivided ½ of 200 acres out of the Lewis Litny League in Jasper County.

An undivided 30 acres out of the W. R. B. Hester 160 acre survey in Jasper County.

An undivided 34 acres out of the S. E. ¼ of H. T. & T. C. Railway Co. Sec. No. 118 in Jasper Co.

320 acres, the William Grigsby survey in Jasper County.

All of the timber on 100 acres out of James H. Blount League in Jasper Co.

An undivided ½ of 100 acres of the William Walker 200 acre survey in Jasper County.

An undivided 77 5/10 acres out of a 154½ acre survey out of the Nathanial Grigsby 308½ acre survey in Jasper County.

An undivided ½ of 609 acres out of B. F. James League in Jasper Co.

An undivided ½ of the Nicey Wright 160 acre survey in Jasper Co.

187 acres out of Alex Wright League in Jasper County.

All of Grantor's interest in the Matilda Rummels League in Newton County less 885 acres before sold by Grantor to J. P. Chapman.

79 880 5/10 acres out of A. M. Bevil League in Newton County.

An undivided 40 acres out of Sarah Ann Ramsey 160 acre survey in Newton County.

An undivided ½ of the Sarah Winfrey 792 acre survey in Newton Co.

An undivided 96 acre out of the North half of the Josiah Roberts Apper survey in Newton Co.

An undivided ½ of the E. P. Morris 640 acre survey in Newton County.

An undivided 160 acres out of the H. & T. C. Ry. Co., Section No. 234, situated on the line of the Counties of Jasper and Newton.

175 acres out of the James Herring 640 acre survey in Newton County.

An undivided ½ of 234 acres out of Landy Lindsey survey in Newton Co.

An undivided 67 acres out of the T. C. Hare 160 acre survey in Newton Co.

H. H. Loving 172 acre survey in Newton County, Texas.

An undivided 1/3 of those tracts of land out of the Adna S. Droddy League in Newton County, as follows,"

837 acres, 1,272 acres in two tracts as follows: 552 acres and 750 acres making the 3 tracts.

80 An undivided 484 acres out of Joseph McGa 1280 acre survey in Newton County.

50 acres of the John M. Jordon 1/3 League in Newton County.

122 acres out of the Martin Palmer and James McMahan surveys in Newton County.

An undivided 12 5/10 acres out of 50 acres out of Joseph McGuire 90 acre survey in Newton Co.

S. W. Collins 160 acre survey in Newton County.

40 acres out of H. T. & B. R. R. Co., survey No. 3 block 12 in Newton County.

395 acres out of Donald McDonald League in Sabine Co. except the townsite of Weed or Brookland.

50 acres of the Wright Cooley survey in Sabine County.

171 acres more or less of the Martin White League in Sabine Co., being composed of 2 tracts of 35 acres and 136 acres.

Those two tracts of land, being 66 acres of the J. A. Curry League and 140 acres of the Larkin Grace League in Sabine County.

An undivided 122¾ acres out of 982 acres out of John S. Lacey League in Sabine Co.

81 201½ acres out of T. C. R. R. Co., Sec. No. 1 Abst. No. 371 in Sabine County.

62½ acres of Francis Richards survey in Sabine County.

An undivided 40 acres of the G. W. McBroom 160 acres survey in San Augustine County.

230 acres of the Z. Turner survey on the line of San Augustine and Shelby Counties.

All the timber of ever- kind and description on 100 acres more or less of the William Isaac League in Sabine Co.

The W. H. Palmer 320 acre survey in Polk County.

An undivided 377 acre survey out of an 1,120 acre survey out of the C. C. Tyler 1,280 acre survey in Tyler County, Texas.

160 acres of the Buyannie Enloe survey in Tyler County.

128½ acres of the E. Thompson survey in Tyler County.

52 acres the M. D. Nowlin survey in Tyler County.

80 acres patented to P. S. Watts assignee of Sarah Fields in Tyler Co.

10½ acres more or less of J. S. Pate survey in Tyler County.

82 200 acres of William Wilburne League in Tyler County.

320 acres, David Barcley survey in Tyler County.

An undivided 235 acres out of 742 acres out of P. S. Watts survey in Tyler County.

T. M. Fann 160 acre survey in Tyler County.

M. Pivito 77 acre survey in Tyler County.

All interest in J. M. Taylor survey in Tyler County.

All interest in Harmon Frazier League in Tyler County.

A. J. Riley 160 acre survey in Tyler county.

332 4 10 acres of J. Mitchell survey in Tyler County.

An undivided 78 acres of Hiram Johnson survey in Tyler County.

690 acres of J. J. Pimberton League in Tyler County.

An undivided 23 55 100 acres of the Charles G. Bruce survey in Montgomery County.

35 acres more or less of T. F. Hull survey in Panola County.

83 In every instance in which an undivided acreage is conveyed by this deed out of any tract or survey out of which an undivided acreage was also conveyed by a certain deed, dated 29th day of June, 1909 from John H. Kirby to J. R. Chapman, which has not yet been recorded, said J. R. Chapman, his heirs or assigns shall be held to take under said deed referred to on acreage in any such

tract or survey to the extent of such acreage as specified in said deed prior to the rights of the grantor herein, its successors, or assigns, and in case it shall at *at* any time in the future be ascertained that on the date of the execution of the said deed from John H. Kirby to J. R. Chapman, said John J. Kirby did not own the aggregate acreage out of any such tract or survey specified in said deed from John H. Kirby to J. R. Chapman and in this deed, then said J. R. Chapman his heirs or assigns shall be held and d*a*med to take in preference to any title or right conveyed by this deed to the extent of the whole of the acreage out of any such tract or survey specified in said deed from John H. Kirby to J. R. Chapman.

Reference is hereby made to all of the deeds patents and judgments hereinabove particularly enumerated and to the records thereof as above stated particular descriptions of the land and timber above conveyed and it is understood that all of said deeds, patents and judgments mentioned in the preceding description and the record thereof shall be considered referred to for such description as fully as if special reference had been made to such one.

In every instance where timber or timber rights are conveyed exclusive of the land upon which such timber is located it is understood and stipulated that the grantee herein above named accepts the title to said timber as timbers rights subject to all of the terms, conditions and limitations under which said title is held by the
84 grantor herein.

To have and to hold said lands, premises, timber and timber rights unto the said Kirby Lumber Company its successors and assigns forever, together with all and singular the rights and appurtenances thereto belonging or in anywise incident or appertaining, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said property and premises unto the said Kirby Lumber Company, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by through or under me but no further.

Witness my hand at Houston, Texas on this the 2nd day of July A. D. 1909.

JOHN H. KIRBY.

THE STATE OF TEXAS,
County of Harris:

Before me, the undersigned authority on this day personally appeared John H. Kirby, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 3rd day of July A. D. 1909.

[L. S.] W. L. COOK,
Notary Public in and for the County of Harris, State of Texas.

Filed for record July 29, 1909 at 4 o'clock P. M.
W. J. GARRETT, *Co. Clerk,*
By EVIE MILL, *Deputy.*

85 THE STATE OF TEXAS,
County of Harris:

Know all men by these Presents; That I, John H. Kirby, of the County of Harris, State of Texas for and in consideration of the sum of One Million and Twenty One Thousand Four Hundred and Fifty-three and ninety nine one hundredths ($1,021,453.99) dollars in cash to me in hand this day paid by J. R. Chapman, the receipt of which is hereby fully acknowledged have granted, bargained, sold and conveyed, and by these presents do grant, bargain sell and convey unto the said J. R. Chapman of the County of Cook, State of Illinois, all of the following described tracts, pieces and parcels of land and also certain timber and timber rights which are hereinafter more particularly described; said lands and timber lying and being in the counties of Angelina, Hardin, Jasper, Liberty, Newton, Sabine, San Augustine, Shelby and Tyler State of Texas, and being more particularly described as follows:

Angelina County.

58 acres, E. M. Bacon Survey.
1,280 acres out of James H. Richardson Survey.
800 acres out of Jacob Beckman Survey.
320 acres out of John A. Vickers League.
276¾ acres out of Nancy Gowan League.
342 acres, the John Gruidy Survey.
200 acres undivided out of E. B. Jackson Survey.
56 3/5 acres, the Henry G. King Survey.
78 6/10 acres, the Henry G. King Survey.
50 29/100 acres the Henry G. King Survey.
111¼ acres, the Henry G. King Survey.
377 acres, the Henry G. King Survey.
136 6/10 acres, the Samuel Overstreet Survey.
80 acres, the Henry G. King Survey.
89 3/10 acres, the J. G. Williford Survey.
30 acres undivided out of J. R. Davenport Survey.
288 47/100 acres, the Henry G. King Survey.
All timber on West half of H. & T. C. Ry. Co. Sec. No. 226.
All timber on North West one quarter of H. & T. C. Ry. Co. Sec. No. 214.

Liberty and Hardin Counties.

All timber on 665 acres out of R. A. Irion League.

Angelina County.

All merchantable timber on R. F. Weichert 79 8/10 acre survey.
All merchantable timber on R. F. Weichert 227 5/10 acre survey.

All timber on Washington County Ry. Co. Sec. No. 363.

86 480 acres undivided out of H. & T. C. Ry. Co. Sec. No. 234 on the line of Jasper and Newton Counties.

Jasper County.

304½ acres undivided out of 609 acres out of B. F. Jones League.
126 acres out of Joseph Kelly 280 acre Survey.
160 acres out of Hezekiah R. Williams Survey.
320 acres out Elijah Champeon 640 acre Survey.
320 acres, the James Chessher Survey.
280 acres, the Joseph W. Bass Survey.
476 acres, the Robert M. Williamson Survey.
480 acres, the T. & N. O. Ry. Co. Sec. No. 2.
200 acres out of William Wilson Survey.
All timber on south half of 160 acres Elmira Wright Survey.
72 acres out of Joel Robinson Survey.
160 acres, the William Bean Survey.
140 acres out of Sherrod Wright League.
160 acres, the Martin M. Jones Survey.
160 acres, the William Singleton Survey.
130 acres out of W. R. B. Hester Survey.
60 acres, the L. S. Bell Survey.
160 acres, the M. L. Morgan Survey.
All timber on Sherod Wright 320 acre Survey.
All timber on Alexander Wright Survey.
All timber on Sherod Wright 86 3/10 acre Survey.
1584 acres out of Joseph Lane League.
438 acres and 15 acres out of Ruffin Turner League.
88½ acres out of William Jones Labor.
76 acres out of Alexander Wright 320 acre Survey.
144 acres out of James Morgan 160 acre survey.
180 acres out of Alexander Wright 320 acre survey.
93 75/100 acres out of 125 acres out of Thomas B. Huling League.
50 acres undivided out of 100 acres out of William Walker 200 acre Sur.
77 acres undivided out of 154½ acres out of Nathaniel Grigsby Survey.
81 8/10 acres out of 245 6/10 acres out of Ed. Good League.
41 acres, the K. B. Seale Survey.
126 acres undivided out of S. E. Quarter of H. & T. C. Ry. Co. Sec. No. 118.
100 acres, undivided half of 200 acres out of Lewis Letney Survey.
50 acres out of Stephen Williams 320 acre survey.
80 acres out of John Dubose Survey.

Liberty County.

All timber on 30 acres out of 50 acres out of Stephen Nichols League.
500 acres out of John R. Faulk League.

4428 acres, the M. E. Pulido League.
1476 acres, the Caled Baker 1/3 League.
1106 1/10 acres out of South half of John Pleasants League, and the property conveyed being only the timber and not the land.
South half of 699 acres, out of H. & T. C. Ry. Co. Sec. No. 156.
640 acres, the Washington County Ry. Co. Sec. No. 49.
2600 acres out of Manuel de las Santos Coy League.
55 acres out of M. A. Hardin Survey.

87 Newton County.

357 acres out of the David Pool Survey.
71 acres out of the David McMahon Pre-emption less R. of Way of O. & N. Ry.
200 acres of the John A. Smith Survey.
320 acres Soloman Ruyle Sur. less 17 6/10 acres R. of Way of J. & E. Ry. Co.
69 acres out of David Odom Survey.
160 acres out of T. & N. O. Ry. Co. Sec. No. 68.
81 2/10 acres, the C. E. Cade Survey.
58½ acres out of W. H. Smith Survey.
268 acres, the E. F. Montgomery Survey.
63 acres, the C. W. Smith Survey.
240 acres, the Hiram Woods Survey.
160 acres, the Nancy Cook Survey.
60 acres out of William McMahon Survey.
49 acres out of James Lewis Survey.
320 acres out of Josiah Stephenson Survey.
416 acres out of Henry Cochran League.
320 acres, the John L. Baker Survey.
885 acres out of Matilda Runnels or Reynolds Survey.
225 acres out of D. S. D. Moore League.
115 acres out of Peter D. Mayer survey.
783 acres out of Josiah Stephenson Survey.
320 acres, the J. W. Goode Survey.
120 acres undivided out of Sarah Ann Ramsey Survey.
396 acres out of Sarah Winfrey Survey.
120 acres out of J. S. Hamlett Survey.
110 acres out of Seaborn Samuel Survey.
150 acres out of William Newton Survey.
64 acres undivided out of Josiah Roberts Survey.
All timber on 542½ acres, John A. McLahan Survey.
320 acres out of E. P. Morrison Survey.
South half and North East Quarter of S. P. Ry. Co. Sec. No. 6.
100 acres out of W. P. Tanner Survey.
80 acres, the T. F. Inman Survey less 7 acres O. & N. Ry. Co. Right-of-way.
177 acres, the Jesse Dickerson Survey.
640 acres, the N. Recindy Survey.
82¼ acres, the Alva Jones Survey.
160 acres, the John Brooks Survey.
25 acres undivided out of Alva Jones 50 acre Survey.

39 acres undivided out of Alva Jones 78 acre survey.
29 5/10 acres out of Alva Jones 59 acre survey.
All Pine and Cypress timber on 250 acres out of T. C. Holmes Survey.
135 acres out of John S. Thompkins 320 acre survey.
37 5/10 acres undivided out of Joseph McGuire 90 acre survey.
55 acres and 49 acres out of Thomas W. Thompkins 160 acre survey.
East one-fourth of T. & N. O. Ry. Co. Sec. No. 68.
160 acres, the L. W. Jackson Survey.
47 acres out of Edward Smith Survey.
80 acres, the W. E. Smith Survey.
11½ acres, the F. M. Miller Survey.
148 57/100 acres undivided out of Samuel Blackshear 160 acre survey.
100 acres out of Eliza Barnes 160 acre Survey.
160 acres, the J. M. Kimmey Survey.
117 4/100 acres undivided out of Landy Lindsey Survey.
88 150 acres out of John M. Jordan Survey.
395 acres out of John Miller League and Labor.
83 acres undivided out of T. C. Hare 160 acre Survey.
262 acres and 93 acres out of Samuel Williams Survey.
968 acres out of Joseph McGee Survey.
1406 acres undivided out of Adna S. Droddy League.
27 acres out of Lewis Hines 160 acre survey.
208 acres and 70 5/10 acres out of A. M. Bevil League.

Sabine County.

200 acres out of A. E. C. Johnson League.
690 acres out of John S. Lane League, less 90 acres to be surveyed in a square on any one of the lines bounding said 690 acre tract.
540 acres and 333 1/3 acres out of R. Slaughter League, less 100 acres heretofore sold.
490 acres out of T. & N. O. Ry. Co. Sec. No. 18.
640 acres, T. & N. O. Ry. Co. Sec. No. 20.
160 acres, the J. S. Robbins Survey.
160 acres, the A. G. Broom Survey.
50 acres out of John Saddler Survey.
160 acres, the C. W. Easley Survey.
160 acres, the C. M. Easley Survey.
147 acres, the J. C. Boyd Survey.
1368 acres out of John Haley League.
160 acres the Martha C. Davidson Survey.
166 acres out of William Defee Survey.

San Augustine County.

877 acres out of A. G. Kellog survey, less 3 tracts of 100, 30, and 100 acres.
100 acres out of Francis Hill 640 acre survey.
160 acres, the J. W. Hight Survey.
160 acres, the C. C. Woods Survey.

160 acres, the Joseph McBroom Survey.
160 acres, the Milo Woods Survey.
80 acres, the Oliver Blount Survey.
80 acres undivided out of Robert Alexander survey.
164½ acres, parts of Hiram Davis and William Humphreys surveys.
160 acres, the B. F. Simms Survey.
80 acres, being north half of Jack Higginbotham 160 acre survey.
120 acres undivided out of G. W. McBroom 160 acre survey.
All those certain tracts of land situated in San Augustine and Shelby Counties patented to Charles G. Bruce and conveyed by J. R Davenport to John H. Kirby by deed dated Dec. 16th, 1908, and duly recorded.

Tyler County.

142 acres out of A. J. Boose Survey.
200 acres, the A. B. Jones Survey.
320 acres, the J. H. Moffitte survey.
153 acres, being south half of E. A. Ratcliff survey.
160 acres undivided out of 320 acres of William R. Ratcliff survey.
640 acres, Buffalo Bayou, Brazos & Colorado Co. Sec. No. 8.
160 —, the William Cranford Survey.
160 acres out of John T. Rawls 320 acre survey.
89 160 acres out of R. Wiggins League.
80 acres, the D. G. Mann Survey.
627 acres out of Josiah Wheat 9¾ Labors.
226 acres out of A. G. Parker League.
71 7/10 acres, the P. H. Sparlock survey.
1476 acres out of David B. McComb Survey.
78 acres out of W. R. Lee Survey.
160 acres the William T. Anderson Survey.
226 acres, the Henry Cline Survey.
160 acres the W. M. Lowe Survey.
312 acres out of Robert Conn Survey.
303 acres out of Robert Conn Survey.
80 acres the W. G. Riley Survey.
95 acres out of W. H. Farrell Survey.
10 acres out of B. Morris 320 acre survey.
287 acres out of D. B. McComb 17⅝ Labors.
1280 acres, the Frederick Helfenstine Survey.
60 acres and 62 acres out of R. E. Powell Survey.
50 acres out of R. E. Powell Survey.
All timber on 160 acres, J. J. Riley Survey.
All timber on H. L. Hall Survey.
All timber on 120 acres, the Sarah E. Hudson Survey.
All timber on G. & B. N. Co. Sec. No. 57.
507 acres undivided out of 742 acres, Sarah Fields Survey.
743 acres out of C. C. Tyler Survey.
All Pine timber on 95 acres out of Burrell Blackman Survey.
100 acres out of William Pamhhlin 20½ Labors.
200 acres out of Robert Lucas League.
37 acres out of Hiram Johnson Survey.

Reference is hereby made to all of the deeds, patents and judgments above particularly enumerated and to the records thereof as above stated for particular descriptions of the lands and timber above conveyed, and it is understood that all of said deeds, patents and judgments mentioned in the preceding descriptions and the records thereof, shall be considered referred to for particular descriptions as fully as if special reference had been made to each one.

In every instance when timber or timber rights are conveyed exclusive of the land upon which such timber is located, it is understood and stipulated that the Grantee accepts the title to said timber or timber rights subject to all the terms, conditions and limitations under which said title is held by the Grantor herein.

To have and to hold the above described and conveyed land and premises together *will* all and singular the rights and appurtenances thereto in any wise belonging unto the said J. R. Chapman,
90 his heirs and assigns forever; This deed is absolute and unconditional and without reservation of any title or lien whatever express or implied, and shall and does vest in the said J. R. Chapman, his heirs and assigns complete and perfect title to the lands herein conveyed; and I hereby covenant with the said J. R. Chapman, his heirs and assigns that no right, title, interest or lien, express or implied thereon or therein — owned, held or retained by me. And I do hereby bind myself, my heirs, executors and administrators to Warrant and forever defend all and singular the said premises unto the said J. R. Chapman, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand on this the 29th day of June, A. D. 1909.

JOHN H. KIRBY.

THE STATE OF TEXAS,
County of Harris:

Before me, the undersigned authority on this day personally appeared John H. Kirby, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 3rd day of July, A. D. 1909.

[L. S.] W. C. COOK,
Notary Public within and for the County of Harris, State of Texas.

91 THE STATE OF TEXAS,
County of San Augustine:

I, W. J. Garrett, County Clerk of San Augustine County, Texas, do hereby certify that the above and foregoing and hereto attached three deeds, which are substantial copies of the originals, were sent to me for record by Mess. Terry, Cavin & Mills, attorneys at Galveston, Texas, and after being recorded by me, were by me returned to the said Mess. Terry, Cavin & Mills.

Witness my hand and the seal of the County Court of San Augustine County, Texas, on this the 7th day of December, A. D. 1909.

[SEAL.] W. J. GARRETT,
Co. Cl'k, San Augustine County, Texas.

Filed. Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. —. Witness, —— ——. Complainants, ——. Date, 1-31, '11. Defendants, ——. Steno., Philips.

92 In re Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections—Chicago Hearing.

Exhibits I, II, and III, Introduced by Various Short-Line Railways at Chicago.

In re Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections—Chicago Hearing.

Exhibits Introduced by Various Short-Line Railways at Chicago.

Extract from Joint and Several Answers of Defendants, Kirby Lumber Company and John H. Kirby, to the Amended Bill of Complaint of Maryland Trust Company, Trustee, in Case of Maryland Trust Company, Trustee, vs. Kirby Lumber Company and Houston Oil Company of Texas, No. 54, in Equity, in the Circuit Court of the United States for the Southern District of Texas, at Houston. Filed March 25, A. D. 1905.

EXHIBIT NO. I.

Thirteenth, fourteenth and fifteenth paragraphs of said answer signed Kirby Lumber Company by John H. Kirby, its President, and attested by Secretary of said Company with corporate seal attached and by John H. Kirby, as found on pages 103, 104 and 105 of said answer as follows:

"13th. Say that the lumber to be cut from the timber on the Kountze lands is tributary to the Gulf, Colorado & Santa Fe Railroad system, which in turn is owned by and is a part of the
93 Atchison, Topeka & Santa Fe Railroad system, operating nearly 10,000 miles of railway, extending from Chicago, Illinois, to San Francisco, Cal., with numerous branches in the State of Texas, Oklahoma, Kansas, Missouri, Illinois, Colorado, New Mexico, and Arizona, through which it runs, and that it has connections at El Paso, Texas, for points in Mexico, enabling defendant, Kirby Lumber Company, to reach all points on the line of the said Atchison system under the contract herein mentioned of said Kirby with said Atchison railroad company, at rates, or rather under conditions, that would give said Kirby Lumber Company an advantage of about $1 per thousand feet of lumber over and above what its competitors, located on other lines of railway, could realize from shipments to

points reached by said Atchison railroad, and this for the reason that said Atchison & Santa Fe railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers, located along the lines of said Atchison railroad, an advantage in freight rates in reaching all points located on the line of the said Atchison railroad system.

"14th. Say that said Houston Oil Company of Texas already owned numerous bodies of land interspersed with said Kountze lands in such a way that it would, if such Kountze lands were not acquired, greatly increase the original cost as well as the expense of operating the tramroads required to log said Houston Oil Company's lands so interspersed, wherefore it was highly important, as an economic movement, that said Kountze lands be acquired, so much so that thereby an estimated difference in the profit to be realized by defendant, Kirby Lumber Company, amounting to at least $2 or $3 per thousand, would result; that the said Kountze lands were for sale by the owners at a rate of about $2 per thousand feet for the yellow pine timber thereon, and some of said Kirby Lumber Company's competitors in the lumber business, as these defendants knew, were making efforts to acquire parts of said Kountze lands; that the arrangement herein stated between said Kirby and said Atchison, Topeka & Santa Fe Railroad, of which defendant, Kirby Lumber Company, is the beneficiary, is not and under the law could not be exclusively for its benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado & Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison railroad, not owned by either said Houston Oil Company of Texas or said Kirby Lumber Company, to tempt competitors, wherefore such regulation by said Atchison railroad would practically result in said Kirby Lumber Company being the sole beneficiary thereof.

"15th. Say that said group of Kountze lands constituted such a large number of acres, and was so well distributed in reference to the other lands owned by said Houston Oil Company of Texas, that it formed with them large and compact bodies of timber
94 land, conveniently located and easily and economically to be logged by said Kirby Lumber Company; that, containing so large a quantity of yellow pine timber, to-wit, about one billion feet, and being so located, they, said Kountze lands, could not be replaced by other acreage, even containing as great a quantity of timber, that would produce the same financial results to this defendant, Kirby Lumber Company; that if such lands were acquired by competing lumber manufacturers on the basis of $2 per thousand for stumpage, while the defendant, Kirby Lumber Company, was paying $5 to said defendant Houston Oil Company of Texas for similar stumpage, such competitors would enjoy all the advantage of aforesaid rate regulation so made by said Atchison system concerning shipment of lumber from the territory tributary to the Gulf, Colorado & Santa Fe Railroad, and the competition, so existing, would result in the

inability of said Kirby Lumber Company to manufacture lumber at a profit, so that it would lose the advantages named, not only as to logging of timber as aforesaid, but the result would so decrease its profits on the whole output of its lumber, that it would be impossible for it to make any money on the entire eight billion feet; that, put in other words, the result would make a difference altogether of a great deal more than $1 per thousand, and which its estimate makes as high as even $2 and $3 per thousand; that, consequently, it would not be possible for it, said Kirby Lumber Company, to pay to said Houston Oil Company of Texas the prices mentioned in said timber contract, nor with said competition could it, in that event, pay per annum for the quantity of stumpage as provided in aforesaid timber contract of July 7, 1901, so that while it might be possible for said Houston Oil Company of Texas to replace the lands of Saunders, Campbell, Rice and Sternenberg with other properties containing an equal or greater quantity of stumpage and milling facilities of equal capacity, it was not possible to so replace the Kountze lands, and hence failure to acquire them would, as aforesaid, be disastrous in its final result; threatening the collapse of the properties of both the defendants, Kirby Lumber Company and Houston Oil Company of Texas, as the latter would be responsible on account of its breach in failing to acquire such lands to the former for its losses thence accruing.

"15th. Say that these facts, as well as other similar facts and statements, often repeated until June, 1902, were laid before said Calhoun and his associates, and as well before said Houston Oil Company of Texas and each of its board of directors as early as July, 1901, about which time the option of said Kirby to said lands had expired; that the question then arose and was under discussion of obtaining an additional option by said Houston Oil Company of Texas from said Kountze Brothers; that said Kirby, during all that time, again and again importuned said Houston Oil Company of Texas and each of its officers and directors, and especially said Calhoun, who then controlled the action of the board of directors of said Houston Oil Company of Texas as well as that of his associates, to take measures to secure and purchase all of said lands, and warned them and each and all of the disaster which threatened both said companies if said lands, especially said Kountze lands, were not acquired, giving the reasons as hereinbefore stated."

95 EXHIBIT II.

Paragraph twenty-three of said answer as found on pages 110 and 111 thereof as follows:

"23rd. Say further, that these defendants, realizing that failure of said Houston Oil Company of Texas to purchase such lands and subject them to said stumpage contract would be disastrous to its manufacturing interests as aforesaid sought in every way they could to aid the Houston Oil Company of Texas in this crisis, and, relying implicitly on the representations of said Calhoun and said Houston Oil Company of Texas, that the latter would later take over said

lands and relieve defendant, Kirby Lumber Company, of the burden thereof and repay to these defendants their respective outlays in that behalf, with interest thereon, cast about to see what plan could be adopted for saving the situation and preventing said Kountze lands from falling into the hands of aforesaid competitors; that said Kirby sought his friend E. P. Ripley, president of said Atchison, Topeka & Santa Fe system, with the result that, after some weeks of negotiation, the board of directors of said system agreed to advance $2,000,000 towards said purchase if, but only if, the title to such lands was conveyed to them for said $2,000,000, the balance of the purchase money to be paid by these defendants, or one of them; that this negotiation culminated in the contract, known as the Gallup contract, under which said Atchison Railroad System, gave to said Kirby an option on such lands for a period of five years, requiring him, said Kirby, to pay the sum of about $165,000, besides interest semi-annually at the rate of 5 per cent per annum on said sum of $2,000,000, which said option said Kirby at once assigned to defendant, Kirby Lumber Company, whereupon it paid said sum of $165,000 in cash and likewise has paid since three of said semi-annual installments of interest; that, as further consideration for said Gallup contract, defendant Kirby Lumber Company was required to enter into a contract to sell to said Atchison Railroad System 10,000,000 feet of lumber per year at low prices, to-wit, 20 per cent less than the market price thereof, and was also required to route over said railroad system all lumber manufactured by said Kirby Lumber Company at such of its mills as were located on the railroads of such system."

Exhibit No. III.

Extract from the thirty-fifth paragraph of said answer beginning at the word "that" on the first line of page 409 and extending to the end of said paragraph as follows:

96 "That he, said Kirby, was also a co-partner in various land-holding and land-owning co-partnerships, and was also a large stockholder in various land-holding and land-owning corporations, and that said Kirby's distributive share in said land-holding co-partnerships and corporations was not less than 135,000 acres, making a total landed estate of more than 225,000 acres of lands, all of which were in the recognized oil belt of Southeast Texas, and had standing upon them more than 1,500,000,000 feet of yellow pine timber, as well as a large stumpage of other timber, being of the value of more than $5,000,000, and that the total holdings of said Kirby individually, the co-partnerships of which he was a member and the corporations of which he was a stockholder and which he controlled, exceeded 535,000 acres, all of which, as aforesaid, are in the recognized oil belt of Southeast Texas, and have standing upon them more than 3,500,000,000 feet of yellow pine timber, and further that many of said Kirby's co-partners and co-stockholders, so associated with him in holding said lands other than his individual lands, were men of wealth and high financial standing, and

that said Kirby controlled the opportunity of gathering into one body, under one ownership, the yellow pine timber and oil lands of Southeast Texas and Southwestern Louisiana, and that the lands so owned by said Kirby, his co-partnerships and corporations were so located that they isolated and controlled large bodies of similar lands, and that Kirby's co-partners and co-stockholders would follow him into a movement to combine, under one management and ownership, the oil and timber lands of Southeast Texas and Southwest Louisiana, but would not join any such movement unless said Kirby did, and further that said Kirby, by just and honest dealings with the owners of lands in Southeast Texas and Southwest Louisiana, and with the people there residing generally, had inspired them with such confidence as to give him great influence over them, and that Kirby was a man of great business ability, having started in 1885 without any capital in money and having acquired his great landed estate in a period of sixteen years, during which time he had organized, constructed and financed the Gulf, Beaumont & Kansas City Railway Company, owning a railroad 75 miles in length, which opened up and developed said oil and timber lands, and had also sold the said railway for nearly $2,000,000, at a great profit to himself, and further that said Kirby stood high in the estimation of the people of his State generally as a man of upright character, integrity and probity of dealing, and that the credit and financial standing of said Kirby in Texas and in Boston, Mass., was very high, and that said Kirby had under consideration the project of combining under one ownership all his own lands, all the lands of his said co-partnerships and corporations, as well as other lands in Southeastern Texas and Southwestern Louisiana, and in the said oil and timber territory belonging to other individuals, co-partnerships and corporations; having ascertained these facts, he, said Calhoun, conceived a scheme and plot to defraud said Kirby and his said co-partners and
97 co-stockholders out of their said properties, and to himself gain possession of all or as much as was possible, so as to convert the same to the use of himself and his said co-conspirators, but under such circumstances and in such a manner as not to subject them or himself to criminal prosecution."

Filed as a part of the record herein, as per instruction of Examiner Burchmore at Chicago hearing.

H. M. GARWOOD,
Attorney for Short Lines.

98 *Statement of Number of Carloads Lumber Shipped to Santa Fe System Points During January and March,* 1910, *Showing Destination as to Competitive or Local Points, Originating at Kirby Lumber Company Mills on Santa Fe System in Texas.*

To—		January, 1910. Competitive.	January, 1910. Local.	March, 1910. Competitive.	March, 1910. Local.
Silsbee,	Texas.....	27	15	22	22
Call Jct.	"	64	74	67	58
Roganville,	"	14	16	15	26
Fuqua	"	11	10	15	10
Bronson,	"	20	20	26	29
Bessmay,	"	56	69	76	75
Kirbyville,	"	67	56	72	75
Evadale,	"	13	13	11	15
Totals.....		272	273	304	310

Recapitulation.

1910.	Competitive.	Local.
Jan'y	272	273
March	304	310
Totals.....	576	583
%.....	49.7	50.3

NOTE.—Beaumont and Browndel Mills not in operation at that time.

Shipments.

January, 1910.

State.									
Texas	via	T. & N. O.	30	Cars,	529,466	feet	118 Cars	2,059,921	ft.
Mexico	"	O. & N. W.	88	"	1,530,455	"			
"	"	T. & N. O.	1	"	15,963	"	18 "	360,687	"
Louisiana	"	O. & N. W.	17	"	344,724	"			
"	"	T. & N. O.	9	"	170,091	"	11 "	222,234	"
Illinois	"	O. & N. W.	2	"	52,143	"			
"	"	O. & N. W.	3	"	62,553	"			
Oklahoma	"	T. & N. O.	3	"	62,575	"	6 "	125,128	"
Indiana	"	O. & N. W.	13	"	243,945		13 "	243,945	"
Nebraska	"	O. & N. W.	1	"	17,568	"	1 "	17,568	"
Iowa	"	O. & N. W.	3	"	54,016	"	3 "	54,016	"
Missouri	"	O. & N. W.	2	"	30,133	"	2 "	30,133	"
Kansas	"	O. & N. W.	3	"	48,456	"	3 "	48,456	"
"	"	T. & N. O.	1	"	19,339	"			
New York	"	O. & N. W.	9	"	151,429	"	10 "	170,768	"
		O. & N. W.	1	"	15,540	"	1 "	15,540	"
		Total Car Shipments					186 "	3,348,396	"
Mexico Export	"	Water			345,201	feet			
	"	"			728,795	"			
								1,073,996	"
		Total Shipments January, 1910						4,422,392	feet.

Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 2. Witness, Farwell. Complainants, ——. Date, 1, 31, '11. Defendants, ——. Steno., Philips.

See p. 6831.

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February, 1910.

State.									
Texas	via	O. & N. W.	91	Cars	1,727,090	feet			
"	"	T. & N. O.	22	"	447,109	"	120	Cars	2,287,678 ft.
"	"	G., C. & S. F.	7	"	113,479	"			
Oklahoma	"	G., C. & S. F.	1	"	15,600	"			
"	"	O. & N. W.	37	"	679,553	"	38	"	695,153 "
Illinois	"	O. & N. W.	6	"	113,114	"	6	"	113,114 "
Mexico	"	O. & N. W.	6	"	106,809	"	6	"	106,809 "
Louisiana	"	O. & N. W.	1	"	18,489	"			
"	"	T. & N. O.	9	"	177,857	"	10	"	196,346 "
Pennsylvania	"	O. & N. W.	5	"	96,270	"	5	"	96,270 "
Kansas	"	G., C. & S. F.	2	"	38,211	"			
"	"	O. & N. W.	11	"	207,751	"	13	"	245,962 "
Iowa	"	O. & N. W.	4	"	70,849	"	4	"	70,849 "
Missouri	"	O. & N. W.	6	"	114,929	"	6	"	114,929 "
Nebraska	"	O. & N. W.	1	"	17,700	"	1	"	17,700 "
Wisconsin	"	O. & N. W.	2	"	40,060	"	2	"	40,060 "
Michigan	"	O. & N. W.	2	"	40,202	"	2	"	40,202 "
New Jersey	"	O. & N. W.	1	"	15,108	"	1	"	15,108 "
Indiana	"	O. & N. W.	3	"	60,636	"	3	"	60,636 "
		Total Car Shipments					217	"	4,100,816 "
Mexico	"	Water			353,061	feet			
Export	"	"			41,073	"			
									394,134 "
		Total Shipments February, 1910							4,494,950 feet.

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March, 1910.

State.									
Texas	via	O. & N. W.	43	Cars	718,721	feet			
"	"	G., C. & S. F.	26	"	449,144	"	93	Cars	1,599,179 ft.
"	"	T. & N. O.	24	"	431,314	"			
Kansas	"	O. & N. W.	9	"	162,788	"			
"	"	G., C. & S. F.	13	"	233,892	"	22	"	396,680 "
Oklahoma	"	O. & N. W.	14	"	257,121	"			
"	"	G., C. & S. F.	22	"	403,413	"	36	"	660,534 "
Mexico	"	O. & N. W.	5	"	68,815	"			
"	"	T. & N. O.	4	"	70,795	"	9	"	139,610 "
Missouri	"	O. & N. W.	5	"	84,517	"			
"	"	G., C. & S. F.	2	"	33,750	"	7	"	118,267 "
Iowa	"	G., C. & S. F.	2	"	31,288	"			
"	"	O. & N. W.	7	"	138,553	"	9	"	169,841 "
Indiana	"	O. & N. W.	1	"	16,750	"			
"	"	G., C. & S. F.	1	"	15,909	"	2	"	32,659 "
Pennsylvania	"	O. & N. W.	6	"	93,960	"	6	"	93,960 "
Massachusetts	"	G., C. & S. F.	2	"	56,458	"			
"	"	O. & N. W.	5	"	122,200	"	7	"	178,658 "
Louisiana	"	O. & N. W.	1	"	23,921	"			
"	"	T. & N. O.	9	"	171,252	"	10	"	195,173 "
New York	"	T. & N. O.	1	"	27,209	"	1	"	27,209 "
Kentucky	"	O. & N. W.	2	"	40,252	"	2	"	40,252 "
Illinois	"	O. & N. W.	3	"	56,619	"	3	"	56,619 "
Colorado	"	O. & N. W.	1	"	20,246	"			
"	"	G., C. & S. F.	1	"	20,198	"	2	"	40,444 "
		Total Car Shipments					209	"	3,749,085 feet.

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Texas	"	Water	18,121	
Export	"	"	430,449	
Mexico	"	"	667,011	
Coastwise	"	"	1,775,039	
				2,890,620 "

Total Shipments, March, 1910 ..... 6,639,705 feet.

102 The Lutcher & Moore Lumber Co., Orange, Texas.

April, 1910.

State.								
Texas	via	O. & N. W.	26	Cars	460,366 feet)			
"	"	T. & N. O.	25	"	480,211	92	Cars	1,673,553 ft.
"	"	G., C. & S. F.	41	"	732,976			
Oklahoma	"	G., C. & S. F.	5	"	87,534)			
"	"	O. & N. W.	18	"	339,169)	23	"	426,703 "
Kansas	"	O. & N. W.	14	"	246,033)			
"	"	G., C. & S. F.	25	"	448,685)	39	"	694,718 "
Louisiana	"	O. & N. W.	..	"	37,194)			
"	"	T. & N. O.	10	"	169,493)	12	"	206,687 "
Missouri	"	O. & N. W.	3	"	63,256)			
"	"	G., C. & S. F.	6	"	104,782)	9	"	168,038 "
Illinois	"	G., C. & S. F.	1	"	17,006)			
"	"	O. & N. W.	1	"	17,006)	2	"	34,012 "
Pennsylvania	"	O. & N. W.	3	"	50,418	3	"	50,418 "
Mexico	"	O. & N. W.	2	"	31,625	2	"	31,625 "
New Jersey	"	O. & N. W.	4	"	65,954	4	"	65,954 "
New York	"	T. & N. O.	3	"	81,677	3	"	81,677 "

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New Mexico	"	.....O. & N. W.....	1	"	19,470	1	"	19,470	"
Kentucky	"	.....O. & N. W.....	1	"	20,124	1	"	20,124	"
Iowa	"	.....O. & N. W.....	3	"	68,762	4	"	88,782	"
"	"	.....G., C. & S. F.....	1	"	20,020				
Virginia	"	.....O. & N. W.....	1	"	16,215	2	"	29,804	"
"	"	.....G., C. & S. F.....	1	"	13,589				
Tennessee	"	.....O. & N. W.....	1	"	31,168	1	"	31,168	"
		Total Car Shipments.....				198	"	3,622,733	
Texas	"	.....Water			41,400				
Mexico	"	..... "			459,834				
Coastwise		..... "			303,655				
Export	"	..... "			816,409				
								1,621,298	"
		Total Shipments April, 1910.....						5,244,031	feet.

May, 1910.

State.								
Texas	via	O. & N. W.	50	Cars	863,729 feet	130 Cars	2,352,687 ft.	
"	"	T. & N. O.	26	"	499,116			
"	"	G., C. & S. F.	54	"	989,842			
Kansas	"	G., C. & S. F.	26	"	506,719	37 "	717,539 "	
"	"	O. & N. W.	11	"	210,820			
Oklahoma	"	O. & N. W.	31	"	558,520	53 "	968,476 "	
"	"	G., C. & S. F.	22	"	409,956			
Louisiana	"	T. & N. O.	8	"	155,430	12 "	233,449 "	
"	"	O. & N. W.	4	"	78,019			
Tennessee	"	O. & N. W.	5	"	130,196	5 "	130,196 "	
Iowa	"	O. & N. W.	1	"	14,002	1 "	14,002 "	
New York	"	O. & N. W.	1	"	23,514	1 "	23,514 "	
Pennsylvania	"	O. & N. W.	1	"	15,392	1 "	15,392 "	
Illinois	"	G., C. & S. F.	2	"	46,000	7 "	160,999 "	
"	"	O. & N. W.	5	"	114,999			
Kentucky	"	O. & N. W.	1	"	20,124	1 "	20,124 "	
Missouri	"	G., C. & S. F.	6	"	118,013	16 "	309,879 "	
"	"	O & N. W.	10	"	191,866			
Mexico	"	O. & N. W.	4	"	61,297	4 "	61,297 "	
Virginia	"	T. & N. O.	1	"	16,777	1 "	16,777 "	
		Total Car Shipments				269 "	5,024,331 "	
Mexico	"	Water			473,478			
Export	"	"			722,966		2,196,444 "	
		Total Shipments May, 1910					7,220,775 feet.	

THIS PAGE

June, 1910.

State.									
Texas	via	O. & N. W.	39	Cars	705,923 feet				
"	"	T. & N. O.	13	"	261,198	102	Cars	1,909,292	ft.
"	"	G., C. & S. F.	50	"	942,171				
Oklahoma	"	O. & N. W.	32	"	594,893				
"	"	G., C. & S. F.	9	"	168,850	41	"	763,743	"
Kansas	"	O. & N. W.	3	"	64,254				
"	"	G., C. & S. F.	13	"	245,561	16	"	309,815	"
Missouri	"	O. & N. W.	6	"	107,248				
"	"	G., C. & S. F.	10	"	186,504	16	"	293,752	"
Louisiana	"	T. & N. O.	9	"	159,224				
"	"	O. & N. W.	3	"	68,105	12	"	227,329	"
Illinois	"	G., C. & S. F.	4	"	73,479				
"	"	O. & N. W.	6	"	131,587	10	"	205,066	"
Massachusetts	"	T. & N. O.	2	"	40,220	2	"	40,220	"
Kentucky	"	G., C. & S. F.	2	"	40,250	2	"	40,250	"
Tennessee	"	O. & N. W.	2	"	48,278	2	"	48,278	"
Michigan	"	G., C. & S. F.	1	"	27,751	1	"	27,751	"
Wisconsin	"	G., C. & S. F.	1	"	23,833	1	"	23,833	"
Ohio	"	O. & N. W.	1	"	18,128	1	"	18,128	"
Iowa	"	O. & N. W.	1	"	15,800	1	"	15,800	"
Nebraska	"	G., C. & S. F.	3	"	58,993	3	"	58,993	"
Mexico	"	G., C. & S. F.	2	"	35,120				
"	"	O. & N. W.	3	"	62,233	6	"	110,637	"
"	"	T. & N. O.	1	"	13,284				
		Total Car Shipments				216	"	4,092,887	"

Mexico	"	Water			687,896		
Export	"	"			284,156		
Coastwise	"	"			837,177		
							1,809,229 "
		Total Shipments June, 1910					5,902,116 feet.

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The Lutcher & Moore Lumber Co., Orange, Texas.

July, 1910.

State.							
Texas	via	O. & N. W.	32	Cars	595,417 feet		
"	"	T. & N. O.	21	"	403,839	80 Cars	1,505,991 ft.
"	"	G., C. & S. F.	27	"	506,735		
Oklahoma	"	O. & N. W.	15	"	281,687		
"	"	G., C. & S. F.	1	"	18,207	16 "	299,894 "
Missouri	"	O. & N. W.	9	"	179,321		
"	"	G., C. & S. F.	16	"	318,100	25 "	497,421 "
Kansas	"	O. & N. W.	8	"	146,971		
"	"	G., C. & S. F.	18	"	330,814	26 "	477,785 "
Louisiana	"	O. & N. W.	6	"	128,559		
"	"	T. & N. O.	33	"	602,893	39 "	731,452 "
Virginia	"	T. & N. O.	1	"	17,198	1 "	17,198 "
Illinois	"	O. & N. W.	5	"	81,680		
"	"	G., C. & S. F.	5	"	66,330	10 "	148,010 "
Iowa	"	O. & N. W.	3	"	59,006		
"	"	G., C. & S. F.	1	"	17,540	4 "	76,546 "
Kentucky	"	G., C. & S. F.	1	"	20,126	1 "	20,126 "

THIS PAGE VERTICAL

Mexico	"	O. & N. W.	1	"	20,755	3	"	63,271 "
"	"	T. & N. O.	1	"	24,080			
"	"	G., C. & S. F.	1	"	18,436			
Massachusetts	"	T. & N. O.	1	"	16,890	1	"	16,890 "
		Total Car Shipments				206	"	3,854,584 feet.
Mexico	"	Water			101,431			
Coastwise	"	"			1,108,775			
Export	"	"			707,199			1,917,405 "
		Total Shipments July, 1910						5,771,989 feet.

August, 1910.

State.								
Texas	via	O. & N. W.	24	Cars	479,679			
"	"	T. & N. O.	16	"	291,459	62	Cars	1,148,865 ft.
"	"	G. C. & S. F.	22	"	377,727			
Louisiana	"	T. & N. O.	15	"	276,164			
"	"	O. & N. W.	1	"	24,802	16	"	300,966 "
Kansas	"	O. & N. W.	5	"	101,382			
"	"	G., C. & S. F.	10	"	184,626	15	"	286,008 "
Oklahoma	"	G., C. & S. F.	1	"	12,008			
		O. & N. W.	6	"	116,582	7	"	128,590 "
Missouri	"	G., C. & S. F.	9	"	194,859			
"	"	O. & N. W.	5	"	86,649	14	"	281,508 "
New York	"	O. & N. W.	1	"	22,412	1	"	22,412 "
Iowa	"	O. & N. W.	2	"	36,852	2	"	36,852 "
Kentucky	"	O. & N. W.	3	"	58,124	3	"	58,124 "
Illinois	"	G., C. & S. F.	1	"	21,968	1	"	21,968 "
Virginia	"	T. & N. O.	1	"	11,251	1	"	11,251 "
Michigan	"	O. & N. W.	2	"	52,014	2	"	52,014 "
Mexico	"	O. & N. W.	3	"	47,621	3	"	47,621 "
		Total Car Shipments				127	"	2,396,179 "
Mexico	"	Water			206,032			
Coastwise	"	Water			1,299,559			
								1,505,591 "
		Total Shipments August, 1910						3,901,770 feet.

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September, 1910.

State.								
Texas	via	O. & N. W.	37	Cars	658,334 feet	68 Cars	1,219,737 ft.	
"	"	G., C. & S. F.	24	"	431,862			
"	"	T. & N. O.	7	"	129,541			
Oklahoma	"	O. & N. W.	2	"	36,044	2 "	36,044 "	
Ohio	"	G., C. & S. F.	2	"	40,151	2 "	40,151 "	
Kansas	"	G., C. & S. F.	1	"	24,871	1 "	24,871 "	
Louisiana	"	O. & N. W.	3	"	58,281	16 "	302,972 "	
"	"	T. & N. O.	13	"	244,691			
Mexico	"	O. & N. W.	4	"	63,863	6 "	113,154 "	
"	"	T. & N. O.	1	"	25,876			
"	"	G., C. & S. F.	1	"	23,415			
Missouri	"	O. & N. W.	2	"	36,815	5 "	86,447 "	
"	"	G., C. & S. F.	3	"	49,632			
Kentucky	"	O. & N. W.	2	"	37,999	2 "	37,999 "	
New Jersey	"	T. & N. O.	1	"	18,832	1 "	18,832 "	
Michigan	"	O. & N. W.	3	"	63,970	6 "	132,823 "	
"	"	G., C. & S. F.	3	"	68,853			
Iowa	"	G., C. & S. F.	1	"	23,919	2 "	56,759 "	
"	"	O. & N. W.	1	"	32,840			
Illinois	"	O. & N. W.	2	"	46,000	2 "	46,000 "	
Colorado	"	G., C. & S. F.	1	"	15,200	1 "	15,200 "	
		Total Car Shipments				114 "	2,130,989 "	
Texas	"	Water			72,790			
Mexico	"	Water			169,000			
Export	"	Water			296,434			
Coastwise	"	Water			591,062			
							1,129,286 "	
		Total Shipments September, 1910					3,260,275 feet.	

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October, 1910.

State.								
Texas	via	O. & N. W.	11	Cars	191,861 feet			
"	"	T. & N. O.	12	"	217,879	70	Cars	1,242,978 ft.
"	"	G., C. & S. F.	47	"	833,238			
Louisiana	"	O. & N. W.	2	"	32,188			
"	"	T. & N. O.	7	"	133,571	9	"	165,759 "
Illinois	"	G., C. & S. F.	2	"	46,000			
"	"	O. & N. W.	1	"	23,000	3	"	69,000 "
Missouri	"	O. & N. W.	1	"	15,000			
"	"	G., C. & S. F.	9	"	156,611	10	"	171,611 "
Colorado	"	G., C. & S. F.	1	"	15,734	1	"	15,734 "
Virginia	"	T. & N. O.	1	"	10,213	1	"	10,213 "
Kansas	"	O. & N. W.	1	"	14,700			
"	"	G., C. & S. F.	1	"	15,740	2	"	30,440 "
Iowa	"	O. & N. W.	1	"	20,852			
"	"	G., C. & S. F.	1	"	18,006	2	"	38,858 "
Kentucky	"	G., C. & S. F.	2	"	40,248	2	"	40,248 "
New York	"	T. & N. O.	2	"	39,932	2	"	39,932 "
Mexico	"	O. & N. W.	1	"	15,136	1	"	15,136 "
		Total Car Shipments				103	"	1,839,909 "
Mexico	"	Water			811,162			
Export	"	"			602,253			
								1,413,415 "
		Total Shipments October, 1910						3,253,324 feet.

THIS PAGE

November, 1910.

State.								
Texas	via	G., C. & S. F.	76 Cars	1,369,183 feet	103 Cars	1,860,870 ft.		
"	"	T. & N. O.	22 "	415,357				
"	"	O. & N. W.	5 "	76,330				
Oklahoma	"	O. & N. W.	4 "	72,851	10 "	187,240 "		
"	"	G., C. & S. F.	6 "	114,389				
Missouri	"	T. & N. O.	1 "	19,950	11 "	188,477 "		
"	"	G., C. & S. F.	10 "	168,527				
Louisiana	"	T. & N. O.	8 "	162,337	8 "	162,337 "		
Kansas	"	O. & N. W.	1 "	19,555	19 "	352,323 "		
"	"	G., C. & S. F.	18 "	332,768				
Iowa	"	G., C. & S. F.	2 "	40,745	2 "	40,745 "		
Colorado	"	O. & N. W.	1 "	20,707	1 "	20,707 "		
Illinois	"	G., C. & S. F.	1 "	19,479	1 "	19,479 "		
Canada	"	T. & N. O.	1 "	12,320	1 "	12,320 "		
		Total Car Shipments			156 "	2,844,498 "		
Mexico	"	Water		350,592				
Coastwise	"	"		731,718		1,082,310 "		
		Total Shipments November, 1910				3,926,808 feet.		

110 The Lutcher & Moore Lumber Co., Orange, Texas.

December, 1910.

State.									
Texas	via	O. & N. W.	1	Car	8,680 feet				
"	"	T. & N. O.	35	"	641,728	136	Cars	2,458,784	ft.
"	"	G., C. & S. F.	100	"	1,808,376				
Missouri	"	G., C. & S. F.	5	"	88,409				
"	"	T. & N. O.	3	"	52,649	8	"	141,058	"
Kansas	"	O. & N. W.	2	"	34,938				
"	"	G., C. & S. F.	13	"	232,748	15	"	267,686	"
Oklahoma	"	O. & N. W.	4	"	70,582				
"	"	G., C. & S. F.	8	"	146,613	12	"	217,195	"
Louisiana	"	T. & N. O.	22	"	415,788	22	"	415,788	"
Iowa	"	G., C. & S. F.	8	"	151,574	8	"	151,574	"
Illinois	"	G., C. & S. F.	3	"	51,522	3	"	51,522	"
Canada	"	T. & N. O.	1	"	19,279	1	"	19,279	"
Mexico	"	T. & N. O.	1	"	15,792	1	"	15,792	"
		Total Car Shipments				206	"	3,738,678	"
Mexico	"	Water			583,236			583,236	
								4,321,914	feet.

THIS PAGE B

Recapitulation, Year 1910.

State.									
Texas	via	G., C. & S. F.	474	Cars	8,554,733	feet			
"	"	O. & N. W.	447	"	8,016,585		1,174	Cars	21,319,535 ft.
"	"	T. & N. O.	253	"	7,748,217				
Illinois	"	G., C. & S. F.	19	"	341,784				
"	"	O. & N. W.	32	"	646,558		54	"	1,050,917 "
"	"	T. & N. O.	3	"	62,575				
Missouri	"	T. & N. O.	4	"	72,599				
"	"	O. & N. W.	50	"	928,057		130	"	2,419,843 "
"	"	G., C. & S. F.	76	"	1,419,187				
Kansas	"	G., C. & S. F.	140	"	2,594,635				
"	"	O. & N. W.	74	"	1,360,621		215	"	3,974,595
"	"	T. & N. O.	1	"	19,339				
Mexico	"	G., C. & S. F.	4	"	76,971				
"	"	T. & N. O.	9	"	165,790		59	"	1,065,639 "
"	"	O. & N. W.	46	"	822,878				
Oklahoma	"	G., C. & S. F.	75	"	1,376,570				
"	"	O. & N. W.	176	"	3,250,947		251	"	4,627,517 "
Nebraska	"	O. & N. W.	4	"	71,716				
"	"	G., C. & S. F.	3	"	58,993		7	"	130,709 "
New Mexico	"	O. & N. W.	1	"	19,470		1	"	19,470 "
Iowa	"	O. & N. W.	25	"	487,649				
"	"	G., C. & S. F.	16	"	303,092		41	"	790,741 "
Louisiana	"	T. & N. O.	152	"	2,838,791				
"	"	O. & N. W.	25	"	521,701		177	"	3,360,492 "
Indiana	"	G., C. & S. F.	1	"	15,909				
"	"	O. & N. W.	5	"	94,954		6	"	110,863 "

Ohio	"	G., C. & S. F.	2	"	40,151	3	"	58,279 "
"	"	O. & N. W.	1	"	18,128			
New York	"	O. & N. W.	2	"	37,952	8	"	186,770 "
"	"	T. & N. O.	6	"	148,818			
Pennsylvania		O. & N. W.	15	"	256,040	15	"	256,040 "
Canada	"	T. & N. O.	2	"	31,599	2	"	31,599 "
Kentucky	"	O. & N. W.	9	"	176,623	14	"	277,247 "
"	"	G., C. & S. F.	5	"	100,624			
Tennessee	"	O. & N. W.	8	"	209,642	8	"	209,642 "
Carried Forward						2,165	Cars	39,889,898 ft.

112 The Lutcher & Moore Lumber Co., Orange, Texas.

Recapitulation—Continued.

Brought Forward						2,165	Cars	39,889,898 ft.
State.								
Colorado	via	O. & N. W.	2	Cars	40,953 feet	5	Cars	92,085 ft.
"	"	G., C. & S. F.	3	"	51,132			
Wisconsin	"	O. & N. W.	2	"	40,060	3	"	63,893 "
"	"	G., C. & S. F.	1	"	23,833			
Virginia	"	T. & N. O.	4	"	55,439	6	"	85,243 "
"	"	O. & N. W.	1	"	16,215			
"	"	G., C. & S. F.	1	"	13,589			
Michigan	"	O. & N. W.	7	"	156,186	11	"	252,790 "
"	"	G., C. & S. F.	4	"	96,604			
New Jersey	"	O. & N. W.	6	"	104,576	7	"	123,408 "
"	"	T. & N. O.	1	"	18,832			

THIS PAGE VERTICAL

Massachusetts	"	T. & N. O.	3	"	57,110			
"	"	O. & N. W.	5	"	122,200	10	"	235,768 "
"	"	G., C. & S. F.	2	"	56,458			
						2,207	"	40,743,085 "
Export	"	Water			5,629,734			
Coastwise	"	"			6,646,985			
Mexico	"	"			5,207,934			
Texas	"	"			132,311			
								17,616,964 "

Total Shipments Year 1910..... 58,360,449 feet.

Car Shipments Year 1910.

via	O. & N. W.	943	Cars	17,399,711	ft.
"	T. & N. O.	438	"	8,219,109	"
"	G., C. & S. F.	826	"	15,124,265	"
		2,207	Cars	40,743,085	"

THE LUTCHER AND MOORE LBR. CO.,
Orange, Texas.

113 *Stockholders.*

Louisiana & Pacific Railway Company.

Capital Stock..... $51,000.00

R. A. Long.
C. B. Sweet.
F. J. Bannister.
Ella M. Long.
Jennie L. Sweet.
Edith M. Bannister.

Louisiana & Pacific.
Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 2. Witness, McLean. Complainants, ——. Date, 12, 13, '10. Defendants, ——. Steno., Philips.
See p. 1554.

114 *List of Stockholders of the King-Ryder Lumber Company.*

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Bannister, F. J.....	100.00	100.00
Foresman, J. H.....	800.00	800.00
Long, R. A.....	91,000.00	91,000.00
Prickett, W. L.....	100.00	100.00
Pontious, J. G.....	1,000.00	1,000.00
Ryder, W. F.....	8,000.00	8,000.00
Sweet, C. B.....	1,000.00	1,000.00
Smith, B. H.....	10,000.00	10,000.00
Wilson, Mrs. R. D.....	1,500.00	1,500.00
Wilson, Mrs. R. D., Guardian....	1,500.00	1,500.00
	$115,000.00	$115,000.00

115 *List of Stockholders of the Hudson River Lumber Company.*

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Bannister, F. J.....	125.00	125.00
Clapp, F. A.....	2,940.00	2,940.00
Congdon, L. C.....	1,470.00	1,470.00
Long, R. A.....	129,940.00	129,940.00
Moore, C. E.....	200.00	200.00
Paxson, C. A.....	4,410.00	4,410.00
Sweet, C. B.....	1,500.00	1,500.00
Sweet, A. L.....	3,000.00	3,000.00
Sweet, H. E.....	6,415.00	6,415.00
	$150,000.00	$150,000.00

116 *List of Stockholders of the Longville Lumber Company.*

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Bannister, F. J.	15,000.00	10,000.00
Blackwell, H. L.	1,000.00	1,000.00
Bolton, J. W.	5,000.00	5,000.00
Brake, V.	1,000.00	1,000.00
Cates, E. G.	.....	1,000.00
Cowley, Clare J.	500.00	500.00
Cowley, Mrs. Flo. J.	1,000.00	1,000.00
Covey, L. M.	1,000.00	1,000.00
Deal, J. W.	1,000.00	1,000.00
Derks, J. H.	2,000.00	3,000.00
Ellis, Sallie A.	500.00	500.00
Eavans, R. L.	1,000.00	1,000.00
Evans, J. F.	500.00	500.00
Gloeckler, Mrs. R. A.	2,500.00	2,500.00
Huffman, C. A.	1,000.00	1,000.00
Long, R. A.	491,200.00	488,200.00
Long, Mrs. R. A.	1,200.00	1,200.00
Long, Loula.	1,000.00	1,000.00
Martin, F. E.	1,000.00	1,000.00
McNair, W. E.	4,000.00	4,000.00
Neely, J. M.	500.00	500.00
O'Halloran, G. W.	1,000.00	1,000.00
Prickett, W. L.	10,000.00	10,000.00
Ryder, W. F.	10,000.00	10,000.00
Ryder, L. L.	2,000.00	2,000.00
Ridgeway, Mollie E.	1,300.00	1,300.00
Pontious, J. G.	.....	1,000.00
Poyntz, J. U.	.....	2,000.00
Roehl, H. T.	.....	1,000.00
Sweet, C. B.	13,000.00	11,000.00
Sweet, H. E.	3,000.00	0,000.00
Scott, C. T.	500.00	500.00
Smith, B. H.	10,000.00	15,000.00
Swank, R. W.	3,000.00	3,000.00
Stack, R.	5,500.00	5,500.00
Scovern, C. E.	1,500.00	1,500.00
Switzer, O. L.	1,000.00	1,000.00
Stack, R. S.	300.00	300.00
Sowards, J. M.	.....	2,000.00
Taylor, L. W.	1,000.00	1,000.00
Tucker, C. J.	1,000.00	1,000.00
Wilson, Mrs. R. D.	4,000.00	4,000.00
	$600,000.00	$600,000.00

117 *List of Stockholders of the Calcasieu Long Leaf Lumber Company.*

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Ashby, D. C.	1,000.00	0,000.00
Bannister, Ida M.	.....	500.00
Bannister, F. J.	10,000.00	10,500.00
Bale, H.	1,000.00	1,000.00
Bester, J. H.	3,000.00	3,000.00
Baxter, L. C.	1,000.00	1,000.00
Boswell, C. M.	2,000.00	2,000.00
Brake, V.	2,000.00	2,000.00
Burnaby, F. H.	1,000.00	0,000.00
Brown, E. W.	1,000.00	1,000.00
Brannin, Chester.	1,000.00	1,000.00
Carson, O. F., Jr.	800.00	800.00
Carson, John.	1,300.00	1,300.00
Clasp, F. A.	5,000.00	5,000.00
Coleman, T. A.	2,000.00	0,000.00
Congdon, L. C.	2,000.00	2,000.00
Cowley, Clare J.	500.00	500.00
Cowley, Mrs. Flo. J.	1,000.00	1,000.00
Davis, R. S.	3,000.00	3,000.00
Davis, Jessie B.	300.00	300.00
Ellis, Sallie A.	1,000.00	1,000.00
Elliott, E. K.	500.00	500.00
Fegtly, A. W.	500.00	500.00
Foresman, J. H.	5,000.00	5,000.00
Foresman, J. A.	2,000.00	2,000.00
Garvey, J. W.	5,000.00	5,000.00
Garten, A. L.	1,000.00	1,000.00
Gittings, G. W.	1,000.00	1,000.00
Gordon, E. F.	1,700.00	1,700.00
Graye, J. A.	2,800.00	2,800.00
Garrett, J. W.	500.00	500.00
Hammer, A. A.	10,000.00	10,000.00
Hays, G. S.	1,000.00	1,000.00
Hackett, Mrs. E. S.	500.00	500.00
Hoyt, R. E.	1,000.00	1,000.00
Jemison, R.	1,000.00	1,000.00
Kerr, W. N.	2,000.00	2,000.00
Kenneson, C. D.	500.00	500.00
Long, R. A.	993,900.00	993,900.00
Long, Mrs. R. A.	1,700.00	1,700.00
Lester, R. T.	1,000.00	1,000.00
Lewis, P. P.	2,000.00	2,000.00
Martin, F. E.	500.00	500.00
Mason, F. E.	3,000.00	3,000.00
Morris, S. M.	2,000.00	2,000.00
Morey, G. A.	2,000.00	2,000.00

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Masters, J. L.	500.00	500.00
Martin, J. W.	8,000.00	8,000.00
McCord, E. E.	500.00	000.00
Morse, R. F.	1,000.00	1,000.00
Magness, J. M.	1,000.00	1,000.00
Moore, N. A.	1,000.00	1,000.00
Moore, S. J.	1,000.00	1,000.00
Nelson, M. B.	3,000.00	3,000.00
Nichols, J. M.	2,000.00	2,000.00
118 Paxson, C. A.	2,000.00	2,000.00
Peters, Wm.	3,000.00	3,000.00
Prickett, W. L.	2,000.00	2,000.00
Ruth, A. C.	1,000.00	1,000.00
Ryder, W. F.	5,000.00	5,000.00
Ryder, L. L.	3,000.00	3,000.00
Ryder, C. E.	1,000.00	1,000.00
Roth, R. R.	500.00	500.00
Rickey, P. C.	3,000.00	3,000.00
Ragland, J. M.	2,000.00	3,000.00
Read, Robbie	2,000.00	2,000.00
Sweet, C. B.	20,000.00	20,000.00
Sweet, A. L.	3,000.00	3,000.00
Sweet, H. E.	8,000.00	8,000.00
Scott, C. T.	1,000.00	1,000.00
Smith, B. H.	8,000.00	8,000.00
Smith, H. L.	500.00	500.00
Swank, R. W.	3,500.00	3,500.00
Slagle, J. S.	500.00	000.00
Stack, R.	.....	2,000.00
Tucker, C. J.	3,500.00	3,500.00
Talcott, C. A.	2,000.00	2,000.00
Tennant, Jno. D.	2,000.00	2,000.00
Uncapher, H. E.	500.00	500.00
Vandercook, W.	1,000.00	1,000.00
Woodring, S. T.	20,000.00	21,000.00
Wilson, Mrs. R. D.	2,000.00	2,000.00
	$1,200,000.00	$1,200,000.00

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 629.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY COMPANY ET AL.

No. 630.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 20, 1913.

(23,980—23,981)

(23,980—23,981)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 829.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY COMPANY ET AL.

No. 830.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

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a United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition and Exhibits.

(Filed January 6, 1913.)

1 In the United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners complain of the respondents, and for cause of action say:

1. That the petitioner Louisiana & Pacific Railway Company is a railway corporation duly chartered, incorporated and existing

under the laws of the State of Louisiana, and by its charter
2 duly empowered to acquire rights of way, construct, maintain and operate railroads and branches thereof in the State of Louisiana, as a common carrier of freight and passengers, and to acquire by lease or otherwise, and to operate as a common carrier freight and passenger railways and trains, and to carry express, United States mail and all other articles usually conveyed and transported by railroads, and to do all things necessary and proper, which may be incident to the above mentioned purposes, and now has and exercises franchises, powers, rights, privileges and immunities conferred by law upon corporations created and organized for railroad purposes.

That the Constitution and Laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation,
organized or doing business in this state, under the laws or
3 authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Const. 1879, p. 245.

Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank, roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in

which the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for
4 such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

Said petitioner Louisiana & Pacific Railway Company operates a line of railroad from De Ridder, Louisiana, to Lake Charles, Louisiana, a distance of about forty-four miles, with a branch line from De Ridder, Louisiana, to Bundick, Louisiana, a distance of nine miles; a branch line from Lilly Junction to Walla, Louisiana, a distance of eight miles, and a branch line from Fayette to Camp Curtis, a distance of nine and one-half miles, and a branch line from Longville to Vandercook, a distance of about five and one-half miles. Making a total mileage of main and branch lines of about seventy-eight miles. Said road also has about nine miles of yard and side tracks.

Said Louisiana & Pacific Railway Company is engaged in both state and interstate commerce. It connects with the Louisiana Western Railroad at Lake Charles, Louisiana, and with the New Orleans, Texas & Mexico Railroad at Fulton, Louisiana; with the Kansas City Southern Railway at Bon Ami and De Ridder, and at Lake Charles, Louisiana; the Gulf, Colorado & Santa Fe Railway at De Ridder, Louisiana, and the St. Louis, Iron Mountain & Southern Railway at Lake Charles, Louisiana.

The petitioner Louisiana & Pacific Railway Company complies with the rules and regulations promulgated by the State Rail-
5 road Commission of Louisiana and by the Interstate Commerce Commission, and complies with all the laws of the State of Louisiana and the United States relating to common carriers by railroad.

It carries a full line of class and commodity rates between points on its own line in Louisiana and concurs in joint tariffs applying between points on its own road and points on connecting lines in Louisiana, and carries a full line of class and commodity rates from and to all interstate territory via all connecting lines, excepting the Gulf, Colorado & Santa Fe Railway Company.

It has invested in physical property $623,014.28, which represents about $8,000 per mile, including equipment, and including the "joint track" hereinafter referred to, or about $14,000 per mile, exclusive of the "joint track."

It has an equipment consisting of:

9 locomotives,
12 box cars,
17 flat cars,
5 cabooses,
1 work car,
1 derrick car,
1 office car,
335 logging cars,
1 motor car,
1 hand car.

It maintains an operating force consisting of a general superintendent, local auditor, car accountant, chief dispatcher, two telegraph operators in chief dispatcher's office, five agents, who also are telegraph operators, fifteen clerks, five stenographers, eight
6 train crews, and the necessary section gangs and track men, varying from time to time; none of which operating force is in any way connected with any of the lumber companies, petitioners herein, or of any other lumber company located on its line of road.

In addition to the lumber traffic handled, it receives from and delivers to various connections merchandise in carload and less than carload quantities, and handles passengers on mixed trains between De Ridder and Lake Charles under tariffs filed with and approved by the Louisiana Railroad Commission and the Interstate Commerce Commission.

There are on the line of this road twenty cities, towns, villages or stations, from and to which it receives and delivers all kinds of freight. Three of these towns, De Ridder, Bon Ami and Longville, have a population of about 2,000 each; Lake Charles has a population of over 12,000.

There are various corporations, individuals and industries located on its line of road and which it serves as a common carrier, none of which, nor the stockholders in which have any interest in the Louisiana & Pacific Railway Company, or in any of the petitioners herein. Among other such industries the W. A. Brown Lumber Company have a saw mill located at Bannister, Louisiana, to which saw mill, prior to the 1st of May, 1912, they shipped logs over both the branch and main lines of the Louisiana & Pacific Railway and shipped the finished product out over the main line of the Louisiana & Pacific Railway.

The Brown Lumber Company have about 8,000,000 feet of timber on the line of the Camp Curtis branch of the Louisiana &
7 Pacific Railway; said Company has about 6,000,000 feet of timber on the Lilly Junction branch and about the same amount on the De Ridder branch, or a total of about 20,000,000 feet of timber on the lines of the Louisiana & Pacific Railway.

From June 1, 1911, to May 1, 1912, the Brown Lumber Company moved 3,428,162 feet of logs over the Louisiana & Pacific road. Since May 1, 1912, they have only shipped 97,405 feet over this road, for the reason that on account of the decision of the Interstate Commerce Commission, hereinafter complained of, they were unable

to ship without a loss, and they cannot reach their timber over the Lake Charles & Northern.

There are also several million feet of timber which the Brown Lumber Company had examined and expected to purchase had it not been for said decision.

There is also located at Bannister the W. A. Brown Mercantile Company, which operates a store and sells goods to the surrounding country.

At De Ridder there is the Waters-Pierce Oil Company, the Gulf Refining Company, an ice company (all of which are reached by the tracks of the Louisiana & Pacific Railway), a bottling works and more than thirty mercantile houses, all or most of which ship over the Louisiana & Pacific Railway.

Between De Ridder and Bon Ami, extending almost from the city limits of one town to the other, is a large experimental farm, containing 480 acres of land, on which farm has been expended $65,-
000.00 in demonstrating what the soil in this section of the
8 country will produce; and it has been demonstrated that this land, which is no better than the other land along the main and branch lines of the Louisiana & Pacific, will produce peaches, figs, pears, plums, grapes, oranges, and almost all kinds of fruit, potatoes, corn, half and alfalfa, and that this whole section of country is a splendid fruit country.

On this farm is a large cannery with a daily capacity of 300 ton-ounce jars, 270 sixteen-ounce jars and 700 four-ounce jars.

Quantities of fruits, vegetables and farm products are shipped from this farm at the station called Experimental Farm over the Louisiana & Pacific Railway.

Cut-over land between De Ridder and Bundick has recently sold for $25.00 an acre and the current price of such land in this section is from $10.00 to $15.00 an acre. Agricultural land between De Ridder and Bundick ranges from $10.00 to $30.00 per acre and upward.

At Longville, besides the Longville Lumber Company, there is a large mercantile establishment, which sells goods, wares and merchandise of all kinds, not only to the citizens of Longville, but to the surrounding country, much of which is shipped in over the Louisiana & Pacific Railway.

At Fulton, Louisiana, there is a general merchandise store.

At Gaytine, Louisiana, there is located the Calcasieu Naval Stores Company, which ships turpentine and rosin over the Louisiana & Pacific Railway.

At Bon Ami, the King-Ryder Mercantile Company, a general store.

9 The Losg-Bell Naval Stores Company, a company the majority of whose stock is owned by stockholders having no interest in the Louisiana & Pacific Railway, is engaged in the business of selling naval stores products, such as turpentine and rosin, and gets its products from trees growing in the vicinity of Bundick on the Bundick branch of the Louisiana & Pacific Railway, and

ships all its products over this branch and over the main line of the Louisiana & Pacific Railway, to the market.

For the year 1911 it shipped 520,240 pounds of rosin and 34,431 gallons of turpentine.

Near the station of Walla, upon the Bon Ami branch of the Louisiana & Pacific Railway, is located the G. R. Harris Lumber Company, which, up to the 1st day of May, 1912, was engaged in the sawmill business, and was a shipper over the Louisiana & Pacific Railway.

No stockholder in said company has any interest in any stock of the Louisiana & Pacific Railway, nor in any of the petitioner-' lumber companies herein; and none of the stockholders in any of the petitioners herein have any interest in the Harris Lumber Company.

For the eight months preceding the 1st of May, 1912, the Harris Lumber Company shipped lumber and forest products over the Louisiana & Pacific Railway to the extent of 52 cars.

Lake Charles, Louisiana, is a large jobbing center with all the various lines of industries to be found in a city of its size, many of which ship over the Louisiana & Pacific.

The following are true and correct statements in reference to the tonnage on the Louisiana & Pacific Railway Company for the period stated, to-wit:

10 *Statement of Lumber and Forest Products Originating on the Louisiana & Pacific Railway for the Fiscal Years Ending June 30th, 1908, 1909, 1910, and 1911, in Tons.*

1908	137,457 tons
1909	200,717 tons
1910	243,122 tons
1911	270,960 tons

The following tonnage which is included in the above figures was originated by mills other than the petitioner mills above mentioned, and in which the stockholders in the petitioners are in no wise interested:

1908	973 tons
1909	684 tons
1910	675 tons
1911	4,393 tons

The following tonnage, consisting of lumber and forest products, was originated on and by the Louisiana & Pacific during the period July 1, 1911, to April 30, 1912: 215,172 tons.

Of this amount 70,138 tons were shipped by parties in no way connected with the above named petitioners.

11 *Statement of Merchandise Received from Various Connections of the Louisiana & Pacific Railway for Period July 1st, 1911, to April 30th, 1912. By Stations.*

From—	Destined to—	Tons.	L. & P. Rev.
Kans. City Southern Ry....	Bundick, Louisiana..	140	$165.26
	Bon Ami, " ..	67	95.78
	Walla, " ..	672	719.49
	Bannister, " ..	25	57.90
	Longville, " ..	458	743.88
	Camp Curtis, " ..	74	98.21
	Fulton, " ..	16	18.74
	Gillis, " ..	1	9.46
	Turps, " ..	18	29.02
	Belfield, " ..	...	.22
	Vandercock, " ..	21	23.94
	Lake Charles, " ..	158	183.35
	Total.....	1,650	$2,145.25

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
Carloads	1,029	$1,432.96
L. C. L.....	56	

For Other than Petitioner Lumber Co.'s:

Carloads	545	712.29
L. C. L.....	20	
	1,650	$2,145.25

From—	Destined to—	Tons.	Revenue.
Gulf, Colo. & Santa Fe Ry...	Bundick, Louisiana..	...	.25
	Bon Ami, " ..	13	28.41
	Walla, " ..	1	3.12
	Longville, " ..	76	130.30
	Fulton, " ..	...	1.64
	Lake Charles, " ..	...	.25
	Total.....	90	$162.97

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
Carloads	84	$139.79
L. C. L.....	2	

For Other than Petitioner Lumber Co.'s:

Carloads	...	24.18
L. C. L.....	4	
	90	$163.97

12

From—	Destined to—		Tons.	Revenue.
New Orleans, Texas & Mexico Railroad Co.	De Ridder,	La.	874	$1,083.84
	Bundick,	"	38	54.64
	Bon Ami,	"	132	286.12
	Walla,	"	38	68.21
	Bannister,	"	2	8.61
	Longville,	"	245	647.96
	Camp Curtis,	"	42	56.79
	Gaytime,	"	...	1.79
	Turps,	"	24	21.42
	Gillis,	"	10	32.29
	Lake Charles,	"	1,337	1,759.87
	Total		2,742	$4,021.54

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
Carloads	846	$1,695.08
L. C. L.	234	

For Other than Petitioner Lumber Co.'s:

Carloads	1,373	2,326.46
L. C. L.	289	
	2,742	$4,021.54

From—	Destined to—		Tons.	Revenue.
St. Louis, Iron Mountain & Southern Railway	De Ridder,	La.	310	$438.50
	Bundick,	"	18	35.79
	Bon Ami,	"	85	170.82
	Walla,	"	70	92.74
	Bannister,	"	18	29.32
	Longville,	"	228	462.55
	Vandercook,	"	86	116.55
	Camp Curtis,	"	144	177.37
	Gillis,	"	150	180.92
	Turps,	"	85	104.05
	Gaytime,	"	...	1.09
	Total		1,194	$1,809.70

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
Carloads	498	$921.98
L. C. L.	82	

For Other than Petitioner Lumber Co.'s:

Carloads	586	887.72
L. C. L.	28	
	1,194	$1,809.70

13

From—	Destined to—		Tons.	Revenue.
Southern Pacific Lines, Louisiana Western Railway	De Ridder,	La	399	$684.16
	Bundick,	"	34	51.65
	Bon Ami,	"	37	76.00
	Walla,	"	41	63.30
	Bannister,	"	1	4.44
	Longville,	"	186	295.03
	Camp Curtis,	"	34	75.45
	Fulton,	"	...	3.12
	Gillis,	"	...	2.87
	Gaytime,	"	...	.19
	Total		732	$1,256.21

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
Carloads	267	$639.77
L. C. L	102	

For Other than Petitioner Lumber Co.'s:

Carloads	355	616.44
L. C. L	8	
	732	$1,256.21

Recapitulation.

From—	Tons.	L. & P. Rev.
Kansas City Southern Railway	1,650	$2,145.25
Gulf, Colorado & Santa Fe Ry	90	163.97
New Orleans, Texas & Mexico R. R.	2,742	4,021.54
St. Louis, Iron Mountain & Sou. Ry	1,194	1,809.70
Sou. Pac. Lines, La. Western Ry	732	1,256.21
Grand total	6,408	$9,396.67

For Petitioner Lumber Co.'s:

	Tons.	Revenue.
C. L.	1,029	$1,432.96
L. C. L.	56	
C. L.	84	139.79
L. C. L.	2	
C. L.	846	1,695.08
L. C. L.	234	
C. L.	498	921.98
L. C. L.	82	
C. L.	267	639.77
L. C. L.	102	
	3,200	$4,829.58

14

For Other than Petitioner Lumber Co.'s:

	Tons.	Revenue.
C. L.	545	$712.29
L. C. L.	20	
C. L.	...	24.18
L. C. L.	4	
C. L.	1,373	2,326.46
L. C. L.	289	
C. L.	586	887.72
L. C. L.	28	
C. L.	355	616.44
L. C. L.	8	
	3,208	$4,567.09
Grand total	6,408	$9,396.67

The following is a recapitulation of freight handled during the year ending June 30, 1912:

The following is a recapitulation of freight handled during the year ending June 30, 1912:

(Here follows table of freight handled, etc., marked page 15.)

Recapitulation of Freight

Petitioner Lo

	Lumber.	
	Tons.	Revenue.
Interstate outbound	230,643	$178,079.51
Interstate inbound	.....	.....
Total interstate	230,643	$178,079.51
State outbound	25,198	12,219.16
State inbound	2,794	844.85
Total State	27,992	$13,064.01
Grand total	258,635	$191,143.52

LOUISIANA & PACIFIC RAILWAY COMPANY.

Recapitulation of Freight Handled During Year Ending June 30, 1912.

	Petitioner Lumber Company's Mills.						Others.					
	Lumber.		Miscellaneous.		Other Forest Prods.		Lumber.		Miscellaneous.		Other Forest Prods.	
	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.	Tons.	Revenue.
.....	230,643	$178,079.51	45	$62.32	...	.....	7,119	$5,852.69	549	$662.97	...	.....
.....	.....	.....	2,073	3,454.24	...	.....	.....	.....	1,923	3,339.84	...	.....
.....	230,643	$178,079.51	2,118	$3,516.56	...	.....	7,119	$5,852.69	2,472	$4,002.81	...	.....
.....	25,198	12,219.16	2,320	3,311.65	...	.....	10,433	7,044.99	1,994	5,553.52	30	$19.50
.....	2,794	844.85	3,534	6,424.64	180	$72.00	179	154.95	2,286	4,761.75	30	19.50
.....	27,992	$13,064.01	5,854	$9,736.29	180	$72.00	10,612	$7,199.94	4,280	$10,315.27	60	$39.00
.....	258,635	$191,143.52	7,972	$13,252.85	180	$72.00	17,731	$13,052.63	6,752	$14,318.08	60	$39.00

16 The stock of the Louisiana & Pacific Railway Company is owned by six stockholders absolutely in their own right and not in trust for any other person. Stockholders owning a majority of the stock in the said railroad also own a majority of the stock in the petitioners Lumber Companies, but there are stockholders owning $1,360,495.00 of stock in said Lumber Companies who have absolutely no interest in the Louisiana & Pacific Railway Company.

The Louisiana & Pacific Railway Company, pursuant to the powers given to it by its charter, has issued outstanding bonds to the amount of $442,300 and secured by deed of trust, the holders of which bonds are various and scattered, and a large amount of said bonds are held by various banks, corporations, trust companies and individuals having no stock in or otherwise interested in the Louisiana & Pacific Railway Company.

The list of said bondholders and the amount of their holdings is as follows:

Mary King	$1,000
Calcasieu Trust & Savings Co.	39,300
H. E. Sweet	5,000
Mrs. C. A. Paxson	5,000
C. E. Moore	2,000
L. C. Congdon	4,000
F. A. Clapp	3,500
Geo. Kingery	8,500
W. F. Ryder and L. L. Ryder	81,500
C. E. Ryder	1,000
J. H. Lane	400
A. L. Sweet	6,400
—— ——	1,500
First National Bank, Kansas City	25,000
Southwest National Bank Commerce	36,800
Commerce Trust Co.	15,000
17 Lumberman's National Bank	25,000
Cora Smith	1,000
Gate City National Bank	5,000
S. M. Morris	1,500
Charles Calise	200
Susan A. Morris	3,000
H. M. Baker	1,200
Mrs. C. A. Neal	500
Lufkin Land & Lumber Company	7,900
Calcasieu Long Leaf Lumber Co.	32,700
Hudson River Lumber Co.	50,100
King-Ryder Lumber Co.	41,200
Longville Lumber Co.	37,100
	$442,300

The stockholders and the amount of stock held by them in the Louisiana & Pacific Railway Company is as follows:

Name.	Value.
R. A. Long	$40,290.00
Ella M. Long	510.00
C. B. Sweet	4,590.00
Jennie L. Sweet	510.00
F. J. Bannister	4,590.00
Edith M. Bannister	510.00

The stockholders of the King-Ryder Lumber Company and the amount of stock held by them is as follows:

Holders.	Amount.
R. A. Long	$89,850.00
J. H. Foresman	800.00
W. L. Prickett	100.00
C. B. Sweet	1,000.00
R. A. Long	1,000.00
B. H. Smith	10,000.00
F. J. Bannister	100.00
W. F. Ryder	8,000.00
18 Mrs. Ray Wilson-Heath	1,500.00
R. A. Long, Curator	1,500.00
J. G. Pontious	1,000.00
L. Hayman L.	150.00
	$115,000.00

The stockholders of the Hudson River Lumber Company and the amount of stock held by them is as follows:

R. A. Long	$129,640.00
L. Haymann	200.00
C. H. Dodd	100.00
F. J. Bannister	125.00
C. B. Sweet	1,500.00
H. E. Sweet	6,415.00
A. L. Sweet	3,000.00
C. A. Paxson	4,410.00
F. A. Clapp	2,940.00
L. C Congdon	1,470.00
C. E. Moore	200.00
	$150,000.00

The stockholders of the Longville Lumber Company and the amount of stock held by them is as follows:

F. J. Bannister	$7,500.00
M. L. Blackwell	1,000.00
J. W. Bolton	5,000.00
Vinnie F. Brake	1,000.00
E. G. Cates	1,000.00

	L. M. Covey	1,000.00
	Clare J. Cowley	500.00
	Florence Cowley	1,000.00
	J. W. Deal	1,000.00
	J. H. Derks	3,000.00
	Mrs. Sallie A. Ellis	500.00
	R. L. Evans	1,000.00
19	Mrs. Ray A. Gloekler	2,500.00
	C. A. Huffman	1,000.00
	Robert Jemison	1,500.00
	Miss Loula Long	1,000.00
	Mrs. Ella Long	1,200.00
	R. A. Long	488,700.00
	L. Hayman	2,000.00
	F. E. Martin	1,000.00
	W. E. McNair	4,000.00
	G. W. O'Halloran	1,000.00
	J. G. Pontius	1,000.00
	W. L. Prickett	10,000.00
	Mollie E. Ridgeway	1,300.00
	H. T. Roehl	3,000.00
	L. L. Ryder	2,000.00
	W. F. Ryder	10,000.00
	C. T. Scott	500.00
	B. H. Smith	18,000.00
	J. M. Sowards	2,000.00
	Robert Stack	5,500.00
	R. S. Stack	300.00
	O. L. Ewitzer	1,000.00
	C. B. Sweet	11,000.00
	Walter L. Taylor	1,000.00
	C. J. Tucker	1,000.00
	Wesley Vandercook	1,000.00
	Mrs. R. D. Wilson	4,000.00
		$600,000.00

The stockholders of the Calcasieu Long Leaf Lumber Company and the amount of stock held by them are as follows:

	R. A. Long	$992,900.00
	F. J. Bannister	10,000.00
	J. H. Bester	3,200.00
	Vinnie Brake	2,000.00
	L. C. Baxter	1,000.00
	Hardin Bale	1,000.00
	C. M. Boswell	2,000.00
	E. W. Brown	1,000.00
	Ida M. Bannister	500.00
20	Roscoe R. Brannin	500.00
	Clare J. Cowley	500.00

	Mrs. Florence J. Cowley	1,000.00
	F. A. Clapp	5,000.00
	O. F. Carson, Jr	800.00
	L. C. Congdon	2,000.00
	Mrs. Elsie Cook	500.00
	R. S. Davis	3,000.00
	Jessie B. Davis	300.00
	Mrs. Sallie A. Ellis	2,000.00
	E. K. Elliott	500.00
	A. W. Feglty	500.00
	J. H. Foresman	5,000.00
	J. A. Foresman	2,000.00
	J. W. Garvey	5,000.00
	A. L. Garten	1,000.00
	Mrs. G. W. Gittings	1,000.00
	E. F. Gordon	1,500.00
	J. A. Graye	2,800.00
	J. W. Garrett	500.00
	A. A. Hammer	10,000.00
	Robert E. Hoyt	1,000.00
	Geo. S. Hays	1,000.00
	Mrs. Hattie R. Hackett	500.00
	Mrs. Ray Wilson Heath	2,000.00
	Robt. Jemison	1,000.00
	W. N. Kerr	2,000.00
	C. D. Kenneson	500.00
	Mrs. R. A. Long	1,700.00
	Roy T. Lestor	1,000.00
	P. P. Lewis	1,500.00
	N. A. Moore	1,000.00
	F. E. Mason	3,000.00
	S. M. Morris	2,000.00
	G. A. Morey	2,000.00
	J. L. Masters	500.00
	Mrs. Inez Martin Morse	1,000.00
	J. W. Martin	8,000.00
	J. M. Magness	1,000.00
	F. E. Martin	500.00
	M. N. Meyer	1,000.00
	M. B. Nelson	3,000.00
	J. M. Nicholls	2,000.00
21	C. A. Paxson	2,000.00
	Wm. Peters	3,000.00
	W. L. Prickett	2,000.00
	A. C. Ruth	1,000.00
	W. F. Ryder	5,000.00
	L. L. Ryder	3,000.00
	P. C. Rickey	3,000.00
	R. R. Roth	500.00
	C. E. Ryder	1,000.00
	J. M. Ragland	3,000.00

C. B. Sweet	20,000.00
A. L. Sweet	3,000.00
H. E. Sweet	8,000.00
C. T. Scott	1,000.00
B. H. Smith	8,000.00
H. L. Smith	500.00
R. W. Swank	3,500.00
Robert Stack	2,000.00
L. Haymann	1,000.00
C. A. Talcott	2,000.00
J. D. Tennant	2,000.00
C. J. Tucker	3,500.00
Mrs. J. E. Tyler	2,000.00
Mrs. Robbie Read Tylor	3,300.00
Uncapher	500.00
Wesley Vandercook	1,000.00
S. T. Woodring	21,000.00
	$1,200,000.00

2. That the petitioners Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and the Longville Lumber Company are each of them corporations organized under the laws of the State of Missouri, for the purpose of manufacturing and selling timber and lumber, and all owning timber lands for the purpose of obtaining timber therefrom to manufacture into lumber; each of said companies owns and operates a lumber mill, planing mill and plant for the manufacture of
22 lumber along the line of the road of the petitioner Louisiana & Pacific Railway Company, said mills being located respectively at De Ridder, Bon Ami, Lake Charles and Longville, Louisiana; each of said Lumber Companies is a large shipper over the Louisiana & Pacific Railroad.

3. The petitioner The Long-Bell Lumber Company is a corporation organized under the laws of the State of Missouri, for the purpose of engaging in the wholesale and retail lumber business. It acts as a selling agent for the product of the lumber companies herein last above mentioned, and it is a party to the contracts hereinafter set out.

4. That the respondents Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway & Steamship Company, the New Orleans, Texas & Mexico Railway Company, are each corporations organized under the laws of the State of Louisiana; the Louisiana Western Railroad Company owns and operates a railroad from the town of Lafayette, in Louisiana, to the western line of the State of Louisiana; Morgan's Louisiana & Texas Railway & Steamship Company owns and operates a line of railroad from the town of Lafayette, Louisiana, to the cities of New Orleans and Baton Rouge, Louisiana, and also a line of railway from the town of Lafayette, in a northwesterly direction through the State of Louisiana; and said

companies, the Louisiana Western Railroad Company and Morgan's Louisiana & Texas Railway & Steamship Company, are parts of what is generally known as the Southern Pacific System, and together constitute one line of railroad between New Orleans and the western line of the State of Louisiana, and constitute a part of a con-
23 tinuous line of railroad from New Orleans to San Francisco, generally known as the Southern Pacific System, and are managed and controlled by the same interests.

The respondent New Orleans, Texas & Mexico Railway Company is a corporation organized under the laws of the State of Louisiana and owns and operates a line of railway from the cities of New Orleans and Baton Rouge to the city of Houston, Texas, and is a part of what is known as the "Frisco System."

5. The St. Louis & San Francisco Railroad Company is a railroad corporation organized under the laws of the State of Missouri, and owns and operates railroads in the States of Louisiana, Arkansas, Missouri, Texas and elsewhere.

6. That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled "Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., Docket No. 1319." Hearings were had at various times and places, and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion, which report and opinion will be found in the 14 Interstate Commerce Commission Reports, at page 364 et seq., reference to which is hereby made. Further hearings were thereafter had in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, and on December 7, 1909, respondent the Interstate Commerce Commission made a supplemental report, which is published in the 17th Interstate Commerce Commission Reports, at page
24 338 et seq., reference to which supplemental report is hereby made, and the same is made a part hereof as fully as if set out herein.

7. By reason of the rendition of this report and opinion, and because the Interstate Commerce Commission demanded under threat of criminal prosecution that they comply with the requirements thereof, the trunk line railroad companies of the United States, or a large number of them, including the respondent Railroad Companies herein, about the month of August, 1910, filed with the Interstate Commerce Commission new tariffs or supplemental tariffs on lumber, to become effective in thirty days, which new tariffs or schedules canceled all joint tariffs which the said respondent Railway Companies had theretofore had and maintained with the petitioner Louisiana & Pacific Railway Company, and except for the order of the Interstate Commerce Commission, set out in paragraph 8 hereof, would have left said petitioner without any joint interstate rates or through routes on lumber with the other railroads of the country.

8. Thereupon the Interstate Commerce Commission made and entered of record an order, in words and figures as follows, to-wit:

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 3d Day of September, A. D. 1910.

Docket No. 3400. Sub. 7.

In the Matter of the INVESTIGATION AND SUSPENSION OF SUPPLEMENT No. 3 to I. C. C. No. 23, Filed by the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company.

It appearing from the records of the Interstate Commerce Commission that there has been filed with the Commission by the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company, schedule designated as Supplement No. 3 to I. C. C. No. 23, effective 10th day of September, 1910, which schedule states new individual or joint rates, fares or charges, applicable upon the articles named therein, that are in excess of the rates, fares and charges now in effect,

It is ordered that the Commission, upon complaint, without formal pleading and without answer by the interested carriers, do enter upon a hearing concerning the propriety of such advances and the lawfulness of the rates, fares, or charges stated in said schedule, with a view to making such order in the premises as may, after full hearing, seem just and proper; and that such hearing be held at such time and place as may be hereafter fixed by the Commission.

The Commission being further of the opinion that, pending such hearing and decision of the Commission concerning the propriety of such rates, fares or charges, the operation of such schedule should be postponed for the reason that from a consideration of the character and amount of the advances and the circumstances under which they have been made, it appears to the Commission there is sufficient ground for claiming that said advances are unlawful and that the rates, fares or charges established by said schedule are unjust
26 and unreasonable, and therefore unlawful, and that the public interest requires that the operation of said schedule be deferred until sufficient time has been given for an investigation by this Commission.

It is further ordered that the operation of the aforesaid schedule be suspended, and that the use of the rates, fares or charges therein specified be deferred until January 5, 1911.

It is further ordered that the several carriers above named that have filed schedules be and they are hereby made defendants to this

proceeding, and that a copy of this order be forthwith served upon each of them; and

It is further ordered that the carriers named in said schedule and supplements thereto as participating therein be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them.

A true copy.

EDW. A. MOSELEY, *Secretary.*"

Thereupon the Interstate Commerce Commission made similar orders on or about the same date, suspending the operation of the schedules of various other railroad companies within the United States, and thereby kept in force and effect the joint tariffs and the maintenance of through routes and joint rates between the petitioner Louisiana & Pacific Railway Company and the respondent railroad companies herein mentioned, and the various other trunk line railroads and systems of the United States for a period of 120 days. Reference to which orders is hereby made and the same are made a part hereof.

And the said Interstate Commerce Commission, from time to time, continued by appropriate orders, similar in form to the order hereinabove set out, the suspension of the cancellation of rates be-
27 tween various railroad companies of the United States, including the respondent railroad companies, and the petitioner the Louisiana & Pacific Railway Company, until the end of the 30th day of April, 1912; the last of said orders being in words and figures as follows, to-wit:

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap Line Connections.

It Appearing That, by orders heretofore entered, the Commission instituted an investigation and hearing concerning the propriety of various tariffs filed by certain carriers wherein joint rates with and divisions or allowances to so-called tap line connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances and refiled them to

become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs canceling such divisions
28 or allowances, and refiled them to become effective on February 1, 1912; and,

It Further Appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commission to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It Further Appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It Is Ordered, That each and all of the carriers that are parties to this record be, and they are hereby, authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions with or allowances to so-called tap line connections, and, Provided, the said tariffs are forthwith refiled to become effective on May 1, 1912;

It Is Further Ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's Order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman*."

9. Pursuant to the orders of date the 3d day of September, 1910, one of which is hereinabove fully set out, the Interstate Com-
29 merce Commission did enter upon a further hearing of the matter of the propriety of the advances and the lawfulness of the rates, fares or charges, stated in said schedules, mentioned in said orders, and thereupon, and on the 15th day of November, 1910, gave to the petitioner the Louisiana & Pacific Railway Company, and to various other railroad companies in the United States, including respondent railroad companies herein, a notice in words and figures as follows, to-wit:

"NOVEMBER 15, 1910.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of TAP LINE ALLOWANCES AND DIVISIONS, BEING Docket Nos. 3400, Sub. 6, 3400, Sub. 7, 3493, 3511, 3512, 3513, 3514, 3524, 3548, 3551, 3552 and 3564 Consolidated under Investigation and Suspension Docket No. 11.

The above entitled proceedings are assigned for hearing on Thursday, December 9, 1910, 10 o'clock a. m., at United States Court rooms, New Orleans, Louisiana.

By THE COMMISSION,
EDW. A. MOSELEY, *Secretary.*"

Your petitioners aver that notwithstanding that by the Act to Regulate Commerce it is required that the Commission serve upon the defendants in any proceeding before it a copy of the petition with directions to answer the same or to satisfy the petition, nevertheless, no such service was made upon the defendants and no answers were made by said defendants to said petition before the said Interstate Commerce Commission.

30 Pursuant to said notice and the orders of the Interstate Commerce Commission hereinabove set forth, the petitioner the Louisiana & Pacific Railway Company, together with numerous other railroad companies, appeared before the Interstate Commerce Commission, at New Orleans, on December 8, 1910, and subsequent days, and at St. Louis, Missouri, and at Chicago, Illinois, upon adjournments of said hearing, and thereupon the Honorable James S. Harlan, one of the Interstate Commerce Commissioners, examined the officers and agents of the petitioner the Louisiana & Pacific Railway Company, concerning the matters under investigation in said proceeding, and said petitioner Louisiana & Pacific Railway Company also thereafter submitted to the Interstate Commerce Commission certain documentary evidence, by filing the same with the secretary of said Commission at Washington; and thereafter, and within the time fixed by the Commission, said petitioner filed with the Interstate Commerce Commission a statement of facts, abstract of the evidence which had been taken before said Commission, in reference to said petitioner, and a brief and argument, reference to which statement and brief is hereby made, and in said statement and brief said petitioner the Louisiana & Pacific Railway Company petitioned the Interstate Commerce Commission in words as follows, to-wit:

"While this Commission has not all of the powers of a court of equity, and while we recognize that if the Louisiana & Pacific is not entitled to through routes and joint rates and fair divisions, its contracts will not give it that right, yet with these contracts existing,

with the vested rights based thereon and on the previous de-
31 cisions of this Commission, we respectfully and most earnestly ask that this Commission, under its power to compel the trunk line railroad companies to maintain through routes and joint rates, issue an order to those trunk line roads to continue the through routes and joint rates heretofore existing with the Louisiana & Pacific."

At the beginning of said hearing at New Orleans on December 8, 1910, the Honorable James S. Harlan, the commissioner presiding at said hearing, made the announcement to the parties interested and appearing at said hearing, that each so-called "Tap Line" would be treated as though it had filed a formal petition.

There was also filed before the Interstate Commerce Commission in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe, "Investigation and Suspension Docket No. 11," a "Brief and Argument for Various Tap Lines," signed by H. M. Garwood, N. S. Brown and Luther M. Walter, which contained, among other things, the following:

"The facts, therefore, of each case are so widely divergent as to render classification impossible, and to necessitate, however burdensome it may become, the analysis of the facts of each case. It would be unjust to the several lines above, many of which are not represented by the writers of this brief, to undertake any arbitrary classification, and we therefore invoke as a part of that due process of law to which each is entitled, the examination by this body of the facts of each case and the entry of a special and separate order thereon, to the end that the rights of each line may be duly regarded."

32 And at the close of said brief was the following:

"We submit, therefore, with confidence that the basic questions underlying this investigation have been fully and carefully decided by the decisions of this Commission, by the practices in accordance therewith extending over a long period of years, by the decisions of our courts, state and federal, by the approval of the Federal Congress; and that investments made in full accord with the constitutions and laws of the several states, with the approval of Congress, and under the prior decisions of this Commission, ought not now to be confiscated in the absence of clear legislative requirement; and that railway corporations legally formed, sustaining all the burdens of state and federal legislation, and assuming, under charters legally issued, all of the common law and statutory obligations of a common carrier, cannot here be denied the right to engage in interstate commerce, establish through rates with connecting carriers and joint rates applicable thereto."

The said brief and the request therein for the entry of a special and separate order in each case was filed on behalf of the petitioner the Louisiana & Pacific Railway Company among others.

10. On the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," which opinion will be found in the 23d Interstate Commerce Commission Reports, p. 277, et seq., reference to which opinion is hereby made, and which is made a part hereof, as fully as if set out herein in full.

And in said opinion and supplemental report is the following, to-wit:

33 "The cancellations by the trunk lines will be allowed to become effective on May 1, as provided in the tariffs now on file."

Your petitioners then believed and now believe that in and by said opinion and supplemental report and by the language hereinabove last quoted the Interstate Commerce Commission made an order authorizing, permitting and commanding the trunk line railroad companies of the United States, including the respondent railroad companies herein, to cancel all joint interstate rates on lumber with the petitioner the Louisiana & Pacific Railway Company, on the 1st day of May, 1912.

And said trunk line companies of the United States, including the respondent railroad companies, have construed said opinion herein last above referred to, as an order from the Commission to cancel said joint rates and tariffs with the petitioner the Louisiana & Pacific Railway Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with said petitioner on lumber. And the Interstate Commerce Commission, through its secretary, notified the trunk line railroads of the United States that said cancellation did take effect at midnight on the 30th day of April, 1912, and that rates, as filed, must be observed by carriers and shippers, if criminal violation of Interstate Commerce Act and Elkins Act is to be avoided.

Your petitioners further state that while "the matter of the investigation and suspension of schedule canceling through rates with certain tap line connections, Investigation and Suspension Docket No. 11," was pending before the Commission upon the applica-

34 tion of the petitioner Louisiana & Pacific Railway Company, and on account of the course of procedure which had theretofore been taken by the Interstate Commerce Commission, your petitioners were led to believe, had the right to believe, and did believe that the Interstate Commerce Commission would further postpone the effectiveness of the tariffs referred to in the order of January 16, 1912, hereinbefore set out, until after the Interstate Commerce Commission had rendered its opinion and made its order in said cause.

Your petitioners further state that the Opinion No. 1853 and the order contained therein, hereinbefore referred to, and reported in the 23d Interstate Commerce Reports, at page 277, et seq., purports to have been decided, and is dated on April 23, 1912. But your petitioners allege that said opinion was not made public until the 29th day of April, 1912, and if it was rendered on the 23d day of April, all knowledge and information thereof was withheld from your petitioners, and the public generally, and your petitioners had no opportunity to know the contents thereof until about 4 o'clock in the afternoon of April 29, 1912, and a copy of said opinion was not received by your petitioners until after the 30th day of April, 1912, by reason of which your petitioners were unable, on account of lack of time, to prepare any petition or application for injunction to this, or any other, Court, to prevent the cancellation of rates by the respondent

railroad companies becoming effective as hereinabove stated, or, before the 1st day of May, 1912, to make any application to this Court to enjoin, set aside and annul the order of the Interstate Commerce Commission hereinbefore set out.

35 Your petitioners further state that on the 1st day of June, 1912, the Interstate Commerce Commission made a supplemental report entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," Opinion No. 1898, which is reported in the 23d Interstate Commerce Reports, at page 549, reference to which is hereby made and which is made a part hereof as fully as if set out herein.

Said supplemental report or opinion, in so far as it relates to the so-called "Tap Line" case in general, and in so far as it makes a finding of the facts in reference to the petitioner Louisiana & Pacific Railway Company, is in words and figures as follows, to-wit:

Investigation and Suspension Docket No. 11, the Tap Line Case, Decided May 14, 1912.

Supplemental Report of the Commission.

By the COMMISSION:

In the original report herein (ante, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation, either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in

36 relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as, in the judgment of the Commission, bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow. In a number of cases, the tap line, without charge, hauls the logs of the lumber company that owns it. In other cases the lumber company

itself hauls its logs over the tap line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers.

37 Except in one or two cases where the tap line crosses the state boundary line, such arrangements are possibly to be regarded as purely local, and, therefore, beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local, and, therefore, beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory, and have taken such action as, under all the circumstances developed, seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless, the same or generally similar conditions exist in other extensive lumber producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature cannot be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory. * * *

The Louisiana & Pacific Railway.

The Louisiana & Pacific Railway Company was incorporated June 6, 1904, with an authorized capital stock of $200,000, of which only $51,000 has been issued. It is controlled by what is referred to on the record as the R. A. Long interests, 70 per cent of its capital stock being held by R. A. Long, and the rest apparently by his agents and associates. The record indicates that Long owns the

38 same proportion of the capital stock of the Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company and the Calcasieu Long Leaf Lumber Company, all of which have sawmills on the Louisiana & Pacific.

The Long-Bell Lumber Company, which is a part of the same general interest, does not manufacture lumber, but markets the output of these mills. Only $30,000 of the capital stock of the tap line was issued for cash, and the balance was subsequently distributed to its stockholders as a stock dividend. It has outstanding bonds to the amount of $582,200, which were issued for the purpose of taking up notes payable to the various lumber companies and covering purchases of track and equipment. All of the tracks of the Louisiana & Pacific, as hereinafter described, were originally constructed as private logging roads by the individual lumber companies.

The Lake Charles & Northern Railroad, which is owned by the Southern Pacific, extends from De Ridder, Louisiana, southward for a distance of about forty-six miles to Lake Charles. It was originally built by the R. A. Long interests as part of the Louisiana & Pacific, and was sold to the Southern Pacific, which thereupon incorporated the Lake Charles & Northern to operate the property. In the sale of the property to the Southern Pacific, however, the R. A. Long interests reserved to the Louisiana & Pacific the right of jointly operating the track between Lake Charles and De Ridder. The Louisiana & Pacific pays the Lake Charles & Northern 25 cents per train-mile for the trains that it operates over that track, and also bears a certain proportion of the station expenses; the payments aggregated for the fiscal year 1910 approximately $7,000. The two companies, as the record indicates, enjoy equal rights over the track, and in view of the price received by the R. A. Long interests from the Southern Pacific the trackage arrangement is obviously a most advantageous one.

The Louisiana & Pacific is a peculiar property. There are
39 five separate branches or tracks not directly connected with each other, but all joining at different points the track conveyed to the Lake Charles & Northern. The five tracks may be described as follows: (1) A track connecting with the Lake Charles & Northern at De Ridder Junction, and extending eight miles to Bundicks, which is apparently a logging camp with a company store. The mill of the Hudson River Lumber Company, in whose interest this track is operated, is at De Ridder, being within a few hundred feet of the rails of the trunk line. (2) At Lilly Junction, a second section of the track of the tap line connects with the Lake Charles & Northern, extending therefrom about seven and one-half miles to a point in the woods known as Walla, where the King-Ryder Lumber Company has a commissary, and there is a small independent yellow pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bonami, on the track jointly operated by the tap line and the Lake Charles & Northern. This is a town of 2,000 people, but apparently has no other industries. (3) Two miles of incorporated track of the Louisiana & Pacific connect with the Lake Charles & Northern track at Longville, a town of 2,000 population, where the Longville Lumber Company has its mill and a store. There are also several independent stores. (4) There are nine miles of track connecting with the Lake Charles

& Northern at Fayette, and extending to Camp Curtis, a settlement of 200 people, where the Calcasieu Long Leaf Lumber Company has a company store, its mill being at Lake Charles. (5) A track one mile in length described on the record as connecting with the Lake Charles & Northern at Bridge Junction and running to Lake Charles station. Through its operating rights over the Lake Charles & Northern, the tap line connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton, and with the Southern Pacific, Iron Mountain and Kansas City South-
40 ern at Lake Charles. The equipment of the Louisiana & Pacific consists of 22 locomotives, 6 cabooses, 41 freight cars and 270 logging cars. It also owns a private car which is used in traveling around the country by its officers, who hold free transportation, and who are connected with the lumber companies. The lumber companies have many miles of unincorporated logging track connecting with the several sections of the Louisiana & Pacific at various points. There are a number of other towns or settlements named on the record, which it is unnecessary to mention; and there is a second small independent mill, owned by the Brown Lumber Company and located at Bannister, on the Lake Charles & Northern.

The logs are loaded by the lumber companies and switched by them over the logging spurs to the point of connection with the incorporated line. The cars are then hauled by the tap line to the mill, a distance on the average of about thirty miles, as is stated of record. No charge is made by the tap line against the lumber companies for the log movement. The tap line switches the carloads of lumber a distance of three-fourths of a mile from the mill at Lake Charles to the Southern Pacific, or a distance of a few hundred feet from the De Ridder mill to the trunk lines. It moves lumber for a distance of eighteen miles from the Lake Charles Mill to the Frisco; the movement from the mill at Bonami to the Southern Pacific at Lake Charles is forty miles; and the lumber movement from the Longville mill to the Southern Pacific at Lake Charles is twenty-four miles. The average haul of the tap line on lumber movements of the controlling companies is said to be nearly twenty miles. The steel for these tracks is apparently supplied by the tap line without charge. There are written agreements under which 50 per cent of the lumber tonnage must be routed over the Frisco and 40 per cent by the Southern Pacific; but the record indicates that
41 these obligations are not rigidly adhered to and more than 10 per cent is delivered to the other trunk lines. The total movement of lumber for the fiscal year 1910 was 243,122 tons, and the merchandise and other commodities aggregated 8,819 tons. As much as 98 per cent of the entire tonnage was supplied by the controlling interests. A few passengers are carried, the receipts from that source for the year 1910 being $473.77. A logging train runs daily on each of the branches, and there is one 'mixed train,' loaded chiefly with logs and lumber, moving over the track between Lake Charles and De Ridder.

The allowances paid by the trunk lines range from 1½ to 5½

cents per 100 pounds out of their earnings under the group lumber rate.

The annual report to the Commission for the year ending June 30, 1910, shows an operating revenue of $220,985.94, with operating expenses amounting to $145,433.69. There was an accumulated surplus on that date of $73,581.07.

In this case we have another instance of a service performed for a lumber company by a tap line claiming to be a common carrier for which no charge is made, namely, the service of hauling the logs to the several mills. For the switching service of a few hundred feet from the mill at De Ridder to the trunk lines, and three-fourths of a mile from the mill at Lake Charles to the Southern Pacific, allowances are made out of the rate of from 1½ to 5½ cents. There are other important facts of record with respect to this tap line which we have not thought necessary to include in this statement. We regard the whole arrangement as indefensible and unlawful, and see no grounds upon which any allowance may lawfully be made. * * *

Irregular Practices of Tap Lines.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there
42 are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they cannot be said to comply with the requirements of the Act. Many of them, also, do not publish any local rates to apply on traffic received from or delivered to their trunk line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of the published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service Law, the Safety Appliance Act and other Acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases, and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases, our examiners have been refused full access to the books of tap lines. With respect to all these matters, the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions, in no instance, have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

General Comments.

The rates of the trunk lines for the movements of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate,
43 provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticised in Red River Cotton Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 437. So far as we can see from a careful examination of the record, there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under Section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk line connections. In other cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or hereafter made effective to or from points on tap lines, the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and non-discriminatory rates on forest product when shipped from tap line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission, an order will be entered authorizing trunk lines to make settlements on these bases with
44 respect to all traffic moving after May 1, either under Section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*"

Your petitioners further state that the Opinion No. 1898, reported in the 23d Interstate Commerce Commission Reports, at page 549, et seq., purports to have been decided and is dated on May 14, 1912, but your petitioners allege that said opinion was not made public until the 1st day of June, 1912.

Petitioners further state that on the 11th day of June, 1912, the Interstate Commerce Commission made and entered of record, or at

least made public on that day, an order in words and figures as follows, to-wit:

Order.

"At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections and Certain Other Cases Consolidated Herewith.

It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof
45 made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It Further Appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
46 Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;

Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gidean & North Island Railroad Company;
47 Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;

Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company; have hereto-
48 fore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It Is Further Ordered, That the defendants the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis; Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are
49 hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;

Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
50 Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Albany Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It Is Further Ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

And It Is Further Ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*"

11. Your petitioners, believing the reports and decisions
51 and orders of the Interstate Commerce Commission hereinbefore set out under paragraph 10 hereof to be void and unlawful, filed in this Court, on or about the 21st day of June, 1912, their petition asking this Court to suspend and annul said orders. Said suit is numbered 71 in this Court.

Thereupon, upon the motion of the United States and of the Interstate Commerce Commission, this Court, basing its decision upon the case of Proctor & Gamble v. The United States, on the 29th day of June, 1912, dismissed the petition of these petitioners for want of jurisdiction in this Court; and thereupon, to meet the decision of this court, these petitioners and other railroad companies, affected by the report, decision and order of the Interstate Commerce Commission, filed an application before the Interstate Commerce Commission for a modification of the order hereinabove set out, which application is in form and substance as follows, to-wit:

Before the Interstate Commerce Commission.

I. & S. Docket No. 11.

Petition.

Comes now the undersigned, attorney for the various tap line railroads whose status was determined by the Commission in the above entitled investigation, and respectfully requests that the Commission will, at the earliest possible date, issue an affirmative order substantially in form as follows:

"It is ordered that Malvern & Freeo Valley Railway Company; Wilmar & Saline Valley Railroad Company; Arkansas & Gulf Railroad Company; Little Rock, Maumelle & Western Railroad Company; Beirne & Clear Lake Railroad Company; Mississippi,
52 Arkansas & Western Railway Company; Bearden & Ouachita River Railroad Company; Arkansas Eastern Railroad Company; Blytheville, Burdette & Mississippi River Railway Company; Brookings & Peach Orchard Railroad Company; Crossett Railway Company; Fordyce & Princeton Railroad Company; Homan & Southeastern Railway Company; Little Rock, Sheridan & Saline River Railway Company; L'Anguille River Railway Company; Ouachita Valley Railway Company; Griffin, Magnolia & Western Railway Company; Saline Bayou Railway Company; Enterprise Railway Company; Natchez, Ball & Shreveport Railway Company; Black Bayou Railroad Company; The Bodcaw Valley Railway Company; Mill Creek & Little River Railway & Navigation Company; Red River & Rocky Mountain Railroad Company; Woodworth & Louisiana Central Railway Company; Freeo Valley Railroad Company; Natchez, Urania & Ruston Railway Company; Bernice & Northwestern Railway Company; Dorcheat Valley Railroad Company; Manghan & Northeastern Railway Company; Galveston, Beaumont & Northeastern Railway Company; Peach River & Gulf Railway Company; Riverside & Gulf Railway Company; Jefferson & Northeastern Railway Company; Beaumont & Saratoga Trans-

portation Company; Angelina & Neches River Railroad Company; Missouri & Louisiana Railroad Company; Saginaw & Ouachita River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Caddo & Choctaw Railroad Company; Manila & Southwestern Railway Company; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Roosevelt & Western Railroad Company; Tioga & Southeastern Railway Company; Louisiana Central Railroad Company; Monroe & Southwestern Railway Company; Victoria, Fisher & Western Railroad Company;
53 Ouachita & Northwestern Railroad Company; Lake Charles Railway & Navigation Company; Louisiana Railway Company; Zwolle & Eastern Railway Company; Sabine & Northern Railroad Company; Gideon & North Island Railroad Company, and Poplar Bluff & Dan River Railway Company be and each of them are required, on or before September 15, 1912, to cease and desist, and for a period of two years thereafter to abstain from maintaining joint interstate rates for the movement of logs to the mills of the respective proprietary lumber companies in Opinions Nos. 1853 and 1898 (which opinions are made part hereof), and for the movement of the products of such logs and mills to interstate destinations.

It is further ordered that the defendants named, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Com-
54 pany; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company and Mobile & Ohio Railroad Company; Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wessen Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway; Fourche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley,

Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company, and Washington & Choctaw Railway Company be and they are hereby authorized and required on or before September 15, 1912, to reopen through routes and publish joint rates upon lumber destined to interstate points, provided the maximum of such joint rates shall not exceed those in effect April 30, 1912.

It is further ordered that the divisions or proportions of
55 the joint rates accruing to the Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wesson Railway Company, Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway Company; Forche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway Company; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company, and Washington & Choctaw Railway Company upon the products of the mills of the proprietary companies named in Opinions Nos. 1853 and 1898, located on said lines, shall not exceed the divisions, proportions or allowances specified in said opinions."

The basis for the aforesaid request is contained in the following statement of facts and circumstances arising subsequent to the entry of the order of May 14, 1912:

(1) The order of May 14, 1912, entered in such proceed-
56 ing is not such an order as is required by Sections 14 and 15 of the Act to Regulate Commerce as amended June 29, 1906.

(2) Subsequent to the entry of said order of May 14, 1912, the Supreme Court of the United States announced its opinion in the Proctor & Gamble case, in which it was held that the Commerce Court had no jurisdiction of suits brought to enjoin so-called negative orders of the Commission.

(3) There was much difference of opinion as to whether said order of May 14, 1912, was or was not an affirmative order within the definition of the Supreme Court in the said Proctor & Gamble case. Application was made to the Commission for modification of said order substantially in form with that set forth above, which said application was denied.

(4) Three test suits were filed in the Commerce Court to enjoin such order of May 14, 1912, and the Commerce Court, upon motion of the Commission and the Department of Justice, dismissed the same on the authority of the Proctor & Gamble decision.

(5) The time limit within which appeals from such decree of dismissal must be made will expire August 18, 1912.

(6) The trunk line railroads connecting with the so-called tap lines have accepted the Commission's requirement of May 14, 1912, as an affirmative order, and the said tap lines are without any recourse whereby to protect their lawful rights.

(7) The modification above requested will not change in any wise the present status of any of the tap line carriers so far as joint rates are concerned; the only effect of the order will be to confer jurisdiction upon the court to determine the lawful rights of the said tap lines and their shippers, and, so far as the law may require or permit, protect the tap lines and their shippers from unlawful acts of the trunk line connections.

57 (8) In the case of fifty-seven (57) lines in which the Commission held that the transportation of logs from the forest to the mills and the product from the mills to the trunk lines was not a service of transportation when performed for the proprietary lumber companies, the trunk lines have refused to establish joint rates upon other forest products, notwithstanding the Commission's suggestion so to do, the position taken by the trunk lines being that if the tap lines are not common carriers of logs and lumber for the proprietary lumber companies such tap lines are not common carriers of any logs and lumber.

(9) Members of the Commission have stated since the entry of this order that the questions of law involved in the tap line cases are important and should be determined at an early date. These questions can be determined at the present time by the entry of the form of order requested herein.

(10) Since May 14, 1912, the Commission has established joint rates upon lumber transported by short line railroad companies for proprietary lumber companies, and has entered an affirmative order requiring the publication of such joint rates. We are asking in the case of the Saline River Railway Company and other carriers recog-

nized by this Commission as properly entitled to participate in joint rates that the same sort of an order be entered as was made by the Commission in the McCloud River Lumber case.

In the Peavey Elevator cases the Commission found that payment out of the joint rate to the Peavey Elevator Company for the elevation of the grain of that company was a rebate and discrimination; the finding in the tap line cases, so far as the transportation of lumber and logs for the proprietary lumber companies upon the fifty-seven (57) lines held not to be carriers of logs or lumber for the proprietary lumber companies, is that any allowance out of the joint rate is a rebate and discrimination. In that case an order
58 to cease and desist was made. That order was similar in all respects to the order requested in this case as to the fifty-seven first named tap lines.

We therefore respectfully petition this Honorable Commission to modify its order in form substantially as above requested.

L. M. WALTER,
Attorney for Petitioners.

And thereupon, on the 30th day of October, 1912, the Interstate Commerce Commission made and entered of record an amended order in form and substance as follows, to-wit:

Interstate Commerce Commission.

Investigation and Suspension Docket No. 11.

The Tap-Line Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap-Line Connections; and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised.

It Is Ordered, That the said order be, and it is hereby, modified to read as follows:

1. It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of
59 fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions

thereon, which said reports are hereby referred to and made a part hereof;

2. It Further Appearing, That the Commission upon the record finds in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
60 Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;

Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
61 Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It Is Ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navi-
62 gation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

4. It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
63 Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. It Further Appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;

Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

64 have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It Is Ordered, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It Is Further Ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
65 De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and *there* are hereby, authorized to re-establish the through routes and joint rates in effect in accordance

with their respective tariffs filed with this Commission on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and Provided, further, that upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It Is Further Ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. It Is Further Ordered, That the divisions of all joint
66 rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. It Is Further Ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And It Is Further Ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

12. Your petitioners further state that as a common carrier the Louisiana & Pacific Railway Company became, and until midnight on the 30th day of April, 1912, was, a party to each and all of the following tariffs applicable on lumber and articles taking lumber rates to the various points in said tariffs mentioned, the lines publishing said tariffs and the lines mentioned and concurring therein constituting, with the petitioner the Louisiana & Pacific Railway Company, reasonable through routes and said tariffs prescribing
67 reasonable through rates between points on the Louisiana & Pacific Railway and the several points therein mentioned, to-wit:

Southwestern Lines Lumber Tariffs Canceled May 1st, 1912, from Louisiana & Pacific Railway Company Points.

S. W. L. 48-G I. C. C. 892 to Oklahoma points.
S. W. L. 50-E I. C. C. 868 to Ariz., Ark., Colo., Iowa, Ks., Mo., New Mex., S. D., Utah, Wyo.
S. W. L. 63-E I. C. C. 897 to Texas points.
S. W. L. 4-A I. C. C. 849 to Mexico points.

St. Louis & San Francisco Railway Company Lumber Tariff Canceled May 1st, 1912, from Louisiana & Pacific Railway Company Points.

St. L. & S. F. 546-C I. C. C. 5313 to Ia., Mo., Minn., Wisc., N. D., S. D., etc.

New Orleans, Texas & Mexico Railway Company Lumber Tariff Canceled May 1st, 1912, from Louisiana & Pacific Railway Company Points.

N. O., T. & M. 217-G I. C. C. a-38 to New Orleans and Port Chalmette, La. (For Export.)

Chicago, Rock Island & Pacific Railway Lumber Tariffs Canceled May 1st, 1912, from Louisiana & Pacific Railway Company Points.

C., R. I. & P. 24000-E I. C. C. c-9235 to Ala., Ark., Fla., Ill., Iowa, Ky., Minn., Miss., Mo., N. Mex., North Dak., South Dak., Tenn., Wisc., Wyoming, etc.
28013 c-9062 Tie Plant, Ark., or Winnfield, La., when creosoted and reshipped beyond.

Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railroad Company Tariffs Canceled May 1st, 1912, from Louisiana & Pacific Railway Points.

L. W. & M. L. & T. 1018 I. C. C. 2706-B to Beaumont, Galveston, Port Arthur, Sabine, Tex. City and West Port Arthur (for export).
68 73-F 708-G. H. S. A. Ariz., Ark., Colo., Iowa, Kans., Minn., Mo., Mont., Neb., N. Mex., North Dak., South Dak., Utah, Wyo., etc.

318-D	2454-B	Ala., Conn., Del., Ill.; Ind., Ia., Ky., Me., Md., Mass., Mich., Minn., Miss., Mo., N. H., N.J., N. Y., N. C., Ohio, Pa., R. I., Tenn., Vt., Va., W. Va., Wisc., Canada, etc.
334-B	2539-B	New Orleans, Algiers, Gretna, La. (For export.)
315-C	2573-B	New York City, (Gulf & Rail.)
176-F	23-T. & N. O.	Ill., Ind., Ky., Mich., Mo., New York, Ohio, Pa., Tenn., West Va., Wisc., etc.

Chicago & Eastern Illinois Railway Company, St. Louis & San Francisco Railway Company and Chicago, Rock Island & Pacific Railway Company Lumber Tariff Canceled May 1st, 1912, from Louisiana & Pacific Railway Company Points.

2800-C I. C. C. 2596 to Ill., Ind., Ky., Mich., Mo., N. Y., Ohio, Pa., W. Va., Wisc., etc.

13. Your petitioners further say that prior to the 31st day of October, 1906, the petitioner Hudson River Lumber Company (located at De Ridder, Louisiana), erected a large sawmill at De Ridder, Louisiana, on the main line of The Kansas City Southern Railway, and the said Hudson River Lumber Company built a standard gauge railroad in an easterly direction to Bundick, a distance of about ten miles, for the purpose of reaching the timber owned by said Hudson River Lumber Company and bringing said timber to the mill of said Company, there to be manufactured into lumber and then to be delivered to the Kansas City Southern Railway at De Ridder for transportation to various markets. Said road so constructed by
69 the Hudson River Lumber Company was formerly called the De Ridder & Eastern Railway.

Also prior to October, 1909, the petitioner King-Ryder Lumber Company, having a mill located at Bonami, Louisiana, built a standard gauge railroad in an eastern direction to Walla, Louisiana, for the purpose of hauling logs from the woods to Bonami, there to be manufactured into lumber and transported over the Kansas City Southern Railway to various markets.

The only trunk line connection for both of these roads then serving separately only the two mills above mentioned was the Kansas City Southern Railway. This trunk line road, the Kansas City Southern, encouraged the building of these properties, and for that purpose and in order to encourage the building of such lines of

road, extended the application of the rate on lumber in effect from Bonami and De Ridder to the woods at the end of the lines of these roads, the point of origin of logs, and allowed these roads, extending from the forest to the mills, certain divisions of the through rate on the manufactured lumber from Bonami and De Ridder to the various points to which said lumber was carried. This practice, known as the "milling in transit privilege," then obtained and now obtains by all railroad companies, and the same practice and custom is applied to grain; cotton and various other commodities, and such practice is recognized in law, and was at that time, and ever since has been, recognized by the Interstate Commerce Commission.

Also prior to October 31, 1906, there was in Calcasieu Parish,
Louisiana, a lumber mill known as the Bradley-Ramsey
70 Lumber Company, which said Bradley-Ramsey Lumber Company also had a line of railroad for hauling timber from the woods to the mill. This road was a narrow gauge road and extended from a point on the Calcasieu River in Section 9, Township 9, Range 8, Calcasieu Parish, Louisiana, to or near a station now called Curtis, and to a point in Section 2, Township 6, Range 10. This road consisted of about thirty miles of track.

About January 17, 1906, the petitioner the Long-Bell Lumber Company purchased the property of the Bradley-Ramsey Lumber Company, including therein two mills at Lake Charles and large tracts of timber in Calcasieu Parish, adjacent to the timber holdings of the King-Ryder Lumber Company and the Hudson River Lumber Company, and included in said purchase the said narrow-gauge logging road of about thirty miles in length, which was built for the purpose of getting logs from the timber north of Lake Charles to the mills at Lake Charles.

This purchase, together with the holdings of the King-Ryder Lumber Company and the Hudson River Lumber Company, gave to the petitioners the Long-Bell Lumber Company, King-Ryder Lumber Company and the Hudson River Lumber Company about forty miles of timber between De Ridder and Lake Charles, Louisiana. This body of timber, or portions thereof, at different times thereafter was sold by the Long-Bell Lumber Company to the other lumber companies petitioners herein, each of said companies owning certain bodies of timber adjacent to the mills built or owned respectively by them.

Up to this time—that is, to about January, 1906—the said peti-
toiners owning the mills at De Ridder and Bonami had
71 been seriously hampered in their efforts to dispose of their products because of the absence of railroad competition, there being but one trunk line connection, the Kansas City Southern Railway aforesaid, and this railroad was unable to furnish adequate transportation facilities and competitive rates to the markets desired to be reached by the said King-Ryder Lumber Company and Hudson River Lumber Company.

Under this condition of affairs and during the year 1906, certain of the owners of the stock of the various lumber companies then owning the forty miles of timber between De Ridder and Lake

Charles, together with the owners of the stock in the three lumber roads heretofore mentioned, seeing the necessity for arranging for additional transportation facilities in the form of new trunk line connections, and with this end in view, organized a company known as the Louisiana & Pacific Railway Company, one of the petitioners herein, being a reorganization of the company formerly owning the short line of railroad from Bonami to Walla.

It was the understanding, intention and plan of the parties organizing and promoting the said Louisiana & Pacific Railway Company that it would be built from De Ridder to Lake Charles, and that connections would be made with the Southern Pacific Railway System and the Missouri Pacific Railway System at Lake Charles, St. Louis & San Francisco System at Fulton, Louisiana; the Kansas City Southern Railway at Bonami; the Kansas City Southern Railway and the Gulf, Colorado & Santa Fe Railway at De Ridder; thus giving the mills located and to be located on the lines of the Louisiana & Pacific Railway additional and ample
72 transportation facilities on a competitive rate basis.

Based on this agreement, understanding and intention of the parties promoting and bringing about the organization of the Louisiana & Pacific Railway, the mill companies petitioners herein parted with and sold the lines of railway theretofore owned by them to the Louisiana & Pacific Railway Company, and the additional transportation facilities contemplated in the organization of the Louisiana & Pacific Railway Company, and by the owners who had sold the three short line roads hereinbefore mentioned, were being provided, or about to be provided, by the Louisiana & Pacific Railway, by the construction by said company of a main line of railroad extending from De Ridder to Lake Charles, with branch lines extending to Bundick, Walla and Curtis.

The said Louisiana & Pacific Railway Company at this time owned a line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River, at or near the northwest corner of Section Ten (10), Township Nine (9), Range Eight (8), in said Calcasieu Parish, a portion of said road being completed and in operation, a portion in process of construction, a portion consisting of the narrow-gauge railroad purchased from the Bradley-Ramsey Lumber Company; and the said Louisiana & Pacific Railway Company at this time—that is, prior to the 31st day of October, 1906, also owned a right of way for a railroad from Lake Charles, Louisiana, to a point on its said road near the northeast corner of Section Thirty-two (32), Township Eight (8), Range Eight (8), in said Calcasieu Parish, and was constructing its said road so as to
73 have a line of railroad from De Ridder, Louisiana, to Lake Charles, Louisiana, and with the branch line heretofore mentioned.

A plat showing the "De Ridder & Eastern Railroad," the "Louisiana & Pacific" as it then was, that is, extending from Bonami southeast, the portion of the road under construction; the narrow gauge road built by the Bradley-Ramsey Lumber Company, called the Lake Charles & Leesville Railroad; and the right of way from

Lake Charles to the northeast corner of said Section Thirty-two, is hereto annexed.

A plat showing the Louisiana & Pacific Railway Company lines and connections, as they now exist, is hereto annexed.

Under this condition of affairs and prior to the 31st day of October, 1906, the officers representing the interests controlling what is known as the Southern Pacific System entered into negotiations with the Louisiana & Pacific Railway Company looking to a joint interest by "the Southern Pacific System" and the Louisiana & Pacific Railway in that portion of the line being built between De Ridder and Lake Charles, to the end that the "Southern Pacific System" might have an interest in that portion of said line of railway between De Ridder and Lake Charles and might over that route reach a territory north of De Ridder; and the "Southern Pacific System," through a subsidiary company, known as the Lake Charles & Northern Railroad Company, purchased the said Louisiana & Pacific Railway Company's line of road and right of way between De Ridder and Lake Charles, extended the road northeast to Nitram, by trackage contract with the Santa Fe, and entered into a joint trackage agreement whereby, although the "Southern Pacific System"
74 would then own the railway from Lake Charles to De Ridder, yet the Louisiana & Pacific Railway Company, through said trackage agreement, had the right to still operate as its main line of railway the road from De Ridder to Lake Charles, Louisiana, and could still carry out the object and purpose for which said railroad was formed, to-wit, obtaining adequate transportation facilities and competitive rates and connections with the various other railroad systems in Calcasieu Parish, Louisiana; said contract, dated the 31st day of October, 1906, between the Louisiana & Pacific Railway and the Lake Charles & Northern Railroad Company, provides that the Lake Charles & Northern Railroad Company would, and it afterwards did, complete the said line of railroad so as to make a continuous, complete and direct line of railroad from De Ridder to Lake Charles, Louisiana, and thereby form an outlet with the defendant the Louisiana Western Railroad Company.

Said contract of sale between the said Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company further provided that in consideration of the sale of said portion of the Louisiana & Pacific Railway Company's railroad and right of way between De Ridder and Lake Charles, that the said Lake Charles & Northern Railroad Company would (and the said Lake Charles & Northern Railroad Company afterwards did) enter into a contract with the Louisiana & Pacific Railway Company, which said contract gives to the Louisiana & Pacific Railway Company joint trackage rights over the line of railroad from De Ridder to Lake Charles, and the right to operate trains of the said Louisiana & Pacific Railway Company over said road at a certain price
75 and upon certain terms fixed by said contract. Said line of railroad between De Ridder and Lake Charles will, for convenience and to distinguish it from the other portions of the Louisiana & Pacific Railway Company's railway, be hereafter referred to as the "joint track."

Said contract between the Louisiana & Pacific Railway Company and the said Lake Charles & Northern Railroad Company further provided that said contract, that is, the agreement for the sale of the "joint track" by the Louisiana & Pacific Railway Company to the Lake Charles & Northern Railroad Company, with all things pertaining thereto, was entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the respondent Louisiana Western Railroad Company and said petitioners Louisiana & Pacific Railway Company, the Hudson River Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company and the Long-Bell Lumber Company.

14. Petitioners further allege that in Interstate Commerce shipments there prevails now, and has prevailed for many years, in all of the lumber producing districts of the South, with the full concurrence of the railroad systems and the producers and shippers of lumber, and with the full concurrence of the Interstate Commerce Commission, what are known as "blanket rates," that is, all lumber rates from all points on all lines in a given territory are the same to any point in any other given territory; that, consequently, the lumber rates for Interstate Commerce shippers from any point on the line of the petitioner the Louisiana & Pacific Railway Com-
76 pany, were, until the 1st day of May, 1912, the same as from any of its points of connection with other railroads.

15. Petitioners further state that under the conditions hereinbefore set out and contemporaneously with the contract of sale between the Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company, in reference to the track and roadbed between De Ridder and Lake Charles, and contemporaneously with the "joint trackage" agreement hereinbefore mentioned between the Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company, and on the 31st day of October, 1906, the petitioners herein and the respondent herein, Louisiana Western Railroad Company, entered into a tripartite agreement wherein and whereby it was agreed that the Louisiana Western Railroad Company and the Louisiana & Pacific Railway Company would, during the existence of said agreement, interchange business with each other at the point of connection of their respective lines and by means thereof establish a through line of railway with traffic thereover on the basis of rates and divisions as in said contract set forth.

The Lumber Companies petitioners herein agreed that during the existence of said agreement they would ship or cause to be shipped over the line of railroad of the Louisiana & Pacific Railway Company to its said connection at Lake Charles, there to be delivered to the Louisiana Western Railroad Company for transportation to destination, at least 40 per cent of the aggregate products of all the mills of the petitioners which were then or which might thereafter be located on the line of railway of the petitioner Louisiana & Pacific Railway Company.

77 The Louisiana & Pacific Railway Company, upon its part, agreed to deliver said freight to the Louisiana Western Railroad Company.

The Louisiana Western Railroad Company agreed that it would accept from the Louisiana & Pacific Railway Company all shipments by it offered to or from points between which joint rates were in effect and to transport the same with reasonable promptness and dispatch, and would use every reasonable effort to furnish the Louisiana & Pacific Railway Company with cars as requested by it from time to time to a number sufficient for transporting 40 per cent of the products of the mills of the petitioner's Lumber Companies along the line of railway of the Louisiana & Pacific Railway Company.

Said contract further provides that the Louisiana Western Railroad Company and the Louisiana & Pacific Railway Company agree, each with the other, that they will enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission, in the manner and form as required by law.

Said contract further provides that the Louisiana Western Railroad Company agrees that it will, at all times, during the existence of said agreement, publish for all points mentioned in its tariffs, the same freight rates on all products of the defendants from all points on the line of railway of the Louisiana & Pacific Railway Company, as are or shall be in effect from Lake Charles, Louisiana, on the line of the said Louisiana Western Railroad Company, which rate shall, at all times, during the existence of said agreement, be competitive with rates from other points in Calcasieu Parish, producing
78 yellow pine, to all destinations to which the Louisiana Western Railroad Company may be able to arrange through rates.

Said contract also provides that it shall commence and become effective on the date thereof and shall be and remain in full force and effect for a period of twenty (20) years thereafter, or so long as the petitioners Lumber Companies shall operate their mills along the line of railroad of the Louisiana & Pacific Railway Company.

A full, true and complete copy of said contract is hereto attached, marked Exhibit "A," hereby referred to and made a part hereof, as fully as if set out herein in full.

16. Petitioner herein, the Longville Lumber Company, is not by name a party to the agreement between the other petitioners and the respondent Louisiana Western Railroad Company, but the Longville Lumber Company, since the execution of the said contract, purchased from one of the other petitioners timber along the line of the railroad of the Louisiana & Pacific Railway Company, has conformed to the provisions of said contract and is entitled to and claims the benefits of said contract, and has been recognized by all the parties to said contract as having the same rights thereunder as the other Lumber Companies petitioners herein.

17. At about the same time that the contracts heretofore mentioned were entered into the petitioners herein entered into a contract with the Colorado Southern, New Orleans & Pacific Railroad Company, which changed its name to, and is now, the New Orleans, Texas & Mexico Railroad Company, and with the St. Louis & San

Francisco Railroad Company, similar in its terms to the con-
79 tract made between petitioners and the Louisiana Western Railroad Company, hereinbefore referred to, and which said contract between the petitioners and the Colorado Southern, New Orleans & Pacific Railroad Company and the St. Louis & San Francisco Railroad Company provides that the Colorado Southern, New Orleans & Pacific Railroad Company and the St. Louis & San Francisco Railroad Company of the one part and the Louisiana & Pacific Railroad Company of the other part will interchange business with each other at the point of connection of their respective lines, and by means thereof establish a through line of railway with traffic thereover on the basis of the division of rates as in said contract set forth; and that said Colorado Southern, New Orleans & Pacific Railroad Company and the St. Louis & San Francisco Railway Company agree each with the other that they will enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission, and to publish the same in the manner and form as required by law.

A copy of said contract is hereto attached, marked Exhibit "B," hereby referred to and made a part hereof, as fully as if set out herein.

The moving cause and consideration for these contracts was that the shippers had the right to route their freight over such line or lines of railroad as they saw fit, and in order to secure the performance of the contracts between the Louisiana & Pacific Railway Company and its connecting carriers, the Southern Pacific and Frisco Systems, it was necessary to have the shippers sign the contracts and agree to route their products over the line of the Louisiana & Pacific Railway Company.

80 18. That, relying upon the contracts between the petitioners herein and the respondent- herein, the Louisiana Western Railroad Company, the New Orleans, Texas & Mexico Railroad Company and the St. Louis and San Francisco Railroad Company, the various lumber companies petitioners herein, owning mills along the line of the Louisiana & Pacific Railway, have, each for itself, entered into contracts whereby the said lumber companies respectively agree to ship, or cause to be shipped, over the line of the Louisiana & Pacific Railway Company, all of the logs and products of said mills; the Louisiana & Pacific Railway Company agreeing to furnish the necessary transportation facilities for the handling of the logs from the point of connection with the Lumber Companies' road to the mill and the product of said logs from the mill, at the published tariff rates of said Companies, filed with the Interstate Commerce Commission.

And also upon the faith of said contracts between the petitioners herein and the defendant Railroad Companies, and upon the faith of the contracts between the said petitioners Lumber Companies and the said Louisiana & Pacific Railway Company, the said petitioners Lumber Companies, now owning mills along the line of the Louisiana & Pacific Railway, have constructed large and valuable mills for the manufacture of lumber, and have acquired in addition

to the lands and timber owned by them prior to the making of said contracts, other large bodies of timber land.

The investments which have been made by said lumber companies and the value of the plants and timber owned by them are as follows:

81	Plant.	Timber, etc.	Total.
King-Ryder	$448,127	$3,167,477	$3,615,604
Calcasieu	393,066	4,730,137	5,132,203
Longville	535,952	2,750,579	3,286,531
Hudson	308,560	3,260,844	3,569,404
	$1,685,705	$13,909,037	$15,603,742

The number of miles of steel rails laid in the tram railroads of the Lumber Companies and the value thereof and the number of locomotives, cars and equipment and the value thereof owned by the petitioners Lumber Companies and used in the transportation of logs to the railroad of the Louisiana & Pacific Railway Company is as follows:

Calcasieu Long Leaf Lumber Company.

Steel rails, 24.704 miles	$24,679.05
Three locomotives	16,000.00
Stock and tank cars, 7 cabooses	3,080.62
Steel cars	559.55
	$44,319.22

Hudson River Lumber Company.

Steel rails, 22.0654 miles	$43,069.81
Three locomotives	10,000.00
Hand, tank and water cars, and cabooses	3,181.37
	$56,251.18

King-Ryder Lumber Company.

Steel rails, 17.405 miles	$33,048.72
Four locomotives	16,200.00
Stock and tank cars, cabooses, etc.	9,608.07
Steel cars	1,030.28
Coach	250.00
	$60,137.07

82 Longville Lumber Company.

Steel rails	$19,797.35
Three locomotives	26,930.52
Stock and tank cars, gondolas, etc.	6,413.57
Steel cars	1,118.02
Pile drivers	6,344.58
	$60,604.04

The capacity of the mills of petitioners Lumber Companies on the line of the defendant Louisiana & Pacific Railway Company is 1,200 cars per month.

19. Your petitioners state that the decision and report of the Interstate Commerce Commission, being the decision published in the 17th Interstate Commerce Commission Reports, page 338 et seq., is an erroneous and incorrect statement of the law, and is a misapprehension, misstatement and misapplication of facts in so far as petitioners herein are concerned, and the statement in said opinion to the effect

"that any allowance or division made to or with the tap line that is owned or controlled directly or indirectly by the lumber mill or by its officers or board of directors, and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates"

is not a correct statement of the law, and is an erroneous and illegal holding upon the part of the Interstate Commerce Commission. And the whole of said opinion is an incorrect and improper statement of the facts and the law as applied to these petitioners, and the action of the trunk line railroad companies in August, 1910, in filing
83 with the Interstate Commerce Commission the schedules stating new, individual or joint rates, fares or charges, applicable upon the articles named therein in excess of the rates, fares and charges theretofore in effect, and in thereby canceling the through routes and joint rates which had theretofore been maintained with the petitioner Louisiana & Pacific Railway Company was and is unlawful, and was and is in wrongful violation and avoidance of the obligations and contracts heretofore pleaded and set out, and is in violation of the Interstate Commerce laws of the United States.

That the opinion and report heretofore referred to and published in the 23d Interstate Commerce Commission Reports, at page 277 et seq., is an erroneous and incorrect finding of facts, is a misapprehension and misapplication of the facts as found, is an erroneous and illegal statement of the law, it takes away from these petitioners vested rights guaranteed by law, and impairs and destroys the obligation of legal contracts which these petitioners have. And the statement in said report found on page 338 thereof, to-wit:

"The cancellations by the trunk lines will be allowed and become effective on May 1st, as provided in the tariffs now on file,"

constitutes an order to the trunk line railroad companies to cancel the tariffs heretofore mentioned in paragraph 12 hereof, constitutes a denial and dismissal of the petition of the Louisiana & Pacific Railway Company to the Commission, heretofore pleaded in paragraph 9 hereof, to issue an order to said trunk line railroads to continue the through routes and joint rates theretofore existing with
84 the petitioner Louisiana & Pacific Railway Company, as provided for in the tariffs set out in paragraph 12 hereof.

That the Interstate Commerce Commission by its said opinions and reports herein referred to, and by its order allowing the cancellation by the trunk lines to become effective on May 1, as provided by the tariffs then on file, and by its supplemental report dated May 14, 1912, and by its order dated May 14, 1912, and by its amended order of October 30, 1912, herein set out in full, has erroneously, illegally and improprely held that the petitioner Louisiana & Pacific Railway Company is not a common carrier in reference to logs and lumber and that the service it performs is not a common carrier service when said service is performed in the hauling of logs and lumber and the products of the petitioner Lumber Companies' mills, and has, by both of its said opinions, to-wit, the opinion dated April 23, 1912, and the opinion dated May 14, 1912, and by its order dated May 14, 1912, and its amended order dated October 30, 1912, ordered the respondent Railroad Companies to cease the maintenance of through routes and joint rates on lumber with the petitioner the Louisiana & Pacific Railway Company, and to cease paying any division whatsoever of the rates to the petitioner Louisiana & Pacific Railway Company.

And by said opinions and reports and orders the Interstate Commerce Commission has ordered and required the respondent Railroad Companies to submit for the approval of the Interstate Commerce Commission the basis of their divisions on through joint class and commodity rates in effect or hereafter made effective to or from points on the line of the petitioner Louisiana & Pacific Rail-
85 way Company, which said order is beyond the jurisdiction of the Interstate Commerce Commission, and commands the respondent Railroad Companies to violate the terms of the contracts with the petitioners, herein set out, and is in violation of Section 15 of the Interstate Commerce Act, which provides that the Commission may establish through routes and joint classifications and may "establish joint rates as the maximum to be charged, and may prescribe the divisions of such rates, as hereinbefore provided, and the terms and conditions under which such through rates shall be operated whenever the carriers themselves shall have refused or neglected to establish voluntarily such through rates or joint classifications or joint rates." Your petitioners further allege that the respondent Railroad Companies and the petitioner Louisiana & Pacific Railway Company have not refused or neglected to establish voluntarily such through routes or joint classifications or joint rates, but on the contrary, as hereinbefore set out, have agreed to establish such through routes and joint classifications and joint rates, and have filed with the Interstate Commerce Commission their tariffs showing such through routes and joint classifications and joint rates, all of which will fully appear by Tariff Index Number 9-B, Interstate Commerce Commission Number 21.

Your petitioners further allege that the respondents Railroad Companies did not voluntarily cancel the through rates under and by virtue of the canceling tariffs hereinbefore referred to, but the action of the respondents Railroad Companies in that regard was had under the compulsion of the several reports, decisions and

orders of the Interstate Commerce Commission hereinbefore
86 referred to, and under the belief induced by said reports, decisions and orders, that if said joint through rates with the petitioner Louisiana & Pacific Railway Company were not canceled, that said respondents Railroad Companies, their officers and agents, would be subject to criminal prosecution at the instance of the Interstate Commerce Commission as for alleged rebates and alleged unlawful discrimination.

Your petitioners further allege that the respondents Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway & Steamship Company; New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, and other common carriers subject to the Act to regulate commerce, have for years recognized the petitioner Louisiana & Pacific Railway Company as a common carrier in every respect and fully entitled to all the rights and privileges belonging to a common carrier under the law; and, but for the action of the Interstate Commerce Commission, herein complained of, would continue to so recognize said petitioner as a common carrier and would participate with said petitioner in joint rates upon lumber and forest products and the maintenance of through routes to interstate destinations.

Your petitioners further state that the statement made in the finding of facts in reference to the Louisiana & Pacific Railway Company, to the effect that there is no charge made for the service of hauling the logs to the mills, is incorrect and misleading, the fact being that the charge for transporting the logs and finished product is provided for in the through rate which applies from the point at
which the logs are delivered to the Louisiana & Pacific Rail-
87 way Company by the Lumber Companies, and includes the transportation of the logs to the mill and the product from the mill to final destination, and is a practice which has long been recognized by the Interstate Commerce Commission, not only on lumber, but on other commodities, and is not in itself illegal.

The statement "the steel for these tracks is furnished and supplied by the Tap Line without charge," is incorrect and untrue. There is no steel or other equipment supplied by the Louisiana & Pacific Railway Company to the Lumber Companies. At the time of the hearing of the case it was the custom of the Louisiana & Pacific Railway Company to lease or lend to shippers on its line steel and other equipment for the trams of said lumber companies beyond the line of the railroad of the Louisiana & Pacific Railway Company; this practice seemed to be condemned by the Commission, and by reason thereof the Louisiana & Pacific Railway Company sold and transferred to the lumber companies all steel and other equipment which was being used by the lumber companies in the tram roads of the lumber companies, and there is now no steel or other equipment furnished to the lumber companies by the Louisiana & Pacific Railway Company, and a copy of the contract or bill of sale evidencing this fact was filed with the Interstate Commerce Commission before the closing of the "Tap Line case" before said Commission.

Petitioners further state that upon the finding of facts made by the Interstate Commerce Commission, hereinabove set out, the petitioner Louisiana & Pacific Railway Company is a common carrier, performs a common carrier service, is entitled to the main-
88 tenance of through routes and joint rates and to divisions, as in its contracts provided.

Petitioners further state that the entire opinion, report, finding and order of the Interstate Commerce Commission, made under the caption, "Investigation and Suspension Docket No. 11, The Tap-Line Case," is inconsistent with itself, with the former decisions and reports of the Interestate Commerce Commission, permits and requires discriminations and inequalities, and a compliance with said decisions and requirements compels the railroad companies to violate Section 3 of the Interstate Commerce Act, hereinafter set out. And said decisions and orders are in violation of and in conflict with the "Commodities Clause" of Section 1 of said Interstate Commerce Act.

Your petitioners further allege that said decisions and orders hereinbefore set out were made by the said Interstate Commerce Commission as a result of investigation and alleged information furnished by its investigators without any opportunity to these petitioners of cross-examination or rebuttal.

Your petitioners allege that the Interstate Commerce Commission has no jurisdiction or authority in law to decide that the petitioner Louisiana & Pacific Railway Company is not a common carrier in respect to the logs and lumber which it transports for petitioners Lumber Companies (although holding that it is a common carrier and compelling it to be a common carrier with respect to other tonnage which it hauls), and by so holding and by its order to the trunk line railroad companies to cancel through routes and joint rates and to cease for two years paying divisions to the petitioner Louisiana & Pacific Railway Company, the
89 Interstate Commerce Commission attempts to nullify state laws and the Interstate Commerce laws and its own rulings and decisions heretofore made; and the decision, in reference to the petitioner Louisiana & Pacific Railway Company and the orders of the Interstate Commerce Commission, hereinabove set out, are each and all unlawful, erroneous and invalid.

Your petitioners further allege that said decisions and orders are arbitrary, unreasonable and in excess of the power and authority of the said Commission and constitute violations of Section 3 of the Act which forbids unjust discrimination between persons, localities and traffic. As an instance of the unequal, discriminatory, arbitrary and unreasonable Act of the Commission, petitioner alleges that many of the so-called tap lines whose status was determined by the Commission in the decisions and orders hereinbefore set out, were recognized as common carriers of the traffic of the so-called proprietary interests and others denied such a status without any distinction in fact or manner of operation.

Further, petitioners allege that notwithstanding the Commission established a rule that under Section 15 payment should be made to

the shipper when the transportation was not less than 1,000 feet nor more than three miles from the trunk line connection, nevertheless no such allowance was prescribed by the Commission in the case of your petitioners, but on the contrary such an allowance is expressly negatived by the Commission.

Your petitioners further allege that other short line railroads mentioned in the decisions and orders above set forth have been by the Commission directed to establish joint rates from points
90 on their line to interstate destination points, when in fact all the circumstances and conditions which properly may be considered by the Commission in an investigation of this sort require that the petitioners be given joint rates over through routes to interstate destinations. In support of this allegation the petitioners call attention to the findings of the Commission and make said findings part of this petition as fully as if set forth herein, in the following cases:

Fourche River Valley & Indian Territory Railway Company.
The Nacogdoches & Southeastern Railroad Company.
Trinity Valley & Northern Railway Company.
Butler County Railroad Company.
Red River & Gulf Railroad Company, and others.

Your petitioners further state that the Interstate Commerce Commission in holding that the tracks and equipment of the Louisiana & Pacific Railway Company with respect to the industry of the petitioners Lumber Companies are plant facilities and that the service performed therewith for the said Lumber Companies in moving logs to their mills and performed therewith in moving the products of the said mills of the petitioners Lumber Companies to the junction of the Louisiana & Pacific Railway Company with its connecting trunk line companies, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility—is without any basis in fact or in law. Said finding and conclusion is arbitrary, unreasonable and in violation of the Act to Regulate Com-
91 merce and the decisions of the Supreme Court of the United States.

Your petitioners assert that under the provisions of the Act to Regulate Commerce and the interpretation thereof by the Supreme Court of the United States upon the facts found by the Commission and set forth herein the said petitioner Louisiana & Pacific Railway Company is a common carrier by railroad of the logs of the petitioners Lumber Companies, in that it furnishes a railroad and maintains the same in condition for the movement of said logs and is a common carrier of the products of the petitioners Lumber Companies from their mills to the junction points with the Louisiana & Pacific Railway Company's connecting carriers, and inasmuch as the larger proportion of the output of said mills of the petitioners Lumber Companies is destined to interstate destinations, the said movement from said petitioners Lumber Companies' mills to said junction points is a service of transportation by a common carrier railroad in interstate commerce.

Your petitioners further state that no part of that portion of the

report headed "Irregular Practices of Tap-Lines," found on pages 649-650 of the 23d Interstate Commerce Commission Reports, applies in any respect whatsoever to the petitioner Louisiana & Pacific Railway Company, but that on the contrary said petitioner Louisiana & Pacific Railway Company, "files annual reports with the Commission"; said reports "are complete and comply with the requirements of the Act"; it does "publish local rates to apply on traffic received from or delivered to its trunk line connections"; it does "charge for carrying passengers and less than carload shipments in all cases, and under authority of published tariffs"; it does not "permit
92 the use by any lumber company of its tracks, without charging therefor," but on the contrary all of its charges and rates "are under tariff authority filed with the Interstate Commerce Commission"; it complies with the "Hours of Service law"; with the "Safety Appliance Act," and all the "other Acts imposing requirements on common carriers engaged in interstate commerce."

The Interstate Commerce Commission itself, while the "Tap-Line Case" was pending before it, caused a prosecution to be entered against the petitioner Louisiana & Pacific Railway Company, because one car in a train operated by said Company, to-wit, St. Louis & San Francisco Car No. 30741, had a broken and disconnected uncoupling chain thereon, and in said suit brought by the United States against it, said Louisiana & Pacific Railway Company was fined for such offense, and paid a judgment in the sum of $100.00, and costs amounting to $10.25.

There is no "lack of attention on the part of the Louisiana & Pacific Railway Company to the rules and regulations respecting the filing of tariffs and keeping of accounts," but on the contrary, said railway company complies strictly with such rules and regulations and pays out thousands of dollars annually in so doing and in the publishing of tariffs, and the books of the Louisiana & Pacific Railway Company have always been open and "full access thereto has been given to the examiners of the Interstate Commerce Commission."

Your petitioners allege that if any such failures to comply with the Act to Regulate Commerce existed on the line of the petitioner Louisiana & Pacific Railway Company, or if any such ir-
93 regular practices do exist upon the line of the said petitioner, it is the duty of the said Interstate Commerce Commission to invoke the curative processes provided for in the Act, and petitioners further allege that such lapses or irregular practices, if any, do not constitute any basis for denial to said petitioner Louisiana & Pacific Railway Company and its shippers of the status which the law confers upon it.

20. Petitioners allege that the action of the respondents the Louisiana Western Railroad Company, New Orleans, Texas & Mexico Railroad Company, and the St. Louis & San Francisco Railroad Company, in filing with the Interstate Commerce Commission, in August, 1910, the schedule designated as Supplement No. 3 to Interstate Commerce Commission No. 23, effective the 10th day of September, 1910, and Supplement No. 9 to I. C. C. No. 2454-B,

and schedule designated as Supplements Nos. 5 and 6 to Interstate Commerce Commission Nos. 6073 and 6194, and any and all other schedules filed by said respondents which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which in effect cancel the through routes and joint rates with the petitioner Louisiana & Pacific Railway Company, is violative of the terms, obligations and conditions of said contracts between the respondents Louisiana Western Railroad Company, New Orleans, Texas & Mexico Railroad Company, the St. Louis & San Francisco Railroad Company and the petitioner Louisiana & Pacific Railway Company heretofore pleaded; and that the same is without cause, justification or excuse; and that the action of said respondent Railway Companies in filing said schedules
94 which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which cancel through routes and joint rates with the petitioner Louisiana & Pacific Railway Company is in violation of that portion of Section 1 of the Act to Regulate Commerce, reading as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * or in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful, * * * and it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs," * * *

and is in violation of Section 3 of the Interstate Commerce Act, reading as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their
95 respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

And the said action of said respondent Railroad Companies pre-

vents these petitioners from having interstate traffic moved by said common carriers, the petitioner Louisiana & Pacific Railway Company and the respondent Railway Companies, at the same rates as are charged or upon terms or conditions as favorable as those given by said common carriers for like traffic under similar conditions to other shippers; and the action of the respondent Interstate Commerce Commission first in declaring the law to be as said respondent declared the law to be by its opinion in the 17th Interstate Commerce Commission Reports, page 338 et seq., and later as it declared the law to be by its report contained in the 23d Interstate Commerce Commission Report, at page 277 et seq., and by the statement in said report permitting the cancellations by the trunk lines to become effective, is in violation of that portion of Section 15 of the Interstate Commerce law reading as follows, to-wit:

"The Commission may also, after hearing on a complaint or upon its own initiative without complaint, establish through routes and joint classifications."

21. And the petitioners allege that the rights and equities of petitioners are so interwoven and complicated by their mutual
96 undertakings under the contracts heretofore referred to and heretofore set out, that petitioners will be irreparably injured by the said respondents Railroad Companies' violation of said contracts, and petitioners will be without any adequate remedy at law.

That a multiplicity of suits will inevitably result, and circuitous action will be entailed upon the petitioners and each of them by the said respondents' avoidance and breach of said contracts.

That over 90 per cent of the lumber tonnage (more than 1,000 cars per month) handled by the petitioner Louisiana & Pacific Railway Company is destined to interstate points; that since the 1st day of May, 1912, the petitioner Louisiana & Pacific Railway Company has charged and is now charging on lumber destined to interstate points its local rate on all lumber shipments from all points to various points of connection with respondent Railway Companies.

The petitioners Lumbers Companies are being, and will continue to be, placed at a serious disadvantage in regard to other lumber industries in the same territory not on the line of the Louisiana & Pacific Railway, because they are compelled to pay on all shipments of lumber destined to interstate points the local rate of the Louisiana & Pacific Railway to the junctions with respondent Railroad Companies, plus the blanket rate (which petitioners' competitors in said territory now enjoy) from said junctions to final destination of the lumber, the combination of the two rates placing petitioners Lumber Companies at a disadvantage as compared with petitioners Lumber Companies' competitors in the same territory enjoying the blanket rate.

97 Petitioners Lumber Companies have no competitive rates on interstate lumber traffic, and the absence of through routes and joint rates greatly retards and impairs the business and investments of the petitioners Lumber Companies, and the damages so caused to said petitioners cannot be adequately measured, and constitute irreparable loss.

The absence of through routes and joint rates and the effect of the Interstate Commerce Commission's said decisions will be to place the petitioners back in the condition in which they were prior to the building of the Louisiana & Pacific Railway in 1906, localize the business of the petitioner Mill Companies and hand over the business of the Louisiana & Pacific Railway to the Southern Pacific System, and, on account of the increased business of these mills, create a condition more intolerable than the conditions which prompted the building of the Louisiana & Pacific Railway.

Your petitioners further allege that in the case of Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific Railroad Company, 10 Interstate Commerce Commission Reports, page 193, the Interstate Commerce Commission held that divisions such as those condemned in the opinions in "The Tap Line Case" were proper, and that, acting under the decision in the said Central Yellow Pine Association case, and other decisions of the Interstate Commerce Commission, and acting under the law of the State of Louisiana, the investments by the petitioners herein mentioned were made; that under the Constitution and Laws of the State of Louisiana the petitioner Louisiana & Pacific Railway Company is compelled to operate as a common carrier and its status as a common carrier is
98 fixed by State and Federal laws, and the Interstate Commerce Commission is wholly without right or authority of law to deny to the petitioner the Louisiana & Pacific Railway Company the right to operate as a common carrier of all traffic transported; that said Louisiana & Pacific Railway Company has invested in physical property more than a half million dollars; its operating expenses for the fiscal year 1911 were $241,248.47; its earnings for the same fiscal year were $229,067.94; its operating expenses for the fiscal year 1912 were $224,980.36; its earnings for the same fiscal year were $228,352.54. Ninety per cent of its revenue is derived from interstate freight, most of which comes from the transportation of lumber; less than 10 per cent of its revenue is from intrastate freight.

In the case of Freeo Valley Railroad Company v. Hodges, Secretary of State, 151 Southwestern Reporter, page 281, the Supreme Court of Arkansas, on November 18, 1912 held that the Freeo Valley Railroad Company (one of the parties to the proceeding in the "Tap Line case") could not surrender its charter and cease to perform its duties to the state and the public, as a common carrier, and this is doubtless the law and will doubtless be so held by the Supreme Court of Louisiana and all other states.

Unless the petitioner Louisiana & Pacific Railway Company is permitted to earn revenue on all interstate shipments of lumber, it cannot pay its operating expenses or interest on its bonded indebtedness. The reports, decisions and orders of the Interstate Commerce Commission hereinbefore set out operate to confiscate said petitioner's property and to deprive it of its property without due process of law, and in violation of the Fifth Amendment to
99 the Constitution of the United States.

The petitioners Lumber Companies have performed, and are now performing, in every respect, the contracts heretofore recited

to be performed by them, and have annually, since the making of said contracts, delivered to the petitioner Louisiana & Pacific Railway Company, and the Louisiana & Pacific Railway Company has delivered to the respondents Louisiana Western Railroad Company, New Orleans, Texas & Mexico Railroad Company, and the St. Louis & San Francisco Railroad Company, freight upon which charges to the amount of hundreds of thousands of dollars have been paid. The petitioners, and each of them, are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded, and against the violation by the respondent Railroad Companies of the terms of the contracts between petitioners and said defendants hereinabove referred to and set out.

Your petitioners aver that the Commission in its finding and in that paragraph of the order which holds that the service performed by the Louisiana & Pacific Railway Company for the petitioners Lumber Companies, in moving logs to their mills and in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, acted erroneously and in violation of the provisions of the Act to Regulate Commerce; your petitioners aver that under the statement of facts contained in the report and opinion of the Commission the said service is in law a service of transportation by a common carrier railroad and
100 that in accordance with the law the petitioner Louisiana & Pacific Railway Company should file tariffs of its charges for said service. Under the report and order of the Commission hereinbefore set out, no tariffs lawfully can be filed covering such movement; that if such movement is transportation, the petitioner Louisiana & Pacific Railway Company will be subject to the penalties provided in the statute for failure to file tariffs.

Further, your petitioners aver that under the statute no common carrier can engage in interstate commerce until it has first filed tariffs covering the transportation in which it is engaged. Your petitioners Lumber Companies therefore aver that their traffic could not be handled by the petitioner Louisiana & Pacific Railway Company, because the findings of the Commission that the said movement is not transportation by a common carrier railroad precludes the filing of tariffs. For these reasons the said order is inconsistent with the Act to Regulate Commerce and destroys the rights of the petitioners Lumber Companies to have the products of their mills moved by the Louisiana & Pacific Railway Company, and prevents said petitioner Railway Company from transporting said products as a common carrier in interstate commerce

Your petitioners allege that the said order of the Commission, dated October 30, 1912, by its terms is directed against the respondent Railroad Companies, among others; that the petitioners were parties to the proceedings before the Interstate Commerce Commission out of which the orders, reports and decisions complained of grew;

that their rights are vitally affected by said reports, decisions
101 and orders; that the respondent trunk line railroads have profited materially by the aforesaid reports, decisions and orders, and will so continue to profit by reason of the fact that the existing lumber rates from the junction point between the petitioner Louisiana & Pacific Railway Company and the said trunk line companies are the same as those which prior to May 1, 1912, applied from the petitioners Lumber Companies' mills on the line of the petitioner Louisiana & Pacific Railway Company; that therefore your petitioners allege that the said reports, decisions and orders of the said Commission as vitally affect the property rights of the petitioners as if said order was directed against the Louisiana & Pacific Railway Company by name.

Your petitioners and each of them are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded.

22. Wherefore, your petitioners say that the said reports and decisions of the Interstate Commerce Commission, and the orders of date May 14, 1912, and October 30, 1912, made in pursuance of said reports and decisions, are invalid and void for the following, among other, reasons:

"(1) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that there is any 'proprietary' lumber company or companies of the Louisiana & Pacific Railway Company; to declare that 'the service performed for the respective proprietary lumber companies in moving the logs from
their respective forests to their respective mills, and in moving
102 the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful,' in so far as such declaration and order is applied to the petitioner Louisiana & Pacific Railway Company, or to deprive said company of its rights as a common carrier granted to it under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States.

(2) The Interstate Commerce Commisssion is wholly without power, authority or jurisdiction to declare that the transportation offered by the trunk line carriers, such as the respondent railroad companies, extends three miles distance from the line of such railroads and that an allowance may be made for the movement which is more than 1,000 feet from said line and not in excess of three miles from said line of railroad. The said holding is legislation, pure and simple, and the exercise of arbitrary and unreasonable power and constitutes a gross discrimination and violation of the Act to Regulate Commerce.

(3) Said order is unconstitutional, invalid and void, in that said order impairs the validity of the contracts hereinbefore declared upon, contrary to the provisions of the Fifth Amendment to the United States Constitution.

(4) Said order unduly discriminates against the petitioner Lumber Companies, as shippers, compared with shippers on the line of the Louisiana & Pacific Railroad and on other railroads.

(5) Said order deprives your petitioners of the through routes and joint rates provided for by Section 15 of the Interstate Commerce Act.

(6) The uncontradicted evidence in the proceeding had by the Interstate Commerce Commission under the title 'Investigation and suspension Docket No. 11,' shows that the petitioner Louisiana & Pacific Railway Company is a common carrier under the
103 law, and the finding of the Interstate Commerce Commission that the petitioner Louisiana & Pacific Railway Company is not a common carrier is not based on any substantial testimony.

(7) Under the findings of fact made by the Interstate Commerce Commission, the Louisiana & Pacific Railway Company is a common carrier of lumber of the petitioner Lumber Companies, and of all other mills on its line of railway.

(8) The aforesaid decisions, reports and orders of the Interstate Commerce Commission require the petitioner Louisiana & Pacific Railway Company to maintain through routes and joint rates with its connecting carriers on traffic of others than the petitioner Lumber Companies, while forbidding the maintenance of through routes and joint rates and divisions upon lumber produced by the petitioner Lumber Companies when destined to interstate points, and thereby said order grossly and unjustly discriminates against the petitioners Lumber Companies, and subjects them to undue prejudice and disadvantage.

(9) The findings, reports, decisions and orders of the Commission hereinbefore set out are arbitrary, unreasonable and in excess of the power of the Commission, in that, among other things, the Commission compels unjust and unlawful discrimination as between the so-called 'tap line' railroads named in the orders hereinbefore set out."

23. Wherefore, petitioners, and each of them, pray that the said orders of the Interstate Commission dated May 14, 1912, and October 30, 1912, be enjoined, set aside and annulled; that the United States of America, the Interstate Commerce Commission and all persons claiming to act under their authority, direction or
104 control, be enjoined and restrained from enforcing or attempting in any wise to enforce or put in effect any portion of said orders which require the respondent Railway Companies to cease and for a period of two years thereafter abstain from maintaining through routes and joint rates upon any property transported from the mills of the petitioners Lumber Companies on the line of the Louisiana & Pacific Railway Company.

And your petitioners further pray that the respondents, Railroad Companies, be enjoined and restrained from violating the terms of the said contracts herein pleaded and herein fully set out under the marks of Exhibits "A" and "B," and that they and each of them be specifically ordered and required to continue to observe the terms, conditions and obligations of said contracts, by filing with the Interstate Commerce Commisssion the tariffs described and

set out in paragraph 12 hereof (or similar tariffs), giving to the Louisiana & Pacific Railway Company through interstate rates, and that the Interstate Commerce Commission be specifically ordered and commanded to accept, receive and file and to permit to become effective upon three days' notice the tariffs specifically described in paragraph 12 hereof, or similar tariffs.

And your petitioners pray for all other and further relief as in equity and good conscience they may be entitled to receive.

And may it please Your Honors to grant unto your petitioners a subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the United States of America, Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway & Steamship Company, New
105 Orleans, Texas & Mexico Railroad Company and the St. Louis and San Francisco Railroad Company, the respondents herein respectively, therein and thereby commanding them, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (an answer under oath being hereby expressly waived), all and singular, the premises, and to stand to, perform and abide by such order, direction or decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

And your petitioners, as in duty bound, will ever pray.

LOUISIANA & PACIFIC RAILROAD COMPANY,
HUDSON RIVER LUMBER COMPANY,
KING-RYDER LUMBER COMPANY,
CALCASIEU LONG LEAF LUMBER COMPANY,
LONGVILLE LUMBER COMPANY, AND
THE LONG-BELL LUMBER COMPANY,
By W. R. THURMOND,
H. M. GARWOOD,
L. M. WALTER,
Their Solicitors.

STATE OF MISSOURI,
County of Jackson, ss:

R. A. Long, being duly sworn, on his oath states that he is the president of the petitioner the Louisiana & Pacific Railway Company, and that he is president of the petitioner The Long-Bell Lumber Company.

That he has read the above and foregoing petition and is familiar with the facts therein stated, and that the allegations and averments therein made and contained are true.

R. A. LONG.

106 Subscribed and sworn to before me this 4th day of January, 1913.

My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI,
County of Jackson, ss:

C. B. Sweet, being duly sworn, on his oath states that he is president of the petitioners Hudson River Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company, and the Longville Lumber Company.

That he has read the above and foregoing petition and is familiar with the facts therein stated, and that the allegations and averments therein made and contained are true.

C. B. SWEET.

Subscribed and sworn to before me this 4th day of January, 1913. My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,
Notary Public in and for Jackson County, Missouri.

EXHIBIT "A."

This Agreement, made and entered into this 31st day of October, Nineteen Hundred and Six (1906), by and between the Louisiana Western Railroad Company, a corporation under the laws of the State of Louisiana, party of the first part; the Louisiana & Pacific Railway Company, a corporation under the laws of the State of Louisiana, party of the second part, and the Hudson River
107 Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company, and The Long-Bell Lumber Company, parties of the third part.

WITNESSETH: The said party of the first part controls a line of railroad, constituting a part of what is known as the Southern Pacific System, and directly and through its connections reaches a large number of markets wherein the products of the parties of the third part may be sold.

The said party of the second part controls and operates a line of railway reaching large tracts of timber land of said parties of the third part, and, at the request of said parties of the third part, is extending its said line of railroad and is about to acquire a better connection with the line of said party of the first part at Lake Charles, Louisiana; and, when such connection is made, it, together with the line of said party of the first part and its connections, will furnish to said parties of the third part facilities for transporting their timber to their mills, located along the line of railway of said party of the second part, and for transporting the products of the mills to the markets on the lines of said party of the first part and its connections.

The business of said third parties is very much hampered because of lack of adequate railway facilities for transporting the products of their mills to desirable markets, and for that reason it will be greatly to the advantage of said parties of the third part to have said party of the second part extend its said line and make a better

connection thereof with the line of the said party of the first part, as above mentioned.

108 Now Therefore, The parties hereto, in consideration of the mutual benefits which will result to them, respectively, and of the mutual covenants and agreements hereinafter set forth, to be by them kept and performed, have and do hereby covenant and agree, each with the others, as follows:

1. The said party of the first part and the said party of the second part agree that, during the existence of this agreement, they will interchange business with each other at said point of connection of their respective lines, that is, Lake Charles, Louisiana, and by means thereof will establish a through line of railway with traffic thereover on the basis of a division of rates, as hereinafter set forth.

2. The said parties of the third part agree that during each and every month, until the expiration of this agreement, they will ship, or cause to be shipped, over the line of railway of the said party of the second part to said connection at Lake Charles, and there to be delivered to the line of said party of the first part, for transportation to its destination, at least forty per cent (40%) of the aggregate products of all their mills, which now are or may be hereafter located on the said line of railway of said second party. And said party of the second part hereby agrees that it will, during the existence of this agreement, deliver to said party of the first part at said point of connection, Lake Charles, Louisiana, said amount of at least forty per cent (40%) of the aggregate products from said mills for the purpose of having the same transported from said point of connection over the line of said party of the second part and said party of the first part and their connections to points of destination thereof.

109 The said third parties also agree to so route at least sixty-five per cent (65%) of all incoming freight as to cause the same to be shipped over the line of said first party; provided the place at which it is purchased will enable the said third parties to so route it as to cause it to be shipped over the line of said first party at an equal rate with the rates which said third parties may be able to obtain for such freight over other lines, which, with their connections will reach points of destination of such freight.

3. The party of the first part agrees that, during the existence of this agreement, it will accept from said party of the second part all shipments by it offered, to or from points between which joint rates are in effect, to transport same with reasonable promptness and despatch and to use every reasonable effort to furnish said party of the second part with cars as requested by it from time to time, to a number sufficient for transporting at least forty per cent (40%) of all the products of the mills of said parties of the third part (now existing or which may hereafter be built) along the line of railway of said second party. It is understood and agreed, however, that if the party of the first part shall fail during any calendar month to furnish the number of cars requested by the second party, and necessary in order to transport at least forty per cent (40%) of the products of the aforesaid mills during said month, then and in such event the

party of the first part shall not be obligated thereafter to make up such deficit of cars in such calendar month, nor shall said second party be obligated thereafter to furnish freight to make up such deficit on account of the failure of said party to furnish said cars in any calendar month.

4. The said party of the first part and said party of the second part agree, each with the other, that they will enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission, in the manner and form as required by law.

5. Said party of the second part and said parties of the third part hereby agree that they will cause or permit all shipments that may be delivered to said party of the first part, under the terms of this agreement, to be so routed by the party of the first part as to give the railways constituting the line or system known as the Southern Pacific System, such haul as shall yield to them the largest revenue.

6. In respect to the division of freight rates between the said party of the first part and the said party of the second part it is hereby agreed that, during the existence of this agreement, the said party of the second part shall be entitled to receive and shall be paid four (4) cents per hundred (100) pounds on the products from said mills along the line of railway of the said second party, which may be shipped under the terms of this agreement (excluding export business, the divisions of which shall be subject to future agreement between the traffic managers of the first and second parties), and that upon all other commodities shipped over the lines of said party of the first part and the said party of the second part, the said party of the second part shall be entitled to such per cent of the whole amount of freight received for the entire shipment as may be agreed upon from time to time by the traffic managers of the said first and second parties.

The division of freight rates above set forth is based upon present through rates; and it is hereby agreed that if, at any time during the existence of this agreement, the through rates shall be changed from what they are at the signing of this agreement, the proportion which the said party of the second part shall receive shall be correspondingly changed—that is, increased or reduced pro rata.

7. The said party of the first part agrees that it will at all times, during the existence of this agreement, publish for all points mentioned in its tariff, the same freight rates on all products of the parties of the third part, from all points on the line of railways of the said party of the second part, as are or shall be in effect from Lake Charles, Louisiana, on the line of the said party of the first part, which rates shall at all times, during the existence of this agreement, be competitive with rates from other points in Calcasieu Parish producing yellow pine, to all destinations to which party of the first part may be able to arrange through rates.

8. The said party of the first part and the said party of the second part agree that said party of the first part shall be amenable to said second party and said party of the second part shall be amenable to said party of the first part for the prompt and careful handling of

all cars of the other party, or cars of other companies not parties hereto, which the said parties may respectively handle; and in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, and that no
112 cars of the party of the first part shall be used locally by the said party of the second part, nor shall any cars of the party of the second part be used locally by said party of the first part.

9. The party of the first part agrees to indemnify and save harmless the party of the second part for any loss or damage to its cars or equipment, or to cars or equipment belonging to other companies or persons, which it may receive from the party of the second part, which may occur while said cars or equipment are on the lines of said party of the first part or under its control. And likewise the said party of the second part agrees to indemnify and save harmless the said party of the first part for any loss or damage to its cars or equipment, or to the cars or equipment belonging to other companies or persons, which it may receive from said party of the first part, and which damage may occur while said cars or equipment are on the line of said second party or under its control. And in case of any damage to such cars or equipment while on the line or under the control of the respective parties hereto, repairs to such cars and damages to such cars shall be adjusted between the parties hereto in accordance with the rules and regulations of the Master Car Builders' Association.

10. This agreement and all the terms and conditions, rights and obligations thereof, shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

11. This agreement shall commence and become effective on the date hereof, and shall be and remain in full force and effect for the period of twenty (20) years thereafter, or so long as the par-
113 ties of the third part shall operate their mills along the line of railway of said party of the second part.

In witness whereof, each party hereto has caused this agreement to be signed by its proper officer and its corporate seal to be affixed the day and year first above written.

[SEAL.] LOUISIANA WESTERN RAILROAD COMPANY,
By W. V. S. THORNE, *Vice-Pres.*

Attest:
ALEX. MILLER, *Secretary.*

[SEAL.] LOUISIANA & PACIFIC RY. CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] HUDSON RIVER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] KING-RYDER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*
[SEAL.] CALCASIEU LONG LEAF LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*
[SEAL.] THE LONG-BELL LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

EXHIBIT "B."

Agreement, Made this 13th day of October, A. D. 1906, by and between the Colorado Southern, New Orleans & Pacific Railroad Company, hereinafter called the "Colorado Company," party of the first part, the St. Louis & San Francisco Railroad Company, hereinafter called the "Frisco Company," party of the second part,
114 the Louisiana & Pacific Railway Company, hereinafter called the "Louisiana Company," party of the third part, the King-Ryder Lumber Company, hereinafter called the "King Company," party of the fourth part, the Hudson River Lumber Company, hereinafter called the "Hudson Company," party of the fifth part, the Calcasieu Long Leaf Lumber Company, hereinafter called the "Calcasieu Company, party of the sixth part, and the Long-Bell Lumber Company, hereinafter called the "Long-Bell Company," party of the seventh part;

Witnesseth: That, Whereas, The Colorado Company is a railroad corporation, organized and existing under the laws of the State of Louisiana, and is constructing a line of railroad in the State of Louisiana running in a general easterly and westerly direction, and which will pass near the village of Ramsay in Calcasieu Parish, and which will reach diretely and through its connections a large number of markets wherein the products of the King Company, the Hudson Company, the Calcasieu Company and the Long-Bell Company, or all companies owned and controlled by either or all of said companies, can be sold, and

Whereas, The Frisco Company is a railroad corporation, organized and existing under the laws of the State of Missouri, and controls, by ownership of stock, the Colorado Company, and

Whereas, The Louisiana Company is a railroad corporation organized and existing under the laws of the State of Louisiana, and is to be constructed and operated from De Ridder to near Ramsay in Calcasieu Parish, Louisiana, and may be extended or construct branches to other points. Its line of railroad will connect
115 with the line of railroad of the Colorado Company near Ramsay and will largely traverse the timber lands of the King Company, the Hudson Company, the Calcasieu Company and the Long-Bell Company, and the companies owned or controlled by

either or all of them, and in connection with the railroad of the Colorado Company and of the Frisco Company will furnish railway facilities for the transportation of the lumber of all of said lumber companies from the forest to the different mills of all of said lumber companies on said line of railroad, and the transportation of the products thereof to the markets which all of said lumber companies will desire to reach, and

Whereas, The said King Company, The Hudson Company, the Calcasieu Company and the Long-Bell Company are each organized under the laws of the State of Missouri, and each owns and controls large tracts of timber lands in the Parish of Calcasieu, State of Louisiana, all of which are tributary to the said proposed line of railroad of the Louisiana Company, and each is extensively engaged in cutting the timber on said land and marketing the products thereof, and

Whereas, The transaction of the business of all of said lumber companies is hampered and made less profitable than it should be because of lack of adequate railway facilities and means of transportation of the timber from the forest to their mills, and for lack of railway facilities and means by which the products of said timber can be transported from the mills to the most advantageous markets. For the proper, economical and profitable conduct of their business the said lumber companies have arranged with the Louisiana Company to construct and operate its said proposed line of rail-
116 way. In furtherance of this purpose the Louisiana Company, the King Company, the Hudson Company, and the Calcasieu Company have requested the Colorado Company to permit the Louisiana Company to make a track connection with its line near Ramsay and to enter into this agreement, and

Whereas, The Long-Bell Company is a corporation, organized and existing under the laws of the State of Missouri, and it owns and controls the property and franchises of the said King Company, Hudson Company, and Calcasieu Company, through stock ownership thereof, and has also requested the Colorado Company to permit the Louisiana Company to make such track connections with its said line and to enter into this agreement, and

Whereas, Where the term "Lumber Companies" is used in this agreement it means the King Comapny, Hudson Company, Calcasieu Company and the Long-Bell Company, and all lumber companies controlled by them by the ownership of stock or otherwise, and

Whereas, The several parties hereto, because of the mutual advantages accruing to them hereby, are willing to enter into this agreement.

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of One Dollar ($1.00) to each of the parties hereto by the other parties paid, the parties hereto have covenanted and agreed, and do covenant and agree each with the other as follows:

First. The Louisiana Company covenants and agrees that it will, with all convenient speed and dispatch, construct its said railroad

and provide it with the necessary side and spur tracks and
117 other appurtenances necessary to the railway ready for the operation of trains thereover from De Ridder, Louisiana, to near Ramsay, Louisiana, and to there connect said line with the line of railway of the Colorado Company, in the Parish of Calcasieu.

Second. The Colorado Company hereby covenants and grants to the Louisiana Company, during the existence of this agreement, the right to connect the above described line of railway of the Louisiana Company with the line of railway of the Colorado Company at such convenient point near Ramsay as shall be designated by the Colorado Company, and also the right thereafter for a like term to operate at and over the point of connection under such rules and regulations therefore as shall from time to time be adopted by the Colorado Company.

Third. The Colorado Company and the Louisiana Company agree that during the existence of this agreement that they will interchange business with each other at said point of connection of their respective lines and by means thereof will establish a through line of railway with traffic thereover on the basis of the division of rates as hereinafter set forth.

Fourth. The King Company, the Hudson Company, the Calcasieu Company and the Long-Bell Company covenant and agree with the Louisiana Company, for its benefit and that of the Colorado Company and of the Frisco Company, to ship and cause to be shipped each and every month during the existence of this agreement over the line of railway of the Louisiana Company from the forest to the mills of the said named lumber companies, and all companies owned or controlled by them or either of them, all of the timber cut by all of said companies from all their lands
118 (including all lands controlled directly or indirectly by them or by any of their subsidiary companies, or by any companies in which they hold controlling interest) which they or either of them now own or may thereafter acquire along or contiguous to the said line of railroad of the Louisiana Company, and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection near Ramsay over the line of railroad of the Louisiana Company, and then over the line of railway of the Colorado Company, and of the Frisco Company, and their connections, to the points of destination thereof. And the Louisiana Company covenants and agrees with the Colorado Company and with the Frisco Company, during the existence of this agreement, to deliver to the Colorado Company and to the Frisco Company, at said point of connection near Ramsay, said amount of at least fifty per centum (50%) of all the products of said mills, as hereinbefore mentioned, for the purpose of having same transported from the said point of connection over the line of the railway of the said Colorado Company and the Frisco Company and their connections to the points of destination thereof. Provided, however, that if hereafter the King Company, the Hudson Company, the Calcasieu Company or the Long-Bell Company shall acquire timber lands along or contiguous to the line of railway of the Louisiana Com-

pany, the owners of which shall require, as a condition of the sale thereof, that all or part of the timber or products of the timber from the same shall be shipped over some other line or lines of railway than the line of railway of the Colorado Company, then, and in such case, the provisions of this agreement shall not apply
119 to such lands or to the timber or products of the timber therefrom, in so far as there may be a necessary conflict with the said condition of sale of such after acquired lands.

Fifth. The Colorado Company and the Frisco Company agree, during the existence of this agreement, to accept from the Louisiana Company all shipments by it offered and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Louisiana Company with cars as requested by it from time to time, to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the King Company, the Hudson Company, the Calcasieu Company and of the Long-Bell Company, and of all companies owned or controlled by them or either of them. It is understood and agreed, however, that if the Colorado Company or the Frisco Company shall fail during any calendar month to furnish the number of cars required by the Louisiana Company and necessary in order to transport fifty per centum (50%) of the products of the said mills during said month, then, in such event, the Colorado Company or the Frisco Company shall not be obliged thereafter to make up such deficit of cars in any such calendar month. Nor shall the Louisiana Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Colorado Company or Frisco Company to furnish cars in said calendar month.

Sixth. The Colorado Company, the Frisco Company and the Louisiana Company agree, each with the other, that they will enter into joint tariffs relating to the joint traffic over their respect-
120 ive lines, and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

Seventh. It is further agreed that no per diem charges shall be made by either the Colorado Company, or Frisco Company, or the Louisiana Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six days after such delivery, but all per diem charge accruing on cars after the expiration of said period of six days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

Eighth. The cost and expense of constructing, maintaining and renewing such connecting, interchange or sidetracks as may be necessary to properly handle the business of the Louisiana Company at said point of connection near Ramsay shall be borne and paid jointly and equally by the Louisiana Company and the Colorado Company.

Ninth. The King Company, the Hudson Company, the Calcasieu Company and the Long-Bell Company further covenant and agree

with the Louisiana Company and the Colorado Company and the Frisco Company to deliver, or cause to be delivered, to the Louisiana Company for transportation over the railway of the Colorado Company and of the Frisco Company to points on or reached via the railways or some of them constituting the railway lines or system of which the Colorado Company or the Frisco Company shall form a part, at least fifty per centum (50%) of all outbound shipments of lumber and other products of the mills of the said King
121 Company, Hudson Company, Calcasieu Company and Long-Bell Company, and of all companies owned or controlled by them or either of them, each and every month during the existence of this agreement, and in every such case they shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Colorado Company and the Frisco Company are a part, such hauls as shall yield to them the largest revenue.

Tenth. In respect to the division of freight rates between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies hereby agree to the following division during the existence of this agreement:

On all lumber shipments originating on the line of the Louisiana Company, the Louisiana Company shall receive thirty-five per centum (35%) of the through rate, with a maximum of five and one-half cents per hundred pounds.

It is agreed that the above division of through rates shall include delivery of shipments to the Colorado Company or to the Frisco Company and are based upon the present through rates. It is agreed that if at any time during the existence of this agreement the through rates shall be reduced, the maximum of five and one-half cents per hundredweight due to the Louisiana Company shall be reduced in proportion to the reduction of the through rates.

Where lumber shipments made by the Lumber Companies originate on the line of the Louisiana Company and are transported over the line of the Colorado Company from the point of connection between the lines of the two companies near Ramsay to near Kinder, in Calcasieu Parish, on the line of railway of the St. Louis,
122 Watkins & Gulf Railway Company and delivered to the latter company at or near Kinder, the Colorado Company will make a rate for the transportation over its line, from the point of connection near Ramsay to the point of connection at or near Kinder, of not to exceed one cent per hundred pounds on such lumber shipments. But as to such shipments the division of the through rate hereinbefore agreed to and the maximum of five and one-half cents per hundred pounds shall not apply, and as to such shipments the Louisiana Company shall not receive from the Colorado Company any division of the through rate, and such shipments from Ramsay to Kinder shall not be computed or considered as part of the fifty per centum (50%) of shipments to be made over the line of railroad of the Colorado Company and the Frisco Company and their connections.

The Colorado Company and the Frisco Company agree that they

will at all times during the existence of this agreement publish for all territory east of the Mississippi River and north of the Ohio River and points on and west of the Mississippi River on the lines of the Frisco and Rock Island Systems and their connections the same freight rates from points on the Louisiana Company's line as are or shall be in effect from Eunice, La., on the Colorado Company's line.

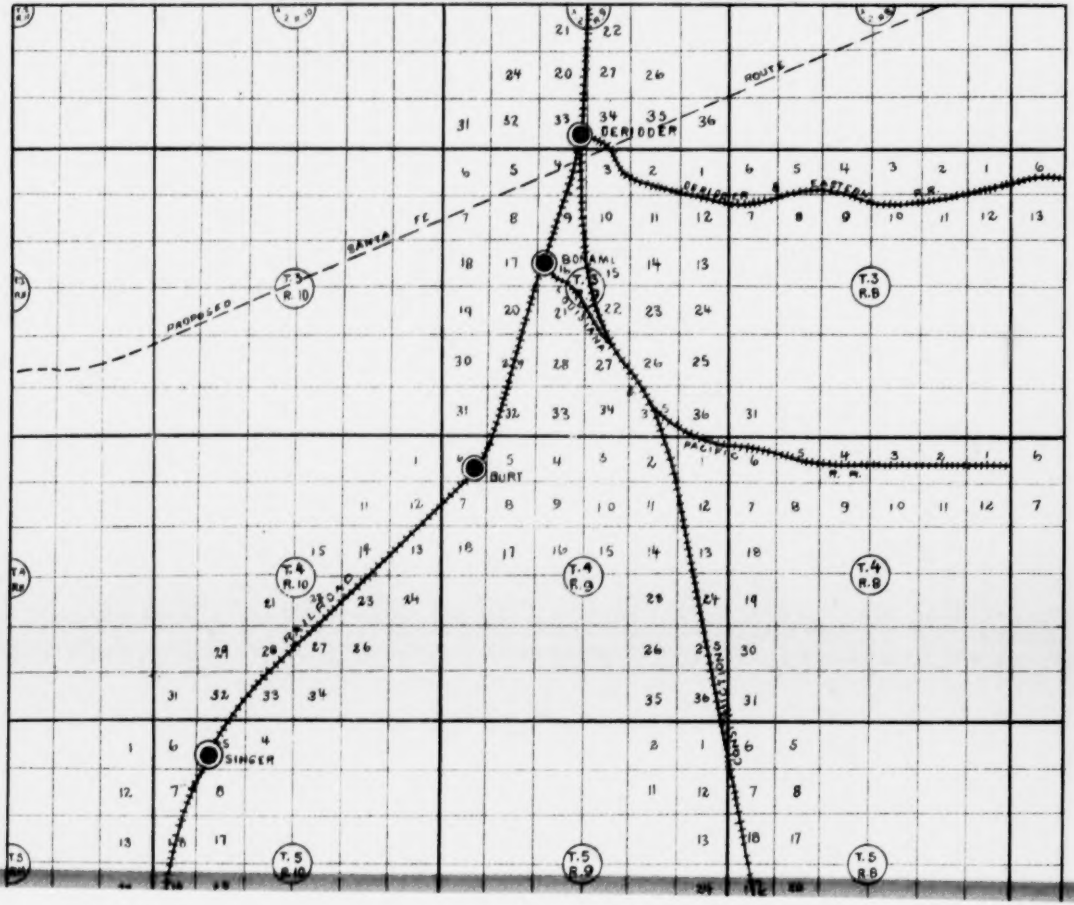
On all commodities of traffic other than lumber which may be interchanged between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair and in accordance with the usual methods of making joint tariffs and divisions on like commodities be-
123 tween railroad companies operating lines of railroad within the State of Louisiana.

Eleventh. The Louisiana Company and the Colorado Company and the Frisco Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of the other companies not parties hereto which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinbefore provided for, and that no cars of either company shall be used locally by the other companies.

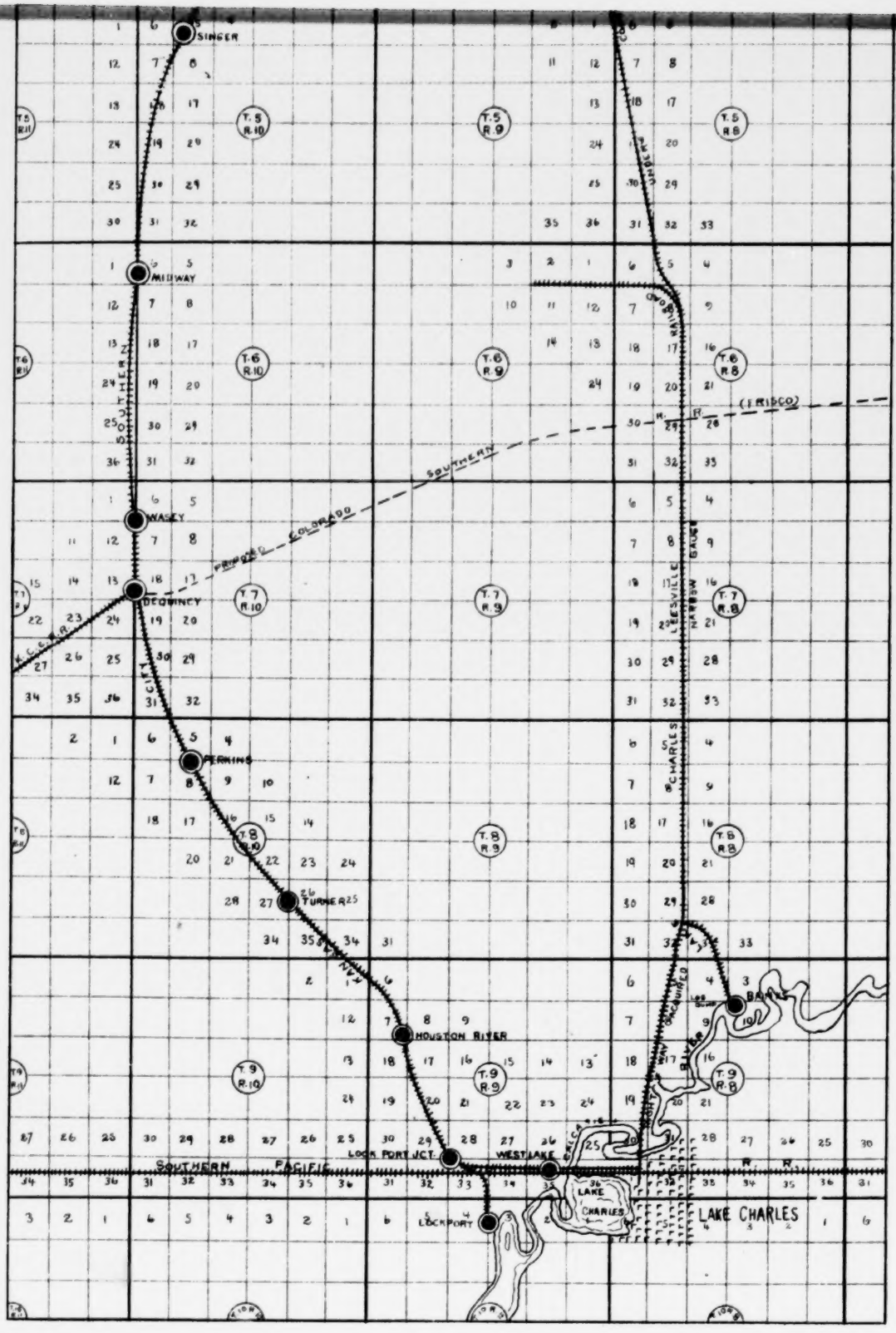
Twelfth. The Louisiana Company and the Colorado Company and the Frisco Company each further covenant and agree to indemnify and save harmless the other from any and all loss of and damage to its cars or equipment or to cars or equipment belonging to other companies or persons which either company may receive from the other company which may occur while such cars or equipment are on the railroad of the indemnifying company, and in case of any damage to said cars or equipment while on its said line each of the said companies agree to properly repair the same without delay, and if it fails or neglects to repair the same within a reasonable time and to the satisfaction of the other company, then the other company may make such repairs and the cost thereof with ten per centum (10%) thereon additional thereto shall be paid to the company making such repairs by the other company immediately upon the receipt of statement showing the amount of such cost.

Thirteenth. This agreement and all the terms and condi-
124 tions, rights and obligations hereof shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

Fourteenth. The Colorado Company shall proceed diligently to construct and put into operation its line of railroad passing near Ramsay and to make railroad connections with other line or lines of railroad so that the freight herein referred to may be transported by said Colorado Company and Frisco Company, and their connections, and as soon as the railroad of the Colorado Company has been constructed and put into operation to such extent and for such purposes then this agreement shall become effective and it shall be and



MAP SHOWING NARROW GAUGE ROAD OF BRADLEY-RAMSAY LUMBER COMPANY RIGHT-OF-WAY OWNED AND LINES UNDER CONSTRUCTION AT TIME



Record Book

Page 126.

remain in full force and effect for a period of fifteen (15) years hereafter, reckoning the said fifteen years from the date of the execution of this agreement, or as long as the lumber companies or either of them shall operate their mills in said Parish of Calcasieu.

In witness whereof, each party hereto has caused this agreement to be signed by its proper officer and its corporate seal to be hereto affixed and attested the day and year first above written.

Executed in seven parts.

[SEAL.] COLORADO SOUTHERN, NEW ORLEANS & PACIFIC RAILROAD COMPANY,
By C. CORDILL, *President.*

Attest:
WM. C. DUFOM, *Secretary.*

[SEAL.] ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
By A. J. DAVIDSON, *President.*

Attest:
F. H. HAMILTON, *Secretary.*

[SEAL.] LOUISIANA & PACIFIC RAILWAY CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

125 [SEAL.] KING-RYDER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] HUDSON RIVER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] CALCASIEU LONG LEAF LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] LONG-BELL LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

(Here follow maps marked pp. 126 & 127.)

Note by the Clerk.

(Report of Interstate Commerce Commission Apr. 23, 1912. Supplemental report of Interstate Commerce Commission May 14, 1912, & amended Order of Interstate Commerce Commission Oct. 30, 1912, are omitted here in printing because printed elsewhere in a separate volume.)

128–305 Original.

No. 90.

Notice to the Attorney General.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is hereby served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 7th day of January A. D. 1913 (Accepted by Blackburn Esterline).

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY,
Deputy Marshal.

306 **Original.**

No. 90.

Notice to Secretary of Interstate Commerce Commission.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to John H. Marble as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John H. Marble, Secretary of the Interstate Commerce Commission, this 7th day of January A. D., 1913.

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

307 Original.

No. 90.

Summons to Railroad Respondents and Return of Service.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to the above named Respondents:

You and each of you are hereby summoned and required within thirty days after service hereof to appear and answer unto a petition filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served upon you.

In case no answer shall be filed within the time named, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the above summons on Morgan's Louisiana & Texas Railroad & Steamship Company by leaving a copy thereof with C. H. Bates its designated agent, at The Westory Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to —— ——.

308 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on Louisiana Western Railroad Company by leav-

ing a copy thereof with C. H. Bates its designated agent, at The Westory Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to —— ——.

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on New Orleans, Texas & Mexico Railroad Company by leaving a copy thereof with Warren N. Akers its designated agent, at The Colorado Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to W. Guy Shreve.

309 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on St. Louis & San Francisco Railroad Company by leaving a copy thereof with Warren N. Akers its designated agent, at The Colorado Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to W. Guy Shreve.

310 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieau Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents.

Answer of the United States.

(Filed January 29, 1913.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the
311 commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

III.

The Interstate Commerce Commission, after due hearing and upon substantial evidence, found that the tracks and equipment of the Louisiana & Pacific Railway Company with respect to the industry of the several proprietary lumber companies, are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills, and in moving the products of the mills to the trunk lines, is not a service of transportation by a common-carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations. Whether or not, as to other shippers, petitioner is a common carrier is immaterial.

IV.

Respondent denies the allegations on page 75 of the petition in so far as they imply that the trunk lines had universally, or even in a majority of instances, extended the blanket rate through the
312 mills of the tributary lumber companies to the trees in the forest, and calls attention to the finding of the Commission (23 I. C. C., 281, 282, 284, 297, and 298) to the effect that the majority of tap lines in this vicinity receive no allowances whatever for the tree-to-mill haul, and alleges that the said finding was based on substantial evidence.

V.

Respondent has no knowledge or information sufficient to form a belief as to the causes which induced the trunk line railroads to cancel their allowances to petitioner or whether said trunk lines would continue to pay said allowances were it not for the order of the Commission herein complained of.

VI.

Respondent denies that the Commission's order herein complained of permits other tap lines to receive allowances from trunk line railroads for services rendered their proprietary companies which are substantially similar to the services rendered to its proprietary companies by this petitioner.

VII.

The contracts between the trunk line railroads and the petitioners described in the petition and set forth at length in the exhibits attached thereto and providing for the payment to the petitioner of divisions out of the joint rate for the transportation of the products of its proprietary lumber companies, are void in so far as they
313 conflict with the Act to regulate commerce or any lawful order of the Interstate Commerce Commission; they are also void because they bind the proprietary lumber companies to ship certain percentages of their entire product over the contracting trunk line railroads and thus these contracts constitute and unlawful device through which the trunk lines pay to the lumber companies a consideration in order to obtain said shipments. In any case it is not within the jurisdiction either of the Interstate Commerce Commission or of the Commerce Court to order specific performance of such contracts.

VIII.

The allegations on pages 5-21, inclusive, contain mere evidentiary matter which, in so far as it is inconsistent with the findings of the Interstate Commerce Commission or not contained therein or in the evidence upon which said findings were based, is irrelevant and immaterial.

IX.

For the purposes of this case, respondent admits the allegations of fact in the petition which are not denied or specifically referred to above and which are not inconsistent with the findings made by the order and report of the commission.

Wherefore, having fully answered this petition, this respondent prays that said petition be dismissed with costs.

WINFRED T. DENISON,
Assistant Attorney General.

January, 1913.

314 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners.

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

Answer of the Interstate Commerce Commission.

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition
315 contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

That there is a misjoinder of parties defendant, in that the act of Congress creating said court expressly provides that suits of this character shall be brought against the United States.

That this court has no jurisdiction of the controversy, matters and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, In the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order of January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C.
316 Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter, set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that thereafter, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338; and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in
317 said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said published reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

318 This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters
319 within the knowledge of the commission, and as to the other matters he believes it to be true.

[SEAL.] JAMES S. HARLAN.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 8th day of February, 1913.

GEORGE B. McGINTY,
Notary Public.

320 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, et al., Petitioners,
vs.
UNITED STATES OF AMERICA et al., Respondents.

Answer of the Louisiana Western Railroad Company.

(Filed February 6, 1913.)

The answer of the Louisiana Western Railroad Company to the complaint herein respectfully shows:

I. It admits the incorporation of the Louisiana & Pacific Railway Company, and is advised and believes that the same is a common carrier as alleged in clause 1 of the complaint. It admits, also, the correctness of the extracts in said clause from the constitution and laws of Louisiana.

It admits, upon information and belief, the correctness of the statements in clause 1 in regard to the location and mileage of the

lines of railway over which the Louisiana & Pacific Railway Company operates, the connections thereof with other lines of railroad, compliance with the rules and regulations of the State Rail-
321 road Commission of Louisiana and of the Interstate Commerce Commission and with the laws of the State of Louisiana and of the United States relating to common carriers by railroad, and its carrying a full line of class and commodity rates, state and interstate, and concurring in joint tariffs with connecting lines.

It has no knowledge, or sufficient information upon which to form a belief, as to the correctness of the statements in clause 1 in regard to the cost of the physical property of the Louisiana & Pacific Railway Company, or in regard to the details of its equipment or of its operating force, or as to the amount and character of its traffic other than traffic, outbound and inbound, for its co-complainants, or of the number and character of its stockholders and their relation or want of relation with corporations, individuals and industries on said line of railway, or as to the bonds issued and the holders thereof; and, neither admitting or denying said statements, it leaves complainants to make such proof thereof as they may be advised to make.

II. It admits, upon information and belief, the correctness of the statements contained in clauses 2 and 3 of the complaint.

III. It admits the general correctness of the statements contained in clause 4 of the complaint in respect to this respondent, the Louisiana Western Railroad Company, and its co-respondent, the Morgan's Louisiana & Texas Railroad and Steamship Company. Said respondents, however, are each an independent, separately organized and existing railroad corporation, operated by its own officers and agents.

322 It has no concern with the statements in clauses 4 and 5 in regard to its co-defendants, the New Orleans, Texas & Mexico Railway Company and the St. Louis & San Francisco Railroad Company.

IV. It is advised and believes that the references in clause 6 of the complaint to the investigations and reports of the Interstate Commerce Commission in Star Grain and Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, are correct.

V. It admits and avers that, by reason of the report or opinion mentioned in the preceding clause of this answer, and by reason of the belief, induced by said report and the action of the said Commission and its members, or some of them, that otherwise its officers and agents would be subjected to criminal prosecution at the instance of the said Commission as for alleged rebates or unlawful discriminations, respondent, about August, 1910, filed with said Commission new tariffs, as supplemental tariffs, on lumber, to become effective in thirty days, which new tariffs canceled all joint tariffs which respondent had theretofore had and maintained with complainant, the Louisiana & Pacific Railway Company.

VI. It admits the general correctness of the statements contained in clauses 8, 9 and 10 of the complaint respecting the further orders, proceedings, argument and reports in the so-called "Tap Line" case, and begs leave to refer to the original proceedings and record

for a more full statement thereof, should the same become necessary.

VII. It admits the general correctness of the statement
323 contained in clause 11 of the complaint respecting the petition filed by complainants in this court on June 21, 1912, the dismissal thereof, and the subsequent application to the Interstate Commerce Commission and the order thereon of October 30, 1912.

VIII. It admits, upon information and belief, the correctness of the statement in clause 12 of the complaint in respect to the tariffs on lumber to which the said Louisiana & Pacific Railway Company was a party on April 30, 1912, but it reserves leave to refer, if need be, to said tariffs on file with said Commission.

IX. For want of sufficient knowledge or information, it neither admits or denies the statements in clause 13 of the complaint relating to the properties, business, plans and intentions, prior to October 31, 1896, of the several complainants herein and leaves complainants to their proof thereof.

It admits that on October 31, 1906, the said Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company entered into an executory contract under which the former was to complete the construction of a broad gauge railroad from De Ridder to Fulton (or Ramsay Junction) and the latter to construct a broad gauge road from Fulton to Lake Charles, and then the former would sell to the latter at cost the road between De Ridder and Fulton, and the right of way and such other rights as it had between Fulton and Lake Charles, the seller to have certain trackage rights over the said road between De Ridder and Lake Charles; and it admits and avers that the said executory contract was carried out and performed by a notarial contract of sale passed at New Orleans,
Louisiana, on February 21, 1908, before Felix J. Puig, notary
324 public, and by a contract under private signature on the same date between the same parties, i. e., the said Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company, whereby the former was given certain joint trackage rights over the said line of railroad between De Ridder and Lake Charles. It reserves the right, if need be, to refer to the originals or to verified copies of said contracts for a more full and detailed statement of their terms and conditions and of the matters covered thereby.

X. It admits the general correctness of the statements in clause 14 of the complaint in respect to "blanket rates" on lumber in the lumber producing districts of the South.

XI. It admits the execution on October 31, 1906, of a tripartite agreement between this respondent, the said Louisiana & Pacific Railway Company, and the Lumber Companies, complainants herein, which was of the general tenor and effect as stated in clause 15 of the complaint.

XII. It avers that the Longville Lumber Company, not originally a party to said tripartite agreement, has been allowed to conform to its provisions and requirements and accordingly to participate in its benefits.

XIII. It has no concern or interest in the statements of clause

17 of the complaint relating to contracts between the complainants and the New Orleans, Texas & Mexico Railroad Company and with the St. Louis & San Francisco Railroad Company, and relating to what has been done by complainants on the faith of said contracts.

325 XIV. For want of sufficient knowledge or information, it neither admits nor denies the statements in clause 18 in regard to the money expended or the property acquired on the faith of said contracts with the defendant railroad companies.

XV. It admits the statement in clause 19 of the complaint, that this respondent canceled the said through rates and divisions, not voluntarily, but under compulsion of the decisions of the Interstate Commerce Commission and the fear of criminal prosecution.

It says that the other matters and things in said clause, being charges against the correctness of the report of the said Commission and its power and authority, concern its co-defendant, the United States, and this respondent asks to be allowed to leave the defense thereof to said co-defendant.

XVI. Answering the remaining clauses of said complaint, this respondent says that the Interstate Commerce Commission having declared that the division of rates between it and the Louisiana & Pacific Railway Company was illegal, it was obliged to act as it did, and cancel the same.

XVII. It denies all the other matters and things in said complaint contained, not hereinabove admitted.

Wherefore, this respondent, the Louisiana Western Railroad Company, prays the court to be hence dismissed with its costs, and for such other and general relief in the premises as to this court may seem meet.

H. A. SCANDRETT,
J. P. BLAIR,
Solicitors for Louisiana Western Railroad Co.

326 United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY et als.
vs.
UNITED STATES et al.

Demurrer of the Morgan's-Louisiana and Texas Railroad and Steamship Company.

Filed February 3, 1913.

This defendant, by protestation, not confessing or acknowledging any of the matters in the complaint herein to be true, doth demur thereto, and for cause of demurrer showeth that complainants have not in their complaint made or stated any such cause as ought to en-

title them or any of them to any relief against this defendant, nor do they seek any relief against it.

Wherefore this defendant demurs thereto, and asks the judgment of this court as to whether it shall be compelled to make any
327 further or other answer to the said bill; and it prays to be hence dismissed with its costs.

H. A. SCANDRETT,
J. P. BLAIR,
Sol'rs for Above-named Defendant.

St. Denis J. De Blanc, being duly sworn, deposes and says that he is secretary of the said Morgan's Louisiana and Texas Railroad and Steamship Company, and that the foregoing demurrer is not interposed for delay.

ST. D. J. DE BLANC.

Subscribed and sworn to before me this 30th day of January, 1913.

[SEAL.] ANDREW OVERO, (?)
Not. Pub.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. P. BLAIR,
Of Counsel for Morgan's La. & Tex. R. R. & S. S. Co.

328 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Joint Answer of Respondents, New Orleans, Texas & Mexico Railroad, and St. Louis & San Francisco Railroad Company.

(Filed February 6, 1913.)

Now come New Orleans, Texas & Mexico Railroad and St. Louis & San Francisco Railroad Company, respondents herein, and for answer to the petition herein, respectfully show:

1. They admit the incorporation of the Louisiana & Pacific Railway Company, hereinafter called the Louisiana Company, and are informed and believe that said company is incorporated under the laws of the State of Louisiana providing for the formation of
329 common carrier railroad corporations, and also admit the correctness of the extracts in Paragraph 1 of the petition herein from the Constitution and Laws of the State of Louisiana.

They admit upon information and belief the correctness of the statements in Paragraph 1 in regard to the location and mileage of the lines of railway over which the Louisiana Company operates, and the connections thereof with other lines of railroad. They have no knowledge or sufficient information upon which to form a belief as to the correctness of the statements in Paragraph 1 of the petition as to compliance with the rules and regulations promulgated by public authorities, or the carriage of a full line of class and commodity rates between points on its own line in Louisiana, but admit that it concurs in joint tariffs on some commodities between points on its road and points on the line of these respondents, but denies that the Louisiana Company has a full line of rates on all commodities to all interstate territory; they have no knowledge or sufficient information upon which to form a belief as to the correctness of the statements in Paragraph 1 of the petition in regard to the cost of the physical property of the Louisiana Company, or the details of its equipment, or of its operating force, as to the amount and character of its traffic, the number or size of the cities, towns, villages or stations located thereon, the number or character of the industries located thereon, or adjacent thereto, the number and character of its stockholders and their relation, or want of relation with corporations, individuals and industries on said line of railway, or as to the bonds issued thereby and the holders thereof.

2. They admit upon information and belief the correctness of the statements contained in Paragraph 2 of the petition.

330 3. They admit upon information and belief the correctness of the statements contained in Paragraph 3 of the petition.

4. They admit that respondent New Orleans, Texas & Mexico Railroad is a railroad corporation of the State of Louisiana and a part of what is known as the "Frisco System," but deny that it owns or operates any line of railroad within the State of Texas, and aver that the line of railroad operated by it extends from New Orleans and Baton Rouge to the boundary line between the States of Louisiana and Texas. These respondents have no concern with statements in Paragraph 4 of the petition respecting their co-respondents herein.

5. They admit that the St. Louis and San Francisco Railroad Company is a railroad corporation organized under the laws of the State of Missouri, owning and operating railroads in the States of Arkansas, Missouri and elsewhere, but deny that the St. Louis and San Francisco Railroad Company owns or operates lines of railroad in the States of Louisiana and Texas.

6. They admit the allegations of Paragraph 6 of the petition.

7. Answering Paragraph 7 of the petition they aver that by reason of the report or opinion of the Interstate Commerce Commission (hereinafter called the Commission), referred to therein, and by reason of the belief, induced by said report and the respondents' understanding of the opinion and attitude of Commission with respect to the subject-matter thereof, that otherwise the re-

331 spondents, their officers and agents would be subject to criminal prosecution at the instance of the Commission as for

alleged rebates or unlawful discriminations, respondents, about August, 1910, filed with the Commission new tariffs, as supplemental tariffs, on lumber, to become effective in thirty days, which new tariffs cancelled all joint tariffs which respondents had theretofore had and maintained with complainant, the Louisiana and Pacific Railway Company.

8. They admit the general correctness of the statements contained in Paragraph 8 of the petition, and beg leave to refer to the original proceedings and record for full statement thereof, should the same become necessary.

9. They admit upon information and belief the allegations of fact contained in Paragraph 9 of the petition herein.

10. They admit upon information and belief the general correctness of the statements contained in Paragraph 10 of the petition respecting the orders and reports of the Commission, and beg leave to refer to the original proceedings and record for a more full statement thereof, should the same become necessary, and for the legal effect thereof.

11. They admit the general correctness of the statements contained in Paragraph 11 of the complaint respecting the petition filed by the petitioners in this court on June 21, 1912, the dismissal thereof and the subsequent application to the Commission and the order thereon of October 30, 1912.

12. They admit upon information and belief the correctness of the statements contained in Paragraph 12 of the petition
332 with respect to the tariffs on lumber to which the Louisiana Company was a party on April 30, 1912, but reserves leave to refer, if need be, to said tariffs on file with said Commission; but deny that the rates therein prescribed were reasonable through rates, and allege that said rates were unreasonably low.

13. They have no knowledge or information sufficient upon which to form a belief as to the correctness of the allegations of Paragraph 13 of the petition as to the prior history of the railroads now operated by the Louisiana Company, or as to the business, plans and intentions of the petitioners and the parties named in said Paragraph 13, with respect to the construction or consolidation of the properties therein named, or the incorporation of the railroad companies therein described, or of the sale therein referred to to the Lake Charles and Northern Railroad Company, or of the contract between said company and the Louisiana Company, but are informed and believe that such contract of sale was made, and that the Louisiana Company has trackage rights as therein alleged.

14. They admit the general correctness of the statement in Paragraph 14 of the petition in respect to blanket rates on lumber in the lumber-producing districts of the South.

15. They state that they have no knowledge or sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 15 of the petition with respect to the contract therein alleged between the petitioners and the Louisiana Western Railway Company, and have no concern or interest therein.

333 16. They have no knowledge or sufficient information upon which to form a belief as to the truth of the allegations in Paragraph 16 of the petition contained, with respect to the actions of the Longview Lumber Company therein alleged, and have no interest or concern therein.

17. They admit the execution on October 13, 1906, of the contract between these respondents and the petition- as stated in Clause 17 of the petition.

18. They have no knowledge and have not sufficient information to form a belief as to the truth of the statements in Paragraph 18 of the petition with regard to the money expended or the property acquired or the contracts made on the faith of said contracts with the respondent railroad companies.

19. They admit that they cancelled the through rates referred to in the petition under and by virtue of the cancelling tariffs hereinbefore referred to by reason of the several reports, decisions and orders of the Interstate Commerce Commission hereinbefore referred to and under the belief, induced by said reports, decisions and orders, and their understanding thereof that if said joint through rates with the Louisiana Company were not cancelled, said respondent railroad companies, their officers and agents would be subject to criminal prosecution at the instance of the Commission as for alleged rebates and alleged unlawful discrimination. As to the legal effect of the various orders and actions taken by the Commission and set forth in Paragraph 19 of the petition herein, defendants refer to said orders themselves as specifically set out in the petition. They are
334 without knowledge or sufficient information to form a belief as to the truth of the statements contained in said Paragraph 19 as to the practices of the Louisiana Company and of the manner in which it conducts its business, and say that the other matters and things in said paragraph contained, being charges against the correctness of the findings of fact and conclusions of law contained in the report of the Commission, and averments respecting the validity of the order of the Commission and its power and authority concern their co-respondent, the United States of America, and these respondents ask to be allowed to leave the defence thereof to said co-respondent.

20. They deny that their action in filing the supplemental tariff referred to in Paragraph 20 of the petition was in violation of the act to regulate commerce and allege that the Commission having held through rates and divisions with the Louisiana Company to be unlawful it was right and proper for these respondents to file said supplemental tariffs for the reasons heretofore given.

21. They are without knowledge or sufficient information to form a belief as to the truth of the statements of facts contained in Paragraph 21 of the petition.

22. They deny all the other matters and things in the petition contained not hereinabove admitted.

Wherefore these respondents pray the Court to be hence dismissed

with their costs and for such action and general relief in the premises as to this Court may seem meet.

W. F. EVANS,
FRED H. WOOD,
Solicitors for Respondents Above Named.

335 In the United States Commerce Court.

No. 90.

THE LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition of Intervention of the Railroad Commission of Louisiana.

(Filed February 10, 1913.)

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, a political corporation organized under and by virtue of the laws of the State of Louisiana, composed of Shelby Taylor, Chairman; Henry B. Schreiber and B. A. Bridges, Commissioners, of which Henry Jastremski
336 is the Secretary, having its domicile in the city of Baton Rouge, State of Louisiana (hereinafter called petitioner), by leave of the Court join- and file- this, its petition of intervention in the above-numbered and entitled cause.

I.

Petitioner is organized under the provisions of Articles 284 to 289, inclusive, of the Constitution of Louisiana, and of the Acts of the Legislature amendatory thereto and supplemental thereof, and it is its duty to adopt, change or make reasonable and just rates, charges and regulations to govern and regulate railroad * * * freight and passenger tariffs and service, * * * to correct abuses and to prevent unjust discrimination and extortion in the rates for the same, on the different railroads * * * of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, * * * for a shorter than a longer distance over the same lines, unless authorized by the Commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the
337 penalties prescribed inflicted through the proper Courts having jurisdiction.

II.

That acting under the authority of the Constitution and Laws of the State of Louisiana, petitioner has adopted and enforced, and is now enforcing numerous rules and regulations to regulate and govern the rates and service of common carriers operating in the State of Louisiana.

That acting under and by virtue of Act No. 195 of the General Assembly of the State of Louisiana of 1906, the Railroad Commission on January 31, 1913, adopted a resolution authorizing the filing of this intervention, a certified copy of which resolution is attached hereto as Exhibit "A," and leave is asked to file the same as part hereof.

III.

That Article 230 of the Constitution of Louisiana exempted for a period of ten years from the date of its completion any railroad or part of such railroad thereafter constructed and completed prior to January 1, 1904, and that this exemption from taxation was renewed and extended by Constitutional Amendment in 1904, for a period of ten years, to all railroads or parts of railroads constructed and completed subsequently to January 1, 1905, and prior to January 1, 1909, which exemptions from taxation was for the
338 purpose of encouraging railroad construction and extension in the State of Louisiana.

IV.

That Article 272 of the Constitution of Louisiana declares that: "Railways heretofore constructed, or that may be hereafter constructed in this State, are hereby declared public highways, and railroad companies common carriers,"

and this provision of the Constitution of Louisiana has been interpreted and defined by the Supreme Court of Louisiana to apply to any railroad with roadbed and crossties, and parallel rails on which steam locomotives draw regular trains for the transportation of passengers and freight.

That on or about the 8th day of December, 1910, petitioner filed a petition of intervention before the Interstate Commerce Commission, In the Matter of Tap Line Allowances and Divisions, Number 1319 on the docket of said Interstate Commerce Commission, on behalf of the people of the State of Louisiana. The petition alleged that "the lumber traffic on railroads operating in the State of Louisiana far exceeds, in volume, the traffic in any other commodity transported, the percentage of the tonnage of lumber, logs and staves transported by thirty-three of the sixty-six railroads reporting to the Railroad Commission of Louisiana for the year ending June
339 30, 1901, being over 60% of the entire tonnage hauled, and the percentage of the lumber, logs and staves transported by forty-six of the sixty-six railroads reporting to the Railroad Commission of Louisiana for the year ending June 30, 1910, being

greater than the tonnage of any other commodity transported by them." It was further alleged "that a larger percentage, which your petitioner cannot state with exactness, of the lumber traffic so moving over the railroads operating within the State of Louisiana, originates on the short line railroads connecting with the trunk lines, and is transported to various points in other States in the United States, and exported to foreign countries." The petition further states: "That the short line railroads have played a valuable and important part in the development of the State of Louisiana, and the policy of your petitioner has been to encourage their extension by establishing fair and reasonable rates on all classes of freight, requiring them, in turn, to establish and maintain adequate and suitable train service, depots, and other facilities of travel and commerce." After alleging that the industrial and agricultural development has been greatly advanced by the building of short line railroads, many miles of which would not have been constructed except for the expected traffic in lumber and forest products, the petition alleges that the Railroad Commission of Louisiana believes that all railroads in the State of Louisiana, having a charter and operating regular trains, filing annual reports, filing and publishing tariffs, operating suitable and adequate trains, providing
339½ ample shipping facilities, and otherwise complying with and obeying all the orders, rules and regulations governing railroads operating in the State of Louisiana, should be allowed to charge a fair and reasonable rate, and earn fair returns on their investments, whether fair returns are derived from local or intrastate freight rates or from a division of freight rates made by agreement with connecting carriers, on both interstate and intrastate traffic.

That the Railroad Commission of Louisiana, through counsel, filed a brief and made oral argument, and the case was submitted on April 15, 1911. Thereafter, on April 23, 1912, the Commission handed down its partial report, and, on May 14, 1912, and on October 30, 1912, the Commission handed down its suplemental reports (being its Opinions Numbers 1853 and 1898), holding that the service performed for the proprietary lumber companies by certain tap lines described in the report is not a service of transportation by a common carrier.

V.

That among other short line railroads operating in the State of Louisiana, so declared by the said Interstate Commerce Commission not to be transportation companies, or common carriers, as to the service performed for the proprietary lumber companies, was the Louisiana & Pacific Railway Company, one of the petitioners in the above-entitled suit, a railway corporation duly incorporated under
340 the laws of the State of Louisiana, a common carrier, owning and operating a railroad between De Ridder, Louisiana, and Lake Charles, Louisiana, a distance of about forty-three miles, with several branches. That said Louisiana & Pacific Railway Company is and has been, since it began operations, engaged in both state and interstate commerce, having connections at Lake Charles, Louisiana,

with the Louisiana Western Railroad; at Fulton, with the New Orleans, Texas & Mexico Railroad; at Bon Ami, Lake Charles and De Ridder, with the Kansas City Southern Railway; at De Ridder with the Gulf, Colorado & Santa Fe Railway; at Lake Charles with the Saint Louis, Iron Mountain & Southern Railway. Said Louisiana & Pacific Railway Company is complying with the laws of Louisiana governing common carriers, and with the rates, rules and regulations and orders of petitioner, the Railroad Commission of Louisiana. It publishes and files with petitioner, the Railroad Commission of Louisiana, tariffs of rates on commodities, and the different classes of freight, applying locally between points on its own line, and it concurs in joint through rates, legally published and filed, applicable between points on its own line and points on connecting lines in Louisiana, and it also publishes and files tariffs of rates from and to interstate points, and under such tariffs freight moves freely. It operates regular trains, on wheih both passengers and freight are handled at regular tariff or statutory rates.

The Louisiana & Pacific Railway has been exempted from taxation for a period of ten years by the State Board of Ap-
341 praisers of the State of Louisiana, in accordance with the Constitutional provisions of the State of Louisiana, hereinabove referred to, applying to new railroads or parts of railroads constructed and completed within certain prescribed dates.

VI.

That under and by virtue of its charter, the Louisiana & Pacific Railway Company has a contract with the State of Louisiana to operate and maintain a railroad in the State of Louisiana, and it should be permitted to transport as a common carrier, and earn revenue upon all kinds and classes of freight that may be tendered or that may result from its development of the country through which it runs, and its contract with the State has been seriously threatened, and will be vitally affected and impaired by reason of an order of the Interstate Commerce Commission, from engaging in interstate transportation of logs, lumber and other forest products, and receiving out of joint through rates a division therefrom.

VII.

And the interests of the State of Louisiana are seriously affected by the orders of the Interstate Commerce Commission attacked in this cause, because the State has encouraged the building of railroads by exempting such roads as were built during certain periods
342 from taxation for ten years. The mileage of railroads in the State of Louisiana on June 30, 1909, was 4,950.55, an increase in the ten years during which the exemption ran, of 2,525.25 miles, a large portion of the increase in mileage having been constructed by the short line railroads, including the mileage of the Louisiana and Pacific Railway.

The Railroad Commission of Louisiana, petitioner, believes, and upon its belief, alleges, that the orders of the Interstate Commerce

mmission attacked herein, if allowed to remain in force, will stifle growth of the State, check the building and extension of short, ependent railroads, hamper and retard its agricultural and indus- l development, reduce its railroad mileage, destroy valuable prop- y at a time when the State of Louisiana is beginning to reap the efits of these investments by reason of the termination of the iod of exemption, by collection of taxes, on the Louisiana and ific Railway, as well as on other railways which will be affected the said orders of the Interstate Commerce Commission.

VIII.

That the said orders of the Interstate Commerce Commission de- y the right of the Louisiana shippers of logs and lumber from pping over the Louisiana and Pacific Railway under like condi- ns with other shippers, who enjoy joint through rates to and from interstate points from and to parties in the State of Louisiana, located on such railway, and likewise if continued in force, destroys the right of the Louisiana and Pacific Railway to gage in the transportation of interstate shipments of logs and lum- , under joint through rates, and divisions of such rates in accord- e with their contracts, which its charter, as a common carrier, der the laws of Louisiana, permits it to do. The said Louisiana l Pacific Railway Company is thereby prevented from giving to Louisiana shippers of logs and lumber manufactured therefrom advantages, opportunities, and conveniences almost universally oyed by shippers, of shipping under joint through rates, and the isiana and Pacific Railway Company, a Louisiana corporation, l other railways operated in Louisiana under similar circum- nces and conditions, the right of entering into contracts with con- ting lines of railways for joint through rates, and a division of h rates.

IX.

That the aforesaid orders of the Interstate Commerce Commission ce an undue and unnecessary burden upon the shippers of local rchandise freight transported by the Louisiana and Pacific Rail- y by denying to the Louisiana and Pacific Railway Com- ay the right to transport logs and lumber manufactured refrom to and from interstate points at established joint through es, and to receive a division out of such revenues as may be derived from such interstate traffic, in that the local rates on such merchandise, or the divisions received on the joint through rates from such merchandise, must bear all the burden of ring operating costs, the maintenance costs, the general expenses, fixed charges, the interest on the investment of such railway. is will result in unjust discrimination against the shipper of local ight, other than logs and lumber, whereas, the logs and lumber nsported by such railway should contribute its fair share of the enue of the Louisiana and Pacific Railway, and not throw upon local shippers of freight other than logs and lumber the burden paying rates high enough to pay all the necessary costs of oper- ng and maintaining the Louisiana and Pacific Railway.

X.

Petitioner further avers that the order of the Interstate Commerce Commission aforementioned destroys the guarantee of the Declaration of Independence, of equal rights to all, and impairs the obligation of the contract existing between the State of Louisiana and the Louisiana and Pacific Railway Company, to operate and maintain a railroad, and engage in both state and interstate commerce, wherefore considering the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the orders of the Interstate Commerce Commission in the Tap Line case, in so far as they effect the right of the Louisiana and Pacific Railway Company and other railway companies similarly organized under the laws of Louisiana and operating as com-
345 mon carriers in said State, were made without power or authority either directly or indirectly conferred upon it by the Act to Regulate Commerce or any amendment thereto or supplement thereof, or by any other law of the United States, the Commission having no jurisdiction to prevent a railroad corporation lawfully incorporated under the laws of the State of Louisiana as a common carrier and operating its railroad accordingly, from engaging in the transportation of logs and lumber to and from interstate points, on the ground that the principal shippers of the logs and lumber so transported own or control the railroad.

2. That for the reasons above set forth the Order of the Interstate Commerce Commission aforementioned, declaring that the service performed for proprietary lumber companies by certain Tap Lines described in its report is not a service of transportation, is unjust, unreasonable, discriminatory, unconstitutional, and therefore null and void.

XI.

Wherefore, petitioner prays that the service of this petition be made on respondents herein commanding them to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondents, on the Attorney-General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said orders of the Interstate
346 Commerce Commission of May 1st and May 14th, 1912, and of October 30, 1912, in the Tap Line case, be enjoined, set aside, and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof, and petitioner prays for all general and equitable relief.

RUFFIN J. PLEASANT,
Attorney-General of the State of Louisiana;
WYLIE M. BARROW,
Assistant Attorney-General,
Solicitors for the Railroad Commission of Louisiana.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

I, Shelby Taylor, Chairman of the Railroad Commission of Louisiana, upon my oath, state that I am authorized to make this affidavit; that I have read the foregoing petition, and that the allegations of fact set forth therein are true, and the allegations made upon information and belief I believe to be true.

SHELBY TAYLOR.

Sworn to and subscribed before me, the undersigned authority, this, the 7th day of February, 1913, A. D.

[SEAL.] R. H. FLOWER,
Assistant Secretary of State, Parish of East Baton Rouge, City of Baton Rouge, State of Louisiana.

347 *Resolution.*

On motion of Commission- Taylor, duly seconded, the following resolution was unanimously adopted:

"Whereas, The Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and,

"Whereas, The following so-called 'tap lines,'

Mansfield Railway & Transportation Company,
Woodworth & Louisiana Central Railway Company, Limited,
Victoria, Fisher & Western Railroad Company, and
Louisiana & Pacific Railway Company

are among those 'tap lines' which have filed such suits, and which railways are duly chartered under the laws of the State of Louisiana as common carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and,

"Whereas, The said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and,

"Whereas, This Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitu-
348 tional interference with the rights of the said railway companies to receive revenue out of joint through rates for the transportation of lumber and logs over their lines in Louisiana destined to interstate points; and,

"Whereas, It is the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right

to ship logs and lumber over said railways at reasonable joint through rates, and deprives the said railway companies from receiving a reasonable division out of joint through rates, which division of rates is the principal source of revenues of such carriers; and,

"Whereas, If the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber, thereby rendering it impossible to meet the operating expenses and fixed charges, and consequently preventing any extension, or hope of extension, or improvement, or hope of improvement of such railways:

Therefore, be it resolved, That the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney-General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognize the said railway companies as common car-
349 riers of interstate shipment of logs and lumber, as they are recognized to be common carriers of all other classes and kind of shipment."

I, Henry Jastremski, Secretary of the Railroad Commission of Louisiana, do hereby certify the above and foregoing as a true and correct copy of the Resolution adopted by the Railroad Commission of Louisiana at the general session held in the city of New Orleans on January 31, 1913.

In testimony whereof, I have hereunto affixed my signature and the seal of the Railroad Commission of Louisiana, at Baton Rouge, La., on this 7th day of February, 1913.

[SEAL.] HENRY JASTREMSKI, *Secretary.*

350 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
THE UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and

it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

351 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition for Leave to Intervene.

(Filed February 10, 1913.)

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceeding before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line- of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the milling industries located upon the lines of petitioners are known as the blanket system of rates.

352 Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitio ers are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries

located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance by the respondents herein will not be in truth an allowance to a railroad for the service of transportation of lumber but on the contrary will be an allowance to the milling industry for an operation incident to the manufacture of lumber, and will constitute a device for the payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Their Attorneys.

February 10, 1913.

353 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
THE UNITED STATES et al.

Order of Intervention.

(Entered February 10, 1913.)

The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the Atchison, Topeka and Santa Fe Railway Company, and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

354 *Journal Entry.*

Proceedings of February 10, 1913.

Cases Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause was taken under advisement by the Court.

355 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

(Entered February 24, 1913.)

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction, in open court made; and the Court having given the arguments of counsel due consideration, now, on the 24th day of February, 1913,

It is ordered and adjudged that said motion be, and the same is hereby, denied, the Court being of opinion that the order complained of is an order the validity of which this Court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

356 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order Designating Judge Carland to Hear Testimony.

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

357 *Agreement, October* 31, 1906, *Louisiana Western Railroad Company, Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company.*

(Filed in Clerk's Office March 22, 1913.)

(Copy of this agreement is attached to the petition herein as Exhibit A.)

Agreement, October 13, 1906, *Colorado Southern, New Orleans & Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company.*

(Filed in Clerk's Office, March 22, 1913.)

(Copy of this agreement is attached to the petition herein as Exhibit B.)

358 United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

This agreement, made and entered into this 31st day of October, Nineteen Hundred and Six, by and between the Louisiana and Pacific Railway Company, party of the first part, and the Lake Charles and Northern Railroad Company, party of the second part, both of said corporations being organized under the laws of the State of Louisiana—

359 Witnesseth: The said party of the first part is the owner of a line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River at or near the Northwest corner of Section Ten, Township Nine, Range Eight, in Calcasieu Parish, State of Louisiana. That part of said line of road lying between Ramsay Junction and said point on Calcasieu River has been completed, but is a narrow gauge road. Of the remainder of said line of road, that is, that portion lying between De Ridder and Ramsay Junction, a portion has been completed and the other portion is now being constructed.

The said first party also owns a right of way for a railroad from Lake Charles to a point on said narrow gauge road near the northeast corner of Section Thirty-two, Township Eight, Range Eight, in said Parish and State.

The said second party desires to purchase said first party's said line of road from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles to the junction with said narrow gauge road in said Section Thirty-two; and said first party is willing to sell its said road and said right of way, on condition

that it can have the joint use of said line of road from De Ridder to Lake Charles, which condition is not objectionable to said second party.

Now, therefore, in consideration of the foregoing premises, and the covenants and agreements to be kept and performed by the parties hereto, respectively, as herein set forth, the said parties do hereby agree and bind themselves as follows:

1. The said first party agrees to sell and said second party agrees to buy said line of railroad from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles to said junction point in Section Thirty-two.

The purchase price of said property shall be a sum equal to Fifteen Thousand ($15,000.00) Dollars, (which is the agreed value of said narrow gauge portion of said line of road, and said right of way from Lake Charles to the aforesaid junction point), plus the total actual cost of that portion of said line of railroad between De Ridder and Ramsay Junction, including the cost of all yards, round-houses, section-houses, tool-houses, depots, shops, right of way, grading, ties, rails, etc., and other appurtenances—such cost to be ascertained by reference to the books of said party of the first part, to be verified by the engineers of the parties hereto. Of such purchase price, the said second party shall pay said first party the sum of Ninety Thousand ($90,000.00) Dollars, at the time of the execution and delivery of this agreement; and the balance shall be paid monthly as the work of construction progresses, on estimates to be furnished by the engineer of the said first party, and verified by the engineer of the said second party, the final amount to be ascertained and determined from the records of the said first party by the engineers of both parties.

2. The said property which the said first party agrees to sell, and which the said second party agrees to buy, as above set forth, shall include the said right of way from Lake Charles to the said
360 junction of the said right of way with the narrow gauge portion of said road in said Section Thirty-two, and the right of way, roadbed, tracks, yards, depots, round-houses, section-houses, tool-houses, shops, and everything pertaining to the line of road of said first party from De Ridder to said point on the Calcasieu River in Section Ten, except the Thirty and Thirty-five pound steel on the narrow gauge portion of said line of road, and except the rolling stock of said first party.

3. The said first party shall, as soon as can reasonably be done, but not later than July 1, 1907, complete the construction of the roadbed, tracks and side-tracks of said portion of said line of road between De Ridder and Ramsay Junction, putting same in the condition usual for roads of similar character, and shall on the completion of said line of road convey by good and sufficient deed to said second party the property contracted to be sold as herein set forth.

4. The said second party shall, at its own cost and expense, as soon as can reasonably be done (it being the hope and expectation of both parties that the work will be completed not later than July 1, 1907), change to a standard gauge road that part of the narrow gauge por-

tion of said road lying between Ramsay Junction and said junction in said Section Thirty-two of said right of way to Lake Charles, and also build from said last named junction to Lake Charles a standard gauge road and connect the same at Lake Charles with the line of the Louisiana Western Railroad Company, and also with the Mills of the Calcasieu Long Leaf Lumber Company, situated near Lake Charles, putting all of said road in an operating condition usual for roads of similar character.

5. The said second party shall, at its own cost and expense, deliver to said first party, at such point along the line of said railway as may be designated by said first party, the thirty and thirty-five pound steel now in the track of the narrow gauge portion of said line of railroad.

6. Immediately upon the conveyance by said first party to said second party of the property herein contracted to be sold, the said second party shall execute and deliver to said first party a contract giving said first party joint trackage rights over the entire line of railroad above mentioned, except that part thereof lying between said point on the Calcasieu River in Section 10 and said junction point in Section Thirty-two.

Said trackage agreement shall vest in said first party trackage rights over the said line of railroad from De Ridder to Lake Charles, with all the appurtenances thereto, for a period of Twenty Years from the date of this contract, for such trains as said first party may desire to operate over said road, provided that the number of trains operated by said first party over said line of railroad shall not materially interfere with the operation of trains by said second party.

The details of the operation of trains by said first party over said line of railroad shall be arranged by the Operating Departments of the said first and second parties, and shall be according to the usual and customary rules prevailing with railroads under similar circumstances; and for the use of said railroads as aforesaid, said first
361 party shall pay to said second party a rental equal to twenty-five cents per train mile for every train that shall be run over said road by said first party during the existence of this contract. Said rental shall be ascertained and fixed by reference to the records to be kept by said second party, and said second party shall keep complete and accurate record of trains that shall be run over said line of railroad during the existence of this contract, which record shall be open to the inspection of said first party.

Payments of rental shall be made monthly and on or before the Tenth day of each month.

The term "train," as used in this provision of this contract, shall at all times be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall be made for any engine running over said road when not pulling one or more cars.

The mileage for which said first party shall be required to pay, shall not include the movements of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the moving of logging trains over that part of

said line between De Ridder and the junction of the De Ridder Branch, which is about three-quarters of a mile in length, or the movements of logging trains over that portion of said line lying between Bonami and the junction of the Bonami branch. Map hereto attached and made part hereof will more fully define the limits referred to.

7. Said second party shall at all times during said period of Twenty years, at its own cost and expense, keep said line of railroad and its appurtenances in such operating condition as is usual with lines of railroad of similar character; and it shall, at its own cost and expense, put in and maintain in operating condition such as is usual with lines of railroad of similar character, such sidings as may be reasonably necessary, whenever a new mill may be built contiguous to said line of railroad.

8. The said first party shall have the right to connect said line of railroad over which it is to have trackage rights with any logging railroad or railroads that it may see proper to build at any time during the said twenty years from any point on said line to serve any near-by lumber mills.

9. In the event that any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand an arbitration and select one arbitrator; and the other party shall, within Ten days' notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter the two arbitrators thus selected shall, if they cannot agree upon the adjustment of the matter in controversy; select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto.

In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third arbitrator within ten days from the date of their selection, then the parties hereto
362 shall select new arbitrators who shall proceed as hereinabove provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators acting shall select another third arbitrator and so on.

10. This agreement with all things pertaining thereto is entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the Louisiana Western Railroad Company, the said Louisiana and Pacific Railway Company, the Hudson River Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company, and the Long-Bell Lumber Company, for division of freights on joint business and for a routing of a proportion of the products of said lumber companies as provided in said agreement.

11. This agreement shall commence and become effective on the date hereof, and all the terms and conditions, rights and obligations hereof, shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

In witness whereof, each party hereto has caused this agreement

to be signed by its proper officer, and its corporate seal to be affixed and attested, the day and year first above written.

(Signed) LOUISIANA & PACIFIC RY. CO.,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

(Signed) LAKE CHARLES & NORTHERN R. R. CO.,
[SEAL.] By G. W. NOTT, *President.*

Attest:
G. G. MOORE, *Secretary.*

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Joint Trackage Agreement between Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company.

This agreement, made and entered into this 21st day of February, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by C. B. Sweet, its Vice President, duly authorized by a resolution of its Board of Directors, adopted November 26, 1907, a certified copy of which is hereto annexed; and the Lake Charles & Northern Railroad Company (hereinafter called the Lake Charles Company), a corporation of the State of Louisiana, herein represented by G. W. Nott, its President, duly authorized by a resolution of the Board of Directors of the Lake Charles Company, adopted February 21, 1908, a certified copy of which is hereto annexed: Witnesseth:

363 Whereas, the Lake Charles Company owns a line of railway in the Parish of Calcasieu, extending from De Ridder, Louisiana, to a connection with the Louisiana Western Railroad Company at Lake Charles, Louisiana, a distance of approximately forty-five (45) miles, together with railroad yards, depots, switches, section-houses and appurtenances, said line of railway being hereinafter designated as "Joint Line," the same being now completed from De Ridder, Louisiana, to Fulton, Louisiana, a distance of approximately twenty-six (26) miles, and it is expected that the Lake Charles Company will complete at an early date that part of the "Joint Line" between Fulton, Louisiana, and a connection with the tracks of the Louisiana Western Railroad Company at Lake Charles, Louisiana—being the property acquired by the Lake Charles Company from the Louisiana Company by Act of Sale before Felix J. Puig, Notary Public, passed at New Orleans, Louisiana, on the 21st day of February, 1908; and,

Whereas, the Lake Charles Company has heretofore agreed to grant to the Louisiana Company joint trackage rights over the "Joint Line" as herein defined, and it is deemed advisable now to execute a contract for such trackage rights,

Now, therefore, it is mutually agreed between the parties hereto as follows, to-wit:

1. The Lake Charles Company grants and leases to the Louisiana Company during the continuance of the term hereinafter mentioned, and upon the terms and conditions and subject to the limitations hereinafter expressed, the right to use jointly with the Lake Charles Company the tracks of the "Joint Line" for the operation of the trains, engines and cars of the Louisiana Company, hereby conferring upon the Louisiana Company joint trackage rights over the "Joint Line" for a period of twenty years from October 31st, 1906, for such trains as the Louisiana Company may desire to operate over said "Joint Line," provided the operation of trains so operated by it shall not materially interfere with the operation of trains by the Lake Charles Company or under its authority.

2. The details of the operation of trains by the Louisiana Company over the "Joint Line" shall be arranged by the Operating Departments of the parties hereto, and shall be according to the usual and customary rules prevailing with railroads under similar circumstances (e. g. the supervision, management and operation of the "Joint Line" shall be under the exclusive direction and control of the Lake Charles Company, but all time cards, rules, regulations or orders for the movement of engines, trains and cars upon the "Joint Line" shall be reasonable, fair and just, and in accordance with the usual and customary rules prevailing with railroads under similar circumstances. All passenger trains shall be given preference over other trains, and the trains of both parties shall be given equal dispatch according to their class).

The Station and Administrative expenses of the "Joint Line" shall be apportioned between the parties hereto, as follows: Before
364 the completion of the operation of the "Joint Line" to Lake Charles, Twenty-five per cent (25%) to the Lake Charles Company, and seventy-five per cent (75%) to the Louisiana Company; after the completion and operation of the "Joint Line" to Lake Charles, Forty per cent (40%) to the Lake Charles Company, and Sixty per cent (60%) to the Louisiana Company.

Said station expenses cover and apply to the stations already established, which are to be maintained as long as they are necessary for the business of either party hereto, and such other stations as may hereafter be established on the "Joint Line."

Administrative expenses shall include the salary of the Superintendent and his office force and expenses, including dispatchers; and Station expense shall include the salaries of Station agents and other station expenses; but it is understood that for service rendered by the Lake Charles, Louisiana, agency, the Louisiana Company agrees to pay the lump sum of One Hundred Dollars ($100.00) per month in lieu of its proportion of station expenses above mentioned, and in addition thereto to furnish necessary stationery and supplies for the transaction of its own business at said station.

All joint employés shall be employed by the Lake Charles Company but any such employé shall be discharged at the request of

the General Manager or any other general officer of the Louisiana Company acting for it.

said joint employés shall perform the customary services incidental to their employment for both parties hereto and keep such accounts and make such reports as may be required of them.

3. The Lake Charles Company shall at all times during the term of this agreement, at its own cost and expense, keep the "Joint Line" in such operating condition as is usual with lines of railroad of similar character; and it shall at its own cost and expense, put in and maintain in operating condition, such as is usual with lines of railroad of similar character, such sidings as may be reasonably necessary whenever a new mill may be built contiguous to the "Joint Line."

4. The Louisiana Company shall have the right to connect the "Joint Line" with any logging railroad or railroads that it may see proper to build at any time during the term of this agreement from any point on the "Joint Line" to serve any nearby lumber mills.

5. The Louisiana Company hereby covenants and agrees that it will pay to the Lake Charles Company at its Treasurer's office in New Orleans, Louisiana, at the times and in the manner hereinafter provided during the term of this agreement, for the aforesaid use of the "Joint Line," a rental equal to twenty-five (25) cents per train mile for every train that shall be run over the "Joint Line" by the Louisiana Company during said term, which rental shall be ascertained and fixed by reference to the records to be kept by the Lake Charles Company, as well as the administrative and station expenses hereinabove provided for. The last named Company shall keep complete and accurate record of trains that shall be run over the "Joint Line" during the existence of this agreement, and such record shall be open to the inspection of the Louisiana Com-
365 pany. Payments of said rental and administrative and station expenses shall be made monthly on or before the tenth day of the following month for all mileage due account of trains run during the preceding month and for all administrative and station expenses of the preceding month.

The term train as used in this contract shall be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall be made for any engine running over the "Joint Line" when not pulling one or more cars.

The mileage for which the Louisiana Company shall be required to pay shall not include the movement of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the movement of logging trains over that part of the "Joint Line" between De Ridder and the junction of the De Ridder branch, which is about three quarters of a mile in length, nor the movement of logging trains over that portion of the said line between Bonami and the junction of the Bonami branch.

It is understood that cars handled solely on switching tracks at De Ridder, Fulton and Bonami to other line connections at these points on which the Lake Charles Company would otherwise receive

no trackage revenue, the Louisiana Company will pay the Lake Charles Company one train mile, or twenty-five (25) cents for each car so handled to such connections.

6. The Louisiana Company hereby assumes the risk of all loss, damage or injury which shall in any manner occur in or upon any tracks, building or premises, the use whereof is hereby granted, whether to property of the Louisiana Company or to property in its custody or to its passengers or to its employés, and which third persons or the property of third persons shall suffer by reason of the movement of any engine, car or train of the Louisiana Company, in all respects as if the Louisiana Company had then been in the exclusive use and control of such track, building or premises, excepting only such loss, damage or injury as shall be caused by the negligence of the employés solely of the Lake Charles Company; and excepting only, as aforesaid, the Louisiana Company hereby agrees to save the Lake Charles Company harmless from all such loss, damage and injury, from all liability and claim therefor, and from all consequent costs and expenses. Each party hereto hereby agrees to save the other party harmless from all loss, damage or injury caused by the negligence of its own sole employés, from all liability and claim therefor, and from all consequent costs and expenses.

The parties hereto expressly covenant and agree that in case of collision between their respective engines, cars or trains while on the "Joint Line," the party whose employé or employés are alone in fault shall be solely responsible for and shall settle and pay for the entire loss and damage caused thereby, and shall save the other party harmless therefrom; and that in case any such collision is caused by the fault of the employés of both parties or by the fault of
366 any joint employé or employés, or in case the cause of the collision is so concealed that it cannot be determined whose employés are at fault, each party shall bear and pay all the loss, damage or injury which its own property or property in its custody or its employés or passengers may have suffered in consequence thereof.

All liability for damages to persons or property accruing in connection with the maintenance or operation of the "Joint Line" from any cause except as herein otherwise provided shall be apportioned and paid by the parties hereto in the same proportion as has been hereinabove provided for the apportionment of administrative and station expenses.

7. In the event any controversy should at any time arise between the parties hereto and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and, within ten days thereafter, the two arbitrators then selected, shall, if they cannot agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that

the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from the date of their selection, then the parties hereto shall select new arbitrators who shall proceed as hereinabove provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

8. It is understood at the signing of this agreement that all of the tracks known as "Joint Line," and appurtenances, have been completed between and including the stations of De Ridder and Fulton, but that the "Joint Line" between Fulton and Lake Charles is under course of construction, but it is expected that the Lake Charles Company will complete at an early date that portion of the "Joint Line" between Fulton, Louisiana, and a connection with the tracks of the Louisiana Western Railroad Company at Lake Charles, Louisiana, at which time this contract of itself becomes effective over the entire "Joint Line."

9. Until the completion of the entire line referred to in Article 8, this contract is to apply as to payments of mileage, administrative and station expenses to the completed portion between Fulton and De Ridder. During the construction of the line between Fulton and Lake Charles, the Lake Charles Company agrees to keep the narrow gauge tracks which temporarily remain on the broad gauge ties in suitable operating condition, for which they are to receive compensation from the Louisiana Company at the regular train mile rates provided for in this agreement.

10. The payment of station and administrative expenses hereinbefore provided to be paid by the Louisiana Company shall cover only such period of time as said Louisiana Company shall have the right to operate trains over said "Joint Line" as a common carrier,
367 and if for any reason said Louisiana Company shall cease to have such right, such proportionate payments for "station and administrative expenses" by said Louisiana Company shall cease; provided, however, the right to operate logging trains shall not thereby terminate; and for the operation of such logging trains, the Louisiana Company shall pay the twenty-five (25) cents per train mile hereinbefore mentioned.

11. It is understood and agreed that all the terms and conditions of this contract shall bear upon and inure to the benefit of the successor or assigns of either or both of the parties hereto.

This done and signed, in duplicate, at New Orleans, Louisiana, on the 21st day of February, 1908.

LAKE CHARLES & NORTHERN RAILROAD COMPANY,

By —— ——, *President.*

Attest:

—— ——, *Secretary.*

LOUISIANA & PACIFIC RAILWAY COMPANY,

By —— ——, *Vice-President.*

Attest:

—— ——, *Secretary.*

Whereas, at a meeting of the Board of Directors of the Lake Charles & Northern Railroad Company, held at its office in the City of New Orleans on the 30th day of October, 1906, it was resolved that this Company enter into an agreement with the Louisiana & Pacific Railway Company to purchase that Company's line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River, Calcasieu Parish, State of Louisiana, both the completed and uncompleted portions thereof, as well as the right of way for a railroad from Lake Charles, Louisiana, together with right of way, road bed, tracks, yards, etc., and to enter at the same time into an agreement to give the Louisiana & Pacific Railway Company joint trackage rights over said railroad upon terms and conditions therein stated; and,

Whereas, the President and Secretary of this Company, being duly authorized by said resolution, did, on October 31, 1906, enter into an agreement with the Louisiana & Pacific Railway Company of the tenor and effect hereinabove recited; and,

Whereas, in accordance with the terms of said resolution and said agreement of October 31, 1906, it is proper and necessary for this Company to execute the contract for trackage rights therein contemplated.

Resolved, that the President and Secretary of this Company be and they are hereby authorized and directed to sign and execute an agreement for and in the name of this Company with the Louisiana & Pacific Railway Company, conferring joint trackage rights on the said railroad from De Ridder to Lake Charles, said officers being hereby vested with full discretion in the premises as to form of said contract and the proper steps to be taken to carry into effect the same.

368 *Certified Copy of Minutes of Meeting of Board of Directors of the Louisiana & Pacific Railway Company Authorizing Joint Trackage Agreement.*

At a special meeting of the Board of Directors of the Louisiana & Pacific Railway Company, a Louisiana corporation, held at the office of said Company at Bonami, Louisiana, on the 26th day of November, 1907, at the hour of 2:30 p. m., all of said Directors having consented that said meeting be held and being present and participating, the following, among other proceedings, were had, to-wit:

"Upon motion of B. H. Smith, the following resolution was introduced and adopted by unanimous vote:

"Whereas, at a meeting of the Board of Direcors of the Louisiana & Pacific Railway Company, held at its office in Bonami, Louisiana, on the 19th day of October, 1906, a resolution was unanimously adopted authorizing an agreement to be made with the Lake Charles & Northern Railroad Company and sell the Louisiana & Pacific Railway Company's line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River, Calcasieu Parish, State of Louisiana, both the completed and uncompleted portions thereof, as well as the right of way for a railroad from Lake

Charles, Louisiana, together with the right of way, roadbed, tracks, yards, etc., and to enter at the same time into an agreement to acquire joint trackage rights from said Lake Charles & Northern Railroad Company upon terms and conditions therein stated; and,

"Whereas, the President and Secretary of this Company, being duly authorized by said resolution, did on October 31, 1906, enter into an agreement with the Lake Charles & Northern Railroad Company of the tenor and effect hereinabove recited; and

"Whereas, in accordance with the terms of said resolution and said agreement of October 31, 1906, it is proper and necessary for this Company to execute the contract for trackage rights therein contemplated;

"Now, therefore, be it resolved, that the Vice President and Secretary of this Company be and they are hereby authorized and directed to sign and execute an agreement for and in the name of this Company with the Lake Charles & Northern Railroad Company acquiring joint trackage rights on said railroad from De Ridder to Lake Charles, said officers being hereby vested with full discretion in the premises as to the form of said contract and the proper steps to be taken to carry the same into effect."

STATE OF LOUISIANA,
Parish of Orleans:

I, B. H. Smith, Secretary of the Louisiana & Pacific Railway Company, a Louisiana corporation, do hereby certify that the above and foregoing is a full, true and correct copy of a resolution adopted at a meeting of the Directors of the Louisiana & Pacific Railway Company, a Louisiana corporation, held at the office
369 of said Company at Bonami, in the Parish of Calcasieu, State of Louisiana; that said meeting was duly, and regularly called in accordance with the provisions of the by-laws of said Company; that before said meeting was held the written consent of each and all the Directors of said Company for the holding of said meeting had been obtained; that all the Direcors of said Company were present and participated therein, and consented that said resolution be passed; that I am Secretary of the Louisiana & Pacific Railway Company at the time of the signing of this certificate.

In testimony whereof, witness my hand and the seal of said Company hereto affixed this 21st day of February, A. D. 1908.

——— ———, *Secretary.*

Agreement Between Louisiana & Pacific Railway Company and Hudson River Lumber Company.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company) a corporation of the

State of Louisiana, herein represented by R. A. Long, its President, and the Hudson River Lumber Company, (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice-President, witnesseth:—

Whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances, together with connections at Lake Charles, with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company, and the St. Louis, Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company, and at De Ridder with the Kansas City Southern Railway Company and the Gulf Colorado & Santa Fe Railroad Company, and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at De Ridder Junction, extending in a southeasterly direction a distance of twelve (12) miles, more or less, to Chitto and beyond, also approximately eleven (11) miles of logging spurs beyond Chitto; and,

Whereas, the Lumber Company owns and operates a saw mill at De Ridder, Louisiana, and owns a large amount of timber land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at De Ridder and there convert the same into lumber, and,

Whereas, said lumber company has been much hampered because of lack of adequate railway facilities and accommodations for
370 transporting its logs to its said mill and for transporting the product of its said mill to desirable market, and

Whereas, it is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish,—

Now therefore, it is mutually agreed between the parties hereto, as follows, to-wit:—

1. The Louisiana Company shall for the period and upon the terms, limitations and conditions hereinafter expressed furnish to the Lumber Company all the necessary engines, cars and other appurtenances and equipment (hereinafter for brevity and convenience called equipment) for transporting the products of said Lumber Company from its Lumber camps to its mills at De Ridder, Louisiana.

2. The Louisiana Company shall place the said equipment upon the spur tracks at the Junction point of said spur tracks with main line of said Louisiana Company at the various Lumber camps along the main line of said Louisiana Company as directed by said Lumber Company.

3. The movement of said equipment and the placing thereof on said spurs shall be made in accordance with an agreement hereafter to be agreed upon between the Superintendent of said Louisiana Company and the Superintendent of said Lumber Company, in such

manner and upon such condition as shall be mutually agreeable to each.

4. The said Lumber Company shall take charge of said equipment and manage and control the same immediately upon its being placed upon said spurs, as hereinabove provided, and shall load the products of said lumber Company upon said equipment and return the same to the main line of said Louisiana Company, there to be taken in charge by the employees of said Louisiana Company, and transported to the mills of said Lumber Company.

5. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

6. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension or extensions to any of the spurs of said Louisiana Company, said Lumber Company to furnish ties and bear all expense connected with the construction thereof.

7. In the event that it becomes necessary in order to make repairs upon any of said logging equipment, to take the same into De Ridder, said Lumber Company shall have the right to take said logging equipment, with its own crews, into De Ridder over the line of said Louisiana Company without any additional expense to said Lumber Company; the movement of such equipment to be made after first obtaining permission from the Superintendent of the Lou-
371 isiana Company, who is hereby required to furnish this permission when requested.

8. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of said Lumber Company.

9. During the term of this agreement the Lumber Company will ship, or cause to be shipped, over the line of railroad of the Louisiana Company to the terminus of said line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred (100%) per cent of the aggregate products of its mill or mills as are now located or may hereafter be located on the Line of said Louisiana Company, or any of its branches, to be carried by the Louisiana Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall, if they cannot

agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from the date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either or both of the parties hereto.

This done and signed, in duplicate, at De Ridder, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
HUDSON RIVER LUMBER COMPANY,
C. B. SWEET, *Vice-Pres.*

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Copy.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and King-Ryder Lumber Company.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by R. A. Long, its President, and the King-Ryder Lumber Company (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice-Pres., witnesseth:

Whereas, The Louisiana Company owns or controls and operates a line of railroad in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances, together with connections at Lake Charles with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company and the St. Louis, Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company, and at De Ridder with the Kansas City Southern Railway Company, and the Gulf, Colorado & Santa Fe Railroad Company; and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at Lilly Junction, extending in a Southeasterly direction a distance of 7.4 miles, more or less, to Walla,—also approximately fifteen (15) miles of logging spurs beyond Walla; and

Whereas, The Lumber Company owns and operates a saw mill at Bonami, Louisiana, and owns a large amount of timber land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at Bonami, and there convert the same into lumber; and

Whereas, Said Lumber Company has been much hampered because of the lack of adequate railway facilities and accommodations for transporting its logs to its said mill and for transporting the products of its said mill to desirable markets; and

Whereas, It is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish,—

Now, therefore, It is mutually agreed between the parties hereto, as follows, to-wit:

1. The Louisiana Company shall for the period and upon the terms, limitations, and conditions hereinafter expressed furnish to the Lumber Company all the necessary engines, cars and other appurtenances and equipment (hereinafter for brevity and convenience called equipment) for transporting the products of
373 said Lumber Company from its lumber camps to its mill at Bonami, Louisiana.

2. The Louisiana Company shall place the said equipment upon the spur tracks at the junction point of said spur tracks with main line of said Louisiana Company at the various lumber camps along the main line of said Louisiana Company as directed by said Lumber Company.

3. The movement of said equipment and the placing thereof on said spurs shall be made in accordance with an agreement hereafter to be agreed upon between the Superintendent of said Louisiana Company and the Superintendent of said Lumber Company, in such manner and upon such condition as shall be mutually agreeable to each.

4. The said Lumber Company shall take charge of said equipment and manage and control the same immediately upon its being placed upon said spurs, as hereinabove provided, and shall load the products of said Lumber Company upon said equipment and return the same to the main line of said Louisiana Company, there to be taken in charge by the employees of said Louisiana Company, and transported to the mills of said Lumber Company.

5. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

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6. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension or extensions to any of the spurs of said Louisiana Company, said Lumber Company to furnish ties and bear all expense connected with the construction thereof.

7. In the event that it becomes necessary in order to make repairs, upon any of said logging equipment, to take the same into Bonami, said Lumber Company shall have the right to take said logging equipment, with its own crews, into Bonami over the line of said Louisiana Company without any additional expense to the said Lumber Company; the movement of such equipment to be made after first obtaining permission from the Superintendent of the Louisiana Company, who is hereby required to furnish this permission when requested.

8. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of the Lumber Company.

9. During the term of this agreement the Lumber Company will ship, or cause to be shipped, over the line of railroad of the Louisiana Company to the terminus of said line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred (100%) per cent of the aggregate products of its mill or mills as are
374 now located or may hereafter be located on the line of said Louisiana Company, or any of its branches, to be carried by said Louisiana Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall, if they can not agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either or both of the parties hereto.

This done and signed, in duplicate, at Bonami, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
KING-RYDER LUMBER COMPANY,
By C. B. SWEET, *V. P.*

[Endorsed:] Agreement between Louisiana & Pacific Railway Co. and King-Ryder Lumber Company.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and Longville Lumber Company.

This agreement, made and entered into this first day of July, A. D. 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company) a common carrier corporation of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Longville Lumber Co. (hereinafter called the Lumber Company) a corporation organized and existing under and by virtue of the laws of the State of Missouri, herein represented by R. A. Long, its President, witnesseth:

That, whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending
375 from Lake Charles, Louisiana to De Ridder, Louisiana, together with the usual railroad yards, depots, switches, and all other appurtenances and connections for the unloading and transporting of freight and passengers; and,

Whereas, the Lumber Company owns and operates a saw-mill at Longville, Louisiana, where it manufactures large quantities of Lumber and similar products; and,

Whereas, the Lumber Company owns large tracts of timber in the neighborhood of Longville, Louisiana, which it is cutting and manufacturing into Lumber at its saw-mill in Longville, Louisiana; and,

Whereas, for the purpose of transporting its logs from the forest to its said saw-mill at Longville, Louisiana, it has been necessary for it to construct certain logging roads from its said mill out into the forest; and,

Whereas, said Lumber company has been much hampered because of the lack of adequate facilities and accommodations for transporting its said logs to its said mill, and for transporting the products of its said mill to desirable markets; and,

Whereas, it is desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish from its said mill;

Now, therefore, it is mutually agreed between the parties hereto, as follows:

1. That for and in consideration of the sum of Seventy Five Thousand Five Hundred Twenty-four and 20/100 Dollars ($75,524.20), paid by the said Louisiana Company to the said Lumber Company, (the receipt of which is hereby acknowledged) the said Lumber Company does hereby grant, bargain, sell and convey to the said Louisiana Company, its successors and assigns, all of its logging roads, tram roads, spurs and connections, together with all cars, engines, tools, equipment and appurtenances of every kind and character therewith connected.

2. The Louisiana Company shall for the period, and upon the terms, limitations and conditions hereinafter expressed, furnish to the Lumber Company all the necessary cars, engines, and other appurtenances and equipments, (hereinafter for brevity and convenience called "equipment") for transporting the products of said Lumber Company to its mill at Longville, Louisiana. The Louisiana Company shall place said equipment upon the spur tracks and logging roads at the points at which the Lumber Company shall from time to time be cutting timber to be transported on said cars to its mill at Longville, Louisiana; said Lumber Company shall receive said equipment at said points and shall perform all the work and render all the services necessary to the loading of said logs and products upon said cars free of expense and charge to the said Louisiana Company; that after said cars are loaded with logs and products of said forest then said Louisiana Company shall receive said cars and equipment so loaded as aforesaid, and shall transport the same to the mill of said Lumber Company at Longville, Louisiana.

3. The movement of said equipment and the placing
376 thereof on said spurs shall be made in accordance with an agreement hereinafter to be agreed upon between the Superintendent of *of* said Louisiana Company and the Superintendent of said Lumber Company, in such manner and upon such conditions as shall be mutually agreeable to each.

4. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies, and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

5. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension to any of the spurs herein purchased from said Lumber Company, and said Lumber Company is to furnish all ties, and bear all expense connected with the construction of said extensions.

6. In the event that it becomes necessary in order to make repairs upon any of said logging equipment, to take same into Longville, Louisiana, said Lumber Company shall have the right to take said logging equipment, with its own crews, into Longville, Louisiana, over the line of said Louisiana Company without any additional expense to the said Lumber Company, the movement of such equipment to be made after first obtaining permission from the Super-

intendent of the said Louisiana Company, who is hereby required to furnish this permission when requested.

7. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company, and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of said Lumber Company.

8. During the term of this agreement the Lumber Company will ship or cause to be shipped, over the line of railroad of said Louisiana Company to the terminus of said Line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred per cent. (100%) of the aggregate products of its mill, or mills, as are now located or may hereafter be located on the line of said Louisiana Company, or any of its branches, to be carried by said Louisiana Company at the regular published tariff rates of said Louisiana Company, and filed with the Inter-State Commerce Commission.

9. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration and may select one arbitrator, and the other party shall, within ten (10) days after notice of the selection of such arbitrator by the other party itself select an arbitrator, notifying the other party of that fact; and within ten (10) days thereafter the two arbitrators then selected shall, if they can not agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the
377 event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten (10) days from the date of their selection, then the parties hereto shall select new arbitrators who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two other arbitrators shall select another third arbitrator, and so on.

10. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of, and be obligations upon, the successors and assigns of either or both of the parties hereto.

This done and signed in duplicate at Bonami, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By C. B. SWEET, *Vice-Pres.*
LONGVILLE LUMBER COMPANY,
By R. A. LONG, *President.*

United States Commerce Court. Filed March 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by R. A. Long, its President, and the Calcasieu Long Leaf Lumber Company (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice Pres. Witnesseth:

Whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances together with connections at Lake Charles with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company and the St. Louis Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company and at De Ridder with the Kansas City Southern Railway Company and the Gulf, Colorado & Santa Fe Railroad Company; and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at Fayette, extending in a Northwesterly direction a distance of nine (9) miles, more or less, to Camp Curtis—also approximately nine (9) miles of logging spurs beyond Camp Curtis; and

Whereas, The Lumber Company owns and operates a saw mill at Lake Charles, Louisiana, and owns a large amount of timber
378 land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at Lake Charles, and there convert the same into lumber; and

Whereas, Said Lumber Company has been much hampered because of the lack of adequate railway facilities and accommodation for transporting its logs to its said mill and for transporting the products of its said mill to desirable market; and

Whereas, It is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish—

Now, therefore, it is mutually agreed between the parties hereto, as follows to wit:

1. The Louisiana Company shall for the period and upon the terms, limitations, and conditions hereinafter expressed, furnish to the Lumber Company all of the necessary engines, cars and other appurtenances and equipment (hereinafter called, for brevity and convenience, equipment) for transporting the products of said Lumber Company from its lumber camps to its mills at Lake Charles, Louisiana.

. The Louisiana Company shall place the said equipment upon spur tracks at the junction point of said spur tracks with main of said Louisiana Company at the various lumber camps along main line of said Louisiana Company as directed by said Lumber npany.

. The movement of said equipment and the placing thereof on spurs shall be made in accordance with an agreement hereafter e agreed upon between the Superintendent of said Louisiana npany and Superintendent of said Lumber Company, in such nner and upon such conditions as shall be mutually agreeable ach.

. The Said Lumber Company shall take charge of said equip- t and manage and control the same immediately upon its being ed upon said spurs, as hereinabove provided, and shall load the ducts of said Lumber Company upon said equipment and re- the same to the main line of said Louisiana Company, there e taken in charge by the employees of said Louisiana Company, transported to the mills of said Lumber Company.

. The Lumber Company shall receive said cars from the Louis- a Company at the places aforesaid subject to the rules of the ter Car Builders Association as far as they are applicable to the ditions and circumstances of said companies and the expense of repairs caused or made necessary by said Lumber Company ll be borne by said Lumber Company.

. The Louisiana Company shall furnish to said Lumber Com- y all steel rails of suitable class, necessary to make any extension extensions to any of the spurs of said Louisiana Company, said mber Company to furnish ties and bear all expenses connected h the construction thereof.

. In the event that it becomes necessary in order to make repairs n any of said logging equipment, to take the same into Lake Charles said Lumber Company shall have the right to take said logging equipment, with its own crews into Lake Charles over the line of said Louisiana Company without any ad- onal expense to the said Lumber Company; the movement of h equipmenut to be made after first obtaining permission from Superintendent of the Louisiana Company, who is hereby re- red to furnish this permission when requested.

. The Lumber Company hereby agrees that it will be responsi- to the Louisiana Company and will hold it harmless and in- nify it against all loss and damage to persons or property caused the operation of any of said equipment while being operated by in possession of the lumber Company.

. During the term of this agreement the Lumber Company will p, or cause to be shipped, over the line of railroad of the Louisiana mpany to the terminus of said line or to the connection of said e of the Louisiana Company with other railroads, there to be ivered to connections with other carriers, one hundred (100%) cent. of the aggregate products of its mill or mills as are now ated or may hereafter be located on the line of said Louisiana mpany, or any of its branches to be carried by said Louisiana

Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party, shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notify the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall if they cannot agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of the said three arbitrators, shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either of the parties hereto.

This done and signed, in duplicate, at Lake Charles, Louisiana, the day and years first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
CALCASIEU LONG LEAF LUMBER COMPANY,
By C. B. SWEET, *V.-P.*

380 (Filed in Clerk's Office, Mar. 22, 1913.)

Agreement made this 13th day of October, A. D., 1906, by and between the Colorado Southern, New Orleans and Pacific Railroad Company, hereinafter called the "Colorado Company," party of the first part, the St. Louis and San Francisco Railroad Company, hereinafter called the "Frisco Company," party of the second part, the Louisiana and Pacific Railway Company, hereinafter called the "Louisiana Company," party of the third part, the King-Ryder Lumber Company, hereinafter called the "King Company," party of the fourth part, the Hudson River Lumber Company, hereinafter called the "Hudson Company," party of the fifth part, the Calcasieu Long Leaf Lumber Company, hereinafter called the "Cal-
381 casieu Company," party of the sixth part, and the Long-Bell Lumber Company, hereinafter called the "Long Bell Company," party of the seventh part; witnesseth:

That, whereas, the Colorado Company is a railroad corporation organized and existing under the laws of the State of Louisiana,

and is constructing a line of railroad in the State of Louisiana running in a general easterly and westerly direction and which will pass near the village of Ramsay in Calcasieu Parish, and which will reach directly and through its connections a large number of markets wherein the products of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company or all companies owned and controlled by either or all of said companies can be sold, and

Whereas, the Frisco Company is a railroad corporation organized and existing under the laws of the State of Missouri, and controls by ownership of stock the Colorado Company, and

Whereas, the Louisiana Company is a railroad corporation organized and existing under the laws of the State of Louisiana, and is to be constructed and operated from De Ridder to near Ramsay in Calcasieu Parish, Louisiana, and may be extended or construct branches to other points. Its line of railroad will connect with the line of railroad of the Colorado Company near Ramsay and will largely traverse the timber lands of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company and the companies owned or controlled by either or all of them and in connection with the railroad of the Colorado Company and of the Frisco Company will furnish railway facilities for the transportation of the lumber of all of said lumber companies from the forest to the different mills of all of said lumber companies on said line of railroad, and the transportation of the products thereof to the markets which all of said lumber companies will desire to reach, and

Whereas, the said King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company are each organized under the laws of the State of Missouri and each owns and controls large tracts of timber lands in the Parish of Calcasieu, State of Louisiana, all of which are tributary to the said proposed line of railroad of the Louisiana Company, and each is extensively engaged in cutting the timber on said land and marketing the products thereof, and

Whereas, the transaction of the business of all of said lumber companies is hampered and made less profitable than it should be because of lack of adequate railway facilities and means of transportation of the timber from the forest to their mills and for lack of railway facilities and means by which the products of said timber can be transported from the mills to the most advantageous markets. For the proper, economical and profitable conduct of their business the said lumber companies have arranged with the Louisiana Company to construct and operate its said proposed line of railway. 'In furtherance of this purpose the Louisiana Company, the King
382 Company, the Hudson Company, and the Calcasieu Company have requested the Colorado Company to permit the Louisiana Company to make a track connection with its line near Ramsay and to enter into this agreement, and

Whereas, the Long Bell Company is a corporation organized and existing under the laws of the State of Missouri, and it owns and controls the property and franchises of the said King Company,

Hudson Company, and Calcasieu Company through stock ownership thereof, and has also requested the Colorado Company to permit the Louisiana Company to make such track connections with its line and to enter into this agreement, and

Whereas, where the term "Lumber companies" is used in this agreement it means the King Company, Hudson Company, Calcasieu Company and the Long Bell Company and all lumber companies controlled by them by the ownership of stock or otherwise, and

Whereas, the several parties hereto, because of the mutual advantages accruing to them hereby, are willing to enter into this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of One Dollar ($1.00) to each of the parties hereto by the other parties paid, the parties hereto have covenanted and agreed and do covenant and agree with *the* other as follows:

First. The Louisiana Company covenants and agrees that it will, with all convenient speed and dispatch, construct its said railroad and provide it with the necessary side and spur tracks and appurtenances necessary to the railway ready for the operation of trains thereover from De Ridder, Louisiana, to near Ramsay, Louisiana, and to there connect said line with the line of railway of the Colorado Company, in the Parish of Calcasieu.

Second. The Colorado Company hereby covenants and grants to the Louisiana Company, during the existence of this agreement the right to connect the above described line of railway of the Louisiana Company with the line of railway of the Colorado Company at such convenient point near Ramsay as shall be designated by the Colorado Company, and also the right thereafter for a like term to operate at and over the point of connection under such rules and regulations therefor as shall from time to time be adopted by the Colorado Company.

Third. The Colorado Company and the Louisiana Company agree that during the existence of this agreement that they will interchange business with each other at said point of connection of their respective lines and by means thereof will establish a through line of railway with traffic thereover on the basis of the divisions of rates as hereinafter set forth.

Fourth. The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company covenant and
383 agree with the Louisiana Company for its benefit and that of the Colorado Company and of the Frisco Company, to ship and cause to be shipped each and every month during the existence of this agreement over the line of railway of the Louisiana Company from the forest to the mills of the said named lumber companies and all companies owned or controlled by them or either of them all of the timber cut by all of said companies from all their lands (including all lands controlled directly or indirectly by them of by any of their subsidiary companies or by any companies in which they hold controlling interest) which they or either of them now own or may hereafter acquire along or contiguous to the said line of railroad of

the Louisiana Company and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection near Ramsay over the line of railroad of the Louisiana Company, and then over the line of railway of the Colorado Company and of the Frisco Company and their connections to the points of destination thereof. And the Louisiana Company covenants and agrees with the Colorado Company and with the Frisco Company during the existence of this agreement to deliver to the Colorado Company and to the Frisco Company at said point of connection near Ramsay said amount of at least fifty per centum (50%) of all the products of said mills as hereinbefore mentioned, for the purpose of having same transported from the said point of connection over the lines of the railway of the said Colorado Company and the Frisco Company and their connections to the points of destination thereof; provided, however, that if hereafter the King Company, the Hudson Company, the Calcasieu Company or the Long Bell Company shall acquire timber lands along or contiguous to the line of railway of the Louisiana Company, the owners of which shall require, as a condition of the sale thereof, that all or part of the timber or products of the timber from the same shall be shipped over some other line or lines of railway than the line of railway of the Colorado Company, them, and in such case the provisions of this agreement shall not apply to such lands or to the timber or products of the timber therefrom in so far as there may be a necessary conflict with the said condition of sale of such after acquired lands.

Fifth. The Colorado Company and the Frisco Company agree during the existence of this agreement to accept from the Louisiana Company all shipments by it offered and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Louisiana Company with cars as requested by it from time to time to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the King Company and Hudson Company, the Calcasieu Company and the Long Bell Company and of all companies owned or controlled by them or either of them. It is understood and agreed, however, that if the Colorado Company *of* the Frisco Company shall fail during any calendar month to furnish the number of cars required
384 by the Louisiana Company and necessary in order to transport fifty per centum (50%) of the products of the said mills during said month, then in such event the Colorado Company or the Frisco Company shall not be obliged thereafter to make up such deficit of cars in any such calendar month. Nor shall the Louisiana Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Colorado Company or Frisco Company to furnish cars in said calendar month.

Sixth. The Colorado Company, the Frisco Company and the Louisiana Company agree each with the other that they will enter into joint tariffs relating to the joint traffic over their respective lines and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

Seventh. It is further agreed that no per diem charges shall be made by either *of* the Colorado Company, or Frisco Company *of* the Louisiana Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six days after the expiration of said period of six days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

Eighth. The cost and expense of constructing, manufacturing and renewing such connecting, interchange or side tracks as may be necessary to properly handle the business of the Louisiana Company at said point of connection near Ramsay shall be borne and paid jointly and equally by the Louisiana Company and the Colorado Company.

Ninth. The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company further covenant and agree with the Louisiana Company and the Colorado Company and the Frisco Company to deliver or cause to be delivered to the Louisiana Company for transportation over the railway of the Colorado Company and of the Frisco Company to points on or reached via the railways or some of them constituting the railway lines or system of which the Colorado Company or the Frisco Company shall form a part, at least fifty per centum (50%) of all outbound shipments *or* lumber and other prpoducts of the mills of the said King Company, Hudson Company, Calcasieu Company and Long Bell Company and of all companies owned or controlled by them or either of them, each and every month during the existence of this agreement, and in every such case they shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Colorado Company and the Frisco Company are a part, such hauls as shall yield to them the largest revenue.

It is agreed between the Louisiana Company, the Colorado Company and the Frisco Company that the Colorado Company and the Frisco Company shall have the exclusive right to fix and
385 determine all interstate rates applicable over the lines of the Louisiana Company and of the Colorado Company and of the Frisco Company and their connections governing all such shipments and all other shipments both outbound and inbound, whether *or* all of the said lumber companies or of the public generally.

Tenth. In respect to the division of freight rates between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies hereby agree to the following division during the existence of this agreement.

On all lumber shipments originating on the line of the Louisiana Company, the Louisiana Company shall receive thirty-five per centum (35%) of the through rate, with a maximum of five and one-half *cents* per hundred pounds.

It is agreed that the above division of through rates shall include delivery of shipments to the Colorado Company or to the Frisco Company and are based upon the present through rates. It is

agreed that if at any time, during the existence of this agreement the through rates shall be reduced, the maximum of five and one half cents per hundred weight due to the Louisiana Company shall be reduced in proportion to the reduction of the through rates.

Where lumber shipments, made by the lumber companies, originate on the line of the Louisiana Company and are transported over the line of the Colorado Company from the point of connection between the lines of the two companies near Ramsay to near Kinder in Calcasieu Parish on the line of railway of the St. Louis, Watkins and Gulf Railway Company and delivered to the latter company at or near Kinder, the Colorado Company will make a rate for the transportation over its line, from the point of connection near Ramsay to the point of connection at or near Kinder, of not to exceed one cent per hundred pounds on such lumber shipment. But as to such shipments the division of the through rate hereinbefore agreed to and the maximum of five and one-half cents per hundred pounds shall not apply and as to such shipments the Louisiana Company shall not receive from the Colorado Company any division of the through rate and such shipments from Ramsay to Kinder shall not be computed or considered as part of the fifty per centum (50%) of shipments to be made over the line of railroad of the Colorado Company and the Frisco Company and their connections.

The Colorado Company and the Frisco Company agree that they will, at all times during the existence of this agreement publish for all territory east of the Mississippi River and north of the Ohio River and points on and west of the Mississippi River on the lines of the Frisco and Rock Island Systems and their connections the same freight rates from points on the Louisiana Company's line as are or shall be in effect from Eunice, La., on the Colorado Company's line.

On all commodities of traffic other than lumber which may be interchanged between the Louisiana Company and the Colo-
386 rado Company and the Frisco Company the said three companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair, and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana.

Eleventh. The Louisiana Company and the Colorado Company and the Frisco Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of the other companies not parties hereto which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinbefore provided for, and that no cars of either company shall be used locally by the other companies.

Twelfth. The Louisiana Company and the Colorado Company and the Frisco Company each further covenant and agree to indemnify and save harmless the other from any and all loss of and damage to its cars or equipment or to cars or equipment belonging to other

companies or persons which either company may received from the other company, which may occur while such cars or equipment are on the railroad of the indemnifying company and in case of any damage to said cars or equipment while on its said line each of the said companies agree to properly repair the same without delay, and if it fails or neglects to repair the same within a reasonable time and to the satisfaction of the other company, then the other company may make such repairs and the cost thereof with ten per centum (10%) thereon additional thereto shall be paid to the company making such repairs by the other company immediately upon the receipt of statement showing the amount of such cost:

Thirteenth. This agreement and all the terms and conditions, rights and obligations hereof shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

Fourteenth. The Colorado Company shall proceed diligently to construct and put into operation its line of railroad passing near Ramsay and to make railroad connections with other line or lines of railroad so that the freight herein referred to may be transported by said Colorado Company and Frisco Company, and their connections, and as soon as the railroad of the Colorado Company has been constructed and put into operation to such extent and for such purposes then this agreement shall become effective and it shall be and remain in full force and effect for a period of fifteen (15) years hereafter, reckoning the said fifteen years from the date of the execution of this agreement; or as long as the lumber companies or either or them shall operate their mills in said Parish of Calcasieu.

In witness whereof, each party hereto has caused this
387 agreement to be signed by its proper officer and its corporate seal to be hereto affixed and attested the day and year first above written.

Executed in seven parts.

COLORADO SOUTHERN, NEW ORLEANS AND PACIFIC RAILROAD COMPANY.

[SEAL.] By C. C. CORDILL, *President*.

Attest:

WM. C. DUFOM, *Secretary*.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

[SEAL.] By A. J. DAVIDSON, *President*.

Attest:

F. H. HAMILTON, *Secretary*.

LOUISIANA AND PACIFIC RAILWAY COMPANY,

[SEAL.] By R. A. LONG, *President*.

Attest:

F. J. BANNISTER, *Secretary*.

KING-RYDER LUMBER COMPANY,

[SEAL.] By R. A. LONG, *President*.

Attest:
F. J. BANNISTER, *Secretary.*

HUDSON RIVER LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

CALCASIEU LONG LEAF LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

LONG BELL LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

388 United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

(Coat-of-Arms.)

STATE OF LOUISIANA:

I, the undersigned Assistant Secretary of State, of the State of Louisiana, do hereby certify that the annexed and following nine (9) pages contain a true and correct transcript of certified copy of charter of "Louisiana and Pacific Railway Company", of Bonami, Louisiana, as is shown by comparing the same with the certified copy on file in this office and recorded in book "Records of Charters", No. 29, Folio 230, under date of August 6th, 1904; and, certified copy of amendment to Article III of the charter of "Louisiana and Pacific Railway Company", of Bonami, Louisiana, as is shown by comparing the same with the certified copy on file in this office and recorded in book, "Record of Charters", No. 47, Folio 424; under date of May 1st, 1907; and, certified copy of proceedings of stockholders' meeting of "Louisiana and Pacific Railway Company", increasing the amount of the capital stock from $30,000.00 to $200,000.00, as is shown by comparing the same with the certified copy on file in this office and recorded in book "Record of Charters" No. 64, Folio 146, under date of February 21st, 1910.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 24th day of September A. D. 1910.

[Seal State of Louisiana, Secretary of State.]

EUGENE J. McGIONEY,
Assistant Secretary of State.

Charter of the Louisiana & Pacific Railway Company.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

Be it known, That on this 6th day of June, A. D. 1904, before me, Henry E. Hall, a notary public in and for the Parish of Calcasieu, State of Louisiana aforesaid, duly commissioned and qualified, and in the presence of the witnesses hereinafter named, and undersigned, personally came and appeared the several persons whose names are hereunto subscribed, who severally declared, that availing themselves of the laws of the State of Louisiana, in such cases made and provided, they have contracted and agreed and do, by these presents, covenant and agree and bind themselves, as well as such persons as may hereafter become associated with them, to form and constitute a corporation for the objects and purposes and under the articles and stipulations, to wit:

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Article I.

The name of the said corporation shall be the "Louisiana & Pacific Railway Company," and under its said corporate name it shall have power and authority to have and enjoy succession for the full term of twenty-five (25) years from and after the date hereof; to contract, sue and be sued; to make and use a corporate seal, to hold, receive, purchase and convey under their corporate name property, both real and personal; to name and appoint such managers, directors and officers, as their officers, and their interests and convenience may require; to make and establish such by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper.

Article II.

The domicile of said corporation shall be at Bonami, in the Parish of Calcasieu, State of Louisiana; all citations or other legal process shall be served upon B. H. Smith, Manager of said corporation, or, in the event of his absence upon any agent of the said corporation.

Article III.

The object and purposes for which this corporation is established, and the nature of the business to be carried on by it, are declared and specified to be, to construct, maintain and operate, or to lease and operate a railroad commencing at Bonami, Calcasieu Parish, State of Louisiana, in an easterly direction, through Bonami Junction, in said Parish and State; to lease and operate railway and steamship lines as common carriers of freight.

Article 4.

The capital stock of said corporation is hereby fixed at the sum of Thirty Thousand Dollars ($30,000.00), divided into and repre-

sented by One Hundred (100) shares of the par value of Three Hundred Dollars (300.00) each. Said stock shall be paid for in installments of such amounts and at such times as the Board of Directors may determine, but any part or parcel of said stock may be issued by said Board of Directors at no less than par value, in payments of labor done or property actually received by the said corporation. Said stock books shall be kept by said corporation.

Article V.

All the corporate powers of said corporation shall be vested and exercised by a Board of Directors, to be composed of six stockholders, to be elected annually on the first Tuesday in April, in each year, all such elections shall take place by ballot at the general office of the company in Bonami, Calcasieu Parish, State of Louisiana, and each share of stock entitles the owner or holder thereof to one vote. The six stockholders receiving the highest number of votes cast shall be declared elected. The six (6) directors so chosen shall immediately thereafter proceed to choose from among their number a President, two Vice-Presidents, Secretary and Treasurer, who shall be vested with such power as given and defined by the by-laws of said corporation.

Article VI.

Whenever this corporation shall be dissolved either by limitation or any other cause, the affairs shall be liquidated by three stockholders to be appointed as Commissioners at a general meeting of the stockholders to be convened for such purpose, after thirty days' previous notice shall have been given by advertisement in one or more newspapers of general circulation and published in the Parish of Calcasieu, State of Louisiana, and a majority in amount of the capital stock of said corporation shall be required to elect, each share shall be entitled to one vote in person of by proxy. Said Commissioners shall remain in office until the affairs of the said corporation shall have been fully settled up and liquidated, and in case of death of one or more of said commissioners, the vacancy shall be filled by the election of surviving Commissioners.

Article VII.

This act of incorporation may be modified, changed or altered, or said corporation may be dissolved with the assent of two-thirds of the capital stock represented at any general meeting of the stockholders convened for such purpose, after thirty (30) days' previous notice shall have been given in one or more newspapers of general circulation and published in Parish of Calcasieu, State of Louisiana.

Article VIII.

No stockholder shall ever be held liable or responsible for the contracts or faults of said corporation in any further sum than the unpaid balance due on shares of stock owned by him, nor shall any mere informality in the organization have the effect of rendering

this charter null or of exposing a stockholder to any liability beyond the amount due on his stock.

Article IX.

R. A. Long, C. B. Sweet, B. H. Smith, W. F. Ryder, Robert Stack, and F. J. Bannister are hereby declared the Directors of this Company, to act until the first Tuesday in April, A. D. 1905, R. A. Long, as President, B. H. Smith, 1st Vice-President, Robert Stack and C. B. Sweet, 2nd Vice-Presidents, W. F. Ryder, Secretary, and Fred J. Bannister, Treasurer, have been chosen and selected as the first Board of Directors and Officers of said corporation to
391 serve as such until the 1st Tuesday in April, A. D. 1905, or until their successors shall have been elected.

Said corporation shall commence business as soon as all shares shall have been subscribed for.

This done and passed in my office in the town of Bonami, Parish of Calcasieu, State of Louisiana, in the presence of R. H. Mathis and O. C. Murray, competent witnesses of lawful age, both of Bonami, who hereunto sign their names with the said appearers and me, Notary Public, on the day and date aforesaid.

R. A. LONG.
C. B. SWEET.
B. H. SMITH.
W. F. RYDER.
ROBT. STACK.
F. J. BANNISTER.

Witnesses:

R. H. MATHIS.
O. C. MURRAY.

HENRY E. HALL,
Notary Public.

The stock of the above corporation is held by the following persons and in the amounts set opposite their names:

R. A. Long, Seventy-five (75) Shares.
C. B. Sweet, Five (5) Shares.
B. H. Smith, Five (5) Shares.
W. F. Ryder, Five (5) Shares.
Robert Stack, Five (5) Shares.
F. J. Bannister, Five (5) Shares.

Have examined the above and foregoing "act of incorporation," and finding nothing therein contrary to law, I hereby approve.

This done and signed officially at my office in the City of Lake Charles, Louisiana, on this 18th day of June, A. D. 1904.

JOSEPH MOORE,
Fifteenth (15) *Judicial District of the State of Louisiana.*

STATE OF LOUISIANA,
Parish of Calcasieu:

I hereby certify that the within is a true copy of the original on file in my office and recorded in book 13 of Mortgages on page 80 et seq.

In testimony whereof witness my official signature and seal on this 21st day of June, A. D. 1904.

(Signed) A. S. GOSSETT,
[SEAL.] *Deputy Clerk.*

392 *Amendment of Article III of the Charter of Louisiana & Pacific Railway Company.*

At a regular meeting of the Louisiana & Pacific Railway Company regularly called and duly held at the office of said Company at Bonami, Calcasieu Parish, Louisiana, on the 12th day of March, A. D. 1907, all of the Capital stock of said Company being represented at said meeting, on motion of C. B. Sweet, duly seconded, the following resolution was adopted:

"That Article III of the Charter of this Company be amended so as to read as follows: "The objects and purposes for which this corporation is established are to acquire right of way; to acquire, construct, maintain and operate a railroad, or railroads, and branches thereof, in the State of Louisiana as a common carrier of freight and passengers; to acquire by lease or otherwise, and to operate as common carriers of freight and passengers, steamship lines, and to carry and transport upon such railway and steamship lines, as may be operated by this corporation, express, United States Mail, and all other articles usually conveyed and transported by railroads and steamship lines; to construct and operate along its right of way telegraph and telephone lines for the transaction of its business; to buy, sell, lease, and otherwise acquire and deal with and in real estate and other property of every kind and character necessary and incident to the carrying out of the purposes of this corporation; to borrow money and issue evidences of indebtedness, and to convey, pledge and mortgage its property, real, personal and mixed, for the purpose of securing its indebtedness; and generally to do all things necessary and proper which may be incident to any of the purposes herein recited, and to have and exercise all the franchises, powers, rights, privileges and immunities conferred by law upon corporations created and organized for the purposes aforesaid."

The said resolution was unanimously adopted by the stockholders of said Company, all of said stock being voted in favor — said amendment.

There being no further business before the meeting, upon motion duly made and seconded, same was declared adjourned.

STATE OF MISSOURI,
County of Jackson:

I, F. J. Bannister, Secretary of the Louisiana and Pacific Railway Company, do hereby certify that the above and foregoing is a true and perfect copy of the Record Book of the Louisiana and Pacific Railway Company of the amendments made and adopted to Article III of Charter at said meeting of the stockholders, held on the 12th day of March, A. D. 1907.

[SEAL.] F. J. BANNISTER,
Secretary of Louisiana and Pacific Railway Company.

393 STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk of 15" Jud. Dist. Court.

I hereby certify that the above is a true and correct copy of a certain amendment of Charter of the Louisiana and Pacific Railway Co. filed for record in this office on the 25th day of April and recorded in Book 21 of Mortgages, page 448, on the 26" day of April, 1907.

In testimony whereof witness my official signature and seal at Lake Charles, La., this 26" day of April, 1907.

(Signed) M. E. CRAWFORD,
[SEAL.] *D'y Clerk.*

Certificate of Proceedings of Stockholders' Meeting of the Louisiana and Pacific Railway Company.

We, the undersigned, Chairman and Secretary of the stockholders' meeting of the Louisiana & Pacific Railway Company convened and held on the eighth day of February, 1910, do hereby certify that a meeting of the stockholders of the Louisiana & Pacific Railway Company was duly convened and held at the office of the Company in the town of De Ridder, Louisiana, on the eighth day of February, 1910; that a notice of said meeting was duly given and that all of the stockholders of said company signed and accepted service of said notice and consented to the meeting held for the purpose mentioned in said notice, and waived the issuance of any other notice and waived the publication of notice of said meeting, which said notice and waiver by stockholders holding all of the shares of stock in said company was duly filed with the Secretary of said meeting; that said meeting was organized by the election of C. B. Sweet as Chairman and Jennie L. Sweet as Secretary of said meeting; that the following resolution was submitted to said meeting, to-wit:

"Resolved, That the capital stock of this company be increased from $30,000.00 to $200,000.00."

That a vote was taken on said resolution and that upon the canvassing of votes it duly appeared that persons holding or representing not less than two-thirds of the capital stock of the corpora-

tion had voted in favor of the proposed increase of stock. That is to say, it duly appeared that all of the stockholders of said company had voted in favor of increasing said capital stock from $30,000.00 to $200,000.00.

We further certify that the amount of the capital stock of said corporation at the time said vote was taken was $30,000.00; the number of the holders of said stock was six; that the amount to which it was proposed and agreed to increase said capital stock was $200,000.00, and the number of shares to which it was proposed and agreed to be increased was 666⅔ shares; that the amount
394 of the shares of stock whose holders had voted in favor of said change was $30,000.00 and the number of shares whose holders had voted in favor of said change was 100 shares, and the amount and number of shares which voted against said change was none, and that the whole amount of debts and liabilities of said corporation is $579,120.03.

(Signed) C. B. SWEET,
Chairman of Stockholders' Meeting.

(Signed) JENNIE L. SWEET,
Secretary of Stockholders' Meeting.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

C. B. Sweet and Jennie L. Sweet being duly sworn upon their oaths do say that they were Chairman and Secretary respectively of the stockholders' meeting of the Louisiana & Pacific Railway Company mentioned and described in the above and foregoing certificate; and that the statements made and contained in the above and foregoing certificate are true.

(Signed) C. B. SWEET.
" JENNIE L. SWEET.

Subscribed in my presence and sworn to before me this 8th day of February, 1910.

(Signed) ALBERT I. SHAW.
[SEAL.] *Notary Public in and for Calcasieu Parish, Louisiana.*

395 (Filed in Clerk's Office, March 22, 1913.)

Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company; of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Longville Lumber Company; of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and King-Ryder Lumber Company, and of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Hudson River

Lumber Company, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 10th day of April, 1913.

[Seal Interstate Commerce Commission, 1887.]

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission

DAVIS EXHIBIT No. 8.

Contract File 3711, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907. Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "Railway Company" a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Calcasieu Long Leaf Lumber Company, hereinafter called the "Lumber Company", a corporation organized under the laws of the State of Missouri, herein represented by S. T. Woodring, its General Manager, Witnesseth:

Whereas the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Lake Charles, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps and

396 Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now, therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Fifteen Thousand Six Hundred Forty-five and 01/100 Dollars, ($15,645.01) to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 71, wheel rod	9,479.81	
Engine No. 51, wheel shay	3,500.00	
4 Acetylene Headlights	38.46	
		$13,018.27
3 Tank Cars	1,330.62	
3 Flat Cars	450.00	
Toggle Chain	846.12	
		2,626.74
		$15,645.01

The railway company also agrees to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Camp Curtis, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Camp Curtis to Lake Charles, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Camp Curtis.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph sixth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

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Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

CALCASIEU LONG LEAF LUMBER COMPANY,

[L. S.] By S. T. WOODRING, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 9.

Contract File 3710, Auditor's Office.

Contract Between Louisiana and Pacific Railway Company and Longville Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907. Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "railway company," a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Longville Lumber Company, hereinafter called the "lumber company", a corporation organized under the laws of the State of Missouri, herein represented by B. H. Smith, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date July 1, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Longville, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

Whereas, although the railway company had furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet at a hearing before the Interstate Com-
398 merce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Thirty-two Thousand Five Hundred Twnety-eight and 29/100 ($32,528.29) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 95.....	9,192.81	
Engine No. 86.....	9,192.81	
Engine No. 97.....	8,544.90	
		26,930.52

1 Steel Car.....	559.20		
2 Tank Cars.....	1,686.02		
1 Cattle Car.....	250.00		
8 Skidder Cars.....	3,102.55		
		5,597.77	
			$32,528.29

The Railway Company also agrees to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Vandercook, at and for the price of thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the first day of July, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph two of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Vandercook to Longville, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Vandercook.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph fifth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its
399 General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

LONGVILLE LUMBER COMPANY,

[L. S.] By B. H. SMITH, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 10.

Contract File No. 3709, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and King-Ryder Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907.
Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "railway company", a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the King-Ryder Lumber Company, hereinafter called the "Lumber Company", a corporation organized under the laws of the State of Missouri, herein represented by W. L. Prickett, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Bonami, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Com-
400 merce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper.

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper and in consideration of the sum of Twenty-six Thousand Eight Hundred Sixty-eight and 23/100 ($26,868.23) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 45, 6 wheel rod.....	$7,500.00	
Engine No. 42, 6 wheel rod.....	4,500.00	
Engine No. 41, 6 wheel rod.....	3,000.00	
Engine No. 33, 4 wheel rod.....	1,200.00	
		$16,200.00

4 Tank Cars	2,387.78	
1 Steel Car	300.00	
1 Caboose	350.00	
1 Coach	250.00	
7 Skidder Cars	3,815.45	
1 Blacksmith Car	500.00	
4 Stable Cars	2,400.00	
2 Hand Cars	60.00	
1 Push Car	25.00	
2 Stock Cars	580.00	
		10,668.23
		$26,868.23

The railway company also agree to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Walla, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Walla to Bonami, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber Company to load and deliver said cars to the railway company at Walla.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

401 Paragraph sixth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

KING-RYDER LUMBER COMPANY,

[L. S.] By W. L. PRICKETT, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 11.

Contract File No. 3708, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and Hudson River Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907.
Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "Railway Company," a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Hudson River Lumber Company, hereinafter called the "Lumber Company," a corporation organized under the laws of the State of Missouri, herein represented by C. H. Dodd, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transportation — products of the lumber company from the lumber company's camps to its mills at De Ridder, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

402 Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Thirteen thousand one hundred eighty-one and 37/100 ($13,181.37) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 1, 8 wheel Shay.....	$5,000.00	
Engine No. 5, 4 wheel rod.....	3,000.00	
Engine No. 14, 4 wheel rod.....	2,000.00	
		$10,000.00

2 Hand Cars	120.00	
1 Tank Car	840.97	
4 Water Cars	1,450.00	
2 Cabooses	770.40	
		3,181.37
		$13,181.37

The Railway Company also agree to sell, transfer and deliver to the lumber company, all steel rails and track equipment, beyond the station of Bundick, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Bundick to De Ridder, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Bundick.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph sixth of said contract is annualled and cancelled.

403-745 In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolution of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

HUDSON RIVER LUMBER COMPANY,

[L. S.] By C. H. DODD, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

Note by the Clerk.

(Transcript of testimony and exhibits are omitted here in printing because printed elsewhere in separate volumes.)

746 *Order to Transfer Original Filing to Supreme Court.*

(Entered December 17, 1913.)

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

In the above entitled cause, an order having been entered allowing an appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered November 28, 1913, and the Clerk having been directed to transmit to the Supreme Court a properly authenticated transcript of the record, proceedings and papers on which said order or decree was made and entered,—

Now, pursuant to Section 2 of the Act of June 18, 1910, it is hereby ordered that the Clerk shall transmit to the Supreme Court from the files of the Commerce Court the original certified copies of exhibits filed in the proceedings before the Interstate Commerce Commission entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, or such parts of said certified copies as were not printed for the use of the Commerce Court.

By the COURT:

MARTIN A. KNAPP,
Presiding Judge.

747 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILROAD COMPANY, Petitioners,
v.
UNITED STATES OF AMERICA, Respondent, et al.

Objections to the Sufficiency of the Petition on Final Hearing.

(Filed June 2, 1913.)

Comes now the United States of America, by its counsel, on the final hearing hereof, and in accordance with the statute in such case made and provided, makes and enters the following objections to the sufficiency of the petition in the above-entitled cause, viz:

First. The Court is without jurisdiction to entertain the said petition, because the order of the Interstate Commerce Commission sought to be set aside is a negative order;

Second. The Court is without jurisdiction to review the action of the Interstate Commerce Commission in refusing to establish through routes and joint rates between the petitioner and the trunk lines;

Third. The Court is without jurisdiction or power to issue an order in the nature of a writ of mandamus or to order specific performance of the contracts;

Fourth. There is a misjoinder of parties petitioners and respondents;

Fifth. The petition does not state any cause of action against the respondent.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

June 2, 1913.

748 *Journal Entries.*

Case- Nos. 90, 91, 92 and 93.

No. 90.

LOUISIANA & PACAFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther

M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

749–778 Proceedings of June 5, 1913.

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Garwood on behalf of the petitioners.

Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Garwood appearing on behalf of the petitioners. Thereupon Mr. Garwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Thereupon the causes were taken under advisement by the Court.

Note By the Clerk.

(Opinion by Mack, J., Nov. 26, 1913, is omitted here in printing because printed elsewhere in separate volume.)

779 *Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 90.

LOUISIANA & PACAFIC RAILWAY Co. et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had, it is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East and West Texas Railway Company;
780 Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas

& Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be and they are hereby, notified and required to cease and desist and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service" be and the same is hereby vacated and set aside as to the petitioners herein.

By the Court.

November 28, 1913.

MARTIN A. KNAPP.
Presiding Judge.

781 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Affidavit.

(Filed November 29, 1913.)

Blackburn Esterline, being duly sworn, says that he is Special Assistant to the Attorney General of the United States, and has had charge of the interests of the United States in the above-entitled cause under the direction of the Attorney General.

That none of the following named companies, viz:
Louisiana Western Railroad Company,
Morgan's Louisiana & Texas Railway and Steamship Company,
New Orleans, Texas and Mexico Railroad, and the
St. Louis and San Francisco Railroad Company;

named as respondents to the petition has ever appeared, by counsel or otherwise, at any time at any of the hearings of the said cause, and has left the defense thereof entirely in the charge of the respondent, the United States.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 29th day of November A. D. 1913.

[SEAL.]

J. H. MACKEY,
Notary Public, D. C.

782 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Summons and Severance.

(Filed November 29, 1913.)

To Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, and the St. Louis and San Francisco Railroad Company:

You are hereby invited to join with the United States of America and the Interstate Commerce Commission in an appeal this day prosecuted from the final order or decree of the Commerce Court entered November 28, 1913, in the above-entitled cause, in which you are a party respondent, to the Supreme Court of the United States, to reverse the judgment rendered in the said cause. In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute said appeal without joining you as parties.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

783 Service of a true copy of the foregoing notice is hereby acknowledged this 29th day of November, A. D. 1913.

CHAS. H. BATES,
Agent at Washington for Louisiana Western R. R. Co.
CHAS. H. BATES,
Agent at Washington for Morgan's Louisiana & Tex. R. R. & S. S. Co.
WARREN N. AKERS,
Agent at Washington for New Orleans, Texas & Mexico R. R. Co.
WARREN N. AKERS,
Agent at Washington for St. Louis & San Francisco R. R. Co.

784 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATE OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana and Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, The St. Louis and San Francisco Railroad Company, Respondents, and Interstate Commerce Commission and Atchison, Topeka & Santa Fe Railway Company, Intervening Respondents.

Petition for Appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervenor, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervenor, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to
785 the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

786 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

787 III.

In not dismissing the petition for the (*a*) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Louisiana and Pacific Railway Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

788

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Louisiana and Pacific Railway Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Louisiana and Pacific Railway Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

789 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in

controlling the routing to compel the trunk lines to make allowances to the Louisiana and Pacific Railway Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may,
790 as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

791 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER COMPANY, KING-RYDER LUMBER COMPANY, CALCASIEU LONG LEAF LUMBER COMPANY, LONGVILLE LUMBER COMPANY, AND THE LONG-BELL LUMBER COMPANY, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana and Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, The St. Louis and San Francisco Railroad Company, Respondents, and Interstate Commerce Commission, and Atchison, Topeka and Santa Fe Railway Company, Intervening Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respect conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

792 *Copy.*

In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, the Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Petition for Appeal.

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, intervenors, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court
793 of the United States.

Washington, November 29, 1913.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

794 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

III.

795 In not dismissing the petition for the reason that (*a*) the same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the Commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the Commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies, the Louisiana and Pacific Railway Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

796

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap lines and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Louisiana & Pacific Railway Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Louisiana & Pacific Railway Company and the trunk lines, in order to evade the provisions of the act to regulate commerce and, simultaneously, to maintain the advantages of the parties.

X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of

bargain and sale, and with the power wielded in controlling the routing, are forcing the trunk lines to make allowances to the
797 Louisiana & Pacific Railway Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary companies by the petitioners is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission, made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Com-
798 merce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

799 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and have in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be, and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, Commerce Court.

800 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, the Atchison, Topeka & Santa Fe Railway Company, Gulf Colorado & Santa Fe Railway Company, and the Railroad Commission of Louisiana Intervenors.

Bond on Appeal.

(Filed December 5, 1913.)

Know all men by these presents, that we, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, as principals and the National Surety Company, a corporation of the State of New York, as surety are held and firmly bound unto the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company in the sum of Five Hundred Dollars ($500.00), to be paid to the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D.
801 nineteen hundred and thirteen.

Whereas, Heretofore, to wit, on the 28th day of November, 1913, in a suit pending in the United States Commerce Court, and numbered 90 on the docket of said Court wherein the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, Calcasieu Long Leaf Lumber Company, and the Long-Bell Lumber Company, were petitioners, and the United States of America, Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis and San Francisco Railroad Company, were respondents, and the Interstate Commerce Commission, The Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado & Santa Fe Railway Company, and the Railroad Commission of Louisiana, were intervenors, an order, judgment and decree was rendered against said respondents and intervenors, and

Whereas, Said The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, have appealed from said order and decree to the Supreme Court of the United States, and have obtained citation directed to the said Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington within thirty days from the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute their said appeal to effect and shall pay all costs, if they fail to
802 make their appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

THE ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
(") EVANS BROWNE,
Its Attorneys.
GULF, COLORADO & SANTA
FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
(") EVANS BROWNE,
Its Attorneys.
[SEAL.] NATIONAL SURETY COMPANY,
(Sgd.) By W. H. RONSAVILLE.

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

(Sgd.) JOHN E. CARLAND, *Judge.*

803 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.,
v.
UNITED STATES et al.

Præcipe for Record.

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition, with exhibits attached, filed January 6, 1913.

Return of service of petition on respondents, filed January 7, 1913.

Answer of the United States filed January 29, 1913.

Answer of the Interstate Commerce Commission, filed February 8, 1913.

Answer of Louisiana Western Railroad Company, filed February 6, 1913.

Demurrer of the M. L. & S. F. R. R. & S. Co., filed February 3, 1913.

Joint answer of N. O. T. & M. R. R. Co. and St. L. & S. F. R. R. Co., filed February 6, 1913.

Petition of intervention of Railroad Commission of Louisiana, filed February 10, 1913.

Order granting the same entered February 10, 1913.

Petition of intervention of A. T. & S. F. Ry Co. et al., filed February 10, 1913.

804 Order granting same entered February 10, 1913.

Journal entry on hearing to dismiss for want of jurisdiction, February 10, 1913.

Order denying motion to dismiss for want of jurisdiction, February 24, 1913.

Order designating Judge Carland to hear testimony entered March 5, 1913.

The following documents contained in the record and proceedings, viz:

1. Agreement, October 31, 1906, Louisiana Western Railroad Company, Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, attached to the petition as exhibit A, filed March 2, 1913.

2. Agreement, October 13, 1906, Colorado Southern New Orleans & Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, marked exhibit B.

3. Agreement, October 31, 1906, Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company, filed March 22, 1913.

4. Agreement, February 21, 1908, Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company, filed March 22, 1913, with the resolution, and certified copy of minutes, accompanying the same.

5. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and Hudson River Lumber Company, filed March 22, 1913.

6. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and King-Ryder Lumber Company, filed March 22, 1913.

7. Agreement, July 1, 1908, Louisiana & Pacific Railway Company and Longville Lumber Company, filed March 22, 1913.

8. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company, filed March 22, 1913.

9. Agreement, October 13, 1906, Colorado Southern, New Orleans

& Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, filed March 22, 1913.

10. Certificate of Secretary of State showing increase of the capital stock of Louisiana & Pacific Railway Company, charter of Louisiana & Pacific Railway Company and certificate thereof, amendment to article 3 of said charter, and certificate of stockholders' meeting, all filed March 22, 1913.

805 Agreement March 1, 1911, Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company; agreement March 1, 1911, between Louisiana & Pacific Railway Company and Longville Lumber Company; agreement March 11, 1911, Louisiana & Pacific Railway Company and King-Ryder Lumber Company; agreement March 1, 1911, Louisiana & Pacific Railway Company and Hudson River Lumber Company, with the certificate of the Secretary of the Interstate Commerce Commission, dated April 10, 1913.

Certified transcripts of testimony at hearings in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913.

Order of Interstate Commerce Commission, in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-*a*, filed May 10, 1913.

Certified copies of exhibits in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Objections of the United States to the sufficiency of the petition on final hearing, filed June 2, 1913.

Journal entries as to final hearing.

Opinion of the Commerce Court.

Final decree of the Commerce Court.

Affidavit of Blackburn Esterline.

Summons and severance.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A. T. & S. F. Ry. Co. et al.

Assignment of errors, same.

Order allowing appeal.

Bond of A. T. & S. F. Ry. Co., G. C. & S. F. Ry. Co.

Citation on said appeal, same.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for A., T. & S. F. Ry. Co. and G., C. and S. F. Ry. Co.

806 DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing præcipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D., nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, District of Columbia.

807 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES et al.

Hugh P. Lutz, being duly sworn, deposes and says, that on December 17th, 1913, he served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees, by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,
Notary Public.

808 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

40.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Louisiana and Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D., 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

809 Filed Nov. 29, 1913. United States Commerce Court. G. F. Snyder, Clerk.

44.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, and Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty

days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

810 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway and Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript, together with the original certified copies of exhibits filed in the proceedings before the Interstate Commerce Commission entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the Clerk's Office of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

811 In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES OF AMERICA et al., Appellants,
v.
LOUISIANA & PACIFIC RY. CO. et al.

Statement of Errors.

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge, La., Counsel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, D. C.

I concur in the above designation.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, Appellant.

812 In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES OF AMERICA et al., Appellants,
v.
LOUISIANA AND PACIFIC RAILWAY Co. et al.

Instructions to Omit Certain Matter From the Printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz.—

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission, in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified typewritten copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913, following short letter of H. M. Garwood, and the certificate of Secretary McGinty, attached thereto.

813 5. Opinion of the United States Commerce Court.

Other instructions are separately given to print in a single volume certain parts of the matter so to be omited.

JNO. W. DAVIS,
Solicitor General.

814 [Endorsed:] File No. 23,980. Supreme Court U. S., October term, 1913. Term No. 829. The United States et al., Appellant-, vs. Louisiana & Pacific Railway Company et al. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

Endorsed on cover: File No. 23,980. U. S. Commerce Court. Term No. 829. The United States and Interstate Commerce Commission, Appellants, vs. Louisiana & Pacific Railway Company et al. File No. 23,981. Term No. 830. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, Appellants, vs. Louisiana & Pacific Railway Company et al. Filed December 29th, 1913. File Nos. 23,980 and 23,981.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 831.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1915.

(23,982 and 23,983)

(23,982 and 23,983)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 831.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

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a United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, Rock Island, Arkansas & Louisiana Railroad Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition and Exhibits.

(Filed January 8, 1913.)

1 In the United States Commerce Court.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, Rock Island, Arkansas & Louisiana Railroad Company, Respondents.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners complain of the respondents, and for cause of action say:

1. That the petitioner, the Woodworth & Louisiana Central Railway Company, Limited, is a railway corporation duly chartered, incorporated and existing under the laws of the State of Louisiana, and by its charter duly empowered to construct, maintain and
2 operate or to lease and operate a railroad in the State of Louisiana as a common carrier of freight and passengers, and it now has and exercises franchises, powers, rights, privileges and

immunities conferred by law on corporations created and organized for railroad purposes.

That the Constitution and Laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Const. 1879 p. 245.

3 Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' pre-

scription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

Said petitioner operates a line of standard gauge railroad
4 from Woodworth, Louisiana, to Lamorie, Louisiana, a distance of about six miles; and operates a narrow gauge railroad from Woodworth, Louisiana, west to a station called Hineston, Louisiana, a distance of about eighteen miles.

The line of railroad of the petitioner, the Woodworth & Louisiana Central Railway Company, connects with the St. Louis, Iron Mountain & Southern Railway, at Woodworth, Louisiana, and with the Chicago, Rock Island & Pacific Railway Company, Morgan's Louisiana & Texas Railway & Steamship Company, and the Texas & Pacific Railway at Lamorie, Louisiana.

The petitioner Woodworth & Louisiana Central Railway Company complies with the rules and regulations promulgated by the State Railroad Commission of Louisiana and by the Interstate Commerce Commission, and complies with the laws of the State of Louisiana and of the United States relating to common carriers by railroad. It is engaged in both state and interstate commerce and is a common carrier by railroad for all persons desiring its services.

It carries a full line of class and commodity rates between points on its own lines in Louisiana and concurs in joint tariffs applying between points on its own road and points on connecting lines in Louisiana, and carries a full line of class and commodity rates from and to all interstate territory via all connecting lines.

That part of the road between Woodworth and Lamorie handles a diversified tonnage made up of general merchandise, agricultural and lumber products. There never have been any logging operations at all on this part of the road. The country through which it runs is an agricultural community.

5 2. The petitioner Rapides Lumber Company is a corporation organized under the laws of the State of Louisiana for the purpose of manufacturing and selling timber and lumber and of owning timber lands for the purpose of obtaining timber therefrom to manufacture into lumber.

It owns and operates a lumber mill, planing mill and plant for the manufacture of lumber at the town of Woodworth, Louisiana, on the line of the petitioner, the Woodworth & Louisiana Central Railway Company, and is a large shipper over said railroad.

3. The petitioner Long-Bell Lumber Company is a corporation organized under the laws of the State of Missouri for the purpose of engaging in the wholesale and retail lumber business. It acts as a selling agent for the product of the Rapides Lumber Company, and it is a party to one of the contracts hereinafter set out.

4. The respondent Chicago, Rock Island & Pacific Railway Company is a consolidated corporation organized under the laws of the States of Illinois and Iowa, and operates in connection with or over the lines of the railway and right-of-way of the respondent Rock Island, Arkansas & Louisiana Railway Company, a line of railways in the States of Louisiana, Texas, Arkansas, Missouri and other states.

5. The Rock Island, Arkansas & Louisiana Railway Company is a railway corporation, organized under the laws of the State of Arkansas, and on the 1st day of August, 1906, it owned and operated certain railway lines in and through the States of Arkansas
6 and Louisiana, and was then constructing a line of railroad into and through Lamorie, in Rapides Parish, Louisiana, which line of railway, when completed, would reach directly, and through its connections, a large number of markets wherein the products of the petitioners, Lumber Companies, could be sold.

6. That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled "Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., Docket No. 1319." Hearings were had at various times and places, and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion, which report and opinion will be found in the 14 Interstate Commerce Commission Reports, at page 364 et seq., reference to which is hereby made. Further hearings were thereafter had in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, and on December 7, 1909, respondent the Interstate Commerce Commission made a supplemental report, which is published in the 17th Interstate Commerce Commission Reports, at page 338 et seq., reference to which supplemental report is hereby made, and the same is made a part hereof as fully as if set out herein.

7. By reason of the rendition of this report and opinion, and because the Interstate Commerce Commission demanded under threat of criminal prosecution that they comply with the require-
7 ments thereof, the trunk line railroad companies of the United States, or a large number of them, including the respondent Railroad Companies herein, about the month of August, 1910, filed with the Interstate Commerce Commission new tariffs or supplemental tariffs on lumber, to become effective in thirty days, which new tariffs or schedules canceled all joint tariffs which the said respondent Railway Companies had theretofore had and maintained with the petitioner Railway Company, and except for the order of the Interstate Commerce Commission, set out in paragraph 8 hereof, would have left said petitioner without any joint interstate rates or through routes on lumber with the other railroads of the country.

8. Thereupon the Interstate Commerce Commission made and entered of record an order, in words and figures as follows, to-wit:

At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 3d Day of September, A. D. 1910.

Docket No. 3400, Sub. 7.

In the Matter of the INVESTIGATION AND SUSPENSION OF SUPPLEMENT No. 3 to I. C. C. No. 23, Filed by the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company.

It appearing from the records of the Interstate Commerce Commission that there has been filed with the Commission by the
8 Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company, schedule designated as Supplement No. 3 to I. C. C. No. 23, effective 10th day of September, 1910, which schedule states new individual or joint rates, fares or charges, applicable upon the articles named therein, that are in excess of the rates, fares and charges now in effect,

It is ordered that the Commission, upon complaint, without formal pleading and without answer by the interested carriers, do enter upon a hearing concerning the propriety of such advances and the lawfulness of the rates, fares, or charges stated in said schedule, with a view to making such order in the premises as may, after full hearing seem just and proper; and that such hearing be held at such time and place as may be hereafter fixed by the Commission.

The Commission being further of the opinion that, pending such hearing and decision of the Commission concerning the propriety of such rates, fares or charges, the operation of such schedule should be postponed for the reason that from a consideration of the character and amount of the advances and the circumstances under which they have been made, it appears to the Commission there is sufficient ground for claiming that said advances are unlawful and that the rates, fares or charges established by said schedule are unjust and unreasonable, and therefore unlawful, and that the public interest requires that the operation of said schedule be deferred until sufficient time has been given for an investigation by this Commission.

It is further ordered that the operation of the aforesaid schedule be suspended, and that the use of the rates, fares or charges therein specified be deferred until January 5, 1911.

9 It is further ordered that the several carriers above named that have filed schedules be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them; and

It is further ordered that the carriers named in said schedule and

supplements thereto as participating therein be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them.

A true copy.

EDW. A. MOSELEY, *Secretary.*"

Thereupon the Interstate Commerce Commission made similar orders on or about the same date, suspending the operation of the schedules of various other railroad companies within the United States, and thereby kept in force and effect the joint tariffs and the maintenance of through routes and joint rates between the petitioner Railway Company and the respondent railroad companies herein mentioned, and the various other trunk line railroads and systems of the United States for a period of 120 days. Reference to which orders is hereby made and the same are made a part hereof.

And the said Interstate Commerce Commission, from time to time, continued by appropriate orders, similar in form to the order hereinabove set out, the suspension of the cancellation of rates between various railroad companies of the United States, including the respondent railroad companies, and the petitioner Railway Company, until the end of the 30th day of April, 1912; the last of said orders being in words and figures as follows, to-wit:

10 "At a General Session of the Interstate Commerce Commission Held at its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty,
Judson C. Clements,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap Line Connections.

It Appearing, That, by orders heretofore entered, the Commission instituted an investigation and hearing concerning the propriety of various tariffs filed by certain carriers wherein joint rates with and divisions or allowances to so-called tap line connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs conceling such divisions or allowances and refiled them

to become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances, and refiled them to become effective on February 1, 1912; and,

It Further Appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commission to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been
11 voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It Further Appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It Is Ordered, That each and all of the carriers that are parties to this record be, and they are hereby, authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions with or allowances to so-called tap line connections, and, Provided, the said tariffs are forthwith refiled to become effective on May 1, 1912;

It Is Further Ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's Order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman.*"

9. Pursuant to the orders of date the 3d day of September, 1910, one of which is hereinabove fully set out, the Interstate Commerce Commission did enter upon a further hearing of the matter of the propriety of the advances and the lawfulness of the rates, fares or charges, stated in said schedules, mentioned in said orders, and thereupon, and on the 15th day of November, 1910, gave the petitioner Railway Company, and to various other railroad com-
12 panies in the United States, including respondent railroad companies herein, a notice in words and figures as follows, to-wit:

"NOVEMBER 15, 1910.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of TAP LINE ALLOWANCES AND DIVISIONS, Being Docket Nos. 3400, Sub. 6; 3400, Sub. 7; 3493, 3511, 3512, 3513, 3514, 3524, 3548, 3551, 3552, and 3564, Consolidated under Investigation and Suspension Docket No. 11.

The above entitled proceedings are assigned for hearing on Thursday, December 9, 1910, 10 o'clock a. m., at United States Court rooms, New Orleans, Louisiana.

By THE COMMISSION,
EDW. A. MOSELEY, *Secretary.*"

Your petitioners aver that notwithstanding that by the Act to Regulate Commerce it is required that the Commission serve upon the defendants in any proceeding before it a copy of the petition with directions to answer the same or to satisfy the petition, nevertheless, no such service was made upon the defendants and no answers were made by said defendants to said petition before the said Interstate Commerce Commission.

Pursuant to said notice and the orders of the Interstate Commerce Commission hereinabove set forth, the petitioner Railway Company, together with the numerous other railroad companies; appeared before the Interstate Commerce Commission, at New Orleans,
13 on December 8, 1910, and subsequent days, and at St. Louis, Missouri, and at Chicago, Illinois, upon adjournments of said hearing, and thereupon the Honorable James S. Harlan, one of the Interstate Commerce Commissioners, examined the officers and agents of the petitioner Railway Company, concerning the matters under investigation in said proceeding, and said petitioner Railway Company also thereafter submitted to the Interstate Commerce Commission certain documentary evidence, by filing the same with the secretary of said Commission at Washington; and thereafter, and within the time fixed by the Commission, said petitioner filed with the Interstate Commerce Commission a statement of facts, abstract of the evidence which had been taken before said Commission, in reference to said petitioner, and a brief and argument, reference to which statement and brief is hereby made, and in said statement and brief said petitioner Railway Company petitioned the Interstate Commerce Commission to make an order compelling the trunk line railroad companies to restore the rates existing with the petitioner Woodworth & Louisiana Central Railway Company.

At the beginning of said hearing at New Orleans on December 8, 1910, the Honorable James S. Harlan, the commissioner presiding at said hearing, made the announcement to the parties interested and

appearing at said hearing, that each so-called "Tap-Line" would be treated as though it had filed a formal petition.

There was also filed before the Interstate Commerce Com-
14 mission in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe, "Investigation and Suspension Docket No. 11," a "Brief and Argument for Various Tap Lines," signed by H. M. Garwood, N. S. Brown and Luther M. Walter, which contained, among other things, the following:

"The facts, therefore, of each case are so widely divergent as to render classification impossible, and to necessitate, however burdensome it may become, the analysis of the facts of each case. It would be unjust to the several lines above, many of which are not represented by the writers of this brief, to undertake any arbitrary classification, and we therefore invoke as a part of that due process of law to which each is entitled, the examination by this body of the facts of each case and the entry of a special and separate order thereon, to the end that the rights of each line may be duly regarded."

And at the close of said brief was the following:

"We submit, therefore, with confidence that the basic questions underlying this investigation have been fully and carefully decided by the decisions of this Commission, by the practices in accordance therewith extending over a long period of years, by the decisions of our courts, state and federal, by the approval of the Federal Congress; and that investments made in full accord with the constitutions and laws of the several states, with the approval of Congress, and under the prior decisions of this Commission, ought not now to be confiscated in the absence of clear legislative requirement; and that railway corporations legally formed, sustaining all the burdens of state and federal legislation, and assuming, under charters legally issued, all of the common law and statutory obligations of a common carrier, cannot here be denied the right to engage in inter-
15 state commerce, establish through rates with connecting carriers and joint rates applicable thereto."

The said brief and the request therein for the entry of a special and separate order in each case was filed on behalf of the petitioner Railway Company among others.

10. On the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," which opinion will be found in the 23d Interstate Commerce Commission Reports, p. 277, et seq., reference to which opinion is hereby made, and which is made a part hereof, as fully as if set out herein in full.

And in said opinion and supplemental report is the following, to-wit:

"The cancellations by the trunk lines will be allowed to become effective on May 1, as provided in the tariffs now on file."

Your petitioners then believed and now believe that in and by said opinion and supplemental report and by the language hereinabove last quoted the Interstate Commerce Commission made an order authorizing, permitting and commanding the trunk line railroad companies of the United States, including the respondent rail-

road companies herein, to cancel all joint interstate rates on lumber with the petitioner Railway Company, on the 1st day of May, 1912.

16 And said trunk line companies of the United States, including the respondent railroad companies, have construed said opinion herein last above referred to, as an order from the Commission to cancel said joint rates and tariffs with the petitioner Railway Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with said petitioner on lumber. And the Interstate Commerce Commission, through its secretary, notified the trunk line railroads of the United States that said cancellations did take effect at midnight on the 30th day of April, 1912, and that rates, as filed, must be observed by carriers and shippers, if criminal violation of Interstate Commerce Act and Elkins Act is to be avoided.

Your petitioners further state that while "the matter of the investigation and suspension of schedules canceling through rates with certain tap line connections, Investigation and Suspension Docket No. 11," was pending before the Commission upon the application of the petitioner Railway Company, and on account of the course of procedure which had theretofore been taken by the Interstate Commerce Commission, your petitioners were led to believe, had the right to believe, and did believe that the Interstate Commerce Commission would further postpone the effectiveness of the tariffs referred to in the order of January 16, 1912, hereinbefore set out, until after the Interstate Commerce Commission had rendered its opinion and made its order in said cause.

Your petitioners further state that the Opinion No. 1853 and the order contained therein, hereinbefore referred to, and reported in the 23d Interstate Commerce Reports, at page 277, et seq., purports to have been decided, and is dated on April 23, 1912. But

17 your petitioners allege that said opinion was not made public until the 29th day of April, 1912, and if it was rendered on the 23d day of April, all knowledge and information thereof was withheld from your petitioners, and the public generally, and your petitioners had no opportunity to know the contents thereof until about 4 o'clock in the afternoon of April 29, 1912, and a copy of said opinion was not received by your petitioners until after the 30th day of April, 1912, by reason of which your petitioners were unable, on account of lack of time, to prepare any petition or application for injunction to this, or any other, Court, to prevent the cancellation of rates by the respondent railroad companies becoming effective as hereinabove stated, or, before the 1st day of May, 1912, to make any application to this Court to enjoin, set aside and annul the order of the Interstate Commerce Commission hereinbefore set out.

Your petitioners further state that on the 1st day of June, 1912, the Interstate Commerce Commission made a supplemental report entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," Opinion No. 1898, which is reported in the 23d Interstate Commerce Reports, at page 549, reference to which is hereby made and which is made a part hereof as fully as if set out herein.

Said supplemental report or opinion, in so far as it relates to the so-called "Tap Line" case in general, and in so far as it makes a finding of the facts in reference to the petitioner Railway Company, is in words and figures as follows, to-wit:

18 Investigation and Suspension Docket No. 11. The Tap Line Case, Decided May 14, 1912.

Supplemental Report of the Commission.

By the COMMISSION:

In the original report herein (ante, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation, either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as, in the judgment of the Commission, bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that fol-

19 low. In a number of cases, the tap line, without charge, hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such

a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line, such arrangements are possibly to be regarded as purely local, and, therefore, beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local, and, therefore, beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory, and have taken such action as, under all the circumstances developed,
20 seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless, the same or generally similar conditions exist in other extensive lumber producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature cannot be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory. * * *

"Woodworth & Louisiana Central Railway.

The Woodworth & Louisiana Central Railway serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain Railroad, which has a spur track to the mill. The tap line and lumber company are identical in interest, with the same principal officers. The tap line has a standard-gauge track extending from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. Its main track, however, is narrow gauge and runs from the mill westward for eighteen miles to a point from which unincorporated track extend- into the timber. The right-of-way for the narrow gauge track is leased from the lumber company; but the steel in the unincorporated logging spurs, on the other hand, is owned by the tap line and leased to the lumber company, as are four narrow gauge locomotives which the lumber company utilizes in the operation of the logging spurs. The equipment of the tap line consists of one standard gauge locomotive, five narrow gauge locomotives, and two standard and nine narrow gauge cars. The logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber com-
21 pany and are dumped into the mill pond by the trainmen. The standard gauge locomotive of the tap line switches the carloads of lumber from the planing mill to the point from which

they are taken by the Iron Mountain, a distance, as the record indicates, of only twenty-five feet, or less than a car length. About 95 per cent of the lumber moves through La Moria, being switched to that point, a distance of six miles, by the tap line. The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. There are no joint rates except on lumber. The record indicates that 40,707 tons of freight was handled for the lumber company during the fiscal year ending June 30, 1910, and that there was 2,100 tons of outside traffic, consisting of merchandise, farm products, and miscellaneous material. It does not appear what proportion of this tonnage was intended for employés of the lumber company. There is no passenger service.

The Woodworth & Louisiana Central was incorporated in 1900, with a capital stock of $25,000. It has no bonds, but is indebted to the lumber company in the sum of $88,000 and to a bank in the amount of $10,000. Its operations for the year ending June 30, 1910, resulted in a deficit; but there was a surplus on that date, resulting from previous years, amounting to nearly $10,000. It files annual reports with the Commission."

* * * * * * *

Irregular Practices of Tap Lines.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file anual reports
22 with the Commission until recently. The reports of others are so far from being complete that they cannot be said to comply with the requirements of the Act. Many of them, also, do not publish any local rates to apply on traffic received from or delivered to their trunk line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service Law, the Safety Appliance Act and other Acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases, and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases, our examiners have been refused full access to the books of tap lines. With respect to all these matters, the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions, in no instance, have been based on the failure of a

tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

General Comments.

The rates of the trunk lines for the movements of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticised in Red River Cotton Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 437. So far as we can
23 see from a careful examination of the record, there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under Section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk line connections. In other cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or hereafter made effective to or from points on tap lines, the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and non-discriminatory rates on forest product when shipped from tap line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission, an order will be entered authorizing trunk lines to make settlements on these bases with respect to all traffic moving after May 1, either under Section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in
24 this territory are parties defendant may be called to our attention in case they are in conflict herewith.

By THE COMMISSION,

[SEAL.] JOHN H. MARBLE, *Secretary.*"

Your petitioners further state that the Opinion No. 1898, reported in the 23d Interstate Commerce Commission Reports, at page 549, et seq., purports to have been decided and is dated on May 14, 1912,

but your petitioners allege that said opinion was not made public until the 1st day of June, 1912.

Petitioners further state that on the 11th day of June, 1912, the Interstate Commerce Commission made and entered of record, or at least made public on that day, an order in words and figures as follows, to-wit:

Order.

"At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It Further Appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natche, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;

Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
26 Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Cado & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gidean & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their
27 respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;

Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It Is Further Ordered, That the defendants the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies;

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;

El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
30 Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Albany Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It Is Further Ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

And It Is Further Ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the

record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By THE COMMISSION,
[SEAL.] JOHN H. MARBLE, *Secretary.*"

11. Your petitioners, believing the reports and decisions and orders of the Interstate Commerce Commission hereinbefore set out under paragraph 10 hereof to be void and unlawful, filed in
31 this Court, on or about the 21st day of June, 1912, their petition asking this Court to suspend and annul said orders. Said suit is numbered 72 in this Court.

Thereupon, upon the motion of the United States and of the Interstate Commerce Commission, this Court, basing its decision upon the case of Proctor & Gamble v. The United States, on the 29th day of June, 1912, dismissed the petition of these petitioners for want of jurisdiction in this Court; and thereupon, to meet the decision of this Court, these petitioners and other railroad companies, affected by the report, decision and order of the Interstate Commerce Commission, filed an application before the Interstate Commerce Commission for a modification of the order hereinabove set out, which application is in form and substance as follows, to-wit:

Before the Interstate Commerce Commission.

I. & S. Docket No. 11.

Petition.

Comes now the undersigned, attorney for the various tap line railroads whose status was determined by the Commission in the above entitled investigation, and respectfully requests that the Commission will, at the earliest possible date, issue an affirmative order substantially in form as follows:

"It is ordered that Malvern & Freeo Valley Railway Company; Wilmar & Saline Valley Railroad Company; Arkansas & Gulf Railroad Company; Little Rock, Maumelle & Western Railroad Company; Beirne & Clear Lake Railroad Company; Mississippi, Arkansas & Western Railway Company; Bearden & Ouachita River
32 Railroad Company; Arkansas Eastern Railroad Company; Blytheville, Burdette & Mississippi River Railway Company; Brookings & Peach Orchard Railroad Company; Crossett Railway Company; Fordyce & Princeton Railroad Company; Homan & Southeastern Railway Company; Little Rock, Sheridan & Saline River Railway Company; L'Anguille River Railway Company; Ouachita Valley Railway Company; Griffin, Magnolia & Western Railway Company; Saline Bayou Railway Company; Enterprise Railway Company; Natches, Ball & Shreveport Railway Company; Black Bayou Railroad Company; The Bodcaw Valley Railway Company; Mill Creek & Little River Railway & Navigation Company; Red River & Rocky Mountain Railroad Company; Woodworth & Louisiana Central Railway Company; Freeo Valley Railroad Com-

pany; Natchez, Urania & Ruston Railway Company; Bernice & Northwestern Railway Company; Dorcheat Valley Railroad Company; Manghan & Northeastern Railway Company; Galveston, Beaumont & Northeastern Railway Company; Peach River & Gulf Railway Company; Riverside & Gulf Railway Company; Jefferson & Northeastern Railway Company; Beaumont & Saratoga Transportation Company; Angelina & Neches River Railroad Company; Missouri & Louisiana Railroad Company; Saginaw & Ouachita River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Caddo & Choctaw Railroad Company; Manila & Southwestern Railway Company; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Roosevelt & Western Railroad Company; Tioga & Southeastern Railway Company; Louisiana Central Railroad Company; Monroe & Southwestern Railway Company; Victoria, Fisher & Western Railroad Company; Ouachita & Northwestern Railroad Company; Lake Charles Railway & Navi-
33 gation Company; Louisiana Railway Company; Zwolle & Eastern Railway Company; Sabine & Northern Railroad Company; Gideon & North Island Railroad Company, and Poplar Bluff & Dan River Railway Company be and each of them are required, on or before September 15, 1912, to cease and desist, and for a period of two years thereafter to abstain from maintaining joint interstate rates for the movement of logs to the mills of the respective proprietary lumber companies in Opinions Nos. 1853 and 1898 (which opinions are made part hereof), and for the movement of the products of such logs and mills to interstate destinations.

It is further ordered that the defendants named, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great
34 Northern Railroad Company and Mobile & Ohio Railroad Company; Saline River Railway Company; Warren &

Ouachita Valley Railway Company; El Dorado & Wessen Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway; Fourche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company, The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpsin & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company, and Washington & Choctaw Railway Company be and they are hereby authorized and required on or before September 15, 1912, to reopen through routes and publish joint rates upon lumber destined to interstate points, provided the maximum of such joint rates shall not exceed those in effect April 30, 1912.

It is further ordered that the divisions or proportions of the joint rates accruing to the Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wesson
35 Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway Company; Forche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway Company; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central

Railroad Company, and Washington & Choctaw Railway Company upon the products of the mills of the proprietary companies named in Opinions Nos. 1853 and 1898, located on said lines, shall not exceed the divisions, proportions or allowances specified in said opinions."

The basis for the aforesaid request is contained in the following statement of facts and circumstances arising subsequent to the entry of the order of May 14, 1912:

(1) The order of May 14, 1912, entered in such proceeding is not such an order as is required by Sections 14 and 15 of the Act to Regulate Commerce as amended June 29, 1906.

36 (2) Subsequent to the entry of said order of May 14, 1912, the Supreme Court of the United States announced its opinion in the Proctor & Gamble case, in which it was held that the Commerce Court had no jurisdiction of suits brought to enjoin so-called negative orders of the Commission.

(3) There was much difference of opinion as to whether said order of May 14, 1912, was or was not an affirmative order within the definition of the Supreme Court in the said Proctor & Gamble case. Application was made to the Commission for modification of said order substantially in form with that set forth above, which said application was denied.

(4) Three test suits were filed in the Commerce Court to enjoin such order of May 14, 1912, and the Commerce Court, upon motion of the Commission and the Department of Justice, dismissed the same on the authority of the Proctor & Gamble decision.

(5) The time limit within which appeals from such decree of dismissal must be made will expire August 18, 1912.

(6) The trunk line railroads connecting with the so-called tap lines have accepted the Commission's requirement of May 14, 1912, as an affirmative order, and the said tap lines are without any recourse whereby to protect their lawful rights.

(7) The modification above requested will not change in any wise the present status of any of the tap line carriers so far as joint rates are concerned; the only effect of the order will be to confer jurisdiction upon the court to determine the lawful rights of the said tap lines and their shippers, and, so far as the law may require or permit, protect the tap lines and their shippers from unlawful acts of the trunk line connections.

(8) In the case of fifty-seven (57) lines in which the Commission held that the transportation of logs from the forest to the
37 mills and the product from the mills to the trunk lines was not a service of transportation when performed for the proprietary lumber companies, the trunk lines have refused to establish joint rates upon other forest products, notwithstanding the Commission's suggestion so to do, the position taken by the trunk lines being that if the tap lines are not common carriers of logs and lumber for the proprietary lumber companies such tap lines are not common carriers of any logs and lumber.

(9) Members of the Commission have stated since the entry of this order that the questions of law involved in the tap line cases are

important and should be determined at an early date. These questions can be determined at the present time by the entry of the form of order requested herein.

(10) Since May 14, 1912, the Commission has established joint rates upon lumber transported by short line railroad companies for proprietary lumber companies, and has entered an affirmative order requiring the publication of such joint rates. We are asking in the case of the Saline River Railway Company and other carriers recognized by this Commission as properly entitled to participate in joint rates that the same sort of an order be entered as was made by the Commission in the McCloud River Lumber case.

In the Peavey Elevator cases the Commission found that payment out of the joint rate to the Peavey Elevator Company for the elevation of the grain of that company was a rebate and discrimination; the finding in the tap line cases, so far as the transportation of lumber and logs for the proprietary lumber companies upon the fifty-seven (57) lines held not to be carriers of logs or lumber for the proprietary lumber companies, is that any allowance out of the joint rate is a rebate and discrimination. In that case an order to cease and desist was made. That order was similar in all respects
38 to the order requested in this case as to the fifty-seven first named tap lines.

We therefore respectfully petition this Honorable Commission to modify its order in form substantially as above requested.

L. M. WALTER,
Attorney for Petitioners.

And thereupon, on the 30th day of October, 1912, the Interstate Commerce Commission made and entered of record an amended order in form and substance as follows, to-wit:

Interstate Commerce Commission.

Investigation and Suspension Docket No. 11.

The Tap-line Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised,

It is Ordered, That the said order be, and it is hereby, modified to read as follows:

1. It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

39

2. It Further Appearing, That the Commission upon the record finds in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;

40

Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;

Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
41 Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It is Ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company, The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkan-
42 sas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad

Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

4. It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company.
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
43 Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. It Further Appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;

Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company,
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

44 have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It is Ordered, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It Is Further Ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
45 De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;

Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to re-establish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and Provided, further, that upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It is Further Ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

46 12. It Is Further Ordered, That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. It Is Further Ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And It Is Further Ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

12. Your petitioners further state that as a common carrier the Woodworth & Louisiana Central Railway Company became, and until midnight on the 30th day of April, 1912, was, a party to each and all of the following tariffs applicable on lumber and articles taking lumber rates to the various points in said tariffs mentioned, the lines publishing said tariffs and the lines mentioned and con-

curring therein constituting, with the petitioner, the Woodworth & Louisiana Central Railway Company, reasonable through
47 routes and said tariffs prescribing reasonable through rates between points on the Woodworth & Louisiana Central Railway and the several points therein mentioned, to-wit:

Southwestern Lines Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

S. W. L.	48-G	I. C. C.	892	to	Oklahoma points.
S. W. L.	50-E	I. C. C.	868	to	Ariz., Ark, Colo., Iowa, Ks., Mo., Neb., N. Mex., S. D., Utah, Wyo.
S. W. L.	63-E	I. C. C.	897	to	Texas points.
S. W. L.	4-A	I. C. C.	849	to	Mexico points.

Chicago, Rock Island & Pacific Railway Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

C., R. I. & P.	24000-E	I. C. C.	c 9235	to	Ala., Ark., Fla., Ills., Iowa, Ky., Minn., Miss., Mo., N. Mex., North Dak., South Dak., Tenn., Wisc., Wyoming, etc.
	28013	I. C. C.	c 9062		Tie Plant, Ark., or Winnfield, La., when creosoted and reshipped beyond.

Chicago & Eastern Illinois Railway Company, St. Louis & San Francisco Railway Company, and Chicago, Rock Island & Pacific Railway Company Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

2800-C	I. C. C.	2596	to	Ill., Ind., Ky., Mich., Mo., N. Y., Ohio, Pa., W. Va., Wisc., etc.

13. Your petitioner further say that prior to the year 1900 the petitioner Rapides Lumber Company was operating a lumber mill at Woodworth, Louisiana, and had a narrow gauge railroad running west into the timber belonging to said Company, and said Company had about 42,000 acres of timber. The only railroad which the Rapides Lumber Company then had for the shipping of its products was the St. Louis, Watkins & Gulf Railroad at Woodworth,
48 Louisiana, which road was unable to furnish the cars and equipment and to reach all markets for the lumber output of the mill of the Rapides Lumber Company. By reason of this fact, and because of having only the one railroad connection at Woodworth, some of the stockholders of the Rapides Lumber Company, about the 8th day of December, 1900, incorporated a railroad known as the Woodworth & Louisiana Central Railway Company, petitioner herein, and constructed a standard gauge railroad from Woodworth to Lamourie in order to connect with the Texas & Pacific Railroad and the Morgan's Louisiana & Texas Railway and Steamship Company. Later the Chicago, Rock Island & Pacific Railway Company built a road through the town of Lamourie, and the Rock Island Company also connected its road with the Woodworth & Louisiana

Central Railroad at Woodworth. The Woodworth & Louisiana Central Railroad Company purchased the narrow gauge road running from Woodworth west about the first of the year 1901 and ever since has owned and operated said road.

14. Petitioners further allege that in interstate commerce shipments there prevails now, and has prevailed for many years, in all of the lumber producing districts of the South with the full concurrence of the railroad systems and the producers and shippers of lumber, and with the full concurrence of the Interstate Commerce Commission, what are known as "blanket rates," that is, all lumber rates from all points on all lines in a given territory are the same to any point in any other given territory; that, consequently, the lumber rates for interstate commerce shippers from any point on the line of the petitioner, the Woodworth & Louisiana Cen-
49 tral Railway Company, were, until the 1st day of May, 1912, the same as from any of its points of connection with other railroads in the same blanket rate territory.

15. Petitioners further state that on or about the 1st day of August, 1906, a contract was entered into between the respondent Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company and the petitioners, the Woodworth & Louisiana Central Railway Company, Rapides Lumber Company and the Long-Bell Lumber Company, providing for a connection between the Woodworth & Louisiana Central Railway Company and Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company at the town of Lamourie, Louisiana, and further providing that during the existence of said agreement said railroad companies would interchange business with each other at said point of connection, and by means thereof would establish a through line of railway with traffic thereover on the basis of the divisions of rates as in said contract set forth. The said petitioners, lumber companies, agreed to ship over the line of the railway of the Woodworth & Louisiana Central Railway Company from the forest to the mills of said lumber companies all the lumber cut by said lumber companies, and that they would ship at least 50 per cent of the products of said mills to the point of connection at Lamourie, and that said lumber companies and said Woodworth & Louisiana Central Railway Company would ship 50 per cent of the products of said mills
50 over the line of the railway of the Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company to the points of destination. The Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company agreed to accept from the Woodworth & Louisiana Central Railway Company all shipments so offered, and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Woodworth & Louisiana Central Railway Company with cars sufficient for transporting said 50 per cent of the products of the mills of said lumber companies. And the said respondents Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island &

Pacific Railway Company further agreed with the Woodworth & Louisiana Central Railway Company that said railway companies would enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission, and to publish the same in the manner and form as required by law. Said agreement provided that it should become effective on the date thereof and continue for a period of fifteen years, or so long as the lumber company should operate its mills in said Parish of Rapides, Louisiana. A copy of said contract is hereto attached, hereby referred to, and made a part hereof, and marked Exhibit "A." The moving cause and consideration for these contracts was that the shippers had the right to route their freight over such line or lines of railroad as they saw fit, and in order to secure the performance of the contracts between the Woodworth &
51 Louisiana Central Railway Company and its connecting carriers, the respondent Railway Companies, it was necessary to have the shippers sign the contracts and agree to route their products over the line of the Woodworth & Louisiana Central.

16. That relying upon the contracts between the petitioners herein and the respondents Rock Island, Arkansas & Louisiana Railway Company, and Chicago, Rock Island & Pacific Railway Company, the petitioner, the Rapides Lumber Company, long prior to the Star Grain and Lumber Company decision, entered into a contract whereby said Lumber Company agrees to ship or cause to be shipped over the line of the Woodworth & Louisiana Central Railway Company all of the products of its mills located on the line of said Railway Company, such product to be carried by said Woodworth & Louisiana Central Railway Company by regular published tariff rates of said Company filed with the Interstate Commerce Commission, and the said Woodworth & Louisiana Central Railway Company has agreed to furnish said Lumber Company the necessary engines, cars and other appurtenances and equipment for transporting the products of said Lumber Company from the connections of the Lumber Company's tram roads with the line of railway of the Woodworth & Louisiana Central Railway Company and the Lumber Company's mills.

The investment which has been made by the Rapides Lumber Company in mills and timber amounts to more than a million and a half dollars. The capacity of the mills of the Rapides Lumber Company is 2,100 cars per annum. The value of the steel
52 rails laid in tram roads of the Rapides Lumber Company is $27,263.21. It has four locomotives used on the tram roads, of the value of $17,500.

17. Your petitioners state that the decision and report of the Interstate Commerce Commission, being the decision published in the 17th Interstate Commerce Commission Reports, page 338 et seq., is an erroneous and incorrect statement of the law, and is a misapprehension, misstatement and misapplication of facts in so far as petitioners herein are concerned, and the statement in said opinion to the effect

"that any allowance or division made to or with the tap line that

is owned or controlled directly or indirectly by the lumber mill or by its officers or board of directors, and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates"

is not a correct statement of the law, and is an erroneous and illegal holding upon the part of the Interstate Commerce Commission. And the whole of said opinion is an incorrect and improper statement of the facts and the law as applied to these petitioners, and the action of the trunk line railroad companies in August, 1910, in filing with the Interstate Commerce Commission the schedules stating new, individual or joint rates, fares or charges, applicable upon the articles named therein in excess of the rates, fares and charges theretofore in effect, and in thereby canceling the through routes and joint rates which had theretofore been maintained with the petitioner Railway Company was and is unlawful, and was
53 and is wrongful violation and avoidance of the obligations and contracts heretofore pleaded and set out, and is in violation of the Interstate Commerce laws of the United States.

That the opinion and report heretofore referred to and published in the 23d Interstate Commerce Commission Reports, at page 277 et seq., is an erroneous and incorrect finding of facts, is a misapprehension and misapplication of the facts as found, is an erroneous and illegal statement of the law, it takes away from these petitioners vested rights guaranteed by law, and impairs and destroys the obligation of legal contracts which these petitioners have. And the statement in said report found on page 338 thereof, to-wit:

"The cancellations by the trunk lines will be allowed and become effective on May 1st, as provided in the tariffs now on file,"

constitutes an order to the trunk line railroad companies to cancel the tariffs heretofore mentioned in paragraph 12 hereof, constitutes a denial and dismissal of the petition of the Railway Company to the Commission, heretofore pleaded in paragraph 9 hereof, to issue an order to said trunk line railroads to continue the through routes and joint rates theretofore existing with the petitioner Company, as provided for in the tariffs set out in paragraph 12 hereof.

That the Interstate Commerce Commission by its said opinions and reports herein referred to, and by its order allowing the cancellation by the trunk lines to become effective on May 1, as provided by the tariffs then on file, and by its supplemental report
54 dated May 14, 1912, and by its order dated May 14, 1912, and by its amended order of October 30, 1912, herein set out in full, has erroneously, illegally and improperly held that the petitioner Railway Company is not a common carrier in reference to logs and lumber and that the service it performs is not a common carrier service when said service is performed in the hauling of logs and lumber and the products of the petitioner Lumber Companies' mills, and has, by both of its said opinions, to-wit, the opinion dated April 23, 1912, and the opinion dated May 14, 1912, and by its order dated May 14, 1912, and its amended order dated October

30, 1912, ordered the respondent Railroad Companies to cease the maintenance of through routes and joint rates on lumber with the petitioner Railway Company, and to cease paying any division whatsoever of the rates to the petitioner Railway Company.

And by said opinions and reports and orders the Interstate Commerce Commission has ordered and required the respondent Railroad Companies to submit for the approval of the Interstate Commerce Commission the basis of their divisions on through joint class and commodity rates in effect or hereafter made effective to or from points on the line of the petitioner Railway Company, which said order is beyond the jurisdiction of the Interstate Commerce Commission, and commands the respondent Railroad Companies to violate the terms of the contracts with the petitioners, herein set out, and is in violation of Section 15 of the Interstate Commerce Act, which provides that the Commission may establish through routes and joint classifications and may "establish joint rates as the
55 maximum to be charged, and may prescribe the divisions of such rates, as hereinbefore provided, and the terms and conditons under which such through rates shall be operated whenever the carriers themselves shall have refused or neglected to establish voluntarily such through rates or joint classifications or joint rates." Your petitioners further allege that the respondent Railroad Companies and the petitioner Railway Company have not refused or neglected to establish voluntarily such through routes or joint classifications or joint rates, but on the contrary, as hereinbefore set out, have agreed to establish such through routes and joint classifications and joint rates, and have filed with the Interstate Commerce Commission their tariffs showing such through routes and joint classifications and joint rates, all of which will fully appear by Tariff Index Number 9-B, Interstate Commerce Commission Number 21.

Your petitioners further allege that the respondents Railroad Companies did not voluntarily cancel the through rates under and by virtue of the canceling tariffs hereinbefore referred to, but the action of the respondents Railroad Companies in that regard was had under the compulsion of the several reports, decisions and orders of the Interstate Commerce Commission hereinbefore referred to, and under the belief induced by said reports, decisions and orders, that if said joint through rates with the petitioner Railway Company were not canceled, that said respondents Railroad Companies, their officers and agents, would be subject to criminal prosecution at the instance of the Interstate Commerce Commission as for alleged rebates and alleged unlawful discrimination.

56 Your petitioners further allege that the respondents Railroad Companies, and other common carriers subject to the Act to regulate commerce, have for years recognized the petitioner Railway Company as a common carrier in every respect and fully entitled to all the rights and privileges belonging to a common carrier under the law; and, but for the action of the Interstate Commerce Commission, herein complained of, would continue to so recognize said petitioner as a common carrier and would partici-

pate with said petitioner in joint rates upon lumber and forest products and the maintenance of through routes to interstate destinations.

Your petitioners further state that the statement made in the finding of facts in reference to the petitioner Railway Company, to the effect that there is no charge made for the service of hauling the logs to the mills, is incorrect and misleading, the fact being that the charge for transporting the logs and finished product is provided for in the through rate which applies from the point at which the logs are delivered to the said Company by the Lumber Companies, and includes the transportation of the logs to the mill and the product from the mill to final destination, and is a practice which has long been recognized by the Interstate Commerce Commission, not only on lumber, but on other commodities, and is not in itself illegal.

The statement "the steel for these tracks is furnished and supplied by the Tap Line without charge," is incorrect and untrue. There is no steel or other equipment supplied by the Railway Company to the Lumber Companies. At the time of the hearing of the case it was the custom of the Railway Company to lease
57 or lend to shippers on its line steel and other equipment for the trams of said lumber companies beyond the line of the Railroad; this practice seemed to be condemned by the Commission, and by reason thereof, the Railway Company sold and transferred to the Lumber Companies all steel and other equipment which was being used by the Lumber Companies, and there is now no steel or other equipment furnished to the Lumber Companies by the Railway Company, and a copy of the contract or bill of sale evidencing this fact was filed with the Interstate Commerce Commission before the closing of the "Tap Line case" before said Commission.

Petitioners further state that upon the finding of facts made by the Interstate Commerce Commission, hereinabove set out, the petitioner Railway Company is a common carrier, performs a common carrier service, is entitled to the maintenance of through routes and joint rates and to divisions, as in its contracts provided.

Petitioners further state that the entire opinion, report, finding and order of the Interstate Commerce Commission, made under the caption, "Investigation and Suspension Docket No. 11, The Tap-Line Case," is inconsistent with itself, with the former decisions and reports of the Interstate Commerce Commission, permits and requires discriminations and inequalities, and a compliance with said decisions and requirements compels the railroad companies to violate Section 3 of the Interstate Commerce Act, hereinafter set out. And said decisions and orders are in violation of and in conflict with the "Commodities Clause" of Section 1 of said Interstate Commerce Act.

58 Your petitioners further allege that said decisions and orders hereinbefore set out were made by the said Interstate Commerce Commission as a result of investigation and alleged in-

formation furnished by its investigators without any opportunity to these petitioners of cross-examination or rebuttal.

Your petitioners allege that the Interstate Commerce Commission has no jurisdiction or authority in law to decide that the petitioner Railway Company is not a common carrier in respect to the logs and lumber which it transports for petitioners Lumber Companies (although holding that it is a common carrier and compelling it to be a common carrier with respect to other tonnage which it hauls), and by so holding and by its order to the trunk line railroad companies to cancel through routes and joint rates and to cease for two years paying divisions to the petitioner Railway Company, the Interstate Commerce Commission attempts to nullify state laws and the Interstate Commerce laws and its own rulings and decisions heretofore made; and the decision in reference to the petitioner Railway Company and the orders of the Interstate Commerce Commission, hereinabove set out, are each and all unlawful, erroneous and invalid.

Your petitioners further allege that said decisions and orders are arbitrary, unreasonable and in excess of the power and authority of the said Commission and constitute violations of Section 3 of the Act which forbids unjust discrimination between persons, localities and traffic. As an instance of the unequal, discriminatory, arbitrary and unreasonable Act of the Commission, petitioner alleges
59 that many of the so-called tap lines whose status was determined by the Commission in the decisions and orders hereinbefore set out, were recognized as common carriers of the traffic of the so-called proprietary interests and others denied such a status without any distinction in fact or manner of operation.

Further, petitioners allege that notwithstanding the Commission established a rule that under Section 15 payment should be made to the shipper when the transportation was not less than 1,000 feet nor more than three miles from the trunk line connection, nevertheless no such allowance was prescribed by the Commission in the case of your petitioners, but on the contrary such an allowance is expressly negatived by the Commission.

Your petitioners further allege that other short line railroads mentioned in the decisions and orders above set forth have been by the Commission directed to establish joint rates from points on their line to interstate destination points, when in fact all the circumstances and conditions which properly may be considered by the Commission in an investigation of this sort require that the petitioners be given joint rates over through routes to interstate destinations. In support of this allegation the petitioners call attention to the findings of the Commission and make said findings part of this petition as fully as if set forth herein, in the following cases:

Fourche River Valley & Indian Territory Railway Company.
The Nacogdoches & Southeastern Railroad Company.
Trinity Valley & Northern Railway Company.
Butler County Railroad Company.
Red River & Gulf Railroad Company, and others.

60 Your petitioners further state that the Interstate Commerce Commission in holding that the tracks and equipment of the petitioner Railway Company with respect to the industry *to* the petitioners Lumber Companies are plant facilities and that the service performed therewith for the said Lumber Companies in moving logs to their mills and performed therewith in moving the products of the said mills of the petitioners Lumber Companies to the junction of the petitioner Company with its connecting trunk line companies, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility—is without any basis in fact or in law. Said finding and conclusion is arbitrary, unreasonable and in violation of the Act to Regulate Commerce and the decisions of the Supreme Court of the United States.

Your petitioners assert that under the provisions of the Act to Regulate Commerce and the interpretation thereof by the Supreme Court of the United States upon the facts found by the Commission and set forth herein the said petitioner Railway Company is a common carrier by railroad of the logs of the petitioners Lumber Companies, in that it furnishes a railroad and maintains the same in condition for the movement of said logs and is a common carrier of the products of the petitioners Lumber Companies from their mills to the junction points with the Railway Company's connecting carriers, and inasmuch as the larger proportion of the output of said mills of the petitioners Lumber Companies is destined to interstate destinations, the said movement from said petitioners Lumber Companies' mills to said junction points is a service of

61 transportation by a common carrier railroad in interstate commerce.

Your petitioners further state that no part of that portion of the report headed "Irregular Practices of Tap Lines," found on pages 649-650 of the 23d Interstate Commerce Commission Reports, applies in any respect whatsoever to the petitioner Railway Company, but that on the contrary said petitioner Railway Company, "files annual reports with the Commission"; said reports "are complete and comply with the requirements of the Act"; it does "publish local rates to apply on traffic received from or delivered to its trunk line connections"; it does "charge for carrying passengers and less than carload shipments in all cases, and under authority of published tariffs"; it does not "permit the use by any lumber company of its tracks, without charging therefor," but on the contrary all of its charges and rates "are under tariff authority filed with the Interstate Commerce Commission"; it complies with the "Hours of Service law"; with the "Safety Appliance Act," and all the "other Acts imposing requirements on common carriers engaged in interstate commerce."

There is no "lack of attention on the part of said Railway Company to the rules and regulations respecting the filing of tariffs and keeping of accounts," but on the contrary, said Railway Company complies strictly with such rules and regulations and pays out thousands of dollars annually in so doing and in the publishing of tariffs,

and the books of the petitioner Railway Company have al-
62 ways been open and "full access thereto has been given to the examiners of the Interstate Commerce Commission."

Your petitioners allege that if any such failures to comply with the Act to Regulate Commerce existed on the line of the petitioner Railway Company, or if any such irregular practices do exist upon the line of the said petitioner, it is the duty of the said Interstate Commerce Commission to invoke the curative processes provided for in the Act, and petitioners further allege that such lapses or irregular practices, if any, do not constitute any basis for denial to said petitioner Railway Company and its shippers of the status which the law confers upon it.

18. Petitioners allege that the action of the respondents Railroad Companies, in filing with the Interstate Commerce Commission, in August, 1910, the schedule designated as Supplement No. 3 to Interstate Commerce Commission No. 23, effective the 10th day of September, 1910, and Supplement No. 9 to I. C. C. No. 2454-B, and schedule designated as Supplements Nos. 5 and 6 to Interstate Commerce Commission Nos. 6073 and 6194, and any and all other schedules filed by said respondents which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which in effect cancel the through routes and joint rates with the petitioner Railway Company, is violative of the terms, obligations and conditions of said contracts between the respondents Railroad Companies and the petitioner Railway Company heretofore pleaded; and that the same is without cause, justification or
63 excuse; and that the action of said respondent Railway Companies in filing said schedules which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which cancel through routes and joint rates with the petitioner Railway Company is in violation of that portion of Section 1 of the Act to Regulate Commerce, reading as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * or in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful. * * * And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs." * * *

and is in violation of Section 3 of the Interstate Commerce Act, reading as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm,

corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act
64 shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

And the said action of said respondent Railroad Companies prevents these petitioners from having interstate traffic moved by said common carriers, the petitioner Railway Company and the respondent Railway Companies, at the same rates as are charged or upon terms or conditions as favorable as those given by said common carriers for like traffic under similar conditions to other shippers; and the action of the Interstate Commerce Commission first in declaring the law to be as said respondent declared the law to be by its opinion in the 17th Interstate Commerce Commission Reports, page 338 et seq., and later as it declared the law to be by its report contained in the 23d Interstate Commerce Commission Report, at page 277 et seq., and by the statement in said report permitting the cancellations by the trunk lines to become effective, is in violation of that portion of Section 15 of the Interstate Commerce law reading as follows, to-wit:

"The Commission may also, after hearing on a complaint or upon its own initiative without complaint, establish routes and joint classifications."

65 19. And the petitioners allege that the rights and equities of petitioners are so interwoven and complicated by their mutual undertakings under the contracts heretofore referred to and heretofore set out, that petitioners will be irreparably injured by the said respondents Railroad Companies' violation of said contracts, and petitioners will be without any adequate remedy at law.

That a multiplicity of suits will inevitably result, and circuitous action will be entailed upon the petitioners and each of them by the said respondents' avoidance and breach of said contracts.

That over 90 per cent of the lumber tonnage (more than 1,000 cars per month) handled by the petitioner Railway Company is destined to interstate points; that since the 1st day of May, 1912, the petitioner Railway Company has charged and is now charging on lumber destined to interstate points its local rate on all lumber shipments from all points to various points of connection with respondent Railway Companies.

The petitioners Lumbers Companies are being, and will continue

to be, placed at a serious disadvantage in regard to other lumber industries in the same territory not on the line of the petitioner Railway, because they are compelled to pay on all shipments of lumber destined to interstate points the local rate of the petitioner Railway to the junctions with respondent Railroad Companies, plus the blanket rate (which petitioners' competitors in said territory now enjoy) from said junctions to final destination of the lumber, the combination of the two rates placing petitioners Lumber Companies at a disadvantage as compared with petitioners Lumber Companies'
66 competitors in the same territory enjoying the blanket rate.

Petitioners Lumber Companies have no competitive rates on interstate lumber traffic, and the absence of through routes and joint rates greatly retards and impairs the business and investments of the petitioners Lumbers Companies, and the damages so caused to said petitioners cannot be adequately measured, and constitute irreparable loss.

Your petitioners further allege that in the case of Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific Railroad Company, 10 Interstate Commerce Commission Reports, page 193, the Interstate Commerce Commission held that divisions such as those condemned in the opinions in "The Tap Line Case" were proper, and that, acting under the decision in the said Central Yellow Pine Association case, and other decisions of the Interstate Commerce Commission, and acting under the law of the State of Louisiana, the investments by the petitioners herein mentioned were made; that under the Constitution and Laws of the State of Louisiana the petitioner Railway Company is compelled to operate as a common carrier and its status as a common carrier is fixed by State and Federal laws, and the Interstate Commerce Commission is wholly without right or authority of law to deny to the petitioner Railway Company the right to operate as a common carrier of all traffic transported.

In the case of Freeo Valley Railroad Company v. Hodges, Secretary of State, 151 Southwestern Reporter, page 281, the Supreme Court of Arkansas, on November 18, 1912, held that the Freeo Valley Railroad Company (one of the parties to the proceeding
67 in the "Tap Line case") could not surrender its charter and cease to perform its duties to the state and the public, as a common carrier, and this is doubtless the law and will doubtless be so held by the Supreme Court of Louisiana and all other states.

Unless the petitioner Railway Company is permitted to earn revenue on all interstate shipments of lumber, it cannot pay its operating expenses or interest on its bonded indebtedness. The reports, decisions and orders of the Interstate Commerce Commission hereinbefore set out operate to confiscate said petitioner's property and to deprive it of its property without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

The petitioners Lumber Companies have performed, and are now performing, in every respect, the contracts heretofore recited to be performed by them, and have annually, since the making of said contracts, delivered to the petitioner Railway Company, and said

Railway Company has delivered to the respondents Railroad Companies, freight upon which charges to the amount of thousands of dollars have been paid. The petitioners, and each of them, are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded, and against the violation by the respondent Railroad Companies of the terms of the contracts between petitioners and said respondents hereinabove referred to and set out.

68 Your petitioners aver that the Commission in its finding and in that paragraph of the order which holds that the service performed by the petitioner Railway Company for the petitioners Lumber Companies, in moving logs to their mills and in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, acted erroneously and in violation of the provisions of the Act to Regulate Commerce; your petitioners aver that under the statement of facts contained in the report and opinion of the Commission the said service is in law a service of transportation by a common carrier railroad and that in accordance with the law the petitioner Railway Company should file tariffs of its charges for said service. Under the report and order of the Commission hereinbefore set out, no tariffs lawfully can be filed covering such movement; that if such movement is transportation, the petitioner Railway Company will be subject to the penalties provided in the statute for failure to file tariffs.

Further, your petitioners aver that under the statute no common carrier can engage in interstate commerce until it has first filed tariffs covering the transportation in which it is engaged. Your petitioners Lumber Companies therefore aver that their traffic could not be handled by the petitioner Railway Company, because the findings of the Commission that the said movement is not transportation by a common carried railroad precludes the filing of tariffs. For these reasons the said order is inconsistent with the Act to Regulate Commerce and destroys the rights of the petitioners Lumber Companies to have the products of their mills moved by the petitioner Railway

69 Company, and prevents said petitioner Railway Company from transporting said products as a common carrier in interstate commerce.

Your petitioners allege that the said order of the Commission, dated October 30, 1912, by its terms is directed against the respondent Railroad Companies, among others; that the petitioners were parties to the proceedings before the Interstate Commerce Commission out of which the orders, reports and decisions complained of grew; that their rights are vitally affected by said reports, decisions and orders; that the respondent trunk line railroads have profited materially by the aforesaid reports, decisions and orders, and will so continue to profit by reason of the fact that the existing lumber rates from the junction point between the petitioner Railway Company and the said trunk line companies are the same as those which prior to May 1, 1912, applied from the petitioners Lumber Companies' mills on the line of the petitioner Railroad Company; that

therefore your petitioners allege that the said reports, decisions and orders of the said Commission as vitally affect the property rights of the petitioners as if said order was directed against the petitioner Railroad Company by name.

Your petitioners and each of them are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded.

20. Wherefore, your petitioners say that the said reports and decisions of the Interstate Commerce Commission, and the orders of date May 14, 1912, and October 30, 1912, made in pursuance
70 of said reports and decisions, are invalid and void for the following, among other, reasons:

"(1) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that there is any 'proprietary' lumber company or companies of the petitioner Railway Company; to declare that 'the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills, and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful,' in so far as such declaration and order is applied to the petitioner Railway Company, or to deprive said Company of its rights as a common carrier granted to it under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States.

(2) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that the transportation offered by the trunk line carriers, such as the respondent railroad companies, extends three miles distance from the line of such railroads and that an allowance may be made for the movement which is more than 1,000 feet from said line and not in excess of three miles from said line of railroad. The said holding is legislation, pure and simple, and the exercise of arbitrary and unreasonable power and constitutes a gross discrimination and violation of the Act to Regulate Commerce.

(3) Said order is unconstitutional, invalid and void, in that said order impairs the validity of the contracts hereinbefore declared upon, contrary to the provisions of the Fifth Amendment to the United States Constitution.

71 (4) Said order unduly discriminates against the petitioner Lumber Companies, as shippers, compared with shippers on the line of the petitioner Railroad and on other railroads.

(5) Said order deprives your petitioners of the through routes and joint rates provided for by Section 15 of the Interstate Commerce Act.

(6) The uncontradicted evidence in the proceeding had by the Interstate Commerce Commission under the title 'Investigation and Suspension Docket No. 11,' shows that the petitioner Railway Company is a common carrier under the law, and the finding of the

Interstate Commerce Commission that the petitioner Railway Company is not a common carrier is not based on any substantial testimony.

(7) Under the findings of fact made by the Interstate Commerce Commission, the petitioner Railway Company is a common carrier of lumber of the petitioner Lumber Companies, and of all other mills on its line of railway.

(8) The aforesaid decisions, reports and orders of the Interstate Commerce Commission require the petitioner Railway Company to maintain through routes and joint rates with its connecting carriers on traffic of others than the petitioner Lumber Companies, while forbidding the maintenance of through routes and joint rates and divisions upon lumber produced by the petitioner Lumber Companies when destined to interstate points, and thereby said order grossly and unjustly discriminates against the petitioners Lumber Companies, and subjects them to undue prejudice and disadvantage.

(9) The findings, reports, decisions and orders of the Commission hereinbefore set out are arbitrary, unreasonable and in excess of the power of the Commission, in that, among other things, the Commission compels unjust and unlawful discrimination as be-
72 tween the so-called 'tap line' railroads named in the orders hereinbefore set out."

27. Wherefore, petitioners, and each of them, pray that the said orders of the Interstate — Commission dated May 14, 1912, and October 30, 1912, be enjoined, set aside and annulled; that the United States of America, the Interstate Commerce Commission and all persons claiming to act under their authority, direction or control, be enjoined and restrained from enforcing or attempting in any wise to enforce or put in effect any portion of said orders which require the respondent Railway Companies to cease and for a period of two years thereafter abstain from maintaining through routes and joint rates upon any property transported from the mills of the petitioners Lumber Companies on the line of the petitioner Railway Company.

And your petitioners further pray that the respondents, Railroad Companies, be enjoined and restrained from violating the terms of the said contract herein pleaded and herein fully set out under the mark of Exhibit "A" and that they and each of them be specifically ordered and required to continue to observe the terms, conditions and obligations of said contract, by filing with the Interstate Commerce Commission the tariffs described and set out in paragraph 12 hereof (or similar tariffs), giving to the Louisiana & Pacific Railway Company through interstate rates, and that the Interstate Commerce Commission be specifically ordered and commanded to accept, receive and file and to permit to become effective upon three days'
73 notice the tariffs specifically described in paragraph 12 hereof, or similar tariffs.

And your petitioners pray for all other and further relief as in equity and good conscience they may be entitled to receive.

And may it please Your Honors to grant unto your petitioners a subpœna of the United States of America, issuing out of and under

the seal of this Honorable Court, directed to the United States of America; Chicago, Rock Island & Pacific Railway Company; Rock Island, Arkansas & Louisiana Railway Company, the respondents herein respectively, therein and thereby commanding them on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (an answer under oath being hereby expressly waived), all and singular, the premises, and to stand to, perform and abide by such order, direction or decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience.

And your petitioners, as in duty bound, will ever pray.

WOODWORTH & LOUISIANA CENTRAL
RAILWAY COMPANY, LIMITED.
RAPIDES LUMBER COMPANY, LIMITED.
THE LONG-BELL LUMBER COMPANY,
By W. R. THURMOND,
H. M. GARWOOD,
L. M. WALTER,
Their Solicitors.

74 STATE OF MISSOURI,
County of Jackson, ss:

R. A. Long, being duly sworn, on his oath states that he is president of the petitioner The Long-Bell Lumber Company, and that he was formerly president of the petitioner Woodworth & Louisiana Central Railway Company, and of the petitioner Rapides Lumber Company.

That he has read the above and foregoing petition and is familiar with the facts therein stated and that the allegations and averments therein made and contained are true.

R. A. LONG.

Subscribed and sworn to before me this 4th day of January, 1913. My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI,
County of Jackson, ss:

C. B. Sweet, being duly sworn, on his oath states that he is president of the Woodworth & Louisiana Central Railway Company and of the Rapides Lumber Company, petitioners in the above entitled cause.

That he has read the above and foregoing petition and is familiar with the facts therein stated and that the allegations and averments therein made and contained are true.

C. B. SWEET.

Subscribed and sworn to before me this 4th day of January, 1913.

My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,

Notary Public in and for Jackson County, Missouri.

EXHIBIT "A."

Agreement made this first day of August, A. D. 1906, by and between the Rock Island, Arkansas and Louisiana Railroad Company, hereinafter called the "Rock Island Company," party of the first part; The Chicago, Rock Island and Pacific Railway Company, hereinafter called the "Chicago Company," party of the second part; the Woodworth and Louisiana Central Railway Company, Ltd., hereinafter called the "Woodworth Company," party of the third part; the Rapides Lumber Company, Ltd., hereinafter called the "Lumber Company" party of the fourth part; and the Long-Bell Lumber Company, hereinafter called the "Long-Bell Company," party of the fifth part.

The Rock Island Company is a corporation organized and existing under the laws of the State of Arkansas. It owns or operates certain railway lines in and through the States of Arkansas and Louisiana, it is now constructing a line into and through Lamourie, in the Parish of Rapides, in said State of Louisiana, and it reaches directly and through its connections, a large number of markets wherein

76 the products of the Lumber Company or of the Long-Bell Company, or of companies owned or controlled by the said Lumber Company or by the Long-Bell Company, or either of them, can be sold.

The Chicago Company is a consolidated corporation organized and existing under the laws of the States of Illinois and Iowa. It is the lessee under a lease for a period of nine hundred and ninety-nine (999) years, of the existing railway of the Rock Island Company, and of the railways or extensions of railways hereafter constructed or acquired by it; that portion of the railway of the Rock Island Company now being constructed into and through Lamourie, as aforesaid, will, when completed, become a part of the railway to which said lease applies.

The Woodworth Company is a corporation organized and existing under the laws of the State of Louisiana, being duly authorized to construct, own and operate a steam railroad. It has, at the request of the Lumber Company, and the Long-Bell Company, built a line of railway from Nelson to Lamourie, both being in the Parish of Rapides and State of Louisiana, as hereinafter more particularly set forth. Said line of railway will connect with the line of the Rock Island Company at Lamourie, when the latter is completed, will largely traverse the timber lands of the Lumber Company, or of the Long-Bell Company, or of companies owned or controlled by the said Lumber Company and the Long-Bell Company, or either of

them, and, in connection with the railway of the Rock Island Company, and of the Chicago Company, will furnish railway facilities for the transportation of the timber of the Lumber Company, or
of the Long-Bell Company, and of the companies owned or
77 controlled by the Lumber Company and the Long-Bell Company, or either of them, from the forest to the different mills of the Lumber Company, or of the Long-Bell Company, and of companies owned or controlled by the said Lumber Company and the Long-Bell Company, or either of them, on said line of railway, and the transportation of the products thereof to the markets the Lumber Company and the Long-Bell Company desires to reach for itself and companies owned or controlled by it.

The Lumber Company is a corporation organized and existing under the laws of the State of Louisiana, and owns or controls large tracts of timber land in the Parish of Rapides in said state, all of which are tributary to the said proposed line of railway of the Woodworth Company, and is extensively engaged in the business of cutting the timber on such land and marketing the products thereof. The transaction of the business of the Lumber Company and of the Long-Bell Company, and of companies owned or controlled by them, or either of them, is hampered and less profitable than it should be because of lack of adequate railway facilities and means for the transportation of the timber from the forest to its mills, and for the lack of facilities and means by which the products of said timber may be transported from the said mills to the most advantageous markets. For the proper, economical and profitable conduct of its business, it arranged with the Woodworth Company to construct and operate said proposed line of railway. In furtherance of this purpose the Woodworth Company and the Lumber Company have requested the Rock Island Company to permit the Woodworth Company to make a track connection with its line and to enter into this
agre-ment.

78 The Long-Bell Company is a corporation organized and existing under the laws of the State of Missouri. It owns or controls the property and franchises of the Lumber Company through stock ownership thereof, and has also requested the Rock Island Company to permit the Woodworth Company to make a track connection with its line and to enter into this agreement.

The several parties hereto, because of the mutual advantages accruing to them hereby, are willing to enter into this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of one dollar by each party hereto to the other parties paid, the parties hereto have covenanted and agreed, and do hereby covenant and agree, each with the others, as follows:

1. The Woodworth Company covenants and agrees that it will, with all convenient speed and dispatch, provide its said railroad with the necessary side or spur tracks and other appurtenances necessary to a railway ready for the operation of trains thereover, from Nelson, Louisiana, to Lamourie, Louisiana, and to connect said line with

the line of railway of the Rock Island Company at Lamourie, in the Parish of Rapides and State of Louisiana.

2. The Rock Island Company hereby grants to the Woodworth Company, during the existence of this agreement, the right to connect the above described line of railway of the Woodworth Company with the line of railway of the Rock Island Company at such
79 convenient point in or near Lamourie as shall be designated by the Rock Island Company, and also the right thereafter for a like term to operate the same, under such rules and regulations therefor as shall from time to time be adopted by the Rock Island Company.

3. The Rock Island Company and the Woodworth Company agree that during the existence of this agreement they will interchange business with each other at said point of connection of their respective lines, and, by means thereof, will establish a through line of railway with traffic thereover, on the basis of the divisions of rates as hereinafter set forth.

4. The Lumber Company and the Long-Bell Company covenant and agree with the Woodworth Company, for its benefit and that of the Rock Island Company and of the Chicago Company, to ship and cause to be shipped each and every month during the existence of this agreement, over the line of railway of the Woodworth Company, from the forest to the mills of the Lumber Company and of the Long-Bell Company, and of companies owned or controlled by the Lumber Company and by the Long-Bell Company, all the timber cut by the Lumber Company and all companies owned or controlled by the said Lumber Company and by the Long-Bell Company from all their lands (including all lands controlled directly or indirectly by them, or by any subsidiary company of the Lumber Company or the Long-Bell Company, or by any company controlled by or in which the Lumber Company or the Long-Bell Company holds a controlling interest) which they or either of them now own or may hereafter acquire along or contiguous to the said line of rail-
80 road of the Woodworth Company, and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection at Lamourie over the line of railroad of the Woodworth Company; and thence over the line of railway of the Rock Island Company, and of the Chicago Company and their connections, to the points of destination thereof, and the Woodworth Company covenants and agrees with the Rock Island Company and with the Chicago Company, during the existence of this agreement, to deliver to the Rock Island Company, or to the Chicago Company, at said point of connection at Lamourie, said amount of at least fifty per centum (50%) of all the products of said mills, as hereinbefore mentioned, for the purpose of having the same transported from the said point of connection over the lines of railway of the Rock Island Company and of the Chicago Company, and their connections, to the points of destination thereof; provided, however, that if thereafter the Lumber Company or the Long-Bell Company shall acquire timber lands along or contiguous to the line of railway of the Woodworth Company, the owners of which shall require, as a condition of the sale thereof, that all or a part of the timber and products of

timber from the same, shall be shipped over some other line or lines of railway than that of the Rock Island Company, then, and in such case, the provisions of this agreement shall not apply to such lands or to the timber or products of timber therefrom, in so far as they may be in necessary conflict with the said condition of sale of such after-acquired lands.

81 5. The Rock Island Company and the Chicago Company agree, during the existence of this agreement, to accept from the Woodworth Company all shipments by it offered, to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Woodworth Company with cars, as requested by it from time to time, to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the Lumber Company and of the Long-Bell Company, and all companies owned or controlled by them, or either of them. It is understood and agreed, however, that if the Rock Island Company or the Chicago Company shall fail during any calendar month to furnish the number of cars required by the Woodworth Company and necessary in order to transport fifty per centum (50%) of the products of said mills during said month, then in such event the Rock Island Company or the Chicago Company shall not be obliged thereafter to make up such deficit of cars in any such calendar month, nor shall the Woodworth Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Rock Island Company or of the Chicago Company to furnish cars in such calendar month.

6. The Rock Island Company, the Chicago Company and the Woodworth Company agree each with the other that they will enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

82 7. It is further agreed that no per diem charges shall be made by either the Rock Island Company, the Chicago Company or the Woodworth Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six (6) days after each delivery; but all per diem charges accruing on cars after the expiration of said period of six (6) days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

8. The cost and expense of constructing, maintaining and renewing such connecting, interchange or side tracks as may be necessary to properly handle the business of the Woodworth Company at said point of connection at Lamourie, shall be borne and paid jointly and equally by the Woodworth Company and the Rock Island Company.

9. The Lumber Company and the Long-Bell Company further covenant and agree with the Woodworth Company and the Rock Island Company and the Chicago Company, to deliver or cause to be delivered, to the Woodworth Company, for transportation over the railway of the Rock Island Company and of the Chicago Company, to points on or reached by way of the railways or some of them constituting the railway lines or systems of which the Rock Island

Company or the Chicago Company shall form a part, at least fifty per centum (50%) of all outbound shipments of lumber and other products of the mills of the Lumber Company or of the Long-Bell Company, and of all companies owned or controlled by them
83 or either of them, each and every month during the existence of this agreement, and in every such case the Lumber Company and the Long-Bell Company shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Rock Island Company and the Chicago Company are a part, such haul as shall yield to them the largest revenue.

10. In respect to the division of freight rates between the Woodworth Company and the Rock Island Company and the Chicago Company, the Woodworth Company and the Rock Island Company and the Chicago Company hereby agree to the following divisions, during the existence of this agreement:

"On all lumber shipments originating on the line of the Woodworth Company, the Woodworth Company shall receive thirty-five (35) per centum of the through rate, with a maximum of five and one-half (5½) cents per hundred pounds."

It is agreed that the above division of through rates shall include delivery of shipments to the Rock Island Company, or to the Chicago Company, and are based upon the present through rates. It is agreed that if, at any time during the existence of this agreement, the through rates shall be reduced, the maximum of five and one-half cents per hundred-weight due to the Woodworth Company shall be reduced in proportion to said reduction of through rate.

The Rock Island Company and the Chicago Company agree
84 that they will, at all times during the existence of this agreement, publish for all territory east of the Mississippi River and north of the Ohio River, and points on and west of the Mississippi River on the lines of the Rock Island and Frisco systems and their connections, the same freight rates from points on the Woodworth Company's line as are or shall be in effect from Alexandria on the Rock Island Company's line.

On all commodities of traffic, other than lumber, which may be interchanged between the Woodworth and the Rock Island Companies and the Chicago Company, the said companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana.

11. The Woodworth Company and the Rock Island Company and the Chicago Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of other companies not parties thereto, which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinbefore provided for, and that no cars of either company shall be used locally by the other company.

85 12. The Rock Island Company and the Woodworth Company and the Chicago Company each further covenant and agree to indemnify and save harmless the other from any and all loss of or damage to its cars or equipment, or to cars or equipment belonging to other companies or persons, which either company may receive from the other company; and in case of any damage of said cars or equipment, while on its said line, each of said companies agrees to properly repair the same without delay, and if it fails or neglects to repair the same with a reasonable time and to the satisfaction of the other company, then the other company may make such repairs, and the cost thereof, with ten per centum (10%) thereon additional thereto, shall be paid to the company making such repairs by the other company immediately upon the receipt of statements showing the amount of such cost.

13. This agreement, and all the terms and conditions, rights and obligations hereof, shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

14. This agreement shall commence and become effective on the date hereof, and shall be and remain in full force and effect for the period of fifteen (15) years thereafter, or as long as the Lumber Company shall operate its mills in said Parish of Rapides.

86–265 In Witness Whereof, each party herein has caused this agreement to be signed by its proper officer, and its corporate seal to be hereto affixed and attested, the day and year first above written. Executed in quintuplicate.

ROCK ISLAND, ARKANSAS & LOUISIANA RAILROAD COMPANY,

[SEAL.] By S. H. FULTON, *Vice-President.*

Attest:

GEO. H. CROSBY, *Assistant Secretary.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

[SEAL.] By B. F. WINCHELL, *President.*

Attest:

GEO. H. CROSBY, *Secretary.*

THE WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LTD.,

[SEAL.] By R. A. LONG, *President.*

F. J. BANNISTER, *Secretary.*

RAPIDES LUMBER COMPANY, LTD.,

[SEAL.] By R. A. LONG, *President.*

Attest:

F. J. BANNISTER, *Secretary.*

LONG-BELL LUMBER COMPANY,

[SEAL.] By R. A. LONG, *President.*

Attest:

F. J. BANNISTER, *Secretary.*

(Here follows map marked page 87.)

Note by the Clerk.

(Report of the Interstate Commerce Commission April 23rd, 1912, Supplemental Report of the Interstate Commerce Commission May 14, 1912, and amended Order of the Interstate Commerce Commission Oct. 30, 1912, omitted here in printing because printed elsewhere in separate volumes.)

266 Original, No. 91.

Notice to the Attorney General.

(Filed January 9, 1913.)

United States Commerce Court.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, Rapides Lumber Company, Limited, The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & Pacific Railway Company, Arkansas & Louisiana Railway Company, Respondents.

The President of the United States to Honorable George W. Wickersham, as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 8th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 9th day of January, A. D. 1913. (Accepted by Blackburn Esterline.)

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY,
Deputy Marshal.

267 Original, No. 91.

Notice to Secretary of Interstate Commerce Commission.

(Filed January 9, 1913.)

United States Commerce Court.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, Rapides Lumber Company., Limited, The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & Pacific Railway Company, Arkansas & Louisiana Railway Company, Respondents.

The President of the United States to John H. Marble, as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 8th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John H. Marble, Secretary of the Interstate Commerce Commission, this 9th day of January, A. D. 1913.

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

268 Original, No. 91.

Summons to Railroad Respondents and Return of Service.

(Filed January 9, 1913.)

United States Commerce Court.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, Rapides Lumber Company, Limited, The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & Pacific Railway Company, Arkansas & Louisiana Railway Company, Respondents.

The President of the United States to the above-named respondents:

You and each of you are hereby summoned and required within thirty days after service hereof to appear and answer unto a petition filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served upon you.

In case no answer shall be filed within the time named, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 8th day of January, A. D 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 9th day of January 1913, I served the above summons on Chicago, Rock Island & Pacific Railway Company by leaving a copy thereof with T. P. Littlepage, its designated agent, at the Union Trust Building the same being his office in the City of Washington, District of Columbia.

January 9, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to J. M. McLachlen.

269 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 9th day of January 1913, I served the within summons on Arkansas & Louisiana Railway Company, now St. Louis, Iron Mountain & Southern Railway Company, by leaving a copy thereof with The Corporation Trust Company (War-

ren N. Akers) its designated agent, at the Colorado Building the same being his office in the City of Washington, District of Columbia.

January 9, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to W. Guy Shreve.

270 *Appearance.*

(Filed January 25, 1913.)

In the United States Commerce Court.

C. C., No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al.,
vs.
THE UNITED STATES OF AMERICA et al.

I hereby enter the appearance of The Chicago, Rock Island & Pacific Railway Company and Rock Island, Arkansas & Louisiana Railroad Company, respondents, and of myself as their attorney, in the above entitled cause.

W. F. DICKINSON,
Attorney for said Respondents.

271 In the United States Commerce Court, February Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, Rapides Lumber Company, Limited, The Long-Bell Lumber Company, Petitioners,
v.
THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & Pacific Railway Company, Arkansas & Louisiana Railway Company, Respondents.

Motion of the United States to Dismiss the Petition.

(Filed February 7, 1913.)

Comes now the United States of America, one of the respondents, by its counsel, and moves the court to dismiss the above-entitled cause, upon the following grounds, viz:

1. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(*a*) The order of the Interstate Commerce Commission is negative in that, in the absence of the Rapides Lumber Company, Limited, and The Long-Bell Lumber Company, as petitioners,
272 and Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, as respondents, none of which is a proper party to this proceeding, except on its own motion, any relief granted against the United States would be of no avail to the Woodworth & Louisiana Central Railway Company in restoring the status quo of the parties;

(*b*) The order of the Interstate Commerce Commission complained of directed no affirmative relief, and the negative order of the commission affords no basis for any action by the Commerce Court;

(*c*) The same relief which is sought of the Commerce Court was denied by the Interstate Commerce Commission, and the Commerce Court has no power or authority to act for and instead of the said commission.

2. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(*a*) The Woodworth & Louisiana Central Railway Company, Limited, is not a common carrier engaged in commerce among the several States;

(*b*) The suit is not one commenced by a common carrier engaged in commerce among the several States, but is commenced in the name and on behalf of the Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, engaged in the manufacture and sale of lumber;

(*c*) The suit is not one brought in the Commerce Court by a common carrier against the United States to enjoin, set aside,
273 annul, or suspend, in whole or in part, an order of the Interstate Commerce Commission, but is commenced against Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, common carriers engaged in commerce among the several States;

(*d*) The said Rapides Lumber Company, Limited, and The Long-Bell Lumber Company seek to compel the specific performance of the contract marked "Exhibit A" between them and the said Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, common carriers engaged in commerce among the several States;

(*e*) The said Rapides Lumber Company, Limited, and The Long-Bell Lumber Company seek to compel the Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, common carriers engaged in commerce among the several States, to file tariffs giving to the Louisiana & Pacific Railway Company through routes and joint rates, and to compel the Interstate Commerce Commission to receive and file the same, after the commission has negatively ordered otherwise;

(*f*) The said petitioners seek to invoke the jurisdiction of the Commerce Court to entertain a controversy not contemplated by the act to create a Commerce Court, in that the Woodworth & Louisiana

Central Railway Company and the United States are but nominal parties, and the real controversy will be conducted and carried on by, between, and in the interest of, the said two lumber companies and the said two common carriers subject to the act to regulate commerce;

274 (*g*) The power to establish through routes and joint rates under the act to regulate commerce is reposed exclusively in the carriers, and in the event of their failure to agree, exclusively in the Interstate Commerce Commission under section 15 of the said act.

3. The said Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and The Long-Bell Lumber Company are, and each of them is, without any standing in a court of equity to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission, on the ground that the Woodworth & Louisiana Central Railway Company, Limited, is a common carrier engaged in commerce among the several States; for that if the said Woodworth & Louisiana Central Railway Company, Limited, is a common carrier engaged in commerce among the several States, then it and the said two lumber companies, as one and the same enterprise, are unlawfully transporting in interstate commerce commodities manufactured, produced, and otherwise dealt in by them, and in which they have an interest, direct and indirect, in violation of section 1 of the act to regulate commerce.

4. The Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and The Long-Bell Lumber Company have no standing in a court of equity to maintain an action to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission, and to compel specific per-

275 formance of the contract set out under the mark of "Exhibit A" to the petition, because the said contract on its face is illegal and void, in that it creates illegal preferences and discriminations on the part of the Chicago, Rock Island & Pacific Railway Company and the Arkansas & Louisiana Railroad Company in favor of the Rapides Lumber Company, Limited, and the said The Long-Bell Lumber Company, in violation of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto, or certain of the provisions thereof.

5. That the incorporation of the Woodworth & Louisiana Central Railway Company, Limited, and the use of the same is a mere device and subterfuge for the purpose of giving the appearance of legality to the illegal contract between the said lumber companies and the said common carriers engaged in commerce among the several States, and for the further purpose of covering up the unlawful preferences, discriminations, and rebates growing out of the same.

6. There is a misjoinder of causes of action and the petition is multifarious because—

(*a*) The petitioners seek an injunction against the United States of America, the Interstate Commerce Commission, and all persons

claiming to act under their authority, direction, or control; and in the same petition,

(*b*) The petitioners seek an injunction against the Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company preventing them from violating the terms of
276 the contract pleaded and set out under the mark of "Exhibit A"; and in the same petition,

(*c*) The petitioners seek to compel specific performance of the said contract on the part of the said Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company; and in the same petition,

(*d*) The petitioners seek an order compelling the carriers to file tariffs of their rates and charges with the Interstate Commerce Commission; and in the same petition,

(*e*) The petitioners seek an order compelling the Interstate Commerce Commission to receive and file the tariffs after the court, by a similar previous order, has compelled the Chicago, Rock Island & Pacific Railway Company and the Arkansas & Louisiana Railway Company to file the said tariffs; and in the same petition,

(*f*) The petitioners seek an order compelling the Chicago, Rock Island & Pacific Railway Company and the Arkansas & Louisiana Railway Company to establish through routes and joint rates with the Woodworth & Louisiana Railway Company.

7. There is a misjoinder of parties because—

According to the statute, none of the following parties, to wit: The Rapides Lumber Company and The Long-Bell Lumber Company, as petitioners, and Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, as respondents, is a necessary or proper party, or a permissible party, except on its own motion.

277 8. The petitioners are, and each of them is, estopped from assailing the validity of the order of the Interstate Commerce Commission, as the said order was entered upon the request and with the consent of the said petitioners and each of them.

9. The petitioners have not in and by their said petition shown that in making its said order the Interstate Commerce Commission transcended the powers conferred upon it by the statute or violated any right of petitioners protected by the Constitution of the United States, or any other right of the petitioners over which this court may exercise jurisdiction.

10. The petition is vague, indefinite, uncertain, and insufficient in that it contains much irrelevant and immaterial matter and abounds in conclusions and assumptions of the pleader without facts to support the same.

11. The said petition is insufficient to set forth a cause of action upon which the court may grant the relief prayed, or any part of the same.

Wherefore, and for divers other good causes appearing from the face of the said petition more fully to be pointed out upon the hearing hereof, this respondent prays that its motion be sustained, and that the said petition be dismissed at the petitioners' cost and

that it be not required to make any answer thereto; and for such other and further action as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

278 *Journal Entry.*

Proceedings of February 10, 1913.

Case- Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY CO. et al., Petitioners,
vs.
COMMERCE COMMISSION et al., Interveners.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause was taken under advisement by the Court.

279 *Order Denying Motion to Dismiss for Want of Jurisdiction.*

(Entered February 24, 1913.)

United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction, in open court made; and the court having given the arguments of counsel due consideration, now, on this 24th day of February, 1913,

It is ordered and adjudged that said motion be, and the same is hereby, denied, the court being of opinion that the order complained of is an order the validity of which this court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

280 In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, Rapides Lumber Company, Limited; the Long-Bell Lumber Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company; Arkansas & Louisiana Railway Company, Respondents.

Answer of the United States.

(Filed March 18, 1913.)

The United States of America, respondent, not waiving its motion to dismiss the above-entitled cause for want of jurisdiction of the court over the subject matter, but still insisting upon its said motion and each and every part of the same, and still protesting against

the court entertaining jurisdiction over the subject matter now and at all times hereafter, and answering the said petition under protest—

The United States of America, respondent, now and at all times hereafter saving to itself any and all manner of benefit and advantage of exceptions or otherwise that can or may be had or
280*a* taken to the many errors, uncertainties, and imperfections in said petition contained, for answer thereto or to so much thereof as this respondent is advised it is material or necessary for it to make answer, answers and says:

I. It admits—

(*a*) The allegations of Paragraph VI of the petition;

(*b*) The commission made and entered the orders of September 3, 1910, and January 16, 1912, referred to in Paragraph VIII of the petition;

(*c*) The commission made and entered the order of November 15, 1910, referred to in Paragraph IX of the petition;

(*d*) The filing with the commission of the brief and argument referred to in Paragraph IX of the petition;

(*e*) The making and filing by the commission on April 29, 1912, of report No. 1853, entitled "Investigation and Suspension, Docket No. 11," referred to in Paragraph X of the petition;

(*f*) The making and filing by the commission on May 14, 1912, of supplemental report No. 1898, entitled "Investigation and Suspension, Docket No. 11, The Tap Line Case," parts of which are set out on pages 18 to 23, inclusive, of the petition, in extenso;

(*g*) The commission made and entered the order of May 14, 1912, referred to on pages 24 to 30, inclusive, of the petition;

(*h*) The filing with the commission of the petition in "I. and S., Docket No. 11," referred to on pages 31 to 38, inclusive, of the petition; and

280*b* (*i*) The commission made and entered the amended order of October 30, 1912, referred to on pages 38 to 46, inclusive, of the petition.

II. It admits—

(*a*) Woodworth and Louisiana Central Railway Company, Limited, is a corporation;

(*b*) Rapides Lumber Company, Limited, is a corporation;

(*c*) The Long-Bell Lumber Company is a corporation;

(*d*) Chicago, Rock Island and Pacific Railway Company is a corporation;

(*e*) Rock Island, Arkansas and Louisiana Railway Company is a corporation;

(*f*) The contract attached to the petition as Exhibit A.

III. Woodworth and Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and The Long-Bell Lumber Company are three interlocking corporations under a common ownership, control, and management operating in the State of Louisiana, with headquarters in a single office in Kansas City, Missouri. Chicago, Rock Island and Pacific Railway Company and Rock Island, Arkansas and Louisiana Railway Company are corporations and common carriers by railroad engaged in interstate

commerce and serve the petitioners. Prior to and during part of the year 1906 the said two common carriers named and other common carriers paid secret allowances to Rapides Lumber Company,
280c Limited, for lumber delivered by it to and transported by the said common carriers in interstate commerce, and each of them, which were illegal rebates and departures from the published tariffs. During the year 1906, or shortly prior thereto, as a device, the stockholders and officers of Rapides Lumber Company, Limited, and The Long-Bell Lumber Company, under the pretense of securing a better supply of cars and other railroad facilities, caused to be organized the Woodworth and Louisiana Central Railway Company, Limited, and took over, for a nominal consideration, the tracks and other plant facilities of Rapides Lumber Company, Limited, which theretofore had been used for the shifting of the loaded and empty cars within and around its mills. Through its organization and by other schemes and devices the stockholders and officers of Rapides Lumber Company, Limited, and The Long-Bell Lumber Company sought to clothe Woodworth and Louisiana Central Railway Company, Limited, with the rights and obligations of a common carrier with trunk-line connections. After so manipulating the said plant facilities and creating competition among several common carriers engaged in interstate commerce for the heavy traffic of Rapides Lumber Company, Limited, and The Long-Bell Lumber Company, they and Woodworth and Louisiana Central Railway Company, Limited, with the power wielded in the control of the heavy traffic, were enabled to and did hammer the competing trunk lines
280d for allowances or divisions; and by reason thereof the petitioners were enabled to and did, in the year 1906, secure such excessive allowances and divisions from Chicago, Rock Island and Pacific Railway Company and Southern Pacific System that they entered into similar, separate contracts with them, in and by which Chicago, Rock Island and Pacific Railway Company, since the year 1906, has received and transported fifty per cent (50%) of the traffic, a copy of the contract being attached to the petition as Exhibit A, and in and by which the Southern Pacific System, since the year 1906, has received and transported forty per cent (40%) of the traffic on similar terms and conditions. By entering into the contracts with the said two trunk lines named, for which they must furnish the cars for ninety per cent (90%) of the traffic, the remaining competing trunk lines are unable to secure any substantial proportion of the traffic; and the petitioners are unable to avail themselves of the cars and other facilities which the other competing carriers could furnish if allowed any substantial proportion of the traffic. The three interlocking petitioners under the common ownership, control, and management are operated for the double purpose of (1) controlling the traffic and dictating their allowances and divisions and (2) giving color of legality to the unlawful arrangements between the said two railroad companies and the petitioners.

The allowances or divisions made to Woodworth and Louis-
280e iana Central Railway Company are illegal rebates to the Rapides Lumber Company, Limited, and The Long-Bell Lumber Company and departures from the published tariffs and

illegal preferences and discriminations forbidden by the provisions of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto.

IV. The matters and things heard and determined by the Interstate Commerce Commission were within its power and authority to hear and determine under the provisions of the act to regulate commerce, and in its reports in writing with respect thereto, made after a full hearing and due notice to all the parties, which state its conclusions, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully covered and foreclosed by findings of fact.

V. Further answering the said petition and each and every part of the same in so far as it has not heretofore been admitted, denied, or otherwise traversed, this respondent denies any fact or facts alleged in said petition or any part of the same which deny or which seek to deny any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any and
280*f* all inferences of fact from any particular fact or facts alleged in the said petition or any part of the same which seek to deny or which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before the Interstate Commerce Commission or which are not referred to in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which attack or which seek to attack the reports and order of the Interstate Commerce Commission and to show facts differently from what the said reports and order show on the face thereof; and denies any allegations in said petition or any part of the same which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found; and denies any conclusions of law alleged and insisted upon in the said petition or any part of the same which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

And this respondent now gives notice that upon the final hearing hereof, and in accordance with section 1 of the act entitled "An act to create a Commerce Court," etc., approved June 18, 1910, it will move to dismiss the petition, for that the same is insufficient
280*g* to state any cause of action against the said respondent and will renew and urge in support thereof the grounds of its written motion already filed in that behalf.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

March, 1913.

280*h* In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

v.

THE UNITED STATES OF AMERICA; CHICAGO, ROCK ISLAND & Pacific Railway Company; Arkansas & Louisiana Railway Company, Respondents.

Answer of the Interstate Commerce Commission.

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

That there is a misjoinder of parties defendant, in that the
280*i* act of Congress creating said court expressly provides that suits of this character shall be brought against the United States.

That this court has no jurisdiction of the controversy, matters and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, In the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order of January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C. Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that there-

after, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in
280*j* said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338; and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times, and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and
280*k* each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said published reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver,

maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were
280*l* specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

JAMES S. HARLAN.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 8th day of February, 1913.

[SEAL.] GEORGE B. McGINTY,
Notary Public.

280*m* In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA et al., Respondents.

Answer of the Chicago, Rock Island & Pacific Railway Company, Respondent, to the Petition of the Above-named Petitioners.

(Filed February 7, 1913.)

I.

It admits the incorporation of the Woodworth & Louisiana Central Railway Company, one of the petitioners herein, and is informed and believes that said company is incorporated under the laws of the State of Louisiana providing for the formation of common carrier corporations; and also admits the correctness of the extracts in Paragraph 1 of the petition herein from the Constitution and Laws of the

State of Louisiana. It admits, upon information and belief, the correctness of the statements in Paragraph 1 of the petition in reference to the location and mileage of the lines of railway operated by the petitioner railway company, and the connections between
280*n* said railway and other lines of railroad. For lack of sufficient information, it neither admits nor denies the statements in Paragraph 1 of the petition as to compliance with the rules and regulations promulgated by public authorities or as to the carriage of a full line of class and commodity rates between points on its own line in Louisiana or from and to all interstate territory via all connecting lines, but admits that it concurs in joint through rates on some commodities between points on its line and points on the line of said respondent.

II.

It admits, upon information and beleief, the correctness of the statements contained in Paragraph 2 of the petition.

III.

It admits, upon information and belief, the correctness of the statements contained in Paragraph 3 of the petition.

IV.

It admits that it is a consolidated corporation organized under the laws of the States of Illinois and Iowa, and that it operates lines of railway in various states of the United States.

V.

Answering Paragraph 5 of the petition, this respondent says that the Rock Island, Arkansas & Louisiana Railroad Company is a railway corporation organized under the laws of the States of
280*o* Arkansas and Louisiana, and that the lines of said railway are leased by it to this respondent for a period of years, under and by virtue of which lease said lines in Arkansas and Louisiana are operated by this respondent.

VI.

It admits the averments set forth in Paragraph 6 of the petition.

VII.

Answering Paragraph 7 of the petition, it admits and avers that by reason of the Report or Opinion mentioned in Paragraph 6 of the petition and by reason of the belief, induced by said report or opinion and the respondent's understanding of the views of the Interstate Commerce Commission with respect to the subject-matter thereof, that otherwise its officers and agents would be subjected to criminal prosecution as for alleged rebates or for unlawful discriminations, this respondent, about August 1, 1910, filed new tariffs on lumber

with said Commission, in the form of supplemental tariffs, to become effective in thirty days, which new tariffs canceled all joint rates or tariffs on lumber which respondent had theretofore maintained with the petitioner railway company.

VIII.

Answering Paragraph 8 of the petition, it admits that on the third day of September, A. D. 1910, the Interstate Commerce Com-
280*p* mission issued an order, in words and figures as set forth in the petition, by which order the said Commission suspended for a period of one hundred and twenty days the operation of the tariffs filed by this respondent with said Commission canceling joint rates on lumber with the petitioner railway company. Respondent admits that the said Commission from time to time by appropriate orders further suspended the cancellation of said joint rates until the thirtieth day of April, A. D. 1912.

IX.

Respondent admits that pursuant to its order of September 3, 1910, the Interstate Commerce Commission entered upon a hearing as to the propriety of the schedules or tariffs filed by respondent canceling joint rates on lumber with the petitioner railway company. It neither admits nor denies the additional averments contained in Paragraph 9 of said petition, but leaves petitioners to make proof thereof.

X.

It admits that following said hearing the Interstate Commerce Commission rendered its Report and Opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, The Tap-Line Case," by which it approved the cancellation of joint rates on lumber between respondent and the petitioner railway company and other railway companies, and under which it permitted the cancella-
280*q* tion of said joint rates to become effective on May 1, 1912. Further answering, it admits that said Commission, under Investigation and Suspension Docket No. 11, issued a supplemental Report and Order in which it found that the service performed by the petitioner railway company and other named railway companies "for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad, and that any allowances or divisions out of the rate on account thereof are unlawful." Respondent neither admits nor denies the additional averments contained in Paragraph 10 of the petition, but leaves petitioners to make proof thereof.

XI.

Answering Paragraph 11 of the petition, it admits the general correctness of the statements set forth in Paragraph 11 of the petition

respecting the petition filed by the petitioners in this court on June 21, 1912, the dismissal thereof, and the subsequent application to the Interstate Commerce Commission. It admits that on the thirtieth day of October, 1912, the said Commission entered of record an Amended Order in Investigation and Suspension Docket No. 11, The Tap-Line Case, requiring this respondent to cease and desist, and for a period of two years thereafter, or until otherwise
280*r* ordered, to abstain, from making any allowances out of joint rates on lumber to the petitioner railway company and other railway companies, the said order being based on a finding by the Interstate Commerce Commission "that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary companies in moving logs to their respective mills, and performed therewith in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in unreasonable and unlawful preferences and unjust discriminations." Respondent neither admits nor denies any of the additional averments contained in Paragraph 11 of the petition, but leaves petitioners to make proof thereof.

XII.

It admits, upon information and belief, the correctness of the statements contained in Paragraph 12 of the petition with respect to the tariffs on lumber to which the petitioner railway company was a party until April 30, 1912; but it reserves leave to refer, if need be, to said tariffs on file with the Interstate Commerce Commission. It denies that the rates therein named were reasonable through rates, and avers that said rates were unduly low.

280*s*

XIII.

It has no knowledge or information sufficient to form a belief as to the correctness of all of the averments of Paragraph 13 of the petition, and it therefore neither admits nor denies the averments in Paragraph 13, but leaves petitioners to make proof thereof, so far as the averments may be deemed material.

XIV.

Answering Paragraph 14 of the petition, it admits that there has prevailed for a number of years in the lumber-producing districts of the South what are known as "blanket rates;" that is, all lumber rates from all points on all lines in a given territory are the same to any points in any other given territory.

XV.

It admits the execution on August 1, A. D. 1906, of a contract between The Chicago, Rock Island & Pacific Railway Company, the

Rock Island, Arkansas & Louisiana Railroad Company, and the petitioners herein, which contract was in words and figures substantially as set forth in a copy thereof attached to the petition and marked "Exhibit A."

280*f*

XVI.

It has no knowledge or sufficient information upon which to form a belief as to the truth of the averments of Paragraph 16 of the petition with respect to any contract or contracts between the petitioner railway company and the Rapides Lumber Company, or as to the investment alleged to have been made by the Rapides Lumber Company in mills and timber.

XVII.

It admits that it canceled joint through rates on lumber with the petitioner railway company under and by virtue of the canceling tariffs hereinbefore referred to, and that such cancellation was made by reason of the several reports, decisions and orders of the Interstate Commerce Commission hereinabove referred to, and by reason of the belief, induced by said reports, decisions and orders, that otherwise its officers and agents would be subjected to criminal prosecution as for alleged rebates or for unlawful discriminations. As to the legal effect of the various orders and requirements of the said Commission, set forth in Paragraph 17 of the petition herein, respondent refers to said orders and requirements as specifically set out in the petition.

It says that the other matters and things in said Paragraph 17, being charges against the correctness of the Report of the said Commission and its power and authority, concern its co-defend-
280*a* ant, The United States, and this respondent asks to be allowed to leave the defense thereof to said co-defendant.

XVIII.

Answering the remaining paragraphs of said petition, this respondent says that, the Interstate Commerce Commission having declared that the division of rates between it and the petitioner railway company was in violation of law, it was obliged to act as it did and cancel the same.

XIX.

It denies all the other matters and things in said petition contained, not hereinabove admitted.

Wherefore, this respondent, The Chicago, Rock Island & Pacific Railway Company, prays the Court to be hence dismissed with its costs, and for such other and general relief in the premises as to this Court may seem meet.

W. F. DICKINSON,
Solicitor for The Chicago, Rock Island & Pacific Railway Company.

280*v* *Petition of A., T. & S. F. Ry. Co. et al., for Leave to Intervene.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition for Leave to Intervene.

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceeding before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the
280*w* milling industries located upon the lines of petitioners are known as the blanket system of rates.

Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitioners are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance by the respondents herein will not be in truth an allowance to a railroad for the service of transportation of lumber, but on the contrary will be an allowance to the milling industry for an operation incident to

the manufacture of lumber, and will constitute a device for the payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Their Attorneys.

February 10, 1913.

280x In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado and Santa Fe Railway Company, having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, that the Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

280y *Petition of Intervention of Railroad Commission of Louisiana.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILROAD COMPANY et al., Petitioners,
vs.
THE INTERSTATE COMMERCE COMMISSION et al., Respondents.

Motion on Behalf of the Railroad Commission of Louisiana for Permission to Intervene as Party Petitioner and to be Represented by Counsel and to File Brief in the Above-entitled Suit.

Comes now the Railroad Commission of Louisiana, through its undersigned counsel, and moves this Honorable Court for an
280z order granting permission to it to enter appearance, to be made party interventor, as petitioner, to be represented by counsel, and to file brief in the above-entitled suit, and as grounds for such motion, shows that it, through its then constituent members, J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, was an interventor In the Matter of the Tap Line Allowances and Divisions, being Docket Numbers 3400, Sub. 6; 3400, Sub. 7, 3493, 3411, 3412, 3513, 3514, 3524, 3551, 3552 and 3564, consolidated under Investigation and Suspension Docket No. 11, and known as the "Tap Line Case," before the Interstate Commerce Commission, in which case the said Interstate Commerce Commission made the orders attacked in the above-entitled cause, and that it is interested in having the orders of the said Interstate Commerce Commission, insofar as they refer to petitioner, a common carrier, duly incorporated and operating under the laws of the State of Louisiana, annulled and set aside.

THE RAILROAD COMMISSION OF LOUISIANA,
SHELBY TAYLOR, *Chairman;*
HENRY B. SCHREIBER,
B. A. BRIDGES,
Commissioners,
By RUFFIN G. PLEASANT,
Attorney General State of Louisiana;
WYLIE M. BARROW,
Assistant Attorney General,
Solicitors for the Railroad Commission of Louisiana, Intervening Petitioner.

280aa In the United States Commerce Court.

Docket No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioner; The Railroad Commission of Louisiana, Intervener,

vs.

THE UNITED STATES OF AMERICA et al., Respondent.

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, composed of Shelby Taylor, Chairman; Henry B. Schreiber and B. A. Bridges, Commissioners, a political corporation created, organized and existing under and by virtue of the laws of the State of Louisiana, having its domicile in the city of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, for the reasons hereinafter set forth,
280bb asks leave to intervene and be made a party to this cause, in behalf of plaintiff.

I.

Because the Woodworth & Louisiana Central Railway Company, Limited, is a railroad corporation duly and legally chartered, incorporated and existing under the laws of the State of Louisiana, and is under the laws of the State of Louisiana, a common carrier of freight and passengers, subject, as to its freight and passenger tariffs and service between and at points in the State of Louisiana, to regulation and control by the Railroad Commission of Louisiana. That the said Woodworth & Louisiana Central Railway Company, Limited, petitioner, is operating a railroad in Louisiana, in accordance with the laws of the State of Louisiana, and is subject to the rules and regulations governing railroads adopted by the Railroad Commission of Louisiana. That said petitioner, the Woodworth & Louisiana Central Railway Company, Limited, accepts and transports shipments at and between points on its said line of railroad in Louisiana, and has filed with the Railroad Commission of Louisiana, tariffs containing class and commodity rates, which have been approved by the Railroad Commission of Louisiana to apply on shipments so transported. That it has been engaged in the business of a common carrier since the Railroad Commission of Louisiana was organized in 1898, and for some time previous thereto.

280cc II.

That there are numerous shippers living along the line of the railroad of the Woodworth & Louisiana Central Railway Company, who ship and receive interstate and intrastate freight over the said railroad, and who are interested in securing fair and reasonable rates and adequate service, for the transportation of all classes and kinds

of freight, including lumber, over the Woodworth & Louisiana Central Railway Company.

III.

That Act No. 195 of the Legislature of 1906 of the State of Louisiana provides:

"That power and authority is hereby vested in the Railroad Commission of Louisiana, and it is hereby made its duty, to appear, through any of its commissioners, or its secretary, or by a duly authorized attorney, before the Interstate Commerce Commission at Washington, D. C., or at any other place where the said Interstate Commerce Commission might be holding a session, whenever, in the judgment of the said Railroad Commission of Louisiana, the interests of shippers or consignees in the State of Louisiana may require it."

That acting under and by virtue of Act No. 195 of the
280*dd* General Assembly of the State of Louisiana of 1906, the Railroad Commission on January 31, 1913, adopted the following resolution:

"Whereas, The Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and

"Whereas, The following so-called 'tap lines,'

Mansfield Railway & Transportation Company,
Woodworth & Louisiana Central Railway Company, Limited,
Victoria, Fisher & Western Railroad Company, and
Louisiana & Pacific Railway Company

are among those 'tap lines' which have filed such suits, and which railways are duly chartered under the laws of the State of Louisiana as common carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and,

"Whereas, The said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and,

280*ee* "Whereas, This Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitutional interference with the rights of the said railway Companies to receive revenue out of joint through rates of the transportation of lumber and logs over their lines in Louisiana destined to interstate points; and,

"Whereas, It is *of* the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right to ship logs and lumber over said railways at reasonable joint through rates, and deprives the said railway companies from receiving a reasonable division out of joint through rates, which

division of rates is the principal source of revenue of such carriers; and,

"Whereas, If the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber, thereby rendering it impossible to meet the operating expenses and fixed charges, and consequently preventing any extension, or hope of extension, or improvement, or hope of improvement of such railways:

"Therefore, be it resolved, That the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney-General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognize the said railway companies as common carriers of interstate shipments of logs and lumber, as they are recognized to be common carriers of all other class- and kind- of shipments."

280*ff*

IV.

That, pursuant to the various appropriate orders made by the Interstate Commerce Commission, in the case of Star Grain & Lumber Company, et al., vs. Atchison, Topeka & Santa Fe Railway Company, et al., Docket No. 1319, as set forth and referred to in Paragraphs III, IV, V, VI, VII, VIII and IX of the petition filed in this cause, the Railroad Commission of Louisiana, believing the shippers and general public living along the line of railroad of the Woodworth & Louisiana Central Railway Company were interested in the proceeding instituted by the Interstate Commerce Commission, entitled:

"Investigation and Suspension Docket No. 11. In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap Line Connections."

On or about the 9th day of December, 1910, filed a petition of intervention on behalf of the shippers of the State of Louisiana, and were operating their railroads as common carriers under and by virtue of their charters, one of which railroads was that owned and operated by the Woodworth & Louisiana Central Railway Company. That the said Railroad Commission of Louisiana thereafter filed a brief and took part in the oral argument before the Interstate Commerce Commission, in support of the rights of the shippers who ship and receive freight over the lines of railroad owned and operated by the common carriers who, for the purposes of the proceedings before the Interstate Commerce Commission were, and have since been, designated as 'tap lines.' That one of the said common carriers in which the Railroad Commission was and is interested as a vehicle and means of intrastate and interstate transportation for the use of the public in the State of Louisiana, is the Woodworth & Louisiana Central Railway Company, plaintiff in this cause.

280*gg*

V.

Your petitioner further states that the Woodworth & Louisiana Central Railway Company is an important railroad, performing a valuable service in the development of the section of the State of Louisiana through which its railroad runs; that the people living along such railroad are dependent upon it for the transportation of their products and their merchandise to and from the towns, cities and markets of the country. That they are entitled to ship
280*hh* at fair and reasonable local and joint through interstate, as well as intrastate, rates; that an important commodity shipped over the said railroad is lumber, and that, while the said railroad is required by the laws of the State of Louisiana and the rulings of the Railroad Commission of Louisiana, to establish reasonable local rates and joint through rates in connection with the trunk lines with which it connects on Louisiana intrastate shipments, and is permitted by the Interstate Commerce Commission to establish joint through rates, and receive divisions therefrom, to and from interstate points on all classes and commodities, except lumber, on shipments of lumber the said Woodworth & Louisiana Central Railway Company is not permitted to receive a division out of joint through interstate rates.

VI.

That in declaring an allowance out of joint through rates on lumber to be unlawful, the Interstate Commerce Commission has deprived the said Woodworth & Louisiana Central Lumber Company of an important source of revenue, which it earns by performing a transportation service, and to which it is entitled as a common carrier, the only restrictions upon such allowance being that it must be reasonable, and in thus denying an allowance out of through interstate rates on lumber to the Woodworth & Louisiana Central Railway Company, and depriving it of this important
280*ii* source of revenue, an undue burden and unnecessary hardship, and an unjust discrimination has been enacted and placed upon shippers of other commodities than lumber who use plaintiff's railroad, thus depriving the State of Louisiana of the natural development and increase in property values which follow the extension and improvement of railroad properties, where the legitimate revenues from the operation of such properties lead to their betterment.

Your petitioner further avers that by depriving the Woodworth & Louisiana Central Railway Company of a division of the earnings from interstate shipments of lumber, made in connection with the trunk lines, with which it connects, the Interstate Commerce Commission has thrown upon the smaller tonnage of general commodities, other than lumber, the entire burden of producing a sufficient revenue to pay all the fixed and operating expenses of the Woodworth & Louisiana Central Railway Company, and, as a result of such a burden, your petitioner fears that the Woodworth & Louisiana Central Railway Company's revenues will so diminish as to cause it to become bankrupt, and thereby seek, through proper legal means, to dissolve its charter, cease its operations, and go out of busines

as a common carrier, leaving many of the citizens of Louisiana, who are served by said Railway Company totally without means of transportation. That such a result will deprive the citizens of Louisiana of their rights to be served by common carriers,
280*jj* properly organized under its laws, under the same conditions and circumstances as are accorded to the trunk lines.

VII.

And petitioner further avers that should the Woodworth & Louisiana Central Railway Company be deprived of its right to receive a fair division of reasonable joint through interstate rates for the transportation of lumber, it will cause an unjust discrimination, is arbitrary, unreasonable, and unjust.

VIII.

Your petitioner further avers that the Woodworth & Louisiana Railway Company is a common carrier by virtue of its charter, that it holds itself out as such, constantly acts in that capacity, and has been so treated by those who it has served, by the great railroad systems with which it connects, by the State Board of Appraisers of the State of Louisiana, by the Railroad Commission of Louisiana, and, except as to the transportation of logs and lumber, in all other respects, by the Interstate Commerce Commission. That as a common carrier, exercising the right of eminent domain, it has received exemption from taxation under the constitutional provisions, amendments thereof of 1898, of the State of Louisiana, having extended its lines during the period when such exemption from taxation ran.

280*kk*

IX.

Petitioner further avers that the Woodworth & Louisiana Central Railway Company actually performs a part of the transportation of every shipment of lumber originating on its line, going to interstate destinations, and accepts all shipments tendered it for such transportation.

X.

Your petitioner further avers that it is and has been the policy of the State of Louisiana to aid and encourage the development of its resources, the investment of capital in manufacturing industries, and to assist, whenever it can consistently do so, the producers of Louisiana, to secure and maintain equitable and fair rates, rules and regulations affecting the transportation of persons and property between points in the State of Louisiana, and points in other States. That the Railroad Commission of Louisiana, as the authorized representative of the shippers of the State of Louisiana, is vitally interested in the outcome of this suit, in that it involves property rights, industrial enterprises and transportation problems, which affect the commerce of its citizens.

Wherefore, petitioner, the Railroad Commission of Louisiana, prays leave to file this intervention, and that it be made a party to this proceeding, and that the orders of the Interstate Com-
280½ merce Commission, dated May 14, 1912, and October 31, 1912, be enjoined, set aside and annulled, all as is prayed for in the prayer of the original petition filed herein.

And your petitioner prays for all other and further relief as in equity and good conscience they may be entitled to receive.

THE RAILROAD COMMISSION OF LOUISIANA,
By W. M. BARROW,
Assistant Attorney-General of the State of Louisiana.

STATE OF LOUISIANA,
Parish of ——:

Shelby Taylor, being duly sworn on his oath, states that he is Chairman of the Railroad Commission of Louisiana, the petitioner herein; that he has read the above and foregoing petition, and is familiar with the facts therein stated; and that the allegations and averments of facts made are, to the best of his knowledge, information and belief, true, and he believes them to be true.

SHELBY TAYLOR,
Chairman Railroad Commission of Louisiana.

Subscribed and sworn to before me, this 7th day of February, A. D. 1913.
[SEAL.]

R. H. FLOWER,
Assistant Secretary of State.

281 In the United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILROAD COMPANY et al.
v.
THE UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times

hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

282 United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order Designating Judge Carland to Hear Testimony.

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

283 *Exhibit Offered in Evidence Before Judge Carland Consisting of the Agreement of August* 1, 1906, *Between Rock Island, Arkansas & Louisiana Railroad Company; Chicago, Rock Island & Pacific Railway Company; Woodworth & Louisiana Central Railway Company; Rapides Lumber Company, and Long-Bell Lumber Company.*

(Offered in Evidence Before Judge Carland, March 20, 1913.)

(Copy of this agreement is attached to the petition herein as Exhibit A.)

284–299 *Certified Transcript of Testimony at Hearings at New Orleans, St. Louis, and Chicago, December,* 1910; *January and February,* 1911, *in Proceeding Before the Interstate Commerce Commission, I. and S. Docket No.* 11.

(Filed in Commerce Court March 26, 1913.)

Note by the Clerk.

(Certificates of the Secretary of the Interstate Commerce Commission to transcripts of testimony & testimony omitted in printing here because printed elsewhere in separate volume.)

299a *Certified Copies of Exhibits in Proceeding Before Interstate Commerce Commission, I. & S. Docket No.* 11, *Filed May* 8, 1913.

The Interstate Commerce Commission certified to one set of exhibits applicable to cases Numbers 90, 91, 92 and 93, and which was used in the four cases. As directed by letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were printed for the use of the Commerce Court, viz:

Note by the Clerk.

(Exhibits filed in the proceedings before the Interstate Commerce Commission, omitted here in printing because printed elsewhere in separate volume.)

300–313 As directed by the same letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were omitted from the printing, vis:

Two time tables, L. & P. Ry. Co.
Petition, U. S. v. L. & P. Ry. Co.
Mortgage, Long-Bell Lumber Co., L. & P. Ry. Co.
Tariff sheets of various railroad companies.
Division sheets, W. & L. C. Ry. Co.
Statement, shipments of Gilmer Lumber Co.
Statement, shipments of 51 concerns.
Certain division sheets of various railroad companies.

Owing to the cumbrous and peculiar nature of the latter exhibits, they are not reproduced here. They are contained in the record on appeal in Louisiana & Pacific Railway Co. v. United States, No. 90, and are made a part hereof by reference the same as though fully incorporated herein.

Note by the Clerk.

(Order of Interstate Commerce Commission Dec. 20, 1910, omitted here in printing because printed elsewhere in a separate volume.)

Case- Nos. 90, 91, 92, and 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

315-344 Journal Entries (Continued).

Case- Nos. 90, 91, 92, and 93.

Proceedings of June 5, 1913.

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Carwood on behalf of the petitioners.

Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Carwood appearing on behalf of the petitioners. Thereupon Mr. Carwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Whereupon the causes were taken under advisement by the Court.

Note by the Clerk.

(Opinion by Mack, J., Nov. 26, 1913, omitted here in printing because printed elsewhere in a separate volume.)

345 *Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY (LIMITED) et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had. It is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended Order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; the Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company;

346 The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Rail-

way Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service,"

be and the same is hereby vacated and set aside as to the petitioners herein.

By the Court.

MARTIN A. KNAPP,
Presiding Judge.

347 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Affidavit.

(Filed November 29, 1913.)

Blackburn Esterline, being duly sworn, says that he is Special Assistant to the Attorney General of the United States, and has had charge of the interests of the United States in the above-entitled cause under the direction of the Attorney General.

That none of the following named companies, viz: Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company, named as respondents to the petition has ever appeared, by counsel or otherwise, at any time, at any of the hearings of the said cause, and has left the defense thereof entirely in the charge of the respondent, the United States.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 29th day of November, A. D. 1913.

[SEAL.]

J. H. MACKEY,
Notary Public, D. C.

348 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Summons and Severance.

(Filed November 29, 1913.)

To Chicago, Rock Island & Pacific Railway Company and Arkansas & Louisiana Railway Company:

You are hereby invited to join with the United States of America and the Interstate Commerce Commission in an appeal this day prosecuted from the final order or decree of the Commerce Court entered November 28, 1913, in the above-entitled cause, in which you are a party respondent, to the Supreme Court of the United States, to reverse the judgment rendered in the said cause. In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute said appeal without joining you as parties.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

Service of a true copy of the foregoing notice is hereby acknowledged this 29th day of November A. D. 1913.

T. P. LITTLEPAGE,
Agent at Washington for Rock Island Lines and Rock Island, Arkansas & Louisiana Ry. Co.
CORPORATION TRUST CO.
WARREN N. AKERS,
Ass't Sec.,
Agent at Washington for Arkansas & Louisiana Ry. Co.

349 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, and Arkansas & Louisiana Railway Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

Petition for Appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervenor, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray and appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervenor, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted
350 forthwith to the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

351 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court of review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

352 III.

In not dismissing the petition for the (*a*) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners show that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Woodworth & Louisiana Central Railway Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

353

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Woodworth & Louisiana Central Railway Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Woodworth & Louisiana Central Railway Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

354 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in

controlling the routing to compel the trunk lines to make allowances to the Woodworth & Louisiana Central Railway Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912 which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may,
355 as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such order and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

356 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener.

v.

UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company and Arkansas & Louisiana Railway Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

357 Copy.

In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener.

v.

UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company and Arkansas & Louisiana Railway Company, Respondents; Interstate Commerce Commission, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, Interveners.

Petition for Appeal.

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, intervenors, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

358 Washington, November 29, 1913.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

359 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioners,
v.
UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and in connection with their petition for appeal, file the following assignments of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

III.

In not dismissing the petition for the reason that (*a*) the
360 same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the Commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the Commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging with relation to the freight of its proprietary lumber companies, that the Woodworth & Louisiana Central Ry. Co., Ltd., is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line
361 haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Woodworth & Louisiana Central Railway Company, Ltd., and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Woodworth & Louisiana Central Railway Company, Ltd., and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in controlling the routing, are forcing the trunk lines to make allowances to the Woodworth &

Louisiana Central Railway Company, Ltd., resulting in un-
362 due and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission, made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce
363 Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1911, be reversed annulled and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and The Gulf, Colorado & Santa Fe Railway Company, Intervenors.

363½ In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED, et al., Petitioners,
v.
UNITED STATES OF AMERICA et al., Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed That the said appeal be, and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

364 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, Petitioners,

v.

UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, and Arkansas & Louisiana Railway Company, Respondents; Interstate Commerce Commission, The Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, and Railroad Commission of Louisiana, Intervenors.

Bond on Appeal.

(Filed December 5, 1913.)

Know all men by these presents, That we, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, as principals, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, in the sum of Five Hundred Dollars ($500.00), to be paid to the Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and the Long-Bell Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D. nineteen hundred and thirteen.

Whereas, heretofore, to wit, on the 28th day of November, 1913, in a suit pending in the United States Commerce Court, and
365 numbered 91 on the docket of said Court, wherein the Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, were petitioners, and the United States of America, Chicago, Rock Island & Pacific Railway Company, and Arkansas & Louisiana Railway Company, were respondents, and the Interstate Commerce Commission, The Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, and the Railroad Commission of Louisiana, were intervenors, an order, judgment and decree was rendered against said respondents and intervenors, and

Whereas, said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, have appealed from said order and decree to the Supreme Court of the United States, and have obtained citation directed to the said Woodworth & Louisiana Central Railway Company, Limited, Rapides Lumber Company, Limited, and the Long-Bell Lumber Company, citing and admonishing them and each of them to be and appear

at a session of the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute said appeal to effect and shall pay all costs, if they shall fail to make their appeal good, then the above obligation to be void, otherwise to re-
366 main in full force and effect.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
" EVANS BROWNE, *Its Attorneys.*
GULF, COLORADO & SANTA FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
" EVANS BROWNE, *Its Attorneys.*
[SEAL.] NATIONAL SURETY COMPANY,
(Sgd.) By W. H. RONSAVILLE.

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

(Sgd.) JOHN E. CARLAND, *Judge.*

367 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY (LIMITED) et al.
v.
THE UNITED STATES OF AMERICA et al.

Præcipe for Record.

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition with exhibits, filed January 8, 1913.

Return of service on respondents, filed January 9, 1913.

Appearance of W. F. Dickinson, for respondent carriers.

Motion of the United States to dismiss the petition, filed February 7, 1913.

Order entered denying motion to dismiss the petition, entered February 24, 1913.

Answer of United States, filed March 18, 1913.

Answer of the Interstate Commerce Commission, filed February 28, 1913.

Answer of the C. R. I. & P. Ry. Co., filed February 7, 1913.

Petition of A. T. & S. F. Ry. Co. et al., to intervene, filed February 10, 1913.

368 Order granting the same, entered February 10, 1913.

Motion of Railroad Commission of Louisiana to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Order designating Judge Carland to take testimony, entered March 5, 1913.

Exhibit offered in evidence before Judge Carland consisting of the agreement of August 1, 1906, between Rock Island, Arkansas & Louisiana Railroad Company, Chicago, Rock Island & Pacific Railway Company, Woodworth & Louisiana Central Railway Company, Rapides Lumber Company, and Long-Bell Lumber Company, attached as "Exhibit A" to the petition.

Certified transcript of testimony at hearings in proceeding before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913.

Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-*a*, filed May 10, 1913.

Certified copies of exhibits in proceeding before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Journal entries as to final hearing.

Opinion of the Commerce Court.

Final decree.

Affidavit of Blackburn Esterline.

Summons and severance.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A. T. & S. F. Ry. Co. et al.

369 Assignment of errors, same.

Order allowing appeal, same.

Bond of A. T. & S. F. Ry. Co., et al.

Citation on appeal, same.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

CHAS W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for A., T. & S. F. Ry. Co. and G., C. and S. F. Ry. Co.

370 DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing præcipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D. nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, District of Columbia.

371 In the United States Commerce Court, June Session, 1913.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY (LIMITED) et al.
v.
THE UNITED STATES OF AMERICA et al.

Hugh P. Lutz, being duly sworn, deposes and says that he, on December 17th, 1913, served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees, by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,
Notary Public.

372 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

91.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Woodworth & Louisiana Central Railway Company, Limited; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company; Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D., 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

373 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

91.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Woodworth & Louisiana Central Railway Company, Limited; Rapides Lumber Company, Limited, and the Long-Bell Lumber Company; Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and

filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

374 United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY CO., LTD.; RAPIDES Lumber Company, Ltd.; The Long-Bell Lumber Company, Petitioners,

vs.

UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Co., Rock Island, Arkansas & Louisiana Railroad Co., Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Co., Gulf, Colorado & Santa Fe Railway Co., Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the Clerk's Office of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

375 In the Supreme Court of the United States, October Term, 1913.

No. 831.

UNITED STATES OF AMERICA et al., Appellant,
v.
WOODWORTH & LOUISIANA CENTRAL RY. CO., LTD.

Statement of Errors.

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge, La., Counsel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, D. C.

I concur in the above designation.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, Appellant.

376 In the Supreme Court of the United States, October Term, 1913.

No. 831.

UNITED STATES OF AMERICA et al., Appellants,
v.
WOODWORTH & LOUISIANA CENTRAL RY. CO., LTD.

Instructions to Omit Certain Matter from the Printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz.—

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings

before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8,

377 1913, consisting of 1 printed volume marked, Volume V.

5. Opinion of the United States Commerce Court.

Other instructions are separately given to print in a single volume certain parts of the matter so to be omitted.

JNO. W. DAVIS,
Solicitor General.

378 [Endorsed:] File No. 23,982. Supreme Court U. S., October term, 1913. Term No. 831. The United States et al., Appellants, vs. Woodward & Louisiana Central Railroad Company et al. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

379 Supreme Court of the United States, October Term, 1913.

No. 831.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, Appellants,
vs.
WOODWARD & LOUISIANA CENTRAL RAILWAY COMPANY et al.

Designation by Appellees of Additional Parts of the Records to be Printed.

Now come the appellees, by their counsel, pursuant to section 9 of rule 10, and desighate additional parts of the records which they think material, namely: all those parts of the records of testimony before the Commission not designated to be printed by the appellants, being vols. I to V inclusive.

LUTHER M. WALTER.

380 [Endorsed:] No. 23,982. Supreme Court U. S., October term, 1913. Term No. 831. The United States et al., Appellants, vs. Woodward & Louisiana Central Railway Company et al. Designation by counsel for appellee of additional parts of record to be printed. Filed February 5, 1914.

Endorsed on cover: File No. 23,982. U. S. Commerce Court. Term No. 831. The United States and Interstate Commerce Commission, appellants, vs. Woodworth & Louisiana Central Railway Company et al. File No. 23,983. Term No. 832. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, appellants, vs. Woodworth & Louisiana Central Railway Company et al. Filed December 29th, 1913. File Nos. 23,982 and 23,983.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 833.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY, FROST-JOHNSON LUMBER COMPANY, AND RAILROAD COMMISSION OF LOUISIANA.

No. 834.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 20, 1913.

(23,984—23,985)

(23,984—23,985)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 833.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY, FROST-JOHNSON LUMBER COMPANY, AND RAILROAD COMMISSION OF LOUISIANA.

No. 834.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

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United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition and Exhibits.

(Filed January 14, 1913.)

1 In the United States Commerce Court.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners complain of the respondent, and for cause of action say:

I.

That the petitioner, Mansfield Railway & Transportation Company, is a railway corporation duly chartered, incorporated and existing under the laws of the State of Louisiana, and by its charter duly empowered to acquire rights of way, construct, maintain and operate railroads and branches thereof in the State of Louisiana, as a common carrier of freight and passengers, and to acquire by lease or otherwise, and to operate as a common carrier freight and passenger railways and trains, and to carry express, United
2 States mail and all other articles usually conveyed and transported by railroads, and to do all things necessary and proper, which may be incident to the above mentioned purposes, and now

has and exercises franchises, powers, rights, privileges and immunities conferred by law upon corporations created and organized for railroad purposes.

That the Constitution and Laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabili-
3 ties, and the names and places of residence of its officers." Const. 1879, p. 245.

Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for

expropriation for such public work shall be barred by two (2) years' prescription, which shall commence to run from the date at which
the land was actually occupied and used for the construction
4 of the works." (As amended by Act. 227, 1902, p. 457.)

Said petitioner, Mansfield Railway & Transportation Company, operates a line of railroad from Mansfield, La., to Hunter, La., a distance of about sixteen miles. Said Mansfield Railway & Transportation Company is engaged in both state and interstate commerce. It connects with the Texas & Pacific Railway Company at Mansfield Junction, La., and with the Kansas City Southern Railway Company, at a point about one and one-half miles east of Mansfield, La. Said petitioner complies with the rules and regulations promulgated by the State Railroad Commission of Louisiana and by the Interstate Commerce Commission and is subject to and complies with all the laws of the State of Louisiana and the United States relating to common carriers by railroad. It carries a full line of class and commodity rates between points on its own line in Louisiana and concurs in joint tariffs applying on class and commodities transported between points on its own road and points on connecting lines in Louisiana and other states of the United States except upon lumber and forest products. It has invested in road and equipment, $294,105.71, which represents about $18,381.61 per mile, including equipment. It has an equipment consisting of one locomotive, one box car and two passenger coaches. It maintains an operating force including office employees, telegraph and station agents, and the necessary section gangs and track men varying from time to time, none of which operating force is in any way connected with the petitioner Frost-Johnson Lumber Company, or of any lumber company located on its line of road.

In addition to the lumber traffic handled it receives from
5 and delivers to its connections above named, merchandise in carload and less than carload quantities and handles passengers, mail and express on regular scheduled trains between Mansfield Junction, Mansfield and Hunter, Louisiana, under tariffs filed with the Louisiana Railroad Commission and the Interstate Commerce Commission. The largest station on its line is Mansfield, La., which has a population of between twenty-five hundred and three thousand inhabitants. At this point it serves the following industries:

Mansfield Gin Company.
De Sota Cotton Oil Company.
De Sota Foundry & Machine Company.

At Oak Hill, La., it serves:

Mansfield Hardwood Lumber Company.
Frost-Johnson Lumber Company.

At Baker, La., it serves:

N. P. Baker Cotton Gin.

At Hunter, La., it serves the

English Cotton Gin.

In addition to these industries at these points it serves many other shippers of general merchandise, viz:

At Mansfield, La.,

Bank of Commerce.....Bank
Peoples Bank.....Bank
Butler, Wilcox & Dillzell.....Gents' Furnishers
C. D. Greening.....General Merchandise
Howell Mercantile Co.....General Merchandise
Town & Grey.....Druggists
Patterson's Pharmacy.....Druggists
Cale, H. & L.....Milliners
6 Model .....Dry goods
C. A. Kidd.....General Merchandise
M. Hirsch.....General Merchandise
B. D. Magee.....Grocer
S. G. Sample & Co.....Grocers
C. K. Sheppard.....Furniture
Mansfield Furniture Co.....Furniture
Farmer Mercantile Co.....General Merchandise
Fair Mercantile Co.....General Merchandise
C. E. Jenkins Co.....General Merchandise
Wilcox & Wemple.....Druggists
Enterprise Publishing Co.....Printers
Journal Printing Co.....Printers
J. T. Henderson Co.....General Merchandise
Peoples' Grocer Co.....Groceries
W. G. Ricks.....Groceries
Cowley Bros.....Groceries
D. W. Saunders.....General Merchandise
Mansfield Hardware Co.....Hardware
De Sota Hardware Co.....Hardware
Ricks & Jarnigan.....Restaurant
Rouse Racket Store.....Bargain Store
Enloe & Burley.....Liverymen
J. W. Durham.....Grain and Flour
H. Hollingsworth.....Horses and Mules
Cale & Storey.....Horses and Mules
A. R. Talliaferro.....Jeweler
C. J. Brewer.....Plumber
Mansfield Gas Co.....Gas and Gas Supplies
Herndon Garage .....Automobiles

At Oak Hill, La.,

Frost-Johnson Lumber Co.....General Merchandise

7 At Baker, La.,

N. P. Baker.....General Merchandise
J. T. Prude.....General Merchandise
Norris & Kidd.....General Merchandise

At Hunter, La.,

Frost-Johnson Lumber Co.....General Merchandise
D. Herick.....General Merchandise
W. H. Rogers.....General Merchandise

The capital stock of the petitioner, Mansfield Railway & Transportation Company, is held by E. A. Frost in trust for the stockholders of the Frost-Johnson Lumber Company, petitioner herein. The petitioner, Mansfield Railway & Transportation Company, has outstanding $77,300 stock, and a bonded indebtedness of $216,000.

II.

That the petitioner, Frost-Johnson Lumber Company, is a corporation organized under the laws of the State of Missouri for the purpose of manufacturing and selling timber and lumber and owns timber lands for the purpose of obtaining timber therefrom at various points in the United States and more particularly at and near said Mansfield, La., and at other points on and adjacent to the line of the petitioner, Mansfield Railway & Transportation Company, over which line of railroad it is a large shipper. The line of railroad of the petitioner, Mansfield Railway & Transportation Company, forms part of a through route between points in the State of Louisiana and points in other states of the United States in connection with the line of railroad of the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, both of which last named railway companies are common carriers engaged in interstate commerce by railroad and as such are subject to the Act to Regulate Commerce and other statutes of the United States applicable to such common carriers.

8

III.

That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., Docket No. 1319. Hearings were had at various times and places, and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion, which report and opinion will be found in the 14 Interstate Commerce Commission Reports, at page 364, et seq., reference to which is hereby made. Further hearings were thereafter had in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, and on December 7, 1909, the Interstate Commerce Commission made a supplemental report, which is published in the 17th Interstate Commerce Commission Reports, at page 338, et seq., reference to which report is hereby made, and the same is made a part hereof as fully as if set out herein.

IV.

By reason of the rendition of this report, or opinion, and because the Interstate Commerce Commission demanded under threat of

criminal prosecution, that they comply with the requirements thereof, the trunk line railroad companies of the United States, or a large number of them, including the Texas & Pacific Railway
9 Company and Kansas City Southern Railway Company, about the month of August, 1910, filed with the Interstate Commerce Commission new tariffs or supplemental tariffs on lumber, to become effective in thirty days, which new tariffs or schedules canceled all joint tariffs upon lumber and forest products which the said railway companies had theretofore had and maintained with the petitioner, Mansfield Railway & Transportation Company, and except for the order of the Interstate Commerce Commission, set out in paragraph 8 hereof, would have left said petitioner without any joint interstate rates or through routes on lumber with the other railroads of the country.

V.

Thereupon the Interstate Commerce Commission made and entered of record an order on or about the 3rd day of September, 1910, which after reciting that it appeared from the records of the Commission that tariffs had been filed by the Texas & Pacific Railway Company and Kansas City Southern Railway Company, and their agents, which schedules or tariffs stated new individual or joint rates applicable upon the articles named in said schedules or tariffs that were in excess of rates, fares and charges then in effect proceeded as follows:

It is ordered that the Commission, upon complaint, without formal pleading and without answer by the interested carriers, do enter upon a hearing concerning the propriety of such advances and the lawfulness of the rates, fares or charges stated in said schedule, with a view to making such order in the premises as may, after full hearing, seem just and proper; and that such hearing be held at such time and place as may be hereafter fixed by the Commission.
10 The Commission being further of the opinion that, pending such hearing and decision of the Commission concerning the propriety of such rates, fares or charges, the operation of such schedule should be postponed for the reason that from a consideration of the character and amount of the advances and the circumstances under which they have been made, it appears to the Commission there is sufficient ground for claiming that said advances are unlawful and that the rates, fares or charges established by said schedule are unjust and unreasonable, and therefore unlawful, and that the public interest requires that the operation of said schedule be deferred until sufficient time has been given for an investigation by this Commission.

It is further ordered that the operation of the aforesaid schedule be suspended, and that the use of the rates, fares or charges therein specified be deferred until January 5, 1911.

It is further ordered that the several carriers above named that have filed schedules be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them; and

It is further ordered that the carriers named in said schedule and supplements thereto as participating therein be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them.

A true copy.

EDW. A. MOSELEY, *Secretary.*

Thereupon, the Interstate Commerce Commission made similar orders on or about the same date, suspending the operation of the schedules of various other railroad companies within the United States, and thereby kept in force and effect the joint tariffs
11 and the maintenance of through routes and joint rates between the petitioner Mansfield Railway & Transportation Company and the railroad companies herein mentioned, and the various other trunk line railroads and systems of the United States for a period of 120 days. Reference to which orders is hereby made and the same are made a part hereof.

And the said Interstate Commerce Commission, from time to time, continued by appropriate orders, similar in form to the order hereinabove set out, the suspension of the cancellation of rates between various railroad companies of the United States, including the railroad companies named herein, and the petitioner, the Mansfield Railway & Transportation Company, until the end of the 30th day of April, 1912; the last of said orders being in words and figures as follows, to-wit:

"At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McCord, Balthasar H. Meyer, Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tapline Connections.

It appearing, That, by orders heretofore entered, the Com-
12 mission instituted an investigation and hearing concerning the propriety of various tariffs filed by certain carriers wherein joint rates with and divisions or allowances to so-called tapline connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances and refiled them to become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs cancel-

ing such divisions or allowances, and refiled them to become effective on February 1, 1912; and,

It further appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commission to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It further appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It is ordered, That each and all of the carriers that are parties to this record be, and they are hereby authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions
13 with or allowances to so-called tapline connections, and, provided, the said tariffs are forthwith refiled to become effective on May 1, 1912;

It is further ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman.*"

VI.

Pursuant to the orders of date the 3rd day of September, 1910, one of which is hereinabove fully set out, Interstate Commerce Commission did enter upon a further hearing of the matter of the propriety of the advances and the lawfulness of the rates, fares or charges, stated in said schedules, mentioned in said orders, and thereupon, and on the 15th day of November, 1910, gave to the petitioner, the Mansfield Railway & Transportation Company, and to various other railroad companies in the United States, including the railroad companies mentioned herein, a notice in words and figures as follows, to-wit:

"NOVEMBER 15, 1910.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of Tapline Allowances and Divisions, Being Docket Nos. 3400, Sub. 6, 3400, Sub. 7, 3493, 3511, 3512, 3513, 3514, 3524, 3548, 3551, 3552, and 3564, Consolidated under Investigation and Suspension Docket No. 11.

14 The above entitled proceedings are assigned for hearing on Thursday, December 9, 1910, 10 o'clock a. m., at United States Court rooms, New Orleans, Louisiana.

By the Commission.

EDW. A. MOSELEY, *Secretary.*"

On or about November 28, 1910, the petitioner, Mansfield Railway & Transportation Company, filed with the Interstate Commerce Commission its petition against the Kansas City Southern Railway Company and its separate petition against the Texas & Pacific Railway Company, complaining of the cancellation by said defendants of joint rates theretofore in effect upon forest products, particularly lumber, requesting of the Commission that an answer be required from each of these defendants, that an investigation be entered into and that joint rates be compelled by and between the said defendants, Texas & Pacific Railway Company and Kansas City Southern Railway Company with the petitioner, Mansfield Railway & Transportation Company, and their connections to all interstate destinations upon all forest products originating at points upon lines of the petitioner, Mansfield Railway & Transportation Company.

Your petitioners aver that notwithstanding that by the Act to Regulate Commerce it is required that the Commission serve upon the defendants in any proceeding before it a copy of the petition with directions to answer the same or to satisfy the petition, nevertheless, no such service was made upon the defendants and no answers were made by said defendants to said petition before the said Interstate Commerce Commission.

15 And pursuant to said notice and the orders of the Interstate Commerce Commission hereinabove set forth, the petitioner, Mansfield Railway & Transportation Company, together with numerous other railroad companies, appeared before the Interstate Commerce Commission, at New Orleans, on December 8, 1910, and subsequent days, and at St. Louis, Missouri, and at Chicago, Illinois, upon adjournments of said hearing, and thereupon the Honorable James S. Harlan, one of the Interstate Commerce Commissioners, examined the officers and agents of the petitioner, the Mansfield Railway & Transportation Company, concerning the matters under investigation in said proceeding, and said petitioner,

Mansfield Railway & Transportation Company, also thereafter submitted to the Interstate Commerce Commission certain documentary evidence, by filing the same with the secretary of said Commission at Washington; and thereafter, and within the time fixed by the Commission, said petitioner filed with the Interstate Commerce Commission a statement of facts, abstract of the evidence which had been taken before said commission, in reference to said petitioner, and a brief and argument, reference to which statement and brief is hereby made.

Thereafter oral argument was made before said Commission in support of the rights of your petitioners.

On the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion No. 1853, entitled, Investigation and Suspension Docket No. 11, the Tapline case, which opinion will be found in the 23d Interstate Commerce Commission Reports, p. 277, et seq., reference to which opinion is hereby made, and which is made a part hereof as fully as if set out herein in full.

And in said opinion and report is the following, to-wit:

16 "The cancellations by the trunk lines will be allowed to become effective on May 1, as provided in the tariffs now on file."

And in and by said opinion and report and by the language hereinabove last quoted, the Interstate Commerce Commission made an order authorizing, permitting and commanding the trunk line railroad companies of the United States, including the railroad companies mentioned herein to cancel all joint interstate rates on so-called proprietary lumber with the petitioner, the Mansfield Railway & Transportation Company, on the 1st day of May 1912.

And said trunk line companies of the United States, including the railroad companies mentioned herein, have construed said opinion herein last above referred to, as an order from the Commission to cancel said joint rates and tariffs with the petitioner, the Mansfield Railway & Transportation Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with said petitioner on lumber. And the Interstate Commerce Commission, through its secretary, has notified the trunk line railroads of the United States that said cancellation did take effect at midnight on the 30th day of April, 1912, and that rates, as filed must be observed by carriers and shippers, if criminal violation of Interstate Commerce Act and Elkins Act is to be avoided.

Your petitioners further state that the opinion No. 1853, and the order contained therein, hereinbefore referred to, and reported in the 23d InterstateCommerce Reports, at page 277, et seq., purports to have been decided, and is dated on, April 23, 1912. But, your petitioners allege that said opinion was not made public

17 until the 29th day of April, 1912, and if it was rendered on the 23d day of April, all knowledge and information thereof was withheld from your petitioners, and the public generally, and your petitioners had no opportunity to know the contents thereof until about 4 o'clock in the afternoon of April 29th, 1912,

and a copy of said opinion was not received by your petitioners until after the 30th day of April, 1912, by reason of which your petitioners were unable, on account of lack of time, to prepare any petition or application for injunction to this, or any other, court, to prevent the cancellation of rates by the said railroad companies becoming effective as hereinabove stated, or, before the 1st day of May, 1912, to make any application to this court to enjoin, set aside and annul the order of the Interstate Commerce Commission hereinbefore set out.

VI.

Your petitioners further state that on the 1st day of June, 1912, the Interstate Commerce Commission made a supplemental report, entitled, Investigating and Suspension Docket No. 11, the Tapline Case, Opinion No. 1898, which is reported in the 23d Interstate Commerce Reports, at page 549, reference to which is hereby made and which is made a part hereof as fully as if set out herein.

Said supplemental report or opinion, in so far as it relates to the petitioner, Mansfield Railway & Transportation Company, or makes a finding of fact in reference to said petitioner, is in words and figures as follows, to-wit:

The Mansfield Railway & Transportation Company was incorporated as long ago as 1881, by the citizens of Mansfield,
18 who built two miles of track from the town to a connection with the Texas & Pacific, at a point known as Mansfield Junction. Within the past ten years this track and equipment then in use was acquired by E. A. Frost and others, through purchase, for the sum of $12,500 of the entire capital stock of the railway company. At about the same time a large body of timber land was purchased lying west of the line of the Texas & Pacific, and a sawmill was erected at a point near Mansfield, known as Oak Hill. The timber and the mill were held and operated by a corporation, owned by Frost and his associates, known as the De Sota Land & Lumber Company, which also held stock of the Mansfield Railway. Some six or eight miles of logging roads were constructed from a connection with the incorporated line into the timber. There is some obscurity in the record, but our understanding is that the Frost-Johnson Lumber Company was later organized by the same interests, and took over the property and business of the De Sota Company. The additional tracks that had been constructed by the Frost interests, however, were transferred in 1908 to their tapline corporation, the Mansfield Railway & Transportation Company. The lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill; the value of this reservation was not reflected in the purchase price, which fully covered the value of the property transferred, as the record clearly indicates. The tapline has issued and outstanding capital stock to the amount of $77,300, all of which is held by the stockholders of the Frost-Johnson Lumber Company; and it is indebted to the lumber company in the sum of $216,806.97.

The two companies are identical in interest. There is a sub-

sidiary corporation of the Frost-Johnson Company that performs the entire logging service. It is owned absolutely by the
19 lumber company, which has assigned to it the trackage privilege over the tapline; and we shall refer to it hereinafter simply as the logging company.

The tapline as described on the record now consists of about sixteen miles of track, commencing at the town of Mansfield and terminating at a logging camp in the woods known as Hunter. In addition to the original connection with the Texas & Pacific at Mansfield Junction the tapline joins the Kansas City Southern, which subsequently built through this section, at a point about one and one-half miles east of Mansfield. The tapline has one locomotive, a passenger coach, and one box car; the logging cars are owned by the logging company. In addition to the incorporated road there are in the aggregate nearly twenty-five miles of unincorporated logging tracks in the woods.

The tapline does not haul the logs to the mill, which, as heretofore stated, is at Oak Hill, about three-fourths of a mile from the junction, with the Kansas City Southern and two and one-half miles from the point of interchange with the Texas & Pacific. The mill is within 300 feet of the right of way of the Kansas City Southern with which it was formerly connected by a spur track that was abandoned and later taken up. The logs are moved to the mill by the logging company under the reserved trackage right already referred to. The service performed by the tapline for the proprietary company consists in switching the empty and loaded cars for lumber shipments between the mill and the tracks of the trunk lines, a distance of three-fourths of a mile, or two and one-half miles, respectively. The tapline, however, bears the expense of maintaining the incorporated tracks extending into the woods over which the logging trains are operated.

20 There are no other yellow-pine sawmills served by the tapline. But there is a hardwood mill adjacent to the mill of the Frost-Johnson Company, which apparently obtains a substantial portion of its logs from the Frost-Johnson Company or its subsidiary logging company, the price paid including delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner that the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific, which are switched by the tapline to the mill at a charge of $2.50 a car or less. The tapline has joint rates on hardwood as well as yellow-pine lumber.

A good deal of outside traffic is handled over the original two miles of line from Mansfield to Mansfield Junction, but there is practically no traffic in which the proprietary company is not interested over the remainder of the track. Hunter, at the western end of the line, is a logging camp, and there are very few settlers along the line who are not employees of the lumber company or the subsidiary logging company. During the fiscal year ending June 30, 1910, 28,596 tons of lumber were handled, of which 91.4 per cent was supplied by the Frost-Johnson Company. There was

16,539 tons of miscellaneous freight, almost all of which moved over the line between Mansfield and Mansfield Junction, and a considerable proportion of which was handled for the controlling interests or their employees. The tapline operates a daily train in each direction on regular schedule and handles passengers, mail, and express; but its revenues from passenger train operation during the year 1910 aggregated only $1,209.76, its freight revenue being $25,617.19.

As stated, the spur track of the Kansas City Southern, about 300 feet long, which formerly went directly into this mill,
21 was torn out; the switching is now done over a track of the tapline three-fourths of a mile long. This arrangement being effected, the Kansas City Southern thereupon undertook to pay the tapline allowances of 1 to 4 cents per 100. We hold this to be a mere manipulation of the situation in order to establish a relation that is unlawful. The tapline also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tapline back toward Mansfield and then to the junction with that line, a distance of about two and one-half miles; the tapline receives from the Texas & Pacific 1 to 4 cents per 100 pounds. In this case we regard any allowance as unlawful.

VII.

Your petitioners further state that the opinion No. 1898, reported in the 23d Interstate Commerce Commission Reports, at page 549, et seq., purports to have been decided and is dated on May 14, 1912, but your petitioners allege that said opinion was withheld and not made public until the first day of June, 1912.

Petitioners further state that on the 14th day of June, 1912, the Interstate Commerce Commission made and entered of record, or at least made public on that day, an order in words and figures as follows, to-wit:

"Order.

At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

22 Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tapline Connections, and Certain Other Cases Consolidated Herewith.

It appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of

fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It further appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmer & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
23 Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcau Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Huston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;

Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It further appearing, That the following parties to the record, namely:

Little Rock, Mammelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It is ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is further ordered, That the defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company;

15

Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; the Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas
26 & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company, be, and they are hereby authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
27 Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;

Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It is further ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railroad Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company.

And it is further ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By the Commission,

[SEAL.] JOHN H. MARBLE, *Secretary.*"

28 VIII.

Thereafter proceedings were begun by certain of the Tapline Companies and shippers thereon situated to enjoin said order of the Commission, but upon motion of the Interstate Commerce Commission and the United States and upon the authority of the decision of the Supreme Court in the case of Proctor & Gamble v. United States, the said petitions for injunction were dismissed. Thereafter and on or about August — 1912, a petition was filed before said Interstate Commerce Commission, in letters and figures as follows:

Comes now the undersigned, attorney for the various Tapline railroads whose status was determined by the Commission in the above entitled investigation, and respectfully requests that the Commission will, at the earliest possible date, issue an affirmative order substantially in form as follows:

"It is ordered that Malvern & Freeo Valley Railway Company; Wilmar & Saline Valley Railroad Company; Arkansas & Gulf Railroad Company; Little Rock, Maumelle & Western Railroad Company; Beirne & Clear Lake Railroad; Mississippi, Arkansas & Western Railway Company; Bearden & Ouachita River Railroad

Company; Arkansas Eastern Railroad Company; Blytheville, Burdette & Mississippi River Railway Company; Brookings & Peach Orchard Railroad Company; Crossett Railway Company; Fordyce & Princeton Railroad Company; Homan & Southeastern Railway Company; Little Rock, Sheridan & Saline River Railway Company; L'Anguille River Railway Company; Ouachita Valley Railway Company; Griffin, Magnolia & Western Railway Company; Saline Bayou Railway Company; Enterprise Railway Company; Natchez, Ball & Shreveport Railway Company; Black Bayou Railroad Com-
29 pany; The Bodcaw Valley Railway Company; Mill Creek & Little River Railway & Navigation Company; Red River & Rocky Mountain Railroad Company; Woodworth & Louisiana Central Railway Company; Freeo Valley Railroad Company; Natchez, Urania & Ruston Railway Company; Bernice & Northwestern Railway Company; Dorcheat Valley Railroad Company; Mangham & Northeastern Railway Company; Galveston, Beaumont & Northeastern Railway Company; Beach River & Gulf Railway Company; Riverside & Gulf Railway Company; Jefferson & Northwestern Railway Company; Beaumont & Saratoga Transportation Company; Angelina & Neches River Railroad Company; Missouri & Louisiana Railroad Company; Saginaw & Ouachita River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Caddo & Choctaw Railroad Company; Manila & Southwestern Railway Company; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Roosevelt & Western Railroad Company; Tioga & Southeastern Railway Company; Louisiana Central Railroad Company; Monroe & Southwestern Railway Company; Victoria, Fisher & Western Railroad Company; Ouachita & Northwestern Railroad Company; Lake Charles Railway & Navigation Company; Louisiana Railway Company; Zwolle & Eastern Railway Company; Sabine & Northern Railroad Company; Gideon & North Island Railroad Company and Poplar Bluff & Dan River Railway Company be and each of them are required, on or before September 15, 1912, to cease and desist, and for a period of two years thereafter to abstain from maintaining joint interstate rates for the movement of logs to the mills of the respective proprietary lumber companies in opinions Nos.
30 1853 and 1898 (which opinions are made part hereof) and for the movement of the products of such logs and mills to interstate destinations.

It is further ordered that the defendants named, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas

City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company and Mobile & Ohio Railroad Company; Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wessen Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway; Fourche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas &
31 Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company and Washington & Choctaw Railway Company be and they are hereby authorized and required on or before September 15, 1912, to reopen through routes and publish joint rates upon lumber destined to interstate points, provided the maximum of such joint rates shall not exceed those in effect April 30, 1912.

It is further ordered that the divisions or proportions of the joint rates accruing to the Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wesson Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway; Fourche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway
32 Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Ar-

kansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton,' Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company and Washington & Choctaw Railway Company upon the products of the mills of the proprietary companies named in opinions Nos. 1853 and 1898, located on said lines, shall not exceed the divisions, proportions or allowances specified in said opinions."

The basis for the aforesaid request is contained in the following statement of facts and circumstances arising subsequent to the entry of the order of May 14, 1912:

(1) The order of May 14, 1912, entered in such proceedings is not such an order as is required by Sections 14 and 15 of the Act to Regulate Commerce as amended June 29, 1906.

(2) Subsequent to the entry of said order of May 14, 1912,
33 the Supreme Court of the United States announced its opinion in the Proctor & Gamble Case, in which it was held that the Commerce Court had no jurisdiction of suits brought to enjoin so-called negative orders of the Commission.

(3) There was much difference of opinion as to whether said order of May 14, 1912, was or was not an affirmative order within the definition of the Supreme Court in the said Proctor & Gamble Case. Application was made to the Commission for modification of said order substantially in form with that set forth above, which said application was denied.

(4) Three test suits were filed in the Commerce Court to enjoin such order of May 14, 1912, and the Commerce Court, upon motion of the Commission and the Department of Justice, dismissed the same on the authority of the Proctor & Gamble decision.

(5) The time limit within which appeals from such decree of dismissal must be made will expire August 18, 1912.

(6) The Trunk Line Railroads connecting with the so-called taplines have accepted the Commission's requirements of May 14, 1912, as an affirmative order, and the said taplines are without any recourse whereby to protect their lawful rights.

(7) The modification above requested will not change in any wise the present status of any of the tapline carriers so far as joint rates are concerned; the only effect of the order will be to confer jurisdiction upon the Court to determine the lawful rights of the said taplines and their shippers, and, so far as the law may require or permit, protect the taplines and their shippers from unlawful acts of the trunk line connections.

(8) In the case of fifty-seven (57) lines in which the Commission held that the transportation of logs from the forest to the
34 mills and the product from the mills to the trunk lines was not a service of transportation when performed for the proprietary lumber companies, the trunk lines have refused to establish joint rates upon other forest products, notwithstanding the Commission's suggestion so to do, the position taken by the trunk lines being that if the Taplines are not common carriers of logs and lumber for the proprietary lumber companies such taplines are not common carriers of any logs and lumber.

(9) Members of the Commission have stated since the entry of this order that the questions of law involved in the tapline cases are important and should be determined at an early date. These questions can be determined at the present time by the entry of the form of order requested herein.

(10) Since May 14, 1912, the Commission has established joint rates upon lumber transported by short line railroad companies for proprietary lumber companies, and has entered an affirmative order requiring the publication of such joint rates. We are asking in the case of the Saline River Railway Company and other carriers recognized by this Commission as properly entitled to participate in joint rates, that the same sort of an order be entered as was made by the Commission in the McCloud River Lumber case.

In the Peavey Elevator cases the Commission found that payment out of the joint rate to the Peavey Elevator Company for the elevation of the grain of that company was a rebate and discrimination; the finding in the tapline cases so far as the transportation of lumber and logs for the proprietary lumber companies upon the fifty-seven (57) lines held not to be carriers of logs or lumber for the proprietary lumber companies is that any allowance out of the joint rates is a rebate and discrimination. In that case an order to cease and desist was made. That order was similar in all respects
35 to the order requested in this case as to the fifty-seven first named taplines.

We therefore respectfully petition this Honorable Commission to modify its order in form substantially as above requested.

IX.

Thereupon the Commission issued an amended order in letters and figures, as follows:

Investigation and Suspension Docket No. 11.

The Tapline Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 30th Day of October, A. D., 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES CancelingThrough Rates with Certain Tapline Connections; and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised,

It is ordered, That the said order be, and it is hereby, modified to read as follows:

1. It appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its find-
36 ing of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part *of* hereof;

2. It further appearing, That the Commission upon the record finds in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railroad Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;

Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
37 Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company,
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber
38 companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Com-

pany; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company, be, and they are hereby notified and re-
39 quired to cease and desist, and for a period of two years hereinafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service.

4. It further appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes

and joint rates to interstate destinations, which said petitions or complaints are filed on or consoldiated with the record herein and on which a full hearing has been had.

40 5. It is ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports, they are hereby, dismissed.

6. It further appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

41 7. It is ordered, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above-named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last-named parties to the record on the products of the mills of the said respective proprietary companies named in said

report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It is further ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
42 Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby authorized to re-establish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and

Provided further, That upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above-named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It is further ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912 on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. It is further ordered, That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the
43 parties hereto for approval.

13. It is further ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And it is further ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

X.

Your petitioners further state that as a common carrier the Mansfield Railway & Transportation Company became and until midnight of the 30th day of April, 1912, was a party to each and all of the following tariffs applicable on lumber and articles taking lumber rates to the various points in said tariffs mentioned. The lines publishing said tariffs and the lines mentioned and concurring therein constituting with the petitioner Mansfield Railway & Transportation Company, reasonable through routes and said tariffs prescribing reasonable joint through rates between points on the Mansfield Railway & Transportation Company and the several
44 points mentioned in said tariffs, to-wit: Kansas City Southern, I. C. C. Nos. 1722, 2593, 2745, 2824, 2838; Southwestern Lines Bureau Nos. 50-B, I. C. C. 703; Southwestern Lines No. 63, I. C. C. 650; Texas & Pacific, I. C. C. 1857 and Supplement 69 to I. C. C. 1266.

Your petitioners state that the decision or report of the Interstate Commerce Commission, being the decision published in the 17th Interstate Commerce Commission Reports, page 338 et seq., is an erroneous and incorrect statement of the law, and is a misapprehension, misstatement and misapplication of facts insofar as petitioners herein are concerned, and statement in said opinion to the effect

"that any allowance or division made to or with the tapline that is owned or controlled directly or indirectly by the lumber mill or by its officers or board of directors, and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates"

is not a correct statement of the law, and is an erroneous and illegal holding upon the part of the Interstate Commerce Commission. And the whole of said opinion is an incorrect and improper statement of the facts and the law as applied to these petitioners, and the action of the trunk line railroad companies in August, 1910,

in filing with the Interstate Commerce Commission the schedules stating new, individual or joint rates, fares or charges, applicable upon the articles named therein in excess of the rates, fares and charges theretofore in effect, and in thereby canceling the through routes and joint rates which had theretofore been maintained with the petitioner, Mansfield Railway & Transportation Company, was and is unlawful, in violation of the Interstate Commerce laws of the United States.

That the opinion or report heretofore referred to and published in the 23d Interstate Commerce Commission Reports, at page 277, et seq., is an erroneous and incorrect finding of facts, is a misapprehension and misapplication of the facts as found, is an erroneous and illegal statement of the law, and takes away from these petitioners vested rights guaranteed by law.

That the Interstate Commerce Commission, by its said opinion and report and by its order allowing the cancellation by the trunk lines to become effective on May 1, as provided by the tariffs then on file, and by its supplemental report rendered on the first day of June, 1912, but dated May 14, 1912 and by its orders dated May 14, 1912, and October 30, 1912, herein set out in full, has erroneously, illegally and improperly held that the petitioner Mansfield Railway & Transportation Company, is not a common carrier of logs and lumber and that the service it performs is not a common carrier service when said service is performed in the hauling of logs and lumber and the products of the petitioner Frost-Johnson Lumber Company, and has, by both of its said opinions, to-wit: the opinion dated April 23, 1912, and the opinion dated May 14, 1912, and by its orders dated May 14, 1912, and October 30, 1912, ordered the Texas & Pacific Railway Company and the Kansas City Southern Railway Company to cease and desist for two years from the maintenance of through routes and joint rates on lumber with the petitioner the Mansfield Railway & Transportation Company, and to cease paying any division whatsoever of the rates to the said petitioner upon any traffic transported for the petitioner, Frost-Johnson Lumber Company.

Your petitioners further allege that the Texas & Pacific Railway Company and Kansas City Southern Railway Company did not voluntarily cancel the through rates under and by virtue of the canceling tariffs hereinbefore referred to, but the action of the said Railroad Companies, in that regard was had under the compulsion of the several reports, decisions and orders of the Interstate Commerce Commission hereinbefore referred to, and under the belief induced by said reports, decisions and orders, that if said joint through rates with the petitioner, Mansfield Railway & Transportation Company, were not canceled, that said Railroad Companies, their officers and agents, would be subject to criminal prosecution at the instance of the Interstate Commerce Commission as for alleged rebates and alleged unlawful discrimination.

Your petitioners further allege that the Texas & Pacific Railway Company and Kansas City Southern Railway Company and other common carriers subject to the Act to Regulate Commerce

have for years recognized the petitioner, Mansfield Railway & Transportation Company, as a common carrier in every respect and fully entitled to all the rights and privileges belonging to a common carrier under the law; but for the action of the Interstate Commerce Commission herein complained of would continue to so recognize the said petitioner as a common carrier and would participate with the said petitioner in joint rates upon lumber and forest products and the maintenance of through routes to interstate destinations.

47 XI.

In order that this court may fully have before it all the facts in connection with the creation and operation of the petitioner, Mansfield Railway & Transportation Company, petitioners set forth the following and aver that the same constitutes a full and complete statement of all material facts pertinent to the issues herein.

The Mansfield Railway & Transportation Company was incorporated as a common carrier under the laws of the State of Louisiana in 1881, by various citizens of the City of Mansfield, to build a line of railway connecting the said City of Mansfield with the Texas & Pacific Railway, a distance of two miles from Mansfield, the point of connection with the Texas & Pacific being Mansfield Junction, Louisiana. Several years ago the stock of this railway, together with all its assets was bought by the De Sota Land & Lumber Company. Several years thereafter the stock of the Railway Company was sold to the petitioner, Frost-Johnson Lumber Company and is now owned by said petitioner. At about the same time, E. A. Frost and associates purchased a large boundary of timber and erected a sawmill at Oak Hill, La., near Mansfield. This timber, together with the mill was sold to the De Sota Land & Lumber Company and after being held and operated by it for several years, in the meantime the railroad having been extended eight miles, the entire holding of timber and mill was sold to the Frost-Johnson Lumber Company. While so held by the petitioner, Frost-Johnson Lumber Company, the railroad was further extended to Hunter, La. In the year 1908, the entire line of railroad from Mansfield to Hunter was sold to the petitioner, Mansfield Railway & Transportation
48 Company, and the trackage rights over said railway were conveyed to the petitioner, Frost-Johnson Lumber Company, or its assigns, for logging trains only. The railroad as now constructed is of standard gauge, well graded and laid with steel ranging from fifty-two to sixty pounds per yard. The road has, as a part of its equipment standard railroad track scales. Passengers, mail and express are carried, the express contract being with the Pacific Express Company. Stations are located at Mansfield Junction, Mansfield, Oak Hill, Baker, Burgess and Hunter, La. Agents exclusively in the employment of the railway are located at Hunter and Mansfield, La. At Baker, La., the station service is performed by a Mr. Baker, a merchant at that point. The railway company's general office is located at Mansfield, and all the accounts and operations of the railway company are separate and distinct from the accounts and opera-

tions of the lumber company. The petitioner, Frost-Johnson Lumber Company's plant at Oak Hill is located two and one-half miles from the junction with the Texas & Pacific Railway and three-fourths of a mile from the junction with the Kansas City Southern Railway. The petitioner railway company owns right-of-way and station grounds and also sidings in and around the mill plant of the petitioner, Frost-Johnson Lumber Company. The logging company is a separate corporation whose stock is owned by the petitioner, Frost-Johnson Lumber Company. This logging company cuts the timber, loads the same on the logging car, conveys the logs to the spur and hauls the same to the mill at Oak Hill, where the logs are dumped into the pond of the lumber company. The logging cars and engines belong to the logging company and the expenses
49 of constructing and maintaining the spur tracks which lead from the railway company's tracks into the woods, aggregating about twenty-five miles, is all borne by the logging company. Hunter, the terminus of the main line of the road, has a population of about one hundred people. Here there was a store located prior to the building of the railroad to that point from which the farming community adjacent to that point obtained its supplies and disposed of its products. The construction of the railroad from Oak Hill to Hunter cost about $16,000.00 per mile. Mansfield is the second oldest town in Louisiana and has a population of from twenty-five hundred to three thousand inhabitants. The De Sota Foundry & Machine Company is one of the largest shippers over the line of the petitioner railway company, and operates a plant for the casting of machinery, repairs to locomotives, cars and saw-mill machinery. There is also located at Mansfield the De Sota Cotton Oil Company, which operates a cotton seed oil mill. The Mansfield Hardwood Lumber Company operates a hardwood mill at Mansfield, the logs for which are handled both from Hunter and Mansfield Junction. When brought from Hunter this hardwood log movement is made by the logging company. Part of the hardwood so hauled is owned by the Frost-Johnson Lumber Company, but the larger tonnage from that territory comes from lands not owned by the Frost-Johnson Lumber Company. On the hardwood brought from the Texas & Pacific and Kansas City Southern junctions a switching charge of $1.00 per car is collected from the Hardwood Lumber Company. Equipment used by the petitioner, Mansfield Railway & Transportation Company in the movement of lumber and other traffic is furnished either by the Kansas City Southern or the Texas &
50 Pacific Railways. Petitioner, Mansfield Railway & Transportation Company, takes the empty car from the junction point with said railway companies to the loading point on the line of the petitioner railway and removes the loaded car from said point to the junction point with said railways. Prior to the cancellation of the joint through rates there were in effect milling-in-transit rates applying upon the raw material to the mill and the finished material out. The division ranged from 1c. to 4c., the average being about 2½c. Most of the hardwood lumber was shipped to southern points on which the division averaged 2c. While the logs for either Frost-

Johnson Lumber Company or Mansfield Hardwood Lumber Company are hauled by the logging company under the contract for trackage rights, yet the petitioner, Mansfield Railway & Transportation Company, furnishes the railroad, maintains it in good condition and thereby sustains the greater part of the expense of the movement of the logs from Hunter to Oak Hill. All merchandise or traffic of any and every description destined to the town of Mansfield is hauled by the petitioner, Mansfield Railway & Transportation Company. The railroad is operated as a common carrier and its entire mileage from Mansfield Junction to Hunter is operated as a unit. Petitioner, Mansfield Railway & Transportation Company operates a daily train on regular schedule round trip from Mansfield to Hunter and from Mansfield to Mansfield Junction. Its operation has been without discrimination. No one has been denied any facility ordinarily furnished by common carriers. During the year ending June 30, 1912, the revenue of the petitioner, Mansfield Railway & Transportation Company amounted to $32,690.78. The total operating ex-
51 penses were $24,267.91. Attached hereto, as "Exhibit A," is a statement in detail of the statistics of the petitioner railway, including a comparative general balance sheet between the years ending June 30, 1911, and ending June 30, 1912, together with the traffic and mileage statistics and freight traffic movement by selected commodities which exhibit is prayed to be taken as part hereof as fully as though set out at length herein. A similar statement showing operating revenue and expenses for the period of four months ending October 31, 1912, is attached hereto, as "Exhibit B," and is prayed to be taken as part hereof as fully as though set out at length herein. An examination of these statements show that the petitioner, Frost-Johnson Lumber Company paid of the total revenue during these four months less than 65%, while its tonnage constituted less than 55% of the total tonnage handled by the petitioner, Mansfield Railway & Transportation Company, during the period ending October 31, 1912.

XII.

Your petitioners further state that the statement in the Commission's findings of fact with reference to the petitioner, Mansfield Railway & Transportation Company, on page 588 of 23d volume of Interstate Commerce reports

"the mill is within 300 feet of the right-of-way of the Kansas City Southern, with which it was formerly connected by a spur track that was abandoned and later taken up"

and the statement on page 589 of said volume,

"as stated the spur track of the Kansas City Southern about 300 feet long, which formerly went directly into this mill was torn out; the switching is now done over a track of the tapline
52 three-fourths of a mile long. This arrangement being effected the Kansas City Southern thereupon undertook to pay the tapline allowances of 1c. to 4c. per hundred pounds. We hold this to be a mere manipulation of the situation in

order to establish a relation that is unlawful. The tapline also crosses the right-of-way of the Texas & Pacific within a short distance of the mill, but the lumber is switched by the tapline back toward Mansfield and then to the junction with that line, a distance of about two and one-half miles; the tapline receives from the Texas & Pacific 1c. to 4c. per hundred pounds. In this case we regard any allowance as unlawful"

is a misstatement of fact and the conclusion therein expressed is arbitrary, unreasonable, without any foundation whatever in law and deprives your petitioners of their rights under the Act to Regulate Commerce and the Constitution of the United States. When the Kansas City Southern transported the machinery for the establishment of the mill there was no track leading to Oak Hill, the site of the mill, from any point on the line of petitioner, Mansfield Railway & Transportation Company, and no means of getting delivery of the carload shipments of machinery other than by the installation of a temporary track from the line of the Kansas City Southern Railway. Your petitioners allege that the Kansas City Southern Railway was unwilling to maintain said spur track permanently for the reason that its maintenance and operation at that point constituted an impracticable connection and was a menace to through transportation both passenger and freight, over the main line of the said Kansas City Southern Railway.

53 Your petitioners further allege that it is immaterial as to why said spur track was removed; that at time of the investigation by the Commission and for a long time prior thereto, there had been no connection whatever by rail from Oak Hill with either the Texas & Pacific and Kansas City Southern Railways other than over the rails of the petitioner, Mansfield Railway & Transportation Company.

Your petitioners further allege that the mills of the petitioner, Frost-Johnson Lumber Company, are located upon the rails of the petitioner, Mansfield Railway & Transportation Company, and that the decisions, orders and requirements of the Commission hereinbefore set out deny the petitioner, Frost-Johnson Lumber Company, the right to participate in interstate traffic and to have its products transported upon as favorable conditions as are given to its competitors and constitute a violation of the Act to Regulate Commerce.

Your petitioners further allege that there is no physical connection between the rails of the Texas Pacific Railway Company and the Mansfield Railway & Transportation Company, at any point nearer than Mansfield Junction and that the only possible movement of carload freight is via said Junction.

XIII.

Petitioners further state that upon the finding of facts made by the Interstate Commerce Commission, hereinabove set out, the petitioner, Mansfield Railway & Transportation Company, is a common carrier, performs a common carrier service, and is entitled to participate in through routes and joint rates and to divisions.

54

XIV.

Petitioners further state that the entire opinion, report, finding and order of the Interstate Commerce Commission, made under the caption, Investigation and Suspension Docket No. 11, The Tapline Case, is inconsistent with itself, with the former decisions and reports of the Interstate Commerce Commission, permits and requires discriminations and inequalities, and a compliance with said decisions and requirements compels the railroad companies to violate Section 3 of the Interstate Commerce Act, hereinafter set out. And said decision and orders are in violation of and in conflict with the "Commodities Clause" of Section 1, of said Interstate Commerce Act.

XV.

Your petitioners further allege that said decisions and orders hereinafter set out were made by the said Interstate Commerce Commission as a result of investigation and alleged information furnished by its investigators without any opportunity to these petitioners of cross examination or rebuttal.

XVI.

Your petitioners further allege that said decisions and orders are arbitrary, unreasonable and in excess of the power and authority of the said Commission and constitute violations of Section 3 of the Act which forbids unjust discrimination between persons, localities and traffic. As an instance of the unequal, discriminatory, arbitrary and unreasonable Act of the Commission, petitioner alleges that many of the so-called taplines whose status was determined
55 by the Commission in the decisions and orders hereinbefore set out, were recognized as common carriers of the traffic of the so-called proprietary interests and others denied such a status without any distinction in fact or manner of operation.

XVII.

Further petitioners allege that notwithstanding the Commission established a rule that under Section 15, payment should be made to the shipper when the transportation was not less than 1,000 feet nor more than three miles from the trunk line connections, nevertheless no such allowance was prescribed by the Commission in the case of your petitioners, on the contrary such an allowance is expressly negatived by the Commission.

XVIII.

Your petitioners further allege that other short line railroads mentioned in the decisions and orders above set forth have been by the Commission directed to establish joint rates from points on their lines to interstate destination points, when in fact all the circumstances and conditions which properly may be considered by the Commission in an investigation of this sort require that the petitioners be given joint rates over through routes to interstate destina-

tions. In support of this allegation the petitioners call attention to the findings of the Commission and make said findings part of this report as fully as set forth herein in the following cases:

Fourche River Valley & Indian Territory Railroad Company;
The Nacogdoches & Southeastern Railroad Company;
56 Trinity Valley & Northern Railroad Company;
Butler County Railroad Company;
Red River & Gulf Railroad Company, and others.

XIX.

Your petitioners allege that the Interstate Commerce Commission has no jurisdiction or authority in law to decide that the petitioner, Mansfield Railway & Transportation Company, is not a common carrier in respect to the logs and lumber of the petitioner, Frost-Johnson Lumber Company, which it transports (although holding that it is a common carrier and compelling it to be a common carrier with respect to other tonnage which it hauls), and by so holding and by its order to the trunk line railroad companies to cancel through routes and joint rates and to cease for two years paying divisions to the petitioner, Mansfield Railway & Transportation Company, the Interstate Commerce Commission attempts to nullify state laws and the Interstate Commerce laws and its own rulings and decisions heretofore made; and the decision, in reference to the petitioner, Mansfield Railway & Transportation Company, and the orders of the Interstate Commerce Commission, hereinabove set out, are each and all unlawful, erroneous and invalid.

Your petitioners further state that the Interstate Commerce Commission in holding that the tracks and equipment of the Mansfield Railway & Transportation Company with respect to the industry of the Frost-Johnson Lumber Company are plant facilities and that the service performed therewith for the said Lumber Company in moving logs to its mill and performed therewith in moving the products of the said mills of the Frost-Johnson Lumber Com-
57 pany to the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, is without any basis in fact or in law. Said finding and conclusion is arbitrary, unreasonable and in volation of the Act to Regulate Commerce and the decisions of the Supreme Court of the United States.

XX.

Your petitioners assert that under the provisions of the Act to Regulate Commerce and the interpretation thereof by the Supreme Court of the United States upon the facts found by the Commission and set forth herein the said petitioner, Mansfield Railway & Transportation Company, is a common carrier by railroad of the logs of the petitioner, Frost-Johnson Lumber Company, in that, it furnishes a railroad and maintains the same in condition for the movement of said logs and is a common carrier of the products of the Frost-Johnson Lumber Company from its mill at Oak Hill to the

junction point with the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, and inasmuch as the larger proportion of the output of said mill of the petitioner, Frost-Johnson Lumber Company, is destined to interstate destinations, the said movement from said Oak Hill to said junction points is a service of transportation by a common carrier railroad in interstate commerce.

XXI.

Your petitioners further state that no part of that portion of the report headed "Irregular Practices of Taplines," found on
58 page 649-650 of the 23d Interstate Commerce Commission Reports, applies in any respect whatsoever to the petitioner, Mansfield Railway & Transportation Company, but that on the contrary said petitioner "files annual reports with the Commission"; said reports "are complete and comply with the requirements of the act"; it does "publish local rates to apply on traffic received from or delivered to its trunk line connections"; it does "charge for carrying passengers and less than carload shipments in all cases, and under authority of published tariffs"; it does not "permit the use by any lumber company of its tracks, without charging therefor," but on the contrary all of its charges and rates "are under tariff authority filed with the Interstate Commerce Commission"; it complies with the "Hours of Service law"; with the "Safety Appliance Act," and all the "other acts imposing requirements on common carriers engaged in interstate commerce."

There is no "lack of attention on the part of the Mansfield Railway & Transportation Company to the rules and regulations respecting the filing of tariffs and keeping of accounts," but on the contrary, said railway company complies strictly with such rules and regulations and pays out large sums of money annually in so doing and in the publishing of tariffs, and its books have always been open and "full access thereto has been given to the examiners of the Interstate Commerce Commission."

Your petitioners allege that if any such failures to comply with the Act to Regulate Commerce exist on the line of the petitioner, Mansfield Railway & Transportation Company, or if any such irregular practices do exist upon the line of the said petitioner
59 it is the duty of the said Interstate Commerce Commission to invoke the curative processes provided for in the act, and petitioner further alleges that such lapses or irregular practices do not constitute any basis for denial to said petitioner and its shippers of the status which the law confers upon it.

XXII.

Petitioners allege that the action of the Texas & Pacific Railway Company and Kansas City Southern Railway Company in filing the schedules hereinbefore referred to, and any and all other schedules filed by said trunk lines which state new, individual or joint rates, fares and charges that are in excess of the rates, fares and charges theretofore in effect, and which in effect cancel the

through routes and joint rates with the petitioner, Mansfield Railway & Transportation Company, and the decisions, orders and requirements of the said Commission hereinbefore set out, are in violation of that portion of Section of the Act to Regulate Commerce, reading as follows:

"It shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * or
60 in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful, * * * and it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs." * * *

and is in violation of Section 3 of the Interstate Commerce Act, reading as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

61 XXIII.

That over 90 per cent of the lumber tonnage handled by the petitioner, Mansfield Railway & Transportation Company is destined to interstate points; that since the first day of May, 1912, the petitioner Mansfield Railway & Transportation Company, has charged and is now charging on lumber destined to interstate points its local

rate from all points of origin to points of connection with said railway companies.

The petitioner, Frost-Johnson Lumber Company, is being, and will continue to be, at a serious disadvantage in regard to other lumber industries in the same territory not on the line of the Mansfield Railway & Transportation Company, because it is compelled to pay on all shipments of lumber destined to interstate points the local rate of the petitioner railway to the junctions with said railroad companies, plus the blanket rate (which petitioners' competitors in said territory now enjoy), from said junctions to final destination of the lumber, the combination of the two rates placing petitioner lumber company at a disadvantage as compared with petitioner's competitors in the same territory enjoying the blanket rate.

Petitioner, Frost-Johnson Lumber Lumber Company, has no competitive rates on interstate lumber traffic, and the absence of through routes and joint rates greatly retards and impairs the business and investments of the petitioner lumber company, and the damages so caused to said petitioner cannot be adequately measured, and constitute irreparable loss.

XXIV.

Your petitioners further allege that in the case of Central
62 Yellow Pine Association v. Vicksburg, Shreveport & Pacific Railroad Company, 10 Interstate Commerce Commission Reports, page 193, the Interstate Commerce Commission held that divisions such as those condemned in the opinions in The Tapline Case were proper, and that, acting under the decision in the said Central Yellow Pine Association case, and other decisions of the Interstate Commerce Commission, and acting under the law of the State of Louisiana, the investments by the petitioners herein mentioned were made; that under the Constitution and Laws of the State of Louisiana the petitioner, Mansfield Railway & Transportation Company, is compelled to operate as a common carrier and its status as a common carrier is fixed by state and federal laws, and the Interstate Commerce Commission is wholly without right or authority of law to deny to the said petitioner, the Mansfield Railway & Transportation Company, the right to operate as a common carrier of all traffic transported, proprietary as well as non-proprietary.

XXV.

Your petitioners aver that the Commission in its finding and in that paragraph of the order which holds that the service performed by the Mansfield Railway & Transportation Company for the petitioner, Frost-Johnson Lumber Company, in moving logs to its mills and in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad acted erroneously and in violation of the provisions of the Act to Regulate Commerce; your petitioners aver that under the statement of facts contained in the report and opinion of the Commission the
63 said service is in law a service of transportation by a common carrier railroad and that in accordance with the law the peti-

tioner, Mansfield Railway & Transportaion Company, should file tariffs of its charges for said service. Under the report and order of the Commission hereinbefore set out, no tariffs lawfully can be filed covering such movement; that if such movement is transportation, the petitioner, Mansfield Railway & Transportation Company, will be subject to the penalties provided in the statute for failure to file tariffs.

Further your petitioners aver that under the statute no common carrier can engage in interstate commerce until it has first filed tariffs covering the transportation in which it is engaged. Your petitioner, Frost-Johnson Lumber Company, therefore avers that its traffic could not be handled by the petitioner, Mansfield Railway & Transportation Company, because the finding of the Commission that the said movement is not transportation by a common carrier railroad precludes the filing of tariffs. For these reasons the said order is inconsistent with the Act to Regulate Commerce and destroys the rights of the petitioner lumber company, to have the products of its mills moved by the Mansfield Railway & Transportation Company, and prevents the petitioner, Mansfield Railway & Transportation Company, from transporting the said products as a common carrier in interstate commerce.

XXVI.

Your petitioners further allege that from time to time the Interstate Commerce Commission has recommended legislation by the Congress which would make it unlawful for a shipper, or one interested in products transported by rail in interstate com-
64 merce, to be interested financially by stock ownership or otherwise in the railroad so transporting said products; that notwithstanding said recommendations the Congress not only refused to enact such legislation, but in such legislation as was enacted, to-wit: the Commodities Clause and other amendments to the Act to Regulate Commerce, expressly recognized such ownership so that in the present statutes the Congress has legalized the ownership by a railroad company in products transported over its line and the ownership by a shipper in the railroad.

Your petitioners allege that the decision of the Interstate Commerce Commission in the tapline case, hereinbefore set out, is in express violation of the acts of Congress and the legislative intent thereof, as shown by the committee reports and debates in Congress.

Your petitioners further allege that the Commission, in its said decision, has undertaken to make the law what it thinks the law ought to be, instead of following the law as written by Congress.

XXVII.

Petitioners allege that a large portion of the lumber manufactured by the Frost-Johnson Lumber Company, at its mill at Oak Hill, La., is sold by the petitioner, Frost-Johnson Lumber Company, delivered on board cars at its plant and that the purchaser pays the freight charges and is the owner of said lumber from the time it is so loaded by your petitioner and before any movement is performed by the

Mansfield Railway & Transportation Company. Therefore your petitioner alleges that the transportation of said lumber is per-
65 formed by the Mansfield Railway & Transportation Company for the consignee and not for the Frost-Johnson Lumber Company.

Petitioner further alleges that the said order of the Commission unjustly and unlawfully discriminates against and subjects to undue prejudice all purchasers of lumber from the petitioner, Frost-Johnson Lumber Company, in that it compels the said purchasers to pay the local rate upon said lumber to the junction point with the Texas & Pacific or Kansas City Southern Railways and to pay therefrom the blanket rate applicable from all points upon the lines of the Texas & Pacific Railway Company or the Kansas City Southern Railway Company or from points upon short-line railroads recognized by the Commission in its report and decision as common carriers of proprietary traffic, while at the same time for a greater haul under similar circumstances and conditions the competitors of said purchasers may purchase lumber and have it delivered at interstate destinations at a less total cost.

XXVIII.

Your petitioners allege that the said order of the Commission, dated October 30, 1912, by its terms is directed against the Texas & Pacific Railway Company and Kansas City Southern Railway Company, among others; that the petitioners were parties to the proceeding before the Interstate Commerce Commission, out of which the orders, reports and decisions complained of grew; that their rights are vitally affected by said reports, decisions and orders; that the said trunk line railroads, Texas & Pacific Railway Company and Kansas City Southern Railway Company, have profited materially by the aforesaid reports, decisions and orders and will so con-
66 tinue to profit by reason of the fact that the existing lumber rates from the junction point between the petitioner, Mansfield Railway & Transportation Company, and said trunk line companies are the same rates as those which prior to May 1, 1912, applied from Oak Hill on the line of the petitioner, Mansfield Railway & Transportation Company; that therefore your petitioners allege that the said reports, decisions and orders of the said Commission as vitally affect the property rights of the petitioners as if said order was directed against the Mansfield Railway & Transportation Company by name.

XXIX.

Attached hereto, and made a part hereof, marked "Exhibit C," is a map of the lines of the petitioner, Mansfield Railway and Transportation Company, and also the mills of the petitioner, Frost-Johnson Lumber Company, at Oak Hill, La.

The petitioners, and each of them, are remediless, unless relief be given by this court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded.

XXX.

Wherefore, your petitioners say that the said reports and decisions of the Interstate Commerce Commission, and the orders of date May 14, 1912, and October 30, 1912, made in pursuance of said reports and decisions, are invalid and void for the following, among other, reasons:

(1) The Interstate Commerce Commission is wholly without
67 power, authority or jurisdiction to declare that there is any "proprietary lumber company or companies of the Mansfield Railway & Transportation Company; to declare that the service performed for the Frost-Johnson Lumber Company by the Mansfield Railway & Transportation Company in moving the logs from the forest to the mill of the Frost-Johnson Lumber Company and in moving the product of the Frost-Johnson Lumber Company to the Texas & Pacific Railway Company and Kansas City Southern Railway Company from said mills is a plant service by a plant facility.

(2) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that the transportation offered by the trunk line carriers such as the Texas & Pacific and Kansas City Southern Railway Companies extends three miles distant from the line of such railroads and that an allowance may be made for the movement which is more than 1000 feet from said line and not in excess of three miles from said line of railroad. The said holding is legislation, pure and simple, and the exercise of arbitrary and unreasonable power and constitutes a gross discrimination and violation of the Act to Regulate Commerce.

(3) Said order discriminates against all purchasers of lumber from the Frost-Johnson Lumber Company in that if it should be held that the lumber of said company in the transit from its mill to the junction point with the trunk line company is intrastate commerce subject to the local Louisiana state rate, all purchasers of lumber paying such freight will be compelled to pay the additional amount of such local state rate and will be driven thereby to purchase only from mills situated either upon trunk lines or upon other short lines similarly situated with the Mansfield Railway &
Transportation Company, but which by said order have been
68 allowed to participate in joint rates and through routes, thereby depriving said purchasers of the competition of mills and depriving petitioner, Frost-Johnson Lumber Company, of the competition of purchasers, all of which is contrary to and in violation of Section 3 of the Act to Regulate Commerce.

(4) Said order unduly and illegally discriminates against the Frost-Johnson Lumber Company as shippers as compared with shippers on other railroads within the same territory and competitive in business and discriminates against said lumber company as compared with shippers of lumber now situated or which may hereafter be situated on the line of the Mansfield Railway & Transportation Company.

(5) Said order deprives your petitioners of the through routes and joint rates provided for by Sections 1, 6 and 15 of the Interstate Commerce Act.

(6) The uncontradicted evidence in the proceeding had by the Interstate Commerce Commission under the title, "Investigation and Suspension Docket No. 11," shows that the petitioner, Mansfield Railway & Transportation Company, is a common carrier under the law, and the finding of the Interstate Commerce Commission that the petitioner, Mansfield Railway & Transportation Company, is not a common carrier of proprietary lumber is not based on any substantial testimony.

(7) Under the findings of fact made by the Interstate Commerce Commission, the Mansfield Railway & Transportation Company is a common carrier of lumber of the petitioner, Frost-Johnson Lumber Company, and of all other mills on its line of railway.

(8) The aforesaid decisions, reports and orders of the Interstate Commerce Commission forbid the Texas & Pacific Railway Company and Kansas City Southern Railway Company, in connection with the Mansfield Railway & Transportation Company, to establish any joint rates upon lumber produced by the petitioner, Frost-Johnson Lumber Company, when destined to interstate points, while in effect authorizing the establishment of joint rates upon lumber of any other shipper on the line of the Mansfield Railway & Transportation Company destined to similar points and thereby said order grossly and unjustly discriminates against the petitioner, Frost-Johnson Lumber Company, and subjects said petitioner to undue prejudice and disadvantage.

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(9) Said order is arbitrary, unreasonable and void and deprives petitioner of the equal protection of the law and due process of the law in that without any just, reasonable or logical reason therefor it prevents petitioner, Mansfield Railway & Transportation Company, from engaging in interstate commerce and receiving any conpensation therefor, while at the same time permitting and requiring other lines of railway similarly situated and which cannot by any just reason be differentiated from the line of your petitioner to engage therein, concur in joint tariffs and through routes and rates and participate in a division thereof.

(10) Said order deprives your petitioner, Mansfield Railway & Transportation Company, of due process of law, deprives it of its property without due process of law, and devotes the same to public use without compensation in that it denies it the right to participate in interstate commerce on the lumber and forest products of the Frost-Johnson Lumber Company and derive revenue therefrom without which it cannot pay operating expenses or earn any just or reasonable return upon the value of its plant.

XXXI.

Wherefore, petitioners, and each of them, pray that the said orders of the Interstate Commerce Commission, dated May 14, 1912, and October 30, 1912, be enjoined, set aside and annulled; that the United States of America, the Interstate Commerce Commission and all persons claiming to act under their authority, direction or control, be temporarily enjoined and restrained from enforcing said order against petitioner, Mansfield Rail-

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way & Transportation Company, and against said Kansas City Southern Railway Company and said Texas & Pacific Railway Company, or any or either of their connections, and that said Interstate Commerce Commission be ordered and commanded to accept, receive and file tariffs and schedules of rates on all lumber moving out over the line of petitioner, Mansfield Railway & Transportation Company, over the lines of said Kansas City Southern and Texas & Pacific Railway Companies and their connections prescribing and installing joint rates and through routes from points on the line of petitioner, Mansfield Railway & Transportation Company, to all interstate points and on all traffic moving to interstate or to foreign points and enjoining and commanding said Interstate Commerce Commission to refrain from preventing or endeavoring to prevent petitioner, Mansfield Railway & Transportation Company, from agreeing with its said connections, Kansas City Southern Railway Company and the Texas & Pacific Railway Company, on just and reasonable divisions of said through rates.

And your petitioners pray for all other and further relief as in equity and good conscience they may be entitled to receive.

Petitioners pray for issuance of subpœna of the United States of America issuing out of and under the seal of this Honorable
71 Court directed to the United States of America, therein and thereby commanding it on a day certain therein to be named and under certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to stand to, perform and abide by such order, direction or decree as may be made in the premises as shall seem meet and agreeable to equity and good conscience, and petitioners pray that on final hearing hereof said injunction be made perpetual, and your petitioners as in duty bound will ever pray.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY,
FROST-JOHNSON LUMBER COMPANY,
By H. M. GARWOOD AND
LUTHER M. WALTER,
Their Solicitors.

72 STATE OF LOUISIANA,
Caddo Parish, ss:

E. A. Frost, being duly sworn on his oath, states that he is the President of the Petitioner, the Mansfield Railway & Transportation Company, and that he is — of the petitioner, Frost-Johnson Lumber Company; that he has read the above and foregoing petition and is familiar with the facts therein stated and that the allegations and averments therein made and contained are true.

——

Subscribed and sworn to before me this — day of January, 1913.

——

Notary Public.

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Exhibit "A"

EXHIBIT "A"

Operating Revenues Year Ending June 30, 1912

REVENUE FROM TRANSPORTATION:		
Freight revenue	$30,064.55	
Passenger revenue	2,165.33	
Mail revenue	429.12	
Express revenue	31.78	
TOTAL REVENUE FROM TRANSPORTATION		$32,690.78
REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:		
Rents of buildings and other property		$ 30.00
TOTAL OPERATING REVENUES		$32,720.78
OPERATING INCOME:		
Operating revenues	$32,720.78	
Operating expenses	24,267.91	
TOTAL NET REVENUE		$ 8,452.87
Taxes accrued		446.31
OPERATING INCOME		$ 8,006.59
DEDUCTIONS FROM GROSS CORPORATE INCOME:		
Hire of Equipment	$ 887.90	
Interest accrued on Funded debt	10,560.00	
Other interest	2,448.42	$13,896.32
NET CORPORATE LOSS		$ 5,889.76

Profit and Loss Account

Balance June 30, 1911	$23,055.44	
Balance for year brought forward from Income Account	5,889.76	
APPROPRIATIONS FOR ADDITIONS AND BETTERMENTS:		
Expended during the year:		
Right of way and station grounds	$ 20.00	
Real estate	2,058.31	
Passenger coach	1,200.00	
	$32,223.62	Debit balance June 30, 1912, carried to General Balance Sheet. $32,223.62

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OPERATING EXPENSES

Account	Amount	Ratio to Total of General Account	Ratio to Total of Operating Expenses
		%	%
MAINTENANCE OF WAY AND STRUCTURES:			
2 Maintenance of roadway and track	$ 9,702.42	92.39	39.98
3 Maintenance of track structures	213.74	2.03	.88
6 Other maintenance of way and structure expenses	585.74	5.58	2.41
TOTAL MAINTENANCE OF WAY AND STRUCTURES	$10,501.23	100.00	43.27
MAINTENANCE OF EQUIPMENT:			
10 Locomotive repairs	$ 549.07	43.01	2.26
11 Car repairs	172.72	13.53	.71
15 Equipment—depreciation	432.40	33.87	1.78
17 Other maintenance of equipment Exp.	122.39	9.59	.51
TOTAL MAINTENANCE OF EQUIPMENT	$ 1,276.58	100.00	5.26
TRAFFIC EXPENSES:			
20 Traffic expenses	$ 42.00	100.00	.17
TRANSPORTATION EXPENSES:			
21 Superintendence and dispatching	250.00	2.69	1.03
22 Station service	2,462.42	26.59	10.15
23 Yard enginemen	1,028.00	11.10	4.24
24 Other yard employees	802.40	8.66	3.31
25 Fuel for yard locomotives	1,689.43	18.24	6.96
26 All other yard expenses	166.94	1.80	.69
29 Road enginemen and motormen	646.92	5.99	2.67
30 Fuel for road locomotives	1,149.22	12.41	4.73
31 Other road locomotive supplies	107.28	1.16	.44
32 Road trainmen	535.80	5.79	2.21
33 Train supplies and expenses	95.40	1.03	.39
35 Loss and damage	138.91	1.49	.56
36 Other casualties	77.00	.83	.32
37 All other transportation expenses	112.88	1.22	.47
TOTAL TRANSPORTATION EXPENSES	$ 9,262.60	100.00	38.17
GENERAL EXPENSES:			
40 Administration	$ 2,370.28	74.41	9.77
41 Insurance	244.77	7.68	1.01
42 Other general expenses	570.45	17.91	2.35
TOTAL GENERAL EXPENSES	$ 3,185.00	100.00	13.13
RECAPITULATION OF EXPENSES:			
I Maintenance of way and structures	$10,501.23		43.27
II Maintenance of equipment	1,276.58		5.26
III Traffic expenses	42.00		.17
IV Transportation expenses	9,262.60		38.17
V General expenses	3,185.50		13.13
TOTAL OPERATING EXPENSES	$24,267.91		100.00

Ratio of operating expenses to operating revenues 74.17 per cent.

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COMPARATIVE GENERAL BALANCE SHEET

June 30, 1911	Assets	June 30, 1912	Increase or *Decrease*
	PROPERTY INVESTMENT:		
	Investment to June 30, 1907 —		
$ 13,862.34	Road	$ 13,862.34	
8,327.49	Equipment	8,327.49	
	Investment since June 30, 1907 —		
270,338.78	Road	272,417.09	$ 2,078.31
484.51		715.49	1,200.00
$292,044.10		$295,322.41	$ 3,278.31
	Reserved for accrued depreciation,		
784.30	Cr.	1,216.70	*432.40*
$291,259.80	TOTAL	$294,105.71	$ 2,845.91
	WORKING ASSETS:		
$ 5,408.24	Cash	$ 4,566.38	$ *841.86*
	Net balance due from agents and		
4,654.54	conductors	347.90	*4,316.64*
2,769.57	Miscellaneous accounts receivable	7,527.14	4,757.57
$ 12,842.35	TOTAL	$12,441.42	
	PROFIT AND LOSS:		
$ 23,055.55	Balance	$ 32,223.62	$ 9,168.07
$327,157.70	GRAND TOTAL	$338,770.75	$11,613.05
	Liabilities		
	STOCK:		
$ 77,300.00	Capital stock	$ 77,300.00	
	Common stock not held by Company, $77,000.00		
$ 77,300.00	TOTAL	$77,300.00	
	MORTGAGE, BONDED AND SECURED DEBT:		
	Plain bonds, debentures and notes		
116,000.00	not held by Company	$ 76,000.00	*40,000.00*
$116,000.00	TOTAL	$ 76,000.00	*$40,000.00*
	WORKING LIABILITIES:		
$ 40,806.97	Loans and bills payable	$ 40,806.97	
3,187.68	Audited vouchers and wages unpaid	324.11	$ *2,863.57*
10,089.02	Miscellaneous accounts payable	8,278.91	*1,810.11*
19,512.63	Matured interest	32,521.05	13,008.42
60,000.00	Matured secured debt unpaid	100,000.00	40,000.00
$133,596.30	TOTAL	$181,931.04	$48,334.74
	APPROPRIATED SURPLUS:		
	Additions to property since June 30,		
261.40	1907, through income	$ 3,539.71	$ 3,278.31
$327,157.70	GRAND TOTAL	$338,770.75	$11,613.05

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TRAFFIC AND MILEAGE STATISTICS

Item	Number Passengers, Tonnage, Etc.	Revenue and Rates
PASSENGER TRAFFIC:		
Number of passengers carried earning revenue	8,870	
Number of passengers carried one mile	84,265	
Number of passengers carried one mile per mile of road	5,316	
Average distance carried, miles	9.50	
Total passenger revenue		$ 2,165.33
Average amount received from each passenger		.24412
Average receipts per passenger per mile		.02570
Total passenger service train revenue		2,626.23
Passenger service train revenue per mile of road		165.69
Passenger service train revenue per train mile		.16909
FREIGHT TRAFFIC:		
Number of tons carried of freight earning revenue	47,095	
Number of tons carried one mile	218,992	
Number of tons carried one mile per mile of road	13,816	
Average distance haul of one ton, miles	4.65	
Total freight revenue		30,064.55
Averagae mount received for each ton of freight		.63838
Average receipts per ton per mile		.13729
Freight revenue per mile of road		1,896.81
Freight revenue per train mile		1.61187
TOTAL TRAFFIC:		
Operating revenues		32,720.78
Operating revenues per mile of road		2,064.40
Operating revenues per train mile		1.75427
Operating expenses		24,267.91
Operating expenses per mile of road		1,531.10
Operating expenses per train mile		1.30109
Net operating revenue		8,452.87
Net operating revenue per mile of road		533.30
Average number of passengers per car-mile	5	
Average number of passengers per train mile	5	
Average mileage operated during year	15.85	

LOCOMOTIVE MILEAGE	
REVENUE SERVICE—	
Freight locomotive-miles	3,120
Mixed locomotive-miles	15,532
Total Revenue Locomotive Mileage	18,652
CAR MILEAGE	
REVENUE SERVICE—	
Passengers	15,532
Freight	No record
TRAIN MILEAGE	
REVENUE SERVICE—	
Freight train-miles	3,120
Mixed train-miles	15,532
Total Revenue Train Mileage	18,652

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FREIGHT TRAFFIC MOVEMENT

COMMODITY		Freight Originating on this Road.	Freight Received from Connecting Roads and other carriers	Total Freight Tonnage	
		Whole Tons	Whole Tons	Whole Tons	Per Cent
Products of Agriculture	Grain	None	221	221	.47
	Flour	None	349	349	.74
	Other Mill products	67	2,979	3,046	6.47
	Hay	None	546	546	1.16
	Cotton	1,061	X	1,061	2.25
	Fruit and Vegetables	X	24	24	.05
	Other products of Agriculture	1,606	1,730	3,336	7.09
	TOTAL	2,734	5,849	8,583	18.23
Products of Animals	None				
Products of Mines	Bituminous Coal	None	4,325	4,325	9.18
	Coke	None	160	160	.34
	Stone, Sand and other like articles	None	3,117	3,117	6.62
	Other products of Mines	None	67	67	.14
	TOTAL	None	7,669	7,669	16.28
Products of Forests	Lumber	18,500	297	18,797	39.91
	Other Products of Forests	634	3,076	3,710	7.88
	TOTAL	19,134	3,373	22,507	47.79
Manufactures	Petroleum and other oils	None	641	641	1.36
	Iron, pig and bloom	58	441	499	1.06
	Iron and Steel rails	148	25	173	.37
	Other Castings and Machinery	60	159	219	.47
	Bar and Sheet metal	X	58	58	.12
	Cement, brick and Lime	X	689	689	1.46
	Agricultural Implements	X	11	11	.02
	Wagons, carriages, tools, etc	X	37	37	.08
	H. H. Goods and furniture	50	139	189	.40
	Other manufactures	X	448	448	.95
	TOTAL	316	2,648	2,964	6.29
Merchandise		1,949	3,231	5,180	11.00
Miscellaneous: Other commodities not mentioned above		10	182	192	.41
TOTAL TONNAGE		24,143	22,952	47,095	1.00

SELECTED COMMODITIES

Commodity	Freight carried in Carload Lots	Ton-Mileage of Freight Carried in Carload Lots	Revenue from Freight Carried in Carload Lots	Revenue per Ton per mile from Freight Carried in Carload Lots
	Whole Tons	Ton Miles	Dollars	Cts. Mills
Grain	221	276	132	47.818
Hay	546	988	331	33.502
Cotton	1,061	1,496	1095	73.195
Bituminous coal	4,325	4,325	1043	24.803

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Exhibit "B"

"EXHIBIT B"

MANSFIELD RAILWAY & TRANSPORTATION COMPANY

Statement Showing Operating Revenues and Expenses.

July 1st, to October 31st, 1912.

Operating Revenues	July	August	September	October	Total for 4 Months
Freight	$3,325.16	$4,038.37	$3,892.40	$5,325.01	$17,080.94
Passenger	215.40	169.05	137.42	165.50	687.37
Mail	36.05	36.05	36.05	36.05	144.20
Express	7.15	2.73	2.42	3.21	15.51
TOTAL Operating Revenues	$4,083.76	$4,246.20	$4,068.29	$5,529.77	$17,928.02
Operating Expenses	**July**	**August**	**September**	**October**	**Total for 4 Months**
Maintenance of Way and Structures	$1,126.91	$1,438.75	$ 804.42	$ 794.79	$4,166.87
Maintenance of Equipment	51.55	114.83	43.20	57.87	267.45
Traffic Expense	10.00	10.00	10.00	10.00	40.00
Transportation Expense	453.48	496.08	527.40	575.08	2,052.04
General Expense	204.70	273.57	271.82	290.05	1,040.14
Total Operating Expenses	$1,848.64	$2,333.23	$1,656.84	$1,727.79	$7,566.50

RECAPITULATION

Operating revenues for four months as above	$17,928.02	
Operating expenses for four months as above	7,566.50	
NET OPERATING REVENUE		$10,362.52
Less taxes accrued		169.24
OPERATING INCOME		$10,192.28
DEDUCTIONS FROM GROSS CORPORATE INCOME:		
Hire of Equipment	$296.00	
Interest accrued on Funded Debt	4336.16	4,632.16
NET CORPORATE INCOME FOR THE FOUR MONTHS		$5,560.12

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FREIGHT TRAFFIC MOVEMENT WITH CONNECTING LINES (T. & P. and K. C. S.) July 1st, 1912 to October 31, 1912.

Commodity	Freight Forwarded		Freight Received		Total	
	Tons	Revenue	Tons	Revenue	Tons	Revenue
Grain	None	None	261	159.51	261	$159.51
Flour	None	None	306	184.17	306	184.17
Other mill products	363	$85.22	497	305.53	860	390.75
Hay	None	X	148	99.01	148	99.01
Cotton	1012	1015.80	X	X	1012	1015.80
Other products of Agriculture	X	X	593	97.38	593	97.38
Bituminous coal	X	X	386	117.55	386	117.55
Coke	X	X	65	19.55	65	19.55
Stone, Sand, etc	X	X	106	18.14	106	18.14
Lumber	41	5.00	X	X	41	5.00
Other forest products	44	5.00	363	22.50	407	27.50
Petroleum and other oils	X	X	298	22.50	298	22.50
Iron, pig and bloom	X	X	279	160.96	279	160.96
Castings and Machinery	12	7.20	35	16.40	47	23.60
Cement, brick and lime	252	32.50	34	20.41	286	52.91
Agricultural Implements	X	X	16	9.60	16	9.60
H. H. Goods and Furniture	10	6.00	18	11.57	28	17.57
Other Manufactures	X	X	304	79.85	304	79.85
Merchandise	283	285.42	1244	1324.57	1527	1609.99
Miscellaneous	10	6.00	164	111.03	174	117.03
	2027	$1448.14	5117	$2780.23	7144	$4228.37

The above does not include shipments of lumber made by Frost-Johnson Lumber Company and Mansfield Hardwood Lumber Company. See separate sheet showing tonnage and revenue for these companies.

LOCAL FREIGHT TRAFFIC MOVEMENT
July 1st, 1912 to October 31st, 1912

Commodity	Tons	Revenue
Flour	15	$ 2.50
Other mill products	39	19.40
Hay	7	5.99
Cotton	26	42.00
Other products of agriculture	897	334.60
Lumber	912	169.56
Other forest products	962	550.85
Merchandise	246	264.99
Miscellaneous	208	36.23
TOTAL	3312	$1,426.12

LOCAL FREIGHT TRAFFIC HANDLED BY STATIONS
July 1st, 1912 to October 31st, 1912

Station	Tons	Revenue
Mansfield, La.	2054	$1,002.75
Oak Hill, La.	1138	221.59
Baker, La.	71	78.50
Burgess, La.	4	4.26
Hunter, La.	45	119.02
TOTAL.	3312	$1,426.12
(Same as above)		

RECAPITULATION OF FREIGHT TRAFFIC MOVEMENT HANDLED BY MANSFIELD RAILWAY & TRANSPORTATION COMPANY
July 1st, 1912 to October 31st, 1912

Interchanged with Connecting Lines	Tons	Revenue
Freight delivered to them	2027	$1,448.14
Freight received from them	5117	2,780.23
TOTAL.	7144	$4,228.37
LOCAL FREIGHT TRAFFIC MOVEMENT.	3312	1,426.12
FROST-JOHNSON LUMBER COMPANY.	11898	11,226.45
MANSFIELD HARDWOOD LUMBER COMPANY.	1200	200.00
	23554	$17,080.94

STATEMENT SHOWING AMOUNT OF FREIGHT RECEIVED AND SHIPPED BY DIFFERENT INDUSTRIES LOCATED ON TRACKS OF MANSFIELD RAILWAY & TRANSPORTATION CO.
July 1st, 1912 to October 31st, 1912

Industry	Received		Forwarded		Total	
	Tons	Revenue	Tons	Revenue	Tons	Revenue
Frost-Johnson Lumber Company	900	$332.30	11898	$11226.45	12798	$11,548.75
Mansfield Hardwood Lumber Co.	676	32.00	1200	200.00	1876	232.00
DeSota Foundry & Machine Company	428	149.10	147	146.28	575	295.38
DeSota Cotton Oil Company	1313	432.70	380	97.62	1693	530.32
TOTAL.	3317	$936.10	13625	$11,670.35	16942	$12,606.45
All others					6612	4,474.49
GRAND TOTAL.					23554	$17,080.94

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MANSFIELD RAILWAY & TRANSPORTATION CO.

Statement showing business handled to and from Stations on M. R. & T. Co. July 1st, 1912 to October 31st, 1912

Stations	Received		Forwarded	
	Tons	Revenue	Tons	Revenue
Mansfield, La.	5936	$2,556.19	2086	$1,479.34
Oak Hill, La.	1138	221.59	X	X
Burgess, La.	4	4.26	X	X
Baker, La.	129	150.38	210	42.00
Hunter, La.	120	160.90	847	813.30
TOTAL.	7327	$3,093.32	3143	$2,334.64

Lumber shipped by Frost-Johnson Lumber Company, and the Mansfield Hardwood Lumber Company not included in the above figures.

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Note by the Clerk.

(Opinion of the Interstate Commerce Commission, Apr. 23, 1912; Supplemental Report of the Interstate Commerce Commission, May 14, 1912, and Amended Order Interstate Commerce Commission, Oct. 30, 1912, omitted here in printing because printed elsewhere in a separate volume.)

(Here follows map, marked page 261.)

262 Original.

Notice to the Attorney General.

(Filed January 16, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to Honorable George W. Wickersham, as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 14th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 15th day of January A. D. 1913. (Accepted by Blackburn Esterline.)

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

263 Original.

Notice to the Interstate Commerce Commission.

(Filed January 16, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to John H. Marble, as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 14th day of January A. D., 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John H. Marble, Secretary of the Interstate Commerce Commission, this 15th day of January A. D., 1913.

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

264 In the United States Commerce Court, February Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,
v.
UNITED STATES OF AMERICA, Respondent.

Motion of the United States to Dismiss the Petition.

(Filed February 8, 1913.)

Comes now the United States of America, respondent, by its counsel, and moves the court to dismiss the above-entitled cause, upon the following grounds, viz:

1. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(*a*) The order of the Interstate Commerce Commission is negative, in that, in the absence of the Frost-Johnson Lumber Company, which is not a proper party to this proceeding, except on its own motion, any relief granted against the United States would be of no avail to the Mansfield Railway & Transportation Company in restoring the status quo of the parties.

265 (*b*) The order of the Interstate Commerce Commission complained of directed no affirmative relief, and the negative order of the commission affords no basis for any action by the Commerce Court.

(*c*) The same relief which is sought of the Commerce Court was denied by the Interstate Commerce Commission, and the Commerce Court has no power or authority to act for and instead of the said commission.

2. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(*a*) The Mansfield Railway & Transportation Company is not a common carrier engaged in commerce among the several States.

(*b*) The suit is not one commenced by a common carrier engaged in commerce among the several States, but is commenced in the name and on behalf of the Frost-Johnson Lumber Company, engaged in the manufacture and sale of lumber.

(*c*) The Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company seek to compel the Interstate Commerce Commission to accept, receive, and file tariffs and schedules of rates and charges prescribing through routes and joint rates with the interstate carriers after the commission has negatively ordered otherwise.

(*d*) The said Mansfield Railway & Transportation and Frost-Johnson Lumber Company seek to invoke the jurisdiction of the Commerce Court to entertain a controversy not contemplated

266 by the act to create a Commerce Court, in that the Mansfield Railway & Transportation Company and the United

States are but nominal parties, and the real controversy will be conducted and carried on by, between and in the interest of the said lumber company and certain common carriers subject to the act to regulate commerce.

(e) The power to establish through routes and joint rates under the act to regulate commerce is reposed exclusively in the carriers, and in the event of their failure to agree, exclusively in the Interstate Commerce Commission under section 15 of the said act.

3. The said Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company are and each of them is, without any standing in a court of equity to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission, on the ground that the Mansfield Railway & Transportation Company is a common carrier engaged in commerce among the several States; for that if the said Mansfield Railway & Transportation Company is a common carrier engaged in commerce among the several States, then it and the said lumber company, as one and the same enterprise, are unlawfully transporting in interstate commerce commodities manufactured, produced, and otherwise dealt in by them, and in which they have an interest, direct and indirect in violation of section 1 of the act to regulate commerce.

4. The Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company have no standing in a court of
267 equity to maintain an action to enjoin set aside, annul, or suspend the order of the Interstate Commerce Commission, for that the allowances create illegal preferences and discriminations on the part of certain common carriers engaged in commerce among the several States in favor of Frost-Johnson Lumber Company, the principal petitioner, in violation of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto, or certain of the provisions thereof.

5. That the incorporation of the Mansfield Railway & Transportation Company, and the use of the same, is a mere device and subterfuge for the purpose of giving the appearance of legality to proposed illegal arrangements between Frost-Johnson Lumber Company and certain common carriers engaged in commerce among the several States, and for the further purpose of covering up the unlawful preferences, discriminations, and rebates growing out of the same.

6. There is a misjoinder of parties because, according to the statute, Frost-Johnson Lumber Company is not a necessary or proper party, or a permissible party, except on its own motion, to this proceeding, and then as intervener only.

7. The petitioners are, and each of them is, estopped from assailing the validity of the order of the Interstate Commerce Commission, as the said order was entered upon the request and with the consent of the said petitioners and each of them.

268 8. The petitioners have not in and by their said petition shown that in making its said order the Interstate Commerce Commission transcended the powers conferred upon it by the statute, or violated any right of petitioners protected by the Con-

stitution of the United States, or any other right of the petitioners over which this court may exercise jurisdiction.

9. The petition is vague, indefinite, uncertain, and insufficient in that it contains much irrelevant and immaterial matter, and abounds in conclusions and assumptions of the pleader without facts to support the same.

10. The said petition is insufficient to set forth a cause of action upon which the court may grant the relief prayed, or any part of the same.

Wherefore, and for divers other good causes appearing from the face of the said petition more fully to be pointed out upon the hearing hereof, this respondent prays that its motion be sustained, and that the said petition be dismissed at the petitioners' cost and that it be not required to make any answer thereto; and for such other and further action as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

269 *Journal Entry.*

Proceedings of February 10, 1913.

Case Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO., et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court

made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause wa staken under advisement by the Court.

270 *Order Denying Motion to Dismiss for Want of Jurisdiction.*

(Entered February 24, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction in open court made; and the Court having given the arguments of counsel due consideration, now, on this 24th day of February, 1913,—

It is ordered and adjudged that said motion be, and the same is hereby, denied, the Court being of opinion that the order complained of is an order the validity of which this Court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

271 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

(Filed March 18, 1913.)

The United States of America, respondent, not waiving its motion to dismiss the above-entitled cause for want of jurisdiction of the

court over the subject matter, but still insisting upon its said motion and each and every part of the same, and still protesting against the court entertaining jurisdiction over the subject matter now and at all times hereafter, and answering the said petition under protest;

The United States of America, respondent, now at all time hereafter saving to itself any and all manner of benefit and advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said petition contained, for answer thereto or to so much thereof as this respondent is advised it is material or necessary for it to make answer, answers and says:

I. It admits—

(*a*) The allegations of Paragraph III of the petition;

272 (*b*) The Commission made and entered the orders of September 3, 1910, and January 16, 1912, referred to in Paragraph V of the petition;

(*c*) The Commission made and entered the order of November 15, 1910, referred to in Paragraph VI, page 13, of the petition;

(*d*) The making and filing by the Commission on April 29, 1912, of Report No. 1853, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," referred to in Paragraph VI, page 15, of the petition;

(*e*) The making and filing by the Commission on May 14, 1912, of Supplemental Report No. 1898, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," referred to in Paragraph VI, page 17, of the petition, parts of which are set out on pages 17 to 21, inclusive, of the petition;

(*f*) The Commission made and entered the order of May 14, 1912, referred to on pages 21 to 27, inclusive, of the petition;

(*g*) The filing with the Commission of the petition referred to in Paragraph VIII of the petition, at pages 28 to 35, inclusive; and

(*h*) The Commission made and entered the amended order of October 30, 1912, referred to in Paragraph IX of the petition, at pages 35 to 43, inclusive.

II. It admits—

(*a*) Mansfield Railway & Transportation Company is a corporation;

273 (*b*) Frost-Johnson Lumber Company is a corporation.

III. Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company are two interlocking corporations with a common ownership, control, and management, operating in the State of Louisiana, with headquarters in a single office. Texas & Pacific Railway Company and Kansas City Southern Railway Company are corporations and common carriers by railroad engaged in interstate commerce and serve the petitioners in the transportation of lumber. When Mansfield Railway & Transportation Company was organized, it owned and operated but 2 miles of track, extending from the town of Mansfield to a connection with the Texas & Pacific Railway Company at a point known as Mansfield Junction. From time to time Frost-Johnson Lumber Company laid additional tracks in and about its mills for the shifting and handling of its logs and lumber and turned the same over to Mansfield Railway &

Transportation Company for nominal considerations, the business of the said two petitioners being all the time conducted as one. In so doing, and through other various schemes and devices, the stockholders and officers of the petitioners have sought to clothe Mansfield Railway & Transportation Company with the rights and obligations of a common carrier with trunk-line connections. After so manipulating the said plant facilities and making connections with Texas & Pacific Railway Company and Kansas City Southern
274 Railway Company, and creating competition between them for the heavy traffic of Frost-Johnson Lumber Company, it and Mansfield Railway & Transportation Company with the power wielded by them in the control of the heavy traffic, are enabled to and do hammer the two competing trunk lines for allowances or divisions; by reason thereof, the petitioners are enabled to secure, and they have secured, excessive allowances and divisions from the said two trunk lines named, which are illegal rebates to Frost-Johnson Lumber Company and its stockholders, and departures from the published tariffs, and illegal preferences and discriminations forbidden by the provisions of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto. The said two interlocking petitioners, under the common ownership, control, and management, are so operated for the double purpose of (*a*) controlling the traffic and dictating the allowances and divisions to them for the traffic which they furnish, and (*b*) giving color of legality to the unlawful arrangements between the said two railroad companies and the petitioners.

IV. The matters and things heard and determined by the Interstate Commerce Commission were within its power and authority to hear and determine under the provisions of the act to regulate commerce, and in its reports in writing with respect thereto, made after a full hearing and due notice to all the parties, which state its conclusions, together with its decision, order, or requirement in
275 the premises, the matters and things of which complaint is made were fully covered and foreclosed by findings of fact.

V. Further answering the said petition and each and every part of the same in so far as it has not heretofore been admitted, denied, or otherwise traversed, this respondent denies any fact or facts alleged in said petition or any part of the same which deny or which seek to deny any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any and all inferences of fact from any particular fact or facts alleged in the said petition or any part of the same which seek to deny or which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before the Interstate Commerce Commission or which are not referred to in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which attack or which seek to

attack the reports and order of the Interstate Commerce Commission and to show facts differently from what the said reports and order show on the face thereof; and denies any allegations
276 in said petition or any part of the same which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found; and denies any conclusions of law alleged and insisted upon in the said petition or any part of the same which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

And this respondent now gives notice that upon the final hearing hereof, and in accordance with section 1 of the act entitled "An act to create a Commerce Court," etc., approved June 18, 1910, it will move to dismiss the petition, for that the same is insufficient to state any cause of action against the said respondent and will renew and urge in support thereof the grounds of its written motion already filed in that behalf.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

March, 1913.

277 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,
v.
THE UNITED STATES OF AMERICA, Respondent.

Answer of the Interstate Commerce Commission.

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

That this court has no jurisdiction of the controversy, matters and things respectively set forth in said petition, nor does
278 it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, In the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order of January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C. Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that thereafter, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338;
279 and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times, and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), begining at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said pub-
280 lished reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the — or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

281 And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

JAMES S. HARLAN.

Subscribed and sworn to before me, Geo. F. Graham, a notary public within and for the District of Columbia, this 8th day of February, 1913.

[SEAL.] GEO. F. GRAHAM,
Notary Public.

282 *Petition of A., T. & S. F. Ry. Co. et al. for Leave to Intervene.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

Petition for Leave to Intervene.

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceedings before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the milling industries located upon the lines of petitioners are known as the blanket system of rates.

283 Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitioners are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance to the petitioners herein will not be in truth an allowance to a railroad for the service of transportation of lumber but on the contrary will be an allowance to the milling industry for an operation incident to the manufacture of lumber, and will constitute a device

for the payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Their Attorneys.

February 10, 1913.

284 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY et al.
vs.
UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado and Santa Fe Railway Company having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

285 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent.

Reply to Intervening Petition of the Atchison, Topeka and Santa Fe Railway, and Gulf, Colorado and Santa Fe Railway Company.

(Filed February 26, 1913.)

Comes now the Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company, Petitioners herein, and ask leave of the Court to file this, their reply to the petition of intervention filed herein by The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

Petitioners admit that intervenors were parties to the original proceeding before the Interstate Commerce Commission, out of which the above entitled suit originated.

286 Petitioners further admit that the intervenors are "interested directly and financially in any disposition of this cause." Petitioners further admit that intervenors are common carriers by railroad, with rails extending from "extensive lumber producing territory to various markets"; that the milling industries located upon the lines of intervenors are competitors with the milling industries located upon the line of the petitioner, Mansfield Railway & Transportation Company; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervenors is known as the blanket system of rates, but these petitioners deny that the rates applying for the carriage of lumber from points upon the line of the petitioner, Mansfield Railway & Transportation Company, is the joint rate commonly known as the blanket rate from the yellow pine producing territory. On the contrary, these petitioners aver that milling industries such as the petitioner, Frost-Johnson Lumber Company, are compelled to pay the blanket rate from the junction point with the trunk lines to consuming territory, plus the local charge of the petitioner, Mansfield Railway & Transportation Company, from the mill to such junction point.

Petitioners further allege that while the intervenors may compel their shippers to pay in full the lawfully published tariff rate on lumber and may make no allowance or division of through rates to tap-lines or milling industries, petitioners aver that the intervenors make concessions, or other arrangements, whereby an undue preference is accorded many shippers from points upon the lines of intervenors as compared with the petitioner, Frost-Johnson

287 Lumber Company, as will more particularly appear herein.

Petitioners deny that any allowance to the petitioner,

Mansfield Railway & Transportation Company, out of the joint through rates, will give these petitioners any undue advantage over milling industries located upon the lines of the intervenors or that such allowance will constitute any unjust discrimination, or otherwise be any violation of the Interstate Commerce law. Your petitioners further deny that such an allowance to the Mansfield Railway & Transportation Company is, or will be, any allowance to the milling industries of the petitioner, Frost-Johnson Lumber Company. On the contrary, these petitioners assert that the service performed by the Mansfield Railway & Transportation Company in moving lumber from the plant of the Frost-Johnson Lumber Company to the Kansas City Southern Railway or the Texas & Pacific Railway is a service of transportation within the meaning of the Act to Regulate Commerce.

Petitioners deny that any allowance to the petitioner, Mansfield Railway & Transportation Company, out of the joint rate, in any way constitutes a device for the payment of a rebate to a shipper, or is otherwise any violation of the Interstate Commerce Law.

Your petitioners affirmatively show unto this honorable court that the intervenors, about the year 1902, purchased from John H. Kirby and his associates two short-line railways, to-wit: the Gulf, Beaumont & Kansas City and the Gulf, Beaumont & Great Northern, both of which railways penetrated the most productive
288 yellow pine territory in Texas. At that time, the said Kirby and his associates were large holders of yellow pine timber lands; that about the same time these intervenors made a contract with said Kirby by which said intervenors agreed, so far as they lawfully could do so, to cancel all through rates on lumber with all of their railway connections, both trunk lines and short lines. Shortly thereafter the said Kirby and his associates organized the Kirby Lumber Company and the Houston Oil Company, both corporations of the State of Texas. Your petitioners aver that it appeared before the Interstate Commerce Commission in the record in the so-called tap-line case that the said Kirby and his associates, through said corporations and their personal holdings, obtained the control of approximately nine hundred thousand acres of yellow pine timber land. The purpose of said Kirby and his associates was shown to be to obtain the practical control of all yellow pine producing territory in southeastern Texas and southwestern Louisiana.

Petitioners further aver that it appeared in evidence before the said Commission that the lands of the Kirby Lumber Company and of John H. Kirby passed into the hands of intervenor, Atchison, Topeka & Santa Fe Railway Company, which now holds a legal title to said lands, the said Kirby holding an option to re-purchase the same. It further was shown to the said Commission that these lands are held for the intervenor, Atchison, Topeka & Santa Fe Railway Company under the name of J. R. Chapman.

289 Petitioners further allege that it was shown to the said Commission in said hearing that the intervenor, Atchison, Topeka & Santa Fe Railway Company, acquired through the in-

strumentality of said Kirby, a vast body of lands in the same territory, known as the "Kountze lands," consisting of one hundred and eighty-seven thousand acres of yellow pine timber. Through an operating contract with the Kirby Lumber Company the timber output of the Houston Oil Company lands is manufactured and controlled by said Kirby Lumber Company.

Petitioners allege that these entire holdings, most of which are immediately adjacent and tributary to the east Texas lines of intervenors, comprise one million and eighty-seven thousand acres, and are generally estimated to contain about eight billion feet of lumber. The Bureau of Corporations of the United States, in its recent report, Senate Document No. 818, estimates privately owned timber in the State of Texas to amount to sixty-six billion feet. It therefore appears that practically one-eighth of the yellow pine timber of Texas is controlled by intervenors.

Petitioners further allege that it was shown to the Interstate Commerce Commission that the Kirby Lumber Company operates thirteen mills, all of which, with one or two exceptions, are located upon the lines of intervenors and all the tonnage produced from the aforesaid holdings by the Kirby Lumber Company east of the Neches River, is tied by contracts to the intervenors.

290 Prior to the hearing before the Commission, and subsequent to the year 1902, intervenors, or persons acting for them, organized the Southwestern Lumber Company, a corporation of the State of Texas, and sold to the Industrial Lumber Company sixty-five thousand acres for an approximate consideration of Three Million Dollars, the deferred payments upon which bore interest at the rate of four and one-half per cent. per annum (the current rate of interest at the time of the transaction being from six to eight per cent.).

Petitioners allege that the Kirby Lumber Company and Industrial Lumber Company were parties to the proceeding before the Commission in which the order complained of by petitioners was made.

Petitioners allege that it was shown to the said Commission that the expenditures incident to the acquisition of the said immense timber holdings by the intervenors in southeastern Texas and southwestern Louisiana approximated eight million dollars.

Petitioners allege that the contract above mentioned between intervenors and said John H. Kirby was intended to, and did, give the said Kirby and his associates an undue and unlawful advantage in marketing yellow pine lumber over the lines of the intervenors.

Petitioners allege that there was filed before the Interstate Commerce Commission in the said tap-line record, a copy of an answer filed by the said Kirby and the Kirby Lumber Company in the Circuit Court of the United States for the Southern District of Texas in the case of Maryland Trust Company, trustee, vs. Kirby

291 Lumber Company and Houston Oil Company, wherein it appeared, in the thirteenth paragraph, that

"said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had

canceled all through and joint rates on lumber with connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system."

The paragraph further provides that

"(it) would give said Kirby Lumber Company an advantage of about one dollar per thousand feet over and above what its competitors, located on other lines of railway, could realize from the shipments to points reached by said Atchison Railroad, and this for the reason that said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system."

As disclosed by the thirteenth, fourteenth and fifteenth paragraphs of said answer, it was the purpose at that time of the Kirby Lumber Company to acquire the Kountze lands above referred to, which the intervenors subsequently acquired as above stated; and it is alleged in the fourteenth paragraph of said answer

"That the arrangement herein stated, between said Kirby
292 and said Atchison, Topeka & Santa Fe Railroad, of which said defendant Kirby Lumber Company is a beneficiary, is not, and under the law could not be, exclusively for his benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado & Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison Railroad not owned by either said Houston Oil Company of Texas or said Kirby Lumber Company, to tempt competitors, wherefore such regulation by said Atchison Railroad would practically result in said Kirby Lumber Company being the sole beneficiary thereof."

Petitioners further allege that the only complaining parties against tap-line allowances in the hearing before the Commission were the Kirby Lumber Company, the Miller Link Company, the Industrial Lumber Company, the Lutcher-Moore Lumber Company, Alexander-Miller Company and Ludington, Wells & VanShaick Lumber Company, all of which, with the exception of the Lutcher-Moore and Miller Link Companies, were directly tributary to the lines of the intervenors herein. It appeared before the Commission that the Southwestern Lumber Company, of which President E. P. Ripley of the intervenors and his associates were the officers, sold to the Industrial Lumber Company sixty-five thousand acres of pine land for approximately three million dollars, and at the time of the taking of the testimony before the Commission about two and one-half million dollars was still unpaid and drawing interest at four and one-half per cent. per annum, while the current rate
293 of interest, which your petitioners pay, was from six to eight per cent.

It appears from the published reports of the Interstate Commerce Commission that the said intervenors did cancel, or cause to be canceled, joint rates from points on their lines to points on other lines of railroad in large lumber consuming territory of the United States. In the original Star Grain case through rates were ordered by the Commission via the St. Louis Southwestern Railway Company and the intervenors.

Petitioners, in view of the foregoing and upon information and belief, allege that the intervenors have stirred up and instigated litigation before the Interstate Commerce Commission and are participating herein for the sole purpose of monopolizing the transportation and trade in yellow pine lumber between points upon its line. Petitioners further allege that intervenors have in control and operation to-lay a mill at Merryville, in the State of Louisiana, whose product is shipped to various points in the United States and is in competition with the lumber produced by the petitioner, Frost-Johnson Lumber Company.

Your petitioners further allege that the order complained of by petitioners herein, if allowed to remain effective, will make it easier for the intervenors to succeed in their plans to monopolize the aforesaid trade and transportation in yellow pine lumber.

Your petitioners therefore say that the aforesaid facts
293½ abundantly show that the order of the Commission constitutes an unjust discrimination and undue preference in violation of the Act to Regulate Commerce and should be enjoined and set aside.

Your petitioners therefore pray as in the original petition.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY,
FROST-JOHNSON LUMBER COMPANY,
By H. M. GARWOOD AND
LUTHER M. WALTER,
Their Solicitors.

294 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; THE ATCHISON, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners.

Motion of the Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company to Strike Out Certain Scandalous, Impertinent and Irrelevant Matter Contained in the Reply of the Mansfield Railway and Transportation Company and Frost-Johnson Lumber Company, and Suggestions in Support of said Motion.

(Filed March 8, 1913.)

Come now The Atchison, Topeka and Santa Fe Railroad Company and the Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners herein, and respectfully move the court to strike from the reply of the Mansfield Railway and Transportation Company and Frost-Johnson Lumber Company, Petitioners, to the intervening petition of The Atchison, Topeka and Santa Fe Rail-
295 way Company and the Gulf, Colorado and Santa Fe Railway Company the following, on the ground that the same is scandalous, impertinent and irrelevant:

"Petitioners further allege that while the intervenors may compel their shippers to pay in full the lawfully published tariff rate on lumber and may make no allowance or division of through rates to tap-lines or milling industries, petitioners aver that the intervenors make concessions, or other arrangements, whereby an undue preference is accorded many shippers from points upon the lines of intervenors as compared with the petitioner, Frost-Johnson Lumber Company, as will more particularly appear herein."

(The above being contained on page 2 of said reply.)

"Your petitioners affirmatively show unto this honorable court that the intervenors, about the year 1902, purchased from John H. Kirby and his associates two short-line railways, to-wit: the Gulf, Beaumont & Kansas City and the Gulf, Beaumont & Great Northern, both of which railways penetrated the most productive yellow pine territory in Texas. At that time, the said Kirby and his associates were large holders of yellow pine timber lands; that about the same time these intervenors made a contract with said Kirby by which said intervenors agreed, so far as they lawfully could do so, to cancel all through rates on lumber with all of their railway connections, both trunk lines and short lines. Shortly thereafter the said Kirby and his associates organized the Kirby Lumber Company and the

Houston Oil Company, both corporations of the state of Texas. Your petitioners aver that it appeared before the Interstate Commerce Commission in the record in the so-called tap-line case that the said Kirby and his associates, through said corporations and their personal holdings, obtained the control of approximately nine hundred thousand acres of yellow pine timber land. The purpose of said Kirby and his associates was shown to be to obtain the practical control of all yellow pine producing territory in southeastern Texas and southwestern Louisiana.

296 Petitioners further aver that it appeared in evidence before the said Commission that the lands of the Kirby Lumber Company and of John H. Kirby passed into the hands of intervenor, Atchison, Topeka & Santa Fe Railway Company, which now holds a legal title to said lands, the said Kirby holding an option to repurchase the same. It further was shown to the said Commission that these lands are held for the intervenor, Atchison, Topeka & Santa Fe Railway Company under the name of J. R. Chapman.

Petitioners further allege that it was shown to the said Commission in said hearing that the intervenor, Atchison, Topeka & Santa Fe Railway Company, acquired through the instrumentality of said Kirby, a vast body of lands in the same territory, known as the "Kountze lands," consisting of one hundred and eighty-seven thousand acres of yellow pine timber. Through an operating contract with the Kirby Lumber Company the timber output of the Houston Oil Company lands is manufactured and controlled by said Kirby Lumber Company.

Petitioners allege that these entire holdings, most of which are immediately adjacent and tributary to the east Texas lines of intervenors, comprise one million and eighty-seven thousand acres, and are generally estimated to contain about eight billion feet of lumber. The Bureau of Corporations of the United States, in its recent report, Senate Document No. 818, estimates privately owned timber in the State of Texas to amount to sixty-six billion feet. It therefore appears that practically one-eighth of the yellow pine timber of Texas is controlled by intervenors.

Petitioners further allege that it was shown to the Interstate Commerce Commission that the Kirby Lumber Company operates thirteen mills, all of which, with one or two exceptions, are located upon the lines of intervenors and all the tonnage produced from the aforesaid holdings by the Kirby Lumber Company east of the Neches River, is tied by contracts to the intervenors.

297 Prior to the hearing before the Commission, and subsequent to the year 1902, intervenors, or persons acting for them, organized the Southwestern Lumber Company, a corporation of the State of Texas, and sold to the Industrial Lumber Company sixty-five thousand acres for an approximate consideration of Three Million Dollars, the deferred payments upon which bore interest at the rate of four and one-half per cent. per annum (the current rate of interest at the time of the transaction being from six to eight per cent.).

Petitioners allege that the Kirby Lumber Company and Industrial Lumber Company were parties to the proceeding before the

Commission in which the order complained of by petitioners was made.

Petitioners allege that it was shown to the said Commission that the expenditures incident to the acquisition of the said immense timber holdings by the intervenors in southeastern Texas and southwestern Louisiana approximated eight million dollars.

Petitioners allege that the contract above mentioned between intervenors and said John H. Kirby was intended to, and did, give the said Kirby and his associates an undue and unlawful advantage in marketing yellow pine lumber over the lines of the intervenors.

Petitioners allege that there was filed before the Interstate Commerce Commission in the said tap-line record, a copy of an answer filed by the said Kirby and the Kirby Lumber Company in the Circuit Court of the United States for the Southern District of Texas in the case of Maryland Trust Company, trustee, vs. Kirby Lumber Company and Houston Oil Company, wherein it appeared, in the thirteenth paragraph, that

'said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system.'

298 The paragraph further provides that

'(it) would give said Kirby Lumber Company an advantage of about one dollar per thousand feet over and above what its competitors, located on other lines of railway, could realize from the shipments to points reached by said Atchison Railroad, and this for the reason that said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system.'

As disclosed by the thirteenth, fourteenth and fifteenth paragraphs of said answer, it was the purpose at that time of the Kirby Lumber Company to acquire the Kountze lands above referred to, which the intervenors subsequently acquired as above stated; and it is alleged in the fourteenth paragraph of said answer

'That the arrangement herein stated, between said Kirby and said Atchison, Topeka & Santa Fe Railroad, of which said defendant Kirby Lumber Company is a beneficiary, is not, and under the law could not be, exclusively for his benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado & Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison Railroad not owned by either said Houston Oil Company of Texas or said Kirby Lumber Com-

pany, to tempt competitors, wherefore such regulation by said Atchison Railroad would practically result in said Kirby Lumber Company being the sole beneficiary thereof.'

Petitioners further allege that the only complaining parties against tap-line allowances in the hearing before the Commission were the Kirby Lumber Company, the Miller Link Company, the In-
299 dustrial Lumber Company, the Lutcher-Moore Lumber Company, Alexander-Miller Company and Ludington, Wells & Van Shaick Lumber Company, all of which, with the exception of the Lutcher-Moore and Miller Link Companies, were directly tributary to the lines of the intervenors herein. It appeared before the Commission that the Southwestern Lumber Company, of which President E. P. Ripley of the intervenors and his associates were the officers, sold to the Industrial Lumber Company sixty-five thousand acres of pine land for approximately three million dollars, and at the time of the taking of the testimony before the Commission about two and one-half million dollars was still unpaid and drawing interest at four and one-half per cent. per annum, while the current rate of interest, which your petitioners pay, was from six to eight per cent.

It appears from the published reports of the Interstate Commerce Commission that the said intervenors did cancel, or cause to be canceled, joint rates from points on their lines to points on other lines of railroad in large lumber consuming territory of the United States. In the original Star Grain case through rates were ordered by the Commission via the St. Louis Southwestern Railway Company and the intervenors.

Petitioners, in view of the foregoing, and upon information and belief, allege that the intervenors have stirred up and instigated litigation before the Interstate Commerce Commission and are participating herein for the sole purpose of monopolizing the transportation and trade in yellow pine lumber between points upon its line. Petitioners further allege that intervenors have in control and operation today a mill at Merryville, in the State of Louisiana, whose product is shipped to various points in the United States and is in competition with the lumber produced by the petitioner, Frost-Johnson Lumber Company.

Your petitioners further allege that the order complained of by petitioners herein, if allowed to remain effective, will make it
300 easier for the intervenors to succeed in their plans to monopolize the aforesaid trade and transportation in yellow pine lumber.

Your petitioners therefore say that the aforesaid facts abundantly show that the order of the Commission constitutes an unjust discrimination and undue preference in violation of the Act to Regulate Commerce and should be enjoined and set aside."

The above being contained on pages 3, 4, 5, 6, 7, 8, 9 and 10 of said Reply.

Respectfully submitted,

ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Solicitors for said Intervening Petitioners.

Chicago, March 3, 1913.

Suggestions of the Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners, in Support of said Motion.

(1) It is respectfully submitted that if all of the scandalous, impertinent and irrelevant matter above set forth were admitted to be true, such facts could have no bearing upon the question as to whether the tap-line allowances constitute an unlawful rebate or a violation of the Interstate Commerce law. Whether the order entered by the Interstate Commerce Commission in this case is correct or incorrect is a question which must be decided without any reference to the alleged practices of the intervening petitioners.

(2) The only jurisdiction which the United States Com-
301 merce Court has in this case is to review a certain order made by the Interstate Commerce Commission in the so-called tap-line case. If it were admitted that all of the scandalous, impertinent and irrelevant facts set forth in said reply are true, the Commerce Court would have no jurisdiction to make any order against The Atchison, Topeka and Santa Fe Railway Company or the Gulf, Colorado and Santa Fe Railway Company with reference to those facts.

For the above reasons it will serve no good purpose to burden the record with inquiries into the matters alleged in said Reply. Surely they will throw no light upon the question as to whether the order of the Interstate Commerce Commission was correct or incorrect; and as these alleged facts, if established, would not present any question which the Commerce Court has jurisdiction to determine, it would seem obvious that they should be stricken from the Reply.

Respectfully submitted,

ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Solicitors for said Intervening Petitioners.

Chicago, March 3, 1913.

302 *Petition of Intervention of Railroad Commission of Louisiana.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioners,
vs.
THE INTERSTATE COMMERCE COMMISSION et al., Respondents.

Motion on Behalf of the Railroad Commission of Louisiana for Permission to Intervene as Party Petitioner and to be Represented by Counsel and to File Brief in the Above Entitled Suit.

Comes now the Railroad Commission of Louisiana, through its undersigned counsel, and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as petitioner, to be represented by counsel, and to file brief in the above entitled suit, and for grounds for such motion, shows that it, through its then constituent members, J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, was an intervener in the Matter of the Tap Line Allowances and Divisions, being Docket Numbers 3400, Sub. 6, 3400 Sub. 7, 3403, 3411, 3412, 3513, 3514, 3524, 3551, 3552, and 3564, consolidated under Investiga-
303 tion and Suspension Docket No. 11, and known as the "Tap Line Case," before the Interstate Commerce Commission, in which case the said Interstate Commerce Commission made the orders attacked in the above entitled cause, and that it is interested in having the orders of the said Interstate Commerce Commission, insofar as they refer to petitioner, a common carrier, duly incorporated and operating under the laws of the State of Louisiana, annulled and set aside.

THE RAILROAD COMMISSION OF LOUISIANA,
SHELBY TAYLOR, *Chairman;*
HENRY B. SCHREIBER,
B. A. BRIDGES,
Commissioners.

By RUFFIN G. PLEASANT,
Attorney General, State of Louisiana.

———, ———,
Assistant Attorney General, Solicitors for the Railroad Commission of Louisiana, Intervening Petitioner.

304 In the United States Commerce Court.

Docket No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY, & FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

vs.

THE UNITED STATES OF AMERICA, Respondent.

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, composed of Shelby Taylor, Chairman, Henry B. Schreiber and B. A. Bridges, Commissioners, a political corporation created, organized and existing under and by virtue of the laws of the State of Louisiana, having its domicile in the city of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, for the reasons hereinafter set forth, asks leave to intervene and be made a party to this cause, in behalf of plaintiffs.

I.

Because the Mansfield Railway and Transportation Company is a railroad corporation duly and legally chartered, incorporated and existing under the laws of the State of Louisiana, and is under the laws of the State of Louisiana, a common carrier of freight and passengers, subject, as to its freight and passenger tariffs and
305 service between and at points in the State of Louisiana, to regulation and control by the Railroad Commission of Louisiana. That the said Mansfield Railway and Transportation Company, petitioner, is operating a railroad in Louisiana, in accordance with the laws of the State of Louisiana, and is subject to the rules and regulations governing railroads adopted by the Railroad Commission of Louisiana. That said petitioner, the Mansfield Railway & Transportation Company, accepts and transports shipments and passengers at and between points on its said line of railroad in Louisiana and has filed with the Railroad Commission of Louisiana, tariffs containing class and commodity rates, which have been approved by the Railroad Commission of Louisiana to apply on shipments and passengers so transported. That it has been engaged in the business of a common carrier since the Railroad Commission of Louisiana was organized in 1898, and for some time previous thereto.

II.

That there are numerous shippers and persons, who travel, living along the line of railroad of the Mansfield Railway and Transportation Company, who ship and receive interstate and intrastate freight over the said railroad and who are interested in securing fair and reasonable rates and adequate service, for the transportation of passengers and all classes and kinds of freight, including lumber, over the Mansfield Railway & Transportation Company's railroad.

306 III.

That Act No. 195 of the Legislature of 1906 of the State of Louisiana provides:

"That power and authority is hereby vested in the Railroad Commission of Louisiana, and it is hereby made its duty, to appear, through any of its commissioners, or its secretary, or by a duly authorized attorney, before the Interstate Commerce Commission at Washington, D. C., or at any other place where the said Interstate Commerce Commission might be holding a session, whenever, in the judgment of the said Railroad Commission of Louisiana, the interests of shippers or consignees in the State of Louisiana may require it."

That acting under and by virtue of Act No. 195 of the General Assembly of the State of Louisiana of 1906, the Railroad Commission on the — day of ——, 1912, adopted the hereto annexed resolution, and on January 31st, 1913, adopted the following resolution:

"Whereas, the Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and

"Whereas, the following so-called 'tap lines,' Mansfield Railway & Transportation Company, Woodworth & Louisiana Central Railway Company, Limited, Victoria, Fisher & Western Railroad Company, and Louisiana & Pacific Railway Company, are among those 'tap lines' which have filed such suits, and which railways
307 are duly chartered under the laws of the State of Louisiana as common carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and

"Whereas, the said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and

"Whereas, this Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitutional interference with the rights of the said railway companies to receive revenue out of joint through rates for the transportation of lumber and logs over their lines in Louisiana destined to interstate points; and

"Whereas, it is the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right to ship logs and lumber over said railways at reasonable joint through rates and deprives the said railway companies from receiving a reasonable division out of joint through rates, which division of rates is the principal source of revenues of such carriers; and

"Whereas, if the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber,

thereby rendering it impossible to meet the operating ex-
308 penses and fixed charges, and consequently preventing any extension, or hope of extension, or improvement, or hope of improvement of such railways:

"Therefore be it resolved, that the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognize the said railway companies as common carriers of interstate shipments of logs and lumber, as they are recognized to be common carriers of all other classes and kinds of shipments."

IV.

That, pursuant to the various appropriate orders made by the Interstate Commerce Commission, in the case of Star Grain & Lumber Company et al. vs. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, as set forth and referred to in Paragraphs III, IV, V, VI, VII, VIII and IX of the petition filed in this cause, the Railroad Commission of Louisiana, believing the shippers and general public living along the line of railroad of the Mansfield Railway & Transportation Company were interested in the proceeding instituted by the Interstate Commerce Commission, entitled:

"Investigation and Suspension Docket No. 11. In the Matter
of the Investigation and Suspension of Schedules Canceling
309 Through Rates with Certain Tap Line Connections."

on or about the 9th day of December, 1910, filed a petition of intervention on behalf of the shippers of the State of Louisiana, and were operating their railroads as common carriers under and by virtue of their charters, one of which railroads was that owned and operated by the Mansfield Railway & Transportation Company. That the said Railroad Commission of Louisiana thereafter filed a brief and took part in the oral argument before the Interstate Commerce Commission in support of the rights of the shippers who ship and receive freight, and of those who travel, over the lines of railroad owned and operated by the common carriers who, for the purposes of the proceedings before the Interstate Commerce Commission were, and have since been, designated as "tap lines." That one of the said common carriers in which the Railroad Commission was and is interested as a vehicle and means of intrastate and interstate transportation for the use of the public in the State of Louisiana, is the Mansfield Railway & Transportation Company, plaintiff in this cause.

V.

Your petitioner further states that the Mansfield Railway & Transportation Company is an important railroad, performing a valuable service in the development of the section of the State of Louisiana

through which its railroad runs; that the people living along
310 such railroad are dependent upon it for the transportation of their products and their merchandise to and from the towns, cities and markets of the country. That they are entitled to ship at fair and reasonable local and joint through interstate, as well as intrastate, rates; that an important commodity shipped over the said railroad is lumber, and that, while the said railroad is required by the laws of the State of Louisiana and the rulings of the Railroad Commission of Louisiana, to establish reasonable local rates and joint through rates in connection with the trunk lines with which it connects on Louisiana intrastate shipments, and is permitted by the Interstate Commerce Commission to establish joint through rates, and receive divisions therefrom, to and from interstate points on all classes and commodities, except lumber, on shipments of lumber the said Mansfield Railway & Transportation Company is not permitted to receive a division out of joint through interstate rates.

VI.

That in declaring an allowance out of joint through rates on lumber to be unlawful, the Interstate Commerce Commission has deprived the said Mansfield Railway & Transportation Company of an important source of revenue, which it earns by performing a transportation service, and to which it is entitled as a common carrier, the only legal restrictions upon such allowance being
311 that it must be reasonable, and in thus denying an allowance out of through interstate rates on lumber to the Mansfield Railway & Transportation Company, and depriving it of this important source of revenue, an undue burden and unnecessary hardship, and an unjust discrimination has been created and placed upon shippers of other commodities than lumber who use plaintiff's railroad, thus depriving the State of Louisiana of the natural development and increase in property values which follow the extension and improvement of railroad properties where the legitimate revenues from the operation of such properties lead to their betterment.

Your petitioner further avers that by depriving the Mansfield Railway & Transportation Company of a division of the earnings from interstate shipments of lumber, made in connection with the trunk lines, with which it connects, the Interstate Commerce Commission has thrown upon the smaller tonnage of general commodities, other than lumber, the entire burden of producing a sufficient revenue to pay all the fixed and operating expenses of the Mansfield Railway & Transportation Company, and, as a result of such a burden, your petitioner fears that the Mansfield Railway & Transportation Company's revenues will so diminish as to cause it to become bankrupt, and thereby seek, through proper legal means, to dissolve its charter, cease its operations, and go out of business as a common carrier, leaving many of the citizens of Louisiana, who are served by said Transportation Company, totally without
312 means of transportation. That such a result will deprive the citizens of Louisiana of their right to be served by common

carriers, properly organized under its laws, under the same conditions and circumstances as are accorded to the trunk lines.

VII.

And petitioner further avers that should the Mansfield Railway & Transportation Company be deprived of its right to receive a fair division of reasonable joint through interstate rates for the transportation of lumber, it will cause an unjust discrimination, is arbitrary, unreasonable and unjust.

VIII.

Your petitioner further avers that the Mansfield Railway & Transportation Company is a common carrier by virtue of its charter, that it holds itself out as such, constantly acts in that capacity, and has been so treated by those who it has served, by the great railroad systems with which it connects, by the State Board of Appraisers of the State of Louisiana, by the Railroad Commission of Louisiana, by the Supreme Court of the State of Louisiana, and, except as to the transportation of logs and lumber, in all other respects, by the Interstate Commerce Commission. That as a common carrier, exercising the right of eminent domain, it has received exemption from taxation under the Constitutional provisions, amendments thereof of 1908, of the State of Louisiana, having extended its lines during the period when such exemptions from taxation ran.

313 IX.

Petitioner further avers that the Mansfield Railway & Transportation Company actually performs a part of the transportation of every shipment of lumber originating on its line, going to interstate destinations, and accepts all shipments tendered it for such transportation.

X.

Your petitioner further avers that it is and has been the policy of the State of Louisiana to aid and encourage the development of its resources, the investment of capital in manufacturing and railroad industries, and to assist, whenever it can consistently do so, the producers and shippers of Louisiana, to secure and maintain equitable and fair rates, rules and regulations affecting the transportation of persons and property between points in the State of Louisiana, and points in other States. That the Railroad Commission of Louisiana, as the authorized representative of the shippers of the State of Louisiana, is vitally interested in the outcome of this suit, in that it involves property rights, industrial enterprises and transportation problems, which affect the commerce of its citizens.

Wherefore, petitioner, the Railroad Commission of Louisiana, prays leave to file this intervention, and that it be made a party to this proceeding, and that the orders of the Interstate Commerce Commission, dated May 14, 1912, and October 31st, 1912, be en-

joined, set aside and annulled, all as is prayed for in the prayer of the original petition filed herein.

314 And your petitioner prays for all other and further relief as in equity and good conscience they may be entitled to receive.

THE RAILROAD COMMISSION OF LOUISIANA,
By W. M. BARROW,
Assistant Attorney General of Louisiana.

STATE OF LOUISIANA,
Parish of ——:

Shelby Taylor, being duly sworn on his oath, states that he is Chairman of the Railroad Commission of Louisiana, the petitioner herein; that he has read the above and foregoing petition, and is familiar with the facts therein stated; and that the allegations and averments of fact made are, to the best of his knowledge, information and belief, true, and he believes them to be true.

SHELBY TAYLOR,
Chairman Railroad Commission of Louisiana.

Subscribed and sworn to before me, this 7th day of February, A. D. 1913.

[SEAL.] R. H. FLOWER,
Ass't Sec'y of State.

315 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said inter-

vener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

316 United States Commerce Court.

No. 92.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order Designating Judge Carland to Hear Testimony.

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this Court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

317–332 *Certified Transcript of Testimony at Hearings at New Orleans, St. Louis, and Chicago, December,* 1910, *January and February,* 1911, *in Proceeding before the Interstate Commerce Commission, I. and S. Docket No.* 11.

(Filed in Commerce Court, March 26, 1913.)

Note by the Clerk.

(Certificates of the Secretary of the Interstate Commerce Commission to transcript of testimony, and testimony omitted here in printing because printed elsewhere in separate volumes.)

333–333a *Certified Copies of Exhibits in Proceeding Before Interstate Commerce Commission, I. & S. Docket No. 11. Filed May 8, 1913.*

The Interstate Commerce Commission certified to one set of exhibits applicable to cases Numbers 90, 91, 92 and 93, and which was used in the four cases. As directed by letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were printed for the use of the Commerce Court, viz:

Note by the Clerk.

(Exhibits filed in the proceedings before the Interstate Commerce Commission, omitted here in printing because printed elsewhere in separate volume.)

3336–346 As directed by the same letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were omitted from the printing, vis:

Two time tables, L. & P. Ry. Co.
Petition, U. S. v. L. & P. Ry. Co.
Mortgage, Long-Bell Lumber Co., L. & P. Ry. Co.
Tariff sheets of various railroad companies.
Division sheets, W. & L. C. Ry. Co.
Statement, shipments of Gilmer Lumber Co.
Statement, shipments of 51 concerns.
Certain division sheets of various railroad companies.

Owing to the cumbrous and peculiar nature of the latter exhibits, they are not reproduced here. They are contained in the record on appeal in Louisiana & Pacific Railway Co. v. United States, No. 90, and are made a part hereof by reference the same as though fully incorporated herein.

Note by the Clerk.

(Order of Interstate Commerce Commission May 10, 1913, omitted here in printing because printed elsewhere in a separate volume.)

347 In the United States Commerce Court, January Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.,
Petitioners,
v.
UNITED STATES OF AMERICA et al., Respondents.

Motion to Strike Out Evidence.

(Filed June 2, 1913.)

Comes now United States of America, Respondent, in the above-entitled cause, by its counsel, and moves the court to strike from the record the testimony of the witnesses, taken before his Honor Judge Carland, at Washington, D. C., March 17, 18, and 19, 1913, and the exhibits accompanying the same, as the same was filed March 22, 1913, and printed under the direction of the clerk, for the following reasons, viz:

1. The said evidence is incompetent, irrelevant and immaterial.

2. The said evidence is not the evidence taken before the Interstate Commerce Commission, but is evidence taken subsequent to the time the order of the Interstate Commerce Commission was entered, and the Court is without power to annul the order of the Commission on a record other and different than that which was before the Commission at the time it entered its said order.

3. The said evidence does not show any lack of power or authority of the Interstate Commerce Commission to enter the said order or that it erred as a matter of law in so doing.

4. The said evidence does not show that the petitioners are deprived of any right under the Constitution and laws of the United States.

5. For other reasons which will be pointed out upon the hearing hereof.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

June 2, 1913.

348 *Journal Entries.*

Case- Nos. 90, 91, 92, and 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

349–378 **Proceedings of June 5, 1913.**

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Garwood on behalf of the petitioners.

Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Garwood appearing on behalf of the petitioners. Thereupon Mr. Garwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Thereupon the causes were taken under advisement by the Court.

Note by the Clerk.

(Opinion by Mack, J., Nov. 26, 1913, omitted here in printing because printed elsewhere in a separate volume.)

379 *Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA, Respondent.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had, It is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended Order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith
380 Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway &

Navigation Company; Gulf, Colorado & Santa Fe Railway Co pany; The Texas & Gulf Railway Company; Missouri & Nor Arkansas Railroad Company; Illinois Central Railroad Compan Southern Railway Company; Northern Alabama Railway Compan New Orleans Great Northern Railroad Company, and Mobile Ohio Railroad Company be, and they are hereby, notified and r quired to cease and desist, and for a period of two years hereafte or until otherwise ordered, to abstain from making any such allo ances to any of the above named parties to the record in respe of any such above described service"

be and the same is hereby vacated and set aside as to the petitione herein.

By the Court, MARTIN A. KNAPP,
Presiding Judge.

November 28, 1913.

381 In the United States Commerce Court, June Session, 191

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and Fros Johnson Lumber Company, Petitioners, Railroad Commission Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERC Commission, Atchison, Topeka & Santa Fe Railway Compan and Gulf, Colorado & Santa Fe Railway Company, Intervenin Respondents.

Petition for Appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerc Commission, intervenor, feeling themselves aggrieved by the fina decree entered in the above-entitled cause on November 28, 1913, b their counsel, pray an appeal to the Supreme Court of the Unite States from the said final decree.

The particulars wherein the United States and the Interstat Commerce Commission consider said final decree erroneous are se forth in the assignment of errors herewith filed, to which referenc is made.

And the United States, respondent, and the Interstate Commerc Commission, intervenor, further pray that a transcript of the record proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forth

382 with to the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:
MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

383 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioner,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred:

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

384 III.

In not dismissing the petition for the (*a*) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Mansfield Railway & Transportation Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

385

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Mansfield Railway & Transportation Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Mansfield Railway & Transportation Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

386 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in

controlling the routing to compel the trunk lines to make allowances to the Mansfield Railway & Transportation Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912 which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may,
387 as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

388 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

389 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, and The Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Petition for Appeal.

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, D. C., November 29, 1913.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for The A., T. & S. F. Ry. Co. and G., C. & S. F. Ry. Co., Intervenors.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

390 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.,
Petitioners,
v.
UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, by their attorneys, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the Court to review.

III.

In not dismissing the petition for the reason that (*a*) the same does not set forth any cause of action, and is insufficient to
391 warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this Court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber company, the Mansfield Railway and Transportation Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching
392 movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Mansfield Railway and Transportation Company and the transfer to it by the lumber company of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Mansfield Railway and Transportation Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bar-

gain and sale, and with the power wielded in controlling the routing,
are forcing the trunk lines to make allowances to the Mans-
393 field Railway and Transportation Company, resulting in
undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary company by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap lin- from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-pro-
394 prietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

395 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA et al., Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and have in all respects conformed to law and the rules of court—

It is ordered and decreed That the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

396 (Copy.)

In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company and Railroad Commission of Louisiana, Intervenors.

Bond on Appeal.

(Filed December 5, 1913.)

Know all men by these presents, That we, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, as principals, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company, in the sum of Five Hundred Dollars ($500.00), to be paid to the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D. nineteen hundred and thirteen.

Whereas, Heretofore, to wit, on the 28th day of November,
397 1913, in a suit pending in the United States Commerce Court, and numbered 92 on the docket of said Court, wherein the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company were petitioners, and the United States of America was respondent, and The Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Interstate Commerce Commission, and the Railroad Commission of Louisiana, were intervenors, an order, judgment and decree was rendered against said respondents and intervenors, and

Whereas, Said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, have appealed from said order and decree to the Supreme Court of the United States, and have obtained citation directed to the said Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute said appeal to effect and shall pay all costs, if they shall fail to make their appeal good, then the above obligation to be void, otherwise to re-
398 main in full force and effect.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
By ALDIS B. BROWNE,
EVANS BROWNE,
Its Attorneys.
GULF, COLORADO & SANTA FE RAILWAY COMPANY,
By ALDIS B. BROWNE,
EVANS BROWNE,
Its Attorneys.
[SEAL.] NATIONAL SURETY COMPANY,
By W. H. RONSAVILLE.

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

JOHN E. CARLAND, *Judge.*

399 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.
v.
THE UNITED STATES OF AMERICA.

Præcipe for Record.

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition with exhibits attached, filed January 14, 1913.

Exhibit to petition, filed February 24, 1913.

Return of service on all respondents, filed January 16, 1913.

Motion of the United States to dismiss, filed February 8, 1913.

Order denying motion to dismiss, entered February 24, 1913.

Answer of the United Sttates, filed March 18, 1913.

Answer of the Interstate Commerce Commission, filed February 8, 1913.

Petition of A., T. & S. F. Ry. Co. et al. to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Reply to intervening petition of A., T. & S. F. Ry. Co., filed February 26, 1913.

Motion of A., T. & S. F. Ry. Company et al. to strike, filed March 8, 1913.

400 Motion of Railroad Commission of Louisiana to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Order designating Judge Carland to take testimony, entered March 5, 1913.

Certified transcript of testimony at hearings in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913.

Certified copies of exhibits in proceeding before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Order of Interstate Commerce Commission, Docket No. 3400, Sub. 7, I. & S. Docket No. 11, filed May 10, 1913.

Motion of the United States to strike out evidence, filed June 2, 1913.

Journal entries as to final hearing.

Opinion of the Commerce Court.

Final decree of the Commerce Court.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A., T. & S. F. Ry. Co. et al.

Assignment of errors, same.

Order allowing appeal.

Bond of A., T. & S. F. Ry. Co. et al.

Citation on appeal, same.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for A., T. & S. F. Ry. Co. and G., C. and S. F. Ry. Co.

401 DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing precipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D., nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, District of Columbia.

402 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY
v.
THE UNITED STATES OF AMERICA.

Hugh P. Lutz, being duly sworn, deposes and says, that on December 17th, 1913, he served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,
Notary Public.

403 United States Commerce Court. Filed Nov. 29, 1913.
G. F. Snyder, Clerk.

92.

36.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Mansfield Railway & Transportation Company, Frost-Johnson Lumber Company, Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be,

why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

404 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

92.

40.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss.*:

To Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company and Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

405 United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the Clerk's office of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

406 In the Supreme Court of the United States, October Term, 1913.

No. 833.

UNITED STATES OF AMERICA et al., Appellants,

v.

MANSFIELD RY. & TRANSPORTATION CO. et al.

Statement of Errors.

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge, La., Coun-

sel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, D. C.

I concur in the above designation.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, Appellant.

407 In the Supreme Court of the United States, October Term, 1913.

No. 833.

UNITED STATES OF AMERICA et al., Appellants,
v.
MANSFIELD RY. & TRANSPORTATION CO. et al.

Instructions to Omit Certain Matter from the Printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz.:

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913, consisting of 1 printed volume marked, Volume V.

5. Opinion of the United States Commerce Court.

408 Other instructions are separately given to print in a single volume certain parts of the matter so to be omitted.

JNO. W. DAVIS,
Solicitor General.

409 [Endorsed:] File No. 23,984. Supreme Court U. S. October term, 1913. Term No. 833. The United States et al., Appellants, vs. Mansfield Railway & Transportation Company

et al. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

Endorsed on cover: File No. 23,984. U. S. Commerce Court. Term No. 833. The United States and Interstate Commerce Commission, appellants, vs. Mansfield Railway & Transportation Company, Frost-Johnson Lumber Company and Railroad Commission of Louisiana. File No. 23,985. Term No. 834. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, appellants, vs. Mansfield Railway & Transportation Company et al. Filed December 29th, 1913. File Nos. 23,984 and 23,985.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 835.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY, LOUISIANA LONG LEAF LUMBER COMPANY AND RAILROAD COMMISSION OF LOUISIANA.

No. 836.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND [illegible] RAILWAY COMPANY, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY.

(23,986 and 23,987)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 835.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY, LOUISIANA LONG LEAF LUMBER COMPANY, AND RAILROAD COMMISSION OF LOUISIANA.

No. 836.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

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a United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition.

(Filed January 14, 1913.)

1 In the United States Commerce Court.

No. —.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners, Victoria, Fisher & Western Railroad Company and Louisiana Long Leaf Lumber Company, complain of respondent, United States of America, and for cause of action say:

I.

That petitioner, Victoria, Fisher & Western Railroad Company, is a railway corporation duly chartered and acting as such under the laws of the State of Louisiana and by its charter is incorpo-
2 rated for the purpose of constructing, operating and maintaining a standard gauge railroad for the purpose of carrying freight only between the city of Natchitoches in Natchitoches Parish, through the towns of Victoria and Fisher by the most practicable route to a point on the Sabine River in Sabine Parish at or near the

town of East Pendleton. That by charter duly issued it was so incorporated on the 8th day of November, 1902, and by said charter it is authorized to exercise all of the rights and subject to all of the duties of a common carrier of freight for the full period of fifteen years from the date of the issuance of said charter. That pursuant to the terms of its said charter, petitioner has acquired, constructed and maintained and is now maintaining a standard gauge railway thirty miles in length from the town of Victoria, where it connects with the line of the Texas & Pacific Railway Company, through the town of Fisher, where it intersects the line of the Kansas City Southern Railway Company, to the town of Cain, its residence and principal place of business being in the town of Fisher in Sabine Parish in the State of Louisiana. Petitioner attaches hereto map marked Exhibit "A," showing location of its line of railway, with location of lumber mills of petitioner Louisiana Long Leaf Lumber Company. That petitioner's railway is permanently constructed and fully equipped to discharge all of its duties as a common carrier of freight and is now discharging and has continuously since its creation fully discharged its duties under its said charter as a public common carrier, and is now acting as a common carrier of freight for the public in accord-
3 ance with the terms of its charter under the laws of the State of Louisiana and continuously since its creation has acted as a common carrier of interstate commerce, subject to the Act to Regulate Commerce and the laws of the United States applicable to common carriers until prevented be the void and illegal orders of the Interstate Commerce Commission hereinafter referred to.

That the Louisiana Long Leaf Lumber Company is a corporation chartered under the laws of the State of Missouri for the purpose of manufacturing and selling lumber with its principal office and place of business in the city of Kansas City in the State of Missouri.

II.

That the railway line of petitioner, Victoria, Fisher & Western Railroad Company, with its equipment and appurtenances represents an actual investment of $406,461.79; that it is permanently constructed with forty and sixty-pound rails and fully equipped with locomotives, cars and all appliances and officers, operatives and employés necessary and proper to enable it to conduct its business as a common carrier of freight. That its equipment consists of five locomotives, three box cars, one flat car, 125 logging cars and four caboose cars of the total value of $86,501.38. That it is subject to all of the laws of the State of Louisiana applicable to common carriers and to the orders of the Railroad Commission of that state which is duly empowered to fix rates of freight and to otherwise regulate the conduct and operation of common carriers. That it makes regular annual reports to said Railroad Commission of Louis-
4 iana and otherwise conforms to the rules and regulatoins of saidCommission. That it makes regular annual reports to the Interstate Commerce Commission and complies with all of the rules and regulations of said Commission and complies with all of the laws of the United States applicable to common carriers engaged in inter-

state commerce. That it has on file with the Interstate Commerce Commission duly published and established a full line of interstate rates applicable to all classes and commodities of freight moving in interstate commerce, except as to the lumber and products of petitioner, Louisiana Long Leaf Lumber Company. That as to such products, from the time of its creation until the void and illegal orders hereinafter mentioned of the Interstate Commerce Commission, it had on file with the Interstate Commerce Commission and duly and legally established and operative interstate rates applicable also to such products moving in interstate commerce over duly and legally established through interstate routes and under duly and legally established joint interstate rates from points on petitioner's line to interstate and foreign points out of which through interstate rates it received by agreement with its connecting lines, the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, and their connecting lines, just and reasonable divisions of such through rates as compensation for the services performed by your petitioner in producing and transporting such products in interstate and foreign commerce. That by virtue of the orders of the Interstate Commerce Commission hereinafter referred to petitioner since the first day of May, 1912, has been driven from the
5 field of interstate commerce as to such products of the Louisiana Long Leaf Lumber Company and has been prevented and forbidden to engage in such interstate and foreign commerce as to such products and has been prevented from receiving compensation for its services as a common carrier of such products and its connections, the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, and their railway connections, have been forbidden to establish through routes or joint rates with your petitioner on such products to interstate and foreign points and your petitioner has been by said orders of the Interstate Commerce Commission denied the right to engage in interstate commerce as to such products, while at the same time it is compelled, under the laws of the United States and the rules, regulations and orders of the Interstate Commerce Commission to engage in such commerce as to all other classes and commodities of freight.

III.

That the Constitution and laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

6 Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby

declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Const. 1879, p. 245.

Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which
7 the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

That the Louisiana Long Leaf Lumber Company is engaged in the business of manufacturing and selling pine lumber produced from pine timber owned by it, situated tributary and adjacent to the line of said Victoria, Fisher & Western Railroad Company. That it owns and operates two saw mills with all of the usual appurtenances thereto for manufacturing lumber, situated respectively at the town of Victoria and the town of Fisher. That these mills are of the value respectively and represent respectively an investment of $110,000.00 and $245,000.00. That the lands of said company from which said lumber is manufactured are of the reasonable value of $1,500,000.00. That said company ships annually about 40,000,000 feet of lumber

representing 2,000 carloads per year. That practically all of this lumber moves out over the line of petitioner Victoria, Fisher
8 & Western Railroad Company, through its said connections, the Texas & Pacific Railway and the Kansas City Southern Railway, to interstate and foreign points. That while a portion of said manufactured lumber manufactured at Victoria, where the line of the Victoria, Fisher & Western Railroad Company connects with the Texas & Pacific moves to interstate and foreign points over the line of said Texas & Pacific and a portion of said lumber manufactured at Fisher moves out to interstate and foreign points over the line of the Kansas City Southern Railway, by reason of the insufficiency of car supply at various intervals due to increased business and by reason of freight conditions and dependent upon the place of ultimate delivery, large quantities of the finished lumber products move from said mill at Fisher over the line of said Victoria, Fisher & Western Railroad Company to the Texas & Pacific Railway at Victoria and from said place of Victoria to Fisher on the Kansas City Southern Railway Company's line, a distance of approximately 22 miles. That under milling-in-transit regulations, duly and legally established in accordance with the rules, regulations and decisions of the Interstate Commerce Commission, the through rates on interstate and foreign lumber legally effective and applicable prior to the orders herein complained of were extended to and were effective from the point of origin of the logs and said Victoria, Fisher & Western Railroad Company, by agreement with its said connections, received out of said through rates as compensation to it for its haul of the logs to the mill and of the lumber from the mill to the junction with its said connections divisions of said through rate varying from
9 one cent to four cents, according to the point of ultimate delivery and the connecting lines over which the traffic moved, which said compensation was in all things just and reasonable. That a large part of the lumber so manufactured and sold by petitioner Louisiana Long Leaf Lumber Company, is sold f. o. b. the mills; that is to say, the lumber is sold at a delivered price at the mills and the purchaser obtains title at the mills and pays the freight thereon together with the purchase price at the point of delivery.

IV.

That said Victoria, Fisher & Western Railroad Company was chartered, constructed and has been operated, and the mill and timber investments of said Louisiana Long Leaf Lumber Company have been made in full faith and reliance upon the decisions of the Interstate Commerce Commission in the Central Yellow Pine Association v. The Vicksburg, Shreveport & Pacific Railroad Company et al., decided March 19, 1904, and reported in 10 I. C. C. R. 193, wherein it was held that divisions of the through rates might properly and legally be accorded to lines of railway similarly situated with petitioner Victoria, Fisher & Western Railroad Company, notwithstanding the ownership of the short-line railway was substantially identical with that of a lumber company producing the greater part of its tonnage and wherein the practices condemned by the orders

hereinafter mentioned were held to be in all things legal. That at or about the same time the Interstate Commerce Commission held in the case of In re Divisions of Joint Rates, 10 I. C. C. R. 385, and In re Transportation of Salt, 10 I. C. C. R. 148, that divisions of the through rates and milling-in-transit privileges and arrangements thereon under such circumstances were in all things legal. That the principles therein announced were applied to conditions long theretofore obtaining and were received and applied as law until the reversal by the Interstate Commerce Commission in and by the orders hereinafter mentioned and complained of. That the principles announced by the Interstate Commerce Commission in said cases had become and were a rule of property and that the amounts invested by your petitioners herein were made in full faith and reliance upon said rules.

V.

That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., docket No. 1319; that hearings were had at various times and places and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion found in the 14th Interstate Commerce Commission Reports, page 364, et seq., reference to which is here made. That further hearings were thereafter had in said case and on December 7, 1909, said Interstate Commerce Commission made a supplemental report, published in 17th Interstate Commerce Commission Reports, page 338, et seq., reference to which supplemental report is here made and same is made a part hereof as fully as if set out herein.

VI.

That by reason of the rendition of these reports and for the reason that the Interstate Commerce Commission demanded of the trunk-line carriers that they comply with the requirements thereof and because the Interstate Commerce Commission, through its members, officers and agents, threatened the various trunk lines with criminal prosecutions if they failed to comply therewith, many trunk lines, including the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, acting solely under the compulsion of these opinions and these threats of prosecution, on or about the — day of August, 1910, filed with the Interstate Commerce Commission new tariffs and supplemental tariffs effective in thirty days, cancelling all joint tariffs and divisional arrangements with petitioner Victoria, Fisher & Western Railroad Company, and other connections, and, except for the orders of said Interstate Commerce Commission referred to in the paragraph next succeeding, petitioner Victoria, Fisher & Western Railroad Company would not have been a party to any joint interstate rate or through routes on lumber with other railroads and petitioner Louisiana Long Leaf Lumber Com-

pany, and purchasers of its lumber would not have had the benefit of through routes or joint rates and would have been compelled to pay the through rate to the junction points of said Victoria, Fisher & Western Railroad Company with the Texas & Pacific Railway
12 Company and the Kansas City Southern Railway Company plus the local Louisiana rate imposed by the Railroad Commission of Louisiana over the Victoria, Fisher & Western Railroad to said point of junction, whereby they would have been placed at serious disadvantage as compared with mills enjoying such through rate, producing as against them an unjust and illegal discrimination violative of the Act to Regulate Commerce.

VII.

That thereupon, on or about the 3d day of September, 1910, upon complaint made to the Interstate Commerce Commission, said body, by orders regularly made, suspended said new supplemental tariffs of said trunk lines, including the Kansas City Southern Railway Company and Texas & Pacific Railway Company, canceling out said joint tariffs and through routes theretofore obtaining and thereby keeping in force and effect the joint tariffs and the maintenance of through routes and joint rates between petitioner Victoria, Fisher & Western Railroad Company and Texas & Pacific Railway Company and Kansas City Southern Railroad Company and various other trunk line railroads and systems of the United States for the period of 120 days, reference to which orders is hereby made and the same are made a part hereof, and the said Interstate Commerce Commission, from time to time, continued by appropriate orders the suspension of the cancellation of rates between said railway companies and petitioner Victoria, Fisher & Western Railroad Company,
13 until the 30th day of April, 1912, the last of said orders being in words and figures as follows:

"At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty,
Judson C. Clements,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap Line Connections.

It Appearing, That, by orders heretofore entered, the Commission instituted an investigation and hearing concerning the propriety

of various tariffs filed by certain carriers wherein joint rates with the divisions or allowances to so-called tap line connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances and refiling them to become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances, and refiled them to become effective on February 1, 1912; and,

It Further Appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commis-
14 sion to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It Further Appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It Is Ordered, That each and all of the carriers that are parties to this record be, and they are hereby, authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions with or allowances to so-called tap line connections, and, Provided, the said tariffs art forthwith refiled to become effective on May 1, 1912;

It is Further Ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's Order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman.*"

VIII.

Pursuant to said orders, the Interstate Commerce Commission entered upon a further hearing of the matters of the propriety of the advances and the lawfulness of the rates, fares and charges stated in schedules mentioned in said orders and thereupon, on or
15 about the 15th day of November, 1910, gave to petitioner Victoria, Fisher & Western Railroad Company, and the various other railroad companies in the United States, notice that a hearing would be had on the Matter of Tap Line Allowances and Divisions at New Orleans on the 9th day of December, 1910. That pursuant to said notice and the orders of the Interstate Commerce Commission

hereinabove referred to, your petitioner Victoria, Fisher & Western Railroad Company, together with numerous other railway companies, appeared before the Interstate Commerce Commission at New Orleans on December 8, 1910, and subsequent days at St. Louis, Mo., and at Chicago, Ill., upon adjournments of said hearing and thereupon said Interstate Commerce Commission examined the officers and agents of petitioner Victoria, Fisher & Western Railroad Company, concerning the matters under investigation in said proceeding and thereafter within the time fixed by the Commission petitioner filed with the Interstate Commerce Commission a statement of facts and abstracts of the evidence which had been taken before said Commission in reference to said petitioner and brief and argument. That on the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," which opinion will be found in the 23d Interstate Commerce Commission Report, page 277, et seq., reference to which opinion is hereby made and which is made a part hereof as fully as if set out herein in full. In said opinion and supplemental report is found the following, to-wit:

16 "The cancellation by the trunk lines will be allowed to become effective on May 1st (1912) as provided in the tariffs now on file."

That said order, taken in connection with the order of the 16th day of January, 1912, hereinabove set out in full, which ordered the trunk line carriers to withdraw all tariffs canceling joint rates with petitioner and other lines similarly situated and ordered the same refiled to become effective on May 1, 1912, constituted and was an affirmative order of the Interstate Commerce Commission authorizing and commanding the trunk line railroad companies of the United States, including the Texas & Pacific Railway Company and the Kansas City Southern Railway Company, to cancel all joint interstate rates on lumber with petitioner Victoria, Fisher & Western Railroad Company, on the first day of May, 1912, and affirmatively denying to said petitioner the right to engage in interstate and foreign commerce therein. That said trunk line companies of the United States, including the Kansas City Southern Railway Company and the Texas & Pacific Railway Company, construed said opinion and order herein last above referred to as an order from the Commission to cancel said joint rates and tariffs with petitioner Victoria, Fisher & Western Railroad Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with petitioner on lumber and forest products of the Louisiana Long Leaf Lumber Company, and the Interstate Commerce Commission, through its secretary, promptly notified the trunk line railroads of the United States that said cancella-

17 tions took effect at midnight on the 30th day of April, 1912, and that rates as filed must be observed by carriers and shippers if criminal prosecutions under the Interstate Commerce Act and the Elkins Act were to be avoided.

IX.

Petitioners further state that on the first day of June, 1912, the Interstate Commerce Commission made a supplemental report entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," which is reported in the 23d Interstate Commerce Commission Reports, page 549, et seq., reference to which is hereby made and which is made a part hereof as fully as if set out at length herein, said supplemental report and opinion, insofar as it makes a finding of facts in reference to the petitioner Victoria, Fisher & Western Railroad Company, is in words and figures as follows, to-wit.

Investigation and Suspension Docket No. 11. The Tap Line Case, Decided May 14, 1912.

Supplemental Report of the Commission.

By the COMMISSION:

In the general report herein (ante, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation, either in the movement
18 of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as, in the judgment of the Commission, bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would — before us as the conclusions announced might enter such order with respect to all the tap lines require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case, we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow. In a number of cases, the tap line, without charge, hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company

pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of
19 this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line, such arrangements are possibly to be regarded as purely local, and, therefore, beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local, and, therefore beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory, and have taken such action as, under all the circumstances developed, seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless, the same or generally similar conditions exist in other extensive lumber producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature cannot be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory. * * *

20 Victoria, Fisher & Western Railroad.

The Victoria, Fisher & Western Railroad Company is owned by the stockholders of the Louisiana Long Leaf Lumber Company, the stock in the two companies being held by the same persons and in the same relative proportion. They have the same officers. The railroad corporation was formed in November, 1902, and its capital stock, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company. A part of the track seems to have been constructed some 25 years ago and was acquired by the lumber company in 1900. The tap line connects with the Texas & Pacific at Victoria, La., and runs southward, crossing the Kansas City Southern at Fisher and terminating at a point known as Cain, a total distance of about 31 miles. There are about 25 miles of logging spurs and side-tracks. The tap line has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and the other about half a mile from tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years. The timber holdings of the lumber company approximate 95,000 acres, in addition to which it owns some 80,000 acres of cut-over land.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs and not the haul over the main track. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, being switched about one-half mile by the tap line, while the greater part of
21 the lumber produced at the mill at Victoria is moved by the tap line one mile to the Texas & Pacific. A small amount of the lumber from each mill moves over the tap line to the more distant trunk line, but the same divisions are paid by the two trunk lines from both mills.

These allowances range from three-fourths cent to four cents per 100 pounds; and the joint rates are the same as the rates published from adjacent mills on the trunk lines, with the exception of traffic moving to points in Texas, where 1¼ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage, amounting for the year 1910 to 316,676 tons, is furnished by the proprietary company. Its annual reports to the Commission indicate an accumulated surplus of $13,509.17 at the end of the fiscal year, June, 1910.

We cannot recognize the right of this tap line to participate as a common carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern must be held to apply from the mill at Fisher, and the rate of the Texas & Pacific from the mill at Victoria. Each of those lines may arrange with the lumber company to perform the necessary switching service for the distance of one-half mile and one mile, respectively, and may make it a reasonable compensation under Section 15.

Irregular Practices of Tap Lines.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming
22 to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they cannot be said to comply with the requirements of the Act. Many of them, also, do not publish any local rates to apply on traffic received from or delivered to their trunk line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have

already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service Law, the Safety Appliance Act, and other acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases, and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases, our examiners have been refused full access to the books of tap lines. With respect to all these matters, the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions, in no instance, have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

General Comments.

The rates of the trunk lines for the movements of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided
23 the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticised in Red River Cotton Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 437. So far as we can see from a careful examination of the record, there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under Section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk line connections. In other cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or are hereafter made effective to or from points on tap lines, the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and non-discriminatory rates on forest product when shipped from tap line points other than the mills of the controlling companies, and will also submit the basis of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission, an order will be entered authorizing

trunk lines to make settlements on these bases with respect to
24 all traffic moving after May 1, either under Section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

By THE COMMISSION.

[SEAL.] JOHN H. MARBLE, *Secretary.*"

X.

Petitioners further state that the opinion No. 1898 reported in the 23d Interstate Commerce Commission Reports, page 549 et seq., purports to have been decided and is dated on May 14, 1912, but your petitioners allege that said opinion was not made public until the 1st day of June, 1912. Petitioners further state that on the 11th day of June, 1912, the Interstate Commerce Commission made and entered of record or made public on that day an order in words and figures as follows, to-wit:

"Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23,
1912, having made and filed a report containing its findings
25 of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It Further Appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Mammelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;

Brookings & Peach Orchard Railway Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
26 Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
27 Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk

lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Naches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
28 Zwolle & Eastern Railway Company;
Gideon & North Island Railway Company;

have heretofore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is Further Ordered, That the defendants the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport &

Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, That allowances or divisoons out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It Is Further Ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

And It Is Further Ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

[SEAL.] By THE COMMISSION,
JOHN H. MARBLE, *Secretary.*

31 XI.

Petitioners allege that, conceiving the foregoing orders and proceedings of the Interstate Commerce Commission to be affirmative orders of said Commission requiring the cancellation of all joint rates with the various railway companies therein declared not to be entitled to participate in joint rates and that said orders and proceedings of the Commission were legal and void as beyond the jurisdiction of the Interstate Commerce Commission and in conflict with the Constitution and laws of the United States, certain of said railway companies, to-wit, among others, the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railroad Company and the Sibley, Lake Bisteneau & Southern Railway Company, filed suits in this Honorable Court for injunction against the enforcement of said order and for the cancellation thereof, whereupon the United States and the Interstate Commerce Commission moved to dismiss and suits upon the authority of the case of Proctor & Gamble Co. v. United States of America, 25 U. S. 282, upon the ground that said orders were not affirmative orders of the Interstate Commerce Commission of which this Honorable Court had jurisdiction, whereupon this Honorable Court held that under the authority of said Proctor & Gamble case, it was without jurisdiction to hear or to determine said suits and the same were thereupon dismissed for lack of jurisdiction.

XII.

32 That thereupon petition by your petition Victoria, Fisher & Western Railroad Company and others was duly filed with the Interstate Commerce Commission to make and enter such amended order as should be affirmative in its terms and subject to the jurisdiction and review of this Honorable Court. That in accordance with said petition the Interstate Commerce Commission on

the 30th day of October, A. D. 1912, amended said order of date May 14, 1912, hereinabove referred to, which said amended order is as follows, to-wit:

"Interstate Commerce Commission.

Investigation and Suspension Docket No. 11. The Tap-Line Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 30th Day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised.

It Is Ordered, That the said order be, and it is hereby, modified to read as follows:

1. It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

33 2. If Further Appearing, That the Commission upon the record finds in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeon Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railway Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railroad Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valey Railway Company;

Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railway Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urbana & Ruston Railway Company;
34 Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Naches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway and Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;
35 that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies is moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; the Missouri, Kansas & Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

36

4. It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouchita Valley Railway Company;
Freco Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railroad Company;
Louisiana & Pine Bluff Railroad Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several peti-
37 tions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be and for the reasons set forth in said reports they are hereby, dismissed.

6. It Further Appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railroad Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

38 have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It Is Ordered, That the said principal defendants above named be, and they are hereby required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided Further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record on the products of the mills of the said respective proprietary companies named in said report

shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It Is Further Ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

39 Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to re-establish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and provided further, that upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It Is Further Ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate
40 petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. It Is Further Ordered, That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. It Is Further Ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;
for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And It Is Further Ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

XIII.

Petitioners further state that as a common carrier of state, interstate and foreign commerce, Victoria, Fisher & Western Railroad Company became and was until midnight on the 30th day
41 of April, 1912, a party to joint tariffs with the Kansas City Southern Railway Company and the Texas & Pacific Railway Company on lumber and forest products constituting with said Victoria, Fisher & Western Railroad Company through routes and reasonable joint through rates between all points on said Victoria, Fisher & Western Railroad Company's line of railway to the various consuming territories of the United States, and foreign, but that pursuant to the orders and proceedings of the Interstate Commerce Commission and the orders above mentioned and especially of said amended order of date October 30, 1912, said joint through rates and tariffs have been canceled and are no longer operative or effective and said Victoria, Fisher & Western Railroad Company is forbidden thereby to engage in interstate commerce by participation in through interstate rates on the lumber and lumber products of the Louisiana Long Leaf Lumber Company and said Louisiana Long Leaf LumberCompany is denied the privilege of through rates which are accorded to its competitors and is compelled to pay the sum of the through rates applicable from Fisher and Victoria on the Texas & Pacific Railway and the Kansas City Southern Railway respectively, plus the local rate of the Victoria, Fisher & Western Railroad Company to the junction point thereof with said trunk-line railways.

XIV.

That under and by virtue of said order of said 30th day of October, 1912, the Interstate Commerce Commission finds that petitioner, Victoria, Fisher & Western Railroad Company, is a plant
42 facility of the Louisiana Long Leaf Lumber Company and that the services performed by said Victoria, Fisher & Western Railroad Company in moving logs to its mills and in moving the products of the mills to the trunk lines is not a service of trans-

portation by a common carrier railroad, but is a plant service by a plant facility, and that any allowance or division out of the rate on account thereof is unlawful and results in undue and unreasonable preferences and unjust discriminations, and the Texas & Pacific Railway Company and the Kansas City Southern Railway Company and the various other railway companies in said order mentioned are affirmatively required for a period of two years after the date of said order to abstain from making any allowance out of the through rate to said Victoria, Fisher & Western Railroad Company in respect to such service.

XV.

Petitioners say that it is not true, as found in said order, that the Victoria, Fisher & Western Railroad Company is in any sense a plant facility of the Louisiana Long Leaf Lumber Company, nor is the service rendered by it in transporting the logs of said Lumber Company to the mill and in transporting the lumber of the mill of said Lumber Company to said trunk-line connections a plant or inter-work service; that there is no substantial testimony to justify said finding of fact and that the Interstate Commerce Commission had no authority, power or jurisdiction to find or declare that said Victoria, Fisher & Western Railroad Company as to such service is not a common carrier, but a mere plant facility. That the
43 Louisiana Long Leaf Lumber Company as such owns no stock in the Victoria, Fisher & Western Railroad Company and exercises no control thereover. That while it is true that a majority of the stockholders of the Louisiana Long Leaf Lumber Company as individuals own a majority of the stock of the Victoria, Fisher & Western Railroad Company, that said Companies are entirely distinct in their corporate organizations and in the conduct of their respective businesses and that the Victoria, Fisher & Western Railroad Company is conducted as a separate and independent organization and operates its line of railway as a common carrier in full compliance with all of the laws of the State of Louisiana and of the United States and in full compliance with all of the rules and regulations of the Railroad Commission of the State of Louisiana and of the Interstate Commerce Commission. That being fully equipped to discharge its duties as a common carrier to the public, it does so discharge said duties and in addition to its other services transports the lumber of said Louisiana Long Leaf Lumber Company a distance in excess of twenty-two miles to points of delivery with its trunk-line connections aforesaid, and petitioner says that if the Victoria, Fisher & Western Railroad Company in its corporate capacity directly and absolutely owned and controlled the Louisiana Long Leaf Lumber Company, that, nevertheless, under the provisions of the Interstate Commerce Act it has full right and power to transport said lumber and to receive just and legal compensation therefor, for that under the commodities clause of Section 1 of said Act to Regulate Commerce, while it is made unlawful after May 1, 1908,
44 for any railroad company to transport in interstate commerce any article or commodity manufactured, mined or produced

by it or under its authority or which it may own in whole or in part, or in which it may have any interest direct or indirect, timber and the manufactured products thereof, are specifically excepted from such provisions and petitioners say that the Victoria, Fisher & Western Railroad Company has the right under the Constitution and laws of the United States, and specially the Act to Regulate Commerce, to engage in interstate commerce, and that the right to transport timber and the products thereof carries with it as an inseparable incident the right to receive compensation therefor, and that the Interstate Commerce Commission is wholly without legal right, authority or jurisdiction to make said order to declare that said Victoria, Fisher & Western Railroad Company is not a common carrier as to the services embraced in said order or to deprive it of the right to receive compensation therefor, and petitioner says that said order is void, because (1) it is based upon no substantial evidence, and the uncontradicted evidence shows that it is not a plant facility in the sense used, but that it is a common carrier discharging all of its duties as such and subject to the obligations of a common carrier under the laws of the state of its creation and of the United States, and (2) that the Interstate Commerce Commission is wholly without authority or jurisdiction to make said order.

XVI.

Petitioner further says that said order is wholly arbitrary and rests upon no just or logical basis. That the Interstate Com-
45 merce Commission in said order without reason arbitrarily classes one common carrier as a plant facility and accords another similarly situated, performing the same service and with the same characteristics, as a common carrier in good faith permitted to engage in interstate commerce and participate in a division of the through rates. That an inspection of said opinions hereinabove referred to discloses that there is no logical basis of classification between the different carriers involved and their assignment to the one class or the other as a plant facility or a common carrier in good faith is not governed by any fixed or logical basis of classification, but is wholly arbitrary, discriminative and illogical. As examples, among others, the Saline River Railway Company, for which see page 554 of said opinion: This railway is nineteen miles long and its stock is owned by the stockholders of the Saline River Lumber Company. It connects with the St. Louis Southwestern Railway Company at Draughon and with the Warren & Ouachita at Glenn. The sawmill of the lumber company is situated at Draughon on the St. Louis Southwestern Railway. While it is allowed no division of the through rate with the St. Louis Southwestern, it is allowed a division together with the Warren & Ouachita Valley Railway Company in connection with the Chicago, Rock Island & Pacific. The application of the same principles applied in the Saline River Railway case would require that for lumber transported from Victoria to the Kansas City Southern at Fisher an allowance of the through rate could be made and likewise for lumber

transported from the mill at Fisher to the Texas & Pacific
46 at Victoria, but that no division of the through rate could be allowed on lumber delivered to the Texas & Pacific from the mill at Victoria or delivered to the Kansas City Southern when delivered from the mill at Fisher; nevertheless, without any reason whatsoever, the divisions are allowed in the Saline River Railway case and not allowed to your petitioners.

A similar case is that of the Warren & Ouachita which extends from Banks on the Chicago, Rock Island & Gulf to Warren on the St. Louis, Iron Mountain & Southern. The mill of the so-called proprietary lumber company is situated at Warren, fifteen miles from Banks, the junction with the Chicago, Rock Island & Gulf. This line is not so well equipped as the line of your petitioner, nor is there so extensive a haul on the finished product of the mill, nevertheless, it is permitted to participate in through rates in connection with Chicago, Rock Island & Gulf and receive therefor a division not exceeding two cents per hundred pounds.

A similar case is that of the Thornton & Alexandria Railroad Company, the Doniphan, Kensett & Searcy Railway Company, the Red River & Gulf Railway and others, as will be apparent by an inspection of said opinion. The last mentioned line connects with the Iron Mountain at Long Leaf and the Rock Island and Texas & Pacific and Southern Pacific at LeCant, the track between those points being about thirteen miles in length. The stock of the railway company is owned by the stockholders of the Crowell & Spencer
Lumber Company. The mill is situated adjacent to the
47 tracks of the Iron Mountain road and is twelve miles distant from the Rock Island. An allowance of a switching charge of $2.00 is made by an opinion and order to the Iron Mountain road and a division of two cents per hundred pounds is fixed for the twelve-mile haul to the Chicago, Rock Island & Pacific. This line has an equipment consisting of one locomotive, one combination passenger and freight car and three flat cars. In its general characteristics it is not more permanent and is not so well equipped as the line of petitioner. Nevertheless, for a haul of twelve miles it is allowed to participate in the through rate, receiving as compensation two cents while petitioner, Victoria, Fisher & Western Railroad Company, for a haul of twenty-two miles on the finished product, is allowed no compensation of any character and is not allowed to participate in the through rate. Wherefore petitioner says that said order is unjustly and illegally discriminative against petitioner. That it denies it the equal protection of the law and due process of law. That it is arbitrary and rests upon no logical basis and is without substantial evidence to support it.

Petitioner further says that said order of the Interstate Commerce Commission is in violation of that portion of Section 15 of the Interstate Commerce Act reading as follows:

"The Commission may also after hearing on complaint, or upon its own initiative without complaint, establish through routes and joint classifications."

And is in further violation of that portion of Section 15 of said Act which prescribes that wherever carriers shall fail to agree
48 among themselves in respect to joint fares or charges, the Commission may, after hearing, prescribe a just and reasonable proportion of such joint rate to be received by each carrier, party thereto, in that the Commission is without power to fix the divisions between the carriers of a joint rate in the absence of disagreement between the carriers relative thereto.

XVII.

Petitioners further allege that in interstate commerce shipments there prevails now and has prevailed for many years in all the lumber producing districts of Louisiana and the southern pine districts with a full concurrence of all of the railway systems and the producers and shippers of lumber, and with a full concurrence of the Interstate Commerce Commission what is known as the "blanket rate"; that is to say, all lumber rates from all points on all lines in a given territory are the same to any point in any other given territory; that under said system there prevails such blanket rates whereby all of the lumber producing mills and manufactories in Louisiana, Texas and the greater part of Arkansas shipped to lumber consuming territories in the northwest and northeast lumber at the same rates regardless of mileage; that under said system the lumber rates for interstate shipments from any point on the line of petitioner Victoria, Fisher & Western Railroad Company and in particular from the mills of petitioner Louisiana Long Leaf Lumber Company, were, until the first day of May, 1912, the same as from all
49 other mills situated in the States of Louisiana and Texas, and from that portion of the State of Arkansas within the blanket-rate territory. That said rates prevailed and were available to petitioner Louisiana Long Leaf Lumber Company, and the purchasers of its lumber, until May 1, 1912. That petitioner Louisiana Long Leaf Lumber Company is in active competition with mills situated in said territory both directly on the main or trunk line railways and also situated on short-line railways whose situations are substantially identical with that of the Victoria, Fisher & Western Railroad Company, but which, nevertheless, are accorded by the orders herein complained of through routes and joint rates. That said order unjustly discriminates against petitioner Lumber Company and those purchasing lumber from it, in that if the exigencies of business, car supply or rates compel it to ship from its mill at Victoria over the Victoria, Fisher & Western Railroad Company to Fisher and thence to interstate or foreign points, or if compelled for the same reason to ship from its mill at Fisher over the Victoria, Fisher & Western Railroad to the Texas & Pacific Railway at Victoria and thence to interstate and foreign points, it is deprived in such shipments of the advantage of through routes and joint rates and is compelled to pay, in addition to the through blanket rate, the local or state rate to the point of junction with the through line and to the extent of the local rate, which petitioner alleges, under the

rates and practices of the Louisiana Railroad Commission, will be not less than five cents per hundred pounds, said petitioner Lumber Company would be subjected to an undue, unjust and illegal
50 discrimination, and is further deprived of the privilege of through bills of lading enjoyed by its competitors in the same territory. Wherefore, petitioner Louisiana Long Leaf Lumber Company says that said order is as to it violative of Section 3 of the Interstate Commerce Act, which prohibits undue or unreasonable preferences or advantages to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatsoever or subjects any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and said order is violative of said Section 3 as applicable to petitioner, Victoria, Fisher & Western Railroad Company, in that it seeks to compel it to unjustly and illegally discriminate against the Louisiana Long Leaf Lumber Company and the products of said Company in favor of other companies which now or may be hereafter situated upon its line, contrary to the provisions of said Section 3 of said Interstate Commerce Act.

XVIII.

Petitioners further say that, notwithstanding under said order the petitioner Louisiana Long Leaf Lumber Company is compelled to ship its said lumber and forest products on local or intrastate bills of lading and under local or intrastate rates to the points of junction with said trunk lines, nevertheless, under the law, said traffic constitutes interstate commerce in that it moves in continuous transit from point of origin to point of destination in other states and territories and to foreign points, and that under the law it is
51 the duty of said Victoria, Fisher & Western Railroad Company to file with the Interstate Commerce Commission rates applicable thereto which shall be just and reasonable and non-discriminatory, and that it is beyond the power, authority and jurisdiction of the Interstate Commerce Commission to relieve said Railway Company of said duty or to deprive it of the privilege of engaging in such commerce under just, reasonable and non-discriminatory tariffs of charges regularly filed, and said order is contrary to and in violation of that portion of Section 1 of the Act to Regulate Commerce providing that:

"All charges made for any services rendered or to be rendered in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful, and it is hereby made the duty of all common carriers, subject to the provisions of this Act, to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs."

XIX.

Petitioner Victoria, Fisher & Western Railroad Company, further alleges that all lumber and forest products, whether the property of the Louisiana Long Leaf Lumber Company or of other parties, moving in continuous transit from point of origin over said line
52 to interstate and foreign points is, as above alleged, interstate commerce, and that under the law it is not entitled to receive for such transportation any other or different compensation from that prescribed in rates duly and legally filed with the Interstate Commerce Commission and duly published in accordance with the terms of the Act to Regulate Commerce and that if not permitted to participate in such commerce or to concur in joint rates and in through routes, it will not be permitted to earn revenue on interstate shipments of lumber and cannot earn sufficient to pay its operating and other expenses, and that the orders of the Commission herein complained of deny its said right and operate to confiscate its property, devote the same to public use without compensation and deny it that due process of law to which it is entitled under the Constitution of the state of its creation and of the United States.

Wherefore, your petitioners say that said reports and decisions of the Interstate Commerce Commission and said order of date October 30, 1912, made in pursuance of said reports, orders and decisions, are invalid and void for the following, among other reasons, to-wit:

1. The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that there is any proprietary lumber or companies of the Victoria, Fisher & Western Railroad Company, to declare that the services performed by said Railway Company for petitioner Louisiana Long Leaf Lumber Company, in moving the logs from the forest to the mills or in moving the lumber from the mills to the connecting trunk lines is not a service
53 of transportation by a common carrier railroad, and that any allowance or division out of the rate on account thereof is unlawful, or to deprive said Victoria, Fisher & Western Railroad Company of its rights as a common carrier granted to it under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States.

2. There is no substantial testimony in said cause justifying the finding of the Interstate Commerce Commission that the Victoria, Fisher & Western Railroad Company is a plant or inter-work facility of the Louisiana Long Leaf Lumber Company, and the uncontradicted testimony herein shows that the Victoria, Fisher & Western Railroad Company is a common carrier performing the duties of a common carrier and subject to all and singular the obligations thereof imposed by the laws of the State of Louisiana and of the United States, and that the service performed in the transportation of the logs and lumber of the Louisiana Long Leaf Lumber Company is a transportation service in interstate and foreign commerce.

3. Said order is invalid and void in that it is in direct conflict with the commodities clause of Section 1 of the Act to Regulate Com-

merce, which specifically permits a railway company to transport timber and the manufactured products thereof, even though the same was directly owned, manufactured or produced by it or under its authority, or whether it had therein any interest whatsoever direct or indirect.

54 4. Said order deprives your petitioner of the through routes and joint rates provided under Section 15 of the Interstate Commerce Act.

5. Said order is violative of Section 6 of the Interstate Commerce Act which provides that every common carrier, subject to the provisions of the Act, shall file with the Commission and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own routes and points on the route of any other carrier by railway and that no carrier shall engage in transportation unless it files and publishes rates, fares and charges thereon which published rates shall not be departed from.

6. Said order is arbitrary, unreasonable and void and deprives petitioner of the equal protection of the law and due process of the law in that without any just, reasonable or logical reason therefor it prevents petitioner Victoria, Fisher & Western Railroad Company from engaging in interstate commerce and receiving any compensation therefor, while at the same time permitting and requiring other lines of railway similarly situated and which cannot by any just reason be differentiated from the line of your petitioner to engage therein, concur in joint tariffs and through routes and rates and participate in a division thereof.

7. Said order deprives your petitioner of due process of law, deprives it of its property without due process of law and devotes the same to public use without compensation in that it denies it the right to participate in interstate commerce on the lumber

55 and forest products of the Louisiana Long Leaf Lumber Company and derive revenue therefrom without which it cannot pay operating expenses or earn any just or reasonable return upon the value of its plant.

8. Said order unduly and illegally discriminates against the Louisiana Long Leaf Lumber Company as shippers, as compared with shippers on other railroads within the same territory and competitive on business, and discriminates against said lumber company as compared with shippers of lumber now situated or which may hereafter be situated on the line of the Victoria, Fisher & Western Railway Company.

9. Said order discriminates against all purchasers of lumber from the Louisiana Long Leaf Lumber Company in that if it should be held that the lumber of said company in the transit from its mills to the junction point with the trunk line company is intrastate commerce subject to the local Louisiana state rate, all purchasers of lumber paying such freight will be compelled to pay the additional amount of such local state rate and will be driven thereby to purchase only from mills situated either upon trunk lines or upon other

short lines similarly situated with the Victoria, Fisher & Western Railroad, but which by said order have been allowed to participate in joint rates and through routes, thereby depriving said purchasers of the competition of mills and depriving petitioner Lumber Company of the competition of purchasers, all of which is contrary to and in violation of section three of the Act to Regulate Commerce.

56 10. Under the findings of fact made by the Interstate Commerce Commission herein, the Victoria, Fisher & Western Railroad Company is a common carrier of lumber of the petitioner Louisiana Long Leaf Lumber Company and of all other mills on its line of railway.

Wherefore, each of your petitioners prays that the order of the Interstate Commerce Commission of date October 30, 1912, be declared null and void and that said Interstate Commerce Commission and the United States and all persons claiming to act under their authority be enjoined and restrained from enforcing or seeking to enforce the same in so far as same is applicable to your petitioners and their said trunk line connections.

Petitioners further say that they are now being and will continue to be irreparably damaged by reason of the order aforesaid and pray that said Interstate Commerce Commission be temporarily enjoined and restrained from enforcing said order against petitioner Victoria, Fisher & Western Railroad Company, and against said Kansas City Southern Railway Company and said Texas & Pacific Railway Company or any or either of their connections, and that said Interstate Commerce Commission be ordered and commanded to accept, receive and file tariffs and schedules of rates on all lumber moving out over the line of petitioner Victoria, Fisher & Western Railroad Company, over the lines of said Kansas City Southern and Texas & Pacific Railway Companies and their connections, prescribing and installing joint rates and through routes from points on the line of petitioner Railroad Company to all interstate points and on all traffic

57 moving to interstate or foreign points and enjoining and commanding said Interstate Commerce Commission to refrain from preventing or endeavoring to prevent petitioner Victoria, Fisher & Western Railroad Company from agreeing with its said connections, Kansas City Southern Railway Company and the Texas & Pacific Railway Company, on just and reasonable divisions of said through rates.

Petitioners pray for issuance of subpœna to the United States of America issuing out of and under seal of this Honorable Court directed to the United States of America, therein and thereby commanding it on a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath, answer under *under* oath being hereby expressly waived, all and singular, the premises, and to stand to, perform and abide by such order, direction or decree as may be made in the premises — as shall seem meet and agreeable to equity and good conscience, and petitioners pray that on final hearing hereof

said injunction be made perpetual, and your petitioners as in duty bound will ever pray.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY,
LOUISIANA LONG LEAF LUMBER COMPANY,
By H. M. GARWOOD,
L. M. WALTER,
Their Solicitors.

58-236 STATE OF MISSOURI,
County of Jackson:

W. W. Warren, being duly sworn, on oath says that he is the Gen'l Manager of the petitioner Victoria, Fisher & Western Railroad Company, and as such is auth-rized to make this affidavit; that he has read the above and foregoing petition and is familiar with the facts therein stated and all allegations of fact therein made are true and where made on information and belief, he believes them to be true.

[SEAL.] W. W. WARREN.

Subscribed and sworn to before me this 10th day of January, A. D. 1913.

A. M. HANCOCK,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI,
County of Jackson:

J. B. White, being duly sworn, on his oath states that he is the Secretary of petitioner Louisiana Long Leaf Lumber Company, and as such is authorized to make this affidavit; that he has read the above and foregoing petition and is familiar with the facts therein stated; that the allegations and averments of fact herein made are true, and where made on information and belief, he believes them to be true.

[SEAL.] J. B. WHITE.

Subscribed and sworn to before me this the 10th day of January, A. D. 1913.

A. M. HANCOCK,
Notary Public in and for Jackson County, Missouri.

(Here follows map marked page 59.)

Note by Clerk.

(Report and opinion of the Interstate Commerce Commission, April 23rd, 1912, Supplemental report and opinion May 14, 1912, and amended order of the Interstate Commerce Commission, Oct. 30, 1912, are omitted here in printing because printed elsewhere in a separate volume.)

237 Original.

Notice to Attorney General.

(Filed January 16, 1913.)

United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to Honorable George W. Wickersham, as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 14th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 15th day of January A. D. 1913. (Accepted by Blackburn Esterline.)

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY,
Deputy Marshal.

238 Original.

Notice to Secretary of Interstate Commerce Commission.

(Filed January 16, 1913.)

United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to John H. Marble, as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 14th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John H. Marble, Secretary of the Interstate Commerce Commission, this 15th day of January A. D., 1913.

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

239 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER AND WESTERN R. R. Co. and LOUISIANA LONG LEAF LUMBER CO., Petitioners,

v.

THE UNITED STATES, Respondent.

Answer of the United States.

(Filed January 29, 1913.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

240 III.

The Interstate Commerce Commission, after due hearing and upon substantial evidence, found that the tracks and equipment of the Victoria, Fisher and Western Railroad Company were formerly owned by the Louisiana Long Leaf Lumber Company; that the lumber company in exchange for said tracks and equipment received the capital stock of the Victoria, Fisher and Western Railroad Company upon its incorporation; that the stock of said railroad company was issued as a dividend to the stockholders of said lumber company; that the stock in the two companies is held by the same persons and in the same relative proportions; and that the two companies have the same officers.

IV.

The Interstate Commerce Commission after due hearing and upon substantial evidence found that the tracks and equipment of the Victoria, Fisher and Western Railroad Company with respect to the industry of the Louisiana Long Leaf Lumber Company, are plant facilities, and that the service performed therewith for the Louisiana Long Leaf Lumber Company in moving logs from the forest to the mill and in moving the products of the mill to the trunk lines (except from the mill at Fisher to the Kansas City Southern Railroad and from the mill at Victoria to the Texas and Pacific Railroad) is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that
241 any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations.

V.

Respondent denies that the commission's order herein complained of permits other tap lines to receive allowances from trunk-line railroads for services rendered their proprietary companies which are substantially similar to the services rendered to the Louisiana Long Leaf Lumber Company by this petitioner or that the commission's order in any other manner discriminates against petitioner.

VI.

Respondent denies the allegations on page 48 of the petition in so far as they imply that the trunk lines had universally, or even in a majority of instances, extended the blanket rates through the mills of the proprietary lumber companies to the trees of the forest, and calls attention to the finding of the Commission (23 I. C. C., 281, 283, 284, 297, and 298) to the effect that the majority of tap lines in this vicinity receive no allowances whatever for the tree-to-mill haul, and alleges that said finding was based on substantial evidence.

VII.

Respondent has no knowledge or information sufficient to form a belief as to the causes which induced the trunk line railroads to cancel their allowances to petitioner or whether said trunk
242 lines would continue to pay said allowances were it not for the order of the Commission herein complained of.

VIII.

For the purposes of this case, respondent admits the allegations of fact in the petition which are not denied or specifically referred to above and which are not inconsistent with the findings made by the order and report of the Commission.

Wherefore having fully answered said petition this respondent prays that said petition be dismissed with costs.

WINFRED T. DENISON,
Assistant Attorney General.

January, 1913.

243 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

Answer of the Interstate Commerce Commission.

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

244 That this court has no jurisdiction of the controversy, matters and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, In the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C. Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that thereafter, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published
245 reports, volume 17 (I. C. C. Rep.), beginning at page 338; and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times, and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and

each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and
246 respondent begs leave to make the same use of said published reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

247 And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

JAMES S. HARLAN.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 8th day of February, 1913.

[SEAL.] GEORGE B. McGINTY,
Notary Public.

248 *Petition for Leave to Intervene of A., T. & S. F. Ry. Co. et al.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al.,
Petitioners,
v.
THE UNITED STATES OF AMERICA, Respondent.

Petition for Leave to Intervene.

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceedings before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the milling industries located upon the lines of petitioners are known as the blanket system of rates.

249 Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitioners are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance to the petitioners herein will not be in truth an allowance to a railroad for the service of transportation of lumber but on the contrary will be an allowance to the milling industry for an operation incident to the manufacture of lumber, and will constitute a device for the

payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Their Attorneys.

February 10, 1913.

250 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD CO. et al.
v.
THE UNITED STATES OF AMERICA.

Order of Intervention.

(Entered February 10, 1913.)

The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

251 In the United States Commerce Court.

In Equity.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition of Intervention of the Railroad Commission of Louisiana.

(Filed February 10, 1913.)

Ruffin G. Pleasant, Attorney General; Wylie M. Barrow, Assistant Attorney General; Solicitors for the Railroad Commission of Louisiana.

252 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioners,
vs.
THE INTERSTATE COMMERCE COMMISSION et al., Respondents.

Motion on Behalf of the Railroad Commission of Louisiana for Permission to Intervene as Party Petitioner and to be Represented by Counsel and to File Brief in the Above Entitled Suit.

Comes now the Railroad Commission of Louisiana, through its undersigned counsel, and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as petitioner, to be represented by counsel, and to file brief in the above entitled suit, and as grounds for such motion, shows that it, through its then constituent members, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, was an intervener In the Matter of the Tap Line Allowances and Divisions, being Docket Numbers 3400, Sub. 6, 3400, Sub. 7, 3493, 3411, 3512, 3513, 3514, 3524, 3551, 3552, and 3564, consolidated under Investigation and Suspension Docket No. 11, and known as the "Tap Line
253 Case," before the Interstate Commerce Commission, in which case the said Interstate Commerce Commission made the orders attacked in the above entitled cause, and that it is interested in having the orders of the said Interstate Commerce Commission, in so far as they refer to petitioner, a common carrier, duly incor-

porated and operating under the laws of the State of Louisiana, annulled and set aside.

THE RAILROAD COMMISSION OF LOUISIANA,
SHELBY TAYLOR, *Chairman*,
HENRY B. SCHREIBER,
B. A. BRIDGES,
Commissioners,
By RUFFIN G. PLEASANT,
Attorney General, State of Louisiana,
W. M. BARROW,
Assistant Attorney General,
Solicitor for the Railroad Commission of Louisiana, Intervening Petitioner.

254 In the United States Commerce Court.

Docket No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et als., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; THE RAILROAD COMMISSION OF LOUISIANA, Intervener.

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, composed of Shelby Taylor, Chairman, Henry B. Schreiber and B. A. Bridges, Commissioners, a political corporation created, organized and existing under and by virtue of the laws of the State of Louisiana, having its domicile in the city of Baton Rogue, Parish of East Baton Rouge, State of Louisiana, for the reasons hereinafter set forth, asks leave to intervene and be made a party to this cause, in behalf of plaintiffs.

I.

Because the Victoria, Fisher & Western Railroad Company is a railroad corporation duly and legally chartered, incorporated and existing under the laws of the State of Louisiana, and is under the laws of the State of Louisiana, a common carrier of freight
255 subject, as to its freight tariffs and service between and at points in the State of Louisiana, to regulation and control by the Railroad Commission of Louisiana. That the said Victoria, Fisher & Western Railroad Company, petitioner, is operating a railroad in Louisiana, in accordance with the laws of the State of Louisiana, and is subject to the rules and regulations governing railroads adopted by the Railroad Commission of Louisiana. That said petitioner, the Victoria, Fisher & Western Railroad Company, accepts and transports shipments at and between points on its said line of railroad in Louisiana and has filed with the Railroad Commission

of Louisiana, tariffs containing class and commodity rates, which have been approved by the Railroad Commission of Louisiana to apply on shipments so transported. That it has been engaged in the business of a common carrier since the Railroad Commission of Louisiana was organized in 1898, and for some time previous thereto.

II.

That there are numerous shippers living along the line of railroad of the Victoria, Fisher & Western Railroad Company, who ship and receive interstate and intrastate freight over the said railroad and who are interested in securing fair and reasonable rates and adequate service, for the transportation of all classes and kinds of freight, including lumber, over the Victoria, Fisher & Western Railroad.

256

III.

That Act No. 195 of the Legislature of 1906 of the State of Louisiana provides:

"That power and authority is hereby vested in the Railroad Commission of Louisiana, and it is hereby made its duty, to appear, through any of its commissioners, or its secretary, or by a duly authorized attorney, before the Interstate Commerce Commission at Washington, D. C., or at any place where the said Interstate Commerce Commission might be holding a session, whenever, in the judgment of the said Railroad Commission of Louisiana, the interests of shippers or consignees in the State of Louisiana may require it."

That acting under and by virtue of Act No. 195 of the General Assembly of the State of Louisiana of 1906, the Railroad Commisston on January 31st, 1913, adopted the following resolution:

"Whereas, the Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and

"Whereas, the following so-called 'tap lines,' Mansfield Railway & Transportation Company, Woodworth & Louisiana Central Railway Company, Limited, Victoria, Fisher & Western Railroad Company, and Louisiana & Pacific Railway Company, are among those 'tap lines' which have filed such suits, and which railways are duly chartered under the laws of the State of Louisiana as com-
257 mon carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and

"Whereas, the said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and

"Whereas, this Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitutional interference with the rights of the said railway companies to receive revenue out of joint through rates of the transportation of lumber and

logs over their lines in Louisiana destined to interstate points; and

"Whereas, it is the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right to ship logs and lumber over said railways at reasonable joint through rates and deprives the said railway companies from receiving a reasonable division out of joint through rates, which division of rates is the principal source of revenue of such carriers; and

"Whereas, if the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber, thereby rendering it impossible to meet the operating expenses and fixed charges,

and consequently preventing any extension, or hope of ex-
258 tension, or improvement, or hope of improvement of such railways;

"Therefore, be it resolved, that the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognizes the said railway companies as common carriers of interstate shipments of logs and lumber, as they are recognized to be common carriers of all other classes and kind of shipments."

IV.

That, pursuant to the various appropriate orders made by the Interstate Commerce Commission, in the case of Star Grain & Lumber Company, et al., vs. Atchison, Topeka & Santa Fe Railway Company, et al., Docket No. 1319, as set forth and referred to in Paragraphs III, IV, V, VI, VII, VIII and IX of the petition filed in this cause, the Railroad Commission of Louisiana, believing the shippers and general public living along the line of the Victoria, Fisher & Western Railway Company were interested in the proceeding instituted by the Interstate Commerce Commission, entitled:

"Investigation and Suspension Docket No. 11. In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap Connections."

259 on or about the 9th day of December, 1910, filed a petition of intervention on behalf of the shippers of the State of Louisiana, and were operating their railroads as common carriers under and by virtue of their charters, one of which railroads was that owned and operated by the Victoria, Fisher & Western Railway Company. That the said Railroad Commission of Louisiana thereafter filed a brief and took part in the oral argument before the Interstate Commerce Commission, in support of the rights of the shippers who ship and receive freight, over the lines of railroad owned and operated by the common carriers, who, for the purposes of the proceed-

ings before the Interstate Commerce Commission were, and have since been, designated as "tap lines." That one of the said common carriers in which the Railroad Commission was and is interested as a vehicle and means of intrastate transportation for the use of the public in the State of Louisiana is the Victoria, Fisher & Western Railway Company, plaintiff in this cause.

V.

Your petitioner further states that the Victoria, Fisher & Western Railroad Company is an important railroad, performing a valuable service in the development of the section of the State of Louisiana through which its railroad runs; that the people living along such railroad are dependent upon it for the transportation of their
260 products and their merchandise to and from the towns, cities and markets of the country. That they are entitled to ship and travel at fair and reasonable local and joint through interstate, as well as intrastate rates; that an important commodity shipped over the said railroad is lumber, and that, while the said railroad is required by the laws of the State of Louisiana and the rulings of the Railroad Commission of Louisiana to establish reasonable local rates and joint through rates in connection with the trunk lines with which it connects on Louisiana intrastate shipments, and is permitted by the Interstate Commerce Commission to establish joint through rates, and receive divisions therefrom, to and from interstate points on all classes and commodities, except lumber, on shipments of lumber the said Victoria, Fisher & Western Railroad Company is not permitted to receive a division out of joint through interstate rates.

VI.

That in declaring an allowance out of joint through rates on lumber to be unlawful, the Interstate Commerce Commission has deprived the said Victoria, Fisher & Western Railroad Company of an important source of revenue, which it earns by performing a transportation service, and to which it is entitled as a common carrier, the only legal restrictions upon such allowance being that it must be reasonable, and in thus denying an allowance out of through interstate rates on lumber to the Victoria, Fisher & Western
261 Railroad Company, and depriving it of this important source of revenue, an undue burden and unnecessary hardship, and an unjust discrimination has been enacted and placed upon shippers of other commodities than lumber who use plaintiff's railroad, thus depriving the State of Louisiana of the natural development and increase in property values which follow the extension and improvement of railroad properties where the legitimate revenues from the operation of such properties lead to their betterment.

Your petitioner further avers that by depriving the Victoria, Fisher & Western Railroad Company of a division of the earnings from interstate shipments of lumber, made in connection with the trunk lines with which it connects, the Interstate Commerce Commis-

sion has thrown upon the smaller tonnage of general commodities, other than lumber, the entire burden of producing a sufficient revenue to pay all the fixed and operating expenses of the Victoria, Fisher & Western Railroad Company, and, as a result of such a burden, your petitioner fears that the Victoria, Fisher & Western Railroad Company's revenues will so diminish as to cause it to become bankrupt, and thereby seek, through proper legal means, to dissolve its charter, cease its operations, and go out of business as a common carrier, leaving many of the citizens of Louisiana, who are served by said Railroad Company, totally without means of transportation. That such a result will deprive the citizens of Louisiana of their right to be served by common carriers, properly organized under its laws, under the same conditions and circumstances as are accorded to the trunk lines.

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VII.

And petitioner further avers that should the Victoria, Fisher & Western Railroad Company be deprived of its right to receive a fair division of reasonable joint through interstate rates for the transportation of lumber, it will cause an unjust discrimination, is arbitrary, unreasonable and unjust.

VIII.

Your petitioner further avers that the Victoria, Fisher & Western Railroad Company is a common carrier by virtue of its charter, that it holds itself out as such, constantly acts in that capacity, and has been so treated by those who it has served, by the great railroad systems with which it connects, by the State Board of Appraisers of the State of Louisiana, by the Railroad Commission of Louisiana, by the Supreme Court of the State of Louisiana, and, except as to the transportation of logs and lumber, in all other respects, by the Interstate Commerce Commission. That as a common carrier, exercising the right of eminent domain, it has received exemption from taxation under the Constitutional provisions, amendments thereof of 1908, of the State of Louisiana, having extended its lines during the period when such exemptions from taxation ran.

IX.

263 Petitioner further avers that the Victoria, Fisher & Western Railroad Company actually performs a part of the transportation of every shipment of lumber originating on its line, going to interstate destinations and accepts all shipments tendered it for such transportation.

X.

Your petitioner further avers that it is and has been the policy of the State of Louisiana to aid and encourage the development of its resources, the investment of capital in manufacturing industries, and to assist, whenever it can consistently do so, the producers of Louisiana, to secure and maintain equitable and fair rates, rules and regu-

lations affecting the transportation of persons and property between points in the State of Louisiana, and points in other States. That the Railroad Commission of Louisiana, as the authorized representative of the shippers of the State of Louisiana, is vitally interested in the outcome of this suit, in that it involves property rights, industrial enterprises and transportation problems, which affect the commerce of its citizens.

Wherefore, petitioner, the Railroad Commission of Louisiana, prays leave to file this intervention, and that it be made a party to this proceeding, and that the orders of the Interstate Commerce Commission, dated May 14, 1912, and October 31, 1912, be enjoined, set aside and annulled, all as is prayed for in the prayer of the original petition filed herein.

264 And your petitioner prays for all other and further relief as in equity and good conscience *they* may be entitled to receive.

THE RAILROAD COMMISSION OF LOUISIANA,
By W. M. BARROW,
Assistant Attorney General of Louisiana.

STATE OF LOUISIANA,
Parish of ——:

Shelby Taylor, being duly sworn on his oath, states that he is Chairman of the Railroad Commission of Louisiana, the petitioner herein; that he has read the above and foregoing petition, and is familiar with the facts therein stated; and that the allegations and averments of fact made are, to the best of his knowledge, information and belief, true, and he believes them to be true.

SHELBY TAYLOR,
Chairman Railroad Commission of Louisiana.

Subscribed and sworn to before me, this 7th day of February, A. D. 1913.

[SEAL.] R. H. FOWLER,
Ass't Sec'y of State.

265 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al.
v.
THE UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court

from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

266 *Journal Entry.*

Proceedings of February 10, 1913.

Case- Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. Co., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court

made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause was taken under advisement by the Court.

267 *Order Denying Motion to Dismiss for Want of Jurisdiction.*

(Entered February 24, 1913.)

United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction, in open court made; and the Court having given the arguments of counsel due consideration, now, on this 24th day of February, 1913,—

It is ordered and adjudged that said motion be, and the same is hereby, denied, the Court being of opinion that the order complained of is an order the validity of which this Court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

268 United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order Designating Judge Carland to Hear Testimony.

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this Court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

269–284 *Certified Transcript of Testimony at Hearings at New Orleans, St. Louis and Chicago, December, 1910, January and February, 1911, in Proceeding Before the Interstate Commerce Commission, I. and S. Docket No. 11.*

(Filed in Commerce Court March 26, 1913.)

Note by Clerk.

(Transcript of testimony omitted here in printing because printed elsewhere in separate volumes.)

284a & b *Certified Copies of Exhibits in Proceeding Before Interstate Commerce Commission, I. & S. Docket No.* 11. *Filed May* 8, 1913.

The Interstate Commerce Commission certified to one set of exhibits applicable to cases Numbers 90, 91, 92 and 93, and which was used in the four cases. As directed by letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were printed for the use of the Commerce Court, viz:

Note by Clerk.

(Exhibits omitted here because printed elsewhere in a separate volume.)

284c–297 As directed by the same letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were omitted from the printing, viz:

Two time tables, L. & P. Ry. Co.
Petition, U. S. v. L. & P. Ry. Co.
Mortgage, Long-Bell Lumber Co., L. & P. Ry. Co.
Tariff sheets of various railroad companies.
Division sheets, W. & L. C. Ry. Co.
Statement, shipments of Gilmer Lumber Co.
Statement, shipments of 51 concerns.
Certain division sheets of various railroad companies.

Owing to the cumbrous and peculiar nature of the latter exhibits, they are not reproduced here. They are contained in the record on appeal in Louisiana & Pacific Railway Co. v. United States, No. 90, and are made a part hereof by reference the same as though fully incorporated herein.

298 In the United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioners,
v.
UNITED STATES OF AMERICA, Respondent, et al.

Objections to the Sufficiency of the Petition on Final Hearing.

(Filed June 2, 1913.)

Comes now the United States of America, by its counsel, on the final hearing hereof, and in accordance with the statute in such case made and provided, makes and enters the following objections to the sufficiency of the petition in the above entitled cause, viz:

First. The Court is without jurisdiction to entertain the said petition, because the order of the Interstate Commerce Commission sought to be set aside is a negative order;

Second. The Court is without jurisdiction to review the action of the Interstate Commerce Commission in refusing to establish through routes and joint rates between the petitioner and the trunk lines;

Third. The Court is without jurisdiction or power to issue an order in the nature of a writ of mandamus;

Fourth. There is a misjoinder of parties petitioners and respondents;

Fifth. The petition does not state any cause of action against the respondent.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

June 2, 1913.

299 *Journal Entries.*

Case- Nos. 90, 91, 92, and 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

300–329 *Journal Entries.*

(Continued.)

Case Nos. 90, 91, 92, and 93.

Proceedings of June 5, 1913.

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Carwood on behalf of the petitioners.

Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Carwood appearing on behalf of the petitioners. Thereupon Mr. Carwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Thereupon the causes were taken under advisement by the Court.

Note by Clerk.

(Opinion by Mack, J., Nov. 26, 1913, omitted here in printing because printed elsewhere in a separate volume.)

330 *Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA, Respondent.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had, It is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended Order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences are unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern
331 Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway

Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company, New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service" and and the same is hereby vacated and set aside as to the petitioners herein.

By the Court.

MARTIN A. KNAPP,
Presiding Judge.

November 28, 1913.

332 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA Long Leaf Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

Petition for Appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervener, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervener, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to
333 the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

334 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al., Petitioner,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

335 III.

In not dismissing the petition for the (*a*) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Victoria, Fisher & Western Railroad Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

336 VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Victoria, Fisher & Western Railroad Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Victoria, Fisher & Western Railroad Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

337 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a

matter of bargain and sale, and with the power wielded in controlling the routing to compel the trunk lines to make allowances to the Victoria, Fisher & Western Railroad Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912 which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as
338 to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

339 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA Long Leaf Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

340 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA Long Leaf Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, and The Gulf, Colorado & Santa Fe Railway Company, Interveners.

Petition for Appeal.

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, interveners, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel pray an appeal to the Supreme Court of the United States, from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, November 29, 1913.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for The A., T. & S. F. Ry. Co. and G., C. & S. F. Ry. Co., Intervenors.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States —.

341 In the United States Commerce Court, June Session, 1913.

No. 98.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA Long Leaf Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA et al.

Assignment of Errors.

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, by their attorneys, and in connection with their petition for appeal file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the same.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is an negative order and beyond the power of the Court to review.

III.

342 In not dismissing the petition for the reasons that (*a*) the same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the Commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition from which to grant the relief prayed, or to form the basis for any relief from the order of the Commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners pro-

tected by the Constitution of the United States, or any other right of the said petitioners over which this Court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber company, the Victoria, Fisher & Western Railroad Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switch-
343 ing movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Victoria, Fisher & Western Railroad Company and the transfer to it by the lumber company of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Victoria, Fisher & Western Railroad Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in controlling the routing, are forcing the trunk lines to make allowances to the
344 Victoria, Fisher & Western Railroad Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary company by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, which declared the tracks and equipment of the petitioner to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioner in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and
345 non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap lines, and are expressly based

upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

346 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and THE Louisiana Long Leaf Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA et al.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and have in all respects conformed to law and the rules of Court—

It is ordered and decreed That the said appeal be and the same is hereby allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and, proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

347 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY and LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company and Railroad Commission of Louisiana, Intervenors.

Bond on Appeal.

(Filed December 5, 1913.)

Know all men by these presents, That we, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santta Fe Railway Company, as principals, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the Victoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company, in the sum of Five Hundred Dollars ($500.00), to be paid to the Victoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D. nineteen hundred and thirteen.

348 Whereas, Heretofore, to wit, on the 28th day of November, 1913, in a suit pending in the United States Commerce Court, and numbered 93 on the docket of said Court, wherein the Victtoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company were petitioners, and the United States of America was respondent, and The Atchison, Topeka & Santa Fe Raiilway Company, Gulf, Colorado & Santa Fe Railway Company, Interrstate Commerce Commission and the Railroad Commission of Louissiana were intervenors, an order, judgment and decree was rendlered against said respondent and intervenors, and

Whereas, Said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company have appealed from said order and decree to the Supreme Court off the United States, and have obtained citation directed to the said Victoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company, citing and admonishing them and eacch of them to be and appear at a session of the Supreme Court off the United States, to be held at the City of Washington, within thirty days after the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute said appeal

to effect and shall pay all costs, if they shall fail to make their appeal good, then the above obligation to be void, otherwise to re-
349 main in full force and effect.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
By ALDIS B. BROWNE,
EVANS BROWNE,
Its Attorneys.
GULF, COLORADO & SANTA FE RAILWAY COMPANY,
By ALDIS B. BROWNE,
EVANS BROWNE,
Its Attorneys.
NATIONAL SURETY COMPANY,
[SEAL.] By W. H. RONSAVILLE, *Attorney in Fact.*

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

JOHN E. CARLAND, *Judge.*

350 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al.
v.
UNITED STATES OF AMERICA.

Præcipe for Record.

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition, filed January 14, 1913.

Return of service, filed January 16, 1913.

Answer of the United States, filed January 29, 1913.

Answer of the Interstate Commerce Commission, filed February 8, 1913.

Petition of A. T. & S. F. Ry. Co. et al. to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Motion of Railroad Commission of Louisiana to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Journal entry as to hearing on motion to dismiss for want of jurisdiction, February 10, 1913.

Order denying motion to dismiss for want of jurisdiction, entered February 24, 1913.

Order designating Judge Carland to hear testimony, entered March 5, 1913.

351 Certified transcript of testimony at hearings in proceeding before Interstate Commerce Commission, I. and S. Docket No. 11, filed March 26, 1913.

Order of the Interstate Commerce Commission, in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-2, entered May 10, 1913.

Certified copies of exhibits in proceeding before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Objections to the sufficiency of the petition on final hearing, filed June 2, 1913.

Journal entries as to final hearing, filed June 3, 6, 1913.

Opinion of the Commerce Court.

Final decree of the Commerce Court.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A. T. & S. F. Ry. Co. et al.

Assignment of errors, same.

Order allowing appeal, same.

Bond of A. T. & S. F. Ry. Co., G. C. & S. F. Ry. Co.

Citation on appeal, same.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for A., T. & S. F. Ry. Co. and G., C. and S. F. Ry. Co.

352 DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing praecipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D., nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, District of Columbia.

353 In the United States Commerce Court, June Session, 1913.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY
v.
UNITED STATES OF AMERICA.

Hugh P. Lutz, being duly sworn, deposes and says, that on December 17th, 1913, he served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees, by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,
Notary Public.

354 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Victoria, Fisher & Western Railroad Company, Louisiana Long Leaf Lumber Company, Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

355 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Victoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company and the Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2 day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

356 United States Commerce Court.

No. 93.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY, LOUISIANA LONG LEAF LUMBER COMPANY, Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the praecipe filed in the Clerk's Office of Said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

357 In the Supreme Court of the United States, October Term, 1913.

No. 835.

UNITED STATES OF AMERICA et al., Appellants,
v.
VICTORIA, FISHER & WESTERN R. R. Co. et al.

Statement of Errors.

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge,

La., Counsel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, D. C.

I concur in the above designations.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, Appellant.

358 In the Supreme Court of the United States, October Term, 1913.

No. 835.

UNITED STATES OF AMERICA et al., Appellants,
v.
VICTORIA, FISHER & WESTERN RAILROAD CO. et al.

Instructions to Omit Certain Matter from the Printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz:

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913, consisting of 1 printed volume marked, Volume V.

359 5. Opinion of the United States Commerce Court.

Other instructions are separately given to print in a single volume certain parts of the matter so to be omitted.

JNO. W. DAVIS,
Solicitor General.

360 [Endorsed:] File No. 23,986. Supreme Court U. S., October term, 1913. Term No. 835. The United States et al., Appellants, vs. Victoria, Fisher & Western Railroad Company et al.

Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

Endorsed on cover: File No. 23,986. U. S. Commerce Court. Term No. 835. The United States and Interstate Commerce Commission, appellants, vs. Victoria, Fisher & Western Railroad Company, Louisiana Long Leaf Lumber Company and Railroad Commission of Louisiana. File No. 23,987. Term No. 836. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, appellants, vs. Victoria, Fisher & Western Railroad Company et al. Filed December 29th, 1913. File Nos. 23,986 and 23,987.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 837.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

BUTLER COUNTY RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 20, 1913.

(23988)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 837.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

BUTLER COUNTY RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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tract, or agreement with parties owning the same; and at present petitioner serves a large farming and lumber territory, and along its lines new industries, villages, and towns have sprung up, and petitioner's road as a means of transportation and communication, has become and is now a public necessity, upon which the persons living and doing business along its line necessarily rely and depend. Petitioner further shows that its accounts are kept in the manner prescribed by the act to regulate commerce, and all of the annual and monthly reports required by the Interstate Commerce Commission and the act to regulate commerce have been made from time to time, and that it has complied with all the regulations required by act of Congress concerning the filing of its tariffs and concurrences in joint tariffs with other carriers, and petitioner has also complied with the act of Congress known as the safety appliance act, at considerable expense, and operates trains on regular schedules for the carriage of passengers and property over its lines, and has been and is now engaged in the transportation of mails of the United States under contract with the Post Office Department of the Government.

Petitioner shows that prior to the proceeding hereinafter referred to before the Interstate Commerce Commission it was a party to joint tariffs over through routes on lumber and forest products shipped from points on its line through the Mississippi River
4 and other gateways to points in the States of the United States outside of the State of Missouri, and that it has a physical connection with the lines of the St. Louis & San Francisco Railroad Company and the Missouri Pacific Railway Company at Poplar Bluff, Missouri, and also at Lowell Junction, Missouri, with the line of the Missouri Pacific Railway Company, and prior to the proceeding hereinafter referred to before the Interstate Commerce Commission through routes and joint rates were in effect under tariffs properly filed, covering transportation of the above and other commodity and class freight over petitioner's line and the lines of the Missouri Pacific Railway Company and the St. Louis & San Francisco Railroad Company and their connections to points in the United States outside of the State of Missouri.

Third. Petitioner shows that on a complaint filed before the Interstate Commerce Commission, in the case of Star Grain & Lumber Company, et al. vs. Atchison, Topeka & Santa Fe Railway Company, et al., decided December 7, 1909, 17 I. C. C. Rep. 338, the Interstate Commerce Commission used in its opinion such expressions, as to the joint rates and through routes of short line railroads with long line carriers, as alarmed the Missouri Pacific Railway Company and the St. Louis & San Francisco Railroad Company, and as a result thereof they threatened to cancel the through routes and joint rates with petitioner, and the division of such rates, on lumber and forest products, and as a result thereof petitioner filed three complaints before the Interstate Commerce Commission; first, against the Missouri Pacific Railway Company, et al.; second, against the St. Louis

& San Francisco Railroad Company, et al.; third, against F. A. Leland, agent, and Alabama & Vicksburg Railway Company,
5 et al.; in which petitioner prayed that the commission might suspend the operation of certain tariffs and notices which were filed by the defendants in the three proceedings above mentioned, cancelling the joint tariffs then in effect with petitioner, on lumber and forest products, which had been filed and established by the defendants above mentioned; and also praying that the commission might find that the through routes and joint rates, and the divisions thereof then in effect, were just, fair and reasonable, and might require the observance thereof by proper order.

Upon the three petitions aforesaid a hearing was duly had by the commission at New Orleans, Louisiana, in connection with the investigation which the commission had inaugurated, known as the Tap Line Case, I. & S. Docket No. 11, and at such hearing evidence was introduced by the Butler County Railroad Company which fully sets forth its entire character and situation, and its relation to shippers upon its line and to the carriers with which it connects.

It appeared at the hearing of said cause that the authorized capital stock of the Butler County Railroad Company was $200,000, and that there had been issued thereof $163,500, which was held by trustees for the Brooklyn Cooperage Company, which company was engaged in lumbering the forests tributary to the line of the Butler County Railroad Company, for timber suitable for cooperage, and manufacturing the same into cooperage stock. There further appeared in detail, the industries which were located along the line of the Butler County Railroad Company, and that there were other persons engaged in lumbering and manufacturing the lumber on the line of petitioner's road in whose business the Brooklyn Cooperage
Company had no interest, and who had no interest in the
6 Butler County Railroad Company or the Brooklyn Cooperage Company. A copy of all of the evidence in said proceeding as to the Butler County Railroad Company is herewith filed as Exhibit A, as a part of this petition.

It further appeared in such proceeding that the Brooklyn Cooperage Company's mill for the manufacture of cooperage, is located at Poplar Bluff, on the line of the Butler County Railroad, and about a mile from the junction point between the Butler County Railroad Company and the St. Louis, Iron Mountain & Southern Railway Company, which road is a part of the system of the Missouri Pacific Railway Company, and about a quarter of a mile from the junction of the Butler County Railroad Company and the St. Louis & San Francisco Railroad Company; that through routes and joint rates were established on lumber and forest products from points on the Butler County Railroad, in connection with the Missouri Pacific Railway Company and the St. Louis & San Francisco Railroad Company, and connections, to points in the United States other than in the State of Missouri, and that the tariffs covering such rates provided for a milling in transit privilege to all mills located on

the line of the Butler County Railroad, and that the joint through rates were divided between the Butler County Railroad and its connections upon terms satisfactory to them and fair and reasonable, so far as all other persons were concerned. Under the milling in transit privilege, above referred to, the rates were available to all shippers of logs over the line of the Butler County Railroad, and which logs were manufactured into lumber and cooperage stock at all mills on the line of said road, the product whereof was then transported through to the markets of destination.

7 After the investigation by the commission aforesaid, it made its report on the 23rd of April, 1912 (23 I. C. C. Rep. 277), and its supplemental report on May 14, 1912 (23 I. C. C. Rep. 549), in which said supplemental report, at page 628, is set forth the report of the commission as to the Butler County Railroad Company, and wherein it practically holds that the Butler County Railroad Company is a common carrier subject to the act to regulate commerce, except in so far as it is engaged in the transportation of traffic for the Brooklyn Cooperage Company, and the exception is made as to this company's traffic for the sole reason that the stock of petitioner is held by trustees for its benefit, and the concluding paragraph of said report, as to the Butler County Railroad Company, is as follows:

"For its service in moving the products of the Cooperage Company's mill to the Iron Mountain and to the Frisco, a distance of less than one mile, this tap line may lawfully receive out of the rate, nothing beyond a reasonable switching charge, which we fix at $1.50 per car."

Following the supplemental report aforesaid, and on the 14th day of May, 1912, the Interstate Commerce Commission entered its order, wherein the connecting carriers of the Butler County Railroad Company were authorized on not less than three days' notice, "to reopen through routes and publish joint rates" with the Butler County Railroad Company, "provided the allowances or divisions of such joint rates to be paid on the products of the mills of the said proprietary companies, shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission;" and thereafter, on the 30th day of October, 1912, the

8 Interstate Commerce Commission entered its amended order, wherein, so far as the Butler County Railroad Company is concerned, it was ordered as follows:

"Seven. It is ordered that the said principal defendants (Missouri Pacific Railway Company, St. Louis & San Francisco Railroad Company) above named, be and they are hereby required, on or before January 1st, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named (Butler County Railroad Company), the through interstate routes and joint rates in effect in accordance with their respective tariffs filed with this commission on April 20th, 1912.

"Eight. Provided, that the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record (Butler County Railroad Company) shall not exceed the current rates in effect from the junction points: and

"Nine. Provided further, that the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record (Butler County Railroad Company) on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum divisions or allowances thereon until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful."

Copies of such original and amended orders are herewith filed and are asked to be taken as a part of this petition, as Exhibits B and C.

Fourth. The result of such amended order is that the through routes and joint rates in effect and established by the Butler County Railroad Company with its connections, the Missouri Pacific Railway Company and the St. Louis & San Francisco Railroad Company, and other carrier companies, on lumber and forest products were approved and the connecting carriers of petitioner were ordered to re-establish the same and for a period of two years to maintain such through routes and joint rates, and the milling in transit privileges under such tariff were practically approved by the commission under its amended order, except that logs shipped over the Butler County Railroad, destined to points on the Missouri Pacific Railway and the St. Louis & San Francisco Railroad, and their connections, and which were transported for the Brooklyn Cooperage Company, should not have the benefit of the milling in transit privilege above referred to, but that on the joint rate over the through route, so far as the traffic of the Brooklyn Cooperage Company was concerned, the Butler County Railroad Company could only receive as its proportion of said joint rate a switching charge of $1.50 per car from the mill to the connection with the long line carriers, and the commision finds in its amended order aforesaid that "any allowances or divisions in excess" of $1.50 per car "result in undue preferences and unjust discriminations, and are unlawful," and the Missouri Pacific Railway Company and the St. Louis & San Francisco Railroad Company are ordered by the commission not to make any divisions of the joint rates to the Butler County Railroad Company other than the $1.50 per car on the traffic of the Brooklyn Cooperage Company aforesaid.

Petitioner charges that there was absolutely no evidence whatever before the commission which justified a conclusion that the joint

rates and divisions thereof, including the milling in transit
10 privilege above referred to, operated to give any undue preference to the Brooklyn Cooperage Company, or anyone else, or to create any unjust discrimination against shippers on the line of the Butler County Railroad Company, other than the Brooklyn Cooperage Company, and it will be seen by reference to the entire evidence filed herewith, so far as it refers to the Butler County Railroad Company or the territory served by it, that there was no evidence before the commission upon which to base the conclusion reached by it.

Fifth. In making the order of May 14th, 1912, and the amended order of October 30th, 1912, petitioner charges that the Interstate Commerce Commission acted without jurisdiction and beyond the powers conferred upon it, in that there was before the commission no substantial evidence to sustain said orders, and the orders were entered without any evidence to warrant the conclusion reached by the commission or the reasons assigned by it for its conclusion, so far as the traffic of the Brooklyn Cooperage Company is concerned, and the commission acted arbitrarily and unjustly in entering said order as to the amount to be received by petitioner from traffic of the Brooklyn Cooperage Company, and the conclusion of the commission was contrary to the evidence. Petitioner further charges that the making of said order, and the enforcement thereof, as to the traffic carried for the Brooklyn Cooperage Company, is a taking and depriving of petitioner of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and further constituted a taking of the property of petitioner for public use without just compensation, and the effect of said order is to require petitioner to serve the public for an entirely inadequate compensation.

11 Petitioner further shows that the order and amended order of the commission aforesaid, if carried out by petitioner and its connections, will require it and them to create unjust discrimination as between shippers upon its line, as illustrated as follows:

If the shipment is from the mill of a shipper other than the Brooklyn Cooperage Company on the line of the Butler County Railroad Company, upon which the rate is ten cents per 100 pounds on lumber or cooperage stock, the division of said rate to which the Butler County Railroad Company is entitled would be three cents per 100 pounds. If, on the other hand, the shipment was made by the Brooklyn Cooperage Company from a mill located in the same locality, under the order and amended order of the commission aforesaid, the Butler County Railroad Company would receive only $1.50 per car for its service, and therefore in order to compensate the Butler County Railroad Company it would have to add sufficient over and above the $1.50 per car to the shipment made by the Brooklyn Cooperage Company in order that petitioner might receive for its services three cents per 100 pounds, and therefore the Brooklyn

Cooperage Company would be required to pay three cents more than the other shipper in the same locality, less $1.50 per car.

The order and amended order of the commission is based entirely upon the fact that the stock of the Butler County Railroad Company is held by trustees for the benefit of the Brooklyn Cooperage Company. Upon this stock the Brooklyn Cooperage Company has never received a cent in return, the only dividend thereon being once paid from borrowed money, and there was no evidence in the record, and none could be produced, tending to show that the
12 tariffs in effect, and which the commission has ordered to be reestablished, except in so far as the traffic of the Brooklyn Cooperage Company is concerned, in any way discriminated against shippers other than the Brooklyn Cooperage Company, or created any preference in favor of that company, but on the contrary, if the order and amended order of the commission are allowed to go into effect, it will be necessary that the charges for like service to the Brooklyn Cooperage Company shall be greater than the charges to other shippers on the line of the Butler County Railroad, and this is made necessary by the order and amended order of the commission aforesaid, or otherwise it is impossible for the Butler County Railroad Company to get sufficient revenue from its traffic to enable it to conduct the same.

Your petitioner is advised and believes that unless prevented from doing so by order of this honorable court the connecting carriers of petitioner aforesaid will decline to allow to petitioner its fair division of the joint rates to be established under the order of the commission aforesaid, and that unless such carriers decline to allow to petitioner its fair proportion of said joint rates the Interstate Commerce Commission will proceed to enforce the unlawful provision in its order as to the division of the joint rates to be allowed to petitioner.

In consideration whereof and for as much as petitioner is remediless in the premises save in a court of equity, where it may obtain relief to which it is entitled, your petitioner now prays that this court may:

First. Grant a preliminary writ of injunction suspending the order and amended order of the commission, in so far only as it forbids a division out of the joint rates to be reestablished on January
13 1st, 1913, to petitioner greater than $1.50 per car, but that the division of said joint rates to be reestablished as aforesaid may continue as heretofore agreed upon by petitioner and its connections aforesaid, and that this preliminary writ of injunction may continue, pending the final hearing and determination of this suit.

Second. That it be adjudged, ordered, and decreed that the order of the commission and the amended order aforesaid, in so far as they forbid a division out of said joint rates to petitioner greater than $1.50 per car, as aforesaid, be forever enjoined, set aside, annulled, and suspended, and that the said United States of America

and the commission and their representatives, officers, agents, and servants be forever enjoined from enforcing or taking any steps to enforce the order or amended order aforesaid, in so far as it limits the division of said joint rates to which petitioner is entitled to $1.50 per car aforesaid.

Third. That your honors may grant to your petitioner process of subpœna to the respondent, requiring it to duly appear and answer the allegations of this petition, answer under oath, however, being expressly waived.

Fourth. The petitioner prays for such other, further, and general relief as in equity and good conscience is meet and proper.

And it will ever pray, etc.

BUTLER COUNTY RAILROAD COMPANY,
By (Sgd.) WM. N. BARRON.

JAMES M. BECK,
WM. A. GLASGOW, JR.,
Counsel for Petitioner.

14 STATE OF MISSOURI,
County of Butler, ss:

WILLIAM N. BARRON, being duly sworn, says that he is the vice president and general manager of the Butler County Railroad Company, the petitioner in the above cause; that he has read the foregoing petition and knows the contents thereof; and that the statements therein are true to the best of deponent's knowledge and belief.

(Sgd.) WM. N. BARRON.

Subscribed and sworn to before me this twenty-first day of December, A. D. 1912.

(Sgd.) SOPHIA A. REID,
Notary Public.

[SEAL]

My commission expires June 14, 1915.

15 *Exhibit A.*

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18 STENOGRAPHER'S MINUTES.

Before the Interstate Commerce Commission. Docket No. 11 (I. & S.).

Investigation and suspension of schedule cancelled through rates with certain tap-line connections.

At New Orleans, La., December 8, 1910.

All of evidence as to Butler County Railroad Company.

Commissioner HARLAN. The Butler County Railroad Company is the next company. Mr. Glasgow, are you ready?

Mr. GLASGOW. Yes, sir.

Commissioner HARLAN. How many witnesses have you?

Mr. GLASGOW. One.

19 WILLIAM N. BARRON was called as a witness, and, having been duly sworn, testified as follows:

Mr. GLASGOW. I want to make a brief statement of our case. In this case there are three petitions filed by the Butler County Railroad Company. They were original petitions filed, and then by permission of the commission they were filed in this cause as petitions to be considered under the Star Grain case. One is the Butler County Railroad Company against the Missouri Pacific Railway Company and the Iron Mountain; the second is the Butler County Railroad Company against the St. Louis & San Francisco Railroad Company and others; and the third is the Butler County Railroad Company against F. A. Leland, agent, and the Alabama & Vicksburg Railway Company.

The petition sets forth the tariffs which were in effect at this time on the several routes set up in the petition by the several defendants,

and their connections, and that tariffs had been filed by each of the defendants with the concurrences cancelling those rates and putting in effect other rates from the junction point with the Butler County Railroad at Poplar Bluff.

The petition has two charges: First, that the rates established under the cancelling tariffs or proposed to be established under those cancelling tariffs, which are increases over and above the rates now in effect, are unjust and unreasonable. Second, that the Butler County Railroad Company is a common carrier and entitled to joint rates and through routes with the long-line carriers, and that the joint rates and through routes in effect before the cancellation notices were just and reasonable, and asking the commission to reestablish them, or require that these rates be reestablished or continued with divisions to the several roads parties thereto.

20 Direct-examination.

Mr. GLASGOW. Where do you live, Mr. Barron?

Mr. BARRON. Poplar Bluff, Missouri.

Mr. GLASGOW. You have a map here of the Butler County Railroad Company?

Mr. BARRON. I am the vice president, treasurer and general manager of the Butler County Railroad Company.

Mr. GLASGOW. You have charge of its operation?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. When was the Butler County Railroad Company organized?

Mr. BARRON. It was organized under the railroad statute of Missouri in September, 1905.

Mr. GLASGOW. Prior to that time, what company or person owned the railroad which the Butler County Railroad Company now owns?

Mr. BARRON. That which was in existence at that time was owned by the Brooklyn Cooperage Company.

Mr. GLASGOW. The Brooklyn Cooperage Company is a lumber company?

Mr. BARRON. It is a cooperage company.

Mr. GLASGOW. Engaged in making cooperage stock?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And it has a mill on the line of the Butler County Railroad?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. At what point?

Mr. BARRON. At a point in the neighborhood of Poplar Bluff called Linstead.

Mr. GLASGOW. At the time that the Butler County Railroad Company was incorporated, were there any allowances made by
21 the carriers with which it connected physically to the Brooklyn Cooperage Company on cooperage stock or lumber or anything else?

Mr. BARRON. No, sir.

Mr. GLASGOW. What roads does the Butler County Railroad Company connect with?

Mr. BARRON. It connects with the St. Louis, Iron Mountain & Southern Railroad, and also with the St. Louis and San Francisco Railroad.

Mr. GLASGOW. At what point?

Mr. BARRON. Well, it is variously known as Linstead and Poplar Bluff; it is in the neighborhood of Poplar Bluff.

Mr. GLASGOW. You have a map here of the Butler County Railroad?

Mr. BARRON. Yes, sir.

(Paper produced.)

Mr. GLASGOW. Beginning at Poplar Bluff, at the connection between the Butler County Railroad and the St. Louis & San Francisco Railroad, there are tracks, a red dotted line. To whom do those tracks belong?

Mr. BARRON. The red line indicates tracks which the Butler County Railroad Company owns.

Mr. GLASGOW. And the black line with white in between?

Mr. BARRON. Indicates tracks owned by other concerns, over which the Butler County Railroad Company operates its trains.

Mr. GLASGOW. And the yellow?

Mr. BARRON. Indicates tracks which are owned by the Brooklyn Cooperage Company.

Mr. GLASGOW. Now, beginning at Poplar Bluff, to what point does the Butler County Railroad Company operate its trains over its own tracks and tracks over which it has the running right?

22 Mr. BARRON. From Poplar Bluff it operates its trains over its own tracks to the junction with the St. Louis, Iron Mountain and Southern at Linstead; then over the track of the St. Louis, Iron Mountain and Southern Railway Company, Cairo Branch, to Lowell Junction.

Mr. GLASGOW. What distance?

Mr. BARRON. About seven and a half miles.

Mr. GLASGOW. That is by arrangement or agreement for trackage payments by the Butler County Railroad?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And thence to where?

Mr. BARRON. It operates over its own track; that is, over the Butler County Railroad Company's own track south, a distance of seven miles.

Mr. GLASGOW. To what point?

Mr. BARRON. To a point called Bailey's; thence over the track that is owned by the Brooklyn Cooperage Company to a point called Melville.

Mr. GLASGOW. Is that under an agreement or lease?

Mr. BARRON. That is under an agreement by which the Butler County Railroad Company operates and has trackage rights on that

track. Thence it operates northwardly to a point called Menorkenut on a track also owned by the Brooklyn Cooperage Company, over which it has trackage rights.

Mr. GLASGOW. At that point is where the tracks of the Brooklyn Cooperage Company operated by it connect with the Butler County Railroad Company?

Mr. BARRON. That is one of the points where it connects with the Brooklyn Cooperage Company logging tracks.

23 Mr. GLASGOW. Beginning at Linstead and going over the St. Louis & San Francisco tracks to Lowell Junction——

Mr. BARRON. That is the Iron Mountain track.

Mr. GLASGOW. I should say the Iron Mountain track, to Lowell Junction, what is the arrangement under which you operate trains over that track?

Mr. BARRON. The arrangement is that the Butler County Railroad Company operates its trains subject to the orders of the train despatcher of the Iron Mountain Railroad, and for the service and the use of the track it pays the Iron Mountain Railroad Company a certain sum per train-mile, depending upon the size of the train.

Mr. GLASGOW. Well, now, a train of 25 cars?

Mr. BARRON. It pays 65 cents per train-mile.

Mr. GLASGOW. And 35 cars?

Mr. BARRON. 75 cents.

Mr. GLASGOW. And 45 cars or more?

Mr. BARRON. 85 cents.

Mr. GLASGOW. Can you tell us about what per annum that rental amounts to which is paid to the Iron Mountain road?

Mr. BARRON. That amounts to about $3,600 per annum.

Mr. GLASGOW. Beginning at Poplar Bluff. Have you got a station there?

Mr. BARRON. We have a station in the neighborhood of Poplar Bluff; it is about a mile distant from the center of the town; it may be said to be in Poplar Bluff.

Mr. GLASGOW. Do you have an agent?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Have you an agent at Lowell Junction?

24 Mr. BARRON. We have a joint agent with the Iron Mountain Railroad there, and we pay the entire compensation of that agent.

Mr. GLASGOW. You pay it?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Have you a station man or agent at Bailey's?

Mr. BARRON. No.

Mr. GLASGOW. Have you at Melville?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. An agent and station man?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. For the delivery of freight or travel which may pass along?

Mr. BARRON. Both.

Mr. GLASGOW. Do you run regular trains over the Butler County Railroad, on schedule?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Have you got a copy of the schedule of your company there?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. The time table No. 4?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. I want to file this as an exhibit.

(The paper so offered and identified was received in evidence and thereupon marked, Butler County Railroad Exhibit No. 1, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. GLASGOW. Those trains shown on that schedule are operated upon regular time tables for the carriage of passengers and freight?

Mr. BARRON. Yes, sir; every day except Sunday.

Mr. GLASGOW. Do you sell passenger tickets on that road?

Mr. BARRON. Yes, sir.

25 Mr. GLASGOW. At what points?

Mr. BARRON. At Poplar Bluff, Lowell Junction, Melville, and wherever there is an agent. The remainder of the business is done on a cash fare basis by the men in charge of the train.

Commissioner HARLAN. What is the total mileage operated by your road?

Mr. BARRON. About 35 miles, 34.

Mr. GLASGOW. What is the part of that of which the Butler County Railroad now owns the track?

Mr. BARRON. Twelve miles.

Mr. GLASGOW. And have you any track arrangement looking to the immediate acquisition of additional tracks?

Mr. BARRON. Yes, sir; just as soon as the deed can be drawn, the Butler County Railroad will acquire by purchase from the Brooklyn Cooperage Company, the present owner, that piece of track lying between Bailey's and the southern terminus of the road, including three miles that is now under construction down there, to the south line of section 13.

Mr. GLASGOW. And has the price been agreed upon?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. When the Butler County Railroad was organized, I suppose, following the usual way, the cooperage company sold to that company the tracks which it then had, and——

Mr. BARRON. Part of them.

Mr. GLASGOW. Part of them, and issued stock in consideration thereof?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And that stock is held by the Brooklyn Cooperage Company?

26 Mr. BARRON. It is held, Mr. Glasgow, by certain individuals in trust for the Brooklyn Cooperage Company.

Commissioner HARLAN. What is the amount of the capital stock issued?

Mr. BARRON. $163,500.

Commissioner HARLAN. And authorized?

Mr. BARRON. $200,000.

Commissioner HARLAN. All of it is held in trust for the Brooklyn Cooperage Company?

Mr. BARRON. I believe so; yes, sir.

Mr. GLASGOW. Has it any bonded indebtedness?

Mr. BARRON. It has a bonded indebtedness of $50,000.

Mr. GLASGOW. Those bonds are probably held in the same way?

Mr. BARRON. I believe they are; yes, sir.

Commissioner HARLAN. Held by whom?

Mr. BARRON. I believe they are held—the paper is made payable to the Brooklyn Cooperage Company.

Mr. GLASGOW. The bonds you mean, or the note?

Mr. BARRON. The note, and the mortgage securing the note.

Mr. GLASGOW. Will you tell us, when the operations were commenced, and these roads were being built, were there any towns or villages or farms along the route this road now goes?

Mr. BARRON. There were no towns or villages; there were a very few farms, but none in comparison with what exist there now.

Mr. GLASGOW. The Great Western Land Company is a company owning large tracts of lumber and timber lands?

Mr. BARRON. Yes, sir; I have a map here which shows the situation about that. (Producing map.)

27 Mr. GLASGOW. The yellow on this map shows the land of the Great Western Land Company, does it?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Now, as the progress of cutting timber on the lands of this company proceeded, the white indicates the lands from which it has been cut off, does it?

Mr. BARRON. No, sir; not altogether; that is hardly correct.

Mr. GLASGOW. Well——

Mr. BARRON. The white indicates land that the Great Western Land Company does not own; and you will notice that there is a great deal more white on the map where the railroad has been in operation for some years than there is farther down; it never was an absolutely solid body, but it was about alike; but up on the northern portion, where the railroad has existed from 11 to 12 years, a great deal of the land has been sold. Whenever it is sold, it is sold to a settler, who puts it, or part of it, immediately into cultivation.

Mr. GLASGOW. That white along there, does that indicate the land that is under cultivation or——

Mr. BARRON. It indicates the land that has been sold and what few farms there were in that neighborhood prior to that time, and that section of the country is very largely in cultivation.

Mr. GLASGOW. Are there farms all along the line of the road from Lowell Junction down to Mellville, of course with intervening spaces yet to be settled?

Mr. BARRON. Yes, sir; the Great Western Land Company in that neighborhood has sold three or four hundred separate tracts of land that are now in cultivation, to farmers.

28 Commissioner HARLAN. What is the relation between the Brooklyn Cooperage Company and the Great Western Land Company?

Mr. GLASGOW. I was coming right to that at this moment, if your Honor will permit me. As I understand, the stock of the Brooklyn Cooperage Company is owned by the American Sugar Refining Company?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. The Great Western Land Company's stock is held by whom?

Mr. BARRON. By the American Sugar Refining Company.

Mr. GLASGOW. And that is the only relation which exists between the Great Western Land Company and the Brooklyn Cooperage Company?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. What is the Brooklyn Cooperage Company engaged in doing; what is its principal business?

Mr. BARRON. Its principal business is the manufacturing of sugar barrels with which to ship the sugar refined by the American Sugar Refining Company.

Mr. GLASGOW. What is the character of the timber in that section of country that the Great Western Land Company owns?

Mr. BARRON. It is the same as all of that eastern Texas and eastern Arkansas and southeast Missouri bottom; it is hardwood timber; it consists principally of gum; next in volume will be oak, and after that, hickory, ash, elm, and other timbers of that forest in smaller proportions.

Mr. GLASGOW. Any pine?

Mr. BARRON. Not a pine tree on the outfit.

Mr. GLASGOW. Now, beginning at Lowell Junction and com-

29 ing along, I understand you to say down towards Melville there are farms along the line of the road.

Mr. BARRON. Yes.

Mr. GLASGOW. Have any villages sprung up since the road was started?

Mr. BARRON. Yes, sir; three.

Mr. GLASGOW. What are they?

Mr. BARRON. Batesville, Bailey's, and Melville.

Mr. GLASGOW. What is the population, should you say, of Melville?

Mr. BARRON. Well, Melville will approximate a thousand people.

Mr. GLASGOW. And the others are villages which have grown up?

Mr. BARRON. And the others are smaller.

Mr. GLASGOW. What character of freight is transported by the Butler County Railroad?

Mr. BARRON. You might say pretty much everything that is used by a community.

Mr. GLASGOW. Well, name the principal articles.

Mr. BARRON. Well, the principal is—transported by the Butler County Railroad?

Mr. GLASGOW. Yes, sir.

Mr. BARRON. Do you mean the less than carload, or the general proposition?

Mr. GLASGOW. Well, it is engaged in carload and less than carload transportation?

Mr. BARRON. Yes.

Mr. GLASGOW. Does it carry the class freights?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And has tariffs in effect covering class freights?

Mr. BARRON. Yes, sir; and filed with the Federal Commission.

30 Mr. GLASGOW. With the Interstate Commerce Commission?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And joint tariffs covering the class freight with what roads?

Mr. BARRON. With the St. Louis, Iron Mountain and Southern.

Mr. GLASGOW. When the tariffs were filed cancelling the rates on lumber and lumber products by the Iron Mountain road, were the class freights cancelled out also?

Mr. BARRON. No.

Mr. GLASGOW. And now today the through routes and joint rates are in effect with the Iron Mountain for class freight on your road?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Does any freight move under those tariffs?

Mr. BARRON. A great deal.

Mr. GLASGOW. Have you any arrangement for carrying the mails on this road?

Mr. BARRON. Yes, sir; we are under contract with the Post Office Department to carry the mail.

Mr. GLASGOW. From what point?

Mr. BARRON. From Lowell Junction to Melville. The name of Melville post office is Quelin. The place has two names; the post office is the name of Quelin and the railroad name of Melville.

Mr. GLASGOW. Have you filed joint tariffs with other roads, the Iron Mountain and the 'Frisco roads, with the Interstate Commerce Commission, or concurrences in their through tariffs?

Mr. BARRON. We have filed concurrences with the Interstate

21 Commerce Commission concurring in tariffs issued by the Missouri Pacific and by the 'Frisco Railroad.

Commissioner HARLAN. Where are your lumbering operations going on now?

Mr. BARRON. They are going on on that land of the Great Western Land Company.

Commissioner HARLAN. I assume so, but what part of this land? Take, for instance, the region south of Melville; what are you doing down there?

Mr. BARRON. They are lumbering down there.

Commissioner HARLAN. In what section?

Mr. BARRON. Well, where that yellow line is, you will see on the other map, Judge——

Commissioner HARLAN. Melville, apparently, seems to be in section 31.

Mr. BARRON. 31 and 36, and the lumbering operations are being carried on in the vicinity of these yellow lines here and here and down there (indicating).

Commissioner HARLAN. If you will just answer the question; Melville, you say, is in 31 and 36?

Mr. BARRON. Melville is situated in section 31, township 23 north, range 7 east and——

Commissioner HARLAN. We will just leave out the township and range and shorten it up.

Mr. BARRON. Well, in sections 31 and 36.

Commissioner HARLAN. Is it towards the north of 31 or the south of 31?

Mr. BARRON. It is in the south half of 31 and 36.

Commissioner HARLAN. Well, south of Melville, then, according to this map, the road is owned by the Brooklyn Cooperage Company?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And it is around that road that you are now doing lumbering south of Melville?

32 Mr. BARRON. Yes, sir.

Commissioner HARLAN. That is, the Brooklyn Cooperage Company is doing the lumbering?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And the Butler County Railroad is doing the hauling?

Mr. BARRON. No, sir.

Mr. GLASGOW. I am coming to it——

Commissioner HARLAN. Well, we have come to it now, and I want to know now. Who does the hauling from the forest to Melville?

Mr. BARRON. From that forest, the Brooklyn Cooperage Company.

Commissioner HARLAN. With what equipment?

Mr. BARRON. Its own.

Commissioner HARLAN. How many logging cars has it?

Mr. BARRON. Now, I beg pardon—I said its own equipment—I had the locomotives in my mind.

Commissioner HARLAN. Very well.

Mr. BARRON. The cars belong to the Butler County Railroad.

Commissioner HARLAN. But the locomotives belong to the cooperage company?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. What is the mileage of the constructed track south of Melville?

Mr. BARRON. It is about two and one-half miles.

Commissioner HARLAN. Does it run right into the forest belonging to the Great Western Land Association?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Is there any ownership there?

Mr. BARRON. Yes, there is——

33 Commissioner HARLAN. According to this yellow map, the ownership is very insubstantial, as indicated by the white part of the map.

Mr. BARRON. Well, it is small, compared with the amount of land owned by the Great Western Land Company, but there is a good deal of territory shown on that map, and a good deal of land and timber is owned by other parties.

Mr. GLASGOW. Each of those blocks represents a square mile, does it?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Well, this map with the yellow color on it indicates substantially the ownership as it exists to-day?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. The yellow showing the Great Western Company's ownership and the white the outside ownership?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Now, I observe that south of the station called Hicoria there is a logging road running due east?

Mr. BARRON. Yes.

Commissioner HARLAN. Are you doing any lumbering there?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And that forest also belongs to the Great Western Land Association?

Mr. BARRON. And others.

Commissioner HARLAN. It is indicated on this colored map?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And the logging road belongs to the cooperage company?

Mr. BARRON. Yes, sir.

34 Commissioner HARLAN. Does it use any locomotives that it owns?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. The locomotives it owns there are confined to the logging road?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And is that true of the locomotives used south of Melville?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. They do not go onto the tracks of the Butler County Railroad?

Mr. BARRON. Yes, sir; they do.

Commissioner HARLAN. What do they do on those tracks?

Mr. BARRON. They will run over them.

Commissioner HARLAN. To what point—do you mean regularly?

Mr. BARRON. No; they will run over them and get some timber and deposit it at some switch where the Butler County Railroad will handle it.

Commissioner HARLAN. Just at an interchange point?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And not beyond that?

Mr. BARRON. No.

Commissioner HARLAN. Now, north of Menorkenut and also to the east, there is some of this track belonging to the cooperage company?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. And you are doing lumbering in there?

Mr. BARRON. The Brooklyn Cooperage Company and others are doing lumbering in there.

35 Commissioner HARLAN. Well, the Brooklyn Cooperage Company is lumbering the Great Western Land Company's lands?

Mr. BARRON. It and others.

Commissioner HARLAN. What other land——

Mr. BARRON. No; it and other parties are lumbering the Great Western Company's land.

Commissioner HARLAN. But the Brooklyn Cooperage Company is lumbering no lands except those belonging to the association?

Mr. BARRON. Yes, sir; it is.

Commissioner HARLAN. Just tell us about that.

Mr. BARRON. If it buys a tract of timber on another man's land, it lumbers that, and the Great Western Land Company is doing business with other parties who lumber on the Great Western Land Company's land as well as the Brooklyn Cooperage Company. The Brooklyn Cooperage Company take off only one class of timber and other parties remove the remainder and ship it out over that road.

Commissioner HARLAN. At what other part of the Great Western Land Company's holding is the cooperage company lumbering at this time?

Mr. BARRON. I beg pardon?

Commissioner HARLAN. Well, I see that the land association owns some lands up along the Iron Mountain right of way.

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Is the Brooklyn Cooperage Company doing any lumbering there?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. How extensive is the lumbering at that point?

Mr. BARRON. Not very extensive, because that section is pretty well cut over, and very little left.

Commissioner HARLAN. You may proceed.

36 Mr. GLASGOW. I was asking you a moment ago whether the Butler County Railroad Company filed concurrences in the joint tariffs published by the 'Frisco and the Iron Mountain roads, with the Interstate Commerce Commission?

Mr. BARRON. Yes, sir; it did.

Mr. GLASGOW. Will you give us, if you have there, a reference to the index filed with the Interstate Commerce Commission of those tariffs?

Mr. BARRON. Well, Mr. Glasgow——

Commissioner HARLAN. You can file that later.

Mr. BARRON. Mr. Glasgow has it, I believe.

Mr. GLASGOW. I do not believe so.

Commissioner HARLAN. Well, it is filed in our Bureau of Tariffs?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. The last that is filed is I. C. C. No. 5, Butler County Railroad Company, indexes to tariff No. 5?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And that shows the list of tariffs which your company has concurred in, and the company filing the tariff with the Interstate Commerce Commission?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Have you also filed with the Interstate Commerce Commission the tariff of the Butler County Railroad?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And that is filed as I. C. C. No. 1, Butler County Railroad freight tariff of local rates No. 3?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. On classes and commodities?

Mr. BARRON. Yes, sir.

37 Mr. GLASGOW. Has your company complied with the Federal statute as to safety appliances?

Mr. BARRON. Yes, sir; clear down to the ash-pan law.

Mr. GLASGOW. The Butler County Railroad has?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Can you give us approximately what was the cost to your company to comply with that statute of Congress?

Mr. BARRON. Well, I should say about $6,500.

Mr. GLASGOW. Has your company made the reports to the Interstate Commerce Commision monthly and yearly required by the act to regulate commerce?

Mr. BARRON. Yes, sir; also required by the orders of the commission.

Mr. GLASGOW. Does your company keep its books in accordance with the regulations and orders of the Interstate Commerce Commission?

Mr. BARRON. It does.

Mr. GLASGOW. Will you tell us how many locomotives the Butler County Railroad has?

Mr. BARRON. It has two.

Mr. GLASGOW. How many cars?

Mr. BARRON. Well, it has 110 or 112 or 113, I forget which; not less than 110, however.

Mr. GLASGOW. It has a passenger coach?

Mr. BARRON. Yes, sir; and we just bought another one, making two.

Mr. GLASGOW. Cabooses?

Mr. BARRON. About three.

Mr. GLASGOW. Has it any box cars?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Coal cars?

Mr. BARRON. It has six gondolas.

38 Mr. GLASGOW. Does this photograph show a train on the Butler County Railroad made up of the various characters of equipment owned by that road? [Handing photograph.]

Mr. BARRON. Yes, sir.

Mr. GLASGOW. I offer that in evidence.

(The photograph so offered and identified was received in evidence and marked Butler County Railroad Exhibit No. 2, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. GLASGOW. Does your company, in pursuance of the act of Congress, observe the hours of service provided by the congressional act?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Can you tell us about what population is adjacent to and along the line of road operated by the Butler County Railroad and served by it?

Mr. BARRON. There is a population of not less than 3,500 or 4,000 people—there is more than that; I will say 5,000 people.

Mr. GLASGOW. Farmers?

Mr. BARRON. Farmers and merchants——

Mr. GLASGOW. A general population, I suppose?

Mr. BARRON. General population. Hunters——

Mr. COWAN. Politicians?

Mr. BARRON. Oh, yes; I might say they predominate.

Examiner BURCHMORE. A great number of timber cutters and lumbermen?

Mr. BARRON. Yes, sir; a great number of men working in the timber; tie makers, piling makers; all of those, however, or with very few exceptions, have farms and they devote their time——

Commissioner HARLAN. Never mind going into those details. We understand there is a general population there.

39 Mr. GLASGOW. When the Butler County Railroad receives shipments of lumber to go over its road, or cooperage stuff, whichever it may be or whatever it may be, where is it received by the Butler County Railroad?

Mr. BARRON. Wherever it is tendered to it.

Mr. GLASGOW. At what points on its line, I mean?

Mr. BARRON. Well——

Mr. GLASGOW. At the junction points with these logging roads?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. That is what I mean.

Mr. BARRON. And other places, too; it receives lumber tendered to it for shipment by a private mill at Melville, and it receives lumber tendered to it for shipment by the public at Bailey's and at Batesville.

Mr. GLASGOW. But I mean, does the Butler County Railroad perform any of the service off its own line of bringing the traffic to its line?

Mr. BARRON. No.

Mr. GLASGOW. That is performed, in the case of the cooperage company by the engines of the cooperage company?

Mr. BARRON. Yes.

Mr. GLASGOW. Will you tell me along that line what industries are there at Poplar Bluff or Linstead?

Mr. BARRON. What industries are there at Poplar Bluff?

Mr. GLASGOW. Or Linstead?

Mr. BARRON. At Poplar Bluff is the mill of the Brooklyn Cooperage Company, engaged in the manufacturing of staves and headings. At Poplar Bluff is the mill of the Quercus Lumber Company, engaged in the manufacture of oak lumber. At Poplar Bluff is the mill of the Oil Well Supply Company, engaged in the manufacture of sucker rods for deep wells and hickory lumber. At Poplar Bluff is the mill of the Putnam Manufacturing Company, engaged in making handles.

Mr. GLASGOW. Has the Brooklyn Cooperage Company any interest whatever in the mill of the Quercus Lumber Company or the Oil Well Supply Company or the Putnam Hickory Mill?

Mr. BARRON. None whatever.

Mr. GLASGOW. The Quercus Lumber Company, however, does buy some of the lumber or timber that they use, from the Great Western Land Company?

Mr. BARRON. It buys oak logs from the Great Western Land Company.

Commissioner HARLAN. Does it buy them delivered?

Mr. BARRON. No, sir; the logs are scaled by two men, one employed by the Quercus Lumber Company and the other by the Great Western Land Company. They are loaded on the ground of the Great Western Land Company, and on the track of the Brooklyn Cooperage Company. Now, the Great Western Land Company pays the freight. Now, where that point of delivery is, is perhaps a nice legal question, and I would not undertake to say, but the title passes on the ground on these private tracks of the Brooklyn Cooperage Company.

Commissioner HARLAN. You mentioned two other companies. Do they get their wood from the Butler County Railway?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Altogether?

Mr. BARRON. No, sir; not altogether.

Commissioner HARLAN. Largely?

Mr. BARRON. Very largely.

41 Commissioner HARLAN. And is that wood sold to them by the Great Western Land Company in practically the same way?

Mr. BARRON. Most of it.

Commissioner HARLAN. And delivered in the same way; the title passes on the logging road of the Brooklyn Cooperage Company?

Mr. BARRON. No, some of the other customers of the Great Western Land Company cut the timber themselves and haul it.

Commissioner HARLAN. And they pay the freight?

Mr. BARRON. And they pay the freight; yes, sir.

Mr. GLASGOW. Is there any other connection between the Quercus Lumber Company, the Putnam Hickory Mill, and the Oil Well Supply Company, other than you have stated?

Mr. BARRON. By connection you mean railroad connection or proprietary interest?

Mr. GLASGOW. I mean proprietary interest, affiliation, ownership or other than that you have detailed, as to getting lumber from the lands of the Great Western Land Company?

Mr. BARRON. None whatever.

Mr. GLASGOW. Coming down to Bailey's, can you tell us what, if any, industries are located there?

Commissioner HARLAN. Proceed as rapidly as you can.

Mr. GLASGOW. Is there a cotton gin there?

Mr. BARRON. There is a cotton gin there and a saw mill in that immediate vicinity.

Mr. GLASGOW. Drummond's saw mill?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And a cattle pen?

Mr. BARRON. Yes, sir.

42 Mr. GLASGOW. Do the Great Western Land Company or the Brooklyn Cooperage Company have any interest in the cotton gin or Drummond's mill?

Mr. BARRON. No.

Mr. GLASGOW. It is separate and independent?

Mr. BARRON. Nor in the cattle pen, which is separate and independent.

Mr. GLASGOW. Take it down at Melville?

Mr. BARRON. Well, there is a saw mill at Batesville.

Commissioner HARLAN. Is there a logging road joining your line at Bailey's?

Mr. BARRON. No.

Commissioner HARLAN. How far is this mill away?

Mr. BARRON. Something less than a mile.

Commissioner HARLAN. How do they get the lumber over there?

Mr. BARRON. By team.

Commissioner HARLAN. Does that mill own forests?

Mr. BARRON. It owns timber.

Commissioner HARLAN. It is lumbering its own timber?

Mr. BARRON. Yes.

Commissioner HARLAN. And not the timber of the Great Western Company?

Mr. BARRON. No.

Mr. GLASGOW. And it hauls it up to Bailey's to your road?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Just as the Brooklyn Cooperage Company does up to the points of connection with the logging road?

Mr. BARRON. Yes, sir; and then the farmers in that neighborhood are making ties and handle bolts and such things.

43 Commissioner HARLAN. They haul them to your road?

Mr. BARRON. Yes.

Commissioner HARLAN. Do you give them any allowance?

Mr. BARRON. No.

Commissioner HARLAN. They bear the expense of their haul?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Do you give the Brooklyn Cooperage Company any allowance for hauling it up to the line of your road?

Mr. BARRON. Yes.

Commissioner HARLAN. There was another mill you said, at Batesville?

Mr. BARRON. At Batesville.

Commissioner HARLAN. Just north of Bailey's?

Mr. BARRON. No.

Commissioner HARLAN. What timber is that mill getting?

Mr. BARRON. They are getting private timber.

Commissioner HARLAN. Not of the Great Western Land Company?

Mr. BARRON. No.

Commissioner HARLAN. How far from your track is that situated?

Mr. BARRON. That is on our track.

Commissioner HARLAN. How do they get their logs to the mill?

Mr. BARRON. By teams.

Commissioner HARLAN. What distance?

Mr. BARRON. Well, they haul within two miles.

Commissioner HARLAN. You do not pay them anything, do not give them any allowance?

Mr. BARRON. No, sir.

44 Mr. GLASGOW. You do not give anybody allowances for bringing traffic up to your line?

Mr. BARRON. No, sir.

Mr. GLASGOW. Now, at Melville there is a cattle pen there for receiving cattle also?

Mr. BARRON. Yes.

Mr. GLASGOW. There is Baumhoefer's mill?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And Talley's mill?

Mr. BARRON. Talley's mill. Mr. Talley tendered to the railroad in November, 18 cars of lumber, and we shipped it from Melville for him.

Commissioner HARLAN. Has he a logging road?

Mr. BARRON. No.

Commissioner HARLAN. How many miles south of Melville is that mill?

Mr. BARRON. Three.

Commissioner HARLAN. How does he get there with his manufactured lumber?

Mr. BARRON. Hauls it by team.

Commissioner HARLAN. Three miles?

Mr. BARRON. Yes.

Commissioner HARLAN. Who bears the expense of that?

Mr. BARRON. He does.

Commissioner HARLAN. You do not give him any allowance?

Mr. BARRON. No, sir.

Examiner BURCHMORE. It would be more convenient for him if he could haul his lumber over to the Brooklyn Cooperage Company's private line and there ship it, would it not? He is very near to their line.

Mr. BARRON. It is a mile and a half away.

Commissioner HARLAN. And he hauls it three miles to Melville?

45 Mr. BARRON. Yes, sir; he has a better road.

Mr. GLASGOW. Has there been any application made to the Brooklyn Cooperage Company, so far as you know, to allow them to use that line if they wanted to?

Mr. BARRON. No.

Commissioner HARLAN. Has there ever been any talk about it?

Mr. BARRON. That is a new line; it has been built this year.

Commissioner HARLAN. I know, but there has been a whole year in which he could take up that question with them.

Mr. BARRON. Well, he has not done so.

Commissioner HARLAN. Does he know it is there?

Mr. BARRON. Yes, sir; he knows it is there.

Mr. GLASGOW. You say he has a better road to Melville than from his place to the tracks owned by the Brooklyn Cooperage Company?

Mr. BARRON. Yes, sir. That railroad is not quite complete down at the lower end, because it is in such a swampy, wet country that we have not been able to finish it, and that is probably the reason he has not applied for the use of that track.

Commissioner HARLAN. You say farmers have bought up some of these lands?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. They cut down trees occasionally, do they not?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. What do they do with them?

Mr. BARRON. They sell them.

Commissioner HARLAN. Sell them to the mills?

46 Mr. BARRON. They will sell them to whoever will buy them. They will sell, depending what it is——

Commissioner HARLAN. Do they sell the standing tree?

Mr. BARRON. No; they sell the product of the tree.

Commissioner HARLAN. Does it not happen occasionally that they carry those logs to the mill and have them lumbered and then use the lumber?

Mr. BARRON. Yes, sir; very frequently.

Commissioner HARLAN. And sell it?

Mr. BARRON. No; they use the lumber.

Commissioner HARLAN. Don't they occasionally sell it?

Mr. BARRON. No; I don't think so. When they carry the log to the saw mill and have it sawn, it is usually for their own purposes—to build houses and barns with.

Commissioner HARLAN. You do not have shipments over your road of small lots of lumber for anybody?

Mr. BARRON. Yes, sir; we do; a great many.

Commissioner HARLAN. Tell us about those. For whom?

Mr. BARRON. Well, from Poplar Bluff we have a great many small shipments of finished lumber to stations down the railroad——

Commissioner HARLAN. I am talking about the lumber the other way.

Mr. BARRON. No, sir; there is no movement of lumber the other way in small lots; it is all in carloads.

Commissioner HARLAN. Well, do you have shippers that give you one or two carloads in a year?

Mr. BARRON. Yes, sir.

47 Commissioner HARLAN. And are there many such shippers?

Mr. BARRON. You speak of lumber?

Commissioner HARLAN. Yes.

Mr. BARRON. Yes; there are two or three.

Commissioner HARLAN. Do they have mills?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Are there any pony mills down in that country?

Mr. BARRON. Yes.

Commissioner HARLAN. Where are they?

Mr. BARRON. Well, there are two on what we call the Hicoria spur.

Commissioner HARLAN. Is that the spur of the cooperage company?

Mr. BARRON. No, sir; the cooperage company owns it, but the Butler Railroad Company runs it——

Commissioner HARLAN. You mean the spur up from Hicoria to Menorkenut?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. What is a pony mill?

Mr. BARRON. Well, I presume by pony mill is meant a portable mill.

Mr. GLASGOW. I understood you to say that the Baumhoefer mill, Talley's mill, the P. & S. lumber mill, were at Melville or in the vicinity of it?

Mr. BARRON. No; the P. & S. Lumber Company has a couple of mills on the Hicoria spur.

Mr. GLASGOW. Does it not also have one at Melville?

Mr. BARRON. No.

Mr. GLASGOW. And Melville is the point where the mail is carried for Quelin?

Mr. BARRON. Yes.

48 Mr. GLASGOW. What is the character of the Butler County Railroad, as to its physical character, equipment, rails, and so forth?

Mr. BARRON. The road which was first built was 56 pounds; all that has been built in the last five years is 60 pounds steel.

Mr. GLASGOW. How does it compare with the road of the trunk line carriers that you join?

Mr. BARRON. Well, I would not like to say that. I think we have got a pretty good road; we carry 100,000 pounds capacity cars over it every day, loaded to capacity.

Mr. GLASGOW. Mr. Barron, does the Butler County Railroad on these through rates which have been in effect on lumber and on the class rates—do you issue through bills of lading?

Mr. BARRON. Yes, sir. I have got last month's bills of lading right here.

Mr. GLASGOW. Are they on the form that has been approved by the commission?

Mr. BARRON. Yes, sir; it is on the universal form.

Mr. GLASGOW. There is no use to file them, I suppose?

Commissioner HARLAN. No. Have you prepared any exhibit showing the tonnage of your road?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. I am coming right to that. Have you a statement prepared of the earnings of your passenger business?

Mr. BARRON. Yes.

Mr. GLASGOW. For the year ending June 30, 1910, and for the five months ending November 30, 1910?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. We offer that in evidence.

(The paper so offered and identified was received in evidence
49 and thereupon marked Butler County Railroad Exhibit No. 3, witness Barron, received in evidence December 9, 1910, and is attached hereto.)

Mr. GLASGOW. Tell us approximately how many passengers per day are handled.

Commissioner HARLAN. We will not go into those details. That is all shown on the exhibit, and can be argued later.

Mr. GLASGOW. No, that is not shown on the exhibit.

Commisioner HARLAN. Well, it ought to be.

Mr. GLASGOW. The total is shown.

Commissioner HARLAN. Very well; ask the question.

Mr. BARRON. We carry 75 passengers per day.

Mr. GLASGOW. Have you prepared a statement showing the tonnage and revenue of the Butler County Railroad, from traffic handled for the Brooklyn Cooperage Company and for all other traffic?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And all other traffic, including the lumber which has been mentioned as being sold by the Great Western Land Company, and which the purchasers take from their lands to mills, and so forth?

Mr. BARRON. Yes, sir; to mills, and that is also sold direct in the form of ties and piling to railroads and brokers.

Mr. GLASGOW. I want to file the monthly statement, beginning July 1st, 1909, and ending June 30th, 1910, and for the five months beginning July 1st, 1910, and ending November 30th, 1910.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 50 4 and 5, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Mr. COWAN. I suggest when a statement of that kind is filed that the summary ought to be stated in the record, because these copies will never be furnished to anybody.

Mr. GLASGOW. Can you tell us the number of cars handled by the Butler County Railroad from July 1st, 1909, to June 30th, 1910, all cars handled?

Mr. BARRON. You are speaking of carload freight?

Mr. GLASGOW. Yes.

Mr. BARRON. Yes, sir; I can tell you.

Mr. GLASGOW. You have it on that yellow memorandum you have got?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Does this yellow sheet summarize the larger sheet you have just offered in evidence?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Just give us the summary.

Mr. GLASGOW. The number of cars for the year ending June 30th, 1910.

Mr. BARRON. 10,436.

Mr. GLASGOW. What number of cars out of that were handled for the Brooklyn Cooperage Company?

Mr. BARRON. 6,593.

Mr. GLASGOW. How many for all other carload freight?

Mr. BARRON. 3,843.

Mr. GLASGOW. What was the percentage of freight cars handled by the Butler County Railroad Company for the Brooklyn Cooperage Company?

Mr. BARRON. 63 per cent.

51 Mr. GLASGOW. And 37 per cent for other carload freight?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And the number of tons handled by the company, total, was what?

Mr. BARRON. 188,403.

Mr. GLASGOW. And the number out of that handled for the Brooklyn Cooperage Company?

Mr. BARRON. 108,722 tons.

Mr. GLASGOW. And other carload freight?

Mr. BARRON. 78,441.

Mr. GLASGOW. And the less than carload freight?

Mr. BARRON. 1,240 tons.

Commissioner HARLAN. Of that other carload freight, 78,000 tons, what part contained lumber of the Great Western Land Company?

Mr. GLASGOW. You mean from——

Mr. BARRON. None. The Great Western Land Company has no lumbering.

Commissioner HARLAN. Well, the Great Western Land Company, you said, sold lumber?

Mr. BARRON. No, sir.

Mr. GLASGOW. Timber.

Commissioner HARLAN. I was not using the word "lumber" in the correct sense. How much timber, then, was moved in that 78,000 tons that had been sold by the land company to mills other than the cooperage company mills?

Mr. GLASGOW. None of that was sold to the cooperage company. I will answer it, to expedite it. We have not got this analyzed down to the point to show that of that other carload freight how much is timber coming from the lands of the Great Western Land Company. We have not analyzed it to that point.

52 Commissioner HARLAN. Your figures do not show that?

Mr. BARRON. No.

Commissioner HARLAN. You can get that, can you not?

Mr. BARRON. Yes, sir; I can get it.

Commissioner HARLAN. I wish you would do so, and file it as an exhibit. You have testified about certain mills that either cut the timber themselves or buy it delivered on the tramways of the Brooklyn Cooperage Company?

Mr. BARRON. Yes, sir.

Commisioner HARLAN. We want an examination and a statement of the amount of that timber that goes over the Butler County Railroad.

Mr. GLASGOW. Would you not want that analyzed a little further, to show what proportion of it goes to each of the purchasers?

Commissioner HARLAN. Well, he can analyze it as he chooses, if he shows that result.

Mr. BARRON. That is on timber that goes to these outside mills?

Commissioner HARLAN. Yes.

Mr. GLASGOW. He wants to know how much of that 78,000 tons comes from timber which was cut on the land of the Great Western Land Company.

Mr. BARRON. And went to these mills?

Mr. GLASGOW. Yes.

Mr. BARRON. All right.

Commissioner HARLAN. Or went elsewhere, all of it that moved over your road.

Mr. BARRON. Well, now, Judge, half of that material that comes off of the Great Western Land Company's land goes to mills, and the other half goes direct in some form that does not require
53 manufacturing; for instance, piling; there is a very large volume of that that goes out.

Commissioner HARLAN. Very well; show that. Show all the timber that comes off the Great Western Company's lands and is moved by your line, and for whom it is moved.

Mr. BARRON. All right.

Commissioner HARLAN. And if you can now, tell us about what proportion of that 78,000 tons constitutes timber of that kind. We would like to know it.

Mr. BARRON. I can not.

Commissioner HARLAN. Very well.

Mr. GLASGOW. What is the percentage of carload freight handled by the Butler County Railroad Company for the Brooklyn Cooperage Company—the percentage of the total?

Mr. BARRON. In tons?

Mr. GLASGOW. No; the percentage of the whole number of tons handled for the Brooklyn Cooperage Company.

Mr. BARRON. Fifty-seven per cent.

Mr. GLASGOW. And 42 per cent is other carload freight?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And 1 per cent is less than carload?

Mr. BARRON. Yes.

Mr. GLASGOW. Now, the revenue earned, what proportion of that comes from the carload freight handled for the Brooklyn Cooperage Company?

Mr. BARRON. Thirty-nine per cent of the revenue derived——

Mr. GLASGOW. Let us get the dollars first.

Mr. BARRON. $28,092.

54 Mr. GLASGOW. What comes from other carload freight?

Mr. BARRON. $41,133.

Mr. GLASGOW. And less than carload freight?

Mr. BARRON. $4,427.

Mr. GLASGOW. And the percentage of the revenue which is derived from the carload traffic of the Brooklyn Cooperage Company is what per cent?

Mr. BARRON. Thirty-nine per cent of the whole.

Mr. GLASGOW. And the other carload freight?

Mr. BARRON. Fifty-five per cent.

Mr. GLASGOW. And less than carload freight?

Mr BARRON. Six per cent.

Commissioner HARLAN. I would like you to extend those figures so as to cover the timber we have just been talking about.

Mr. BARRON. Well, it will only change one line.

Mr. GLASGOW. I think practically what you want is a statement of all the shippers and what tonnage is handled for them?

Commissioner HARLAN. Well, the witness understands. I want the information and percentages of this outside tonnage we have just been talking about.

Mr. BARRON. Yes, I understand.

Mr. GLASGOW. Now, then, for the five months of the year 1910, beginning July 1st, I will read this without asking the question. The number of cars handled——

Commissioner HARLAN. I think if you will just file it, that will be sufficient.

Mr. GLASGOW. Mr. Cowan asked to put it in the record.

Commissioner HARLAN. We need all the time we have got. Now, Mr. Glasgow, if you will oblige the commission by filing it——

55 Mr. GLASGOW. I am going to do it, but I was told that counsel wanted the figures.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 6 and 7, Witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Mr. GLASGOW. You know the tariffs which you have had in effect with the Iron Mountain and the St. Louis and San Francisco road. Can you give us a statement showing the divisions of the through rates to points, St. Louis, New York, New Orleans, Cairo, Thebes, Memphis, and East St. Louis; first in connection with the Iron Mountain, and second, in connection with the St. Louis & San Francisco?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Have you that statement?

Mr. BARRON. Yes, sir.

(The papers so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 8 and 9, Witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Commissioner HARLAN. Was there a larger percentage of traffic for the controlling mill for the year ending June 30th, 1909, than there was for the year ending June 30th, 1910?

Mr. BARRON. I think not. The controlling mill's output has been quite uniform, but the other business has been growing quite rapidly.

Commissioner HARLAN. Then the percentage last year would be larger, would it not, if the percentage of the other has grown rapidly this year?

Mr. BARRON. Yes, sir; the percentage of the outside business was larger this year than before.

56 Commissioner HARLAN. What was the percentage of the inside business last year; the controlling mill's traffic?

Mr. BARRON. You have it there.

Commissioner HARLAN. I mean for the year ending June 30th, 1909.

Mr. BARRON. I have not got the figures, but it would be larger, of course, than——

Commissioner HARLAN. Have you any idea what the percentage was for that year?

Mr. BARRON. It would not be a great deal greater; the outside business is growing. At the beginning, the outside business——

Commissioner HARLAN. If you do not know, we will not stop.

Mr. BARRON. I do not know; no; but it is not a great deal different.

Mr. GLASGOW. Will you please tell us in connection with the two statements you have just filed, showing the divisions which the Butler County Railroad gets, what is the service rendered by the Butler County Railroad for the division of rates which it gets?

Mr. BARRON. The service performed by the Butler County Railroad Company is the transportation of the timber from the point where it is tendered to the Butler County Railroad to destination. Some of it is milled in transit. Now, the compensation—of course I say it is transported to destination for the through rate, of which we get that division. Now, the compensation that is received is on the cheaper grades of lumber, one cent per 100 pounds on the logs, and on the more valuable kinds of timber, one and one-half cents per 100 pounds on the logs, for the milling in transit service, for handling it, and then the division on the manufactured product, if it is milled.

57 Mr. GLASGOW. To illustrate it briefly, take a log you receive at Menorkenut, on your line, that is going through, a through shipment of the lower grades. As I understand, you carry that log down on your line to the mill at Linstead?

Mr. BARRON. Down to the Brooklyn Cooperage Company's mill, say, at Linstead; yes, sir.

Mr. GLASGOW. There it is milled in transit?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Then you handle that from the mill tracks over to the long-line road, and deliver it?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And for that you get the proportion shown in the statement filed? As shown in the tariff?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And in addition to that, you get one cent per 100 pounds for your own tariff on the log?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And if it is the higher grade of log, one and one-half cents per 100 pounds?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. What is the total earnings of your road, then, on the shipment?

Mr. BARRON. On the shipment?

Commissioner HARLAN. Yes.

Mr. BARRON. Well, it takes about five cars of logs to make one of lumber or manufactured material. Now, we get an average of $4.00 a car on the logs; that is $20.00, and three cents per 100 pounds under the junction rate, say, 60,000 pounds, is $18.00. Now, we get $38.00 for handling, say, five and a half cars.

Commissioner HARLAN. To the mill, and how many cars from the mill?

58 Mr. BARRON. No; four and one-half cars to the mill and one from the mill.

Commissioner HARLAN. And what is the distance from the mill to the junction with the Rock Island?

Mr. BARRON. Half to three-quarters of a mile.

Examiner BURCHMORE. That is the distance from the outside of your plant to the line of the Iron Mountain, or does that include the haul inside the plant?

Mr. BARRON. Well, it will average a little over half a mile. You take the mill of the Quercus Lumber Company, that stands about half a mile away from the junction point of the Iron Mountain and 'Frisco. The Brooklyn Cooperage Company's mill is about the same, and the handle mill about the same.

Commissioner HARLAN. Who hauls it from the mill to the regular line?

Mr. BARRON. The Butler County Railroad.

Mr. GLASGOW. Are there any other mills in competition with the Brooklyn Cooperage Company's mill in the sale of the manufactured products?

Mr. BARRON. No, sir; the products of the Brooklyn Cooperage Company's mill is consumed by the proprietor of the mill, by the real owner, the beneficial owner of the property. It is not sold.

Mr. GLASGOW. Is there anybody in that vicinity making the same character of stuff?

Mr. BARRON. Yes, sir; but in a very small way, a very insignificant way.

Mr. GLASGOW. And the product of the Brooklyn Cooperage Company's mill does not come into competition with that product?

Mr. BARRON. No, sir. Whenever there is any transaction of that character at all it is the purchase by the Brooklyn Cooperage Company of the product of the outside mill, and not a sale except——

59 Mr. GLASGOW. I think that is all. I will ask to have these maps marked as exhibits.

(The maps so offered and identified were received in evidence and thereupon marked Butler County Railroad Exhibits Nos. 10 and 11, witness Barron, received in evidence December 9, 1910, and are attached hereto.)

Examiner BURCHMORE. You testified that the Butler County Railroad was incorporated in 1905?

Mr. BARRON. Yes.

Examiner BURCHMORE. Did you give the date on which it was built, or the first building?

Mr. BARRON. I did not.

Examiner BURCHMORE. What was the first construction?

Mr. BARRON. 1899.

Examiner BURCHMORE. Prior to the incorporation in 1905 did or did not the Butler County Railroad, I mean the line that was then in existence, receive allowances from the Missouri Pacific System?

Mr. BARRON. It did not.

Examiner BURCHMORE. It received none?

Mr. BARRON. No.

Examiner BURCHMORE. Has the Butler County Railroad any contract in effect now with the Iron Mountain System covering through rates or allowances?

Mr. BARRON. Well, I guess not; nothing more than is shown in the tariffs.

Examiner BURCHMORE. Any contract, not a tariff, but a contract.

Mr. BARRON. Well, then, if a tariff is not a contract, it has no contract; no, sir.

Examiner BURCHMORE. Has it in the past had any such contract for divisions?

60 Mr. BARRON. No, sir.

Examiner BURCHMORE. Does the Brooklyn Cooperage Company now have, or has it in the past had such a contract with the Iron Mountain System?

Mr. BARRON. No.

Examiner BURCHMORE. Would you know if there had been such a contract in existence in the past?

Mr. BARRON. I would.

Mr. GLASGOW. Have you any information that there is? Because I will look it up if you have.

Commissioner HARLAN. What are you the president of?

Mr. BARRON. Nothing.

Commissioner HARLAN. What is your relation to the railroad company?

Mr. BARRON. I am vice president.

Commissioner HARLAN. As such, are you authorized to sign contracts?

Mr. BARRON. For the railroad company; yes, sir.

Commissioner HARLAN. For the railroad company?

Mr. BARRON. Yes.

Commissioner HARLAN. Is any one else authorized to sign contracts?

Mr. BARRON. Well, I don't remember what the by-laws provide, but I have done all of the business; there has nobody else done anything except me; I have done it all.

Commissioner HARLAN. I want to put to you the question: Is there any contract between the Iron Mountain or the Missouri Pacific or any other line governing the amount of divisions that are received by the Butler County Railroad, whether that contract is with
61 your railroad, or with the American Sugar Refining Company or the Land Association, or the Brooklyn Cooperage Company?

Mr. BARRON. I do not know what you mean by a contract. They have got a division sheet, issued, but that is all I know anything about.

Commissioner HARLAN. I am talking about a formal contract.

Mr. BARRON. No, sir; there is none and never was.

Examiner BURCHMORE. One of your companies has a contract with the Iron Mountain under which these trackage rights are exercised.

Mr. BARRON. That is a verbal contract which runs from month to month. They perform the service and send us a bill for so much money, and we pay it.

Examiner BURCHMORE. There was a written contract some time ago?

Mr. BARRON. Yes; there was a written contract covering those trackage rights, but that was made by an individual with the Iron Mountain Railroad, and it is so long ago it has been forgotten.

Examiner BURCHMORE. Who was that individual?

Mr. BARRON. That individual was a man named Lowell M. Palmer.

Examiner BURCHMORE. Who was Lowell M. Palmer?

Mr. BARRON. But that did not cover any question of divisions; it just provided for the running of the trains, and fixed the amount of the trackage and the amount per train mile.

Examiner BURCHMORE. Why was that contract discontinued; why did you abandon that method and resort to a verbal contract, if you know?

Mr. GLASGOW. When was the date of this contract?

62 Mr. BARRON. That contract was made in 1899, when the business was started out there. At that time the land was owned by Lowell M. Palmer.

Commissioner HARLAN. Have you a copy of that contract?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Will you supply a copy to the commission?

Mr. BARRON. Certainly; but that was before these companies ever acquired any of this land——

Mr. GLASGOW. May I ask—because I never heard of this before—what is the purpose of going back to 1899 on this?

Commissioner HARLAN. For the purposes of this inquiry.

Mr. GLASGOW. That does not give me any information.

Commissioner HARLAN. We want to get all of the information that is available.

Mr. GLASGOW. I thought if I knew your Honor's purpose, I might be able to assist in getting it out.

Mr. JEFFERY. I will state at this time I know there is no contract for divisions between the Butler County Railroad and either the Missouri Pacific or the Iron Mountain. You will recollect that we withdrew from our written contracts which we had with any tap line, and there was only one. This is the first I ever heard of this one, and it must be with an individual.

Commissioner HARLAN. The witness has said that it was.

Mr. JEFFERY. But there is none with the Butler County Railroad. In fact, there is none in effect with any now.

63 Examiner BURCHMORE. You testified that the amount of compensation paid to the Iron Mountain for trackage rights was so much per train; I think you mentioned 85 cents per train of 25 cars.

Mr. BARRON. No; I said it was 65, 75, and 85.

Examiner BURCHMORE. Does your road run a train composed of as many as 35 cars?

Mr. BARRON. Yes, sir.

Examiner BURCHMORE. I ask the question because your time table shows three trains each way each day. You testified your total traffic last year amounted to something in excess of 10,000 cars, which would be, in rough numbers, 35 a day. Those 35 were apparently handled in six trains.

Mr. GLASGOW. I suggest that Mr. Barron has not testified that he hauled an average of 35 cars a day over the road. I suppose it is like any other road——

Examiner BURCHMORE. The only question I desire to ask is: What is the average payment per train which you make for these trackage rights, in a general way?

Mr. BARRON. Well, it is 75 cents per mile.

Examiner BURCHMORE. That is your average actual payment?

Mr. BARRON. Yes, sir. Now, you say we operate three trains a day. That is correct, but two of those trains do not handle any freight business to speak of. All of the freight business is handled by one train, and the train will carry on an average, I would say, 42 cars. It is a level track and a good engine, and we put all that business into one train and get over the ground faster with the other two, the other two being devoted, I might say, exclusively to passenger business.

Examiner BURCHMORE. You testified that lines of railroad marked in red on this first map were owned by the Butler County Railroad Company.

64 Mr. BARRON. Yes, sir.

Examiner BURCHMORE. Is that an actual ownership in fee of the land, or a long term lease of the land, or some other kind of lease of the land from the Brooklyn Cooperage Company?

Mr. BARRON. It is an actual ownership in fee of the land.

Commissioner HARLAN. And the rails?

Mr. BARRON. Yes, sir; and the rails and the ties and spikes.

Examiner BURCHMORE. The town known as Linstead; is it within the municipal limits of Poplar Bluff?

Mr. BARRON. It is not.

Examiner BURCHMORE. Within what distance is it of Poplar Bluff?

Mr. BARRON. Well, the property there constitutes the eastern boundary of part of Poplar Bluff, and there is about 120 acres of land devoted to manufacturing businesses outside of the municipal limits.

Examiner BURCHMORE. You referred in your testimony to three other industries at Linstead or Poplar Bluff, the Oil Well Supply Company, the Quercus Lumber Company, and the Putnam Manufacturing Company. Are the mills or factories of those companies on ground owned by the Brooklyn Cooperage Company; that is, are they lessees of the Cooperage Company?

Mr. BARRON. They are, all of them; and up until a few months there was another mill there, the Garretson & Greacen Lumber Company.

Examiner BURCHMORE. Can you indicate in a general way what that lease arrangement is?

Mr. BARRON. Yes, sir; the Brooklyn Cooperage Company leased five acres of land to the Oil Well Supply Company for a rental of $150 per annum, on which they constructed a mill which they
65 operate, and a similar arrangement was made with the Quercus Lumber Company, and on another piece of ground of 20 acres. Later on another arrangement similar to the other two was made with the Putnam Manufacturing Company for its mill site.

Examiner BURCHMORE. And substantially the same rental consideration—the same general basis?

Mr. BARRON. The same general basis; yes, sir.

Examiner BURCHMORE. Does the line of the Butler County Railroad connect with any other railroad than the Iron Mountain?

Mr. BARRON. Yes, sir.

Examiner BURCHMORE. With the 'Frisco?

Mr. BARRON. Yes, sir.

Examiner BURCHMORE. At what point?

Mr. BARRON. Well, they call that Poplar Bluff.

Examiner BURCHMORE. There is an actual physical connection at Poplar Bluff?

Mr. BARRON. There is an actual physical connection, but it is not in the city of Poplar Bluff, it is outside on this same tract of ground.

Examiner BURCHMORE. Does your company maintain joint through rates in connection with the 'Frisco generally?

Mr. BARRON. Not generally on lumber.

Examiner BURCHMORE. Practically its entire traffic goes out over the Iron Mountain?

Mr. BARRON. No, sir; the 'Frisco gets some. The Iron Mountain has been pretty short of cars lately, and the 'Frisco got the bulk of it.

Examiner BURCHMORE. What rates apply over the 'Frisco—the combination of locals?

Mr. BARRON. No; there are some through rates there. We have never gotten down to the combination of local rates yet, and I hope we never shall.

66 Examiner BURCHMORE. There are joint through class rates in effect over your line in connection with the Iron Mountain to interstate destinations, and those are published and filed with the commission. What is the publication of those rates; that is to say from stations on your line are the class rates to interstate destinations the same as the class rates from the junction points, Lowell, and the same as the class rates from Popular Bluff? Perhaps that is a little long——

Mr. BARRON. It was a little indirect.

Examiner BURCHMORE. The question is this: Are these joint through class rates in effect over your line to interstate destinations the same as the junction class rates, or are they made on the combination of locals?

Mr. BARRON. They are made, some of them are on a combination of locals, and some are not. Some are joint through rates.

Examiner BURCHMORE. But the amount of those joint through rates; are they as low as the joint through rates——

Mr. BARRON. As the combination of locals? They are lower.

Examiner BURCHMORE. Are they as low as the through rates in effect from Popular Bluff?

Mr. BARRON. No; they are higher.

Examiner BURCHMORE. They are substantially equal to the sum of the locals?

Mr. BARRON. No; they are less than the sum of the locals.

Examiner BURCHMORE. You testified that you had class and commodity rates filed with the commission between points on the Butler County Railroad, local rates?

Mr. BARRON. Yes, sir.

67 Commissioner HARLAN. Is your division less or greater than your locals?

Mr. BARRON. Why, Judge, I will tell you. Up to about a month ago it was less, but I went to Mr. Perkins and Mr. Johnson and I complained about that, and they were good enough to increase it so it is a shade more. It formerly was 27 per cent, and it is now 33 per cent. Twenty-seven per cent was a shade too low, and 33 per cent would just carry it.

Commissioner HARLAN. The percentage of the joint through rates?

Mr. BARRON. Yes.

Commissioner HARLAN. Now, you get a division that is larger than the local?

Mr. BARRON. Well, it is our local plumb; the scale goes down like that; but before that, it did not, it went down on the other side; but it is not substantially different from the sums of our locals; that is, on those rates which are based on the sum of the two locals. Now, there are certain rates which are not arrived at in that way, we agree on the division arbitrarily.

Mr. JEFFERY. That is less than carload business, and not lumber?

Mr. BARRON. That is less than carload business and not lumber; yes; general classes and commodities. But now, live stock and cattle which goes in carloads, on which there are through rates; that is not dealt with on the basis of the sum of the two locals, but it is competitive, and we met it, both took less than the sum of our local rate,

Examiner BURCHMORE. On these through class rates are all points on your line blanketed; do they all take the same rate?

Mr. BARRON. No, sir—well, no, sir; they do not.

68 Examiner BURCHMORE. Do all points on your line south of Lowell Junction take the same rate?

Mr. BARRON. No, sir.

Examiner BURCHMORE. Those rates are scaled, graded?

Mr. BARRON. Yes, sir; except cotton and live stock.

Examiner BURCHMORE. Your index of tariffs, issued December 1, 1910, I. C. C. No. 5, under section 3, reads as follows: "Numerical list of Butler County Railroad Company tariffs bearing I. C. C. numbers, none." Does that not indicate that you have no local rates on file with the commission under your own I. C. C. number?

Mr. BARRON. It indicated that at the time that tariff was filed we had no local rates on file with the commission, but we have filed one since.

Examiner BURCHMORE. Since December 1st, 1910?

Mr. BARRON. Yes, sir. I have a copy of it here, I think, or Mr. Glasgow has it.

Examiner BURCHMORE. You referred to the transportation of the United States mails. Do you have a contract with the Government similar to the contracts entered into by the Government with all common carriers?

Mr. BARRON. Well, now, I never had anything to do with any other railroad, and I do not know what kind of a contract the other railroads have, but we have a contract with the Government which I presume is similar to the usual contracts.

Examiner BURCHMORE. The question with me is just this, the Government employs railroads to transport the mail as common carriers between various points; it also employs private individuals, or mail routes, to transport mail in carriages and otherwise——

69 Mr. BARRON. Well, the Government has employed us to transport the mails as a common carrier, and we get the railroad carrier's compensation for the service, which I might mention incidentally is very low.

Commissioner HARLAN. Do you mean your division is low?

Mr. BARRON. No; the total compensation; the through rate is low.

Mr. GLASGOW. The division with the Government is low?

Mr. BARRON. Yes, sir.

Examiner BURCHMORE. Do you carry any express matter?

Mr. BARRON. No. We have three trains a day, and it will go by freight just as fast as it will go by express.

Mr. GLASGOW. You give it all an expedited service?

Mr. BARRON. Yes, sir.

Examiner BURCHMORE. Has your company any track scales for weighing cars?

Mr. BARRON. No.

Examiner BURCHMORE. Has it any small scales for weighing L. C. L. freight?

Mr. BARRON. Yes, sir; it has team scales.

Commissioner HARLAN. Judge Cowan, have you some questions?

Mr. COWAN. I wanted to ask some questions about some of these divisions. In the exhibits which you have filed, Mr. Barron, showing the divisions with the Missouri Pacific and the St. Louis, Iron Mountain and Southern on lumber and cooperage stock handles and cotton, the rate from Poplar Bluff is stated to be 12 cents to St. Louis from all stations on the Butler County Railroad, of which you

70 get a division of five cents. Does that include the station called Linstead, where your factory is?

Mr. BARRON. No, sir; now pardon me, but you said the paper shows the rate from Poplar Bluff. Your question would have expressed what you meant if you had left that Poplar Bluff off, and said from all stations on the Butler County Railroad.

Mr. COWAN. Yes; they are both coupled here in the same category, but I see the rate is ten cents from Poplar Bluff and twelve cents from all stations on your road.

Mr. BARRON. Yes, sir.

Mr. COWAN. Out of that twelve cents you get five cents?

Mr. BARRON. Yes.

Mr. COWAN. Does that apply on traffic—lumber loaded into the cars at Linstead?

Mr. BARRON. Yes, sir; by reason of the milling in transit arrangement.

Mr. COWAN. Do you manufacture lumber, or does that term "lumber" means lumber products, staves, and barrel heads?

Mr. BARRON. Well, the lumber products go out on a commodity cooperage rate, and the lumber proper is manufactured by parties with whom we have no proprietary connection.

Mr. COWAN. You mentioned several factories to whom you had leased some land there.

Mr. BARRON. Yes, sir.

Mr. COWAN. And I assume that was for the purpose of concentrating the business there, and for your railroad to get the traffic loaded on its line and then transferred to the Iron Mountain, so you would get a division of the rate. Is that correct?

71 Mr. BARRON. Well, that matter was not altogether lost sight of; no. That railroad has got to live; it has enjoyed a division ever since it was created, and the result of the operation so far has been a net loss of $8,000; and we had in mind that division; yes, sir, we had.

Mr. COWAN. There was no other compensation which would amount to anything to let them have the land on which to put the factory, except the fact that you would get a division of the rate on the lumber which they manufactured?

Mr. BARRON. Yes, sir; they all paid a fair rental value for the land they got.

Mr. COWAN. I think I heard you mention $150 a year for five acres. I thought that was pretty cheap.

Mr. BARRON. Well, we paid $60 an acre for the land.

Examiner BURCHMORE. Does that include the use of your mill pond?

Mr. BARRON. No; that is only the land.

Mr. GLASGOW. That is 50 per cent.

Mr. COWAN. On cooperage stock from all Butler County Railroad stations the rate to St. Louis is 35 cents, out of which you get——

Mr. BARRON. No, sir; that is New York.

Mr. COWAN. I am mistaken; 35 cents to New York, out of which you get three cents?

Mr. BARRON. Yes, sir.

Mr. COWAN. How does it come about that you get practically ten per cent on the New York shipments, and you get 40 per cent on the shipments to St. Louis?

Mr. BARRON. Because the haul is much longer to New York and the rate higher, and we do not haul it any longer or any farther on a New York shipment than on a St. Louis shipment.

72 Mr. COWAN. How far do you haul the lumber itself?

Mr. BARRON. The manufactured product?

Mr. COWAN. Yes.

Mr. BARRON. About three-quarters of a mile

Mr. COWAN. It is customary for the carload shipper of lumber or lumber products throughout the country to load the cars?

Mr. BARRON. Yes, sir.

Mr. COWAN. The railroad company does not undertake that?

Mr. BARRON. Yes, sir; they load the cars.

Mr. COWAN. At what expense is the Butler County Railroad per car for the handling of it from one of these lumber concerns there out to the Iron Mountain road?

Mr BARRON. Ordinarily none, and I will explain why, because I applied to the American Railroad Association and the Central Storage and Demurrage Bureau for admission to those organizations, and they have so far deferred approving the application, and we are on a demurrage basis instead of a *per diem* basis. We do not pay *per diem*, and therefore we are at no expense for the cars.

Mr. COWAN. But I meant the expense of handling per car.

Mr. BARRON. The expense of handling per car?

Mr. COWAN. Yes. You switch it over about three-quarters of a mile, as I understand, and I wondered if you knew how much it cost you per car to do that.

Mr. BARRON. Well, it does not cost a great deal to do that, but that is not the entire service. We have got to get that timber in there to Linstead.

Mr. COWAN. I understand all that.

Mr. BARRON. And there is a 35 mile haul.

73 Mr. COWAN. How much do you get for hauling the logs into the mills of some of these other concerns which make lumber products which move to St. Louis on the 12 cent rate?

Mr. BARRON. One and one-half cents per 100 pounds, which will average about $6.00 per car, and the haul will average 25 miles.

Mr. COWAN. Do you know what the Arkansas commission tariff is for hauling logs a similar distance?

Mr. BARRON. No, sir; we do not do business in Arkansas.

Mr. COWAN. Well, Missouri, then.

Mr. BARRON. About four and one-half cents per 100 pounds.

Mr. COWAN. For a distance of 25 miles?

Mr. BARRON. Yes, sir; either four or four and a half cents, I am not sure.

Mr. GLASGOW. Is that a local tariff?

Mr. BARRON. Yes, sir. I can tell you what it is.

Mr. GLASGOW. I do not care to go any further with it.

Mr. COWAN. I did not mean to take time with that.

Mr. GLASGOW. You need not go into that unless counsel desires.

Mr. COWAN. I see the rate on cotton to St. Louis from your stations is 14 cents per 100 pounds, out of which you get a ten per cent division. Why is the division on cotton so much less in percentage to the total that in the case of the lumber?

Mr. BARRON. Well, I expect the Missouri Pacific gentlemen outtraded me on that.

Mr. JEFFERY. They don't often do it, I guess.

74 Mr. BARRON. I am glad you called attention to it.

Mr. COWAN. I see the rate to Thebes from all stations on your line for lumber is ten cents, out of which you get five cents, and the Iron Mountain gets five.

Mr. BARRON. Well, that is a division of three cents under the junction rate, just as it is in the other cases, outside of cotton.

Mr. COWAN. I wanted to ask what the cooperage company pays for getting its logs in?

Mr. BARRON. It pays one cent per 100 pounds. Those logs are not worth more than 50 per cent of the value of the other logs.

Mr. COWAN. I notice that you do not have the blanket system of rates on lumber from your stations, but a two cent arbitrary above the average. I do not know whether it is an arbitrary, but it is two cents above the St. Louis rate.

Mr. GLASGOW. No.

Mr. BARRON. We have the blanket system, but it is not the same rate as the Poplar Bluff rate, it is a group rate.

Mr. COWAN. It is two cents more from stations on your line than from Poplar Bluff?

Mr. BARRON. Yes.

Mr. GLASGOW. But the whole line of stations on his line are grouped.

Mr. COWAN. Is there a blanket system of rates from the locality of Poplar Bluff on Iron Mountain stations?

Mr. BARRON. Yes, sir; but the blanket is not as big as it is farther south.

Mr. COWAN. How far down does this ten cent rate extend below Poplar Bluff?

75 Mr. BARRON. I do not know; but I do know that a point 15 miles south of Poplar Bluff carries a 10½-cent rate.

Mr. COWAN. How far north of Poplar Bluff does the ten-cent rate apply?

Mr. BARRON. That I do not know.

Mr. COWAN. Do you know the extent of the blanket to which the ten-cent rate applies from stations on the 'Frisco line to St. Louis?

Mr. BARRON. No, sir; but on the same parallel of latitude as the southern terminus of our road, the 'Frisco's rate to St. Louis is 12 cents, the same as ours; that is a point a few miles east of the southern end of our road.

Mr. COWAN. A man doing business on your line and shipping from stations on your line, either logs or lumber, would have to pay on the basis of two cents more than he would for an equal distance from St. Louis on the Iron Mountain or the 'Frisco. Your rates are two cents higher.

Mr. BARRON. No, sir From a point on the 'Frisco as far south from St. Louis as our stations he would pay the same. He would pay a little more if he shipped over our road than he would if he shipped on the Iron Mountain from a point about as far south.

Mr. COWAN. You receive from the 'Frisco on shipments to Cairo also one-half of the ten-cent rate. Now, you spoke about them out-trading you on the cotton. By what sort of means were you able to get the 'Frisco Railroad and the Iron Mountain Railroad to give you one-half of the rate to Cairo and to Thebes; what inducement was there that would induce them to give you half the rate for the service you performed, and they take it and haul it on to Thebes or Cairo for the same amount they give your company?

76 Mr. BARRON. Well, they give us a division of three cents under the junction rate, and we haul it, say 35 miles to the mill, deliver it to the mill, switch them in and empty car and get the load and carry it out and haul it three-quarters of a mile, and they will haul it 70 miles. We will haul five cars 35 miles and they will haul one car 70 miles, and I think that we are not getting any more than we are entitled to.

Mr. JEFFERY. What is the through rate?

Mr. BARRON. I think ten cents; I am not quite sure.

Mr. COWAN. What is the distance from Poplar Bluff to Thebes?

Mr. BARRON. I should say 60—65 or 70 miles. I am not sure.

Mr. COWAN. Do you know what expense is involved in delivering at Thebes?

Mr. BARRON. No, sir.

Mr. COWAN. Nor Cairo?

Mr. BARRON. No, sir. I understand there is a bridge toll there.

Mr. COWAN. How much do you understand the bridge toll to be?

Mr. BARRON. A cent and a half.

Mr. COWAN. So, after paying the bridge toll, they would have, out of a shipment either to Cairo or Thebes, 3½ cents left, 1½ cents off of five cents.

Mr. BARRON. Well, assuming those figures are correct, that is so; but they only haul one car, while we have to handle six.

Mr. COWAN. Well, but at all events, three and one-half cents is what the net would be after they paid the bridge toll at Thebes or Cairo.

Mr. BARRON. It is three cents less than their regular rate, whatever that will be.

Commissioner HARLAN. Mr. Jeffery, is there a bridge toll at Thebes?

77 Mr. JEFFERY. Yes, I think there is. It is a bookkeeping proposition, for the reason that the Iron Mountain and the Cotton Belt and one other road own the bridge, and the Iron Mountain, for instance, gets one-third back of everything that goes over it.

Mr. COWAN. Let me ask at this point, Mr. Jeffery, however, it is a very expensive bridge, and you would not be making any money on your investment on one and one-half cents per 100 pounds.

Mr. JEFFERY. I could not say about that.

Mr. COWAN. What did the bridge cost, do you know?

Mr. JEFFERY. I haven't any idea.

Mr. COWAN. Now, you handle some carloads of lumber from stations on your line where there are some small sawmills where you do not handle the logs at all, but just handle the lumber?

Mr. BARRON. Yes, sir.

Mr. COWAN. In those cases you would haul the lumber, just one car?

Mr. BARRON. Yes.

Mr. COWAN. Down to the junction point of delivery?

Mr. BARRON. Yes.

Mr. COWAN. And get five cents per 100 pounds for it, while the railroad would take that and deliver it to Thebes or Cairo for the other part of the rate?

Mr. BARRON. Yes, sir; in those instances that is true.

Mr. COWAN. Your rates generally on that line for everything including lumber are a differential higher than the junction point rate to the outgoing destinations on the Mississippi River. That is, it appears so here?

Mr. BARRON. I do not think the classes are stated on here.

78 Mr. COWAN. No; but you stated a while ago that the rates were higher on points on your line than they are from junction points.

Mr. BARRON. Yes, sir; they are.

Mr. COWAN. Your New York rate, however, is the same on cooperage to New York—New York is the same rate, and it is also the same to New Orleans from stations on your line as from Poplar Bluff?

Mr. BARRON. Yes, sir.

Mr. COWAN. Is the cotton rate from points on your line the same as from the junction point?

Mr. BARRON. No, sir; it is higher.

Mr. COWAN. How much higher; do you remember?

Mr. BARRON. No; I do not remember.

Mr. COWAN. That will be shown by the tariff, anyway?

Mr. BARRON. Yes.

Mr. COWAN. That is all. I wanted to inquire of Mr. Glasgow if there has been any map or drawing of the track connections at Poplar Bluff, showing the location of the industries, the switch tracks, and their connection with the Iron Mountain and the 'Frisco?

Mr. GLASGOW. Nothing further than I have already offered in evidence.

Mr. COWAN. I did not look at it.

Mr. GLASGOW. It did not show the terminal connections.

Mr. COWAN. I suggest in all these cases there ought to be a drawing to show the terminal connections.

Mr. GLASGOW. What is the purpose of that?

Mr. COWAN. It enables the eye to see better than a verbal description.

Mr. GLASGOW. You will have a drawing showing your tracks from the mill to the railroad?

79 Mr. BARRON. Yes, sir.

Mr. COLEMAN. Your cooperage rates from points on your line are the same as from junction points to New York and other points, are they not?

Mr. BARRON. To New York and New Orleans they are the same.

Mr. COLEMAN. You do not add the two cent arbitrary?

Mr. BARRON. We do on cooperage to everywhere except those two points.

Mr. COLEMAN. The rate on lumber carries an arbitrary of two cents from points on your line over the rate from junction points?

Mr. BARRON. Yes, sir.

Mr. COLEMAN. The effect of that is to enable you to buy from those little men on your line a good deal cheaper?

Mr. BARRON. We do not buy from the little men.

Mr. GLASGOW. What little men are you referring to?

Mr. COLEMAN. Haven't you some individual lumber men on the line who would sell, some men with pony lumber mills?

Commissioner HARLAN. This witness said when they made a purchase of that sort it was a direct purchase by the cooperage company.

Mr. BARRON. Of the Great Western Land Company. Well, the Brooklyn Cooperage Company has purchased some tracts of timber also.

Mr. COLEMAN. And the effect of that adjustment would be to let them buy it two cents cheaper?

Commissioner HARLAN. This witness is talking about the purchase of land, and you are referring to manufactured material.

Mr. BARRON. We do not purchase any manufactured material.

80 Mr. COLEMAN. If they can add two cents on the lumber man's rate out, and make it the same on the cooperage rate, they can get two cents off his price, that is my point.

Mr. GLASGOW. I would like to have the gentleman work that out a little more definitely.

Mr. COLEMAN. We will after lunch. You said you complied with all the safety appliance laws?

Mr. BARRON. Yes, sir.

Mr. COLEMAN. And that you spent $6,500 to put ash pans on two engines?

Mr. BARRON. No.

Mr. GLASGOW. Let us be fair among ourselves.

Mr. COLEMAN. I wanted to know.

Mr. BARRON. No; I said the expense of complying with the safety appliance acts amounted to anyhow $6,500.

Mr. COLEMAN. What did you do to comply with it?

Mr. BARRON. Well, we put air brakes on; something like 115 and 120 vehicles.

Mr. COLEMAN. I see by this picture you have no air brakes on those cars at all.

Mr. BARRON. No; you do not see anything of the kind.

Mr. COLEMAN. Well, show me them.

Mr. BARRON. I am not going to show them. They are there all right; like the drummer's overcoat.

Mr. GLASGOW. You find them.

Mr. COLEMAN. You can not find them, either; they are not there.

Mr. GLASGOW. That is a puzzle picture. You find the air brakes.

Mr. COLEMAN. How many ash pans did you put on these engines?

81 Mr. BARRON. We did not put any ash pans on. I said that we had complied with the safety appliance acts down to the furnishing of the ash pans.

Mr. COLEMAN. That was all you did?

Mr. BARRON. No; I did not say that was all we did.

Mr. COLEMAN. Well, we don't seem to connect up, for some reason.

Mr. BARRON. I mean to say that our engines have got the ash pans that you can dump without having the fireman go underneath it. The equipment is fixed that way. It is also fixed with air brakes, and we put them on, and it cost something between $5,000 and $6,000 to do that thing alone. They are also equipped with the required steps and grab irons and hand brakes, and the tops of the box cars have got these running boards on.

Mr. COLEMAN. That is all.

Mr. COWAN. Just one question. The cooperage that is shipped from your manufacturing establishment principally goes to New York and New Orleans?

Mr. BARRON. Yes, sir; principally. It goes to other points, but most of it goes to those two points.

Mr. COWAN. That is because the owner of the mill, or the practical owner, consumes the cooperage at the sugar manufacturing plants in the vicinity of those two places?

Mr. BARRON. Yes, sir. Now, those cooperage rates were made in 1899, before the organization of the Butler County Railroad or the participation by the railroad in the rate, and they are the same now as they were then.

Examiner BURCHMORE. Where did those rates apply from then?

Mr. BARRON. They applied from Linstead.

82 Examiner BURCHMORE. Well, but does not Linstead take the Poplar Bluff rate?

Mr. BARRON. Yes, sir; and those rates are the same as the Poplar Bluff rates. They are the Poplar Bluff rates; that is what they are.

Commissioner HARLAN. Is your railroad paying dividends?

Mr. BARRON. No, sir; it has paid in the five years one dividend of four per cent but it ought not to have paid that.

Commissioner HARLAN. It could have paid it? It did pay it?

Mr. BARRON. It had borrowed some money, and did not spend all that it had borrowed, and it had that surplus and paid a dividend with it, and afterwards it had to borrow more. We have had to borrow some $15,000 to $20,000 to pay our bills in the last two years.

Commissioner HARLAN. You file your reports with the commission, I believe?

Mr. BARRON. Yes.

Commissioner HARLAN. That shows your surplus account, if you have any?

Mr. BARRON. Yes, sir.

Mr. GLASCOW. Will you state, please, what is the population of Poplar Bluff?

Mr. BARRON. About 8,000.

Mr. GLASGOW. I want you also to state to the commission whether this man Palmer that you spoke of, who made this contract or agreement with one of the roads for trackage—he sold out all his interests there to the Brooklyn Cooperage Company afterwards.

Mr. BARRON. Mr. Palmer owned the land in 1899 and made that contract in his own name. In 1902 he sold all his land to the Brooklyn Cooperage Company.

83 Mr. GLASGOW. So, at the time the contract was made which has been referred to, Palmer owned the lands?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. And he afterwards sold those lands to the Brooklyn Cooperage Company?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. Will you please tell us what is the width of the right of way of the Butler County Railroad?

Mr. BARRON. 100 feet.

Mr. GLASGOW. Have you had accidents on that road for which you have been under the Missouri statute applicable to carriers?

Mr. BARRON. Yes, sir.

Mr. GLASGOW. How many?

Commissioner HARLAN. We will not stop on the details of that. If you have been held, that covers the question. It is not necessary to go into detail.

Mr. BARRON. Yes, sir; we have been held for that, for litigated contests.

Commissioner HARLAN. You have so stated.

Mr. GLASGOW. One more question. Your company is engaged in extending its road as the development requires in that community?

Mr. BARRON. Yes, sir. We have in contemplation at the present time the extension of the road ten miles south into Arkansas.

Mr. GLASGOW. A further extension of the Butler County Railroad?

Mr. BARRON. Yes, sir.

Commissioner HARLAN. Did Mr. Palmer own that land in his own right or as trustee?

Mr. BARRON. In his own right.

(Witness excused.)

Whereupon at 1.00 p. m., a recess was taken until 2.00 p. m.

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EXHIBITS.

Exhibit No. 1.

Time table No. 4.

(Cancels Time Table No. 3.)

Mixed.	Mixed.	Mixed.	Mls.	Station.	Mixed.	Mixed.	Mixed.
.....	.....	9.50 a. m.	0	Lve. LINSTEAD Arr.	2.55 p. m.	.....	.....
4.20 p. m.	8.30 a. m.	10.24	8	LOWELL JCT.	2.20	8.20 a. m.	4.15 p. m.
4.30	8.40	10.40	9	Marshall	2.15	8.10	4.00
4.35	8.50	10.50	10	ROSSVILLE	2.05	8.00	3.55
4.42	8.57	11.05	13	Batesville	1.55	7.50	3.48
4.45	9.00	11.15	14	Bailey	1.45	7.45	3.45
4.52	9.07	11.30	16	Nyssa	1.38	7.38	3.38
4.55	9.10	11.40	17	Quercus	1.35	7.35	3.35
4.58	9.15	11.50	19	ULMUS	1.30	7.32	3.32
5.00 p. m.	9.20 a. m.	11.55 a. m.	20	Arr. Melville Lve.	1.00 p. m.	7.30 a. m.	3.30 p. m.
.....	9.30 a. m.	1.02 p. m.	0	Lve. Melville Arr.	12.15 p. m.	.....	3.15 p. m.
.....	9.35	1.10	1	ULMUS	12.05	.....	3.10
.....	9.55	1.30	3	Celtis	11.50 a. m.	.....	2.50
.....	10.05	1.50	8	Hicoria	11.20	.....	2.35
.....	10.15 a. m.	2.00 p. m.	10	Arr. Menorkenut Lve.	11.00 a. m.	.....	2.15 p. m.

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Exhibit No. 2.

Photograph showing a train on the Butler County Railroad made up of the various characters of equipment owned by that road.

Exhibit No. 3.

Statement of passenger earnings.

YEAR ENDING JUNE 30, 1910.

Period.	No. passengers.	Revenue.	Average per month.	
			Passengers.	Revenue.
July 1, '09, to April 15, '10	7,826	$3,412.90	824	$359.25
April 16, '10, to June 30, '10	3,493	1,393.04	1,397	567.21

FIVE MONTHS ENDING NOVEMBER 30, 1910.

	July.	August.	Sept.	Oct.	Nov.	Total.	Ave. per mo.
No. passengers	1,245	1,309	1,392	1,861	1,727	7,534	1,507
Revenue	$459.20	$501.92	$517.46	$701.25	$628.38	$2,808.21	$561.64

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Exhibit No. 4.

Traffic furnished by the mill owned by the same interests that own the railroad.

Commodity.	July, 1909.			August, 1909.			September, 1909.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	441	6,677	$1,335	551	8,265	$1,653	533	7,995	$1,599
Cooperage	43	1,061	533	58	1,451	760	50	1,218	637
Machinery							5	137	83
Coal	3	82	40				3	82	33
Total	487	7,820	1,908	609	9,716	2,413	591	9,432	2,352

All other traffic.

Commodity.	July, 1909.			August, 1909.			September, 1909.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs and bolts	143	2,907	$1,098	114	2,291	$950	53	1,061	$399
Lumber	23	622	488	13	336	262	18	516	402
Piling and ties	77	1,465	1,074	84	1,770	1,348	95	1,679	1,299
Mill stuffs	5	76	73	3	46	51	2	32	38
Live stock	1	9	10						
Ice	2	40	28	1	20	16	2	55	44
Beer				1	11	23			
Household goods							2	23	45
Total	251	5,119	2,771	216	4,474	2,650	172	3,365	2,230
Grand total	738	12,939	4,679	825	14,190	5,063	763	12,797	4,572

Commodity.	October, 1909.			November, 1909.			December, 1909.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	553	8,295	$1,659	536	8,040	$1,608	495	7,425	$1,485
Cooperage	48	1,150	617	68	1,719	859	62	1,592	732
Machinery	1	27	17	2	55	33	3	82	50
Coal	3	93	37	2	55	22			
Total	605	9,565	2,330	608	9,869	2,522	560	9,099	2,267

Commodity.	October, 1909.			November, 1909.			December, 1909.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs and bolts	76	1,539	$462	174	3,568	$1,070	165	3,334	$1,000
Lumber	44	1,142	848	43	1,242	949	43	1,174	1,005
Piling and ties	57	1,042	833	118	2,212	1,769	69	1,359	1,087
Mill stuffs	2	29	35	3	47	53	2	36	37
Live stock				2	17	21			
Cotton	5	29	58	2	10	21	3	18	35
Cottonseed	3	65	91	2	40	57			
Household goods							1	10	20
Vegetables							2	25	50
Total	187	3,846	2,327	344	7,136	3,940	285	5,956	3,234
Grand total	792	13,411	4,657	952	17,005	6,462	845	15,055	5,501

All other traffic—Continued.

Commodity.	January, 1910.			February, 1910.			March, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	604	9,060	$1,812	342	6,840	$1,368	650	9,750	$1,950
Cooperage	53	1,365	718	59	1,524	645	62	1,561	781
Machinery	1	27	17	3	82	50			
Coal				3	82	33	4	110	44
Total	658	10,452	2,547	407	8,528	2,096	716	11,421	2,775

Commodity.	January, 1910.			February, 1910.			March, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs and bolts	201	4,033	$1,210	208	4,270	$1,282	216	4,608	$1,383
Lumber	41	1,213	895	43	1,230	911	58	1,583	1,136
Piling and ties	81	1,455	1,164	67	1,189	951	169	2,976	2,381
Mill stuffs	5	88	88	2	39	40	6	110	119
Live stock	1	9	10	2	22	24	2	17	21
Cotton	2	9	19						
Beer							1	12	25
Household goods	1	10	16				1	10	18
Vegetables							1	15	26
Hay	1	10	14	2	25	35			
Total	333	6,827	3,416	324	6,775	3,243	454	9,331	5,109
Grand total	991	17,279	5,963	731	15,303	5,339	1,170	20,752	7,884

Commodity.	April, 1910.			May, 1910.			June, 1910.			Total for fiscal year ending June 30, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	580	8,700	$1,740	506	7,590	$1,518	46	695	$139	5,837	89,332	$17,866
Cooperage	78	2,070	989	88	2,316	1,076	46	1,168	1,168	715	18,195	9,515
Machinery	2	100	60				3	106	162	20	616	472
Coal				3	75	30				21	579	239
Total	660	10,870	2,789	597	9,981	2,624	95	1,969	1,469	6,593	108,722	28,092

Commodity.	April, 1910.			May, 1910.			June, 1910.			Total for fiscal year ending June 30, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs and bolts	245	4,975	$1,492	275	5,501	$1,650	326	6,570	$1,971	2,196	44,657	$13,980
Lumber	51	1,359	1,023	59	1,557	1,183	57	1,023	1,115	493	12,996	10,217
Piling and ties	143	2,627	2,102	66	1,114	911	38	620	496	1,064	19,508	15,415
Mill stuffs	2	43	32	5	88	75	2	40	43	39	674	684
Live stock				1	9	10	1	11	14	10	94	110
Cotton										12	66	133
Cottonseed										5	105	148
Ice				1	25	35				6	140	123
Beer										2	23	48
Household goods										5	53	99
Vegetables										3	40	76
Hay	3	30	42	1	10	14	1	10	15	8	85	120
Total	444	9,034	4,691	408	8,304	3,878	425	8,274	3,654	3,843	78,441	41,133
Grand total	1,104	19,904	7,480	1,005	18,285	6,502	520	10,243	5,123	10,436	187,163	69,225

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Exhibit No. 5.

Traffic furnished by the mill owned by the same interests that own the railroad.

Commodity.	July, 1910.			August, 1910.			September, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	200	3,000	$600	498	7,510	$1,508	456	9,035	$1,811
Cooperage	43	1,119	891	57	1,395	1,296	62	1,555	1,172
Machinery	7	185	125	3	90	81	3	75	90
Coal	1	42	17	10	400	120	2	93	27
Iron							3	80	95
Total	251	4,346	1,633	568	9,395	3,003	526	10,838	3,195

Commodity.	October, 1910.			November, 1910.			Total for 5 months ending Nov. 30, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs	467	8,951	$1,814	437	8,040	$1,608	2,058	36,536	$7,339
Cooperage	71	1,868	1,654	82	2,210	1,727	315	8,147	6,740
Machinery	1	30	27	2	60	54	16	440	377
Coal	11	354	106	19	857	342	43	1,746	612
Iron				9	235	518	12	315	613
Total	550	11,203	3,601	549	11,402	4,249	2,444	47,184	15,681

All other traffic.

Commodity.	July, 1910.			August, 1910.			September, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs & bolts	200	5,239	$1,572	227	4,528	$1,258	240	5,745	$1,723
Lumber	66	1,708	1,509	68	1,661	1,460	64	1,588	1,450
Piling & ties	29	593	513	31	517	418	36	692	557
Mill stuffs	6	96	107	4	80	72	2	53	47
Live stock	1	12	15	2	22	24			
Cotton									
Cotton seed									
Ice	1	37	16						
Beer									
Household goods									
Salt	2	39	26						
Hay							1	11	16
Total	305	7,724	3,756	332	6,808	3,232	343	8,089	3,793
Grand total	616	12,070	5,389	900	16,203	6,235	869	18,927	6,988

Commodity.	October, 1910.			November, 1910.			Total for 5 months ending Nov. 30, 1910.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Logs & bolts	223	5,309	$1,592	275	6,408	$1,954	1,225	27,229	$8,009
Lumber	73	1,999	1,923	88	*2,443	*2,283	339	9,399	8,625
Piling & ties	52	972	860	52	*817	*784	200	3,591	3,132
Mill stuffs	1	15	18	2	39	40	15	283	284
Live stock							3	34	37
Cotton				4	*71	*142	4	71	142
Cotton seed				1	22	31	1	22	31
Ice							1	37	16
Beer									
Household goods									
Salt							2	39	26
Hay	1	10	15				2	21	31
Total	350	8,305	4,408	422	9,800	5,234	1,812	40,726	20,423
Grand total	900	19,508	8,009	971	21,202	9,483	4,256	87,910	36,104

* Estimated.

88 ***Exhibit No. 6.***

Year ending June 30, 1910.

	Number of cars.	Percentage of the whole in carloads.	Number of tons.	Percentage of the whole in tons.	Revenue earned.	Percentage of total revenue.
		Per cent.		*Per cent.*		*Per cent.*
Carload freight supplied by the controlling mill	6,393	63	108,722	57	28,092	39
All other carload freight	3,843	37	78,441	42	41,133	55
L. C. L. freight			1,240	01	4,427	06
Total	10,436	100	188,403	100	73,652	100

Butler Co. R. R.

Interstate Commerce Commission.
Docket No. 11 I. & S., Exhibit No. 6.
Witness..... Barron.....
Complainants. Date, 12-9-10.
Defendants. Steno., Phillips.

See p. 354.

89 ***Exhibit No. 7.***

From July 1, 1910, to Nov. 30, 1910, both inclusive.

	Number of cars.	Percentage of the whole in carloads.	Number of tons.	Percentage of the whole in tons.	Revenue earned.	Percentage of total revenue.
		Per cent.		*Per cent.*		*Per cent.*
Carload freight supplied by the controlling mill	2,444	57	47,184	53	15,681	41
All other carload freight	1,812	43	40,726	46	20,423	53
L. C. L. freight			684	1	2,486	6
Total	4,256	100	88,594	100	38,590	100

Butler Co. R. R.

Interstate Commerce Commission.
Docket No. 11 I. & S., Exhibit No. 7.
Witness..... Barron.....
Complainants. Date, 12-9-10.
Defendants. Steno., Phillips.

See p. 354.

90 *Exhibit No. 8.*

St. Louis and San Francisco Railroad Company.

Commodity.	From—	To—	Rate.	Division.	
				B. C. Ry.	Other r'ys.
Lumber	Poplar Bluff	St. Louis	10		
	All B. C. stations		12	4	8
Cooperage stock	Poplar Bluff	New York	35		
	All B. C. stations		35	3	32
Cooperage stock	Poplar Bluff	New Orleans	17		
	All B. C. stations		17	2	15
Lumber	Poplar Bluff	Cairo	9		
	All B. C. stations		11	4	7
Lumber	Poplar Bluff	Thebes	8		
	All B. C. stations		10	4	6
Lumber	Poplar Bluff	Memphis	10		
	All B. C. stations		12	4	8
Lumber	Poplar Bluff	E. St. Louis	11½		
	All B. C. stations		13½	4	9½

91 *Exhibit No. 9.*

Missouri Pacific and St. Louis, Iron Mountain & Southern Railroads.

Commodity.	From—	To—	Rate.	Division.	
				B. C. Ry.	Other r'ys.
Lumber	Poplar Bluff	St. Louis	10		
	All B. C. stations		12	5	7
Cooperage stock	Poplar Bluff	New York	35		
	All B. C. stations		35	3	32
Cooperage stock	Poplar Bluff	New Orleans	17		
	All B. C. stations		17	3	14
Handle blanks	Poplar Bluff	Charleston	6		
	All B. C. stations		5½	2½	3
Lumber	Poplar Bluff	Cairo	8		
	All B. C. stations		10	5	5
Lumber	Poplar Bluff	Thebes	8		
	All B. C. stations		10	5	5
Lumber	Poplar Bluff	Memphis	10		
	All B. C. stations		12	5	7
Lumber	Poplar Bluff	East St. Louis	11½		
	All B. C. stations		13½	5	8½
Cotton	Poplar Bluff	St. Louis			
	All B. C. stations		40	10	30

92 *Exhibit No. 10.*

Map of line of the Butler County Railroad Company and connections.

Exhibit No. 11.

Map of territory in which the Butler County Railroad is located, showing ownership of land along route.

93 *Supplementary Exhibit No. 1.*

Filed at request of Mr. Commissioner Harlan. (See Record, p. 85:)

Piling and ties, logs and lumber manufactured from logs cut by parties (other than Brooklyn Cooperage Company) on land of the Great Western Land Company, and by said parties shipped per Butler County Railroad.

[No community of proprietary interest exists between any of the said shippers and the Butler County Railroad, or any allied concern.]

Name of shipper.	Year ending June 30, 1910.								
	Logs.			Lumber.			Piling and ties.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Oil Well Supply Co	475	9,580	$2,874	77	2,256	$1,839			
Garetson-Greason Lumber Co	375	7,585	2,274	133	3,893	3,122			
C. H. Smith Tie & Tbr. Co.							293	6,924	$5,538
Ed. Jacobs							734	11,261	8,795
Quercus Lumber Co	1,062	21,110	6,478	148	3,981	3,341			
Hearne Timber Co				2	58	47			
J. W. Putnam Mfg. Co	284	6,426	2,342	78	2,162	1,085			
Western Tie & Tbr. Co							33	768	605
Total	2,196	44,701	13,968	438	12,350	9,434	1,060	18,953	14,938

Name of shipper.	Five months ending November 30, 1910.								
	Logs.			Lumber.			Piling and ties.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Oil Well Supply Co	267	5,347	$1,604	36	1,005	$1,005			
Garetson-Greason Lumber Co				13	312	312			
C. H. Smith Tie & Tbr. Co.							72	1,814	$1,809
Ed. Jacobs							157	2,399	1,938
Quercus Lumber Co	960	19,220	5,766	221	5,971	5,724			
J. W. Putnam Mfg. Co	101	2,180	654	37	905	453			
Total	1,328	26,747	8,024	307	8,193	7,494	229	4,213	3,747

Shipments of forest products were made during the same periods by—

Name of shipper.	Year ending June 30, 1910 (piling and ties).			Five months ending Nov. 30, 1910 (logs).		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
Great Western Land Co	6	124	$99	16	320	$96

94 *Supplementary Exhibit No. 2.*

Filed at request of Mr. Commissioner Harlan. (See Record, pp. 37 and 38:)

Logs, lumber, and piling and ties shipped per Butler County Railroad by parties with whom and with whose freight neither the Great Western Land Company, the Butler County Railroad, nor any associated interests had any connection.

Name of shipper.	Year ending June 30, 1910.								
	Logs.			Lumber.			Piling and ties.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
T. J. Moss Tie Co.							7	287	$230
Columbia Hdw. Lbr. Co.				18	507	$406			
P. & S. Lumber Co.				2	65	52			
C. Drummond				1	24	19			
H. I. Ruth				2	50	40			
Bank of Poplar Bluff				3	83	66			
A. Winklebleck				1	22	18			
Bimel-Ashcroft Mfg. Co.	1	30	$21						
A. W. Greer				4	65	75			
Henry Turner				1	15	12			
Total	1	30	21	32	831	688	7	287	230

Name of shipper.	Five months ending November 30, 1910.								
	Logs.			Lumber.			Piling and ties.		
	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.	Cars.	Tons.	Rev.
C. Drummond				3	79	$79			
H. I. Ruth				3	72	72			
A. Winklebleck				1	21	21			
A. W. Greer				1	16	15			
Henry Turner				3	45	36			
Frank N. Hall				14	409	409			
B. C. Cook	1	20	$20						
Singer Mfg. Co.	2	41	41						
Fullerton-Powell Lbr. Co.				2	50	40			
Vernon Thompson				3	63	63			
Upham & Ogles				3	89	89			
Total	3	61	61	33	844	824			

95 *Supplementary Exhibit No. 3.*

Supplementary Exhibit No. 3, filed at request of Mr. Commissioner Harlan. (See Record, p. 45.)

(Copies of agreements between the St. Louis, Iron Mountain & Southern R. Co. and Lowell M. Palmer filed with commission. Not printed.)

Supplementary Exhibit No. 4.

Supplementary Exhibit No. 4, filed at request of Mr. Cowan. (See Record, pp. 61 and 62.)

(Drawing showing tracks of Butler County Railroad at Linstead, and connections with long-line railroads, also sites of Brooklyn Cooperage Company's mill and mills of other industries at Linstead.)

96 *Exhibit B.*

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the matter of the investigation and suspension of schedules canceling through rates with certain tap-line connections; and certain other cases consolidated herewith.

It appearing that a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It further appearing that the Commission has found that in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
97 Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;

Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
98 Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It further appearing that the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;

Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
99 Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the commission petitions asking for the establishment or reestablishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It is ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is further ordered, That the defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific
100 Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company;

Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
101 Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, the allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary com-
102 panies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission.

It is further ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on

the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company.

And it is further ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By the commission.

JOHN H. MARBLE, *Secretary.*

(SEAL.)

Exhibit B1.

REPORT OF INTERSTATE COMMERCE COMMISSION AS TO BUTLER COUNTY RAILROAD.

The Butler County Railroad Company is owned by the Brooklyn Cooperage Company, while most of the timber land which it reaches is owned by the Great Western Land Company. All
103 are subsidiary corporations of the American Sugar Refining Company, the cooperage company manufacturing chiefly sugar barrels. The railroad company was incorporated in September, 1905, and its capital stock issued and outstanding amounts to $163,500, issued for the tracks and equipment which it then acquired from the cooperage company. It is also indebted to the cooperage company in the sum of $50,000.

The tap line is in two disconnected sections. One connects with the Iron Mountain and the Frisco at a point in or near Poplar Bluff, Mo., known as Linstead, and extends to and into the plant of the cooperage company, which is within three-fourths of a mile of the two trunk lines. The other section is the principal track of the tap line and connects with the Iron Mountain at Lowell Junction, about 7½ miles from Poplar Bluff, running thence southward about 7 miles to a point known as Baileys, with a branch about 3 miles in length connecting with the main stem at Rossville. At Baileys a connection is made with the unincorporated tracks of the cooperage company that run through its timber and are used largely in logging operations. Over a considerable portion of this unincorporated track the tap line has a trackage right. It also enjoys the privilege of running its trains over the Iron Mountain from Lowell Junction to Poplar Bluff, for which it pays 65 cents a train-mile for 25 cars. The equip-

ment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and log cars.

The timber is all hardwood and the logs are loaded on the cars by the employees of the cooperage company and hauled by its locomotives to a connection with the track of the tap line. The tap line then hauls the cars over its own rails to Lowell Junction, then
104 over the Iron Mountain to Linstead and over its own track for a fraction of a mile to the mill, where they are unloaded by the cooperage company. A charge of 1 cent to 1½ cents per 100 pounds, amounting approximately to $4 per car, is made by the tap line against the cooperage company for the log movement to the mill, being the regular manufacturing rate under the Missouri distance tariff. The tap line switches the loaded cars from the mill to the tracks of the Frisco or Iron Mountain, a distance in each case of less than 1 mile. It receives from the trunk lines an allowance of from 2 to 5 cents per 100 pounds. The rates from points on the tap line, including the mill at Linstead, are in all cases 2 cents higher than the rates of the trunk lines from Poplar Bluff, excepting to New Orleans and New York, where the most of the cooperage company's shipments actually move; to those points the Poplar Bluff rates apply from points on the tap line.

The traffic of the Butler County Railroad for the fiscal year ending June 30, 1910, was chiefly forest products, amounting in the aggregate to 184,688 tons, as against 2,475 tons of other freight. Of the first figure, 107,527 tons was logs and cooperage material, furnished by the controlling interests; 77,161 tons of logs, bolts, piles, ties, and lumber were moved for outsiders, but all of the timber came from lands of the Great Western Land Company. The 2,475 tons of miscellaneous freight included 1,195 tons of inbound machinery and coal for the proprietary companies. The passenger revenue for the same year was $4,104.22. The tap line operates three mixed trains in each direction daily between Linstead, where the plant is located, and Melville, a point on the unincorporated track south of Baileys. Two of these trains are said to be used principally for passenger business.

105 There are several independent industries on the tracks of the Butler County Railroad near Poplar Bluff or Linstead which secure their timber material from the Great Western Land Company, the tap line switching their product to the trunk lines. These industries lease their factory sites from the cooperage company; and the admission appears of record that the leases were made for the purpose of securing the traffic to the tap line so that it would obtain divisions thereon. There are also a few independent producers of ties, handle bolts, etc., that team their logs to the sawmills and ship out their products over the main track of the tap line into Lowell Junction. But such shippers pay either the local rate of the tap line in addition to the charge of the trunk line or

pay a through rate that is 2 cents higher than the rate from Poplar Bluff.

This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points.

For its service in moving the products of the cooperage company's mill to the Iron Mountain and to the Frisco, a distance of less than 1 mile, this tap line may lawfully receive out of the rate nothing beyond a reasonable switching charge, which we fix at $1.50 per car.

106 *Exhibit C.*

Interstate Commerce Commission.

Investigation and Suspension Docket No. 11.

The Tap-Line Case.

Amended order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the matter of the investigation and suspension of schedules canceling through rates with certain tap-line connections; and certain other cases consolidated herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the commission on May 14, 1912, and the commission being fully advised,

It is ordered, That the said order be, and it is hereby, modified to read as follows:

1. It appearing, That a full investigation of the matters and things herein involved has been had, and the commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

107 2. It further appearing, That the commission upon the record finds in the case of the following-named parties to the record, and each of them, namely;

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
108 Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;

Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of
109 the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It is ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company;
110 Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service.

4. It further appearing that the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

111 have heretofore filed with the commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It is ordered that said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. It further appearing that the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;

Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

112 have heretofore filed with the commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It is ordered, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to reestablish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this commission, on April 30, 1912;

8. Provided, That the rates on yellow-pine lumber and articles taking the same rates from points on the lines of the last above-named parties to the record shall not exceed the current rates in effect from the junction point; and

9. Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last-named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It is further ordered, that in the case of the following parties to the record, by which petitions for the establishment or reestablishment of through routes and joint rates have not been filed, namely:

113 Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;

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Alabama Central Railroad Company;
Washington & Choctaw Railway Company;
the said principal defendants be, and they are hereby, authorized to reestablish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this commission on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and provided further, that upon the failure of the principal defendants to reestablish the through routes and joint rates in effect on April 30, 1912, with the last above-named parties to the record on or before January 1, 1913, the commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the reestablishment of such through routes and joint rates.

11. It is further ordered, that in case of the failure of the principal defendants to reestablish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other
114 than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. It is further ordered, That the divisions of all joint rates herein required and authorized to be reestablished on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the commission by the parties hereto for approval.

13. It is further ordered, That in the case of the following parties to the record, namely:
Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;
for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And it is further ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the commission, the tariffs to refer to this order by date and number.

By the commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

115 Interstate Commerce Commission.

Washington.

(Filed in Commerce Court March 31, 1913.)

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that pages 19 to 84, both inclusive, and exhibits No. 1 and Nos. 3 to 9, both inclusive, and supplementary exhibits Nos. 1 and 2, contained in the attached printed bill and exhibits filed in the United States Commerce Court in the case of Butler County Railroad Company against United States of America, are true copies of pages 304 to 395, both inclusive, of the transcript of the stenographer's notes of the hearing on December 8, 1910, at New Orleans, Louisiana, in the proceeding entitled, "In the matter of the investigation and suspension of schedules cancelling through rates with certain tap-line connections," investigation and suspension docket No. 11, and Exhibits No. 1 and Nos. 3 to 9, both inclusive, and supplementary Exhibits Nos. 1 and 2, filed as a part of said testimony, the originals of which are now on file and of record in the office of this commission; and I further certify that Exhibit No. 2, being photograph showing a train on the Butler County Railroad made up of the various characteristics of equipment owned by that road, Exhibit No. 10, being map of line of Butler County Railroad and connections, Exhibit No. 11, being map of territory in which the Butler County Railroad is located, showing ownership of land along route, supplementary Exhibit No. 3, being copies of agreements between the St. Louis, Iron Mountain & Southern Railroad Company and Lowell M. Palmer, and supplementary Exhibit No. 4, drawing showing tracks of Butler County Railroad at Linstead and connections with long line railroads, were also filed as a part of the testimony in said case, but copies of these exhibits are not included in the exhibits hereto attached.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the commission, this 31st day of March, 1913.

(Signed) GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal of
Interstate Commerce
Commission.]

116 IN THE UNITED STATES COMMERCE COURT.

BUTLER COUNTY R. R. CO., PETITIONER,
v.
UNITED STATES AND INTERSTATE COMMERCE COMMISSION, respondents. | No. 89.

Answer of the United States.

(Filed January 29, 1913.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, an upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

117 III.

The switching allowance of $1.50 per car for transportation between the mill and the tracks of the trunk-line carriers, fixed as a maximum by the order of the Interstate Commerce Commission herein complained of, is an allowance given to the owner of goods for services rendered in connection with transportation thereof. Said allowance of $1.50 per car was found by the commission, on substantial evidence, to be reasonable in the present instance.

IV.

Respondent denies that there was no evidence upon which the commission might properly find, as it did (23 I. C. C., at 281, 282, 283, 284, 298), that the majority of the tap lines in this territory receive no allowance whatever for plant-facility services and that to deny allowances to some while giving them to others constitutes undue and unlawful discrimination.

V.

Respondent has no knowledge or information sufficient to form a belief as to the causes which induced the trunk-line railroads to threaten to cancel their allowances to petitioner.

VI.

For the purposes of this case, respondent admits the allegations of fact in the petition which are not denied or specifically referred to above and which are not inconsistent with the findings made by the order and report of the commission.

118 VII.

And now, having fully answered the petition, this respondent prays that said petition be dismissed at the petitioner's costs and for such other and further orders as may be appropriate in the premises.

WINFRED T. DENISON,
Assistant Attorney General.

119 In the United States Commerce Court.

No. 89.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT.

Answer of the Interstate Commerce Commission.

(Filed February 28, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

120 That this court has no jurisdiction of the controversy, matters, and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter, May 14, 1912, it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C. Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter set forth in said petition.

This respondent admits that thereafter, on October 30, 1912, this respondent made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338; and this
121 respondent admits that the trunk lines withdrew their tariffs and filed new tariffs at the times and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said published
122 reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

123 And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

JAMES S. HARLAN.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 8th day of February, 1913.

[SEAL.] GEORGE B. McGINTY,
Notary Public.

124 In the United States Commerce Court.

No. 89.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,

v.

THE UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT.

Stipulation.

(Filed March 31, 1913.)

For the purpose of settling certain facts and determining the parts of the record of the evidence before the Interstate Commerce Commission in the Tap-Line case, Investigation and Suspension Docket No. 11, to be certified for use before said court in the above-entitled case, and the parts thereof that shall be printed; it is hereby stipulated and agreed by and between counsel for the respective parties as follows:

1. That in and by certain evidence before the commission, including tariffs on file with the commission, it appeared that the main-line roads in the general territory under investigation by the commission in Investigation and Suspension Docket No. 11 established and maintained rates for switching service ranging from $1.50 per car to $2.00 per car.

2. That in and by certain evidence before the commission it appeared that there were numerous lumber companies in the territory under investigation, in Investigation and Suspension Docket No. 11, manufacturing hardwood lumber that owned and operated logging roads, unincorporated, as a plant facility, bringing the
125 logs from the forest to the mill and delivering the products of the mills to the interchange track of the main-line railroad for shipment, and that for this service said mills did not receive any portion of the rate for the main-line haul.

3. That all of the oral testimony taken before the commission in the proceeding and investigation aforesaid, offered by and pertaining to the Butler County Railroad Company, petitioner herein, being the testimony from page 304 to page 395, inclusive, of the record before the commission, a copy of which is printed with the complainant's petition, shall be considered as part of the record in this case, and a copy of said record, from page 10 to page 42, inclusive, being statements of counsel and of Commissioner Harlan, as certified by the commission, shall also be considered as part of the record of this case.

4. That the exhibits presented and filed by the petitioner herein with the commission, being numbers 5 to 11, inclusive, and printed as a part of complainant's petition, shall also be considered as a part

of the record of this case; provided that maps and blueprints may not be printed, but the same may be used in argument by either party.

5. The original and supplemental reports of the commission and the original and supplemental orders, printed by the commission, shall be filed and used without reprinting in the record.

Counsel for petitioner reserves all and every right of objection to the consideration by the Interstate Commerce Commission, or by this court, of any facts herein, or in the report of the commission stated, not particularly related to the Butler County Railroad Company.

Washington, D. C., March 26, 1913.

W. A. GLASGOW, Jr.,
Solicitors for the Petitioner.

WINFRED T. DENISON,
For the United States.

CHAS. W. NEEDHAM,
For the Interstate Commerce Commission.

126 *Report and Supplemental Report of Interstate Commerce Commission in I. and S. Docket No. 11.*

(Filed in Commerce Court March 31, 1913.)

(Omitted in printing.)

* * * * * * *

298 *Order and amended order of Interstate Commerce Commission in I. and S. Docket No. 11.*

(Filed in Commerce Court March 31, 1913.)

(Omitted in printing.)

* * * * * * *

311 *Certified copy of testimony and exhibits before Interstate Commerce Commission.*

(Filed in Commerce Court, March 31, 1913.)

(See certificate immediately following copy of petition herein.)

312 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of pages 10 to 42, inclusive, of the transcript of the stenographer's notes of the hearing held at New Orleans, Louisiana, on December 8, 1910, before Commissioner Harlan, in the proceeding entitled "In the matter of the investigation and suspension of schedules cancelling through rates with certain tap-line connections," Investi-

gation and Suspension Docket No. 11, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 31st day of March, 1913.

[SEAL.] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

313 *Proceedings.*

Commissioner HARLAN. Gentlemen, I wish first to suggest that all who are here representing any interest that is involved in this proceeding will be good enough to file their appearances with the reporter at some time during the day. It is desirable that the record should show just who are here and who are interested. Another thing that I would like all to observe is this: The stenographer does not know all who are here and all who may address the commission on this occasion. He suggests, and I hope you will bear it in mind when any one rises to address the commission they will first give their names to the stenographer, and it might be well to say what interest they represent.

I shall be glad now to have any suggestions as to procedure. I assume counsel perhaps have given that matter some consideration, and I would be glad to know whether the suggestions have been formulated as to how we shall proceed with this matter. Of course it is understood that the Star Grain and Lumber case is here, also all the special cases that have been filed by the tap lines. It is the purpose of the commission to make one record, which shall be considered as attached to the record in the Star Grain and Lum-
314 ber case, and also will be a record for the individual cases that are to be presented.

Have counsel any suggestions to make as to how we shall proceed to make up this record?

Mr. GLASGOW. Mr. Commissioner, I represent the Butler County Railway Company. Counsel who have been representing the numerous short lines who are here have been somewhat embarrassed in making any suggestion as to procedure, because they did not know exactly what the views of the commission were in connection with this hearing. They have considered, as far as I know, both separately, as far as their lines are concerned, and generally, the subject of this inquiry; and upon one question they have appointed a committee to present a motion to your honor this morning as to a matter which occurs in the record, which I will now, if your honor will permit me, ask to have spread on the record at this time.

There has been a petition filed in this cause styled the supplemental petition of the Miller Link Lumber Company and others. As I understand the situation, the Star Grain case has been reopened for taking further evidence, and that it has been combined and consoli-

dated with the special petitions of short line roads, which have
315 been filed with the commission, all to be heard at this time before your honor.

The scope of the Star Grain case was that certain complaints filed with the commission a petition to reestablish through routes and joint rates which had been withdrawn by the carrier, the Atchison, Topeka & Santa Fe Railway Company. Upon that inquiry the commission delivered an opinion and subsequently reopened the case or considered it further, taking into consideration the general question of division of rates between short line railroads and the trunk lines, and whether joint rates and through routes should be established, and that, as we understand it, is the inquiry that is now before the commission for investigation. The petition to which I have alluded undertakes in this inquiry to extend the investigation far beyond any question which was in the Star Grain case or any question made by the special petition. Therefore, this committee, who represent or who are acting for all of the counsel here, because it was inconvenient for them all to make the motion, desire to present this motion, which I will read, if your honor will permit me:

"Now come all short line railway companies and all owners of short line railways, cited to appear at this hearing and now
316 move the commission to strike from the record in this cause all of the supplemental petition filed herein by Miller Link Lumber Company et al., except so much thereof as charges that the division of through rates between the trunk line railways and the short line railways is in violation of the second and third sections of the act to regulate commerce.

"And in order that the above motion and the reasons therefor may be made more specific it is further moved—

"1. That section 3 of said supplemental petition filed herein by Miller Link Lumber Company et al. be stricken from this record for the reason that by said section 3 there is thrust into this case questions which can not properly be considered, upon the citation which parties are required to answer upon a reopening of the case of Star Grain & Lumber Company et al. versus A. T. & S. F. Railway Company et al., No. 1319, and the other cases assigned for hearing this day therewith since by said petition it is sought to have the commission pass upon all 'rates of freight on lumber and sawmill products, now in effect from points on the lines of said railways in Louisiana, Arkansas, and Texas to interstate destinations in the States of Oklahoma, Colorado, Kansas, Missouri, Iowa, Nebraska,
317 and other inter-state destinations' and this upon the insufficient and indefinite charge that such rates 'are unjust and unreasonable per se and relatively as compared to the rates of freight which the owners of sawmills and shippers who receive such divisions of the rates are accorded.'

"2. That section 5 of said petition should be stricken from the record in that it undertakes without any definite or distinct allegations of fact or without giving information as to what specific objec-

tion petitioners may have as to rates, to have this commission 'consider the entire body of rates on lumber from Louisiana, Arkansas, and Texas as well as the regulations and practices pertaining to such transportation and to the rates' and to thrust said omnibus, indefinite, and unlimited inquiry into cause No. 1319 aforesaid.

"3. That said petition undertakes to inject into this cause an inquiry into the legality or propriety of group rates, which has no place in the investigation upon which the commission is engaged in cause No. 1319 aforesaid, and especially in that there are not specific and definite allegations as to what group rates petitioner charges to be illegal and the reasons therefor, and paragraph 3 of the prayers of said petition should be stricken from the record for the
318 above reason and because same is indefinite and uncertain.

"4. That paragraph 1 of the prayers of said petition be stricken from the record, because it asks to inject into cause No. 1319 aforesaid matters which can not properly be considered therein.

"5. That paragraph No. 4 of the prayers of said petition be stricken from the record, in that it asks the commission to give notice of an omnibus 'investigation of all the interstate rates from Texas points to interstate markets on lumber and lumber products, together with the tap-line divisions and other allowances, regulations, practices, and rates applicable to the lumber and logging traffic in the same manner and to the same extent as the same subject shall be involved with respect to the rates, regulations, and practices from said points in Louisiana and Arkansas,' and the facts alleged and the section aforesaid are so indefinite that the commission can not properly base an investigation or an order thereon.

"6. That paragraph 5 of the prayers of said petition be stricken from the record as the same is too indefinite and uncertain to enable parties interested in this proceeding to understand definitely
319 the relief asked, and the commission can not properly base an investigation or order thereon.

"7. If investigation is to be had on a complaint as indefinite as the petition above referred to, then the effect thereof would be to deny to parties interested a proper hearing in that they would have no definite and specific information as to the grounds of complaint and necessarily could not prepare their defense thereto.

WM. A. GLASGOW, JR., *Philadelphia*,
EDGAR H. FARRAR, *New Orleans*,
H. W. SEAMAN, *Chicago*,
C. L. MARSILLIOT, *Memphis*,
WALTER H. SAUNDERS, *St. Louis*,
Committee of Counsel Representing
Short Line Railroads Cited to Appear."

Now, sir, I think, and the committee think, that the case of the National Petroleum Association against Ann Arbor Railroad Company settles the question as to this petition (14 I. C. C. Reports). Your honor is no doubt familiar with the case. In that case a

petition very much of the same character as this, undertaking to charge that all the rates in a certain district were unreasonable
320 and unjust, just as this undertakes to charge that all the rates from Texas, Arkansas, and Missouri to all the points in Colorado and the other States of the Union are unjust and unreasonable was filed, and the commission says:

"Then it must follow that we are asked by complainant to reduce by one sweeping order thousands and perhaps hundreds of thousands of rates concerning which no specific complaint has been made and not one syllable of evidence offered. To quote the language used in Dallas Freight Bureau versus M., K. & T. Ry. Co., 12 I. C. C. Rep., 427: 'The case seems to have been thrown together, as if the commission only needed to have an opportunity presented to it to take favorable action. * * * We are authorized under the act to order a reduction in rates only when it is made to appear that they are unjust or unreasonable or unjustly discriminatory or unduly preferential. But inasmuch as this proceeding is undoubtedly maintained in good faith upon the belief that the commission can, within the powers conferred upon it by law, and from the evidence in this record, grant the relief prayed for, it may be well to state here some of the insuperable difficulties involved in an omnibus complaint of this nature,' and they go on to discuss it:

321 "We can make no such wholesale order as is prayed for in this proceeding. If any of these rates are excessive or operate to effect forbidden discriminations, as may be the case, they are the rates of one or more carriers against which a definite and specific complaint can be directed," and the commission in that case dismissed the complaint of the National Petroleum Company and required them to come in, as they subsequently did, with specific charges as to specific rates.

Now, the committee make this motion. We do not want to be yond the inquiry which is legitimately and properly before the commission, and we make this motion before your honor on the record. I do not know whether your honor will feel like passing upon it at this time, but before going into any of the questions involved on that, if your honor does not pass on it, we should ask that your honor refer the motion to the commission to be passed upon before we go to the expense of going into the record on that question.

Commissioner HARLAN. Is counsel here representing the petition? I think it was filed by Judge Cowan.

Mr. COWAN. Yes, your honor.

Commissioner HARLAN. Have you any suggestions to make in response to the motion?

322 Mr. COWAN. The motion of Mr. Glasgow is to postpone the case until the allegations can be made sufficiently definite to inform the parties interested of what rates we complain, and that we shall not be permitted to inject into the case an investigation of any rates which were not embraced in the original case of the Star Grain and Lumber Company, and that we shall not investigate any ques-

tions except the questions involved in that case. As I understand Mr. Glasgow, he wants the commission and your honor to postpone the hearing of this case in order that they may ascertain whether these questions may be heard in this case, so they will not have to go to the expense of making preparation for trial. It is like the application in a criminal case for the continuance of such a trial on the ground of the absence of the witnesses, who are really in the vicinity of the courthouse. The commission under the present law has ample and complete power to investigate any matter that pertains to the matter of the complaint or the rates complained of. The act of 1910 gives the commission ample power in that particular, and it may investigate without a complaint and on its own motion. The law does not require that the commission specify with the cer-
323 tainty of an indictment just what the subject matter is in all particulars, but only generally. I take it that the motion is without any foundation, legally speaking, because of the power conferred upon the commission by the act of Congress of 1910. The petition seeks in this case to adjust the rates for the purpose of preventing those discriminations as to which the commission made its decision in the Star Grain and Lumber case, the object being to embrace the question of reasonableness per se and the relative reasonableness of the rates, as well as matters pertaining to discrimination, to rebates, and to practices concerning the handling of traffic, the making of the application of the rates or the divisions of the rates. Whether the petition is as aptly drawn as my friend, Mr. Glasgow, might draw it, and whether it sets out in detail to inform those who are present of the matter that is intended to be reached by virtue of the petition calling the commission's attention to the situation, I do no know; I probably could have drawn it a great deal better, but it was sufficient, at least, that when the petition is served upon these gentlemen it has brought together the largest aggregation of good-looking and intelligent and wealthy gentlemen who are participating in these advantages that I have ever seen, by a petition con-
324 taining as little as Mr. Glasgow says it contains. It brought him down here representing a cooperage company and not a lumber company, from Philadelphia, and it seems very strange, in view of what you honor sees before you, that these gentlemen should contend that the petition was not sufficient to inform these gentlemen what the subject matter intended to be reached is about. I think the petition has ample evidence now before your honor that it has reached all the purposes of a petition that could be drawn by a Philadelphia lawyer, however much better it might be than one drawn by a gentleman from Texas.

Mr. GLASGOW. The question is not who drew the petition, but when my friend undertakes to look around over this audience and say this petition has brought them here, the truth of the business is a great many of these distinguished and good-looking gentlemen he has referred to never heard of this petition until they got here. He has misinterpreted this motion——

Commissioner HARLAN. I assume, after the compliment Judge Cowan has paid to the assemblage, that no one wants action on your motion at this time.

Mr. GLASGOW. No, sir; I do not suppose you will pass upon it now.

325 Commissioner HARLAN. We will reserve that question for the commission. I think it proper, however, to say that in addition to the notice that has been given, that the commission expects at this time to have a record that will enable it to proceed on the intimations made by the commission in the Star Grain and Lumber case. The commission has before it also the numerous petitions of particular lines which bring that same general question in issue; and in addition, the commission has suspended the action of the carriers cancelling the so-called tap line allowances, and the investigation of the propriety of the carriers in that regard is here before us. So that I may say, for the commission, and after a conference with the commission, that it hopes at this time to make a record that will be a sufficient basis for such action as may be necessary on this whole question.

Mr. GLASGOW. Do you mean of the division of rates to carriers?

Commissioner HARLAN. The division of rates and lawful allowances in all cases and in particular cases, and in the propriety of the action taken by the carriers in cancelling allowances. Now, I should regard it, and that is the view of the commission, as most un-

326 fortunate if any attitude is assumed here, either by the tap lines or by the regular lines, or by the lumber interests, that will impair the sufficiency of this record as the basis for a disposition of the whole question.

Mr. GLASGOW. I have not done that, and neither does this motion put it in that attitude. But we cannot be put in the attitude of being in any way attempting to limit the inquiry of the commission. But your honor recognizes that the question of reasonableness per se of rates from Texas to Louisiana and Arkansas is a very different question from what has been considered in this case, and we do ask that before you go into the questions of the breadth suggested by this supplemental petition, that if your honor does not feel like passing upon it alone before you go into it, we have that matter submitted to the commission for its order in that connection, because it opens up a breadth of examination that no commission, in my judgment, can possibly pass on in one case; it is utterly impossible. Therefore I do not think that the committee can expect your honor to pass upon it, but we do not want to go into that thing without having it submitted to your honor to consider it at your leisure.

Commissioner HARLAN. Your motion is of record, and you

327 have heard my statement made in behalf of the commission, and I think all questions growing out of the motion may be reserved for the action of the commission.

Mr. GARWOOD. In behalf of the lines which I represent, I wish to say that in view of the course of this investigation and in view of

the shortness and insufficiency of the notice of this supplemental petition, it had not occurred to us that the reasonableness of the lumber rates from the territory mentioned to the consuming territory would be considered, as to the reasonableness per se of those rates, and we are utterly unprepared with testimony to maintain those rates, if they are to be attacked. I think that I state almost a truism when I say it has never occurred to any of the main lines, the trunk lines, that here we would be called upon to meet the charge that the rates were unreasonable, and we are not prepared to do it.

Commissioner HARLAN. Let me interrupt you for a moment, Mr. Garwood. The view of the commission is, as I think I correctly interpret it, that the purpose of the supplemental petition was not to bring before the commission the general question of the rea-
328 sonableness of the lumber rates from those territories, but only the particular question as to the reasonableness in view of the allowances made to tap lines. I assume that counsel who filed the petition is not prepared to go beyond that phase of the question of reasonableness. And it occurs to me, and I assume that it would be acceded by you, that there will be a sufficient basis here for the determining of the reasonableness of lumber rates from that point of view.

Mr. GARWOOD. As a mere collateral or incidental question——

Commissioner HARLAN. As a question growing out of the whole matter of allowances made by regular lines to tap lines, the state of those allowances, and the effect that those allowances have upon the net revenues of those carriers. I assume we will have no difficulty in proceeding upon that general basis, and I assume that counsel does not expect at this time to go beyond that.

Mr. COWAN. Your honor has correctly stated the view that we hold for the petitioners and the object of filing it. We did not expect to go into the general question of the rates per se; that is, put in the formal allegation of the petition like in the filing of an indictment.

Mr. PEIRCE. I would like to state my view of the situation
329 in view of this supplemental petition. I think your honor has stated about as clearly as could be my own understanding of this supplemental petition. Now, the Rock Island was not a party to the Star Grain and Lumber case and has never been made a party to it, to my knowledge, and no copy of this petition has ever been served on us. Now, the situation, as I understand it, is simply this: That there has been a controversy pending in Texas by many of the Texas lumber producers that the payment of these allowances in Arkansas and Louisiana resulted in discrimination against the Texas people who were not getting these allowances directly or indirectly, and a petition was filed before the Texas commission asking that the local rates in Texas be reduced to offset these divisions in Arkansas and Louisiana; and that the Texas people have never made any contention as to the rates in and of themselves, but simply that the payment of these divisions in Arkansas and Louisiana resulted in

a discrimination, which, if removed or cancelled, satisfied their complaint. Now, when the main lines like the Rock Island and the Missouri Pacific and the others filed these petitions cancelling the divisions with the short lines, the commission suspended these
330 cancellations; and while I have never known just precisely the theory upon which it was done, I have understood in a general way, and I think perhaps now in an authoritative way, that it was done for the purpose of determining whether these cancellations were proper or not——

Commissioner HARLAN. That is not quite the basis of the action of the commission, as I understand it. It was done because the Rock Island in a case in court had permitted or secured, or at any rate, the results were had in court as to produce a discrimination if the rest of the rates were not suspended.

Mr. PEIRCE. The noise outside, your honor, prevented me from hearing.

Commissioner HARLAN. Well, it was done as the result of a proceeding against the Rock Island in court, in which such action was taken as would result in a discrimination unless the suspension was made general.

Mr. PEIRCE. What action do you refer to?

Commissioner HARLAN. I do not think it worth while to refer to it. You were there and argued the case, as I understand. However, I do not think it worth while to go into the reasons of the com-
331 mission in taking that action. It did take it, and this is the situation.

Mr. PEIRCE. I was just stating my understanding, and was about to conclude. The petition filed by Mr. Cowan, as stated by your honor, was simply to restate the petition of the Texas shippers, that these allowances in Arkansas and Louisiana were improper, and resulted in a discrimination, and the only effect of this petition was to raise the question squarely before the commission and put them on the record in order to be heard here on the question of the propriety of these allowances, and that that is the question that is now before the commission. After all, these lines are here, and I understand they are all here by their counsel and want to be heard, and make their cases, and the commission, after hearing the evidence, may decide that the action of the main lines in cancelling these divisions was improper, and that these lines are lines entitled to share in these rates; and if they do decide that, it seems to me the only necessary conclusion is that the petition of Mr. Cowan must be dismissed. If, on the contrary, the commission holds these divisions are improper, then, of course, they will be permanently cancelled, and in that way Mr. Cowan's petition will be satisfied and no further
332 action than the permanent cancellation of divisions will be necessary. Now, that is the issue, as I understand it, that is to be heard by the commission here at this time.

Commissioner HARLAN. Mr. Peirce, I do not see how I can make the statement any clearer than I have endeavored to make it. You

have overlooked the second hearing in this city on the tap-line question. Now, if you will remember, the issue in the Star Grain and Lumber case was so enlarged in the second hearing as to bring before the commission the entire question of tap-line allowances, whether in Arkansas, Louisiana, or Texas, and the Rock Island, if I mistake not, was present on that occasion.

Mr. PEIRCE. Well, we were present——

Commissioner HARLAN. The commissioner certainly regards the Rock Island as being before it on this occasion.

Mr. PEIRCE. I do not think there is any question but what the Rock Island is here, and I do not think there is any question but what the Rock Island is a party to the record, and I do not want your honor to understand I am going to raise any technical objection. But at the first hearing in New Orleans the Star Grain case was set down for hearing, to which the Rock Island was not a party,
333 and also the other cases, known as the Chicago Coal and Lumber cases, to which the Rock Island was a party. They were all assigned for hearing before the commission at New Orleans, in this room, and we all appeared here in those cases and introduced evidence, and the record was made one, and the evidence was treated in both cases, but separate opinions were rendered in those cases, and I do not know of any order that was ever made consolidating those cases. However, I do not desire and will not. If it becomes necessary to get in the Star Grain and Lumber case, in order to let the commission go ahead, I think we shall do it. I do not want to take any position that would in any way obstruct this proceeding, and will not do it, and if necessary, I think we would enter our appearance, if you wanted it entered, in order to proceed with this record in this case.

Commissioner HARLAN. I think probably counsel will do that; at any rate, there can be no misunderstanding. The whole tap-line question is here, and, as I understand it, counsel understands the Rock Island is a party to that question.

Mr. PEIRCE. I do not rise to object to the jurisdiction of the
334 commission, but simply for the purpose of stating my understanding of the issues before the commission.

Commissioner HARLAN. If your understanding is any narrower than that, I think you are wrong. The commission understands that the tap-line question is before it in all of its aspects in this hearing, and we expect a record to be made, and we want the cooperation of everyone in making a record that will enable the commision to dispose of that question.

Mr. PEIRCE. Well, you say the tap-line question, in all of its aspects, and I take it that is the propriety of making the divisions to the tap lines in each and all of the cases.

Commissioner HARLAN. The propriety of making the divisions generally and in individual cases, and also the question intimated very clearly by the commission in the Star Grain and Lumber case,

whether there ought not to be a reduction of the rate, so that the matter may rest on the net revenues of the carriers.

Mr. PEIRCE. Yes, sir. Now, if the position of the commissioner is correct, that there ought to be a readjustment of the rates if the tap-line divisions are cancelled, it is impossible for us to give any consideration to that question until after the tap-line question is
335 settled, because we do not know what divisions you are going to allow or what you are not going to allow, and it is impossible for us to give any consideration to that, and impossible for us to introduce any evidence on that, because we do not know what the decision of the commission is ultimately going to be after you hear the evidence of all these gentlemen here as to their individual roads. You may decide, after you hear the evidence, that the situation will remain as it is to-day. If you do, I take it there would not be any readjustment of the rates under the intimation of the commission in the Star Grain and Lumber case, and I do not see how the commission could very well expect us to introduce evidence on the question of the readjustment of rates on the assumption that tap-line divisions are cancelled, because we do not know what the commission is going to decide, and we do not know what the result of that phase of the controversy is going to be.

Commissioner HARLAN. Well, I assume, Mr. Peirce, that there will be abundant opportunity before the commission to present your views on this particular question as well as on the general question, and I can see that on any suggestion made by counsel that this question will be considered by the commission. As to whether it
336 is desirable to have your line introduce further testimony, all these matters can come forward for decision by the commission after we have made this record.

Mr. GLASGOW. Your honor's statement of what is here to-day is practically satisfactory to us, so far as I am concerned; that is, all the questions involved in the allowances to tap lines are to be considered. We make our motion, and I expect we will have an opportunity for hearing on that. We are not complaining of the breadth of this petition as filed as a supplemental petition at this time. That is reasonably satisfactory. Now, not as a member of the committee, but as counsel for a single client, I want to suggest to your honor as to the method of procedure. The tariffs have been filed in the case I particularly represent by the St. Louis & San Francisco, and by the Missouri Pacific, cancelling the former rates in effect from points on the Butler County Railroad to destination, and putting in effect new rates, which new rates are an increase over the rates formerly paid, or under the tariffs cancelled out. The petition was filed by the Butler County Railroad Company attacking the cancelling tariffs as unjust and unreasonable, and asking for joint rates and
337 through routes in division of the rates between the two carriers, alleging that the Butler County Railroad Company is a common carrier. Now, upon that petition, and I take it that the others are practically the same, the first inquiry arises as to whether the tar-

iffs which your honors have suspended and whether the rates thereunder, are reasonable and just, and upon that the burden of proof is upon the railway companies to justify what is an increased rate. That is a matter of procedure now. Second, the question comes up whether there shall be joint rates and through routes and divisions thereof. The question arises on the threshold whether the Butler County Railroad is a common carrier, and if so, what should be the rates and divisions thereof, and therefore, I suggest to your honor that the question of procedure now shall be, first, that as to the tariffs which have been suspended, and the reasonableness of the increased rates which have been filed, that the carriers should now assume the burden of establishing the justness of the rates which are increased, for the service rendered.

Commissioner HARLAN. Where is the Butler County Railroad?

Mr. GLASGOW. It runs from a place called Poplar Bluff in either Arkansas or Missouri——

338 Mr. JEFFERY. In Missouri.

Mr. GLASGOW. To a connection with the Iron Mountain and the Frisco road, for about thirty-five miles towards the Arkansas line in a general way south.

Commissioner HARLAN. Have you had allowances heretofore?

Mr. GLASGOW. We do not state it that way.

Commissioner HARLAN. I do not want to commit you, but we want to get along. Did you get something from the regular lines?

Mr. GLASGOW. We got a division of the through rates.

Commissioner HARLAN. Very well; call it what you like; division or allowance; that is what you got?

Mr. GLASGOW. Yes.

Commissioner HARLAN. Now, the new tariffs cancelled that?

Mr. GLASGOW. Yes, sir.

Commissioner HARLAN. And at the same time raised the rates?

Mr. GLASGOW. Put in the rate from the junction the same as it was from the Butler County Railroad, which is an increased rate on shipments from the Butler County Railroad.

Commissioner HARLAN. Then you stand practically as all the other lines here?

Mr. GLASGOW. I think so.

339 Commissioner HARLAN. And on that question the commission understands that the regular lines, in pursuance of the intimations by the commission in the Star Grain and Lumber case, filed these tariffs cancelling the allowances. Now, these tap lines filed their petitions asking for their restoration. We want all the information that we can get on that question from the particular carriers, and we are not going to stop very long this morning to determine the question of where the burden of proof is, or whether it is an increased rate or not.

Mr. GLASGOW. I am trying to bring out of this chaos some method of procedure.

Commissioner HARLAN. I do not think there is any chaos.

Mr. GLASGOW. I am talking about the chaos we had yesterday, when your honor was not here, because there was a great variety of opinion as to what we were to do. Now, I suggest, in order to try to get along—I am not trying to obstruct anything——

Commissioner HARLAN. I assume you are not.

Mr. GLASGOW. What I say is that the petition attacks the rates which are now filed as unreasonable, and when that question
340 comes up, I suggest the burden would be upon the carriers to proceed with the inquiry. When it comes to the question of the allowance or division of rates, or whether the joint rates should be established, the individual short line must proceed to present its case.

Commissioner HARLAN. That has been understood.

Mr. GLASGOW. And I merely suggest that as the method of procedure.

Commissioner HARLAN. We are trying to make a record on the general question, and not on the individual cases.

Mr. PEIRCE. Right on that point, we are not parties to the Butler County case——

Mr. GLASGOW. Yes; you are.

Mr. PEIRCE. If we are, then that serves as an illustration. I do not understand in these petitions filed by the short lines, any question is raised as to the reasonableness of rates. Those petitions are filed asking the restoration of through rates, and, therefore, Mr. Glasgow is wholly wrong and illogical in his position, in stating that any burden of proof rests upon the main carriers here to establish the reasonableness of an increased rate. They did not increase the rate, but merely cancelled a through rate with one of their
341 connections, in view of this understanding of the intimation of the commission in the Star Grain case, and now that short line comes and says to the commission that the main line has improperly cancelled that through rate, and we ask the restoration of the through rate, but the only question now is whether that cancellation was improperly made, and if the commission finds it was improperly made, then I take it that the through rate will be immediately reestablished in accordance with whatever the finding of the commission may be.

Commissioner HARLAN. Mr. Peirce, I do not understand there is any substantial difference between your view and that suggested by Mr. Glasgow and the view I have endeavored to express for the commission. We shall not at this time discuss whether the 24-cent rate from Texas to Kansas City is or is not a reasonable rate. We shall at this time expect to make a record which will enable the commission to determine whether any part of that rate is to go to the tap line as a general proposition, and to the particular tap line that contests that rate as a particular proposition.

Mr. PEIRCE. That is exactly as I understand it.

Commissioner HARLAN. Now, there can be no misunderstanding as to what we are here for.

342 Mr. PEIRCE. I agree fully with that, and will proceed on that line.

Mr. MCRAE. I represent the Prescott & Northwestern Railroad, and we have filed a complaint against the St. Louis, Iron Mountain & Southern, and against the Kansas City & Southern Railway Company for the cancellation of the rates. We are among the first on the docket, and I would ask of your honor, if you have determined the order in which these special complaints shall be heard. We are here with our witnesses, prepared to give the commission such information as we have touching our transportation question.

Commissioner HARLAN. Mr. McRae, before taking up that question, I want to make an addition, Mr. Peirce, to the statement I last made, which was incorporated in some remarks I had previously made on the question of the reasonableness of the rate, to the extent that the rate may be unreasonable because of the allowances or divisions being made to tap lines, that question of reasonableness is before us, but no other question. I have stated that in several different ways, and in making my last statement I neglected to complete it by calling attention again to that phase of the matter which the commission believes is now before it.

343 Mr. JEFFERY. Do I understand from that that for instance the 18-cent rate from the lumber territory to St. Louis will be attacked and the burden on us to defend that 18-cent rate as it stands? I am doing this sincerely, because I could not quite get your idea on that point.

Commissioner HARLAN. I am going to ask counsel to confer with other counsel on that point.

Mr. JEFFERY. I will do that, but I did not understand.

Commissioner HARLAN. I set it forth as clearly as I could, and I am going to leave the question now with this assemblage, and let us go ahead.

Mr. GLASGOW. Some of the gentlemen here have not filed petitions for their specific lines, and I think it would clarify the subject if your honor would state, as I suppose is the rule, that they may introduce evidence as to their lines without having formally filed a complaint.

Commissioner HARLAN. It was so understood with counsel representing a number of these lines at Washington, that they need not burden the record with separate petitions, but that every one here that wanted to go into this record would have liberty to do so without a formal petition. We have assigned first for hearing

344 the case of the Red River & Gulf Railroad against the Rock Island. That case went into court, and was referred by the court to the commission, and we thought it desirable, under these conditions and as a courtesy to the court, that that case be disposed of first. I would like to know who is here representing that road.

Mr. FARRAR. We represent the Red River & Gulf, but I think your honor is mistaken in saying the court referred that case to the com-

mission. The appeal was dismissed voluntarily, because the defendant came in and pleaded——

Commissioner HARLAN. Aside from the question, we have assigned that case first, and if you are ready to go ahead we will go ahead with this.

Mr. MARSILLIOT. Mr. Commissioner——

Mr. FARRAR. It will be necessary for us to send out and get our books and papers.

Commissioner HARLAN. I hope counsel will be ready when their case is called. I make no criticism of this particular case, but I hope hereafter all books and papers and witnesses will be on hand when the case is called.

Mr. FARRAR. We would have been ready, but my client's train was delayed.

Mr. MARSILLIOT. In order that we may facilitate the move-
345 ment of the commission and carry out the suggestion your honor has just made, and which we think was a most excellent one, I would like to repeat Mr. Glasgow's question as to whether or not your honor has fixed any order that these cases may be set, in order that we may be ready, and all of us may be ready as fast as they are called.

Commissioner HARLAN. We will have to develop this thing a little later. We want to get started and then be able to make some announcement that will relieve a good many of those who are here perhaps until to-morrow.

346 *Order.*

(Entered Dec. 16, 1913.)

United States Commerce Court.

No. 89.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER.

In the above entitled cause, an order having been entered allowing an appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered November 28, 1913, and the clerk having been directed to transmit to the Supreme Court a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered:

Now, pursuant to section 2 of the act of June 18, 1910, it is hereby ordered that the clerk shall transmit to the Supreme Court from the files of the Commerce Court the original certified copy of pages 10

to 42, inclusive, of the transcript of the stenographer's notes of the hearing held at New Orleans, Louisiana, on December 8, 1910, before Commissioner Harlan, in the proceeding entitled "In the matter of the investigation and suspension of schedules canceling through rates with certain tap line connections," investigation and suspension docket No. 11, which certified copy was filed in the Commerce Court on March 31, 1913.

By the court,

MARTIN A. KNAPP,
Presiding judge.

347 *Certified copies of certain agreements and bond from records of Interstate Commerce Commission.*

(Filed Apr. 1, 1913.)

INTERSTATE COMMERCE COMMISSION.

WASHINGTON.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of five agreements between the St. Louis, Iron Mountain & Southern Railway Company and Lowell M. Palmer, and one bond filed in the proceeding entitled "In the matter of the investigation and suspension of schedules canceling through rates with certain tap-line connections," Investigation and Suspension Docket No. 11, and forming part of the original records now on file in the office of this commission.

Seal of the Interstate Commerce Commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 1st day of April, 1913.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

348 These articles of agreement, made and entered into, in duplicate, this day of , A. D. 1899, by and between the St. Louis, Iron Mountain & Southern Railway Company, a consolidated railway corporation, organized and existing under the laws of the States of Missouri, Arkansas, and Louisiana, hereinafter, for brevity, described as the Railway Company, party of the first part, and Lowell M. Palmer, of the city and State of New York, party of the second part:

Whereas the said party of the second part has constructed a logging road from a point known as Lowell Junction, on the Cairo Branch of the St. L., I. M. & S. Ry., extending south a number of miles into the timber; said party of the second part having also constructed a cooperage plant adjacent to said Cairo Branch of the St. L., I. M. & S. Ry. near Poplar Bluff in Butler County, State of Missouri, a distance of about seven (7) miles from the intersection

of said logging road aforesaid; the said party of the second part being desirous of obtaining from the party of the first part permission to operate his logging trains from his said branch over the track of the party of the first part between Lowell Junction in Butler County, State of Missouri, and the cooperage plant of the party of the second part, near Poplar Bluff, Missouri, a distance from Lowell Junction to said cooperage plant, known as "Palmer Mill," of seven and one-fourth (7¼) miles:

Now, therefore, license or permit is hereby granted to the said party of the second part to run his said trains between Lowell Junction and Palmer Mill for the purpose of transporting rough lumber and other material for the use of said mill:

349 This agreement further witnesseth:

That for and in consideration of one dollar ($1.00) in hand paid to the Railway Company by the party of the second part, receipt of which is hereby acknowledged, and other valuable considerations hereinafter enumerated, that is to say, the further stipulations and agreements to be faithfully kept and performed by said party of the second part, the said Railway Company hereby gives to the said party of the second part for the purpose hereinafter set forth, the right to intersect or connect his tracks with those of the said Railway Company on its Cairo division near Poplar Bluff, called "Palmer Mill," near Ash Hill, called "Lowell Junction," in Butler County, State of Missouri, as shown in the attached blueprint, which plat is made a part of this agreement, together with the right of said party of the second part with his own locomotive and cars, to use said intersecting and connecting tracks and as much of the main track of the Railway Company as is necessary between "Lowell Junction" and "Palmer Mill," a distance of about seven and one-quarter (7¼) miles more or less.

The foregoing license or permit is expressly conditioned upon the performance by the said party of the second part of each and all of the covenants and agreements hereinafter set forth to be kept and performed by him as follows, to wit:

First. The said party of the second part hereby covenants and agrees with the said Railway Company that he will pay all damages for which a legal liability may arise against either party to this contract, on account of death or injury to persons, or damage to

350 property, which may occur on, or be occasioned by the locomotives or cars of the said party of the second part, or by the negligence of his employes, or defect of his equipment, and will, upon request of the Railway Company, defend and save harmless the said Railway Company in any and all such cases. And it is covenanted and agreed between the parties to this contract that the said party of the second part shall have no cause of action against the said party of the first part for any injury to or damage sustained by any locomotive engine, car, or equipment belonging to said party of the second part while being operated upon or across the tracks of the said parties of the first and second parts; and that said party of the second part

shall be responsible to the said party of the first part for all injuries to or damages sustained by any locomotive engine, car, or equipment belonging to said party of the first part while the same is being operated upon or over the tracks of the said party of the second part hereinbefore referred to, and shall pay to said party of the first part the amount of damage sustained by it on its locomotive engine, car, or equipment.

Second. The said party of the second part hereby agrees with the said Railway Company that he will fully release and hold harmless the said Railway Company from and against all liability or claim for damages for killing, crippling, or maiming any and all live stock on the spur tracks, sidings, or main tracks of the said Railway Company, by reason of said second party operating engines or cars over said tracks.

Third. The said party of the second part further agrees to fully release, indemnify, and hold the said Railway Company
351 from all liability or claim for damages on account of fire caused by locomotives operating upon said tracks or while engaged in work connected with the use of said tracks.

Fourth. The said party of the second part hereby further agrees to be at all expense in the construction and maintenance of a station and telegraph office at "Palmer Mill" and at "Lowell Junction." The operator at "Lowell Junction" to be appointed by and under the control of the said Railway Company, and the operator at "Palmer Mill" to be appointed by and under the control of the party of the second part. It is, however, distinctly understood and agreed that the party of the second part shall pay the salary or wages of both operators, and the Railway Company will furnish wire connections, instruments, etc., at both stations. In case either operator is objectionable he may be removed by written notice of either party to the other.

Fifth. It is further mutually understood and agreed that the operation of the engines and cars of said party of the second part over the tracks of the said Railway Company shall be at all times according to the rules and regulations as may be prescribed by the proper officials of the Railway Company, and that said engines and cars shall be kept in good running order, so that said equipment shall comply with the M. C. B. rules.

Sixth. It is further understood and agreed that the conductor and engineer of the trains operating over the tracks of the said railway between "Lowell Junction" and "Palmer Mill" shall have a thorough knowledge of the rules and regulations of the said Rail-
352 way Company and must be acceptable to the superintendent of the Railway Company.

Seventh. It is further agreed that none of the tracks aforesaid shall at any time be used by the party of the second part until the conductor or engineer in charge or said train of the party of the second part has obtained a clearance of train order from the dispatcher authorizing the use of said railway company tracks.

Eighth. It is further mutually understood and agreed that the said party of the second part shall have the right to operate his engines and cars between "Lowell Junction" and "Palmer Mill" only between the hours of 6 a. m. and 6.30 p. m., and that no train shall consist of more than an engine and twenty-five (25) loaded cars. It is further understood and agreed that the said party of the second part shall switch and place all loaded or empty cars at "Palmer Mill" off the right-of-way of the said railway, and that any loaded or empty cars placed on either leg of the "Y" connection at "Palmer Mill" shall constitute a delivery.

Ninth. It is further understood and agreed that the party of the second part shall not operate his engines or cars on the main line of the said Railway Company, other than between "Palmer Mill" and "Lowell Junction," and shall not be permitted to carry any passengers other than his own employes, nor any freight for any outside party or concern.

Tenth. It is further understood and agreed that for and in consideration of the use of said Railway Company's tracks as aforesaid, the said party of the second part shall pay to the said Railway
353 Company the sum of sixty-five cents (65c) per train mile as trackage on each train, either loaded or empty, in either direction that is moved between "Palmer Mill" and "Lowell Junction," and vice versa, said amount to be paid monthly.

Eleventh. It is mutually understood and agreed that it is the intent of the contracting parties to this agreement that the party of the second part shall furnish his own engines and equipment to handle freight between "Palmer Mill" and "Lowell Junction," and vice versa.

Twelfth. It is further mutually agreed that the operator at "Lowell Junction" shall keep a daily record of all trains and loads moved between "Palmer Mill" and "Lowell Junction"; said report or statement of account to be used in rendering bills against the said party of the second part.

Thirteenth. It is further understood and agreed between the parties hereto that any default or failure on the part of said party of the second part to keep and perform all and singular the foregoing covenants and conditions on his part, shall work a forfeiture to said Railway Company of all the rights to said party of the second part under this contract. For the faithful performance of the covenants and conditions contained in this agreement the said party of the second part shall prepare and furnish to said Railway Company a bond in the sum of twenty thousand dollars ($20,000), with two sureties to be approved by the Railway Company.

Fourteenth. It is hereby mutually agreed and understood that this agreement shall take effect on the day and date first above
354 written and continue in force and effect until terminated by thirty days' written notice given by either party hereto to the other.

In witness whereof the St. Louis, Iron Mountain & Southern Railway Company has caused its corporate name to be hereunto subscribed by its general manager, and the said Lowell M. Palmer has signed his name the day and year first above written.

Executed in duplicate, each an original to be considered as one and the same agreement.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
By ----------

Witness:

Witness:

Approved as to form.

MARTIN L. CLARDY, *General Attorney.*

355 This second supplemental agreement, made and entered into in duplicate this 25th day of September, A. D. 1902, by and between the St. Louis, Iron Mountain & Southern Railway Company, hereinafter for brevity designated the Railway Company, party of the first part, and Lowell M. Palmer, of the city and State of New York, party of the second part, witnesseth:

Whereas the parties hereto did, on the seventh day of September, A. D. 1899, enter into a contract for the use by the party of the second part of a part of the main line of the railway of the party of the first part between Poplar Bluff and Lowell Junction in the county of Butler and State of Missouri; and did also on the tenth day of May, A. D. 1901, enter into an agreement supplemental to said agreement dated Sept. seventh, A. D. 1899, modifying said agreement of Sept. 7th, 1899, in certain respects, and

Whereas the parties hereto desire to still further modify said agreement dated Sept. seventh, 1899, as amended by said supplemental agreement dated May tenth, 1901:

Now therefore the parties hereto have covenanted and agreed and do hereby covenant and agree each with the other as follows, to wit:

1. That the ninth paragraph of said original contract dated Sept. seventh, 1899, be, and the same is hereby, modified and amended to read as follows, to wit:

"Ninth. It is further understood and agreed that the party of the second part shall not operate its engines or cars on the main line of the said railway company, other than between 'Palmer Mill' and 'Lowell Junction,' and also betweeen Lowell Junction and

356 Fisk, and shall not be permitted to carry any passengers other than his own employees, nor any freight for any outside party or concern, otherwise than raw material, consisting of so-called forest products for the use of the H. D. Williams Cooperage Co., located at Poplar Bluff, Mo., or for the use of the other vendees of said

party of the second part who are engaged in the manufacturing of said raw material into lumber or other finished product, located at Poplar Bluff, Missouri; Palmer Mill, Mo.; Lowell Junction, Mo.; Ash Hill, Mo.; Fisk, Mo.; or at any other point on the line of railway of said party of the first part in Butler County, Mo.; said cars of forest products designed for the use of the H. D. Williams Cooperage Co. or of other vendees of said party of the second part located at Poplar Bluff, Mo., to be delivered to the St. Louis, Iron Mountain and Southern Ry. Co. at Palmer Mill, to be switched to the H. D. Williams Cooperage Co.'s plant or to the plant or plants of such other vendees of said party of the second part at Poplar Bluff, in consideration of the usual switching charge."

2. That said contract, dated Sept. seventh, 1899, as amended by said first supplemental agreement, dated May tenth, 1901, and by this second supplemental agreement, shall be and remain in full force and effect during the full term of a certain contract in writing entered into between the parties hereto on the 25th day of Sept., A. D. 1902, relative to the extension of the logging railway of the party of the second part hereto, the removal of timber from lands owned or controlled by the party of the second part hereto in Clay County, Ark., and elsewhere, and other matters, and that to
357 that and article fourteenth of said original contract, dated Sept. seventh, 1899, be, and the same is hereby, declared to be annulled and rescinded.

3. That all the provisions and considerations in said original contract, dated September seventh, 1899, the said first supplemental agreement, dated May tenth, 1901, contained, shall be and remain in full force and effect, except as herein and hereby supplemented, modified, or annulled.

In witness whereof said party of the first part has caused its corporate name to be hereunto subscribed by its general supt., being thereunto duly authorized, and said party of the second part has hereunto set his hand the day and year first above written.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RY. CO.
By WM. COTTER, *Gen. Supt.*

LOWELL M. PALMER.

Approved as to form:
ALEX G. COCHRAN,
General Solicitor.

Approved:
RUSSELL HARDING,
3rd V. P. and G. M., St. L., I. M. & S. Ry. Co.

358 This third supplemental agreement made and entered into in duplicate this day of , A. D. 1904, by and between St. Louis, Iron Mountain and Southern Railway Company (hereinafter for brevity designated the Railway Company), party of the first part, and Lowell M. Palmer, of the city and State of New York, party of the second part, witnesseth:

Whereas the parties hereto did, on the 7th day of September, A. D. 1899, enter into a contract for the use by the party of the second part of a part of the main line of the railway of the party of the first part between Poplar Bluff and Lowell Junction, in the county of Butler and State of Missouri; and did also on the 10th day of May, A. D. 1901, and on the 25th day of September, A. D. 1902, respectively, enter into several agreements supplemental to said agreement dated September 7th, A. D. 1899, in certain respects; and

Whereas, the parties hereto desire to still further modify said agreement dated September 7th, 1899, as amended by said supplemental agreements dated May 10th, 1901, and September 25th, 1902, respectively;

Now therefore, for and in consideration of the sum of one dollar ($1.00) in hand paid by said party of the second part to the Railway Company, the receipt whereof is hereby duly acknowledged, the parties hereto have covenanted and agreed, and do hereby covenant and agree, each with the other, as follows, to wit:

1. That the eighth paragraph of said original contract dated September 7th, 1899, be, and the same is hereby, modified and amended to read as follows, to wit:

359 "Eighth. It is further mutually understood and agreed that the party of the second part shall have the right to operate his engines and cars between 'Lowell Junction' and 'Palmer Mill,' and between 'Lowell Junction' and 'Fisk' only between the hours of six (6) a. m. and six thirty (6:30) p. m., and that no train shall consist of more than an engine and forty-five (45) loaded cars. It is further understood and agreed that the said party of the second part shall switch and place all loaded or empty cars at 'Palmer Mill' off the right of way of said railway, and that any loaded or empty cars placed on either leg of the 'Y' connections at the 'Palmer Mill' shall constitute a delivery."

2. That the tenth paragraph of said original contract dated September 7th, 1899, be and the same is hereby modified and amended to read as follows, to wit:

"Tenth. It is further understood and agreed that for and in consideration of the use of said Railway Company's tracks, as aforesaid, said party of the second part shall pay to the said railway company the sum of sixty-five (65) cents per train mile as trackage on each train, either loaded or empty, consisting of an engine and not more than twenty-five (25) cars, in either direction, that is moved between Palmer Mill and Lowell Junction, or between Lowell Junction and Fisk, or vice versa; that the said party of the second part shall pay to the said railway company the sum of seventy-five (75) cents per train mile as trackage on each train, either loaded or empty, consisting of an engine and more than twenty-five cars and not more than thirty-five (35) cars, in either direction, that is moved between Palmer Mill and Lowell Junction, or between Lowell Junction and Fisk, or vice versa; that said party of the second part shall pay to

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the said Railway Company the sum of eighty-five (85) cents per train mile as trackage on each train, either loaded or empty, consisting of an engine and more than thirty-five (35) and not more than forty-five (45) cars, in either direction, that is moved between Lowell Junction and Palmer Mill, or between Lowell Junction and Fisk, or vice versa; all settlements to be made monthly."

That all the provisions and considerations in said original contract, dated Sept. 7, 1899, and said first and supplemental agreements dated May 10, 1901, and September 25, 1902, respectively, contained shall be and remain in full force and effect, except as herein and hereby supplemented, modified or annulled.

360 In witness whereof, said party of the first part has caused its corporate name to be hereunto subscribed by its being thereto duly authorized, and said party of the second part has hereunto set his hand, the day and year first above written.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.
By LOWELL M. PALMER.
Approved as to form:
ALEX. G. COCHRAN, *General Solicitor,*
St. Louis, Iron Mountain & Southern Ry. Co.
Approved:
------ ------, *Vice President and General Manager,*
St. Louis, Iron Mountain and Southern Ry. Co.

361 This supplemental agreement made and entered into, in duplicate, this 10th day of May, 1901, by and between the St. Louis, Iron Mountain and Southern Railway Company, hereinafter for brevity designated as the Railway Company, party of the first part, and Lowell M. Palmer, of the city and state of New York, party of the second part, witnesseth:

That, whereas, the parties hereto, on the 7th day of September, 1899, entered into a contract (copy of which is hereto attached) for the use by the party of the second part of a part of the main line of the railway of the party of the first part, from Poplar Bluff to Lowell Junction; and

Whereas, the party of the second part desires to use the main line of the Railway Company from Lowell Junction to Fisk, a distance of about two and nineteen one-hundredths miles and said Railway Company is willing to grant said party of the second part said privilege, on the following conditions, viz:

That the party of the second part will pay a flat rate of four dollars per train of twenty-five cars or less, for all trains hauled over its track between said Lowell Junction and Fisk (round trip);

And said party of the second part agrees to erect at his own expense a suitable station building at Fisk, and pay the salary of a telegraph operator to be there stationed;

And all the provisions and conditions contained in said contract of the 7th of September, 1899, shall apply with equal force to this con-

tract, which is intended merely as a supplemental contract to said original contract aforesaid.

362 Executed in duplicate.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN R'Y. CO.
By J. M. HERBERT, *General Superintendent.*
LOWELL M. PALMER.

Approved as to form:
MARTIN L. CLARDY, *General Attorney.*
Approved:
R. HARDING,
3rd Vice-Pres. & Gen. Manager St. L. I. M. & S. Ry.

363 This agreement made and entered into in duplicate this 25th day of Sept., A. D. 1902, by and between Lowell M. Palmer, of the city of New York, State of New York, party of the first part, and St. Louis, Iron Mountain and Southern Ry. Co., a consolidated corporation organized and existing under the laws of the State of Missouri and Arkansas, party of the second part;

Whereas said party of the second part did, on or about the 25th day of Sept., A. D. 1902, by its warranty deed, convey unto said party of the first part, his heirs and assigns for ever, about seven thousand eight hundred and twenty-six and 31/100 (7,826-31/100) acres of land, more fully described in said deed, lying and being situated in the county of Clay and State of Arkansas, for the sum of three dollars and sixty-two and one-half cents ($3.62½) per acre, in hand paid to said party of the second part by said party of the first part, and for other valuable considerations; and

Whereas the other valuable considerations were the undertaking of said party of the first part to enter into a contract in writing with said party of the second part in relation to the removal of standing timber now upon the lands conveyed by said deed and other covenants of said party of the first part herein contained; and

Whereas said parties are now ready to enter into such contract:

Now therefore this agreement witnesseth that for and in consideration of the sum of one dollar ($1.00) each to the other in hand paid, the receipt whereof is hereby duly acknowledged; and

364 in further consideration of the covenant and obligations hereinafter undertaken to be kept and performed by the parties hereto, the parties hereto have covenanted and agreed, and do hereby covenant and agree, each with the other, as follows, to wit:

1. The party of the first part covenants and agrees that he will, without cost or expense to the party of the second part, extend or cause to be extended the logging railway now built and in operation from Lowell Junction, on the Cairo branch of the railway of said party of the second part, southwardly to a point at or near the southeast corner of section thirty-six (36), township twenty-four (24) north, range seven (7) east, heretofore known as Bailey's End, in the county of Butler, State of Missouri, said railroad being owned and operated by the party of the first part from its present terminus

as aforesaid to a point in the county of Clay and State of Arkansas not less than thirteen (13) miles south of the boundary line between the States of Missouri and Arkansas, measured at right angles to said boundary line.

2. Said party of the first part further covenants and agrees that he will deliver to said party of the second part for transportation over its own and connecting lines of railway, at Palmer's Mill, Poplar Bluff station, Lowell Junction station, Ash Hill station, Fisk station, or other points on the line of railway of said party of the second part in said Butler County, all the logs, timber, shooks, staves, heading, and other forest products, whether in natural or manufactured state, originating along the line of the logging railway now owned and operated by said party of the first part, or
365 along the extension of said logging railway to be constructed in accordance with the terms of this agreement, or any other or further branches or extensions of said logging railway, or elsewhere, when manufactured at the mill or mills of said party of the first part, so far as the routing of said logs, timber, lumber, shooks, staves, heading, and other forest products may be within his control; and said party of the first part covenants and agrees that he or his vendees of the forest products of said land will deliver to said party of the second part for transportation over its own and connecting lines of railway not less than two thousand five hundred (2,500) loaded cars of logs, timber, lumber, shooks, staves, heading, and other forest products during each year that this agreement shall remain in effect, and said party of the first part further covenants and agrees to deliver to said party of the second part for transportation over its own and connecting lines of railway all other freight of any description whatsoever originating along the line of said logging railway, or the extension thereof to be constructed under the terms of this agreement or any other or further branches or extensions of said logging railway, or which may be shipped to said party of the first part at Poplar Bluff or Palmer's Mill, Mo., the routing of which may be within his control.

3. The party of the first part further covenants and agrees that he will prosecute the work of removing the standing timber from the lands in Clay County, Ark., conveyed to him by the party of
366 the second part on or about the 25th day of September, A. D. 1902, as aforesaid, and from all other lands east of Black River in said county or adjoining counties adjacent or tributary to said logging railway, or any branches or extensions thereof as aforesaid owned or controlled by him, with due diligence and with all reasonable despatch. Said party of the first part further covenants and agrees that he will exercise all reasonable diligence to procure and facilitate the settlement of development of said lands and of all other lands owned or controlled by said party of the first part in the county of Clay and State of Arkansas or elsewhere adjacent or tributary to said logging railway and any branches or extensions thereof

as aforesaid as fast as the standing timber shall be removed from said lands and the same rendered fit for settlement and cultivation.

4. It is further covenanted and agreed by and between the parties hereto that a certain contract in writing entered into between said parties on the seventh day of September, A. D. 1899, relative to the operation of the engines and cars of said party of the first part over the line of railway of said party of the second part hereto between Lowell Junction, on the Cairo branch of the St. Louis, Iron Mountain and Southern Railway, and the cooperage plant of the party of the second part near Poplar Bluff, Mo., known as "Palmer's Mill," a distance of seven and one-fourth (7¼) miles, and a certain agreement suplementary thereto entered into on the tenth day of May, A. D. 1901, shall be continued and remain in full force and effect until all standing timber shall have been removed from the lands in Clay County, Ark., conveyed to said party of the first
367 part by said party of the second part, as hereinbefore stated, and from all other lands in said Clay County, Ark., or elsewhere adjacent or tributary to said land or to said logging railway or any branches or extensions thereof owned or controlled by said party of the first part.

In witness whereof said party of the first part has hereunto set his hand and said party of the second part has caused its corporate name to be hereto subscribed by its this the day and year first above written.

Witness:

H. L. UTTER. LOWELL M. PALMER.

St. Louis, Iron Mountain & Southern Ry. Co.

Witness:

E. S. CRONK. By C. G. WARNER, *2nd V. P.*

368 Know all men by these presents, That we, Lowell M. Palmer, as principal, and and as sureties, are held and bound unto the St. Louis, Iron Mountain & Southern Railway Company, in the sum of twenty thousand dollars ($20,000) for the payment of which well and truly to be made, we do bind ourselves, our and each of our heirs, executors, administrators, successors, and assigns, sealed with our seals, this day of A. D. 1899.

The condition of the above obligation is such that, whereas, the said Lowell M. Palmer did, on the day of , 1899, make and enter into an agreement in writing, with the said St. Louis, Iron Mountain & Southern Railway Company, for the operation of engine and cars between "Palmer Mill" and "Lowell Junction," in consideration whereof said Lowell M. Palmer covenanted and agreed to do and perform divers and sundry things, and to pay to the said St. Louis, Iron Mountain & Southern Railway Company divers and sundry sums of money, as by reference to said contract will more fully and at large appear.

Now, if said Lowell M. Palmer shall well and truly keep and perform all and singular his obligations, covenants, and agreements as provided by said contract to be by him kept and performed, and shall well and truly pay all moneys as by him agreed to be paid, according to terms, conditions, and provisions of said contract, then this obligation shall be void; otherwise to be and remain in full force and effect.

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369 In the United States Commerce Court.

Butler County Railroad Company, petitioner,
v.
United States of America, respondent. } No. 89

Objections to the sufficiency of the petition on final hearing.

(Filed March 31, 1913.)

Comes now the United States of America, by its counsel, on the final hearing hereof, and in accordance with the statute in such case made and provided, makes and enters the following objections to the sufficiency of the petition in the above-entitled cause, viz:

First. The court is without jurisdiction to entertain the said petition, because the order of the Interstate Commerce Commission sought to be set aside is a negative order;

Second. The court is without jurisdiction to review the action of the Interstate Commerce Commission in refusing to establish through routes and joint rates between the petitioner and the trunk lines;

Third. The petition does not state any cause of action against the respondent.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

370 *Journal Entry.*

Proceedings of March 31, 1913.

Case No. 89.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER.

Said cause came on for the taking of testimony, and William N. Barron being duly sworn as a witness, counsel for the petitioner proceeded with his examination. Thereupon counsel for the United States objected to the taking of testimony; and counsel for the Interstate Commerce Commission interposed its objections to each question as put to the witness. Thereupon the court stated that it was in doubt as to the relevancy of the testimony, but would permit the witness to proceed and reserve decision as to the relevancy of his testimony. Thereupon said cause came on for final hearing and the arguments of counsel were concluded, Mr. William A. Glasgow, jr., appearing on behalf of the petitioner, Mr. Blackburn Esterline, special assistant to the Attorney General, on behalf of the United States, and Mr. Charles W. Needham, on behalf of the Interstate Commerce Commission. Leave was granted to counsel to file briefs. Thereupon the cause was taken under advisement by the court.

371 *Opinion.*

(November 26, 1913.)

United States Commerce Court.

No. 89.—February session, 1913.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER.

On final hearing.

(For opinion of Interstate Commerce Commission see 23 I. C. C. Rep., 277 and 549.)

Mr. William A. Glasgow, jr., for the petitioner.

Mr. Blackburn Esterline, special assistant to the Attorney General, for the United States.

Mr. Charles W. Needham, for the Interstate Commerce Commission.

Before Knapp, presiding judge, and Hunt, Carland, and Mack, judges.

(November 26, 1913.)

Mack, Judge:

Complaints filed by this petitioner against several trunk
372 lines, requesting that joint rates and through routes theretofore in force be reestablished, were made a part of the Interstate Commerce Commission's investigation and suspension docket No. 11. The reports and orders of the commission in those proceedings are fully considered in our opinion filed this day in cases No. 90 to 93.

The finding in those orders that certain tap lines were plant facilities did not include this petitioner. As to it, as well as to a number of other tap lines not now before us, the order was as follows:

"Seven. It is ordered that the said principal defendants (the trunk lines) be and they are hereby required, on or before January 1st, 1913, to reestablish, and for a period of two years to maintain, with (the Butler County Railroad Company) the through interstate routes and joint rates in effect in accordance with their respective tariffs filed with this commission on April 30th, 1912.

"Eight. Provided, that the rates on yellow pine lumber and articles taking the same rates from points on the lines of the (Butler County Railroad Company) shall not exceed the current rates in effect from the junction points; and

"Nine. Provided further, that the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said (Butler County Railroad Company) on the products of the mills (of its proprietary company) shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum divisions or
373 allowances thereon until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful."

At page 629 of the supplemental report the commission says:

"For its service in moving the products of the cooperage company's (the proprietary) mill to the Iron Mountain and to the Frisco, a distance of less than one mile, this tap line may lawfully receive out of the rate nothing beyond a reasonable switching charge, which we fix at $1.50 per car."

This is the only provision for any allowance or division in respect to the traffic of the proprietary company.

The effect of the order of the commission is to find that this tap line is a common carrier both of logs and of lumber, but while it may receive a division out of the joint rate for both the log and the lumber traffic of nonproprietary companies, it may receive neither

a division nor an allowance for the log traffic and only an allowance but no division for the lumber traffic of the proprietary mill.

For the reasons stated in the opinion filed this day in cases No. 90 to 93, we are of the opinion that the distinctions here made are arbitrary and that the order is, in this respect, beyond the power of the commission.

When the commission permits the reestablishment of a joint rate, which was applicable both to the logs and the lumber, including the milling-in-transit privilege, thereby recognizing the tap
374 line as a common carr'er both of logs and lumber, it is without power to forbid the payment by the trunk line to the tap line of a reasonable division for its services both in hauling the logs to a mill, proprietary or nonproprietary, and in hauling or switching the lumber from such a mill to a trunk line. It is in such case equally without power to limit the payment in respect to the traffic of the proprietary mill to a mere allowance for switching the lumber. The proviso contained in paragraph numbered 9 of the order must, therefore, be annulled.

If the divisions theretofore in force were so excessive as to produce an unjust discrimination, or to amount to a secret rebate, the commission may reduce them to a reasonable sum, and nothing herein stated is intended in any manner to limit the power of the commission in this respect.

A decree will be entered accordingly, and it is so ordered.

375 *Opinion of Commerce Court in La. & Pacific Ry. Co. et al.* vs. *United States et al.*

(Filed November 26, 1913.)

(Omitted in printing.)

* * * * * * *

404 United States Commerce Court.

No. 89.

BUTLER COUNTY RAILROAD CO., PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENER.

Final decree.

(Entered November 28, 1913.)

The above case having been submitted on final hearing upon pleadings and proofs, and due consideration thereof having been had.

It is ordered and adjudged that so much of the order of October 30th, 1912, which reads as follows:

"Nine. Provided further that the allowances or divisions out of such joint rates to be paid by said principal defendants respectively to the said last named parties to the record (Butler County Railroad Company) on the products of the mills of the said respective proprietary companies named in said report, shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum divisions or allowances thereon until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful." be and the same is hereby vacated and set aside as to the petitioner herein.

By the court.

(Signed) MARTIN A. KNAPP,
Presiding Judge.

NOVEMBER 28, 1913.

405 In the United States Commerce Court.

February session, 1913.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT. } No. 89.

Petition for appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervenor, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray and appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervenor, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to
406 the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. MCREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

407 In the United States Commerce Court, February Session, 1913.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT. } No. 89.

Assignment of errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its solicitor, and in connection with their petition for appeal file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

408 III.

In not dismissing the petition for that (a) the same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (b) nor has the said petitioner shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (c) nor has the petitioner shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (d) nor has the petitioner shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioner protected by the Constitution of the United States, or any other right of the said petitioner over which this court may exercise jurisdiction.

IV.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

V.

In holding that the commission was without power to inquiry into and go behind the mere forms of organization and methods of doing business by the industrial company and the tap line, and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the industrial company's traffic.

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VI.

In holding that the commission after finding that the tap line was a medium for the payment of rebates on some of the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

VII.

In not holding and adjudging that the organization of the Butler County Railroad Company and the transfer to it by the industrial company of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the industrial company, as shipper, and the trunk lines, as carriers, to private divisions between the Butler County Railroad Company and the trunk lines, in order to evade the provisions of the act to regulate commerce and, simultaneously, to maintain the advantages of the parties.

VIII.

In not holding and adjudging that the industrial company is making the transportation of its enormous traffic a matter of bargain and sale, and with the power wielded in controlling the routing compelled the trunk lines to make allowances to the Butler County Railroad Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the industrial company and against other shippers.

IX.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are
410 not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioner.

X.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services, as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XI.

In vacating and setting aside as to the petitioner the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, embraced within proviso nine, and set forth at length in the final decree herein.

XII.

In not sustaining the order of the Interstate Commerce Commission.

XIII.

In granting the relief prayed by the petitioner or a substantial part thereof.

411 Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court entered November 28, 1913, be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

J. C. McReynolds,
Attorney General of the United States.

Chas. W. Needham,
Solicitor for the Interstate Commerce Commission.

412 In the United States Commerce Court, February Session, 1913.

Butler County Railroad Company, petitioner,
v.
United States of America, respondent, and Interstate Commerce Commission, intervening respondent. } No. 89.

Order allowing appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final

decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be, and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

413 In the United States Commerce Court.

February session, 1913.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervenor. } No. 89.

Praecipe for record.

To the CLERK:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office of the clerk of the Supreme Court of the United States upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings, and papers on file or of record, to wit:

Petition and exhibits, filed December 31, 1912.

Answer of the United States, filed January 29, 1913.

Answer of the Interstate Commerce Commission, filed February 28, 1913.

Stipulation as to record before Interstate Commerce Commission, in I. and S. Docket No. 11, filed March 31, 1913.

Report and supplemental report, order, and amended order of Interstate Commerce Commission, in I. and S. Docket No. 11, filed March 31, 1913.

Certified copy of testimony and exhibits before Interstate Commerce Commission, filed March 31, 1913.

Certified extract from record of Interstate Commerce Commission, hearing at New Orleans, December 8, 1910, filed March 31, 1913.

Certified copies of certain agreements and bond from records of Interstate Commerce Commission, filed April 1, 1913.

Objections of the United States on final hearing to the sufficiency of the petition, filed March 31, 1913.

414 Opinion of the Commerce Court in the above-entitled cause, filed November 26, 1913.

Opinion of the Commerce Court in Louisiana & Pacific Railway Company et al. *v.* United States et al., No. 90, filed November 26, 1913.

Final decree of the Commerce Court, entered November 28, 1913.

Petition for appeal, filed November 29, 1913.

Assignment of errors, filed November 29, 1913.

Order allowing appeal, filed November 29, 1913.

Citation on appeal, filed November 29, 1913.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

415 *Citation on appeal.*

UNITED STATES OF AMERICA, *ss:*
To BUTLER COUNTY RAILROAD COMPANY, A CORPORATION.

Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

WM. A. GLASGOW, JR.,
Solicitor for Appellee.

416 United States Commerce Court.

No. 89.

BUTLER COUNTY RAILROAD COMPANY, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify that the foregoing transcript, together with the original certified copy of certain pages of the stenographer's transcript of hearing before Interstate Commerce Commissioner Harlan in Investigation and Suspension Docket No. 11, constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the praecipe filed in the clerk's office of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 19th day of December, A. D. 1913.

[SEAL.] G. F. SNYDER, *Clerk.*

417 In the Supreme Court of the United States.

October Term, 1913.

UNITED STATES OF AMERICA ET AL., APPELLANTS, *v.* BUTLER COUNTY R. R. CO. } No. 837.

Statement of errors.

To the Clerk:

In pursuance of paragraph 9, rule 10, rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to William A. Glasgow, jr., Esq., Real Estate and Trust

Building, Philadelphia, Pa., by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[SEAL.] J. H. MACKEY,
Notary Public, D. C.

I concur in the above designation.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, appellant.

418 In the Supreme Court of the United States.

October Term, 1913.

UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
BUTLER COUNTY RAILROAD CO. } No. 837.

Instructions to omit certain matter from the printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz:

1. The report and supplemental report and the order and the amended order of the Interstate Commerce Commission.

2. Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11–A.

3. Opinion of the United States Commerce Court in Louisiana and Pacific Railway Co. *v.* United States, No. 90.

Other instructions are separately given to print in a single volume certain parts of the matter so to be omitted.

JNO. W. DAVIS,
Solicitor General.

419 File No. 23,988. Supreme Court U. S. October term, 1913. Term No. 837. The United States et al., appellants, vs. Butler County Railroad Company. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

(Indorsed:) File No. 23,988. U. S. Commerce Court. Term No. 837. The United States and Interstate Commerce Commission, appellants, vs. Butler County Railroad Company. Filed December 29th, 1913. File No. 23,988.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 930.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 930.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 931.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 932.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 933.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 934.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 935.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, PERRIN AND WESTERN RAILROAD COMPANY ET AL.

No. 936.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, PERRIN AND WESTERN RAILROAD COMPANY ET AL.

No. 937.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

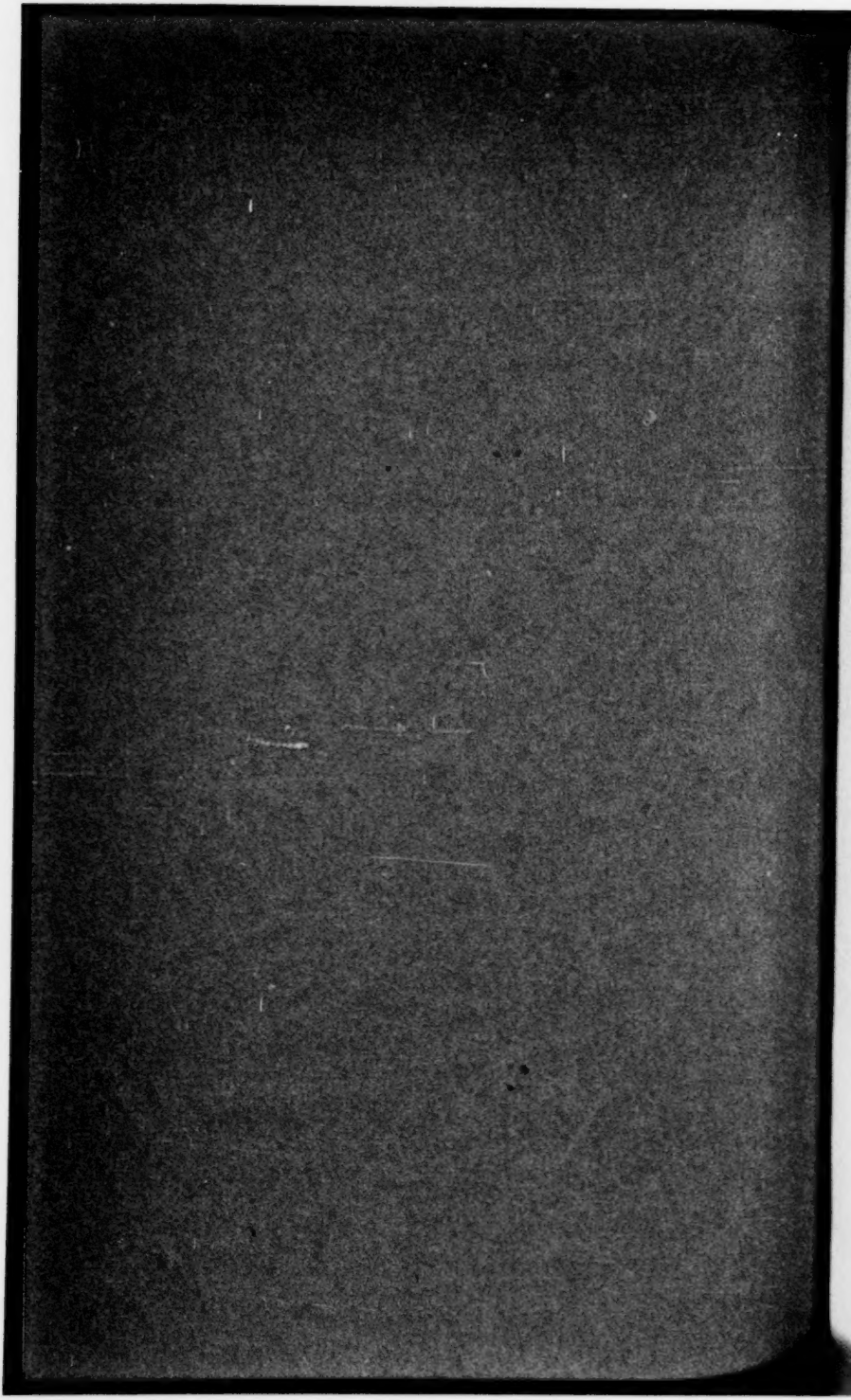
vs.

BUTLER COUNTY RAILROAD COMPANY.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 23, 1912.

(23,980—23,987)



(23,980—23,987)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 829.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 830.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 831.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 833.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1914.

No. 834.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 835.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 836.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 837.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS.

vs.

BUTLER COUNTY RAILROAD COMPANY.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

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INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP-LINE CASE.

Submitted April 15, 1911. Decided April 23, 1912.

The common ownership of an industry and a short line serving it is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company owned and operated by the industry or in its interest does not divest those appliances of their character as a plant facility if such in fact is the case. A line must be drawn at some point between what is transportation and what is industry and between a facility of transportation and a plant facility or tool of the industry. Each case, however, must stand on its own facts. On the facts shown of record; *Held*, That the service performed for the proprietary lumber companies by certain tap lines described in the report is not a service of transportation by a common carrier.

John H. Marble for Interstate Commerce Commission.

S. H. Cowan, *Frank Andrews*, and *Andrews*, *Ball & Streetman* for interveners.

Walter Guion, attorney general, *Ruffin G. Pleasant*, and *Wylie M. Barrow*, assistant attorneys general, for Railroad Commission of Louisiana.

R. P. Allen for Railroad Commission of Arkansas.

Robert Dunlap, *T. J. Norton*, and *James L. Coleman* for Atchison, Topeka & Santa Fe Railway System.

William A. Northcutt, *Nelson W. Proctor*, and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

James C. Jeffery for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

S. H. West for St. Louis Southwestern Railway Company.

S. W. Moore for Kansas City Southern Railway Company.

H. M. Garwood, *Luther M. Walter*, *N. S. Brown*, *Sidney F. Andrews*, *A. Cochran*, *E. J. Mantooth*, *McRae & Tompkins*, *Gaughan & Sifford*, *Rodgers & Dorough*, *Julian C. Wilson*, *W. C. Gilbert*, *Charles T. Coleman*, *W. M. Lewis*, *James M. Beck*, *William A. Glasgow, jr.*, *Saner & Saner*, *Hill, Brizzolara & Fitzhugh*, *Edgar A. Bancroft*,

Samuel D. Snow, *John S. Kirkpatrick*, *W. L. Stocking*, *Marcellus Green*, *Garner Wynn Green*, *Frank P. Leffingwell*, *Walter H. Saunders*, *T. Brady, jr.*, *Mixon & Cassidy*, *Mehaffy*, *Reid & Mehaffy*, *Thurmond & Farrar*, *J. W. Bishop*, *D. B. Holmes*, *Ashley Cockrill*, *Henry M. Armistead*, *J. F. Gautney*, *John B. Jones*, *C. F. Ziebold*, *Stubbs*, *Russell & Theus*, *J. D. Riddell*, *Bradley & McKay*, *Leon Sugar*, *Greer & Minor*, *Blair*, *Drayton & Hillyer*, *Charles H. Bates*, *Dean*, *Humphrey & Powell*, *Joe R. Lane*, *Joseph C. Rich*, *J. Gaillard Hamilton*, and *Coleman & Lewis* for individual tap lines.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

An industrial railroad, as that phrase is now commonly used, is a short line constructed primarily to serve the particular plant or industry in the general interest of which it is owned and operated. It consists of the tracks connecting the various factories, warehouses, and other buildings of the industry with one another, and ordinarily has a connection with one or more adjacent trunk lines by means of a track leading from the plant to their rights of way. It serves the industry by receiving its inbound shipments of raw materials from the trunk lines at agreed interchange points, distributing them among the various buildings according to the requirements of the manufacturing operations, and by taking its finished products from the plant to the trunk lines; it is also often in a position to effect all the necessary movements of materials and partially finished products from building to building within the plant. The rails, tracks, and locomotives are more frequently operated as a bureau of the industry and no pretense is made of serving outside interests. In recent years, however, a practice has grown up under which the rails, tracks, and locomotives operated and used in and around an industrial plant, when set over to a small incorporated railroad company, organized for the purpose and owned by the industry or in its interest, are thereafterward dealt with by the regular lines as something wholly apart from the industry and as if they constituted a common carrier in the service of the general public, participating on an equal basis with other carriers in the transportation of the traffic of the country. On this theory of their status many industrial lines receive allowances out of the rates both on the traffic of the controlling industry and upon such traffic of outside interests as they may handle.

The aggregate amount so paid by the regular lines to industrial lines throughout the country is not known. It has been estimated at not less than $100,000,000 a year. On the basis of such investigations as we have been able to make it seems entirely conservative to say that they amount, for the whole country, to not less than $50,000,000 or $60,000,000 a year. In many cases the allowances so received out

of the rate are sufficient, and are intended both by the carrier and the industry owning the industrial line to be sufficient, to cover the cost not only of the movement of materials and finished products between the plant and the adjacent trunk lines but the cost of all the operations of the industrial lines for the industry within its plant. In no small number of cases the allowances are sufficient to meet all these costs and to return handsome dividends on the entire investment of the industry in its tracks and equipment. In some cases the amount thus received by a particular industry is so large as to contribute materially to its prosperity as compared with the prosperity of a competitor in the same line of business receiving no such aid. To a concern whose manufacturing operations are large, a contribution of this kind from the public carriers may be relatively unimportant, but similar aid to a competitor that is not so strong might readily determine in some cases whether it is to survive in the struggle or go out of existence.

The importance of the question and the numerous informal complaints of discrimination arising out of these relations between public carriers and industrial lines led the Commission several years ago to enter upon an extensive general examination of industrial lines of all classes. The investigation was closed, for the purpose of compilation, on June 30, 1909, upon a record embracing 2,208 cases where tracks and locomotives were owned and controlled and used by industries in active operation. Of that number it appeared that 1,748 were owned by affiliated industries directly or through the direct ownership of all the stock of an incorporated industrial line. In 264 cases the stockholders of the industrial line were identical with the stockholders of the controlling company. In 164 cases the industrial company, on the face of its records, owned a majority of the stock of the industrial line. Of the 2,208 industrial lines then in operation, but 611 were incorporated as railroad companies. The remaining 1,597 lines were being operated directly by the owning industrial companies. Out of the whole number, incorporated and unincorporated, only 450 were receiving divisions or allowances from the public carriers. Some 363 derived some revenues under local rates, while 1,395 derived no revenue at all from operation. Out of the whole number, but 135 were receiving, according to their own claims, as much as 20 per cent of their traffic from the general public; and there is reason to think that a careful analysis of the figures would materially modify the extent of this outside traffic. In the case of 2,073 lines 80 per cent or more of the traffic was supplied by the controlling industrial company. Of the whole number, only 441 had filed tariffs or concurrences with the Commission, as required by law, and but 345 had filed annual and monthly reports.

In the operations of manufacture and production it was first the practice to use horses and wagons for handling materials in and about the industrial plant, and in the same way to haul the raw material from the tracks of the public carrier to the plant, and to haul the manufactured product from the plant to the carrier's receiving station. Later pushcarts and handcars, sometimes moving on rails, cranes, conveyers, and other appliances were brought into use. These facilities are still to be found in many of the smaller industries. But with the combinations of capital and the concentration of manufacturing operations into large plants, railroad tracks, cars, and locomotives have become necessary to avoid delay and expense in handling the raw material into and in and about the plant, and in order to deliver the manufactured products as cheaply as possible from the plant to the carriers that move them to the markets. It can not be doubted that large economies in the cost of manufacture and production have been effected in that way. When the service is performed on rails by a bureau of the industry and with locomotives that it owns and with crews that it employs, this change in method was manifestly not a change in the thing done but simply a change in the facility used for doing the same thing. Whether the service, so far as the controlling industry is concerned, takes on another aspect when the rails and locomotives have been set over to an incorporated railroad company owned by or in the interest of the industry, and ceases to be a part of the industrial operation as was the service performed by the horses and carts and other appliances formerly used by industrial companies and still used by the smaller concerns, is a question that manifestly must depend upon the facts in each case. In a formal investigation we are now looking into the relations between the public carriers and the industrial lines affiliated with iron and steel industries, and with other manufacturing concerns located in the territory east of Chicago. A number of particular instances are also before us upon formal complaint. All these cases will be considered in due time. We propose here to examine only industrial lines affiliated with lumber companies, limiting our observations to lumbering operations in the southwest, and more particularly to those in the states of Arkansas, Missouri, Louisiana, and Texas. These small railroads, owned by or affiliated with lumber companies and commonly referred to as tap lines, although different from other lines in many respects, are generally classified as industrial railroads. The tap-line question, therefore, is simply a phase of the larger question which we have endeavored to outline in the foregoing pages. So far as it affects the lumber interests in that territory, it has been considered in a general form in *Central Yellow Pine Asso.* v. *V. S. & P. R. R. Co.*, 10 I. C. C., 193; *Central Yellow Pine Asso.* v. *I. C. R. R. Co.*, 10 I. C. C., 505; and *Star Grain*

& Lumber Co. v. *A. T. & S. F. Ry. Co.*, 14 I. C. C., 364; 17 I. C. C., 338. It was also considered on the special facts of the case in *Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450, where the haul of logs to the mill was held to be a plant service. The matter is again before us upon further complaint and upon an exhaustive record, in which the relations between the so-called tap lines and the respective lumber companies, in the interests of which they are owned and operated, were exhaustively examined. All that is here said must therefore be understood to relate to the conditions disclosed upon this record and as having relation only to industrial lines that are owned by or affiliated with lumber companies in that particular territory.

The lumber traffic of the country in the aggregate is enormous. Allowances, however, are not universally made to the tap lines of lumber companies. Taking the industry as a whole throughout the country an allowance by a public carrier to a lumber road or tap line is the exception rather than the rule. Even in the yellow-pine forests west of the Mississippi River, which is the territory more particularly involved on the record before us, there are more tap lines receiving no allowances than there are tap lines to which such allowances are paid. To some extent the practice of making such concessions out of the rate has spread to the yellow-pine districts east of the Mississippi River and allowances are now paid to a few of those mills. The rest of the mills east of the river enjoy no allowances and formerly none were paid at all. This difference in conditions east and west of the river is doubtless reflected to some extent in the current rate of 16 cents on lumber from mills west of the river as compared with a 14-cent rate on lumber from mills east of the river to such points, for example, as Cairo; generally speaking, the rates from points west of the river seem to be higher than the rates east of the river for hauls of equal distances. In the statement of facts preceding the opinion of the court in *Illinois Central R. R.* v. *I. C. C.*, 206 U. S., 441, 444, the difference in the practice on the two sides of the river was explained in the following language:

> The railroads west of the Mississippi make a certain allowance to the mills which have "logging roads"—that is, roads by which logs are hauled from the timber to the mills. This is called "tap-line allowance or division." * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate* or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.

While it is said that the allowances paid west of the river enter into and affect the general rate structure from those producing points, an examination of the tariffs does not show that the rates for hauls from

mills west of the river are uniformly higher than rates for hauls of equal distances from mills east of the river. Such discriminations as may exist, as between mills east and west of the river, do not arise so much out of the rate schedules as out of the fact, just mentioned, that a large number of the mills west of the river enjoy allowances from the trunk lines while those east of the river and the majority of those west of the river have the benefit of no such aid from the carriers.

Of the 2,208 industrial lines of all classes that were examined in the course of the general investigation referred to, it was found that some 1,251, incorporated and unincorporated, were tap lines owned by or closely affiliated with companies engaged in different parts of the country in the manufacture of lumber and forest products. Of these so-called railroads only 243 were found to be receiving allowances from the public carriers. On the other hand 1,008 were receiving no allowances of any kind. The 243 lumber companies that were beneficiaries of such contributions from the public carriers were operating, through their tap lines, 5,787 miles of track, while the tap lines of the 1,008 other mills receiving no aid from the public carriers were operating 12,358 miles of track. These figures fairly lead to the inference that it is the larger lumber companies with their larger traffic that receive allowances, while the smaller concerns are compelled to get along without such contributions from the public carriers.

These 1,251 lumber mills in different parts of the country are operated under different conditions and manufacture lumber of different kinds and classes. It must be remembered, nevertheless, that they are all in competition with one another in the general lumber markets of the country. But limiting our comments to the conditions that exist west of the Mississippi River in the three states of Arkansas, Texas, and Louisiana, where the lumber industry is confined largely to yellow pine, we find that the public carriers, at the time our investigations were brought to a conclusion, were making allowances out of the rates to 112 tap lines, while 143 tap lines were receiving no such contributions. Later in this report we shall analyze the conditions under which many of these lumber industries were conducting their operations, and shall examine into the mileage, tonnage, and motive power of their respective tap lines, and the conditions under which they were being used in the process of turning their logs into lumber. At this point it will suffice to say that 11 of the tap lines receiving no allowances had been incorporated; on the other hand 6 unincorporated tap lines were receiving allowances. The general rule, however, as heretofore stated, was to pay allowances only to the incorporated tap lines. Nevertheless, taken as a whole, the tap lines receiving no allowances are shown by the investigation to have

been operated, so far as the lumber traffic is concerned, under conditions that were substantially similar to the conditions surrounding the operation of most of the tap lines that were enjoying allowances from the public carriers. The yellow-pine lumber companies in those states compete with one another in the same general markets and under conditions that would be equal, so far as can be ascertained from the record, were it not for the fact that the carriers aid some of them with contributions out of the rates, while the majority of them bear their own burdens in conducting their lumber operations.

DISCRIMINATIONS RESULTING FROM ALLOWANCES.

That discriminations grow out of these contributions by the public carriers to certain of the lumber interests in Arkansas, Missouri, Texas, and Louisiana is apparent upon the face of the record. The allowances paid range from a minimum of three-quarters of a cent to 6 cents per 100 pounds. In the competition of carriers for the traffic allowances as high as 7 cents per 100 pounds have been paid out of a 14-cent rate, where the haul of the tap line was a matter of feet and yards while the haul of the carrier itself approximated 400 miles. The amount of the allowance seems not to be governed definitely by the extent or character of the service said to be performed by the tap line, but to result to some extent from the bargain made between the carrier and the lumber company. In one case a tap line, operating 6 miles of main line, receives allowances of 3 and 4 cents per 100 pounds, while a few miles away another tap line, operating 12 miles, receives but 1 to 2½ cents per 100 pounds, depending upon destination; in each case the public carrier performs all the service between the mill and its own tracks. It did not appear that the controlling lumber companies, the real beneficiaries of the allowance, knew of the discrimination between them until the facts were developed on the hearing. Other instances appear of record where incorporated tap lines are receiving allowances that are less or greater than the allowances paid to other incorporated tap lines performing a service that is substantially similar in extent and character and under like conditions. A number of witnesses for tap lines expressed surprise at the hearing upon learning of the larger allowances paid to other tap lines. The three principal trunk lines whose tracks extend through the territory in question are the Kansas City Southern, the Iron Mountain, and the Rock Island. As illustrating the extent of the discrimination arising out of the payment of allowances to some tap lines and the failure to make allowances to others, it is well here to state that of 27 tap-line connections of the Kansas City Southern it makes allowances to 15, while 12 receive no allowances. The Iron Mountain has junctions with 90 tap lines, to

63 of which allowances are made; the other 27 have no allowances. The Rock Island is reached by 43 tap lines. Of this number it makes allowances to 33, leaving 10 without allowances. This was the condition existing at the time of the hearing.

This difference in the treatment by carriers of lumber companies owning incorporated tap lines is one form of discrimination growing out of tap-line allowances. But there are also other forms. There is the discrimination involved in the payment of allowances to one lumber company through its incorporated tap line, while the same public carrier in the same territory refuses to make any allowance to another lumber company using a tap line that has not been incorporated, but where all the other conditions, as well as the extent of the service, the mileage, motive power, cost of operation, etc., are substantially similar. An instance of this kind is before us upon formal complaint in Docket No. 3878. This proceeding was brought by the Davis Brothers Lumber Company against the Chicago, Rock Island & Pacific Railway Company and other carriers. The complainant company was included in our general investigation and the conditions under which it conducts its lumbering operations are shown of record and are explained upon its complaint. It appears that its plant and yearly output are much more extensive than those of many other lumber companies that are receiving allowances. It has 16 miles of tap line and 5 miles of logging spurs. It operates 4 locomotives and uses 40 logging cars. It has a small amount of traffic for outsiders, a claim that can not be advanced by many of the incorporated tap lines that are receiving allowances. In its complaint it points out that all the lumber companies in this territory have long used logging roads to haul logs from their adjacent forests to their mills, and that these facilities have, until recent years, been regarded as mere adjuncts to their plants; that the Rock Island, on the pretense that tap lines become common carriers when incorporated, is making allowances to the competitors of the complainant, ranging from 2 to 3 cents per 100 pounds and even higher, while refusing such aid to the complainant which uses and always has used a logging road of the same kind, for the same purpose, and which it has operated at the same proportionate expense. A striking allegation in the complaint is that the Rock Island has offered to pay the complainant similar allowances if it would go through the form of incorporating its logging road as a common carrier, a device which the complainant regards as a mere evasion of the act, and to which it therefore has declined to resort. It is a device, however, which the record shows has been adopted by many lumber companies in this territory at the express suggestion of trunk lines which desired their traffic and advised the incorporation of their tap lines as a basis for legalizing allowances.

The tap lines that are not incorporated are operated in precisely the same way and for precisely the same purposes, so far as the proprietary lumber companies are concerned, as are the incorporated tap lines. Nevertheless the lumber companies that have not incorporated their tap lines must not only bear the entire burden of the cost of their operation but must share with the general shipping public the burden cast upon the rates by the large amounts paid by the trunk lines to lumber companies having incorporated tap lines. The aggregate figures are not available in this proceeding, but from a careful check of the information found on the record it has been estimated that the allowances paid through their incorporated tap lines to these lumber companies in Louisiana, Arkansas, and Texas amount to not less than a million and a half dollars annually. Were the facts accurately known it is said that a complete check would disclose an aggregate of from two million to three million dollars annually. Indeed, the assistant attorney-general of Louisiana, using figures prepared by the railroad commission of that state and relating to that state only, said on the argument:

> The tap lines incorporated and operated as common carriers haul an annual tonnage of 4,061,876 tons of lumber. Assuming the average allowance paid the tap lines in Louisiana as 3 cents per 100 pounds, it may safely be estimated that the tap lines received $2,437,125 as divisions from their interstate freight rates with trunk lines.

WHAT IS A TAP LINE?

Originally it was usual to refer to all the rails used in a lumber mill operation as a "logging road." But since the practice of making allowances to the lumber companies west of the Mississippi River has crept in, and more particularly within the last four or five years, the rails leading from the mill to or through the timber, and usually to a logging camp or company town, have come to be known as the main line or "tap line." The spurs radiating into the forest from that point or from other points along the main line are now usually referred to as the "logging road."

The tap lines shown on the record differ from one another in details and no description of one would be an altogether accurate description of another. It is possible, nevertheless, by a general description to give a fairly accurate impression of their physical characteristics and their relations to the proprietary lumber companies:

TAP LINES GENERALLY DESCRIBED.

Some new mills have been erected within the last four or five years. In most of these cases the tap lines were constructed in the name of an incorporated railroad company, owned, however, either by

or in the interest of the lumber company. But in the great majority of the cases on the record the present incorporated railroad company operates tracks that were originally constructed and operated directly by the lumber company as a facility in its manufacture of lumber. Later the title to them was turned over to the newly incorporated railroad company in exchange for its stock. In all these cases the railroad company is directly owned by the lumber company or in its interest. In most instances the tap line was incorporated for no other purpose than to give the lumber company the color of a legal right to receive allowances. Witness after witness, as heretofore stated, broadly and definitely admitted at the hearing that the sole object in incorporating his tap line was to obtain and legalize the allowances. For the Bernice & Northwestern a witness said:

> Well, we really chartered to get the divisions; we had to charter before we could get them. We chartered in order to get the divisions.

This statement was not made under the stress of cross-examination but in reply to an inquiry as to why his road had been incorporated. It is illustrative of many similar statements made on behalf of other tap lines; they were incorporated, in other words, not to serve the public, but primarily to get an allowance. When the Rock Island lines were pushed into this territory already served by other lines it entered upon an active contest to share in the lumber traffic by offering higher allowances or divisions than the other lines were paying. A standard form of contract was prepared to which both the lumber company and its tap line were usually parties. One of its requirements was that the lumber company must route not less than 50 per cent of its traffic over the Rock Island lines. Another clause, inserted as a protection against possible future troubles and obligations, provides that in case this Commission or a state commission or any court should declare the contract unlawful or the allowances excessive, the former should at once become void, and in either event no claim for damages should result against the Rock Island. It appeared at the hearing that in many cases the lumber companies had incorporated their tap lines on the advice of the Rock Island or other public carriers serving this territory. For the Sabine & Northern Railroad, Mr. Walden said:

> We incorporated because the traffic department of the Kansas City Southern advised me that it was the opinion of their legal department that they could not pay divisions * * * unless the roads were legally incorporated as common carriers, and in order to get these divisions we incorporated.

The record is filled with similar admissions by other witnesses representing other tap lines. Counsel for one trunk line in order, as he explained, to get the fact of record, said that his legal department some years ago advised the traffic department that it

would be illegal to pay an allowance or a division of any kind to an unincorporated tap line, but that it would be legal to pay a division to an incorporated tap line. Subsequently, his traffic department advised the lumber interests that had been receiving allowances that they would no longer be paid unless their lines were incorporated, and new lines were advised that they had to be incorporated.

But, generally speaking, there was no change after the tap line was incorporated, either in its physical characteristics or in the extent or nature of the service that it performed for the lumber company by which it was owned. The tracks and equipment of the lumber company were simply turned over to an incorporated railroad company and the work of the controlling industry went on precisely as it had when the tracks and equipment were operated directly by it. The only dissimilarity that exists between tap lines that receive allowances and those that do not is that the former are incorporated while the latter are not; and this dissimilarity resulted in many instances from the suggestion of the public carriers that wished to have some appearance of a legal basis for securing the traffic. In a number of cases the tap line is well built; in other cases there has been an improvement in that regard since its incorporation. In some cases the tap line has been extended beyond the immediate needs or requirements of the industry through the forests of the lumber company to a connection with a second trunk line. In most of these cases it frankly appears that this expense was not incurred until after the trunk line had given the lumber interest the assurance of better allowances than it was receiving from the trunk line on which its mill was built. The record makes it clear that the trunk lines were bidding for the traffic by offers of increased allowances, and that the lumber companies, the real beneficiaries, were selling their traffic for the allowances.

The main or tap line in a few instances has acquired a part of its right of way by condemnation proceeding. Ordinarily, however, the lumber company not only owned the real estate where the mill is, but all the property through which its tap line runs. In many cases care has been taken to deed the right of way to the incorporated railroad company; but in a large number of cases the tap line enjoys only a lease of its right of way. In some cases this is a tenancy at will, no written lease having been executed. In a number of cases the public carrier has supplied the rails used by the tap line on a nominal rental basis; in some cases both the rails and the equipment are owned by the lumber company and are leased to its tap line. The result in such cases is that the tap line, even though incorporated as a common carrier, has no really permanent character. The record discloses several instances where they have not only abandoned their operations but where the rails have been torn up. The Ouachita & Northwestern Railroad is such an instance. Fourteen miles of the

main line of this tap line were taken up notwithstanding the fact that it had served a number of good farms and had moved some agricultural products for the farmers. When asked how their traffic was now being moved, the witness for this line said that the farmers hauled it for themselves over the country roads. There was another small mill on this tap line, said to belong to outside interests; it is now draying its lumber to the public carrier that moves it to the markets. The Kendall & Sulphur Springs Railway went out of business as a common carrier after its pine lands had been cut over. It is still operated, however, as a facility of the lumber company, which is now manufacturing hardwood lumber. The explanation made is that the public carriers declined to give it allowances on hardwood, and it gave up the claim of being a common carrier, although it had some traffic from outside interests. There are other cases of tap lines operated as an alleged common carrier that were bodily removed when the forests had been cut over, and reconstructed through other forests of the lumber company. The record is not free from instances where the mill, rails, equipment, and all the other property of a lumber company were removed to a new territory. With a few exceptions there is scarcely a tap line on the record that would not necessarily cease its operations if the lumber mill of the proprietary lumber company were moved or ceased to run. Instances are shown of record where the tap line stopped running while the mill was temporarily shut down.

A few of the tap lines are incorporated as common carriers of freight and not of passengers. In most cases a caboose is the only car available for passengers; but several of the lines named on the record operate one or more passenger trains daily. A few run a passenger coach in their log and lumber trains; but many have no real passenger traffic and make no charge against the farmers and others who occasionally ride on the locomotive or in the caboose.

Different lumber companies move their logs from their forests to their mills in different ways. Ordinarily all the operations in the forest are conducted by the lumber company; the trees are felled by its employees and the logs are usually loaded on the cars by its steam loaders. Ordinarily they are hauled over the logging road by the lumber company with its logging engines to the point where commences what we have referred to as the incorporated tap line. They are ordinarily hauled thence to the mill by tap-line locomotives. In many cases, however, the tap-line locomotives run up into the forest and haul the log trains over the logging roads to the tap line and thence to the mill. In other cases the lumber company hauls the logs directly from the forest over its logging road and thence under trackage rights over its incorporated tap line to its mill. There

are about as many cases where the tap line receives no pay for the trackage rights as there are cases where the lumber company goes through the form of paying it some compensation for the use of its tracks. When its locomotives go into the forest and haul the logs over the logging road to its own rails the incorporated tap line, in the usual case, makes a charge against the lumber company for the service. But ordinarily no charge is made against the lumber company by the tap line for hauling the logs over the incorporated line to the mill. This part of the service is supposed to be covered by the allowances paid to the tap line by the public carriers. In some cases the employees of the tap line participate in loading the logs on the cars in the forest, and in some cases they unload the logs into the pond at the mill. Where this is done the service is supposed to be covered by the charge made by the tap line against the proprietary lumber company. Ordinarily, however, both the loading and unloading are done by employees carried on the pay rolls of the lumber company.

It is only in a few cases that any waybill or bill of lading is issued to cover the movement of the logs to the mill. This is true even where the rates are constructed in the form of milling-in-transit rates. In many cases the conductor of the logging train does not even hand in a slip to indicate the quantity of logs brought in to the mill. When the manufactured lumber goes out, billing is issued by a tap line or lumber company employed and in some cases dated on the day the lumber is tendered to the public carrier for transportation. This is done by an agent of the tap line who is sometimes exclusively employed by it, but is more often an employee of the lumber company; in many cases he is also the agent of the trunk line at the junction point. When no allowance is made, the mill is shown as the point of origin; but if the lumber is destined to an interstate point it gets an allowance and the other end of the tap line is shown on the billing as the point of origin.

There are cases shown of record where tap lines receive allowances, in one case as high as 4 cents per 100 pounds, on lumber as to which they perform no service whatever, either on the logs in or the lumber out. In another case the tap line does not reach the mill, but the logs are taken across a river by a conveyer running on a cable. The finished lumber is handled out of the mill by the trunk line. Nevertheless the tap line receives an allowance of 4 cents per 100 pounds on the theory that the lumber has originated at the other end of the tap line in the woods. When questioned, the witness for this road frankly admitted that his tap line performed no service whatever on the outbound lumber and that the allowance received was not paid to it for any transportation service but was a payment "for developing the traffic." In another somewhat similar case the unincor-

porated logging road reaches the river and the logs are floated thence across to the mill. The lumber is hauled by the incorporated tap line from the mill to the trunk line, a distance of 2½ miles. Out of an 18-cent rate to St. Louis the tap line, which has no outside traffic, receives 4 cents for its haul or twice the rate under the state switching tariff, while the trunk line retains 14 cents for a haul of nearly 400 miles to destination. In all but a few exceptional cases the mill is located within an ordinary switching distance from the tracks of a public carrier and the latter is therefore able readily to handle the lumber out of the mill without the intervention of the tap line.

In general it may be said of all but a few of these incorporated tap lines that they have no real freight stations and are not otherwise equipped properly to handle less than carload freight or general merchandise; all claims to the contrary are shown by the record to be a mere pretense in most cases, and this is generally understood. Points on tap lines shown on the tariffs can often be located by no visible landmarks and have no real existence. Their so-called general offices are usually in the offices of the lumber companies; their accounts are very often kept by the bookkeepers of the lumber companies. Their cash often is kept in the same bank account with the cash of the lumber company, and in some cases the lumber company's checks are used for paying tap line bills. Not infrequently the allowances are paid by the public carriers directly to the lumber company for the account of the tap line, there being no other way to handle the transaction. And in practically all cases the officers of the tap line are also officers of the lumber company and the salaries paid to them are ordinarily shared in by each company. The free passes that they receive in their capacity as railroad officials are used by them when traveling in the interest of the lumber company. This was frankly admitted.

One feature in the distinction drawn by lumber companies between their incorporated tap lines and their unincorporated logging roads must not be overlooked. As just explained, when the tap line does not own its right of way it usually holds it under a formal or informal lease from the lumber company. But the lumber company never surrenders its ownership and absolute control over the logging roads. And there is a definite purpose in that course. It is ordinarily explained that the logging roads are more or less temporary in character, while the tap line is built in a more permanent way. But this explanation, while having some foundation in fact, is not complete. In most cases the tap line extends through lands of the proprietary lumber company that have already been cleared of pine and where hardwood only remains, or through pine forests that for some reason it is not lumbering; the logging roads reach beyond into its forests where its lumber operations are being conducted and often lie in the direction of forests owned by outsiders. In the usual case

the incorporated tap line is not so located as to be easily available to outside interests, while the unincorporated logging roads often closely approach the forests that are owned by others. While Mr. Foster, president of the Malvern & Freeo Valley Railroad, the tap line of the Wisconsin & Arkansas Lumber Company, was on the stand, he was asked why the tracks of his incorporated line ended at Landers and why the very extensive logging road of his company had not also been turned over to his incorporated company. He first declined to answer, but when told that the question was a proper one and that he must answer, he replied:

> The reason we did not incorporate the tap line into the timber was because we wanted to control the timber in that section of the country so no outsider could come in and acquire it.

Other witnesses admitted that a lumber company, by retaining the direct ownership of the logging roads, acquire a virtual monopoly of the adjacent forests. Moreover, it is demonstrated by the whole record that the tap lines being constructed by and in the interest of their respective lumber companies are not only laid out but are operated so as best to serve the interests of the lumber investment.

GENERAL PRINCIPLE CONTROLLING THE CONTROVERSY.

Upon the record some 99 tap lines in the territory in question have laid before us their claim of a right to receive allowances and have disclosed their history, their manner of operation, and their relation to their respective mills. Naturally, there are wide differences in the way in which their operations are conducted. From a careful examination, however, of all the facts disclosed of record we have arrived at certain general conclusions that must control and guide us in the disposition of these cases:

The notion seems to prevail in the yellow-pine district west of the Mississippi River that a common carrier must be an incorporated company; on the other hand, it is also claimed that a company incorporated as a common carrier is a common carrier in law for all purposes, regardless of all other considerations. This, however, is not a sound view of the matter. In some of the states the local law permits only incorporated companies to act as common carriers by rail; and, as a matter of fact and practice, common carriers by rail are usually incorporated companies. At the moment we recall no exception. Nevertheless, the act to regulate commerce specifically applies "to any corporation or any person or persons" engaged in the transportation of passengers or property by rail from a point in one state to a point in another state. It follows, therefore, so far as interstate transportation is concerned, that incorporation is not a condition precedent to the right to be a common carrier by rail.

That relation to the public may lawfully be sustained, with respect to interstate traffic, by individuals or partnerships or other associations. The inquiry with this Commission, therefore, is not whether a railroad company has been incorporated, but whether the company or the person claiming to be a common carrier by rail is a common carrier in fact. If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. This Commission, in the enforcement of the law, is necessarily bound to ascertain the real purpose and object of the holding out; and in the prevention of preferences and other unlawful consequences it is entitled to and must ascertain the real situation. In other words, whether a company or a person claiming to be a common carrier is a common carrier at all and for all purposes is a question of fact, and whether the service performed for a particular person is a service of transportation or an industrial service is also a question of fact.

It follows from that view of the matter that the common ownership of an industry and of a railroad that is held out as a common carrier and has some actual traffic for the public for hire is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand, the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company, owned and operated by the industry or in its interest, does not divest those appliances of their character as a plant facility if such in fact is the case. If the rails were laid and the equipment acquired for the use of the industry as a facility in the process of manufacture and production, and are so used, the fact that some outside traffic may be carried over the same rails does not modify the character of what is done over them for the industry. We must look at the thing done and scrutinize the manner in which it is done. We must ascertain what is its real relation to the industry. If in such a case the tracks and equipment are a facility of the plant and are so used in the process of manufacture, what is thus done for the controlling industry can not be regarded as a service of transportation. It is clear that a division allowed by a public carrier out of the rate under such circumstances is a rebate to the industry. But again, it must be added that the real relation of the tracks and locomotives to the industry is a question of fact that is not controlled by considerations of

mere ownership, but by a correct understanding of the service thus performed for the controlling industry.

EACH CASE MUST STAND ON ITS OWN FACTS.

The number of industries that use rails and locomotives in connection with their manufacturing operations is increasing, and there is a growing number of cases where allowances out of the rates are made to them by the regular lines. It is clear, therefore, that the time has come when the Commission must draw a line at some point between what is transportation and what is industry, and must distinguish between what is a facility of transportation and what is a plant facility or a tool of the industry. In the present state of the law it is no less clear, however, that the question is not susceptible of solution on general grounds; that no general rule or principle may be laid down that will do exact justice in all cases; and that the only safe course is to ascertain and determine on the facts disclosed in each case what is the real relation between the tap line and the industry by which or in the interest of which it was constructed and is now operated. With that view of the matter in mind we have carefully analyzed the testimony offered by each of the tap lines appearing of record and shall presently state each case in a summary outlining the features shown of record that we regard as of importance.

Before doing that, however, it may be well to look for a moment into the practice of the trunk lines in this territory in connection with their lumber traffic:

It is our understanding that in some cases the trunk lines have connected their rails with the mills by constructing spur tracks at their own expense; in other cases they have furnished the rails and the ties and the lumber companies have borne the expense of the grading and construction, and in a number of cases the lumber companies have built the connection entirely at their own cost, either directly or through their tap lines. In some instances the original spur or switch track built by the trunk line to the mill still remains and could be used; as a matter of fact, however, the tap-line connection subsequently built is actually used. In some cases, where the tap line has connected the mill with the trunk line, the spur track of the trunk line to the mill has been torn up. In some instances the trunk line is still closely connected with the mill by an available switch track, but in order to give the appearance of a real service the tracks of the tap line have been laid parallel to the trunk line to a more distant switch connection.

In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive

the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as 3 miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than 3 miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. We should regard an allowance under such circumstances as a mere device to effect an unlawful payment to the lumber company. We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line.

Where a mill is distant more than 3 miles from a trunk line and is connected with the latter by a tap line not recognized by this Commission as a common carrier, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no

better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. But where a mill is more than three miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by this Commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk-line carriers have defined in this territory; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof according to the extent of its participation in the through service under the through rate.

This view of the matter, it must be clearly understood, is based upon the particular conditions that we find existing in this lumber territory and the rate adjustment which there obtains. We shall not endeavor at this time to fix the allowances that may be made under section 15 to a lumber company furnishing a facility for the transportation of its lumber from its mill in the manner and under the conditions described or to fix the divisions on the lumber haul that may be paid by the trunk lines to tap lines herein recognized by the Commission as common carriers. The basis of such allowances and divisions may be proposed by the trunk lines for our approval after conference with the parties in interest. In submitting the matter to the Commission it will be well also to make a more complete statement as to the distance of the mills to which the trunk lines now extend the lumber rate without additional charge for the switching service that they perform. It will, of course, be understood that the allowances and divisions so submitted must have a proper relation to the service performed and be such in amount as not to effect a rebate to the industry. It must also be understood that a tap line herein recognized by us as a common carrier can not expect to continue to be so recognized if it does not itself recognize its obligations as a common carrier under the act to regulate commerce by conforming its accounting methods to the requirements of the Commission, by filing annual reports and lawful tariffs, by obeying the hours of service law and the safety-appliance acts, so far as they are applicable, and otherwise fulfilling the obligations and duties imposed by the act on carriers engaged in interstate commerce. We have no authority to overlook the failure of any company claiming to be a common carrier to fulfill all the requirements of the act and to comply with the rules and regulations of the Commission; and we shall regard any omission of its duty in this respect by a tap line as tending to show that its claim to be a common carrier is a mere device or attempt to justify allowances and divisions.

THE LOG MOVEMENT TO THE MILL.

It may be well at this point to make a brief reference to the haul of logs to the mill. Lumbering is one of the primary occupations and lumber products are as necessary and even more widely used than are the products of coal mines. Lumbering processes are more or less familiar to everyone. The forest must be made into logs and the logs must be drawn to the mill and there converted into lumber. Whether this is done with ox teams or horses, on wagons or sleds, or the logs are floated down a stream to the mill or are carried there in flumes or otherwise, the service that the lumberman thus performs for himself is industrial and not a service of transportation. When the adjacent timber has been manufactured there is an economy in reaching the more distant timber by the use of rails and locomotives, and these appliances are often used in the larger operations. But the character of the thing done is not affected by the new means employed to do it. Nor do the new appliances bear a different relation to the industry. A number of witnesses admit, and the whole record shows, that a large lumbering operation in this territory can not be conducted economically without a tap line. Tracks and locomotives are as necessary to successful results from the investment as the mill itself. One or two of the companies avail themselves of streams to float the logs to the mill, but all the other lumbering operations of any magnitude in the southwest have tap lines. East of the river, as we have seen, and in the majority of instances west of the river, they are regarded, like the mill itself, as a mere plant facility. Each of the tap lines west of the river that now claims to be a common carrier was originally operated directly by the proprietary lumber company and as a part of it. The only exception to that statement is that in the case of some of the more recent investments the tap line was incorporated and the track laid while the mill was being constructed. With one exception and regardless of the date of their construction, every tap line now before us is owned by or in the interest of a lumber company, and with one exception was built by the same people that own the forest and the mill, and with no other real object than to serve the mill as a necessary plant facility. That is their present primary purpose and use and no pretense to the contrary is made.

It is said that parts of the trunk lines now serving this territory were originally tap lines. That is true, and it may be, when the timber is cut away, that parts of this country may develop and some of the tap lines now under consideration may ultimately pass into the control of the trunk lines. This, however, can not be accepted as an excuse for the continuance of discriminations that now exist or for allowances that amount to unlawful concessions from the

rates. With a very few exceptions not one of the tap lines before us would continue to operate if the mill by which, or in the interest of which it is owned should cease to run; they were all built to serve the proprietary mill and the incorporation was an afterthought developed out of the keen competition of the trunk lines for the traffic. Their real relation to the industry is primarily nothing but that of a plant facility, and such outside traffic as they are able to pick up is purely incidental. With one or two possible exceptions not one of them would have been built or would now be operated for the outside traffic only; not one of them would cease its operations if deprived of the outside traffic altogether, for it is a part, and a necessary part, of the lumber investment; and with two or three exceptions not one would continue in operation after the mill to which it belongs had been shut down. In other words, with very few exceptions they are purely plant facilities.

As we have seen, this is the theory upon which the lumber interests in general are to-day manufacturing their lumber and competing with one another in the general lumber markets. It is the theory that prevails in the yellow-pine district east of the Mississippi River, and is the theory upon which a majority of the lumbering operations west of the river are conducted. They are hauling their logs to their mills at their own cost and with facilities that they regard as a mere adjunct to and a part of the machinery of manufacture. It is clear, then, that appliances that are generally regarded by the lumber interests themselves not only as mere plant facilities, but as necessary facilities in the successful conduct of their investments, can not reasonably be held to become the transportation facilities of a common carrier merely because a lumber company has incorporated a small railroad company and turned the facilities over to it. There must be something more substantial than a mere manipulation of the situation in order to change the real relation of these facilities to the industry. As with the movement of lumber from the mill, so with the movement of the logs to the mill, we must necessarily hold that it is an industrial service pure and simple, except when performed for the lumber company over the rails and with the power and equipment of a tap line that is a common carrier not in form only but in fact as well. And here, again, we find it impossible to lay down any general rule or principle by which in all cases it may be determined whether the movement of logs from the forest to the mill is transportation under the act or merely an industrial service. Each case must stand upon its own facts. But two conditions are clearly essential in all cases: No tap line that is, in fact, a common carrier engaged in interstate commerce may haul the logs to the mill of the proprietary company free of charge, as is the case in many of the instances before us. A free service is inherently unlawful.

Nor may a trunk line set up a milling-in-transit privilege with a common carrier tap line by which the lumber rate is extended back through the mill point to the tree in the forest unless it pursues the same course with respect to forests on its own line. That would be an unlawful preference. In this lumber territory the trunk lines make net rates for a log haul over their own rails when they have the lumber movement from the mill. These rates vary, but a typical tariff now before us makes a net rate of 2 cents per 100 pounds for a log haul of 25 miles, and 2½ cents for a haul of 50 miles, the established rate from the mill being collected on the outbound lumber. On the other hand, in many cases the rate adjustment with tap lines is such that the lumber rate is extended back through the mill to the tree in the forest in such a way as to include the log haul to the mill. It will suffice to say that any milling-in-transit rates proposed for our approval with a tap line recognized by the Commission as a common carrier must be adjusted on a nondiscriminatory basis, and the tap-line division, as heretofore stated, must be fixed in an amount that will not effect a rebate to the industry.

USE OF PASSES BY TAP-LINE OFFICERS.

With scarcely an exception the officers of the tap line are officers of the lumber company in the interest of which it is owned and operated. Throughout the record it was frankly admitted that they make use of the privilege of free transportation extended to them by the trunk lines even when traveling on the business of the lumber company and in the capacity of an officer of the lumber company. In one case "car and party" passes are shown to have been used. This is another of the advantages to industries that own short lines serving their plants, and which they have caused to be incorporated as common carriers. The use of such free transportation we regard as altogether improper and unlawful, even though the holder may be an officer of a tap line that we have found to be a common carrier. The affairs of the proprietary lumber company are so interwoven with the affairs of the tap line as to make it impossible to admit the right under the law of an officer of a tap line to use free transportation.

THE INDIVIDUAL CASES DESCRIBED.

To these general observations it may fairly be assumed that no valid objection can be made, for what is a plant facility can not also be a common carrier for the plant, and what is an industrial service can not also be a service of transportation. These principles, we think, should be applied to each of the companies whose affairs are now to be stated. In the brief summary that follows we have endeavored to outline the history of each tap line, its ownership, physi-

cal condition, the nature and source of its traffic and revenues, and the manner in which its operations for the proprietary company are conducted. Our finding is that in none of the cases that follow does the tap line perform a service of transportation as a common carrier either in the movement of the lumber of the proprietary company from its mill to the trunk line or in the movement of its logs from the forest to its mill.

MALVERN & FREEO VALLEY RAILWAY.

The entire capital stock is owned by the stockholders of the Wisconsin & Arkansas Lumber Company—"a community of interests; they are both held by the same stockholders." This statement was made by the president of the tap line, who is also president of the lumber company; he admitted that both properties constitute practically one investment, and this is also admitted on the brief. In its report for 1910 it appears that all the stock of the tap line is now held by the president of the lumber company as trustee for its stockholders. None of the officials of the tap line receive any salary from it, but all are under salary by the lumber company.

The tap line extends from a point near the mill to a logging camp in the forest called Landers, a distance of about 9 miles. The legal title to this track is in the tap line. The track leading through the mill yards to the junction with the Rock Island and Iron Mountain, a point called Walco, is owned by the lumber company, but is leased to the tap line. There is no industry at Walco other than the mill nor any at Landers. The lumber company has a commissary store at the mill and another in the woods. There is a rough, temporary board shed at Walco, but no station or agent at Landers.

The mill and the road were constructed at the same time and together went into operation during the spring of 1902. At this time the tap line was owned directly by the lumber company. The mill was built on the Iron Mountain tracks; at that time the Rock Island terminus was at Malvern, a mile and a half away. While this condition existed the Iron Mountain had the bulk of the traffic and paid an allowance for it, although an occasional carload reached the Rock Island at Malvern, being switched there by the Iron Mountain.

In 1905 the Rock Island built to a point within a half mile of the mill. Its approach was accompanied by an understanding, afterwards reduced to contract, by which the Rock Island agreed to make an allowance of 3 cents per 100 pounds and the lumber company agreed to give the Rock Island the bulk of their tonnage. We shall not stop to go into the details of the contracts between them. Under their terms the Rock Island now gets 66⅔ per cent of the outbound shipments of the lumber company; and it reserved the right to fix rates inbound and outbound both on lumber and other traffic,

whether handled by the tap line for the lumber company or for the public. Another feature of the agreement is the provision that in case the allowance is declared illegal by this or any other commission or by any court it shall no longer be payable or shall be modified as the circumstances might require, and that in such case no claim or demand would accrue against the Rock Island. The lumber company was a party to these contracts.

The proximity of the Rock Island and its offer of such a traffic arrangement was followed by the incorporation of the tap line, which thereupon acquired the equipment of the lumber company and the right of way from the mill to Landers. This was accomplished by an exchange of its capital stock. No money passed and no further stock has been issued since the transaction was completed. When asked why the tap line had been incorporated, its president replied that it was done for the express purpose of legalizing the allowance. The tap line has no passenger, mail, or express business. Out of revenues of $41,131.40 for the year 1910 its outside traffic is stated at $2,058.17. In 1909 its outside traffic aggregated $241.67, and for 1908 it amounted to $90.47. An examination develops the fact that of the outside traffic claimed for 1910 $1,985.61 was for oak staves and stave bolts, all of which doubtless came from its own forests. The other traffic claimed for outsiders during that year consisted of four carloads of fertilizer and one carload of brick, on which was collected the local state rate. If it had any such traffic in 1910 or 1911, it was so inconsiderable that it was not thought worth while to show it on the annual reports to the Commission for those years.

The line ends, as heretofore stated, at Landers. From that point the lumber company owns 17 miles of logging road radiating into its forests. Most of the rail in the logging road was supplied by the Rock Island under lease at a rental of 6 per cent on a valuation of $28 per ton. It is interesting to note that, while the tap line acquired the locomotives of the lumber company as heretofore explained, all but one of them are used by the lumber company on its logging roads. The tap line has no equipment suitable for general traffic, all its cars being logging cars specially adapted for hauling logs.

Throughout the investigation it appeared that the lumber companies are careful to draw a sharp line between the "tap line" and the "logging road," and there is much significance in this practice. As heretofore stated, while Mr. Foster, president of this tap line and also president of the lumber company by which it is owned, was testifying it appeared that it was the desire to legalize the allowance that led to the incorporation of his tap line to Landers and the desire to monopolize the forests and thus control the timber that led the lumber company to retain the ownership of the logging

road beyond Landers. The Wisconsin & Arkansas Lumber Company has added 35,000 acres to its original holding of 75,000 acres of timber lands. Of this total holding about 65,000 acres are still uncut and will yield 500,000,000 feet of lumber and keep the mill and its tap line in operation for 12 or 14 years. At the expiration of that period Mr. Foster did not know whether the tap line would be taken up, as has happened in a number of cases, or whether it would continue in operation.

As hereinafter appears, the logs are hauled by the tap lines or logging roads of lumber companies under a variety of conditions. In this case it appears that after the logs have been loaded by the lumber company on the cars the locomotive of the incorporated tap line runs up into the woods over the unincorporated logging line and hauls them to the point called Landers; from that point it hauls the cars over the tap-line tracks to the mill, where the logs are unloaded into the mill pond by employees of the lumber company. The tap line makes a formal charge against the lumber company of 80 cents per thousand feet, log scale, for hauling the logs over the unincorporated logging tracks to Landers. It makes no charge against the lumber company for hauling the logs from Landers over the incorporated line to the mill.

There are no bills of lading, waybills, or other shipping papers covering the movement from the forest to Landers; nor is there any billing covering the movements of the logs from Landers to the mill at Walco. When the manufactured lumber is ready for shipment it is loaded by the employees of the mill on cars furnished by the Rock Island or Iron Mountain, which are switched from the mill to these lines by the tap line, a distance of a few hundred feet in the case of the Iron Mountain and half a mile in the case of the Rock Island. A bill of lading is then issued by the agent at Walco, who is a joint employee of the Iron Mountain and of the Rock Island; it is dated on the day the lumber is tendered for transportation and shows Landers as the point of origin and not Walco. The tap line receives out of the rate 3 cents per 100 pounds, which is equivalent to from $12 to $18 for carloads of 40,000 to 60,000 pounds. Its president says that the carriers "should pay if they want the tonnage."

WILMAR & SALINE VALLEY RAILROAD.

This tap line extends from Wilmar due south 12 miles to Godwin, both in the state of Arkansas. From the latter point 15 miles of logging roads reach in to the timber. All are owned by the Gates Lumber Company, its mill being at Wilmar, where the tap line joins the Iron Mountain. Godwin is a place of 30 or 40 people, most of whom are company employees; the place seems also to be known as

Bailey. At one time the tap line ran to the north of the mill, but this track was removed, the lumber company now doing its logging south of the mill. The equipment is owned by the lumber company but is leased to the tap line without charge. The officers of the two companies are practically identical. The lumber company and the tap line have the same paymasters. The tap line files annual reports and claims to keep its accounts as prescribed by this Commission. It also claims to be recognized as a common carrier in Arkansas. While separate books of account are kept, the cash of the tap line is kept with the company cash in the same bank, and all checks are drawn by the lumber company for the tap line. It has no revenues from passenger, mail, or express service. At the time of the hearing a witness said that there was a prospect of moving three carloads of cotton seed; but although it is said to reach some good farming country the annual report for 1910 shows no freight other than forest products.

The tap line has no joint rates with the Iron Mountain to interstate points except on lumber from Godwin, at its farther end. The rate is made by adding 2 cents to the Iron Mountain rate on lumber from its junction with the tap line at Wilmar. The tap line division is 4 cents, which gives it a net allowance of 2 cents. There is no outside mill on this line, and such a rate adjustment would necessarily discourage the erection of a mill by outsiders, for while it would enable the mill of the Gates Lumber Company, owning the tap line, to compete on an even basis with mills elsewhere, it would put an outside mill erected on the line at a disadvantage of 2 cents per 100 pounds.

The lumber company hauls the logs over the logging lines to the tap line, while the tap line hauls them thence to the mill. On state shipments the mill is shown as the point of origin; on interstate shipments Godwin, the other end of the tap line, is shown as the point of origin. When asked for an explanation of this difference in the billing, the reply was made that it was not necessary on state shipments to show Godwin as the point of origin because no allowances were paid on any but interstate shipments, and the actual point of origin is therefore shown. From the mill to the Iron Mountain tracks, a distance of 2,000 feet, the manufactured lumber is hauled sometimes by the tap line, but more usually by the Iron Mountain. At the time of the hearing the tap line was doing most of the service, because of the temporary disability of the Iron Mountain engines. The net operating revenue to the tap line for the year 1909, after making substantial allowances for maintenance of way and structures, maintenance of equipment, and transportation expenses, is shown at the sum of $24,872.43. For 1910 it amounted to $29,778.02. Its capital stock amounts to but $50,000 and is said

to represent the actual cost of construction; the dividends shown as paid during the year 1910 aggregated $28,164.02, or more than 50 per cent on the investment. These figures, drawn from its own reports without any further examination as to details, include the sums credited to the tap line by the lumber company for its services on the logging road. Accepting its own figures, it appears that the entire operating expense of the tap line, including the cost of its service on the logging road, was substantially made good by the Iron Mountain for both years through its allowances.

ARKANSAS & GULF RAILROAD.

The Kimball Lumber & Manufacturing Company is unincorporated and is owned largely, if not entirely, by Mr. Phin Kimball. The tap line of the company is incorporated as the Arkansas & Gulf Railway. It extends from Kimball, in the state of Arkansas, across the state line to Laark, in the state of Louisiana, a distance of seven miles. Kimball is not a town and is now even without a station, one built by the Iron Mountain having been destroyed by fire. It is simply a point of interchange between the tap line and the Iron Mountain. Laark is a company town owned by Mr. Kimball. There is a post office and Mr. Kimball is the postmaster. There are about three miles of logging spurs extending into the 35,000 or 40,000 acres of timber there owned by Mr. Kimball. The tap line was incorporated in 1905, but no capital stock has been issued. It has a bookkeeper, timekeeper, an agent at Laark, "and a lady accountant at St. Louis." There are no stations or station buildings, and the agent at Laark is also in the company's store at Laark owned by Mr. Kimball. Upon inquiry it appears that Mr. Kimball understood that he owned the tap line, but that he "has a few local partners who own between $300 and $400 in the investment." Automatic couplers are not used on the logging cars, because the road is so rough they will not stay coupled. Passengers are carried between Kimball and Laark upon a motor car; it also takes the mail. There are no passenger tickets, fares being collected in cash. This traffic does not seem to be covered by a lawful tariff, although as the tap line crosses the boundary line between the two states it is necessarily interstate traffic. There is no development in the surrounding country, such farms as formerly existed there having been abandoned, and there is no traffic to speak of except that of the lumber company. The present source of the outside traffic of the tap line is thus described by Mr. Kimball in a letter filed in lieu of a brief:

> I have designated by writing the word "Ranch" on the map where residents live, which you will note are six—this is all—and these six will not average 25 acres each, and doubt if 15 acres each of cultivated lands. They have hogs and cattle that run "wild" in the forest, free of cost, and that is the cause of the "clearings" at those points.

The mill is at Laark, and the tap line enters a charge of $1.50 per car for hauling the logs from the several spurs to the mill. During the year 1909 it hauled 3,000,000 feet of logs from the forests near Kimball. For hauling the manufactured lumber back from Laark to Kimball the Iron Mountain allows the tap line from 2 to 3 cents a hundred pounds, but as the rate on lumber from Laark is 1 cent higher than the rate from Kimball the net amount accruing to the tap line is 1 and 2 cents. Although Mr. Kimball is president and traffic manager of the tap line, he receives no salary from it, but does enjoy free transportation over the trunk lines, and uses passes when traveling on the business of his lumber company.

A reading of the testimony of this witness does not give an adequate impression of the humor with which he offered it, or the amusement with which it was heard by those present. Rudimentary as was his effort to give a legal form and appearance to the separation of the tap line from his lumber company, his case does not differ substantially in that respect from many other instances on the record. Many of the Arkansas tap lines are chartered with the health resort known as Hot Springs as a terminus, but none had reached that point at the date of the hearing, nor was any prospect shown by any tap line of such a fulfillment at any time in the future of its charter powers. Mr. Kimball, in a letter addressed to the Commission after the hearing, explains the future prospects of his railroad in this wise:

> As I have before stated, The Arkansas & Gulf Railroad is going to be built *somewhere—either south, east, or northwest*, or likely both. It was started with that full intention, and was stopped because railroad building was stopped in that section generally, and it now needs help, more than ever, and not a "knock." Please help me boost it.

While this seems somewhat indefinite it is in fact no less definite than are the plans for future extensions put forth by many others.

The Arkansas & Gulf tap line differs from the great majority in that the mill was not built on the tracks of the trunk line but 7 miles away in the forest, and the manufactured lumber is therefore hauled by the tap line for that distance. Mr. Kimball explains the location of the mill by saying that while it is a costly enterprise to build a manufacturing plant in the woods away from the main line and he could have saved thousands of dollars by building it on the tracks of the Iron Mountain, he always thought the railroad "was the best part of the proposition."

LITTLE ROCK, MAUMELLE & WESTERN RAILROAD.

The Little Rock, Maumelle & Western Railroad extends from a connection with the St. Louis, Iron Mountain & Southern about 3 miles south of Little Rock, Arkansas, westward for 16 miles to a point known as Maumelle, from which unincorporated logging spurs, ag-

gregating about 10 miles in length and owned by the Neimeyer Lumber Company, radiate into the woods. The tap line, which has issued capital stock to the amount of $160,000 and 6 per cent bonds for $132,000, is substantially identical in interest with the A. J. Neimeyer Lumber Company. The stockholders of the tap line are stockholders of the lumber company, and most of the bonds are owned by stockholders of the lumber company.

The timber holdings of the lumber company, which are extensive, were acquired from the St. Louis, Iron Mountain & Southern Railroad Company in 1904. The tramroad was built two years later by the lumber company from the junction with the Iron Mountain for a distance of 7 miles into the timber; in 1907 it was extended 2 or 3 miles to a point known as Carnes; and in 1908 it was completed to Maumelle. The separate railroad corporation was not formed until 1907, and took over at that time the tracks already built and operated by the lumber company.

It is important to observe that the tap line parallels the line of the Rock Island, which is at no point more than 5 miles away. The intervening country is hilly and broken. Three towns are mentioned on the record as being reached by the tap line. Becker is a sawmill settlement, its only other industries being a brick plant and the penitentiary; at Carnes there is a small hardwood mill, which cuts hardwood lumber for the Neimeyer Lumber Company, at a charge of $3 per 1,000 feet; and Maumelle, otherwise known as Douglas, is apparently only a logging camp. There are two or three small stave shippers on the line.

Two regular trains are run daily in each direction; their principal load is logs, but they also carry some passengers, who pay cash fare. The revenue from that source in 1911 was $2,223.11. The equipment consists of one locomotive, a combination caboose for the carriage of passengers and less-than-carload freight, several work cars, and a few flat cars. There is also a motor car, which was acquired from the lumber company and which is still used by its employees in the inspection of timber. All the equipment is second hand and was purchased very cheap.

The mill of the Neimeyer Lumber Company is located about three-fourths of a mile from the junction with the Iron Mountain, but the distance from the sawmill and planing mill to the actual point of interchange where cars are delivered to the Iron Mountain is about one-eighth of a mile. The main track of the tap line runs through the lumber plant. The logs are hauled over the unincorporated logging spurs to the point known as Maumelle, by employees of the lumber company, which owns and operates for this purpose three locomotives and 70 logging cars. From Maumelle the loaded cars are hauled by the locomotive of the tap line to the pond, where the trainmen assist

the employees of the mill in unloading the logs. For the movement of the logs from Maumelle to the mill the tap line charges the lumber company 2 cents per 100 pounds, but 40 per cent of this amount is subsequently refunded, pound for pound, when the lumber is shipped out. The tap-line engine switches the empty cars furnished by the Iron Mountain and switches the loaded cars from the mill to the point of interchange with the Iron Mountain, a distance of about one-eighth of a mile. This service is paid for by the divisions, where joint rates are in effect. There are joint rates to practically all points except destinations in the states of Arkansas, Oklahoma, Louisiana, and Texas, the joint rates being uniformly 2 cents higher from points on the tap line than from the junction point. The tap line receives a division of 5 and 6 cents per 100 pounds, which includes the 2-cent arbitrary. In other words, the Iron Mountain shrinks its rate 3 and 4 cents per 100 pounds. There are, as heretofore stated, no joint rates to Arkansas, Oklahoma, Louisiana, and Texas. On shipments to points in those states the tap line receives a switching charge of $3 a car, which is paid by the lumber company or its customer in addition to the rate of the Iron Mountain. The stave men who ship over the tap line to Arkansas points do not have the benefit of joint rates, but pay a local charge to the tap line in addition to the rates of the Iron Mountain. Their traffic, however, is inconsiderable in amount, the total movements of staves for the year covered by the record being 300 tons and the traffic of the hardwood lumber mill amounting to 7,000 tons, out of a total movement over the tap line amounting to upward of 105,000 tons. No other freight was shipped out over the tap line, and the inbound freight was limited to a small quantity of hay, coal, castings, and merchandise, largely if not wholly for the lumber company or its employees. The traffic of the lumber company has nearly 93 per cent of the whole tonnage.

Approximately 40 per cent of the product of the Neimeyer Lumber Company is switched by the Iron Mountain to Little Rock and delivered to the Rock Island, which absorbs the Iron Mountain charge of $3.50 per car and in addition pays the Little Rock, Maumelle & Western a division of 5 and 6 cents per 100 pounds.

The officers of the tap line, with one exception, are officers also of the lumber company, and receive substantial salaries from the tap line. Through their connections with the tap line the officers of the lumber company enjoy passes over the trunk lines, which they freely use.

The tap line is operated at a profit, its operating revenues for the year 1910 being $47,341.83, and its operating expenses, $22,607.58, including substantial salaries to its officers, who are officers also of the lumber company. The net operating revenue was therefore $24,734.25, against which is charged taxes and interest to the amount of

$22,231.12 on the bonds held by stockholders of the lumber company. It had a low operating ratio, 47.7 per cent.

The engine and cars of the tap line are repaired by the lumber company in its shops at Becker, and the cost is charged against the railroad.

BEIRNE & CLEAR LAKE RAILROAD.

The Beirne & Clear Lake Railroad is a narrow-gauge tap line built to serve the mill of the Penn Lumber Company at Beirne, Ark. The two companies are identical in interest. The tap line consists of 4½ miles of track, constructed some years ago at a cost shown on its books as $8,000; but it was not incorporated until March, 1909, being operated previous to that date as an unincorporated logging road. The lumber company also has 4½ miles of unincorporated track which it leases to the tap line for a consideration of $300 per year. The mill of the Penn Lumber Company is one-half mile from the junction with the Iron Mountain. There is also a small stave mill and a manufacturer of hickory bolts and shafts at Hartley, where the unincorporated tracks meet the incorporated tracks.

The entire traffic of the Beirne & Clear Lake consists of forest products, practically all of which is the property of the Penn Lumber Company, and on which it receives a division from the Iron Mountain of 2 cents per 100 pounds, the joint rates being the same as the rates of the Iron Mountain from the junction point. The tap line charges the lumber company $3 per 1,000 feet for hauling the logs from the timber to the junction between the unincorporated and the incorporated tracks. It operates a logging train daily and employs one train crew, a switch engine crew, and one section gang. It has nothing in the way of scales or warehouses, and its equipment is limited to 2 locomotives and 12 log cars. Its operating expenses are slightly in excess of the revenues. Although receiving a division under the claim of being a common carrier, subject to the act, it did not file an annual report with the Commission until the last fiscal year.

MISSISSIPPI, ARKANSAS & WESTERN RAILWAY.

The Mississippi, Arkansas & Western Railway, consisting of 8 miles of main track, was acquired by the Bliss-Cook Oak Company, which now controls it, in 1904 or 1905, when that company took over all the property of the Chico Lumber Company, including stock in the tap line corporation to the amount of $220,000 and bonds of the same face value. The tap line had been incorporated in 1902, and it is admitted to be overcapitalized.

The mill of the lumber company manufactures hardwood lumber and is located about 1½ miles from the rails of the Iron Mountain.

In addition to the tap line the lumber company has 20 miles of unincorporated tracks extending from the end of the tap line into and through the timber. The tap line has 4 locomotives, 20 box and flat cars, and 53 log cars. There are two train crews who work jointly for the lumber company and the tap line. It has not had through rates on lumber with the Iron Mountain for the past two or three years; and the joint rates formerly in effect were 1 cent per 100 pounds higher than the Iron Mountain rate from the junction point; the net allowance then paid to the tap line was 1 cent and 2 cents per 100 pounds. Passengers are carried without charge. Since the cancellation of the joint rates and the discontinuance of divisions a charge of about $2.00 per car has been made against the lumber company for hauling the logs over the incorporated tracks to the mill. The unincorporated tracks are operated by the lumber company itself. The tap line does not make any charge, as the record clearly states, for the less than carload movements of staves, products, and supplies, amounting to about a carload a week, which it makes for the farmers along its line. Its traffic during the year covered by the record amounted to 4,229 carloads of logs and 605 carloads of lumber. These figures are understood to include 100 carloads of logs which it hauled for a lumber company having a mill some distance away on the Iron Mountain and for which it made a charge of $2.50 per car for the movement from the loading point to the junction with the Iron Mountain. It also claims to have handled during the year mentioned five or six carloads of staves, on which it received a division of the joint rate then in effect with the Iron Mountain, and 20 carloads of stave bolts.

The annual report for the fiscal year ending June 30, 1910, shows a net operating revenue of $7,242.53 available for the payment of interest and taxes, which exceeded that amount, leaving a loss for the year. It had, however, a surplus of $12,910.13 from previous years.

The allowances which the Mississippi, Arkansas & Western formerly received were cut off by the Iron Mountain as the result of our decision in *Fathauer* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 517. An opportunity was afforded in this proceeding for a full statement of the affairs of the tap line and its controlling lumber company, and the facts here briefly set forth were then developed.

BEARDEN & OUACHITA RIVER RAILROAD.

The mill of the Cotton Belt Lumber Company at Best, Ark., was erected in 1885 and is served by the St. Louis Southwestern Railway Company. The tracks and equipment which the lumber company constructed and acquired a few years later for the hauling of logs to its mill were conveyed in 1904 to a railroad corporation which it

then created, known as the Bearden & Ouachita River Railroad Company. The new corporation, as is admitted of record, was formed for the purpose of legalizing allowances out of the published rates. Its capital stock, amounting to $28,000, was distributed among the stockholders of the lumber company as a stock dividend, and the shares in the two companies are now held substantially by the same persons and in the same proportion. It has no bonded or other indebtedness, the capitalization representing the cost of the road except for some seven or eight thousand dollars expended out of earnings for betterments.

The tracks of the tap line extend from the mill at Best for a distance of 14 miles to a point known as Caney, from which unincorporated logging spurs extend into the woods. The equipment of the tap line consists of 1 box car and 50 logging cars, together with 3 locomotives, 2 of which are exclusively used by the lumber company for the movement of carloads of logs over the unincorporated spurs to Caney. From that point the logs are hauled by the tap line to the mill. The tap line makes a charge of 10½ cents per ton against the lumber company, which is intended to cover the use of the tap line locomotives and logging cars on the unincorporated spurs in the woods, and the unloading of the logs by the trainmen of the tap line at the mill. The empty cars are placed at the mill by the trunk line, which subsequently moves the loaded cars out. The tap line is accorded a division of from 1 to 2½ cents per 100 pounds out of the published rates. There are no joint rates either for class freight or for other commodities than lumber; such merchandise as is handled pays a local rate to or from the junction point in addition to the charge of the trunk line. The traffic includes an occasional carload of cotton, fertilizer, feed, or supplies, of which a substantial proportion is for the lumber company and its employees. More than 95 per cent of the tonnage, amounting for the year 1910 to 58,000 tons, consisted of logs handled for the lumber company. There is one train daily in each direction operated on an irregular schedule, on which passengers are permitted to ride without charge. The employees consist of one train crew and one gang of track men. The woods foreman of the lumber company acts as agent for the tap line at Caney.

Annual reports are filed with the Commission and show that the operation of the tap line is profitable.

ARKANSAS EASTERN RAILROAD.

In 1907 the Baker Lumber Company, whose hardwood sawmill is located on the line of the Frisco at Turrell, Ark., incorporated the main line of its logging road, extending from the mill for a distance

of nearly 7 miles to a point known as Hafer, the corporation thus formed being known as the Arkansas Eastern Railroad Company. The authorized capital stock of the new corporation was $112,000, of which only $42,500 has been issued, and this went to the stockholders of the lumber company. In addition to the tracks which it turned over to the corporation thus formed, the lumber company has retained the direct ownership of several miles of logging spurs that extend from Hafer into the timber. The expense of maintaining these unincorporated tracks is borne by the lumber company itself, but they are operated for it by its tap line. The equipment of the tap line consists of 3 locomotives and 50 logging cars. The only service it performs on the traffic of the controlling corporation is the movement of the logs from the woods to the mill, and for this it is compensated by the allowance of 1½ to 3 cents per 100 pounds which is paid by the Frisco out of the published rates. In addition, it is credited $25 a day by the lumber company for the movement of the logs by its crews and engines over the unincorporated spurs. The manufactured lumber is moved by the trunk line directly from the mill.

Although the country through which the Arkansas Eastern operates is described of record as good agricultural land, with a number of small farms, there is no indication of any substantial traffic other than forest products. It was said at the hearing that 300 bales of cotton would be moved during the season then beginning, and the brief indicates that this prediction proved correct.

The only traffic of substantial volume that was not supplied by the controlling interest consisted of several hundred carloads of logs which the tap line moved from the logging spurs of the controlling lumber company to Turrell for the account of the Wisarkana Lumber Company, whose mill is located at Nettleton, about 50 miles distant on the Frisco. For this movement of logs the tap line made a charge of 2 cents per 100 pounds; and the tariffs indicate that an additional charge was made by the Frisco for their movement from Turrell to Nettleton. Although the testimony is that this tap line had filed annual reports with the Commission, this is not verified on our records. No annual report has ever been rendered by that company to the Commission.

BLYTHEVILLE, BURDETTE & MISSISSIPPI RIVER RAILWAY.

The Three States Lumber Company erected its hardwood mill at Burdette, Arkansas, in the year 1900, and built a track 5 miles in length from that point to Wolverton Landing, on the Mississippi River, near the town of Luxora. This track was used for hauling the machinery to the mill and afterwards for the movement of logs

the mill and lumber to the landing, from which the lumber is
ken by steamer up the river. Later the line of the Frisco was
ilt in through Blytheville and Luxora, and a spur track 1¼ miles
ng was built from the mill to a connection with that trunk line at
rdette junction. The lumber company subsequently incorporated
e tap line as the Blytheville, Burdette & Mississippi River Rail-
ad Company, in 1906, and took $100,000 in stock and the same
ount in bonds in exchange for the railway tracks and equipment.
ldditional stock to the amount of $40,000 has since been issued, prac-
ally all of which is in the hands of shareholders of the lumber
mpany. The statement made in the brief is that most of the stock
the tap line is held in trust for the stockholders of the lumber
mpany. In addition to the tracks referred to, there are three
called branches which are apparently nothing but temporary spurs
ed in the logging operations of the lumber company. An extension
planned from Burdette northward to Blytheville, a town of some
portance, where a connection will be effected with the Cotton Belt;
l it is said that this will be for the purpose of serving the general
blic rather than in the interest of the mill. It will be observed,
wever, that if constructed the track from Burdette to Blytheville
ll parallel the Frisco. Moreover, the tap line as it at present exists
nowhere more than 1¼ miles from the line of the Frisco. It is
parent therefore that the claims it makes for future development
a carrier serving the public are without foundation, except so far
they involve dividing the traffic of that country with the Frisco.
is said that only 41 per cent of the revenue of the tap line for the
ar 1910 accrued on the tonnage of the Three States Lumber Com-
ny. In other words, the statement made of record is that 9,167,500
nds of forest products and 691,612 pounds of other freight were
ndled for the Three States Lumber Company, for a total charge of
600.24, while 19,906,512 pounds of forest products were handled for
ers at a charge of $3,666.88, with miscellaneous freight weighing
2,525 pounds, on which the charges were $37.60. A close analysis
these figures and other statements made of record, however, will
verify the claims made by the tap line. The principal shippers
t are mentioned on the record other than the Three States Lum-
Company are a small manufacturer of scythe handles, and a
perage company, which is owned by one of the stockholders of the
nber company and obtains practically all of its raw material from
lumber company, as is admitted of record.

The equipment of the tap line consists of 4 locomotives and 19
cars. The lumber company owns the logging cars. There is a
rehouse and platform at Burdette and a shed or station building at
river landing. The officers of the tap line receive no salaries; and
salary of the agent at Burdette, who makes out through billing, is

paid by the lumber company, whose clerks keep the books of the tap line without charge. When the mills are in operation two log trains are run daily in each direction between Burdette and the woods to the westward. Trainloads of lumber are hauled from Burdette to the connection with the Frisco as occasion requires. The service from Burdette to the river landing is irregular, but the trains meet all steamboats. Passengers are permitted to ride on the train without charge.

For the movement of logs to the mill the tap line charges the lumber company 2 cents per 100 pounds. It receives an additional 2 cents or 3 cents per 100 pounds from the Frisco as an allowance out of the joint rates for the movement of the lumber from the mill to the Frisco. For the lumber delivered to the steamers at Wolverton Landing the tap line charges 2 cents per 100 pounds. It furnishes the cars for such shipments, whereas on traffic moving over the Frisco the car is supplied by the trunk line.

BROOKINGS & PEACH ORCHARD RAILROAD.

The hardwood mill of the Harris Manufacturing Company, at Brookings, on the bank of the Black River, in the state of Arkansas, and the equipment and narrow-gauge track of the Brookings & Peach Orchard Railroad, extending from that mill to the line of the Iron Mountain, a distance of 3 miles, were purchased in 1907 by the Quellmalz Lumber & Manufacturing Company. The mill and the tap line are substantially one investment. The latter was not incorporated, however, until 1908, when its track was rebuilt by the present owners and changed to standard gauge. The officers of the tap line are officers also of the lumber company; and while they receive no salaries from the tap line they are accorded annual and trip passes for interstate use by the trunk lines. In addition to its capital stock of $6,000, the tap line owes the lumber company nearly $10,000 on account of purchases of steel and equipment. It has one locomotive and four freight cars, two of which are only 5-ton capacity. It has no station buildings, track scales, or other facilities for handling carload or less-than-carload freight. It has put in operation since the hearing a boat and barge, which it uses for hauling ties and stave bolts on the Black River and tributary waters. Its locomotive hauls out one lumber train daily, on an irregular schedule; the tap line carries no passengers.

The logs are floated down the Black River to the mill at Brookings. The lumber is moved by the tap line for a distance of 3 miles to the Iron Mountain. For this service it receives 3 cents per 100 pounds out of the joint rates published by the Iron Mountain, which are 1 cent higher than the rate from the junction point, so that the net contribution by the Iron Mountain out of its revenues is 2 cents per

100 pounds. In addition to the mill of the Quellmalz Company there are three small sawmills, each having a capacity of 10,000 to 15,000 feet daily, which use the facilities of the tap line. Their entire tonnage for the year 1910, however, was but 960 tons, or apparently about 40 carloads. The output of the Quellmalz mill during the same period was approximately 8,000 tons. In addition to the products already referred to, the only traffic handled by the tap line during the year 1910 was 1 carload of corn. Brookings is described as a mill and farm town, with a population of 150, with a company store. While the tap line owns its right of way, the record indicates that practically all the land on both sides of the river is owned by the Quellmalz Company.

CROSSETT RAILWAY.

The mill of the Crossett Lumber Company is at Crossett, Ark., where terminate branch lines of the Rock Island, Iron Mountain, and Arkansas, Louisiana & Gulf Railroads. The lumber company controls, and operates in the interest of its mill, a tap line known as the Crossett Railway connecting with the three trunk lines at Crossett. At the date of the hearing the tap line owned 10 miles of track extending northward, closely paralleling for some distance the rails of the Rock Island; and beyond this track it leased about 5 miles of unincorporated spurs owned by the lumber company. The cost of the tap line, including about 5 miles of so-called terminals in and about the mill and extending to the trunk lines, is stated on the brief at $120,000. The capital stock of the railroad corporation amounts, however, to but $25,000, all of which was issued to the lumber company in 1905, when the tap-line corporation was formed, in exchange for 10 miles of track and equipment. The tap line owns 2 locomotives but no cars; it leases 80 logging cars from the lumber company at an annual rental of $22,500, or an average of more than $280 per car. The original cost of the cars was less than $400 and they are kept in repair by the lumber company. The tap line has no salaried employees excepting its trainmen and trackmen and one car inspector. Its officers receive their entire salary from the lumber company, whose clerks are employed by the tap line for an arbitrary charge of $100 per month, to keep its accounts and perform its clerical services.

The lumber company loads the logs on the cars and hauls them over its private unincorporated spurs to the point of connection with the track that it leases to the tap line; from that point the logs are hauled by the tap line over the leased track and then over the track it owns to the mill, where they are unloaded by the trainmen into the pond. No charge is made by the tap line for this service. The shipments of lumber, for which empty cars are furnished by the

trunk lines, are switched by the tap line from the mill to the Iron Mountain, a distance of one-quarter mile, or one-half mile to the Rock Island. The trunk lines allow out of their earnings from 2 to 4½ cents per 100 pounds, which is intended to cover the movement of the logs into the mill and the lumber out. Under a formal contract with the Rock Island the tap line has agreed to deliver to that company not less than 50 per cent of its outbound lumber tonnage. About 40 per cent is actually delivered to the Iron Mountain and something less than 10 per cent to the Arkansas, Louisiana & Gulf.

The tap line does not carry passengers, but permits persons to ride on its trains without charge; and for the fiscal year 1910 its annual report to the Commission indicates that its entire traffic, amounting to 252,673 tons, was forest products, of which 95 per cent was supplied by the lumber company, and 5 per cent by other persons, who cut their timber on the lands of the lumber company, as the record indicates. The statement on the annual report, however, does not accord with the record, where it is claimed that 19 carloads of merchandise and the same number of carloads of forest products were handled during the year 1910, in which neither the tap line nor the lumber company had any interest. This outside tonnage is said to have increased to 180 cars during the six months ending December 31, 1910. Mention is made on the record of a small mill at Crossett, owned by the lumber company and leased to another lumber company, which purchases its logs from the Crossett Lumber Company and has them hauled in by the tap line. The impression sought to be made by the tap line on the record is that the timber holdings of the Crossett Lumber Company, which had amounted to over 200,000 acres, were nearly all cut, and that therefore "the tonnage of the Crossett Lumber Company will disappear by July, 1911." The fact, however, as disclosed by a careful examination of the testimony, is that the lumber company owns or is contemplating acquiring extensive additional timber holdings south of Crossett, which will be reached by proposed extensions of the line in the opposite direction from that now taken. There remains a large quantity of hardwood which is available for cutting on its lands that have been denuded of yellow pine. It threatens on the one hand that if the Commission holds that the tap line is not a common carrier it will remove and take up its rails and withdraw entirely from the railroad business, because without its interstate business it would be most unprofitable. On the other hand it boasts of large plans for future development; one proposition stated on the record being an extension of a few miles to meet the Wilmar & Saline Railroad, another tap line, with which it would then consolidate, making "54 miles of railway under one management."

Another possibility mentioned is the acquisition of the line by one of the connecting trunk lines.

The reports to the Commission indicate a gross operating revenue for the year 1910 of $71,745.05, and a net operating revenue of $35,593.12. After payment of taxes and paying to the lumber company $5,193.36 for lease of track and $22,500 for lease of equipment, it had a net income for the year of $7,643.51, making a total surplus from its operations to June 30, 1910, of $31,681.46. The officers of the lumber company, through their connection with the tap line, have the benefit of free interstate passes, which they do not hesitate freely to use.

FORDYCE & PRINCETON RAILROAD.

The Fordyce Lumber Company was incorporated in 1890, and erected its mill at Fordyce, Arkansas, about 1 mile from the line of the Cotton Belt System. In the same year and as part of the same investment, the Fordyce & Princeton Railroad Company was organized and laid a track from the Cotton Belt to the plant. When the mill was opened the track was extended northward into the timber for the purpose of hauling logs. From the beginning the tap line has been operated primarily as a facility of the mill. Its main stem runs northward from the mill for a distance of 22½ miles to a point known as Old Junction. It parallels, within a distance of about a mile, the line of the Rock Island, which was subsequently built through Fordyce and crosses the Rock Island near Old Junction. From a point named Cynthiana, where there are two farmhouses, there is a branch 6 miles in length crossing the Rock Island and running to Dobbs Mill, where there is a small hardwood mill, and thence to Trigg, a settlement where the lumber company has a store. This line, from Cynthiana to Trigg, was built by the lumber company and transferred to the incorporated tap line shortly before the hearing for a consideration of $42,000. The lumber company has an unincorporated logging track connecting with the tap line at Old Junction and several miles of unincorporated spurs in the vicinity of Trigg. The equipment of the tap line consists of 1 locomotive, 4 box and 67 logging cars. The lumber company uses on its unincorporated tracks three Shay geared locomotives.

Mention is made on the record of a stave company which has a mill at Fordyce, and a manufacturer of spokes, handles, and other hardwood products that is erecting a mill at the same point. Neither of these industries, however, is on the rails of the tap line, but they obtain a considerable quantity of logs from the Fordyce Lumber Company. There are also a few small shippers of staves along the tap line. But the tap line runs so near to the Rock Island that any

traffic it receives or originates must necessarily be taken at the expense of the trunk lines. It does not participate in joint rates on any commodities other than lumber outbound and coal inbound. The merchandise, amounting to 265 tons, which it handled during the year 1910, paid the local charge of the tap line in addition to the rates of the trunk line. The shipments of staves and stave bolts moved during the same year for others than the lumber company amounted to 4,288 tons, and it is understood that this moved on a local rate to Fordyce. The traffic of the lumber company itself in the same period amounted to 24,079 tons, of which 264 tons was hay and grain and the rest lumber. The tap line runs two log trains daily in each direction, but does not carry passengers for hire.

The logs are loaded on the unincorporated tracks by the employees of the lumber company, and its locomotives deliver the cars at the junction with the incorporated tap line. They are then taken by the tap line, without cost to the lumber company, to the mill. The tap line moves the lumber from the mill to the line of the Rock Island or Cotton Belt, a distance of about a mile. It receives from the Rock Island divisions ranging from 2 to 4½ cents per 100 pounds, and from the Cotton Belt 2½ to 3 cents. There is a contract between the lumber company, the tap line, and the Rock Island providing for these divisions and requiring the delivery of at least 50 per cent of its traffic to that company. The record indicates that the most of the lumber goes to destinations where the division is 4 and 4½ cents.

The tap line claims to perform a switching service on shipments interchanged between the Cotton Belt and the Rock Island at Fordyce, its revenue in the year 1910 on that account being $1,145.

The annual report to the Commission indicates the payment of a dividend aggregating $5,430 during the year 1910. After the payment of this dividend a deficit was created by the writing off of accrued depreciation on road and equipment.

HOMAN & SOUTHEASTERN RAILWAY.

The main track of the Homan & Southeastern Railway Company is 12 miles long and connects with the Iron Mountain at Homan, Ark. The mill that it serves is about 1,000 feet from the Iron Mountain right of way, and is named on the record as Arthur. The other end of the track is in the timber and bears no name. The tap line also operates several miles of logging spurs. Its equipment consists of 2 locomotives, 2 flat and 15 log cars; and one logging train runs daily in each direction, on which passengers are carried free. A special train is sometimes run when a carload of freight other than forest products is offered for movement.

The mill was apparently erected in 1904 by the Kelly Lumber Company, which had previously been in business elsewhere. Shortly thereafter the tap line was built, and was incorporated as the Homan & Southern, having at that time 6 miles of track, that has since been taken up and entirely relocated. In 1906 the Kelly Lumber Company failed, and the Homan Lumber Company took over the property. At the same time the Homan & Southeastern was organized and succeeded the Homan & Southern. In 1909 the mill at Homan and the entire capital stock of the Homan & Southeastern, amounting to $27,000, was purchased by J. A. Brown & Company, the Homan Lumber Company at that time having cut off most of its timber. The vendees were not prepared to begin logging their own timber, and therefore leased the mill to the Homan Lumber Company, which continued to operate it until December, 1910, when the mill was destroyed by fire. At the time of the hearing it was being rebuilt by Brown. The Homan Lumber Company was itself building a new mill on the Red River about 3½ miles away, and was constructing about a mile of railroad to connect with the Iron Mountain.

There are said to be a number of farms along the tap line and the country is developing. The traffic of the tap line during the year 1910, however, was almost entirely lumber, there being but 306 tons of cotton seed, farm products, and merchandise, the lumber weighing 10,344 tons, with some three or four times that weight of logs moving into the mill. For the fiscal year 1909 the lumber movement exceeded 29,000 tons.

The Homan & Southeastern is a party to joint rates published by the Iron Mountain that are 1 cent higher than the rates from mills on the trunk line itself. The Iron Mountain allows the tap line from 4 to 5 cents per 100 pounds, which includes the arbitrary of 1 cent. On such other traffic as it has the tap line apparently makes a local charge in addition to the Iron Mountain's rate. While the mill was in operation the logs were hauled to it by the tap line without charge against the lumber company; and the lumber was switched by the tap line for a distance of about 1,000 feet from the mill to the Iron Mountain.

The Homan & Southeastern does not file annual reports with the commission.

LITTLE ROCK, SHERIDAN & SALINE RIVER RAILWAY.

The Little Rock, Sheridan & Saline River Railway Company was chartered in February, 1892, and is owned by the William Farrell Lumber Company, as is admitted of record. The track of the tap line is narrow gauge and runs from mill at Farrell, Ark., to a point in the timber known as Craig's Mill, a distance of 17 miles. The

equipment consists of 3 locomotives and 36 cars. There are unincorporated logging spurs owned by the lumber company which it operates with engines furnished by the tap line at a charge of $20 per day, including fuel and the crew. The tap line hauls the logs to the mill and charges the lumber company $4 per car. This, however, is later refunded when the lumber is shipped out. The sawmill is about 200 yards from the main track of the Iron Mountain; the planer is somewhate less distant. But apparently all of the manufactured lumber, whether planed or undressed, is switched by the Iron Mountain from the mill. The tap line receives an allowance of 4 or 5 cents per 100 pounds out of the Iron Mountain's rates.

The timber holdings of the lumber company are in the vicinity of Craig's Mill, where the logging spurs are laid, and aggregate about 54,000 acres. The traffic handled for others than the lumber company amounted, during the fiscal year 1910, to only 110 tons, and consisted of feed and general merchandise, while the lumber shipped by the Farrell Lumber Company exceeded 41,000 tons. The log movement averages 10,000 cars per annum.

The capital stock issued and outstanding amounts to $125,000; and in addition the Farrell Lumber Company holds bonds in the tap line to the amount of $75,000. The surplus on June 30, 1910, was $14,290.01, accumulated since 1907.

L'ANGUILLE RIVER RAILWAY.

The L'Anguille River Railway consists of 1.7 miles of track, laid in what is described on the brief as a general circular direction from the right of way of the Iron Mountain in the town of Marianna, Ark., to the bank of the L'Anguille River, where the mills of the Indiana-Arkansas Lumber & Manufacturing Company and the Miller Lumber Company are in operation. The stockholders of those companies own all of the stock, amounting to $10,000, in the tap line. It is stated of record that one "station" on the road is the loading point of the Indiana-Arkansas Company, one is the loading point of the Miller Lumber Company, and the other "station" is the loading point of the McDonald Company. The tap line has two locomotives, and it uses cars furnished by the Iron Mountain. No passengers are carried, but it has some miscellaneous freight that is brought in by a packet line and which it switches over to the Iron Mountain. There is also a small brick plant that furnishes some traffic. Altogether for the year 1910 it moved 223 carloads, or 5,671 tons, of miscellaneous freight, on which it received earnings of $2,458.14, made up for the most part of local charges paid by the shippers. For the same period the traffic of the Indiana-Arkansas Company aggregated 631 cars, on which its revenues were $5,893.74, while the tonnage of the

Miller Lumber Company amounted to 552 cars, on which the revenue was $5,706.04.

The logs that are cut by the mills are floated down the river or brought in by barges and steamers. For the movement of the lumber from the mills the Iron Mountain makes an allowance of 2 cents per 100 pounds out of its rate from Marianna. The only joint rates are on forest products, and on other commodities, such as brick and coal, the tap line is content to receive a switching charge of $3 per car, or $5 per car on cotton, which apparently is not absorbed by the Iron Mountain but is paid by the shipper.

The tap line was incorporated in 1902. It makes annual reports to the Commission, from which it appears that the salaries to its officers exceed $6,000 per annum.

OUACHITA VALLEY RAILWAY.

The Ouachita Valley Railway connects with the Cotton Belt at Millville, Ark., where the mill of the Freeman-Smith Lumber Company is situate, and runs in a southeasterly direction for a distance of 28 miles to Stark, where it joins the Rock Island Railroad. A good deal is said on the record of proposed extension of the line to reach certain towns and farming country. There are said to be one or two small settlements and a few farms on the line, but the freight in which the lumber company was not directly interested amounted to but 450 tons for the eighteen months ending December 31, 1910. There are a number of miles of unincorporated logging track connecting with the tap line. The tap line itself is laid with a light 30-pound rail, but it owns its right of way. It has 5 locomotives, 2 cabooses, a motor car, and 70 logging cars. One mixed lumber and logging train runs daily in each direction between Millville and Stark; its passenger revenue for 1910 amounted to $764.54.

The tap line was originally built by the lumber company nearly 20 years ago; and upon its incorporation in 1904 the track and equipment was transferred to the railroad company in exchange for its capital stock, amounting to $100,000, which was thereupon distributed among the shareholders of the lumber company as a dividend.

The logs are hauled by the tap line from the loading point on the unincorporated tracks to the mill and are unloaded at the mill by the trainmen. A charge of $4 per car is made against the lumber company, which is supposed to include the expense incurred by the tap line in laying and changing the logging spurs. The mill is at the junction with the Cotton Belt which places the empties and takes away the loaded cars moving over that route. The greater proportion of the tonnage, however, is delivered to the Rock Island, requiring a haul by the tap line of the empty and loaded cars of 28 miles from

the mill to Stark. When the Rock Island built into the country, in 1906, it entered into its standard form of contract with the Ouachita Valley Railway, requiring the routing of 50 per cent of its traffic over that trunk line and stipulating for the payment of a division of from 2 to 5 cents per 100 pounds. The Cotton Belt allows from 1 to 2½ cents per 100 pounds. The excess of the Rock Island divisions therefore seems to be sufficient to induce a 28-mile movement by the tap line in preference to direct delivery to the Cotton Belt. There are also joint commodity rates with the Rock Island on fertilizer, hay, feed, and coal, but on most of the miscellaneous traffic, amounting only to 259 tons in 1910, local rates are apparently charged.

SOUTHERN PINE SYSTEM.

The so-called Southern Pine System seems to be an informal association of four tap lines, two of which, known as the Griffin, Magnolia & Western Railway Company and the Saline Bayou Railway Company, are Arkansas corporations, and the others, namely, Enterprise Railway Company and Natchez, Ball & Shreveport Railway Company, are located in the state of Louisiana. The precise relationship between the four companies as respects their ownership or control is not definitely disclosed of record; but the fact is not important. The four properties are similar in many respects, and their methods of doing business do not differ materially.

The Griffin, Magnolia & Western is controlled by the stockholders of the Louis Werner Saw Mill Company, and its main track, 18 miles in length, connects with the Iron Mountain at Griffin, Ark. The other end of the line is referred to on the record as Graham, but is named on the annual report to the Commission as Junction. There are about 7 miles of logging branches. The tap line has capital stock to the amount of $50,000 and no bonds. Its equipment consists of 3 locomotives, 1 caboose, 2 coal cars, and 25 flat cars, used for hauling logs. The lumber company has neither locomotives nor cars of its own; nor are there any unincorporated logging tracks.

Both the sawmill and the planing mill of the Werner Company are reached by the tracks of the Iron Mountain at Griffin; and the usual practice is for the Iron Mountain to spot the empty cars and take the loaded cars directly from the mill without assistance by the tap line. The tap line hauls the logs to the mill, making a charge against the lumber company of $1.50 per 1,000 feet for the service on the logging spurs up to Junction or Graham; its compensation for the movement of the logs from that point to the mill is the division of the through rate allowed it by the Iron Mountain, which varies from 2 to 5 cents per 100 pounds. It is said that the logs of the Werner Sawmill Company constitute only 65 per cent of

the total tonnage of the road. There seem to be one or two other small mills on the line and a number of shippers of staves. The latter pay the local charge of the tap line in addition to the regular charges of the Iron Mountain. A considerable quantity of logs, chiefly hardwood, moves over the tap line to Griffin, and from there is hauled by the Iron Mountain to sawmills along its lines, one of the mills apparently being 300 miles distant. These logs are said to be cut from timberland in which the lumber company is not interested and which is reached by the logging spurs of the tap line; the tap line charges the regular Arkansas log rate for the entire distance from the loading point on the logging spurs to the junction with the Iron Mountain. For the fiscal year 1910 more than 99 per cent of the traffic of the tap line was forest products, which amounted in the aggregate to 59,740 tons. There were 200 tons of farm products and 318 tons of merchandise and miscellaneous freight. No charge is made for carrying passengers.

The first 5 miles of the Griffin, Magnolia & Western was originally built as an unincorporated logging road by a lumber company which subsequently failed. The tap line was incorporated in 1905. Its annual report to the Commission for the year 1910 shows freight revenues of $29,547.56 and a net loss from operation, on June 30, 1910, of $6,097.45. Mention is made of proposed extensions to El Dorado and Champion, which, if constructed, would involve the crossing and paralleling of several other tap lines now built or which have plans of building in that territory.

The Saline Bayou Railway Company was chartered in June, 1905, under the Arkansas law, and its capital stock, amounting to $30,000, is held by the stockholders of the Oak Leaf Mill Company. The sawmill is reached by the tracks of the Iron Mountain, and the tap line performs no service on the manufactured lumber. The rails of the tap line extend from the mill at Oak Leaf, Ark., for a distance of 14 miles into the timber, with several miles of incorporated logging spurs. It has two locomotives and a number of logging cars, but no box cars or other equipment for miscellaneous traffic. About 95 per cent of the tonnage consists of the logs of the lumber company. An insignificant amount of general merchandise and farm products is moved for settlers and there is a small movement of hardwood logs. It has no passenger service.

The logs are loaded on the cars by the employees of the tap line; the method of hauling them to the mill is similar to that employed on the Griffin, Magnolia & Western; and the same charge of $1.50 per 1,000 feet is made by the tap line for the service on the logging spurs. The divisions received from the Iron Mountain range from 1½ to 5 cents, the average being 3 cents per 100 pounds, the shipping-point rate being in effect from all points on the tap line.

The reports filed with the Commission indicate that the tap line is operated at a slight loss, and the statement made on the brief is that the deficit is met by the Oak Leaf Lumber Company.

The Enterprise Railway Company was incorporated in 1903, and operates 12 miles of standard-gauge track connecting with the Iron Mountain at Simms and penetrating the timber of the Enterprise Lumber Company, whose mill is located on the tracks of the Iron Mountain in Alexandria, La. The tap line has trackage rights from the junction of its own rails at Simms over the Iron Mountain to the mill at Alexandria, this right being limited to the operation of logging trains at a charge of 50 cents per train-mile. The tap line has 4 locomotives and 71 cars. The lumber company has no equipment. The tap line builds and maintains spurs into the timber wherever required for logging operations. The tap line hauls the logs all the way from the loading point in the woods to the mill at Alexandria; and a charge of $1.50 per 1,000 feet is made against the lumber company for the expense of maintaining the logging spurs, hauling the logs over them, and the unloading of the logs at the mill. The trunk line switches the manufactured product from the mill and pays the tap line a division of from 2 to 5 cents per 100 pounds out of the joint rates which are published as applying from Clear Creek, the terminus of the tap line in the woods.

The tap line has an inconsiderable traffic in merchandise and miscellaneous freight, and the revenue from the staves and hardwood which it moves for others than the lumber company amounts to but 3 or 4 per cent of its total revenue. The only through rates in which it participates are those on yellow-pine lumber, all other freight paying a local charge to Simms in addition to the rates of the Iron Mountain.

The operations of the tap line appear not to have been profitable, and the lumber company has supplied more than $100,000 to meet operating deficits.

The J. F. Ball & Brother Lumber Company has two mills, located, respectively, at Pollock and at Ball, in the state of Louisiana, being points on the line of the Iron Mountain, a short distance north of Alexandria. Simms, the junction point of the Enterprise Railroad with the Iron Mountain, is between Pollock and Ball. Each of the mills of the lumber company is served by the tracks of a tap line, which is known as the Natchez, Ball & Shreveport Railway Company, and is controlled by the lumber company. In other words, the tap line is built in two sections, one connecting with the Iron Mountain at Pollock and the other connecting with the Iron Mountain at Ball. The aggregate of the tracks is 34 miles, and at Dry Prong the tap line connects with the Louisiana & Arkansas Rail-

road, over which the Rock Island lines have trackage rights. The equipment consists of 4 locomotives, about 70 flat cars, and 2 cabooses, 27 of the flat cars being leased from the Iron Mountain for a per diem charge.

The record indicates that the tap line was built through an unbroken forest. It does not carry passengers; and its tonnage consists very largely of forest products, of which more than 95 per cent is supplied by the mills of the Ball company. The record is silent as to the manner in which the lumber is handled from the mills, which are located within a few hundred feet of the Iron Mountain, but our own investigations indicate that the cars are switched by the Iron Mountain. As the tap line seems not to enjoy allowances or divisions from the Rock Island or Louisiana & Arkansas, we infer that little if any tonnage is delivered to those companies. The divisions paid by the Iron Mountain out of its earnings range from 1½ to 5 cents per 100 pounds. As on the other three lines composing the Southern Pine System, the logs are hauled by the tap line from the point where they are loaded on the logging spurs to the mill and a charge of $1.50 per 1,000 feet is made for the service on the logging spurs.

The Natchez, Ball & Shreveport has not filed annual or other reports with the Commission, nor has it published any tariffs that are on file with the Commission.

BLACK BAYOU RAILROAD.

The Black Bayou Railroad Company was organized in 1904 and was operated in the interest of the small sawmill of the Black Bayou Lumber Company. The record indicates that the lumber company got into financial difficulties as a result of the panic of 1907 and was compelled to cease operations. The Southern Lumber Company subsequently purchased the assets and reorganized the tap line corporation, which had forfeited its charter. Capital stock was issued to the amount of $50,000, in addition to which the tap line owes the Southern Lumber Company about $1,000. The tap line was thereupon rebuilt in a more substantial form and relocated to run in another direction, the 35-pound steel being replaced with 60-pound steel, which apparently is leased from the Kansas City Southern Railway Company.

The equipment consists of 1 locomotive, 1 construction car, and 26 logging cars. There are no station buildings or other facilities. Its employees consist of one train crew, one section gang, and a construction gang. The record states that no salaries are paid to its officers, who are also officers of the lumber company and who enjoy the privilege of free passes over the Kansas City Southern. The first annual report made to the Commission, however, for the fiscal year 1911, shows that the officers have since been placed on salary.

The Black Bayou Railroad connects with the Kansas City Southern at Myrtistown, La., and extends into the timber for a distance of 7 miles, crossing the state line into Texas. In addition to this track there are logging spurs aggregating over 8 miles in length constructed by the tap line. The mill of the lumber company is apparently at the junction between the tap line and the Kansas City Southern, and the Kansas City Southern places the empty cars and switches the loaded cars from the mill. There are joint rates on lumber out of which the Kansas City Southern allows the tap line from 1 to 4 cents per 100 pounds, which is, of course, intended to cover the movement of the logs into the mill. In addition to this compensation the tap line charges the lumber company, for the construction and operation of the logging spurs, an arbitrary amount, which is apparently determined periodically and is sufficient to make the road show net earnings. For the year 1911 this charge seems to have been $5 per log car. The record describes the traffic of the tap line as consisting wholly of logs and camp supplies transported for the Southern Lumber Company. The annual report for the fiscal year 1911 seems to verify this fact. There is no regularity of train service, but about four trainloads of logs are handled each day. It does not carry passengers.

The annual report to the Commission is somewhat informal in character and indicates that the disbursements of the tap line are made through the lumber company.

BODCAW VALLEY RAILWAY.

The Bodcaw Valley Railway Company was incorporated in 1904 and has capital stock outstanding to the amount of $67,000. Its tracks extend from a connection with the Cotton Belt at Alden Bridge, Louisiana, in an easterly direction for about 24 miles. It is owned by the Frost-Johnson Lumber Company, which acquired the tap line when it purchased the mill and timber of the Whited & Wheless Lumber Company; no separate or specific amount was paid for the railroad and equipment.

The Bodcaw Valley is remarkable in the fact that it receives from the Cotton Belt an allowance of from 1 to 2½ cents per 100 pounds out of the rate, although it neither hauls the logs to the mill nor performs any service on the finished product from the mill. The mill of the lumber company is located on the tracks of the Cotton Belt, which places the empty cars at the loading platform and moves the carloads of lumber away. The tap line conducts no train operations, its tracks from the timber to the mill being used by the Smyth Logging Company, which is also subsidiary to the Frost-Johnson Lumber Company, for the movement of logs to the mill. For this

purpose the logging company leases the equipment of the tap line and pays a yearly rental for the tracks. Such is the testimony appearing of record, although the annual report indicates that the tap line has several trainmen. The entire traffic as reported to the Commission consists of logs, amounting for the year 1910 to 78,592 tons.

This tap line yields a substantial profit to its owners, having paid during the year 1910 a dividend of 20 per cent on the stock, its net operating revenue for that year being $7,140. Apparently the bills for the allowances are sent to the Cotton Belt by the lumber company, and the cash accruing under the settlements passes to the lumber company.

MILL CREEK & LITTLE RIVER RAILWAY.

The Mill Creek & Little River Railway & Navigation Company is controlled by the stockholders of the Little River Lumber Company, which furnishes its entire traffic, consisting, for the year covered by this record, of 52,425 tons of logs and lumber and 197 tons of merchandise. It is admitted on the brief that the two companies are one and the same investment, and that there is no outside traffic. The country traversed is hilly, with very few settlers, for whom the tap line does not, in fact, carry any products or supplies. The mill is at Manistee, La., on the tap line about 3 miles from the junction with the Iron Mountain. This is purely a mill town, of about 300 inhabitants and a company store. The construction of the tap line was begun in August, 1905, by the lumber company, and about 6 miles were built the first year. In November, 1905, the tap-line corporation was formed, but it did not take title to the railroad property until 1908. There are 10 miles of incorporated track, lightly constructed with 35-pound rails, of which 8 miles is on land owned by the lumber company, the tap line itself owning no right of way. The lumber company also has several miles of unincorporated logging spurs, the rails in which are owned by the tap line. The equipment of the tap line consists of 2 locomotives and 12 logging cars.

For the movement of the logs to the mill the tap line makes a charge of $4 per car against the lumber company; and this includes the operation of the unincorporated spurs. It also includes the unloading of the logs into the mill pond by employees of the tap line. The tap line switches the empty cars furnished by the Iron Mountain from the junction point known as Bryant's spur to the mill, a distance of 3 miles, and switches the loaded cars the same distance back to the Iron Mountain. For this service a division of 2 cents per 100 pounds is allowed out of the rates, which are the same from the mill as from originating points on the Iron Mountain proper.

It is interesting to observe that for several years there was a mill in operation at Manistee which brought in its logs by ox carts and reached the Iron Mountain with its lumber over a wooden tram operated by mule power. The mill was compelled to suspend operations with the cutting away of the timber standing within a distance that could be logged profitably by wagon. The present owners purchased the property and constructed the tap line.

The intention of the lumber company seems to have been to acquire barges or other floating equipment and thus move forest products on the river. This intention is expressed in the corporate title of the tap line, but has not been made effective.

RED RIVER & ROCKY MOUNT RAILWAY.

The mill of the Antrim Lumber Company is adjacent to the right of way of the St. Louis Southwestern Railway, known as the Cotton Belt, at Antrim, La., and has been in operation for about 16 years. During practically all of that period it has brought in its logs over a tram road which was incorporated in May, 1904, as the Red River & Rocky Mount Railway Company, but which had been receiving divisions out of the through rate prior to that date. The tap line consists of 12 miles of standard gauge track extending westward from the mill to the timber and about three-fourths of a mile of track crossing the Cotton Belt and running to the eastward; all of the track is laid with light 35-pound steel, and title to the right of way is in the name of the tap line. The lumber company has a short unincorporated logging spur which is operated for it by the tap line. The equipment of the tap line consists of 3 locomotives and 30 loggings cars. There are 3 train crews. The entire tonnage of the road consists of logs handled for the lumber company from the timber to the mill, at a charge of 40 cents per ton, which apparently is not refunded, although the rates published by the Cotton Belt and participated in by the tap line are apparently on a milling-in-transit basis. In addition to this charge on the logs the tap line receives from the Cotton Belt an allowance out of the published rate of from 1 cent to 2¼ cents per 100 pounds. The lumber, however, is loaded by the lumber company into cars furnished and placed at the mill by the Cotton Belt, which also takes the loaded cars away. In other words, the tap line performs no service in connection with the movement of the finished lumber.

The capital stock of the tap line amounts to $64,000, which was issued to the stockholders of the lumber company as a dividend. We find of record an admission that when the timber is cut away the rails may be taken up and the tap line abandoned. On the other hand it is contended that the development of the Caddo oil fields may furnish new traffic for the tap line.

WOODWORTH & LOUISIANA CENTRAL RAILWAY.

The Woodworth & Louisiana Central Railway serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain railroad which has a spur track to the mill. The tap line and lumber company are identical in interest with the same principal officers. The tap line has a standard-gauge track extending from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. Its main track, however, is narrow gauge and runs from the mill westward for 18 miles to a point from which unincorporated tracks extend into the timber. The right of way for the narrow-gauge track is leased from the lumber company; but the steel in the unincorporated logging spurs, on the other hand, is owned by the tap line and leased to the lumber company, as are four narrow-gauge locomotives which the lumber company utilizes in the operation of the logging spurs. The equipment of the tap line consists of 1 standard-gauge locomotive, 5 narrow-gauge locomotives, and 2 standard and 9 narrow-gauge cars. The logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber company and are dumped into the mill pond by the trainmen. The standard-gauge locomotive of the tap line switches the carloads of lumber from the planing mill to the point from which they are taken by the Iron Mountain, a distance, as the record indicates, of only 25 feet, or less than a car length. About 95 per cent of the lumber moves through La Moria, being switched to that point, a distance of six miles, by the tap line. The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. There are no joint rates except on lumber. The record indicates that 40,707 tons of freight was handled for the lumber company during the fiscal year ending June 30, 1910, and that there was 2,100 tons of outside traffic, consisting of merchandise, farm products, and miscellaneous material. It does not appear what proportion of this tonnage was intended for employees of the lumber company. There is no passenger service.

The Woodworth & Louisiana Central was incorporated in 1900, with a capital stock of $25,000. It has no bonds, but is indebted to the lumber company in the sum of $88,000 and to a bank in the amount of $10,000. Its operations for the year ending June 30, 1910, resulted in a deficit; but there was a surplus on that date, resulting from previous years, amounting to nearly $10,000. It files annual reports with the Commission.

FREEO VALLEY RAILROAD.

The record indicates that the sawmill and planing mill of the Eagle Lumber Company at Eagle Mills, La., have been in operation more than 25 years and are served by short spur tracks connecting with the rails of the Cotton Belt. The logs are brought into the mill over a track about 22 miles in length, most of which was constructed a few years after the building of the mills, and which was incorporated in 1904 as the Freeo Valley Railroad Company. When this corporation was formed the lumber company declared a dividend that was utilized by its stockholders in securing shares in the tap line. The two corporations are identical in interest, and with one exception their officers are the same. Beyond the incorporated track already referred to, which terminates at a point known as Princeton junction, there is about 17 miles of unincorporated tracks owned by the lumber company itself. The first 2½ miles of this track, however, seems to be treated as a part of the incorporated line to the extent that the tap line runs logging trains for that distance to a town known as Princeton, which had a population of about 400, and seems once to have been a county seat. The first 3 miles of the line out of Eagle Mills extends through pine land, the next 7 miles through a farming country that has been cut over by the lumber company, and the remainder through timber which when cut over will be available only for orchard purposes. The tap line has no equipment of its own, but uses 2 locomotives, 61 logging cars, and 1 other car that belong to the lumber company, no charge being made therefor.

The tap line moves the logs over the unincorporated track from Princeton to Princeton junction, and thence over its own rails to the mill, where they are unloaded by the trainmen. For the service over the unincorporated track from Princeton to Princeton junction, and the unloading, the lumber company pays the tap line $2 per car. The trunk line spots the empties at the mill and takes away the loaded cars of lumber. It pays the tap line a division of from 1 to 2½ cents per 100 pounds out of the joint rates on yellow-pine lumber, which are the same from Princeton junction as from Eagle Mills.

The tap line does not carry passengers and it has very little traffic other than forest products. During the year 1910 it is estimated that the logs moved for the lumber company aggregated in weight about 108,000 tons. Mention is made on the record of 15 carloads of fertilizer hauled for various farmers during that year, and it is said that the merchandise and miscellaneous freight, including this fertilizer, amounted to 5,524 tons. Its report to the Commission, however, shows only 718 tons of agricultural products,

of which 589 tons were inbound hay and grain, 1,220 tons of coal and other mine products, and 115 tons of merchandise and manufactured articles. Its report for the year 1911 shows a total traffic exclusive of forest products of 2,053 tons.

There is one yellow-pine mill on the line and a small hardwood mill which is engaged exclusively in cutting ties, but their tonnage added to the traffic of the farmers and settlers on the line was so small, as compared with the tonnage of the lumber company, as to make during the year covered by the record less than 10 per cent of the total movement of the tap line. Moreover, it will be noted that the hardwood mill pays a flat rate of $15 per car to the tap line in addition to the rate of the Cotton Belt from the junction point. There are no joint through rates on class and commodity freight.

The annual reports to the Commission indicate substantial net operating revenues and a surplus on June 30, 1910, of nearly $50,000, a large portion of which had been actually expended in extensions and betterments. Previous to February, 1911, no charge was made for less-than-carload movements of merchandise.

NATCHEZ, URANIA & RUSTON RAILWAY.

The Natchez, Urania & Ruston Railway is controlled by the stockholders of the Urania Lumber Company through ownership of the entire capital stock. The two companies are one investment and the officers are identical.

It extends from a connection with the Iron Mountain at Urania, La., into the timber about 14 miles. The road was originally constructed in 1899 by the Urania Lumber Company as a private logging road. It was incorporated March 29, 1902, under the laws of Louisiana, with a capital stock of $100,000, of which $50,000 has been issued for the purchase of the road from the lumber company. This purchase only covered the steel, ties, and equipment, the lumber company retaining the title to the right of way. There are no bonds.

The equipment consists of 2 locomotives and 24 cars. The lumber company owns no equipment or motive power.

The mill of the lumber company is located at Urania, about 300 yards from the connection with the Iron Mountain. There are no other mills in operation on the line. The lumber company owns about 50 per cent of the timber tributary to the tap line. There is no other timber owned in sufficient quantities to justify a mill operation.

The tap line constructs and maintains short logging spurs into the timber, and loads the logs upon the cars and hauls them to the mill, where they are unloaded into the log pond by the train crew. For the entire service a charge is made against the lumber company of $1.50 per 1,000 feet, which, it is stated, only covers the keeping up of

the logging spurs, the loading of the logs, and their delivery at the main incorporated track of the tap line.

The Iron Mountain handles the empty and loaded cars between the mill and the junction with its main line, using the tracks of the tap line. The tap line receives divisions from the Iron Mountain of from 2 cents to 4 cents per 100 pounds out of the through rates on lumber. The divisions have been received since the original construction of the road and were not changed after the incorporation.

The tap line has no passenger, mail, or express service, but a few passengers are carried free of charge. It handles no logs for others than the controlling lumber company. The only outside traffic consists of stave bolts and ties. A small amount of farm products and general merchandise is handled free of charge, as the record indicates. No revenue is derived from operation other than that accruing from the movement of logs and lumber for the controlling interests except a small revenue for the movement of staves and ties for the public, for which a charge of $15 per car is made.

The tap line does not file annual reports with the Commission. It is admitted that the net earnings in 1909 were in excess of $10,000, and that the net revenue for the fiscal year ending June 30, 1910, was about 15 per cent on an investment of $70,000.

BERNICE & NORTHWESTERN RAILWAY.

The Bernice & Northwestern Railway Company is controlled by the interests that own also the Bernice Lumber Company and the Dubach Lumber Company, and the three companies have the same principal officers. Each of the lumber companies has a mill on the tap line.

The Bernice & Northwestern has two separate tracks. One was constructed by the Bernice Lumber Company in 1902, for bringing the logs to its mill on the Rock Island in Bernice, and extends for a distance of 15 miles to a point known as Summerfield; beyond Summerfield there are 9 miles of unincorporated logging track of the Bernice Lumber Company. The other section of the tap line connects with the Rock Island at Dubach, and runs for 11 miles to Cunningham, where a connection is made with the unincorporated track 9 miles in length used by the Dubach Lumber Company, whose mill is also on the Rock Island, at Dubach. The tap line has 3 locomotives, 4 flat cars, and 64 logging cars. It was incorporated in 1908, for the purpose, as is admitted, of getting divisions.

On each of the sections of the tap line the logs are loaded by the lumber company and hauled over the logging tracks to the junction with the incorporated line. They are then taken by the tap line to the mill for a charge of $5 per car, which is subsequently refunded by the tap line when the lumber is reshipped.

At both mills the Rock Island spots the empties and takes away the loaded cars, so that the tap line performs no service with respect to the manufactured lumber. It receives, however, an allowance from the Rock Island of from 1 to 4 cents per 100 pounds on lumber. There are no regular trains on either division; and the tap line does not carry passengers. Its total freight traffic for the year 1910 was 86,611 tons, of which 72,388 tons was lumber for the controlling interests.

The Bernice & Northwestern files annual reports with the Commission, and claims otherwise to comply with the act.

DORCHEAT VALLEY RAILROAD.

The Dorcheat Valley Railroad was constructed by the Porter-Wadley Lumber Company as a private logging road in 1905, and was incorporated in the following year with a capital stock of $75,000, which was issued to the stockholders of the lumber company. The two companies have the same officers. The tap line extends from a connection with the Louisiana & Arkansas, at Cotton Valley, La., to Gleason, a distance of about 6 miles, and has 20 miles of logging spurs through the timber which are moved from time to time to meet the logging requirements. These tracks are constructed and moved without expense to the lumber company. The equipment consists of 5 locomotives and 60 logging cars.

The mill of the lumber company is on the tap line about one-quarter of a mile from the track of the Louisiana & Arkansas. The logs are hauled in by the tap line and the lumber is switched by it to the trunk line. For the service on the logging spurs the lumber company pays $1.25 per 1,000 feet, logging scale. Out of the joint rates on lumber the tap line receives from the trunk line a division of 3 or 4 cents per 100 pounds, being one-half the proportion of the through rates that the Louisiana & Arkansas itself receives.

There are no other sawmills on the line, but there is a small stave mill and a handle factory. The outside traffic for the year covered by the record included but 746 tons of feed, fertilizer, and general merchandise; there were 5,100 tons of staves; and the lumber traffic aggregated 29,000 tons. No revenue is shown for carrying the persons who are permitted to ride on the logging trains.

The annual report to the Commission for the year 1910 shows an operating revenue of $53,375.42. The operating expenses for the same year were $48,680.89, which included substantial sums expended in moving the logging spurs.

MANGHAM & NORTHEASTERN RAILWAY.

The track of the Mangham & Northeastern Railway Company was originally constructed as a private logging road. It was incorporated

in 1905 with a capital stock of $50,000, of which $30,000 has been issued, and is in the hands of the stockholders of the Stewart-Greer Lumber Company. The tap line owes $12,000 to the lumber company, and the two companies have the same officers.

The tap line extends from a connection with the Iron Mountain at Mangham, La., in a northeasterly direction 6 miles to Big Creek. It has 2 locomotives, 1 box car, and 23 logging cars. The tap line lays, maintains, and operates logging spurs for the lumber company, and makes a charge on that account of 1½ cents per 100 pounds for the logs hauled to the mill, which is about 1 mile from the Iron Mountain. The tap line switches the lumber from the mill to the trunk line, and receives for the latter an allowance of from 2 to 3½ cents per 100 pounds out of the junction-point rate. All but 1 per cent of the traffic for the year 1910 was supplied by the lumber company. The record shows that the tap line is wholly dependent upon the mill, and during the year 1908, when the mill was shut down, the tap line discontinued all train service.

PEACH RIVER LINES.

The three tap lines of the Miller-Vidor Lumber Company, the corporate names of which are Galveston, Beaumont & Northeastern Railway Company, Peach River & Gulf Railway Company, and Riverside & Gulf Railway Company, respectively, comprise a "system" known as the Peach River lines. The first named of these companies was incorporated March 2, 1906, and has capital stock to the amount of $100,000, of which $93,000 is held in trust as collateral security for bonds issued by the lumber company on certain of its timber lands. The Peach River & Gulf was incorporated in March, 1904, and has capital stock to the amount of $100,000. The Riverside & Gulf was incorporated in April, 1907, and has a capital stock of $50,000. All three companies are controlled by the Miller-Vidor Lumber Company, whose timber lands and sawmills they serve. It is important to observe that neither of them is recognized by the authorities of the state of Texas as common carrier by railroad, and they therefore do not participate as such in joint rates on intrastate traffic.

The testimony is that each of the lines published tariffs, but although copies of local schedules bearing I. C. C. numbers are on the record, the records of the Commission do not disclose that those tariffs have been filed with the Commission in the manner required by section 6. Annual reports, however, have been filed, and it is said that the accounts are kept in accordance with the rules of the Commission. The disbursements of each of these tap lines, however, are made by the lumber company, which handles all the cash, the tap lines having no individual bank accounts. In other words, their financial matters are simply bookkeeping transactions.

The Galveston, Beaumont & Northeastern has 9 miles of main track running southward from a point in the timber known as De Sanque to Vidor, Tex., where it connects with the Texarkana & Fort Smith Railway, over which it has trackage rights for a distance of 8 miles through Beaumont to Chaison. The trackage contract entered into in 1908 is in evidence and limits the use of the track by the tap line to the "hauling of company material in carload lots, with its own cars and engines"; this is apparently intended to mean the logs of the lumber company. A wheelage charge of $27.50 per train of 15 cars, equivalent to $1.83 per car, is made by the Texarkana & Fort Smith. From Chaison a joint track about 1½ miles in length extends to the plant of the Beaumont Sawmill Company, one of the Miller-Vidor corporations, on the bank of the Neches River. For the use of this track the tap line pays the Texarkana & Fort Smith about $105 per month. The equipment of this tap line consists of 2 locomotives, 40 flat cars, and 1 caboose. It has two train crews and one section gang. The logging spurs are apparently constructed, maintained, and operated by the tap line.

The record indicates that the entire traffic of the Galveston, Beaumont & Northeastern consists of logs and lumber handled for the controlling interests, and this is verified by its annual reports to the Commission, which shows neither passenger nor express revenue, nor any tonnage other than forest products. The logs are hauled by the tap line from the timber over the tracks heretofore described to the mill, where they are unloaded by its trainmen into the river. For this movement of the logs the tap line on its books makes a charge of $3 per car against the lumber company, and no part of this charge is refunded. The tap line also switches the cars for lumber shipments between the mill and the track used for interchange with the Texarkana & Fort Smith, a distance of 3½ miles; and for this service it receives out of the published rate to interstate points an allowance of 1½ to 4 cents per 100 pounds. On intrastate traffic the allowance is uniformly $1.50 per loaded car.

The Peach River & Gulf connects with the Gulf, Colorado & Santa Fe at Timber, Tex., and extends southeasterly for a distance of 10 miles to Midline, where it crosses the Houston East & West Texas Railroad, and terminates at Bartle, 1 mile beyond. It also has one short branch connecting with its main line at a point 5½ miles from Timber, known as Lincoln. The burning of a bridge on that section some time prior to the hearing resulted in the suspension of train service between Lincoln and the Houston East & West Texas, and it was said on the hearing that the bridge would not be rebuilt until the determination in this case of the legality of its allowances. The tracks were laid by the Santa Fe at the expense of the tap line and are standard gauge, with 35 and 40 pound steel. Its equipment con-

sists of 3 locomotives, 30 freight cars, and 1 coach; the cars are not equipped with safety appliances. It has 2 train crews and 1 section gang, and operates, as the record indicates, a daily train on regular schedule, and while the passenger coach seems to be attached to this train the road has no passenger earnings, which indicates that no charge is made for such persons as may be carried. Its entire revenues accrue on the logs and lumber of the Miller-Vidor Lumber Company, there being no other inbound or outbound freight of sufficient consequence to be mentioned on the record or on its reports to the Commission.

The mill of the Miller-Vidor Lumber Company is located at the junction with the Santa Fe at Timber, and while the spur track to the loading platform is owned by the tap line, the Santa Fe spots the empties and switches the loaded cars. The tap line formerly switched the lumber to the Houston, East & West Texas, a distance of 12 miles, when it was in receipt of divisions. But it has had no allowances either from the Santa Fe or the Southern Pacific since August, 1908. Prior to that time it received 1 and 2 cents per 100 pounds. Its witness testified that it would be to the interest of the lumber company to have the Santa Fe haul the lumber direct from the mill rather than for the tap line to haul the lumber 12 miles to the Houston, East & West Texas for a division of 2 cents per 100 pounds. The Peach River & Gulf hauls logs over the logging spurs, which it constructs and maintains, and thence over its main track to the mill, for which it makes a charge on the books of $3 per log car against the lumber company.

The Riverside & Gulf connects with the Santa Fe at a point known as Milvid junction and extends southward for a distance of about 12 miles. It has an additional 8 or 10 miles of logging spurs, passing tracks, and sidings. Its rolling stock consists of 3 locomotives, a log skidder, and some 70 other cars, not equipped with safety appliances; and it has 1 station agent, 6 train crews, and a number of shop and trackmen. It has received no divisions since August, 1908; previous to that time it was allowed 2 cents per 100 pounds by the Santa Fe.

The mill of the controlling interests is on the tap line about a mile south of the junction with the Santa Fe. The logs are hauled in by the tap line from the logging spurs in the timber at a charge of $3 per loaded car. The tap line switches the lumber from the mill to the Santa Fe, for which it makes a charge on its books, in order that it may be credited with proper earnings, of 2 cents per 100 pounds, but no such collection is made from the lumber company.

There is also an independent hardwood mill served by the tap line, located about one-half mile south of the yellow-pine mill of the controlling interests and owned and operated by T. B. Allen &

Company. Its plant is said to be worth $175,000, and it has logging spurs extending from a connection with the tap line for several miles into its timber. The Allen Company has railroad equipment by means of which it hauls logs over its logging spurs to the tap line, over which it has a trackage right to the mill. For this privilege it pays the tap line 90 cents per loaded car. It will be seen, therefore, that the Riverside & Gulf does not haul logs to the Allen mill. In its statement of traffic and revenues, however, it includes the weight of the logs thus hauled by the Allen Lumber Company itself, and shows the earnings under the 90-cent trackage charge referred to as freight earnings. The lumber of the Allen mill amounted to about 6,000 tons for the year covered by the record; it is moved by the tap line from the mill to the Santa Fe, and for this service a charge of 2 cents per 100 pounds is made on the books. But this charge is not being collected. The explanation is that when the Allen Company located its mill on the tap line some years ago the president of the Miller-Vidor Company guaranteed that it would have the same rates to the markets as mills located on the Santa Fe proper. At that time the tap line had joint rates with the Santa Fe and was receiving an allowance of 2 cents. It is explained that if as the result of this proceeding the joint rates are restored and divisions are again received from the Santa Fe the tap line will collect the 2-cent charge on traffic of the Allen Company from the Santa Fe; but if this proceeding has another result the charge of 2 cents on the lumber of the Allen mill will be paid by the Miller-Vidor Lumber Company, under the obligation imposed upon it by the contract under which the Allen Company was induced to locate there.

The traffic of the Riverside & Gulf for the year 1910 consisted of 26,565 tons of lumber and 131,880 tons of logs, handled for the Miller-Vidor Company; 6,214 tons of hardwood lumber for T. B. Allen & Company, and about 1,500 tons of other freight, practically all of which was handled for the account of the Miller-Vidor Company.

JEFFERSON & NORTHWESTERN RAILWAY.

The Jefferson & Northwestern Railway Company was incorporated in 1899, and its capital stock, amounting to $20,000, is owned by the stockholders of the Clark & Boyce Lumber Company, which also holds its notes in the sum of $60,000. The tap line was built by Clark & Boyce as long ago as 1892 for the purpose of bringing logs to the mill, which is at a point known as North Jefferson, Tex., less than a quarter of a mile from the line of the Texas & Pacific and about a mile from the line of the Missouri, Kansas & Texas. The tap line

has about 32 miles of track connecting with these railroads and serving the mill and timber. There are also two or three small mills along the line that formerly manufactured lumber, but none of them had been in operation for two or three years prior to the hearing.

The logs are hauled to the mill of the lumber company by the tap line for a distance of 32 miles. Some logs also are brought in by the tap line from spur tracks connecting with the Missouri, Kansas & Texas, over which the tap line enjoys trackage rights for that purpose. On all log movements the lumber company is charged $5 per car, and on log movements of the latter character $2 of the charge goes to the Missouri, Kansas & Texas for the trackage privilege. The manufactured product is switched by the tap line to one or the other of the trunk lines, a distance of a quarter of a mile or 1 mile, as the case may be. It receives no allowances from the Texas & Pacific, but receives from the Missouri, Kansas & Texas a division on lumber of from 2 cents to 5 cents per 100 pounds, the average allowance on each carload of lumber moving over that route being about $22.

The tap line has no passenger traffic; and no logs or lumber were handled for others than the controlling lumber company, the traffic of which for the year 1910 amounted to 26,950 tons of logs and 10,200 tons of lumber. There was, however, a substantial movement of crossties for a firm of railway contractors at a charge of $10 per car for a haul of 18 miles. It is said that 81 per cent of the total tonnage and 82 per cent of the revenue for the year 1910 came from the traffic of the proprietary lumber company.

It was not until 1911 that the tap line filed its first report with the Commission.

BEAUMONT & SARATOGA.

At the time of the hearing the Beaumont & Saratoga Transportation Company was receiving no allowances from the trunk lines, the division of from 1 to 3 cents per 100 pounds which it had formerly secured from the Texas & New Orleans having been cut off. It was incorporated in 1906, under the Texas laws, not as a railroad common carrier, but as a transportation company. Its entire capital stock, amounting to $20,000, is held in trust for the Keith Lumber Company, which also holds notes of the tap line for about $100,000.

The track of the tap line is 12 miles in length and extends from a connection with the Santa Fe and with the Texas & New Orleans at Voth, Tex., in a westerly direction to Pelt. Its equipment consists of four locomotives and seven flat cars. The lumber company uses two of the locomotives in operating the logging tracks which connect with the incorporated tap line at various points, and the steel in which is leased from the tap line for a consideration of $100 per month that covers also the use of the locomotives. The tap line

hauls the logs from the junction of the 4 unincorporated spurs with its tracks to the mill, at a charge of $3 per car. A considerable portion of the output of the mill moves out by water in boats or barges owned by the lumber company. The lumber that is shipped by rail is frequently taken by the trunk lines directly from the mill, but the tap line sometimes switches the cars.

There is a small movement of traffic for others than the lumber company, the revenue from which amounted during the year 1911 to $257.59. The report for that year was the first that was filed with the Commission.

ANGELINA & NECHES RIVER RAILROAD.

The Angelina & Neches River Railroad was originally built by the Angelina County Lumber Company as an unincorporated logging road, extending from a connection with the Cotton Belt at Keltys, Tex., into the timber. It was incorporated in August, 1900, and capital stock amounting to $55,000 was distributed among the stockholders of the lumber company. The two companies have the same officers. The mill is at the junction with the Cotton Belt. The track of the tap line as described of record now extends to Prosser, where it connects with the Houston East & West Texas Railroad and thence easterly to Naclina, making about 20 miles in all. The tap line has one locomotive, a passenger car, and three box cars. It formerly owned logging cars and three additional locomotives, which were transferred to the lumber company to escape the operation of the state safety appliance acts. The lumber company also has about 15 miles of unincorporated track running from the terminus of the incorporated line at Naclina into the timber.

The traffic consists almost entirely of the lumber of the Angelina County Lumber Company; there are no other sawmills served by the line. A passenger service was inaugurated in November, 1910, but the traffic is light. The lumber company hauls the logs from the point where they are loaded to the mill, paying the tap line for the privilege of operating its trains over the incorporated track, a charge of 50 cents per thousand feet, log scale, which is equivalent to about 1½ cents per 100 pounds on the weight of the logs. Shipments of rough lumber are switched by the tap line from the sawmill to the Cotton Belt tracks, a distance of a few hundred feet, but the Cotton Belt itself moves shipments of dressed lumber directly from the planing mill. Traffic delivered to the Houston East & West Texas is moved by the tap line for a distance of 3 miles from the mill to Prosser. The tap line receives a division of from 1 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 4 cents per 100 pounds from the Cotton Belt.

SUPPLEMENTAL REPORT.

In the near future, in a supplemental report, we shall state the facts in relation to all the other tap lines whose affairs are disclosed on the record before us, and shall point out which of them are regarded by the Commission as common carriers in the service that they render to their respective proprietary companies. The cancellations by the trunk lines will be allowed to become effective on May 1 as provided in the tariffs now on file. The rights of such tap lines as we find, in the supplemental report, to be common carriers will be protected in the order that will be entered herein in connection with the supplemental report.

PROUTY, *Chairman*, concurring:

While I do not dissent from the conclusions finally announced in the majority opinion, I do dissent from the implication that the building of branch-line railroads, whether denominated tap lines, industrial lines or what not, by those persons who own an industry to be served by these railroads, should be discouraged by this Commission. While the industrial line and the tap line have been the medium through which the grossest discriminations have been perpetrated in the past my belief is that these unlawful practices can be stopped without the slightest difficulty and that the thing itself should be encouraged rather than discouraged. This view, which I have entertained from the first, is confirmed by observation and reflection, and I desire to keep it clearly before the public.

My meaning can be best illustrated by the accompanying rough diagram.

Let us assume that AB is a 100-mile section of a trunk-line railroad and that CD is a branch extending from C to D. The section traversed by this railroad produces lumber, coal, stone, perhaps various commodities. The principle is the same in all cases, although the application might somewhat differ.

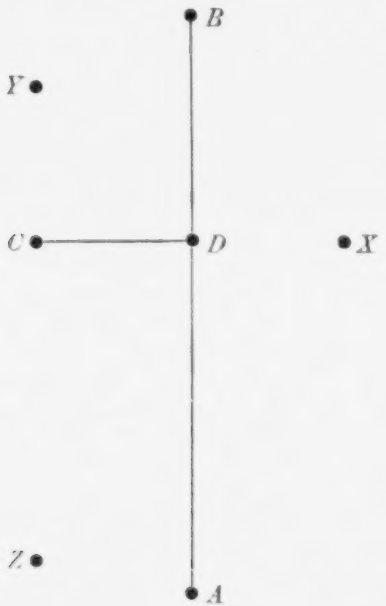
X, Y, and Z are localities distant from the main line by about the same number of miles as C, but in these localities the industry has not been developed.

The railroad AB applies to all points upon its main line and to its branch line CD the same rate to markets of consumption. X, Y, and Z can not be developed until railroads are constructed, connecting these localities with the main line. Manifestly it is for the public interest that connecting lines shall be constructed, since otherwise a monopoly in the production of the commodity at points tributary to AB is possible. By whom shall these branch railroads be built?

Manifestly the owners of property at X may construct a road from X to AB and may transport the commodity manufactured from X to AB and there ship it to destination. The cost of render-

ing this service may be, if lumber, 3 cents per 100 pounds; if coal, 10 cents per ton. Whatever the cost, it is plain that the operator at X is at a disadvantage as compared with the operator at C by the exact amount of this charge, and it frequently and perhaps usually happens that the advantage thereby obtained by the industry at C is sufficient to entirely prevent, certainly for a long time, the development at X, Y, or Z.

The inevitable conclusion is that the railroad AB absolutely dictates the development of this region. If it elects to construct its branch line to C, that locality becomes valuable, whereas if it goes to X or to Y those are the favored locations. It must be admitted



that it is most unfortunate to put the development of a country into the hands of a main-line railroad as this of necessity does. My own belief is that those persons interested in the localities other than C should be permitted, where circumstances justify, to construct a railroad from X to the main line; that the main line AB should be required to establish in connection with the branch line from X the same rate which it applies from its branch line at C, and should be required to accord to the branch line in the way of a division a sum which is fairly equivalent to the expense which it incurs in originating this traffic at C and handling it from C to D. This is certainly in the public interest; what valid objection can be urged against it?

Consider this, first, from the standpoint of the main-line railroad. That road transports the traffic from C to D at a certain cost and from D to destination at a certain other cost. If from the through rate there be deducted the cost of transporting the business from C to D, there remains the service from the main-line point D to destination. If, now, it allows the other branch line from X the same amount, it becomes a matter of indifference, so far as its profit as a railroad is concerned, whether traffic originates upon its own branch line at C or upon the independent branch line at X.

This might be urged, possibly, that if the mine or the forest at X is developed the mine or the forest at C may produce less, and the main line may therefore have less business for its own branch; but this is a matter of small consequence, which ought not to weigh in the general conclusion. Its profit is not made upon the branch line but upon the main line.

If this railroad AB itself owns lands at C which it desires to develop, then manifestly it is for its advantage that the branch line from X should not be constructed; or, if those persons interested in the main line and potential in the direction of its policy own lands at C, it is manifestly for their interest that no other similar industry should be developed; but the function of a railroad in these modern days has come to be, not the exploitation of its private property used in other than its transportation purposes nor in the enriching of those who sit in its directorate, but rather in serving the entire public impartially and for a reasonable consideration.

From the standpoint of the main-line railroad, considered purely as a railroad, there is no reason why the branch line from X should not be permitted to connect and should not be allowed a suitable division. It should be carefully noted that this only applies in its entirety to instances where the main line establishes a blanket rate upon its main line, as is usually done with producing points in case of lumber, coal, etc., and where it extends that rate to its own branch lines. If a fair mileage scale were applied, both to main line and to branch line, these difficulties would largely disappear. My proposition only goes to this: That the main-line road should be required to put the industry at the end of the independent branch line upon substantially the same basis that it puts the industry at the end of its own branch line or at a corresponding point upon its main line.

Consider this matter, now, from the standpoint of the mine or the mill. Compare the operator at C with his competitor at X.

The distance from the main line to C is the same as from the main line to X. There is no reason why the rate from X ought not to be the same as the rate from C. Suppose the same rate is applied and is paid by both these competing operators. Looking to the mill and

to the company which owns and operates the mill, manifestly there is no discrimination.

But it is said that the same individuals who own the industry at X also own the capital stock of the railroad which leads from X to the main line, and that therefore they have finally the benefit of whatever division is allowed to this independent branch line.

This branch line is performing a legitimate common-carrier service, exactly the same service from X which is performed from C. The agency which performs that service from X is entitled to a fair compensation to exactly the same extent as is the agency which performs that service from C.

If, now, the expense of constructing and operating the railroad from X to D is such as to leave no net return out of the divisions allowed by the main line, then the individuals who own the mine at X have received nothing beyond that received by those who own the mine at C, although they have invested and devoted to the public service an additional amount of capital. If the net is sufficient to pay a fair return upon the fair value of the property, they have received exactly that to which they are entitled under the constitution of the United States.

The mining company is not discriminated in favor of, for it pays the same rate as does the competitor at C. The individuals who own the railroad from X to the main line are not discriminated in favor of as against the individuals who own the mine at C, for they have only received a legitimate return upon the property which they have devoted to this public service, if it be a legitimate public service. It is true that if the division allowed to the independent branch line is excessive, that does work out a final discrimination, not in favor of the mine at X, but in favor of the individuals who own the railroad and who also own that mine. The discrimination would be exactly the same if the divisions were, with respect to traffic, not produced at the mine, but handled from the mine of a competitor upon the branch, or with respect to an entirely different species of traffic.

It is urged that this gives to the owner of property at X an advantage over the owner of similar property at Y, and this is true, for neither X nor Y can be developed without a railroad. But that sort of discrimination arises out of the fact that the operator at X has the money or the means of securing the money with which to build the railroad from X to the main line, while the owner at Y does not possess this means. Some day the importance of this aspect of the case may become such that the government itself will build and operate all these branches, but until then the most that can be done is to secure to all persons equality of opportunity, to give to the individual at Y, if he can find the money, the same chance which the individual at X possesses.

In my opinion, this right to build branch lines and obtain recognition from the main line is becoming daily of more and more consequence. Our trunk lines have been built; many, perhaps most, of the branch lines remain to be built. Upon what inducement is this future development to take place?

In the past branch lines have been often constructed to develop properties which the railroad itself owned; still more frequently to develop properties owned by those who could influence the policy of the main-line railroad.

Branch lines have often been constructed as stockjobbing propositions with a view to selling them at an extravagant price to the main line. These motives will not to any great extent operate in the future, and if there is to be a free development of our resources, if that development is not to be put entirely under the control of our railroads and the influences which dominate them, then the recognition of branch lines by the main line must be enforced.

It is significant that the three states in which the tap lines under consideration are most developed—Texas, Louisiana, and Arkansas—in every instance approve and insist upon the legal status of these railroads, the reason being, as stated by their accredited representatives before this Commission, that the recognition of the tap line promotes the development of the country by fostering the building of railroads which will otherwise not be constructed and which the country absolutely needs.

It is desirable that common carriers by rail should be strictly confined to their public functions and not permitted to engage in private commercial pursuits. While this may not be as imperative in case of branch lines as with trunk lines, since the former can be subjected to a closer scrutiny and a higher degree of control, still the ideal condition would be one in which the carrier's service was performed either by the government or by some private corporation with no interest whatever in the property transported. We should not, however, sacrifice the essential to the pursuit of the ideal, nor should we repress legitimate undertaking simply because some phases of the means employed may result in abuse. Congress might prohibit all connection between railway and private industry. As to what has actually been done, it may be observed:

First. When Congress came to declare its will in this respect by the enactment of the commodities clause, lumber was expressly excepted from the operation of that provision, thereby giving an implied sanction to unity of ownership between the lumber-carrying railroad and the commodity which is carried.

Second. The commodities clause itself as interpreted by the Supreme Court and as accepted by Congress since that interpretation

does not prohibit a common ownership of industry and railroad, provided the two are kept entirely separate and distinct in their operation. Inasmuch as the statute has not been changed since that interpretation was put upon it, it must be assumed that as so interpreted it represents the legislative will.

The abuses disclosed by the present proceeding result mainly from two causes:

(*a*) In many cases divisions are allowed on account of so-called railroads which are in reality mere plant facilities. Of the 83 cases now before the Commission, a majority are of that character.

I do not attempt to define here a railroad. I do wish to say, however, that the basic inquiry is not, in my opinion, whether the operation is great or small, but rather is it honest. Does it occupy the sphere of a railroad?

If public necessity requires that this railroad be built and operated; if, under the laws of the state in which it exists, land can be taken *in invitum* for its right of way; and if the railroad itself is, in fact, operated and maintained as a public carrier in conformity to the laws of the state which creates it, and of the United States in so far as it is subject to federal regulation, then I think it must be treated as a public servant, irrespective of the amount or the character of its traffic.

If a particular railroad is found to be a common carrier by railroad, under the act to regulate commerce, then I think, irrespective of its stock ownership, without reference to the purpose of its creation, it must be treated as such; that in all cases the trunk line may establish joint rates and allow proper divisions of those rates and, in many cases, it should be compelled to do so.

(*b*) In many instances where the allowance of a division is proper the division itself has been excessive, and this, without doubt, has inured to the benefit of the industry or of the persons or individuals who owned the industry. While there may be some doubt as to our authority in the premises, I believe we have the right to determine in these cases whether the divisions are excessive and to order them reduced to a proper amount.

If this Commission prohibits the payment of any division in all cases where the railroad is not a bona fide common carrier, and confines those divisions when properly allowable within proper limits, I am unable to see how harmful discrimination can result.

One fact has been developed which does lead to slight discrimination and which we can not apparently correct, and that is the issuing of passes to the officers of these common-carrier tap lines who are also owners and frequently officers engaged in the management of the industries. The use of these passes when traveling upon the

business of the industry undoubtedly gives to that industry an advantage over its competitor.

This is wrong and should be corrected—if not by the voluntary action of the carriers who issue and honor these exchange passes, then by Congress. But let it be noted that this vice is not confined to the insignificant tap line. Directors of main-line railroads are almost invariably engaged in private business, in the course of which free transportation is used.

Discrimination of this kind ought not to exist, but it will continue to exist until common carriers by rail are prohibited from issuing these exchange passes. When the issuing of free transportation by railroad is restricted to railroad employees who spend substantially their entire time in railroad service, with such general exceptions as may be made upon sentimental grounds and which involve no element of commerce, discrimination from this source will cease, and not until then.

I do not wish at this time to enter upon any general discussion of this tap-line question; that I have done in previous reports; but only to restate my conviction that to prohibit or discourage legitimate enterprises of this character is to deal a serious blow to the future development of this country.

I may add that I do not fully concur in the suggestion that main-line carriers may make to the owners of private railroads not common carriers allowances for the movement of lumber from the mill to the main line. I doubt whether this is a transportation service within the meaning of the fifteenth section; but even if the allowance might be under some circumstances lawful, we ought not to invite it. There is no essential difference between a private railroad operated by steam and a tramway or a dray. When once the door is opened there is no stopping place. I believe that all these services should be performed by the railroad itself and that the shipper, instead of receiving an allowance for these accessorial services, should be compelled to pay a reasonable charge for every service rendered outside the ordinary transportation.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP-LINE CASE.

Decided May 14, 1912.

Following the original report herein, *ante*, page 277, the remaining tap lines shown of record are considered and conclusions announced. Comments are also made respecting certain irregularities and defects in practices and tariffs.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In the original report herein (*ante*, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as in the judgment of the Commission bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow.

In a number of cases the tap line without charge hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap-line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line such arrangements are possibly to be regarded as purely local and therefore beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local and therefore beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory and have taken such action as under all the circumstances developed seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless the same or generally similar conditions exist in other extensive lumber-producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature can not be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory.

MISSOURI & LOUISIANA RAILROAD.

The entire capital stock of the Missouri & Louisiana Railroad Company, amounting to $150,000, is held by trustees for the Central Coal

& Coke Company; and the two companies have the same officers. The tap line is composed of four separate properties, one in the state of Missouri and one in Arkansas, are operated as facilities of the coal mines of the proprietary company. Inasmuch as the record relates only to lumbering conditions, we shall confine our discussion of this tap line to the other two so-called divisions, which are situated in the state of Louisiana and are used as facilities in the lumbering operations of the proprietary company.

The track known as the Carson division connects with the Kansas City Southern at Carson, where the Central Coal & Coke Company, which we shall hereinafter refer to as the lumber company, has a mill. From that point it extends westward and northward for about 7 miles to a connection with the Santa Fe at Pujo. The line also extends eastward from Carson for about 3 miles to a connection with the Lake Charles & Northern. There is also a 4-mile branch extending from the main track to a connection with the Santa Fe at Hall City. The aggregate length of the tracks composing what is known as the Carson division is about 14 miles. They are not owned by the tap line, but are operated by it under a verbal arrangement with the Central Coal & Coke Company, which constructed the tracks and has retained title to the right of way. The tap line owns two locomotives, but no other equipment. The logging cars belong to the lumber company, which also owns one locomotive and uses one of the locomotives that is owned by the tap line. The switching of the logging cars in the woods is done by the lumber company, using the two locomotives already referred to, but the logs are hauled from the assembling track to the mill by the tap line, which enters up a charge for that service of $3 per car against the lumber company. The tap line switches the carloads of lumber from the mill for a distance of less than 2,000 feet to the Kansas City Southern, or moves them nearly 4 miles to the Lake Charles & Northern, or 7 miles to the Santa Fe. The bulk of the traffic actually moves out over the Kansas City Southern, which makes an allowance out of the published rates of from a fraction of a cent to 3 cents per 100 pounds. Practically the same divisions are paid by the Lake Charles & Northern, but no allowances are accorded by the Santa Fe. The traffic on the Carson division for the year 1910 aggregated 269,991 tons, on which the allowances received from the trunk lines aggregated $14,390.10, while the charge entered up against the lumber company for the log haul amounted to $29,319. Apparently the logging trains are run on an irregular schedule. If there is any outside traffic it is insignificant, and the record does not indicate that any fares are collected from such passengers as may be carried on the engine.

The tap line in its relation to the proprietary lumber company and the traffic of this mill is purely a plant facility. For the movement of the lumber from the mill to the Kansas City Southern, if performed under the conditions referred to in our original report, the lumber company may receive nothing beyond a reasonable allowance under section 15.

The so-called Neame division connects with the Kansas City Southern at Neame, La., and runs westward for a distance of 5 miles to Rand. It is owned by the Central Coal & Coke Company, but is operated by the Missouri & Louisiana Railroad under a verbal arrangement. The lumber company itself operates several miles of logging spurs, moving the logs to the connection with the main stem from which they are taken to the mill at Neame by the tap line. Here again a charge of $3 per car is made against the lumber company for the log movement. The mill, however, is on the tracks of the Kansas City Southern, which spots the empty cars and removes them when loaded. An allowance of from a fraction of a cent to 3 cents per 100 pounds is made out of the published rates. The tap line owns two locomotives, one of which is used by the lumber company on the spurs, in addition to a locomotive which the lumber company itself owns. The only cars in service are logging cars, which are owned by the lumber company. The traffic on this section for the year 1910 aggregated 185,142 tons, on which the Kansas City Southern paid allowances amounting to $16,174.82, while the lumber company, for the hauling of the logs to the mill, was charged $17,148. There is no other mill or industry served by this track, and the record does not indicate the movement of any freight on which the proprietary company was not directly interested.

It is clear that this part of the tap line is purely a plant facility, and the allowances heretofore made by the Kansas City Southern have operated as a fraud upon the law. No allowances may be made in the future either to the lumber company or the tap line.

SAGINAW & OUACHITA RIVER RAILROAD.

The mill of the Saginaw Lumber Company is on the east bank of the Ouachita River, about two and one-half miles from the line of the Iron Mountain system, which it reaches with its manufactured lumber by means of its incorporated tap line, known as the Saginaw & Ouachita River Railroad Company. The line was constructed some 15 years ago, but was not separately incorporated until 1905, when capital stock of the railroad corporation to the amount of $25,000 was issued to the lumber company in exchange for the railroad property. They constitute one general investment. Near the mill is a town known as Saginaw, with about 250 inhabitants, being largely the employees of the lumber company and their families. The only

store is one conducted by the lumber company. There are a few farms so close to the Iron Mountain that they usually haul their products to that system for transportation. The only industry other than the Saginaw Lumber Company that is served by the tap line is a small mill near Saginaw, which manufactures furniture stock. It will therefore be seen that it has very little traffic in which the lumber company has not a direct interest; the record, in fact, shows that approximately 99 per cent of it is furnished by the lumber company. While it carries passengers, the revenues from that source during the fiscal year 1910 were but $329.85, or less than $1 a day. The larger part of this small revenue, we can not doubt, was paid by employees of the lumber company.

The lumber company has an unincorporated logging road which extends from a point on the west bank of the river, opposite the mill, for a distance of about 12 miles into the timber. The logs are brought over this road to the river and floated across to the mill. For the movement of the lumber from the mill to the Iron Mountain, a distance of 2½ miles, the tap line receives an allowance of 3 and 4 cents per 100 pounds out of the joint rates, which are the same from the mill at Saginaw as from the Iron Mountain junction point. The claim is that this division is not intended to and does not in fact cover the movement of the logs into the mill.

The road is apparently operated at a substantial profit, the operating revenues for the year 1910 being $7,915.47, with operating expenses aggregating but $5,726.21. In the year 1910 it declared a dividend of $6,282.32, partly out of surplus.

The equipment consists of one locomotive and a caboose, which is used for passengers, l. c. l. freight, and the mail. The necessary cars for shipments of lumber are furnished by the Iron Mountain. There are no station facilities. The employees consist of one train crew and two or three trackmen. The officers of the lumber company are officers also of the tap line and receive and use interstate passes. The clerks of the lumber company act as clerks for the tap line and the tap line credits the lumber company for their services.

Under the ruling in the original report in this proceeding the lumber rate extends from the mill, and the Iron Mountain, upon arranging with the lumber company to perform the service for it, would be entitled to make it a reasonable allowance under section 15. We find on the facts disclosed that the tap line comes within the category of cases outlined in the original report.

SALINE RIVER RAILWAY.

The Saline River Railway Company was incorporated in 1897 and is controlled by the stockholders of the Saline River Lumber

Company, to which it is indebted in a sum exceeding $125,000, principally for money expended in changing the route and widening the track from narrow to standard gauge. The two companies are therefore identical in interest and have been from their inception; the property as an entirety was acquired by the present owners in 1907.

The Saline River Railway connects with the Cotton Belt at Draughon, Ark., where the sawmill and planing mill of the lumber company are situated, and extends southward to a point known as Glynn, Ark., where a connection is made with the tracks of the Warren & Ouachita Valley Railway, another tap line of which further mention will be made hereafter, by means of which it reaches the Rock Island. (See map, *post*, p. 556.) The tap line consists of about 19 miles of main track and less than 2 miles of sidings, with trackage rights over the Warren & Ouachita Valley to certain unincorporated logging spurs owned and operated for the Saline River Lumber Company. The equipment of the tap line consists of 3 locomotives, 1 combination passenger car, 35 logging cars, and 3 other cars. It has a small station building at New Edinburg, which is described of record as the only town on the line with the exception of Draughon. It has some stores and a bank, but is not shown as a community on the census reports of 1910. We understand, however, that there are about 200 inhabitants in the locality. It is about 9 miles from Draughon, and, until shortly before the hearing, was the terminus of the incorporated tap line. The country traversed by the tap line is largely cut over timber lands, with a few farms and one or two small portable sawmills.

The sawmill and planing mill of the lumber company at Draughon is served by a sidetrack owned jointly by the tap line and the trunk line. The Cotton Belt places the empty cars and switches the loaded cars of lumber from the mills. The tap line, on the other hand, hauls the logs from the loading point on the logging spurs in the woods direct to the mill, making a charge of $3 per car against the lumber company for the service on the unincorporated tracks. For the service of hauling the logs over the incorporated track the tap line receives from the trunk line a division of from 1 to 2½ cents per 100 pounds. About one-half of the lumber produced at the Draughon mill, however, is hauled by the tap line to Glynn, and thence by the Warren & Ouachita Valley to Banks, where it is received by the Rock Island, which allows a division of 5 cents per 100 pounds, of which 1½ cents is retained by the Warren & Ouachita Valley. The Rock Island makes the same rate as that published by the Cotton Belt, 3½ cents going to the

Saline River Railway Company. There is no other explanation of record for this back-haul movement of the lumber.

The Saline River Railway has two regular logging trains daily between Draughon and New Edinburg, on which it transports passengers and carries the mail. Its revenues from passenger traffic for the year 1910, however, were but $1,041. Its freight revenue for the same period was $20,019.19. A few carloads of staves and other forest products were handled for outside parties, and the total traffic in commodities other than forest products was 1,400 tons, of which 191 tons was outbound farm products and the remainder inbound shipments of supplies, merchandise, and material.

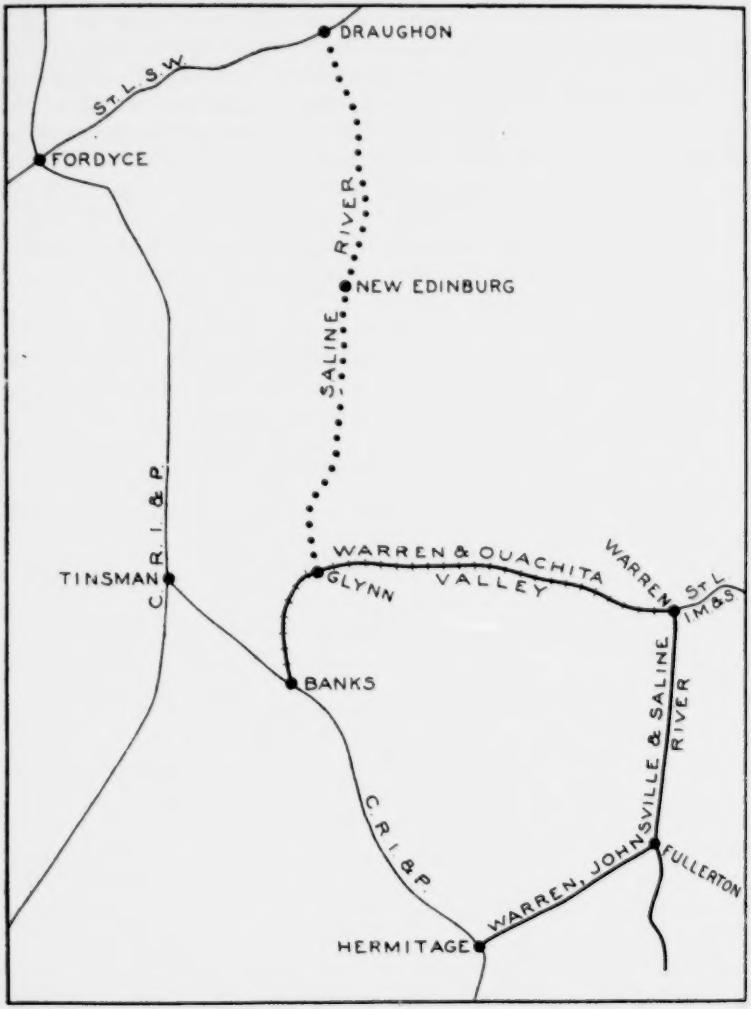
This is a typical case of a mill located immediately on one trunk line, but which is induced to back haul its lumber for a considerable distance to another trunk line in order to get the benefit of its higher allowances. The Cotton Belt extends its lumber rate to the mill and performs the service. There is no reason, therefore, why it should make an allowance to this tap line. The aggregate division out of the rate to the two tap lines for handling the lumber from the mill through Glynn and thence over the Warren & Ouachita to Banks may not lawfully exceed 2 cents per 100 pounds.

WARREN & OUACHITA VALLEY RAILWAY.

The Warren & Ouachita Valley Railway Company was incorporated in 1899 and has capital stock outstanding to the amount of $284,000. It is owned by the stockholders of the Arkansas Lumber Company and the Southern Lumber Company, both of which have mills on its line. There is no bonded or other indebtedness. The officers of the tap line are officers also of one or the other of the lumber companies. The record does not indicate whether there is any intercorporate or other relation between the lumber companies.

The tap line connects with the Iron Mountain at Warren, Arkansas, and extends westward for a distance of about 16 miles to Banks, Arkansas, where it meets the rails of the Rock Island. At Glynn, about 5 miles from Banks, a connection is made with the line of the Saline River Railway Company, as heretofore stated. The lumber companies jointly own an unincorporated logging road extending from a connection with the tap line for a distance of 10 or 12 miles into the timber. Each of the lumber companies also has private logging spurs connecting with the rails of the Rock Island. These unincorporated spur tracks are operated by the lumber companies themselves. In hauling their logs to the mills they have trackage rights over the line of the Rock Island for which they pay 75 cents per train-mile; they pay the tap line 15 cents per 1,000 feet of logs,

which is equivalent to about 50 or 60 cents per train-mile, for the privilege of operating log trains over the rails of the tap line to the mills from the junction with the Rock Island or from the junction of the unincorporated spurs with the tap line, as the case may be.



One of the mills is at a distance of 1½ miles and the other 2 miles from the connection with the Iron Mountain at Warren; they are therefore nearly 15 miles from the junction with the Rock Island. The tap line hauls the lumber from the mills to the Rock Island, on the

one hand, and switches the lumber to the Iron Mountain on the other, the tonnage being about equally divided between the two trunk lines. Out of the joint rates on lumber which are the same from points on the tap line as from stations on the trunk lines in this vicinity, an allowance is made of from 1 to 5 cents per 100 pounds.

The Warren & Ouachita Valley has three locomotives, two passenger coaches, six freight cars, and a caboose. Each of the lumber companies also owns and operates locomotives and logging cars. The tracks of the tap line are laid with 60-pound steel rails and are well ballasted, with permanent bridges. It has a station building at Warren and a telegraph and telephone system. It operates two trains daily each way and its revenue from passengers is said to exceed $1,000 per month. While more than 5,000 bales of cotton are raised along its line annually, most of this traffic is drayed by the farmers to the trunk lines. The total lumber tonnage for the fiscal year 1910 was 53,830 tons, of which about 7,500 tons was moved for small independent mills on or near its line. More than 90 per cent of its entire traffic and revenue is supplied by the lumber companies in whose interest it is operated. In this percentage is not included the log movement over the tap line performed by the lumber companies themselves. Including this large tonnage the percentage of outside traffic would be comparatively insignificant. In the outside traffic is included the lumber received from the Saline River Railway, amounting to something like 20 carloads per month.

The record indicates that the Warren & Ouachita Valley is a profitable investment, and this is confirmed by the annual reports made to the Commission. Its total revenue for the fiscal year 1910 was $83,496.09, and its net operating revenue $21,140.35. It paid during that year a dividend of $28,400, partly out of surplus, leaving a surplus at the end of the year of $3,502.93, having paid during the previous three years dividends aggregating 50 per cent on its capital of $284,000.

In this case the controlling lumber companies not only have trackage rights for hauling their own logs over their own tap line to their mills, but have trackage rights for the same purpose over the Rock Island. This we regard as unlawful. We do not understand that shippers may move their property over the rails of common carriers except under lawfully published tariff provisions open to all shippers. As a part of the contract giving its use in that manner to the lumber companies the Rock Island requires them to route half of the products of their mills to its line. The arrangement apparently was a concession to the lumber companies for their traffic.

The mills of the controlling companies at Warren are respectively 1 and 1½ miles from the Iron Mountain rails. We think that the

Iron Mountain may pay this tap line nothing in excess of a reasonable switching rate, which we fix at $2.50 per car, and that the Rock Island may make a division out of the rate from these mills not exceeding 2 cents per 100 pounds.

WARREN, JOHNSVILLE & SALINE RIVER RAILROAD.

The entire stock of the Warren, Johnsville & Saline River Railroad Company, of which $50,000 has been issued, is owned by the stockholders of the Bradley Lumber Company, a subsidiary corporation of the Chicago Lumber & Coal Company. Its outstanding bonds to the amount of $200,000 also are apparently held by the lumber company or its stockholders.

The tap line connects with the Iron Mountain at Warren, Ark., and with the Rock Island at Hermitage, the main track being about 15 miles in length. The statement on the record is that it has 1.13 miles of yard tracks and sidings, but the annual report to the Commission for the fiscal year 1910 shows over 10 miles of branch lines and spurs. The latter figure doubtless includes the tracks aggregating some 5 miles in length that are described on the record as private logging spurs owned by the lumber company. The equipment of the tap line consists of 3 locomotives, 1 caboose, and 50 logging cars. A time table is published which shows one "mixed train" moving daily on regular schedule; but it is explained that this schedule was issued in compliance with the regulations of the Arkansas commission, and that in fact there is no regular train movement. A few passengers are carried in the caboose without any charge. The tap line has three train crews and two gangs of trackmen, one of which is employed in maintaining the logging spurs.

The mill of the lumber company is at the junction with the Iron Mountain in Warren. In 1902 six miles of logging track were built by the lumber company from the mill into the timber, and subsequently an additional 4 miles were laid. When the tap line was incorporated, in 1905, the track then in operation was turned over to it, and an additional 4 miles were built to the connection with the Rock Island. A contract, to which the proprietary lumber company was a party, was entered into providing for the payment of allowances by the Rock Island to the tap line, and the delivery to the Rock Island of not less than 50 per cent of the output of the mill. The divisions thus received range from 1½ to 5 cents per 100 pounds, the maximum amount being paid on the major portion of the traffic. Apparently the same allowances are made by the Iron Mountain, which actually receives nearly one-half the traffic. There are also some joint class and commodity rates published in connection with the Rock Island to interstate points.

The tap line hauls the logs from the point where they are loaded on the cars to the mill, charging the lumber company $6 per car in addition to the actual expense of maintaining and operating the logging spurs heretofore referred to. Apparently there is no arrangement by which this charge or part of it is subsequently refunded or written off the books by the tap line, but the record is not entirely clear in this regard. The empty and loaded cars for the shipments of manufactured lumber are switched by the tap line to the interchange track with the Iron Mountain, a distance of about ¾ mile, or are hauled from and to the junction with the Rock Island, a distance of nearly 15 miles. (See map *ante*, p. 556.)

The country through which the tap line runs is a wilderness, the only towns being Warren and Hermitage, the respective junction points with the trunk lines. There is very little traffic except that supplied by the lumber company, although it is stated that there are one or two short spurs used by independent producers of staves, bolts, and ties, and there is an occasional movement of fertilizer or cottonseed. The annual report for the fiscal year 1910 shows but 1,539 tons of miscellaneous freight inbound and outbound out of a total movement of 170,527 tons, of which 2,120 tons was coal and 166,868 tons was forest products.

The tap line formerly enjoyed trackage rights over the Rock Island for the movement of logs, which were apparently being cut by the lumber company at points along that trunk line. The charge was 75 cents per train-mile, but the arrangement was discontinued in June, 1910.

This tap line, we find, belongs to the class of tap lines described in the original report herein. Its proprietary lumber company would be entitled to a reasonable allowance for switching its lumber to the Iron Mountain under the conditions there outlined.

EL DORADO & WESSON RAILWAY.

In 1904 the Edgar Lumber Company purchased a small mill at Wesson, Ark., which delivered its manufactured product to the Arkansas Southern Railroad, a subsidary line of the Rock Island system, by means of a branch or spur track about 5 miles in length, owned by the Arkansas Southern but operated by the lumber company. This track joined the Arkansas Southern at a point known as Cornie Junction and was built of steel weighing only 20 and 30 pounds to the yard, the individual rails being from 6 inches to 30 feet in length. The capacity of the mill was increased, and its owners incorporated the El Dorado & Wesson Railway Company and built a track from the mill northward for about 10 miles to El Dorado, where a connection is had with the Rock Island and the Iron

Mountain. Before the tap line was built a contract was entered into with the Rock Island, which, in addition to providing for allowances to the tap line out of the joint rates on the one hand, and the delivery of the majority of its tonnage to the Rock Island on the other hand, contemplated that the Rock Island would contribute not to exceed $100,000 toward the construction of the tap line. As a matter of fact, its contributions aggregated $112,000, for which it demanded no note or other evidence of indebtedness from the lumber company or tap line. This amount had been repaid to the Rock Island at the date of the hearing, with the exception of about $50,000. It was repaid in the sense that the Rock Island has retained its divisions to the aggregate of about $75,000 on the outbound product of the lumber company. These divisions range from 1½ to 5 cents per 100 pounds and average more than 4 cents. The contract provided for the repayment of the sum advanced by the Rock Island within a period of four years, but this has been wholly disregarded by the parties to it. Here, then, is a case where a lumber company acquires property of large value by an allowance made to it out of the rate on its traffic. The tap line claims to have expended $50,000 for equipment. The record shows, however, that the equipment was purchased by the lumber company and turned over to the tap line in exchange for its capital stock to that amount. This is its only outstanding stock.

The equipment of the tap line consists of 1 locomotive, a passenger coach, 4 box and 3 flat cars. It runs one logging train daily in each direction, on which passengers and the mail are carried. The revenue from its passenger service for the fiscal year 1910, as reported to the Commission, was $5,523.67, and a slightly less amount for the year 1911. Its total traffic for the year 1910 was 40,487 tons and its revenue thereon $37,608.28, as reported to the Commission. Of this tonnage 36,433 tons is stated of record as the weight of the lumber forwarded by the Edgar Lumber Company. The traffic in farm products and supplies for settlers is small, although the country through which it runs is said to have been occupied as a farming community before the Civil War. El Dorado, the junction point with the trunk lines, is the county seat and has a population of 7,000. Wesson is apparently a mill town with about 800 inhabitants. There is a small cotton gin at Wesson and three or four merchants.

The lumber company owns an unincorporated logging track which is operated under the name of Cornie Valley Railroad, 12 to 15 miles being described as main line and the remaining 10 or 12 miles as spurs. This track extends westward from the mill into the timber. It is not so well built as the incorporated tap line and has some grades as high as 8 per cent. In the operation of the Cornie Valley railroad the lumber company uses 4 locomotives, 3 flat cars, 2 box cars,

and 75 logging cars, with which it hauls the logs to the mill. It appears that there is another small mill and some settlers in the vicinity of the Cornie Valley and that their freight is hauled to Wesson in about the same way that the El Dorado & Wesson hauls traffic for settlers along its lines, but the Cornie Valley claims not to hold itself out as a common carrier. It appears, however, that occasional carloads of staves are loaded along the Cornie Valley, and that its charge, amounting to about $10 per car, is shown on the waybill as advances and collected from the consignee at Memphis or other destination. It is said that construction has begun on an extension of the El Dorado & Wesson southward to Homer, La., and that the citizens of that town, which is already served by the Louisiana & Northwest, have voted a tax. We infer from the record that the lumber company owns or proposes to acquire timber holdings in that direction.

In this case we fix the maximum division that this tap line may lawfully receive out of the rate at 2 cents per 100 pounds.

THORNTON & ALEXANDRIA RAILWAY.

The mill of the Stout Lumber Company is within a few feet of the line of the Cotton Belt in the town of Thornton, Ark., and has been in operation for about 25 years. The lumber company was formerly known as the Stout-Greer Lumber Company, and some 15 years ago built 18 miles of narrow-gauge track for the purpose of bringing in logs to the mill. In 1904 the Thornton & Alexandria Railway Company was incorporated; the lumber company declared a dividend to its stockholders payable in stock in the new corporation, to which it turned over the tracks and equipment. The line was then changed to standard gauge, the money for that purpose being furnished, apparently, by the lumber company, to which the tap line is now indebted in a sum exceeding $80,000. The two companies are a part of the same general investment.

The tap line connects with the Cotton Belt at Thornton and runs in a southerly direction to Hampton, which is the county seat. The lumber company has about 5 miles of unincorporated logging tracks which connect with the tap line at Hampton. The tap line has 4 locomotives, 1 combination passenger car, 1 caboose, 9 freight cars, and 50 logging cars.

The lumber company owns about 70,000 acres of timberland, of which something over 20,000 acres have been cut over; the remaining timber will be exhausted at the present rate of cut in about 30 years. The tap line hauls the cars from the point where they are loaded, on the private logging spurs of the lumber company, through Hampton and over its own tracks to the mill, charging the lumber company

$1.25 per 1,000 feet, log scale, for the service performed on the spurs. The manufactured lumber is loaded into cars standing on the tracks of the Cotton Belt. The tap line receives from the Cotton Belt a division on yellow-pine lumber of from 1 to 2½ cents per 100 pounds, the joint rate being the same as the Cotton Belt's rate from the junction point. There are no joint rates on hardwood lumber, although there are said to be a number of independent shippers of staves, bolts, and heading; those shippers pay the tap line a local charge of 5 cents per 100 pounds in addition to the rates of the Cotton Belt. The tap line also has some joint class and commodity rates out of which it receives a division of 15 per cent. The total traffic for the year ending June 30, 1910, as shown on its report to the Commission, was 63,372 tons, of which 3,367 tons was miscellaneous freight and the rest lumber and other forest products. It is said that there are a number of farmers and producers of freight in the country traversed by the tap line; and the town of Hampton is said to have a population of nearly 1,000, with some 19 stores. About 95 per cent of the entire tonnage is supplied by the controlling lumber company. The tap line runs one logging train daily in each direction, carrying passengers and the mail. Its revenue from passengers for the year 1910 aggregated $2,648.96, and its earnings from mail and express $1,396.83, its entire operating revenue for the year being $42,995.92.

This tap line performs no service on the products of the proprietary lumber company moving out over the Cotton Belt; its haul of the logs to the mill we hold to be a plant service. We are now advised that a connection has been made with the Rock Island at Tinsman. If lumber from the mill moves through that junction the Rock Island may pay a division out of the rate not exceeding 1 cent per 100 pounds.

DONIPHAN, KENSETT & SEARCY RAILWAY.

The sawmill of the Doniphan Lumber Company is at Doniphan, Ark., at the northern end of its tap line, known as the Doniphan, Kensett & Searcy, which connects with the Iron Mountain 1½ miles to the south at a point known as Kensett. The lumber company and the tap line are identical in interest, their stock being held by the same individuals. The tap line is also indebted to the lumber company in a sum exceeding $35,000. The track from Doniphan to Kensett was constructed in 1906, when the mill was erected, the steel being leased from the Iron Mountain. Doniphan is a mill town with about 75 houses belonging to the lumber company; and the track from Doniphan to Kensett is used exclusively for the traffic of the lumber company and its employees.

In 1907 about 5 miles of track was constructed from Kensett westward to Searcy, a county seat with a population of about 3,000.

where a connection was effected with the Rock Island lines and the Missouri & North Arkansas Railroad. Although this track is used chiefly for the movement of logs for the lumber company, there is some outside traffic over it; and it runs parallel to the line of the Missouri & North Arkansas. It appears that there was formerly a line from Kensett to Searcy operated by mule power, and known as the Merchants Transportation Company, by means of which freight was transferred from the Iron Mountain to the town of Searcy; but this mule line was abandoned when the Doniphan, Kensett & Searcy was opened for operation. The Missouri & North Arkansas was afterwards built in through Searcy to Kensett and beyond, and the tap line enjoys trackage rights over it for a considerable distance northward from Searcy to the timber of the Doniphan Lumber Company. Utilizing this trackage right, for which a wheelage charge of $1 per train-mile is apparently paid, the tap line hauls the logs to Searcy, and thence over its own rails through Kensett to the mill at Doniphan. For this movement it charges the lumber company 2 cents per 100 pounds. When the lumber is shipped out the tap line switches the cars to the Iron Mountain at Kensett, a distance of 1½ miles, or removes them 6 miles to Searcy, where they are delivered to the Rock Island. In either case it receives a division of 3 or 4 cents per 100 pounds out of the joint rates. It also participates in through class rates to certain destinations, including Memphis and St. Louis, out of which it is allowed by the trunk lines 20 per cent or 25 per cent as a division. It does not carry passengers. More than 85 per cent of the whole traffic of the tap line for the fiscal year 1910 was supplied by the lumber company. While the country through which the tap line passes has largely been cleared of timber, the forest of the lumber company being located along the Missouri & North Arkansas as heretofore stated, the agricultural products handled by the tap line for the year 1910 aggregated only 662 tons.

The equipment of the tap line consists of 2 locomotives, 21 flat cars, and 2 cabooses, all having safety appliances. The lumber company has neither rolling stock nor unincorporated logging spurs, at least in the vicinity of the tap line. The employees of the tap line include two train crews, one section gang, two station agents, and two general officers. The officers and the agent at Doniphan are jointly employed by the tap line and the lumber company. Through bills of lading and through waybills for the movement of lumber are issued by the agent of the tap line at Doniphan. While apparently no dividends have been paid, there was a surplus on June 30, 1910, of $14,265.14, indicating that the operation of the tap line under its allowances has been a profitable one.

For its service in switching to or from the mill, a distance of 1½ miles, to the Iron Mountain at Kensett, the latter may allow this tap line a switching charge of $2.50 a car; for its service in switching the products of the controlling mill through Kensett, a distance of 6 miles, to the Rock Island at Searcy, the latter may allow the Doniphan, Kensett & Searcy a division out of the rate of 1 cent per 100 pounds.

FOURCHE RIVER VALLEY & INDIAN TERRITORY RAILWAY.

The Fourche River Valley & Indian Territory Railway Company and the Fourche River Lumber Company are identical in interest. The mill is at a company town known as Graytown, less than a mile from the line of the Rock Island, and was erected in 1903. Before the machinery was installed a track was built from a point on the Rock Island then known as Esau, but now in the town of Bigelow. When the mill was opened this track was extended south and west for the purpose of reaching the timber, and in August, 1905, when the railroad corporation was formed, was about 9 miles in length. There is some obscurity in the record, but apparently the track was operated previous to 1905 in the name of the Arkansas River & Southern Railway, which purported to be a common carrier. When the Fourche River Valley & Indian Territory was incorporated, capital stock to the amount of $220,000 was issued in exchange for the equipment and tracks then laid and in operation. Subsequently an additional 6 miles was constructed at an expense of about $80,000, and bonds were issued to the lumber company therefor in the sum of $100,000. The tap line, as described of record, is standard gauge, laid with 56-pound steel and having substantial bridges. It extends from Bigelow, a town on the Rock Island, to Bellevue, a distance of 15 miles, with about 2 miles of side track. At a switch known as Wye, about 9 miles from Bigelow, unincorporated logging tracks connect with the tap line and reach out into the woods. The tap line has 1 locomotive, 1 combination passenger and baggage car, 1 tank car, and 61 freight and logging cars. The lumber company itself owns two locomotives, which it operates on the logging tracks. The tap line has a two-story building at Graytown, used as a station and office, with small sheds and a loading platform at one or two other points. It apparently uses the Rock Island station at Bigelow, and it weighs carload shipments on the lumber company's track scale at Graytown.

The logs are loaded by the employees of the lumber company on the unincorporated tracks and are taken by the tap line from Wye to the mill; a charge of 2 cents per 100 pounds is made for this service. The manufactured product is subsequently moved by the tap

line from the mill to the Rock Island, less than a mile away. The Rock Island allows out of the joint rates, which are the same from the mill at Graytown as from the junction, a division of from 2 to 3 cents per 100 pounds.

The tap line operates two logging trains daily in each direction with a coach, but its passenger revenues for the fiscal year 1910 were only $1,100. Its principal tonnage is forest products, amounting for the year 1910 to 142,359 tons, of which 31,176 tons was lumber. It moved during the same period 3,825 tons of miscellaneous freight, including nearly 2,000 tons of coal. The record indicates that 6,082 tons of freight moving outbound and 448 tons moving inbound were furnished by others than the proprietary company, or an aggregate of about 5 per cent of its traffic. It does not participate in through rates on articles other than forest products, and its local charges on merchandise are not filed with the Commission. The joint rates on lumber, staves, etc., from points west of the mill at Graytown are 1 cent per 100 pounds higher than the rates from the mill; and the allowance made to the tap line on movements from west of Graytown are increased by that amount. There are said to be two or three small mills in the vicinity that team their lumber to the tap line. The Neimeyer Lumber Company has extensive timber holdings in the near vicinity of the Fourche River Valley tap line, but it has a tap line of its own, known at the Little Rock, Maumelle & Western, reaching that timber. An effort is being made to colonize the cut-over lands and new settlers are coming in. It is hoped that it will develop into a farming country.

The operations of the tap line have been unusually profitable, and it has paid dividends aggregating more than $100,000. The assets on June 30, 1910, amounted to $341,000, including a surplus of $17,000 remaining after the payment during that year of a 16 per cent dividend amounting to $35,200.

On August 9, 1904, a contract was entered into by the Rock Island lines with the Arkansas River & Southern Railroad, and this has been assigned to the Fourche River Valley & Indian Territory. It provides for the payment of divisions to the tap line, and requires that not less than 50 per cent of its traffic shall be given to the Rock Island.

In this case the Rock Island may lawfully allow the tap line a switching charge of $1.50 for moving the products of the controlling mill at Graytown to the junction point, a distance of nearly 1 mile.

BLYTHEVILLE, LEACHVILLE & ARKANSAS SOUTHERN RAILROAD.

The precise relation between the Blytheville, Leachville & Arkansas Southern Railroad Company and the Chicago Mill & Lumber

Company is not disclosed of record; but there is a community of interest which amounts to a domination, if not full ownership of the tap line by the lumber company. Moreover, the tap line is operated primarily as a facility for bringing logs to the mill of the lumber company, which is in the vicinity of Blytheville, Ark., at a point known as Glenco, and has a capacity of 75,000 feet per day. The rails of the Jonesboro, Lake City & Eastern extend through the plant inclosure.

The Blytheville, Leachville & Arkansas Southern Railroad Company is described on the brief as operating 52 miles of road, extending from Blytheville, Ark., through Arbyrd, Mo., to Shaw, Ark. Its annual report for the year 1910, however, shows an aggregate of 7 miles of track owned; and the report for 1911 shows 19.11 miles, all in the state of Arkansas. It, in fact, owns and operates a main track running northward from a point in the timber, known as Shaw, for about 17 miles to Leachville. This track was constructed on a survey made for a proposed extension of the Frisco, which terminates at Leachville, where it meets the east and west lines of the Jonesboro, Lake City & Eastern. From Leachville the tap line enjoys trackage rights over the Frisco, crossing the state line into Missouri, a distance of 8 miles, to Arbyrd. From Arbyrd it has trackage rights eastward over the Paragould Southeastern Railway, a part of the Cotton Belt Route, for 22 miles, again crossing the state line to Chickasawba. From that point it has tracks extending to the mill at Glenco and to connections with the Jonesboro, Lake City & Eastern and Frisco railroads at Littleton and Blytheville. The length of these tracks aggregates 2½ miles. It therefore will be seen that the tap line owns two sections of track, one reaching the timber south of Leachville and the other in the vicinity of the mill; and that these tracks are connected by means of running rights over the trunk lines. There is a three-party contract between the tap line, the Frisco, and the Paragould Southeastern which restricts the trackage privilege to the operation of freight trains on which the tap line transports no freight "except that which originates on its own rails and is destined to points on its own rails." The agreement names a wheelage charge of 50 cents per train-mile, in addition to which it provides for the payment to the trunk lines of 95 per cent of the gross charges earned by the tap line on all freight hauled over the tracks in question except logs and other forest products in the rough. The plain intention of the contract, therefore, seems to be to restrict the trackage rights enjoyed by the tap line to the movement of forest products.

The tap line was incorporated in May, 1908, and took over tracks built and owned by the Chicago Mill & Lumber Company in the

vicinity of Glenco and 5 miles of track extending south from Leachville. It also acquired from the lumber company 10 miles of track and right of way extending south and west from a point called Big Lake on the Jonesboro, Lake City & Eastern. This track was promptly abandoned and the rails used in extending the line south of Leachville, the lumber company exchanging 10 miles of new right of way south of Leachville for the 10 miles south of Big Lake.

It is said that an extension of the tap line is contemplated southward to Truman, a point on the Frisco's line from Memphis to Kansas City, where a large veneer and sawmill plant is under construction, which is expected to furnish a considerable tonnage moving to Cairo. Other large claims are made of outside traffic now existing or in future prospect. It is admitted, however, that during the 10 months ending October 31, 1910, 96.6 per cent of the entire tonnage of the tap line was furnished by the Chicago Mill & Lumber Company. On the brief it is claimed that during a later period the outside tonnage increased 131 per cent; but this would indicate the traffic in which the lumber company had no interest as less than 10 per cent.

The equipment consists of 6 locomotives, one of which is out of service, 86 flat cars, 2 cabooses, 1 box and 2 coal cars. It has a track scale at the mill, and one of its employees is a sworn weighmaster of the weighing and inspection bureau. It has 3 train crews and 27 sectionmen. The only station building is a joint depot at Leachville. It operates a "passenger service" over the track from Leachville to Shaw, with "four trains daily" that meet the trains of the trunk lines; but its passenger earnings for the fiscal year 1911, as reported to the Commission, were but $1,181.37; its only passenger equipment shown of record is two cabooses. The miscellaneous freight shown on its report for that year as originating on its line was 462 tons of grain and hay and 132 tons of merchandise, and the only inbound traffic was 237 tons of bituminous coal. The volume of forest products for the same year aggregated 163,357 tons, of which 30,548 tons was lumber. There are said to be several independent lumber companies that have mills along the main track south of Leachville, but the traffic which they give the tap line is apparently inconsiderable, although not stated of record. It may be well to explain that this general territory is honeycombed with the tracks of tap lines already constructed or proposed to be extended.

Here we have another tap line owning two separate pieces of track widely separated, which are connected under trackage rights over trunk lines. One of the connecting carriers runs immediately through the mill plant, but makes no allowance to the tap line. The rights of way of the other two connecting carriers apparently lie about 2 miles from the mill, and they make the tap line an allowance of 2 cents per 100 pounds. We regard this as unlawful. As their

lumber rates extend to the mill they may under section 15 reasonably compensate the lumber company for switching the lumber to their lines, but only if the distance from the mill to the trunk line rails is in excess of 1,000 feet.

GOULD SOUTHWESTERN RAILWAY.

The record with respect to the Gould Southwestern Railway Company, and the lumber interests with which it is or has been affiliated, is far from satisfactory. The impression sought to be conveyed is that there is an entire absence of any community of interest between the tap line and any lumber company, but the facts appearing of record and disclosed by our own investigations by no means confirm any such assertion. The officers of the Gould Southwestern are officers of a large lumber manufacturing and selling company at Chicago. The record indicates that previous to 1906 a corporation known as the Estabrook Lumber Company operated a sawmill near Gould, Ark., which was sold or transferred in that year to the Newhouse Mill & Lumber Company. As a facility in the operation of the mill the vendees constructed about 5 miles of track extending southwestwardly from a point known as Bonner, crossing and connecting with the Iron Mountain at Gould, and terminating at another point known as Webber. This track was turned over to a corporation formed by the lumber company and known as the Gould Southwestern Railway Company, having a capital stock of $51,000, which was exchanged for the right of way and distributed among the stockholders of the lumber company. In addition to this stock the tap line is indebted to the lumber company for loans exceeding $100,000. The Newhouse Company, which apparently still controls the Gould Southwestern, claims to have gone out of the lumber business in this county, leasing its mill to one R. L. Muse, and selling its company store. It claims also to have disposed of most of its timber holdings in that vicinity to various parties having no relation to the lumber company or the tap line. In other words, the Newhouse Company is described on the record as in a state of liquidation, having permanently retired from the lumber business. There is nothing on the record to indicate that the product of the mill which the controlling company has leased to Muse is not marketed by the same interests that control the tap line; nor is there a definite statement indicating that the controlling interests do not have timber holdings that will be reached by proposed extensions of the tap line which are referred to on the record.

The track of the Gould Southwestern as in operation at the date of the hearing was laid from Bonner through Gould to Star City, a total distance of 17.6 miles. Its equipment consisted of two loco-

motives, a combination coach, and a wrecking outfit. It had no freight cars, using for such traffic as it was able to secure the cars furnished by the trunk line. There are two logging trains daily in each direction, operated on regular schedules and carrying from 800 to 1,000 passengers monthly. More than 90 per cent of its tonnage during the period prior to the hearing was forest products, the remainder being cotton, other agricultural products, and general merchandise. Star City is a town of several hundred inhabitants, with a dozen stores, and there are one or two other small villages along the line, the inhabitants depending no doubt largely on the sawmills for their employment. The tap line charges from $5 to $12 per car for hauling logs to the mill, being the regular Arkansas scale. On shipments from the mill operated by Muse, which is within one-eighth of a mile of Gould, joint rates that are the same as the Iron Mountain publishes from its local station at Gould are applied, and an allowance of 2 cents is made therefrom to the tap line. From other points on the tap line an arbitrary of from 2 to 5 cents per 100 pounds is added to the rate published by the Iron Mountain from the junction point; and the tap line receives the entire arbitrary in addition to the 2 cents allowed out of the earnings of the Iron Mountain. In other words, the seven or eight mills along the line that are described as independent pay from 2 to 5 cents per 100 pounds more than the mill leased by the controlling interest to Muse.

In this case no allowance out of the rate may be made, the mill of the controlling company being within a few hundred feet of the trunk line.

PRESCOTT & NORTHWESTERN RAILROAD.

The Prescott & Northwestern Railroad Company is an example of a well-equipped tap line which does a substantial outside business, only 75 per cent of its traffic being that of the Ozan Lumber Company, with which it is affiliated. The tap line has no branches and extends from Prescott, Ark., where it connects with the St. Louis, Iron Mountain & Southern in a westerly direction for about 40 miles to a point in the woods where it meets the unincorporated logging road of the lumber company. At Tokio (see map, *post*, p. 573), a small settlement with one or two stores and less than 100 people, it crosses another incorporated tap line that is a party to the record, and which is known as the Memphis, Dallas & Gulf. There are several other small settlements along the Prescott & Northwestern, the largest of which has a population of 100 people, with five or six stores, a sawmill, gin, and canning factory. There are also three or four small independent sawmills in the country tributary to its road, all of which bring their logs in by wagon; one or two of the

mills also haul their manufactured lumber several miles over to the tap line for shipment. The principal outside industry on the Prescott & Northwestern is a peach orchard established three or four years ago, having 2,000 acres of trees, from which many carloads of peaches were shipped during the past year to St. Louis; this traffic is developing rapidly. Seventy carloads of cantaloupes moved out over the Prescott & Northwestern in 1911. It is the assertion that the construction of this line has resulted in building up several small communities, and that there is great promise of future agricultural development along its line.

The Prescott & Northwestern has 6 locomotives, 101 freight cars, and 1 combination passenger and baggage car. Most of the equipment has safety appliances. Its road is substantially and permanently built, with 54 and 63 pound rail laid on gravel ballast. It has one or two station buildings; and its trains are dispatched by telephone. There are four section gangs and two train crews. It employs six station agents, of whom all but one are storekeepers, paid a commission. In addition to carrying the mails and express 15,000 passengers were transported during the year 1910. There are two trains daily in each direction, one a mixed train and the other a passenger train, which from Tokio runs over the Memphis, Dallas & Gulf for 7 miles to Nashville, a town of 3,000 people. There is an arrangement by which the lines divide the revenues for this joint-passenger service. The record indicates that the tap line was organized in 1890, the mill being opened at the same time, and 8 or 9 miles of its line were built from Prescott out into the woods. It is said, however, that the lumber company then operating the mill had no direct interest in the road. Financial difficulties were encountered, however, and in 1892 the tap line was sold to Bemis & Whitaker, who were subsequently bought out by the Ozan Lumber Company. The tap line was extended to its present terminus, known as Helbig, about the year 1906.

The present capitalization of the Prescott & Northwestern is $30,000, having been reduced from $125,000. It has no bonds; but it is indebted to the Ozan Lumber Company for money borrowed to the extent of $570,000, of which $350,000 is secured by a mortgage. The stockholders of the two companies are identical and hold their shares in the same proportion. It is admitted that the tap line has been financed by the lumber company, and they have the same principal officers. The bookkeeper of the lumber company serves the tap line as auditor, without additional salary.

The timber holdings of the Ozan Lumber Company aggregate 40,000 acres, or upward of 250,000,000 feet, and were acquired between the years 1900 and 1907. The mill is in the village of Prescott,

about 1,000 feet from the right of way of the Iron Mountain; but the track on which lumber is loaded connects with the tap line at a point which for convenience is referred to as Dian. The logs are brought from Helbig, the beginning of the unincorporated logging spurs, to the mill by the tap line under the contract rate of $1 per 1,000 feet, log scale, for the haul of 41 miles. The charge is intended also to cover rental for the rails and fastenings furnished by the tap line for the use of the lumber company in its logging spurs. No bills of lading or other shipping papers are issued for the movements of the logs to the mill. The outbound lumber is switched by the tap line from the mill to the interchange track of the Iron Mountain, a distance of about 1,200 feet; and the bills of lading issued by the tap line's agent show Dian as the point of origin. So far as the billing is concerned, the traffic, therefore, does not move on a milling-in-transit basis. The rates, however, from Dian, the mill point, are the same as from Helbig, at the farther end of the tap line, and are the same as the Iron Mountain rate from the junction point. And the officials of the tap line admit that its division of from 3½ to 6 cents per 100 pounds received from the Iron Mountain out of the joint rates is intended also to take care of the cost of hauling the logs into the mill. There is a division of only 1 cent on the rate to Texas points.

In moving the lumber from the mill of the proprietary lumber company to the Iron Mountain we think that this line may be said to perform a service of transportation, or a switching service, for which it may be reasonably compensated out of the rate. It is clear, however, that the divisions allowed are altogether beyond reason, and that an allowance out of the rate of $1.50 a car is all that lawfully may be paid by the trunk line.

CADDO & CHOCTAW RAILROAD.

We are definitely advised that since the submission of this proceeding the tap line known as the Caddo & Choctaw Railroad has been taken over by the Memphis, Dallas & Gulf, another tap line that is party to the record and which is hereinafter discussed. We shall therefore make only a brief statement of the principal facts shown of record with respect to the Caddo & Choctaw. It was incorporated in 1907, and the first 4 miles of its track connecting with the Iron Mountain at Rosboro, Ark., and extending into the woods was constructed. In addition to this track, the Caddo River Lumber Company, in whose interest the tap line was incorporated and owned, had an unincorporated logging track about 2 miles in length. Subsequently extensions of the tap line were laid, until at the time of the hearing it had about 14 miles of track running from Rosboro to a

point known as Cooper, about a mile and a half from a town of 500 people known as Daisy. The statement on the record was that the people of Daisy were moving over to Cooper. Each holder of two shares of the Caddo River Lumber Company held one share in the railroad corporation. The latter was indebted to the lumber company in a sum exceeding $100,000 for money advanced for the construction of the line.

The mill of the lumber company was about one-fourth of a mile from the Iron Mountain station at Rosboro. It had at the time of the hearing several miles of unincorporated logging tracks connecting with the tap line at various points. The tap line had 1 locomotive and 18 cars, used chiefly in hauling the logs to the mill, for which service a charge of 50 cents per 1,000 feet, log scale, was made against the lumber company, there being no tariff covering the charge. The tap line also switched the lumber from the mill to the Iron Mountain, and received out of the earnings of that company a division of 4 cents per 100 pounds, except to a limited territory, where the division was only 2 cents. On shipments to points within the state of Arkansas the tap line's charge of 4 cents was added to the rate of the Iron Mountain, there being no joint rate.

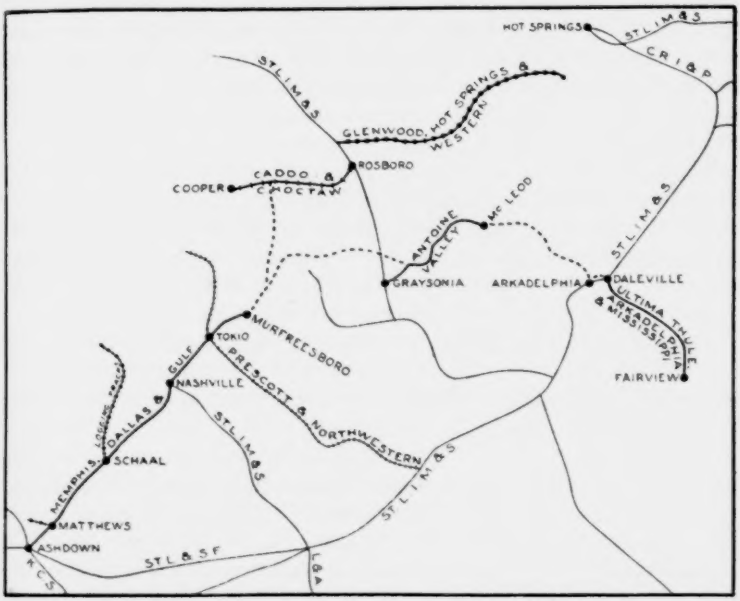
The record indicates that no logs were hauled for others than the controlling company, but there were a few outside shippers of staves, etc. Out of its total traffic of 150,000 tons for the fiscal year ending June 30, 1910, more than 95 per cent was the logs and lumber of the proprietary company. Very little merchandise freight was handled and no charge was assessed on less-than-carload movements. There were two or three carloads of fertilizer, cottonseed meal, and cake. A single log train was run daily in each direction, on which passengers were permitted to ride at their own risk, without charge. Out of the aggregate earnings of $19,688.62 for the fiscal year 1909, only $27.96 accrued on traffic in which the lumber company was not directly interested. The following year the operating revenue was $24,550.53. It files annual reports with the Commission.

As its facilities and practices are described on the record, it is apparent that the Caddo & Choctaw was nothing more or less than a facility of the plant of the Caddo River Lumber Company.

In disposing of its ownership of this tap line the Caddo River Lumber Company reserved a trackage right over it for its own logging trains, and in this manner the lumber company continues to haul logs from its forest to its mill. That is our information, and we do not understand that it receives any allowance out of the rate. If, as probably is the case, the Memphis, Dallas & Gulf switches the lumber from the mill to the Iron Mountain rails, it is entitled to receive for the service nothing beyond a reasonable switching charge, which we fix at $1.50 a car.

MEMPHIS, DALLAS & GULF RAILROAD.

The Memphis, Dallas & Gulf Railroad Company is controlled, through the ownership of practically its entire capital stock, by the stockholders of the Graysonia & Nashville Lumber Company; but the railroad corporation has separate officers who are not employed by the lumber company, with the exception of its traffic manager, who receives no salary from the railroad and is general manager of the lumber company. It was incorporated in 1906 as the Memphis, Paris & Gulf, the corporate name being changed on June 1, 1910, when it took over the operation of two other tap lines known, respectively, as the Antoine Valley Railroad and the Ultima Thule,



Arkadelphia & Mississippi Railway. The tracks of the three tap lines that are now consolidated and known as the Memphis, Dallas & Gulf are separate and disconnected, but form a part of a single proposed route. They are shown on the map herewith and may be briefly described and their history stated as follows:

The Memphis, Paris & Gulf, prior to 1910, consisted of about 41 miles of track extending in a northwesterly direction from Ashdown, Ark., through Nashville and Tokio to Murfreesboro. It connected with the Kansas City Southern and Frisco at Ashdown, with the Iron Mountain at Nashville, and at Tokio with the Prescott & Northwestern, another tap line which is a party to this record. The construc-

tion of the track from Ashdown to Nashville was apparently begun early in 1906; but the 15 miles from Nashville to Murfreesboro was not laid until 1908. The Memphis, Paris & Gulf was controlled by the Nashville Lumber Company, which had a large mill on its tracks at Nashville, about one-half mile from the junction with the Iron Mountain. The timber holdings of that company west of Nashville were quite extensive, and it had many miles of logging tracks connecting with the incorporated road at various points.

The Antoine Valley Railroad Company was controlled by the Grayson-McLeod Lumber Company, and was operated in the interest of its mill at Graysonia, Ark. The track connected with the Iron Mountain at that point and extended several miles through the land and timber of the controlling company. We understand that the title to the railroad right of way was vested in the lumber company. The mill was within one-half mile of the Iron Mountain, and the tap line switched the lumber for that distance. It received a division from the trunk line of from 2 to 5 cents per 100 pounds. It did not haul the logs to the mill.

The same interests that owned the Antoine Valley also controlled the Ultima Thule, Arkadelphia & Mississippi Railway, which had about 17 miles of track connecting with the Iron Mountain at Daleville, near Arkadelphia, Ark., and extended eastward to a point known as Fairview. The mill of the Grayson-McLeod interests when in operation several years ago was at Daleville, but it was dismantled and apparently removed to Graysonia when the yellow-pine timber was cut out, the only mills remaining on the Ultima Thule tap line being hardwood mills that are apparently not owned or controlled by the Grayson interests.

In the summer of 1910 the Nashville Lumber Company and the Grayson-McLeod Lumber Company were consolidated as the Graysonia-Nashville Lumber Company, and at the same time the Memphis, Dallas & Gulf took over the operation of the tap lines described. The consolidated tap line as described on the record consisted at the date of the hearing of the three detached sections of track already described, being respectively 41, 6, and 17 miles in length; the intervening gaps are "under construction," as is stated. The owners have in contemplation, as they assert, an extension of the line for about 190 miles southwestward to Dallas, and to the north it has approached within 200 miles of Memphis. It also announces the intention, expressed by most of the tap lines on the record, of building into Hot Springs, Ark.

The Commission is advised that since the hearing the Memphis, Dallas & Gulf has acquired two other properties, one being the logging road of the Clark Lumber Company, known as the Glen-

wood, Hot Springs & Western Railroad, and extending for 20 miles southward from a point near Hot Springs. It has also purchased the Caddo & Choctaw Railroad, the track and operations of which are hereinbefore described. The intention of the Memphis, Dallas & Gulf in absorbing these two roads is said to be to connect them up with its own line and thus accomplish its desire to get into Hot Springs.

In addition to its officers, the Memphis, Dallas & Gulf claims to have 5 clerks, 10 station agents, 6 train crews, 46 track men, and a number of other employees. It is said that none of its agents are employed by the lumber company. It has station buildings at seven points on its disconnected lines.

The equipment consists of 5 locomotives, 4 passenger cars, 9 freight cars, and 5 other cars. The controlling lumber company itself owns and operates 4 locomotives and about 130 cars. The tap line runs two trains daily in each direction between Ashdown and Murfreesboro on which passengers are carried; the record does not indicate whether lumber and other freight moves in the same trains. The Prescott & Northwestern apparently runs a single train, carrying passengers, over this tap line under trackage rights between Tokio and Nashville, the Memphis, Dallas & Gulf receiving one-third of the passenger earnings. A single "mixed train" is operated daily over the track formerly known as the Ultima Thule tap line, on which a few passengers are apparently carried. The only service over what was formerly the Antoine Valley is logging trains, which seem to be run irregularly.

The annual report for 1910 indicates a passenger revenue of $24,488.54; express revenue, $1,283.79; and mail, $1,623.30. During the same year the aggregate freight movement was 446,894 tons, of which 177,388 tons were forest products. These figures include the logs hauled by the lumber company itself under trackage rights. The proprietary company supplied 35,202 tons of forest products and about 130,000 tons of logs. Sand and gravel aggregating 250,980 tons were taken from a pit owned by the tap line and sold by it to connecting carriers; about 80 per cent of the inbound coal movement, amounting to 5,272 tons, was consigned to the railroad company itself. Steel rails weighing 204 tons were handled on account of the lumber company for use in its spurs. The outside tonnage included 7,090 tons of lumber for others than the proprietary company, and a small amount of other freight, the total outbound movement of agricultural products being 3,657 tons. The figures given are all for the year ending June 30, 1910, and as the consolidation of the three companies did not take place until June 1 of that year the figures practically relate only to what was formerly the

Memphis, Paris & Gulf. The report to the Commission for the fiscal year ending June 30, 1911, during which the entire property was operated by this company, indicates an aggregate freight movement of 167,939 tons, of which forest products comprised 86,966 tons, or about 52 per cent; there were 55,600 tons of sand and gravel and 5,850 tons of coal. The outbound movement of cotton and other products of agriculture amounted to 6,383 tons.

The lumber company has about 30 miles of unincorporated logging tracks connecting with the tap line at various points, particularly at Schaal and Matthews, on the original Memphis, Paris & Gulf. It also has trackage rights for the operation of its logging trains over the tap line to the mill at Nashville, paying therefor a wheelage charge, which was formerly $5 per car, but was reduced to 50 cents per car on June 1, 1910. The lumber company therefore loads the logs on the logging spurs in the woods and hauls them all the way to the mill, paying the tap line 50 cents per car for the privilege of using its tracks. The tap line has never hauled logs for the lumber company, but does so for some independent producers. The tap line switches the empty and loaded cars for lumber movement between the mill at Nashville and the interchange track with the Iron Mountain, a distance of about one-half a mile. In the case of traffic moving out over the Kansas City Southern it hauls the cars a distance of 27 miles to Ashdown. The traffic from the Nashville mill is divided about equally between the two trunk lines, which allow the same divisions, varying from 4 to 6½ cents per 100 pounds, out of their rates on yellow-pine lumber.

In view of the extent of the passenger traffic over the Nashville division, the volume of the outside freight traffic over that disconnected part of this tap line is surprisingly small. For the service of the tap line in handling the products of the mill at Nashville the Iron Mountain may allow it out of the rate a switching charge of $2; the connecting carriers at Ashdown may allow it out of the rate divisions not exceeding 2 cents per 100 pounds.

The lumber company also has private logging tracks connecting with the Antoine Valley division of the tap line at Graysonia and Leard. The logs are hauled by the lumber company to the mill at Graysonia in the same way and under the same trackage charge as applies in connection with the mill at Nashville. The tap line switches the lumber from the mill at Graysonia for a distance of about 500 feet to the Iron Mountain, which pays it an allowance of from 4 to 6½ cents per 100 pounds. We do not understand from the record that any outside traffic moves over these tracks.

The allowances paid on the movement of lumber from this mill we regard as wholly unlawful under the principles announced in the

original report. No allowance at all may properly be paid on the lumber of this mill.

As heretofore stated, the proprietary company has no yellow-pine mill on the so-called Ultima Thule division, but there are several hardwood mills on that track, which have the benefit of the junction-point rate from their mills to certain destinations, but to other territory have to pay an arbitrary over the rate of the trunk line, the additional charge amounting in some cases to as much as 5 cents.

The tap line also interchanges a considerable tonnage of lumber with the Prescott & Northwestern at Tokio. On such traffic received from the other tap line the Memphis, Dallas & Gulf has a division of 2 cents per 100 pounds for the haul over its line.

We have already referred to the acquisition by the Memphis, Dallas & Gulf of the incorporated tap line of the Caddo Lumber Company, known as the Caddo & Choctaw Railroad, and of the unincorporated line of the Clark Lumber Company, named the Glenwood, Hot Springs & Western. The vendors of these properties, by a formal agreement with the Memphis, Dallas & Gulf, reserved to themselves the privilege of operating logging trains over the tracks in question at a charge of 50 cents per carload. This arrangement has apparently become effective; if so, it is unlawful. We do not understand that a shipper may have a preference over other shippers in the use of a line that claims to be a common carrier.

CRITTENDEN RAILROAD.

The stockholders of the Crittenden Lumber Company own $143,000 of the capital stock of the Crittenden Railroad Company, which aggregates $150,000. Part of the remainder is held by persons in one way or another connected with the lumber company, but stock amounting to $5,000 is owned by the president of the tap line, who was formerly interested in the mill, but who claimed at the time of the hearing to have no interest of any kind in the lumber company or in any other industry served by the tap line or in its vicinity. The lumber company owns about 75 per cent of the timberland tributary to the tap line.

The track of the Crittenden Railroad Company extends from Earle, a point on the Iron Mountain about 25 miles west of Memphis, southward for 15 miles to a connection with the Rock Island, at Heth, and then a mile or two beyond. There are 3 or 4 miles of logging spurs and sidetracks. It was incorporated in August, 1905, when 7 or 8 miles were already in operation as a private logging road, the constructing of the line having been begun by the lumber company as long ago as 1899; the track was built into Heth in 1908. The tap line has 2 locomotives, 3 box cars, 1 flat car, and 19 logging cars. It

hauls the logs from the forest to the mill, which is about 2½ miles south of Earle, charging the lumber company $5 per car. The mill manufactures hardwood only, and its product moves in about equal proportions over the two trunk lines, the haul over the tap line to the Iron Mountain being about 2½ miles and to the Rock Island over 13 miles. Each of the trunk lines makes an allowance of 2 cents per 100 pounds out of its rates to Memphis, Cairo, St. Louis, and Kansas City. On shipments moving to points where there are no divisions in effect the tap line makes a local charge in addition to the rate of the trunk line.

There are said to be seven manufacturing plants served by the tap line in which neither the Crittenden Lumber Company nor the owners of the tap line have any interest; the tap line charges the regular local rates for the movement of logs to these independent mills. It is also claimed that less than 75 per cent of the entire traffic is supplied by the controlling lumber company. Passengers are carried free in the caboose. For the fiscal year ending June 30, 1910, the aggregate freight moving was 78,805 tons, of which 55,719 tons was logs, lumber, and coal for the Crittenden Lumber Company, and 23,186 tons was merchandise and other commodities handled for the public, as is said. It is of interest to observe, however, that a substantial portion of the outside tonnage claimed by the tap line originated at or was destined to the town of Earle, which is served by the Iron Mountain. In other words, the Rock Island, in connection with the tap line, now divides with the Iron Mountain the traffic of the town of Earle. For example, one of the witnesses on the hearing was a merchant at Earle, whose cotton gin is on a sidetrack connecting with the Iron Mountain. He drays a considerable quantity of cotton to the tracks of the Crittenden Railroad, and the cars are then routed through Heth and over the Rock Island to Memphis.

The tap line files annual reports with the Commission, but the information given is far from complete; and the record indicates that its accounts are not kept in accordance with the regulations of the Commission.

In this case we think that an allowance out of the rate of 2 cents per 100 pounds on the product of the mill may lawfully be made to the tap line by the Rock Island and that for its short switching service to the Iron Mountain rails the latter may lawfully allow a switching charge of $3.

WILSON NORTHERN RAILWAY.

The Wilson Northern Railway was originally constructed as a private logging road extending from the sawmill situated at a point now known as Wilson, Ark., about 1 mile from the Mississippi River, northward for 10 miles into the timber. There was at that time no trunk line in the vicinity. The Frisco was subsequently extended

through and is now joined by the tap line at Wilson. In addition to the 10 miles just mentioned the record states that the tap line operates about 7½ miles of track extending northward from its own terminus to a connection with the Jonesboro, Lake City & Eastern at Ross. This track was owned by Moore & McFerren, a lumber firm, and has been purchased by the Wilson Northern since the hearing. The tap line also has trackage rights over the Frisco for a distance of about 21 miles from Deckerville to Wilson, paying the Frisco $4 per loaded car and $2 per loaded truck. The equipment consists of 3 locomotives, 1 caboose, 2 box cars, and 15 flat cars.

The Wilson Northern Railway Company was incorporated in December, 1904, with a capital stock of $100,000, which is held by the same persons who owned the stock of Lee, Wilson & Company, which operates the mill at Wilson. The two companies have the same principal officers.

The tap line hauls the logs from the point of loading on its own track or from the spurs on the Frisco near Deckerville to the mill. The mill is reached by a spur track about a mile and a half long, owned by the Frisco, and the tracks of the tap line do not reach the mill. Nevertheless the tap line, as a matter of fact, switches the lumber over the spur track to the point from which it is actually taken by the Frisco engines. The record does not describe any movements of lumber from the mill northward over the line of the tap line, and the track formerly owned by Moore & McFerren to Ross; and apparently shipments were not routed that way prior to the hearing. The Frisco allows the tap line 2 and 3 cents per 100 pounds out of the joint rates, which are the same from points on the tap line as from the junction point with the Frisco, except from Ross, where the rate is one-half cent higher, the division of the tap line being increased by that amount. In addition to these allowances out of the trunk line's earnings the tap line charges the lumber company 2 cents per 100 pounds for hauling the logs to the mill.

At the time of the hearing the Wilson Northern did not carry passengers, mail, or express matter. Mention is made on the record of a small independent sawmill and a manufacturer of staves and heading. Out of a total movement of 85,635 tons during the fiscal year 1910, the volume of logs and lumber amounted to 81,780 tons, of which about 85 per cent was furnished by the proprietary company. There were 4,253 tons of merchandise and agricultural products, a substantial portion of which was doubtless consigned to the store of the lumber company, although there are one or two independent stores on the line.

We are advised that on September 15, 1911, the Wilson Northern was leased to the Jonesboro, Lake City & Eastern Railroad Company, by which it is now operated, the rental reserved by its owners

being $12,000 per annum. The Jonesboro, Lake City & Eastern has over 100 miles of road, operates regular passenger trains, and has a general freight-train movement under tariffs filed with the Commission. We had not understood that the tap-line question had any application to it. Nevertheless, it has failed to make annual reports to the Commission. It is apparent that the situation with respect to these lines needs further examination; and we shall withhold announcement of any conclusion respecting the Wilson Northern or the tracks formerly operated by it. We shall look to the trunk lines, however, to give effect to the general views that we have expressed in this proceeding.

MANILA & SOUTHWESTERN RAILWAY.

The Manila & Southwestern Railway Company is apparently owned by four brothers, named Taylor, who bought the property in at a foreclosure sale in 1907 for an amount approximating $28,000. The record indicates that they had previously advanced the money used in its construction. Two of the brothers seem to have acquired at the same time a sawmill at Lunsford, Ark., at the northern end of the tap line, while the other brothers have extensive farms on the line. The track is five miles in length and extends from Lunsford to Herman, where it connects with the Frisco. In addition to the mill at Lunsford, which is of comparatively small capacity and which was closed down from 1907 to 1909, there is a cooperage plant on the tap line about 1,000 feet from its connection with the Frisco; and there is another small sawmill about one-half mile from Herman.

The tap line has one locomotive, a flat car, and a caboose, which make a regular daily round trip. Passengers are carried, but the record gives no indication whether fares are paid or of the revenues from that source.

The tap line does not file annual reports with the Commission and we have little information respecting its traffic. The statement made on the record is that during the year 1909 the Taylor interests supplied only 10 per cent of the traffic. During a considerable portion of that year their mill was closed down. During the first six months of the calendar year 1910 a statement filed of record shows the movement of 15,584 tons of logs, 1,927 tons of lumber, about 140 tons of merchandise, and 8 tons of cottonseed. We are not told what proportion of this traffic was furnished by those not interested in the tap line, nor does the record indicate whether there are logging spurs or the manner in which the logs reach the mill. It is stated, however, that some logs are moved by the tap line to Herman and thence by the Frisco to Nettleton and other points, where they are manufactured. The tap line receives from the Frisco a division of 2 cents

per 100 pounds out of the rates on lumber and 1 cent per 100 pounds on logs and stave bolts. On merchandise and cottonseed a local charge is made by the tap line for the haul to the junction.

This tap line has not recognized itself as a common carrier under the act to regulate commerce to the extent of filing an annual report with the Commission. Until it has complied with the provisions of the act and we are more fully informed with respect to its operations we shall hold that it has not shown that it may lawfully receive divisions out of the through rate on the traffic of its proprietors and others affiliated in its ownership and operation.

DE QUEEN & EASTERN RAILROAD.

The stockholders of the Dierks Lumber & Coal Company own nine-tenths of the capital stock of the De Queen & Eastern Railroad Company, and the two companies have practically the same officers. The tap line was incorporated in 1900 and the two companies were in their origin one and the same investment, and have so continued to the present time, the railroad being built as a facility in the lumbering operations. The book value of the road is said to approximate $600,000 and capital stock is outstanding to the amount of $593,700. When the mill was opened, in 1902, about 8 miles of the track had been laid. As described on the record, the tap line consists of about 27 miles of main track connecting with the Kansas City Southern at De Queen, Ark., extending southeasterly to a point known as Locksburg, and thence northeasterly to its terminus at Dierks. There are also about 15 miles of logging spurs and sidings, and the tap line has steel sufficient for about 30 miles of logging spurs. The tap line claims to have four station buildings along its line, costing about $1,000 each, with a building used as its general office at De Queen. It also has track scales for weighing carload shipments and shops for repairing its equipment. There are 5 locomotives, 3 box cars, 74 flat cars, and 20 other cars, and in addition 2 log loaders. The tap line has 5 station agents, 1 train crew, and a number of track and shop men. It is said that none of its employees work for the lumber company. But the salaries paid by the tap line to its officials, who are also officials of the lumber company, aggregate $650 per month.

The yellow-pine sawmill of the controlling company was formerly located at De Queen, within one-quarter mile of the tracks of the Kansas City Southern, but it was destroyed by fire about a year previous to the hearing. The statement made of record is that the mill will be rebuilt when the condition of the lumber market improves. The proprietary company also has a small hardwood mill, which was shut down shortly after the burning of the yellow-pine mill. It

is said that there are also six independent sawmills along the line and five cotton gins. The capacity of these mills is not stated, but seems to be small. There are five towns or settlements along the line, having a population of three or four hundred each, with one or two stores; one is a county seat. The tap line carries passengers, mail, and express, its revenues from that traffic aggregating about $7,000 for the fiscal year 1910. Its freight revenues for the same year aggregated $46,603.76. The freight moved consisted of 49,217 tons of lumber and forest products and 5,301 tons of other commodities. The tonnage of lumber represented the shipments that had accumulated before the mill was burned together with about two months' supply of logs for the hardwood mill. At the time of the hearing very little lumber was left at the mill for movement.

When the mill was in operation the practice was for the tap line to load the logs on the logging spurs, making a charge of $1.25 per car against the lumber company; the tap line set up an additional charge of $6 per car for hauling the logs over the spurs to the junction with its main track, including the maintenance of the spurs; and without charge against the lumber company the tap line hauled the logs over its main track to the mill. It also switched the lumber from the mill to the trunk line, a distance of about a quarter of a mile. The trunk line allowed out of its rates on yellow-pine lumber the divisions varying from 2 to 6 cents per 100 pounds, the average allowance actually made approximating 4 cents. The rates from points on the tap line, however, are 2 cents higher than the rate of the trunk line from the junction point, so that the net allowance runs up to 4 cents or less, the average net allowance being about 2 cents. No arbitrary is added to the junction point rate to make the rates from points on the tap line on hardwood lumber.

We are not advised whether the mill has been rebuilt and is again in operation. But if so, no division should be made on its products in excess of a reasonable switching charge, which we fix at $1.50 per car.

CENTRAL RAILWAY OF ARKANSAS.

The Central Railway Company of Arkansas was incorporated in January, 1906, with a capital stock of $2,600,000. Its charter describes a line 130 miles in length terminating at or near Hot Springs, Ark.; but as actually completed in 1907 it terminates at a point known as Brizi, Ark., about 13 miles from its other terminus at Ola, where it connects with the Rock Island. Only 10 per cent of the authorized capital is outstanding, that amount having been issued to the Fort Smith Lumber Company, which furnished the funds for building the track and purchasing the equipment, and by

which the stock was transferred, apparently as a dividend, to its own stockholders. The mill of the lumber company is at Plainview, on the tap line 7 miles from its junction with the Rock Island. The lumber company has an unincorporated logging track extending into its timber from a point intermediate between the mill and the junction point, but it has no engines or cars. The tap line has 5 locomotives, a combination passenger car, 3 box cars, and 16 flat cars. It also has three train crews, a number of track men, and a station agent at the mill point, Plainview, where there is a station building.

The logs are hauled by the tap line to the mill, an average distance of from 7 to 10 miles, at a charge of 50 cents per 1,000 feet, log scale, set up against the lumber company. The tap line also moves the lumber from the mill to Ola, a distance of 7 miles, and receives from the Rock Island a division of from 3¾ cents to 4 cents per 100 pounds.

It is claimed that there are three independent sawmills on the tap line and five or six other mills in that vicinity which haul their lumber to the tap line for shipment. But it appears that the aggregate lumber shipments furnished by others than the Fort Smith Lumber Company does not exceed 80 carloads per annum. All of these independent mills receive their logs by dray and their capacity is undoubtedly small. The report to the Commission for the fiscal year 1910 states the movement of forest products as 58,108 tons, substantially all of which seems to have been supplied by the proprietary company. It is stated that 40 per cent of the miscellaneous freight, amounting in the same year to 17,360 tons, was supplied by the lumber company. Only 1,558 tons of this miscellaneous traffic moved outbound. The junction point, Ola, is a town of about 1,000 people. Plainview seems to be a company town, having a population of about 1,500; and has been built since the opening of the mill and construction of the tap line. It is said to have two banks and six general stores. The tap line carries passengers, its revenue from that traffic aggregating $3,654.70 for the year 1910, in addition to which it received $644.31 for the carriage of mail and express matter. It had a net surplus on June 30, 1910, of $2,650.60, resulting from its operations for previous years, there being a slight deficit for that year.

In this case we fix a maximum of 1½ cents as the division of this tap line out of the rate on the products of the mill of the controlling company.

LOUISIANA & PINE BLUFF RAILWAY.

The Louisiana & Pine Bluff Railway Company is owned by the Union Sawmill Company, which itself is subsidiary to and owned by the Frost-Johnson Lumber Company. The three companies are one in interest. The facts are somewhat involved, but it will be well to state in some detail the history of the whole investment.

The Union Sawmill Company was incorporated in December, 1902, and acquired a large body of timber lying in southern Arkansas and across the line in Louisiana. It opened a sawmill at Huttig, Ark., and as a facility for the lumbering operations the Little Rock & Monroe Railway Company was incorporated, and 44 miles of track were constructed, extending from a connection with the El Dorado & Bastrop division of the Iron Mountain at Felsenthal to Monroe, passing through Huttig.

Immediately after the completion of this line, in the spring of 1905, it was sold to the Iron Mountain for about $580,000 in cash, the right being reserved to the sawmill company, in a contract with the Iron Mountain, to operate its logging trains over the Little Rock & Monroe, the El Dorado & Bastrop, and Farmerville & Southern, being subsidiary lines of the Iron Mountain system, at a trackage charge of 35 cents per train-mile. At about this time, and apparently pursuant to a suggestion by the Iron Mountain officials, the sawmill company acquired extensive additional holdings of timber land valued at more than $1,000,000. The contract heretofore referred to required the sawmill company and C. D. Johnson individually to organize a railroad corporation for the construction of a new line northerly from Huttig, to reach the timber in that direction and make it available for manufacture at the mill at Huttig. The provision in the contract was that the proposed railroad should be constructed and incorporated in such manner as to justify the publication of joint rates and the payment to it of allowances. In accordance with this agreement the Louisiana & Pine Bluff Railway Company was incorporated in March, 1905, with a capital stock of $300,000, which was issued to practically the same persons that owned the Union Sawmill Company. The so-called terminals in the vicinity of the mill at Huttig, as well as the locomotives, cars, and other equipment that had been used on the Little Rock & Monroe previous to its sale to the Iron Mountain, were turned over to the tap line by the sawmill company in exchange for stock, which stock is still held by the sawmill company. This, in brief, is the story of the investment.

The Louisiana & Pine Bluff, as described on the record, has a main track 3 miles in length connecting with the Farmerville & Southern and Little Rock & Monroe divisions of the Iron Mountain at Huttig, and extending to Dollar Junction, where it meets the El Dorado & Bastrop division of the same system. There is also about 5 miles of track beyond Dollar Junction which was not yet completed for operation at the date of the hearing. From Huttig a track nearly 22 miles in length extends westward in a general way parallel to the Iron Mountain. This track was not included as part of the incorporated road until shortly prior to the hearing, as we shall hereinafter

state. We shall also refer again to the logging tracks, aggregating 75 miles in length, some of which are included as part of the incorporated line, while others are not. A track or branch about 3 miles in length, extending from Felsenthal to the river, was reserved when the Little Rock & Monroe was sold to the Iron Mountain, and was afterwards conveyed by the lumber company to the Louisiana & Pine Bluff. It was used for hauling logs from the river, and when the lumber company ceased getting logs from that source the track was abandoned and taken up. The equipment of the tap line consists of 12 locomotives, 1 combination passenger car, 1 caboose, 31 box cars, 36 flat cars, 22 coal and other cars, and 152 logging cars.

The track 22 miles in length from Huttig to El Dorado & Bastrop Junction, which has been referred to above, was constructed by the tap line, but until a year and a half before the hearing it was operated by the Huttig Logging Company, owned by the Frost-Johnson interests. The annual report for 1911 does not include this track as part of the tap line, but it is distinctly so included on the record. Nothing was paid by the logging company or the Union Sawmill Company to the tap line for the use of the tracks. Connecting with the tap line at various points are logging branches, one of which is 7 miles in length and another 21 miles long. These are referred to on the record as main logging stems; and connecting with them are logging spurs which are built by the logging company, the necessary steel being loaned by the tap line without charge. These spurs are operated by the logging company, which uses locomotives and cars belonging to the tap line, no rental being paid, although the locomotives are kept in repair by the tap line at its own cost.

The logging company loads the cars in the timber and moves them, with the engines borrowed from the tap line, to the main track. The cars are taken the rest of the way to the mill by the tap line, no charge being made against the lumber company or the logging company for the movement, although the trainmen employed by the tap line do the unloading.

The mill of the lumber company, as heretofore stated, is at Huttig and is directly accessible to the Iron Mountain. The plant covers about 160 acres. The lumber could be taken by the Iron Mountain directly from the mill; but as a matter of fact it is moved by the tap line for a distance of 3 miles to Dollar Junction, and there delivered to the Iron Mountain, which allows 5 cents per 100 pounds out of its rates on yellow-pine lumber to all destinations. The rates on hardwood lumber are about 2 cents lower than the rates on yellow pine, and on such traffic the Iron Mountain allows 3 cents per 100 pounds. On all lumber the rate of the Iron Mountain from the junction point is published as a joint rate from points on the tap line.

The Wisconsin Lumber Company, which is affiliated with the International Harvester Company, has a large hardwood sawmill on the tracks of the tap line at Huttig. It obtains a portion of its hardwood logs from the Union Sawmill Company, at a price including their delivery at the mill. Such logs are hauled to the mill in the same manner as the yellow-pine logs moving to the Union Sawmill. The hardwood logs which the Wisconsin Lumber Company obtains from the lands owned by others are also brought to the mill without charge, the service being performed by the logging company and the tap line in the manner already described. The manufactured lumber is moved from the Wisconsin Lumber Company's mill to Dollar Junction by the tap line, which receives the divisions heretofore stated. The annual report to the Commission for the fiscal year ending June 30, 1910, shows no tonnage other than forest products moving outbound and coal coming inbound. The coal was consumed entirely by the sawmill company, the logging company, and the tap line itself, and aggregated 3,835 tons. Out of the total of 317,473 tons of logs and lumber handled during the same year, about 7,900 tons was manufactured by others than the sawmill company from logs cut on the lands of that company. The tap line has joint rates with the Iron Mountain on coal as well as lumber, but not on merchandise or class traffic. The record indicates that no charge is made for hauling logs that are cut by farmers or others and manufactured at the mills on the tap line. Although the tap line claims to run "two passenger trains daily" between Dollar Junction and Huttig, it has but one combination coach, and its receipts from passengers for the year 1910 amounted to only $587.24. Its mail revenue amounted to $101.31. Its operating revenues for that year aggregated $78,714.93, and this amount was substantially less than its operating expenses. On June 30, 1910, it had an accumulated deficit of more than $85,000, which we assume has been taken care of in some way by the lumber company or its owners.

This is a typical instance of a mere manipulation of its facilities in such a way as to give the tap line the appearance of performing a service as a basis for an allowance out of the rate. Indeed, it was agreed, as heretofore stated, that the tap line should be constructed in such a manner as to justify allowances. A glance at the map will show how this was done. The Iron Mountain reaches the mill with its own rails, and is, therefore, in a position to serve the mill directly without making a concession to the lumber company out of the rate. The lumber company, however, has constructed a track of its own 3 miles in length to the Iron Mountain rails, and in compensation for its service in switching its lumber over that track it receives allowances of 5 cents a hundred pounds, or from $20 to $30 a car. We have already said that the extension of the trunk-line lum-

ber rate through the mill point to the tree stump on a tap line is discriminatory unless the same rate adjustment is in effect on the trunk line's own rails. The only service of transportation, therefore, that this tap line can be said to perform for the lumber company that owns it is the switching of the product of its mill to the trunk line, and this the latter is equipped to do upon its own rails. Under these circumstances we regard the arrangement as a mere device for the payment of allowances, which we hold to be unlawful.

We have already pointed out that a tap line claiming to be a common carrier can not render service for others without charge. It follows, if that is its status, that its practice of hauling hardwood logs without charge to the mill of the Wisconsin Lumber Company is unlawful. The divisions received by it for switching products of the Wisconsin Lumber Company's mill to the Iron Mountain are also unlawful.

MANSFIELD RAILWAY.

The Mansfield Railway & Transportation Company was incorporated as long ago as 1881, by the citizens of Mansfield, who built 2 miles of track from the town to a connection with the Texas & Pacific, at a point known as Mansfield Junction. Within the past 10 years this track and the equipment then in use was acquired by E. A. Frost and others, through purchase, for the sum of $12,500, of the entire capital stock of the railway company. At about the same time a large body of timber land was purchased, lying west of the line of the Texas & Pacific, and a sawmill was erected at a point near Mansfield, known as Oak Hill. The timber and the mill were held and operated by a corporation, owned by Frost and his associates, known as the De Soto Land & Lumber Company, which also held the stock of the Mansfield Railway. Some 6 or 8 miles of logging roads were constructed from a connection with the incorporated line into the timber. There is some obscurity in the record, but our understanding is that the Frost-Johnson Lumber Company was later organized by the same interests, and took over the property and business of the De Soto Company. The additional tracks that had been constructed by the Frost interests, however, were transferred in 1908 to their tap line corporation, the Mansfield Railway & Transportation Company. The lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill; the value of this reservation was not reflected in the purchase price, which fully covered the value of the property transferred, as the record clearly indicates. The tap line has issued and outstanding capital stock to the amount of $77,300, all of which is held by the stockholders of the Frost-Johnson Lumber Company; and it is indebted to the lumber company in the sum of $216,806.97.

The two companies are identical in interest. There is a subsidiary corporation of the Frost-Johnson Company that performs the entire logging service. It is owned absolutely by the lumber company, which has assigned to it the trackage privilege over the tap line; and we shall refer to it hereinafter simply as the logging company.

The tap line as described on the record now consists of about 16 miles of track commencing at the town of Mansfield and terminating at a logging camp in the woods known as Hunter. In addition to the original connection with the Texas & Pacific at Mansfield Junction the tap line joins the Kansas City Southern, which subsequently built through this section, at a point about one and one-half miles east of Mansfield. The tap line has one locomotive, a passenger coach, and one box car; the logging cars are owned by the logging company. In addition to the incorporated road there are in the aggregate nearly 25 miles of unincorporated logging tracks in the woods.

The tap line does not haul the logs to the mill, which, as heretofore stated, is at Oak Hill, about three-fourths of a mile from the junction with the Kansas City Southern and two and one-half miles from the point of interchange with the Texas & Pacific. The mill is within 300 feet of the right of way of the Kansas City Southern, with which it was formerly connected by a spur track that was abandoned and later taken up. The logs are moved to the mill by the logging company under the reserved trackage right already referred to. The service performed by the tap line for the proprietary company consists in switching the empty and loaded cars for lumber shipments between the mill and the tracks of the trunk lines, a distance of three-fourths of a mile or two and one-half miles, respectively. The tap line, however, bears the expense of maintaining the incorporated tracks extending into the woods over which the logging trains are operated.

There are no other yellow-pine sawmills served by the tap line. But there is a hardwood mill adjacent to the mill of the Frost Johnson Company, which apparently obtains a substantial portion of its logs from the Frost-Johnson Company or its subsidiary logging company, the price paid including delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner that the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific, which are switched by the tap line to the mill at a charge of $2.50 a car or less. The tap line has joint rates on hardwood as well as yellow-pine lumber.

A good deal of outside traffic is handled over the original two miles of line from Mansfield to Mansfield Junction, but there is practically no traffic in which the proprietary company is not inter-

ested over the remainder of the track. Hunter, at the western end of the line, is a logging camp, and there are very few settlers along the line who are not employees of the lumber company or the subsidiary logging company. During the fiscal year ending June 30, 1910, 28,596 tons of lumber were handled, of which 91.4 per cent was supplied by the Frost-Johnson Company. There was 16,539 tons of miscellaneous freight, almost all of which moved over the line between Mansfield and Mansfield Junction, and a considerable proportion of which was handled for the controlling interests or their employees. The tap line operates a daily train in each direction on regular schedule and handles passengers, mail, and express; but its revenues from passenger train operation during the year 1910 aggregated only $1,209.76, its freight revenue being $25,617.19.

As stated the spur track of the Kansas City Southern, about 300 feet long, which formerly went directly into this mill, was torn out; the switching is now done over a track of the tap line three-fourths of a mile long. This arrangement being effected, the Kansas City Southern thereupon undertook to pay the tap line allowances of 1 to 4 cents per 100. We hold this to be a mere manipulation of the situation in order to establish a relation that is unlawful. The tap line also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tap line back toward Mansfield and then to the junction with that line, a distance of about 2½ miles; the tap line receives from the Texas & Pacific 1 to 4 cents per 100 pounds. In this case we regard any allowance as unlawful.

GULF & SABINE RIVER RAILROAD.

We gather from the record that the Gulf & Sabine River Railroad Company is controlled, through the ownership of its capital stock and bonds, by the Gulf Lumber Company, which is a subsidiary corporation or closely allied in interest with the Chicago Lumber & Coal Company, which has mills elsewhere and acts as sales agent for the Gulf Lumber Company.

The Gulf & Sabine River Railroad Company was incorporated in 1906 and is capitalized at $100,000 with a bonded indebtedness of $300,000. It consists of two separate tap lines, not physically connected, one known as the Stables division, connecting with the Kansas City Southern at Stables and extending about 8½ miles into the timber with logging spurs aggregating about 8 miles in length; the other known as the Fullerton division, comprising 10 miles of track, connecting with the rails of the Santa Fe at Nitram and extending to and beyond Fullerton, La. Since the hearing we are advised that active progress has been made on an extension of the

Fullerton division to Leesville, a point not far from Stables, where a connection apparently will be effected with the Kansas City Southern. The Lake Charles & Northern, a part of the Southern Pacific system, also connects with the Fullerton division at Nitram by means of trackage rights over the rails of the Santa Fe. In addition to the tracks already described, the lumber company has many miles of logging spurs which connect with the tap line at various points and which the lumber company maintains and operates, using for that purpose one or more locomotives leased from the tap line at a charge of $10 per day. The entire equipment of the Gulf & Sabine consists of 7 locomotives, 2 passenger cars, 95 logging cars, and 10 other cars. The lumber company has no rolling stock of its own.

The so-called Stables division is purely a logging road and has no outside traffic. Curiously enough there is no mention on the record of the mill on this portion of the tap line, but we understand from other sources that the controlling interests have two mills at Stables, one of which is within 150 yards of and is reached by a spur track from the Kansas City Southern. While the record is deficient in this respect, it is clearly indicated that on the Stables division, its only service is in the movement of logs to the mill and the switching of lumber from one of the mills to the Kansas City Southern. It charges the lumber company for the log movement $2.50 per car, and receives from the Kansas City Southern divisions of from three-fourths of a cent to 1 cent per 100 pounds. We hold this to be unlawful, and that no allowance may be paid to the tap line or to the controlling company on products of its mills on this division.

The construction of the tracks known as the Fullerton division was begun in 1907, before the mill of the lumber company was opened for operation at Fullerton, and before the line of the Santa Fe was built into Nitram. The tracks on this line are of unusually substantial construction, being laid with 56 and 60 pound rail, well ballasted, with a maximum grade of six-tenths of 1 per cent. It has a round-house, track scale, and telephone and telegraph wires for dispatching trains and other purposes. The record indicates that the Santa Fe offered to build into Fullerton, but the lumber company preferred to construct a tap line. Two trains are operated daily in each direction on a regular schedule for the transportation of passengers, express matter, and the mails, as well as for the transportation of lumber between the mill at Fullerton and the connection with the trunk lines at Nitram. The mill has a capacity of from 35 to 50 carloads of lumber per day, and its actual shipments are said to average 25 carloads. In a broad sense Fullerton is a company town, with a population of about 1,800 and a number of stores. The supplies needed

for a community of that size furnish more or less traffic for the tap line; its miscellaneous freight during the year 1910 amounted to nearly 10,000 tons. The passenger earnings of that year were $3,809.25, and the express and mail revenues amounted to $956.48. The lumber and logs of the controlling interests, however, amounted to 370,164 tons during the same year, or in excess of 90 per cent of the total traffic. It receives on this lumber an allowance from the Lake Charles & Northern of 25 per cent of the proportions accruing up to Lake Charles, La., or from 1 to 4 cents per 100 pounds. No allowance is made by the Santa Fe. The tap line also charges the lumber company a flat rate of $2.50 per car for the movement of logs from the connection between the logging spurs and the incorporated track to the mill. There are also said to be several small mills in the territory traversed by the Gulf & Sabine River Railroad, which cut hardwood lumber chiefly from logs taken from lands of the Gulf Lumber Company.

The total operating revenue of the Gulf & Sabine in the year 1910 was $116,359.74, its operating expenses aggregating $76,067.43, leaving a net operating revenue of $40,292.31. While it has paid no dividends on its capital stock it had an accumulated surplus on June 30, 1910, of $34,969.16.

On this division of the tap line we think any allowance out of the rate in excess of 1 cent a 100 pounds on the products of the mill of the controlling company is unlawful. We fix that as a maximum.

LOUISIANA & PACIFIC RAILWAY.

The Louisiana & Pacific Railway Company was incorporated June 6, 1904, with an authorized capital stock of $200,000, of which only $51,000 has been issued. It is controlled by what is referred to on the record as the R. A. Long interests, 70 per cent of its capital stock being held by R. A. Long and the rest apparently by his agents and associates. The record indicates that Long owns the same proportion of the capital stock of the Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, and the Calcasieu Long Leaf Lumber Company, all of which have sawmills on the Louisiana & Pacific. The Long-Bell Lumber Company, which is a part of the same general interest, does not manufacture lumber, but markets the output of these mills. Only $30,000 of the capital stock of the tap line was issued for cash, and the balance was subsequently distributed to its stockholders as a stock dividend. It has outstanding bonds to the amount of $582,200, which were issued for the purpose of taking up notes payable to the various lumber companies, and covering purchases of track and equipment. All of

the tracks of the Louisiana & Pacific, as hereinafter described, were originally constructed as private logging roads by the individual lumber companies.

The Lake Charles & Northern Railroad, which is owned by the Southern Pacific, extends from De Ridder, La., southward for a distance of about 46 miles to Lake Charles. It was originally built by the R. A. Long interests as part of the Louisiana & Pacific, and was sold to the Southern Pacific, which thereupon incorporated the Lake Charles & Northern to operate the property. In the sale of the property to the Southern Pacific, however, the R. A. Long interests reserved to the Louisiana & Pacific the right of jointly operating the track between Lake Charles and De Ridder. The Louisiana & Pacific pays the Lake Charles & Northern 25 cents per train-mile for the trains that it operates over that track, and also bears a certain proportion of the station expenses; the payments aggregated for the fiscal year 1910 approximately $7,000. The two companies, as the record indicates, enjoy equal rights over the track, and in view of the price received by the R. A. Long interests from the Southern Pacific the trackage arrangement is obviously a most advantageous one.

The Louisiana & Pacific is a peculiar property. There are five separate branches or tracks not directly connected with each other, but all joining at different points the track conveyed to the Lake Charles & Northern. The five tracks may be described as follows: (1) A track connecting with the Lake Charles & Northern at De Ridder Junction, and extending 8 miles to Bundicks, which is apparently a logging camp with a company store. The mill of the Hudson River Lumber Company, in whose interest this track is operated, is at De Ridder, being within a few hundred feet of the rails of the trunk lines. (2) At Lilly Junction, a second section of the track of the tap line connects with the Lake Charles & Northern, extending therefrom about 7½ miles to a point in the woods known as Walla, where the King-Ryder Lumber Company has a commissary, and there is a small independent yellow-pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bon Ami, on the track jointly operated by the tap line and the Lake Charles & Northern. This is a town of 2,000 people, but apparently has no other industries. (3) Two miles of incorporated track of the Louisiana & Pacific connect with the Lake Charles & Northern track at Longville, a town of 2,000 population, where the Longville Lumber Company has its mill, and a store. There are also several independent stores. (4) There are 9 miles of track connecting with the Lake Charles & Northern at Fayette, and extending to Camp Curtis, a

settlement of 200 people, where the Calcasieu Long Leaf Lumber Company has a company store, its mill being at Lake Charles. (5) A track 1 mile in length described on the record as connecting with the Lake Charles & Northern at Bridge Junction and running to Lake Charles station. Through its operating rights over the Lake Charles & Northern the tap line connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton, and with the Southern Pacific, Iron Mountain and Kansas City Southern, at Lake Charles. The equipment of the Louisiana & Pacific consists of 22 locomotives, 6 cabooses, 41 freight cars, and 270 logging cars. It also owns a private car which is used in traveling around the country by its officers who hold free transportation, and who are connected with the lumber companies. The lumber companies have many miles of unincorporated logging tracks connecting with the several sections of the Louisiana & Pacific at various points. There are a number of other towns or settlements named on the record, which it is unnecessary to mention; and there is a second small independent mill, owned by the Brown Lumber Company, and located at Bannister, on the Lake Charles & Northern.

The logs are loaded by the lumber companies and switched by them over the logging spurs to the point of connection with the incorporated line. The cars are then hauled by the tap line to the mill, a distance on the average of about 30 miles, as is stated of record. No charge is made by the tap line against the lumber companies for the log movement. The tap line switches the carloads of lumber a distance of three-fourths of a mile from the mill at Lake Charles to the Southern Pacific; or a distance of a few hundred feet from the De Ridder mill to the trunk lines. It moves lumber for a distance of 18 miles from the Lake Charles mill to the Frisco; the movement from the mill at Bon Ami to the Southern Pacific at Lake Charles is 40 miles; and the lumber movement from the Longville mill to the Southern Pacific at Lake Charles is 24 miles. The average haul of the tap line on lumber movements of the controlling companies is said to be nearly 20 miles. The steel for these tracks is apparently supplied by the tap line without charge. There are written agreements under which 50 per cent of the lumber tonnage must be routed over the Frisco and 40 per cent by the Southern Pacific; but the record indicates that these obligations are not rigidly adhered to and more than 10 per cent is delivered to the other trunk lines. The total movement of lumber for the fiscal year 1910 was 243,122 tons, and the merchandise and other commodities aggregated 8,819 tons. As much as 98 per cent of the entire tonnage was supplied by the controlling interests. A few passengers are carried, the receipts from

that source for the year 1910 being $473.77. A logging train runs daily on each of the branches, and there is one "mixed train," loaded chiefly with logs and lumber, moving over the track between Lake Charles and De Ridder.

The allowances paid by the trunk lines range from 1½ to 5½ cents per 100 pounds, out of their earnings under the group-lumber rate.

The annual report to the Commission for the year ending June 30, 1910, shows an operating revenue of $220,985.94, with operating expenses amounting to $145,433.69. There was an accumulated surplus on that date of $73,581.07.

In this case we have another instance of a service performed for a lumber company by a tap line claiming to be a common carrier for which no charge is made, namely, the service of hauling the logs to the several mills. For the switching service of a few hundred feet from the mill at De Ridder to the trunk lines, and three-fourths of a mile from the mill at Lake Charles to the Southern Pacific, allowances are made out of the rate of from 1½ to 5½ cents. There are other important facts of record with respect to this tap line which we have not thought necessary to include in this statement. We regard the whole arrangement as indefensible and unlawful, and see no grounds upon which any allowance may lawfully be made.

SIBLEY, LAKE BISTENEAU & SOUTHERN RAILWAY.

The Sibley, Lake Bisteneau & Southern Railway Company and the Globe Lumber Company belong to what is referred to on the record as the R. A. Long interests, a majority of the stock of both companies being owned by R. A. Long. The tap line, with the Louisiana & Pacific and the Woodworth & Louisiana Central, forms what is known as the Shreveport, Alexandria & Southwestern system.

The Sibley, Lake Bisteneau & Southern connects at Sibley, La., with the Vicksburg, Shreveport & Pacific and the Louisiana & Arkansas railways, and extends southward for about 31 miles through Webster and Bienville parishes for about 28 miles, terminating 3 miles beyond a point know as Camp Long. It apparently parallels the Louisiana & Arkansas for a considerable portion of its length. South of Camp Long there are extensive unincorporated logging tracks. The entire road, which is laid with 40 and 60 pound rails, was originally built as a private logging road, but was incorporated in 1900, with a capital stock of $100,000, all of which was issued to the lumber company in part payment for the property then acquired the valuation of which was fixed at $211,000. The tap line still owes the lumber company about $100,000. Its equipment consists of 6 locomotives, 2 passenger cars, 7 freight cars, and 106 logging cars. It will be observed, however, that three of the locomotives and all of

the freight and logging cars are leased to and used by the lumber company.

The mill is at Yellow Pine, a company town with a population of 1,200, less than 5 miles south of the junction with the trunk lines. The only other towns on the line are Sibley, the junction point, a place of about 800, and Ringgold, which is about 16 miles south of Sibley, and seems to be 5 miles from the Louisiana & Arkansas Railroad, having a population of more than 1,000, with a bank, several stores, and an independent sawmill, cotton gin, etc. It is claimed that the country tributary to the tap line is being settled; there are a number of very old farms. There are about 117,000 acres of timber reached by the tap line which is owned and controlled by the lumber company. The tap line claims to have four independent lumber shippers, the principal one shipping about 20,000 feet a day. This mill, however, is 3 miles from the tap line and its logs are hauled to the mill and its lumber to the tap line by teams.

The record indicates that about 70 per cent of its freight revenue accrued on traffic supplied by the proprietary company. During that year it handled 2,384 tons of agricultural products, moving outbound, and 1,692 tons of such freight, moving in, with more than 4,000 tons of other freight. Of the whole movement 43,899 tons was supplied by the proprietary company, and 9,762 tons was handled for others. The tap line apparently runs one "mixed" train daily in each direction on which passengers are carried. Its revenue from that source during the year 1910 aggregated $3,112.16. The freight revenue for the same period amounted to $46,646.08. The operating expenses for that year exceeded $60,000, leaving a deficit after the payment of taxes and interest of more than $20,000. But there was an accumulated surplus from previous years of more than $80,000, so that on June 30, 1910, its net surplus was $53,626.70.

The lumber company loads the logs on the cars furnished to it by the tap line and hauls them to the junction of the logging tracks with the incorporated line. They are then hauled by the tap line to the mill, a charge of $2.75 being made for the movement, when the logs reach the tap line south of Ringgold, and $2.50 per car when taken by it from points north thereof. The logs coming from north of Ringgold are hauled to the tap line with teams, being purchased from small independent producers. With the exception of a few hardwood logs shipped for export no logs have been handled by the tap line for outsiders. The tap line moves the empty cars furnished by the trunk line to the mill and switches the loaded cars back to the junction, a distance of less than 5 miles. It receives out of the rates allowances from the trunk lines ranging from 1½ to 4½ cents per 100 pounds. It at one time received as much as 7 cents per 100 pounds.

In this case the allowance paid by the connecting trunk lines on the products of the proprietary mill may not lawfully exceed 1 cent per 100 pounds.

ROOSEVELT & WESTERN RAILROAD.

The Roosevelt & Western Railroad is owned by J. B. Schuh and extends from a connection with the Iron Mountain at Roosevelt, La., for 8 miles into the timber. It has 1 locomotive, 2 box cars, 2 slab cars, and 10 logging cars. None of the equipment has safety devices except the locomotive, which has air brakes. The tap line was incorporated in 1909, when the construction was commenced, and it has capital outstanding to the amount of $15,000. The track is laid with old rails leased from the Iron Mountain for a rental of 6 per cent of the valuation.

The mill is at a point known as Lynchville, about one and three-quarter miles west of the junction with the Iron Mountain, and is operated in the name of the J. B. Schuh Lumber Company, which is not incorporated. There are no other mills or industries on the line. The lumber company holds about 96,000 acres of timber rights and there are three farms, or plantations, along the line. At the date of the hearing the tap line had been in operation only a few months and it had handled in that time about 6,000 tons of lumber for its owners. It claims to have handled 500 tons for outsiders. It does not run trains with any regularity and carries neither passengers, mail, nor express matter. It moves the logs to the mill at a charge of 1 cent per 100 pounds against the lumber company. It switches the empty and loaded cars for lumber movements for a distance of less than two miles in each direction between the mill and trunk line. Its allowance out of the published rate of the Iron Mountain is 2 cents per 100 pounds.

As the facts are thus disclosed the Roosevelt & Western clearly comes within the class of cases disposed of in our original report, and is not a common carrier with respect to the services it performs for the proprietary interests or on the product of their mills. But under the ruling in the original report the lumber rate of the Iron Mountain extends from the mill, and upon arranging with the lumber company to perform the service of moving cars to and from its line the Iron Mountain is entitled to make it a reasonable allowance out of the rate under section 15 of the act.

TIOGA & SOUTHEASTERN RAILWAY.

The Tioga & Southeastern Railway Company was incorporated in 1905, and its entire capital stock, amounting to $50,000, is held by the stockholders of the Lee Lumber Company; the two companies

have the same officers. Ten miles of the track was originally constructed by the Louis Werner Sawmill Company, from which it was acquired by the present owners in 1905, with the purchase of the sawmill at Tioga, La.

The tap line extends from a connection with the Iron Mountain at Tioga through Ems, which is on a branch line of the Louisiana Railway & Navigation Company, to Violet, a distance of 15 miles. Beyond that point the lumber company has about five miles of unincorporated logging tracks. The tap line also has several miles of spur tracks, some of which are used for logging operations in the woods. The equipment consists of 5 locomotives and 52 log cars. Two of the locomotives are leased to the lumber company for a rental of $10 per day.

The logs are loaded on the spurs and hauled by the lumber company to the junction of the unincorporated track with the tap line, from which point the tap line hauls the logs to the mill. For the service on the logs the tap line charges $5 per car where the manufactured lumber moves to a point where there are no through rates in effect with the trunk line. Where there are through rates the $5 charge is not made, but the divison allowed by the trunk line, which averages $20 per car on the lumber, is accepted by the tap line as covering the movement of the logs to the mill. Both the sawmill and the planing mill are reached directly by the Iron Mountain, so that the tap line performs no service in the movement of lumber over that route. About 10 per cent of the output of the mill is forwarded over the Louisiana Railway & Navigation Company, a distance of 9 miles.

The tap line makes annual reports to the Commission. For the fiscal year ending June 30, 1910, its freight tonnage aggregated 44,782 tons, of which all but 464 tons was lumber, logs, and staves. About 99 per cent of the entire traffic was furnished by the Lee Lumber Company. No dividends have been paid, but there was an accumulated surplus on June 30, 1910, of $99,194.61. The intention is to devote the surplus, as is asserted, to extending the road toward the Mississippi River and toward a connection with the Texas & Pacific, the country to be traversed being heavily wooded and the lumber company having an interest in the timber.

The service performed for the Lee Lumber Company by its tap line is a plant service and not a service of transportation. Any allowance by the Iron Mountain, which itself moves the lumber from the mill, would be unlawful. There is no justification for an extension by the Louisiana Railway & Navigation Company of the group rate to the mill and an allowance out of that rate to the tap line for the back haul from the mill to the junction at Ems.

LOUISIANA CENTRAL RAILROAD.

The Louisiana Central Railroad Company was incorporated in 1904, and its entire capital stock, amounting to $250,000, was issued to and is now held by the stockholders of the W. R. Pickering Lumber Company, to which it is indebted for loans amounting to nearly $75,000. The two corporations are not only identical in interest but have the same officers.

The tap line consists of two separate pieces of track, about 20 miles apart. One is designated as the northern division; it connects with the Kansas City Southern at Barham, La., where the lumber company has a mill, and extends in a westwardly direction for about 9.5 miles into the timber, terminating at a point known as Bayou Toro. This track was originally constructed by the lumber company as a private logging road, and the title was transferred for stock of the railroad corporation when later formed. The lumber company has about 10 miles of unincorporated spurs connecting with this track. The lumber produced at the Barham mill is loaded on cars standing on the tracks of the Kansas City Southern, and the only service performed by the tap line is the movement of the logs to the mill.

The so-called southern division serves two mills of the lumber company, one at the junction of the tap line with the Kansas City Southern at Pickering, La., and the other about one-half mile from the junction of the tap line with the rails of the Santa Fe at Cravens. The Lake Charles & Northern uses the line of the Santa Fe through Cravens under trackage rights. The track of the Louisiana Central from Pickering to Cravens is about 19 miles in length and extends beyond the Santa Fe for a distance of about 10 miles. There are a number of logging spurs connecting with the southern division and operated by the tap line. The main track was in part constructed by the lumber company and turned over to the tap line when incorporated.

The greater portion of the lumber manufactured at the Cravens mill is hauled by the tap line for a distance of about 19 miles to Pickering and delivered to the Kansas City Southern. A few carloads from that mill move out over the Lake Charles & Northern or the Santa Fe, whose track is about one-half mile distant, and in such case the Lake Charles & Northern allows the tap line a switching charge of $2.50 a car. Substantially the entire output of the mill at Pickering moves out over the Kansas City Southern, and the record indicates that 75 per cent of the tonnage at that mill is moved by the Kansas City Southern from the mill without the aid or intervention of the tap line.

The tap line has 10 locomotives, 1 combination passenger and baggage car, 4 freight cars, 1 caboose, 5 other cars, and 166 logging cars. It has station agents at Cravens, Pickering, and Barham, who are also employees of the lumber company. It employs about 60 trackmen, who work not only on its main tracks but on the logging spurs of the southern division. The tap line runs one train daily out of Barham, which is referred to on the record as a passenger train; but its passenger earnings are insignificant, having amounted to only $83.64 in 1910. Apparently a single log train is also run with more or less regularity on the southern division. But on both divisions practically the only movement is logs and lumber of the Pickering Lumber Company. The total traffic for the year ending June 30, 1910, was 216,346 tons, of which 99 per cent was supplied by the controlling lumber company.

The Kansas City Southern allows a division of from three-fourths cent to 5½ cents per 100 pounds out of its rates on yellow-pine lumber, the maximum division being paid out of the rate of 24 cents to Kansas City. With the exception of the switching charge heretofore referred to, no divisions are accorded the tap line by the Lake Charles & Northern or the Santa Fe; and the result seems to be that those lines get scarcely any of the traffic. The lumber company is charged $1.25 per 1,000 feet, log measure, for the service performed by the tap line on the logging spurs. But no charge is made against the lumber company for the movement of the logs over the main tracks of the tap line to the several mills.

As heretofore stated, the lumber is taken from the mill at Barham, on the so-called northern division, by the trunk line itself, whose tracks apparently reach that mill; the service by the tap line of bringing the logs to the mill is purely a plant service, and any allowance by the Kansas City Southern, either to the tap line or to the lumber company, would be clearly unlawful.

There are two mills on the so-called southern division. From the mill at Pickering the Kansas City Southern itself moves the major portion of the lumber without aid by the tap line, the mill being within 1,000 feet of the Kansas City Southern tracks. We see no grounds upon which an allowance to the tap line may lawfully be made on the products of either of the mills, but an allowance may be made to the lumber company under section 15 on lumber delivered by it to the carriers at Cravens from the mill at that point. The mill at Cravens is one-half mile from the tracks of the Santa Fe, over which the Lake Charles & Northern has running rights.

NORTH LOUISIANA & GULF RAILROAD.

The stockholders, officers, and directors of the North Louisiana & Gulf Railroad Company bear the same relation to the Huie-Hodge

Lumber Company; and the two companies are one investment. The tap line is in two separate sections. One track connects with the Rock Island at Hodge, La., where the lumber company has a sawmill and planer, and extends westward for about 10 miles to a point known as Danville, where the lumber company has a hardwood mill. This track was originally operated as a private logging road and was taken over by the tap line, when incorporated, in January, 1906. Beyond Danville there are several miles of rails at present owned and operated as an unincorporated logging road by the lumber company, but which was formerly included as a part of the North Louisiana & Gulf. The tap line deeded this track back to the lumber company in exchange for the four miles of track that now composes the other section of the incorporated tap line. This track connects with the Lousiana & Northwest Railroad at a point known as Bienville, La., and runs eastward to a point in the woods known as Walsh; it was laid by another lumber company in 1907 and was acquired by the present owners in 1909, with the purchase of the sawmill at Bienville. We understand that since the hearing several miles of additional track have been laid from Walsh to Danville, thus connecting up the two parts of the incorporated tap line. The new track also serves to reach additional timber of the lumber company.

The tap line has 5 locomotives, 1 combination car, 6 box cars, 7 flat cars, and 70 logging cars. Two of the locomotives are used by the lumber company in hauling the logs over the unincorporated tracks to Danville, the rental paid being in the form of a charge of 25 cents per 1,000 feet on the logs handled. From Danville the tap line hauls the yellow-pine logs to the mill at Hodge without charge. The tap line also hauls rough hardwood from the mill at Danville to the planing mill at Hodge; and no charge is made for this service. Some of the hardwood lumber is shipped out without planing. On shipments from the mill or planer at Hodge a part of the service is performed by the tap line and a part by the Rock Island. The same conditions exist with respect to the movements of logs and lumber at the Bienville mill on the Louisiana & Northwest. That line allows a uniform division of 2 cents per 100 pounds, while the Rock Island pays from 1½ to 4 cents per 100 pounds. Joint rates were first established by the Rock Island in 1906 and by the Louisiana & Northwest in 1909.

The annual report for the year 1910 shows a total traffic of 40,228 tons, of which 1,145 tons were merchandise and supplies, and the remainder was forest products. One logging train is run daily in each direction, on which passengers are carried, the revenue from that source for the year 1910 being less than $800, with revenues from mail

service amounting to about $340. There are one or two small shippers of staves, bolts, and ties along the line; and mention is made on the record of the proposed establishment of a salt and crushed-rock plant, which it is hoped will ship two or three carloads a day. But the traffic of the tap line, in which the lumber company is not directly interested, is very small, and the service it performs is that of a mere plant facility of the lumber company.

Each of the mills on this line is within less than 1,000 feet of the tracks of the nearest trunk line. No allowance may therefore be made out of the rate on the products of either mill. On the products of the hardwood mill a division of 2 cents may be paid by each of the connecting trunk lines, except when again milled or planed at Hodge.

MONROE & SOUTHWESTERN RAILWAY.

The Monroe Lumber Company, predecessor of the Grayling Lumber Company in the ownership and operation of a yellow-pine sawmill at Monroe, La., on the east bank of the Ouachita River and on the tracks of the Iron Mountain, built a private logging road from the opposite bank of the river into its timber. This track connects at West Monroe with the Vicksburg, Shreveport & Pacific. Subsequently, in 1904, the Monroe & Southwestern Railway Company was formed, with an authorized capitalization of $1,000,000, of which $172,000 was issued, and took over the track referred to, which is about 10 miles in length. The stockholders of the Grayling Lumber Company own the stock of the tap line, and the two companies are one and the same investment. The incorporated track includes also about 7 miles of spurs and sidings, in addition to which the lumber company has unincorporated logging spurs connecting with the tap line at various points, the steel in which belongs to the tap line. The tap line has 4 locomotives and 91 cars. The lumber company has the free use of one of the locomotives. The tap line runs two logging trains daily in each direction and claims to carry a few passengers, but its report to the Commission for the year 1910 shows no passenger revenues. For the year 1911 the revenue from that source amounted to $334.35. About 99 per cent of the whole traffic, amounting to 99,338 tons, was supplied by the proprietary company. Its entire tonnage was forest products, with the exception of 484 tons of agricultural products and 69 tons of merchandise. It is claimed that four or five carloads of staves, bolts, and ties are moved each month for outsiders. A local rate is charged on all traffic except the lumber of the controlling company. This is true of the lumber manufactured at the hardwood mill of the Riverside Lumber Company, about 1 mile from the junction with the Vicksburg, Shreve-

port & Pacific. This mill receives its logs on the river and pays the tap line $5 a car for switching its lumber to the trunk line.

As will be seen from the foregoing statement, the mill of the lumber company is served only by the tracks of the trunk line; its tap line terminates at the opposite bank of the stream. The service performed by the tap line therefore consists of moving the logs from the point of connection of the unincorporated spurs with its track to the west bank of the river. There is a cable stretched across the river which the lumber company operates and by means of which the logs are transferred from the cars on the tap line to the mill. The lumber is taken from the mill by the Iron Mountain, which allows out of its rates a division of 3 and 4 cents per 100 pounds. The Vicksburg, Shreveport & Pacific makes no rates in connection with the tap line, and no traffic of the controlling lumber company moves out over that line. In addition to the divisions received from the Iron Mountain the tap line charges the lumber company 1½ cents per 100 pounds for the movement of the logs to the river.

The annual reports filed with the Commission indicate an accumulated surplus on June 30, 1910, of nearly $25,000, which had actually been expended, however, on the improvement of the line.

This is clearly not a case in which the trunk line may lawfully make any allowance out of its published rate either to the tap line or to the lumber company.

VICTORIA, FISHER & WESTERN RAILROAD.

The Victoria, Fisher & Western Railroad Company is owned by the stockholders of the Louisiana Long Leaf Lumber Company, the stock in the two companies being held by the same persons and in the same relative proportion. They have the same officers. The railroad corporation was formed in November, 1902, and its capital stock, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company. A part of the track seems to have been constructed some 25 years ago and was acquired by the lumber company in 1900. The tap line connects with the Texas & Pacific at Victoria, La., and runs southward, crossing the Kansas City Southern at Fisher and terminating at a point known as Cain, a total distance of about 31 miles. There are about 25 miles of logging spurs and sidetracks. The tap line has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and the other about

alf a mile from tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years. The timber holdings of the lumber company approximate 95,000 acres, in addition to which it owns some 80,000 acres of cut-over land.

The tap line hauls the logs from the woods to the mill, making a harge of $1.50 per 1,000 feet, which is supposed to cover only the ervice performed on the logging spurs and not the haul over the ain track. The greater portion of the lumber manufactured at isher is delivered to the Kansas City Southern, being switched bout one-half mile by the tap line, while the greater part of the mber produced at the mill at Victoria is moved by the tap line one ile to the Texas & Pacific. A small amount of the lumber from ch mill moves over the tap line to the more distant trunk line, but e same divisions are paid by the two trunk lines from both mills. These allowances range from three-fourths cent to 4 cents per 100 ounds; and the joint rates are the same as the rates published from djacent mills on the trunk lines, with the exception of traffic moving points in Texas, where 1¼ cents per 100 pounds is added to the nction-point rate.

The tap line does not carry passengers; and more than 99 per cent f the total tonnage, amounting for the year 1910 to 316,676 tons, is rnished by the proprietary company. Its annual reports to the ommission indicate an accumulated surplus of $13,509.17 at the end f the fiscal year, June, 1910.

We can not recognize the right of this tap line to participate as a mmon carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern ust be held to apply from the mill at Fisher, and the rate of the exas & Pacific from the mill at Victoria. Each of those lines may rrange with the lumber company to perform the necessary switching rvice for the distance of one-half mile and one mile, respectively, nd may make it a reasonable compensation under section 15.

OUACHITA & NORTHWESTERN RAILROAD.

The Ouachita & Northwestern Railroad Company was incorporated in May, 1905, and its stock was distributed by the Louisiana entral Lumber Company as a dividend to the stockholders of that mpany. Title to the right of way, track, and equipment thereto- re owned and operated by the lumber company was turned over to e new corporation. The two companies are practically identical their stockholders and in their officers.

The lumber company has two mills, one at Clarks and the other Standard, La., each being about one-half mile from the track of e Iron Mountain. Each is served by rails of the Ouachita & North-

western. In other words, the tap line as described on the record consists of two separate tracks, respectively designated as the Jackson divison and as the Standard divison. The Jackson division serves the mill at Clarks and extends from the point of connection with the Iron Mountain in a northwesterly direction for about 20 miles, with logging branches aggregating 15 miles in length. This track was not completed and put in operation until September, 1910. There had been, however, a track, constructed in 1903, running southeasterly from Clarks for a distance of 14 miles. When the timber in that direction was cut out the track was taken up and the line abandoned. In doing this no consideration was given to the rights or convenience of the farmers and one or two other outside shippers in that vicinity. There was also a small lumber mill about 6 miles southeast of Clarks which shipped two or three carloads a week over that track. That mill was still in operation at the time of the hearing, and apparently had to team its lumber to the Iron Mountain. The other section of the tap line connects with the Iron Mountain at Standard, which is some miles south of Clarks, and runs for 9 miles eastward to a point known as Summerville. This track was acquired from another lumber company in 1906.

The tap line has 7 locomotives and 150 cars. Its logging-train service is apparently irregular. It hauls the logs to the mills and switches the lumber to the trunk line, which allows a division of from 2 to 4 cents per 100 pounds out of the rate, most of the traffic being subject to the maximum division. For the movement of the logs to the mill and the expense of maintaining and changing the logging spurs the tap line makes a charge of $1.50 per 1,000 feet against the lumber company. This is in addition to the division of the through rate. The outside traffic is comparatively small, amounting for the year ending June 30, 1910, to but 1,661 tons out of an aggregate movement of 412,205 tons, or a fraction of 1 per cent. The annual reports to the Commission indicate a substantial profit from its operations.

An interesting fact was developed on the hearing of this case. It appears from the testimony of its witness that an understanding was had between the Ouachita & Northwestern and the Iron Mountain respecting the payment of divisions; and the agreement on the part of the Iron Mountain to allow 4 cents per 100 pounds was accepted by the lumber company as a warrant for purchasing additional timber lying farther from the trunk line. It is frankly stated that other timber lying nearer the trunk line would have been purchased had not this concession been granted by the Iron Mountain to the tap line.

This tap line is clearly in the class of cases disposed of in our original report. Each of the mills of the proprietary company is

about one-half mile from the tracks of the Iron Mountain and the group rate therefore extends from the mills. If it performs for the Iron Mountain the service of moving the cars to and from the mills, the lumber company may have a reasonable allowance under section 15 of the act.

LAKE CHARLES RAILWAY.

The Lake Charles Railway & Navigation Company was incorporated in 1908 as a common carrier of freight only, and all but $2,000 of its capital stock, amounting to $50,000, was issued to four stockholders of the Powell Lumber Company in consideration for the logging road theretofore constructed, and which at one time had been known as the Kelly Tram, together with the rolling stock and certain boats belonging to the lumber company. The railroad corporation and the lumber company are owned by the same stockholders and have the same officers. Moreover, there is an indebtedness to the lumber company of nearly $30,000.

The track of the Lake Charles Railway & Navigation Company connects with the Iron Mountain at Edna, La., and extends from that point southward and westward to a point known as Hecker, on the Calcasieu River. There are 20 miles of incorporated railroad, in addition to which the lumber company has several miles of unincorporated spurs connecting with the main track at various points, the steel in which is furnished by the tap line. The tap line has 3 locomotives, 15 flat cars, and 50 logging cars. It also owns and operates one steamboat and two barges, which run from Hecker down the Calcasieu River to Lake Charles, a distance of about 25 miles. One log and lumber train is run over its track between Hecker and Edna daily in each direction.

The lumber company has a mill at Edna directly on the tracks of the Iron Mountain, which switches the empty and loaded cars for lumber movements from the mill. It also has a mill at Lake Charles, La., to which the Kansas City Southern, the Iron Mountain, and the Southern Pacific all have direct access, and from which they switch the loaded cars of lumber. The only service which the tap line performs for the lumber company, therefore, is the movement of the logs from the woods to the mill at Edna on the one hand, or to Hecker and thence by boat or barge to the mill at Lake Charles on the other hand. The divisions allowed by the trunk lines range from three-fourths cent to 3 cents per 100 pounds. The annual report to the Commission for the year 1910 indicates the movement of 212 tons of naval stores and 1,014 tons of merchandise and supplies, in addition to 108,700 tons of lumber. There is very little outside traffic, and the record does not disclose the existence of any independent mills on the line. The town of Hecker is said to have

a population of nearly 500, with two general stores and a turpentine plant. The lumber company has a commissary which, as we assume, took a substantial portion of the merchandise shipments moving over the tap line.

The lumber is moved directly from the mills by the trunk lines, as heretofore stated. No allowance may lawfully be paid to the tap line on account of the service which it performs for the proprietary company.

ARKANSAS SOUTHEASTERN RAILROAD.

The Arkansas Southeastern Railroad serves the mill of the Summit Lumber Company at Randolph, La., a point on the Rock Island, which passes within 150 yards of the plant. The track is laid from Randolph in a southeasterly direction for about 28 miles, to Farmerville, where a connection is made with the Iron Mountain. At a point 17 miles from the mill known as McKay an unincorporated logging road of the Summit Lumber Company connects with the tap line and on those tracks the lumber company operates logging trains, using three locomotives. The tap line itself has 2 locomotives, a combination passenger car, 18 flat cars, and 73 logging cars. The tap line was constructed by the lumber company several years before its incorporation, in 1904, which is admitted to have taken place for the purpose of obtaining divisions of through rates. The record indicates certain changes shortly prior to the hearing in the ownership of a majority of the stock of the tap line. Our understanding, however, is that the ownership of the tap line is vested in persons who are directly interested in the mill at Randolph, which it serves. In other words, the mill and tap line are still to all intents and purposes one and the same investment.

The Summit Lumber Company loads the logs on the cars and moves them with its equipment over the unincorporated tracks to the junction with the tap line; and the tap line hauls the logs to the mill without charge. The lumber is switched by the tap line from the mill to the junction, a distance of three-quarters of a mile. The Rock Island allows from 1 to 4 cents per 100 pounds out of the rates on lumber. For the year ending June 30, 1910, the shipments of the Summit Lumber Company aggregated 70,702 tons, while the traffic of outsiders was 2,469 tons. There is a small hardwood mill owned by W. F. Usrey & Company, which purchases its logs from the Summit Lumber Company; there are also a small yellow-pine mill and stave mill which use the tap line. One mixed train is run in each direction daily on which a few passengers are carried. The revenue from that source for the year 1910, however, was only

$778.90. The lumber company furnishes 96 per cent of the traffic of the tap line.

This mill is within 150 yards of the Rock Island rails, and we hold that no allowance out of the rate may lawfully be made by the Rock Island. On lumber delivered by the tap line to the Iron Mountain at Farmersville a division of 2 cents may be paid to the tap line.

LOUISIANA RAILWAY.

The stockholders of the Grant Timber & Manufacturing Company own a majority if not practically all of the capital stock of the Louisiana Railway Company, and practically the only service performed by the latter is the movement of logs and lumber for the proprietary company. The two corporations have the same officers.

The track of the tap line is about 16 miles in length, connects at Grant, its eastern terminus, with the Louisiana & Arkansas, crosses the Iron Mountain at Selma, running thence westerly for several miles and turning northward, crossing the Louisiana & Arkansas, and terminating at a point in the timber known as Harrell; there are also about 14 miles of unincorporated logging tracks the steel in which is owned by the tap line, but which are laid and maintained by the lumber company. About 9 miles of the main track was purchased from prior owners for the sum of $85,000; the remainder was apparently constructed by the lumber company and turned over to the tap line, the cost being borne out of the earnings. The cost of the entire track, which is laid with light rail, and equipment, aggregated about $200,000. The tap line has 6 locomotives, 25 flat cars, and 93 logging cars.

The lumber company has two mills in operation at Selma, one immediately adjacent to the line of the Iron Mountain and the other within 300 feet of its right of way. Its timber holdings aggregate more than 100,000 acres and include certain lands where the lumber company has private logging spurs reached by the tap line by means of trackage rights over the Louisiana & Arkansas. The tap line hauls the logs all the way from the point of loading to the mill, and the trainmen unload them into the pond. A charge of $1 per 1,000 feet is made against the lumber company, which is supposed to cover the rental of the steel in the unincorporated tracks as well as the service performed by the tap line in moving the logs thereon. The loading track at one of the mills in Selma is owned in part by the Iron Mountain and in part by the lumber company. The other mill has a short spur track, less than 300 feet in length, connecting with the Iron Mountain. The record does not clearly indicate whether the locomotive of the Iron Mountain or that of the tap line places the empty cars and switches the loaded cars for lumber movements from

the mills or either of them. About one-half of the traffic of the lumber company is forwarded over the Louisiana & Arkansas, which entails a movement by the tap line of the empty car for a distance of 2¼ miles from Grant to Selma, and of the loaded car for the same distance from the mills at Selma to Grant. Each of the trunk lines publishes rates in connection with the tap line, and each makes an allowance of from 2 to 4 cents per 100 pounds. As heretofore stated, the tap line has practically no outside traffic. During the year covered by the record it moved 260,000 tons of logs for the proprietary company, and 75,848 tons, or about 3,000 carloads, of lumber.

The tap line makes annual reports to the Commission. Its capital stock amounts to $100,000, of which $75,000 was issued as a stock dividend. No cash dividends have been paid, but large sums have been taken from earnings to extend or improve the property. There was apparently a surplus on June 30, 1910, of about $80,000, against which must be balanced an indebtedness of nearly $20,000 due on open account to the lumber company.

We find on the facts disclosed that the Louisiana Railway, in the movement of the logs and lumber of the proprietary company, is a plant facility, and comes within the group of cases embraced in the original report herein. The mills at Selma are within 300 feet of the Iron Mountain; and for the reasons stated in the original report we can not recognize the propriety of any allowance for the movement of cars between the mill and the Iron Mountain tracks, although performed by the lumber company itself. Our view is, however, that for the movement of lumber from the mill to the Louisiana & Arkansas, a distance of about 2¼ miles, that company may make an allowance of a reasonable amount under section 15 of the act to the lumber company.

RED RIVER & GULF RAILROAD.

The Red River & Gulf Railroad Company was incorporated in April, 1905, and its capital stock, amounting to $101,000, was delivered to the Crowell & Spencer Lumber Company and distributed by the latter as a dividend to its stockholders. The lumber company constructed the track and deeded the property to the railroad corporation. The two companies are, and have been from their inception, identical in interest, and they have the same officers.

The tap line connects with the Iron Mountain at Long Leaf, La., and with the Rock Island, Texas & Pacific and Southern Pacific at LeCompte, the track between those points being about 13 miles in length. The timber has all been cut away along the main line; but the lumber company has an unincorporated track about 4 miles in length, connecting with the tap line and running into the

standing timber. The equipment of the tap line consists of 1 locomotive and combination passenger and freight car, and 3 flat cars. The lumber company itself owns and operates 3 locomotives and about 50 logging cars.

The mill of the lumber company is at Long Leaf, within a quarter of a mile of the tracks of the Iron Mountain. The lumber company loads the logs on its cars in the woods, and with its engines hauls them over the unincorporated tracks and thence over the incorporated tap line to the mill under a trackage privilege, for which it pays the tap line 25 cents per 1,000 feet, log scale. In other words, the logs are moved to the mill precisely in the manner that they were before the incorporation of the tap line, with the exception that the lumber company goes through the form of paying a trackage charge. Before the incorporation practically all the lumber moved over the Iron Mountain and no divisions were paid. But at the time of the hearing the bulk of the lumber moved over the tap line to the Rock Island, a distance of over 12 miles, the divisions paid by that company ranging from 2½ cents to 4½ cents per 100 pounds. The allowance of the Iron Mountain is uniformly 3 cents, while the Southern Pacific pays 3 and 4 cents per 100 pounds. The Texas & Pacific grants no divisions.

There is an independent mill on the tap line about 5 miles from LeCompte, with a capacity of about 40,000 feet per day. It hauls its logs to the mill by wagon. The lumber traffic of the tap line for the year 1910 amounted to 37,820 tons, with 1,363 tons of other freight. The revenue from the freight was $29,576.56, in addition to which the lumber company paid $5.191.36 for trackage rights for its log trains, and the Rock Island paid $6,666.75 for the privilege of running trains loaded with gravel over a portion of the tap line. The Red River & Gulf runs one train daily in each direction, on which passengers are carried; and its revenues from passengers amounted to $1,213.40 for the year 1910. These figures are taken from the annual reports to the Commission, which show an accumulated surplus on June 30, 1910, of $6,865.74, after the payment of a 40 per cent dividend during that year, amounting to $40,400. In the year 1907 it paid a 15 per cent dividend, with 40 per cent in 1908, and 20 per cent in 1909, making a total of $116,150 distributed in four years to its stockholders, on a capitalization of $101,000.

The allowances paid here are clearly excessive and amount to a rebate to the lumber company. The allowance by the Iron Mountain to the tap line for switching the product of the mill to its rails may not lawfully exceed $2 a car; and we fix the division out of the rates that may lawfully be made by the Rock Island and other trunk lines on the products of the mill of the controlling company at Long Leaf at 2 cents per 100 pounds as a maximum.

ZWOLLE & EASTERN RAILWAY.

In the year 1899 the Sabine Lumber Company built a sawmill for the manufacture of yellow-pine lumber at Zwolle, La., within one-half mile of the tracks of the Kansas City Southern, and a planing mill immediately on those tracks. At the same time, and for the purpose of bringing the logs to its mill, the lumber company constructed several miles of track which it transferred in 1904 to a corporation then organized by it and known as the Zwolle & Eastern Railway Company. The capital stock of the new corporation, amounting to $20,000, was taken in part exchange for the track and equipment, and the balance of its value, amounting to $75,000, has since been paid for out of the earnings of the tap line. The stockholders of the lumber company own practically the entire capital stock of the tap line; and the two companies are not only identical in interest, but have the same officers and several joint employees.

The main track of the Zwolle & Eastern is 14 miles in length and extends in a southwesterly direction from Zwolle to a point known as Blue Lake. There are about 4 miles of spurs and sidetrack. The equipment consists of 3 locomotives, 1 combination passenger and baggage car, a box car, and about 60 logging cars. There are no station structures, although there are said to be several small towns or settlements along the line. Blue Lake is a logging camp. The only independent industry on the line is a small hardwood mill at a point known as Gibson, about 1 mile from the junction with the Kansas City Southern.

The logs are loaded on the cars by employees of the tap line and are hauled by it over the logging spurs and thence over its main line to the mill, a charge of $1.75 per 1,000 feet, log scale, being debited against the lumber company for the services on the logging spurs. For hauling logs over the main track from Blue Lake to Gibson the tap line charges the hardwood mill $2 per 1,000 feet, log scale. The tap line switches shipments of lumber from the sawmill to the trunk line, a distance of about one-half mile; but nearly 90 per cent of the shipments of the proprietary company are dressed lumber, which is taken by the trunk line directly from the loading track. The lumber shipments of the hardwood mill at Gibson are moved by the tap line a distance of 1 mile to the Kansas City Southern. The divisions allowed by the trunk line are from one-half cent to 4 cents per 100 pounds, averaging about 2 cents.

The statement made on the record is that the passenger revenue of the tap line amounts to $60 per month, and that there are two mixed trains moving daily in each direction on which passengers are carried. The annual reports to the Commission do not bear out this claim, however, for the fiscal year 1911, the revenue being shown

thereon as $385.15, with no revenues from passenger traffic for the preceding fiscal year. The volume of forest products exceeded 110,000 tons for the year 1910, while the inbound and outbound movements of miscellaneous material and supplies aggregated only 510 tons. The tap line has been operated at a substantial profit, its accumulated surplus on June 30, 1910, amounting to $114,516.67, the major portion of which has been utilized in the payment of its indebtedness of $75,000 to the lumber company, of which mention has already been made.

The Kansas City Southern itself removes the dressed lumber from the planing mill and we should regard any allowance on such traffic either to the tap line or to the lumber company as clearly unlawful. While about 10 per cent of the shipments are rough lumber, which is actually switched by the tap line for a distance of nearly one-half mile, we infer that the loading track of the sawmill is within a very much less distance of the rails of the Kansas City Southern, and that if that company cared to remove the cars from the sawmill it could do so with a switching movement of less than 1,000 feet. If this understanding is not correct, under the principle stated in the original report, the lumber company may have an allowance from the Kansas City Southern under section 15 for switching the rough lumber to the trunk line.

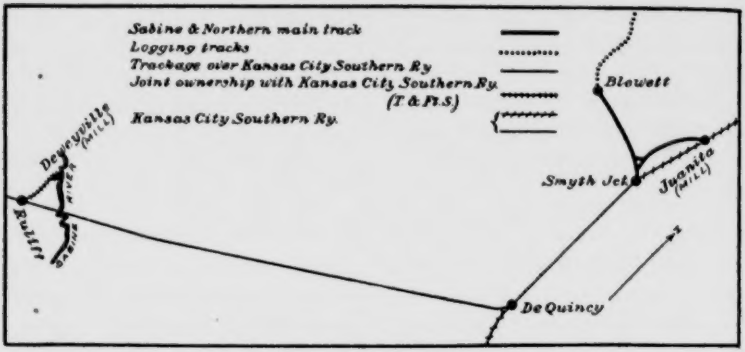
SABINE & NORTHERN RAILROAD.

The Sabine & Northern Railroad Company is controlled, through the ownership of its entire capital stock, by a lumber company known as the Sabine Tram Company, which has a mill at Juanita, La., and another at Deweyville, Tex. The lumber company has some 23,000 acres of timberland in Louisiana which is reached by the tap line, and a tract of approximately 60,000 acres in Texas. The mill at Deweyville has been in operation since 1899, but the mill at Juanita was built more recently.

The Sabine & Northern connects with the Kansas City Southern at Smyth Junction and extends westward for about 5 miles to a camp or logging town known as Blewett and having a population of about 500. From Juanita Junction, which is about 1 mile west of Smyth Junction, a track runs northward for a distance of 3½ miles parallel to and joining the Kansas City Southern at Juanita. These tracks are laid with 35 and 50 pound steel rails, and the right of way is apparently owned by the tap line.

The tap line enjoys trackage rights over the Kansas City Southern from Smyth Junction southward for 8 miles to De Quincey, and westward about 21 miles to Ruliff, on the west bank of the Sabine River in the state of Texas. From Ruliff it operates over a track 1½ miles long owned jointly by the Texarkana & Fort Smith, a part of

the Kansas City Southern system, and the Sabine Tram Company, to the mill at Deweyville. It is of interest to observe that the trackage rights in question originated in a contract entered into between the Kansas City Southern and the Sabine Tram Company, before the opening of the mill at Juanita and the building of the tracks into that point; that this contract was subsequently assigned to the tap line when organized; and that it is limited to the movement by the tap line over the Kansas City Southern of trainloads of logs belonging to the Sabine Tram Company. The joint track from Ruliff to Deweyville was laid in 1899 and is used by the Sabine & Northern simply for the movement of logs to the lumber company's mill at that point; the Texarkana & Fort Smith apparently furnishes a general freight service for Deweyville, a town of 1,500 inhabitants. The right of way for the joint track was furnished by the lumber com-



pany, which did the grading and furnished the ties, while the Texarkana & Fort Smith supplied and laid the steel.

The tap line was incorporated in February, 1906, for the purpose, as is admitted of record, of legalizing divisions from the Kansas City Southern. Its equipment consists of one locomotive, one flat car, and a caboose, together with a second locomotive and 70 log cars which it rents from the lumber company. The locomotives have proper safety appliances.

The lumber company has unincorporated logging spurs aggregating in length about 16 miles and extending into the timber from the terminus of the incorporated tap line at the logging camp known as Blewett. The lumber company operates these spurs and with its own power moves the logs to Blewett. They are then taken by the locomotive of the tap line to the mill at Juanita, no charge being made against the lumber company for this service. The lumber produced at the Juanita mill is loaded directly on the tracks of the Kansas City Southern, which switches the cars to and from the

mill. The tap line also takes carloads of logs at Blewett and hauls them over its own rails to Smyth Junction, and thence, under the trackage rights heretofore referred to, over the Kansas City Southern to Ruliff and the joint track to Deweyville. It pays the Kansas City Southern $1.75 per car for the trackage right and makes a charge against the lumber company of $5.25 per car for the entire movement of the logs from Blewett to Deweyville. This charge, however, is subsequently refunded by the tap line on four carloads of logs for each carload of lumber shipped out, the rates established by the Kansas City Southern and participated in by the tap line being on the milling-in-transit plan. The lumber produced at the Deweyville mill is moved by the Texarkana & Fort Smith from the mill. It will be seen therefore that in the case of each of the two mills the tap line hauls the logs but does not haul the lumber. It receives an allowance from the Kansas City Southern of from three-fourths cent to 3 cents per 100 pounds, except to destinations in the state of Texas, and to certain other territories where no division is allowed. It is claimed that the bulk of the business goes to points where the Sabine & Northern has no allowances, but the proof is not definite on this point.

The traffic of the Sabine & Northern consists almost entirely of the logs of the Sabine Tram Company and supplies for its logging camp and employees. Its whole tonnage for the year 1910, exclusive of forest products, was 1,435 tons, of which 235 tons was coal and 279 tons iron and steel. All of this freight was inbound, nothing being moved out except logs. No charge is made for such few passengers as are carried, and it has no special facilities for the handling of traffic for the public if any were offered.

It files annual reports with the Commission, from which it appears that the operating expenses shown on its books are slightly in excess of the revenues.

The Kansas City Southern or its subsidiary line, the Texarkana & Fort Smith, takes the manufactured lumber from both of the mills of the proprietary company. Upon the facts of the case, therefore, no allowance may lawfully be made out of the rates on the traffic of these mills. The trackage right acquired over the Kansas City Southern crosses the state line; although assigned by the lumber company to its tap line, the agreement limits the right to the logs of the controlling lumber company. This we regard as of doubtful validity.

TREMONT & GULF RAILWAY.

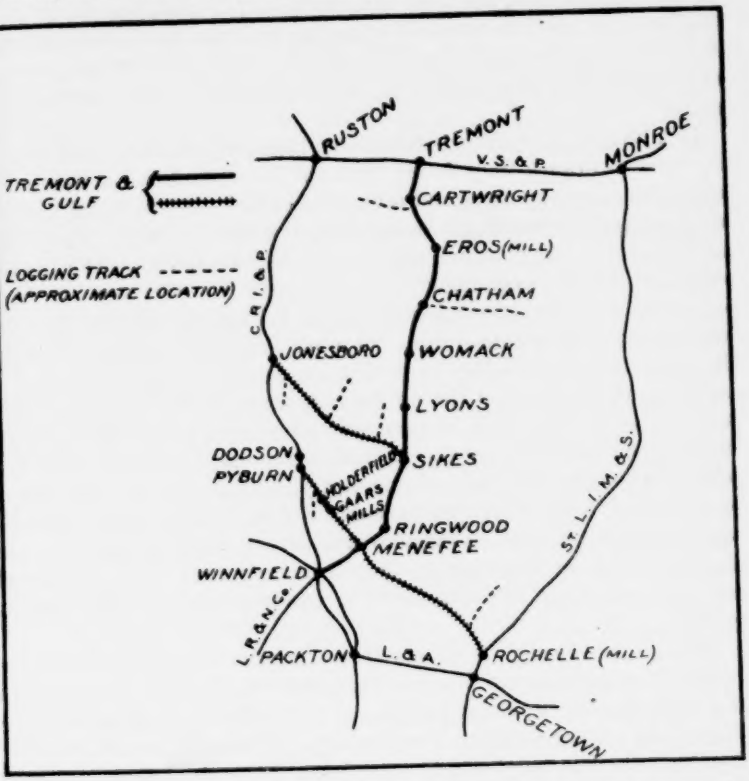
The main line of the Tremont & Gulf Railway extends from a connection with the Vicksburg, Shreveport & Pacific at Tremont, La., southward for a distance of practically 50 miles to Winnfield, La., a town of 4,000 people, with two banks, a number of

stores, and several mills and commercial enterprises, where it connects with the Rock Island, Louisiana & Arkansas, and Louisiana Railway & Navigation Company. It is laid with 60-pound steel rails, with a maximum grade of 1 per cent and a maximum curvature of 4°; its bridges are substantial; it is equipped with water tanks, coal chutes; and has telephone and telegraph lines for the dispatching of its trains. It has 6 agency stations, with 4 substantial depot buildings, costing from $200 to $7,000 each; and 30 section houses, 3 scales, a freight warehouse, etc. It also has 1 passenger and 3 freight locomotives; 3 combination coaches and passenger cars; 148 box cars; 50 flat cars, a pile driver, and cabooses; and its equipment has the necessary safety appliances. There are 18 or 20 men employed in its train crews and it has over 100 section or track men. It also has a full set of general officers, including a vice president, general superintendent, and general freight and passenger agent. It has a daily passenger train, consisting of a combination baggage, mail, and express car, and passenger coach, which is scheduled to make the 50 miles from Winnfield to Tremont in a little over two hours. It also operates a freight service as the traffic requires. It reports a passenger revenue of $17,000 for the year 1910. In addition to the town of Winnfield, which is its southern terminus, there are seven or eight small settlements along its line to and from which some traffic is hauled for the public and at which are located several small independent mills. The country is not well developed agriculturally and there are only occasional shipments of cotton, peanuts, and cattle for the farmers. Out of a total freight movement of 191,374 tons during the fiscal year 1910, 167,270 tons were forest products, of which the major portion was supplied by the mills of the Tremont Lumber Company. It is stated that the shipments of that company average not less than 450 carloads per month, while the independent mills ship about 95 carloads. For the tap line itself the claim is made that more than 72.6 per cent of its revenue is earned on lumber and merchandise handled for the account of the Tremont Lumber Company, while as much as 27.4 per cent is for other interests.

The Tremont & Gulf Railway also owns and operates a branch line, crossing its main line at a point about 5 miles north of Winnfield, connecting with the Rock Island at Pyburn and running for a distance of about 29 miles eastward to a connection with the Iron Moutain known as Rochelle. It also operates a branch leased from the Tremont Lumber Company and extending from a junction with the Rock Island at Jonesboro about 20 miles eastward to a connection with the tap line at Sykes. There are doubtless logging camps along these branch lines; there is a single small independent sawmill on

ch branch; but there are neither towns nor settlements; and apparently these branch lines are used primarily for the benefit of the remont Lumber Company.

The capital stock of the Tremont & Gulf Railway Company, of hich $2,000,000 has been issued, is held by the Southern Investment ompany, which also owns the stock of the Tremont Lumber Company, and other lumber industries elsewhere. We find, therefore, an lentity of interest between the tap line and the Tremont Lumber



Company, which has vast timber holdings along the tap line, amounting at the date of the hearing to approximately 235,000 acres. The lumber company also has three large mills at present in operation and two that have ceased running.

The principal mill is located a few hundred feet from the Iron Mountain right of way at Rochelle, on one of the branch lines heretofore mentioned, and about 40 per cent of the total manufactured output of the Tremont Lumber Company is shipped therefrom.

The balance of the output is about evenly divided between its mill at Eros, which is on the main road of the tap line, about 11 miles south of Tremont, and the mill at Jonesboro, from which there is a switching movement to the Rock Island of about 3,000 feet over the branch which the tap line operates under lease from the lumber company. The lumber from each of these mills is not routed over the line of the nearest trunk-line connection, but is distributed among the various trunk lines, the Rock Island getting about 35 per cent of the whole traffic, the Iron Mountain 20 per cent, the V., S. & P. 33⅓ per cent, and the remainder moving over the Louisiana Railway & Navigation Company from Winnfield. It is said that the average haul over the Tremont & Gulf on the finished lumber is about 26 miles.

In addition to the incorporated line, including, as heretofore stated, 20 miles of branch lines leased from the Tremont Lumber Company, the latter company owns and operates upward of 50 miles of logging road and spurs reaching into its extensive timber tracts. They connect with the incorporated tap line at various points. The lumber company has trackage rights over the railroad, under and by virtue of which it moves logging trains from its various logging spurs in the timber to its several mills. In other words, the incorporated tap line does not haul the logs of the lumber company to its mills; and it made no charge against the lumber company for the trackage rights until after the hearing. It now gets a trackage toll of 35 cents per train-mile. It seems that the understanding had previously been that the incorporated tap line was sufficiently remunerated by its divisions on the manufactured lumber to warrant it in giving away the trackage privilege. In the operation of the private logging spurs and the movement of its log trains over the incorporated line, the lumber company uses 9 or 10 locomotives; it also has more than 100 logging cars.

For the movements of lumber from the various mills to the trunk-line connections the tap line receives an allowance or division of from 2.4 cents to 6 cents per 100 pounds. The lumber is billed as originating at the respective mills, there being no milling-in-transit arrangement, as the logs are brought into the mills by the lumber company itself. An allowance of 6 cents for its average haul of 25 miles yields a revenue of nearly 5 cents a ton-mile. The empty car is furnished by the connecting trunk line.

In spite of the comparative completeness of its equipment and organization it is perfectly apparent that this tap line is a facility of the Tremont Lumber Company. That is the way it has been used. The lumber company freely used its entire trackage to haul its logs without cost until after the hearing, and now enjoys trackage rights

at a low toll per train-mile over its total mileage. This we regard as unlawful. We do not understand upon what principle a shipper may use the rails of a line that calls itself a common carrier either free of charge or on terms that are not published and offered to other shippers.

On the brief filed in behalf of this tap line it is said that if it be contended that the tap line is not entitled to a division out of the rate on shipments delivered to the Iron Mountain from the Rochelle mill or on shipments delivered to the Rock Island at Pyburn from the mill at that point—

> it must be remembered that the strategic position of this company is such that five railway lines compete for its traffic. There is no legal reason why a railway line should not sell its traffic to that competitor which gives it the best division. The through rates remaining unchanged, the public is not interested.

This view, however, overlooks every essential element in the controversy. The principal mill of the lumber company is at Rochelle and is within a thousand feet of the Iron Mountain. The mill at Jonesboro is about 3,000 feet from the Rock Island, and the switch track reaching it is the property of the lumber company, the tap line using it under lease. Under these circumstances divisions out of the rate, amounting in some cases to 6 cents per 100 pounds, on the products of those mills when shipped out over those connections are unlawful rebates. This is less true only in degree of the divisions out of the rate on the products of the other mills. Nothing should be paid by the Iron Mountain on the products of the Rochelle mill or by the Rock Island on the products of the lumber company's mill at Jonesboro in excess of a reasonable switching charge, which we fix at $1.50 a car. On the product of the mill at Eros routed through Tremont a division of 1½ cents may be made out of the rate. On the traffic of that mill moved through Sykes to junctions with other trunk lines, a division out of the rate of 2 cents per 100 pounds may be made. On the products of the mill at Jonesboro moved through Sykes to Rochelle or to Tremont or delivered to the Louisiana Railway & Navigation Company at Winnfield, a division of 2 cents may be paid out of the rate. On the products of the mill at Rochelle, delivered to the Rock Island at Winnfield, Pyburn, or Jonesboro, or to the Vicksburg, Shreveport & Pacific at Tremont, a like division may be made out of the rate.

NACOGDOCHES & SOUTHEASTERN RAILROAD.

The Nacogdoches & Southeastern Railroad is one of the tap lines of the Frost-Johnson Lumber Company, having been acquired by that company in 1910, when it purchased the mill of the Hayward

Lumber Company, at Hayward, Tex. The tap line was incorporated in 1904 and has capital outstanding to the amount of $245,400, which is in the hands of the stockholders of the Frost-Johnson Company. The track connects with the Texas & New Orleans Railroad at Hayward and extends through the timber to a point known in the record as Woden. Since the hearing an additional mile of the track has been put in operation westbound, from Hayward to Nacogdoches, and connection thus effected with the Houston East & West Texas. The entire length of the track operated, including sidings, is about 17 miles. It has 2 locomotives, 1 combination passenger car, 8 freight cars, and 54 logging cars. In addition to the tracks described, the lumber company has 15 miles of unincorporated logging spurs, on which it operates 1 locomotive that it owns and 1 leased from the tap line.

The tap line runs one train daily in each direction and carries a few passengers, its revenue from that source during 1910 being $322. The logs are hauled to the mill by the lumber company, which enjoys trackage rights for that purpose over the tap line, a yearly rental of $1,000 or $1,500 being paid to the tap line. The tap line switches the cars for lumber shipments for a distance of about one-quarter of a mile to the Texas & New Orleans or about one and a quarter miles to the Houston East & West Texas. There is one other small sawmill on the line the lumber traffic of which is hauled a distance of about 10 miles by the tap line, but more than 93 per cent of the lumber traffic for the year 1910 was handled for the Frost-Johnson Company, which supplied 88 per cent of the entire tonnage of the tap line, in addition to using the tracks for its own logging trains.

No allowance may be made out of the rate by the Texas & New Orleans on the products of the mill of the controlling company, which, as stated, is within a few hundred feet of its rails. For switching the products of the mill to its rails at Nacogdoches the Houston East & West Texas may allow the tap line out of the rate a reasonable switching charge, which we fix at $1.50 a car.

TEXAS SOUTHEASTERN RAILROAD.

The Texas Southeastern Railroad was originally constructed by the Southern Pine Lumber Company as a private logging road, but was incorporated in 1900 with a capital stock of $250,000, of which $238,900 has been issued and is owned by the stockholders of the lumber company. The tap line owes the lumber company $365,000.

The mills of the lumber company are at Diboll, on the track of the tap line, some 3,000 feet or more from the line of the Houston East & West Texas. The tap line runs northward from that point

for a distance of 18 miles to Neff, where a connection is had with the Eastern Texas. There is also a track nearly 10 miles in length branching out from the so-called main line and terminating at Lufkin, a point on the Houston East & West Texas and the Cotton Belt. At Vair the Texas Southeastern meets the Groveton, Lufkin & Northern, another tap line that is a party to this record, which enjoys trackage rights over the Texas Southeastern to Lufkin. For this trackage right the Texas Southeastern receives from the Groveton, Lufkin & Northern an annual rental of $450 per mile, together with a proportion of the maintenance expense. The lumber company has several miles of logging tracks connecting with the incorporated road at Vair, but these spurs are operated for it by the tap line.

The Texas Southeastern has 4 locomotives, 1 caboose, 1 combination passenger and baggage car, 10 box cars, and 84 freight cars. Its regular service consists of one "mixed train" moving daily in each direction, on which passengers are carried.

The lumber company loads the logs and assembles the loaded cars on the unincorporated spurs; and from the assembling point they are moved by the tap line to the mill, a charge of $2.50 being made where the movement is less than 10 miles, and $3 per car where it is more than 10 and less than 20 miles. On lumber from the mill routed over the Houston East & West Texas through Diboll, the tap line performs a switching movement of from 3,000 to 8,000 feet. But 95 per cent of the lumber is said to move out through Lufkin, entailing a haul by the tap line of about 17 miles. Most of the traffic is delivered at Lufkin to the Cotton Belt, but about 15 per cent is taken at Lufkin by the Houston East & West Texas. The divisions accorded by the last-named trunk line are on a percentage basis and average about 3 cents per 100 pounds. But on traffic moving for Cairo, for example, the allowance for the haul of 17 miles is 4 cents per 100 pounds, while the trunk lines for their haul of 640 miles retain 12 cents. The Cotton Belt allows from 2 to 4 cents per 100 pounds.

During the calendar year 1910 the tap line moved 58,458 tons of lumber and ties, most of which was supplied by the proprietary company. It also handled 2,200 tons of miscellaneous freight, of which about 50 per cent was supplied by the controlling interests. Its annual report for the fiscal year ending June 30, 1910, shows a total revenue of $98.543.91, of which $2,722.01 was receipts from passenger service. While the tap line keeps separate accounts, the statement made of record is that the lumber company acts as its financial agent and supplies all the funds needed. An accumulated surplus of $58,538.88 was shown on the books on June 30, 1910, but this had been expended in betterments.

The lumber rates of the Houston East & West Texas must be held to extend from the mill, which as heretofore stated is about 3,000 feet from its line, and it may pay the tap line a switching charge of $2 per car for handling the products of the mill to its rails; when the products move out over the tap line to other trunk-line connections they may allow the tap line a division out of the rate not exceeding 2 cents per 100 pounds.

TIMPSON & HENDERSON RAILWAY.

The mill of the Ragley Lumber Company was built in 1900 at Ragley, Tex., and about 10 miles of track laid to a connection with the Houston East & West Texas and the Texas & Gulf railways at Timpson. The following year the track was incorporated as the Timpson & Northwestern Railway Company. The lumber company retained the ownership of, or constructed, about 12 miles of additional track extending northwest from Ragley into the timber. In August, 1909, a new corporation was formed, known as the Timpson & Henderson Railway Company, about 60 per cent of the stock of which was issued to and is held by the stockholders of the Ragley Lumber Company; about 40 per cent was taken by citizens of Henderson. The new corporation not only took over the track of its predecessor, but also the 12 miles of logging road from Ragley to Pine Hill. The track was extended about 12 miles into Henderson, so that the tap line as in operation at the time of the hearing was 34 miles in length, beginning at Timpson and terminating at Henderson, where a connection is made with the International & Great Northern. In addition to the mill of the Ragley Lumber Company there are two small mills near Pine Hill, and a planing mill at a point known as Long Branch. There are also four small towns or settlements, each having one or more stores, and two of them having banks. Timpson and Henderson, the terminal points, each has a population of 3,000 or 4,000.

In addition to the capital stock, amounting to $250,000, mention should be made of an indebtedness by the tap line to its president, who is also president of the Ragley Lumber Company, of nearly $50,000. The two companies have the same officers.

In addition to the tracks already referred to the lumber company at the time of the hearing had unincorporated logging tracks connecting with the tap line near Pine Hill and extending into the timber. It hauled the logs with its own engines over this track to the incorporated line, and thence under a trackage right for which it paid 25 cents per train-mile, to the mill. The tap line moved the lumber from the mill to the trunk lines, a distance of 10 miles in the case of shipments routed through Timpson, or a distance of 25 miles

on traffic moving through Henderson and over the International & Great Northern. It receives a division of from 3 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 3 cents per 100 pounds from the International & Great Northern. The Texas & Gulf is a part of the Santa Fe system, and has made no allowances to this tap line since 1908; it formerly paid 1½ cents per 100 pounds. The statement made on the hearing was that the timber holdings of the lumber company would be entirely cut out within another year. We are now advised that the lumbering operations of this company will be brought to a conclusion within 60 days. We are also advised that one or two other new independent mills have recently been erected in proximity to this tap line, in which neither the Ragley Lumber Company nor any of its stockholders has any interest.

There are also joint class rates with the trunk lines and some commodity rates, out of which the tap line receives, for example, a division of 23 cents per 100 pounds on cotton destined to Houston and Galveston when moving through Timpson, and 20 cents through Henderson. In the calendar year 1910 it handled 1,029 carloads of lumber, of which 506 carloads belonged to the controlling lumber company. It also handled 15,274 tons of miscellaneous freight, consisting chiefly of grain and grain products, fertilizer, and cotton. It does not file tariffs with the Commission, but is a party to and concurs in tariffs issued by the trunk lines naming joint rates to and from points on its track. It runs one "mixed" train daily in each direction on a regular schedule and its receipts for passenger traffic for the calendar year 1910 are said to approximate $11,000.

The Timpson & Henderson makes annual reports and claims to keep its accounts in accordance with the rulings of the Commission.

In this case we hold that the connecting carriers may properly allow a division out of the rate on the products of the mill not exceeding, however, 2 cents per 100 pounds.

SHREVEPORT, HOUSTON & GULF RAILROAD.

The Shreveport, Houston & Gulf Railroad Company was incorporated in 1906, and its stock, amounting to $50,000, is owned by the stockholders of the Carter-Kelly Lumber Company, to which it is also indebted in the sum of $30,000. The two companies are identical in interest and have the same officers. The tap line runs for a distance of nine miles from a connection with the Texas & New Orleans and Cotton Belt at Prestridge, Tex., to the mill at Manning. It also operates for a distance of one and three-fourths of a mile under trackage rights over the Cotton Belt. The equipment consists of 4 locomotives, 1 passenger coach, 1 combination mail, bag-

gage, and express car, and 32 freight cars. But 3 of the locomotives and 31 flat cars are leased to the lumber company and used by it for the operation of its logging tracks, which aggregate 7 miles in length and extend from the mill into the timber.

The tap line runs two lumber trains daily in each direction, on which passengers, mail, and express matter are handled. Its passenger revenue for the year 1910 was $2,978.20; its revenue on express matter was $146.87, and on mail transported, $384.75. Its freight revenues for the same year amounted to $21,955.02. Although it participates in joint class rates less than 3 per cent of its freight traffic is supplied by others than the proprietary company. The lumber company itself moves the logs to the mill; and the tap line hauls the lumber from the mill to the trunk lines, receiving from the Cotton Belt a uniform division of 4 cents per 100 pounds and from the Texas & New Orleans 3 and 4 cents per 100 pounds.

The annual reports to the Commission indicate that the tap line had on June 30, 1910, a surplus of $21,541.67.

Out of the lumber rates the trunk lines may pay to this tap line on the products of the mill of the controlling company at Manning a division of 1½ cents per 100 pounds.

GROVETON, LUFKIN & NORTHERN RAILWAY.

The mills of the Trinity County Lumber Company are at Groveton, Tex., a point on the Missouri, Kansas & Texas Railway, and for many years its logs were brought in over a narrow-gauge track constructed for that purpose and running from the mill southward to the timber. The record indicates that the facilities and service of the trunk line were not entirely satisfactory, and to secure another outlet for its products the lumber company therefore built a standard-guage road running northward to Vair, Tex., where it joins the Texas Southeastern, another tap line. When completed, the tap line was turned over to a corporation organized in 1908, under the Texas laws, known as the Groveton, Lufkin & Northern Railway Company, capital stock to the amount of $50,000 and bonds for $437,000 being issued to the lumber company for the completed road. From Vair to Lufkin the tap line enjoys trackage rights over the Texas Southeastern and as a result is enabled to reach the Houston East & West Texas and the Cotton Belt, which now receive a substantial portion of the output of the mills. The tap line has 1 locomotive, 1 passenger and 1 combination car, 8 box cars, and 21 flat cars.

The lumber company has about 20 miles of unincorporated logging tracks connecting with the tap line about 1½ miles from Groveton. The lumber company hauls the logs over these tracks and over the

tap line to the mill, a distance of about a mile. When lumber is shipped out over the Missouri, Kansas & Texas the tap line switches the cars between the mill and the interchange track, a distance of about 1 mile. The tonnage delivered to the other trunk lines is hauled by the Groveton, Lufkin & Northern about 20 miles to Vair, the terminal of its own rails, and thence over the tracks of the Texas Southeastern a distance of about 13 miles to Lufkin. It receives divisions of from 1 to 5 cents per 100 pounds out of the joint rates on lumber.

The Groveton, Lufkin & Northern claims to have a large outside tonnage. It operates a mixed train daily in each direction between Groveton and Lufkin, and its passenger revenues for the fiscal year 1910 exceeded $12,000, in addition to which its income from mail and express was about $1,200. During that year its total freight revenue was $43,075.72, of which about $33,000 accrued on traffic furnished by the Trinity County Lumber Company. It hauled during that period 8,175 tons of freight other than lumber, of which 2,422 tons was agricultural products and merchandise, outbound. The volume of its lumber movement for the same period exceeded 52,000 tons.

In this case we find that, on the products of the mill of the controlling company near Groveton, the Missouri, Kansas & Texas may lawfully pay the tap line a switching charge of $2 per car, and that the other trunk lines may pay divisions out of the rate not exceeding 2 cents per 100 pounds.

MOSCOW, CAMDEN & SAN AUGUSTINE RAILWAY.

The Moscow, Camden & San Augustine Railway Company was incorporated in 1898, and its capital stock, of which $50,000 has been issued, is owned by W. T. Carter & Brother, a copartnership, the members of which are the officers of the railroad company. The tap line extends from a connection with the Houston East & West Texas at Moscow, Tex., in an easterly direction for 7 miles to the mill of the lumber company at Camden. From that point there is an unincorporated logging track 12 miles in length running to the timber. The tap line has 1 locomotive, 1 passenger car, and 16 freight cars.

The lumber company hauls the logs to the mill. The tap line hauls the lumber from the mill to the trunk line at Moscow, a distance, as heretofore stated, of 7 miles, receiving a division out of the joint rates of from 1 to 4 cents per 100 pounds. The tap line also participates in joint rates with the trunk line on class freight and on grain, the divisions varying from 2 to 12 cents per 100 pounds. There are said to be 1,500 people living within a few miles of Camden who are not connected with the lumber company but use the facilities of the tap line. Camden is a sawmill town with a company store or commissary. The only independent mill served by the line is a shingle

mill which ships three or four carloads a year. About 95 per cent of the traffic of the tap line is supplied by the proprietary company. The freight other than lumber handled by the tap line during the year 1910 amounted to 1,305 tons, but a substantial portion of this freight was consigned to the commissary of the lumber company. A train of four or five freight cars and a coach is run daily in each direction on which passengers are carried, the revenue from that traffic during the year 1910 amounting to less than $1,000. The tap line has no station buildings, but it is explained that passengers wait for the train in the company store at Camden. Apparently the only facility available for shippers is a loading platform for cotton at Camden.

In this case we are of the opinion that an allowance out of the rate of 1½ cents per 100 pounds may lawfully be paid to the Moscow, Camden & San Augustine on the products of the mill of the proprietary company.

TRINITY VALLEY & NORTHERN RAILWAY.

The Trinity Valley & Northern Railway Company was incorporated in 1906, with a capital stock of $25,000, which is held by the stockholders of the Dayton Lumber Company. The tap line is indebted to that company in a sum exceeding $60,000, upon which interest, at the rate of 8 per cent, is unpaid.

The tap line extends from a connection with the Texas & New Orleans Railroad at Dayton, Tex., in a northeasterly direction to Fouts, a distance of 10 miles. There is also an extension of about 8 miles from Fouts which was not yet in operation by the tap line at the time of the hearing, but over which the lumber company was running logging trains. The tap line connects at Fullerton with the Beaumont, Sour Lake & Western, a part of the Frisco system. The equipment consists of 1 locomotive, 1 passenger coach, 7 box and 8 flat cars. Two mixed freight and passenger trains move daily in each direction. The passenger, mail, and express revenue for the year 1910 was $2,642.70, and of its freight revenue about 10 per cent accrued on traffic supplied by others than the proprietary company.

The mill is at Ladd, about 1 mile from the Texas & New Orleans and nearly 5 miles from the Frisco. The lumber company hauls the logs to the mill over unincorporated tracks that are laid and maintained for it and at its expense by the tap line and over a portion of the incorporated line under a trackage right for which it pays the tap line $1 per train-mile. The tap line moves the carloads of lumber from the mill to the Texas & New Orleans, a distance of less than a mile, or 5 miles to the Frisco. Divisions are allowed by both trunk lines, the average being about 2½ cents per 100 pounds. This was so stated on the hearing.

The lumber company moved to its mill during the year 1910 about 32,000 tons of logs and shipped out about 20,000 tons of lumber. About 8,000 tons of ties, stave bolts, and wood were handled for outside shippers during the same period, as is claimed. There are no other mills on the tap line, although there are one or two tie camps and a few farms.

The tap line makes annual reports to the Commission, from which it appears that on June 30, 1910, there was an accumulated surplus of $4,886.08.

In this case we think that, with respect to the products of the mill of the lumber company, any division out of the rate to the tap line in excess of 1 cent per 100 pounds would be unlawful. We fix that as the maximum.

TRINITY VALLEY SOUTHERN RAILROAD.

In 1898 the Columbia Lumber Company built 6 miles of track from its mill at Oakhurst, Tex., westward to a connection with the International & Great Northern Railroad at Dodge, Tex. This track was known as the Trinity Valley Railroad until 1901, when the Trinity Valley Southern Railroad Company was incorporated. At that time the Palmetto Lumber Company, having some timber interests in the vicinity, had a sawmill at a point known as Palmetto, within 2 miles of the tap line with which it was connected by a private track. In the year 1909 A. C. Ford, president of the Palmetto Lumber Company, and W. S. Gibbs, a banker at Huntsville, Tex., purchased the timber and mill of the Columbia Lumber Company, together with the railroad property known as the Trinity Valley Southern. Title to the latter was taken by Gibbs, who had no stock in the Palmetto Lumber Company, but held its bonds to the extent of $200,000. It is said that these bonds were liquidated by the Palmetto Lumber Company shortly prior to the hearing in exchange for timber holdings in another part of the state, which it turned over to Gibbs. The mill and timber acquired from the Columbia Lumber Company was taken in the name of the Palmetto Lumber Company. The officers of the Palmetto Lumber Company are officers of the tap line, and the tap line is operated primarily as a facility of the Palmetto Lumber Company. It may be well to add that the record indicates that the lumber company originally purchased its timber holdings from Gibbs. The capital stock, as shown on the annual report to the Commission, is $20,000. The record, however, mentions the capitalization as $200,000.

The mill of the Palmetto Lumber Company is at Oakhurst, a company town with a commissary, 6 miles from the trunk line. The lum-

ber company has unincorporated tracks aggregating in length about 20 miles, connecting with the tap line at various points and extending into the timber. One or more of these tracks run directly from the mill into the timber. The lumber company hauls the logs to the mill with locomotives and cars which it owns and operates. The service performed by the tap line is limited to the movement of lumber, in cars furnished by the trunk line, from the mill to the junction point, Dodge. For this purpose it operates a daily train in each direction, in which there is a combination passenger and baggage car carrying passengers, express matter, and the mails. The tap line has two locomotives, but no freight cars of any description.

The divisions allowed by the trunk line out of the rates on yellow-pine lumber vary from 2 to 5 cents per 100 pounds, being 30 per cent of the total proportion accruing to the International & Great Northern. Out of joint class and commodity rates that are in effect with the trunk line to St. Louis and Kansas City, the tap line receives a division of 10 per cent.

The annual report to the Commission for the year ending June 30, 1910, indicates a movement of 27,288 tons of lumber and forest products, all of which was apparently supplied by the Palmetto Lumber Company. There were 2,964 tons of other freight, of which 210 tons moved outbound, and the remainder came in. Apparently a substantial proportion, if not all, of the inbound tonnage was merchandise and supplies used by the lumber company, its commissary, or its employees. The revenues from passengers for the same year amounted to $1,330, and from mail and express matter, $685.92. There was a small profit from the operation of the road for that year which, added to the surplus from previous years, enabled it to pay a dividend of $2,000 and have a net surplus on June 30, 1910, of $3,311.28.

The officers of the tap line, who are officers also of the lumber company, receive and use free passes over the trunk lines.

We fix 1 cent per 100 pounds as the maximum division that may lawfully be paid out of the rate to this tap line on the products of the mill of the controlling company.

CARO NORTHERN RAILWAY.

The Caro Northern Railway Company was incorporated on September 15, 1906, under the laws of Texas. It is controlled by the stockholders of the Saner-Whitman Lumber Company, through the ownership of practically the entire capital stock, amounting to $100,000. There are no bonds. The president and general manager of the railroad are also officers of the lumber company.

It extends from a connection with the Texas & New Orleans Railroad at Caro, Tex., in a general northerly direction about 18 miles to Mount Enterprise. The equipment consists of 2 locomotives, 1 passenger car, and 2 box cars. The lumber company owns separate equipment, consisting of locomotives and logging cars.

The mill of the lumber company is located at a point called Wydeck, about one-half mile from the junction. There are also a number of sawmills and cotton gins along the line.

The tap line operates one mixed train in each direction daily on regular schedule, and handles passengers, mail, and express. The passenger revenue for the last fiscal year was about $1,700. For the year ending June 30, 1910, the total traffic handled was 1,348 carloads of lumber, of which 897 cars were supplied by the controlling interests and 451 cars by others, and 294 carloads of traffic other than lumber, of which 98 cars were supplied by the controlling interests and 196 cars by others.

The lumber company hauls the logs from the loading point on the logging spurs to the mill under trackage rights over the tap line, for which it pays the tap line $4 per train for the round trip, which amounts to approximately 33⅓ cents per car for the average train of 12 cars. On lumber shipments, the tap line handles the empty and loaded cars between the mill and the junction, a distance of six-tenths of a mile. For outbound shipments of lumber, bills of lading and waybills are issued by the agent of the tap line at Wydeck.

It receives divisions from the Texas & New Orleans on lumber of from three-fourths of a cent to 3 cents on interstate business, and from three-fourths of a cent to 4 cents on state business. On through class rates applying to and from points on the tap line, the tap line receives 12½ per cent of the St. Louis or Missouri River rate, which amounts to from 2 cents to 2½ cents per 100 pounds.

The annual report for the year 1910 shows a total freight revenue of $21,085.31; passenger, $1,538.18; mail, $499.44; express, $458.28; it received from the lumber company for trackage rights, $1,481.50; or a total operating revenue of $25,062.71. The operating expenses were $24,443.55 and the net operating revenue $619.16. The payment of taxes and hire of equipment caused a net corporate loss of $2,702.16, but there was an accumulated surplus from previous operation of $7,601.35, which left a surplus June 30, 1910, of $4,899.19.

The only service performed by this tap line in handling the products of the mill of the controlling company is to switch the lumber from the mill to the trunk line, a distance of one-half mile. The divisions now received by it are altogether excessive. From no point of view may this allowance lawfully exceed a reasonable switching charge, which we think should not exceed a maximum of $2 a car.

BUTLER COUNTY RAILROAD.

The Butler County Railroad Company is owned by the Brooklyn Cooperage Company, while most of the timber land which it reaches is owned by the Great Western Land Company. All are subsidiary corporations of the American Sugar Refining Company, the cooperage company manufacturing chiefly sugar barrels. The railroad company was incorporated in September, 1905, and its capital stock issued and outstanding amounts to $163,500, issued for the tracks and equipment which it then acquired from the cooperage company. It is also indebted to the cooperage company in the sum of $50,000.

The tap line is in two disconnected sections. One connects with the Iron Mountain and the Frisco at a point in or near Poplar Bluff, Mo., known as Linstead, and extends to and into the plant of the cooperage company which is within three-fourths of a mile of the two trunk lines. The other section is the principal track of the tap line and connects with the Iron Mountain at Lowell Junction, about 7½ miles from Poplar Bluff, running thence southward about 7 miles to a point known as Baileys, with a branch about 3 miles in length connecting with the main stem at Rossville. At Baileys a connection is made with the unincorporated tracks of the cooperage company that run through its timber and are used largely in logging operations. Over a considerable portion of this unincorporated track the tap line has a trackage right. It also enjoys the privilege of running its trains over the Iron Mountain from Lowell Junction to Poplar Bluff, for which it pays 65 cents a train-mile for 25 cars. The equipment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and log cars.

The timber is all hardwood and the logs are loaded on the cars by the employees of the cooperage company and hauled by its locomotives to a connection with the track of the tap line. The tap line then hauls the cars over its own rails to Lowell Junction, then over the Iron Mountain to Linstead and over its own track for a fraction of a mile to the mill, where they are unloaded by the cooperage company. A charge of 1 cent to 1½ cents per 100 pounds, amounting approximately to $4 per car, is made by the tap line against the cooperage company for the log movement to the mill, being the regular manufacturing rate under the Missouri distance tariff. The tap line switches the loaded cars from the mill to the tracks of the Frisco or Iron Mountain, a distance in each case of less than 1 mile. It receives from the trunk lines an allowance of from 2 to 5 cents per 100 pounds. The rates from points on the tap line, including the mill at Linstead, are in all cases 2 cents higher than the rates of the trunk lines from Poplar Bluff, excepting to New Orleans and New York,

where the most of the cooperage company's shipments actually move; to those points the Poplar Bluff rates apply from points on the tap line.

The traffic of the Butler County Railroad for the fiscal year ending June 30, 1910, was chiefly forest products, amounting in the aggregate to 184,688 tons, as against 2,475 tons of other freight. Of the first figure, 107,527 tons was logs and cooperage material, furnished by the controlling interests; 77,161 tons of logs, bolts, piles, ties, and lumber were moved for outsiders, but all of the timber came from lands of the Great Western Land Company. The 2,475 tons of miscellaneous freight included 1,195 tons of inbound machinery and coal for the proprietary companies. The passenger revenue for the same year was $4,104.22. The tap line operates three mixed trains in each direction daily between Linstead, where the plant is located, and Melville, a point on the unincorporated track south of Baileys. Two of these trains are said to be used principally for passenger business.

There are several independent industries on the tracks of the Butler County Railroad near Poplar Bluff or Linstead which secure their timber material from the Great Western Land Company, the tap line switching their product to the trunk lines. These industries lease their factory sites from the cooperage company; and the admission appears of record that the leases were made for the purpose of securing the traffic to the tap line so that it would obtain divisions thereon. There are also a few independent producers of ties, handle bolts, etc., that team their logs to the sawmills and ship out their products over the main track of the tap line into Lowell Junction. But such shippers pay either the local rate of the tap line in addition to the charge of the trunk line or pay a through rate that is 2 cents higher than the rate from Poplar Bluff.

This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points.

For its service in moving the products of the cooperage company's mill to the Iron Mountain and to the Frisco, a distance of less than 1 mile, this tap line may lawfully receive out of the rate nothing beyond a reasonable switching charge, which we fix at $1.50 per car.

DEERING SOUTHWESTERN RAILWAY.

The Deering Southwestern Railway Company is owned by the International Harvester Company and is operated in connection with the mill of its subsidiary corporation, the Wisconsin Lumber Company, at Deering, Mo. The officers of the Deering Southwestern are officers of other industrial or terminal lines owned by the Harvester Company. The tap line was incorporated in 1903, and has issued capital stock to the amount of $400,000. There have been one or two amendments to its charter, authorizing the building of extensions.

The Deering Southwestern, as in operation on the date of the hearing, connected with the Frisco at a point known as Deering Junction, and extended in a southwesterly direction for about 11 miles to Converse. It had 5 locomotives, 1 passenger car, 1 combination car, 1 caboose, 22 freight cars, and 66 logging cars. The lumber company itself owned a number of miles of unincorporated logging spurs connecting with the tap line, together with 1 small locomotive and a log loader.

Since the hearing extensions have been completed and put in operation, as the Commission is advised, so that its line now extends from Deering eastward a distance of nearly 14 miles, crossing the Frisco at Blazer and ending at Caruthersville, on the Mississippi River, where a junction is effected with another branch of the Frisco. The original line from Deering to Converse has been extended to Hornersville, a point on the Cotton Belt. The aggregate length of the tracks as thus extended is about 31 miles. Citizens of the town of Caruthersville donated the land for the terminals at that point.

The line as operated at the date of the hearing reached no towns and served no industries other than the proprietary company. The track as extended reaches several towns; and it is claimed that more or less outside tonnage is being developed.

The mill of the lumber company at Deering is about half a mile from the track of the Frisco; and the lumber company also has two small mills down in the timber. The logs are loaded by the lumber company and moved by it to the junction of the spurs with the main track of the tap line; from that point they are taken by the tap line to the mill, at a rate of $1 per 1,000 feet, which is equivalent to 1 cent per 100 pounds, charged up against the lumber company. At the time of the hearing the tap line switched the lumber to the Frisco at Deering Junction. But with the extension of the track the plan contemplated was the delivery by the tap line of the lumber of the proprietary company at Blazer, 7 miles east of the mill. We are given to understand that the operating conditions of the branch of the Frisco connecting with this tap line at Deering Junction are

such as to make it no longer practicable to receive the lumber at that point.

At the time of the hearing it was admitted that practically the entire tonnage of the tap line was supplied by the controlling interests, and no passengers were carried. It has subsequently opened a passenger service between Caruthersville and Hornersville; but no figures are given of record. The tap line files annual reports with the Commission and keeps its accounts in accordance with the method prescribed by the Commission.

The only rates published by the Frisco in which the tap line participates apply on lumber and forest products, and the allowance out of those rates to the tap line is uniformly 2 cents per 100 pounds. This is the same as the so-called local rate which it publishes from the mill to the junction point, a distance of one-half mile.

For its service in hauling the products of the mill of the controlling company to the Frisco at Blazer, a distance of 7 miles, we fix 1½ cents as the maximum division that may lawfully be paid to this tap line out of the rate; we fix the same maximum as the division that may lawfully be paid by the Cotton Belt on traffic delivered to it at Hornersville.

GIDEON & NORTH ISLAND RAILROAD.

The track operated by the Gideon & North Island Railroad Company connects at Malden, Mo., with the Frisco and Cotton Belt and extends in a southeasterly direction through Gideon, 8 miles distant, where it joins the Frisco, to a point known as North Island, a distance of about 21 miles. There are also about 10 miles of sidetracks and spurs and a short branch track which will be mentioned later. The tap line owns the spurs and sidings and 9 miles of its main track. But 7 miles, extending from Malden southward through Five Points, is leased from the Gideon-Anderson Lumber & Mercantile Company, and 5 miles, extending southward out of Gideon, are leased from the United States Cooperage & Handle Company. As a matter of fact, the three companies are substantially one in interest, the stockholders of the Gideon-Anderson Company owning a majority of the stock of the tap line; and stockholders of the cooperage company owning the minority. The president of the Gideon-Anderson Company is president of the tap line and owns about 52 per cent of the stock of the cooperage company. The tap line was incorporated in April, 1908, at which time the 12 miles of track which it leases from the controlling companies were laid and in operation, those tracks having been constructed subsequent to 1904 as plant facilities for the purpose of hauling logs to the mills. The additional mileage operated by the tap line was constructed by it after its incorporation.

The leases of track to the tap line will expire in 1918; and the consideration is stated as 4 per cent on the estimated value of the track, with the privilege to the tap line of purchasing the property at a stipulated valuation at the expiration of the term. One of the conditions is that the tap line shall build the necessary logging spurs, each not exceeding 2 miles in length, and shall load the logs on the cars and transport them to the mills. The tap line owns two log loaders. It has 3 locomotives, 12 flat cars, and about 30 logging cars. It leases 40 logging cars from the controlling companies. It formerly also leased several locomotives, which were later sold by the lumber companies.

The Gideon & North Island enjoys trackage rights over the Frisco for a distance of over 40 miles between Gideon and Wardell. Under these rights it hauls logs to the mill at Gideon, paying the Frisco 50 cents per 1,000 feet, for the use of the tracks.

The mill of the Gideon-Anderson Company is reached by the tracks of the Frisco at Gideon, while the mill of the United States Cooperage Company is within a few hundred feet of the Frisco rails in Malden. The tap line loads the logs and hauls them to the mills, making a charge of 1½ cents per 100 pounds against the lumber companies. It switches the lumber from the mill at Malden for a distance of about one-quarter of a mile to the interchange track from which they are taken by the Frisco. The Frisco itself occasionally takes the cars directly from the mill at Gideon; but they are usually switched by the tap line. It allows the tap line a division of 2 cents per 100 pounds out of the rates to Memphis, and 3 cents out of the rates to other territory, all of the rates as published from points on the tap line being 1 cent higher than the rate of the Frisco from the junction point. These rates and allowances relate only to hardwood lumber, staves, and heading. There are no joint rates or divisions on other commodities or on class traffic; and no allowances are received from the Cotton Belt, which apparently gets very little, if any, of the traffic.

There is a small independent sawmill about four miles from Gideon and another on the line between Gideon and Malden. Another small mill at a point known as O'Neill is reached by a spur track about 1 mile in length connecting with the tap line at Five Points. It formerly teamed its lumber to the tap line, but with the construction of the spur track its lumber is moved by the tap line at a charge of 4 cents per 100 pounds over the rate from Malden. The capacity of the independent mills is not stated of record. But apparently 95 per cent of the entire tonnage of the tap line is supplied by the controlling companies. The traffic for the year ending June 30, 1910, aggregated 103,017 tons, of which all but 1,239 tons were

forest products. The tap line carries neither passengers, mail, nor express matter. Two logging trains are run over the road daily.

It first filed an annual report with the Commission for the year ending June 30, 1910, and this report showed a net surplus of $8,125.51. The operating revenues in that year aggregated $52,283.31, and the operating expenses were $24,680.85. It expended out of its net earnings more than $17,000 for constructing new tracks, being apparently logging spurs, and paid for the lease of tracks $1,720.

This tap line comes clearly within the class of cases described in the original report, and is not entitled to any allowance from the trunk lines for the services which it performs for the controlling lumber companies or on their product.

MISSISSIPPI VALLEY RAILWAY.

The track of the Mississippi Valley Railway Company crosses and connects with the Frisco system at Steele, and extends from that point westward about 6 miles to Dolphin, and eastward over 9 miles to Tyler, on the Mississippi River. The hardwood mill of the Tyler Land & Timber Company, which owns practically the entire capital stock of the tap line, is at Tyler. The tracks and equipment, together with the mill and timber, were all purchased by the lumber company in 1904 from prior owners, and the tap line corporation was then formed. It has 2 locomotives, a combination car, and about 40 logging cars. It has no agents or clerks, its books being kept for it by employees of the lumber company.

The tap line hauls the logs from the point where they are loaded on the spurs in the woods to the mill, charging the lumber company $5 per car. Some logs are floated down the river to the mill. The tap line moves the lumber from the mill to the Frisco, a distance as heretofore stated of 9 miles, and receives an allowance of 2 cents per 100 pounds. It publishes no tariffs and has no rates on miscellaneous freight, but customarily charges 10 cents per 100 pounds on less than carload shipments, and on grain, cottonseed, and cotton charges from $5 to $10 per car, depending on the loading point.

The tap line is said to pass through a good farming country, the population of which is about 2,000, with a number of cotton gins and some country stores. The traffic for the fiscal year 1910 aggregated 87,245 tons, practically all of which was logs and lumber, and of which 40,434 tons was handled for the proprietary company. It also carries passengers on its logging and lumber trains, which run at irregular times, its revenue from passengers and the mail aggregating $3,571.20 for the year 1910.

Although the tap line has been receiving allowances for several years, at the date of the hearing it had not filed any annual report, but has since submitted its report for the year 1911.

With respect to the product of the mill of the proprietary company we should regard any allowance in excess of 1½ cents per 100 pounds as unlawful.

PARAGOULD & MEMPHIS RAILWAY.

The track of the Paragould & Memphis Railway Company connects with the Cotton Belt at Cardwell, Mo., and extends from that point through Paulding, Mo., where it connects with the Frisco, and thence to Manila, Ark., where it interchanges some traffic with the Jonesboro, Lake City & Eastern, with which, however, it has no physical connection. There is a short branch extending from Cardwell to a point known as Fort Scott, Ark. The length of the tap line aggregates about 27 miles. Its book valuation is $220,000, or more than $8,000 per mile. There are station buildings at Cardwell and Manila, and it uses the Frisco depot at Paulding. The tap line has 2 locomotives, 1 passenger car, 1 caboose, and 53 freight cars; 20 of the freight cars are owned, however, by the Cardwell Mill & Lumber Company. The tap line has 3 station agents, 2 train crews, and 14 trackmen.

The Paragould & Memphis Railway Company was incorporated in 1902, with an authorized capital stock of $525,000, of which $60,000 has been issued. A majority of the stock is owned by members of the Vail family, who own stock in five manufacturing companies served by the tap line, namely, the Decatur Egg Case Company, Cardwell Stave Company, Buffalo Stave Company, Paulding Stave Company, and Indiana Stave Company. The tap line has also executed a first mortgage in favor of a bank, securing a loan of $25,000, and a second mortgage for $90,000, on which the interest is unpaid, in favor of the Decatur Egg Case Company. The Egg Case Company is no longer in active business, but owns considerable land and timber on the tap line or in its vicinity. At the time of the incorporation nine miles of the track was already in operation, being owned by the Egg Case Company, and turned over by it to the tap-line corporation in exchange for stock.

It is claimed that the tap line hauls very few logs for the mills of the Vail interests, which obtain their principal supply by wagon from timber from off the tap line. A considerable quantity of logs is hauled by the tap line, however, for independent mills at a charge of $1.75 and $2 per 1,000 feet, log scale, which is equivalent to 1¾ and 2 cents per 100 pounds. These are net rates made on the understanding that the tap line shall haul the manufactured product.

The product of the mills at Cardwell is hauled a distance of about 1 mile to the Cotton Belt, or 4 miles to the Frisco. The product of the mills at Paulding is apparently switched a short distance to the Frisco or moves about 5 miles to the Cotton Belt at Cardwell. Such traffic as is interchanged with the Jonesboro, Lake City & Eastern is drayed from one track to the other at Manila, the expense being jointly borne by the two companies.

The claim is that only 25 per cent of the traffic of the tap line is supplied by the controlling companies. It hauled during the fiscal year 1910, 75,470 tons of forest products, and also 596 tons of agricultural products moving outbound, in addition to which 404 tons of coal and 1,819 tons of supplies and miscellaneous material came in. During the same period the passenger earnings aggregated $1,553.98. There was a net surplus on June 30, 1910, of $19,727.94, which had been expended, however, in betterments. No dividends have been paid.

In this case we think the allowance on the products of the mills of the Mayo companies should not exceed a reasonable switching charge, which we fixed at $3 per car on the product of the mills at Paulding and Cardwell when delivered to the trunk lines at Cardwell and Paulding, respectively, and $2 per car when delivered to the nearest trunk line.

POPLAR BLUFF & DAN RIVER RAILWAY.

The Poplar Bluff & Dan River Railway Company was organized in February, 1906, with a capital stock of $50,000, practically all of which is owned by Mr. H. I. Ruth, its president, who is also president and treasurer of the Hargrove-Ruth Lumber Company. The two companies are identical in interest; and the mill, timber, and railroad were acquired by the present owners at a receiver's sale. Moreover, the tap line previous to its incorporation was privately operated by the lumber company as a facility of the mill.

The track connects with the Iron Mountain at Poplar Bluff, Mo., and extends for a distance of 22 miles southward to Ruthville. The tap line has 2 locomotives, and 6 cars, not equipped with safety appliances. Practically the entire tonnage is supplied by the proprietary company, the only exception being a few stave bolts and ties shipped by small producers. The tap line owns the logging spurs and performs all service necessary in delivering the logs to the mill, setting up a charge of $1 per 1,000 feet against the lumber company. The lumber is loaded at the mill into cars standing on the tracks of the Iron Mountain. The tap line receives, however, a division of 4 cents per 100 pounds out of the joint rates, which includes an arbitrary of 2 cents per 100 pounds added to the rates in effect from the junction point.

On June 30, 1910, the tap line had a surplus of $19,000, the revenues for the year ending on that date having exceeded the expenses by nearly $10,000. It does not file annual reports with the Commission.

It is frankly stated by counsel on the record that the methods and practices of the Poplar Bluff & Dan River have been irregular; and his client voluntarily announced a willingness to relinquish all claim to receiving divisions as a common carrier. In fact, the witness, until required by the Commission to do so, refused to testify on the ground of self-incrimination. We hold that no allowance out of the rate may lawfully be made in this case.

SALEM, WINONA & SOUTHERN RAILROAD.

The Missouri Lumber & Mining Company owns about 19 miles of track connecting with the Frisco at a point known as Winona Junction, Mo., and extending in a northerly direction to a point known as Horse Hollow. It also owns 2 locomotives, 2 coaches, a caboose, 2 box cars, and 50 flat cars. About 13 miles of the track, from Winona Junction to a point known as West Eminence, and all of the equipment are leased by the lumber company to a separate corporation which it caused to be incorporated in 1908, and which is owned by its stockholders, known as the Salem, Winona & Southern Railroad Company. The annual rental is $12,000, or about 8 per cent on the estimated value of the property. The lease in terms apparently does not cover the 6 miles of track between West Eminence and Horse Hollow, but the tap line also operates that portion of the track. The entire line was originally constructed by the lumber company as a facility for its mill, then located at Grandin, Mo., on what is now the Current River branch of the Frisco, over which the lumber company had trackage rights for its logging trains. The plant at Grandin was subsequently abandoned and the lumber company built a new mill at West Eminence. The tap line enjoys trackage rights over the Frisco for a distance of about two and a half miles between Winona Junction and Winona. There is a small station building and track scales at West Eminence.

The lumber company loads the logs on the cars and with engines which it owns and operates hauls them over the track from Horse Hollow to the mill at West Eminence. The tap line moves no logs to the mill. It hauls the lumber from the mill to Winona, a distance of over 15 miles, where it delivers them to the Frisco, which allows a division of from 1 to 4 cents per 100 pounds. On shipments that move to points where no joint rates and divisions are published the tap line makes a charge of 4 cents per 100 pounds in addition to the rate of the Frisco from Winona.

The tap line moved 53,101 tons of forest products of the proprietary company during the fiscal year 1910 and 3,006 tons for others. It is stated that there is one small independent mill on the line and another about three miles from Horse Hollow, which teams its lumber to that point for shipment. The miscellaneous freight included 5,310 tons supplied by the controlling company and 3,145 tons which is said to have been furnished by outsiders. It will be seen therefore that the proprietary company furnishes nearly 90 per cent of the traffic. During the same year the passenger earnings aggregated $5,302.49 and the receipts from the carrying of the mails were $822.86. The tap line claims to run two "mixed trains" daily, in each direction on a regular schedule, their principal load being lumber.

It is admitted on the record that the tap line was incorporated for the purpose of securing divisions out of the rates and trackage rights from the Frisco. It has capital stock amounting to $150,000; but the tap line owns neither track, right of way, nor equipment, and the record does not state what proceeds, if any, were realized from the issuance of the stock.

In this case we find that any division to the tap line out of the rate on the products of the mill of the proprietary lumber company in excess of 1½ cents per 100 pounds would be unlawful.

FERNWOOD & GULF RAILROAD.

The Fernwood & Gulf Railroad Company was incorporated in 1906 and has capital stock issued and outstanding to the amount of $10,000, together with bonds aggregating $125,000. It is identical in interest with the Fernwood Lumber Company, the stockholders being common and holding shares in the same proportion.

Some years ago the lumber company built a private logging road, laid with wooden rails, over which cars were drawn by horse or mule power. Later one or more small locomotives were acquired and the wooden rails were replaced by 25 and 30 pound steel. When the timber in that vicinity was cut out the track was moved to a different location in order to reach other timber and heavier rails were substituted. About 21 miles were laid and in operation when the tap line was incorporated; and an agreement was drawn up under which this track was thereafter operated for a period of three years by the tap line. At the end of that period the lumber company sold this track for the sum of $125,000 to the tap line, reserving, however, the privilege of operating logging trains thereon without charge. In 1909 about 9 miles of additional track were laid at a cost of $135,000.

The tap line, as described on the record, consists of about 33 miles of track connecting with the Illinois Central at Fernwood, Miss..

running southeastward to Tylertown, on the New Orleans Great Northern, and thence northeastward to a point one mile beyond Kokomo. There are also about six miles of switch tracks in the vicinity of the mill at Fernwood, which are owned and operated jointly by the Illinois Central, the tap line, and the lumber company. The lumber company has several miles of logging tracks connecting with the tap line and extending into the timber. The equipment of the tap line consists of a baggage car, 2 combination passenger cars, and 19 freight cars. It owns no locomotives, but leases one from the lumber company. There are several stations on the line and it has one train crew, a number of section men, and other employees.

The tap line was built through virgin timber owned largely by the proprietary company. Its traffic is chiefly lumber and other forest products, of which 60,374 tons moved during the year ending June 30, 1910, the total freight movement in that year being 79,041 tons. The traffic included 1,477 tons of naval stores, 579 tons of coal, 5,661 tons of agricultural products, and 10,950 tons of miscellaneous supplies and merchandise. It is asserted that only 63 per cent of the tonnage was supplied by the proprietary company. The revenues from freight traffic during the same year were $53,507.82; and the earnings from passenger, mail, and express aggregated $12,798.61.

The mill of the Fernwood Lumber Company is several hundred feet from the right of way of the Illinois Central at Fernwood. The logs are hauled to the mill by the lumber company, under the free trackage right heretofore referred to. The empty and loaded cars for lumber shipments are switched from the mill to the Illinois Central, sometimes by the lumber company, sometimes by the tap line, and at other times by the Illinois Central itself. In all cases, even when the Illinois Central itself switches the car, an allowance of 2 cents per 100 pounds is paid to the tap line by the Illinois Central out of the rates in effect from Fernwood. On the shipments made by small independent sawmills served by the tap line the rates charged are 2 cents per 100 pounds higher than the rate from the junction point, and the tap line receives from the Illinois Central 4 cents per 100 pounds. A part of the output of the Fernwood mill is moved by the tap line to Tylertown, and there delivered to the New Orleans Great Northern, which makes an allowance of 2 cents per 100 pounds. That trunk line pays a division of 3 cents on lumber shipped by other mills on the tap line.

In this case we hold that the Illinois Central may lawfully pay the tap line a switching charge of $2.50 a car when it handles the products of this mill to its rails; the New Orleans Great Northern may lawfully allow it a division out of the rate of 2 cents per 100 pounds.

KENTWOOD & EASTERN RAILWAY.

The Kentwood & Eastern Railway Company is owned by the stockholders of the Brooks-Scanlon Lumber Company. The two companies have the same officers, whose salaries, aggregating $20,000 per year, are prorated between the companies in the proportion of their capital stock. The tap line was incorporated in 1905; its capital stock amounts to $100,000; and it is indebted to the lumber company in the sum of $220,000, on which it pays interest.

The lumber company has two mills, both at Kentwood, La., one directly adjacent to the right of way of the Illinois Central Railroad and the other only 400 feet distant therefrom. Both are reached by sidetracks connecting with the Illinois Central.

The tap line has a track about 3 miles in length, extending from Kentwood eastward to a point known as Bolivar Junction, about 2 miles of which it does not own but leases from the lumber company. This track has a third rail, enabling the tap line to operate standard and narrow gauge trains over it. From Bolivar Junction a narrow-gauge track laid with 35 and 40 pound steel and running uphill and down dale extends eastward for over 25 miles, crossing the New Orleans Great Northern Railroad at Warnerton and terminating at a point known as Hackley. The construction of this track was apparently begun as long ago as 1896 by another lumber company; and it was completed about 1901. Subsequently the Brooks-Scanlon Company purchased the track for the sum of $112,000, as well as the timber and the mill of the former owner, the price paid for the mill being $50,000. It has retained the ownership of the track from Bolivar Junction to Hackley, and leases it to the tap line for a rental of $10,000 per annum, plus the taxes. From Bolivar Junction the tap line has another track, referred to as the standard-gauge division, extending southward for a distance of about 23 miles to Foley. This is laid with 56-pound steel and traverses a level country. It was constructed in 1906. The tracks operated by the tap line aggregate over 50 miles in length; but it owns only one-half of the mileage of the main track. It has 4 standard-gauge and 5 narrow-gauge locomotives, 6 passenger cars, 4 cabooses, 48 box cars, 9 work cars, 52 log cars and 182 flat cars; of this number 252 are narrow gauge and 51 standard gauge. The lumber company also has a number of miles of logging tracks connecting with the incorporated line and extending into its timber. It also owns one locomotive and a number of cars. An independent manufacturer, the Bassfield Lumber Company, has a short unincorporated logging road connecting with the tap line about 2 miles west of the junction with the New Orleans Great Northern. There are said to be several small towns or settlements along the tap line, and it has

stations at three points, with "pagodas" or sheds to shelter passengers at one or two other points. It is claimed that there are 32 small sawmills along the line, only one of which has any relation to the Brooks-Scanlon Company, and that their average output is from 15,000 to 40,000 feet of lumber daily. There are 6 turpentine stills, 4 of which are owned by the proprietary company, as is admitted, and also 17 cotton gins, together with a number of farms in the vicinity of the tap line. The tap line has a daily train for logs and passengers on the standard-gauge division, and two in each direction daily on the narrow-gauge division; with two such trains between Kentwood and Bolivar Junction. The passenger revenue for the year 1910 aggregated $13,684.60, and the earnings from mail and express aggregated $2,521.37. Its revenue from freight traffic for the same year amounted to $193,624.41. It handled 281,030 tons of lumber and other forest products, of which about 83 per cent was supplied by the proprietary company. It also moved 7,378 tons of coal inbound, and moved outbound 3,134 tons of agricultural products and 3,043 tons of naval stores. The merchandise and miscellaneous supplies aggregated 6,981 tons. Of all this miscellaneous freight other than forest products a substantial portion was handled for the controlling interests or their employees.

The logs are loaded on the cars by a firm of logging contractors, which constructs and maintains the spurs and delivers the cars at the junction with the incorporated line. The tap line sets up against the lumber company a charge of 2½ cents for a haul of 15 miles, and 3 cents for hauls in excess thereof, for the movement of the logs to the mill. The Illinois Central allows a division of from 2½ to 4 cents per 100 pounds out of the rates, which are higher from points on the tap line than from the junction point. The net earnings of the Illinois Central, however, are less than its published rates from Kentwood. The record is not altogether clear respecting the amount of the divisions. But apparently when the lumber moves out over the Illinois Central and the allowances are paid, the tap line refunds to the lumber company the revenue which it has received as a division from the Illinois Central. The practical result seems to be that the lumber company has its logs hauled to the mill free of charge or at very low cost. As heretofore stated, the lumber is taken from the mill by the Illinois Central. None of the lumber from the proprietary mills moves out over the New Orleans Great Northern.

On shipments of lumber moving from the independent mills heretofore referred to, the tap line does not haul the logs but receives from the Illinois Central the same divisions as are paid on the lumber shipped by the Brooks-Scanlon Company. The tap line makes annual reports to the Commission, which show a net surplus on June

30, 1910, of $127,936.04. No dividends have been paid. Seventy-five per cent of the revenue accrues on the traffic of the lumber company.

One of the mills of the proprietary company is directly on the line of the Illinois Central and the other but 400 feet from it. The service on the products of the mill is performed by the trunk line and not by the tap line. Allowances out of the rate by the Illinois Central to the tap line under such circumstances we would regard as an unlawful concession out of the rate to the proprietary company.

KENTWOOD, GREENSBURG & SOUTHWESTERN RAILROAD.

The Kentwood, Greensburg & Southwestern Railroad Company is controlled by the shareholders of the Amos Kent Lumber & Brick Company, who own practically the entire capital stock. That company in turn is subsidiary to the F. C. Denkmann Company, which also controls the Natalbany Lumber Company and its tap line, the New Orleans, Natalbany & Natchez, hereinafter described.

The Kentwood, Greensburg & Southwestern connects with the Illinois Central at Kents Mill, near Kentwood, La., and extends in a westerly direction for about 16 miles to Freiler. The track is narrow gauge, laid with 35 and 40 pound steel. Beyond the terminus the lumber company has an unincorporated track; it also has logging spurs connecting with the tap line at various points and extending into the timber. The tap line has 7 locomotives, 3 of which are leased to and used by the lumber company, and 2 so-called passenger cars, which are, in fact, rebuilt cabooses. There are also about 70 freight or logging cars.

The construction of the tap line was begun as long ago as 1850, and it was completed to Freiler in 1904. Apparently it was operated as a private facility of the mill. In any event it was not incorporated until 1906, after it had been purchased by the Denkmann interests at a cost of $100,000 from the prior owners, who also conveyed the mill and timber. Its authorized capital stock was fixed at $350,000, of which $100,000 was issued. The tap line owes the lumber company nearly $50,000.

The Amos Kent Company has a sawmill on the tracks of the Illinois Central at the junction point, where it also has a brick plant and commissaries and stores. There are said to be four other small sawmills along the tap line, which obtain their logs by means of drays, one of which is served by a spur track about 600 feet in length connecting with the tap line. One or two small towns, each having a population of less than 300, are reached by the tap line, which has a station and an agent at Freiler, and one also at the junction point.

The logs are hauled to the mill of the proprietary company by the tap line from the loading point, and are dumped into the pond by the train men. A charge of 3 cents per 100 pounds is passed to the

credit of the tap line by the lumber company on its books, but apparently is not actually paid. The Illinois Central places the empty cars at the mill and takes the shipments of lumber therefrom. The rates on lumber which it publishes in connection with the tap line are uniformly 2 cents per 100 pounds higher than the rate from the junction point; and the gross allowance is 4 cents per 100 pounds. Shipments of lumber by the independent sawmills are loaded on narrow-gauge cars and hauled by the tap line to the junction point, where it transfers the lumber into standard-gauge cars furnished by the Illinois Central; the latter company issues a bill of lading reading from the junction point. On such shipments the tap line apparently assesses a local charge of 3 cents per 100 pounds in addition to the rate of the Illinois Central from the junction point; and the shipper is also required to pay 50 cents per 1,000 feet for the transfer of the lumber from car to car.

The aggregate traffic for the year ending June 30, 1910, was 64,082 tons, of which all but 3,762 tons was supplied by the proprietary company. There were 765 tons of agricultural products moving outbound, and 1,597 tons of merchandise and miscellaneous freight. The remainder of the tonnage was forest products. The revenue from all this traffic was $51,785.34. The tap line received $801.58 for carrying the mail, and received on passenger traffic $2,823.83. It had a net surplus on June 30, 1910, of $12,508.11. No salaries are paid to its officers, who are officers also of the lumber company.

Here again the mill of the proprietary company is not only immediately on the rails of the trunk line but the service on the products of the mill is performed by the trunk line. Under such circumstances we regard any allowance to the tap line on the products of the mill of the controlling company as an unlawful rebate to the lumber company.

NEW ORLEANS, NATALBANY & NATCHEZ RAILWAY.

The stockholders of the Natalbany Lumber Company hold practically the entire capital stock, amounting to $155,000, of the New Orleans, Natalbany & Natchez Railway Company, which was incorporated in 1902 and owes the lumber company $181,482.89. As heretofore stated, the Natalbany Lumber Company is controlled by the Denkmann interests, who also own the Kentwood, Greensburg & Southwestern Railroad, *supra*. The tap line, the mill, and the timber were purchased by the Denkmann interests in one transaction, the value of the properties, however, being separately estimated.

The track of the tap line extends from a connection with the Illinois Central at Natalbany, La., in a northwesterly direction for 25

miles to a point known as Pine Grove. There are about 7 miles of spur tracks and sidings, with nearly 8 miles of unincorporated logging tracks which connect with the tap line at various points. There are said to be station buildings at Natalbany, Montpelier, and Pine Grove, with public team tracks; and the tap line has track scales. It has 10 locomotives, 2 passenger cars, a caboose, 6 box cars, and 130 flat cars, 2 motor cars, and a pile driver. Six of the locomotives are leased to the lumber company at a charge of $12 per day for each. The tap line employs 3 agents, 4 train crews, and 5 gangs of trackmen, none of whom are employed by the lumber company.

The Natalbany Lumber Company has three sawmills, two of which, together with the planer, are about a mile from Natalbany at a point designated as Mason. The other sawmill is within 100 feet of the right of way of the Illinois Central in Natalbany, but the loading track is owned by the tap line.

The logs are loaded by employees of the lumber company and are assembled into trains and hauled over the unincorporated spurs to the main track by the lumber company, which uses for that purpose the locomotives leased from the tap line. The latter hauls the logs to the mill and the train men unload them into the pond. At the end of each month a bill is rendered to the lumber company for the movement of the logs, at a rate of 3 cents per 100 pounds. The lumber manufactured at the three mills is switched by the tap line a distance of from 1,500 feet to about 1 mile to the interchange track, from which they are taken by the Illinois Central. The agent of the trunk line issues the bills of lading. The rates on lumber in effect over the Illinois Central from Natalbany are applied on shipments from the mills of the proprietary company; and the Illinois Central allows a division of 2 cents per 100 pounds. But the independent mills served by the tap line, of which there are said to be seven, pay on their lumber shipments rates that are 2 cents per 100 pounds higher than the rates from Natalbany.

It is stated that the tap line runs two "mixed trains" in each direction daily on a regular schedule, on which passengers and the mail are carried, and that in addition there are usually four logging trains, on irregular schedule. The passenger and mail earnings for the fiscal year 1910, as reported to the Commission, aggregate $4,246.22. The freight revenue for the same year amounted to $159,051.71. At the end of that year the surplus, as accumulated from the operations of three years, amounted to $73,914. It is estimated that about 80 per cent of the entire freight traffic is supplied by the proprietary company. The volume of forest products for the year 1910 was 236,657 tons and the miscellaneous freight weighed 3,182 tons.

We hold on the facts disclosed in the record of this case that any allowance out of the rate to the tap line in excess of a reasonable

switch charge for the service performed on the products of two of the mills of the proprietary company is unlawful. We fix the switching charge at $1.50 as a maximum. The third mill is situated within 100 feet of the tracks of the Illinois Central, but the switch track has been so laid as to give the tap line a haul of 1,500 feet. On the products of that mill no allowance should be made.

LIBERTY-WHITE RAILROAD.

The entire capital stock of the Liberty-White Railroad Company, of which $300,600 has been issued, is owned by the stockholders of the J. J. White Lumber Company, the shares in the two corporations being held in substantially the same proportions. Their officers are identical; and the tap line owes the lumber company or its president about $134,000.

Prior to 1880 a narrow-gauge logging road was laid from McComb, Miss., westward into the timber. When the land was all cut over the track was about to be abandoned and taken up when the citizens of the town of Liberty induced the owners to change the location of the tracks and build into that point. Such is the statement on the record. The tap line was incorporated in December, 1902, and then took over the tracks already laid and in operation, the narrow-gauge line being changed to standard gauge. As incorporated the operation did not begin until June, 1904. In 1907 about 9 miles of track were built eastward from McComb to a point known as New Holmesville. The line now in operation, as described on the record, connects with the Illinois Central at McComb, extending from that point westward about 24 miles to Liberty, and also extending eastward from McComb for 9 miles to New Holmesville. The tap line also operates under a trackage agreement, at a rental of $300 per month, an unincorporated track 10 miles in length connecting with its main line at a point between McComb and Liberty known as Irene, and running southward a distance of 10 miles to Keith. The equipment consists of 5 locomotives, a mail and baggage car, 6 passenger cars, 1 passenger motor car, 2 cabooses, 4 tank cars, and 14 box cars. There are station buildings at a number of points on the line, costing from $1,500 to $2,500 each. The tap line has a train master, roadmaster, 6 station agents, 12 enginemen, 10 trainmen, and several crews of trackmen. It is said that none of its employees are in the service of the lumber company. Two passenger trains and two logging trains run daily between McComb and Liberty; and there is one daily "mixed train" running eastward from McComb to New Holmesville and return. The passenger revenues for the year 1910 aggregated $15,190.39; the receipts from express matter were $686.51, and for the carriage of the mails $1,437.08. The freight earnings for the same year amounted to $94,766.57. The principal traffic was forests products, of which

there were 127,214 tons out of a total freight movement of 137,789 tons. The proprietary company contributed 89,514 tons of the forest products, and 37,700 tons of such commodities are said to have been shipped by others. It will be observed therefore that there is a substantial tonnage in which the proprietary company was not directly interested.

The mill is near the tracks of the Illinois Central in McComb, and that company customarily places the empty cars at the loading platform and moves the shipments therefrom. The tap line occasionally switches a car from the mill, a distance of about 600 feet. The logs are loaded by the lumber company, and the cars are moved by it to the junction of the logging spurs with the main line; from that point they are taken by the tap line to the mill, for which a charge of $5 per car is made against the lumber company. The through rates on lumber from points on the tap line are 2 cents per 100 pounds higher than the Illinois Central rate from McComb. The tap line is allowed 4 cents per 100 pounds, or 2 cents in addition to the arbitrary. From the mill of the proprietary company the rate applied does not include the arbitrary of 2 cents, and the tap line receives on such traffic a division of 2 cents per 100 pounds. There are no joint rates on other commodities or on class freight.

We hold on the facts appearing here that any allowance out of the rate on the products of the mill of the proprietary company is unlawful.

NATCHEZ, COLUMBIA & MOBILE RAILROAD.

The capital stock of the Natchez, Columbia & Mobile Railroad Company, of which $900,000 has been issued, is held by the same persons and in the same proportions as the stock of the Butterfield Lumber Company, which has a mill at Norfield, Miss. The track of the tap line joins the Illinois Central at Norfield and extends eastward for 14 miles to a point known as Main Line Junction, where it divides into two branches, one extending northeastward for about 9 miles to Old Camp, and the other track running southward about 7½ miles to Furlough switch. In addition to these tracks, aggregating about 30 miles in length, the tap line builds and operates for the lumber company logging tracks of a temporary character joining the main line at various points and extending into the timber that is being cut. There are three towns or settlements where the tap line has station buildings, and at the junction point, Norfield, it employs jointly the agent of the Illinois Central. There are track scales at Norfield on which the employees of the tap line weigh the shipments of the lumber company. The equipment consists of 7 locomotives, 1 baggage car, 2 passenger cars, 2 box cars, 10 flat cars, and 75 logging cars, with a few work cars and a pile driver.

The tap line was incorporated in 1892, and the first construction of the track was coincident with the building of the mill of the lumber company. It is stated that the latter had previously endeavored to get the Illinois Central to build a track for the purpose of bringing logs from the timber to the mill, and being unsuccessful in this effort it undertook the construction of the tap line.

The logs are loaded on the cars by employees of the lumber company, but the locomotives of the tap line not only move the cars to the mill but perform all necessary service on the logging spurs in the woods, including the movement of the log loader from place to place. The train employees unload the logs into the pond at the mill. For these services a charge of 2 cents per 100 pounds is set up against the lumber company, together with a special switching charge of $1 per car for the services on the logging spurs. The tap line switches the empty and loaded cars for the lumber shipments between the mill and the interchange track with the Illinois Central, a distance of one-quarter of a mile, the mill being adjacent however to the Illinois Central right of way. The rates published by the Illinois Central in which the tap line participates are 2 cents per 100 pounds higher than the junction-point rates. In the case of shipments by the proprietary lumber company this arbitrary represents the charge of 2 cents already referred to for moving the logs to the mill. The Illinois Central gives a division of 4 cents per 100 pounds or a net payment out of its earnings of 2 cents. It is interesting to observe the way in which the payments are made: The charges on the lumber are assessed by the Illinois Central at the regular rate from the junction point; and at the end of each month, upon presentation by the tap line of a statement of the inbound movements of logs to the mill, the claim department of the Illinois Central refunds 2 cents per 100 pounds. There are several small independent mills along the tap line, including one, known as the Busbee mill, which has a sidetrack connecting with the tap line. These mills pay on their lumber 2 cents per 100 pounds more than the rates in effect from the junction point; and those mills have to bear the entire cost of moving their logs in.

The tap line runs two logging trains daily, to one of which a passenger coach is attached. It also runs one other train, referred to on the record as a "mixed train," on which passengers and mail are carried. Its revenues during the year 1910 from the carriage of passengers and mails aggregated $3,735. During the same year it earned on freight traffic $101,213.05. There was an accumulated deficit on June 30, 1910, of $556,890.70. This has been taken care of in some way by the lumber company. The record clearly indicates that the entire revenues are paid over to the lumber company and placed to the credit of the tap line on its books. The lumber company makes

all disbursements, purchases the material and supplies, and pays the employees of the tap line. It owns the shops where the locomotives and cars of the tap line are kept in repair.

The record does not indicate the exact proportion of the freight traffic in which the proprietary company was interested, but during the year 1910 there were 16,611 tons of lumber and about 168,000 tons of logs. During the same year 1,692 tons of agricultural products and merchandise moved outbound, and 3,063 tons of merchandise and supplies, together with 3,773 tons of coal, moved in. A large proportion of this traffic was apparently handled for the account of the lumber company or its employees. There are several stores and commissaries along the line, some of which are owned by outside interests, and operated by the lumber company under some special arrangement.

We find no justification here for any allowance on the products of the mill of the proprietary lumber company.

ALABAMA CENTRAL RAILROAD.

The Alabama Central Railroad Company was incorporated in 1906 with an authorized capital stock of $100,000, of which $90,000 has been issued and is owned by E. M. Barton, its president, who, with his family, owns a majority of the stock of the Manchester Lumber Company. The tap line has no bonds; its track connects with the Illinois Central, the Frisco, and the Northern Alabama Railway at Jasper, Ala., and extends northward for a distance of less than seven miles to Manchester. Beyond that point the lumber company has an unincorporated logging road. The equipment of the tap line consists of one locomotive and one combination passenger car. The lumber company owns and operates locomotives and logging cars. Its mill is at Manchester, a sawmill town with a population of about 500, where there is a company store. There is said to be coal underlying a considerable portion of the timber land of the lumber company, which exceeds 26,000 acres; but no mines have been opened.

When the mill was opened the public carriers proposed to build or assist in the building of the necessary track to reach their lines; but their offers were not taken advantage of, the tap line corporation being formed to build and operate the track. One train runs daily in each direction over the tap line, on which a few passengers are carried, the revenue therefrom being $280.50 for the year 1910; for the carriage of the mail the tap line received $294.97, while its revenues from express traffic amounted to $4.96. Over 85 per cent of its freight revenues, amounting to $13,014.25, for the same year, accrued on traffic of the proprietary company, and about 40 per cent of that amount was paid by the trunk lines, which make a uni-

form allowance of 2 cents per 100 pounds out of their published rates on lumber. There are no through rates or allowances on other commodities. The lumber company itself moves the logs over the spurs to a point on its unincorporated line about 4 miles north of the mill; from that point the engine of the tap line moves the cars to the mill at a charge of 50 cents per 1,000 feet. The tap line moves the lumber over the full length of its line from the mill at Manchester to the junction at Jasper, a distance of 7 miles.

Although the tap line has been receiving divisions for several years it did not file an annual report with the Commission until August 14, 1911, when it presented the report for the fiscal year 1910. This report showed a small deficit from the operation of the road to that date.

In this case a division out of the rate may lawfully be made to the tap line by its trunk line connections not exceeding 1½ cents per 100 pounds.

WASHINGTON & CHOCTAW RAILWAY.

The E. W. Gates Lumber Company was incorporated in 1904, and acquired a tract of timber and a narrow-gauge logging road about 3 miles in length. The latter was abandoned, and a standard-gauge line was constructed, which now extends from a connection with the Mobile & Ohio Railroad at Yellow Pine, Ala., in a northerly direction for about 22 miles to a point known as Matthews. This track is owned and operated by the Washington & Choctaw Railway Company, which was incorporated in December, 1910, immediately prior to the hearing, with an authorized capital stock of $700,000, of which $200,000 is outstanding, having been issued to the lumber company in exchange for the track and equipment. It is stated that the tap line owes the lumber company about $49,000; it is also said that the cost of the road up to the date of the hearing exceeded $250,000. Beyond Matthews is 4 or 5 miles of track operated by the lumber company in its logging operations; but the steel is furnished by the tap line without charge. The equipment consists of 2 locomotives, 6 box cars, 4 flat cars, and 40 logging cars. There are station structures at one or two points on the line, and also loading tracks.

It is not definitely stated on the record that the lumber company owned the entire capital stock of the tap line, but we infer that the two companies are substantially one in interest. Previous to the incorporation in 1910 the tap line was run as a department of the lumber company, whose charter authorized the conducting of railroad operations.

The sawmill of the lumber company is about a quarter of a mile from the junction with the Mobile & Ohio, but the planing mill is reached directly by the tracks of the trunk line. There are said to

be several small towns or settlements along the tap line with populations ranging from 100 to 600, each having one or more stores. It is also claimed that five independent sawmills and eight or nine cotton gins use the facilities of the tap line; and there are many farms along the line. The tonnage statements filed of record relate to a period of 11 months ending December 1, 1910, during which 76,592 tons of freight were handled. The proprietary lumber company shipped 60,000 tons of lumber and forest products, while 13,000 tons of such freight were shipped by others, together with 2,000 tons of crossties, which were apparently cut on the lands of the lumber company. About 800 tons of cotton and cottonseed and about the same quantity of merchandise were handled. The statement is that 80 per cent of the forests products and 20 per cent of the miscellaneous freight were supplied by the proprietary company. The tap line does not carry passengers, mail, or express, but operates one regular logging or freight train daily in each direction, and three other such trains at irregular times.

The logs are hauled by the tap line from the points where they are loaded on the logging spurs to the mill, a charge of 3 cents being set up against the lumber company for this service. Most of the lumber is apparently shipped out in the rough and is switched by the tap line a distance of about a quarter of a mile from the mill to the interchange track. The shipments of dressed lumber are moved by the trunk line from the loading track at the planing mill. On all lumber shipments of the proprietary company the tap line receives from the Mobile & Ohio a division of 3 cents per 100 pounds, out of the junction-point rates. The same rates and the same allowances apply in connection with the lumber shipped by independent producers.

The tap line filed its first annual report with the Commission for the fiscal year ending June 30, 1911.

In this case we think that any allowance to the tap line on the dressed lumber is unlawful, but a reasonable switching charge of $1.50 a car may lawfully be paid to the tap line for switching the rough lumber from the sawmill to the trunk line.

IRREGULAR PRACTICES OF TAP LINES.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they can not be said to comply with the require-

ments of the act. Many of them also do not publish any local rates to apply on traffic received from or delivered to their trunk-line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service law, the Safety Appliance act, and other acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases our examiners have been refused full access to the books of tap lines. With respect to all these matters the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions in no instance have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

GENERAL COMMENTS.

The rates of the trunk lines for the movement of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticized in *Red River Cotton Oil Co.* v. *T. & P. Ry. Co.*, 23 I. C. C., 437. So far as we can see from a careful examination of the record there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk-line connections. In other

cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or are hereafter made effective to or from points on tap lines the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and nondiscriminatory rates on forest product when shipped from tap-line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission an order will be entered authorizing trunk lines to make settlements on these bases with respect to all traffic moving after May 1, either under section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of May, A. D. 1912.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF SCHEDULES CANCELING THROUGH RATES WITH CERTAIN TAP-LINE CONNECTIONS; AND CERTAIN OTHER CASES CONSOLIDATED HEREWITH.

It appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It further appearing, That the Commission has found that in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;

Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It further appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Fresco Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission petitions asking for the establishment or reestablishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It is ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is further ordered, That the defendants The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;

Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It is further ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company.

And it is further ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By the Commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

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Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
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Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
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Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber com-

panies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. *It is ordered*, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service.

4. *It further appearing*, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;

Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. *It is ordered*, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. *It further appearing*, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

have heretofore filed with the Commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. *It is ordered*, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to

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reestablish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912;

8. *Provided*, That the rates on yellow-pine lumber and articles taking the same rates from points on the lines of the last above-named parties to the record shall not exceed the current rates in effect from the junction points; and

9. *Provided further*, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last-named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. *It is further ordered*, That in the case of the following parties to the record, by which petitions for the establishment or reestablishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to reestablish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and *provided further*, that upon the failure of the principal defendants to reestablish the through routes and joint rates in effect on April 30, 1912, with the last above-named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the reestablishment of such through routes and joint rates.

11. *It is further ordered*, That in case of the failure of the principal defendants to reestablish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. *It is further ordered*, That the divisions of all joint rates herein required and authorized to be reestablished on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. *It is further ordered*, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. *And it is further ordered*, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1913

United States Commerce Court.

JUNE SESSION, 1913.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., petitioners, *v.* THE UNITED STATES OF AMERICA ET AL., respondents.	No. 90.
WOODWORTH & LOUISIANA CENTRAL RAILWAY Company (Limited), et al., petitioners, *v.* THE UNITED STATES OF AMERICA ET AL., respondents.	No. 91.
MANSFIELD RAILWAY & TRANSPORTATION Company et al., petitioners, *v.* THE UNITED STATES OF AMERICA, respondent.	No. 92.
VICTORIA, FISHER & WESTERN RAILROAD Company et al., petitioners, *v.* THE UNITED STATES OF AMERICA, respondent.	No. 93.

INTERSTATE COMMERCE COMMISSION, RAILROAD Commission of Louisiana, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, interveners.

18448—13——1

ON FINAL HEARING.

(For opinion of Interstate Commerce Commission see 23 I. C. C. Rep. 277 and 549.)

Mr. Luther M. Walter and *Mr. H. M. Garwood,* with whom *Mr. W. R. Thurmond* was on the brief, for the petitioners.

Mr. Blackburn Esterline, special assistant to the Attorney General, for the United States.

Mr. Charles W. Needham for the Interstate Commerce Commission.

Mr. Wylie M. Barrow, with whom *Mr. Ruffin G. Pleasant* was on the brief, for the Railroad Commission of Louisiana.

Mr. James L. Coleman, with whom *Mr. Robert Dunlap* and *Mr. T. J. Norton* were on the brief, for intervening carriers.

Before KNAPP, Presiding Judge, and HUNT, CARLAND, and MACK, Judges.

(November 26, 1913.)

MACK, *Judge:*

Following the supplemental report of the Interstate Commerce Commission in *Star Grain & Lumber Co.* v. *A. T. & S. F. Railroad* (14 I. C. C., 364; 17 I. C. C., 338), in which the Commission, while entering no formal order, condemned the making of allowances and divisions to tap lines for the traffic of proprietary mills, the trunk lines filed with the Commission cancellations of the tariffs which had provided for joint rates with the several petitioners

herein. Thereupon the Mansfield Railway & Transportation Co. and others filed complaints requesting that joint rates and through routes with the trunk lines be enforced. These complaints were made a part of investigation and suspension docket No. 11, under which the Commission entered into a full and complete investigation of the so-called tap-line situation in reference to lumbering operations in the Southwest, and more particularly in the States of Arkansas, Missouri, Louisiana, and Texas. It had theretofore entered upon an extensive general examination of industrial lines of all classes, and it had also, on specific complaints at an earlier period, considered the matter as it affected this particular region. (See *Central Yellow Pine Association* v. *V. S. & P. R. R. Co.*, 10 I. C. C., 193; *Central Yellow Pine Association* v. *I. C. R. R. Co.*, 10 I. C. C., 505; *Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450.)

Pending the investigation and final order of the Commission, the cancellation of the joint rates had from time to time been suspended, withdrawn, refiled, and again suspended. On April 23, 1912, the Commission filed its report in investigation and suspension docket No. 11, entitled "*The Tap Line case*" (23 I. C. C., 277), and on May 14, 1912, its supplemental report (23 I. C. C., 549), findings, and order.

It found that any allowance or division with respect to the products of the so-called proprietary

lumber companies of a large number of tap lines, including all of the tap lines that are petitioners herein, was unlawful. The order, however, did not affirmatively forbid the trunk lines to make allowances or divisions.

Petitions filed in this court by the petitioners herein were on motion dismissed for want of jurisdiction on the authority of *Proctor & Gamble Co.* v. *U. S.* (225 U. S., 282). Thereupon the Interstate Commerce Commission, pursuant to the request of these petitioners, amended its original order, and on October 30, 1912, entered the order which is now sought to be annulled. While the Commission adhered to the views theretofore expressed, it not only found as to each of the petitioners herein

"that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving the product of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowance or divisions out of the rate on account thereof are unlawful and result in undue or unreasonable preferences and unjust discriminations, as found in said reports";

but in order to enable the petitioners herein to secure a judicial review of the legality of its action, it also expressly ordered the trunk line defendants

"to cease and desist and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the

above-named parties to the record in respect of any such above-described services."

While thus forbidding allowances and divisions in respect to services in moving the logs to and the lumber from the proprietary mills, the Commission further expressly ordered as to the tap lines that are petitioners in this court—

"That in case of the failure of the principal defendants (the trunk lines) to reestablish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto."

The terms of the original order were followed in dismissing, among others, the complaint of the Mansfield Railway & Transportation Co. in so far as it related to rates on products of the mill of the proprietary company. The amended order, however, instead of merely authorizing, now directed the trunk lines to reestablish through routes and joint rates with a number of tap lines not now before this court, provided that the rates from points on these lines should not exceed the junction point rates; and provided also that the divisions and allowances out of such joint rates on the products of the mills of their proprietary lumber companies should not exceed certain stated amounts.

The findings in the amended order differed from those in the original order by adding thereto the specific findings hereinabove set forth in reference to plant service, plant facilities, undue and unreasonable preferences, and unjust discrimination.

A careful consideration of the several reports and orders leads to the conclusion that the Commission held:

First. That each of the petitioning tap lines is a bona fide interstate common carrier.

Second. That in respect to the services rendered by them for the nonproprietary mills they acted in this capacity.

Third. That in respect to the services rendered by them for the proprietary companies they acted not in their capacity of common carriers but purely as a plant facility, and performed not a transportation but a plant service.

Fourth. That in respect to the services performed for their proprietary companies, each of the other tap lines with which the trunk lines were directed to reestablish joint rates, although under a limitation as to the amount of the division or allowance to be paid, not merely performed a transportation service but also in so doing acted in its capacity of an interstate common carrier.

The evidence before the Commission tending to show that the petitioning tap lines were originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned

or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, might have justified the Commission in finding that these tap lines were not in fact bona fide common carriers. We do not, however, consider this question as open, because, in our judgment, the Commission impliedly, if not expressly, held them to be interstate common carriers when it authorized and in effect directed the reestablishment of through routes and joint rates as to the nonproprietary traffic, inasmuch as the Commission is without authority to make such an order except as between interstate common carriers.

For the same and similar reasons we say that the Commission necessarily deemed the services rendered for proprietary companies by those tap lines not now before us with which the trunk lines were ordered to reestablish joint rates as to all traffic, to be not merely transportation services rendered by

or on behalf of the proprietary companies for which, under section 15 of the act, an allowance may be made, but transportation services rendered by the tap lines as interstate common carriers. Under the act a carrier may perform accessorial, nontransportation services for a shipper, provided this be done without unjust discrimination. It can not, however, be compelled so to do. It must, therefore, follow that, in the judgment of the Commission, the services which it compels a carrier to perform are necessarily transportation services. Moreover, while under section 15 a carrier may permit a shipper, directly or indirectly, to render a service connected with transportation, and may make a just and reasonable allowance therefor, it can not be compelled to permit such substituted performance of any of its own obligations. It follows, therefore, that when the Commission, instead of merely fixing a maximum allowance to be paid to the tap lines or to the proprietary companies for switching and other services rendered with the consent of the trunk line in connection with through shipments, directs the establishment by the trunk lines of joint rates with such tap lines, and the payment of not exceeding a specified division out of such joint rate for such services, it necessarily holds such services to be not merely services connected with transportation but the services of an interstate common carrier engaged in such transportation.

That a common carrier may, however, as to some of its work, act in a strictly private capacity is well

settled (*A., T. & S. F. Ry.* v. *Grant Brothers,* 228 U. S., 177); and that it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, has been held by this court in *Crane Iron Works* v. *U. S.,* No. 55, June 7, 1912.

Whether or not a payment provided for in the tariff for such a service would be per se illegal in the absence of an order by the Commission forbidding it (*C. & A. Ry.* v. *U. S.,* 156 Fed., 558; *Am. S. R. Co.* v. *D., L. & W. Ry.,* 207 Fed., 733, reversing s. c. 200 Fed., 652), it is clearly within the power of the Commission to prohibit such payment (*Am. S. R. Co.* v. *D., L. & W. Ry., supra*).

If, then, the Commission was justified in finding that these interstate common carriers, the petitioning tap lines, were mere plant facilities as to their proprietary companies, and that the services rendered by them in hauling logs to and lumber from the proprietary mills were merely the plant services of plant facilities, its order forbidding any division or allowance therefor would be valid and proper.

Whether or not this is a justifiable finding of fact is to be determined, in the first instance, by the Interstate Commerce Commission. When, as in these cases, a full and fair hearing has been granted, the Commission's findings of fact are subject to review in this court only upon an allegation that they are not sustained by any substantial evidence in the

record before it or are arbitrary in being based upon improper distinctions and considerations.

No constitutional question can properly be involved in such a case, inasmuch as the tap lines, if they are in fact acting only as plant facilities in respect to the proprietary companies, can have no constitutional right to that which is necessarily an illegal allowance, however much they may be injured financially by the denial thereof.

Nor can the Commission be charged with such arbitrary action as would justify an annulment of its orders in respect to the petitioning tap lines merely because of a different finding as to some other tap lines, whose history, physical conditions, and relations to and service for the proprietary companies are in many respects like, although necessarily not identical with, those of the petitioning tap lines and their proprietary companies; for though the orders are made in one proceeding, they are separate and distinct as to each of the tap lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies. Moreover, an erroneous conclusion by the Commission as to the real nature of the services of one or more of the tap lines toward its or their proprietary companies would of itself be no justification for the annulment of the findings and the orders as to some other companies on the ground of arbitrary action, if the latter are based upon substantial evidence. Arbitrary action can, however, be predicated on a disregard by the Commission of

the very criteria which it adopts to determine the ultimate questions of fact, or on the adoption of distinctions without real differences.

The important questions, therefore, to be considered by this court are:

First. Whether the Commission acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be acting as a mere plant facility of and performing mere plant service for the proprietary companies; or,

Second. Whether in each of these cases there was substantial evidence to justify the ultimate findings and the consequent order of the Commission; not whether this court would have drawn the same conclusion from conflicting evidence; not whether, in the judgment of this court, it is expedient or inexpedient to encourage the building of these tap lines by the large lumber interests of the southwest, but solely whether in the evidence before it there can be found a substantial basis for the Commission's conclusions.

Before determining these questions, there are some subsidiary matters which require attention.

1. It is urged upon us that the petitions herein should be dismissed on the ground either that, though affirmative in form, they are nevertheless negative in substance, or that the petitioners in this court are not those against whom the order is directed. This motion must be denied. The amended order is clearly an affirmative order. It expressly

forbids certain action because of its illegality. Disobedience would involve not merely the penalties prescribed by the act for illegal transactions, but the other and heavier penalties therein prescribed for violation of the orders of the Commission.

Inasmuch as the petitioners herein, though not the parties commanded in the order to desist from the illegal action, are directly and financially affected by the orders in question, they have a standing as complainants in a court of equity. (*I. C. C.* v. *Diffenbaugh*, 222 U. S., 42.)

2. The petitioners in cases Nos. 90 and 91 seek not only to have the order of the Commission annulled, but pray also that the trunk lines may be ordered to perform certain contracts made with them. As this court is without jurisdiction to enforce such contracts, this additional prayer may be disregraded. Neither joining a cause of action over which this court has no jurisdiction with one over which the court has jurisdiction nor the joining of unnecessary parties defendant would, however, justify the dismissal of the petitions.

3. The Interstate Commerce Commission has moved to strike out the testimony taken by this court on the ground that the only real issues in the case, viz., whether or not there was substantial evidence before the Commission to support its order and whether or not it acted arbitrarily, not in the sense of denying a full and complete hearing, but in the sense of acting in utter disregard of the evidence or upon distinctions not based upon the evi-

dence, must be determined exclusively by the record as made before the Commission. In our judgment this motion must be granted.

Under the law as it existed prior to the amendment of 1906, the findings of the Commission on the facts were expressly given only prima facie effect. For this reason the courts, while stating that the carriers ought not to withhold evidence from the Commission and for the first time produce it before the court, nevertheless held that neither party was restricted in the courts to the evidence before the Commission on the question of reasonable rates, unjust discriminations, or dissimilarity of circumstances. (*C., N. O. & T. P. Ry.* v. *I. C. C.*, 162 U. S., 184; *I. C. C.* v. *Alabama Midland Ry. Co.*, 168 U. S., 114.)

Under the amendment of 1906, however, the determination of the Commission as to the facts is final and binding, subject to the qualification that it must be supported not by a mere scintilla of proof, but by substantial evidence. (*I. C. C.* v. *Union Pacific R. R.*, 222 U. S., 541, 548, 550.) Whatever may be the rule as to the admission of additional evidence when an order of the Commission is attacked as making a rate that is confiscatory, we are of the opinion that when, as in these cases, the real basis of the complaint is that the findings of the Commission are unsupported by substantial evidence or are arbitrary, as based upon distinctions shown by the evidence to be improper, the correct-

ness of such allegations can be tested only by the evidence that was before the Commission.

If, after the hearing by the Commission and either before or after its order shall have been entered, new evidence should be discovered, or a change should have taken place such as should cause the Commission to modify or reverse its findings and order, the proper remedy is to apply for a rehearing, to present a supplemental complaint, or to file a new complaint before the Commission. Any and all evidence bearing upon the questions of fact involved in the mattters adjudicated should, however, first come before the Commission in order that it may be able to determine the ultimate facts in the case.

We come, then, to a consideration of the main questions. Was there, as to each of these petitioning tap lines, substantial evidence to justify the findings of the Commission? Did the Commission differentiate the several companies arbitrarily on distinctions or differences not justifiable in law? While evidence was given as to each road separately and specifically, and while the report deals with each road separately, a considerable mass of testimony and a considerable portion of the reports cover the entire situation. It is apparent therefrom that very real evils existed, evils demanding correction.

Tap lines, in many instances, were receiving amounts entirely disproportionate to the services

rendered by them; amounts based, not upon the cost or the value of the services rendered, if they were transportation services, but upon other and totally illegal considerations. Such payments were, in a large measure at least, secret rebates, and to that extent unlawful. Many tap lines received no allowances for work practically identical with that performed by other lines to which most liberal allowances were given. Moreover, while prior to 1906 divisions and allowances, especially in the form of secret rebates, were made directly to the mills, after the amendment of 1906 the test of the right to receive them, as fixed by the trunk lines, was incorporation of the tap line as a common carrier, although it is clear that incorporation is not essential to the status of an interstate common carrier.

The power of the Commission to prevent such rebates and unjust discriminations is beyond question. It is to be accomplished, however, not by enjoining payments, which the law itself recognizes as legal, but by requiring equality of treatment and by regulating the sums to be paid, so that they will be fairly proportioned to the services rendered. That the Commission is not authorized to forbid lawful payments merely because, in its judgment, unjust discriminations result therefrom, or to declare that to be unjust discrimination which results only from a perfectly lawful payment is apparent from the case of *I. C. C.* v. *Diffenbaugh*

(222 U. S., 42). The invalidity of the Commission's finding, when unsupported by the evidence, that certain services are plant facility and not transportation services, is also attested by the same case.

In the Diffenbaugh case the Commission held that on grain passing through an elevator and mixed, treated, weighed, or inspected therein, no allowance for elevation might be made to the elevator owner if he had any interest in the grain itself. The basis of the order was its determination that the elevation under such circumstances was not transportation within the act, and that an unjust discrimination resulted in favor of the elevator owner, against other grain dealers who did not have elevators, even though the payment was an honest one, limited to the bare cost of elevation, inasmuch as he obtained undue advantages by being thereby enabled to perform other services in respect to the grain. But the courts held that unjust discrimination could not be based upon a lawful and proper payment and that such a service was in fact a transportation service. Mr. Justice Holmes says (p. 46):

"The act of Congress in terms contemplates that if the carrier receives services from an owner of property transported * * * he shall pay for them."

"The only permissive element being that the commission may determine the maximum"
to be paid.

Judge Sanborn, writing the opinion of the Circuit Court *en banc*, said (176 Fed., 409, 418):

"Reasonable compensation for transfer services may not be denied lawfully because there is a possibility that those who receive it may at some future time violate the law and secure rebates or effect discrimination. There is no more power in the Commission to forbid carriers from paying or allowing for the elevation and transfer of grain in transit reasonable compensation because there is a possibility that a future violation of the law may arise out of such an allowance than there is to prohibit carriers from charging and receiving reasonable rates for transportation of all property, because there would be less danger of future rebates and discriminations if they were compelled to conduct transportation without compensation."

Equally may it be said that a reasonable division out of joint rates can not be denied a common carrier for transportation services because of any past or present derelictions, or even the fear of further violations of the law. The law itself fixes the method of punishment for such wrongs; it does not include therein a denial of proper compensation for proper services.

Common ownership of a railroad and an industry facilitates the making of discriminations and the covering up of rebates. For this reason Congress enacted the commodities clause, which forbids a railroad from transporting any commodity—

"manufactured, mined, or produced by it or under its authority, or which it may own in whole or in

part or in which it may have an interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

But Congress at the same time expressly excepts "timber and the manufactured products thereof" from this prohibition. It has thereby made it manifest that, in its judgment, the possible evils of secret rebates and unjust discriminations which might result from the common ownership of a railroad and a lumber plant do not offset the advantages that may be derived therefrom. It is clear, too, as well from the report and the evidence before the Commission, particularly the concurring opinion of Mr. Commissioner Prouty, as from the position taken by the State of Louisiana in this court in support of the contentions of these petitioners that these advantages are very real; that the vast forests of the country will not be developed without branch or tap lines running from the great trunk lines into the woods themselves, near which sawmills are most advantageously to be located; and that in a large measure the capital for the construction of such branch or tap lines must be raised by those who control the forests and the mills.

Common ownership or control of a lumber mill and a railroad can not, therefore, be prohibited by the Commission or be made the basis of a denial to a railroad of rights accorded another road not so owned.

Counsel for petitioners strenuously urge that this is the real basis for the action of the Commission in classifying many of these tap lines. Despite some expressions in the report which would seem to support this conclusion we accept the Commission's express recognition of this limitation of its power and its disclaimer both in this and in later cases (see *McCloud Lumber Co.* v. *S. P. Co.*, 24 I. C. C., 89, 94) of the adoption of this test.

What, if any, general rules did the Commission formulate? While it is stated at page 293 of the report—

" that the question is not susceptible of solution on general grounds; * * * that the only safe course is to ascertain and determine on the facts disclosed in each case what is the real relation between the tap line and the (proprietary) industry,"

the Commission, nevertheless, further says:

" It is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. * * * By their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as three miles from their own lines. * * * The transportation (in such case) commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the

trunk line to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. * * * It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. We should regard an allowance under such circumstances as a mere device to effect an unlawful payment to the lumber company. We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line.

" Where a mill is distant more than three miles from a trunk line and is connected with the latter by a tap line not recognized by this Commission as a common carrier in respect of the service performed for its proprietary lumber company, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. But where a mill is more than three miles distant from a trunk line and is connected

with it by a tap line organized as a common carrier and so recognized by this Commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk-line carriers have defined in this territory; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof * * *."

In a concurring opinion, Prouty, C., however, said (p. 344):

"I do not fully concur in the suggestion that main-line carriers may make to the owners of private railroads not common carriers allowances for the movement of lumber from the mill to the main line. I doubt whether this is a transportation service within the meaning of section 15."

In effect the Commission holds:

First. Switching service within three miles of a trunk line is by custom included in the through rate.

Second. Such switching is a transportation service.

Third. For switching products of a proprietary mill located within the three-mile limit, no division of the through rate may be made, but an allowance, under section 15, may be paid either to the industry or to its tap line, if the trunk line prefers to permit the industry or tap line to do this work.

Fourth. For switching products of a nonproprietary mill an allowance may be given, and, in the case of a common carrier tap line, a division out of the through rate should be made.

Fifth. But no such allowance or division shall be made if the proper switching distance is or should be less than 1,000 feet.

Sixth. The benefit of the blanket rate is to be extended beyond the three-mile switching limit for a mill on or connected by switch (presumably not over three miles long) with a common carrier tap line and through the latter with a trunk line, provided only that the mill be not a proprietary industry as to the tap line. Neither allowance nor division is to be given the tap line for switching the products of such a proprietary mill.

In our judgment these distinctions must be regarded as arbitrary and without justification as a matter of law. In determining the proper boundaries of free switching or blanket-rate service, the Commission could, of course, take into consideration, or even be guided by the practice of the roads as to the distances within which switching should be free.

In view of its finding as to the custom, it could have limited the blanket rate to mills within three miles of a trunk line. This, however, it did not do. On the contrary, it expressly ordered that the blanket rate be extended to mills on (or probably within three miles of) a common carrier tap line that connected with a trunk line, irrespective of the distance of the mills from the trunk line, provided only that they were nonproprietary. The alleged custom was thereby disregarded.

Moreover, a custom relating to the territorial extent of a blanket rate can not, in the nature of things, be determinative of the character of the service. If switching from 1,000 feet to three miles from a proprietary mill to a trunk line by means of a tap line is a transportation service, as the Commission (Prouty, C., doubting), in our judgment, correctly held, then switching for a longer or a shorter distance under similar conditions can not be a plant service. The distinction between transportation and plant service can not be dependent upon the distance that the goods are moved.

Inasmuch as the reports are specifically made a part of the order, and as the Commission therein expressly permits payment of an allowance to a proprietary mill located within the three-mile limit (p. 603, Victoria, Fisher & Western R. R., No. 93), we do not interpret the finding in the original and amended orders that the service for the proprietary companies is a plant service and an allowance therefor illegal as intended to apply to a switching service from 1,000 feet to three miles. As we have already stated the possibility, particularly in the case of short switches, of an abuse or illegal use by a railroad of the right granted to it by statute to make an allowance for services connected with transportation which, in its discretion, it permits the shipper to perform does not vest the Commission with power absolutely to forbid its exercise as an unjust discrimination. It may cut down the

compensation if it be too high; it may enforce any reasonable regulations to prevent unjust discrimination, but it may not forbid such payments as unlawful because the service is relatively either small or great.

Nor may the line be drawn on the basis of what is and what is not essential to the industry. Transportation would not flourish without manufacturing; manufacturing could not be successfully carried on without transportation; they are distinct activities; but both are essential to the industry. Raw materials must be brought to and the finished product must be carried from the mill; whether any particular service involving an actual hauling of the goods is transportation or industrial depends upon whether, on the one hand, it is an interindustry act, a step in the manufacturing process, or, on the other hand, a movement of raw material from without to the mill or of finished product from the mill toward the market. Every actual carrying of each part of the material or product is, of course, not a transportation service; the *Crane Iron Works case* (*supra*) well illustrates this. In that case, as in other cases therein cited (*General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C., 246), it was held that the hauling between buildings of an extensive plant was a part of the manufacturing, not of the transportation operations; that the transportation ended, as to raw materials, when the common carrier had

performed all that it could have been required to perform and all that it did for nonproprietary mills—that is, when it made delivery at some point on the plant; that any further activity on the part of the tap line common carrier within the plant itself could not have been compelled and was not a transportation service for which the trunk line could pay either an allowance to the industry or a division of the joint rate to the tap line as a common carrier.

But the situation here is totally different. The actual service in transporting logs to or lumber from the proprietary mills in no respect differs from that performed for independent mills; the carriage over the tap line ranges from a short switch to a many-mile haul; its purpose, so far as the lumber is concerned, is not to serve the industry in its internal operations, but directly to serve both the mill, as shipper, and the general consuming public, as consignees and purchasers. When these tap lines, which it must again be emphasized, are not private carriers, but are admittedly for some purposes interstate common carriers, take the carloads of finished lumber at the mills for the purpose of either hauling or switching them to a trunk line so that they may reach their ultimate destination beyond the State, the interstate transportation has actually begun.

As to the logs, the conditions, while not identical, are not dissimilar. The hauling, it is true, is primarily for the benefit of the mill; consignee and

consignor are one. If the service had continued to be what it originally was in most of these cases, by a private carrier for the one industry alone or from the forests to the directly adjacent mills, forest and mill being in fact one entire plant, so that the haul was interindustrial, it might well be held to be a plant-facility service (*Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450, 455); but as Prouty, C., says in that case:

"The thing done is properly the function of a common carrier and not necessarily of a plant facility. Great quantities of logs are transported to mills for manufacture by railroads as common carriers under published tariffs."

The Commission might have limited the blanket rate to the lumber either directly or by forbidding milling in transit. This, however, was not done. On the contrary, the order directing reestablishment of the old rates as to nonproprietary mills sanctioned the extension of the blanket rates not only to the mill, but back to the forests with the milling in transit privilege. That applied to each of the petitioning tap lines and is in itself a recognition of their status as interstate common carriers not only of lumber but also of logs.

Again, it is immaterial that in an early stage of the industry or in small plants logs are hauled to and lumber from the mills by horse and wagon and not by railroad. When this is the method of bringing the goods to the trunk line the allowance may or should be forbidden not because of the na-

ture of the service—clearly it is transportation when performed by a common carrier expressman—but because of the means used to perform it. The allowance to be made by a trunk line under section 15, and the payment of which can not be forbidden (*I. C. C.* v. *Diffenbaugh, supra*), is only for a service that is a part of or for an instrumentality to be used in the transportation which the trunk line would otherwise be compelled to perform, not for a service which is neither part of nor directly connected with the trunk line's transportation even though it be transportation in its relation to the industry.

The fact that these tap lines connect directly with the private logging roads of the proprietary mills; that the latter alone run into the forests; that the point at which the common-carrier service begins is more or less arbitrarily determined solely in the interest of the proprietary mills; that other mills must haul their logs by team to the tap line or must purchase them in the open market, and that thereby these proprietary mills have great commercial advantages over their competitors does not in any manner affect the matters now before us. As the Supreme Court has said in the *Diffenbaugh case* (*supra*):

"The law does not attempt to equalize fortune, opportunities, or abilities."

As the actual service rendered by the tap line from the time it takes the logs until it delivers the

finished product to the trunk line is the same for proprietary and nonproprietary mills, and as this is held to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

In view of our conclusions as to the arbitrary character of the distinctions on which the order of the Commission is based, it becomes unnecessary for us to consider the evidence as to each petitioning tap line separately.

It follows, therefore, that the Commission was not only without power to forbid any allowance whatsoever to be made by a trunk line to the petitioning proprietary industries for switching either less than 1,000 feet or more than 3 miles, but it was also without power to prohibit the making of joint rates by the trunk lines and the petitioning tap lines and the payment by the former to the latter of some division thereof for its services in hauling logs to and lumber from the petitioning proprietary mills, and its order must to this extent and as to these petitioners be annulled.

The Commission is, of course, fully empowered to regulate the amount of allowances and divisions so as to prevent rebates and unjust discriminations. In this way, as well as by the prohibition of or prosecution for certain illegal practices mentioned in the report, whereby proprietary mills obtain undue advantages, most of the evils which the Commission has sought by its order to prevent, will be checked. But such as are inherent in the common

ownership of industrial and common carrier transportation facilities do not constitute legal wrongs and must remain unless and until Congress shall extend the scope of the commodities clause.

In so far as the order of the Commission is negative, in dismissing the complaint filed to secure an order compelling the reestablishment of through routes and joint rates, we are without jurisdiction to determine its validity.

A decree will be entered in accordance with the views herein expressed, *and it is so ordered.*

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In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES OF AMERICA et al., Appellants,
v.
LOUISIANA & PACIFIC RY. CO. et al.

No. 831.

UNITED STATES OF AMERICA et al., Appellants,
v.
WOODWORTH & LOUISIANA CENTRAL RY. CO., LTD.

No. 833.

UNITED STATES OF AMERICA et al., Appellants,
v.
MANSFIELD RY. & TRANSPORTATION CO. et al.

No. 835.

UNITED STATES OF AMERICA et al., Appellants,
v.
VICTORIA, FISHER & WESTERN R. R. CO. et al.

No. 837.

UNITED STATES OF AMERICA et al., Appellants,
v.
BUTLER COUNTY R. R. CO.

Matter Applicable to the Foregoing Cases to be Printed in a Single Volume.

To the Clerk:

In pursuance of Paragraph 9, of Rule 10, Rules of the Supreme Court, the United States, appellant, hereby designates the following matter to be printed in a single separate volume, for use in the argument of the foregoing appeals.

1. The Report and Supplemental Report, and the Order and Amended Order of the Interstate Commerce Commission (50 printed copies of each herewith for the use of the printer).

2. Order of the Interstate Commerce Commission, December 20, 1910, in Docket No. 3400, Sub. 7. I. & S. Docket No. 11-A.

3. From printed Volume I, entitled "Transcript of Stenographer's Notes of Hearings Held at New Orleans, La., December, 1910," etc., as follows:

Page 1, beginning with and including the words "Before the Interstate Commerce Commission" to and including the top of Page 22, ending with the words "as they are called."

Page 109, beginning with and including the words "New Orleans, La., December 9, 1910," to and including the first half of Page 114, ending with the words "not been called, who wish to enter their appearance."

Page 636, after first inserting the date, thus: (New Orleans, La., December 13, 1913,) beginning with the words "Commissioner Harlan: The Woodworth & Louisiana Central and" to and including the first half of Page 666, ending with the words "until 9.30 tomorrow morning."

Page 684, beginning with the words "New Orleans, La., December 14, 1910," to and including the top of Page 769, ending with the words "and is attached hereto)."

Page 787, beginning with the words "Woodworth & Louisiana Central Railway Company," to the end of said Volume I.

4. From printed Volume II, entitled "Transcript of Stenographer's Notes of Hearings held at New Orleans, La., December, 1910," etc., as follows:

Page 1189, after first inserting the date, thus: (New Orleans, La., December 17, 1910,) beginning with the words "after recess" to and including that part of Page 1195 ending with the words "we will have to adjourn."

Page 1566, after inserting the date, thus: (New Orleans, La., December 14, 1910,) beginning with the words "Victoria, Fisher & Western Railway Company," to and including that part of Page 1582 ending near the bottom with the words "in the main room."

5. From printed Volume III, entitled "Transcript of Stenographer's Notes of Hearings Held at St. Louis, Mo., January, 1911," etc., as follows:

Page 1680, beginning with the words "St. Louis, Mo., January 23, 1911," to and including the first half of Page 1689, ending with the words "and having been postponed from New Orleans."

Page 2037, beginning with the words "St. Louis, Mo., January 26, 1911," to and including Page 2098, omitting Pages 2099, 2100, and 2101, and continuing with all of Page 2102, to and including Page 2114.

6. From printed Volume IV, entitled "Transcript of Stenographer's Notes of Hearings Held at Chicago, Ill., January, 1911," etc., as follows:

Page 2638, after inserting the date, thus: (Chicago, Ill., January 30, 1911,) beginning with the words "John H. Kirby was called as a witness," to and including the first half of Page 2749, ending with the words "(Witness Excused)."

Page 2840, beginning with the words "George K. Smith was called as a witness," to the end of the volume.

7. All of printed Volume V, entitled "Exhibits Filed in the Proceedings Before the Interstate Commerce Commission," etc., consisting of 105 printed pages.

8. The opinion of the Commerce Court (50 printed copies herewith for the use of the printer).

JNO. W. DAVIS,
Solicitor General.

Supreme Court of the United States, October Term, 1913.

No. 829 and Nos. 831, 833, 835, Known as the Tap Line Cases.

UNITED STATES OF AMERICA et al.
v.
LOUISIANA & PACIFIC RAILWAY COMPANY et al.

January 15, 1914, received of counsel for the United States true copies of memorandum to be filed with the Clerk by the appellants designating the portions of the record to be printed in each of the foregoing cases for the hearing of the appeals.

LUTHER M. WALTER,
Solicitor for All Appellees & R. R. Com. of Louisiana.

Jan. 16, '14.

[Endorsed:] File Nos. 23,980, etc. Supreme Court U. S. October term, 1913. Term Nos. 829, etc. The United States et al., Appellants, vs. Louisiana & Pacific Railway Company et al. Designation by The United States as to printing records and proof of service of same. Filed January 21, 1914.

In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,
v.
LOUISIANA & PACIFIC RAILWAY COMPANY et al.

No. 830.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Appellants,
v.
LOUISIANA & PACIFIC RAILWAY COMPANY et al.

No. 831.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,
v.
WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY et al.

No. 832.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Appellants,
v.
WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY et al.

No. 833.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,
v.
MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.

No. 834.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Appellants,
v.
MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.

No. 835.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,
v.
VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al.

No. 836.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Appellants,
v.
VICTORIA, FISHER & WESTERN RAILROAD COMPANY et al.

No. 837.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,
v.
BUTLER COUNTY RAILROAD COMPANY.

Designation and Stipulation.

In order to avoid duplication of printing, the designations to print and instructions to omit, filed by the United States are hereby adopted by all of the appellants in the foregoing appeals.

The United States and the Interstate Commerce Commission shall bear one half of the cost of the printing of the records according to such designations and instructions, and The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company shall bear the other half thereof, and the Clerk is requested to proceed accordingly.

JNO. W. DAVIS,
Solicitor General.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
GARDINER LATHROP &
J. L. COLEMAN,
Solicitors for The Atchison, Topeka and Santa Fe Railway Co. and Gulf, Colorado and Santa Fe Railway Co.

January 17, 1914.

[Endorsed:] File Nos. 23,980 to 23,988. Supreme Court U. S. October term, 1913. Term Nos. 829 to 837. The United States et al., Appellants, vs. Louisiana & Pacific Railway Company et al. Designation and stipulation as to printing records. Filed January 21, 1914.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, appellants, *v.* LOUISIANA & PACIFIC RAILWAY COMPANY et al.	No. 829.
ATCHISON, TOPEKA & SANTA FE RAILWAY CO. et al., appellants, *v.* LOUISIANA & PACIFIC RAILWAY COMPANY et al.	No. 830.
UNITED STATES AND INTERSTATE COMMERCE COMMISSION, appellants, *v.* WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY et al.	No. 831.
ATCHISON, TOPEKA & SANTA FE RAILWAY CO. et al., appellants, *v.* WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY et al.	No. 832.
UNITED STATES AND INTERSTATE COMMERCE COMMISSION, appellants, *v.* MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.	No. 833.

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ATCHISON, TOPEKA & SANTA FE RAILWAY Co. et al., appellants, *v.* MANSFIELD RAILWAY & TRANSPORTATION Company et al.	No. 834.
UNITED STATES AND INTERSTATE COMmerce Commission, appellants, *v.* VICTORIA, FISHER & WESTERN RAILROAD Company et al.	No. 835.
ATCHISON, TOPEKA & SANTA FE RAILWAY Co. et al., appellants, *v.* VICTORIA, FISHER & WESTERN RAILROAD Company et al.	No. 836.
UNITED STATES AND INTERSTATE COMmerce Commission, appellants, *v.* BUTLER COUNTY RAILROAD COMPANY.	No. 837.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled causes, known as the Tap Line Cases, for hearing at this term.

The appeals are from final orders or decrees of the Commerce Court entered November 28, 1913,

annulling an order of the Interstate Commerce Commission.

As grounds for this motion it is shown—

A "tap line" is a railroad owned by a company organized for the purpose of taking over and operating the tracks, logging cars, and other equipment of a proprietary company engaged in the business of cutting and sawing timber in order to secure divisions from the trunk lines on the traffic of the proprietary lumber company. In each instance the "tap line" company and the lumber company are under a common ownership, management, and control.

The Interstate Commerce Commission investigated 99 such tap line companies and their arrangements with the proprietary lumber companies and the trunk lines. In certain instances, including those of appellees Louisiana & Pacific Railway Company, Woodworth & Louisiana Central Railway Company, and Mansfield Railway & Transportation Company, it directed the discontinuance of any allowances whatever by the trunk lines on the traffic of the proprietary lumber company. In other instances, including those of appellees Victoria, Fisher & Western Railway Company and Butler County Railroad Company, it permitted allowances by the trunk lines for the switching services performed by the tap lines.

The Commerce Court, in a single opinion, annulled the order of the Commission in so far as it applied to the five appellee railway companies. The reasons upon which the Commerce Court rested its conclu-

sions are such as to affect the entire investigation by the Commission of all the tap lines. Many other cases will be controlled by the final decision of these appeals.

Important questions of jurisdiction are also raised in the record by the appellants.

The order of the Commission was entered October 13, 1912, effective for two years. Unless the cases are advanced, the order will expire by its own limitation before any hearing can be had.

The public interest is involved.

The priority suggested is also authorized by section 2 of the Act of June 18, 1910, 36 Stat. 539, 542.

Opposing counsel concur in this motion.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1914.

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UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS, *v.* MANSFIELD RAILWAY AND TRANSPORTATION CO. ET AL.	No. 833.

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL., APPELLANTS, *v.* MANSFIELD RAILWAY AND TRANSPORTATION CO. ET AL.	No. 834.
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UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS, *v.* BUTLER COUNTY RAILROAD COMPANY.	No. 837.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

These are appeals from decrees of the Commerce Court (209 Fed. 244, 260) which annulled and set aside an order of the Interstate Commerce Commission entered on the 30th day of October, 1912, in so

far as that order refused to reinstate joint rates between the petitioners and certain trunk lines and to compel the payment by the latter to the former of allowances upon the transportation of the logs and lumber of the lumber companies by which the petitioners are severally owned or controlled.

Nos. 830, 832, 834, and 836 are sister cases, being appeals from the same decrees taken by the Atchison, Topeka & Santa Fe Railway Company, one of the trunk lines interested.

The order thus annulled was the outcome of an investigation by the Commission into the relations existing between the so-called Tap Lines in the lumber industry, their proprietary lumber companies, and the trunk line carriers in the yellow pine districts of Missouri, Arkansas, Texas, and Louisiana.

This investigation was indirectly due to the reports of the Commission in *Star Grain & Lumber Company* v. *Atchison, Topeka & Santa Fe Railway Company*, 14 I. C. C. 364 (June 23, 1908), 17 I. C. C. 338 (December 7, 1909). Prior to these reports joint tariffs had been maintained between certain trunk lines and lumber tap lines, but with the views of the Commission expressed in these two reports as a justification of their action the trunk line carriers undertook to cancel the joint tariffs theretofore maintained. Thereupon petitions were filed with the Commission by sundry tap lines, including the appellees, seeking the establishment or reestablishment of through routes and joint rates with their connecting trunk lines and the payment of allow-

ances or divisions out of such joint rates, particularly upon the traffic of their proprietary lumber companies. The appellees, Louisiana and Pacific Railway Company, Woodworth and Louisiana Central Railway Company, Victoria, Fisher & Western Railroad Company, and their affiliated lumber companies, filed no formal petitions, but the Commission at their request treated the case as though they had done so.

The investigation ultimately embraced over 250 tap lines throughout that region. On May 14, 1912, the Commission filed its report and entered an order dismissing the several petitions of the appellees Louisiana & Pacific Railway Company, Woodworth & Louisiana Central Railway Company, Mansfield Railway & Transportation Company, and Victoria, Fisher & Western Railroad Company, and granting to the appellee Butler County Railroad Company divisions or allowances to a limited amount. This order was amended and modified by a subsequent order of October 30, 1912, again declaring the four appellees first named not entitled to the relief prayed and any allowances or divisions to them unlawful, granting to the Butler County Railroad Company limited allowances, and requiring the principal trunk line defendants to abstain from making such unlawful allowances. This order went against 92 railroads connected with lumber companies besides those involved in the present appeals.

The appellees filed their several petitions in the Commerce Court praying that this order might be

enjoined, set aside, and annulled. The Government answered the petitions on the merits and also assailed the jurisdiction of the court.

In so far as the order was held to be affirmative it was annulled, and the parties were left as they were found by the Commission. These appeals were then taken.

DESCRIPTION OF THE INDIVIDUAL APPELLEES.

Both the Commission and the Commerce Court declared that each case must rest upon its own facts. The Commission therefore set forth at some length the circumstances and history of each appellee. The facts so found are amply supported by the evidence, which will be summarized.

LOUISIANA & PACIFIC RAILWAY COMPANY.[1]

Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and Longville Lumber Company are Missouri corporations owning extensive tracts in Louisiana from which they cut timber and manufacture it into lumber at their mills located respectively at De Ridder, Bon Ami, Lake Charles, and Longville (R. 15). The total capital stock of all the companies is $2,065,000, of which R. A. Long owns 83 per cent, the remainder being held princi-

[1] The evidence before the Commission is found in Volume I, pages 636–666 and 684–769. The findings of the Commission are at 23 I. C. C. 591. Opinions, Orders, etc., 111. R. 24.

pally by his few associates in the business, and relatives (R. 11, 12, 13). C. B. Sweet, an associate of R. A. Long, is president of all the companies, and a minority stockholder (R. 65).

Long-Bell Lumber Company, a Missouri corporation, acts as the selling agent for the products of the four lumber companies, and is engaged in the wholesale and retail lumber business (R. 15). R. A. Long is president (R. 64).

Prior to 1906 each of the mills operated its own switch tracks as part of its facilities in cutting timber and manufacturing lumber. The respective railroad companies with their own engines ran over the tracks of the lumber companies to take the cars out. Then the several lumber companies, as shippers, transacted all business directly with the trunk line railroads, from whom they received allowances.

The Hepburn Act, which amended the Elkins Act, was approved June 29, 1906, to become effective August 28, 1906. In that year the organization of the Louisiana & Pacific, which up to that time had been a mere paper railroad, was completed by the lumber companies (except Longville Lumber Company) transferring to it the logging roads, tramroads, spurs, and connections, together with all cars, engines, tools, equipment, and appurtenances. The Louisiana & Pacific issued its bonds in payment. The evidence shows that "this railroad was made up by connecting together three lumber railroads companies"; three railroads "then belonging to lumber compa-

nies." It has a dirt roadbed (Vol. 1, R. 637, 639, 760). July 1, 1908, Longville Lumber Company also conveyed its entire railroad equipment to the Louisiana & Pacific (R. 121).

Louisiana & Pacific has an authorized capital stock of $200,000, of which $51,000 is outstanding. R. A. Long, who is president, owns $40,290 of the stock. It has a bonded indebtedness of $442,300 of which the four lumber companies and their agents hold approximately $260,000 (R. 11, 24, 25). Only $30,000 were issued for cash (Vol. 1, R. 725).

Messrs. Long, Sweet, Bannister and Rickey are all officers in all of the companies (Vol. 1, R. 640).

The four lumber companies, the agency company, and the railroad company thus constitute six interlocking corporations, under a common ownership, management, and control, jointly operating in the State of Louisiana, with headquarters in a single office in the R. A. Long Building, Kansas City, Missouri, dominated by a single individual owner (Vol. 1, R. 690, 691).

The sole object of building the Louisiana & Pacific was to get competition among five or six trunk line railroads. "We were out to get as much money as we could out of it with these railroads and built for these connections." (Vol. 1, R. 753).

October 13, 1906, the six companies and the Colorado Southern, New Orleans & Pacific Railroad Company (owned and controlled by the Frisco Company)

entered into a contract for the term of 15 years, agreeing (R. 126)—

That the six companies would route 50 per cent of all the products of their mills over the Frisco (R. 128, 129);

That the Louisiana Company and the Frisco Company would enter into joint tariffs (R. 129);

That no per diem charges would be made by the Frisco Company or the Louisiana Company on freight cars delivered by either to the other until the expiration of six days after the delivery (R. 130);

That the Frisco Company would have the exclusive right to fix and determine all interstate rates applicable over the lines of the Louisiana Company, the Colorado Company and the Frisco Company, and over connections governing all shipments inbound or outbound (R. 130);

That with respect to the division of freight rates between the Louisiana & Pacific Railway Company, the Colorado Company and the Frisco Company, the first shall receive 35 per cent of the through rate on all lumber shipments originating on its line with a maximum of 5½¢ per 100 pounds, and the two latter companies agree to publish "the same freight rates from points on the Louisiana Company's line as are or shall be in effect from Eunice, Louisiana, on the Colorado Company's line (R. 130);

On all commodities of traffic other than lumber which may be interchanged between

> the Louisiana Company and the Colorado Company and the Frisco Company the said three companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair, and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana (R. 131).

October 31, 1906, Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company (a subsidiary of the Southern Pacific), entered into a contract by which the Lake Charles Company purchased the line of road and right of way of the Louisiana Company between De Ridder and Lake Charles, paying $15,000 in cash, plus the actual cost of the line between De Ridder and Ramsey. The Lake Charles Company agreed to execute a contract giving the Louisiana Company joint trackage rights over the entire line from De Ridder to Lake Charles, for a period of 20 years, for such trains as the Louisiana Company may desire to operate over said road. The rental was fixed at an amount equal to 25 cents per train mile for every train that shall be run over the road by the Louisiana Company (R. 105). This trackage contract was not formally executed until February 21, 1908, and "was a very good one" for the Louisiana & Pacific, which had "the same rights on the road that we had before and we believed at less money than we could afford to own it and keep it up." (Vol. 1, R. 754.)

The contract for the sale of the road to the Lake Charles Company contained the following clause (R. 108):

> This agreement, with all things pertaining thereto, is entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the Louisiana Western Railroad Company, the said Louisiana and Pacific Railway Company, the Hudson River Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company, and the Long-Bell Lumber Company, for division of freights on joint business and for a routing of a proportion of the products of said lumber companies as provided in said agreement.[1]

The contract of sale to Lake Charles & Northern and the contract with Louisiana & Western for through routes and joint rates constituted one transaction (Vol. I, R. 753, 754).

Upon the execution of the contract, the tracks of the lumber companies, which had been conveyed to the Louisiana & Pacific, were connected with the tracks of the trunk lines by trackage rights over the Lake Charles & Northern. The commission gave a full description of the tracks (R. 25).

October 31, 1906, the six companies entered into a contract with the Louisiana Western Railroad Company (a subsidiary of the Southern Pacific), agreeing to ship over the Louisiana & Pacific to the connection with the Louisiana Western at Lake

[1] The contracts of October 13 and 31, 1906 (R. 69, 105), though different in certain provisions, represent the same transactions.

Charles at least 40 per cent of the aggregate products of all their mills. The Louisiana & Pacific was to receive 4 cents per 100 pounds on the products from the mills along its line shipped under the terms of the agreement. As to other freight for the public they agreed (R. 67):

> And that upon all other commodities shipped over the lines of said party of the first part and the said party of the second part, the said party of the second part shall be entitled to such per cent of the whole amount of freight received from the entire shipment as may be agreed upon from time to time by the traffic managers of the said first and second parties.

The entire equipment consists of 22 locomotives, 6 cabooses, 41 freight cars and 270 logging cars (R. 26). The petition alleges it as much less (R. 4).

March 2, 1908, the officers of the Louisiana & Pacific made a contract with themselves as officers of the lumber companies in which they agree to furnish the lumber companies all steel rails of suitable class necessary to make any extensions to any of the spurs of the Louisiana & Pacific. December 13 and 14, 1910, the testimony was taken by the Commission at New Orleans, and the contract was before the Commission. March 1, 1911, while the Commission had the case under advisement, the officers of the lumber companies made another contract with themselves as officers of the Louisiana & Pacific by which they agreed to cancel the contract of March 2, 1908, because "the Interstate Commerce

Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper." May 14, 1912, the Commission filed its report. The appellees now allege that "the statement 'the steel for these tracks is furnished and supplied by the tap line without charge' *is incorrect and untrue*" (R. 115, 124, 140, 147, 54).

It also owns a private car, which its officers, who are also officers and stockholders of the lumber companies, use in traveling around the country on free transportation furnished by the trunk lines.

The lumber companies have many miles of unincorporated logging track connecting with the several sections of the Louisiana & Pacific at various points. The logs are loaded by the lumber company and switched by them over the spurs to the point of connection with the incorporated tracks. The cars are then hauled by the Louisiana & Pacific to the mill, about 30 miles distance on the average. *No charge is made by the Louisiana & Pacific against the lumber companies for the log movement.* After the lumber is sawed, the Louisiana & Pacific switches the carloads from the mill at Lake Charles to the Southern Pacific, three-fourths of a mile, or from De Ridder to the trunk lines, a few hundred feet. It moves lumber from the mill at Lake Charles to the Frisco, a distance of 18 miles, and from Bon Ami to the Southern Pacific, a distance of 40 miles. The average haul of the Louisiana & Pacific on lumber movements of the affiliated companies is said to be nearly 20 miles (R. 26).

Cars from any of the mills at De Ridder, Bon Ami, and Longville may be switched to Lake Charles for delivery to the trunk lines. Cars from the mill at Lake Charles may be switched to Fulton or De Ridder and there delivered to the trunk lines. In that way the parties may increase the average lumber haul on the tap line.

The lumber companies ship more than 1,000 cars of lumber per month (R. 59). For the fiscal year 1910, the total movement of lumber was 243,122 tons, and other freight 8,819 tons; *98 per cent of the entire tonnage was supplied by the controlling interests.* The passenger receipts were $473.77 (R. 26).

For the year ending June 30, 1910, the annual report shows an operating revenue of $220,985.94, operating expenses $145,433.69, accumulated surplus $73,581.07 (R. 27).

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY.[1]

Rapides Lumber Company is a Louisiana corporation, owning about 42,000 acres in Louisiana, from which it cuts timber and manufactures it into lumber at its mills located at Woodworth, with a capacity of 2,100 cars per annum (R. 31). The Long-Bell Lumber Company acts as its selling agent also (R. 3).

[1] The evidence before the Commission is found in Volume I, pages 787–804. The findings of the Commission are at 23 I. C. C. 327. Opinions, Orders, etc., 51. R. 12.

Woodworth & Louisiana Central Railway Company has an authorized capital stock of $25,000 (Vol. I, R. 789), and is indebted to the Rapides Lumber Company in the sum of $88,000 (Vol. I, R. 789). It owes $10,000 to a bank in Alexandria, La., which is secured by a note indorsed by R. A. Long (Vol. I, R. 789, 790). It has no bonds (Vol. I, R. 789). R. A. Long is the owner of the majority of the capital stock of the two companies, which belong to the so-called R. A. Long interests (Vol. I, R. 801). Messrs. Long, Sweet, Bannister and Rickey are all officers in both companies (Vol. I, R. 788). R. A. Long is president, and C. B. Sweet is vice-president, of each (Vol. I, R. 788). The stock of the railway company is owned by the stockholders of the lumber company (Vol. I, R. 789). It is practically the same investment (Vol. I, R. 789).

December 8, 1900, the stockholders of Rapides Lumber Company incorporated Woodworth & Louisiana Central Railway Company (R. 29). It then had a connection with St. Louis, Watkins & Gulf (Iron Mountain) (R. 29). The Rock Island went into that country in 1907, and opened for business in 1908 (Vol. I, R. 799). Before 1908, the Texas & Pacific got at least 75 to 80 per cent of the tonnage. The Iron Mountain did not get a great deal (Vol. I, R. 800).

Woodworth & Louisiana Central now connects with the Iron Mountain at Woodworth, and with Texas & Pacific, Southern Pacific, and Rock Island at Lamoria (R. 3).

There are no joint rates except on lumber (R. 13).

The lumber company owns the spurs in the woods, and the railroad company owns the steel (Vol. I, R. 792). The railroad company owns 5 narrow-gauge locomotives, 4 of which it has leased to the lumber company, which uses them on the spurs (Vol. I, R. 794). No compensation is paid or collected for the use of these locomotives, or *for hauling the logs from the interchange tracks in the forest to the mill and dumping them in the pond* (Vol. I, R. 794, 795), but the Woodworth & Louisiana Central gets the outbound tonnage from the lumber company, which is shipped from Woodworth (Vol. I, R. 795).

August 1, 1906 (two years before it opened for business), the Rock Island entered into its contract with Rapides Lumber Company (R. 44) in which it was agreed that—

> (*a*) On all lumber shipments originating on the line of the Woodworth Company, the Woodworth Company shall receive thirty-five (35) per centum of the through rate, with a maximum of five and one-half (5½) cents per hundred pounds (R. 48).
>
> (*b*) No per diem charges shall be made by either the Rock Island Company * * * or the Woodworth Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six (6) days after each delivery (R. 47).
>
> (*c*) They will publish joint tariffs relating to the joint traffic over their respective lines (R. 47).

(*d*) They will maintain the same through freight rates as are maintained from other points on the line of the Rock Island Company in Louisiana (R. 48).

(*e*) On all commodities of traffic, other than lumber, which may be interchanged between the Woodworth and the Rock Island Companies and the Chicago Company, the said companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana (R. 48).

The answer of the United States alleges that the Southern Pacific has a similar contract for 40 per cent of the traffic (R. 61). This contract is not in the record. R. S. Davis, traffic manager of the appellees, testified:

> Commissioner Harlan: Will you answer the question at this point, whether the connection between the Rock Island and the Woodworth & Louisiana Central resulted in an increase of divisions by any line?
>
> Mr. Davis: An increase of one and one-half cents (Vol. I, R. 799).
>
> * * * * *
>
> We give 50 per cent of our business to the Rock Island if they furnish cars, *and of the balance, 40 per cent to the Southern Pacific.*

He further testified that after the Rock Island opened in 1908, they got from 2 cents to 5½ cents

from the Rock Island (Vol. I, R. 799, 800), and 7 cents on the Denver business (Vol. I, R. 800).

As a result of these arrangements, 95 per cent of the whole traffic now goes over the standard track from the Iron Mountain at Woodworth to the other carriers at La Moria (Vol. I, R. 798).

MANSFIELD RAILWAY & TRANSPORTATION COMPANY.[1]

Frost-Johnson Lumber Company is a Missouri corporation owning extensive tracts in Louisiana from which it cuts timber and manufactures it into lumber at its mills at Mansfield, La. (R. 5).

It owns about 325,000 acres of land (Vol. III, R. 2061). In one year it shipped 183,000,000 feet of lumber (Vol. III, R. 2061). There are quite a number of large operators down there (Vol. III, R. 2086). It owns all of the timber in certain territories in that country and a majority of the timber between the railroad and the river, sometimes for a distance of 8 or 10 miles (Vol. III, R. 2085).

Mansfield Railway & Transportation Company is a Louisiana corporation empowered to own and operate a railroad. The general office is at Mansfield. It claims to operate a line of railroad from Mansfield to Hunter, a distance of 16 miles (R. 3). It was incorporated in 1881, and was built by the merchants from Mansfield to Mansfield Junction. Four or five years

[1] The evidence before the Commission is in Volume III, pages 2060–2114. The findings of the Commission are at 23 I. C. C. 587. Opinions, orders, etc., 107. R. 11.

ago, E. A. Frost bought for $12,500 cash (R. 11, Vol. III, R. 2068) the stock and property of the road, including the equipment and roadbed, which then did not go beyond Mansfield Junction. The line from Mansfield to Mansfield Junction is two miles (Vol. III, 2068). The line from Mansfield to Hunter is 14 miles (R. 12).

After purchasing the stock, E. A. Frost extended it out to Hunter, crossing the Texas & Pacific tracks (Vol. III, 2065). The rail is 60, 56, and 52 pounds. It has not a ballasted road (Vol. III, R. 2069). It has 1 locomotive, 1 box car, and 2 passenger cars (R. 3). Its office force consists of 1 man in the main office and another man to handle the local freight in town (Vol. III, R. 2077).

E. A. Frost is president and admits there is but one investment and one interest in the two companies (Vol. III, R. 2064).

The stock of Frost-Johnson Lumber Company is held by different stockholders, and the entire outstanding capital stock of Mansfield Railway & Transportation Company, amounting to $77,300 (R. 11), is issued in the name of Edwin A. Frost, who holds it in trust for the stockholders of the Frost-Johnson Lumber Company (Vol. III, R. 2064). Mansfield Railway & Transportation Company is indebted to the Frost-Johnson Lumber Company in the sum of $216,806.97 (R. 11).

Frost-Johnson Lumber Company sold the track to Mansfield Railway & Transportation Company, but

never divested itself of its right to operate its own trains over it at its own expense (Vol. III, R. 2096, 2097, R. 11). An incorporated logging company, which cuts the trees and brings them to the mill pond, separately operates the logging equipment of the lumber company (Vol. III, R. 2094, 2095). The logging company runs the cars over the tracks of the lumber company by virtue of the right which the latter reserved in its contract with the railroad company to which it sold the track.

The distance from the planing mill to the junction of the main line of the Mansfield Railway & Transportation Company is about 2,000 feet (Vol. III, R. 2072). The distance to the point where cars are delivered to the Kansas City Southern is about three-quarters of a mile (Vol. III, R. 2073).

After the logs are hauled from the forest to the mill by the logging company they are sawed into lumber. The loaded cars are then switched to the connections with Kansas City Southern and Texas & Pacific. The railroad company performs no service whatever on the log haul. One passenger engine performs all of the service. No trackage charge is paid to the railroad (Vol. III, R. 2082).

Nor does the railroad company perform any service whatever as a carrier for other people who have logs to ship (Vol. III, R. 2084, 2085). By reason of contracts between the railroad company and the lumber company, no one can haul a log from Hunter over the line of the railroad company except under condi-

tions dictated by the lumber company. The latter absolutely controls the movement of logs over that line in that direction (Vol. III, R. 2086, 2087).

The average car contains about 19,000 feet of lumber and holds about 60,000 pounds (Vol. III, R. 2093). The lumber rates apply from points on the line of the railroad company (Vol. III, R. 2076).

The divisions are from 1 cent to 4 cents (Vol. III, R. 2075). The railroad company receives the same divisions regardless of the service (Vol. III, R. 2076, 2077). The lumber company does the work and the allowance of 4 cents is paid to the railroad company (Vol. III, R. 2095). There are no earnings until the cars containing the manufactured products are handled (Vol. III, R. 2095). In paying the railroad company for the haul of the logs by the lumber company some profit is yielded on the investment (Vol. III, R. 2076).

After the divisions were agreed upon with the trunk lines, there was delay in arriving at a settlement. The divisions were finally made retroactive, and $9,500 was paid in a lump sum (Vol. III, R. 2091, 2092).

Much of the inbound tonnage is for the lumber company and the railroad company (Vol. III, R. 2077, 2078). They use more than one-half of the coal. A very large portion of the general merchandise tonnage moves only between Mansfield and Mansfield Junction (Vol. III, R. 2079, 2080).

During the fiscal year ending June 30, 1910, 28,596 tons of lumber were handled, of which 91.4

per cent was supplied by the Frost-Johnson Lumber Company. There were 16,539 tons of miscellaneous freight, almost all of which moved over the line between Mansfield and Mansfield Junction, and a considerable portion of which was handled for the controlling interests or their employees (R. 12, 13).

Edwin A. Frost had one or two passes over the Texas & Pacific and the Kansas City Southern, and occasionally had been to Chicago on transportation (Vol. III, R. 2089). E. T. Whited, vice-president, had one or two passes. He is vice-president of the lumber company and the railroad company (Vol. III, R. 2089).

> Commissioner HARLAN. You are both engaged in pushing the interests of the lumber company as far as you can?
>
> Mr. FROST. We push it all we can.
>
> Commissioner HARLAN. And in pushing it you occasionally travel?
>
> Mr. FROST. We have to.
>
> Commissioner HARLAN. And having to travel, you occasionally use free transportation?
>
> Mr. FROST. If we have got it, we do.
>
> Mr. WALTER. You do not understand that under the statute the law prescribes what the purpose of your travel shall be when you ride on transportation?
>
> Mr. FROST. No. (Vol. III, 2089.)

Edwin A. Frost also held passes for the year 1910 over the lines of the Texas & Pacific, Kansas City Southern, Iron Mountain, Cotton Belt, Missouri

Pacific, Wabash, Chicago & Alton, and Chicago & Northwestern. These passes were used regardless of the business on which he traveled (Vol. III, R. 2103, 2104). E. T. Whited had passes in the same way. He looked after the manufacturing and the small railroads (Vol. III, R. 2104, 2105).

VICTORIA, FISHER & WESTERN RAILROAD COMPANY.[1]

Louisiana Long Leaf Lumber Company is a corporation, organized for the purpose of manufacturing and selling lumber, with its mills located at Victoria and Fisher, La. It ships annually about 40,000,000 feet, or 2,000 carloads (R. 4, 5). It has approximately 95,000 acres of timberlands (R. 12).

Victoria, Fisher & Western Railroad Company is a corporation, organized under the laws of the State of Louisiana for the purpose of constructing, operating, and maintaining a standard-gauge railroad, from the city of Natchitoches, to East Pendleton (R. 1, 2), through the towns of Victoria and Fisher, where the two lumber mills are located. It has a total capitalization of $300,000, which represents "a dividend on the capital stock of the Louisiana Long Leaf Lumber Company paid to its stockholders (Vol. II, R. 1577)." It does not appear that any cash passed between the lumber company and the railroad company when the latter took over the tracks and equipment.

[1] The evidence before the Commission is found in Volume II, pages 1566-1582. The findings of the Commission are at 23 I. C. C. 302. Opinions, orders, etc., 122. R. 10.

It carries only freight and is not incorporated as a passenger line (Vol. II, R. 1570). It has 31 miles main line and 25 miles used in sidings and logging spurs, all standard gauge, with 40 to 60 pound rails (Vol. II, R. 1567). Originally this railroad was largely a logging proposition in connection with one of these mills (Vol. II, R. 1570). It has 5 wood-burning locomotives (Vol. II, R. 1573), 3 box cars, 1 flat car, 105 logging cars, and 4 caboose cars, which it purchased from the lumber company eight years ago (Vol. II, R. 1567, 1568).

The railroad connects with the Texas & Pacific at Victoria and with the Kansas City Southern at Fisher (Vol. II, R. 1567). The distance from the mill at Victoria to the junction with the Texas & Pacific is about 100 yards; and a quarter of a mile in the direction that the lumber moves (Vol. II, R. 1569). The distance from the mills at Fisher to the junction with the Kansas City Southern is very nearly a mile (Vol. II, R. 1569).

Its engines do not go off its own line (Vol. II, R. 1570). It has no station buildings (Vol. II, R. 1570). There are team tracks at the mills and sidings along the main line (Vol. II, R. 1570). From Fisher there are two train crews that make three or four trips daily, and from Victoria there is one that makes two trips daily. The service between Fisher and Victoria is taken care of as required (Vol. II, R. 1571).

The officers and managers of the lumber company and the railroad company are the same (Vol. II, R. 1567), and 99 per cent of the tonnage of the railroad

company is the traffic of the lumber company (R. 12). The stock of the two companies is held by the same stockholders in the same relative proportions. The railroad company pays the lumber company $1,000 a year, which is the total of the salaries of the officers and clerks of the railroad. W. W. Warren is general manager of both companies and receives a salary from each (Vol. II, R. 1567).

The total tonnage of forest products furnished by the lumber company was 315,496 tons; revenue, $116,373.90. The tonnage of other freight handled for the lumber company was 245 tons, revenue, $1,972.96. The forest products handled for others was 920 tons, revenue, $890.49; other freight, 15 tons, revenue, $44.87 (Vol. II, R. 1571). The railroad company has never paid any dividend (Vol. II, R. 1577). On June 30, 1910, it had a surplus of $13,509.17, which it had accumulated since 1902. The road makes $10,000 a year. Last year the net earnings were $66,374.79, from which must be deducted $47,655.88, which represents the abandoned spurs and depreciation on rolling stock and other property. The abandoned spurs all belong to the lumber company (Vol. II, R. 1578).

The railroad handles the logs to, and the lumber from, the mill (Vol. II, R. 1574, 1579). *The haul from the tree to the mill was never considered a part of the through movement* (Vol. II, R. 1579). The railroad accommodates its patrons by building temporary spur tracks off in the woods to get the timber (Vol. II, R. 1579, 1580). All of the tracks belong to

the railroad company and the engine goes the whole way from the tree to the mill (Vol. II, R. 1579).

When the lumber has been manufactured it is loaded into empty cars that are supplied by the Texas & Pacific and the Kansas City Southern, who furnish the equipment (Vol. II, R. 1574). The Victoria, Fisher & Western sets the cars at the mill. They are then loaded by the mill employees, switched by the Victoria, Fisher & Western, or moved by it, over to the trunk lines (Vol. II, R. 1574). The length of the movement at Victoria over tracks of the railroad company from the mill to the Texas & Pacific is 100 yards (Vol. II, R. 1569). From Fisher to the interchange track of the Kansas City Southern is about 1 mile (Vol. II, R. 1569).

The Victoria, Fisher & Western Railroad Company participates in, and receives divisions out of, the joint rates with the Texas & Pacific and the Kansas City Southern roads (Vol. II, R. 1571). On lumber the railroad company receives from ¾ of a cent to 4 cents (Vol. II, R. 1573). The highest divisions are from the Kansas City Southern on their traffic to Kansas City, which is a 4-cent division (Vol. II, R. 1573). The rates are on a milling in transit basis and cover the movement of the logs into the mill and the subsequent movement of the lumber out (Vol. II, R. 1572). The service rendered for the division is the milling in transit service, placing and switching of empty and loaded cars, and weighing of loads and delivery to the mill (Vol. II, R. 1574). For moving over the branch lines the railroad company charges $1.50 per 1,000 feet (Vol. II, R. 1572).

The Victoria, Fisher & Western Railroad Company does not issue any waybills, but simply switches the car over to the Texas & Pacific. The Kansas City Southern executes the bills of lading on lumber originating at Fisher and moving over its line. "Cane" is the junction of all the logging spurs west of Fisher (Vol. II, R. 1575). The Louisiana Long Leaf Lumber Company writes the bill of lading, shows the point of origin as Cane, and delivers that shipment and the bill of lading to the Kansas City Southern. Cane is not on the Victoria, Fisher & Western, and a bill of lading which recites that the property was received at Cane *is a little mixed* (Vol. II, R. 1576). The bill of lading provides that the property is received at Fisher and originated at Cane.

Some lumber moves from the Fisher mill over the main line to the Texas & Pacific, and some moves in the opposite direction from the Victoria mill over the main line to the Kansas City Southern. The division is the same regardless of the service performed (Vol. II, R. 1576).

There is a small mill between Fisher and Victoria, which brings its logs to the mill by team. The lumber company hauls its logs by teams to the spurs (Vol. II, R. 1580). No shipper has ever asked to see the tariffs of the Victoria, Fisher & Western Railroad Company (Vol. II, R. 1577). The railroad company keeps its accounts in accordance with the rules prescribed by the Commission and in other respects complies with the statute (Vol. II, R. 1577).

BUTLER COUNTY RAILROAD COMPANY.[1]

American Sugar Refining Company is engaged in refining and marketing sugar. It has important refining establishments at New York City and New Orleans (R. 64). In connection with, and as a part of, its business it controls extensive timber tracts and lumber industries in Butler County, Missouri, from which it secures staves, barrel heads, and lumber products, for its two manufacturing establishments (R. 41). Its operations in Butler County are conducted by its subsidiary corporations.

Great Western Land Company is a corporation holding the title to large tracts of lands in Butler County, Missouri (R. 15), producing hardwood timber, consisting principally of gum, oak, hickory, ash and elm (R. 16). Its entire capital stock is owned by American Sugar Refining Company (R. 16).

Brooklyn Cooperage Company is a corporation owning and operating a lumber mill at Poplar Bluff, Butler County, Missouri. Prior to 1905 it owned 12 miles of railroad track, which it used in connection with its lumbering and milling business. It cuts lumber from the lands of the Great Western Land Company (R. 20), and manufactures it into staves, barrel heads, and other lumber products (R. 41), which are consumed "by the real owner" (R. 34), and are shipped principally to New York and New Orleans "because the owner of the mill, or the practical owner, consumes

[1] The evidence before the Commission is all in the short record. The findings of the Commission are at 23 I. C. C. 628. Opinions, orders, etc., 148. R. 62.

the cooperage at the sugar plants in the vicinity of those two places" (R. 48). Its principal business is the manufacturing of sugar barrels with which to ship the sugar refined by the American Sugar Refining Company, which owns the whole of its capital stock (R. 16).

Butler County Railroad Company was organized in 1905, under the railroad statute of Missouri (R. 11). It operates 34 miles of railroad track, of which it owns 12 miles (R. 14), which it acquired at the time it was organized from Brooklyn Cooperage Company (R. 14). Its entire equipment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and logging cars (R. 63). It has an authorized capital stock of $200,000, of which $163,500 has been issued (R. 15) and is now held by certain individuals in trust for Brooklyn Cooperage Company (R. 14). Part of the stock was issued in consideration of the tracks, which the Cooperage Company turned over to it. It has a bonded indebtedness of $50,000. The note and the mortgage securing the note are made payable to the Brooklyn Cooperage Company (R. 15).

The patchwork railroad system of Butler County Railroad Company may be thus described:

The tracks consist of two disconnected sections. One section connects with the Iron Mountain and the Frisco at a point at or near Poplar Bluff, known as Linstead, and extends to and into the plant of the Brooklyn Cooperage Company, which is within three-fourths of a mile of the two trunk lines (R. 62). The other, or principal, section connects with the Iron

Mountain at Lowell Junction, about 7½ miles east of Poplar Bluff, and extends southward for a distance of 7 miles to a point called Bailey's. At Rossville a stem projects westward and southward for 3 miles. These are the only tracks which it owns.

From Poplar Bluff to Lowell Junction the track is owned by the Iron Mountain, over which, through an oral arrangement, the appellee operates such equipment as it has. In order to make this patchwork of any use whatever, the Butler County Railroad Company enjoys the high privilege of running its equipment over the rails of the Iron Mountain for the small consideration of 65 cents a train mile for 25 cars, 75 cents a train mile for 35 cars, and 85 cents a train mile for 45 cars (R. 13) amounting to $3,600 (R. 13) for 10,436 cars for 1910 (R. 29). From Bailey's to Melville, and from Melville to Menorkenut, the track is owned by the Brooklyn Cooperage Company. North and east of Menorkenut the Brooklyn Cooperage Company is lumbering on the lands of the Great Western Land Company (R. 20). The stem from Melville south projects about 2½ miles into the forest where the Brooklyn Cooperage Company is also lumbering (R. 18) on the lands of Great Western Land Company.

The appellee performs no service on the tracks in bringing the traffic to the line operated by it, which is performed by the engine of the Brooklyn Cooperage Company (R. 23). Butler County Railroad Company transports the timber from the point where it is tendered to it to the mill (R. 22).

South of Melville, and north of Menorkenut, the Brooklyn Cooperage Company operates logging roads in the forests of the Great Western Land Company. The locomotives of the Cooperage Company are confined to the logging roads (R. 19). They haul the timber from the forest over the logging tracks to the switch at an interchange point, where Butler County Railroad Company receives it (R. 20).

A charge of 1 cent to 1½ cents per 100 pounds, amounting approximately to $4 per car, is made by the Butler County Railroad Company against the Brooklyn Cooperage Company for the log movement to the mill. Butler County Railroad Company switches the loaded cars from the mill to the tracks of the Frisco or Iron Mountain, a distance in each case of less than 1 mile. It receives from the trunk lines an allowance of from 2 to 5 cents per 100 pounds (R. 63), amounting in some instances (to Cairo, for example), fully to one-half of the through rate (R. 42, 43).

For the fiscal year ending June 30, 1910, the traffic of Butler County Railroad Company consisted chiefly of forest products, amounting in the aggregate to 184,688 tons, as against 2,475 tons of other freight. Of the first figure, 107,527 tons were logs and cooperage furnished by the controlling interests; 77,161 tons of logs, bolts, piles, ties, and lumber were moved for outsiders, but all of the timber came from lands of the Great Western Land Company. The 2,475 tons of miscellaneous freight included 1,195 tons of inbound machinery and coal for the proprietary companies (R. 63).

For the benefit and advantage of the American Sugar Refining Company the rate from Poplar Bluff to New York and New Orleans on cooperage material is 2 cents less than the rate from all other points on the line of Butler County Railroad Company. The few independent shippers must pay either the local rate in addition to the charge of the trunk line, or a through rate that is 2 cents higher than the rate from Poplar Bluff (R. 62, 64).

Fifty-seven per cent of the entire tonnage was handled for the Brooklyn Cooperage Company, 42 per cent was other carload freight, and 1 per cent was less than carload. Thirty-nine per cent of the revenue was derived from the carload freight handled for the Brooklyn Cooperage Company, or $28,092; 55 per cent for other carload freight, or $41,133; and 6 per cent for less than carload freight, or $4,427 (R. 31, 32).

SPECIFICATIONS OF ERROR.

In No. 829 the assignments of error appear on pages 157–160, inclusive. In No. 831 the assignments of error appear on pages 92–95, inclusive. In No. 833 the assignments of error appear on pages 99–101, inclusive. In No. 835 the assignments of error appear on pages 62–65, inclusive. In No. 837 the assignments of error appear on pages 107–109, inclusive.

No purpose would be subserved by repeating them. That the Commerce Court was without jurisdiction to entertain the petitions, and that it erred in

annulling in whole or in part the order of the Interstate Commerce Commission are the two main contentions of the Government.

BRIEF OF ARGUMENT.

I. The Commerce Court was without jurisdiction to hear and determine the cases.

1. The portion of the Commission's order of which appellees complain was merely a refusal of the relief for which they prayed and was negative in character.

II. The Commerce Court properly disregarded the testimony taken before it on behalf of the appellees.

1. The findings of the Commission if based on substantial evidence are conclusive.

2. Congress, therefore, did not contemplate a retrial of the issues of fact before another tribunal.

III. The incorporation of the tap lines was insufficient to confer on them the status of common carriers or to alter their relations to, or the character of the services performed by them for, their proprietary companies.

1. Under the Interstate Commerce Act an individual as well as a corporation may be an interstate common carrier.

2. The court will look behind the fact of separate incorporation to ascertain the actual relations of the parties.

IV. The conclusions reached by the Commission did not proceed upon arbitrary or unlawful distinctions and are supported by the evidence.

1. That certain of the tap lines before it were not *bona fide* common carriers as to the proprietary traffic but mere plant facilities, and were therefore not entitled to a division out of the through rate.

(*a*) Only common carriers are entitled to divisions out of joint rates.

(*b*) Appellees' ostensible holding out, or the trifling incidental service performed by them for third persons, were not sufficient to make them common carriers as matter of law.

(*c*) Nor would this holding out and this incidental public service render their services to their proprietary companies other than those of plant facilities.

(*d*) The facts in evidence warranted both conclusions.

2. That the switching service within three miles of the trunk line, being one which the trunk line held itself out to perform under the through rate, was a service "connected with transportation" when performed by the shipper or its agent; but that switching for a greater distance so performed was purely an accessorial service.

3. Hence, that a plant facility tap line performing this service within the three-mile limit was entitled to an allowance under §15, but to no division out of the through rate.

4. That a common carrier tap line was entitled to a division or allowance out of the through rate on a haul of either more or less than three miles.

5. That the movement of the logs to the mill was not a transportation service to be paid for out of the through rate but an accessorial service for which the shipper should pay.

6. That any allowance for switching within 1,000 feet of a trunk line was "a mere device to effect an unlawful payment."

V. Assuming that the Commerce Court correctly interpreted the Commission's findings and order, the latter were not without support in the evidence nor erroneous in law.

VI. These conclusions of the Commission are conclusions of fact and are therefore not open to judicial review.

1. Questions of discrimination, preference, divisions and allowances are questions of fact peculiarly within the competency of the Commission.

2. An inference drawn by the Commission even from undisputed testimony is conclusive upon the courts unless erroneous as matter of law.

ARGUMENT.

I.

The Commerce Court was without jurisdiction to hear and determine the cases.

1. That portion of the Commission's order of which appellees complain was merely a refusal of the relief for which they prayed and was therefore negative in character.

The second order was as to them no more affirmative in character than the first.

As has been stated, the Commission entered two orders, one on the 14th day of May, 1912, and the other on the 30th day of October. Confessedly, the second order was entered at the instance of these appellees to give color of jurisdiction to the Commerce Court. We submit that so far as the appellees are concerned the two orders are identical in effect and amounted simply to refusing in whole as to four of the appellees and in part as to the fifth, Butler County Railroad Company, the relief for which they had severally petitioned the Commission.

It will be recalled that the controversy began with the cancellation by the trunk lines of the joint rates theretofore in force between themselves and these several tap lines on forest products, and it was this cancellation which brought the appellees to the Commission for relief. Their attitude before that body may be stated in their own language, borrowed from their several petitions to the Commerce Court.

The Mansfield Railway & Transportation Company (No. 833, R. 9)—

> filed with the Interstate Commerce Commission its petition against the Kansas City Southern Railway Company and its separate petition against the Texas & Pacific Railway Company, complaining of the cancellation by said defendants of joint rates theretofore in effect upon forest products, particularly lumber, requesting of the Commission that an answer be required from each of these defendants, that an investigation be entered into and that joint rates be compelled by and between the said defendants, Texas & Pacific Railway Company and Kansas City Southern Railway Company with the petitioner, Mansfield Railway & Transportation Company, and their connections to all interstate destinations upon all forest products originating at points upon lines of the petitioner, Mansfield Railway & Transportation Company.

The Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, and the Victoria, Fisher & Western Railroad Company filed no formal petitions, but (No. 829, R. 21)—

> At the beginning of said hearing at New Orleans on December 8, 1910, the Honorable James S. Harlan, the Commissioner presiding at said hearing, made the announcement to the parties interested and appearing at said hearing, that each so-called Tap Line would be treated as though it had filed a formal petition.

Thereafter, by leave of the Commission, the Louisiana & Pacific Railway Company filed a brief in which it petitioned the Commission as follows (No. 829, R. 20):

> While this Commission has not all the powers of a court of equity, and while we recognize that if the Louisiana & Pacific is not entitled to through routes and joint rates and fair divisions, its contracts will not give it that right, yet with these contracts existing, with the vested rights based thereon and on the previous decisions of this Commission, we respectfully and most earnestly ask that this Commission, under its power to compel the trunk line railroad companies to maintain through routes and joint rates, issue an order to those trunk line roads to continue the through routes and joint rates heretofore existing with the Louisiana & Pacific.

The Woodworth & Louisiana Central Railway Company filed a similar brief in which it "petitioned the Interstate Commerce Commission to make an order compelling the trunk line railroad companies to restore the rates existing with the petitioner Woodworth & Louisiana Central Railway Company" (No. 831, R. 8).

The Victoria, Fisher & Western Railroad Company filed a similar brief (No. 835, R. 9).

The Butler County Railroad Company filed three complaints before the Commission against the Missouri Pacific Railway Company, the St. Louis & San

Francisco Railroad Company, and the Alabama & Vicksburg Railway Company, respectively, in which

> petitioner prayed that the Commission might suspend the operation of certain tariffs and notices which were filed by the defendants in the three proceedings above mentioned, cancelling the joint tariffs then in effect with petitioner, on lumber and forest products, which had been filed and established by the defendants above mentioned; and also praying that the Commission might find that the through routes and joint rates, and the divisions thereof then in effect, were just, fair, and reasonable, and might require the observance thereof by proper order (No. 837, R. 3).

As to the first four appellees the original order held that their service to their proprietary companies in moving logs and lumber was not a service of transportation, that allowances or divisions upon it were unlawful, and their petitions were dismissed. The Commission, in brief, declined to grant as to this proprietary traffic any part of the relief for which they had prayed.

The orders of cancellation which the trunk lines had entered stood, and the original joint rates having been declared unlawful it was out of the question, of course, that the trunk lines should restore them.

The effect of the second or amended order is identical so far as these four appellees are concerned. It is true, the Commission adds to its finding that these appellees are "plant facilities," but this, of course, is to be implied from the original order declaring that

the service rendered for their proprietary companies is not a service of transportation. The amended order also adds a section directing the principal defendants, trunk lines, to abstain from making any of the allowances which the Commission had declared unlawful and which the trunk lines had already abandoned. While this was a modification in form, we submit that it was no change in legal effect or consequence. The result of both orders to these four appellees is that they were denied the relief for which they had petitioned, the cancellations which the railroads had made on proprietary traffic were permitted to stand, and the Commission refused to disturb the *status quo*.

Thereupon, the identical petitioners who originally invoked the jurisdiction of the Commission, and tried their cases before it, filed their several petitions in the Commerce Court, not for the purpose of annulling and enjoining an order of the Interstate Commerce Commission entered against them, but for the sole purpose of transferring their lost case before the Commission to the court to make another attempt to gain that which had been denied them. The respective prayers of the several petitions allow them no escape from this position. The prayer in the Louisiana & Pacific case, which will serve as an illustration, is as follows (No. 829, R. 63):

> Wherefore, petitioners, and each of them, pray that the said orders of the Interstate Commission dated May 14, 1912, and October 30, 1912, be enjoined, set aside and

annulled; that the United States of America, the Interstate Commerce Commission and all persons claiming to act under their authority, direction or control, be enjoined and restrained from enforcing or attempting in any wise to enforce or put in effect any portion of said orders which require the respondent Railway Companies to cease and for a period of two years thereafter abstain from maintaining through routes and joint rates upon any property transported from the mills of the petitioners Lumber Companies on the line of the Louisiana & Pacific Railway Company.

And your petitioners further pray that the respondents, Railroad Companies, be enjoined and restrained from violating the terms of the said contracts herein pleaded and herein fully set out under the marks of Exhibits "A" and "B," and that they and each of them be specifically ordered and required to continue to observe the terms, conditions and obligations of said contracts, by filing with the Interstate Commerce Commission the tariffs described and set out in paragraph 12 hereof (or similar tariffs), giving to the Louisiana & Pacific Railway Company through interstate rates, and that the Interstate Commerce Commission be specifically ordered and commanded to accept, receive and file and to permit to become effective upon three days' notice the tariffs specifically described in paragraph 12 hereof, or similar tariffs.

Under the act the Commerce Court is not given jurisdiction to redress complaints based exclusively, as in these cases, on the ground that the Commission

has refused the relief asked. *Proctor & Gamble* v. *United States*, 225 U. S. 282.

Nor is the Butler County Railroad Company in any better position. Like its companions, it prayed that the Commission would suspend the cancellations made by the trunk lines and that it would reaffirm the existing through routes and joint rates. The prayer of this petition was granted in part. It was refused as to so much of the preexisting divisions and allowances as exceeded the rate of $1.50 per car moving from the proprietary mill to the trunk lines. The complaint of the petitioner and appellee goes to this refusal. It prays that the court will (No. 837, R. 7)—

> First. Grant a preliminary writ of injunction suspending the order and amended order of the Commission, in so far only as it forbids a division out of the joint rates to be reestablished on January 1, 1913, to petitioner greater than $1.50 per car, but that the division of said joint rates to be reestablished as aforesaid may continue as heretofore agreed upon by petitioner and its connections aforesaid, and that this preliminary writ of injunction may continue, pending the final hearing and determination of this suit.
>
> Second. That it be adjudged, ordered, and decreed that the order of the Commission and the amended order aforesaid, in so far as they forbid a division out of said joint rates to petitioner greater than $1.50 per car, as aforesaid, be forever enjoined, set aside, annulled, and suspended, and that the said United States of America and the Commission and

> their representatives, officers, agents, and servants be forever enjoined from enforcing or taking any steps to enforce the order or amended order aforesaid, in so far as it limits the division of said joint rates to which petitioner is entitled to $1.50 per car aforesaid.

As to the matters of which it complains, the order of the Commission was purely negative also, and its case is therefore governed by *Hooker* v. *Knapp*, 225 U. S. 302, in which the complainant had received before the Commission part but not all of the relief desired.

If for the purpose of the argument it is assumed that the tap-line appellees are common carriers of the traffic of the lumber companies, the court is still without jurisdiction.

If appellees are unsuccessful before the Commission in seeking to have established through routes and joint rates with other common carriers and do not secure such liberal divisions as they seek for the traffic which they control, certainly Congress did not contemplate that they may transfer their cases to the Commerce Court. The Act to Regulate Commerce, after providing that the Commission may direct the carriers to establish through routes and joint rates, provides that—

> Whenever the carrier or carriers * * * shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after hearing, make a supplemental order prescribing the just and

> reasonable proportion of such joint rate to be received by each carrier party thereto, * * *. (Sec. 15, 36 Stat. 551.)

Under this section the Commerce Court was still without jurisdiction, as the Commission is arbiter of all questions of difference between common carriers in establishing through routes and joint rates. The Congress did not contemplate that the United States should be made the principal litigant representing the public interest in a case which involves merely the private divisions of two common carriers in establishing through routes and joint rates. *United States* v. *Pacific & Arctic Co.*, 228 U. S. 87.

II.

The Commerce Court properly disregarded the testimony taken before it on behalf of the appellees.

1. The findings of the Commission if based on substantial evidence are conclusive.

This proposition is now too firmly established to require more than a reference to recent cases which have placed it beyond dispute.

Interstate Commerce Commission v. *Union Pacific Railroad Co.*, 222 U. S. 541, 548, 550.

Interstate Commerce Commission v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88.

The necessary outcome of this doctrine is that the courts in reviewing an order of the Commission are virtually confined to the consideration of questions of law. This is recognized in *Procter & Gamble Co.*

v. *United States*, 225 U. S. 282, 297, where it is said:

> Originally the duty of the courts to determine whether an order of the Commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of orders of the Commission, for the purpose of enforcing or restraining their enforcement, the courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred, although it may be not technically doing so. *Int. Com. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 547; *Int. Com. Comm.* v. *Ill. Cent. R. R.*, 215 U. S. 452.

Commenting on the decision in the *Procter & Gamble* case this court, in *United States* v. *Balt. & Ohio R. R. Co.*, 225 U. S. 306, 323, said:

> And as, at that time it was conclusively settled that the courts had only authority to reexamine the findings of the Commission as to subjects like the one here under consideration, for the purpose of ascertaining whether the action of the Commission was repugnant to the Constitution, in excess of the statutory powers conferred upon it, or manifested such an abuse as to be equivalent to an excess of authority, it clearly results that the court be-

low was likewise limited in passing upon the petition before it in this case. This being true, *it is also necessarily true that virtually the sole authority of the court below was in a sense confined to determining questions of law arising upon the case as presented on the face of the pleadings.* (Italics ours.)

2. Congress, therefore, did not contemplate a retrial of the issues of fact before another tribunal.

The respective appellees in their several petitions have alleged much matter new and different from that which they adduced before the Commission. Among other things, they have sought substantially to swell the volume of the tonnage handled for others than the proprietary companies and to show other things relating to the operation of the tap lines which have been created since the hearing before the Commission. The appellees took additional evidence before the Commerce Court, which was later stricken out, and no cross error was assigned.

The only inquiry open to the court upon an issue of fact is whether or not there was substantial evidence to support the Commission's finding; if there was such evidence, the court can not reverse that finding simply because it would have come to a different conclusion upon all the facts. Obviously, however, this inquiry can not be affected by any evidence which was not introduced before the Commission.

The Commerce Court was therefore entirely correct in recognizing as it did this limitation upon its powers.

III.

The incorporation of the tap lines was insufficient to confer on them the status of common carriers or to alter their relations to, or the character of the services performed by them for their proprietary companies.

1. Under the Interstate Commerce Act an individual as well as a corporation may be an interstate common carrier.

The circumstance that the Act to Regulate Commerce applies in terms to any person or corporation engaged in the transportation of passengers or property by rail from one State to another was referred to, as we have seen, by the Commission itself. (23 I. C. C. 291.) It seems quite clear, therefore, that the Commission was entirely correct in disregarding the fact of incorporation in its attempt to ascertain whether or not the tap lines before it were interstate common carriers. For whatever the provisions of the State law on the subject, the status of a tap line in interstate commerce must depend on the character of the services performed and not at all on the circumstance of its existence as a distinct corporate entity.

In the present cases the Commission find (23 I. C. C. 277, 286):

> * * * In most instances the tap line was incorporated for no other purpose than to give the lumber company the color of a legal right to receive allowances. Witness after witness, as heretofore stated, broadly and definitely admitted at the hearing that the sole object

in incorporating his tap line was to obtain and legalize the allowances.

* * * * *

The record is filled with similar admissions by other witnesses representing other tap lines. Counsel for one trunk line in order, as he explained, to get the fact of record, said that his legal department some years ago advised the traffic department that it would be illegal to pay an allowance or a division of any kind to an unincorporated tap line, but that it would be legal to pay a division to an incorporated tap line. Subsequently, his traffic department advised the lumber interests that had been receiving allowances that they would no longer be paid unless their lines were incorporated, and new lines were advised that they had to be incorporated.

2. The court will look behind the fact of separate incorporation to ascertain the actual relations of the parties.

This has been so frequently reiterated by this court under a variety of circumstances, and particularly with regard to the Act to Regulate Commerce, that no extended discussion of the point seems necessary.

Miller & Lux v. *East Side Canal Co.*, 211 U. S. 293.

So. Pac. Terminal Co. v. *Int. Com. Comm.*, 219 U. S. 498, 521.

United States v. *Union Stock Yard*, 226 U. S. 286, 304.

Fourche River Lumber Co. v. *Bryant Lumber Co.*, 230 U. S. 316.

Crane Iron Works v. *United States*, 209 Fed. 238.

IV.

The conclusions reached by the Commission did not proceed upon arbitrary or unlawful distinctions and are supported by the evidence.

1. That certain of the tap lines before it were not bona fide common carriers as to their proprietary traffic, but mere plant facilities, and were therefore not entitled to a division out of the through rate.

This finding concerns the first four tap lines which are appellees here.

(*a*) If the Commission was justified in concluding that these tap lines were not *bona fide* common carriers as to their proprietary companies, it seems too plain for argument that they had no claim to a division out of the through rate. For a joint rate, or a division therefrom, is only permissible between public carriers; it would be an anomaly for an individual or company not a common carrier to be permitted to receive such a concession. The inevitable result would be those very discriminations against which the Commerce Act was primarily directed. Indeed, the provision of section 15 allowing the owner of property transported to receive a reasonable allowance for rendering any service connected with such transportation or furnishing any instrumentality used therein, is wholly incompatible with the notion that he or any third person may accept a division out of the rate for such services. Were it otherwise the requirement in section 15 that the "allowance therefor shall be

no more than is just and reasonable" could readily be violated in substance if not in form.

This rule has been uniformly recognized by the courts. Thus, in *Taenzer & Co.* v. *Chicago, R. I. & P. Ry. Co.* (C. C. A. 6th C.) 191 Fed. 543, the contract between a railroad and a lumber company, whereby the latter was to receive certain divisions out of the through rate for switching over its own private tracks from its mill to the main line, was held to be void and in violation of the act.

Similarly, in *Chicago & Alton Ry. Co.* v. *United States* (C. C. A. 7th C.), 156 Fed. 558, it was held that the payment of a dollar per car by an interstate carrier to a shipper for the use of the private tracks on its plant in getting cars out to the main line constituted a rebate, since the private tracks in question were mere plant facilities, and hence carriage over them was not part of the interstate transportation. The decision was affirmed by this court without opinion in 212 U. S. 563. The arrangement held unlawful was not filed or published, and that may have been the ground of this court's affirmance. It was expressly not the basis of the judgment of the Circuit Court of Appeals.

In *Central Yellow Pine Association* v. *Vicksburg, Shreveport & Pacific R. Co.*, 10 I. C. C. 193, the Commission held that an interstate carrier subject to the act can allow a division of rates only to another common carrier which, participating in the particular traffic to which the rate applied, is also subject to its

provisions, and hence that the defendants could not lawfully grant a division of the rate to the owner of a lumber mill as compensation to him for bringing his logs to the mill.

But the correctness of this conclusion is distinctly asserted in *Fourche River Lumber Co.* v. *Bryant Lumber Co.*, 230 U. S. 316, 322, where the court, in dealing with one of the incorporated tap lines included in the Commission's order, said:

> The status of this road is discussed in *Tap Line Cases*, 23 I. C. C. 277, and its right to a division of the freight recognized notwithstanding the fact that the stockholders are the same as those who own the shares of the Fourche Lumber Company. But it receives this part of the through rate, not as a concession, but for services actually rendered by it *as a common carrier* in hauling freight for part of the distance between the point of origin and the point of destination. In any other view it would have been unlawful for the Rock Island to pay * * *. (Italics ours.)

Nor is this conclusion affected by the decision of this court in *United States* v. *Balt. & Ohio R. R. Co.*, 231 U. S. 274. The terminal company (Arbuckle Bros.) in that case, although expressly found to be performing a public service, was only held to be entitled to a reasonable allowance under section 15; it was not even claimed that a division out of the through rate was payable.

Likewise, *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, dealt only with allowances under section 15 and not with divisions out of the through rate.

(*b*) Nor was the mere fact that the appellees performed some service for the general public, or rather for such few members of it as were able to avail themselves of such service, sufficient to necessitate the finding that they were common carriers. A plant railroad does not become a common carrier merely by calling itself such, nor yet by offering to serve the public when there is substantially no public to serve.

The cases arising under State laws which tend to support a different view are not controlling here. It may well be that a railroad which would be a common carrier at common law or under State statutes is not to be regarded as a common carrier "engaged in the transportation of passengers or property" in interstate commerce within the meaning of the first section of the Act. If the Commission is to be held to the strict rule that a holding out to serve the public, regardless of the existence of a public to be served, is sufficient to render an industrial railroad a common carrier engaged in interstate commerce, the prohibitions of the act against unjust discriminations and undue preferences can readily be thwarted. It is hardly conceivable that Congress, in permitting divisions out of joint rates to common carriers jointly engaged in the interstate movement of property

within the discretion of the Commission, contemplated the payment of such divisions to large shippers through the simple expedient of a holding out to serve all alike.

Such was the attitude of the Commission in *the Matter of the Transportation of Salt from Hutchinson*, 10 I. C. C. 1, 9, where it was said of the alleged railroad there under consideration:

> It is possible that the institution as now constituted may be technically a railroad under the laws of Kansas; but looking to the substance, and not the form, it is purely a scheme for the purpose of obtaining a concession in the rate.

This principle was asserted even more emphatically by the Commission in *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. 338, a case involving much the same question as is here presented. After stating that it could not recognize as a common carrier a tap line which did not conform to the requirements of the act with regard to the publishing of tariffs and the keeping of accounts, the Commission continued (p. 344):

> But assuming a case where all these matters have been carefully guarded by tariffs properly constructed and a system of accounts conforming to our regulations, must we accept that tap line as a common carrier merely because it calls itself a common carrier, when in fact its so-called line is a mere logging road extending from the mill that really owns it into the forest also owned by the mill, with

no public to serve or no traffic other than the logs that have been cut by the mill and are to be manufactured by it into lumber? In other words, as an administrative body, are we to be stopped at the surface of a transportation problem because its form and outward appearance are regular and not look into and examine its real substance?

It is sometimes said that the essential characteristic of a common carrier is that it holds itself out as such to the world, and in a certain class of cases some such test has been applied; and *where there is a shipping world to which it may hold itself out as a common carrier and which it may serve in that capacity* the test suggested may be a proper one. But when we are dealing with a law the underlying principle of which is to forbid preferences, discriminations, and concessions from the legal rates, and when there is no shipping public which the alleged common carrier may serve, and when it is owned or controlled directly or indirectly by a particular industry which needs it as a plant facility and can not successfully conduct its business without it, and when its revenues accrue directly or indirectly to that industry, it leaves this Commission in rather an impotent condition if it must accept the mere form as controlling, and may not look into the actual situation and thus be able to enforce the prohibitions of the act against such preferences and discriminations and departures from lawfully published rates. (Italics ours.)

The following conclusion was reached (p. 345):

> We hold that any allowance or division made to or with a tap line that is owned or controlled, directly or indirectly, by the lumber mill or by its officers or proprietors and that has no traffic beyond the logs that it hauls to the mill, *except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility*, is an unlawful departure from the published rates. (Italics ours.)

This ruling was followed in *Fathauer Co.* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C. 517, and *Industrial Lumber Co.* v. *St. L., W. & G. Ry. Co.*, 19 I. C. C. 50. It is therefore seen that its application to the present controversy involves the enunciation by the Commission of no new doctrine.

The Commerce Court, as has been pointed out, conceded that the Commission would have been justified in finding that the tap lines before it were not *bona fide* common carriers; in other words, that the mere facts of holding out or of *some* service performed for third persons were not determinative of their character. Unless the primary purpose of the Commerce Act is to be defeated by an overstrict construction of its language (a result which this court has always assiduously avoided), this concession must be accepted as sound.

The Commission therefore rightly regarded the question as one of fact, to be determined in each instance by ascertaining the substantial character of

the service performed by the tap line for the public at large as compared with the work done for its proprietary company.

(*c*) It is not necessary to go this far in order to sustain the action of the Commission. The finding of that body with regard to the tap lines in the first group, as recited in its order, was that—

> the tracks and equipment *with respect to the industry of the several proprietary companies* are plant facilities, and that the service performed therewith *for the respective proprietary lumber companies* in moving logs to their respective mills and * * * in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad but is a plant service by a plant facility. (Opinions, 180.)

The Commission, in short, limited its finding to the immediate question before it. If this finding can only be sustained by implying the additional finding that these tap lines were not common carriers at all, this court may properly make that implication on the assumption that the Commission acted lawfully and within its delegated power; and the facts, as will shortly appear, amply warrant that result. But we submit that it is not necessary to go so far; that the Commission's finding as it stands is lawful and adopts a proper distinction; in other words, that a railroad may be a mere plant facility with respect to the service performed by it for its owners, regardless of its status with respect to the public at large.

In *Santa Fe Railway* v. *Grant Bros.*, 228 U. S. 177, 185, this court said:

> It is apparent that there may be special engagements which are not embraced within its duty as a common carrier, although their performance may incidentally involve the actual transportation of persons and things whose carriage in other circumstances might be within its public obligation. *Baltimore & Ohio, &c., Railway Co.* v. *Voigt*, 176 U. S. 498, and cases cited; *Northern Pacific Railway Co.* v. *Adams*, 192 U. S. 440; *Long* v. *Lehigh Valley R. R. Co.*, C. C. A., 2d Circuit, 130 Fed. Rep. 870.

In the instant case the Commerce Court said (Opinions, 192, 193, 194):

> That a common carrier may, however, as to some of its work, act in a strictly private capacity is well settled (*A., T. & S. F. Ry.* v. *Grant Brothers*, 228 U. S. 177); and that it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, has been held by this court in *Crane Iron Works* v. *U. S.*, No. 55, June 7, 1912.
>
> Whether or not a payment provided for in the tariff for such a service would be per se illegal in the absence of an order by the Commission forbidding it (*C. & A. Ry.* v. *U. S.*, 156 Fed. 558; *Am. S. R. Co.* v. *D., L. & W. Ry.*, 207 Fed. 733, reversing s. c. 200 Fed. 652), it is clearly within the power of the Commission to prohibit such payment (*Am. S. R. Co.* v. *D., L. & W. Ry., supra*).

If, then, the Commission was justified in finding that these interstate common carriers, the petitioning tap lines, were mere plant facilities as to their proprietary companies, and that the services rendered by them in hauling logs to and lumber from the proprietary mills were merely the plant services of plant facilities, its order forbidding any division or allowance therefor would be valid and proper.

Whether or not this is a justifiable finding of fact is to be determined, in the first instance, by the Interstate Commerce Commission. When, as in these cases, a full and fair hearing has been granted, the Commission's findings of fact are subject to review in this court only upon an allegation that they are not sustained by any substantial evidence in the record before it or are arbitrary in being based upon improper distinctions and considerations.

No constitutional question can properly be involved in such a case, inasmuch as the tap lines, if they are in fact acting only as plant facilities in respect to the proprietary companies, can have no constitutional right to that which is necessarily an illegal allowance, however much they may be injured financially by the denial thereof.

Nor can the Commission be charged with such arbitrary action as would justify an annulment of its orders in respect to the petitioning tap lines merely because of a different finding as to some other tap lines, whose history, physical conditions, and relations to and

> service for the proprietary companies are in many respects like, although necessarily not identical with, those of the petitioning tap lines and their proprietary companies; for though the orders are made in one proceeding, they are separate and distinct as to each of the tap lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies. Moreover, an erroneous conclusion by the Commission as to the real nature of the services of one or more of the tap lines toward its or their proprietary companies would of itself be no justification for the annulment of the findings and the orders as to some other companies on the ground of arbitrary action, if the latter are based upon substantial evidence.

In *Crane Iron Works* v. *United States*, 209 Fed. 238, the industrial railroad of the iron works, separately incorporated as the Crane Railroad Company, performed switching services both for its proprietary company and for other industries in the neighborhood, to which its tracks were extended for that purpose. It also moved cars from point to point within the plant of the iron works. It imposed a charge of $2 per car both on the iron works and on the independent industries for performing this switching service. The Central Railroad of New Jersey, the trunk line with which it connected, allowed it 5 to 6 cents per ton to absorb this switching charge on the nonproprietary traffic, but refused to make any allowance on its switching for the iron works. This refusal was held to be justified and the result was

sustained in the Commerce Court. It was contended that the Crane Railroad Company was a common carrier, being organized under the railroad law of New Jersey, which declared that all railroads so organized should be common carriers. The Commerce Court said:

> It is not necessary to discuss whether the Crane Railroad is in fact a common carrier within the meaning of that term as used in the act to regulate commerce, because we shall assume for the purposes of this case that it is a common carrier subject to the act, and the matters in dispute will be decided on that assumption. (p. 241.)
>
> * * * * *
>
> Upon all the circumstances connected with the location, construction, and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing services which the iron works should perform for itself if it desired such services, and that the Central Railroad was under no obligation to pay the Crane Railroad for the switching service which it performs for the iron works, and, indeed, could not lawfully do so. We see no reason to doubt the correctness of this conclusion. The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (General Electric Company *v.* N. Y. C. & H. R. R. R. Co. et al., 14 Interst. Com. Com'n R. 237; Solvay Process Company

v. D., L. & W. R. R. Co., 14 Interst. Com. Com'n R. 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle. That there was substantial evidence to sustain the finding of the Commission as to the character of the services rendered is not open to reasonable question, and, this being so, the conclusion must be accepted accordingly.

* * * * *

Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers. Whether considered from the standpoint of law or of practical administration, it seems reasonable to hold, as the Commission virtually held in this case, that a railroad of the kind in question may have this dual character and perform services for one concern which are not the services of a common carrier, but which that concern is bound to provide for itself, notwithstanding it occupies the relation of a common carrier to other concerns and the public generally. Concededly, the work which the Crane Railroad does in moving cars between different points in the iron works' plant has none of the incidents of common carriage, and why may not the same thing be affirmed of the work it does in switching cars for the iron works to and from the exchange track with the Central Railroad, even if the work it does for the other industries makes it as to them or the shippers of Catasauqua a common carrier (pp. 242–244)?

This is an admirable statement of the principles which should have guided the Commerce Court in the disposal of the present case. Had these principles been adhered to, the present order of the Commission must necessarily have been sustained.

The doctrine is no new one with the Commission. *Kaul Lumber Co.* v. *Central of Ga. Ry. Co.*, 20 I. C. C. 450, involved the legality of an allowance of 2 cents per 100 pounds on yellow pine lumber made by the defendant railway to the tap line of the complainant company on yellow pine lumber and its products manufactured by the latter. The tap line, while not incorporated, was a common carrier under the laws of Georgia and served others on its lines besides its proprietary company. The Commission held that it was unnecessary to decide whether the tap line was a common carrier; that since its service for the lumber company was a pure plant facility service, the allowance therefor was unlawful.

No decision by this court or the lower Federal courts has been found which holds this distinction improper as matter of law. In *United States* v. *Balt. & Ohio R. R. Co.*, 231 U. S. 274, it was decided that *under the facts of that case* the Commission was not justified in finding that the terminal company was performing purely a plant service in transporting its own sugar but a public service in transporting the goods of other shippers. But there the defendant railroad had held itself out, and was therefore obliged, to deliver under the through rate within the New York

lighterage limits; and the terminal company, acting as the defendant's agent, was held to be entitled, not to a division out of the through rate, but to reasonable compensation under section 15 for performing a service connected with transportation which the defendant would otherwise have had to perform. The situation there was identical with that in the present case within the three-mile limit, where the Commission in effect permitted allowances under section 15 to *all* tap lines performing for their proprietary companies a substantial service of transportation which the trunk lines would otherwise have been obligated to perform without additional charge.

On principle, the distinction adopted by the Commission seems a highly proper one. If an unincorporated tap line making no pretense of carrying for the public at large is performing a service for the industry which has always been regarded as strictly accessorial, it is difficult to see why the mere fact of its incorporation and the movement of a trifling amount of traffic for outsiders should be held to change entirely the nature of that industrial service. That transportation by an industrial railroad to or from the point at which the service of the trunk line, and hence interstate transportation, begins or ends is an accessorial service can no longer be questioned.

Gen. Elec. Co. v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237.

Solvay Process Co. v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246.

In the Matter of Allowances for Transfer of Sugar, 14 I. C. C. 619.

Chicago & A. Ry. Co. v. *United States, supra.*

Ches. & Ohio Ry. Co. v. *Standard Lumber Co.* (C. C. A. 4th C.), 174 Fed. 107.

Industrial Railways Case, 29 I. C. C. 212.

Yet the essential character of this service is in no way altered by the fact that the tap line *incidentally* transports goods or passengers for others.

It must be conceded that no hard and fast line can be drawn: that the difference between an accessorial service and a service of transportation by an interstate carrier in each instance will be one of degree dependent upon all the circumstances of the case. But the fact that the legal status of the service turns upon a difference of degree is no objection. As was recently said by Mr. Justice Holmes, dissenting, in *Le Roy Fibre Co.* v. *Chicago, M. & St. P. Ry. Co.*, 232 U. S. 340, 354:

> The whole law does so as soon as it is civilized. See *Nash* v. *United States*, 229 U. S. 373, 376, 377.

And it is peculiarly in instances like the present, involving questions of reasonableness and discrimination, that the legality of a certain course of conduct may well be held to depend upon the administrative judgment of the Commission acting on the particular facts presented, and not upon the adoption of some hard and fast criterion.

(*d*) The attack on this feature of the case must therefore come down to the contention that there was no substantial evidence in the record to support the finding that these appellees, at least so far as the movement of the traffic of their proprietary companies was concerned, were not actually and in good faith common carriers. A brief reference to certain facts recited by the Commission and appearing of record will suffice to answer this contention.

LOUISIANA & PACIFIC RAILWAY.

It was shown, as we have seen, that this so-called railway, together with four manufacturing lumber companies and one selling agency company, were all controlled by the same individual owners, R. A. Long, and his associates; that they had common officers and a common office; that the several disconnected branches now operated under this name were originally built as private logging roads by the lumber companies and that the incorporation took place only after the passage of the Hepburn Act in 1906; that this railway company, together with its proprietary lumber companies, had entered into contracts with the Frisco and Southern Pacific, or their subsidiaries, agreeing to deliver to the Frisco Company 50 per cent of the traffic from the proprietary mills and to the Southern Pacific Company 40 per cent, leaving but 10 per cent to be routed over other lines; that as to this proprietary traffic a specific agreement was made for the division of rates, with a covenant to make such divisions

as should be reasonable and fair on other commodities, thus making themselves the very classification and distinction between proprietary and nonproprietary traffic of which they now complain when made by the Commission; that as the result of these special contracts the proprietary lumber companies profited through this railway not only by a division of rates but by escaping demurrage on cars and by procuring free transportation for the officers of the lumber companies when engaged about their business; that the total movement of lumber for the fiscal year 1910 was 243,122 tons, and of merchandise and other commodities 8,819 tons; that 98 per cent of the entire tonnage was supplied by the controlling interests; that a few passengers were carried, the revenue from that source for the same year being $473.77 out of a total operating revenue of $220,985.94; that the average log haul was about 30 miles and the average lumber haul about 20 miles; and that the logs of the proprietary lumber companies are hauled from the forest to the mills by the tap line free of charge. Certainly these are all pertinent facts to demonstrate that the Louisiana & Pacific is a common carrier in name only; that its actual service to the public is so slight as to be utterly negligible, and that the sole purpose and object of its incorporation and holding out was to secure illegal divisions and allowances out of the through rate on the traffic of its proprietary companies.

WOODWORTH & LOUISIANA CENTRAL RAILWAY.

It is shown that the tap line and the lumber company are not only identical in interest but have the same principal officers; that the right of way of the tap line's main track is leased from the lumber company; that the log haul to the mill is performed without charge against the company; that there is no passenger service; that during the fiscal year 1910 40,707 tons of freight were handled for the lumber company, and 2,100 tons of outside traffic were carried, consisting of merchandise, farm products and miscellaneous material; that there are no nonproprietary lumber mills for it to serve; and (most significant of all, perhaps) that there were no joint rates except on lumber. Surely, unless a plant railroad becomes a common carrier by the mere facts of incorporation and the transportation of *any* freight for third persons for hire, this railway is nothing more nor less than a plant facility.

MANSFIELD RAILWAY.

It appears of record that this tap line has an equipment consisting of one locomotive, one passenger coach, and one box car, the logging cars being owned by the logging company, a subsidiary of the proprietary lumber company; that its line is 16 miles long and terminates at a logging camp in the woods; that the logging company moves the logs from the woods to the mill over the incorporated tracks of the tap line, which bears the entire expense of maintaining those tracks; that the tap line serves no other

yellow pine mills except the proprietary mill, and that the one hardwood mill served by it obtains a substantial portion of its logs from the proprietary company; that it has joint rates on hardwood as well as on yellow pine lumber, but apparently on nothing else; that during a single year 28,596 tons of lumber were handled, of which 91.4 per cent were supplied by the proprietary company; that 16,539 tons of miscellaneous freight were carried, a considerable proportion of which was handled for the controlling interests or their employees; that the revenues from passenger-train operation aggregated in a year only $1,209.76, while its freight revenue was $25,617.19; and finally, that the switching services for the proprietary company, on which the tap line received allowances, were, first, to the Kansas City Southern over a three-fourths mile track, substituted for a spur track of the last-named trunk line, 300 feet long, which had been torn out; and, second, 2½ miles to the Texas and Pacific, a distance made up by switching the lumber back over the tap line and then to the junction, although the tap line crossed the right of way of the Texas and Pacific within a short distance of the mill. While the pretense of performing a common-carrier service is more substantial in this case than in that of the Woodworth and Louisiana, the facts recited were sufficient to justify the Commission in concluding that the tap line was performing no substantial common-carrier service in interstate commerce, but was acting as a mere plant facility of the proprietary company.

VICTORIA, FISHER & WESTERN RAILROAD.

This line, it appears, has an equipment of five locomotives, four cabooses, three box cars, one flat car, and 105 logging cars. It operates no trains on regular schedule; it carries no passengers; more than 99 per cent of its total tonnage is furnished by the proprietary company; it apparently serves no other mill and has joint rates on no commodity except lumber. In short, the tap line is quite comparable to the Woodworth and Louisiana in the extent and character of its public service.

These facts, we believe, are quite sufficient to justify the conclusion that these tap lines were not *bona fide* common carriers at all; that their ostensible public service was a mere cover for divisions out of the through rate which they could not hope to receive in their capacity of plant railroads. The same facts suggest quite as strongly the inference that, whatever their status generally, the service performed by them for the proprietary companies was strictly accessorial. Not only was this service unaltered in its physical aspects after incorporation; in all other respects as well the change was a mere matter of bookkeeping, and sometimes not even that. The failure of the tap line to charge the proprietary company for moving the latter's logs to the mill or for allowing the use of its tracks for that purpose is particularly significant in this connection. Such a free service of transportation by a carrier for a shipper is legally inconceiv-

able, and strongly supports the view that the parties regarded the situation as essentially unchanged by the change of front.

In annulling the order, the Commerce Court said:

> * * * the Commission *impliedly*, if not expressly, held them to be interstate carriers when it *authorized* and in effect directed the reestablishment of through routes and joint rates as to the nonproprietary traffic, inasmuch as the Commission is without authority to make such an order except as between interstate common carriers (209 Fed. 249).
>
> * * * * *
>
> As the actual service rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and nonproprietary mills, and as this is held to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former (p. 258).

The parties themselves, without exception in any case, and in two cases by their express written contracts, separated the traffic into two separate and distinct classes, viz., traffic of the proprietary companies, and traffic for other shippers. The traffic of the proprietary companies was the traffic which was, without exception, the subject of the special arrangements. The parties were interested only in the allowances on their own traffic, as such allowances gave them the preferences and discriminations which they sought. Any allowances to them on other merchan-

dise for the public was a mere incident, with which they were not concerned.

Louisiana & Pacific does not solicit the traffic of the public, and its own agents route such traffic over Lake Charles & Northern (Vol. I, R. 702, 703).

The appellees should not prevail in their effort to break down and destroy the stupendous and magnificent labor of the Commission extending over a period of years because it *impliedly recognized* certain tap line companies as carriers of an insignificant amount of traffic for the public, which the parties themselves had separated from their own, and as to which the Commission authorized through routes and joint rates. *De minimis non curat lex.* The Commerce Court gave too much weight to that element of the case and its holding should be reversed.

The Commission found that the preferences and discriminations prohibited by the Act to Regulate Commerce grew out of the traffic of the proprietary companies. The record abounds in evidence on the subject, and the particular advantages of the parties may be thus summarized:

First. The allowances of 1½ cents to 5 cents per 100 pounds from the freight rate, and the resultant advantages of these lumber companies over their competitors in the transportation and sale of lumber in the markets. Some of the mills turn out 2,500 cars a year. Four cents per 100 pounds on the basis of 50,000 pounds to the car would amount to $50,000 to a single company within a single year (Vol. I, R. 660). For the year ending June 30, 1910, Butler

County Railroad Company shipped 6,593 cars for Brooklyn Cooperage Company (R. 29). Louisiana & Pacific Railway Company handles more than 1,000 cars per month for the lumber companies (R. 59).

Second. The use by the lumber companies of the incorporated tracks, switches and sidings as holding yards for loaded and empty cars of the trunk lines, which enables them to evade all demurrage and car service charges. The tracks of the tap lines are merely the switching facilities in and around the plants of the lumber companies, where the tap line companies may hold the cars of the trunk lines on the basis of 50 cents a day over six days free time instead of the lumber companies paying the usual $1 and $2 per day over the 48 hours free time. The tap lines may hold the cars until the lumber companies are ready to load. An order may then be given, the cars set, loaded and returned in a time so short as that the lumber companies may absolutely avoid all demurrage and car service charges which would accrue if the tap lines did not stand between the trunk line carriers and the lumber companies.

Third. The use of free interstate transportation distributed wholesale to the officers and agents of the lumber companies and used by them in traveling in the interest of the lumber companies, or in their own interest. R. A. Long has a private car, and may have transportation as far East as Buffalo. All of the officers of the Louisiana & Pacific and the lumber companies have transportation over the trunk lines (Vol. I, R. 711, 712). E. A. Frost and E. T. Whited,

president and vice-president of Frost-Johnson Lumber Company, are also fully supplied with transportation over as many as 8 trunk lines.

The Commission properly concluded that in each instance the service performed for the proprietary company was a plant service by a plant facility, and that to hold otherwise would perpetuate unjust preferences and discriminations.

2. That the switching service within 3 miles of the trunk line, being one which the trunk line held itself out to perform under the through rate, was a service "connected with transportation" when performed by the shipper or its agent; but that switching for a greater distance so performed was purely an accessorial service.

It was conceded by the Commerce Court that the Commission might properly have taken cognizance of the custom of the trunk lines as to the distance within which switching should be free, namely, 3 miles. In its opinion, however, the Commission did not do this, since it extended the blanket rate to mills on a common carrier tap line connecting with a trunk line irrespective of their distance from the latter.

In this connection, we submit, the Commerce Court overlooked the legal distinction which lay at the foundation of this branch of the Commission's order: the distinction between the service performed by a common carrier itself, and that performed by a shipper for a common carrier. The former is the service which a *common carrier* tap line performs in transporting commodities, whatever distance it extends from the trunk line or carries the goods. The latter

is the service rendered by a *plant facility* tap line in switching the product of its proprietary company or of third persons to the trunk line, under circumstances where the latter would otherwise have to do this switching under the through rate. With this distinction in mind it will be seen that the Commission did give effect to the custom adverted to and made it the basis of a formal regulation.

The test applied was an eminently proper one. Whether a service performed by or for the shipper is "a service connected with transportation" for which he may reasonably be compensated under section 15 has been invariably held to depend upon whether it is a service which the common carrier has held itself out to perform, and could therefore be compelled to perform, without additional charge.

Such has been the uniform ruling of the Commission. *Gen. Elec. Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237, 245, where it is said:

> In our judgment the complainant does nothing within its plant which it can lawfully call upon the defendants to do for it and therefore nothing for which it may lawfully demand compensation.

In *Solvay Process Co.* v. *D. L. & W. R. R. Co.*, 14 I. C. C. 246, 249, it is said:

> We find that the switching service performed by complainant within its plant is not a service which it can lawfully call upon defendants to perform for it, and consequently is not a service for which it may lawfully demand compensation.

In the Matter of Allowances for Transfer of Sugar, 14 I. C. C. 619, 627, it is said:

> It necessarily follows that if the allowance is to be sustained the transfer of goods to the possession of the carrier must be held to be the carrier's duty, for which the shipper making the transfer is entitled to compensation.

In the *Industrial Railways Case*, 29 I. C. C. 212, 230, the Commission, after referring to the above cases, said:

> It will be observed in the cases cited that the line carriers were declining to perform any service within the plant beyond the interchange point, and we held that no service beyond that point could lawfully be required of them and, therefore, that they could not be required to make an allowance to the industries for doing the service for themselves with their own facilities.

The same principle has recently been recognized by this court in *United States* v. *Balt. & Ohio R. R. Co.*, 231 U. S. 274, 293, where it is said:

> *if the lighterage of the Arbuckle sugar was included in the through rate from the Jay Street station, and a part of the transportation which the railroads were under obligation to perform*, and that lighterage was done by Arbuckle Brothers at the instance and procurement of the carriers, they, as owners of the freight thus transported, were entitled to demand a compensation reasonably commensurate with the facilities furnished and the services performed. (Italics ours.)

Again, in *Int. Com. Comm.* v. *Diffenbaugh, supra,* p. 46, the effect of section 15 is thus explained:

> The act of Congress in terms contemplates that if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them. * * * *As the carrier is required to furnish this part of the transportation upon request* he [the shipper] could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality instead of owning it. (Italics ours.)

In *American Sugar Refining Co.* v. *D. L. & W. R. R. Co.*, 200 Fed. 652, 656, the District Court dealt with the contention that draying from the complainant's refinery to the station was a service for which compensation could be had under section 15, as follows:

> The plaintiff does not contend that transportation begins at the factory, but insists that, while such draying may not be transportation, it is a "service connected with" transportation, within the meaning of section 15; but the phrase "service connected with" such transportation, as used in such section, can be given no more comprehensive meaning than the similar phrase "service in connection with" the receipt of property to be transported, contained in section 1. The argument that at common law a common carrier, in the promotion of its business, could contract to dray the goods from the factory to its railroad is not helpful in this discussion. Many of the common-law rights of carriers have been taken away; and in the matter of making allowances

> for services rendered in connection with transportation it is perfectly manifest that the only services of the shipper that can be compensated for by the carrier, under the statute, are such as are rendered by the shipper after the carrier's duty to take and transport the goods has begun.

It will not do, therefore, to say that transportation, although by a plant facility tap line, is nevertheless transportation within the meaning of section 15 whatever the length of the haul, and hence that the trunk line must pay for it under section 15. It might far more reasonably be argued that *no* transportation performed by way of delivery to or receipt from the trunk line is a service connected with interstate transportation, but that such switching is a purely private service, performed by the tap line owner, like any other individual, in his own behalf, and hence to be paid for by him. This was practically the result arrived at by the Commission in its latest utterance on the subject, *Industrial Railways Case*, 29 I. C. C. 212, where it holds that switching services over the private tracks of a large industrial plant are not services connected with interstate transportation even though the carriers have volunteered to perform them without compensation "in excess of their legal obligation," but that transportation over such tracks—

> beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within or

> without the plant, is a shipper's service and not a service of transportation which the line carrier may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry or by its industrial railroad * * *. (Pp. 230, 237.)

That the same conclusion was not reached in the instant cases must be attributed to the Commission's recognition of the custom which imposed on the trunk line a legal obligation to switch within 3 miles.

Again, whether the service is public or private surely can not depend, as the Commerce Court would have us believe, upon whether or not the act of delivery to the common carrier is performed by means of a horse and wagon or of a locomotive running on tracks.

The language of the Circuit Court of Appeals in *Chicago & Alton Ry. Co.* v. *United States, supra*, 156 Fed. 561, is here appropriate:

> Suppose that the S. & S. Co., instead of ties and rails, had put down a paved roadway on its land, and that the Alton, in addition to the $20 worth of transportation it was giving to other shippers, furnished horses and wagons to haul the meats from the packing rooms to the Belt Line, would it be contended that the Alton could lawfully still further pay the S. & S. Co. for the use of the pavement? Or suppose that the S. & S. plant was all under one roof, and that the trolleys which convey carcasses and cuts of meat from one department

> to another were so arranged that the finished produce arrived at the property line adjoining the Belt tracks, could the Alton properly make an allowance for the use of the trolleys as instrumentalities furnished by the shipper in the transportation of property in interstate commerce? In our judgment, the jury were warranted in finding that the tracks in question were plant facilities, as clearly as the supposititious pavement and trolleys would be plant facilities, and not instrumentalities for the Alton's use in discharging its duties to the public.

In *Fourche River Lumber Company* v. *Bryant Lumber Company*, 230 U. S. 316, 323, this court said:

> The Commerce Act prohibits the payment of rebates, and its command can not be evaded by calling them differentials or concessions, nor by taking the money from the railroad itself or from a company that is proved to be the same as the railroad. Otherwise nothing would be easier than for lumber companies to charter a railroad, collect freight as a railroad, but pay it out as a lumber company to shippers.

That the Interstate Commerce Commission has full power and authority, under the Act to Regulate Commerce, to eliminate preferences and discriminations by dealing with the particular traffic, the particular parties, and the particular devices, or any means whatsoever by which they are brought about must, under the repeated adjudications of this court, be conceded.

In *Billings* v. *United States*, 232 U. S. 261, 284, Mr. Chief Justice White said:

> That which is settled beyond dispute may not be disregarded and be brought into the realm of that which is controvertible and questionable by the mere garb in which propositions are clothed.

The duty of the common carrier to perform and the right of the shipper to receive compensation for himself performing must therefore be coextensive. Otherwise we would reach the anomalous result of compelling carriers to pay for services which they could not possibly be compelled to perform themselves.

But the extent of the carrier's duty to perform is obviously limited by its holding out. The argument that the carrier is obliged under the act to furnish transportation and that transportation includes the receipt and delivery of the goods transported, simply begs the question. Except by the express requirements of the act in regard to connecting carriers, a carrier is under no obligation to receive or deliver beyond its own line; *a fortiori*, then, it can not be compelled to do so over the private tracks of a shipper. Only when it has held itself out in its published tariffs to perform such services for all shippers similarly situated can it be held to have incurred this obligation.

Equally obvious is it that the service thus offered to the public must be included in the rate in order

to entitle the shipper to compensation for performing it. For if it is a service for which the carrier makes an additional charge, the shipper, by performing it himself, avoids paying that charge; it would then be worse than superfluous to allow him compensation for performing it in addition. In short, section 15 contemplates a *quid pro quo*, not a gratuity to the shipper.

In the present instance the trunk line carriers had held themselves out in the region in question to receive or to deliver free over tap lines to a distance of three miles. This, then, was the limit of the service which the trunk lines could have been obliged to perform under the through rate; consequently it was also the limit of the service for which a shipper could ask a reasonable compensation under section 15. Beyond that distance, as the carrier could not have been required to accept or deliver at all, it would have been manifestly unjust to require it to compensate the shipper for so doing. No other result was consistent with the custom which the Commission found.

But perhaps so lengthy a discussion of this point is unnecessary, since this court has recognized the validity of the Commission's findings and order in this respect in the recent case of *Mitchell Coal & Coke Co.* v. *Penna. R. R. Co.*, 230 U. S. 247, 264, where it is said:

> That station rates may be applied from mill or mine reached by spur tracks is recognized by the ruling of the Commission in the *Tap*

Line Cases, 23 I. C. C. 277, where, in dealing with the practice of paying an allowance for hauling lumber from sawmills, the Commission said (p. 293):

"In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as 3 miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than 3 miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company having a mill within that distance of a trunk line undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15

whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. *But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination,* to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work." 23 I. C. C. Rep. 277.

In view of this ruling it is apparent that lateral allowances might have been lawfully paid. They became unlawful only when unreasonable. Whether they were so or not was a rate-making question as to which parties were directly at issue, and which the courts had no jurisdiction to determine so far as it concerned the allowances to the Altoona, Millwood, and Glen White mines. Having no jurisdiction, the parties could not by consent give it to the court, to the judge, nor to the referee.

3. Hence, that a plant facility tap line performing this service within the 3-mile limit was entitled to an allowance under section 15, but to no division out of the through rate.

As has been shown, a division out of a joint rate can lawfully be paid only to a common carrier. It follows that a tap line which is not a common carrier is entitled to nothing but a reasonable allowance

under section 15 for performing a service connected with transportation such as that performed here within the 3-mile limit.

It may be argued that this distinction results in unjust discriminations between tap lines. The discrimination, if such it can be called, is that which exists universally between shippers and carriers; and as it is a necessary consequence of the difference in legal status between the two it can hardly be termed unjust. The objection in reality goes back to the Commission's finding that certain of these tap lines are common carriers and that others are not. In regard to the tap lines before us, sufficient has been said to justify the Commission's finding in that respect.

4. That a common carrier tap line was entitled to a division or allowance out of the through rate on a haul of either more or less than 3 miles.

The legality of divisions out of the joint rate to carriers participating in the through movement is recognized by that provision of section 15 which confers upon the Commission power "to establish through routes and * * * joint rates" and to "prescribe the division of such rates * * * whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or * * * joint rates * * * ."

That this gives wide discretion to the Commission can hardly be doubted. Possibly the Commission might lawfully refuse to order, or might even prohibit, the division of a through rate by common car-

riers if circumstances demanded. It is inconceivable, however, that where the Commission has exercised its discretion by establishing such joint rates and divisions, the court may step in and deny the propriety of that exercise merely because it may prove disadvantageous to third persons not common carriers. The common carrier tap lines, if not absolutely entitled to joint rates and divisions thereof, were at least entitled to receive them if the Commission saw fit to award them.

There is nothing on the record to suggest that the divisions allowed the common carrier tap lines were in any way excessive. It is therefore not necessary to discuss whether if they were that fact would afford other tap lines a just ground of complaint.

5. That the movement of the logs to the mill was not a transportation service to be paid for out of the through rate but an accessorial service for which the shipper should pay.

This aspect of the case particularly concerns the Butler County Railroad, which, as the Commerce Court pointed out, was not included in the Commission's finding that certain tap lines before it were plant facilities. It is fairly to be implied that the Commission found it to be a common carrier of the products of the proprietary mill. Its statement concerning this tap line concludes as follows (No. 836, R. 64):

> For its service in moving the products of the cooperage company's mill to the Iron Mountain and to the Frisco, a distance of less than 1 mile, this tap line may lawfully receive *out*

> *of the rate* nothing beyond a reasonable switching charge, which we fix at $1.50 per car. (23 I. C. C. 629.)

This conclusion was apparently misunderstood by the Commerce Court, which said that its effect was to allow the Butler County Railroad "only an allowance but no division for the lumber traffic of the proprietary mill." (209 Fed. 261.) The payment "out of the rate" would seem to mean a division of the joint rate, not an allowance under section 15; and the fact that it is described as "a reasonable switching charge" and is measured by the carload rather than by the hundred pounds, does not militate against this interpretation. Besides, it is not clear that the Butler County Railroad, whatever its status, was entitled to anything except reasonable compensation under section 15 for performing a service which the trunk line was obliged to perform under the through rate. *United States* v. *Balt. & Ohio R. R.*, *supra*. Since there is nothing in the record to show that the charge fixed by the Commission was not a reasonable compensation for the service performed, this portion of the order should be allowed to stand regardless of the precise meaning to be attached to the language of the Commission in awarding such compensation.

We therefore come to the other or negative feature of the order, its virtual denial of allowances upon the log movement. As to this the Commerce Court held that—

> The effect of the order of the Commission is to find that this tap line is a common carrier

> both of logs and of lumber, but * * * may receive neither a division nor an allowance for the log traffic * * * of the proprietary mill. (209 Fed. 261.)

We question the correctness of the first clause of this statement. As we have seen, the Commission undoubtedly did find that the service performed by this tap line in moving the product of the proprietary mill to the tap line was a service of transportation by a common carrier; it does not follow that it found the same with regard to the log movement to the mill. There is nothing in the order of the Commission which is determinative of this point. But since the Commission expressly declared that milling-in-transit rates and divisions therefrom were permissible when the log movement was performed by a common carrier (23 I. C. C. 297–298), we must infer that it did not find that the Butler County Railroad was acting as a common carrier in this movement.

This brings us back to the distinction, contended for above, between the legal relation of the tap line to its proprietary company and its relation to outsiders. If that distinction is sound it may equally well be applied to the log movement to the mill as to the movement from the mill to the trunk line. That it was intended to be so applied is evident from the following language of the Commission:

> As with the movement of lumber from the mill, so with the movement of the logs to the mill, we must necessarily hold that it is an industrial service pure and simple, except

> when performed for the lumber company over the rails and with the power and equipment of a tap line that is a common carrier not in form only but in fact as well. (23 I. C. C. 297.)

Indeed, there is more reason for observing this distinction in connection with the log movement than with the lumber transportation. The carriage of logs from the forest to the mill which owns the forest seems essentially a service accessorial to the industry. It is only by a strained construction that this movement can ever be termed part of the interstate transportation of the finished product; and the Commission has long been averse to extending the practice beyond its necessary limits. *Central Yellow Pine Ass'n* v. *Shreveport, Vicksburg and Pacific R. R. Co., supra.* If the mere rendering of any service for third persons is sufficient to transform this particular movement from a necessary function in the operation of the plant to a part of interstate transportation, there is virtually no legal limit to the concessions from the rates which particularly favored shippers may obtain by this means.

It is only necessary, then, to inquire whether there is any substantial evidence upon the record to sustain the Commission's finding as to the Butler County Railroad in this respect.

By reference to the Commission's report on this railroad, we find that it is owned by the Brooklyn Cooperage Company, while most of the timber land which it reaches is owned by the Great Western

Land Company; that all three are subsidiaries of the American Sugar Refining Company, and that the Cooperage Company's principal output is sugar barrels for the Refining Company; that the rates from points on the tap line are in all cases two cents higher than the rates from Poplar Bluff, the junction with the trunk line, except to New Orleans and New York, where most of the Cooperage Company's shipments move; that the tap line's traffic for a given year was 184,688 tons of forest products as against 2,475 tons of other freight; that of the former, 107,527 tons were logs and cooperage material furnished by the controlling interests, and the remainder was logs and lumber products moved for outsiders, but all from timber from the lands of the Great Western Land Company; that nearly half of the miscellaneous freight was inbound machinery and coal for the proprietary companies; and that the few independent producers of lumber products were obliged *to team their logs* to the saw mills. (23 I. C. C. 628–629.)

These facts are indicative that the tap line was a mere plant facility so far as the movement of the logs to the proprietary mill was concerned. It may be argued that they equally show it to be a plant facility in moving the products of the proprietary mills to the trunk line—a conclusion which the Commission did not reach. The appellee is hardly in a position to complain because the facts shown warranted a conclusion more unfavorable to it than was actually attained. Aside from this, the fact

that all of the log movement was performed for the controlling interests or from their land is sufficient to differentiate the cases. Whether this court would reach the same conclusion from the facts presented is not the question.

6. That any allowance for switching within 1,000 feet of a trunk line was a mere device to effect an unlawful payment.

The first three appellees are prevented by this rule from obtaining even an allowance under section 15 on the products of their proprietary mills. For the Commission's statement was that "no allowance * * * ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. * * * We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line." (23 I. C. C. 294.)

In the case of the Louisiana and Pacific Railway, the haul from one of the proprietary mills was a few hundred feet. From another mill it was three-fourths of a mile; but this distance, it appeared, was made up by a long detour to the trunk line, which actually came within a stone's throw of the mill itself. The other two hauls from the mill in this case, respectively of 18 and 40 miles, run counter to the other rule concerning hauls in excess of three miles, and therefore need not be discussed here. (23 I. C. C. 593; No. 829, R. 26.)

In the Woodworth and Louisiana Central case, the haul to the Iron Mountain was only 25 feet, while the haul to the Southern Pacific, Texas and Pacific and Rock Island was six miles. (23 I. C. C. 327.)

In the case of the Mansfield Railway, the spur track of the Kansas City Southern, 300 feet long, was torn out, and a track of the tap line three-fourths of a mile long was substituted. The Commission found this to be "a mere manipulation of the situation" designed to secure unlawful allowances. And while the tap line crossed the right of way of the Texas and Pacific tracks within a short distance of the mill, the lumber was switched back up the tap line and then to the junction to make up a distance of about 2½ miles—as obviously a manipulation as the other. (23 I. C. C. 589.)

The question may well be asked, however, why *any* allowance for such a distance was prohibited? At first blush it would seem that the shipper should have some compensation for performing some service, however slight.

The answer is to be found in a matter which is not expressly mentioned in the Commission's report but which plainly appears of record: the practice of the trunk lines in that territory. On short hauls of 1,000 feet or less it was customary for the trunk line itself to perform the switching service rather than to allow the shipper to perform it. With two or three exceptions, however, this was not done where the distance was over 1,000 feet. The Commission, taking

cognizance of this custom, concluded therefrom that any allowance for a lesser distance was not compensation for a service actually rendered by the shipper for the trunk line at the latter's request, but was in fact a rebate paid without a substantial *quid pro quo*.

That the custom referred to was some evidence of this unlawful design can hardly be questioned. There must be a point at which the carrier can more economically perform the service itself than pay the shipper for performing it. Where that is the case a payment to the shipper is not in reality a payment of reasonable compensation under section 15, but a virtual rebate. And surely, the best evidence of the nature of the payment in a given case is the practice of other carriers in the same locality under substantially similar circumstances and conditions.

It may be argued that under section 15 it is optional with the carrier to perform the service itself or to let the shipper perform it. But section 15 can hardly contemplate an uncontrolled option between the shipper and the carrier in this respect. If it did the granting of allowances for an insignificant service would be a ready means of granting preferences to some shippers and discriminating against others, wherever competitive conditions made that course more profitable to the trunk lines. And such preferences and discriminations, as has been repeatedly said, are the very practices which the act to regulate commerce was particularly designed to abolish.

This ruling comes within the principle laid down by the Commission, and approved by this court in

Mitchell Coal & Coke Co. v. *Penna. R. R. Co.*, 230 U. S. 247, 265, that an allowance to a tap line under section 15 "is lawful only when the trunk line prefers, *for reasons of its own and without discrimination*, to have the lumber company perform the service." 23 I. C. C. 277, 294. (Italics ours.)

The Commission, on facts which it found, in some instances allowed certain companies divisions, in other instances switching charges, and in still other instances, allowances to the shippers under section 15.

Any allowances whatsoever to as many as 57 companies were stricken down as unlawful (Opinions, 179, 180), and the petitions were dismissed by negative orders. To 35 other companies the Commission likewise denied their claims, but allowed either a smaller division of the rate or an arbitrary switching charge (Opinions, 182, 183), in the amounts which the Commission found the parties were entitled to receive for the service which they rendered. To 5 other companies the Commission refused any allowances on the traffic of the proprietary companies.

No trunk line has come forward to challenge the validity of the order. Those which were brought in by summons have answered that they would allow the United States to defend. The Atchison, Topeka & Santa Fe Railway Company has intervened in support of the order. Out of a total of 97 tap line companies, against which the order was directed, 92 have accepted its terms. Only 5 have objected. Twice

the report has been sanctioned by this court to the extent of citing it as authority.

> *Mitchell Coal & Coke Co.* v. *Pennsylvania Railroad Co.*, 230 U. S. 247, 264, 265.
>
> *Fourche River Lumber Co.* v. *Bryant Lumber Co.*, 230 U. S. 316, 322.

The five objecting parties are met with the powerful presumptions of validity which accompany the order, which are reenforced by the nonaction of the great majority of the interested parties, and the sanction which this court has already given the report.

It can not be said, therefore, that the Commission was without substantial evidence to support its finding on this point.

V.

Assuming that the Commerce Court correctly interpreted the Commission's findings and order, the latter were not without support in the evidence nor erroneous in law.

We have tried to establish that a tap line railroad may lawfully be regarded as a common carrier for the public at large, and yet be held a plant facility performing an accessorial service for its proprietary company, even though in their purely physical aspects the two services are the same. *Crane Iron Works* v. *United States, supra*. It has also been shown that the facts of the cases now before the court were sufficient to justify such a finding with regard to the services rendered by these tap lines for their proprietary companies.

If this argument be accepted, it follows that the order of the Commission was based on appropriate distinctions and created no illegal discrimination against the tap lines or their proprietary companies even if, as asserted by the Commerce Court, it did in effect permit the tap lines in question to receive divisions out of the through rate on nonproprietary traffic, while denying them such divisions on the traffic of the proprietary lumber companies. For since only common carriers *performing common carrier service* may receive divisions out of a joint rate, it would be anomalous and utterly illegal to allow such divisions to the tap lines in question for an accessorial service merely because they or other tap lines were permitted to receive them for performing a similar service *as common carriers*. Similarly, since a shipper can not receive an allowance under section 15 for performing services which the carrier is not obliged to perform, the denial of any compensation to these tap lines for hauling proprietary lumber more than 3 miles was entirely proper.

The order was therefore within the competency of the Commission, however injurious or disadvantageous to the proprietary companies it may in fact prove. And here it is necessary to reiterate what has been so frequently stated with regard to the findings and orders of the Commission: that their

legality alone, and not their expediency, is open to judicial review.

I. C. C. v. *Illinois Cent. R. R. Co.*, 215 U. S. 452, 470.

I. C. C. v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547.

To hold otherwise would be, in the language of this court in *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, *supra*, to "usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised" (p. 470).

VI.

These conclusions of the Commission are conclusions of fact and are therefore not open to judicial review.

1. Questions of discrimination, preference, divisions and allowances are questions of fact peculiarly within the competency of the Commission.

The proposition that where the Commission, proceeding in the lawful exercise of its power, has found an unjust discrimination or unlawful preference to exist, its conclusions may not be questioned or set aside by the court if founded on substantial evidence, is such familiar law as to scarcely require citation of authority. Without elaborating the point we refer the court to—

Balt. & Ohio R. R. Co., v. *Pitcairn Coal Co.*, 215 U. S. 481.

Robinson v. *Balto. & Ohio R. R. Co.*, 222 U. S. 506.

Mitchell Coal & Coke Co. v. *Penna. R. R. Co.*, 230 U. S. 247.

Morrisdale Coal Co. v. *Penna. R. R. Co.*, 230 U. S. 304.

United States v. *Pacific & Arctic Co.*, 228 U. S. 87.

A. T. & S. F. Ry. Co. v. *U. S.*, 231 U. S. 736.

That the propriety of allowances under section 15 involves questions of reasonableness or discrimination which require the exercise of the administrative discretion of the Commission is also settled. *Mitchell Coal & Coke Co.* v. *Penna. R. R. Co.*, *supra*, page 255, where it was said that the determination of such a question

> involves a consideration and comparison of many and various facts and calls for the exercise of the discretion of the rate-regulating tribunal. The courts have not been given jurisdiction to fix rates or practices in direct proceedings, nor can they do so collaterally during the progress of a lawsuit when the action is based on the claim that unreasonable allowances have been paid.

The same statement would apply with even more force to the granting of divisions out of a joint rate, a matter left by section 15 of the act entirely to the Commission's discretion where the carriers themselves can not agree on the division. This was recognized by the Commerce Court in *Crane Iron Works* v. *United States*, *supra*, where the Commission's refusal to grant a division to the Crane Railroad Co. was expressly sustained on this ground. The court, after

quoting that part of section 15 which authorizes the Commission to establish joint rates and prescribe the division thereof, said (p. 242):

> That this invests the Commission with discretionary power, and was so intended, can not be seriously doubted. Not only is the grant of authority permissive in form, but the entire paragraph contemplates the exercise of judgment upon the facts disclosed, and implies the right and duty of the Commission to order or decline to order joint rates, as the circumstances and conditions developed in each inquiry may seem to require. The provision for a hearing upon complaint, or the equivalent initiative of the Commission, involves the liberty and obligation of the administrative tribunal to decide a controversy of this nature upon its merits with due regard to the interests of both shippers and carriers. In short, it seems clear to us that the question of establishing joint rates or declining to do so rests in the discretion of the Commission, and it is equally clear that the refusal of the Commission in this case was a lawful and proper exercise of that discretion.

Butler County Railroad Company is similarly foreclosed by the findings of the Commission.

On the discriminations and preferences, the Commission found (Opinions, 149):

> This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has

> important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points.

It is agreed that the evidence before the Commission showed "that the main-line roads in the general territory under investigation * * * establish and maintain rates for switching service ranging from $1.50 per car to $2 per car" (R. 75). No issue is raised in the petition, and there is no pretense, that the allowance so fixed does not more than pay the cost of the service for the switching from the mill to the trunk lines—a distance of about three-fourths of a mile. The order is presumptively valid until overthrown by competent evidence.

> *Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, 215 U. S. 452.
>
> *Interstate Commerce Commission* v. *Chicago and Alton Railroad Co.*, 215 U. S. 479.
>
> *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Railway Co.*, 218 U. S. 88.

In *Mitchell Coal & Coke Co.* v. *Pennsylvania Railroad Co.*, *supra*, this court said (263, 264):

> In case any question arose as to the reasonableness of the practice, the limits within which the station rates should apply, or the reasonableness of the allowance paid those shippers, who supplied motive power, the

Commission alone could act. For the courts are no more authorized to determine the reasonableness of an allowance for a haul over a spur track, between mine and station, than they are to pass upon the reasonableness of a rate for a haul, over a trunk line, between station and station. What is or was a proper allowance is not a matter of law until after it has been fixed by the rate-regulating body.

2. An inference drawn by the Commission even from undisputed testimony is conclusive upon the courts unless erroneous as matter of law.

It may be suggested that the underlying facts in this action are substantially undisputed; and therefore that, as was held by the Commerce Court in the case of *Louisville & Nashville R. R. Co. et al.* v. *United States*, 197 Fed. 58, 65, the drawing of the inference from such testimony was a judicial and not an administrative function, and consequently one upon which the judgment of the court could properly be substituted for that of the Commission.

That case is now before this court for review. In its brief in this court, the Government contested the attitude of the Commerce Court upon this point. It is not necessary to reiterate all that was said there. Suffice it to point out that since many cases before the Commission turn ultimately upon the proper inference to be drawn from undisputed statistics, the acceptance of such a doctrine would virtually strip the Commission of that administrative discretion which Congress has confided to it

and this court has so assiduously upheld, and would reduce that body in such cases to the position of a mere referee for the taking of testimony for the court to pass upon. It seems quite clear that no such result was intended by Congress. The Commerce Court's fallacy was in assuming that a question becomes purely one of law when witnesses do not contradict one another. In reality the question whether a particular rate or practice is unjustly discriminatory or unduly preferential is essentially a question calling for the exercise of the Commission's administrative functions, whether it depends on undisputed testimony or not. This follows of necessity from the familiar doctrine that the Commission's findings are conclusive upon the courts if founded upon substantial evidence. *I. C. C.* v. *L. & N. R. R. Co., supra; I. C. C.* v. *Union Pacific R. R. Co., supra.* For where facts may reasonably lead to either of two opposing inferences, it can not be said that either inference the Commission might draw would lack substantial evidence to support it.

It is submitted that the Commission's findings concerning the status of the appellees and the nature of the services performed for them by the proprietary companies, as well as its conclusions that any divisions or allowances except those prescribed in this order would "result in undue and unreasonable preferences and unjust discriminations," are conclusions of fact; and, being founded upon substantial evidence in the record, were beyond the power of the Commerce Court or of this court to review.

CONCLUSION.

The judgment of the Commerce Court was erroneous and should be reversed.

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MARCH, 1914.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 837.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

BUTLER COUNTY RAILROAD COMPANY, APPELLEE.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

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[*The matter following to page 66 (inclusive) of this brief is the same as the corresponding pages in the brief filed in this court on behalf of the Commission in the Tap Line Cases, Nos. 829, 831, 833, and 835.*]

QUESTIONS OF LAW.

In view of the holding of the Commerce Court that switching on private sidings and spur tracks, and log hauls with milling-in-transit privileges, may be integral parts of through routes covered by the line

rate upon lumber, we present for consideration the following propositions:

1. A switching service on a private siding or spur track is a service which precedes or follows a line haul; it is the shipper's delivery to, or the consignee's receipt from, the line carrier; it is not a line service, therefore it can not be the basis of, or a link in a through route.

2. Logs and lumber are distinct commodities, for each of which there is a classification and commodity rate; the cost of transporting logs is a part of the cost of the logs at the sawmill; therefore a log haul performed by a carrier *free of charge* is a consideration to induce the mill owner to give the carrier his lumber traffic at the published lumber rate; such absorption of a distinct service by a carrier is rebating or "buying the traffic."

3. A milling-in-transit privilege which extends the lumber rate, for the lumber line haul, back to the forest and thereby absorbs or obliterates any charge for the log-haul, is not a true milling-in-transit privilege and is unlawful.

4. A tap line or industrial road may be so owned, organized, and conducted as to be a plant facility as to the traffic of the proprietary company and a common carrier as to non-proprietary traffic.

5. It is within the powers of the Interstate Commerce Commission, upon full hearing, to determine:

(*a*) That the practice in a given case of absorbing switching, spur track, and log-haul services in order to secure the shipper's lumber traffic creates undue discrimination, favoritism, and rebating.

(*b*) That a milling-in-transit privilege which has the purpose and effect of rendering to the shipper a free service in transporting raw material for him, in order to secure the shipper's traffic of manufactured commodities, is unlawful.

(*c*) That a tap line or industrial road is a plant facility as to the traffic of the proprietary mill, while it may be a common carrier as to non-proprietary traffic.

I.

A switching service upon a private siding or spur track is an independent service which precedes or follows a line haul.

Matters to be excluded.—The discussion under this head has reference solely to the movement of cars between the private warehouse or place of business of a shipper and the point on the private siding (free of the line tracks) where connection is made with the main line. We have no reference to the carrier's delivery in shunting cars upon the private sidings free of the main track, or switching between line carriers in a through route, or deliveries upon public team tracks. We contend that the movement of cars upon private sidings is a shipper's service, tak-

ing the place of, and being a substitute for, the truck or team delivery by shippers generally.

Loading and unloading carload traffic.—It is the universal practice for shippers and consignees to load and unload carload shipments. The carrier receives the car loaded from the shipper and delivers it loaded to the consignee. The line haul for which a line rate is charged is between the points of such receipt and delivery by the carrier. All services outside the line haul are additional services for which the carrier may properly claim additional compensation.

Absorption.—We do not contend that a carrier may not absorb this additional service where it does not work undue discrimination or operate as a rebate. This court and the commission have held that a switching service may be performed without extra charge; that is, may be absorbed by the line carrier. Our contention is that a shipper having a private siding, has no right to have this additional service absorbed, and that the commission may prohibit it where such absorption operates as an undue discrimination against shippers of like traffic who are obliged to deliver their traffic upon public or team tracks. The phrase "*absorbing the service*" *means*, and is interchangeable with the term, "*free service.*"

Switching and interplant service.—Before the extension of the definition of the word "transportation," by the act to regulate commerce, the word, as used at common law, was equivalent to what is now termed the line haul. Transportation, when carried on by a common carrier by railroad, was the business

of receiving traffic from shippers at designated points on the rail-line and delivering the same to consignees at other designated points on the line. It was the shipper's business to bring his traffic to the carriers at the points of receipt, and of the consignee's to take it away from the points of delivery. In the case of carload freight the delivery by the shipper included the loading, and the consignee unloaded the freight.

Switching and its relation to the transportation was clearly defined by the Supreme Court of Georgia.

> The test of distinction between "transportation" service, relative to loaded freight cars, for which a railway company can lawfully charge tonnage rates, and "switching" or "transfer" services, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line or that of another; for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires no movement over other tracks or lines of railway, whereas a switching or transfer service is one which precedes or follows a transportation service, and applies only to a shipment on which legal freight charges have already been earned or are to be earned. (*Syllabus.*)
>
> *Dixon* v. *Central of Georgia Ry. Co.* (110 Ga., 173; 35 S. E., 369, 372).

Statutory definition.—In 1904 the English statute was adopted requiring carriers, for the accommodation of shippers, upon certain conditions, to con-

nect with private sidings and to operate them. But, as we shall see from a clear line of authorities, the distinction theretofore prevailing, that this was *additional service* for which compensation could be required, was recognized.

Our act to regulate commerce, as amended June 29, 1906, provides that:

> The term "railroad" as used in this act shall include * * * all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, * * * and the term "transportation" shall include * * * all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit * * * and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor. * * *
>
> Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and *operate upon reasonable terms* a switch connection with any such lateral, branch line of railroad, *or private side track* which may be constructed to connect with its railroad, where such connection is reasonably prac-

> ticable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same (Sec. 1).

When the carrier refuses to furnish these facilities the commission is authorized to require the same "and shall determine as to the * * * *reasonable compensation* therefor * * *."

Additional compensation.—The words above quoted, "and operate upon reasonable terms a switch connection," etc., when considered in connection with the debates in Congress, should, we think, be construed to mean that the carrier may be required to operate the cars upon a switch. This construction arises in consequence of the fact that private sidings are in many cases for the accommodation of shippers who have no locomotives with which to move cars upon the switch or spur.

The use of the words "upon reasonable terms" and "reasonable compensation therefor" is a clear recognition that the services performed upon the switch in operating the cars is a service additional to the line haul. It is not a part of the delivery which the carrier is required to make of carload freight. Prior to these enactments the carrier could not be compelled to operate a switch; it was not a part of the transportation; delivery of car lots was made by shunting the car upon the private switch clear of the main track; the "spotting" was additional service performed voluntarily, usually under contract. The statutes both in England and in the United States

recognize it as additional or extra service by providing that carriers may be compelled to put in and operate switches only upon the payment of reasonable compensation therefor.

Lateral line.—This is true as to spurs and lateral lines. Such lines are longer than a "switch," put in to reach a warehouse, mill, coal mine, or forest. The same general designation appears in the English statute—"private sidings or private branch railways." The phrase "lateral branch" in the act to regulate commerce has been construed by this court to mean lines "that are dependent upon and incident to the main line—feeders such as may be built from mines or forests to bring coal, ore, and lumber *to the main line for shipment.* * * * That some shippers would be accommodated by a switch connection is not enough." (*United States* v. *B. & O. Southwestern Ry.*, 226 U. S., 14, 19.)

Whatever the legal construction of the word "operate" may finally be, there is a clear recognition that the services upon a switch, spur, or lateral branch line of road are services additional to the main-line haul and are not included in it. The "line haul," as it is always defined, includes the taking of a car from the team track or *from the junction point* of a private siding and conveying it to the point of destination and delivering it either upon the team track or upon the private siding *clear of the main track.*

The following English and American authorities state the law upon this subject. The doctrines established by these authorities will be discussed after the citations are given. Our act is similar to the English statutes and their courts have decided the question under consideration here.

ENGLISH AUTHORITIES.

Fourth Edward VII, chapter 19, provides that an abutting property owner is entitled to a siding connection with the railway, and section 2 of the Railway and Canal Traffic Act of 1854 provided that a trader is entitled to all reasonable facilities, etc. This language is defined in the statute first above referred to as follows:

> The reasonable facilities which every railway company is required to afford under section 2 of the Railway and Canal Traffic Act of 1854 as amended or explained by any other act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by such company, and reasonable facilities for receiving, forwarding, and delivering traffic upon and from those sidings or private branch railways.

The charges which may lawfully be imposed by a railroad company in England are fixed by the provisions of the Rates and Charges Order Confirmation Act applicable to particular companies. These acts are substantially similar and provide for (see

54 Vict., ch. 121): (1) Maximum conveyance rate (line haul); (2) maximum station terminal rate for use of station accommodations; (3) service at terminals, maximum rate for services in connection with the loading, unloading, covering and uncovering of merchandise; (4) special charges, including, *inter alia*, "*services rendered by the company at or in connection with sidings not belonging to the company.*"

The English cases define with considerable detail the obligations of railroad companies to afford reasonable facilities for receiving and forwarding goods and passengers. The decisions, construing the statutes, recognize the common-law obligations of rail carriers to transport and perform services upon their lines, and distinctly hold that there is, outside of the statute, no obligation to perform services off their lines. Services performed by a carrier upon private sidings are held to be additional services and are required of carriers by statute only upon payment of reasonable compensation therefor.

Referring to the operation of a private switch, Sir Frederick Peale said:

> The far end of the siding where Pidcock and Company load and unload is at some distance from its junction with the railway, and the railway company, besides delivering at the junction, take the trucks on to the farther end of the siding. This, of course, is a voluntary service on their part, for no com-

pany is bound to travel beyond its own railway.

M. S. & L. Ry. Co. v. *Pidcock & Co.*, 10 Ry. and Ca. Tr. cases, 150, 159.

In a case arising under section 6 of the Board of Trade Arbitrations Act, 1874, and under sections 5 and 7 of the schedule to the North Staffordshire Railway Co.'s Rates and Charges Order Confirmation Act, 1892, Sir Frederick Peel said:

> The North Staffordshire Railway Company claim to be repaid certain expenses incurred by them * * * for works and services at the junction with their railway of sidings belonging to the Salt Union. * * * As to the shunting services for which the railway company claim to be paid, according to the time their engine is engaged shunting, at the rate of 7s. per hour, the schedule to the Charges Act, section 5, subsection 1, gives a railway company power to charge a reasonable sum *by way of addition to the tonnage rate* for "services rendered at or in connection with sidings not belonging to them," but the Salt Union deny that the shunting that is done for them at Malkins Bank or Wheelock is more than is incidental to conveyance. * * * The service the staff perform seems to be a necessary one. * * * I think, therefore, the railway company's claim, as it respects the Salt Union, may be allowed.
>
> Wright, J.: I also agree with the judgment which has been delivered, and I have only to add a statement of the law as we

understand it and have applied it with reference to the railway company's claim to make an extra charge for services on their own line in the delivery and collection of traffic at the traders' sidings.

It is not implied in our judgment that the railway company can charge beyond the conveyance rate for anything done on their own lines which is properly incidental to delivery or collection of traffic to or from sidings, no matter how much the cost and trouble may be increased by the inconvenience of the sidings or the nature of the traffic, unless the defects or inconveniences are such as to relieve the railway company from their duty to deliver and collect. The very existence of the siding implies in practice that the railway company must, in order to collect and deliver from or to the siding, do on their own lines something beyond the mere work of transit. But they may be entitled to make a carrier's or service charge if they are required, for the convenience of the siding owner, *to do work on his siding;* and where they are so required, then, if by reason of the insufficiency of the siding or otherwise, that work involves extra work on their own line, that extra work may be a ground for an extra charge. For instance, a siding may, from its limited size or its situation, be such as not of itself to afford sufficient accommodation for the delivery or collection of its traffic. In such a case, if for the convenience of the trader the company work in and out of the siding, and if in order to do so they

> are obliged to make an extraordinary use of their own lines, it may be that their lines would be regarded for this purpose as a prolongation of the sidings, and the company may, according to the circumstances, be entitled to that extent to be paid for the extraordinary work done on their own lines, as if their lines were a part of the sidings themselves.
>
> *N. S. Ry. Co.* v. *Salt Union Limited,* 10 Ry. & Ca. Tr. Cases, 161, 164, 167.

Upon complaint made by a shipper having a siding that the rate charged was unreasonable, the carrier defended the rate on the ground that part was "for services at or in connection with a siding not belonging to the company." Wright, Justice, said:

> Owing to the inconvenient position of the applicant's siding, the railway company have to haul the trucks *past the mouth of the siding, and do something beyond the point at which they would naturally deliver.*

Sir Frederick Peale said:

> Now, if the mode in which a junction has been affected is such that a company need incur no greater expense in connection with it than is involved in stopping a goods train specially at the siding junction, and either uncoupling trucks there and *depositing them in the siding clear of the points,* or drawing out trucks *ready marshaled* and attaching them to the train, *doing no work within the siding,* * * * there is then a

> mere delivery for which no extra payment is due.
>
> *Portway* v. *Colne Valley & H. Ry. Co. et al.*, 10 Ry. and Ca. Tr. Cases, 211, 217, 220.

In another case involving services upon a private siding, Lawrence, J., said:

> The main question of fact in dispute has been: Does the railway company perform any service in respect to this traffic beyond what they are bound to do as carriers *conveying it from* one private siding to another. If they do they would be entitled to charge a reasonable sum in respect thereof under section 5, subsection 1.
>
> *Birmingham* v. *M. R. Co. Ry. Co. et al.*, 14 Ry. & Ca. Tr. Cases, 24, 33, 34.

In one of the earlier Railway & Canal Traffic cases the court said:

> We think the traders [owners of the siding] will do all that is necessary on their part to entitle them to have their traffic taken by the company, without extra payment, *if they place their trucks as near to the junction of their sidings with the main line as they can be brought with safety to the main line*, and with sidings constructed as theirs have been; and if also they take care to arrange their trucks in proper order and clear of any obstacles to their being moved away. * * * Subject, therefore, to the traffic being presented in the way we have mentioned, we are of opinion that the company are bound to receive and forward it for the mileage

rate, and free of any charge for terminal services.

Watkinson et al. v. *W. M. & C. A. Ry. Co.*, 3 Ry. & Ca. Tr. Cases, 5, 9. See also *Birmingham et al.* v. *Mid. Ry. Co.*, 9 Ry. & Ca. Tr. Cases, 165.

AMERICAN AUTHORITIES.

Private sidings.—A private siding put in at the cost of the shipper or partly at the cost of the shipper and partly at the cost of the railroad is not a part of the railway company's line. As we shall see, the courts of this country in passing upon the question of services upon private sidings hold distinctly that, at common law, a railroad company is not obligated to perform any service *off its own line;* that such additional services are the subject of private agreement. The statute has modified the common law but recognizes the service *as additional to the line haul.*

The Circuit Court of the Western District of Kentucky, speaking through Evans, district judge, in construing the rights of third persons to use a switch connection put in at the instance and for another person, said:

> A common carrier cannot be required to receive freight on or along a private switch. Its duty in that regard is confined and limited to its own depots or shipping or receiving points.
>
> *Bedford-Bowling Green Stone Co.* v. *Oman*, 134 Fed. Rep., 441, 449.

The Supreme Court of Indiana, speaking through Chief Justice Mitchell, said:

> It is undoubtedly true that a carrier is not liable for failing to furnish cars, and for not transporting goods, unless goods are offered at a regular depot, or other usual or designated place for receiving freight. * * * All that can be done by the owner of goods of the character and quantity of those described, which are designed for transportation, is to place them contiguous to the railway company's track at some usual or properly designated place and request the company to furnish cars and receive the goods.
>
> *L., N. A. & C. Ry. Co.* v. *Flannagan et al.*, 14 Northeastern Rep., 370-1-2.

In a case brought to recover a penalty for delay in transporting freight, decided by the Supreme Court of North Carolina, Brown, J., said:

> The first assignment of error is that his honor erred in holding that the defendant was required not only to transport the car from Cary to Greensboro within the statutory period, but must within that time place the car upon the plaintiff's side track.
>
> * * * Although this [State] statute was amended by chapter 461, Acts 1907, so as to require a delivery at destination within the time specified, we have held that when the goods arrive, and the carrier has notified the consignee that it is ready to deliver, it has discharged its duty. *Wall* v. *Railroad*, 147 N. C., 411; 61 S. E., 277. But this statute

> as amended does not undertake to compel a railway company to deliver loaded cars off its own right of way and tracks on to the private track of an individual or private corporation. Therefore, a delivery of the car load of lumber to plaintiff upon its private track, belonging to it and leading to its mill, must of necessity be a matter of agreement between plaintiff and defendant and cannot come within the purview of section 2632. A railroad company cannot be compelled to operate its engines on a private track belonging to a private corporation or individual over which the railroad company has no control or supervision.
>
> *Brooks Mfg. Co.* v. *Southern Ry. Co.*, 68 S. E., 243 ,245.

May discontinue service.—In a case involving the depression of tracks and the discontinuance of private sidings the Supreme Court of Minnesota, speaking through Brown, J., said:

> At various times during the last 30 years, as the same were demanded or required, the railway company has constructed numerous side and spur tracks connecting with the main track of its said Hastings and Dakota Division, and has maintained and operated the same to deliver and receive freight cars to and from the premises of the plaintiffs. Some of these side tracks are entirely on the respondent company's right of way, and others partly thereon and partly on the lands of the plaintiffs. In some instances the railway company paid the entire cost of their

construction; in some the plaintiffs shared the cost. During the said period of 30 years it has been the unvaried and uniform custom of the respondent to furnish trackage to all such industries as located along its said right of way. Sometimes side tracks have been provided under written contracts and deeds; sometimes they have been provided to avoid proceedings before the railroad and warehouse commission of the State. The railway company has at all times encouraged and invited the location of industries along its right of way, in order to increase its freight business, and the plaintiffs, encouraged by the railway company and relying on its uniform custom, its agreements, and its statutory obligation to furnish trackage, purchased their lands and established their several plants, such plants or establishments being on grade with the railway company's track and right of way as they now stand, and the buildings of the plaintiffs being built next to the side tracks by which they are served, and so constructed as to facilitate the loading and unloading of freight directly between such buildings and the railway company's cars.

* * * The railway company, furthermore, admits that it intends to tear up and remove all these side tracks, and that it has made no plans for providing them in the future and does not intend to construct or maintain them, or any others, in the future, along the line where so depressed.

Discussing the ordinance controlling the railway company in this improvement, the court referred to the contracts under which the switches were originally constructed and said:

> Contracts of this character, for the permanent location or use of their road or works, have been held to be subject to termination *when even the interest of the road itself requires it.*
>
> This, we think, is the true doctrine that must control the instant case, and the rule as above announced disposes of the plaintiffs' contentions as to their vested rights so far as the same are predicated upon contract, prescription, or estoppel.
>
> *Twin City Separator Co.* v. *Chicago, M. & St. P. Ry. Co.*, 137 N. W., 193, 195, 197, 198.

This case shows that these private sidings were operated by the railway company as additional services, and were subject to discontinuance when the public interest demanded it although it might work financial injury to private interests. If the tracks can be taken up, certainly free service thereon can be discontinued whenever the public interest demands it.

Not a terminal facility.—The Supreme Court of Mississippi, speaking through Cooper, J., held that a mere switch was not a depot or terminal facility. (*Kansas City, &c. Co.* v. *Lily*, 8 Southern Rep., 644.)

The Supreme Court of Michigan, speaking through Grant, J., held that a provision in a con-

tract to build a side track, exempting the railroad company from liability for loss by fire from its own negligence, was not void, for the reason that—

> In contracting to put in these side tracks, the defendant was not acting in the capacity of a common carrier. It was under no legal obligations to put them in. It might have refused.
>
> *Mann et al* v. *Pere M. Ry Co.*, 135 Michigan, 210; 97 Northwestern Rep., 721, 723.

Not covered by line rate.—In the Circuit Court of Appeals, Seventh Circuit, the court, speaking through Showalter, C. J., held:

> No satisfactory reason suggests itself against the legality and propriety, under special circumstances, such as exist here and as existed in the Covington case, of such a division of his compensation by a carrier even apart from the statute. * * *
>
> The contention that the carriers must move cattle from their lines of road over the track of the stockyards company to the stockyards, without compensation other than as contained in their charges for hauling to points on their respective lines in Chicago (and this is what the claim of these appellees amounts to), is invalid.
>
> *Walker* v. *Keenan*, 73 Fed. Rep., 755, 762.

No vested rights.—The Circuit Court of Appeals, Eighth Circuit, Thayer, J., speaking for the court, held that a railroad company could legally decline to place cars for loading coal at the station side tracks and could insist that the mine owner accept

cars from the railroad to be loaded at the mines on private sidings *prepared by the company for such purpose*. The court said:

> We entertain no doubt that the defendant had the right to abandon the method of receiving coal which it had adopted at Hartford when the conditions that led to the practice at that station had so far changed as to render its further continuance inconvenient and burdensome. * * *
>
> The privilege which he demanded was essentially different from that accorded to other shippers who had built spur tracks on which cars could be placed and handled by the defendant with much less inconvenience and risk than when standing on its house tracks, which it used for handling other commodities, and for switching purposes, and probably used at times for the passage of trains.
>
> *Harp* v. *Choctaw, O. & G. R. Co.*, 125 Fed. Rep., 445, 451-2.

Interplant and delivery service.—In a case decided by the Circuit Court of Appeals, Seventh Circuit, the plaintiffs in error were jointly convicted of violating the Elkins Act. The rebate consisted in an allowance of $1 per car to a packing company at Kansas City. The book entries read "refund of terminal charges." The plaintiffs operated a packing establishment adjoining the tracks of the Belt Line; within the plant and running around and between the various buildings thereof they had built, at a cost of $75,000, 1½ miles

of switches and sidings on which the annual outlay for maintenance and taxes was $1,200. The Chicago & Alton took the traffic from the Belt Line; this line published a rate of $3 per car for hauling the car over the plant line and the Belt Line to the Alton. It was claimed that the payment was a refund of terminal charges. The real transaction, however, the court held, was a payment by the Alton for the use of the plant tracks in getting freight out of the plant to the Belt Line. The court said:

> The trouble in this case, however, comes from the fact that the Alton did not take a lease of the S. & S. tracks for the purpose of discharging its undertakings as an interstate common carrier. It had undertaken to carry for all the shipping public a carload of meats from Kansas City, Kans., to New York for $20, say. For that purpose it controlled, by means of its connections, a public highway. The S. & S. tracks were not a part of that highway. They were not used by the Alton in serving the shipping public generally. *Their only use was in getting a particular shipper's freight from his own property out to the public highway.* Suppose that the S. & S. Co., instead of ties and rails, had put down a paved roadway on its land, and that the Alton, in addition to the $20 worth of transportation it was giving to other shippers, furnished horses and wagons to haul the meats from the packing rooms to the Belt Line, would it be contended

that the Alton could lawfully still further pay the S. & S. Co. for the use of the pavement? Or suppose that the S. & S. plant was all under one roof, and that the trolleys which convey carcasses and cuts of meat from one department to another were so arranged that the finished produce arrived at the property line adjoining the Belt tracks, could the Alton properly make an allowance for the use of the trolleys as instrumentalities furnished by the shipper in the transportation of property in interstate commerce? In our judgment the jury were warranted in finding that the tracks in question were plant facilities as clearly as the supposititious pavement and trolleys would be plant facilities, and not instrumentalities for the Alton's use in discharging its duties to the public.

* * * * *

This case is ruled in principle, we believe, by the decision in *Wight* v. *United States* (167 U. S., 512; 17 Sup. Ct., 822, 42 L. Ed., 258), that an arrangement whereby a particular shipper was allowed to offset against his freight bills the true value of the use of his teams in hauling the property from the railroad to his warehouse was a discrimination against other shippers of the same class of property in the same city who were compelled to pay the freight in full. It is contended that the citation is inapplicable because the question there was of discrimination and here of rebate. Under the Cullom

Act (act Feb. 4, 1887, c. 104, 24 Stat., 379; U. S. Comp. St. 1901, p. 3154) the standard of comparison was the treatment of other shippers. It was necessary to prove not only that the favored shipper really paid less than the published rate but also that other shippers paid the full rate or a greater rate than that of the favored shipper. Under the Elkins Act the standard of comparison is the published rate. It is only necessary to prove that the favored shipper has had his property transported at a less rate than that published and filed. Both acts were aimed to kill favoritism, and the favoritism in the *Wight case* was of the same kind and effect as in this. The big manufacturer or dealer has all the advantage over his small competitor that he is legally or morally entitled to in his savings of labor cost and in buying his materials at greater discounts. The application of the maxims of merchandising to railroading was always counter to the common-law pact between the railroads and the people. But it was not until the Government as parens patriæ was authorized to represent the scattered and unorganized sufferers from favoritism that any hope appeared of taking the railroad business out of the realm of private barter.

Chicago & A. Ry. Co. v. *United States*, 156 Fed. Rep., 558, 561, 562.

Not obliged to receive freight on private siding.—In an action against the Texas & Pacific Ry. Co. for damages for negligence in not keeping a watchman or agent at a station called Meekers the con-

clusions as to the obligations of the carrier regarding a switch on which this station was located are stated by Mr. Justice McKenna of this court as follows:

> Meekers was not a regular station; indeed was not a station at all, but a mere switch track. *The defendant was not obliged to receive freight there.* It was, as said by the court of appeals, "a country or plantation switch," established and maintained for the accommodation of the planters of the neighborhood.
>
> *Charnock* v. *Texas & Pacific Ry. Co.*, 194 U. S., 432, 437.

Illinois cases.—These cases are based upon a constitutional provision, which reads as follows:

> All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased, or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee and any public warehouse, coal bank, or coal yard may be reached by the cars on said railroad.

In the Vincent case the complainants owned and occupied a warehouse in the city of Chicago, "situated upon the line of the defendant's railroad, and connected with it by a side track about one hundred and fifty feet in length, and situated two blocks

from the freight depot, and between that and the passenger depot." The siding was built under a written agreement which was recorded, the complainant owning the land, and the contract provided for free switching. The question was presented—

> whether the appellants have a legal right to insist upon a delivery, at their elevator or warehouse, of grain consigned to them, without discriminating charges against them, such warehouse being connected with the line of the railway in the manner above stated, and, if they have such right, whether the powers of a court of chancery can be invoked to protect it.

After reciting that the railroad company could not deliver this grain in its ordinary depot and that it had been the custom to deliver grain to the elevator to which it was consigned, the court said:

> If, then, the common-law rule requiring of common carriers an immediate delivery, when practicable, to the consignees, has been relaxed, in regard to railways, only from necessity, it is difficult to perceive why the rule should not be applied, in its full force, to transportation of this character. Here the necessity of relaxation has not only ceased, but the railway is compelled to seek some other warehouse than its own freight depot, and to send its cars, over a side track, to some private elevator. And where there are several elevators thus connected with the main line, in substantially the same mode, it is difficult to conceive how, as a question

merely of common law, the railway company can be permitted to deliver grain to an elevator of its own selection, in place of that to which the property has been consigned.

Vincent et al. v. *C. & A. R. R. Co.*, 49 Ill., 33, 37–39.

The doctrine of *The Vincent case*, in 49 Ill., was, that a railway company must deliver grain to any elevator which it had allowed by a switch, to be connected with its own line. This rule has been reaffirmed in an opinion filed at the present term, in the case of *The People ex rel. Hempstead* v. *The Chicago and Alton Railroad Co.* (55 Ill., 95). But in the last case we have also held that a railway company *can not be compelled to deliver beyond its own line,* simply because there are connecting tracks over which it might pass by paying track service, but which it has never made a part of its own line by use.

Chicago and Northwestern Railway Co. v. *The People*, 56 Ill., 365; 8 A. R., 690.

Illinois cases not controlling.—The Circuit Court of Appeals, Sixth Circuit, speaking through Taft, C. J., referred to the Illinois cases, and held that a railroad company as a common carrier is not bound at common law by the establishment and maintenance for any length of time of a switch connection with a private warehouse to maintain it. The court said:

A change of conditions, an increase in business, a necessity for travel at higher speed, may make such a connection either incon-

venient or dangerous, or both. We must therefore dissent altogether from the proposition that the establishment and maintenance of a switch connection of the main line to a private warehouse for any length of time can create a duty of the railroad company at common law forever to maintain it. There is little or no authority to sustain it.

The latest of the Illinois cases which are relied upon is based upon a constitutional provision which requires all railroad companies to permit connections to be made with their track, so that the consignee of grain and any public warehouse, coal bank, or coal yard may be reached by the cars of said railroad. The supreme court of that State has held that the railroad company has a discretion to say in what particular manner the connection shall be made with its main track, but that this discretion is exhausted after the completion of the switch and its use without objection for a number of years. (*Railroad Co.* v. *Suffern*, 129 Ill., 274; 21 N. E., 824.) But this is very far from holding that there is any common-law liability to maintain a side track forever after it has once been established. The other Illinois cases (*Vincent* v. *Railroad Co.*, 49 Ill., 33; *Chicago & N. W. Ry. Co.* v. *People*, 56 Ill., 365) may be distinguished in the same way. They depended on statutory obligations and were not based upon the common law, though there are some remarks in the nature of obiter dicta which gives color to plaintiff's contention. But it will be seen by reference to Mr. Justice

Gray's opinion, already quoted from, that the Illinois cases have exercised greater power than most courts in controlling the discretion of railroads in the conduct of their business.

Jones v. *Newport News & M. V. Co.*, 65 Fed. Rep., 736, 740.

Extra service.—If the stopping for inspection and reloading is of some benefit to the shipper and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish. Especially is this true when, as here, the privilege is in no sense a part of the transportation, but outside thereof.

Southern Ry. Co. v. *St. Louis Hay Co.*, 214 U. S., 297, 301.

By section 15 the commission is authorized and required, upon a complaint, to inquire and determine what would be a just and reasonable rate or rates, charge or charges. This, of course, includes all charges, and the carrier is entitled to have a finding that any particular charge is unreasonable and unjust before it is required to change such charge. For services that it may render or procure to be rendered *off its own line* or

outside the mere matter of transportation over its line, it may charge and receive compensation. *Southern Railway Co.* v. *St. Louis Hay Co.*, 214 U. S., 297. If the terminal charge be in and of itself just and reasonable it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. In order to avail itself of the benefit of this rule the carrier must separately state its *terminal or other special charge* complained of, for if many matters are lumped in a single charge it is impossible for either shipper or commission to determine how much of the lump charge is for the terminal or special services. The carrier is under no obligations to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and commission that it is insisting upon it.

Interstate Commerce Comm. v. *Stickney*, 215 U. S., 98, 105.

Freight requiring special facilities.—Referring to the liability of a common carrier to provide suit-

able facilities for receiving live stock, this court, speaking through Mr. Justice Harlan, said:

> The vital question in respect to such matters is, whether the means and facilities so furnished by the carrier or by some one in its behalf are sufficient for the reasonable accommodation of the public. But, it is contended, that the decree is erroneous so far as it compels the railroad company to receive live stock offered by the appellees for shipment and to deliver live stock consigned to them, *free from any charge other than the customary one for transportation,* for merely passing into and through the yards of the Covington Stock-Yards Company to and from the cars of the railroad company. * * *
>
> In other words, the duty to receive, transport, and deliver live stock will not be fully discharged, unless the carrier makes such provision, at the place of loading, as will enable it to properly receive and load the stock, and such provision, at the place of unloading, as will enable it to properly deliver the stock to the consignee. * * *
>
> There are recognized limitations upon the duty and responsibility of carriers of inanimate property that do not apply to carriers of live stock. These limitations arise from the nature of the particular property transported. * * *
>
> *Covington Stock-Yards Co.* v. *Keith,* 139 U. S., 128, 133, 134, 135.

Carrier not obligated to deliver at particular yards.—In *Central Stock Yards Company case* this

court, speaking through Mr. Justice Holmes, said:

> If the cattle are to be unloaded, then, as was said in *Covington Stock-Yards Company* v. *Keith*, the defendant has a right to unload them where its appliances for unloading are, and can not be required to establish another set hard by. * * *
>
> We have discussed the case as if the two stockyards were side by side. They were not, but they both were points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. * * *
>
> As the defendant would not be bound to deliver at the Central Stock Yards *if they were by the side of its track*, its obligation is no greater because of the intervention of a short piece of the track of another railroad.
>
> *Central Stock Yards* v. *Louisville, etc. Ry. Co.*, 192 U. S., 568, 570–72.

May not discriminate by special services.—In the *Nashville Stock Yards* case, in the Circuit Court, M. D. Tennessee, Chief Justice Baxter, said:

> By the permission or acquiescence of defendant, complainants' yard was connected with defendant's road by appropriate stock gaps and pens, which have been in use by both parties for more than twelve years.

The railroad company made an arrangement with the Union Stock Yards Company in Nashville for the delivery of stock and stipulated that after

a certain date it would deliver stock only at the Union Stock Yards. Complainants filed a bill to enjoin the railroad company from refusing to deliver their own stock at their private yard. The court indicates that there was involved in the case some intentional discrimination, and further said:

> Or may such railroad company, in like manner, discriminate between grain elevators in the same place,—constitute one elevator its depot for the delivery of grain, and force competing interests to receive from and transfer the grain consigned to them through such selected and favored channel?
>
> If railroad corporations possess such right, they can destroy a refractory manufacturer, exterminate or very materially cripple competition, and in large measure monopolize and control these several branches of useful commerce, and dictate such terms as avarice may suggest. We think they possess no such power to kill and make alive. Impartiality in serving their patrons is an imperative obligation of all railroad companies; equality of accommodations in the use of railroads is the legal right of everybody. The principle is founded in justice and necessity, and has been uniformly recognized and enforced by the courts. A contrary idea would concede to railroad companies a dangerous discretion, and inevitably lead to intolerable abuses. It would, to a limited extent, make them masters instead of the servants of the public. By an unjust exercise

> of such a power they could destroy the business of one man and build up that of another, punish an enemy and reward a friend, depress the interests of one community for the benefit of its rival, and so manipulate their roads as to compel concessions and secure incidental profits to which they have no legal or moral right whatever.
>
> *Coe et al.* v. *L. & N. R. Co.*, 3 Fed. Rep. 775, 776, 779-80.

Charges may be separated.—In a case involving an extra charge per car in Chicago for delivering live stock to the stockyards this Court, speaking through Mr. Justice White, now the Chief Justice, said:

> As the right of the defendant carriers to divide their rates and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the stockyards, a point beyond the lines of the respective carriers, was conceded by the Commission and was upheld by the circuit court of appeals, no contention on this subject arises. If, despite this concurrence of opinion, controversy was presented on the subject, we see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below. This is especially the case in view of the sixth section of the act to regulate commerce, wherein it is provided that the schedules of rates to be

> filed by carriers shall "state separately the terminal charges and any rules or regulations which could in anywise change, affect, or determine any part of the aggregate of said aforesaid rates and fares and charges."
>
> *Inter. Com. Commis'n* v. *Chicago &c. R'd Co.*, 186 U. S. 320, 335.

The act to regulate commerce in section 6 provides that:

> The schedules * * * shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

Industrial railroads not common carriers.—A railroad constructed and used merely in connection with the conduct of a private business is not a common carrier, so where a railroad is built to haul logs from the forest to the sawmill of the owner it is not a common carrier.

> *White* v. *Kennon*, 83 Ga., 343; 9 S. E., 1082.
>
> *Wade* v. *Lutcher & M. C. Lumb. Co.*, 74 Fed., 517.
>
> *Nicolette Lumb. Co.* v. *Peoples Coal Co.*, 26 Pa. Supr. Ct., 575.

Plant facility.—The circuit court of appeals, dealing with a provision of the State constitution which dealt with corporations of public improvement and utility, said:

> We would not suppose that the learned counsel would seriously contend that article 244 of the State constitution, dealing with corporations of public improvement and public utility was intended to, or could be so construed as to, make out of a logging railroad appurtenant to a sawmill, constructed wholly on private grounds, and operated for private purposes, a common carrier charged with all the duties and responsibilities incumbent by the laws of the land upon common carriers, simply because it is a railroad, and the owners are incorporated as a business corporation. It seems to us, we might as well hold that a railroad on a sugar plantation, appurtenant to the sugar mill, and used for carrying cane thereto, should be declared a common carrier.

In Louisiana it was held that a corporation organized to carry freight and passengers between two sugar plantations about five miles distant from one another, the sole object of which was to foster the private ends of two persons named, who owned jointly two sugar plantations, and who wished to transport sugar cane grown on one of the plantations to the refinery situated on the other, was not necessarily such a corporation for public improve-

ment as would authorize the appropriation of private property for its purpose.

Williams v. *Judge of 18th Judicial Dist. Ct.*, 45 La. Ann., 1295; 14 So., 57.

Not common carrier.—A strictly private spur track leading from private property to the line of a public railroad over which the public can have no rights is not a common carrier. This was applied in Illinois to a tramroad running from one portion of a coal field to another. The court said:

> It is clear the use for which the land is proposed to be taken in this case is not a public one. The coal, the coal works, and the present tramway are in the strictest sense private property, and the public generally have no more interest in them, or in the operation of the works, including the tramway, than they have in any other strictly private business. The same would be equally true after the proposed extension of the tramway. The extending of it to the railroad would not change its character or the obligations of the company to the public in the slightest degree.
>
> *Sholl* v. *German Coal Co.*, 118 Ill., 427; 10 N. E., 199, 201.

In another case, where the company sought to condemn land for a track, the court said:

> Stripped of all the disguises thrown around the case of the petitioner, it is shown that its object is to condemn the land of the defendants for the purpose of enabling it to

> lay a siding, switch, branch road, or lateral work from the main track to the Wheeling Steel Works, a few hundred feet distant, for the purpose, as stated in the original petition, "of transporting freights to and from said steel works over the petitioner's said railroad." This clearly was for the private accommodation of both the railroad and steel-works, and to make the private business of both more profitable. This was not for a public, but was for a private, use, and the taking of the property, under these circumstances, would be the taking of private property for private use, which is clearly prohibited.
>
> *Pittsburg W. & K. R. R.* v. *Benwood Iron Works*, 31 W. Va., 710; 8 S. E., 453, 467.

Montana case.—This case, often cited, is based upon a constitutional provision which provides that:

> All railroads shall be public highways, and all railroads, transportation, and express companies shall be common carriers, and subject to legislative control, etc.

This provision is supplemented by a statute authorizing the construction of sidetracks, branches, etc., which made them instruments of public service. (*Butte A. & P. Ry. Co.* v. *U. Ry. Co.*, 16 Mont., 504; 41 Pac., 232 and 239.)

In the foregoing case the court, speaking through Hunt, Justice, said:

> It is well established that if, in point of law, a use is public, the fact that not very

> many persons will enjoy the use is not material. (*Talbot* v. *Hudson*, 16 Gray, 417.) The character of a way, whether it is public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. If all the people have the right to use it, it is a public way, although the number who have occasion to exercise the right is very small. (*Phillips* v. *Watson*, 63 Iowa, 28; 18 N. W., 659; Lewis, Em. Dom., p. 241; *Shaver* v. *Starrett*, 4 Ohio St. 496; *Kettle River R. Co.* v. *Eastern R. Co.*, 41 Minn., 461; 43 N. W., 469; Rand. Em. Dom., 56.)

A common carrier may, as to a certain shipper, be a plant facility.—In *Crane Iron Works* v. *United States et al.*, No. 55, United States Commerce Court, in an opinion by the presiding judge, the question here involved was carefully considered. In that case the court said (italics ours):

> In the operation of this plant it is necessary to transport loaded cars received by rail to various points within the limits of the plant for unloading, *to transport cars which have been loaded with its product from various points within the plant to the line of railway by which they are taken to destination*, * * *. *For these purposes the iron works long ago laid down rails extending from a connection with the Central Railroad to the various points within its plant where cars were to be placed* * * *. The iron works also provided the necessary locomotives for operating the various tracks

which it had built to accommodate the needs of its plant. * * *

For this service the petitioner has never received and, until the organization of the Crane Railroad, had never claimed that it should receive compensation from the Central Railroad. Indeed, it seems to have been assumed that these tracks and engines were a necessary part of the plant of the iron works, whose business could not be properly carried on without them.

In process of time a few other industries, perhaps half a dozen, were located in close proximity to the premises of the iron works, though not upon its land, and these industries were so situated that loaded cars could be transported between the tracks of the Central Railroad and the industry only over the rails of the Crane Iron Works. For the purpose of serving these industries the Crane Iron Works extended its rails beyond its own land to these several plants. Cars for these industries were placed upon the same track with those intended for the iron works and taken by the locomotives of the iron works over the rails of that company to the several industries. * * *

The principal contention of petitioners appears to be that the Crane Railroad Company is a common carrier, subject to the provisions of the act to regulate commerce and the jurisdiction of the Commission; * * * that as such common carrier the Crane Railroad Company is legally entitled to compensation for the transportation service which it is alleged to perform for petitioner; * * *.

Quoting the statute, " The Commission may also, after hearing, * * * establish through routes and * * * joint rates * * *," the court further said:

> Upon all the circumstances connected with the location, construction, and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing services which the iron works should perform for itself if it desired such services, and that the Central Railroad *was under no obligation to pay the Crane Railroad for the switching service which it performs for the iron works and, indeed, could not lawfully do so. We see no reason to doubt the correctness of this conclusion.* The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (*General Electric Co.* v. *N. Y. C. & H. R. R. R. Co. et al.*, 14 I. C. C. Rep., 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. Rep., 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle. That there was substantial evidence to sustain the finding of the Commission as to the character of the services rendered is not open to reasonable question, and, this being so, the conclusion must be accepted accordingly.

In the transportation of supplies and employees of contractors, in connection with the construction of its own road, a railroad company does not act as a common carrier. It is a common carrier as to part of its traffic, but not such a carrier as to the traffic in which it is interested. (*Santa Fe Ry.* v. *Grant Bros.*, 228 U. S., 177.)

The definition and character of a railroad is determined by the purposes or objects for which it was constructed. (*I. C. C.* v. *B. & O. S. W. R. R. Co.*, 226 U. S., 14.)

A rebate.—This Court has stated that these allowances to tap lines from the lumber rates are rebates.

In *Illinois Central R. R.* v. *I. C. C.*, 206 U. S., 441, 444, the difference in the practice on the two sides of the river was explained in the following language:

> The railroads west of the Mississippi make a certain allowance to the mills which have "logging roads"—that is, roads by which logs are hauled from the timber to the mills. This is called "tap-line allowance or division." * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate* or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.

Device.—The act to regulate commerce prohibits rebating in any form, directly or indirectly, "by any device whatever." Construing this phrase in the *Armour Packing Company* v. *United States,* 209 U. S., 56, 71, 72, this court, speaking through Mr. Justice Day, said:

> * * * And we find the word device disassociated from any such words as fraudulent conduct, scheme, or contrivance, but the act seeks to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given, or received. Had it been the intention of Congress to limit the obtaining of such preferences to fraudulent schemes or devices, or to those operating only by dishonest underhanded methods, it would have been easy to have so provided in words that would be unmistakable in their meaning. A device need not be necessarily fraudulent; the term includes anything which is a plan or contrivance. Webster defines it to be "that which is devised or formed by design: a contrivance; an invention: a project," etc.
>
> * * * * *
>
> The Elkins Act proceeded upon broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions should be the one established, published, and

> posted as required by law. It is not so much the particular form by which or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates from the fixed rates, duly posted and published.

The latest case, and one bearing upon the lawfulness of an allowance for services in spotting cars on private side tracks, was decided in January last by the Supreme Court of New York, Schenectady trial term, opinion by Van Kirk, J. The court said:

> I find that the 20 cents per ton is a reasonable charge for the work done and for which payment is claimed. The vital question, therefore, is whether or not this service is a part of the regular transportation service covered by the lawful, published freight rate. Is it a part of the service which the plaintiff is obliged to render as a common carrier of in and out freight? Is it service before delivery to the consignee and after acceptance from the consignor? If it is, the defendant's claim is lawful; if it is not, it is unlawful. (*Int. Com. Comm.* v. *Diffenbaugh*, 222 U. S., 42.) In order to answer this question it is necessary to determine where transportation begins and ends, where the delivering and receiving point is;
>
> * * * * *
>
> The general freight rate from point to point may not include an element for spotting (where it occasions appreciable expense), as such

actually results in an unjust charge to those for whom spotting is not done.

* * * * *

I find that the delivery on the storage tracks is a delivery to defendant; that the transportation begins and ends there; that plaintiffs published tariff includes no charge for service upon a "private siding"; that no transportation on a private siding further than to make clearance can be required from the carrier.

N. Y. C. & H. R. R. R. Co. v. *General El. Co.*, 83, Misc. 539, 543, 544.

ARGUMENT.

The line haul, and moving cars upon a private siding, are independent and different services.

The line haul.—By an unbroken line of authorities, in England and in this country, it is established that, without statutory requirement, a carrier by railroad can not be compelled to perform services off its own line. But where private sidings are put in and used by shippers and consignees the carrier must receive carload traffic from, and deliver it to the private siding at the points of connection. The cars must be marshalled at the points of connection between the siding and the main line *by the shipper* so that they may be taken by the carriers' locomotives without operating upon the private siding, and the carrier makes delivery to the consignee by shunting the car upon the private siding *clear of the main track*. Some very large industries have, at the point of connection, "exchange tracks" and the cars

are marshaled upon these tracks by the shippers. The "transportation" or "conveyance" is between these points of connection; and this constitutes the line haul for which the line rate is charged.

Switching.—As the shipper must load and the consignee unload the cars, the cars must necessarily be moved upon the siding to and from the mills, warehouses, and plants of the shipper and consignee. The tracks are not public and this movement is not a "public" service. It is a private service for the shipper or consignee for whom it is performed. As the court said in *Chicago & A. Ry. Co.* v. *U. S.*, *supra*, referring to private sidings, "their only use was in getting a particular shipper's freight from his own property out to the public highway." When this switching service is performed by the line carrier it is paid for as a car movement and not upon a tonnage basis. Switching charges are always per car, while for a line haul there is a tonnage charge—so much per hundred or per ton for the car contents. Switching is as distinct and separate a service as icing or refrigeration or any of the other services mentioned in the statute and declared to be "transportation" for the purposes of the act. The purpose of the statute is regulation. It is intended that all services performed by a carrier subject to the act shall be brought under the regulatory power of the Commission. These charges are to be included in the published tariffs and thereby become "lawful" charges. In doing this Congress did not declare that such additional or special services should be per-

formed by the carrier as a part of the line haul for the line rate. On the contrary, the statute expressly provides that these services shall be, performed for compensation, and the Commission may be, and often is appealed to to determine whether such charges are reasonable.

We must conclude, therefore, from the authorities and the reading of the statute that the shipper has no right to demand that switching services be performed free of charge, but that the carrier has the right to make a separate charge appropriate and reasonable for this distinct service.

Discrimination.—It has been a common practice in this country for the carriers to absorb a switching service at some places and in special cases; to do the switching without making any charge therefor in addition to the line rate. The right of the carrier to do this is not questioned provided such *free service* does not work undue discrimination between shippers or localities. If this practice in any case gives an undue preference and advantage to a shipper the Commission, upon full hearing, may order the practice discontinued. The practice of absorbing switching services on private sidings is not universal. There are as many and perhaps more instances where a switching charge is published and collected. Some general principle or test must, therefore, be applied to determine whether performing a switching service on a private siding *free of charge* by a carrier is unduly discriminatory.

In *Wight* v. *United States*, *supra*, this court held that an accessorial service allowed to a single shipper was discriminatory because the service was not given to all shippers at that place.

We are not unmindful that this court has said that the law does not undertake to equalize the fortunes or conditions of man. Mere inequality of condition, therefore, does not create the undue discrimination or preference prohibited by the statute. But when the carrier performs for a shipper a service which is accessorial and thereby relieves that particular shipper of a burden which rests upon him, and does not perform the same service for other shippers at the same place, it is unlawful. This is not equalizing the conditions or fortunes of men; it is simply preventing preferences. To illustrate, two shippers in the same business, competing with each other, have warehouses located 2,000 feet from the line of a railroad; they deliver their carload traffic at the team track by drays at a cost of 50 cents per ton; the cost of loading a 30-ton car is $15. The conditions, or fortunes, of these two shippers in this matter are precisely alike. Suppose now that one shipper puts in a siding, connecting his warehouse with the main tracks and the line carrier spots his cars at the warehouse and takes them loaded from the warehouse charging for the switching service $5 per loaded car. Assuming this to be a reasonable charge and all that can be required, the conditions or fortunes of these two shippers are now disturbed. One is

still draying at a cost of $15 per car and the other is delivering to the carrier at a cost of $5 per car plus interest on his investment in the siding. The law does not undertake to equalize their condition by raising the switching charge. One shipper has put in a modern improvement that has reduced the cost of doing his business and he is entitled to that advantage. But suppose the carrier absorbs the switching service upon the siding, then, by an artificial, contractual relation voluntarily entered into by the carrier, the shipper is relieved entirely of the burden and expense of doing a part of his business—that of delivering his traffic to the carrier. This burden is assumed by the carrier. Clearly in such a case the carrier is giving an undue preference and advantage prohibited by the statute. As well might the carrier collect the $5 switching charge and pay it back, as to perform the service without charge. It is no less a rebate when he performs the service free than it is when he pays back the money.

Again, the theory upon which the carrier is permitted to absorb a switching service is that the line rate is sufficient to cover the line haul and the switching. It must be observed, however, that if the line haul is sufficiently high to cover an additional service then it is too high to be charged to the shipper who does not receive the additional service. If the line rate is a reasonable charge for the line haul then the carrier is performing an additional service for which no remuneration is collected and the cost of that

service must be made up out of the public in some other way. In either view the practice of absorbing a switching service for one or more shippers having sidings where there are other shippers who do not have sidings but are compelled to deliver their traffic at their own expense to the team tracks, necessarily and inevitably works a discrimination. The only cases in which there is no discrimination are at points where all shippers have sidings and are served alike. But where some have sidings and others must deliver by drays, the only nondiscriminatory and equitable practice is to make the line rate reasonable for the line haul and make a reasonable charge for the additional service on private sidings. All shippers then pay the line rate and the shippers who receive the additional service on sidings compensate the carrier for it. Each shipper pays for what he gets.

A switching service can not be an integral part of a through route.

Section 1 of the act to regulate commerce requires common carriers subject to the act "to establish through routes and just and reasonable rates applicable thereto;" and to provide reasonable facilities for operating such through routes; "and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto." If carriers subject to the act do

not comply with these requirements of the law the Commission may, after hearing, establish through routes and joint rates and prescribe the division of such rates, and the terms and conditions under which such through routes shall be operated. (Section 15.) Then follows this limitation:

> And in establishing such through route, the Commission shall not require any company, without its consent, *to embrace in such route substantially less than the entire length of its railroad* and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which would otherwise be established.

The use of the term "through route" and the limitations put upon the Commission in establishing through routes show clearly that Congress had in mind only line hauls. A switching movement upon a private siding, at the point of origin or destination of freight, is not a part of a route. It is as above noted, *a service which precedes or follows* a line haul, and this is equally true whether the line haul be over a single railroad or over a through route composed of several lines.

The fact that private sidings and switches are included within the definition of "transportation" and "railroad" in the act, does not justify the claim that they may become an integral part of a through

route entitled to a division of the joint rate. Icing, storage, refrigeration, sleeping-car service, and other things are also included within the term "transportation," but no one would contend that a through route could be made out of a line haul and icing, sleeping-car, or any other of these incidental or additional services. In moving over a through route there is very much switching performed—the passing of trains, the transfer of cars from one railroad to another—but these services are incidental to and not the basis of the through route.

These tap lines, therefore, are not entitled to through routes, even if they be *bona fide* common carriers, when the service rendered is nothing more than switching cars of lumber from the mill to the main line. It is not transportation, using that word in the sense of conveyance or line haul; it is bringing the freight to the public highway or line carrier. It can not, therefore, be a segment in a through route.

Here it may be well to observe the difference between the words "allowance" and "division," as used in the statute. The former applies to allowances made to a shipper under section 15 for services which the carrier can be compelled to perform, but which he allows the shipper to perform. The word "division" applies only in cases of through routes, to the portions of the joint rate which each line carrier receives. If the services performed by a shipper is a switching service, the allowance will be a switching charge, that is, a charge per car, and such allowances have been made to tap lines. They

complain of this and say they want a "division." The reason for this is apparent. A switching charge would be from $1.50 to $5 per car. The divisions which have been improperly allowed by carriers were on the theory that a switching movement was a part of the through route, and "divisions" were made ranging from 2 to 4 cents per 100 pounds, making the "allowance" to the shipper or its tap line $12 to $18 and $20 per car. Of course, they want "divisions." But the character of the service must always determine the compensation. If the service is switching the allowance will be a switching charge; if it be a line haul over part of a through route there will be a "division" of the joint rate.

Spurs and branch lines.—This court, construing the phrase "lateral branch line of railroad, or private side track," in our act, said:

> They are dependent upon and incident to the main line—feeders such as may be built from mines or forests *to bring coal, ore, and lumber to the main line for shipment. U. S.* v. *B. & O. S. W. Ry., supra.*

From this and other authorities cited spurs and branch lines are longer than a switch, but like the switch are intended to reach a shipper's warehouse or place of business or to accommodate a group of shippers. They furnish a cheap and expeditious means for making *the shipper's delivery.* The service is special and precedes the main line haul; in quality it is precisely the same as the service performed upon a switch; it is *getting the shipper's traffic*

to the main line; it is an additional service to the main-line haul; it is not a part of a through route and is not covered by the line rate. What we have said, therefore, in reference to the operation of a switch by a carrier applies with equal force to services performed by a carrier upon a spur or a branch-line railroad, the only difference being that the compensation for services upon spurs and branch lines is usually computed upon tonnage, while the compensation for services performed upon a switch is a charge per car. This difference in the mode of arriving at charges does not modify or affect the general principle here discussed as to its relation to the line haul.

II.

Transportation of logs.

Logs are the raw material out of which lumber and other forest products are manufactured. Their relation to lumber is the same as the relation of wheat to flour, iron ore to steel. In all tariffs and classifications logs are recognized as a distinct commodity, the rates upon which are fixed with reference to value, loading, and the distance transported. The cost of milling lumber or other like products involves the cost of the logs at the mill, and this necessarily involves the cost of transporting them there. A sawmill is usually located upon a line railroad and has a switch connection for the delivery of carload lumber. If the forest is near, the logs are hauled by team. As the timber is

cut away the log haul increases, and logging roads of various types are put in to reduce the cost of transporting the logs from the forest. Whether the mill transports its logs from an immediate territory or buys them on the Pacific coast and has them shipped a long distance, the cost of the transportation in either case and in all cases is a part of the cost of the logs at the mill. Any practice, therefore, by line carriers which relieves the mill owner of the reasonable charge for the transportation of logs *is a direct contribution to his net operating revenue*. There is no more reason or right for a common carrier to contribute to the mill owner the cost of transporting logs than there would be in contributing the logs themselves, or furnishing the mill owner with forests free from which he might cut his timber. In either case the carrier would be making a direct contribution to the net operating revenues of the mill owner, and the purpose in making such a contribution would be to get the lumber traffic. There is no difference in principle between buying the lumber traffic by giving a free service and buying the traffic with money or a cash rebate from the published rate.

Any practice by a carrier which results in contributing to a mill owner the cost of transporting his logs, or any part of the fair charge for transporting them, to secure his lumber traffic, is unlawful, and a violation to the statute.

III.

The milling-in-transit privilege as practiced by tap lines.

The evidence in this case shows two practices. The first is the more general. It consists of the tap line filing with the Commission a logging rate with a milling-in-transit privilege, then arranging with the line carrier for a "division" of the lumber rate, and applying the lumber rate to a tap line "station" at the forest where the logs originate. The line carriers put in a blanket rate on lumber, which applies to every station in this territory, covering parts of three States of the Union, with a concurrence in milling privileges established by "connecting carriers." They then established through routes and joint rates over their own lines and the tap lines. The "joint rate" being the blanket lumber rate, the result of this arrangement is, that when the logs are milled into lumber at the mill, the blanket lumber rate is extended to the terminal of the tap line at the forest; the tap line is given a division of the blanket lumber rate, and the charge for the log haul is *entirely obliterated*. By this method a mill owner secures the transportation of the logs from the forest to his mill without paying anything for the transportation. The allowance which he receives from the line carrier out of the lumber rate pays the entire cost, and often more, of the transportation of the logs from the forest to the mill.

This tap line milling-in-transit differs radically from the milling-in-transit upon main-line railroads. The tariffs of the Chicago, Rock Island & Pacific Railway, Kansas City Southern Railway, Missouri Pacific Railway and other main lines give milling-in-transit privileges upon logs. The logs are charged a high rate, often a penalty rate, from the forest to the mill. After they are milled, if the lumber is shipped out over the same line, the lumber rate is charged in full and the log rate into the mill is reduced, but still remains a substantial charge. Take the instance given by our Division of Tariffs upon the Rock Island road, which is typical of the practice by line carriers. There are two stations, Moreland and Ruston, in the State of Louisiana. They are 99 miles apart. The blanket lumber rate into Memphis, Tenn., from both these points is 14 cents; there are two rates published on logs from Moreland to Ruston; one is 11 cents, called the "Billing rate," the other is 3½ cents, called the "Net rate." If the logs are hauled into Ruston by the Rock Island and the lumber is transported over the Rock Island lines from Ruston to Memphis, the total charge is 17½ cents—the full lumber charge of 14 cents from Ruston and a 3½-cent charge for the log haul from Moreland to Ruston. Now, if we take a tap line extending 99 miles from Ruston to a station called "Tap Line," the application of the tap line billing practice would be to extend the 14-cent lumber rate back to "Tap Line." The result would be that a mill owner at Ruston owning a forest or purchasing his

logs at Moreland would pay for his log and lumber haul 17½ cents, while a mill owner at Moreland, having a forest at "Tap Line" and being the proprietary owner of the tap-line railroad, would pay 14 cents for his total log and lumber haul, thus creating a very great discrimination and preference in favor of the mill owner having the tap line.

To meet this objection, so apparent and manifest, some of the tap lines that have so-called independent mills upon their lines have put in a small charge for the log haul, which they collect from the independent miller and also make a book charge against the proprietary company for the hauling of logs. This charge in one case, which is the highest made, is 1½ cents. This rate is published, *but it is no part of the through rate.* It is an *intrastate rate.* The tap line secures a division of the lumber rates on its milling-in-transit privilege, without regard to the fact that it is collecting 1½ cents from the independent mill. This log charge the tap line collects without accounting for it upon the joint through-route rate. This furnishes a weak argument to meet the objections of the former case.

The so-called independent mill is usually a sort of by-product for the proprietary mill. These independent mills do not manufacture the same kind of lumber manufactured by the proprietary mill, or do not, for other reasons, compete with the proprietary mill owning the tap line. An independent mill owner is allowed to establish his mill upon the tap line a few miles from the main-line railroad. He gets his mill

site from the tap line mill owner; he buys his timber from him; the proprietary mill owner's tap line hauls the logs to the mill and makes a small charge for the haul. The tap line then arranges with the main-line railroad for a through route, and as the originating carrier secures a large division of the blanket lumber rate, 2 to 4 cents per 100 pounds. The independent mill therefore becomes a by-product to the proprietary lumber company. We do not say that there is anything unlawful in the proprietary mill's arrangement with the independent mill; but we do say that the whole arrangement, when properly viewed in connection with the dominant traffic of the tap line owner, is a device for securing divisions out of the main-line lumber rates for services which are only a shipper's delivery over a spur track. The delivery of the lumber from the proprietary mill over the switch to the main-line railroad is a shipper's delivery of his traffic. The public should not be charged for performing this service, for we must bear in mind always, as stated by the Commission in the terminal case, that where a substantial benefit is given by a carrier to a shipper by way of allowances out of main-line rates, a loss results that is made up by charges upon other traffic, and in that way the public bears the burden.

This practice of absorbing the log haul is a bald, open contribution to the mill owner.

The so-called milling-in-transit privilege, as practiced by the tap lines, results in free log hauls and is unlawful. Any practice by which the line carrier

assumes the burden of transporting logs for a mill owner is a rebate, the purpose of which is to buy the mill owner's lumber traffic.

IV.

Matters claimed by the tap lines as bases for through routes and divisions of the main-line lumber rate.

Incorporation.—The act to regulate commerce makes no distinction, in the application of the provisions of the act, between corporations or persons. The privileges of, and prohibitions upon, practices in transportation apply alike to incorporated companies and carriers that are not incorporated. A group of men may carry on a business of transportation; at a later time they may incorporate that business and issue the stock to themselves; this change in the ownership and operation does not confer any additional rights or subject them to any additional or different obligations or penalties. The mere act of incorporating a logging railroad or tap line does not confer, in itself, any special privileges.

Common-carrier tap lines.—After the passage of the Elkins Act, a great number of logging roads were incorporated under State statutes as common carriers. These statutes are general incorporation acts, under which a specified number of persons may become incorporated for a y purpose stated by them in their application.

While in most cases this confers upon the corporation certain rights and, when they offer to carry property for other persons, may constitute them common

carriers as to such traffic, it does not prevent an inquiry into the whole matter to determine whether they are *bona fide* common carriers as to all traffic. The power to investigate and determine whether such incorporation and incidental common carriage is assumed as a device for the purpose of evading the Federal law and securing rebates or unlawful discriminations or preferences upon the traffic of the proprietary owners, can not be defeated by this arrangement.

Prior to the enactment of the "commodities clause" and the conference of power upon the Commission to determine whether or not rates and practices by railroads are unlawful and to prescribe reasonable rates and practices for the future, this court held that a practice by two line carriers which resulted in a violation of the Federal act prohibiting discrimination in transportation rates could be enjoined; that the court could look through the forms adopted by the carriers—the business in itself then being otherwise legitimate—to ascertain whether *in fact* it resulted in a violation of the act to regulate commerce. (*New Haven R. R. Co.* v. *Interstate Com. Com.*, 200 U. S., 361.) The power which the court in that case exercised has since been vested in this Commission. The Commission may now investigate the form and method of carrying on interstate transportation business, and if after full hearing it is of the opinion that any "practices whatsoever" are "unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any

of the provisions of this act," it may prescribe what "practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, * * *." (Section 15.) If the practice by line carriers could be investigated by the court prior to the act of 1906 and, if found to be in violation of the act, be prohibited, certainly since the act of 1906 a practice by a line carrier in connection with a tap line may be investigated by the Commission, and if found to be unlawful it may be prohibited. Common carriage of a small outside traffic, by the tap line, can not defeat this power.

Common carriers as to part.—In the *Crane Iron Works* case, the Commerce Court said:

> Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers.

The fact that these tap lines have been incorporated by proprietary mill owners, and may be regarded as common carriers as to some outside traffic, does not prevent the Commission from finding, if it be true, that as to the traffic of the proprietary mill they are a plant facility performing a plant service. (*A., T. & S. F. Ry.* v. *Grant Bros.*, 228 U. S., 177.) Nor does it follow that because they transport lumber for an outside party over what is practically a spur track, that such transportation is anything more than a shipper's delivery to a main-line carrier.

A railroad originally organized as a tap line may develop into and become a line carrier; when it does, the Commission will so recognize it. Each particular case must be decided upon the character of its particular traffic. It is *the character of the transportation service*, rather than the character of the agent, which determines whether the agent is entitled to through routes and joint rates.

Device.—The act to regulate commerce prohibits rebating, directly or indirectly, "by any device whatever." Construing this phrase in a criminal proceeding, this court, speaking through Mr. Justice Day, said:

> * * * the act seeks to reach all means and methods by which the unlawful preference or rebate, concession, or discrimination is offered, granted, given, or received * * *. A device need not be necessarily fraudulent, the term includes anything which is a plan or contrivance * * *. It is not so much the particular form by which, or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions or rebates from the fixed rates duly posted and published. (*Armour Packing Co.* v. *United States, supra.*

In the case at bar the Commerce Court recognized the power of the Commission to investigate and determine whether or not a tap line was a *bona fide* common carrier. It said:

> The evidence before the Commission tending to show that the petitioning tap lines were

> originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, *might have justified the Commission in finding that these tap lines were not in fact bona fide common carriers.* (Rec. 190.)

The Commission therefore has power, and it is its duty, being charged with the enforcement of the provisions of the act to regulate commerce, to investigate and determine whether a particular tap line is, in fact, a *bona fide* common carrier *as to all of its traffic;* to ascertain what the nature of the transportation service performed by the tap line is, and from all the evidence determine whether the organization, the methods of doing the business, and the transportation service carried on, is in fact a device to secure rebates and concessions from the published rates. If, upon such investigation, it is found that such was, and is the purpose of the organization and practices, it becomes

the duty of the Commission to prohibit the line carriers from establishing through routes and joint rates that result in such rebating and discrimination.

General observations.—The investigation in this case has developed a widespread commingling of the business of transportation with private business. The aggregate amount of the allowances out of main line lumber rates is enormous. It reduces legitimate railroad revenues by an insidious system of rebating. The purpose in this case is to separate the public business from private business; to insure to public line carriers reasonable compensation for every substantial service that they render; to place upon each shipper the duty of paying the reasonable charges for the services which he receives; to prevent private enterprises from casting upon the public, through the common carrier service, a part of the burden of doing their private business. Each shipper should perform its interplant service, and deliver its traffic to the line carriers.

This requires the separation of the charges for the line haul from switching charges where absorption of the switching service is not permissible. It is within the power of the Commission to require that this shall be done.

After holding that icing is a transportation service under the statute, this court, speaking through Mr. Justice Lamar, said:

> It [the Commission] may prescribe the form in which schedules shall be prepared and arranged (section 6) and may approve tariffs

stating that the single rate includes both the line haul and accessorial services absorbed in the rate. Conversely, it may prescribe a tariff fixing a through rate which includes not only the haul of the fruit, but the haul of the ice necessary to keep the fruit in condition. All these are matters committed to the decision of the administrative body, which, in each instance, is required to fix reasonable rates and establish reasonable practices. The courts have not been vested with any such power. They can not make rates. They can not interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those orders are void.

Atchison, Topeka & Santa Fe Ry. Co. v. *United States et al.* Opinion filed January 26, 1914.

V.

THE BUTLER COUNTY RAILROAD COMPANY.

There are two corporations whose entire stock is owned by the American Sugar Refining Co., of New York: (1) The Great Western Land Co. and (2) the Brooklyn Cooperage Co. The Brooklyn Cooperage Co. owns all of the stock of the Butler County Railroad Co. The Sugar Refining Co. therefore owns and controls all three of these corporations and is the sole beneficiary of their business operations.

The Land Co. owns very large tracts of timber in the State of Missouri. The Brooklyn Cooperage Co. operates a large mill at what is known as Poplar Bluff or Linstead, Mo. It manufactures sugar barrels or cooperage stock for the American Sugar Refining Co. The mill is connected by a switch with the St. Louis, Iron Mountain & Southern Ry. and the St. Louis & San Francisco Railroad. The logs or timber from which this cooperage stock is manufactured comes from the forests owned by the Great Western Land Co., and the logs are transported from the forests to the mill by the Butler County Railroad. The cooperage stock is switched from the mill to the main tracks of the line railroads, a distance of about three-quarters of a mile. There are other mills located on these switch tracks. The railroad, the mills, and connections are shown upon a map attached to this brief. The American Sugar Refining Co. has its refineries in New York and New Orleans, and the shipments of its

lumber are over the main line railroads from the cooperage company's and other mills.

The tap line railroad is in two disconnected sections; one connects with the Iron Mountain and "Frisco" Railroads at a point known as Linstead, which is outside the limits of the town of Poplar Bluff, Mo. The mill of the cooperage company is located at Linstead. At this point there are only the switches or private sidings connecting with the main-line railroads. The other section of the tap line connects with the Iron Mountain Railroad at Lowell Junction, about 7½ miles from Linstead; it runs thence southward about 7 miles to a point known as Baileys, with a branch about 3 miles in length at Rossville. At Baileys connection is made with, and a trackage right is given over, the unincorporated tracks of the cooperage company that run into the timber tracts owned by the land company to Menorkenut. The cooperage company has other logging roads into the forests. The tap line has a trackage privilege over the Iron Mountain Railroad from Lowell Junction to Linstead. For this trackage right it pays only 65 cents per train-mile for a train of 25 cars. The equipment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and log cars. It operates over about 34 miles of rails, of which it owns 12 miles.

Prior to September, 1905, this entire railroad was constructed and operated, with the main-line trackage right, by the cooperage company as a logging road.

Aside from rebates from the published rates, no formal divisions of joint rates or allowances for plant services were paid by the line carriers. In September, 1905, preceding the passage of the Elkins Act, the logging roads, except those extending directly into the timber tracts, were conveyed to the newly organized Butler County Railroad. The stations named were established as the forest termini of the road. Beyond these points into the forests the logging roads were still retained and operated by the cooperage company. This is the common practice in all the tap-line cases. The logging roads into the forests are not made common carriers for the reason that if they were, the owners of segregated tracts of timberland could ship their logs over them. The great lumber companies prefer to hold a monopoly over the forests and thereby compel the sale of outside tracts to them as they need them. Through these two manipulations the large lumber companies seek (1) to monopolize the forests, and (2) to secure, through the medium of through routes and joint rates and the milling-in-transit privilege, rebates from the published lumber rates.

The timber is loaded on the cars in the forest by the employees of the cooperage company and hauled by the mill locomotives to the tap line. The tap line then hauls the loaded cars over its rails to Lowell Junction, thence over the Iron Mountain Railroad to the mill of the cooperage company at Linstead. The cooperage company unloads the logs, manufactures the lumber,

and loads the manufactured products upon cars, and the tap-line engine switches the cars to the trunk lines. Before the tap line was organized this switching was done by the trunk lines.

The cooperage company owns certain tracts of land lying between the main-line railroads and the lands belonging to the land company. As the cooperage company manufactures only cooperage stock it has leased certain mill sites to "independent" industries; these are located on the tap line switches near Linstead. The independent industries lease their factory sites from the cooperage company, purchase their timber from the Great Western Land Co., and the Butler County Railroad Co. hauls the logs to their mills, and switches the products of the mills to the main lines of railroad. The tap line charges the independent mill 1 to 1½ cents per 100 pounds, $4 to $6 per car, for hauling the logs to the mill. And they make a like book charge against the cooperage company for hauling logs to its mill. These rates on logs are fixed in accordance with the distance tariff of the State of Missouri, the haul being an intrastate movement. No charge is made to the independent mill for switching its lumber to the main-line railroad.

The Butler County Railroad up to the time of the hearing in this case had been receiving a division of the blanket rate on lumber—proprietary and nonproprietary—ranging from 3 to 5 cents per 100 pounds—60 cents to $1 per ton. This, on carloads of 25 tons each, would be $15 to $25 per car. In some instances the allowance was greater.

This division of the through rate was made upon the theory of a milling-in-transit privilege. The Butler County Railroad Co. put in a tap-line milling-in-transit privilege, which in effect sets the lumber rate back to the tap-line stations at the forest and thereby absorbs or obliterates entirely any charge to the cooperage company for the log haul. The independent mills receive no benefits from the arrangement. It is not a rebate as to them. This company collects from the independent mills from $4 to $6 per car for hauling logs, but this is no part of, nor is it taken into consideration in fixing the divisions of the joint rate over the through route. It is an entirely independent intrastate charge collected by the Butler County Railroad Co. It has no reference to, or connection with the line rate. Of course the mere book charge of this local intrastate log rate to the cooperage company is no source of income to the American Sugar Refining Co. as owner. If they paid it in cash it would go from one pocket to another. The charge to the independent mill is a recognition of the fact that a mill owner ought to pay for hauling his logs, and they require the independent mill owner to do this. But when it comes to the "division" of the through lumber rate with the main-line railroads, and its application to the so-called milling-in-transit privilege, these log charges do not figure. The "division" is just the same on the independent mill traffic as it is on the cooperage company's; but, as the ownership of the tap line and the proprietary traffic is one and the same, the payment of a "division" on this traffic is,

in fact, *a payment to the shipper*. It is a plain, unequivocal absorption of the log haul of the cooperage company by the payment of a very large rebate.

The distance tariff of the State of Missouri on logs, applied on these log hauls for the independent mill, amounts to from $4 to $6 per car. The divisions of the published lumber rate, covering this same log haul and a switching movement at the mill, amounts to $15 to $25 per car.

The independent shippers pay the local log rates on the tap line, in addition to the charge of the trunk line on their lumber, and receive no benefits from the division of the lumber rates.

The power of monopoly is here also asserted. If the independent shipper ships to points *other than New York or New Orleans*, where the American Sugar Refinery Co.'s plants are located, they pay a through rate that is 2 cents higher than the rate from Poplar Bluff on the main line, the 2 cents being paid on outgoing freight. Regarding this practice the Commission says:

> This is a striking example of the advantage that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are, therefore, so adjusted as to induce movements to these points and to restrict movements to other points.

VI.

THE ISSUES.

The Butler County Railroad is placed in the third list of tap lines in the Commission's order and it results, so far as the Butler County Railroad is concerned, in allowing through routes and divisions of joint rates—upon divisions to be approved by the Commission—on nonproprietary traffic where the shippers receive no benefits from the divisions. In fixing the divisions the Commission will take into account the log rate. The switching of this traffic from the mill is covered by the through rate. A switching allowance is permitted for switching the proprietary lumber from the mill to the main-line tracks. This is allowed because the main-line railroads in that entire territory absorb the switching service and, as discussed in our other tap-line brief, where an absorption of a switching service is general as to all shippers, then if the company allows a particular shipper to do the switching it may make a reasonable allowance to such shipper for that service. The allowance in this case was fixed at not to exceed $1.50 per car. Divisions on the proprietary traffic was refused because it results in direct benefit, and payments to the shipper—the American Sugar Refining Co.

DECISION OF THE COMMERCE CORUT.

The Commerce Court held:

> For the reasons stated in the opinion filed this day in cases No. 90 to 93 we are of the opinion that the distinctions here made are

arbitrary and that the order is, in this respect, beyond the power of the Commission.

When the Commission permits the reestablishment of a joint rate which was applicable both to the logs and the lumber, including the milling-in-transit privilege, thereby recognizing the tap line as a common carrier both of logs and lumber, it is without power to forbid the payment by the trunk line to the tap line of a reasonable division for its services both in hauling the logs to a mill, proprietary or nonproprietary, and in hauling or switching the lumber from such a mill to a trunk line. It is in such case equally without power to limit the payment in respect to the traffic of the proprietary mill to a mere allowance for switching the lumber. The proviso contained in paragraph numbered 9 of the order must, therefore, be annulled.

If the divisions theretofore in force were so excessive as to produce an unjust discrimination, or to amount to a secret rebate, the Commission may reduce them to a reasonable sum, and nothing herein stated is intended in any manner to limit the power of the Commission in this respect.

Bearing in mind that the services which are performed by the Butler County Railroad Co. for these divisions, amounting to from $15 to $25 per car, are (1) switching the lumber from the mill to the main tracks, and (2) hauling logs from the forest to the mill of the cooperage company, under an unlawful milling-in-transit privilege, the errors in the decision of the Commerce Court are apparent.

Switching.—We have already discussed this subject at length and need not here repeat it. Switching is no part of a line haul and therefore does not entitle the tap line to a "division" out of the line rate. It is a service which the carrier may be required to perform *under the terms of the statute;* if the carrier permits this shipper to perform this service, and absorbs the service as to all other shippers in like condition, it is proper to make an allowance of a purely switching charge. It can only be the reasonable charge fixed by carriers for a switching service. There is no claim by the Commerce Court that there was no evidence to support the finding of the Commission that an allowance of $1.5 for the switching service was reasonable. In fact, that question could not be raised in this case in the Commerce Court, as the whole record before the Commission was not presented. The evidence, therefore, as to the amount of the allowances at other points for similar service does not appear in this record. It was expressly stipulated that there was evidence showing switching charges ranging from $1.50 to $2. (Rec., p. 75, sec. 1.)

No question, therefore, can be raised here that the amount of the allowance is not supported by substantial evidence.

Log haul.—As already set forth in our brief a milling-in-transit privilege which eliminates entirely any charge for the log haul is illegal and unlawful. It is an absorption of a service which the mill owner must pay, not by any theoretical bookkeeping *but in*

fact. The Commission found in this case that the result of this milling-in-transit privilege was to lift entirely the burden of hauling logs from the mill owner who owned and operated the tap line. Bookkeeping is an easy and inexpensive process. When the mill owner operates his own logging road and receives a rebate of $15 to $25 per car from the published rate he is subject to fine and imprisonment under the Elkins Act. The appellee would have us believe that by organizing a tap line and holding all the stock, the tap line can take the $15 or $25 per car and distribute it in dividends to the mill owner without violating the law. If no dividends are paid, the payment of the "divisions" pays the tap line for hauling the logs for *its owner;* its owner being also the mill owner, and the shipper. If a line carrier, in order to get the lumber haul, should baldly offer to carry the logs from the forest to the mill for the mill owner, this would be buying the traffic and a clear violation of the law. But if the mill owner organizes a tap line and holds all the stock himself, puts in a milling-in-transit privilege which extends the lumber rate back to the tree and thereby obliterates any charge to the owner for the log haul, this they would have us understand is legitimate business. And the Commerce Court seems to have taken this view when it annulled that part of the order of the Commission which prohibits "a reasonable division for its services *both in hauling the logs to the mill * * * and in hauling or switching the lumber from such a mill to a trunk line.*

If the doctrine laid down in the *New York & New Haven case* is to prevail, then the Commission under the amendatory acts of Congress has the same power which the court exercised in that case. The Commission may look through the forms, agreements and methods of doing the business and ascertain whether there is in fact a violation of the act to regulate commerce; whether the organization and processes are a device to secure rebates to the shipper; whether such arrangements and conduct of business result in undue discriminations and preferences in favor of the proprietary company, the only real party in interest. If such results do necessarily follow, then the Commission has the power, asserted by the court in the *New Haven case*, to prohibit such acts as do result in a violation of the statute.

The holdings of the American Sugar Refining Co. is one single interest—a person, and that person is the mill owner and the shipper of the lumber who pays the freight. The result of the payment of divisions on this proprietary traffic must be clearly distinguished from the result of like payments on the nonproprietary traffic; in the first instance it is a direct payment to the shipper, in the latter it is not; in the first, the cost of the log haul is absorbed in the lumber rate, in the latter it is not; in the former the shipper gets his logs hauled from his forest to the mill free, in the latter the shipper pays for the hauling of his logs; in the former the shipper gets a large concession from the lumber rate, in the latter they pay the full lumber rate. Upon these distinctions rest the necessity, and the right, to determine that

as to proprietary traffic the service is a plant facility, while as to the nonproprietary it may be the service of a common carrier.

No one can study this case with care and discrimination without being led to the conclusion reached by the commission. These practices are a clear violation of the law. The Commerce Court was compelled to say in its main opinion "*it is apparent therefrom that very real evils existed*, evils *demanding correction*." What were they if not the very things the commission condemns?

It is beside the mark to say that the tribunal to enforce the law, possessed of all the powers enumerated in the statute and clearly stated in the opinions of this court, can not reach and eradicate these evils because a tap line is holding itself out to do common carriage business for outside shippers. This would have defeated the order in the *Crane Iron Works case*. The law can not be so impotent. In the *Armour Packing Company case*, which was a criminal proceeding, this court clearly held that an act, even if lawful when made, could become unlawful under the statute and the keeping of it a criminal offense. It would be strange under this strong virile opinion if these ill-conceived and ill-covered practices to secure rebates can not be reached and prohibited by the orders of the Commission.

In the New Haven case this court used the following language, which we think particularly pertinent in this case:

> * * * This simply asserts the proposition which we have disposed of, that a carrier pos-

sesses the power, by the form in which he deals, to render the prohibitions of the act ineffective, since it implies the right of a carrier to shut off inquiry as to the real result of a particular transaction on the published rates, and thereby to obtain the power of disregarding the prohibitions of the statute (p. 396).

* * * * *

* * * the commingled powers of producing, selling, and transporting were alone made the basis of the conclusion reached by the Commission as to the character of relief which could be afforded (p. 400).

* * * * *

Especially do we think this rule applicable to the case in hand, because of the nature and extent of the authority conferred on the Commission from the beginning concerning the prohibitions of the act as to rebates, favoritism, and discrimination of all kinds, and particularly in view of the repeated declarations of the court that an exertion of power by the Commission concerning such matters was entitled to great weight and was not lightly to be interfered with (p. 402).

As no other questions of law are raised in this case, or decided by the Commerce Court, we ask that the decision of the Commerce Court be reversed.

Respectfully submitted.

JOSEPH W. FOLK,

CHARLES W. NEEDHAM,

Counsel, Interstate Commerce Commission.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

Supreme Court, U.
FILED
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JAMES D. MAHER
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BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

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QUESTIONS OF LAW.

In view of the holding of the Commerce Court that switching on private sidings and spur tracks, and log

hauls with milling-in-transit privileges, may be integral parts of through routes covered by the line rate upon lumber, we present for consideration the following propositions:

1. A switching service on a private siding or spur track is a service which precedes or follows a line haul; it is the shipper's delivery to, or the consignee's receipt from, the line carrier; it is not a line service, therefore it can not be the basis of, or a link in a through route.

2. Logs and lumber are distinct commodities, for each of which there is a classification and commodity rate; the cost of transporting logs is a part of the cost of the logs at the sawmill; therefore a log haul performed by a carrier *free of charge* is a consideration to induce the mill owner to give the carrier his lumber traffic at the published lumber rate; such absorption of a distinct service by a carrier is rebating or "buying the traffic."

3. A milling-in-transit privilege which extends the lumber rate, for the lumber line haul, back to the forest and thereby absorbs or obliterates any charge for the log-haul, is not a true milling-in-transit privilege and is unlawful.

4. A tap line or industrial road may be so owned, organized, and conducted as to be a plant facility as to the traffic of the proprietary company and a common carrier as to non-proprietary traffic.

5. It is within the powers of the Interstate Commerce Commission, upon full hearing, to determine:

(*a*) That the practice in a given case of absorbing switching, spur track, and log-haul services in order to secure the shipper's lumber traffic creates undue discrimination, favoritism, and rebating.

(*b*) That a milling-in-transit privilege which has the purpose and effect of rendering to the shipper a free service in transporting raw material for him, in order to secure the shipper's traffic of manufactured commodities, is unlawful.

(*c*) That a tap line or industrial road is a plant facility as to the traffic of the proprietary mill, while it may be a common carrier as to non-proprietary traffic.

I.

A switching service upon a private siding or spur track is an independent service which precedes or follows a line haul.

Matters to be excluded.—The discussion under this head has reference solely to the movement of cars between the private warehouse or place of business of a shipper and the point on the private siding (free of the line tracks) where connection is made with the main line. We have no reference to the carrier's delivery in shunting cars upon the private sidings free of the main track, or switching between line carriers in a through route, or deliveries upon public team tracks. We contend that the movement of cars upon private sidings is a shipper's service, tak-

ing the place of, and being a substitute for, the truck or team delivery by shippers generally.

Loading and unloading carload traffic.—It is the universal practice for shippers and consignees to load and unload carload shipments. The carrier receives the car loaded from the shipper and delivers it loaded to the consignee. The line haul for which a line rate is charged is between the points of such receipt and delivery by the carrier. All services outside the line haul are additional services for which the carrier may properly claim additional compensation.

Absorption.—We do not contend that a carrier may not absorb this additional service where it does not work undue discrimination or operate as a rebate. This court and the commission have held that a switching service may be performed without extra charge; that is, may be absorbed by the line carrier. Our contention is that a shipper having a private siding, has no right to have this additional service absorbed, and that the commission may prohibit it where such absorption operates as an undue discrimination against shippers of like traffic who are obliged to deliver their traffic upon public or team tracks. The phrase *"absorbing the service"* means, as it is interchangeable with the term, *"free service."*

Switching and interplant service.—Before the extension of the definition of the word "Transportation," by the act to regulate commerce, the word, as used at common law, was equivalent to what is now termed the line haul. Transportation, when carried on by a common carrier for hire, was the business

of receiving traffic from shippers at designated points on the rail-line and delivering the same to consignees at other designated points on the line. It was the shipper's business to bring his traffic to the carriers at the points of origin, and of the consignee's to take it away from the points of delivery. In the case of carload freight the delivery by the shipper included the loading, and the consignee unloaded the freight.

Switching and its relation to the transportation was clearly defined by the Supreme Court of Georgia.

> The test of distinction between "transportation" services, relative to loaded freight cars, for which a railway company can lawfully charge tonnage rates, and "switching" or "transfer" services, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line or that of another; for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires no movement over other tracks or lines of railway, whereas a switching or transfer service is one which precedes or follows a transportation service, and applies only to a shipment on which legal freight charges have already been earned or are to be earned. (*Syllabus.*)
>
> *Dixon* v. *Central of Georgia Ry. Co.* (110 Ga., 173; 35 S. E., 369, 372).

Statutory definition.—In 1904 the English statute was adopted requiring carriers, for the accommodation of shippers, upon certain conditions, to con-

nect with private sidings and to operate them. But, as we shall see from a clear line of authorities, the distinction theretofore prevailing, that this was *additional service* for which compensation could be required, was recognized.

Our act to regulate commerce, as amended June 29, 1906, provides that:

> The term "railroad" as used in this act shall include * * * all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, * * * and the term "transportation" shall include * * * all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit * * * and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor. * * *
>
> Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and *operate upon reasonable terms* a switch connection with any such lateral, branch line of railroad, *or private side track* which may be constructed to connect with its railroad, where such connection is reasonably prac-

ticable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same (Sec. 1).

When the carrier refuses to furnish these facilities the commission is authorized to require the same "and shall determine as to the * * * *reasonable compensation* therefor * * *."

Additional compensation.—The words above quoted, "and operate upon reasonable terms a switch connection," etc., when considered in connection with the debates in Congress, should, we think, be construed to mean that the carrier may be required to operate the cars upon a switch. This construction arises in consequence of the fact that private sidings are in many cases for the accommodation of shippers who have no locomotives with which to move cars upon the switch or spur.

The use of the words "upon reasonable terms" and "reasonable compensation therefor" is a clear recognition that the services performed upon the switch in operating the cars is a service additional to the line haul. It is not a part of the delivery which the carrier is required to make of carload freight. Prior to these enactments the carrier could not be compelled to operate a switch; it was not a part of the transportation; delivery of car lots was made by shunting the car upon the private switch clear of the main track; the "spotting" was additional service performed voluntarily, usually under contract. The statutes both in England and in the United States

recognize it as additional or extra service by providing that carriers may be compelled to put in and operate switches only upon the payment of reasonable compensation therefor.

Lateral line.—This is true as to spurs and lateral lines. Such lines are longer than a "switch," put in to reach a warehouse, mill, coal mine, or forest. The same general designation appears in the English statute—"private sidings or private branch railways." The phrase "lateral branch" in the act to regulate commerce has been construed by this court to mean lines "that are dependent upon and incident to the main line—feeders such as may be built from mines or forests to bring coal, ore, and lumber *to the main line for shipment.* * * * That some shippers would be accommodated by a switch connection is not enough." (*United States* v. *B. & O. Southwestern Ry.*, 226 U. S., 14, 19.)

Whatever the legal construction of the word "operate" may finally be, there is a clear recognition that the services upon a switch, spur, or lateral branch line of road are services additional to the main-line haul and are not included in it. The "line haul," as it is always defined, includes the taking of a car from the team track or *from the junction point* of a private siding and conveying it to the point of destination and delivering it either upon the team track or upon the private siding *clear of the main track.*

The following English and American authorities state the law upon this subject. The doctrines established by these authorities will be discussed after the citations are given. Our act is similar to the English statutes and their courts have decided the question under consideration here.

ENGLISH AUTHORITIES.

Fourth Edward VII, chapter 19, provides that an abutting property owner is entitled to a siding connection with the railway, and section 2 of the Railway and Canal Traffic Act of 1854 provided that a trader is entitled to all reasonable facilities, etc. This language is defined in the statute first above referred to as follows:

> The reasonable facilities which every railway company is required to afford under section 2 of the Railway and Canal Traffic Act of 1854 as amended or explained by any other act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by such company, and reasonable facilities for receiving, forwarding, and delivering traffic upon and from those sidings or private branch railways.

The charges which may lawfully be imposed by a railroad company in England are fixed by the provisions of the Rates and Charges Order Confirmation Act applicable to particular companies. These acts are substantially similar and provide for (see

54 Viet., ch. 121): (1) Maximum conveyance rate (line haul); (2) maximum station terminal rate for use of station accommodations; (3) service at terminals, maximum rate for services in connection with the loading, unloading, covering and uncovering of merchandise; (4) special charges, including, *inter alia*, "*services rendered by the company at or in connection with sidings not belonging to the company.*"

The English cases define with considerable detail the obligations of railroad companies to afford reasonable facilities for receiving and forwarding goods and passengers. The decisions, construing the statutes, recognize the common-law obligations of rail carriers to transport and perform services upon their lines, and distinctly hold that there is, outside of the statute, no obligation to perform services off their lines. Services performed by a carrier upon private sidings are held to be additional services and are required of carriers by statute only upon payment of reasonable compensation therefor.

Referring to the operation of a private switch, Sir Frederick Peale said:

> The far end of the siding where Pidcock and Company load and unload is at some distance from its junction with the railway, and the railway company, besides delivering at the junction, take the trucks on to the farther end of the siding. This, of course, is a voluntary service on their part, for no com-

pany is bound to travel beyond its own railway.

M. S. & L. Ry. Co. v. *Pidcock & Co.*, 10 Ry. and Ca. Tr. cases, 150, 159.

In a case arising under section 6 of the Board of Trade Arbitrations Act, 1874, and under sections 5 and 7 of the schedule to the North Staffordshire Railway Co.'s Rates and Charges Order Confirmation Act, 1892, Sir Frederick Peel said:

> The North Staffordshire Railway Company claim to be repaid certain expenses incurred by them * * * for works and services at the junction with their railway of sidings belonging to the Salt Union. * * * As to the shunting services for which the railway company claim to be paid, according to the time their engine is engaged shunting, at the rate of 7s. per hour, the schedule to the Charges Act, section 5, subsection 1, gives a railway company power to charge a reasonable sum *by way of addition to the tonnage rate* for "services rendered at or in connection with sidings not belonging to them," but the Salt Union deny that the shunting that is done for them at Malkins Bank or Wheelock is more than is incidental to conveyance. * * * The service the staff perform seems to be a necessary one. * * * I think, therefore, the railway company's claim, as it respects the Salt Union, may be allowed.

Wright, J.: I also agree with the judgment which has been delivered, and I have only to add a statement of the law as we

understand it and have applied it with reference to the railway company's claim to make an extra charge for services on their own line in the delivery and collection of traffic at the traders' sidings.

It is not implied in our judgment that the railway company can charge beyond the conveyance rate for anything done on their own lines which is properly incidental to delivery or collection of traffic to or from sidings, no matter how much the cost and trouble may be increased by the inconvenience of the sidings or the nature of the traffic, unless the defects or inconveniences are such as to relieve the railway company from their duty to deliver and collect. The very existence of the siding implies in practice that the railway company must, in order to collect and deliver from or to the siding, do on their own lines something beyond the mere work of transit. But they may be entitled to make a carrier's or service charge if they are required, for the convenience of the siding owner, *to do work on his siding*; and where they are so required, then, if by reason of the insufficiency of the siding or otherwise, that work involves extra work on their own line, that extra work may be a ground for an extra charge. For instance, a siding may, from its limited size or its situation, be such as not of itself to afford sufficient accommodation for the delivery or collection of its traffic. In such a case, if for the convenience of the trader the company work in and out of the siding, and if in order to do so they

are obliged to make an extraordinary use of their own lines, it may be that their lines would be regarded for this purpose as a prolongation of the sidings, and the company may, according to the circumstances, be entitled to that extent to be paid for the extraordinary work done on their own lines, as if their lines were a part of the sidings themselves.

A. S. Ry. Co. v. *Salt Union Limited*, 10 Ry. & Can. Tr. Cases, 161, 164, 167.

Upon complaint made by a shipper having a siding that the rate charged was unreasonable, the carrier defended the rate on the ground that part was "for services at or in connection with a siding not belonging to the company." Wright, Justice, said:

> Owing to the inconvenient position of the applicant's siding, the railway company have to haul the trucks *past the mouth of the siding, and do something beyond the point at which they would naturally deliver.*

Sir Frederick Peel said:

> Now, if the mode in which a junction has been effected is such that a company need incur no greater expense in connection with a train as involved in stopping a goods train specially at the siding junction, and either uncoupling trucks there and *depositing them in the station dock of the yards*, or drawing out trucks *ready marshalled* and attaching them to the train, *doing no work within the station* . . . there is then a

> mere delivery for which no extra payment is due.
>
> *Portway* v. *Colne Valley & H. Ry. Co. et al.*, 10 Ry. and Ca. Tr. Cases, 211, 217, 220.

In another case involving services upon a private siding, Lawrence, J., said:

> The main question of fact in dispute has been: Does the railway company perform any service in respect to this traffic beyond what they are bound to do as carriers *conveying it from* one private siding to another. If they do they would be entitled to charge a reasonable sum in respect thereof under section 5, subsection 1.
>
> *Birmingham* v. *M. R. Co. Ry. Co. et al.*, 14 Ry. & Ca. Tr. Cases, 24, 33, 34.

In one of the earlier Railway & Canal Traffic cases the court said:

> We think the traders [owners of the siding] will do all that is necessary on their part to entitle them to have their traffic taken by the company, without extra payment, *if they place their trucks as near to the junction of their sidings with the main line as they can be brought with safety to the main line*, and with sidings constructed as theirs have been; and if also they take care to arrange their trucks in proper order and clear of any obstacles to their being moved away. * * * Subject, therefore, to the traffic being presented in the way we have mentioned, we are of opinion that the company are bound to receive and forward it for the mileage

rate, and free of any charge for terminal services.

Watkinson et al. v. *W. M. & C. A. Ry. Co.*, 3 Ry. & Ca. Tr. Cases, 5, 9. See also *Birmingham et al.* v. *Mid. Ry. Co.*, 9 Ry. & Ca. Tr. Cases, 165.

AMERICAN AUTHORITIES.

Private sidings.—A private siding put in at the cost of the shipper or partly at the cost of the shipper and partly at the cost of the railroad is not a part of the railway company's line. As we shall see, the courts of this country in passing upon the question of services upon private sidings hold distinctly that, at common law, a railroad company is not obligated to perform any service *off its own line;* that such additional services are the subject of private agreement. The statute has modified the common law but recognizes the service *as additional to the line haul.*

The Circuit Court of the Western District of Kentucky, speaking through Evans, district judge, in construing the rights of third persons to use a switch connection put in at the instance and for another person, said:

> A common carrier cannot be required to receive freight on or along a private switch. Its duty in that regard is confined and limited to its own depots or shipping or receiving points.
>
> *Bedford-Bowling Green Stone Co.* v. *Oman*, 134 Fed. Rep., 441, 449.

The Supreme Court of Indiana, speaking through Chief Justice Mitchell, said:

> It is undoubtedly true that a carrier is not liable for failing to furnish cars, and for not transporting goods, unless goods are offered at a regular depot, or other usual or designated place for receiving freight. * * * All that can be done by the owner of goods of the character and quantity of those described, which are designed for transportation, is to place them contiguous to the railway company's track at some usual or properly designated place and request the company to furnish cars and receive the goods.
>
> *L., N. A. & C. Ry. Co.* v. *Flannagan et al.*, 14 Northeastern Rep., 370–1–2.

In a case brought to recover a penalty for delay in transporting freight, decided by the Supreme Court of North Carolina, Brown, J., said:

> The first assignment of error is that his honor erred in holding that the defendant was required not only to transport the car from Cary to Greensboro within the statutory period, but must within that time place the car upon the plaintiff's side track.
>
> * * * Although this [State] statute was amended by chapter 461, Acts 1907, so as to require a delivery at destination within the time specified, we have held that when the goods arrive, and the carrier has notified the consignee that it is ready to deliver, it has discharged its duty. *Wall* v. *Railroad*, 147 N. C., 411; 61 S. E., 277. But this statute

> as amended does not undertake to compel a railway company to deliver loaded cars off its own right of way and tracks on to the private track of an individual or private corporation. Therefore, a delivery of the car load of lumber to plaintiff upon its private track, belonging to it and leading to its mill, must of necessity be a matter of agreement between plaintiff and defendant and cannot come within the purview of section 2632. A railroad company cannot be compelled to operate its engines on a private track belonging to a private corporation or individual over which the railroad company has no control or supervision.
>
> *Brooks Mfg. Co.* v. *Southern Ry. Co.*, 68 S. E., 243 ,245.

May discontinue service.—In a case involving the depression of tracks and the discontinuance of private sidings the Supreme Court of Minnesota, speaking through Brown, J., said:

> At various times during the last 30 years, as the same were demanded or required, the railway company has constructed numerous side and spur tracks connecting with the main track of its said Hastings and Dakota Division, and has maintained and operated the same to deliver and receive freight cars to and from the premises of the plaintiffs. Some of these side tracks are entirely on the respondent company's right of way, and others partly thereon and partly on the lands of the plaintiffs. In some instances the railway company paid the entire cost of their

tract to build a side track, exempting the railroad company from liability for loss by fire from its own negligence, was not void, for the reason that—

> In contracting to put in these side tracks, the defendant was not acting in the capacity of a common carrier. It was under no legal obligations to put them in. It might have refused.
>
> *Yonn et al v. Pere M. Ry Co.*, 135 Michigan, 210; 97 Northwestern Rep., 731, 733.

Not covered by line rate.—In the Circuit Court of Appeals, Seventh Circuit, the court, speaking through Showalter, C. J., held:

> No satisfactory reason suggests itself against the legality and propriety, under special circumstances such as exist here and as existed in the Covington case, of such a division of his compensation by a carrier even apart from the statute.
>
> The contention that the carriers must move cattle from their lines of road over the track of the stockyards company to the stockyards, without compensation other than as contained in their charges for hauling to points on their respective lines in Chicago and this is what the claim of these appellees amounts to, is invalid.
>
> *Walker v. Keenan*, 73 Fed. Rep., 755, 762.

No crated coats.—The Circuit Court of Appeals, Eighth Circuit, Thayer, J., speaking for the court, held that a railroad company could legally decline to place cars for loading coal at the station side tracks and could insist that the mine owner accept

of switches and sidings on which the annual outlay for maintenance and taxes was $1,500. The Chicago & Alton took the traffic from the Belt Line; this line published a rate of $1 per car for hauling the car over the plant line and the Belt Line to the Alton. It was claimed that the movement was a refund or terminal charges. The real transaction, however, the court held, was a payment for the Alton for the use of the plant facilities in getting freight out of the plant to the Belt Line. The court said:

Act (act Feb. 4, 1887, c. 104, 24 Stat., 379; U. S. Comp. St. 1901, p. 3154) the standard of comparison was the treatment of other shippers. It was necessary to prove not only that the favored shipper really paid less than the published rate but also that other shippers paid the full rate or a greater rate than that of the favored shipper. Under the Elkins Act the standard of comparison is the published rate. It is only necessary to prove that the favored shipper has had his property transported at a less rate than that published and filed. Both acts were aimed to kill favoritism, and the favoritism in the *Wight case* was of the same kind and effect as in this. The big manufacturer or dealer has all the advantage over his small competitor that he is legally or morally entitled to in his savings of labor cost and in buying his materials at greater discounts. The application of the maxims of merchandising to railroading was always counter to the common-law pact between the railroads and the people. But it was not until the Government as parens patriæ was authorized to represent the scattered and unorganized sufferers from favoritism that any hope appeared of taking the railroad business out of the realm of private barter.

Chicago & A. Ry. Co. v. *United States*, 156 Fed. Rep., 558, 561, 562.

Not obliged to receive freight on private siding.—In an action against the Texas & Pacific Ry. Co. for damages for negligence in not keeping a watchman or agent at a station called Meekers the con-

clusions as to the obligations of the carrier regarding a switch on which this station was located are stated by Mr. Justice McKenna of this court as follows:

> Meekers was not a regular station; indeed was not a station at all, but a mere switch track. *The defendant was not obliged to receive freight there.* It was, as said by the court of appeals, "a country or plantation switch," established and maintained for the accommodation of the planters of the neighborhood.
>
> *Charnock* v. *Texas & Pacific Ry. Co.*, 194 U. S., 432, 437.

Illinois cases.—These cases are based upon a constitutional provision, which reads as follows:

> All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased, or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee and any public warehouse, coal bank, or coal yard may be reached by the cars on said railroad.

In the Vincent case the complainants owned and occupied a warehouse in the city of Chicago, "situated upon the line of the defendant's railroad, and connected with it by a side track about one hundred and fifty feet in length, and situated two blocks

from the freight depot, and between that and the passenger depot." The siding was built under a written agreement which was recorded, the complainant owning the land, and the contract provided for free switching. The question was presented —

> whether the appellants have a legal right to insist upon a delivery, at their elevator or warehouse, of grain consigned to them, without discriminating charges against them, such warehouse being connected with the line of the railway in the manner above stated, and, if they have such right, whether the powers of a court of chancery can be invoked to protect it.

After reciting that the railroad company could not deliver this grain in its ordinary depot and that it had been the custom to deliver grain to the elevator to which it was consigned, the court said:

> If, then, the common-law rule requiring of common carriers an immediate delivery, when practicable, to the consignees, has been relaxed, in regard to railways, only from necessity, it is difficult to perceive why the rule should not be applied, in its full force, to transportation of this character. Here the necessity of relaxation has not only ceased, but the railway is compelled to seek some other warehouse than its own freight depot, and to send its cars, over a side track, to some private elevator. And where there are several elevators thus connected with the main line, in substantially the same mode, it is difficult to conceive how, as a question

merely of common law, the railway company can be permitted to deliver grain to an elevator of its own selection, in place of that to which the property has been consigned.

Vincent et al. v. *C. & A. R. R. Co.*, 49 Ill., 33, 37-39.

The doctrine of *The Vincent case*, in 49 Ill., was, that a railway company must deliver grain to any elevator which it had allowed by a switch, to be connected with its own line. This rule has been reaffirmed in an opinion filed at the present term, in the case of *The People ex rel. Hempstead* v. *The Chicago and Alton Railroad Co.* (55 Ill., 95). But in the last case we have also held that a railway company *can not be compelled to deliver beyond its own line*, simply because there are connecting tracks over which it might pass by paying track service, but which it has never made a part of its own line by use.

Chicago and Northwestern Railway Co. v. *The People*, 56 Ill., 365; 8 A. R., 690.

Illinois cases not controlling.—The Circuit Court of Appeals, Sixth Circuit, speaking through Taft, C. J., referred to the Illinois cases, and held that a railroad company as a common carrier is not bound at common law by the establishment and maintenance for any length of time of a switch connection with a private warehouse to maintain it. The court said:

> A change of conditions, an increase in business, a necessity for travel at higher speed, may make such a connection either incon-

venient or dangerous, or both. We must therefore dissent altogether from the proposition that the establishment and maintenance of a switch connection of the main line to a private warehouse for any length of time can create a duty of the railroad company at common law forever to maintain it. There is little or no authority to sustain it.

The latest of the Illinois cases which are relied upon is based upon a constitutional provision which requires all railroad companies to permit connections to be made with their track, so that the consignee of grain and any public warehouse, coal bank, or coal yard may be reached by the cars of said railroad. The supreme court of that State has held that the railroad company has a discretion to say in what particular manner the connection shall be made with its main track, but that this discretion is exhausted after the completion of the switch and its use without objection for a number of years. (*Railroad Co.* v. *Suffern*, 129 Ill., 274; 21 N. E., 824.) But this is very far from holding that there is any common-law liability to maintain a side track forever after it has once been established. The other Illinois cases (*Vincent* v. *Railroad Co.*, 49 Ill., 33; *Chicago & N. W. Ry. Co.* v. *People*, 56 Ill., 365) may be distinguished in the same way. They depended on statutory obligations and were not based upon the common law, though there are some remarks in the nature of obiter dicta which gives color to plaintiff's contention. But it will be seen by reference to Mr. Justice

Gray's opinion, already quoted from, that the Illinois cases have exercised greater power than most courts in controlling the discretion of railroads in the conduct of their business.

Jones v. *Newport News & M. V. Co.*, 65 Fed. Rep., 736, 740.

Extra service.—If the stopping for inspection and reloading is of some benefit to the shipper and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish. Especially is this true when, as here, the privilege is in no sense a part of the transportation, but outside thereof.

Southern Ry. Co. v. *St. Louis Hay Co.*, 214 U. S., 297, 301.

By section 15 the commission is authorized and required, upon a complaint, to inquire and determine what would be a just and reasonable rate or rates, charge or charges. This, of course, includes all charges, and the carrier is entitled to have a finding that any particular charge is unreasonable and unjust before it is required to change such charge. For services that it may render or procure to be rendered *off its own line* or

outside the mere matter of transportation over its line, it may charge and receive compensation. *Southern Railway Co.* v. *St. Louis Hay Co.*, 214 U. S., 297. If the terminal charge be in and of itself just and reasonable it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. In order to avail itself of the benefit of this rule the carrier must separately state its *terminal or other special charge* complained of, for if many matters are lumped in a single charge it is impossible for either shipper or commission to determine how much of the lump charge is for the terminal or special services. The carrier is under no obligations to charge for terminal services. Business interests may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and commission that it is insisting upon it.

Interstate Commerce Comm. v. *Stickney*, 215 U. S., 98, 105.

Freight requiring special facilities.—Referring to the liability of a common carrier to provide suit-

able facilities for receiving live stock, this court, speaking through Mr. Justice Harlan, said:

> The vital question in respect to such matters is, whether the means and facilities so furnished by the carrier or by some one in its behalf are sufficient for the reasonable accommodation of the public. But, it is contended, that the decree is erroneous so far as it compels the railroad company to receive live stock offered by the appellees for shipment and to deliver live stock consigned to them, *free from any charge other than the customary one for transportation,* for merely passing into and through the yards of the Covington Stock-Yards Company to and from the cars of the railroad company. * * *
>
> In other words, the duty to receive, transport, and deliver live stock will not be fully discharged, unless the carrier makes such provision, at the place of loading, as will enable it to properly receive and load the stock, and such provision, at the place of unloading, as will enable it to properly deliver the stock to the consignee. * * *
>
> There are recognized limitations upon the duty and responsibility of carriers of inanimate property that do not apply to carriers of live stock. These limitations arise from the nature of the particular property transported. * * *
>
> *Covington Stock-Yards Co.* v. *Keith,* 139 U. S., 128, 133, 134, 135.

Carrier not obligated to deliver at particular yards.—In *Central Stock Yards Company case* this

court, speaking through Mr. Justice Holmes, said:

> If the cattle are to be unloaded, then, as was said in *Covington Stock-Yards Company* v. *Keith*, the defendant has a right to unload them where its appliances for unloading are, and can not be required to establish another set hard by. * * *
>
> We have discussed the case as if the two stockyards were side by side. They were not, but they both were points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. * * *
>
> As the defendant would not be bound to deliver at the Central Stock Yards *if they were by the side of its track*, its obligation is no greater because of the intervention of a short piece of the track of another railroad.
>
> *Central Stock Yards* v. *Louisville, etc. Ry. Co.*, 192 U. S., 568, 570–72.

May not discriminate by special services.—In the *Nashville Stock Yards* case, in the Circuit Court, M. D. Tennessee, Chief Justice Baxter, said:

> By the permission or acquiescence of defendant, complainants' yard was connected with defendant's road by appropriate stock gaps and pens, which have been in use by both parties for more than twelve years.

The railroad company made an arrangement with the Union Stock Yards Company in Nashville for the delivery of stock and stipulated that after

a certain date it would deliver stock only at the Union Stock Yards. Complainants filed a bill to enjoin the railroad company from refusing to deliver their own stock at their private yard. The court indicates that there was involved in the case some intentional discrimination, and further said:

> Or may such railroad company, in like manner, discriminate between grain elevators in the same place,—constitute one elevator its depot for the delivery of grain, and force competing interests to receive from and transfer the grain consigned to them through such selected and favored channel?
>
> If railroad corporations possess such right, they can destroy a refractory manufacturer, exterminate or very materially cripple competition, and in large measure monopolize and control these several branches of useful commerce, and dictate such terms as avarice may suggest. We think they possess no such power to kill and make alive. Impartiality in serving their patrons is an imperative obligation of all railroad companies; equality of accommodations in the use of railroads is the legal right of everybody. The principle is founded in justice and necessity, and has been uniformly recognized and enforced by the courts. A contrary idea would concede to railroad companies a dangerous discretion, and inevitably lead to intolerable abuses. It would, to a limited extent, make them masters instead of the servants of the public. By an unjust exercise

> of such a power they could destroy the business of one man and build up that of another, punish an enemy and reward a friend, depress the interests of one community for the benefit of its rival, and so manipulate their roads as to compel concessions and secure incidental profits to which they have no legal or moral right whatever.
>
> *Coe et al.* v. *L. & N. R. Co.*, 3 Fed. Rep. 775, 776, 779-80.

Charges may be separated.—In a case involving an extra charge per car in Chicago for delivering live stock to the stockyards this Court, speaking through Mr. Justice White, now the Chief Justice, said:

> As the right of the defendant carriers to divide their rates and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the stockyards, a point beyond the lines of the respective carriers, was conceded by the Commission and was upheld by the circuit court of appeals, no contention on this subject arises. If, despite this concurrence of opinion, controversy was presented on the subject, we see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below. This is especially the case in view of the sixth section of the act to regulate commerce, wherein it is provided that the schedules of rates to be

> filed by carriers shall "state separately the terminal charges and any rules or regulations which could in anywise change, affect, or determine any part of the aggregate of said aforesaid rates and fares and charges."
>
> *Inter. Com. Commis'n* v. *Chicago &c. R'd Co.*, 186 U. S. 320, 335.

The act to regulate commerce in section 6 provides that:

> The schedules * * * shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

Industrial railroads not common carriers.—A railroad constructed and used merely in connection with the conduct of a private business is not a common carrier, so where a railroad is built to haul logs from the forest to the sawmill of the owner it is not a common carrier.

> *White* v. *Kennon*, 83 Ga., 343; 9 S. E., 1082.
>
> *Wade* v. *Lutcher & M. C. Lumb. Co.*, 74 Fed., 517.
>
> *Nicolette Lumb. Co.* v. *Peoples Coal Co.*, 26 Pa. Supr. Ct., 575.

Plant facility.—The circuit court of appeals, dealing with a provision of the State constitution which dealt with corporations of public improvement and utility, said:

> We would not suppose that the learned counsel would seriously contend that article 244 of the State constitution, dealing with corporations of public improvement and public utility was intended to, or could be so construed as to, make out of a logging railroad appurtenant to a sawmill, constructed wholly on private grounds, and operated for private purposes, a common carrier charged with all the duties and responsibilities incumbent by the laws of the land upon common carriers, simply because it is a railroad, and the owners are incorporated as a business corporation. It seems to us, we might as well hold that a railroad on a sugar plantation, appurtenant to the sugar mill, and used for carrying cane thereto, should be declared a common carrier.

In Louisiana it was held that a corporation organized to carry freight and passengers between two sugar plantations about five miles distant from one another, the sole object of which was to foster the private ends of two persons named, who owned jointly two sugar plantations, and who wished to transport sugar cane grown on one of the plantations to the refinery situated on the other, was not necessarily such a corporation for public improve-

ment as would authorize the appropriation of private property for its purpose.

Williams v. *Judge of 18th Judicial Dist. Ct.*, 45 La. Ann., 1295; 14 So., 57.

Not common carrier.—A strictly private spur track leading from private property to the line of a public railroad over which the public can have no rights is not a common carrier. This was applied in Illinois to a tramroad running from one portion of a coal field to another. The court said:

> It is clear the use for which the land is proposed to be taken in this case is not a public one. The coal, the coal works, and the present tramway are in the strictest sense private property, and the public generally have no more interest in them, or in the operation of the works, including the tramway, than they have in any other strictly private business. The same would be equally true after the proposed extension of the tramway. The extending of it to the railroad would not change its character or the obligations of the company to the public in the slightest degree.
>
> *Sholl* v. *German Coal Co.*, 118 Ill., 427; 10 N. E., 199, 201.

In another case, where the company sought to condemn land for a track, the court said:

> Stripped of all the disguises thrown around the case of the petitioner, it is shown that its object is to condemn the land of the defendants for the purpose of enabling it to

> lay a siding, switch, branch road, or lateral work from the main track to the Wheeling Steel Works, a few hundred feet distant, for the purpose, as stated in the original petition, "of transporting freights to and from said steel works over the petitioner's said railroad." This clearly was for the private accommodation of both the railroad and steel-works, and to make the private business of both more profitable. This was not for a public, but was for a private, use, and the taking of the property, under these circumstances, would be the taking of private property for private use, which is clearly prohibited.
>
> *Pittsburg W. & K. R. R.* v. *Benwood Iron Works*, 31 W. Va., 710; 8 S. E., 453, 467.

Montana case.—This case, often cited, is based upon a constitutional provision which provides that:

> All railroads shall be public highways, and all railroads, transportation, and express companies shall be common carriers, and subject to legislative control, etc.

This provision is supplemented by a statute authorizing the construction of sidetracks, branches, etc., which made them instruments of public service. (*Butte A. & P. Ry. Co.* v. *U. Ry. Co.*, 16 Mont., 504; 41 Pac., 232 and 239.)

In the foregoing case the court, speaking through Hunt, Justice, said:

> It is well established that if, in point of law, a use is public, the fact that not very

many persons will enjoy the use is not material. (*Talbot* v. *Hudson*, 16 Gray, 417.) The character of a way, whether it is public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. If all the people have the right to use it, it is a public way, although the number who have occasion to exercise the right is very small. (*Phillips* v. *Watson*, 63 Iowa, 28; 18 N. W., 659; Lewis, Em. Dom., p. 241; *Shaver* v. *Starrett*, 4 Ohio St. 496; *Kettle River R. Co.* v. *Eastern R. Co.*, 41 Minn., 461; 43 N. W., 969; Rand. Em. Dom., 56.)

A common carrier may, as to a certain shipper, be a plant facility.—In *Crane Iron Works* v. *United States et al.*, No. 55, United States Commerce Court, in an opinion by the presiding judge, the question here involved was carefully considered. In that case the court said (italics ours):

> In the operation of this plant it is necessary to transport loaded cars received by rail to various points within the limits of the plant for unloading, *to transport cars which have been loaded with its product from various points within the plant to the line of railway by which they are taken to destination.* * * *. *For these purposes the iron works long ago laid down rails extending from a connection with the Central Railroad to the various points within its plant where cars were to be placed* * * *. The iron works also provided the necessary locomotives for operating the various tracks

which it had built to accommodate the needs of its plant. * * *

For this service the petitioner has never received and, until the organization of the Crane Railroad, had never claimed that it should receive compensation from the Central Railroad. Indeed, it seems to have been assumed that these tracks and engines were a necessary part of the plant of the iron works, whose business could not be properly carried on without them.

In process of time a few other industries, perhaps half a dozen, were located in close proximity to the premises of the iron works, though not upon its land, and these industries were so situated that loaded cars could be transported between the tracks of the Central Railroad and the industry only over the rails of the Crane Iron Works. For the purpose of serving these industries the Crane Iron Works extended its rails beyond its own land to these several plants. Cars for these industries were placed upon the same track with those intended for the iron works and taken by the locomotives of the iron works over the rails of that company to the several industries. * * *

The principal contention of petitioners appears to be that the Crane Railroad Company is a common carrier, subject to the provisions of the act to regulate commerce and the jurisdiction of the Commission; * * * that as such common carrier the Crane Railroad Company is legally entitled to compensation for the transportation service which it is alleged to perform for petitioner; * * *.

Quoting the statute, " The Commission may also, after hearing, * * * establish through routes and * * * joint rates * * *," the court further said:

> Upon all the circumstances connected with the location, construction, and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing services which the iron works should perform for itself if it desired such services, and that the Central Railroad *was under no obligation to pay the Crane Railroad for the switching service which it performs for the iron works and, indeed, could not lawfully do so. We see no reason to doubt the correctness of this conclusion.* The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (*General Electric Co.* v. *N. Y. C. & H. R. R. R. Co. et al.*, 14 I. C. C. Rep., 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. Rep., 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle. That there was substantial evidence to sustain the finding of the Commission as to the character of the services rendered is not open to reasonable question, and, this being so, the conclusion must be accepted accordingly.

In the transportation of supplies and employees of contractors, in connection with the construction of its own road, a railroad company does not act as a common carrier. It is a common carrier as to part of its traffic, but not such a carrier as to the traffic in which it is interested. (*Santa Fe Ry.* v. *Grant Bros.*, 228 U. S., 177.)

The definition and character of a railroad is determined by the purposes or objects for which it was constructed. (*I. C. C.* v. *B. & O. S. W. R. R. Co.*, 226 U. S., 14.)

A rebate.—This Court has stated that these allowances to tap lines from the lumber rates are rebates.

In *Illinois Central R. R.* v. *I. C. C.*, 206 U. S., 441, 444, the difference in the practice on the two sides of the river was explained in the following language:

> The railroads west of the Mississippi make a certain allowance to the mills which have "logging roads"—that is, roads by which logs are hauled from the timber to the mills. This is called "tap-line allowance or division." * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate* or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.

Device.—The act to regulate commerce prohibits rebating in any form, directly or indirectly, "by any device whatever." Construing this phrase in the *Armour Packing Company* v. *United States*, 209 U. S., 56, 71, 72, this court, speaking through Mr. Justice Day, said:

> * * * And we find the word device disassociated from any such words as fraudulent conduct, scheme, or contrivance, but the act seeks to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given, or received. Had it been the intention of Congress to limit the obtaining of such preferences to fraudulent schemes or devices, or to those operating only by dishonest underhanded methods, it would have been easy to have so provided in words that would be unmistakable in their meaning. A device need not be necessarily fraudulent; the term includes anything which is a plan or contrivance. Webster defines it to be "that which is devised or formed by design; a contrivance; an invention; a project," etc.
>
> * * * * *
>
> The Elkins Act proceeded upon broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions should be the one established, published, and

> posted as required by law. It is not so much the particular form by which or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates from the fixed rates, duly posted and published.

The latest case, and one bearing upon the lawfulness of an allowance for services in spotting cars on private side tracks, was decided in January last by the Supreme Court of New York, Schenectady trial term, opinion by Van Kirk, J. The court said:

> I find that the 20 cents per ton is a reasonable charge for the work done and for which payment is claimed. The vital question, therefore, is whether or not this service is a part of the regular transportation service covered by the lawful, published freight rate. Is it a part of the service which the plaintiff is obliged to render as a common carrier of in and out freight? Is it service before delivery to the consignee and after acceptance from the consignor? If it is, the defendant's claim is lawful; if it is not, it is unlawful. (*Int. Com. Comm.* v. *Diffenbaugh*, 222 U. S., 42.) In order to answer this question it is necessary to determine where transportation begins and ends, where the delivering and receiving point is;
>
> * * * * *
>
> The general freight rate from point to point may not include an element for spotting (where it occasions appreciable expense), as such

actually results in an unjust charge to those for whom spotting is not done.

* * * * *

I find that the delivery on the storage tracks is a delivery to defendant; that the transportation begins and ends there; that plaintiffs published tariff includes no charge for service upon a "private siding"; that no transportation on a private siding further than to make clearance can be required from the carrier.

N. Y. C. & H. R. R. R. Co. v. *General El. Co.*, 83, Misc. 539, 543, 544.

ARGUMENT.

The line haul, and moving cars upon a private siding, are independent and different services.

The line haul.—By an unbroken line of authorities, in England and in this country, it is established that, without statutory requirement, a carrier by railroad can not be compelled to perform services off its own line. But where private sidings are put in and used by shippers and consignees the carrier must receive carload traffic from, and deliver it to the private siding at the points of connection. The cars must be marshalled at the points of connection between the siding and the main line *by the shipper* so that they may be taken by the carriers' locomotives without operating upon the private siding, and the carrier makes delivery to the consignee by shunting the car upon the private siding *clear of the main track*. Some very large industries have, at the point of connection, "exchange tracks" and the cars

are marshaled upon these tracks by the shippers. The "transportation" or "conveyance" is between these points of connection; and this constitutes the line haul for which the line rate is charged.

Switching.—As the shipper must load and the consignee unload the cars, the cars must necessarily be moved upon the siding to and from the mills, warehouses, and plants of the shipper and consignee. The tracks are not public and this movement is not a "public" service. It is a private service for the shipper or consignee for whom it is performed. As the court said in *Chicago & A. Ry. Co.* v. *U. S.*, *supra*, referring to private sidings, "their only use was in getting a particular shipper's freight from his own property out to the public highway." When this switching service is performed by the line carrier it is paid for as a car movement and not upon a tonnage basis. Switching charges are always per car, while for a line haul there is a tonnage charge—so much per hundred or per ton for the car contents. Switching is as distinct and separate a service as icing or refrigeration or any of the other services mentioned in the statute and declared to be "transportation" for the purposes of the act. The purpose of the statute is regulation. It is intended that all services performed by a carrier subject to the act shall be brought under the regulatory power of the Commission. These charges are to be included in the published tariffs and thereby become "lawful" charges. In doing this Congress did not declare that such additional or special services should be per-

formed by the carrier as a part of the line haul for the line rate. On the contrary, the statute expressly provides that these services shall be, performed for compensation, and the Commission may be, and often is appealed to to determine whether such charges are reasonable.

We must conclude, therefore, from the authorities and the reading of the statute that the shipper has no right to demand that switching services be performed free of charge, but that the carrier has the right to make a separate charge appropriate and reasonable for this distinct service.

Discrimination.—It has been a common practice in this country for the carriers to absorb a switching service at some places and in special cases; to do the switching without making any charge therefor in addition to the line rate. The right of the carrier to do this is not questioned provided such *free service* does not work undue discrimination between shippers or localities. If this practice in any case gives an undue preference and advantage to a shipper the Commission, upon full hearing, may order the practice discontinued. The practice of absorbing switching services on private sidings is not universal. There are as many and perhaps more instances where a switching charge is published and collected. Some general principle or test must, therefore, be applied to determine whether performing a switching service on a private siding *free of charge* by a carrier is unduly discriminatory.

In *Wight* v. *United States, supra,* this court held that an accessorial service allowed to a single shipper was discriminatory because the service was not given to all shippers at that place.

We are not unmindful that this court has said that the law does not undertake to equalize the fortunes or conditions of man. Mere inequality of condition, therefore, does not create the undue discrimination or preference prohibited by the statute. But when the carrier performs for a shipper a service which is accessorial and thereby relieves that particular shipper of a burden which rests upon him, and does not perform the same service for other shippers at the same place, it is unlawful. This is not equalizing the conditions or fortunes of men; it is simply preventing preferences. To illustrate, two shippers in the same business, competing with each other, have warehouses located 2,000 feet from the line of a railroad; they deliver their carload traffic at the team track by drays at a cost of 50 cents per ton; the cost of loading a 30-ton car is $15. The conditions, or fortunes, of these two shippers in this matter are precisely alike. Suppose now that one shipper puts in a siding, connecting his warehouse with the main tracks and the line carrier spots his cars at the warehouse and takes them loaded from the warehouse charging for the switching service $5 per loaded car. Assuming this to be a reasonable charge and all that can be required, the conditions or fortunes of these two shippers are now disturbed. One is

still draying at a cost of $15 per car and the other is delivering to the carrier at a cost of $5 per car plus interest on his investment in the siding. The law does not undertake to equalize their condition by raising the switching charge. One shipper has put in a modern improvement that has reduced the cost of doing his business and he is entitled to that advantage. But suppose the carrier absorbs the switching service upon the siding, then, by an artificial, contractual relation voluntarily entered into by the carrier, the shipper is relieved entirely of the burden and expense of doing a part of his business—that of delivering his traffic to the carrier. This burden is assumed by the carrier. Clearly in such a case the carrier is giving an undue preference and advantage prohibited by the statute. As well might the carrier collect the $5 switching charge and pay it back, as to perform the service without charge. It is no less a rebate when he performs the service free than it is when he pays back the money.

Again, the theory upon which the carrier is permitted to absorb a switching service is that the line rate is sufficient to cover the line haul and the switching. It must be observed, however, that if the line haul is sufficiently high to cover an additional service then it is too high to be charged to the shipper who does not receive the additional service. If the line rate is a reasonable charge for the line haul then the carrier is performing an additional service for which no remuneration is collected and the cost of that

service must be made up out of the public in some other way. In either view the practice of absorbing a switching service for one or more shippers having sidings where there are other shippers who do not have sidings but are compelled to deliver their traffic at their own expense to the team tracks, necessarily and inevitably works a discrimination. The only cases in which there is no discrimination are at points where all shippers have sidings and are served alike. But where some have sidings and others must deliver by drays, the only nondiscriminatory and equitable practice is to make the line rate reasonable for the line haul and make a reasonable charge for the additional service on private sidings. All shippers then pay the line rate and the shippers who receive the additional service on sidings compensate the carrier for it. Each shipper pays for what he gets.

A switching service can not be an integral part of a through route.

Section 1 of the act to regulate commerce requires common carriers subject to the act "to establish through routes and just and reasonable rates applicable thereto;" and to provide reasonable facilities for operating such through routes; "and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto." If carriers subject to the act do

not comply with these requirements of the law the Commission may, after hearing, establish through routes and joint rates and prescribe the division of such rates, and the terms and conditions under which such through routes shall be operated. (Section 15.) Then follows this limitation:

> And in establishing such through route, the Commission shall not require any company, without its consent, *to embrace in such route substantially less than the entire length of its railroad* and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which would otherwise be established.

The use of the term "through route" and the limitations put upon the Commission in establishing through routes show clearly that Congress had in mind only line hauls. A switching movement upon a private siding, at the point of origin or destination of freight, is not a part of a route. It is as above noted, *a service which precedes or follows* a line haul, and this is equally true whether the line haul be over a single railroad or over a through route composed of several lines.

The fact that private sidings and switches are included within the definition of "transportation" and "railroad" in the act, does not justify the claim that they may become an integral part of a through

route entitled to a division of the joint rate. Icing, storage, refrigeration, sleeping-car service, and other things are also included within the term "transportation," but no one would contend that a through route could be made out of a line haul and icing, sleeping-car, or any other of these incidental or additional services. In moving over a through route there is very much switching performed—the passing of trains, the transfer of cars from one railroad to another—but these services are incidental to and not the basis of the through route.

These tap lines, therefore, are not entitled to through routes, even if they be *bona fide* common carriers, when the service rendered is nothing more than switching cars of lumber from the mill to the main line. It is not transportation, using that word in the sense of conveyance or line haul; it is bringing the freight to the public highway or line carrier. It can not, therefore, be a segment in a through route.

Here it may be well to observe the difference between the words "allowance" and "division," as used in the statute. The former applies to allowances made to a shipper under section 15 for services which the carrier can be compelled to perform, but which he allows the shipper to perform. The word "division" applies only in cases of through routes, to the portions of the joint rate which each line carrier receives. If the services performed by a shipper is a switching service, the allowance will be a switching charge, that is, a charge per car, and such allowances have been made to tap lines. They

complain of this and say they want a "division." The reason for this is apparent. A switching charge would be from $1.50 to $5 per car. The divisions which have been improperly allowed by carriers were on the theory that a switching movement was a part of the through route, and "divisions" were made ranging from 2 to 4 cents per 100 pounds, making the "allowance" to the shipper or its tap line $12 to $18 and $20 per car. Of course, they want "divisions." But the character of the service must always determine the compensation. If the service is switching the allowance will be a switching charge; if it be a line haul over part of a through route there will be a "division" of the joint rate.

Spurs and branch lines.—This court, construing the phrase "lateral branch line of railroad, or private side track," in our act, said:

> They are dependent upon and incident to the main line—feeders such as may be built from mines or forests *to bring coal, ore, and lumber to the main line for shipment*. *U. S.* v. *B. & O. S. W. Ry., supra.*

From this and other authorities cited spurs and branch lines are longer than a switch, but like the switch are intended to reach a shipper's warehouse or place of business or to accommodate a group of shippers. They furnish a cheap and expeditious means for making *the shipper's delivery*. The service is special and precedes the main line haul; in quality it is precisely the same as the service performed upon a switch; it is *getting the shipper's traffic*

to the main line; it is an additional service to the main-line haul; it is not a part of a through route and is not covered by the line rate. What we have said, therefore, in reference to the operation of a switch by a carrier applies with equal force to services performed by a carrier upon a spur or a branch-line railroad, the only difference being that the compensation for services upon spurs and branch lines is usually computed upon tonnage, while the compensation for services performed upon a switch is a charge per car. This difference in the mode of arriving at charges does not modify or affect the general principle here discussed as to its relation to the line haul.

II.

Transportation of logs.

Logs are the raw material out of which lumber and other forest products are manufactured. Their relation to lumber is the same as the relation of wheat to flour, iron ore to steel. In all tariffs and classifications logs are recognized as a distinct commodity, the rates upon which are fixed with reference to value, loading, and the distance transported. The cost of milling lumber or other like products involves the cost of the logs at the mill, and this necessarily involves the cost of transporting them there. A sawmill is usually located upon a line railroad and has a switch connection for the delivery of carload lumber. If the forest is near, the logs are hauled by team. As the timber is

cut away the log haul increases, and logging roads of various types are put in to reduce the cost of transporting the logs from the forest. Whether the mill transports its logs from an immediate territory or buys them on the Pacific coast and has them shipped a long distance, the cost of the transportation in either case and in all cases is a part of the cost of the logs at the mill. Any practice, therefore, by line carriers which relieves the mill owner of the reasonable charge for the transportation of logs *is a direct contribution to his net operating revenue.* There is no more reason or right for a common carrier to contribute to the mill owner the cost of transporting logs than there would be in contributing the logs themselves, or furnishing the mill owner with forests free from which he might cut his timber. In either case the carrier would be making a direct contribution to the net operating revenues of the mill owner, and the purpose in making such a contribution would be to get the lumber traffic. There is no difference in principle between buying the lumber traffic by giving a free service and buying the traffic with money or a cash rebate from the published rate.

Any practice by a carrier which results in contributing to a mill owner the cost of transporting his logs, or any part of the fair charge for transporting them, to secure his lumber traffic, is unlawful, and a violation to the statute.

III.

The milling-in-transit privilege as practiced by tap lines.

The evidence in this case shows two practices. The first is the more general. It consists of the tap line filing with the Commission a logging rate with a milling-in-transit privilege, then arranging with the line carrier for a "division" of the lumber rate, and applying the lumber rate to a tap line "station" at the forest where the logs originate. The line carriers put in a blanket rate on lumber, which applies to every station in this territory, covering parts of three States of the Union, with a concurrence in milling privileges established by "connecting carriers." They then established through routes and joint rates over their own lines and the tap lines. The "joint rate" being the blanket lumber rate, the result of this arrangement is, that when the logs are milled into lumber at the mill, the blanket lumber rate is extended to the terminal of the tap line at the forest; the tap line is given a division of the blanket lumber rate, and the charge for the log haul is *entirely obliterated*. By this method a mill owner secures the transportation of the logs from the forest to his mill without paying anything for the transportation. The allowance which he receives from the line carrier out of the lumber rate pays the entire cost, and often more, of the transportation of the logs from the forest to the mill.

This tap line milling-in-transit differs radically from the milling-in-transit upon main-line railroads. The tariffs of the Chicago, Rock Island & Pacific Railway, Kansas City Southern Railway, Missouri Pacific Railway and other main lines give milling-in-transit privileges upon logs. The logs are charged a high rate, often a penalty rate, from the forest to the mill. After they are milled, if the lumber is shipped out over the same line, the lumber rate is charged in full and the log rate into the mill is reduced, but still remains a substantial charge. Take the instance given by our Division of Tariffs upon the Rock Island road, which is typical of the practice by line carriers. There are two stations, Moreland and Ruston, in the State of Louisiana. They are 99 miles apart. The blanket lumber rate into Memphis, Tenn., from both these points is 14 cents; there are two rates published on logs from Moreland to Ruston; one is 11 cents, called the "Billing rate," the other is 3½ cents, called the "Net rate." If the logs are hauled into Ruston by the Rock Island and the lumber is transported over the Rock Island lines from Ruston to Memphis, the total charge is 17½ cents—the full lumber charge of 14 cents from Ruston and a 3½-cent charge for the log haul from Moreland to Ruston. Now, if we take a tap line extending 99 miles from Ruston to a station called "Tap Line," the application of the tap line billing practice would be to extend the 14-cent lumber rate back to "Tap Line." The result would be that a mill owner at Ruston owning a forest or purchasing his

logs at Moreland would pay for his log and lumber haul 17½ cents, while a mill owner at Moreland having a forest at "Tap Line" and being the proprietary owner of the tap-line railroad, would pay 14 cents for his total log and lumber haul, thus creating a very great discrimination and preference in favor of the mill owner having the tap line.

To meet this objection, so apparent and manifest, some of the tap lines that have so-called independent mills upon their lines have put in a small charge for the log haul, which they collect from the independent miller and also make a book charge against the proprietary company for the hauling of logs. This charge in one case, which is the highest made, is 1½ cents. This rate is published, *but it is no part of the through rate.* It is an *intrastate rate*. The tap line secures a division of the lumber rates on its milling-in-transit privilege, without regard to the fact that it is collecting 1½ cents from the independent mill. This log charge the tap line collects without accounting for it upon the joint through-route rate. This furnishes a weak argument to meet the objections of the former case.

The so-called independent mill is usually a sort of by-product for the proprietary mill. These independent mills do not manufacture the same kind of lumber manufactured by the proprietary mill, or do not, for other reasons, compete with the proprietary mill owning the tap line. An independent mill owner is allowed to establish his mill upon the tap line a few miles from the main-line railroad. He gets his mill

site from the tap line mill owner; he buys his timber from him; the proprietary mill owner's tap line hauls the logs to the mill and makes a small charge for the haul. The tap line then arranges with the main-line railroad for a through route, and as the originating carrier secures a large division of the blanket lumber rate, 2 to 4 cents per 100 pounds. The independent mill therefore becomes a by-product to the proprietary lumber company. We do not say that there is anything unlawful in the proprietary mill's arrangement with the independent mill; but we do say that the whole arrangement, when properly viewed in connection with the dominant traffic of the tap line owner, is a device for securing divisions out of the main-line lumber rates for services which are only a shipper's delivery over a spur track. The delivery of the lumber from the proprietary mill over the switch to the main-line railroad is a shipper's delivery of his traffic. The public should not be charged for performing this service, for we must bear in mind always, as stated by the Commission in the terminal case, that where a substantial benefit is given by a carrier to a shipper by way of allowances out of main-line rates, a loss results that is made up by charges upon other traffic, and in that way the public bears the burden.

This practice of absorbing the log haul is a bald, open contribution to the mill owner.

The so-called milling-in-transit privilege, as practiced by the tap lines, results in free log hauls and is unlawful. Any practice by which the line carrier

assumes the burden of transporting logs for a mill owner is a rebate, the purpose of which is to buy the mill owner's lumber traffic.

IV.

Matters claimed by the tap lines as bases for through routes and divisions of the main-line lumber rate.

Incorporation.—The act to regulate commerce makes no distinction, in the application of the provisions of the act, between corporations or persons. The privileges of, and prohibitions upon, practices in transportation apply alike to incorporated companies and carriers that are not incorporated. A group of men may carry on a business of transportation; at a later time they may incorporate that business and issue the stock to themselves; this change in the ownership and operation does not confer any additional rights or subject them to any additional or different obligations or penalties. The mere act of incorporating a logging railroad or tap line does not confer, in itself, any special privileges.

Common-carrier tap lines.—After the passage of the Elkins Act, a great number of logging roads were incorporated under State statutes as common carriers. These statutes are general incorporation acts, under which a specified number of persons may become incorporated for any purpose stated by them in their application.

While in most cases this confers upon the corporation certain rights and, when they offer to carry property for other persons, may constitute them common

carriers as to such traffic, it does not prevent an inquiry into the whole matter to determine whether they are *bona fide* common carriers as to all traffic. The power to investigate and determine whether such incorporation and incidental common carriage is assumed as a device for the purpose of evading the Federal law and securing rebates or unlawful discriminations or preferences upon the traffic of the proprietary owners, can not be defeated by this arrangement.

Prior to the enactment of the "commodities clause" and the conference of power upon the Commission to determine whether or not rates and practices by railroads are unlawful and to prescribe reasonable rates and practices for the future, this court held that a practice by two line carriers which resulted in a violation of the Federal act prohibiting discrimination in transportation rates could be enjoined; that the court could look through the forms adopted by the carriers—the business in itself then being otherwise legitimate—to ascertain whether *in fact* it resulted in a violation of the act to regulate commerce. (*New Haven R. R. Co.* v. *Interstate Com. Com.*, 200 U. S., 361.) The power which the court in that case exercised has since been vested in this Commission. The Commission may now investigate the form and method of carrying on interstate transportation business, and if after full hearing it is of the opinion that any "practices whatsoever" are "unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any

of the provisions of this act," it may prescribe what "practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, * * *." (Section 15.) If the practice by line carriers could be investigated by the court prior to the act of 1906 and, if found to be in violation of the act, be prohibited, certainly since the act of 1906 a practice by a line carrier in connection with a tap line may be investigated by the Commission, and if found to be unlawful it may be prohibited. Common carriage of a small outside traffic, by the tap line, can not defeat this power.

Common carriers as to part.—In the *Crane Iron Works* case, the Commerce Court said:

> Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers.

The fact that these tap lines have been incorporated by proprietary mill owners, and may be regarded as common carriers as to some outside traffic, does not prevent the Commission from finding, if it be true, that as to the traffic of the proprietary mill they are a plant facility performing a plant service. (*A., T. & S. F. Ry.* v. *Grant Bros.*, 228 U. S., 177.) Nor does it follow that because they transport lumber for an outside party over what is practically a spur track, that such transportation is anything more than a shipper's delivery to a main-line carrier.

A railroad originally organized as a tap line may develop into and become a line carrier; when it does, the Commission will so recognize it. Each particular case must be decided upon the character of its particular traffic. It is *the character of the transportation service*, rather than the character of the agent, which determines whether the agent is entitled to through routes and joint rates.

Device.—The act to regulate commerce prohibits rebating, directly or indirectly, "by any device whatever." Construing this phrase in a criminal proceeding, this court, speaking through Mr. Justice Day, said:

> * * * the act seeks to reach all means and methods by which the unlawful preference or rebate, concession, or discrimination is offered, granted, given, or received * * *. A device need not be necessarily fraudulent, the term includes anything which is a plan or contrivance * * *. It is not so much the particular form by which, or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions or rebates from the fixed rates duly posted and published. (*Armour Packing Co. v. United States, supra.*

In the case at bar the Commerce Court recognized the power of the Commission to investigate and determine whether or not a tap line was a *bona fide* common carrier. It said:

> The evidence before the Commission tending to show that the petitioning tap lines were

> originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, *might have justified the Commission in finding that these tap lines were not in fact bona fide common carriers.* (Rec. 190.)

The Commission therefore has power, and it is its duty, being charged with the enforcement of the provisions of the act to regulate commerce, to investigate and determine whether a particular tap line is, in fact, a *bona fide* common carrier *as to all of its traffic;* to ascertain what the nature of the transportation service performed by the tap line is, and from all the evidence determine whether the organization, the methods of doing the business, and the transportation service carried on, is in fact a device to secure rebates and concessions from the published rates. If, upon such investigation, it is found that such was, and is the purpose of the organization and practices, it becomes

the duty of the Commission to prohibit the line carriers from establishing through routes and joint rates that result in such rebating and discrimination.

General observations.—The investigation in this case has developed a widespread commingling of the business of transportation with private business. The aggregate amount of the allowances out of main line lumber rates is enormous. It reduces legitimate railroad revenues by an insidious system of rebating. The purpose in this case is to separate the public business from private business; to insure to public line carriers reasonable compensation for every substantial service that they render; to place upon each shipper the duty of paying the reasonable charges for the services which he receives; to prevent private enterprises from casting upon the public, through the common carrier service, a part of the burden of doing their private business. Each shipper should perform its interplant service, and deliver its traffic to the line carriers.

This requires the separation of the charges for the line haul from switching charges where absorption of the switching service is not permissible. It is within the power of the Commission to require that this shall be done.

After holding that icing is a transportation service under the statute, this court, speaking through Mr. Justice Lamar, said:

> It [the Commission] may prescribe the form in which schedules shall be prepared and arranged (section 6) and may approve tariffs

> stating that the single rate includes both the line haul and accessorial services absorbed in the rate. Conversely, it may prescribe a tariff fixing a through rate which includes not only the haul of the fruit, but the haul of the ice necessary to keep the fruit in condition. All these are matters committed to the decision of the administrative body, which, in each instance, is required to fix reasonable rates and establish reasonable practices. The courts have not been vested with any such power. They can not make rates. They can not interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those orders are void.
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> *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States et al.* Opinion filed January 26, 1914.

V.

OPINION OF THE COMMERCE COURT.

In the four cases under consideration the tap lines are named in the first list given in the order. (Rec., p. 180.) The Commerce Court deals with that part of the order relating to these tap lines, which reads:

> that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service

> by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports. (Rec., pp. 180, 181.)

The Commerce Court in its opinion concedes much that we claim, but seems to have confused the findings and order of the Commission in regard to some specific matters.

As already noted, the Commerce Court concedes that there was evidence before the Commission which might have justified the Commission in finding that these tap lines were not *bona fide* common carriers. (Opin., p. 7.) If they are not *bona fide* common carriers, what are they? There is but one answer; they are plant facilities, and the Commission so found. While fully recognizing that the Commission found that they are plant facilities, the Commerce Court says that the Commission held: "That each of the petitioning tap lines is a *bona fide* interstate common carrier." (Opin., p. 6.) A reading of the order shows that this is not a correct representation of the Commission's finding. The Commerce Court, in the final analysis, seems to take the position that if they were common carriers as to *any* traffic they were necessarily common carriers as to all like traffic for the proprietary companies; that they could not be plant facilities as to part and common carriers as to part of their traffic, although the court in another part of the opinion states that they may be.

The law is clearly settled,

> That a common carrier may, however, as to some of its work, act in a strictly private capacity is well settled (*A., T. & S. F. Ry.* v. *Grant Brothers*, 228 U. S., 177); and that it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, has been held by this court in *Crane Iron Works* v. *U. S.*, No. 55, June 7, 1912. (Rec., pp. 192, 193.)

An attempt is made to distinguish the *Crane Iron Works* case by saying that the services in that case were "interplant" services. This is not the fact. The larger part of the service in that case, as in this, was switching cars from the warehouses to the line railroad—delivering the freight to the carrier.

Disregarding the similarity in the cases the Commerce Court proceeds to say:

> When, as in these cases, a full and fair hearing has been granted, the Commission's findings of fact are subject to review in this court only upon an allegation that they are not sustained by any substantial evidence in the record before it or are arbitrary in *being based upon improper distinctions and considerations.* (Rec., pp. 193, 194.)
>
> * * * * *
>
> The important questions, therefore, to be considered by this court are:
>
> First. Whether the Commission acted arbitrarily and on improper considerations in de-

> termining under what circumstances a common carrier tap line would be deemed to be acting as a mere plant facility of and performing mere plant service for the proprietary companies. (Rec., p. 195.) * * *

Referring to the evidence, the Commerce Court says:

> *It is apparent therefrom that very real evils existed, evils demanding correction.* (Rec., p. 198.)
>
> * * * * *
>
> The power of the Commission *to prevent such rebates and unjust discriminations is beyond question.* (Rec., p. 199.)

Then, as a basis for holding that the action of the Commission was arbitrary, the Commerce Court makes the following statements (Rec., p. 205):

> *In effect* the Commission holds:
>
> First. Switching service within 3 miles of a trunk line is by custom *included in the through rate.*
>
> Second. *Such switching is a transportation service.*
>
> Third. For switching products of a proprietary mill located within the 3-mile limit, no division of the through rate may be made, but an allowance, under section 15, may be paid either to the industry or to its tap line, if the trunk line prefers to permit the industry or tap line to do this work.
>
> Fourth. *For switching products* of a nonproprietary mill an allowance may be given, and, in the case of a common carrier tap line, *a division out of the through rate should be made.*

> Fifth. But no such allowance or division shall be made if the proper switching distance is or should be less than 1,000 feet.
>
> Sixth. * * *. *Neither allowance nor division is to be given the tap line for switching the products of such a proprietary mill.*
>
> In our judgment, *these distinctions must be regarded as arbitrary* and without justification as a matter of law.

We have shown that switching is an independent and distinct service. This the Commission recognized, and where allowances are made for this service—switching cars from the mill to the main track—it is a per car or switching allowance. The *switching allowance* is given, when asked for (see Victoria & Fisher Ry.), under section 15, but in cases where a "division" of a through rate is insisted upon for a switching service, it is refused. The Commission found, as a fact, that in this territory the line carriers absorbed all switching services to a distance of 3 miles. Accepting this fact the Commission held that if they absorbed this service for shippers generally, then where they permitted a shipper or its tap line to do the switching, an allowance of a reasonable switching charge (per car movement), might be made under section 15. This applies to all traffic when such an allowance is asked for. The Commerce Court fails to distinguish between "allowances" under section 15 and "divisions" of joint rates between common carriers operating a "through route." (Rec., pp. 17, 18.)

In the case of nonproprietary lumber traffic if it amounted to a line haul, division of the lumber rate could be allowed. The Commission reserved the right to supervise these divisions on nonproprietary traffic in order to prevent a main line from making unusually large allowances to tap lines as an inducement to the proprietary companies to give the line carrier their own lumber traffic.

It is difficult to see how the Commission could have more carefully guarded the whole situation and cut out the *evils that existed "demanding correction."* The large proprietary mills are all located on the main lines of railroad and are connected with main lines by switch connections. So far as the lumber traffic is concerned, therefore, the only service which the tap line could perform for the proprietary lumber companies was to switch the cars from the mill to the main line and to place the empties at the mill—excluding unnecessary back hauls. If, as stated by the Commerce Court, a tap line may be a common carrier as to some traffic while it is a plant facility as to other traffic, then it was within the power of the Commission to say that as to nonproprietary traffic *where there was a line lumber haul by the tap line* a reasonable division might be made on such traffic.

But the Commerce Court says:

> When these tap lines, * * * take the carloads of finished lumber at the mills *for the purpose of either hauling or switching them to a trunk line* so that they may reach their

> ultimate destination beyond the State, *the interstate transportation has actually begun.*

That is to say the switching is a part of a through route and the tap line is entitled to a division of the rate.

This is contrary to the cases cited, which hold that the shipper must deliver his traffic to the line carrier, or as expressed in some of the cases "*must bring his traffic to the highway.*" Because the statute requires this service on a private siding to be performed by a carrier it does not make it any the less a shipper's delivery. For the purposes of the statute—*that is, for the purpose of regulation*—the whole service is within the statutory term "transportation." Nevertheless the switching is for the shipper to perform or pay for, unless it may be properly absorbed by the line carrier. While it is a way of stating it to say that the line rate "extends to the mill" it is not technically a correct statement. The *line rate* only extends to the point where the carrier receives the shipment *for* TRANSPORTATION to destination. If the carrier absorbs a service beyond that point it is not, properly speaking, an extension of the rate to the mill. This is not an artificial construction or definition, for if absorption works discrimination the carrier may not absorb the service, but must charge for it. This the carrier could not do if the *line rate* "extended to the mill." But where the switching is recognized as a service additional to the line haul it may be freely treated either by absorbing it or charging for it, as the particular case justifies.

The Commerce Court therefore erred in holding that the refusal to give a "division" of the line rate *for a switching service* was arbitrary.

In treating the log haul from the forest to the mill the Commerce Court says:

> *The hauling, it is true, is primarily for the benefit of the mill;* consignee and consignor are one. *If the service had continued to be what it originally was* in most of these cases, *by a private carrier for the one industry alone* or from the forests to the directly adjacent mills, forest and mill being in fact one entire plant, so that the haul was interindustrial, *it might well be held to be a plant-facility service.*
>
> * * * * *
>
> The Commission *might have limited the blanket rate to the lumber either directly or by forbidding milling in transit.* This, however, was not done.
>
> * * * * *
>
> * * * *that other mills must haul their logs* by team to the tap line or must purchase them in the open market, *and that thereby these proprietary mills have great commercial advantages over their competitors does not in any manner affect the matters now before us.* (Rec., pp. 209, 210, 211.)

In short, if a common carrier at a given place wholly absorbs a log haul for big shippers, the fact that other shippers are compelled to perform these services for themselves "*does not in any manner affect*" the case. This is contrary to the doctrine stated in *Wight* v. *U. S.*, *supra.*

The Commerce Court absolutely ignores the character of this milling-in-transit privilege as practiced on the tap lines. The direct advantage to the proprietary mills in having the haul of their logs to the mill paid for by an allowance from the lumber rate is not referred to. In the illustration which we have already given it clearly appears that the proprietary company under this peculiar milling-in-transit privilege is entirely relieved from any expense in hauling logs. This expense is paid for by an allowance out of the lumber rate. The nonproprietary mills pay something for the log haul although it is not a part of the through rate. The Commerce Court erred in its conclusion that—

> *as the actual service* rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line *is the same for proprietary and nonproprietary mills, and as this is held to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.*

The Commerce Court deems it unnecessary to consider the evidence as to each petitioning tap line separately. It decides the case wholly "on a disregard by the Commission of the very criteria which it adopts to determine the ultimate facts or on the adoption of distinctions without real differences," and concludes as follows:

> It follows, therefore, that the Commission was not only without power to forbid any allowance whatsoever to be made by a trunk

> line to the petitioning proprietary industries for switching either less than 1,000 feet or more than 3 miles, but it was also without power to prohibit the making of joint rates by the trunk lines and the petitioning tap lines and the payment by the former to the latter of some division thereof for its services in hauling logs to and lumber from the petitioning proprietary mills, and its order must to this extent and as to these petitioners be annulled. (Rec., p. 212.)

CONCLUSION.

While the Commerce Court states that there are very great evils existing whi h demand correction in these cases, and that it is within the power of the Commission to prevent this rebating and discrimination, it practically ties the hands of the Commission. If this opinion be the law then there is *in fact* no remedy for the evils, the rebating and the discriminations, which admittedly exist in these cases. The only way in which these evils can be eradicated is by prohibiting the practices which result in rebating and discrimination.

The owners of these tap lines are not in the railroad business as a business. They are lumbermen with logging roads as a part of their plant facilities. If by doing a little outside common carriage business they can secure a half million dollars in rebates upon their lumber rates, and the Commission is without power to prohibit this thing, then rebating is legalized so long as the interests of lumber merchants induce them to dabble a little in railroading.

We respectfully submit that the position of the Commerce Court is inconsistent in holding: (1) That there was evidence sufficient to warrant the Commission in finding that these tap lines were not *bona fide* common carriers, and almost in the next sentence saying, that it is *arbitrary* to hold that they are plant facilities as to their own traffic if they are common carriers as to outside traffic; (2) That as the Commission referred to switching as "transportation" under the statute, therefore it must be held that switching is a part of the line haul, and the tap lines are entitled to through routes and joint rates for a switching service; (3) That as the Commission recognized that the transportation of logs with a true milling-in-transit privilege—a *bona fide* charge for the log haul—is legitimate, therefore, a milling-in-transit privilege without a charge for the log haul *must be legitimate*. These several positions taken by the Commerce Court seem to be not only inconsistent, but an unnecessary application of technical construction to certain words in the Commission's report. Though not intentional, the result is to protect an existing evil of large dimensions and widely extended practice, and to cripple the powers of the Commission as a regulating body.

The importance and far-reaching effect of the decision in this case can not be easily overstated. These are in a sense test cases involving definitions of the "line haul" for which the line rate is charged; a switching service, as distinguished from the line haul, for which

additional charges may be made; and milling-in-transit as practiced by tap lines, which results in casting upon the carrier a part of the expense of a shipper's business. The practices condemned in these cases result in very serious depletion of railway revenues, and cast upon the general public a burden which belongs to individual and favored shippers.

They create grave discrimination between shippers and give to favored shippers undue preferences. The extent of these allowances—and this means cash out of the carrier's treasury—is stated by the Commission in its report in this case (p. 2):

> The aggregate amount so paid by the regular lines to industrial lines throughout the country is not known. It has been estimated at no less than $100,000,000 a year. On the basis of such investigations as we have been able to make it seems entirely conservative to say that they amount, for the whole country, to not less than $50,000,000 or $60,000,000 a year.

In Industrial Railways Case No. 4181, decided by the Commission January 20, 1914 (not yet bound. Copies for the use of the court are filed herewith), the Commission said:

> The allowances so paid and the free services so performed involve in the aggregate an immense expenditure for which the carriers must necessarily be reimbursed through the rates exacted on the traffic of the general public; at the same time it must be noted, the allowances and free services so paid and performed by the

carriers relieve the particular industries of a large burden of expense which the industries themselvse would otherwise have to meet as a part of their manufacturing cost. This operates as a discrimination against the smaller competitors of the favored concerns because, in the nature of things, the benefit of such allowances and free services can be enjoyed only by the larger industrial establishments with plant railways.

Citing special cases the Commission said:

Allowances.—During the year ending June 30, 1912, the Pennsylvania Railroad paid $1,019,910.41 in divisions out of the rate to only 10 such industrial railways connected with steel plants; the New York Central's western lines paid to 12 such industrial railways an aggregate of $660,057.93; the Baltimore & Ohio paid to 13 such industrial railways the sum of $530,317.06.

* * * * *

Free services.—During the year ending June 30, 1911, the railroads performed for a single steel industry, the Republic Iron & Steel Company, at Youngstown, Ohio, free spotting services for 75,134 cars at a cost to the railroads of $104,329.62, or $1.40 per car.

It is essential in dealing with these practices that the Commission determine, where the evidence warrants the conclusion, that the tap line or industrial railway is a plant facility as to the proprietary traffic, although it may be at the same time, a common carrier as to some outside traffic.

We respectfully submit that the decision of the Commerce Court should be reversed; that the doctrines herein expressed regarding the extent of the line haul, the character of a switching service on a private siding, and the unlawfulness of absorption of log hauls, should be sustained.

As the Commerce Court declined to discuss the evidence in regard to the particular tap lines we have not referred to it in the brief, but attach an appendix giving a statement regarding each tap line and lumber company. We also submit herewith under a separate cover maps showing the four tap lines as they now exist and as they existed at the time of incorporation.

Respectfully submitted.

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Counsel, Interstate Commerce Commission.

APPENDIX.

THE APPELLEE TAP LINES AND LUMBER COMPANIES.

No. 829.

The Louisiana and Pacific Railway Company and four lumber companies, named as petitioners in this case, are owned and controlled by R. A. Long. He owns 70 per cent of the stock in each company, and the remaining 30 per cent is held by his associates and agents. The tap line company was a party before the commission in the tap line case, and the evidence submitted by it at the hearings before the Interstate Commerce Commission is found in volume 1 of the printed evidence in this case, beginning at page 636 of the record. The exhibits submitted to the commission and referred to are found in the transcript of record in this number. The findings of the commission regarding this company are set forth on pages 591 to 594, inclusive, of the supplemental report. (Rec. p. 111.)

Mr. Sweet, an associate and officer in all the companies of the "R. A. Long interests," who has been connected with these interests for 27 years, and other officials describe the lumber companies, the tap line, and the lumber business. From this evidence (Rec., pp. 636 to 738), the contracts and the annual reports of the railroad companies,

in evidence before the commission, the following facts are taken:

1. The Hudson River Lumber Co. was organized in 1898; its mill is located at De Ridder, within about 1,200 feet of the Kansas City Southern Railroad. It was the first lumber company located at De Ridder; a switch track connected its mill with the railroad, which was operated without charge by the Kansas City Southern. The lumber company built a logging road, afterwards called the De Ridder & Eastern. It built the logging road from its mill into the forest, and operated it without incorporation. In 1904 it incorporated the Louisiana and Pacific Railway Co., which took over the logging road. The operation of this logging road and the loading lumber at the mill *were a part of the manu* of *manufacturing business* carried on by the lumber company.

2. The King-Ryder Lumber Co. commenced business in 1891; its mill is located on the Kansas City Southern at Bon Ami. A switch connection was put in between the mill and the railroad, and operated without charge by the Kansas City Southern. The lumber company built a logging road from its mill into the timber and extended it as the timber was cut off. The operation of the logging road and the loading of the lumber upon the cars on the switch were performed by the lumber company *as a part of its business*.

3. The Calcasieu Long Leaf Lumber Co. is a successor to the Bradley-Ramsey Lumber Co.

Its mill is located at Lake Charles. It had a track connection with the Kansas City Southern at Lake Charles, which was operated by the main line. Now it also connects at Lake Charles with the Louisiana & Western, a part of the Southern Pacific System, and with the St. Louis, Iron Mountain & Southern Railway. All switching was done by the main-line roads without expense to the lumber company up to the time of the organization of the tap line. The forests of this lumber company are located at Camp Curtis, about 31 miles from the mill. A narrow-gauge logging road was constructed by the Bradley-Ramsey Lumber Co. from a point at Lake Charles (point marked Gosport) north to a point shown on the map as Fayette, thence east to Camp Curtis. Logs were floated from Gosport to the mill. This logging road was operated by the lumber company as a part of its manufacturing business, and it loaded the lumber upon the cars at its mill. The Bradley-Ramsey Lumber Co., together with its logging road, was purchased by the Long interests in 1905.

4. The Longville Lumber Co. was organized in and has its timber tracts near Vandercook. A logging road was constructed from its timber tract to its mill at Longville; the mill is located on the Lake Charles & Northern Railway, constructed, owned, and operated by the Southern Pacific system.

5. The Long-Bell Lumber Co. is a selling agent for the R. A. Long interests; it does not manufacture lumber.

6. The tap line, the Louisiana & Pacific Railway Co., was originally incorporated June 6, 1904. The objects for which the company was organized, as stated in its charter, are:

> To construct, maintain, and operate, or to lease and operate, a railroad commencing at Bon Ami, Calcasieu Parish, State of Louisiana, in an easterly direction through Bon Ami Junction, in said parish and State; to lease and operate railway and steamships as common carriers of freight.

The charter was amended March 12, 1907, "to acquire, construct, maintain, and operate a railroad or railroads, and branches thereof, in the State of Louisiana, as a common carrier of freight and passengers; etc."

The authorized capital stock is $200,000, of which only $51,000 has been issued, $20,000 as a dividend to stockholders, and $31,000, it is stated, was issued for cash. The stock is held by the R. A. Long interests in substantially the same proportion as the stock of the lumber companies, namely, 70 per cent by R. A. Long and 30 per cent by his associates and agents. The tap line has a bonded debt of $582,200, created to pay notes given to the lumber companies in payment for their logging roads.

In October, 1906, Mr. Long started a scheme which the witness, Davis, describes as "an effort to find other outlets for his tonnage" (Rec., p. 654) and,

Mr. Sweet says, to "secure more money from the railroads." (Rec., p. 753.) Mr. Davis says:

> Before Mr. Long started south with his property he organized the Louisiana & Pacific Railway, taking over the De Ridder & Eastern road, which was running at that time between Bundicks and De Ridder. Also the line of the Louisiana & Pacific running from Bon Ami out to Walla. Those two lines were in existence at the time. He had this Lake Charles & Leesville road, which was a narrow-gauge line, which had just been purchased, running from a point on the Calcasieu River north over toward Camp Curtis. Those three roads were taken over by this company, and, as he stated, this extension south was started when these negotiations with the Southern Pacific people were entered into. Mr. Harriman wanted a line north and Mr. Long wanted a line south. (Rec., pp. 654–655.)

Evidently the witness is mistaken as to the time these roads were taken over. He has in mind the fact that the roads were taken over during the period of what is termed "the reorganization" of the Louisiana & Pacific Railway Co. This company filed its first report with the Interstate Commerce Commission October 21, 1905, for the year ending June 30, 1905. Under the head "Property operated" (p. 9) it gave the mileage of the line, 1 mile; "spurs," 1½ miles; line operated under trackage right, 10 miles; total, 12½ miles.

In its report filed October 6, 1906, for the year ending June 30, 1906 (p. 9), the same mileage is given.

October 4, 1907, it filed its report for the year ending June 30, and reports, without giving details, 26 miles of railroad from De Ridder, La., to Fulton, La. On page 53 statements called for are answered as follows:

1. All extensions of road put in operation? Answer: Twenty-six miles.

2. Decrease in mileage, etc.? Answer: None.

3. All other important physical changes? Answer: None.

4. All leases taken or surrendered? Answer (p. 53): Lease of equipment and trackage rights with King-Ryder Lumber Co., canceled. New leases made with Calcasieu Long Leaf Lumber Co., Hudson River Lumber Co., and King-Ryder Lumber Co., granting use of equipment and trackage rights.

Under explanatory remarks it states: "The 61 miles of branches and spurs were not operated by the Louisiana & Pacific Ry. Co., but by lessees named on page 53."

There is no increase in capitalization, and under "Explanatory remarks" it is stated: "The capitalization per mile, shown as $345, is small, considering the recent development of the property. When the Louisiana & Pacific Railway Co. was organized and unincorporated, the capitalization of $30,000 was thought entirely adequate for all future developments. When

later the line was extended, no change was made in the capitalization, because it could not be determined just what amount of capital would be required and it was possible to make loans sufficient to carry on the development."

In the annual report, filed with the commission October 25, 1908, under the heading "Roads operated" (p. 13) it gives the following:

> Main line, De Ridder Junction to Bundicks, 8 miles; Lilly Junction to Walla, La., 7.4 miles; Fayette to Camp Curtis, 9.4 miles; Milepost 38 to Banks, La., 2.5 miles; total mileage owned, 27.3 miles. Line operated under trackage rights, Lake Charles & Northern Pacific Railway Co., De Ridder, La., to Milepost 38, 38 miles under trackage right.
>
> Total owned and trackage, 65.3 miles.

Under "Funded debt," an explanatory remark reads:

> This $362,549.57 represents our indebtedness to several companies in the acquirement of track material and equipment. These notes call for interest at rate of 6 per cent per annum from date, but do not specify interest payable annually and the interest has not been paid on accrual.

It clearly appears from these reports that at the time the contracts for divisions were made, October, 1906, this railroad company did not have any railway excepting the $2\frac{1}{2}$ miles of track and "spurs" and the lease of the King-Ryder Lumber Co.'s logging road. To get the full record of this "reorganization" we must now examine the contracts filed as exhibits. The first is with the Southern Pacific (Rec., pp. 188

to 191), dated October 31, 1906. This contract is signed by the Louisiana Western Railway Co. for the Southern Pacific Co. (first party), the Louisiana & Pacific Railway Co. (second party), and by the four lumber companies (third party). The contract recites that the Louisiana Western Railroad Co. is controlled by and constitutes a part of the Southern Pacific System; after other recitals it agrees in substance:

> (1) That during the existence of the agreement the railroads "will interchange business with each other at said point of connection of their respective lines—that is, Lake Charles, La."—on the basis of a division of rates as herein set forth.
>
> (2) That the lumber companies, during each and every month until the expiration of the agreement, will ship over the Southern Pacific, via the connection at Lakes Charles, "at least 40 per cent" of the aggregate products of their mills.
>
> (4) That the two railroad companies will enter into joint arrangements and file the same with the Interstate Commerce Commission.
>
> (5) The lumber companies agree that the Louisiana & Pacific Railway Co. may route their traffic so as to give the Southern Pacific system such haul as shall yield it the largest revenue.
>
> (6) That in respect to the division of freight rates during the existence of this

agreement, the Louisiana & Pacific Railway shall be paid 4 cents per 100 pounds on the products of said mills shipped during the term of the agreement, excepting export business, division of which is to be fixed in the future agreement.

(7) The said party of the first part agrees that it will at all times during the existence of this agreement publish for all points mentioned in its tariff the same freight rates on all products of the parties of the third part from all points on the line of railways of the said party of the second part as are or shall be in effect from Lake Charles, La., on the line of the said party of the first part, which rates shall at all times during the existence of this agreement be competitive with rates from other points in Calcasieu Parish producing yellow pine to all destinations to which the party of the first part may be able to arrange through rates.

(11) This agreement shall commence and become effective on the date hereof, and shall be and remain in full force and effect for the period of 20 years thereafter, *or so long as the parties of the third part shall operate their mills along the line of railway* of said party of the second part.

It will be observed that this contract was made before the Louisiana & Pacific Railway Co. had any railroad in existence between De Ridder and Lake Charles; the contract was in fact a contract with the lumber companies. Their mills were then connected

with the Southern Pacific at Lake Charles, by switches and over the Kansas City Southern Railway.

In connection with this contract a corporation was organized October 30, 1906, called Lake Charles & Northern; the capital stock was taken and is now held by the Southern Pacific Railway Co. This railroad was opened for business October 25, 1908. (Poor's Manual (1913), p. 1460.) The Southern Pacific contract was executed the day after this company was incorporated. On the same day—October 31, 1906—a contract was executed by this newborn railroad company. This contract recites that the Louisiana & Pacific—

> is the owner of a line of railway from De Ridder, La., to a certain point on the Calcasieu River * * *. That part of said line of road lying between Ramsay Junction and said point on Calcasieu River has been completed, but is a narrow-gauge road. Of the remainder of said line of road—that is, that portion lying between De Ridder and Ramsay Junction—a portion has been completed and the other portion is now being constructed.
>
> The said party of the first part also owns a right of way for a railroad from Lake Charles to a point on said narrow-gauge road near the northeast corner of section 32, township * * *.
>
> The said second party [just organized] desires to purchase said first party's line of road from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles

> to the junction with said narrow-gauge road in said section 32; and said first party is willing to sell its said road and said right of way, on condition that it can have the joint use of said line of road from De Ridder to Lake Charles, which condition is not objectionable to said second party.

The purchase price is $15,000 for the narrow-gauge road, or "cost to be ascertained by reference to the books of said party of the first part, *and the cost of balance of the road to be verified by the engineers of the parties hereto.*"

The purchase price is to be paid, $90,000 *upon the execution of the contract,* and the balance "*monthly as the work of construction progresses on estimates* to be furnished by said first party and verified by engineers of the party of the second part, the final amount to be ascertained from the records of the first party by the engineers of both parties."

The contract includes payment to the Louisiana & Pacific Railway Co. for the narrow-gauge road, and the cost of all right of way owned or to be obtained between De Ridder and Lake Charles, structures of every kind existing or to be constructed, making a complete railroad between points; in addition, the Southern Pacific agrees to reconstruct the narrow-gauge road at its own expense, changing it to a standard gauge, but allowing the narrow gauge to remain for the use of the Calcasieu Long Leaf Lumber Co. during the period of reconstruction, and the rails on

the narrow-gauge road are retained by the Louisiana & Pacific.

It is then provided:

> Immediately upon the conveyance by said first party to said second party of the property herein contracted to be sold, the said second party shall execute and deliver to said first party a contract, giving said first party joint-trackage rights over the entire line of railroad above mentioned, * * *
>
> Said trackage agreement shall vest in said first party trackage rights over the said line of railroad from De Ridder to Lake Charles, with all the appurtenances thereto, for a period of 20 years from the date of this contract, for such trains as said first party may desire to operate over said road, provided that the number of trains operated by said first party over said line of railroad shall not materially interfere with the operation of trains by said second party.
>
> * * * and for the use of said railroad as aforesaid, said first party shall pay to said second party a rental equal to 25 cents per train-mile for every train that shall be run over said road by said first party during the existence of this contract. * * *
>
> Payments of rental shall be made monthly and on or before the 10th day of each month.
>
> The term "train" as used in the provisions of this contract shall at all times be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall

be made for any engine running over said road when not pulling one or more cars.

The mileage for which said first party shall be required to pay shall not include the movements of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the moving of logging trains over that part of said line between De Ridder and the junction of the De Ridder branch, which is about three-quarters of a mile in length, or the movements of logging trains over that portion of said line lying between Bonami and the junction of the Bonami branch. Map hereto attached and made part hereof will more fully define the limits referred to.

The contract provides that the Southern Pacific is to pay the cost of maintenance during the period of 20 years and put in and maintain "such sidings as may be reasonably necessary whenever a new mill may be built contiguous to said line of railroad."

The said first party shall have the right to connect said line of railroad over which it is to have trackage rights with any logging railroad or railroads that it may see proper to build at any time during the said 20 years from any point on said line to serve any near-by lumber mills.

This agreement, with all things pertaining thereto, is entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the Louisiana Western Railroad Co., the said Louisiana

> & Pacific Railway Co., the Hudson River Lumber Co., the King-Ryder Lumber Co., the Calcasieu Long Leaf Lumber Co., and the Long-Bell Lumber Co., for division of freights on joint business and for a routing of a proportion of the products of said lumber companies as provided in said agreement.

In reference to these contracts Mr. Sweet, an associate of Mr. Long and an official in all these companies, says:

> "I made at the time of the sale a traffic arrangement, not with the Lake Charles & Northern, *but with the Southern Pacific interests,* and one contract hangs on the other."

THE FRISCO CONTRACT.

(Transcript p. 69.)

Before going to the Southern Pacific, Mr. Long had made a very remarkable contract with the St. Louis & San Francisco Railroad Company. This contract is dated October 13, 1906, and is found upon pages 191 to 198, inclusive, of the record. The four lumber companies are parties to this contract. It contemplates the construction of roads to make a connection that would enable the lumber companies to ship their products over their tap line to the Frisco, and in contemplation of this connection it was agreed that the Frisco should receive 50 per cent of all the products of the mills and allow the Louisiana & Pacific Railway Company "thirty-five per centum (35%) of the through rate,

with a maximum of 5½ cents per hundred pounds" on lumber. There are other matters in this contract which might be commented upon, but it is sufficient, for the purpose of this argument, to say that, armed with this agreement, Mr. Long was enabled, on the 31st of October, to make an arrangement with the Southern Pacific Railway Company by which that company undertook the building of the railroad which the lumber companies, under the Frisco contract, were obligated to build, making a junction with the Frisco road (afterwards built) at Fulton.

THE SOUTHERN PACIFIC.

The Lake Charles & Northern Railway *was constructed after these contracts were executed.* It was wholly paid for by the Southern Pacific, on monthly estimates, as it was constructed. (See contract and annual reports to Commission.) It was opened for business October 25, 1908, two years after the contracts were made. It connects with the mills of the Hudson River Lumber Company at De Ridder Junction and with the King-Ryder Lumber Company at Bon Ami. The connection with the mill of the Calcasieu Lumber Company is at Lake Charles. The Southern Pacific *is operating this road and can receive the products of all these mills on its line from the switch tracks.* Under the custom prevailing in this lumber belt, all switching is done from the mill to the main track by the main-line roads without charge. These lumber companies, therefore, can deliver their lumber, without

charge, from their mills to the Southern Pacific and have it transported to all points at the lumber rate, from De Ridder and Lake Charles.

Prior to the construction of this road, and at the time these remarkable contracts were made, the mills at De Ridder and Bon Ami were connected with the Kansas City Southern Railway, and the Kansas City Southern connected at Lake Charles with the Louisiana Western and the Iron Mountain Railroads. These mills, therefore, had, or could have secured under the provisions of sections 1 and 15 of the act to regulate commerce, through routes from these mills, at the published lumber rates, over all the roads named. It appears from the evidence that no through routes had been established over the Kansas City Southern from De Ridder to the lines with which it made connection at Lake Charles, but such through routes could have been compelled by an application to the Interstate Commerce Commission, if these shippers required that service. The Calcasieu Lumber Company at Lake Charles was within the switching limits of each one of the railroads named.

In view of the foregoing facts, it seems remarkable that a railroad should have been projected from Lake Charles to De Ridder for the purpose of serving the public. But admitting that it was necessary, it was entirely unnecessary that two railroad companies should operate over this line. If the Southern Pacific was to operate, as it does, between Lake Charles and De Ridder, there was no reason, from the public stand-

point, why this other company, the Louisiana & Pacific, which runs only to the lumber camps of the Long lumber companies, should also operate over the same track. The reasons for this arrangement are to be found in the desire of the lumber companies to secure a concession from the published rates on lumber from their mills to the markets, or, as Mr. Sweet puts it, "to get more money out of the railroads." They could have secured the through routes to all points reached by any of these railroads at the rate prevailing upon lumber, which was the same from De Ridder as it was from Lake Charles, through their switch connection with the Kansas City Southern and the other roads at Lake Charles. But this did not satisfy the lumber companies; they wanted to "*sell their traffic.*" It was only by a scheme of this kind, and through an agency created by them, that a large concession could be secured from the published rates.

For a less proportion of the through rate, the Southern Pacific could have secured connection with the mills over the existing line of the Kansas City Southern. The Frisco road was afterwards built and connects at De Quincy with the Kansas City Southern. A through route could have been secured from De Ridder over the Kansas City Southern to points on the Frisco. It can hardly be presumed that the portion of the rate to the Kansas City Southern for hauling the traffic from De Ridder to De Quincy, or from Lake Charles to De Quincy, would have been 35 per cent

of the through rate, with a maximum of 5½ cents per 100 pounds. Nor can it be supposed that the portion of the Kansas City Southern for hauling from De Ridder to Lake Charles and transferring to the Southern Pacific would have been as much as 4 cents per 100 pounds. But with the division of through rates over these lines the mills were not concerned. They wanted to sell their traffic for the largest possible concession from the lumber rate.

LOSSES TO THE SOUTHERN PACIFIC.

The maintenance, under the contracts with the Long lumber interests, of the Lake Charles & Northern Railway has resulted in a large annual loss to the Southern Pacific. The reports of the Lake Charles & Northern Railway Company, filed with the Interstate Commerce Commission, show that in 1909 the net corporate losses in the operation of that road from Lake Charles to De Ridder were $23,928.61; in 1910, $6,190.61; in 1911, $19,110.36; and in 1912, $27,713.01. (See certified copies of reports.) These are actual cash losses. In addition, the Southern Pacific permits, without charge, certain log hauls over this road by the Louisiana & Pacific Company. The rent collected from the Louisiana & Pacific at the rate of 25 cents per train-mile for specified traffic is at least one-fifth of what would be regarded as a fair rental.

ADVANTAGES TO THE LOUISIANA & PACIFIC.

Assuming that there was a reason for the existence of the Louisiana & Pacific Railway Company other than as a plant facility in hauling logs, and that it was

necessary for it to build and maintain a road from De Ridder to Lake Charles, the advantages of this agreement, by which the Southern Pacific built and is required to maintain at its own expense this line of road, may be stated as follows:

[Figures taken from the annual reports of the Lake Charles & Northern Railway Company and Louisiana & Pacific Railway Company, with the exception of the "5 per cent return upon investment." Copies on file.]

	Fiscal years ended June 30—			
	1909	1910	1911	1912
Property investment of Lake Charles & Northern R. R. Co.	$833,888.94	$883,674.81	$894,134.35	$900,168.02
Less value of equipment	21,900.00	21,900.00	29,866.00	29,645.50
Value of property in joint use	811,988.94	861,774.81	864,268.35	870,522.52
5 per cent return upon investment in joint use	40,599.45	43,088.74	43,213.42	43,526.13
Maintenance of way and structures expenses	12,489.97	21,916.64	38,061.79	33,873.05
Transportation expenses:				
Superintendence	2,210.13	2,429.43	3,338.83	3,876.83
Dispatching trains	1,001.60	1,500.00	1,300.02	732.24
Station employees	5,249.52	7,859.01	9,652.41	9,751.75
Station supplies and expenses	218.87	270.02	619.03	474.34
Water for road locomotives	316.00	806.25	1,227.53	1,278.92
Drawbridge operation	1,075.39	1,373.79	1,372.43	1,363.69
Total expenses	21,561.48	36,155.14	55,222.04	51,350.82
Total expenses and return on investment	62,160.93	79,243.88	98,435.46	94,876.95
Amount paid by L. & P. Ry. for use of facilities of L. C. & N. R. R.	16,182.57	18,386.84	20,850.32	19,513.63
Advantage to L. & P. Ry. Co. over owning and maintaining the property	45,978.36	60,857.04	77,585.14	75,363.32

The foregoing statement assumes that the traffic over the road would be only the traffic carried by the Louisiana & Pacific during the periods covered by the statement. But which ever way it is looked at—from the standpoint of the Southern Pacific losses or from the advantages which the Louisiana & Pacific secures—the concessions to this tap line far exceed any amount that can be explained upon any hypoth-

esis other than that this deal was a flagrant concession to the Long interests to secure 40 per cent of his traffic.

It must be observed that this road, maintained by the Southern Pacific, is also used in part as a logging road for the Calcasieu Lumber Mill, and from Lily Junction to Bon Ami for the King-Ryder Lumber Company, and from De Ridder Junction to De Ridder for the Hudson River Lumber Company.

Next comes the cash concession from the lumber rate. In the testimony taken before the Commission (Rec., p. 660), Commissioner Harlan inquired of Mr. Davis what the 4 cents per hundred pounds amounted to on an ordinary carload, to which Mr. Davis replied "20 dollars a car." One of the mills turned out 2,500 cars a year. This amounts to $50,000 per annum, applying the 4 cents to the entire output. When we consider that 90 per cent of the entire output of each mill goes either to the Southern Pacific or the Frisco line, and that the allowance from the Frisco is greater than that from the Southern Pacific, the magnitude of this rebate clearly appears.

From the foregoing statement it will be seen that all the lumber mills operated by the several lumber companies in this case are located upon, and can be served directly by, main line railroads. Under the custom prevailing in this timber belt, as found by the commission, the main line railroads absorb the switching service to the mills and apply the

junction rate. There is, therefore, no sound reason why the Louisiana & Pacific Railway Company should operate over the rails of the Southern Pacific in handling lumber. This service of the Louisiana & Pacific does not add in the slightest to the public convenience. It is a burden superimposed by contract upon a main line carrier, and is a mere device to secure a concession from the published rates on lumber applicable to the traffic of these lumber companies. Main line roads, required by law to devote their entire capital to transportation, should not be burdened with a service and traffic which is fictitious and useless. The whole scheme is an unlawful device, to secure a rebate from the published rate on lumber. From the Southern Pacific side it is a "buying" of 40 per cent of the Long lumber traffic.

No. 831.

The Woodworth & Louisiana Central Railway Company, Limited, was chartered in 1900 under the laws of Louisiana, with a capital stock of $25,000. It took over the logging road of the lumber company, as hereinafter described, at a valuation of $88,000, for which it gave its notes. These notes are still unpaid, and no interest has been paid upon them. The notes are held by the lumber company. It is a mere agency of the lumber company.

It serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain Railroad. The logging road was constructed by

the Rapides Lumber Company and operated as a plant facility for a number of years. It extended some miles from the mill on the Iron Mountain Railroad into the timber lands owned by the mill company, and is used for the purpose of hauling logs from the timber to the mill to be manufactured into lumber. This track is narrow gage, and at present extends about 18 miles to a point from which unincorporated tracks are still operated directly by the lumber company. The right of way for the narrow-gage track is leased from the lumber company, but the track from the mill to a point shown on the map as Hineston is owned by the railroad company. It is operated for the purpose of conveying logs from the forests to the mill, this service being the same as the service originally performed by the mill company. In addition, there is a switch track from the mill at Woodworth to the Iron Mountain Railroad. This switch track was originally put in by the mill under arrangement with the Iron Mountain Railroad Company, and was operated by the Iron Mountain. The Woodworth & Louisiana Central acquired, in exchange for its notes, the interest which the mill had in this switch track, and undertook its operation.

The Woodworth & Louisiana Central, with capital furnished by Mr. Long, constructed a spur standard gage railroad from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. This spur track was constructed for the purpose of conveying

lumber manufactured by the mill company to competing lines of railroad, the purpose, as stated, being to secure competition for their traffic.

The tap line has one standard gage and five narrow gage locomotives. The standard gage locomotive is used for switching the carloads of lumber from the mill to the Iron Mountain Railroad, a distance, as the record before the Commission shows, of twenty-five feet, and for delivering carloads of lumber from the mill to the railroad lines at La Moria, a distance of six miles.

About 95 per cent of the lumber moves through La Moria. The explanation is in the fact that the allowances out of the through rate from the Iron Mountain Railroad run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. At the time of the hearing before the Commission the record shows that 40,707 tons of freight were handled for the lumber company during the fiscal year ending June 30, 1910, and 2,100 tons of outside traffic consisting of merchandise, farm products, and miscellaneous material, which included supplies carried to the mill and the milling camps. There is no passenger service.

LUMBER COMPANY.

The Rapides Lumber Company was organized and commenced operations many years before the organization of the Woodworth & Louisiana Central Railroad. Its business includes the cutting of timber and the manufacturing and sale of lumber. No logs are

shipped over the main line railroads; only lumber manufactured from the logs is delivered to the main lines for shipment to the markets. As a part of its business, and to cheapen the cost and facilitate business, the mill company constructed the narrow-gage tap line above described for the purpose of conveying the logs from its timberlands to its mill and conveying supplies from Woodworth to its lumber camps. It still continues to operate the narrow-gage road from Hineston into the timber, shown upon the map in yellow lines. At the time of the hearing, and for some time after the order in controversy was entered, the steel for these logging roads into the timber was supplied by the W. & L. Central. Since the hearing this has been changed upon the books of the company. The fact remains, however, that this narrow-gage road is operated precisely as it was operated by the mill company and for the same purpose, and without any money changing hands. The connection between Woodworth and La Moria is used entirely for putting the products of the mill upon the lines of three competing railroads; the line being more than three miles long, it is not a service which, by custom in this territory and in reference to this traffic, is absorbed by the main lines as a part of the service of transportation under the main-line group rate. It consists, therefore, of a plant facility performing a plant service in delivering the products of the mill to competing lines in order to secure greater allowances out of the regular rate and additional car

service. It is just as much a part of the business of the lumber company as it would be if this haul was made by teams. The rails and steam engine decrease the cost of delivery over team service, and are therefore used. It is a business proposition. The question before the Commission was simply whether the "divisions" for this service out of the main-line lumber rate was an unlawful device.

No. 833.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY.

This company was incorporated in 1881 under the laws of Louisiana by the citizens of Mansfield. Two miles of track were constructed from the town of Mansfield to a connection with the Texas & Pacific Railroad at a point known as Mansfield Junction, to serve the town of Mansfield as a freight connection. No passengers are carried over this line, passengers being conveyed by stages.

About 1891, E. A. Frost and associates purchased the entire capital stock of this railway company for $12,500, and about the same time purchased a large tract of timberland lying west of the line of the Texas & Pacific Railroad. These parties erected a sawmill at a point near Mansfield known as Oak Hill. The timber and the mill were held and operated by a corporation owned by Frost and his associates, known as the De Soto Land & Lumber Company, and the stock of the Mansfield Railway was held by this lumber company. Some six or eight

miles of logging roads were constructed from a connection with the mill into the timber. The Frost Lumber Company was organized and took over the property and business of the De Soto Company.

The tracks into the timber were used solely for conveying logs to the mill, and the mill was connected by switch with the Texas & Pacific Railroad. Lumber was shipped from the mill over this side track or connection, the cars being switched and the service absorbed by the main-line road.

At a point about 1½ miles east of Mansfield a connection is made by a switch with the Kansas City Southern Railway.

In transferring the logging road to the Mansfield Railway & Transportation Company, the lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill. No consideration was allowed for this; the full value of property transferred was exchanged for the outstanding capital stock to the amount of $77,300, all of which, at the time of the investigation by the Commission, was held by the stockholders of the Frost Lumber Company. The railroad is indebted to the lumber company in the sum of $216,806.97. The holdings of the stockholders in the Frost-Johnson Company and the tap line are identical.

There is a subsidiary corporation of the Frost-Johnson Company that performs the entire logging service. The lumber company assigned its trackage privilege over the tap line to the logging company. The Mans-

field Railway and Transportation Company owns one locomotive, a passenger coach, and one box car; the logging cars are owned by the subsidiary company that transports the logs.

In addition to the incorporated logging road, there are, in the aggregate, nearly 25 miles of unincorporated logging tracks in the timber.

FROST-JOHNSON LUMBER COMPANY.

As before stated, this corporation has been in existence for some time. It received the stock of the Mansfield Railway & Transportation Company and distributed it to its stockholders. It owns the subsidiary logging company and also the timberlands and mill. The mill is located at Oak Hill, about three-fourths of a mile from the junction with the Kansas City Southern Railroad, and 2½ miles from the point of interchange with the Texas & Pacific Railroad. The mill is within 300 feet of the right of way of the Kansas City Southern, with which it formerly connected by a switch. After the organization of the Mansfield Railway Company, this switch was abandoned, and later taken up and the other connection made. The distance of the lumber movement from the mill to the main lines is (*a*) to the Kansas City Southern about three-fourths of a mile, and (*b*) to the Texas & Pacific Railroad about 2½ miles.

Under the custom found by the commission to prevail in this territory the main-line roads absorb the service of switching or moving cars over the side tracks connecting with lumber mills where the

distance does not exceed 3 miles. Under this custom, therefore, the Frost Lumber Company can have its lumber taken from its mill by the Kansas City Southern Railway Company or the Texas & Pacific Railroad Company at the main-line rate; that is, without any switching charge. The Frost-Johnson Company's mill manufactures yellow-pine lumber. There is a hardwood mill adjacent to the mill of the Frost-Johnson Company, operated by the Mansfield Hardwood Lumber Company. This company buys a substantial portion of its timber from the Frost-Johnson Company or its subsidiary logging company. The price paid includes delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner as the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific Railroad, which are brought to the junction by the latter road and switched by the Mansfield Railway & Transportation Company to the mill at a charge of $2.50 a car.

The original connection with the Kansas City Southern was about 300 feet long. This switch was taken out and a connection about three-fourths of a mile long was substituted. After the latter switch was made an arrangement was effected by which the Kansas City Southern undertook to pay the Mansfield Railway & Transportation Company divisions of 1 to 4 cents per 100 pounds. This was held by the commission to be "a mere manipulation of the

situation in order to establish a relation that is unlawful."

The tap line also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tap line back towards Mansfield, and then to the junction, making the distance 2½ miles; the tap line receives from the Texas & Pacific 1 to 4 cents per 100 pounds.

It will be observed that in both instances the original short switch connections were taken out and longer connections were constructed. The purpose as found by the commission was to compel these main lines to make a greater allowance to the tap line out of the main line rate. This is a plain "device" to secure a rebate.

No. 835.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY.

This railroad was incorporated in November, 1902, under the laws of Louisiana. It is owned by the stockholders of the Louisiana Long Leaf Lumber Company. The railroad and lumber company have the same officers, and the capital stock of the railroad company, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company.

The track of the railroad was constructed some 25 years ago as a logging road and was acquired by the present lumber company in 1900. It connects

with the Texas & Pacific Railroad at Victoria, Louisiana, and runs southward, crossing the Kansas City Southern at Fisher, and terminating at a point known as Cain, a distance of about 31 miles. There are about 25 miles of logging spurs and side tracks operated by the lumber company. The railroad has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet which, it claims, covers the service performed on the logging spurs, and not on the haul over the main track. The lumber from the mill is switched about one-half mile by the tap line to the Kansas City Southern, and about 1 mile to the Texas & Pacific. It receives divisions out of the main line rates from both railroad companies, ranging from $\frac{3}{4}$ of a cent to 4 cents per 100 pounds, except on traffic moving to points in Texas, where $1\frac{1}{4}$ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage for the year 1910 was furnished by the proprietary company.

THE LOUISIANA LONG LEAF LUMBER COMPANY.

This lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and another about half a mile from the tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years, and was

acquired by the present lumber company in 1900. The timber holdings of the company approximate 95,000 acres, in addition to which it owns 80,000 acres of cut-over land. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, while the greater part of the lumber produced at the mill at Victoria is delivered to the Texas & Pacific Railroad. A small amount of lumber from each mill moves over the tap line to the more distant trunk line.

The organization of this tap line and its operation did not change the service theretofore rendered; that service was a part of the business operation of the lumber company. It is still a plant or business service. The organization and changes made was a device to secure rebates.

TOTAL LUMBER TONNAGE OVER THESE FOUR TAP LINES.

The evidence before the Commission shows that the lumber tonnage of these several tap lines is as stated below. The carloads are figured on the basis of 25 tons per car.

	Tons.	Equivalent in carloads on a basis of 25 tons per car.
Louisiana & Pacific Ry	243,122	9,725
Mansfield Ry. & Transportation Co	28,596	1,144
Victoria, Fisher & Western R. R	316,416	12,657
Woodworth & Louisiana Central Ry	39,773	1,591
Total	627,907	25,117

Taking Mr. Davis's statement that the "divisions," under the Southern Pacific contract, would be $20

a car, and applying that to the whole traffic, it would amount to $502,340. An average of half that rate would amount to a yearly profit of over a quarter of a million dollars. And this comes out of the lumber rates applicable from the junction points. To the extent of these allowances these Long lumber companies are preferred over their competitors and railroad revenues are that much depleted.

The extent of these practices, the importance of the subject, and the far-reaching effect of the tap-line decision is suggested by the following from the Commission's report (p. 282):

> Of the 2,208 industrial lines of all classes that were examined in the course of the general investigation referred to, it was found that some 1,251, incorporated and unincorporated, were tap lines owned by or closely affiliated with companies engaged in different parts of the country in the manufacture of lumber and forest products. Of these so-called railroads only 243 were found to be receiving allowances from the public carriers. On the other hand, 1,008 were receiving no allowances of any kind. The 243 lumber companies that were beneficiaries of such contributions from the public carriers were operating, through their tap lines, 5,787 miles of track, while the tap lines of the 1,008 other mills receiving no aid from the public carriers were operating 12,358 miles of track. These figures fairly lead to the inference that it is the larger lumber companies with their larger traffic that receive allowances, while the

smaller concerns are compelled to get along without such contributions from the public carriers.

These 1,251 lumber mills in different parts of the country are operated under different conditions and manufacture lumber of different kinds and classes. It must be remembered, nevertheless, that they are all in competition with one another in the general lumber markets of the country. But limiting our comments to the conditions that exist west of the Mississippi River in the three States of Arkansas, Texas, and Louisiana, where the lumber industry is confined largely to yellow pine, we find that the public carriers, at the time our investigations were brought to a conclusion, were making allowances out of the rates to 112 tap lines, while 143 tap lines were receiving no such contributions.

QUESTIONS INVESTIGATED.

The investigation by the Commission had in view, and for its purpose, the ascertainment of all evidential facts bearing upon, and the determination from the facts of, the questions—

(1) Whether the giving of these divisions constituted in any case a rebate; and

(2) Whether, in a case where a tap line is a common carrier but wholly owned by a proprietary lumber company, a division with the tap line, upon the traffic of the proprietary lumber company, constituted, in whole or in part, unjust and undue discrimination in favor of the proprietary lumber company and against its competitors in the same field.

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Office Supreme Court, U. S.
FILED
APR 6 1914
JAMES D. MAHER
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

Nos. 829, 831, 833, 835.

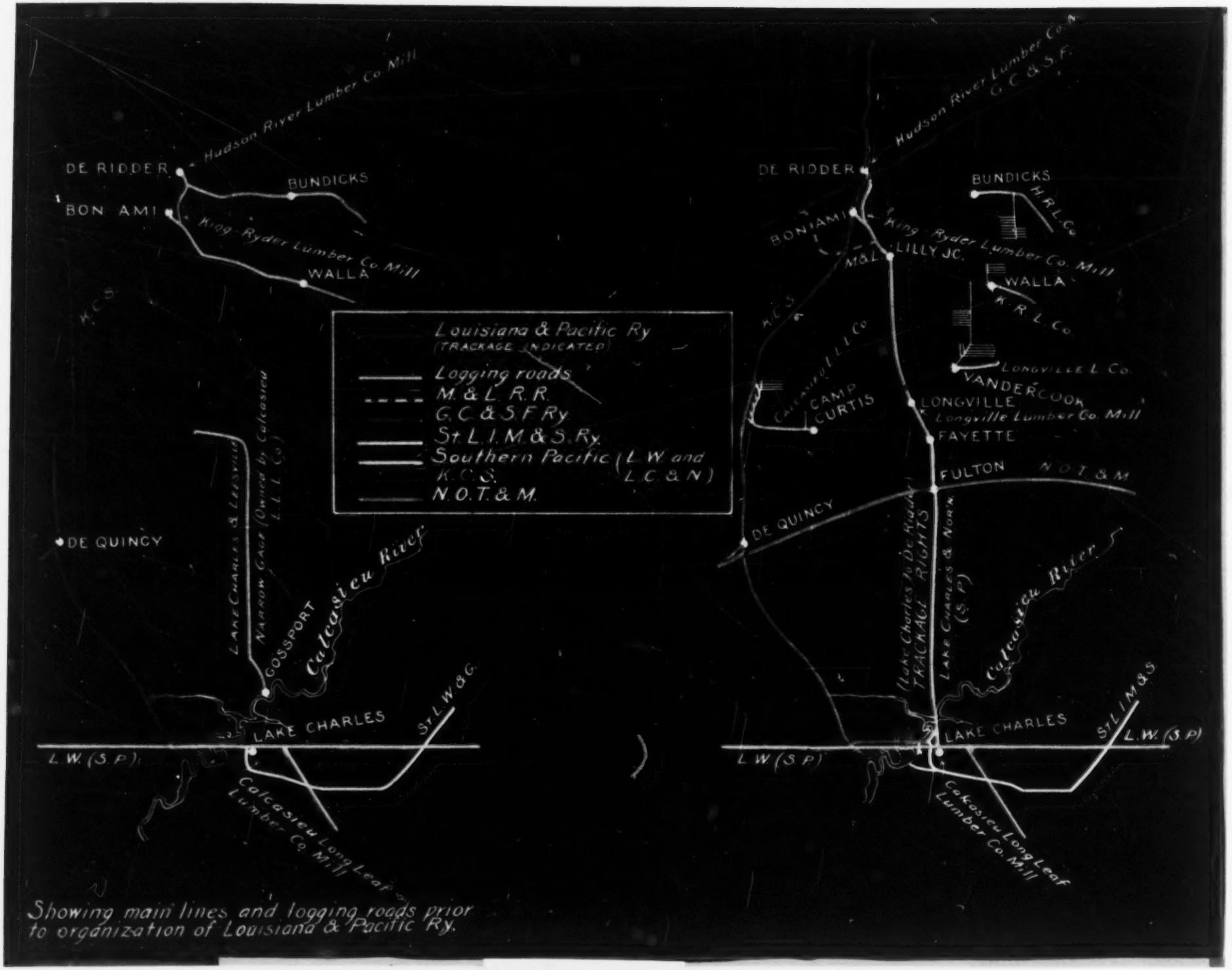
APPENDIX B

TO THE

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,
CHARLES W. NEEDHAM,
Counsel for Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1914



Showing main lines and logging roads prior to organization of Louisiana & Pacific Ry.

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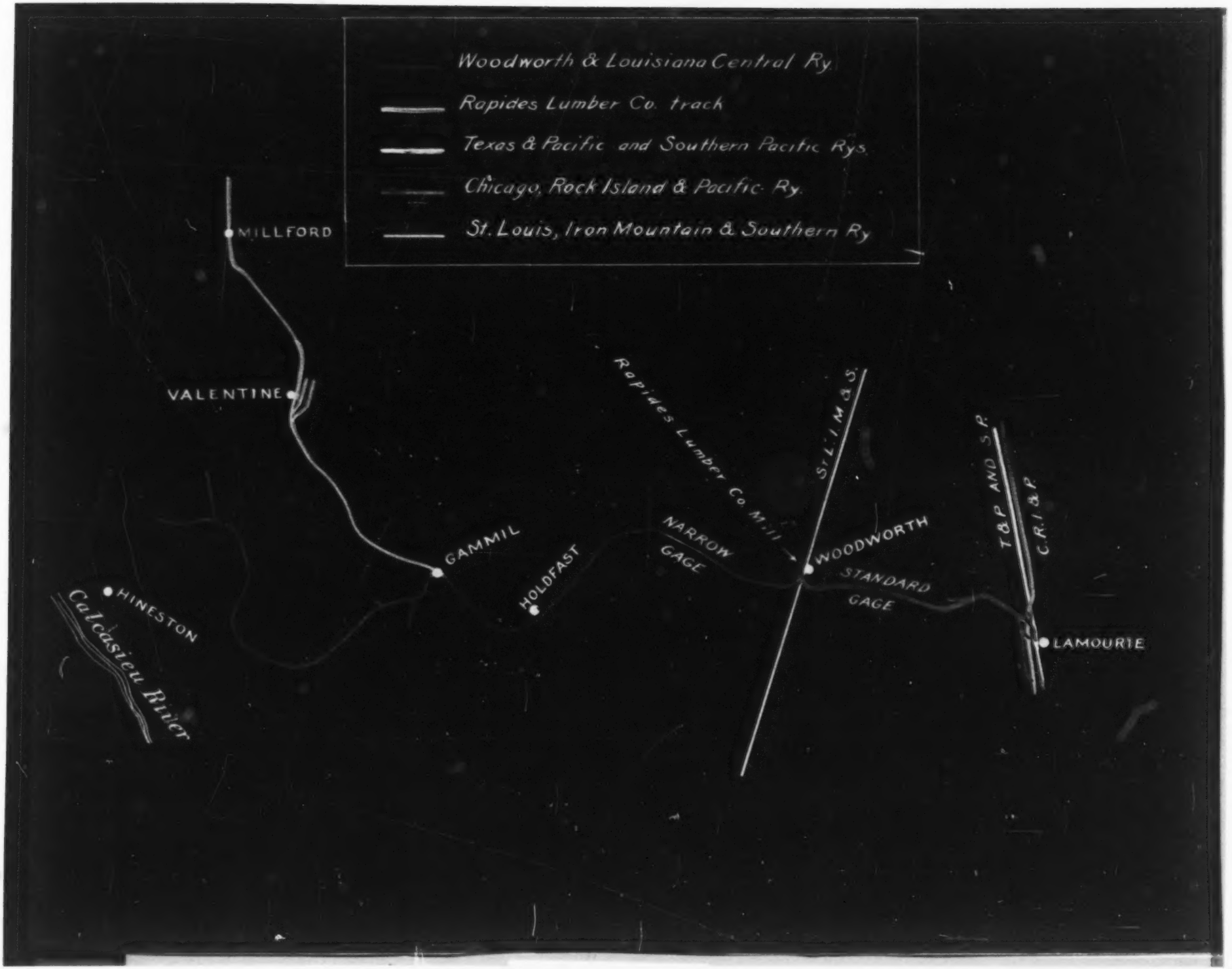
Woodworth & Louisiana Central Ry.
Rapides Lumber Co. track
Texas & Pacific and Southern Pacific Rys.
Chicago, Rock Island & Pacific Ry.
St. Louis, Iron Mountain & Southern Ry.
MILLFORD
VALENTINE
GAMMIL
HOLDFAST
HINESTON
Calcasieu River
Rapides Lumber Co. Mill
NARROW GAGE
STANDARD GAGE
WOODWORTH
St. L. I. M. & S.
T&P AND S.P.
C.R.I.&P.
LAMOURIE

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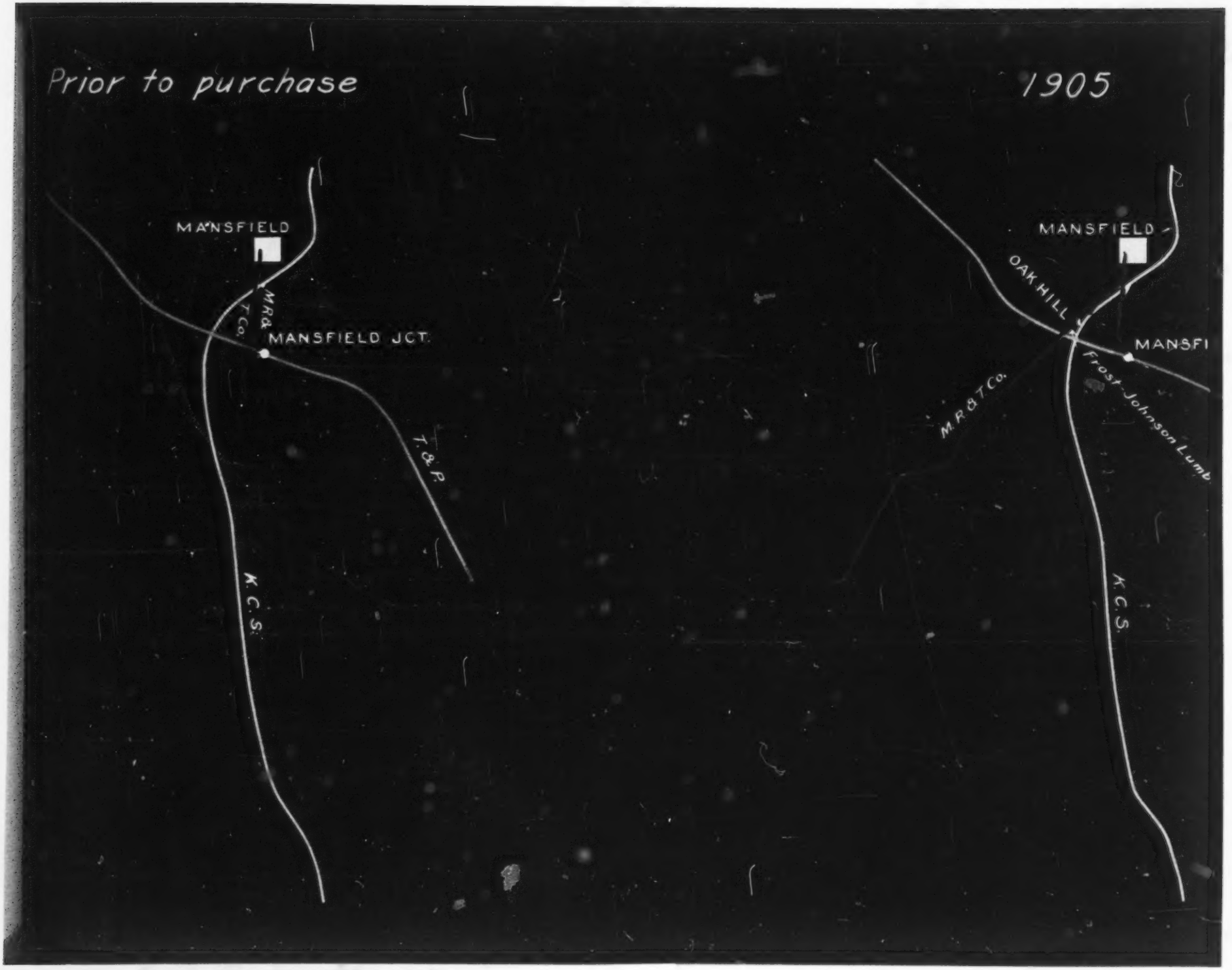
Prior to purchase
1905
MANSFIELD
MR&T Co.
MANSFIELD JCT.
T. & P.
K. C. S.
MANSFIELD
OAK HILL
MANSFI
M. R & T Co.
Frost-Johnson Lumb
K. C. S.

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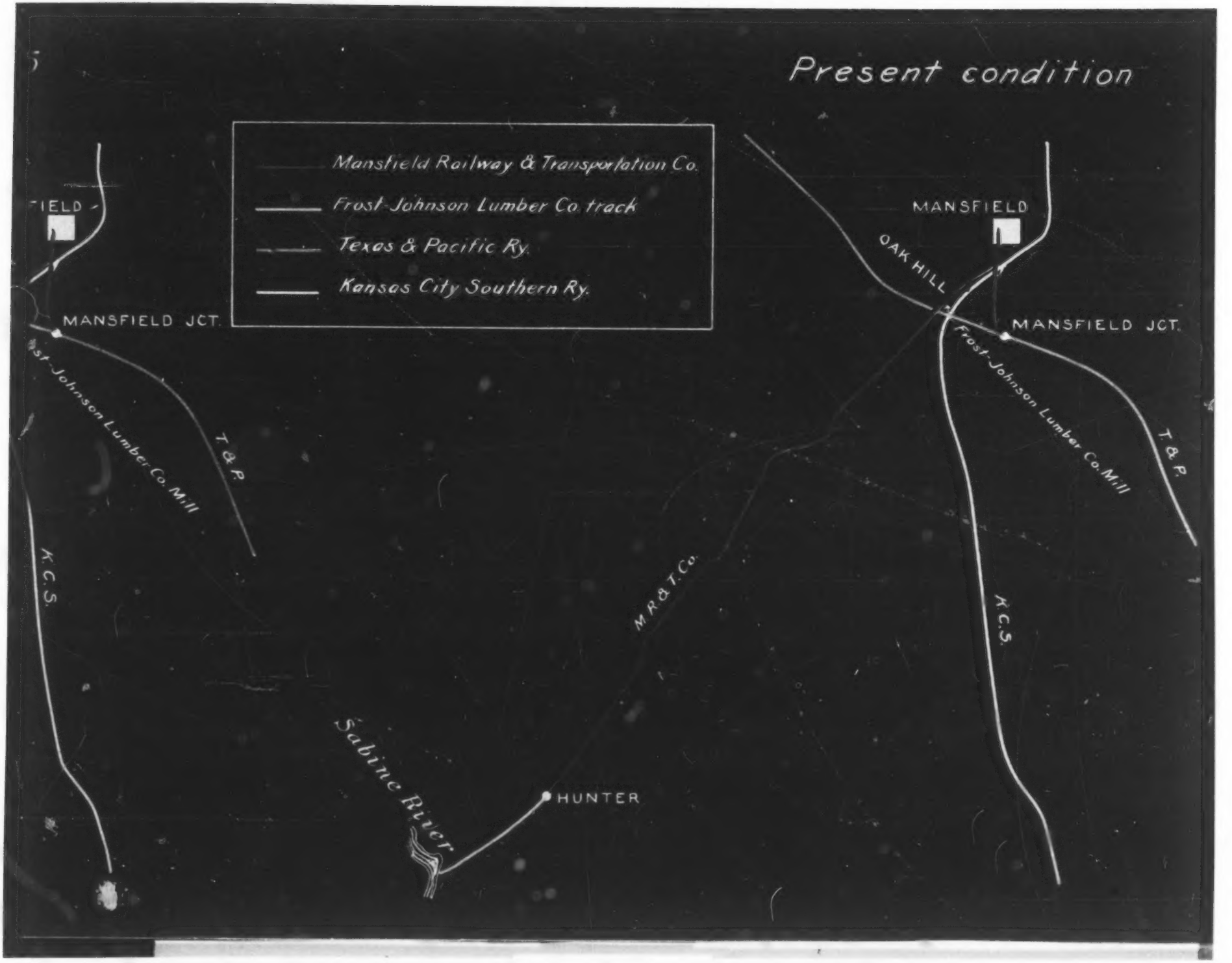
Present condition
Mansfield Railway & Transportation Co.
Frost-Johnson Lumber Co. track
Texas & Pacific Ry.
Kansas City Southern Ry.
MANSFIELD
MANSFIELD JCT.
OAK HILL
MANSFIELD JCT.
Frost-Johnson Lumber Co. Mill
T & P.
K.C.S.
M R & T Co.
K.C.S.
Sabine River
HUNTER

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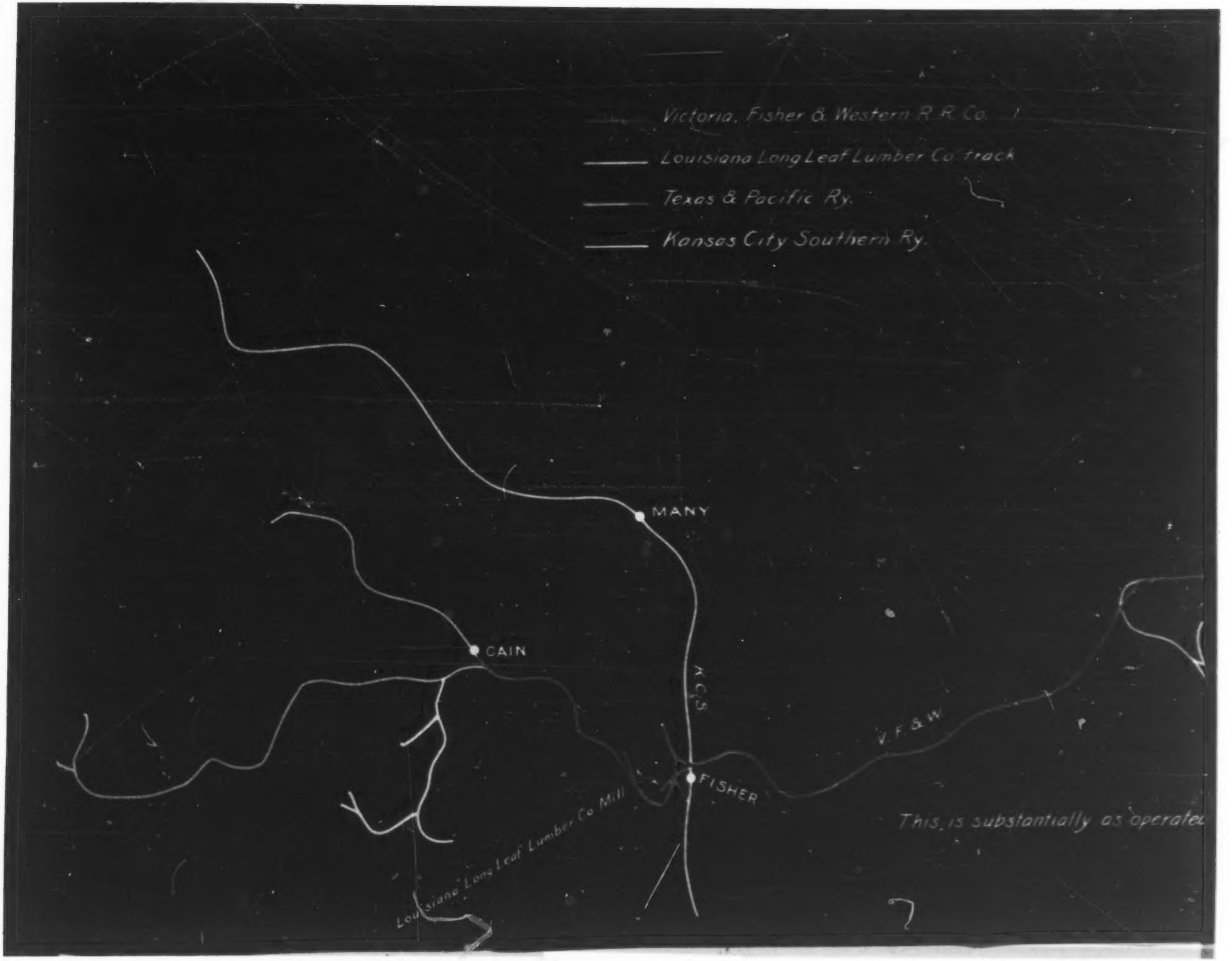
Victoria, Fisher & Western R R Co.
Louisiana Long Leaf Lumber Co track
Texas & Pacific Ry.
Kansas City Southern Ry.
MANY
CAIN
V.C.S.
V.F.&W.
FISHER
Louisiana Long Leaf Lumber Co Mill
This is substantially as operated

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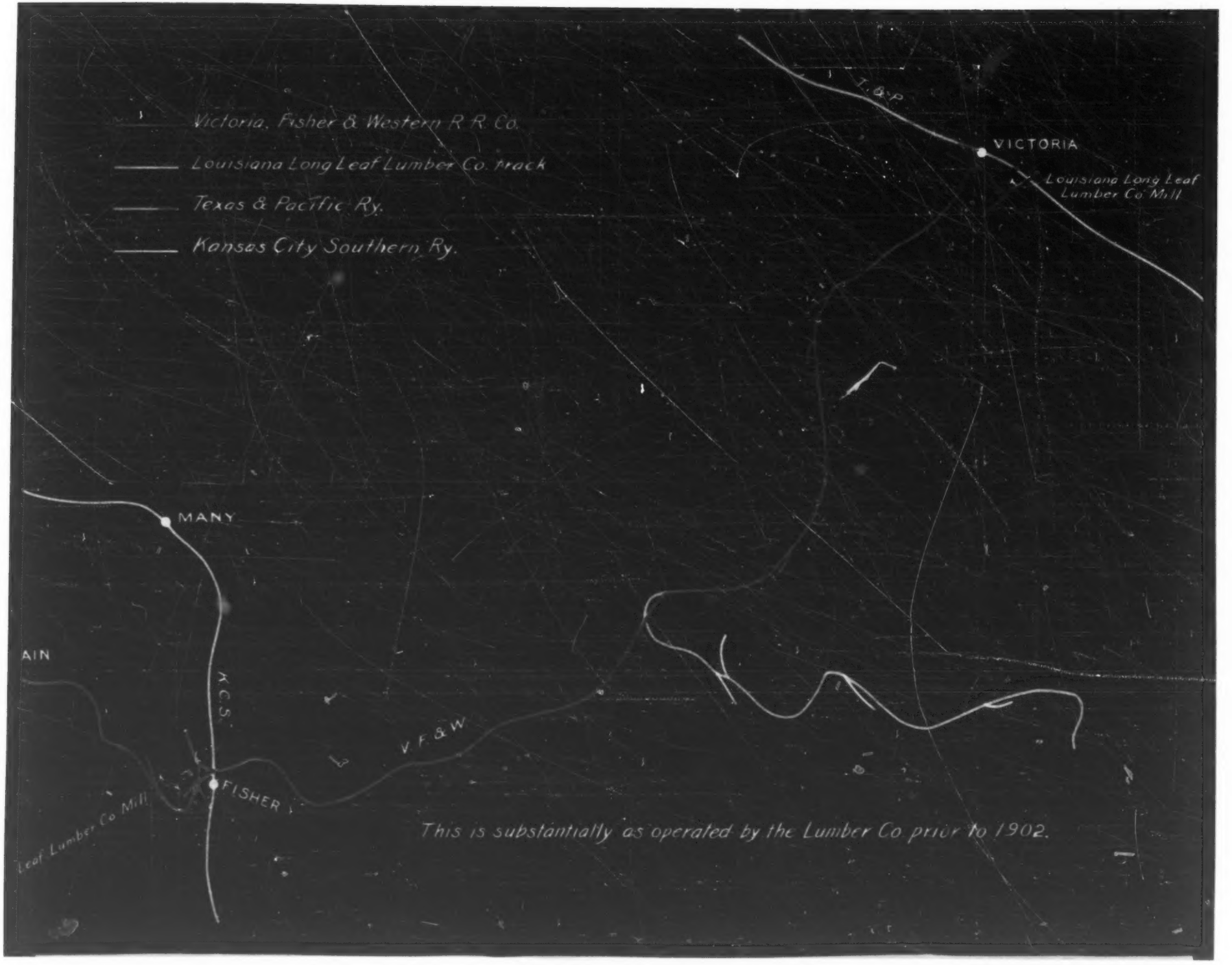
Victoria, Fisher & Western R R Co.
Louisiana Long Leaf Lumber Co. track
Texas & Pacific Ry.
Kansas City Southern Ry.
T. & P.
VICTORIA
Louisiana Long Leaf Lumber Co. Mill
MANY
AIN
K.C.S.
V.F.&W.
FISHER
Leaf Lumber Co. Mill
This is substantially as operated by the Lumber Co prior to 1902.

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Substituted Brief

Tap Line Cases.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 829.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., APPELLEES.

No. 831.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY (LTD.) ET. AL., APPELLEES.

No. 833.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., APPELLEES.

No. 835.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., APPELLEES.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

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WASHINGTON: GOVERNMENT PRINTING OFFICE: 1914

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 829.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL., APPELLEES.

No. 831.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY (LTD.) ET. AL., APPELLEES.

No. 833.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY ET AL., APPELLEES.

No. 835.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

VICTORIA, FISHER & WESTERN RAILROAD COMPANY ET AL., APPELLEES.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

STATEMENT.

It is reasonably clear from the facts in these cases that the proprietors of the different tap lines in con-

troversy were receiving rebates from the trunk lines prior to the passage of the Hepburn Act. After the Hepburn Act went into effect the proprietors incorporated the tap lines, and then received in the shape of divisions what before they had gotten as rebates.

The position of the Commission is that there is no magic in a corporate charter to change crime into innocence, and if stripped of its cloak of incorporation the division awarded a tap line is in effect a rebate the Commission may, under the authority to prevent rebating and discrimination given by the act to regulate commerce, make such orders as will stop the abuse. The power given to the Commission with respect to rebating and discriminations it would seem carries with it the authority to pass on divisions between different lines, and if under the facts and circumstances the Commission finds a rebate concealed in a "division" of the through rate it is the right and duty of the Commission under the law to order a discontinuance of the practice bringing about this result.

Whether a line is an industrial or common carrier is of importance only as affecting the question of rates. Being a rate-making question it comes within the exclusive province of the Commission to determine the reasonableness of the division or allowance. (Mitchell Coal Co. *v.* Penna. R. R. Co., 230 U. S., 264.)

It was within the administrative functions of the Commission to investigate the facts surrounding

each so-called tap line and the conclusions of the Commission as to facts are not open to review. The determination and investigation of the different conditions surrounding the various tap lines were administrative matters for the Commission to decide.

If the Commission has no power to look through the veil of incorporation of the tap lines, in order to prevent rebating, a plant situated say 4 miles from a trunk line could, by the mere process of incorporating its tap line, secure rebates in the guise of "divisions" with immunity. It is the contention of the Commission that the act to regulate commerce gives it authority to prevent such discriminations, and if it finds that a line is in fact a mere plant facility as to the proprietor it may so declare, even though the same line may incidentally perform the duties of a common carrier as to others than the proprietor.

The Commerce Court held that the Commission could not by its order make a distinction between proprietary traffic and nonproprietary traffic.

POINTS.

1. A tap line is not entitled to a "division" of the through line lumber rate for performing a switching service. Where the carriers absorb the switching service at the points of origin of lumber traffic, the shipper or its tap line may be allowed, under section 15, a reasonable switching charge for performing the switching service.

2. Logs and lumber are distinct commodities, for each of which there is a classification and commodity rate; the cost of transporting logs is a part of the cost of the logs at the sawmill; therefore a log haul performed by a carrier *free of charge* is a consideration to induce the mill owner to give the carrier his lumber traffic at the published lumber rate; such absorption of a distinct service by a carrier is rebating or "buying the traffic."

3. A milling-in-transit privilege which extends the lumber rate, for the lumber line haul, back to the forest and thereby absorbs or obliterates any charge for the log haul, is not a true milling-in-transit privilege and is unlawful.

4. A tap line or industrial road may be so owned, organized, and conducted as to be a plant facility as to the traffic of the proprietary company and a common carrier as to nonproprietary traffic.

5. It is within the powers of the Interstate Commerce Commission, upon full hearing, to determine:

(*a*) That the practice in a given case of absorbing switching, spur track, and log-haul services in order to secure the shipper's lumber traffic creates undue discrimination, favoritism, and rebating.

(*b*) That a milling-in-transit privilege which has the purpose and effect of rendering to the shipper a free service in transporting raw material for him, in order to secure the shipper's traffic of manufactured commodities, is unlawful.

(c) That a tap line or industrial road is a plant facility as to the traffic of the proprietary mill, while it may be a common carrier as to nonproprietary traffic.

Order of the Commission.—The four tap lines, appellees above named, are included in the first list of tap lines set forth in the Commission's amended order (Opinions, orders, etc., pp. 179, 180). As to all the tap lines in this list, the order reads:

> That the Commission upon the record finds * * * that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;
>
> *It is ordered*, That the principal defendants, [naming the companies operating the main line railroads] be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service.

Commission's report.—In the report which i expressly made a part of the order it is stated (Opinions, orders, etc., pp. 15, 16, 17 and 18):

> The notion seems to prevail * * * that a common carrier must be an incorporated company; on the other hand, it is also claimed that a company incorporated as a common carrier is a common carrier in law for all purposes, regardless of all other considerations. This, however, is not a sound view of the matter. * * * That relation to the public may lawfully be sustained, with respect to interstate traffic, by individuals or partnerships or other associations. * * * If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist, whether the holding out is by a company or by an individual. * * * Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. This Commission, in the enforcement of the law, is necessarily bound to ascertain the real purpose and object of the holding out; and in the prevention of preferences and other unlawful consequences it is entitled to and must ascertain the real situation.
>
> * * * * *

It follows from that view of the matter that the common ownership of an industry and of a railroad that is held out as a common carrier and has some actual traffic for the public for hire is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand, the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company, owned and operated by the industry or in its interest, does not divest those appliances of their character as a plant facility if such in fact is the case. * * * We must look at the thing done and scrutinize the manner in which it is done. We must ascertain what is its real relation to the industry. If in such a case the tracks and equipment are a facility of the plant and are so used in the process of manufacture, what is thus done for the controlling industry can not be regarded as a service of transportation. It is clear that a division allowed by a public carrier out of the rate under such circumstances is a rebate to the industry.

* * * * *

It is our understanding that in some cases the trunk lines have connected their rails with the mills by constructing spur tracks at their own expense; in other cases they have furnished the rails and the ties and the lumber companies have borne the expense of the grading and construction, and in a number of cases the lumber companies have built the connection entirely at their own cost, either directly or through their tap lines. In some

instances the original spur or switch track built by the trunk line to the mill still remains and could be used; as a matter of fact, however, the tap-line connection subsequently built is actually used. In some cases, where the tap line has connected the mill with the trunk line, the spur track of the trunk line to the mill has been torn up. In some instances the trunk line is still closely connected with the mill by an available switch track, but in order to give the appearance of a real service the tracks of the tap line have been laid parallel to the trunk line to a more distant switch connection.

In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long.

* * * * *

If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company

may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15, whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. * * *

No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. We should regard an allowance under such circumstances as a mere device to effect an unlawful payment to the lumber company. We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line.

* * * * *

But where a mill is more than 3 miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by this commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk-line carriers have defined in this territory; and the lumber rate is

to be regarded as in effect from the mill, the tap line being entitled to a division thereof according to the extent of its participation in the through service under the through rate.

Opinion of the Commerce Court.—The opinion and judgment of the Commerce Court enjoins and annuls the order of the Commission, in regard to these four tap lines, upon the ground that the power of the Commission was arbitrarily exercised. It holds that no constitutional question arises in the case, and the court does not base its opinion upon the ground that there was no substantial evidence to support the order. The reasoning and the judgment of the Commerce Court is shown by the following extracts from the opinion (opinion begins on p. 185 of the record, Opinions, etc.):

> Arbitrary action can, however, be predicated on a disregard by the Commission of the very criteria which it adopts to determine the ultimate questions of fact, or on the adoption of distinctions without real differences.
>
> The important questions, therefore, to be considered by this court are:
>
> First. Whether the Commission acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be acting as a mere plant facility of and performing mere plant service for the proprietary companies; or,
>
> Second. Whether in each of these cases there was substantial evidence to justify the

ultimate findings and the consequent order of the Commission. (Rec. pp. 194, 195.)

* * * * *

ARGUMENT.

I.

A switching service upon a private siding or spur track is an independent service which precedes or follows a line haul.

Matters to be excluded.—The discussion under this head has reference solely to the movement of cars between the private warehouse or place of business of a shipper and the point on the private siding (free of the line tracks) where connection is made with the main line. We have no reference to the carrier's delivery in shunting cars upon the private sidings free of the main track, or switching between line carriers in a through route, or deliveries upon public team tracks or terminals. We contend that the movement of cars upon private sidings is a shipper's service, taking the place of, and being a substitute for, the truck or team delivery by shippers generally.

Loading and unloading carload traffic.—It is the universal practice for shippers and consignees to load and unload carload shipments. The carrier receives the car loaded from the shipper and delivers it loaded to the consignee. The line haul for which a line rate is charged is between the points of such receipt and delivery by the carrier. All services outside the line haul are additional services for which the carrier may properly claim additional compensation.

Absorption.—We do not contend that a carrier may not absorb this additional service where it does not work undue discrimination or operate as a rebate. This court and the Commission have held that a switching service may be performed without extra charge; that is, may be absorbed by the line carrier. Our contention is that a shipper having a private siding has no right to have this additional service absorbed, and that the Commission may prohibit it where such absorption operates as an undue discrimination against shippers of like traffic who are obliged to deliver their traffic upon public or team tracks. The phrase "*absorbing the service*" *means*, and is interchangeable with the term, "*free service.*"

Switching and its relation to the transportation was clearly defined by the Supreme Court of Georgia.

> The test of distinction between "transportation" service, relative to loaded freight cars, for which a railway company can lawfully charge tonnage rates, and "switching" or "transfer" services, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line or that of another, for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires no movement over other tracks or lines of railway, whereas a switching or transfer service is one which precedes or follows a transportation service, and applies only to a shipment on which legal freight

charges have already been earned or are to be earned. (*Syllabus.*)

Dixon v. *Central of Georgia Ry. Co.* (110 Ga., 173; 35 S. E., 369, 372).

Our act to regulate commerce, as amended June 29, 1906, provides that—

> The term "railroad" as used in this act shall include * * * all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, * * * and the term "transportation" shall include * * * all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor. * * *
>
> Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and *operate upon reasonable terms* a switch connection with any such lateral, branch line of railroad, *or private side track* which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will

furnish sufficient business to justify the construction and maintenance of the same (sec. 1).

When the carrier refuses to furnish these facilities the Commission is authorized to require the same "and shall determine as to the * * * *reasonable compensation* therefor * * *." (Sec. 15.)

Discrimination.—It has been a common practice in this country for the carriers to absorb a switching service at some places and in special cases; to do the switching without making any charge therefor in addition to the line rate. The right of the carrier to do this is not questioned provided such *free service* does not work undue discrimination between shippers or localities. If this practice in any case gives an undue preference and advantage to a shipper or locality the Commission, upon full hearing, may order the practice discontinued.

In *Wight* v. *United States*, 167 U. S., 512, this court held that an accessorial service allowed to a single shipper was discriminatory because the service was not given to all shippers at that place.

We are not unmindful that this court has said that the law does not undertake to equalize the fortunes or conditions of man. Mere inequality of condition, therefore, does not create the undue discrimination or preference prohibited by the statute. But when the carrier performs for a shipper a service which is accessorial and thereby relieves that particular shipper of a burden which rests upon him, and does not perform the same service for other shippers

at the same place, it is unlawful. This is not equalizing the conditions or fortunes of men; it is simply preventing preferences.

A switching service can not be an integral part of a through route.

These tap lines, therefore, are not entitled to through routes, even if they be *bona fide* common carriers, when the service rendered is nothing more than switching cars of lumber from the mill to the main line. It is not transportation, using that word in the sense of conveyance or line haul; it is bringing the freight to the public highway or line carrier. It can not, therefore, be a segment in a through route.

Here it may be well to observe the difference between the words "allowance" and "division," as used in the statute. The former applies to allowances made to a shipper under section 15 for services which the carrier can be compelled to perform, but which he allows the shipper to perform. The word "division" applies only in cases of through routes, to the portions of the joint rate which each line carrier receives. If the services performed by a shipper or carrier is a switching service, the allowance will be a switching charge and such allowances have been made to tap lines. They complain of this and say they want a "division." The reason for this is apparent. A switching charge would be from $1.50 to $5 per car. The divisions which have been improperly allowed to tap lines by carriers were on the theory that a switching movement was a

part of the through route. The "divisions" made range from 2 to 4 cents per 100 pounds, making the "allowance" to the shipper or its tap line $12 to $18 and $20 per car. Of course, they want "divisions." But the character of the service must always determine the compensation. If the service is switching the allowance will be a switching charge; if it be a line haul over part of a through route there will be a "division" of the joint rate.

II.

Transportation of logs.

Logs are the raw material out of which lumber and other forest products are manufactured. Their relation to lumber is the same as the relation of wheat to flour, iron ore to steel. In all tariffs and classifications logs are recognized as a distinct commodity, the rates upon which are fixed with reference to value, loading, and the distance transported. The cost of milling lumber or other like products involves the cost of the logs at the mill, and this necessarily involves the cost of transporting them there. A sawmill is usually located upon a line railroad and has a switch connection for the delivery of carload lumber. If the forest is near, the logs are hauled by team. As the timber is cut away the log haul increases, and logging roads of various types are put in to reduce the cost of transporting the logs from the forest. Whether the mill transports its logs from an immediate territory

or buys them on the Pacific coast and has them shipped a long distance, the cost of the transportation in either case and in all cases is a part of the cost of the logs at the mill. Any practice, therefore, by line carriers which relieves the mill owner of the reasonable charge for the transportation of logs *is a direct contribution to his net operating revenue*. There is no more reason or right for a common carrier to contribute to the mill owner the cost of transporting logs than there would be in contributing the logs themselves, or furnishing the mill owner with forests free from which he might cut his timber. In either case the carrier would be making a direct contribution to the net operating revenues of the mill owner, and the purpose in making such a contribution would be to get the lumber traffic. There is no difference in principle between buying the lumber traffic by giving such a free service and buying the traffic with money or a cash rebate from the published rate.

Any practice by a carrier which results in contributing to a mill owner the cost of transporting his logs, or any part of the fair charge for transporting them, to secure his lumber traffic, is unlawful, and a violation of the statute.

III.

The milling-in-transit privilege as practiced by tap lines.

The evidence in this case shows two practices. The first is the more general. It consists of the tap line filing with the Commission a logging rate with a milling-in-transit privilege, then arranging with the line carrier for a "division" of the lumber rate, and applying the lumber rate to a tap line "station" at the forest where the logs originate. The line carriers put in a blanket rate on lumber, which applies to every station in this territory, covering parts of three States of the Union, with a concurrence in milling privileges established by "connecting carriers." They established through routes and joint rates over their own lines and the tap lines. The "joint rate" being only the blanket lumber rate, the result of this arrangement is, that when the logs are milled into lumber at the mill, the blanket lumber rate is extended to the terminal of the tap line at the forest; the tap line is given a division of the blanket lumber rate, and the charge for the log haul is *entirely obliterated*. By this practice a mill owner secures the transportation of the logs from the forest to his mill without paying anything for the transportation. The allowance which he receives from the line carrier out of the lumber rate pays the entire cost, and often more, of the transportation of the logs from the forest to the mill.

This tap line milling-in-transit differs radically from the milling-in-transit upon main-line railroads. The tariffs of the Chicago, Rock Island & Pacific Railway, Kansas City Southern Railway, Missouri Pacific Railway, and other main lines give milling-in-transit privileges upon logs. The logs are charged a high rate, often a penalty rate, from the forest to the mill. After they are milled, if the lumber is shipped out over the same line, the lumber rate is charged in full and the log rate into the mill is reduced, but still remains a substantial charge. Take the instance given by our division of tariffs upon the Rock Island road, which is typical of the practice by line carriers. There are two stations, Moreland and Ruston, in the State of Louisiana. They are 99 miles apart. The blanket lumber rate into Memphis, Tenn., from both these points is 14 cents; there are two rates published on logs from Moreland to Ruston; one is 11 cents, called the "Billing rate," the other is 3½ cents, called the "Net rate." If the logs are hauled into Ruston by the Rock Island and the lumber is transported over the Rock Island lines from Ruston to Memphis, the total charge is 17½ cents—the full lumber rate of 14 cents from Ruston and a 3½-cent charge for the log haul from Moreland to Ruston. Now, if we take a tap line extending 99 miles from Ruston to a station called "Tap Line," the application of the tap line billing practice would be to extend the 14-cent lumber rate back to "Tap Line." The result would be that a mill owner at Ruston owning a forest or purchasing his

logs at Moreland would pay for his log and lumber haul 17½ cents, while a mill owner at Moreland, having a forest at "Tap Line" and being the proprietary owner of the tap-line railroad, would pay 14 cents for his total log and lumber haul, thus creating a very great discrimination and preference in favor of the mill owner having the tap line.

To meet this objection, so apparent and manifest, some of the tap lines that have so-called independent mills upon their lines have put in a small charge for the log haul, which they collect from the independent miller and also make a book charge against the proprietary company for the hauling of logs. This charge in one case, which is the highest made, is 1½ cents. This rate is published, *but it is no part of the through rate.* It is an *intrastate rate.* The tap line secures a division of the lumber rates on its milling-in-transit privilege, without regard to the fact that it is collecting 1½ cents from the independent mill. This log charge the tap line collects without accounting for it upon the joint through-route rate. This furnishes a weak argument to meet the objections of the former case.

The so-called independent mill is usually a sort of by-product for the proprietary mill. These independent mills do not manufacture the same kind of lumber manufactured by the proprietary mill, or do not, for other reasons, compete with the proprietary mill owning the tap line. An independent mill owner is allowed to establish his mill upon the tap line a few miles from the main-line railroad. He gets his mill

site from the tap line mill owner; he buys his timber from him; the proprietary mill owner's tap line hauls the logs to the mill and makes a small charge for the haul. The tap line then arranges with the main-line railroad for a through route, and as the originating carrier secures a large division of the blanket lumber rate, 2 to 4 cents per 100 pounds. The independent mill therefore becomes a by-product to the proprietary lumber company. We do not say that there is anything unlawful in the proprietary mill's arrangement with the independent mill; but we do say that the whole arrangement, when properly viewed in connection with the dominant traffic of the tap line owner, is a device for securing divisions out of the main-line lumber rates. The delivery of the lumber from the proprietary mill over the switch to the main-line railroad is a shipper's delivery of his traffic. The public should not be charged for performing this service, for we must bear in mind, as stated by the Commission in the terminal case, that where a substantial benefit is given by a carrier to a shipper by way of allowances out of main-line rates, a loss results that is made up by charges upon other traffic, and in that way the public bears the burden.

This practice of absorbing the log haul is a bald, open contribution to the mill owner.

The so-called milling-in-transit privilege, as practiced by the tap lines, results in free log hauls and is

unlawful. Any practice by which the line carrier assumes the burden of transporting logs for a mill owner is a rebate, the purpose of which is to buy the mill owner's lumber traffic.

IV.

Matters claimed by the tap lines as bases for through routes and divisions of the main-line lumber rate.

Incorporation.—The act to regulate commerce makes no distinction, in the application of the provisions of the act, between corporations or persons. The privileges of, and prohibitions upon, practices in transportation apply alike to incorporated companies and carriers that are not incorporated. A group of men may carry on a business of transportation; at a later time they may incorporate that business and issue the stock to themselves; this change in the ownership and operation does not confer any additional rights or subject them to any additional or different obligations or penalties. The mere act of incorporating a logging railroad or tap line does not confer, in itself, any special privileges.

Common-carrier tap lines.—After the passage of the Elkins Act a great number of logging roads were incorporated under State statutes as common carriers. These statutes are general incorporation acts, under which a specified number of persons may become incorporated for any purpose stated by them in their application.

While in most cases this confers upon the corporation certain rights and, when they offer to carry prop-

erty for other persons, may constitute them common carriers as to such traffic, it does not prevent an inquiry into the whole matter to determine whether they are *bona fide* common carriers as to all traffic. The power to investigate and determine whether such incorporation and incidental common carriage is assumed as a device for the purpose of evading the Federal law and securing rebates or unlawful discriminations or preferences upon the traffic of the proprietary owners can not be defeated by this arrangement.

Prior to the enactment of the "commodities clause" and the conference of power upon the Commission to determine whether or not rates and practices by railroads are unlawful and to prescribe reasonable rates and practices for the future, this court held that a practice by two line carriers which resulted in a violation of the Federal act prohibiting discrimination in transportation rates could be enjoined; that the court could look through the forms adopted by the carriers—the business in itself then being otherwise legitimate—to ascertain whether *in fact* it resulted in a violation of the act to regulate commerce. (*New Haven R. R. Co.* v. *Interstate Com. Com.*, 200 U. S., 361.) The power which the court in that case exercised has since been vested in this Commission. The Commission may now investigate the form and method of carrying on interstate transportation business, and if after full hearing it is of the opinion that any "practices whatsoever" are "unjust or un-

reasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act," it may prescribe what "practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist * * *." (Section 15.) If the practice by line carriers could be investigated by the court prior to the act of 1906 and, if found to be in violation of the act, be prohibited, certainly since the act of 1906 a practice by a line carrier in connection with a tap line may be investigated by the Commission, and if found to be unlawful it may be prohibited. Common carriage of a small outside traffic by the tap line can not defeat this power.

Common carriers as to part.—In the *Crane Iron Works* case the Commerce Court said:

> Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers.

The fact that these tap lines have been incorporated by proprietary mill owners, and may be regarded as common carriers as to some outside traffic, does not prevent the Commission from finding, if it be true, that as to the traffic of the proprietary mill they are a plant facility performing a plant service. (*A., T. & S. F. Ry.* v. *Grant Bros.*, 228 U. S., 177.) Nor does it follow that because they transport lumber

for an outside party over what is practically a spur track, that such transportation is anything more than a shipper's delivery to a main-line carrier. A railroad originally organized as a tap line may develop into and become a line carrier; when it does, the Commission will so recognize it. Each particular case must be decided upon the character of its particular traffic. It is *the character of the transportation service*, rather than the character of the agent, which determines whether the agent is entitled to through routes and joint rates.

Device.—The act to regulate commerce prohibits rebating, directly or indirectly, "by any device whatever." Construing this phrase in a criminal proceeding, this court, speaking through Mr. Justice Day, said:

> * * * the act seeks to reach all means and methods by which the unlawful preference or rebate, concession, or discrimination is offered, granted, given, or received * * *. A device need not be necessarily fraudulent, the term includes anything which is a plan or contrivance * * *. It is not so much the particular form by which, or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions or rebates from the fixed rates duly posted and published. (*Armour Packing Co. v. United States*, 209 U. S. 56.)

In the case at bar the Commerce Court recognized the power of the Commission to investigate and deter-

mine whether or not a tap line was a *bona fide* common carrier. It said:

> The evidence before the Commission tending to show that the petitioning tap lines were originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, *might have justified the Commission in finding that these tap lines were not in fact bona fide common carriers.* (Rec., 190.)

The Commission therefore has power, and it is its duty, being charged with the enforcement of the provisions of the act to regulate commerce, to investigate and determine whether a particular tap line is, in fact, a *bona fide* common carrier *as to all of its traffic;* to ascertain what the nature of the transportation service performed by the tap line is, and from all the evidence determine whether the organization, the methods of

doing the business, and the transportation service carried on, is in fact a device to secure rebates and concessions from the published rates. If, upon such investigation, it is found that such was and is the purpose of the organization and practices, it becomes the duty of the Commission to prohibit the line carriers from establishing through routes and joint rates that result in such rebating and discrimination.

General observations.—The investigation in this case has developed a widespread commingling of the business of transportation with private business. The aggregate amount of the allowances out of main line lumber rates is enormous. It reduces legitimate railroad revenues by an insidious system of rebating. The purpose in this case is to separate the public business from private business; to insure to public line carriers reasonable compensation for every substantial service that they render; to place upon each shipper the duty of paying the reasonable charges for the services which he receives; to prevent private enterprises from casting upon the public, through the common-carrier service, a part of the burden of doing their private business. Each shipper should perform its interplant service, and deliver its traffic to the line carriers.

This requires the separation of the charges for the line haul from switching charges where absorption of the switching service is not permissible. It is within the power of the Commission to require that this shall be done.

After holding that icing is a transportation service under the statute, this court, speaking through Mr. Justice Lamar, said:

> It [the Commission] may prescribe the form in which schedules shall be prepared and arranged (section 6) and may approve tariffs stating that the single rate includes both the line haul and accessorial services absorbed in the rate. Conversely, it may prescribe a tariff fixing a through rate which includes not only the haul of the fruit, but the haul of the ice necessary to keep the fruit in condition. All these are matters committed to the decision of the administrative body, which, in each instance, is required to fix reasonable rates and establish reasonable practices. The courts have not been vested with any such power. They can not make rates. They can not interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those orders are void.
>
> *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States et al.* Opinion filed January 26, 1914.

V.

OPINION OF THE COMMERCE COURT.

In the four cases under consideration the tap lines are named in the first list given in the order. (Rec., p. 180.) The Commerce Court deals with that part of the order relating to these tap lines, which reads:

> that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service

> performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports. (Rec., pp. 180, 181.)

The Commerce Court in its opinion concedes much that we claim, but seems to have confused the findings and order of the Commission in regard to some specific matters.

As already noted, the Commerce Court concedes that there was evidence before the Commission which might have justified the Commission in finding that these tap lines were not *bona fide* common carriers. (Rec. 190, 191.) If they are not *bona fide* common carriers, what are they? There is but one answer; they are plant facilities, and the Commission so found. While fully recognizing that the Commission found that they are plant facilities, the Commerce Court says that the Commission held: "That each of the petitioning tap lines is a *bona fide* interstate common carrier." (Rec. 190.) A reading of the order shows that this is not a correct representation of the Commission's finding. The Commerce Court, in the final analysis, seems to take the position that if they were common carriers as to *any* traffic they were necessarily common carriers as to all like traffic

for the proprietary companies; that they could not be plant facilities as to part and common carriers as to part of their traffic, although the court in another part of the opinion states that they may be.

The law is clearly settled,

> That a common carrier may, however, as to some of its work, act in a strictly private capacity is well settled (*A., T. & S. F. Ry.* v. *Grant Brothers*, 228 U. S., 177); and that it may as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, has been held by this court in *Crane Iron Works* v. *U. S.*, No. 55, June 7, 1912. (Rec., pp. 192, 193.)

An attempt is made to distinguish the *Crane Iron Works* case by saying that the services in that case were "interplant" services. This is not the fact. The larger part of the service in that case, as in this, was switching cars from the warehouses to the line railroad—delivering the freight to the carrier.

Disregarding the similarity in the cases the Commerce Court proceeds to say:

> When, as in these cases, a full and fair hearing has been granted, the Commission's findings of fact are subject to review in this court only upon an allegation that they are not sustained by any substantial evidence in the record before it or are arbitrary in *being based upon improper distinctions and considerations.* (Rec., pp. 193, 194.)

* * * * *

> The important questions, therefore, to be considered by this court are:
>
> First. Whether the Commission acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be acting as a mere plant facility of and performing mere plant service for the proprietary companies. (Rec., p. 195.) * * *

Referring to the evidence, the Commerce Court says:

> *It is apparent therefrom that very real evils existed, evils demanding correction.* (Rec., p. 198.)
>
> * * * * *
>
> The power of the Commission *to prevent such rebates and unjust discriminations is beyond question.* (Rec., p. 199.)

Then, as a basis for holding that the action of the Commission was arbitrary, the Commerce Court makes the following statements (Rec., p. 205):

> *In effect* the Commission holds:
>
> First. Switching service within 3 miles of a trunk line is by custom *included in the through rate.*
>
> Second. *Such switching is a transportation service.*
>
> Third. For switching products of a proprietary mill located within the 3-mile limit, no division of the through rate may be made, but an allowance, under section 15, may be paid either to the industry or to its tap line, if the trunk line prefers to permit the industry or tap line to do this work.

> Fourth. *For switching products* of a non-proprietary mill an allowance may be given, and, in the case of a common carrier tap line, *a division out of the through rate should be made.*
>
> Fifth. But no such allowance or division shall be made if the proper switching distance is or should be less than 1,000 feet.
>
> Sixth. * * *. *Neither allowance nor division is to be given the tap line for switching the products of such a proprietary mill.*
>
> In our judgment *these distinctions must be regarded as arbitrary* and without justification as a matter of law.

We have shown that switching is an independent and distinct service. This the Commission recognized, and where allowances are made for this service—switching cars from the mill to the main track—it is a switching allowance. The *switching allowance* is given, when asked for (see Victoria & Fisher Ry.), under section 15, but in cases where a "division" of a through rate is insisted upon for a switching service, it is refused. The Commission found, as a fact, that in this territory the line carriers absorbed all switching services to a distance of 3 miles. Accepting this fact the Commission held that if they absorbed this service for shippers generally, then where they permitted a shipper or its tap line to do the switching, an allowance of a reasonable switching charge might be made under section 15. This applies to all traffic when such an allowance is asked for. The Commerce Court fails to distinguish between "allowances" under sec-

tion 15 and "divisions" of joint rates between common carriers operating a "through route." (Rec., pp. 17, 18.)

In the case of nonproprietary lumber traffic if it amounted to a line haul, division of the lumber rate could be allowed. The Commission reserved the right to supervise these divisions on nonproprietary traffic in order to prevent a main line from making unusually large allowances to tap lines as an inducement to the proprietary companies to give the line carrier their own lumber traffic.

It is difficult to see how the Commission could have more carefully guarded the whole situation and cut out the *evils that existed "demanding correction."* The large proprietary mills are all located on the main lines of railroad and are connected with main lines by switch connections. So far as the lumber traffic is concerned, therefore, the only service which the tap line could perform for the proprietary lumber companies was to switch the cars from the mill to the main line and to place the empties at the mill—excluding unnecessary back hauls. If, as stated by the Commerce Court, a tap line may be a common carrier as to some traffic while it is a plant facility as to other traffic, then it was within the power of the Commission to say that as to nonproprietary traffic *where there was a line lumber haul by the tap line* a reasonable division might be made on such traffic.

But the Commerce Court says:

> When these tap lines, * * * take the carloads of finished lumber at the mills *for the purpose of either hauling or switching them to a trunk line* so that they may reach their ultimate destination beyond the State, *the interstate transportation has actually begun.*

That is to say the switching is a part of a through route and the tap line is entitled to a division of the rate.

This is contrary to the authorities which hold that the shipper must deliver his traffic to the line carrier, or as expressed in some of the cases "*must bring his traffic to the highway.*" Because the statute requires this service on a private siding to be performed by a carrier it does not make it any the less a shipper's delivery. For the purposes of the statute—*that is, for the purpose of regulation*—the whole service is within the statutory term "transportation." Nevertheless the switching is for the shipper to perform or pay for, unless it may be properly absorbed by the line carrier. While it is a way of stating it to say that the line rate "extends to the mill" it is not technically a correct statement. The *line rate* only extends to the point where the carrier receives the shipment *for* TRANSPORTATION to destination. If the carrier absorbs a service beyond that point it is not, properly speaking, an extension of the rate to the mill. This is not an artificial construction or definition, for if absorption works discrimination the carrier may not absorb the service, but must charge for it. This the

carrier could not do if the *line rate* "extended to the mill." But where the switching is recognized as a service additional to the line haul it may be freely treated either by absorbing it or charging for it, as the particular case justifies.

The Commerce Court therefore erred in holding that the refusal to give a "division" of the line rate *for a switching service* was arbitrary.

Log haul.—In treating the log haul from the forest to the mill the Commerce Court said (*italics ours*):

> *The hauling, it is true, is primarily for the benefit of the mill;* consignee and consignor are one. *If the service had continued to be what it originally was* in most of these cases, *by a private carrier for the one industry alone* or from the forests to the directly adjacent mills, forest and mill being in fact one entire plant, so that the haul was interindustrial, *it might well be held to be a plant-facility service.*
>
> * * * * *
>
> The Commission *might have limited the blanket rate to the lumber either directly or by forbidding milling in transit.* This, however, was not done.
>
> * * * * *
>
> * * * *that other mills must haul their logs* by team to the tap line or must purchase them in the open market, *and that thereby these proprietary mills have great commercial advantages over their competitors does not in any manner affect the matters now before us.* (Rec., pp. 209, 210, 211.)

In short, if a common carrier at a given place wholly absorbs a log haul for big shippers, the fact that other shippers are compelled to perform these services for themselves "*does not in any manner affect*" the case. This is contrary to the doctrine stated in *Wight* v. *U. S.*, *supra*.

The Commerce Court absolutely ignores the character of this milling-in-transit privilege as practiced on the tap lines. The direct advantage to the proprietary mills in having the haul of their logs to the mill paid for by an allowance from the lumber rate is not referred to. In the illustration which we have already given it clearly appears that the proprietary company under this peculiar milling-in-transit privilege is entirely relieved from any expense in hauling logs. This expense is paid for by an allowance out of the lumber rate. The nonproprietary mills pay something for the log haul although it is not a part of the through rate. The Commerce Court erred in its conclusion that—

> *as the actual service* rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line *is the same for proprietary and nonproprietary mills, and as this is held to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.* (Rec. pp. 211, 212.)

Substantial evidence.—The Commerce Court deems it unnecessary to consider the evidence as to each petitioning tap line separately. It decides the case

wholly "on a disregard by the Commission of the very criteria which it adopts to determine the ultimate facts or on the adoption of distinctions without real differences," and concludes as follows:

> It follows, therefore, that the Commission was not only without power to forbid any allowance whatsoever to be made by a trunk line to the petitioning proprietary industries for switching either less than 1,000 feet or more than 3 miles, but it was also without power to prohibit the making of joint rates by the trunk lines and the petitioning tap lines and the payment by the former to the latter of some division thereof for its services in hauling logs to and lumber from the petitioning proprietary mills, and its order must to this extent and as to these petitioners be annulled. (Rec., p. 212.)

CONCLUSION.

While the Commerce Court states that there are very great evils existing which demand correction in these cases, and that it is within the power of the Commission to prevent this rebating and discrimination, it practically ties the hands of the Commission. If this opinion be the law then there is *in fact* no remedy for the evils, the rebating and the discriminations, which admittedly exist in these cases. The only way in which these evils can be eradicated is by prohibiting the practices which result in rebating and discrimination.

The owners of these tap lines are not in the railroad business as a business. They are lumbermen

with logging roads as a part of their plant facilities. If by doing a little outside common carriage business they can secure a half million dollars in rebates upon their lumber rates, and the Commission is without power to prohibit this practice, then rebating is legalized so long as the interests of lumber merchants induce them to dabble a little in railroading.

We respectfully submit that the position of the Commerce Court is inconsistent in holding: (1) That there was evidence sufficient to warrant the Commission in finding that these tap lines were not *bona fide* common carriers, and almost in the next sentence saying, that it is *arbitrary* to hold that they are plant facilities as to their own traffic if they are common carriers as to outside traffic; (2) That as the Commission referred to switching as "transportation" under the statute, therefore it must be held that switching is a part of the line haul, and the tap lines are entitled to through routes and joint rates for a switching service; (3) That as the Commission recognized that the transportation of logs with a true milling-in-transit privilege—a *bona fide* charge for the log haul—is legitimate, therefore, a milling-in-transit privilege without a charge for the log haul *must be legitimate*. These several positions taken by the Commerce Court seem to be not only inconsistent, but an unnecessary application of technical construction to certain words in the Commission's report. Though not intentional, the result is to protect an existing evil of large dimensions and widely

extended practice, and to cripple the powers of the Commission as a regulating body.

The importance and far-reaching effect of the decision in this case can not be easily overstated. These are test cases involving definitions of the "line haul" for which the line rate is charged; a switching service, as distinguished from the line haul, for which additional charges may be made; and milling-in-transit as practiced by tap lines, which results in casting upon the carrier a part of the expense of a shipper's business. The practices condemned in these cases result in very serious depletion of railway revenues, and cast upon the general public a burden which belongs to individual and favored shippers.

They create grave discrimination between shippers and give to favored shippers undue preferences. The extent of these allowances—and this means cash out of the carrier's treasury—is stated by the Commission in its report in this case (Rec. p. 2):

> The aggregate amount so paid by the regular lines to industrial lines throughout the country is not known. It has been estimated at not less than $100,000,000 a year. On the basis of such investigations as we have been able to make it seems entirely conservative to say that they amount, for the whole country, to not less than $50,000,000 or $60,000,000 a year.

In Industrial Railways Case No. 4181, decided by the Commission January 20, 1914. (Copies for the

use of the court are filed herewith), the Commission said:

> The allowances so paid and the free services so performed involve in the aggregate an immense expenditure for which the carriers must necessarily be reimbursed through the rates exacted on the traffic of the general public; at the same time, it must be noted, the allowances and free services so paid and performed by the carriers relieve the particular industries of a large burden of expense which the industries themselves would otherwise have to meet as a part of their manufacturing cost. This operates as a discrimination against the smaller competitors of the favored concerns because, in the nature of things, the benefit of such allowances and free services can be enjoyed only by the larger industrial establishments with plant railways (p. 213).

Citing special cases the Commission said:

> *Allowances.*—During the year ending June 30, 1912, the Pennsylvania Railroad paid $1,019,910.41 in divisions out of the rate to only 10 such industrial railways connected with steel plants; the New York Central's western lines paid to 12 such industrial railways an aggregate of $660,057.93; the Baltimore & Ohio paid to 13 such industrial railways the sum of $530,317.06 (p. 214).
>
> * * * * *
>
> *Free services.*—During the year ending June 30, 1911, the railroads performed for a single steel industry, the Republic Iron & Steel Company, at Youngstown, Ohio, free spotting

services on 75,134 cars at a cost to the railroads of $104,329.62, or $1.40 per car (p. 215).

It is essential in dealing with these practices that the Commission determine, where the evidence warrants the conclusion, that the tap line or industrial railway is a plant facility as to the proprietary traffic, although it may be at the same time, a common carrier as to some outside traffic.

We respectfully submit that the decision of the Commerce Court should be reversed; that the doctrines herein expressed regarding the extent of the line haul, the character of a switching service on a private siding, and the unlawfulness of absorption of log hauls, should be sustained.

As the Commerce Court declined to discuss the evidence in regard to the particular tap lines we have not referred to it in the brief, but attach an appendix giving a statement regarding each tap line and lumber company. We also submit herewith under a separate cover maps showing the four tap lines as they now exist and as they existed at the time of incorporation.

Respectfully submitted.

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APPENDIX.

THE APPELLEE TAP LINES AND LUMBER COMPANIES.

No. 829.

The Louisiana and Pacific Railway Company and four lumber companies, named as petitioners in this case, are owned and controlled by R. A. Long. He owns 70 per cent of the stock in each company, and the remaining 30 per cent is held by his associates and agents. The tap line company was a party before the commission in the tap line case, and the evidence submitted by it at the hearings before the Interstate Commerce Commission is found in volume 1 of the printed evidence in this case, beginning at page 636 of the record. The exhibits submitted to the commission and refferred to are found in the transcript of record in this number. The findings of the commission regarding this company are set forth on pages 591 to 594, inclusive, of the supplemental report. (Rec. p. 111.)

Mr. Sweet, an associatte and officer in all the companies of the "R. A. Long interests," who has been connected with these interests for 27 years, and other officials describe the lumber companies, the tap line, and the lumber business. From this evidence (Rec., pp. 636 to 738), the contracts and the annual reports of the railroad companies,

in evidence before the commission, the following facts are taken:

1. The Hudson River Lumber Co. was organized in 1898; its mill is located at De Ridder, within about 1,200 feet of the Kansas City Southern Railroad. It was the first lumber company located at De Ridder; a switch track connected its mill with the railroad, which was operated without charge by the Kansas City Southern. The lumber company built a logging road, afterwards called the De Ridder & Eastern. It built the logging road from its mill into the forest, and operated it without incorporation, In 1904 it incorporated the Louisiana and Pacific Railway Co., which took over the logging road. The operation of this logging road and the loading lumber at the mill *were a part of the manu* of *manufacturing business* carried on by the lumber company.

2. The King-Ryder Lumber Co. commenced business in 1891; its mill is located on the Kansas City Southern at Bon Ami. A switch connection was put in between the mill and the railroad, and operated without charge by the Kansas City Southern. The lumber company built a logging road from its mill into the timber and extended it as the timber was cut off. The operation of the logging road and the loading of the lumber upon the cars on the switch were performed by the lumber company *as a part of its business.*

3. The Calcasieu Long Leaf Lumber Co. is a successor to the Bradley-Ramsey Lumber Co.

Its mill is located at Lake Charles. It had a track connection with the Kansas City Southern at Lake Charles, which was operated by the main line. Now it also connects at Lake Charles with the Louisiana & Western, a part of the Southern Pacific System, and with the St. Louis, Iron Mountain & Southern Railway. All switching was done by the main-line roads without expense to the lumber company up to the time of the organization of the tap line. The forests of this lumber company are located at Camp Curtis, about 31 miles from the mill. A narrow-gauge logging road was constructed by the Bradley-Ramsey Lumber Co. from a point at Lake Charles (point marked Gosport) north to a point shown on the map as Fayette, thence east to Camp Curtis. Logs were floated from Gosport to the mill. This logging road was operated by the lumber company as a part of its manufacturing business, and it loaded the lumber upon the cars at its mill. The Bradley-Ramsey Lumber Co., together with its logging road, was purchased by the Long interests in 1905.

4. The Longville Lumber Co. was organized in and has its timber tracts near Vandercook. A logging road was constructed from its timber tract to its mill at Longville; the mill is located on the Lake Charles & Northern Railway, constructed, owned, and operated by the Southern Pacific system.

5. The Long-Bell Lumber Co. is a selling agent for the R. A. Long interests; it does not manufacture lumber.

6. The tap line, the Louisiana & Pacific Railway Co., was originally incorporated June 6, 1904. The objects for which the company was organized, as stated in its charter, are:

> To construct, maintain, and operate, or to lease and operate, a railroad commencing at Bon Ami, Calcasieu Parish, State of Louisiana, in an easterly direction through Bon Ami Junction, in said parish and State; to lease and operate railway and steamships as common carriers of freight.

The charter was amended March 12, 1907, "to acquire, construct, maintain, and operate a railroad or railroads, and branches thereof, in the State of Louisiana, as a common carrier of freight and passengers; etc."

The authorized capital stock is $200,000, of which only $51,000 has been issued, $20,000 as a dividend to stockholders, and $31,000, it is stated, was issued for cash. The stock is held by the R. A. Long interests in substantially the same proportion as the stock of the lumber companies, namely, 70 per cent by R. A. Long and 30 per cent by his associates and agents. The tap line has a bonded debt of $582,200, created to pay notes given to the lumber companies in payment for their logging roads.

In October, 1906, Mr. Long started a scheme which the witness, Davis, describes as "an effort to find other outlets for his tonnage" (Rec., p. 654) and,

Mr. Sweet says, to "secure more money from the railroads." (Rec., p. 753.) Mr. Davis says:

> Before Mr. Long started south with his property he organized the Louisiana & Pacific Railway, taking over the De Ridder & Eastern road, which was running at that time between Bundicks and De Ridder. Also the line of the Louisiana & Pacific running from Bon Ami out to Walla. Those two lines were in existence at the time. He had this Lake Charles & Leesville road, which was a narrow-gauge line, which had just been purchased, running from a point on the Calcasieu River north over toward Camp Curtis. Those three roads were taken over by this company, and, as he stated, this extension south was started when these negotiations with the Southern Pacific people were entered into. Mr. Harriman wanted a line north and Mr. Long wanted a line south. (Rec., pp. 654–655.)

Evidently the witness is mistaken as to the time these roads were taken over. He has in mind the fact that the roads were taken over during the period of what is termed "the reorganization" of the Louisiana & Pacific Railway Co. This company filed its first report with the Interstate Commerce Commission October 21, 1905, for the year ending June 30, 1905. Under the head "Property operated" (p. 9) it gave the mileage of the line, 1 mile; "spurs," 1½ miles; line operated under trackage right, 10 miles; total, 12½ miles.

In its report filed October 6, 1906, for the year ending June 30, 1906 (p. 9), the same mileage is given.

October 4, 1907, it filed its report for the year ending June 30, and reports, without giving details, 26 miles of railroad from De Ridder, La., to Fulton, La. On page 53 statements called for are answered as follows:

1. All extensions of road put in operation? Answer: Twenty-six miles.

2. Decrease in mileage, etc.? Answer: None.

3. All other important physical changes? Answer: None.

4. All leases taken or surrendered? Answer (p. 53): Lease of equipment and trackage rights with King-Ryder Lumber Co., canceled. New leases made with Calcasieu Long Leaf Lumber Co., Hudson River Lumber Co., and King-Ryder Lumber Co., granting use of equipment and trackage rights.

Under explanatory remarks it states: "The 61 miles of branches and spurs were not operated by the Louisiana & Pacific Ry. Co., but by lessees named on page 53."

There is no increase in capitalization, and under "Explanatory remarks" it is stated: "The capitalization per mile, shown as $345, is small, considering the recent development of the property. When the Louisiana & Pacific Railway Co. was organized and unincorporated, the capitalization of $30,000 was thought entirely adequate for all future developments. When

later the line was extended, no change was made in the capitalization, because it could not be determined just what amount of capital would be required and it was possible to make loans sufficient to carry on the development."

In the annual report, filed with the commission October 25, 1908, under the heading "Roads operated" (p. 13) it gives the following:

> Main line, De Ridder Junction to Bundicks, 8 miles; Lilly Junction to Walla, La., 7.4 miles; Fayette to Camp Curtis, 9.4 miles; Milepost 38 to Banks, La., 2.5 miles; total mileage owned, 27.3 miles. Line operated under trackage rights, Lake Charles & Northern Pacific Railway Co., De Ridder, La., to Milepost 38, 38 miles under trackage right.
>
> Total owned and trackage, 65.3 miles.

Under "Funded debt," an explanatory remark reads:

> This $362,549.57 represents our indebtedness to several companies in the acquirement of track material and equipment. These notes call for interest at rate of 6 per cent per annum from date, but do not specify interest payable annually and the interest has not been paid on accrual.

It clearly appears from these reports that at the time the contracts for divisions were made, October, 1906, this railroad company did not have any railway excepting the 2½ miles of track and "spurs" and the lease of the King-Ryder Lumber Co.'s logging road. To get the full record of this "reorganization" we must now examine the contracts filed as exhibits. The first is with the Southern Pacific (Rec., pp. 188

to 191), dated October 31, 1906. This contract is signed by the Louisiana Western Railway Co. for the Southern Pacific Co. (first party), the Louisiana & Pacific Railway Co. (second party), and by the four lumber companies (third party). The contract recites that the Louisiana Western Railroad Co. is controlled by and constitutes a part of the Southern Pacific System; after other recitals it agrees in substance:

> (1) That during the existence of the agreement the railroads "will interchange business with each other at said point of connection of their respective lines—that is, Lake Charles, La."—on the basis of a division of rates as herein set forth.
>
> (2) That the lumber companies, during each and every month until the expiration of the agreement, will ship over the Southern Pacific, via the connection at Lakes Charles, "at least 40 per cent" of the aggregate products of their mills.
>
> (4) That the two railroad companies will enter into joint arrangements and file the same with the Interstate Commerce Commission.
>
> (5) The lumber companies agree that the Louisiana & Pacific Railway Co. may route their traffic so as to give the Southern Pacific system such haul as shall yield it the largest revenue.
>
> (6) That in respect to the division of freight rates during the existence of this

agreement, the Louisiana & Pacific Railway shall be paid 4 cents per 100 pounds on the products of said mills shipped during the term of the agreement, excepting export business, division of which is to be fixed in the future agreement.

(7) The said party of the first part agrees that it will at all times during the existence of this agreement publish for all points mentioned in its tariff the same freight rates on all products of the parties of the third part from all points on the line of railways of the said party of the second part as are or shall be in effect from Lake Charles, La., on the line of the said party of the first part, which rates shall at all times during the existence of this agreement be competitive with rates from other points in Calcasieu Parish producing yellow pine to all destinations to which the party of the first part may be able to arrange through rates.

(11) This agreement shall commence and become effective on the date hereof, and shall be and remain in full force and effect for the period of 20 years thereafter, *or so long as the parties of the third part shall operate their mills along the line of railway* of said party of the second part.

It will be observed that this contract was made before the Louisiana & Pacific Railway Co. had any railroad in existence between De Ridder and Lake Charles; the contract was in fact a contract with the lumber companies. Their mills were then connected

with the Southern Pacific at Lake Charles, by switches and over the Kansas City Southern Railway.

In connection with this contract a corporation was organized October 30, 1906, called Lake Charles & Northern; the capital stock was taken and is now held by the Southern Pacific Railway Co. This railroad was opened for business October 25, 1908. (Poor's Manual (1913), p. 1460.) The Southern Pacific contract was executed the day after this company was incorporated. On the same day—October 31, 1906—a contract was executed by this newborn railroad company. This contract recites that the Louisiana & Pacific—

> is the owner of a line of railway from De Ridder, La., to a certain point on the Calcasieu River * * *. That part of said line of road lying between Ramsay Junction and said point on Calcasieu River has been completed, but is a narrow-gauge road. Of the remainder of said line of road—that is, that portion lying between De Ridder and Ramsay Junction—a portion has been completed and the other portion is now being constructed.
>
> The said party of the first part also owns a right of way for a railroad from Lake Charles to a point on said narrow-gauge road near the northeast corner of section 32, township * * *.
>
> The said second party [just organized] desires to purchase said first party's line of road from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles

> to the junction with said narrow-gauge road in said section 32; and said first party is willing to sell its said road and said right of way, on condition that it can have the joint use of said line of road from De Ridder to Lake Charles, which condition is not objectionable to said second party.

The purchase price is $15,000 for the narrow-gauge road, or "cost to be ascertained by reference to the books of said party of the first part, *and the cost of balance of the road to be verified by the engineers of the parties hereto.*"

The purchase price is to be paid, $90,000 *upon the execution of the contract,* and the balance "*monthly as the work of construction progresses on estimates* to be furnished by said first party and verified by engineers of the party of the second part, the final amount to be ascertained from the records of the first party by the engineers of both parties."

The contract includes payment to the Louisiana & Pacific Railway Co. for the narrow-gauge road, and the cost of all right of way owned or to be obtained between De Ridder and Lake Charles, structures of every kind existing or to be constructed, making a complete railroad between points; in addition, the Southern Pacific agrees to reconstruct the narrow-gauge road at its own expense, changing it to a standard gauge, but allowing the narrow gauge to remain for the use of the Calcasieu Long Leaf Lumber Co. during the period of reconstruction, and the rails on

the narrow-gauge road are retained by the Louisiana & Pacific.

It is then provided:

> Immediately upon the conveyance by said first party to said second party of the property herein contracted to be sold, the said second party shall execute and deliver to said first party a contract, giving said first party joint-trackage rights over the entire line of railroad above mentioned, * * *
>
> Said trackage agreement shall vest in said first party trackage rights over the said line of railroad from De Ridder to Lake Charles, with all the appurtenances thereto, for a period of 20 years from the date of this contract, for such trains as said first party may desire to operate over said road, provided that the number of trains operated by said first party over said line of railroad shall not materially interfere with the operation of trains by said second party.
>
> * * * and for the use of said railroad as aforesaid, said first party shall pay to said second party a rental equal to 25 cents per train-mile for every train that shall be run over said road by said first party during the existence of this contract. * * *
>
> Payments of rental shall be made monthly and on or before the 10th day of each month.
>
> The term "train" as used in the provisions of this contract shall at all times be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall

be made for any engine running over said road when not pulling one or more cars.

The mileage for which said first party shall be required to pay shall not include the movements of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the moving of logging trains over that part of said line between De Ridder and the junction of the De Ridder branch, which is about three-quarters of a mile in length, or the movements of logging trains over that portion of said line lying between Bonami and the junction of the Bonami branch. Map hereto attached and made part hereof will more fully define the limits referred to.

The contract provides that the Southern Pacific is to pay the cost of maintenance during the period of 20 years and put in and maintain "such sidings as may be reasonably necessary whenever a new mill may be built contiguous to said line of railroad."

The said first party shall have the right to connect said line of railroad over which it is to have trackage rights with any logging railroad or railroads that it may see proper to build at any time during the said 20 years from any point on said line to serve any near-by lumber mills.

This agreement, with all things pertaining thereto, is entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the Louisiana Western Railroad Co., the said Louisiana

> & Pacific Railway Co., the Hudson River Lumber Co., the King-Ryder Lumber Co., the Calcasieu Long Leaf Lumber Co., and the Long-Bell Lumber Co., for division of freights on joint business and for a routing of a proportion of the products of said lumber companies as provided in said agreement.

In reference to these contracts Mr. Sweet, an associate of Mr. Long and an official in all these companies, says:

> "I made at the time of the sale a traffic arrangement, not with the Lake Charles & Northern, *but with the Southern Pacific interests*, and one contract hangs on the other."

THE FRISCO CONTRACT.

(Transcript p. 69.)

Before going to the Southern Pacific, Mr. Long had made a very remarkable contract with the St. Louis & San Francisco Railroad Company. This contract is dated October 13, 1906, and is found upon pages 191 to 198, inclusive, of the record. The four lumber companies are parties to this contract. It contemplates the construction of roads to make a connection that would enable the lumber companies to ship their products over their tap line to the Frisco, and in contemplation of this connection it was agreed that the Frisco should receive 50 per cent of all the products of the mills and allow the Louisiana & Pacific Railway Company "thirty-five per centum (35%) of the through rate,

with a maximum of 5½ cents per hundred pounds" on lumber. There are other matters in this contract which might be commented upon, but it is sufficient, for the purpose of this argument, to say that, armed with this agreement, Mr. Long was enabled, on the 31st of October, to make an arrangement with the Southern Pacific Railway Company by which that company undertook the building of the railroad which the lumber companies, under the Frisco contract, were obligated to build, making a junction with the Frisco road (afterwards built) at Fulton.

THE SOUTHERN PACIFIC.

The Lake Charles & Northern Railway *was constructed after these contracts were executed.* It was wholly paid for by the Southern Pacific, on monthly estimates, as it was constructed. (See contract and annual reports to Commission.) It was opened for business October 25, 1908, two years after the contracts were made. It connects with the mills of the Hudson River Lumber Company at De Ridder Junction and with the King-Ryder Lumber Company at Bon Ami. The connection with the mill of the Calcasieu Lumber Company is at Lake Charles. The Southern Pacific *is operating this road and can receive the products of all these mills on its line from the switch tracks.* Under the custom prevailing in this lumber belt, all switching is done from the mill to the main track by the main-line roads without charge. These lumber companies, therefore, can deliver their lumber, without

charge, from their mills to the Southern Pacific and have it transported to all points at the lumber rate, from De Ridder and Lake Charles.

Prior to the construction of this road, and at the time these remarkable contracts were made, the mills at De Ridder and Bon Ami were connected with the Kansas City Southern Railway, and the Kansas City Southern connected at Lake Charles with the Louisiana Western and the Iron Mountain Railroads. These mills, therefore, had, or could have secured under the provisions of sections 1 and 15 of the act to regulate commerce, through routes from these mills, at the published lumber rates, over all the roads named. It appears from the evidence that no through routes had been established over the Kansas City Southern from De Ridder to the lines with which it made connection at Lake Charles, but such through routes could have been compelled by an application to the Interstate Commerce Commission, if these shippers required that service. The Calcasieu Lumber Company at Lake Charles was within the switching limits of each one of the railroads named.

In view of the foregoing facts, it seems remarkable that a railroad should have been projected from Lake Charles to De Ridder for the purpose of serving the public. But admitting that it was necessary, it was entirely unnecessary that two railroad companies should operate over this line. If the Southern Pacific was to operate, as it does, between Lake Charles and De Ridder, there was no reason, from the public stand-

point, why this other company, the Louisiana & Pacific, which runs only to the lumber camps of the Long lumber companies, should also operate over the same track. The reasons for this arrangement are to be found in the desire of the lumber companies to secure a concession from the published rates on lumber from their mills to the markets, or, as Mr. Sweet puts it, "to get more money out of the railroads." They could have secured the through routes to all points reached by any of these railroads at the rate prevailing upon lumber, which was the same from De Ridder as it was from Lake Charles, through their switch connection with the Kansas City Southern and the other roads at Lake Charles. But this did not satisfy the lumber companies; they wanted to "*sell their traffic.*" It was only by a scheme of this kind, and through an agency created by them, that a large concession could be secured from the published rates.

For a less proportion of the through rate, the Southern Pacific could have secured connection with the mills over the existing line of the Kansas City Southern. The Frisco road was afterwards built and connects at De Quincy with the Kansas City Southern. A through route could have been secured from De Ridder over the Kansas City Southern to points on the Frisco. It can hardly be presumed that the portion of the rate to the Kansas City Southern for hauling the traffic from De Ridder to De Quincy, or from Lake Charles to De Quincy, would have been 35 per cent

of the through rate, with a maximum of 5½ cents per 100 pounds. Nor can it be supposed that the portion of the Kansas City Southern for hauling from De Ridder to Lake Charles and transferring to the Southern Pacific would have been as much as 4 cents per 100 pounds. But with the division of through rates over these lines the mills were not concerned. They wanted to sell their traffic for the largest possible concession from the lumber rate.

LOSSES TO THE SOUTHERN PACIFIC.

The maintenance, under the contracts with the Long lumber interests, of the Lake Charles & Northern Railway has resulted in a large annual loss to the Southern Pacific. The reports of the Lake Charles & Northern Railway Company, filed with the Interstate Commerce Commission, show that in 1909 the net corporate losses in the operation of that road from Lake Charles to De Ridder were $23,928.61; in 1910, $6,190.61; in 1911, $19,110.36; and in 1912, $27,713.01. (See certified copies of reports.) These are actual cash losses. In addition, the Southern Pacific permits, without charge, certain log hauls over this road by the Louisiana & Pacific Company. The rent collected from the Louisiana & Pacific at the rate of 25 cents per train-mile for specified traffic is at least one-fifth of what would be regarded as a fair rental.

ADVANTAGES TO THE LOUISIANA & PACIFIC.

Assuming that there was a reason for the existence of the Louisiana & Pacific Railway Company other than as a plant facility in hauling logs, and that it was

necessary for it to build and maintain a road from De Ridder to Lake Charles, the advantages of this agreement, by which the Southern Pacific built and is required to maintain at its own expense this line of road, may be stated as follows:

[Figures taken from the annual reports of the Lake Charles & Northern Railway Company and Louisiana & Pacific Railway Company, with the exception of the "5 per cent return upon investment." Copies on file.]

	Fiscal years ended June 30—			
	1909	1910	1911	1912
Property investment of Lake Charles & Northern R. R. Co.	$833,888.94	$883,674.81	$894,134.35	$900,168.02
Less value of equipment	21,900.00	21,900.00	29,866.00	29,645.30
Value of property in joint use	811,988.94	861,774.81	864,268.35	870,522.52
5 per cent return upon investment in joint use	40,599.45	43,088.74	43,213.42	43,526.13
Maintenance of way and structures expenses	12,489.97	21,916.64	38,061.79	33,873.66
Transportation expenses:				
Superintendence	1,210.13	2,429.43	3,338.83	3,876.83
Dispatching trains	1,001.60	1,500.00	1,300.02	732.24
Station employees	5,249.52	7,859.01	9,302.41	9,751.75
Station supplies and expenses	218.87	270.02	619.03	474.34
Water for road locomotives	316.00	806.25	1,227.53	1,278.92
Drawbridge operation	1,075.39	1,373.79	1,372.43	1,363.69
Total expenses	21,561.48	36,155.14	55,222.04	51,350.82
Total expenses and return on investment	62,160.93	79,243.88	98,435.46	94,876.95
Amount paid by L. & P. Ry. for use of facilities of L. C. & N. R. R.	16,182.57	18,386.84	20,850.32	19,513.63
Advantage to L. & P. Ry. Co. over owning and maintaining the property	45,978.36	60,857.04	77,585.14	75,363.32

The foregoing statement assumes that the traffic over the road would be only the traffic carried by the Louisiana & Pacific during the periods covered by the statement. But which ever way it is looked at—from the standpoint of the Southern Pacific losses or from the advantages which the Louisiana & Pacific secures—the concessions to this tap line far exceed any amount that can be explained upon any hypoth-

esis other than that this deal was a flagrant concession to the Long interests to secure 40 per cent of his traffic.

It must be observed that this road, maintained by the Southern Pacific, is also used in part as a logging road for the Calcasieu Lumber Mill, and from Lily Junction to Bon Ami for the King-Ryder Lumber Company, and from De Ridder Junction to De Ridder for the Hudson River Lumber Company.

Next comes the cash concession from the lumber rate. In the testimony taken before the Commission (Rec., p. 660), Commissioner Harlan inquired of Mr. Davis what the 4 cents per hundred pounds amounted to on an ordinary carload, to which Mr. Davis replied "20 dollars a car." One of the mills turned out 2,500 cars a year. This amounts to $50,000 per annum, applying the 4 cents to the entire output. When we consider that 90 per cent of the entire output of each mill goes either to the Southern Pacific or the Frisco line, and that the allowance from the Frisco is greater than that from the Southern Pacific, the magnitude of this rebate clearly appears.

From the foregoing statement it will be seen that all the lumber mills operated by the several lumber companies in this case are located upon, and can be served directly by, main line railroads. Under the custom prevailing in this timber belt, as found by the commission, the main line railroads absorb the switching service to the mills and apply the

junction rate. There is, therefore, no sound reason why the Louisiana & Pacific Railway Company should operate over the rails of the Southern Pacific in handling lumber. This service of the Louisiana & Pacific does not add in the slightest to the public convenience. It is a burden superimposed by contract upon a main line carrier, and is a mere device to secure a concession from the published rates on lumber applicable to the traffic of these lumber companies. Main line roads, required by law to devote their entire capital to transportation, should not be burdened with a service and traffic which is fictitious and useless. The whole scheme is an unlawful device, to secure a rebate from the published rate on lumber. From the Southern Pacific side it is a "buying" of 40 per cent of the Long lumber traffic.

No. 831.

The Woodworth & Louisiana Central Railway Company, Limited, was chartered in 1900 under the laws of Louisiana, with a capital stock of $25,000. It took over the logging road of the lumber company, as hereinafter described, at a valuation of $88,000, for which it gave its notes. These notes are still unpaid, and no interest has been paid upon them. The notes are held by the lumber company. It is a mere agency of the lumber company.

It serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain Railroad. The logging road was constructed by

the Rapides Lumber Company and operated as a plant facility for a number of years. It extended some miles from the mill on the Iron Mountain Railroad into the timber lands owned by the mill company, and is used for the purpose of hauling logs from the timber to the mill to be manufactured into lumber. This track is narrow gage, and at present extends about 18 miles to a point from which unincorporated tracks are still operated directly by the lumber company. The right of way for the narrow-gage track is leased from the lumber company, but the track from the mill to a point shown on the map as Hineston is owned by the railroad company. It is operated for the purpose of conveying logs from the forests to the mill, this service being the same as the service originally performed by the mill company. In addition, there is a switch track from the mill at Woodworth to the Iron Mountain Railroad. This switch track was originally put in by the mill under arrangement with the Iron Mountain Railroad Company, and was operated by the Iron Mountain. The Woodworth & Louisiana Central acquired, in exchange for its notes, the interest which the mill had in this switch track, and undertook its operation.

The Woodworth & Louisiana Central, with capital furnished by Mr. Long, constructed a spur standard gage railroad from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. This spur track was constructed for the purpose of conveying

lumber manufactured by the mill company to competing lines of railroad, the purpose, as stated, being to secure competition for their traffic.

The tap line has one standard gage and five narrow gage locomotives. The standard gage locomotive is used for switching the carloads of lumber from the mill to the Iron Mountain Railroad, a distance, as the record before the Commission shows, of twenty-five feet, and for delivering carloads of lumber from the mill to the railroad lines at La Moria, a distance of six miles.

About 95 per cent of the lumber moves through La Moria. The explanation is in the fact that the allowances out of the through rate from the Iron Mountain Railroad run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. At the time of the hearing before the Commission the record shows that 40,707 tons of freight were handled for the lumber company during the fiscal year ending June 30, 1910, and 2,100 tons of outside traffic consisting of merchandise, farm products, and miscellaneous material, which included supplies carried to the mill and the milling camps. There is no passenger service.

LUMBER COMPANY.

The Rapides Lumber Company was organized and commenced operations many years before the organization of the Woodworth & Louisiana Central Railroad. Its business includes the cutting of timber and the manufacturing and sale of lumber. No logs are

shipped over the main line railroads; only lumber manufactured from the logs is delivered to the main lines for shipment to the markets. As a part of its business, and to cheapen the cost and facilitate business, the mill company constructed the narrow-gage tap line above described for the purpose of conveying the logs from its timberlands to its mill and conveying supplies from Woodworth to its lumber camps. It still continues to operate the narrow-gage road from Hineston into the timber, shown upon the map in yellow lines. At the time of the hearing, and for some time after the order in controversy was entered, the steel for these logging roads into the timber was supplied by the W. & L. Central. Since the hearing this has been changed upon the books of the company. The fact remains, however, that this narrow-gage road is operated precisely as it was operated by the mill company and for the same purpose, and without any money changing hands. The connection between Woodworth and La Moria is used entirely for putting the products of the mill upon the lines of three competing railroads; the line being more than three miles long, it is not a service which, by custom in this territory and in reference to this traffic, is absorbed by the main lines as a part of the service of transportation under the main-line group rate. It consists, therefore, of a plant facility performing a plant service in delivering the products of the mill to competing lines in order to secure greater allowances out of the regular rate and additional car

service. It is just as much a part of the business of the lumber company as it would be if this haul was made by teams. The rails and steam engine decrease the cost of delivery over team service, and are therefore used. It is a business proposition. The question before the Commission was simply whether the "divisions" for this service out of the main-line lumber rate was an unlawful device.

No. 833.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY.

This company was incorporated in 1881 under the laws of Louisiana by the citizens of Mansfield. Two miles of track were constructed from the town of Mansfield to a connection with the Texas & Pacific Railroad at a point known as Mansfield Junction, to serve the town of Mansfield as a freight connection. No passengers are carried over this line, passengers being conveyed by stages.

About 1891, E. A. Frost and associates purchased the entire capital stock of this railway company for $12,500, and about the same time purchased a large tract of timberland lying west of the line of the Texas & Pacific Railroad. These parties erected a sawmill at a point near Mansfield known as Oak Hill. The timber and the mill were held and operated by a corporation owned by Frost and his associates, known as the De Soto Land & Lumber Company, and the stock of the Mansfield Railway was held by this lumber company. Some six or eight

miles of logging roads were constructed from a connection with the mill into the timber. The Frost Lumber Company was organized and took over the property and business of the De Soto Company.

The tracks into the timber were used solely for conveying logs to the mill, and the mill was connected by switch with the Texas & Pacific Railroad. Lumber was shipped from the mill over this side track or connection, the cars being switched and the service absorbed by the main-line road.

At a point about 1½ miles east of Mansfield a connection is made by a switch with the Kansas City Southern Railway.

In transferring the logging road to the Mansfield Railway & Transportation Company, the lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill. No consideration was allowed for this; the full value of property transferred was exchanged for the outstanding capital stock to the amount of $77,300, all of which, at the time of the investigation by the Commission, was held by the stockholders of the Frost Lumber Company. The railroad is indebted to the lumber company in the sum of $216,806.97. The holdings of the stockholders in the Frost-Johnson Company and the tap line are identical.

There is a subsidiary corporation of the Frost-Johnson Company that performs the entire logging service. The lumber company assigned its trackage privilege over the tap line to the logging company. The Mans-

field Railway and Transportation Company owns one locomotive, a passenger coach, and one box car; the logging cars are owned by the subsidiary company that transports the logs.

In addition to the incorporated logging road, there are, in the aggregate, nearly 25 miles of unincorporated logging tracks in the timber.

FROST-JOHNSON LUMBER COMPANY.

As before stated, this corporation has been in existence for some time. It received the stock of the Mansfield Railway & Transportation Company and distributed it to its stockholders. It owns the subsidiary logging company and also the timberlands and mill. The mill is located at Oak Hill, about three-fourths of a mile from the junction with the Kansas City Southern Railroad, and 2½ miles from the point of interchange with the Texas & Pacific Railroad. The mill is within 300 feet of the right of way of the Kansas City Southern, with which it formerly connected by a switch. After the organization of the Mansfield Railway Company, this switch was abandoned, and later taken up and the other connection made. The distance of the lumber movement from the mill to the main lines is (*a*) to the Kansas City Southern about three-fourths of a mile, and (*b*) to the Texas & Pacific Railroad about 2½ miles.

Under the custom found by the commission to prevail in this territory the main-line roads absorb the service of switching or moving cars over the side tracks connecting with lumber mills where the

distance does not exceed 3 miles. Under this custom, therefore, the Frost Lumber Company can have its lumber taken from its mill by the Kansas City Southern Railway Company or the Texas & Pacific Railroad Company at the main-line rate; that is, without any switching charge. The Frost-Johnson Company's mill manufactures yellow-pine lumber. There is a hardwood mill adjacent to the mill of the Frost-Johnson Company, operated by the Mansfield Hardwood Lumber Company. This company buys a substantial portion of its timber from the Frost-Johnson Company or its subsidiary logging company. The price paid includes delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner as the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific Railroad, which are brought to the junction by the latter road and switched by the Mansfield Railway & Transportation Company to the mill at a charge of $2.50 a car.

The original connection with the Kansas City Southern was about 300 feet long. This switch was taken out and a connection about three-fourths of a mile long was substituted. After the latter switch was made an arrangement was effected by which the Kansas City Southern undertook to pay the Mansfield Railway & Transportation Company divisions of 1 to 4 cents per 100 pounds. This was held by the commission to be "a mere manipulation of the

situation in order to establtablish a relation that is unlawful."

The tap line also crosses thes the right of way of the Texas & Pacific within a short hort distance from the mill, but the lumber is switched hed by the tap line back towards Mansfield, and then to:n to the junction, making the distance 2½ miles; the tap tap line receives from the Texas & Pacific 1 to 4 cents pers per 100 pounds.

It will be observed that inat in both instances the original short switch connectionctions were taken out and longer connections were construstructed. The purpose as found by the commission was twas to compel these main lines to make a greater allowanowance to the tap line out of the main line rate. This is is is a plain "device" to secure a rebate.

No. 835. 335.

VICTORIA, FISHER & WESTERN R;RN RAILROAD COMPANY.

This railroad was incorporatedrated in November, 1902, under the laws of Louisiana. na. It is owned by the stockholders of the Louisiana ana Long Leaf Lumber Company. The railroad and lud lumber company have the same officers, and the capital pital stock of the railroad company, amounting to $300,0000,000, was issued as a dividend to the stockholders ers of the lumber company in exchange for the tracks acks and equipment then owned and theretofore operatoerated by the lumber company.

The track of the railroad was was constructed some 25 years ago as a logging road alad and was acquired by the present lumber company in y in 1900. It connects

with the Texas & Pacific Railroad at Victoria, Louisiana, and runs southward, crossing the Kansas City Southern at Fisher, and terminating at a point known as Cain, a distance of about 31 miles. There are about 25 miles of logging spurs and side tracks operated by the lumber company. The railroad has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet which, it claims, covers the service performed on the logging spurs, and not on the haul over the main track. The lumber from the mill is switched about one-half mile by the tap line to the Kansas City Southern, and about 1 mile to the Texas & Pacific. It receives divisions out of the main line rates from both railroad companies, ranging from ¾ of a cent to 4 cents per 100 pounds, except on traffic moving to points in Texas, where 1¼ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage for the year 1910 was furnished by the proprietary company.

THE LOUISIANA LONG LEAF LUMBER COMPANY.

This lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and another about half a mile from the tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years, and was

acquired by the present lumber company in 1900. The timber holdings of the company approximate 95,000 acres, in addition to which it owns 80,000 acres of cut-over land. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, while the greater part of the lumber produced at the mill at Victoria is delivered to the Texas & Pacific Railroad. A small amount of lumber from each mill moves over the tap line to the more distant trunk line.

The organization of this tap line and its operation did not change the service theretofore rendered; that service was a part of the business operation of the lumber company. It is still a plant or business service. The organization and changes made was a device to secure rebates.

TOTAL LUMBER TONNAGE OVER THESE FOUR TAP LINES.

The evidence before the Commission shows that the lumber tonnage of these several tap lines is as stated below. The carloads are figured on the basis of 25 tons per car.

	Tons	Equivalent in carloads on a basis of 25 tons per car
Louisiana & Pacific Ry.	243,122	9,725
Mansfield Ry. & Transportation Co.	28,596	1,144
Victoria, Fisher & Western R. R.	316,416	12,657
Woodworth & Louisiana Central Ry.	39,773	1,591
Total	627,907	25,117

Taking Mr. Davis's statement that the "divisions," under the Southern Pacific contract, would be $20

a car, and applying that to the whole traffic, it would amount to $502,340. An average of half that rate would amount to a yearly profit of over a quarter of a million dollars. And this comes out of the lumber rates applicable from the junction points. To the extent of these allowances these Long lumber companies are preferred over their competitors and railroad revenues are that much depleted.

The extent of these practices, the importance of the subject, and the far-reaching effect of the tap-line decision is suggested by the following from the Commission's report (p. 282):

> Of the 2,208 industrial lines of all classes that were examined in the course of the general investigation referred to, it was found that some 1,251, incorporated and unincorporated, were tap lines owned by or closely affiliated with companies engaged in different parts of the country in the manufacture of lumber and forest products. Of these so-called railroads only 243 were found to be receiving allowances from the public carriers. On the other hand, 1,008 were receiving no allowances of any kind. The 243 lumber companies that were beneficiaries of such contributions from the public carriers were operating, through their tap lines, 5,787 miles of track, while the tap lines of the 1,008 other mills receiving no aid from the public carriers were operating 12,358 miles of track. These figures fairly lead to the inference that it is the larger lumber companies with their larger traffic that receive allowances, while the

smaller concerns are compelled to get along without such contributions from the public carriers.

These 1,251 lumber mills in different parts of the country are operated under different conditions and manufacture lumber of different kinds and classes. It must be remembered, nevertheless, that they are all in competition with one another in the general lumber markets of the country. But limiting our comments to the conditions that exist west of the Mississippi River in the three States of Arkansas, Texas, and Louisiana, where the lumber industry is confined largely to yellow pine, we find that the public carriers, at the time our investigations were brought to a conclusion, were making allowances out of the rates to 112 tap lines, while 143 tap lines were receiving no such contributions.

QUESTIONS INVESTIGATED.

The investigation by the Commission had in view, and for its purpose, the ascertainment of all evidential facts bearing upon, and the determination from the facts of, the questions—

(1) Whether the giving of these divisions constituted in any case a rebate; and

(2) Whether, in a case where a tap line is a common carrier but wholly owned by a proprietary lumber company, a division with the tap line, upon the traffic of the proprietary lumber company, constituted, in whole or in part, unjust and undue discrimination in favor of the proprietary lumber company and against its competitors in the same field.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

TAP LINE CASES

No. 829.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 830.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

LOUISIANA AND PACIFIC RAILWAY CO. ET AL.

No. 831.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 833.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 834.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY ET AL.

No. 835.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

No. 836.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

VICTORIA, FISHER AND WESTERN RAILROAD COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR THE RAILROAD COMMISSION OF LOUISIANA, INTERVENOR AND APPELLEE.

STATEMENT.

The questions here presented, being public in their nature, and not merely private controversy, are of great interest to the people of the State of Louisiana.

The interests of the public of the State of Louisiana in the fundamental questions involved in these cases have at all times been regarded by the Railroad Commission of Louisiana as sufficient to impel its appearance before the Interstate Commerce Commission, before the Commerce Court, and now before this great final court.

Hundreds of miles of standard gauge, splendidly maintained, and well-operated railroads, representing investments in Louisiana running far into the millions, will be affected by the decision in these cases.

The prosperity of the South depends upon its agricultural development. It is essentially an agricultural section. Where once stood the silent forests, will in future rise the homes of farmers, and the soil that has produced the finest timber in the world will become, and is fast becoming, a great agricultural country, producing crops that annually run into millions in value. This sort of development has followed the railroads, naturally, because it depends upon transportation for its success.

Transportation is the forerunner of all agricultural and manufacturing development. It is trite to say that the most commonplace and worthless articles are often given a great value by simply transporting them to a market. Sand is valueless while lying on the river bank, but becomes a valuable commercial product when transported to a city. Gravel in the river bed is worthless; farms are not prosperous unless near a river or a railroad, and, without transportation, trees in the forests are useless. Transportation is necessary to give them a

commercial value, and so railroads had to be built to transport them to a sawmill.

HISTORY OF THE LOUISIANA TAP LINES.

The four Louisiana companies which are attacked as mere devices for securing a rebate from their connecting trunk lines, are the

Louisiana and Pacific Railway Company,
Mansfield Railway and Transportation Company,
Victoria, Fisher and Western Railroad Company,
Woodworth and Louisiana Central Railway Company.

Each of these companies is a railway corporation, duly chartered, incorporated and existing under the laws of the State of Louisiana.

They have complied with the laws of the State of Louisiana, the Rules and Regulations of the Railroad Commission of Louisiana, and with the Federal laws governing railroads.

These cases involve the question as to whether the appellee railroad companies are common carriers or merely plant facilities.

That they are useful as a means of converting the wildernesses of Louisiana into farms that produce varied crops of high commercial value, and thereby induce immigration to the State, has been admitted time and again in the voluminous record now before the Court.

Many of the early railroads of this country occupied much the same position as the "tap line" railroads now occupy. Small railroads pioneered the civilization of the South and Southwest. Specially was this true in the State of Louisiana. The charters of the first railroads built in the State of Louisiana were all special charters by Act of the Legislature, and the railroads built under these charters were, in the first instance, built to carry the products of the farms out to the steamboat landings on the Mississippi River. They were owned by the same men who raised the crops that were shipped over them. The demands for rail transportation have always been promptly met by some one who had the enterprise to meet the situation. Long before any trunk lines were built through the State of Louisiana there were numerous short lines in operation, connecting the rivers with the interior. As early as 1833 the Pontchartrain Railroad, four miles long then, and no longer now, operated between Lake Pontchartrain (Spanish Fort) and New Orleans, and it was then owned and operated by the merchants of New Orleans as a facility for bringing in their freight which came by ship from foreign countries and coastwise states through the lakes, to the rear of the city.

There was not much develo evelopment in the lumber industry until about the early early nineties. Following a great exploitation of the tim e timber resources of the State, inaugurated at the Cott Cotton Centennial Exposition in 1884, at New Orlean rleans, a wave of investment swept over the South. I h. Realizing the value of the vast forests, north and sou d south railroads were extended into them and the lum lumber industry of Louisiana began to grow until it til it reached tremendous proportions. For years the dev e development of the lumber industry was confined to t to the forests adjacent to the existing trunk line railroa ilroads. These lines were the recipients of the benefits fr ts from the transportation of both logs and lumber. They They were extended into new territory, and as they were were lengthened, the locations of the mills were changed nged. This continued until the timber adjacent to the the right of way of the railroads was cut, and the dista distance between the rails and the forest became too grea great for a team haul of the heavy logs.

As long as the timber was a was along the line of the trunk line railroad, the logs w gs were often hauled by the railroad to the saw mill, th ill, there cut into timber, and the timber reshipped to it to its final destination. There was a milling-in-transit a nsit arrangement in many cases, which covered the moveme ovement of the logs to the mill and the lumber from the m he mill to its destination,

just as it was handled over the tap lines in connection with the trunk lines previous to the cancellation of the through rates and divisions applying on logs and lumber. When the tap lines were built, the arrangement was extended to the end of the tap line.

As transportation was necessary to haul the logs from points on the trunk lines to the saw mills, it was equally necessary when the space between the timber and the trunk line became so great as to render team hauls impracticable. Railroad extension, therefore, to the timber line, became necessary. The trunk lines were unwilling to extend their railroads. Had they done so, the hauling of the logs from the forests to the saw-mill over their branches would never have been questioned as a transportation service by a common carrier railroad. The railroads themselves often owned large tracts of timber lands. Their owners were also owners of saw mills and forests. This is true to-day. The Santa Fe is a saw mill owner as well as a railroad owner. The large saw mill at Merryville, Louisiana, is a Santa Fe property, and the logs which are sawed into lumber at the Santa Fe's Merryville plant are also the logs of the Santa Fe Railroad Company.

The trunk line railroads were unwilling to build branches to the forests to get the logs for the saw mills, so this work had to be undertaken by some one

else. Naturally the interested parties, the owners of the timber and the saw mills, built the lateral railroads to reach their timber and to afford the transportation necessary to get their products to the markets. When these lateral railroads were built, the trunk line railroads extended their rates so as to cover the movement over the tap lines.

Then arose the question as to whether the railroads belonging to lumber companies, whether incorporated or not, were common carriers of interstate commerce, which might participate in through rates and divisions with trunk line common carriers —common carriers of the logs and lumber belonging to their stockholders, as well as common carriers of other freight.

PROCEEDINGS BEFORE THE INTERSTATE COMMERCE COMMISSION.

The first inquiry undertaken by the Commission as to the right of a tap line to participate in through rates and receive a division thereof, was upon its own motion, in re **Transportation of Salt from Hutchinson, 10 I. C. C. Rep. 1.** Informal complaint was made to the Commission that the Hutchinson & Arkansas River Railroad, while not a railroad in fact, was receiving divisions of the rate for the transportation of salt from Hutchinson, Kansas.

In that case the Hutchinson & Arkansas River Railroad Company, a Kansas corporation, was organized to build a railroad; but it did not build a railroad. It simply purchased sidetracks at Hutchinson, connecting the mills of the Hutchinson, Kansas, Salt Company with the tracks of the Santa Fe. It owned no equipment; it issued no bills of lading; it performed no service. It was held that the allowance of a division of a through rate with this corporation was illegal. The case can not, therefore, be cited in support of the Commission's action in declaring illegal the divisions allowed the Louisiana & Pacific Railway Company, the Mansfield Railway & Transportation Company, the Woodworth & Louisiana Central Railway Company, and the Victoria, Fisher & Western Railway Company. Conditions are entirely different.

The next case in which the question whether allowances from the published rate made by the railroads west of the Mississippi River to logging roads or "tap lines," as they are called, owned or controlled by the lumber mills, constituted departures from published rates in violation of the Act to regulate commerce, was the case of **The Central Yellow Pine Association vs. The Vicksburg, Shreveport & Pacific Railroad Company, 10 I. C. C. Rep. 193.**

Speaking generally of the tap lines in the Southwest, the Commission, in this case says:

> "While these logging roads are almost or quite without exception mill propositions at the outset, built exclusively for the purpose of transporting logs to the mill, they soon reach a point where they engage in other business to a greater or less extent. As the length of the road increases, as the lumber is taken off and other operations obtain a foothold along the line, various commodities besides lumber are transported, and this business gradually develops until in several cases what was at first a logging road pure and simple has become a common carrier of miscellaneous freight and passengers. Almost all these lines, even where they are run as private enterprises, do more or less outside transportation, and it would be difficult to draw any line of demarkation between the logging road as such and the logging road which has become a general carrier of freight." (Ibid. 199.)

* * * * *

> "The division does not seem to be in any case as great as the actual expense of transporting the logs to the mill." (Ibid. 199.)

* * * * *

> "It requires about four carloads of logs to produce one of lumber, and the expense of transporting the logs to the mill is, therefore, considerably greater than would be the cost of carrying the lumber if that were manufac-

tured at the point where the log is taken up. It hardly seems, however, that most of these divisions could be regarded as excessive if the mill were located in the forest and the tap line treated as the initial road in transporting the lumber from there to destination." (Ibid. 199.)

The opinion in this case was handed down by Commissioner Prouty. Its conclusions support our contentions in every syllable. From it we excerpt the following:

"Rates throughout this southern lumber-producing territory are blanket rates—that is, they are the same from all points of production upon the various lines of railway to a given destination. Now, when the traffic manager of the Kansas City Southern was approached and asked to extend his line to the tract of timber which Mr. A. possessed, it is apparent that he might have elected to do so. That company might have constructed a branch line of the necessary length, might have located a station at the terminus where the mill stood, and might have applied the same rate on lumber from that station which obtained from other stations upon its line. Indeed, it would have found some difficulty, in view of the system universally in vogue, in applying a higher rate from that mill than was made from all southern territory."

* * * * *

"Mr. A. finds it impossible to interest others in the construction of this railroad, and

thereupon he takes the stock himself. The road is built and operated exactly as though the ownership of it and the mill were independent, but in fact the same person owns the two. It seems clear to us that this fact can make no difference; that the mill of Mr. A. may be accorded the same through rate that is accorded to a mill located at the junction point, and the branch road allowed a sufficient division to compensate it for transporting the lumber from the mill to the main line, provided that the rate is a joint rate between two common carriers."

* * * * *

"It is not the fact that lumber and not logs has been transported to the junction point, nor that this lumber has been carried there by a railroad, which justifies the payment of the division; but, rather, the fact that the railroad which furnishes this service is a common carrier, and that the rate from the mill is a joint rate between these two carriers."

* * * * *

"These mills are usually located at the junction point and not upon the logging road. This is primarily due to the manner in which the development of the sawmill industry has proceeded; but there are also many reasons why, if the mill were to be located anew, it would be better to place it beside the main line rather than at the end of the branch line."

"We are clear that one of these defendants **(trunk line railroads)** may do upon a branch line constructed and operated by it whatever it could do upon its main line, and that it might accomplish under a joint rate with an independent railway carrier whatever could be done upon its own branch line. The real question is, therefore, can a railway which receives logs at a point upon its line, and transports these logs to a sawmill, where they are manufactured into lumber, treat the lumber as originating where the log did, and make such allowances towards the transportation of the logs as would be a fair compensation for hauling the lumber from that point? In other words, can the principle of milling in transit be applied to the manufacture of logs into lumber?"

* * * * *

"It is well understood that at the present time this principle is applied to the movement of many commodities."

* * * * *

"Such practices were, however, in use to a considerable extent at the time of the passage of the Act and since then they have become universal. To abrogate these privileges would be to confiscate millions of dollars in value by rendering worthless industrial plants which have been constructed upon the faith of their continuation. Nor is it a forced construction of the statute to hold that when the product finally goes forward to the point of

consumption it but completes the journey upon which it entered when the raw material was taken up. There can be no doubt that the application of this principle has cheapened the cost of transportation and probably of manufacture."

* * * * *

"The practice which is attacked has grown up with the development of the lumber industry and seems on the whole to have been beneficial to the country in which it exists. Its effect is to bring into market lands not otherwise accessible, to decrease the cost and stimulate the production of lumber, thereby benefitting the entire public. Values have adjusted themselves to this situation. Lands have been purchased, mills located, large amounts of money invested upon the theory that the system would be continued. While the mill owner has no legal vested right of this sort which he can assert, there is a moral obligation resting upon the railway company to continue the practice, if it can do so legally. So far as can be seen, the mill owner, the railway, the purchaser of lumber are all benefited. It seems plain to us that we ought not to interfere unless the positive mandate of the law requires it, and with considerable hesitation we conclude that it does not."

* * * * *

"If the logs were shipped from a point upon the main line of one of these defendants to the mill at the local rate, we do not think

that an adjustment of the rate in and of the rate out, when the lumber went forward, which would treat the lumber shipment as originating where the logs did would be illegal as a matter of law."

* * * * *

"Once admitting the legality of the principle of milling in transit, whether it shall be extended to a particular case, must depend largely upon the facts. Under all the circumstances disclosed by the record before us we think that this practice may be permitted here but this holding extends the application of that principle to the extreme limit."

* * * * *

"What we hold is that the shipment of the log to the mill and the lumber from the mill may, under the circumstances of this case, be treated as in the nature of a through shipment from the point where the log is received to the point where the lumber is finally delivered, and that the carrier may make such allowance toward the cost of moving the log as would be fairly involved in moving the lumber from that point, and that it may do this by a joint arrangement with the carrier bringing the log to the mill, **provided that carrier is a common carrier by rail.**"

* * * * *

"It will be noted that in our opinion these divisions can only be granted when the logging road is a public carrier which actually

makes a joint through rate, and it was urged in argument that there can be no difference in effect between a common carrier which brings these logs to the mill and a private carrier which discharges the same service. It would be a sufficient answer to this that the law permits the allowance in one case and not in the other, but there is a practical answer as well. The common carrier is subject to public control, its tariffs must be filed according to law, it must report to governmental authority, it must obey the law obligatory on such common carriers. These logging roads develop with the country, passing by almost imperceptible progress from carriers of logs to carriers of general merchandise and often of passengers. The same considerations which require that railroads in general should be subject to public supervision apply to these lines."

* * * * *

"We think, therefore, that the tariffs should state upon their face that the transportation provided for covers the carriage of the log to the mill, and that the division which is allowed the tap line should in all cases be named."

* * * * *

"To become a common carrier within the purview of this case the tap line must clearly file its tariffs and render its statistical report to the Commission.

And thus the matter rested from March, 1904, until the decision of the Commission in **Star Grain & Lumber Company et al v. Atchison, Topeka & Santa Fe Ry. Co. et al.** (14 I. C. C. Rep. 364, 17 I. C. C. Rep. 364). In the interim, however, in the case **In the Matter of Divisions of Joint Rates** (10 I. C. C. Rep. 385, decided November, 1904), the Commission held that ownership of a railroad by its largest individual shipper was not prohibited by the Act to regulate commerce.

> "The mere fact that this road **(Illinois Northern Railroad)** is to-day entirely owned by the largest individual shipper over it, or that it was originally organized and built for the purpose of doing the work of that shipper, is not, in our opinion, controlling against the legality of the transaction before us."

In that case it was held that an industrial railway, however short it may be, if actually operated independently with its own locomotives and cars, is a common carrier, though it is operated for the exclusive benefit of the industrial enterprise which owns it. This is certainly the case where it accepts such general traffic along its line as may be offered it.

Of the Illinois Northern Railroad, the Commission, by Commissioner Prouty, said:

> "The Illinois Northern Railroad is a common carrier within the first section of the Act to regulate commerce. It is incorporated as

> a railroad company under the laws of Illinois. It actually owns and operates a line of railroad. It maintains a freight station, at which it receives and delivers for the general public considerable quantities of less than carload freight. Its main business is the moving of loaded cars to and from various industries along its line, and in this capacity it serves more than a hundred plants, besides that of the International Harvester Company. Manifestly, there is no reason in law why this railroad may not make joint rates, file joint tariffs and agree upon joint divisions as other railroads do."

Immediately after these decisions were rendered the short line lumber railroads and the trunk lines with which they connected adjusted their rates and tariffs and arranged their accounts to meet the plain requirements of the Interstate Commerce Commission.

In the Star Grain case the history of the tap lines was again in the making, and the Commission announced that it would make an investigation into these tap lines and the character of the transportation which they conduct, having reference to the tap lines generally. This, notwithstanding the very thorough exposition of the tap line situation as made by the Commission in its decision in the Central Yellow Pine case, 10 I. C. C. Rep. 193. The principles laid down in that case, and the actions of the tap lines

to comply with them, were immediately put in doubt by the decision in the Star Grain case.

Out of the Star Grain case grew the general investigation into the tap lines, in the proceeding instituted by the Commission upon its own motion, entitled, **"In the Matter of Tap Line Allowances; Investigation and Suspension of Schedules Cancelling Existing Through Rates on Certain Tap Line Connections,** which resulted in the decision rendered by the Commission April 29, 1912, and its Supplemental Report of May 14, 1912. (23 I. C. C. Rep. 277, and 549.)

The manner in which logs and lumber were handled by the tap lines was not materially different in 1904 than in 1908, when the Star Grain case was decided. Changes were made in the manner of publishing tariffs and filing them with the Commission, so as to have them conform to law, yet the practices which were approved by the Commission in 1904 in the Central Yellow Pine case (10 I. C. C. Rep. 193) were rejected by the Commission in its decision in the Tap Line Case (23 I. C. C. Rep. 277 and 549).

The opening paragraph of the Commission's opinion in the Tap Line Case defines an industrial railroad, and later in the opinion it is stated that—

"These small railroads, owned by or affiliated with lumber companies and commonly referred to as tap lines, although different from other lines in many respects, are generally classified as industrial railroads."

"An industrial railroad," says the Commission, by Commissioner Harlan, "as that phrase is now commonly used, is a short line constructed primarily to serve a particular plant or industry in the general interest of which it is owned and operated. It consists of the tracks connecting the various factories, warehouses and other buildings of the industry with one another, and ordinarily has a connection with one or more adjacent trunk lines by means of a track leading from the plant to their rights of way. It serves the industry by receiving its in-bound shipments of raw materials from the trunk lines at agreed interchange points, distributing them among the various buildings according to the requirements of the manufacturing operations, by taking the finished products from the plant to the trunk lines; it is also often in a position to effect all the necessary movements of materials and partially finished products from building to building within the plant. The rails, tracks, and locomotives are most frequently operated as a bureau of the industry, and no pretense is made of serving outside interests. In recent years, however, a practice has grown up under which the rails, tracks, and locomotives operated and used in and around an industrial plant, when set over to a small incorporated railroad company organ-

ized for the purpose and owned by the industry or in its interest, are thereafter dealt with by the regular lines as something wholly apart from the industry, and as if they constituted a common carrier in the service of the general public, participating on an equal basis with other carriers in the transportation of the traffic of the country. On this theory of their status many industrial lines receive allowances out of the rates both on the traffic of outside interests as they may handle."

From this definition of an industrial or so-called tap line railroad we unhesitatingly contend that the four railroad companies, plaintiffs in the proceedings now before this court are entitled to full recognition as common carriers which should receive the reasonable allowances out of through interstate rates on the logs and lumber which they handle for their proprietary companies, as well as on the other traffic which they handle.

The facts concerning each of the tap line railroads, appellees, being specifically set forth in their respective briefs, are not repeated here.

The interest of the State of Louisiana in these cases lifts them from the category of mere private controversy and places them on the plane of public questions.

The questions to be decided are of unusual interest to the citizens of the State of Louisiana, since not

only is the mere status of these railroads to be solved, but the value of a charter granted under the authority of the State of Louisiana is to be tested, and the interests of shippers who have invested fortunes in Louisiana properties are to be passed upon. The lumber and timber products industry is by far the most extensive industry in the State of Louisiana. The value of the output of the various mills engaged in manufacturing the products of timber is only exceeded by the value of the combined industries of manufacturing sugar and molasses, which includes the refining of sugars brought into the State from Cuba and Porto Rico. In 1909, the lumber industry gave employment to an average of 46,072 wage-earners, and the value of its products amounted to $62,838,000, these figures representing 60.5 per cent of the value of all products, and 28.1 of the number of wage-earners employed by the varied industries of the State. At the present time it ranks first in relation to the number of wage-earners employed, and second in value, among all of the industries of the State of Louisiana.* The tonnage hauled by the railroads of Louisiana of freight originating in the State is largely composed of shipments of logs and lumber, a great majority of which originates

*Note.—Supplement for Louisiana, Abstract of Thirteenth Census of the United States (1910).

on some one of the short lines which are designated "tap lines." In fact, for the year ending June 30, 1911, logs and lumber constituted 60 per cent of the tonnage hauled by railroads in Louisiana.

THE CONSTITUTION AND LAWS OF THE STATE OF LOUISIANA.

The following are taken from the Constitution and laws of the State of Louisiana relating to railroads:

> Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this State and connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." (Constitution 1879, Art. 243.)
>
> Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers." (Constitution 1879, Art. 244.)
>
> Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public

inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Constitution 1879, p. 245.

Revised Statutes, Sec. 1479. "Whenever the State or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the lows of this State for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such State, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name

> of the owner thereof, if known at present in the State, with a prayer that the land be adjudged to such State, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

Articles 284 to 289 of the Constitution of the State of Louisiana place all railroads under the supervision of the Railroad Commission, and Act No. 195 of the Legislature of the State of Louisiana of 1906 makes it the duty of the Railroad Commission to appear before the Interstate Commerce Commission whenever in the judgment of the Railroad Commission the interests of shippers or consignees in the State of Louisiana may require it.

Article 230, Constitution of 1898, second and third paragraphs:

> "There shall also be exempt from taxation for a period of ten years from the date of its completion any railroad or part of such railroad that may hereafter be constructed and completed prior to January 1st, 1904; provid-

ed, that when aid has heretofore been voted by any parish, ward, or municipality to any railroad not yet constructed, such railroad shall not be entitled to the exemption from taxation herein established, unless it waives and relinquishes such aid or consents to a resubmission of the question of granting such aid to a vote of the property taxpayers of the parish, ward, or municipality, which has voted the same, if one-third of such property taxpayers petition for the same within six months after the adoption of this Constitution.

"And, provided further, that this exemption shall not apply to double tracks, sidings, switches, depots or other improvements or betterments, which may be constructed by railroads now in operation within the State, other than extensions or new lines constructed by such railroads; nor shall the exemption hereinabove granted apply to any railroad or part of such railroad, the construction of which was begun and the roadbed of which was substantially completed at the date of the adoption of this Constitution."

By amendment, the exemption was extended to all railroads built in the State of Louisiana after January 1st, 1904, and prior to January 1st, 1909, for a period of ten years.

These laws indicate the effort which the State of Louisiana has made to increase its railroad mileage.

Congress, realizing the great importance of the short tap line lumber roads in the development of the

Southwest, excepted from the commodities which a railroad company might not own "timber and the manufactured products of timber."

So that both Congress and the State of Louisiana have recognized in a most emphatic manner the value of the lumber roads as a means of developing the sections in which they operate, and they have, by the State of Louisiana at least, been encouraged by substantial assistance in exemptions from taxation for long periods.

THE POSITION OF THE RAILROAD COMMISSION OF LOUISIANA IN THESE CASES.

When the Interstate Commerce Commission was conducting its investigation into the tap lines of the Southwest, the State of Louisiana, through its Railroad Commsision, promptly intervened, presented testimoney, filed a brief and took part in the oral arguments. Following up the first steps which it took in an endeavor to protect the shippers of the State, whose interests are affected, it intervened in these cases when they were before the Commerce Court.

The policy of the State of Louisiana in inducing railroad building and extension was clearly stated by Mr. J. J. Meredith, then chairman of the Railroad Commission of Louisiana, in his testimony before Commissioner Harlan, taken at St. Louis, January

26, 1911. (Pp. 2037-2059, printed record, Vol. III.) Commissioner Meredith made this statement:

> "I desire to state that after consultation with the Attorney General of the State of Louisiana, who is the legal advisor of our State Railroad Commission, that we decided to enter a formal protest and intervention before this Commission against the cancellation of through rates and divisions between the trunk lines and the branch lines and the so-called tap lines of the State of Louisiana.
>
> "In explanation, the Constitution of the State of Louisiana creating the Railroad Commission gives it power to fix just and reasonable rates for the transportation of freight and passengers over the lines of railroad within the State of Louisiana, and to regulate and fix joint and through rates between the trunk lines of the State and the branch lines or short lines of the State of Louisiana. The Supreme Court of the State of Louisiana has defined a railroad or common carrier to be a railroad that has complied with the laws of the State of Louisiana by taking out a charter, by filing schedules and tariffs and otherwise complying with the laws of the State of Louisiana governing railroads and transportation. The statutes of the State of Louisiana, No. 195, of the Acts of 1906, makes it the duty of the Railroad Commission of the State of Louisiana to appear before the Interstate Commerce Commission whenever in their judgment there is any matter to be considered affecting the rates of transportation within the State of Louisi-

ana. It has been the policy of the State of Louisiana for some years past to encourage immigration and the investment of capital. This policy has not only been expressed by public sentiment everywhere, but it has been crystallized in the statutory legislation. Our Legislature passed an act exempting all lines of railroad from taxation that were built within a certain period of time—I believe for the period of ten years—and since that time on the expiration of this time the act has been revived and the time extended for another peroad of ten years. The people of the State of Louisiana in various sections of the State have also voted special taxes to different roads as an inducement and an encouragement to build through certain sections of the State. Louisiana has long suffered from the want of immigration and the investment of capital, and under the laws of our State the Railroad Commission not only deems it wise but their official duty and also their moral duty to lend whatever support and protection they can to the perpetuation of the short lines already built within our State that have complied with the laws of the State of Louisiana governing railroads and to encourage the building of other railroads in the future. There are various short line railroads against which complaints have been filed before our Commission complaining of the service rendered and the equipment furnished, and our Commission has assumed jurisdiction over these roads, issued orders at various times which have been complied with, none of which, I believe, that I can recall at this time have ever been contested. I

remember especially in September, 1909, when the great storm swept across the southern portion of the State of Louisiana, it blew down great forests of pine timber which was very valuable to the owners, and the owners of this timber petitioned to the Railroad Commission asking for more equipment and for extended facilities in this emergency in order to utilize the timbers before they should decay and go to destruction from worms and other causes. This complaint was made against the Kentwood, Greensburg & Southwestern Railroad, a short line of railroad connecting the Illinois Central in the southern part of our State. Some of this timber belonged to local citizens there within the parish, and some of it belonged to non-residents and parties living at a distance. Our Commission issued an order for the extension of side track facilities for the purchase of more cars and the quick transportation of this lumber, and the order was complied with."

Commissioner Harlan: "You speak of the transportation of lumber. Was it lumber or logs?"

Commissioner Meredith: "Both lumber and logs. We have also had application from other short lines of railroad against the service, asking for a change of schedule, asking for better accommodations for pasesngers, in which we have ordered the company to procure additional equipment and furnish adequate facilities for the business tendered to its line. These orders have been complied with."

"I desire to state further that my statements are intended to be confined to those lines of railroad that have complied with the laws of the State of Louisiana governing railroads and common carriers. I believe that is about all the statement I care to make."

Commissioner Harlan: "Are the complaints and orders you refer to preserved in the archives of your Commisison?"

Commissioner Meredith: "Yes, sir."

Commissioner Harlan: "And were the orders entered in connection with the complaints which have been filed since you have been a member of the Commission?"

Commissioner Meredith: "Yes, sir."

Chairman Meredith then reviews the history of the development of various railroads in Louisiana, tracing their origin to the short lumber railroads, first built to serve only the mills with which they were then connected, and then extended and converted into common carriers, eventually assuming their places in the transportation system of the State as parts of their main lines or important branches.

As Chairman of the Louisiana Commission, he stated that he believed that a division of joint through rates would be cheaper to the consumer than it would be to pay the rate to the trunk line, and then the local rate over the short line, and representing the general interests of the country, the Louisiana

Commission was of the opinion that a division of joint rates would be for the best interests of the country. (P. 2044Tr. of Testimony.)

The testimony of Chairman Meredith is of more than passing importance. It is the voice of a sovereign State speaking through its official, seeking to place fairly before this Court the general character of the Louisiana & Pacific Railway, the Mansfield Railway & Transportation Company, the Victoria, Fisher & Western Railroad, and the Woodworth & Louisiana Central Railroad.

This official had no interest to serve except the public. He was familiar with the conditions under which these railroads are operated, and his opinion is entitled to great weight. He says that these railroads are performing the services of a common carrier. They have a small portion of the public to serve. They are complying with the laws, and are treated as common carriers by the governing bodies of the State which gave them their charters.

Eminent counsel will contend no doubt that these are all questions of policy to be dealt with by the State, which in no manner binds the Interstate Commerce Commission or the Courts in reviewing its orders. But these are not entirely questions of policy. These officials testify that they have been able to enforce their orders against these railroads; that they have demanded and received an adequate

service for the public, scant though it may be, not by reason of courtesy on the part of the owners of these lines, but because they are common carriers, subject to the law's penalties for violating the mandates of the federal and state commissions. Can railroads so organized and operated be common carriers as to one and not as to all—common carriers as to some freight and not common carriers as to other freight, subject to control by the Interstate Commerce Commission in the enforcement of its orders and rulings relative to making reports and filing tariffs **as common carriers,** yet declared by the Commission as performing a transportation service as to one portion of its patrons and not as to all?

The position of the Railroad Commission of Louisiana, summarized, is that the Louisiana & Pacific Railway, the Mansfield Railway & Transportation Company, the Victoria, Fisher & Western Railway, and the Woodsworth & Louisiana Central Railway, by every test of law, in fact, as well as in name, are common carriers. There has been no question raised as to their status in the State of Louisiana, and as to the intrastate traffic which they handle they are recognized as common carriers by every official body dealing with public service corporations in the State of Louisiana. They are treated as common carriers by the Railroad Commission of Louisiana, and as to

some of their interstate traffic by the Interstate Commerce Commission, to whom they make annual reports in accordance with prescribed forms, and with whom they file tariffs under its rules. They have been treated so by the State Board of Appraisers, whose duty it is in the State of Louisiana to assess the value of railroad property. Portions of their lines have been exempted from taxation by virtue of their being common carrier railroads. They exercise the power of eminent domain granted by the State, by expropriating property for railroad purposes. They have been so treated by the great trunk lines with which they connect, by the making of joint through rates and the handling of through shipments. They have been so treated by the courts which have entertained suits filed against them for damages growing out of their negligence, and, in one instance at least, the Louisiana & Pacific Railway Company has been so treated by the Interstate Commerce Commission and the United States, which have, through their attorneys, prosecuted the company for a violation of the Federal Safety Appliance Act.

* * * * *

By virtue of the law they are entitled to make joint through rates, and the making of joint through rates carries with it the necessary obligation on the part of the connecting line of allowing a fair division

to the road which originates the tonnage. This principle is so well founded in the jurisprudence of this country that argument on this point seems unnecessary. They have track connections with the trunk lines which they meet and cross. They are required to receive and transport the cars and tonnage of their connections.

By declaring that the Louisiana & Pacific Railway Company, as to the logs and lumber which it handles for the lumber companies whose stockholders own a controlling interest in the railroad, is a mere plant facility and not a common carrier, the Commission has struck the vital spot of the corporation. To deprive the Louisiana & Pacific Railway Company of a fair division out of a through interstate freight rate on the lumber and logs which are shipped by the proprietary lumber company, is to deprive it of its principal source of revenue.

It is admitted in the decision of the Commission that the cancellation of the through rates and divisions will have the effect of greatly reducing the "tap line" earnings, and the inevitable result will be that the local traffic must, in the end, bear the entire burden of paying all the operating expenses and fixed charges of the railway company.

When the testimony was taken, some two years ago, over 62 per cent of the tonnage of the Louisiana

& Pacific Railway Company consisted of logs, lumber and other traffic shipped by the lumber company, which owns a controlling interest in the railway company. Upon the other 38 per cent of the traffic, therefore, has rested the burden of producing enough revenue to pay the operating expenses, the fixed charges, and the interest on the investment of the railroad company. That this cannot be done is evident, because 62 per cent of its tonnage must be hauled without revenue. That the shippers and the State of Louisiana will suffer is a natural consequence. The shippers will suffer because the local rates must be advanced to a point where they will produce sufficient revenue to meet the expenses of the railroad company; and the State of Louisiana will suffer because its assessments are based upon not only the original cost of the railroad itself, but also on its revenues. These alone would be sufficient reasons to justify the State of Louisiana, through its Railroad Commission, in intervening in this case in behalf of the plaintiff railroad company.

But while the percentage of the shipments of timber and its manufactured products is now high, it decreases year by year, and the shipments of other freight increases. Eventually, the percentage of other shipments than timber and its manufactured products will predominate, and in but a few years

the railroad will be in the midst of a highly productive agricultural section. This is not problematical or speculative. It is the history of every trunk line and branch railroad in the timber regions of the South and West. In fifteen years most of the timber now standing will have been cut. There will be no inducement to trunk lines to extend branches into the cut-over lands, and unless the intervening time is utilized in developing them agriculturally they will decline in value. As railroads participating in revenues from joint hauls as well as from local business, on interstate as well as intrastate traffic, the tap lines can be utilized to develop the lands they traverse.

When the State of Louisiana grants a charter to a railroad company in good faith, it expects to receive in return from the railroad company an adequate service at reasonable rates. This service should extend to and include shipments destined to and coming from other States as well as shipments to and from points in the State of Louisiana. If a railroad company organized under the laws of Louisiana may, by a decision of the Interstate Commerce Commission, be limited as to the traffic it may haul as a common carrier, then the right of commerce to move freely in unobstructed channels between the State of Louisiana and other States becomes restricted. Congress never intended to prohibit legitimate rail-

road corporations from engaging freely in interstate commerce.

Many Important Railroads Now Operating in Louisiana Originated as Tap Lines.

From the tap lines in Louisiana have sprung some of the most important trunk lines of the State today. It is only by reason of the fact that these small lines in the beginning were able freely to handle interstate, as well as intrastate, commerce that this development has been possible. Having received its charter and proceeded to comply with the same by building its railroad, buying equipment and holding itself out to the public as a common carrier, the plaintiff railroads are entitled to grave consideration before they should be held to be mere plant facilities as to any of their traffic.

Railroads may be operated by individuals or by corporations, and their stock may be owned by individuals or by other corporations. There is no Federal or State law which declares that a railroad company cannot engage in interstate commerce by reason of any restriction on its stock ownership. When a railroad company is organized with the avowed purpose of constructing or operating a railroad, there is no restriction in the law preventing it from purchasing railroads already constructed, building new

railroads, or leasing railroads already built, and operating them as public carriers. As such carrier it has the right to make traffic arrangements with trunk line connections, which is simply saying, in other words, that it is free to contract with other railroads for the continuous carriage of its passengers, tonnage or cars in interstate journeys. The rates for such transportation must be reasonable.

The laws of the State of Louisiana require carriers to operate their lines in accordance with the reasonable rules and regulations of the Railroad Commission of Louisiana, and consequently the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, the Mansfield Railway & Trasportation Company, and the Victoria, Fisher & Western Railway Company must continue to operate their lines, although they have been deprived of an important source of revenue by the ruling of the Interstate Commerce Commission, attacked in this case. The sequence will be higher rates on local shipments, unless the joint through interstate rate on lumber is restored. Rates cannot be advanced beyond certain limits. The moment they become exorbitant, traffic ceases. Those who live on the line are driven to more favorable localities. Development stops. Bankruptcy follows, and in its wake, a wilderness.

It cannot be expected that a railroad built through a heavily timbered district can secure a heavy tonnage of anything but lumber during the first ten or fifteen years of its existence. The timber must first be cut away, the lands cleared and the country settled before it can derive any considerable revenue from other commodities. As the country develops the ratio of the lumber tonnage decreases, and the ratio of the tonnage of other products increases. This is the history of all new railroads built in the Southwest. By way of comparison, we refer to the tonnage of the Santa Fe Railroad, over 90 per cent of which at the time the evidence in the tap line cases was closed, consisted of logs and lumber. The Santa Fe's Louisiana extension was built through a virgin forest. It was built into the yellow pine forests of Southwestern Louisiana to afford transportation for the logs and lumber along its line.

We are in sympathy with the spirit of the Interstate Commerce Act. We recognize that its purpose is to prevent favoritism or rebating by any means or device whatever, but we cannot agree with the finding of the Commission in its tap line decision, declaring the services performed by the Louisiana & Pacific, Mansfield Railway & Transportation Company, Woodworth & Louisiana Central Railway Company, and the Victoria, Fisher & Western Rail-

way Company those of plant facilities, nor that the incorporation of these companies was a device to secure a rebate.

The Blanket System of Rates as Applied to the Tap Lines.

The entire State of Louisiana, in so far as its interstate lumber traffic is concerned, is under the so-called "blanket" system of rates. The cancellation of the divisions with the tap lines now under consideration, in effect, means that in so far as the lumber traffic moving from points on their various lines is concerned, the blanket rate has been destroyed, the local rate must be paid to the junction point and the blanket rate must be paid from the junction point to destination. Or, the railroad belonging to the lumber company, having undertaken the obligations of a common carrier, must continue to so operate, without receiving the rates it is entitled to receive. It jumps to the eye at once that the lumber mills located upon the main line of a trunk line railroad would, under the decision of the Interstate Commerce Commission, have a decided advantage over the lumber mills located upon the tap lines, when the tap line has become a chartered railroad, operated as such, with all its risks and obligations. The lumber mill on the trunk line will continue to pay the blanket rate, while the lumber mill on the tap line

will pay the blanket rate from the junction point, plus the local rate of the tap line. To put it differently, the lumber mill on the trunk line railroad is advantaged by not having to operate a railroad with all the expenses and obligations incident to a common carrier. This is a discrimination which would soon drive the shipper on the tap line from the timber markets and destroy the "tap line" railroad as a railroad. While this is obviously the purpose of the decision of the Interstate Commerce Commission, it is not to be desired.

The proprietary lumber company, being the largest shipper over the tap line, is as much to be considered as the shipper of the occasional carload from the independent lumber mill located on the tap line. The record shows that there are independent lumber shippers located on all the tap line railroads now before the court, and under the decision of the Interstate Commerce Commission, these shippers are protected on their through shipments to interstate points; but the large investor, the interest which has really built up the section through which the railroad runs and made it possible for the smaller shipper and the independent mill owner to exist, suffers from the discrimination thus created. His enterprise counts for naught.

The Exemption in the Commodities Clause of Section 1 of the Act to Regulate Commerce.

The contention will hardly be made that because the lumber company owns the railroad company it violates the commodities clause of Section 1 of the Act to Regulate Commerce. Congress did not take that view as to lumber. An exemption is made in the commerce clause of timber and the manufactured products thereof. It seems plain that the intention of Congress was that a railroad itself might haul timber or the manufactured products thereof which it owned directly. The records show that this is the practice of the Santa Fe. There is no prohibition in the act to regulate commerce against a lumber company owning stock in a railroad company, and to deprive a railroad company of its right to receive transportation charges in the form of a division out of a through rate because a lumber company owns a majority of its capital stock, is to confiscate its property, nullify its charter and destroy its right as a common carrier of both state and interstate commerce.

The position of the Santa Fe system in these cases is incongruous. It hauled the logs and lumber which it owned, because this is the one commodity it could own and transport under the commodities clause of the act to regulate commerce. It claims

that it is a "country developer," and has genuine railroads that reach into the forests of Louisiana and Texas, which railroads haul the logs it owns to the saw mills it owns, and then hauls the lumber produced by its saw mills to its connections or local destinations. At the same time it denies the right of the tap line railroads, similarly incorporated, and doing precisely the same thing, to reasonable rates for transportation. Is the service of hauling the logs to the mill when performed by a common carrier tap line railroad any the less a transportation service than when performed by a trunk line railroad?

The right to demand reasonable compensation follows the railroad charter and is the only mode by which the object of the charter can be accomplished and the only means by which the company can secure revenues with which to perform the obligations imposed upon it, and save its franchise and property from destruction. Since the right to a reasonable rate for services rendered is a vested right, it cannot be taken away; and an act of the Commission taking it, is a violation of the Constitution.

We do not contend, nor shall we be understood as contending, that a charter which is drawn and put into operation for the furtherance of an illegal purpose should receive the shadow of respect. Such

charters fall of their own iniquity. The very purpose of an illegal charter brings it into disrepute the moment it falls into the light of investigation. But the railroad charters granted to the tap line railroads in these cases by the State of Louisiana do not differ in any respect from the charters of any of the great trunk lines, over whose railroads are carried both intrastate and interstate commerce, and who receive and deliver a part of such commerce from and to the plaintiff railroad companies in these cases. The obligation to serve the public is no less in one than in the other case, and the responsibility to carry the goods intrusted to the care of the Southern Pacific lines and the Texas & Pacific is no greater than is the obligation of the Louisiana & Pacific Railway, the Mansfield Railway & Transportation Company, the Woodworth & Louisiana Central Railroad, or the Victoria, Fisher & Western Railroad.

It is contended by the appellants that the charters of these railroad companies were taken out in an effort to legalize what otherwise would be an illegal transaction. They claim that the paying of a division out of the through rate to the lumber companies that own the controlling stock in the railroad companies is but a subterfuge, a device, a scheme for legalizing the rebates which were formerly paid directly by the railroad company to the lumber com-

pany. To this we reply that if it be true that the railroad companies had paid illegal rebates to the lumber companies before the organization of the railroad companies whose charters are now attacked, it is not a sufficient ground upon which the Court may hold that they are not railroad companies now because some of their stockholders at one time did something which, in the eyes of the law, was improper. There was ample redress against such practices if they were improper. The law does not provide that railroad property shall be confiscated because of the former wrongdoing of some of those who compose the company, if such wrongdoing exists. But there is no power vested in the Interstate Commerce Commission to take away from a common carrier, legally organized under the laws of the State of Louisiana, its right to engage in interstate commerce as to all the freight it handles, because of the fact that it has received a division out of the through rate on shipment of logs and lumber belonging to the lumber company which owns and controls the majority of its stock.

We appreciate that there are nice questions involved in the cases before this court, but we cannot apprehend how any doubt should arise as to the standing of these railroads as common carriers. It

seems beyond comprehension that there should be any doubt whatever as to the right of the Louisiana & Pacific, for example, a common carrier railroad, to receive all the benefits which may justly arise out of the traffic that it handles. Deprived of its interstate tonnage on proprietary lumber, it will soon famish for lack of revenue, because, as is shown by the record, the bulk of the tonnage is lumber owned by its stockholders, who also own some of the lumber companies shipping over its line, and the great volume of the movement is interstate. This is true of all the railroads before this Court, in these cases.

The service of hauling the logs to the mill is properly transportation, and being transportation by a common carrier, it should be paid for on the basis of reasonable compensation.

The railroad itself cannot exist without the authority of the State. A private corporation may build a tramroad on its own land and operate its trains upon such road as long as it sees fit in its own interest. So long as it carries only for itself it is a private carrier, but the moment it opens its lines to the use of the public, holds itself out as a common carrier, and declares its purpose in a charter which it seeks from and is granted by the State, it loses its private character and its use becomes public. Railroad corporations are established to serve great purposes,

and they hold out advantages and benefits to the public, without restrictions, to every one who wishes to comply with their reasonable regulations. Their property is private; their use is public. And it was with these expressed thoughts that the Supreme Court of the United States in the case of **Winona, etc., R .R. Co. vs. Blake, 94 U. S. 180, 24 L Ed. 99,** held.

> "By its charter the Winona and St. P. R. R. Company was incorporated as a common carrier with all the rights and subject to all the regulations that name implies."

While in no way controlling, the State decisions upon the question of who are common carriers throw some light upon the subject which is the main issue in this case. In the case of **W. C. Agee & Co. vs. Louisville & N. R. R. Co., 37 Sou. 680, 152 Ala. 344,** the Supreme Court of Alabama held that a railroad which serves business houses located along a spur track by delivering to them cars of freight and cars to be freighted and shipped, is a common carrier with respect to the use it makes of the track, and is, as such, bound to treat the houses located along the track without discrimination, and cannot discontinue its service as to one and continue it as to the others.

The Supreme Court of the State of Louisiana has settled the question of what constitutes a com-

mon carrier in the State in the case of **Amos Kent Lumber & Brick Co. vs. Tax Assessor** (114 La. 862), previously referred to. In this case a railroad owned by a lumber company, operating regular trains for freight and passengers with a fixed schedule of charges, was taxed by the local taxing authorities of the Parish of St. Helena. The owners of the railroad claimed exemption under the provision of the Constitution of the State of Louisiana, exempting from taxation "for a period of ten years from the date of its completion any railroad or part of such railroad as may hereafter be constructed and completed prior to January 1, 1904." The company owning the railroad (not a railroad company), claimed the right of exemption, and the Supreme Court of Louisiana in this case held that the railroad was in fact a railroad and entitled to the exemption. In the opinion, the ownership of a railroad by private corporation is discussed. The Court (p. 863) says:

> "The argument of counsel assumes that a limited company or a private individual cannot own and operate a railroad, but that is a mistake. 'Railroads may be owned by private individuals.'"

Is it not stretching the law beyond reason for the Interstate Commerce Commission to say that one railroad company organized under the laws of a sov-

ereign State can engage in interstate commerce, and another railroad company organized under the same laws, acting under a similar charter and performing similar functions, with the same rights and obligations, may not engage in interstate commerce as to some of its traffic, but places no restriction upon it as to the remainder of its traffic?

In the case of **Chicago, Burlington & Quincy R. R. Co. vs. Cutts, 94 U. S. 155, 24 L. Ed. 94,** the United State Supreme Court says:

> "Railroad companies are carriers for hire. They are incorporated as such and given extraordinary powers in order that they may better serve the public in that capacity." * * *

Speaking of the railroad company in that case, the Supreme Court says:

> "This company, in the transaction of its business, has the same rights and is subject to the came control as private individuals under the same circumstances. It must carry when called upon to do so, and can charge only a reasonable sum for the carriage."

The Discrimination Made by the Interstate Commerce Commisison Between "Transportation" as to Different Shippers and Different Commodities.

The Interstate Commerce Commission's finding as to the Louisiana Pacific Railway Company and the other lines which have been classed as tap lines is:

> **"The service performed for the respective propreitary lumber companies in moving logs from their respective forests to their respective mills, and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad, and any allowance of division of the rate on account thereof is unlawful."**

A finding that this chartered railroad corporation is not a common carrier in full, but only a common carrier in part; a common carrier as to the flour, corn and general merchandise which it hauls, but not a common carrier as to the logs and lumber which it hauls for those who own its stock; a common carrier as to certain shippers, but not a common carrier as to all shippers; a common carrier as to some of the freight hauled for those who control its stock, but not a common carrier as to all of the freight of those who control or own the railroad. This is a new distinction in law, not supported by any decision from any court in this country. **Tap Line Case, 23 I. C. C. Rep. 277.**

The question to be determined here is **whether or not the corporation performing the service and making the charge is entitled to reasonable compensation as a common carrier.** And the finding of the Interstate Commerce Commission amounts to a direct decision that these railroads are not common carriers

as to the service which they perform in hauling the logs and lumber of their proprietors.

The Public Necessity of the Tap Line Railroads.

The State of Louisiana, through its Railroad Commission, has offered evidence in this record to show the public necessity for these railroads to be operated in all respects as common carriers. Attention has been called to the fact that their greatest revenue comes from the logs and lumber which they haul, and during their early history it follows that it is upon the revenue derived from such transportation that their existence depends.

It is common knowledge that the railroad development in Louisiana has followed the development of the lumber industry, and at the time the investigation into the tap line cases was being made by the Interstate Commerce Commission, every railroad in Louisiana, with one or two exceptions, was hauling a greater percentage of lumber than of any other single commodity. It should not be surprising then to find that the shortest and youngest railroads in the State of Louisiana seeking their tonnage from the forests. The sawmill located in the midst of the forest needed transportation for its lumber, just as the sawmill located on the main line of the trunk line railroad needed transportation for its logs. This

transportation was afforded by the short line railroads built by the lumber companies themselves. It would seem immaterial to discuss this phase of the question, were it not for the fact that the report of the Interstate Commerce Commission on the Tap Line Case lays some stress upon the volume of the lumber traffic as compared with the other traffic hauled over the appellee railroads now before this Court, and also refers to the scarcity of the outside public served.

The contention which we here make was, it seems to us, in the mind of the Interstate Commerce Commission when the order in the Tap Line Case was adopted, which idea we gather from the following language:

> "The inquiry with this Commission, therefore, is not whether a railroad company has been incorporated, but whether the company or the person claiming to be a common carrier by rail is a common carrier in fact. If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist, whether the holding out was by a company or by an individual." * *

> "It follows from that view of the matter that the common ownership of an industry and of a railroad that is held out as a com-

> mon carrier and has some traffic for the public fore hire, is not in itself sufficient to divest the railroad of its status as a common carrier." (The Tap Line Case, 23 I. C. C. Rep.)

It is difficult to reconcile the conclusion of the Commission with the legal definitions of common carriers, which form part of every text book on the subject, as taken from the decisions of the Courts.

The duty of the "tap lines" before this Court to serve the public is not merely as an accommodation. It is compelled by a charter, the obligations of which cannot be escaped.

In the case **New York Central Railroad Co. vs. Lockwood (17 Wall, 357-384; L. Ed., 627-642),** the Supreme Court of the United States used the following language:

> "It seems to us more accurate to say that common carriers are such by virtue of their occupation, not by virtue of the responsibilities under which they rest. Those responsibilities may vary in different countries, and at different times, without changing the character of the employment. The common law subjects the common carrier to insurance of the goods carried, except as against the act of God or public enemies. The civil law, excepts, also, losses by means of any superior force, and any inevitable accident. Yet the

employement is the same in both cases. And if by special agreement the carrier is exempted from still other responsibilities, it does not follow that his employment is changed, but only that his responsibilities are changed. The theory occasionally announced, that a special contract as to the terms and responsibilities of carriage changes the nature of the employment, is calculated to mislead. The responsibilities of a common carrier may be reduced to those of an ordinary bailee for hire, whilst the nature of his business renders him a common carrier still. Is there any good sense in holding that a railroad company, whose only business is to carry pasesngers and goods, and which was created and established for that purpose alone, is changed to a private carrier for hire by a mere contract with a customer, where the latter assumes the risk of inevitable accident in the carriage of his goods? Suppose the contract relates to a single crate of glass or crockery, whilst at the same time the carrier received from the same person twenty other parcels, respecting which no such contract is made. **Is the company a public carrier as to the twenty parcels and a private carrier as to the one?"**

And answering its own query, the Court replies:

"But when a carrier has a regularly established business for carrying all or certain articles, and specially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of articles is embraced within the scope of its chartered powers, **it is a common carrier,** and a special con-

tract about its responsibility does not divest it of the character."

In a case from Maine, the Court expounds principles that have long been recognized as controlling:

> "But the mere fact that the primary purpose of such a branch is to accommodate a particular private business enterprise is by no means a controlling test. The character of the use, whether public or private, is **determined by the extent of the right** to its use, and not by the extent to which that right is or may be exercised. If it is a public way the fact is not material that but few persons will enjoy it. When such a branch track is first constructed, and the right of way necessary therefor is taken it may in fact be used only for the business of the plant for which it is constructed, because at that time no other business enterprises may exist in that vicinity to furnish freight for transportation; but in the future, other enterprises may spring up, either upon the line or upon the extension thereof, so that a branch track, which in the first instance is primarily constructed for the accommodation of one may become of equal accommodation, benefit and use to others." **(Ulmer vs. Lime Rock Ry. Co., 98 Maine, 579; 57 Atl., 1001.)**

In this case the leading authorities of the country are reviewed, and general principles are laid upon the foundation of the unbroken line of decisions of the appellate courts.

"The tests decisive of this question," says the Court in the Maine case just cited, "as to whether a branch road of this character is to be constructed and operated for public or private purposes deducible from the great weight of authority upon the question in this country, are these: If the track is to be open to the public to be used upon equal terms, by all who may at any time have occasion to use it, so that all persons who have occasion to do so can demand that they may be served without discrimination, not merely by permission, but as of right; and if the track is subject to governmental control, under general laws, as are the main lines of a railroad, then the use is a public one, and the Legislature may grant the power to exercise the right of eminent domain to a corporation which is to construct and operate such track, and if the purpose of the railroad corporation in building any particular branch track is to operate the same in conformity with these requirements, then the power granted by the Legislature may be exercised in that particular case."

In the following cases the same doctrine has been expounded:

De Camp vs. Hibernia R. Co., 47 N. J. Law. 43.

National Dock R. R. Co. vs. Central R. R. Co. 32 N. J. Eq. 755.

C., B. & N. R. Co. vs. Porter, 43 Minn. 527; 46 N. W. 75.

Phillips vs. Watson, 63 Iowa 28, 18 N. W. 659.

Dock & Canal Co. vs. Garrity, 115 Ill. 155, 3 N. E. 448.

Gaylord vs. Sanitary Dist. of Chic., 204 Ill. 576, 68 N. E. 522.

Butte, Anaconda, etc., Ry. Co. vs. Montana, 16 Mont. 504, 41 Pac. 232, 31 L. R. A. 298, 50 Am. St. Rep. 508.

In **Norway Plains Company vs. The Railroad** (1 Gray, 263; 61 Am. Dec., 423), it was held:

> "That railroad companies are authorized by law to make roads as public highways, to lay down tracks, place cars upon them and carry goods for hire, are circumstances which bring them within all the rules of common law and make them eminently common carriers. Their iron roads, though built in the first instance by individual capital, are yet regarded as public roads, required by common carrier convenience and necessity, and their allowance by public authority can only be justified on that ground." * * *

In the case of **Butte, Anaconda & Pacific Railway vs Montana Union Railway (16 Mont., 504; 50 Am. St. Rep., 508; 31 L. R. A., 298)**, where a "tap line" railroad was first reviewed by a court, the following principles were discussed and applied:

> "Frequently railroads are extended by spurs or lateral connections of main lines, or by independent lines, into mining camps

where but a single line is developed and capable of shipping freight. Such roads or spurs are not infrequently built by the private enterprise of those interested in the one mine to be benefited, and, when constructed, it is intended that the tracks will be used almost wholly by the mining company which constructed the spur. The supposed barrenness of the country contiguous to the road, or the undeveloped condition of the mountain in which the mine is lying, or, perhaps, the hitherto unrewarded search of the prospector, has encouraged the belief that, apart from the single mine owned by those who have built the railroad, there are no other paying properties upon which a railroad might rely for ores or supplies to transport. Such expected limited uses are but the results of the location of the mine and its inaccessibility. They do not in any way, however, exclude an equal right of use by others, perchance, desiring to ship freight or secure transportation over the road. To better illustrate our meaning, we have only to modify the instance just referred to of the lateral railroad built to a single mine. Suppose that a pioneer prospector has located and represented a claim contiguous to such railroad, but, by reason of the impracticability of expense of constructing a wagon road, he has been obliged to simply keep what he believed was a good mine, hoping that in the future railroad facilities would afford him the opportunity to haul his ore to market. Suddenly, by the enterprise of others, and without any expectation on their part of aiding any project other than their own, a rail-

road is built, and he may attain the fruition of his hopes if he can use the railroad to ship his ore. Could it be contended with any merit that the railroad company, incorporated under the railroad laws of the State, can discriminate against him by saying,'We are a private enterprise, for private use, and are not generally open to the public, and for this reason refuse to haul your ore, or to bring your machinery and supplies into these hills, and you cannot compel us to act otherwise?' "

In this case will be found a review of many decisions supporting the same principles.

In the case of **McCloud River Lumber Co. vs. Southern Pacific Co. et al. (24 I. C. C. Rep., 89)**, the Interstate Commerce Commission held that the McCloud River Railroad, although identical in ownership with the plaintiff, was entitled to through routes and joint rates in connection with the Southern Pacific lines and connections. The McCloud River Railroad had, according to the decision, 46 miles of main line and 51 miles of logging branches and spurs. It was organized January 21, 1897, under the laws of California. It files tariffs and reports and keeps its accounts in accordance with the regulations of the Commission. It operates a number of passenger and freight trains daily. Owns quite a lot of equipment. Ninety-four per cent of the total freight tonnage of the road was products of the for-

est. The Southern Pacific refused joint rates and divisions to the McCloud River Railway upon the theory that the latter railroad was but a plant facility, a branch built for the purpose of conveying lumber to the main line by means of the cheapest method possible. It was treated by the Southern Pacific Company as analogous to an ox team, a flume, or other means of conveyance, the expense of which should be borne by the lumber company and not by the Southern Pacific Company. No attempt was made by the Commission to prescribe the divisions of the through rate; but through rates were ordered, the McCloud River Railway's existence as a "plant facility" ended, and its full-fledged life as a common carrier railroad initiated. Does not the life of a common carrier begin with its charter, and is it not entitled to be so recognized from the moment it engages in the business of serving the public?

The Courts have always taken judicial notice of the fact that a railroad company is a common carrier where a statute declares it to be such, and declaration and proof of such a fact is unnecessary. **Caldwell vs. Richmond, etc., R. Co. (89 Ga., 550); Denver, etc., R. Co. vs. Cahill (8 Colo. App., 158).**

It is true, it is impossible for a common carrier of freight or passengers, or both, to carry on its

business without a railroad; but it is immaterial whether it owns the railroad over which it operates, leases it, or builds and sells it, retaining the right to operate its trains over it. It is transportation which gives to the carrier its life, and, so long as it holds itself out to carry persons and their goods and furnishes the means for doing so, by operating trains, it is performing the functions of a common carrier, is liable as such and must serve all upon the same terms for similar service.

In the **Lake Superior & Mississippi Railroad Company vs. United States (93 U. S., 442, 23 L. Ed., 965)**, Mr. Justice Bradley being the organ of the Court, said:

> "But the ascertained impracticability of the general and indiscriminate public use of these great thoroughfares (railroads) does not preclude their use by transportation companies having no interest in the roads themselves. Such companies, in fact, are actually engaged in conducting vast carrying business on the principal lines of railroads throughout the country."

An early decision of this Court embodies the fundamental principle of these cases. The Court then says:

> "But when a carrier has a regularly established business for carrying all or certain articles, and especially if that carrier be a

> corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, it is a common carrier, and a special contract about its responsibility does not divest it of that character." **N. Y. C. R. R. Co. vs. Lockwood, 17 Wall, 357 (377); 31 L. Ed., 627 (639).**

In a comparatively recent decision, this Court has discussed the question as to what are interstate carriers. In **United States vs. Union Stock Yard & Transit Company of Chicago (decided December 9, 1912), 226 U. S., 286,** it is held that a corporation organized for the purpose of maintaining a stock yard, with the usual facilities of such yards as to loading and unloading and caring for freight, which lawfully owns and operates a railroad system for the transportation of cars to and from trunk lines, in the course of their transportation from beyond the state and to points outside of the state, is an interstate railway carrier within the meaning of the interstate commerce act of February 4, 1887, and as such is obliged to file its tariffs with the Interstate Commerce Commission, as required by Sec. 6 of that act, the Supreme Court says (speaking of the Union Stock Yard & Transit Company and the Chicago Junction Railway Company):

> "They are common carriers because they are made such by the terms of their charters, hold themselves out as such, and constantly act in that capacity, and because they are so treated by the great railroad systems which use them."

There can be no doubt that the tap line railroads involved in these cases are common carriers.

Then, is the service they perform in hauling the logs to the mill "transportation service," or "plant facility?"

If they are common carriers, what particular part of the service they perform is the shipper's duty?

It would seem beyond dispute that when a common carrier moves a shipment of freight over its own rails under a shipper's order, it is entitled to compensation.

Is it in any sense the duty of the shipper to haul its logs over the railroad of a common carrier? May the common carrier perform such a service without compensation for one shipper and charge another? If it is "transportation" for the tap line railroads to haul logs over their lines for those who do not own their stock, is it any the less "transportation" when a similar service is performed for those who do own stock?

These questions have been unsolved by the decision of the Commerce Court in favor of the conten-

tions of the tap lines, which we have consistently supported from the time the trunk line railroads began cancelling the through rates and divisions with them.

These tap line railroads are "common carriers engaged in the transportation of passengers or property."

The lumber "tap lines" of the South and Southwest must not be confused with the inter-plant and intra-plant facilities of the industries of the East. There is a vast difference between the lumber road and the railroad built within the gates, so to speak, of the iron and steel mills, or the breweries. In the lumber mills there are rails used as a part of the plant. They are the logging spurs upon which the skidders load the cars with logs. These spurs are temporary, leading out from the main line of the tap line railroad to the point where the logs are loaded. There are the tracks that connect the warehouses in the yards of the mill. These are not included in the tap line haul. They represent the true plant facility, and are distinct and easily distinguishable from the tap line railroad.

The public importance of these railroads has been dwelt upon in the decisions of the Interstate Commerce Commission and was referred to in the opinion of the Commerce Court.

If they were created for the great wrongs indicated by the briefs of the appellants, they would be a disgrace and a shame to the nation and the state. If the receiving of a division out of a published through rate by these tap line railroads is the crime charged by the Santa Fe Railway Company, the only voice complaining here of the divisions, the government would long ago have instituted proceedings against the giver and the recipient of these "rebates."

The Atchison, Topeka and Santa Fe Railroad Company, in its brief, makes the bold and erroneous assertion that the divisions received by the tap lines are **secret rebates.**

The Act to regulate commerce provides that all agreements and contracts between carriers shall be filed with the Commission, and the tariff showing the through rates and the agreement under which the rates were divided were promptly filed with the Commission, as they were made or issued. The tap lines complied with the law in the same manner as all other carriers. They did not conceal anything or seek in any way to evade the requirements of the statute. Quite the contrary, they sought in every way to comply with the requirements of the Act to regulate commerce, and did so fully and completely.

For three years this case has run the gauntlet of the Commission and the Courts, and in that time great changes have been wrought in the conditions along some of the tap lines.

The government has, we understand, called the Courts' attention to the action of the Interstate Commerce Commission's rehearing in the tap line case, for argument on the fundamental principles involved, which was heard at Washington on February 4th and 5th, 1914. This action has a significance, in that it seems to indicate that the Commission either admits that it may have erred in its former decision in the tap lines case, or that it is in doubt as to the proper solution of the questions involved.

There seems no parallel case where such great enterprises have been throttled by administrative action, when nothing but benefit was resulting from the continuance of the legitimate practices attacked—a practical benefit to a great, new country, awakening into a land of homes and thrifty people. An awakening that has followed, and is following, the enterprise and investments of the lumber men in substantial railroads that, except for their industry, would not have been built for years to come, if, in many cases, at all.

CONCLUSION.

We shall take no occasion to discuss or review the late jurisprudence of this Court upon the fundamental questions involved. The briefs of the carriers and the government will fully present these phases of the questions. Our purpose is to lay before the Court the public's side of these important cases.

The State of Louisiana depends upon its railroads for its future prosperity. With only a little more than five thousand miles of operated railroad (5,257 miles single track operated on June 30, 1912), it can not afford to lose any of the lines which form a part of its railroad system. It has many practical examples of the growth of some of its most important railroads from what were at one time insignificant "tap lines." The State is advertising its resources to the world, and using every means in its power to induce immigration to her fertile soils. Along the tap lines, slowly but surely, there is a growth and extension of outside interests—a general settlement of the lands along the tap lines. These facts explain, to some extent, the interest of the State of Louisiana in these cases. But the decisions of the courts and the laws of the country furnish unanswerable reasons why the shippers of Louisiana, represented by their Railroad

Commission, are demanding that the ancient maxim of the law, that **"one who undertakes for hire to transport the goods of such as choose to employ him, from place to place,"** is a common carrier, be applied in these cases, and that, being common carriers, they perform a service of "transportation" when they haul the logs and lumber of those who own their capital stock, for which they are entitled to reasonable compensation.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., et al., *Appellants,* *vs.* LOUISIANA & PACIFIC RAILWAY COMPANY et al., *Appellees.*	No. 830.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., et al., *Appellants,* *vs.* THE WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY et al., *Appellees.*	No. 832.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al., *Appellants,* *vs.* MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., *Appellees.*	No. 834.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., et al., *Appellants,* *vs.* VICTORIA, FISHER & WESTERN RAILROAD CO., et al., *Appellees.*	No. 836.

BRIEF FOR APPELLANTS.

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CHICAGO, March 7, 1914.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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. The tap line division is a rebate and the various steps taken by appellees in their attempts to legalize such rebate are mere devices to evade the payment of the published tariff rate in full.

The incorporation of the various tap line railroads and the other steps taken by them were for the sole purpose of continuing under the name of a division the old open rebate which was paid direct to the lumber companies. Masquerading as railroads, the lumber companies were making their traffic a matter of bargain and sale and by the device of a secret division were compelling the trunk lines to bid against each other in the dark for such business. Such was the finding of the Interstate Commerce Commission 22

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STATEMENT OF THE CASE.

These are appeals taken by The Atchison, Topeka and Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company from a decree of the United

States Commerce Court setting aside an order of the Interstate Commerce Commission in what are known as the tap line cases. The questions involved in these cases are identical with the questions involved in Cases Nos. 829, 831, 833 and 835, which are appeals taken by the United States and the Interstate Commerce Commission from the decree of the United States Commerce Court in the same cases. Because the United States and the Interstate Commerce Commission will no doubt deal with the particular facts in each case, this brief will be confined to a statement of the general situation revealed by the record and a discussion of those fundamental principles of law applicable thereto.

These appellants are trunk line railroads which penetrate the great lumber district here involved, and reach, in competition with other trunk lines, various important lumber markets. The lawfully published tariff rates of these appellants are the same as the lawfully published tariff rates of the competing trunk lines. Appellants compel and in the past have compelled shippers of lumber located on their lines to pay the lawfully published tariff rates. The other competing trunk line railroads, however, have been accustomed to making to favored shippers a rebate from the tariff rate ranging from 1c to 7c per 100 pounds, by the devices hereafter referred to, so that as a result of such rebate the large and favored shippers located upon the competing railroads were enabled to market their lumber at a cost much less than shippers located upon the lines of these appellants, and these appellants were seriously hampered in their efforts to get or move traffic by reason of the fact that they obeyed the law and collected the tariff rates, while their competitors disobeyed the law and made rebates and concessions from the tariff rates.

This most grievous and menacing violation of the Act to Regulate Commerce had existed for a long period of time prior to 1904. In 1904 the Interstate Commerce Commission entered into an investigation of the matter and in the case of *The Central Yellow Pine Association v. The Vicksburg, Shreveport & Pacific Railroad Company et al.*, 10 I. C. C. R., 193, decided that the allowance made to the favored shippers of lumber was a rebate, and condemned the practice.

In that case the history of the practice of making allowances to shippers as well as the results flowing from it were considered at some length. The general principles antagonistic to such rebate were announced in that case, and it was distinctly pointed out there that although in some cases the tap line was a mere department of the mill and in others was operated by a separate copartnership composed of the same individuals that owned the mill, and in still others by a chartered corporation, the stock of which was owned by the mill company or its operators, in practically all cases the allowances in the nature of a division of a joint rate received from the regular carriers finally, if not directly, inured to the benefit of the mill company; and the Commission said then that the substance and nature of the transaction could not be altered by merely changing the name of the party to whom payment was made and that such a course would be nothing but a transparent device for securing an illegal concession. But because in that case the Commission decided that "under the Act to Regulate Commerce a common carrier subject to its provisions can allow a division of rates only to another common carrier" (Syllabus 5), that guarded expression was seized upon by ingenious minds as a justification for continuing to accept the rebate provided that the industry tracks were incor-

porated as common carriers. As a result, therefore, those industry tracks connecting the various mills and timber with one another, and which tracks were used by the mills for their own convenience in manufacturing and carrying on their business, and as a necessary part of the manufacture of lumber, were incorporated and were utilized by the mill owners to secure from the trunk line railroad a division of the through rate. Therefore, from 1904 the industry tracks and logging trams in question were incorporated as common carriers and the same rebate which had been condemned in the Yellow Pine Case was continued.

After the tap line was incorporated there was no change either in its physical characteristics or in the extent or nature of the service that it performed for the lumber company by which it was owned. The tracks and equipment of the lumber company were simply turned over to an incorporated railroad company and the work of the controlling industry went on precisely as it had when the tracks and equipment were operated directly by it. By the device of incorporating, therefore, this rebate was skillfully covered and for a long time successfully concealed.

It had been the custom to pay the rebate from the tariff rate direct to the favored shipper, but with the incorporation of the industry tracks and as an additional step in the consummation of that device, the tap line was given a division of a joint through rate; that is to say, the same allowance that had formerly been openly paid to the shipper was now paid to the incorporated line under the guise of a division of the through rate. This division, of course, was a matter of secret agreement between the parties, as the law does not require the publication of divisions. As the agreement was secret, the different

shippers or tap lines never knew how much their competing neighbors received, and one trunk line carrier not knowing the division offered by its competitor was bidding in the dark for the tonnage of the big shipper. But nevertheless it resulted that the large and favored shippers received from some of the trunk lines for a haul by the shippers' tap lines which varied from 25 feet to a few miles (all of which haul was purely incidental to the manufacturing business of such shippers, and in no sense an incident of transportation by a common carrier) nearly as much revenue as the trunk line carrier received for the transportation service of several hundred miles. Indeed, as was said by the Commission in its report in the present tap line case, 23 I. C. C. R., 283:

> "In the competition of carriers for the traffic allowances as high as 7 cents per 100 pounds have been paid out of a 14-cent rate, where the haul of the tap line was a matter of feet and yards while the haul of the carrier itself approximated 400 miles."

The function performed by the large and favored shipper as a justification for obtaining such allowance was precisely the same as that performed by the unfavored shippers who received no allowance, and was the same as that performed by all shippers adjacent to the lines of these appellants. The evil of such a situation may be thus concretely stated:

Under a tariff rate of 14c to a given point shippers on the lines of these appellants, as well as the unfavored shippers on the competing trunk lines, were obliged to pay the full tariff rate, while the favored shipper on the competing trunk line would have rebated to him 7c, so that such favored shipper would get his lumber to market at a net rate of 7c per 100 pounds, as against 14c paid by his competitors.

Attention is called to the findings of fact made by

the Interstate Commerce Commission with reference to the subject under discussion for the purpose of showing:

A. That the method of manufacturing and marketing lumber is the same throughout the territory involved and that under this method it is recognized that the activity performed by the tap line is incidental to the manufacturing business of such lumber and in no sense an incident of transportation by a common carrier.

B. That on this general understanding lumber interests are manufacturing their lumber and competing with one another in the lumber markets, so that when the trunk line makes a rebate to the favored shipper it unduly discriminates in his favor and against all his competitors not so favored.

C. That the same is true with reference to the haul of logs from the forest to the mill.

D. That no real change in the situation was effected by the incorporation of the tap line.

E. That the result of this device of rebating was gross discrimination.

A.

That the method of manufacturing and marketing lumber is the same throughout the territory involved and that under this method it is recognized that the activity performed by the tap line is incidental to the manufacturing business of such lumber and in no sense an incident of transportation by a common carrier.

In the case of *Central Yellow Pine Association* v. *V. S. & P. R. R. Co.*, 10 I. C. C. R., 193, 195-6 (decided March 19, 1904), the Commission said:

> "The method of manufacturing and marketing this lumber is essentially identical in all parts of the south. Mills are at first constructed upon the lines of railway traversing that territory and the logs are hauled into these mills from the forest. As the timber is cut off, however, and the haul becomes

longer, it is necessary to provide some other means for bringing the logs to the mill. If the mill happens to be situated upon a stream they are sometimes floated down, but ordinarily a railroad is built into the timber and the logs are transported by this means. These logging roads are usually of the standard gauge, although not invariably, and are constructed and operated as are the main line railroads of this country, the power being furnished by locomotives and the logs hauled upon flat cars. In process of time the logging road increases in length until it frequently reaches 50 or 60 miles. The cost of constructing these roads is from $6,000 to $8,000 per mile. As already indicated, the use of this appliance for bringing logs to the mill is almost universal with large plants. There are few mill operations of any extent upon the east or the west of the Mississippi River which do not embrace as a part of the necessary outfit a logging road of this character."

So, also, the Commission said in its report in the case in contest, I. & S. Docket No. 11, 23 I. C. C. R., 277, 280:

"In the operations of manufacture and production it was first the practice to use horses and wagons for handling materials in and about the industrial plant, and in the same way to haul the raw material from the tracks of the public carrier to the plant, and to haul the manufactured product from the plant to the carrier's receiving station. Later pushcarts and handcars, sometimes moving on rails, cranes, conveyers and other appliances were brought into use. These facilities are still to be found in many of the smaller industries. But with the combinations of capital and the concentration of manufacturing operations into large plants, railroad tracks, cars and locomotives have become necessary to avoid delay and expense in handling the raw material into and in and about the plant, and in order to deliver the manufactured products as cheaply as possible from the plant to the carriers that move them to the markets. It cannot be doubted that large economies in the cost of manufacture and production have been effected in that way. When the service is performed on rails by a bureau of the industry and with loco-

motives that it owns and with crews that it employs, this change in method was manifestly not a change in the thing done but simply a change in the facility used for doing the same thing. Whether the service, so far as the controlling industry is concerned, takes on another aspect when the rails and locomotives have been set over to an incorporated railroad company owned by or in the interest of the industry, and ceases to be a part of the industrial operation as was the service performed by the horses and carts and other appliances formerly used by industrial companies and still used by the smaller concerns, is a question that manifestly must depend upon the facts in each case."

B.

That on this general understanding lumber interests are manufacturing their lumber and competing with one another in the lumber markets, so that when the trunk line makes a rebate to the favored shipper it unjustly discriminates in his favor and against all his competitors not so favored.

On page 297 of its report in the case in contest the Commission makes the following statement:

"With a very few exceptions not one of the tap lines before us would continue to operate if the mill by which, or in the interest of which it is owned should cease to run; they were all built to serve the proprietary mill and the incorporation was an afterthought developed out of the keen competition of the trunk lines for the traffic. Their real relation to the industry is primarily nothing but that of a plant facility, and such outside traffic as they are able to pick up is purely incidental. With one or two possible exceptions not one of them would have been built or would now be operated for the outside traffic only; not one of them would cease its operations if deprived of the outside traffic altogether, for it is a part, and a necessary part, of the lumber investment; and with two or three exceptions not one would continue in operation after the mill to which it belongs

had been shut down. In other words, with very few exceptions they are purely plant facilities.

As we have seen, this is the theory upon which the lumber interests in general are today manufacturing their lumber and competing with one another in the general lumber markets. It is the theory that prevails in the yellow pine district east of the Mississippi River, and is the theory upon which a majority of the lumbering operations west of the river are conducted. They are hauling their logs to their mills at their own cost and with facilities that they regard as a mere adjunct to and a part of the machinery of manufacture. It is clear, then, that appliances that are generally regarded by the lumber interests themselves not only as mere plant facilities, but as necessary facilities in the successful conduct of their investments, cannot reasonably be held to become the transportation facilities of a common carrier merely because a lumber company has incorporated a small railroad company and turned the facilities over to it. There must be something more substantial than a mere manipulation of the situation in order to change the real relation of these facilities to the industry."

C.

That the same is true with reference to the haul of logs from the forest to the mill.

Because some of the tap lines attempted to justify the allowance or rebate from the tariff rate on the ground that in some cases the haul of logs from the forest to the mill was substantial and was an incident of transportation of a common carrier rather than an incident of the business of the shipper in manufacturing lumber, the Commission considered the matter, and in its report in this case on page 296 it said:

> "It may be well at this point to make a brief reference to the haul of logs to the mill. Lumbering is one of the primary occupations and lumber products

are as necessary and even more widely used than are the products of coal mines. Lumbering processes are more or less familiar to everyone. The forest must be made into logs and the logs must be drawn to the mill and there converted into lumber. Whether this is done with ox teams or horses, on wagons or sleds, or the logs are floated down a stream to the mill or are carried there in flumes or otherwise, the service that the lumberman thus performs for himself is industrial and not a service of transportation. When the adjacent timber has been manufactured there is an economy in reaching the more distant timber by the use of rails and locomotives, and these appliances are often used in the larger operations. But the character of the thing done is not affected by the new means employed to do it. Nor do the new appliances bear a different relation to the industry. A number of witnesses admit, and the whole record shows, that a large lumbering operation in this territory cannot be conducted economically without a tap line. Tracks and locomotives are as necessary to successful results from the investment as the mill itself. One or two of the companies avail themselves of streams to float the logs to the mill, but all the other lumbering operations of any magnitude in the southwest have tap lines. East of the river, as we have seen, and in the majority of instances west of the river, they are regarded, like the mill itself, as a mere plant facility. Each of the tap lines west of the river that now claims to be a common carrier was originally operated directly by the proprietary lumber company and as a part of it. The only exception to that statement is that in the case of some of the more recent investments the tap line was incorporated and the track laid while the mill was being constructed. With one exception and regardless of the date of their construction, every tap line now before us is owned by or in the interest of a lumber company, and with one exception was built by the same people that own the forest and the mill, and with no other real object than to serve the mill as a necessary plant facility. That is their present primary purpose and use and no pretense to the contrary is made."

D.

That no real change in the situation was effected by the incorporation of the tap line.

Dealing with this proposition the Commission in its report in this case said on pages 285 *et seq.*:

> "Some new mills have been erected within the last four or five years. In most of these cases the tap lines were constructed in the name of an incorporated railroad company, owned, however, either by or in the interest of the lumber company. But in the great majority of the cases on the record the present incorporated railroad company operates tracks that were originally constructed and operated directly by the lumber company as a facility in its manufacture of lumber. Later the title to them was turned over to the newly incorporated railroad company in exchange for its stock. In all these cases the railroad company is directly owned by the lumber company or in its interest. In most instances the tap line was incorporated for no other purpose than to give the lumber company the color of a legal right to receive allowances. Witness after witness, as heretofore stated, broadly and definitely admitted at the hearing that the sole object in incorporating his tap line was to obtain and legalize the allowances. For the Bernice & Northwestern a witness said:
>
> 'Well, we really chartered to get the divisions; we had to charter before we could get them. We chartered in order to get the divisions.'
>
> This statement was not made under the stress of cross-examination but in reply to an inquiry as to why his road had been incorporated. It is illustrative of many similar statements made on behalf of other tap lines; they were incorporated, in other words, not to serve the public, but primarily to get an allowance. When the Rock Island lines were pushed into this territory already served by other lines it entered upon an active contest to share in the lumber traffic by offering higher allowances or divisions than the other lines were paying. A standard form of contract was prepared to which both

the lumber company and its tap line were usually parties. One of its requirements was that the lumber company must route not less than 50 per cent. of its traffic over the Rock Island lines. Another clause, inserted as a protection against possible future troubles and obligations, provides that in case this Commission or a state commission or any court should declare the contract unlawful or the allowances excessive, the former should at once become void, and in either event no claim for damages should result against the Rock Island. It appeared at the hearing that in many cases the lumber companies had incorporated their tap lines on the advice of the Rock Island or other public carriers serving this territory. For the Sabine & Northern Railroad, Mr. Walden said:

'We incorporated because the traffic department of the Kansas City Southern advised me that it was the opinion of their legal department that they could not pay divisions * * * unless the roads were legally incorporated as common carriers, and in order to get these divisions we incorporated.'

The record is filled with similar admissions by other witnesses representing other tap lines. Counsel for one trunk line in order, as he explained, to get the fact of record, said that his legal department some years ago advised the traffic department that it would be illegal to pay an allowance or a division of any kind to an unincorporated tap line, but that it would be legal to pay a division to an incorporated tap line. Subsequently, his traffic department advised the lumber interests that had been receiving allowances that they would no longer be paid unless their lines were incorporated, and new lines were advised that they had to be incorporated.

But, generally speaking, there was no change after the tap line was incorporated, either in its physical characteristics or in the extent or nature of the service that it performed for the lumber company by which it was owned. The tracks and equipment of the lumber company were simply turned over to an incorporated railroad company and the work of the controlling industry went on precisely as it had when the tracks and equipment were operated directly by

it. The only dissimilarity that exists between tap lines that receive allowances and those that do not is that the former are incorporated while the latter are not."

E.

That the result of this system of rebating was gross discrimination. On pages 283, 284 and 285 of its report the Commission said:

"That discriminations grow out of these contributions by the public carriers to certain of the lumber interests in Arkansas, Missouri, Texas, and Louisiana is apparent upon the face of the record. The allowances paid range from a minimum of three-quarters of a cent to 6 cents per 100 pounds. In the competition of carriers for the traffic allowances as high as 7 cents per 100 pounds have been paid out of a 14-cent rate, where the haul of the tap line was a matter of feet and yards, while the haul of the carrier itself approximated 400 miles. The amount of the allowance seems not to be governed definitely by the extent or character of the service said to be performed by the tap line, but to result to some extent from the bargain made between the carrier and the lumber company. In one case a tap line, operating 6 miles of main line, receives allowances of 3 and 4 cents per 100 pounds, while a few miles away another tap line, operating 12 miles, receives but 1 to 2½ cents per 100 pounds, depending upon destination; in each case the public carrier performs all the service between the mill and its own tracks. It did not appear that the controlling lumber companies, the real beneficiaries of the allowance, knew of the discrimination between them until the facts developed on the hearing. Other instances appear of record where incorporated tap lines are receiving allowances that are less or greater than the allowances paid to other incorporated tap lines performing a service that is substantially similar in extent and character and under like conditions. A number of witnesses for tap lines expressed surprise at the hearing upon learning of the larger allowances paid

to other tap lines. The three principal trunk lines whose tracks extend through the territory in question are the Kansas City Southern, the Iron Mountain, and the Rock Island. As illustrating the extent of the discrimination arising out of the payment of allowances to some tap lines and the failure to make allowances to others, it is well here to state that of 27 tap-line connections of the Kansas City Southern it makes allowances to 15, while 12 receive no allowances. The Iron Mountain has junctions with 90 tap lines, to 63 of which allowances are made; the other 27 have no allowances. The Rock Island is reached by 43 tap lines. Of this number it makes allowances to 33, leaving 10 without allowances. This was the condition existing at the time of the hearing.

This difference in the treatment by carriers of lumber companies owning incorporated tap lines is one form of discrimination growing out of tap-line allowances. But there are also other forms. There is the discrimination involved in the payment of allowances to one lumber company through its incorporated tap line, while the same public carried in the same territory refuses to make any allowance to another lumber company using a tap line that has not been incorporated, but where all the other conditions, as well as the extent of the service, the mileage, motive power, cost of operation, etc., are substantially similar. An instance of this kind is before us upon formal complaint in Docket No. 3878. This proceeding was brought by the Davis Brothers Lumber Company against the Chicago, Rock Island & Pacific Railway Company and other carriers. The complainant company was included in our general investigation and the conditions under which it conducts its lumbering operations are shown of record and are explained upon its complaint. It appears that its plant and yearly output are much more extensive than those of many other lumber companies that are receiving allowances. It has 16 miles of tap line and 5 miles of logging spurs. It operates 4 locomotives and uses 40 logging cars. It has a small amount of traffic for outsiders, a claim that cannot be advanced by many of the incorporated tap lines that

are receiving allowances. In its complaint it points out that all the lumber companies in this territory have long used logging roads to haul logs from their adjacent forests to their mills, and that these facilities have, until recent years, been regarded as mere adjuncts to their plants; that the Rock Island, on the pretense that tap lines become common carriers when incorporated, is making allowances to the competitors of the complainant, ranging from 2 to 3 cents per 100 pounds and even higher, while refusing such aid to the complainant which uses and always has used a logging road of the same kind, for the same purpose, and which it has operated at the same proportionate expense. A striking allegation in the complaint is that the Rock Island has offered to pay the complainant similar allowances if it would go through the form of incorporating its logging road as a common carrier, a device which the complainant regards as a mere evasion of the act, and to which it therefore has declined to resort. It is a device, however, which the record shows has been adopted by many lumber companies in this territory at the express suggestion of trunk lines which desired their traffic and advised the incorporation of their tap lines as a basis for legalizing allowances.

The tap lines that are not incorporated are operated in precisely the same way and for precisely the same purposes, so far as the proprietary lumber companies are concerned, as are the incorporated tap lines. Nevertheless the lumber companies that have not incorporated their tap lines must not only bear the entire burden of the cost of their operation but must share with the general shipping public the burden cast upon the rates by the large amounts paid by the trunk lines to lumber companies having incorporated tap lines. The aggregate figures are not available in this proceeding, but from a careful check of the information found on the record it has been estimated that the allowances paid through their incorporated tap lines to these lumber companies in Louisiana, Arkansas and Texas amount to not less than a million and a half dollars annually. Were the facts accurately known it is said that a complete check would disclose an aggregate of from two million to

three million dollars annually. Indeed, the assistant attorney general of Louisiana, using figures prepared by the railroad commission of that state and relating to that state only, said on the argument:

"The tap lines incorporated and operated as common carriers haul an annual tonnage of 4,061,876 tons of lumber. Assuming the average allowance paid the tap lines in Louisiana as 3 cents per 100 pounds, it may safely be estimated that the tap lines received $2,437,125 as divisions from their interstate freight rates with trunk lines."

In concluding its general observations in the tap line cases the Commission said on pages 298-9 of its report:

"To these general observations it may fairly be assumed that no valid objection can be made, for what is a plant facility cannot also be a common carrier for the plant, and what is an industrial service cannot also be a service of transportation. These principles, we think, should be applied to each of the companies whose affairs are now to be stated. In the brief summary that follows we have endeavored to outline the history of each tap line, its ownership, physical condition, the nature and source of its traffic and revenues, and the manner in which its operations for the proprietary company are conducted. Our finding is that in none of the cases that follow does the tap line perform a service of transportation as a common carrier either in the movement of the lumber of the proprietary company from its mill to the trunk line or in the movement of its logs from the forest to its mill."

For the information of the court it may be stated that the report of the Commission with reference to the tap lines, appellees herein, may be found on the following pages of the report in I. & S. Docket No. 11, 23 I. C. C. R.:

Louisiana & Pacific Railway Company, pages 591-594;

The Woodworth & Louisiana Central Ry. Co., page 327;

Mansfield Railway & Transportation Co., pages 587-589.

Victoria, Fisher & Western R. R. Co., pages 602-603.

When the report of the Interstate Commerce Commission was published in the tap line cases (23 I. C. C. R., 277) it contained no formal order of the Commission and was intended to express the views of the Commission upon the various matters investigated, rather than its mandate. It was intended no doubt as a warning to all parties interested that the opinion expressed the policy of the Commission with respect to criminal prosecutions. Shortly thereafter (May 14, 1912) the Interstate Commerce Commission made a finding that in the cases of (among others) The Woodworth & Louisiana Central Railway Company, the Louisiana & Pacific Railway Company, the Mansfield Railway & Transportation Company, and the Victoria, Fisher & Western Railroad Company:

> "The service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful."

Upon the finding made by the Commission on said date the tap lines sued in the Commerce Court to suspend said order, but on June 29, 1912, the Commerce Court dismissed the case for want of jurisdiction upon the authority of *Proctor & Gamble* v. *United States*, 225 U. S., 282.

Thereupon the petitioners before the Commerce Court, appellees here, by their attorney, L. M. Walter, petitioned the Interstate Commerce Commission to issue an affirmative order (See petition of Louisiana & Pacific

Railway Company, No. 90, in the Commerce Court, pages 51-8) in substance forbidding the tap lines from receiving divisions. And thereafter, on the 30th day of October, 1912, the Interstate Commerce Commission issued the order which is the subject matter of this litigation. The order was predicated upon a finding contained therein, in the case of The Woodworth & Louisiana Central Railway Company, the Mansfield Railway & Transportation Company, the Louisiana & Pacific Railway Company and the Victoria, Fisher & Western Railroad Company:

> "That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports."

Said order was directed, not against the tap lines, but against the principal defendants, The Chicago, Rock Island & Pacific Railway Company and all the trunk lines involved, and it was ordered that each of said companies:

> "Be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service."

The cases in question came before the Commerce Court upon several questions raised by petitioners (appellees here), among such questions being the one that there was

no evidence in the record to sustain the findings of the Commission, and that the same were purely arbitrary. The Commerce Court, however, did not disturb any finding of fact made by the Commission. Indeed, in the decision of the case in the Commerce Court (*Louisiana & Pacific Railway Company* v. *United States*, 209 Fed., 247) the court said on page 249:

> "The evidence before the Commission tending to show that the petitioning tap lines were originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, might have justified the Commission in finding that these tap lines were not in fact *bona fide* common carriers."

So, also, it appears that the Commerce Court recognized the gravity of the situation which the Interstate Commerce Commission was attempting to correct. On page 253 the court says:

> "It is apparent therefrom that very real evils existed, evils demanding correction.
>
> Tap lines, in many instances, were receiving amounts entirely disproportionate to the services rendered by them; amounts based, not upon the cost or the value of the services rendered, if they were transportation services, but upon other and totally illegal considerations. Such payments were, in a large measure at least, secret rebates, and to that extent unlawful. Many tap lines received no allowances for work practically identical with that per-

formed by other lines to which most liberal allowances were given. Moreover, while prior to 1906 divisions and allowances, especially in the form of secret rebates, were made directly to the mills, after the amendment of 1906 the test of the right to receive them, as fixed by the trunk lines, was incorporation of the tap line as a common carrier, although it is clear that incorporation is not essential to the status of an interstate common carrier.

The power of the Commission to prevent such rebates and unjust discriminations is beyond question."

Yet, notwithstanding the gravity of the situation, the imperative call for relief and the admitted power of the Interstate Commerce Commission to grant such relief, the Commerce Court, accepting as true the findings of fact of the Commission, nevertheless held that the Commission must have implied something exactly the opposite to what it expressed, and it based its opinion that the order of the Commission in this case was arbitrary, not upon an examination of facts or evidence in the record, but upon its idea of what the Commission implied, for the Commerce Court expressly said on page 258:

"In view of our conclusions as to the arbitrary character of the distinctions on which the order of the Commission is based, it becomes unnecessary for us to consider the evidence as to each petitioning tap line separately."

It appears therefore that the Commerce Court held that the Commission had done the right thing in the wrong way.

ERRORS RELIED UPON.

Appellants rely upon the following errors:

1. The Commerce Court erred in setting aside the order of the Interstate Commerce Commission.

2. The Commerce Court erred in holding that appellees were common carriers of the traffic of their proprietary lumber companies.

3. The Commerce Court erred in setting aside the order of the Interstate Commerce Commission which was intended to stop illegal transactions or rebates.

4. The Commerce Court erred in holding that the through route of a trunk line could be extended beyond its own rails so as to include an activity or duty of the shipper.

5. The Commerce Court erred in holding that the Interstate Commerce Commission was without power to pierce the device of incorporation in order to ascertain whether the tap line was used as a medium for securing rebates on the lumber companies' traffic, and to prevent such illegal transactions.

6. The Commerce Court erred in finding that the Interstate Commerce Commission had no power to order the trunk line carriers to desist from paying rebates to the lumber companies where the payment was made indirectly through the tap line companies.

BRIEF AND ARGUMENT.

I.

THE TAP LINE DIVISION IS A REBATE AND THE VARIOUS STEPS TAKEN BY APPELLEES IN THEIR ATTEMPTS TO LEGALIZE SUCH REBATE ARE MERE DEVICES TO EVADE THE PAYMENT OF THE PUBLISHED TARIFF RATE IN FULL.

THE INCORPORATION OF THE VARIOUS TAP LINE RAILROADS AND THE OTHER STEPS TAKEN BY THEM WERE FOR THE SOLE PURPOSE OF CONTINUING UNDER THE NAME OF A DIVISION, THE OLD OPEN REBATE WHICH WAS PAID DIRECT TO THE LUMBER COMPANIES. MASQUERADING AS RAILROADS THE LUMBER COMPANIES WERE MAKING THEIR TRAFFIC A MATTER OF BARGAIN AND SALE AND BY THE DEVICE OF A SECRET DIVISION WERE COMPELLING THE TRUNK LINES TO BID AGAINST EACH OTHER IN THE DARK FOR SUCH BUSINESS. SUCH WAS THE FINDING OF THE INTERSTATE COMMERCE COMMISSION.

As appears most plainly the incorporation of the various industry tracks as railroad companies was for the purpose of continuing the old rebating system which had been forbidden by the Commission in the Yellow Pine Case, and which was plainly violative of the Act to Regulate Commerce.

Indeed, it was said by this court in the case of *Illinois Central Railroad Company* v. *Interstate Commerce Commission*, 206 U. S., 441, 444, in dealing with the precise situation under consideration (italics ours):

> "The railroads west of the Mississippi make a certain allowance to the mills which have 'logging roads' —that is, roads by which logs are hauled from the timber to the mills. This is called 'tap-line allowance

> or division.' * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.*"

The main contention of the tap lines in this case is that they are now incorporated common carriers and therefore they are in fiction, if not in fact, entirely separated from the lumber companies. The fallacy of this view is that the actual character of the traffic carried on by the logging roads, which are in reality plant facilities and are constructed and operated as a part of the general machinery and as one of the regular facilities used in lumbering enterprises, never changed; that the separation from the mill was nominal only and the tap-line railroad in substance is just as much a plant facility as though the charter had never been obtained. It may also be stated that the amount of the tap line division depends largely upon the number of trunk lines which compete for the lumber company's business. Most of the traffic of these tap line roads is lumber of the mill company which controls them.

The fact being admitted, then, that these tap lines are incorporated, does that change what would otherwise be a rebate into a lawful allowance. And by this mere formal application for a charter, is the law satisfied and all objections to the old illegal practice removed?

It must be remembered that this proceeding is brought before a Commission created under a law the underlying principle of which is to forbid undue preferences, discriminations and rebates from legal rates and that one of the most important provisions in that law is that a car-

rier may not give to a shipper a concession or rebate "*by any device whatsoever.*"

If it is held that the mere incorporation of a plant facility legalizes a rebate, then your Honors would authorize an easy device which will be seized upon to emasculate the Act to Regulate Commerce.

The fact that the rebate is paid in the way of a division to an incorporated railway company cannot disguise the real transaction. The money goes to the lumber company, the real owner of the railroad company, and by this method the mills owning tap lines obtain a decided advantage over the other mills which have not incorporated their tap lines; and indeed the incorporated tap line which receives only 1 cent because it has only one trunk line connection is discriminated against by its neighbor which receives 6 or 7 cents because it is fortunate enough to connect with three or four trunk lines.

But there is no halo about a paper charter or the theory of incorporation which prevents the Commission or the courts from searching into the actual results. Corporations and their fictions are much older than the Act to Regulate Commerce and in judicial history many attempts may be found to practice fraud under the cloak of incorporation.

Heretofore, however, courts have had no difficulty in getting behind the legal fiction of a separate legal personality, resulting from an incorporation, in order to ascertain who are really benefitted by the same to see whether the scheme is not merely designed to circumvent the law or to perpetrate some fraud whether upon creditors or upon the public in general. This court will be as readily able to see through the subterfuge and to decline to lend its aid in setting aside the judgment of the Interstate

Commerce Commission and thus assisting these parties to secure an unjust advantage over their competitors.

The Interstate Commerce Law in a number of provisions is particular to cover any kind of device which may result in discriminations as between shippers. The Elkins Law made it unlawful to grant or solicit any rebate, concession or discrimination in respect to interstate transportation whereby property should "*by any device whatsoever*" be transported at less than the tariff rate. The second section of the law, on the subject of unjust discrimination, makes it unlawful for any common carrier *directly or indirectly by any special rate, rebate, drawback, or other device, etc.*, to charge one person a greater compensation than another for a similar service. The third section is even broader in forbidding the giving of an undue or unreasonable preference or advantage to one person or subjecting another to an undue or unreasonable prejudice or disadvantage *in any respect whatsoever.* Other provisions of that law might also be pointed out which would show that its spirit is not to be violated by any device which might be trumped up, concocted or resorted to by crafty and ingenious minds.

The Interstate Commerce Commission held that the service performed by the tap line for the proprietary lumber company in moving logs from the forest to the mill or in switching cars of lumber between the mill and the trunk line was not a service of transportation by a common carrier railroad, and that after the incorporation of the tap line the situation was not changed. The Commission held that in respect to such services the tap line was simply an instrumentality or agency of the lumber company adopted and used by the latter to perpetuate the concessions or rebates from the regular rate which had theretofore been received by the lumber company, and

that this resulted in unlawful or undue discrimination. It was obvious to the Interstate Commerce Commission that notwithstanding the act of incorporation and the professions of the tap line as to holding itself out as a common carrier, the lumber company was simply masquerading through the guise of an incorporated tap line to secure concessions indirectly which it could not legally obtain directly.

In administering such a statute as the Interstate Commerce Law the Commission acting on behalf of the Government or the public should view, as it did, matters in a practical way and get at the real substance of the transactions, and it should not be prevented from inquiring into the facts and enforcing the law by any theoretical rule or legal fiction which might separate the corporate entity of the tap line from the lumber company. The Commission is created for the purpose of seeing that the Interstate Commerce Law is not evaded or its provision circumvented by any mode or manner of device, scheme or subterfuge. Its duty is to see and determine whether from a practical and actual working standpoint the scheme or device attacked is one intended to or which does in fact tend or result in giving some favored shippers concessions from the regular rate or undue discriminations as against competitors. The federal law can not be evaded by a resort to incorporation under a state statute, for all that may be done under the state statute is subject to the paramount federal law.

Thus in the case of *Northern Securities Co. v. United States*, 193 U. S., 197, an attempt was made to circumvent the Sherman Anti-Trust Law by the device of a holding company formed under the laws of New Jersey, to which holding company was transferred by individual stockholders of the Northern Pacific Company and the Great

Northern Company their stock, thus placing under a single control, through ownership of a majority of stock of each competing line, the management or control of two competing lines.

This court characterized that plan as a mere device, looked through the corporate fiction of the holding company and the purpose of its formation, and found that it was intended to and in fact did result in stifling competition and was, therefore, violative of the Anti-Trust Law. The holding company was ordered to dispose of its stock in the two competing railways.

While it is true perhaps that each of the steps taken by the tap lines and lumber companies in pursuance of this scheme might be called legal, yet they result in an illegality. So it was held in the case of *Swift & Company v. United States*, 196 U. S., 375, that even if the separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful.

So also in the case of *Brundred et al. v. Rice*, 49 Ohio St., 640; 32 N. E., 169, a transportation company was organized to operate a pipe line, but largely for the purpose of securing rebates to the promoters who were shippers of oil. In a suit brought by another shipper, a competitor of the promoters, to recover damages on account of unlawful discrimination, a judgment was awarded in his favor, it being held that the incorporation of the transportation company by the promoters was a mere subterfuge for the illegal purpose of securing to them discriminatory rates and rebates. In that case it was held that rebates to a corporation controlled by a shipper were illegal and violative of the Ohio statute.

The Interstate Commerce Commission, of course, is

vested with all the power of the Government to investigate violations of the law and to make necessary administrative orders to stop a continuance of such violations. Acting for the government and on behalf of the public it stands in the same position as did the representatives of the government in the Northern Securities case, in a proceeding in equity to restrain a violation of the Anti-Trust Law. This controversy is not between private individuals, but is one between the Government or the public on the one side and certain shippers and tap lines on the other side, alleged to be violating the law, so that the Commission is not precluded by the mere charter or professions of the tap line incorporation papers to inquire whether it has been utilized and is being used as a device to circumvent the prohibitions of the Interstate Commerce Law.

In the case of *United States* v. *Milwaukee Refrigerator Transit Co. et al.*, 142 Fed., 247, parties who controlled a brewing company which was a shipper of beer organized and controlled a transit company which would control the shipments and secure commissions from railway companies on such shipments. It was held that such commissions were merely unlawful rebates and that the incorporation was a mere subterfuge or device to evade the provisions of the Interstate Commerce Law. On page 255 the court said:

> "When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. This much may be expressed without approving the theory that the legal entity is a fiction, or a mere mental creation; or that the idea of invisibility or intangibility is a sophism."

On the same page it is said:

> "A corporation, from one point of view, may be considered an entity, without regard to its shareholders, yet the fact remains self-evident that it is

not in reality a person or thing distinct from its constituent parts. The word corporation is but a collective name for the members who compose the association." (Citing a number of authorities.)

So in the case of *Taenzer & Company* v. *C., R. I. & P. Ry. Co.*, 191 Fed., 543 (C. C. A., 6th Cir.), an action was brought by a shipper against the railway company to recover damages for breach of contract between the plaintiff, a lumber company, and the defendant, an interstate railroad company, by which the plaintiff agreed to build a private track on its own lines connecting with defendant's line, and to ship all of its product, with a certain exception, over defendant's road, in consideration of which defendant agreed to furnish cars to carry plaintiff's product at certain rates, which were divided between the shipper and the carrier, and which, therefore, resulted in the shipper obtaining a less net rate than was established and published in the tariffs. This contract was held to be illegal and void as in contravention of the Interstate Commerce Law.

See, also, *Taenzer & Co.* v. *C., R. I. & P. Ry.*, 170 Fed., 240 (C. C. A., 6th Cir.), where it was held that a spur railway line built by a lumber company on its own land, forming a connecting line between a railroad and its mill for the sole purpose of transporting its own products to the railroad for shipment, was not a common carrier.

By a purely legal fiction a corporation is regarded as a distinct legal entity or person, in fact representing, however, the interests of its aggregate membership. The legal fiction is resorted to merely for convenience to enable the members to transact business or engage in undertakings in a lawful and orderly manner. But said Story, J., in *United States* v. *Bags of Coffee*, 8 Cr., 415, "fictions of law shall not be permitted to work any wrong." So Mr. Justice Holmes said in *Blackstone* v. *Miller*, 188 U. S., 206,

"when logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

As stated heretofore, courts have frequently and especially of late years, gone behind the corporate fiction and ascertained who were the real parties in interest in order to prevent the carrying out of either some fraud or some circumvention of the law.

In 1 Cook on Corporations, Sixth Edition, Section 6, pages 31-32, it is said:

> "But there are occasions where the courts will ignore the corporate existence and will hold that its acts are the act of its stockholders and *vice versa* the same as in a partnership. Thus, where an individual organizes a corporation to violate a contract which he himself would not be allowed to violate, the court will enjoin the corporation as though it were the person himself. So, also, where a director causes the corporation to give a valuable contract to a corporation in which he is secretly interested, this may be the same as though he were interested in a firm which received that contract. Property acquired by and in the name of a 'dummy' corporation may be held to be subject to a mortgage executed by the owner of such 'dummy' corporation. A contract between three local companies by which one runs over the tracks of another for a consideration paid to the third is legal as to the second corporation where such second corporation is a mere dummy of the third corporation and the earnings of both corporations go together. Where one family own all the stock of a mercantile corporation and one of them is president and has entire control and management of its affairs and he wilfully fires the property in order that the insurance may be collected, the insurance company is not liable.
>
> Where one corporation owns all the stock and purchases all the property for another corporation, and employs a person to do work for the latter, it is liable for his wages on the ground that the subor-

dinate company was merely an agency or instrumentality for carrying out the purposes of the former. A corporation may be held liable for the fraud of its board of directors against another corporation which the same board controlled. The New York Court of Appeals have said: 'We have of late refused to be always and utterly trammeled by the logic derived from corporate existence where it only serves to distort or hide the truth.'

This same principle applies to trade combinations of corporations called 'Trusts.' The corporate existence will be disregarded and the acts and contracts of the persons holding all the stock will be the acts and contracts of the corporation itself, where the effect is the same as though the corporation had acted or contracted as a corporation. Hence, where all the stock is combined with all the stock of other companies in order to form a combination which is illegal, the state will forfeit the charter of the corporation, although technically it is not a party to the agreement."

In 2 Cook on Corporations, Sixth Edition, Sections 663 and 664, it is said on page 1972:

"The disabilities of the corporation are not disabilities of the stockholders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a 'cloak' for frauds. Such cases as these are becoming common, and the courts are becoming more and more inclined to ignore the corporate existence, when necessary, in order to circumvent the fraud. Thus, it has been held that, where a person has contracted that he will not do a certain act, he cannot form and control a corporation and have the corporation do that act. And where a bankrupt practically owns the entire capital stock of a corporation, the bankruptcy court will consider the corporation as merely an agent of the partnership, and will extend its jurisdiction over its property and determine in the bankruptcy proceedings the respective rights of the creditors of both concerns."

In Note 1, the following language *In re Rieger, etc.*, 157 Fed., 609, is quoted:

> "The fiction of legal corporate entity cannot be so applied by the partners as to work a fraud on a part of their creditors, or hinder and delay them in the collection of their claims, and thus defeat the provisions of the bankrupt act. The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud."

On page 1974, 2 Cook on Corporations, Sixth Edition, Section 663 and 664, the author continues:

> "Where it would be illegal for two or more corporations to unite in regulating the production and price of an article, it is illegal to accomplish that result by placing all the shares of stock of those corporations in the hands of trustees and thereby securing co-operating boards of directors.
>
> There are many other instances in which the corporate existence will not suffice to evade liabilities, disabilities, and frauds. An individual or partnership cannot transfer all of his or its property to a corporation for shares of stock and thereby defraud the creditors of the partnership. The officers and agents of a corporation who cause the corporation to defraud its creditors or subscribers to its stock by means of fraudulent misrepresentations are liable to the persons so defrauded."

See also pages 1975, 1983, 1984, 1985, 1986 and 1987.

In several instances this court has gone back of the corporate fiction to ascertain whether a corporation was organized mainly for the purpose of invoking the jurisdiction of the Federal courts in respect to controversies concerning title to property or other matters affecting a corporation which could not invoke such jurisdiction. In those cases the stockholders of a local or domestic company caused to be incorporated a foreign corporation and the property of the domestic company was transferred to

the foreign corporation. The court, however, looked through the subterfuge and determined it was unavailing to accomplish the purpose intended even in such indirect manner.

See:

Miller & Lux v. *East Side Canal Co.*, 211 U. S., 293.

Lehigh Mining and Man'f'g Co. v. *Kelly*, 160 U. S., 327.

In *Kendall* v. *Klapperthal Co.*, 202 Pa. St., 596, 52 Atl., 92, where, in order to develop the property of a land company, its stockholders organized a railroad company, also a light, heat and power company, the respective interests of the various companies being practicaly the same, it was held that the land company might legally endorse and guarantee the notes of the other companies. The court said:

> "For purposes of equity, courts will look behind that artificial personalty, and, if need be, ignore it altogether, and deal with the individuals who constitute the corporation (citing cases); and that is what, in justice and fairness, must be done here, where practically the same persons were associated together for one common purpose, under three or four different names, corresponding to the several branches of the single common enterprise, and acted together only formally as distinct organizations, each devoted to the corporate pursuit of its appropriate branch."

In *Watson* v. *Bonfils*, 116 Fed., 157, where a bank, in order to handle real estate which it acquired on foreclosure organized a corporation, and owned all the stock and was the sole creditor of such corporation, the object of the whole transaction being to conceal the amount of money the bank had invested in real estate, the transaction was held fraudulent as to creditors of the bank and

the real estate was held attachable as the property of the bank.

In *Seymour* v. *Spring Forest Cemetery Ass'n.*, 144 N. Y., 333 and 340, it was said:

> "The abstraction of the corporate entity should never be allowed to bar out and pervert the real and obvious truth."

The same view is taken and the same process adopted by the courts in determining whether there would not be a violation of the Interstate Commerce Law or state laws on the subject of rebates and discriminations. In 2 Cook on Corporations, Sixth Edition, Sections 663 and 664, it is said on page 1975:

> "Where a corporation secures a rebate from a railroad company, not only on shipments made by the former, but on shipments made by other parties, the active agents of such corporations receiving such moneys may be held personally liable for them. The court said that inasmuch as the company 'was organized by the promoters, the defendants, simply for the purpose of consummating the illegal agreement and shielding themselves from the consequences of receiving the illegal exactions made under it, the act of incorporating can be of no avail to them as a defense.'"

In the recent case of *Martin* v. *Martin Co.*, Court of Chancery of Delaware, October, 1913, 88 Atl., 612, where the defendant holding the corporation, in which the complainants were stockholders, owned the stock of seven or eight other corporations engaged in the same business and financed them, and all of the directors of four of such companies were also directors of defendant corporation, while a majority of the directors of the others were directors of the defendant, and the president of the defendant was also the president of seven of such other corporations, it was held in a proceeding to compel the

defendant to produce the books of the various companies, for discovering whether defendant was fraudulently mismanaging its corporate affairs, that the subsidiary corporations shall be regarded by a court of equity as mere instrumentalities of the defendant, and that such defendant will be compelled to produce the books of such companies, as well as its own books, for discovery.

The fundamental principle of that decision is that the fiction of a legal corporate entity will be ignored when used to shield fraudulent or illegal acts.

See also *Hunter* v. *Baker Motor Vehicle Co.*, 190 Fed., 665, where it was held that the legal fiction of distinct corporate existence will be disregarded when necessary to circumvent fraud, or where one corporation is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality or adjunct of the other.

Passing from these cases which announce the general principle that incorporation cannot cover fraud, we come to cases involving the same principle but with reference to facts almost identical with the facts in this case.

In the case of *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission and E. H. Young*, 219 U. S., 498, this court had before it the question whether the incorporation by the Southern Pacific Co. of a terminal company sufficiently individualized and separated these companies, in a case arising under the Interstate Commerce Law. The court affirming the order of the Interstate Commerce Commission said on page 521:

> "Another and important fact is the control of the properties by the Southern Pacific Company through stock ownership. There is a separation of the companies if we regard only their charters; there is a

union of them if we regard their control and operation through the Southern Pacific Company. *This control and operation are the important facts to shippers. It is of no consequence that by mere charter declaration the Terminal Company is a wharfage company or the Southern Pacific a holding company. Verbal declarations cannot alter the facts.*"

On page 522 it was further said:

"As well said by the Interstate Commerce Commission, 'a corporation such as this Terminal Company, which has 'competing lines,' should not be permitted to defeat the jurisdiction of this Commission by showing that it is not in fact owned by any railroad company. * * * The Terminal Company is part and parcel of the system engaged in the transportation of commerce, and to the extent that such commerce is interstate the Commission has jurisdiction to supervise and control it within statutory limits. To hold otherwise would in effect permit carriers generally, through the organization of separate corporations, to exempt all of their terminals from our regulating authority.' "

And the court further said:

"*In opposition to these views appellants urge the legal individuality of the different railroads and the Terminal Company and cite cases which establish, it is contended, that stock ownership simply or through a holding company does not identify them. We are not concerned to combat the proposition. The record does not present a case of stock ownership merely or of a holding company which was content to hold. It presents a case, as we have already said, of one actively managing and uniting the railroads and the Terminal Company into an organized system. And it is with the system that the law must deal, not with its elements. Such elements may, indeed, be regarded from some standpoint as legal entities; may have in a sense, separate corporate operation; but they are directed by the same paramount and combining power and made single by it.*"

In that case this court ignored the fiction and recog-

nized the fact; it disregarded the form and sought for the substance.

In the case of *United States* v. *Union Stock Yard & Transit Co.*, 226 U. S., 286, the court said on pages 307, 308 and 309:

> "By Section 2 of the Act to Regulate Commerce the carrier is guilty of unjust discrimination, which is prohibited and declared unlawful, if by any rebate or other device it charges one person less for any service rendered in the transportation of property than it does another for a like service. The Elkins Act makes it an offense for any person or corporation to give or receive any rebate, concession or discrimination in respect to the transportation of property in interstate commerce whereby any such property shall be transported at a rate less than that named in the published tariff or whereby any other advantage is given or discrimination is practiced. By the very terms of the contract it is evident that the interest of the Stock Yard Company and also of the Junction Company is in the profit to be made in receiving and delivering, handling and caring for and transporting live stock, shipments of which, to the extent stated, are made in interstate commerce. The contract provides that if the Pfaelzers construct a packing plant adjacent to the stock yards of the Stock Yard Company they shall receive $50,000, and it obligates them to maintain and operate the plant for a period of fifteen years and buy and use in their slaughtering business such live stock only as moves through such stock yards, and if not so bought to pay the regular charges thereon as if the same had moved into the stock yards and had been there purchased by them. In other words, this plant in effect may pay for the services of the Stock Yard Company, up to the sum of $50,000, with the bonus given to the Pfaelzers for the location of their plant in juxtaposition to the stock yards. The only interest which the Stock Yard Company has in Pfaelzer & Sons' interstate business is compensation for its services in handling their freight and its share of the profits realized by the Junction Com-

pany in rendering its service. Any other company with which it has made no contract would be compelled to pay the full charge for the services rendered without any rebate or concession. Another company might have a contract for a larger or smaller bonus, and thereby receive different treatment. Certainly as to the company which receives no such bonus there has been an undue advantage given to and an unlawful discrimination practiced in favor of Pfaelzer & Sons. If these companies had filed their tariffs, as we now hold they should have filed them, they would have been subject to the restrictions of the Elkins Act as to departure from published rates—and we must consider the case in that light—and this preferential treatment, as we have said, would have been in violation of that act. It is the object of the Interstate Commerce Law and the Elkins Act to prevent favoritism by any means or device whatever and to prohibit practices which ran counter to the purpose of the act to place all shippers upon equal terms. We think the Commerce Court should have enjoined the carrying out of this contract."

In the case of *Taenzer & Co.* v. *C., R. I. & P. Ry.*, 170 Fed., 240 (Circuit Court of Appeals, Sixth Circuit, April, 1909), where the facts were fairly representative of the facts in the cases at bar as to ownership, operation and purpose of a certain logging road. Shortly before that proceeding was instituted the logging road was incorporated in the name of the St. Francis River Railroad so that it appeared in court as a common carrier just as much as most of the tap lines that are now claiming to be common carriers. But the court said on page 248, referring to the circumstances and conditions which it is claimed made the St. Francis Railroad a common carrier:

"They cannot overcome the fact, which clearly stands out, according to the proofs given or offered, that the so-called railroad was intended, both by the

railroad company and the lumber company, merely as a spur to the mill for the purpose of enabling the lumber company, not as a carrier but as a shipper, to transport its forest products over the line of the Choctaw Road; that, throughout, the lumber company's relation to the railroad company was in fact that of shipper. * * * The terms used and the provisions relied upon as establishing the status of common carrier cannot prevail against the considerations that this lumber and logging road had no rolling stock suitable for any purpose except logging; that there was in the neighborhood no cotton or other merchandise to ship, and no inhabitants to serve as carrier, either in the relation of passengers, shippers, or consignees."

Nor was the question new to the Interstate Commerce Commission. As long ago as March, 1905, the Commission had before it the matter of divisions of joint rates and other allowances to terminal railroads, Docket No. 735, 10, I. C. C. R., 661.

In the first case there considered the Eclipse Transfer Company was organized for the purpose of obtaining an allowance made to transfer companies of 5 cents per hundred pounds from East St. Louis to St. Louis. The Eclipse Transfer Company was organized for the sole purpose of obtaining these allowances. It used teams owned by the Simmons Hardware Company and used the storehouse of the latter for a receiving depot. The Grant Chemical Company also received a similar allowance for such service. It was held that the payments to the Grant Chemical Company and the Eclipse Transfer Company were illegal.

In the second case there considered the Granite City, Alton & Eastern Railroad was organized for the purpose of operating several thousand feet of railway used in the business of the St. Louis Syrup & Preserving Company and located on the latter's private ground at Granite

City, Illinois. The Granite City Company had constructed a short track outside the limit of the Preserving Company's ground and used jointly with other parties a second track about 3,000 feet long, by means of which it connected with trunk line railroads and was paid by the latter certain divisions of the rate on traffic shipped by the Preserving Company and hauled to such connections by the Granite City, Alton & Eastern Railroad. The Commission, assuming the identity of ownership of the Preserving Company and the Granite City Company, held that the payment to the Granite City Company constituted a rebate and was illegal.

In the third case the Illinois Terminal Railroad Company was organized in the interest of the Illinois Glass Company and used tracks constructed by the latter on its private grounds at Alton for the sole purpose of connecting its plant with different lines of railway. On pages 667 to 672 details of the construction and operation of the terminal road are stated and they are very much like the fact in the case at bar. The Commission held that the allowance made to the terminal railroad was illegal and amounted to no more than a rebate. The opinion is by Mr. Commissioner Prouty.

In the case of *General Electric Company* v. *New York Central & Hudson River R. R.*, 14 I. C. C. R., 237, it was held that a manufacturing company, which owned and operated several miles of road connecting with trunk line railroads, was not entitled to compensation from the trunk lines to cover the cost of the movement of loaded and empty cars between the interchange tracks and its shops and foundries within the inclosure. It was held that the General Electric Company did nothing in this switching of its cars to the railroads which could have been lawfully demanded of the trunk line railroads. The

General Electric Company had 12 miles of standard gauge track. The allowance for switching the cars was 1 cent per hundred, or 20 cents per ton, for this service. It might also be stated that in 1906 when this information came to the United States Government indictments were returned against the trunk line railroads on the charge of having unlawfully paid rebates to the General Electric Comppany.

See also the case of *Solvay Process Co.* v. *Delaware, Lackawanna & Western R. R. Co.*, 14 I. C. C. R., 246. In that case the Solvay Process Company was receiving $3 a car for services in transferring cars from its plant to the interchange tracks of the trunk line railroads. The plant had about 12 miles of track, 6 locomotives and 175 box, tank and flat cars. The haul performed by the Solvay Company was from 700 to 1,500 feet. The Commission by Mr. Chairman Knapp said on page 249:

> "We find that the switching service performed by complainant (Solvay Process Company) within its plant is not a service which it can lawfully call upon defendants to perform for it, and consequently is not a service for which it may lawfully demand compensation."

See also the case of *Crane Railroad Co.* v. *Philadelphia & Reading Ry. Co.*, 15 I. C. C. R., 248, opinion by Mr. Chairman Knapp, in which the Commission refused the complainant, a railroad company having 1.9 miles of track, connecting the Crane Iron Works and five other industries at Catasqua, Pennsylvania, with defendants' tracks, an allowance of $2 per car per round trip.

In the case of *Crane Iron Works* v. *Central Railroad Co. of New Jersey*, 17 I. C. C. R., 514, the Commission held, by Mr. Commissioner Prouty, that the service performed by the Crane Railroad Company in the case last cited, for the complainant in the present case, the Crane

Iron Works, was that of a plant facility, the expense of which should be borne entirely by the Iron Works and which no railroad under the guise of the absorption of a switching charge might lawfully sustain.

In *In re Transportation of Salt from Hutchinson*, 10 I. C. C. Rep., 1, the Commission investigated the operation of the Hutchinson and Arkansas River Railroad Company, which owned between four and five thousand feet of railway track adjoining the plant of the Hutchinson Salt Company. The railroad company had acquired its track from the Salt Company and the ownership of the railroad company and the Salt Company was held by the same common stockholders. The Railroad Company owned no equipment or rolling stock and did not serve the public, but it received 25 per cent. of the rates on salt as its division. The Interstate Commerce Commission, by Mr. Commissioner Prouty, held that the granting of the division of the rate to the so-called railroad was a mere subterfuge to give a concession in the rate and was, therefore, unlawful. This case was referred to the Department of Justice for action.

In the case of *Chicago & Alton R. R. Co.* v. *United States* (C. C. A., 7th Cir., 1907), 156 Federal, 558, the Schwarzschild & Sulzberger Company owned private tracks to a plant on its own property extending to a connection with the tracks of a belt line company. The Packing Company did not own or furnish any cars. The Alton Railroad Company refunded to the Schwarzschild & Sulzberger Company $1 a car as terminal charges for the use made of the S. & S. Company's tracks in getting the cars of freight out upon the Belt Line's railroad. At the conclusion of the Government's evidence the Alton Railroad Company moved the court to instruct the jury to find the defendant not guilty. The motion was overruled. *There-*

upon the Alton Railroad Company offered to prove that the use of the S. & S. Company's tracks was reasonably worth $1 *a car,* but the court refused. The Circuit Court of Appeals affirmed the judgment of the lower court. The case was also affirmed by this court. In this case the action was a criminal one to fine the Railroad Company for giving rebates.

See also the recent decision of the Interstate Commerce Commission in the Industrial Railways Case, 29 I. C. C. R., 212.

In the light of these cases it is difficult to see in the tap line allowance anything but a device to effect a rebate. It is too easy to obtain a charter—and if a shipper with a tap line charter may accept a rebate an easy way to evade the law is presented.

Courts of equity have never defined "Fraud" because as was explained by a learned English chancellor if a court once went into details as to what constituted fraud unscrupulous persons would soon frame up a plan which would be outside of the definition but yet would accomplish the same result, and for that reason to this very day equity courts have declined to make a rule which crafty persons might easily contrive to circumvent.

If it should be held that a shipper owning a paper railroad charter is entitled to a rebate the big shipper will be afforded the easiest way yet suggested to evade the Act to Regulate Commerce.

With this statement of the real issue in the case we pass to a consideration of the points made by appellees before the Interstate Commerce Commission and the United States Commerce Court.

II.

THE POINTS RAISED BY APPELLEES BEFORE THE COMMERCE COURT AND BEFORE THE INTERSTATE COMMERCE COMMISSION ARE WITHOUT MERIT.

In the Commerce Court the following points were made by the appellees:

"1. The service performed by each of the petitioner railroads herein is a service of transportation by a common carrier railroad within the meaning of the Act to Regulate Commerce.

2. The petitioner railroads are not plant facilities and do not perform a plant facility service for the petitioner lumber companies herein.

3. There was no evidence upon which the Commission could base its finding that the participation by the petitioner railroads in joint rates upon the logs and lumber of the petitioner lumber companies constitutes an undue and unreasonable preference or subjects any party to unjust discrimination within the meaning of the Act to Regulate Commerce.

4. The Commission's order results in undue and unreasonable preference and unjust discrimination within the meaninng of the Act to Regulate Commerce.

(a) As between common carriers subject to the Act to Regulate Commerce.

(b) As between shippers.

5. The order deprives the petitioners of their rights under the Constitution of the United States.

6. The order of the Commission expressly overrides the exception contained in the commodities clause of the Act to Regulate Commerce."

These points we shall discuss *seriatim:*

Points 1 and 2.

"1. The service performed by each of the petitioner railroads herein is a service of transportation by a common carrier railroad within the meaning of the Act to Regulate Commerce.

2. The petitioner railroads are not plant facilities and do not perform a plant facility service for the petitioner lumber companies herein."

It was the contention of the tap lines that in some way not understood by us, the rebate in question was authorized by the law because the word "transportation" appears in Section 1 of the Act to Regulate Commerce, on the theory that the word "transportation" as used in that Act meant the mere act of carrying. But in using this argument they lose sight of the fact that the term "common carrier" is associated with the word "transportation," the language being: "any *common carrier* or *carriers* engaged in the *transportation* of passengers or property." On the premise, then, that transportation means a mere carrying they state that the tap lines are engaged in transportation and are therefore in all respects common carriers under the Act to Regulate Commerce and are entitled to all the rights and privileges of common carriers, including the right to make joint rates and agree upon divisions thereof. But if, as found by the Commission, the tap line is a mere instrumentality of the lumber company, it is of no importance that the tap line is engaged in transportation for the lumber company because before the tap lines were organized the lumber companies were engaged in their own "*transportation*" to the same extent that the tap lines are now engaged in "*transportation.*" The tap line as was found by the Interstate Commerce Commission is a mere agency of the lumber company and is therefore as to the traffic of the lumber company no more a common carrier than would be the lumber company itself. Being an agency of the shipper the tap line cannot secure indirectly for the shipper that rebate which the shipper could not have secured directly. The point we are here making is plainly set out in the opinion of the Commerce Court in the case of

Crane Iron Works v. *United States*, 209 Fed., 238, where it is said in a case exactly like this, on pages 242 *et seq.*:

> "But the dismissal order in question rests upon another basis, which will be briefly considered. Upon all the circumstances connected with the location, construction, and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing services which the iron works should perform for itself if it desired such services, and that the Central Railroad was under no obligation to pay the Crane Railroad for the switching service which it performs for the iron works, and, indeed, could not lawfully do so. We see no reason to doubt the correctness of this conclusion. The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (*General Electric Company* v. *N. Y. C. & H. R. R. Co. et al.*, 14 Interst. Com. Com'n R., 237; *Solvay Process Company* v. *D., L. & W. R. R. Co.*, 14 Interst. Com. Com'n R., 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle. That there was substantial evidence to sustain the finding of the Commission as to the character of the services rendered is not open to reasonable question, and, this being so, the conclusion must be accepted accordingly.
>
> But the argument is earnestly pressed that such a relation cannot as matter of law be predicated of an incorporated railroad which is declared to be a common carrier by the fundamental law of the state of its creation. In other words, it is insisted that the Crane Railroad, being in law a common carrier and performing the functions of a common carrier, cannot be a plant facility of the Crane Iron Works, but must be regarded as a common carrier for the Crane Iron Works, and entitled as a matter of legal right to a just share of the transportation charge which the Central Railroad makes and collects for carrying the traffic of the iron works; and on this theory it is argued that the finding and conclusion of the Com-

mission involve an error of law which this court should correct.

We are constrained to reject this contention. Whether the Crane Railroad is a plant facility as to the Crane Iron Works or a common carrier of the traffic of that concern must be held to be a question of fact which is not affected by the circumstance of incorporation. We understand it to be admitted that the operations of this railroad when it was owned and operated by the iron works were the operations of a plant facility. It is contended, however, when the railroad was separately incorporated and passed from the ownership of the iron works, that its relation to the latter and the legal character of its services became immediately changed. That is to say, the mere fact of the separation of ownership and the transfer of the title and control of the railroad property to a new corporation, although there was not the slightest change in what was actually done, operated in legal effect to transform a plant facility into a common carrier and to impose obligations on the Central Railroad, as to the traffic of the iron works, which it could not theretofore have been required to assume. We cannot believe that any such result was accomplished. The rights and duties of the Central Railroad respecting the iron works could not thus be altered. If its obligations as a common carrier were fully discharged and its tariff rate earned by delivering cars to and taking them from the exchange tracks before the iron works parted with its railroad, its rights and duties respecting that concern were neither increased nor diminished by the creation of the Crane Railroad. The services rendered to the iron works continuing to be precisely the same in point of fact, this railroad continued to be utilized as the facility of the iron works' plant in the same way after as before incorporation.

Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers. Whether considered from the standpoint of law or of practical administration, it seems reasonable to hold, as the Commission virtually held

in this case, that a railroad of the kind in question may have this dual character and perform services for one concern which are not the services of a common carrier, but which that concern is bound to provide for itself, notwithstanding it occupies the relation of a common carrier to other concerns and the public generally. Concededly, the work which the Crane Railroad does in moving cars between different points in the iron works' plant has none of the incidents of common carriage, and why may not the same thing be affirmed of the work it does in switching cars for the iron works to and from the exchange track with the Central Railroad, even if the work it does for the other industries makes it as to them or the shippers of Catasauqua a common carrier?"

It seems quite clear that a common carrier is one who carries for every one or the public in general, and not one who carries principally for himself. Indeed, in so far as a railroad company may carry free for its own use or in its own interest it is a private carrier and as to such traffic the railroad company is not subject to the prohibitions of the Interstate Commerce Law aimed against common carriers.

Santa Fe, Prescott & Phoenix Ry. Co. v. *Grant Bros. Construction Co.*, 228 U. S., 177.

Yet no one would contend that the railroad company because it is a common carrier could lawfully, in respect to its own property, prefer itself directly or indirectly in respect to the transportation or marketing of the same over that of other shippers.

See:

New York, N. H. & H. R. R. Co. v. *Interstate, etc.*, 200 U. S., 361.

An argument persisted in by appellees in the Commerce Court and before the Commission was that in condemna-

tion cases some courts have held that the land owner could not question the legality of incorporation purpose for which the road was being constructed. Of course the cases relied upon were all cases between a railroad company and a private individual, in which the courts refused to inquire into the legality of the incorporation or the ulterior motive for condemning the land, holding that such questions could only be inquired into at the instance of the state in *quo warranto*. Of course such question might be inquired into by the state or Government in any direct proceeding by any tribunal duly constituted for that purpose in order to determine whether the purpose of incorporation or whether the attempted exercise of power was lawful or merely an abuse. Thus in the Northern Securities case, *supra*, the proceeding was in equity under the Federal Anti-Trust statute and the investigation went into matters which could not have been reached in any private inquiry. Under the Interstate Commerce Law the Commission is given ample power to investigate and determine whether the thing resorted to is a mere device or makeshift utilized to circumvent the prohibitions of that law. In other words, that law is administered by the Commission for and on behalf of the public and the same reasoning does not apply which was used by the courts in condemnation cases between a railroad company and a private party in which the controversy was wholly between private parties, and in which, of course, the court was justified in confining the case to a consideration of the power under the charter of the company and its professed purposes for condemning. Matters of public concern, of course, could not be litigated in such private suits.

Yet in many cases where roads of this character have come before the courts upon matters requiring the court

to ascertain their true nature, it has been held that they were not common carriers. Thus, for instance, in the case of *Wade* v. *Lutcher & Moore*, 74 Fed., 517, the Circuit Court of Appeals for the Fifth Circuit, reviewing the judgment of the Circuit Court of the United States for the Eastern District of Louisiana, held that a logging railroad was not to be considered as a real railroad and was not subject to the liability of a railroad company. They further held that Article 244 of the Constitution of Louisiana, providing that all railroads are public highways and all railroad companies are common carriers does not have the effect of making a business corporation organized to construct and operate a sawmill and a railroad in connection therewith, which constructs a logging railroad on its private grounds and operates the same for private purposes, a common carrier, charged with the duties and responsibilities imposed by law on such carriers. Wade was suing for injuries received while a passenger on this railroad. The court said on page 521:

> "But for the earnestness with which the argument was presented in this court, we would not suppose that the learned counsel would seriously contend that article 244 of the state constitution, dealing with corporations of public improvement and public utility, was intended to, or could be so construed as to, make out of a logging railroad appurtenant to a sawmill, constructed wholly on private grounds, and operated for private purposes, a common carrier charged with all the duties and responsibilities incumbent by the laws of the land upon common carriers, and simply because it is a railroad, and the owners are incorporated as a business corporation. It seems to us, we might as well hold that a railroad on a sugar plantation, appurtenant to the sugar mill, and used for carrying cane thereto, should be declared a common carrier. The Supreme Court of the State of Louisiana, while not squarely deciding the matter in hand, has decided that a corporation or-

ganized to carry freight and passengers between two sugar plantations about five miles distant from one another, and which, it was charged, was not a corporation organized for public purposes, but was a combination of individuals, whose sole object was to foster the private ends of two certain persons named, who owned jointly two sugar plantations, and who wished to transport the sugar cane grown on one of the plantations to the refinery situated on the other, was not, *ex necessitate*, such a corporation for public improvement as would authorize the expropriation of private property for its purposes. *Williams* v. *Judge, etc.*, 45 La. Ann., 1295, 14 Southern, 57."

See, also:

Demko v. *Carbon Hill Coal Co.* (Circuit Court of Appeals, Ninth Circuit, 1905), 136 Fed., 162.

Williams v. *Northern Lumber Co.*, 113 Fed., 382.

Eastern & Western Ry. Co. v. *Rayley*, 157 Fed., 532.

See also the case of *Taenzer & Co.* v. *C. R. I. & P. Rld. Co.*, 170 Fed., 240 (C. C. A., 6th Cir.).

So in the case of *McKilvergan* v. *Alexander & Edgar Lumber Company* (Supreme Court of Wisconsin, 1905), 102 N. W., 332, it was held that a statute of Wisconsin which makes a railroad liable for damages sustained by employes caused by the negligence of other employes has no application to a lumber logging road. That road was owned by the lumber company and an action based on the liability of a railroad company was brought under Section 1861 of the Laws of Wisconsin of 1898, which provides as follows:

"The phrase 'railroad corporation' as used in the statutes, may be taken to embrace any company, association, corporation or person, managing, maintaining, operating or in the possession of a railroad,

whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver."

The court said:

"The difference between such a railroad (referring to a real railroad) and one used as an incident to conducting a private business is readily perceived and understood, without elaboration. The objects and uses of the one are far removed from those of the other, though the instruments of operation, such as tracks, cars, and engines, may be common to both."

The court held that the logging road was not a railroad.

It ought to be obvious that a shipper cannot by obtaining a state charter nullify the Interstate Commerce Act.

Another point made by the tap lines is that by the charter which each line obtained from the state it was endowed with the right to accept a division of a freight rate. The counsel evidently go on the theory that part of the duty of the state is to transport freight and passengers and consequently when the state chartered the railroad it conferred or delegated that duty to these taplines. This is only another way of saying that the state has power to nullify the Federal power over interstate commerce. The same theory was advanced to this court in the cases recently decided by it known as the Corporation Tax Cases (220 U. S., 107). These cases involved for the consideration of the Supreme Court the application of the Federal Corporation Tax Law to corporations of various kinds including railroad corporations. The railroad corporations sought to carve for themselves an exception from the application of the law on the same theory. On page 171 Mr. Justice Day said in disposing of this contention:

"We come to the question: Is a so-called public

service corporation, such as The Coney Island and Brooklyn Railroad Company, in case No. 409, and the Interborough Rapid Transit Company, No. 442, exempted from the operation of this statute? In the case of *South Carolina* v. *United States,* 199 U. S., 437, this court held that when a state, acting within its lawful authority, undertook to carry on the liquor business it did not withdraw the agencies of the state carrying on the traffic from the operation of the internal revenue laws of the United States. If a state may not thus withdraw from the operation of a federal taxing law a subject-matter of such taxation, *it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the federal right to reach such properties and activities for the purposes of revenue.*

It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of private corporations, and, though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character. The former, the United States may not interfere with by taxing the agencies of the state in carrying out its purposes; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate federal taxation.

Applying this principle, we are of opinion that the so-called public service corporations represented in

> the cases at bar, are not exempt from the tax in question."

The absurdity of this contention is that if the state government could withdraw one function of a railroad incorporated by it from the operation of the Act to Regulate Commerce it could withdraw other functions and thus one state could utterly destroy the Federal power over interstate commerce.

POINT 3.

The third point of appellees raised in the Commerce Court is as follows:

> "3. There was no evidence upon which the Commission could base its finding that the participation by the petitioner railroads in joint rates upon the logs and lumber of the petitioner lumber companies constitutes an undue and unreasonable preference or subjects any party to unjust discrimination within the meaning of the Act to Regulate Commerce."

The Commission, however, made such a finding and made it upon substantial and almost uncontradicted evidence. The Commerce Court did not find that there was no evidence to support such finding of the Commission. The evidence was sufficient.

Illinois Central Railroad Co. v. *Interstate, etc.*, 206 U. S., 441, 454.

Interstate, etc., v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S., 88.

Proctor & Gamble Co. v. *United States*, 225 U. S., 282.

Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S., 88.

Point 4.

Point 4, upon which great stress was laid by the tap lines in the Commerce Court, is as follows:

> "4. The Commission's order results in undue and unreasonable preference and unjust discrimination within the meaning of the Act to Regulate Commerce.
>
> (a) As between common carriers subject to the Act to Regulate Commerce.
>
> (b) As between shippers.

Even if the facts at all supported the theory of this objection it would be sufficient answer to say that it is no objection to the validity of an order of the Interstate Commerce Commission that its enforcement might result in discrimination against some other common carrier.

In so far, therefore, as the tap lines assuming the position of common carriers are complaining against an alleged discrimination, they plainly are in no position to complain or raise such question.

> *Interstate Commerce Commission* v. *C., R. I. & P. Ry. Co.,* 218 U. S., 88.

And generally on such a question the finding of the Interstate Commerce Commission involves merely a question of fact not reviewable by the courts.

> *Interstate Commerce Commission* v. *D., L. & W. R. R. Co.,* 220 U. S., 235.

Of course the lumber company would have no standing in court to complain of an order of the Commission or its effect (*Proctor & Gamble* v. *United States,* 225 U. S., 282), and the lumber company cannot use its tap line to get such standing. But the claim of discrimination against the tap lines or the affiliated mills is ab-

surd. The entire effort of the Commission was to prevent that discrimination which existed in favor of these great shippers. It would be absurd, however, to say that because the Commission attempted to stop the payment to favored shippers of enormous rebates that such favored shippers or their agents the tap lines were being discriminated against by the order.

Point 5.

Point 5 raised by appellees in the Commerce Court is as follows:

> "5. The order deprives the petitioners of their rights under the Constitution of the United States."

It is respectfully suggested, however, that the appellees have no constitutional right to receive a rebate or to commit a crime.

It is claimed by tap lines that the result of the order of the Commission is to deprive them of their property. Of course, petitioners have no right to a rebate, and that is the only "property" they will lose as a result of the order. It is true such rebate was promised by written agreement, but such agreements are, and were when made unlawful.

Strong cases have arisen where contractual rights which were lawful when made afterwards became illegal as in violation of the Act to Regulate Commerce, and this court held the contracts to be illegal.

In *Armour Packing Company* v. *United States*, 209 U. S., 56, the railroad company had entered into contracts with certain favored shippers, agreeing to maintain a certain rate on certain commodities; subsequently the railroad company, by its published tariffs, increased the rate to the public and continued to fulfill the provisions

of the contract by maintaining the special rates for the favored shippers. In sustaining a conviction and fine this court said (71, 72):

"In this act we find punishment by imprisonment abolished and the shipper and carrier are placed upon the like footing, and it is made unlawful for any person or corporation to offer, grant, solicit, give, or to accept or receive any rebate, concession or discrimination in respect to transportation of property in interstate or foreign commerce, whereby any such property shall, by any device whatever, be transported for a less rate than that published and filed by such carriers, or whereby any other advantage is given or discrimination practiced. And we find the word 'device' disassociated from any such words as 'fraudulent conduct,' 'scheme' or 'contrivance,' but the act seeks to reach all means and methods by which the unlawful preference of rebate, concession or discrimination is offered, granted, given or received. Had it been the intention of Congress to limit the obtaining of such preferences to fraudulent schemes or devices, or to those operating only by dishonest, underhanded methods, it would have been easy to have so provided in words that would be unmistakable in their meaning. A device need not be necessarily fraudulent; the term includes anything which is a plan or contrivance. Webster defines it to be 'that which is devised or formed by design; a contrivance; an invention; a project,' etc. * * *

The Elkins Act proceeded upon broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions should be the one established, published and posted as required by law. It is not so much the particular form by which or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates from the fixed rates, duly posted and published."

In *Louisville & Nashville Railroad Company* v. *Mottley*, 219 U. S., 467, it was held that a pass issued by a railroad company to an individual, even though in pursuance of an agreement which was legal at the time it was made, resulted in preferences and discriminations prohibited by the Act to Regulate Commerce. After reviewing numerous authorities on the subject, Mr. Justice Harlan said (p. 478):

> "The purpose of Congress was to cut up by the roots every form of discrimination, favoritism and inequality, except in the case of certain excepted classes to which Mottley and his wife did not belong and which exceptions rested upon peculiar grounds. Manifestly, from the face of the commerce act itself, Congress, before taking final action, considered the question as to what exceptions, if any, should be made in respect of the prohibition of free tickets, free passes and free transportation. It solved the question when, without making any exceptions *of existing contracts*, it forbade by broad, explicit words *any* carrier to charge, demand, collect, or receive a 'greater or less *or different* compensation' for *any* services in connection with the transportation of passengers or property than was specified in its published schedules of rates. The court cannot add an exception based on equitable grounds when Congress forbore to make such an exception."

But the tap line rebate agreement was unlawful when made.

Point 6.

THE COMMODITIES CLAUSE DOES NOT REPEAL THE ACT TO REGULATE COMMERCE.

Counsel for appellees endeavor in Point 6 to show that the Commodities Clause sanctions the practice of rebating. Such sanction is not apparent, but if the Commodities Clause permits rebating and unjust discrimina-

tion it repeals the most important provisions of the Act to Regulate Commerce.

The sixth point made, *i. e.*, that "the order of the Commission expressly over-rides the exception contained in the commodities clause of the Act to Regulate Commerce," was seriously argued and evidently made some sort of impression upon the Commerce Court, and while that court did not go to the extent of saying that the Commodities Clause legalized a rebate, yet such seems to have been the opinion of that court. The Commodities Clause forbids "any railroad company" to transport its own commodity other than timber, in which it has any interest, direct or indirect, from one state to another, unless it is necessary for its business as a common carrier. This provision was simply intended to prevent a railroad company from engaging in interstate commerce at all except as a common carrier because of the opportunities afforded for discriminating against other shippers. This clause, of course, does not repeal any provision of the Interstate Commerce Law on the subject of discriminations or preferences and it was intended thereby not to give a lumber company as a shipper any opportunity to obtain a concession or rebate from the tariff rate or to work a discrimination against other shippers. It certainly did not make the lumber company or its agency, the tap line, a common carrier under the law exempt from the prohibition against rebating which is imposed upon a regular common carrier, nor did it permit a tap line to work a discrimination which it would not permit a regular railroad company to make. There was simply excepted from the general prohibition of the Commodities Clause a railroad company which at the same time was engaged in manufacturing lumber, and merely impliedly permitted such company to carry its

own lumber for commercial purposes. In the tap line cases the situation is reversed and we have the tap line railroad not carrying its own lumber or that in which it is interested, but simply carrying lumber for its principal, the lumber company. But it is not made a common carrier by doing so. Thus reference was made to the case of *United States, etc.* v. *Delaware & Hudson River Co.*, 213 U. S., 366, which was the first Commodities Clause case. That railroad while originally incorporated under the state law to construct a canal and operate coal mines subsequently became in fact a common carrier by railroad of passengers and property. So far as it was concerned it was estopped from saying that it was not a common carrier or railroad company as long as it carried other property and passengers. Such being the case, it fell within the prohibition of the Commodities Clause. In other words, the Delaware & Hudson Company had been acting as a railroad company by its own profession, so that it was estopped in a proceeding by the Government to deny that it was a common carrier and the very fact that it carried a carload of coal or freight as a common carrier for other parties brought it within the prohibition of the Commodities Clause. The exception of lumber or timber from the prohibition of the Commodities Clause gives no countenance to the claim that thereby other prohibitions in the law as against undue preferences and discriminations and rebating were annulled or weakened.

III.

CASES HERETOFORE RELIED UPON BY APPELLEES.

Appellees heretofore cited the case of *United States* v. *U. S. Yard & Transit Co.*, 226 U. S., 286, as supporting their contention that the tap lines are common carriers as to their own traffic. That case, however, is easily distinguishable from the case at bar. It is rather in our favor.

The Union Stock Yard & Transit Company was not a shipper nor was it controlled by shippers. It appeared that the Stock Yards Company which originally owned and operated railroad tracks under its charter in connection with stock yards leased the tracks to the Junction Railroad, securing revenue from the business thereon. The stock of the Stock Yards Company and of the Junction Railroad was held and controlled by a holding company, which, of course, indirectly controlled both of the subsidiary companies. The Stock Yards Company attempted, under contract with one Pfaelzer, to give him a bonus for locating upon the tracks of the Junction Company, in consideration of his shipping over the same and patronizing the Stock Yards. The Stock Yards were unquestionably a facility of the various railroad companies used by them for the receipt and delivery of cattle transported. The court held that the proposed donation by the Stock Yards Company while claiming not to be a common carrier was nevertheless in the nature of a concession and a discrimination prohibited by the Interstate Commerce Law and the Elkins Amendment thereto. The court referred to the common control of the Stock Yards Company and the Junction Railroad being by the same interest, that is, the holding company, and the fact that

the Stock Yards Company under its lease was interested in the receipts of the Junction Railroad. Therefore, it was held that, in substance and effect, the Stock Yards Company and the Junction Railroad were common carriers and that *it was unlawful for the same interests, through the instrumentality of the Stock Yards Company, to offer such a concession to a shipper.*

In other words, the court looked through the corporate fiction to the actual control of both companies and disregarded the technicality of the separate legal corporate entities. It is contended from that case, however, that the petitioning lumber companies or tap lines are also common carriers to the extent that they furnished under lease or through stock ownership rails or other instrumentalities of interstate transportation. Such contention merely is that any shipper who furnishes any instrumentality for interstate transportation even though wholly for his own benefit or use becomes a common carrier. If that is so then every industry owning its own tracks becomes a common carrier with the right to participate in and make through rates upon its own commodities and secure such division as the trunk line or regular railroad company is willing to give; for until parties to a joint rate disagree the Commission is without power or jurisdiction to fix the division.

In *United States* v. *B. & O. R. R. Co.*, 231 U. S., 274, generally known as the "Lighterage Case," the trunk line railroads, extending from the west to the New Jersey shore of the Hudson river and requiring facilities for the receipt and delivery of freight upon Manhattan Island, made a contract with Arbuckle Bros. the latter contracting and doing business under the name of the "Terminal Company," for the use of facilities known as the "Jay Street Terminal," and which was made and es-

tablished as a public depot for the receipt and delivery of freight generally, and also for use of lighters and the services of the Terminal Company in lightering freight between the railroad terminals on the New Jersey shore and the Jay Street terminal in New York. An allowance of a certain amount per ton was made to Arbuckle Bros. on all freight using the terminal and which was lightered both to and from the New Jersey shore. Arbuckle Bros. were located adjacent to the Jay Street terminal, but it was in fact used for receipt and delivery of all kinds of freight and the freight (sugar) of Arbuckle Bros. was but one-third of the actual tonnage handled. The trunk line railroads extended rates applicable to the New Jersey shore over to the Jay Street terminal in New York. The Federal Sugar Refining Company, which was located at Yonkers and outside of this lighterage district, complained that it was not given the same allowance that was thus made to Arbuckle Bros. although steamers carrying their sugar from Yonkers touched Pier 24, which was within the lighterage district, and was then carried to the New Jersey terminals of the trunk lines. The Commission had held in an earlier hearing that the free lighterage arrangements theretofore made by the trunk lines were the only available means by which they could extend their lines to New York and were not forbidden by the Commerce Act. Neither were they obliged to extend the free lighterage district. It also ruled that the service rendered by Arbuckle Bros. in the lighterage of their own sugar from the Jay Street terminal to the Jersey shore was a service in the aid of transportation, and that the allowance, under the contracts, was not unreasonable. Nevertheless on the second complaint of the Federal Sugar Refining Company, while the Commission did not

forbid the allowance to Arbuckle Bros. as in itself illegal or unreasonable it forbade it only as being discriminatory unless a like allowance was made to the Federal Sugar Refining Company. In this respect it was held that the Commission erred because owing to difference in location of these two shippers, as well as the other conditions, there was no undue discrimination; that under the contract with the terminal company the railroad companies had extended their lines of road as to the public generally to the Jay Street terminal and were at liberty to perform the transportation service themselves or to permit Arbuckle Bros. to do it for them for a reasonable allowance. On the other hand, the railroad companies not having extended by lease or otherwise their lines to the docks of the Federal Sugar Refining Company they were under no obligations to the public to transport to or from there and, therefore, under no obligations to make any allowance to the Federal Sugar Refining Company; that the lighterage service performed by the Federal Sugar Refining Company was for its own convenience for which the railroads were under no obligation to make compensation. There was no evidence whatever that the selection of the premises of Arbuckle Bros. was for the purpose of giving them, as large nearby shippers, any preference or undue discrimination against competing sugar refineries. The court also found that the contract governing the Jay Street terminal and lighterage service was made in good faith and not as a cover for any fraudulent scheme to give rebates or any other legal advantage. As the order of the Commission was in the alternative the court concluded that the Commission found nothing unlawful *per se* in the compensation paid to Arbuckle Bros. under the contract, although compensated upon the gross tonnage

which included their own sugar for the order sanctioned the continuance of the practice upon condition that a like allowance should be paid upon the sugar lightered by the Federal Sugar Refining Company. It thus appeared that both the Commission and the courts concluded that under the contracts the trunk lines had secured the use of Arbuckle Bros.' property and made them public terminals thereby extending their lines to that point the same as though they had leased or purchased such terminals, and that as they had also extended their tariff rate to that point they were obligated as common carriers to carry to and from such point. We do not believe, however, that it was intended to be held that the mere extension of a tariff rate by a trunk line to a private mill located upon its own tracks and which could be utilized only by such mill would amount in law to an extension of the trunk line railroad so as to give such private mill or lumber company a right to a division of that rate for services it might perform for itself in the way of switching its own freight to and from the trunk line. Such a holding would afford too easy an opportunity to the trunk line to favor any lumber company it might choose, and thus unduly discriminate against others whom it did not choose to favor. It would have to be determined whether, as a matter of law as well as of fact, the trunk line railroad had really extended its line to include points upon the rails of the lumber company so that it would be obligated to operate such part in connection with its trunk line as a carrier of freight of all parties to and from such points.

As to the Peavey Elevator Case, 222 U. S., 42, it is sufficient to say that the allowance made by the Union Pacific Railroad Company to the Elevator Company upon all grain passing through the elevator, including

that of Peavey & Company, was an allowance which the Commission found to be reasonable in itself, and was for a service which the railroad company, under Section 1, was obliged to furnish, namely, elevation and transfer in transit. In so far as the railroad company did not make the same allowance to other elevator companies performing the same service in the same locality it was held guilty of undue discrimination. See:

Union Pacific Railroad Co. v. *Updyke*, 222 U. S., 215.

But in this case the trunk lines were not obliged to receive or deliver freight beyond their own established depots and were not obliged, as a matter of law, to receive or deliver at the mills of the lumber company located upon the tap lines, and we do not think, therefore, that any allowance could be made either to the lumber company or its agency the tap line for performing services for the lumber company in getting its own freight to and from the trunk line.

IV.

THE DECISION OF THE COMMERCE COURT COMMENTED UPON.

The decision of the Commerce Court in these cases is reported in 209 Fed., 244, *et seq.*

In this decision it seems quite plain that the Commerce Court appreciated the following facts:

1. That the situation before the Commission in its investigation was one revealing the grossest discrimination.

2. That the allowances made by the trunk line carriers to the tap lines were rebates.

3. That the tap lines were mere plant facilities as to

their proprietary companies, and that the services rendered were mere plant services.

4. That the Commission had power, first, to discover whether there had been any violation of the law; and second, to make an order which would prevent such violation.

5. That the situation imperatively called for correction.

And yet notwithstanding all of this the Commerce Court set aside the order of the Commission as being unlawful, not upon anything expressly found by the Commission, but, on the contrary, by something which the Commerce Court claimed the Commission must have impliedly held, although the Commission expressly held the contrary.

Thus the Commerce Court said, on page 249:

> "The evidence before the Commission tending to show that the petitioning tap lines were originally constructed as mere plant facilities to serve only the proprietary interests, that the latter owned or through common ownership in whole or in large part controlled them, that the later incorporation was primarily in order to secure rebates, that the incorporation of only a part of the logging road was a device to retain a monopoly, that the traffic other than that of the proprietary mills was negligible in quantity and merely incidental, that the trunk lines and their branches could be compelled to render such service and at such rates as would make it unnecessary to employ the tap lines as common carriers, as well as the evidence of many other facts on which the Commission in its report and counsel in argument and briefs lay much stress, might have justified the Commission in finding that these tap lines were not in fact *bona fide* common carriers."

On page 250 the Commerce Court said:

> "If, then, the Commission was justified in finding

> that these interstate common carriers, the petitioning tap lines, were mere plant facilities as to their proprietary companies, and that the services rendered by them in hauling logs to and lumber from the proprietary mills were merely the plant services of plant facilities, its order forbidding any division or allowance therefor would be valid and proper."

And yet that is exactly what the Interstate Commerce Commission did hold in the case in question.

On page 250 the Commerce Court concedes that a railroad might be as to proprietary shippers a mere plant facility, although performing common carrier's services for others (following its own decision in *Crane Iron Works* v. *United States*, 209 Fed., 238), and it concedes the power in the Interstate Commerce Commission to prohibit the payment for such plant-facility service.

On page 251 the Commerce Court said:

> "The important questions, therefore, to be considered by this court are:
>
> First. Whether the Commission acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be acting as a mere plant-facility of and performing mere plant service for the proprietary companies. Or,
>
> Second. Whether in each of these cases there was substantial evidence to justify the ultimate findings and the consequent order of the Commission; not whether this court would have drawn the same conclusion from conflicting evidence; not whether, in the judgment of this court, it is expedient or inexpedient to encourage the building of these tap lines by the large lumber interests of the southwest, but solely whether in the evidence before it there can be found a substantial basis for the Commission's conclusions."

The Commerce Court on page 252 began a consideration of the above questions. It said:

> "We come, then, to a consideration of the main questions: Was there, as to each of these petitioning tap lines, substantial evidence to justify the findings of the Commission? Did the Commission differentiate the several companies arbitrarily on distinctions or differences not justifiable in law? While evidence was given as to each road separately and specifically, and while the report deals with each road separately, a considerable mass of testimony and a considerable portion of the reports cover the entire situation. It is apparent therefrom that very real evils existed, evils demanding correction.
>
> Tap lines, in many instances, were receiving amounts entirely disproportionate to the services rendered by them; amounts based, not upon the cost or value of the services rendered, if they were transportation services, but upon other and totally illegal considerations. Such payments were, in a large measure at least, secret rebates, and to that extent unlawful. Many tap lines received no allowances for work practically identical with that performed by other lines to which most liberal allowances were given. Moreover, while prior to 1906 divisions and allowances, especially in the form of secret rebates, were made directly to the mills, after the amendment of 1906 the test of the right to receive them, as fixed by the trunk lines, was incorporation of the tap line as a common carrier, although it is clear that incorporation is not essential to the status of an interstate common carrier.
>
> The power of the Commission to prevent such rebates and unjust discriminations is beyond question."

The Commerce Court, after admitting the existence of such a serious situation and after stating that the power of the Commission to prevent such rebates and such unjust discrimination is beyond question, then makes the following remarkable statement on page 253:

> "It is to be accomplished, however, not by enjoining payments, which the law itself recognizes as legal,

> but by requiring equality of treatment and by regulating the sums to be paid, so that they will be fairly proportioned to the services rendered. That the Commission is not authorized to forbid lawful payments merely because, in its judgment, unjust discriminations result therefrom, or to declare that to be unjust discrimination which results only from a perfectly lawful payment, is apparent from the case of *I. C. C.* v. *Diffenbaugh*, 222 U. S., 42, 32 Sup. C., 22, 56 L. Ed., 83. The invalidity of the Commission's finding, when unsupported by the evidence, that certain services are plant facility and not transportation services, is also attested by the same case."

But there was no finding by the Commerce Court that the evidence did not support the findings of the Commission. On the contrary, it seems to have conceded throughout the case that the discriminations, rebates and facts were as found by the Commission.

The Updike case and the Diffenbaugh case cited by the court in support of its conclusion are not at all pertinent to the controversy in question.

On page 257 the court calls attention to the case of *Crane Iron Works* v. *United States*, 209 Fed., 238, and then utterly ignoring the doctrine there laid down, proceeds to advance the view that so long as the logs or lumber are in any way "transported" on rails a division of a through rate is lawful although it would be unlawful if paid to a shipper. This reasoning, of course, leads to the absurd proposition that the services of a common carrier are not confined to its rails but that anyone can compel a common carrier to leave its own rails and go after his goods.

The Commerce Court never reached a consideration of the second question which it asked itself, but stopped at the end of the first by saying on page 258:

> "In view of our conclusions as to the arbitrary character of the distinctions on which the order of

> the Commission is based, it becomes unnecessary for us to consider the evidence as to each petitioning tap line separately."

After thus destroying in a sentence the work which had taken the Commission years to perform the court goes on to say on page 259:

> "The Commission is, of course, fully empowered to regulate the amount of allowances and divisions so as to prevent rebates and unjust discriminations. In this way, as well as by the prohibition of or prosecution for certain illegal practices mentioned in the report, whereby proprietary mills obtain undue advantages, most of the evils, which the Commission has sought by its order to prevent, will be checked. But such as are inherent in the common ownership of industrial and common carrier transportation facilities do not constitute legal wrongs and must remain unless and until Congress shall extend the scope of the commodities clause."

Although the Commission expressly found that the tap lines were not common carriers of the traffic in question, the Commerce Court seems to hold that the Commission impliedly held that they were common carriers.

It is idle, however, to say that if these tap lines be given the status of common carriers the Commission can in any way correct the intolerable situation revealed by the record. If these tap lines are declared to be common carriers of the traffic in question the old situation will be immediately resumed. As a matter of fact this whole proceeding is a crafty attempt on the part of the tap lines to have themselves declared common carriers.

The tap lines have never remained in a definite position in this case. They have always started by arguing that they are common carriers and as such are entitled to any division of a freight rate which they are able to obtain from a trunk line; and yet when counsel were asked to state whether a tap line had a right to obtain

7c per hundred pounds for hauling a few feet when the trunk line obtained only 7c for hauling several hundred miles they have always stated that they must confess that some grave abuses have existed in the general situation and that the Commission had ample power to wipe out the same. Of course the truth is that if these tap lines are given the status of common carriers of the traffic of their principals, the sawmills, they will be free to make any division they see fit. Under Section 15 of the Interstate Commerce Law the Commission may establish through routes and joint rates "and may prescribe the divisions of such rates *as hereinbefore provided* and the terms and conditions under which such through routes shall be operated, *whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates.*"

In a preceding part of Section 15 the Commission is given the power to change joint rates where found to be excessive or discriminatory, and it is then provided:

> "Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, *shall fail to agree among themselves upon the apportionment or division thereof,* the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order."

It is obvious from this that the power and jurisdiction of the Commission in respect to fixing divisions of a joint rate does not arise until the carriers shall have failed to agree upon the same.

It is very plain from the language that the power of the Commission to fix the division of a freight rate is predicated upon the failure or refusal of the carriers themselves to make the apportionment or divi-

sion of the rate. The purpose of the provision was manifest. If the carriers could not voluntarily agree upon the amount of compensation each was to receive, they were entitled then to a hearing before the Commission to have the compensation of each party determined and fixed. But if they voluntarily agreed upon the amounts there would be no occasion or justification for the Commission to act in fixing a division. After such failure or refusal the Commission may make a supplemental order prescribing the division. In the event, therefore, that these tap lines are held to be common carriers it is very plain that the power and jurisdiction of the Commission to prescribe a division of joint rates will not arise unless the carriers parties thereto shall fail to agree upon the division. The history of this case, however, plainly shows that there will be no refusal or failure to agree between the trunk lines and the favored tap lines. As a matter of fact in the petition in the Commerce Court two of the appellees herein sought specific performance of contracts providing for a division of the freight rate. In those instances the agreement has already been made as to the divisions, so that if it is held that the two appellees in question are common carriers the old situation which the Commission attempted to remedy will be at once resumed. Moreover, it is difficult to find a case in the general situation where contracts have not been entered into providing for a division of the rates.

Conclusion.

The last analysis of the case is that an abuse prevalent for years was attempted to be corrected by the Commission, under jurisdiction and power which all concede. Proceeding in a logical way, the Commission held that the tap line as to traffic of its proprietary mill was not a

common carrier, but was a mere agency of the mill in performing a service which the shipper and not the trunk line company must perform, and for which service any allowance out of the joint through rate would be unlawful.

Realizing the great power of shippers who control immense traffic to compel trunk lines to make rebates in order to obtain such traffic, the Commission ordered the trunk line railroads to cease from further paying such rebates.

The Act to Regulate Commerce plainly forbids rebating and discrimination, and plainly gives the Interstate Commerce Commission power to prevent it, and the investigation and order of the Interstate Commerce Commission was in pursuance of such power and duty.

But the Commerce Court, admitting the evil and conceding the necessity for stopping it, set this order aside upon a theory diametrically opposite to its opinion in the case of *Crane Iron Works* v. *United States*, 209 Fed., 238, and without any suggestion as to how the desired end could be accomplished.

It will be as strange a thing as ever happened in the history of this nation if large and favored shippers by the mere device of incorporation and the laying of 50 feet of railroad track can secure from trunk lines enormous and discriminating rebates from the lawfully published tariff rate; and if there is no way of stopping such an abuse then the Interstate Commerce Law has been repealed.

That is the real point in this case.

Robert Dunlap,
T. J. Norton,
James L. Coleman,
Solicitors for Appellants.

Gardiner Lathrop,
Of Counsel.

Chicago, March 7, 1914.

TAP-LINE CASES.

Office Supreme Court, U. S.
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IN THE 9

Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

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UNITED STATES, Appellant, vs. WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, et al., Appellees.	}	No. 831.
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ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR APPELLEES.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
FOR APPELLEES.

BARNARD & MILLER PRINT, CHICAGO.

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ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR APPELLEES.

STATEMENT OF CASE.

This case comes here on appeal from a decree of the Commerce Court enjoining an order of the Interstate Commerce Commission forbidding certain railroad companies therein named from publishing and maintaining in connection with the appellee railroads, joint rates upon lumber and other forest products from points of origin on the lines of railroad operated by the appellees, to various points of destination in other states of the United States. Inasmuch as the Commerce Court disposed of the questions involved in all four cases in a single opinion we shall discuss the issues involved in all eight appeals in a single brief.

History of the Case.

Early in 1908 the Interstate Commerce Commission, in pursuance of formal complaints entered upon a hearing and investigation in what is known as the Star Grain & Lumber case. The opinion and report thereon is published in 14 I. C. C. 364. Thereafter the case was reopened, and upon further hearing a supplemental report was published, 17 I. C. C. 338. No order was made in either proceeding, the Commission's conclusions being announced as abstract propositions of law, and involved the lawfulness of practices in the southwest yellow pine producing section arising out of the common or affiliated ownership of railroads and lumber companies. This ownership took various forms, the following

three being the most common: (a) Common stockholders in identical proportions in both the lumber and the railroad company; (b) majority stockholders in one company being the sole owner of the stock in the other; (c) ownership of stock in one company by the other company, stock being held by trustees.

In practically all instances the railroad company was a corporation organized and existing under the laws of the state as a common carrier with all the liabilities and rights prescribed by the common law or state regulations, statutory or constitutional. Rates on yellow pine lumber from the producing section to the consuming territory were published as joint through rates and to any given point, were identical from all points of origin in the territory south of the Arkansas River and west of the Mississippi River. That is to say, a blanket rate applied over all the producing territory. The railroad company serving a particular mill with common or affiliated ownership had become party to the joint rate and by agreement this joint rate was divided between the originating carrier and successive carriers to destination. The portion of the rate earned by each carrier was technically known as a division of the joint through rate. In the two reports and opinions above referred to, the Interstate Commerce Commission announced that joint rates could not be maintained between railroad companies unless all such companies were *bona fide* common carriers. The legal questions involved were important and of far reaching consequence. Under the threat of criminal prosecution the trunk line carriers (by trunk line is meant all those carriers other than the orig-

inating carriers owned by or affiliated with the lumber producing companies) filed with the Commission in August and September, 1910, tariffs canceling the joint rates upon forest products then applying from the yellow pine producing section to interstate points of destination. The result of these canceling tariffs was to put in effect from mills located upon the originating short line railroads a combination of rates so that, for example, a mill located just south of the Arkansas River 10 miles out on one of the short line roads, would be compelled to pay the local charge of that railroad to the junction point of the trunk line, such local charge averaging about five cents per 100 pounds, and in addition the blanket rate from the junction point, while a mill located in South Louisiana on a trunk line railroad several hundred miles further from the consuming market would pay only the blanket rate, or five cents less than the mill located on the tap-line just south of the Arkansas River. It is thus apparent that this cancelation of joint rates increased the revenue of the trunk line railroads by the portion of the joint rate theretofore earned by and paid to the originating carrier, and subjected the mill owner on the short line road to the payment of largely increased charges.

Upon petition the Interstate Commerce Commission suspended the tariffs canceling said joint rates and instituted an investigation upon its own motion. The joint rates remained in effect until April 30, 1912. The Commission announced its conclusions in two reports, the original being published in 23 I. C. C., pages 277 to 344, and supplemental report a few days later, published in the same volume, pages 549 to 651.

An examination of the Commission's order of May 14, 1912, which was the original order in the case, discloses that as to each of the four railroad companies, appellees herein, the Commission found that no transportation service was being performed upon the forest products owned or produced by the affiliated lumber companies, appellees herein, the exact finding in respect to this matter being

> The service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful.

Thereafter suits were filed in the Commerce Court by certain of the appellees herein, praying for an injunction against the said order. The Commerce Court, however, following the Proctor & Gamble decision, 225 U. S. 282, dismissed the petitions. Thereupon appellees herein filed a petition with the Interstate Commerce Commission for an amendment to the order to obviate the defect in the order of May 14th, above quoted. Thereupon the Commission issued its amended order of October 30, 1912, which amended the finding above set forth so as to read as follows:

> That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk line is not a service of transportation by a com-

> mon carrier railroad, but is a plant service by a plant facility and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations as found in the said reports.

The amended order then further proceeded to name the trunk line connections of the appellees herein and ordered that they

> be, and they are hereby, notified and required to cease and desist and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

It is further provided in the said order:

> That in case of the failure of the principal defendants (the trunk lines) to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

It thus appears that by its amended order the Commission added to its original order a finding that the tracks and equipment of the appellees herein were plant facilities of the appellee lumber companies; that the service performed by the appellee railroads upon the proprietary traffic was a plant service by a plant facility and that any allowances or divisions out of the joint rate on the traffic of the appellee lumber companies resulted in undue and unreasonable preferences and unjust discrimination.

The order further announced the intention of the Commission to require joint rates upon the forest products of all lumber companies other than appellees herein. This amended order was made upon the same record as the original order. The Commerce Court, after hearing additional evidence before the Commission, announced its opinion November 26, 1913, 209 Fed. 247.

In the unanimous opinion of the court the conclusion was reached that the Commission had erred in its order so far as the appellees herein are concerned and enjoined the order. Briefly stated, the Commerce Court reached the conclusion that the distinctions drawn by the Commission were arbitrary and without justification as a matter of law; that since the Commission had found that the appellee railroads were common carriers of traffic owned by other than the proprietary interests, and since a similar service was performed for the appellee lumber companies, it followed that the railroad companies were common carriers of all traffic so transported. The Commerce Court said:

> The actual service in transporting logs to or lumber from the proprietary mills in no respect differs from that performed for independent mills; the carriage over the tap line ranges from a short switch to a many-mile haul; its purpose, so far as the lumber is concerned, is not to serve the industry in its internal operations, but directly to serve both the mill, as shipper, and the general consuming public, as consignees and purchasers. When these tap lines, which it must again be emphasized, are not private carriers, but are admittedly for some purposes interstate common carriers, take the carloads of finished lumber at the mills for the purpose of either

hauling or switching them to a trunk line so that they may reach their ultimate destination beyond the state, the interstate transportation has actually begun.

As to the logs, the conditions, while not identical, are not dissimilar. The hauling, it is true, is primarily for the benefit of the mill; consignee and consignor are one. If the service had continued to be what it originally was in most of these cases, by a private carrier for the one industry alone or from the forests to the directly adjacent mills, forest and mill being in fact one entire plant, so that the haul was inter-industrial, it might well be held to be a plant-facility service (*Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C. 450, 455); but as Prouty, C., says in that case:

"The thing done is properly the function of a common carrier and not necessarily of a plant facility. Great quantities of logs are transported to mills for manufacture by railroads as common carriers under published tariffs."

The Commission might have limited the blanket rate to the lumber either directly or by forbidding milling in transit. This, however, was not done. On the contrary, the order directing re-establishment of the old rates as to non-proprietary mills sanctioned the extension of the blanket rates not only to the mill, but back to the forests with the milling in transit privilege. That applied to each of the petitioning tap lines and is in itself a recognition of their status as interstate common carriers not only of lumber but also of logs.

Again, it is immaterial that in an early stage of the industry or in small plants logs are hauled to and lumber from the mills by horse and wagon and not by railroad. When this is the method of bringing the goods to the trunk line the allowance may or should be forbidden not because of the nature of the service—clearly it is transportation when performed by a com-

mon carrier expressman—but because of the means used to perform it. The allowance to be made by a trunk line under Section 15, and the payment of which cannot be forbidden (*I. C. C.* v. *Diffenbaugh, supra*), is only for a service that is a part of or for an instrumentality to be used in the transportation which the trunk line would otherwise be compelled to perform, not for a service which is neither part of nor directly connected with the trunk line's transportation even though it be transportation in its relation to the industry.

The fact that these tap lines connect directly with the private logging roads of the proprietary mills; that the latter alone run into the forests; that the point at which the common carrier service begins is more or less arbitrarily determined solely in the interest of the proprietary mills; that other mills must haul their logs by team to the tap line or must purchase them in the open market, and that thereby these proprietary mills have great commercial advantages over their competitors does not in any manner affect the matters now before us. As the Supreme Court has said in the Diffenbaugh case, *supra:*

"The law does not attempt to equalize fortune, opportunities or abilities."

As the actual service rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

In view of our conclusions as to the arbitrary character of the distinctions on which the order of the Commission is based, it becomes unnecessary for us to consider the evidence as to each petitioning tap line separately.

The Atchison, Topeka & Santa Fe Railroad Company, appellant herein, was an intervenor in the Commerce Court, in support of the validity of the Commission's order. We shall later have occasion to point out the interest of the Santa Fe in this case.

Whether or not the opinion of the Commerce Court correctly states the law is not the primary question herein. If there is any sufficient basis for the decree of the Commerce Court it must be affirmed.

The Commission was without power or authority to make the order complained of for the following reasons:

1. *The service performed by each of the appellee railroads herein is a service of transportation by a common carrier railroad within the meaning of the Act to Regulate Commerce.*

2. *The appellee railroads are not plant facilities and do not perform a plant facility service for the appellee lumber companies herein.*

3. *There was no evidence upon which the Commission could base its finding that the participation by the appellee railroads in joint rates upon the logs and lumber of the appellee lumber companies constitute an undue and unreasonable preference or subjects any party to unjust discrimination within the meaning of the Act to Regulate Commerce.*

4. *The Commission's order results in undue and unreasonable preference and unjust discrimination within the meaning of the Act to Regulate Commerce.*

(a) *As between common carriers subject to the Act to Regulate Commerce.*

(b) *As between shippers.*

5. *The order deprives the appellees of their rights under the Constitution of the United States.*

6. *The order of the Commission expressly overrides the exception contained in the commodities clause of the Act to Regulate Commerce.*

ARGUMENT.

I.

THE SERVICE PERFORMED BY EACH OF THE APPELLEE RAILROADS HEREIN IS A SERVICE OF TRANSPORTATION BY A COMMON CARRIER RAILROAD WITHIN THE MEANING OF THE ACT TO REGULATE COMMERCE.

The Commission's original tap line report, 23 I. C. C. 277, discloses the Commission's views on the questions involved. While in the syllabus of the opinion the Commission disclaims making common ownership of the industry and short line railroad serving it the test as to whether or not the short line railroad is a common carrier, we are unable to find any rule laid down in the opinion by the application of which to the facts as to any particular short line railroad it may be ascertained whether the railroad falls in the category of "plant facility" or should be recognized as a common carrier with all the rights thereunto belonging. In the original opinion, 23 I. C. C. 277 to 344, the Commission passed upon the status of some 34 short line railroads, all of which were held by the Commission not to be performing a service of transportation as a common carrier for the proprietary lumber companies. Since the decision of the Commission in the Tap-Line case, it has dismissed certain of the tap-lines from the proceeding on a showing made that there had been a divorce

of ownership and complete severance of stockholders as between the railroad and the lumber company. So that we think it plain that if there had been no common ownership or common stockholders the Commission would have had no difficulty in reaching the conclusion that each of the appellee railroads was performing a service of transportation as a common carrier of all traffic handled. In other words, while the Commission disclaims common ownership as the test, nevertheless but for that common ownership there would have been no condemnation of the railroad and its participation in joint rates would not have been declared unlawful.

The Commission's views as to the plant facility service is summed up in its opinion as follows:

> It is clear, then, that appliances that are generally regarded by the lumber interests themselves not only as mere plant facilities, but as necessary facilities in the successful conduct of their investments, cannot reasonably be held to become the transportation facilities of a common carrier merely because a lumber company has incorporated a small railroad company and turned the facilities over to it. There must be something more substantial than a mere manipulation of the situation in order to change the real relation of these facilities to the industry. As with the movement of lumber from the mill, so with the movement of the logs to the mill, we must necessarily hold that it is an industrial service pure and simple, except when performed for the lumber company over the rails and with the power and equipment of a tap line that is a common carrier not in form only but in fact as well. And here, again, we find it impossible to lay down any general rule or principle by which in all cases it may be determined whether the

> movement of logs from the forest to the mill is transportation under the act or merely an industrial service.

The law of the case must be found primarily in the Act to Regulate Commerce with its various amendments and supplements. The congressional intent is clearly set forth in Section 1 of the Act to Regulate Commerce, as amended June 18, 1910. The section first names the entities subject to the act. Among others these are "any common carrier or carriers engaged in the transportation of passengers or property, wholly by railroad" from one state to another state of the United States. Congress then, in the same section, defines the term "transportation" and the term "railroad." The term "transportation" is specifically defined as including

> cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported;

By the same section the term "railroad" is defined as including

> all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property.

These statutory definitions, together with the ordinary dictionary interpretation, must determine the application of the Act to Regulate Commerce. The Commission has already held, and rightly, that since the act did not define the term "common carrier," the Commission must look to the common law for the definition.

> *Manufacturers Ry. Co.* v. *St. Louis, Iron Mountain & Southern Ry.*, 21 I. C. C. 304, 312.

So that under the Commission's interpretation of the act, wherever at common law, upon a given state of facts, the relation of common carrier existed, that same state of facts would constitute a common carrier under the Act to Regulate Commerce. Congress intended to apply the restrictions, duties and liabilities under the Act to Regulate Commerce to all common carriers transporting property from one state to another by railroad. The language of the act is specific. The railroad over which the transportation or handling must be performed need not be owned by the common carrier. If it be operated under a contract, agreement or lease it becomes part of the highway subject to the act. Terminal facilities, all the track, the depots, the yards, and grounds used in the transportation or delivery of any property are subject to the statute. Numerous services, such as elevation, transfer in transit, ventilation, refrigeration or storage are included within the term "transportation." It is apparent that Congress intended to reach every service performed for the shipper from the time when the carrier took possession of the property until that property reached

its final destination and was delivered to the consignee. Congress expressly waived ownership as any test in determining the application of the statute by its use of the phrase "irrespective of ownership." Where Congress desired ownership to enter as a test in determining the application of the broad principles announced by the act it used specific language. In the amendment of 1906, known as the Commodities Clause, Congress made it unlawful for a railroad company to transport property owned by it, manufactured by it, mined by it, or produced by it or under its authority after May 1, 1908. We shall later discuss this clause in the act more in detail. It is sufficient here to say that so far as ownership is prescribed as a test, that clause does not apply to the appellee railroads because timber and the manufactured products thereof are expressly exempted from the prohibition of the statute.

In the case of *Columbia Conduit Company* v. *Commonwealth*, 90 Pa. St. 307, the Supreme Court of Pennsylvania construed the Act of the Pennsylvania Legislature of 1874, requiring *transportation companies* to pay an annual tax based upon capital stock of the company. It was contended by the Columbia Conduit Company, an ordinary pipe line corporation, that it was not engaged in transportation, in moving its own oil through the pipe line. The question to be determined was whether the corporation so handling petroleum through its own pipe lines was a transportation company. The court held that in addition to the provision of the act authorizing the laying down of pipes, tubing, etc., "to transport petroleum" and in the fourth section of the act, in

speaking of the companies to be taxed among others provided "or device for the transportation of freight or passengers." The court said:

> "We cannot doubt that this is a company engaged in the transportation of freight within the act of assembly."

This court, in the case of *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S. 196, defined the term transportation as follows:

> Transportation implies the taking up of persons or property at some point and putting them down at another.

Whether upon the facts shown of record the appellee railroads are common carriers is a matter for judicial determination. For the convenience of the court, and at the risk of prolixity, we set forth various decisions of the highest courts of the States of Missouri, Montana, Oregon, California, Minnesota, New Jersey, Maine, Louisiana, Texas and Kentucky, in which citations are given to numerous other state decisions.

In the case of *Kansas & Texas Coal Railway Company* v. *North Western Coal Company*, 161 Mo. 288, 61 S. W. 864, the Supreme Court of Missouri passed upon the status of the Missouri & Louisiana Railway, one of the tap-lines considered by the Commission in its tap-line opinion, and held that the real test was not stock ownership, length of line of railway or kind of tonnage handled for the controlling interest, but the real test was the existence of the right to haul for the public; that determined the public character of the enterprise. We quote from that opinion as follows:

If, as it is conceded, the plaintiff is a regularly organized railroad company, and its charter and rights cannot be questioned except by quo warranto, it is difficult to understand how the courts in a proceeding of this character can hear evidence as to whether the officers, directors or stockholders of the plaintiff company are the same as those of the Kansas & Texas Coal Company, or whether the coal company loaned the plaintiff company $70,000, or any other sum; for if all this be conceded, it would avail nothing in this case, unless the rights inherent to and expressly granted to, a railroad company, could be inquired into and taken away from such a company in a collateral proceeding. *National Docks Ry. Co.* v. *Central R. Co.*, 32 N. J. Eq., Loc. cit. 755-760. But, aside from this, the contention is untenable. There is nothing in the letter or spirit of the law which prohibits the same persons from forming and conducting two or more different corporations, one a business and the other a railroad company. Neither is there any prohibition in the law against a railroad company borrowing money on bonds secured by mortgage on its property, to build and operate its road from a business corporation, rather than from a bank, a trust company, or an individual.

The second contention is equally untenable. The charter of the plaintiff and the laws of this state expressly require the plaintiff to transport persons and freight, and the plaintiff can be compelled by mandamus to do so, if it refuses. The fact that almost the entire volume of business now in sight for the plaintiff to do will be the transportation of coal produced by the Kansas & Texas Coal Company, does not destroy the character of the plaintiff as a railroad company, nor convert it into a private and not a public railroad, nor does it make the use to which the land sought to be condemned is to be applied any the less a railroad right-of-way, and therefore a

public use. So long as the company holds its charter, it speaks in the name of the state when it comes into court and asks to condemn land for a railroad right-of-way, and it would be intolerable that, whenever it seeks to exercise the extraordinary power by this summary process, the courts should stop to inquire into the character, or regularity, or legality, of its organization, or into the motives of the incorporators, or their relations to, or holdings in, other corporations of a different character. The law is settled in this and other states that the use of land for railroad tracks is a public use. *St. Louis, H. & C. K. R'y Co.* v. *Hannibal Union Depot Co.*, 125 Mo. 82, 28 S. W. 438; *Dietrich* v. *Murdock*, 42 Mo. 279; *Railway Co.* v. *McGrew*, 104 Mo. 282, 15 S. W. 931; *Railroad Co.* v. *Moss*, 23 Cal., loc. cit. 328; *Colorado E. R'y Co.* v. *Union Pac. R'y Co.* (C. C.), 41 Fed. 293; *DeCamp* v. *Railroad Co.*, 47 N. J. Law, 44; *Railroad Co.* v. *Petty* (Ark.), 21 S. W. 884; *Arkansas & O. R. Co.* v. *St. Louis & S. F. R. Co.* (C. C.), 103 Fed. 747.

So that while it is true that the Constitution (Section 20, Art. 2) provides "that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and, as such, judicially determined, without regard to any legislative assertion, that the use is public"; it is also true that it has been judicially determined that the use of land for a railroad right-of-way is a public use, and not a mere private use. * * *

This case is not without precedent in the law, and all of the defenses that are made here have been made and held insufficient in other cases. A reference to a few will suffice: *Dietrich* v. *Murdock*, 42 Mo. 279; *Railroad Co.* v. *Moss*, 23 Cal. 323; *Colo. E. R'y Co.* v. *Union Pac. R. Co.* (C. C.), 41 Fed. 293; *New Central Coal Co.* v. *George's Creek Coal & Iron Co.*, 37 Md. 537; *Powers* v. *R'y Co.*, 33 O. St. 429; *B., A. & P. R. Co.* v. *Mont. Un. R. Co.* (Mont.), 41 Pac. 232, 31

L. R. A. 298; *National Docks R. Co.* v. *Central R. Co.*, 32 N. J. Eq. 755; *DeCamp* v. *R. Co.*, 47 N. J. Law, 44; *Mining Co.* v. *Seawell*, 11 Nev. 394; *Mining Co.* v. *Corcoran*, 15 Nev. 147; *Boyd* v. *Negley*, 40 Pa. 377; *Phillips* v. *Watson*, 63 Iowa, 28, 18 N. W. 659.

The cases * * * are in all essential particulars similar to the case at bar. They were cases where an existing railroad was endeavoring to condemn a right-of-way for a railroad that would reach coal or mineral mines, and transport the products thereof to the markets, or where a new railroad company, organized practically for that purpose, was seeking to do the same thing. In *Dietrich* v. *Murdock*, *Railroad Co.* v. *Moss*, *Colo. E. R'y Co.* v. *Union Pac. R. Co.*, *New Central Coal Co.* v. *George's Creek Coal & Iron Co.*, and *Powers* v. *Railway Co.*, the same persons owned the coal mines, and the railroad was organized principally to transport the products of the coal mines to the markets, and precisely the same objections and defenses were made in those cases as are made in this case; yet in each instance the right of eminent domain was sustained, and the use declared to be a public use. These precedents are in entire consonance with reason, principle, and the spirit, letter, and policy of the law, and abundantly support the ruling of the trial court in this regard.

Of course, if a railroad company should undertake to condemn land for a purpose that was not within the scope of the powers and purposes legally allowed to railroads, such a proceeding would not only be *ultra vires*, but would be a taking of land for a private use. But the condemnation of land, for the purpose of constructing and operating thereon a railroad, in its very nature and essence, cannot be the taking of land for any other than a public use. Section 14, Art. 12, of our Constitution declares: "Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies com-

mon carriers. The general assembly shall pass laws to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads of the State, and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties." And the general assembly has passed such laws, and provides for punishing any railroad that refuses to receive freight or passengers, and has required the Railroad Commissions to see to the enforcement of the law; and has expressly prescribed that mandamus shall lie to enforce the rights so secured, and, in addition, imposes a fine for violation of the law.

If the Constitution is to be respected, it follows, as surely as the shadow does the sun, that land condemned by a railroad can only be used for a public purpose—is a public highway—and therefore cannot be used for private purposes. The land so appropriated and used is as much a public highway as a street in a city, so far as the use is concerned, and can no more be employed or used for private uses than a street can be. This is the purpose, and this is the use, for which the land is sought to be condemned. The right must exist unless it be true that the length of the road, or the volume of business likely to be done, at once limits or qualifies or takes away the right, or changes the character of the use. Such a contention manifestly disproves itself. But authority is not wanting to show that the courts have always refused to put any such construction upon such provisions in a Constitution or in the laws. *Talbot* v. *Hudson*, 16 Gray, 417; *Colorado E. Ry. Co.* v. *Union Pacific Ry. Co.*, 41 Fed. 293; *Railroad C.* v. *Moss*, 23 Cal. 323; *Gaslight Co.* v. *Richardson*, 63 Barb., loc. cit., 448; *Fanning* v. *Gilliland* (Or.), 61 Pac. 636; *Hartwell* v. *Armstrong*, 19 Barb. 166; *Aldridge* v. *Railroad Co.*, 2 Stew. & P. 199; *Gilmer* v. *Lime*

Point, 18 Cal. 229; *Coster* v. *Water Co.*, 18 N.
Eq. 54; *O'Reilly* v. *Drainage Co.*, 32 Ind. 1
Riche v. *Water Co.*, 22 Alb. Law J. 498; *Phill*
v. *Watson*, 63 Iowa, 28, 18 N. W. 659; *Natio*
Docks Ry. Co. v. *Central R. Co.*, 32 N. J. Eq. 7
Railroad Co. v. *Porter*, 43 Minn. 527, 46 N.
75; *Ross* v. *Davis*, 97 Ind. 79; *Irrigation Co.*
Mehrtens, 97 Cal. 676, 32 Pac. 802; *Waterwo*
Co. v. *Bird*, 130 N. Y. 249, 29 N. E. 246. Th
cases decide that the principle is the sa
whether all of the State, or only all the peo
of the same locality, have a right to demand a
receive service from the corporation—then
use or purpose is public, and not private.
Dietrich v. *Murdock*, 42 Mo., loc. cit., 283, t
court settled the law on this subject in this St
in the following concise and clear annunciati
"The legislature, in the exercise of its disc
tion in delegating to this company the right
eminent domain, evidently proceeded upon
idea that the public interest was, to some exte
at least, to be subserved by its creation. W
the precise degree of its usefulness to the pu
might be is not, in our view of the case, nec
sary to be determined. We think the courts
the country ought not to interfere with the
ercise of this discretion, except in those ca
where it is manifest that private interests al
are to be promoted, and private rights violat
to the extent of taking the property of one i
vidual and transferring it to another. The si
section of the act (Acts 1846-1847, p. 153), un
which this company claimed its corporate ex
ence, declares that 'said company shall h
the exclusive power to acquire, own and emp
steam power, or animal power, locomotives, c
and carriages necessary for the transportat
of passengers, coal and every description of p
sonal property on said road, for themselves
other persons.'" Whether the private in
ests of this company were such as to require
construction of this road, or constituted

main reason for the act of incorporation, with the power conferred by it, is not material. It is enough that, by the terms of the law, it is made a public corporation for the use and benefit of that particular section of the state. The public had a right to demand that the means of transportation, both for passengers and freight, commensurate with its wants, should be provided by the company. Any failure of its duty to the public in this particular, and to transport passengers and freight when offered for that purpose, would have subjected the company to damages. "It must be assumed, then, that the grant of authority to the company to condemn the land necessary for a road-bed was a rightful exercise of legislative discretion." To my mind, the principle is axiomatic—a truism—and needs no precedent to prove or support it. It is absolutely incomprehensible, to my mind, to contend for such a construction, in face of the Constitution and the laws of the state. If the plaintiff condemns this land, the Constitution at once impresses it with a public use. The plaintiff cannot use it for any other purpose. It must serve all people alike, or it can be compelled by mandamus to do so, and forced if it refuses. The fact that all the people of the state do not need it does not change its character or the use it can legally put the land to. No railroad serves all the people. It can only serve the public living along its line, or desiring to travel over it, and if it does this, its right and powers and duties are the same, under the Constitution and laws of this state, whether it is only ten miles long, or is a monster railroad, girding the state from one end to another. (61 S. W., 687-9.) * * *

In the case of *Butte, Anaconda & Pacific Railway Company* v. *Montana Union R. Co.*, 16 Mont. 504, 41 Pac. 232, the Supreme Court of Montana said:

It is well established that if, in point of law, a use is public, the fact that not very many per-

sons will enjoy the use is not material. *Talbot* v. *Hudson*, 16 Gray, 417. The character of a way, whether it is public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. If all the people have the right to use it, it is a public way, although the number who have occasion to exercise the right is very small. *Phillips* v. *Watson*, 63 Iowa, 28, 18 N. W. 659; Lewis, Em. Dom., p. 241; *Shaver* v. *Starrett*, 4 O. St. 496; *Kettle River R. Co.* v. *Eastern R. Co.*, 41 Minn. 461, 43 N. W. 469; Rand. Em. Dom., Sec. 56. The circumstances that the plaintiff road was built by a private corporation, and that its branches run within convenient contiguity of private mines or ore houses, does not materially affect the road and give a private character to its use, or to the use of its spurs. All termini of tracks and switches are more or less beneficial to private parties, but the public character of the use of the track is never affected by this. "It may be, in such cases, that it is expected, or even that it is intended, that such tracks will be used almost entirely by the manufacturer; yet if there is no exclusion of an equal right of use by others, and the singleness of use is simply the result of location and convenience of access, it cannot affect the question." *Canal Co.* v. *Garrity*, 115 Ill. 155, 3 N. E. 448; *Railroad Co.* v. *Porter*, 43 Minn. 527, 46 N. W. 75; *Railway Co.* v. *Petty*, 57 Ark. 359, 21 S. Q. 884.

In *Bridal Veil Lumber Company* v. *Johnson*, 30 Ore. 581, 46 Pac. 790, the Supreme Court of Oregon said:

> The fact that it (the railway) has not been fully completed between the termini indicated in its articles of incorporation, or that there is at present no town, city or settlement, or other railroad, at its proposed southeastern terminus, or that its proposed route is through a rough, mountainous and sparsely settled country, or

that the plaintiff has not yet fully equipped the road, or supplied itself with complete and perfect terminal facilities, or that it has not charged the passengers upon its railroad any fare, does not affect its right to exercise the power of eminent domain. The question of public use is not determined, as a matter of law, by any of these things, but by the fact that the proposed road is intended as a highway for the use of the public in the transportation of freight and passengers. And it can make no difference that its use may be limited by circumstances to a small part of the community. Its character is determined by the right of the public to use it, and not by the extent to which that right is exercised. *DeCamp* v. *Ry. Co.*, 47 N. J. Law, 43; *Phillips* v. *Watson*, 63 Iowa, 28, 18 N. W. 659; *Ross* v. *Davis*, 97 Ind. 79.

Madura Railway Company v. *Raymond Granth Co.*, 86 Pac. Rep. 27, is a strong case. The Supreme Court of California there holds that the fact that the benefit of the road accrues to a particular individual or class of individuals, does not deprive it of its public character; that the length of the road is immaterial. It also holds that the fact that its rolling stock was furnished by another corporation or that its corporate stockholders are stockholders of a corporation which will be primarily benefited, does not deprive it of its public character entitling it to exercise the right of eminent domain. (See also *Contra Costa Ry. Co.* v. *Moss*, 23 Cal. 323.)

In *Kettle River Railway Co.* v. *Eastern Railway Co.*, 43 N. W. 473, the Supreme Court of Minnesota held that the question whether the use is public or private does not depend upon the amount of business done or the number of persons who may have occasion to use the road; but upon the right of the public

to require a corporation to carry their freight. If all the public have the right to use the road, it is a public use or interest, though the number who have business requiring its use be small.

The case of *DeCamp* v. *Hibernia Railway Company*, 47 N. J. Law, 46, was a case of a mining road. The New Jersey court said:

> It is true that the number of persons who will use it for transportation purposes is limited. This enterprise does not lose the character of a public use because of the fact that the projected railroad is not a thoroughfare and that its use may be limited by circumstances to a comparatively small part of the public. Every one of the public having occasion to send materials, implements or machinery for mining purposes into or to obtain ores from the several mining tracts adjacent to the location of the road may use it for that purpose, and of right may require the company to serve him in that respect; and that is the test which determines whether the use is public.
>
> Nor will any motive of personal gain which may have influenced the projectors in undertaking the work, take from it its public character. A particular improvement, palpably for private advantage only, will not become a public use because of the theoretical right of the public to use it; but when the franchise is, in its nature, a public franchise, as the transportation of freight is, and the object promoted is one that concerns the public, as the development of the mining resources of the state, the improvement is essentially for the public benefit and advantage, and if there be no restriction of the right of the public to use it and no inability to use it except such as arises from circumstances, the court in determining whether the improvement is such a public use as that the right of eminent domain shall extend to it, will not scan closely the number of

the individuals immediately profited by it. Indeed it would not be possible to indicate the number of persons or define the area to which the benefit of such an improvement may extend.

The case of *Ulmer* v. *Railway Company*, 98 Me. 581, 57 Atl. 1001, is often cited. In that case the Supreme Court of Maine, after discussing a number of decisions, said:

> It is undoubtedly true that for the present, at least, few persons may have occasion to be served by this branch track, except the owner of the quarry to which it is to be constructed; and we assume that it is equally true that the primary purpose in the construction of this track is to obtain the transportation of freight from their quarry to and over the main lines of the railroad company's road. But, as we have already seen, this is by no means decisive of the character of the use of the road or branch track. * * * In fact this track must be operated by the railroad company for the benefit of all persons that may have occasion to use it. * * * Another cause of complaint * * * is that all the stock of the railroad company is at the present time owned by the Rockland-Rockport Lime Company. * * * Whoever may be the owner of the stock of the railroad company, or however many or few such owners there may be, that corporation still continues to exist as a separate and independent corporation. * * * We cannot, therefore, see how this allegation can in any way affect the question here involved. * * * The question whether or not the railroad company has done or failed to do anything which should result in a forfeiture of its franchises can only be inquired into in a proceeding, appropriate for that purpose, such as an information in the nature of *quo warranto* instituted by the proper authorities in the name of the state. It is not competent in a collateral pro-

> ceeding, such as this, to show any matter affecting the forfeiture of a charter.

In the case of *Amos Kent Lumber & Brick Co.* v. *Assessor* (114 La. 862) it was held by the Supreme Court of Louisiana that plaintiff's railroad, which was only ten miles in length and whose tonnage chiefly consisted of plaintiff's shipments was a common carrier and entitled to the exemption from taxation as provided by the constitution of that state.

In the case of *Chapman* v. *Trinity Valley & Northern Railway Company*, 138 S. W. 440 (writ of error refused by Supreme Court), the Court of Civil Appeals of Texas passed on the status of the Trinity Valley & Northern Railway Company. This line of railroad is one which the Commission considered in the tapline case, 23 I. C. C. 624. While in that case the Commission recognized that the Trinity Valley & Northern is a common carrier of the proprietary lumber, nevertheless we want to call attention to the views of the Texas court. In an effort to condemn right-of-way for an extension of the railroad, the owner of lands sought to be condemned contended that the railway company was incorporated solely for the purpose of hauling lumber and coal products and kindred freight, for and to the mill of the Dayton Lumber Company, the proprietary lumber company, and that the railway company was not incorporated primarily for the benefit of the public at large. The Court of Appeals said:

> As to the first objection above set out, it is true, as stated by appellant in his proposition under this assignment, that the question of public use *vel non* is a judicial question; but admitting the fact that appellee is a regularly char-

tered railroad company, as authorized by the statute under which it has been created, and that the land sought to be condemned is for a right-of-way 100 feet wide, neither of which facts are denied, the facts set out in this objection afford no defense to the application to condemn. By its incorporation the railway became a public highway, and the railway company a common carrier. Const., Art. 10, No. 2. Whatever the motives or the primary purpose of the incorporators may have been, the law imposes upon the corporation certain duties to the public, which it cannot evade, but which by the same power which called it into being it can be compelled to perform. It may not have been called upon to serve the general public either in the carriage of freight or passengers; but it must carry every passenger who presents himself for carriage and every pound of freight offered for transportation, or suffer the penalty prescribed by law.

The character of a way, whether public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. *Railway Co.* v. *Railway Co.*, 16 Mont. 504, 41 Pac. 232, 31 L. R. A. 298, 50 Am. St. Rep. 508. "At the present day it would hardly be doubted that the mere acceptance of a franchise to build and operate a railway, coupled with the power of eminent domain, would involve the assumption of duties to the public." *Borden* v. *Rice & Irrigation Co.*, 98 Tex. 510, 86 S. W. 14, 107 Am. St. Rep. 640.

In the case of *Greasy Creek Mineral Company* v. *Ely Jellico Coal Company*, 132 Ky. 692, the Court of Appeals of Kentucky discussed the application of the state statute authorizing the condemnation of land for spur track. In that case, the condemnation was desired in order to reach a mine within three miles of a navigable stream or railroad. All the freight which the spur railroad could haul would be

that produced by the Greasy Creek Mineral Company. It was there contended that while the statute provided that the owner or operator of such spur track railroad should be controlled by laws relating to other railroads, nevertheless it was purely a private enterprise. We quote from the decision of the court:

> Appellee's position is that the building of a railroad by a mine owner for the exclusive use of his own mine is a purely private enterprise; that the operator does not owe or discharge any public duty; and that, if he be allowed to exercise the right of eminent domain, it would be to let one person, under that power which lays alone in the sovereign, take one man's property to another man's private use. We do not find it necessary to enter into a discussion of the power of the state to empower a private person to take property of another by condemnation for private use. The statute in question in this case is a part of the chapter on railroads. It provides for the building of a railroad, not more than three miles long, for a particular purpose; that is, to a mine or quarry. The statute expressly brings such roads, so far as the conditions may apply, within the general laws regulating all railroads. We understand this to mean that these short roads, like trunk lines and other railroads, are subject to the laws affecting common carriers, and that they may be required to serve the public as common carriers. Indeed, such construction seems to have been implied in the opinion in *Bowling Green Stone Co.* v. *Oman,* 115 Ky. 369, 73 S. W. 1038. It may be that the owner of the track may not have cars and engines with which to serve the public; but if an arrangement be made with another carrier to supply the necessary equipment, and it is done, we perceive no reason why every interest of the public in the matter is not

> satisfied. We held in *L. & N. R. R. Co.* v. *P. & Ky. Coal Co.*, 111 Ky. 960, 64 S. W. 969, 55 L. R. A. 601, 98 Am. St. Rep. 447, that in using such spur tracks the operating railroad company was bound to serve all the public alike, and could not by contract limit its services to one customer upon the spur. This construction rescues the section from the vice imputed to it by appellants. The Legislature must have intended by the language of the section bringing these short lines under the general law affecting railroads as carriers to make them servants of the public. A coal mine generally requires a great many people to operate it. Its product, while shipped out by one consignor, is destined for a considerable number of consignees. The road serves not only the miners in hauling in their supplies and the like, but the coal shipping public in hauling out the coal. The fact that the circumstances are such that but one commercial commodity is shipped over the road makes it none the less a common carrier serving the public in that capacity. Being a *quasi*-public corporation, it was competent for the Legislature to empower it to exercise the right of eminent domain. *Chesapeake Stone Co.* v. *Moreland*, 104 S. W. 762, 31 Ky. Law Rep. 1075; Lewis, Em. Domain, section 170.

A very similar question was involved in the Commodities case, 213 U. S. 366-417. As to one of the companies contesting the validity of the Commodities Clause a contention was made somewhat similar to the Commission's finding in the Tap-Line case. The Delaware & Hudson Company was a corporation organized under the laws of the State of New York and by its charter was authorized to construct a canal from the anthracite coal district in Pennsylvania to the Hudson River in New York, to purchase

lands, to mine coal and to market the same from such lands. By subsequent statutes the Delaware & Hudson Company was authorized to invest capital in the construction of rails from its own lands for the hauling of its own coal and coal mined or purchased by it under leases; its own coal amounted approximately at the time of the hearing before this court to 70 per cent. of the entire transportation over its rails. After the year 1870 the Delaware & Hudson became, incidental to its business as a coal mining company, a common carrier by railroad of passengers and property. Under these facts it was contended by the Delaware & Hudson that it was not a railroad company within the meaning of the Commodities Clause. We quote from the decision of this court:

> There is a contention as to one of the defendants, the Delaware & Hudson Company, to which we, at the outset, referred, which requires to be particularly noticed. Under the charters granted to the company by the States of New York and Pennsylvania, it was authorized to secure coal lands and mine coal, and, without going into detail, was originally authorized to construct a canal, and ultimately, a railroad for the purpose of transporting, for its own account, the products of its mines; and, undoubtedly, vast sums of money have been invested in carrying out these purposes. It is true also that the company is the owner of stock in various coal corporations. The claim now to be disposed of is that, by the true construction of its charters, the Delaware & Hudson Company is not a railroad company within the meaning of the term as used in the commodities clause, but is really a coal company. The contention, we think, is without merit. The

> facts stated in the excerpts from the answers and returns of the company, which we have previously placed in the margin, leave no doubt that the corporation was engaged as a common carrier by rail in the transportation of coal in the channels of interstate commerce, and as such we think it was a railroad company within the purview of the clause, and subject to the regulations which are embodied herein, as we have interpreted them.

To a like effect was the holding of this court in the Union Stock Yard & Transit case, 226 U. S. 286, wherein this court held that the Union Stock Yards & Transit Company and Chicago Junction Railway Company, both corporations under the laws of the State of Illinois, were common carriers subject to the Act to Regulate Commerce. The Union Stock Yards & Transit Company did nothing but furnish the track which it leased to the Chicago Junction Railway, and load and unload live stock. The Chicago Junction Railway, with its own motive power, moved traffic over the rails leased from the Union Stock Yards & Transit Company. The charter of the Stock Yards Company authorized it to locate, construct and maintain all necessary yards, enclosures, railway lines, tracks, switches and turn-outs for the reception, weighing, delivering and transfer of cattle and live stock and also of dead freight that may be at or passing through or in the City of Chicago and as well for the accommodation of a general Union Stock Yards for cattle and live stock. The charter further provided that the company should construct a railway from the Stock Yards to a connection with the tracks of all the railroads terminat-

ing at Chicago. Later the Stock Yard Company leased all of its tracks to the Chicago Junction Railway Company and all the operations of the railway including the movement of cars, both empty and loaded, was performed by the Junction Railway Company. The Stock Yard Company did not perform any service whatever except the loading and unloading, aside from the owning of the leased rails and equipment. Stock in both the Stock Yard & Transit Company and the Chicago Junction Railway Company was owned by the Chicago Junction Railways and Stock Yards Company, a New Jersey corporation. The Stock Yard Company, under the lease, receives two-thirds of the profits of the Junction Company from the performance of the service in connection with the railroad transportation. The Commerce Court had held that the Chicago Junction Railway Company was a common carrier engaged in interstate commerce, but that the Stock Yard Company was not a common carrier. We quote from the opinion of this court:

> In view of this continuity of operation, the manner of compensation and the performance of services in connection with interstate transportation by railroads such as are described, are the Stock Yard Company and the Junction Company subject to the terms of the Act to regulate commerce and bound to conform to its requirements?
>
> The Interstate Commerce Act, as amended by the Hepburn Act (34 Stat., sec. 1), applies to common carriers engaged in the transportation of persons or property from state to state wholly by railroad, and the term railroad is defined to include "all switches, spurs, tracks and terminal facilities of every kind used or neces-

sary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property;" and transportation is defined to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported."

That the service is performed wholly in one state can make no difference if it is a part of interstate carriage. "The transportation of live stock," said this court in *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, in treating of the duties of common carriers, irrespective of the Act to regulate commerce, "begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee." In this connection see *Coe* v. *Errol*, 116 U. S. 517; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498.

The fact that the performance of the service is distributed among different corporations having common ownership in a holding company which controls an interstate system was held in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, *supra*, to make no difference, where the service to be performed was a part of the carriage of freight by railroad in interstate commerce. Nor does it make any difference that neither the Junction Company nor the Stock Yard Company issues through bills of lading. It is the character of the service rendered, not the manner in which goods are billed, which determines the interstate character of the service. *Southern Pacific Terminal Co.* v. *In-*

terstate Commerce Commission, supra; Ohio R. R. Comm. v. *Worthington*, 225 U. S. 101.

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. *They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by great railroad systems which use them.* * * *

We think that these companies, because of the character of the service rendered by them, their joint operation and division of profits and their common ownership by a holding company, are to be deemed a railroad within the terms of the act of Congress to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act. It is the manifest purpose of the act to include interstate railroad carriers, and by its terms the act excludes transportation wholly within a state. In view of this purpose and so construing the act as to give it force and effect, we think the Stock Yard Company did not exempt itself from the operation of the law by leasing its railroad and equipment to the Junction Company for it still receives two-thirds of the profits of that company, and both companies are under a common stock ownership with its consequent control. We therefore think the

Commerce Court was right in holding that the Junction Company should file its rates with the Interstate Commerce Commission and that it should also have held the Stock Yard Company subject to the provisions of the interstate commerce Acts.

It should be noted that the ownership of the Chicago Junction Railway and the Union Stock Yard & Transit Company was in a common control, viz.: that of a New Jersey holding corporation. This court applied the language of the Act to Regulate Commerce just as it reads. Here was a railroad furnished by the Stock Yards & Transit Company. The operation of that railroad was performed by the Chicago Junction Railway. To the extent that each furnished a part of the transportation defined by the Act to Regulate Commerce this court holds each a common carrier.

The test applied by this court, and which we have set forth in italics above, rests upon three matters:

1. Terms of charters.
2. Holding out to the public as common carriers.
3. Recognition and treatment by the trunk lines.

The record before the Commission, even the decision of the Commission itself, shows a charter as a common carrier and a strict compliance with all the obligations of a common carrier. As to the second basis each one of the appellee railroads held themselves out as common carriers, published tariffs of their charges and filed them with the proper Commission, accepted freight for all upon the same terms and under the liability which the statutes and

the common law impose upon common carriers. Each of the appellee railroads has been recognized by all its trunk line connections as a common carrier. Joint rates were published applying over the appellees' lines and the trunk lines jointly as though they were single lines. Bills of lading, interline settlements, in short, all the affairs of the trunk line railroad and the appellee railroads so far as they affected each other were conducted upon the same basis and in exactly the same manner as are similar transactions conducted among trunk lines.

This court at the present term in the case of *United States* v. *Baltimore & Ohio Railroad Company et al.*, commonly known as the "Sugar Lighterage" case, held that the movement of sugar both of the Arbuckle Brothers and of the public generally from the Jay Street Terminal to Jersey City was transportation. We shall later more particularly refer to this decision, but set forth here the particular portion of the opinion just referred to:

> "Assuming then, that the lighterage service performed by the Federal Sugar Refining Company was a service by it for its own convenience for which the railroads were under no obligation to make compensation, we come to the question whether the facilities employed and the service performed by Arbuckle Brothers in respect to their own sugar after delivery at the Jay Street terminal are accessorial, or services in aid of railroad transportation for which they may be paid a reasonable compensation without discriminating unduly against the Federal Sugar Refining Company.
>
> That the plain purpose of the contracts between the several railroad companies and the Terminal Company was to constitute the dock

and warehouses of that company a public freight station is too clear for extended discussion. That the premises became such a depot through contract with the owners and not by virtue of a fee simple title or a lease is of no legal significance. *Central Stock Yards Co.* v. *L. & N. Railroad*, 10 I. C. C. Rep. 175; *Cattle Association* v. *C. B. & Q. Railway*, 11 I. C. C. Rep. 277. Nor is there the slightest substantial evidence that in the selection of the premises of Arbuckle Brothers there was any purpose to give them as large nearby shippers any preferance or to unduly discriminate against competing sugar refineries. The premises were ideally adapted to meet the necessities of the great manufacturing and commercial business interests along the river front of Brooklyn and constituted the only property reasonably obtainable by the railroads for the extension of their lines of transportation to the Brooklyn side of East River. That through instrumentalities furnished by the Terminal Company and the service by it performed transportation by the railroads begins and ends at this station, is most obvious. * * * The order of the Commission is made to rest upon an erroneous assumption that the services performed by Arbuckle Brothers in respect of their own westbound shipments of sugar after the delivery of such sugar at this station is a shipper's service done for their convenience, with their own facilities, and, therefore, an accessorial service for which they cannot be allowed compensation unless a similar compensation is allowed to the Federal Sugar Refining Company for the lighterage of its sugar to the west shore railroad terminals."

The foregoing decisions are complete and all embracing both by the common law and by the statute. It appears that every movement of property by rail

in interstate commerce is subject to the act. The movement of logs by each of the four appellee railroads from the forest to the respective mills of the appellee lumber companies is a transportation service by a common carrier. Had there been different ownership the Commission would have reached an entirely different conclusion. Identical service in kind is performed by all the trunk line carriers in this territory for mills located on their lines. Identical service in kind is performed by the appellee railroads for all non-proprietary shippers. We think this court will have no difficulty in finding that the service performed by each of the appellee railroads in moving lumber from the mill of the appellee lumber companies to the trunk line connection is a service of transportation by common carrier.

II.

THE APPELLEE RAILROADS ARE NOT PLANT FACILITIES, AND DO NOT PERFORM A PLANT FACILITY SERVICE FOR THE APPELLEE LUMBER COMPANIES HEREIN.

The Act to Regulate Commerce does not recognize a plant facility co nomine.

Only in recent years has there been any attempt by the Commission to create the hybrid railroad, from one point of view it appearing to be a railroad and from another not a railroad. An examination of the Act to Regulate Commerce finds no reference to any such hybrid, nor does its creation result in any benefit to the public or any shipper. It is true that the trunk line railroads have profited by this

creation of the Commission. The money heretofore earned out of the joint rate by the so called "plant facility" now inures to the benefit of the trunk line railroad. The record in this case shows that as a result of the decision of the Commission the trunk line carriers in the southwestern yellow pine producing section have profited by not less than $3,000,000 annually as a result of the Commission's decision in this case.

The language of the act in its every provision, negatives the recognition of a class of railroads who are common carriers for one person, and not common carriers for others. And in this connection we are again reminded that but for the ownership of the proprietary lumber company there would have been no order entered against the appellees herein. In fact, where there has been a separation of ownership between the lumber mill and timber holdings from the railroad, the Commission has itself withdrawn its prohibition against joint rates. In the case of the Beaumont & Great Northern, the owner of the railroad and the lumber company sold both interests to other parties who prior to such purchase had no interest in either the mill or the railroad. Some months later the previous owner of the mill and the railroad, repurchased the railroad only. The Commission now holds that that railroad is within every sense of the act a *bona fide* common carrier of the lumber produced by the mill which had been formerly owned by the owner of the railroad. (*Beaumont & Great Northern Railroad* v. *A. T. & S. F., et al.*, 24 I. C. C. 161, 163.) Had there, however, been no severance as to the two properties,

the service performed by the railroad company would have continued to be not a service of transportation but a plant facility and service. The whole argument of the Commission rests upon the theory that lumber manufacture in the southwest, upon its present extensive scale, could not profitably be carried on without a railroad; that what is necessary to the profitable performance must be a part of the performance, and, that, therefore, the railroad is a plant facility.

In the case of some of the appellees in these cases, the railroad already existed and had existed for many years prior to the building of the proprietary mill. In the case of the Mansfield Railway & Transportation Company, that railroad had existed and served the public in the town of Mansfield, Louisiant, for more than ten years prior to the building of the mill. And yet the Commission holds that that same railroad, which today serves the Frost-Johnson mill, has ceased, as to that mill, to be a common carrier and is now a plant facility. If John Jones owned the Mansfield Railway & Transportation Company, admittedly the Commission would not extend its order in the tap-line case to embrace the Mansfield Railway & Transportation Company. Further the Commission has decided in a number of cases where the trunk line railroad hauls logs to a mill located along its line but owned by a wholly independent party, the service in moving the logs to the mill is that of a common carrier. To transport means to carry. Transportation is the service of carriage. And under the law, the distance trans-

ported is wholly immaterial. On many of the trunk lines in the southwestern yellow pine territory there are what is called milling-in-transit rates. The logs are hauled to the mill, there cut into lumber and the lumber transported from the mill to the consuming market. This is transportation recognized by the Commission, the only exception being that if the haul is performed for persons interested in the railroad, and the tonnage is so large as to constitute practically the entire tonnage of the railroad, then the service performed is that of a plant facility.

In the case of *Crane Iron Works* v. *United States*, the Commerce Court announced a definition of a plant facility. The Crane Railroad was very limited in its extent and was practically confined to the handling of cars between various points in the plant of the Crane Iron Works and to a connection with the Central Railroad of New Jersey. The decision of that court upholding the Commission's dismissal of the petition of the Crane Iron Works was based upon the provision in Section 15, conferring upon the Commission authority to establish joint rates and through routes. That court held that the authority conferred upon the Commission was discretionary and that it could refuse to establish joint rates and that the court would not review that discretion. We quote from that opinion:

> But the dismissal order in question rests upon another basis, which will be briefly considered. Upon all the circumstances connected with the location, construction and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing serv-

ices which the iron works should perform for itself if it desired such services, and that the Central Railroad was under no obligation to pay the Crane Railroad for the switching service which it performs for the iron works and, indeed, could not lawfully do so. We see no reason to doubt the correctness of this conclusion. The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (*General Electric Co.* v. *N. Y. C. & H. R. R. Co. et al.*, 14 I. C. C. Rep. 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. Rep. 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle. That there was substantial evidence to sustain the finding of the Commissions as to the character of the services rendered is not open to reasonable question, and, this being so, the conclusion must be accepted accordingly.

But the argument is earnestly pressed that such a relation cannot as matter of law be predicated of an incorporated railroad which is declared to be a common carrier by the fundamental law of the state of its creation. In other words, it is insisted that the Crane Railroad, being in law a common carrier and performing the functions of a common carrier, cannot be a plant facility of the Crane Iron Works, but must be regarded as a common carrier for the Crane Iron Works, and entitled as a matter of legal right to a just share of the transportation charge which the Central Railroad makes and collects for carrying the traffic of the iron works; and on this theory it is argued that the finding and conclusions of the Commission involve an error of law which this court should correct.

We are constrained to reject this contention. Whether the Crane Railroad is a plant facility

as to the Crane Iron Works or a common carrier of the traffic of that concern must be held to be a question of fact which is not affected by the circumstance of incorporation. We understand it to be admitted that the operations of this railroad when it was owned and operated by the iron works were the operations of a plant facility. It is contended, however, when the railroad was separately incorporated and passed from the ownership of the iron works, that its relation to the latter and the legal character of its services became immediately changed. That is to say, the mere fact of the separation of ownership and the transfer of the title and control of the railroad property to a new corporation, although there was not the slightest change in what was actually done, operated in legal effect to transform a plant facility into a common carrier and to impose obligations on the Central Railroad, as to the traffic of the iron works, which it could not theretofore have been required to assume. We cannot believe that any such result was accomplished. The rights and duties of the Central Railroad respecting the iron works could not thus be altered. If its obligations as a common carrier were fully discharged and its tariff rate earned by delivering cars to and taking them from the exchange tracks before the iron works parted with its railroad, its rights and duties respecting that concern were neither increased nor diminished by the creation of the Crane Railroad. The services rendered to the iron works continuing to be precisely the same in point of fact, this railroad continued to be utilized as the facility of the iron works' plant in the same way after as before incorporation.

Nor do we perceive any serious objection to regarding a given agency as a plant facility of a particular shipper, although a common carrier as to other shippers. Whether considered from the standpoint of law or of practical ad-

> ministration, it seems reasonable to hold, as the Commission virtually held in this case, that a railroad of the kind in question may have this dual character and perform services for one concern which are not the services of a common carrier, but which that concern is bound to provide for itself, notwithstanding it occupies the relation of a common carrier to other concerns and the public generally. Concededly, the work which the Crane Railroad does in moving cars between different points in the iron works' plant has none of the incidents of common carriage, and why may not the same thing be affirmed of the work it does in switching cars for the iron works to and from the exchange track with the Central Railroad, even if the work it does for the other industries makes it as to them or the shippers of Catasauqua a common carrier?

The Commerce Court adopted the distinction which the Commission had laid down in the General Electric and Solvay Process cases as differentiating a plant facility from a common carrier service. It is sufficient here to state that those distinctions laid down by the Commission were based upon the facts which were of record in those two cases. (14 I. C. C. 237-246.) In the General Electric case there was no corporation common carrier performing any service whatever. The General Electric itself, as one of the departments of its business, performed the service of taking its own property from storage tracks where the trunk line connection had placed the cars and switched them to its shops, foundries and other buildings. All these tracks, both the storage tracks and the tracks between the various points in the plant of the General Electric, were within a fence which marked the limits of the General Electric

property. In other words, all the services performed by the General Electric Company were entirely within the plant of the General Electric Company and that company did not in any wise serve any other shipper.

In the Solvay Process case, the Solvay Process Company operated certain tracks in and about its plant at Solvay, New York. The interchange track with the plant of the Solvay Process was upon its property and the entire service of moving loaded and empty cars from and to the interchange tracks, or between points within the plant, was performed upon its property.

So that it appears in each of these cases that the manufacturing plant of both the General Electric and the Solvay Process required the use of locomotives and railroad tracks. It was no part of the transportation service customary in that territory for the Railroad Company to go upon the private tracks of these two companies and switch the cars about. Any service performed by the railroad company in this respect was not a transportation service which the General Electric or Solvay Process could compel without compensation.

In the case at bar we have an entirely different situation. The appellee railroads are no more necessary to the manufacture of lumber than are the rails of the trunk line connections. Raw material is transported by all the railroads of the country. That service is no part of the manufacture. The finished product of every saw-mill in the country must be transported to the consumer and that service is performed by the railroads of the country, a serv-

ice which, we may add, is as much for the consumer or consignee, as it is for the mill-man, and is no part of manufacture. If the Southern Pacific or the Santa Fe owned the tracks of the appellee railroad companies there would be no contention whatever that these tracks are plant facilities.

In none of these cases is there a condition which approaches in any wise that which existed in the case of the Crane Railroad. That road was nothing more or less than a net-work of tracks connecting different parts of a steel mill and for the most part was enclosed by a fence, so that it became, in every sense of the term, a private plant, and was used in the manufacturing process and not in transporting raw material to the mill, or the finished product therefrom.

In the case of each of the appellees the railroad is extensive, is built over the lands of various people, is incorporated under the laws of the state where operated, files tariffs of its charges with the proper authorities, and in every way complies with the laws of the state.

The Commerce Court, in discussing this plant facility question in the case at bar, said:

> Nor may the line be drawn on the basis of what is and what is not essential to the industry. Transportation would not flourish without manufacturing; manufacturing could not be successfully carried on without transportation; they are distinct activities; but both are essential to the industry. Raw materials must be brought to and the finished product must be carried from the mill; whether any particular service involving an actual hauling of the goods is transportation or industrial depends upon whether, on the

one hand, it is an interindustry act, a step in the manufacturing process, or, on the other hand, a movement of raw material from without to the mill or of finished product from the mill toward the market. Every actual carrying of each part of the material or product is, of course, not a transportation service; the Crane Iron Works case (*supra*) well illustrates this. In that case, as in other cases therein cited (*General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246), it was held that the hauling between buildings of an extensive plant was a part of the manufacturing, not of the transportation operations; that the transportation ended, as to raw materials, when the common carrier had performed all that it could have been required to perform and all that it did for nonproprietary mills—that is, when it made delivery at some point on the plant; that any further activity on the part of the tap line common carrier within the plant itself could not have been compelled and was not a transportation service for which the trunk line could pay either an allowance to the industry or a division of the joint rate to the tap line as a common carrier.

But the situation here is totally different. The actual service in transporting logs to or lumber from the proprietary mills in no respect differs from that performed for independent mills; the carriage over the tap line ranges from a short switch to a many-mile haul; its purpose, so far as the lumber is concerned, is not to serve the industry in its internal operations, but directly to serve both the mill, as shipper, and the general consuming public, as consignees and purchasers. When these tap lines, which it must again be emphasized, are not private carriers, but are admittedly for some purposes interstate common carriers, take the carloads of finished lumber at the mills for the purpose of either hauling or switching them to a trunk line so

> that they may reach their ultimate destination beyond the State, the interstate transportation has actually begun.

Our position, summed up, is this: Each of the appellee railroads, when it receives timber or logs, and transports those logs toward the ultimate destination of the finished product of those logs, is not a plant facility, but is performing a transportation clearly embraced within the provisions of the Act to Regulate Commerce. The stoppage of the logs and their milling do not affect the service performed by the railroad. The movement of the lumber from the mill to the railroad is not part of manufacture, but is transportation, and is performed not only for the consignor, the manufacturer of the lumber, but is performed as well and in the same degree for the consignee, the consumer of the lumber.

III.

THERE WAS NO EVIDENCE UPON WHICH THE COMMISSION COULD BASE ITS FINDING THAT THE PARTICIPATION BY THE APPELLEE RAILROAD IN JOINT RATES UPON THE LOGS AND LUMBER OF THE APPELLEE LUMBER COMPANIES CONSTITUTES AN UNDUE AND UNREASONABLE PREFERENCE OR SUBJECTS ANY PARTY TO UNJUST DISCRIMINATION WITHIN THE MEANING OF THE ACT TO REGULATE COMMERCE.

We must, in determining the Commission's view as to discrimination, take its report as constituting the basis for the holding that discrimination results from the application of joint rates upon the logs and lumber of the appellee lumber companies. At page

283 the Commission announces that discriminations are apparent upon the face of the record. The only discrimination which the Commission finds is that arising from the division of the joint rate. The amount of this division the Commission says is not governed by the extent or character of the service performed by the short line, but results to some extent from the "bargain made between the carrier and the lumber company." And on page 284 the Commission further says:

This difference in the treatment by carriers of lumber companies owning incorporated tap-lines is one form of discrimination growing out of tap-line allowances. But there are also other forms. There is the discrimination involved in the payment of allowances to one lumber company through its incorporated tap-line, while the same public carrier in the same territory refuses to make any allowance to another lumber company using a tap-line that has not been incorporated, but where all the other conditions, as well as the extent of the service, the mileage, motive power, cost of operation, etc., are substantially similar.

The trunk lines may be discriminating in refusing to make joint rates with some of the short line roads while contemporaneously they make joint rates with others; this discrimination should be cured by the Commission, not by forbidding the making of joint rates with the one carrier, but by requiring the trunk line to extend the application of the joint rate to the short line theretofore not a party to joint rates. But this discrimination, which the Commission has set forth in the above excerpt, is no different than

that resulting from the Commission's order itself. For example, in the case of the Trinity Valley & Northern Railroad, the Commission fixes as a maximum allowance for a haul of one mile one cent per hundred pounds. (Rec., 624.) In the case of the Mansfield Railway & Transportation Company, appellee herein, the Commission declines to allow any division, although there is a haul of two and one-half miles.

In the trial of the cases before the Commission, intervenors had alleged undue and unjust discrimination because of the divisions of the joint rate. But when asked to point out whether his competition came in a greater degree from those lumber men who were interested in short line railroads, than from other intervenors, he was compelled to answer that he could not distinguish one competitor from another in the open market. This intervenor was asked as to whether the discrimination which did result because of the division, would be determined by the "sale price." To this the witness gave assent. When it was attempted to put into the record the sale prices of all the intervenors as compared with all the lumber companies owning tap-lines, objection was made and the objection was sustained by the Commission.

There is not a single syllable of testimony in the record which points out a single instance of loss of business, by any of the lumber interests not owning or controlling short line railroads, to any interest so controlling a railroad. Nor is there any evidence whatever of any discrimination, just or unjust, or any preference, due or undue, arising from the fact

that joint rates were in effect from the lines of the appellees and their trunk line connections, save the existence of such joint rates in and of themselves.

The Commission made a similar finding in the elevator cases, and we cannot better illustrate our contention than to set forth the Commission's finding in the elevator cases as to discrimination and the final decision of this court reversing the Commission's finding.

The Commission found that the payment of elevation charges to Peavey & Company resulted in unjust discrimination; we quote from that opinion:

14 I. C. C. 324.

> (a) That Company might derive an advantage from the fact that the amount paid for the service was greater than the cost of the service itself. If they received more than the expense to them, they would manifestly obtain an advantage over a competitor who did not perform the service by exactly the amount of difference between the sum paid and the cost to them. * * *
>
> (b) There is an entirely different discrimination arising from the fact that Peavey & Company, as grain dealers, must have these facilities of elevation. That the service which they performed for the railroad company also involves a service necessary to themselves as grain handlers, and that therefore the railroad pays them for a service in connection with their own grain, which their competitor must furnish at his own cost. This is perfectly seen by assuming that some elevator is located upon the line of the Union Pacific at Omaha or Council Bluffs which does not receive the allowance.
>
> It must be kept in mind that this elevator service is absolutely essential to the business of Peavey & Company. They could not transact a

grain business at Omaha without it. The evidence shows that practically all the grain handled into the elevator is their own; hence the service which they perform in storing and transferring this grain for the Union Pacific differs in no respect from the service which they would perform, except in rare instances, if they were not operating under this contract.

The competitor of Peavey & Company also owns a line of country houses upon the Union Pacific, with a terminal elevator located at Omaha and performs for the Union Pacific in the handling of its business, exactly the same service as does Peavey & Company, and probably at substantially the same expense; yet Peavey & Company are paid one and one-fourth cents per 100 pounds, while their competitor receives nothing at all. This allowance, as we have already seen, is often more than the entire profit from the handling of the grain; hence as a practical matter there arises in the working out of this contract a discrimination in favor of Peavey & Company as against other elevators at Omaha. * * *

(c) A third discrimination still remains. While this is termed a transfer charge upon the tariff and is only paid upon grain which actually moves out from Omaha, it is, in fact, under actual conditions, an elevator allowance, and is paid by the Union Pacific for the purpose of inducing the elevation of grain at Omaha. In other words, the Union Pacific pays for the unloading of a carload of grain when discharged into an elevator and requires the consignee to pay for the unloading if that grain is unloaded by any other means. This is a clear discrimination in favor of the elevator against the consignee who does not employ the service of an elevator in the unloading of his grain * * * the same discrimination would arise against a shipper who, though desiring to use an elevator, did not wish to use it at Omaha.

Commissioner Harlan wrote a concurring opinion, 14 I. C. C. 331, 332, in which he said:

> But I agree that any allowance by the carrier to the owner of an elevator on grain belonging to him that has been weighed, inspected, cleaned, mixed, or otherwise treated in the process of elevation, is unlawful. As a facility for the convenience of the carrier, free elevation is unobjectionable; but when the owner is permitted to and does use the elevation as a transit privilege for himself, by means of which to secure commercial advantages on his own grain, the result is an unlawful preference and discrimination.

Commissioner Clark concurred in the views expressed by Commissioner Harlan.

Now on this state of the record, an order having been entered forbidding the payment of any allowances to Peavey & Company, or any one else at the Missouri River, suits for injunction were brought by Peavey & Company to enjoin the order of the Commission. The Circuit Court, sitting *en banc* (Sanborn, Hook and Adams), held the order of the Commission invalid as beyond the power of the Commission. Judge Sanborn, in writing the opinion of the court, discusses the opinion of the Commission as to discriminations; we quote at some length from that opinion:

176 Fed. 409.

> Laying aside the question of the constitutionality of the orders challenged in these cases, let us consider this question: Has the Commission been empowered to prohibit allowances and payments of compensation for the transfer by elevators of grain in transit? The statutes under which the Commission acts require the rates for transportation, and hence for the elevation of

grain in transit, to be just and reasonable. Elevation is a part of transportation which the law requires the carriers to provide, and for which it authorizes them to pay others reasonable compensation. The three-fourths of a cent per 100 pounds which the carriers now pay for this service at the Missouri River cities is a just and reasonable compensation for it. Whence comes the power of the Commission to forbid this payment? From the facts, says the Commission, that those who receive this compensation generally own the grain which they transfer and the elevators by means of which they transfer it, that they derive pecuniary advantages which those who do not own the elevators and also the grain transferred do not secure by treating, that is, by cleaning, clipping, mixing, and grading the grain, as it passes through the elevator, thereby enhancing its value, and that there is danger that they may use the practice of allowing this compensation to violate the acts of Congress, to secure rebates and effect unjust discrimination. That although other considerations are mentioned in the opinions of some members of the Commission, the facts above stated are the only ones upon which the Commission relied to sustain their authority to make the orders in question, let its opinion upon the motion for another hearing (14 Interst. Com. R. 510), and the order in the case of the Union Pacific Company which permits it to make this allowance to Peavey & Co. on condition that the latter separates its elevation or transfer in transit from its treatment of the grain, witness.

But the legal presumption is that parties will obey the law and discharge their duties. Reasonable compensation for transfer services may not be denied lawfully because there is a possibility that those who receive it may at some future time violate the law and secure rebates or effect discrimination. There is no more power in the Commission to forbid carriers from pay-

ing or allowing for the elevation and transfer of grain in transit reasonable compensation because there is a possibility that a future violation of the law may arise out of such an allowance than there is to prohibit carriers from charging and receiving reasonable rates for transportation of all property, because there would be less danger of future rebates and discriminations if they were compelled to conduct transportation without compensation.

The treatment of the grain in the elevators, the cleaning, clipping, mixing, inspecting and grading of it is a trade service; it is no part of transportation and is not a transportation service. No power has ever been granted to the Interstate Commerce Commission to regulate, to prohibit, to separate by miles from the service of elevation and transfer in transit or from any other transportation service or to interfere with this trade service. The advantages derived from it are of the same nature as those which the owners of mills enjoy who manufacture into flour in transit the wheat which they own and ship, who saw into lumber in transit the logs which they own and ship and who dress in transit the rough lumber which they own and ship. They are of the same nature as those which the owners and shippers of cotton who practically own the compresses derive from compressing the cotton in transit, and yet in all these cases the carriers maintain, and the Commission sustains, the same rates of transportation for the shippers who own the mills, the compresses and the articles transported, and the shippers who own none of these facilities of trade and derive none of the advantages thereof. See the authorities cited at the opening of this opinion. They are of the same nature as those which the owners of cars leased to a railroad company who are shippers of the articles transported therein may derive from that ownership. *Consolidated Forward-*

ing Co. v. Southern Railway Company, 9 Interst. Com. R. 182, 206e.

It is no part of the duty, nor is it within the power, of the Commission to see that all shippers of like commodities derive the same measure of profit from their trade in and treatment of the articles which they ship, to see that a shipper who owns a warehouse, an industrial track and private cars derives no greater profit from dealing in the groceries or other articles he ships that a shipper who has none of these facilities, to see that a shipper of coal who owns a tipple from which he loads it gains no greater profit from the handling of his coal than the one who loads it from a wagon. *Harp v. Choctaw, Oklahoma & Gulf R. Co.*, 125 Fed. 445, 61 C. C. A. 405. Pecuniary advantages derived by shippers from the ownership or use of such facilities of trade are attributable to that ownership, and not to the transportation of the articles shipped, and the consideration and regulation of these advantages are without the scope of the Commission's power.

The truth is that trade advantages of this nature do not condition the questions of reasonableness of rates, of rebates or of discrimination. The shipper who owns warehouses, tipples, spur tracks, cars, mills and by their use derives greater profit from the dealing in the articles which he ships over a railroad, is entitled to the same rate of charge for transportation and the same reasonable compensation for transportation services which he renders that the shipper who owns less or no such trade facilities and derives less profit is entitled to. The reasonableness of and the discrimination by the charge and the compensation is conditioned by the reasonable value of the service, not by the gain or the loss which the shipper derives from the use of the trading facilities he owns in the handling of the articles transported. The pecuniary advantages that result to the owners of

elevators, who are also shippers of the grain, from its treatment in their elevators, are derived, not from the transportation of the grain nor from its elevation or transfer in transit through their elevators, but from their ownership or their operative control of the elevators, and their use of them in the conduct of their trade. They are therefore *ultra vires* the Commission and immaterial to the issues whether or not the compensation or allowance to the owners of elevators who are also shippers is reasonable, unjustly discrimination, or violative of the prohibition against rebates, and when these advantages are laid aside this compensation or allowance is neither.

That the Commission is without power to prohibit carriers from paying or allowing to the owners of elevators reasonable compensation for elevating grain in transit which they own and ship is demonstrated by the course of decision and legislation that is crystallized in the amended interstate commerce act. Prior to 1906, that act contained no declaration that elevation or transfer in transit was a part of transportation, or that compensation might be charged or allowed therefor. After the Commission had decided, in 1904, that the allowance by the Union Pacific Company of one and one-four cents per 100 pounds to Peavey & Co. for the elevation of the grain in transit, the larger portion of which Peavey & Co. owned and shipped, in the year 1905, the Commission made this report and recommendation to Congress:

"Terminal roads, elevator charges and private cars.

There is an important class of cases in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the service rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or per-

forms any part of the transfer service. Such performance may take the form of an allowance or division to a terminal road owned by the shipper, the payment of an allowance or other service to the owner of the grain, the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations have so far led us to think that all these methods are at the present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would certainly interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the services can be rendered or the facility furnished more advantageously both to shipper and railway and without injury to the public, if provided by the shipper itself. We do think, however, that the Commission should be empowered in a case of this kind, to determine whether the allowance to the property owner is just and reasonable compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Thereupon the Congress amended section 1 of the act so that it provides that transportation shall include "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storage and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act, to provide and give

prescribed the remedy and fixed its limit. It is that the charge and allowance to the owner of the elevator, who is also the shipper of the grain, shall be no more than is just and reasonable, and the limit of the power of the Commission is to determine what is a reasonable charge as the maximum to be paid by the carrier for the service. Counsel argue that this view ignores the power vested in the Commission to prevent rebates under Section 2, and to repress regulations and practices of carriers that are unjustly discriminatory or unduly preferential under Section 3, and Section 15 of the amended act. But the permission granted by the amendment of 1906, to continue the known regulation and practice of allowing reasonable compensation for elevation and transfer in transit to shippers who were also the owners of elevators, and the clear limitation in that amendment of the power of the Commission to the determination of the reasonableness of the allowances thus made, was, in view of the knowledge of the Congress and of the common knowledge of the pecuniary advantages derived by such shippers from this practice, a conclusive legislative determination that, when the allowances were reasonable, neither the fact that the shipper of the grain was the owner of the elevator, nor the fact that he enhanced the value of his grain by treating it during the elevation and transfer in transit, constituted a rebate, an unjust discrimination, an undue preference, or a repressible danger of either. It was not only a clear withholding from the Commission of the power, but an implied and effective prohibition of the Commission, to forbid the allowance to such shippers and owners of reasonable compensation for the elevation and transfer in transit of their grain through their elevators.

Again, the allowance here in question was not a rebate because it was not a concession from the published schedules, but an allowance in ac-

cordance with them. If it had been discriminatory, it would have been because the entire rate of transportation charged by the carrier after this allowance was deducted would have been unduly preferential. But the allowance was only reasonable compensation for the service rendered, and the lawful remedy, if such discrimination existed, could not have been to deprive the owner of the elevator of such compensation for the service of transportation it was rendering and thereby of a beneficial use and of a portion of the value of its elevator. In *Interstate Commerce Commission* v. *Stickney* (Circuit Court, November 29, 1909) 164 Fed. 638, 643, 644, the Supreme Court affirmed an injunction against an order of the Commission which reduced a reasonable terminal charge of $2 per car to $1 per car on the ground that the rate of the carrier plus the terminal charge was in its opinion unreasonably high, and held that the Commission's remedy was to reduce the carrier's rate, and that it was beyond its power to reduce the terminal charge below reasonable compensation for the service. By the same mark it was beyond the power of the Commission to prohibit the allowance or payment to the owners and operators of elevators of reasonable compensation for elevation because the carriers' rate, together with that payment or allowance, was discriminatory. The result is that the orders in these cases were beyond the power of the Commission, and that they cannot be sustained.

Counsel have presented arguments upon which the orders of the Commission and its announcement that the principle upon which they are founded will result in universal prohibition of payment to owners and operators of elevators throughout the land of any compensation for elevation obviously do not rest. But these arguments have also been carefully considered.

It is said that the grain upon which the al-

lowance is made is not elevated or transferred in transit because it is shipped from points of origin in Kansas and Nebraska to the Missouri River upon local rates and local waybills. But a proportional rate is the balance of a through rate. There are proportional rates from the Missouri River to the Mississippi River and to points east, north, and south which are less than the local rates between those points, and this grain which comes from points west of the Missouri River takes, not the local, but these proportional, rates east of the river upon the certificates or expense bills of the companies west of the river which show whence it came. Ninety per cent. of the grain which comes to the Missouri River points passes through them to points east, north, and south. The schedules of the carriers and their practice limit this elevator allowance or payment to grain coming into the elevators from the west which is actually loaded out into cars sent north, south, or east, and this service of unloading grain out of cars which have brought it from the west and loading it into cars which carry it to points east, north and south is "elevation" and "transfer in transit" within the meaning of the amended interstate commerce act.

The rate of transportation from points west of the Missouri River through the cities upon that river to St. Louis and other eastern points is the same to all shippers. All shippers are offered the option of sending their grain through these cities with or without elevation for the same price. The railroad company pays out of the amount it receives from this uniform rate three-fourths of a cent per 100 pounds to the elevator men at the river for the elevation of that part of the transported grain which is elevated in transit there in consideration of a prompt return and full use of its cars. It is insisted that this constitutes a rebate and an unjust discrimination because the net amount retained by the carrier is three-fourths of a

cent less on grain elevated than on that which is not elevated, and because the shipper who elevates his grain receives a service that he who does not elevate it fails to obtain. But this is not a rebate because there is no concession from the published rate here, but an allowance in accordance with that rate (section 2), and because the same service of elevation is offered to all shippers at the same price, and they are all able to accept it, and there is neither rebate nor unjust discrimination where such an offer is made, although some accept and others reject its advantages. *Nicholson* v. *Great Western Railway Company*, 1 Nev. & McN. 121, 125, 149.

Much is said in argument of discrimination and preference. While general expressions may be found in the opinions of the courts to the effect that there must be no difference in charges not based on difference in service and that the interstate commerce act was passed to secure equality of rates and to destroy favoritism (*New York, New Haven & Hartford R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 26 Sup. Ct. 272, 50 L. Ed. 515), the legal effect of the act is that declared by Judge Jackson, afterwards Mr. Justice Jackson of the Supreme Court, in *Interstate Commerce Commission* v. *Baltimore & Ohio R. R. Co.* (C. C.) 43 Fed. 37, in these words, which have been three times affirmed and adopted by the Supreme Court as the true interpretation of the law:

"Subject to the two leading prohibitions, that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so

as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits." *Interstae Commerce Commission* v. *Cincinnati, New Orleans & Texas Pacific Ry. Co.*, 167 U. S. 479, 493, 17 Sup. Ct. 896, 42 L. Ed. 243; *Cincinnati, New Orleans & Texas Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 196, 197, 16 Sup. Ct. 700, 40 L. Ed. 935; *Interstate Commerce Commission* v. *Baltimore & Ohio R. R. Co.*, 145 U. S. 263, 12 Sup. Ct. 844, 36 L. Ed. 699; *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 173, 18 Sup. Ct. 45, 42 L. Ed. 414.

The act does not prohibit all preferences or advantages, or the production of all prejudices and disadvantages, but only those that are undue and unreasonable. Sec. 3, 24 Stat. 380; section 15, as amended, 34 Stat. 589.

It is contended that the allowance of the three-fourths of a cent to the owners of terminal elevators for elevation at the river constitutes a discrimination against the owners of elevators at St. Louis and points east and west of the river to whom no such allowance is made and who cannot treat the grain during this elevation in transit. But to the companies whose termini are at the Missouri river elevation in transit there is a commercial necessity for which they have a right to pay in order that they may secure their share of the transportation and the full use of their cars. For this service they pay three-fourths of a cent per 100 pounds. The owners of elevators at other places cannot render this service and cannot treat this grain at these points; but they may do both and receive the compensation and benefit thereof by constructing elevators at the termini of the railroads at the Missouri river as those have done who do receive these benefits. The difference in allowance and in advantage is the just re-

sult of a difference in location and in the natural advantages of terminal elevators and cities upon the Missouri river, and it constitutes neither unjust discrimination nor undue prejudice. The Union Pacific Company and the Chicago Great Western Company, which have no railroads at St. Louis, certainly cannot be required to give to the owners of elevators and dealers in grain there the same advantages which they bring to those at the termini of their railroads. The Supreme Court, after a review of authorities, said:

"In short, the substance of all these decisions is that railways are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of conditions and a change of circumstances justifies an inequality of charge." *Interstate Commerce Commission* v. *Baltimore & Ohio R. R. Co.*, 145 U. S. 263, 283, 12 Sup. Ct. 844, 36 L. Ed. 699; *Harp* v. *Choctaw, Oklahoma & Gulf R. Co.* (C. C.) 118 Fed. 169, 175; *id.*, 125, Fed. 445, 450, 453, 61 C. C. A. 405.

Railroad companies carrying wheat out of St. Louis allow for elevation at that city three-fourths of a cent per 100 pounds on grain shipped out to the south and to the southeast, and one-fourth of a cent per 100 pounds on grain shipped out to the east; but they allow and pay nothing for elevation upon grain shipped into St. Louis from the west. Complaint is made that the payment by the carriers of three-fourths of a cent per 100 pounds for elevation at Omaha and Kansas City works a discrimination between the dealer in grain who owns an elevator at St. Louis and the dealer who owns one at Omaha, in this, that if the former purchases grain west of the Missouri River, ships it through Omaha to his elevator at St. Louis, and then out to some eastern point, it costs him three-fourths of a cent per 100 pounds more at

that point than it would cost the dealer at Omaha who has passed the grain through his elevator. The answer is that the two dealers are not similarly situated. The Union Pacific Company and the Chicago Great Western Company neither reach St. Louis nor have their termini there. Their need for elevation in transit and their competition for transportation which constitute a controlling factor at Omaha and Kansas City do not exist at St. Louis, and that city is many hundred miles farther distant from the grain fields. These facts extract from this difference every element of unjust discrimination or undue prejudice. *East Tennessee, V. & G. Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, 12, 21 Sup. Ct. 516, 45 L. Ed. 719; *Interstate Commerce Commission* v. *Alabama Midland R. R. Co.*, 168 U. S. 144, 171, 175, 18 Sup. Ct. 45, 42 L. Ed. 414; *Louisville & Nashville R. R. Co.* v. *Behlmer*, 175 U. S. 648, 671, 674, 20 Sup. Ct. 209, 44 L. Ed. 309.

The allowance for elevation at the Missouri River points has not been made to millers who own elevators and are engaged in milling in transit there, and it is said that from this fact arises a discrimination in favor of millers at St. Louis who own elevators at Omaha or Kansas City and pass their grain through them. There is no discrimination here in favor of millers in St. Louis who have no ownership or operative control of an elevator at one of the Missouri River cities. There is no evidence that there is any miller in St. Louis who has such an ownership or control, and this suggested discrimination is too theoretical and improbable to persuade. If, however, it exists, the remedy is to grant reparation to the millers who elevate their grain in transit in accordance with the schedules of the carriers at the Missouri River points, as the Commission has done in the cases of the operators of other elevators there (*Nebraska-Iowa Grain Company* v. *Union Pacific*

R. R. Co. (Jan. 6, 1909), 15 Interst. Co. R. 90), not to forbid all compensation for elevation in transit.

This brief review of the suggestions of counsel in support of the action of the Commission discloses no rebate, no unjust discrimination, no undue prejudice—nothing that may bring the sweeping orders before us within the delegated powers of that body. On the other hand, the enforcement of these orders cannot fail to cause great losses and to entail much discrimination. It will strike down the practice of a decade in reliance upon which elevators have been built, terminal grounds in large cities have been bought and equipped, contracts have been made, business and markets have grown up, and business relations have been established. If the carriers whose roads terminate at the Missouri River cities may not pay for this elevation in transit, they must furnish it themselves free, or the producers and consumers whose grain passes over their roads must ultimately bear the expense of it. If they furnish it free, or if they construct elevators and charge a reasonable compensation for it, the owners of the terminal elevators at the river must lose the use which in large part induced their construction, and must lose a portion of their value. If the carriers charge for it, producers and consumers of grain, which on account of its origin must pass, or for other reasons does pass, over their railroads, must bear this charge, while those whose grain may pass over the through roads may be free from it, and this fact will necessarily have the effect to divert grain and the business in it from the Missouri River cities and to diminish the value of all investments therein in facilities for conducting it.

While these facts bear upon the wisdom and expediency of the orders, they are not unworthy of serious consideration in the determination of the question whether or not the power of the

Commission to affect so radically the property rights and interests of the parties to these suits really exists. The conclusion of the whole matter is that the sweeping orders under consideration were beyond the delegated power of the Commission, and for that reason they must be annulled, and their enforcement must be enjoined.

The Commission appealed from this decision of the Circuit Court; this court, in an opinion by Mr. Justice Holmes, affirmed the judgment of the Circuit Court. 222 U. S. 42. We quote from that opinion:

> The ground on which the payment to owners of grain finally was held to be a rebate had been considered from the beginning, and, as we have said, had been brought to the mind of Congress. It is that when the owners of the elevators own the grain put into them, they have the opportunity to perform other services to the grain in the way of treatment, or cleaning, clipping, and mixing the grain, which, although not included under the term "elevation," or paid for by the railroad, it is an advantage to them to be able to perform at the same time. This advantage is thought to create an undue preference and unjust discrimination. Of course, the opportunities for fraud are adverted to, but the ground of the decision is that even an honest payment of the bare cost of elevating grain in transit gives an undue advantage if the elevator owner also owns the grain. As was pointed out by the court below, the final order is confined to grain that has been treated, weighed, inspected, or mixed.
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> We agree with the court below that this decision is erroneous in its conception of the grounds on which, under the statute, an advantage may be pronounced undue, and in its assumption that Congress has left the matter open by merely permissive words. The principle as to

advantages is recognized in *Penn. Ref. Co.* v. *Western New York & P. R. Co.*, 208 U. S. 208, 221, 52 L. Ed. 456, 28 Sup. Ct. Rep. 268. The law does not attempt to equalize fortune, opportunities, or abilities.

In the Federal Sugar Refining case, 20 I. C. C. 200, the Commission found, among other things, that the allowances paid by the carriers on sugar brought by Arbuckle Brothers on floats and lighters to the carriers from stations on the Jersey shore, resulted in inequalities, preferences and discriminations and were unduly prejudicial to the Federal Sugar Refining Company, a competitor in the same markets with Arbuckle Brothers, since the Federal Refining Company received no allowances for moving its sugar to the same station. The Commission was following the same principle which had governed it in the elevator cases. There are many expressions in this case similar to that used by Commissioner Harlan in the Tap-Line case. We shall not insert herein the many references in the Sugar Lighterage case to unjust discrimination arising from certain facts there recited. In the opinion by Mr. Justice Lurton this court points out that the differences which exist and which the Commission denominated as the source of undue discrimination and unjust preference, were really ones that might properly exist. Such differences as did exist arose from natural conditions. We quote from the opinion:

> "That certain advantages inured to Arbuckle Brothers from the fact that their refinery was so near this public station that their product might be trucked or carted to the station at slight cost, is obvious. That this was a consideration which operated as an inducement to

make these contracts, may be true. But this mere advantage of nearness was one which they shared in common with every other shipper who chanced to be near a shipping station. That they were large shippers was also more or less an inducement to the railroads to place their depot in a locality which would tend to secure their shipments as against rival carriers, may also be conceded. But these were business considerations which are far from showing any purpose to give them any illegal preference or to discriminate against other shippers. That the station constituted a great public utility by which the shipping public was served is too plain for argument. Although nearly one-third of all west-bound shipments through that station were made by Arbuckle Brothers, the remaining two-thirds of the tonnage was furnished by the general public. Thus, the uncontradicted averment of the bill is that during the first six months of 1907 the shipments of general merchandise through that station numbered 92,622, of which more than 85,000 were by shippers other than Arbuckle Brothers, though the tonnage of the latter aggregated nearly one-third of the total. Thus it is demonstrated that while Arbuckle Brothers are by far the largest shippers, yet the advantages of the station are availed of by thousands of the general public. * * * We must now recur to the distinction drawn by the Commission between the compensation paid by the railroad companies to Arbuckle Brothers for the instrumentalities furnished and the service performed by them in respect to their own west-bound shipments of sugar, and the compensation paid to them in respect to the freight handled by them through their station for the general public. The Commission find no fault with reference to the compensation paid for the latter but do find that the compensation paid for the former is an undue discrimination unless a like compensation

is made to the Federal Sugar Refining Company for the lighterage of its sugar.

We have before noticed that the order of the Commission is in the alternative. The obvious inference is that the Commission found nothing unlawful *per se*, in the compensation paid to Arbuckle Brothers under the contract, although they are compensated upon a gross tonnage which includes their own sugar, for it sanctions its continuance upon condition that a like allowance shall be paid upon the sugar lightered by the Federal Sugar Refining Company. *Penn. Refining Co.* v. *Railroad*, 208 U. S. 208, 218.

But, as has already been shown, the railroads were under no obligation to lighter the sugar of the Federal Sugar Refining Company. Upon the other hand, if the lighterage of the Arbuckle sugar was included in the through rate from the Jay Street station, and a part of the transportation which the railroads were under obligation to perform, and that lighterage was done by Arbuckle Brothers at the instance and procurement of the carriers, they, as owners of the freight thus transported, were entitled to demand a compensation reasonably commensurate with the facilities furnished and the services performed. *Wight* v. *United States*, 167 U. S. 512; *General Electric Company* v. *New York Central Railroad*, 14 I. C. C. Rep. 237; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46. In the case last cited, it is said: "* * * the act of Congress in terms contemplates that if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them. That is taken for granted in Section 15; the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum in case there is complaint (or now, upon its own motion. Act of June 18, 1910, Chap. 309, Sec.

12, 36 Stat. 539, 551). As the carrier is required to furnish this part of the transportation upon request he could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality instead of owning it."

* * * Viewing the whole case in a broad light, it is apparent that the disadvantage under which the Federal Sugar Refining Company labors is one which arises out of its disadvantageous location. That disadvantage would still remain if the title to the Jay Street station was in the railroad companies, and its business in charge of a third person.

We think it is entirely fair to the Commission to say that it has determined since Congress failed to prohibit as broadly as the Commission had recommended the participation in transportation either directly or indirectly by the shipper, that it, the Commission, would proceed to secure the same result by holding in all instances that unjust discrimination resulted by reason of the participation of shippers in transportation. Commissioner Prouty said in the Sugar Lighterage case, 20 I. C. C. 22:

"To permit a shipper to receive from a railroad compensation for any part of the service of transportation undertaken by the railroad is a fruitful source of favoritism and discrimination. This has always been recognized by all students of the subject, and Congress, in view of this fact, might very well have prohibited all transactions of this kind. That it does so to more fact that Arbuckle Brothers are the owners of a substantial part of the traffic moving through this terminal would render the operation of the contract unlawful.

Congress has not done this. The Commission in calling the attention of Congress to the wrongs which grew out of this connection be-

> [illegible] the shipper and the railroad itself stated that there might be instances in which it was for the interest of the general public that some portion of the transportation service should be performed by the owner of the property, and that, for this reason, the latter was deemed to be in such case that the compensation paid the shipper for the performance of this service was not unreasonable. Whether influenced by this suggestion or not, Congress did, in the Hepburn amendment of 1906, provide that where the shipper rendered a part of the transportation service the Commission might inquire what would be a reasonable compensation for that service and fix a limit which should not be exceeded by the carrier, thereby expressly recognizing the right of the carrier to employ the shipper about the transportation of his own property, provided the compensation paid for that service was not unreasonable."

The decision by the Commission as to unjust discrimination was made in the Jeffersonville and other circuit cases and in the Sugar Lighterage case. Ordinarily the same result is reached in the Tap-Line cases now under review. The Commerce Court held that the Commission proceeded arbitrarily and that the differences which the Commission found did not constitute in law unjust discrimination. After pointing out that many of the Tap-Lines had received amounts disproportionate to the service rendered, and that others received no allowance for work practically identical with that performed by others, the court proceeded to say that the result should be accomplished not by equalizing such payments, but by requiring equality of treatment and regulating the rates to be paid. We quote from the opinion of the Commerce Court:

The power of the Commission to prevent such rebates and unjust discriminations is beyond question. It is to be accomplished, however, not by enjoining payments, which the law itself recognizes as legal, but by requiring equality of treatment and by regulating the sums to be paid, so that they will be fairly proportioned to the services rendered. That the Commission is not authorized to forbid lawful payments merely because, in its judgment, unjust discriminations result therefrom, or to declare that to be unjust discrimination which results only from a perfectly lawful payment is apparent from the case of *I. C. C.* v. *Diffenbaugh* (222 U. S. 42). The invalidity of the Commission's finding, when unsupported by the evidence, that certain services are plant facility and not transportation services, is also attested by the same case.

In the Diffenbaugh case the Commission held that on grain passing through an elevator and mixed, treated, weighed, or inspected therein, no allowance for elevation might be made to the elevator owner if he had any interest in the grain itself. The basis of the order was its determination that the elevation under such circumstances was not transportation within the act, and that an unjust discrimination resulted in favor of the elevator owner, against other grain dealers who did not have elevators, even though the payment was an honest one, limited to the bare cost of elevation, inasmuch as he obtained undue advantages by being thereby enabled to perform other services in respect to the grain. But the courts held that unjust discrimination could not be based upon a lawful and proper payment and that such a service was in fact a transportation service. Mr. Justice Holmes says (p. 46):

"The act of Congress in terms contemplates that if the carrier receives services from an owner of property transported * * * he shall pay for them."

"The only permissive element being that the commission may determine the maximum" to be paid.

Judge Mack then refers to the decision by Judge Sanborn in the Diffenbaugh case, 176 Fed. 418, which we have already set forth fully, and proceeds as follows:

> Equally may it be said that a reasonable division out of joint rates can not be denied a common carrier for transportation services because of any past or present derelictions, or even the fear of further violations of the law. The law itself fixes the method of punishment for such wrongs; it does not include therein a denial of proper compensation for proper services.
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> Common ownership of a railroad and an industry facilitates the making of discriminations and the covering up of rebates. For this reason Congress enacted the commodities clause, which forbids a railroad from transporting any commodity—
>
> "manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part or in which it may have an interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."
>
> But Congress at the same time expressly excepts "timber and the manufactured products thereof" from this prohibition. It has thereby made it manifest that, in its judgment, the possible evils of secret rebates and unjust discriminations which might result from the common ownership of a railroad and a lumber plant do not offset the advantages that may be derived therefrom. It is clear, too, as well from the report and the evidence before the Commission, particularly the concurring opinion of Mr. Com-

missioner Prouty, as from the position taken by the State of Louisiana in this court in support of the contentions of these petitioners that these advantages are very real; that the vast forests of the country will not be developed without branch or tap lines running from the great trunk lines into the woods themselves, near which sawmills are most advantageously to be located; and that in a large measure the capital for the construction of such branch or tap lines must be raised by those who control the forests and the mills.

Common ownership or control of a lumber mill and a railroad can not, therefore, be prohibited by the Commission or be made the basis of a denial to a railroad of rights accorded another road not so owned.

Counsel for petitioners strenuously urge that this is the real basis for the action of the Commission in classifying many of these tap lines. Despite some expressions in the report which would seem to support this conclusion we accept the Commission's express recognition of this limitation of its power and its disclaimer both in this and in later cases (see *McCloud Lumber Co.* v. *S. P. Co.*, 24 I. C. C. 89, 94), of the adoption of this test.

The Commission says that the payment of a division out of the joint rate upon the property of the appellee lumber companies is a rebate or departure from the published rates. It said the same thing in the elevator cases. It pronounces the service performed by the appellee railroads as not a transportation service and yet in the case of many of the appellees herein the Commission authorized the trunk line railroads to pay the shipper for transporting his product to the rails of the trunk line railroad, provided that transportation be greater than 1,000 feet and not greater than three miles. In this

connection it is interesting to note the observation of this court on this point in the case of *Mitchell Coal & Coke Company* v. *Pennsylvania Railway Company*, 230 U. S. 247, 264 and 265, 57 Law Ed. 1479-1480, where this court quoted from page 277 of the Commission's Tap-Line opinion, and added:

> "In view of this ruling, it is apparent that lateral allowances may have been lawfully paid. They become unlawful only when unreasonable."

There is no consistency between the holding that the four appellee railroads do not perform a transportation service upon the lumber of the appellee lumber companies and the holding that various lumber companies as set forth in the Tap-line report do perform a transportation service. The circumstances of carriage in all instances are substantially similar. The Elevator and Sugar Lighterage cases conclusively dispose of the Commission's contention as to discrimination. The Act authorizes, even requires, joint rates between the appellee railroad companies and the trunk lines. There was no basis either in fact or in law for the Commission's finding in the order that the participation in joint rates by appellees results in undue and unreasonable preferences and unjust discriminations.

IV.

THE COMMISSION'S ORDER RESULTS IN UNDUE AND UNREASONABLE PREFERENCE AND UNJUST DISCRIMINATION WITHIN THE MEANING OF THE ACT TO REGULATE COMMERCE.

(*a*) *As between common carriers subject to the Act to Regulate Commerce.*

The decision of the Commission divides the 99 tap-line railroads considered in the tap-line opinion into three classes: (1) Common carriers of all traffic transported; (2) common carriers of non-proprietary traffic only, and (3) (ignoring separate organization of railroad and lumber company) allowances are given direct to the lumber company. We attach to this brief, as "Appendix A" a tabulated comparison of the various tap-lines, giving in some detail the facts as found by the Commission, together with the compensation fixed by the Commission for such services as it found under the Act to Regulate Commerce, to be entitled to compensation. We earnestly ask the court carefuly to examine this tabulated statement as it shows the tap-line decision in concise form. Such an examination shows that the Commission has decided and disposed of the tap-line case without any application of a uniform principle. While the Commission announces that transportation within the meaning of the Act to Regulate Commerce extended in the yellow pine producing territory, three miles from the main line of the trunk line companies, no allowance was made to the appellees herein for services identical with that given

by the trunk line railroads within the three mile limit. In the case of the Mansfield Railway & Transportation Company, lumber is hauled three-fourths of a mile from Oak Hill to the Kansas City Southern interchange track, and two and one-half miles to the Texas & Pacific interchange track, for which the Commission expressly says no allowance may be made. The only excuse for this finding by the Commission is that the appellees had manipulated the situation in order to establish "a relation that is unlawful." There was no evidence whatever of manipulation, or of any purpose to establish any unlawful relation. At the time the switch connection with the Kansas City Southern was removed allowances were being made by the trunk line carriers direct to unincorporated railroads and to lumber companies, making no pretense of serving the public as a common carrier. The evidence expressly shows that the Kansas City Southern established the spur track for the temporary purpose, and that its maintenance at the present time would be in violation of those conditions set forth in Section 1 of the Act to Regulate Commerce governing the power of the Commission to establish switch track connections. The testimony shows that the connection could not now be made with safety to freight and passenger traffic.

To denominate the situation in the Mansfield Railway & Transportation Company case as a mere manipulation to establish an unlawful relation, is the exercise of arbitrary power for the sole purpose of denying to the Mansfield Railway & Transportation Company compensation for what admittedly in

other circumstances would be permissible, and to deny to the appellee Frost Johnson Lumber Company the right to have joint through rates established upon lumber shipped to interstate destinations. If this court will examine the decision of the Commission in the case of the Deering Southwestern Railroad, 23 I. C. C. 630, it will observe that at the time of the hearing before the Commission, the Deering Southwestern Railroad received a division of the joint rate upon the products of the Wisconsin Lumber Company for a haul of about a half mile. After the date of the hearing before the Commission, the Deering Southwestern made delivery to the Frisco at Blazer, seven miles distant from the mill. We quote from the Commission's opinion in reference to that case:

> We are given to understand that the operating conditions of the branch of the Frisco connecting with this tap-line at Deering Junction is such as to make it no longer practicable to receive the lumber at that point. At the time of the hearing, it was admitted that practically the entire tonnage of the tap-line was supplied by the controlling interest and no passengers were carried. * * * For its service in hauling the products of the mill of the controlling company to the Frisco at Blazer, a distance of seven miles, we fix one and a half cents as the maximum division that may legally be paid to this tap-line out of the rate.

Why should the Commission authorize a division of one and a half cents for a haul of seven miles, necessitated only because the half-mile haul was impracticable and at the same time refuse to give the Mansfield Railway & Transportation Company com-

pensation for its three-fourths or two and one-half mile haul respectively, to the Kansas City Southern and Texas & Pacific, for the only possible haul from the mill to any railroad? The Commission refuses to permit compensation for the only possible means of outlet to market and yet in another case authorizes payment of one and a half cents per hundred pounds ($7.50 per car of 50,000 pounds), when it was possible to make delivery within a half mile. We are not complaining of the allowance to the Deering Southwestern, for clearly that line was entitled to recognition. We simply point out this difference in treatment by the Commission, which we submit most unjustly discriminates and works an undue preference.

In the case of the appellee Woodworth & Louisiana Central the Commission declines to authorize compensation for the movement from La Moria, a distance of six miles, the movement being from the mill located at Woodworth near the Iron Mountain Railroad, while at the same time it authorizes the Red River & Gulf to receive two cents per hundred pounds for the movement from Long Leaf to Le Compte a distance of 13 miles, on the products of the mill located at Long Leaf, near the Iron Mountain. An inspection of the map discloses a complete identity of movement in the case of the Woodworth & Louisiana Central and Red River & Gulf, except as to distance.

These considerations apply with equal force to the appellee Louisiana & Pacific Railway, which is allowed no compensation for the line haul on the finished product for distances of seven and one-half

to 43 miles or for deliveries at points near the mills from three-fourths of a mile to one and one-half miles. The Victoria, Fisher & Western likewise has a haul, on the finished lumber, of 25 miles.

Numberless examples of these gross discriminations are disclosed from the Commission's opinion. We may call attention here to the cases of Arkansas Southeastern and Ouachita Valley Railroad.

In the case of Arkansas Southeastern, 23 I. C. C. 606, the Commission allows 2 cents for the movement from Randolph, Louisiana, a point on the Rock Island, to Farmersville, 28 miles away in connection with the Iron Mountain. In the case of the Ouachita Valley Railway, 23 I. C. C. 319, the Commission declines to make any allowance for a 28-mile haul from Millville, on the Cotton Belt, to Stark, on the Rock Island. The only difference in fact between the two last named railroads is that the Arkansas Southeastern, the recognized common carrier, has a passenger revenue of $778.90, while during the same period the Ouachita Valley Railway, the plant facility, had a passenger revenue of $764.54.

Now it can scarcely be possible that any tribunal would undertake to say that the right to participate in joint rates should be determined by the fact that passenger earnings of less than $778.90 should be a bar, while as much or more than this amount would entitle the carrier to participate in such rates.

(*b*) *Discrimination as between shippers.*

In the case of all of the appellee lumber companies the Commission holds that joint rates may not be established upon through traffic from the mill

over the line of the appellee railroads and their trunk line connections, while at the same time it requires the application of joint rates upon the products of independent lumber companies from points on the appellee railroads over their lines in connection with the trunk lines. This gives the so-called independent yellow pine manufacturer, who ships from points along the line of any of these appellee railroads, the same rate from his mill which the appellee lumber companies must pay for the transportation from the junction point between the appellee railroads and the trunk line.

It is thus apparent that while the non-proprietary yellow pine lumber is carried to St. Louis from tap-line points at a 19-cent rate, the proprietary yellow pine must be transported at the local tariff rate from the mill to the junction point, ranging from 2 to 5 cents, and the 19-cent rate in addition from the junction, or a total of 21 to 24 cents. This prevents the proprietary lumber company and its stockholders from enjoying the facilities which have been prepared by the common owners and at the same time gives the benefit of these facilities free of cost to the non-proprietary producer. Furthermore, there is a discrimination as between shippers due to the fact that the non-proprietary producer of yellow pine lumber, several hundred miles further away from market, but situated on the trunk line, may have his lumber carried to St. Louis for 19 cents, although the transportation is much more expensive than is the transportation of the proprietary lumber from the tap-line point to St. Louis. Take the case of any one of these appellee railroads; any lumber

man may erect a mill at the extreme terminus of any one of these appellee railroads and he may have the benefit of all the investment made in these appellee railroads without paying a single cent more than is paid by the appellee lumber companies for transportation from the junction point. This discrimination is gross, unwarranted, and is in law most arbitrary and unreasonable. We shall take occasion at the argument to point out specific instances disclosed by the Commission's opinion where discriminations as between railroads and shippers exist as a result of the Commission's decision.

V.

THE ORDER DEPRIVES THE APPELLEES OF THEIR RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES.

It is a maxim of transportation law that a common carrier is entitled to reasonable compensation for all services which it performs. In this case the Commission denies that the service performed is a transportation service by a common carrier and thus seeks by fiat to set aside the established law applicable to common carriers. The Fifth Amendment to the Constitution of the United States provides that property shall not be taken without due process of law. The investments made in the railroad company while largely made by the same persons who are investors in the proprietary lumber company nevertheless are the property of separate individuals within the meaning of the law. In the case of some of the appellees there are several hun-

dred thousand dollars invested in the lumber company by men who have no relation whatever to the railroad and no interest in it in any way. The reverse is also true, there being large holdings in the railroad company whose owners have no interests direct or indirect in the lumber company. The action of the Commission therefore takes the property of the investors in the one instance compelling the railroad company to perform a service without reward and in the other case giving a service without charging therefor. This action of the Commission is not only unlawful, but it is destructive of good morals. The due process of law which is violated by the order of the Commission results from the failure of the Commission to comply with the provisions of the Act to Regulate Commerce. The provisions of the statute we have already set forth and it is sufficient here to say that sections one, three, six and fifteen all carry plain directions to the Commission and these directions have been violated. Section one defines the common carriers that are subject to the act and also the transportation subject to the act. Section six of the Act to Regulate Commerce requires all charges for the transportation of property subject to the act to be filed with the Interstate Commerce Commission. If there are no joint rates, each carrier must file its separately established rate applicable on the through business. If no rates have been published for a movement, the carrier is forbidden to engage in such transportation or to make the movement of property for which no tariff is published. The Commission finds that the haul by the appellee railroads of lumber produced by the ap-

pellee lumber companies is not transportation subject to the Act to Regulate Commerce; it therefore follows that no tariffs naming rates for the haul of such lumber can be filed with the Commission. Without such rates on file, the appellee railroads cannot move such lumber. We therefore have not only a denial of the right to participate in joint rates, but we have a denial of the right to participate in the haul in any wise. We may say, for the information of the court, that appellee railroads have regarded it their duty under the law to follow the mandate of the statute rather than the effect of the Commission's opinion, and have therefore exacted their local tariff charge for the movement from the mill to the trunk line connection. It is sufficient to say that the ruling of the Commission and its order in accordance with such ruling, completely destroys all rights which common carriers from the adoption of the federal constitution have enjoyed, viz.: the right to have compensation for property which is devoted to the public use. The decisions of numbers of courts heretofore cited completely demonstrate the right of the appellee railroads to be recognized as common carriers, and we believe this court will have no difficulty in reaching the conclusion that the Commission has erroneously construed the law, both statutory and constitutional.

II.

THE CASE OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, INVOLVING THE EXCEPTIONS CONTAINED IN THE COMMODITIES CLAUSE OF THE ACT TO REGULATE COMMERCE.

Before the Commission three appellate rulings under the provision of the Act to Regulate Commerce known as the "Commodities Clause," relating to the interpretation of that clause by the Supreme Court. We urged that the common ownership of stock in the short line railroads by stockholders in the parent company had been recognized as legal by the decision of the court interpreting the "commodities clause." When Congress was discussing the short lines to be embodied in the statute, it was familiar with the decisions of the Commission and the general situation affecting industrial railroads. It was well understood that such roads participated in transportation service upon products owned, produced or manufactured by affiliated interests. It is, of course, apparent that the "commodities clause" was directed mainly at the railroad owning roads of the east, but the decision took a wide range and embraced the idea of a complete and perfect separation of the functions of a common carrier from those of all other business and pursuits. The decision of the court in the Commodities Clause case does clearly that it was not intended by the "commodities clause" to prohibit a railroad corporation from transporting the products of a company in which the railroad company owns stock, and that such stock ownership gave the railroad

company no interest, direct or indirect, in the product transported.

The interests here involved are far more remote and, even without the exception of lumber and its manufactured products, we could confidently rely upon that decision as foreclosing the question of affiliated ownership in the cases of the appellees herein. A history of the "commodities clause" distinctly shows that Congress had before it definitely and clearly the very situation here under investigation, and that it was the deliberate purpose of the legislative branch of the Government to permit the continuation of the very practice here involved. The original amendment, as introduced by Senator Elkins, was as follows:

> It shall be unlawful for any common carrier subject to the provisions of this act to engage, directly or indirectly, in the production, manufacture, buying, furnishing or selling of coal, coke, or any other commodity or commodities of commerce in competition with any shipper or producer on its line or lines: *Provided*, That nothing in this act shall be construed to prevent a carrier from mining coal exclusively for its own use. (See Congressional Record, May 7, 1906, p. 6620.)

This amendment was modified so as to read as follows:

> It shall be unlawful for any common carrier engaged in the production, manufacture, buying, furnishing, or selling, directly or indirectly, of coal, coke or any other commodity of commerce, to engage in interstate commerce: *Provided*, That nothing in this act shall be construed to prevent a carrier from mining coal or

furnishing or producing other commodities exclusively for its own use.

Senator McLaurin (p. 6622, Cong. Rec.) offered the following substitute:

> It shall be unlawful for any common carrier engaged in the production, manufacture, buying, furnishing, or selling, directly or indirectly, of coal, coke or any other commodity of commerce, to engage in interstate commerce as a common carrier of articles and commodities of its own production, mining or manufacture: *Provided,* That nothing in this act shall be construed to prevent a carrier from mining coal or producing other commodities exclusively for its own use.

It will be noticed that the substitute does not prohibit the common carrier thus engaged in the production, manufacture, and so forth, absolutely, from participating in interstate commerce, but the prohibition to engage in interstate commerce extends only to such articles of its own production.

Senator Tillman, in charge of the bill (p. 6622), after alluding to the difficulties of the situation, said:

> Now, I will state some of my perplexities. This amendment deals with the three great problems: First, of monopoly—the railroad controlling coal lands and freezing out competitors who are engaged in the business as private owners. Second, it deals with the question of discrimination—preventing a fair deal between the private owner and the railroad by distribution of cars and access to market. It also deals with the more perplexing question or idea of the destruction of private rights and private interests.
>
> For instance, suppose we should limit the en-

> gaging in interstate commerce of a public carrier to the production by others, forbidding transport beyond the State line of any article which he himself was producing, what would become of that class of cases or those conditions in some region where the country is sparsely settled and where there is a great lumbering industry—that is, a great deal of lumber standing in trees? I have known half a dozen railroads in the South, in my own limited scope of view, that have been built entirely and solely for the purpose of hauling out the lumber from the swamps and backwoods to get it to market; and but for the fact that the lumbermen built their own road they absolutely would have had no market for their product.

Discussing these remarks of Senator Tillman, Senator Knox (page 6682) said:

> In the first place, Mr. President, the question we are considering is how we may lay the hand of injunction upon corporations conducting a carrying trade between the States to prevent them from doing either that which the States have, by the express act of their legislatures, authorized them to do or, by a long period of acquiescence, permitted them to do.
>
> The question of the power of Congress to prohibit commerce between the States has been passed on but once by the Supreme Court of the United States. The thing which Congress prohibted in that case was the transportation from State to State by express or railroad or by the hand of man of a lottery ticket, a thing connected with a gambling scheme, a thing which had been condemned by Congress time and time again. It had been excluded from the mails; it had been excluded from foreign commerce; and, Mr. President, the question of the power of Congress to prohibit that noxious thing was debated three times in the Supreme Court of the

United States by the court's own invitation, and then only sustained by a vote of 5 to 4. I challenge any Senator to put his hand upon a decision of the Supreme Court of the United States to the effect that Congress has the power to go within the borders of any State and lay a hand upon and stifle or crush the policy of that State as declared in its own legislation with respect to the development of its own resources as proposed by this amendment.

Take for illustration the State of North Caroline, rich in timber, possibly not so wealthy in capital as some of her neighbors. It is her laudable ambition that her timber shall be brought to the markets of the world; that her borders shall be filled with the industrious men who are to be engaged in that enterprise. She invites capital to come within her borders for investment. She gives by charter the privilege to a lumber company to accumulate a large area of timber land, the extent of which she may circumscribe. She permits the people who invest their money upon her hills to build highways into the forest in order that the lumber may be carried out and put into the channels of interstate and foreign commerce.

Does any Senator mean to say that it rests in the power of Congress, under the Constitution, to reverse that policy? If so, I should like to see the authority upon which it rests. Congress may, I think, without question provide that a carrier which is lawfully engaged within the borders of a State which created it in developing the resources of that State and which seeks unlawfully to gain an advantage in interstate commerce over its competitors in that particular product shall be excluded from participating in interstate commerce with respect to that product.

Congress can prevent a carrier from stifling competition by refusing to give cars, facilities

> in the way of side-tracks, and other facilities. Congress can, with absolute certainty, in my judgment, prohibit a carrier from entering into interstate commerce in respect to particular traffic if it is trying to crush out its rivals. But, Mr. President, to say that Congress can cancel the policy of any State in respect to the development of its resources by prohibiting the agencies of its creation from commercial intercourse upon equal terms with citizens of other States is to say that which I think is impossible; and I entirely agree with the legal conclusions that have been so clearly announced upon this subject by the Senator from Colorado.

It must not be forgotten that during all of these discussions the evil sought to be remedied was the ownership of the products transported by the railroad company, as such, as it does not seem to have occurred to any member of the legislative branch that it was the intention of Congress to enact a law which would practically prevent a citizen of any state from owning stock, both in an industrial and a railroad corporation. Later on, Mr. McLaurin withdrew the amendment above quoted, and offered the following substitute:

> It shall be unlawful for any corporation that mines or manufactures or produces any article or commodity of commerce for sale to engage in the business of interstate commerce as a carrier of its own products, mining, or manufacture; and it shall be unlawful for such corporation to charge, demand, collect or receive any money or other thing for the carriage, as a carrier of interstate commerce, of any of the like kind of articles or commodities produced, mined or manufactured by any other person, company, or corporation; and for a violation of this provision the person paying such charge or demand

may recover in any State or Federal court having jurisdiction of the subject matter an amount triple the amount so collected or paid, together with all costs of collection, including attorney's fees, and costs of travel to and from the attendance upon court. If any such corporation shall engage in the business of a common carrier of such articles or commodities as intrastate carrier, it shall be unlawful for such corporation to engage in interstate commerce as a carrier of any kind of commerce.

Discussing these propositions, Senator Bacon (Cong. Rec., May 8, 1906, p. 6685) says:

That is an extremely difficult question, and it is one which not only will affect illegitimate enterprises, if I may so denominate them, but it is one which will affect legitimate enterprises, and therefore it should be regulated with great care, so as not in any manner to do unwanted injury to those legitimate enterprises.

I will give an illustration. Of course, in these matters the fact that it will affect industries in our particular localities naturally occurs to Senators. The Senator from Pennsylvania instances the case of the lumber trade in North Carolina and that is true also in the State of Georgia. The southern half of the State of Georgia is a timber-producing section. Very many railroads have been built in that section for no purpose except to develop the timber industry. Men owning large tracts of timber land remote from railroads have built railroads into those tracts of land for the purpose of being able to market the timber. After they had built the railroads, while they are engaged primarily and principally in the transportation of timber which they themselves cut, they also take some business from the public in the way of the carrying of passengers and freight, and however minor it may be compared with the main

business of carrying the timber, it constitutes them as common carriers.

While it is true that those roads are located within the State entirely, beginning in the State and ending in the State, still when a railroad takes a shipment from a point within the State to a point out of the State, a part of the transportation to be effected through other carriers, it constitutes itself a corporation engaged in interstate commerce, and becomes subject to the provisions of this bill.

On the same day the Senator from North Carolina, Senator Simmons (p. 6740) said:

If we should adopt the amendment proposed by the Senator from West Virginia, I fear the effect would be to greatly embarrass and cripple certain important enterprises in my State—railroad building and manufacture of lumber. There is, as I will show later, a very important connection between these in my State at this time.

I have no doubt that there are great evils growing out of the conditions which exist in Pennsylvania, Ohio, Illinois, and West Virginia, by reason of the fact that some of the railroads in those States are also the owners of many of the coal mines and that they are operated conjointly. There is a just and powerful public sentiment that these evils should be remedied. But there is, I think, no demand for hasty or immature legislation.

The Senator from Pennsylvania has alluded to the conditions in my State. I do not refer to them for the purpose of using them as an argument against the proposed amendments, but for the purpose of showing what might be the effect upon these conditions if the amendment proposed by the Senator from West Virginia, for instance, should be adopted. There is today in my State an era of railroad construction.

That is especially true in the eastern section of the State, and the great pine-tree region of the State. Nearly every railroad that is today in process of construction in that section of the State is being built by corporations that are interested in the manufacture of lumber. They have bought immense tracts of timber lands; they have built great plants upon those lands, and they are now constructing railroads to and through them. Nearly every one of these railroads has its basing point outside of the State of North Carolina. The timber does not lie upon streams. The most of that has long since been cut. The timber that remains is in the interior, so to speak. It can only be reached by railroads. In some instances the railroad would be worth but little without the timber, and the timber but little without the railroad. There are at least 200 miles of railroad being constructed in my State today, much of it to develop timber lands owned by those who are building them, and the market for all that timber is outside of the State, making this interstate business.

Senator Clark (May 9, p. 6758), after adverting to the coal situation in the East, said:

Now, Mr. President, that is the evil you want to deal with here. You do not want to deal with a proper road. You do not want to deal with a railroad that has been built to carry lumber from the forest to any community, because there has been no question here of its improper use that I know of. It may be that we ought to adopt a general system that no public carrier engaged in interstate commerce shall engage in anything else, but to do that you must wait and take time, and it must be done carefully and in such way that the interests which are already involved and legally involved, the money already invested according to law may be properly protected.

I doubt very much, Mr. President, whether you can do that with all the different interests unless you shall confine this to one or two articles. If the evil is so great touching coal—and I do not know but that it is—then it would be well to put a stop to it by dealing with that subject alone, dealing with the other subjects as the complaint arises as the opportunity is presented.

Mr. President, I fear myself, as do the Senators from Montana, that a sweeping provision of this character may materially affect the industries of the great West. We have had a hard time to settle up the West. We are in a very prosperous condition today, and I believe as a general rule there is not much complaint in the great West against railroad companies engaging in commerce or anything of this kind. As a rule they do not. There may be some exceptions where they are engaged in such production and distribution as ought to be prohibited, but the vice of their production and distribution is not the production and distribution but the abuse they make of it by attempting to avoid and get rid of the statute which declares that they shall publish their rates and adhere to their rates. Punish them, Mr. President, if they do not adhere to the rates. Punish them in some way if they engage in interstate commerce, and then make that an excuse for an undue and unjust competition on their part. If they by that system select a man to whom to sell and give him a price they do not give to somebody else, or if they go into the market and buy articles and transport them and give the seller an opportunity they do not give somebody else, that is a violation of existing law, a law the Supreme Court of the United States says is sufficient now to deal with it; but if it is not, we might readily amend it in that particular and leave these other questions until such time as

we shall have an opportunity to do so with less danger of doing something out of the way.

Thereafter, on the same day (p. 6758), Senator Fulton, discussing the same amendment, says:

All over the West, as the senator from Colorado has said, there are little railroads which have been built to connect with coal mines and saw-mills, that have been built simply to get the product from the mills and the mines. In such cases mining and milling are the principal enterprises. The railroad is merely incidental thereto and yet those railroads connect with interstate lines or with other railroads connecting with trans-continental or interstate lines. Hence these small roads doubtless would be held to be engaged in interstate commerce. It seems to me, Mr. President, that a distinction should be made and that proper exceptions should be provided in any legislation that shall be enacted on this subject in order to protect such enterprises. Just what those exceptions should be and just how they should be framed I am not prepared at this moment to say, and it does not seem to me that any other senator is prepared to say. * * *

I know of railroads which have been built to coal mines for the sole purpose of developing them. If this amendment shall become a law, the owners of such will be compelled either to dispose of the mines or of the roads, and neither would be of any value without the other.

It is my conviction that legislation of this character should be directed against those transportation lines only that are engaged principally in carrying interstate commerce, and with which mining or other enterprises are merely incidental. It ought not to be applicable to those carriers with whom railroading is merely incidental to the business of their mills or mines. I think senators will generally agree with me on that proposition. * * *

Consider the effect of the proposed legislation

> on one of the small railroads out West, of which I have spoken, having, we will say, a coal mine in the State of Idaho and a railroad extending therefrom into Washington or Oregon. Such a railroad would be in interstate commerce line and subject to the prohibitions of the amendments which have been proposed here. This legislation would ruin all such industries and deprive thousands of men of employment. Yet they are offending against no men; they are doing no person and no community an injury or an injustice. They are necessary to and powerful factors in the development of the resources of the great West. Shall they be stricken down simply because we realize that there are great evils elsewhere which we wish to remedy? Is it necessary to destroy the good in order to correct and restrain the evil? Why must we indulge in this hasty and ill-considered legislation? * * * Let whatever measure which shall be adopted be carefully considered and the proper and necessary exceptions made.

The amendment offered by Senator Elkins, which was adopted in the Committee of the Whole, read as follows (p. 7224):

> From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any state, territory, or district of the United States to any other state, territory or district of the United States or to any foreign country, any article or commodity manufactured, mined or produced by it or under its authority or which it may own in whole or in part, or in which it may have an interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier.

Senator Tillman, on May 17 (p. 7220), offered in lieu of this the following:

> After May 1, 1908, it shall be unlawful for

any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, *by stock ownership or otherwise,* in the article or property which is the subject matter of such commerce, or if it be interested at the time, directly or indirectly, *by stock ownership or otherwise,* in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee, of such common carrier be interested, directly or indirectly, *by stock ownership or otherwise,* in the business of buying or selling such article or property which is the subject matter of such commerce, or in the mines or factories producing the same; *or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject matter of such commerce, or in the mines or factories producing the same.*

This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders.

The amendment, which was directed at the question of common-stock ownership in a railroad and an industrial enterprise, was defeated (p. 7222). Discussing it, the senator from Washington, Mr. Piles (p. 7222), said:

Mr. President, if it is in order, I should like to make a few remarks in reference to this amendment, as it would destroy practically every industry in the State of Washington if it should be adopted. I reserved the right to offer to this paragraph of the section when the bill reached the Senate an amendment providing that it shall not have application to timber or the manufac-

tured products thereof. I might just as well present the amendment now, and my remarks with reference thereto, if it is proper. I move to amend the section, in line 4, page 6, after the word "Commodity," by inserting "other than timber and the manufactured products thereof."

Then occurred the following colloquy:

THE PRESIDENT PRO TEMPORE: The senator cannot offer the amendment now.

MR. PILES: I will discuss the question anyway.

MR. TILLMAN: I will say to the senator from Washington that, so far as I am personally concerned, I am perfectly willing and anxious to except any industry. I mentioned the other day that there were lumber roads that had been built by the owners of the trees, and unless they had been allowed to build their own railroads, the lumber would never have gotten to market. I am perfectly willing to except lumber and its products. * * * I am after coal and coke, two of the necessaries of life.

Senator Piles then continued as follows:

Mr. President, I know, for instance, in my own home city, in the early history of that country, the people turned out en masse for the purpose of constructing, or aiding in the construction, of a little line of railroad—which is now some 38 miles in length—to the coal mines, in order that they might have some product to send to market and get ready money into that new country. That road exists today, and to my personal knowledge its stock is or was, owned by another transportation company. It is run in connection with the steamship line, and it carries freight and passengers for hire for the people living along the line of the road. But the transportation of outside freight is a mere incident to its business. The principal business of that road is to carry the coal mined by its stock-

lumber up in the mountains down to the City of Seattle, and there it is transported by steamers to California and other domestic ports, where it is sold. That steamship line is indirectly, at least, interested in that railroad. Is it the intention of Congress to put that railroad out of business? Is it the intention of Congress to put that steamship line out of business? I think not.

But let me go one step further. Mr. President, in the development of the great Pacific northwestern country we have opened up the most magnificent forests in the world. We have done it by building great logging railroads into the forests. We are not logging in that country with horses or wagons or oxen. We are logging by means of railroads. These railroads running from 5 to 40 or 50 miles back into the forests, necessarily penetrate the valleys. People to a certain extent have settled in these valleys and have builded for themselves homes. Their little freight, as a matter of accommodation more than anything else, and also passengers, are carried by the logging railroads. These logging roads run saw-mills on the water, or the mill companies own the logging roads. The roads take the timber to the saw-mills, where it is sawed into lumber. The mill companies own their own schooners, both steam and sail. When the timber is sawed into lumber it is transported on these schooners to all parts of the maritime world.

If, then, these little logging roads can not own stock in the saw-mills, or the mill companies can not own stock in the logging roads or own said roads outright, the great lumber industry, which employs in the woods 30,000 men alone, and which employs in the woods and in the mills and in the various industries connected with the manufacture of lumber in the State of Washington alone, upwards of a hundred thousand men, and has an annual pay roll of something like $60,000,000, will be seriously retarded if not

> wholly destroyed. * * * I protest in the name of the great Pacific Northwest against the injustice that is about to be inflicted upon these people, and I hope the Senate will not permit the amendment to prevail.

On page 7224, same date, Senator Piles moved that the amendment be amended by inserting after the word "commodity" the words "other than timber and the manufactured products thereof," and this amendment was adopted. The bill, as thus amended, was sent to the conference committee and, on June 2 (p. 8009), the conference committee in its report recommended that the Senate recede from its amendment inserting the words "other than timber and manufactured products thereof," the Senate conferees agreeing that the Senate recede. The conference committee report being presented to the Senate, this particular amendment came again under discussion, and Senator Piles, on June 6 (p. 8162), said:

> Mr. President, I desire to express the hope that the conference committee will retain in this bill the amendment excepting timber and the manufactured products thereof from the provision which prohibits the carriage in interstate and foreign commerce of any article manufactured or produced by a carrier. When I had the honor to propose the amendment I took occasion very briefly, as I shall now, to explain to the Senate my reasons for the amendment.
>
> I regret exceedingly that the conference committee saw fit to yield to the House conferees on that point. As I understand, the reason which prompted the senator from West Virginia to introduce the amendment prohibiting such carriage was because interstate carriers owned coal mines along their lines of road, and that those carriers were furnishing to their own coal mines cars, thereby preventing the independent coal

operators from competing with them successfully in the market, because the carriers would not furnish the independent operators a sufficient number of cars, although the former had plenty of cars with which to haul the coal which they were engaged in mining. If that was the object, so far as it relates to my section of the country, it will be a detriment instead of a benefit on that point alone.

As I said the other day, Mr. President, the lumbermen of the State of Washington by means of their logging roads and steam and sailing schooners are carrying to all parts of the world the products of the forests and their sawmills, I think the greatest in the world.

These people are not engaged, strictly speaking, as common carriers, while they are such undoubtedly under the law. But there are now, I suppose, in the neighborhood of a thousand (?) cars of lumber west of the Cascade Mountains, and certainly that number west of the Rocky Mountains which cannot be transported over the mountains for lack of motive power. These lumbermen in my section of the country went into the business on the lines in which they are now engaged with rail and schooner for the express purpose of getting their product to market, which they could not get to market because the railroads were unable to furnish them a sufficient number of cars and sufficient motive power to take their products to market.

These people have engaged in this business, having provided their own means of transportation, by which they transport the lumber of the Pacific to the Atlantic coast, and to all parts of the world, which cannot be transported in cars for the reasons I have stated, and which, in a large degree, had had a tendency to give a reasonable rate by which they could put their products upon the eastern market. It seems to me that Congress ought not to pass any law which would in any way prevent them from getting their product to market or to pass any law which

would compel those people through some subterfuge, to organize some company different from that which they are now operating, or to organize a number of companies for that purpose, but that they ought to be encouraged in the great business which they have undertaken.

I do not want to take the time of the Senate in discussing a question which I discussed only a few days ago. I do hope, and I felt it my duty to say it, that the Senate conferees, when they go back to reconsider the report, will stand firmly by this amendment which was inserted in the bill.

The senator from Oregon, Mr. Fulton, on June 7, 1908, discussing the amendment offered by Senator Piles, said:

I want to call the attention particularly of the conferees to the importance to the people of the Northwest in particular, of preserving and retaining the amendment that was offered by the senator from Washington, which excepts from those prohibited articles which interstate commerce carriers may transport, they being interested in the production thereof, timber and the manufactured products thereof.

The senator from Texas yesterday said that if there is any one article which these carriers should be prohibited from engaging in the manufacture of it is the article of timber and the manufactured products thereof. His argument was based upon the fact that the timber supply of this country is being rapidly depleted. That is true, Mr. Presiden', but it does not follow by any means that the mature timber that is going to waste in the forests should be allowed to go to waste and should not be manufactured simply because the timber supply is not as great as it formerly was.

In the forests of the Northwest there are billions of feet of lumber in mature trees which if not converted into some article of use will pass

into decay and will be lost entirely. The fact that we permit the lumbermen to prosecute their business does not in the least prevent or hinder us from providing for re-foresting the timber lands and for providing for a new and wider growth of timber.

So I submit that the proposition urged by the senator from Texas is not one that may properly be considered in this connection. One of the great sources of wealth at the present time of the Northwest, and particularly in the States of Oregon and Washington, is its forests. If you shall deprive us of engaging in the industries incident thereto, Mr. President, you strip us at once of one of the greatest resources we have, and the effect of this provision will be to do exactly that. * * *

Now, Mr. President, if we shall fail to insist on the amendments of the senator from Washington, the result will be this: In the great forests of the Northwest under present conditions, logging camps cannot be profitably carried on without railway connections in many instances. Railways have to be built in connection with such enterprises in order to bring out the timber. These railroads are usually only a few miles long, but many of them serve the people of the vicinity as common carriers. However, the real primary purpose of such railroads is to serve the logging camps in connection with which they are constructed.

They connect in many cases with the trunk lines, or they come down to the great waterways, such as the Columbia River and Puget Sound. They therefore become interstate commerce carriers, and under the provisions of this amendment, unless you adopt the exception proposed by the senator from Washington, they will be prohibited from operating such roads for the purpose of carrying out the products of their logging camps.

The same rule applies throughout the Northwest also to coal mines. There are a very few

coal mines in the Northwest that are developed, except in connection with the railroad lines. That which applies to coal mines and timber is true also of copper mines, iron and other mines.

Mr. President, what good reason is there for prohibiting our people from thus engaging in the development of the industries of the country? There is a great evil that we are seeking to remedy. We all understand that in the anthracite region there is an existing and a really great evil that we wish to exterminate, but cannot that be remedied without striking down legitimate and proper industries?

It seems to me that the Senate of the United States ought to be able to correct the evils that we know of and yet preserve the industries that we all understand and admit are proper and legitimate and desirable.

Why should the man developing a mine in the Rocky Mountains, finding it necessary in the course of that development to build a railway leading down to a trunk line, be prohibited from doing that simply because we want to correct an evil in some other section of the country, which we can correct without depriving him of that necessary facility?

Senator Bailey, of Texas, opposed the amendment upon the ground that there should be an absolute divorce and separation of the business of a common carrier from business of any other character whatsoever. The statements and questions of this senator, however, would indicate that where the lumber company and the railroad company were separate corporations, that the amendment even in its original form would not apply. He states (p. 8209):

The Senator would argue as though we are interfering with the industries of people. He is mistaken. We propose to interfere with no proper and legitimate industry. We simply

say that a corporation organized for one purpose, engaging in other purposes, shall be denied the right to engage in interstate commerce. If the railroad is a common carrier, then it is not a manufacturer, and ought not to be.

I am aware that in some of the older states railroads have been chartered with special rights to produce and transport coal, but I doubt if a charter has been granted in any state of the American Union for many years which confuses the functions of a common carrier and the functions of other branches of industry.

It is clear from this statement that the Senator from Texas was of opinion that the commodity clause in its original form, without the amendment offered by Senator Piles, applied only to those cases where the railroad company owned the timber or lumber directly and that it would not apply to a case of stock ownership in the same individuals of the stock of two independent companies. Senator Fulton therefore said (p. 8210):

There is not a single great railway line that is engaged in the lumber business, but all of the railroads that are engaged in connection with such business are little lines, built by private individuals, leading up through some little valley, 5, 10 or 20 miles in length.

And the Senator from Minnesota (Mr. Clapp) suggests to me, these short railroad lines are simply incidental to and a part of the equipment of the main enterprise—simply adjuncts thereto; and yet they lead down to navigable waters, such as Puget Sound and the Columbia River, and connect there with vessels which take the products of the mills, or else they connect with some trunk line or railroad, which carries the products of the camp or mill to market.

Senator Bailey then asked this question (p. 8210):

I should like to inquire if it is not true in the State of Washington and in the State of Oregon that the people who have obtained railroad charters and condemned the property of private citizens are not really conducting private business?

To which Senator Fulton replied:

The Senator is very much mistaken if he thinks they are not subserving the public interests at the same time. Take, for instance, a little railroad line I have in mind, that is about five miles long, I think, running back from the Columbia River in the State of Washington. True, it is a common carrier, but it practiced no deception in getting the rights of a common carrier, because it serves the people of that little valley; it takes the products of their farms down to tidewater, so that they can place them on board ship.

It is a great accommodation and a great benefit to the people of that valley; but the main purpose in constructing the road was to enable the owners to get their own logs to market. If some one will tell me why that industry should be destroyed and why they should be prohibited from operating these few miles of railway, I will be pleased to hear the reason; but I have not yet heard it suggested by any person. * * *

If this amendment be enacted as it stands, it means the destruction of many industries now in operation; it means retarding seriously the development of the vast area west of the Rocky Mountains for many years to come. "Oh," some say, "you can prevent this by incorporating two companies, one a railway line and the other the logging, lumbering, or mining company."

Mr. President, we ought not to drive people into indirection in order to defeat or circumvent the law. I do not know whether they could defeat it or not by resorting to such expedients;

but we ought not to enact legislation that must drive people to subterfuges such as that in order to operate industries that are important to great communities and to the public at large.

I trust that the conferees will take into consideration the death blow which they will deal to many industries of the West if they consent to disagree to the amendment of the Senator from Washington. I hope it will be retained in the bill.

The bill having been sent back to conference, the House withdrew its objection and the amendment offered by the Senator from Washington remained in the bill, the conference report being adopted by both Houses.

We have made these extended references to the congressional debates for the reason that it removes every vestige of doubt from the proposition that Congress investigated and debated every proposition now urged against these lines. It is, of course, a debatable question whether public policy demands the complete severance of interests between transportation and industrial lines. This, however, belongs to the legislative department of the government and after full and able debate, timber and its manufactured products were exempted from the commodities clause.

These debates show beyond the peradventure of a doubt:

1. That it was the intention of Congress to permit railroad companies *per se* to own and transport timber and its products.

2. It was the legislative construction of the commodities clause in its original form, before the ad-

dition of the amendment exempting timber and its manufactured products, that the ownership by a railroad corporation of the stock of a timber or lumber company did not come within the purview of the clause as originally adopted.

3. That in the view of those who carried to the extreme limit the theory of a divorce between transportation and industrial interests the common ownership of stock by individuals in a lumber corporation and a railroad corporation transporting its products, did not come within the meaning of the commodities clause even before the adoption of the timber exception.

4. The exact situation which was before the Commission in these cases was before Congress which had in mind distinctly the cases of roads constructed primarily for the development of timber holdings, and upon which business for the public was more or less of an incident. That by the adoption of the "commodities clause" Congress determined not to deny a carrier the right to engage in interstate commerce in the production or transportation of the products of timber. With this legislative history illuminated by the views of this court, we respectfully submit that the question involved in these cases has received definite and final settlement and that there does not exist in the Interstate Commerce Commission power to forbid that which the Congress of the United States expressly permits to be done. The Commission in these cases has held to be the law not that which Congress enacted, but that which Congress refused to enact. The Commission has legislated and has practically enacted into law,

an amendment to the commodities clause in effect prohibiting the common ownership of the manufacturing or producing company and a common carrier railroad company. The true public policy to be served, it seems to us, is the reasonable regulation of the charges of all railroads for the transportation performed. There can be no doubt that where the traffic transported is owned by the owners of the railroad that the closest scrutiny should be made of all charges for such transportation. What the Commission should have done in these cases was to recognize the right of the appellee railroads to participate in joint rates upon lumber and other forest products produced or shipped by the appellee lumber companies to interstate destinations and should have confined its activities to a restriction of the division of those rates to what is just and reasonable for the services performed.

This brief has already reached more than the maximum permitted in ordinary cases. Our excuse for the extent of this brief is the magnitude of interests involved. A conservative estimate of the loss to our clients is a million and a half to two million dollars per annum. In addition, there are the great public interests which depend upon the development of the territory through which these tap-lines extend. The Railroad Commissions of Louisiana, Arkansas, Alabama and Mississippi have entered their protests against the action here sought to be reviewed. In no case which the Commission has considered and disposed of, has it by sheer fiat of opinion so affected vast investments, so interfered with future development, as in the tap-line case. The Commission has recommended to Congress certain legisla-

tion. That recommendation was acted upon unfavorably, but by its decision the Commission has gone further than mere legislative enactment could possibly have extended.

We look with confidence to the judicial determination of what the law is. In that determination our clients must, of course, acquiesce. Chaotic conditions now exist in all the yellow pine producing territory. The order of the Commission should be set aside, a correct interpretation of the law should be made so that the Commission, as well as all parties in interest, may know the limit of administrative interference with lawful investments and lawful operation of railroads. All the wrongs which the Commission found throughout the scope of its investigation, could have been removed and remedied by the exercise of careful judgment in fixing the earnings of the appellee as well as other tap-line railroads. The wrongs and injustice which the Commission's decision has wrought upon these vast interests might have been avoided by such a course of action by the Commission. These injuries have been suffered. But the future is of vastly more importance than the past. We therefore respectfully submit our case, confident that out of the present unjust and chaotic condition there may be pointed a way which will restore confidence and make it possible for further railroad building to be had in the southwest, at the same time protecting all legitimate rights of the public.

Respectfully submitted,

H. M. Garwood,
W. R. Thurmond,
L. M. Walter,
Solicitors for Appellees.

Name	23 I C C Rep. Page	Status	When Incor-porated	Capital Stock
Alabama Cent. R. R.	647	Common Carrier	1906	$100,000.00
Angelina & Neches River R. R.	337	Plant Facility	1900	55,000.00
Arkansas & Gulf R. R.	303	Plant Facility	1905	Not Shown
Arkansas Eastern R. R.	309	Plant Facility	1907	112,000.00
Arkansas Southeastern R. R.	606	Common Carrier	1904	
Bearden & Ouachita River R. R.	308	Plant Facility	1904	28,000.00
Beirne & Clear Lake R. R.	307	Plant Facility	1909	
Bernice & Northwestern Ry.	330	Plant Facility	1908	
Black Bayou R. R.	323	Plant Facility	1904	50,000.00
Blytheville, Burdette & Miss. River R. R.	310	Plant Facility	1906	140,000.00
Blytheville, Leachville & Ark. Sou.	565	Plant Facility	1908	
Bodcaw Valley Ry.	324	Plant Facility	1904	67,000.00
Brookings & Peach Orchard R. R.	312	Plant Facility	1908	6,000.00
Butler County R. R.	628	Common Carrier	1905	163,500.00
Caddo & Choctaw R. R.	571	Plant Facility	1907	109,000.00
Cairo Northern R. R.	626	Common Carrier	1906	100,000.00
Central Ry of Ark.	582	Common Carrier	1906	2,600,000.00
Crittenden R. R.	577	Common Carrier	1905	150,000.00
Deering Southwestern Ry.	630	Common Carrier	1903	400,000.00
De Queen & Eastern R. R.	581	Common Carrier	1900	600,000.00
Doniphan, Kensett & Searcy R. R.	562	Common Carrier	1906	
Dorcheat Valley R. R.	331	Plant Facility	1905	75,000.00
Eldorado & Wesson R. R.	559	Common Carrier	1904	
Enterprise Ry.	320	Plant Facility	1903	
Fernwood & Gulf R. R.	637	Common Carrier	1906	10,000.00
Fordyce & Princeton R. R.	315	Plant Facility		42,000.00
Louisiana & Pacific Ry. Co.	591	Plant Facility	1904	200,000.00
Mansfield Ry. & Transportation Co.	587	Plant Facility	1881	77,300.00
Gulf & Sabine River R. R.	589	Common Carrier	1906	100,000.00
Red River & Gulf R. R.	608	Common Carrier	1905	101,000.00

When Incorporated	Capital Stock	Bonded Indebtedness	Stock Ownership	Name Proprietary, &c.	Miles	Equipment	Dividends declared	Per cent. of Net Earnings paid as Taxes	Per cent. of Net Earnings paid as Rent	Terminal Line Connections
1906	$100,000.00	No	Proprietary	Manchester Lite. Co.	7	1 Loco., 1 Pass. Car	Dep	8[illegible]	Yes	Ill. Cent.
										Penn.
										Nor. Ala. Ry.
1900	35,000.00	No	Same as Prop. Co.	Angelina County Lite. Co.	20	1 Loco., 1 Pass., 3 Box Cars	No		Yes	Gulf, Colo. & Santa Fe
1905	Not Shown	No	Same as Prop. Co.	Kimball Lite. & Mfg. Co.	7	Not Shown	No		No	H. E. & W. T.
1907	112,000.00	No	Proprietary	Baker Lite. Co.	7	1 Loco., 30 Log Cars	No		No	St. L. I. M. & S.
1904		No	Same as Prop. Co.	Summit Lite. Co.	5	2 Locos., 1 Pass., 18 Flat, 22 Log Cars	No	8[illegible]	Yes	Penn.
1904	28,000.00	No	Same as Prop. Co.	Cotton Belt Lite. Co.	14	2 Locos., 1 Box, 30 Log Cars	No	6[illegible]	No	St. L. I. M. & S.
1899			Proprietary	Penn. Lite. Co.	9	2 Locos., 22 Log Cars	No	6[illegible]	No	Cotton Belt
1905			Same as Prop. Co.	Bonanza Lumber Co.	20	3 Locos., 4 Flat, 44 Log Cars	No	8[illegible]	No	St. L. I. M. & S.
				Ouachita Lite. Co.						C. R. I. & P.
1904	50,000.00	No	Same as Prop. Co.	Southern Lite. Co.	7	1 Loco., 25 Log Cars	No	10[illegible]	No	K. C. S.
1905	140,000.00	100,000.00	Same as Prop. Co.	Three States Lite. Co.	45½	4 Locos., 10 Flat Cars	No	3[illegible]	No	Penn.
										Miss. River Bdg.
1908				Chicago Mill & Lbr. Co.	22	6 Locos., 86 Flat, 2 Oil, 1 Box, 2 Coal	No	9[illegible]	Yes	Penn.
										Cotton Belt
1904	67,000.00		Proprietary	Frost-Johnson Lbr. Co.	20				No	C. & E. I. & T.
1905	6,000.00		Same as Prop. Co.	Quelbank Lbr. & Mfg. Co.	3	1 Loco., 4 Pr.		100	No	Cotton Belt
1905	163,500.00		Proprietary	Brooklyn Cooperage Co.		2 Locos., 2 Pass., 3 Oil, 900 Pr.	$1.20 per Car		Yes	St. L. I. M. & S.
										Penn.
1907	100,000.00		Same as Prop. Co.	Cable River Lbr. Co.	11	1 Loco., 18 Cars	No	6[illegible]	No	St. L. I. M. & S.
1906	100,000.00	No	Same as Prop. Co.	Sure-Whitman Lbr. Co.	7	2 Locos., 1 Pass., 2 Box Cars	$90 per Car	4[illegible]	Yes	Tex. & N. O.
1906	2,600,000.00		Proprietary	Ft. South Lbr. Co.	12	3 Locos., 1 Pass., 3 Box, 10 Flat Cars	Dep		Yes	C. R. I. & P.
1905	150,000.00		Same as Prop. Co.	Cottonden Lbr. Co.	15	2 Locos., 3 Box, 1 Flat Cars	Dep	7[illegible]	Yes	C. R. I. & P.
							$200			St. L. I. M. & S.
1903	400,000.00		International Lbr. Co.	Wisconsin Lbr. Co.	21	3 Locos., 1 Pass., 1 Oil, 1 Oil, 25 Flat Cars	Dep	6[illegible]	Yes	Penn.
1900	600,000.00		Same as Prop. Co.	Davis Lbr. & Coal Co.	27	3 Locos., 3 Box, 74 Flat, 20 other Cars	$1.20 per Car		Yes	Cotton Belt
							$2.20 per Car			K. C. S.
1906			Same as Prop. Co.	Doughan Lbr. Co.	9	2 Locos., 2 Flat, 2 Oil				St. L. I. M. & S.
1905	75,000.00		Same as Prop. Co.	Pyne-Hadley Lbr. Co.	9	2 Locos., 60 Log Cars	Dep			C. R. I. & P.
1904			Proprietary	Edgar Lbr. Co.	10	1 Loco., 1 Pass., 4 Box, 2 Flat Cars	No	8[illegible]	No	La. & Ark.
1903			Proprietary	Enterprise Lbr. Co.	12	4 Locos., 72 Cars	No	6[illegible]	Yes	C. R. I. & P. and St. L. I. M. & S.
1906	10,000.00	125,000.00	Proprietary	Fernwood Lbr. Co.	22	2 Locos., 2 Pass., 30 Flr. Cars	$20 per Car	6[illegible]	No	St. L. I. M. & S.
							$2			Ill. Cent.
	42,000.00		Proprietary	Fordyce Lbr. Co.	58½	3 Locos., 4 Box, 67 Log Cars	No	8[illegible]	Yes	T. & N. O. & K. C.
1904	200,000.00	382,300.00	Same as Prop. Co.	Shubuta River Lbr. Co.					No	C. R. I. & P.
				King-Snyder Lbr. Co.		2 Locos.				Cotton Belt
				Longville Lbr. Co.	60½	4 Flr. Cars	No	9[illegible]	Yes	K. C. & S. Ry.
				Calcasieu Long Leaf Lbr. Co.		200 Log Cars, 6 Oil				K. C. S. Ry.
										K. C. S. Ry.
										T. & N. O. & K. Ry. (Proposed)
										Louisiana West Ry. (Proposed)
										K. C. S. Ry.
										St. L. I. M. & S. Ry.
1881	77,300.00		Proprietary	Frost-Johnson Lbr. Co.	16	1 Loco., 1 Pass., 1 Box Cars	No	9[illegible]	Yes	K. C. S. Ry.
										Texas & Pacific Ry.
1906	100,000.00	200,000.00	Proprietary	Gulf Lbr. Co.	40	7 Locos., 2 Pass., 65 Log, 10 Misc. Cars	Fr	4[illegible]	Yes	G. C. & N. Ry.
				Chicago Lbr. & Coal Co.						G. C. & S. F. Ry.
1905	101,000.00		Same as Prop. Co.	Crandall & Spencer Lbr. Co.	22	2 Locos., 1 Crane, 4 Flr., 3 Box Cars	$200 Per Car		Yes	St. L. I. M. & S. Ry.
							$2 per M			C. R. I. & P. So. Pac. and [illegible]

Division Allowed	Proportion Proprietary Tonnage to Total	Passenger Service	Trunk Line Connections	Junction Points	Distance Proprietary Mill to Junction Points	Total Tonnage	Gross Revenue	Net Revenue	Files, Reports Tariffs
1½c	85%	Yes	Ill. Cent.	Jasper.....Ala.	7 Miles	.....	13,294.75	.....	Yes
			Frisco	Jasper.....Ala.	7 Miles				
			Nor. Ala. Ry.	Jasper.....Ala.	7 Miles				
No	.....	Yes	Cotton Belt	Keltys.....Tex.	300 Feet	.....	.....	.....	.....
			H. E. & W. T.	Prosser.....Tex.	3 Miles				
No	.....	No	St. L. I. M. & S.	Kimball.....Ark.	7 Miles	.....	.....	.....	Yes
No	.....	No	Frisco	Turrell.....Ark.	Junction Point	.....	.....	.....	.....
2c	96%	Yes	St. L. I M. & S.	Farmersville.....La.	28 Miles	73,171	.....	.....	No
			C. R. I. & P.	Randolph.....La.	150 Yards				
No	95%	No	Cotton Belt	Best.....Ark.	Junction Point	58,000	.....	.....	Yes
No	95%	No	St. L. I. M. & S.	Beirne.....Ark.	½ Mile.	.....	.....	.....	Yes
No	84%	No	C. R. I. & P.	Bernice & Dubach...La.	Junction Point	86,611	.....	.....	Yes
No	100%	No	K. C. S.	Myrtistown.....La.	Junction Point	.....	.....	.....	Yes
No	50%	No	Frisco	Burdette Jct.....Ark.	1½ Miles	14,944	6,267.12	.....	.....
			Miss. River Ldg.	Wolverton Ldg....Ark.	5 Miles				
			Frisco	Leachville.....Mo.	.....				
No	96%	Yes	Cotton Belt	Arbyrd.....Mo.	.....	163,357	.....	.....	.....
			J. L. C. & E.	Littleton.....Ark.	.....				
.....	.....	No	Cotton Belt	Alden Bridge.....La.	Junction Point	78,592	7,140.00	.....	.....
.....	100%	No	St. L. I. M. & S.		3 Miles	8,000	.....	.....	Yes
$1.50 per Car	.....	Yes	St. L. I. M. & S.	Lowell Jct.....Mo.	Less than 1 Mile	184,688	.....	.....	Yes
			Frisco	Poplar Bluff.....Mo.	Less than 1 Mile				
No	95%	No	St. L. I. M. & S.	Rosboro.....Ark.	¼ Mile	150,000	19,688.62	.....	.....
2.00 per Car	65%	Yes	Tex. & N. O.	Cairo.....Tex.	½ Mile	1,348 Cars	25,062.71	.....	.....
1½c	.....	Yes	C. R. I & P.	Ola.....Ark.	7 Miles	75,468	.....	.....	Yes
2c R. I.	75%	Yes	C. R. I. & P.	Heth.....Ark.	13 Miles	78,805	.....	.....	.....
3.00 I.M.&S.			St. L. I. M. & S.	Earle.....Ark.	2½ Miles				Yes
1½c	95%	Yes	Frisco	Blazer&DeeringJct..Mo.	7 Miles	.....	.....	.....	.....
$1.50 per Car	.....	Yes	Cotton Belt	Hornersville.....Mo.	14 Miles				
2.50 per Car	.....	.....	K. C. S.	De Queen.....Ark.	½ Mile	49,217	46,603.76	.....	Yes
1½c			St. L. I. M. & S.	Kensett.....Ark.	1½ Miles	.....	.....	.....	Yes
No	80%	.....	C. R. I. & P.	Searcy.....Ark.	6 Miles				
2c	90%	Yes	La. & Ark.	Cotton Valley.....La.	¼ Mile	35,000	53,375.42	.....	.....
No	.....	No	C. R. I. & P. and St. L. I. M. & S.	Eldorado.....Ark.	10 Miles	40,487	37,608.28	.....	.....
			St. L. I. M. & S.	Alexander.....La.	Junction Point	.....	.....	.....	Yes
2.50 per Car	63%	Yes	Ill. Cent.	Fernwood.....La.	¼Mile	79,041	66,000.00	.....	No
2c			N. O. G. N.	Tylertown.....La.	32 Miles				Yes
No	85%	No	C. R. I. & P.	Fordyce.....Ark.	1 Mile	29,000	.....	.....	.....
			Cotton Belt						
			G. C. & S. F. Ry.	De Ridder.....La.	Minimum Haul	251,941	220,985.54	.....	Yes
			K. C. S. Ry.	De Ridder.....La.	½ Mile				
No	98%	Yes	K. C. S. Ry.	Bon Ami.....La.	Maximum Haul				
			N. O. T. & M. Ry. (Frisco Line)	Fulton.....La.	44 Miles				
			Louisiana West. Ry. (So. Pac.)	Lake Charles.....La.					
			K. C. S. Ry.	Lake Charles.....La.					
			St. L. I. M. & S. Ry.	Lake Charles.....La.					
No	91.4%	Yes	K. C. S. Ry.	Mansfield Jct.....	¾ & 2½ Miles	45,135	26,826.95	.....	Yes
			Texas & Pacific Ry.						
1c	90%	Yes	L. C. & N. Ry.	Nitram.....La.	6⁴/₁₀ Miles	380,164	116,359.74	40,292.31	Yes
			G. C. & S. F. Ry.	Nitram.....La.	6⁴/₁₀ Miles				
2.00 Per Car	.....	Yes	St. L. I. M. & S. Ry.	Longleaf.....La.	¼ Miles	39,183	30,789.96	.....	Yes
2c per 100			C. R. I. & P., So. Pac. and Tex. Pac.	Le Compte.....La.	12 Miles				

Name	23 I C C Rep. Page	Status	When Incorporated	Capital Stock	Bonded Indebtedness	Stock Ownership	Name Proprietary Mill	Mileage	Equipm
Woodworth & La. Central Ry	327	Plant Facility	1900	$ 25,000.00		Same as Prop. Co.	Rapides Lbr. Co	24	6 Loco,, 2 Frt., 99 L
Salem, Winona & So. Ry	636	Common Carrier	1908	150,000.00	No	Same as Prop. Co.	Missouri Lbr. & Mining Co	19	2 Loco., 2 Coaches,
Victoria, Fisher & Western	602	Plant Facility	1902	300,000.00	No	Same as Prop. Co.	Louisiana Long Leaf Lbr. Co	31	5 Loco., 8 Frt., 105
Louisiana Central R. R.	598	Plant Facility	1904	250,000.00	No	Same as Prop. Co.	Pickering Lbr. Co	42	10 Loco., 1 Pass., 4
North La. & Gulf R. R.	599	Common Carrier	1906			Same as Prop. Co.	Huie-Hodge Lbr. Co	10	5 Loco., 1 Pass., 6 Bo
Mangham & North Eastern	331	Plant Facility	1905	50,000.00		Same as Prop. Co.	Stewart & Greer Lbr. Co	6	2 Loco., 1 Box, 23 L
New Orleans, N. & Natchez	642	Common Carrier	1902	155,000.00		Same as Prop. Co.	Natalbany Lbr. Co	25	10 Loco., 2 Pass., 1 C
Ouachita & North Western R. R	603	Plant Facility	1905			Same as Prop. Co.	Louisiana Central Lbr. Co	35	Flat, 2 Motor Cars. 7 Loco., 150 Cars.
Paragould & Memphis Ry	634	Common Carrier	1902	220,000.00		Same as Prop. Co.	Various 5 Mills	27	2 Loco., 1 Pass., 1 C
Peach River & Gulf Ry	332	Plant Facility	1904	100,000.00		Same as Prop. Co.	Miller-Vidor Lbr. Co	10	3 Loco., 1 Coach, 30
Prescott & North Western Ry	569	Common Carrier		30,000.00		Same as Prop. Co.	Ozan Lbr. Co	7	6 Loco., 101 Log., 1
Red River & Rocky Mountain	326	Plant Facility	1904	64,000.00		Same as Prop. Co.	Antrim Lbr. Co	12	3 Loco., 30 Log. Cars
Saline River Ry	553	Common Carrier	1897	125,000.00		Same as Prop. Co.	Saline River Lbr. Co	19	3 Loco., 1 Pass., 3 M
Saginaw & Ouachita River	552	Plant Facility	1905	25,000.00		Same as Prop. Co.	Saginaw Lbr. Co	52	1 Loco., 1 Cab. Cars
Shreveport, H. & Gulf R. R.	621	Common Carrier	1906	50,000.00		Same as Prop. Co.	Carter-Kelly Lbr. Co	9	4 Loco., 1 Pass., 1 Co
Tioga & South Eastern Ry	596	Plant Facility	1905	50,000.00		Same as Prop. Co.	Lee Lbr. Co	15	5 Loco., 52 Log. Cars
Fourche River Valley & I. T. Ry	564	Common Carrier	1905	220,000.00	100,000.00	Same as Prop. Co.	Fourche River Lbr. Co	15	1 Loco., 1 Pass., 61 L
Groveton, L. & Northern Ry	622	Common Carrier	1908	50,000.00	437,000.00	Proprietary	Trinity County Lbr. Co	33	1 Loco., 2 Pass., 8 B
Memphis, D. & Gulf	573	Common Carrier	1906						
Miss. Valley Ry	633	Common Carrier	1904			Proprietary	Tyler Land & Timber Co	15	2 Loco., 1 Pass., 40 L
Moscow, Camden & S. A. Ry	623	Common Carrier	1898	50,000.00		Proprietary	W. T. Carter & Bros.	7	1 Loco., 1 Pass., 16 L
Nacogdoches & South Eastern R. R.	617	Common Carrier	1904	245,000.00		Same as Prop. Co.	Frost-Johnson Lbr. Co	17	2 Loco., 1 Pass., 8 P
Sibley Lake, B. & So. Ry	594	Common Carrier	1900	100,000.00	No	Same as Prop. Co.	Globe Lbr. Co	31	6 Loco., 2 Pass., 7 P
Texas South Eastern Ry	618	Common Carrier	1900	250,000.00		Same as Prop. Co.	Southern Pine Lbr. Co	28	4 Loco., 1 Cab., 1 P
Thorton & Alexandria Ry	561	Common Carrier	1904			Same as Prop. Co.	Stout Lbr. Co	18	4 Loco., 1 Pass., 10 P
Timpson & Henderson	620	Common Carrier	1900	250,000.00		Same as Prop. Co.	Ragley Lbr. Co	34	
Tremont & Gulf Ry	613	Common Carrier		2,000,000.00		Same as Prop. Co.	Tremont Lbr. Co	99	4 Loco., 3 Pass., 200

Equipment	Division Allowed	Proportion Proprietary Tonnage to Total	Passenger Service	Trunk Line Connections	Junction Points	Distance Proprietary Mill to Junction Point	Total Tonnage	Gross Revenue	Net Revenue	Files, Reports Tariffs
Loco., 2 Frt., 99 Log. Cars	No	95%	No	St. L. I. M. & S. Ry. C. R. I. & P. Ry. Texas & Pacific So. Pac. Ry.	Woodworth La. Lamorie La. Lamorie La. Lamorie La.	25 Feet 6 Miles 6 Miles 6 Miles	42,807			Yes
Loco., 2 Coaches, 53 Frt. Cars	1½	90%	Yes	Frisco	Winona Mo.	16 Miles	64,562			Yes
Loco., 8 Frt., 105 Log. Cars		99%	Yes	K. C. S. Ry. Texas & Pac. Ry.	Fisher La. Victoria La.	1 Mile between ½ Mi. 25 Mile	316,676			Yes
0 Loco., 1 Pass., 4 Frt., 1 Cab.	1.50 Switch'g	99%	No	G. C. & S. F. Ry. Kan. City So. Ry. Lake Chas. & Northern	Cravens La. Pickering La. Barham La. Cravens La.	1¼ miles ¼ mile ¼ mile 1¼ miles	216,364			Yes
Loco., 1 Pass., 6 Box, 7 Flat, 70 Log.	2c per 100 Hardwood		Yes	C. R. I. & P. Ry La. and North West	Hodge La. Bienville La.	Junction Point	40,228			Yes
Loco., 1 Box, 23 Log. Cars	No	99%		Iron Mountain	Mangham La.					No
0 Loco., 2 Pass., 1 Cab., 6 Box, 130 Flat, 2 Motor Cars	1.50 Per Car Switching	80%	Yes	Ill. Central Ry	Natalbany La.	1500 feet Junction Point	236,657	163,297.93		Yes
Loco., 150 Cars	Switching	99%	No	Iron Mountain Ry. Iron Mountain Ry. Cotton Belt Route	Standard La. Clarks La. Cardwell Mo.	½ mile Junction Point 1 mile	412,205			Yes
Loco., 1 Pass., 1 Cab., 53 Frt. Cars	3.00 & 2.00	25%		Frisco Route Jonesboro City & Eastern	Manilla Ark. Manilla Ark.	4 miles 4 miles	80,000		19,727.94	
Loco., 1 Coach, 30 Frt. Cars	No	100%	No	G. C. & S. F. Ry. H. E. & W. T. Ry.	Timber Texas Midline Texas	Junction Point 10 miles				Yes
Loco., 101 Log., 1 Pass. Cars	1.50 Switch'g		Yes	Iron Mountain Ry.	Prescott Ark.	1200 feet				Yes
Loco., 30 Log. Cars	No	100%	No	Cotton Belt Route	Antrim La.	¾ miles				
Loco., 1 Pass., 3 Misc., 35 Log. Cars	2c per 100	98%	Yes	Cotton Belt Route Warren & O. V. Ry.	Draughon Ark. Glynn Ark.	Junction Point 19 miles		21,060.19		
Loco., 1 Cab. Cars	Switching	99%	Yes	Iron Mountain Ry.	Saginaw Ark.	2½ miles		7,915.47		
Loco., 1 Pass., 1 Comb., 32 Frt. Cars	1½c per 100		Yes	Texas and New Orleans Cotton Belt Route	Manning Texas Prestridge Texas	9 miles		21,955.02		Yes
Loco., 52 Log. Cars	No	99%		Iron Mountain Ry. L. R. & N. Ry	Tioga La. Enis La.	Junction Point 9 miles	44,782			
Loco., 1 Pass., 61 Log., 1 Tank Cars	1.50 per Car	95%	Yes	Rock Island	Biglow Ark.	1 mile	146,184			
Loco., 2 Pass., 8 Box, 21 Flat Cars	2.00 per car 2c per 100	75%	Yes	Mo. Kan. & Texas Various Lines	Groveton Texas Lufkin Texas	1 mile 33 miles	60,175	43,075.00		
Loco., 1 Pass., 40 Log. Cars	1½c per 100	77%	Yes	St. Louis & San Fran. R. R.	Steele	9 miles	57,245			No
Loco., 1 Pass., 16 Frt. Cars	1½c per 100	95%	Yes	H. E. & W. T. Ry.	Moscow Texas	7 miles				
2 Loco., 1 Pass., 8 Frt., 54 Log. Cars	1.50 per Car	88%	Yes	Texas & New Orleans H. E. & W. T.	Hayward Texas Nacogdoches Texas	¼ miles 1¼ miles				
5 Loco., 2 Pass., 7 Frt., 106 Log. Cars	1c per 100	70%	Yes	V. S. & P. Ry. L. & A. Ry	Sibley La. Sibley La.	5 miles	53,661	49,758.24		Yes
Loco., 1 Cab., 1 Pass., 94 Frt. Cars	2.00 per Car 2c per 100		Yes	H. E. & W. T. Eastern Texas R. R.	Lufkin Texas Neff Texas	3000 feet 18 miles	60,658	98,543.91		Yes
Loco., 1 Pass., 10 Frt., 50 Log. Cars	1c per 100	95%	Yes	C. R. I. & P. Ry Cotton Belt Route	Tinsman Ark. Thornton Ark.	Junction Point	63,372	42,995.92		
	2c per 100	60%	Yes	I. & G. N. Ry H. E. & W. T. Ry.	Henderson Texas Timpson Texas	12 miles 10 miles				Yes
Loco., 3 Pass., 200 Frt. Cars	1.50 per Car 1.50 per Car 1½c per 100 2c per 100	83%		Iron Mountain. C. R. I. & P. Ry. V. S. & P.	Rochelle La. Jonesboro La. Tremont La.		191,374			Yes

TAP-LINE CASES.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

UNITED STATES, Appellant, vs. LOUISIANA & PACIFIC RAILWAY COMPANY et al., Appellees.	No. 829.
UNITED STATES, Appellant, vs. WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, et al., Appellees.	No. 831.
UNITED STATES, Appellant, vs. MANSFIELD RAILWAY & TRANSPORTATION COMPANY, et al., Appellees.	No. 833.
UNITED STATES, Appellant, vs. VICTORIA, FISHER & WESTERN RAILROAD COMPANY, et al., Appellees.	No. 835.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Appellant, vs. LOUISIANA & PACIFIC RAILWAY COMPANY, et al., Appellees.	No. 830.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Appellant, vs. WOODWORTH & LOUISIANA CENTRAL RAILWAY CO., et al., Appellees.	No. 832.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Appellant, vs. MANSFIELD RAILWAY & TRANSPORTATION COMPANY, et al., Appellees.	No. 834.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Appellant, vs. VICTORIA, FISHER & WESTERN RAILROAD COMPANY, et al., Appellees.	No. 836.

ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF OF FACTS FOR APPELLEES.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
FOR APPELLEES.

BARNARD & MILLER PRINT, CHICAGO.

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ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

BRIEF OF FACTS FOR APPELLEES.

FACTS AS TO LOUISIANA & PACIFIC RAILWAY COMPANY.

The conclusions and findings of the Commission with reference to the Louisiana & Pacific Railway will be found on pages 291-294 of the opinion of the Interstate Commerce Commission of date April 22, 1912.

The testimony applicable to the Louisiana & Pacific Railway in the original hearing herein had at New Orleans December 8, 1909, and following, will be found in the testimony of David McLean, Vol. I, printed record, page 636, R. S. Davis, Vol. I, page 650, and page 685, David McLean, Vol. I, page 736, P. C. Rackey, Vol. I, page 725, and C. R. Sweet, Vol. I, page 748.

The Interstate Commerce Commission found that the Louisiana & Pacific Railway Company was not entitled to any compensation whatever for any service performed by it. It was not only forbidden to receive any portion of the through rate by way of division but was allowed no compensation for switching or other service. The conclusion of the Commission is expressed on page 294 of the opinion where it is said "We regard the whole arrangement as indefensible and unlawful and see no grounds upon which any allowance may lawfully be made." The formal order following the opinion forbids the allowance of any compensation whatsoever to the Louisiana & Pacific for any service by it performed on the lumber, logs or other forest products of either of the lumber companies parties complainant herein.

We desire to refer to some of the conclusions drawn by the Interstate Commerce Commission in

the "tap-line" case in order to make a comparison of the findings as made by the Commission with the actual facts in reference to the railroad in question.

The Interstate Commerce Commission in its report in the so-called "tap-line case" describes what it conceives to be an industrial railroad (25 I. C. C. Rep. 277).

It gives an estimate of the money which has been paid in divisions to "tap-line" roads (278). It recites that the Commission has investigated a large number of tap-lines, and makes a certain sort of classification of these lines. Goes into the history and growth and development of the lumber manufacturing business and of the transportation facilities used thereon (279).

It draws the conclusion that the larger lumber companies through their tap-line railroads receive an allowance while the smaller concerns do not. It points out that some of what it calls "tap-lines" do not receive an allowance because they are not incorporated, although they do as much business as others which are incorporated. This refers, doubtless, to the Kirby interests (280).

Under the heading of "Discriminations resulting from allowances" it picks out isolated cases of very high allowances for very small services. It does not give the facts but even refers to the record showing upon what evidence it bases these statements. It points out some abuses in the matter of allowances from the trunk lines to tap-lines. It cites another proceeding pending before it (281), not a part of the investigation and Suspension Docket No. 11, and draws conclusions from this other case.

It devotes a page or two under the heading "Tap lines generally described," and instead of generally describing tap lines, it picks out tap lines which are mere logging railroads and uses these as illustrations of tap lines generally.

It recites numerous instances of abuse of the incorporation of a railroad and numerous facts relating to certain tap lines, but when it comes to state the facts in reference to the Louisiana & Pacific Railway, it does not make any distinction between that railroad and the class of tap lines which are so severely criticised, when the truth is that the very converse of the facts which the Commission cites in condemnation of tap lines is true in almost every detail as applied to the Louisiana & Pacific. For instance, the report indicates (291) that by reason of the "tap line" the owners of the "tap line" can have a monopoly of the timber, and can keep other timber owners from reaching their mills and markets with the timber. The record before the Commission (I. C. C. Rec. Vol. I, page 646) in the case of the Louisiana & Pacific, shows that outside interests did have the benefit of the Louisiana & Pacific Railroad until that opinion was rendered and that by reason of the rendition of that opinion millions of feet of timber are unable to have the transportation facilities which they formerly had.

The Commission says:

> "If there is a holding out as a common carrier for hire and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist."

And (receding from the former doctrine laid down):

> "The common ownership of an industry and of a railroad that is held out as a common carrier and has some actual traffic for the public for hire is not in itself sufficient to divest the railroad of its status as a common carrier."

And then the Commission lay down the doctrine that if a railroad is a mere plant facility the fact that some outside traffic is carried over the same rails does not change the character of the railroad.

After making these general observations, the Commission says that the question is not susceptible of solution on general grounds and that each case must stand on its own facts. The Commission (294) proceeds to fix arbitrary distances between a thousand feet and three miles within which limits they say allowances may or may not be had. And then, when they come to decide the individual cases they absolutely ignore even this arbitrary distinction they have made, and we can take railroads side by side on the map, in which the Commission permits an allowance to one railroad and deny it to another, without any logical or apparent reason for the distinction they so make.

In its specific finding of facts in reference to the Louisiana & Pacific Railway the Commission makes many mis-statements—statements which are not borne out by the evidence before the Commission, and statements which are directly refuted by the evidence before this court.

The Commission says that:

> The road is controlled by what is referred to

> on the records as the R. A. Long interests; 70 per cent. of its capital stock being held by R. A. Long, and the rest, apparently, by his agents and associates.

This statement as to R. A. Long owning 70 per cent. or more of the capital stock, is substantially correct, but the statement that the rest is apparently held by his agents or associates is incorrect and misleading.

The record shows (Vol. V, p. 102) just how the stock is owned and held. The other stockholders are not agents for Mr. Long, although they are his associates in business. They own the stock absolutely in their own right (I. C. C. Rec., Vol. 1, page 749).

The Commission further states:

> The record indicates that Long owns the same proportion of the capital stock of the Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, and the Calcasieu Long Leaf Lumber Company, all of which have mills on the Louisiana & Pacific.

A list of the stockholders of these lumber companies is given on pages 102-105, Vol. V of Record, and shows a large number of stockholders and a large amount of stock held by parties having no interest in the Louisiana & Pacific Railway. It shows that there is $1,619,300 of stock held by stockholders in the lumber companies who have absolutely no interest in the railway company. Attention is directed to the statement of M. B. Nelson (Vol. 4, p. 2872 Printed Record) that he owns stock in Long Bell Company of book value of $270,000, and owns no interest in the Louisiana & Pacific or any other railway.

The Commission says:

> All of the tracks of the Louisiana & Pacific, as hereinafter described, were originally constructed as private logging roads by the individual lumber companies.

This statement, while substantially correct as to the branch lines, is not correct as to the line between De Ridder and Lake Charles, known as the joint track. This track was originally constructed by the Louisiana & Pacific Railway Company as any other railroad is constructed (I. C. C. Rec., Vol. 1, pages 654-5-6). To make the statement quoted with the implication therein contained that the Louisiana & Pacific railroad was originally constructed as a mere logging road, is exceedingly unfair in the light of the history of this road, as set out on pages 68 to 82 inclusive of the petition of the Louisiana & Pacific Railway Company herein, and the facts disclosed by the record before the Commission and the record before this court.

The Commission says (592):

> The Louisiana & Pacific pays the Lake Charles Northern 25 cents per train-mile for trains that it operates over their tracks and also bears a *certain portion* of the station expenses.

This "certain portion" is 60 per cent. plus the entire station expenses of the Louisiana & Pacific separate station at Lake Charles.

In view of the next statement that:

> In view of the price received by the R. A. Long interests from the Southern Pacific, the trackage arrangement is obviously a most advantageous one.

It would seem that the Commission might have

given the exact figures to support or refute its conclusion that the trackage arrangement is obviously a most advantageous one; and to have further stated whether it was advantageous to the Louisiana & Pacific or to the Lake Charles & Northern Railroad Company.

The Interstate Commerce Commission has evidently wholly misunderstood the nature of the so-called trackage arrangement between the Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company. The so-called trackage right which is evidently the basis of the treatment of the Louisiana & Pacific by the Commission, does not stand upon the same plane as an independent trackage right made by an old company with one seeking to enter upon its rails. The difference is this: The Louisiana & Pacific had practically constructed a railroad. It owned a railway from De Ridder to Lake Charles, a distance of 43 miles. A considerable portion of this had already been constructed and laid with steel. The right of way for the entire distance had been procured. The roadbed for the larger portion of the way had already been constructed and steel purchased therefor. The Southern Pacific interests, desiring to build northward into practically the same territory, find this railway already upon the ground, and not wishing to expend money in the construction of an additional railway begin negotiations for the purchase of the properties of the Louisiana & Pacific. The latter road sells that portion of its line referred to, that is to say, from De Ridder to Lake Charles, but reserves title to the right of trackage and operation

over it from De Ridder to Lake Charles. The documents introduced in evidence conclusively show that the reservation of the trackage right was contemporaneous with all of the other documents and consisted of one single indivisible transaction.

The purpose of the construction of the Louisiana & Pacific was to secure the facilities of several different trunk line connections through which the varied lumber interests on its line could secure sufficient car service and obtain entrance to varied traffic territories. The testimony indisputably shows that no one or two lines could furnish a sufficient number of cars nor reach sufficient trade territory to permit profitable operation of the lumber industries. By reserving from the properties conveyed to the Lake Charles & Northern Railway the right to operate over its tracks, the Louisiana & Pacific was relieved of a large capital investment and reserved the advantages proposed in its original construction. The agreement of October 31, 1906 (see page 198, transcript of record in No. 829), clearly discloses the nature of this contract. The sale by the Louisiana & Pacific to the Lake Charles & Northern was clearly made upon condition that the former should have the joint use of the tracks conveyed to the latter. This is indicated by the following clause of the contract:

> The said second party desires to purchase said first party's said line of road from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles to the junction of said narrow gauge road in said Section 32; and said first party is willing to sell its said line and said right of way on condition that it can have the joint use of said line of road from

> De Ridder to Lake Charles, which condition is not objectionable to said second party.

Again, clause 6 of the agreement of sale is as follows:

> Immediately upon the conveyance by said first party to said second party of the property herein contracted to be sold, said second party shall execute and deliver to said first party a contract giving said first party joint trackage rights over the entire line of railroad above mentioned except that part thereof lying between said point on the Calcasieu River in Section 10 and said junction point in said Section 32; said trackage agreement shall vest in said first party trackage rights over the said line of railroad from De Ridder to Lake Charles with all the appurtenances thereto, for a period of 20 years from date of this contract for such trains as said first party may desire to operate over said road, provided that the number of trains operated by said first party over said line of railroad shall not materially interfere with the operations of trains by said second party.

This contract was followed by conveyance of the title to that portion of the Louisiana & Pacific Railroad mentioned in the agreement with the reservation of the trackage right, and due execution of the trackage agreement stating the compensation and method of operation, etc. So that it is shown indisputably upon the record that while the Louisiana & Pacific Company sold that portion of its physical properties lying between De Ridder and Lake Charles, it reserved to itself an estate therein, to wit, the right to operate its trains thereover for the full period of 20 years from the date of the agreement. That there is nothing "indefensible" or "illegal" in

this arrangement is evident from the fact that the Lake Charles & Northern, wishing to enter the territory beyond De Ridder and finding the Jasper & Eastern, a Santa Fe property, already on the ground, obtained trackage rights over that line from De Ridder to Nitram. Such trackage agreements, as shown by the record herein, are common. The present agreement, however, stands on a different basis, because the Louisiana & Pacific owning originally the entire title, conveys it to the Lake Charles & Northern, reserving an estate to itself, that is, the easement of operation thereover for a period of 20 years.

The Commission says (23 Rep. 592):

> The Louisiana & Pacific is a peculiar property. There are five separate branches or tracks not directly connected with each other, but all joining at different points, the track conveyed to the Lake Charles & Northern.

These tracks are connected just the same as any branch lines of any railroad are connected with the main line. It is true that the main line between De Ridder and Lake Charles is a joint track; that is, both the Lake Charles & Northern and the Louisiana & Pacific operate over it just as the Lake Charles & Northern operates over the Santa Fe track immediately north and as hundreds of railroads operate and have trackage rights over other railroads. But the five branch lines mentioned by the Commission are physically connected; through trains run directly from the various termini of the branch lines to Lake Charles. They run in the opposite direction from Lake Charles and out over the various branch lines and logs are hauled, by companies in no way con-

nected with this suit, from Camp Curtis over the Camp Curtis branch line, and then on the main line up to the mill at Bannister, where they are manufactured into lumber, and the lumber goes out over the line between De Ridder and Lake Charles over five transcontinental trunk lines connecting with the Louisiana & Pacific at Lake Charles, Fulton and De Ridder.

The same thing is true in reference to the other branch lines. That is to say, in the transportation both of logs and lumber, there is no distinction between the branch lines and the main line between De Ridder and Lake Charles. The whole thing is operated as one system and freight is carried from the terminus of a branch line, then over the main line or joint track and out on to another branch line.

The Commission says (592):

> The five tracks may be described as follows: (1) A track connecting with the Lake Charles & Northern at De Ridder Junction, and extending eight miles to Bundicks, which is apparently a logging camp with a company store. The mill of the Hudson River Lumber Company, *in whose interest* this track is operated, is at De Ridder, being within a few hundred feet of the rails of the trunk lines.

This statement is absolutely misleading. It gives the impression that the De Ridder-Bundick branch is nothing but a logging road serving only the Hudson River Lumber Company, and that company, because "within a few hundred feet of the rails of the trunk lines," does not need the Louisiana & Pacific Railway for transportation services.

The record shows a large quantity of general

merchandise, such as flour, mill products, fruit and vegetables, packing house products, stone and sand, petroleum, sugar, naval stores, iron and steel rails, castings and machinery, brick and lime, household goods, other manufactures and miscellaneous commodities handled for independent shippers in no wise connected with either of the lumber companies referred to as proprietary interests. See Vol. V, pages 2-4.

The statement of merchandise received from various connections shown on pages 11 and 12 of the petition in this case shows that from July 1, 1911, to April 30, 1912, there was shipped to Bundick coming from:

Kansas City Southern Railway	140 tons
From the Frisco	38 tons
From the Iron Mountain	18 tons
From the Southern Pacific	34 tons

The statement that the mill of the Hudson River Lumber Company is within a few hundred feet of the rails of the trunk lines and the inference drawn from this statement and other statements of the Commission that the Louisiana & Pacific is for that reason a plant facility, will be considered later.

The Commission says (page 592):

> (2) At Lilly Junction, a second section of the track of the tap-line connects with the Lake Charles & Northern, extending therefrom about 7½ miles to a point in the woods known as Walla, where the King-Ryder Lumber Company has a commissary, and there is a small independent yellow pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bonami, on the track jointly operated by the tap-line and the Lake

Charles & Northern. This is a town of 2,000 people, but apparently has no other industries.

A comparison of the statement just above referred to of merchandise going to Walla shows:

From the Kansas City Southern 672 tons (quite a little merchandise which the "trunk line" could not deliver to Walla, except for the Walla branch of the Louisiana & Pacific).

From the Santa Fe	1 ton
From the Frisco	38 tons
From the Iron Mountain	70 tons
From the Southern Pacific	41 tons

Not a ton of this merchandise could be delivered by rail to Walla except for the branch line alleged by the Commission to serve only the King Ryder Lumber Company.

The Commission says (page 592):

> Two miles of incorporated track of the Louisiana & Pacific connect with the Lake Charles & Northern track at Longville, a town of 2,000 population, where the Longville Lumber Company has its mill, and a store. There are also several independent stores.

The record before this court shows that the Longville branch is now 54 miles long. And the Brown Lumber Company shipped over it, and the "independent stores" have absolutely no other railroad facilities (see map).

The Commission says (page 592):

> (4) There are nine miles of track connecting with the Lake Charles & Northern at Fayette, and extending to Camp Curtis, a settlement of 200 people, where the Calcasieu Long Leaf Lumber Company has a company store, its mill being at Lake Charles.

This nine miles of track connects directly with the main line or "joint track" and affords a through haul from Camp Curtis to Lake Charles, a distance of 30.3 miles. So that instead of being an isolated logging road of nine miles, as the Commission's report would make it appear, it has 30 miles of road direct from Camp Curtis to Lake Charles, and, as heretofore pointed out, independent lumber companies did, up to the time of the Commission's report, ship logs over this Camp Curtis branch into Bannister, a point at which there are no "Long" interests.

The Commission says (Rec., 593):

> (5) A track one mile in length described on the record as connecting with the Lake Charles & Northern at Bridge Junction and running to Lake Charles station.

Why cut a railroad system up into fractional parts, some as small as one mile, and then treat the several parts as if they had no connection with one another?

The one mile in question is that fork of the railroad which is owned and used exclusively by the Louisiana & Pacific, and which runs into its station, as distinguished from that part of the road South of the Calcasieu River, which runs to the station of the Lake Charles & Northern.

The Commission says (Rec., 593):

> There are a number of other towns or settlements named on the record, which it is unnecessary to mention; and there is a second *small* independent mill, owned by the Brown Lumber Company, and located at Bannister, on the Lake Charles & Northern.

[illegible]

connections of the Louisiana & Pacific. It does not, and in the nature of things could not, all go out over the nearest trunk line to the mill. This is explained very clearly by witnesses, R. S. Davis and David McLean, Vol. I, p. 636, *et seq.*, Vol. V, p. 9. The tonnage during the latter half of 1912 was divided; 21.7% to Kansas City Southern, 32.7% to the Frisco, 37% to Southern Pacific and 8.6% to Iron Mountain.

The Commission says (Rec., 594):

> The annual report to the Commission for the year ending June 30, 1910, shows an operating revenue of $220,985.94, with operating expenses amounting to $145,433.69. There was an accumulated surplus on that date of $73,581.07.

This is erroneous in that from that sum should be taken interest, taxes, per diem charges, trackage rights, showing a surplus for the fiscal year ending June 30, 1910, of $16,000. Vol. I, p. 643.

The Commission says (Rec., 92):

> A logging train runs daily on each of the branches, and there is one mixed train, loaded chiefly with logs and lumber moving over the track between Lake Charles and De Ridder.

The fact is, as shown by the testimony taken before the Commission, volume 1, page 643, that there were two regular scheduled mixed trains per day and these trains were *not* loaded with logs, which would be a violation of the law to run logging cars in other trains. Why that charge should have been insinuated in the Commission's report is more inexplicable than all of the others because we have been unable to find a word in the record that could be distorted to indicate that these mixed passenger and freight trains were loaded with logs.

The especial attention of the Court is directed to the movement of the manufactured lumber over the Louisiana & Pacific. See Vol. V, p. 9, exhibit showing movement of cars loaded with lumber from various mills to several railway connections for years 1908-1909 and 1910. The testimony of the witnesses, Davis and Sweet, shows that no single line of railway could either furnish a sufficient number of cars to enable the lumber companies complainant herein to operate their mills, nor could any single line of railway afford them entrance to the different trade territories, and it was to obtain connection with a number of railways that the line of the Louisiana & Pacific was originally constructed and the reservation of the easement made.

Davis' testimony in this case shows that the Hudson River Lumber Company, the mill of which is at De Ridder, for the period from July 1st to December 31, 1912, produced 1,018 cars. Of this total product 378 cars were delivered to the Kansas City Southern at De Ridder, 284 were transported 25.6 miles to Fullerton, where they were delivered to the Frisco, 259 a distance of 43.3 miles to Lake Charles, where they were delivered to the Southern Pacific line, and 97 were there delivered to the Iron Mountain & Southern. For the same period the King-Ryder Company at Bonami produced 1,657 cars, of which 460 were delivered to the Kansas City Southern, 526 were transported a distance of 21.8 miles to Fullerton, where delivery was made to the Frisco, 579 were hauled 39.5 miles to Lake Charles and delivered to the Southern Pacific, while 92 were delivered at Lake Charles to the Iron Mountain &

Southern. The Longville Lumber Company at Longville produced 1,655 cars during this period, of which 211 were hauled 18.4 miles to De Ridder where they were delivered to the Kansas City Southern, 690 were hauled 7.2 miles to Fullerton, where they were delivered to the Frisco, 618 were hauled 24.9 miles to Lake Charles, where they were delivered to the Southern Pacific, and 136 were delivered at Lake Charles to the Iron Mountain & Southern.

The Calcasieu Long Leaf Lumber Company, located at Lake Charles, produced during that time 1,353 cars, of which 183 were delivered to the Kansas City Southern at Lake Charles, the haul being three-fourths of a mile. Three hundred and fifty-seven were delivered to the Frisco and hauled 17.7 miles to Fullerton, 649 were delivered to the Southern Pacific at Lake Charles, with a haul of three-fourths of a mile; and 164 to the Iron Mountain at Lake Charles, a haul of three-fourths of a mile. Davis' Exhibits, page 394, show figures of the same character for each mill during the period from July 1, 1909, to June 30, 1910, giving the movement of the product of each mill, there being a total production of the four mills of 9,678 cars, with an average haul of 18.82 miles per car. The exhibit, page 396, covering the period from January 1st to December 31, 1910, shows a production of the four mills of 11,254 cars, and as in each of the other two exhibits, shows the movement from each mill to each railway, with the average haul of 19.08 miles per car. These exhibits, in connection with the testimony of Mr. Davis and Mr. Sweet, show that there is often a movement from Lake Charles to De Ridder, a dis-

tance of 43.3 miles, and from De Ridder to Lake Charles, and from each mill to each railway, in accordance with the exigency of the need for cars and of the market to be reached.

It is also apparent from the undisputed testimony of the witnesses, Davis and Sweet, that no one connecting railway can or will furnish the cars and by reason of the fact that through routes and rates are not available, access to the various markets could not be obtained where the service of a single railroad only is available. For example, there are no through rates in between the Lake Charles & Northern and the Frisco. If it was desired to ship lumber from DeRidder, Bonami, Longville or Calcasieu via the Frisco and Fullerton, if the limits there located were tied down to the Lake Charles & Northern they would be compelled to pay the Lake Charles & Northern local rate to Fullerton plus the blanket rate via the Frisco to point of ultimate destination, and again, the Lake Charles & Northern would not furnish cars for transportation of lumber in times of shortage to points on the Frisco, it being the universal practice for every line so far as possible to conserve its car supply for its own points rather than those of rival companies.

These exhibits and this testimony show not only that the service rendered by the Louisiana & Pacific is a strictly transportation service, but demonstrate the business necessity for the construction of the Louisiana & Pacific and the reservation of the estate described in the trackage agreement above referred to.

The Louisiana & Pacific Railway Company is duly chartered and incorporated and existing as a railway

company under the laws of the State of Louisiana, with all the powers of a railway company, including the right to operate as a common carrier of freight and passengers. Constitution of the State of Louisiana, Articles 271, 272 and 273, Revised Statutes of Louisiana, 1479 (quoted in petition, page 2). It operates a main line of railway from DeRidder to Lake Charles, a distance of about 44 miles (Rec., 12), with four branch lines, all of which fully appear by reference to map of the Louisiana & Pacific Railroad attached to petition in this case. Its total miles of main and branch lines is 75 miles. It has nine miles of yards and side tracks (see map). It is engaged in state and interstate commerce. It connects with the Louisiana & Pacific Railway (Southern system) at Lake Charles. With the New Orleans and Texas (Frisco system) at Fulton. With the Kansas City Southern at Bonami, DeRidder and Lake Charles. With the Gulf, Colorado & Santa Fe at DeRidder, and with the St. Louis, Iron Mountain & Southern at Lake Charles. It complies with the rules and regulations of the State Railroad Commission and of the Interstate Commerce Commission and with the laws of the state and United States relating to common carriers.

It carries a full line of class and commodity rates between points on its own line in Louisiana and concurs in joint tariffs applying between points on its own road and points on connecting lines in Louisiana, and carries a full line of class and commodity rates from and to all interstate territory via all connecting lines, except the Gulf, Colorado & Santa Fe Railway Company.

It maintains an operating force consisting of a general superintendent, local auditor, car accountant, chief dispatcher, two telegraph operators, five agents who also are telegraph operators, fifteen clerks, five stenographers, eight train crews, and the necessary section gangs and track men, varying from time to time; none of which operating force is in any way connected with any of the lumber companies, petitioners herein, or of any other lumber company located on its line of road. (Rec., 98.)

In addition to the lumber traffic handled, it receives from and delivers to various connections merchandise in carload and less than carload quantities, and handles passengers on mixed trains between DeRidder and Lake Charles under tariffs filed with and approved by the Louisiana Railroad Commission and filed with the Interstate Commerce Commission.

There are on the lines of this road 20 cities, towns, villages or stations, from and to which it receives and delivers all kinds of freight. Two of these towns, Bonami and Longville, have a population of about 2,000 each; DeRidder has a population of 4,000; Lake Charles has a population of over 12,000. (Rec., Vol. 1, pp. 646-647.)

There are various corporations, individuals and industries located on its line of road and which it serves as a common carrier, none of which, nor the stockholders in which, have any interest in the Louisiana & Pacific Railway Company, or in any of the petitioners herein. Among other such industries the W. A. Brown Lumber Company have a saw mill located at Bannister, Louisiana, to which saw mill, prior to the 1st of May, 1912, they shipped logs over

both the branch and main line of the Louisiana & Pacific Railway." (Vol. 1, 646-647.)

It has invested in property over $623,000. At the time of the hearing before the Commission, $607,000. (I. C. C. Rec. Vol. 1, page 638.)

It has an equipment consisting of: 22 locomotives, 14 box cars, 15 flat cars, 6 cabooses, 1 work car, 1 derrick car, 1 office car, 270 logging cars, 1 tank car, 1 refrigerator, 10 outfit cars, 8 gondolas, 3 stock cars. (Vol. 1, p. 644.)

The country through which the railroad runs, after the timber is cut off, is an agricultural and stock raising country. The land is worth from $10 to $30 per acre. (Rec., 101-102.)

A larger portion of the tonnage of the Louisiana & Pacific Railway consists of logs and lumber, and the larger portion of this log and lumber tonnage comes from the lumber companies in which the majority are stockholders in the railroad and own a majority of the stock; but the railroad carries a diversified tonnage. Tonnage statements for the years 1908, 1909, 1910 and 1911 are shown on page 10 of the petition herein. These same tonnage statements, up to the time of the hearing before the Commission, were offered in evidence before the Commission.

A significant fact is, that while the Commission find (Rec., 593) that 98 per cent. of the entire tonnage at the time of the hearing before the Commission was supplied by the so-called "Long interests," yet from the period from July 1, 1911, to April 13, 1912, which was prior to the date of the handling down of the Commission's report, this per cent.

changed so that only 68 per cent. came from the so-called Long interests and 32 per cent. from parties having no interest in the Louisiana & Pacific Railway Company, or any of the lumber companies, petitioners herein. Tonnage statements set out on pages 11, 12, 13 and 14 of the petition show that this railroad received from connecting carriers a larger amount of merchandise destined to other than the petitioner lumber companies than it did of merchandise destined to the petitioner lumber companies, and that this merchandise came in considerable quantities and was consigned to every station on the line of the road; the total exact figures being 3,200 tons of merchandise to the lumber companies known as the "Long interests," and 3,208 tons to others.

A recapitulation of the freight handled during the year ending June 30, 1912, shows 258,635 tons of lumber handled for the so-called Long interests; 17,731 tons handled for others; 7,972 tons of miscellaneous freight was handled for the Long interests; 6,752 tons miscellaneous freight for others.

The road has a bonded indebtedness of $442,300, secured by deeds of trust and bonds held by various individuals, banks and trust companies, none of whom have stock or are otherwise interested in the Louisiana & Pacific Railway Company, and a larger amount of whom have no interest in any of the lumber companies, petitioners in this case. (Vol. V, p. 11.)

The Louisiana & Pacific Railroad is well constructed, and in this respect is equal to the other trunk line railroads in Louisiana.

History of the Building of the Road and Reasons Why It Was Built.

About the year 1900 and from that date up to the present time, but more particularly from 1900 to 1906, Mr. R. A. Long and Mr. C. B. Sweet, with associates, forming corporations, were purchasing tracts of yellow pine timber in what was then Calcasieu Parish, Louisiana, now divided into four parishes.

They acquired this timber in large tracts, sometimes as much as 50,000 acres at a time, between DeRidder and Lake Charles, the distance between the two points being 45 miles.

They organized mill companies and were known generally as the Long-Bell Lumber Company.

The mill companies in Calcasieu Parish were the King-Ryder Lumber Company, with mill located at Bonami; the Hudson River Lumber Company, mill located at DeRidder; the Calcasieu Long Leaf Lumber Company, mill located at Lake Charles. Later on the Longville Lumber Company located a mill at what is now Longville, and built up a town at that point.

The Kansas City Southern Railroad was the only line to which these companies could deliver their tonnage, and this company did not have the facilities to handle the tonnage even of the two mills at DeRidder and Bonami.

The Hudson River, King-Ryder and Calcasieu companies by 1904 had something over 300,000 acres of timber land. Other companies between DeRidder and Lake Charles had large bodies of timber land. The Fulton Lumber Company, south of DeRidder,

had 2,500,000 feet; the Brown Lumber Company had quite a lot; the Hodge-Fence Lumber Company had 150,000,000 feet; the Central Coal & Coke Company had 400,000,000 feet.

It is very apparent then that a railrad running from Lake Charles to DeRidder, and touching the mill towns in that section and connecting all these mills with the five trunk line railroads at DeRidder, Bonami, Fulton and Lake Charles would be a good railroad proposition. It would be a good railroad proposition from the standpoint of the railroad securing the tonnage for transportation, and it would be a good thing for all the mill companies, because such a road furnished them an outlet over five trunk line systems, instead of keeping them tied up to the particular trunk line road which passed through the town where the mill was located.

In addition there was a narrow gauge logging road extending from a point on the north bank of the Calcasieu River, a distance of about 22 miles north, which road bed could be used as a part of the railroad between DeRidder and Lake Charles.

Mr. Sweet and Mr. Long and associates, therefore, began the construction of a railroad from DeRidder to Lake Charles, and by about October, 1906, they had surveyed the entire line, had maps and profiles, had made soundings at the river and surveys across the swamp, had purchased and had on hand 40 miles of 60-pound rail, had the road built and completed for seven miles and the right of way graded and cut through for about 20 miles, when negotiations were opened up by the Southern Pacific concerning the sale of the road and right of way between DeRidder and Lake Charles to the Southern Pacific interests.

The negotiations resulted in the Southern Pacific buying this right of way, and so much of the road as was constructed, including the narrow gauge road, for which the Southern Pacific paid the cost, amounting to about $490,000, and entered into the contracts set out on pages 188, 189 and 202, by virtue of which the Southern Pacific owned the road, but the Louisiana & Pacific reserved the right to operate over it upon the payment of 25 cents per train mile and 60 per cent. of the station expenses, except for the Louisiana & Pacific's separate station at Lake Charles, for which the Louisiana & Pacific paid the entire operating expenses.

The lines of railroad extending from DeRidder to Bundick, from Lilly Junction to Walla, from Fayette to Camp Curtis were acquired and retained by the Louisiana & Pacific, and in connection with the joint trackage right between DeRidder and Lake Charles they constitute a system of railroad now serving the parishes of Vernon, Beauregard and Calcasieu and the timber and agricultural tributary to the line of road, including therein timber and agricultural interests in Allen and Jeff Davis parishes, also constituting an aggregate of 78 miles of main line and 8.8 miles of yard and side tracks, and over this road and its connections lumber and forest products, and all kinds of merchandise, and agricultural products, are shipped from and to every state in the Union and to many foreign countries, its export business being very large.

Based on the ability to secure transportation for their timber and lumber over this Louisiana & Pacific system, the mill companies along its line have

invested large sums of money not only in the plants and timber, but in steel rails and tram roads, by which these companies bring their logs to the Louisiana & Pacific rails, the investment in steel alone being $289,000, and the mileage of such tram roads being 73½ miles.

This investment and mileage is by the four lumber companies petitioners herein alone.

The Brown Lumber Company also have quite an investment at Bannister, and other similar companies have mills on the road, and not only the industries located in the various cities and towns on the line, but the farming community and country stores as well ship a large amount of merchandise and farming products over the road. (See statement attached at page 238 of the record.)

The mill companies alone have invested in plants and timber tributary to this road nearly $20,000,000.

Blanket Rates and Divisions.

In the territory traversed by the Louisiana & Pacific Railway what is known as the "Blanket System" of rates, as applied to lumber, prevails.

This blanket rate embraces the territory on and south and west of the Arkansas River, beginning at Little Rock and west of the Mississippi River, to the Gulf of Mexico, and includes the south half of Arkansas, all of Louisiana and Texas.

The blanket rate system is the result of an effort on the part of the trunk lines of the Southwest to enable the yellow pine industry to compete in the North with the woods of Wisconsin and Michigan and the Northwest.

This system has existed and grown up during the last 25 years and under that system all the producing points within the blanket territory enjoy the same rate to certain territories of consumption.

To illustrate, the rate on yellow pine lumber from the Arkansas River to the Gulf of Mexico, when shipped to St. Louis, is 19 cents per cwt.; to Kansas 24 cents and to Chicago 26 cents.

Prior to May 1, 1912, the date of the entry of the order complained of in this case, the rate from all points on the Louisiana & Pacific Railway to St. Louis on yellow pine lumber was 19 cents per cwt. Immediately after that date all rates between the trunk lines and the Louisiana & Pacific were canceled and since that date the rate is 24 cents instead of 19 cents; that is to say, the rate is arrived at by adding the local rate of the Louisiana & Pacific, of 5 cents, to the rate of 19 cents, made by the trunk line railroads.

In connection with this blanket rate system the practice was in effect of allowing divisions out of the through rate and the making of joint rates and through routes. This practice was in effect long prior to the construction of the mills on the Louisiana & Pacific and prior to the construction of that railroad, and continued in effect until the promulgation of the order of the Commission herein complained of and still continues in effect except as to those railroads affected by such order of the Commission.

Milling in transit is a universal custom and has long been approved by the Interstate Commerce Commission, as applied to logs, as well as other

things, and is still approved by the Interstate Commerce Commission except in the case where the Commission conceives that the stockholders of a railroad company are also stockholders of the lumber company.

As a result of the opinion and order complained of herein, the trunk line railroads canceled through routes and joint rates with the Louisiana & Pacific and refused to allow it any division of the blanket rate.

The divisions theretofore allowed by the trunk line railroads with the Louisiana & Pacific are shown in a general way on pages 121 and 122 of the record.

The Louisiana & Pacific Railway filed its tariffs and concurred in tariffs in the same manner as any other railroad company, and in accordance with the rules and regulations of the Interstate Commerce Commission. See also tariff indexes and division sheets. (Vol. V, p. 41.)

The tariff rule in reference to milling in transit on lumber provides:

> On shipment of logs and lumber originating at stations on the Louisiana & Pacific Railway and the Woodworth & Louisiana Central Railway, transported to milling points on those lines for further manufacture and transportation to points to which no through rates are provided in the joint tariffs of these companies and connecting lines, a charge of 5 cents per 100 pounds will be assessed on the weight of the milled product forwarded, which charge will include the transportation of the logs, or lumber, into the milling point and the delivery of the product to the connecting line.
>
> Where through rates are provided, same will include the transportation of the logs, or lum-

> ber, into milling points on these lines for the purpose of sawing, resawing or further manufacturing into articles described in the joint lumber tariffs of these companies, and through rates will apply from point of origin to final destination of the product shipped.

These tariff provisions relating to milling-in-transit are found in tariffs on file and testified to by witnesses Davis and McLane. They are the usual milling-in-transit arrangements in vogue in lumber producing territory on all rail lines, both trunk line and short line carriers. They have often received the approval of the Interstate Commerce Commission. On the Louisiana & Pacific, as shown by the testimony herein, the average log haul is 30 miles and at the time of the investigation by the Commission the average haul on the finished product was 20 miles. The tariffs covered both the log haul and the haul on the finished product, the average divisions allowed out of the through rate, as testified to by witness Davis, being about 3.9 cents per 100 pounds. The testimony shows that according to rate territory to be reached and the varying car supply afforded by the several trunk line connections, the shipments of lumber moved from the two mills at De Ridder and Bonami respectively, either to the Kansas City Southern at that point, the G. C. & S. F. Ry. at De-Ridder, or to the Frisco connection at Fulton, or to the Louisiana & Western (Southern Pacific), St. Louis, Watkins & Gulf (Iron Mountain), or Kansas City Southern at Lake Charles. In the same way the lumber moved out from the mill at Longville and from the mill at Lake Charles. An inspection of the record shows that much of this lumber moved the

entire length of the main line branch of the Louisiana & Pacific, or a distance of 43 miles; that a purely transportation service of great extent therefore is shown not only in the log movement to the mill, but in the movement of the manufactured product out from the mill through the various trunk line arteries to the markets of the world, is apparent. There is absolutely no testimony in the record which shows, or tends to show, that the Louisiana & Pacific Railway Company performs any plant or inter-work industrial or milling service. The tram lines of the Lumber Company, owned and operated by the Lumber Company, branch out from the ends of the several lateral lines of the Louisiana & Pacific and deliveries of the logs are made by the Lumber Companies at these points of connection to the Railway Company, there being no operation of the Railway Company over the tram lines of the Lumber Company, or operation of the equipment of the Lumber Company over the rails of the railway common carrier. The testimony therefore, in brief, shows a permanent and substantial railway line, equal in all its physical characteristics to the trunk lines in its vicinity, well equipped with a sufficient equipment of rolling stock and cars, doing no industrial or interplant service, hauling lumber in large quantities for a distance of 43 miles, with an average haul, as stated, of over 20 miles and an average haul of 30 miles over on the logs.

The testimony further shows that while a very few individual stockholders own, absolutely and of their own right, the stock of the Louisiana & Pacific Railway Company, a large number of individual stock-

holders own the stock of the Calcasieu Lumber Company, the Longville Lumber Company, the King, Ryder Lumber Company and the Hudson River Lumber Company. The stock of each of which Lumber Companies is held by different individuals and in different proportions, great numbers of these stockholders holding stock in large amounts in the different companies, having absolutely no interest in the railway investment. Notwithstanding this unchallenged condition, the Interstate Commerce Commission holds that the service of the Louisiana & Pacific Railway Company, which company is chartered as a common carrier under the laws of the State of Louisiana, made a common carrier by the constitution and laws of that state, holding itself out as such, and transacting a large and constantly growing common carrier business for the public at large, rendering obedience to, and compliance with, all of the laws of the State of Louisiana and the United States relative to common carriers, is not as to the Calcasieu Lumber Company, the Longville Lumber Company, the King-Ryder Lumber Company and the Hudson River Lumber Company, a common carrier of interstate lumber traffic. As to lumber of those not stockholders in one of the several companies, above mentioned, and as to traffic other than lumber, it is by the same holding a common carrier. The discrimination is evident. The local state rate to the several junctions is 5 cents per hundred weight. The Lumber Companies mentioned, shipping to St. Louis, for instance, pay 24 cents. The Brown Lumber Company shipping from the same point to the same desination under the order of the Commission would pay 19 cents. The discrimination is obvious. The

record shows similar arbitrary and inexplicable discriminations between carriers, as for example, in the same locality is the Gulf & Sabine Company, owned by substantially the same interests as own the Chicago Lumber & Coal Company furnishing the greater part of its tonnage. For a haul of approximately ten miles, this line, of no better construction, with all the governing facts and characteristics in no wise different, is allowed by the same order of the Commision to participate in the through rate to the extent of 1 cent per 100 pounds. Just to the east, in the same territory, the Red River & Gulf, for a haul of 12 miles, is permitted to participate in the through route and joint rate and to receive a division of 2 cents per 100 pounds, the railway being less in extent, less in equipment and performing far less service, its ownership being identical with that of the Lumber Company which furnishes the greater part of the tonnage.

The finding of the Commission that the practice of allowing such a common carrier as the Louisiana & Pacific to participate in a division of the through rate, works a discrimination in favor of those stockholders of such railway who are also stockholders in the Lumber Company, whose products are shipped out over it is wholly without basis of fact and rests wholly on the theoretical deductions of the Commission herein. The testimony upon this subject consists wholly of the unsupported opinions of one or two witnesses utterly without basis of fact. No witness appeared to testify that he was affected injuriously in any market by the competition of any stockholder of a Lumber Company, who was also a stock-

holder in the Louisiana & Pacific Railway Company. The sales agent of a number of lumber companies, whose stockholders also own stock in common carrier Railway Companies, testified that the fact that the Railway Company received divisions did not enter into the selling price of the lumber in any respect whatsoever. Mr. Nelson, the sales agent of the several Lumber Companies affiliated in interest in a general way with the Louisiana & Pacific, testified that he did not know what, if any, division, the Louisiana & Pacific Railway Company received; that while he was a stockholder in some of the Lumber Companies, he owned no stock and had no interest in the Louisiana & Pacific Railway and that the amount of the divisions played no part in the price of lumber. The main witness called upon this issue was John H. Kirby, the principal stockholder of the Kirby Lumber Company, an enterprise substantially owned and controlled by the intervener, the Atchison, Topeka & Santa Fe Railway Company, or its affiliated interests. This witness was unable to show that the interests of its company had been injuriously affected in any territory by competition with those lumber companies whose stockholders were stockholders in common carrier railways receiving divisions. To the contrary, appellee and others similarly interested, sought to prove from Mr. Kirby, and those interested with him, that they were not under sold in any market by the Lumber Companies, whose stockholders were interested in Railway Companies. This record shows that notice to produce figures showing the selling price of lumber in various markets, was given to these interveners and that they were called upon to produce it at the Chicago hearing

herein, and that while they were then and there in possession of the facts and figures necessary to answer the questions propounded, they declined to do so and in this declination were sustained by the Commissioner who was conducting the investigation. It is stated therefore, with entire confidence upon the whole record, that not only does the record fail to show substantial testimony that the divisions heretofore received out of the through rate by the Louisiana & Pacific operated as an illegal discrimination in favor of the several lumber companies above mentioned, but that the record does affirmatively show that the order of the Commission herein operates as an illegal discrimination against the four Lumber Companies mentioned, in that, they are compelled to pay the local rate added to the through rate for the transportation of their products to market, while their competitors, situated upon trunk lines, or upon arbitrarily favored short lines, ship on the through rate. And further that the order of the Commission discriminates directly and arbitrarily in favor of lines similarly situated as to stock ownership and with less of the characteristics of a common carrier than appellee herein.

Facts as to Woodworth & Louisiana Central Railway Company.

This road was duly chartered and incorporated as a railroad corporation and common carrier under the laws of the State of Louisiana in the year 1900, with the usual powers and obligations of a railway company.

For convenience it is known as a part of the

Shreveport, Alexandria & Southwestern Railway System, and its executive officers and traffic manager are the same as those of the Louisiana & Pacific Railway Company and the Sibley, Lake Bisteneau & Southern Railway Company.

It files its tariffs under the title:

"Shreveport, Alexandria & Southwestern Railway System, operating Sibley, Lake Bisteneau & Southern Railway Company, Woodworth & Louisiana Central Railway Company, Louisiana & Pacific Railway Company."

For this reason we refer to the record, to the testimony taken in those cases and to our statement of the facts in those cases, insofar as that testimony relates to the blanket rate system, milling in transit, and divisions. And we also refer to the references to the constitution of the State of Louisiana and to the statute quoted in our petition as to the laws of Louisiana governing railroad companies and giving them the power of eminent domain. (For testimony see Vol. 1, pages 787-804, Vol. V.)

About the year 1900, R. A. Long became interested in the Rapides Lumber Company, located at Woodworth, Louisiana. This company had a mill and a large tract of timber land.

This mill was situated on the St. Louis, Watkins & Gulf Railroad, and it had no other railroad outlet. The mill had a narrow gauge tram or logging road running west from Woodworth to its timber, over which logs were brought into the mill.

The St. Louis, Watkins & Gulf at that time (1900) was little more than a logging road. It was then

what the Interstate Commerce Commission would now doubtless designate as a "tap line." It ran through a timber country and was being constructed between Alexandria and Lake Charles, a distance of about 100 miles.

The road bed was in bad condition; their equipment was poor and they did not seem to have working contracts with other lines to the extent that they could give anything like adequate service to their shippers.

Because of this fact of having no adequate railroad facilities some of the stockholders interested in the Rapides Lumber Company organized the Woodworth & Louisiana Central Railway Company, and built a standard gauge railroad from Woodworth to Lamorie, connecting with Morgan's Louisiana & Texas Railway (Southern Pacific System), and the Texas & Pacific Railroad.

The Rock Island System was not in this country at that time, but later, about 1907, built through, thus giving the Woodworth & Louisiana Central connections with that road.

As one of the inducing causes to the Rock Island to build into this country the Woodworth & Louisiana Central Railway Company entered into a contract with the Rock Island, copy of which contract, under mark of Exhibit "A" is attached to and made a part of the petition herein; and under this contract the Woodworth & Louisiana Central Railway Company agreed to give the Rock Island 50 per cent. of the products of the mills on the Woodworth & Louisiana Central line, the Rapides Lumber Company being also a party to this contract.

About the same time there was a similar contract made with the Morgan's Louisiana & Texas Railway & Steamship Company to give that company 40 per cent. of the lumber tonnage; the contracts providing, however, that these companies should receive these percentages in case they were able to furnish cars to transport the freight delivered to them by the Woodworth & Louisiana Central.

They were not, however, able at all times to furnish the cars, and statements filed in evidence in this case show that for the fiscal year ending June 30, 1912, the Woodworth & Louisiana Central Railway Company delivered to

Morgan's Louisiana & Texas	488 cars
Rock Island	836 cars
Texas & Pacific	93 cars
Iron Mountain	239 cars
Total	1,656 cars

For the fiscal year ending June, 1911, to

Morgan's Louisiana & Texas	689 cars
Rock Island	872 cars
Texas & Pacific	47 cars
Iron Mountain	141 cars
Total	1,749 cars

For the months ending December 31, 1912, to

Morgan's Louisiana & Texas	510 cars
Rock Island	409 cars
Texas & Pacific	27 cars
Iron Mountain	227 cars
Total	1,173 cars

About 80 per cent. are thus delivered to the railroads at Lamorie and 20 per cent. to the Iron Mountain at Woodworth.

The Woodworth & Louisiana Central between Woodworth and Lamorie was never in any sense a "logging" road, and while there is a little pine timber east of Woodworth it is not being manufactured and does not belong to any individuals or company even remotely connected with the Woodworth & Louisiana Central Railway Company or the Rapides Lumber Company. As shown Vol. V, pages 17-18, the tonnage of outside interests, especially agricultural, was for years 1909 and 1910 very large.

There is also some hard wood east of Woodworth owned by parties in no way interested in these companies, and some of this is now being transported over the Woodworth & Louisiana Central and the Southern Pacific, but the country generally is a very fertile farming country, mostly sugar plantations, and the land is worth from $50 to $70 an acre.

When the Woodworth & Louisiana Central Railway Company was organized it took over the logging road which had been constructed by the Rapides Lumber Company and extended this road until it now reaches about 18 miles west from Woodworth. There is very little freight hauled over this narrow gauge road except the logs of the Rapides Lumber Company, although there are some farms on the cut over lands west of Woodworth and some little agricultural products are hauled over the narrow gauge road. These logs are hauled in under the milling in transit system and under tariffs duly filed with the Commission in the same manner as shown in the record in the Louisiana & Pacific case, and as set out in our statement of facts in that case.

The Woodworth & Louisiana Central has the following equipment:

1 45-ton locomotive.
1 35-ton locomotive.
1 box car.
99 flat cars.

The investment in equipment amounts to $27,464.33. Its investment in track and track material is $77,918.

It owns its right of way in fee simple.

The Woodworth & Louisiana Central received from connecting carriers for the fiscal year ending June 30, 1911, merchandise as follows:

From the Morgan's Louisiana & Texas ..... 381,162 lbs.
From the Texas & Pacific ..... 190,335 lbs.
From the Rock Island ..... 213,048 lbs.

For the fiscal year ending June 30, 1912:

From the Morgan's Louisiana & Texas ..... 353,417 lbs.
From the Rock Island ..... 413,830 lbs.
From the Texas & Pacific ..... 114,440 lbs.

It received from shippers and delivered to its connecting lines merchandise as follows:

For the fiscal year ending June 30, 1911:

To the Morgan's Louisiana & Texas, from the Rapides Lumber Co. ..... 11,575 lbs.
Others ..... 240,000 lbs.
To the Texas and Pacific, from the Rapides Lumber Co. ..... nothing
From others ..... 2,242,086 lbs.
To the Iron Mountain, from Rapides Lumber Co. ..... nothing
From others ..... 65,000 lbs.

For the fiscal year ending June 30, 1912:

To the Morgan's Louisiana & Texas, from Rapides	4,264 lbs.
From others	60,000 lbs.
To the Texas & Pacific, from Rapides Lumber Co.	864 lbs.
From others	4,020,000 lbs.
To the Rock Island, from Rapides Lumber Co.	210,000 lbs.
To the Iron Mountain, from others	114,000 lbs.

It was shown that there was no occasion for using a railroad in connection with manufacture of lumber at the Rapides Lumber Company's mill from the time the logs were put in the pond until the finished product goes out. That is to say, the railroad is not used as a plant facility.

The statement or report made by the Interstate Commerce Commission in reference to the Woodworth & Louisiana Central road (shown on page 327 of the 23 I. C. C. Reports), is not a fair statement at all in reference to this road. The statement as in the Louisiana & Pacific, appears to have been written to fit a preconceived theory. The statement says that:

> The tap line and lumber company are identical in interest with the same principal officers.

The stockholders and the officers are not identical, although most of the stockholders in one company are stockholders in the other. Vol V, pp. 18-19.

The Commission says:

> Its (Woodworth & Louisiana Central Railway Company) main track, however, is narrow gauge.

The narrow gauge track is not the main track, but

the standard gauge track from Woodworth to La Morie is the main track.

The Commission says that the right of way for the narrow gauge track is leased from the lumber company.

This was true at the time of the hearing by the Commission, but was not true when the report was made.

The Commission says:

> But the steel in the unincorporated logging spurs is owned by the tap line and leased to the lumber company as are four narrow gauge locomotives which the lumber company utilizes in the operation of the logging spurs.

This was true at the time of the hearing before the Commission, but on account of the implied criticism of that fact by the Commission this condition was changed by the sale of the equipment, used by the lumber companies, outright to the lumber companies, and the contracts evidencing such sale were filed with the Commission long before the report was written. (See the contracts on file with the Commission.)

In stating the equipment the Commission's report says "9" narrow gauge cars. It should have been "99."

The Commission says the logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber company. The fact is they are hauled under tariffs filed with the Commission.

The Commission says:

> The tap line switches the car loads of lumber from the planing mill to the point from which

> they are taken by the Iron Mountain, a distance, as the record indicates, of only 25 feet, or less than a car length.

The basis for this statement by the Commission is that it was testified that the Iron Mountain's tracks were within about 25 feet of the planing mill and from this statement the Commission draws the conclusion that the cars need only be switched 25 feet. The facts are that the maximum haul necessary to do the switching to the Iron Mountain is 2,772 feet.

The average switch is about 2,044 feet. (Rec., 22.)

The Commission says:

> That 95 per cent. of the lumber is *switched* to La Morie, a distance of six miles.

Six miles is rather a long "switch," and we think "transported" would be a better term.

The Commission says:

> The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Morie allow from 2 to 5½ cents.

We believe we have given a better "explanation" in our statement heretofore showing the reason why the Woodworth & Louisiana Central was built to connect with the Southern Pacific and the Texas & Pacific systems rather than to have only the St. Louis, Watkins & Gulf as a transportation facility.

The Commission says:

> There are no joint rates except on lumber.

The tariffs at all times on file with the Commission contradict this statement.

The Commission says:

> There was 2,100 tons of outside traffic consisting of merchandise, farm products and miscellaneous material. It does not appear what proportion of this tonnage was intended for employes of the lumber company.

It did appear, however, that this merchandise, farm products and miscellaneous material was *outbound* tonnage, so it would seem to us to appear very conclusively that the employes of the lumber company were not consuming merchandise and farm products which was being shipped *out*.

As aptly illustrating the discriminating and wholly arbitrary nature of the order in this case, reference is here made to the case of the Red River & Gulf Ry., a short line immediately south of appellee Woodworth & Louisiana Central Ry. (Vol. 1, p. 67-89.) It makes the same connections, was built for the same reasons and presents the same questions of stock ownership. The only substantial difference is that the haul of the Red River & Gulf on the branch is twelve miles and that of the Woodworth & Louisiana Central is six miles. Yet the former is classed as a common carrier, the latter as a plant facility. The former is allowed $2 per car for switching to the Iron Mountain Ry. and 2 cents per 100 pounds for the movement eastwards to the connection with the Southern Pacific, Texas & Pacific and Rock Island, the latter is allowed nothing for either service. The former can be party to through routes and joint rates, the latter cannot. The Crowell & Spencer Co. (proprietary interest) can ship on the through rate. The Rapides Lumber Co. must pay the through rate plus the Louisiana local rate from the mill to the

junction at LaMorie. (See opinion of Commission, 23 I. C. C. 608.) This rank discrimination has not been and cannot be explained or justified.

Facts as to Mansfield Railway and Transportation Company.

The facts as stated by the Commission in the case of the Mansfield Railway & Transportation Company, in its opinion No. 1898, 23 I. C. C. 587, are generally correct, except so far as it deals with the establishment of the spur track from the Kansas City Southern, the removal of the same and the operation by the Mansfield Railway & Transportation Company over its line of railway to the interchange track with the Kansas City Southern and Texas and Pacific Railways. The testimony before the Commission on this point is contained in Volume 3 of the printed record herein, page 2072, and for convenience is set forth verbatim.

> Commissioner Harlan: Well, what is the distance from the planing mill to the main line of the Kansas City Southern?
>
> Mr. Frost: This is the Kansas City Southern. It is just off their right of way, probably 300 feet, but they have got no track connections in there at all, neither has the Texas & Pacific.
>
> Commissioner Harlan: Did the Kansas City Southern ever have a switch track to your planing mill?
>
> Mr. Frost: They cut in a siding in there temporarily for us when we moved the machinery in, and as soon as that was done it was taken out, because we had our own facilities. We built in there and used our own track.
>
> Commissioner Harlan: When the De Soto Lumber Company owned that mill, did the Kan-

sas City Southern have a switch track in to the planing mill?

Mr. FROST: No. I say when it was organized, and we commenced to build the mill the Kansas City Southern put in a little siding in here to accommodate us and get the machinery in. We had to unload the machinery; but that was all temporary, and when we built it was taken up.

Commissioner HARLAN: When you say we, you refer to the De Soto Company?

Mr. FROST: Yes, the original company.

Commissioner HARLAN: What is the distance from the planing mill to the junction of the main line of the Mansfield Railway & Transportation Company?

Mr. FROST: I think about 2,000 feet.

In the Commission's report, page 588, it is stated:

> The mill is within three hundred feet of the right of way of the Kansas City Southern, with which it was formerly connected by a spur track that was abandoned and later taken up.

And on page 589:

> As stated, the spur track of the Kansas City Southern, about 300 feet long, which formerly went directly into this mill, was torn out; the switching is now done over a track of the tap line three-fourths of a mile long. This arrangement being effected, the Kansas City Southern thereupon undertook to pay the tap line allowances of 1 to 4 cents per 100. We hold this to be a mere manipulation of the situation in order to establish a relation that is unlawful. The tap line also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tap line back toward Mansfield and then to the junction with that line, a distance of about two and a half miles; the tap line receives from the Texas & Pacific 1 to 4 cents per 100 pounds. In this case we regard any allowance as unlawful.

It is thus apparent, from the testimony before the Commission, that there was no basis whatever for a finding that there was any manipulation by the Mansfield Railway & Transportation Company, the Frost-Johnson Lumber Company, or their predecessors, or by either of the trunk line railroads "in order to establish a relation that is unlawful." There was no inquiry before the Commission as to the purpose or intent of any person. There was not a particle of testimony of any sort which would warrant any such finding by the Commission as is set forth in its report. In no way was there any indication that any suspicion was entertained as to the good faith of any party in the construction of the spur track from the Kansas City Southern. The testimony before the Commission on the point is a frank statement of fact. It is a common occurrence that a spur track is taken up. Furthermore the testimony before the court shows that the location of the spur was impracticable and unsafe. The Kansas City Southern had consented to install the spur for the sole purpose of allowing the machinery to be placed as near to its permanent location as railroad track would warrant. The Mansfield Railway & Transportation Company was extending its line so as to serve the mill and give it an outlet to both of the carriers. This was done at a time when the railroads were giving allowances on lumber which was never handled by the mill or the affiliated tap line and there was therefore no necessity whatever for making any change in order to secure an allowance. The finding of the Commission is gratuitous and unwarranted and inasmuch as it appears to be the sole reason for refusing to require the establish-

ment of joint rates from Oak Hill on the lumber of the Frost-Johnson Lumber Company, the order should be set aside.

In addition to the foregoing, we desire to call the court's attention to the opinion of the Commission in the *Tapline Case*, so far as it relates to the Deering Southwestern Railway Company, 23 I. C. C. 630, where the facts show a situation similar to those above discussed in connection with the petitioner, Mansfield Railway & Transportation Company. The Deering Southwestern Railway Company and the Wisconsin Lumber Company, located on that line of railway, are both owned by the International Harvester Company.

We quote from the Commission's opinion just referred to:

> At the time of the hearing the tapline switched the lumber to the Frisco at Deering Junction. But with the extension of the track the plan contemplated was the delivery by the tapline of the lumber of the proprietary company at Blazer, seven miles east of the mill. We are given to understand that the operating conditions of the branch of the Frisco connecting with this tapline at Deering Junction are such as to make it no longer practicable to receive the lumber at that point.

And on page 631:

> For its service in hauling the products of the mill of the controlling company to the Frisco at Blazer, a distance of seven miles, we fix 1½ cents as the maximum division that may lawfully be paid to this tapline out of the rate.

Solely because it was impracticable to continue making a delivery at Deering Junction the Commis-

sion authorized an increase in the division theretofore received by the Deering Southwestern to 1½ cents per hundred pounds. In one or the other of these cases the Commission has made a mistake. It grants an allowance of 1½ cents on a representation that it was impracticable longer to continue making delivery at Deering Junction as was the practice at the time of the hearing before the Commission, while in the case of the petitioners there was no possible method of making delivery other than as was done and which the Commission finds to be "a mere manipulation of the situation in order to establish a relation that is unlawful." In substance, the Commission holds unlawful any allowance because at one time there was a connection within 300 feet to the Kansas City Southern and a crossing of the Texas & Pacific line within one thousand feet of the mill, although there never was an interchange of traffic at either place within the last six or eight years. In fact, from the time lumber was produced there has been no other way in which to ship lumber other than over the Mansfield Railway & Transportation Company's line. We make no harsh criticism of the Commission's action in this case when we say, that the holding is in its essence the exercise of an arbitrary power. Certainly it is most unreasonable to forbid the Mansfield Railway & Transportation Company to receive compensation out of the joint rate for the haul actually performed on the lumber of the Frost-Johnson Lumber Company, when there is no other possible means of transportation by rail. The Commission's statement of fact does not completely set forth the data contained in the statistical testimony filed with the Commission. The court's

attention is specially directed to the tables, Vol. V, pages 20-21, showing the large and increasing outside tonnage of this carrier for the years 1909, 1910 and 1911, and the large public which is served by it.

In addition to what the Commission sets forth, we call attention to the fact that during the year ending June 30, 1912, the Mansfield Railway & Transportation Company carried 8,870 passengers and 47,095 tons of freight, divided as follows:

Tonnage originating on the line of the petitioner:

Products of agriculture	2,734 tons
Products of forest	19,134 tons
Manufactures	316 tons
Merchandise	1,949 tons
Miscellaneous	10 tons
	24,143 tons

Received from connecting roads and other carriers:

Products of agriculture	5,849 tons
Products of mines	7,669 tons
Products of forests	3,373 tons
Manufactures	2,648 tons
Merchandise	3,231 tons
Miscellaneous	182 tons
	22,952 tons

It will thus be seen that there is almost an even balance between tons originated and tons received from connecting lines. tI is further shown that the Frost-Johnson Lumber Company received 900 tons of freight on which revenue was $332.30, and forwarded shipments aggregating 11,898 tons, on which revenue was $11,226.45. The total movement therefore, for the Frost-Johnson Lumber Company was

13,698 tons. During the same period for other shippers there were received 7,327 tons on which the revenue was $3,093.32, and forwarded 3,143 tons on which the revenue for $2,334.64. The total tonnage received and forwarded for all parties other than the Frost-Johnson Lumber Company during the four months ending October 31, 1912, was 10,470 tons. It will thus be seen that out of a total tonnage handled during the four months of 23,554 tons, practically 45 per cent. was for parties other than the petitioner, Frost-Johnson Lumber Company. Here is a railroad organized in 1881 serving a large and important community. Almost one-half of its tonnage is for parties other than the affiliated lumber company. The testimony shows, beyond all question, that in the manufacture of logs into lumber by the Frost-Johnson Lumber Company, the Mansfield Railway & Transportation Company performs no service that is not performed by trunk line railroads for mills along their lines. There is a holding out to the public of a service of carriage for hire. All the public demands, by way of transportation is furnished by the Mansfield Railway & Transportation Company without discrimination and we therefore submit that the Mansfield Railway & Transportation Company meets every test that should be applied to a common carrier.

FACTS AS TO VICTORIA, FISHER AND WESTERN RAILWAY.

The portion of the opinion of the Interstate Commerce Commission of date April 23, 1912, applicable to the Victoria, Fisher & Western Railroad, is found on pages 602 and 603. The Commission therein says:

> We cannot recognize the right of this tapline to participate as a common carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern must be held to apply from the mill at Fisher and the rate of the Texas & Pacific from the mill at Victoria. Each of those lines may arrange with the lumber company to perform the necessary switching and service for the distance of one-half mile and one mile respectively and may make it a reasonable compensation under Section 15.

The testimony taken at the original hearing is found in Volume 2 of the printed record herein, pages 1566-1582. The material conditions have undergone but little change since the original hearing except that there has been a slight increase in tonnage originating from outside sources. The Victoria, Fisher & Western Railroad Company was incorporated as a common carrier of freight on the 5th day of November, 1902, having been purchased from the Louisiana Long Leaf Lumber Company which had bought the road many years prior thereto. The stock ownership of the road corresponds generally speaking with that of the lumber company with the exception of one stockholder who owns a substantial interest in the railway and owns none in the lumber company and another who owns stock in the lumber company without any corresponding

interest in the railway company. The railway is standard gauge and of substantial and permanent construction. It extends from the Town of Victoria on the Texas & Pacific Railway in a southwesterly direction to the Town of Fisher on the Kansas City Southern Railroad, a distance of approximately 25 miles. At Fisher, intersecting the Kansas City Southern Railway, it further extends in a generally southwesterly direction to the Town of Cain, approximately five miles further, making a total distance from Victoria to Cain of 30 miles. At Victoria there is located a pine lumber mill, the distance from the loading platform to the interchange track with the Texas & Pacific being five-tenths of a mile. At Fisher there is located a pine lumber mill and also a hard wood mill, the distance from the loading platform of the pine lumber mill to the interchange track with the Kansas City Southern being seventy-seven one-hundredths of a mile and from the hard wood loading platform to the interchange track with the Kansas City Southern being one and forty-seven one-hundredths miles. The railway represents an investment up to June 30, 1912, of $406,471.79. It would cost in excess of $500,000 to reproduce the property in its present state. It is constructed of forty and sixty-pound rails and compares favorably with trunk line railways in that vicinity. It owns its own track scales and is well equipped with working forces, both as to section laborers and the usual officers and agents of an operating railway. Its equipment consists of five locomotives, three box cars, one flat car, one hundred and twenty-five logging cars and four caboose cars of the total value of $86,501.38. Having been incorporated

as a common carrier of freight it has continuously held itself out to the public as a common carrier; has actually received and transported freight for the public continuously since its incorporation and as found on pages 39 and 40 of printed transcript of testimony taken in the Commerce Court and in the testimony at the original hearing above referred to, does a substantial business, both tonnage and revenue, for the outside public. It is recognized as a common carrier by the Railroad Commission of Louisiana; is taxed by the State of Louisiana as such and makes all reports to said Commission and complies with all of the laws of the State of Louisiana applicable to common carriers. It has always, since its creation, complied with all of the federal laws applicable to common carriers paying an income tax as such, complying with the safety appliance laws, making all reports required by the Interstate Commerce Commission and duly filing and publishing tariffs of interstate rates as required by law. It has hitherto published full lines of class and commodity rates and until prevented by the order complained of herein, participated in through routes and joint rates to interstate points on lumber and other forest products. The country through which the line extends, as testified to by Mr. Shelby Taylor, member of the Railroad Commission of the State of Louisiana, is a well developed agricultural section. The soil is good and can be developed into one of the finest farming countries of the state. The land is level and well drained. In addition to the pine lands it is a fine hard wood timber section. There are farms along the entire

extent of the railway, with schools and other developments incident to an agricultural country. There is also located a cannery on this land, nine miles south of Victoria. As illustrative of the fertility of the soil it may be mentioned that during the past year there was raised on that line 90 bushels of corn per acre. For the years ending June 30, 1910, 1911 and 1912, the freight revenues were respectively $119,282.22, $96,522.32 and $82,275.93. The operating expenses for the same years were respectively $100,093.22, $102,591.56 and $76,159.48. As shown, Vol. II, page 1571, the outside tonnage for both forest products and other freight at the time of the hearing was considerable.

The Louisiana Long Leaf Lumber Company owns valuable mills situated at Victoria and Fisher, as above stated and ships out annually approximately 40,000,000 feet of lumber, representing 2,000 carloads per year. Some of this lumber moves from Victoria, where the Victoria, Fisher & Western Railroad connects with the Texas & Pacific, over the line of the Victoria, Fisher & Western to Fisher on the Kansas City Southern and in like manner lumber from both the pine mill and the hard wood mill at Fisher moves from the mills there over the Victoria, Fisher & Western to a junction with the Texas & Pacific at Victoria. There is thus a haul of 25 miles on the finished product each way. The greater movement over the entire length of the Victoria, Fisher & Western is from Fisher to Victoria, for the reason that the hard wood mill is located at Fisher. There are therefore deliveries from each mill to the trunk line near which it is situated and also to the trunk

line situated at the other terminus. This movement is due to three causes. First, it often occurs that cars at Victoria, for instance, cannot be obtained from the Texas & Pacific Railway Company. They are therefore obtained from the Kansas City Southern and the empty cars hauled from a connection with that line at Fisher to the Victoria mill and the loaded cars hauled back from Victoria to Fisher. This also occasionally happens when the Kansas City Southern Railroad Company is not able to furnish cars for the products of the mills at Fisher. The cars are then obtained from the Texas & Pacific and are hauled empty from Victoria to Fisher and loaded back. Second, there is at times a better line of rates to some territory in connection with the Texas & Pacific than can be obtained by the Kansas City Southern. In other words, territory can be reached through the Kansas City Southern gateway. As, for instance, Oklahoma stations on the Frisco can be reached through the Kansas City Southern on a lower basis than in connection with the Texas & Pacific. Again the Texas & Pacific operates a larger line of rates into Texas, and can get into Texas to a larger number of stations on a basis that would enable them to compete through the Texas & Pacific than they can via the Kansas City Southern. New Orleans cannot be reached at all by the Kansas City Southern except by a combination of locals. That line publishes no through rates to New Orleans. The Kansas City Southern on the other hand operates a line of export rates to Port Arthur, while the Texas & Pacific has in no export rates to that point. It is therefore often necessary for the mills at Fisher to use the Texas & Pacific gateway, and

for the mill at Victoria to use the Kansas City Southern gateway, involving in each case the haul of 25 miles for the empty car and 25 miles for the loaded car. Third, different sizes and kinds of lumber are manufactured at the different mills and it occurs that lumber ordered from points to be reached via the Texas & Pacific must be furnished from the Fisher mills and that ordered from Kansas City Southern points must be furnished from the Victoria mill. For this movement the order of the Commission forbids compensation of any character. Prior to the effective date of the order herein complained of, the Victoria, Fisher & Western was a party to through rates and joint tariffs with the Texas & Pacific and the Kansas City Southern, receiving divisions of the through rates from these connections. With the Kansas City Southern the divisions ran from three-fourths of a cent to 4 cents per hundred pounds on lumber and from 2 to 3 cents per hundred pounds with the Texas & Pacific. The 4 cents received from the Kansas City Southern applied only to business for local stations on the Kansas City Southern, north of Neosho. To all stations on the Kansas City Southern except Fort Scott where 4 cents were received, and to stations on its connecting lines the division received varied from three-fourths of a cent to 2 cents. In connection with the Texas & Pacific 3 cents was received on business to points on the Texas & Pacific and to all other stations where through rates were obtained 2 cents was allowed. See Tariff Index I. C. C. 5. The milling-in-transit arrangement applied in these tariffs. There is no testimony in the record that the Victoria, Fisher &

Western Railroad Company performs any inter work or plant facility service for the mills of the Louisiana Long Leaf Lumber Company. To the contrary, neither the railway company nor any of its facilities in the way of engines, etc., are used in any way in the inter work or inter mill service of the mills. The railway company hauls the lumber from the mills to the Kansas City Southern on the one side and to the Texas & Pacific upon the other. It also hauls logs into the respective mills. The testimony clearly shows that the construction of this railway and its operation was purely a transportation and not a plant facility proposition.

The testimony shows a well equipped and permanently constructed railroad, chartered as a common carrier, holding itself out as such, treated as such by the State of Louisiana, and its trunk line connections, and actually performing the duties of a common carrier, for an agricultural section not otherwise provided with transportation facilities. It carries pine and hard wood lumber 25 miles, logs in some cases in excess of that distance. Except for the fallacy which pervades the entire opinion of the Commission, that its stockholders being stockholders in a lumber company, cannot own stock in a railroad, there is nothing in the entire record to justify the denial to it of compensation for purely transportation services actually performed.

Respectfully submitted,

H. M. Garwood,
W. R. Thurmond,
Luther M. Walter,
Solicitors for Appellees.

11

APR 3 1914

JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

No. 837. October Term, 1913.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

BUTLER COUNTY RAILROAD COMPANY,
Appellee.

BRIEF FOR APPELLEE.

WM. A. GLASGOW, JR.,
JAMES M. BECK,
Counsel for Appellee.

Lawyers' Book Pub. Co., 624 Walnut St., Phila.

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*Cited in cases referred to by us.

IN THE

Supreme Court of the United States.

October Term, 1913. No. 837.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

BUTLER COUNTY RAILROAD COMPANY,

Appellee.

BRIEF FOR APPELLEE.

Statement.

A.—The Butler County Railroad Company, Appellee, is a corporation organized under the Railroad Statute of the State of Missouri (Record p. 11), and was and is engaged, as a common carrier, in the transportation of persons and property, both in intrastate and interstate commerce, and at the time of the proceedings referred to in this cause, the Appellee was operating thirty-five miles of railroad, part of which it owned and part of which was operated under arrangement, contract or agreement with parties owning the same. The

incorporation and methods of Appellee in the conduct of its business are set forth in the Bill (Record pp. 1-2). This Railroad is characterized as a "patchwork" railroad in the brief for the United States, although the Commission found it to be a common carrier, subject to the Act to Regulate Commerce, as hereinafter shown.

B.—Prior to and at the time of the proceedings before the Interstate Commerce Commissioner hereinafter referred to, the Appellee was engaged in the transportation of lumber and forest products, as well as all kinds of class and commodity traffic, to and from points on its road in the State of Missouri, to and from points in other States, on "through routes and joint rates" established by Appellee and the St. Louis, Iron Mountain and Southern R. R. Company and the St. Louis & San Francisco Railroad Company and connections, and tariffs covering such rates were duly filed with the Interstate Commerce Commission and had been in effect for some years, and such tariffs as to lumber and forest products provided for "a milling in transit privilege to all mills located on the line of the Butler County Railroad, and the joint through rates were divided between the Butler County Railroad and its connections upon terms satisfactory to them and fair and reasonable so far as all other persons were concerned." (Record, pp. 3-4.)

The milling in transit privilege above referred to was available to all shippers of logs over the line of the Butler County Railroad, and which logs were manufactured into forest products taking lumber rates, including lumber, handle stock, sucker rods and cooperage stock, at mills on the line of said road, the product being then transported over the Butler County Railroad and its connections, on the through routes and joint rates, to the markets, at destination: (Record, p. 4).

For illustration: The lumber rate from all points on the Butler County Railroad (except Poplar Bluff, which was the junction point with other railways), to St. Louis, was 12 cents per 100 pounds, and to Thebes was 10 cents, both being 2 cents per 100 pounds above the rate over the Trunk Lines from the Junction at Poplar Bluff. The rates to St. Louis, Thebes and Cairo, from points on the Butler County Railroad (other than Poplar Bluff), were 2 cents above the junction rate so as to be on a parity with rates from points on the Trunk Lines, beyond the junction point and about equal in distance with the points on the Butler County Railroad, to the Mississippi River crossings and points of destination. The divisions to the Butler County Railroad are shown in the Record p. 55—Exhibits 8 and 9. The rates *on lumber and cooperage* stock were made to apply from points on the Butler County Railroad where the *logs* were received by that company, from the shipper, and if the milling in transit privilege was availed of by the shipper, he was required to pay 1½ cents per 100 pounds to the Butler County Railroad Company on the logs, in addition to the lumber rate, when made into lumber, and 1 cent per hundred pounds when made into cooperage stock. About four and one-half cars of logs make one car of lumber, and compensation was made to the Butler County Railroad Company for hauling each of the four and one-half cars of logs, about 27 miles to the mill at Linstead, and one car of lumber from the mill to the junction by giving to that company its division out of the joint rate on the lumber and the payment aforesaid on the logs for the milling in transit privilege.

The same tonnage of lumber movings from the mills, was in the logs where they were received for

transportation by the Butler County Railroad, and therefore by joint tariffs the lumber rates were applied from the point where the logs, containing the lumber, were received for transportation. But the Butler County Railroad performed a service not covered by the lumber rates, in that it carried the tonnage of logs, cut away at the mills, to produce the lumber and therefore there was paid to it, by the shippers, for the milling in transit privilege, 1½ cents per 100 pounds, on the logs.

No allowances were made to anybody for bringing logs to the stations on the Butler County Railroad, but the rates applied on the lumber from the stations on the Butler County Railroad; (see Record, p. 55, "Exhibit No. 9"). No complaint was ever made, either as to the fairness of the rates, the divisions thereof, or as to the milling in transit privilege, which was in the usual form, and like provisions have been many times approved by the Interstate Commerce Commission.

The rate on cooperage stock to New York was 35 cents per 100 pounds; Philadelphia, 33 cents; Boston, 37 cents; and New Orleans, 17 cents; which were the same rates as from Poplar Bluff, the junction point, and the same as made by the Trunk Line carriers from all points in southeastern Missouri and Arkansas, to and including Texarkana, Arkansas, and of course, rates from points on the Butler County Railroad had to be on the basis of the group rates of the Trunk Lines; and of these rates the Butler County Railroad Company received as its division thereof, 3 cents per 100 pounds. As there were many participating carriers, and the distance was greater the Butler County Railroad Company necessarily received less in the division, than on a short haul to the Mississippi River points. The rates on lumber

to these points were 2 cents higher than the above rates, but lumber did not move to these markets. Cooperage stock is made from the low grade of timber, to wit, gum; while lumber is made from the high grade timber, to wit, white oak, red oak, hickory, ash and cypress. The same provision covering the privilege of milling in transit applied on these rates.

C.—The entire capital stock of Appellee is held by trustees for the benefit of the Brooklyn Cooperage Company, and the capital stock of the latter company is held and owned by the American Sugar Refining Company. The Brooklyn Cooperage Company, at the time of the hearing before the Commission, was engaged in cutting timber, for cooperage, at points adjacent to the line of road of Appellee, some, (not all as incorrectly stated in the Brief for the United States p. 30), of the timber being from land of the Great Western Land Company and some from lands owned by other people, the stock of which company is held by the American Sugar Refining Company—(Record pp. 16, 20)—other mills (Quercus Lumber Co., Putnam Hickory Mill and Oil Well Supply Co.) buy logs from the Great Western Land Company (Record pp. 23, 24)—and the mill of the Brooklyn Cooperage Company and other mills are located at Linstead, on the line of Appellee, within a mile of the junction point between Appellee and the St. Louis, Iron Mountain and Southern Railroad and the St. Louis & San Francisco Railroad. There were other parties also engaged in cutting timber at points adjacent to the line of road of Appellee, and also milling such timber at points at or near Linstead, aforesaid. The Brooklyn Cooperage Company owned its own logging tracks over which it brought logs to the stations or sidings of the Butler County Railroad,

which latter Company did not operate its locomotives over said tracks, made no allowance for the bringing of logs to its stations or sidings, and was engaged in the transportation of such logs, only after they were brought by shippers up to the stations or receiving tracks on its road.

In the Brief for the United States it is stated at page 31:

> "For the benefit and advantage of the American Sugar Refining Company the rate from Poplar Bluff to New York and New Orleans on cooperage material is 2 cents less than the rate from all other points on the line of Butler County Railroad Company. (R. 62, 64.)"

We know that the learned counsel for the United States would not intentionally create an erroneous impression as to the facts of this case, but in their zeal to find something in this record upon which to base an attack upon the American Sugar Refining Company, they have been led to make the above statement which is incorrect in every particular.

The rate "from Poplar Bluff to New York and New Orleans on cooperage material" is not 2 cents less than the rate from all other points on the line of Butler County Railroad". All points on the Butler County Railroad, *including Poplar Bluff*, to New York and New Orleans are grouped on *the same rate*, and this is required because the tariffs of the Trunk Lines, with which Butler County Railroad connects, group all points in that territory on the same rate to New York and New Orleans—being long hauls upon which the slight differences in distance become immaterial.

As to this, the Commission says (Record p. 63):

> "The rates from points on the tap line, including the mill at Linstead, are in all cases 2

> cents higher than the rates of the Trunk Lines from Poplar Bluff, excepting to *New Orleans and New York*, where most of the cooperage company's shipments actually move; *to those points the Poplar Bluff rates apply from points on the tap line.*"

This clearly shows the inaccuracy of the statement of the learned counsel above referred to.

The learned counsel for the United States at page 31 of their brief continue their inaccurate statement as follows:

> "The few independent shippers must pay either the local rate in addition to the charge of the Trunk Line or a through rate that is 2 cents higher than the rate from Poplar Bluff (R. 62, 64)."

This statement seems to refer to the shipment of "cooperage material" to New York and New Orleans, and if so, is inaccurate because, as above shown, the rate to those points is the group rate applying from all points on the Butler County Railroad and is the same as the Poplar Bluff rate.

If this refers to lumber and forest products to St. Louis, Thebes and Cairo, to which joint rates apply—and which are short hauls—the rates from all points on the Butler County Railroad, except Poplar Bluff at the junction, are 2 cents above the junction rate, but the rates are the same to all shippers, whether the Brooklyn Cooperage Company or so-called "independent shippers".

The Commission says (R. p. 63):

> "There are also a few independent producers of ties, handle bolts, etc., that team their logs to the saw-mills and ship out their products over the main track of the tap line into Lowell Junction. But such shippers pay either the local rate of the

tap line in addition to the charge of the Trunk Line or pay a through rate that is 2 cents higher than the rate from Poplar Bluff."

The situation is as follows:

1. The Brooklyn Cooperage Company delivers logs to the Butler County Railroad at its station at Bailey's, (for illustration), and pays on the lumber in logs, which is manufactured at Linstead (Poplar Bluff) a through rate 2 cents above the Poplar Bluff rate and also pays for the milling in transit privilege 1½ cents per 100 pounds on the logs from Bailey's to Linstead.

2. The so-called "independent shipper" hauls his logs by team to his mill at Bailey's and there the lumber is manufactured and then if he ships, on joint rates to points on the Trunk Lines, such as St. Louis, Thebes or Cairo, he pays the joint rate, 2 cents above Poplar Bluff, or if to New York or New Orleans he pays the same as the Poplar Bluff rate. He pays nothing on the logs, for he does not use the milling in transit privilege. He pays for teaming his logs to his mill and the Brooklyn Cooperage Company pays the cost of bringing its logs on its own tracks to the station at Bailey's and then pays the 1½ cents per 100 pounds on the logs for the milling in transit privilege, which it uses.

It is impossible that there should be, under the above facts, any unjust discrimination against anybody, and the Commission did not find that there was.

This is the only part of the Brief for the United States, where any effort seems to be made to show that the Butler County Railroad Company was discriminating against anybody, and it must be obvious that the learned counsel have misunderstood the facts.

We do not deem it necessary to correct the very insufficient statement in the Brief for the United States as to the detailed operations of the Butler County Railroad Company, all of which appear in the evidence and the Commission's Report. We are relieved of this by the frank admission of the learned counsel for the United States, in their Brief, p. 84:

> *"It is fairly to be implied that the Commission found it" (Butler County Railroad) "a common carrier of the products of the proprietary mill."*

Of course it would follow that if the Butler County Railroad Company is a common carrier of the products of the "proprietary mill" it is a common carrier as to other so-called "independent shippers".

D.—In a report issued on December 7, 1909 (17 I. C. C. Rep. 338), in what is known as the *Star Grain case*, the Interstate Commerce Commission so expressed itself as to the through routes and joint rates of short line railroads with the Trunk Lines or long line carriers, in general, as to alarm the St. Louis, Iron Mountain & Southern Railroad Company and the St. Louis & San Francisco Railroad Company, and as a result thereof they threatened to cancel the through routes and joint rates and the divisions thereof with Appellee, on lumber and forest products, and as a result of such threat, Appellee filed its petitions before the Interstate Commerce Commission, in which it prayed that the Commission would suspend the operation of certain tariffs and notices which were filed by the carriers aforesaid, cancelling the through routes and joint rates then in effect with the Butler County Railroad Company, on lumber and forest products, and also praying that the

Commission might find that the through routes and joint rates and the divisions thereof, then in effect, were just and reasonable, and might require the observance thereof by proper order (Record pp. 2-3). No tariffs were filed, however, cancelling through routes and joint rates on traffic covered by class rates.

E.—A hearing was duly had upon the petitions of Appellee, as aforesaid, at the same time that the Commission made its investigation in what is known as the Tap Line case, I. & S. Docket No. 11, and at such hearing evidence was introduced by the Butler County Railroad Company, which fully set forth the details of its operations, character and situation, at the time of the hearing, and all of the evidence as to Appellee which was before the Commission (being evidence offered by Appellee), appears in the Record as Exhibit A with the Bill. On the 14th day of May, 1912 (23 I. C. C. Rep. 549), the Commission made its report and finding as to the Butler County Railroad (Record, pp. 62 to 64, inclusive), the closing paragraph of which report is as follows:

> "For its services in moving the products of the Cooperage Company's mill to the Iron Mountain and to the Frisco, a distance of less than one mile, this Tap Line may lawfully receive *out of the rate* nothing beyond a reasonable switching charge, which we fix at $1.50 per car."

This finding of the Commission ignored the fact that the service of the Butler County Railroad Company, under the joint tariffs, began at the station on its road where the logs (containing the "products of the Cooperage Company's mill") were received, and no provision was made under this finding for compensation out of the joint rate for the service up to the mill,

which was provided for by agreement of the carriers, who were parties to the division of the joint rates.

On the 14th day of May, 1912, the Interstate Commerce Commission entered its order, wherein the connecting carriers of the Butler County Railroad Company were authorized "on not less than three days notice, to reopen through routes and publish joint rates with" the Butler County Railroad Company, "provided the allowance or division out of such joint rates to be paid on the products of the mills of the said proprietary companies", (Brooklyn Cooperage Company), "shall not exceed the division or allowance specified in the aforesaid supplemental report of the Commission;" (Record, p. 61); which said division was $1.50 per car; "and it is further ordered that the joint rates hereinbefore authorized may be published on three days notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record, may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies."

The result of this order was to authorize through routes and joint rates by the Butler County Railroad Company with its Trunk Line connections, the St. Louis, Iron Mountain and Southern Ry. Co. and the St. Louis and San Francisco R. R. Co., which was a finding of the fact that the Butler County Railroad Company is a common carrier, otherwise it could not join in through routes and joint rates and was not subject to the jurisdiction of the Commission; and as to all shippers, the tariffs were to "reopen through routes and publish joint rates" to and from stations on the Butler County Railroad on the terms

and with the divisions theretofore in effect, and with the milling in transit privilege; but this privilege and the joint rates were not to be accorded to the traffic of the Brooklyn Cooperage Company, the only exception among all shippers, because it was characterized by the Commission as a "proprietary company", and *therefore a distinction was made based simply upon the fact that the stock of Appellee was held by trustees for the benefit of Brooklyn Cooperage Company*, and this is emphasized by the admission of the United States (Brief p. 84) that: **"It is fairly to be implied that the Commission found it (Butler County Railroad) to be a common carrier of the products of the proprietary mill."**

F.—Subsequently, and on the 30th day of October, 1912, the Interstate Commerce Commission entered its amended order, which is (so far as applicable here) as follows (Record, p. 68):

> "6. It further appearing that the following parties to the record, namely" (Butler County Railroad Company), "have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had;
>
> "7. It is ordered, That the said principal defendants above named be", (among others, the St. Louis, Iron Mountain and Southern R. R. Company and the St. Louis and San Francisco Railroad Company) "and they are hereby, required, on or before Jany. 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named," (Butler County Railroad Co.) "the through interstate routes and joint rates in effect,

in accordance with their respective tariffs filed with this commission, on April 30, 1912:

* * * * * * * * * * * * * * * * *

"9. Provided, further, That the allowance or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last-named parties to the record" (Butler County Railroad Co.) "on the products of the mills of the said respective proprietary companies named in said report" (Brooklyn Cooperage Company) "shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum *divisions or allowances thereon*, until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

* * * * * *

"12. It is further ordered That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the commission by the parties hereto for approval."

The result of such amended order was to again find that the Butler County Railroad Company was and is a common carrier, and the defendants were "required on or before January 1st, 1913, to re-establish and for two years to maintain with each of said parties to the record last above named, the through interstate routes and joint rates in effect *in accordance with their respective tariffs* filed with this Commission on April 30th, 1912." (Italics ours.)

This provision required re-establishing the through routes and joint rates theretofore in effect with the Butler County Railroad Company, to and from all stations, *and the divisions thereof, with the*

milling in transit provision above referred to, and which were in effect on the 30th of April, 1912. By this order, however, it was provided that the divisions made out of the joint rates to the Butler County Railroad on the products of the mill of the Brooklyn Cooperage Company, only, "shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission", and which allowance or division was $1.50 per car, although the allowance or division to Appellee on traffic of all other shippers over the line of the Butler County Railroad, on the through routes and joint rates, with the milling in transit privilege, was required to remain in effect as it was on the 30th of April, 1912, giving to the Butler County Railroad Company its division of the lumber rate as well as its charges on the logs for the milling in transit privilege; and the Commission directed that the divisions of all joint rates required and authorized by its order, on traffic "other than the products of the mills" of the Brooklyn Cooperage Company, should be submitted to it for approval.

By this order there were two affirmative requirements of the Commission, as follows:

First. That although through routes and joint rates were to be re-established, the Butler County Railroad should not receive out of the joint rates a greater amount than $1.50 per car on the products of the mill of the Brooklyn Cooperage Company, even though the rates applied on the lumber, under the milling in transit provision, from all points on Appellee's road; and

Second. It was ordered that the divisions of all joint rates should be submitted to the Commission "for approval".

After this order was entered, the Butler County

Railroad Company applied to the Commerce Court for an injunction against the order and amended order of the Commission, in so far as they forbade the payment to the Butler County Railroad Company of a division out of the joint rates, re-established by such orders, greater than $1.50 per car on the products of the mill of the Brooklyn Cooperage Company, and praying that the division of $1.50 per car ordered by the Commission, so far as the products of the mill of the Brooklyn Cooperage Company were concerned, might be forever "enjoined, set aside, annulled and suspended".

The United States and the Interstate Commerce Commission answered the Bill and at the hearing, all of the record before the Interstate Commerce Commission, with reference to the Butler County Railroad Company, was admitted in evidence, and on November 28, 1913, the Commerce Court entered its final decree, as follows:

> "It is ordered and adjudged that so much of the order of October 30, 1912, which reads as follows: '9. Provided further, that the allowances or divisions out of such joint rates to be paid by said principal defendants respectively, to the said last named parties to the record' (Butler County Railroad Company) 'on the products of the mills of the respective proprietary companies named in said report, shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful'; be and the same is hereby vacated and set aside as to the petitioner herein." (Record, p. 105).

And thereupon an appeal was allowed to this Court.

Upon the foregoing statement of the case, we submit the following propositions:

I. The Commerce Court had jurisdiction of the complainant's Bill, and power to grant the relief prayed.

II. The Interstate Commerce Commission by its Supplemental Report of May 14, 1912, finds that the Butler County Railroad Company is a common carrier subject to the Act to Regulate Commerce.

III. The Interstate Commerce Commission required the Butler County Railroad Company, with the St. Louis & San Francisco Railroad Company and the St. Louis, Iron Mountain and Southern Railroad Company, respectively, to reestablish the through routes and joint rates theretofore in effect "in accordance with their respective tariffs", thereby fixing what was and is the proper and legal joint rate on lumber and forest products, from stations on the Butler County Railroad.

IV. Having fixed the proper and legal joint rate on lumber and forest products, the Commission had no power to prescribe the "proportion or division of such rate to be received by each carrier party thereto", unless the carriers "shall fail to agree among themselves upon the apportionment or division thereof".

V. It was beyond the power of the Commission to require that the Butler County Railroad Company should not receive out of the joint rate a greater sum than $1.50 per car, as a division of the rates on lumber and forest products carried for the Brooklyn Cooperage Company, when at the same time providing for its proper division of the joint rate to the Butler County Railroad on traffic carried for other shippers, under the same tariffs, containing the provision as to milling in transit.

ARGUMENT.

I.

The Commerce Court Had Jurisdiction of the Complainant's Bill and Power to Grant the Relief Prayed.

The jurisdiction of the Commerce Court invoked in this case, was given by the following provisions of the Act establishing that Court, as contained in Section 207 of the Judicial Code of March 3, 1911:

> "Section 207. The Commerce Court shall have the jurisdiction possessed by Circuit Courts of the United States and the judges thereof immediately prior to June 18, 1910, over all cases of the following kinds:
>
> First: * * * * * *
>
> Second: Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission."

Under this Act, as construed by this Court in the case of *Procter & Gamble vs. United States*, 225 U. S. 282, the Commerce Court had "jurisdiction only to entertain complaints as to affirmative orders of the Commission", and our position is that the reading of the order of the Commission, here complained of, will demonstrate its affirmative character, and as said by the Chief Justice in the above case (page 293):

> "No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves."

However, it is deemed proper to state the views we entertain as to the order and the jurisdiction of the Court.

This bill of complaint was filed in the Commerce

Court to enjoin, set aside and annul, "in part", the order of the Interstate Commerce Commission of October 30, 1912, and particularly Section 9 thereof.

In reading the order it will be observed that Section 3 thereof, names the principal defendants, and by Section 6 it is recited that the Butler County Railroad Company has "heretofore filed with the Commission" its petition "for the establishment or re-establishment of through routes and joint rates to interstate destinations", which said petition is filed on or consolidated with the record "herein", and on which a full hearing has been had. Therefore,

> "7. It is ordered, That the said principal defendants above named be and they are hereby required, on or before January 1, 1913, to reestablish and for a period of two years to maintain with each of the said parties to the record last above named" (of which the Butler County Railroad Company was one), "the through interstate routes and joint rates in effect in accordance with their respective tariffs filed with this Commission on April 30, 1912." (Record p. 68.)

It can hardly be doubted that this requirement of the order was affirmative, and that it required the Butler County Railroad Company and the principal defendants to reestablish "the through interstate routes and joint rates in effect on April 30, 1912", and that such order required that such joint rates should be made effective "in accordance with their respective tariffs" which were on file with the Commission on April 30th, and which provided for the milling in transit privilege hereinbefore referred to. The reading of the order must be conclusive that so far it is affirmative.

There was the following in addition to the above order:

"Nine. Provided further, that the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record" (Butler County Railroad Company) "on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the commission, which are hereby fixed as maximum divisions or allowances thereon until further order, the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful." (Record p. 68.)

It is obvious that the effect of this provision was an order to the principal defendants to pay to the Butler County Railroad Company the $1.50 per car referred to in the supplemental report of the Commission (Record, p. 64), as a division out of the joint rate, and *no more than that amount*, and the Butler County Railroad Company was ordered to receive no more than that amount; and if this be the correct construction of the proviso aforesaid, it is apparent that this part of the order complained of was affirmative in character, and within the jurisdiction of the Commerce Court.

It is further to be observed that the Commission affirmatively fixes the $1.50 per car "as maximum divisions or allowances" to the Butler County Railroad Company "on the products of the mills of the Brooklyn Cooperage Company", and this in effect was an order that the principal defendants should not pay, and the Butler County Railroad Company should not receive an allowance or division "out of such joint rates" fixed by the order, greater than $1.50 per car.

The learned counsel for the United States say that

this case is governed by the case of Hooker vs. Knapp, 225 U. S. 302,—In that case the appellant applied to the Commission for the reduction of certain rates—The Commission reduced the rates but not to the extent demanded by appellant, who then filed his bill in the Commerce Court to enjoin and set aside the order of the Commission and praying for a mandatory injunction requiring the Commission to reopen the case and give him the relief which it had denied. The affirmative order of the Commission was in favor of appellant; the order to which an injunction was asked simply denied relief and this Court held that the Procter and Gamble case controlled the case. Here, however, the Butler County Railroad Company is required to join in the transportation, upon the payment to it of $1.50 per car, out of the joint rate, which we submit was an affirmative order and not governed by the case of Hooker vs. Knapp.

It is quite true that the Commission in its general order classifying the carriers, adds the following:

> "The Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful"; (Record, p. 68).

but, no effort is made by counsel to show how discrimination could occur, and as we will hereinafter show, there was absolutely no evidence in the Record upon which to base such a statement, so far as the case of the Butler County Railroad Company was concerned, and is but an illustration of the confusion and error brought about by putting that Company into an attempted classification of railroads under a general order, not applicable to it, while it *may be applicable* to some of the carriers in the class.

It seems needless to further argue that the part

of the order complained of was affirmative in character, and that the Commerce Court had jurisdiction to grant the complainant relief, by setting aside and annulling the same.

II.

The Interstate Commerce Commission by its Supplemental Report of May 14, 1912, finds that the Butler County Railroad Company is a Common Carrier subject to the Act to Regulate Commerce.

The order of the Commission of October 30, 1912, required the principal defendants to reestablish "the through interstate routes and joint rates in effect" with the Butler County Railroad Company "in accordance with their respective tariffs filed with this Commission on April 30, 1912". This order could only have been entered upon the finding of the Commission that the Butler County Railroad Company was a "carrier subject to the provisions of this Act" (Section 1 of the Act to Regulate Commerce), for only common carriers are subject to the Act to Regulate Commerce and to the jurisdiction of the Interstate Commerce Commission, and only a carrier subject to the Act to Regulate Commerce can be required by the Commission, under the provisions of the Act to Regulate Commerce, "to establish through routes and just and reasonable rates applicable thereto".

We, therefore, conclude that when the Commission entered its order requiring the establishing of joint rates by the Butler County Railroad Company and the principal defendants, it was a necessary part of the finding of the Commission *that each of the parties to such through route and joint rate should be a common carrier and subject to the provisions of the Act to Regulate Commerce.*

Counsel for the United States frankly admit that: "*It is fairly to be implied that the Commission found it* (Butler County Railroad) *to be a common carrier of the products of the proprietary mill.*"

III.

The Interstate Commerce Commission required the Butler County Railroad Company, with the St. Louis & San Francisco Railroad Company and the St. Louis, Iron Mountain and Southern Railway Company, respectively, to reestablish the through routes and joint rates theretofore in effect "in accordance with their respective tariffs", thereby fixing what was and is the proper and legal joint rate on lumber and forest products, from stations on the Butler County Railroad.

By its order of October 30, 1912, the Interstate Commerce Commission not only required the principal defendants, with the Butler County Railroad Company, to reestablish "the through interstate routes" which were in effect on April 30, 1912, but also required the Butler County Railroad Company and the principal defendants to reestablish the "*joint rates in effect in accordance with their respective tariffs filed with this Commission on April* 30, 1912"; so that the Commission not only required through routes, but fixed the amount of the "joint rates" which it required should be reestablished and provided that the same should be "in accordance with their respective tariffs filed with this Commission on April 30, 1912", which carried not only the rates, *but the milling in transit privilege covered by such rates.*

IV.

Having fixed the proper and legal joint rate on lumber and forest products, the Commission had no power to prescribe the "proportion or division of such rate to be received by each carrier party thereto", unless the carriers "shall fail to agree among themselves upon the apportionment or division thereof."

The provisions of the Act to Regulate Commerce as amended in 1906, which are applicable to the question here involved, will be here referred to and discussed.

Section 1 of the Act provides that "it shall be the duty of every carrier subject to the provisions of this Act * * * * to establish through routes and just and reasonable rates applicable thereto * * * * and providing for reasonable compensation to those entitled thereto". It will be observed that *it was the duty* of the principal defendants and of the Butler County Railroad Company, under Section 1, "to establish through routes and just and reasonable rates applicable thereto", and this means rates applicable to the through routes and where necessary, because the route covers the road of more than one carrier, *joint rates;* and where in operating such through routes it was necessary that more than one carrier participate in the traffic, they were required "to make reasonable rules and regulations with respect to the exchange, interchange and return of cars used therein and *for the operation of such through routes"*, and then the several carriers composing the through routes were required, of themselves, "to make reasonable rules and regulations * * * * providing for reasonable compensation to those entitled thereto".

The conclusion from this Section of the Act is ob-

vious that out of the "reasonable rates applicable" to through routes, *the several carriers were required* "to make reasonable rules and regulations" for the division or apportionment of the joint rates so as to provide "for reasonable compensation to those entitled thereto". The Act is mandatory that each party for the service over the through route, is to have fixed *by the carriers themselves* "reasonable compensation" for its service in "the operation of such through routes".

Prior to the amendment of the Act in 1906, there was no power given to the Commission or the courts to require the establishment of joint rates or to supervise the division thereof when made by the carriers. This clearly appears from the case of *Chicago & N. W. Ry. Co. vs. Osborne*, 52 Fed. 912 (C. C. A., Eighth Circuit), in which the opinion was delivered by Mr. Justice Brewer, sitting on the Circuit, and at page 915 it is said:

> "No power existed at common law, and none is given by the Act, to Court or Commission, to compel connecting companies to contract with each other, to abandon full control of their separate roads or to unite in a joint tariff." (Cases cited). "The whole matter is left to the voluntary action of the companies; and in forming by agreement any joint tariff *the basis of division and the proportion of moneys each shall take is also a matter left to their determination.*" (Italics ours).

In that case a writ of certiorari to the Circuit Court of Appeals of the Eighth Circuit was denied by this Court, 146 U. S. 354.

Congress, however, was not satisfied that the carriers would make joint rates when necessary and therefore enacted the foregoing provisions requiring the establishing of joint rates and by Section 15 the Com-

mission *was given power* to require the carriers to establish through routes and joint rates; and in order to insure that the carriers would deal fairly among themselves, and provide satisfactory compensation to each carrier rendering service in "the operation of such through routes", it was further provided, by Section 15 of the Act, as amended in 1906, as follows:

> "*Whenever* the carrier or carriers, in obedience to such order of the Commission *or otherwise*, in respect to joint rates, fares or charges, *shall fail to agree* among themselves upon the apportionment or division thereof, the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order." (Italics ours).

By this provision Congress intended that if the carriers "in obedience to an order of the Commission", *or* "*otherwise*", having themselves established joint rates "shall fail to agree among themselves upon the apportionment or division thereof", that then the Commission, after a hearing, might prescribe "the just and reasonable proportion of such joint rate to be received by each carrier, party to the joint rate". Congress never intended to give to the Commission the power of prescribing the "apportionment or division" of the joint rate among the carriers parties thereto *unless and until the carriers failed* "to agree among themselves upon the apportionment or division thereof". The public is only interested that the division should give to each carrier "reasonable compensation" for services over the through route, and therefore the Commission is only authorized to act "whenever" the carriers "shall fail to agree". The condition must occur before the Commission is authorized to act.

This provision of Section 15 is in accord with the provision in Section 1, which requires the carriers *in the first instance* to provide among themselves "for reasonable compensation to those entitled thereto" in "the operation of such through routes"; and likewise by Section 15 the jurisdiction of the Commission is limited and can only be invoked "whenever the carrier or carriers * * * * shall fail to agree among themselves upon the apportionment or division thereof".

The express condition upon which the Commission has jurisdiction to interfere, is that the carriers in the first instance *shall fail to agree among themselves*, and as was said by this Court in the case of *Interstate Commerce Commission vs. Northern Pacific Ry. Co.*, 216 U. S. 538, by Mr. Justice Holmes, at page 545:

> "The condition in the Statute is not to be trifled away."

The only other pertinent provision of the Act as to joint rates and the divisions thereof, is a subsequent clause of Section 15 as follows:

> "The Commission may also, after hearing on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged, and may prescribe the division of such rates *as hereinbefore provided*, and the terms and conditions under which such through routes shall be operated whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates."

In this provision the Commission is given power to "prescribe the division of such rates *as hereinbefore provided*," and this clause refers back to the provision of Section 15, which authorizes the Commission to pre-

scribe "the just and reasonable proportion of such joint rate to be received by each carrier party thereto", but only "*whenever* the carrier or carriers * * * *shall fail to agree among themselves upon the apportionment or division thereof.*" (Italics ours.)

We do not intend to suggest that the Commission might not interfere and forbid the use of divisions of joint rates among the carriers, which resulted in violation of other provisions of the Act, as to rebates or unjust discrimination or otherwise; but if the Commission undertakes to forbid established divisions on that ground, it can only act "after hearing" at which the evidence presented was sufficient to establish such violations of the Act, and then the Commission could prescribe "the just and reasonable proportion of such joint rates to be received by each carrier party thereto", only when based upon evidence before it, after due hearing.

In this case the evidence before the Commission, which will be found in the Record beginning at page 10, demonstrates that there was nothing before the Commission indicating that the divisions agreed upon resulted in any way in a violation of the Act, nor was evidence adduced on the subject of the divisions or apportionment of the joint rates, as between the Butler County Railroad Company and the principal defendants; and in fixing the "allowances or divisions out of such joint rates to be paid by said principal defendants" to the Butler County Railroad Company "on the products of the mills" of the Brooklyn Cooperage Company at $1.50 per car, the Commission *acted arbitrarily and without the slightest evidence before it upon which to justify its action.* It was shown by the Record without controversy that every shipper on the line of the Butler County Railroad paid the same rate,

and that the divisions which the Butler County Railroad Company got out of the joint rates were hardly sufficient to pay operating expenses, and that there had never been a dividend upon its stock, held for the benefit of the Brooklyn Cooperage Company, referred to as the proprietary company, except once when four per cent. was paid out of a balance of money which the Butler County Railroad Company had borrowed, (See Record, p. 48).

It is true that in its supplemental report the Commission said, (Record, p. 64):

> "This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points."

While this statement of the Commission is not justified by anything in the Record, it is interesting to note that it refers to the Butler County Railroad as being owned by an industry, *which holds it out* "as a common carrier", when the Commission in its order treats the Butler County Railroad Company *as a common carrier*, and in effect finds that it is such; and it is also interesting to observe that while the Commission apparently criticises the joint rates of the Butler County Railroad and other carriers from points on the Butler County Railroad to New York and New Orleans, by its order of October 30, 1912, the Commission *directs that these very same joint rates be reestablished over the through routes covered by the same.* It is

further interesting to inquire how the divisions of the joint rate among the carriers can result in inducing the movement of hardwood to New York and New Orleans and "restrict movements to other points"? The question of whether the traffic will move to a certain point depends on *what is the joint rate to that point* and not on what is the division of that rate among the carriers. The Commission approved the existing joint rates and ordered them to be reestablished, and it would seem to be absurd to say that the point to which the traffic will move can be influenced, not by the joint rates approved by the Commission, *but by the division of such rates among the carriers.*"

The Brooklyn Cooperage Company has never received any return upon the investment it has in the Butler County Railroad, but that road has furnished, as a carrier, to it and to the other shippers along its line, the transportation service necessary to the transaction of their traffic and the development of the country. The only possible difference between the situation of the Brooklyn Cooperage Company and the other shippers over the line of the Butler County Railroad, is that the Brooklyn Cooperage Company has an investment in the stock of the Butler County Railroad Company upon which it has never received a return. The transporfation service covered by the rates, with the milling in transit privilege, is conducted for the Brooklyn Cooperage Company on exactly the same basis as for other shippers on the Butler County Railroad, and the Commission has found that the Butler County Railroad is a common carrier, and this finding is amply sustained by the facts of record, which it is not deemed necessary to here repeat.

Under the order of the Commission the same joint rates apply on the traffic of the Brooklyn Cooperage

Company and of other shippers, and the difference made is that upon the traffic of the Brooklyn Cooperage Company, under such order, the connections of the Butler County Railroad Company retain the whole of the joint rate, except $1.50 per car; whereas on the traffic of other shippers, the joint rate is divided between the Butler County Railroad and its connections. The Commission has frequently held that the fact that a company shipping over a line of railroad, owns the stock of that road, does not determine the question of whether the road is a common carrier or not.

Thus in *Division of Joint Rates*, 10 I. C. C. Rep. 385, the Commission said (page 399):

> "The mere fact that this road is today entirely owned by the largest individual shipper over it, or that it was originally organized and built for the purpose of doing the work of that shipper, is not, in our opinion, controlling against the legality of the transaction before us. While there may be grave objections to allowing shippers to build and operate railroads over which their traffic moves, the Interstate Commerce Act contains no prohibition of that kind. This was so ruled by us in *Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co.*, 10 I. C. C. Rep. 193. We also held in *Re Allowances to Elevators by the Union P. R. Co.*, 10 I. C. C. Rep. 309, that the Union Pacific Company might pay an elevator Company for transferring grain from its cars to the cars of its connections at Council Bluffs, so long as the transaction was in good faith, even though the greater part of the grain so transferred belonged to the Elevator Company receiving the compensation."

In *Crane Railroad Co. v. Philadelphia & Reading Ry. Co.*, 15 I. C. C. Rep. 248, at page 252, the Commission said:

> "The mere fact that complainant's road is owned by a corporation which also owns the stock

> of the largest shipper over it, and that it was originally organized and built for the purpose of doing the work of that shipper, is not in our opinion controlling against its being held a common carrier."

If the Butler County Railroad Company is a common carrier, it would seem clear that any distinction between shippers, on account of stock ownership of one of the shippers, in the division of rates which the Butler County Railroad Company receives, would obviously be arbitrary and beyond the power of the Commission, unless there was evidence showing that the Butler County Railroad Company was a mere device, and in that case, it would not be a *bona fide* common carrier.

In the case of *Malvern & Freeo Valley Railroad Co. v. Chicago &c. Ry. Co.*, 182 Fed. 685, the Court said, (p. 688):

> "If complainant is a common carrier it must be entitled to its share of interstate rates. The law enjoins that very thing upon the litigating parties, and it enjoins upon the Interstate Commerce Commission, upon proper showing and conditions, to enforce that law."

Therefore, the Interstate Commerce Commission having found that the Butler County Railroad Company is a common carrier, the difference in the divisions of the joint rates to the Butler County Railroad Company on traffic of the Brooklyn Cooperage Company and other shippers, is an arbitrary distinction, and does not accord to the Butler County Railroad Company, what it is entitled to under the Act, as a common carrier.

It is admitted by counsel for the United States (Brief p. 85) that the $1.50 per car to the Butler Coun-

ty Railroad Company is a division to it out "of the joint rate" and not a mere switching charge.

We, therefore, submit that until it was shown to the Commission that the carriers failed to agree among themselves as to the apportionment or division of the joint rates which it had established, the Commission had no power to prescribe what should be "the allowances or divisions out of such joint rates to be paid by said principal defendants" to the Butler County Railroad Company, on the products of the mills of the Brooklyn Cooperage Company, and we further submit that the Commission had no power at any time to prescribe such allowances or divisions out of the joint rate, except "after hearing" and the presentation to it of evidence as to what should be "the just and reasonable proportion of such joint rate to be received by each carrier party thereto", and that when the Commission fixed $1.50 per car as the division or allowance to the Butler County Railroad Company, out of the joint rate, it acted arbitrarily and beyond the powers conferred upon it by the Act to Regulate Commerce.

V.

It was beyond the power of the Commission to require that the Butler County Railroad Company should not receive out of the joint rate a greater division than $1.50 per car on lumber and forest products carried for the Brooklyn Cooperage Company, when at the same time providing for proper divisions of the joint rate to the Butler County Railroad Company on traffic carried for other shippers under the same tariffs containing the provision as to milling in transit.

It will be observed that in its supplemental report

(Record, p. 64), the Commission refers to the $1.50 per car to the Butler County Railroad Company as "a reasonable switching charge", *while in its order of October* 30, 1912 (*Record, p.* 68), it refers to this $1.50 per car as "the allowance or division out of such joint rates", and by the order this amount is "hereby fixed as a maximum division or allowance thereon". See Brief for United States p. 85. So that by the order of the Commission it is clear that the $1.50 per car is *an allowance or division to the Butler County Railroad* out of the joint rates applicable from points on its line, over the through routes with other carriers, to points of destination in other States, the tariffs covering which said rates also provide for the milling in transit privilege, which the Commission does not question but affirms and approves in directing that the joint rates shall be reestablished "*in accordance with their respective tariffs filed with this Commission on April* 30, 1912."

The joint rates on lumber provided for under the tariffs of the Butler County Railroad Company and its connections, apply from all points on the Butler County Railroad where the logs are received, and under the milling in transit provision, the logs are carried under the lumber rate, with the additional charge of 1½ cents per 100 pounds on the logs when the milling in transit privilege is availed of. So that the service of the Butler County Railroad is the transportation of 4½ carloads of logs from the point on its line where they are received, to the mill where the lumber is manufactured, and then the transportation of one car of lumber from these logs from the mill to the connecting Trunk Line. For this service the Butler County Railroad Company, under the tariffs, gets its division out of the joint rate on one car of lumber, and in addition thereto 1½ cents

per 100 pounds on the logs for the milling in transit privilege.

This is the basis upon which transportation is conducted for all shippers under the tariffs, and if, under the order of the Interstate Commerce Commission, the Butler County Railroad Company can only receive $1.50 per car out of the joint rate, for switching a car of lumber from the mill to the Trunk Line junction, it is evident that as to the traffic of the Brooklyn Cooperage Company, the Butler County Railroad Company is required to perform the service from the point where the logs are received to the mill, without compensation out of the joint rate other than $1.50 per car, whereas it receives its full division out of the joint rates as compensation on the traffic of other shippers. On both classes of traffic the Butler County Railroad Company would receive 1½ cents per 100 pounds on the logs for the milling in transit privilege.

In its order the Commission requires the carriers to reestablish the joint rates in effect on April 30, 1912, both on the products of the mills of the Brooklyn Cooperage Company and on the products of the mills of shippers other than the Brooklyn Cooperage Company; but when it comes to the division or apportionment of the joint rates to the Butler County Railroad Company, while it leaves the divisions, theretofore in effect, upon traffic other than the products of the mills of the Brooklyn Cooperage Company, it limits the division of the Butler County Railroad Company on the products of the mills of the Brooklyn Cooperage Company to $1.50 per car. Both the Brooklyn Cooperage Company and other shippers are entitled, under the order, to the milling in transit privilege provided for in the tariffs, and under this order it is easily demonstrated that the Butler County Railroad Company, if its revenues

are to be merely sufficient to operate the road, is required to discriminate in charges against the traffic of the Brooklyn Cooperage Company, and this is ordered by the Commission, simply and purely because *the entire capital stock of the Butler County Railroad Company is held by trustees for the benefit of the Brooklyn Cooperage Company.*

It is a sound proposition that an industrial company owning the stock of a common carrier railroad company should not thereby secure to itself a preference in rates. It is equally clear that an industrial company owning the capital stock of a common carrier railroad company should not be penalized by reason of its owning such stock, in the rates which it may have to pay for like service, and yet it is easily demonstrated that the order of the Commission complained of brings about this very discrimination, as follows:

If the shipment is by a shipper other than the Brooklyn Cooperage Company on cooperage stock on the line of the Butler County Railroad Company to New Orleans, upon which the rate is 17 cents per 100 pounds, the division of said rate to which the Butler County Railroad Company is entitled would be 3 cents per 100 pounds (Record p. 55). If on the other hand, the shipment was made by the Brooklyn Cooperage Company from a mill located in the same locality under the order and amended order of the Commission aforesaid, the Butler County Railroad Company would receive as its allowance or division out of such joint rate $1.50 per car for its service, and therefore, in order to compensate the Butler County Railroad Company, it would have to add sufficient over and above the $1.50 per car to the shipment made by the Brooklyn Cooperage Company, in order that it might receive for its services 3 cents per 100 pounds; and, therefore, the

Brooklyn Cooperage Company would be required to pay 3 cents per 100 pounds, (less $1.50 per car), more than the other shipper in the same locality, in order that the Butler County Railroad Company might receive the same amount of revenue on the two shipments, and because of the stock ownership aforesaid in the Butler County Railroad Company, its connections would take the whole of the 17 cents per 100 pounds less $1.50 per car.

We submit that this would require the Butler County Railroad Company to unjustly discriminate against the Brooklyn Cooperage Company and its shipments, in order that it might secure an equal amount of revenue from the two shipments above set forth.

The Brief on behalf of the Interstate Commerce Commission.

The learned counsel for the Interstate Commerce Commission has filed a brief in this case, but it is difficult to see the applicability of the greater part of it to this record. The Commission is now engaged in an investigation—"In the Matter of Additional Charges over present rates for Spotting Cars to Private Sidings"—and the first fifty pages of the brief filed here by the Interstate Commerce Commission is a theoretical discussion of that question, evidently prepared for filing therein, and we can see no place for such discussion upon the issues here involved.

In the case now under consideration, the Butler County Railroad Company hauls the logs *from its stations* to all the mills at Linstead, where the lumber is manufactured, and then hauls the lumber from the mills to the junction with the trunk line carriers. As heretofore shown, the lumber rates, under the tariffs, are made to apply from the stations on the Butler

County Railroad, where the logs are received, containing the lumber which finally moves from the mills; and; under the order of the Interstate Commerce Commission of October 30, 1912 (Record, pp. 64, 68), the Butler County Railroad Company and the trunk lines were required to re-establish "the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912", which rates applied on lumber from the stations of the Butler County Railroad, through the mill to the junction with the trunk lines, and thence to destination, with the milling in transit privilege, for which the shipper was charged 1-½ cents per 100 pounds, on the logs, in addition to the lumber rate; and by Section 9 of the order aforesaid, the Commission provides for an allowance or division "out of such joint rates to be paid" by the trunk lines to the Butler County Railroad, of $1.50 per car on traffic of the Brooklyn Cooperage Company.

The service in transporting the lumber from the mill to the junction is not a switching service, but, as shown by the order of the Interstate Commerce Commission, is a part of the service in operating the through route, covered by the joint rates, and as admitted by the learned counsel for the United States (Brief, p. 85):

> "The payment 'out of the rate' would seem to mean a division of the joint rate, not an allowance under Section 15; and the fact that it is described as 'a reasonable switching charge' and is measured by the carload rather than by the hundred pounds, does not militate against this interpretation."

It is obvious, therefore, that the transportation from the mills to the junction with the trunk lines is a part of the transportation service over the through

route. The Butler County Railroad does none of the interplant switching, which is done by the mill owners themselves.

In the brief of counsel for the Interstate Commerce Commission, (at page 52), it is said:

> "These tap lines, therefore, are not entitled to through routes even if they be *bona fide* common carriers, when the service rendered is nothing more than switching cars of lumber from the mill to the main line."

This statement is entirely inapplicable to the case now under consideration, and as shown in their brief, (page 1) is addressed to the situation in the general Tap Line cases. The service of the Butler County Railroad begins at its station where the logs are received, and the haul from the mills to the junction is not a mere switching service, but is a part of the transportation service, over the "through route".

Again, at page 55 of brief for the Commission, which also was applicable to the general Tap Line cases, it is stated:

> "Any practice, therefore, by line carriers, which relieves the mill owner of the reasonable charge for the transportation of logs, is a direct contribution to his net operating revenue."

In this case the mill owner is charged by the Butler County Railroad Company 1-½ cents per 100 pounds for the logs, and the division which the Butler County Railroad Company gets out of the joint rate covers the transportation *of the lumber in those logs*, from stations on the Butler County Railroad, to the junction with the trunk lines.

Again, at page 56 of the brief, which is still applicable under the statement of counsel, to the general Tap Line cases, the lumber rate is spoken of as apply-

ing "at the forest where the logs originated"; and then it is stated: "By this method a mill owner secures the transportation of the logs from the forest to his mill without paying anything for the transportation." This, also, is inapplicable to the present case, as shown above.

And again, at page 59, still applicable to the general Tap Line case, according to the statement of counsel, it is said:

> "This practice of absorbing the log haul is a bald open contribution to the mill owner."

And this is equally inapplicable to the situation of the Butler County Railroad, for the log haul is paid for, by the shipper, and the charge is not absorbed.

Again, at page 65, which counsel say is applicable to the general Tap Line cases, it is stated:

> "The investigation in this case has developed a wide spread commingling of the business of transportation with private business."

We challenge the accuracy of this statement, as applied to the Butler County Railroad. The Commission found no such condition, and there is absolutely nothing in the record upon which to base any such charge. The accounts of the Butler County Railroad Company were kept as required by the Commission. Monthly and annual reports were made to the Commission, and no part of its business is complicated with the affairs of any shipper on its line. The Brooklyn Cooperage Company has never received any return upon its investment, and it is not fair to make general charges of this kind, unsustained by the record or by the finding of the Commission.

At page 67 of the brief, the learned counsel refer to the Butler County Railroad Company, and state that

the logs "or timber from which this cooperage stock is manufactured, comes from the forests owned by the Great Western Land Company, and the logs are transported from the forests to the mill by the Butler County Railroad."

The logs from which the cooperage is manufactured by the Brooklyn Cooperage Company not only come from the lands of the Great Western Land Company, but from other timber purchased by it, (Record, p. 20) and the logs are transported, from the forests to the station or sidetrack of the Butler County Railroad, by the Brooklyn Cooperage Company and then transported by the Butler County Railroad (Record, p. 33). The Butler County Railroad Company does not transport the logs from "the forests to the mill" but only from its stations to the mill.

At page 68 of the brief, the learned Counsel say that for the trackage right from Lowell Junction to Linstead, over the Iron Mountain Railroad, the Butler County Railroad "pays only 65 cents per train mile for a train of twenty-five cars". The trackage right is based upon the usual charges, therefor, and no criticism is made of this by the Commission.

At page 69 of the Brief of learned Counsel, it is stated:

> "the logging roads into the forests are not made common carriers for the reason that if they were the owners of segregated tracts of timber land could ship their logs over them. The great lumber companies prefer to hold a monopoly over the forests and thereby compel the sale of outside tracts to them as they need them. Through these two manipulations the large lumber companies seek (1) to monopolize the forests and (2) to secure, through the medium of through routes and joint rates and the milling in transit privilege, rebates from the published lumber rates."

We submit that this statement is entirely inapplicable to the case under consideration. The Commission made no such finding and upon the record could not have made such a finding as here set forth.

In the brief of Counsel, on pages 70 and 71, the charge of the Butler County Railroad for the log haul is spoken of as a "book charge against the Cooperage Company for hauling logs to its mill" and as a "mere book charge". There is absolutely nothing in the Record nor in the finding of the Commission upon which to base such a statement. It is clearly shown that all shippers are treated exactly alike and that the tariff of rates is collected from the Brooklyn Cooperage Company as from every other shipper and that upon such charges the Butler County Railroad Company bases its ability to operate the road, in the interest of all shippers, and no part of the charges collected from the Brooklyn Cooperage Company has ever been returned to it, by way of dividends, or otherwise.

Counsel, at the bottom of page 71 and top of page 72, of their brief, charge that the division of the through rate on traffic of the Brooklyn Cooperage Company is a "payment to the shipper" and "a plain, unequivocal absorption of the log haul of the cooperage company by the payment of a very large rebate". And further, it is stated "the power of monopoly is here also asserted".

Charges of this kind, not only unsustained by the record but clearly contradicted thereby and not in accordance with the finding of the Commission, we submit, should not commend this brief to the Court. The Butler County Railroad Company has been found by the Commission to be a common carrier. The record shows that it is doing a useful and necessary passenger and freight business; that all of its patrons are served fairly and exactly alike, and learned Counsel

for the Commission should not go out of the record, to embarrass this railroad company in its effort to build up the country through which it operates. Upon the record in this case, we challenge any charge of unfair treatment of anybody or that the operations of this Company are conducted for any improper purpose. The charge of giving or receiving a rebate, is a serious one and should not be loosely and carelessly made, without the slightest evidence to support the charge.

We submit, that the decree of the Commerce Court should be affirmed.

Wm. A. Glasgow, Jr.,
James M. Beck,
Counsel for Appellee.

March 27th, 1914.

TAP-LINE CASES.

FILED
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JAMES D. MAHER
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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

UNITED STATES, Appellant, vs. LOUISIANA & PACIFIC RAILWAY COMPANY et al., Appellees.	No. 829.
UNITED STATES, Appellant, vs. WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, et al., Appellees.	No. 831.
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ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

REPLY BRIEF FOR APPELLEES.

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ON APPEAL FROM THE UNITED STATES COMMERCE COURT.

REPLY BRIEF FOR APPELLEES.

We have been furnished with the corrected brief on behalf of the Interstate Commerce Commission in manuscript form. We are therefore unable to make references to the particular pages of the brief to which this reply is directed. We shall, however, quote verbatim from the Commission's brief, in order that the court will have no difficulty in knowing the particular matter to which this reply is directed.

The first subdivision of the Commission's brief presents the following propositions:

> "1. A tap line is not entitled to a 'division' of the line lumber rate for performing a switching service. Where the carriers absorb the switching service at the points of origin of lumber traffic, the shipper or its tap line may be allowed, under Section 15, a reasonable switching charge for performing the switching service."

By this we understand that counsel for the Commission distinguishes between the term "division" and the term "allowance," and between the term "transportation" and the term "switching." This is shown by the sentence in the brief under the heading, "A switching service cannot be an integral part of a through route," reading as follows:

> "Here it may be well to observe the difference between the words 'allowance' and 'division,' as used in the statute. The former applies to allowances made to a shipper under Section 15 for services which the carrier can be compelled to perform, but which he allows the shipper to perform. The word 'division' applies only in cases of through routes, to the portions of the joint rate which each line carrier receives. If the services performed by a shipper is a switching service, the allowance will be a switching charge, that is, a charge per car, and such

allowances have been made to tap lines. They complain of this and say they want a 'division.' The reason for this is apparent. A switching charge would be from $1.50 to $5 per car. The divisions which have been improperly allowed by carriers were on the theory that a switching movement was a part of the through route, and 'divisions' were made ranging from two to four cents per 100 pounds, making the 'allowance' to the shipper or its tap line $12 to $18 and $20 per car. Of course, they want 'divisions.' But the character of the service must always determine the compensation. If the service is switching the allowance will be a switching charge; if it be a line haul over part of a through route there will be a 'division' of the joint rate."

From these quotations it seems apparent that counsel for the Commission are of the opinion that the petitioner railroads are switching roads, do not perform a line haul, and are entitled, if to anything, only to an allowance and not to a division. The vice in the argument on behalf of the Commission lies in the fact that it is a complete reversal of the terms used by the Commission in the Tap Line opinion, and of the Commission's conference rulings. The court will observe from the Tap Line decision that the words "division" and "allowance" are used interchangeably. Indeed, in prescribing the division out of the joint rate to be accorded lines recognized by the Commission as common carriers, the term "division" has been used by the Commission where the distance did not exceed one mile. The argument on behalf of the Commission is that switching is not an integral part of a through route and cannot be covered by a joint rate.

In the case of the Trinity Valley & Northern Rail-

road, 23 I. C. C. 624 (Opinions, orders, etc., page 144), the Commission finds the distance over which the lumber is hauled by the Trinity Valley & Northern to the Texas & New Orleans Railroad, to be "about one mile," and to the Frisco "nearly five miles." On the following page, when fixing the amount to be paid out of the joint rate, the Commission says:

> "In this case we think that, with respect to the products of the mill of the lumber company, any division out of the rate to the tap line in excess of one cent per 100 pounds would be unlawful. We fix that as the maximum."

In many places in the opinion Commissioner Harlan refers to "allowances" as covering the entire compensation paid to any tap line. On page 7 (Opinions, Orders, etc.), speaking generally under the heading "Discriminations resulting from allowances," the Commission says:

> "That discriminations grow out of these contributions by the public carriers to certain of the lumber interests in Arkansas, Missouri, Texas and Louisiana, is apparent on the face of the record. The *allowances* paid range from a minimum of ¾ of a cent to six cents per 100 pounds. In the competition of carriers for the traffic *allowances* as high as seven cents per 100 pounds have been paid out of a 14 cent rate, where the haul of the tap line was a matter of feet and yards, while the haul of the carrier itself approximated 400 miles. The amount of the *allowance* seems not to be governed definitely by the extent or character of the service said to be performed by the tap line, but to result to some extent from the bargain made between the carrier and the lumber company. In one case a tap line, operating six miles of main line, receives *allowances* of three and four cents per

> 100 pounds, while a few miles away another tap line, operating 12 miles, receives but one to two and one-half cents per 100 pounds, depending upon destination; in each case the public carrier performs all the service between the mill and its own tracks."

In the case of the following lines among others the Commission uses the term "allowance" in describing the earning out of the joint rate given the tap line: Malvern and Freco Valley (Opinions, Orders, etc., page 23); Arkansas & Gulf (Opinions, Orders, etc., page 27); Arkansas Eastern Railroad (Opinions, Orders, etc., page 34).

The term "division" is used in connection with the Little Rock, Maumelle & Western Railroad (Opinions, Orders, etc., page 30); Beirne & Clear Lake Railroad (Opinions, Orders, etc., page 31); Beardon & Ouachita (Opinions, Orders, etc., page 33); Fordyce & Princeton Railroad (Opinions, Orders, etc., page 40).

All of these lines just named were found by the Commission to be mere plant facilities of the proprietary traffic, and the haul ranged from less than 1,000 feet to more than three miles. Taking the following roads which were recognized as common carriers of the proprietary traffic, we find in the case of the following among others the use of the term "division:" Timpson & Henderson (Opinions, Orders, etc., page 141); Shreveport, Houston & Gulf (Opinions, Orders, etc., page 142); Groveton, Lufkin & Northern (Opinions, Orders, etc., page 143); Moscow, Camden & St. Augustine (Opinions, Orders, etc., page 143).

The term "allowance" is used by the Commis-

sion in the following cases with respect to roads recognized by the Commission as common carriers of the proprietary traffic: Mississippi Valley Railroad (Opinions, Orders, etc., page 153); Warren & Ouachita Valley Railway (Opinions, Orders, etc., page 77); Crittenden Railroad (Opinions, Orders, etc., page 98).

In the case of the Doniphan, Kensett & Searcy Railway, the Commission held (page 84):

> "For its service in *switching* products of the controlling mill through Kensett, a distance of six miles, to the Rock Island at Searcy, the latter may *allow* the Doniphan, Kensett & Searcy a *division* out of the rate of one cent per 100 pounds."

In the case of the Moscow, Camden & St. Augustine Railway (Opinions, Orders, etc., page 143), the Commission found the tap line receiving at the time of the hearing for the haul from the mill to the trunk line at Moscow, "a distance as heretofore stated of seven miles * * * a *division* out of the joint rates of from one to four cents per 100 pounds." The Commission states (page 144) in this case:

> "We are of the opinion that an *allowance* out of the rate of 1½ cents per 100 pounds may lawfully be paid to the Moscow, Camden & St. Augustine on the products of the mill of the proprietary company."

We have gone to the trouble of pointing out these statements of the Commission in its decision, in order to demonstrate to this court that counsel for the Commission, in now undertaking to distinguish between these terms, is drawing a distinction which the Commission never recognized in its opinion.

As to the appellees, the Commission describes the earnings of the Tap-line out of the joint rate as follows: In the case of the Louisiana & Pacific (Opinions, Orders, etc., page 594), as "allowances," where the average haul is 20 miles on the finished product; in the case of Woodworth & Louisiana Central (Opinions, Orders, etc., page 327), as "allowances" for a haul of six miles on 95 per cent. of the lumber; in the case of Mansfield Railway & Transportation Company (Opinions, Orders, etc., page 587), as "allowances" for a haul three-quarters of a mile to two and a half miles; in the case of the Victoria, Fisher & Western (Opinions, Orders, etc., page 602), "allowances" is the term used for a haul from a half to one mile. We thus find as to all of these appellees the Commission uses the term "allowances" as covering a movement either within the switching limit of three miles or a line haul averaging 20 miles. In all of these instances the Commission has ignored the movement of the logs to the mill ranging from a few miles to more than 30 miles.

Furthermore, the Commission has never recognized the term "line haul" in fixing rates, and has never recognized that the term "joint rate" is affected by the length, character or kind of carriers participating in the through route.

In Tariff Circular No. 18-A, in effect during all of the time covered by the tap line investigation, and in effect today, page 3, the Commission defines the term "joint rate" as follows:

> "The term 'joint rate,' as used herein, is construed to mean a rate that extends over the lines of two or more carriers and that is made by agreement between such carriers.

> 'Joint tariffs' are those which contain or are made up from such joint rates."

In Rule 10 (b) of Tariff Circular No. 18-A, page 24, the Commission provides:

> "If a joint rate applies to or from a point on a terminal or switching road, and such terminal or switching road receives a division of said rate which is not absorbed by a connecting carrier, the terminal or switching road must publish, post and file, or concur in or post, the tariff containing the joint rate."

In the brief and argument by counsel for the Commission there appears an effort to distract the attention of the court from the questions involved in the tap line appeal, and to draw from the court some expression of opinion as to what service the carrier should perform under the transportation charge, to sustain some preconceived notion by counsel for the Commission in a matter, as he stated to the court, now under investigation by the Commission as to what service should be performed upon a private sidetrack without additional charge. We do not understand that the views expressed by the counsel for the Commission are the views of the Commission. Nor do we understand that counsel claims for the views expressed in his brief that he has the sanction of the Commission. The opinion of the Commission speaks for itself, and by that opinion and its orders this court must determine the position of the Interstate Commerce Commission.

Counsel for the Commission, in discussing the alleged switching movement ignore entirely the transportation service performed in hauling the log to the mill, and treat only of the movement of the fin-

ished product. They state that the haul of the logs was done free, when in fact the record discloses that the rates published in the tariffs at the time of the investigation by the Commission covered the transportation of the log not from the tree but from the junction of the lumber company's logging road with the tap line to the mill, and the transportation of the lumber from the mill over the tap line to the trunk line.

As indicating the situation as far as milling in transit is concerned at the time of the Commission's investigation, and as answering the argument of counsel for the Commission as to the situation on the Rock Island, we call attention to the following provision in the tariff of the Chicago, Rock Island and Pacific Railway, in effect April 30, 1912, I. C. C. No. C-9235, item 17, page 45, reading as follows:

> "Shipments of logs or lumber moving from points on lines named below may be stopped at points on those lines or at junction point of delivery to the C. R. I. & P. Ry., for the purpose of storing, sawing, re-sawing, or further manufacture into articles described in this tariff, and through rate from point of origin to final destination applied on the commodity re-shipped."

Sixteen lines are mentioned, including the appellee, Woodworth & Louisiana Central Railway.

The item further provides as to the appellee Louisiana & Pacific:

> "Shipments moving from off the Louisiana & Pacific Railway may be stopped at points on that line or at its junction with the New Orleans, Texas & Mexico Railroad, for the purpose of storing, sawing, re-sawing, or further manufacture into articles described in this tariff, and

the through rate from points of origin to final destination, as in effect date shipment moved from original point of origin applied to the commodity re-shipped."

The Frisco's present tariffs provide (Supplement No. 3 to I. C. C. No. A-65):

"When one carload of lumber produced from logs transported at the above rate, is delivered to the O. & N. W. R. R. for shipment to final destination, the freight charges on three and one-half cars of such logs will be refunded; it being understood that the amount so refunded shall not exceed the joint proportion of the O. & N. W., B. S. L. & W. and N. O. T. & M. R. R. Cos. of the through rate on the one car of lumber."

The present tariff of the Vicksburg, Shreveport & Pacific Railway (Supplement 22 to I. C. C. No. 2679) provides:

"Logs may be shipped from stations on the Vicksburg, Shreveport & Pacific Railway shown in Tariff and Supplements to Vicksburg, Miss., for the purpose of being manufactured into lumber, and the manufactured product may be reshipped via the Alabama & Vicksburg Ry. and Meridian, Miss., to points in Ohio and Indiana, under the following conditions:

The logs must be waybilled to Vicksburg, Miss., at a proportion of 6 cents per one hundred pounds, on basis of actual weight, subject to minimum weight of 30,000 pounds when one car is used, and 24,000 pounds for each car when more than one car is used, and delivery made to, and freight charges collected on the aforementioned basis from consignees. When the manufactured product is offered for reshipment, the Alabama & Vicksburg Ry. agent at Vicksburg, Miss., is authorized, on surrender of inbound paid freight bills, not over six months old (see Note), covering movement of three

pounds of logs in, for every one pound of manufactured product out, to refund to the consignee at Vicksburg, Miss., the amount collected on the inbound movement on basis of three pounds in, for every one pound out, and waybill the reshipment to final destination at the difference between 6 cents per one hundred pounds and the through rate on lumber from original point of shipment, in effect at the time the logs left point of origin, on basis of actual weights, subject to minimum weight on lumber published in tariff and supplements, allowing lines beyond Meridian, Miss., their proportion of the through rate, and the balance of the difference to the Alabama & Vicksburg Ry. The amount refunded must be shown as 'advanced charges,' and reference to the inbound billing must be indicated on the outbound billing."

These tariffs are cited to show that at the time of the hearing, and at the present time, trunk line railroads were and are hauling logs to the mill and the lumber thence under the blanket rate, and the division out of the joint rate includes the haul of the logs to the mill, and the lumber from the mill to the connecting line, or final destination.

These tariffs further show that at the time of the hearing before the Commission the Kirby Lumber Company, the chief complainant against the tap-line railroads before the Commission, had the benefit of the blanket rate covering the movement of its logs to its mills and the lumber thence to final destination. That practice which was then in existence is, as shown by these tariffs, in effect to-day so that we have the Commission denying to these appellee lumber companies located upon these appellee tap-line railroads, the application of the joint or blanket rate even upon movement of their lumber from their mills

to final destination, while it has not interfered with the tariffs of the Frisco and other railroads which are giving to the Kirby Lumber Company the joint rate not only upon its lumber from its mill to final destination, but also include the haul of the log to the mill.

As showing what the Commission considered to be the practice on milling-in-transit as long ago as the Central Yellow Pine decision, 10 I. C. C. 214 to 216, we set forth the following quotation:

> When these logs start for the mill it is certain, and may readily be a matter of agreement, that the entire product will go forward to destination. If the logs were shipped from a point upon the main line of one of these defendants to the mill at the local rate, we do not think that an adjustment of the rate in and of the rate out, when the lumber went forward, which would treat the lumber shipment as originating where the logs did, would be illegal as a matter of law. To hold otherwise would simply compel the moving of these mills to the vicinity of the timber and this although entailing much expense would benefit nobody.
>
> Once admitting the legality of the principle of milling in transit, whether it shall be extended to a particular case, must depend largely upon the facts. Under all the circumstances disclosed by the record before us, we think that this practice may be permitted here, but this holding extends the application of that principle to the extreme limit.
>
> It appears that some, perhaps all of these defendants, now make what is known as a rough material rate upon logs from points upon their line to the mill. These tariffs specify that the low rate shall apply only in case the product is shipped out over the defendant line. Whether a carrier may apply a lower rate to the transportation of raw material to a given mill which ships

the product out over its line than it applies for the same service to another mill, which disposes of the product otherwise, is not decided. What we hold is that the shipment of the log to the mill and the lumber from the mill may, under the circumstances of this case, be treated as in the nature of a through shipment from the point where the log is received to the point where the lumber is finally delivered, and that the carrier may make such allowance toward the cost of moving the log as would be fairly involved in moving the lumber from that point and that it may do this by joint arrangement with the carrier bringing the log to the mill, provided that carrier is a common carrier by rail.

It will be noted that in our opinion these divisions can only be granted when the logging road is a public carrier which actually makes a joint through rate, and it was urged in argument that there can be no difference in effect between a common carrier which brings these logs to the mill and a private carrier which discharges the same service. It would be a sufficient answer to this that the law permits the allowance in one case and not in the other, but there is a practical answer as well. The common carrier is subject to public control, its tariffs must be filed according to law, it must report to governmental authority, it must obey the law obligatory on such carriers. These logging roads develop with the country, passing by almost imperceptible progress from carriers of logs to carriers of general merchandise and often of passengers. The same considerations which require that railroads in general should be subject to public supervision apply to these lines.

One further observation should be made. While the public as a rule has no concern in the division of through rates and while the statute does not require the publication of the proportions into which such rates are divided among the carriers, we think these divisions stand somewhat different. The transportation first of the

log and then of the lumber involves the exercise of the right to mill in transit. Where that privilege is granted to grain, cotton, or other commodities, the fact should be and usually is plainly stated upon the tariff, together with the conditions upon which the privilege will be allowed. In this case the only way of stating the value of that privilege to the mill owner is by giving the division which is allowed the tap-line, since that division is in all cases, even if the road be a distinct and independent corporation, an allowance for the benefit of the mill. We think, therefore, that the tariffs should state upon their face that the transportation provided for covers the carriage of the logs to the mill and the lumber from the mill, and that the division which is allowed the tap-line should in all cases be named."

Counsel for the Commission, under a heading "Errors of Fact," referring to alleged errors made by the Commerce Court as to the effect of the Commission's report and order, allege, first, that the Commerce Court erred in holding that the Commission had held that switching service within three miles of a trunk line was a transportation service. We find some difficulty in reaching a satisfactory interpretation of counsel's statement. At any rate, the Commission did hold that the movement from a mill within the three-mile limit to the trunk line was a transportation movement, and that the trunk line railroad could make a joint rate covering the movement over that three miles, and over the trunk line to destination, and that a joint rate lawfully might be applied to the combined movement, provided the tap-line was recognized by the Commission as a common carrier.

Counsel allege that the Commerce Court erred in its fourth statement as to the Commission's holding:

> "For switching products of the non-proprietary mill an allowance may be given, and, in the case of a common carrier tap line, a division out of the through rates should be made."

Counsel for the Commission says that this is incorrect, stating, "This is not the fact, for a purely switching service a switching allowance is made either to the shipper or to the tap line performing the service, and without any regard to whether it be proprietary or non-proprietary lumber." That this statement of counsel is incorrect is shown by the amended order of October 30, 1912 (Paragraph 11, Opinions, Orders, etc., page 184):

> "It is further ordered that, in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies, in the case of any of the parties to the record first hereinabove named, the Commission will, upon proper petition herein, enter an order requiring the establishment of such through routes and joint rates, or enter upon an inquiry with respect thereto.
>
> It is further ordered that the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies, shall be submitted to the Commission by the parties hereto, for approval."

These paragraphs of the order demonstrate beyond all question that in all instances the payment out of the joint rate either for switching a distance of less than three miles, or for a haul of greater than three miles, a division of the joint rate must be made to the tap line on nonproprietary traffic.

These paragraphs also show conclusively the application of the ownership doctrine of the Commission, by the segregation of proprietary and nonproprietary as to the application of joint rates.

Counsel is in error in stating that allowances were made to two of the tap lines before the court for proprietary as well as nonproprietary traffic. Of these lines only one received a switching allowance for the movement from the mill to the trunk line on the finished product. No division of the joint rate was accorded to any of the appellee railroads for the movement of the logs to the mills and the lumber to the trunk line.

Counsel assign as a third error of fact by the Commerce Court the finding in the sixth paragraph (Opinions, Orders, etc., page 206), to the effect that the blanket rate is to be extended beyond the three mile limit for a mill with a common carrier tap line connection to the trunk line, provided only that the mill be not a proprietary interest as to the tap line. Counsel assert that this is not a fair statement of the Commission's finding, and quote from the opinion of the Commission as follows:

> "But where a mill is more than three miles distant from a trunk line, and is connected with it by a tap line organized as a common carrier, and so recognized by this Commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk line covers, as defined in this territory."

The imported qualification as to the tap line is that it must be organized as a common carrier *and so recognized by the Commission.* It is therefore

plain that the Commission held that if a mill be a proprietary mill more than three miles distant from the trunk line, it would not be entitled to the blanket rate unless the tap line be recognized by the Commission as a common carrier, and since, in the case of all four of the appellees there was no such recognition by the Commission, it follows that the proprietary mill more than three miles from the trunk line would not be entitled to the joint rate, while the non-proprietary mill on the lines of the appellees more than three miles from the trunk line is entitled to the joint rate.

We therefore find that the Commerce Court was right as to all three of these alleged errors of fact, and that there is no proper criticism against their statement.

In every observation made by the Commission's counsel, there is the qualification either that the Commission recognized the tap line as a *bona fide* common carrier, or that the service performed was not in fact a plant service.

We have said this much as to the new matter in the brief for the Commission because we did not want this court to understand that any of the argument advanced by the Commission's counsel had the support even of the Commission itself. We see that in all decisions the Commission has recognized that a joint rate is divided between the carriers participating, and that the share which each of the carriers received was denominated "allowance" or "division." The term "switching" does not cover any particular haul, long or short, and generally is intended to apply to the movement by one carrier for

another trunk line in making delivery within so-called switching limits in large terminals. The Commission provides in its rules, as we have before shown, for the application of a joint rate over even a switching movement.

We further have shown that the movement of the logs to the mill under the joint rate or blanket rate is not a free service; that in the decision in the Central Yellow Pine case the Commission correctly describes such movement as lawful; that the milling in transit there accorded is substantially that which was in effect upon the tap-lines at the time of the Commission's decision and in effect upon many of the trunk lines today. There was no free service, there was no unlawful discrimination and the Commission, by its construction of the statute and its application to the facts in these cases has by sheer denomination deprived the appellee railroads of their legitimate existence as common carriers of all traffic and has denied to the appellee lumber companies the benefits of the joint rate solely because of the ownership of the two companies. There have been disputes as to questions of fact. We are content to leave our statements for measurement by the record. The Commission has not justified in any sense its contentions that the Commerce Court was wrong or answered our contentions that the order of the Commission was unjust and unlawful and we therefore respectfully submit that the decree should be affirmed.

Respectfully submitted,

H. M. Garwood,
W. R. Thurmond,
Luther M. Walter,
For Appellees.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1913.

THE TAP LINE CASES.[1]

APPEALS FROM THE UNITED STATES COMMERCE COURT.

Nos. 829, 830, 831, 832, 833, 834, 835, 836. Argued April 8, 9, 13, 1914.—Decided May 25, 1914.

An order of the Interstate Commerce Commission, based on its finding that the service rendered by a connecting line is not a service of transportation by a common carrier railroad, but a plant service by a plant facility, to the effect that allowances and divisions of rates

[1] Docket titles of the Tap Line Cases are: No. 829. United States and Interstate Commerce Commission *v.* Louisiana & Pacific Railway Co.; No. 830. Atchison, Topeka & Santa Fe Railway Co. *v.* Louisiana & Pacific Railway Co.; No. 831. United States and Interstate Commerce Commission *v.* Woodworth & Louisiana Central Railway Co.; No. 832. Atchison, Topeka & Santa Fe Railway Co. *v.* Woodworth & Louisiana Central Railway Co.; No. 833. United States and Interstate Commerce Commission *v.* Mansfield Railway & Transportation Co.; No. 834. Atchison, Topeka and Santa Fe Railway Co. *v.* Mansfield Railway & Transportation Co.; No. 835. United States and Interstate Commerce Commission *v.* Victoria, Fisher & Western Railroad Co.; No. 836. Atchison, Topeka & Santa Fe Railway Co. *v.* Victoria, Fisher & Western Railroad Co.

are unlawful and must be discontinued, is affirmative in its nature and subject to judicial review by the Commerce Court.

Where the validity of an order of the Interstate Commerce Commission directing discontinuance of divisions of rates with another railroad depends upon whether the latter is a common carrier or a plant facility, the determination of that question upon undisputed facts is a conclusion of law which is subject to judicial review.

Although a railroad may have originally been a mere plant facility, after it has been acquired by a common carrier duly organized under the law of the State and performing service as such and regulated and operated under competent authority, it is no longer a plant facility but a public institution, even though the owner of the industry of which it formerly was an appendage is the principal shipper of freight thereover.

The extent to which a railroad is in fact used does not determine whether it is or is not a common carrier, but the right of the public to demand service of it.

Railroads owned by corporations properly organized under the laws of the State in which they are and treated as common carriers by the State, authorized to exercise eminent domain, dealt with as common carriers by other railroad corporations, and engaged in carrying for hire goods of those who see fit to employ them, are common carriers for all purposes, and cannot be treated as such as to the general public and not as to those who have a proprietary interest in the corporations owning them.

Congress has expressly excepted the transportation of lumber from the operation of the commodities clause, and had power so to do. *United States* v. *Del. & Hudson Co.*, 213 U. S. 366.

Debates in Congress may be resorted to for the purpose of showing that which prompted the legislation.

This court will not, in interpreting the power of the Interstate Commerce Commission in regard to a particular traffic, ignore a declaration of public policy in regard to that traffic as shown by an enactment of Congress.

Congress, by the exemption of lumber from the operation of the commodities clause, shows that it regarded railroad tap lines for lumber, owned and operated by the owners of the timber, as essential for the development of the timber interests of the country.

It is beyond the authority of the Interstate Commerce Commission to order a tap line to cease a division of rates as to lumber owned by it or by those having proprietary interest therein, if it is allowed such division as to lumber shipments by others.

If the division of joint rates between the principal carrier and the tap line really amounts to a rebate or discrimination in favor of the tap line owners, it is within the power and duty of the Interstate Commerce Commission to reduce such division to a proper point.
209 Fed. Rep. 244, affirmed.

THESE are all appeals from decrees of the United States Commerce Court (209 Fed. Rep. 244) annulling orders of the Interstate Commerce Commission refusing in whole or in part to compel certain common carriers which had filed schedules cancelling former schedules covering through routes and joint rates with the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, the Mansfield Railway & Transportation Company and the Victoria, Fisher & Western Railroad Company, appellees, hereinafter referred to as tap lines, to establish or reëstablish through routes and joint rates and to grant allowances and divisions to the tap lines.

The Commission, after an extensive investigation of the tap lines in the lumber regions, particularly in the States of Arkansas, Missouri, Louisiana and Texas, on April 23, and May 14, 1912, filed its report and supplemental report (23 I. C. C. 277, 549). The report deals at some length with the manner in which logs and lumber are moved in that territory and the practices attending such traffic. The Commission found the identification of the road with the industry, the necessity of incorporation to secure divisions and allowances, the great amount in the aggregate paid by the trunk lines to the tap lines, and the resulting discrimination, the fact that allowances were dependent upon the bargain the tap lines might exact from the trunk lines for a proportion of their traffic and not upon the amount of service rendered, and the fact that most of the lumber mills were near public carriers and that the tap lines would not be kept in operation if the mills were removed. General principles for determining the character

of carriers were set forth, and the conclusion stated that the real relation of a tap line was a question to be decided upon the facts in each case.

The Commission entered upon a particular examination of the various lines under investigation, among others, the appellees in these appeals. It found:

The Louisiana & Pacific Railway Company, controlled by the R. A. Long interests, owning a controlling interest in the Hudson River Lumber Company, the King-Ryder Lumber Company, Longville Lumber Company and the Calcasieu Long Leaf Lumber Company, consists of the following tracks, all of which were originally constructed as private logging roads: (1) a track from De Ridder Junction, Louisiana (all of the lines involved in these cases are within that State), to Bundicks, a distance of eight miles. The mill of the Hudson River Lumber Company in whose interest this track is operated is located at De Ridder within a few hundred feet of the trunk lines; Bundicks is apparently a logging camp with a company store. (2) A track from Lilly Junction to Walla, about seven and one-half miles, the latter being a point in the woods where the King-Ryder Lumber Company has a commissary and where is located a small independent yellow-pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bon Ami, a town of 2,000, located on the Lake Charles & Northern Railroad Company a short distance from and connected by it with Lilly Junction. (3) A track of two miles at Longville, a town of 2,000 people, where the Longville Lumber Company has its mill and a store, and where also are several independent stores. (4) A track of nine miles from Fayette to Camp Curtis, a place of 200 population, where the Calcasieu Long Leaf Lumber Company has a store, its mill being at Lake Charles. (5) A track of one mile from Bridge Junction to Lake Charles station. The towns De Ridder, Bon Ami, Lilly Junction, Longville, Fayette and

Lake Charles are connected by The Lake Charles & Northern Railroad, a Southern Pacific Railway Company line, originally built by the Long interests as a part of the Louisiana & Pacific, and sold to the Lake Charles & Northern with the reservation of trackage rights advantageous to the Louisiana & Pacific. By means of this arrangement the Louisiana & Pacific connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton (a station south of Fayette) and with the Southern Pacific, Iron Mountain and Kansas City Southern at Lake Charles. Its equipment consists of 22 locomotives, 6 cabooses, 41 freight cars and 270 logging cars, and a private car used by its officers, who are connected with the lumber companies, in traveling around the country. The lumber companies have many miles of unincorporated logging tracks connecting with the Louisiana & Pacific at various points. There are a number of other stations on the line, among them Bannister, where the Brown Lumber Company owns a small independent mill.

The operation is this: The lumber companies load the logs and switch them over the logging spurs to connection with the tap line which hauls them to the mill, an average distance of 30 miles, for which no charge is made. The tap line switches the carloads of lumber from the mill at Lake Charles, a distance of three-quarters of a mile, to the Southern Pacific; at De Ridder only a few hundred feet to the trunk lines; from the Lake Charles mill to the Frisco a distance of 18 miles; from the Bon Ami mill to the Southern Pacific at Lake Charles a distance of 40 miles, and from the Longville mill to the Southern Pacific at Lake Charles a distance of 24 miles,—the average haul for the controlling companies being nearly 20 miles. By written agreement 50% of the lumber must be routed over the Frisco and 40% over the Southern Pacific, but this is not always done. 243,122 tons of lumber, as against 8,819 tons of merchandise were shipped in 1910, 98% of the whole ton-

nage being supplied by the controlling interests. The passenger receipts for 1910 were $473.77. A logging train runs daily on each branch and there is one "mixed" train, loaded chiefly with logs and lumber, between Lake Charles and De Ridder. The allowances paid by the trunk lines range from 1½ to 5½c per 100 pounds out of their earnings under the group-lumber rate. The operating revenue for the year ending June 30, 1910, was $220,985.94, with operating expenses of $145,433.69, and there was an accumulated surplus of $73,581.07 on that date.

The Commission found that no charge was made for hauling the logs to the mills by the tap line and that for the short switching service allowances were made as above stated, and concluded that it regarded the whole arrangement as indefensible and unlawful, and saw no ground upon which any allowance might lawfully be made.

The Woodworth & Louisiana Central Railway Company and the Rapides Lumber Company, situated at Woodworth, are identical in interest. The mill is near the Iron Mountain which has a spur track to the mill, and the tap line has a standard gauge track from the mill to La Moria, about six miles, where it connects with the Southern Pacific Railway, Texas & Pacific Railway and Chicago, Rock Island & Pacific Railway, and a narrow gauge track in the other direction for 18 miles whence spur tracks go into the timber. The equipment consists of 1 standard gauge locomotive, 5 narrow gauge locomotives and 2 standard and 9 narrow gauge cars. The steel in the logging spurs and 4 of the narrow gauge locomotives used by the lumber company on the spurs are owned by the tap line and leased to the lumber company; while the right of way for the narrow gauge track is leased from the lumber company.

The tap line hauls the logs from its terminus to the mill without charge, where they are dumped by the trainmen into the mill pond. The carloads of lumber are switched

by the tap line from the planing mill to the place where they are taken by the Iron Mountain, about 25 feet. About 95% of the lumber goes through La Moria, being switched there by the tap line; the allowances from the Iron Mountain out of through rates being from 1½ to 5½c per 100 pounds, while from the trunk lines at La Moria from 2 to 5½c. There are no joint rates except on lumber. For the year ending June 30, 1910, there was 40,707 tons of freight handled for the lumber company and 2,100 tons of outside traffic. It has no passenger business. Its operations for that year showed a deficit, but there was a surplus from previous years of nearly $10,000. It files annual reports with the Commission.

The Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company are identical in interest. The tap line extends from Mansfield to a logging camp in the woods known as Hunter, a distance of about 16 miles and the line which was originally incorporated by the citizens of Mansfield in 1881 consisting of 2 miles of track from the town to a connection with the Texas & Pacific at Mansfield Junction. Later the Mansfield Company acquired the two-mile track and equipment, and the interests controlling it purchased a large amount of timber lands near Mansfield at a point called Oak Hill where a mill was built, and spur tracks were laid into the timber, which were later turned over to the Mansfield Company, with the free privilege reserved to the Lumber Company to operate logging trains between the timber and the mill, which operation is performed by a subsidiary company. The purchase price did not reflect the value of the reservation. There are about 25 miles of unincorporated logging tracks. The tap line also has a connection with the Kansas City Southern. It owns a locomotive, a passenger coach and a box car.

The service performed by the tap line is switching cars between the mill and the Kansas City Southern about

three-fourths of a mile, although the mill is within 300 feet of the Kansas City Southern and was formerly connected by a spur track which was abandoned and taken up, and to the Texas & Pacific, a distance of two and one-half miles. The tap line bears the expense of maintaining its tracks extending into the woods.

No other yellow-pine mills are served by the tap line, but there is a hardwood mill adjacent to the Frost-Johnson mill, obtaining a substantial portion of its logs from the latter company or subsidiaries, the price including delivery at the hardwood mill, the logs being hauled by the logging company under its trackage right. Some logs are also obtained from the Texas & Pacific, for the switching of which the hardwood mill pays the tap line $2.50 a car or less. The tap line maintains joint rates on hardwood as well as yellow-pine.

Practically no traffic other than that in which the Lumber Company is interested moves over the track from Mansfield to Hunter, but a good deal of outside traffic moves over the original two miles from Mansfield to Mansfield Junction. 16,539 tons of miscellaneous freight was handled during the year ending June 30, 1910, most of which passed over the Mansfield Junction branch, and much of which was for the controlling interests or their employés; while during the same time 28,596 tons of lumber were handled, 91.4 per cent. of which was supplied by the Lumber Company. A daily train is operated by the tap line in each direction on regular schedule, handling passengers, mail and express; but in 1910 the passenger revenues were only $1,209.76, while its freight revenues were $25,617.19.

The Commission noticed the abandonment of the 300 foot spur track and then the payment of an allowance of 1 to 4c per 100 pounds, and held that it was a mere manipulation of the situation in order to establish an unlawful relation; and also held that since the tap line crosses the

right of way of the Texas & Pacific within a short distance, the allowance of a like amount by the Texas & Pacific for switching from the mill to Mansfield and down to the junction was unlawful.

The Victoria, Fisher & Western Railroad Company and the Louisiana Long Leaf Lumber Company have the same stockholders and officers. The tap line extends from Victoria, where it connects with the Texas & Pacific, to Fisher, where it crosses the Kansas City Southern Railway, and then extends to Cain, in all about 31 miles. A part of the track was built some time ago and was acquired by the Lumber Company in 1900. In 1902 the Railroad Company was incorporated and its stock exchanged as a stock dividend for the line. There are about 25 miles of logging spurs and sidetracks. The equipment consists of 5 locomotives, 4 cabooses, 3 box cars, 1 flat car and 105 logging cars. It does not operate any trains on regular schedule. There are two mills owned by the Lumber Company, one about a mile from the junction with the Texas & Pacific and the other about half a mile from the tracks of the Kansas City Southern.

The tap line hauls the logs from the forest to the mill, charging $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs and not the haul over the main track. The greater part of the lumber from Fisher is turned over to the Kansas City Southern, involving a one-half mile switch by the tap line, and from Victoria is moved by the tap line one mile to the Texas & Pacific; a small amount of the lumber from each mill is taken by the tap line to the more distant trunk line, but the same divisions are paid. The allowances range from ¾ to 4c per 100 pounds, and the joint rates are the same as the rates published from adjacent mills on the trunk lines, except traffic moving to Texas, for which 1¼c per 100 pounds is added to the junction-point rate. No passengers are carried, and of 316,676 tons

of freight for the year 1910, over 99% was furnished by the proprietary company. And the accumulated surplus at the end of June, 1910, was $13,509.17.

The Commission held that the tap line could not participate as a common carrier in joint rates on the products of the proprietary company, but said that the lumber rate of the trunk lines applied from the adjacent mills and that they might make a reasonable allowance for switching.

The Commission made an order in such matter on May 14, 1912, which it amended on October 30, 1912. The amended order, so far as these appeals are concerned, provided:

"The Commission upon the record finds in the case of the . . . Woodworth & Louisiana Central Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Victoria, Fisher & Western Railroad Company; that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports," and it ordered that the trunk lines should cease and for two years abstain from making any such allowances to the tap lines named.

The Commission further ordered that if the trunk lines failed by a time stated, to reëstablish the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of certain proprietary com-

panies, among others, the appellees herein, it would upon proper petition enter an order requiring the establishment of such routes and rates or enter upon an inquiry with respect thereto, and further provided that all divisions of joint rates should be submitted to the Commission for approval.

The appellees thereupon by their several petitions filed in the United States Commerce Court sought to have the order of the Commission, so far as applicable to them, enjoined and annulled. The Interstate Commerce Commission, the Atchison, Topeka and Santa Fe Railway Company, the Gulf, Colorado and Santa Fe Railway Company and the Railroad Commission of Louisiana intervened. The Commerce Court said that the question was whether the Commission had acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be performing a mere plant service for a proprietary company, and held that as the service rendered to the proprietary and non-proprietary mills by the tap lines was the same, and as it was held to be a transportation service by an interstate common carrier as to the non-proprietary mills, it must be held to be a similar service as to the proprietary mills, and concluded that the Commission was without power to prohibit the making of joint rates by the trunk lines and the tap lines and the payment of some division of such rates to the tap lines for their services in hauling logs to and lumber from the proprietary mills, and annulled the order of the Commission in this respect and so far as it applied to the appellees.

The United States and the Interstate Commerce Commission, and the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company entered separate appeals from the decrees of the Commerce Court in the four cases instituted by the appellees.

Mr. Blackburn Esterline, Special Assistant to the Attorney General, with whom *The Solicitor General*, and *Mr. Karl W. Kirchwey*, Attorney, were on the brief, for the United States:

Mr. Charles W. Needham, with whom *Mr. Joseph W. Folk* was on the brief, for the Interstate Commerce Commission:

The trunk lines sought to cancel their tariffs prescribing divisions and allowances to the tap lines. The latter filed petitions with the Commission, complaining of this action. They requested that an answer be required from each trunk line, that an investigation be entered into, and that through routes and joint rates be established between the trunk lines and the tap lines. The Commission found that the tap lines were plant facilities of the lumber companies, denied the relief prayed, and by a single order dismissed the several petitions. This order was a negative order. As no affirmative order was entered against the tap lines, which they might annul or enjoin, the Commerce Court was without jurisdiction. *Proctor & Gamble Co.* v. *United States*, 225 U. S. 282; *Hooker* v. *Knapp*, 225 U. S. 302.

In cases of preference and discrimination, this court has held that judicial review is limited to the single inquiry, Was there substantial evidence before the Commission to support the order? In their petitions to the Commerce Court, the tap lines alleged much matter other and different from that which they adduced before the Commission. They also offered new evidence. Among other things, they sought to show conditions which they had created after the hearing before the Commission relating to the operation of the tap lines, and also to swell substantially the volume of the tonnage handled for others than the proprietary companies. They now seek to destroy the report and order of the Commission with a record which was not before it. Congress did not contemplate a retrial of the same issues of fact before another tribunal.

The Commerce Court was right in disregarding the testimony taken before it, and in striking it from the record. *I. C. C.* v. *Un. Pac. R. R. Co.*, 222 U. S. 541, 550; *I. C. C.* v. *Louis. & Nash. R. R. Co.*, 227 U. S. 88; *United States* v. *Balt. & Ohio R. R. Co.*, 225 U. S. 306, 323.

The Commission had the right to look behind the fact of separate incorporation to ascertain the actual relations of the parties. The tap lines are not *bona fide* common carriers of the traffic of the lumber companies, but they are mere devices created for the purpose of taking over the switch tracks and logging equipment of the several lumber companies, and converting allowances, which would otherwise be bald rebating transactions, into private divisions between the appellee tap lines and the trunk lines, in order to evade the provisions of the Act to Regulate Commerce, and simultaneously to maintain advantages over other shippers of lumber. *Miller & Lux* v. *Canal Co.*, 211 U. S. 293; *So. Pacific Co.* v. *I. C. C.*, 219 U. S. 498, 521; *United States* v. *Union Stock Yard*, 226 U. S. 286, 304; *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257; *Fourche River Co.* v. *Lumber Co.*, 230 U. S. 316; *Crane Iron Works* v. *United States*, 209 Fed. Rep. 238.

The particular preferences and advantages to the lumber companies may be thus summarized: 1. The allowance of 1½c to 5c per 100 pounds from the freight rate, and the resultant advantages of these lumber companies over their competitors in the transportation and sale of lumber in the markets. Some of the mills turn out 2,500 cars per year; 4c per 100 pounds, on the basis of 50,000 pounds to the car, would amount to $50,000 to a single company within a single year. 2. The use by the lumber companies of the tracks, switches and sidings as holding yards for loaded and empty cars, which enables them to evade all demurrage and car service charges. The tap lines hold for the lumber companies the cars of the trunk lines on the basis of 50c a day after 6 days

free time, instead of the lumber companies paying the usual $1 and $2 per day over 48 hours free time. 3. The use of free interstate transportation over the trunk lines distributed wholesale to the officers and agents of the lumber companies and used by them in travelling in the interest of the lumber companies, or in their own interest.

In order to gain these preferences and discriminations, the lumber companies are making the transportation of their enormous traffic a matter of bargain with all of the trunk lines, and the sale of it to the one or two which pays the highest allowances. With the power wielded in controlling the routing, the lumber companies are forcing the trunk lines to make allowances to the tap lines, of which the stockholders of the lumber companies are getting the benefit.

The conclusions reached by the Commission did not proceed upon arbitrary and unlawful distinctions and are supported by substantial evidence.

The switching service within 3 miles of the trunk line, being one which the trunk line held itself out to perform under the through rate, was a service "connected with transportation" when performed by the shipper or its agent. Switching for a greater distance so performed was purely an accessorial service. *Taenzer & Co.* v. *C., R. I. & P. Ry. Co.*, 191 Fed. Rep. 543; *C. & A. Ry. Co.* v. *United States*, 156 Fed. Rep. 558; affirmed, 212 U. S. 563; *Central Yellow Pine Association* v. *V. S. & P. R. Co.*, 10 I. C. C. 193; *Fourche River Co.* v. *Bryant Lumber Co.*, 230 U. S. 316, 322; *United States* v. *B. & O. R. R. Co.*, 231 U. S. 274; *I. C. C.* v. *Diffenbaugh*, 222 U. S. 42; *Matter of the Transportation of Hutchinson Salt*, 10 I. C. C. 1, 9; *Star Grain Co.* v. *A., T. & S. F. Ry. Co.*, 17 I. C. C. 338; *Fathauer Co.* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C. 517; *Industrial Lumber Co.* v. *S. L. W. & G. Ry. Co.*, 19 I. C. C. 50; *Santa Fe Ry.* v. *Grant Bros.*, 228 U. S.

177, 185; *Crane Iron Works* v. *United States*, 209 Fed. Rep. 238; *Kaul Lumber Co.* v. *Central of Georgia Ry. Co.*, 20 I. C. C. 450; *United States* v. *B. & O. Ry. Co.*, 231 U. S. 274; *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246; *Re Allowances for Sugar Transfer*, 14 I. C. C. 619; *C. & O. Ry. Co.* v. *Standard Lumber Co.*, 174 Fed. Rep. 107; *Industrial Railways Case*, 29 I. C. C. 212; *Le Roy Fibre Co.* v. *C., M. & St. P. Ry. Co.*, 232 U. S. 340, 354; *Am. Sugar Co.* v. *D., L. & W. R. R. Co.*, 200 Fed. Rep. 652, 656; *Mitchell Coal Co.* v. *Penna. R. R. Co.*, 230 U. S. 247, 264.

A plant facility tap line performing this service within the 3 mile limit was entitled to an allowance under § 15, but to no division out of the through rate. A common carrier tap line was entitled to a division or allowance out of the through rate on a haul of either more or less than 3 miles. The movement of the logs from the forest to the mill was not a transportation service to be paid for out of the through rate, but an accessorial service for which the shipper should pay.

Any allowance for switching within 1,000 feet of a trunk line was a mere device to effect an unlawful payment. These findings are within the principles approved by this court in *Mitchell Coal Co.* v. *Penna. R. R. Co.*, 230 U. S. 247, 265, to the effect that an allowance to a tap line under § 15 "is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service."

The Commerce Court affirmed in all respects the report and order of the Commission, with the single and sole exception that the Commission had arbitrarily found the tap lines to be plant facilities of the lumber companies, and impliedly recognized them as common carriers of an insignificant amount of traffic of a few other shippers, amounting to only 1 or 2 per cent of the whole.

The tap lines, the lumber companies, and the trunk lines, in all of their arrangements among themselves, and in various forms, carefully and clearly separated the traffic of the proprietary companies from the traffic of other shippers, and the Commission simply treated the case as the parties themselves had made it.

The preferences and discriminations found by the Commission do not arise out of the insignificant amount of traffic handled for shippers other than the proprietary companies. Such shippers do not receive the allowance of 1½c to 5c, or free demurrage and car service, or free passes. Rebates are not paid to the public on insignificant amounts of traffic, but they are paid to private parties on large volumes of traffic.

Any allowance whatever to as many as 57 tap lines was stricken down as unlawful, and the petitions were dismissed by negative orders. To 35 other tap lines the Commission allowed either a small division of the rate or an arbitrary switching charge, in the amounts which the Commission found they were entitled to receive for the service which they rendered. To 5 other tap lines the Commission refused any allowance on the traffic of the proprietary companies. No trunk line has come forward to challenge the validity of the order. Those which were brought in by summons have answered that they would allow the United States to defend. Out of a total of 97 tap lines against which the order was directed, 92 have accepted its terms. Only 5 have objected. Twice the report of the Commission has been sanctioned by this court to the extent of citing it as authority. *Mitchell Coal Co.* v. *Penna. R. R. Co.*, 230 U. S. 247, 264, 265; *Fourche River Co.* v. *Bryant Lumber Co.*, 230 U. S. 316, 322. The five objecting parties are met with the powerful presumptions of validity which accompany the order, which are reënforced by the nonaction of the great majority of the interested parties, and the sanction which this court

has already given to the report in the cases already cited.

Mr. Robert Dunlap and *Mr. James L. Coleman*, with whom *Mr. T. J. Norton* and *Mr. Gardiner Lathrop* were on the brief, for the Atchison, Topeka & Santa Fe Railway Company, and other trunk line railway companies, appellants in Nos. 830, 832, 834 and 836:

The tap line division is a rebate and the various steps taken by appellees in their attempts to legalize such rebate are mere devices to evade the payment of the published tariff rate in full.

The incorporation of the various tap line railroads and the other steps taken by them were for the sole purpose of continuing under the name of a division the old open rebate which was paid direct to the lumber companies. Masquerading as railroads, the lumber companies were making their traffic a matter of bargain and sale and by the device of a secret division were compelling the trunk lines to bid against each other in the dark for such business. Such was the proper finding of the Interstate Commerce Commission.

The points raised by appellees before the Commerce Court and before the Interstate Commerce Commission are without merit. The facts of record and the law are that:

The service performed by each of the appellee railroads herein is not a service of transportation by a common carrier railroad within the meaning of the Act to Regulate Commerce, but is an industrial service to the plant; the appellee railroads are plant facilities and perform a plant facility service for the proprietary lumber companies; there was abundant evidence upon which the Commission could base its finding that the participation by the appellee railroad in joint rates upon the logs and lumber of the proprietary lumber companies constitutes an undue and unreasonable preference and subjects other shippers to

unjust discrimination within the meaning of the Act to Regulate Commerce.

The Commission's order does not result in undue or unreasonable preference or unjust discrimination within the meaning of the Act to Regulate Commerce, either as between common carriers subject to the Act to Regulate Commerce, or as between shippers.

The order does not deprive the appellees of their rights under the Constitution of the United States.

The Commodities Clause does not repeal the Act to Regulate Commerce with respect to the prohibitions against rebating and discriminations.

Cases heretofore relied upon by appellees can be distinguished.

In support of these contentions, see *Armour Packing Co.* v. *United States*, 209 U. S. 56; *Blackstone* v. *Miller*, 188 U. S. 206; *Brundred* v. *Rice*, 49 Oh. St. 640; *Central Pine Assn.* v. *Shreveport &c. R. R. Co.*, 10 I. C. C. 193; *Chicago & Alton R. R. Co.* v. *United States*, 156 Fed. Rep. 558; 1 Cook on Corporations, 6th ed., 31; 2 Cook on Corporations, 6th ed., 1972, 1974, 1975, 1983, 1985, 1986, 1987; *Corporation Tax Cases*, 220 U. S. 107; *Crane Iron Works* v. *United States*, 209 Fed. Rep. 238; *Crane Iron Works* v. *Central R. R. Co.*, 17 I. C. C. 514; *Crane Railroad Co.* v. *Phila. & Reading Ry. Co.*, 15 I. C. C. 248; *Demko* v. *Carbon Hill Coal Co.*, 136 Fed. Rep. 162; *Eastern & Western Ry. Co.* v. *Rayley*, 157 Fed. Rep. 532; *General Electric Co.* v. *N. Y. C. & H. R. R.*, 14 I. C. C. 237; *Hunter* v. *Baker Vehicle Co.*, 190 Fed. Rep. 665; *Ill. Cent. R. R. Co.* v. *Int. Com. Comm.*, 206 U. S. 441; *Industrial Railways Case*, 29 I. C. C. 212; *Re Divisions of Joint Rates*, 10 I. C. C. 661; *Re Hutchinson Salt*, 10 I. C. C. 1; *Re Investigation of Tap-line Connections*, 23 I. C. C. 277, 283; *Int. Com. Comm.* v. *C., R. I. & P. Ry. Co.*, 218 U. S. 88; *Int. Com. Comm.* v. *D., L. & W. R. R. Co.*, 220 U. S. 235; *Int. Com. Comm.* v. *L. & N. R. R. Co.*, 227 U. S.

88; *Re Rieger*, 157 Fed. Rep. 609; *Kendall* v. *Klapperthal Co.*, 202 Pa. St. 596, 52 Atl. Rep. 92; *Lehigh Mining Co.* v. *Kelly*, 160 U. S. 327; *Louis. & Nash. R. R. Co.* v. *Mottley*, 219 U. S. 467; *La. & Pac. Ry. Co.* v. *United States*, 209 Fed. Rep. 247; *Martin* v. *Martin Co.*, 88 Atl. Rep. 612; *Miller & Lux* v. *East Side Canal Co.*, 211 U. S. 293; *McKilvergan* v. *Alexander Lumber Co.*, 102 N. W. Rep. 332; *New York, N. H. & H. R. R. Co.* v. *Int. Com. Comm.*, 200 U. S. 361; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Peavey Elevator Case*, 222 U. S. 42; *Procter & Gamble* v. *United States*, 225 U. S. 282; *Santa Fe &c. Ry. Co.* v. *Grant Bros.*, 228 U. S. 177; *Seymour* v. *Spring Forest Assn.*, 144 N. Y. 333; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246; *So. Pac. Terminal Co.* v. *Int. Com. Comm.*, 219 U. S. 498; *Swift* v. *United States*, 196 U. S. 375; *Union Pacific R. R. Co.* v. *Updyke*, 222 U. S. 215; *Taenzer & Co.* v. *C., R. I. & P. Ry. Co.*, 170 Fed. Rep. 240; *S. C.*, 191 Fed. Rep. 543; *United States* v. *Bags of Coffee*, 8 Cr. 415; *United States* v. *B. & O. R. R. Co.*, 231 U. S. 274; *United States* v. *Del. & Hud. R. Co.*, 213 U. S. 366; *United States* v. *Milwaukee Transit Co.*, 142 Fed. Rep. 247; *United States* v. *Union Stock Yard*, 226 U. S. 286; *Wade* v. *Lutcher*, 74 Fed. Rep. 517; *Watson* v. *Bonfils*, 116 Fed. Rep. 157; *Williams* v. *Northern Lumber Co.*, 113 Fed. Rep. 382.

Mr. Luther M. Walter and *Mr. H. M. Garwood*, with whom *Mr. W. R. Thurmond* was on the brief, for appellees:

The service performed by each of the appellee railways is a service of transportation by a common carrier within the meaning of the Act to Regulate Commerce.

Appellee railways are not plant facilities and do not perform a plant facility service for the lumber companies, appellees herein.

There was no evidence upon which the Interstate Commerce Commission could base its finding that the participation by the appellee railways in joint rates upon the

logs and lumber of the appellee lumber companies constitutes an undue or unreasonable preference, or subjects any party to any illegal discrimination within the meaning of the Act to Regulate Commerce.

The Commission's order results in undue and unreasonable preference and unjust discriminations within the meaning of the Act to Regulate Commerce as between carriers subject to the Act to Regulate Commerce and as between shippers.

The order deprives appellees of their rights under the Constitution of the United States.

The order of the Commission expressly overrides the exception contained in the Commodities Clause of the Act to Regulate Commerce.

In support of these contentions, see *Amos Kent Co.* v. *Assessor*, 114 Louisiana, 862; *Butte & Pac. Ry. Co.* v. *Montana Union R. Co.*, 16 Montana, 504; *Bridal Veil Lumber Co.* v. *Johnson*, 30 Oregon, 581; 46 Pac. Rep. 790; *Beaumont &c. R. R.* v. *A., T. & S. F.*, 24 I. C. C. 161, 163; *Chapman* v. *Trinity Valley Ry. Co.*, 138 S. W. Rep. 440; *Columbia Conduit Co.* v. *Commonwealth*, 90 Pa. St. 307; *Contra Costa Ry. Co.* v. *Moss*, 23 California, 323; *Commodities Clause Case*, 213 U. S. 366–417; *Crane Iron Works* v. *United States*, 209 Fed. Rep. 238; *DeCamp* v. *Hibernia Ry. Co.*, 47 N. J. Law, 46; *Diffenbaugh Case*, 176 Fed. Rep. 409; *Elevator Cases*, 14 I. C. C. 324; 176 Fed. Rep. 409; 222 U. S. 42; *Federal Sugar Case*, 20 I. C. C. 200; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196; *Greasy Creek Co.* v. *Ely Jellico Coal Co.*, 132 Kentucky, 692; *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. 237; *Kans. & Tex. Ry. Co.* v. *North West. Coal Co.*, 161 Missouri, 288; 61 S. W. Rep. 864; *Kettle River Ry. Co.* v. *Eastern Ry. Co.*, 43 N. W. Rep. 473; *La. & Pac. Ry. Co.* v. *United States*, 209 Fed. Rep. 247; *Manufacturers Ry. Co.* v. *St. L., I. M. & So. Ry.*, 21 I. C. C. 304, 312; *Madura Railway Co.* v. *Raymond Granth Co.*, 86 Pac. Rep. 27; *Mitchell Coal Co.* v.

Pennsylvania Ry. Co., 230 U. S. 247, 264; *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C. 246; *Ulmer* v. *Railway Co.*, 98 Maine, 581; 57 Atl. Rep. 1001; *Union Stock Yard Case*, 226 U. S. 286; *United States* v. *Balt. & Ohio R. R. Co.*, 231 U. S. 274.

Mr. Wylie M. Barrow, with whom *Mr. Ruffin G. Pleasant*, Attorney General of the State of Louisiana, was on the brief, for the Railroad Commission of Louisiana, intervenor and appellee:

The interest of the State of Louisiana in these cases lifts them from the category of mere private controversy and places them on the plane of public questions.

Many important railroads now operating in Louisiana originated as tap lines.

There is a public necessity for the tap line railroads.

The questions here presented, being public in their nature, and not merely private controversy, are of great interest to the people of the State of Louisiana.

In support of the contentions of the State, see *Agee* v. *Louis. & Nash. R. R. Co.*, 152 Alabama, 344; *Amos Kent Brick Co.* v. *Tax Collector*, 114 Louisiana, 862; *Butte & Pac. R. Co.* v. *Montana Union Ry.*, 16 Montana, 504; *Caldwell* v. *Richmond &c. R. Co.*, 89 Georgia, 550; *Central Yellow Pine Ass'n* v. *Vicksburg &c. R. R. Co.*, 10 I. C. C. 193; *Chi., B. & Q. R. R. Co.* v. *Cutts*, 94 U. S. 155; *Chi., B. & Q. R. Co.* v. *Porter*, 43 Minnesota, 527; *De Camp* v. *Hibernia Ry. Co.*, 47 N. J. Law, 43; *Denver &c. R. Co.* v. *Cahill*, 8 Colo. App. 158; *Re Divisions of Joint Rates*, 10 I. C. C. 385; *Dock Co.* v. *Garrity*, 115 Illinois, 155; *Lake Superior R. R. Co.* v. *United States*, 93 U. S. 442; *McCloud Lumber Co.* v. *So. Pac. Co.*, 24 I. C. C. 89; *National Dock Co.* v. *Central R. R. Co.*, 32 N. J. Eq. 755; *N. Y. Cent. R. R. Co.* v. *Lockwood*, 17 Wall. 357; *Phillip* v. *Watson*, 63 Iowa, 28; 18 N. W. Rep. 859; *Star Grain Co.* v. *Atchison &c. Ry. Co.*, 17 I. C. C. 338; *S. C.*, 14 I. C. C. 364; *Tap Line*

Cases, 23 I. C. C. 277; *Re Transportation Hutchinson Salt*, 10 I. C. C. 1; *Ulmer* v. *Lime Rock Ry. Co.*, 98 Maine, 579; *United States* v. *Union Stock Yard*, 226 U. S. 286; *Winona R. R. Co.* v. *Blake*, 94 U. S. 180.

MR. JUSTICE DAY, after making the foregoing statement, delivered the opinion of the court.

A preliminary objection is made to the jurisdiction of the Commerce Court in that the order of the Commission is not reviewable because merely of a negative character. The Commerce Court examined this question and in view of the amended order of October 30, 1912, reached the conclusion that the order was affirmative in its nature and of a character permitting of review by proper proceedings in that court under the act giving it jurisdiction in such cases. We find no reason to differ with this conclusion and are of opinion that the Commerce Court had jurisdiction in the case.

It is further insisted upon the authority of *Procter & Gamble Co.* v. *United States*, 225 U. S. 282, and other cases in this court which have followed that decision, that in the present cases the decision rests upon conclusions of the Commission as to matters of fact only, which are within the sole jurisdiction of that body and not reviewable in the courts. But we shall consider the case upon the findings of fact preceding this opinion, which are identical with those made by the Commission, and test the conclusions reached as matters of law, giving proper consideration to matters of fact which are not in dispute.

The final decree of the Commerce Court vacated and set aside the portion of the Commission's order reading as follows:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the

respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

"3. It is Ordered, That the principal defendants [trunk lines, naming them], be, and they are hereby notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service."

The question now before this court is the correctness of this decree.

A perusal of the findings and orders of the Commission make it apparent that the grounds of decision upon which it proceeded were two, first, that these roads were mere plant facilities, second, that they were not common carriers as to proprietary traffic. The Commission held that before incorporation they were plant facilities and that after incorporation they remained such. What the Commission means by plant facilities may be gathered from a consideration of some of its decisions. In *General Electric Co.* v. *N. Y. C. & H. R. R. R.*, 14 I. C. C. 237, a network of interior switching tracks constructed to meet the necessities of the business, were held to be mere plant facilities. The same principle was applied to the internal trackage of large industrial plants in *Solvay Process Company* v. *Delaware, Lackawanna & Western R. R. Co.*, 14 I. C. C. 246. These systems of internal trackage were not common carriers, and, however extensive, were intended to and did furnish service for the plants which owned and

operated them. But a common carrier performing service as such, regulated and operated under competent authority, as observed by Commissioner Prouty in *Kaul Lumber Co.* v. *Central of Georgia Railway Co.*, 20 I. C. C. 450, 456, is no longer a mere appendage of a mill "but a public institution." It thus becomes apparent that the real question in these cases is the true character of the roads here involved. Are they plant facilities merely or common carriers with rights and obligations as such?

It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used, does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. This principle has been frequently recognized in the decisions of the courts. We need not cite the many state cases in which it has been so held, in view of the fact that the same principle was laid down in the late case of *Union Lime Co.* v. *Chicago & N. W. Ry. Co.*, 233 U. S. 211. In that case the Supreme Court of Wisconsin sustained the extension of a spur track to reach the quarries and lime kilns of a single company as a public use authorizing the exercise of the right of eminent domain, and this court affirmed the judgment. Dealing with the contention that the Wisconsin statute was invalid because it authorized action appropriating property upon the exigency of a private business, this court said (p. 221):

"A spur may, at the outset, lead only to a single industry or establishment; it may be constructed to furnish an outlet for the products of a particular plant; its cost may be defrayed by those in special need of its service at the

time. But none the less, by virtue of the conditions under which it is provided, the spur may constitute at all times a part of the transportation facilities of the carrier which are operated under the obligations of public service and are subject to the regulation of public authority. As was said by this court in *Hairston* v. *Danville & Western Rwy. Co.*, *supra* (p. 608) [208 U. S. 598]: 'The uses for which the track was desired are not the less public because the motive which dictated its location over this particular land was to reach a private industry, or because the proprietors of that industry contributed in any way to the cost.' There is a clear distinction between spurs which are owned and operated by a common carrier as a part of its system and under its public obligation and merely private sidings. See *De Camp* v. *Hibernia R. R. Co.*, 47 N. J. Law, 43; *Chicago &c. R. R. Co.* v. *Porter*, 43 Minnesota, 527; *Ulmer* v. *Lime Rock R. R. Co.*, 98 Maine, 579; *Railway Company* v. *Petty*, 57 Arkansas, 359; *Dietrich* v. *Murdock*, 42 Missouri, 279; *Bedford Quarries Co.* v. *Chicago &c. R. R. Co.*, 175 Indiana, 303."

The Commission has recognized this principle as applicable to tap lines, for in the *Central Yellow Pine Association* v. *The Vicksburg, Shreveport & Pacific R. R. Co.*, 10 I. C. C. 193, 199, it said:

"While these logging roads are almost or quite without exception mill propositions at the outset, built exclusively for the purpose of transporting logs to the mill, they soon reach a point where they engage in other business to a greater or less extent. As the length of the road increases, as the lumber is taken off and other operations obtain a foothold along the line, various commodities besides lumber are transported, and this business gradually develops until in several cases what was at first a logging road pure and simple has become a common carrier of miscellaneous freight and passengers. Almost all these lines, even where they are run as private enterprises,

do more or less outside transportation, and it would be difficult to draw any line of demarkation between the logging road as such and the logging road which has become a general carrier of freight."

This representation it is contended by the Attorney General of Louisiana, who appears here in behalf of the Louisiana Railroad Commission, intervenor, is aptly descriptive of the growth and development of railroads in that State.

Furthermore, these roads are common carriers when tried by the test of organization for that purpose under competent legislation of the State. They are so treated by the public authorities of the State, who insist in this case that they are such and submit in oral discussion and printed briefs cogent arguments to justify that conclusion. They are engaged in carrying for hire the goods of those who see fit to employ them. They are authorized to exercise the right of eminent domain by the State of their incorporation. They were treated and dealt with as common carriers by connecting systems of other carriers, a circumstance to be noticed in determining their true character. *United States* v. *Union Stock Yard & Transit Co.*, 226 U. S. 286. They are engaged in transportation as that term is defined in the Commerce Act and described in decisions of this court. *Coe* v. *Errol*, 116 U. S. 517; *Covington Stock Yds. Co.* v. *Keith*, 139 U. S. 128; *Southern Pac. Term. Co.* v. *Interstate Com. Comm.*, 219 U. S. 498; *United States* v. *Union Stock Yard Co.*, *supra*.

Applying the principles which we have stated as determinative of the character of these roads and without repeating the facts concerning them, they would seem to fill all the requirements of common carriers so employed, unless the grounds upon which they were determined not to be such by the Commission are adequate to that end. The Commission itself as to all shippers other than those controlled by the so-called proprietary companies, treated

them as common carriers, for it has ordered the trunk lines to reëstablish through routes and joint rates as to such traffic. But says the Government, and it insists that this fact alone might well control the decision, the roads are owned by the persons who also own the timber and mills which they principally serve.

This fact is not shown to be inconsistent with the laws of the State in which they are organized and operated. On the contrary the public authorities of that State are here insisting that these companies are common carriers. Congress has not made it illegal for roads thus owned to operate in interstate commerce. While Congress in enacting the Commodities Clause amending § 1 of the Act to Regulate Commerce (June 29, 1906, c. 3591, 34 Stat. 584) sought to divorce transportation from production and manufacture and to make transportation a business of and by itself unallied with manufacture and production in which a carrier was itself interested, the debates, which may be resorted to for the purpose of ascertaining the situation which prompted this legislation, show that the situation in some of the States as to the logging industry and transportation was sharply brought to the attention of Congress and led to the exemption from the Commodities Clause of timber and the manufactured products thereof, thus indicating the intention to permit a railroad to haul such lumber and products although it owned them itself. And that Congress had the constitutional power to enact such exemption was held in *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 416–7. This declaration of public policy which is now part of the Commerce Act cannot be ignored in interpreting the power and authority of the Commission under the act. The discussion resulting in the action of Congress shows that railroads built and owned by the same persons who own the timber were regarded as essential to the development of the timber regions in the Southwest

and the necessity of such roads was dwelt upon and set forth with ample illustration by Commissioner Prouty in his concurring opinion in this case.

As we have said, the Commission by its order herein required the trunk lines to reëstablish through routes and joint rates as to property to be transported by others than the proprietary owners over the tap lines. This order would of itself create a discrimination against proprietary owners, for lumber products are carried from this territory upon blanket rates applicable to all within its limits. It follows that independent owners would get this blanket rate for the entire haul of their products while proprietary owners would pay the same rate plus the cost of getting to the trunk line over the tap line. The Commission, by the effect of its order, recognizes that railroads organized and operated as these tap lines are, if owned by others than those who own the timber and mills, would be entitled to be treated as common carriers and to participate in joint rates with other carriers. We think the Commission exceeded its authority when it condemned these roads as a mere attempt to evade the law and to secure rebates and preferences for themselves.

It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to participate in joint rates with other common carriers that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the

authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

For the reasons stated, we think the Commerce Court did not err in reaching its conclusion and decision, and its judgment is

Affirmed.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION *v.* BUTLER COUNTY RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

No. 837. Argued April 13, 1914.—Decided May 25, 1914.

The *Tap Line Cases*, *ante*, p. 1, followed to the effect that:

The fact that the same ownership controls the freight offered and the stock of a railroad company which is a common carrier, does not justify a different rate imposed upon the same kind of traffic.

Under the Commodities Clause it is not unlawful for a common carrier to carry lumber owned by it, and until the law otherwise provides, it may treat freight owned by it in the same manner as like freight independently owned.

If the division of rates between a trunk line and a common carrier controlled by the same interest as controls the bulk of the freight moved by the carrier, is a mere cover for rebates and discriminations, the Interstate Commerce Commission has power to prevent such practices.

209 Fed. Rep. 260, affirmed.

THE facts, which involve the status of a lumber tap line and the powers of the Interstate Commerce Commission in regard to establishment of joint rates thereover, are stated in the opinion.

Mr. Blackburn Esterline, with whom *The Solicitor General* and *Mr. Karl W. Kirchwey* were on the brief, for the United States.

Mr. Charles W. Needham, with whom *Mr. Joseph W. Folk* was on the brief, for the Interstate Commerce Commission.

Mr. William A. Glasgow, Jr., with whom *Mr. James M. Beck* was on the brief, for appellee:

The Commerce Court had jurisdiction of the complainant's bill and power to grant the relief prayed.

The Interstate Commerce Commission by its supplemental report of May 14, 1912, finds that the Butler County Railroad Company is a common carrier subject to the Act to Regulate Commerce.

The Interstate Commerce Commission required the Butler County Railroad Company, with the St. Louis & San Francisco Railroad Company and the St. Louis, Iron Mountain and Southern Railway Company, respectively, to reestablish the through routes and joint rates theretofore in effect "in accordance with their respective tariffs," thereby fixing what was and is the proper and legal joint rate on lumber and forest products, from stations on the Butler County Railroad.

Having fixed the proper and legal joint rate on lumber and forest products, the Commission had no power to prescribe the "proportion or division of such rate to be received by each carrier party thereto," unless the carriers "shall fail to agree among themselves upon the apportionment or division thereof."

It was beyond the power of the Commission to require that the Butler County Railroad Company should not receive out of the joint rate a greater division that $1.50 per car on lumber and forest products carried for the Brooklyn Cooperage Company, when at the same time providing for proper divisions of the joint rate to the Butler County Railroad Company on traffic carried for other shippers under the same tariffs containing the provision as to milling in transit.

In support of these contentions, see Act to Regulate Commerce, §§ 1 and 15; *Central Yellow Pine Ass'n* v. *Vicksburg S. & P. R. Co.*, 10 I. C. C. 193; *Chicago & N. W. Ry. Co.* v. *Osborne*, 52 Fed. Rep. 912; *S. C.*, 146 U. S. 354; *Crane Railroad Co.* v. *Phila. & Reading Ry. Co.*, 15 I. C. C. 248; *Division of Joint Rates*, 10 I. C. C. 385; *Hooker* v. *Knapp*, 225 U. S. 302; *Int. Com. Comm.* v. *Nor. Pac. Ry. Co.*, 216 U. S. 538; Judicial Code of March 3, 1911, § 207; *Malvern &c. R. R. Co.* v. *Chicago &c. Ry. Co.*, 182 Fed. Rep. 685; *Procter & Gamble* v. *United States*, 225 U. S. 282; *Re Allowances to Elevators*, 14 I. C. C. 309; *Star Grain Case*, 17 I. C. C. 338.

MR. JUSTICE DAY delivered the opinion of the court.

The appellee, the Butler County Railroad Company, filed with the Interstate Commerce Commission its petition asking for the reëstablishment of through routes and joint rates with certain trunk lines, which was consolidated with and decided upon the same record as the complaints before the Commission in the *Tap Line Cases* involved in

the previous cases, Nos. 829 to 836, just decided, *ante*, p. 1. The general statement of the Commission in its report and supplemental report filed April 23, and May 14, 1912 (23 I. C. C. 277, 549) referred to in those cases preceded the following findings of fact:

The Butler County Railroad Company, the Brooklyn Cooperage Company, which owns the Railroad Company, and the Great Western Land Company, owning most of the timber reached by the railroad, are all subsidiaries of the American Sugar Refining Company.

The tap line, which was acquired from the Cooperage Company, consists of a section of track at Linstead, near Poplar Bluff, Missouri, extending into the plant of the Cooperage Company and connecting it with the St. Louis, Iron Mountain & Southern Railway and the St. Louis & San Francisco Railroad, which are within three-quarters of a mile of the plant, and the principal track extending about seven miles from Lowell Junction, a station on the Iron Mountain 7½ miles from Poplar Bluff, to Baileys, with a branch about 3 miles from Rossville, an intermediate point, and with trackage rights over unincorporated spurs from Baileys belonging to the Cooperage Company, and over the Iron Mountain from Lowell Junction to Poplar Bluff, paying for the latter 65c a train mile for 25 cars. It has 2 locomotives, 2 passenger coaches, 3 cabooses and about 100 freight and log cars.

The tap line hauls the logs, all of which are hardwood, from a connection with the unincorporated track to Lowell Junction, then over the Iron Mountain to Linstead and thence to the mill over its own track, where they are unloaded by the Cooperage Company. The regular manufacturing rate under the Missouri distance tariff is charged the Cooperage Company by the tap line, 1 to 1½c per 100 pounds, approximately $4 per car. The loaded cars are switched to the Frisco or Iron Mountain, less than one

mile, and the appellee receives from them an allowance of from 2 to 5c per 100 pounds. The rates from tap line points, including the mill at Linstead, are in all cases 2c higher than the rates of the trunk lines from Poplar Bluff, excepting to New Orleans and New York, to which points most of the shipments of the Cooperage Company go, and to which Poplar Bluff rates apply.

One hundred and eighty-four thousand six hundred and eighty-eight tons of forest products and 2,475 tons of other freight were hauled during the year ending June 30, 1910; of the first amount 107,527 tons being furnished by the controlling interests, 77,161 tons by outsiders, but all the timber coming from the lands of the Great Western Land Company, and of the miscellaneous freight 1,195 tons of inbound machinery and coal being for the proprietary companies. Passenger revenues were $4,104.22. Three mixed trains in each direction are operated daily between Linstead and Melville, a point beyond Baileys on the unincorporated track, two being used principally for passenger service.

The Great Western Land Company furnishes timber to several independent industries on the tracks of the tap line near Linstead, the tap line switching their product to the trunk lines. Their factory sites are leased from the Cooperage Company, the purpose of making such leases being to secure traffic upon which the tap line might obtain divisions. A few independent producers on the main track of the tap line team their supplies and ship their products over the tap line. They pay the local rate of the tap line and the trunk line rate, or a through rate that is 2 cents higher than the Poplar Bluff rate.

The Commission found that the Sugar Company, having refineries at New Orleans and New York, so adjusted the rates to such places as to induce movements to them and restrict movements to other points, and limited the amount the tap line might receive on proprietary traffic

moved from the mill to the Iron Mountain and Frisco to a switching charge fixed at $1.50 per car.

The order of the Commission, so far as it related to the appellee, required the trunk lines named to reestablish and maintain with it the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with the Commission on April 30, 1912; provided that the rates on yellow-pine lumber and articles taking the same rates from points on the line of the appellee should not exceed the current rates in effect from the junction points, and

"Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants [the trunk lines], respectively, to the said last-named parties to the record [the appellee and others] on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission [in this instance the switching charge of $1.50 per car] which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful."

The appellee then brought suit in the United States Commerce Court seeking to enjoin and annul the order of the Commission in so far as it forbade a division out of the joint rates of more than $1.50 per car. The Commerce Court held, after stating that the Commission had found this road to be a common carrier both of logs and of lumber, and not a plant facility, but had denied it the right to receive either a division or allowance for the log traffic and only an allowance for the lumber traffic of the proprietary mill, while permitting it to receive a division out of the joint rate for both log and lumber traffic of non-proprietary companies, that the reasons stated in the other

opinion applied here and that the distinctions made were arbitrary and the order beyond the power of the Commission, and the Commerce Court decreed that that part of the order of the Commission above quoted, with reference to the divisions and allowances to be made out of the joint rates, be vacated and set aside as to the appellee. 209 Fed. Rep. 260.

The United States and the Interstate Commerce Commission, the latter having intervened in the proceeding in the Commerce Court, prosecuted this appeal.

This case was argued on the same day with the other tap line cases, and much that is said in those cases is applicable here. The Commission ordered the restoration of the schedule of tariffs of April 30, 1912, thus recognizing the right of this road to participate in joint tariffs with other common carriers and to receive a division out of the joint rates. But the Commission excepted from this right traffic offered to the appellee by its proprietary company, evidently upon the theory enforced in the other cases before the Commission that as to such traffic the Railroad Company had not the rights of a common carrier, and as to such traffic limited the compensation of the Railroad Company to a switching charge of $1.50 per car.

We think the Commerce Court correctly held that the fact that the same ownership controlled the freight offered and the Railroad Company would not justify the different rate imposed upon the same kind of traffic. Under the Commodities Clause of the Act to Regulate Commerce, as amended (June 29, 1906, c. 3591, 34 Stat. 584), the right of a carrier, as we have said in the former opinion in these cases, to carry this class of freight although owned by it, is recognized as lawful. This being so, such carrier, until the law otherwise provides, has the right to treat such freight in the same manner as it does like freight independently owned. Of course, if the division of the rates

is a mere cover for rebates or discriminations, such practices may be controlled by the Commission under the authority given to it in the Act to Regulate Commerce.

We find no error in the disposition the Commerce Court made of this case, and its judgment is therefore

Affirmed.

UNITED STATES OF AMERICA *v.* AXMAN.